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HOGAN & HARTSON LLP CONTINUES EXPANSION OF ITS NEW YORK OFFICE WITH THE ADDITION OF EIGHT INTELLECTUAL PROPERTY LAWYERS

NEW YORK, Dec. X, 2003 - Hogan & Hartson L.L.P. announced today that eight intellectual property lawyers, including one partner, one counsel and six associates, have joined the firm's New York office. The group, formerly with Clifford Chance, follows the arrival of Eric J. Lobenfeld and Ira J. Schaefer, who joined the firm earlier this month. Lobenfeld and Schaefer were members of the litigation department at Clifford Chance, in which Lobenfeld was the head of the complex litigation and trial practice group.

"The recent additions reflect the significant growth of the firm's intellectual property capabilities in New York," said Ira Sheinfeld, managing partner of the firm's New York office. "We are pleased to have such a talented group of lawyers join Hogan & Hartson."

Jonathan M. Sobel, a partner with the firm effective as of January 1, 2004, focuses his practice on patent litigation. Jonathan also has a wide range of experience in copyright, trademark and complex commercial litigation, and has extensive trial experience. His most recent patent cases have involved wireless networking, bar code scanning and medical device technology. Before joining his previous firm, Jonathan was an associate with Chadbourne & Parke LLP. He holds a law degree, *cum laude*, from Benjamin N. Cardozo School of Law, where he was the articles editor of the *Cardozo Law Review*, and a bachelor's degree, *cum laude*, from the University of Pennsylvania.

Mark A. Kornfeld, who joins the firm as counsel, focuses his practice on complex commercial litigation, including securities class actions, intellectual property and shareholder suits. Before joining his previous firm, Kornfeld served as general counsel of Multicast Media Network, a start-up technology and media company. He also served as assistant general counsel with The Dreyfus Corporation, where he oversaw litigation matters, including class-action litigation and regulatory matters. Kornfeld holds a law degree from Brooklyn Law School, where he graduated *magna cum laude* and was executive editor of the *Brooklyn Law Review*. He holds a bachelor's degree in from Vassar College.

Also joining Hogan & Hartson are Russell DeClerck, Mitchell S. Feller, Brian C. Lavin, Mark J. Lemire, Allison J. Schoenthal and Ernest Yakob. They will be working with as associates in the intellectual property and litigation groups.

About Hogan & Hartson

Our New York office provides a full-range of legal services to Fortune 500 companies, multinational conglomerates, emerging businesses and individual business leaders. With close to 150 attorneys in Manhattan, Hogan & Hartson lawyers advise clients in the areas of corporate and securities, mergers and acquisitions, tax, litigation, intellectual property, lending, bankruptcy & creditors' rights, real estate and labor and employment. The New York attorneys work closely with other Hogan & Hartson lawyers around the world to provide business-focused legal solutions.

Hogan & Hartson is an international law firm headquartered in Washington, D.C. with close to 1,000 attorneys practicing in 19 offices worldwide. The firm's broad-based international practice cuts across virtually all legal disciplines and industries. Hogan & Hartson has European offices in Berlin, Brussels, London, Paris, Budapest, Prague, Warsaw, Moscow; Asian offices in Tokyo and Beijing; and U.S. offices in New York, Baltimore, Northern Virginia, Miami, Los Angeles, Denver, Boulder, Colorado Springs and Washington, D.C. For additional information about Hogan & Hartson, visit www.hhlaw.com.

LUCE FORWARD HAMILTON & SCRIPPS NAMES NEW MANAGING PARTNER, EXECUTIVE COMMITTEE MEMBERS AND NEW PARTNERS

Luce Forward Hamilton & Scripps LLP has announced that **Robert J. Bell** has been elected to be the Managing Partner of the firm effective January 16, 2004.

Bell, who began his law career at Luce Forward, is a Partner in Luce Forward's Real Estate Practice Area. He will assume the overall management responsibilities from **Robert D. Buell**, also a Partner in the Real Estate Practice Area, who has been the firm's Managing Partner since 1998.

Bell, who is already a member of Luce Forward's Executive Committee, will be joined this year by:

Michael A. Isaacs
Partner, San Francisco, and member of the Commercial, Finance & Insolvency Practice Area);

Nancy T. Scull (Partner, San Diego, and member of the Real Estate Practice Area); and,

Mark Hagarty, (Partner, San Diego, and member of the Real Estate Litigation Practice Area).

In addition to Robert D. Buell, **Edward "Pat" Swan** will finish his term on the Executive Committee on January 15, 2004.

"Being Managing Partner of Luce Forward has been one of the most challenging and interesting parts of my career, but I am looking forward to getting back to working with some terrific real estate clients," Buell said. "Bob Bell is a very talented attorney who will bring strong leadership and a great degree of professionalism, experience, and enthusiasm to the Managing Partner role."

In addition to the Managing Partner transition, Luce Forward Partners invited Associates Brian C. Fish, S. Elizabeth Foster, Seth M. Friedman, Marie Burke Kenny, David R. Krause-Leemon and Melissa M. Trunnell to become Partners in 2004.

"The attorneys selected to become partners have consistently demonstrated the integrity, excellence and commitment needed to succeed. I know that each one will continue to provide great service to our clients, to be active in our communities and to play an important part in our future growth as a firm," Bell said.

Brian C. Fish of Luce Forward's San Diego office practices in the Real Estate Practice Group and specializes in land use and redevelopment. He assists public and private clients with land use and environmental litigation, due diligence, property acquisition, document preparation and all aspects of the entitlement process, including California Environmental Quality Act review, permit processing, subdivision mapping and condominium conversions.

S. Elizabeth Foster is a member of Luce Forward's Business/Corporate, International and Corporate Finance practice areas who handles domestic and international business transactions from the San Diego office. She has been engaged in all aspects of complex corporate transactions for domestic and international clients, including mergers and acquisitions, divestments, public and private equity and debt issuances, and domestic and international IPOs. Prior to joining Luce Forward, Elizabeth practiced with a major New York law firm.

Seth M. Friedman practices from the firm's San Diego office and specializes in litigating bad faith claims for the nation's largest insurance carriers.

Marie Burke Kenny also works out of the firm's San Diego office, where she represents employers in federal and state court litigation involving wrongful termination, discrimination, harassment, retaliation, unfair competition and wage and hour claims.

David R. Krause-Leemon of Luce Forward's Los Angeles office practices in the areas of business litigation, legal malpractice, insurance bad faith litigation, public entity litigation and employment discrimination litigation.

Melissa M. Trunnell is a member of the Real Estate Practice Group and is located in the San Diego office. She represents major developers in residential and commercial real estate acquisitions and sales, residential and commercial development, affordable housing, financing and commercial and retail leasing. Her affordable housing practice includes the representation of for-profit and non-profit developers in all aspects of affordable housing, including tax credit, tax-exempt bond financing, and for sale and inclusionary housing transactions throughout California. Her finance practice includes the representation of developer and institutional borrowers in traditional financings, syndicated financings, tax credit and tax-exempt bond financings.

For additional information visit www.luce.com

NAUTADUTILH NAMES NEW PARTNERS

We are pleased to announce that Petra Zijp and Thijs Lommen will become partners as per 1 January 2004.

Petra Zijp is a member of the corporate practice group and specialises in capital market transactions, securities law and financings.

Thijs Lommen is a member of the banking and finance practice group and specialises in financing transactions and financings in the context of public-private partnerships. In addition, he litigates regularly in the field of banking law.

PRAC 35th INTERNATIONAL CONFERENCE
Lima Cusco, Peru
May 15th 21st, 2004

Dear PRAC Members:

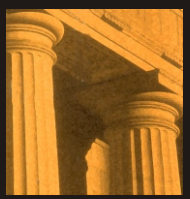
It gives us great pleasure to be the host of the 35th Pacific Rim Advisory Council Conference to be held in Lima and in the historic city of Cusco, Peru, from May 15th to 19th, 2004 and for those attending the follow on programme in Machu Picchu, from May 20th to 21st.

Cusco, a fascinating city steeped in history, tradition and legend, is now the oldest inhabited city in the American continent. The heart of the once mighty Inca Empire, it is the archaeological capital of the Americas, and reveals the various stages and cultures of its Pre-Inca, Colonial and Republican history. The conference program also includes activities in Machu Picchu, the Lost City of the Incas, declared a Cultural and Natural World Heritage Site by UNESCO. The beautifully preserved ruins consist of an enormous stone city hidden by a spectacular terraced green mountain plateau surrounded by three towering peaks. Social events included in the program will present to you Andean typical dances, songs and meals from the different regions of Peru.

This information and complete conference details, including on line registration are available at the PRAC web site at www.prac.org .

We look forward to welcoming you in our country, sharing with you our cultural and geographical variety, and extending to you our traditional Peruvian hospitality.

Jorge Pérez-Taiman
Host Committee Chair



MUÑIZ,
FORSYTH,
RAMIREZ,
PEREZ-TAIMAN &
LUNA-VICTORIA
ATTORNEYS - AT - LAW

RODYK PARTNER ELECTED PRESIDENT OF THE LAW SOCIETY OF SINGAPORE

Rodyk Partner **Philip Jeyaretnam S.C.** was elected President of the Law Society of Singapore in November 2003. Philip, who was the Law Society's Vice-President took over the Presidency unchallenged.

The legal community welcomed his election as President, with members citing his considerable experience and open personality as traits that will serve him well in the position.

Philip was a partner with HelenYeo & Partners from its formation in 1992 and joined Rodyk with the merger of the two firms. He graduated from Cambridge University in 1986 with First Class Honours in Law. He leads the Projects, Construction and Investment Practice Group in Rodyk's Litigation Department. In January 2003 Philip was appointed Senior Counsel by the Chief Justice of Singapore. The appointment as Senior Counsel is "an award for outstanding advocacy".

His principal areas of focus are disputes involving complex joint venture or equity arrangements and claims arising from major engineering and construction projects. He has also represented clients in major cases in the fields of contract law, tort liability, international arbitration practice and conflicts of law.

As with past Presidents, he will continue to run an active practice throughout his term. In his words, "The Presidency is a big commitment, but it will not take time away from my conduct of cases. Thankfully, we have a large Council and a very efficient Secretariat to share the load."

As Law Society President, Philip has said he will 'champion the profession and enhance the standing of lawyers in the community.'

CLAYTON UTZ CONSOLIDATES POSITION AS MAJOR AUSTRALIAN M&A ADVISOR

Sydney, 7 January 2004: The 2003 Mergers & Acquisitions (M&A) Legal League Tables published today by Thomson Financial testify to a very solid year's performance and reflect the truly national nature of the M&A practice at leading law firm Clayton Utz. The firm ranked first in 2003 in both announced deals involving an Australian or New Zealand target and announced deals involving an Asia-Pacific target. The firm also ranked third in both announced and completed M&A deals with any Australian or New Zealand involvement.

"The result is indicative of a very solid year for M&A advice at the firm," said the head of the M&A team at Clayton Utz, Mr Rod Halstead, recognised as one of Australia's leading M&A lawyers. "The fact that our team was involved in leading deals in every state points to the geographic depth of the firm's M&A practice.

"Advising on four of the year's top ten deals demonstrates that we are winning some of the best work with our M&A team. Given that we were active in almost half of the year's top 15 deals there is no doubt that our reputation as leading M&A advisers continues to grow.

