PACIFIC RIM ADVISORY COUNCIL

Pacific Rim Advisory Council
May 2017 e-Bulletin

MEMBER NEWS

►ARIAS Adds Key Guatemala Partner
►BAKER BOTTS Strengthens West Coast Corporate Practice
►CLAYTON UTZ Market Leaders Join Insolvency and Forensic Practices
►DAVIS WRIGHT TREMAINE Adds Complex Litigation Partner
►HOGAN LOVELLS Bolsters Life Sciences Bench with Prominent U.S. Drug Enforcement Administration Attorney
►ROUSAUD COSTAS DURAN Welcomes New Partners
►SIMPSON GRIERSON Adds Senior Public Law Specialist

COUNTRY ALERTS

►AUSTRALIA Major Changes on the Way for Banking and Financial Services Sector in the Federal Budget CLAYTON UTZ
►BRAZIL New Law Modifying Rules of Outsourcing and Temporary Work TOZZINIFREIRE
►CANADA Ontario Court of Appeal Permits Union Certification Application in Face of Insolvency Stay of Proceedings BENNETT JONES
►CHILE Manufacturing Incentives Announced to Promote Development of Lithium Products CAREY
►CHINA Released of Draft Measures for Transfer of Data Overseas GIDE
►EL SALVADOR Metal Mining Prohibition Act in Effect ARIAS
►EU Bill 7128 Implementing The Fourth EU Anti-Money Laundering Directive NAUTADUTILH
►INDONESIA Supreme Court Guidance on Handling of Corporate Crime ABNR
►NEW ZEALAND Commerce Commission Puts Retailers On Notice Over Misleading Pricing SIMPSON GRIERSON
►PHILIPPINES New Issuances of the Competition Commission SyCip Law
►TAIWAN Summary of Draft Amendments to the Enforcement Rules of Labor Standards Act LEE & LI
►UNITED STATES Federal Circuit Holds that "Secret Sales" and Offers for Sale May Constitute Prior Art Under Post –AIA Section 102 BAKER BOTTS
►UNITED STATES Draft "Internet Freedom NPRM" Released by FCC - More Net Neutrality Madness to Follow DAVIS WRIGHT TREMAINE
►UNITED STATES Health Care Reform Bill Clears the House, but Could Hit a Wall in the Senate HOGAN LOVELLS

CONFERENCES & EVENTS

Upcoming Conferences

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

PRAC 63rd International Conference
Honolulu - Hosted by Goodsill Anderson Quinn & Stifel LLP
April 21—24, 2018

For more information visit www.prac.org

MEMBER DEALS MAKING NEWS

►ARIAS Assists in Unicomer US$350 million bond offer

►BAKER BOTTS Represents Sunnova Energy Corporation in Solar Asset-Backed Notes and Warehouse Credit Facilities

►BENNETT JONES Acts for Cenovus Energy in Acquisition 50% Stake in FCCL Partnership

►BRIGARD URRUTIA Acts for Buyer in Acquisition of Local Airport Operators

►CAREY Acts for Incofin USD$40 million Bond Issuance

►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 Counsel to CNP Assurances on Reorganising Sanef's capital

►HOGAN LOVELLS Advises In the first sukuk to be listed on ISE's Global Exchange Market

►MUNIZ Assists Campas Group SAFI in US$47 million Property Sale in Lima

►NAUTADUTILH Acts in Geneba Properties sale agreement to Frasers Property

►SANTAMARINA Y STETA Assists Kruger Brown in Plastic Acquisition

►TOZZINIFREIRE Assists Kirin US$704 Million Sale of its Brazilian beverage assets to Heineken

PRAC TOOLS TO USE

PRAC Contacts PRAC Member Directory Events
Visit us online at www.prac.org

ARIAS ADDS KEY GUATEMALA PARTNER

Board Member of Important Guatemalan organizations joins Arias as Partner

GUATEMALA – 01 April, 2017: José Pivaral, a well-known Guatemalan lawyer with extensive professional experience in the financial sector, has joined Arias Guatemala as Partner as of April, with the purpose of offering greater value to the firm and its clients.

Mr. Pivaral has extensive experience in the practice of the legal profession, emphasizing in Banking, Financial and Insurance Law; he also has experience in acquisitions, commercial and corporate law.

In addition to his private practice and his academic background, he has had a key role in the drafting and amendments of important laws in Guatemala representing some of the country's most prestigious business associations. Proof of this is his contribution in the amendments of the laws of the financial system in Guatemala in 2002, reforms that included the issuance of the Banking and Financial Groups Law, Insurance Business Law, Credit Cards Law, Free Currency Negotiation Law, Monetary Law, among others. This experience allowed him to learn firsthand the essence and legal objectives of these reforms, as well as their application in several industries.

He is widely recognized in several industrial sectors in Guatemala, having held important executive positions in the main business associations in the country, including his role as President of the Chamber of Finance of Guatemala, President of the Banking Association of Guatemala, President of CACIF (Coordinating Committee for Agricultural, Commercial, Industrial and Financial Associations), President of the Guatemalan Association of Insurance Institutions (AGIS), President of the Association of Sugar Producers of Guatemala, among others; roles in which it has been exposed to the public sector (regulators) leading negotiations, analysis and sectoral consensus, aimed towards generating more progress and development for Guatemala.

"We are very excited in welcoming José Pivaral in our team. We have known him for a long time and we are sure that his experience and knowledge will further strengthen Arias Guatemala" said Jorge Luis Arenales, Managing Partner of Arias Guatemala.

Arias Guatemala now has 7 Partners and a total of 27 lawyers who are part of the 120 attorneys that comprise the firm on a regional level.

José Pivaral's incorporation takes place within the 75th anniversary celebration of Arias, the firm of reference in Central America, with presence in Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama; it is also an example of the firm's continued commitment to excellence.

For additional information visit www.ariaslaw.com

BAKER BOTTS STRENGTHENS WEST COAST CORPORATE PRACTICE

SAN FRANCISCO, May 2, 2017: Baker Botts L.L.P., a leading international law firm, today announced that Samuel C. Dibble is joining the firm's corporate practice as a partner in San Francisco. Mr. Dibble is the newest addition to the California corporate practice following the firm's recent hiring of Yan Zhang and Cynthia Cole in the Palo Alto office.

"Expanding our capabilities with extraordinary lawyers, like Sam, will continue the recent growth we have seen in both our U.S. and our international offices," said Andrew M. Baker, Managing Partner of Baker Botts. "Sam is the fourth corporate lawyer to join our firm in California in the past two months," added Mr. Baker.

"Sam's joining our corporate practice in San Francisco enhances our already stellar team," said Pat Stanton, Partner-in-Charge of the firm's San Francisco office. "His experience and background will be a tremendous value add to the services we provide to our clients. We are bringing in the best within the industry and are glad to have Sam as part of the team."

"We are pleased to have another high quality addition to our Corporate practice," said Partner David Kirkland, Corporate Department co-chair. "Sam is joining the firm at a pivotal time as we are benefitting from a concerted expansion of our group and its capabilities."

Mr. Dibble's practice focuses on corporate transactions, including mergers & acquisitions, corporate finance and leveraged buyouts. His practice includes advising boards of directors and special committees of public companies in the context of merger, acquisitions and other transactions. His clients include investment funds, high net worth individuals and private and public companies in the technology, life sciences, and other industry sectors such as food, beverage and consumer products. Mr. Dibble received his of Bachelor of Arts from Stanford University and his J.D. from the University of California, Berkeley, School of Law where he was a John M. Olin Scholar, Law and Economics, and Technical Editor for the Berkeley Journal of International Law.

Baker Botts has 45 lawyers based in California, and has added 18 new partners across the firm in 2017.

For additional information visit www.bakerbotts.com

DAVIS WRIGHT TREMAINE ADDS COMPLEX LITIGATION PARTNERS

Litigator Jacob M. Harper Joins Davis Wright Tremaine in Los Angeles

LOS ANGELES - 05 APRIL, 2017: Jacob M. Harper, a litigator with experience in consumer class actions, retailer rights, real estate matters, and other complex litigation, has joined Davis Wright Tremaine as a partner in Los Angeles.

Mr. Harper comes to the firm from TroyGould PC, where he was a Shareholder. He previously spent six years as an associate at Morrison & Foerster LLP. His experience includes advising major national grocery chains and food distributors on false advertising, food labeling, and privacy issues as well as property rights and other matters. He has successfully represented clients in shareholder litigation and online privacy cases as well.

"Jacob is a multifaceted litigator and his many areas of experience are highly complementary to the strengths of our team," said Rob Maguire, chair of the litigation practice group at Davis Wright Tremaine. "We're very pleased to welcome him to our growing Los Angeles office."

Mr. Harper received his B.A. from University of California, Los Angeles, and his J.D. from the University of Chicago Law School. He serves on the Culver City Chamber of Commerce.

For more information, visit www.dwt.com

MARKET LEADERS JOIN CLAYTON UTZ INSOLVENCY AND FORENSIC & TECHNOLOGY SERVICES PRACTICES

Clayton Utz attracts market-leading partner as it expands Restructuring and Insolvency services and gives weight to Forensic & Technology Services Practice with two new recruits

SYDNEY - 05 May 2017: Clayton Utz has welcomed Tim Sackar from Ashurst as a partner in the firm's national Restructuring and Insolvency (R&I) practice, as the firm's leadership team continues to focus on areas of strong growth opportunity and client demand.

Tim is recognised as a market leading R&I practitioner, with both domestic and international experience. He was a partner of Ashurst and the Head of the Ashurst R&I practice in Asia, as well as Head of the Alternate Investment Funds Practice for Australia and Asia. He began his career in R&I at Clayton Utz in 1998 and has worked for Allen & Overy in London and Hong Kong and Hogan Lovells in Hong Kong. Tim has been involved in many major matters in Australia, Asia and the UK advising on restructurings, workouts and cross-border insolvencies as well as related contentious matters.

Clayton Utz Chief Executive Partner Rob Cutler said Tim's appointment further strengthened the firm's national R&I service offering to clients. "Tim is known for his team-based, client-focused approach which is a good fit for our R&I team. We also see significant opportunities for him to work collaboratively with our other practice groups, particularly Financial Services and Corporate, to deliver even better client service and solutions."

Tim joined Clayton Utz on 1 May 2017.

SYDNEY – 04 May 2017: Clayton Utz has attracted two leading forensic specialists, Owen Bourke and Meg McKechnie, as Directors in the firm's recently launched Forensic and Technology Services (FTS) practice.

Owen is considered at the forefront of leading investigations using the Relativity eDiscovery platform for managing, analysing and reviewing evidence and is the first accredited "Relativity Expert" in the Asia Pacific. With over 15 years' experience, Owen has worked with Federal Government conducting computer forensic investigations with the ACCC and ATO, and worked in the private sector delivering sophisticated evidence collection and analysis services supporting litigation, investigations and regulatory inquiries. Recently he led the design and implementation of a case management and data analytics platform for the Royal Commission into Institutional Responses to Child Sexual Abuse.

Meg will head up the firm's Forensic Investigations service offering nationally. A qualified investigator and a chartered accountant, Meg has over 20 years' experience investigating corporate misconduct, financial crime and corporate governance failings in Australia and Asia, including the collapses of HIH Insurance and OneTel. She has worked in both the private sector and government, holding senior roles at ASIC and APRA. She has extensive experience providing assistance to legal teams including with the collation of evidence, the provision of financial analysis and quantification of economic damages required for administrative, civil and criminal proceedings.

