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April 2019 e-Bulletin

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Visit www.prac.org for all events and details

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BAKER BOTTS ANNOUNCES LEADERSHIP CHANGES

PALO ALTO, April 1, 2019 - Baker Botts, a leading international technology and energy law firm, today announced a series of leadership changes.

These changes coincide with John Martin's appointment as the firm's 15th Managing Partner, which following his election in mid-February, became effective today.

Rebeca Huddle becomes Partner-in-Charge of the firm's Houston office. A former Justice on the Texas Court of Appeals for the First District, Rebeca's practice focuses on complex commercial litigation. Rebeca has first-chaired trials to decision, and she represents plaintiffs and defendants in a broad range of business litigation based on complex contracts, fiduciary obligations, and fraud and other business torts. Rebeca also draws on her judicial experience to advise clients on appellate strategy.

Brian Lee becomes Partner-in-Charge of the firm's Palo Alto office. Brian is also the West Coast Chair of the Corporate Department. He advises private and public companies, venture capital and private equity firms and investment banks, across a broad range of industries. His practice centers on mergers and acquisitions, venture capital, start-up companies and company representation.

Renee Wilm becomes Partner-in-Charge of the firm's New York office. Renee is also the East Coast Chair of the Corporate Department and a member of the firm's Executive Committee. She counsels TMT clients on a wide range of corporate matters, including public and private mergers and acquisitions, complex capital structures and shareholder arrangements. Renee also represents issuers in offerings of debt, equity and unique hybrid securities.

"One of Baker Botts' core strengths is the dedication that we have to providing outstanding client service in each of the communities in which we operate. It is one of the reasons we have grown and will continue to grow," said John Martin, Managing Partner of Baker Botts. "

"Service at the local level has been and will remain a core focus of the firm, and I am thrilled that Rebeca, Brian and Renee have agreed to take on these important leadership positions in these key growth markets,'' added Mr. Martin.

For more information, please visit www.bakerbotts.com

PRAC 66th International Conference

Seattle

Hosted by Davis Wright Tremaine

October 5 - 8, 2019

Details onliine at www.prac.org

DAVIS WRIGHT CONTINUES GROWTH WITH ADDITION OF LEADING LAWYERS

MARCH 25, 2019 – The technology practice group at Davis Wright Tremaine, adviser to some of the world's largest and most innovative companies, has expanded with the addition of Davina Childs Inslee, a former lead counsel at Intellectual Ventures' Global Good fund, Vulcan, and T-Mobile.

Ms. Inslee brings to the firm more than 25 years of experience handling a full spectrum of technology and intellectual property matters, including: the negotiation of complex product co-development agreements; collaborative research agreements; public-private partnerships with companies, non-governmental organizations, and academic institutions; tech-transfer; and patent licensing and commercialization. She has served companies operating in such varied industries as telecommunications, biotech, energy, and global health.

"Our clients are increasingly involved in initiatives that have global impact—whether they're developing next-generation technology, engaged in high-impact philanthropy, working to shape public policy, or seeking other ways to affect change," said Pete Johnson, Davis Wright Tremaine's Seattle partner-in-charge. "Davina has been supporting the success of those missions for most of her career. Her strategic vision and leadership will be a tremendous resource for our clients."

Ms. Inslee served most recently as lead counsel for the Intellectual Ventures technology-development fund, Global Good and Research. Created by Bill Gates and focused on a shared vision with Nathan Myhrvold, Global Good invents, licenses, and deploys technology that draws on machine-learning, molecular diagnostics, imaging, biosensing, and biotechnology to solve some of humanity's most daunting problems. Prior to that role, Ms. Inslee spent a decade as chief IP counsel at Vulcan Inc., where she served affiliates such as Vulcan Energy, Interval Licensing, Vulcan Philanthropy, Vulcan Technology, Vulcan Labs, Vulcan Productions Inc., Allen Institute for Artificial Intelligence, and Allen Institute for Brain Science. Her work included the successful launch of several technology startups. Ms. Inslee received a B.S. in Biology with a minor in Chemistry from Purdue University and a J.D. from Indiana University School of Law.

"I began my career in the private practice of law and am delighted to be returning to that role at a firm as dynamic, collegial, and forward-thinking as Davis Wright Tremaine," said Ms. Inslee. "In addition to the firm's many top-tier established clients, the firm's Project W initiative is having a tremendous impact on the advancement of women-led startups around the country and I can't wait to help support those efforts."

NEW YORK – 08 APRIL 2019 – The media, entertainment, and intellectual property practice group at Davis Wright Tremaine, widely recognized as one of the nation's best, has expanded with the addition of M. Darren Traub, a highly experienced litigator and transactional attorney, who will serve clients from the firm's offices in New York and Los Angeles. Traub helps clients in creative industries grow, monetize, and protect their intangible assets. He has a flourishing practice representing the organizers of leading-edge cultural and musical events, including esports league championships and international music festivals. He also supports the success of celebrity branding campaigns. On behalf of these clients, and others across the entertainment spectrum, he brings more than two decades of experience providing turnkey transactional services and litigating a wide range of intellectual property and contractual issues.

"Darren's instincts for where interactive entertainment is headed, and his passionate support of the creative and business success of his cutting-edge clients, will make him a great asset to DWT clients and colleagues alike," said Alexandra ("Allie") Nicholson, who chairs Davis Wright Tremaine's media, entertainment, and intellectual property practice. "His work perfectly complements—and expands upon—the well-known strengths of our existing team."

Traub provides his event clients with one-stop service. He negotiates all facets of their related agreements—including artist engagements, staging, club residencies, sponsorships, streaming, content licensing, investment, and performance—while helping them manage risk and avoid litigation pitfalls. Traub also helps branded entertainment agencies, product placement firms, celebrities, and influencers to create entertainment properties that align their marketing campaigns with brands and media platforms.

"The entertainment industry is completely different from what it was even five years ago," said Traub. "The emergence of new media platforms and technology ecosystems has added a new form of entertainment and has broadened the definition of 'celebrity.' With the use of these new media platforms, there are ever-emerging legal issues and regulations. It's my privilege to help keep my clients on top of this fast-moving shift."

Traub was previously a partner at Akerman LLP in New York City. About his move to Davis Wright Tremaine, Traub said: "I am excited to join such a dynamic, full-service law firm committed to the continued success and growth of its entertainment practice. The depth and breadth of this highly respected and forward-thinking group immediately attracted me to the firm. I look forward to servicing my clients in new and different ways by tapping into the resources and network of DWT."

For more information, visit www.dwt.com .

LEĜA AND IMERGY URDANETA MERGER

LEĜA AND IMERY URDANETA MERGE TO CONSOLIDATE LEĜA AS THE LEADING LAW FIRM IN VENEZUELA

CARACAS – 05 April, 2019: On 5 April 2019, the leading Venezuelan law firms of LEĜA and Imery Urdaneta executed a merger agreement that incorporates the partners and the whole team of Imery Urdaneta from its three offices in Caracas, Valencia and Barquisimeto, into LEĜA, consolidating the latter as the leading Venezuelan law firm.

Imery Urdaneta was founded in 1997, specializing in corporate law, tax law, regulatory, labor law, litigation and alternative dispute resolution. The firm has consistently been ranked as one of the best law firms in Venezuela by the leading legal directories.

Imery Urdaneta will bring to LEĜA a wide and varied clientele consisting mainly of domestic and transnational companies, participating in various industries relating to both goods and services, including technology, construction, telecom-munications, oil & gas, food, mass consumption, automotive, franchising and pharmaceuticals.

LEĜA is a leading law firm in the Venezuelan market and of international renown, with a modern approach to the practice of law. The firm has 15 practice areas, covering all branches of law, and 23 industry areas, created on the basis of the experience of our team, thereby guaranteeing a practical and successful approach to each industry. LEĜA is the largest and one of the most prestigious law firms in Venezuela, with numerous individual awards and the highest recognition for all its areas of practice from the world's most important legal directories.

LEĜA is an exclusive member of Lex Mundi, World Service Group, Pacific Rim Advisory Council and several other international networks that oblige it to maintain the highest standards of service to domestic and foreign clients. In Venezuela, LEĜA has been a key participant in academic associations and its lawyers have been involved in leadership roles in many of them. After this historical merger, the first of its kind in Venezuela, LEĜA will have a team of more than 50 legal professionals of the highest quality committed to the provision of outstanding services to its clients, located in Caracas and offices in the cities of Barquisimeto and Valencia.

In total, LEĜA will have 26 partners, of which 10 will be senior partners. The highly impressive roster comprises leading lawyers in their respective areas of practice, namely Luis López-Durán, Carlos Domínguez, Miguel Rivero, José Gregorio Torrealba, Jesús Sol Gil, John Tucker, Pedro Urdaneta, Gabriel Calleja, Faustino Flamarique and Pedro Jedlicka. Marcel Imery incorporates as a counsel, and Imery Urdaneta's Carlos García Soto and Luis Azuaje will become partner and junior partner, respectively. Luis López-Durán and Carlos Domínguez will still be the co-managing partners of LEĜA.

Luis López-Durán, co-managing partner of LEĜA said: "The combination with Imery Urdaneta is part of our vision of consolidation of the legal market in Venezuela for the continuous support of our clients. It reflects a growth in line with the challenges we are experiencing as well as our vision of the future of Venezuela. We are reinforcing our platform of high-quality legal services, incorporating talented lawyers who are both locally and internationally recognized. The merger also expands our client base, with leading national and multinational corporations, and we are incorporating teams in Valencia and Barquisimeto. All this significantly strengthens our positioning in the market, with an innovative vision focused on multidisciplinary work and specialization by industrial sector. We are very pleased with this new step and challenge for the future."

Pedro Urdaneta, managing partner of Imery Urdaneta, added: "We are very excited to combine forces, talents and offices with LEĜA, to provide our clients with added value, more practice areas and more hours of experience. With our new partners we share values, quality standards, organizational culture and a deep love for Venezuela. This combination also catapults us internationally, since LEĜA belongs to the most important networks of independent law firms: Lex Mundi, World Services Group, Pacific Rim Advisory Council, Cathay Associates, Employment Law Alliance and the International Network of Boutique & Independent Law Firms."

For additional information visit www.lega.law

NAUTADUTILH STRENGTHENS ITS COMPETITION TEAM

AMSTERDAM – 15 April 2019: Mauricette Schaufeli, a renowned competition specialist, will be joining NautaDutilh's competition team on 15 April 2019 as partner. In her new role, Mauricette - who is an economist as well as a lawyer - will be advising clients on EU and national competition law matters in all market sectors.

Before joining NautaDutilh,
Mauricette served as competition economist at PwC Netherlands where she advised on wide-ranging competition matters, including merger control, antitrust and State Aid. Mauricette started her career at another leading law firm, where she gained deep and broad experience in European and Dutch competition law.

Mauricette SSchaufeli

"We are very happy that Mauricette will be joining NautaDutilh," says Petra Zijp, NautaDutilh board member. We are convinced that with her economic and legal background and experience Mauricette is perfectly suited to further strengthen the competition team as well as the firm as a whole. We wish Mauricette all the best in her new role."

At NautaDutilh, competition law is an integral component of the firm's services along with administrative law, criminal law and corporate M&A and governance – a combination that ensures practical advice on the feasibility of mergers and acquisitions, joint venture agreements and vertical agreements.

For additional information visit www.nautadutilh.com

RBS WELCOMES NEWEST PROFESSIONALS

VANCOUVER, 14 March 2019: It is with pleasure we announce the arrival of Associates, Douglas G. Cottier and Elisabeth A. Sadowski, and Trademark Agent, Karin Binder.

Doug is a member of the Business Law Group, assisting clients with acquisitions and sales of businesses, corporate reorganisations, and general corporate commercial matters. Elisabeth joins the Personal Injury and Employment and Human Rights Groups, representing clients who have been seriously injured as a result of a car accident, slip and fall, or occupiers negligence, and advising both employers and employees in employment and human rights issues. Karin joins our Trademark Group, with an extensive background in all aspects of trademark work including trademark clearance, filing strategies, prosecution, opposition and non-use cancellation proceedings.

For more information visit www.rbs.ca

TOZZINIFREIRE ANNOUNCES TEN NEW PARTNERS

Promotions contribute to the strategic expansion of several practices

SAO PAULO – 15 March, 2019: Ten senior associates were promoted to partners at TozziniFreire Advogados - Bárbara Bassani of the Insurance and Reinsurance practice group; Christiane Alvarenga and Erlan Valverde of the Tax practice group; Carla do Couto Battilana of the Corporate/M&A and Cybersecurity/Data Privacy practice groups; Fernando Carvalho of the Corporate/M&A practice group; Guilherme Carneiro Monteiro Nitschke and Lucas Mejias of the Litigation and Arbitration practice groups; José Augusto de Castro of the Public Law practice group; Luiz Rafael de Vargas Maluf of the Capital Markets and Banking & Finance practice groups; and Patricia Bandouk Carvalho of the Antitrust practice group.

According to the CEO of TozziniFreire Advogados, Fernando Serec, these promotions are not only a legitimate result of the talent development process within the firm, but they also contribute to the strategic expansion of our business. "Brazil's new government gave the sign the market expected to potentiate new businesses in the country. As a full-service law firm, the growth of these key areas is a natural consequence of this optimistic perspective", says Serec.

More details about the new partners:

Bárbara Bassani holds a doctorate in Civil Law from USP (Universidade de São Paulo), a master's degree in Civil Law from Universidade Presbiteriana Mackenzie (SP), same institution where she was granted her bachelor's degree. Bárbara is a member of the Insurance Law Committee of OAB/SP (Brazilian Bar Association - São Paulo section) and of AIDA (International Insurance Law Association). She is also a professor of insurance law at higher-education institutions.

Carla do Couto Battilana holds an LL.M. from the University of Chicago (USA). She is specialized in Corporate Law from IICS (International Institute of Social Sciences) and in Business Contracts from FGV-SP (Fundação Getulio Vargas). Carla is a graduate of the Law School of PUC-SP (Pontifícia Universidade Católica de São Paulo). In addition to Corporate Law, she works in the Cybersecurity & Data Privacy, Technology & Innovation and Intellectual Property practice groups.

Christiane Alvarenga holds an LL.M. in Tax Law from Georgetown University (USA). She is specialized in Tax Law from USP (Universidade de São Paulo) and a graduate of the same institution. She has extensive experience in tax consultancy and tax litigation.

Erlan Valverde is a graduate of the Law School of São Bernardo do Campo (SP). He studied Principles of International Tax Law at the IBDF (International Bureau of Fiscal Documentation). Erlan has more than 15 years of experience in assisting Brazilian and foreign companies in several tax matters.

Fernando Carvalho holds an LL.M. from the University of Chicago (USA) and is a graduate of Universidade Presbiteriana Mackenzie (SP). He works in the Corporate/M&A and Private Equity areas.

Guilherme Carneiro Monteiro Nitschke holds a Doctoral degree in Civil Law from USP (Universidade de São Paulo), a master's degree from UFRGS (Universidade Federal do Rio Grande do Sul) and he is a graduate of PUCRS (Pontifícia Universidade Católica do Rio Grande do Sul). He is a director of CBAr (Brazilian Arbitration Committee) for the 2018-2021 triennium. Guilherme is also a professor in postgraduate courses in Private Law and Arbitration at several institutions in the South of Brazil.

José Augusto Dias de Castro holds an LL.M. in Public Law from LSE (London School of Economics and Political Science - UK) and a master's degree in Constitutional Law from IDP (Instituto Brasiliense de Direito Público). He is also specialized in Tax Law from IBET (Instituto Brasileiro de Estudos Tributários) and in Business and Corporate Diplomacy from ESPM (Escola Superior de Propaganda e Marketing). He is a graduate of the Law School of PUCRS (Pontifícia Universidade Católica do Rio Grande do Sul).

Lucas Mejias holds a Master's degree in Procedural Law from USP (Universidade de São Paulo). He is specialized in Arbitration from the Continuing Education Course of the Law School of FGV-SP (Fundação Getulio Vargas) and a graduate of the Law School of USP. Lecturer in classes and events on Civil Procedure and Arbitration, he is a member of the CBAr (Brazilian Arbitration Committee) and CEAPRO (Centro de Estudos Avançados de Processo). At TozziniFreire, he works in the Litigation, Arbitration and Mediation practice groups.

Luiz Rafael de Vargas Maluf holds an LL.M. in Corporate and Securities Law from the University of Virginia School of Law (USA). He is specialized in Corporate Law from FGV-SP (Fundação Getulio Vargas) and a graduate of Universidade Presbiteriana Mackenzie (SP). Rafael has more than ten years of practice in the capital markets and corporate law fields. Between 2016 and 2017, Rafael worked as an international associate in the Corporate/Latin America practice group of the New York office of Simpston Thacher & Bartlett LLP, assisting in merger and acquisition transactions, bond issuances and public offers of shares of Latin America companies, as well as compliance matters, and a litigation in the Supreme Court of New York involving Brazilian company.