"Another pleasing aspect of the year was the versatility of the practice in working across a broad range of industry sectors. In 2003 our M&A activity spanned a broad industry spectrum from financial services to mining, beverages to property trusts, and from healthcare through to gaming."

For additional information contact:

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HOGAN & HARTSON HONORED FOR MAJOR WIND PROJECT; RECOGNIZED "LITIGATION DEPARTMENT OF THE YEAR RANKING"

Contact: Wendy Whitney Taylor (202) 637-5600
For Immediate Release:
January 2004

Project Finance International has recognized a major wind project completed by Hogan & Hartson in its annual list of top financing deals of the year. FPL Energy American Wind, a transaction valued at more than $380 million, was named North American Deal of the Year.

Using a creative strategy, Hogan & Hartson packaged several projects around the country, many of them under construction, to create a portfolio that received an A credit rating. This was the first wind deal in 10 years to receive capital market financing.

Serving as issuers' counsel, Hogan & Hartson attorneys James A. Gede Jr., Edward Sledge, Edith Webster, Thomas Morey and Bruce Gilchrist handled the transaction.

Project Finance International, a Thomson publication, ranks deals based on size, complexity and uniqueness

American Lawyer has recognized Hogan & Hartson on its " Litigation Department of the Year " ranking. The list is published in the January 2004 issue and covers matters handled from January 2002 to June 2003.

The magazine singled out 15 firms from the AmLaw 200 law firms with a litigation department for their achievements in pretrial work, trial matters, appellate work, settlements, pro bono and other matters, such as arbitrations. Judges looked for achievement in all categories and cases of national importance.

During this 18 month period, Hogan & Hartson was involved in a number of high-profile cases. The highlights include a series of litigation and arbitration proceedings involving a European-based satellite manufacturer regarding transnational agreements heard in courts and tribunals in New York, Geneva and Delaware; a 4,000+ hour pro bono matter that vindicated 38 individuals who were caught in illegal drug stings in Texas; an antitrust case in Germany involving energy brokerage agreements and a $27 billion action against a Russian aluminum company. In addition, the firm's lawyers had seven Supreme Court appearances and filed one original action as well as numerous amicus briefs and petitions for certiorari during this period.

ARGENTINE DEFENSE OF COMPETITION LAW
(FEDERAL LAW #25.156, AS AMENDED)

CHAPTER I

FORBIDDEN AGREEMENTS AND PRACTICES

Section 1- All actions and conduct shown in any manner whatsoever, related to the production and exchange of goods or services, with the purpose or effect of limiting restraining, falsifying or distorting competition or access to the market, or which constitute an abuse of a dominant position in a market, in such a way that damage may be caused to the general economic interest, shall be forbidden and shall be punished according to the provisions of this law.

The obtaining of significant competitive advantages by means of infraction of other rules stated by administrative act or inappealable judgement is included in this section, if according to the provisions of the above-mentioned paragraph.

Section 2- The following forms of conduct, among others, as long as they constitute the parameters of section 1, are considered restrictive practices of competition:

a) To directly or indirectly determine, arrange or manipulate the sales price, or the purchase price of goods or services offered or demanded in the market, as well as to exchange information with the same purpose or effect;
b) To establish obligations to produce, process, distribute, purchase or commercialize only a restricted or limited quantity of goods, or to render a restricted or limited number, volume or frequency of services;
c) To horizontally divide territories, markets, customers and supply sources.
d) To arrange or coordinate positions in tenders or bids;
e) To arrange limitation or control of technical development or investments destined to production or marketing of goods and services;
f) To hinder, prevent or hamper the entrance or stay of third parties in a market or to exclude them from it;
g) To indirectly or directly fix, impose or practice, as agreed with competitors or individually, in any form whatsoever, prices and conditions of the purchase or sale of goods, the rendering of services or the products;
h) To regulate markets of goods or services, by means of agreements in order to limit or control research and technological development, production of goods or rendering of services, or in order to hinder investments destined for the production of goods or services or their distribution;
i) To subordinate the sale of goods to the purchase of another good or to the use of a service, or to subordinate the rendering of a service to the use of other service or to the purchase of goods;
j) To tie the purchase or sale to the condition of not using, purchasing, selling or providing goods or services produced, processed, distributed or commercialized by a third party;
k) To impose discriminatory conditions for the purchase or sale of goods or services, with no reason based on commercial use and customs;
l) To refuse with no justified reason to meet requirements for the purchase or sale of goods or services, made according to current market conditions;
m) To stop providing a monopoly service dominant in the market to a provider of a public interest service;
n) To dispose of goods or to render services at a price lower than their cost, with no reason based on commercial use and customs, in order to exclude competition from the market or to cause damage in the image or value of trademarks of their suppliers of goods or services.

Section 3 All individuals or legal entities, whether public or private, for profit or otherwise, who practice economic activities in all or part of the National territory, and those who practice economic activities overseas, as long as their acts, activities or agreements can produce effects in the National market, are subject to the provisions of this law.

For the purpose of this law, in order to determine the actual nature of the actions or conducts and agreements, economic situations and relationships which are effectively made, pursued or established shall be considered.

CHAPTER II

MARKET- DOMINANT POSITION

Section 4- For the purpose of this law, it is understood that one or more persons enjoy a dominant position when such person is the only offerent or demander of a determined product or service within the National market or in one or several parts of the world, or , when not being the only one, it is not exposed to a substantial competition or, when due to the degree of vertical or horizontal integrity, it is able to determine the economic viability of a competitor who participates in the market, causing damages to them.

Section 5- In order to establish the existence of dominant position in a market, the following circumstances shall be considered:

a) The extent to which the good or service can be substitute by others, whether local or foreign; the conditions of such substitution and the time required for it;
b) The extent to which law restrictions limit the access to products or offerents or demanders to the market ;
c) The extent to which the presumed responsible person can unilaterally influence the price fixing or restrict the supply or demand in the market and the extent to which its competitors can counteract such power.

CHAPTER III

CONCENTRATIONS AND MERGERS

Section 6- For the purpose of this law it is understood by economic concentration the taking of control of one or several companies, by means of the following acts:

a) Merger of companies;
b) Transfers of ongoing concerns;
c) Acquisition of property or any right on stock or capital shares, or debt securities granting any right to be converted in stock or capital shares or to have any kind of influence on the decisions of the person who issues them, when such acquisition grants the acquirer the control of or the substancial influence on such person
d) Any other agreement or act which transfers in a factual or legal way to a person or economic group the assets of a company or which grants determining influence on regular or special administration decisions of a company.

Section 7- Economic concentrations whose purpose or effect is or can be to restrict or distort competition, in a way that damage to the general economic interest may be caused, are forbidden.

Section 8- The acts indicated in section 6 of this law, when the business volume of the companies affected exceed the amount of TWO HUNDRED MILLION PESOS ($ 200,000,000) within the country, shall be notified for its examination before or within the period of a week from the date of termination of the agreement, the date of publication of the purchase or exchange offer, or the date of acquisition of control before the Court of Defense of Competition, the period being considered from the moment when the first of the mentioned events takes place, upon sanction in case of failure to comply with the provisions of section 46 sub-section d. The acts shall only produce effects between the parties or *vis-à-vis* third parties once the provisions of section 13 and 14 of this law are complied with, respectively.

For the purpose of this law it is understood by business volume the amounts resulting from the sale of products and rendering of services made by the affected companies during the last period corresponding to regular activities, after deduction of discounts on sales, as well as deduction of tax on the added value and of other taxes directly related to business volume.

For the calculation of the business volume of the company affected, the business volume of the following companies shall be added up:

a) The company affected
b) The companies where the affected one, directly or indirectly, has:

1- more than half of the capital or working capital;
2- the power to exercise more than half of the voting rights;
3- the power to designate more than half of the members of Security council or Administration or the bodies which legally represent the company, or;
4- the right to manage the companies´ activities.

c) Those companies which have the rights or powers mentioned in sub section b) with respect to an affected company;
d) Those companies where one of the companies mentioned in subsection c) have the rights or powers mentioned in subsection b);
e) The affected companies where several companies of those mentioned in subsections a) and d) have the rights or powers mentioned in subsection b)

Section 9- Failure to notify the transactions mentioned in the section above, shall be imposed with the fines provided in section 46 subsection d).

Section 10 - The following transactions are exempted from the mandatory notification provided in the previous section.

a) Purchase of companies from which the buyer already had more than fifty percent (50%) of the shares;
b) Purchase of bonds, debentures, shares with no voting rights or credits of companies;
c) Purchase of one only company by one only foreign company which previously did not have assets or shares of other companies in Argentina;
d) Purchase of liquidated companies (which have not registered activities in the country during the last year);
e) Economic concentration transactions provided in section 6 which require notification according to the provisions of section 8, when the amount of the transaction and the value of assets in Argentina to be absorbed, acquired, transferred or controlled do not exceed, for each of them respectively, TWENTY MILLION PESOS (20,000,000), except that in the period of the previous twelve months transaction exceeding in the aggregate that amount had been performed, or SIXTY MILLION PESOS (60,000,000) within the last thirty six months, provided that in both cases the market is the same.

Section 11 - The National Court of Defense of Competition shall determine in general the information and background people must file before the Court and the periods in which the mentioned information shall be provided.

Section 12 - The regulation shall determine additional form and content of the notification of projects of economic concentration and operations of control of companies so that the confidential character of them is guaranteed.

Section 13 - In all cases subject to the notification provided in this chapter, the Court by justified resolution shall decide within forty five (45) days of the filing of the respective application and documentation:

a) To authorize the transaction;
b) To condition the transaction to the completion of the conditons that the Court establishes;
c) To refuse authorization

The request for additional documentation shall be made in a single act in each stage, which would halt the timing of the period during, except when incomplete.

Section 14 - Once the period provided in the previous section has passed with no resolution on the matter, the operation shall be considered authorized implicitly. The tacit authorization shall produce in all cases the same legal effects as the expressed authorization.

Section 15- Concentrations which had been notified and authorized can not be contested afterwards in administrative headquarters on the basis of information and documentation verified by the court, except when such resolution had been obtained on the basis of false or incomplete information given by the applicant.

Section 16- When an economic concentration involves companies or people whose economic activity is regulated by the National Government through a regulatory agency, the National Court of Defense of competition, upon passing the resolution, shall require from this entity a report based on the proposal of economic concentration regarding the impact on the competition in the corresponding market or on the compliance with the corresponding framework of the law.

The opinion shall be required within THREE (3) days of the filing of the request. The period for its answering shall be FIFTEEN (15) days and shall not stop the period referred to in section 13.

CHAPTER IV

AUTHORITY OF APPLICATION

Section 17- The National Court of Defense of Competition is created as an autarkic agency within the Ministry of Economy and Public Works and Services of Argentina in order to apply and control the compliance with this law. It shall have its headquarters in the City of Buenos Aires but it can act, be established and hold sessions at any place in the Republic through representatives designated by the President of the Court. The magistrate´s representatives can be National, provincial or local officials.

Section 18- The National Court of Defense of competition shall be composed by seven members with sufficient experience and suitability to hold the position, of whom at least two shall be lawyers and other two shall be economics professionals, all of them with more than five years in practice. The members of the court shall have full-time dedication during the term of office, except for teaching activity.

