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IBA Washington, D.C. Member Receptions
September 19 - hosted by Bennett Jones
September 20 - hosted by Hogan Lovells

PRAC 61st International Conference
Hong Kong - Hosted by Hogan Lovells
April 22 - 25, 2017

PRAC 62nd International Conference
Sao Palo - Hosted by TozziniFreire
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BAKER BOTTS - NOTED IP LITIGATORS JOIN FIRM

SAN FRANCISCO - August 3, 2016: Baker Botts L.L.P., a leading international law firm, today announced that Wayne Stacy and Sarah Guske will be joining the firm's San Francisco office as Partners in the Intellectual Property practice group. They will join Stuart Plunkett and Jonathan Shapiro who joined the firm in May.

"Wayne and Sarah are outstanding litigators and we are thrilled that they are joining our firm. Baker Botts has a vibrant Technology practice, in fact eight of the firm's largest 15 clients are in the Technology Sector, and their decision to join us highlights our sector leadership and the added value we are able to provide to our clients," said Andrew M. Baker, Managing Partner of Baker Botts.

Mr. Stacy has a background in trying patent cases in the Northern District of California and the Eastern District of Texas where his practice has targeted litigation among competitive entities where significant damages are at issue and injunctions are utilized. He also has extensive expertise in representing clients before the Patent Trial and Appeal Board (PTAB). In addition, he has litigated on behalf of clients in the software electronics, telecommunications systems and cloud computing industries.

Mr. Stacy has been an Adjunct Professor for over a decade teaching Patent Litigation and Patent Office Litigation.

He has a BS in Computer Engineering from Southern Methodist University and a JD, with high honors, from George Washington University Law School.

Ms. Guske's practice focuses on technology and patent litigation. She has litigated matters in district court and before the PTAB involving a wide variety of technologies, including telecommunication protocols and systems, MPEG multimedia data for broadcast, telephonic voice recognition software and graphic chipset design. Ms. Guske also has significant appellate, unfair competition and trademark litigation experience. In addition, she also served as an Adjunct Professor teaching Patent Litigation.

She has a BS in Physics, summa cum laude, from Washington State University, a BA in Electrical Engineering, summa cum laude, from Whitworth College and a JD from the University of California, Davis School of Law.

"Sarah and Wayne are well known and highly regarded technology and patent litigators. Baker Botts is known as one of the industry's leading patent litigation firms and having them join our San Francisco office further highlights the momentum that we have generated since opening our office earlier this year," said Pat Stanton, Partner-in-Charge of the firm's San Francisco office.

Ms. Guske and Mr. Stacy are joining Baker Botts from Cooley LLP.

The Baker Botts IP and Technology practice is recognized for its expertise and the firm's lawyers were recently described by Chambers & Partners as having "excellent judgment and are highly skilled litigators."

For more information, please visit www.bakerbotts.com

CLAYTON UTZ ADDS TAX SPECIALIST

SYDNEY - 22 July 2016: Leading income tax lawyer Peter Feros has joined Clayton Utz as a partner, based in Sydney.

Peter specialises in providing strategic front-end income tax advice to listed Australian corporates and multinationals, and financial sponsors, with a focus on M&A and fund structuring. His key clients cover technology, communications, financial services, private equity, hedge and property funds.

Peter was previously a partner at Gilbert +Tobin, where he provided tax advice to clients in connection with many of the country's largest and most complex transactions. Peter also spent many years in the tax group of PwC as an adviser and then partner.

Clayton Utz national tax practice group leader Andrew Sommer said Peter's skillset was a natural fit for the practice.

"Peter's experience in front-end corporate tax work nicely complements our tax disputes capability, as does his track record of acting for a diverse range of clients, particularly those engaged in domestic and cross-border M&A and related transactions. Peter's reputation as a dynamic and energetic adviser with a focus on client service is also why he will be an asset to our team and have a leading role in continuing to grow the presence and reputation of the Clayton Utz tax practice."

In joining Clayton Utz, Peter said he was attracted to the opportunity to be part of a strong tax brand in the Australian market and work with an outstanding group of tax professionals. "In what is a highly competitive and largely undifferentiated market for tax services in Australia, our aim is to cement Clayton Utz as the unquestionable choice for clients seeking tax advice on their most important and strategic matters."

For additional information visit www.claytonutz.com

TOZZINIFREIRE BOOSTS LABOR TEAM

TozziniFreire boosts its office in the Brazilian South market hiring new partner

SAO PALO – 05 August 2016: Specialist in labor law, Maurício de Carvalho Góes is the new member of TozziniFreire in Rio Grande do Sul. With his lateral hire, the firm now has 80 partners across the country.

Born in Porto Alegre, 40 years old, Doctor in Nanotechnological Labor Law, Universidade do Vale do Rio dos Sinos (Unisinos, 2014), and Master in Labor Law, Universidade Luterana do Brasil (Ulbra, 2008). Góes has additional activities as a professor in several courses such as: the degree course in Law at PUC; the specialization course in Labor Law and Procedure at Centro de Estudos do Direito (CETRA); and at Escola Verbo Jurídico. He is also an official member of the Academia Sul-Riograndense do Direito do Trabalho.

Maurício joins the corporate team of TozziniFreire in South Brazil, which is formed by partners Luis Renato Ferreira da Silva, Gustavo Nygaard, Eduardo Mariotti, Roberto Bersch, Rafael Mallmann, Vinicius Berni and Gabriela Wink.

According to Roberto Bersch, Góes's arrival is an important decision to the office's growth strategy in the South. "We are sure that Maurício will reinforce our labor team to meet current demands and, of course, meet those to come up with the Brazilian's economic recovery", he says.

Founded 40 years ago, TozziniFreire was the first major Brazilian law firm to open its doors in Rio Grande do Sul in 2000. TozziniFreire is a full-service law firm acting in all areas of corporate law and has offices in Porto Alegre, Sao Paulo, Rio de Janeiro, Campinas, Brasilia and New York.

For additional information visit www.tozzinifreire.com.br

DAVIS WRIGHT WELCOMES VETERAN ENERGY INDUSTRY LEADER

SEATTLE - 03 AUGUST 2016: Eric (Ric) Redman, a veteran energy industry lawyer, entrepreneur, and consultant, has joined Davis Wright Tremaine, where he will serve as Senior Policy Adviser on energy and climate. Redman will advise clients on significant transactional, regulatory, and policy matters.

“Over his 40+-year career, Ric has built an extraordinary reputation for his ahead-of-the-curve thinking about the energy industry,” said Jeff Gray, managing partner at Davis Wright Tremaine, who practices in the firm’s energy group in San Francisco. “He’s developed a unique perspective having spent time on both the business and legal sides of the industry that will be invaluable to our clients.”

Mr. Redman’s many accomplishments include serving as a key drafter of the Northwest Power Act of 1980; directing the first and largest privatization of a federal hydroelectric facility; leading the drafting of Alaska laws and power sales agreements for five new hydroelectric projects now supplying power to 11 Alaska utilities; founding an international carbon capture business; and helping pioneer the “build-own-transfer” model of power plant development for electric utilities. He has been especially recognized for his insight into the opportunities and challenges presented by climate change.

“Ric brings to the firm an incomparable depth of experience in the energy and climate fields,” said Craig Gannett, co-chair of Davis Wright Tremaine’s energy group. “He’s counseled leading energy companies on their most significant matters. He’s personally spearheaded the development of billion-dollar projects. He’s developed a network of industry and government relationships across the U.S., China, and the U.K. We’re delighted to have the opportunity to put his knowledge and skills to work on behalf of our clients.”

“Davis Wright’s energy team has been my own outside counsel,” said Mr. Redman, “so I know they bring more than just legal service to clients—they bring tremendous strategic insight. It’s a privilege to team up with them to help companies across the energy sector navigate this defining transitional period in the industry’s history.”

Mr. Redman began his legal career at Preston Gates (now K&L Gates) and later joined Heller Ehrman, serving as chair of the firm’s energy and clean energy technologies practice groups. During his three-plus decades in private practice, he was a key adviser and primary outside counsel to boards and CEOs regarding their most important challenges, including regulatory, transactional, legislative, and policy matters at all levels—state, regional, and federal. Mr. Redman later joined Summit Power Group LLC, a Seattle-based developer of climate-friendly power plants. As Summit Power’s CEO and president, he managed the development of a multi-billion dollar portfolio of natural gas, solar, wind, and carbon capture projects in the U.S. and abroad. Most recently, as CEO of Thunderbolt Clean Energy, LLC, Mr. Redman has advised technology companies and others on electric power and climate matters, as well as on the development, commercialization, and deployment of climate-friendly products, systems, and processes.

“Ric has developed a global network within the energy and technology industries,” said Scott MacCormack, co-chair of the energy practice at Davis Wright. “He’s been a strong proponent for managing energy-related carbon emissions, and enjoys very good relations with both traditional oil and gas interests as well as many environmental constituencies.”

Mr. Redman is a longtime friend of Gary Locke, the former U.S. ambassador to China, Secretary of Commerce, and governor of Washington state, who rejoined Davis Wright last year as a Senior Adviser and Consultant.

“Ric has built a reputation as an energy professional in China and we look forward to having him partner with Gary to assist clients with China-related work,” said Jeff Gray.

Like Gov. Locke, Mr. Redman will be serving Davis Wright Tremaine clients strictly in an advisory and consulting capacity and will not be practicing law.

For additional information visit www.dwt.com

HOGAN LOVELLS ACCELERATES REGULATORY JOURNEY WITH NEW TOOL FOR FINTECHS

Hogan Lovells Accelerates Regulatory Journey With new Tool for FinTechs

03 August 2016 Hogan Lovells today launched its new Regulatory Accelerator, an online tool to help FinTechs understand and navigate the Financial Conduct Authority's (FCA) regulatory regime as they start up and scale.

The Regulatory Accelerator addresses challenges that many FinTech companies face when designing and scaling a business by providing information and guidance on the FCA's regulatory regime. It includes resources and tools to help FinTechs determine whether they are conducting regulated activities or issuing financial promotions, and whether they, therefore, need to be an authorised firm or an appointed representative. It also provides information on the FCA application process, what FinTechs will need to demonstrate to the FCA in order to be eligible for authorisation and the key rules that will apply to the business once it becomes authorised.

Hogan Lovells has been at the heart of innovation within the financial services sector for many years, working on a range of developments from the UK's first ever debit card to advising Zopa on the UK's first peer to peer lending platform and Barclays on the launch of Pingit. The firm has helped countless FinTech companies throughout their life-cycles.

Through this work and from insights provided by the firms' Strategic Partnership with Innovate Finance, Hogan Lovells recognised that many FinTechs struggle with common regulatory issues and find engagement with regulatory materials challenging.

In an Innovate Finance survey of members who had recently gone through the authorisation process in Q1 this year members described their difficulty in understanding the complex regulatory and scope, the amount of time, capital and resource they burned, and their uncertainty about the process and whether they needed to be authorised at all.

The Regulatory Accelerator, free to FinTech members of Innovate Finance, seeks to address these issues and accelerate FinTechs along their regulatory journey. On average, FinTechs surveyed by Innovate Finance estimated their cost of getting authorised at approximately £200,000, taking into account both internal resources and external advisers. Hogan Lovells' Regulatory Accelerator should help make it easier, quicker and less expensive for FinTechs to get to market.

Commenting on the Regulatory Accelerator Rachel Kent, Global Head of Hogan Lovells Financial Institutions Sector, said:

"Cost and management time devoted to becoming and being authorised are a major investment for any business. We know that the FCA has gone a long way to help with their Regulatory Accelerator programme but we also know that this is not available for everyone, so we have created our own Regulatory Accelerator tool to address the challenges we see FinTech clients facing on a daily basis. Hogan Lovells is committed to innovation and to supporting and developing the FinTech community in the UK and globally, and we are also assisting Innovate Finance and the FCA to formulate their proposals for the broader Industry Sandbox."

Lawrence Wintermeyer, CEO, Innovate Finance said:

"The Regulatory Accelerator is a platform which will enable Innovate Finance members to access the knowledge needed to navigate FCA regulations to better ensure they are fit for market purpose and FCA regulation, rapidly and cost effectively. Hogan Lovells has created an intuitive and easy to use online solution that enables FinTech start-ups to map out their regulatory requirements to determine if they need to be regulated, right through to requirements for full authorisation."

To request access go to www.hoganlovellsregulatoryaccelerator.com. Click here http://ehoganlovells.com/cv/17f94cd844a0cef5a482ac3c1567dbc623afd466 to attend the official launch event co-hosted by Hogan Lovells and Innovate Finance on 21 September.

For additional information visit www.hoganlovells.com

SYCIP LAW ANNOUNCES NEW PARTNERS

MANILA - 12 July 2016: SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) is pleased to announce the admission of ***Aaron Roi B. Riturban*** and ***Franco Aristotle G. Larcina*** to the partnership.

Mr. Riturban is with the firm's Banking, Finance and Securities, and Special Projects groups. He specializes in mining, natural resources development, and environment law, and regularly advises local and foreign clients in relation to these areas, as well as those in the power generation, infrastructure development, and banking industries. He has acted as counsel for the private sector in connection with projects under the Philippine Government's public-private partnership (PPP) program.

He has significant experience in securities and capital markets transactions, having acted as counsel for both issuers and underwriters in major securities offerings.