FTS national practice group leader Paul Fontanot said the new appointments were part of the firm's strategy to build a comprehensive client offering incorporating forensic investigation, forensic accounting, forensic technology and front end transaction services.

"We are taking the front foot to help clients identify and manage early on the increasingly common commercial, regulatory and reputation risks to their business. Owen and Meg are well known in the region for their specialist expertise in forensic investigations, and their experience will add depth to our services and boost our ability to respond to our clients' needs."

For additional information visit www.claytontuz.com

HOGAN LOVELLS BOLSTERS LIFE SCIENCES BENCH WITH PROMINENT U.S. DRUG ENFORCEMENT ADMINISTRATION ATTORNEY

Hogan Lovells Bolsters Life Sciences Bench with Prominent U.S. Drug Enforcement Administration Attorney

WASHINGTON, D.C., 1 May 2017: Hogan Lovells announced today that Jason Hadges will join the firm's Government Regulatory practice group as a partner in the Washington D.C. office, working in the firm's Pharmaceuticals and Biotechnology Regulatory Practice.

"There are few attorneys with the substantial first-hand regulatory experience that Jason has gained throughout his career at DEA and FDA," said Alice Valder Curran, Head of Hogan Lovells Government Regulatory Practice Group. "His deep knowledge and familiarity with the relevant laws, agency policies and precedents will offer our life sciences clients a particularly informed perspective on regulatory issues, especially with regard to enforcement actions."

Hadges joins the firm after five years in the Office of Chief Counsel of the US Drug Enforcement Administration (DEA), where he was a senior attorney in the Diversion and Regulatory Litigation Section. Before DEA, Hadges spent more than eight years at the Food and Drug Administration (FDA), as an Associate Chief Counsel in the Office of Chief Counsel, where he focused on criminal enforcement and counseling FDA's Office of Criminal Investigations. During that period he also served as a Special Assistant US Attorney on a number of prosecutions. His legal career started as a criminal defense attorney in the US Navy Judge Advocate General's Corps.

"Jason's experience, coupled with his keen analytical skills and practical, results-oriented approach, will be a significant addition to our enforcement and compliance capabilities, especially with regard to controlled substances, but also pharmaceutical products more broadly," said Philip Katz, chair of the firm's Pharmaceuticals and Biotechnology Practice. "DEA and FDA compliance is a large and growing part of our work, both anticipatorily and in response to agency inspections and enforcement actions. Jason joins and further bolsters the strong team we have in place, and allows us to do even more for our clients around the globe."

"I am looking forward to joining and collaborating with the Hogan Lovells lawyers, who are well known for providing smart, creative, and practical advice to the complex legal issues faced by their pharmaceutical and biotechnology clients," said Hadges. "Our shared goal is to continue expanding the firm's ability to provide knowledgeable counsel and advocacy to help clients successfully operate businesses in highly regulated environments, and I'm excited to get started."

Hadges earned his J.D., summa cum laude, from The American University, Washington College of Law and a B.A. from Duke University.

For more information, see www.hoganlovells.com

ROUSAUD COSTAS DURAN PARTNER ANNOUNCEMENTS

BARCELONA - 25 April 2017: RCD - Rousaud Costas Duran continues to consolidate its expansion by adding new partners and promoting internal talent.

Jesús Martrat joins the firm as a Pharma and Privacy partner and David Villa has been promoted as a new Innovation and Entrepreneurship partner. With them, the firm now has 30 partners leading a team of more than 200 professionals.

Jesús Martrat has over 20 years of experience in the pharma sector and specializes in regulatory matters, corporate government and in privacy and data protection. David Villa is an expert in innovation and entrepreneurship and has ample experience providing comprehensive advice to start-ups, especially technology-based start-ups.

Jesús Martrat is a lawyer with over 20 years of experience providing legal advice to the pharma industry on corporate and strategic matters, such as licensing and similar contracts, M&A and related integration processes, compliance, etc. He also advises on all kinds of corporate operations: from the preliminary research until the final phases of the product's life cycle, as well as in its development and regulatory approval, production and commercialization. He is also a specialist in privacy and data protection matters.

Prior to joining RCD, Jesús held several positions in the pharma industry as in-house lawyer at Almirall laboratories. He actively participated in corporate government matters, such as implementing company policies, Compliance, Ethics Codes and Whistleblowing Channels. He has also been responsible for privacy and data protection, and has been a member of corporate committees such as a Health, Safety & Environment Committee, Drug Safety Committee and Quality Committee.

David Villa has been promoted as new Innovation and Entrepreneurship partner. He regularly advises a wide range of clients, including start-ups and leading entrepreneurs in the e-commerce, ICT and life sciences sectors, investors, accelerators and incubators and big business corporations.

He is secretary of the board of several technology-based companies, and has over 15 years of experience. He is an expert in corporate, M&A and IP law and his practice features advising start-ups and entrepreneurs on all phases of the development of their products, the negotiation and execution of private equity and venture capital operations, advice on the sale of companies, the design of restructuring and internationalization operations, legal advice on corporate venturing programs, the drafting and implementation of protection policies of intangible assets, and the negotiation of agreements to lease IP rights (mainly software and patents licensing).

In the words of Adolf Rousaud, Managing Partner of RCD: "Our firm has extensive experience advising in the field of life sciences. With the appointment of Jesús we will strengthen our specialization in the pharma industry –a key sector for our company– and we will improve our coverage in a constantly evolving field. On the other hand, the promotion of David Villa is a well-deserved recognition for his work over recent years and demonstrates the firm's commitment to the development of its professionals, key assets to consolidate the growth of the firm. For me, and also for Ignasi Costas as Head of HR, it is especially gratifying that, again, a professional of our own who has developed most of their career at our firm, is promoted to partner".

For additional information visit www.rcdslp.com

SIMPSON GRIERSON ADDS SENIOR PUBLIC LAW SPECIALIST

AUCKLAND - 11 April, 2017: Simpson Grierson is pleased to announce the appointment of senior lawyer Sally McKechnie as a partner in its Wellington office.

Sally will join the firm's public law team and brings extensive experience of the central government environment. Her role will focus on assisting the firm's public sector facing clients with strategic, regulatory and policy-related issues.

Sally commented "I am excited to be joining Simpson Grierson. The firm has a great reputation for its work in the public sector, and a strong existing team. I am looking forward to building the firm's practice in this area."

Chairman Kevin Jaffe commented "Sally is an outstanding public law litigator and has a superb track record in high profile Crown-related work. Her appointment reflects the demand we have from clients for assistance with complex public law matters."

Sally is currently a team leader at Crown Law. She has a first class honours degree in Law and a BA from Otago University, was a Rhodes Scholar and attained a BCL with distinction and MPhil in International Relations from Oxford University.

Sally will join the firm on 1 June.

For additional information visit www.simpsongrierson.com

October 21—24, 2017

Visit www.prac.org/events.php

ARIAS

ASSISTS UNICOMER IN US$350 MILLION BOND OFFER

EL SALVADOR - 05 April, 2017: Arias has helped Salvadorean retailer Unicomer issue bonds worth US$350 million. Arias (El Salvador) coordinated all other Latin American and Caribbean jurisdictions involved. ALong with El Salvador, Unicomer enlisted Arias' five other offices in Guatemala, Honduras, Nicaragua, Costa Rica and Panama. Proceeds of the offering will be used to repay existing debt. The deal closed on 27 March.

The bonds were issued with guarantees over Unicomer subsidiaries in Ecuador, Paraguay, the British Virgin Islands, the US, Saint Lucia, Trinidad, Belize, Jamaica and Barbados.

Counsel to Unicomer Arias (El Salvador) Partner Zygmunt Brett and associate Mariana Nóchez in San Salvador; Arias (Guatemala) Partner Jorge Luis Arenales and associate Juan José del Pino in Guatemala City; Arias (Honduras) Partner Evangelina Lardizábal in Tegucigalpa; Arias (Nicaragua) Partner Ana Teresa Rizo and associate Ivania Paguaga in Managua; Arias (Costa Rica) Partner Andrey Dorado and associate Tracy Varela in San José; Arias (Panama) Partner Lisa Domínguez and associate María Cristina Fábrega in Panama City.

For additional information visit www.ariaslaw.com

BAKER BOTTS

REPRESENTS SUNNOVA ENERGY CORPORATION IN SOLAR ASSET-BACKED NOTES AND WAREHOUSE CREDIT FACILITIES

HOUSTON - 24 April 2017: Deal Description: Sunnova Energy Corporation announced today the closing of a private placement by its subsidiary, Helios Issuer, LLC, of approximately $255 million aggregate principal amount of asset-backed notes and two warehouse credit facilities in an aggregate principal amount of $360 million. The notes financing represents Sunnova's first asset-backed notes securitization and the largest distributed generation lease/PPA solar securitization issued into the ABS capital markets to date.

Credit Suisse Securities (USA) LLC acted as sole structuring agent and sole bookrunner for the asset-backed notes securitization.

Baker Botts represented Sunnova Energy Corporation in the transaction.
Client: Sunnova Energy Corporation
Outside Counsel to Sunnova Energy Corporation: Baker Botts L.L.P.
In-house Counsel to Sunnova Energy Corporation: George Fibbe; Sean Salisbury
Other Parties: Credit Suisse Securities (USA) LLC acted as sole structuring agent and sole bookrunner for the asset-backed notes private placement.
Outside Counsel to Other Parties: Kramer Levin acted as counsel to Credit Suisse Securities (USA) LLC in the private placement; Chapman and Cutler LLP acted as counsel to Credit Suisse Securities (USA) LLC for the warehouse facilities.
Value: $615 million

Baker Botts Lawyers/Office Involved: Corporate: Josh Davidson (Partner, Houston); Travis Wofford (Senior Associate, Houston); Sarah Dodson (Associate, Houston); Jennifer Gasser (Associate, Houston); Ruchira Podali (Associate; Houston); Finance: Martin Toulouse (Partner, New York); Emanuel Grillo (Partner, New York); William Stutts (Senior Counsel, Austin); Jon Finelli (Senior Associate, New York); Peter Glenn (Associate, New York); Whitney Blazek (Associate, Dallas); Josh Espinosa (Associate, Dallas) Tax: Michael Bresson (Partner, Houston); Renn Neilson (Partner, Houston); Jon Nelsen (Partner, Austin); David Morris (Associate, Houston); Bucky Brannen (Associate, Dallas); Counsel: Danny David (Partner, Houston).

For additional information visit www.bakerbotts.com

BENNETT JONES

ACTS FOR CENOVUS ENERGY IN ACQUISITION OF 50% STAKE IN FCCL PARTNERSHIP

Date Announced: March 29, 2017
Date Closed: TBD
Deal Value: C$17.7 billion
Client Name: Cenovus

Bennett Jones acted as a lead legal advisor to Cenovus Energy Inc. in its C$17.7-billion acquisition of ConocoPhillips' 50 percent interest in the FCCL Partnership, the companies' jointly owned oil sands venture operated by Cenovus. Cenovus is also purchasing the majority of ConocoPhillips' Deep Basin conventional assets in Alberta and British Columbia.

