Pacific Rim Advisory Council

February 2016 e-Bulletin

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Barcelona
Hosted by Rousaud Costas Duran SLP
May 21-24, 2016

60th International PRAC Conference
Manila
Hosted by SyCip Salazar Hernandez & Gatmaitan
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ABNR ANNOUNCES PARTNER APPOINTMENTS

JAKARTA - January, 2016: ABNR is delighted to announce the promotion of Senior Associates ***Kevin Omar Sidharta*** and ***Indra Setiawan*** to the position of Partner with effect from 1 January 2016.

Kevin Omar Sidharta joined ABNR in 2002 and became a partner at the beginning of 2016. He attended the Faculty of Law of the University of Indonesia, majoring in Business Law. After his graduation in 2000, he went on to continue his law studies in Leiden University, from which he graduated in 2002 with the cum laude honor and earned his LL.M degree in International Business Law. In 2015, he was seconded to one of the leading law firms in the Netherlands. He has been involved in a wide range of law practice areas which include bankruptcy/suspension of payments/corporate restructurings, mergers and acquisitions, foreign investment, telecommunications, corporate matters, contract law, commercial arbitration / litigation, and environmental law. He also has considerable experience in advising and representing multinational companies in various sectors of industries which include manufacturing, oil and gas services, information technology / telecommunication, trading/distribution, construction, and mining and plantation.

Indra Setiawan joined ABNR in 2003 and became a partner on 1 January 2016. He graduated from the Faculty of Law of the University of Indonesia, majoring in Indonesian Civil Law. In ABNR, he specializes in Indonesian employment law and has advised clients on various employment matters. He has extensive experience in employment disputes and has represented clients before the Indonesian Industrial Relations courts. In addition to his employment practice, over the years he has developed expertise in other areas of practice which include corporate and commercial laws, foreign investment, mergers and acquisitions, plantation, pharmaceutical, and immigration. From 2013 – 2014, he was seconded to one of the largest law firms in South Korea.

For additional information visit www.abnrlaw.com

BAKER BOTTS LAUNCHES NEW PATENT TRIAL AND APPEALS BOARD TRIALS BLOG

HOUSTON - 14 January 2016: Baker Botts L.L.P., a leading international law firm, announced today the launch of its Patent Trial and Appeal Board (PTAB) Trials Blog - PTABBlog.law.

Over the last several years, the patent landscape has changed dramatically, due to changes introduced by the America Invents Act (AIA). One of the most significant changes is the establishment of new post-grant patent proceedings, including Inter Partes Review (IPR), Post-Grant Review (PGR) and Covered Business Method Review (CBMR).

“The introduction of these proceedings has dramatically changed how the validity of patents are challenged and evaluated, and has had a wide-ranging impact on the patent litigation landscape,” said Luke Pedersen, Chair of Baker Botts' PTAB Trials practice.

“Every week brings new decisions and rulings that offer insight into how the PTAB is handling these proceedings and interpreting statutes and regulations associated with the AIA. As leaders in the patent prosecution and litigation arena, the Baker Botts PTAB Trials Blog will provide a unique perspective on news, trends and analysis of PTAB proceedings as they evolve,” added Mr. Pedersen.

“With over 160 IP lawyers, holding over 180 advanced degrees, Baker Botts has an incredibly deep bench of practitioners with a wealth of experience in patent litigation, patent prosecution and post-grant proceedings. Lawyers in our PTAB Trials practice have already participated in over 135 IPRs and 10 CBMRs on behalf of our clients,” said Bart Showalter, Chair of Baker Botts' Intellectual Property practice.

To subscribe to our new blog, visit here: http://www.ptabblog.law/

For additional information visit www.bakerbotts.com

HOGAN LOVELLS LAUNCHES CYBER RISK SERVICES

WASHINGTON, DC – 01 February 2016: In an effort to help business leaders navigate the complex and cross-disciplinary challenges of today's cyber threat environment, Hogan Lovells announced today the launch of its Cyber Risk Services business unit, expanding the capabilities of the firm's market-leading Cybersecurity Solutions Group.

The formation of a dedicated unit of technical and risk professionals responds to client demand for the comprehensive services already offered by the firm's global team of experienced cybersecurity lawyers and professionals. Working side-by-side, the Hogan Lovells team will provide clients with cybersecurity program development, risk management, incident preparedness, breach response and investigations counsel, regulatory enforcement, litigation, and crisis management assistance.

The newly formed Cyber Risk Services team will partner closely with the firm's lawyers on:

Program development: This includes the evaluation of an organization's cyber risk and threats; governance and preparedness; review of policies, procedures and technical capabilities against appropriate standards of due care; development of policies and procedures for oversight and management of cyber risk; and evaluation of vendor cybersecurity practices.

Incident and crisis response. This includes the development of plans and procedures for investigating and responding to cybersecurity incidents, testing response capabilities, management and oversight of response efforts, providing technical and procedural recommendations, and leading highly complex incident response activities and investigations.

Regulatory compliance (HIPAA, ITAR, NNPI, etc.). This includes the development of governance programs, policies, procedures, and the technical cybersecurity requirements needed to comply with regulatory demands; review of existing policies, procedures, and capabilities; and advice on how to respond to regulators when faced with compliance issues.

Training and Awareness. This includes an evaluation of the cyber risk associated with employees, contractors, vendors, and other third-parties; analysis of the capability to protect against inside and outsider threats; evaluation of internal cultural awareness; and delivery of a comprehensive program to develop and evolve organizational cybersecurity awareness and best practices.

"As cybersecurity risk continues to occupy the top tier of corporate counsel and management agendas across sectors, Hogan Lovells' creation of a Cyber Risk Services business unit is a groundbreaking step in response to the demand clients have for the firm's unique blend of legal, technical, and management capabilities," said Harriet Pearson, partner and head of the firm's multi-disciplinary cybersecurity practice.

"By formalizing and expanding our team of technical and risk professionals who work in conjunction with our market-leading lawyers, we're able to offer clients comprehensive support to see them through every phase of a cybersecurity matter," said Deen Kaplan, partner and co-head of the new Cyber Risk Services unit.

Members of the firm's Cybersecurity Solutions Group include deeply experienced regulatory lawyers, many of whom are former senior government officials; veteran litigators experienced in assessing litigation risk and defending a wide range of matters; seasoned investigative lawyers including former cybercrime prosecutors; individuals with high-level security clearances; and technical and management professionals with significant operational and leadership experience working inside some of the world's largest and most sophisticated organizations -- all of whom understand how to engage in complex, nuanced and high-stake situations.

Jeffrey Lolley, newly appointed Managing Principal of Hogan Lovells Cyber Risk Services, added, "I am excited by the opportunity to work directly with clients drawing on my two decades worth of experience as a technologist, global chief information security officer, and risk consultant."

Hogan Lovells has had a longstanding top-rated cybersecurity practice – the Cybersecurity Solutions Group -- that serves communications, health, energy and utility, technology, defense, insurance, financial services, professional, and other services companies of all sizes, helping them to address their most challenging matters.

For more information visit www.hoganlovells.com

GOODSILL ANNOUNCES PARTNER APPOINTMENTS

HONOLULU - January, 2016: Goodsill Anderson Quinn & Stifel is honored to announce the January 1, 2016 appointments of Gail Cosgrove to Equity Partner and Claire Goldberg is a Partner.

Gail joined the Firm in July 2014 and centers her practice in civil litigation, primarily medical liability, complex litigation, product liability and toxic tort litigation. She is also a Lecturer-in-Law at University of Hawaiʻi William S. Richardson School of Law where she teaches Pretrial Litigation to second and third year law students.

Claire joined the Firm as an associate in 2007. She currently focuses her practice in the area of real estate transactions by assisting clients with real estate acquisitions, sales, financing, and leasing.

Prior to joining Goodsill, Claire attended New York University and the University of Michigan Law School.

For additional information please visit www.goodsill.com

RCD ADDITION TO ADMINISTRATIVE & URBAN PLANNING PRACTICE

RCD reinforces its Administrative and Urban Planning Department with the incorporation of Enric Acero, formerly the Municipal Secretary of Parets del Vallès Town Council and Secretary of its Industrial Board.

Enric Acero is a renowned expert in public-private procurement, in managing contentious administrative procedures and in the legal directing of urban development plans and projects, among others. He has extensive experience and recognition in the public sector, and he has occupied positions of responsibility in Parets del Vallès Town Council, where he was Municipal Secretary and Secretary of the Industrial Board from its constitution. He has also been Director of the Territorial Department and Director of the legal and contracting services, as well as Secretary of the company Habitaparets.

Enric Acero's incorporation expands and consolidates the services provided by the Administrative and Urban Planning Department, which is led by Eva Giménez Corrons and made up of professionals expert in advising public administrations and entities as well as private companies. Acero will reinforce the services on public procurement, public-private partnerships and on transparency and improvement of the administrative organization.

RCD – Rousaud Costas Duran combines its knowledge and experience related to the functioning and demands of the Public Administration in order to provide innovative and interdisciplinary legal advice. The law firm is a reference in providing comprehensive legal advice, its team is made up of over 200 professionals led by 30 partners, and it's positioned amongst the top-15 Spanish law firms.

For additional information visit www.rousaudcostasduran.com

SIMPSON GRIERSON WELCOMES FOUR NEW ASSOCIATES

NEW ZEALAND - 02 February, 2016: Simpson Grierson is delighted to announce four new senior associates.

Mark Allen is a commercial property expert with broad experience across a range of commercial property, property development, commercial and contract matters. He has advised on projects for major corporate clients utilising his contract management and negotiation skills.

Natalie Miller specialises in commercial litigation. Her areas of expertise include commercial and civil disputes, with a particular focus on debt recovery, commercial lease enforcement/disputes and enforcing contracts.

Sarah Mitchell works in the local government and environment group. She advises a wide range of corporate clients, local authorities and CCOs, on resource management and local government legal issues.

Rob O'Connor is a local government and environment expert. He regularly appears in the Environment Court and has also appeared in the High Court. Rob has international experience working in the United Kingdom planning system in both the public and private sectors.

For additional information visit www.simpsongrierson.com

SYCIP ANNOUNCES SENIOR ASSOCIATE APPOINTMENTS

MANILA - 19 January 19 2016: SyCip Salazar Hernandez & Gatmaitan is pleased to announce the following promotions to Senior Associate effective on January 1, 2016:

- Maria Christina C. Ortua
- Emmar Benjoe B. Panahon
- Ma. Patricia B. Paz

Let us congratulate them for this well-deserved milestone in their legal career.

For additional information visit www.syciplaw.com

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ARIAS & MUNOZ EL SALVADOR

ADVISES CITIBANK AND GRUPO TERRA IN SALES PURCHASE AGREEMENT

SAN SALVADOR - January 2016: Arias & Muñoz has advised Grupo Terra in the signing of an SPA which would allow them to acquire the majority of shares of Citibank's Consumer banking business and Insurance business in El Salvador, operated by Citibank El Salvador, S.A. and other legal vehicles and Seguros e Inversiones (SISA) and its subsidiaries.

On the other side, Arias & Muñoz also provided counsel to long-time client Citibank as the seller. The agreement was signed on December 19, 2015 and remains subject to local regulatory approval. The value was not disclosed. As advisors to both buyers and sellers, Arias & Muñoz has demonstrated its ability not only in handling transactions that involve a great deal of complexity, but also that it has a mature internal structure of specialists with the capability of working with the highest level of confidentiality in order to protect the client's best interest. Both sides (seller and buyer) were aware of Arias & Muñoz' expertise in handling most of the country's biggest and most complex M&A transactions.

Part of the Arias & Muñoz teams that worked on the deal: Arias & Muñoz El Salvador Counsel to Citibank: Ana Mercedes López (Partner), Armando Arias (Partner). Mario Lozano (Associate); Marcela Deras (Paralegal). Counsel to Terra: Zygmunt Brett (Partner). Mariana Nochez (Associate).

For additional information visit www.ariaslaw.com

BAKER BOTTS

SECURES RULING THAT ARBITRAL TRIBUNAL IN YUKOS-RELATED CASE LACKED JURISDICTION

LONDON - 25 January 2016: Baker Botts L.L.P., a leading international law firm, announced today that its client, the Russian Federation, obtained a declaration from the Swedish courts that Group Menatep-supported ADR-holders in Yukos Oil Company had wrongly brought expropriation claims against the Federation in international arbitration proceedings. The Court also ordered reimbursement of all of the Russian Federation's legal expenses in obtaining vindication. This is one of the many high-stakes arbitrations and cross-border litigations in which Baker Botts acts to protect its clients' rights.

On January 18, 2016, the Svea Court of Appeal ruled that, "the arbitral tribunal has no jurisdiction to adjudicate the claim." With regard to the Russian Federation's legal expenses, the Court ruled that, "The outcome of the case may also be assumed to be important for the Federation outside the current proceedings [and] the costs incurred appear justified for safeguarding the rights of the Federation in this case."