Mr. Larcina is a member of the firm's Special Projects group. He specializes in investments, mergers and acquisitions, particularly in industries with FDI and nationality restrictions and in listed and public corporations. His other work focus is arbitration and dispute resolution for commercial transactions.

He has expertise in merger and competition law, securities regulations, and telecommunications, media, and technology.

For additional information visit www.syciplaw.com

SyCip Salazar Hernandez & Gatmaitan

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ALLENDE & BREA
ASSISTS PI RUTA 6 WITH OFF-PLAN INDUSTRIAL PARK SALE

BUENOS AIRES - August 2016: Allende & Brea has helped private developers sell lots in a 130-hectare industrial park north of Buenos Aires. PI Ruta 6, which is a real estate development company owned by José Mizrahi and José Abad de Alfizar, completed the first round of sales to private bidders at the Parque Industrial Ruta 6 on 20 June.

The deal is thought to be the first time an industrial park has been entirely sold off-plan in Argentina. The purchase price has not been disclosed.

Allende & Brea Partner Carlos Melhem and associates Camila Fernández Llorente and Lucía Ibarreche Brühl acted in the transaction.

For additional information visit www.allendebrea.com.ar

ARIAS FABREGA & FABREGA
ASSISTS BANCO GENERAL ISSUES DPR BACKED SECURITIES

PANAMA - August 2016: Panama's Arias, Fábrega & Fábrega assisted Panama's second largest bank, Banco General, issue securities worth US$250 million that are backed by diversified payment rights (DPRs).

The securities are backed by a DPR programme established by Banco General, which securitises future funds flows, represented by DPRs. The offering closed on 14 July.

Counsel to Banco General Arias, Fábrega & Fábrega Partner Ricardo Arango and associate Marianne Romero in Panama City; Mayer Brown LLP (Chicago).

For additional information visit www.arifa.com

ARIAS & MUNOZ
ADVISES IN USD$125 MILLION CREDIT LINE

COSTA RICA - August 2016: Arias & Muñoz (Costa Rica) advised administrative agent Wells Fargo, as well as Banco Latinoamericano de Comercio Exterior (Bladex) and Wells Fargo Securities, the joint lead arrangers and bookrunners in Scotiabank de Costa Rica US$125 million loan from a group of 11 lenders. Mayer Brown LLP's New York office and Consortium Legal (Costa Rica) assisted Scotiabank de Costa Rica.

The loan closed on 5 July. The senior unsecured credit facility is split between a two-year, US$55 million tranche and a three-year, US$70 million tranche and will be used for retail and corporate banking activities.

Counsel to Bladex, Wells Fargo, Export Development Canada, First Citizens Financial Services, National Bank of Canada, Landesbank Baden-Württemberg, Popular Bank, Tai Fung Bank, Republic Bank and Taiwan Cooperative Bank Arias & Muñoz (Costa Rica) Partner Daniel Araya and associate Donato Rivas in San José.

For additional information visit www.arias.com

BAKER BOTTS

REPRESENTS TRANSOCEAN LTD IN ACQUISITION OF TRANSOCEAN PARTNERS LLC

HOUSTON - August 1, 2016: Transocean Ltd. (NYSE: RIG) and Transocean Partners LLC (NYSE: RIGP) today announced that Transocean has agreed to acquire all of the outstanding common units of Transocean Partners not already owned by Transocean in a share-for-unit merger transaction. In the merger, Transocean Partners common unitholders will receive 1.1427 Transocean shares for each Transocean Partners common unit. The Transocean Partners unit price implied by the exchange ratio represents a 15% premium to Transocean Partners' closing price on July 29, 2016. Transocean expects to issue approximately 22.7 million shares in the merger. Completion of the transaction is conditioned upon approval by Transocean Partners' common unitholders and is anticipated to close in the fourth quarter of 2016.

Following completion of the transaction, Transocean Partners will be 100% owned by Transocean and therefore Transocean will have indirectly acquired the 51% ownership interests in the Discoverer Inspiration, the Discoverer Clear Leader and the Development Driller III that are currently owned by Transocean Partners. Additionally, Transocean Partners' common units will cease to be publicly traded on the NYSE.

Baker Botts represented Transocean Ltd. in the transaction.

Baker Botts Lawyers/Office Involved:Corporate: Gene Oshman (Partner, Houston); A.J. Ericksen (Partner, Houston); James Mayor (Partner, Houston); Jonathan Bobinger (Senior Associate, Houston); Nathan Tanner (Associate, Houston); Tax: Derek Green (Partner, Houston); Jon Lobb (Senior Associate, Houston); Employee Benefits: Gail Stewart (Partner, Houston); Chris Pratt (Special Counsel, Houston).

For more information, please see Transoceans' news release by clicking here http://www.deepwater.com/news?ID=2191262 or visit us at www.bakerbotts.com

BENNETT JONES

ADVISING DEVON ENERGY CORP AGREEMENT TO SELL ACCESS PIPELINE INTEREST

- Date Announced: July 13, 2016
- Date Closed: Unknown
- Deal Value: $1,400,000,000

Devon Energy Corp. (NYSE: DVN) announced that it has entered into a definitive agreement to sell its 50-percent ownership interest in Access Pipeline to Wolf Midstream Inc., a portfolio company of Canada Pension Plan Investment Board, for C$1.4 billion, or US$1.1 billion, using current exchange rates. The agreement also includes the potential for an incremental C$150 million payment with the sanctioning and development of a new thermal-oil project on Devon's Pike lease in Alberta, Canada. Under terms of the sale agreement, Devon's thermal-oil acreage is dedicated to Access Pipeline for an initial term of 25 years. A market-based toll will be applied to production from the Company's three Jackfish projects, which are fully operational. The agreement also includes the potential for the Access Pipeline toll to be reduced by as much as 30 percent with the development of new thermal-oil projects in the future. The transaction is subject to regulatory approvals along with customary terms and conditions. Closing is expected in the third quarter of 2016.

Bennett Jones LLP is advising Devon in connection with the transaction with a team led by Pat Maguire (Oil and Gas) that included Vivek Warrier (Oil and Gas), Anu Nijhawan (Tax), Beth Riley (Competition) and Ashley White (Oil and Gas).

For additional information visit www.bennettjones.com

CAREY

ADVISES EL PUERTO DE LIVERPOOL WITH ASSOCIATION AGREEMENT

SANTIAGO – 10 August 2016: Carey advised El Puerto de Liverpool (Liverpool), owner and operator of retail stores and shopping centers in Mexico, in the negotiation of an Association Agreement with the Calderon family, controlling persons of Ripley Corp (Ripley), holders of 52.98% of Ripley shares. To this end, Liverpool will make a tender offer (OPA) of up to 100% of the shares issued by Ripley, at a price of CLP420 per share payable in cash (Offer).

The Offer will be made by a subsidiary of Liverpool within 10 business days after all condition precedent required to commence the Offer have been met, including the authorization from the Superintendency of Banks and Financial Institutions allowing Liverpool to acquire more than 10% of the shares of Ripley and indirectly participate in more than 10% of Banco Ripley.

The Offer shall be deemed successful, among other conditions, if as a result of it Liverpool acquires at least 493,693,336 shares, representing 25.5% of the shares of Ripley.

Parties also agreed on a shareholders agreement, which shall become effective upon a successful OPA. Such shareholders agreement provides for a joint management of Ripley, and sets out reciprocal share transfer restrictions usual for this kind of agreements.

The valuation of Ripley for the transaction was USD1,200 million. Final acquisition price will depend on the number of shares finally offered for sale in the OPA.

Carey advised Liverpool through a team led by partners Jorge Carey and Salvador Valdés and associates Cristián Figueroa and Francisco Urcelay.

For additional information visit www.carey.cl

GIDE

ADVISES ON PRIVATIZATION OF NICE AND LYON AIRPORTS

PARIS - 01 August 2016: On 28 July 2016, the French government announced that it had selected the prospective purchasers for its shareholdings in airport companies Aéroports de la Côte d'Azur (ACA) and Aéroports de Lyon (ADL).

ACA's capital is currently 60%-held by the State and 40% by the Nice-Côte d'Azur Chamber of Commerce and Industry, the Provence-Alpes-Côte-d'Azur Region, the Alpes-Maritimes Département and the Nice-Côte d'Azur metropolitan authorities.

ADL's capital is also 60%-held by the State, with the remaining 40% being held by the Lyon Chamber of Commerce and Industry, the Auvergne-Rhône-Alpes Region, the Rhône Département and the Lyon metropolitan authorities.

These privatisations are taking place pursuant to French law no. 2015-990 of 6 August 2015 on growth, activity and equality of economic opportunities. A call for tenders in respect of each airport was launched by the French State Investments Agency (Agence des Participations de l'Etat) on 10 March 2016.

The State has designated the consortium of Atlantia, Aeroporti di Roma and EDF (EDF Invest) as the prospective purchaser of its holding in ACA's capital.

The consortium of Vinci Airports, the Caisse des Dépôts et Consignations and Predica has been designated prospective purchaser of the State's shareholding in ADL.

The final decision regarding the disposals will be taken after full consultation with ACA's and ADL's works councils, and once authorised by the competent merger control and civil aviation authorities.

The French State Investments Agency is advised by Gide, which has put together a team of 20 lawyers led by Thomas Courtel (Public and Infrastructure Law) and Guillaume Rougier-Brierre (M&A), and also including Stéphane Hautbourg (Competition Law) and Foulques de Rostolan (Employment Law), partners.

For additional information visit www.gide.com

BRIGARD & URRUTIA

ASSISTS LENDERS GROUP IN USD$144 MILLION AIRPORT FINANCING

BOGOTA - August 2016: Brigard & Urrutia Abogados assisted a group of lenders provide 345 billion Colombian pesos (US$114 million) to the concessionaire in charge of Ernesto Cortissoz International Airport, which serves Barranquilla.

Grupo Aeroportuario del Caribe (concessionaire) was represented by Gómez-Pinzón Zuleta Abogados. The transaction closed on 14 June.

The financing is composed of three tranches: (1) a dollar-denominated sum from Latin America's development bank (CAF); (2) a peso-denominated loan from Banco de Bogotá, Banco de Occidente and Banco Davivienda; and (3) a lease facility from Bancolombia.

Counsel to CAF, Banco de Bogotá, Banco de Occidente, Banco Davivienda and Bancolombia was represented by Brigard & Urrutia Abogados Partner Manuel Fernando Quinche and associates Clara María Robledo, María Jimena Rojas and Maria Natalia Rodríguez.

For additional information visit www.bu.com.co

TOZZINIFREIRE

ADVISES OCTANTE SECURITZADORA AND BANCO SANTANDER COMPLETE CRA OFFERING

TozziniFreire Advogados assisted Brazilian securitisation company Octante Securitizadora issue agribusiness receivables certificates valued at 216 million reais (US$65 million).

TozziniFreire also advised Banco Santander as lead underwriter. Lefosse Advogados counselled pesticide maker Nufarm as the issuance's sponsor. The transaction closed 22 July.

Counsel to Octante Securitizadora and Banco Santander TozziniFreire Advogados Partner Alexei Bonamin and associates Debora Seripierri, Ana Claudia Pires Alves and Lais Monte Claudio

For additional information visit www.tozzinifreire.com.br

CLAYTON UTZ

MARKS MAJOR MILESTONE WITH ENDEAVOUR MINING ON US$328 MILLION HOUNDE GOLD PROJECT

PERTH - 03 August 2016: Clayton Utz has marked a major milestone with intermediate gold producer Endeavour Mining (TSX:EDV) (OTCQX:EDVMF), closing major procurement and finance contracts for their Houndé Gold Project (Houndé) in Burkina Faso.

With an initial estimated capital outlay of US$328 million, Houndé is 90% owned by Endeavour Mining (Endeavour) and 10% by the State of Burkina Faso. Construction began on the Houndé site in April 2016, and the project is on track for start-up of operations in late 2017.

Once operational, Houndé is anticipated to become Endeavour's flagship low cost mine and one of the region's leading cash generating mines. The open pit mine has a forecasted average annual gold production of 190,000 ounces at an All-In Sustaining Cost (AISC) of US$709 per ounce over the first decade of operations.

Major projects and construction partner Clive Luck led the Clayton Utz team advising Endeavour on all aspects of the Houndé contract negotiation and documentation, including the US$46 million contract with Komatsu Japan for the supply of the construction and mining fleet.

Clive Luck said the project finance, procurement and operational structures in place for Houndé were relatively common in other parts of the world but a first for a Japanese financed procurement in the West Africa region.

"This structure assists Endeavour to maintain low operational costs and I expect its success will lead to an increased interest in similarly structured investments in the region, which will subsequently support local economies and development."

The Clayton Utz team was supported by Endeavour's in-house team and Stikeman Elliott in London.

For additional information visit www.claytonutz.com

HOGAN LOVELLS

DOJ GRANTS ANTITRUST APPROVAL FOR SABMILLER PLC IN ITS ACQUISITION BY ANHEUSER-BUSCH INBEV NV

Hogan Lovells is representing SABMiller in the groundbreaking global transaction.

Washington, D.C., 21 July, 2016 – The U.S. Department of Justice today granted antitrust approval for Anheuser-Busch InBev NV (AB InBev) to acquire SABMiller plc (SABMiller). Hogan Lovells advised SABMiller plc on U.S. merger clearance issues in this complex matter. Hogan Lovells also advised SABMiller plc on EU merger clearance issues. The European Commission cleared the transaction with remedies on May 24, 2016.