Section 19- The members of the court shall be designated by the National Executive Power by open competition of background and opposition before a Jury composed of an attorney general of the Treasury Department, the secretary of Industry, Commerce and Mining of the Ministry of Economy and Public Works and Services, the presidents of the Commerce Commissions of both Chambers of the Legislative Power, the president of the National Appeal Court in Commercial matters, and the presidents of the Law National Academy and Economics National Academy.

Section 20- The members of the Court shall serve six years in the course of their duties. Their renewal shall be made partially every three years and they can be re-elected by the procedures established in the previous section. At the end of the first three years three members shall be renewed and at the end of the other three years, the remaining four. They can only be removed upon decision- by simple majority- of the Jury mentioned in the previous section.

The case for removal shall be started in an obligating manner if there is prosecution by the Executive power or the president of the Court or only by decision of the Jury if the lawsuit had any other origin.

The Jury shall pass the rules of procedure which guarantee the right of defense and the due process of the lawsuit.

Section 21- The causes of removal of the members of the Court are:

a) Bad performance of their duties;
b) Repeated negligence that prolongs the process;
c) Incapacity;
d) Conviction for fraud;
e) Breaking laws on incompatibility;
f) Not excusing themselves according to the provisions of Civil and Commercial Procedure Code.

Section 22- Any member of the court committed for trial for fraud shall be suspended preventively and immediately from the course of his duties.

Section 23- The National Registry of Defense of Competition is created within the National Court of Defense of Competition, where the operations of economic concentrations provided in Chapter III and the definite resolutions pronounced by the Court shall be registered. The Registry shall be public.

Section 24- The duties and powers of the National Court of Defense of Competition shall be the following:

a) Carrying out market studies and research considered necessary. In order to do so, it shall request from private individuals or entities or National provincial or local authorities or from the associations of defense of consumers and users, the documentation and cooperation deemed necessary;
b) Holding hearings with the presumed responsible people, reporter of a crime, damaged parties, witnesses or experts, taking their declarations and ordering confrontations, for which purpose the help of public force could be requested;
c) Making the necessary tests on books, documents and other elements of the investigation, control of stock, confirm origins and cost of raw material or other goods.
d) Impose the penalties provided by this law;
e) Promoting the study and investigation in competition matters;
f) When deemed necessary, issue opinions in matters of competition and free concurrence regarding laws, regulations, circulars and administrative acts, without these opinions being considered binding;
g) Giving recommendations of general or partial nature regarding modalities of competition in the markets;
h) Acting with the competent departments in the negotiation of international treaties or agreements in matters of regulation, competition policies and free concurrence;
i) Elaborating its internal regulations which shall establish among other issues, manner of election and term of office of the President, who has legal representation of the Court;
j) Organizing the National Registry of Competition created by this law;
k) Promoting and encouraging actions before the Justice, a legal representative being designated for this purpose;
l) Suspending the proceeding periods of this law by justified resolution;
m) Having access to the places subject to inspection with consent of the inhabitants or by means of court order requested by the Court before the competent judge, who shall make a ruling within a period of 24 hours;
n) Requesting the competent judge the precautionary measures he/she deems necessary, which shall be resolved within 24 hours;
o) Subscribing agreements with provincial or local organisms for occupation of offices which receive reports in the provinces;
p) The president of the Court has the administrative function of the organism and shall be allowed to hire personnel for specific or special work which cannot be made by their permanent organization, determining work conditions and retribution. The dispositions of the law of labor agreement shall regulate the relationship with the personnel of the permanent organization.
q) Subscribing agreements with asociations of users and consumers for the promotion of participation of associations of the community in defense of competition and openness of the markets

CHAPTER V

BUDGET

Section 25- The National Court of Defense of Competition shall make, each year, the budget project for its later submittance to the National Executive Power.

The Court shall establish the fees to be paid by the interested parties for proceedings initiated before it. Its product shall be destined to pay regular expenses of the organism.

CHAPTER VI

PROCEDURE

Section 26 - The procedure shall be initiated on the court´s own motion or by accusation made by any natural person or legal entity, whether private or public.
Section 27 - All the terms of this law shall be calculated by administrative working days.

Section 28 - The report must contain

a) Name and domicile of the person who files;
b) Object of the report, clearly expressed;
c) Facts on which it is based, clearly explained;
d) The law concisely defined.

Section 29 - If the court considered the accusation is relevant, shall notify the presumed responsible party for 10 days so that he can give explanations he deems necessary. In case the procedure is initiated on the court's own motion the notification shall be about the relation between events and on which foundations it is based.

The notification shall be for the same period of the offered evidence.

Section 30 - Once the complaint has been answered, or the period expired, the Court shall decide upon the preliminary investigation of the case.

Section 31 - If the Court considers the explanations satisfactory, or if, after the hearing, there was no foundation for the continuation of the procedure, it shall be filed.

Section 32 - After the preliminary hearing the court shall notify the presumed responsible parties so that in a period of 15 days they can defend themselves and offer the evidence they deem necessary.

Section 33 - Court decisions on evidence matters are final.

However the court can reconsider the evidence provided regarding its importance, admissibility and suitability.

Section 34 - After the trial, parties can debate for 6 days on the foundations of the evidence. The court shall pass a resolution within a maximum period of 60 days. The court resolution ends the administrative stage.

Section 35 - The Court at any stage of the proceedings, is empowered to impose the compliance of the conditions it establishes or order cessation or abstention of the damaging behaviour. When serious damage could be caused to the competition regime the court shall be able to order the measures which were suitable according to the circumstances to prevent the damage. An appeal can be lodged against this resolution with returning effect , in the form and terms provided by sections 52 and 53.

In the same way it shall be able to order , on the court´s own motion or upon request of the party, the suspension, modification or reversal of the measures provided by virtue of occurring circumstances or which could not be known at the moment of their adoption.

Section 36 - until the pronouncement of the resolution of section 34 the presumed responsible party can commit to the immediate or gradual cessation of the investigated facts or to the modification of aspects related to it.
The commitment shall be subject to the approval of the National Court of Defense of Competition in order to produce the suspension of the procedure.

After 3 years from the compliance with the commitment of this section, the proceedings shall be filed.

Section 37 - The court can on the court´s own motion or upon request of the party within the three days of the notification and without substantiation, clarify unclear concepts or replace any omission contained in the resolutions.

Section 38- The National Court of Defense of Competition shall decide the calling for public hearing when deemed necessary for the course of investigation.

Section 39- The decision of the National court of Defense of Competition as for the hearing, must contain respectively:

a) identification of the investigation in course;
b) nature of the hearing;
c) purpose;
d) date, time and place;
e) requirements for the attendance and participation.

Section 40 - Hearings must be called with minimum notice of 20 days and notified to the parties authorized in the file in a period of not less than 15 days.

Section 41- The call for public hearing must be published in the Official Gazette and in two national newspapers of with a minimum notice of ten days. The said publication shall contain at least the information provided in section 39.

Section 42- The court can intervene as contributory party in the procedures substantiated before it, to the people affected by the facts under investigation, to the associations of consumers and company associations legally recognized, provinces and any other person with a legitimate interest in the facts under investigation.

Section 43- The court can require reports on the investigated facts from individuals or legal entities of public or private nature of well-known authority on the matter.

Section 44- The resolutions which establish penalties of the court, once notified to the interested parties and being unappealable, shall be published in the Official Gazette and when deemed convenient in the most important newspapers of the country at the expense of the punished parties.

Section 45- Whoever committed crime of false testimony shall be liable to the sanctions provided in section 46 subsection b) of this law, when the informer had used false information or documentation, in order to cause dam age to the competition, without detriment to the other corresponding civil and criminal actions.

CHAPTER VII

FINES

Section 46- The individuals or legal entities which do not comply with the dispositions of this law, shall be liable to the following fines:

a) The cessation of the acts or conducts provided in chapters I and II and, if relevant , the removal of its effects;
b) Those who perform the acts forbidden in chapters I and II and in section 13 of chapter III, shall be sanctioned with a fine of 10,000 pesos to 150,000,000 pesos, which shall be adjusted on this basis: 1- The loss suffered by the persons affected by the forbidden activity. 2- The benefit obtained by the persons involved in the forbidden activity. 3- the value of the assets involved of the people indicated in item 2, at the moment when the violation was committed. In case of relapse of payment, the amounts of the fine shall be doubled.
c) Without detriment to other fines which may correspond, when there were acts which constitute dominating position abuse or when it is proved that a monopolistic or oligopolistic position has been achieved or consolidated breaking the dispositions of this law, the court can impose the compliance of conditions aiming at neutralization of the distorting aspects of competition or request the competent judge that the offending companies shall be dissolved, liquidated, dispersed or divided.
d) Those who do not comply with the provisions of sections 8, 35 and 36 shall be liable to a fine of up to one million pesos per day, from the date of expiry of the obligation to notify the projects of economic concentration or from the moment when the commitment, order of cessation or abstention are broken.

All of this, with no detriment to other fines which could be applied.

Section 47- The legal entities are responsible for the conduct of individuals who had acted in name, with help or in benefit of the legal entity, and even when the act on which the representation was based was ineffective.

Section 48- When the infractions provided by this law were committed by a legal entity, a fine shall also be applied jointly to directors, managers, administrators, trustees or members of the Syndic Office, agents or legal representatives of the said legal entity who by means of their action or omission of their duties of control, supervision or security, had contributed, encouraged or allowed the commission of the infraction.

In this case, a complementary penalty of disqualification from doing business of one to ten years can be imposed on the legal entity and the persons mentioned in the paragraph above.

Section 49- The Court on imposing fines shall consider the seriousness of the infraction, damage caused, indication of intention, participation of the offender in the market, size of the market affected, duration of practice or concentration and the relapse or background of the responsible party, as well as his economic capacity.

Section 50- Those who impede or make the investigation difficult or do not meet the requirements of the court can be fined up to 500 pesos per day.

When, according to the court the mentioned infraction has been committed, the accusation of the presumed responsible party shall be notified, and this person must defend himself and offer evidence within the period of 5 days.

Section 51- Individuals or legal entities damaged by the acts forbidden by this law, can bring an action for damages according to the rules of common law, before a judge with jurisdiction on the matter.

CHAPTER VIII

APPEALS

Section 52- Those resolutions pronounced by the court ordering the following are applicable:

a) Application of fines;
b) Cessation or abstention of a form of behaviour;
c) Opposition or conditioning regarding acts provided in Chapter III;
d) Dismissal of the accusation by the Court of Defense of Competition.

Appeals provided in subsection a) shall be given with suspensive effect, and those of subsections b), c) and d) shall be given with returning effect.

Section 53- The appeal shall be lodged and be founded before the National Court of defense of Competition within the period of 15 days of the notification of the resolution. This court within the 5 days of lodging the appeal shall submit the file to the corresponding National Court.

CHAPTER IX

PRESCRIPTION

Section 54- Actions derived from the infractions provided in this law are prescribed after 5 years.

Section 55- The terms of prescription are interrupted with the report or commission of other offense punished by this law.

CHAPTER X

TRANSITORY AND COMPLEMENTARY DISPOSITIONS

Section 56 - The Criminal Procedure Code and the Criminal Code shall apply in the matters not mentioned in this law and its regulations, aslong as they are in accordance with the provisions of this law.

Section 57 - The dispositions of law 19.549 shall not be applied to cases regulated by this law.

