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February 2017 e-Bulletin

MEMBER NEWS

►BAKER BOTTS Welcomes Highly Regarded IP Litigator
►CLAYTON UTZ Announces New Board Appointments
►HOGAN LOVELLS Continues Antitrust Practice Expansion
►ROUSAUD COSTAS DURAN Strengthens Regulated Markets Practice
►SIMPSON GRIERSON Appoints Three New Partners
►SKRINE Appoints Four Partners

COUNTRY ALERTS

►ALGERIA 2017 Investment Related Measures GIDE
►ARGENTINA New Data Protection Bill ALLENDE BREA
►AUSTRALIA Native Title Agreement-Making Turned on its Head CLAYTON UTZ
►BELGIUM, LUXEMBOURG, NETHERLANDS Court of Justice of European Union Imposes Strict Conditions for Payment Service Providers NAUTADUTILH
►BRAZIL Cannabidiol and Tetrahyydrocannabinol Authorised for Medical Use TOZZINIFREIRE
►CANADA New Coordinated Rules Relating to the Clearing of Over the Counter Derivatives BENNETT JONES
►CHILE Public Power Tender Process to Supply Distribution Companies CAREY
►CHINA Regulation on Internet-Based Live Broadcasting Business DAVIS WRIGHT TREMAINE
►COSTA RICA Corporate Tax Approval ARIAS
►HONG KONG RegTech - The State of Play HOGAN LOVELLS
►INDONESIA Draft Law on Drug and Food Supervision ABNR
►MALAYSIA Bankruptcy Act Amendment Bill SKRINE
►NEW ZEALAND The Flouride Bill Is Here SIMPSON GRIERSON
►SINGAPORE Enforcement of Judgement Debt - Joint Accounts - The New Shield? DENTONS RODYK
►TAIWAN Promulgation of Taxpayer Protection Act to Safeguard Taxpayer Rights LEE & LI
►UNITED STATES DMCA Safe Harbor Protection - All Online Service Providers Must Re-Register Agents BAKER BOTTS
►UNITED STATES FCC Eliminates Two Public File Requirements DAVIS WRIGHT TREMAINE
►UNITED STATES Travel Ban Update: Appeals Court Upholds Temporary Halt on Enforcement HOGAN LOVELLS
►VENEZUELA Approval of Multilateral Instrument for Modification of Over Two Thousand Bilateral Tax Treaties HOET PELAEZ CASTILLO & DUQUE

CONFERENCES & EVENTS

Upcoming Conferences

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

PRAC 62nd International Conference
Sao Paulo - Hosted by TozziniFreire - October 21 - 24, 2017

For more information visit www.prac.org

MEMBER DEALS MAKING NEWS

►ARIAS Acts for International Finance Corporation in USD$45M Commercial Real Estate Loan

►BAKER BOTTS Represents Kimbell Royalty Partners, LP in First MLP Initial Public Offering of 2017

►CLAYTON UTZ Advises MMG Limited on US $210 million sale of Golden Grove mine to EMR Capital

►DAVIS WRIGHT TREMAINE Leads $83 Million CMBS Refinancing for the Westin Palo Alto Hotel

►GIDE Advises Joint Lead Managers on €500 million note issue by Bolloré

►HOGAN LOVELLS Advises Allianz Global Investors on €450 billion AUM Global Outsourcing

►MUNIZ Acts for Coca-Cola Bottler Corporation Lindley's in USD$42 million Bond Offering

►NAUTADUTILH Assists Delta with Sale of Delta Retail to EQT

►RCD Advises Siroco Capital on €2.7 million Acquisition of El Conjuro Wind Farm (Granada)

►SANTAMARINA Y STETA Assists Kruger Brown in Plastic Acquisition

►SIMPSON GRIERSON advises Daiwa Living Management on significant transaction

►TOZZINIFREIRE Assists Brazilian subsidiary of French Company Elis in USD$403 million acquisition of Lavebras

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BAKER BOTTS WELCOMES HIGHLY REGARDED IP LITIGATOR

Clive Thorne Joins Baker Botts as Special Counsel in London IP Practice

LONDON – 07 February, 2017 - Baker Botts L.L.P., a leading international law firm, announced today that Clive Thorne has joined the firm as Special Counsel in the Intellectual Property department of the London office.

“Clive is a highly regarded litigator and specialist in Intellectual Property litigation and arbitration, including patents, designs, copyright, branding and trade secrets with a distinguished pedigree, and I am delighted that he has chosen to join our firm,” said Barton E. Showalter, Chair of the Intellectual Property Department at Baker Botts and partner in the Dallas office.

“Clive is a great addition to our London practice and I am excited about the prospect of working with such a talented senior litigator,” added Mark Rowley, Partner-in-Charge of the firm’s London office. “As we continue to build on our international capabilities, particularly with clients seeking representation in Asia, his unmatched experience in the conduct of multi-jurisdictional litigation and cross-border IP matters will help to grow our IP practice.”

”I very much look forward to working alongside such a commercially focused lawyer who can lead core IP matters for businesses of all stages effectively and is so highly sought after for his design, trade mark, trade secrets and patent work, ” commented Neil Coulson, a London based partner and Chair of the London Intellectual Property Department.

Before joining Baker Botts, Clive Thorne served as a partner in the IP and Commercial Team at Wedlake Bell. He previously spent three years as a partner at RPC and 23 years as a partner and head of the IP practices at Denton Hall and at Arnold & Porter. Mr. Thorne qualified in 1977 with Clifford-Turner and spent four years practising in Hong Kong.

Mr. Thorne is an Associate of the Chartered Institute of Patent Attorneys, Fellow of the Chartered Institute of Arbitrators and Liveryman of the Worshipful Company of Arbitrators.

Mr. Thorne is also a founding member of The Intellectual Property Lawyers Organisation and formerly Vice Chair of the Disputes sub-committee of the IBA Technology Committee. He is an established writer and lecturer on Intellectual Property Law, and joint author of the User's Guide to Copyright Law and User's Guide to Design Law published by Bloomberg Professional.

Mr. Thorne is a qualified solicitor in England and Wales. He is also admitted to practice in Hong Kong and Victoria, Australia. He has an MA (Hons) in Law from Cambridge University.

With over 180 lawyers and IP professionals holding over 220 technical degrees, Baker Botts’ IP practice provides unparalleled service, experience and capability in the high technology and life sciences field.

For more information, please visit www.bakerbotts.com

CLAYTON UTZ ANNOUNCES NEW BOARD APPOINTMENTS

SYDNEY – 08 February 2017: Clayton Utz Major Projects partner Steve O'Reilly has been appointed Chair of the Firm's Board, effective 1 January 2017. Steve succeeds Dispute Resolution partner Ross Perrett, who served in the role for six years.

The Board has also appointed Jane Halton as an independent non-executive director, also with effect from 1 January 2017. Jane replaces Peter Hawkins, who will retire from the Board during 2017.

Steve is a longstanding Clayton Utz partner, specialising in Construction and Major Projects and International Arbitration. He is actively involved in the Firm's Pro Bono practice and Social Responsibility programs, and is a founding member of the not-for-profit organisation, Communities Assist.

Jane has extensive public and private sector experience, with a particular focus on the health sector. In a 33-year career within the public service, she held several senior roles including Deputy Secretary in the Department of Prime Minister and Cabinet, Secretary of the Department of Health (formerly Health and Ageing) and most recently, Secretary of the Department of Finance. Jane has also held various senior roles within the OECD and World Health Organisation, and also served for five years as a Commissioner on the Australian Sports Commission. In October 2016, Jane was appointed to the board of ANZ as a non-executive director.

For additional information visit www.claytontuz.com

HOGAN LOVELLS CONTINUES ANTITRUST PRACTICE EXPANSION WITH ADDITION OF ANDREW LEE

WASHINGTON, D.C. – 06 February 2017: Hogan Lovells announced today that Andrew Lee will join the firm's Antitrust, Competition and Economic Regulation (ACER) practice as a partner in its Washington, D.C. office. He joins the firm from Steptoe & Johnson LLP where he was a partner in the Antitrust & Competition Practice in Washington, D.C. Prior to that, he practiced law at White & Case LLP for about a decade, where he began to focus his time on representing clients based in Asia. He started his career at the U.S. Federal Trade Commission.

Lee's arrival follows the firm's December hire of Christopher H. Casey, former Deputy Associate Attorney General at the United States Department of Justice, and the January promotion of Justin Bernick and Meghan Rissmiller to partnership.

Lee concentrates his practice on antitrust/competition law, including cartel defense and merger review proceedings. He has particularly strong experience representing Korean and Japanese clients, and has advised clients on mergers and defended them during investigations by the Federal Trade Commission (FTC) and the Department of Justice (DOJ). Fluent in Korean, Lee will be actively involved in the expansion of the firm's antitrust practice in Korea, Japan, and the rest of Asia.

"We're excited to add an accomplished attorney like Andrew, who has a notable reputation in Asia, to our ACER practice," said Suyong Kim, ACER co-head. "One of our firm's strategic objectives is to grow our client base in Asia. Andrew has a deep understanding and strong ties to clients in Korea and Japan, where many companies have been facing antitrust enforcement activity by EU and U.S. authorities."

"Andrew's keen understanding of antitrust matters and enforcement climate dates back to the 1990s when he worked at the FTC," said Janet McDavid, ACER co-head. "He has represented a wide array of companies regarding complex antitrust matters, and will be a strong addition to Hogan Lovells' global platform."

Hogan Lovells' antitrust team includes more than 135 lawyers in 18 countries who operate as an integrated team handling all aspects of antitrust law, including mergers, government investigations and cartel cases, civil litigation, and counseling.

For more information, see www.hoganlovells.com

ROUSAUD COSTAS DURAN STRENGTHENS REGULATED MARKET PRACTICE

BARCELONA - 24 January, 2017: Carlos Hernández Rivera, on leave from the Spanish Government Legal Service.Lawyer for the State Carlos Hernández Rivera Becomes New Partner in the Regulated Markets Area at RCD – Rousaud Costas Duran.

Prior to joining the firm, he was Director General for the Regulation of Gambling, a management body pertaining to the Secretariat of Finance (Ministry of Finance and Public Administration). He has a broad professional career comprised of other positions of responsibility in the General State Administration. He is an expert on regulated markets and public law.

Carlos has carried out duties relating to the counsel for and defense of the General State Administration in civil, criminal, social and contentious-administrative proceedings. He has served before the Contentious-Administrative Chamber of the National Court; in the Crime Department of the Sub-Directorate General of Administrative-Contentious Disputes of the Spanish Government Legal Service; as leading lawyer for the State in Santa Cruz de Tenerife, where he also acted as Director of the Port Authority and Secretary of the provincial Economic-Administrative Court; and lastly, in the Administrative-Contentious Courts of Barcelona.

Prior to joining RCD, Carlos held a senior position in the Secretariat of Finance within the Ministry of Finance and Public Administration. He most recently served as Director General for the Regulation of Gambling, having previously served as Subdirector General for Gambling Regulation in the same Directorate. During this time, Carlos was also a Counselor in SEGITTUR (Public Corporation for Tourism Technology and Innovation Management) and a member of the European Commission Expert Group on Online Gambling Services.

In 2015 he received the award Máster de Oro a la Alta Dirección, granted by the Real Fórum Alta Dirección, and in 2014 he was recognized as Europe Gaming Regulator of the Year by the International Masters of Gaming Law.

"Carlos Hernández is a professional with an outstanding career that contributes solid experience of the public sphere and regulated markets. He joins the firm through its strong commitment to offer highly specialized service to our clients" said Adolf Rousaud, Managing Director of RCD .

For his part, Carlos Hernández notes his confidence in the firm's values: "I am excited to join the RCD project and to form part of a firm with an ambitious and innovative endeavor, and with great promise, having become one of the leading firms in the country in only 13 years."

For additional information visit www.rousaudcostasduran.com

SIMPSON GRIERSON APPOINTS THREE NEW PARTNERS

Jo-Anne Knight, Josh Cairns and Sarah Scott appointed as partners

NEW ZEALAND - 09 February 2017: Simpson Grierson is delighted to announce three new partners across its New Zealand offices.

Jo-Anne Knight becomes a partner in the firm's Auckland commercial litigation group. Jo-Anne has represented construction parties and local authorities in well over 100 mediations and judicial settlement conferences, and has over 20 years' experience in negotiating and advising on construction contracts, and all forms of construction dispute litigation.

Josh Cairns is a banking and finance law expert based in the Wellington office. He's well regarded for his corporate finance, and restructuring and insolvency, advice. He recently acted on Solid Energy's pre-packed voluntary administration, a deal that was awarded both Deal of the Year and Capital Markets Deal of the Year at last year's New Zealand Law Awards.

Sarah Scott becomes a partner in the firm's Christchurch office, heading the South Island-based local government and environment group. Sarah specialises in all aspects of resource management and environmental law, advising public and private clients on district and regional planning processes, earthquake recovery matters, development and infrastructure projects, and resource management litigation. Sarah was named Young Private Practice Lawyer of the Year at last year's New Zealand Law Awards.

"We are excited to welcome Sarah, Josh and Jo-Anne to the partnership," says Simpson Grierson Chairman Kevin Jaffe. "These appointments show the firm's strength across New Zealand and across a wide variety of business sectors."

For additional information visit www.simpsongrierson.com

SKRINE APPOINTS FOUR PARTNERS

We are pleased to announce that four Senior Associates have been admitted as Partners of the Firm with effect from 1 January 2017.