The Bennett Jones team was led by John Piasta (Partner, Calgary, Corporate/Commercial) and Pat Maguire (Partner, Calgary, Corporate/Commercial) and included: Thomas McInerney, Partner, Calgary (Corporate/Commercial); Beth Riley, Partner, Calgary (Corporate/Commercial, Competition); Susan Seller, Partner, Toronto (Employment); John Gilmore, Partner, Calgary (Employment); Stephen Burns, Partner, Calgary (Intellectual Property); Shawn Munro, Partner, Calgary (Regulatory); Ashley White, Partner, Calgary (Corporate/Commercial)

For additional information visit www.bennettjones.com

BRIGARD URRUTIA

ACTS FOR BUYER IN ACQUISITION OF LOCAL AIRPORT OPERATORS

BOGOTA - 27 April, 2017: Colombia's Brigard Urrutia assisted local airport operators Aeriopuertos de Oriente with its acquisition of controlling stakes from Nexus Capital Partners and Limpia Group. Airplan and Aeropuertos de Oriente operate 12 airports in Colombia.

Counsel to Grupo Aeroportuario del Sureste - Brigard & Urrutia Abogados Partner Sergio Michelsen and associates Jeison Larrota, Ana Maria Cortes Gomez and Paula Morales Rivadeneira in Bogotá.

For additional information visit www.bu.com.co

CAREY

ACTS FOR INCOFIN IN USD$40 MILLION BOND ISSUANCE

SANTIAGO - 05 May, 2017: Carey has acted as deal counsel for a US$40 million bond issuance by Chilean manufacturing company Incofin. The underwriter was Banco Santander. The offering closed on 28 March.

Carey Partner Diego Peralta and Associates Elvira Vial and Gabriel Acuna acted in the transaction.

For additional information visit www.carey.cl

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

JANUARY 12, 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 ON THE FIRST SUKUK TO BE LISTED ON ISE'S GLOBAL EXCHANGE MARKET

DUBAI— 11 May 2017: Hogan Lovells has advised Aktif Bank on the first sukuk ever to be listed on the Global Exchange Market of the Irish Stock Exchange ("ISE").

The US$118million sukuk was issued under a mudarabah structure with GAP İnşaat Yatırım ve Dış Ticaret A.Ş., a Turkish construction company, acting as mudarib. While the Irish Stock Exchange has listed sukuk historically, this is the first sukuk to be listed on the ISE's Global Exchange Market ("GEM"). GEM is one of the fastest growing debt listing markets in Europe, with over 1,000 issuers and more than 11,000 debt securities from 50 countries.

The Hogan Lovells team was led by Imran Mufti (Partner, Dubai), with support from Annalisa Feliciani (Counsel, Rome), Ahmet Kalafat (Senior Associate, Dubai) and trainees Marjun Parcasio and Luigi de Angelis. Hogan Lovells also represented Bank of New York Mellon as delegate trustee and paying agent with Kit Johnson (Partner, London), Megan James (Associate, London) and trainee Chris Montague-Jones advising.

Commenting on the transaction, Imran said:

"We were delighted to assist Aktif Bank on this landmark transaction and its listing on the Global Exchange Market of the Irish Stock Exchange which has increasingly become much more of a popular venue for sovereign and corporate issuers from the Middle East."

Onur Aksoy from Aktif Bank added:

"This sukuk represents a milestone for Islamic capital markets originating out of Turkey, particularly in light of the ISE listing on the Global Exchange Market. We were pleased to work with the Hogan Lovells team, benefitting from their deep understanding of Islamic finance, capital markets and their experience advising on similar transactions."

Hogan Lovells has a first-rate reputation as a leader in Islamic finance, having advised on many first-of-their-kind transactions, such as the first major sukuk by an African sovereign, the first convertible sukuk, the first equity-linked sukuk, the first Sharia-compliant securitisation, the first international sukuk al-mudaraba and sukuk al-musharaka, the first sukuk buy-back, and the first Multilateral Investment Guarantee Agency (MIGA) guaranteed Islamic project financing.

For more information, see www.hoganlovells.com

GIDE

COUNSEL TO CNP ASSURANCES ON REORGANIZING SANEF'S CAPITAL

PARIS - 28 April 2017: Gide has advised CNP on reorganising the capital of Holding d'Infrastructures de Transports (HIT), an investment vehicle controlling 100% of French motorway company Sanef that operates over 2,000 km of motorways in Normandy and the north and east of France.

In a series of operations worth two billion euros overall, Spanish group Abertis has bought up all shares of minority stakeholders, first from Caisse des Dépôts et Consignations, then Axa République, and lastly Prédica, FFP and CNP.

These successive operations, which bring the value of HIT/Sanef to approximately 4.6 billion euros, enable Abertis to control 100% of the capital.

Gide's team comprised partner Guillaume Rougier-Brierre and associate Hugo Nocerino.

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
ACTS IN GENEBA PROPERTIES SALE AGREEMENT TO FRASERS PROPERTY

AMSTERDAM - 20 April 2017: On 15 April Geneba Properties, its controlling shareholder Catalyst and Frasers Property announced their agreement on the acquisition of Geneba Properties.

Frasers will acquire Catalyst's 86% stake in Geneba through a block trade and launch a public offer for the remaining 14% free float depositary receipts. The purchase price for Catalyst's stake is EUR 315.9 million subject to certain adjustments. NautaDutilh advised Geneba and Catalyst on the transaction.

Geneba Properties is a real estate investment company with properties in the Netherlands and Germany. The Catalyst Capital Group is a Canadian private equity firm which acquired Geneba in 2014 out of the Homburg bankruptcy. Frasers is a listed property company from Singapore. In December 2016 Geneba announced that it had decided to explore its strategic options.

NautaDutilh's core team consisted of Ruud Smits, Petra Zijp, Joost Kloosterman and Joppe Schoute. Other team members included Carola Houpst, Jorieke van Strijen, Silvia Gawronski, Anne Stoffels, Gwenn Korteweg, Pieter Drooge, Florine Kuiperi, Daan Hagelstein, Simone Honig, Sjoerd Panis, Jochem van Hummelen, Antonia Netiv, Laura Brummelhuis, Frans van Eerden, Roderick Watson, Laurens Hillen, Edward Rijnhout, Sjuul Jentjens, Peter de Kock, Peter Vogels, Wouter Loijson, Daniel Kuiper, Gijs van Nes, Valerie Nauta, Joyce Trebus, Amy Hays, Elias Ram and Ewoud Zweers.

For additional information visit www.nautadutilh.com

MUNIZ RAMIREZ PEREZ TAIMAN & OLAYA
ASSISTS CAMPAS GROUP SAFI IN US$47 MILLION PROPERTY SALE IN LIMA

LIMA – 01 March, 2017: Muñiz Ramírez Pérez-Taiman & Olaya assisted investment fund administrator Compas Group SAFI in US $47 million sale of Centro Corporativo Micracorp, a property located in Lima's business district, to German property investment fund GLL Real Estate Partners. The deal closed on 26 January. Compass Group SAFI made the sale through its real estate fund, Fondo de Inversión Inmobiliario I.

Counsel to Compass Group SAFI Muñiz Ramírez Pérez-Taiman & Olaya Partner Mauricio Olaya and associate Annalucia Fasson.

For additional information visit www.munizlaw.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 KIRIN IN US$704 MILLION SALE OF ITS BRAZILIAN BEVERAGE ASSETS TO HEINEKEN

SAO PAULO - 01 March 2017: TozziniFreire Advogados São Paulo assisted Japanese beverage maker Kirin to o sell its Brazilian beverage assets to Dutch beer maker Heineken in a deal worth US$704 million. Kirin blames high inflation and a stagnant drinks market for its exit. The company originally paid US$3.6 billion for 12 breweries in 2011. It already parted with one of its bottling plants in 2016, selling the business to Brahma beer maker Ambev. Kirin has retained TozziniFreire throughout its time in Brazil.

Brazil produced 139 million hectolitres of beer in 2015, making it the third biggest beer maker in the world, with only China and the US producing more.

Acting in the transaction for TozziniFreire Advogados were Partners Jun Oyafuso Makuta, Daniel Oliveira Andreoli and Fernando Eduardo Serec, and associates Eduardo Barreto Alfonso, Jacques Abi Ghosn and Mario Glauco Pati Neto in São Paulo.

For additional information visit www.tozzinifreire.com.br

October 21—24, 2017

Visit www.prac.org/events.php

PRAC EVENTS


PRAC2016
Barcelona
PRAC 59th
INTERNATIONAL
CONFERENCE
21 - 24 MAY 2016
RCD
ROUSAUD
COSTAS
DURAN S.L.P
PACIFIC RIM


PRAC @ Vancouver 2015


PRAC @ Brisbane 2015


PRAC @ Taipei 2014
PACIFIC RIM
ADVISORY COUNCIL
PRAC @ IPBA Vancouver


PRAC @ INTA San Diego


PRAC @ IPBA Hong Kong
PRAC @ PDAC Toronto 2014

The Pacific Rim Advisory Council is an international law firm association with a unique strategic alliance within the global legal community providing for the exchange of professional information among its 28 top tier independent member law firms.

Since 1984, Pacific Rim Advisory Council (PRAC) member firms have provided their respective clients with the resources of our organization and their individual unparalleled expertise on the legal and business issues facing not only Asia but the broader Pacific Rim region.

www.prac.org

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.

CLAYTON UTZ

10 MAY 2017

Major changes on the way for Australian banking and financial services sector in the Federal Budget

Apart from the well-publicised levy on liabilities, the Government announced a broad package of measures described as "A more accountable and competitive banking system" in the Federal Budget last night, covering a revised disputes resolution process, heightened executive accountability and remuneration restrictions, increased standards and penalties, open data, ongoing competition inquiries, and another review.

Dispute resolution

A free, fast and binding "one stop shop" dispute resolution service will be established, to be known as the Australian Financial Complaints Authority (**AFCA**) for consumers, small businesses and retail investors to resolve all financial disputes, including superannuation, with the banks and other financial institutions.

AFCA will be industry-funded and replace the existing Financial Ombudsman Service, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal. It will hear individual consumer/investor and small business disputes of higher values than are currently permitted under the existing three schemes. AFCA will commence operation from 1 July 2018, although the current services will continue to operate after that date to complete their existing complaints.

ASIC will be provided with stronger powers to oversee AFCA, including a directions power.

Financial institutions will also be required to report to ASIC on internal dispute resolution outcomes.

Banking executive accountability and remuneration regime

All senior executives and directors of ADIs will be required to be registered with APRA. ADIs will have to give APRA accountability maps of senior executives' roles and responsibilities. APRA will be given stronger powers to remove and disqualify senior executives and directors.

A new regime will be introduced to establish expectations on how ADIs and their executives and directors conduct their business, covering matters such integrity, due skill and care, diligence and acting in a prudential manner. If in breach, executives can be deregistered and disqualified from holding executive positions, and be stripped of their bonuses. Civil penalties of up to $200 million will apply for larger ADIs and $50 million for smaller ADIs. It appears this regime will be regulated by APRA.

A proportion of bank executives' variable remuneration will be required to be deferred for a minimum of four years. It will generally be 40%, other than for certain executives, such as CEOs, where it will be 60%.

These changes appear likely to imitate aspects of the senior managers, certification and conduct rules regime and the rules for the remuneration of banking staff introduced by the UK Financial Conduct Authority and UK Prudential Regulation Authority over the past several years.