"The Swedish court's careful policing of the boundaries of arbitral jurisdiction in a cross-border investment treaty should give some comfort to the growing number of critics concerned with using arbitration clauses in agreements like the Trans-Atlantic Trade and Investment Partnership ("TTIP") and the Trans-Pacific Partnership ("TPP")," said Jay Alexander, Partner in the firm's London office and Co-Chair of the International Arbitration and Dispute Resolution group.

"The improper usurpation of jurisdiction is an issue in wide debate today, due not just to the wasted costs and fees, but also to the inherent problems associated with premature reliance on the arbitral decision prior to its reversal. We were and are pleased to work so seamlessly with our colleagues at Lindahl to forcefully address these issues," said Michael Goldberg, Partner in the firm's Houston and New York offices and Co-Chair of the International Arbitration and Dispute Resolution group.

"The judgment of the Svea Court of Appeal provides a sound restatement of the rules on the interpretation of treaties, which are essential to all international agreements between sovereigns, such as Russia and Spain in this case. I am extremely pleased that the Baker Botts International Disputes group was a part of this important result," said London Partner, Alejandro Escobar.

Baker Botts team members include: Jay Alexander (Partner, London), Alejandro Escobar (Partner, London), Michael Goldberg (Partner, Houston and New York), Izabella Sarkisyan (Associate, Moscow), Ernesto Féliz De Jesús (Associate, London).

For additional information visit www.bakerbotts.com

CAREY

ASSISTS MASISA LAUNCH TENDER OFFER FOR PARTIAL REPURCHASE OF ITS NOTES WORTH USD100 MILLION

SANTIAGO - January, 2016: Carey have helped wood products company Masisa launch a tender offer to repurchase US$100 million worth of debt from JP Morgan and Scotiabank.

The transaction closed on 6 January. JP Morgan and Scotiabank initially purchased the debt in 2014, when Masisa issued notes worth US$300 million. Carey advised Masisa in that deal.

Chile Counsel to Masisa - Carey Partners Jaime Carey, Diego Peralta and Francisco Ugarte, and associates Jorge Ugarte, Manuel José Garcés and Raúl Morales in Santiago.

For additional information visit www.carey.cl

BRIGARD & URRUTIA

ADVISES GOLDMAN SACHS ON US$30 MILLION REAL ESTATE ACQUISITION

A fund indirectly owned by Goldman Sachs and New York investor Rizk Ventures bought a building housing a cardiovascular clinic in the Colombian city of Bucaramanga. GSRVC Holdings bought the rights to a trust that owned the real estate from non-profit health-care organisation La Fundación Cardiovascular de Colombia.

Following the sale of the trust rights, GSRVC signed a triple net lease agreement with Fundación Cardiovascular allowing the foundation to continue operating the clinic. Believed to be the first example of a triple net lease agreement in Colombia, the arrangement makes Fundación Cardiovascular responsible for paying three costs related to the building – real estate taxes, building insurance and common area maintenance – on top of rent.

The deal closed on 30 December.

Counsel to Goldman Sachs Brigard & Urrutia Abogados Partners Manuel Quinche and Francisco Uribe and associates Fernando Castillo, Ana Rodriguez Polanía, Jean Carlo Arévalo and Natalia Hernandez.

For additional information visit www.bu.com.co

CLAYTON UTZ

ADVISING SUNDANCE RESOURCES LTD ON AU$16.5 MILLION EQUITY RAISING

PERTH - 03 February, 2016: Clayton Utz is advising ASX listed Sundance Resources Ltd (ASX: SDL) on its pro-rata renounceable entitlement offer to raise up to $16.5 million, announced today.

The entitlement offer is partially underwritten and offers shareholders 1 new share for every 1 share held at an issue price of A$0.005 per share, together with 1 free attaching option for every 1 share subscribed.

Clayton Utz Perth corporate partner Mark Paganin is leading the Firm's team with support from senior associate Stephen Neale and lawyer Thomas Parker.

For additional information visit www.claytonutz.com

GIDE

ADVISES VALLOUREC ON THE ACQUISITION OF TIANDA OIL PIPE

Gide has advised Vallourec Tubes SAS on its HKD 846.6 million acquisition of 50.61% of the entire issued share capital of Anhui Tianda Oil Pipe Co., Ltd. (TOP, 0839.HK), a Chinese seamless pipe manufacturer listed on the Hong Kong Stock Exchange.

This major transaction for Vallourec is part of its new strategic plan to transform its operational structure and bolster its global competitiveness. Vallourec has held a 19.46% stake in TOP since 2011, and this acquisition will give it a 70.07% controlling interest in the Chinese company.

Vallourec and TOP signed the conditional sale and purchase agreement on 29 January 2016. After the transaction is completed, Vallourec will launch a mandatory general offer to acquire all remaining shares.

Gide acted as lead counsel to Vallourec and advised on the PRC legal aspects of the project. The Gide team, led by partner Thomas Urlacher with the assistance of associates Wu Bin and Ronan Diot, also drafted all contractual documentation, including the sale and purchase agreement.

For additional information visit www.gide.com

HOGAN LOVELLS

ADVISES ON ONE OF THE MAJOR HEALTHCARE PPP'S IN RUSSIA AND CIS

MOSCOW - 19 January 2016: Hogan Lovells Moscow-based team has assisted Nevskaya Medicinskaya Infrastruktura, a JV of Pizzarotti I.E. and Gazprombank in relation to a PPP project with the City of St. Petersburg. Pizzarotti is a leading Italian construction company and Gazprombank is the third largest bank in Russia.

The parties signed the public-private partnership (PPP) agreement for the Design-Build-Finance-Maintenance (DBFM) of the EUR 240 million project at the end of December 2015. This is one of the first healthcare PPPs in Russia and CIS and by far the biggest one to date.

The Hogan Lovells team was led by Moscow partner Alexander Dolgov, head of IERP practice in Russia and CIS, with senior associates Konstantin Makarevich and Svetlana Sorkina assisting.

Commenting on the transaction, Alexander said:

"We feel honored to be part of this new success for the Russian PPP market having helped the client team to bring to successful commercial close this groundbreaking project. It is not only one of the first and the largest healthcare PPP in Russia and CIS, but also the last PPP in St. Petersburg structured on the basis of the regional PPP law prior to the Federal Law on PPP entering into force on 1 January 2016. We hope that it will pave the way for further private investments into Russian healthcare, including from leading international investors and operators."

For additional information visit www.hoganlovells.com

NAUTADUTILH

ASSISTS WITH ACQUISITION OF BRANTANO FROM MACINTOSH RETAIL GROUP

04 February 2016: NautaDutilh assisted BrantNew BVBA with the acquisition of the shoes and footware company Brantano from Macintosh Retail Group. BrantNew is a Belgian private venture of R&S Retail Group's owner Rens van de Schoor, supported by Dieter Penninckx (FNG Group, listed on the Brussels Free Market) and the family holding of Torfs.

Macintosh Retail Group, a Dutch bankrupt Euronext listed company, is the parent company of brands such as Scapino, Manfield, Dolcis, Invito and Pro Sport and filed for bankruptcy on 29 December 2015. BrantNew launched its winning bid and coordinated with the financing banks and the bankruptcy trustees to close the deal within a month of the bankruptcy filing. Brantano has over 134 stores in Belgium and Luxembourg and employs over 1,100 employees.

The NautaDutilh core team was led by Elke Janssens and Barbara Rumora-Scheltema and consisted of Virginie Ciers and Robert Woudenberg.

For additional information visit www.nautadutilh.com

ROUSAUD COSTAS DURAN

ADVISES ALBAJUNA THERAPEUTICS ON CAPITAL INFLOW TO FUND DEVELOPMENT OF ANTIBODIES TO FIGHT HIV

RCD advises AlbaJuna Therapeutics, an IrsiCaixa spin-off, on the inflow of capital that will fund the development of antibodies to fight HIV

SPAIN - 03 February, 2016: RCD – Rousaud Costas Duran has advised AlbaJuna Therapeutics, a spin-off from the IrsiCaixa AIDS Research Institute, on the investment of €3.75M by the pharmaceutical company Grifols, which will support the development of therapeutic antibodies to fight HIV. The amount invested is expected to increase as each molecule development stage is completed.

Aelix Therapeutics is a spin-off of HIVACAT, a joint public and private sector consortium, internationally recognized in the fight against AIDS, which is composed of medical institutions and leading AIDS research centres such as the Institute for AIDS Research IrsiCaixa, University Hospital Germans Trias i Pujol and the AIDS and Infectious Diseases Service at Barcelona's Hospital Clinic. HIVACAT conducts research into the development of a new HIV vaccine, in conjunction with the pharmaceutical company ESTEVE, and with the support of the "la Caixa" Foundation, the autonomous Catalan government's Department of Economy and Knowledge plus the Clinic Foundation at Barcelona's Hospital Clinic (ICREA) and the Gloria Soler Foundation. This consortium is the first major collaboration attempt between a local government, research centres and private enterprise in this field.

RCD's Innovation team has led the legal advice on this transaction, considered a milestone in the public-private partnership in the field of biotechnology as RCD's partner, Oscar Alegre, explains: "the funding round has resulted in the convergence of the interests of public research, pharmaceutical companies and specialized investors in the sector, both locally and internationally. The agreement was a challenge and the goodwill of all parties made it possible; it will certainly be a model for new projects in the future."

RCD has wide experience advising public research institutions as well as biotech companies on technology transfer, public-private collaborative agreements, venture capital, regulatory issues, etc.

For additional information visit www.rousaudcostasduran.com

RODYK

ACTS IN ACQUISITION OF THE ENTIRE ISSUED AND PAID-UP SHARE CAPITAL IN CECIL PTE. LTD —S$210 MILLION

SINGAPORE , January 2016: Rodyk advised Shanghai-based investor in the acquisition of the entire issued and paid-up share capital in Cecil Pte. Ltd. from Mr Cheong Sim Lam. Cecil Pte. Ltd. is the registered proprietor of the property at 137 Cecil Street, formerly known as the Aviva Building.

The S$210 million deal was closed on 30 November 2015, and was coupled with a leaseback arrangement to the seller's nominated entity, for a period of at least three years. The newly renovated 13-storey commercial development, which has a mezzanine level and basement carpark, is on a freehold site.

Rodyk also acted in the financing aspects of the transaction, which involved credit facilities of more than S$200 million granted by a local bank to refinance the existing loans.

Real estate partner Norman Ho and corporate partner Ng Eng Leng led in this transaction. They are supported by real estate partners Tan Shijie and Cindy Quek. They are also assisted by real estate senior associate Woon Jing Yi, corporate senior associates Nigel Chia and Wong Hui Yi, litigation senior associate Tang Jin Sheng, corporate associate Glen Chiang, and real estate associates Jamie Tan and Marco Low.

For additional information visit www.rodyk.com

TOZZINIFREIRE

ASSISTS SUMITOMO CORPORATION IN JOINT VENTURE WITH GERDAU SA

SAO PALO, 27 January 2016: Sumitomo Corporation and The Japan Steel Works, Ltd. have reached a basic agreement on major terms and conditions with Gerdau S.A., the largest steelmaker in Brazil, based on which the two Japanese companies will participate in the manufacture and sale of forged parts for wind power generation and establish a joint venture with Gerdau in Brazil, subject to the prior approval of antitrust authorities in several jurisdictions.

The new joint venture will require R$280 million in investments for the acquisition of new production equipment. Gerdau will supply assets for the production of rolling mill rolls, without any expected cash expenditures. The project will be located at Gerdau's mill in Pindamonhangaba, which will supply special steel for the manufacture of parts for wind turbine towers (main shaft and bearing rings).

Value of deal Investments of R$ 280 million are predicted.

TozziniFreire Advogados Partners Jun Makuta, Adriana Mathias Baptista, Bianca Bilton Signorini Antacli and associates Roberta Graziela dos Santos Aronne, Gustavo Fonseca Farran acted in the transaction.

For additional information visit www.tozzinifreire.com.br

SANTAMARINA Y STETA

HELPS KIMBERLY-CLARK CLINCH US$200 MILLION LOAN

MEXICO CITY, 10 February 2016: The Mexican branch of US hygiene company Kimberly-Clark has called on Santamarina y Steta in Mexico City and the New York office of Skadden, Arps, Slate, Meagher & Flom LLP to obtain a loan worth US$200 million.

Galicia Abogados provided Mexican counsel to lender Bank of America for the transaction, which closed on 29 January.

Counsel to Kimberly-Clark de México Santamarina y Steta Partner Alberto Saavedra and associates Alfonso Monroy and Pablo Garza in Mexico City.

For additional information visit www.s-s.com.mx

ROUSAUD COSTAS DURAN

ADVISES RASTAR GROUP ON ACQUISITION OF SPANISH SOCCER CLUB RCD ESPANYOL'S SHARE CAPITAL

December, 2016: Rousaud Costas Duran has advised Rastar Group, a leading manufacturer and distributor of electronic toys in China, on the acquisition of 45.1% to 56% of the share capital of the Spanish soccer club RCD Espanyol.