Jocelyn Lim Yean Tse - Dispute Resolution Division. Jocelyn graduated with an LLB (Hons) and Master of Laws from the University of Northumbria. Her main practice areas are in Arbitration & Alternative Dispute Resolution, Contract Drafting & Advisory, Contracts Administration and Risk Management.

Janice Tay - Dispute Resolution Division. Janice Tay is a graduate from the University of Cambridge. Her main practice areas are Arbitration & Alternative Dispute Resolution, Construction & Engineering, Adjudication, Oil and Gas and General Litigation.

Kwan Will Sen - Dispute Resolution Division. Kwan Will Sen graduated from the University of Malaya with a LLB (Hons). His main practice areas are Arbitration & Alternative Dispute Resolution, Bankruptcy/ Insolvency, Constitutional, Public & Administrative Law, Corporate & Commercial Disputes, Directors & Officers Liability, Securities Law and Defamation.

Sim Miow Yean - Corporate Division. Sim Miow Yean is a graduate of Oxford Brookes University. Her main practice areas are in Real Estate, Banking, Joint Ventures, Wills, Probate and Administration, Mining and Mineral Resources Development, Private Wealth/Wealth Management, Trust and Charities.

These appointments will further enhance and strengthen our Firm's capabilities in delivering premium legal services to our valued clients.

For additional information visit www.skrine.com

ARIAS

ACTS FOR INTERNATIONAL FINANCE CORPORATION IN USD$45M COMMERCIAL REAL ESTATE LOAN

EL SALVADOR - 07 February, 2017: Several offices of Arias assisted the International Finance Corporation (IFC) in a loan granted to Grupo Roble, an important real estate developer in Central America, based in El Salvador. The funds are to be used for the expansion and or refurbishment of shopping centers: Metrocentro Santa Ana (El Salvador), Mentrocentro Managua (Nicaragua) and Multiplaza Tegucigalpa (Honduras).

Arias El Salvador coordinated throughout the region and the team was responsible for reviewing of the loan agreement under the local laws as well as the necessary guarantees and other related documents. The loan agreement was a total of US$45 million to be distributed in the different shopping centers abovementioned.

"These projects have special relevance in El Salvador, Honduras and Nicaragua and will have a positive impact in hundreds of households. In El Salvador alone, the mall expansion will generate over 500 direct jobs and 1500 indirect jobs" , expressed Lilian Arias, Partner at Arias El Salvador.

Grupo Roble, which is part of Grupo Poma, is one of the largest commercial and industrial groups in the Americas, with operations in Central America, Panama, the Caribbean, South America and the United States. Grupo Roble participates in the real estate industry through its development of mixed-use complexes such as shopping centers under the Multiplaza and Metrocentro brands.

The ARIAS team participating in the deal was: El Salvador: Lilian Arias (Partner), Ana Mercedes López (Partner), Mario Lozano (Associate); Honduras: Evangelina Lardizabal (Partner); Nicaragua: Ana Teresa Rizo (Partner), Rodrigo Ibarra (Associate); Panamá: María Cristina Fábrega (Associate);

For additional information visit www.ariaslaw.com

BAKER BOTTS

REPRESENTS KIMBELL ROYALTY PARTNERS, LP IN FIRST MLP INITIAL PUBLIC OFFERING OF 2017

HOUSTON - 03 February, 2017: Kimbell Royalty Partners, LP, a limited partnership that owns oil and natural gas mineral and royalty interests across twenty states, announced the pricing of its initial public offering of 5,000,000 common units representing limited partner interests at $18.00 per common unit. The common units began trading on the New York Stock Exchange today under the ticker symbol "KRP." The offering is expected to close on or about February 8, 2017, subject to customary closing conditions.

The underwriters of the offering have a 30-day option to purchase up to an additional 750,000 common units from Kimbell Royalty Partners. At the closing of this offering, the public will own a 30.6 percent limited partner interest in Kimbell Royalty Partners, or a 35.2 percent limited partner interest if the underwriters exercise in full their option to purchase additional common units. Certain parties who are contributing oil and natural gas mineral and royalty interests at the closing of the offering will collectively own the remaining limited partner interests in Kimbell Royalty Partners.

Kimbell Royalty Partners is an oil and gas mineral and royalty variable pay master limited partnership based in Fort Worth, Texas. Kimbell Royalty Partners owns mineral and royalty interests in approximately 4.5 million gross acres across the continental United States, including ownership in more than 48,000 gross producing wells.

Baker Botts is representing Kimbell Royalty Partners, LP in the transaction.

Baker Botts Lawyers/Office Involved: Josh Davidson (Partner, Houston); Jason Rocha (Partner, Houston); Clint Rancher (Partner, Houston); Shalla Prichard (Partner, Houston); Eileen Boyce (Associate, Houston); Chad Davis (Associate, Houston); Lakshmi Ramanathan (Associate, Houston); Samantha Blons (Associate, Houston); Jennifer Gasser (Associate, Houston); Mike Bresson (Partner, Houston); Chuck Campbell (Special Counsel, Houston); David Morris (Associate, Houston); Thor Fielland (Associate, Houston); Brian Finch (Associate, Houston); Alia Heintz (Associate, Houston).

For additional information visit www.bakerbotts.com

CLAYTON UTZ

ADVISES MMG LIMITED ON US$210 MILLION SALE OF GOLDEN GROVE MINE TO EMR CAPITAL

PERTH – 13 January 2017: Clayton Utz is advising Hong Kong Stock Exchange and ASX-listed global resources company MMG Limited on the sale of its Golden Grove mine located in Western Australia to EMR Capital.

On 30 December 2016, MMG entered into a conditional share sale agreement with EMR Golden Grove Holdings Pty Ltd, an entity owned and managed by EMR Capital, for the sale of MMG Golden Grove Pty Ltd for US$210 million.

Subject to MMG board and other approvals, the sale is expected to be completed in early 2017.

Clayton Utz corporate partner Brett Cohen is leading the team on the transaction, which includes senior associate Armin Fazely and lawyers Kaley Ohariw and Milana Sarenac. The core transaction team has been supported by specialist teams from Clayton Utz including tax, environment, native title and employment.

Commenting on the transaction, Brett said: "We are pleased to have been given the opportunity to provide strategic advice and support to this longstanding client of Clayton Utz, working alongside MMG and its financial adviser Goldman Sachs to execute the sale agreement for this transaction in a compressed timeframe over the 2016 Christmas holiday break."

For additional information visit www.claytonutz.com

DAVIS WRIGHT TREMAINE

LEADS USD$83 MILLION CMBS REFINANCING FOR WESTIN PALO ALTO HOTEL

12 JANUARY 2017: Davis Wright Tremaine has advised Mr. Clement Chen, the principal owner of The Westin Palo Alto Hotel, in securing an $83 million CMBS loan from LStar Capital, the credit affiliate of global private equity firm Lone Star Funds.

The Westin Palo Alto is owned by an affiliate of Mr. Chen's Pacific Hotel Management LLC, which operates eight prestige properties in California, including the new concierge-style super-luxury hotel, The Clement Hotel, also in Palo Alto, and InterContinental The Clement Monterey, on historic Cannery Row in Monterey. The latter property was also refinanced by LStar in 2015 for $72.5 million, another loan in which DWT advised Mr. Chen.

"Our client's hotels are outstanding performers, and comprise a significant part of the LStar funds in which they are securitized," said Steve Ledoux, co-chair of the DWT's Hotels & Resorts practice group. "We are starting 2017 off with a bang, and look forward to a positive and dynamic year for CMBS borrowers and for all kinds of strategic hotel transactions."

The mortgage broker for The Westin Palo Alto loan and for the InterContinental The Clement Monterey loan was Highland Realty Capital.

For additional information visit www.dwt.com

HOGAN LOVELLS

ADVISES ALLIANZ GLOBAL INVESTORS ON €450 BILLION AUM GLOBAL OUTSOURCING

LONDON - 07 February 2017: Hogan Lovells has advised Allianz Global Investors (AllianzGI) on the global outsourcing of investor services to State Street for its entire fund range covering more than €450 billion in assets under management. This significant outsourcing transaction has developed AllianzGI and State Street's existing relationship into a strategic global partnership. Its global breadth and scope covering the United States, Europe and Asia Pacific makes it one of the largest transactions of its kind.

This transaction consolidates a wide spread of services, including depository and trustee services, global custody, transfer agency, share class hedging and data consolidation services. The mandate remains subject to approvals of applicable funds' boards as well as customary regulatory approvals.

The Hogan Lovells' London-based core team was led by Rachel Kent, Global Head of Financial Institutions, supported by Angela Greenough, Counsel, and Joy Bristow, Associate, working hand in hand with AllianzGI's in-house legal team led by Thomas Schindler, General Counsel Europe, and Jorge Solis Velasco, Assistant General Counsel Europe. They managed and co-ordinated advice from Hogan Lovells' offices across the globe.

Commenting on the transaction, Rachel Kent, said: "This matter had significant practical and multi-jurisdictional challenges. The successful result demonstrates our capacity to undertake an extremely complex global corporate outsourcing transaction, with input from a range of practice areas across the firm. We are delighted to have acted for AllianzGI in this capacity on such a significant transaction for a key client."

Thomas Schindler said: "The transaction is the result of a seamless and efficient collaboration between the Legal side and the involved business functions of our global franchise".

For additional information visit www.hoganlovells.com

GIDE

ADVISES JOINT LEAD MANAGERS €500 MILLIONNOTE ISSUE BY BOLLORÉ

PARIS - 02 February 2017: Gide advised the Joint Lead Managers Crédit Agricole Corporate and Investment Bank, HSBC Bank plc, ING Bank N.V. Belgian Branch, Natixis and Société Générale on the issuance by Bolloré of its € 500 million 2.00 per cent. notes due 2022, and admitted to trading on the regulated market of NYSE Euronext in Paris.

Gide's team was led by partner Hubert du Vignaux assisted by Bastien Raisse and Mariléna Gryparis.

For additional information visit www.gide.com

RCD

ADVISES SIROCCO CAPITAL ON €2.7 MILLON ACQUISITION OF EL CONJURO WIND FARM (GRANADA)

BARCELONA - 21 January, 2017: RCD – Rousaud Costas Duran has advised venture capital fund Siroco Capital on the acquisition of the company operating the El Conjuro wind farm in Granada, Spain.

The €2.7 million investment will allow the venture capital fund to control 100% of the wind farm, which produces 2,000 full-load hours per year from its location between the municipal disricts Motril and Gualchos.

The transaction has been led by RCD's Energy Area, which has extensive experience advising on projects in the energy sector.

Rousaud Costas Duran is an independent, dynamic and innovative law firm, and a reference provider of integral legal advice. The firm's team is made up of over 300 professionals, led by 28 partners, and is positioned among the top law firms in Spain. It has been recognized for its innovation by the European ranking Financial Times FT – Innovative Lawyers 2016.

The firm has offices in Madrid and Barcelona, as well as a wide network of alliances and 'best friends' agreements with leading law firms abroad.

For additional information see www.rousaudcostasduran.com

NAUTADUTILH

ASSISTS DELTA WITH SALE OF DELTA RETAIL TO EQT

ROTTERDAM – 08 December, 2016: NautaDutilh assists DELTA N.V., the municipality and province owned integrated utility company of the Dutch province of Zeeland, with the contemplated divestment of DELTA Retail to EQT Infrastructure for EUR 488 million.

DELTA Retail is the leading telecom infrastructure owner and operator, provider of multimedia services (broadband, TV, telephony) and supplier of energy, serving over 140,000 households and businesses mainly in the Dutch province of Zeeland. DELTA Retail's hybrid fibre-coaxial (HFC) network of over 6,000km passes 192,000 homes, which corresponds to ~90% of the total number of homes in Zeeland. DELTA Retail employs approximately 370 people and generated sales of EUR 214 million in 2015. It is headquartered in Middelburg, the capital of Zeeland, the Netherlands.

The contemplated transaction is subject to customary conditions, such as merger control, shareholder approval and completion of a works council consultation procedure.

The NautaDutilh team consists of Joost den Engelsman, Harm Kerstholt, Lisa Schoenmakers, Mirjam Klompenhouwer, Bart Koster (Corporate M&A/Energy); Arief van Rhee, David Wumkes and Minke Hahn (Real Estate); Homme ten Have en Gijs van Nes (Employment); Albert van der Kolk (Pensions); Marianne de Waard-Preller and Dido Wolvius (Corporate Notarial); Barbara Nijs (Competition); Edward Rijnhout and Sjuul Jentjens (Tax).

For additional information visit www.nautadutilh.com

MUNIZ RAMIREZ PEREZ TAIMAN & OLAYA

ACTS FOR COCA-COLA BOTTLER CORPORATION LINDLEY'S IN USD$42 MILLION BOND OFFERING

LIMA - 21 December, 2016: Peru's Muñiz Ramírez Pérez-Taiman & Olaya has acted as deal counsel for Coca-Cola bottler Corporación Lindley's 150 million soles (US$42 million) bond offering.

BBVA Banco Continental acted as arranger, with BBVA Contibolsa Sociedad Agente de Bolsa as placement agent. The offering closed on 7 December.

Represented by In-house counsel to BBVA Banco Continental - Anabeli Gonzalez; Muñiz Ramírez Pérez-Taiman & Olaya Partner Andres Kuan-Veng and associate Rocio Izquierdo.