Section 58- Law 22.262 is repealed. In spite of this, the causes being processed on the date this law comes into force shall still be processed according to its provisions before the application organism of the said rule, which shall subsist until the constitution and starting of the National Court of Defense of Competition. Likewise, it shall hear the cases promoted as from the coming into force of this law. Once the court is constituted the cases shall be forwarded to it in order to continue with their substantiation.

Section 59 - All attribution of competition related to the purpose of this law and given to other organisms or state entities shall be repealed.

Section 60- The Executive Power shall regulate this law, in the period of 120 days calculated as from its publication.

Section 61 - This shall be passed to the Executive Power.

GRANTED IN THE HALL OF SESSIONS OF THE ARGENTINE CONGRESS IN BUENOS AIRES ON THE TWENTY-FIFTH DAY OF AUGUST OF NINETEEN NINETY NINE.

REGISTERED UNDER #25.156

ALBERTO PIERRI- C ARLOS RUCKAUF- Juan Estrada- Juan Oyarzun

ECONOMIC CONCENTRATION TRANSACTIONS NOTIFICATION FORM

(RESOLUTION 40/2001)

FORM F1

1. INFORMATION ON NOTIFYING COMPANIES

a) State name, domicile and legal domicile in Buenos Aires, telephone number, fax number and e-mail address of the companies.

b) To prove legal capacity of the representative of the companies please enclose power of attorney granted by public deed or protocolized, or certified copy thereof, with sufficient powers to notify the economic concentration transaction with the Application Authority. In the case of individuals or partners in partnerships, enclose copy of the first and second sheet of the National Identity Number (passport or identity document equivalent). In the case of traders, enclose number of registration in "Registro Publico de Comercio".

c) State names of people responsible for the answers to this form and /or who will be interlocutors with the Application Authority, reporting address, telephone number, fax number, e-mail address and position in the company. The referred persons are to have effectively participated in the processing of information sent, because these will be consulted by officials of the Application Authority.

d) State number of file in the local authority of legal entities or the number of registration in "Registro Publico de Comercio" when necessary and CUIT number of the companies.

e) Enclose a list of all the shareholders, quota holders or holders of social capital holding a participation of more than 5%.

2. INFORMATION ON COMPANIES INVOLVED AND GENERAL ASPECTS OF THE ECONOMIC CONCENTRATION TRANSACTION.

a) Enclose copy of the last balance sheet with reports of the social fiscalization organism and annual report, when applicable according to type and social contract and/or by-law, of the Involved Companies offering Involved Products. When the annual report is filed, it will only be necessary to enclose translation of financing information of balance sheets.

b) Provide a list of all Involved Companies , identifying for each of them type of control and type of activity developed. Enclose graphics or diagrams of organization which are clear and illustrative.

c) Give details of the main characteristics of the economic concentration transaction notified, classifying it according to the provisions stated in section 6 of Law 25.156

d) Explain structure of property or of control resulting after the operation

e) Identify the different economic concentration transactions, in the terms of section 6 of law 25,156, in the market of Involved and Substitute Products in which the Involved Companies have participated during the last three (3) years.

f) File the definitive version or the most recent version of the documentation related to the economic concentration transaction.

g) Enclose the analysis, reports, studies and surveys to which the companies have access, which can be useful to assess the impact of the economic concentration transaction, competition conditions, competitors (actual or potential) and market situation.

h) State if, according to the companies, the concentration is legal ,according to section 7 of law 25.156 and give reasons.

3. RELEVANT MARKET OF THE PRODUCT

Product

a) Identify all the products and/or services, distinguishing by type and by trademark, offered by the Involved Companies in Argentina.

b) Identify the Products Involved. For each of them, file a brief description of its main characteristics, for instance its trademark, physical features and use.

c) Identify the different stages the Involved Products go through, until they reach the final consumer.

Substitution by demand

d) Identify the Substitute Products. For each of them, file a brief description of its main features, for instance, its trademark, physical features and use.

e) Identify the different stages the Substitute Products go through until they reach the final consumer

Substitution by supply

f) Explain the characteristics a company should have to begin the production and/or marketing of the Involved and Substitute Products.

(i) in a short period (up to six months)

(ii) in a medium period (from six months to one year)

(iii) in a long period (more than one year)

If possible, state which companies have the previously mentioned characteristics.

4. RELEVANT GEOGRAPHIC MARKET

a) State the geographic zones of Argentina where each of the Involved products are offered.

b) State the geographic zones of Argentina where each of the Substitute Products are offered.

5. QUANTITATIVE MARKET INFORMATION

a) Estimate total volume and total value (tax free) of the Involved and Substitute products sold or commercialized in each geographic zone stated in 4 a and 4 b above. Explain the method used or the sources used for the estimation and file the documents which support these calculations.

b) State which is the participation in the market of each company which produces or commercializes the Involved and Substitute products for each of the last three years and for each type of product. Explain the method used or the sources used for these calculations.

c) State if the purchase of consumables, either goods or services, used for the production of Involved Products is above twenty five percent (25 %) of the sales of the supplier of such consumable. If this is the case, provide details whenever possible.

6. BACKGROUND

a) State if any of the Involved Companies has been or is being investigated in Argentina or elsewhere for breaking antitrust laws or antidumping laws. Should this be the case, describe the investigation and the result, if applicable.

b) State if the notified economic concentration transaction has been filed with any other antitrust authority of any other country. Should this be the case, provide the list of countries where this has occurred and its result (authorization, conditions or prohibition) or process state.

ECONOMIC CONCENTRATION TRANSACTIONS NOTIFICATION FORM
(RESOLUTION 40/2001)

FORM F2

1. RELEVANT MARKET OF THE PRODUCT

Substitution on the demand side

a) Explain why you consider the products mentioned in item 3 d) of Form F1 to be Substitute Products.

b) In the case of a non-temporary increase of five percent in the price of Involved Products, calculate which percentage of the demand of the said products should be transferred to the Substitute Products, if the price of the last ones remains the same. Indicate also what would happen in case of a ten percent rise in such price.

c) Explain if the Involved Products require their consumer to have any kind of previous knowledge or training for their correct use (for instance, a training course for use of software).

d) Mention those Substitute Products which changes of price or sales policy (discounts, incentive bonuses, etc.) caused changes in prices or sales policy of the Involved Products in the last three years. In each case, specify date and geographic market and identify the companies which caused such changes. Enclose supporting documentation.

e) Indicate if the sales policy of the Involved Products includes mechanisms which reward the consumer´s loyalty (for instance, frequent their programs).

f) Identify those companies which produce or market the Substitute Products. Enclose address and telephone number for each of them.

g) Identify chambers or company associations which draw together the above mentioned companies. Provide address and telephone number of each of them.

Substitution on the supply side

h) Regarding item 3 f) of Form F1, explain which investments should be made by the company on advertising, new trademarks, distribution logistics, installations for production, etc., in order to start offering the Substitute Products.

i) Indicate if, in the last three years, new competitors have appeared, or if the existing competitors have launched new products or have repositioned existing products in the market of Involved Products. If so, provide details.

2. RELEVANT GEOGRAPHIC MARKET

a) Enclose planning, strategic documentation, sales reports and/or marketing or any other document to which the companies have access where there is analysis on the possibility of the appearance of a competitor in the geographic zones mentioned in item 4 a) of Form F1.

b) Enclose planning, strategic documentation, sales report and/or commercialization or any other document to which the notifying companies have access where there is analysis on the probable competitive scenario in case of the appearance of a competitor in the geographic zones of item 4 a) of Form F1. Specify probable changes in the price level, product quality, marketing policy, degree of innovation and development, etc.

c) For each geographic zone mentioned in item 4 a) of F1, indicate which of them are shipped and the cost of transportation of the Involved Products. Remark which percentage represents the cost of transportation on the ex-factory price.

d) Indicate the manner the Substitute Products are shipped and provide a calculation of costs of transportation and percentage these costs represent on the ex-factory price. Clarify methodology used to make this calculation.

e) Regarding the Involved Products, indicate:

i) the maximum distance they can be shipped in a profitable way;

ii) the maximum distance they are shipped at present;

iii) average distance (by sold volume) they are shipped at present; and

iv) which are the different features of the cost of transportation which limit the maximum distance they can be shipped in a profitable way, such as legal, environmental or conservation restrictions.

f) Regarding the Substitute Products, indicate:

i) the maximum distance they can be shipped in a profitable way;

ii) the maximum distance they are shipped at present;

iii) average distance (by sold volume) they are shipped at present; and

iv) which are the different features of the cost of transportation which limit the maximum distance they can be shipped in a profitable way, such as legal, environmental or conservation restrictions.

g) Indicate the address of each production plant and/or distribution or marketing centers of the Involved and Substitute Products. Also mention the size of the geographic zone covered by each plant or center mentioned above.

h) Indicate if there are companies which offer the service of transportation of Involved and Substitute Products temporarily or permanently. If so, provide a list of them with name, address and telephone number.

3. PRODUCTION PROCESS

a) Briefly describe the production process of the involved and Substitute Products. Indicate if the involved companies produce Involved Products for third parties or hire third parties for all or part of the production of Involved Products (out-sourcing).

b) Identify legal restrictions (environmental, license, authorizations, patent, permits) which had to be necessarily complied with for the production and/or marketing of involved and Substitute Products in Argentina.

c) Indicate maximum capacity of production of each of the Involved Products in each of the past three years. Clarify if there are projects being implemented to increase such capacity.

d) Indicate year when the maximum production or marketing of each involved product was obtained in the last ten years, indicating the volume reached. Indicate modifications introduced in the process of production or marketing of Involved Products in the year this maximum level was reached (such as contracting out of third parties, rent of machinery, temporary personnel hiring)

e) In case there are registrations of variations in the capacity of maximum production during the last ten years indicate their reasons in order of importance (for instance, technological improvements, labor training, plant restructure, etc.) indicate also any other type of restructure of productive area, including changes in qualifications of production personnel, and in the procedure of the productive circuit.

f) Provide a list of suppliers of consumables and raw materials representing at least five percent of total cost of production of Involved Products, indicating kind of consumable or raw material, address and name of supplier companies.

4. QUALITATIVE AND QUANTITATIVE MARKET INFORMATION

a) Explain the evolution of the market of Involved Products, and if possible, of the Substitute Products during the last three years, (volume, prices, new products, new technologies). Explain how these markets will evolve, according to the opinion of notifying companies, in the near future.

b) Indicate if there is any company with significant influence within the market of Involved Products and Substitute Products regarding price, innovation, etc. If so, indicate which company and explain how it influences.

c) Report the sales volume of each of the Involved Products in the local market, indicating measure unit and billing of each of the last three years. Differentiate this information in each geographic zone indicated in item 4 a) of form F1, for each plant or distribution or commercialization center. Also differentiate production for third parties and the one which is made by third parties. Report gross and net values of any kind of taxes.

d) Report total value of each of the Involved Products and Substitute Products for each of the last three years, indicating FOB and CIF values and corresponding volume. Provide information by customs position (number and description), by company and by origin and destination, respectively. Enclose documentation which supports the reported numbers.

e) If any of the Involved Products is imported indicate factors which influence the decision of importing, conditions of import (for instance, duration of agreements) and necessary expenses to bring the product into the country. Indicate if there were changes in the supply markets during the last three years, and if so, the reasons for those changes.

f) If any of the Involved Products are exported, report volume and FOB and CIF values of the last three years and indicate factors of influence in the decision to export , conditions of export (for instance duration of agreements, possibilities of re-importation , etc.).