According to the agreement, the Chinese group will pay 78€ per each of the club's share, which represents a total deal value of 14.3 to 17.6 million euros. Once the operation is completed, Rastar will control over 50.1% of RCD Espanyol. Moreover, Rastar will acquire in the next 4 years the rest of the 5% of the shares that will remain in hands of the sellers after the sale transaction.

The transaction has been led by Rousaud Costas Duran's corporate & commercial department and demonstrates once again the firm's experience in the field of M&A as well as in sports. Adolf Rousaud, managing partner of the firm and head of the corporate & commercial practice, highlights the importance of the transaction: "It's been an honor to accompany our client in a transaction in which the legal and the market knowledge have conjugated with an international component."

For additional info visit www.rousaudcostasduran.com

TOZZINIFREIRE

ASSISTS PAEMA EMBALAGENS IN SALE TO SMURFIT KAPPA

SAO PALO, January, 2016: Ireland's Smurfit Kappa, E urope's largest paper packaging company, with the acquisition of two Brazilian paper product producers, marks the packager's entry into Latin America's largest economy.

The Irish paper company bought Paema Embalagens and INPA Embalagens for a combined US$200 million. INPA and Paema run three recycled paperboard mills and four corrugated packaging factories located across Brazil.

Counsel to Paema Embalagens TozziniFreire Advogados led with Partner Gustavo Nygaard and associates Eduardo Petry Terra Werneck, Maria Medeiro Bofill and Daniele Russi Campos.

For additional information visit www.tozzinifreire.com.br

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Barcelona

Registration Now Open - Deadline March 19, 2016

Event details and registration at www.prac.org

Event is open to PRAC member firms only

UPCOMING PRAC EVENTS

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04 February 2016

Mandatory central clearing on its way for issuers of OTC derivatives in Australia

By Sonia Goumenis and Mano Karthigeyan.

Key Points:

You will need to work out if you are a clearing entity or a foreign internationally-active dealer, either in your personal capacity or in a representative capacity.

Issuers of certain over-the-counter (**OTC**) interest rate derivatives will soon be required to clear their swaps in compliance with the Australian Securities and Investments Commission's (**ASIC**) new mandatory clearing rules.

The rules were finalised and released in December 2015 following a period of industry consultation on the initial draft released by ASIC in May 2015. At the time, the Treasury also consulted on a draft Ministerial determination that prescribed the product scope of the proposed clearing rules and regulations that established the parameters of ASIC's rule-making powers. The Ministerial determination was made in August 2015 and the regulation was passed in September 2015.

Who is impacted?

The rules are likely only to affect major banks and foreign dealers as they are limited in application to derivative transactions entered into between two "clearing entities" (or transactions between a "clearing entity" and a "foreign internationally-active dealer").

Entities of the following types that have gross notional outstanding OTC derivatives positions that are equivalent to or in excess of AUD100 billion (the clearing threshold) and are acting in their personal capacity are "clearing entities":

- Australian or foreign Authorised Deposit-taking Institutions (ADIs);
- Australian or foreign Australian Financial Services (AFS) licensees; or
- exempt foreign AFS licensees.

The regime will also apply to entities that are acting in a representative capacity and hold gross notional outstanding OTC derivatives positions that are equivalent to or in excess of the clearing threshold on behalf of a registered trust or scheme that is established in Australia.

Background to the new mandatory clearing rules

The clearing requirements under the new regime will commence in April 2016 and are part of a broader reform agenda with respect to OTC derivatives reflecting Australia's G20 commitments. These commitments, most of which were agreed at the 2009 Pittsburgh Summit and later supplemented in November 2011 by G20 Leaders in Cannes, include the overarching objectives to substantially reform market practice for OTC derivatives and ensure more transparency and stability in derivatives markets.

Agreed reform measures include mandatory reporting requirements for OTC derivative transactions to trade repositories, which after a staggered implementation through July 2013 to December 2015 has now been implemented in Australia.

We also await rules in relation to margining requirements for non-centrally cleared OTC derivatives, jurisdiction for which (at least with respect to ADIs) sits with the Australian Prudential Regulatory Authority (**APRA**) rather than ASIC.

Classes of derivatives affected

In addition to its limited application to significant swap dealers, the scope of the rules is narrow in terms of the classes of derivatives affected. The rules are confined to transactions involving interest rate derivatives that are denominated in either Australian Dollars, US Dollars, British Pounds and Japanese Yen (collectively known as the G4 interest rate derivatives). Specifically, the rules will apply to basis swaps, fixed-to-floating swaps, forward rate agreements and overnight index swaps. The interest rate derivative market is the largest and systemically most important derivatives market in Australia.

ASIC's focus on G4 interest rate derivatives stems from the clearing mandates implemented in other relevant jurisdictions, namely by the U.S. Commodity Futures Trading Commission (**CFTC**) and by the European Securities and Markets Authority (**ESMA**), in an effort to streamline the mandatory clearing rules across different jurisdictions to maintain overall consistency for financial institutions involved in cross-border OTC derivative transactions.

ASIC's objective through implementing clearing rules that are broadly consistent with regimes in the U.S. and Europe is to enhance the likelihood of Australian financial institutions reducing or relieving themselves of compliance obligations relating to foreign clearing requirements through substitute compliance.

This more limited scope differs from the much wider scope of the mandatory trade reporting rules for OTC derivatives.

Key exceptions to the rules

There are some limited exceptions to mandatory clearing. For instance, clearing will not be required in the event that a relevant transaction is terminated prior to its deadline or a licensed or prescribed clearing and settlement facility is unavailable.

Other exceptions include intra-group trades or trades in connection with a multilateral portfolio compression cycle (a process whereby notional exposures in a portfolio are reduced by modifying, terminating or replacing derivatives in order to minimise operational risks or counterparty credit risks). An intra-group trade is defined as one where the counterparty to the clearing transaction is a related body corporate of the clearing entity.

What you need to do

As the rules have limited application you will need to work out if you are a clearing entity or a foreign internationally-active dealer either in your personal capacity or in a representative capacity. If you enter into a relevant OTC derivative transaction after April 2016 you will need to ensure compliance for trades entered into with other clearing entities and should seek advice in relation to the new rules.

You might also be interested in...

- Temporary relief from OTC derivatives reform under Phase 3: ASIC acknowledges practical limitations
- Mandatory OTC derivatives reporting now a reality

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New Obligations for Online Sellers and Service Providors

Thursday, 4 February 2016

On 9 January 2016, Regulation (EC) No 524/2013 entered into effect. This regulation supplements Directive 2013/11 on alternative dispute resolution for consumer disputes and reflects the European legislature's will to better structure the available means of alternative dispute resolution and ensure that European consumers have straightforward access to these means. It will apply to the out-of-court resolution of contractual disputes between consumers residing in and traders established in the EU.

New ODR platform

The regulation puts in place an EU-wide online dispute resolution (ODR) platform. The platform, which will be operational as from15 February 2016, will take the form of an interactive website offering a single point of entry to consumers and traders seeking to resolve out-of-court disputes which have arisen from online transactions. Both consumers and traders alike will thus be able to file complaints by completing an electronic form, available in all EU languages.

Steps to take if you offer online sales or service contracts

- If you have agreed, for example by adhering to a professional code of conduct, or are obliged by an administrative authority to have recourse to alternative dispute resolution you must:
  - inform consumers of the existence of the new ODR platform and their possibility to use it to resolve disputes; and
  - provide a link to the platform on your website as well as, if the contract is offered by email, in the email itself.

  In addition, if you have general terms and conditions applicable to online sales or service contracts, the abovementioned information and link should be included therein.

- If you have not agreed or are not obliged to use alternative dispute resolution, you must still post on your website an easily accessible link to the platform, along with your email address. Although not required, we advise you to include the link in your general terms and conditions as well.

- Finally, if your FAQ contain a section on complaints, please ensure that it complies with the abovementioned information requirement.

Deadline for compliance

Although the regulation has been in effect since 9 January 2016, you have until 15 February 2016 (i.e. the date on which the platform becomes operational) to comply with the new obligations.

Should you require any assistance implementing the regulation, do not hesitate to contact me.

Contact me

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BRAZILIAN PORTS UPDATE: SIX PORT TERMINALS IN NORTHERN BRAZIL TO BE GRANTED FOR PRIVATE OPERATION

Infrastructure / Government, Contracts and Projects – Administrative Law

On January 22, 2016, the Brazilian Ports Ministry (SEP) and the National Waterway Transportation Agency (Antaq) initiated the bidding processes to grant the operation of six port terminals located in the State of Pará to private parties, comprising:

- 3 areas for handling and storage of solid bulk of vegetal origin located in the Outeiro Terminal;
- 2 areas for handling and storage of solid bulk of vegetal and mineral origin respectively, located in the Santarem Port;
- 1 area for handling and storage of solid bulk of vegetal origin located in Vila do Conde Port, municipality of Barcarena.

The auction is scheduled to take place in BM&FBovespa, in March 31, 2016. Investments of R$ 1,766 billion are estimated, divided in: R$ 1,464 billion for construction work in the terminals and R$ 301,977 to Companhia Docas do Pará, corresponding to the revenue resulting from the leases. However, the grant value can be higher than the estimated grant amount, provided that the bidders will propose the grant payment and the highest bid will be the winner bidder selection criterion. The lease contracts will be valid for 25 years and may be renewed for additional 25 years, at the government's sole discretion.

New rules. The bid documents authorize the grant to be paid in installments, upon 25% payment dueupon the contract execution and the remaining 75% in five installments to be paid throughout 5 years, updated by inflation based on the IPCA index. Furthermore, the Grace period for identification of hidden liabilities was extended from 180 to 360 days.

To access a copy of the bid documents, please click here: http://tozf.re/1ih.

Alberta Announces Modernized Royalty Framework

February 08, 2016 | Don Greenfield, QC, Duncan McPherson, Jana Prete and Michael Thorne

On January 29, 2016, the Alberta government released the *Alberta at a Crossroads - Royalty Review Advisory Panel Report* and announced that it will begin drafting a modernized royalty framework (MRF) based on all of the recommendations of the Royalty Review Advisory Panel contained in the report.

Although the report was lengthy, the panel recommended that minimal changes be made to the existing royalty framework (ERF). The report included a significant volume of information and discussion regarding the process taken in developing the report and the factors that need to be considered to create a fair and efficient royalty structure in light of the current challenges facing the industry in Alberta. Set forth below are highlights of the suggested changes to the ERF, the timing of implementation, the next steps to be taken with respect to the MRF, and some comments on practical implications of the implementation of the MRF.

A Single Royalty Structure

Central to the MRF is a single royalty structure for crude oil, liquids and natural gas, involving among other things the same royalty rate. By eliminating the discriminatory treatment of different hydrocarbons, the MRF seeks to reduce exploration risk by allowing producers to assess development opportunities based on market forces instead of how a well might be classified.

The structure will involve a "revenue minus costs" approach where the average drilling cost for any new well would be estimated by using a Drilling and Completion Cost Allowance formula, based on vertical depth and horizontal leg length. The panel recommends that the Drilling and Completion Cost Allowance be determined yearly and that Alberta Energy create and maintain an Alberta Capital Cost Index that will indicate average operating costs for similar-sized wells. They also recommend that derivation and public announcement of the Index occur by March 31 of each year for application on April 1 of the same year. The Index will also appy to oil sands projects.

There will be a flat five percent royalty rate on revenue up to payout. Payout will occur when the total revenues from a well equal the Drilling and Completion Cost Allowance (not the actual costs to drill the well), regardless of the type of hydrocarbon produced. After payout, the royalty rates are to escalate on a price-sensitive scale until such time production drops below a set Maturity Threshold (yet to be determined), after which the royalty rates will be sensitive to declining productivity.

Implementation

The target implementation date for the MRF is January 1, 2017. The MRF will create a distinction between "old wells" and "new wells". Old wells will be wells drilled before the implementation of the MRF and new wells will be wells drilled after the implementation of the MRF. The MRF will apply only to new wells; old wells will continue to be subject to the ERF for 10 years following the implementation of the MRF, at which time they will transition to the MRF.

All wells drilled before 2017 will qualify for and continue to benefit from the Natural Gas Deep Drilling Program and Emerging Research & Technology Initiative, which expire at the end of November 2016 and June 2018, respectively.

Oil Sands

The government will make no changes to oil sands royalty rates under the MRF. The report states that there was little room for an increase given the price levels being projected by both industry and the Alberta government. Instead, the government plans to modernize the process of calculating costs and collecting oil sands royalties and has promised to improve disclosure of cost, revenue and collection information relating to projects and royalties.

Practical Implications

One of the goals driving the standardization of the Allowance is that it will be an incentive for energy companies to innovate, reduce costs and stay competitive, because they will be rewarded if they can bring wells in under the average completed cost thereby remaining at the lower royalty rate even after they have recovered their actual costs. However, it is not clear yet whether this calculation of the Allowance will differentiate sufficiently between highly variable drilling circumstances.