Patricia Bandouk Carvalho is specialized in Economic Law from FGV-SP (Fundação Getulio Vargas) and a graduate of Universidade Presbiteriana Mackenzie (SP). She is a lawyer at TozziniFreire since 2012 with 14 years of experience in antitrust.

For additional information visit www.tozzinifreire.com.br

ARIAS

ASSISTS CANADIAN SEAFOOD COMPANY COOKE CONTINUE LATINAMERICA EXPANSION

MANAGUA 04 April, 2019: Canadian fish farming company Cooke, purchased Nicaraguan shrimp producer Farallon. Cooke relied on Arias' offices in Managua, Panama City and Tegucigalpa. The deal closed on 16 March. No value was disclosed. The transaction gives Cooke assets in Mexico, Nicaragua, Panama, Venezuela and Thailand. The deal comes less than two months after Cooke closed the acquisition of one of Latin America's largest premium shrimp producers, Seajoy Seafood. That purchase handed Cooke shrimp farms in Honduras and Nicaragua.

Local Counsel to Cooke Arias (Nicaragua) Partner Ana Teresa Rizo and associates Ivania Paguaga and Maryeling Guevara in Managua; Arias (Panama) Partner Yuri Moreno and associates Denise Littman and Mayrolis Parnther in Panama City;

Arias (Honduras) Partner Evangelina Lardizabal and associates Claudia Midence, Antonio Montes, Rodolfo Salgado and Valerya Theodoracopoulos in Tegucigalpa.

For additional information visit www.ariaslaw.com

BAKER BOTTS

ADVISES INITIAL PURCHASERS IN UPSIZED NOTES OFFERING BY CRESTWOOD MIDSTREAM PARTNERS

HOUSTON, 15 April 2019

Deal Description: On April 15, 2019, Crestwood Midstream Partners LP ("CMLP"), a wholly-owned subsidiary of Crestwood Equity Partners LP (NYSE: CEQP), issued $600 million in aggregate principal amount of 5.625% Senior Notes due 2027 (the "Notes") in a Rule 144A offering that is exempt from the registration requirements of the Securities Act, which was upsized from the originally proposed $500 million offering. The Notes are guaranteed on a senior unsecured basis by all of CMLP's subsidiaries that guarantee its existing notes and the indebtedness under its revolving credit facility.

CMLP expects to use the net proceeds from this offering to repay a portion of the outstanding borrowings under its revolving credit facility, which includes approximately $250 million of borrowings that were used to fund a portion of the previously announced acquisition of a 50% interest in Jackalope Gas Gathering Services, L.L.C.

Baker Botts L.L.P. represented the initial purchasers in the offering.

Clients: The initial purchasers. Wells Fargo Securities, LLC; Citigroup Global Markets Inc.; J.P. Morgan Securities LLC; Barclays Capital Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Morgan Stanley & Co. LLC; RBC Capital Markets, LLC; and SunTrust Robinson Humphrey, Inc. acted as joint book-running managers.

Outside Counsel to CMLP: Vinson & Elkins LLP

Value: $600 million

Baker Botts Lawyers/Office Involved: Corporate: Mollie Duckworth (Partner, Austin); Josh Davidson (Partner, Houston); Jennifer Wu (Senior Associate, Austin); Sunil Jamal (Associate, Houston); Ieuan List (Associate, Houston); Jack Chadderdon (Associate, Houston);Finance: Daniel Tristan (Partner, Houston); Lyman Paden (Special Counsel, Houston)

For additional information visit www.bakerbotts.com

BENNETT JONES

ASSISTS CRESCO LABS IN $1.1 BILLION ACQUISITION OF ORIGIN HOUSE

TORONTO – 01 April, 2019: Cresco Labs Inc. and Origin House entered into a definitive agreement pursuant to which Cresco Labs will acquire all of the issued and outstanding shares of Origin House. Under the terms of the agreement, holders of common shares of Origin House will receive 0.8428 subordinate voting shares of Cresco Labs for each Origin House Share. The transaction represents a total consideration of approximately C$1.1 billion on a fully-diluted basis, or C$12.68 per Origin House Share (based on the Exchange Ratio and the closing price of Cresco Labs Shares on March 29, 2019, the last trading day prior to the announcement of the transaction).

The transaction represents the largest public company acquisition in the history of the U.S. cannabis industry. The combined entity will be: one of the largest vertically-integrated multi-state cannabis operators in the United States; a leading North American cannabis company, by footprint; and one of the largest cannabis brand distributors.

For additional information visit www.bennettjones.com

CAREY

ASSISTS IN DISNEY-FOX MERGER APPROVAL IN CHILE

SANTIAGO - 28 March 2019: Carey in Santiago helped Disney obtain antitrust approval for its US$71.3 billion global merger with 21st Century Fox in Chile, while other local counsel represented Disney in Honduras and Costa Rica. Allen & Overy LLP in London acted as international counsel to Fox. Chile's antitrust agency gave the green light on 19 March. Honduras' commission for the defence and promotion of competition approved the transaction on 25 January, while its Costa Rican counterpart approved the merger back in July 2018.

Local Chilean Counsel to Disney - Carey Partner Claudio Lizana and associates Felipe Hepner and Paulina Espinoza in Santiago.

For additional information visit www.carey.cl

CLAYTON UTZ

ADVISES LENDLEASE ON DELIVERY OF AUSTRALIA'S FIRST HEALTH & WELLBEING PRECINCT FOR ILLAWARA REGION

SYDNEY - 15 April 2019: Clayton Utz has advised Lendlease on a new $500 million Innovation Precinct with the University of Wollongong to develop a 7.5 hectare health and wellbeing precinct on the University's campus.
The agreement was signed on 26 March after a competitive procurement process won by Lendlease in early 2018. Clayton Utz's national practice group leader for Real Estate, Nikki Robinson, led the transaction for Lendlease, with key support from senior associate Lance Bode. The development will include 199 independent retirement units, a 126-bed residential aged care facility, a childcare facility for 80 children and recreational facilities. Construction is expected to commence in 2020 with the first facilities to open by 2022.

Clayton Utz advised Lendlease through the entire process to agree a contract and framework for the development, ensuring it maintains the shared vision of the parties to deliver aged care and retirement living facilities in the heart of the University's Innovation Campus. The precinct will offer collaboration between the University, the residents and the broader health and wellness industry by combining clinical practice, education and research for the benefit of those in the later stages of their lives.

Nikki Robinson said, "This is an exciting and market leading project and leads the way in collaboration between the University of Wollongong and Lendlease Retirement Living - drawing together the benefits of university research, training for students and the benefits that can be found through engaging community with an ageing population."

For additional information visit www.claytonutz.com

DENTONS RODYK

ADVISES CHINA TITANIUM RESOURCES ON US$25 MILLION FUNDING IN OROKOLA BAY INDUSTRIAL SANDS PROJECT IN PAPUA NEW GUINEA

SINGAPORE, 05 April 2019: Dentons Rodyk acted for China Titanium Resources Holdings Ltd. in its investment in the Orokolo Bay Industrial Sands Project, which has a net present value of approximately US$106 million and mining tenements that are spread over 10,000 square kilometers in Papua New Guinea's Gulf province. The deal concerns the provision of US$25 million in funding for up to a 49% stake in MR Iron PNG Pte Ltd, a subsidiary of Mayur Resources Ltd, which holds the Orokolo Bay Industrial Sands Project as part of its industrial mineral sands mining portfolio in Papua New Guinea. The Dentons Rodyk team advised clients on, among other things, the subscription and shareholders' agreements for the investment.

Senior Partner Marian Ho led the matter, supported by Legal Executive Sean Gallagher and Associate Randall Lee.

For additional information visit www.dentons.rodyk.com

GIDE

COUNSEL TO IDIA CAPITAL INVESTISSEMENT ON INVESTMENT IN MAISON CHAPOUTIER

PARIS - 15 April 2019: Gide has advised Idia Capital Investissement, a subsidiary of group Crédit Agricole, on its investment in the share capital of Maison Chapoutier, a wine producer and merchant in the greatest wines of the Rhone valley and whose vineyards cover 450 hectares in France and abroad (Australia, Spain and Portugal).

This transaction is part of a more global reorganisation of Maison Chapoutier's shareholding, alongside the Chapoutier family and its longstanding partner Sofina.

This investment will boost the development of the family-owned vineyard's activities, in particular as regards biodynamic growing methods and wine tourism.

In continuing its investment strategy in the wine sector, Idia thus adds to its portfolio a prestigious and long-standing Maison, lauded by Drinks International as the most admired French wine brand worldwide in 2019.

The Idia Capital Investissement team comprised in particular Arnaud Pradier, Eric Le Cann, Cédric Fontaine and Paul Halard.

The Gide team that advised Idia was headed by partner Alexis Pailleret, working with associate Chloé Bouhours on M&A aspects, partner Bertrand Jouanneau and associate Foulques Delaporte on tax aspects, associate Sophie Gillard on real estate aspects, and associate Elena Piotrowski on employment law aspects.

Gide can draw on a multidisciplinary team dedicated to operations in the wine and spirits sector, with specialists from the firm's various practice groups.

Maison Chapoutier was advised by Ratheaux.

For additional information visit www.gide.com

HAN KUN

ADVISES ON FUTU HOLDINGS LIMITED'S U.S. INITIAL PUBLIC OFFERING AND LISTING ON NASDAQ

BEIJING, 03 March, 2019: Han Kun advised and acted as the PRC counsel to the joint bookrunners on Futu Holdings Limited's U.S. initial public offering and listing on the Nasdaq Global Market (NASDAQ: FHL).

Futu Holdings Limited is a leading online securities brokerage platform.

For additional information visit www.hankunlaw.com

NAUTA DUTILH

ASSISTS BLOKKER SALE

AMSTERDAM, 02 April 2019: The Dutch Blokker family has sold its retail company to current CEO Michiel Witteveen. The CEO takes over both Blokker and Big Bazar by means of a buy-out. The deal concerns a total of 474 own stores and 77 franchise stores in the Netherlands, and 139 stores in Belgium and Luxembourg. Financial details are not disclosed.

The NautaDutilh team assisting Blokker consist of Lieke van der Velden, Nico Blom, Wijnand Bossenbroek, Willianne van Zandwijk, Aalt Colenbrander, Pieternel van den Brink, Annefleur van Oel and Daan Hagelstein.

For additional information visit www.nautadutilh.com

SANTAMARINA

ASSISTS IN TOPAS ACQUISITION OF HARMON HOLL

MEXICO CITY, 02 April 2019: Santamarina + Steta provided legal advice and representation to Talisis Holding, S.A.P.I. de C.V. (a subsidiary of Topaz Holding, S.A.P.I. de C.V., a major investment conglomerate with headquarters in Monterrey, Mexico) and oversaw the due diligence, acquisition and financing processes.

Talisis acquired 100% of the shares of Harmon Hall Holding, S.A. de C.V., for MXN$540 million (approx. USD$27 million), from Nexxus Capital and several others international institutional investors.

BBVA Bancomer provided the acquisition financing through a long term facility, secured with the recently acquired shares of Harmon Hall.

Harmon Hall is the leading English school network in Mexico, with more than 50 years of operations, and with more than 100 campuses across the country. By adding Harmon Hall to its portfolio, Talisis increased its footprint on the Mexican education sector to 190 campuses, more than 150,000 students, around 8,000 teachers, and an unparalleled leading presence throughout Mexico, the U.S. and Central America.

Ritch, Mueller, Heather y Nicolau, S.C. acted as legal counsel to the sellers.

Santamarina's team was led by its partners Alberto Saavedra and Juan Carlos Machorro as well as associates Ricardo Orea and Juan Pablo Rodríguez.

For additional information visit www.s-s.mx

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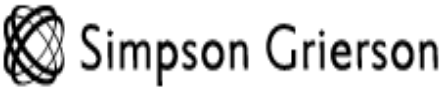

ALLENDE & BREA

The Legislature of the City of Buenos Aires reformed the Contraventional Code to incorporate the digital impersonation of identity among other faults and contraventions.

On January 4th 2019, the Legislature of the City of Buenos Aires enacted law No. 6.128 amending the Contraventional Code, by means of which, among other things, Chapter V on infraction to the digital identity of the Internet is incorporated.

Chapter V incorporates article 71 fifth, which impose sanction to any digital identity misappropriation. It provides fines from one hundred sixty to four hundred fixed units, one to five days of public utility work, or one to five days of arrest, to anyone who uses the image and / or a persons personal data or creates a false identity with the image and / or a persons filiatory data through the use of any type of electronic communication, data transmission, web pages and / or any other means, and has been made without the consent of the victim, provided that the facts involved do not constitute a crime.

At the same time, the same article provides for the aggravating factors of the behavior described. All penalties will be doubled if (i) the behavior was performed for the purpose of making a data bank with the information obtained; (ii) the victim was under 18 years of age, over 70 years old or has a disability; (iii) the contravention was committed by the spouse, ex-spouse, or the person with whom he or she maintains or has maintained a relationship of couple, mediate or not cohabitation and (iv) the contravention is committed in order to make sexual services offer through any means of communication.

Moreover, Chapter V sanctions are included for unauthorized dissemination of images or intimate recordings (aka revenge porn), digital harassment and the aggravating facts of both described behaviors.

For more information visit www.allendebrea.com.ar

CLAYTON UTZ

04 APR 2019

The countdown is on to recommence fracking in the Northern Territory

BY NICOLE BESGROVE, MARGARET MICHAELS

The NT Government has implemented another recommendation from the Independent Scientific Inquiry into Hydraulic Fracturing inching a step closer to the oil and gas industry restarting hydraulic fracturing in the Territory.

After consideration of the Economic Policy Scrutiny Committee's inquiry report recommendations, the NT Parliament passed the Petroleum Legislation Amendment Bill 2018 with amendments on 19 March 2019. The Bill is currently awaiting assent and will commence on the day fixed by the Administrator by Gazette notice.

We previously examined the Bill after it was introduced into Parliament on 29 November 2018 with its key amendments being to:

- provide provisions for open standing judicial review for decisions under the Petroleum Act and Petroleum (Environment) Regulations;
- require that oil and gas companies, as applicants, are “fit and proper” to hold exploration permits or production licences; and
- require oil and gas companies to comply with, and be penalised for breaches of, of Codes of Practice made under the regulations as recommended by the Inquiry.

These key amendments remain essentially the same, with some tweaks being made in order to implement most of the Committee's recommendations in full.

Ten amendments recommended

The Committee tabled its Report on 12 March 2019 and recommended that the Bill be passed with ten (10) amendments.

The ten amendments

Recommendation 2: The Committee recommends that the definition of hydraulic fracturing (cl 4) be amended to replace the term "gas and oil extraction" and the word "hydrocarbons" with the word petroleum.

Recommendation 3: That proposed section 15A(2)(b) be amended to provide for consideration of an associated entity as per section 16(3)(ea) and section 45(1)(ea).

Recommendation 4: That proposed section 15A(4) be removed and proposed section 15A(1)(a) be amended with words to the following effect: "whether the person has contravened the prescribed legislation, taking into account the seriousness of past contraventions, the length of time since the contraventions occurred, and any other matters that appear relevant to the Minister".

Recommendation 5: The Committee recommends that proposed section 15A(1)(c) be amended by substituting the words "prescribed legislation" for "prescribed environmental legislation".

Recommendation 6: The Committee recommends that the following legislation be added to the prescribed legislation listed in proposed section 15A(6): the Water Act 1992 (NT), the Northern Territory Aboriginal Sacred Sites Act 1989 (NT), and the Taxation Administration Act 2007 (NT)

Recommendation 7: The Committee recommends that the Bill be amended to include the following decisions in the proposed Schedule – Judicial Review of decision or determination (cls 12 and 18):

- Proposed section 15A – appropriate person to hold permit or licence
- Section 19(10) of the Petroleum Act 1984 (NT) – determination to either refuse or approve a transfer of an interest.

Recommendation 8: The Committee recommends that the Bill be amended to enable the Petroleum (Environment) Regulations to update the proposed Schedule – Judicial Review of decision or determination (cls 12 and 18).

Recommendation 9: The Committee recommends that the term “code of practice” should be adopted throughout the entirety of the Bill.

Recommendation 10: The Committee recommends that the phrase “the Minister must be satisfied” be inserted after the word “licence” in cl 10(2).

Recommendation 11: The Committee recommends that the Bill be amended to place on an applicant a clear obligation to disclose matters relevant to section 15A, and to enable the Minister to request further information relevant to a determination under section 15A, in line with Recommendation 14.12 of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory.

The majority of the Committee's recommended amendments were made in full, along with some additional amendments. The most notable changes made prior to the Bill being passed relate to the "fit and proper" test.

Associated entity

When determining whether to grant an exploration permit or production licence, the Minister must be satisfied that the applicant is an appropriate person to hold a permit or licence under the Act, having regard a range of matters which now includes whether any "associated entity" of the applicant is an appropriate person or body to be granted an exploration permit or production licence.

Associated entity is defined by reference to section 50AAA of the Corporations Act 2001 which includes related bodies corporate to the principal of the business, where one entity has the control or a significant influence over the other entity or a qualifying investment, and the operations, resources or affairs of one entity or interest from the investment is material to the other entity.

