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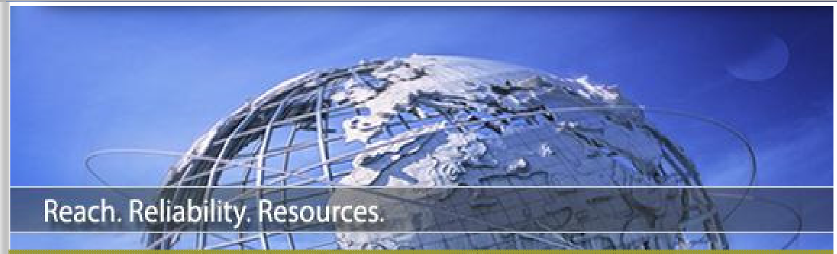

Pacific Rim Advisory Council

November 2017 e-Bulletin

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GIDE ENHANCES INTERNATIONAL ARBITRATION AND DISPUTE RESOLUTION CAPABILITY

PARIS - 02 November 2017: Leading international law firm Gide is strengthening its international arbitration and dispute resolution practice with the addition of Saadia Bhatty as Counsel in the London office.

A specialist in international dispute resolution, Saadia Bhatty has advised and represented States and private entities on a wide range of contentious and non-contentious international dispute resolution law matters, in particular in international commercial and investment arbitrations and other public international law matters. Her experience includes providing advice on drafting arbitral clauses under various rules including those of the ICC, the ICSID, the LCIA, the SCC and the Organization for the Harmonization of Business Law in Africa (OHADA), and acting as secretariat for an arbitral tribunal in several ICC proceedings. She acts in proceedings that deal with the laws of both civil law and common-law jurisdictions.

Saadia is an attorney admitted to the New York bar and is a graduate of Harvard Law School and the Paris 1 Panthéon-Sorbonne University.

Saadia was previously an associate in the International Arbitration team of Gide's Paris office and returns to the firm from Clyde & Co's London office, having also worked at a US firm in London and New York.

"We are delighted to have Saadia with us. This is an exciting development both for the London disputes practice and the Gide arbitration practice as a whole." said Rupert Reece, partner in charge of Gide's London office and head of the International Dispute Resolution practice in London.

The London International Dispute Resolution team is part of Gide's global disputes practice, which comprises over 130 lawyers, including 40 partners. The London team handles multi-jurisdictional disputes and is uniquely placed to bridge the common law and civil law systems in which the firm's clients operate.

For additional information visit us at www.gide.com

NAUTADUTILH OPENS LUXEMBOURG DESK IN NEW YORK

NEW YORK - 02 October, 2017: NautaDutilh expands its New York office with a Luxembourg desk headed by Jad Nader, who recently has been named local partner. The firm's New York satellite team advises US clients on Dutch, Belgian, and Luxembourg law, particularly in regard to cross-border banking and finance and corporate M&A transactions. The arrival of a Luxembourg partner will increase the firm's capacity to handle Dutch and Luxembourg matters locally.

"We are excited to be able to offer our US clients an integrated Dutch-Luxembourg team in their own time zone," Elizabeth van Schilfgaarde, managing partner NautaDutilh New York says. "Having a Luxembourg presence in our London office has given us a great advantage in the scope of our service to local clients," adds Josée Weydert, managing partner of NautaDutilh Luxembourg. "I look forward to seeing the same growth take place in New York."

NautaDutilh's board member Petra Zijp "I am very pleased we are able to continue building our cross-border services in New York with the addition of Jad. By having members of our Luxembourg team present in both London and New York, we are able to markedly improve our 24/7 service to clients."

Jad specializes in banking and financial law. In addition to his experience in cross-border lending transactions, he assists clients on various financial and insurance regulatory matters as a member of NautaDutilh's Banking and Finance group. Jad focuses on sophisticated international financial techniques, where he advises and acts for major international financial institutions and private equity houses. He also has expertise in the field of Islamic finance.

For additional information visit www.nautadutilh.com

GOODSILL WELCOMES RETURNING COMMERCIAL LITIGATOR AND ADDS NEW PARTNER TO TRUST, ESTATE AND FAMILY BUSINESS GROUP

HONOLULU: Wayne R. Wagner has rejoined Goodsill as an Associate. After concluding clerkships in federal court for the Honorable Richard R. Clifton of the United States Court of Appeals for the Ninth Circuit, as well as the Honorable Susan Oki Mollway, then Chief Judge of the United States District Court of Hawaiʻi,

Wayne returns to the firm to continue his practice as a commercial litigator. He has experience in environmental matters, intellectual property, federal class actions, construction defect, and appeals.

Eric S.T. Young has joined Goodsill as a partner in the Trusts, Estates and Family Business group. Eric advises clients in the areas of estate planning, probate, trust and conservatorship administration, dispute resolution, and litigation.

Prior to joining the firm, he operated as a sole practitioner in Honolulu. He is also an adjunct professor at the University of Hawaii School of Law where he teaches a clinical class on estate planning and appointed member of the Judiciary's Committee on the Uniform Probate Code and Probate Court Practices. Most recently he was named "Lawyer of the Year in Honolulu" in the area of Litigation - Trusts and Estates by Best Lawyers in America.

For additional information visit us at www.goodsill.com

TOZZINIFREIRE JOINS CO-WORKING ORGANIZATION WEWORK, BUIDLING ON MOMENTUM FROM ITS STARTUP & INNOVATION PRACTICE GROUP

SAO PAULO – 27 October, 2017: As of July 2017, TozziniFreire has also been operating from co-working spaces in two different regions in São Paulo (Av. Paulista and Faria Lima). The firm is now a member of WeWork, the biggest co-working network in the World. This initiative is part of TozziniFreire's Startup & Innovation practice group.

TozziniFreire is the pioneer full-service law firm to work with Startups, seeking revolutionary businesses, understanding their needs and supporting companies interested in Open Innovation. The creation of the practice group "Startups & Innovation" in 2016 not only opened minds towards focusing in different markets, but also changed how employees work, incorporating methodologies, such as Design Thinking, to improve project management.

TozziniFreire is at the forefront in Brazil when it comes to implementation of a modern structure and cutting-edge processes. The firm seeks to not only maintain its long-standing reputation as an innovator and a keen competitor, but also to shape itself as the Brazilian law firm of the future.

For additional information visit www.tozzinifreire.com.br

HOGAN LOVELLS CAPITAL HILL VETERAN JOINS GOVERNMENT RELATIONS AND POLICY ADVOCACY PRACTICE

WASHINGTON, 13 November 2017 – International law firm Hogan Lovells announced today that Ivan Zapien has joined the firm's leading Government Relations and Policy Advocacy practice as a partner in the Washington, D.C. office. Zapien combines over two decades of private sector and Capitol Hill experience as an accomplished legislative and administrative advocate on behalf of corporate organizations in the U.S. and Mexico.

Ivan Zapien
Partner, Washington, D.C.

"Ivan has earned a solid reputation on both sides of the aisle as a lawyer, executive, advocate, and leader with international and domestic experience in government affairs management and campaigns. With the procedural rules, policy traditions, and political norms of Washington changing quickly, clients are looking for someone to help them navigate these uncharted waters. Ivan's background and experience uniquely position him to address both existing challenges and new opportunities in this rapidly changing environment," said former U.S. Senator Norm Coleman, Practice Area Leader for the Government Relations and Policy Advocacy group.

Added Alice Valder Curran, Government Regulatory Practice Group Leader, "Earlier this year, we made a strategic decision to invest in a new Strategic Communications group, led by Mark Irion, to enhance our abilities in the public policy arena through integrated communications advice. Ivan's addition combines a solid public policy background with public relations and corporate communications experience. He provides both our Government Relations and Strategic Communications teams with a solid foundation for future growth."

Zapien spent nearly a decade working for Walmart in Washington, D.C. and Mexico City, where he gained on-the-ground international management experience in government relations. Most recently he spent two years as Vice President, Corporate Affairs for Walmart in Mexico City in charge of government relations and public outreach in Mexico and Central America. He also spent eight years in the Walmart office in Washington, D.C., including five years managing the office as Vice President for Federal Government Relations.

In addition to his private sector experience, Zapien has significant Capitol Hill experience as a leader in the Democratic Caucus. He served as chief of staff to U.S. Senator Robert Menendez of New Jersey until early 2008 and oversaw support for the senator's service as Chair of the Democratic Senatorial Campaign Committee and Co-chair of the Senate Hispanic Task Force. He also served as National Outreach Director of the House Democratic Caucus and as Executive Director of the Hispanic Leadership Council of the Democratic National Committee.

"The team at Hogan Lovells understands that clients and stakeholders must navigate the parallel and intersecting paths of politics, process, and policy to be successful. I'm excited to join this talented group of policy advocates and look forward to helping clients capitalize on the opportunities of the current environment," said Zapien.

Zapien earned his J.D. from the Columbus School of Law at Catholic University, his M.A. from the Graduate School of Political Management at George Washington University, and his B.A. from the University of Arizona.

For additional information visit www.hoganlovells.com

RCD—ROUSAUD COSTAS DURAN EXPANDS WITH NEW HIRES AND NEW OFFICE IN VALENCIA

BARCELONA – 27 September, 2017

The law firm RCD - Rousaud Costas Duran has opened an office in Valencia as part of its growth strategy, which joins the offices already present in Madrid and Barcelona. After gaining prestige in the sector, the firm now sprouts roots in the Valencian Community, taking note of the strong economic growth experienced by this region in recent years, as well as the strong ties that link the firm to the eastern part of the country.

With this office, in addition to those of Madrid and Barcelona, the firm maintains its strategy of growth and consolidation as one of the top legal firms in Spain. At the same time, the firm incorporates professionals of recognized prestige, such as partner Borja de Gabriel for the Tax Practice and senior associate Ricardo Pla for the Corporate and Commercial Practice, both with extensive experience in the Valencian Community.

The new office, located at Calle Moratín 17, is in the heart of the city next to the City Hall and the main street Calle de les Barques. It has a multidisciplinary approach and operates as a single unified office with RCD's other locations, which will allow it to offer more than 20 legal and sectoral specialties, being able to provide both comprehensive and highly specialized advice at the same time.

On the opening of the new office, Adolf Rousaud, managing partner of the firm, said: "Valencia is a region with a solid economy, a strategic location and international projection. We identify with Valencia's competitiveness, entrepreneurship and innovation, and also share many ties. From our beginnings, we have defended the interests of numerous Valencian companies and individuals, in many cases advising them on transactions of great impact, not only for the companies themselves, but also for the region. In addition to these economic reasons, there are also personal reasons: part of our partners and professionals come from the Valencian Community, so we feel very connected to the area".

Growth The opening of a new office comes in response to the unstoppable growth that RCD has experienced in recent years, being one of the fastest growing offices in the market and ranking among the top legal firms in Spain. The firm invoiced a total of 25.5 million euros in 2016. This was 24% more than in 2015, having also experienced the same percentage growth compared to 2014. In addition, in 2016, RCD was, for the second consecutive year, the most active advisor by volume of transactions in venture capital and one of the most outstanding in M&A, according to the main rankings of the sector, including Transactional Track Record (TTR) and Bloomberg.

New Hires The opening of the new office is made complete with the hiring of Borja de Gabriel, a native of the Valencian Community, as the new partner of the Tax Area of RCD, from the firm MA Abogados. He holds a degree in Law from the University of Valencia and a Master's Degree in Business Tax Consulting from the Instituto de Empresa. De Gabriel has an extensive track record of providing recurring tax advice for companies and industrial groups. He has advised on the internationalization processes of Spanish companies (analyzing taxation in the country of destination and advising on the design and implementation of schemes and measures of international tax planning) and advised international groups on their investments in Spain. He is a member of the Bar Association of Valencia and the Spanish Association of Tax Advisors.

Ricardo Pla also joins the Valencia Office as a Senior Associate in the Corporate and Commercial Area. Pla has extensive experience in corporate and contractual law, in business reorganization, M&A, restructuring and debt refinancing processes.

—- continues next page

ROUSAUD EXPANDS WITH NEW HIRES AND NEW OFFICE IN VALENCIA ..CONTINUED

RCD has incorporated lawyer and economist Lucas Espada, with 15 years of experience in the field of taxation, as a new partner of the Tax Area. The appointment of Espada reflects the commitment of the firm to incorporate the best talent within the framework of its strategy of growth and consolidation as one of the primary legal firms in Spain. Espada has 15 years of experience in tax planning, tax advice and structured finance with extensive experience in tax planning for international investments and restructurings, as well as tax advice on mergers and acquisitions, venture capital (structuring of funds, carried interest, procurement planning and divestments) and structured finance (project finance, asset finance, securitization). At the same time, he has extensive experience in the real estate sector and advising large estates.

This practice area, led by Jorge Sarró and José María Durán and made up of about 40 professionals, is one of the most recognized in the market - both in tax and wealth management - according to the main legal directorates such as Chambers & Partners.

Lucas Espada holds a degree in Economics and Law from the University of Granada and holds a master's degree in Tax Consultancy from the Garrigues Studies Center, where he was awarded special recognition. Espada has also authored several articles on taxation. Before joining RCD, he developed his career in the tax department of Baker & McKenzie and, previously, in Garrigues.