For additional information visit www.munizlaw.com

SIMPSON GRIERSON

ADVISES DAIWA LIVING MANAGEMENT ON SIGNIFICANT TRANSACTION

AUCKLAND - -3 February 2017: Simpson Grierson has advised Daiwa Living Management Co. Ltd (DLM), together with Cosmos Initia Co. Ltd (CI) on the New Zealand aspects of their joint purchase of 75% of Waldorf Australia and New Zealand Group.

DLM is one of the largest rental housing management companies in the world. With 1,500 apartments, Waldorf is currently one of the largest serviced apartment operators in Australasia.

DLM and CI are subsidiary companies of Daiwa House Industry Co. Ltd, the largest publicly listed construction and development company in Japan.

Simpson Grierson's team was led by Michael Pollard, and included Laura Drake and Amy Johns.

For additional information visit www.simpsongrierson.com

SANTAMARINA Y STETA

ASSISTS KRUGER BROWN IN PLASTIC ACQUISITION

MEXICO CITY - 27 January, 2017: Mexico's Santamarina y Steta have helped investment company Kruger Brown Holdings (KBH) close the Mexican leg of its acquisition of US based plastic producer, The PendaForm Company.

The acquisition closed on 22 December with no value disclosed.

Santamarina y Steta team was led by Partner Pablo Laresgoiti and associate Iván Szymanski in Mexico City

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

TOZZINIFREIRE

ASSISTS IN USD$403 MILLION ACQUISITION OF LAVEBRAS

SAO PAULO - 17 January, 2017:
TozziniFreire Advogados has helped the Brazilian subsidiary of French company Elis acquire local garment maintenance company Lavebras for 1.3 billion reais (US$403 million).

Atmosfera purchased 100% of the corporate capital from shareholders Ricardo Faria, Gilmar Cadore and investment fund Fundo de Investimento em Participações Genoma I.

The deal was announced on 5 January.

Counsel to Atmosfera TozziniFreire Advogados Partner João Busin and associates Alice Sardinha and Lucas Vasconcelos .

For additional information visit www.tozzinifreire.com.br

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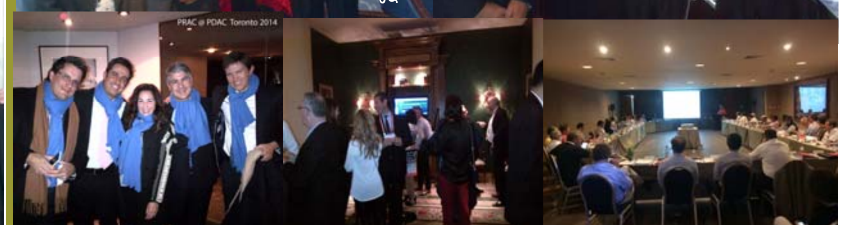
PRAC @ PDAC Toronto 2014

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With over 12,000 lawyers practicing in key business centers around the world, including Latin America, Middle East, Europe, Asia, Africa and North America, these prominent member firms provide independent legal representation and local market knowledge.

www.prac.org

GIDE

GIDE LOYRETTE NOUEL

newsletter

INVESTMENT-RELATED MEASURES | ALGERIA | JANUARY 2017

THE FINANCE LAW FOR 2017

Law No. 16-14 dated 28 December 2016 implementing the Finance Law for 2017 (hereinafter the "**2017 FL**") was published in the Official Journal of 29 December 2016. The 2017 FL takes place in a context of diversification of the national economy and rationalization of public spending.

This newsletter focuses on the key measures of the 2017 FL.

PROVISIONS REGARDING INVESTMENT

(i) Reinvestment obligation

Article 82 of the 2017 FL has repealed article 57 of the 2009 Complementary Finance Law ("**CFL**"), and clarifies the reinvestment obligation principle. Previously, two texts coexisted (article 142 of the Direct Tax Code and the former article 57 of the CFL), which made interpretation complex.

An interministerial decree dated 28 November 2016 has set out the conditions for implementing the obligation to reinvest 30% of profits, corresponding to tax exemptions and reductions granted in the context of investment support regimes. In particular, this decree specifies that:

- the reinvestment obligation only concerns tax exemptions or reductions **related to corporate income tax (IBS) and tax on professional activities (TAP)** granted during the investment **exploitation phase.** It applies to profits that must be reinvested as of 1 January 2016, and to profits from previous years that are not yet time barred;
- **the concept of reinvestment** encompasses (i) asset acquisitions for the creation of new production capacity or production capacity extension and rehabilitation activities; and (ii) participation in a company's share capital;
- where a partnership is signed between foreign investors and national companies (privately owned or state-owned companies), **the reinvestment obligation does not apply** when advantages granted have been fully injected in the price of finished goods and services produced by the company.

It is worth noting that, according to the above-mentioned framework, the amount of profits that must be reinvested cannot be distributed as dividends. In other words, it seems that any distributable profit exceeding the aforementioned reinvestment amount may be distributed to shareholders.

(ii) Improvement of access to land

Article 58 of the Finance Law for 2016 had set out the possibility for both individuals and legal persons to create, adapt and manage areas of activity or industrial areas on non-agricultural self-owned lands.

- Article 80 of the 2017 FL has restricted that possibility to private law legal persons (individuals being excluded) and extended it to encompass the creation of logistics areas. The land in question should be owned by these persons or be subject to a 33-year state-granted concession when part of state-owned land.
- The creation, development and management of these areas is subject to specifications prepared by the ministry in charge of investment (for private law land) or jointly by the ministries in charge of investment and finance (for state-owned land).

(iii) Withdrawal of the obligation to pay imports by documentary credit

Article 111 of the 2017 FL has repealed article 69 of the 2009 CFL which stated an obligation to pay imports only by documentary credit. Provisions of the Finance Law for 2014 had already enacted the possibility of paying imports by documentary remittance. The cancellation of the obligation to pay imports through the *Crédoc* offers more flexibility when choosing from the payment methods authorised by the Algerian exchange control regulation.

KEY TAX MEASURES

(i) Taxation of capital gains arising from the transfer for valuable consideration of built or not built properties

Articles 2 and 3 of the 2017 FL provide for the taxation of gains arising from the transfer of a built or not built property at a 5% global income tax (IRG) rate, and cancel the need for payment of the corresponding income tax. This provision concerns capital gains actually realised by persons who transfer, **other than in the course of their professional activity**, all or part of built or not built properties.

The taxable capital gain consists of the positive difference between the property transfer price and the transferor's acquisition price or initial creation value.

However, capital gains realised in the context of an estate wind-up or when lessors or lessees transfer their property in the context of leasing contracts such as lease-backs or when transferring a property owned for more than ten (10) years, are not concerned by such capital gains taxation. By contrast, donations to relatives further than second degree and non-relatives are considered to be transfers for valuable consideration and are therefore subject to the 5% IRG rate.

(ii) Transfer pricing

- **Requirement to keep analytical accounting** for companies conducting operations with related companies (article 8 of the 2017 FL).
- **Obligation to submit analytical accounting** in the context of transfer pricing policy verifications (article 44 of the 2017 FL).
- **Time extension of accounting verification in the context of transfer pricing controls**: Article 43 of the 2017 FL has extended by **six (6) months** the accounting control and spot-checks timeframe when the tax administration submits, in the context of administrative assistance and exchange of information, information requests to other tax administrations. This extension of control timeframe forms a part of the reinforcement of measures against tax avoidance implemented by the Algerian tax legislation.
- The **amount of the fine** applicable in case of production failure (or incomplete production) of a company's transfer pricing documentation has been increased from DZD 500,000 to **DZD 2,000,000**.

(iii) Withdrawal of the additional registration duty applicable to transfers of assets having benefited from regulatory re-evaluations

Article 69 of the 2017 FL has repealed article 28 of the 2009 CFL, which subjected transfers of shares having benefited from regulatory re-evaluation to a 50% additional registration duty. This registration duty was based on the amount of the realised capital gain and also applied to re-evaluated asset transfers. As a reminder, the additional registration duty rate had already been reduced to 30% by the 2015 CFL.

This registration duty was an obstacle, which has now been removed, to equity capital operations (transfers, mergers, contributions) on companies that had benefited from regulatory re-evaluations.

(iv) Possibility of deducting previously omitted deductible VAT

VAT deductions on purchases that had been omitted may now be stated on subsequent tax declarations until 31 December of the year following the omission. It should however be stated separately from deductible taxes related to the current period subject of the declaration.

(v) Legal suspension of payment provision increased to 30%

The suspension of payment legal framework provided by article 74 of Tax Procedure Code, which made it possible to delay tax payments being challenged by taxpayers during a claim, has been redesigned by the 2017 FL. The new framework introduces the possibility for taxpayers to constitute guarantees to ensure the recovery of such challenged taxes and if not, allows taxpayers to delay payment of the challenged amount by paying an amount equal to **30% of the disputed tax amount instead of the previous 20%**. This provision thus allows delaying the recovery of the remaining tax amounts until a decision on the matter at issue is rendered.

(vi) Modification of procedures related to claims

The claims timeframe set out in article 153 *bis* of the Tax Procedure Code has been extended from one (1) to two (2) months from the notification of the challenged act or the notification of the first proceeding act. Furthermore, the provisions governing claims admissibility have been specified with the possibility for claimants to rectify their claim within eight (8) days when such claim does not satisfy the admissibility requirements.

(vii) Creation of a payment plan subject to payment of 10% of the tax debt

Article 60 of the 2017 FL has introduced an obligation to pay 10% of the tax debt to benefit from a payment plan. Payment plans are thus granted for a maximum period of 36 months, provided that 10% of the tax debt is being paid in the first place.

(viii) Continuation of the tax compliance program

The tax compliance program has been extended **until 31 December 2017**.

As a reminder, this program, established by the 2015 CFL, aims to allow taxpayers owning lawfully acquired but undeclared funds to settle their situation with regards to the tax administration by paying a 7% fixed levy in full discharge tax.

(ix) Staggering of tax debts payment for distressed companies

Article 90 of the 2017 FL has introduced a mechanism to stagger tax debts owed by distressed companies over a period of time not exceeding 36 months, provided that such companies submit to the tax administration documents supporting financial difficulties that prevent them from paying such debts.

(x) Measures applicable to foreign companies with no permanent professional establishment in Algeria

Amounts received by **foreign companies not having a permanent professional establishment in Algeria** and operating under a service contract subject to the 24% withholding tax, when the tax base benefits from reduced tax rates or tax allowances, are now subject to VAT.

(xi) Creation of additional taxes or increase in existing tax rates

- **Creation of a 10% tax**: on the production or broadcasting of advertisements made for the benefit of goods not manufactured locally. This tax, based on the contract amount, is borne by the company that requests the advertisement broadcast. It cannot deduct the charge from its taxable income. The tax implementation conditions must however be determined by order of the ministry in charge of finance, which has not yet been published.

- **Creation of the energy efficiency tax (EET)**, applicable to locally manufactured or imported goods running on electricity, gas and oil products consuming more than the energy efficiency standards provided by applicable regulations.

- **Increase of the value added tax (VAT)** from 17% to 19% for the standard rate and from 7% to 9% for the reduced rate.

- **Increase of the domestic consumption tax (DCT)**: in the specific case of tobacco, the tax fixed part has been increased from DZD 1,260/kg to DZD 1,760/kg on light tobacco, from DZD 1,040/kg to DZD 1,240/kg on dark tobacco, and from DZD 1,470/kg to DZD 2,470/kg on cigars.

(xii) Tax incentive regime regarding assembly activities

Article 88 of the FL 2017 provides that production companies specialised in assembly benefit from the preferential tax regime existing in favour of collections dedicated to assembly industries and “CKD” collection parts. Three (3) conditions must be met to benefit from this regime: the implementation of an investment; job creation; and compliance with the integration rate for final products set by the joint order issued by both the ministries of Industry and Finance.

It should be noted that unpublished specifications related to motor vehicle assembly have already introduced an ambitious integration rate that companies involved in the assembly business must observe. When issuing the aforementioned joint order, authorities must clarify which integration rate these companies are actually subject to so as to remove any uncertainty.

- Article 110 of the 2017 FL exempts from customs duties and VAT, for a five-year period, components and raw materials imported or locally acquired by subcontractors in the course of their assembly and sub-assembly production activity for the mechanical, electronics and electrical industries.

- Cap on notaries’ fees

Article 84 of the 2017 FL provides that the cap on notaries’ fees must be fixed by regulation.

MEASURES REGARDING THE PHARMACEUTICAL INDUSTRY

(i) Increase of the registration applications tax on pharmaceutical products

This tax has been increased from DZD 4,000 to DZD 12,000 for batch control, from DZD 10,000 to DZD 30,000 for control and expertise of products subject to registration, and from DZD 5,000 to DZD 15,000 for analysis and control of raw materials.

(ii) Increase in registration applications fees on pharmaceutical products

A distinction is made between the pharmaceutical products concerned, whether they are essential or not, imported or locally manufactured.

(iii) Control of the regulation regarding medicine reimbursement arrangements

Articles 97 and 98 of the 2017 FL restrict eligibility conditions to social security reimbursement for onerous and very onerous medicine through:

- An annual cap in terms of both volume and amount on reimbursements, with the requirement that pharmaceutical laboratories whose products are subject to the cap annually refund to social security institutions the amount reimbursed in excess of capped volumes and/or capped amounts; and

- The introduction of the "performance contracts" concept entered into by social security institutions and pharmaceutical laboratories holding registration decisions in Algeria. These performance contracts aim to implement undertaking clauses at the expense of pharmaceutical laboratories, which shall refund to social security institutions the medicine reimbursements concerned in case of therapeutic failure.