Record of compliance

When applying the "fit and proper" test, the Minister must also have regard to the applicant's or associated entity's record of compliance with the prescribed legislation which includes a range of State and Commonwealth environmental legislation

(referred to as prescribed environmental legislation) as well as work health and safety and petroleum legislation. The legislation prescribed has now been expanded to also include:

- the Water Act 1992 as prescribed environmental legislation; and
- the Northern Territory Aboriginal Sacred Sites Act 1989 and the Taxation Administration Act 2007.

The next steps for fracking in the Northern Territory

Once the Act commences, enforceable codes of practice will be able to be made under the petroleum regulations, such as those recommended in the Inquiry's Final Report for:

- setting out minimum requirements for the decommissioning of any onshore shale gas wells in the NT;
- setting out the minimum requirements that must be met to ensure the integrity of onshore shale gas wells in the NT; and
- ongoing monitoring, detection and reporting of methane emissions from any onshore shale gasfields and wells.

If you would like to understand how the amendments will affected your operations, please contact us.

RELATED KNOWLEDGE

- Comments sought on proposed changes to Northern Territory petroleum legislation

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TOZZINIFREIRE
ADVOGADOS

April 02, 2019

Recent Brazilian Central Bank regulations innovate the Brazilian Fintech market

Following the article published on November 2018, [Regulatory push spurs fintech forward in Brazil], the Brazilian Central Bank (BACEN) has been living up to the expectations set for the fintechs market in Brazil since its first statements on the matter.

In the very final moments of 2018, BACEN enacted regulations and released communiqués that are expected to significantly impact the operations of online lenders and consequently the whole Brazilian payment and settlement infrastructure (Sistema Brasileiro de Pagamentos – SBP).

In such publications, it is noticeable that the regulator intends to innovate the means of payment market, providing it with new possibilities as well as with new players.

The referred innovations were introduced through the following provisions:

• Resolution No. 4,707, of December 19, 2018 and Circular No. 3,924, of December 19, 2018, which discipline the use of payment arrangement receivables as collaterals for credit transactions.

• Circular No. 3,925, of December 20, 2018, which amended the Annex to Circular No. 3.682, of November 4, 2013, which addresses the provision of payment service within the framework of the arrangements of the Brazilian Payment System.

• Communiqué No. 32,927, dated December 21, 2018, which addressed the fundamental requirements for the Brazilian instant payment environment.

Specifically regarding the provisions set forth by Resolution No. 4.707 and by Circular No. 3.924, the regulator sought to simplify the access to credit to retailers, making it possible to use means of payment receivables as collaterals in credit transactions, especially credit card receivables.

Also innovatively, BACEN has defined the manner and the requirements for the acceptance of the receivables as collateral in credit transactions, presenting essential provisions that shall be implemented in credit agreements, such as the definition:

i. of the institution that will settle the receivables for each payment arrangement;

ii. of the maximum daily amount that can be withheld, as provided for in the schedule of payment

arrangement receivables; and

iii. of the conditions for the release of the financial resources to the transaction account of the receiving final user, including the proceeds from anticipation transactions.

Based on this information, it is possible to tie in the value of the receivables given as collateral to the debit balance of the credit operation, thus avoiding an excessive amount of collateral or the retailer anticipating any collateral surplus, granting the operation legal certainty.

Another topic of prominence is the possibility for the retailer to partially or totally anticipate its receivables from financial institutions that provide accreditation services, as well as from accredited and sub-accredited payment institutions.

Thus, aiming to assure transparency, centralize the transaction and ensure greater reliability to the credit transaction, the accrediting companies must settle the receivables used as collateral and provide their payment schedules to the financial institutions that are part of the respective credit transaction.

The rules laid down in Resolution No. 4,707 and in Circular No. 3,924 will come into force on January 31, 2019.

On the other hand, Circular No 3,925 introduces premises of governance and details further initiatives to promote interoperability in the means of payment market.

The governance provisions in the text reflect the duties of the setters of the payment arrangements, namely:

i. introduce obligations to the creditor, which involves:

the control, specifically regarding the monitoring of the activities of the sub-accreditors; and

the definition of the information to be provided by the underwriters to the creditor, in order to comply with operational obligations, risk management, fraud prevention, interoperability and others.

ii. the presentation of clear rules in their payment arrangement agreements, especially with regard to refunds of payment transactions, definition of clearing system and settlement of payment (when using systems of diverse participants of the arrangement), detecting of risks according to the rules/procedures and their management structure, conflict resolution organization, applicable penalties in the event of breach of contract, and minimum operational standards applied to the participants; and

iii. the presentation of a specific channel of communication with the participants of their payment arrangement, in the event that they do not fit into the closed payment arrangement modality. In addition, if the total value of transactions accumulated in the last 12 months of this payment arrangement exceeds 20 billion Brazilian Reais, the setter of the arrangement shall structure the communication through an electronic system.

The interoperability is a constant concern of the regulator, as observed in the above-mentioned Circular that obliges the insurer of an open payment arrangement to enter into bilateral agreement with closed payment arrangements through standardized contracts.

BACEN's initiatives evidently seek to organize and clarify the responsibilities of each party to a mean of payment in Brazil, whether it is a payment arrangement, an accreditation institution, a sub-accreditation institution or even the end users of payments. These changes have a deadline for their application by the operators of this market, since BACEN demanded that all the settlors of the payment arrangements have their transactions regularized by March 29, 2019.

Finally, through the Communiqué No. 32,927, BACEN approves the fundamental requirements of an alternative mean of payment, the instant payment.

This provision comes as a pleasant surprise, especially since BACEN has finally established the main aspects of the structure of this new form of payment in which governance rules, forms of participation, operational and centralized settlement infrastructure, connectivity services and settlement provision stand out.

It is clear that the autarchy is concerned with the application of a flexible and open system of participation that grants financial inclusion as well as the advent of different structures, which may fit in the following ways as service providers:

i. direct participation: financial institution or payment institution, which offers a transactional payment account to its clients and end users, and which has an account and connection to the centralized settlement infrastructure with BACEN;

ii. indirect participation: financial or payment institution, which offers a transactional payment account to its clients and end users, but does not have an account, nor does it have a connection to the centralized settlement infrastructure with BACEN. In this case, the indirect participant must establish a service partnership with a direct participant, who will make their settlements; and

iii. participation as a payment initiation service provider: an institution that does not offer a transactional account to the end user, but offers a payment service in which the user utilizes the transactional account at another financial or payment institution. BACEN has stated that there will be a specific rule to establish the participation of this instant payment service provider.

It is also worth mentioning the participation of BACEN in this new mean of payment, intended to centralize the settlement infrastructure, operating these transactions one by one, 24/7 every day of the year.

The Brazilian means of payment market has shown positive changes, among which are major investments, in particular strategic sale of stakes of domestic companies to foreign groups, public offering of shares abroad (IPOs) and the entry of numerous startups.

These new rules reaffirm the objective of CMN and BACEN in seeking the constant development of the Brazilian means of payment market, as well as the promotion of financial inclusion. Regardless of the market's natural evolution, the Brazilian government stimulates it even more through innovative initiatives, which encourage the improvement of this segment, present payment alternatives to retailers and consumers and enables the introduction of new companies and investments. Thus, it is advisable that the fintechs be aware of the regulatory changes and market demands, since new niches and business opportunities are emerging due to these much welcome regulatory advances.

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Court of Appeal Decision Welcome News for Victims of Fraud

April 10, 2019

Written by Jim Patterson and Amanda C. McLachlan

The Ontario Court of Appeal's decision in *Wescom Solutions Inc v Minet*, 2019 ONCA 251 released on April 1, 2019, provides helpful guidance for victims of fraud seeking to pursue civil recovery against third parties.

Nadia Minetto, the central defendant in *Wescom*, used a company credit card to fraudulently obtain iPhones and iPads (the "Apple Products"). Using a Kijiji advertisement, Minetto caught the attention of Gabriel Fung, who, after responding to the advertisement, met her for the first time in a parking lot in Yorkdale Mall in November 2011 to make a purchase of the Apple Products. Thereafter, Minetto continued to sell the Apple Products to Fung, who, over a two and a half year period, purchased a total of 4,942 iPhones and 5,321 iPads from Minetto. The transactions initially took place in the Yorkdale Mall parking lot, followed by an Ikea parking lot. Eventually Minetto began to direct the products to a virtual office rented by Fung, with sales ultimately totaling $6.2 million before the scheme was uncovered. The Apple Products were always purchased by Fung in cash. Fung would then resell the Apple Products through an electronics store he operated. Fung also sold to wholesalers and to companies in Hong Kong.

Following the initial trial, the trial judge found that Fung was not wilfully blind during the initial stages of the fraud, where he occasionally met Minetto in the Yorkdale Mall parking lot. However, when the fraud escalated to meetings in the parking lot of an Ikea store, and during the period of time in which the Apple Products were delivered to Fung's virtual office, the court concluded he was wilfully blind, and awarded damages in the amount of approximately $5.094 million.

On appeal, Fung argued that the trial judge had erred by applying an objective, rather than a subjective standard, to his wilful blindness analysis. The respondent, by contrast, argued that the objective analysis was appropriate because it was a case involving allegations of "knowing receipt".

In this regard, the Court of Appeal confirmed that knowing receipt can be proven not only by establishing actual knowledge or wilful blindness, but also by establishing "constructive knowledge", based on the application of objective criteria. Specifically, the Court of Appeal confirmed that knowing receipt can be established where the defendant:

- had knowledge of circumstances that would indicate the facts to an honest and reasonable person;

or

- had knowledge of circumstances that would put an honest and reasonable person on inquiry.

Notwithstanding its findings with respect the application of objective criteria to a finding of knowing receipt, the Court of Appeal further clarified that in this particular case, the agreed issue before the trial judge had been "whether the defendant [Fung] knew or was wilfully blind to the fact that he was purchasing stolen goods or goods fraudulently obtained by Minetto."

Articulating the test from *R. v. Makfara*, the Court of Appeal clarified that a finding of wilful blindness requires a subjective focus on the workings of the defendant's mind. Where wilful blindness is in issue, the Court must ask whether the accused "was in fact suspicious"—not whether the accused *should* have been suspicious.

Although the Court of Appeal found that the trial judge had erred in law in his articulation of the concept of wilful blindness, the Court of Appeal concluded that Fung was wilfully blind and upheld the trial judge's decision to award damages against Fung in favour of Minetto's former employer. In doing so, the Court of Appeal pointed to findings made by the trial judge that established that subjectively, Fung was wilfully blind. This includes a finding that Fung had "made a conscious choice not to seek verification or further information about the source of the Apple products he was purchasing...He choose to remain deliberately ignorant as to the source of those products".

In doing so, the Court of Appeal has confirmed that a person who makes a "deliberate choice not to investigate" in the face of "knowledge that products were probably stolen by fraud" will meet the definition of wilful blindness articulated by the Supreme Court of Canada in *R. v. Sansregret*. In *Sansregret*, the Supreme Court defined wilful blindness as arising when "a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth".

The Court of Appeal's decision presents welcome news for victims of fraud seeking to pursue civil recovery against third parties to an alleged theft or fraud, particularly in circumstances where the primary rogue lacks sufficient assets to provide full recovery to the victim.

Posted on: March 18, 2019

SPECULATION AND VACANCY TAX ACT SUMMARY

By: Benjamin Hagen

The *Speculation and Vacancy Tax Act* (the "**Act**") received Royal Assent on November 27, 2018. The *Act* imposes a new Speculation and Vacancy Tax (the "**Speculation Tax**") on owners of residential properties within specified areas of British Columbia ("**B.C.**").

The Speculation Tax is applicable for the 2018 tax year and subsequent years moving forward. Between January and February 2019, owners of residential property within the specified areas that are subject to the Speculation Tax will receive a letter from the Province and related instructions for how to complete a declaration for the 2018 tax year and register for an exemption, if applicable (the "**Declaration**").

The deadline for Declarations is March 31, 2019

Declarations can be completed either by telephone or online. Further information regarding the Declaration is available on the Provincial website: https://www2.gov.bc.ca/gov/content/taxes/property-taxes/speculation-and-vacancy-tax/declaration

Payment

If applicable, the Speculation Tax is due and payable on or before July 2, 2019.

Taxable Specified Areas

The Speculation Tax applies to residential properties located within the following specified areas (subject to certain exclusions):

- A municipality within the Capital Regional District
- A municipality within the Metro Vancouver Regional District (other than the Village of Lions Bay and Bowen Island)
- The part of Electoral Area A with the Metro Vancouver Regional District that comprises the University of BC and University Endowment Lands
- The City of Abbotsford
- The City of Chilliwack

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- The City of Kelowna and the City of West Kelowna
- The City of Nanaimo
- The District of Lantzville
- The District of Mission

Notably, islands that are accessible only by air or water are not part of the specified areas and are not subject to the Speculation Tax.

Tax Rates

The Speculation Tax rate varies based on the owner and is levied on the assessed value of the property as determined by the B.C. Assessment Authority on July 1 of the calendar year immediately prior to the year in which the Speculation Tax is due. The Speculation Tax is subject to various exemptions. If no exemption is available, possible tax credits may be accessed.

The Speculation Tax rate is divided into three categories as follows:

Owner Category	Rate	Year	Available Credits
Foreign Owners and "Satellite Families"	0.5%	2018 only	20% credit based on B.C. Income (*maximum credit discussed below)
	2%	2019 and subsequent years	
B.C. Residents	0.5%	2018 and subsequent years	Maximum credit of $2,000 on a secondary property
Other Canadian Citizens and Permanent Residents	0.5%	2018 and subsequent years	Credit base on B.C. Income (*maximum credit discussed below)

Corporations, Partnerships, and Trusts

Corporate, Partnership, and Trust owners must meet specific rules in order to qualify for the lower tax rate (0.5%), exemptions, or credits.

A corporation, partner or trustee will pay tax at the highest rate that would be applicable to any of the corporate interest holders, partnership interest holders, or beneficial owners if they held the property individually.

Corporations, Partnerships, and Trustees should carefully review the tax rates, exemptions, and credits and seek legal or accounting advice prior to filing the Declaration. The RBS real estate team is available to offer guidance as to the application of the specific definitions and provisions of the Act that govern in these

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circumstances.

Multiple Owners

The Speculation Tax is applied to each owner based on their registered interest in the property (as reported on title). If no interest is specified (as is the case for joint tenancies), the registered owners are considered to each have equal interests in the property.

Categories and Credits

Foreign Owners and "Satellite Families"

Foreign Owners

Foreign owners are not specifically mentioned or defined in the Act, and these owners will fall into the category of "Other Owners". "Other Owners" essentially captures all owners that are not eligible for the lower Speculation Tax rate shown in the table above.

Satellite Families

The Declaration takes into account where in the world the majority of the combined spousal income of registered owners is reported.

Individuals who declare less than 50% of their total combined household income for the year on Canadian income tax returns may pay tax at the highest rate and may not be entitled to all exemptions. Although "satellite family" is also not defined in the Act, individuals in this situation are referred to as members of a satellite family. This may apply even if the individuals are Canadian citizens and/or B.C. residents.

Foreign owners and satellite families may be eligible for a tax credit equal to 20% of their B.C. income to reduce the 2% Speculation Tax rate. The tax credit cannot reduce the tax rate below the tax rate for an equivalent B.C. resident, which is zero on a principal residence or 0.5% on other properties. Unused B.C. income may be carried forward for up to two years or transferred to a spouse. This tax credit is pro-rated for 2018 as the tax rate is 0.5% for all owners.

B.C. Residents

For 2018 and subsequent years, the Speculation Tax rate will be 0.5% for an individual who is, at the end of the last day of the calendar year, a resident in B.C. for income tax purposes.

B.C. owners are eligible for a tax credit of up to $2,000 on a secondary property. This effectively exempts an

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owner on a property otherwise subject to the tax that is assessed at up to $400,000, or provides a $2,000 reduction in Speculation Tax on a property assessed above $400,000 (for example, a property assessed at $500,000 would be subject to Speculation Tax on $100,000).

The tax credit is limited to $2,000 per owner and $2,000 per property (for example, for two equal owners of a property, each owner's tax credit is limited to $1,000). This tax credit cannot be carried forward or transferred to a spouse and the total reductions made for a calendar year in respect of all properties in which the owner holds an interest cannot exceed $2,000.

Other Canadian Citizens and Permanent Residents

For 2018 and subsequent years, the Speculation Tax rate will also be 0.5% for an individual who is, at the end of the last day of the calendar year, a Canadian citizen or a permanent resident of Canada. Satellite families are specifically excluded from this category.

Canadian citizens or permanent residents who are not resident in B.C. may be eligible to claim a tax credit based on the amount income claimed in B.C. The tax credit cannot reduce the tax rate below the tax rate for an equivalent B.C. resident.

Unused tax credits may be carried forward for up to two years or transferred to a spouse. These tax credits are pro-rated in 2018, when the tax rate is 0.5% for all owners.

Exemptions

Principal Residence

The term 'principal residence' is defined to mean "the place in which the individual resides for a longer period in a calendar year than any other place."