Open data

The Government will implement an open data regime which will give customers access to, and control over, their banking data. It will commission an independent review to recommend the best approach to its implementation, to report by the end of 2017.

ACCC inquiries

The ACCC will be funded to establish a dedicated unit to undertake regular inquiries into specific financial system competition issues.

Productivity Commission review into the financial system's competitiveness

The Productivity Commission will commence a 12 month review on 1 July 2017 of the state of competition in the financial system. The review will be conducted with a view to improving:

- consumer outcomes;
- the productivity and international competitiveness of the financial system and the economy more broadly; and
- supporting ongoing financial system innovation while balancing financial stability objectives.

APRA regulation of non-bank lenders

The Government will provide funding to APRA to allow APRA to exercise new powers in respect of the provision of credit by lenders that are not ADIs. Non-bank lenders include entities such as finance companies.

The broad strokes of the new policies are clear; as usual, the devil will be in the detail. The sector should be getting ready to engage with Government further in relation to these matters.

GET IN TOUCH

Steven Klimt

PARTNER, SYDNEY
+61 2 9353 4133
sklimt@claytonutz.com

Narelle Smythe

PARTNER, SYDNEY
+61 2 9353 4220
nsmythe@claytonutz.com

Matthew Daley

PARTNER, SYDNEY
+61 2 9353 4675
mdaley@claytonutz.com

Kirsten Webb

PARTNER, SYDNEY
+61 2 9353 4608
kwebb@claytonutz.com

Nicholas Mavrakis

PARTNER, SYDNEY
+61 2 9353 4621
nmavrakis@claytonutz.com

Michael Corrigan

PARTNER, SYDNEY
+61 2 9353 4187
mcorrigan@claytonutz.com

Ross McInnes

PARTNER, SYDNEY
+61 2 9353 4371
rmcinnes@claytonutz.com

Linda Evans

PARTNER, SYDNEY
+61 2 9353 4217
levans@claytonutz.com

Scott Grahame

PARTNER, SYDNEY
+61 2 9353 4676
sgrahame@claytonutz.com

Bruce Lloyd

PARTNER, SYDNEY
+61 2 9353 4219
blloyd@claytonutz.com

Geoff Hoffman

PARTNER, SYDNEY
+61 2 9353 4617
ghoffman@claytonutz.com

Rod Halstead

DIRECTOR - STRATEGIC CORPORATE/M&A, SYDNEY
+61 2 9353 4126
rhalstead@claytonutz.com

CONTACT US

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

March 28, 2017

NEWSLETTER – Outsourcing and temporary work – New Law

The Brazilian House of Representatives approved on March 22, 2017 a bill of law that substantially modifies the rules of outsourcing and temporary work. The bill of law still depends on the approval of the President to come into full force and effect.

The bill of law approved by the House of Representatives authorizes the outsourcing of any activities, even those considered to be within the company's core business. It also sets forth that the contracting company should only be liable for the outsourced workers' labor obligations in case the outsourcing company is unable to pay them (subsidiary/secondary liability). The bill also clarifies that no employment relationship exists between the contracting company and the outsourced workers. In other words, the outsourcing company is the sole responsible for hiring and paying the outsourced workers, as well as directing their work.

Outsourcing in Brazil has never been regulated by law and companies rely on a precedent by the Superior Labor Court (TST) on the matter, which currently prohibits the outsourcing of the company's so-called "core business". This prohibition has caused many disputes within the labor courts, particularly on what actually constitutes a company's core business. For this reason, a significant change in labor court's precedents is expected to take place as soon as the new law comes into full force and effect.

As to temporary work, the bill extends the duration of these temporary work arrangements, which can be used to substitute permanent workers or to meet a supplementary demand of unpredictable or, when predictable, intermittent, periodic or seasonal services. If approved, companies will be able to hire temporary workers through temporary agencies for a term of up to 180 days (with an additional 90-day extension), consecutives or not.

Partners

Roberto Pierri Bersch
Mihoko Sirley Kimura
Maurício de Carvalho Góes
Marcelo Pereira Gômara
Leonardo Augusto Padilha Bertanha
Fernanda Bianco Pimentel
Andre Fittipaldi
Alexandre de Almeida Cardoso

www.tozzinifreire.com.br

Bennett Jones

Court of Appeal Permits Union Certification Application in Face of Insolvency Stay of Proceedings

May 03, 2017 | Sean Zweig and Preet K. Bell

The Ontario Court of Appeal recently released a decision allowing a certification application by a union to proceed in the face of a receivership of the employer. The decision garnered a strong dissent from Justice Lauwers, suggesting that the decision of the majority would "effect a sea change in insolvency law."

The case, Romspen Investment Corporation v Courtice Auto Wreckers Ltd., 2017 ONCA 301, involves another intersection between federal insolvency law and provincial labour law, a matter that has resulted in a fair amount of judicial consideration over the past number of years. On October 19, 2015, a Receiver was appointed over several companies, including the employer, and a stay was in effect providing that no proceeding could be commenced against the Receiver or the debtors except with consent of the Receiver or leave of the Court. On December 9, 2015, the union applied for certification to the Ontario Labour Relations Board (OLRB) seeking to represent a bargaining unit of six employees. The union asserted that two days later the Receiver dismissed four of the six employees and hired new replacement workers; therefore, on December 18, the union also filed an unfair labour practice complaint with the OLRB in respect of the Receiver's actions. The OLRB stayed the union's application in light of the stay under the Receivership order, so the union sought leave of the Court to proceed with its applications. The motion judge denied leave.

The majority of the Court of Appeal, in a decision written by Justice MacPherson, overturned the motion judge's decision and granted leave, disagreeing with all of the motion judge's reasons:

The motion judge found the certification application would increase the rights of those employees relative to other creditors. Justice MacPherson stated that it was conjecture at this point to assume the union would be successful in negotiating a more financially favourable contract and certification does not automatically increase the rights of employees as creditors.

The motion judge found that recognition could negatively impact a potential sale. Justice MacPherson stated that while some purchasers may be dissuaded, a collective agreement might be attractive to a prospective purchaser, and there was no concrete evidence that it would negatively impact a sale.

The motion judge found that there was no prejudice to the union as it could pursue its certification application against the purchaser once a sale was completed. Justice MacPherson disagreed stating that interfering with the employees' ability to exercise their statutory labour rights causes clear prejudice.

The motion judge found there was no certainty the proposed bargaining unit would be meaningful after any sale. Justice MacPherson found this to be speculative, stating that whatever the results of the sale, the employees had presently existing statutory rights.

In light of the above, the Court of Appeal considered afresh whether the union ought to be granted leave to proceed with its certification application. The majority found that there was significant prejudice to the union and the employees in not lifting the stay, and little material prejudice to the Receiver and creditors, and thus granted leave. Justice MacPherson highlighted that "[l]abour rights do not end when insolvency proceedings begin."

With respect to the union's unfair labour practice complaint against the Receiver, Justice MacPherson also granted leave to proceed, stating that the threshold for granting leave against a Receiver is not a high one and in this case, given the timing of the dismissals, there was clear prima facie merit to the complaint.

A fairly lengthy and strong dissent was written by Justice Lauwers, addressing the specific arguments raised by both parties but also providing a strong caution to the potential broader effects of the majority's decision. Justice Lauwers highlighted some governing principles of insolvency law, including that:

creditors in the same class (including employees) are to be treated equally;

the date on which rights of creditors are to be determined is the effective date of insolvency;

the administration of assets is to be orderly with a single proceeding model to administer claims expeditiously; and

a stay is the primary tool for establishing order and preserving the status quo with the lifting of a stay being an exceptional remedy.

These governing principles, combined with other constitutional and statutory arguments, led Justice Lauwers to strongly disagree with the majority and issue some cautionary statements, including:

"In my view, giving unions carte blanche to begin certification efforts for insolvent enterprises after the date of the appointment of a trustee or receiver or the date of an order under the CCAA would effect a sea change in insolvency law; it would profoundly alter the economic dynamics of insolvency, and whether the CCAA route is preferable to outright bankruptcy."

While this case may be more narrowly applicable based on its facts, Justice Lauwers' comments highlight some potentially significant broader concerns. The powers of a union and collective bargaining rights within an insolvency proceeding can be significant. The general principle in a receivership or CCAA proceeding is that there is an automatic preservation of the status quo subject to narrow extraordinary exceptions. This case provides what could be a fairly large exception—the potential certification of a union (with all of its corresponding rights and remedies) —with respect to a business that the Receiver is actively trying to sell at a time when it is subject to a court-ordered stay of proceedings. The potential impact of lifting the stay in this circumstance could be significant and, at a minimum, could provide the employees with a level of bargaining power that they did not have when the receivership commenced.

Leave to appeal this decision to the Supreme Court of Canada has not yet been sought. If leave is sought, the Supreme Court may engage on this opportunity to opine further on the intersection of federal insolvency and provincial labour laws.

www.bennettjones.com

NEWSALERT

/Carey

Chile offers manufacturing incentives to promote the development of lithium products

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

Vergara, Rafael
Partner
+56 2 2928 2210
rvergara@carey.cl

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

The Chilean Economic Development Agency, Corfo, and the Foreign Investment Promotion Agency, InvestChile, have announced the opening of the first call for national and foreign companies, to express their interest in manufacturing lithium products, such as battery cathodes and electrolytes. Companies that are selected will be guaranteed 25 per cent of US producer Albemarle's lithium production at the lowest cost available in the market. Currently, there are only two companies that extract lithium in Chile, Albemarle and Sociedad Química y Minera de Chile (SQM).

Chile has the largest lithium carbonate reserves in the world with exports representing over 40% of worldwide production by volume. In 2016, Chile exported 80 thousand tons of lithium carbonate equivalent (LCE) for a total of USD 589 million. By 2035, Chile is expected to export 300 thousand tons of LCE annually. Located in northern Chile, the Salar de Atacama's high-grade lithium is easier and cheaper to produce than anywhere else in the world because it is found in brines below the surface of salt flats.

Government exploration of public–private initiatives to develop the lithium industry could facilitate a more open investment climate for private companies in Chile's lithium sector.

The deadline to express interest in the manufacture of lithium products is June 30th, 2017. Final results will be announced in November 2017.

client alert

TELECOMMUNICATIONS, MEDIA & TECHNOLOGY | CHINA | 10 MAY 2017

CHINA RELEASES DRAFT MEASURES FOR TRANSFER OF DATA OVERSEAS

Further to the issuance of the *Cyber Security Law* on 7 November 2016 (which will come into force on 1 June 2017), the Cyberspace Administration of China released a draft version of the *Measures for the Security Assessment of Transfers of Personal Information and Critical Data Overseas* (the "**Draft Measures**") on 11 April 2017 for public comment.

As detailed in our previous client alert (link), the *Cyber Security Law* imposes an obligation on operators of key information infrastructure to localise in China all personal information and critical data collected in China. It also subjects any transfer of such data overseas to a security assessment.

The Draft Measures would specifically regulate such security assessment, as well as broaden the obligation to localise data in China.

This Client Alert highlights the key points of the Draft Measures and their potential impact on network operators in China.

STRENGHTHENED REQUIREMENTS FOR DATA LOCALISATION

The Draft Measures require all network operators to store in China all personal information and critical data collected and generated in the course of their operations in China. This obligation goes beyond the provisions of the *Cyber Security Law*, under which the data localisation requirement applies only to operators of "key information infrastructure".

