PACIFIC RIM ADVISORY COUNCIL

Pacific Rim Advisory Council
January 2018 e-Bulletin

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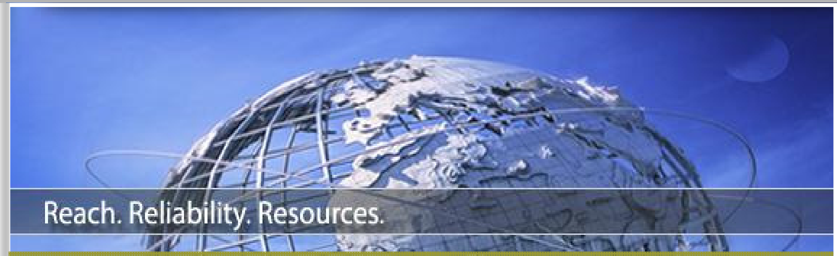

CONFERENCES & EVENTS

PRAC @ PDAC Toronto
March 6, 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

Visit www.prac.org for full details

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►BRIGARD & URRUTIA Acts in Frontera Energy Share Sale in Utilities Unit

►CAREY Assists in Chile's Four Largest Transactions Closed in Last Quarter 2017

►CLAYTON UTZ Advising Tox Free Solutions on $671m scheme of arrangement with Cleanaway Waste Management

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►NAUTADUTILH Advises assisted ENEL with EUR 10 billion revolving loan from 38 banks

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PRAC APPOINTS NEW BOARD CHAIR AND VICE CHAIR

01 January 2018: The Pacific Rim Advisory Council is pleased to announce its newly elected Board Chair and Vice Chair for the two-year term 2018 thru 2019.

Joyce C. Fan

Chair: Joyce C. Fan, Deputy CEO and Partner, Lee and Li (Taipei)

Joyce's practice areas include: corporate, cross border transactions, M&A, infrastructure projects, government procurement, trade law, energy law, environmental protection law, and related dispute resolution. She is experienced in drafting, reviewing and negotiating for various types of commercial contracts.

Jaap Stoop

Vice Chair: Jaap Stoop, Partner, NautaDutilh (Amsterdam)

Jaap specializes in corporate law. His main focus is on mergers and acquisitions, joint ventures, fund formation and restructurings. Jaap acts for both domestic and international clients. He is co-chair of NautaDutilh's China Desk as well as the firm's Funds Group.

The Pacific Rim Advisory Council ("PRAC") is a unique strategic alliance within the global legal community, with unparalleled expertise on the legal and business issues facing not only Asia but the broader Pacific Rim region.

PRAC members are top-tier, independent law firms, each of which provides legal services to major international companies conducting substantial business across the Pacific Rim region.

With over 12,000 lawyers practicing in key business centers around the world, these prominent member firms provide independent legal representation and local market knowledge. Whether you are an Institutional client or an emerging business our member firms are leaders in their fields and understand your business needs and the complexities of your industry.

Beyond the prominent standing that PRAC members already enjoy in their respective countries, member firms demand from each other that our unique alliance remains at the forefront of global and regional issues and trends. We remain committed and look forward to the challenge of ensuring that these objectives are met.

For more information and to view our list of member firms visit www.prac.org

DAVIS WRIGHT TREMAINE PROMOTES 6 TO PARTNER

SEATTLE - 03 January, 2018: Six lawyers at Davis Wright Tremaine have been promoted to partnership as of January 1, 2018.

The new partners, along with their areas of practice are:

Nicolas A. Jampol – Media
Allison May – Financial Services
Sanjay Nangia – Litigation
Daniel P. Reing – Communications
Jonathan Segal – Media
Michael Zahn – Real Estate & Land Use

Davis Wright Tremaine is a national law firm with more than 550 lawyers representing clients based throughout the United States and around the world.

For more information, visit www.dwt.com

GOODSILL ANNOUNCES NEW MANAGING PARTNER; 3 PARTNER APPPINTMENTS

HONOLULU - 02 January, 2018: Michael J. O'Malley is the new managing partner at Goodsill.

As managing partner Mike oversees the firm's business, management and operations. He is taking over the role in the firm from Peter T. Kashiwa who will continue to practice at Goodsill in the areas of real estate transactions, business and commercial transactions, corporate documentation and immigration issues.

"Goodsill has a long history of servicing businesses in Hawaii, contributing to the community and developing quality legal professionals and staff. I am excited for the future of the firm and the endeavors being undertaken to continue to make Goodsill a leader among law firms and integral member of our community," Mike said when he accepted the managing partner role.

As an attorney, Mike focuses his practice in the areas of business law, mergers and acquisitions, tax, and health law. Very active in the community, he is a board director for several organizations including Kapi'olani Medical Center for Women & Children, Hawaii Strategic Development Corporation, Natural Energy Laboratory of Hawaii Authority, HiBEAM, Friends of Family Specialty Courts, and Tax Foundation of Hawaii

Goodsill has promoted Elizabeth H. Lee, Joanne J. Lee, and David J. Hoftiezer to partner effective January 1, 2018.

Elizabeth Lee joined the firm as counsel in 2013 and has been assisting clients in the areas of business, real estate, finance and corporate securities. Previously she practiced law in Seattle, Washington. Since joining Goodsill, she has represented local companies as well as multinational corporations in financing, purchase and sale transactions, and real estate development projects.

Joanne Lee practiced with a large New York City law firm prior to joining Goodsill in 2015. Her diverse practice includes corporate and tax matters, with a focus on mergers and acquisitions, joint ventures, and business transactions.

Just before David Hoftiezer joined the firm in 2014, he was practicing law in Washington, D.C. and Paris, France. A litigator in the areas of aviation, environmental law, corporate defense, premises liability, dram shop liability and intellectual property, he also assists clients in understanding complex electronic and technological issues related to eDiscovery and cybersecurity.

For additional information visit www.goodsill.com

HOGAN LOVELLS APPOINTS NEW BOARD CHAIR

International law firm Hogan Lovells has appointed Hamburg-based partner Leopold von Gerlach as Chair of its Board from 1 May 2018.

10 January, 2018: Leo will serve in the post for three years. He takes over from London real estate partner Nicholas Cheffings who will have served two full terms as Chair, starting in May 2012. Nicholas will continue with his market-leading commercial real estate practice. Prior to Nicholas Cheffings the previous Co-Chairs were Claudette Christian and John Young who held the post from 2010 to 2012.

The Chair is a member of the Hogan Lovells Board and oversees the ethos and standards of Hogan Lovells and can be held for up to two three-year terms. The Board comprises 12 members in total and has supervisory responsibility for overseeing the affairs of the firm, but without executive responsibility for strategy, management, and operating decisions. It provides input to the CEO and Hogan Lovells' International Management Committee. Members of the Board make up the Compensation Committee and are part of the Equity Elevation and Partner Advancement Committees, which they chair. Membership of the Board is designed to reflect the broad scope of the business, with members representing a combination of geographic and other backgrounds.

Leo first joined the Board in May 2014 as the representative for Continental Europe and is an Intellectual Property, Media, and Technology partner. As an accomplished IP litigator with extensive trial experience, Leo mainly acts against counterfeit and grey market goods, look-alikes, and other types of IP infringements. His clients from various industries include The LEGO Group, Citi, eBay, PayPal, Estee Lauder, and Gibson Brands. He has been named as "one of the leading names in trademark law" by the World Trademark Review 1000 report and has also been commended by Chambers for his strategic approach to IP litigation. He and Washington, D.C. partner Cate Stetson led the 2015-2016 project to produce the consolidated history of the firm.

As a member of the Board, Leo has served on the Partner Advancement Committee, working with other members of the Board and members of the firm's International Management Committee on the promotion of associates and counsel to the partnership.

Commenting on the appointment of Leo, Hogan Lovells' current Chair Nicholas Cheffings said: "Leo taking on the role of Chair is a natural step for him and for Hogan Lovells. Leo has been an excellent contributor to the Board as the elected representative for Continental Europe and he has a very deep sense of the culture, ethos, and heritage of our firm."

Says Leo von Gerlach:

"Hogan Lovells is uniquely positioned in the market – it has unrivaled strengths on both sides of the Atlantic and a strong shared single sense of identity based on common values which transcend national boundaries. As the elected Board member for Continental Europe it has been very impressive to see just how cohesive we are as a firm and how well we collaborate and innovate for the benefit of our clients – something which they see as truly distinctive for us.

For additional information visit www.hoganlovells.com

GIDE APPOINTS FIVE NEW PARTNERS

PARIS - 14 December 2017: Gide is pleased to announce the appointment of five new partners, effective on 1 January 2018: Rym Loucif (Mergers & Acquisitions / Corporate) in Algiers, Simon Auquier (Mergers & Acquisitions / Corporate) in Casablanca, Olivier Bernardi (Banking & Finance), Thomas Binet (Banking & Finance) and Alexis Pailleret (Mergers & Acquisitions / Corporate) in Paris.

Stéphane Puel, Managing Partner of Gide, states: « I would like to congratulate our five new partners on their excellent career so far and their commitment to our firm and our clients. These appointments reflect our strong tradition to promote our most talented individuals to keep supporting our clients in their activities and projects both in France and abroad, by offering our advice and litigation assistance in all fields of business law. »

Rym Loucif Admitted to the Paris Bar in 2006, Rym Loucif (37) specialises in mergers-acquisitions and corporate law. She has gained extensive experience in several regulated sectors, including the energy and telecommunications fields. Rym Loucif acts on cross-border mergers, acquisitions and implementation of joint ventures. She specialises in investment law, and is an expert appointed to the EU-OECD Programme on Promoting Investment in the Mediterranean. Prior to joining Gide in 2011, Rym Loucif worked for over six years for leading US law firms in Paris. She is referenced as a 'Leading Individual' by Legal 500, and as a 'Rising Star' by IFLR1000. She holds a Master's degree in business law and an in-house counsel diploma (Diplôme de Juriste Conseil d'Entreprise) from Paris II - Panthéon-Assas University.

Simon Auquier Admitted to the Paris Bar in 2006, Simon Auquier (36) is a member of Gide's Mergers & Acquisitions / Corporate practice group. He moved to the Casablanca office in early 2010, where he now heads the M&A department, after spending four years in Gide's Paris office. He works on corporate acquisitions and divestments, acquisitions of equity holdings, as well as investment and industrial partnership projects for foreign investors seeking to move into Morocco and/or expand their existing investments in the country. In addition, he works for Moroccan clients on joint ventures with foreign partners, acquisitions in Morocco, etc. Simon also assists both Moroccan and foreign clients on their investment projects in sub-Saharan Africa. Over recent years, he has been involved in a number of major acquisition and investment projects in West Africa, and in operations involving various African sub-regions. Simon Auquier is referenced as a 'Leading Individual' by Legal 500, and as a 'Rising Star' by IFLR1000. He graduated from French business school ESSEC and holds a Master's degree in corporate law / in-house counsel (Diplôme de Juriste Conseil d'Entreprise) from Paris II - Panthéon-Assas University.

Olivier Bernardi A specialist in banking and finance law, Olivier Bernardi (36) advises credit institutions and investment firms on the legislation and regulations applicable to their structures, and acts in financial disputes. In this regard, Olivier Bernardi handles issues pertaining to the structure of financial institutions, bank monopoly, investment services, payment services, and the distribution of banking and financial products. He also advises regulated institutions on the implementation of their internal procedures (internal control, compliance, risk management, KYC/AML/terrorism financing issues, international economic and financial sanctions) and assists them before common law courts and in disciplinary proceedings before the French Financial Markets Authority (AMF) and the French Prudential Supervision and Resolution Authority (ACPR). Lastly, he is involved in lobbying activities with the French authorities (Ministry of Finance, AMF, ACPR) and European authorities (European Commission, European Parliament) as regards the drafting of banking and financial regulations, or certain specific topics. Prior to joining Gide in 2009, Olivier Bernardi was Deputy Head of the Banking and Monetary Affairs Division of the French Treasury (Ministry of Economy, Industry and Employment) from 2006 to 2008. Olivier Bernardi graduated from the Paris II - Panthéon-Assas University's Institute for corporate law (2004), with Master's degrees in banking and finance law (2005) and corporate and tax law (2004). He also holds a financial markets professional certification delivered by the AMF (2014).

Thomas Binet Admitted to the Paris Bar in 2004, Thomas Binet (41) is a member of the Banking & Finance practice group in Paris. He has extensive experience in structured finance, corporate finance and debt restructuring. He regularly acts as counsel to borrowers, sponsors, senior, mezzanine and unitranche arrangers on such financing activities. Thomas Binet holds a postgraduate degree in general private law from Paris II Panthéon-Assas University.

Alexis Pailleret Admitted to the Paris Bar in 2004 and a member of Gide's Mergers & Acquisitions / Corporate practice group in Paris, Alexis Pailleret (39) specialises in domestic and international acquisitions and divestments, joint ventures and corporate restructurings. He regularly acts on M&A transactions in regulated fields, mainly renewable energies, infrastructure and defence, for investment funds and industrial clients. Alexis Pailleret was seconded for three years to Central Europe between 2004 and 2006, and has acquired significant experience in outbound investment projects. He teaches Mergers & Acquisitions law to Master's students in business law at Paris-Dauphine University. Alexis Pailleret graduated from that same university and holds a postgraduate degree in business and economics law from Paris I - Panthéon-Sorbonne University.

For additional information visit www.gide.com

NAUTADUTILH APPOINTS 3 PARTNERS

20 December 2017: We are pleased to announce the appointment of **Bastiaan Assink, Ezechiel Havrenne and Frans Overkleeft** as equity partner of our firm.

Bastiaan Assink specialises in arbitration and (arbitration related court) litigation. He primarily acts as counsel to national, foreign and multi-national parties in high value matters that typically involve complex questions of company law and private law, including claims under commercial contracts, shareholders' disputes, failed joint-ventures, and directors' and shareholders' liability, in particular in international corporate arbitrations. Bastiaan will continue his part-time position as professor of company law.

Ezechiel Havrenne leads our Luxembourg investment management practice. His clients include international private equity fund managers, global real estate fund managers, credit institutions, financial groups, institutional investors, mutual fund promoters and ultra-high net worth individuals.

Frans Overkleeft specialises in corporate litigation. He primarily focuses on transaction-related disputes, including cases on contested public takeover bids and shareholder activism. Frans recently received his PhD-degree for a doctoral thesis on the position of shareholders in Dutch listed companies. With his background in M&A, he is perfectly placed to strengthen NautaDutilh's transaction related litigation practice.

'With these new appointments, we strengthen the core competences of our firm', managing partner Petra Zijp says. 'We would like to congratulate Bastiaan, Ezechiel and Frans and wish them success in their new role.'

For additional information visit us at www.nautadutilh.com

RBS WELCOMES THREE NEW PARTNERS

VANCOUVER - 02 January, 2018: We are pleased to announce the addition of **Silvana Facchin, Greta Reiten**, and **Nick Safarik** to the partnership. “It is gratifying to see such quality lawyers join our partnership as we continue to build for the future”, said Managing Partner, Jeff Lowe, Q.C.

Silvana Facchin is a senior member of the firm’s Business Law and Wealth Preservation groups, and manages our Corporate Services Department.

Greta Reiten is the Practice Group Leader of our Family Law practice, and handles all matters affecting married and common law partners and families, guardianship, parenting time, residency, child and spousal support, property division, trusts, divorce and adoption. In addition, she has years of experience in general litigation and municipal legal matters.

Nick Safarik’s practice focuses on wills and estates litigation, insurance defence and general commercial litigation.

We congratulate them on this milestone.

For additional information visit www.rbs.ca

SKRINE PARTNER ANNOUNCEMENT

KUALA LUMPUR - 01 January, 2018: SKRINE is pleased to announce that 7 Senior Associates have been admitted as Partners of the Firm with effect from 1st January 2018. These appointments will further enhance and strengthen our Firm's capabilities in delivering premium legal services to our valued clients.

Sheba Gumis joined Skrine's Corporate Division as an Associate in April 2010 following from her admission as an Advocate and Solicitor of the High Court of Malaya. She recently completed her Masters in Corporate Law at the University of Cambridge, United Kingdom

Area of Practice: Mergers & Acquisitions, Joint Ventures, Foreign Investment, Licensing

Tan Shi Wen joined Skrine's Corporate Division as an Associate upon being admitted to practice as an Advocate and Solicitor of the High Court of Malaya in February 2011. Shi Wen is a Barrister of the Lincoln's Inn, London and holds a LL.M in International Commercial Law from the College of Law, London and a Postgraduate Diploma in EU Competition Law from the King's College, London.