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New Argentine Data Protection Bill - deadline to file comments with the DPA Feb 28, 2017

On February 2017, the Argentina Data Protection Agency (Dirección Nacional de Protección de Datos Personales or "DNPDP" or "DPA") posted online in its website a draft bill for a new data protection act.

The bill was prepared taking into consideration several changes proposed by the public during 2016 and is heavily based on the EU GDPR. The DNPDP shall be accepting comments on the draft bill from February 1 to 24, 2017 using the Justicia 2020 at https://www.justicia2020.gob.ar/ , the digital platform of the Government or by paper.

Among the changes introduced by the draft bill is the elimination of the duty to register databases. Also, the draft bill only recognizes individuals as data subject; the current data protection act covers both individuals and legal entities (e.g. companies). Moreover, the proposed bill adds several new definitions like biometric data and genetic data, among others.

The draft bill introduces new ways to determine whether an entity or certain data processing is subject to Argentine law, quite similar to the criteria found in the European General Data Processing Regulation. Also, and in connection with the European regulation, the proposed bill introduces new legal basis, besides consent, to allow data processing, like the legitimate interests of the data controller.

Among other changes, the draft bill makes an overhaul of the current section dealing with international transfers (including BCRs), introduces sections on child consent, cloud computing, data breaches, accountability, privacy by design, the duty to have a data protection officer and mandatory impact studies.

Credit reports, one of the main issues of the current data protection act, has receive certain amendments, like the manner that terms are counted regarding the duties over debtors personal data as well as the introduction of a duty to inform an individual in the event that certain agreement or equivalent was not entered into due to negative information contained in a credit report. It should be noted that, considering the elimination of protection for legal entities, the data protection act will not apply to financial information of corporations.

Finally, one of last amendments proposed by the DNPDP in its draft bill is the independence of the DPA from any other governmental entity; currently, the DNPDP depends from the National Ministry of Justice and Human Rights. The bill seeks to remedy one of the observations made by the European Union when Argentina was deemed a jurisdiction with an adequate level of data protection.

We expect the DPA to send the Bill to the President later this year. The Bill will be discussed during 2018 in Congress.

For more information on the proposed bill or to file comments on it, please contact us at dataprotection@allendebrea.com.ar.

For further information on this topic please contact Pablo A. Palazzi.

CLAYTON UTZ

03 FEB 2017

Native title agreement-making turned on its head

The Full Federal Court's decision yesterday on how Indigenous land use agreements (**ILUAs**) are made will be of major interest to all government, resources, pastoral and other players who have sought to (and who would seek to) enter into ILUAs to ensure that their operations are valid for native title purposes (McGlade v Native Title Registrar [2017] FCAFC 10).

The Full Court's decision adjudges to be incorrect what has been heavily relied on over the last six years as settled law in relation to who needs to sign an ILUA on behalf of native title parties. **This means that the validity of many ILUAs has been put at risk as has the validity of the grant of mining and petroleum tenements and other interests that had been validated through the ILUA registration process. Further, the ramifications of the decision appear to go well beyond ILUAs extending into every aspect of native title law.**

It would seem that the best solution to resolve the problem would be for the Commonwealth Parliament to amend the Native Title Act 1993 (Cth) (**NTA**) to ensure the validity of all of these interests and to create certainty as to the operation of the NTA, a possible solution flagged by the Court.

The position pre-McGlade on who must execute an ILUA

The case relates to four of six "Settlement ILUAs" entered into between the State of Western Australia and the Noongar People of South West WA. These ILUAs are the crux of efforts undertaken by the State and the Noongar People since December 2009 to achieve a voluntary settlement of the latter's native title claims throughout the South West.

Under section 24CA of the NTA an agreement will be an ILUA if it meets certain requirements, one of which is that all persons in the "native title group" for an area are parties to any ILUA over the area, as set out in section 24CD. The section defines the "native title group" for an area to include "all registered native title claimants" in relation to the area.

The individuals authorised by a native title claim group to jointly comprise the "applicant" for a registered native title claim over an area, also jointly comprise the registered claimant for that area (sections 253 and 61(2) of the NTA).

However, in QGC Pty Limited v Bygrave (No 2) [2010] FCA 1019, Justice Reeves decided that section 24CD **did not mean** that every individual comprising each registered claimant for an area was a mandatory party to any ILUA to be made over that area, or that such individuals were required to assent to or sign the ILUA. All section 24CD required was that **one or more** of the individuals comprising each registered claimant for the area be named as a party to the ILUA.

In the ensuing six years, the National Native Title Tribunal has registered many ILUAs in reliance upon Bygrave 2 – that is, in circumstances where not every person who comprises the registered claimant has executed the ILUA. McGlade is the first Full Federal Court decision to consider the correctness of Bygrave 2.

The Full Court's decision: all individual members of each registered claimant must sign

The Full Court decided that:

- in order for an agreement over a registered claim area to qualify as an ILUA under section 24CA, all individual members of each registered claimant for the area would have to sign the agreement;
- contrary to previous thinking, the authorising group does not have power to direct the registered claimant to act in any way other than unanimously;
- if any member of the registered claimant does not sign, the only way the agreement could become an ILUA would be for the non-signing member (or members) of the registered claimant to be relieved of their post using the process in section 66B of the NTA (involving a claim group authorisation and Federal Court application); and
- a section 66B application to dismiss non-signing members will be needed before an agreement can be considered to be an ILUA, even if the reason they have not signed is that they are dead!

Ramifications of the McGlade decision for native title law generally

In light of the McGlade decision, governments, resources proponents, pastoralists and others who have relied on registered ILUAs to validate their future acts should review all of their agreements to determine how many of them were registered, on the strength of Bygrave 2, notwithstanding the absence of a "full set" of registered claimant signatures.

The consequence of the Full Court's decision is that future acts contained in any agreements with "missing" signatures may be invalid. In other words, **the validity of the grant of mining and petroleum tenements and other interests that had been validated through the ILUA registration process is now at risk.**

In practical terms, the decision may result in the established practice of registered claimants executing an ILUA only after they have been authorised to do so at an authorisation meeting being reversed in order to avoid a second authorisation meeting being required (for the purposes of section 66B) to remove any individual member of the registered claimant who does not sign the ILUA.

The fallout from the McGlade decision could also include resort to compulsory acquisition of native title where members of registered claimants refuse to sign ILUAs that are acceptable to most of the native title holders.

Further, the ramifications of the decision are likely to extend beyond ILUAs. **It appears that in all circumstances**, including with respect to making right to negotiate, cultural heritage and other agreements, instructing lawyers or taking steps in a native title claim, and despite any direction to the contrary that may be given by the claim group, **the individuals who comprise an applicant or a registered claimant will be required to act unanimously**.

Unless the Full Court's decision is overturned on appeal, perhaps only the Commonwealth Parliament –by introducing appropriate amendments to the NTA – would be able to mitigate:

- the potential invalidity of the grant of mining and petroleum tenements and other interests;

- the resulting exorbitant costs that could lie in store for Australian business;
- the needless extinguishment of native title by compulsory acquisition where a full set of registered claimant signatures has not been obtained; and
- the uncertainty associated with the requirement in every instance for applicants and registered claimants to act by consensus.

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You've got mail?

The CJEU imposes strict conditions on the use of an integrated mailbox in a client-dedicated web space for e-banking and other services

Tuesday 7 February 2017

In its judgment of 25 January 2017 in a case (C- 375/15) opposing BAWAG, an Austrian bank and VKI, an Austrian consumer organisation, the Court of Justice of the European Union ("CJEU") answered the question whether payment service providers may notify their users of any contractual changes via the electronic mailbox of client-dedicated e-banking web space.

The CJEU ruled that the communication of contractual changes via a message to such integrated mailbox without any supplementary communication, for example, via a message sent to the personal private e-mail of the client or per sms informing him/her that a message has been sent to the e-banking mailbox, is insufficient within the context of the Payment Services Directive 2007/64/EC.

Other EU consumer acquis directives (e.g. the Consumer Rights Directive 2011/83/EU) have the same or similar requirements for the provision of some categories of information so that this judgment will also have an impact on mailbox solutions embedded in client-dedicated web spaces for other services than e-banking.

The Payment Services Directive 2007/64/EC requires that:

- some information, such as contractual changes, must be "**provided**", which requires an active and effective notification.

According to the CJEU this is not warranted by sending a message to an e-mail box integrated in a dedicated e-banking web space, but instead by sending a message to a means of communication that the client usually uses with persons other than that payment service provider.

- some information, such as contractual changes, must be provided on a "**durable medium**", which means that it must allow the client to store information addressed to him/her personally in such a way that he/she may access and reproduce it unchanged for an adequate period ("storage requirement"), without any unilateral modification of its content by that service provider or by another professional being possible ("integrity requirement").

The CJUE interprets the integrity requirement in a way that any possibility that the payment service provider or another professional to whom the management of that site has been entrusted could change the content unilaterally, must be excluded.

Whether this requirement was fulfilled in the case at hand was left to the referring Austrian court. The Advocate-General to the CJEU was more specific and stated that a mailbox hosted and administered by the payment service provider is unlikely to comply with the integrity requirement, since it is technically under the control of the payment service provider.

The Advocate-General, however, also pointed out that such mailbox could also be seen as a kind of gateway for the provision of information and documents whereby the payment service provider could assure their integrity by communicating them via an electronic format which prevents alterations, guaranteeing a reasonable degree of authenticity of the information, if later potentially relied upon by the customer.

So when considering the integrated mailbox as a gateway rather than an information storage means, the integrity requirement could be complied with even when the mailbox is under the technical control of the payment service provider. However, in this case the "storage requirement" must also be respected and thus even when the storage does not take place in the integrated mailbox. The storage requirement can in this scenario be met when the storage possibilities are brought to the attention of the customer via a user-friendly interface set up in a way that it will lead the consumer almost certainly to either secure the information on paper or to store it on another durable medium (hard disk, CD-Rom,…).

Not only payment service providers should take note of this judgment, but also online providers of goods and services to consumers, insurance intermediaries and others. Indeed, many other EU consumer *acquis* directives have the same or similar requirement to "provide" some categories of information on a "durable medium" so that this judgment will also have an impact on mailbox solutions embedded in client-dedicated web spaces for other services than e-banking. The directives concerned are, amongst others:

- the Consumer Rights Directive 2011/83/EU which in the context of off-premises contracts and distance contracts imposes the formal requirement of provision of the required information and contract to consumers on a durable medium;
- the Distance Marketing Directive of Consumer Financial Services 2002/65/EC which imposes the prior provision, meaning before the consumer is bound by any distance contract or offer, of the required information to the consumer on a durable medium;
- the Insurance Distribution Directive 2016/97/EU which imposes insurance intermediaries to, prior to the conclusion of any initial insurance contract, provide the customer with certain information on a durable medium;
- the Consumer Credit Directive 2008/48/EC which imposes the prior provision, meaning before the consumer is bound by any credit agreement or offer, of the required pre-contractual information on paper or on another durable medium; and
- the Markets in Financial Instruments Directive 2014/65/EU ("MiFID II") which, amongst others imposes the provision on a durable medium within the framework of reporting and prior advisory obligations towards clients.

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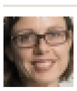

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Cannabidiol and tetrahydrocannabinol authorised for medical use in Brazil

By Elysangela Rabelo, M&A and Life Sciences Partner at TozziniFreire Advogados

On November 23 2016 the Health Surveillance Agency (ANVISA) approved changes to its rules for using substances subject to special control in order to provide easier access to drugs containing cannabidiol (CBD) and the first access to drugs containing tetrahydrocannabinol (THC) in Brazil.

These two active principals derive from cannabis sativa and, until recently, their use was forbidden by ANVISA because, from the authority's perspective, there was a lack of evidence of their positive effect in treating diseases.

Until 2015 both active principals were included in the list of forbidden substances established in ANVISA Ordinance 344 (May 1998). This ordinance provided for technical specificities regarding substances subject to special control, including both forbidden substances and substances which can be acquired and administered in specific conditions.

Liberalisation of CBD

The first change to the forbidden substance list was made in January 2015 when ANVISA decided to transfer CBD to the list of substances subject to special control. This decision resulted from a case involving a child with a rare case of epilepsy that could not be treated conventionally. More than 60,000 people signed a petition requiring the liberalisation and regularisation of CBD's use for medical purposes in Brazil. Thereafter, in May 2015 ANVISA issued new regulations regarding the import of CBD, allowing patients to have access to it in specific circumstances.

Now, almost two years later, a similar situation has arisen regarding the liberalisation of THC. ANVISA Ordinance 344 has been amended to include THC in the list of substances subject to special control. Any other type of use is still forbidden (eg, recreational use). Moreover, it is also a crime to cultivate and sell cannabis sativa and its derivatives in Brazil under Federal Law 11.343/2006.

Liberalisation of THC

Following on from the liberalisation of CBD, the use of THC for medical purposes has been authorised in order to facilitate the registration of a particular drug which uses THC as one of its active principals in its basic composition and which is already produced and used in some European countries for the treatment of multiple sclerosis.

According to ANVISA, the parties which initially requested the registration of THC presented sufficient evidence of its benefits. In addition, ANVISA's president advised that this change in use of THC is being carried out in accordance with previous standards and regulations in force in the United Kingdom and Belgium. This also means that Brazilian drugs containing either THC or CBD can have a maximum concentration of 30 milligrams per millilitre of the drug solution.