The combination of the world's two largest brewers, SABMiller plc and AB InBev, will create a global brewer in a transaction that was valued at more than US$100 billion. To obtain U.S. DOJ approval, AB InBev has agreed to divest SABMiller's interest in MillerCoors to Molson Coors, SABMiller's joint venture partner in the U.S. Additionally, AB InBev will be subject to certain conduct remedies. The parties anticipate to close the deal later this year.

The Hogan Lovells team in Washington advising SABMiller on the transaction in the U.S. was led by Antitrust, Competition, and Economic Regulation partners Janet McDavid and Logan Breed, with assistance from senior associate Meghan Rissmiller. The Hogan Lovells team in London advising SABMiller on EU merger clearance issues was led by Antitrust, Competition, and Economic Regulation partner Suyong Kim, with assistance from counsel, Paul Castlo. Senior Advisor and Foreign Legal Consultant to Hogan Lovells Rachel Brandenburger also advised on this matter.

For more information, see www.hoganlovells.com

NAUTADUTILH

ASSISTS OOS INTERNATIONAL WITH RESPECT TO THE CONSTRUCTION OF TWO SEMI-SUBMERSIBLE CRANE VESSELS

04 August 2016: NautaDutilh assists Overdulve Offshore Services (OOS) International with respect to the entry into a partnership with China Merchants Industry Holdings (CMIH) regarding the engineering and construction of two Semi-Submersible Crane Vessels (SSCV's) named OOS Serooskerke and OOS Walcheren.

OOS International is a fast growing offshore services company. It currently operates two SSCV's, called OOS Gretha and OOS Prometheus, under a contract with Petrobras for renovating and maintaining 30 platforms in Brazil.

The two new SSCV's will be presented as a turnkey solution for the oil & gas / wind markets, offering a combination of heavy lifting capability of 4,400T and hotel facilities for up to 750 people per vessel.

The engineering and construction phase for the OOS Serooskerke vessel is estimated to be completed in Q2 2019 and the OOS Walcheren vessel is expected to follow in Q3 2019.

Press release by OOS International here: http://www.oosinternational.com/press-release-quantum-leap-within-the-offshore-heavy-lift-industry/

For additional information visit www.nautadutilh.com

ROUSAUD COSTAS DURAN SLP

ADVISES CORNERJOB ON EUR23 MILLION RAISING

BARCELONA - 25 July 2016: RCD's innovation team has advised CornerJob, a jobs marketplace start-up belonging to Antai Venture Builder, on its recent investment round. The capital injection will help the firm consolidate its presence in Spain and other foreign markets.

The round was led by VC firm Northzone (shareholder in Wallapop), with the participation of e.ventures, as well as earlier investors who have reinvested in the firm. With this round CornerJob has managed to raise over 30 million euros since its creation in 2015.

CornerJob is a blue collar Jobs app that has up to 40,000 monthly job offers in industries such as hotel and leisure, retail, security, services and industry, among others. The company operates in Spain, Italy, France and Mexico where it will invest the capital received. Furthermore the start-up is planning on entering new markets before the end of the year.

Since its creation RCD has been committed to innovative and entrepreneurship projects for this reason it has become a pioneer and a reference for legal advice in this area. Our clients include technology and biotech companies to whom we offer a comprehensive and unique advice.

For additional information visit www.rcdslp.com

SYCIP LAW

ADVISES LENDERS IN LIMAY, BATAAN POWER PROJECT

MANILA - 01 August 2016: SyCipLaw acted as local counsel to DBS Bank Ltd., Mizuho Bank, Ltd. and Standard Chartered Bank, the structuring banks in the US$400 million Project Financing of a new 300MW coal-fired power plant in Limay, Bataan of SMC Consolidated Power Corp.

The lenders to the project financing, in addition to the structuring banks were Bank of Commerce, Bank of Tokyo-Mitsubishi UFJ, CTBC Bank Co. Ltd., Maybank International (Labuan Branch), Maybank Philippines, Inc., Siemens Bank GMBH (London Branch), INTESA San Paolo S.p.a. (Hong Kong Branch). The project financing was recognized as Best Power Deal in the Asia -Pacific Region in the 2015 IJ Global Awards.

SMC Consolidated Power Corp. is a wholly-owned subsidiary of San Miguel Corporation through SMC Global Power Holdings Corp. The San Miguel group is currently expanding its power generation portfolio with several projects being advanced into construction phases across grids. This project is the first of three 300MW power plants, which will share certain facilities and be operated by a single O&M Contractor.

The SyCipLaw team was composed of partners Simeon Ken R. Ferrer, Hector M. de Leon, Jr. and Angel M. Salita, Jr. with senior associates John Paul V. de Leon and Bhong Paulo A. Macasaet, and Maria Luisa D. Manalaysay Sabornay and Levi Anthony B. Malaylay as associates.

For additional information visit www.syciplaw.com

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TOZZINIFREIRE ADVOGADOS

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First Renewable Energy Public Bidding Process

On May 18, 2016, the Executive Branch of Argentina announced a public bidding process for the generation of electricity from renewable sources, the first one of a series to be made within the new Regulatory Framework for the Promotion of Use of Renewable Energy in Electric Power Generation (the "Regulatory Framework"), which sets forth milestones for the satisfaction of electric power demand from renewable sources. Pursuant to the Regulatory Framework, the percentage of electric power demand to be satisfied from renewable sources should increase to 8% by the end of 2017 and continue to grow up to 20% by 2025. The launch of the public bidding process includes the publication of the preliminary bidding specifications and power purchase agreement (the “Preliminary Documents”) to be entered into by the winners of the bidding process and the Wholesale Electricity Market Administration Company (“CAMMESA”, for its Spanish acronym).

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1. Source and Total Power to be Tendered

According to the Preliminary Documents, the type of source and total power to be tendered in this first round are the following:

Source	Power Requested
Wind	600 MW
Solar	300 MW
Biomass	65 MW
Biogas	15 MW
Mini hydro	20 MW
Total	**1.000 MW**

2. FODER Trust Fund Guaranty

The Regulatory Framework also sets forth creation of a Trust Fund for the Development of Renewable Energies (“FODER”, for its Spanish acronym), in an effort to finance, make capital contributions and guaranty projects of electric power generation from renewable sources approved by the Ministry of Energy and Mining. The Preliminary Documents set forth that the FODER will guarantee to the power producers the payment of an amount equivalent to the payments for the following 12 months under the power purchase agreements awarded, on a rolling basis.

3. World Bank Guaranty

The Preliminary Documents provide that the World Bank will issue a US$500 million guarantee that would protect the FODER from the potential failure of the Ministry of Treasury and Public Finance to provide funds to the FODER in case the FODER is required to pay certain termination amounts to the project company in connection with the proposed power purchase agreement, and the FODER does not have the funds allocated to do so. The guarantee will be allocated to the different projects on a US$500,000 per MW basis.

4. Consultation Process

The Preliminary Documents have been made available to the general public so that, during a period of 20 calendar days as from May 18, 2016, any interested party may make comments or suggestions in relation to the Preliminary Documents to CAMMESA.
The publication of the final documents and start of the term to make offers is expected for July 1, 2016.

* * *

For additional information on this matter or any other matter related with Energy and Natural Resources in Argentina please contact Marcos Patron Costas at mpc@allendebrea.com.ar or (+54 11) 4318-9943.

For further information on this topic please contact Marcos Patrón Costas

back

CLAYTON UTZ

04 AUG 2016

Fatal blow or flesh wound? Court dismisses challenge to NSW Government's forced Council amalgamations

BY BRENDAN BATEMAN, GABRIELLE SHEEHAN

The decision casts significant doubt on the likely success of the pending challenges to the council amalgamation process brought by other councils.

NSW Government's forced amalgamations of local councils, which arguably is the most important micro-economic reform in the State, is still on track, after the Land and Environment Court comprehensively dismissed Woollahra Council's challenge. While this raises doubt about the prospects of upcoming challenges by other NSW councils, there is more to come, with the council lodging an appeal (Woollahra Municipal Council v Minister for Local Government [2016] NSWLEC 86).

What happened?

On 6 January 2016, the Minister made 35 proposals for local councils to be amalgamated under section 218E(1) of the Local Government Act 1993, one of which involved a proposal to amalgamate Woollahra, Randwick and Waverley Councils.

The Minister referred these proposals to the Acting Chief Executive of the Office of Local Government. The Acting Chief Executive's Delegate held public inquiries as required under the Local Government Act, and sent his report to the Boundaries Commission for review and comment.

A number of local councils sought to challenge the decision and the process which was undertaken by the Government, the Delegate and the Boundaries Commission.

On 12 May 2016, the Minister announced the creation of 19 new councils which were proclaimed the same day in the Gazette. The Minister put nine proposed mergers on hold, including that relating to Woollahra Council, pending the outcome of court appeals.

Woollahra Council alleges there were flaws in the process

Woollahra Council challenged the proposal to amalgamate it with Randwick City Council and Waverley Council.

Woollahra Council claimed that the Delegate did not:

- give reasonable public notice of the holding of the public inquiry;
- hold a reasonable inquiry in accordance with section 263(2A) of the Local Government Act;
- examine the proposal as required by section 218F and section 263(1) of the Local Government Act; and
- accord Woollahra Council procedural fairness in the inquiry or examination stages.

Woollahra Council claimed that the Boundaries Commission did not:

- conduct a review of the Delegate's report as required under section 218F(6)(b) of the Local Government Act; and
- accord Woollahra Council procedural fairness in its review of the Delegate's report.

Woollahra Council also claimed that the Government made false and misleading representations that the KPMG reports relied upon by the Government for its decision were independent.

The Land and Environment Court decides the Local Government Act was complied with

The Chief Judge of the Land and Environment Court, Justice Preston, rejected all of Woollahra Council's grounds for challenging the council amalgamation process.

The Court held that:

- the public notices of the holding of the inquiry contained adequate information regarding when and where the inquiry was to be held, the particular inquiry that was to be held and the purpose of the inquiry, as required under section 263 of the Local Government Act;
- the Local Government Act does not require that the public inquiry needs to have "a structure and forensic process similar to that of an administrative trial", under section 263 of the Local Government Act;
- the Delegate was not legally obliged to "scrutinise, test and interrogate" claims made by the Minister or the proposal;
- the Delegate had considered in his report the financial advantages and disadvantages to residents and ratepayers, as required under section 263(3)(a);
- the legislative function of the Boundaries Commission does not require it to express its own view on the merits of the proposal;
- the Boundaries Commission was not required to disclose adverse submissions to affected persons under section 263 of the Local Government Act;
- there was no denial of procedural fairness by the Delegate not disclosing the KPMG reports as the Delegate had not been provided with the reports and it was not established that these documents were so damaging or unforeseeable that required them to be disclosed;
- the Boundaries Commission was not under a duty to accord procedural fairness under the statutory power under section 218F(6)(b);
- the representations that the KPMG report was independent was not false and misleading as KPMG exercised professional judgment in undertaking the analysis; and
- even if the representations were false and misleading, they did not invalidate the process as the statements were not included in notices or documents required to be produced under the Local Government Act.

Accordingly, Justice Preston dismissed the appeal and ordered Woollahra Council to pay the Minister's costs of the proceedings.

What's next?

The Woollahra Council will appeal the decision of the Land and Environment Court so this is not the last word.

The decision casts significant doubt on the likely success of the pending challenges to the council amalgamation process brought by other councils including North Sydney, Botany Bay, Ku-ring-gai, Mosman, Strathfield and Hunters Hill councils, until and unless the Court of Appeal rules otherwise.

The decision also clarifies the requirements of the amalgamation process under the Local Government Act and may clear potential hurdles for future forced amalgamations.

GET IN TOUCH

Brendan
Bateman

PARTNER, SYDNEY
+61 2 9353 4224
bbateman@claytonutz.com

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Clayton Utz communications are intended to provide commentary and general information. They should not be relied upon as legal advice. Formal legal advice should be sought in particular transactions or on matters of interest arising from this communication. Persons listed may not be admitted in all States and Territories.

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- Environment and Planning

CONTACT US

Sydney	+61 2 9353 4000	**Melbourne**	+61 3 9286 6000
Brisbane	+61 7 3292 7000	**Perth**	+61 8 9426 8000
Canberra	+61 2 6279 4000	**Darwin**	+61 8 8943 2555

TOZZINIFREIRE
ADVOGADOS

June 28, 2016

BREXIT AND POSSIBLE IMPACTS TO BRAZIL: OVERVIEW

On June 23rd, the people of the United Kingdom decided that the country should withdraw from the European Union. The exact conditions of this exit shall be negotiated within the next two years, after which the treaties of the European Union will no longer apply to the United Kingdom.

According to Vera Kanas, partner in our International Trade practice group, the impacts are limited for Brazil.

The vast European regulatory framework, that comprehends standards for the commercialization of goods and services, rules on capital movements, investments, consumer Law, competition Law, and environmental Law, shall be progressively modified. The incentives and financing programs granted by the European Union to several sectors will no longer be available to British companies.

In this context, Brazilian companies should review any existing agreements which encompass companies, investments, imports and exports of the United Kingdom, in order to evaluate if there is any consequence to these agreements. Impacts may exist due to expected changes in legislation after the Brexit, due to cuts in incentives and financing programs, as well as other measures that may affect the execution of the agreement. Special attention must be given to clauses that establish obligations over the European Union's territory – which will now exclude the United Kingdom.