Indicate also if there were changes in export markets during the last three years and if so which were the reasons for those changes.

g) Report if the imports of involved and Substitute Products are affected by high cost of transportation, tariff and non fee tariff barriers, environmental or health regulations, logistics problems, etc. If so, provide complete information on each of these aspects, enclosing the certifying documentation.

h) Indicate the price policy (prices classified by client, price lists, discounts , etc.) for the marketing of the Involved Products and its evolution in the last three years. Enclose price lists for the indicated period.

i) Provide a list of consumers representing more than five percent of the total billing of each of the Involved Products, indicating amounts, volume, name, address, and telephone number of each.

j) Indicate if any of the involved companies has contractual or factual links such as strategic alliances, joint projects of investigation and development, exchange of technology, etc., with any producer or trader of Substitute Products.

5. DIFFERENTIATED PRODUCTS

a) Calculate the proportion of the consumers of each involved product offered by an involved company which considers the Involved Products offered by each of the other companies involved as their second option of consumption.

b) In case of a non-temporary rise of five percent in the price of each involved product, calculate the percentage of the demand of those products which shall be transferred to each of the other Involved Products, supposing their price is the same. Indicate also what would happen in case of a ten percent rise in such price.

6. COST OF PRODUCTION

a) With the purpose of reporting the structure of average cost per unit of Involved Products, complete Table 1 (enclosed as annex), indicating in each case the percentage participation of each of the concepts which compose the average cost per unit and differentiating especially between fixed and variable costs (i.e., costs which respectively remain constant and vary when the produced quantity varies).

b) Indicate if the unit average cost per unit of the Involved Products diminishes or increases as the use of installed production capacity rises.

c) Explain relative importance of the capital costs in the total costs of Involved Products.

7. EFFICIENCY GAINS

The existence of efficiency gains transferred to consumers in Argentina can be decisive to authorize an operation, but the lack of them would not necessarily mean the prohibition of an operation

which, in principle, does not affect competition. That is to say, your answer in this item can have a positive or neutral impact, but never a negative one, on the evaluation of the operation.

a) Provide details of the efficiency gains you expect to obtain as consequence of the concentration, considering the following:

- Efficiency gains should only be considered as such when derived directly from concentration and cannot be achieved without it.

- Those decreases in costs which imply transfer between two or more agents shall not be considered as efficiency gains derived from concentrations. This case should be the one of those lowering of costs which do not represent an actual saving of resources and which are derived from the greater power of negotiation the concentrated company has as consequence of the operation. For example, if the concentrated company has capacity to obtain discounts from the suppliers or to negotiate lower salaries with the workers, such lowering of costs shall not be considered as productive efficiency gains. The same criterion is applicable to lowering of costs which, for tax reasons, is a consequence of the concentration.

Efficiency gains can be considered acceptable where, for instance:

- concentration allows maintaining quantity, quality and variety of offered products by means of using fewer resources ;

- concentration allows quantity, quality or variety of offered products to increase by means of using the same resources:

- concentration allows lower financial costs and/or increases possibilities of access to capital market;

- Detailed explanation should be given on the nature of the expected efficiency gains, magnitude and probability of each of them, manner and moment when they will be produced, manner in which they will encourage companies to compete and the reason why they cannot be reached except through concentration;

- All information and/or documentation which allows verification of the above-mentioned explanation should be enclosed;

- All costs from the operation should be given, indicating nature and magnitude and the moment and manner in which they will be produced (for instance, costs of restructuring the companies involved in the transaction, costs of transition, etc.);

- In the case where the efficiency gains invoked require certain investments or specific costs for their realization, the nature and magnitude of them and the manner and moment when they will be produced should be given in detail (for instance, costs of adjusting a plant to specialize its production, etc.);

- All information referred to costs derived from the operation as well as those referred to costs or investments necessary to realize the invoked efficiency gains, shall be filed together with documentation or supporting reports for verification.

b) Indicate the way the savings derived from the efficiencies achieved by concentration should be transferred to Argentine consumers regarding price, quality and produced quantity. Calculate such transfers, indicating sources and methodology used in the calculations made.

ANNEX

Table 1
Cost structure

CONCEPT	PRODUCT UNIT	% PARTICIPATION
Variable costs		
Consumable /raw material		
Others		
Manufacture fixed costs Advertising and promotion		
Cost of marketing		
Indirect labor		
Depreciation		
Capital costs (interest)		
Other fixed production costs		
Average cost per unit		
Ex-Factory Unit Price		
Distribution and sales margins		
Final unit price		

AUSTRALIA - CLAYTON UTZ - PRIVACY BILL TABLED IN PARLIAMENT

The Privacy Amendment Bill 2003 was tabled in Parliament on 3 December 2003. If enacted, the Bill will amend the Privacy Act 1988 (Cth) in the following ways:

1. The Bill makes it clear that National Privacy Principle ("NPP") 9, relating to transborder data flows, applies to personal information about persons who are not Australian residents or citizens.
2. Under the Bill, the Privacy Commissioner will no longer be barred from investigating complaints about breaches of access and correction rights where the complainant is not an Australian resident or citizen.
3. The Bill extends the matters which may be covered in an organisation's privacy code.
4. The Bill corrects an unintended limitation on the provision of superannuation services to Commonwealth employees.

Part 1: The application of National Privacy Principle 9 to non residents

NPP 9 provides that a private sector organisation to which the Act applies may only transfer personal information about an individual to a foreign country in certain circumstances.

Section 5B(1) of the Act details the Act's extra-territorial operation. It currently provides that the Act applies to the extra-territorial acts and practices of an organisation only if:

(a) the act or practice relates to personal information of an Australian citizen or resident; and

(b) there is a link with Australia (as is more particularly described in sections 5B(2) and 5B(3).

There is a risk that section 5B(1)(a) can be interpreted as limiting the operation of NPP 9 to Australian citizens or residents only. This is because it can be argued that since NPP 9 involves an extra-territorial act, section 5B(1)(a) limits the operation of that NPP to data flows of personal information of Australian residents or citizens only.

The Bill amends section 5B(1) to make it clear that the extraterritorial limitation to Australian citizens and residents does not apply in relation to NPP 9. If the Bill is enacted, NPP 9 will apply to all extra-territorial acts and practices of the organisation if the requirement set out in section 5B(1)(b) is satisfied.

Part 2: Extension of correction rights to non-Australians

Under section 41(4) of the Act, the Privacy Commissioner may only investigate complaints about a possible breach of the right to correct personal information (whether that rights exists under IPP 7, NPP 6 or a privacy code) if the complainant is an Australian citizen or resident. The Bill repeals this section.

Part 3: Approved privacy codes

The amendment under the Bill aims to remove existing limitations on the matters which may be covered in privacy codes. Under the Act, a privacy code approved by the Privacy Commissioner may replace an organisations obligations under the NPPs that would otherwise apply.

A privacy code is defined as "a written code regulating acts and practices that affect privacy". Section 7(1)(ee) states that an 'act or practice' of an organisation does not include an act or practice that is an exempt act or practice (which includes acts or practices relating to employee record and some acts or practices of journalists). Therefore, a privacy code is not permitted to deal with 'exempt acts or practices'.

The Bill amends the Act to allow privacy codes to include provisions relating to exempt acts or practices. It further provides that if an exempt act or practice is included in a code, then the Act will apply in relation to the code, as if those acts or practices were not exempt. This means that a breach of a provision of a code

that imposes privacy obligations on acts or practices that would otherwise be exempt under the Act will constitute an interference with privacy and may be the subject of a complaint and investigation by the Privacy Commissioner.

Part 4: Use of government payroll identifiers

NPP 7.2 provides that private sector organisations must not use or disclose an identifier assigned to an individual by a Commonwealth agency unless an exemption applies. One of those exemptions is where a Regulation allows a use or disclosure by an organisation.

A consequence of NPP 7.2 is that it prevents private sector organisations which provide superannuation services to Commonwealth employees from using or disclosing Commonwealth payroll numbers unless a Regulation applies.

Currently under section 100(2), a Regulation must be made for each superannuation provider in consultation with each member's employing agency and in consultation with the Privacy Commissioner in order for those superannuation providers to use Commonwealth payroll numbers. Given the number of providers and agencies involved, and the fact that new agencies may be created, it is an overly burdensome problem to create and update such regulations.

The proposed amendment dispenses with the requirements under section 100(2) being fulfilled when making Regulations in relation to superannuation providers. Instead, only one Regulation will be needed which requires consultation between the relevant minister and the Privacy Commissioner only. This Regulation can cover a class of superannuation providers and a class of Commonwealth payroll identifiers, greatly streamlining the process of making regulations.

Please do not hesitate to contact us if you have any queries about any aspect of privacy law.

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TFTS NEWS

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Capital Markets and Banking

BRAZIL: NEW REGULATIONS FOR PUBLIC OFFERINGS OF SECURITIES

On December 29, 2003 the Brazilian Securities Commission (Comissão de Valores Mobiliários - CVM) established a new regulatory framework for public offerings of securities in Brazil, through the enactment of Instruction CVM No. 400 ("Instruction 400").

The purpose of Instruction 400 is to regulate public offerings of securities in both primary and secondary markets in Brazil, aiming at protecting investors by assuring equitable treatment and imposing requirements of broad, transparent and adequate disclosure of information about the offerings, the respective securities, the issuers and any other persons involved in the relevant transactions.

As a general rule, Instruction 400 maintained the already existing obligation to register with CVM any and all public offerings of securities in Brazil. However, some relevant changes were introduced by Instruction 400, including the following:

- exemptions from registration in certain cases and in accordance with the terms and conditions established in Instruction 400;
- registration of public offering programs (shelf registration), with a maximum term of 2 years;
- the distribution of supplemental tranches of securities in case of excess of demand, limited to 15% of the amount initially offered (green shoe option);
- possibility of amendment or revocation of the offering in case of material changes that may increase the risks assumed by the issuer;
- partial public offerings;
- prior consultation with investors about the feasibility of an offering;
- specific bookbuilding rules; and
- rules concerning simultaneous public offerings in different jurisdictions.

The new regulations will come into force on February 2, 2004.

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Last Bulletins

- Brazil: Proposed Regulations for Digital Communication Services
- Brazil: New Regulations for the Imposition of Fines in Import Transactions
- Brazil: Foreign Capital and Exchange Information Network – RedeCEC
- Brazil: Major Changes Proposed to the Bankruptcy Law

focus on Securities Litigation

FMC
FRASER MILNER CASGRAIN LLP

December 2003

Offshore Accounts - Investors Can't Have Their Cake and Eat it Too

Each year many Canadians take the plunge and invest funds in offshore investment accounts. They do so in an attempt to benefit from the variety of tax advantages offered by such investment vehicles. In a typical scenario, an investor will incorporate and deposit his/her funds into an offshore holding corporation (Co. X). Co. X will then open an account and deposit "its" funds with a financial institution based in a suitably welcoming foreign (offshore) country which will in turn re-invest those funds, as an offshore investor, through a domestic investment account with a brokerage of the initial investor's choosing.

What happens when, as is becoming increasingly common, the underlying individual investor takes issue with the conduct of the his/her domestic brokerage for advice pertaining to the "offshore" account? Can that investor sustain an action against the domestic brokerage in respect of the "offshore" account?