In addition to the amendment to the ordinance, ANVISA also issued an updated list of drugs containing CBD that can be imported into and used in Brazil. The agency also added a section to its website to clarify doubts about the import of products containing CBD, which sets out the documents, forms and procedures required for the registration and customs clearance of customs of such products. In the words of ANVISA's representatives, it has successfully achieved its objective of facilitating the import of products based on this substance.

The registration of the first drug containing THC in Brazil has yet to be approved by ANVISA and no exact timeframe has been set out for the administrative procedures to be concluded. However, it is clear that the update of ANVISA's ordinances and resolutions will benefit doctors, patients and the industry.

After the first registration has been approved, it is expected that more laboratories will start seeking the registration of products based on THC. ANVISA is also expected to change its rules in order to facilitate the import and registration of more products using THC as their active principal in future.

New Coordinated Rules Relating to the Clearing of Over-the-Counter Derivatives in Canada

January 23, 2017 | Mark S. Powell

On January 19, 2017, the securities regulators in each of the provinces and territories of Canada published a notice that they have finalized two new derivatives rules as part of their ongoing G20 commitment to regulate over-the-counter derivatives in Canada.

These rules are:

1. National Instrument 94-101 entitled *Mandatory Central Counterparty Clearing of Derivatives* (http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20170119_94-101_derivatives.htm) (Mandatory Clearing Rule) (http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20170119_94-102_customer-clearing.htm)
2. National Instrument 94-102 entitled *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20170119_94-102_customer-clearing.htm) (Customer Clearing and Protection Rule)

Mandatory Clearing Rule

The Mandatory Clearing Rule is anticipated to be in force as of April 4, 2017, and requires that, unless there is an exemption available, certain standardized interest rate swaps and forward agreements that have been entered by parties on an over-the-counter basis be submitted to a regulated clearing agency for clearing. The purpose of the rule is to reduce counterparty risk in the derivatives market and increase financial stability. In order to clear these transactions through a regulated clearing agency, the parties will need to comply with the rules of that clearing agency such as the requirements to post credit support with the clearing agency.

Fortunately, there are a number of exemptions available and, for the vast majority of our clients, we do not anticipate there being a need to clear the relevant transactions through a regulated clearing agency.

That being said, in order to rely on certain of these exemptions, there are some additional steps that must be taken. For example, in order to rely on the exemption relating to transactions amongst affiliates, the affiliates must enter into certain agreements as well as submit notices to the applicable regulators.

Although the Mandatory Clearing Rule is anticipated to be in force as of April 4, 2017, unless both of the counterparties to transaction have entered arrangements with regulated clearing agency in advance of October 4, 2017, there should be no need to submit transactions to a regulated clearing agency for clearing under the Mandatory Clearing Rule until October 4, 2017.

Customer Clearing and Protection Rule

In connection with the obligations to clear certain over-the-counter transactions through a regulated clearing agency, the Canadian securities regulators have finalized the Customer Clearing and Protection Rule. It is anticipated to be in force as of July 3, 2017.

The purpose of the rule is to ensure that the clearing of transactions by a clearing agency and intermediaries will occur in a manner that protects the counterparties' positions and collateral. The Customer Clearing and Protection Rule is intended to improve the regulated clearing agencies' resilience to a default by a clearing agency or intermediary.

The Customer Clearing and Protection Rule imposes obligations on the clearing agency and intermediaries relating to the provision of clearing services, the segregation and use of credit support provided by the counterparties and the transfer of credit support and trading positions in the event of a default of a clearing agency or intermediary. In addition, the rule details several recordkeeping, reporting and disclosure requirements imposed on clearing agencies.

If you have any questions relating to your obligations to clear over-the-counter derivatives transactions through a clearing agency or have any questions relating to the requirements being imposed on the clearing agencies, please do not hesitate to contact us.

Related People

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NEWSALERT

/Carey

Public power tender process to supply distribution companies 2017/01

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

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Regarding the public tender process for the supply of energy and capacity to distribution companies that will take place this year ("**2017/01 Tender Process**"), please consider the following:

On December 30, 2016, the National Energy Commission (**CNE**) began the process of creating the **Registry of Interested Institutions and Users** for the submittal of technical observations to the **Preliminary Tender Process Report.**

Every tender process of this kind starts with a Preliminary Tender Process Report.

In order to be part of the registry, interested parties must submit the relevant application, background information and declarations mentioned in Annex I of Exempt Resolution N° 942 **before February 10, 2017**. **Click here**

Additionally, on December 12, 2016, CNE approved the text of the **Preliminary Terms and Conditions of the 2017/01 Tender Process**. **Click here**

Although this text is not the final text, it includes the following useful information:

- 4,200 GWh will be tendered, divided into five supply blocks to supply energy from January 1, 2023, to December 31, 2042.
- The submission of bids will take place on October 11, 2017, and on October 30, 2017 the economic offers will be opened.
- Supply blocks:

Tendered Energy (GWh)	Supply Block N° 1-A	Supply Block N° 1-B	Supply Block N° 1-C
Supply Block	1,100	1,620	825
Base	1,000	1,473	[illegible]
Variable	100	147	75

Tendered Energy (GWh)	Supply Block N° 2-A	Supply Block N° 2-B
Supply Block	330	330
Base	300	300
Variable	30	30

As always, we remain at your full disposal in case of any questions or comments in connection to this matter.

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PRC Regulation on Internet-Based Live Broadcasting Businesses

02.08.17

By Vincent Wang and Kraig L. Marini Baker

On Sept. 2, 2016, the General Administration of Press Publication Radio, Film and Television of the People's Republic of China (the "GAPP") released the Circular on Several Issues for Strengthening the Administration of Internet-Based Live Broadcasting Services (the "GAPP Circular"), which took effect immediately. The government determined that this regulation was not sufficient and additional regulation was necessary. As a result, on Nov. 4, 2016, the Cyberspace Administration Office of the People's Republic of China (the "CAO") released the Regulation on Internet-Based Live Broadcasting Services (the "CAO Regulation"), which took effect on Dec. 1, 2016. This article highlights the key regulatory measures in both the GAPP Circular and the CAO Regulation. In this article, the GAPP Circular and the CAO Regulation are jointly referred to as the "Internet Live Regulations".

Authorities and Targets

The Internet Live Regulations aim to regulate the Internet-Based Live Broadcasting Services (the "Live Services"), the platform service providers for the Live Services (the "Live Platform Providers"), and the providers of content for the Live Services (the "Live Content Providers").

Live Services are the internet-based services that consistently provide the public with real time information in the form of video, audio, pictures, articles, etc. A Live Platform Provider, such as www.douyu.com, is the entity that runs the platform service that hosts the Live Services, and a Live Content Provider, such as Papi Jiang, is an entity or individual broadcaster and/or user that receives the Live Platform Porvider's services and provides contents to the general public.

Similar to regulation of other online content, the Internet Live Regulations establish three-layer regulation. At the top of the regulatory hierarchy, the CAO and its local offices will take primary responsibility for regulating Live Services. In the middle, various ministry authorities and their local counterparts will coordinate with the CAO and its local offices within the regulatory authorities on regulating specific Live Services content. Finally, at the bottom, the Live Platform Providers will censor and/or block prohibited content for the Live Services delivered through their respective platforms. Moreover, these Live Platform Providers will be held accountable for illegal content provided through their platforms.

Regulatory Focuses

News Content. News broadcasting is always a sensitive area in China. Not surprisingly, the CAO Regulation emphasizes the applicability of the regulation to internet news and information services provided through the Live Services, and the GAPP Circular establishes specific operational guidance and requirements for news content on the Live Services.

Under the CAO Regulation, in order to offer legally compliant news-related Live Services, (1) the Live Platform Provider must obtain the approval from the CAO for the internet news information service (the

“Internet News Approval”), (2) the Live Content Provider must also obtain its own Internet News Approval, and (3) the specific news content provided in the Live Services must fall within the approved scope of both the Internet News Approval received by the corresponding Live Platform Provider and that received by the corresponding Live Content Provider.

Under the GAPP Circular, an “Information Network Audio and Video Transmission Permit” (the “Online AV Permit”) will also be required to broadcast audio or video news-related Live Services. Depending on the type of news related Live Services, one will have to obtain one or the other of the following Online AV Permit:

- Item 5 of Category A Online AV Service Permit if the Live Services involve live AV for serious and important political, military, economic, social, cultural, and sports events; and

- Item 7 of Category B Online AV Service Permit if the Live Services involve live AV for the general social, cultural, and sports events.

Other Content. Although not governed by the Internet Live Regulations, other content offered on the Live Services must still comply with the general content regulation that currently governs the Chinese telecommunications and online content services.

Regulatory Requirements

The majority of the regulatory requirements of the Internet Live Regulations are imposed on the Live Platform Providers. This is not a surprise. Such regulatory requirements include:

- Advance Filing Requirements for AV News: Live Services must file with the GAPP 5 days and 48 hours in advance respectively for Live Services involving (1) serious and important political, military, economic, social, cultural, and sports events, and (2) general social, cultural, and sports events;

- Chief Editor Personal Responsibility: In addition to the usual requirement imposed upon the Live Platform Providers to have proper professional personnel for identification and content verification, information security, technical support, and emergency support, the Live Platform Provider must also appoint a Chief Editor who will be personally responsible and liable for the news content on the Live Service;

- Special News Content Rules: The Live Platform Providers must ensure that (1) the source of the news content is true, fair, and objective, (2) the reproduced news content is properly marked with the original source and without any content alteration; and (3) no real-time onscreen comments are allowed at all for serious and important political, military, economic, social, cultural, and sports events, and the Live Platform Provider must implement real-time screening of the real-time onscreen comments for the general social, cultural, and sports events;

- Prior Content Screening: The Live Platform Providers must screen the content before the content is distributed or published on their platforms and they must ensure that there is no improper political content contained in the content;

- Live Content Provider Screening: The Live Platform Providers are required to establish a reliability or reputation evaluation policy for the Live Content Providers, and they must further establish and maintain a blacklist of the Live Content Providers who fail to demonstrate such creditworthiness. The Live Content Provider must deregister and not allow the re-registration for Live Services of any Live Content Provider included in the blacklist. The Live Platform Provider must share such blacklist with the CAO;

- Capability to Suspend and Terminate: The Live Platform Providers must have the capability to suspend and terminate the Live Services with technologies and processes that are compliant with the China national standards;

- Different Real-Name Policies for Live Services Users and Live Content Providers: The Live Platform Providers must (1) identify and verify all Live Services users by their mobile phone numbers, and (2) identify and verify all Live Content Providers by their personal ID and business registration, and categorize the Live Content Providers into different categories and register the category information with the CAO;

- 60 Days Log Records: The Live Platform Providers are required to record the content and log information of the Live Content Providers and must keep such records for 60 days.

Punishment and Discipline

The Internet Live Regulations do not impose any new liabilities or punishments for violation of the regulation of the Live Services. Any news content violation in the Live Services is subject to the punishment and discipline defined by the Administration Rules on Internet News Information Services, and any other content violations to other corresponding existing administrative regulations and rules.

The Internet Live Regulations impose clear regulatory requirements and specific operational requirements. Although there appears to be no greater liability under the Internet Live Regulations, the Internet Live Regulations will disqualify individuals from engaging in news content-related Live Services and they further impose additional personnel, technical, and administrative costs and burdens for platform providers to support the Live Services. As a result, the Internet Live Regulations are destined to have a critical impact on the further development of such businesses in China, and service and content providers in such a business should be wary about the changes in the legal and administrative requirements and policies.

In short, the Live Service Regulations are consistent with the Chinese government's strategy to bring the administrative regulation governing contents from offline to online providers. As interesting comparison, when the O2O businesses strive for success by connecting their online users with the offline service providers, the Chinese regulatory authorities effectuate regulatory strategy by focusing on offline physical content providers in order to regulate their online contents offering. So far, both strategies are successful and effective.

Recently, a news article was published about the Internet Live Regulation entitled "The Death of the Live Services". Will it become true? We will all have to wait and see its true impact.

PRESS ROOM

CORPORATE TAX APPROVAL IN COSTA RICA

January, 2017

On January 9th, 2017, the Corporate tax was approved on first debate, its final approval is still pending.

This tax will apply to all companies as well as branches and foreign companies with legal representatives registered in Costa Rica.

This tax has a fiscal period from January 1st to December 31st of every year. The payment should be done by January 31st at the latest, before the Tax Authorities. This year a special term is applicable.

The amounts to be paid up to date, once the law is approved on second debate, are the following:

- **₡63,630.00:** for all the companies that are not declarants or tax payers.
- **₡106,050.00:** for the companies with a reported income less than ₡50,904,000.00.
- **₡127,260.00:** for the companies with a reported income that is more than ₡50,904,000.00 and less than ₡118,776,000.00.
- **₡212,100.00:** for the companies with an income over ₡118,776,000.00.

Having not paid 3 consecutive periods could result in the dissolution of the company by the Corporate Registry, and the legal representatives will be jointly responsible.

RegTech in Hong Kong: the current state of play

December 2016

Given its increasing importance within the FinTech space, RegTech – regulatory technology - has come to occupy a position of focus, as it has in numerous other jurisdictions, in the Hong Kong market. Mark Parsons, Partner at Hogan Lovells, takes a look at the state of play for the regulation of RegTech in Hong Kong in the context of the wider attitude taken towards FinTech by the regulatory authorities of Hong Kong, who have generally been viewed as taking a somewhat cautious approach.