A second impact – to be expected in the medium term – regards the United Kingdom's standards and regulations to international trade. The European Union promoted an extensive harmonization between the rules of each of its members, reducing costs of conformity to producers within the block and exporters from third countries.

With the Brexit, the United Kingdom will likely alter its own standards and regulations, moving further away from the European regulatory framework. Complex regulations such as REACH – applicable to the commercialization of chemical products in the European common market – may suffer changes in the medium term.

These changes will result in costs to Brazilian companies: Brazilian producers intending to export goods and services to the United Kingdom will need to conform their exports to different standards than the ones adopted today by the other European countries.

Bennett Jones

Ontario Takes Action on Pension Funding Reform

August 4, 2016 | Mariette Matos and Susan G. Seller

In November of last year, as part of its 2015 Economic Outlook and Fiscal Review, the Ontario government announced its plans to review the current solvency funding rules for defined benefit (DB) pension plans. The expedited review was to focus on plan sustainability, affordability and benefit security.

On July 26, 2016, Ontario released the results of that review, a consultation paper entitled *Review of Ontario's Solvency Funding Framework for Defined Benefit Pension Plans*. The Consultation Paper proposes options for reform of the funding rules for DB single employer pension plans (SEPPs).

What Precipitated the Ontario Government's Review of the Solvency Funding Rules?

The last significant update to the funding rules for DB plans in Ontario was in 1992 and, at that time, the long-term government of Canada bond yields were at about 9%. Since 1992, bond yields have fallen precipitously and have remained low for many years now. At the end of July 2016, the long-term government of Canada bond yield was just 1.60%. In addition to lower bond yields, since 1992, there have been several updates to the mortality tables required to be used for solvency valuations in order to reflect that retirees are now living much longer. The much lower interest rates, coupled with the increased longevity of retirees, has resulted in solvency valuations becoming the driving force in determining the minimum required funding contributions for most DB plans. Volatile equity market returns have further exacerbated the funding challenges that DB plan sponsors face.

As a result of these challenges, Ontario implemented three rounds of temporary solvency relief in 2009, 2012 and 2015. These temporary solvency relief measures allowed plan sponsors to spread the funding of their solvency deficiencies over longer periods of time. Despite these measures, the existing solvency funding regime continues to create challenges for DB plan sponsors. As a result, the Ontario government initiated a review of the solvency funding rules and has started this process by seeking input from various stakeholders on its Consultation Paper by September 30, 2016.

The Background: Plan Sponsor Concerns

As part of its review, Ontario acknowledged that DB plan sponsors have raised the following concerns:

- *Contribution Volatility* – many DB plan sponsors are invested in assets that do not closely track the changes in the value of their plan liabilities. The falling bond yields and volatile equity market returns have resulted in contribution volatility, making it difficult for companies to budget for contributions.
- *Procyclical Contribution Requirements* – The lower bond yields and equity market losses often occur at the same time that companies are facing economic challenges and, as a result, increased contribution requirements typically occur when companies have less available cash flow.
- *High Cost of Benefit Security* – Solvency funding assumes that a plan is wound up on the valuation date and some are of the view that this results in excessive funds being allocated to their plans instead of being invested in their businesses.
- *Complexity and Lack of Transparency* – The current funding rules are complex and difficult to understand for most DB plan beneficiaries.
- *Potential Surplus Issues* – Depending on the future economic environment, large solvency contributions now could result in plan surpluses in future – a result that plan sponsors wish to avoid.

Two Main Approaches to Solvency Funding Reform

Ontario is considering two broad approaches to reforming the SEPP funding rules:

- first, modify the solvency funding rules; or
- second, eliminate the solvency funding requirements and strengthen going concern funding.

Under each of these approaches, a number of different options are available.

Approach A – Modified Solvency Funding Rules

Under this approach, the Consultation Paper discusses the following options:

- **Option 1: Average Solvency Ratios** – Plans would be required to fund a deficiency derived from an average solvency ratio calculated over three years. One fifth of this deficiency would be required to be funded each year. Alternatively, pension plans could be funded according to the lower of the average solvency ratio and the actual solvency ratio on the valuation date. Either of these approaches would result in less volatile contribution requirements.
- **Option 2: Lengthening the Amortization Period** – Solvency deficiencies would be amortized over a period longer than five years (e.g., 10 years). This option would reduce the size of solvency funding payments.
- **Option 3: Consolidation of Solvency Deficiencies** – When there is a solvency deficiency at a valuation date, rather than establishing a new solvency payment schedule, solvency deficiencies could be consolidated and re-amortized at each valuation date. In most cases, this would result in a reduction in the size of solvency funding payments.
- **Option 4: Funding a Percentage of the Solvency Liability** – Rather than full funding on a solvency basis, a plan could instead be funded based on a percentage of the solvency liability. This would result in reduced solvency payments. Because this option involves a lower benefit security for plan beneficiaries, it could be coupled with an increase in the $1,000 monthly PBGF guarantee.
- **Option 5: Solvency Funding for Certain Benefits Only** – Under this option, normal retirement benefits would be funded on a going concern basis only, coupled with an increase in the $1,000 monthly PBGF guarantee for normal retirement benefits. Plans offering additional benefits like subsidized early retirement benefits could fund those benefits on a going concern and solvency basis. Alternatively, normal retirement benefits could be funded on both a going concern and solvency basis while any additional benefits would be funded on a going concern basis only. Any increase in the PBGF guarantee would be in respect of the additional benefits only. These approaches would result in lower contribution volatility while addressing benefit security issues.
- **Option 6: Use of Solvency Reserve Accounts** – Contributions made in respect of a solvency deficiency could be held in a solvency reserve account (SRA) which is a separate account maintained within a pension plan. When a plan's solvency position is at a certain level above 100%, some of that surplus could be withdrawn. This approach would minimize plan sponsor concerns over high solvency contributions resulting in large surpluses (which in turn could cause sponsors to refrain from making more than the minimum required contributions). Sponsors' concerns about having large surpluses would be alleviated while benefit security through solvency funding would be maintained. SRAs are currently available under Alberta and British Columbia pension legislation.
- **Option 7: Use of Letters of Credit** – Letters of credit could be used to cover solvency special payments for more than 15% of a plan's solvency liabilities. This approach would result in reduced solvency payments while continuing to provide benefit security. Letters of credit are currently permitted in a number of jurisdictions and their use is subject to certain prescribed conditions.

Approach B – Eliminate Current Solvency Funding Requirements and Strengthen Going Concern Funding

Under this approach (which is the approach that has been taken in the Province of Quebec since January 1, 2016), the following options are available:

- **Option 1: Provision for Adverse Deviation** – Funding under a plan would include a Provision for Adverse Deviation (PfAD) prior to any changes being made that could weaken the plan's funded status, e.g., benefit improvements. By increasing a pension plan's assets, a PfAD provides some benefit security otherwise provided through solvency funding. The PfAD would be higher for plans with a greater degree of asset/liability mismatch.

- **Option 2: Shortening the Amortization Period** - Going concern special payments could be amortized over less than the current 15-year period. This would result in increased contribution requirements which, in turn, would improve benefit security.
- **Option 3: Restrictions on Plan Assumptions** – Plans could require more conservative assumptions for a going concern valuation, e.g., interest rate assumptions. In so doing, benefit security would be enhanced because plan sponsors would be prevented from significantly relying on investment returns to fund accrued benefits.
- **Option 4: Solvency Trigger for Enhanced Funding** – Despite solvency funding no longer being required, if a plan were to fall below a certain solvency threshold, then additional funding like a lump sum contribution could be required or a plan could be prohibited from taking any action that would weaken its funded position.
- **Option 5: PBGF Enhancement** – Enhancements could be made to the PBGF, including an increase to the PBGF level of protection - which would result in an increased level of benefit security.

Any option involving an increased level of benefit protection from the PBGF would also require increased PBGF assessments on the part of DB plan sponsors with Ontario members.

Additional Reform Measures

Ontario is also seeking input on certain additional possible reform measures, including:

- **Requirement for Annual Valuation Reports:** Valuation reports could be required to be filed annually on consistent dates regardless of the funded position of a plan. The report could be required to include the plan's going concern and solvency financial positions despite the elimination of solvency funding. Annual valuations would increase transparency and disclosure to plan beneficiaries.
- **Mandatory Governance and Funding Policies:** Plan administrators could be required to establish and file written governance and funding policies, which would increase transparency for plan beneficiaries.
- **Modification of Commuted Values:** Commuted value payout rules could be modified to reflect the underlying pension plan risks, e.g., by increasing the interest rate used to calculate commuted values. This could reduce a plan sponsor's costs by reducing the commuted value payout amounts to terminating members.
- **Further Restrictions on Contribution Holidays and Benefit Improvements:** Additional restrictions could be imposed on contribution holidays. For example, contribution holidays could be permitted only if a Provision for Adverse Deviation (PfAD) is fully funded. Further funding restrictions could also be imposed on plan benefit improvements. If a plan's going concern funded ratio is less than a certain threshold percentage, then the portion of the benefit improvement below the threshold could be immediately funded and the remaining portion of the benefit improvement funded over an amortization period shorter than that for other funding deficiencies.
- **Administrator Discharge on Annuity Buyouts:** Plan administrators who purchase buyout annuities for certain plan beneficiaries retain the related pension obligations (unless members transfer their commuted values out of the plan or if annuities are purchased during a wind up). Instead, plan administrators could be fully discharged provided certain conditions are met. If an insurer becomes insolvent, Assuris provides annuity insurance which provides greater coverage than the PBGF. If plan administrators are permitted a discharge on an annuity buyout, then more plan administrators may consider buyout annuities.
- **Increasing PBGF Coverage:** The level of benefit guaranteed by the PBGF could be increased, together with a corresponding adjustment to the PBGF assessment formula.

What this Means for DB Plan Sponsors

Sponsors of single-employer DB plans in Ontario will be impacted by changes to the funding rules. Plan sponsors may wish to consider providing their input on the options outlined in the Consultation Paper. The Ontario government is keen to hear from as many stakeholders as possible as it strives to improve the solvency funding requirements in a way that balances the interests of plan members and plan sponsors alike.

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NEWSALERT

Law establishes new Power Transmission Systems and creates an Independent Coordinating Body for the National Power System (Law No. 20. 936)

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

Mackenna, Juan Francisco
Partner
+56 2 2928 2210
jfmackenna@carey.cl

Bustamante, José Miguel
Partner
+56 2 2928 2381
jmbustamante@carey.cl

Hurley, José Tomás
Associate
+56 2 2928 2211
jthurley@carey.cl

Ibarrola, Diego
Associate
+56 2 2928 2205
dibarrola@carey.cl

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Carey y Cía. Ltda.
Isidora Goyenechea 2800, Piso 43
Las Condes, Santiago, Chile.
www.carey.cl

On July the 27th 2016, Law No. 20.936 that establishes New Power Transmission Systems and creates an Independent Coordinating Body for the National Power System (the "Transmission Law" or "New Law") was published. Its stated objectives are to ensure that transmission does not become an obstacle to power generation, increase competition in the electrical market and boost the development of non-conventional renewable energies. The New Law introduces relevant changes to the current electrical regulation contained in the Electrical Services General Law ("LGSE"), that was established by Decree No. 4/20.018, and to Law No. 18.410 that establishes the Superintendence of Electricity and Fuels ("The SEC Law").

Among the main modifications introduced by the Transmission Law are the following:

1. **Creation of an Independent Coordinating Body for the National Power System**

   A new, centralized coordinating entity (the "Coordinator") for the electrical system will replace the current Economic Load Dispatch Centers ("CDEC" or "CDECs"). The Coordinator will be independent of the electrical market's players. This is in direct contrast to its predecessor, the CDEC, which was composed of members who were chosen by key players in the electrical system. The Coordinator will be a non-profit organism with an independent legal entity that is not part of the government's administration.

   The New Law states that the Coordinator will assume the CDEC's current responsibilities of ensuring the safety of the service provided by the electrical system, guaranteeing both the most cost-effective operation and open access to every transmission system. The law also requires that the Coordinator track and monitor industry competition and the payment chain, while ensuring information transparency.

   According to Article No. 1 of the New Law, it is expected that the specific regulation of the Coordinator regarding its duties and faculties will come into force before July, 20th 2017.

2. **New definition of the current Transmission Systems, Power Programming and Transmission Expansion**

   The Transmission Law re-defines the terms by which each current transmission systems is named:

   (i) The Trunk Transmission System is replaced by the National Transmission System;
   (ii) The Sub Transmission System is replaced by the Zonal Transmission System; and
   (iii) The Additional Transmission System is replaced by the Dedicated Transmission System.

   A new Transmission System is created under the name of Generation Development Hubs (the "Development Hubs"), which will be used to distribute power production from those geographical areas[1].

   In addition, the New Law regulates international power exchanges, with the creation of the concept of "International Interconnection Systems" which will be under the Coordinator's technical and economic management.

   Regarding the system's programing, the Ministry of Energy (the "Ministry") will be in charge of the development of long term (at least 30 years) energy planning processes. For that purpose, power supply and demand projection scenarios shall be considered (especially electrical), taking into account the identification of Development Hubs of Generation, distributed generation (net billing), international exchanges of energy, environmental policies and power efficiency objectives, among others.