However, the Draft Measures does retain the same definitions as the *Cyber Security Law*. "Network operators" include network owners, network managers, and network service providers; while "personal information" is defined as all kinds of information recorded by electronic or other means that can be used (independently or in combination with other information) to identify the personal information of individuals, including but not limited to names, dates of birth, ID numbers, biometrics, addresses, and telephone numbers.

The Draft Measures introduce a definition for "critical data" as data closely related to national security, economic development, and public interests. The specific scope of critical data is to be further stipulated under national standards and guidelines.

SECURITY ASSESSMENT

Any transfer of personal information or critical data outside China must be necessary for business purposes and pass a security assessment. The Draft Measures create two types of security assessment: assessments carried out by network operators (self-assessment) and assessments carried out by Chinese authorities (government assessment).

Before any transfer of personal information or critical data overseas, networks operators are generally required to conduct a self-assessment and are responsible for the results of the assessment.

According to the Draft Measures, the security assessment must focus on the following aspects:

- Necessity of the overseas data transfer;
- The quantity, scope, type, and sensitivity of the data to be transferred, and for personal information, whether the concerned individual(s) have consented to such transfer;
- The data recipient's safeguard measures, capabilities, and standards for security protection, and the network security requirements of the country and region where the data recipient is located;
- Risks of the data being divulged, damaged, tampered with, or misused after being transferred abroad and any subsequent transfer;
- Potential risks for national security, public interest, and the concerned individuals' legitimate interests arising from the data transfer and data collection; and
- Other important aspects that may need to be assessed.

In addition to the self-assessment, any transfer of the following data out of China will be subject to a government assessment:

- Data involving or cumulatively involving personal information of more than 500,000 individuals;
- Data larger than 1,000 GB;
- Data containing information on nuclear facilities, chemical or biological matters, national defence, health of the population, major engineering activities, oceanic environment, and sensitive geographical information;
- Data containing network security information, e.g. system vulnerabilities and the security of key information infrastructure;
- Personal information and critical data provided by operators of key information infrastructure to overseas parties; and
- Any other situation that may affect national security and/or public interests, and the competent regulator considers that a security assessment should be required.

Under the Draft Measures, the government assessment must be completed within 60 working days.

In addition to the self-assessment and government assessment (if applicable), network operators are responsible for conducting an annual security assessment of their overseas data transfers and reporting the results to authorities. If there is any change to the data recipients or any significant change to the purpose, scope, volume, or type of transfer, the security assessment must be updated in a timely manner.

PROHIBITED OVERSEAS DATA TRANSFERS

Under the Draft Measures, data may not be transferred overseas in the following circumstances:

- Where the concerned individual has not consented to the transfer of his/her personal information, or the transfer may infringe his/her personal interests;
- Where the transfer of data creates a risk to the safety of state politics, economy, science and technology, or national defence, or may affect national security or public interests; and
- Other circumstances identified by the Cyberspace Administration of China, public security department, security department, or other governmental authority.

COMMENTS

The Draft Measures detail the security assessment process introduced by the *Cyber Security Law*. It also unexpectedly expands the scope of security assessment by imposing security assessment obligations on all network operators (and not only operators of key information infrastructure). If passed, this new provision will create additional constraints on network operators and oblige them to carefully monitor any transfer of data overseas.

Gide will closely follow the development of the Draft Measures. In the meantime, please feel free to contact us if you have any questions regarding this or any other issue.

CONTACTS

Beijing

GUO MIN
guo@gide.com

Shanghai

FAN JIANNIAN
fan@gide.com

China/Hong Kong

DAVID BOITOUT
boitout@gide.com

Paris

ANTOINE DE LA GATINAIS
gatinais@gide.com

CHARLES-HENRI LEGER
leger@gide.com

GUILLAUME ROUGIER-BRIERRE
rougier@gide.com

STÉPHANE VERNAY
vernay@gide.com

THOMAS URLACHER
urlacher@gide.com

METAL MINING PROHIBITION ACT

El Salvador

By Legislative Decree No. 639, dated on March 29, 2017, published in the Official Gazette on April 4, 2017, was approved the Law Prohibiting Metal Mining in El Salvador. This decree repeals all those provisions relating to the metal mining, contained in the Mining Law, approved by Legislative Decree No. 544, dated on December 14, 1995, published in Official Gazette No. 16, Volume 330, of January 24, 1996.

The prohibition contained in the aforementioned decree includes the exploration, extraction, exploitation and processing, either open or underground, of metal in the soil and subsoil of El Salvador. The use of toxic chemicals such as cyanide, mercury and others is also prohibited in any metal mining process.

Any procedure to obtain a license or concessions to carry out metal mining activities will cease to have effects as of the entry into force of this law, on April 12, 2017.

The Ministry of Economy will close the metal mines and coordinate with the Ministry of Environment and Natural Resources the environmental remediation of damages caused by them in the affected regions.

In the case of artisanal and small-scale mining, the decree states a period of two years from the entry into force of the law to switch to another productive activity; the Salvadoran State will provide the necessary technical and financial support and assistance for such purpose.

Please, do not hesitate to contact us for more information.

FLOR RODRÍGUEZ
Associate
flor.rodriguez@ariasla

NautaDutilh

Corporate

Luxembourg

Bill 7128 Implementing The Fourth EU Anti-Money Laundering Directive

Wednesday 10 May 2017

*Bill 7128 (the "**Bill**") implementing some of the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the "**4th AML Directive**") has been brought before the Luxembourg Parliament. The Bill will amend a number of Acts, in particular the AML Act of 12 November 2004, as amended (the "**AML Act**").*

The Bill is mainly intended to implement the provisions of the 4th AML Directive with regard to the application of "a holistic, risk-based approach" by all professionals subject to the AML legislation.

Two-step implementation

The Bill transposes the provisions of the 4th AML Directive relating to obligations applicable to professionals in the framework of the fight against money laundering.

The provisions of the 4th AML Directive regarding the obligation of all corporate and other legal entities incorporated in Luxembourg to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held as well as the storage of such information in a central register, are not part of this Bill.

A holistic, risk-based approach

Professionals will be obliged to evaluate risks on a case-by-case basis. As a result, there will no longer be situations or transactions in relation to which they can automatically conduct simplified customer due diligence. On the other hand, the Bill contains a description of situations deemed to be higher risk and in relation to which professionals must ensure enhanced customer due diligence in order to manage and mitigate the risks appropriately.

Additional compliance obligations

In order for professionals to be able to efficiently mitigate and manage risks, the Bill requires them to have or put in place appropriate internal organizational and procedural rules, policies and controls which must be proportionate to the nature, particularities and size of the professional. These include internal AML rules and procedures, management policies, document preservation measures, the regular training of personnel, etc., as well as a compliance officer and possibly an independent audit, depending on the size and nature of the professional's activities. The Bill also provides for specific rules to be applied at group level.

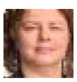
Data protection obligations

The Bill requires professionals to provide new clients with the information required by Article 26(1) of the Data Protection Act of 2 August 2002, as amended (the "**Data Protection Act**"). This information must be provided prior to the start of the business relationship or execution of the transaction and should include a general disclaimer regarding the professional's obligations under the AML Act as regards the processing of personal data in the framework of the prevention of money laundering and the fight against terrorism. The Bill contains a number of additional data protection-related provisions and clarifies that the processing of personal data under the AML Act is deemed a matter of public policy for purposes of the Data Protection Act.

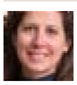
Sanctions

The Bill provides for enhanced oversight of various professional supervisory bodies and introduces additional sanctions which can be imposed on professionals that fail to comply with their AML obligations and which, in principle, can be made public.

Contact us


Greet Wilkenhuysen | Luxembourg | +352 26 12 29 32


Romain Sabatier | Luxembourg | +352 26 12 29 47


Yoanna Stefanova | Luxembourg | +352 26 12 29 51

NautaDutilh | Challenge the obvious

International Law Firm | Amsterdam · Brussels · London · Luxembourg · New York · Rotterdam

ABNR
COUNSELLORS AT LAW

28/04/2017

GUIDANCE ON THE HANDLING OF CORPORATE CRIMES - SUPREME COURT REGULATION NO.13 OF 2016

The Supreme Court made a significant move which marks a new development in the Indonesian corporate criminal liability legislation, by enacting its Regulation Number 13 of 2016 regarding Manner and Procedure for the Handling of Crimes Committed by Corporations (“Regulation 13/2016”).

Consisting of 37 articles, this Regulation 13/2016 is meant to provide law enforcers with guidance in handling corporate crime cases. It strengthens and complements the existing regulations, comprising (i) Letter from the Attorney General (Jaksa Agung) to all Chairmen of the Provincial Public Prosecutor’s Offices (Kejaksaan Tinggi) No. B-036/A/Ft.1/06/2009 dated 29 July 2009 concerning Corporations As Suspects/Defendants In Corruption Criminal Cases and (ii) Regulation of the Attorney General (Peraturan Jaksa Agung) No. PER-028/A/JA/10/2014 dated 1 October 2014 concerning Guidance for the Handling of Criminal Cases with Corporations as the Legal Subject (*Pedoman Penanganan Perkara Pidana Dengan Subjek Hukum Korporasi*).

Officially signed by the Chairman of the Supreme Court on December 21st, 2016, Regulation 3/12016 defines “crimes committed by corporations“ as crimes committed by person(s) on the basis of work relationship or other relationship, either severally or jointly, for and on behalf of the respective corporation, either inside or outside of the “corporation’s environment”. “Corporation’s environment” is further defined as scope of the corporation or scope of the corporation’s business or the work scope included in and/or which supports the business activities of the corporation, either directly or indirectly.

Corporations should take note of the following new rules set out by Regulation 13/2016:

Corporate liability in a corporate crime:

- In a corporation group situation, the parent and/or subsidiary and/or affiliate company (including sister company) of the prosecuted corporation may be prosecuted for involvement in the crime. In this case, the criminal liability will be apportioned based on the actual role/involvement of each corporation.
- In a merger or consolidation situation, the liability is limited to the value of assets placed in the surviving corporation or the newly established corporation.
- In a spin-off situation, the liability is imposed upon the spun off corporation or the corporation conducting the spin-off and/or both in accordance with their respective roles in the corporate crime.
- In a dissolution situation, the liability is still imposed on the dissolving corporation. A corporation that has been dissolved after a corporate crime occurs is immune from criminal proceedings. However, the dissolved corporation’s assets that are allegedly being used for committing the crime and/or constituting the result of the crime are subject to the law enforcements’ measures under the prevailing criminal law. Civil lawsuits may also be launched against the ex-board members as well as against heirs or other third parties that control the assets deriving from the dissolution of the corporation. If there are concerns that the corporation intends to avoid its liabilities by way of dissolving itself, the investigators or prosecutors may request a court order to suspend the dissolution process.

Judges can determine whether a corporation is liable for a corporate crime by considering the following:

- Whether the corporation might gain profit or benefit from the criminal act or whether the criminal act is committed in furtherance of the corporation's interest;
- Whether the corporation allows the crime to take place; or
- Whether the corporation omitted to take the required steps to prevent the crime, to prevent the bigger impacts and to ensure compliance with prevailing laws and regulations for the purpose of avoiding criminal acts.

Judges have the power to sentence the corporation or the Board or both the corporation and/or the Board, as well as the accomplices, for a corporate crime.