For the managing partner of RCD, Adolf Rousaud, "the incorporation to the firm of a distinguished professional like Lucas Espada reinforces and strengthens our commitment to offer advice of the highest quality to entities both inside the country and internationally in a matter as complex and necessary as taxation. Lucas will strengthen our Tax Area, which is widely recognized in the market and is formed of over 40 professionals".

For his part, Lucas Espada states that "Joining a dynamic firm that is experiencing considerable growth, and a firm with the prestige that RCD has, is a great professional challenge which I relate to, and I face it with the utmost eagerness and aspirations".

For additional information visit www.rcdslp.com

PRAC UPCOMING EVENTS

PRAC @ PDAC Toronto Reception—March, 2018

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

PRAC 64th International Conference
Calgary - Hosted by Bennett Jones LLP
September 15—18, 2018

For more information visit www.prac.org

BAKER BOTTS

REPRESENTS OIL SEARCH IN $400 MILLION ACQUISITION OF OIL ASSETS FROM ARMSTRONG ENERGY LLC AND GMT EXPLORATION

HOUSTON - 02 November, 2017: On October 31, 2017, Oil Search signed an agreement to acquire a number of oil assets in the Alaska North Slope from privately-owned companies Armstrong Energy LLC and GMT Exploration Company LLC. The terms of the acquisition include the purchase for US$400 million of a 25.5% interest in the Pikka Unit and adjacent exploration acreage, a 37.5% interest in the Horseshoe Block and Hue Shale, together with rights to operatorship of the Pikka Unit. Also included in the terms of the transaction is an option, exercisable at Oil Search's discretion until 30 June 2019, to double its interest in the assets for an additional US$450 million.

The acquired oil leases contain approximately 500 million barrel (gross) in the Nanushuk and satellite oil fields, with Nanushuk being one of the largest conventional oil fields discovered in the US in more than 30 years.

The acquisition will provide Oil Search with world class oil assets immediately adjacent to existing infrastructure. The assets complement the Company's existing top quartile, high returning PNG gas portfolio and, with significant growth opportunities, have the potential to become, over time, a material business for Oil Search, of a scale equivalent to its PNG assets.

Baker Botts L.L.P. represented Oil Search in this transaction.

For additional information visit www.bakerbotts.com

BRIGARD URRUTIA

ASSISTS FRONTERA ENERGY IN UTILITIES UNIT PETROELECTRICA DE LOS LLANOS

BOGOTA— 01 November, 2017: Brigard & Urrutia has helped oil and gas production company Frontera Energy sell shares in utilities unit Petroelectrica de los Llanos to an affiliate of Colombian construction company Eléctricas De Medellín.

The purchase was valued at US$56 million. The deal was signed on October 25.

Frontera will use the majority of the funds raised from the sale (some US$50 million) to pay a portion of the purchase price of its US$225 million acquisition of shares in Pacific MidStream, an oil and electricity company based in Canada.

Brigard & Urrutia Partner Jaime Robledo and associates Jeison Larrota and Natalia Gutiérrez de Larrauri in Bogotá.

For additional information visit us at www.bu.com.co

GIDE

ADVISED GECINA ON BUYBACK OF NOTES FOR EUR 274 MILLION APPROX. AND A NEW ISSUE OF EUR700MILLION

PARIS - 20 October 2017: Gide advised Gecina on its tender offer on three series of notes due respectively in 2019, 2021 and 2023, for a total amount of approximately EUR 274 million.

Simultaneously, Gecina issued EUR 700 million 1.375 per cent. notes due in 2028 and admitted to trading on the regulated market of Euronext Paris.

Gide's team was led by Arnaud Duhamel (partner), assisted by Laurent Vincent (counsel), Aude-Laurène Dourdain and Louis Ravaud.

For additional information visit www.gide.com

BENNETT JONES

CONGRATULATES GOVERNMENT OF NUNAVUT FOR OUTSTANDING SUCCESS OF IQALUIT INTERNATIONAL AIRPORT IMPROVEMENT PROJECT

TORONTO - November, 2017: Bennett Jones congratulates the government of Nunavut for the outstanding success of the Iqaluit International Airport Improvement Project. The Project won the Gold Award for Infrastructure at the Canadian Council for Public-Private Partnerships' (CCPPP) 20th Annual National Awards for Innovation and Excellence in PPPs.

Bennett Jones acted on behalf of the government of Nunavut throughout the procurement.

"This is a well-deserved award for government of Nunavut on a critical infrastructure project for Canada's north," says Paul Blundy, Partner and Head of Public Infrastructure Projects at Bennett Jones. "We're thrilled to see them honoured for this world-class P3 project."

Improving the Iqaluit International Airport was a major undertaking in Nunavut. The new facility includes a new airport terminal; expanded aprons for planes to park; new lighting systems; an upgraded runway; and a new combined services building housing the fire-fighting vehicles/support equipment and the heavy equipment that maintain the runways and aprons. The airport is critical to Nunavut, a vast coastal territory in which no two communities are connected by roads. The airport was kept open throughout the construction allowing people and supplies to continue to reach the communities of Nunavut and maintaining the only link to the south.

CCPPP said its Awards Committee found this project to be "an outstanding demonstration of how vital infrastructure in Northern Canada can be successfully delivered in a public-private partnership." Committee members also took particular note of the project proponent's extensive and effective community engagement and the resulting incorporation of unique local considerations in the planning, design, construction and operations of the airport facility, including the reflection of cultural values.

Since their inception in 1998, the annual CCPPP awards are a coveted seal of excellence in the P3 sector. The council noted there are currently 268 P3 projects in Canada, but only the Iqaluit International Airport Project rose to the level of Gold Award winner for Infrastructure in 2017.

For additional information visit www.bennettjones.com

CAREY

ADVISES CBRE CHILE IN TENDER PROCESS FOR ENERGY SUPPLY

SANTIAGO - November, 2017: Carey advised CBRE Chile in the tender process for the supply of energy to 40 commercial buildings under the management of CBRE Chile. The advice involved the legal and regulatory analysis regarding the applicability of free negotiated tariff to the buildings; structuring the tender process, including drafting the tender terms and conditions, invitation and Q&A letters. Also it included the assessment of the bids submitted; and the negotiation of the PPA with AES Gener Chile, the awarded bidder.

The advice was highly innovative due to it was the first time that in the legal market was identified and proposed to a client - based on recent amendments to the Electricity Law and the changes that occurred in the market - the possibility of obtaining savings in electricity rates payable by commercial buildings, by contracting supplies directly from generators, at a freely negotiated price.

Carey advised CBRE Chile through a team led by partner José Miguel Bustamante and associates José Tomás Hurley and Juan de Dios Vial.

For additional information visit www.carey.cl

CLAYTON UTZ

ADVISES SENIOR LENDERS ON DEBT FINANCING AGREEMENT FOR BAUXITE HILLS MINE

PERTH - 10 August 2017: Clayton Utz has advised Canadian based Sprott Private Resource Lending (Sprott) as senior lender on its debt financing agreement with Metro Mining Limited (MMI) which will fund the development of MMI's Bauxite Hills Mine in Queensland, Australia.

The transaction includes a A$40 million debt financing facility as well as warrants issued to Sprott by MMI.

Clayton Utz Banking partner Rohan Mishra led the team advising Sprott which included special counsel Kate Casellas, senior associate Stephen Neale, lawyer Gemma Robinson and graduate Nicholas Rawlinson.

For additional information visit www.claytonutz.com

DENTONS RODYK

ACTS FOR MALAYAN BANKING BERHAD ON $100 MILLION FINANCE PACKAGE

SINGAPORE - November, 2017: Dentons Rodyk acted for Malayan Banking Berhad, Singapore branch, as the lender on a financing package of more than $100 million for the purpose of the acquisition via share sale of the high-end residential development known as TwentyOne Angullia Park in Singapore (which is valued at S$219,000,000) by certain private high-net worth investors who are Singapore citizens or Singapore companies wholly-owned by Singapore citizens.

Following the acquisition, the company successfully obtained a Clearance Certificate under Section 10(2) of the Residential Property Act (Chapter 274 of Singapore). With the Clearance Certificate, the developer company is no longer bound by the various conditions imposed by the Qualifying Certificate, with fixed timeline for the sale of all the units in the development, and a prohibition against leasing of the units. Senior partner Doreen Sim led in this transaction, supported by partner Yun Hui Tan and associate Chengyi Hong.

For additional information visit www.dentons.com

Upcoming Events

PRAC @ PDAC Toronto Reception—March, 2018

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April 21—24, 2018

PRAC 64th International Conference
Calgary - Hosted by Bennett Jones LLP
September 15—18, 2018

For more information visit www.prac.org

HOGAN LOVELLS

ADVISES ON £185 MILLION EQUITY FUNDRAISING BY RWS HOLDINGS PLC TO PART-FINANCE THE US$320 MILLION ACQUISITION OF MORAVIA US HOLDING COMPANY INC. AND MORAVIA LUX HOLDING COMPANY S.A.R.L. (MORAVIA)

LONDON - 18 October 2017: hogan Lovells London-based corporate team has advised Barclays and Numis Securities on their placing of £185 million of new equity in AIM-listed RWS Holdings plc (RWS) to institutional investors.

The Hogan Lovells team advising was led by London corporate partner Daniel Simons with assistance from partner John Basnage, and associate Elly Dennis.

The funds will be used by RWS, together with a new debt facility and existing cash balances, to acquire the entire issued share capital of Moravia for US$320 million.

RWS is a leading provider of intellectual property support services (patent translations, international patent filing solutions and searches), a market leader in Life Sciences translations and linguistic validation as well as a high level specialist language service provider in other technical areas, providing for the diverse needs of a blue-chip multinational client base from Europe, North America and Asia.

Moravia is a leading provider of technology-enabled localisation services, headquartered in Brno in the Czech Republic with operations in the USA, Japan, China, Argentina, Hungary and Ireland. Its longstanding clients include some of the largest technology companies in the world. Employing over 1200 people globally, Moravia operates across a range of industries including IT, pharmaceuticals, retail and travel.

For more information, see www.hoganlovells.com

MUNIZ

SELECTED FOR PERU'S PROINVERSION US$2 BILLION COPPER MINE AUCTION

LIMA—30 October, 2017: On September 8, 2017, Peru's Private Investment Promotion Agency (ProInversión) invited Muñiz, Ramírez, Pérez-Taiman & Olaya to participate in an international competitive bidding process where the successful bidder would provide legal advice in relation to the award of the Michiquillay Copper Project. ProInversión choose Muñiz, Ramírez, Pérez-Taiman & Olaya as the legal adviser of the project in October. Michiquillay is an open-pit mine which will require an estimated investment of US$2 billion, its mining capacity being 187.000 tons of copper per year.

The competitive bidding process was aimed at selecting a law firm with enough experience in the mining field, specifically in projects implemented in the last 10 years, involving a production of over 20,000 tons a day and an investment of no less than US$250 million.

Moreover, participating law firms were required to have experience in securing the permits, approvals and licenses required for the development of mining projects.

Our firm, given the regulatory impact of mining activities, made available to ProInversión its thirty-seven (37) practice groups to answer all inquiries and concerns during the course of the competitive bidding process.

To this end, it set up a team of lawyers with extensive experience in Tax Law, Finance Law, Mining-Environmental Regulations, and Administrative Law to channel and answer all of ProInversión's concerns and questions related to the award of the Michiquillay copper Project.

It should be pointed out that Michiquillay is a copper porphyry deposit containing gold and silver, located on land belonging to the Michiquillay and La Encañada agrarian communities, approximately 45 km. away from the city of Cajamarca and 900 km. north of Lima, at 3,950 meters above sea level. It is located in the district of La Encañada, province and department of Cajamarca.

This Project represents the largest investment announced by the President of Peru this year.

For additional information visit www.munizlaw.com

NAUTADUTILH

ADVISES INFLARX ON ITS NASDAQ IPO

AMSTERDAM - 08 November, 2017: Yesterday night, InflaRx, a German biotech company, successfully priced the initial public offering of its ordinary shares on NASDAQ. Petra Zijp, Antonia Netiv and Paul van der Bijl led the NautaDutilh team that has been advising InflaRx on this IPO.

InflaRx raised USD 100 million in the IPO, making this our fifth consecutive Nasdaq IPO for a Dutch company. Our core team consisted of Petra Zijp, Paul van der Bijl, Antonia Netiv, Jules van de Winckel, Esther Schreiber, Joppe Schoute, Kathrin Bungenberg, Pedro Paraguay, Gijs van Nes and Elias Ram.

For additional information visit www.nautadutilh.com

SANTAMARINA Y STETA

ADVISES MEXICAN MFG CO GRUPO INDUSTRIAL SALTILLO ON US$93 MILLION BOND ISSUE

MEXICO CITY - 06 November: Santamarina y Steta has advised Mexican manufacturing company Grupo Industrial Saltillo on a bond issuance worth 1.1 billion Mexican pesos (US$93 million).

The deal involved two issuances in the Mexican market, one worth 1.3 billion pesos (US$72 million) with a 10-year term, the other for 400 million pesos (US$21 million) with a three-year term. The deal closed October 19.

Counsel to Grupo Industrial Saltillo Santamarina y Steta Partners Jorge Barrero, Alfonso Castro and Carlos Argüelles, and associates José Carlos Vera, Ana Paula Buchanan acted on the transaction.