'RegTech,' or regulatory technology, is an increasingly important element of FinTech. As Hong Kong presses forward with its ambition to be the Asia region's leading FinTech hub, RegTech has come to be a point of focus, both for market participants and for regulators.

As is the case elsewhere, financial services in Hong Kong are increasingly moving to a digital experience. Hong Kong is an advanced economy with a 230% mobile penetration rate and a strong appetite for e-banking services. It is also a leading asset management and commercial paper hub and home to the Asia region's third largest stock exchange. These are all business drivers for the logical emergence of Hong Kong as a FinTech centre, but it must also be recognised that Hong Kong's claim to be a FinTech leader is supported by a strong reputation for a stable and well-understood regulatory environment. It is a natural result that Hong Kong's FinTech surge is accompanied by a strong RegTech element.

For larger institutions with substantial compliance overheads, the promise of RegTech is to replace manual processes with technologies that are cheaper and more effective at achieving compliance and managing risk. For technology companies - both large and small - RegTech represents an opportunity to re-invent the compliance function altogether, for example by leveraging advanced data analytics to assess credit worthiness and monitor for money laundering and fraud. RegTech is therefore more than just back-office administration - it can be a driver of disruption and competitive advantage.

At the same time, regulatory authorities are evaluating the use of RegTech to enhance their regulatory oversight, giving them access to better information and analytics to more quickly and fully understand what is happening in the markets that they regulate, and better devise and calibrate a regulatory response. It follows that there are two aspects to RegTech - (i) the use of technology by institutions and market participants to improve the compliance function, and (ii) the use of technology by regulators to enhance oversight.

RegTech and the Hong Kong regulatory environment

It is often said that FinTech is disrupting financial services so quickly that regulators and lawmakers are struggling to keep up. Hong Kong's financial services legislation was mainly written before the FinTech revolution began, and it shows. The launch in October 2016 by the Hong Kong Monetary Authority (the'HKMA') of a new stored value facility regime does reflect some progress in the law keeping pace with advances in payments technology. Stored value licensees are regulated under a lighter touch regime that stands alongside the traditional banking system, reflecting the lower risk that these services entail. But taking a closer look, the 13 licensees now operating under that regime are basing their customer due diligence ('CDD') procedures on the same paperbased standards that apply across the established financial services regulatory environment in Hong Kong. The core requirement is a face-to-face meeting with the customer in which the customer produces identity documentation and a proof of address in the form of a utility bill. There are some allowances at the margins for smaller transactions and facility loadings, but the status quo for CDD is a paper-driven standard that will conflict with many FinTech business models.

The push to move forward with RegTech isn't just driven by technology-focused new entrants to financial services. Established institutions have also been impressed by the potential of RegTech and see these technologies delivering performance improvements on existing paper-based checks and balances in areas such as fraud detection, both in the context of CDD and beyond. However, these technologies are typically being deployed in parallel to the CDD requirements mandated by law - not as a compliance requirement per se, but as an enhancement to risk management.

Big data

Many RegTech solutions are said to be 'data-driven' in the sense that they rely upon advanced techniques to analyse large volumes of data to gain insights, for example biometrics technology that records a customer's voiceprint and uses this information to verify account access. Hong Kong's Personal Data (Privacy) Ordinance (the 'PDPO') must be navigated when evaluating the fitness for purpose of RegTech solutions in Hong Kong. The PDPO is the Asia region's longest standing comprehensive data protection law. The law takes its cues from the same principles that underlie European data protection law, meaning that, subject to limited exemptions, personal data may only be processed with the user's consent. Importantly, publicly available information is still regulated as personal data under the PDPO, meaning that datadriven solutions that involve, for example, leveraging data from social media or public registries will need to take account of the fact that consent may be required.

Hong Kong RegTech: the way forward

2016 has seen an explosion of activity on the Hong Kong FinTech scene. The latest budget allocates $2 billion to an innovation and technology venture fund that will support co-investment in Hong Kong startups. The HKMA has launched a supervisory sandbox for banks, and all three principal financial services regulators have launched FinTech contact points to foster better engagement with the FinTech community.

The regulatory focus is sharpening. A recent example is the October 2016 advisory circular in which the Securities and Futures Commission (the 'SFC') reported that it had studied industry proposals relating to biometric technologies, such as facial recognition, to administer CDD in non-face-to-face account opening. The SFC concluded that in jurisdictions where regulators had accepted such technologies, they had generally been applied to non-face-to face transaction authorisations, where biometric samples had been collected in person upon account opening, rather than non-face-to-face account opening.

Cyber security regulation is now moving forward in ways that will impact RegTech. The HKMA has launched a Cyber Fortification Initiative that will involve a cyber-readiness benchmarking exercise and the development of cyber incident information-sharing protocols for banks. Last month, the SFC issued a circular announcing a review of brokers' internet and mobile trading systems in the wake of a number of hacking incidents.

The broader contours of the use of RegTech by Hong Kong regulators was put under a spotlight earlier in the year when the SFC announced its evaluation of 'see-through surveillance' of trades on the Hong Kong Stock Exchange. The SFC already has real-time access to trading data at the broker level. The proposal here would give the regulator visibility at the client level, raising an interesting debate. Some commentators raised privacy concerns and views that there could be leakage of sensitive information about trading strategies or delays in execution and settlement of trades. The idea of regulators having a 'regulatory node' delivering perfect information about the market also raises wider issues of risk allocation amongst market participants, institutions, exchanges and the regulators themselves.

Conclusions

As Hong Kong moves forward with its ambition to secure its FinTech future, RegTech will increasingly come to the fore. It is noteworthy that Hong Kong's approach to regulating FinTech has been perceived to be a cautious one. For example, Hong Kong's new SVF regime has fewer exemptions than Singapore's, which exempts all stored value businesses having an average float of less than SGD 30 million. The HKMA's supervisory sandbox, which follows in the wake of similar sandbox initiatives by financial regulators in the UK, Singapore and Australia, is intended to offer a lighter touch regulatory environment in support of FinTech innovation. That said, Hong Kong's sandbox is only open for licensed banks to play in and not to startups, as is the case with Hong Kong's global rivals.

The cautious approach we see here has been put down to an imperative that Hong Kong maintain its good standing as a prudent regulator of financial services. This is a worthy objective, but as Hong Kong regulators gain experience with the changes to financial services brought about by FinTech, we can expect to see the risk assessments grow more nuanced. We can also expect that RegTech will be an important piece of the puzzle of finding the right balance going forward. RegTech can and will provide essential risk management tools for the industry and for regulators as financial services are redefined going forward.

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ABNR
COUNSELLORS AT LAW

21/10/2016

DRAFT LAW ON DRUG AND FOOD SUPERVISION

The Government has submitted a draft law on Drug and Food Supervision (“Bill“) to the House of Representatives, just in time following the recent uncovering of the counterfeit vaccine and drugs scandal. The Bill has been included in the 2015-2019 National Legislative Program, even though it is not placed in the priority category for the year 2016.

Serving as an umbrella for regulations on supervision of foods and drugs, the Bill covers a wide range of aspects of the supervision, among others:

a. Production;
b. Distribution;
c. Export and Import;
d. Promotion and Advertising;
e. Laboratory Testing, Recalls and Disposal;
f. Liabilities; and
g. Criminal Sanction.

The following is noteworthy:

a. Pursuant to its definition, “Drugs and Foods” includes: (i) Drugs, (ii) Drug Raw Materials, (iii) Herbal Drugs, (iv) Herbal Extracts, (v) Cosmetics, (vi) Health Supplements, and (vi) Processed Foods (including packaged foods and ready-to-serve foods).
b. The Bill shows the government’s intention to expand and strengthen the role and authority of the National Agency of Drug and Food Control (Badan Pengawas Obat dan Makanan or “BPOM”). Under the Bill, BPOM replaces the role of the Ministry of Health in granting Pharmaceutical Manufacturing Licenses (Izin Industri Farmasi), Pharmaceutical Wholesaler Licenses (Izin Pedagang Besar Farmasi), and Cosmetic Manufacturing Licenses (Izin Industri Kosmetik). Processed foods manufacturing licenses are still granted by referring to the Industrial Business License issued by the Ministry of Industry.
c. The BPOM will maintain its current role as issuer of Drugs and Foods marketing authorization (izin edar).
d. The Bill emphasizes the previous BPOM requirement that the information stated on drug and food product labels be objective, comprehensive, correct and not misleading.
e. The Bill stipulates the following drug distribution channeling:

Pharmaceutical industries	→	a. Pharmaceutical wholesalers; and b. Governmental pharmaceutical stock storage facilities.
Pharmaceutical wholesalers		a. Other pharmaceutical wholesalers; b. Pharmacies; c. Governmental pharmaceutical stock storage

	➡	facilities; d. Hospital pharmaceutical facilities; e. Clinic pharmaceutical facilities; f. Drugstore, except for prescribed drugs; and g. Scientific institutes
Governmental pharmaceutical stock storage facilities	➡	a. Other governmental pharmaceutical stock storage facilities; b. Government-hospital pharmaceutical facilities; c. Public Health Centers (Puskesmas); and d. Clinic pharmaceutical facilities.

f. The Bill allows online distribution of Drugs and Foods, provided that the licensing, manufacturing and labeling standards and requirements are complied with. However, it is still unclear as to whether there are restrictions on the online distribution, given the restrictive nature of prescribed drugs.

g. In addition to the usual import licenses (API), Drugs and Foods exporters and importers are required to obtain an export/import certificate (Surat Keterangan Impor) from the BPOM.

h. The promotion and advertising of Drugs and Foods products require the approval of BPOM. The scope of BPOM's authority in this is still unclear.

i. Marketing authorization holders are obliged to recall Drugs and Foods products (i) which do not meet the standards and/or (ii) which marketing authorization is revoked. The Head of BPOM has the authority to announce Drugs and Foods products which are being recalled from circulation.

j. Drugs and Foods manufacturers must ensure the safety, quality and efficacy of their products. Failing to do so may cause the manufacturer to face a tort claim.

k. The sanctions imposed on corporations for violations of certain responsibilities, obligations or requirements under this draft law are 3 (three) times heavier than the sanctions for the same violations imposed on individuals.

The Bill is currently being deliberated between the Government and the House of Representatives. When it has become a law, its implementing regulations will still need to be issued by the BPOM. (*By: Adri Yudistira Dharma*)

REVAMPING THE BANKRUPTCY ACT 1967

Trevor Padasian provides an overview of the Bankruptcy (Amendment) Bill 2016

The Bankruptcy (Amendment) Bill 2016 ("the Bill") was tabled for its First Reading before the Dewan Rakyat of the Malaysian Parliament on 21 November 2016. The debate on the Bill will continue when Parliament reconvenes in March 2017. It is, arguably, the most drastic revamping of the Bankruptcy Act 1967 ("Act") since the Act came into force on 30 September 1967.

In the months leading up to the tabling of the Bill, it was reported in the local media that the Government intended to amend the Act to provide greater protection for debtors. As reported, the Government's principal objectives in seeking to do so are to: (a) reduce the number of bankruptcy cases; (b) provide an opportunity for a debtor to rearrange his debts; (c) reduce the period before a bankrupt may be discharged from his bankruptcy; and (d) increase the minimum threshold for the presentation of a bankruptcy petition.

The objective of reducing the number of bankruptcy cases may have been triggered by alarming statistics which showed that a total of 95,799 debtors had been declared bankrupt between 2012 and August 2016.

This article provides an overview of the major amendments which are to be introduced under the Bill. For the purpose of this article, the Bill will be referred to as "the Amendment Act".

CHANGE OF NAME

The name of the Act will be changed to the Insolvency Act 1967. It should be noted that unlike some other jurisdictions, such as the United Kingdom and New Zealand, where the Insolvency Acts deal with the insolvency of both individuals and companies, the Act will regulate only insolvency and bankruptcy of an individual and a firm. Insolvency of companies in Malaysia will continue to be regulated under the Companies Act 1965 (and in due course, the Companies Act 2016).

MINIMUM THRESHOLD INCREASED

The minimum threshold for presentation of a bankruptcy petition will be increased from RM30,000 to RM50,000 under the Amendment Act. Although no rationale is provided for the increase, it appears from media reports that it is to give "*protection to the people*" and is in line with the "debtor-centric" thrust of the amendments.

SINGLE ORDER BANKRUPTCY

The Amendment Act also introduces a single order for bankruptcy, i.e. the bankruptcy order, in place of the existing receiving and adjudication orders.

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When a receiving order is made, the Director General of Insolvency ("DGI") becomes the receiver of the debtor's property. The receiving order protects the debtor's property from being dissipated but does not have the effect of making the debtor a bankrupt. The debtor is made a bankrupt only upon the issue of an adjudication order.

Although the receiving and adjudication orders are usually made simultaneously, the making of an adjudication order does not necessarily follow the making of a receiving order. If the debtor satisfies the court that he is in a position to offer a composition or make a scheme of arrangement acceptable to his creditors, then an adjudication order will not be made. This existing flexibility may be removed by replacing the receiving and adjudication orders with a single bankruptcy order.

VOLUNTARY ARRANGEMENT

The Amendment Act introduces the concept of a "voluntary arrangement", a pre-bankruptcy rescue mechanism, which provides the debtor with the opportunity to rearrange his debts with his creditors before he is adjudged a bankrupt.