Area of Practice: Merger & Acquisitions Oil & Gas Foreign Investments Joint Ventures Shipping & Ship Financing Licensing Competition Law Healthcare

Lee Ai Hsian graduated from National University of Malaysia (UKM). She joined Skrine's Corporate Division as an Associate upon being admitted to practice as an Advocate and Solicitor of the High Court of Malaya in July 2011.

Area of Practice: Banking & Finance Acquisitions Joint Ventures Foreign Investments Real Estate & Project Development

Foo Siew Li graduated from the Cardiff University in 2008 and completed her Certificate in Legal Practice the following year. She joined Skrine upon being admitted to practice as an Advocate and Solicitor of the High Court of Malaya in September 2010.

Area of Practice: Employment & Industrial Relations Immigration Shipping Corporate / Commercial Disputes

Loshini_Ramarmuty has been with Skrine since her pupillage in the Construction and Engineering practice group. Having graduated from the Cardiff University, she was called to the English Bar (Inner Temple) in 2009, obtained a Master of Laws in International Financial Law from the University of Manchester in 2010 and was admitted as an Advocate and Solicitor of the High Court of Malaya in 2011

Area of Practice: Arbitration Adjudication Construction & Engineering Mediation Oil and Gas Tax

Khong Siong Sie graduated from the University of Liverpool in 2012 and completed his Certificate in Legal Practice the following year. He has been with Skrine since his pupillage and joined as an Associate upon his admission as an Advocate and Solicitor of the High Court of Malaya in 2014.

Area of Practice: Tax Trade & Customs General Litigation

Natalie Lim has been with the firm since her pupillage and joined Skrine's Intellectual Property Division as an Associate after her admission to the Malaysian Bar. A graduate of King's College London with a LLB (Hons) in 2009, she was admitted as a Barrister-At-Law (Middle Temple) in October 2010 and was admitted to practice as an Advocate and Solicitor of the High Court of Malaya in October 2011.

Area of Practice: Intellectual Property Data Protection Franchising Technology, Media & Telecommunications

For additional information visit www.skrine.com

BAKER BOTTS

REPRESENTS UNDERWRITERS IN $249 MILLION UPSIZED INITIAL PUBLIC OFFERING

HOUSTON – 12 January 2018: On January 11, 2018, Liberty Oilfield Services Inc. announced the pricing of an upsized initial public offering of 12,731,092 shares of its Class A common stock at $17.00 per share. The shares are expected to begin trading on the New York Stock Exchange under the ticker symbol "LBRT" on January 12, 2018. In addition, Liberty and the selling shareholder granted the underwriters a 30-day option to purchase up to an additional 1,909,663 shares of Liberty's Class A common stock at the initial public offering price, less underwriting discounts and commissions.
The offering is expected to close on January 17, 2018, subject to customary closing conditions.

Liberty expects to receive approximately $194.4 million of net proceeds from the offering, or $220.2 million if the underwriters exercise their option to purchase additional shares in full. Morgan Stanley, Goldman Sachs & Co. LLC, Wells Fargo Securities, Citigroup, J.P. Morgan and Evercore ISI are acting as joint book-running managers for the offering.

Baker Botts Lawyers/Office Involved: Corporate: Joshua Davidson (Partner, Houston); Jonathan Platt (Partner, Dallas), Heath DeJean (Associate, Houston) and Sunil Jamal (Associate, Houston); Tax: Stephen Marcus (Partner, Dallas) and Jared Meier (Associate, Houston)

For additional information visit www.bakerbotts.com

BRIGARD URRUTIA

ACTS IN SALE OF FRONTERA ENERGY SHARES IN UTILITIES UNIT

BOGOTA - December, 2017: Brigard & Urrutia Abogados 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, worth US$56 million was signed on 25 October.

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. It bought shares in Pacific MidStream from a group of sellers led by the International Finance Corporation.

Counsel to Frontera Energy Corporation - Brigard & Urrutia Abogados Partner Jaime Robledo and associates Jeison Larrota and Natalia Gutiérrez de Larrauri in Bogotá.

For additional information visit www.bu.com.co

NAUTADUTILH

ASSISTED ENEL WITH EUR 10 BILLION REVOLVING LOAN FROM 38 BANKS

AMSTERDAM - 12 December, 2017: NautaDutilh's Capital Markets teams served as Dutch counsel to ENEL in connection with its entering into a EUR 10 billion revolving facility agreement. The loan was granted to ENEL by a "super syndicate" consisting of 38 banks, amongst which Banca IMI, Barclays, BNP Paribas, Citigroup, Commerzbank, Credit Suisse, Goldman Sachs, Crédit Agricole, HSBC, ING, J.P. Morgan, Mediobanca, Merrill Lynch, Morgan Stanley, RBS, Santander and UniCredit. The festive physical signing whereby almost all parties were represented took place in Amsterdam at 18 December 2017.

The NautaDutilh team consisted of Petra Zijp, Dewi Walian and Tim van der Lee, assisted by Nina Kielman for tax. Our co-counsel on this transaction was Legance.

For additional information visit www.nautadutilh.com

CLAYTON UTZ

ADVISING TOX FREE SOLUTIONS ON $671M SCHEME OF ARRANGEMENT WITH CLEANAWAY WASTE MANAGEMENT

PERTH - 11 December 2017: Clayton Utz is advising ASX-listed, leading specialist waste management company Tox Free Solutions Limited (ASX: TOX) in respect of its entry into a scheme implementation deed with ASX-listed Cleanaway Waste Management Limited (ASX: CWY), announced today.

Clayton Utz corporate partner Mark Paganin and senior associate Stephen Neale are leading the firm's team, with support from lawyer Benjamin Depiazzi.

Under the deed, Cleanaway will acquire 100% of the issued share capital of Tox via a scheme of arrangement. The scheme will be subject to, among other things, approval of Tox shareholders, the Federal Court of Australia and the ACCC.

If approved, Tox shareholders will receive $3.425 cash for each Tox share and will also be entitled to receive an interim dividend for FY2018 of $0.05 per share. Tox also expects to declare and pay a fully-franked special dividend on or shortly before the implementation of the scheme, the quantum of which will be advised to Tox shareholders in due course.

The scheme consideration values Tox's fully diluted equity at approximately $671 million and at an enterprise value of $831 million.

For additional information visit www.claytonutz.com

GIDE

ADVISED YAREAL POLSKA ON PURCHASE OF AREA OF SOHO FACTORY

WARSAW - 20 December 2017: The real estate team at Gide Warsaw law firm advised Yareal Polska on the purchase of post-industrial real property with a total area of 5.3 ha located on the area of SOHO Factory in the district of Praga-Południe in Warsaw.

There are plans to build a residential complex with a usable area of ca. 70 thousand square metres on the purchased real property, located between ul. Mińska and ul. Żupnicza. The investment will retain the post-industrial look of the location, adding modern architectural and urban solutions.

Gide participated at all stages of the transaction, from the due diligence investigation, through the negotiations and concluding the transactional documentation.

The work was performed in particular by Błażej Czwarnok, Marcin Muszel and Aleksandra Kobylińska.

For additional information visit www.gide.com

Upcoming Events

PRAC @ PDAC Toronto Reception - March 6, 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

CAREY

ASSISTS IN CHILE'S FOUR LARGEST TRANSACTIONS CLOSED IN LAST QUARTER 2017

SANTIAGO—02 January, 2018: In the last months of 2017, the four largest transactions of the year were closed in Chile, and Carey was involved acting as advisor to one of the parties in each one. Banking, health insurance, infrastructure services and energy were the main industries involved in those deals, which all together totaled approx. USD6.7 billion.

At the end of November, the City National Bank of Florida (CNB), a subsidiary of Banco de Crédito e Inversiones (Bci), signed the purchase of TotalBank, a Spanish bank based in Miami and owned by Banco Popular Español, for USD528 million. The transaction was structured as a merger in which CNB will be the surviving entity. Once approved by US and Chilean regulators, CNB will become the third-largest bank based in Florida and within the top 2% of 5,300 national banks in the US. The transaction is expected to close in the second semester of 2018.

This transaction, in which Carey was counsel to CNB, was extremely complex, involving regulatory aspects of the US, Spain and Chile. The negotiations lasted more than eight months and had to overcome the insolvency of Banco Popular and subsequent purchase of said bank by Banco Santander.

Carey also advised Scotiabank in the acquisition of a majority stake of BBVA Chile for USD2.2 billion. Now, Scotiabank owns 68.19% of BBVA's stake, while the Said family holds the remaining 32%. Through this acquisition signed on December 4th, Scotiabank became the third largest bank in the private sector in Chile, reaching a 14% market share, equivalent to USD390 billion.

In addition, Carey advised UnitedHealth Group in the acquisition of Banmédica, a Chilean healthcare company, for USD2.7 billion. Banmédica has operations in the health insurance, healthcare and medical rescue businesses, with a presence in Chile, Colombia and Peru. The deal was signed on December 21st.

Banmédica has yearly revenues over USD2.2 billion, and more than 20,000 employees. On the other hand, UnitedHealth Group, the largest American health insurer, number thirteen on the Global 500 list and sixth on the US Fortune 500 list, is based in Minnesota and has more than 130 million global customers and more than 230,000 employees.

Finally, Carey advised Brookfield Asset Management on the sale of its 27.8% stake in Transelec to China Southern Power Grid International, a state-owned company, for USD1.3 billion. This acquisition was signed on December 26th.

For additional information visit www.carey.cl

DENTONS RODYK

ACTS AS SINGAPORE LEGAL ADVISORS TO FINTECH COMPANY INCORPORATED IN SINGAPORE

Dentons Rodyk is acting as Singapore legal advisors to TenX Pte. Ltd. ("TenX"), a FinTech company incorporated in Singapore, on the legal structuring and the contractual, tax, intellectual property, corporate finance and regulatory aspects of the pre-initial token sale (the "Pre-ITS") and the initial token sale (the "ITS", and together with the Pre-ITS, the "Token Sale") of cryptographic tokens ("PAY Tokens") created and sold by a company affiliated to TenX (the "Token Vendor").

The Token Sale raised an aggregate of 245,832 Ethers (also widely referred to as ETH, being a cryptocurrency associated with the Ethereum blockchain), being equivalent to approximately US$80 million based on the USD/ETH exchange rate as at the close of the Token Sale. Proceeds from the Token Sale are earmarked for deployment by the Token Vendor for, amongst others, development of the TenX Card Payment System.

Senior Partners Kenneth Oh and S. Sivanesan joint led the deal, supported by Senior Partners Edmund Leow SC, Gilbert Leong, Li Chuan Hsu as well as Partners Jia Xian Seow, Sunil Rai, Elaine Lew, and Associates Beverly Chong and Ann Louise Chia.

For additional information visit www.dentons.rodyk.com

HOGAN LOVELLS

ADVISES IFC ON ACQUISITION OF STAKE IN AFGHANISTAN INTERNATIONAL BANK

DUBAI - 14 December 2017: Hogan Lovells has advised the International Finance Corporation ("IFC"), a member of the World Bank Group, on the acquisition of a 7.5 percent equity stake in the Afghanistan International Bank ("AIB") to help the bank boost its commercial lending and enhance financial inclusion. AIB has two shareholders, Horizon Associates LLC (Delaware Company) and Wilton Holding Limited (Cayman Island Company) and have each given up to IFC 3.75 percent of their equity stake in AIB.

The Hogan Lovells team was led by Imtiaz Shah (Partner, Dubai), with support from Nada Moallem (Associate, Dubai). Commenting on the transaction, Imtiaz said: "We are pleased to support IFC on this strategic transaction which will help boost access to finance for SMEs in Afghanistan at a challenging time".

For more information, see www.hoganlovells.com

MUNIZ

ASSISTS SINO-PORTUGUESE JOINT VENTURE HYDRO GLOBAL PERU WITH US $365 MILLION LOAN FROM CHINA DEVELOPMENT BANK

LIMA - 29 NOVEMBER, 2017: Muñiz Ramírez Pérez-Taiman & Olaya in Lima has helped Sino-Portuguese joint venture Hydro Global Perú obtain a US$365 million loan from China Development Bank to build a 209-megawatt hydropower plant in Peru. The deal closed on 17 November. BBVA Continental acted as structuring agent. The transaction is thought to be the largest project finance deal in Peru's private sector this year. The loan will finance the construction of the San Gaban III power plant project, located in the Puno region, south Peru.

The project involves the construction of two 104.6-megawatt impulse turbines and a 139-kilometre transmission line.

Counsel to Hydro Global Perú Muñiz Ramírez Pérez-Taiman & Olaya Partners Daniel Lovón, Jorge Otoya,
Rolando Salvatierra and Gillian Paredes in Lima

For additional information visit www.munizlaw.com

SKRINE

ACTING FOR MyCC IN SUCCESSFUL OPPOSITION TO MyEG'S APPEAL TO THE COMPETITION APPEAL TRIBUNAL

KUALA LUMPUR: On 28 December 2017, Skrine, acting for the Competition Commission ("MyCC"), was successful in opposing an appeal brought by My E.G. Services Berhad ("MyEG") and My E.G. Commerce Sdn Bhd ("MyEG Commerce") against MyCC's Decision dated 24 June 2016. This is the first appeal before the Competition Appeal Tribunal ("CAT") with regard to an infringement for abuse of dominant position under Section 10(2)(d)(iii) of the Competition Act 2010.

In MyCC's Decision dated 24 June 2016, MyEG was directed to cease and desist immediately from imposing different conditions to the equivalent transactions in the process of renewal applications of mandatory insurances for online foreign workers permit, to provide an efficient gateway for all its competitors in the market of the sale of the mandatory insurances within 60 days, and to pay a financial penalty of RM2,272,000.00.

This case stemmed from a high-profile privatisation of the government's foreign workers permit renewal to MyEG.

The CAT affirmed MyCC's Decision and found that MyEG had abused its dominant position in the downstream market in which MyEG is operating the sole platform for online foreign workers permit renewal applications, and had applied different conditions to equivalent transactions where MyEG Commerce is participating as an insurance agent for the mandatory insurances for the permit renewal. The CAT imposed a further financial penalty of RM4,140,000.00 (daily penalty of RM7,500.00 from 25 June 2016 to 28 December 2017) on MyEG.

MyEG has since made an announcement that it intends to seek for judicial review and apply for a stay against the CAT's Decision.

Dato' Lim Chee Wee, Sharon Chong and Manshan Singh acted on behalf of MyCC.

For additional information visit www.skrine.com

TOZZINIFRIERE

ASSISTS LENDERS IN MEXICO'S LARGEST DAIRY PRODUCER GRUPO LALA OBTAIN A BRIDGE LOAN TO PURCHASE BRAZILIAN COUNTERPART VIGOR ALIMENTOS FOR 25 BILLION PESOS (US$1.5 BILLION)

SAO PAULO – 01 December, 2017: Tozzini assisted the lenders in Mexico's largest dairy producer Grupo Lala obtain a bridge loan to purchase Brazilian counterpart Vigor Alimentos for 25 billion pesos (US$1.5 billion).

JP Morgan, BBVA Bancomer and Santander were the lenders and enlisted Davies Polk & Wardwell LLP's New York and Washington, DC, offices, Mexico's Ritch, Mueller, Heather y Nicolau, SC in Mexico City and Brazilian firm TozziniFreire Advogados.

The financing agreement was executed on 24 October, while the acquisition closed on 26 October.