For additional information visit www.s-s.mx

TOZZINIFREIRE

ASSISTS BRAZILIAN MANUFACTURING COMPANY DURATEX IN 500 MILLION REAIS COMMERCIAL PAPER ISSUANCE

SAO PAULO - November, 2017: TozziniFreire Advogados has advised Brazilian manufacturing company Duratex on an issuance of commercial papers worth 500 million reais (US$152 million). The deal closed October 20.

Duratex manufactures wood panels, sanitary metals and porcelain products.

Counsel to Duratex TozziniFreire Advogados Partners Alexei Bonamin and Kenneth Ferreira and associate Maria Eugênia Castellari worked on the on the transaction.

For additional information visit www.tozzinifreire.com.br

PRAC EVENTS


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


PRAC @ Taipei 2014


PACIFIC RIM
ADVISORY COUNCIL


PRAC @ IPBA Vancouver


PRAC @ Vancouver 2015


PRAC @ INTA San Diego


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Resolution No. 419-E/2017

On November 2nd 2017, the Resolution No. 419-E/2017 was published in the Official Gazette, which modifies the Annex of the Resolution 46-E/2017 that created the bases and conditions of the Incentive Program for Investments in the Development of Natural Gas Production of Unconventional Reserves (the “Program”). The purpose of the Program is to accelerate the transition from a pilot stage to a development stage of those concessions granted to exploit hydrocarbons originated in unconventional reserves, as well as to increase the production of those that are in development stage.

The objective of this amendment, implemented by Resolution 419-E/2017 is to increase the incentives by modifying the bases and conditions of the Program. Therefore, the new bases and conditions establishes: (i) a lower limit of the average annual production of natural gas –which is used to evaluate the investment project that applies to the Program and to distinguish the concessions that are in a pilot stage at the moment of application to the Program from those that are in a development stage – and (ii) the Program modifies the estimations related to the calculation of the Effective Price – the monthly price weighed according to the total number of sales of natural gas in Argentina and published by the Secretariat of Hydrocarbon Resources.

For further information on this topic please contact Juan Martín Allende, María Soledad Ferreyra y

Marcos Patrón Costas

06 NOV 2017

Harper reforms to Australian competition law in effect from today

From today, businesses operating in Australia must comply with new laws governing misuse of market power, concerted practices, and cartels, following the commencement of the Harper reforms, embodied in:

- the Competition and Consumer Amendment (Competition Policy Review) Act; and
- the Competition and Consumer Amendment (Misuse of Market Power) Act.

And from today third line forcing is no longer an outright prohibition. Any third line or third party bundling arrangements and similar will, in the future, be only at risk if they significantly affect competition in the relevant market. As a result, most of these co- promotion arrangements will likely not need to be notified to the ACCC, which was previously a common practice.

If you haven't already, you need to review multiple points in your business to ensure you do not breach the new laws (or, indeed, can engage in conduct which was previously prohibited).

The ACCC has also released its interim guidelines on the new section 46 and concerted practices for public consultation, with submissions due by 5pm, Friday 24 November 2017.

If you'd like any help in complying with the new laws, or understanding the ACCC's proposed guidelines, please contact us.

GET IN TOUCH

Michael Corrigan

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

Linda Evans

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

Bruce Lloyd

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

Kirsten Webb

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

Fred Prickett

PARTNER, MELBOURNE
+61 3 9286 6971
fprickett@claytonutz.com

Barry Dunphy

PARTNER, BRISBANE
+61 7 3292 7020
bdunphy@claytonutz.com

Scott Crabb

PARTNER, PERTH
+61 8 9426 8430
scrabb@claytonutz.com

Margaret Michaels

PARTNER, DARWIN
+61 8 8943 2517
mmichaels@claytonutz.com

Brian O'Callaghan

PARTNER, CANBERRA
+61 2 6279 4015
bocallaghan@claytonutz.com

Paul Fitzpatrick

PARTNER, PERTH
+61 8 9426 8416
pfitzpatrick@claytonutz.com

Adrian Kuti

SPECIAL COUNSEL, SYDNEY
+61 2 9353 5778
akuti@claytonutz.com

Elizabeth Richmond

SPECIAL COUNSEL, SYDNEY
+61 2 9353 4823
erichmond@claytonutz.com

Mihkel Wilding

SPECIAL COUNSEL, SYDNEY
+61 2 9353 5814
mwilding@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

Blog

New TSX Rules Regarding Disclosure on Listed Issuers Websites

November 10, 2017

Written by Kahlan K. Mills and Alexander Baker

On April 1, 2018, the Toronto Stock Exchange (TSX) Company Manual will be amended to include a newly adopted section 473 that addresses certain disclosure requirements related to the websites of listed issuers. Section 473 is intended to provide participants in the Canadian capital markets with efficient access to important security holder documents that may have traditionally been available, but sometimes difficult to locate, on SEDAR.

Specifically, section 473 will require listed issuers to make available on their websites copies of their effective constating documents and, if adopted, certain corporate policies and corporate governance documents including the following, as applicable:

- articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer and its by-laws;
- majority voting policy;
- advance notice policy;
- position descriptions for the chairman of the board and the lead director;
- board mandate; and
- board committee charters.

The webpage(s) containing the documents noted above should be easily identifiable and accessible from the listed issuer's home page or investor relations page. If a listed issuer's website is shared with other issuers, each listed issuer should have a separate, dedicated webpage on the website for the purposes of complying with section 473.

Section 473 was drafted broadly to require the disclosure of certain policies and corporate governance documents that may not be required to be filed on SEDAR. The overall aim of section 473 is to enhance the efficiency and transparency of listed issuers' documents that are relevant to their security holders.

As a result of this change to the TSX Company Manual, each listed issuer should seek counsel to ensure that its website will be compliant with section 473 when it becomes effective, and that the materials presented communicate the listed issuer's intended message in both form and substance.

Section 473 does not apply to Eligible Interlisted Issuers, Eligible International Interlisted Issuers and Non-Corporate Issuers.

Posted on: October 23, 2017

PREVENTATIVE TRADEMARK MEDICINE IN 2018 FOR CHANGES TO THE ACT

By: Trisha A Doré

Bill C-31 received Royal Assent in 2014 and is expected to come into force sometime in the first half of 2019 upon completion of the Rules and Regulations by the Canadian Intellectual Property Office (‘CIPO’). This will result in the most substantial changes to the Canadian *Trademarks Act* ever seen. An early audit of your Canadian trademark portfolio in 2018 with a view to the changes on the horizon expected in 2019 can prove to be cost effective and provide opportunities for broader rights not previously available.

FILE EARLY:

Canada will join the Singapore Treaty and Nice Agreement and our trademark system will adopt the Nice International classification system. Goods and services will still need to be described in “ordinary commercial terms”. Government filing fees for new applications are however expected to increase dramatically with the Nice classification system. Currently there is only one government fee regardless of the number of classes of goods/services recited in an application. With the adoption of the International classification system, there will be a government fee payable for each class of goods/services. Filing applications now for marks which may be in use or scheduled for use but not applied for is recommended to take advantage of the lower government fees.

RENEW EARLY:

(i) The renewal period will be reduced from 15 years to 10 years. All registrations which are made prior to the implementation of the new Rules and Regulations will be valid for the old 15 year term. Renewals are valid when made one year in advance of the renewal date. Review existing registrations that are within one year of the renewal term and renew early to take advantage of the extra 5 years.

(ii) Renewal fees under the new Rules and Regulations are expected to increase and additional fees will be required for each Nice class of goods/services.

(iii) Renewals made prior to the implementation of the new Rules and Regulations are not required to classify goods/services although it is recommended.

700 - 401 W GEORGIA ST.
VANCOUVER, BC V6B 5A1
CANADA
TELEPHONE
604 682 3664
FAX
604 688 3830
RBS.CA

REVIEW TRADEMARKS WHICH OTHERWISE WERE NOT REGISTRABLE:

Trademarks will be expanded to include non-traditional marks, such as a colour or combination of colours, 3D shapes, holograms, moving images, sound, scent, taste, texture, etc. some of which may not have previously been registrable. Filing new applications in mid-2018 should put those applications in position for examination under the new rules and regulations as examination is currently 10+ months from filing.

REMOVAL OF "USE" REQUIREMENT PRIOR TO REGISTRATION:

Next to the implementation of the Nice Classification System, the most significant change expected is the removal of the "use" requirement in Canada prior to registration. Currently an application will not issue to a registration until the applicant confirms by statutory declaration that the mark has been put to use on all the goods/services recited in an application. With the new changes coming in 2019, that requirement will be eliminated.

REVIEW PENDING APPLICATIONS AWAITING USE FOR REGISTRATION

Take an account of all pending applications which are currently awaiting use. It may be prudent to request the available extensions of time so that those goods/services not in use have an opportunity to be included in the registration under the proposed new rules where use will no longer be a requirement. It is noted that stating a date of first use in an application, claiming registration and use abroad, and the filing of a Declaration of Use prior to registration will no longer be required, although they may be optional.

TAKE STEPS TO AVOID SQUATERS AND TRADEMARK TROLLS:

Audit all marks in use but no applications or registrations filed. With the removal of the "use" requirement prior to registration there is an increased concern for "squatters" to undertake mass filings, it appears that this may have already started in Canada. It is important to take an inventory of all marks and ensure applications are underway to prevent trademark "trolls" from achieving early registration rights. Registration rights recovery against third parties is considerably onerous and significantly more costly than early filing for registration protection.

SAFE KEEPING OF MATERIALS DEMONSTRATING USE OF MARKS

Although evidence of earlier use has always been important, with the expected removal of the "use" requirement prior to registration it is more important than ever. If a third party should ever challenge a date of first use and/or registration of a trademark, or if you wish to challenge a third party's use and/or

700 - 401 W GEORGIA ST.
VANCOUVER, BC V6B 5A1
CANADA
TELEPHONE
604 682 3664
FAX
604 688 3830
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registration of an identical or similar trademark, it would be necessary for you to show: (1) how your trademark has been used, (2) the dates in which the mark was first used and (2) the extent in which the mark has been used. Examples of items to consider for safekeeping which will prove to be very valuable if a dispute arises with a trademark "squatter" in the future are:

- dated photographs (or an actual samples) of products displaying the trademark;
- photographs (or an actual samples) of packaging displaying the trademark;
- copies of invoices displaying the trademark;
- sampling of customer invoices from year to year;
- mailing labels displaying the trademark which accompanying the product;
- photographs (or an actual sample) of promotion items displaying the trademark;
- order forms, catalogues, price lists, labels, tags, etc.;
- promotional inserts, brochures, pamphlets, etc.;
- photographs of signage, shelf talkers, etc.;
- business cards, letterhead, envelopes, etc.;
- advertisements, circulations, news releases, publications, magazines/newspaper articles, etc.;
- evidence of trademark use at trade shows; and
- original screen prints of the trademark first displayed on websites

700 - 401 W GEORGIA ST.
VANCOUVER, BC V6B 5A1
CANADA
TELEPHONE
604 682 3664
FAX
604 688 3830
RBS.CA

NEWSALERT

New rules allow investment in alternative assets by Pension Funds and Unemployment Funds

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

Ugarte, Francisco
Partner
+56 2 2928 2201
fugarte@carey.cl

Ugarte, Jorge
Partner
+56 2 2928 2201
jugarte@carey.cl

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

On October 25, 2017, the Chilean Pensions Superintendence ("SP") published the final rules amending the Investment Regimes allowing the investment in alternative assets by the Pension Funds and Unemployment Funds (collectively, the "Funds"), system that came into force on November 1, 2017.

The goal of the reform is to achieve greater diversification of investments, increase the universe of long-term investments and permit direct investment in a greater class of assets, in order to improve the profitability of Funds.

These rules were submitted to two consultation periods (between June 22 and July 21, and between August 22 and 29, 2017), in which comments and feedback were received from 34 market agents, experts and public entities. To learn more about this, you can read our previous news alerts published in **July** and **August**.

To access the full text of the rules issued by the SP, see the links below

http://www.spensiones.cl/portal/prensa/579/articles-12676_recurso_2.pdf
http://www.spensiones.cl/portal/prensa/579/articles-12676_recurso_3.pdf

China Prohibits Unverified Internet Users to Post Online Comments

09.07.17

By Ron Cai and Sherry Zhang

On August 25, 2017, the Cyberspace Administration of China ("CAC") issued the *Administrative Provisions for Services concerning Internet Comment Posting* (the "Internet Comment Posting Provisions") and the *Administrative Provisions for Services concerning Internet Forums and Communities* (the "Internet Forum and Community Services Provisions"), both of which will become effective on October 1, 2017.
On the same date of issuance, CAC's head commented at a press conference that the purpose of these two provisions is to "thoroughly implement the spirit of China's new Cybersecurity Law", "to standardize China's Internet comment posting services market" and to "promote healthy and orderly development of the market." At the same time, however, the special requirements for Internet users and service providers under these new provisions also cause substantial concern in the market.

Application of the Provisions

The Internet Comment Posting Provisions state that they will regulate the provision of "Internet comment posting services" within the territory of China. "Internet comment posting services" are defined as the provision of publishing services of texts, symbols, expressions, pictures, audio, and video clips to the users by any Internet websites, applications, interactive communication platforms, and other communication platforms with the nature and function of providing news and public opinions, and social mobilization, through posts, replies, messages, "bullet screen" comments (*danmu*), and etc.