A debtor may initiate a voluntary arrangement with his creditors by: (a) appointing a nominee ("nominee"), who must be a registered chartered accountant, an advocate and solicitor or a person approved by the Minister upon the recommendation of the DGI, to supervise the implementation of the voluntary arrangement; and (b) applying to the court for an interim order of voluntary arrangement ("interim order").

The High Court will make an interim order upon receipt of an application for an interim order if there is no previous application for an interim order and the nominee is willing to act in relation to the proposal. An interim order operates to stay all bankruptcy and other legal proceedings against the debtor and is valid for 90 days, and may only be extended in limited circumstances for a further period of 30 days.

The debtor must submit a proposal ("proposal") for approval by his creditors during the subsistence of the interim order. The voluntary arrangement is subject to the approval by a majority in number and at least three-fourths in value of the creditors at a meeting of creditors, or in writing, and voting on the resolution. If the proposal is not approved by the creditors, the court may set aside the interim order.

If a debtor fails to comply with any of his obligations under a voluntary arrangement, any creditor who is bound by such arrangement may file or proceed with a bankruptcy petition against the debtor for the balance of the debt due to him.

ABSOLUTE PROTECTION FOR SOCIAL GUARANTOR

Currently, a creditor may commence a bankruptcy action against a "social guarantor", i.e. a person who provides, not for the purpose of making profit, a guarantee for: (a) a loan, scholarship or grant for educational or research purposes; or (b) a hire-purchase transaction of a vehicle for personal or non-business use; or (c) a housing loan transaction solely for personal dwelling, only if he satisfies the court that he has exhausted all avenues to recover the debts owed

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to him by the principal debtor. The Amendment Act will **absolutely prohibit** bankruptcy proceedings against a social guarantor.

OTHER GUARANTORS

As a result of the amendments, other guarantors (not being social guarantors) will have the same protection currently accorded to social guarantors under the Act. A creditor must satisfy the court that he has exhausted all avenues to recover the debts owed to him by the principal debtor and obtain leave of the court before commencing any bankruptcy action against a guarantor. This new requirement sets a high bar for the commencement of bankruptcy actions against non-social guarantors.

PROHIBITED OBJECTIONS TO DISCHARGE OF BANKRUPT

Currently, a bankrupt may be discharged if a certificate of discharge is issued by the DGI after five years from the date of the receiving and adjudication orders. A creditor may object to the issuance of such a certificate. The Amendment Act prohibits objections against the discharge of a bankrupt who: (a) was adjudged a bankrupt because he was a social guarantor; or (b) has a disability under the Persons with Disabilities Act 2008; or (c) who has passed away; or (d) is suffering from a serious illness certified by a Government Medical Officer. It is to be noted that the Amendment Act does not provide any guidance as to what constitutes "*serious illness*".

AUTOMATIC DISCHARGE

The Amendment Act introduces provisions for an **automatic discharge** of a bankrupt upon the expiry of **three years** from the date of submission of the statement of affairs by the bankrupt if he has: (a) achieved an amount of target contribution of his provable debt; and (b) complied with the requirement to render an account of moneys and property to the DGI.

The Amendment Act sets out the factors that the DGI may take into account in determining the target contribution. These factors include, amongst others, the amount of the provable debt of the bankrupt, the current monthly income of the bankrupt, his prospective monthly income over the duration of the bankruptcy, his educational and vocational qualifications, age and work experience, the effect of the bankruptcy on his earning capacity and the prevailing economic conditions.

Before an automatic discharge can be effected, the DGI must serve a notice of discharge on each of the bankrupt's creditors not less than six months before the expiry of three years from the submission of the statement of affairs, but not earlier than one year before the expiration of the aforesaid 3-year period.

A creditor may, within 21 days of being served with a notice of discharge, object to the automatic discharge by applying to the court to suspend the discharge only on one or more of the following grounds:

(a) the bankrupt has committed any offence under the Act or under certain provisions of the Penal Code relating to fraudulent disposition or concealment of property to prevent distribution to creditors;

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(b) the discharge would prejudice the administration of the bankrupt's estate;

(c) the bankrupt has failed to co-operate in the administration of his estate.

The creditor's application must be served on the DGI and the bankrupt and the court is required to hear the DGI and the bankrupt before making an order. The Amendment Act does not address the consequences of the bankrupt's absence at the hearing.

The court may either dismiss the application and approve the automatic discharge or suspend the discharge for two years. In the case of suspension, the bankrupt must continue to fulfil his statutory duties and obligations and will be automatically discharged at the end of the 2-year period.

The amendments by their wording suggest that the automatic discharge after a suspension of two years is not conditional upon the due fulfilment by the bankrupt of his duties and obligations during that period.

As mentioned earlier, the Act presently only permits the DGI to issue a certificate of discharge after five years from the date of the receiving and adjudication orders. If the court upholds an objection from a creditor, no certificate of discharge can be issued by the DGI within two years. After the 2-year period, there is no automatic discharge and it is up to the DGI to commence fresh proceedings for the issue of a certificate of discharge (which may be objected to by the creditors).

CONCLUSION

The amendments under the Amendment Act are far reaching and will go some way in meeting the Government's objectives set out in the second paragraph of this article, particularly in providing greater protection for debtors, specifically social guarantors, and reducing the number of bankruptcy cases. Certain provisions may hopefully be fine-tuned, for example, to provide the criteria to assist the courts in deciding whether a judgment creditor has exhausted all modes of execution and enforcement to recover the debts owed by the principal debtor. It remains to be seen whether the amendments would have the effect of dampening the risk appetite of and changing the types of security acceptable to financial institutions and other creditors.

TREVOR PADASIAN (tjp@skrine.com)
20 January 2017

Trevor is a Partner in SKRINE. His main practice areas are commercial litigation, family law and bankruptcy and insolvency law.

Simpson Grierson

Fluoride Bill is here

December 16, 2016

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The Fluoride Bill is here. Despite previous indications, it does not contain a full transfer of decision making responsibilities on fluoridation to district health boards from local government.

The media coverage before the bill was released broadly stated the introduction of the bill would see a transfer of the decision-making responsibility of fluoridation from local authorities to district health boards (DHBs).

The proposed amendment to Part 2A of the Health Act 1956 does not make a full transfer of decision-making responsibility from local authorities. Instead, it empowers DHBs to make directions to local authorities to introduce or cease fluoridation of drinking water. However, DHBs are not required to consider fluoridation. Consequently, local authorities will remain the decision-makers on the issue if the relevant DHB does not elect to use the bill's new powers.

Given the controversial nature of decisions on fluoridation, it is not impossible to imagine a situation where a DHB chooses not to make a direction on the matter to avoid the risk of costly court proceedings.

When deciding to make a direction under the bill, the DHB must consider:

- scientific evidence on the effectiveness of adding fluoride to drinking water in reducing the prevalence and severity of dental decay; and
- whether the benefits of adding fluoride to the drinking water outweigh the financial costs, taking into account: the number of residents drinking water is supplied to; the state of the resident population's oral health; and the cost and savings of adding fluoride.

The inclusion of broadly worded mandatory considerations may invite a continuation of the litigation about fluoridation. Terms like the "financial cost and savings" are open to interpretation, and would appear to invite debate. It is also questionable how the size of a resident population is a relevant factor, given the costs and savings are already considered separately.

In our view, it would be preferable for the bill to be more definitive, and to pass responsibility for decisions on fluoridation to DHBs in a more complete manner. There are easy fixes to achieve this within the bill's current framework. It would also be highly beneficial to address what we see as potential avenues for challenge in order to help prevent decisions on fluoridation being caught up in more litigation.

The Health (Fluoridation of Drinking Water) Amendment Bill had its first reading last week and submissions will be accepted until 2 February 2017.

Disclosure

We act for South Taranaki District Council in what has become lengthy and multi-faceted litigation about the lawfulness of fluoridation. The Court of Appeal recently released its decision in *New Health NZ Inc v South Taranaki District Council*, which rejected New Health's appeal in this case and two other cases. New Health NZ Inc has applied for leave to appeal to the Supreme Court.

We would be happy to assist you in preparing a submission on the bill.

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DENTONS RODYK

Joint accounts - The new shield?

A case review on *One Investment and Consultancy Limited and another v Cham Poh Meng (DBS Bank Ltd, garnishee)* [2016] SGHC 208

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Introduction

Although the sum involved was small, the High Court's decision in *One Investment and Consultancy Limited and another v Cham Poh Meng (DBS Bank Ltd, garnishee)* [2016] SGHC 208 is one which would have a great impact in the area of enforcement of a judgment debt – A joint account held in the names of a judgment debtor and third parties jointly cannot be subject to attachment under a garnishee order.

This decision, together with the reasons the High Court used to justify it, now casts doubt on whether a bank is able to rely on a common clause found in security documents which allows it to combine any account held by a borrower (whether solely or jointly with a third party) together with the borrower's liabilities. More importantly, it now advances the possibility of borrowers using joint accounts as a shield against enforcement by banks.

Background

The first plaintiff was a company incorporated in the British Virgin Islands and the second plaintiff was its director. On 8 January 2016, the plaintiffs obtained summary judgment against the defendant for, *inter alia*, a sum of S$1,472,561.

Pursuant to the summary judgment, the second plaintiff applied for a garnishee order against DBS Bank Ltd (DBS) for, *inter alia*, a joint account held in the names of the defendant and his wife (the Joint Account), consisting of S$117.34.

At first instance, the learned Assistant Registrar referred to the recent cases of *Chan Shwe Ching v Leong Lai Yee* [2015] 5 SLR 295 and *Chan Yat Chun v Sng Jin Chye and another* [2016] SGHCR 4. In *Chan Shwe Ching*, it was held that a defendant's interest in a property held jointly by him and a third party as joint tenants could be attached and taken in execution to satisfy a judgment debt under a writ of seizure and sale, and in *Chan Yat Chun*, it was held that a similar approach is also taken where the defendant and the third party hold the property as tenants-in-common instead. Relying on the two cases, it was held that the Joint Account could be subject to attachment under the garnishee order. Although the learned Assistant Registrar acknowledged that the two cases mentioned above relate to a writ of seizure and sale against immovable property rather than the garnishing of money in a joint account, she held that there was no reason to distinguish the two.

DBS subsequently appealed.

The High Court’s ruling

On appeal, Kannan Ramesh JC (the Judge) found for DBS, and in doing so laid out the positions of the various Commonwealth authorities, as well as the policy considerations, justifying his decision.

The Commonwealth authorities

The learned Judge first considered the various Commonwealth authorities, most of which supported the view that joint accounts could not be the subject of a garnishee order:

I. The English Position is well-established in the case of *Hirschhorn v Evans* [1938] 3 All ER 491, where the English Court of Appeal held that a joint account cannot be the subject of a garnishee order in respect of the debt of only one of the account holders. This is because to hold otherwise would be to enable a judgment creditor to attach a debt to two persons in order to answer for the debt due to him from the judgment debtor alone, which would be altogether contrary to justice. This position was later considered and confirmed in a White Paper, and as such remains unchanged.

II. The Australian Position follows the English Position: the Court of Appeal of New South Wales held in *D J Colburt & Sons Pty Ltd v Ansen; Commercial Banking Co of Sydney Ltd (Garnishee)* [1996] 2 NSWR 289 that the correctness of the English position in *Hirschhorn* was “so obvious as not to require further attention”. The position was subsequently subject to legislative reform, but the court’s decision still stands where the statute does not apply.

III. The positions in Hong Kong (see *Gail Stevenson and another v The Chartered* Bank [1977] HKLR 556*)* Northern Ireland (see *Belfast Telegraph Newspapers Ltd v Blunden (trading as Impact Initiatives)* [1995) NI 351) and India (see *Anumati v Punjab National Bank* LNIND 2004 SC 1877) all support his view as well.

IV. The only Commonwealth jurisdiction that has departed from the position in *Hirschhorn* is Canada: In *Smith v Schaffner* [2007] NSJ No 294, the Nova Scotia Supreme Court allowed a garnishee order to be made against a joint account, as they found that “there is no reason, based on policy, equity, or logic, that if the interest of the execution debtor in the “property” of a joint account is established, that a creditor should not be entitled to have the sheriff attach the execution debtor's "interest" in the "property" by garnishee." However it was held that the burden fell on the judgment creditor to establish the interest of the judgment debtor in the joint account.

As such, the approach taken by the majority of the Commonwealth countries lent great weight in the Judge arriving at the view that joint accounts cannot be subject to a garnishee order.

Policy considerations

More importantly, the Judge examined the policy considerations surrounding this case, and categorised into two categories: (1) Prejudice to the banks, and (2) Prejudice to the innocent joint account holders.

Prejudice to the banks

The first category of policy considerations is the detriment potentially suffered by the banks.

The main issue the Judge considered is the current lack of a framework for determining each joint holder's contribution to the joint account. As it was held that there is no basis in law or fact for a presumption of the contributions of the joint account holders to be equal, such a determination would involve a "fairly involved process that is typically resolved by a full factual investigation at trial, something that banks are not equipped to conduct and that enforcement processes are ill-suited for". Furthermore, to require the banks to make such assessments could expose them to liability to the innocent joint account holders.

Even if such a framework is to be adopted, this would result in the increased operational and legal costs of compliance: in order to ensure that the innocent joint account holders are properly treated and their complaints are properly addressed, the banks would have to incur costs in notifying them and responding to their complaints. The Australian Parliament has laid down a lengthy framework for issuing garnishee orders against joint accounts, and if Singapore was to adopt this framework, this would impose a significant financial and administrative burden on the banks. Such increased costs would ultimately be borne by the judgment creditors and debtors, thereby imposing a barrier to justice.