The MRF will allow energy companies to include the capital cost-related portion of the new carbon levy among the costs they deduct before they pay royalties. The new carbon levy was announced in November 2015 when the Alberta government announced its Climate Leadership Plan.

Absent considerably more detail, it is likely not yet possible to model the economies of drilling under the MRF, but the announcement has hopefully brought some certainty to the environment.

Next Steps

The panel recommended that by no later than March 31, 2016 the following be accomplished:

- the creation of a Calibration Team to finalize the Allowance formula and the post-payout royalty rates.
- the development of details of strategic programs for enhanced hydrocarbon recovery and high-risk experimental wells concurrently with the announcement of the details of the MRF.
- the release of complete details of the MRF, including allowances in the MRF to accommodate the sharing of the carbon levy.

The report also asks that Alberta Energy review the Otherwise Flared Solution Gas Royalty Waiver Program before the end of 2016 to ensure that it is adjusted to conform with the Climate Leadership Plan.

The panel also requested that the Alberta government develop a value-added natural gas strategy, starting with the appointment of an expert advisory group. On Monday, February 1, 2016, only three days after releasing the report, the government announced the Petrochemicals Diversification Program, a 10-year royalty credit program that will award up to a total of $500 million of royalty credits to new petrochemical facilities. Petrochemical facilities of course do not pay royalties; earned royalty credits can however be traded to an oil or natural gas producer who can in turn use the credits to reduce their royalty payments.

January, 2016

/Carey

Law No. 20,855 which requires the release and cancelation of mortgages and pledges without conveyance that guarantee loans

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Carey contact.

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On January 23, Law No. 20,855 (the Law) was enacted, which requires the release and cancelation of mortgages and pledges without conveyance that guarantee loans, once they are extinguished. The Law amends law No. 19.496 on Consumer Rights Protection (CRPL) in regard to services from the financial industry agreed on by adhesion contracts which are guaranteed with mortgages; and law No. 20.190, known as the Pledge without Conveyance Law, henceforth, the "PWCL".

The Law distinguishes between mortgages granted as a general guarantee (guaranteeing not only the loan, but every obligation, either present or future, between the consumer and the lender), and those that are granted as a specific guarantee (guaranteeing only the loan):

- **Mortgages operating as a specific guarantee:** Once completely extinguished, the lender, at their own expense, will grant the release deed of the mortgage and other encumbrances granted for that purpose. The lender is obliged to enter the release deed into the Custodian of Real Estate (the CRE) within 45 days from the total extinction of the debtor's obligation, and the lender must report this within 30 days from the effective cancelation of the mortgage and the other encumbrances.

- **Mortgages operating as general guarantee:** Once the debt has been fully paid by the original debtor, the guarantor or the joint co-debtor, the lender must inform the debtor in writing within 20 days from the extinction of the debt. From that notification, the debtor may require, by any suitable physical or technological means, the release of the mortgage and any other related encumbrance and its registration or marginal note in the CRE registry to the lender, at the latter's expense. The lender must complete this within 45 days from the debtor's request. The lender must notify the debtor within 30 days of the cancelation of the registration. The Debtor is not required to maintain the mortgage or any other encumbrances in order to obtain a new loan if there are no pending obligations guaranteed by a general guarantee mortgage. Nevertheless, the debtor is entitled to maintain the mortgage and the other encumbrances, if any exist.

Likewise, article 2 of the Law amends the PWCL and distinguishes between pledges without conveyance (hereinafter, the PWC) as they act as a general guarantee of a specific one.

/Carey

- **PWC operating as specific guarantee:** The lender is obliged to grant the public deed or the private document of the PWC and any other encumbrance or prohibition within 45 days counted from the total extinction of the debt. The lender must inform both the extinction of the debt and the cancelation of the PWC within 30 days from the cancelation of the registration in the Registry of PWC.

- **PWC operating as a general guarantee:** Once the debt has been fully paid by the original debtor, the guarantor, or the joint co-debtor, the lender must inform the debtor in writing within 20 days. After this, the debtor may request the release of the PWC and any other encumbrance or prohibition, which the lender must do at their own expense through a public deed or a private document, accordingly. Registration in the PWC Registry must be canceled within 45 days from the debtor's request.

The Law shall govern every loan which has been fully paid from this date on. For loans that have been previously paid, the following rules apply:

- **Mortgages operating as a specific guarantee of loans that have been fully paid up to 6 years before the Law's enactment (January 26, 2010):** The lenders shall, at their own expense, grant the release of mortgages, other encumbrances and prohibitions and public deeds and manage the cancelation of the registration in the CRE. This must be done within 3 years from the date the Law comes into force. Nevertheless, the debtor may request the release of the mortgage and other encumbrances and prohibitions, which the lender must complete within 45 days from the debtor's request. The lender must notify the debtor within 30 days of the cancelation of the registration.

- **Mortgages operating as a specific guarantee of loans paid prior to 6 years before the enactment of the law:** If required by the debtor in writing, the lender, at their own expense, shall grant the public deeds and ask for the cancelation of the registrations of the mortgages and other encumbrances and prohibitions in the CRE within 45 days from the debtor's request. The lender must notify the debtor within 30 days of the cancelation of the registration.

- **PWC operating as specific guarantee of loans fully paid up to 4 years prior to the enactment of the Law:** The lender, at their own expense, shall grant the release of the PWC and the other encumbrances and prohibitions granted, as well as manage the cancelation of the registration in the PWC Registry, within 18 months from the enactment of the Law. Nevertheless, the debtor may request in writing the release of the PWC and the other encumbrances and prohibitions granted to the lender. The lender must do this within 45 days from the request. The lender must notify the debtor within 30 days of the cancelation of the registration.

- **PWC operating as specific guarantees of loans fully paid prior to 4 years before the enactment of the Law:** If required by the debtor in writing, the lender, at their own expense, shall grant the public deeds and cancel the registrations of the PWC and other encumbrances and prohibitions in the CRE within 45 days from the debtor's request. The lender must notify the debtor within 30 days of the cancelation of the registration.

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China Contemplates New Regulations to Tighten Its Grip on Internet News

01.28.16

By Ron Cai and Ervin Ou

On Jan. 11, 2016, the Cyberspace Administration of China (the "CAC") issued an announcement to solicit public comments on a draft amendment to the *Administrative Rules on Internet News Information Service* (《互联网新闻信息服务管理规定》) (the "Draft Amendment"). The deadline for submitting comments is Feb. 15, 2016. Below are the major highlights of the Draft Amendment as compared with the *Administrative Rules on Internet News Information Service*, which went into effect on Sept. 25, 2005 (the "Existing Rules").

Change of Regulatory Authority

Ten years ago, the Existing Rules was jointly released by the State Council Information Office ("SCIO") and the Ministry of Information Industry (currently named as the Ministry of Information Industry and Technology, "MIIT"). In practice, SCIO is responsible for the implementation of the Existing Rules.

The Draft Amendment vests the power in the CAC, which is a new government agency formed in May 2013. Although the CAC is a government agency, it is concurrently the Office of Central Leading Group for Cyberspace Affairs.

Refinement of the Definition of "Internet News Information Service"

Under the Existing Rules, "Internet News Information Service" includes the following three types of online services:

1. publication of news information;
2. provision of electronic bulletin board services for current affairs and politics; and
3. distribution to the public of communications of current affairs and politics.

The Draft Amendment will overhaul the definition and include many forms of new media within the regulatory regime. According to the Draft Amendment, Internet News Information Service will cover collection, editing, publication and reposting of news information through various online channels, including but not limited to websites, applications, forums, blogs, microblogs, instant messages, and search engines.

Rise of Threshold for Licenses

The Draft Amendment, like the Existing Rules, requires each Internet news provider to obtain a license before starting business. Nevertheless, the Draft Amendment makes it difficult for applicants to obtain the licenses.

If the Draft Amendment is enacted in its current form, the "persons-in-charge" of applicants as well as their chief editors must be Chinese citizens. During the license application process, the authority may request detailed information of the applicants, such as ownership structures and business models. In addition, applicants will be obligated to formulate management systems for information security and adopt relevant

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technical measures. Applicants will also be required to engage qualified evaluation agencies to issue reports on information and technology security.

Applicants for online news reposting or publication platforms must be legal entities which have been incorporated for more than two years and have a good performance record for at least one year. Once a platform has been established, the platform operator will be responsible for vetting Internet news providers on the platform and filing with provincial level counterparts of the CAC.

Emphasis on Privacy Protection

The Draft Amendment allows Internet news providers to collect users' personal identity information if the providers have already published their collection rules and record retention policies. User information, other than identity information, may be collected only with consent from users.

Internet news providers will also be required to retain within China for at least 60 days a record of the Internet news published or reposted by themselves or any users. Such information must be provided to government agencies upon their request.

The Draft Amendment further provides that Internet news providers and users may not copy, publish or distribute the identifiable information or privacy information of others, unless otherwise provided by laws or agreed by the persons in concern.

Restrictions on News Reposting

Pursuant to the Draft Amendment, if Internet news providers would like to repost news, they will only be able to repost the news published by the news agencies under the administration of central and provincial-level governments or otherwise appointed by the CAC. All reposted news must be complete and accurate, without any distortion in the meaning of original titles and contents.

Internet news providers must also clearly indicate the origins, authors, original title, and editors' true names of the news to ensure that origins of news will be trackable.

Assurance on Effective Implementation

The Draft Amendment requires Internet news providers to establish a system for timely feedback to complainants. Individuals and entities may also directly submit complaints to the CAC or its local counterparts. Once Internet news providers receive a complaint either from independent complainants or from the CAC or its local counterparts, they will be required to take immediate actions and keep relevant records.

The CAC and its local counterparts will evaluate Internet news providers and establish a blacklist of offenders. Once the CAC or its local counterparts find that Internet news providers fail to timely take down inappropriate information, they may conduct investigations and interview the persons-in-charge, legal representatives and chief editors of such providers.

New administrative liability of legal entities for acts of local and transnational corruption - Law 1778 of 2016

On February 2nd, the Colombian Congress enacted Law 1778 of 2016 "*pursuant to which rules on liability of legal entities related with the commission of acts of transnational corruption and other provisions related with the fight against corruption*" (the "Law 1778"). Law 1778 grants faculties to the Superintendence of Companies (the "Superintendence") regarding the possibility to investigate and sanction legal entities whose, employees, contractors, directors or partners (**of their own or any subordinate entity**), **give**, **offer** or **promise to give** to a foreign public official[1], sums of money, any object of monetary value, or any other kind of benefit or value in exchange for the latter to perform, omit or delay acts **related with their duties** and in connection with a **business or international transaction**.

According to Law 1778, **the parent companies may also be responsible**, along with their subordinate entities when, with the latter's acknowledgement or tolerance, such subordinate entities (employees, contractors, directors or partners) perform acts of transnational bribery.

Sanctions that may be imposed against legal entities for incurring in actions related with transnational bribery are as follows:

- Fines by the Superintendence of up to **200.000 minimum monthly salaries** (COP$137.891.000.000, approximately US$41,785,151)
- **Debarment** to contract with government owned entities for up to 20 years.

- **Publication of the sanction in wide circulation media and on the website of the sanctioned legal person**.
- Prohibition to receive incentives or subsidies from the government for a 5 years period.
- **Registration of the sanction contained in the administrative act in the commercial registry** (or in the registries managed by the surveillance authorities supervising the specific legal entity) of the sanctioned legal person.

It is important to bear in mind that Law 1778 extends the effects of sanctions to (i) absorbing or created companies under merger transactions; (ii) divided companies and/or beneficiaries under spin-off transactions and (iii) the acquirer in change of control situations. Additionally, the effects are extended to any other associative form different to corporations.

It is important to note that sanctioning faculties of the Superintendence under the Law 1778 are not subject or limited to other processes and/or decisions taken by any other jurisdictions (no pre-judgement between jurisdictions).

For the graduation of sanctions, Law 1778 establishes different criteria to be considered by the Superintendence, such as: (i) the financial capacity of the offender, (ii) the economic benefit obtained or intended and, (iii) the existence, implementation and effectiveness of transparency programs, among others. In addition, there are benefits for the investigated corporations if misconducts are opportunely reported to the Superintendence and if corporation collaborate in the course of the investigation. Benefits may include the total or partial waiver of the penalty.

Finally, Article 34 of Law 1474 was modified, related to actions against legal entities which benefited from the commission of crimes against the public administration (for example, local corruption). In this context, to the extent that a condemnatory ruling has been dully issued by criminal courts against the legal representative or the director of a company, the Superintendence may impose the same sanctions referenced above for transnational bribery. In this case, the mechanisms for graduating the sanctions are the following: (i) the existence, implementation and effectiveness of transparency programs and business ethics codes, (ii) adequate due diligence (in case of acquisition by a third party) and, (iii) the provision of evidence relating to the commission of conduct by its directors or employees, among others.