Brazil Counsel JP Morgan, BBVA Bancomer and Santander - TozziniFreire Advogados Partners Alexei Bonamin, Shin Jae Kim and Renata Muzzi Gomes, and associates Jose Augusto Dias, Felipe Tulio de Paiva and Fernanda Vilela Viana in São Paulo

For additional information visit www.tozzinifreire.com.br

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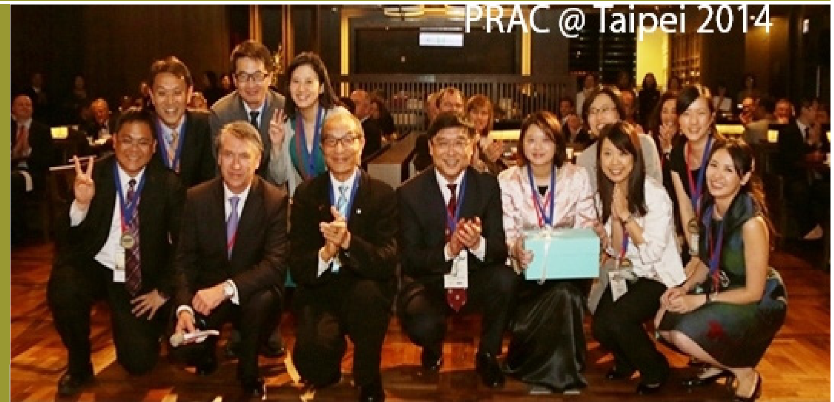
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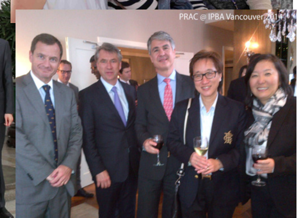
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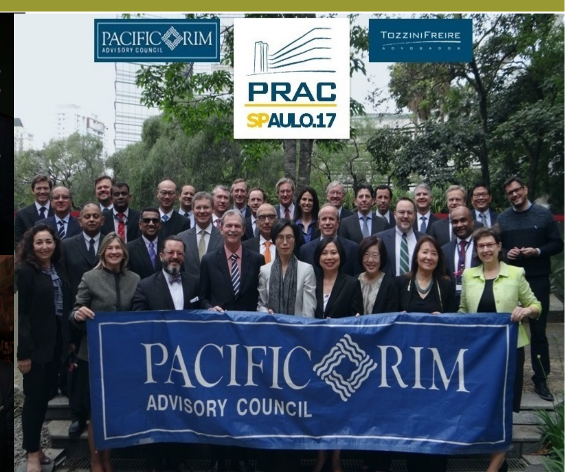
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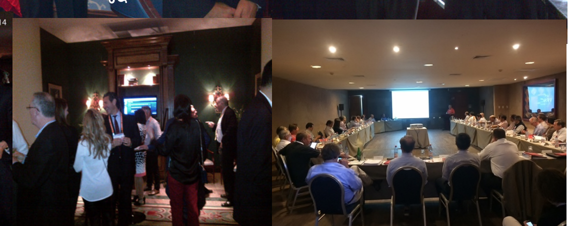

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TozziniFreire Advogados

ALLENDE & BREA

ARGENTINA Resolution No. 447-E/2017 (Program to Stimulate the Production of Unconventional Natural Gas)

On November 17, the Resolution No. 447-E/2017 of the Ministry of Energy and Mining was published in the Official Gazette (the "Resolution") which extends the application of the Program to Stimulate Investments on the Production of Unconventional Natural Gas, created by Resolution No. 46-E/2017 (the "Program") to the production of unconventional natural gas coming from the Cuenca Austral.

The Resolution adapted the definition of "Unconventional Gas" of the Annex to Resolution No. 46-E/2017 for the concessions located in the Cuenca Austral in order to include those concessions within the scope of the Program, due to the geological heterogeneities of each project located at the Cuenca Austral.

The Secretary of Hydrocarbon Resources shall determine, on the analysis of the pilot phase of each project, the particular technical conditions that the natural gas production of each well must meet to be considered Unconventional Gas, such as the initial flow of each well, its accumulated in the first semester, and any other parameter considered relevant by the Secretary in order to consider the production as coming from formations of low permeability and/or porosity."

For further information on this topic please contact Juan Martín Allende, Marcos Patrón Costas and María Soledad Ferreyra in Buenos Aires.

www.allendebrea.com.ar

CLAYTON UTZ

21 DEC 2017

Dealings with cyber pirates – how will they play out under Australia's new data breach notification laws?

BY SHARON SEGAL, SARAH MARTINE

Recent cyber attacks have raised the question of whether dealings with cyber pirates will provide relief under Australia's new data breach notification laws.

Recent high-profile cyber attacks have demonstrated the potential for businesses to be faced with the difficult dilemma of whether or not to pay a ransom if they fall victim to a cyber attack. When personal information has been compromised, striking an agreement with a cyber pirate might be successful in preventing serious harm to affected individuals.

Under Australia's new mandatory data breach notification scheme, the obligation to notify an "eligible data breach" to the Office of the Australian Information Commissioner (**OAIC**) and potentially affected individuals will not arise if an entity is able to take remedial action before any serious harm is caused by the breach.

Will paying a ransom to a cyber pirate constitute sufficient remedial action to relieve an entity of an obligation to notify the breach to the OAIC and affected individuals?

Australia's new mandatory data breach notification scheme

From 22 February 2018, the Privacy Act 1988 (Cth) will include a mandatory data breach notification scheme. The purpose of the scheme is to ensure that individuals can take remedial steps if their personal information is compromised.

Entities subject to the Privacy Act will be required to notify data breaches to both the OAIC and individuals who are likely to be at risk of serious harm by the data breach. The notification obligation only applies to "eligible data breaches". These are data breaches which are likely to result in serious harm to any individual to whom the information relates.

Exception – remedial action

The new scheme encourages entities to be proactive in taking steps to address data breaches, by providing an exception to the notification obligation where an entity takes remedial action before serious harm is caused by the breach.

This exception will apply if:

- the entity takes action in relation to a data breach before it results in serious harm to any of the affected individuals; and
- as a result of the action, a reasonable person would conclude that the data breach would not be likely to result in serious harm to any of those individuals.

If these elements are satisfied, an entity is not required to notify the data breach to the OAIC or affected individuals.

How will dealings with cyber pirates play out?

The OAIC has published draft guidance on the new scheme which contains examples of remedial action that may prevent serious harm. One such example is where an email is sent to an incorrect recipient, and the sender contacts the recipient and requests that they permanently delete the file.

Arguably striking a deal with a cyber pirate is similar to this – you make contact with the hackers, pay a ransom, and request them to permanently destroy the personal information they stole.

However, it is questionable whether this action would satisfy the second requirement of the exception – that is, as a result of the remedial action, a reasonable person would be satisfied that the data breach would not be likely to result in serious harm to the affected individuals. While an entity might argue that obtaining assurances from hackers that stolen data has been deleted is enough to alleviate any risk of harm to the affected individuals, a reasonable person might not agree.

But what if an entity obtains satisfactory proof that the stolen data was not used and has now been deleted? Arguably this would satisfy the second requirement of the exception and therefore relieve an entity of its obligation to notify the OAIC and affected individuals.

Where to now?

While paying a cyber pirate's ransom may not be what the legislators had in mind, it does demonstrate the value of being proactive in taking positive steps to address data breaches. In particular, entities should be getting ready for the new mandatory data breach notification scheme by putting in place response plans which will enable them to contain, assess and respond to data breaches in a timely fashion. This will help entities mitigate potential harm to affected individuals if they suffer a data breach, and potentially avoid the need to notify the OAIC and affected individuals. Entities should keep in mind, however, that they may still have reporting obligations under other laws if they fall victim to a cyber attack.

GET IN TOUCH

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Court of Justice Finds Prescription-support Software to Be a Medical Device

Monday, 18 December 2017

Case C-329/16 - Snitem and Philips France

On 7 December 2017, the Court of Justice of the European Union (CJEU) ruled that to the extent software constitutes a medical device and bears the CE marking of conformity, it may be placed on the market and circulate freely in the European Union and may not be made subject to additional national certification requirements. This decision, which will certainly be of interest to businesses active in the field of digital health and of course the producers of medical devices, also recapitulates the two conditions which software must meet in order to be considered a medical device.

Background

France adopted legislation that requires certain prescription-support software to obtain national certification (attesting to compliance with rules of good practice), even if the software already bears the CE marking.

Philips France ('Philips'), which manufactures and markets the drug prescription assistance software Intellispace Critical Care and Anesthesia (ICCA), and the *Syndicat national de l'industrie des technologies médicales* (Snitem), the representative body for businesses active in the medical devices sector in France, brought proceedings before the Council of State seeking to have the legislation in question set aside.

The claimants argued that since the ICCA software bears the CE marking, attesting to the fact that it has undergone an assessment of its conformity with the requirements of the Medical Devices Directive (93/42), it should not be subject to an additional national certification procedure.

In particular, the claimants contended that the national certification procedure constitutes a measure having an equivalent effect to a quantitative restriction on imports. In imposing an additional requirement for the certification of medical devices, on top of those provided for by the Medical Devices Directive, the legislation breaches Article 4(1) of the directive, pursuant to which Member States must not create any obstacle to the placing on the market or the putting into service within their territory of devices bearing the CE marking.

The Council of State was uncertain whether software such as ICCA should be considered a medical device within the meaning of Article 1(2)(a) of Directive 93/42 and thus sought an interpretation of the French legislation from the Court of Justice.

The Judgment

The Court of Justice first noted that software constitutes a medical device for purposes of the Medical Devices Directive where it satisfies the two cumulative conditions which must be met by a medical device, relating to the objective pursued and the action resulting therefrom.

The objective pursued

Software is deemed a medical device per se when it is specifically intended by the manufacturer to be used for one or more of the medical purposes set out in the definition of a medical device. Thus, software intended for general purposes is not considered a medical device when used in a healthcare setting (para. 24).

The Court noted that the claimant's software cross-references patient-specific data with the drugs that the doctor is considering prescribing and is thus able to provide the doctor, in an automated manner, with an analysis intended to detect, in particular, possible contraindications, drug interactions and excessive dosages. The Court found that the software is thus used "for the purpose of prevention, monitoring, treatment or alleviation of a disease", and hence pursues a specifically medical objective, making it a medical device within the meaning of Article 1(2)(a) of Directive 93/42.

The Court clarified, however, that this would not be the case for software that, while intended for use in a medical context, has the sole purpose of archiving, collecting or transmitting data, such as:

- patient medical-data storage software;
- software whose function is limited to indicating to the attending physician the name of the generic drug associated with the one the doctor intends to prescribe; and
- software intended to indicate the contraindications mentioned by the manufacturer of the drug in its instructions for use (paras. 25 and 26).

The action resulting from the objective pursued

Secondly, as regards the condition relating to the action resulting from the objective pursued, the Council of State asked whether software which does not function automatically in or on the human body can be considered a medical device within the meaning of Article 1(2)(a) of Directive 93/42.

In that respect, the Court noted that although the provision in question states that the main action of a medical device 'in or on the human body' cannot be obtained exclusively by pharmacological or immunological means, or by metabolism, it does not require that the device itself act directly in or on the human body (para. 28).

The Court thus emphasized the fact that the European legislature intended to focus, when determining whether software should be classified as a medical device, on the purpose of its use and not the manner in which the effect it is capable of producing on or in the human body is likely to materialise (para. 29).

Thus, in order to be classified as a medical device, it is irrelevant if software acts directly or indirectly on the human body; what matters is that it fulfils one or more of the medical purposes set out in the definition of a medical device.

Moreover, the Court added that this interpretation has been confirmed by the *Commission Guidelines on the qualification and classification of stand-alone software used in healthcare within the regulatory framework of medical devices*, whose objective is to promote a uniform application of the provisions of the Medical Devices Directive throughout the European Union. It should be recalled that the guidelines indicate that software constitutes a medical device (i) where it is specifically intended by the manufacturer to be used for one of the purposes set out in Article 1(2)(a) of Directive 93/42 and (ii) where it is intended to create or modify medical information, in particular by means of calculation, quantification or comparison of recorded data against certain references, in order to provide information about a particular patient. The guidelines furthermore state that "if the software does not perform an action on data, or performs an action limited to storage, archival, communication, "simple search" or lossless compression (i.e. using a compression procedure that allows the exact reconstruction of the original data) it is not a medical device."

Having answered the question of whether software can be considered a medical device, the Court then turned to the issue of certification.

The national certification procedure

The Court noted that to the extent software constitutes a medical device, it must bear the CE marking of conformity when it is placed on the market. Once the CE marking has been obtained, the product, having regard to that particular function, may be placed on the market and circulate freely in the European Union. It may not be made subject to additional national certification requirements (para 35).

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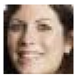

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Changes to the CFEM, the Brazilian mining royalty

On December 19, law No. 13,540/2017 was enacted. It was originated from executive order No. 789/2017 and its subsequent bill of law No. 38/2017. The new law changes several rules regarding the collection of the Financial Compensation for Mineral Exploitation *(Compensação Financeira pela Exploração de Recursos Minerais – CFEM)*, known as the Brazilian mining royalty.

After the discussion in Congress, the final report modified some aspects of the executive order sponsored by the Federal Government, essentially regarding CFEM tax basis and rates.

Tax basis

Before the issuance of the mentioned executive order, the CFEM tax basis was the mineral products net sales, excluding taxes over the selling as well as transportation and insurance costs. Now, the tax basis will consider the gross revenue, excluding only taxes over the selling. If the mineral product is consumed by the company, from 2018 on, the CFEM may levy on the calculated gross revenue considering the products (or similar products) current prices in local, regional, national or international markets, according to each case. Alternatively, CFEM may levy on the reference price of the product obtained upon the processing of the minerals, according to the Brazilian mining authority's discretion.

The Brazilian National Mining Agency *(Agência Nacional de Mineração – ANM)*, that supervenes the National Department of Mineral Production *(Departamento Nacional de Produção Mineral – DNPM)*, will establish the criteria when the miner consumes the mineral product, indicating the market price or the reference price. For the latter, the ANM must observe parameters set forth in a decree (not yet enacted), in order to apply higher reference prices for mineral deposits with higher grades.

For mineral water, CFEM will levy on gross revenues, excluding taxes over the selling, paid or offset, according to the tax regime adopted.

Rates

The CFEM rates suffered major changes. Rocks, sands, gravel, clay and other mineral products used directly in civil construction (also called construction aggregates), ornamental rocks, as well as mineral and thermal water are now levied on a 1% rate. Gold has now a 1.5% rate. Diamonds and other mineral products, on their turn, are now levied on a 2% rate, while bauxite, manganese, niobium and rock salt have a 3% rate.

The Government intended to create progressive rates for the iron ore, according to its international price. However, the report was modified in the House of Representatives and the progressive rates table was removed. Now, the iron ore has a fixed rate of 3.5%. The ANM is authorized to reduce iron ore's rate to up to 2% for mineral deposits with feasibility compromised due to low grades, production scale, taxation or the number of employees.

The Congress also included a clause reducing the rates by half for tailings mineral exploitation.

The president Michel Temer vetoed a clause that established a 0.2% rate for gold and diamond in artisanal and small scale mining, gemstones and limestone for soil pH correction, potassium, rock salt, phosphate rocks and other substances used as fertilizers. Therefore, now the rates mentioned in the previous paragraphs also apply for these substances.

Leasing and civil liability

In the leasing of mining activities, the new rule sets forth the lessor's subsidiary liability if the lessee fails to comply with its CFEM obligations. This should end with an old discussion between the DNPM and the mining companies, because the DNPM, through ordinances, demanded joint and several liability clauses in order to approve lease agreements.

Cities affected by mining enterprises

The Congress changed the distribution of mining royalties to grant a 15% share of the CFEM to the cities affected by mining enterprises. These cities are now entitled to the CFEM share if they are affected by railways or pipelines used for mineral transportation, or when they are affected by ports, tailings, waste dams or other facilities where the processing occurs.

Brazilian Mining Industry Renewal Program

The CFEM changes are part of the Brazilian Mining Industry Renewal Program announced in July by the Federal Government. The program also comprehends the executive orders No. 790/2017 and 791/2017 which, respectively, modified the Mining Code and created the ANM, supervening the DNPM. The changes to the Mining Code were not approved in the House of Representatives. On the other hand, the creation of the ANM was approved and awaits for the president to sign it into law.

For more information contact Partner Luiz Fernando Visconti

www.tozzinifeire.combr

Blog

Alberta Replaces Specified Gas Emitters Regulation with Carbon Competitiveness Incentive Regulation

January 03, 2018

Written by Thomas W. McInerney and Duncan M. McPherson

On December 18, 2017, the Alberta government released the long awaited Carbon Competitiveness Incentive Regulation (CCIR), which came into force January 1, 2018. The CCIR replaces the existing Specified Gas Emitters Regulation (SGER) for compliance years 2018 onwards.