Generally, one exemption must be shared between a married couple or common-law spouses. The principal residence exemption does not apply to individuals who are part of a satellite family.

Rental – Tenant Occupied Property

For 2018, a tenant must occupy the property for a minimum of three one-month periods for the exemption to apply. In 2019, the threshold will increase to a minimum of six one-month periods.

The Speculation Tax distinguishes between tenants at arm's length from the owner and those that are non-arm's length. Generally, a person who is at arm's length is a person who has no special advantage in their

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dealings with the owner. Family members, such as parents, adult children, or siblings, are automatically non-arm's length. Friends and others may be non-arm's length depending on the circumstances.

(a) Arm's Length Tenant

In order for the exemption to apply, the tenancy must be pursuant to a written tenancy agreement and the property must be the place that the tenant makes the tenant's home.

Since the exemptions are individual, each owner of the property must evaluate their eligibility for the exemption. The tests must be evaluated with respect to each owner and the tenant.

(b) Non-Arm's Length Tenant

Within the category of non-arm's length tenancies, there is a further distinction and separate treatment between Canadian citizen owners and foreign owners.

(i) Non-Arm's Length Tenant – Canadian Owner

The owner of the property, their spouse, or a minor child of the owner that is living with the child's parent or guardian in the residence may not be tenants.

Non-arm's length tenants do not require a written tenancy agreement. The non-arm's length tenant must reside in the residence for a longer period in the month than any other place.

If the owners are Canadian citizens or permanent residents and they file Canadian income tax returns, then there is no minimum rental rate. However, the rental rate should be considered with advice from a tax advisor.

(ii) Non-Arm's Length Tenant – Foreign Owner

Foreign owners with non-arm's length tenants are only exempt in limited circumstances.

In order for the exemption to apply the tenant must:

(A) be a Canadian citizen or permanent resident,

(B) be a resident of B.C. for income tax purposes at the end of the last day of the calendar year,

(C) not be a member of a satellite family, and

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(D) have a B.C. income for the calendar year that is equal to or greater than three times the annual fair market rent for the entire residential property.

Landlords are entitled to ask tenants for certain types of personal information, including proof of income. The RBS real estate team is available to offer guidance regarding the information that should be requested and documented prior to entering into a non-arm's length tenancy agreement.

Tenancy Exemption for "Widely Held Owners"

There is also an exemption for property owned by a widely held entity (including a corporation listed on a public stock exchange and certain trusts including a real estate investment trust, a mutual fund trust and a specified investment flow-through trust). These entities need only meet the tenancy duration tests.

Land Under Development

There are exemptions for properties under construction or substantial renovation, and for properties undergoing the development and permitting process. There are specific conditions that apply to these exemptions, but the exemptions are broad and contemplate construction, substantial renovation and development. The exemptions also specifically include applications for financing and permits, as well as entering into contracts for designing, building, and construction of the development.

Other Exemptions

(a) Rental Restrictions (applicable to 2018 and 2019 tax years only)

The rental restriction must have been in place on or before October 16, 2018. The owner must also have purchased the property before that date.

(b) Property is a strata hotel (2018 and 2019 tax years only)

(c) Medical Treatment (this requires documentation from a medical practitioner)

(d) Transfer of Property – year of acquisition

(e) Death of an Owner

(f) Property Uninhabitable

(g) Breakdown of Relationship

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(h) Separation for Work

(i) Bankruptcy

(j) Property is in a trust created by a will for a minor

(k) Property includes a licensed child daycare

(l) No residence on the property (2018 tax year only)

Other discrete exemptions may apply based on individual circumstances. A legal or tax representative should be contacted before a Declaration is completed.

Declaration, Assessment, and Penalties

All residential property owners in the specified areas must complete the Declaration. Where there are multiple owners of a home, a declaration must be completed by each owner, including spouses.

The declaration letter from the Province will list all the residential properties owned by the owner in the specified areas and will outline how to declare and claim any relevant exemptions. The letter will be sent to the mailing address on file with BC Assessment.

If the Declaration is not completed, the owner will receive a Notice of Assessment assessing the Speculation Tax at the maximum rate of 0.5% for 2018 and 2% for 2019 and subsequent years. The Declaration must be completed on or before March 31 in the year following the calendar year. Any Speculation Tax owing is due and payable on or before July 2 in the year following the calendar year.

The Act contains an anti-avoidance provision and several penalty provisions in respect of matters that include incomplete information on a declaration, gross negligence, and misrepresentation by third parties.

The maximum penalties are as follows:

For individuals

(a) a fine equal to an amount:

(i) that is not less than the amount of tax that was sought to be evaded, and

(ii) that is not more than the sum of the following:

(A) the amount of tax that was sought to be evaded;

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(B) $100,000,

(b) imprisonment for not more than 2 years, or

(c) both the fine and imprisonment.

For Corporations

(a) A fine equal to an amount:

(i) that is not less than the amount of tax that was sought to be evaded, and

(ii) that is not more than the sum of the following:

(A) the amount of tax that was sought to be evaded;

(B) $200,000.

What to do next?

The Speculation Tax is nuanced and can easily create confusion in the course of completing the Declaration. Our team can assist in navigating these new complexities and in advising on the utility of corporate, partnership, and trust structures for your real estate and real estate development strategies.

IMPORTANT NOTE: *The information in this material is for general information and guidance on estate planning, as at March 1, 2019 in British Columbia. Such information is provided without any knowledge regarding your identity or specific circumstances. Richards Buell Sutton LLP cannot be held liable for any errors or inconsistencies. This information is not to be construed as legal advice. Due to the general nature of this material, it cannot be relied upon by you. You are urged to consult with a lawyer and tax advisor before acting in any manner on the information contained in this material.*

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March, 2019

New law incorporates the teleoperators' employment contract into the Labor Code (Law No. 21,142)

I. *Introduction*

On March 1st, 2019, Law No. 21,142 was published in the Official Gazzette (hereinafter the "Law"). This Law regulates the employment contract of Teleoperators and will enter into force on September 1st, 2019.

II. *Relevant Content*

1. Definition: The Law defines the Teleoperators' employment contract as a "*convention referring to the provision of services for contacting, or being contacted with third parties, either via telephone, telematic means, digital technology or any other electric means, for the attention, information or counselling on technical, commercial or administrative support, selling or promotion of products and services, provided in a place furnished by the employer, named contact center or call center.*"

In general terms, the Law will apply to employees of call centers.

2. Special characteristics of the employment contract: This employment contract shall include all minimum terms and conditions as set forth in article 10 of the Labor Code for all employment contracts in general, plus the following special provisions set out in the Law:

a. **Remunerations:** There are special requirements that variable remunerations must comply with, as well as certain specific information that payroll slips for these employees must include.

b. **Work shifts:** Companies that provide services which demand continuity, must establish the working shifts at least one week in advance.

c. **Interruptions and breaks from work:** Employees from a contact center or call center who are subject to permanent connection have the right to enjoy special breaks between calls and during the work day, which shall alter the distribution of the working hours, reducing the effective working time.

3. Password for using connection systems: The Law considers these passwords as working tools, that are deemed secret and personal for each employee. Any violation to this provision will be subject to a special judicial procedure that protects employees against infringements to their fundamental rights.

4. Regulations: The Chilean Labor Ministry shall issue two different regulations within the term of six months as of the date when the Law enters into effect (i.e. no later than March 1st, 2020). The first regulation shall refer to the environmental, safety and health conditions for these employees, while the second one will regulate physical and ergonomic conditions in which they will provide their services, as well as their right to take preventive medical exams each year.

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

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Legal Commentary

March 20, 2019

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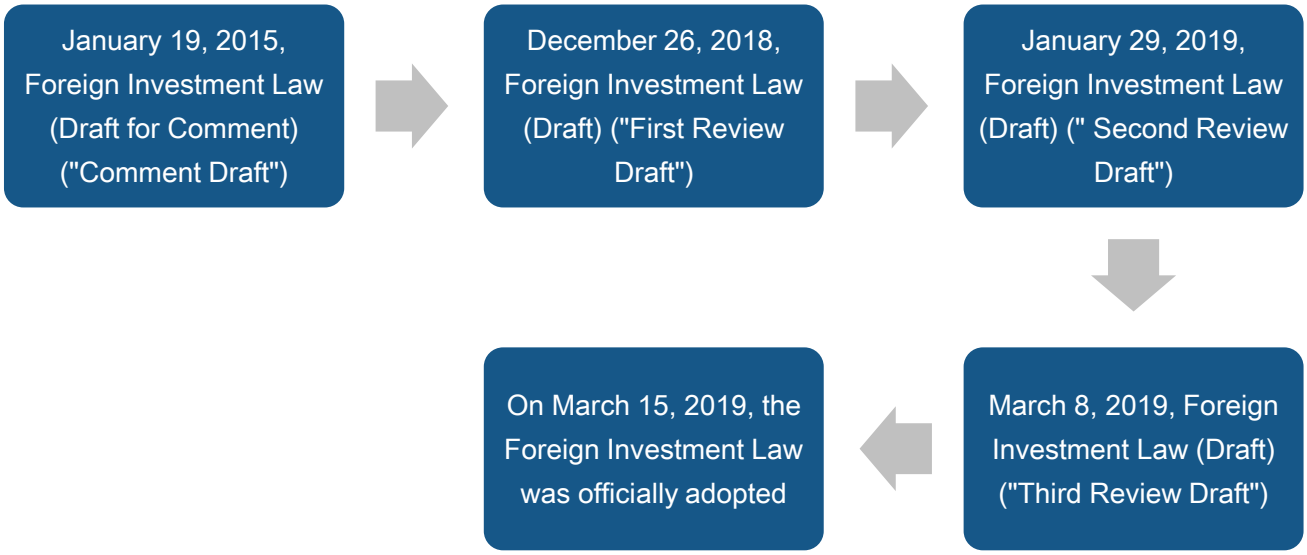
Interpreting the Foreign Investment Law: Uncharted Waters

Authors: Adrian LV | Huanhao HE

On March 15, 2019, the *Foreign Investment Law of the People's Republic of China*[1] was adopted at the Second Session of the Thirteenth National People's Congress, which will become effective on January 1, 2020. The law was adopted quickly following its first submission to the NPC Standing Committee for deliberation on December 23, 2018, reflecting the legislative body's strong determination to create a basic legal system to replace the "three foreign-invested enterprise laws"[2] and serve as the foundation for foreign investment in China.



The Foreign Investment Law provides clear provisions on issues of common concern for foreign-invested enterprises and their investors, such as the pre-access national treatment plus negative list system, the equal application of all national policies to foreign-invested enterprises, no expropriation of foreign

[1] http://www.npc.gov.cn/npc/xinwen/2019-03/15/content_2083532.htm

[2] Refers to the currently effective *Law of the People's Republic of China on Foreign-Capital Enterprises*, *Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures* and *Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures*.

investments under unexceptional circumstances, liberalization of inbound and outbound remittances, concentration of undertakings reviews and foreign investment security review systems. For more analysis, please see our related article, *Interpreting the Foreign Investment Law: In a Nutshell*.

However, the Foreign Investment Law has also left more than a few open questions, many of which remain topics of interest. This article will analyze these open questions.

I. Temporarily shelving VIE structure issues

The variable interest entity ("**VIE**") structure, also known as "agreement control" or "contractual arrangement", refers to the use of a series of agreements, rather than equity ownership, to achieve actual control of domestic operating entities and consolidation into the financial statements.

Since Sina completed its NASDAQ listing by adopting a VIE structure in 2000, VIE structures have been widely used by Chinese companies involved in foreign investment-restricted or -prohibited industries (such as TMT, private education, etc.) to raise foreign capital by creating red chip structures or completing overseas IPOs. However, currently effective Chinese laws and regulations have yet to clearly determine the nature of VIE structures.

Article 15 of the 2015 consultation draft of the Foreign Investment Law (the "**Comment Draft**") for the first time clearly defined VIE structures as a form of foreign investment. However, the first draft for deliberation in 2018 of the Foreign Investment Law ("**First Review Draft**") removed all provisions referring to "agreement control" or "actual controller". In their place, a catch-all clause was added which stipulated that "foreign investment" includes "investments made by foreign investors in China through other means as provided by laws, administrative regulations or by the State Council." This catch-all clause has been retained in the final Foreign Investment Law[3].

We tend to believe that the current focus of the Foreign Investment Law is to expand opening-up, clarify the pre-access national treatment plus negative list system, and ensure an equally competitive environment for domestic and foreign investors under the background of the coming 40th anniversary of reform and opening-up and continuation of Sino-U.S. trade frictions and consultations. The Foreign Investment Law temporarily shelves many controversial issues that are less urgent, leaving them for later legislative authorization, such as the legality of VIE structures and identifying foreign investment based on actual control rather than place of registration (i.e., the actual control concept proposed in the Comment Draft). Therefore, Article 2, para. 2 of the Foreign Investment Law leaves open the possibility that VIE structures may still be included in the regulatory scope of "foreign investment" through special laws, or administrative regulations or even normative documents formulated by the State Council.

For more analysis of VIE structures, please refer to our related article, *Interpreting Draft Foreign Investment Law from VIE Perspectives*.

[3] The clause reads as "investment made by foreign investors through other means as provided by law."

II. The Foreign Investment Law applies to Hong Kong, Macao and Taiwan investors on a "reference or comparison" basis, with supporting regulations possibly to come

Hong Kong SAR, Macao SAR and Taiwan are a part of China, and are also classified as independent customs zones. Thus, investments from Hong Kong, Macao and Taiwan are regarded neither as entirely foreign nor entirely domestic. In practice, the Chinese government has long administered Hong Kong, Macao and Taiwan-sourced investments by reference to foreign investment laws.

In fact, Articles 162 and 163 of the Comment Draft stipulated that the law would apply by reference to investments in mainland China made by Hong Kong, Macao and Taiwan investors and overseas Chinese investors, except as otherwise provided by laws and administrative regulations. However, the First Review Draft removed these provisions, which were also missing from the final Foreign Investment Law.

In this regard, at a press conference on the Second Session of the Thirteenth National People's Congress held on March 4, 2019, Mr. Zhang Yesui, spokesperson for the Second Session, stated that: "In practice, the government administers Hong Kong, Macao and Taiwan investments by reference to foreign investment. The Foreign Investment Law will not change this arrangement for the application of law. And the relevant systems will be continuously revised and improved in accordance with practical needs, and further provide a more open and convenient business and development environment for Hong Kong, Macao and Taiwan investments[4]."

On the morning of March 15, Premier Li Keqiang held a press conference at the conclusion of the Second Session. While taking questions from journalists, Premier Li stated: "Hong Kong, Macau and Taiwan investment can refer to or comparatively apply the just-adopted Foreign Investment Law, and some of the institutional arrangements and actual practices that have worked well for a long time will continue to be followed, not only will this not disturb [investment], it will help attract investment from Hong Kong, Macau and Taiwan[5]." We expect that, in the future, the National People's Congress and its Standing Committee or the State Council may further introduce supporting regulations to clarify the laws that apply to Hong Kong, Macao and Taiwan investors and the enterprises which they establish in mainland China in order to attract Hong Kong, Macao and Taiwan investment.

III. Three types of foreign-invested enterprises need to adjust corporate governance structures during the transition period

In order to establish unified rules for domestic and foreign-invested enterprises, Article 31 of the Foreign Investment Law clearly stipulates: "The organizational form and organizational structure of foreign-invested enterprises shall be governed by the Company Law of the People's Republic of China and the Law of the People's Republic of China on Partnership Enterprises." Article 42 of the Foreign Investment Law further provides that the three foreign-invested enterprise laws will be repealed as of January 1, 2020, and that foreign-invested enterprises established under these laws before the Foreign Investment Law becomes

[4] http://www.npc.gov.cn/npc/zhibo/zzzb44/node_381.htm
[5] http://www.xinhuanet.com/politics/2019lh/2019-03/15/c_1124239569.htm

effective may retain their original organizational form for a period of five years.

Thus, a majority of foreign-invested enterprises face the problem of completing necessary internal adjustments during this five-year transition period to comply with the Company Law, which will come to uniformly apply to both domestic and foreign-invested enterprises. These adjustments are not expected to be easy.