The Internet Forum and Community Service Provisions will regulate the provision of "Internet forum and community services" within the territory of China. "Internet forum and community services" are defined as the provision of services to the users of interactive information publishing communities and platforms in the form of forums, postings, communities, etc.
Definitions under these two provisions appear to be broad enough to cover all website, application and forum operators providing information publishing services through Internet in China (collectively, the "Service Providers").

Substantive Responsibilities of the Service Providers

The provisions expressly address eight types of substantive responsibilities that the Service Providers are legally required to comply with in offering information publishing services, including:

- Verification of the real identity information of the registered users. Before a user is permitted to use the Service Provider's service, he/she must disclose its real name and ID information to the Service Provision for verification. Service Providers are not permitted to provide information publishing services to any users without identity verification. However, after verification, the users do not have to display their real names when making comments within the platform.

- Establishment of user information protection mechanism. The Service Providers must not divulge, tamper, destroy, sell or disclose to others any of the users' personal information. Before collecting and using such personal information, the Service Providers must obtain the users' prior approval.

- If the users are intended to comment on any news, the Service Providers must review the comments for any improper discussion before releasing the comments to the Internet.

- For any "bullet screen" comments (*danmu*), a popular feature among young Chinese netizens where comments scroll across the screen while a video clip is playing, the Service Provider must post within the same webpage and same platform the text version of the "bullet screen" comments.

- Service Providers are required to provide prior review and real-time management of all the comments posted, and report to the supervisory authorities if any illegal information is discovered.

- Service Providers are required to develop a sound information security and protection system to avoid any safety defects and loopholes.

- Service Providers shall maintain a professional team of editors.
- Service Providers are required to provide necessary technical, materials and data support for the supervisory authorities' supervision and inspection.

Protection of Legitimate Personal Rights

In formulating these two provisions, CAC also had the goal of protecting legitimate personal rights. In addition to requiring protection of the users' personal information and information safety discussed in the section above, the new provisions expressly prohibit a Service Provider or any of its employees from intentionally deleting or recommending any posts for the purpose of seeking improper benefits or based on erroneous values. Service Providers and users are not permitted to use software, hire business organizations, or personnel to disseminate information that misleads public opinion.
Finally, the provisions require that Service Providers are also required to establish a "credit evaluation grading system" for all their users under which the Service Providers should evaluate the users' performance, and decide the scope of services provided to the user based on the evaluation results. If any user is given a low credit score under the grading system, Service Providers shall stop providing services to the user and add the user to a black list, and prohibit the user from any further use of its service (for example, through registering a new account).

Supervisory Authorities

CAC and its local agencies at different levels are the law enforcement agencies and supervisory authorities of the Service Providers under the provisions. They are empowered to hold any Service Providers accountable who fails to perform their responsibilities by law. Also, the provisions stipulate that if a Service Provider intends to offer new products, applications, and features for comment posting services, it must file an application with the CAC or its local agencies for a security evaluation. Finally, CAC or its local agencies shall also establish a "credit evaluation grading system" for the Service Providers to supervise the credibility and compliance of all the Service Providers.

Observation

The issuance of these two provisions show the Chinese government is taking active regulatory approaches toward the information publishing industry. However, at the same time, the industry also worries that these new provisions may impose excessively harsh responsibilities on the Service Providers, which may increase operating costs, reduce operation efficiency, and even affect business innovation. The healthy development of the industry needs the joint efforts and in-depth communications among legislation, law enforcement agencies, and Internet companies.

Disclaimer

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BRIGARD& URRUTIA

New regulations for the cannabis industry in Colombia

The production of cannabis in Colombia is regulated by two entities: the Ministry of Justice and Law (“**MJ**”) and the Ministry of Health and Social Protection (“**MHSP**”). They have the power to dictate regulations applicable to the harvest, processing, and production of cannabis and cannabis by-products in Colombia.

During August 2017, in an effort to supplement the regulations applicable to the production of cannabis, the MJ and the MHSP, issued three significant resolutions for investors interested in producing cannabis in Colombia.

1) Resolution No. 577 of 2017 (“Resolution 577”) issued by the MJ sets forth the rules for the supervision and monitoring of the licenses for the (i) sowing of cannabis seeds; (ii) harvest of psychoactive cannabis plants; and (iii) harvest of non-psychoactive cannabis plants. Resolution 577 also regulates the grounds for modification of the licenses, the security protocol in harvest areas, and the production and manufacturing quotas.

2) Resolution No. 578 of 2017 issued by the MJ, sets the tariffs applicable to the different processes concerning the cannabis licenses, such as applications, modifications, extraordinary authorizations, and allocation of additional production and manufacturing quotas.

3) Finally, Resolution No. 2892 of 2017 issued by the MHSP sets forth the technical regulations for the granting of the *license to manufacture cannabis by-products*, including additional obligations of the licensee, grounds for modification of the license, and rules related to the production and manufacturing quotas.

To see the full text of the resolutions, please enter the following links:

Resolution No. 577 of 2017

Resolution No. 578 of 2017

Resolution No. 2892 of 2017

For more information please contact

- Carlos Urrutia Valenzuela
- Marianna Boza Morán
- Guillermo Tejeiro Gutiérrez
- Daniel Uribe Correa

CONTACT US

Bogotá:
Calle 70A No. 4 - 41
Phone: (+57-1) 346 2011
Cali:
Calle 6 Norte No. 1-42
Phone: (+57-2) 489 7394

Fax: (+57-1) 310 0609 - (+57-1) 310 0586
info@bu.com.co

TAX AMNESTY CAME INTO EFFECT

On October 27th, 2017, day of effective circulation of the Official Journal, Legislative Decree number 804 dated October 10th, 2017, came into effect, which was formally published in the Official Journal number 196 volume number 417 corresponding to October 20th, 2017, containing the Transitory Law to Facilitate the Fulfillment of Tax and Customs Obligations, known as Tax Amnesty.

1. **TERM.** The referred law concedes a term of three (3) months, which began on October 27th, 2017 and ends on January 27th, 2018, granting taxpayers the benefits contained in such Transitory Law related to their tax and customs obligations, benefits which are only applicable to tax and customs obligations prior to October 27th, 2017, whose term to settle or present the declaration has expired before that date.

2. **APPLICABLE TAXES.** The aforementioned law is applicable to the obligations and taxes administered by the General Directorate of Internal Taxes (*Dirección General de Impuestos Internos*) and the General Directorate of Customs (Dirección General de Aduanas), such as: payment on account, withholdings, income tax, VAT, real estate transfer tax, specific and ad-valorem taxes, special contributions, import customs duties and import VAT.

3. **BENEFITS.** The taxpayer who pays any applicable tax will be exempt from interests, surcharges and penalties, or only interests as appropriate for each case.
   The benefits will not apply for cases in which the Attorney General's Office (*Fiscalía General de la República*) had already begun the respective criminal process.

4. **PAYMENT METHODS.** Payment can be made in cash, check, cashier´s check or certified check, credit notes from the public treasury, credit or debit cards accepted by the Treasury Service (*Dirección General de Tesorería*) and presenting the corresponding tax declarations or merchandise declarations, as applicable for each case.
   Payment may be made promptly or during a maximum period of six (6) months that may be requested and authorized by the Treasury Service.

5. **APPLICATION.** The Amnesty Decree considers a series of cases in which amnesty may be granted.

In order to know if your case may apply the Amnesty Decree or if you want to know more about this decree, please do not hesitate to contact us.

News

NEWS DETAIL

13/10/2017

SIMPLIFIED APPLICATION PROCEDURES FOR OIL AND GAS LICENSES

To promote a more conducive investment climate, the Ministry of Energy and Natural Resources ("Ministry") is simplifying and streamlining the procedures for the application of upstream and downstream oil and gas related licenses by way of its regulation No. 29 of 2017 concerning Licenses in the Field of Oil and Gas ("Regulation 29").

Regulation 29 came into effect one month following its enactment, as of which date the new procedures and requirements started to apply for two (2) upstream licenses and four (4) downstream licenses, as follows:

i. Survey License (upstream);
ii. Oil and Gas Data Management License (upstream);
iii. Oil and Gas Processing Business License (downstream);
iv. Oil and Gas Storage Business License (downstream);
v. Oil and Gas Transportation License (downstream); and
vi. Oil and Gas Commerce License (downstream).

Although the technical and administrative requirements are in a way similar, if not completely the same as those of the previous regulations that were revoked, a welcome news brought by this Regulation 29 is that the application can be done online and that most of the applied licenses could issued in the space of 10 to 15 calendar days, which in Indonesian standards is quite fast for non-general operational licenses. In practice, the ambitious time frame still needs to be experienced.

In general, the application procedure starts with the submission of the application to the Ministry through the Director General of Oil and Gas ("Director"), along with the administrative and technical requirements listed in an appendix of Regulation 29. The Director will examine and evaluate the application and ask for clarification where necessary, and upon finding the application documents to be satisfactory will issue a recommendation to the Minister for the issuance of the license.

Particularly for applications for Oil and Gas Processing Business License, Oil and Gas Storage Business License, Oil and Gas Transportation License, and Oil and Gas Commerce License, following the assessment of the application, the applicant may be issued either a temporary license or a non-temporary license.

The applicant will receive a temporary license if means and facilities as well as a license from another institution still need to be procured for the activities. To convert its temporary license into a non-temporary license, the business entity must pass the Director's evaluation of its fulfillment of the obligations and technical requirements.

Aside from regulating procedures and requirements for the oil and gas licenses applications, Regulation 29 also stipulates the duties and responsibilities of the license holders and assigns the Director to supervise the license holders' business activities.

Previously issued licenses covering the same activities will be honored until their expiration dates, whereas license applications already submitted to the Ministry before the coming into effect of Regulation 29 will be processed in accordance with the provisions of Regulation 29. (by: *Giffy Pardede*)

THE SOLVENCY TEST UNDER THE COMPANIES ACT 2016

The Companies Act 2016 ("CA 2016") which came into operation on 31 January 2017 introduces the requirement for a solvency test and a solvency statement for certain transactions, namely redemption of preference shares out of capital, reduction of capital by way of special resolution (except for the sole purpose of cancelling share capital which is lost or no longer represented by assets), provision of financial assistance and share buyback.

ELEMENTS OF THE SOLVENCY TEST

The solvency test applicable to the redemption of preference shares, reduction of capital and provision of financial assistance differs from the test applicable to a share buyback. Both tests comprise two components, namely "*cash flow solvency*" and "*balance sheet solvency*".

The solvency test for the redemption of preference shares, reduction of capital and provision of financial assistance is set out in section 112(1) of the CA 2016 and is as follows –

(1) *Cash flow solvency* – this test is satisfied if (i) immediately after the transaction, there is no ground on which the company is unable to pay its debts; and (ii) either (a) the company will be able to pay its debts as and when they become due during a period of 12 months from the date of the transaction; or (b) if the company is to be wound up within 12 months after the date of the transaction, it will be able to pay its debts within 12 months after the commencement of the winding up; and

(2) *Balance sheet solvency* – this test is satisfied if the company's asset exceeds its liability at the date of the transaction.

The solvency test for the share buyback is found in section 112(2) and 122(3) of the CA 2016 and is as follows –

(1) *Cash flow solvency* – this test is satisfied if the company remains solvent after each buyback during the period of six months after the date of the declaration made under section 113(5) of the CA 2016, in that the company will be able to continue to meet its debts as and when they fall due without any substantial disposition of its assets outside the ordinary course of its business, restructuring its debts, externally forced revisions of its operations or other similar actions; and

(2) *Balance sheet solvency* – this test is satisfied if the share buyback would not result in the company being insolvent and its capital being impaired (that is, when the value of its net assets is less than the aggregate amount of all the shares of the company after the share buyback) at the date of the solvency statement.

The solvency test in relation to redemption of preference shares, capital reduction by special resolution and provision of financial assistance in the CA 2016 is substantially similar to the test in the United Kingdom Companies Act 2006, the Singapore Companies Act (Cap. 50) and the New Zealand Companies Act 1993. The aforesaid companies' legislation do not contain provisions that correspond with the solvency test for share buyback in the CA 2016.

Unit No. 50-8-1, 8th Floor, Wisma UOA Damansara, 50 Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur, Malaysia.
T: +(603) 2081 3999 F: +(603) 2094 3211 E: skrine@skrine.com W: www.skrine.com

Considerations in applying the solvency test

In applying the solvency test and forming an opinion for the purpose of making a solvency statement, section 113(4) of the CA 2016 provides that a director shall (i) inquire into the company's state of affairs and prospects; and (ii) take into account all liabilities, including contingent liabilities, of the company.

THE SOLVENCY STATEMENT

The solvency statement shall (i) be made in a manner as may be determined by the Registrar; (ii) state the date on which it is made; (iii) state the name and bear the signature of each director making the statement; and (iv) be supported by a declaration that the directors have made an inquiry into the affairs of the company.

Number of directors making the statement

The CA 2016 requires a solvency statement relating to a reduction of share capital or redemption of preference shares to be made by all directors of the company. Where the transaction relates to the provision of financial assistance or a share buyback, the statement is to be made by the majority of the directors of the company.