The short answer appears to be no. In the recently released decision in *Chambers et al v. HSBC Securities (Canada) Inc. et al,* [2003] O.J. No. 3470 (S.C.J.), *a matter dealing with this exact issue and in respect of which Fraser Milner Casgrain acted successfully for the domestic brokerage house carrying the "offshore" account*, the Superior Court unequivocally held that as the domestic investor had no legal interest in the "offshore" account, that investor no longer had the legal capacity to sustain a cause of action for damages against the domestic brokerage for losses in that account.

In *Chambers*, the plaintiffs' case was based upon an allegation that regardless of the legal structure that was put in place for tax purposes, the reality that existed between himself and the brokerage house was that he (the underlying investor) was in fact the beneficial owner of the "offshore" account such that the losses sustained in that account were his.

In summarily dismissing the plaintiffs' claim, the Court rejected the argument that an alleged beneficial ownership entitled the underlying investor to bring an action for damages in respect of the losses sustained in the "offshore" account:

> *The plaintiff…has submitted that regardless of the legal structure that was put in place for tax purposes, the reality that existed between himself and the [brokerage house] was that the money in the [offshore] account was his…for a Court to award the plaintiffs' damages based on those allegations, would be to sanction a situation where [the plaintiff] was entitled to create one legal reality for the tax department and then to ignore that reality when it no longer suited his purposes.*

In effect, the Superior Court has said that, in the context of an "offshore" account, the brokerage's client is not the underlying investor, but rather the foreign financial institution which opened that account. The decision in *Chambers* therefore provides domestic brokerages with a measure of protection against allegations of negligence and unsuitability in that, while brokers are still required to "know their client", that client is the (presumably sophisticated) institution which opened the "offshore" account and not the underlying investor.

CONTACTS

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United States-Singapore Free Trade Agreement
A-Hole-in-One: Beating the Odds

Introduction

Golf enthusiasts would know the odds of striking a hole-in-one is 42,000 to 1. Singapore did just that when it inked the USSFTA with the United States.

It was almost midnight on 11 November 2000 and the Asia Pacific Economic Conference (APEC) Summit dinner was just over. Most delegates must have preferred retiring to the comforts of their room, but golf enthusiasts, Bill Clinton and Goh Chok Tong, decided to head straight to the Royal Brunei Golf and Country Golf Club for a game together despite the thunderstorm brewing overhead.

The golf game did not end till two in the morning, and after nine holes. President Bill Clinton, despite having two penalties, still managed a score of 42. Prime Minister Gok Chok Tong too played brilliantly, striking a "hole-in-one" of a different kind when against the setting of the Augusta of Asia, the two leaders agreed that their countries should negotiate a free trade agreement.

Indeed, the USFFTA is unique not only in its genesis but also for the many firsts it has achieved. It is the first free trade agreement to be signed between the United States and an Asian country. It has also been said that the USSFTA will be used as a precedent for future free trade agreements with other Asian countries under the Enterprise for Asean Initiative (EAI). Importantly, both countries have agreed to commitments under the USSFTA which go beyond the NAFTA and the WTO in many respects.

Politically, the USSFTA is also significant as it was conceived during the Clinton Democrat administration and ultimately concluding with the Bush Republican administration. This speaks volumes of the bi-partisan support that the USSFTA enjoys, a fact also reiterated by the overwhelming votes of approval given at both the House of Representatives (276-159) and the Senate (66-32). President George Bush signed the USSFTA into law on 4 September 2003, completing the process that began almost three years ago.

Overview

Negotiation for the USSFTA was launched on 16 November 2000. The first round of negotiations began on 4 December 2000, and the final round ended on 17 November 2002. The 11 rounds of negotiations which took 2 years to complete culminated in an agreement with 21 chapters and 22 side letters with a total of over 1400 pages. The USSFTA will go into force on 1 January 2004.

The USSFTA is wide-ranging and covers amongst others, trade in goods, financial services, labour, temporary entry, rules of origin, e-commerce and intellectual property protection.

The United States has lauded the USSFTA as the most comprehensive agreement it has signed. In Singapore, the belief is that the USSFTA, like other free trade agreements (FTAs) will be a step toward greater trade liberalisation both regionally and globally. But what really, does the USSFTA mean for you?

Benefits of USSFTA:

Elimination of taiffs
For one, the waiving of import tariffs on goods which originate from Singapore has been welcomed by many. This elimination of import tariffs is estimated to achieve savings of up to US$300 million a year. Additionally, the merchandise processing fee of 0.21% which is payable for all imports entering Singapore, will be waived for goods originating from Singapore.

Rules of Origin
Savings from the elimination of tariffs are strongly supported by rules of origin which are used to determine the nationality of goods. The departure from traditional concepts under the USSFTA offers quick-thinking businessmen more room to maneuver around in the conduct of their business. For instance, goods which are partly processed outside of Singapore will still be considered as having originated locally as long as the value of the activities carried out in Singapore meet the required percentage of the final value of the finished product. This is so whether or not the outward processing takes place before or after activities carried out in Singapore. The significance of this lies in that part of the manufacturing process may now be outsourced to neighbouring areas where costs are lower, while preserving the status of the end product as having originated from Singapore and hence qualifying for the waiving of tariffs.

Integrated Sourcing Initiatives
Under the Integrated Sourcing Initiatives in the USSFTA, certain ICT components, regardless of place of manufacture, will be deemed to be of local origin, such that the end product will be more likely to satisfy the rule of origin, and hence qualify more easily for the preferential tariffs. In his speech at a lunch talk on 25 February 2003, Professor Tommy Koh, also the Chief Negotiator for the USSFTA, pointed that this will encourage manufacturers to invest in the region, especially in Bintan and Batam. This is certainly expected to boost local trading activities in turn.

Services
Singapore and the United States have also committed to fair and non-discriminatory treatment and market access to service providers under the USSFTA. This is noteworthy as it entitles a Singapore service provider to the same treatment given to a supplier from the United States. A Singapore company being considered no different from an American company, is therefore able to compete on the same level in an enlarged home ground.

Government Procurement
The commitment to broad market access by service providers extends to all government procurement contracts for goods and services, as well as construction procurement contracts. This means that Singapore companies, alike their American counterparts, will be able to bid for procurement contracts in the United States which are open for tender.

Negative List Approach
Broad ranging commitments have been have been made to ensure equal treatment of service providers from both countries. Using the negative list approach, all services, other than what each country has specifically reserved, will be liberalised. This approach also ensures that all new services that may arise in the future will be automatically liberalised.

Temporary Entry
Yet another perk under the USSFTA is that businessmen travelling to the United States can now look forward to a more hassle-free trip. Separate categories of entry which have been created will allow Singaporean businessmen to conduct business activities in the United States for up to 90 days without the need for the labour market test as typically required.

Intellectual Property Protection
The emphasis of the Singapore government on a knowledge-based economy is also reinforced by both parties' strong commitments to protection of intellectual property rights. The USSFTA provides protection of copyrights, patents, trademarks and trade secrets, as well as breakthrough protection of digital products such as music and videos. Enforcement mechanisms are also enhanced so as to prohibit and discourage intellectual property rights infringement.

Custom Cooperation
The USSFTA have put in place a framework which calls for closer cooperation between the custom authorities. Systems and procedures will be implemented to deter import of illegitimate goods, and illegal claims of preferential treatment under the USSFTA.

Labour & Environment
Both countries have also committed to the enforcement of domestic laws on labour and environment, as well as the pledging of close cooperation on issues of mutual concern.

Conclusion :

There is no doubt that the preferential trading status granted to Singapore under the USSFTA will stimulate exports and redirect existing trade movements, and bring about many other consequential benefits for local companies and businesses. Rodyk & Davidson, for instance, is privileged to be representing Wrigley's in its application to import therapeutic chewing gum. This is the first such application to be made under the USSFTA.

While the full impact of the USSFTA for Singapore will not be realized until many months down the road, the USSFTA is propitious for future free trade agreements which Singapore will negotiate to expand its economic space. Also concluded are FTAs with New Zealand, Australia and Japan. Currently the FTA with India is being negotiated and this will be followed by FTA negotiations with Mexico, Canada, South Korea and China.

No other country is as dependent on international trade as Singapore. While some might see the USSFTA as a hole-in-one in that it is a great achievement as well as a fortuitous event, for Singapore the USSFTA is well-earned and is an affirmation of its influence and success in the expansion of its economic space.

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US-Singapore Free Trade Agreement
Key Changes to our Intellectual Property Laws

Amongst other things, the USSFTA incorporates strong commitments by both parties to enhance intellectual property standards on a non-discriminatory basis. This short article summarises the key elements of the Intellectual Property provisions of the USSFTA.

General

The USSFTA will bring about changes to the Intellectual Property (IP) laws of Singapore, with a view to further strengthening an already strong IP regime. This, in turn, will reinforce Singapore's position as a regional IP hub, making it a more attractive place to carry out R&D activity and generally to do business in.

Trade Marks

- Registration of sound marks will be allowed, whilst both parties must make best efforts to allow the registration of scent marks.
- Both parties will accord stronger protection for well-known marks.
- It will no longer be necessary for trade mark licences to be recorded to establish validity of the licence or to assert any rights in a trade mark.

Patents

- Both parties will make patents available for any invention, whether a product or a process, in all fields of technology, including bio-inventions, provided that the invention is new, involves an inventive step, is capable of industrial application and does not contradict public order or morality.
- Extension of the term of a patent for pharmaceutical products will be provided in circumstances where the right to market a patented pharmaceutical product is unreasonably curtailed as a result of marketing approval delays.
- Use of compulsory licences shall be limited to situations of anti-competitive practice, public non-commercial use, cases of national emergencies and other circumstances of extreme emergency.
- Both parties will ratify or accede to the International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention) to better protect new plant varieties.

Copyright

- Both parties have agreed to extend the term of protection for copyrighted works to life of the author and 70 years after the author's death.
- New and robust anti-circumvention provisions will be introduced to make it illegal for persons to tamper with or circumvent technology or devices that were designed to prevent unauthorised copying of digital works such as software, music and films.
- Provisions providing adequate and effective legal remedies to protect against removal or alteration of rights management information will be introduced.
- Provisions making it a criminal offence to willfully infringe copyright on a commercial scale will be introduced.
- Both parties will provide clearer rules concerning the liability of Internet Service Providers with regard to the storage and transmission of unauthorised content and the notice and take down process for such content.
- Both parties will ratify or accede to various treaties concerning copyright, including the WIPO Copyright Treaty (1996) and the WIPO Performances and Phonograms Treaty (1996).

In addition to the foregoing, both parties are obliged to further strengthen their IP enforcement measures, including providing increased civil and criminal remedies to IP rights holders. Both parties will provide criminal procedures and penalties in cases of willful trade mark counterfeiting or copyright or related rights piracy on a commercial scale. Remedies will include imprisonment and monetary fines sufficient to deter future acts of infringement consistent with the policy of removing the financial incentive of the infringer. Judicial authorities will be empowered to order the seizure of suspected counterfeit goods, any related implements used in the commission of an offence, any assets traceable to the infringing activity as well as documentary evidence.

It is hoped that the introduction of these changes will encourage entrepreneurship, increased foreign investment and create jobs and growth in Singapore.

IP Taskforce

A twelve member task force comprising seven leading business associations and five government statutory boards has been established to help businesses understand the impending changes to Singapore's IP laws and their implications. The task force will also help businesses prepare for the changes. The task force will act as a forum for businesses and the government to exchange ideas and for feedback.