   The National Energy Commission (the "CNE") will run an annual Transmission planning process that will consider a 20 year horizon, covering necessary expansion works of the National Transmission System, the Zonal Transmission System and the Dedicated Transmission Systems used by concessionaires of distribution services for the supply of regulated consumers or necessary for the delivery of supply, accordingly.

3. **Development Hubs**

   The Ministry is entitled to identify, within the context of Ministry's long-term planning, areas of high potential for power generation where Development Hubs can be established[2]. After the relevant Strategic Environmental Assessment[3], such areas can be formalized, resulting in a significant contribution to the power supply. Regarding this matter, the Transmission Law requires that 20% of the yearly total power withdrawals from the Development Hubs must come from non-conventional renewable energy ("ERNC").

   Also, the Transmission Law establishes that in case of coordination conflicts between different power generation companies, in a way that the totality or part of the production capacity of one or more of the Development Hubs cannot be injected to the Transmission System, the CNE is authorized to consider in its annual transmission expansion plan, the construction of necessary transmission systems for those Development Hubs. For the above, the CNE will be able to incorporate dedicated lines and sub-stations, new or existent, as Transmission System serving such Generation Development Poles.

4. **Trace Development for the National Transmission System**

   In the current plan for the trace definition, once the decision has been made to expand the transmission system with a new line, the operator must open a call for tenders to construct the new line. The operator must provide participants in the bidding process with information that meets at least minimum requirements. The company that wins the bidding process is responsible for trace development and obtaining the relevant environmental approval resolution, if required. In addition, implementation deadlines are stringently defined and penalties are applied in case of breach.

   According to the Transmission Law, the State will have a new role in the development of the National Transmission System, involving itself in the trace definition and the placement of the new transmission systems. The Transmission Law requires the elaboration of a new Trace Study process for electric transmission paths of public interest, which will be subjected to Strategic Environmental Assessment, to the indigenous consultation process contained in the International Labor Organization Agreement No. 169 if required, and to the Sustainability Ministry Council's approval[4].

5. **Open access**

   The open access is understood as the attribute by which the electrical system's transmission facilities can be used by third parties under non-discriminatory technical and economic conditions. In exchange, those third parties must pay the remuneration of the use of the corresponding transmission system.

   Even though the "open access" regime applied before the enactment of the New Law when compliance with the legal requirements was observed (i.e. available technical capacity, among others), now the possibility of open access to Dedicated Transmission Systems is expanded. Before this change, it was only possible to have open access to Additional Systems when those facilities used electric concessions or national assets of public use.

   The Coordinator will have to establish the proceeding payment for concepts of connection, studies, engineering analysis or rights of use over facilities, and terms for the connection.

6. **Payment of the system**

   As a substantial modification to the old model, the New Law transfers to final costumers (both unregulated and regulated) the National, Zonal, and Dedicated (in part used by clients submitted to price regulation) Transmission Systems costs payment[5]. With the New Law, a single access charge is established, called "postage stamp method" (or "estampillado" in Spanish).

   The Transmission Law establishes a new transitory article to define the National Transmission System's collection, payment and remuneration, which will be valid through December 31, 2034, with the objective of maintaining the price of transportation of current supply contracts unaltered. In that way, payments made by final consumers shall be compensated, if applicable, under those contracts.

7. **Supply unavailability compensation**

   With the Transmission Law, a new supply unavailability compensation system is incorporated for breaches produced in power generation and transmission zones, which will guarantee the performance standards compliance that are required by the electrical regulation. The previous, notwithstanding the sanctions applied by the Superintendence of Electric Power and Fuels, if applicable.

   In the context of this New Law, interruptions caused by supply unavailability of electric facilities will be compensated at the equivalent of non-supplied energy, valorized at fifteen times the current energy fee during the supply unavailability for the case of regulated costumers. For unregulated costumers, the compensation will be the equivalent to the non-supplied power, valorized at fifteen times the energy component of the average market price established by the definitive technical report of the current short term node price during the event. However, the compensation payment will not proceed if this item is already the object of any special clause in their supply contracts.

   Finally, maximum values for concept of compensations by event are established, consisting of the lowest value of either 5% of the company's income for that year, or 20.000 UTA. The compensation paying company may claim before the Superintendence of Electric Power and Fuels such payment, which will have to initiate an administrative process to determine the preceding compensation. Once the Superintendence of Electric Power and Fuels payment claim process ends, affected parties may initiate the corresponding legal actions.

8. **Complementary Services**

   Complementary Services are all those services that are necessary to maintain the quality and security of the electric power supply, tension and frequency control and power demand management. They also help to keep the technology of the System up to date. The New Law outlines a plan where the National Energy Commission annually determines the Complementary Services and its categories, by extent resolution, following the Coordinator's Proposal which determines the services required by the Electric System. The Complementary Services implementation will be made through competitive tender processes.

Finally, it is worth noting that given the magnitude of the amendments introduced by the New Law, a transitory regime will govern the implementation of a number of matters addressed in this law. For details on this, refer to the Transitory Articles in the New Law.

[1] Details regarding Development Poles and Transmission Systems for the Generation Development Poles in section 3. that follows.

[2] According to Article No. 85 of the LGSE, it is understood by Development Pole "geographically identifiable zones of the country, located in regions in which the National Electrical System is situated, where power generation resources from renewable energies are found, whose utilization by means of a single transmission system results of public utility due to their economic sufficiency to the power supply, complying with environmental legislation and territorial regulations".

[3] According to Article No. 2 letter i) of the Law No. 19.300 of General Environmental Bases, Strategic Environmental Assessment is the procedure carried out by the respective sectorial Ministry by means of which environmental considerations are incorporated to the process of formulating general normative policies and plans seeking their integration in the dictation of such policies and plans.

[4] According to Article No. 71 of the Law No. 19.300, the Sustainability Ministry Council is presided by the Environment Minister, and is also composed by the Minister of Agriculture, the Minister of Finance, the Health Minister, the Economy Minister, the Energy Minister, the Minister of Public Works, the Housing Minister, the Transport Minister, the Mining Minister, and the Planning Minister.

[5] Before the entry into force of this New Law, the Trunk Transmission System was paid by Power Generation Companies and clients together, according to a prorate defined by the LGSE.

GIDE

GIDE LOYRETTE NOUEL

client alert

BANKING & FINANCE (FRANCE) | AUGUST 2016

BREAKING NEWS: THE AMF SOFTENS ITS POSITION REGARDING THE DEFINITION OF MARKETING OF UCITS AND AIFs IN FRANCE

Following the announced revision of the notion of marketing of UCITS and AIFs in France within the framework of the working group "FROG" (*French [Routes & Opportunities] Garden*), which aims to reinforce the competitiveness of the Paris market place for management of investment funds, on July 4, 2016, the AMF published a modified version of its position n°2014-04 (the "**AMF Position**").

CONFIRMATION OF CORE PRINCIPLES

The AMF Position does not modify the definition of marketing according to which "*the act of marketing units or shares of a UCITS or AIF consists in presenting them on the French territory by different means (advertising, direct marketing, advice…) with a view to encouraging an investor to subscribe to or purchase them*".

As before, the AMF excludes from the scope of the AMF Position the following circumstances:

- when the investor itself solicits the subscription ("*reverse solicitation*");
- the subscription of units or shares of a UCITS or an AIF when the prospect is an investment service provider acting under the terms of a third party discretionary portfolio management agreement;
- the subscription of units or shares of a UCITS or an AIF when the prospect is a management company managing UCITS or AIFs.

INTRODUCTION OF A PRE-MARKETING REGIME

Following the request of numerous professionals in the asset management industry, the AMF has broadened the scope of the exceptions to the concept of marketing by providing **three** new exceptions, summarized below:

- The most important one relates to the introduction into French law of a "pre-marketing" regime. On the basis of similar schemes adopted by other European countries, the AMF has introduced into French law the possibility for management companies, or third parties acting for their account, to conduct "surveys" with no more than **50 investors** in order to assess their interest in a UCITS or a AIF prior to its launching, provided that:
  - the targeted investors are (i) professional investors or (ii) non-professional investors whose initial subscription would be equal to or above 100.000 euros (in relation to FIAs reserved for professional investors but allowing subscriptions from non-professional investors under certain conditions); and

- the management company or the third party acting for its account does not provide such targeted investors with a subscription pack and/or documentation with definitive information on the characteristics of the fund which would allow such investors to subscribe or commit to subscribe to the units or shares of the UCITS or the AIF.

The AMF has not provided any further detail as to what might constitute documentation with definitive information. Therefore it is not clear at this time whether it would be acceptable to provide a final PPM (so long as no fund governing documents (LPA) or subscription pack are distributed) or whether it would be preferable to provide a PPM, other presentation or teaser, in draft form only.

The AMF further indicates that any subscriptions which may subsequently be made by such surveyed investors will not be considered to be subscriptions resulting from reverse solicitation.

- The AMF also indicated that the transfer of units or shares of a UCITS or an AIF between two investors in a secondary transaction is not an act of marketing if it is not organised by the management company or a third party.

  It is unclear what type of "third party" the AMF was referring to: the AMF may, in our view, have been referring to trading platforms, as opposed to placement agents hired by the seller or buyer as would typically be the case in secondary transactions, but the use of the broad term "third party" is confusing.

- The participation of a management company in a conference or the organisation of an investors' meeting at which the management company would provide information on market developments and trends or on the management company's activities is not considered to be an act of marketing to the extent that the conference or the investors' meeting is restricted to professional investors and that there is no solicitation to invest in a specific UCITS or AIF, nor any communication regarding a UCITS or AIF whose units or shares are available for subscription.

- The response by a management company to a tender offer with technical specifications, initiated by a legal entity qualifying as a professional investor, for the setting up of an OPCVM or an FIA, also falls outside the scope of the concept of marketing.

- Finally, the subscription of "carried interest" units or shares, or of units or shares of UCITS or AIFs managed by the management company, as part of the remuneration policies of such management company, is not considered to be an act of marketing.

These new exceptions are welcome and should facilitate the ability of management companies to access French investors. The AMF has clearly signalled its desire to promote a more flexible regulatory framework for the marketing of funds to institutional investors.

CONTACT PARTNERS

STEPHANE PUEL
puel@gide.com

ANN BAKER
ann.baker@gide.com

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GUATEMALA

FINANCIAL LEASING LAW

The Economic and Foreign Trade Commission ruled in favor of the Financial Leasing Law, which establishes the legal framework for entities such as banks and financial companies, to include leasing as part of its product portfolio.

This bill, which still has to be analyzed and approved by the Congress, aims to contribute with the development of the national economy as it expands financing options in all sectors, especially for small and medium entities, providing financing to income-producing assets without having to disburse large amounts of money from the beginning. It will offer financial, operational and tax advantages that will help them to be more productive and to be more competitive in both the domestic and international markets.

The lease agreement, which has the nature of a commercial contract, is the one by which a company obtains the usage and enjoyment of a property for a specified period of time, in exchange of a rent payment. On the expiry of the contract, the lessee may exercise its right to purchase the property, paying the value agreed in the contract.

This financing model is not new in Guatemala, this is a model that has been used and is still used by companies for the purchase of income-producing assets. The aim is to regulate the leasing activity in Guatemala and give greater legal certainty to the operations under this system.

We are in our best availability to provide legal advice on this matter.

Juan José Del Pino
Associate
JuanJose.DelPino@ariaslaw.com

15 June 2016

Are mobile chat messages caught by Hong Kong's anti-spam law?

In April this year, the Magistrates' Court of Hong Kong directed the defendant to disclose information on the sending of unsolicited group chat messages on a mobile messaging application. This confirms that mobile chat messages and potentially other forms of interactive messaging on social media would be subject to the anti-spam law of Hong Kong, the Unsolicited Electronic Messages Ordinance ("**UEMO**"). The regulatory authority, the Office of the Communications Authority ("**OFCA**"), received over 1,000 complaints about the sending of an identical, unsolicited short message promoting the defendant's tutor referral service via the mobile messaging platform. The defendant was investigated by the OFCA as to potential contravention of various requirements under the UEMO, including:

- Commercial electronic messages ("**CEM**") must include accurate sender information;
- CEMs must contain an unsubscribe facility;
- Senders must honour unsubscribe requests; and
- Senders must not send CEMs to a phone number listed on the do-not-call register.

The most interesting implication of this case is that the ambit of "commercial electronic messages" is considered wide enough to cover mobile messaging. This may potentially extend to other forms of interactive messaging on social media too. This is despite the fact that when the UEMO came into force on 22 December 2007, many of these mobile messaging platforms were not yet in existence. This is consistent with the spirit of the UEMO, which aims to tackle unsolicited electronic marketing messages with a Hong Kong link sent through text or pre-recorded voice messages to electronic addresses including telephone numbers, fax numbers, email addresses and instant messaging accounts. The definition of "electronic messages" is also drafted in wide and technology-neutral terms, referring to messages in any form sent over a public telecommunications service to an electronic address, including text, voice, sound, image or video messages or messages combining those mediums.

OFCA has also stated that as a matter of policy, it takes a "technology-neutral approach" to enforcement.

Thus, the lesson to take away is, senders of marketing materials through existing or new messaging channels or media must carefully consider the potential implications of the UEMO and must comply with the applicable requirements.