The statute of limitations related with the sanctioning faculties of the Superintendence are as follows: for the scenario of foreign bribery, the statute of limitations is now 10 years while for the scenario of local bribery, the sanctioning faculties expire after 5 years as from the moment in which the conduct occurred (Art. 235 of Law 222 of 1995).

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[1]Foreign public official has been defined as any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organization.

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EL SALVADOR

REFORM OF THE LABOR CODE

By the Legislative Decree No.143 dated October 23, 2015, the Legislative Assembly of El Salvador amended the first paragraph of Article 309 of the Labor Code, in the sense of increasing four weeks of license for maternity leave to the twelve weeks established prior to the amendment, besides it indicates that the first ten weeks after giving birth must be taken mandatorily in order to benefit the permanent care of the mother to the newborn, strengthen the emotional bond between mother and child, and facilitate breastfeeding.

The text of the amended article is as follows:

"Art.309 - The employer is obliged to provide pregnant employees in respect of maternity leave, sixteen weeks of license, ten of which must be taken mandatorily after giving birth; also, to pay in advance the equivalent of seventy five percent of the basic wage during such license."

The decree was published in the Official Journal No.196, Volume No.409 dated October 26, 2015, and will become effective 120 days after its publication.

Should you require further information regarding this or other labor matters, please contact us:

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client alert

INVESTMENT FUNDS | TAX | FRANCE | JANUARY 2016

FRANCE'S NEW INVESTMENT VEHICLE

French laws and regulations relating to the asset management industry have been modernized over the past several years, partly as a result of the implementation of European Union directives including Directive 2009/65/EU ("**UCITS IV**") and Directive 2011/61/EU (the "**AIFMD**"). Nevertheless, and although global investors have over the past decades certainly invested in French private investment funds, the perception remained that the local fund vehicle did not offer the same flexibility as competing fund vehicles in other countries, such as the limited partnership in the United States and the United Kingdom, or the new Luxembourg special limited partnership (the *société en commandite spéciale*).

Almost six months ago, the *société de libre partenariat*, most often referred to by its easier acronym, the SLP, was born. The provisions relating to the SLP were set forth in Law No. 2015-990, dated 6 August 2015. The implementing decree and the modifications to the relevant regulations have now been approved. A smooth take-off for the SLP can be expected.

The name in French includes "free" and "partnership", two of the key concepts intended to characterise the SLP. With the introduction of this new fund vehicle, crafted from an existing corporate form to fit the current regulatory framework, France aims to offer a competitive and flexible fund vehicle to global investors.

The SLP is an alternative investment fund ("AIF") within the meaning of the AIFMD, which must be managed by a regulated portfolio management company ("**AIFM**"). The SLP takes the form of a *société en commandite simple,* a form of limited partnership which, although popular in France in the XIXth century, had since become infrequently used. Interestingly, during the time that France owned Louisiana, it implemented the civil law system in that territory, thereby importing the *société en commandite*. Following the acquisition of Louisiana from France, and inspired by the civil law *société en commandite*, U.S. lawmakers in turn conceived of limited partnerships, which, over time, became the preferred vehicle for U.S. private investment funds. And today, to better compete with the limited partnerships prevalent in the anglo-saxon jurisdictions, France has revived its *société en commandite simple* specifically for use as an alternative investment fund vehicle for professional investors.

A SIMPLIFIED VEHICLE STRUCTURED ALONG INTERNATIONAL STANDARDS

A structure similar to a U.S.-style limited partnership

As noted above, an SLP is a *société en commandite simple* (a form of company that is set forth in the French Commercial Code) that has been given a special status pursuant to new provisions in the French Monetary and Financial Code. The SLP is included in the category of *fonds professionnels spécialisés*, which are funds that do not require prior authorization from the French Financial Markets Authority (the *Autorité des Marchés Financiers* - "AMF"), but are required to be managed by an AIFM, and are reserved to professional investors.

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The SLP, being a company, must be registered with the Registry of Companies (see below), and has legal personality. Similar to a U.S.-style limited partnership, the SLP has two types of shareholders or partners:

- the *associé commandité*, who has unlimited liability (i.e., the general partner); and
- the *associés commanditaires*, whose liability is limited to the amount invested (i.e., the limited partners).

The *associé commandité* can be either an individual or a legal entity, or any entity otherwise provided in the By-Laws of the SLP. The *associés commanditaires* must be professional investors (see below).

Management of the SLP

A distinction is made between, on the one hand, the day-to-day management of the SLP, and, on the other hand, portfolio and risk management pursuant to the AIFMD.

The day-to-day management is ensured by a manager (*gérant*), who can be either a shareholder (*commandité* or *commanditaire*) or a third party, and who must be designated in the By-Laws. This means that, for example a cornerstone investor, who wishes to have a more active role than that of a passive investor, could take on the role of *gérant non-commandité*, with a management role alongside the AIFM, but without the unlimited liability of the *commandité*.

The SLP's portfolio and risk management must be performed by an AIFM.

The SLP may be self-managed, with its manager (*gérant*), which must then also be an AIFM, performing both the day-to-day management and the portfolio and risk management functions.

The Monetary and Financial Code provides specifically that any limited partner who is not the manager (*gérant*) can nevertheless perform certain actions that will not be considered participating in external management, such as exercising its shareholder rights, providing advice to the SLP or its affiliates, performing acts of control or supervision, granting loans or guaranties, or providing any other assistance to the SLP or its affiliates.

In line with European post-AIFMD requirements and standards, the SLP will need to appoint a depositary.

Formation of the SLP

As noted above, SLPs are specialized professional funds (*fonds professionnels spécialisés*), which need only to be declared to the AMF within one month after their date of formation. Consequently, no or limited oversight by the AMF of the By-Laws is to be expected. Although the By-Laws will be filed with the AMF, the By-Laws are not publicly available, thus ensuring the confidentiality of the terms of the SLP.

In addition, while a French company is required to file its complete by-laws with the relevant Registry of Companies, an SLP is required to file only an extract thereof. The extract includes the following limited information: the corporate name and purpose of the SLP; regarding the general partner: name and address, place and date of birth (for individuals), or head office address and corporate purpose (for entities); the designation of managers having the power to represent the SLP; the date of formation and the duration of the SLP; the conditions for shareholder decisions including for amendments to the By-Laws; and the conditions for share transfers. Neither the names of the limited partners or other key economic or governance provisions of the By-Laws are required to be included in the extract.

Except for the extract, which must be in French, the By-Laws can be in any other language that is commonly used in the financial sector (i.e., English).

An SLP may be formed with several sub-funds or compartments, each of which will be individually considered to be an SLP.

A CONTRACTUAL FUND FOR PROFESSIONAL INVESTORS

A contractual fund

Investment rules

As a *fonds professionnel spécialisé* (or a specialized professional fund), the SLP's investment objective and rules are freely set forth in the By-Laws. An SLP is not subject to the diversification ratios or leverage limitations that apply to other French investment funds, including the limitations that are applicable to other categories of funds open to professional investors such as the *fonds professionnel de capital investissement* ("**FPCI**").

Consequently, an SLP may invest in any type of asset provided that:

- the ownership of such asset is based on an official deed (*acte authentique*) or on an agreement whose probative value is recognized under French law;
- such asset is not backed by any guarantees other than guarantees that are necessary for the achievement of the investment objective of the SLP;
- the valuation of such asset is reliable;
- the liquidity of such asset allows the SLP to comply with its redemption obligations, if any, as may be set forth in the By-Laws.

Thus, the SLP can invest in all types of financial instruments (shares, debt and convertible debt, warrants, interests or units in funds), receivables and shareholder loans, as well as any type of asset (real estate, agricultural land, forests, etc…).

Operational rules

Subject to a limited number of decisions that require prior approval of the limited partners and the general partner (modification of the corporate purpose, merger, absorption, transformation or winding up of the SLP), the By-Laws can otherwise freely set forth those matters that may require a vote of the limited partners and specify how such votes are taken.

Subject to any additional requirements as may be set forth in the By-Laws, reporting to the investors is streamlined. The manager must provide the investors at least yearly with a report pertaining to the management of the SLP, with the conditions of such reporting to be specified in the By-Laws. Nonetheless, SLPs are also subject to requirements applicable to any French regulated AIF and are therefore required to draw up annual and half-yearly reports.

Shares held by limited partners are freely negotiable, although the By-Laws can provide for typical restrictions on transfer, such as prior approval by the general partner or a right of first refusal. In contrast, shares held by the general partner are not freely negotiable, as any transfer thereof is subject to certain formalities including the filing of an original or certified copy of the transfer agreement at the head office of the SLP. The SLP's By-Laws can provide for several categories of shares with different financial, economic and voting rights (including therefore a category of shares giving right to the carried interest).

A fund open only to professional clients

The investors, i.e., the *associés commanditaires* or limited partners, must be (i) professional clients, as defined in Directive 2014/65/EU on Markets in Financial Instruments, (ii) the manager, the AIFM or the *associé commandité*, or any company providing services related to the management of the SLP, investing directly or indirectly, as well as such company's managers, employees or any individual or entity acting on their behalf, or (iii) investors whose subscription is at least equal to 100,000 euros.

GIDE

TAXATION

From a tax perspective, a SLP is assimilated to a FPCI which is a collective investment vehicle that is not subject to any taxation.

In addition, French corporate and individual investors can benefit from a favourable tax regime if the SLP complies with certain investment and tax quotas, which require that 50% of the assets of the SLP be invested in:

- non-listed companies, having their head office in a Member State of the European Union (the "EU") or in a State which is party to the Agreement of the European Economic (the "EEA") that has concluded with France a tax treaty providing for an administrative assistance clause aimed at avoiding fraud and tax evasion. Such companies must perform an activity listed in Article 34 of the French tax code (commercial, industrial or artisanal activity) and must be subject to corporate income tax,
- shares in listed EU and EEA companies, the market capitalization of which does not exceed €150 million. Shares in such EU and EEA listed companies can be taken into consideration for the determination of the 50% test up to an amount representing 20% of the assets of the SLP.

Distributions from the SLP to non-French investors paid out of capital gains realized on the disposition of shares in French portfolio companies will generally not be subject to French tax (i) unless they are paid to an investor domiciled or organized in a non-cooperative territory, in which case a special tax will be levied at the rate of 75% or (ii) unless the non-French investor owns or has owned at any time over the five years preceding the distribution, more than 25% of the dividend rights in the relevant French portfolio company, in which case the distribution will be taxed at a rate of 45%, reduced by a discount (of 50% if the shares have been held for more than two years or 65% if the shares have been held for more than eight years).

Similarly, non-French investors generally will not be subject to French tax upon the sale or redemption of their interests in the SLP.

Finally, distributions from the SLP to non-French investors paid out of capital gains realized upon the disposition of shares in non-French portfolio companies will not be taxed in France.

Individuals who are tax residents of France and who subscribe to shares in the SLP giving right to the carried interest should be able to benefit from the same favourable tax treatment on any carried interest distributed as individuals who subscribe to carried interest units in FCPIs (provided that the applicable conditions are met, including the obligation to subscribe to carried interest shares an amount equal to at least 1% of the total commitments of the SLP).

It is expected that the French tax authorities will issue further guidelines (in the form of an Instruction) with additional detail on the tax regime applicable to an investment in the SLP.

Please do not hesitate to contact us with any questions.

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COUNSELLORS AT LAW

09/02/2016

NEW GOVERNMENT REGULATION ON EXPLOITATION OF WATER RESOURCES BUSINESS

The Government of Indonesia just issued Government Regulation No. 121 of 2015 regarding Exploita ion of Water Resources for Business Purposes ("**GR 121/2015**"), as the implementing regulation of Law No. 11 of 1974 regarding Water Cultivation ("**Law 11/1974**").
Law 11/1974 which was previously revoked by Law No. 7 of 2004 regarding Water Resources came back into effect when Law No. 7 of 2004 was revoked by the Indonesian Constitutional Court.

GR 121/2015 contains provisions which are meant to control and supervise the business exploitation of **Surface Water** (*Air Permukaan*) and **Groundwater** (*Air Tanah*) resources. It stipulates two types of licenses:

a. Business Permit for the Exploitation of Surface Water; and
b. Business Permit for the Exploitation of Groundwater.

<u>The Business Permit for he Exploitation of Surface Water</u>

This permit is issued by:

a. The Ministry of Public Works and Housing, if the water is sourced from a trans-provincial or cross-country river or a river that has been determined as national strategic river;
b. The Governor, if the water is sourced from a river located in more than one regency or city; or
c. The Regent or the Mayor, if the water is sourced from a river that is located in one regency or city as relevant.