Offences regarding solvency statement

A director who makes a solvency statement without having reasonable grounds for the opinion expressed in the statement will be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding RM500,000 or to both.

PARTICULAR ISSUES

Redemption of preference shares

A redemption of preference shares out of capital can only be effected after (i) all the directors have made a solvency statement in relation to that redemption; and (ii) a copy of the solvency statement has been lodged with the Registrar.

Reduction of capital

In the case of a reduction of capital by way of a special resolution, a company meets the solvency requirements if (i) all the directors of the company have made a solvency statement in relation to the capital reduction; (ii) the statement is made in the case of a private company, within the time frames specified in sections 117(3)(b)(i) and 117(5) of the CA 2016 and in the case of a public company, within the time frames specified in sections 117(3)(b)(ii) and 117(6) of the CA 2016; and (iii) a copy of the solvency statement has been lodged with the Registrar together with the notice under section 117(1)(a) of the CA 2016 that a special resolution to reduce the share capital has been passed.

For a private company, section 117(3)(b)(i) requires the solvency statement to be made within a period of 14 days ending on the date of the special resolution, and section 117(5) requires (i) where the resolution is to be passed as a members' written resolution, a copy of the solvency statement to be served together with the special resolution, or where the special resolution is to be passed at a general

Unit No. 50-8-1, 8th Floor, Wisma UOA Damansara, 50 Jalan Dungun, Damansara Heights, 50490 Kuala Lumpur, Malaysia.
T: +(603) 2081 3999 F: +(603) 2094 3211 E: skrine@skrine.com W: www.skrine.com

meeting, the solvency statement or a copy thereof to be made available for inspection by members throughout the meeting; and (ii) the solvency statement or a copy thereof is to be made available at the registered office for inspection by any creditor for a period of six weeks from the date of the resolution.

In the case of a public company, section 117(3)(b)(ii) requires the solvency statement to be made within a period of 21 days ending on the date of the special resolution, and section 117(6) requires the solvency statement or a copy thereof to be made available for inspection (i) by members throughout the meeting; and (ii) by any creditor of the company at the registered office for a period of six weeks from the date of the resolution.

Financial assistance

Section 126 of the CA 2016 permits a company, other than a listed company, to provide financial assistance for the purposes of purchasing or acquiring shares in the company or in its holding company or reducing or discharging a liability for such an acquisition if the conditions set out in section 126(2) are satisfied. These conditions include (i) an obligation on the directors who vote in favour of the resolution (being not less than the majority of the directors) to make a solvency statement in relation to the giving of the financial assistance on the same day as that on which the aforesaid resolution is passed; and (ii) a requirement that the assistance is to be given not more than 12 months after the date on which the solvency statement is made.

The company is also required to provide a copy of the solvency statement and other information prescribed in section 126(5) to each member of the company within 14 days from the giving of the financial assistance.

Share buyback

A solvency statement for a share buyback is required under section 113(5) of the CA 2016 to include a declaration by the directors that the share buyback is necessary and is made in good faith in the interest of the company. The Companies Commission of Malaysia has confirmed in an FAQ that based on section 112(2)(b) of the CA 2016, a solvency statement issued in relation to a share buyback is valid for six months.

SOLVENCY TEST IN OTHER JURISDICTIONS

New Zealand

In New Zealand, the solvency test is set out in Section 4(1) of the Companies Act 1993. As in the case of the CA 2016, it embodies cash flow solvency and balance sheet solvency. In assessing whether the test had been satisfied, the New Zealand Court of Appeal in *Petterson v Browne* [2016] NZCA 189 focused on the balance sheet solvency. In arriving at its decision, the court referred to the company's financial statements and found that the company's current liabilities exceeded its current assets. Further, at the time the payments were made, the company was unable to meet its contingent liabilities i.e. an adjudication claim made pursuant to an indemnity given in favour of a subcontractor. Accordingly, the court held that the solvency test was not satisfied.

United Kingdom

As in the case of the CA 2016, the United Kingdom Companies Act 2006 permits private and public companies to reduce their share capital by way of a special resolution supported by a solvency statement. The case of *BAT Industries plc v Sequana and another* [2016] EWHC 1686 concerned a challenge to dividends paid by a company to its parent after the directors had resolved that the company would first reduce its share capital for the dividend distribution. The company in question was exposed to long-term environmental liabilities. The court formed the opinion that where a company had on its balance sheet an estimated provision in respect of a long-term liability, there was no justification for holding that the duty to protect creditors' interests applied for the whole period of the long-term liability. To do so would suggest that the directors are to take account of the creditors' rather than the shareholders' interests when running a business over an extended period. Accordingly, the court found that the directors had validly formed the necessary views when they made the solvency statement.

CONCLUSION

The introduction of the solvency test and solvency statement under the CA 2016 is welcomed as they impose a duty on directors to act in the interest of not only the shareholders of the company but also of its creditors. The requirement for a solvency statement offers a safeguard to creditors against the risk that directors may improperly distribute or otherwise pay company funds to shareholders at the cost of creditors and provides some assurance that the company will be able to pay its debts as and when they fall due within a foreseeable period of time.

Moving forward, it will be interesting to see how the Malaysian courts will interpret the application of the solvency test – will a restrictive approach be adopted to further secure the interests of the creditors or will the courts follow the approach taken by the English court in *BAT Industries plc v Sequana and another*?

CHEE SIYING (chee.siying@skrine.com)

SiYing is an Associate in the Corporate Division of SKRINE. She graduated from the University of Nottingham in 2013.

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Corporate

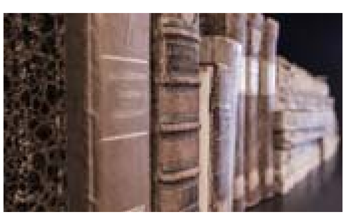
Netherlands | EU

Corporate law-related plans for 2018 in the coalition agreement and state budget

Tuesday 7 November 2017

In October 2017, the new government presented several intended legislative changes as part of its coalition agreement. In addition, the announcement of the state budget for the coming year included a description of the legislative programme for 2018 (i.e. proposed legislation with a planned effective date between 1 July 2017 and 1 January 2019). In this newsletter we discuss the corporate law-related bills/draft bills referred to in the above two documents. It should be noted that some of the target dates given in the legislative programme are very near (or had even already passed at the time of the programme's publication). Furthermore, the new government's plans must still be converted into specific draft bills and could undergo changes during the legislative process. Nevertheless, the legislative programme and the coalition agreement together give a clear picture of the concrete priorities for 2018.

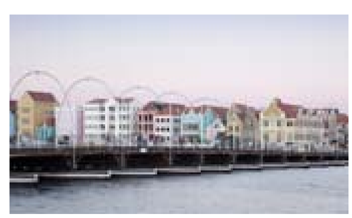
2017 COALITION AGREEMENT



Modernisation of legislation

The coalition agreement states that legislation will be updated to help businesses respond better to social and technological developments through their products and services. No further details are given on this. In addition, steps will be taken to limit the regulatory and administrative burden for businesses, for example by expanding the current business impact test (used by the Ministry of Economic Affairs to assess proposed new legislation) to include an SME test.

Protection of businesses (including in vital sectors)



At present, there are two lines of discussion on additional scrutiny of and protection against hostile and/or risky takeovers. The first was prompted by the 2013 threatened takeover of KPN, which raised the question as to whether companies operating in vital sectors in the Netherlands ought not to be better protected. The second discussion arose in the wake of the threatened takeovers of AkzoNobel and Unilever and focuses primarily on improved protection against hostile takeovers and improper shareholder activism in Dutch listed companies in general. For more information on all the above see our newsletter from June 2017. The coalition agreement sets out proposals with regard to both subjects: after careful analysis of the risks to national security, selected companies working in vital sectors will only be eligible for takeover following explicit approval (subject to conditions if necessary) or will be protected by means of other suitable guarantees. It will also be investigated whether such protection is likewise necessary for agricultural land and certain regional infrastructure works, in addition to the current list of vital sectors.

In addition, the coalition agreement states that in order to shift influence from certain activist shareholders with a primarily short-term outlook to shareholders and other stakeholders who are interested in creating long-term value, the following steps will be taken:

- Where a listed company faces proposals during a general meeting of shareholders for a fundamental change of strategy, it will be able to invoke a response time (a time-out) of up to 250 days, provided capital transactions are not affected. This last requirement, which is intended to avoid violating EU law, means that the time-out cannot be invoked during a hostile takeover situation, as was proposed by the previous government. During the time-out, the company should explain to shareholders the policy being pursued and all stakeholders should be consulted. This measure cannot be used in combination with companies' own anti-takeover measures, such as issuing preference or priority shares. The proposed time-out seems to be in line with the (non-statutory) 180-day response time currently provided for by the Dutch Corporate Governance Code. In 2007 the Corporate Governance Code Monitoring Committee advised that the 180-day period be incorporated in statutory law, but this advice was not followed by the then Minister of Finance when drawing up corporate governance legislation in 2009.
- Listed companies with an annual turnover of more than €750 million will be given the opportunity to ask shareholders that own more than 1% of the share capital to register as major shareholders with the Netherlands Authority for the Financial Markets (AFM).

A competative business climate (reform of tax system)

The new government aims to retain the Netherlands' attractiveness to international enterprises. In the government's view, increasing globalisation has made it necessary to take additional measures that will attract businesses with a real added value and not letterbox companies. The coalition agreement sets out the following measures:

- Limits will be placed on the deductibility of loan capital, making equity financing more attractive.
- Dividend tax will be abolished as from 2020. At the same time, a withholding tax will be imposed on dividends paid to low-tax jurisdictions and in situations of abuse. As a result of the abolition of dividend tax, direct investments in real estate by fiscal investment institutions (fiscale beleggingsinstellingen) will no longer be permitted.
- The EU Anti-Tax Avoidance Directive (which must be implemented in national legislation by 1 January 2019) includes a general interest deduction limitation in the form of an earnings-stripping rule. Under that directive, the interest deduction is limited to 30% of a taxpayer's EBITDA (earnings before interest, tax, depreciation and amortisation). The new government proposes to apply a threshold of EUR 1 million. Several existing interest deduction limitations will be eliminated (but the anti-base erosion rules will remain intact). Because banks' interest revenues usually exceed their borrowing costs, they will as a rule not be affected by the earnings-stripping rule. Therefore, a general thin capitalisation rule will be introduced under which interest may not be deducted if the debt exceeds 92% of the balance sheet total.
- The corporate income tax rates will be reduced from 20% and 25% to 16% and 21%, respectively, in annual steps from 2019 to 2021.

- Under the current rules losses may be carried back to the preceding year or carried forward for nine years. Under the new rules, loss carry-forwards will be limited to six years.
- The effective tax rate for the innovation box (a measure which reduces the tax base for income relating to R&D activities) will be increased from 5% to 7%.
- Businesses will be permitted to depreciate real estate up to a maximum of 100% of its value as determined by local authorities for property tax purposes (the "WOZ" value). Under the current rules, the maximum that can be depreciated is 50%. The real estate must be used by the business in question.
- A tax will be imposed on businesses that reside in the Netherlands solely in a formal sense for the purpose of avoiding taxation. As from 2023 a withholding tax on outbound interest and royalty payments to low-tax jurisdictions will probably apply.

In addition the coalition agreement announces (but without giving any further explanation) three initiatives that will also affect businesses:

- A stricter regulatory framework will apply to trust offices, and the Dutch Central Bank, which supervises the sector, will be equipped with a broader range of tools. This is in line with the proposed Trust Office Supervision Act 2018 (Wet toezicht trustkantoren 2018), which was recently the subject of a consultation process. On 24 October 2017 the Minister of Finance said that the relevant bill would be submitted to Parliament in early 2018.
- In light of the Panama Papers, the government will ensure that the tax authorities have better access to information and greater investigative capacity and that there is increased transparency. A business case will be drawn up to this end.
- Finally, the rules banning "radical organisations that aim to overthrow or destroy democracy and the rule of law" will be enhanced by amending section 2:20 of the Dutch Civil Code.

2018 LEGISLATIVE PROGRAMME

Modernisation of partnership law

Soon after a bill aimed at modernising Dutch partnership law foundered in 2011, several practising lawyers and tax advisers formed a working group to pursue this cause (see our June 2016 newsletter for more information). In September 2016 the working group submitted its report – containing recommendations and a draft bill – to the Minister of Security and Justice, who called the report a good basis for new legislation and said he would open a consultation process. According to the legislative programme, the new rules will enter into effect on 1 January 2019. However, it is not known whether the bill ultimately submitted to Parliament will be the same as or similar to the working group's draft bill.

Major corporate events in listed companies: "creaming off" of management board members' gains on share remuneration

At the end of 2016 the Minister of Security and Justice discussed the results of an evaluation of the then-existing rules that applied where – in short – a management board member of a listed company had received shares or options as remuneration and these increased in value as a result of a takeover bid for the company. Under those rules, which lapsed on 1 July 2017, the supervisory board was required to withhold the amount of that increase from the director's remuneration when he sold the shares/options or left the company. The minister indicated that he would try to introduce a less complex scheme in early 2017 under which, for example, the supervisory board would have a discretionary power to claw back the relevant gains in the event of a "major corporate event" such as a takeover or acquisition. The 2018 legislative programme includes a draft bill on this subject, with 1 January 2018 as the

– now dubious – planned effective date. The content of the new rules is unknown but we expect them to grant the supervisory board a discretionary power as described above.