Various elements of the SGER are carried through into the CCIR, as the CCIR remains an emissions intensity-based regime requiring large emitters, and other facilities that have opted in, to reduce their emissions intensity below a prescribed level, or otherwise achieve this through a true-up obligation whereby credits can be applied against such required level, in concert with or as an alternative to physical abatement, with significant penalties for failure to achieve compliance.

However, the CCIR has fundamental differences both in the way a facility's total regulated emissions are calculated, as well as how the required emission intensity reduction is measured. The facility specific baselines that were the cornerstone of the SGER have now largely been replaced with product specific benchmarks which form the basis for an output based allocation of permissible CO_2e emissions specific to each such product.

Who Does the CCIR Apply To?

The same as with the SGER it replaces, any facility that has emitted 100,000 tonnes of carbon dioxide equivalent (CO_2e) in 2003 or any subsequent year will be subject to the CCIR. Like the SGER, certain facilities can opt-in to the CCIR and thereby avoid obligations they would otherwise have pursuant to Alberta's carbon levy (effectively exchanging the reporting and compliance obligations of the carbon levy for those of the CCIR which, depending on the circumstances, may be advantageous). Facilities that opted in under the SGER do not automatically qualify for inclusion under the CCIR.

A facility may opt-in under one of two circumstances. Firstly, if it is in direct competition with another facility that is subject to the CCIR and thus a "competitively impacted facility" or secondly, if it emits 50,000 tonnes or more of CO_2e in its second full year of commercial operation and can demonstrate that it is in an "emissions-intensive trade-exposed sector".

Whether a sector is emissions-intensive trade-exposed (EITE) depends on the relationship between such sector's emissions intensiveness (full carbon cost of a sector divided by the gross value added for such sector), and its trade-exposure (the ratio of: (a) the total value of all sector products exported and imported from/into Alberta; and (b) the total value of all products provided by a sector plus the total value of all products produced by the sector that are imported), and is represented by the following chart:

Emissions Intensity and Trade Exposure

Emissions Intensity	< 10%	10%–20%	20%–60%	> 60%
> 30%	High	High	High	High
15%–30%	Medium	High	High	High
3%–15%	Medium	Medium	High	High
1%–3%	Low	Medium	Medium	Medium
< 1%	Low	Low	Low	Low
	Trade Exposure			

Source: Standard for Establishing and Assigning Benchmarks—Carbon Competitiveness Incentive Regulation Version 1.0 December 2017

When emissions intensiveness and trade exposure combine to result in a "High" value, such facility is said to be in an EITE sector, and thus eligible to opt-in.

Notwithstanding the foregoing, facilities that are within the conventional oil and gas sector are currently *not* eligible to opt-in under the CCIR due to the fact that such facilities are exempt from paying Alberta's carbon levy on fuel used in a production process before 2023, pursuant to the *Climate Leadership Regulation* (Alberta). Facilities that generate electricity from renewable sources having a capacity less than five megawatts, or are otherwise subject to a renewable electricity support agreement (RESA), pursuant to the Alberta government's Renewable Electricity Program, are also ineligible to "opt-in" to the CCIR.

Provided certain criteria are met, a facility that has opted in to the CCIR, can apply to revoke such status, thereby returning it to carbon pricing regulation under Alberta's carbon levy.

How Does the CCIR Work?

Generally, the CCIR requires each regulated facility to calculate and report its total regulated emissions (TRE) of specified gases which are compared as against the output based allocation (discussed below) for that facility. The specified gases covered by the CCIR are the same as those covered by the SGER with the addition of nine additional gases such that the CCIR aligns with the United Nations Framework on Climate Change. As was the case with the SGER, to the extent a facility's total regulated emissions is less than its output based allocation, it will earn emission performance credits that may be banked, traded, or used for future compliance obligations and, conversely, to the extent a facility's total regulated emissions exceeds its output based allocation, the person responsible for such facility will be required to "true-up" by applying emission performance credits, emission offsets, fund credits or a combination of them, such that its net emissions equal the applicable facility output based allocation.

Total Regulated Emissions (TRE)

Total Regulated Emissions are the sum of a facility's direct emissions of specified gases (excluding any biomass CO_2 emissions) less any CO_2 imported by such facility from a different facility to which the CCIR applies, plus any CO_2 that is exported from such facility, plus any CO_2 used by the facility as feedstock for urea production, as per the following formula:

$$TRE = DE - ICO_2 + ECO_2 + UCO_2$$

where

"TRE" is the total regulated emissions for the facility for the reporting period, expressed in tonnes on a CO_2e basis;

"DE" is the direct emissions for the facility for the reporting period;

"ICO_2" is the amount of carbon dioxide expressed in tonnes imported on site during the reporting period from a different facility to which the CCIR applies;

"ECO_2" is the amount of carbon dioxide expressed in tonnes exported from the facility during the reporting period; and

"UCO_2" is the amount of carbon dioxide expressed in tonnes used by the facility as feedstock for the production of urea during the reporting period.

Output Based Allocation (OBA)

Each facility will have an output based allocation of emissions calculated by multiplying the actual quantity of products produced by such facility by such product's benchmark which, depending on the product type, may be either an "established benchmark", or an "assigned benchmark" and then applying a scope adjustment to account for such facility's imports of electricity, heat or hydrogen (effectively deducting such imported quantities from such facility's output based allocation), as represented by the following formula:

$$OBA = \sum_i (BE_{i-Y} \times P_i) + \sum_j (BA_{j-Y} \times P_j) - ((BE_{E-Y} \times I_E) + (BE_{Hy-Y} \times I_{Hy}) + (BE_{IHe-Y} \times I_{He}))$$

where

"OBA" is the output-based allocation for the facility for the reporting period;

"BE_{i-Y}" is the established benchmark for year Y for each product i;

"i" is each product of the facility that has an established benchmark;

"Y" is the year in which the reporting period occurs;

"P_i" is the production for each product i for the facility during the reporting period;

"BA_{j-Y}" is the assigned benchmark for year Y for each product j;

"j" is each product of the facility that has an assigned benchmark;

"P_j" is the production for each product j for the facility during the reporting period;

"BE_{E-Y}" is the established benchmark for year Y for electricity;

"IE" is the electricity imported by the facility during the reporting period, expressed in megawatt hours;

"BE_{Hy-Y}" is the established benchmark for year Y for hydrogen;

"I_{Hy}"

(a) in the case of a facility producing a product with a benchmark unit of "Alberta complexity weighted barrel" is zero, and

(b) in the case of any other facility, is the hydrogen imported by the facility during the reporting period, expressed in tonnes;

"BE_{IHe-Y}" is the established benchmark for year Y for industrial heat;

"I_{He}" is the heat imported by the facility during the reporting period, expressed in gigajoules.

Established Benchmarks

The CCIR contemplates two types of benchmarks. Those that are "established" and those that are "assigned". Generally, products produced by more than one regulated facility will have an established benchmark.

With the exception of products like electricity (which uses a benchmark based on "good as best gas") and industrial heat (which uses a benchmark based on standard boiler efficiency) established benchmarks are determined based on production-weighted average, best-in-class or top quartile production methodologies. The production-weighted average approach contemplates a benchmark based on 80 percent of a production-weighted average of emissions (subject to stringency adjustments discussed below). However, where such production-weighted average approach results in a reduction requirement more stringent than the best performing facility in a sector, the emissions intensity of such facility will then typically become the basis for the "best-in-class" benchmark. For certain other products (e.g., oil sands in situ and mining bitumen) a top quartile methodology is employed to arrive at the established benchmark, whereby the emissions intensity of the facility responsible for the 25th percentile of production of emissions for such sector becomes the basis for the established benchmark.

Each such established benchmark has a 1 percent tightening rate that applies in compliance years 2020 and thereafter such that the established benchmark (excluding the portion thereof attributable to industrial emissions) gradually becomes more stringent over time.

Below is a list of the current established benchmarks.

Established Benchmarks for Products

Product	Established benchmark for 2018 (tonnes of CO2e per benchmark unit)	Established benchmark for 2019 (tonnes of CO2e per benchmark unit)	Established benchmark for 2020 (tonnes of CO2e per benchmark unit)	Established benchmark for 2021 (tonnes of CO2e per benchmark unit)	Established benchmark for 2022 (tonnes of CO2e per benchmark unit)	Established benchmark for 2023 and subsequent years (tonnes of CO2e per benchmark unit) is determined as follows:	Benchmark Unit
Ammonia	1.942	1.942	1.935	1.928	1.921	*BE = **BE_{Y-1} - ***0.007	Tonne
Ammonium nitrate	0.3260	0.3260	0.3250	0.3240	0.3230	BE = BE_{Y-1} - 0.0010	Tonne
Bituminous coal	0.07053	0.07053	0.06982	0.06911	0.06840	BE = BE_{Y-1} - 0.00071	Tonne
Cement	0.7853	0.7853	0.7823	0.7793	0.7763	BE = BE_{Y-1} - 0.0030	Tonne
Electricity	0.3700	0.3700	0.3663	0.3626	0.3589	BE = BE_{Y-1} - 0.0037	Megawatt hour
Hardwood kraft pulp	0.1768	0.1768	0.1751	0.1734	0.1717	BE = BE_{Y-1} - 0.0017	Air dry metric tonne
Hydrogen	7.970	7.970	7.890	7.810	7.730	BE = BE_{Y-1} - 0.080	Tonne
Industrial heat	0.06299	0.06299	0.06236	0.06173	0.06110	BE = BE_{Y-1} - 0.00063	Gigajoule
Oil sands in situbitumen	0.3504	0.3504	0.3469	0.3434	0.3399	BE = BE_{Y-1} - 0.0035	m3 of bitumen
Oil sands mining bitumen	0.1954	0.1954	0.1934	0.1914	0.1894	BE = BE_{Y-1} - 0.0020	m3 of bitumen
Refining	3.831	3.831	3.793	3.755	3.717	BE = BE_{Y-1} - 0.038	Alberta complexity weighted barrel (in thousands)
Softwood kraft pulp	0.2416	0.2416	0.2392	0.2368	0.2344	BE = BE_{Y-1} - 0.0024	Air dry metric tonne

Note: The values in the columns for 2020, 2021 and 2022 reflect the application of an annual 1% tightening rate.
*BE is the established benchmark for the year.
**BE_{Y-1} is the established benchmark for the previous year.
*** is the tightening rate.

Source: Schedule 2 of the *Carbon Competitiveness Incentive Regulation* (Alberta)

Assigned Benchmarks

Assigned benchmarks differ from established benchmarks in that they are facility specific rather than product specific due to the fact that, with a few notable exceptions, they only apply to products that are produced at a single regulated facility. Currently, those products include linear alpha olefins, calcinated coke, iso-octane, carbon black, sub-bituminous coal, methanol, lime, magnesium oxide, nickel, cobalt, live cattle weight, and landfill gas methane. Assigned benchmarks are typically 80 percent of the production-weighted average of emissions for such facility (subject to stringency adjustments, if warranted).

Notwithstanding the foregoing, there are assigned benchmarks for products produced by more than a single regulated facility in the following instances:

Sector	Product Categories	Benchmark Approach
Oil and Gas	Upgrading Natural Gas Processing Natural Gas Transmission Network	80% of facility production weighted average
Fertilizer	Other Fertilizer Products	
Chemical	Multi-Product Chemicals	

Source: Table 4 of Standard for Establishing and Assigning Benchmarks – Carbon Competitiveness Incentive Regulation Version 1.0 December 2017

The Alberta government indicated that for the Upgrading Natural Gas Processing and Multi-Product Chemicals product categories, insufficient data prevented the creation of an established benchmark, but that they intend to move these assigned benchmarks to established benchmarks as soon as possible. As for Natural Gas Transmission Networks and Other Fertilizer Products, due to difficulty in production metrics and small proportion of emissions, respectively, they are intended to continue to be subject to assigned benchmarks, irrespective of the fact that multiple regulated facilities produce such products.

Stringency Adjustments

For benchmarks both assigned and established, that employ production-weighted average methodology, the typical starting point of 80 percent of the production weighted average can be adjusted upwards (thereby reducing the stringency of the reduction requirement) in 10 percent increments up to 100 percent, provided that such facility can demonstrate either: (i) an economic impact analysis indicating that the CCIR compliance costs for such facility reveals operational vulnerability (based on ratios of compliance costs to a facility's sales or profit figures), provided such facility is also in an EITE sector, or (ii) that it deploys "best-in-class technology" or "best available technology that is economically achievable."

Transition

For the 2017 compliance year, the SGER will continue to apply, with the CCIR's reporting and compliance requirements commencing in respect of the 2018 compliance year and thereafter. For compliance years 2018 and 2019 any true-up obligations a facility may have are reduced by 50 percent and 25 percent respectively, provided that such reductions cannot operate to reduce a facility's true-up obligation below its true-up obligations in 2016 under the SGER.

These reductions apply equally to regulated facilities in a "credit" position as well (i.e., where a facility's TRE is less than its OBA, entitling it to be issued emission performance credits) such that a facility entitled to receive emission performance credits in respect of the 2018 compliance year will receive 50 percent of such credits, and 25 percent of such credits for 2019.

Compliance

Compliance Options

Compliance options for regulated facilities under the CCIR are roughly analogous to those previously under the SGER, as a facility may physically abate its emissions or otherwise "true-up" its emission reduction requirements under the CCIR by applying emission offsets, emission performance credits or fund credits, or a combination of the foregoing. Like the SGER, there are no limits on applying fund credits purchased from the Alberta government, to satisfy such requirements, however, the CCIR now restricts how emission performance credits and emission offsets (collectively referred to as "credits") can be applied in respect of any such true-up obligation.

Limiting credit usage was expected, as the Alberta government announced on March 3, 2017, that credit usage would be capped at 30 percent of a facility's true-up obligation for the 2018 compliance year and onward. However, the CCIR, while relaxing the 30 percent cap by replacing it with a sliding scale of 50 percent up to 60 percent as detailed below now adds additional restrictions by placing an expiry date on credits and restricting credit usage based on the vintage of such credits.

Limits on Credit Usage—Old versus New

Credits under the CCIR are now broadly categorized into two groups: old (2016 vintage year or older) and new (2017 vintage year or later). Each compliance year now has specific caps on the percentage of credits that can form a facility's true-up obligation, with a further sub-cap on the percentage of old credits forming such true-up obligation in each compliance year, as illustrated by the following chart:

	Credit Limit On	2018	2019	2020	2021	2022
Limit on Credit Usage	New and Old	40%	40%	40%	40%	60%
	New	10%	15%	20%	20%	

Source: Compliance Flexibility Policy Fact Sheet—December 2017—Government of Alberta

Expiration of Credits

Under the CCIR, credits now have an expiry date relative to their vintage year such that credits from 2014 and earlier expire in 2020 and credits from 2015 and 2016 expire in 2021. New credits created in 2017 and onward are subject to an eight-year expiry such that 2017 credits expire in 2025. In each case, such credits can be used for the compliance year in which they expire.

Annual Forecasting and Quarterly Reporting/Compliance

For regulated facilities whose emissions exceed one megatonne of CO_2e, they will be required to provide a forecast of the anticipated emissions for the following year by no later than November 30 of the preceding year save for those facilities that exceeded such threshold in 2017, which are required to submit such forecast no later than January 15, 2018. In addition, such facilities will also be required to submit compliance reports with associated compliance true-ups on a quarterly basis for so long as they remain above the one megatonne CO_2e threshold.

For regulated facilities that do not exceed such threshold, annual submission of compliance reports by March 31 of the year immediately following the compliance year is all that is required.

Important Dates

Below are a few important dates to be mindful of:

Submission of Forecasts and Compliance Reports

Regulated Facilities ≤ 1 MT of CO_2e	
March 31 of following compliance year	deadline for submitting annual compliance report for prior compliance year
Regulated Facilities > 1 MT of CO_2e	
January 15, 2018	deadline for submitting emission forecast for 2018 compliance year
November 30 of current compliance year	deadline for submitting emission forecast for the following compliance year
May 15 of current compliance year	deadline for submitting Q1 compliance report
August 15 of current compliance year	deadline for submitting Q2 compliance report
November 15 of current compliance year	deadline for submitting Q3 compliance report
March 31 of following compliance year	deadline for submitting annual compliance report for prior compliance year
Application for Assigned Baseline	
September 1, 2018	deadline for submitting application for assigned baseline for 2018 compliance year
June 1 of the current compliance year	deadline for submitting application for assigned baseline for such compliance year
Opt-In/Opt-Out	
June 1, 2018	deadline to apply to opt-in for 2018 compliance year
June 1 of the year preceding the compliance year in which such facility will opt-in	deadline to apply to opt-in for 2019 compliance year and onwards

Next Steps

Bennett Jones is ready to assist clients who wish to gain a better understanding of the CCIR, and the risks and opportunities it presents.