Surface Water Utilization Permit is valid for maximum 10 (ten) year depending on several factors as follows:

a. Water availability;
b. Water resources and related environmental conditions; and/or

<u>The Business Permit for the Exploitation of Groundwater</u>

This permit is issued by the Governor. The administrative and technical requirements are detailed in GR 121/2015. In addition, a technical recommendation is required from:

a. The Ministry of Public Works and Housing, if the groundwater resource is located across a provincial or the country's border, or on a national strategic zone; or
b. The regional government agency in charge of groundwater matters, if the groundwater resource is located within a province which is not covered by point (a).

Underground Water Utilization Permit is valid for maximum validity period of 3 (three) years, depending on:

a. The availability of the water;
b. The environmental condition surrounding the water resource; and/or
c. The business purpose of the water exploitation.

GR 121/2015 also imposes on the permit holder the obligation to submit monthly reports to the Governor on the water debit and to install a water meter on each production well. (*by: Rendi Prahara Septiawedi*)

SANTAMARINA STETA
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LEGAL UPDATE

February, 2016

LIMITATION TO LOST WAGES IS CONSTITUTIONAL

In recent days, the Second Chamber of the Supreme Court of Justice resolved the contradiction of rulings arising from criteria issued by several Federal Collegiate Courts in connection with the legal validity of the lost wages limitation, which was included within the reformed Article 48 of the Federal Labor Law, and determined that such measure is constitutional and does not affect workers' human rights.

As part of the arguments to support its decision, said Chamber established that such limitation does not infringe the progressiveness principle that the Constitution protects regarding human rights given that workers who deem to have been subject to a wrongful dismissal are still provided with the possibility to claim either reinstatement or an indemnification, as required by the international treaties on employment minimum standards. Therefore, through the reform, Congress only modified the way to calculate lost wages, which is within its prerogatives.

Likewise, the Second Chamber deemed that the 12 months' limitation on lost wages plus the respective interest in case the trial exceeds such term, is proportional and reasonable, as the purpose of such limitation is to avoid that proceedings are artificially extended with the sole intention of increasing potential lost wages.

It is important to bear in mind that this resolution was reached to settle contradiction of rulings by Federal Collegiate Courts, therefore, such resolution is binding upon all such Courts, as well as upon all Conciliation and Arbitration Boards in the country.

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Simpson Grierson

The Health & Safety reforms are coming - what you need to do

January 20, 2016

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The Health and Safety at Work Act comes into effect on 4 April 2016. Making sure your organisation is prepared for this date is important and you also need to think beyond 4 April and start planning for the long term.

What should you be thinking about now?

At the moment you should be reviewing and gaining an understanding of the critical safety activities your organisation undertakes. From there, make sure processes are in place to carry out these activities safely.

To do this, test yourself - do you know the answers to the following questions?

- Do you understand what a PCBU is?
- Do you know what PCBUs you will have overlapping duties with?
- Have you got a horizontal consultation process ready?
- Who are your officers?
- Do they have a due diligence plan ready to go?
- Are your health and safety practices in line with the new duties?
- Have you reviewed and revised your policies and procedures?
- Do you have an effective employee participation and engagement process?

What about the long term?

While it's important to be thinking about compliance with the Act in the short term, planning for long term sustainable improvement needs to be an important objective.

You need a health and safety strategy and plan that:

- is competently led at Board and Executive level
- builds the capabilities of your team at all levels, and

- creates a culture of proactive health and safety improvement.

Practical elements of the strategy should include:

- People & Leadership - what is your organisation doing to ensure your people know what's required of them and that your leaders know how best to lead their teams?
- Equipment & Facilities - how do you know the equipment you give your people, and the facilities you ask them to work in, are safe and help protect them?
- Safety Management Systems - do your safety systems help your Board and leadership team understand the risks and how well you manage them? And are they systems that are useable for your people?

What's next?

Don’t stop developing your processes; they should continue to change with your business, the risks you manage and the maturity of your H&S culture. If you want to check and adjust how you are tracking, our team is here to help.

Find out more at our upcoming seminar

On 8 March we are holding a seminar covering these key issues.

Please click **here (http://reporting.demand.co.nz/t/r-i-vtjxtt-l-j/)** for more information and to register. In the coming months we will also be holding a more detailed workshop. More information on this session will follow shortly.

Health & safety law - reform and updates (/resources/health-safety-law-reform-and-updates)

A New Avenue In The Law Of Easements In Singapore

An easement is an interest of a landowner which gives him either a positive or negative right to derive some limited advantage from the land of another (*Muthukumaran s/o Varthan v. Kwong Kai Chung* [2015] SGCA 69 at [39]), such as a right of way, a right to light or a right to support. It is a species of real property that is "parasitic upon the land" (*London and Blenheim Estates Ltd v. Ladbroke Retail Parks Ltd* [1992] 1 W.L.R. 1278 at 1283).

The Singapore courts have recognised that once an easement exists, it is very difficult to extinguish it (see e.g. *Frontfield Investment Holding (Pte) Ltd v. Management Corporation Strata Title Plan No. 938 and others* [2001] 2 Sing. L.R. (R.) 410 at [31]). Indeed, prior to 15 August 2014, the Land Titles Act (Chapter 157) ("**LTA**") only contained a few ways for an easement to be extinguished or cancelled:

(1) The same person becomes the owner of both lands (LTA, section 100(1));

(2) The execution of an instrument of release in the appropriate form (LTA, section 105(1));

(3) The expiry of the period of time for which the easement was intended to subsist (LTA, section 106(1)(a));

(4) The occurrence of any event upon which the easement was intended to determine (LTA, section 106(1)(b)); or

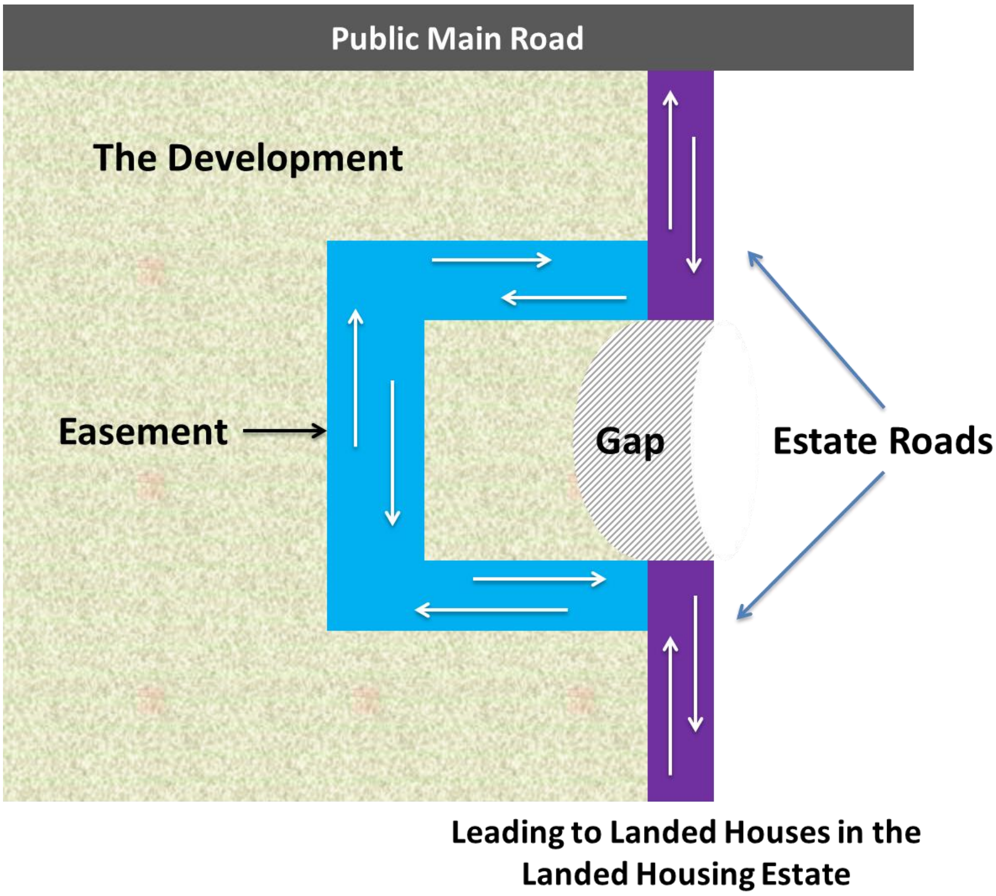
(5) The abandonment of the easement (LTA, section 106(1)(c)).

Notably, the LTA did not provide for an easement to be varied or extinguished, either in whole or in part, by reason of a change of use of the land in question, or by reason of changes in the character of the land or the surrounding neighbourhood.

This was exactly the obstacle which confronted one of our clients, who had little recourse under the statutory provisions stated above to remove an easement encumbering the land which they had purchased, even though the easement has become unnecessary over the years and no longer served its original purpose.

An obsolete easement

The land purchased by our clients comprised an apartment block with shops on the first storey (the "**Development**"). It was subject to an easement for the right of way over the driveway on the land (the "**Easement**"), which dissected the land into two unequal parts, as shown below.



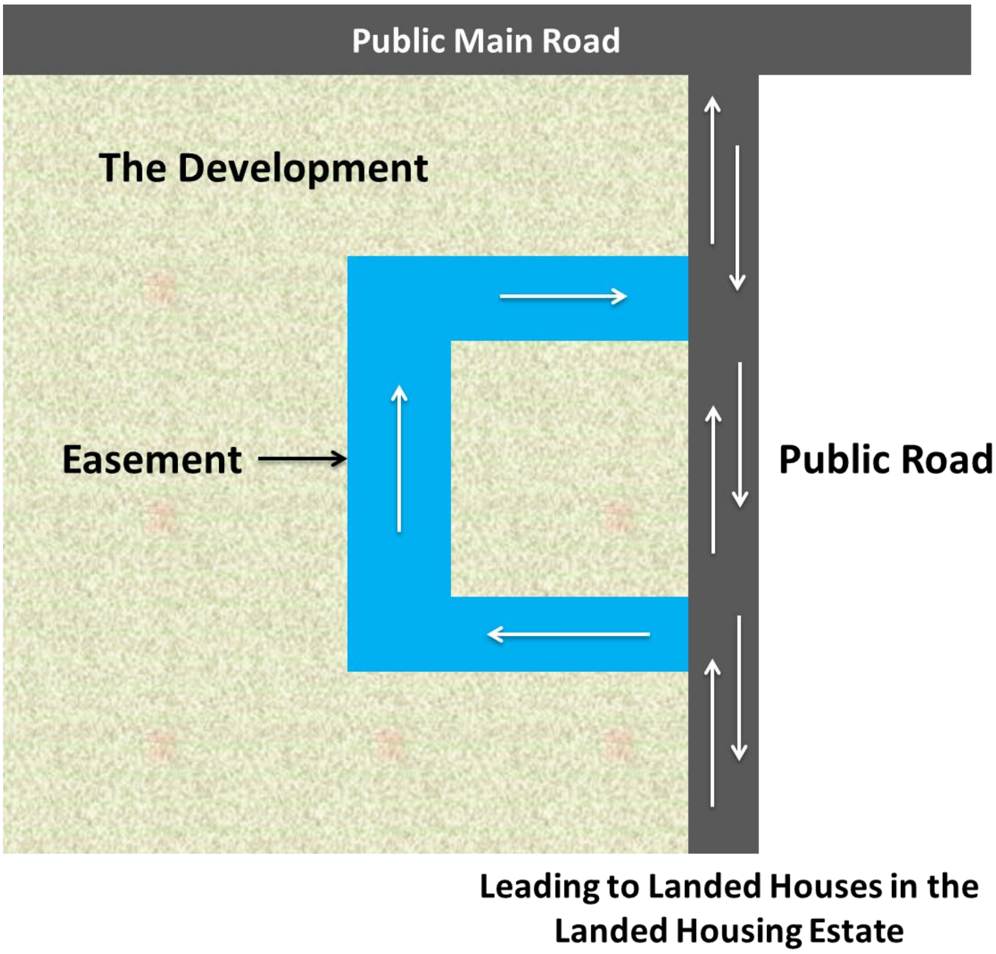
The Development was constructed towards the late 1960s and early 1970s, together with a landed housing estate further south. The housing estate included a network of private roads (the "**Estate Roads**"), which allowed the residents of the housing estate to gain access to the main public road situated towards the north of the Development, but only via the Easement. In other words, the Easement was created as part of a larger network of roads serving the housing estate, which included the Development as well.

One point of access to this Easement is situated roughly at the southeast corner of the Development, with the Easement taking a C-shaped path through the Development, leading to the other access point situated roughly at the northeast corner of the Development. Both access points were connected to the Estate Roads.

For some reason, the strip of land fronting the Development between the two access points was neither a public road nor an Estate Road, leaving a gap in the continuity of the Estate Roads which led to and from the main road. Hence, the Easement over the Development was necessary, as there were no other means for the residents of the housing estate to gain access to and from the said main road.

In 1980, however, a two-way street was constructed along the easterly boundary of the Development. This new public road provided the residents with a direct link between the housing estate and the main road. This naturally meant that the Easement over the driveway in the Development was no longer required by the residents of the housing estate to gain access to the main road, and vice versa. Indeed, the straight road now offers a much faster and shorter route between the housing estate and the main road.