Cross border conversion of legal entities

While at EU level a third proposal for a directive on cross-border mergers, divisions and conversions (transfers of seat) of legal entities has been submitted for consultation, at national level a draft bill on the cross-border conversion of legal entities is in preparation. Although the draft bill was listed on the 2016 legislative programme with 1 July 2016 as the planned effective date, it has not yet been opened for consultation or submitted to Parliament. The only known information about the draft bill is that it lays down a procedure for converting Dutch legal entities into legal entities incorporated under the laws of another EU member state. According to the 2018 legislative programme, it is scheduled to enter into effect on 1 July 2018.

Identification of holders of bearer shares

During the period April-May 2017 an online consultation was held on a draft bill under which all bearer shares will be registered online (dematerialised), thus preventing the anonymous transfer of such shares. No definitive bill has as yet been submitted to Parliament. For more information see our newsletter from March 2017. According to the 2018 legislative programme the proposed new rules are intended to enter into effect on 1 January 2018, but here – again – it is doubtful that this target date can be met.

Management and supervision of legal entities

On 8 June 2016, the Management and Supervision (Legal Entities) Bill was submitted to Parliament. The bill's purpose, in brief, is to harmonise a number of rules for all of the different types of legal entities so that they are in line with the rules currently applicable to private and public limited liability companies (BVs and NVs). See our newsletter from July 2016. As the bill is still before the lower house of Parliament, it seems unfeasible that the new rules will enter into effect on 1 January 2018 (the planned effective date in the 2018 legislative programme).

Additional measures audit firms

This bill, which is currently before the upper house of Parliament, aims to introduce new measures for improving the quality of statutory audits. For example, the client's management board will no longer have the primary authority to instruct an auditor to perform that client's statutory audit; that authority will instead be vested in the general meeting or the supervisory board. Only in the absence of a general meeting or supervisory board will the management board be authorised to issue the requisite instruction to the auditor. On 18 August 2017, the Minister of Finance announced that the planned effective date was being postponed from 1 January 2018 to 1 July 2018. A motion opposing this postponement was rejected in the lower house.

Future developments

Some of the legislative proposals discussed above have already reached Parliament while others are still in the preparatory phase or have only recently been announced. Their effect will of course depend on the changes they undergo during the legislative process and whether they cross the finish line at all. We will follow their development and inform you of any relevant amendments.

Contact me

 Geert Raaijmakers | Amsterdam | +31 20 71 71 992

 Nico Blom | Amsterdam | +31 20 71 71 822

 Suzanne Rutten | Amsterdam | +31 20 71 71 954

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OCTOBER 2017

RECENT CHANGES TO TAX LEGISLATION

71 COUNTRIES, INCLUDING RUSSIA, SIGN MULTILATERAL TAX CONVENTION

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "**Convention**") has been signed by 71 countries, including the Russian Federation. It will come into the force after its ratification. Once the Convention comes into force, taxation rules should be determined taking into account not only national tax law and applicable double tax treaties but also the Convention.

DOUBLE TAX TREATY BETWEEN RUSSIA AND JAPAN

The Governments of Japan and Russia signed a new Double Tax Treaty (the "**Treaty**") on 7 September 2017, which will replace the previous one.

In particular, the Treaty (i) provides an exemption from withholding income tax on income in the form of interest and royalties, and (ii) reduces the withholding income tax rate for income in the form of dividends, provided that certain conditions established by the Treaty are met.

It is expected that to come into force from 1 January 2018.

AMENDMENTS TO TAX CODE

Numerous amendments have been introduced to the Tax Code of the Russian Federation (the "**Tax Code**"). The amendments will come into force from 1 January 2018, subject to certain exceptions, and were introduced by Federal Laws No 56-FZ, No. 57-FZ and No. 58-FZ, all dated 3 April 2017, as well as Federal Laws No. 25-FZ dated 7 March 2017, No. 163-FZ dated 18 July 2017, No. 254-FZ dated 29 July 2017 and Federal Law No. 286- FZ dated 30 September 2017.

The main amendments to the Tax Code are the following:

- Article 54.1 is introduced to the Tax Code, outlining signs of good faith by taxpayers. In particular, according to this article, taxpayers can decrease their taxable base and/or amount of tax in accordance with the rules established by the relevant chapter of the Tax Code, as long as (i) the main purpose of the transaction is neither the non-payment (underpayment) of taxes nor the offset (refund) of taxes *and* (ii) the obligation under the transaction is performed by the counterparty, and/or by an entity to whom the obligation under the transaction is transferred under the agreement or by law.

- The receipt of property, property rights and non-property rights in the amount of their monetary valuation by a Russian legal entity in the form of a “contribution to assets” to a Russian legal entity, within the rules established by Russian civil legislation, will *not* be subject to Russian profit tax under sub-point 3.7 of point 1 of Article 251 of the Tax Code (i.e. this amendment to the Tax Code is important for “contributions of assets” in respect of which the “exemption” from profit tax under sub-point 11 point 1 of Article 251 of the Tax Code cannot apply, in particular, for “contributions to assets” from a shareholder that holds not more than 50% of the share capital of such Russian legal entity.

- The forgiveness of a debt by a shareholder, with the aim of increasing the net assets of a subsidiary, will *not* be included on the list of non-taxable income under the amended sub-point 3.4 of point 1 of Article 251 of the Tax Code. However, the inclusion of this type of income in the list of non-taxable income under sub-point 11 of point 1 of Article 251 of the Tax Code should be analysed (in particular, where the relevant shareholder holds more than 50% of the share capital of the Russian legal entity).

- Obtaining free-of-charge guarantees will not be subject to Russian profit tax, as long as the parties to the relevant transaction are non-banking Russian legal entities.

- The list of R&D expenses that may be deducted for profit tax purposes with a 1.5 coefficient has been expanded, i.e. the list will include (i) incentive payments to R&D staff (including bonuses) and related accrued obligatory contributions to non-budgetary state funds, as well as (ii) expenses on the acquisition of exclusive rights for inventions, utility models or industrial samples, or the rights to use such intellectual property rights under a licence agreement, provided they are used solely for R&D purposes (this provision will be applicable until the end of 2020).

ADOPTION OF NEW FORM OF VAT INVOICE, AMENDMENTS TO VAT DOCUMENTATION

Regulation of the Government of the Russian Federation No. 981 dated 19 August 2017 (the “**Regulation**”) introduced amendments to the Regulation of the Government of the Russian Federation No. 1137 dated 26 December 2011, in particular related to VAT invoices (a new form of VAT invoice has been adopted), VAT purchases and VAT sales books, and journals of issued and received VAT invoices.

The Regulation came into force on 1 October 2017, and the new form of VAT invoice applies from 1 October 2017.

OTHER ISSUES

In addition to recent changes to the tax legislation, please see the below brief on several important (i) overviews in respect of tax issues adopted by the Presidium of the Supreme Court of the RF, and (ii) letters from Ministry of Finance of the Russian Federation (the “**Ministry of Finance**”) and the Federal Tax Services of the Russian Federation (the “**FTS**”).

Transfer Pricing and Thin Capitalization Rules

An overview of court practice in respect of disputes related to the transfer pricing rules and thin capitalization rules has been adopted by the Presidium of the Supreme Court of the RF dated 16 February 2017.

The most important positions related to the transfer pricing and thin capitalization rules, include:

- Only the FTS can inspect prices of the “controlled transactions” (i.e. local tax authorities cannot conduct such inspections during desk and field tax audits). However, the local tax authorities can apply transfer pricing methods established by Chapter 14.3 of the Tax Code during tax audits if, under the applicable chapters of the second part of the Tax Code, market prices should be used to calculate the taxes due on certain transactions (for example, the application of VAT in respect of VAT-able sales of goods, works, services, etc. free of charge).

- In general, in respect of “non-controlled transactions”, the tax authorities should not challenge for tax purposes the price of the transaction established by the parties to the transaction. However, if the price of the transaction is many times different than the market price, this may be considered by the tax authorities as an indicator that an unjustified tax benefit is obtained and, in conjunction with other factors, might discredit the business purpose of the transaction.

- A report on market prices related to a certain transaction issued by an independent appraisal company can be used:
  - ✓ if the sources of information listed in Article 105.6.1 of the Tax Code are not available or not sufficient;
  - ✓ for a one-off transaction, provided the methods established in Chapter 14.3 of the Tax Code do not provide the possibility to define whether the price of the transaction corresponds to the market value; and
  - ✓ if the valuation of a transaction is obligatory under the legislation.

- A loan from a foreign company affiliated with a foreign mother company (in particular, a loan from a foreign sister company) may be subject to Russian thin capitalization rules.

Defence of Foreign Investors

An overview of court practice in respect of disputes related to the defense of foreign investors has been adopted by the Presidium of the Supreme Court of the Russian Federation dated 12 July 2017.

The most important positions related to the defence of foreign investors, include:

- The fact that a foreign shareholder had ceased to be a shareholder of a Russian legal entity by the time dividends were paid to the shareholder, by itself should not be an obstacle to applying a reduced tax rate to dividends under the applicable double tax treaty.

- If the original foreign shareholder has joined another foreign legal entity (tax resident in the same country) which received dividends from a Russian legal entity (the “**Successor**”), then a reduced withholding income tax rate can be applied to the payment of dividends to the Successor legal entity, provided that the conditions for the applying the reduced tax rate are met by the original shareholder.

- Contributions of assets should be considered as an investment for the purposes of applying a reduced tax rate for dividends under a double tax treaty[1] (i.e. “investments” should not be limited to increases of share capital).

[1] A double tax treaty signed between Russia and Switzerland was considered

- A delay in receiving a tax residency certificate by a tax agent should not, by itself, prohibit the application of a reduced withholding income tax rate under a respective double tax treaty.

Clarifications on CFC Rules

A Letter of the Ministry of Finance of the Russian Federation dated 10 February 2017 No. 03-12-11/2/7395 provided clarifications in respect of 26 issues related to the application of Russian controlled foreign companies rules (CFC rules), including clarifications in respect of (i) accounting for the profit of a controlled foreign company if the financial year of the company does not correspond to the calendar year, (ii) accounting of losses of a controlled foreign company, and (iii) confirmation documents related to the amount of profit/loss of a controlled foreign company, etc.

Beneficial Ownership for the Application of Double Tax Treaties

In a Letter of the FTS dated 17 May 2017 No. CA-4-7/9270@, the FTS clarified to local tax authorities the issue of beneficial ownership for the application of double tax treaties provisions. In particular, the FTS outlined that:

- The Commentaries to the OECD Model Tax Convention on Income and Capital may be used for the purposes of interpreting the provisions of double tax treaties.

- The concept of beneficial ownership can be applied not only to income in the form of dividends, interest and royalties (the articles of double tax treaties on dividends, interest and royalties, generally include the beneficial ownership concept as one of the conditions to be met to apply a reduced tax rate under the respective treaty), but also to other types of income in order to avoid treaty shopping.

- Certain criteria that should be met by the recipient of income in order to be considered a beneficial owner of respective income, including: economic presence in the country of residence, wide authority related to using the respective income, in particular, in commercial activities by the recipient of the income, obtaining economic benefit from such income, taking commercial risks in respect of such assets, the absence of legal or actual obligations related to the further transfer of the income, etc.

Joint Methodological Recommendations of the FTS and the Investigative Committee of the RF Related to Identifying Circumstances Proving the Intent of a Taxpayer Aimed at Non- or Under- Payment of Taxes

In a Letter of the FTS No ЕД-4-2/13650@ dated 13 July 2017, the FTS and the Investigative Committee of the RF have issued joint methodological recommendations for local tax authorities and investigative authorities related to identifying circumstances proving the intent of a taxpayer aimed at non-payment (underpayment) of taxes (see the annex to the letter of the FTS No ЕД-4-2/13650@ dated 13 July 2017).

The methodological recommendations include: (i) examples of characteristic features of intent of non-payment (underpayment) of taxes, (ii) recommendations to the authorities on the procedure of conducting inspections (in particular, examinations, document seizures), as well as (iii) lists of questions that should be clarified by respective employees of a taxpayer (in particular, by the general director, etc.) in respect of the process of choosing of counterparties, the procedure of signing contracts, etc..

Overview of Court Practice on Obtaining by Taxpayers of Unjustified Tax Benefits from Business Splitting and Artificial Income Distribution

In a Letter of the FTS No CA-4-7/15895@ dated 11 August 2017, the FTS provided an overview of court practice related to obtaining by taxpayers of unjustified tax benefits from business splitting and the artificial distribution of income between interdependent parties.
The overview includes (i) a discussion of factors which may suggest that such actions are taking place, as well as (ii) examples of related court cases.

Clarification of the FTS in respect of Article 54.1 of the Tax Code

In a Letter of the FTS No CA-4-7/16152@ dated 16 August 2017, the FTS clarifies to the local tax authorities the application in practice of the provisions of Article 54.1 of the Tax Code (Article 54.1 of the Tax Code outlines the signs of good faith of taxpayers). The FTS, in particular, outlined that the tax claims are possible only if the tax authority proves that the taxpayer's counterparty did not actually perform the transaction, and that the conditions established by point 2 of Article 54.1 of the Tax Code are not met by the taxpayer.