Contacts

Eugene Low
Partner, Hong Kong
Eugene.low@hoganlovells.com
+852 2840 5907

About Hogan Lovells

Hogan Lovells is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

Atlantic House, Holborn Viaduct, London EC1A 2FG, United Kingdom
Columbia Square, 555 Thirteenth Street, NW, Washington, D.C. 20004, United States of America

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NEWS DETAIL

03/05/2016

INDONESIAN GOVERNMENT ISSUES PRESIDENTIAL REGULATION TO ACCELERATE ELECTRICITY INFRASTRUCTURE DEVELOPMENT

On January 19, 2016, the Government of the Republic of Indonesia (GoI) promulgated Presidential Regulation No. 4 of 2016 concerning Acceleration of Electricity Infrastructure Development (“PR 4/2016”). The issuance of PR 4/2016 is part of the GoI’s commitment to ensure the success of its 35,000 MW program.

PR 4/2016 outlines the rules of the game for the implementation of the Electricity Infrastructure Development (EID) by PT Perusahaan Listrik Negara (Persero) (PLN). It provides PLN with two options in managing the EID projects: by self-managing or by way of electricity supply cooperation through PLN’s subsidiary or with power plant developers (PPDs). The first option of self managing may be taken if the following conditions are met: (i) PLN has the financing capability to fund the equity and the project is has low cost fund resources, (ii) the construction risks are low, (iii) availability of the fuel supply, (iv) availability of a peaker to ensure a reliable operation and/or (v) development of an isolated system.

Electricity supply cooperation through PLN’s subsidiary is applicable if PLN plans to cooperate with a foreign state-owned company through a joint venture. The cooperation with the foreign state-owned company is to be made for the purpose of obtaining funding and/or energy supply for the implementation of the EID.

The cooperation with PPDs is applicable to electricity infrastructure projects which meet the criteria of requiring vast funding, having high construction and infrastructure risks, and requiring high fuel supply, new and renewable energy power plant, the expansion of an existing power plant owned by a PPD and/or the development of a power plant in a new location by several PPDs.

Both options of self managing and the electricity supply cooperation are eligible for a government guarantee. For the guarantee, the President Director of PLN is to submit an application letter to the Minister of Finance. The implementation provisions on the government guarantee will be issued by the Minister of Finance.

The GOI shows its support by stipulating in the PR 4/2016 the prioritization of the utilization of new and renewable energy for the implementation of the EID, and the provision of easy processes of the licenses and permits through the One Stop Services (PTSP) of the Investment Coordinating Board (BKPM). PR 4/2016 also stipulates the prioritization of the GOI’s land procurement for the EID.
(*by: Serafina Muryanti H.P*)

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Banking & Finance

Luxembourg

EU Market Abuse Regulation shakes up local legal framework

Friday 5 August 2016

The EU Market Abuse Regulation (596/2014) came into force in Luxembourg on July 3 2016. A new market abuse regime has been implemented, together with a wider set of rules covering the disclosure of:

- *inside information;*
- *insider list manager transactions; and*
- *modifications relating to multilateral trading facility platforms (MTFs).*

The regulation's new framework – in addition to the EU Criminal Penalties for Market Abuse Directive (2014/57/EC) – replaces the existing EU framework on market abuse that was established by the EU Insider Dealing and Market Manipulation Directive (2003/6/EC).

The Market Abuse Regulation is directly applicable in Luxembourg. It is unclear whether the existing rules that conflict with the Market Abuse Regulation or the Criminal Penalties for Market Abuse Directive will be removed from the Act on Market Abuse or adapted.

Changes affecting listed companies

Insider lists

Pursuant to the Market Abuse Regulation, issuers must now establish a list of all persons who:

- have access to inside information; and
- work for them under an employment contract or otherwise perform tasks through which they have access to inside information (eg, advisers, accountants and credit rating agencies).

Delayed disclosure of inside information

As is presently the case, listed companies will be entitled to delay the disclosure of inside information to the public under certain conditions.

Managers' transactions

The Market Abuse Regulation requires persons discharging managerial responsibilities for an issuer, as well as persons closely associated with them, to notify the issuer and competent authority of every transaction conducted for their own account relating to the issuer's shares or debt instruments – or to derivatives or other financial instruments linked thereto – within three business days of the date on which the transaction took place.

Provisions concerning MTFs

The scope of the Market Abuse Regulation has been extended to include MTFs.

Market soundings

New rules have been introduced pertaining to the disclosure of inside information in the market sounding framework in relation to capital market transactions.

Safe harbour

The safe harbour has been maintained for buy-back programmes and stabilisation, with a number of small changes.

Euro MTF in Luxembourg

The scope of the Market Abuse Regulation has been extended to apply to instruments traded on MTFs, including on the Luxembourg Euro MTF market. In essence, the changes concern the disclosure requirements for:

- inside information;
- insider lists; and
- notifications of transactions by persons discharging managerial responsibilities (PDMRs).

In regards to the disclosure regime, issuers of securities listed on MTFs must now inform the public of inside information (the role of the inside information being the one referred to in the Market Abuse Regulation),(1) in a manner that enables fast access and the complete, correct and timely assessment of the information. Under certain conditions, a delayed disclosure may be possible, subject to certain conditions such as:

- the information of the competent authorities; and
- a written explanation of how the conditions for the delay were met immediately on disclosureof the information to the public.

This regime is similar to that applicable to issuers of securities listed on regulated markets.

Issuers of securities listed on the Luxembourg Euro MTF market must also create a list of persons with access to inside information and provide it to the Luxembourg financial sector regulator (CSSF) on its request.

In addition, transactions conducted by PDMRs and persons closely associated with them must now be publicly disclosed within three business days of the date on which the transaction took place. A list of all PDMRs and persons closely associated with them will be prepared.

The Market Abuse Regulation also introduces the concept of a 'closed period' for MTF issuers' PDMRs, which relates to the prohibition of PDMRs' transactions in certain circumstances.

Materials and useful documents

The CSSF has published a substitution table indicating the relevant provisions of the Market Abuse Regulation and the Act on Market Abuse. In order to facilitate the co-existence of European and local applicable provisions, the European Securities and Markets Authority (ESMA) has released frequently asked questions on the Market Abuse Regulation, which highlight – among other things – the obligation to detect and notify suspicious orders and transactions under Article 16 of the Market Abuse Regulation. The ESMA has clarified that this obligation is not limited to investment firms within the meaning of the EU Markets in Financial Instruments Directive (2004/39/EC), but also applies to buy-side firms.

The application of the Market Abuse Regulation will be detailed in future CSSF circulars and frequently asked questions, including with respect to topics dealt with in CSSF Circulars 06/257, 07/280 and 07/323 within the context of the Act on Market Abuse.

In addition, the notification forms to be used to report to the CSSF any suspicious transactions and order reports and to report managers' transactions will soon be available on the CSSF's website, in addition to templates to be used to prepare insider lists.

Endnote

(1) Information of a precise nature that has not been made public, relating directly or indirectly to one or more issuers or to one or more financial instruments, and that – if made public – would likely have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

Contact us

Josée Weydert | Luxembourg | +352 26 12 29 97

Arnaud Joseph | Luxembourg | +352 26 12 29 37

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Simpson Grierson

Overseas investment - a busy year to date

July 20, 2016

So far 2016 has been a busy year for New Zealand's overseas investment regime:

1. The Overseas Investment Office (**OIO**) has consulted on and announced changes to its fee structure.
2. P.D. McKenzie CNZM QC has completed a review of the OIO's good character processes and made recommendations to the OIO.
3. In April 2016, the High Court ordered the first civil penalty of its type under the Overseas Investment Act 2005 (**Act**)[1].

In addition, the OIO has faced ever increasing media attention on transactions requiring consent under the Act. Transactions involving Scales Corporation and Silver Fern Farms are just two recent examples.

The Office of the Auditor-General has also announced that it will carry out a review of how effectively the OIO collects and manages information.

The Minister for Land Information, the Hon Louise Upston, held a workshop in Auckland on 21 June 2016 on foreign investment and the OIO's processes. During discussions at the workshop and following that meeting, interested parties made various suggestions to the OIO that are designed to speed processing times. These suggestions include:

Practical

1. **Outsourcing:** Given the unpredictable nature of the OIO's workload, the OIO should look to outsource part (or all) of the process relating to certain applications (perhaps those that are deemed to be least sensitive) in times of most stress.
2. **Fee Customisation:** Fees should be customised, to a greater extent, to the complexity of the application, meaning additional resources can be committed to the most complex investments.
3. **Sliding Fee Scale:** A sliding scale of fees should be introduced, tailored to deal with different types of application, and for investors who make repeat applications. Different timeframes for processing such applications should exist based on the likely complexity or simplicity.
4. **Urgency:** Situations exist where urgent consent is required, and the OIO should introduce an optional urgency fee payable for a fast tracking process.

Legal

1. **Incidental Interests in Land:** The requirement to obtain consent in connection with certain classes of "sensitive land" should be eliminated. Many transactions are caught by the regime merely because of an incidental land interest that has no real sensitivity, and is of little value to the public. For example, small recreation reserves could be removed from the list published in accordance with section 37 of the Act.
2. **Repeat Investors:** Where an investor has been approved by the OIO in the past, it should not have to provide the same level of information on each subsequent investment. To simplify the process, repeat applicants should be able to provide a simplified set of generic information to the OIO.
3. **One Fee:** When an acquisition involves several smaller transactions, only one application encompassing the whole acquisition structure should be required, enabling a reduction in processing time.
4. **Good Character:** New guidelines should be developed and published detailing the OIO's approach to the "good character" requirement. Relevance and materiality should be the guiding principles. For example, a minor driving offence of an applicant who is applying to the Overseas Investment Office to get consent to acquire "significant business assets" in New Zealand, should not be taken into

account (or be required to disclosed) as it is irrelevant. On the other hand, a charge for fraud, for example, would be clearly relevant.

Since the meeting, the OIO has engaged proactively with industry participants. In particular, the OIO has advised that:

- a quarterly newsletter is to be published by the OIO starting in August 2016;
- the OIO is now providing applicants with an estimated timeframe for their application to be allocated for full assessment (the current estimate is around 25 working days);
- pre-application discussions with applicants are being encouraged; and
- targeted exemptions to the OIO's screening process have been announced, and Treasury is expected to consult on an exposure draft of the exemptions in late August. The five proposed exemptions are:
    - an exemption from the requirement to advertise on the open market for the acquisition of leasehold farmland for a term of up to 20 years;
    - an exemption for leasehold land where a previously consented lease is being renewed or re-granted on the same terms, and the ownership and size of the property is unchanged;
    - an exemption for transactions between overseas persons for certain land that is considered less sensitive;
    - an exemption for certain transactions in connection with the Public Works Act 1981 where consent has previously been obtained to acquire the adjoining land; and
    - an exemption for overseas custodians for shareholdings held on behalf of New Zealand investors.

We will keep you updated of changes to the OIO's processes and the overseas investment regime over the coming months.

[1] Chief Executive of Land Information NZ v Carbon Conscious New Zealand Limited [2016] NZHC 558 [4 April 2016], in which the Court ordered Carbon Conscious New Zealand Limited to pay a $40,000 civil penalty.

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NICARAGUA

IAD□ PLANS TO INVEST IN GEOTHE□MAL ENE□G□ E□PLO□ATION IN NICA□AGUA

The Inter-American Development Bank (IADB) presented the proposal of carrying out a project of exploration and certification of geothermal energy reserves in the country.

Mr. Carlos Melo, IADB´s representative in Nicaragua, has presented to the local media the proposal which aims to carry out a project of exploration and certification of geothermal reserves in the country. The purpose of the project is the promotion of the alternatives for the generation of renewable energy, as well as the consolidation of the sector and the promotion of foreign investment in the country.

Likewise, Mr. Melo has exposed that the project will have an approximate cost of up to USD $ 60 million dollars and that public and private partnerships are expected for its execution.

The execution of this Project will allow Nicaragua to present a more attractive and reliable offer for potential investors, national or foreigners, since they will have access to a specialized study of the available reservoirs, potential capacity and other specific conditions of the reservoirs, which consequently, should expedite the obtainment of financing for the geothermal exploration and exploitation, as well as required permits and authorizations, among other resulting benefits.

If you should require further information about this matter, please do not hesitate to contact us.

Rodrigo Ibarra R.
Associate
Rodrigo.Ibarra@ariaslaw.com

Secondary Listings on the SGX - Key Requirements and Considerations

August 4, 2016

Key contact

Wan Hong Chan
Senior Partner, Singapore
D +65 6885 3668

Introduction

As at 13 January 2016, there are 34 companies with a secondary listing on the Singapore Exchange Securities Trading Limited (the "SGX"). Out of these companies, 7 achieved their secondary listing on the SGX in the past 5 years.

This article seeks to highlight the key considerations and criteria for a foreign company exploring a secondary listing of its shares on the SGX Main Board.

Typical rationale for seeking a secondary listing on the SGX

There are various reasons why a foreign issuer may wish to seek a secondary listing on the SGX.