Furthermore, the C-shaped driveway was converted to a one-way road in 1990. This was effected by a "NO ENTRY" sign which was placed at one of the access points to control the directional flow of traffic. It thus became impossible for residents of the housing estate to use the Easement to gain access to the rest of the housing estate from the main public road.



Obviously, the Easement had been rendered obsolete, given the reconfiguration of the network of roads serving the housing estate, as well as the change in the nature of the Easement itself.

With this in mind, our clients made an application to the Singapore Land Authority to cancel the Easement in September 2013 under section 106(2) of the LTA, on the ground that there is non-user of the Easement for a period exceeding 12 years. Unfortunately, this application was not approved, simply because there were objections by a mere handful of landowners (out of a total of over 200) who were entitled to the benefit of the Easement.

There was absolutely no way to vary or cancel the Easement under section 106(2) of the LTA, so long as any of the landowners who are entitled to its benefit raises an objection, because this would immediately defeat any claim of non-user or abandonment.

This episode only served to expose the unsatisfactory state of the law of easements in Singapore at that juncture, because the Easement has evidently become unnecessary (and has remained as such for more than two decades), even though it plainly and manifestly curtailed the full utilisation and redevelopment potential of the site by our clients, who have already obtained a Grant of Written Permission from the Urban Redevelopment Authority of Singapore to redevelop the land.

A new avenue – Section 105A of the LTA

The turning point for our clients came when LTA, section 105A came into effect on 15 August 2014:

> **Power of court to vary or extinguish easements**
>
> **105A.**—(1) The court may, on application by any person with an interest in a servient tenement, make an order to vary or extinguish wholly or in part the easement (including any implied easement) over the servient tenement.
>
> (2) An order under subsection (1) may be made upon the court being satisfied —
> (*a*) that by reason of a change of use of the land affected, as approved by planning permission within the meaning of the Planning Act (Cap. 232), or of changes in the character of the land or the neighbourhood, or other circumstances the court considers material, the continued existence of the easement will, unless varied or extinguished, impede the development of the land for public or private purposes without securing practical benefits to the persons entitled to the easement; or
> (*b*) that the proposed variation or extinguishment will not substantially injure

the persons entitled to the easement.

(3) An order varying or extinguishing wholly or in part an easement under subsection (1) may direct the applicant to pay to any person entitled to the benefit of the easement such sum by way of compensation as the court may think just to award under one, but not both, of the following heads:
(*a*) a sum to make up for any loss or disadvantage suffered by that person in consequence of the variation or extinguishment;
(*b*) a sum to make up for any effect which the easement had at the time when it was imposed in reducing the consideration then received for the land affected by it.

(4) An order made under subsection (1) shall not vary or extinguish wholly or in part an easement until an instrument in the approved form has been registered.

This legislative intervention was Parliament's response to the suggestion made by the High Court in the case of *Botanica Pte Ltd v. Management Corporation Strata Title Plan No. 2040* [2012] 3 Sing. L.R. 476 at [56]. Towards the end of his judgment, Justice Steven Chong observed that in most other Commonwealth jurisdictions that similarly operate a Torrens system of land registration, an express statutory power is already conferred on the courts to modify easements.

He could not discern any particular reason why such a power was not included in the LTA, and urged the legislature to review the necessity of introducing such statutory power, given the "increased activity in the property redevelopment sector".

When the new section 105A of the LTA came into force, we lost no time in filing an application on behalf of our clients for the extinguishment of the Easement under this new provision, on the basis that the character of the land or the neighbourhood has changed, and the continued existence of the Easement will, unless varied or extinguished, impede the development of our clients' land without securing practical benefits to the landowners entitled to the use of the Easement.

Furthermore, our clients took the position that the proposed extinguishment of the Easement would not, or would not substantially, injure the landowners who are entitled to the Easement. Even if they would suffer any loss or disadvantage, the court has the discretion to award them with compensation.

The court agreed with our client's submissions, and gave the order to extinguish the Easement.

Conclusion

The court's decision to grant the order for the extinguishment of the Easement in the present case is no doubt a move in the correct direction, and is certainly consistent with the long-term, forward-looking approach of Singapore's land use planning principles.

This successful application under the new section 105A of the LTA has also demonstrated that the enactment of this provision is timely. As observed by the Court of Appeal recently in *Muthukumaran s/o Varthan v. Kwong Kai Chung* [2015] SGCA 69 at [1], our courts are likely to see more disputes between neighbours over the creation or scope of easements in the future, as Singapore becomes increasingly built-up.

Given the acute land scarcity in Singapore, trade-offs between compelling priorities may sometimes be inevitable, and the new section 105A of the LTA has specifically empowered the court to strike a right balance – to achieve an efficient use of land, and at the same time, to protect the interests of landowners who enjoy the use of easements in deserving cases.

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Highlights of the Draft Amendment of China's Patent Law

01/28/2016

Steve Song

The State Council of China released a new draft amendment to the Patent Law submitted by the State Intellectual Property Office of China (SIPO) on December 2, 2015 for public comments. The amended clauses that catch particular attentions are those concerning the expansion of administrative enforcement power, striking down willful infringement, increase in the upper and lower limits of statutory damages, adoption of ex officio examination in patent reexamination and invalidation procedures, and establishment of licensing of rights system and implied license system for standard essential patents (SEP).

1. Expanded administrative enforcement power

The most significant revisions in the draft amendment pertain to the expansion of administrative enforcement power in patent protection. For example, the patent administrative department of the State Councilmay investigate and deal with significant patent infringement and counterfeit cases and the scope of patent administrative departments of local people's government is extended to the city level (cities divided into districts) and county level (counties authorized by laws and rules)under Article 3; the decision of invalidating a patent does not apply retroactively to any previous decision on patent infringement penalties under Article 47; the patent administrative departments have the power to investigate and impose penalty against intentional infringement acts that disrupt market order, such as group infringement and repeated infringement under Article 60; the patent administrative departments may investigate and deal with cases involving patent infringement and counterfeit on the Internet under Article 63; andthe patent administrative departments may make inquiry, access and duplicate related information, conduct onsite inspection, conduct inspection of goods and items, and seize relevant materials, and impose the legal consequences of interfering with infringement investigation under Article 67.

With respect to these clauses, the main concerns of the industry are: The expansion of administrative enforcement power in patent infringement disputes runs counter to the private right nature of patent system and the international practice that emphasizes judicial protection of patent rights. When the administrative enforcement power is extended to the patent administrative agencies at city level (cities divided into districts) or even county level, the law overlooks the dual attributes in which the technical complexity is mingled with the application of patent laws,thereby creating conflicts between the criteria and guidelines for the courts and the administrative departments. Moreover, there are no common ground on what constitute a group infringement and a repeated infringement. The intervention of public power in those issues could end up with harming the innocent.

2. Ex officio examination

Article 41 of the draft amendment gives the patent reexamination board the power to conduct ex officio examination on patent cases; Article 46 gives the patent reexamination board the power to conduct ex officio examinationon invalidation cases.

With respect to these clauses, the concerns of the industry are: By vesting the patent reexamination board with the power to conduct ex officio examination in both reexamination and invalidation proceedings, it fails to differentiate the different natures of the two proceedings.Reexamination involves only one party, in which the patent reexamination board conducts reexamination of patent applications on behalf of the state; and invalidation involves two parties, in which the patent reexamination board acts as an arbiter. Giving the board authority toconduct ex officio examinationin both proceedings could deviate from the remedy nature of reexamination and the role of the board as an impartial judge in an invalidation action.

3. Indirect patent infringement

Article 62 of the draft amendment stipulates the joint and several liability of indirect infringer.

With respect to this clause, the concerns of the industry are: The issue of whether to add “indirect patent infringement” to the Patent Law has stirred up considerable arguments in the past amendments of the law. In addition, since the Tort Law has stipulated the liability of abetting and assisting parties as joint tortfeasors, it is meaningless to stipulate further the liability of such act in the Patent Law. Moreover, the clause may be abused by some patentees.

4. The liability of Internet service providers (ISPs)

Article 63 of the draft amendment stipulates the obligations of ISPs to determine whether their services are being used in patent infringement or counterfeit acts.

With respect to this clause, the concerns of the industry are: The “notice & remove” rule in the field of copyright should not be transplanted to the field of patent. Different from copyright and trademark, the determination of patent infringement requires more technical knowledge, patent claim construction is more complicated, and the rules of comparing the patent scope with the accused infringing acts are more professional. It will be hard pressed for ISPs to determine on their own whether the act of their service users constitutes patent infringement, and imposing such obligation on them will put them in an awkward position in the market and may seriously impede the development of ISP industry.

5. Increase in limits of statutory damages

Paragraph 2, Article 68 of the draft amendment stipulates the lower limit of statutory damage is RMB100,000 and the upper limit is RMB5,000,000.

With respect to this clause, the concerns of the industry are: The root cause of low damage awards in China’s patent infringement cases does not lie in the lower limit of statutory damages, but in the lack of evidence to support the claimed damages. Thus, even if the limits of statutory damages increase, the low damage award problem still remains. Some people also voice their concern that raising the limits of statutory damages may encourage the plaintiff to be tardy in providing evidence to show his damage or the gain profited by the defendant, but to wait passively for the court to grant an award according to the prescribed statutory damages. It may even lead to the emergence of “patent trolls.”

6. Licensing of right

Articles 82 to 84 of the draft amendment stipulate the licensing of rights system.

With respect to these clauses, the concerns of the industry are: Patent licensing is a matter freely determined by and negotiated between private entities. The matter should be regulated through market mechanism and it is not necessary for state power to step in. The intent of the licensing of rights system is to enhance patent implementation and utilization. But the basis for the licensing of rights system to work smoothly is built on the availability of high-quality patents, whereas the overall quality of Chinese patents is rather low at the present time.

7. Implied license for standard essential patents (SEPs)

Article 85 of the draft amendment sets the implied license system for SEPs that when a patentee participates in the formulation of a national standard without disclosing the SEP he owns, it shall be deemed that the SEP patentee permits the patent implementer to use his patented technology. The clause further stipulates that if the patentee and the implementer fail to reach an agreement on the licensing royalty, they can request the decision of the patent administrative department of the State Council.

With respect to this clause, the concerns of the industry are: On one hand, there is no similar stipulation in the patent law of developed countries, and the legislation seems overly hasty in the absence of in-depth study and consensus on SEPs. On the other hand, it is inappropriate for the State to unduly intervene how patentees exercise their rights. In addition, licensing royalty disputes are typical civil disputes that do not require a preliminary proceeding of administrative intervention. Huawei, in its opinion voiced on behalf of many other Chinese enterprises, thinks that this clause is not consistent with common international practice or the actual conditions in China, but will only end up with tying down Chinese enterprises.

BAKER BOTTS

Commerce and Treasury Departments Make Additional Amendments to the Cuba Sanctions Regulations

29 January 2016

Updates

On January 26, 2016, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") announced new amendments to the Cuban Assets Control Regulations ("CACR") (31 C.F.R. Part 515) and Export Administration Regulations ("EAR") (15 C.F R. Parts 730-774). These amendments further implement the new direction toward Cuba that President Obama laid out in December 2014.

The amendments to the CACR and EAR remove existing restrictions on payment and financing terms for certain authorized exports and reexports to Cuba, as well as establish a case-by-case licensing policy for exports and reexports of items to meet the needs of the Cuban people, including to Cuban state-owned enterprises. However, the removal of the existing restrictions does not apply to agricultural commodities and items (as those payment terms are mandated by statute), thus making financing for agricultural commodities and items more restricted than other authorized exports. Additionally, the amendments further facilitate travel to Cuba for authorized purposes by allowing blocked space, code-sharing, and leasing arrangements with Cuban airlines; authorizing additional travel-related transactions directly incident to the temporary sojourn of aircraft and vessels; and authorizing additional transactions related to professional meetings and other events, disaster preparedness and response projects, and information and informational materials, including transactions pertaining to professional media or artistic productions in Cuba.