CONTACTS

TIM THEROUX
theroux@gide.com

TATIANA KIRGETOVA
kirgetova@gide.com

From off-shore to on-shore: Moving foreign entities to Singapore under the Inward Re-domiciliation Regime

Benefits, requirements, and tax considerations when transferring a foreign entity to Singapore

DENTONS RODYK

25 October 2017

Increasingly, companies and individuals are reconsidering their use of “offshore” corporate entities, in light of a growing international push for transparency and exchange of information amongst jurisdictions for tax purposes. Additionally, public scandals, such as Panama Papers leak, have brought added scrutiny to the motives and reputations of companies using offshore entities.

As of 11 October 2017, Singapore has adopted a regime which allows for a greater flexibility to re-organise corporate groups for regulatory, strategic or organisational purposes. In essence, it allows foreign corporate entities to transfer their company’s registration to Singapore and become a Singapore company limited by shares – under the “*Inward Redomiciliation Regime*” (*the Regime*), under Part XA of the Companies Act of Singapore (sections 355 to 364A).

Re-domiciled entities may enjoy certain benefits, including more favourable tax treatment and access to Singapore’s developed business environment. However, this Regime may not extend to, or benefit, all applicants.

Below, we explain (A) some of the benefits and implications of inward re-domiciliation; (B) requirements to transfer registration; and (C) the tax framework and considerations under the Regime.

A. Potential Benefits and Implications of the Inward Re-domiciliation Regime

This Regime stands as an alternative to setting up a business presence in Singapore through registering a branch or subsidiary, allowing a re-domiciled foreign corporate entity to retain its employees, corporate history, and branding. Additionally, as a Singapore company, the re-domiciled entity would need to comply with local legislation, including the Companies Act of Singapore.

Companies and individuals considering re-domiciling foreign corporate entities (*FCEs*) to Singapore, may enjoy several benefits under the Regime and Singapore’s laws and business environment.

1. **FCE’s Public Image:** the FCE’s public image may be significantly enhanced by choosing to operate in Singapore, a reputable jurisdiction with a large network of double tax treaties, rather than an offshore entity. Traditionally considered “tax havens,” offshore jurisdictions are losing their lustre due to damaging scandals, such as the Panama Papers leak, and increased international scrutiny, leading to robust information-exchange regimes targeting tax evasion.

   Global tax transparency has been especially buttressed by the OECD’s BEPS[1] project and exchange of information regime, along with the CRS[2] and the requirements for country-by-country reporting (i.e., CbCR) for transfer pricing purposes.

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[1] Base Erosion and Profit Shifting

2. **Tax Benefits under the Regime:** the FCE may benefit from tax credits if its originating jurisdiction imposes an exit tax on its unrealised profits, and those profits are also taxed in Singapore. The applicability of these benefits is discussed further in **Section C**.

3. **As a Singapore company, the FCE:**

    a. Is not subject to capital gains tax payable in Singapore;

    b. Is not subject to restrictions on foreign ownership of business;

    c. May easily repatriate its dividends;

    d. May benefit from various government grants and initiatives; and

    e. May operate in an attractive business environment – including: access to an educated workforce, well-planned infrastructure, a robust financial and intellectual property ecosystem, thriving capital markets, and a stable socio-political environment.

While this is not an exhaustive list of potential benefits and implications of an FCE's re-domiciliation under the Regime, Dentons Rodyk is happy to help you understand further implications based on your circumstances.

B. Requirements to Transfer Registration of an FCE

Under the Regime, FCEs can apply to the Accounting and Corporate Regulatory Authority of Singapore (ACRA) for re-domiciliation. The Companies (Transfer of Registration) Regulations 2017 (Regulations) set out the minimum requirements to apply for transfer of registration.

Requirement	Description
Size Criteria	The foreign corporate entity (the FCE) must satisfy any 2 of the following: • Value of its total assets exceeds $10 million; • Annual revenue exceeds $10 million; • Has more than 50 employees. If the FCE is a parent, the size criteria will be assessed on a consolidated basis. Where the FCE is a subsidiary, the size criteria will apply on a single entity basis. The subsidiary will also meet the criteria where its parent (Singapore incorporated or registered in Singapore through a transfer of registration) meets the size criteria.
Solvency Criteria	As at the date of application for registration: • There is no ground on which the FCE could be found to be unable to pay its debts; and • The value of its assets is not less than the value of its liabilities (including contingent liabilities).

[2] Standard for Automatic Exchange of Financial Account Information in Tax Matters or Common Reporting Standard

Requirement	Description
	During the period of 12 months: • After the date of application for registration, the FCE is able to pay its debts as they fall due; and • After the date of winding up (if the FCE intends to wind up within 12 months after applying for transfer of registration), it is able to pay its debts in full within this period.
Laws of the Place of Incorporation	The laws of the FCE's place of incorporation: • Must authorise the transfer; and • Must be complied with by the FCE in relation to the transfer of registration.
Policy Considerations	The application for transfer of registration must not be intended to defraud FCE's existing creditors and is to be made in good faith.
Other Requirements	There are other minimum requirements for example the FCE is not under judicial management, not in liquidation nor being wound up etc.

The FCE should consult counsel in its current jurisdiction if (a) there is any criteria to be met or if there would be any objections or issues if it were to transfer its incorporation to another jurisdiction; and (b) if it has met any such criteria or resolved any such issues.

When re-domiciling, there may also be tax and stamp duty implications for the FCE. The FCE should understand how the transfer will be treated for tax and stamp duty purposes in the home country and assess whether they are prepared for the consequences, in addition to the tax implications in Singapore, further discussed in **Section C**.

C. Tax Framework and Considerations under the Regime

An important issue to consider when deciding whether to transfer the FCE's registration, is the tax treatment of the re-domiciled company. We highlight that the tax considerations arise not only in Singapore but also in the jurisdiction of the FCE's place of incorporation.

1. Tax Framework under the Regime

The tax treatment of the re-domiciled FCE is set out in the proposed new sections 34G and 34H of the Income Tax Act (Cap. 134, Rev. Ed. 2014). The provisions specify the tax treatment of certain items of expenditure incurred, or assets acquired by a FCE that has never carried on any trade or business in Singapore before the date of registration.

Furthermore, the new section 34H provides for a tax credit to be given to a re-domiciled company if its originating jurisdiction imposes an exit tax on its unrealised profits, and those profits are also taxed in Singapore. This is subject to the approval of the Minister and the conditions upon which the tax credit is to be allowed.

2. Tax Considerations under the Regime

The Regime may be most suitable for foreign corporations that already have a presence or operations in Singapore (for example a branch), or foreign group companies that want to move their holding entities to Singapore. However, the Regime may not be suitable for all FCEs with an existing active business outside of Singapore.

In addition, there are various tax considerations one should have regard to before deciding whether registration should be transferred. As mentioned above, there may be tax implications in the originating jurisdiction arising from the transfer. Aside from stamp duties, there may also be capital gains tax or exit taxes in the originating jurisdiction.

D. Conclusion

This Regime provides an added option for FCEs to shift base to, or set-up in, Singapore. A foreign corporate that has grown in revenue and size in its country of origin may wish to consider re-domiciling the parent entity, subsidiary or whole group to Singapore to enjoy several benefits of being a Singapore-domiciled company as set out above.

Dentons Rodyk is well positioned to advice any foreign entity considering a move to Singapore on the benefits, requirements and process if any assistance is required (including relevant filings with ACRA).

If you wish to speak to us on any of the above, or require our assistance on the same, please do not hesitate to contact the persons below.

Key contacts

Edmund Leow, SC
Senior Partner
Tax

D +65 6885 3613
E edmund.leow@dentons.com

Sunil Rai
Partner
Corporate

D +65 6885 3624
E sunil.rai@dentons.com

About Dentons Rodyk

Situated at the southern most tip of Southeast Asia, Singapore is a massive regional hub for global commerce, finance, transportation and legal services. This important island city-state is a vital focal point for doing business throughout the Asia Pacific region.

As one of Singapore's oldest legal practices, trusted since 1861 by clients near and far, rely on our full service capabilities to help you achieve your business goals in Singapore and throughout Asia. Consistently ranked in leading publications, our legal teams regularly represent a diverse clientele in a broad spectrum of industries and businesses.

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Tax Exemptions under the M&A Act Now Applicable to More Types of Spin-off Transactions

Leo Tsai/Judy Lo

The amendment to the Business Mergers and Acquisitions Act (the "**M&A Act**") enacted in January of 2016 stipulated in Paragraph 1, Article 39 that for a spin-off transaction, if voting shares are given to the original company as the consideration of the transaction and if such consideration takes up more than 65% of the total consideration, such transaction can enjoy exemptions of stamp duty, deed tax, securities transaction tax and business tax, as well as a deferral of land value increment tax. However, this Article does not specify whether such tax exemptions are only applicable to vertical spin-offs but not horizontal spin-offs (e.g. when a company splits off its R&D department into a separate entity), where the considerations are paid to the shareholders of the original company.

As such, the Ministry of Finance promulgated a Tax Ruling on July 28, 2017 (Ref. No.: Tai-Tsai-Shui-Zi-10600029170) to further clarify that when a company spins off a part of its business pursuant to the M&A Act, the tax exemptions provided in Paragraph 1, Article 39 of the M&A Act shall apply if voting shares are given to shareholders of the original company as the consideration of the spin-off transaction and if such consideration takes up more than 65% of the total consideration. Such Tax Ruling clarified that the tax exemptions provided under Paragraph 1, Article 39 of the M&A Act are applicable to both vertical and horizontal spin-off transactions. Also, if under a spin-off transaction, the original company acquired parcels of land and enjoyed the deferral of the land value increment tax under Subparagraph 5, Paragraph 1, Article 39 of the M&A Act within 3 years of the transfer registration of such parcels of land, the shareholders who received shares as consideration on the record date of the spin-off transaction shall be subject to the restrictions under Paragraph 2, Article 39 of the M&A Act.

In addition, the above-mentioned Tax Ruling also clarified that the scope of "total consideration" referred to in Paragraph 1, Article 39 of the M&A Act shall be governed by the Business Entity Accounting Act, Regulation on Business Entity Accounting Handling, Enterprise Accounting Standards, and the International Financial Reporting Standards, International Accounting Standards, and other relevant interpretations and interpretation announcements recognized by the Taiwan Financial Supervisory Commission. The foregoing regulations and interpretations shall also be applicable in calculating whether the voting shares given to the shareholders of the original company as consideration of the transaction exceed 65% of the total consideration.

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Ideas

Preparing for Proxy Season 2018: SEC Issues Staff Legal Bulletin Providing Guidance on the Treatment of Certain Exceptions for Shareholder Proposals

08 November 2017
Firm Thought Leadership

Overview
On November 1, 2017, the Division of Corporation Finance of the U.S. Securities and Exchange Commission ("SEC") released Staff Legal Bulletin No. 14I (the "Bulletin") (available here) to provide guidance on four topics related to the exclusion by a company of a shareholder proposal from the company's proxy statement pursuant to Rule 14a-8 under the Securities Exchange Act of 1934. The Division's views discussed in the Bulletin concern:

1. the "ordinary business" exception under Rule 14a-8(i)(7);
2. the "economic relevance" exception under Rule 14a-8(i)(5);
3. the eligibility requirements under Rule 14a-8(b); and
4. the use of images in shareholder proposals under Rule 14a-8(d).

The Ordinary Business Exception
The "ordinary business" exception provided in Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal that "deals with a matter relating to the company's ordinary business operations." Under this exception, the SEC has historically permitted the exclusion of shareholder proposals that raise matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight", unless the shareholder proposal "focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote" (see Release No. 34-40018 (May 21, 1998), available here).

Such a determination is highly fact specific, and the SEC believes that a company's board is best situated to make this determination; however, the SEC has observed a recurring trend of no-action requests focusing on whether a shareholder proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant to transcend ordinary business and override the exception in Rule 14a-8(i)(7).

In light of the foregoing, the Bulletin provides guidance that, going forward, any no-action request under Rule 14a-8(i)(7) must include a discussion that reflects the board's analysis of the particular policy issue raised by the shareholder proposal and its significance. The Bulletin further instructs companies that such discussion would be "most helpful if it detailed the specific processes employed by the board to ensure that is conclusions are well-informed and well-reasoned."

The Economic Relevance Exception

The "economic relevance" exception provided in Rule 14a-8(i)(5) permits a company to exclude a shareholder proposal that "relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business."

Following a decision by the District Court for the District of Columbia in *Lovenheim v. Iroquois Brands, Ltd*., 618 F. Supp. 554 (D.D.C. 1985), however, the SEC's application of the rule to shareholder proposals related to a matter of social or ethical significance has resulted in only infrequent exclusion under the "economic relevance" exception, even where a shareholder proposal relates to less than 5% of total assets, net earnings and gross sales, if the company conducted business, no matter how small, related to the issue raised in the proposal.

The Bulletin acknowledges this interpretation has unduly limited the availability of the exclusion under Rule 14a-8(i)(5) because it has largely ignored the portion of the rule related to whether the proposal "deals with a matter that is not significantly related to the issuer's business." Therefore, going forward, for shareholder proposals that raise issues of social or ethical significance, the SEC will focus on a shareholder proposal's "significance to the company's business when it otherwise relates to operations that otherwise account for less than 5% of total assets, net earnings and gross sales." The Bulletin further clarifies that the SEC will "generally view substantive governance matters to be significantly related to almost all companies."