The Company Law sees significant differences compared to the currently effective Law on Chinese-Foreign Equity Joint Ventures and Law on Chinese-Foreign Contractual Joint Ventures, including but not limited to the following:

Matter	**Company Law**	**Law on Chinese-Foreign Equity Joint Ventures**	**Law on Chinese-Foreign Contractual Joint Ventures**
Highest authority	Shareholders' meetings	Board of directors	Board of directors or joint management committee
Minimum number of members	Permitted to have one executive director	No fewer than three directors	Board of directors or joint management committee may have no fewer than three members
Quorum	None	2/3 or more directors	2/3 or more members of the board of directors or the joint management committee
Term of directors	No more than three years	Four years	No more than three years
Voting mechanism for major matters	Approval by shareholders representing more than two-thirds of the voting rights	Unanimous approval by directors present at the meeting	Unanimous approval by members present at the meeting
Initial shareholder characteristics	Chinese natural persons permitted to participate in establishment	Chinese natural persons not permitted to participate in establishment	Chinese natural persons not permitted to participate in establishment
Profit distributions	Distributions based on proportion of paid-in capital, unless otherwise agreed by all shareholders	Distributions based on registered capital ratios	In accordance with contractual joint venture contract

Matter	Company Law	Law on Chinese-Foreign Equity Joint Ventures	Law on Chinese-Foreign Contractual Joint Ventures
Equity transfer restrictions	Approval by more than half of the other shareholders, unless otherwise agreed in the articles of association	Unanimous approval by the other shareholders	Unanimous approval by the other members

In practice, there is some controversy as to whether a joint venture can conform to the Company Law, whose provisions differ significantly from the Law on Chinese-Foreign Equity Joint Ventures. For example, can a joint venture stipulate in its contract and articles of association that a two-thirds affirmative vote of voting directors is required to approve a major event? And can a joint venture stipulate in its contract that equity transfers only require the consent of more than half of the other shareholders, or even stipulate that certain or all shareholders have the right to freely transfer their shares? Although there are no definite answers to these questions, and we believe the answers will vary depending on specific circumstances, the existence of such questions is sufficient evidence to prove that it has become difficult for the three foreign-invested enterprise laws to meet the needs of reform and opening-up.

With respect to the highest authoritative body, joint ventures will need to establish new shareholders' meeting systems to inherit rights from their boards of directors as described in the Company Law, and will need to establish new voting mechanisms. These adjustments will possibly result in conflicts between joint venture parties.

By contrast, a more pressing issue is whether existing foreign-invested enterprises during the transition period should comply with the new Foreign Investment Law by reference (and if so, how), or whether they should continue to comply with the then-repealed three foreign-invested enterprise laws (that is, will the laws remain effective for those existing foreign-invested enterprises?). We believe that these issues need to be clarified before the new Foreign Investment Law comes into effect on January 1, 2020.

IV. Foreign investment promotion policy to be carefully opened to local government, which is worth looking forward to

Both the First Review Draft and the Second Review Draft stipulated in Article 18 that "local governments at various levels may formulate foreign investment promotion policies within their statutory authority." Some local governments had long issued certain preferential policies in terms of taxation, income and finance in order to attract foreign investment which were all subsequently suspended by the *Circular of the State Council on Stocktaking and Regulation of Preferential Policies for Taxation and Related Issues (Guo Fa [2014] No. 62)*. Article 18 therefore raises similar concerns about local governments abusing their authority and uncertainty about the future suspension of similar local preferential policies.

Article 18 was revised in the Third Review Draft to further clarify that governments at or above the county level can only formulate policies and measures to promote and facilitate foreign investment within their statutory authority in accordance with the provisions of laws, administrative regulations and local

regulations. This new provision was also adopted in the new Foreign Investment Law.

According to the Legislation Law, the legislative body, scope of application and legislative preconditions of local regulations are shown in the following table.

Local legislative body	Scope of application	Legislative preconditions
People's congresses and their standing committees of provinces, autonomous regions and municipalities directly under the central government	Provinces, autonomous regions, municipalities directly under the central government	Not in conflict with the constitution, laws, administrative regulations
People's congresses and their standing committees of the autonomous prefectures and cities divided into districts	Autonomous regions and cities, and limited only to matters related to urban and rural construction and management, environmental protection, historical and cultural protection, etc. (except as otherwise provided by law)	Not in conflict with the constitution, laws, administrative regulations and local regulations of the province or autonomous region, and must be reported to the standing committee of the people's congress of the province or autonomous region for approval.

The highlight of the above amendment is to add “local regulations” to the legal basis for developing local preferential policies. In practice, except for some regions of strategic significance such as the Guangdong-Hong Kong-Macao Greater Bay Area, local governments will find it difficult to count on a national law basis for their local foreign investment promotion policies. “Local regulations” may address this concern by not causing the requirements under Article 18 to be too high so as to become impractical, but also not too low so as to invite abuses of authority.

It will be worthwhile to see how the local governments use the convenience provided by “local regulations” to formulate local foreign investment promotion and facilitation policies and measures.

Important Announcement

This Legal Commentary has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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COMPANIES IN RISK OF DISSOLUTION DUE TO NONPAYMENT OF CORPORATE TAX

The Ministry of Finance announced on late February that the government will begin the process of dissolving 74 thousand companies for failing to pay the annual corporate tax.

Since 2018, the government of Costa Rica, has been implementing strong measures to reduce the fiscal deficit, the country has been struggling with this matter for more than 10 years. As part of these measures, the Ministry of Finance, entity in charge of collecting this annual corporate, which is in force since 2017, has requested the Registry to proceed with the dissolution of all companies that still have not paid three tax periods, in accordance with Law N ° 9428 Annual Corporate Tax.

Our Corporate Law department can gladly provide you with more information on this matter and review the status of your companies' obligations.

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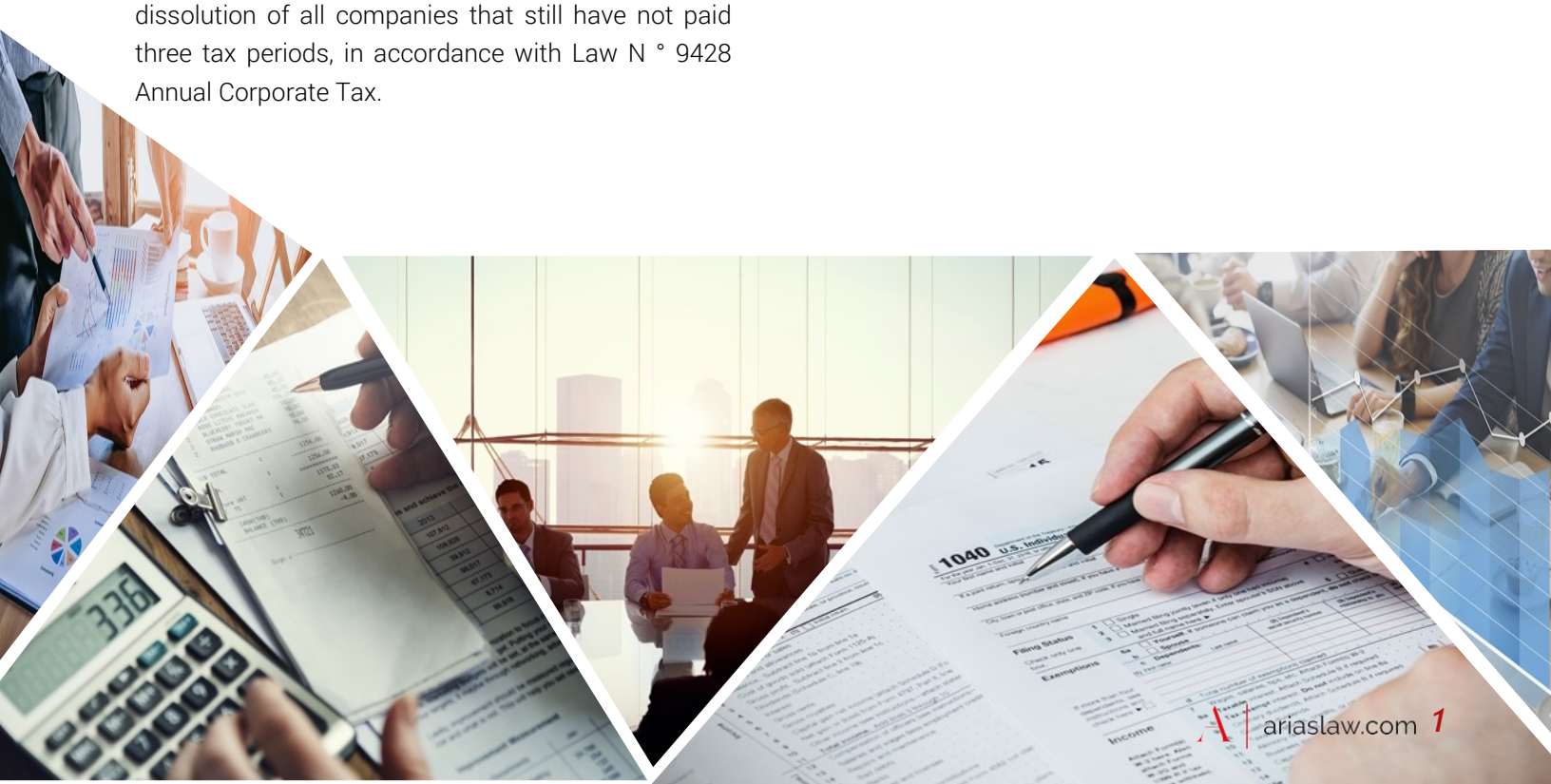

Transitional measures for financial institutions under a no-deal Brexit scenario: Germany, France, Italy, Spain and Portugal

April 2019

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The European Council met on 10 April 2019 to discuss the letter of Prime Minister Theresa May of 5 April asking for a further extension of the deadline for the withdrawal of the United Kingdom ("UK") from the European Union ("EU").

In response, the European Council agreed to an extension to allow for a possible ratification of the withdrawal agreement negotiated so far until 31 October 2019 at the latest. Progress on this matter will be reviewed at the meeting of the Council of June 2019 (communication of the European Council of 10 April 2019).

On the same date, the European Commission issued a communication reminding that the likelihood of a no-deal Brexit remains significant, and that although an orderly Brexit remains the preferred solution, Member States are now prepared for a no-deal Brexit in particular in the financial sector, stressing that keeping a coordinated and consistent approach was crucial.

Please find below a summary of the transitional measures adopted for financial institutions in the main jurisdictions of the EU, Germany, France, Italy, Spain and Portugal, in case of a no-deal Brexit scenario ("Hard Brexit").

Germany

Regulation approved

The German Federal Parliament (*Deutscher Bundestag*) has recently adopted a new law, according to which the German financial supervisor (BaFin) will be empowered to decide the applicable regime on the pre Hard Brexit agreements (possibly by way of a general ruling regarding certain types of regulated firms).

The new law is relevant for banks, investment firms, payment services providers and insurance companies from the UK.

Treatment of existing business relationships

The BaFin is likely to determine that supervised UK firms and their German branches may continue the existing agreements with German clients, which were entered into on the basis of the European passport in the past, for a transitional period. They may even conclude new agreements of the same type with such German existing clients. The transitional regime may last **up to 21 months**.

This would enable supervised UK firms to continue the regulated business activities in Germany for the time being, in a legally secure manner, while applying for a regulatory license for an EU/EEA subsidiary to which the existing agreements could be transferred at the end of the transitional period.

Treatment of existing licenses

The regulatory licensing requirements relate to regulated activities "in Germany" (section 32 para. 1 of the German Banking Act). The German nexus criterion is generally fulfilled if a company:

- operates from its registered office in the Federal Republic of Germany or from a German branch; or
- carries out substantial parts of the regulated business activities in Germany; or
- targets the German market (e.g. by way of calling German customers, advertising in Germany, German websites, German hotlines, etc.).

Since the cross-border continuation of existing agreements by UK firms does not meet any of these criteria, we are of the view that a regulatory license is not required. However, others consider the continuation of agreements with German clients to trigger a German licensing requirement after the transitional period in the event of a Hard Brexit and therefore, there is no comprehensive legal certainty. It is advisable to make plans for the worst case. In some cases it is possible to apply for an exemption from the regulatory licensing requirements.

Additional questions

It is not yet clear which transitional regime will be implemented by BaFin in case of a Hard Brexit. In particular, it cannot be ruled out that the BaFin will provide for a transitional period that is shorter than 21 months as a first step.

France

Regulation approved

The French ordinance no. 2019-75 regarding the preparatory measures in connection with the withdrawal of the UK from the EU in respect of financial services (the "**Ordinance**") was published on February 7, 2019 in the *Journal Officiel* and has been amended by ordinance no. 2019-236 published on March 28, 2019. It has been completed by a decree and two orders (*arrêtés*) published on March 24, 2019.

Treatment of existing business relationships

As a general rule, most ongoing banking and financial contracts will continue post Brexit, to the extent that no material amendments are brought to the contractual terms of the agreements amounting to the provision of a new regulated services.

The Ordinance however addresses specific issues in order to ensure stability and prevent systemic risks in the financial sector in the event of a Hard Brexit.

The Ordinance guarantees French entities' access to UK interbank settlement and delivery-versus-payment systems (CLS, CHAPS, CREST and the clearing houses) by applying the French rules implementing "Settlement Finality" Directive (98/26/EC) to them, ensuring that settlements made through these systems are final.

The Ordinance provides for a transitional regime with respect to master agreements concluded between UK and French entities relating to transactions on financial instruments, including notably derivative transactions. In case of a Hard Brexit, the offer for a new master agreement governed by French law made by an EU subsidiary of a UK-regulated entity shall be deemed accepted by the French client provided notably that it is strictly identical to the existing master agreement with the UK entity. Such mechanism, only available for a transitional period of 12 months from the effective date of Brexit, intends to ensure smooth substitution of the existing master agreements.

In the event of the UK leaving with no deal, UK securities would lose their eligibility to the assets of collective investment undertakings in terms of the exposure ratios to European entities. The Ordinance and its implementation text thus ensures, for limited transitional periods (from 15 to 21 months), the eligibility of UK securities to collective investment undertakings distributed via equity savings plans and equity savings plans dedicated to small and medium-sized firms and mid-caps securities, and in private equity funds subject to exposure ratios to European entities.

Regarding insurance companies, the Ordinance confirms the validity of the commitments entered into by UK insurers under their European passport and their obligation to fulfil these commitments. However, such insurance contracts, under penalty of nullity, may not give rise to a renewal or the issue of new premiums.

With a new definition in the French Code des assurances of insurance operations that cannot be carried out by companies that have lost their European passport, the French Government is trying to encourage the transfer of such activities within the EU..

Treatment of existing licenses

The Ordinance does not provide for any measures with regard to the existing licenses which would notably allow UK firms to enter into new agreements post Hard Brexit with French clients for a transitory period.

After a Hard Brexit, the third-country regime shall be applicable to UK firms intending to operate in France, which will have to:

- either obtain a local license (i.e. through a subsidiary or a branch); or
- with respect specifically to investment firms working with professional clients or eligible counterparties, register with ESMA under the third-country regime, assuming that an equivalence decision concerning the UK is taken by the European Commission.

Additional questions

In addition to the above, the Ordinance provides for the implementation of various measures with respect to a Hard Brexit relating inter alia to the French supervisory authorities' jurisdiction over UK firms under certain circumstances or the implementation of an ISDA agreement under French Law.

Italy

Regulation approved

The Italian Government has recently published the Law Decree no. 22 of 25 March 2019, containing the necessary measures for ensuring the continuity of both markets and intermediaries in the event of Hard Brexit.

Under such a scenario, the UK will become a third country as of the date of Hard Brexit, with the consequent discontinuation of bilateral relations with the EU.

The aforementioned measures are aimed at ensuring the financial stability, the integrity, and the operational continuity of both markets and intermediaries, and at protecting depositors, investors, and customers in general, through the introduction of an appropriate transitional period during which such entities can continue to operate, similarly to the transitional period planned in the event of a Hard Brexit.

Following the entry into force of the Law Decree, the Italian supervisory authorities (CONSOB and the Bank of Italy) have published specific instructions for UK intermediaries wishing either to continue to carry out their activities in Italy during the transitional period or to terminate their relationships with clients based in Italy.

Treatment of existing business relationships

The Law Decree establishes a transitional period that will last **18 months** from the official date of the Hard Brexit. During the transitional period UK intermediaries will be generally able both to continue to manage the existing relationships with the clients and to offer their services to prospects. However, there are certain exceptions.

In particular:

UK intermediaries operating vis-à-vis retail clients and professional clients upon request under the freedom to provide services regime are excluded from the scope of the transitional period;

UK banks which carry out the activity of collection of public saving without an establishment in Italy will be only able to continue to manage existing relationship, without entering into new agreements nor renewing the existing ones.

In relation to the point under (a), it should be clarified that entities which, at the date of Hard Brexit, provide investment services and activities in Italy without a branch may continue to carry out the same service and activities solely in respect of eligible counterparties and professional clients for the transitional period, subject to prior notification to the competent authorities.

They shall instead cease operating with retail and professional clients upon request within the date of Hard Brexit. However, in order to avoid any prejudice to the clients and ensure the orderly closure of the existing relationships, these UK intermediaries would be able to continue to manage the relationships already existing for a maximum of 6 months from the date of Hard Brexit, without the possibility of concluding new contracts, nor tacitly renewing existing ones. Special provisions are set out for the relationship with clients holding OTC derivatives. In principle, UK intermediaries will be able not only to continue to provide investment services to their existing clients but also to offer them to prospects (as opposed to merely handling existing contracts), during the transitional period.

Treatment of existing licenses

The transitional period will be granted only upon the filing by the banking, financial and insurance intermediaries of a specific notification to the competent supervisory authority (and, therefore, not automatically).

This notification shall be submitted no later than 3 working days before the official date of withdrawal, in accordance with the specific procedures which will be laid down by the competent authorities.