Some of these reasons could include the following:-

1. A secondary listing on the SGX could enhance an issuer's public image in the Asian region as well as internationally. Approximately 40% of the over 760 listed companies on the SGX come from overseas and, as at 13 January 2016, there were 34 companies with a secondary listing on the SGX-ST.
2. The depth of the issuer's shareholder base could be enlarged and improved, thereby improving liquidity in the trading of its securities, especially if there is limited liquidity in the domestic market where the issuer is primarily listed. This could also result in more efficient share prices arising from trading in an additional market.
3. The issuer would be able to tap into other capital markets to fund its business growth and expansion. It would also provide investors and the Singapore public an opportunity to participate in the equity of the company.
4. There could be strategic or other considerations specific to a particular company. For instance, given Singapore's continued development as a life sciences hub for the region, there could be possible long term strategic considerations for a life science or biomedical company that is already listed in a foreign jurisdiction to seek a secondary listing on the SGX.

Key rules and criteria prescribed by the SGX

The SGX Listing Manual prescribes certain rules and criteria for foreign companies seeking a secondary listing on the SGX Mainboard. Highlighted below are some of the key rules and criteria that potential foreign issuers should be mindful of:-

1. The SGX Mainboard listing requirements specified in the SGX Listing Manual would need to be satisfied by the foreign issuer[1].
2. The foreign issuer must already be listed or will be concurrently listed on a foreign stock exchange and must or will be subject to the listing or other rules of the primary home exchange.
3. The foreign issuer must have at least 500 shareholders worldwide, or at least 500 shareholders in Singapore or 1,000 shareholders worldwide if there is no established framework for the movement of shares between the SGX and the primary home exchange.
4. The foreign issuer does not need to comply with the SGX's listing rules provided it undertakes to:-

   (a) release all information and documents in English to the SGX at the same time as they are released to the home exchange;

   (b) inform the SGX of any issue of additional securities in a class already listed on the SGX and the decision of the home exchange in relation there to this; and

   (c) comply with such other listing rules as may be applied by the SGX from time to time.
5. The financial statements submitted for a secondary listing application and future periodic financial reports have to be reconciled to the Singapore Financial Reporting Standards, International Financial Reporting Standards or United States Generally Accepted Accounting Principles.
6. All securities are to be quoted in Singapore dollars, unless the SGX agrees to a quotation in a foreign currency or unless the Monetary Authority of Singapore requires otherwise. The foreign issuer is encouraged to consult the SGX if it prefers a quotation in a foreign currency.
7. Arrangements satisfactory to the SGX must be made to enable shareholders in Singapore to register their shareholdings promptly.
8. A foreign company seeking a listing on the SGX must have at least two Singapore resident independent directors.
9. There is no moratorium requirement on promoters' shareholdings in the case of a secondary listing.
10. It should be noted that the SGX has absolute discretion concerning the admission of an issuer to its official list and the quotation of its securities, and may approve listing applications unconditionally or subject to conditions. The SGX may also vary any such conditions or impose additional conditions and prescribe additional or other requirements for the listing of specific types of issuers.
11. A company with a secondary listing on the SGX Mainboard must, on a continuing basis, maintain its listing on its home exchange, be subject to all the applicable listing rules of its home exchange (unless a waiver has been obtained for any non-compliance) and provide an annual certification in the form prescribed in the listing rules that it has complied with the applicable continuing listing obligations

in the SGX listing manual.

In addition, SGX had on 3 November 2014 further streamlined its rules for secondary-listed companies to further enhance its stock market.

Under the new framework, SGX will deem a company as coming from a "developed" jurisdiction if both the Financial Times Stock Exchange ("FTSE") and Morgan Stanley Capital International ("MSCI") classify the jurisdiction of the company's home exchange as "developed". FTSE and MSCI, which are leading international index providers, have currently classified 23 jurisdictions including Singapore as "developed". SGX will treat all other jurisdictions as "developing".

Where a company is secondary-listed on SGX, and primary-listed on the main board of any of the 22 developed jurisdictions other than Singapore, SGX will not impose additional regulatory requirements under the new framework. Such a company must remain primary-listed on its home exchange and comply with all relevant rules of its home exchange.

For a company from a developing jurisdiction, SGX will review its home exchange's legal and regulatory requirements and may impose additional requirements to enhance shareholder protection and corporate governance standards.

SGX will continue to assess whether a company seeking a secondary listing is suitable for the Singapore market, including whether it can meet the admission criteria for SGX.

Other considerations

1. A foreign issuer may want to consider the differences between a dual primary listing or a secondary listing on the SGX; and a listing with a share offering or a listing by way of introduction, to determine which listing structure best suits its requirements:-

   (a) In a dual primary listing, the issuer is primarily listed on both the home exchange as well as the SGX, and would need to comply with the listing rules of both exchanges. In the case where the issuer is primarily listed on the home exchange and secondarily listed on the SGX, the issuer needs to comply with the listing rules of the home exchange but generally does not need to comply with the SGX's listing rules save for certain minimal requirements (as discussed above).

   (b) An issuer may carry out an offering of its securities, in connection with its listing on the SGX. Alternatively, an issuer may list its securities on the SGX by way of introduction without any offer being made for the subscription/sale of its securities if it complies with the relevant shareholding spread requirements.
2. A share migration arrangement would need to be implemented between the relevant primary home exchange and the SGX, if there is no existing direct trading or settlement system established between the primary home exchange and the SGX.
3. A comparative study on the differences between Singapore's company law and the foreign jurisdiction's company law may need to be prepared for inclusion in the prospectus/introductory document to be issued by the issuer in connection with the secondary listing on the SGX.
4. In addition, to facilitate the SGX's review of the foreign issuer's listing application, a comparative study on the differences between the listing rules of

the home exchange and the SGX listing rules may need to be prepared and submitted.

5. The issuer should also bear in mind that different time zones, trading characteristics (including trading volume and liquidity), trading rules and investor bases (including different levels of retail and institutional participation) may result in different trading prices on the SGX and the primary home exchange.
6. Additionally, there is a practical issue to consider in relation to substantial shareholding disclosure requirements. Singapore shareholders may have to disclose their shareholdings above a certain percentage or threshold on the primary home exchange of the foreign issuer in accordance with the listing rules of the primary home exchange and/or the laws of the country of incorporation of the foreign issuer. Exemptions may need to be explored or a system put in place to facilitate such disclosure.
7. The foreign issuer should consider which currency it wishes to use for quotation of its shares on the SGX. If it prefers a quotation in a foreign currency, the issuer should consult the SGX. Currently, there are securities traded on the SGX in the United States dollar, Hong Kong dollar, Australian dollar, Euro and Japanese yen.
8. Generally, shares are traded on the SGX in board lots of 100 shares. The foreign issuer would need to decide on the board lot for its shares for trading on the SGX, and consult the SGX where the proposed board lot is other than 100 shares.

Conclusion

With the current financial crisis continuing to affect Western economies with no clear rebound in sight, an increasing number of companies are looking to Asia for growth, including listing and fund raising opportunities. In tandem with such a trend and as the SGX seeks to strengthen its position as the preferred venue for companies with a focus on the Asian region, we can expect to see a continued interest in foreign issuers seeking a dual listing on the SGX.

Whilst the potential benefits and upside of a secondary listing on the SGX would be key factors to be considered by a potential applicant, the applicant should also be mindful of the regulatory requirements and possible practical constraints, and should seek appropriate professional advice in deciding whether to proceed with such an exercise[2].

Endnotes:

[1] Under Rule 210(2) of the SGX Listing Manual, an issuer applying for listing of its equity securities on the SGX Mainboard must satisfy, in addition to other requirements, one of the following quantitative criteria:-

(a) minimum consolidated pre-tax profit (based on full year consolidated audited accounts) of at least S$30 million for the latest financial year and has an operating track record of at least three (3) years;

(b) profitable in the latest financial year (pre-tax profit based on the latest full year consolidated audited accounts), has an operating track record of at least three (3) years and has a market capitalisation of not less than S$150 million based on the issue price and post-invitation issued share capital; or

(c) operating revenue (actual or pro forma) in the latest completed financial year and a market capitalisation of not less than S$300 million based on the issue price and post-invitation issued share capital. Real Estate Investment Trusts and Business Trusts who have met the S$300 million market capitalisation test but do not have historical financial information may apply under this rule if they are able to demonstrate that they will generate operating revenue immediately upon listing.

[2] Editor's note: For the perspective of a Singapore-listed company seeking dual listing in Singapore and a foreign exchange, please refer to the June 2011 edition of the Rodyk Reporter which published an article, "Dual Listings - A Singapore Perspective", which discussed the key considerations that a Singapore company should take into account in a dual listing.

This article was first published in the Rodyk Reporter in March 2012. This is the latest updated version.

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Ideas

Public Utility Commission of Texas Studies Alternative Electricity Ratemaking Mechanisms

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Updates

On May 22, 2016, the Public Utility Commission of Texas ("PUCT") released a report outlining alternative ratemaking mechanisms used in other states to set electric utility rates. The report, prepared by Christensen Associates Energy Consulting, was requested in response to Senate Bill No. 774 of the 84th Legislature, Regular Session in 2015, which requires the PUCT to analyze ratemaking mechanisms adopted by other states that serve as alternatives to traditional cost-of-service ratemaking and to provide a report to the legislature detailing the findings by January 15, 2017. A current rate adjustment mechanism that permits timely recovery of distribution infrastructure costs—the distribution cost recovery factor or DCRF—is scheduled to expire on September 1, 2019. Before the expiration, the Texas legislature plans to explore the various types of ratemaking mechanisms that could be used to ensure timely cost recovery while maintaining incentives to achieve other ratemaking goals.

While the report was prepared for the purpose of informing electric utility ratemaking policy in Texas, it contains information about the structure and comparative advantages and disadvantages of alternative ratemaking mechanisms that may be useful in any number of state or federal venues and may be applicable to gas and other utilities as well.

The Christensen report begins by reviewing a number of factors that have raised interest over the years (in Texas and elsewhere) in alternative ratemaking mechanisms. These factors include: (1) the desire to improve performance incentives among utilities, (2) the deregulation of wholesale electricity markets, (3) public policy support for renewable energy, (4) technological progress, and (5) the declining rates of electricity sales growth.

Next, the report examines a variety of ratemaking policy goals, some of which are compatible with each other, and some of which are mutually exclusive, that could drive alternative ratemaking proposals. The goals examined include the reduction of procedural costs, the establishment of reasonable procedural timetables, decoupling cost recovery from variations in electric load, assuring cost recovery, assuring the prudency of costs, assuring reasonable rates of return on equity ("ROE"), assuring service quality, promoting energy conservation, and maintaining rate stability.

At its core, the report evaluates six broad revisions to traditional cost-of-service ratemaking and five small incremental revisions to cost-of-service ratemaking.

Broad Revisions

The report focuses extensively on six broad alternatives to traditional cost-of-service ratemaking.

- **Formula Rate Plans:** The formula rate plan mechanism operates using pre-defined formulas to adjust rates automatically to keep the utility's actual ROE within a specified band near the authorized ROE. Benefits of the formula rate plan mechanism include the reduction of both the frequency and cost of rate cases, the ability of customers to gain an early share of cost efficiencies that a utility may acquire between rate cases, and the reduction of a utility's financial risk by assuring a reasonable ROE.
- **Straight Fixed-Variable Rates ("SFV Rates"):** SFV Rates allow the utility to recoup nearly all fixed costs through fixed monthly charges (per customer-month) or peak demand charges (per peak kW) that are independent of the volume of electricity consumed. Benefits of SFV Rates include improving utility recovery of fixed costs, mitigating the need to adjust rates in response to load changes, and removing disincentives for utility promotion of energy efficiency. The report identifies the SFV Rates mechanism as one of the principal mechanisms for achieving the goal of decoupling cost recovery from load variations.
- **Revenue Decoupling:** Revenue decoupling adjusts energy prices to compensate for differences between actual revenues per customer and test-year revenues per customer. Revenue decoupling accomplishes two main goals. First, decoupling encourages energy efficiency by consumers by maintaining an energy-sensitive charge and removes disincentives to utility promotion of energy efficiency. Second, decoupling protects utility recovery of fixed costs from changes in customer sales. Additionally, the report recognizes revenue decoupling as one of the mechanisms that could potentially decouple cost recovery from load variations.
- **Lost Revenue Adjustment Mechanisms ("LRAMs"):** LRAMs adjust utility rates between rate cases to address the impacts that conservation has on utility sales that were not considered during the general rate case forecast. LRAMs, like other mechanisms, remove utility disincentives for promoting energy efficiency. In addition, LRAMs reduce the need for frequent rate cases. LRAMs are also identified as a mechanism that could help decouple cost recovery from load variations.
- Multi-Year Rate Plans: Multi-year rate plans work by holding full rate cases every three to five years and having automatic rate adjustments in between cases that focus on external factors such as changes in a utility's business environment. The advantage of multi-year rate plans is that they incentivize utilities to cut costs and improve performance, while also providing more predictable utility revenues and customer rates.
- **Price Cap Plans:** Price cap plans are designed to encourage utilities to reduce costs by tying price increases to some measure of inflation while also accounting for some measure of productivity improvement in the power industry. The main benefit of price cap plans is that they provide a large incentive for utilities to seek production efficiency.

<u>Incremental Revisions</u>

In addition to the broad alternatives, the report evaluates five smaller, incremental changes to cost-of-service ratemaking.

- **Future Test Years:** Under a future test year mechanism, the data used in general rate cases would come from the first twelve-month period during which new rates would apply. The principal benefit of using future test years is that the data will be appropriate for the time period to which it will apply.