The implementation of criminal (either primary or additional) and other disciplinary sanctions on corporations is regulated as follows:

- Criminal and other disciplinary sanctions on corporations must be executed on the basis of a final and binding court decision;
- Primary criminal sanctions in the form of fines being imposed on corporations must be complied by the corporations within 1 month as of the date the court decision becomes final and binding (which period can be extended for another month if there is a justified reason for the extension). Otherwise, the public prosecutor has the right to confiscate and auction the corporations' assets to satisfy the fine.
- Confiscation of goods from corporations for evidence purposes as an additional sanction can only be done for 1 month at the longest as of the date the court decision becomes final and binding. Any profit in the form of assets gained from the crime will be confiscated by the State.
- Additional sanctions in the form of compensation, indemnity and restitution must be implemented in the manner stipulated by the prevailing laws and regulations. The respective corporation has 1 month as of the date the court decision becomes final and binding to comply with the sanction, which period can be extended for another month if there is a justified reason for the extension. Otherwise, the public prosecutor has the right to confiscate and auction the corporation's assets to satisfy the sanction.
- Additional sanctions in the form of orders to take remedial actions to cure the damage resulting from the crime must be implemented in the manner stipulated by the prevailing laws and regulations.

Laws on corporate crimes and liability had been enacted in the past in Indonesia, including: Emergency Law Number 7 of 1955 regarding Investigation, Prosecution and Trial of Economic Crimes, Law Number 5 of 1997 concerning Psychotropic, Law Number 31 of 1999 as amended regarding Eradication of Corruption, Law No. 41 of 1999 as amended concerning Forestry, Law Number 35 of 2009 concerning Narcotics, Law Number 31 of 2004 as amended regarding Fishery, Law Number 38 of 2004 regarding Road, Law Number 32 of 2009 regarding Environment Protection and Management and Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering.

Prior to the enactment of Regulation 13/2016, a decision which was issued by the Supreme Court, No. 936 K/Pid.Sus/2009, became a case law. This Supreme Court decision declared the respective corporation as guilty of committing continuous corruption and imposed on it primary and additional penalty in the form of (i) temporary closure and (ii) seizure of its assets. (*by: Kevin Sidharta*)

Commerce Commission puts retailers on notice over misleading pricing

May 11, 2017

Contacts

Partners

Anne Callinan (http://www.simpsongrierson.com/people/anne-callinan),

James Craig http://www.simpsongrierson.com/people/james-craig

Senior Associates Nina Blomfield (http://www.simpsongrierson.com/people/nina-blomfield)

The Commerce Commission has today taken the unusual step of issuing an open letter to retailers in the hope of improving pricing practices in the retail sector.

The letter comes on the back of several high penalties in recent prosecutions by the Commission for misleading price promotions and misleading advertising about pricing and applicable contract terms. The Commission is also currently pursuing 45 charges against Bunnings for allegedly misleading consumers by advertising the prices of its goods as being the lowest in the market.

The Commission says it often sees a range of concerning pricing practices. These tend to be around exaggerated discounts, 'was/now' discounts, using promotional pricing continually, including additional unavoidable charges in the fine print, 'final days' and 'clearance price' sales, and advertising limited stock at discount prices.

Tips from the Commission for ensuring a price promotion stays within the bounds of the law include:

- don't use fine print to hide important information, such as unavoidable additional costs or charges;
- make sure you take discounts off the 'usual' price (that is, the price you commonly sell the item for) and don't inflate your 'usual' price to exaggerate the discount;
- price comparisons must compare equivalent or 'like-for-like' items;
- a 'sale' is a limited chance to buy items at reduced prices and items must be priced below the price they are usually sold at;
- a 'clearance' must be limited to a specific period and should only be used where a trader is genuinely getting rid of certain stock items;
- shelf prices must match checkout prices;
- don't exaggerate savings or how many items are on sale; and
- be careful when making absolute price claims such as 'lowest' and 'cheapest'.

In light of the recent prosecutions for misleading pricing practices, and given pricing is currently a specific area of focus for the Commission, retailers would be well advised to take this message on board and review their pricing strategies carefully. Failure to do so could see fines of up to $600,000 for each breach by a company, and up to

$200,000 for each breach by an individual.

Full details of the Commission's letter and price promotion tips can be found here (http://www.comcom.govt.nz/the-commission/media-centre/media-releases/detail/2017/retailers-put-on-alert-about-using-misleading-pricing).

For advice on your pricing practices, please get in touch with one of the contacts above.

SyCipLaw Competition Bulletin:

New Issuances of the Philippine Competition Commission

The Philippine Competition Commission ("*PCC*") has issued the Merger Review Guidelines (the "*Guidelines*"), which outline the principal analytical techniques, practices, and the enforcement policy of the PCC with respect to mergers and acquisitions that may have a direct, substantial and reasonably foreseeable effect on trade, industry, or commerce in the Philippines. The Guidelines were adapted from the International Competition Network ("*ICN*") Recommended Practices for Merger Analysis, which were derived from the ICN Merger Guidelines Workbook and common practices across member jurisdictions, and tailored to apply to Philippine commercial and legal practices and made consistent with the Philippine Competition Act ("*PCA*") and the Implementing Rules and Regulations ("*IRR*").

The PCC's purpose for issuing the Guidelines is to increase the transparency of the analytical process undertaken by the PCC and, in so doing, assist the business community and competition law practitioners in assessing proposed transactions. The Guidelines may also assist the courts in developing an appropriate framework for interpreting and applying the PCA, the IRR and other regulations relating to mergers.

Prior to the issuance of the Guidelines, the PCC also issued Clarificatory Note No. 17-001 on February 23, 2017, which clarified that, although the waiting period in voting securities acquisitions (*e.g.,* tender offers, third party and open market transactions, in which the acquiring entity proposed to buy securities from shareholders of the acquired entity) begins after the acquiring entity files a complete Merger Notification Form (the "*Form*"), the acquired entity is nevertheless required to submit its Form no later than ten (10) calendar days from the day the acquiring entity files its Form. Failure of the acquired entity to submit its own Form within such period may lead to insufficient information for the review of the transaction within the 30-day Phase 1 review period and may constrain the PCC to initiate a Phase II review of the transaction.

Finally, on February 13, 2017, the PCC issued PCC Memorandum Circular No. 17-001 setting out the guidelines for the imposition of fines for failure to comply with the merger notification requirements and waiting periods under the PCA and the IRR.

Under the circular:

- *Basis of the fine.* The fine is based on the value of the transaction, which shall be the higher of (i) the aggregate value of the assets in the Philippines subject of the proposed transaction or owned by the acquired corporation, including entities it controls; or (ii) the gross revenues generated by assets subject of the proposed transaction or from sales in, into or from the Philippines of the acquired corporation, including entities it controls.

(Continued on page 2)

FOR MORE INFORMATION
Please contact your account partner
or the author of this Client Alert:
Arlene M. Maneja ammaneja@syciplaw.com

MAKATI OFFICE
SyCipLaw Center, 105 Paseo de Roxas
Makati City, Metro Manila
Philippines 1226
Phone +632 982-3500, 982-3600, 982-3700
Fax +632 817-3896, 817-3567
Email sshg@syciplaw.com

(Continued from page 1)

- *Basic Fine.* The basic fine shall be three percent (3%) of the value of the transaction, subject to adjustment depending on the gravity and duration of the violation, taking into account all the relevant circumstances of the case. The circular enumerates aggravating and mitigating circumstances that the PCC may take into consideration. In no case, however, shall the imposable fine for each violation exceed five percent (5%) of the value of the transaction nor shall the fine be less than one percent (1%) of the value of the transaction.

- *Solidary Liability.* The covered entities, their pre-acquisition ultimate parent entities and their successors or assigns shall be liable for the payment of the fines under the said circular.

FOR MORE INFORMATION
Please contact your account partner
or the author of this Client Alert:
Arlene M. Maneja ammaneja@syciplaw.com

MAKATI OFFICE
SyCipLaw Center, 105 Paseo de Roxas
Makati City, Metro Manila
Philippines 1226
Phone +632 982-3500, 982-3600, 982-3700
Fax +632 817-3896, 817-3567
Email sshg@syciplaw.com

March 29, 2017

Summary of the Draft Amendments to the Enforcement Rules of the Labor Standards Act

Lawrence Yu/Joyce Chen

Following the enactment of the latest amendments to the Labor Standards Act (the "LSA") on December 21, 2016, the Ministry of Labor published the Draft Amendments to the Enforcement Rules of the Labor Standards Act (the "Draft") on March 13 of 2017 in order to gather feedback from the public before finalizing the Draft. While some adjustments might still be made, the Draft is expected to remain more or less the same and take effect in May or later this year. A summary of the Draft is as follows:

I. Article 2

The average wage, which is the basis for calculating an employee's severance pay, pension, compensation for occupational hazard, and compensation for non-competition obligation following termination, shall be calculated based on the employee's wage for the six-month period immediately before the event that requires such computation. Such calculation is to ensure that the interests of an employee that are based on his/her average wage will not be impacted by any extraordinary circumstances during his/her employment. According to the Draft, the wage and the number of days during the following seven periods shall not be included when calculating average wage (Items (5), (6) and (7) below are additions to the Enforcement Rules of the LSA):

(1) The day of occurrence of the event that requires the computation of an employee's average wage;

(2) The period of an employee’s medical treatment for an occupational injury;

(3) The period during which an employee's wages were paid at one-half of the normal rate as set forth in Paragraph 2, Article 50 of the LSA;

(4) The period during which an employee was unable to work due to his/her employer's suspension of business caused by a natural disaster, accident or other force majeure event;

(5) The period during which an employee was on sick leave, and such leave was taken in accordance with his/her employer's leave-taking rules;

(6) The period during which an employee was receiving lower-than-normal wages due to menstrual leave, maternity leave, family care leave or pregnancy leave, and such leave was taken in accordance with the LSA and the Act of Gender Equality in Employment; and

(7) The period of leave without pay.

II. Article 7

In response to the newly added rest days under Article 36 of the LSA, a mandatory provision which specifies that employees are entitled to one rest day in every seven days must be included in all employment contracts. The day of the rest days shall be agreed upon by the employer and the employee. For employers that adopt normal work weeks, Saturdays are usually the designated rest days.

III. Article 11

Minimum wage is the compensation an employee receives for his/her work within normal working hours. Since the addition of rest days under the LSA, work carried out on a rest day is considered overtime work for which the wage received by the employee shall not be included as part of the minimum wage.

IV. Article 14

The existing rules stipulate that the minimum wage for underage workers shall not be lower than 70% of the normal minimum wage. However, in order to protect the rights of underage workers, such rules have been deleted in the Draft and underage workers will be able to enjoy the normal minimum wage protection.

V. Article 14-1

The LSA specifies that employers shall provide employees with detailed statements showing the calculation of their wages and that employers shall keep complete records of wages and employment. The Draft stipulates that the following items shall be included in such detailed statements:

(1) The total amount of wages agreed upon by the employer and the employee;

(2) The amount of payment in each category of the wage payment including the base salary, bonus, benefit, overtime pay and other compensation for the employee's work;

(3) Deductions required by law or otherwise agreed upon by the employer and the employee including labor insurance and health insurance premiums borne by the employee, the employee’s pension contribution and welfare fund contribution;

(4) The actual amount of payment received by the employee.