In addition to all these initiatives, the Intellectual Property Office of Singapore (IPOS) will also be launching a nationwide campaign to build awareness of the IP law reforms. IPOS will also be creating a dedicated website, preparing publicity material and setting up a national resource centre (including a call centre) to provide assistance to businesses with regard to the changes.

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LEE AND LI
ATTORNEYS-AT-LAW

LEE AND LI BULLETIN

November 2003

Lee and Li Bulletin is a bi-monthly bulletin designed to provide an overview on the latest legal developments in Taiwan, the Republic of China. Due to space limitations and the general nature of its contents, this Bulletin does not contain any legal advice. For more information on any topics covered in this Bulletin or advice on specific legal issues, please approach your regular contact at Lee and Li or the editors of this Bulletin. Your valuable suggestions or opinions are most welcome.

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SECURITIES

TAX

FOCUS

RELEVANT REGULATIONS FOR REAL ESTATE SECURITIZATION

Yung-Chi Wang/Hsin-Lan Hsu

Since the Real Estate Securitization Act was promulgated by the President on 23 July 2003, the Ministry of Finance (MOF) has been working to draft relevant regulations. The drafting progress is outlined as follows.

I. Enforcement Rules of the Real Estate Securitization Act

The MOF published a draft of the Enforcement Rules of the Real Estate Securitization Act ("Enforcement Rules") on 16 August 2003. The publication period for the draft ended on 2 September 2003, but up until now, the MOF has not yet officially announced the Enforcement Rules.

Based on the draft published by the MOF, the Enforcement Rules will provide further details of the regimes of the Real Estate Investment Trust ("REIT") and Real Estate Asset Trust ("REAT").

- Real Estate Investment Trust: The Enforcement Rules add the qualification of a "promoter" of an REIT and provide special provisions for the registration of trusts.

  "Promoter" means the owner of the real estate or the rights related to such real estate in which an REIT invests. To avoid conflicts of interest and to safeguard investors' interests, the draft Enforcement Rules provide that promoters of an REIT shall not be an interested party of the trustee. Also, to prevent beneficiary certificates held by promoters being overvalued to the detriment of other investors' interests, promoters are not allowed to transfer or dispose of its beneficiary certificates within one year from the establishment of the REIT. With respect to the trust registration, the draft Enforcement Rules clearly indicate that the applicant shall be the trustee, and shall specify in the "other registration matters" column of the register book that such real estate is the trust property of the REIT.

- Real Estate Asset Trust: The draft Enforcement Rules include several provisions regarding the required documents provided by the property owner of the real estate or real estate related rights and the effect of the certificate issued by a notary public. To reduce the risk of omissions in the trustee's survey of rights attached to the trust property, and to reinforce the property owner's or right owner's duty of disclosure, the draft Enforcement Rules provide that the property owner and/or real-estate-related right owner shall provide relevant documents and information in relation to the trust property, including but not limited to location of the trust property, the nature of the rights attached to it, its legally designated use, licenses for or restrictions on its use, and entitlement certificates or evidencing documents in connection with a detailed statement of debts related to the trust property and encumbrances on the trust property.

  Secondly, with regard to the certificate issued by a notary public evidencing the consent of a mortgagor to relinquish its rights under the mortgage for as long as the trust agreement remains in force (which a property owner must submit when seeking registration or approval of the trust if the trust property is mortgaged), the draft Enforcement Rules provide that such certificate is binding not only on the mortgagor and the property owner,

but also on the trustee and on the successors of the mortgagor. The mortgagor shall also inform its successor of the assignment at the same time of the assignment of the mortgage.

- Provisions applicable to both REIT and REAT: In consideration of the important role played by real estate management organizations in the real estate securitization process, the draft Enforcement Rules require the Trust Association of the ROC to draw up guidelines for the qualifications and conduct of real estate management organizations. The trust agreement shall stipulate that real estate management organizations must act in accordance with such guidelines, and shall define the duties and responsibilities of the management organization. In addition, the association should draw up standard formats for the statement of settlement under the trust plan and the filing document to be prepared by trustee, and submit these formats to the MOF for approval.

To the extent applicable, the provisions of the Financial Asset Securitization Act and its enforcement rules also apply to other matters of real estate securitization, such as filing process of the REIT and REAT plans by the trustee, authentication of beneficiary certificates, and beneficiaries' meetings.

II. Regulations Governing the Public Offering and Private Placement by Trustees of Beneficiary Certificates of Real Estate Investment Trusts and Real Estate Asset Trusts

On 30 September 2003 the MOF announced the above regulations, which mainly define the following: the documents to be submitted by a trustee for approval or for registration, the timing for filling an application for approval or registration of a public offering or private placement of beneficiary certificates; the actions required to be taken after approval or registration; and the circumstances under which the MOF may reject, disagree, withdraw or cancel its approval or the registration. The main points are outlined below:

- For public offerings of beneficiary certificates, prior approval is required in all cases. For private placements, either prior approval or registration is required subject to the MOF's further clarification.

- Special provisions for REITs

  If the investment target has been decided when the trustee files an application for approval or registration, the trustee must also submit a written evaluation report together with the application. However, if at the time of filing the investment target is not yet certain, no evaluation report is required. In the case of a private placement, no evaluation report need be submitted.

  To avoid conflicts of interest, the regulations require the trustee to provide a declaration stating that the promoter is not an interested party of the trustee in the case that the investment target is decided. The promoter must provide a document evidencing its consent to transfer the ownership of the real estate or its related rights. If the investment target is not yet certain, the two documents mentioned above are not required. "Interested party" above has the same meaning in Article 7 of the Trust Enterprise Act.

  Also, in line with the provisions on lock-up periods provided in the draft Enforcement Rules, the regulations further stipulate that if a promoter holds beneficiary certificates due to a transfer of real estate or its related rights, it must deposit such certificates with Taiwan Securities Central Depositary Co., Ltd., and

may not remove from deposit, transfer, or pledge them, for a period of one year after acquiring them.

- Special provisions for REATs

  In principle, property ownership rights transferred into a REAT should be free of any mortgage, otherwise, the property owner must provide a certificate issued by a notary public evidencing the consent of the mortgagor to relinquish its rights under the mortgage for as long as the trust agreement remains in force. However, in practice, mortgagors may be unwilling to see mortgaged property securitized, because the property provides them with a regular flow of income.

  To facilitate real estate securitization, the regulations provide that if at the time of application for approval or registration the trustee is unable to obtain the evidence of cancellation of a mortgage on the trust property or a certificate of a notary public evidencing the consent of the mortgagor to relinquish its rights under the mortgage for the life of the trust agreement, it may substitute for the above documents a written undertaking by the trustee to obtain the evidence of cancellation of the mortgage immediately upon completion of the public offering or private placement of beneficiary certificates.

  In the case of a public offering of REAT beneficiary certificates, the trustee must also submit an evaluation report produced by a securities underwriting firm, and a credit rating report on the beneficiary certificates produced by a credit rating agency. This provision is intended to ensure adequate disclosure of information to investors through external expert opinions.

  A trustee making a public offering of REAT beneficiary certificates must engage a securities underwriter to underwrite the certificate. The lead underwriter must not be an interested party of the property owner or the owner of the real-estate-related right.

- To promote real estate securitization products, so that they do not merely become a tax planning tool for a small number of investors, the regulations provide that the number of holders of the beneficiary certificates of a REAT must be not less than 50 for at least 335 days in each calendar year, and that the total holdings of any five beneficiary certificate holders, or the aggregate amount of the most preferred beneficiary certificates of an REAT must not exceed half the total issued value of the beneficiary certificates concerned. The above stipulation must also be included in the trust agreement.

  If a holder of beneficiary certificates is not in compliance with the above requirements, the trustee must give the holder notice to dispose of its beneficiary securities within one month to comply with the above requirements. A holder that fails to comply within that timeframe may not exercise voting rights in respect of its holdings, and the trustee may not distribute trust benefits to the holder. However, if (x) none of the holders of beneficiary certificates through private placement is an individual, and (y) none is an interested party or affiliated enterprise (as defined in the Company Act) of the promoter of the REIT or of the property owner of the REAT concerned, then the above requirements for dispersion of holdings do not apply.
- The regulations define the qualification for trust supervisors if they are individuals, and limit corporate supervisors to real estate management organizations and trust enter-

prises. If a trustee manages the trust property by itself, it must appoint trust supervisors in order to protect investors' interests through external supervision.

- When the MOF examines an application, it must consult the opinion of the central competent authority for the relevant economic sector. If the beneficiary certificates are to be offered publicly, an approval from the securities regulatory authority is also required. If beneficiary certificates of a closed-end fund are to be publicly offered, before the regulatory authority grants the approval the trustee must also obtain a consent letter from Taiwan Securities Exchange (TSE) or GreTai Securities Market (GTSM) for listing of the beneficiary certificates on TSE or GTSM, as the case may be.

- When a trustee intends to publicly offer beneficiary certificates, if there is any material change in the financial condition or business operations of the trustee, or any change in the content of the application documents during the period from the filing of application to the approval by the MOF, which would materially affect the price of the securities, the trustee must make a public announcement of such change within two days after its occurrence, and must report it to both the MOF and the securities regulatory authority.

- If, after publicly offering or privately placing beneficiary certificates, the trustee intends to revise the trust plan of REIT or REAT, it must apply for approval, or register the changes with the MOF, depending on whether the original offering or placement was subject to prior approval or registration.

III. Other Supplementary Regulations

- Criteria Governing Information to be Published by Trustees in Memoranda for Private Placement of Beneficiary Certificates of Real Estate Investment Trusts and Real Estate Asset Trusts

  The MOF announced the above criteria on 24 September 2003,which stipulate the required contents of a memorandum for a private placement of REIT beneficiary certificates or REAT beneficiary certificates.

- Criteria Governing Information to be Published by Trustees in Prospectuses for the Public Offering of Beneficiary Certificates of Real Estate Investment Trusts and Real Estate Asset Trusts

  On 30 September 2003 the Securities and Futures Commission (SFC) announced the above criteria, and instructed TSE and GTSM to amend their respective criteria for listing and trading. The criteria stipulate the required contents of prospectuses for public offerings of REIT beneficiary certificates or of REAT beneficiary certificates.

- Regulations Governing the Commissioning by the Ministry of Finance of Professional and Technical Personnel to Investigate Interested Parties in Real Estate Securitization Cases

  The MOF announced the above regulations on 30 September 2003, which explicitly define the scope of "professional and technical personnel" and of "interested parties in real estate securitization cases," and stipulate in detail the qualification for such personnel, their responsibilities, investigation procedures, the scope of investigations, and the format and required content of investigation reports.

- Criteria Governing Establishment of Trust Enterprises

On 29 September 2003 the MOF announced amendments to the above criteria, which provide that for trust enterprises engaged only in REIT or REAT business, the MOF may set separate requirements for minimum paid-in capital, shareholder structure, qualification for responsible persons, and restrictions on business activities. A trust enterprise engaged only in REIT business should have a minimum paid-in capital of NT$300 million, while a trust enterprise engaged only in REAT business, or both types of real estate trust business, must have a minimum paid-in capital of NT$1 billion. Both these capital requirements are lower than the minimum paid-in capital of NT$2 billion required for setting up a trust company for other types of trust business.