- **Earnings Sharing Mechanisms:** Earnings sharing mechanisms allow for rate adjustments outside of the general rate case when the utility's actual ROE falls outside of a pre-determined band. Earnings sharing mechanisms provide lower procedural costs for assuring that utilities' actual ROEs do not drastically differ from authorized ROEs, thereby helping to assure reasonable ROEs.
- **Cost Trackers:** Cost trackers use a formula or predefined rule to allow utilities to recover specific costs outside of general rate cases. The main advantage of cost trackers is that they provide a timely recovery of costs, which reduces utilities' financial risk, while not creating any incentives to reduce performance.
- **Infrastructure Surcharges:** Infrastructure surcharges allow utilities to recover a portion of their capital costs before the completion of a facility's construction. The infrastructure surcharges help mitigate future rate shock and avoid delays in capital cost recovery.
- **Performance Incentive Regulation:** Performance incentive regulation offers financial incentives to utilities—such as adjustments to ROE—to improve service quality and performance.

As we read the report, it suggests a preference for SFV Rates as a broad-based revision to Texas' rate setting mechanism. According to the authors of the report, SFV Rates have three main advantages. First, they provide "a close match between retail price components and the ways (*i.e.*, fixed or variable) that costs are incurred." As a result, "changes in sales lead to roughly equal changes in revenues and costs." Second, the rates that are set need not change as load changes. Third, SFV Rates impose a low administrative burden. However, the report also points out that a major disadvantage of SFV Rates is that they require significant revisions to present rates, which may have an adverse impact on low-volume and low-income customers.

The PUCT has opened Project No. 46046 to consider the report and will convene an Open Meeting on August 10th, 2016 at 9:30 a.m. to discuss the report and receive general comments. The PUCT has solicited feedback on two specific questions: (1) is the report sufficiently comprehensive or are there ratemaking mechanisms not covered in the report that the PUCT should consider, and (2) in addition to the findings and recommendations contained in the report, what further recommendations, if any, should the PUCT make to the Texas legislature?

The PUCT report on Alternative Electricity Ratemaking Mechanisms Adopted by Other States can be found here.

Please contact one of the authors below or your Baker Botts relationship attorney with any questions. The authors wish to acknowledge the assistance of Baker Botts summer associate, Carlos Marquez, in preparing the above summary.

Related Professionals

James H. Barkley

Partner

Brooksany Barrowes

Partner

Emil Barth

Special Counsel

Jay T. Ryan

Partner

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Insurers Beware: The Risks of Failing to Comply With OFAC SDN Screening Requirements

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By Burt Braverman and Brian Wong

Two related enforcement actions by the U.S. Department of Treasury's Office of Foreign Assets Compliance (OFAC) are stark reminders that health insurance providers (and other insurers) must maintain adequate U.S. trade sanctions compliance programs, including conducting screening of customers and others. While the insurance company and its third party administrator (TPA), which provided health insurance coverage to, and received payments from, sanctioned narcotics dealers, were fortunate to escape with non-monetary "Findings of Violation," in the future insurers that do not engage in adequate screening and other trade sanctions compliance measures may not be so lucky.

Under the Foreign Narcotics Kingpin Sanctions Regulations, 31 C.F.R. Part 598, "U.S. Persons"[1] are forbidden from dealing with all blocked property and interests in property within the United States, or within the possession or control of any U.S. person, that are owned or controlled by significant foreign narcotics traffickers, as identified by the President, or foreign persons designated by the Secretary of the Treasury. Similar prohibitions are found in other U.S. trade sanctions programs (e.g., various country-specific sanctions (e.g., Iran, North Korea, Sudan, Syria, Cuba and Crimea), non-proliferation sanctions, anti-terrorism sanctions, etc.). The names of individuals, groups and companies with whom such dealings are forbidden – which today number approximately 7,500 -- are collected in the Specially Designated Nationals (SDN) List, which is maintained by OFAC.

Although OFAC proscribes U.S. persons from engaging in transactions with such persons, it does not specifically describe what actions will be deemed adequate for purposes of measuring compliance with the sanctions regulations. Rather, U.S. Persons must perform a "risk-based" analysis to determine an appropriate level of compliance based upon the nature of their business and the likelihood of engaging in transactions with SDNs. Two fundamental compliance measures are (1) maintaining and applying an adequate written compliance program, and (2) periodically screening customers, and perhaps other persons, to identify SDNs. Violations of the regulations can lead to the imposition of substantial monetary penalties, which can amount to the higher of $250,000 (which amount is about to be increased) or twice the value of the transactions at issue.

In its recent enforcement actions, OFAC found that AXA Equitable Life Insurance Company (AXA) facilitated and/or processed payments and maintained two health insurance policies in which SDNs had an interest. When AXA issued the policies in 1992, the policy holders were not on the SDN List. The Kanawha Insurance Company (whose parent company is Humana, Inc.), as TPA, serviced the policies, collected premiums, maintained policy records, and answered general inquiries from insured parties. In 2009, OFAC added the policy holders to the SDN List. Neither AXA nor Kanawha screened the names of the policyholders serviced by the TPA, and both companies failed to identify and block the policies and premium payments. In 2011, a new company assumed TPA responsibilities, identified the policyholders as SDNs, and coordinated with AXA to block and cease providing any services for the policies.

OFAC found that Findings of Violation should be issued because:

- The companies are large and commercially sophisticated financial institutions.

- The companies facilitated and/or processed numerous payments, and maintained two health insurance policies in which one or more SDNs had an interest, doing harm to the U.S. sanctions programs.

- The companies' compliance programs did not ensure that the names of policyholders associated with policies were screened or reviewed for OFAC compliance purposes.

However, OFAC elected not to impose monetary penalties because:

- No company personnel, including managers or supervisors, appear to have had actual knowledge of the conduct that led to the violations.

- The companies had not received a penalty notice or Finding of Violation from OFAC relating to substantially similar violations in the five years preceding the current violation.

- The companies cooperated with OFAC's investigation, including by making voluntary disclosures, and executing statute of limitations tolling agreements and extensions.

These companies were fortunate to avoid monetary fines, but the violations nonetheless have consequences. For example, should either company violate OFAC's rules again in the next five years, OFAC will consider these past violations, making significant monetary penalties likely.

OFAC's recent actions are a reminder to health (and other) insurance companies, as well as their administrators and other service providers, that they must maintain and apply adequate OFAC compliance programs and procedures, including periodic screening of customers and others. Failure to do so could be very risky indeed.

FOOTNOTE

1 A "U.S. Person" is any United States citizen or national, permanent resident alien, an entity organized under the laws of the United States (including its foreign branches), or any person within the United States. 31 C.F.R. § 598.318.

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FDA Issues Final General Wellness Product Guidance

04 August 2016
Medical Device Alert

On July 29, 2016, the Food and Drug Administration (FDA or the agency) released its final guidance document entitled, *General Wellness: Policy for Low Risk Devices* (Final General Wellness Guidance). A draft guidance of the same name was published previously on January 20, 2015 (Draft Guidance).[1] The Final General Wellness Guidance reflects the agency's current thinking on general wellness products. As discussed in further detail below, the Final General Wellness Guidance tracks the Draft Guidance in most respects, with some notable deviations.

General Wellness Product Policy

In summary, consistent with the Draft Guidance, the Final General Wellness Guidance clarifies that FDA does not intend to examine low risk general wellness products to determine whether they are devices under the Federal Food, Drug and Cosmetic Act (FD&C Act), or, if they are devices, to determine whether they comply with the relevant regulatory requirements. Also consistent with the Draft Guidance, a "general wellness product" must be intended *only* for general wellness use, and it must pose a low risk to the safety of users and other persons. There are two types of intended uses that qualify as general wellness uses:

- an intended use that relates to maintaining or encouraging a general state of health or a healthy activity.
  - This would include claims about sustaining or offering general improvement to functions associated with a general state of health that do not make any reference to diseases or conditions (e.g., claims that focus on weight management, physical fitness, relaxation, enhancing learning capacity).

- an intended use that relates the role of healthy lifestyle with helping to reduce the risk or impact of certain chronic diseases or conditions and where it is well understood and accepted that healthy lifestyle choices may play an important role in health outcomes for the disease or condition.
  - This would include uses that promote, track, or encourage healthy lifestyle choices that may help reduce the risk of certain chronic diseases or conditions or may help an individual to live well with such a condition. The Final General Wellness Guidance presents heart disease, high blood pressure, type 2 diabetes, anxiety, migraine headaches, and skin cancer as examples of the disease.

In addition, a general wellness product must be "low risk," which is determined by evaluating the following product characteristics:

- The product is not invasive;
- The product is not implanted;
- The product does not involve an intervention or technology that may pose a risk to the safety of users and other persons if specific regulatory controls are not applied, such as risks from laser or radiation exposure.

In addition, the Final General Wellness Guidance still provides a general wellness product decision algorithm (General Wellness Decision Algorithm) to help stakeholders analyze whether their product falls under the policy.

Key Changes According to FDA

In its public announcement of the Final General Wellness Guidance, FDA noted the following "key changes" from the draft guidance:

- Clarified that CDRH's general wellness policy does not apply to devices that present risks to users' or *other persons*' safety.
- Clarified that FDA will continue to focus oversight on devices that do not meet the policy's definition of "low risk," as outlined above.

Of the key changes noted by FDA, the change to the definition of "low risk" is more significant. Specifically, FDA removed the requirement that a general wellness product not raise novel questions of usability, or new questions of biocompatibility, but added consideration of whether the product is implantable. The three criteria included in the Final General Wellness Guidance were otherwise captured in the prior "low risk" definition found in the Draft Guidance. Moreover, as indicated above, the agency clarified that general wellness products may not pose risks to users' *or other persons'* safety. The Final General Wellness Guidance goes on to clarify that simply being classified as a class I device does not necessarily mean that a device is "low risk" under the Final General Wellness Guidance.

Other Notable Changes

In addition to the key changes noted by FDA, there are other important differences between the Draft Guidance and Final General Wellness Guidance.

Most notably, the Agency modified the list of claims that may be acceptable for general wellness products. For example, with respect to claims regarding "maintaining or encouraging a general state of health" FDA made several modifications:

- Claims regarding enhancement of learning capacity were added;
- Claims regarding the enhancement of cardiac function were eliminated from the list of examples; and
- FDA clarified that claims to treat *anxiety disorders* are not acceptable under this category (i.e., prohibition was altered from claims to treat anxiety to claims to treat *anxiety disorders*).

Further, with respect to disease specific claims, the Final Guidance, like the Draft Guidance, explains that the association between the healthy lifestyle choice and the health outcomes for a specific disease or condition must be generally accepted. In the Draft Guidance, FDA noted that such an association would typically be described in peer-reviewed scientific publications, leaving open the possibility that the association could be established through other means. In its Final General Wellness Guidance, FDA clarifies that such associations *are* described in peer-review scientific publications *or official statements* organization is an acceptable means to establish the association, and suggests that the association is to be established using one of those two sources.

FDA added a new example of an appropriate disease-related claim: mobile app that reminds users to keep exposed skin out of direct sunlight when the UV index is high, which as part of a healthy lifestyle, may help reduce the risk of skin cancer. FDA also added two examples of chronic diseases that would be acceptable to reference under this category: migraine headaches and anxiety.

In addition, FDA added the following to its list of devices that are not "low risk": neurostimulation devices and devices that require a venipuncture.

Interestingly, in the General Wellness Decision Algorithm, FDA altered the possible conclusions such that the most definitive conclusion one may draw is that "the product is *likely* a general wellness product within the scope of this guidance, but the factors and examples in the guidance should be reviewed to confirm the status of the product." (emphasis added) Under the Draft Guidance, the General Wellness Decision Algorithm allowed stakeholders to conclude that a product was a "general wellness product".

Key Takeaways

The Final General Wellness Guidance reflects the same purpose, and largely the same policy structure, as was announced in the preceding Draft Guidance. As with the Draft Guidance, the final general wellness policy has implications for a broad range of device types, but seems to be specifically geared toward the mobile health space. This is evident from the agency's decision to include four new examples for disease-related general wellness claims, all of which pertained to software devices. The Final General Wellness Guidance also remains consistent with FDA's prior Mobile Medical Apps guidance as it relates to software products intended for individuals to log, record, track, evaluate, or make decisions or behavioral suggestions related to developing or maintaining general fitness, health or wellness. As noted in Hogan Lovells' prior discussion of the Draft Guidance, even if an app exceeds the scope of a general wellness product, it may still fall into the "enforcement discretion" bucket of the MMA Guidance.

Other key takeaways include:

- FDA has modified its definition of "low risk" under the general wellness product policy, and clarified that class I devices are not necessarily "low risk" for purposes of the policy;
- FDA provided three new examples of chronic diseases that could be referenced in a disease-related general wellness claim: migraines, anxiety, and skin cancer;
- When claiming that healthy lifestyle choices may play an important role in health outcomes for a chronic disease, that association must be generally accepted. FDA has clarified that such generally accepted associations are described in peer-review scientific publications or official statements made by healthcare professional organizations.

[2] FDA includes a definition for "healthcare professional organization" in footnote 6 of the Final General Wellness Guidance.

The team

Yarmela Pavlovic
Partner
San Francisco

Jennifer Agraz Henderson
Counsel
Washington, D.C.

Blake E. Wilson
Associate
Philadelphia

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