The Draft also requires that such detailed statements be readily available to employees in written and electronic forms (e.g. e-mail, text message, messaging app, the employer's internal payroll system).

VI. Article 20

In response to the newly added rest days under Article 36 of the LSA, the Draft requires that an employer to make a public announcement if it decides to adopt a flexible working hour system or change the day of rest days.

VII. Article 20-1

In response to the newly added rest days under Article 36 of the LSA, the Draft stipulates that all work carried out on rest days shall be deemed as overtime work.

VIII. Article 21

According to Paragraph 5, Article 30 of the LSA, employers shall prepare employees' attendance records. The Draft further provides that such attendance records shall include attendance logs, clock card machines, clock cards, access cards, records on biometric identification systems (e.g. fingerprint sensors), electronic attendance records or other records that can verify and record employees' time of attendance.

The Draft also requires employers to present the above-mentioned records in a written form if the authority conducts a labor inspection or if an employee requests for a review of the records.

IX. Article 23

The Draft specifies that national holidays (including memorial days and other holidays), on which employees are entitled to have a day off, shall be those announced by the Ministry of the Interior. The number of national holidays has been reduced from 19 to 12 days per year.

X. Article 23-1

The Draft specifies that if a national holiday (except for a day-off otherwise designated by the competent authority such as an election day) falls on a fixed day-off or a rest day, the fixed day-off or rest day shall be deferred to a date mutually agreed upon by the employer and the employee.

XI. Article 24

The Draft states that the cycle for calculating an employee's annual leave shall commence on the first day of his/her employment; employers shall grant employees annual leaves in accordance with Paragraph 1, Article 38 of the LSA. In other words, except for employees whose period of service is between six months and one year, the cycle for calculating employees' annual leave shall start from the first day of his/her employment.

In order to provide some flexibility, the Draft specifies that employers and employees may negotiate and agree to adopt one of the following three cycles for calculating annual leaves:

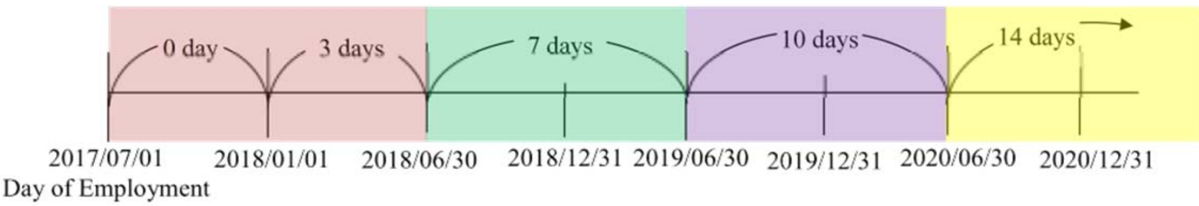
(1) By the anniversary date: The annual cycle starts on the first day of the employee's employment. However, for an employee whose period of service is between six months and one year, he/she is entitled to take annual leave at the start of the six months' service period.

(2) By the calendar year: The annual cycle starts on January 1 and ends on December 31 of each year.

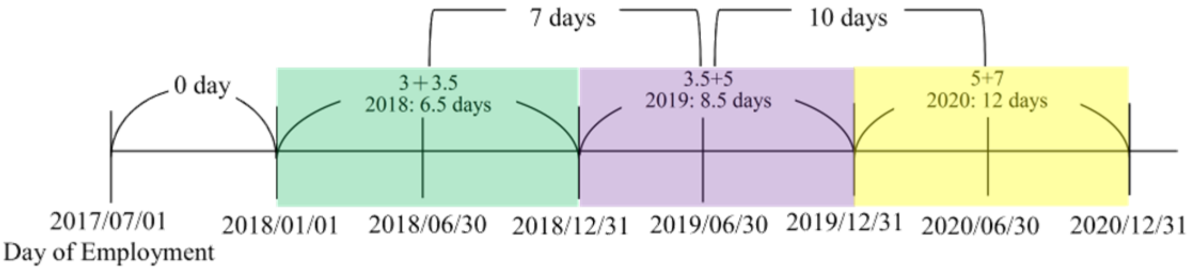
(3) By the fiscal year: The annual cycle is consistent with the employer's fiscal year.

The following charts illustrate how annual leaves are granted based on an employee's years of service and the first two cycles above:

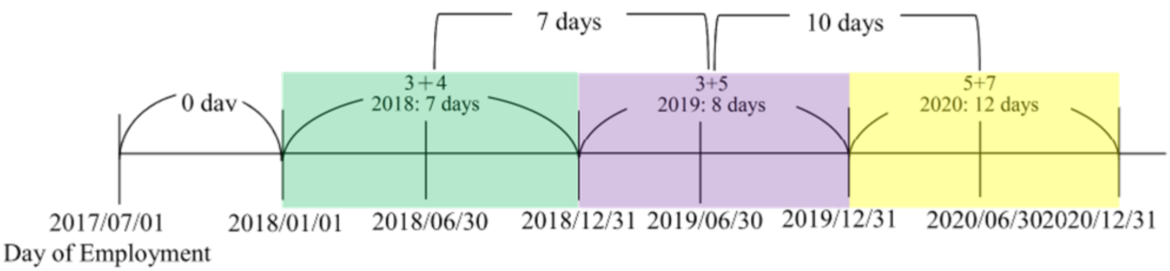
By anniversary date:



By calendar year (Example 1)



By calendar year (Example 2)



According to Paragraph 3, Article 38 of the LSA, employers shall notify employees of their annual leave entitlements within 30 days following the day on which the employees become eligible to take such leave.

XII. Article 24-1

(1) Employees shall receive a lump sum payment for their unused annual leave at the end of a year. The Draft stipulates that "at the end of the year" shall mean the end of the employment’s anniversary date, calendar year, or fiscal year cycle, whichever has been adopted by the employer.

(2) Unused annual leave payment shall be calculated and paid in accordance with the following rules as set forth under the Draft:

1. Payment calculation:

i.Employees shall receive 100% of their daily wage for every day of unused annual leave. For example, if an employee has five days of unused annual leave as of the end of a year, the employer shall pay such employee five days of daily wage.

ii.The wage referred to in the preceding paragraph shall mean an employee's daily wage immediately before the end of the annual leave calculation cycle or before the termination of employment contract. If an employee's wage is calculated on a monthly basis, for the calculation hereunder, the employee's monthly wage right before the end of the annual leave calculation cycle or the termination of the employment shall be divided by 30, and the result shall be deemed the daily wage.

2. Deadline for making unused annual leave payment

(1) At the end of the year: Unused annual leave payment shall be made on the regular pay day or within 30 days following the end of the annual calculation cycle. For example, if the regular pay day is the 5th day of every month, and that the end of the annual calculation cycle is April 15, the unused annual leave payment shall be made on May 5 or before May 15 of the same year at the latest.

(2) Upon termination of employment contract: Unused annual leave payment shall be made on the date of termination or the regular pay day. For example, if the regular pay day is the 5th day of every month, and that the employment contract is terminated on April 15, the unused annual leave payment shall be made on April 15 or before May 5 of the same year at the latest.

XIII. Article 24-2

Employers shall give yearly and regular notifications to their employees regarding their annual leave entitlements (number of days) and amount of unused annual leave payment. The Draft provides that such notifications shall be given in writing in accordance with the following rules:

(1) A written notice shall be given before the applicable payment deadline specified under Article 24-1; and

(2) A written notice shall be made readily available and printable for employees in written or electronic forms.

XIV. Article 24-3

Article 39 of the LSA specifies that with the consent of an employee, the employer may ask the employee to work on a paid day-off, provided that the employer pays such employee double his/her pay for such work. The Draft stipulates that a paid day-off refers to a national holiday or memorial day set forth under Article 37 of the LSA or a day of annual leave specified under Article 38 of the LSA. In other words, double pay for working on a paid day-off only applies to work carried out on a national holiday, memorial day or a day of annual leave.

Ideas

Federal Circuit Holds That "Secret" Sales and Offers for Sale May Constitute Prior Art Under Post-AIA Section 102

02 May 2017

Updates

On May 1, 2017, the Federal Circuit issued its opinion in *Helsinn Healthcare S.A. v. Teva Pharmaceuticals USA, Inc.*, Nos. 2016-1284 and 2016-1787 (Fed. Cir. May 1, 2017). In a panel decision authored by Judge Dyk, the Court held that sales or offers for sale that do not publically disclose the details of an invention may still qualify as prior art for post-AIA patents. Notably, the USPTO has been operating under the presumption that such sales or offers for patents filed after March 16, 2013 are not prior art. *See, e.g.*, M.P.E.P. § 2152.

Before the passage of the AIA, both the Supreme Court and the Federal Circuit held that "secret" prior art (such as certain uses, sales, or offers for sale) may serve as invalidating prior art without disclosing the "details of the invention" to the public. Slip Op. at 22-23. In enacting the AIA, Congress amended § 102 to prohibit patenting of an "invention [that] was patented, described in a printed publication, or in public use, on sale, *or otherwise available to the public* before the effective filing date of the claimed invention." 35 U.S.C. § 102(a)(1) (emphasis added). Helsinn (the patentee) argued that by including the phrase "or otherwise available to the public," Congress legislatively repealed the jurisprudence allowing for the use of "secret" prior art. Slip Op. at 22.

The Federal Circuit rejected Helsinn's argument as overbroad. Helsinn relied primarily on several floor statements suggesting that Congress intended to prevent "secret" prior art from invalidating a patent. Slip Op. at 20-21. The Federal Circuit reviewed these statements, and determined that they were all directed to secret "uses," not to secret "sales" or "offers for sale." *Id.* Because the issue of secret "use" was not raised in this case, the Court did not determine whether the AIA excludes "secret uses" from serving as prior art. *Id.*

With respect to whether "sales" or "offers for sale" must disclose details of the invention, the Federal Circuit found "no indication" that Congress intended to overrule the Court's prior cases. Slip Op. at 26. The Court reasoned that, "[i]f Congress intended to work such a sweeping change to our on-sale bar jurisprudence and wished to repeal these prior cases legislatively, it would do so by clear language." *Id.* (quotations omitted). Accordingly, "after the AIA, if the existence of the sale is public, the details of the invention need not be publicly disclosed in the terms of sale." *Id.* at 27.

The Federal Circuit did not address the circumstance in which a sale (or offer) is itself "secret," as opposed to a publically known sale that fails to disclose the "details of the invention." Rather, in *Helsinn*, there was no dispute that the sale itself (which was announced in a public filing) was public. Slip Op. at 21. Therefore, the Court noted that "[e] ven if the floor statements were intended to overrule [pre-AIA] secret or confidential sale cases … that would have no effect here since those cases were concerned entirely with whether the existence of a sale or offer was public." *Id.* The Court's reasoning leaves open whether the AIA changed the law with respect to non-public sales or offers, whether or not such sales disclose the "detail of the invention."