To further cater for trust companies engaged only in REIT or REAT business, the amendments also include some adjustments to the qualification for professional promoters and shareholders of a trust company, and to the documents to be submitted when applying for approval to set up a trust company.

- Criteria Governing Eligibility of Responsible Persons and Specialist Qualifications or Experience of Operational and Management Personnel of Trust Enterprises

  On 15 September 2003, the MOF announced amendments to the above criteria, to take into account of the operational needs of trust companies engaged only in REIT or REAT business. Thus, the responsible persons of such trust company may qualify on the basis of their work experience with real estate management organizations or administrative experience of real estate management, instead of the usual requirements for academic qualifications and for professional experience with financial institutions or in the area of trust business.

  Unless otherwise approved by the MOF, such responsible person may not concurrently act as the responsible person of a real estate management organization. The amendments also introduce a new provision requiring at least one person to be appointed with the authority to decide the application of a Real Estate Investment Trust fund, and to be exclusively responsible for handling the application and management of the fund assets. The qualifications to be met by such personnel are also defined.

- In addition to the above supplementary regulations, the Trust Association is also required to draw up the following documents: a sample agreement for real estate investment trust funds; sample agreement for real estate asset trusts; guidelines for marketing, contract conclusion, information disclosure, risk management, internal audit, and internal control by trust enterprises when issuing REIT or REAT beneficiary certificates; and principles for assessment of trust property and standards for calculation of net asset value of a real estate investment trust fund. No drafts of the above documents have thus been released.

IV. Administrative rules announced by the MOF

- Credit ratings of trustees: The Real Estate Securitization Act provides that trustees must meet credit ratings at or above the levels announced by the MOF. On 5 September 2003 the MOF announced the relevant credit rating requirements. Broadly speaking, trustees must have long-term-debt credit ratings of BBB or above.

- Eligible investors for private placements of beneficiary certificates:

  1. Local and foreign individuals with an adequate understanding of the beneficiary certificates concerned, if at the time of subscription or acquisition (a) the investor has net assets of over NT$10 million, or the combined net assets of the investor and his/her spouse exceed NT$15 million; or (b) in the most recent two tax years, the investor had an annual average income of over NT$1.5 million, or the investor and his/her spouse had a combined average annual income of over NT$2 million.

  2. Corporate entities or funds whose audited financial statements for the most recent accounting period show assets exceeding NT$50 million; trust enterprises holding trust property worth more than NT$50 million under current trust agreements; and securities investment trust enterprises and securities investment consultant enterprises with discretionary control of investment funds exceeding NT$50 million.

  3. Securities investment trust funds offered by securities investment trust enterprises, mutual trust funds offered by trust enterprises, the Civil Service Pension Fund, Labor Retirement Funds, and the Labor Insurance Fund.

  A trustee must make a due investigation of the eligibility of persons approached as prospective private placement investors, and must obtain reasonable and credible evidence of such eligibility from private placement subscribers. When beneficiary certificates are transferred, it is the transferor's responsibility to make a due investigation of the eligibility of the transferee, and to obtain reasonable and credible evidence from the transferee. The trustee is not permitted to register the transfer in the absence of such evidence.

- Minimum proportion of the funds of an REIT to be held in cash, government bonds, and the investments listed in Article 17 Paragraph 1 Items 1 to 3 of the Real Estate Securitization Act: In a ruling issued on 2 September 2003, the MOF stated that the aggregate amount of the above investments must not be less than 75% of the net value of the REIT.

- Percentage and ceiling of investments by an REIT in the types of securities referred to in Article 6 of the Securities and Exchange Act: In a ruling dated 19 September 2003, the MOF stated that investments in the above securities must not exceed 40% of the total issued number of the beneficiary certificates issued by an REIT, or NT$600 million.

- Transaction value above which an evaluation report is required: In a ruling dated 19 September 2003, the MOF stated that before a trustee uses the funds of an REIT for a real estate transaction or real-estate-related rights transaction valued at NT$100 million or above, it must first produce an evaluation report. The value of any other real estate transaction and/or real-estate-related rights transaction which is consumed within six months of the closing date of the previous transaction and involving property located on the same site or on neighboring land must be included in the total.

Since the Real Estate Securitization Act was promulgated in July 2003, the Industrial Bank of Taiwan and Societe Generale have already carried out a real estate asset securitization involving the IBM Building in Taipei as the entrusted asset. In addition, various life insurance companies which own large amounts of real estate, are planning to launch real estate securitization

products based on their office buildings. They include Far Glory Life Insurance, Shin Kong Life Insurance, and Fubon Group.

Lee and Li previously assisted the Council for Economic Planning and Development in drafting the Real Estate Securitization Act, and is currently also assisting various companies in planning real estate securitization. As various pieces of supplementary regulations and accompanying measures are announced, providing a more complete legal framework, more real estate securitization products will be launched, and this will reinvigorate Taiwan's real estate and capital markets.

HOGAN & HARTSON LLP

update

FDA

December 2003

President Signs The Pediatric Research Equity Act of 2003 Requiring Specific Assessment of Safety and Efficacy in Children

On December 3, 2003 the Pediatric Research Equity Act of 2003 (the "Act" or "PREA") was signed into law.[1] The Act essentially codifies the Food and Drug Administration's so-called "Pediatric Rule," which became effective April 1, 1999,[2] but was invalidated in October 2002 by a D.C. federal district court as exceeding FDA's statutory authority.[3]

Under PREA, sponsors submitting a new drug application ("NDA"), biological license application ("BLA"), or supplemental applications on or after April 1, 1999 must include "assessments" of safety and efficacy for all relevant pediatric populations for "claimed" indications. PREA also allows FDA to require pediatric assessments for already marketed drugs in certain circumstances. Waivers and deferrals granted by FDA under the Pediatric Rule will still be honored, with deferrals extended by over a year (see below). However, sponsors that have submitted an application since April 1, 1999, but who did not seek a waiver or deferral, must submit pediatric assessments by December 3, 2004, or negotiate a deferral. The Act explicitly provides that it is self-executing, requiring no implementation by FDA either by regulation or guidance to industry.

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1. Pediatric Research Equity Act, Pub. L. No. 108-155, 117 Stat. 1936 (2003), *available at* www.fda.gov/opacom/laws.prea.html.
2. *See* 21 CFR § 201.23 (1999); 21 CFR § 314.55 (1999); 21 CFR § 601.27 (1999).
3. *See Ass'n of American Physicians and Surgeons, Inc. v. FDA*, 226 F. Supp. 2d 204 (D.D.C. 2002) (appeal pending).

Background

In 1997, as part of the Food and Drug Administration Modernization Act of 1997 ("FDAMA"), Congress had authorized the provision of six months of market exclusivity to sponsors who voluntarily conducted and submitted pediatric studies on the active ingredients of their drugs as requested by FDA (On January 4, 2002, the Best Pharmaceuticals for Children Act ("BPCA") reauthorized the exclusivity provisions in FDAMA, which had expired on January 1, 2002.[4]) The fact that the provision did not apply to already marketed drugs without patent or market exclusivity protection, or to certain antibiotics or biological products—as well as the voluntary nature of the pediatric exclusivity provision—undercut its effectiveness in FDA's view.

In response, FDA issued the Pediatric Rule in 1998 with an effective date of April 1999 to ensure that sponsors of drugs and biological products would assess their products' safety and efficacy in children. In October 2002, a federal district court invalidated the Pediatric Rule as exceeding FDA's statutory authority under the federal Food, Drug, and Cosmetic Act ("FDCA").

In the wake of this action, FDA sought legislation to provide a statutory basis for the concepts embodied in the Pediatric Rule. The Pediatric Research Equity Act of 2003 provides the agency with this authority.

Key Provisions of PREA

Retroactive to April 1999

PREA establishes the same requirements for pediatric assessments as FDA had promulgated in the Pediatric Rule, retroactive to April 1, 1999. Thus, PREA requires sponsors who submit NDAs, BLAs, or supplemental applications on or after April 1, 1999 "for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration," to include "assessments" for all relevant pediatric populations for "claimed" indications. These assessments must be adequate to assess the safety and effectiveness of the drug in each pediatric population and to support dosing instructions.

Does Not Apply to Orphan Indications

Unless FDA issues a regulation to the contrary, pediatric assessments are not required for indications for which orphan exclusivity has been granted.

For Already Marketed Products, FDA Must First Issue Written Request Under BPCA

PREA is intended to serve as a "safety net" to ensure that certain critical studies relating to pediatric safety, efficacy, and dosing are performed and labeling adopted if the mechanisms from BPCA—the pediatric patent exclusivity provisions—do not work. PREA will only apply if the sponsor has refused to comply with a written request for pediatric studies under BPCA, and if FDA certifies no funds are available for another entity to conduct the studies.

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4. Pub. L. No. 107-109, 115 Stat. 1408 (2002). The BPCA set up public funding mechanisms to finance pediatric studies if the sponsors elect not to conduct them. It also included a provision for including information from pediatric studies in drug labeling. The BPCA is set to sunset in 2007.

For Already Marketed Products, FDA Required to Make Finding of Risk Plus Substantial Pediatric Use or Therapeutic Benefit

The provisions of PREA will be triggered for already marketed products *only* if FDA makes one of the following findings after providing written notice to the sponsor and an opportunity for a written response and meeting:

- The product is used for a substantial number of pediatric patients for the *labeled* indications AND the absence of adequate labeling could pose significant risks to pediatric patients; or
- There is reason to believe that the product would provide a meaningful therapeutic benefit over existing therapies for pediatric patients for at least one of the claimed indications AND the absence of adequate labeling would pose significant risks to pediatric patients.

Deferrals and Waivers

On its own initiative or at the request of the sponsor, FDA can defer submission of required pediatric assessments until a specified date. A deferral may be granted if the agency finds that the product is ready for approval in adults before pediatric studies are complete or that pediatric studies should be delayed until more safety and effectiveness data has been collected. A waiver can be issued if the agency determines that the studies are impossible or impracticable to conduct, if evidence exists showing that the product would be unsafe or ineffective in all pediatric age groups, or the product does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients and it is unlikely to be used in a substantial number of pediatric patients.

Effective Dates for Implementing PREA

- **Waivers:** FDA will honor waivers previously obtained under the Pediatric Rule.
- **Deferrals:** The date for previously obtained deferrals is extended by over one year (i.e., 413 days, the number of days that is equal to the period between October 17, 2002, and December 3, 2003, the date of enactment of the Act).
- **One Year Deadline:** Sponsors must submit a pediatric assessment by December 3, 2004, or by the date of a newly negotiated deferral, if a waiver or deferral has not been previously granted for an application or supplemental application submitted on or after April 1, 1999.

Penalties for Failure to Comply with PREA

Drugs and biological products that lack pediatric assessments within the time frames outlined in the Act may be considered misbranded. However, criminal penalties under the FDCA will not apply.

For additional information regarding how the Pediatric Research Equity Act might affect your current or future drug products, please contact one of the attorneys listed below.

Update authored by **David Fox**, **Jayne Bultena**, and **Katlin McKelvie**.

Hogan & Hartson's Drug/Biotechnology Products Practice focuses on FDA's regulation of human and animal drugs, including biotechnology products. The firm's drug/biotechnology attorneys counsel clients regarding the ever-changing regulatory landscape, particularly new legislation, regulations,

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