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Posted on: December 14, 2017

DON'T YOU WANT ME? B.C. SUPREME COURT AWARDS SEVERANCE TO AN EMPLOYEE AFTER EMPLOYER RETRACTS OFFER OF EMPLOYMENT

By: Michelle Quinn

In the recent decision of *Buchanan v. Introjunction Ltd.,* 2017 BCSC 1002, the B.C. Supreme Court found that the plaintiff employee was wrongfully dismissed when his employment was terminated shortly after his contract of employment with the defendant employer was executed but before he actually started work. The Court awarded him six weeks' severance pay.

THE FACTS

The plaintiff, Colton Buchanan ("Buchanan") brought a wrongful dismissal action against the defendant, Introjunction Ltd ("Introjunction") when his offer of employment was retracted shortly after he signed a written contract of employment with the defendant (the "Employment Agreement").

In mid-July 2016, while employed by a company known as LocalSphere Digital Media, Buchanan applied for employment with Introjunction. Following receipt of Buchanan's job application, he was invited to meet with representatives of Introjunction.

After a series of meetings, Introjunction provided Buchanan with a letter dated September 29, 2016. In mid-October 2016, after some discussion pertaining to the terms of employment, Buchanan received and executed an Employment Agreement. On October 16, 2016, he returned the Employment Agreement to Introjunction.

On October 29, 2016, Introjunction's Chief Executive Officer, Mike Nabavi ("Nabavi") met with Buchanan and advised him that Introjunction was "retracting" its offer of employment.

The Employment Agreement provided that Buchanan would start his employment with Introjunction effective November 1, 2016 in the position of senior software engineer at an annual salary of $125,000. He was also eligible to participate in a stock option plan and to receive a company-wide bonus. The Employment Agreement also contained the following probation clause:

Employee's employment shall be subject to a probation period of three months beginning on the Effective

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Date during which time the Employer may terminate the employment without notice or cause.

Subsequent to Introjunction's "retraction" of the Employment Agreement, Nabavi, on behalf of Introjunction, suggested to Buchanan that Introjunction may be able to assist him financially or with some short-term employment. Buchanan did not pursue any short-term work with Introjunction.

On December 19, 2016, Buchanan commenced employment with another company.

THE ISSUES

The issues before the Court were three-fold:

1. Did Introjunction's "retraction" of the Employment Agreement constitute a wrongful dismissal entitling Buchanan to seek damages in lieu of reasonable notice? Included in this issue was the question of whether Introjunction could rely on the probation clause to terminate Buchanan's employment without obligation;

2. If Buchanan was entitled to reasonable notice, what was the appropriate period? and

3. Did Buchanan fail to mitigate his losses?

THE DECISION

Regarding the first issue, Justice Skolrood held that Introjunction could not rely on the probation clause to support its termination of Buchanan without notice. The Court reached this conclusion for the following reasons:

> *[18] First, on its face, the probation clause provides that the three month probation period commences as of the effective date of November 1, 2016. Thus, it was not in force on October 29, 2016 when the defendant retracted the Contract. Had the defendant intended to maintain a right to terminate the Contract without notice at any time after execution, it could have included a term to that effect. In DeGagne, Madam Justice Dardi similarly found that a probation clause had no application prior to the employee actually starting work (at para. 45).*
>
> *[19] Second, I reject the defendant's argument that had the probation clause applied, it gave the defendant an unfettered right to terminate the plaintiff without notice or cause. The purpose of a probationary period is to permit the employer to engage in a good faith assessment of the employee's suitability for the position in issue.*

The Court found that Introjunction could not rely on the probation clause to escape its obligation to pay damages in lieu of notice. There was no good faith assessment by Introjunction of Buchanan's suitability for the job for which he was hired. Suitability played no role.

The Court further held that Introjunction's "retraction" of the Employment Agreement amounted to a repudiation which, based on the parties' communications, was accepted by Buchanan. Introjunction stated a clear intention not to be bound by the Employment Agreement and it was open to Buchanan to treat the Employment Agreement as at an end and to sue for damages.

Buchanan was wrongfully dismissed from his employment and was awarded damages equivalent to six weeks' notice.

As to whether Buchanan failed to mitigate his losses by not accepting Nabavi's offer of short-term work; on this particular point, the Court stated that Buchanan was not unreasonable for declining to pursue an *"ill-defined job"* for unknown hours at a reduced salary from Introjunction who had recently advised him that there was no need for his services.

The Court did note that Nabavi acted *"honourably and had a genuine interest in helping"* Buchanan, however, his offers of assistance were not ones that a reasonable person would have accepted given all of the prevailing circumstances.

LESSONS FROM *BUCHANAN*

For employers the lessons from Buchanan are clear: if you decide to terminate an employment agreement without cause, you must provide notice, even in situations where the contract is terminated before an employee starts work. Another key point to remember is that probationary clauses are not to be viewed as a mechanism to deny an employee his or her entitlement to notice, or pay in lieu of notice. Rather, the rationale behind incorporating a probation provision into an employment agreement is to permit the employer to engage in a good faith assessment of the employee's suitability for the position.

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The Bogota City Council approved the future budgetary allocations of the first metro line

Thu, 11/09/2017 - 10:38

NewsFlash: 396

Infrastructure and Public Utilities

The Bogota City Council approved the future budgetary allocations (vigencias futuras) for the financing of the first metro line of Bogotá and executed the financing agreement with the Nation

On October 31, the Bogota City Council approved the future budgetary allocations (vigencias futuras) for an amount equivalent to 6.08 billion pesos (approximately USD$2,03 billions), resources that will be committed by the District Administration to assume 30% of the financing of the first metro line of Bogotá, in addition to the 70% assumed by the National Government.

The previous step occurred after the National Government, through CONPES 3900, declared the strategic importance of the first metro line of the Bogotá, committing national resources for 70% of the project value.

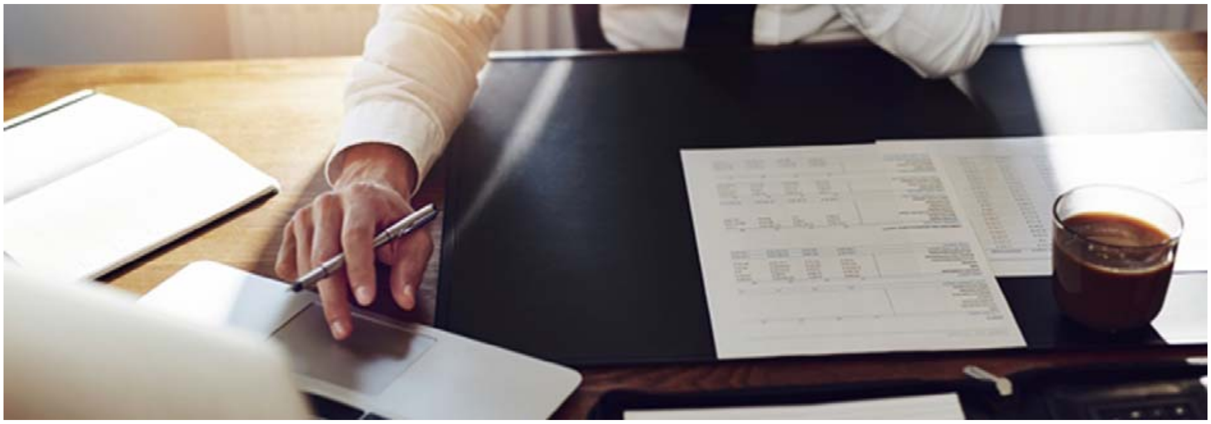
Likewise, on November 9, the District and the National Government signed the co-financing agreement, an agreement that guarantees the commitment of the resources required to perform the project.

Following the aforementioned steps, the District Administration is planning to formally open the public tender at the beginning of 2018, expecting to start the construction of the project in 2019.

For more information please visit us at www.bu.com.co

Carlos Umaña Trujillo
Claudia Navarro Acevedo
Julián Parra Benítez

CORPORATE TAX PAYMENT - Costa Rica



The annual Corporate Tax for 2018 fiscal year must be paid during this month of January, and should be done on January 31st at the latest.

The Corporate Tax must be paid by any company, branch of a foreign company or its representative, as well as any individual limited liability company, currently registered at the Public Registry, or register hereinafter in the Public Registry.

The Corporate Tax must be paid, according to the following rates:

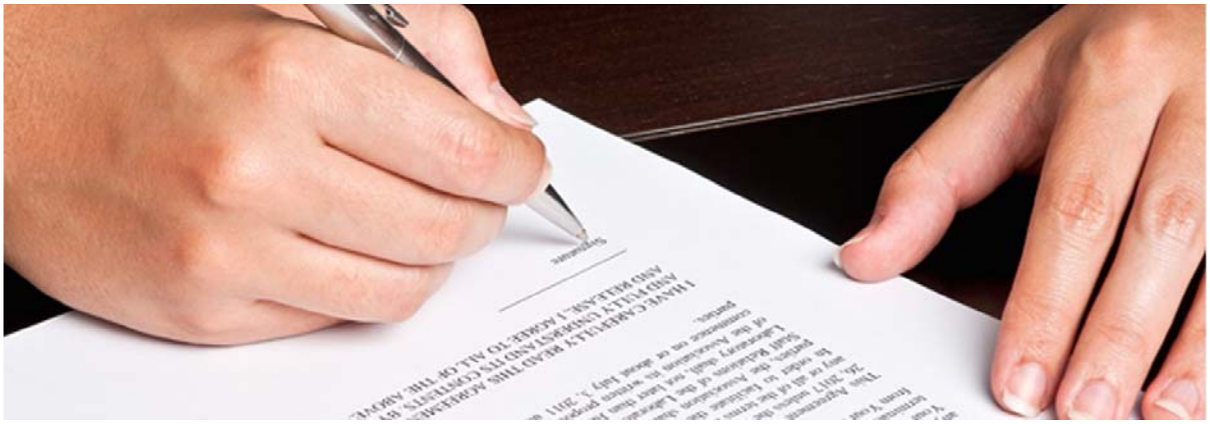
Entity (Annual Income) *Base salary to be determined annually	Tax Fee
Legal entities without business activities (with no reported income).	15% of a Base Salary* ₡64 650 Approx. $114
Legal entities with gross income under 120 base salaries.	25% of a Base Salary* ₡107 750 Approx. $190
Legal entities with gross income between 120 base salaries, and 280 base salaries.	30% of a Base Salary* ₡129 300 Approx. $228
Legal entities with gross income over 280 base salaries.	50% of a Base Salary* ₡215 500 Approx. $380

*The base salary for this year was established in 431.000 colones, approximately $755

Failure to comply with this obligation could lead to economic penalties including additional interests. Also, the entities that do not pay the tax cannot sign any agreements with the Costa Rican Government or any of its dependencies, nor will be able to update any information or obtain certifications from the Costa Rican Public Registry.

Arias

MODIFICATION OF THE INCOME TAX REGIME - GUATEMALA



In Guatemala, lucrative activities engaged by taxpayers are subject to Income Tax ("ISR" by its acronym in Spanish), in accordance with the provisions of Decree 10-2012. Guatemalan taxpayers can choose to register under one of the following regimes:

1. Regime over profits: with a 25% tax rate over profits, the tax is paid quarterly by applying one of the following formulas:

a. Partial accounting closings or preliminary liquidations of their lucrative activities at the end of each quarter, to determine the taxable base; or,

b. The taxable base estimated at an eight percent (8%) of the total gross income derived from lucrative activities quarterly, minus the exempted income.

2. Simplified optional regime on gross revenue:

a. Gross income between Q.1.00 to Q.30,000.00: taxed at a 5% rate payable monthly.

b. Gross income over Q.30,000.00 is taxed at a fixed amount of Q.1,500.00 plus 7% rate over the surplus of Q.30,000.00.

Article 51 of Decree 10-2012allows taxpayer to modify their income tax regime prior written notice to the Guatemalan Tax Authority. Such notice shall be given during the month preceding the beginning of the each fiscal year.

Consequently, December is propitious to apply for the change of income tax regime for the following year. If taxpayers consider such modification convenient to their interests, the abovementioned notice must be given within the next days, for the new regime to apply form **January 1st, 2018**.

COUNSELLORS AT LAW

NEWS DETAIL

13/10/2017

BILL ON OIL PALM: INCENTIVE PACKAGE FOR BUSINESS ACTORS

The Indonesian Government and the House of Representatives have agreed to put the Bill on Palm Oil (the "Bill") as a priority to be enacted in 2017. The Bill has been criticized particularly by environmental activists who argue that there is no urgency for its enactment as most of the provisions are already contained in Law No. 39 of 2004 regarding Plantation (the "Plantation Law").

Regardless the controversy surrounding its enactment, here are the Bill's provisions of note:

Licensing

- Oil Palm licenses will be issued in accordance with the business activities, as follows:
  1. Oil Palm Plantation Business License for oil palm plantation cultivation;
  2. Oil Palm Industrial Business License for oil palm product processing; and
  3. Oil Palm Trading Business License for oil palm trading.
- The Oil Palm product processing business may be carried out alone or together with with the oil palm cultivation business.
- To engage in the oil palm business and in the oil palm trading activities, the following are required:
  1. Location Permit;
  2. Environmental Permit;
  3. Conformity with the respective region's spatial plan; and
  4. Conformity with the palm oil master plan and strategic plan.

The Bill is more detailed regarding the above requirements than the Plantation Law. However, it is unclear why the Location Permit is required for the trading activities.

- The Bill obligates medium and large scale oil palm companies which have obtained their license to (i) cooperate with small scale oil palm companies and with employees, and the surrounding community, and (ii) facilitate the development of an oil palm plasma plantation.

Land for Palm Oil Cultivation

The Bill stipulates the use of mineral land and/or peat land for oil palm cultivation. It adopts the stipulation of the Plantation Law regarding the maximum area, which is 25 hectares for small scale businesses and 100,000 hectare for large scale businesses.

- The Bill sets the following oil palm cultivation targets for oil palm plantation companies which have obtained their plantation business license and the land for its activities:
  1. Three (3) years as of the issuance of the license: at least 30% of the land must have been cultivated;
  2. Five (5) years as of the issuance of the license: at least 50% of the land must have been cultivated; and
  3. Eight (8) years as of the issuance: the entire land must have been cultivated.

Foreign Ownership

- The Bill requires foreign investors in the oil palm business to cooperate with domestic investor(s) by establishing an Indonesian limited liability company. It states that the foreign shareholding ownership will be further regulated in a specific government regulation. Whether a new foreign shareholding ownership limit will be set remains to be seen. At the moment, a 95% limit is set under the so-called Negative Investment List;

- Under the Bill, the foreign shareholders of oil palm companies which have become public companies are required to divest their shares in compliance with the maximum foreign ownership restriction, within three years (presumably as of the enactment of the Bill into a law). There are no provisions regarding the procedure for the divestment and the percentage.

Palm Oil Processing Industry

- The Bill divides oil palm processing industry into (1) cooking oil industry, (2) organic basic chemical industry, and (3) derivatives industry.
- The Bill adopts the provision of the current plantation regulation that 20% of oil palm processing companies' raw material must come from their own palm oil plantation. This means that an oil palm processing company cannot be an independent company and must integrate with an oil palm plantation.
- To guarantee the quality of the oil palm and the products of its processing, the Bill stipulates provisions regarding the standardization of oil palm cultivation and processing in accordance with Indonesian national standards.

Palm Oil Trading

- All products of oil palm processing must be registered with the Ministry of Industry. It is not clear as to why the registration is with the Ministry of Industry instead of with the Ministry of Agriculture.
- Export duties will be imposed for exportation of oil palm, crude palm oil, and derivative products of amounts which are competitive with the requirements of the palm oil exporting countries. The proceeds from the export duties will be used inter alia for oil palm research and development and for promoting and marketing the country's oil palm commodity.
- Exportation or importation of oil palm oil seeds requires a permit from the Minister of Agriculture. All imported palm oil seeds must meet the minimum technical and requirements and quality standards. The oil palm seeds certification must be done by the Ministry of Agriculture in accordance with national and international standards.