Related Professionals

Paula Heyman

Partner

Jesse Adland

Associate

LOCATIONS:

AUSTIN | BEIJING | BRUSSELS | DALLAS | DUBAI | HONG KONG | HOUSTON | KUWAIT ALLIANCE | LONDON | MOSCOW | NEW YORK | PALO ALTO | RIYADH | SAN FRANCISCO | WASHINGTON

Draft "Internet Freedom NPRM" Released by FCC – More Net Neutrality Madness to Follow

05.11.17

By Mike Sloan

On April 27, 2017, FCC Chairman Ajit Pai released the draft text of a Notice of Proposed Rulemaking (the "*Internet Freedom NPRM*") that would reverse the FCC's 2015 *Open Internet Order. The Open Internet Order*, which has now been renamed the *Title II Order*, imposed a broad set of so-called "net neutrality" obligations on broadband ISPs on the theory that Internet access is "telecommunications service" subject to oversight by the FCC under the Title II / common carrier provisions of the Communications Act. The *Open Internet Order / Title II Order*, itself, reversed long-standing FCC precedent that Internet access is an information service and not a telecommunications service. So, the *Internet Freedom NPRM* is billed as a return to the *status quo* before the 2015 reclassification. The draft NPRM is scheduled to be voted on and adopted at the May 18, 2017 Open Commission Meeting.

Shortly after the draft NPRM was released, the U.S. Court of Appeals for the District of Columbia Circuit denied the petitions to rehear *en banc* its 2016 decision in *U.S. Telecom Association v. FCC* that affirmed the *Open Internet / Title II Order*. The *en banc* denial starts the 90-day clock for petitions seeking U.S. Supreme Court review, although it is unclear if any such petitions will be pursued in light of *Internet Freedom NPRM's* stated intention to repeal the net neutrality rules imposed by the 2015 order. In fact, Chairman Pai released a statement shortly after the D.C. Circuit's denial of the rehearing petitions in which he described that denial as confirming that "the FCC has the authority to classify broadband Internet access service as an information service," as Pai proposes to do, and he confirmed that "the Commission on May 18 will begin the process of repealing the FCC's Title II regulations." (For more on the long history of the FCC's attempt to craft workable and sustainable open Internet / net neutrality rules, we refer you to Davis Wright Tremaine's Open Internet Law Advisor blog.)

The NPRM starts with the premise that re-reclassification of broadband Internet access is necessary because the regulatory burden imposed on ISPs by the *Open Internet / Title II Order* led to decreased investment and reduced innovation. It also considers the information service designation to be supported by the text of the statute, Commission precedent, and public policy considerations. Not shrinking from the about-face in policy the NPRM represents, the NPRM states (at ¶ 53) that, "[a]n agency is free to change its approach to interpreting and implementing a statute so long as it acknowledges that it is doing so and justifies the new approach."

In addition to legal reclassification, the NPRM proposes re-evaluating the rules and regulations imposed on ISPs by the *Title II Order*. The NPRM proposes eliminating the Internet conduct standard (a vague rule of conduct that the FCC claimed was at issue while investigating zero-rated and "sponsored data" services), and it seeks comment on the usefulness and necessity of the no-blocking rule, the no-throttling rule, the no paid prioritization rule, and the transparency rule, which requires disclosure of providers' network-management practices and performance data, as well as its authority to continue overseeing the business-to-business interconnection of broadband networks. The Notice also seeks comment on what an effective enforcement regime would look like if broadband Internet access service is classified as an information service.

Finally, the draft NPRM proposes to "return" authority to the Federal Trade Commission to "police the privacy practices of Internet service providers" – authority which had been stripped away along with 2015 reclassification. A potential complicating factor for this proposal is how the Ninth Circuit proceeds in the Federal Trade Commission's "data throttling" enforcement action against AT&T. In a 2016 decision, a panel of the Ninth Circuit held that the FTC lacked authority to apply its Section 5 unfair and deceptive acts and practices enforcement authority to any activities of a "common carrier" – even those activities that are not

RELATED PEOPLE

Danielle Frappier

Paul Glist

K.C. Halm

Peter Karanjia

Christin S. McMeley

Christopher W. Savage

Michael C. Sloan

RELATED PRACTICES

Cable

Communications Regulatory

Communications, Media, IP & Technology

Internet & E-Commerce

Telecommunications

Wireless

common carriage. But on May 9, 2017 the Ninth Circuit agreed to review the panel ruling *en banc* and voided any precedential effect of the panel ruling. If the Circuit reverses the panel ruling it will be far simpler for the FTC to exercise authority over broadband services that are reclassified as information services.

Please do not hesitate to contact us if you would like more details. Comments would be due 30 days after publication in the Federal Register although, according to the draft, initial comments will be due July 17, 2017, and replies on August 16. We would be happy to assist you in participating in or monitoring this proceeding.

Disclaimer

This advisory is a publication of Davis Wright Tremaine LLP. Our purpose in publishing this advisory is to inform our clients and friends of recent legal developments. It is not intended, nor should it be used, as a substitute for specific legal advice as legal counsel may only be given in response to inquiries regarding particular situations.

Health Care Reform Bill Clears the House, but Could Hit a Wall in the Senate

5 May 2017

The American Health Care Act (AHCA), a bill that would repeal and replace key portions of the Affordable Care Act (ACA), narrowly passed the House of Representatives on 4 May 2017. The bill's passage marks a reversal of fortune for AHCA; in March of 2017, the initial push to have a House vote on the bill failed in light of opposition from conservative and moderate segments within House Republicans' own ranks. After the bill's initial failure, a number of amendments to AHCA were introduced to win over skeptical or undecided House Republicans. The effort succeeded, and AHCA passed in a 217 to 213 vote, in which 20 House Republicans joined House Democrats in voting against the bill. AHCA faces an uncertain future as it goes on to the Senate, due to political and procedural roadblocks that could derail the bill's passage into law.

Politically, the House bill has received a tepid initial reaction from a number of Republicans in the Senate. Senator Lamar Alexander (R-TN) recently stated that "we're writing a Senate bill and not passing the House bill" and "we'll take whatever good ideas we find there that meet our goals."[1] Other Senate Republicans (as well as Democrats) have raised concerns about the projected decrease in coverage under the bill.

Procedurally, because the bill is proceeding under the special budget reconciliation process, which allows Senate Republicans to pass the bill with only a bare majority of Senators, additional challenges may arise. Under the so-called Byrd rule, any provision of the bill that is found by the Senate parliamentarian to not directly affect spending or revenue could be subject to exclusion as extraneous. Among other things, this could put some of the recent amendments to the House bill at risk.

In addition, to be passed under the reconciliation process, the bill must not be projected to increase the deficit after 10 years. The Congressional Budget Office (CBO) has not yet scored the version of the bill that passed the House. CBO did score an earlier version of the bill, concluding that it would reduce covered lives by 24 million people over 10 years—but also reduce the deficit by $150 billion over the same period. At this point, it is uncertain how the recent amendments to the House bill will impact CBO's covered lives and cost savings estimates.

[1] Burgess Everett and Jennifer Haberkorn, Senate GOP Rejects House Obamacare Bill (5 May 2017), http://www.politico.com/story/2017/05/04/house-health-care-bill-senate-doa-238000.

Recent Amendments to the House Bill

For a detailed summary of the bill as initially introduced, please refer to our previous client alert on the bill. Since its introduction, the bill has changed in significant ways, as amendments have been adopted to win over skeptical or undecided House Republicans. Two recent amendments were particularly crucial in securing the votes needed to pass the bill in the House.

MacArthur-Meadows Amendment

The first amendment, which helped gain support from conservative members of the Republican caucus, was offered by Congressmen Tom MacArthur (R-NJ) and Mark Meadows (R-NC) and would allow states to apply to the Secretary of Health and Human Services for three types of waivers of requirements created by either AHCA or the ACA. If granted, a waiver would last for up to 10 years and could be further extended by the Secretary upon request by the state.

The first type of waiver would allow states, beginning in 2018, to permit insurers to charge older individuals more than five times the rate that they charge younger individuals. The baseline 5:1 ratio would be established under the AHCA bill, modifying the current 3:1 ratio established under the ACA. The second type of waiver would allow a state, beginning in 2020, to define the essential health benefits required to be covered by insurers in that state. Notably, the prohibition on lifetime and annual limits on coverage and the limitation on out-of-pocket expenses applicable to both insurers and employers—both of which are applicable only to essential health benefits—could be affected by any such definitional change. The third type of waiver would allow states, under certain specified conditions, to permit insurers to charge consumers higher premiums based on their health status, if the states operate a program under the AHCA's patient and state stability fund.

Upton Amendment

The second amendment, which helped gain support from moderate members of the Republican caucus, was introduced by Congressman Fred Upton (R-MI) and six other Republican House Representatives. The amendment would allocate $8 billion over a period of 5 years to states that seek waivers under the MacArthur-Meadows amendment "for the purpose of providing assistance to reduce premiums or other out-of-pocket costs of individuals who are subject to an increase in the monthly premium rate for health insurance coverage as a result of such waiver." Although funds under the amendment have been described as being targeted at those with pre-existing conditions, the amendment does not restrict the funds to be used only for such purpose.

Other Amendments

Some of the other notable amendments to the House bill since its introduction would:

- Allow states to choose to receive federal Medicaid funding via block grants rather than per capita funding. States that select block grants would be given significant flexibility to determine who is eligible for and what benefits are covered under Medicaid.
- Permit states to establish work requirements for non-disabled, non-elderly, and/or non-pregnant adults as a condition of receiving coverage under Medicaid.

- Prohibit states that have not already expanded Medicaid from receiving the enhanced federal matching funds provided under the ACA's Medicaid expansion program. States that have not expanded Medicaid would still have the ability to expand coverage up to 133 percent of the federal poverty level, but would only receive federal matching funds at their regular rate.
- Accelerate the repeal of most of the ACA's taxes compared to the timetable under the initial version of the bill—from 2018 to 2017.
- Extend the moratorium of the so-called "Cadillac tax" on high-cost employer health benefit plans until 2026. The moratorium would have lasted until 2025 under the initial version of the bill.
- Further reduce the medical expense deduction threshold to 5.8 percent of adjusted gross income. The current threshold under the ACA is 10 percent, and the initial version of the bill would have reduced the threshold to the pre-ACA threshold of 7.5 percent.
- Add $15 billion from 2018 to 2026 to the $100 billion stability fund that was included in the initial version of the bill.

Contacts

Sheree Kanner
Partner, Washington, D.C.
Tel +1 202 637 2898
sheree.kanner@hoganlovells.com

Melissa K. Bianchi
Partner, Washington, D.C.
Tel +1 202 637 3653
melissa.bianchi@hoganlovells.com

Ken Choe
Partner, Washington, D.C.
Tel +1 202 637 5675
ken.choe@hoganlovells.com

Elizabeth Halpern
Partner, Washington, D.C.
Tel +1 202 637 8609
elizabeth.halpern@hoganlovells.com

Therese Goldsmith
Partner, Baltimore
Tel +1 410 659 5071
therese.goldsmith@hoganlovells.com

Stuart M. Langbein
Partner, Washington, D.C.
Tel +1 202 637 5744
stuart.langbein@hoganlovells.com

Beth L. Roberts
Partner, Washington, D.C.
Tel +1 202 637 8626
beth.roberts@hoganlovells.com

Craig H. Smith
Partner, Miami
Tel +1 850 309 0009
craig.smith@hoganlovells.com

Helen R. Trilling
Partner, Washington, D.C.
Tel +1 202 637 8653
helen.trilling@hoganlovells.com

James Huang
Associate, Washington, D.C.
Tel +1 202 637 3696
james.huang@hoganlovells.com

Isaac L. Swaiman
Associate, Washington, D.C.
Tel +1 202 637 6403
isaac.swaiman@hoganlovells.com