Prejudice to the other account holders

The second category of policy considerations is the detriment potentially suffered by the innocent joint account holders.

The first issue that arises in this category is the lack of a framework for a joint account holder to assert his share in the joint account: There is currently no requirement that an innocent joint account holder be notified, nor is there any mechanism for the innocent joint account holder to seek determination of the judgment debtor's interest in the joint account under the Rules of Court. This means that the garnishee order could be made final and the sum specified therein deducted even before the innocent joint account holder is made aware. Even if the innocent joint account holder was notified by the bank, he has no recourse save to register his objection with the bank or to incur substantial costs by seeking to participate in the formal garnishee process before the court.

Even if the Singapore courts allow the approach in *Smith* where the burden falls upon the judgment creditor to establish the interest of the judgment debtor in the joint, the result is that the decision of the court would be based on the partisan evidence of the judgment creditor – an apparent breach of natural justice.

The second issue that arises is determining what percentage of the joint account to freeze in the period between the service of the order to show cause and the garnishee order being made final. Even if the decision to freeze half of the account was rightfully made, the order would not have prevented a judgment debtor from withdrawing the remaining money in a joint account, and this would have resulted in the innocent joint account holder shouldering the whole of the judgement debtor's debt since all that would be left in the joint account would be the frozen money, a result which would run counter to the aim of garnishee proceeds.

The High Court's conclusion

Based on the reasons mentioned above, the learned Judge allowed the appeal. It is important to note that in the course of his judgment, he acknowledged the fact that his holding would allow a debtor to deliberately channel his funds into joint accounts to shield them from garnishee orders. However, in the learned Judge's view, the benefits of introducing a policy to attach joint accounts under garnishee orders would be disproportionate to the range of operation, cost and policy difficulties which would impact on debtors, creditors and third parties alike.

Commentary

The dictum of the case is narrowly restricted to the issue of garnishee proceedings in relation to joint accounts. However it seems that the reasons adopted by the learned Judge, especially the policy considerations, are equally applicable to cases beyond the scope of garnishee proceedings. One such area of law relates to cases where the bank itself is the creditor – would borrowers be able to shield their liquid assets from the bank by channelling them into joint accounts?

A standard clause in most security documents nowadays provides for banks to have the option to combine or consolidate all or any of the accounts of a borrower, regardless of whether such accounts are held by that borrower alone or jointly with another person, with the liabilities of the borrower. As such, a standard remedy available to banks would be to set-off any liabilities of a borrower with any account with the borrower's name on it.

In light of the above case, it would seem that the enforceability of this standard clause is now cast in doubt: the policy considerations applied by the High Court to garnishee proceedings may equally apply to situations where the bank itself is the creditor seeking redress from joint accounts held jointly by a borrower and an innocent third party. This is because an innocent joint account holder will likely suffer the same prejudice he would have suffered if a garnishee order were made against the same joint account. Similarly, to introduce a framework to establish the contributions of each individual joint account holder would incur significant costs for the borrower and the innocent joint account holder, as well as operational and administrative costs for the bank.

As such, it seems that there is now doubt on whether such a remedy is available to banks in the case of a default by a borrower. As noted by the Judge in the case, it would seem that a borrower could easily ring-fence his assets from a bank by transferring funds into a joint account with a third party.

Whether or not such an extension will be adopted by the Singapore courts remains to be seen. In any case, as the learned Judge held in *obiter*, a possible alternative would be for a judgment creditor to apply for a receiver to be appointed over the joint account. However anything more than that was held to be best left for legislative reform.

Dentons Rodyk acknowledges and thanks associate Ryan Goh for his contribution to the article.

06 February 2017

Taiwan promulgates the Taxpayer Protection Act to safeguard taxpayer rights

02/06/2017

Tony T.L. Chen/Judy Lo

Taiwan's Taxpayer Protection Act (the "TPA") was promulgated on 28 December 2016 and will take effect on 28 December 2017. While the TPA sets forth regulations that aim to ensure taxpayer rights, the transparency of the tax system, and the proper procedures of tax investigations, it also includes new procedures of administrative proceedings so that tax disputes can be resolved more efficiently.

In terms of taxpayer rights, the TPA provides that no tax shall be levied on the portion of the income necessary to sustain a taxpayer's basic living requirements. The Act also reiterates the principle of taxation under the Law. Furthermore, it specifies that the legal consequence of tax avoidance is that a tax avoider shall pay the avoided tax payment plus interest and another 15% of the avoided amount as the overdue fine, instead of paying several times the avoided amount like a tax evader would, as it is inappropriate to impose the same fine for tax avoidance and tax evasion.

In terms of ensuring the transparency of the tax system and the legitimacy of tax investigations, the TPA stipulates that the tax authorities' interpretations and other administrative rules shall be made available to the public unless official secrets or personal privacy are involved. If such interpretations or rules have not been made public in accordance with the Administrative Procedure Act, they may not be cited by tax authorities as basis for tax collection. The TPA also provides that a subject of tax investigation may have an advocate or assistant present during tax investigations or inquiries; either the subject or the tax authorities may request that the investigation or inquiry sessions be audio/visual recorded.

Moreover, the TPA specifies that the tax authorities shall set up taxpayer protection agencies and establish a "taxpayer protection council" under the Ministry of Finance to institute basic policies and plans to protect taxpayer rights. Tax agencies shall also appoint "taxpayer protection officers" to handle tax-related complaints and to assist taxpayers in resolving tax disputes.

As for improving the procedures of administrative proceedings, the TPA demands that at least two-thirds of the member on the administrative appeals committee under the Ministry of Finance shall be outside experts in order to increase the credibility of the committee. The new Act also provides that administrative courts shall set up independent tax tribunals so that tax-related disputes can be tried in professional courts and resolved with quality judgments and decisions.

All Online Service Providers Must Re-Register Agents with Copyright Office by December 31, 2017 to Continue to Enjoy DMCA Safe Harbor Protection

February 2017

IP Reports

Section 512(c) of the Digital Millennium Copyright Act ("DMCA") imposes certain obligations on online service providers who wish to take advantage of the Act's safe harbor protection from liability for copyright infringement stemming from storage of a material at the direction of a user. For purposes of 512(c), a service provider is broadly defined as a "provider of online services or network access, or the operator of facilities therefor." This includes, but is not limited to, "an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received." As such, if you host or operate a website to which members of the public or subscribers can upload material, you could qualify as a service provider and take advantage of the safe harbor provisions. As one prerequisite, service providers must register with the Copyright Office an agent to whom copyright holders may direct takedown notices flagging allegedly infringing material. The purpose of this requirement is to ensure that the public is able to readily identify the proper individual or entity to whom to report claims of infringement.

As of December 1, 2016, registration of agents with the Copyright Office is conducted electronically and is governed by new rules. One benefit of the new regulations is that the registration fee has dropped from $105 to $6. The regulations impose two new obligations, however, that service providers ignore at their peril. **First, service providers who have previously registered their DMCA agents must re-register through the new system by December 31, 2017; those who fail to comply will lose safe harbor protection on January 1, 2018. Second, registrations will expire after three years if not timely renewed. Service providers must timely renew their registrations to continue to avail themselves of safe harbor protection.** Additional highlights from the rules include:

1. As before, service providers must timely update their agent registration information to keep it current.
2. Service providers must include in their registration all alternate names that members of the public are likely to use in searching for that entity's registered agent. These might include URLs, "doing business as" names, and so forth.
3. An agent can be a person, a job title, a department or division of an organization, or a third party entity.

4. Parents and subsidiaries that are separate legal entities are considered distinct service providers and must have their own registered agents. That said, one Copyright Office account can be used to register agents for multiple entities.
5. As noted above, the registration system is now electronic; paper or PDF filings are no longer accepted.
6. Until December 31, 2017, the public must search both the existing paper-based Designated Agent Directory and the new electronic Designated Agent Directory, as an agent may be registered in either system.

All online service providers are encouraged to take stock of their compliance with Section 512 as a general matter, and to re-register their agents with the Copyright Office sufficiently in advance of the deadline to avoid any issues. Additional details and filing requirements can be found on the Copyright Office website at https://www.copyright.gov/dmca-directory/. Baker Botts will continue to monitor this important area of the law.

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FCC Eliminates Two Public File Requirements: One for Broadcasters and One for Cable Operators

02.01.17

By David M. Silverman

New FCC Chairman Ajit Pai chaired his first Commission meeting yesterday with a slimmed-down Commission consisting of two Republicans (Pai and Michael O'Rielly) and one Democrat (Mignon Clyburn). The FCC will likely be back to the full complement of five Commissioners after President Trump names a third Republican Commissioner, at which time he may reappoint former Democratic Commissioner Jessica Rosenworcel, while still maintaining a Republican majority.

At yesterday's meeting, the three remaining Commissioners unanimously approved a rather noncontroversial proposal to eliminate two relatively minor public inspection file requirements, which we wrote about here. The first eliminated rule required commercial TV and radio broadcast stations to maintain copies of correspondence (both letters and emails) from the public in a locally maintained public file, while all other public file documents are (or soon will be) maintained in an online public file at the FCC website accessible here. With the elimination of the public correspondence retention requirement for broadcasters, the FCC is also eliminating the need for broadcasters to summarize correspondence relating to violent programming in their renewal applications.

The second action eliminated the need for cable operators to keep information about the location of the cable system's "principal headend" in a locally maintained public inspection file. Although the Commissioners noted the continued need for cable operators to make this information available upon request to the FCC (for signal leakage and interference purposes), TV broadcasters (for must-carry purposes), and franchise authorities, they also noted that there is no need for the public to have this information, which was identified as a potential security concern. In eliminating this requirement, it will now be possible for cable operators to do away with any local public file, as all other required public file documents are posted online at the FCC. (The FCC noted that cable operators may post principal headend information online, if they choose to do so. They must otherwise respond to requests from TV stations and franchisors within 15 days via certified mail, email or telephonically.)

With the elimination of these two public inspection file requirements, it should now be unnecessary for most broadcasters and cable operators to maintain a local public inspection file. The Commission considers this a helpful security measure, as broadcasters and operators will no longer need to allow public access to a station's or cable system's facilities.

This action will not be effective until approved by the Office of Management and Budget, following which the FCC will issue a Public Notice announcing the effective date. Until then, the old rules are still in effect requiring local public file access to public correspondence (broadcasters) and principal headend location information (cable operators).

Travel Ban Update: Appeals Court Upholds Temporary Halt on Enforcement

10 February 2017
Immigration Alert

On February 9, 2017 the U.S. Court of Appeals for the Ninth Circuit issued a unanimous (per curiam) order denying the Federal Government's emergency motion for a stay of the district court order temporarily enjoining enforcement of the travel restrictions imposed by Executive Order 13769. This Executive Order (1) suspends the entry to the U.S. of aliens from seven countries (Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen) for 90 days, (2) suspends the United States Refugee Admissions Program for 120 days, and (3) suspends indefinitely the entry of all Syrian refugees.

The countrywide temporary restraining order (TRO) issued by Judge Robart of the United States District Court for the Western District of Washington, which does not include an expiration date, remains in effect and individuals targeted by the order remain free to travel until further notice. However, if the travel ban is reinstituted while individuals subject to the Executive Order are outside of the country, they may not be able to return. The case of *Washington v. Trump*, in which the TRO was issued, remains pending.

For more details about the Executive Order and the case of *Washington v. Trump*, please see Hogan Lovells alerts published on January 30, 2017 and February 6, 2017.

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Approval of Multilateral Instrument that will Modify More Than 2000 Bilateral Tax Treaties to Relieve Double Taxation Within the Frame of the BEPS Action 15

On November 24th, more than 100 States members of the OECD (Organisation for Economic Co-operation and Development) and the G20 (Group of Twenty) approved the "Multilateral Instrument" in order to modify existing bilateral treaties so as to avoid the base erosion and profit shifting.

The approval of such Treaty culminates the work developed regarding action 15 of the BEPS Action Plan called by the OECD to fight tax evasion and aggressive tax planning.

The Bilateral Treaty will be signed in June 2017 by the States that approved it. Its effective date will depend on the process of signature, ratification and parliamentary approval applicable according to the legislations of each signing State.

Such Bilateral Treaty includes diverse subjects related to the international taxation that entail a change of paradigm in concepts such as the permanent establishment, international tax transparency, rules of transfer pricing, among others. The implementation of such instruments intends to establish the recommendations concerning the diverse actions of the BEPS Action Plan.

In this regard, such Treaty includes measures to counter treaty abuse ("treaty shopping") by means of the incorporation of limitation on benefits clause ("LOB") and the principal purpose clause ("PPT" – "Principal Purpose Test"), according to which the benefits of a treaty shall not apply when the only objective or purpose of a person, entity or transaction is to obtain profits from a treaty.

Without any doubt, the content of the Multilateral Instrument will cause impact on the structures of investment and cross-border transactions of the transnational entities. Also, such treaty entails a change of paradigm in the international taxation that obliges companies to be prepared for its effective date.

Please visit the link below in case you desire to download the Multilateral Treaty:
http://www.oecd.org/tax/treaties/countries-adopt-multilateral-convention-to-close-tax-treaty-loopholes-and-improve-functioning-of-international-tax-system.htm

FLASH LEGAL REPORT

December 2016

Flash Legal Report
Approval of Multilateral Instrument that will Modify More Than 2000 Bilateral Tax Treaties to Relieve Double Taxation Within the Frame of the BEPS Action 15

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