Incentives for Oil Palm Investors

- Oil palm investors will be provided with facilities/incentives. To be eligible for the incentives, an investor must meet the conditions, such as providing a good size of employment and technology transfer, and preserving the environmental sustainability.
- The facilities/ incentives which are available to qualified investors are, among others:
    1. Income tax reduction;
    2. Import duty exemption or relief for capital goods and machinery;
    3. Import duty exemption or relief for raw or supporting materials for production purposes within a certain period of time and upon fulfillment of certain requirements;
    4. VAT exemption for a certain period of time;
    5. Accelerated amortization;
    6. Land and building tax relief; and/or
    7. Product marketing support.

The Bill is currently being deliberated by the Indonesian government and the House of Representatives. If the Bill is passed, the Government must issue its implementing regulations at the latest of one year after the enactment of the Bill as a law. (By: *Adri Yudistira Dharma & Putri Wulandari*)

Santamarina + Steta

LEGAL UPDATE

January, 2018.

MEASUREMENT AND UPDATE UNIT 2018

On January 10th, the National Institute of Statistics and Geography published in the Official Gazette of the Federation, the value of the Measurement and Update Unit that will come into effect on February 1st, 2018 which was set at **$80.60 pesos** per day.

This Unit serves as an index, base, measurement or reference to determine the amount for the payment of obligations to the federal entities and Mexico City contemplated in federal laws, such as fines, taxes, governmental duties and others.

The official publication can be consulted directly at the following link: http://www.dof.gob.mx/nota_detalle.php?codigo=5510380&fecha=10/01/2018

In the event you require additional information, please contact the partner responsible of your account or any of the attorneys listed below:

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NEW CAPITAL REDUCTION PROCEDURE AND WHITEWASH EXEMPTION FOR FINANCIAL ASSISTANCE

The Companies Act 2016 ("CA 2016") which came into operation on 31 January 2017 (with the exception of certain provisions which are not relevant to this article) introduces various new concepts into Malaysian company law. These new concepts include an alternative procedure for the reduction of share capital and a whitewash exemption for the provision of financial assistance for the purchase of shares.

THE SOLVENCY TEST

Both of the newly-introduced concepts mentioned above require a solvency statement to be made in the prescribed form, whereby each director making the statement has to declare that he has formed the opinion that the company satisfies the solvency test laid out in section 112(1) of the CA 2016, namely that:

(a) immediately after the transaction there will be no ground on which the company could be found unable to pay its debts;

(b) the company will be able to pay its debts as the debts become due during the period of 12 months immediately following the date of the transaction **or** it is intended to commence winding up of the company within 12 months after the date of the transaction and the company will be able to pay its debts in full within 12 months after the commencement of the winding up; and

(c) the assets of the company exceed the liabilities of the company at the date of the transaction.

The solvency test has been discussed in greater detail in Legal Insights – A Skrine Newsletter - Issue No. 2/17 (June 2017).

ALTERNATIVE PROCEDURE FOR CAPITAL REDUCTION

The previous regime under the Companies Act 1965 ("CA 1965") provided that a company may only reduce its share capital by a special resolution subject to confirmation of the reduction by the Court. The CA 2016 retains this concept but also introduces an alternative procedure whereby a company may reduce its share capital by passing a special resolution which is supported by a solvency statement ("Section 117 Capital Reduction").

Procedural requirements

The procedure for carrying out a Section 117 Capital Reduction may be summarised as follows:

(1) All directors of the company make a solvency statement in relation to the reduction of share capital;

(2) The company passes a special resolution to reduce its share capital in accordance with its constitution within 14 days (in the case of a private company) or 21 days (in the case of a public company) from the date of the solvency statement;

(3) The company sends a notice to the Director General of the Inland Revenue Board and the Registrar of Companies ("Registrar") within 7 days of the date of the resolution. The notice must state that the resolution has been passed and contain the text and the date of the resolution. A copy of the solvency statement is to be lodged with the Registrar together with the notice;

(4) The company makes the solvency statement or a copy thereof available for inspection without charge by its creditors at its registered office for six weeks from the date of the resolution; and

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(5) The company advertises a notice of the reduction of share capital within seven days from the date of the resolution in two widely circulated newspapers in Malaysia – one in Bahasa Malaysia and the other in the English language.

The CA 2016 exempts a company whose reduction of share capital is solely by way of cancellation of any paid-up share capital which is lost or unrepresented by available assets from the requirement for a solvency statement.

Objection by creditor

Any creditor of the company may, within six weeks from the date of the resolution, apply to the Court for the resolution passed under the Section 117 Capital Reduction to be cancelled. The creditor is required to serve the application on the company as soon as possible. The company must, in turn, give notice of the application to the Registrar as soon as possible.

If the resolution has not been cancelled at the time when the application is to be heard, the Court may make an order cancelling the resolution ("Section 120 Order") if any debt or claim on which the application was based is outstanding, and the Court is satisfied that:

(a) the debt or claim has not been secured and the applicant does not have other adequate safeguards for the debt or claim; and

(b) it is not the case that security or other safeguards are unnecessary in view of the assets that the company would have after the reduction.

The Court is required to dismiss the creditor's application if it is not satisfied that there are sufficient grounds to make a Section 120 Order.

Effective Date of Section 117 Capital Reduction

If no application for cancellation of the resolution is made by any creditor, the company is required to lodge the documents specified in Section 119(1) of the CA 2016 with the Registrar within 6 to 8 weeks from the date of the resolution (i.e. within 2 weeks from the end of the period within which creditors may apply to Court for a cancellation of the resolution).

If one or more applications for cancellation of the resolution have been made, the proceedings for all such applications are to be brought to an end due to their being dismissed, withdrawn or for any reason as the Registrar may allow. The company is then required to lodge the documents specified in Section 119(2) with the Registrar within 14 days from the date on which the last of such applications was dismissed, withdrawn or bought to an end.

The reduction of the share capital will take effect when the Registrar has recorded the information lodged with him in the appropriate register. The Registrar will then issue a notice to confirm the reduction of share capital, which is conclusive evidence that all the requirements of the CA 2016 with respect to the reduction of share capital have been complied with.

THE WHITEWASH EXEMPTION FOR FINANCIAL ASSISTANCE

General prohibition

Under the CA 1965, a company was prohibited from providing financial assistance for the purpose of, or in connection with, a purchase or subscription of shares in the company or in its holding company. This general prohibition is retained in Section 123(1) of the CA 2016.

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In addition to the general prohibition, a further restriction is introduced in Section 123(2) of the CA 2016 which prohibits the provision of financial assistance for the purpose of reducing or discharging any liability that has been incurred by a person in the acquisition of shares in the company or in its holding company.

The Whitewash Exemption

Notwithstanding the general prohibition on financial assistance, Section 126 of the CA 2016 introduces a "*whitewash*" exemption which allows a company whose shares are not quoted on Bursa Malaysia to provide financial assistance for the acquisition of its own shares or shares in its holding company, or for the reduction or discharge of any liability incurred for the purpose of such acquisition of shares.

The granting of financial assistance under the whitewash exemption however is subject to the following requirements:

(1) The company must pass a resolution authorising the giving of financial assistance;

(2) Before the assistance is given, the company must pass a directors' resolution, setting out the full grounds of the conclusions of the directors, that (a) permits the company to give the assistance; (b) states that the giving of the assistance is in the best interest of the company; and (c) the terms and conditions under which the assistance is to be given are just and reasonable to the company;

(3) On the same day that the resolution for financial assistance is passed, the directors who voted in favour of that resolution must make a solvency statement that complies with provisions in relation to the giving of the assistance;

(4) The aggregate amount of the assistance and any other financial assistance given under Section 126 that has not been repaid must not exceed 10% of the aggregate amount received by the company in respect of the issue of shares and the reserves of the company, based on the most recent audited financial statements of the company;

(5) The company must receive fair value in connection with the giving of the assistance; and

(6) The assistance must be given not later than 12 months after the day on which the solvency statement was made.

Notification to members

Within 14 days from giving financial assistance under Section 126 of the CA 2016, the company must send to each member a copy of the solvency statement made in connection with provision of the assistance together with a notice that contains the following information:

(a) the class and number of shares in respect of which the assistance was given;

(b) the consideration paid or payable for those shares;

(c) the name of the person receiving the assistance and, if a different person, the name of the beneficial owner of those shares; and

(d) the nature, the terms and, if quantifiable, the amount of the assistance.

It is to be noted that the CA 2016 does not restrict the types of persons who are allowed to be given financial assistance under the whitewash exemption.

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Penalties for contravention

The penalty that may be imposed on an officer of the company who contravenes the general prohibition against financial assistance in Section 123 is a term of imprisonment not exceeding five years, or a fine not exceeding RM3,000,000, or both. Although the maximum term of imprisonment remains unchanged from the CA 1965, the maximum fine has been increased substantially from RM100,000 to RM3,000,000 under the new CA 2016. As in the case of the CA 1965, a person who is convicted of the offence may also be ordered to pay compensation to the company or the person who has suffered loss or damage as a result of the contravention.

Further, the company and every officer who contravenes the whitewash exemption provisions in Section 126 may be liable to a fine not exceeding RM3,000,000 or imprisonment for a term not exceeding 5 years or to both. In the case of a continuing offence, a further fine not exceeding RM1,000 per day may be imposed for each day that the offence continues after conviction.

Continued validity notwithstanding contravention

A newly introduced Section 124 provides that the validity of the financial assistance and any contract or transaction connected with the financial assistance is not affected only by reason of the contravention of the provisions in the CA 2016 on financial assistance.

CONCLUSION

The procedure for effecting a Section 117 Capital Reduction is a welcomed alternative to a court sanctioned capital reduction as it expedites the time frame and reduces the cost of implementation of a capital reduction exercise, in particular if no objections are made by the company's creditors.

The whitewash exemption for the provision of financial assistance in connection with a purchase of shares in the company or its holding company is a slight liberalisation of the absolute prohibition under the CA 1965. The legislators have put in place various safeguards against the abuse of this procedure. Firstly, the total amount of the assistance that can be provided is limited to 10% of the company's share capital and reserves. Secondly, the provision of assistance must be approved by a special resolution of members and a board resolution supported by a solvency statement. Thirdly, the giving of assistance must be in the best interest of the company and be on terms which are fair and reasonable to it. Fourthly, the severe penalties which may be imposed for contravention of the provisions against financial assistance may mitigate the risk of abuse. To prevent the company from being short-changed, the 2016 Act also makes it mandatory that the company receives fair value in connection with the giving of the financial assistance.

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Simpson Grierson

Havelock North Drinking Water Inquiry, Stage 2 Report released

December 15, 2017

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Local government Public Policy (inc Election 2017) Public law Water management

The Havelock North Drinking Water Inquiry released its Stage 2 report into the 2016 outbreak of gastroenteritis in Havelock North on 6 December 2017. It would be difficult to argue with the report's logic that high standards of care should apply to drinking water. The real question will be how far New Zealand's communities are willing (and can afford) to go towards implementing its recommendations in order to reduce the risk of similar outbreaks in the future.

The focus of Stage 2 of the inquiry was the improvement of the safety of drinking water in New Zealand, lessons to be learned from the Havelock North outbreak, and changes which should be made to achieve those goals **[2]**. Following the inquiry's investigation, 19 urgent recommendations and 31 further recommendations have been made, which together call for an entire overhaul of NZ's drinking water regulatory regime.

Vital importance of drinking water

The overarching principle that underpins the Report's assessments and recommendations is the *very high standard of care and diligence which should apply to the supply of drinking water* **[16]**. And this is the real emphasis of the approximately 7-month investigation, that there is a real risk of a substantially worse outbreak, which would put many lives at risk, and impact on NZ's international clean/green image. Given slightly different circumstances and/or a different pathogen, the outcomes of the outbreak could have been *substantially worse* **[17]**.

The recommendations set out are therefore fulsome and detailed, urging the government and local authorities to drastically reform how they manage drinking water. However, an important side note is that the catalyst for this report was the event at Havelock North, which is a very different environment in terms of drinking water than Auckland, Christchurch or the Tasman District. Is an entire overhaul of our current drinking water regime required or is there still room for "horses for courses"?

Should all drinking water be treated?

Most notably, the report recommends that all drinking water should be appropriately and effectively treated (Recommendations 6-8 and 20). Push-back against this suggestion has been rapid; for example, the Christchurch City Council has stated it does not consider treatment necessary in its circumstances, and while some territorial authorities have commenced or expanded their water treatment since the Havelock North incident, others have not.

The Inquiry considered several reasons presented to it about why universal treatment should not be mandatory, and did not consider any of them to be compelling. Given the Report's emphasis of the risk of doing nothing and the clear community opposition in some areas to treatment of drinking water, legislative change would be necessary before universal treatment became a reality, and this issue is likely to become a political football.

The type of water supplies that are targeted through any implementation of the recommendations will have a significant impact on the extent of benefits and the burden of the recommendations, and there will be limits to what can reasonably be justified on the basis of the Stage 2 report. In particular, despite the Inquiry acknowledging that self-suppliers were outside the scope of the inquiry, the Report urges the extension of its findings to those suppliers, not just to the networked supplies that were the focus of the inquiry and provided the evidential base for its findings. In the absence of an investigation into the nature and circumstances of self-suppliers, caution is warranted before requiring universal treatment of those supplies at this stage.

Counting the cost

A natural part of the objection by some councils to the treatment of all drinking water is the cost of doing so. If the risks of an outbreak are perceived as being low, then some may not see the need to spend substantial amounts of community money to reduce those risks further, particularly if treatment comes with a change in the taste of drinking water. However, likelihood is only one component, and the RMA proceeds on the basis that any potential effect of low probability that has a high potential impact is a relevant effect and cannot be ignored. A focus on avoiding outbreaks that could have significant impacts on communities is therefore understandable.

Despite the merits of reducing risk as much as possible, the Report does not fully address the cost of doing so. In fact, it specifically noted that an assessment of the financial implications of mandatory treatment was beyond the scope of the Inquiry **[152]**. Councils are on limited budgets and therefore need to make strategic choices about what is the priority for their local areas, which requires balancing of all the different effects against the economic cost of different responses. Assuming a limited appetite for hiking rates, increased expenditure on drinking water protection is likely to come at the expense of other community initiatives.

Recommendation 32 could assist in the necessary balancing exercise as it recommends that aggregated dedicated water suppliers be set up. If implemented, this approach may help to spread the cost over a wider area and allow smaller townships to obtain the funding ability of larger urban populations. This recommendation is also relevant to the 'political football' issue explained above. At a national level, the current Government may have difficulty requiring the formation of dedicated water suppliers, because Labour, NZ First and the Greens are on record as having opposed Watercare-like CCOs on the basis that they are contrary to local choice and subsidiarity. On the other hand, at a local government level, using CCOs to run and treat drinking water supplies could reduce the scope for water to be used as an election platform and increase the prospects of real outcomes in the short-term. In any event, further work is needed by the Government in this area to ensure the benefits of this structure outweigh the cost of setup.

"Easier" wins

However, amidst the 50 recommendations there are some that can be implemented more swiftly and with lower cost. In particular, Recommendation 37 calls for water suppliers to be required by the Director General to review their Water Safety Plans to ensure that leadership, governance and management understand the relevant drinking water risks and have appropriately addressed those risks in their strategic decision making, long term planning, audit and resource allocation processes, and delegations. It also calls for operational staff to understand the critical control points and other processes, and ensure that they are being effectively implemented.

While significant changes may take some time, at a minimum we anticipate that water suppliers will need to ensure their current systems are being effectively implemented and any obvious inadequacies are addressed.

National inquiry?

A final thought to note is that this inquiry was never intended to be a national inquiry into drinking water but that is what it has developed into. How to reduce the risk of similar outbreaks in the future was a small part of the overall terms of reference, which was focussed primarily on what happened in Havelock North. As noted above, the cost of the sweeping recommendations is not a focus of this Report and will require further consideration before any overhaul of the national drinking water regime is undertaken.

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GIDE

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CIVIL LAW | RUSSIA | NOVEMBER 2017

CHANGES TO THE REGULATIONS OF FINANCIAL TRANSACTIONS IN 2018

Significant amendments to Russian regulation of financial transactions have been approved as part of the on-going reform of the Civil Code of the Russian Federation (the "**Civil Code**").[1] The said changes (altogether, the "**Amendments**") cover various matters, including:

(1) loans and credit facility agreements;

(2) the assignment of rights;

(3) bank accounts and settlement (including new rules on escrow); and

(4) factoring agreements.