Additionally, if applicable, within 15 days from the date of entry into force of the Law Decree (i.e. from March 26, 2019), UK intermediaries which has decided not to continue to provide services in Italy or which cannot continue to provide services under the new framework shall send a communication to clients and to the Italian supervisory authorities.

Spain

Regulation approved

Last March 2, 2019, the Spanish Government approved the transitional measures which would be applicable in a Hard Brexit scenario, through the Royal Decree-Law 5/2019 (the "**Decree**").

The Decree covers different aspects related to UK citizens residing in Spain, employment agreements, healthcare or customs.

Treatment of existing business relationships

Regarding financial institutions, the transitional regime is mainly focused on keeping the effects of the existing agreements with UK institutions. Those agreements on financial services (banking, investment services, insurance and others) executed before a Hard Brexit with an UK financial institution providing the services (including branches) may be in force after the Hard Brexit, keeping their effects for the parties.

Treatment of existing licenses

After the Hard Brexit, UK financial institutions will be treated as third country institutions; therefore, they will be required to obtain a new license in order to renew or amend the existing agreements, or to subscribe new agreements in Spain.

The regulatory license of UK financial institutions to operate in Spain before the Hard Brexit will remain valid for a 9-month period, **but only in relation to the existing agreements**, with a view to:

- either terminate the existing agreements or assign them to another financial institution duly authorized to operate in Spain; and

- apply for a new license to operate in Spain under any of the relevant regimes for third country institutions, including the incorporation of a Spanish licensed subsidiary. This would rule out the possibility of using the transitional period for operating in the future through an EU licensed institution passported into Spain.

Therefore, UK institutions will not be permitted to commercialize new financial services and investment funds, or to approach prospects, in Spain during the transitional period. Any situation should be treated, however, on a case-by-case basis.

Additional questions

The measures will enter into force on the Hard Brexit. They will be suspended, however, if the UK authorities do not grant a reciprocal treatment to the Spanish institutions.

Portugal

Regulation approved

On 22 February, a specific draft law has been presented by the Government to the Parliament on contingency measures to be applied in the event of Hard Brexit. However, such draft law focuses on rights of natural persons and does not cover the activity in Portugal of financial institutions established in the UK.

The Government has further approved and disclosed a Contingency Plan, which includes a section on financial services, whereby it clearly sticks to the European Commission's statement that only a limited number of contingency measures at EU level (e.g. CCPs, central securities depositaries, derivatives settlement, etc.) would be warranted and that no supplementary measures by Member States would be necessary.

The Contingency Plan also includes a reference to coordination efforts at financial supervisors' level (Banco de Portugal, CMVM and ASF). No detailed guidance has so far been disclosed by supervisors.

Treatment of existing business relationships

On the basis of the above and given the lack of an approved transitory period for UK financial institutions acting in Portugal, we expect Banco de Portugal, CMVM and ASF to allow them to continue servicing their clients under existing business relationships, provided that no additional services are provided. There is no clear definition of what "additional services" may mean, but a restrictive approach may be taken.

Treatment of existing licenses

Following a Hard Brexit, UK authorized financial institutions will no longer be authorized to provide financial services in Portugal, unless they:

- incorporate a subsidiary in Portugal authorized by the relevant competent authority;
- establish a registered branch in Portugal as a third-country institution authorized by the relevant competent authority; or
- operate on a reverse solicitation basis only.

  Regarding reverse solicitation, we underline that financial institutions shall not, after the Hard Brexit, promote their services or communicate to their prospect or existing clients with a view to providing their services to them. Therefore, financial institutions should ensure adequate communication of their situation prior to the Hard Brexit, while they hold existing licenses.

Additional questions

As there is no transitional period for UK financial institutions to operate in Portugal, we recommend that institutions implement their plans for Brexit immediately, even in case a Hard Brexit scenario is postponed.

Annex - Comparative chart of Hard Brexit transitional measures

	Germany	France	Italy	Spain	Portugal
Existing Agreements before Hard Brexit	Existing agreements will continue in force at least during the transitional period of up to 21 months. New agreements of the same type with such German existing clients may be entered into.	Most existing agreements will continue. Master agreements entered into between EU-members and UK counterparties can be novated subject to a number of conditions.	[Existing Agreements will continue in force during the transitional period, keeping their effects for the parties].	The Existing Agreements may be in force after a Hard Brexit, keeping their effects for the parties.	Not clearly determined yet. We expect financial supervisors to allow financial institutions to continue servicing their existing clients on a no-additional-services basis.
Transitional period	Up to 21 months, however, it may be shorten up by the BaFin.	12 months (for master agreements)	18 months	9 months	No transitional period is foreseen.
Agreements after Hard Brexit	UK financial institutions will need to obtain a license for a local institution or branch in order to enter into agreements with new clients.	Either obtain a local license or apply for an exemption, or register with ESMA under the third-country regime.	UK intermediaries will be able to offer their services to prospects. During the transitional period, except for certain UK financial institutions providing services without an establishment in Italy. The continuation of the activity during the transitional period is subject to the filing of a specific notification to the competent supervisory authority.	UK financial institutions will need to obtain a new license.	UK financial institutions will need to obtain a license for a local institution or branch, or operate under a reverse solicitation basis.

HKEx Sanctions Guidance Letter

March 2019

Hogan Lovells

HKEx Sanctions Guidance Letter

Executive Summary

On Friday 22nd March 2019, the Stock Exchange of Hong Kong (**HKEx)** released a guidance letter that provides additional clarity on the types of activities by listing applicants in jurisdictions, or with persons or entities, which are subject to economic or trade sanctions that may be a concern to the HKEx as it evaluates a listing applicant's suitability for listing (**Guidance Letter**). The Guidance Letter is in many ways consistent with HKEx Listing Decision LD76-2013, which was published by the HKEx in December 2013 (**LD76-2013**). However, the Guidance Letter goes beyond the LD76-2013 in several important ways:

- The Guidance Letter provides additional clarity as to what conduct is of concern to the HKEx through the use of a number of defined terms that have precise language.
- The Guidance Letter includes reference to both "primary" and "secondary" sanctions, an area that may be subject to confusion by persons that are not familiar with the way that sanctions work, and their extraterritorial application.
- It adds a new concept of a "Sanctions Trader" as an entity that will be subject to the Guidance, and states that a Sanctions Trader may not be suitable for listing.
- Lastly, the Guidance Letter expands the jurisdictions whose sanctions regulations a listing applicant must consider beyond the original four jurisdictions that were covered by LD76-2013.

As LD76-2013 was issued more than five years ago, and has become known among financial and legal advisors who assist listing applicants, this note focuses on changes and clarifications to that decision found in the Guidance Letter.

Background

International trade and economic sanctions have been attracting increasing attention as businesses of every size become more international. However, international trade regulations are complex and vary from jurisdiction to jurisdiction. Many businesses that are smaller and lack sophisticated compliance systems can inadvertently conduct business transactions in a manner that can run afoul of sanctions regulations. These issues are often identified in the due diligence process that a listing applicant undergoes in preparation for an initial public offering. In recognition of this, the HKEx in December 2013 published LD76-2013. Since that time, the amount of international trade, and trade regulation, has only increased, and with it has increased the amount of media attention given to these topics. Recent high profile cases, particularly those involving technology companies headquartered in China have furthered the attention given to these topics.

On Friday 22nd March 2019, the HKEx released the Guidance Letter, which provides significant insight into the way it will consider international trade and sanctions issues in the context of IPO transactions. While many of the concepts are similar to LD76-2013, the Guidance Letter includes precise definitions that while complex, provide more clarity as to what conduct the HKEx will consider important in this area, and expands the areas a prospective listing applicant must consider in a few key ways.

Key Points from the Guidance Letter

Covered Scenarios

The Guidance Letter identifies three specific scenarios of concern: (1) the listing applicant has engaged in primary sanctioned activity, (2) the listing applicant has engaged in secondary sanctioned activity, and (3) a listing applicant is (i) itself a target of sanctions, (ii) located, incorporated, organized or resident in a country that is subject to sanctions, or (iii) is a "Sanctioned Trader".

The inclusion of both primary and secondary sanctions is an important distinction from LD76-2013, and is often an area of confusion for companies as they attempt to understand their exposure to international sanctions. Generally, to trigger primary sanctions, an activity must have a nexus to the jurisdiction. However, to have such nexus, a listing applicant need not have properties or subsidiaries in the jurisdiction, which the HKEx recognizes by including in its definition of primary sanctions activity – a listing applicant incorporated or located in a Relevant Jurisdiction (as explained below) ***or which otherwise has a nexus with such jurisdiction with respect to the relevant activity, such that it is subject to the relevant sanctions law or regulation*** (*emphasis added*). This language recognizes that a listing applicant's commercial activity may subject it to a jurisdiction's sanctions laws without any physical presence in the jurisdiction, such as for example the way that transactions settled in U.S. dollars may trigger U.S. sanctions laws and regulations without otherwise having a nexus to the United States.

The Guidance Letter also covers listing applicants that engage in secondary sanctions activities. The Guidance Letter does not go into detail as to what these activities are, but simply states that it includes activities that may result in the imposition of sanctions against the listing applicant despite the lack of nexus with the sanctioning jurisdiction. Generally, secondary sanctions are limited to sanctions enforced by the United States, and target entities that actively engage with persons or entities that are the direct target of U.S. sanctions. U.S secondary sanctions actions are applicable only to U.S. sanctions that target Iran, Russia, North Korea, and Syria.

Further, the Guidance Letter covers listing applicants that are themselves a target of sanctions, or that are located, incorporated, organized or resident in a sanctioned country. It is perhaps not surprising that if a listing applicant were specifically targeted by sanctions, such as being named on the list of specially designated nationals and blocked persons (**SDN List**) maintained by the U.S. Treasury's Department of Foreign Assets Control (**OFAC**), that this would raise issues with the HKEx. Similarly, if a listing applicant resides in a country subject to comprehensive sanctions, it is unlikely that the listing applicant will be found suitable for listing. The new element, therefore, is the concept of a Sanctioned Trader. The Guidance Letter defines a Sanctioned Trader as any person or entity that does a material portion (10% or more) of its business with sanctioned targets and sanctioned country entities or persons.

The result of engaging in primary sanctions activities is that the listing applicant must obtain a reasoned analysis from its legal advisor on whether the activity violates applicable sanctions regulations or creates material sanctions risk. Further, the listing applicant must cease any activities that may have breached the regulations, and assess the impact on its results of operations of such cessation. The impact on engaging in secondary sanctions activities also requires a reasoned analysis of legal advisors, but in this case the view must state whether sanctions will be imposed. In the case of either primary or secondary sanctioned activities, internal control measures should be considered by the listing applicant to minimize

sanctions risks; this is consistent with the practice that developed following LD76-2013.

Lastly, if the listing applicant is a target of sanctions, is located in a sanctioned country, or is a Sanctioned Trader, the Guidance Letter indicates that the listing applicant may not be suitable for listing, or may be subject to restrictions on the listing applicant's offering. It is perhaps worth noting here that the Guidance Letter notes the lack of suitability could be due to “reputational risk” to the HKEx, which could give the HKEx considerable latitude in considering this issue as a means of finding a listing applicant unsuitable under the listing rules (***Main Board 8.04/GEM 11.06***).

Relevant Jurisdictions

Those familiar with LD76-2013 will recall that it specifically noted sanctions imposed by the United States, the European Union, the United Nations, and Australia. The Guidance Letter takes a more expansive view of international sanctions by employing the term "Relevant Jurisdiction"; stating the applicant must consider laws and regulations of any jurisdiction that is relevant to the listing applicant and has sanctions related laws or regulations. Presumably, this will in practice require a listing applicant to consider whether any jurisdiction with which it has a relevant nexus, has sanctions laws and regulations, and whether the listing applicant has complied with them. This may in practice require a bit of extra due diligence on the part of the listing applicant and its advisors, particularly with respect to companies that have global operations. However, it is unlikely to create much additional exposure to sanctions violations, give that other jurisdictions outside the four named in LD76-2013 are unlikely to have sanctions regulations with broader scope than such four jurisdictions.

Measures to be adopted

The Guidance Letter specifically mandates that a listing applicant, which is subject to material sanctions risk must implement internal control measures that are effective to monitor exposure to sanctions risks. It also states that, depending on the materiality of the sanctions risk, the listing applicant may be required to make undertakings to the HKEx about (i) use of proceeds from the listing, (ii) termination of any contracts that expose it to sanctions risk, and (iii) to disclose in its annual, interim and quarterly reports details of any sanctioned activities, its efforts in monitoring its business exposure to sanctions risks, and the current or anticipated sanctioned activity. It reiterates the point that any breach of such undertakings may lead to a possible delisting of the listing applicant's securities from HKEx.

The Guidance Letter also affirms the existing practice of providing disclosure in a listing applicant's IPO prospectus about any past or current sanctioned activities and the risk they may present, together with the legal advisor's analysis, known material contingent liabilities in relation to sanctioned activities, and other information. This type of disclosure has become the norm for listing applicants since LD76-2013.

Other highlights

The Guidance Letter closes with a few final bits of guidance. First, it makes the point, perhaps somewhat obvious, that a listing application is unlikely to be approved if (a) any sanctions risks materially undermine the listing applicant’s ability to continue its operations; (b) IPO proceeds will be used to finance sanctioned activities; or (c) the listing would cause a significant risk to the listing applicant's investors, the HKEx and its related parties. Second, at the other side of the spectrum, the Guidance Letter notes that if a listing applicant is not exposed to any material sanctions risk, then none of the disclosure and internal control

measures discussed in the Guidance Letter are required.

* * * * * * * * *

As noted in the Guidance Letter, the rules and regulations that implement international economic and trade sanctions are frequently modified to include additional sanctions targets, whether persons, organizations or industries, or make other modifications or additions. Many recent developments, including the United States withdrawal from the Joint Cooperative Plan of Action involving Iran, the imposition of numerous sanctions targeting various industries and persons in Russia following its annexation of the region known as Crimea, and the ongoing changes to sanctions involving North Korea illustrate this point well.

Hogan Lovells has over 100 professionals that focus on issues of international trade and government regulation that are up to date with the most current developments in the this area. Hailed as a leading international trade practice by Chambers USA and Legal 500 US since 2012, our International Trade and Investment group offers effective, informed advice on trade policy, legislation, compliance and enforcement, litigation, and administrative proceedings. Our clients rely on us to handle issues such as export and import controls, economic sanctions, antibribery rules, foreign direct investment, trade agreement negotiations, and antidumping and subsidy cases. With more than 45 offices in the U.S., Europe, Latin America, Asia, Africa, and the Middle East, we are one of the few legal practices that can handle large, varied, and complex trade matters in every major world market.

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Avoiding Corporate Criminal Liability for Corruption Offences

Selvamalar Alagaratnam and Caroline Leong explain Malaysia's Guidelines on Adequate Procedures

The new section 17A which was introduced into the Malaysian Anti-Corruption Commission Act 2009 ("MACC Act") in May 2018 provides for corporate criminal liability for corruption offences as well as for personal liability of persons involved in the management of a commercial organisation.

Section 17A(1) provides that a commercial organisation commits an offence if a "person associated" with the organisation corruptly gives, agrees to give, promises or offers to any person any gratification, whether for the benefit of that person or another person, with intent to obtain or retain business for the organisation, or to obtain or retain an advantage in the conduct of business for the organisation.

For the purposes of section 17A, "commercial organisation" includes companies and partnerships (including limited liability partnerships), whether incorporated or formed in Malaysia or elsewhere, provided that the organisation concerned carries on business, or part of its business, in Malaysia; and a "person associated" refers to a director, partner, employee or any person who performs services for or on behalf of a commercial organisation.

Pursuant to section 17A(3) when a commercial organisation is convicted of an offence under section 17A, a director, controller, officer, partner or member of the management of the organisation is deemed to have committed the offence unless he proves that the offence was committed without his consent or connivance, and that he had exercised due diligence to prevent the commission of the offence, having regard to the nature of his function and to the circumstances.

Sanctions for Corporate Liability Offence

The penalties that can be imposed against a commercial organisation found to have committed an offence under section 17A are severe. The organisation can be subject to a fine of not less than 10 times the sum or value of the gratification or RM1.0 million, whichever is higher, or to imprisonment for a term not exceeding 20 years, or to both.

It has been announced that section 17A will come into force on 1 June 2020. In anticipation of this new law coming into force, commercial organisations are encouraged to prepare themselves for the inevitable. This article will discuss the measures that commercial organisations can adopt to mitigate the risk of corporate liability for corruption offences. However, the measures that individuals may adopt to mitigate the risk of personal liability fall outside the scope of our discussion.

Corporate Defence - Adequate Procedures

The sole statutory defence available to a commercial organisation to avoid corporate liability is that it had in place adequate procedures to prevent associated persons from committing corruption. This is similar to the UK Bribery Act which provides that the defence for a company against liability for an offence of corporate failure to prevent bribery is to prove that it had adequate procedures in place to prevent bribery.

It is therefore patently clear that adequate procedures must be put in place but what are such "adequate procedures" and how does one ensure that they are sufficiently adequate?