The key elements of the changes in the revised CACR and EAR include the following:

- Exports
    - BIS established a general policy of approval for exports and reexports to Cuba pertaining to the following:
        - telecommunication items that would improve communications to, from and among the Cuban people;
        - commodities and software to human rights organizations or to individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba;
        - commodities and software to U.S. news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public;

        - certain agricultural items that are outside the scope of "agricultural commodities" such as insecticides; pesticides; and herbicides; and
        - items necessary to ensure the safety of civil aviation and safe operation of commercial aircraft engaged in international air transportation, including the export or reexport of such aircraft leased to state-owned enterprises.
    - BIS also established a case-by-case licensing policy for exports and reexports to meet the needs of the Cuban people, including exports and reexports for such purposes made to state-owned enterprises and agencies and organizations of the Cuban government that provide goods and services to the Cuban people.
    - OFAC expanded an existing general license to authorize certain additional travel-related transactions that are directly incident to the conduct of market research; commercial marketing; sales or contract negotiation; accompanied delivery; installation; leasing; or servicing in Cuba of items consistent with the export or reexport licensing policy of the Department of Commerce, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.
- Air Carrier Services
    - OFAC authorized the entry into blocked space, code-sharing, and leasing arrangements to facilitate the provision of carrier services by air, including the entry into such arrangements with a Cuban national.
- Travel
    - Certain personnel who are operating or servicing vessels or aircraft are authorized to engage in travel-related and other transactions in Cuba to facilitate the temporary sojourn of aircraft and vessels as authorized by the Department of Commerce in connection of authorized travelers between the United States and Cuba.
    - OFAC authorized travel-related and other transactions directly incident to professional media or artistic productions of information or informational materials for export, import, or transmission, including the filming or production of media programs (such as movies and television programs); music recordings; and the creation of artworks in Cuba by persons that are regularly employed in or have demonstrated professional experience in a field relevant to such professional media or artistic productions.
    - OFAC also expanded an existing general license to authorize transactions relating to the creation, dissemination, or artistic or other substantive alteration or enhancement of such informational materials, including employment of Cuban nationals and remittance of royalties or other payments.
    - OFAC authorized by general license travel-related and other transactions to organize professional meetings or conferences in Cuba. (The previous general license authorized only attendance at such meetings or conferences.)
    - OFAC authorized by general license travel-related and other transactions to organize amateur and semi-professional internationals sports federation competitions and public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions in Cuba. OFAC also removed requirements that U.S. profits from certain events must be donated to certain organizations and that certain events be run at least in party by U.S. travelers.
    - OFAC expanded the list of authorized humanitarian projects to include disaster preparedness and response.
- Financing
    - Restrictions on payment and financing terms for authorized exports and reexports, except for agricultural commodities and agricultural items, are removed, and U.S. depository institutions are authorized to provide financing, including issuance of letters of credit for such exports and reexports.

- Examples of permissible payment and financing terms for authorized non-agricultural exports and reexports include payment of cash in advance; sales on an open account; and financing by third-country financial institutions or U.S. financial institutions.

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DEFINING SUCCESS TOGETHER

Publications

1st Circuit Hands SEC Major Reversal While SEC Doubles Down on In-House Courts

January 2016

By Candice M. Tewell

As we reported last year, the SEC has substantially increased its use of in-house administrative proceedings before SEC-employed Administrative Law Judges ("ALJs"). Appeals from the ALJs' decisions are then reviewed by the SEC's own commissioners. But the SEC cannot entirely remove itself from the jurisdiction of the federal courts—and the 1st Circuit recently handed the SEC a significant reversal, reminding the SEC it has to play by the rules, even in its own in-house courts.

In *Flannery v. SEC*, Nos. 15-1080, 15-1117 (1st Cir. Dec. 8, 2015), the 1st Circuit reversed the SEC's order imposing sanctions against James Hopkins and John Flannery of State Street Global Advisors ("State Street") for securities violations during the 2007 subprime mortgage crisis. The 1st Circuit's decision explores the limits of court deference to Commission decisions, gives teeth to the "substantial evidence" standard of review, and provides a useful roadmap for evaluating and defending allegations of material misstatements in securities cases.

In 2010, the SEC instituted proceedings against Hopkins (a former State Street vice president) and Flannery (a former chief investment officer) based on allegedly misleading communications to investors in a State Street-managed fund. Following an 11-day hearing, involving testimony from 19 witnesses, the ALJ issued a 58-page decision finding neither Hopkins nor Flannery made any false or misleading statements. The decision was a rare defeat for the SEC in its in-house courts (in which it has a 90% success rate).

The SEC's Division of Enforcement appealed the ALJ's decision to the five-member Commission. Three years later, the commissioners issued a 3-2 decision reversing the ALJ. As to Hopkins, the Commission determined that a single slide in a presentation he had given to a group of investors was materially misleading regarding the percent of the fund invested in asset-backed securities. As to Flannery, the Commission found he was liable to misstatements in two letters. Both men were suspended for one year from association with any investment adviser or company and assessed a civil monetary penalty.

Hopkins and Flannery appealed to the 1st Circuit, which reversed. The Court found the SEC's showing of materiality related to the single slide in Hopkins' presentation was "marginal" and the SEC failed to demonstrate he acted with scienter. As to Flannery, the Court concluded one of the two letters cited by the Commission was not misleading, and even assuming the other letter might have been, the single alleged misstatement was not sufficient to hold Flannery liable under the relevant law (which required a course of dealing).

Two aspects of the Court's decision were of particular interest to observers of the SEC's increased use of in-house courts. First, the Court's stringent review gave the Commission less deference than we have come to expect of a "substantial evidence" standard of review. The Court rejected a number of key factual findings by the Commission and explained how the Commission "misread" one of the communications at issue. Second, the Court focused on context when evaluating materiality and scienter. Although the Court acknowledged a single misleading statement could be actionable under certain securities laws, it reminded the SEC that materiality and scienter must be considered in the context of the presentation or statement at issue and the other information readily available to investors.

While this loss gives hope to individuals and companies facing the SEC's in-house courts, we will have to wait and see if other courts follow the 1st Circuit and engage in a searching inquiry of decisions coming out of the SEC. Meanwhile, the SEC continues to bring civil enforcement actions in its in-house courts despite the continuing constitutional challenges the system faces. The 4th Circuit recently refused to block the SEC's administrative action pending an appeal challenging the constitutionality of the process. See *Bennett v. SEC*, No. 15-2584 (4th Cir. Jan. 22, 2016). The 4th Circuit may be foreshadowing that it will join the 7th and D.C. Circuits in refusing to consider challenges to the SEC in-house court's constitutionality while an administrative claim is underway. In contrast, the 2nd Circuit in September froze a contested administrative proceeding so that it could consider the issues surrounding the SEC's in-house court. A district court judge in Georgia has likewise stayed several SEC administrative proceedings, finding that the agency's in-house court is likely unconstitutional. *See Ironridge Global IV v. SEC*, No. 15-cv-2512 (N.D. Ga. Nov. 17, 2015); *Gray Fin. Grp. Inc. v. SEC*, No. 15-cv-492 (N.D. Ga. Aug. 4, 2015); *Hill v. SEC*, 15-cv-1801 (N.D. Ga. June 8, 2015). The SEC has appealed the judge's rulings to the 11th Circuit.

Medical Device Alert

01 February 2016

See note below about Hogan Lovells

FDA Offers New Recommendations for Interoperability of Connected Devices

On January 26, 2016, the Food and Drug Administration (FDA or the Agency) released a draft guidance document, *Design Considerations and Pre-market Submission Recommendations for Interoperable Medical Devices* (Draft Guidance). The Draft Guidance describes design considerations and premarket submission content for medical devices that share data and information with other devices and systems.

The Draft Guidance comes as one more step in the Agency's effort to address increased connectivity between the tools used in today's healthcare environment. While recognizing that interconnectivity of various products and systems has the potential to increase effective patient care, the Draft Guidance cautions that there are certain safety considerations that should be addressed to ensure the safe and effective use of connected medical devices and the overall device system. This Draft Guidance is the most recent in a line of guidance documents addressing similar concerns regarding wireless connectivity in medical devices[1] and cybersecurity in both the premarket[2] and postmarket settings.[3] This guidance explicitly addresses the transmission and reception of data through both wired and wireless connections, and the transfer or exchange of information between medical or non-medical technology. While in many ways the Draft Guidance reflects current FDA practice in terms of requests for information for interoperable medical device, the document also proposes considerations that potentially signal a much broader way of thinking about these devices and the context in which they are used.

Defining Interoperability

The Draft Guidance defines, "interoperability" as the "ability of two or more products, technologies or systems to exchange information and to use the information that has been exchanged" where "exchange of information" includes transmission and/or reception through either wired or wireless connections. These connections may present in various forms such as the display, storage, interpretation and analysis or control of another product. The Agency notes that interoperability may be used in a range of activities from very simple, unidirectional, transmission of data to complex interactions including control of one device by another.

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Design and Testing Considerations

The agency stresses the need to establish and implement functional, performance and interface requirements for the device. In addition, the Draft Guidance notes the importance of designing testing plans that account for the intended use of the product and the risks associated with that use.

With respect to the design of the device, the Agency encourages developers to consider the following:

- **Device design.** Manufactures should consider in the device design the level of interoperability required for the device to meet its intended use, including the types of devices that it is intended to connect with, the type of data that will be exchange, method of the data transmission, the necessary timeliness and reliability of the information transfer.

- **Anticipated users.** Design considerations should account for the different types of users (e.g., physicians, IT professionals) who will interact with the system and who may need different information. Companies may wish to consider developing different instructions for different users.

- **Security considerations**. An electronic data interface may impact the security and risk management considerations for the products and systems with which it interacts. Therefore, manufacturers should ensure there are appropriate security features included in the design of the device, that the interface does not impact the safety or essential performance of the device, and that the device can appropriately handle data that is corrupted or otherwise outside of the parameters.

- **Risk management.** The draft guidance recommends that manufacturers perform a risk analysis that explicitly addresses interoperability, reasonably foreseeable misuse, and other reasonably foreseeable situations that could present risks. The Agency acknowledges that a manufacturer cannot be responsible for all possible situations of misuse beyond its intended uses.

In addition, FDA recommends conformance to any FDA recognized consensus standards that may be applicable to the individual product.

With respect to verification and validation, the Draft Guidance notes that interoperable medical devices must be evaluated to demonstrate that the interactions with other products perform as intended. This may include testing with specific products, or if the device is intended to interface with may devices, testing with representative products. Such tests should evaluate scenarios such as whether corrupt data can be detected and managed, whether the device can safely operate even when incorrect parameters are sent or received, the security of access by only authorized users, and whether the user interface of the device is sufficient to allow for correct use. Notably, FDA indicates that where a medical device is intended to be part of a larger system, the manufacturer should conduct testing to assure that the device performs appropriately when “assembled, installed, and maintained according to its instructions.”

Content of Premarket Submissions

FDA acknowledges in the Draft Guidance that certain interoperable medical devices do not require the submission of premarket notifications. However, for those devices which do require premarket submissions, the agency recommends submission of the following information:

- Discussion of electronic data interfaces, including the purposes of the interface and the mode of data transmission/receipt/exchange

- Risk Analysis including evaluation of risks associated with interoperability. Notably, many premarket submissions do not include full device risk analyses. It is unclear whether the Agency is suggesting that a risk analysis should be included for all interoperable devices.

- Verification and validation data regarding electronic data interfaces. The extent of this testing will depend on the purposes of the interface and the risks associated with the device and the interface. This data may include validation of labeling through human factors studies.

- Labeling, meeting the informational requirements discussed below.

Labeling

One of the more significant aspects of the draft guidance is FDA's recommendations regarding the inclusion of detailed information in the labeling regarding the interoperability interface. This would include a description of the purpose of the interface, the means of connection, specifications, any applicable contraindications, precautions or warnings, a summary of testing performed to verify interoperability, list of conformance to any standards, recommendations for connections or architectures, settings or configurations as appropriate, and instructions for IT personnel on how to connect/install or disconnect/uninstall the device. While much of this information is fairly intuitive and has previously been requested by FDA in recent submissions, FDA appears to be expanding the type and breadth of information that should be made publicly available in a manufacturer's labeling.

Key Take-Aways

- The Draft Guidance represents one more step in the Agency's effort to address risks associated with cybersecurity and connectivity for medical devices. The document places the focus on good design efforts along with robust testing, but makes it clear that manufacturers should think broadly about the contexts in which their products may be used.

- It is unclear whether the Draft Guidance will change the type of information that must be submitted in premarket submissions. For example, it is not yet clear whether FDA will require the inclusion of the full device risk analysis in future 510(k) premarket notifications.

- The recommendations described in the guidance are generally consistent with recent requests we have seen from the Agency in terms of the concerns raised and information required to address those concerns. At the same time, the Draft Guidance appears to expand the concerns from those focused solely on the individual device and its performance to include risks associated with interoperability of entire systems. While a manufacturer can include design elements that enhance the likelihood of successful interoperability with other devices, it is not always possible to anticipate all possible configurations in which a device may operate once purchased. The extent to which the Agency recognizes those limitations is not yet clear in the draft guidance.

Comments are being accepted on the draft guidance through March 26, 2016.

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[1] Radio Frequency Wireless Technology in Medical Devices - Guidance for Industry and Food and Drug Administration Staff (August 2013), available at
http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm077210.htm

[2] Content of Premarket Submissions for Management of Cybersecurity in Medical Devices - Guidance for Industry and Food and Drug Administration Staff (October 2014), available at
http://www.fda.gov/downloads/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm356190.pdf

[3] Postmarket Management of Cybersecurity in Medical Devices - Draft Guidance for Industry and Food and Drug Administration Staff (January 2016), available at
http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM482022.pdf