The Amendments will enter into force on 1 June 2018 and will generally apply to contracts entered into after that date.

In this alert we aim to briefly highlight those aspects of the Amendments that are most relevant for financial transactions between legal entities, rather than changes primarily affecting financial arrangements for individuals.

LOAN AND CREDIT FACILITY AGREEMENTS

- Loan agreements with non-bank organisations (i.e. lenders which are not banks or other credit institutions) can now be entered into as executory contracts (or "*консенсуальные сделки*"):[2] the parties may agree on the provision of a loan in the future, whereas previously a loan agreement was regarded as a real contract and thus existing only once the lender had transferred the loan principal to the borrower. This Amendment has two important impacts:

  (i) it significantly changes the perspective of the borrower's claims under a loan agreement: the borrower is now able to demand the provision of a loan by the lender; and

  (ii) it allows companies that do not qualify as "credit institutions" to participate in syndicated lending along with banks.

- Bank fees for a loan (other than interest) are to be construed as part of the loan principal and thus lawful and appropriate.

  This Amendment changes the earlier practice where courts only recognized the legality of such fees if they were paid for a separate service provided by a bank or intended to compensate for expenses incurred by the bank.

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[1] The legal basis for the Amendments is Federal Law No. 212-FZ dated 26 July 2017 "*On Amendments to the First and the Second Part of the Civil Code of the Russian Federation as well as Other Statutes of the Russian Federation"* (coming into force on June 2018).

[2] Earlier this was only possible for credit agreements, i.e. loan agreements with banks or other credit institutions.

- Securities may be the object of a loan.
- Interest rates applicable to a loan are by default equal to the key rates set by the Bank of Russia for the relevant periods.
- Parties may stipulate in a loan agreement that the loaned funds are to be provided by the lender to a third party designated by the borrower, and in that case the loan is to be regarded as having been granted directly to the borrower.
- This change apparently decreases the risks of a targeted loan being regarded as misused by the borrower and thus cancelled or sanctioned (as in many cases such agreements are entered into with a parent company as a formal borrowing entity, whereas the funds are in fact lent for its subsidiary, which is the actual borrower).
- If a loan (credit) agreement is entered into following a mandatory tender (i.e. in cases when, pursuant to the law, such agreement may only be entered by way of holding a public tender), the parties thereto may change the interest rates if the key rates set by the Bank of Russia are changed.

ASSIGNMENT OF RIGHTS

The Amendments abolish a debtor's ability to challenge a contractually prohibited assignment based on the assignee's awareness of such a restriction. At the same time, a similar prohibition continues to apply to the assignment of rights related to the performance of non-monetary obligations.

The parties to an assignment agreement will be authorised to limit the assignor's liability for the invalidity of the transferred contractual right: the limitations may extend to invalidity caused by circumstances (a) of which the assignor was not (and should not have been) aware of, or (b) about which the assignor warned the beneficiary (including rights to security provided for the obligation, rights to accrued interest, etc.).

Finally, the assignment of rights arising out of a contract entered into under a mandatory tender is now expressly allowed with respect to any rights to claim payment (monetary claims) under such contracts.

BANK ACCOUNTS AND SETTLEMENT REGULATIONS (INCLUDING ESCROW)

The most notable changes to the regime governing the letter of credit (the "**LC**") introduced by the Amendments are the following:

- the LC rules will thoroughly regulate relations between the issuing bank and the bank it is allowed to nominate (authorize) to pay the funds to the receiver (the "**Nominated Bank**"), as well as settlements between them (whereas previously it was relations between the issuing bank and its client that were the main focus of the Civil Code articles on the LC). In other words, the regulation will now be more detailed for cases where the LC is issued and paid by two different banks and not one and the same bank;
- the LC will be irrevocable by default:[3] the issuing bank will not be allowed to change its conditions or cancel the LC without the prior notification of the recipient of the funds; in addition, if the LC has been affirmed by the Nominated Bank, it cannot be changed or cancelled without the latter's consent;
- the list of actions to be performed by the issuing bank for the performance of the LC is no longer closed: it is not limited only to making payments and/or accepting bills of exchange, but includes other actions to be performed, as prescribed by the conditions of the LC; this apparently enlarges the sphere of application of the LC in practice; and

[3] Before the Amendments come into force, letters of credit are by default revocable.

- the *transferable LC* is to be brought under legislative regulation (instead of being acknowledged as an international trade custom). Under the amended Civil Code, a transferable credit is a LC that may be performed in favour of a person(s) designated by the recipient of funds, provided that the Nominated Bank has granted its consent. The recipient of funds may determine a list of documents to be provided by such second beneficiary in order for the LC to be performed in its favour.

The regulation on the transferable LC does not yet cover all of the important terms of its transfer and performance. For example, it is not clear whether the recipient of funds may 'transfer' only part of the credit to a second beneficiary, or whether it may allocate the credit in different shares between several beneficiaries (or whether multiple beneficiaries must have equal shares, etc.). In other words, it remains to be seen how the new provisions on the transferable LC will work in practice.

As mentioned above, the Amendments also set out regulations applicable to escrow accounts and widen the sphere of their potential use, in particular:

(a) an escrow mechanism is now available for various types of movable property (including cash, certificated securities) as well as non-cash funds and book-entry securities (i.e. securities title to which is evidenced through an entry in a special register rather than holding a physical certificate to such securities);

(b) the functions of an escrow agent may be performed by any person and not only by a bank.

At the same time, the legislation remains silent as to the requirements to be complied with by an organisation intending to act as an escrow agent; such as the licensing regime or other governmental control procedure. In other words, it remains to be seen whether and how the status of escrow agents will be regulated;

(c) it is determined who has title to the escrowed movable property: as a general rule, the escrow depositor holds the title until the date on which the escrow release conditions occur; after that date the title transfers to the beneficiary (where the escrow agent is generally responsible for any loss of or damage to the escrowed movables as a custodian);

(d) the escrow of book-entry securities is to be conducted by the making of an appropriate entry in the register of the securities by a competent person (authorized registrar, etc.);

(e) if escrowed property is non-cash funds and the escrow agent is not a bank, the funds will be deposited in the agent's nominal account; the receiving party of the funds from such an account will be the depositor – before the escrow release conditions occur – or the beneficiary – after the occurrence of those conditions; and

(f) the term of validity of escrow agreements is limited to a maximum of 5 years and is subject to notarisation (unless the escrowed property is non-cash funds or book-entry securities).

The Amendments also provide that escrowed property will be immune in the event of the bankruptcy of the escrow depositor. It is stipulated now that:

(a) escrowed property will not be included in the bankruptcy estate of the escrow depositor;

(b) the bankruptcy trustee will not be allowed to dispose of the escrowed property of the debtor;

(c) the bankruptcy of the escrow depositor will not impede the transfer of escrowed property to the beneficiary by the escrow agent for the purpose of performing the depositor's obligation towards the beneficiary; and

(d) if the escrow release conditions do not occur within six months following the initiation of the bankruptcy liquidation procedure, the escrowed property will be included in the bankruptcy estate.

In addition, the Amendments provide that escrowed property may not be forfeited due to enforcement proceedings against the escrow depositor, the beneficiary or the escrow agent. However, it is possible to apply judicial enforcement procedures to the depositor's or beneficiary's right of claim against the escrow agent.

FACTORING AGREEMENTS

The Amendments significantly widen the 'area' of factoring agreements:[4]

(a) Factoring no longer covers all assignments of rights for consideration. The law sets out that entities may also enter into other agreements under which the assignment of rights is subject to another entity's performing certain actions. This change will, presumably, facilitate the further development of securitisation and related instruments.

(b) The list of the types of monetary claims which may be factored has been expanded. Now it includes:

(i) rights arising out of any kind of contract, including licence agreements (whereas before the Amendments only rights under supply or service contracts could be factored); and

(ii) rights from contracts entered into at a tender, including contracts (previously, the factoring of rights under such contracts was prohibited).

(c) Rules on consideration for the assignment of rights in factoring arrangements have also been articulated. Whereas previously it was only possible to provide monetary funds as consideration, the Amendments now allow the factor to choose and conduct **any** two of the following activities:

(i) granting money (including as a loan or advance payment);

(ii) keeping records to monetary claims of the client against third parties (debtors);

(iii) exercising rights to monetary claims of the client (including demands for their payment, receipt of payments and related settlements); and

(iv) exercising rights under security agreements with respect to debtors' obligations.

(d) The further assignment of rights by the factor is no longer prohibited, unless otherwise agreed in the factoring contract.

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[4] A factoring agreement is generally an agreement under which one person undertakes to assign certain rights (rights to claim) to another person and the latter undertakes to pay for such assigned rights (rights to claim).

The Amendments aim to expand the scope of current regulations applicable to financial transactions and to make such regulations more practical and effective, thereby providing the parties with a broader range of options to achieve their business objectives. For example, the possibility to enter into executory loan agreements makes lending available for any company (not only banks) and strengthens the position of borrowers; reducing the grounds for challenging an assignment makes this instrument more stable and less dependent on the will of the debtor; and the update and clarification of the regulations on LCs may spark interest in this means of payment.

At the same time, to function effectively, the Amendments will likely require the future adoption of certain governmental acts regulating a number of practical (mostly procedural) aspects of the relevant commercial arrangements.

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Infamy and Public Shaming: The newest risk of using “offshore” entities

DENTONS RODYK

What investors, companies and high-net-worth individuals can do to protect their financial reputation

29 November 2017

While many companies and businesspeople actively manage their online and social media presence – many overlook the reputational impact of their financial and tax planning decisions. The recent “Paradise Papers” leak illustrates this point – with global audiences paying close attention to the roster of famous (and not-so-famous) names linked to each subsequent information leak. More than 120,000 names of people and companies have been identified.

The Paradise Papers leak involved the hacking of offshore law firm Appleby, and subsequent leakage of 13.4 million files to the Sueddeutsche Zeitung, a German newspaper, and the International Consortium of Investigative Journalists (ICIJ), an organisation known for its lengthy investigations. Global personalities like Shakira, Canadian Prime Minister Justin Trudeau, and US President Trump’s son-in-law Jared Kushner have been linked to either offshore accounts or account-holders.

While the trifecta of tax, the law and technology does not usually rise to the ranks of “celebrity gossip” – these scandals are symptomatic of a new risk of using “offshore” corporate entities. Beyond the risk of regulatory compliance – investors must also consider the public “naming and shaming” which may result when using offshore companies to hold property, aircraft, yachts, and investments in stocks and shares – among numerous other assets.

No reports have so far suggested that any of the activities mentioned in the Paradise Papers were illegal. However, the reputational damage alone may affect not only current holdings, but also future professional and investment opportunities. There may also be significant impact for business associates, employees, family members, and friends of the named individuals or entities.

This is not the first scandal of this type. Last year, global attention was captured by the “Panama Papers” scandal. But if there is no illegality, then why is public opinion so negative towards the use of offshore jurisdictions? It appears that part of the explanation relates to the perception that these jurisdictions are engaged in the selling of secrecy, and that people who use such jurisdictions are therefore assumed to have something to hide.

The growing international push for transparency and exchange of information amongst jurisdictions for tax purposes will only make it more likely that the “Paradise Papers” will not be the last of its kind – and high-net-worth individuals should prepare for eventualities. The possibility that many such “leaks” may have resulted from hacking or other illegal activities seems to be ignored, or even defended on various grounds. In such an environment, further “leaks” can only be expected.

Managing these risks is not only possible, but crucial. Many high-net-worth individuals have traditionally managed ownership of their assets in an ad-hoc or casual way – delaying proper tax planning for later years. However, by simply structuring asset ownership carefully and operating out of reputable jurisdictions, many of the reputational risks arising out Paradise-Papers-style hackings can be mitigated.

For example, a jurisdiction like Singapore offers companies and individuals a favourable tax regime, a well-developed legal system, and access to reputed law firms, legal professionals, and financial advisors. It is also a financial and business hub where foreigners and locals locate their business and financial activities for sound commercial reasons. The Singaporean government is also known for its commitment to the rule of law, as well as remaining vigilant of abuses in the financial sector.

Furthermore, Singapore has now made it easier for foreign corporate entities to transfer their company's registration to Singapore and become a Singapore company limited by shares under our Companies Act.

The Paradise Papers is only one instance, of many, of massive hacks of sensitive financial and legal information. However, individuals and companies using offshore accounts can effectively pre-empt reputational damage by engaging in careful tax planning and managing their assets from jurisdictions like Singapore, with strong reputations for financial compliance.

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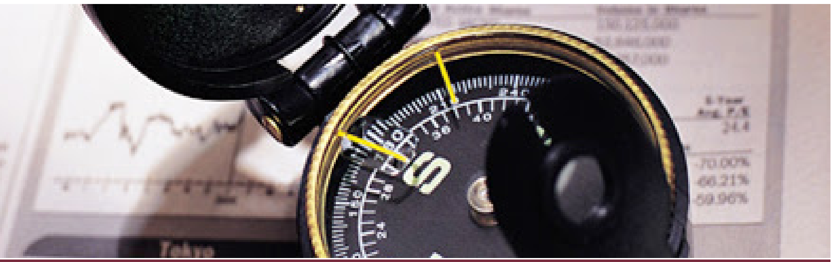

Summary of the Latest Amendments to the Labor Standards Act

01/11/2018

Summary of the Latest Amendments to the Labor Standards Act

Following the promulgation of the amended Labor Standards Act ("LSA") on December 21, 2016, many people from a wide spectrum of the general public have expressed concerns about the flexibility of the amendments, particularly regarding overtime pay on rest days, restrictions on the hours of overtime work, the weekly fixed day off and annual leave entitlements. Responding to such concerns, the Legislative Yuan (Taiwan's Legislature) passed the amendments to 8 provisions under the LSA on January 10, 2018. Such amendments will take effect on March 1, 2018.

Below is a summary of the key amendments to the LSA:

1. Work Hours and Wages on Rest Days (Article 24)

Current regulations stipulate that if an employee works on a rest day, (i) 4 hours of work or less shall be counted as 4 hours, (ii) 4 to 8 hours of work shall be counted as 8 hours; and (iii) 8 to 12 hours of work shall be counted as 12 hours. After the amendments to the LSA, work hours and wages on rest days will be calculated according to employees' actual hours of work.

2. Restrictions on the Hours of Overtime Work (Article 32)

Current regulations prescribe that overtime work shall not exceed 46 hours per month. In order to allow for more flexibility, the amendments to the LSA stipulate that if the employer obtains the approval of the labor union or the labor-management conference in the absence of a labor union, the maximum number of hours of overtime work per month may be increased to 54 hours, provided that the maximum number of overtime hours shall be limited to 138 (46*3) per quarter.

Moreover, if an employer has more than 30 employees, the employer will be obligated to file a report with the local competent authority for approval.

3. Compensatory time off in lieu of Overtime Pay (Article 32-1)

Current regulations are silent on the issue regarding how to calculate the hours of the compensatory time off when employees choose to take the compensatory time off in lieu of the overtime pay. After the amendments to the LSA, if employees choose to accept compensatory time off in lieu of overtime pay and the employer agrees, the hours of compensatory time off will be calculated according to employees' actual hours of overtime work. The period for taking compensatory time off may be negotiated between the parties ("Period"). However, if employees fail to use up their compensatory time off before the Period or the termination of their employment, the unused hours of compensatory time off shall be compensated by the payment of salary, which are calculated based on the statutory rates for overtime pay.

4. Hours of Rest between Working Shifts (Article 34)

After the amendments to the LSA, in principle, a mandatory 11 consecutive hours of rest between working shifts is required for employees who follow a rotating shift schedule. However, the length of such mandatory rest-period may be shortened to 8 consecutive hours, subject to (i) the announcement of the Ministry of Labor after the approval of the authority in charge of the company filing the application in consideration of the characteristics of work or special circumstances, and (ii) the approval of the union or the labor-management conference in the absence of a union. Moreover, if an employer has more than 30 employees, the employer is obligated to file a report with the local competent authority for approval if the length of the mandatory rest-period is to be shortened.