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The Prime Minister's Department issued the Guidelines on Adequate Procedure ("Guidelines") dated 4 December 2018 pursuant to section 17A(5) of the MACC Act. These Guidelines were formed on the basis of five principles which may be used as reference points for any anti-corruption policies, procedures and controls which commercial organisations may choose to implement. The adequate procedure principles are as follows:

1. Top Level Commitment;
2. Risk Assessment;
3. Undertake Control Measures;
4. Systematic Review, Monitoring and Enforcement;
5. Training and Communication.

Top level commitment

The Guidelines emphasise the primary responsibility on top management to ensure that commercial organisations:

(a) Practice the highest level of integrity and ethics;
(b) Comply fully with the applicable laws and regulatory requirements on anti-corruption; and
(c) Effectively manage the key corruption risks of the commercial organisation.

The effectiveness of any anti-corruption effort will require the buy-in and commitment of top-level management. This includes setting the commercial organisation's tone from the top and spearheading its effort in fighting corruption. It is imperative that it is clearly communicated internally and externally from the board of directors and the highest level of management that the organisation has zero tolerance for corruption. Besides corporate statements or corporate charters reciting the anti-corruption values, a culture of integrity has to be instilled at all levels, including by establishing proper procedures and encouraging the use of any reporting (whistleblowing) channels.

Risk Assessment

A corruption risk assessment should form the basis of a commercial organisation's anti-corruption efforts. This will assist a commercial organisation to understand and identify where the risks of corruption exist, the extent of such risks and to identify the required processes, systems and controls that should be put in place to minimise, if not eliminate, those risks.

The Guidelines recommend that a comprehensive risk assessment be done every three years, with intermittent assessments conducted to ensure integrity levels are not compromised. This may be on a stand-alone basis, but it is further recommended that the assessment be incorporated into the organisation's general risk register.

The assessment process should be tailored to the commercial organisation's business and culture, keeping in mind factors such as its size, location, nature of business and organisation structure.

Undertake Control Measures

Control measures and contingency measures that are reasonable and proportionate to the risks of corruption and the nature, scale and complexity of the commercial organisation's activities should be implemented.

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The Guidelines identify two items that should be included, namely due diligence on any relevant parties or personnel and reporting channels that are accessible, confidential and prohibit retaliation.

The application of section 17A of the MACC Act is far-reaching. It extends to any person who performs services for or on behalf of a commercial organisation. This means that a commercial organisation may be liable for the corrupt acts of its agents or even suppliers.

It is therefore important that before entering into commercial relationships, due diligence is carried out on potential business associates, partners and/or agents. In this context, due diligence refers to the process of investigating, analysing and researching a company which the commercial organisation wishes to enter into a commercial relationship with to ensure that the said company is run in a manner which is consistent with the expectations and standards of the commercial organisation. Due diligence tools may be crafted to serve this purpose. The due diligence process should be fully documented as such documentation may prove useful in the event there is an investigation by the authorities into the dealings of the commercial organisation with its business partners. As an additional step of vigilance, due diligence should also be carried out periodically while the commercial relationship is ongoing to ensure constant compliance.

The Guidelines also recommend that policies and procedures of the commercial organisation should deal with areas where higher risks of corruption lie as identified by the risk assessment process, which could include, among others, gift receiving and giving, movement of moneys, bribery, fraud, and influence peddling. These should not only be clear and precise but should also be crafted in a way that is effective in deterring corrupt practices within or on behalf of the organisation.

While not specified in the Guidelines, it is suggested that written policies clearly set out the prohibited acts which may amount to an offence under the MACC Act, while bearing in mind that the list should not and cannot be exhaustive.

The bare minimum that a commercial organisation should have in place are:

- Anti-bribery and corruption policy or statement;
- Code of business conduct and ethics;
- Standard operating procedures for due diligence;
- Written confirmation and undertakings in contractual documents;
- Whistleblowing policy;
- Written limits of authority; and
- Internet and communication policy.

These policies and procedures must be endorsed by top level management, kept up to date, communicated to and remain easily and readily accessible by all associated persons at all times. Employment agreements should include a requirement for all employees to abide by the policies and procedures as and when established by the organisation. Ideally, employees should be required to sign-off on all policy documents issued.

Systematic Review, Monitoring and Enforcement

A commercial organisation's duty in preventing bribery and corruption does not end with the implementation of policies and procedures. Continuous or regular monitoring and review of its and its associated persons' practices in relation to the control measures, policies and procedures is key to avoid or minimise risks. Such reviews may be conducted via an internal audit or an audit carried out by external independent parties such as the MS ISO 37001 auditors.

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As a prudent step, reviews could extend to internal procedures such as accounting, record keeping, and internal audit, as well as training and courses to ensure and heighten effectiveness.

The Guidelines recommend procedures which in effect would monitor, review and ensure that policies and procedures put in place by the commercial organisation are effective and complied with.

To avoid condonation of breaches of policies and procedures, a certain amount of vigilance is required. A commercial organisation, through its management personnel, must insist on strict adherence to its policies and procedures. This includes taking disciplinary action for what might otherwise be seen as minor non-compliance or a cultural norm.

Training and Communication

A commercial organisation is expected to conduct trainings and communicate its policies and charter on anti-bribery and corruption through the right modes, within and outside the organisation, so that there is no doubt as to its stance in respect of this matter. It should cover policy, training, reporting channels and consequences of non-compliance. Based on each commercial organisation's structure and culture, it should consider the best mode of communication, including the format, medium and language to be used.

Training, guidance, and courses should be undertaken within the commercial organisation for its employees and associated persons to ensure thorough understanding of the commercial organisation's anti-corruption position and the effectiveness of the measures put in place, including alerting employees of their roles within and outside of the commercial organisation and on the consequences of non-compliance.

Conclusion

Commercial organisations are encouraged to put things in gear. Further guidance on creating programmes is available from ISO 37001 which is an anti-bribery management system standard published by the International Organization for Standardization (ISO) in October 2016. It is designed to help establish, implement, maintain and improve an anti-bribery compliance programme.

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Netherlands | EU

Introduction of Dutch UBO register expected in January 2020

Friday 12 April 2019

On 4 April 2019, the Dutch Minister of Finance submitted a bill to the lower house of the Dutch parliament introducing an obligation for a wide range of legal entities and other organisational forms (collectively referred to as entities) to enter information on their ultimate beneficial owners (UBOs) in the Trade Register. Some of the information will be accessible to the general public. The bill, which derives from the Fourth and Fifth EU Anti-Money Laundering Directives, consists of amendments to existing Dutch national legislation such as the Money Laundering and Terrorist Financing (Prevention) Act (*Wet ter voorkoming van witwassen en financiering van terrorisme:* Wwft) and the Trade Register Act 2007. The obligation to file UBO information is expected to enter into force in January 2020. Entities that are already registered in the Trade Register on the date of the new legislation's entry into effect will have 18 months from that date in which to file UBO information.

Which entities will be subject to the UBO registration requirement?

Under the bill, the following entities incorporated or formed in the Netherlands will be required to enter information on their UBOs in the register:

- Private limited liability companies (BVs) and public limited liability companies (NVs), with the exception of (i) listed companies that are subject to the disclosure requirements laid down in the EU Transparency Directive or to equivalent international requirements and (ii) wholly owned subsidiaries of the listed companies described in (i);
- Foundations (*stichtingen*), cooperatives (*coöperaties*), mutual insurance associations (*onderlinge waarborgmaatschappijen*), associations (*verenigingen*) with full legal capacity and associations with limited legal capacity operating a business;
- Private partnerships (*maatschappen*), limited partnerships (*commanditaire vennootschappen*), general partnerships (*vennootschappen onder firma*), European economic interest groupings (EEIGs) and shipping companies (*rederijen)*; and
- European companies (SEs) and European cooperative societies (SCEs) having their corporate seat in the Netherlands.

According to the explanatory memorandum to the bill, there will be a separate bill to introduce a UBO registration requirement for mutual funds (*fondsen voor gemene rekening*), trusts and similar constructions.

Who is a UBO?

In brief, a UBO is an individual (natural person) with ultimate ownership of or control over an entity. The Wwft (Implementation) Decree 2018 (*Uitvoeringsbesluit Wwft 201*8), which we discussed in our newsletter of 13 April 2018, sets out categories of individuals who qualify in any event as UBOs of certain types of entities:

- In the case of a BV, NV, SE or SCE, the UBOs are in any event the natural persons who ultimately own or control the entity (i) through direct or indirect ownership of more than 25% of the shares (including bearer shares), voting

rights or ownership interest in that entity, or (ii) by other means, such as the right to appoint or dismiss the majority of the members of the entity's administrative, management or supervisory body;
- In the case of a foundation, association, cooperative or mutual insurance association, the UBOs are in any event the natural persons who ultimately own or control the entity through (i) a direct or indirect ownership interest of more than 25%, (ii) the ability to directly or indirectly exercise more than 25% of the voting rights in relation to an amendment of the entity's articles of association, or (iii) the ability to exercise effective control over the entity;
- In the case of a private partnership, limited partnership or general partnership, the UBOs are in any event the natural persons who ultimately own or control the partnership through (i) a direct or indirect ownership interest of more than 25%, (ii) the ability to directly or indirectly exercise more than 25% of the voting rights in relation to – in brief – an amendment of the partnership agreement, or (iii) the ability to exercise effective control over the partnership. These criteria are also applicable in the case of an EEIG or a shipping company (*rederij).*

If no "real" UBO can be identified on the basis of ownership or control, or if there is any doubt that the person(s) identified is/are the UBO(s), the natural person(s) who holds/hold the position of senior managing official(s) will be deemed to be the UBO(s) and recorded as such in the register. In the case of legal entities, these "pseudo UBOs" will be the management board members and in the case of partnerships they will be the partners (with the exception of limited partners).

What are the required details?

For each individual who meets the definition of a UBO, the following information must be registered:

- first name and last name;
- date, place and country of birth;
- nationality and residential address;
- Dutch citizen service number (BSN)/foreign tax identification number;
- nature and extent (expressed as a range, i.e. more than 25-50%, 50-75% or 75-100%) of the economic interest held by the UBO;
- copies of documents used to verify the abovementioned personal details (e.g. passport copy, etc.); and
- copies of documents showing the nature and extent of the economic interest held (e.g. an extract from a shareholder register or a copy of a partnership agreement).

Which details from the UBO register will be publicly accessible?

The following information will be accessible to members of the general public:

- first name and last name;
- month and year of birth;
- country of residence;
- nationality; and
- nature and extent (expressed as one of the abovementioned ranges) of the economic interest held.

All other details about a UBO will only be accessible to the Financial Intelligence Unit and to certain authorities (designated as "competent authorities") such as the Dutch Central Bank (DNB), the Authority for the Financial Markets (AFM), the Public Prosecution Service and the National Police Corps.

Privacy and blocking of access to UBO information

In exceptional circumstances and on a case-by-case basis, it will be possible to block all publicly accessible information about a particular UBO, except for the nature and extent of the economic interest held by him/her. This can be done if the UBO is a minor or a person otherwise lacking in legal capacity, or if the accessibility of the information would expose the UBO to a disproportionate risk, e.g. fraud, kidnapping or blackmail. More detailed rules on the blocking of information will be laid down in the Trade Register Decree 2008 (*Handelsregisterbesluit 2008*) when it is amended. In our experience, under that decree in its present form it can sometimes be difficult to block information in the Trade Register. Furthermore, the experience of other EU countries that have already introduced UBO registers has shown that it can be difficult – and in some cases impossible – to block access by members of the general public to UBO information.

Additional obligations and sanctions

In addition to the obligation to register UBO information with the Trade Register, entities will be required to maintain adequate, accurate and up-to-date records of such information themselves. From their side, UBOs will be required to

cooperate in the performance of the above obligation by providing the relevant entity/entities with all information necessary for this purpose.

Parties that are under a duty, pursuant to the Wwft, to conduct customer due diligence procedures (e.g. banks, auditors and civil law notaries) may not rely solely on information in the UBO register for this purpose; they must also independently obtain and verify information on their clients' UBOs. In addition, they will be required to notify the Chamber of Commerce if there are any discrepancies between the information in the register and information they have obtained from other sources.

Non-compliance by entities or UBOs with the respective obligations set out in the bill may lead to the imposition of administrative or even criminal sanctions. Intentional violations may result in imprisonment for up to two years, community service or a fine of up to EUR 20,750. In other cases, violations may result in detention for up to six months, community service or a fine of up to EUR 20,750.

What are the implications for you?

It will be some time before the Dutch UBO register will become operational. Nevertheless, we advise management board members of entities that will be subject to the registration requirement to start collecting and recording the necessary UBO information, if they have not already done so. Having a complete and up-to-date set of UBO records will be useful not only as preparation for the introduction of the register, but also in the event that UBO information is requested in connection with a customer due diligence pursuant to the Wwft. For UBOs who are concerned about any potential risks arising from the introduction of the UBO register, it is time to consider ways in which such risks can be mitigated.

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More change to NZ's overseas investment rules

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Overseas investment (/resources/overseas-investment)

Government reform and public policy (/resources/government-reform-and-public-policy)

The Treasury yesterday released its consultation paper in relation to a further round of changes to the overseas investment regime (*Reform of the Overseas Investment Act 2005 - Facilitating productive investment that supports New Zealanders' wellbeing*). This represents the second phase of changes, following those made in late 2018.

Importantly, this is not a "first principles" reform process. The continued existence of an overseas investment regime is not being questioned - ie a regime focusing on transactions by "overseas persons" in relation to "sensitive" land.

Instead, the Treasury is concerned instead that the existing rules are not working as they should, and is seeking views on issues centring around three main themes: what is to be screened, who is screened, and how the screening process works.

In this FYI we review the main questions being posed by The Treasury's consultation paper and offer our comment.

> *"To enable the benefits that overseas investment can bring to New Zealand, it is important that the rules allow New Zealand to attract good investment and are not so burdensome that they discourage potential investors. Equally important, we need to ensure that the ownership of, and rights over, assets that are important to New Zealanders are not compromised or harmed."*

The main questions posed are:

- If an overseas person wants to acquire land that is next to "sensitive" land, should consent be necessary?
- If an overseas investor who wants to lease "sensitive" land, have to go through the same consent process as they would if they wanted to buy it outright?
- Should a company that has a mix of NZ and overseas shareholders be viewed as an "overseas person"?
- Should there be discretion to not screen low-risk transactions?

- What is the best way to assess the character and capability of an overseas person who wants to invest in NZ?
- What is needed to ensure investments by overseas persons are in the national interest?
- What should be done to enable the OIO to block investments not covered by the rules, where this presents risks to NZ's national security and/or public order.

The paper calls for submissions on the various policy issues being considered, to feed into the Government's legislative process, leading ultimately to the new law being passed by Parliament in mid-2020.

Our Comment: As part of the consultation, we will also be encouraging The Treasury to do what it can to promote certainty around the consenting process and to increase the efficiency of the process overall.

We agree that it is important to balance the benefits and risks of overseas investment, but uncertainty and delay that are outside international regulatory norms do nothing to promote New Zealand as a country to invest in. With this in mind, it will be important to ensure that any 'national interest' test is clearly defined and understood at the outset, so that investors can have confidence as to how (and when) it will be applied, rather than having it be a 'sword of Damocles'.

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Legal Update: Delayed detection of lung cancer – a patient's suit against a hospital and its doctors

DENTONS RODYK

March 22, 2019

Key implications of the Court of Appeal's judgment of 26 February 2019 in the case of *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd and others* [2019] SGCA 13 on medical practice and public sector hospital work systems

I. Brief background to the litigation

The patient, Ms Noor Azlin binte Abdul Rahman, was diagnosed with lung cancer in 2012. Two years later, she suffered a relapse, and in 2015, she sued Changi General Hospital (the Hospital) and three of its doctors – a respiratory medicine specialist (Dr X) and two medical officers working in the Hospital's Accident & Emergency (A&E) Department (Dr Y and Dr Z) (collectively the 3 Doctors) for negligently delaying the diagnosis of her disease. The 3 Doctors each faced distinct claims in medical negligence. The Hospital faced two types of claims in negligence, the first by way of primary liability for negligence because of the system which it had in place at the material time, and the second by way of secondary (vicarious) liability for the negligence of each of the 3 Doctors.

After a trial and hearing the testimony of various witnesses of fact and expert witnesses, the High Court in February 2018 dismissed the patient's negligence claim against all four defendants, with costs awarded against her. The patient appealed the High Court's decision. In a landmark decision delivered on 26 February 2019, the Court of Appeal allowed the patient's claim against the Hospital, found the Hospital liable in negligence and remitted the issue of loss and damage, including the quantum of damages to be awarded (if any), back to the trial judge for decision. The patient's appeal in respect of all of the 3 Doctors failed.

The Dentons Rodyk & Davidson LLP team led by Lek Siang Pheng and Vanessa Lim successfully defended the 3 Doctors both in the High Court and in the Court of Appeal.