The SEC also indicate that where a shareholder proposal's significance to a company's business is not apparent on its face, the proposal is excludable unless the proponent can demonstrate that the proposal is "otherwise significantly related to the company's business." Upon such a showing, the SEC will consider the proposal in the light of the "total mix" of information about the company.

As with the "ordinary business exception" under Rule 14a-8(i)(7), the SEC believes the board of the company is in the best position to determine wither a particular proposal is "otherwise significantly related to the company's business." Accordingly, the Bulletin provides guidance that going forward the SEC will expect a company's Rule 14a-8(i)(5) no-action request to "include a discussion that reflects the board's analysis of the proposal's significance to the company." The Bulletin further instructs companies that such discussion would be "most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned."

Finally, the Bulletin instructs that, while historically the SEC has historically analyzed whether a proposal is "otherwise significantly related" under the "ordinary business exception" of Rule 14a-8(i)(5), the SEC now will apply "separate analytical frameworks [to] ensure that each basis for exclusion serves its intended purpose."

Proposal by Proxy

Historically, the SEC has viewed a shareholder's submission of a shareholder proposal through a representative as consistent with Rule 14a-8, although the rule does not address the ability of a shareholder to do so. The Bulletin reaffirms the SEC's view that proposal by proxy is consistent with Rule 14a-8.

The Bulletin acknowledges the challenges and concerns that proposals by proxy may present with respect to the eligibility requirements of Rule 14a-8(b) and explains that the SEC will look to whether the shareholders who submit a proposal by proxy provide documentation describing the proposing shareholder's delegation of authority to the proxy. The required documentation must:

- identify the shareholder proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted; and
- be signed and dated by the shareholder.

In the event that such information is not provided, the Bulletin recognizes that there may be a basis to exclude the proposal under Rule 14a-8(b).

Use of Images in Shareholder Proposals
In two recent no-action letters, the SEC has expressed the view that, due to the "500 words" rule and the absence of an express reference to graphics in Rule 14a-8(d), the inclusion of graphs and/or images in shareholder proposals is not prohibited. The Bulletin recognizes that the potential for abuse is mitigated by the ability of a company to exclude graphs and/or images under Rule 14a-8(i)(3) in the event that they are:

- materially false or misleading;
- inherently vague or indefinite;
- directly or indirectly impugn character, integrity or personal reputation; or
- are irrelevant to a consideration of the subject matter of the proposal.

In addition to exclusion under Rule 14a-8(i)(3), the Bulletin further clarifies that the 500 word limit of a shareholder proposal applies to the entire proposal, including words in any graphs and/or images.

Final Points
In addition to providing much needed clarity to certain rules governing the exclusion of shareholder proposals, the Bulletin makes clear the importance of a detailed analysis by the board of a company with respect to the application of Rules 14a-8(i)(5) and 14a-8(i)(7) when seeking to exclude a shareholder proposal through the no-action letter process. The company's board must take great care not only to conduct a detailed analysis under the applicable rule, but also to document the steps taken by the board in the books and records of the company. Doing so will assist the company in providing supporting documentation required by the SEC when seeking an exception to include a shareholder proposal under Rules 14a-8(i)(5) or 14a-8(i)(7).

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Long-awaited CFIUS reform legislation introduced in U.S. Congress

13 November 2017

A group of Republican and Democratic lawmakers have introduced legislation in both chambers of Congress to reform the Committee on Foreign Investment in the United States (CFIUS). CFIUS is the U.S. government interagency committee that conducts national security reviews of foreign investments. Fundamentally, the Foreign Investment Risk Review Modernization Act (FIRRMA) would significantly expand CFIUS's existing statutory mandate by permitting the Committee to examine national security threats posed not only by foreign "control" of U.S. companies, but also by: (1) *any* non-passive foreign investment in a U.S. company involved in critical technology or critical infrastructure; (2) a U.S. company's joint ventures or licensing agreements involving transfers of critical technologies to foreign persons; (3) a foreign person's *lease* of U.S. real estate located near a sensitive U.S. Government installation; and (4) certain changes in a foreign investor's rights in a U.S. company, if the changes could result in foreign control of the company or a non-passive investment in a company involved in critical technologies or critical infrastructure. FIRRMA also mandates the filing of declarations (so-called "light filings") for certain foreign-government investments, extends CFIUS's initial review period from 30 to 45 days, and codifies certain factors for CFIUS to consider in its national security reviews – many (or all) of which, in our experience, CFIUS already examines.

FIRRMA also is aimed at maintaining U.S. technological and industrial leadership in areas affecting U.S. national security. In this respect, and overall, the bill clearly targets China, and the bill's sponsors, including Senator John Cornyn (R-TX), have emphasized that FIRRMA is an effort to address a national security threat emanating from China and other U.S. adversaries. The White House is believed to be supportive of the bill, which closely tracks the Administration's previously expressed views on CFIUS, its *de facto* hold on numerous pending transactions involving Chinese companies, and its focus on U.S. manufacturing and technological leadership. Yet, with Congress's already ambitious legislative agenda, it is too early to predict whether and how soon the legislation has a meaningful chance of becoming law. Sen. Cornyn has indicated that the bill will proceed through "regular order" in the Senate, including hearings and mark-ups, meaning that the bill could change.

The bill delegates to the Treasury Department and CFIUS the task of drafting key regulations, including a host of important definitional terms, such as "critical technologies," "critical materials," "U.S. critical technology company," "U.S. critical infrastructure company," and "non-public technical information." Thus, the full scope and application of the bill will only become clear when this process is completed.

Hogan Lovells is actively monitoring the legislation and would be pleased to assist your company in navigating any changes to the CFIUS process.

What's changing?

The current CFIUS statute covers transactions that result in foreign "control" of a U.S. business. The proposed legislation clarifies and significantly expands CFIUS's jurisdiction, and is likely to increase the number of deals that will be subject to its review. The legislation's most far-reaching changes would effectively expand CFIUS's jurisdiction to include *any* non-passive investment in a U.S. company involved in critical technology or critical infrastructure, certain joint ventures, certain technology transfers and licensing arrangements, and leases of U.S. real estate near U.S. military bases or other sensitive national security facilities.
An official section-by-section breakdown of the legislation asserts that the legislation would broaden the purview of CFIUS by explicitly adding five new types of "covered transactions":

1. **Non-passive investments**: Any non-passive investment by a foreign person in any U.S. critical technology company or critical infrastructure company, including a non-controlling investment stake, that, when coupled with parallel partnerships, material financial relationships, or other side agreements, can result in the foreign person having significant influence over the company.

2. **Joint ventures**: The contribution by a U.S. critical technology company (other than through an ordinary customer relationship) to a foreign person of both intellectual property and associated support through a joint venture or other arrangement.

3. **Changes in foreign investors' rights**: Any change in a foreign investor's rights in a U.S. business, if the change could result in foreign control of the U.S. business or in a non-passive investment in a U.S. critical technology or critical infrastructure company. This would allow CFIUS to review any circumstance where a non-controlling investment changes to a controlling investment, or where a passive investment changes to a non-passive investment.

4. **Transactions aimed at evading CFIUS**: Any other transaction, transfer, agreement, or arrangement the structure of which is designed/intended to evade/circumvent CFIUS review.

5. **Real estate in proximity to sensitive facilities**: The purchase/lease by a foreign person of certain real estate located in the U.S. in close proximity to U.S. military or other U.S. Government national security facilities.

Other notable changes include the following:

- **New national security factors**: Adding new national security factors for CFIUS to consider in its analyses (*e.g.*, whether the transaction is likely to reduce the U.S. technological and industrial advantage, relative to any country of special concern; whether the transaction will involve personally identifiable information).

- **Mandatory "light-filings" for certain transactions**: Imposing a mandatory "light filing" requirement for certain types of transactions (all CFIUS filings are currently voluntary). These light filings would take the form of mandatory declarations for certain "covered transactions," including ones involving foreign governments and state-owned enterprises. These light filings generally would be limited to five pages in length and could trigger a full CFIUS review. These declarations must be filed 45 days prior to completion of the transaction.

- **U.S. ally exemption**: Authorizing CFIUS to exempt certain otherwise "covered transactions" if all foreign investors are from a country that meets certain criteria, such as being a U.S. treaty ally, having a mutual defense treaty with the U.S., and having a comparable CFIUS-like process. Specific countries are not identified in the legislation.

- **CFIUS power to suspend covered transactions**: Granting CFIUS the explicit authority – already held by the President but not the Committee itself – to suspend covered transactions under review.

- **Sharing information with foreign governments**: Permitting the Secretary of the Treasury, in the interest of national security, to authorize the sharing of information submitted by parties to a CFIUS notice with foreign governments.

Why now?

The legislation comes at a time when Chinese investment into the U.S. has grown sharply in recent years—much to the consternation of certain members of Congress and U.S. policymakers. According to Bloomberg data, Chinese acquisitions and minority investments in the U.S. grew to $45.9 billion in 2016, up from $17.7 billion in 2015. CFIUS has subjected certain high-profile Chinese investments to increased scrutiny. In September, for example, President Trump blocked a proposed purchase of Lattice Semiconductor Corporation by a Chinese venture capital fund on national security grounds. A number of other Chinese acquisitions are before CFIUS, and the prospects for their clearance by the Committee appear dim.

The CFIUS review process has not been amended by Congress in nearly a decade.[1] The lead sponsors argue that "gaps in the current process have allowed foreign adversaries to weaponize their investment in U.S. companies and transfer sensitive dual-use U.S. technologies, many of which have potential military applications." Moreover, the sponsors argue, these "investment-driven technology transfers have jeopardized the United States' ability to maintain our historical military advantage and have, in turn, weakened our defense industrial base." Sen. Cornyn has regularly voiced his concern that Chinese state policy has sought to "weaponize" investment as a means of obtaining technology that could be deployed by the Chinese military. FIRRMA also addresses concerns expressed in a report issued earlier this year by the Department of Defense's Defense Innovation Unit Experimental (DIUx), which warned of the threat to U.S. national security from technology transfers to China, particularly through joint ventures and Chinese investments in start-up technology companies.

Legislative outlook

As noted above, the bill has bipartisan co-sponsors in the Senate and House and apparent support from the Trump Administration. The lead sponsors, Sen. Cornyn and Representative Robert Pittenger, a senior Member of the Financial Services Committee, have each invested considerable political capital in forging bipartisan and bicameral coalitions in support of the legislation. Their staffs worked closely over several months with the Treasury Department, which chairs CFIUS, and with other CFIUS member agencies to craft FIRRMA's language. Senior Administration officials have urged CFIUS reform in recent months. Attorney General Sessions is quoted in the lead sponsors' press release emphasizing the need for legislation, and other key Administration officials, including Secretary of Defense James Mattis and Director of National Intelligence Dan Coats, have cited the need for CFIUS reform. Treasury Secretary Steven Mnuchin has said publicly on a number of occasions that the Trump Administration supports reforms to CFIUS that preserve its national security focus, but do not deter foreign investment.

Because tax reform is likely to dominate the Administration and Congressional agenda for the rest of the year, the window for the bill to move likely will open sometime next year. Moreover, despite the bipartisan nature of the bill's sponsors, the bill does not yet have the support of the Republican Chairmen of the House Financial Services Committee and Senate Banking Committee, the respective committees of jurisdiction. Despite being approached for their support, Rep. Jeb Hensarling (R-TX) and

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[1] CFIUS operates pursuant to section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (section 721) and as implemented by Executive Order 11858, as amended, and regulations at 31 C.F.R. Part 800.

Sen. Mike Crapo (R-ID) did not co-sponsor the legislation. Both have historically been avowed free market champions, and their positions on the bill will be important.

Unilateral steps

The Trump Administration could also intentionally link ongoing concerns about the national security threat posed by Chinese investments in the United States with its efforts to pressure Beijing into isolating North Korea economically. Threatening to, or even rejecting, deals through CFIUS might be a lever that President Donald Trump uses to cajole his Chinese counterpart, Xi Jinping, into tightening Chinese enforcement of international sanctions. Meanwhile, the Trump Administration already appears to realize the considerable power CFIUS wields today even in the absence of statutory changes, as many Chinese transactions undergoing CFIUS review currently remained stalled.

We will continue to watch this space closely and report back with new developments.

Contacts

Anthony V. Capobianco
Partner, Washington, D.C.
Tel +1 202 637 2568
anthony.capobianco@hoganlovells.com

Brian P. Curran
Partner, Washington, D.C.
Tel +1 202 637 4886
brian.curran@hoganlovells.com

Andrew Keller
Partner, Washington, D.C.
Tel +1 202 637 5649
andrew.keller@hoganlovells.com

Robert D. Kyle
Partner, Washington, D.C.
Tel +1 202 637 5494
robert.kyle@hoganlovells.com

Warren H. Maruyama
Partner, Washington, D.C.
Tel +1 202 637 5716
warren.maruyama@hoganlovells.com

Aaron Cutler
Partner, Washington, D.C.
Tel +1 202 637 5648
aaron.cutler@hoganlovells.com

Ari Fridman
Associate, Washington, D.C.
Tel +1 202 637 5449
ari.fridman@hoganlovells.com