5. Adjustment of Fixed Day Off (Article 36)

Current regulations stipulate one fixed day off per week (or two fixed days off every two weeks for a business entity, only if that business entity has adopted a four-week flexible working-hour system). The amendments to the LSA allow for more flexibility to the arrangement of the weekly fixed day off. That is, even if an employer is not eligible to adopt a four-week flexible working-hour system, the one fixed day off per week may be adjusted every 7 days, subject to (i) the approval of the authority in charge of the company filing the application, (ii) the company filing the application falls in the list of industries designated by the Ministry of Labor, and (iii) the approval of the union or the labor-management conference in the absence of a union, but an employer who has more than 30 employees will be obligated to file a report with the local competent authority for approval if the weekly fixed day off is to be adjusted. In other words, under such adjustment, the one fixed day off may be freely assigned on a given 7-day period. As a result, the interval of two fixed day offs can be 12 days apart in an extreme case, i.e. the 1st and the 14th day of a given 14-day period.

6. Unused Annual Leave (Article 38)

Current regulations prescribe that unused annual leave must be compensated by payment of salary in lieu thereof on a yearly basis. The amendments to the LSA stipulate that unused annual leave at the end of a year may be carried over to the next year, subject to negotiation and agreement between employers and employees. However, if any portion of the deferred annual leave entitlement remains unused at the end of the next year or upon termination of the employment contract, the unused annual leave entitlement must still be compensated by payment of salary in lieu thereof.

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Ideas

FERC Rejects Proposed Grid Resiliency Pricing Rule and Opens Broader Inquiry

09 January 2018
Firm Thought Leadership

On January 8, 2018, the Federal Energy Regulatory Commission (FERC or Commission) terminated the proceeding it had initiated in late 2017 to address the Proposed Rule on Grid Reliability and Resilience Pricing (Proposed Rule) submitted to FERC by the Secretary of Energy. FERC determined that the Proposed Rule failed to satisfy the requirements of section 206 of the Federal Power Act. FERC concurrently initiated a new proceeding to evaluate the resilience of the bulk power system in regions operated by FERC-regulated independent system operators (ISOs) and regional transmission organizations (RTOs).

Background

The Proposed Rule, available here, if adopted, would have directed ISOs and RTOs to ensure, through their FERC-approved tariffs, that "eligible grid reliability and resiliency resources" be "fully compensated for the benefits and services [they provide] including reliability, resiliency, and on-site fuel assurance . . . and a fair return on equity." To qualify as an eligible grid reliability and resiliency resource, the Proposed Rule would have required that an electric generator meet the following criteria:

- Be physically located within a FERC-approved RTO/ISO;
- Be able to provide essential energy and ancillary reliability services (e.g., voltage support, frequency services, operating reserves, and reactive power);
- Have a 90-day fuel supply on-site enabling operation during emergencies, extreme weather, or disasters;
- Maintain compliance with all applicable federal, state, and local environmental requirements; and
- Not be subject to cost-of-service rate regulation by any state or local authority.

The Secretary of Energy initially directed FERC to take final action on the Proposed Rule by December 11, 2017. However, considering the voluminous record (including over 1,500 submissions), as well as the addition of two new members to the Commission following the close of the official comment period, FERC Chairman Kevin McIntyre requested, and the Secretary of Energy agreed to, a 30-day extension.

FERC Rejects the Proposed Rule

In yesterday's order, FERC noted the importance of grid resilience, but the Commissioners voted unanimously to terminate the pending proceeding on the Proposed Rule due to its failure to satisfy the "clear and fundamental legal requirements under section 206 of the [Federal Power Act]." The Commission explained that neither the Proposed Rule nor the record established in the proceeding satisfied section 206, which requires FERC to find that existing tariffs are unjust, unreasonable, unduly discriminatory or preferential and that the proposed remedy (i.e. the Proposed Rule's compensation mechanism for certain resources) is just, reasonable, and not unduly discriminatory or preferential before FERC may order a change to those tariffs.

FERC Initiates a New Proceeding to Address Resilience

Concurrent with terminating its consideration of the Proposed Rule, FERC initiated a new proceeding to evaluate resilience issues in RTOs/ISOs and determine whether further action is warranted. Unlike the Proposed Rule, which focused on a resource's availability of secure on-site fuel, the new proceeding will encompass a broad range of topics impacting resilience. For instance, FERC expects to consider activities such as wholesale market design, transmission planning, mandatory reliability standards, emergency action plan development, inventory management, and routine system maintenance.

Within this broader scope, the Commission established three specific goals for its new proceeding. First, the proceeding will seek to develop a common understanding of resilience. As a starting point in this process, the Commission offered the following initial definition of resilience: "the ability to withstand and reduce the magnitude and/or duration of disruptive events, which includes the capability to anticipate, absorb, adapt to, and/or rapidly recover from such an event."

Second, FERC intends to develop an understanding of how each RTO/ISO assesses and addresses resilience in its footprint. To this end, the Commission has requested a broad range of information from the RTOs/ISOs regarding identification of threats to resilience, including but not limited to: identification, and methodology for identification, of primary risks to resilience including low-frequency, high-impact risks; information on how the impact and likelihood of resilience-related risks are evaluated; identification of any existing or planned studies and their scope and findings regarding resilience; information on coordination with relevant stakeholders to identify resilience-related threats; and obstacles to assessing such threats. The Commission also directed each RTO/ISO to submit information describing how it mitigates risks to resilience, such as describing how any relevant operational policies, procedures, or market-based mechanisms address resilience-related threats and whether any such processes could be improved.

Third, based on its analysis of the information submitted in response to the topics identified above, the Commission will evaluate whether further action regarding resilience is appropriate.

Concurring Statements

Three of the Commission's five members submitted written concurrences explaining their reasons for supporting the unanimous order.

In his concurrence, Commissioner Chatterjee clarified his view that the immediate order is only a "first step." Further, he argued that enough evidence had been presented to issue an order pursuant to section 206 requiring each RTO/ISO to either (1) submit tariff revisions to provide interim compensation for existing generation resources that may provide necessary resilience related attributes and are at risk of retirement, or (2) show cause why it should not be required to do so.

Commissioners LaFleur and Glick emphasized the view that the Proposed Rule was fundamentally flawed. LaFleur voiced her “serious concerns” with the Proposed Rule's out-of-market payment mechanism and noted that, if warranted, FERC should take a fuel-neutral, transparent approach to the issue of resilience. Commissioner Glick stated that the Proposed Rule had “little, if anything, to do with resilience.” Rather, he argued, it was designed as a “bailout targeted at coal and nuclear generating facilities.” Commissioner Glick also emphasized the need to focus on the threat to the bulk power system posed by challenges to the transmission and distribution systems, rather than focusing solely on generation resources.

Implications and Next Steps

FERC’s order effectively ends the Secretary of Energy’s initiative to provide immediate economic support to coal and nuclear facilities in the form of a guaranteed cost recovery and a “fair rate of return.” The Proposed Rule was widely opposed by representatives of numerous industry segments, including solar, wind, and natural gas-fired generation, who argued that it would distort markets, among other things. Instead, FERC will take a more comprehensive approach to assessing resilience-related risks, and the order leaves open the issue of whether additional Commission action is warranted.

The order directs RTOs and ISOs to file responses to the information requests discussed above by Friday, March 9, and third parties will have until Monday, April 9, to submit responsive comments, after which FERC will decide whether further action is necessary.

FERC’s order and the concurring opinions of Commissioners LaFleur, Glick, and Chatterjee are available here.

Please contact one of the authors below or your Baker Botts relationship attorney with any questions.

# # #

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Bundle up: CMS releases request for applications for new version of Bundled Payments for Care Improvement model

January 12, 2018

This week, the Centers for Medicare & Medicaid Services (CMS) released details on the much-anticipated new version of the Bundled Payments for Care Improvement (BPCI) payment model, which will be known as BPCI Advanced.

The original BPCI model was designed to bundle payment for health care providers and practitioners providing items and services to Medicare beneficiaries across settings over an episode of care in order to generate savings and improve quality through better care management, elimination of unnecessary care, and reduction of post-discharge emergency department visits and readmissions. CMS will build on its experience with the original BPCI model and other bundled payment models in BPCI Advanced.

Like the original BPCI model, BPCI Advanced will be a voluntary model, and prospective participants must apply and be accepted by CMS to participate. The Request for Applications (RFA) released by CMS lays out the timeline for applications and enrollment and offers information on how CMS will structure the new model, including the list of 32 available Clinical Episodes, details on how shared savings or losses will be calculated, and other requirements that participants will need to meet.

Our alert below describes some of the key elements of the BPCI Advanced Model.

Timing

The online portal for applications opened on January 11, 2018, and applications must be submitted by **March 12, 2018**. The model's performance period will begin on October 1, 2018, with a second enrollment date available on January 1, 2020. The performance period will end on December 31, 2023.

Participant Roles

A Participant can be either a Convener Participant or a Non-Convener Participant.

Convener Participants apply to participate in the model and take on risk both on their own behalf and on behalf of one or more Episode Initiators (physician group practices or acute care hospitals that trigger the beginning of a Clinical Episode). Convener Participants can be any type of entity, whether or not enrolled in Medicare as a provider or supplier.

Non-Convener Participants take on risk only for themselves and apply to participate in the model on their own. Non-Conveners can be only Medicare-enrolled physician group practices and acute care hospitals.

Participants of either type may enter into agreements with individual physicians and non-physician practitioners, referred to as Participating Practitioners, who will furnish care during Clinical Episodes. (See more details on Clinical Episodes below.)

Participants of either type also may choose to include provisions in their agreements with Participating Practitioners to share any gains or losses under BPCI Advanced. Participating Practitioners, as well as Episode Initiators, entering into such agreements are referred to as Net Payment Reconciliation Amount (NPRA) Sharing Partners. (The NPRA is the payment that CMS will make to Participants that achieve net savings under the terms of the model. But note that an NPRA Sharing Partner may share both net savings and net losses with its partner Participant.)

Clinical Episodes

The Clinical Episode is the basic unit used to measure a Participant's performance under the model. A Clinical Episode is triggered when an Episode Initiator submits a claim for a qualifying inpatient hospital stay, or outpatient procedure. Whether a claim triggers a Clinical Episode for a particular BPCI Advanced Participant depends on the types of Clinical Episodes for which that Participant has agreed to be held accountable under the model.

Once triggered, the Clinical Episode includes the triggering stay or procedure and all other items and services furnished to the patient over the next 90 days, if paid for under Medicare fee-for-service (FFS). Certain items and services are specifically excluded from the Clinical Episode, such as those provided to beneficiaries enrolled in a Medicare Advantage plan or who die during the triggering stay or procedure, services furnished during inpatient stays for major trauma, cancer care, or organ transplants, new technology add-on payments or pass-through payments, and hemophilia clotting factors.

BPCI Advanced will initially include 29 inpatient Clinical Episodes and three outpatient Clinical Episodes. Participants must commit to be held accountable for one or more Clinical Episodes and may not add or drop those selected Clinical Episodes until January 1, 2020.

A full list of the Clinical Episodes is available on the CMS website, and includes Clinical Episodes related to cardiac, gastrointestinal, joint, pulmonary, spine, joint, and renal diagnoses and procedures. Unlike the original BPCI model, BPCI Advanced includes three outpatient Clinical Episodes: Percutaneous Coronary Intervention (PCI); Cardiac Defibrillator; and Back & Neck except Spinal Fusion.

Bundled Payments Through Retrospective Reconciliation

BPCI Advanced will use a retrospective bundled payment mechanism under which claims for items and services furnished during a Clinical Episode will be subject to a semi-annual reconciliation against the target price for that Clinical Episode, which is determined in advance based on a 3 percent discount off the benchmark cost of the Clinical Episode and subject to adjustment based on the Participant's actual patient case mix. As noted above, all items and services furnished to a BPCI Advanced beneficiary during the Clinical Episode (with limited exceptions) are included in the expenditures to be compared to the target price. If the total expenditures for the Clinical Episode are below the target price, the Participant earns a "Positive Reconciliation Amount," but, if the total expenditures for the Clinical Episode are greater than the target price, the Participant owes a "Negative Reconciliation Amount."

At each semi-annual reconciliation, CMS calculates each Participant's total reconciliation amount by netting the reconciliation amounts (positive and negative) for each Clinical Episode. In short, whether a Participant receives a payment from CMS, or owes a payment to CMS at the semi-annual reconciliation depends on how the Participant has performed across all Clinical Episodes during that reconciliation period.

Unlike the original BPCI model, a Participant's final payment received or owed is adjusted up to 10 percent based on its performance on certain quality metrics. For the first two years, these clinical metrics include claims-based measures that will be collected by CMS directly. Starting in 2020, Participants will be accountable for reporting additional quality metrics.

The final reconciliation amount paid to or owed by a Participant is subject to a 20 percent stop-gain or stop-loss limit, calculated at the Episode Initiator level. If a Participant chooses to enter into NPRA Sharing Agreements, the Participant may distribute the reconciliation payment or amount owed among its NPRA Sharing Partners, as agreed among the partners. However, shared payments and repayment obligations may not exceed 50 percent of the total Medicare FFS expenditures included in Clinical Episodes attributed to the Participant.

Other Program Elements

In addition to taking on risk of gains or losses, BPCI Advanced Participants are required to participate in certain BPCI Advanced Activities, including implementing care redesign activities, reporting on quality measures, using certified electronic health record technology, and attesting to a minimum of four Merit-Based Incentive Program System (MIPS) Improvement Activities. CMS is also introducing required Learning System Activities in BPCI Advanced, which will provide support to applicants as they prepare to redesign care and bear financial risk under BPCI Advanced, and to Participants in lowering the cost of care and maintaining or improving the quality of care for beneficiaries.

The BPCI Advanced model is expected to meet the criteria for an Advanced Alternate Payment Model (APM) under the Quality Payment Program, which means that practitioners who are qualifying participants in BPCI Advanced are expected to be exempt from payment adjustments under MIPS.

BPCI Advanced Participants also are eligible for certain payment waivers similar to those offered in the original BPCI model, including waivers of the three-day skilled nursing facility (SNF) rule, geographic area limitations for telehealth services, and limitations on post-discharge home visit services.

Further information about the BPCI Advanced model is available on the CMS website: https://innovation.cms.gov/initiatives/bpci-advanced. If you have further questions, please contact one of the Hogan Lovells lawyers listed on this alert or with whom you usually work.

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Creation and regulation of Crypto-asset Superintendence and related activities

Through Decrees N° 3.196 and 3.197, published in the Special Official Gazette N° 6.346, dated December 8th 2017, recently published, Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela, instructed the creation of the Crypto-asset Superintendence and related activities.

Decree N° 3.196, regulates the creation of said Superintendence, which will be managed, supervised and incorporated to the Republic´s Vice-presidency.

The object of the Decree is to lawfully establish the regulatory conditions provided in the Venezuelan Civil Code for the purchase/sale of financial assets, with the use, development and application of Blockchain technologies.

As for PETRO, Article 4 establishes that it is Venezuelan crude oil traded in the OPEC basket, as well as other commodities, such as gold, diamond, coltan and gas. In the same way, it is established that PETRO will have, as physical support, a sale contract per oil barrel from the Venezuelan crude oil basket or any commodity the Nation decides.

On the other hand, Article 5 provides that the PETRO may be traded to the market value, for its equivalent in another crypto-asset, in Bolivars to the market exchange rate published by the national crypto-asset exchange bureau, or by a fiduciary currency in the international exchanges. Similarly, each PETRO holder is authorized to have a virtual wallet, which will be of their sole responsibility, as well as all the risks associated to the management and safekeeping thereof.

Articles 6 and 7, create the figures of Exchange Bureau and the crypto-asset Exchange Bureau, which will provide the necessary platform for the secondary trade of crypto-assets. Buyers and sellers will open and close positions, and be able to exchange the crypto-asset to its equivalent in Bolivars, another fiduciary currency, or other cryptocurrencies through these Exchange Bureaux.

Article 8 sets that initial coin offering (ICO) will be executed through biddings or direct allocation executed by the Crypto-asset Superintendence and related activities, in accordance with the number of barrels of reserves issued by the National Executive for the backing of the PETRO.

The Superintendence´s operation and internal organization will be defined on its rules of procedure and further rules of operation created for such purpose.

FLASH LEGAL REPORT

December 2017

Flash Legal Report

Creation and regulation of Crypto-asset Superintendence and related activities

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