II. Summary of the case and key findings by the Court of Appeal

Key Facts

The crux of the patient's case was that the 3 Doctors who saw her on separate occasions from 2007 to 2011, and the Hospital where they worked, had negligently delayed the diagnosis of a malignant lung nodule, which resulted in the loss of a better medical outcome and/or loss of chance to cure her cancer. There were distinct allegations of breach of duty made by the patient against each of the 3 Doctors and the Hospital.

The patient had seen Dr X in November 2007 for a lung opacity that had been incidentally detected on a chest X-ray

when she attended at the Hospital's A&E Department two weeks earlier. Dr X examined the patient in his specialist outpatient clinic (SOC) and found her well and asymptomatic. He ordered a further chest X-ray in two views, and upon reviewing the X-ray films, concluded that the lung opacity was infective. Since it appeared to be resolved or resolving, he gave her an open date to return to his clinic.

In 2010, the patient was seen in the Hospital's A&E Department by Dr Y, a locum A&E medical officer, complaining of right lower chest pain which worsened with deep inhalation, but had no respiratory symptoms. An ECG and chest X-ray were ordered, and a stable opacity with no malignant features was noted in the right mid-zone of the patient's lung. The patient informed Dr Y that she had previously seen Dr X, a respiratory medicine specialist, and was told that she was fine. Dr Y did not have access to the respiratory medicine department's SOC notes. After discussing the case with his supervising A&E consultant, Dr Y diagnosed the patient with musculoskeletal pain, and sent the chest X-ray for reporting, noting that the patient would be recalled if necessary. She was then discharged with medication. Dr Y did not have to follow up on the X-ray report personally, as the Hospital had a system by which X-ray reports would be sent to the A&E Department, where they would be reviewed by a senior A&E doctor on duty. This senior doctor would then determine what follow-up, if any, was required. Hence, Dr Y was not aware of the 2010 chest X-ray radiological report or its contents.

The 2010 chest X-ray radiological report states:

"A rounded opacity measuring approximately 2.2cm is seen in the (R) mid zone, which appears stable since the previous chest radiograph dated 15/11/2007. This is non-specific and is indeterminate in nature. A follow-up radiograph may be performed for assessment of interval stability. The rest of the visualised lung parenchyma shows no significant abnormality. No gross consolidation is seen."

In 2011, the patient was seen in the Hospital's A&E Department by Dr Z, an A&E medical officer. This time, she presented with left lower rib cage pain which had persisted for one month and was previously diagnosed by a general practitioner as rib-cage inflammation. Dr Z ordered an ECG and a chest X-ray in two views (erect and left oblique). In view of the patient's complaint, Dr Z adopted a targeted approach and focused on the left side of the patient's chest. He did not notice the opacity in the right mid-zone of the patient's lung, which was only visible in the erect view of the X-ray. Dr Z cleared his diagnosis of costochondritis with his supervising consultant. The chest X-ray was sent for reporting. Again, Dr Z did not receive the 2011 chest X-ray radiological report, and he was unaware that a lung nodule had been detected.

The 2011 chest X-ray radiological report states:

"The opacity in the (R) midzone is again noted, measuring 2.6x2.2cm compared to 2.5x2.0cm in the previous study dated 29 April 2010. It is non-specific in nature and largely stable since the previous study. No new mass lesion is noted in the rest of the lungs. There is also no pleural effusion or pneumothorax. Follow up of this lesion is suggested."

Key findings of the Court of Appeal

We summarise below the main allegations made by the patient against the Hospital and the 3 Doctors, and the key findings by the Court of Appeal:

The Hospital

The patient alleged that the Hospital failed to put in place a reasonable system of management to ensure proper follow-up on her medical condition. In its defence, the Hospital had argued that the 2010 and 2011 chest X-ray radiological reports were sent to the A&E Department, and the senior doctor on duty had reviewed the reports and determined that no follow-up was required on each occasion. However, the Court of Appeal found that there was no evidence that the Hospital had in fact taken any action on the patient's radiological reports in 2010 and 2011. The Court went on to identify three systemic failures by the Hospital.

- First, the standard of care required the Hospital to ensure that radiological reports were properly followed up and given appropriate attention. The Court of Appeal expressed the view that such reports should not have been sent to the A&E Department, but rather to the SOCs, which are better equipped and have more time to deal with them. As to which SOC ought to receive the radiological report, the Court's view was that the Radiology Department should decide this. Only if the radiologist was unable to ascertain the appropriate department for follow-up, should the radiological report be sent to the A&E Department for follow-up. In the present case, the Court held that the 2010 and 2011 chest X-ray radiological reports should have been assessed by a respiratory physician rather than an A&E doctor.
- Second, the Hospital's [then] system for review of radiological reports did not allow for comprehensive management of a patient, namely, a means for consolidating known information about the patient. The Court cited in particular, Dr Y's inability to access Dr X's clinic notes.
- Third, the Hospital did not have a system [then] for recording decisions made by the A&E senior doctors who reviewed the patient's 2010 and 2011 X-ray radiological reports. This meant that the patient would not know the decision made, and doctors treating the patient down the line would not know the reasons for the decision.

Thus, the Hospital was held by the Court of Appeal to have been negligent in that it breached its duty of care owed to the patient for failing to have in place a proper system to ensure adequate follow-up of the patient's case and that this resulted in a delay in diagnosing her with lung cancer. This is a finding of primary liability against the Hospital.

As none of the 3 Doctors were found to have been negligent (see below), there was no finding of vicarious liability on the part of the Hospital in this regard.

The 3 Doctors

The patient had alleged that Dr X ought not to have discharged her with an open date without being sure that the patient's lung opacity had resolved. The Court of Appeal agreed with the patient on this point but found that Dr X was not liable to her in negligence because she did not have lung cancer in 2007. [In other words, while there was a breach of duty by Dr X, there was no causation of loss. Hence, there was no liability in negligence.]

Among the key allegations by the patient against Drs Y and Z were that they should have either referred the patient to a specialist or ordered a CT scan to diagnose her lung nodule. However, the Court of Appeal, accepting the expert opinion of the doctors' Emergency Medicine expert witness, held that standard of care applicable to A&E doctors must be informed by the reality of their working conditions and calibrated accordingly. A&E doctors work under immense time pressure and cannot be expected to review patients in the same manner as a GP or in a SOC. They are permitted to adopt a targeted approach to prioritise the patient's presenting symptoms and rule out life-threatening conditions. However, incidental findings should not be ignored, and the standard of care for incidental findings would depend on factors such as its characteristics, the patient's history, whether the finding had been detected previously.

Dr Y was not in breach of his duty of care to the patient. It was sufficient for him to defer the diagnosis of the lung opacity, send the chest X-ray for reporting and provide instructions to recall the patient if necessary. There was also no duty on the A&E medical officer to order a CT scan at first instance on an incidental finding of a known nodule that was stable. However, the Court of Appeal also cautioned that the fact that the A&E medical officer is aware that a specialist had seen the patient in the past cannot of itself justify a lack of follow-up. Also, simply because a patient says that a specialist had told her that "she was fine" would not be sufficient reason by itself, for the medical officer not to investigate further.

As for Dr Z, the Court of Appeal accepted that he had not seen the lung opacity on the 2011 chest X-ray image. However, there was no breach of duty on the part of Dr Z, as he was entitled, as an A&E doctor to adopt a targeted

approach to address the patient's presenting condition in an A&E setting.

III. Implications of the Court of Appeal's judgment

We highlight four key implications of the decision which are likely to affect medical practice, particularly in the public sector healthcare setting:

1. The Court of Appeal did not address the part of the High Court's decision that the patient should be notified of the results of radiological reports and of the clinical decision on the patient's condition as part of the doctor's communication of his/her diagnosis. Given that this part of the High Court's decision remains in place, hospitals may need to consider putting in place a system to ensure that radiological findings are communicated to the patient even if no further intervention is assessed to be required, so as to allow the patient to evaluate the information to decide how, if at all, they want their care to be followed up on. If the radiological findings are related to or have some impact on the patient's presenting complaint, the hospital may have to recall the patient to explain the findings to him/her, even if no further intervention is thought necessary. If the findings are not related to his/her presenting complaint, such communication can be made by e-mail.

Our comments

It is plausible that the High Court's ruling can extend to all investigation findings and reports which are not immediately available at the time of the patient's consultation, or prior to the patient's discharge (if he or she was admitted).

2. The Court of Appeal accepted the expert evidence adduced on behalf of Drs Y and Z that the A&E Department is meant to adopt a targeted approach focusing primarily on the acute episode concerned and the patients' presenting symptoms in view of the constraints of time and resources. Following from this, the Court of Appeal's view is that the radiological reports should be routed by the radiologists (rather than the A&E doctors) to the appropriate SOC, and it is only where the radiologist is unable to ascertain the appropriate specialty that the report is sent to the A&E Department for a consultant to decide upon.

Our comments

a. The import of this aspect of the Court of Appeal's ruling is that public hospitals with an A&E Department should now consider implementing processes for all radiological reports, which would ordinarily be sent to the A&E Department, to be directed instead to the appropriate outpatient SOCs. In addition, the receiving SOCs would have to devise a system for these radiological reports to be reviewed and followed up on if necessary. Decisions on whether to follow-up and what the follow-up is would also have to be documented.
b. The aspect of the Court of Appeal's view that radiological reports should be routed by radiologists (rather than the ordering A&E Department) to the relevant SOC bears a closer look. The Court's view seems to be based on the premise that the reviewing senior doctor in the A&E Department is subject to the same time constraints as the medical officers working on the ground and attending to patients at the frontline. However, we think that this may not necessarily be the case in every A&E Department: if there is a separate system or roster in place for such a review to be undertaken, this would possibly ameliorate these constraints. Also, given that the A&E Department had ordered the radiological investigation and that the doctors there had taken the patient's history and seen the patient, the A&E Department would perhaps be better placed, rather than the Radiology Department, to correlate the radiological findings with the patient's presentation, and make the call as to whether a referral to the SOC is required and also which specialty the patient should be referred to.

3. The Court of Appeal's decision suggests that hospitals ought to have a system to consolidate known information

about a patient.

Our comments

With electronic medical records system now prevalent in public sector hospitals and more accessible to doctors, the problem that arose in the case of *Noor Azlin bte Abdul Rahman* (that is, an A&E doctor's inability to access SOC clinical notes) is unlikely to arise now in the public sector. There remains the separate and distinct problem of how to sieve through the mass of available medical history in the records.

4. Of particular interest to doctors would be the Court of Appeal's observation that the mere fact that a patient says that she had previously seen a specialist and had been told she was fine, does not by itself excuse the doctor from investigating further. In other words, this suggests that the medical history given by a patient should not be taken entirely at face value. This gives rise to several interesting questions: how far must a doctor investigate medical history narrated by a patient or care-giver, and what must he/she do to satisfy his/her duty of care? Would mere verification against previous medical records suffice, and if so, how far back must he/she look? Or must the doctor take further steps such as initiating a referral or performing clinical investigations where previous records are old or not available?

Our comments

The likely answer is that the extent of further investigation required depends on the context of the consultation, e.g. how important that piece of medical history is to the doctor's treatment plan, whether verification against previous records is practicable, and the cost vs benefit of putting the patient through further rounds of clinical investigation (such as MRI or CT scans, which are costly) or referrals to verify the medical history. Going forward, doctors of all specialties may need to think twice, before simply accepting a patient's medical history at face value.

IV. Conclusion

The Court of Appeal's decision in *Noor Azlin bte Abdul Rahman* is the first time a public sector hospital in Singapore has been found to have been negligent for its system. The decision, particularly on the aspects of the case relating to the hospital work systems impacts on how a healthcare institution ought to collate and consider the relevant medical information in its possession for the purpose of patient care. Accordingly, healthcare institutions may wish to review their processes and protocols, particularly with regard to radiological investigations and also the handling of incidental findings.

Dentons Rodyk would like to thank and acknowledge Senior Associate Audrey Sim and Associate Zoe Pittas for their contributions to this article.

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Illegal Timber Trade Touches Pacific Northwest

04.17.19
By Olivier Jamin

On March 25, 2019, the Environmental Investigation Agency (EIA) released a report revealing the results of a four-year undercover investigation of illegal timber trafficking from Gabon and Republic of Congo. The video recordings and other materials have been shared with federal officials and show that at least some of the illegal timber found its way to the Pacific Northwest. The EIA found evidence of br bery and other illicit activity in the supply chain of a hardwood timber veneer known as okoume, which was sold domestically by companies in Washington and Oregon. U.S. Immigration and Customs Enforcement confirmed that it had launched an investigation into the illegal import of tropical hardwood by Northwest companies. This report is a good reminder that the international trade of exotic timber is often regulated, and can sometimes be simply proh bited, under the regulatory regime of the Convention on International Trade of Endangered Species (CITES). This article provides a brief overview of CITES and its permitting system, as well as penalties associated with illegal trade of exotic products in the U.S.

CITES: Permits Required for Trade in Wildlife

CITES entered into force in 1975 and has proven to be one the most robust international regulatory regimes. The aim of CITES is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES counts 183 parties today, is legally binding, and provides for the adoption of trade sanctions against non-compliant parties. Importantly, CITES applies to "specimens" of fauna and flora, which is defined broadly to mean "any animal or plant, whether alive or dead," and "any readily recognizable part or derivative thereof."

The most important parts of CITES are found at Articles III, IV, V, which provide the necessary findings to be made before import or export permits are granted. CITES lists endangered species in different appendices depending on their conservation status and vulnerability to trade. Appendix I species, for example, cannot be imported for commercial purposes. The relevant authorities of the country of import must also be satisfied that the import will not be detrimental to the survival of the species and that the proposed recipient of a living specimen is suitably equipped to house and care for it. Some species of Rosewood are listed in Appendix I. Appendix II species can generally be traded for commercial purposes, but still require an export permit from the country of export, accompanied by a finding that the trade will not be detrimental to the species and that the recipient of a living specimen is suitably equipped to house and care for it.

National Implementation of CITES

Parties generally implement CITES' permitting scheme in their own legal system. In the U.S., regulations are found at 50 C.F.R. § 10-24. The Lacey Act, 18 U.S.C. § 42-43, provides the penalties associated with illegal trade of endangered species of fauna and flora. Anyone who imports or exports fish, wildlife or plants in violation of U.S. law is liable to pay a fine of not more than $20,000 and/or imprisonment for not more than five years. Each violation is a separate offense, making penalties potentially quite significant. The agency issuing CITES permits and certificates is the U.S. Fish and Wildlife Service.

Avoiding CITES Violations

Companies trading internationally in timber species that are listed in Appendix I or II of CITES should always make sure that the goods have the necessary permits. Even if an import permit is not needed for Appendix II species, an export permit must be issued by the country of export and the importer should be sure that a valid export permit has been granted and signed by the Management Authority of the country of export. To import Appendix I species, the importer must obtain a Fish and Wildlife Service import permit, and the import cannot be for primarily commercial purposes. More information about how to obtain a permit can be found here.

Companies should also pay particular attention to petitions to list or up-list species of timber at CITES meetings, as CITES is an evolving convention and its appendices are often updated.

IPO Has Amended Rules for Hearings on Patent Invalidation Cases

04/01/2019

Jason Chuang

In the past, patent invalidation cases were examined by reviewing the written documentation/evidence submitted, and a face-to-face interview or on-site inspection would be conducted only if the Intellectual Property Office (IPO) deemed necessary. In order to make the examination of patent invalidation cases more transparent and to simplify the subsequent administrative review procedure, the IPO had, based on the hearing system stipulated in the Administrative Procedure Act, formulated the "Rules for Holding Hearings on Patent Invalidation Cases," which were announced on 30 March 2018 (the "2018 version"). According to the rules, the hearings on patent invalidation cases should be held by a three-examiner panel, allow the parties to present oral arguments and be open to the public. Up till March 2019, the IPO has held hearings on 12 patent invalidation cases. After holding hearings on more than 10 cases, having several internal discussions and collecting public comments, the IPO announced on 5 March 2019 that it would implement amendments to the "Rules for Holding Hearings on Patent Invalidation Cases" (the "2019 version").

The 2019 version includes the following main amendments:

1. The 2018 version stipulated that after one party petitions for a hearing, a hearing will be held only if the opposing party agrees. In contrast, according to the 2019 version, a hearing can be held even if the opposing party disagrees. Nevertheless, to avoid public concerns, the 2019 version grants the IPO the discretion to decide whether a hearing is necessary (see Article 3.1 of the 2019 version).

2.The 2019 version clearly specifies what the IPO should do if either party applies for rescheduling of the hearing or requests that the hearing should not be open to the public.

For example, if either party applies for rescheduling of the hearing, the party should state the reasons on the application form. The IPO can grant the rescheduling application if the reasons provided by the party are considered reasonable by the IPO. Otherwise, the IPO should inform both parties that the hearing will be held on schedule.

Additionally, if either party considers that opening the hearing to the public is contrary to public interest or will cause serious damage to it, it may state its reasons on the application form and request a private hearing. The IPO can agree to hold a private hearing if the reasons provided by the parties are considered reasonable by the IPO. Otherwise, the IPO should inform the parties that the hearing will be open to the public (see Articles 6.3 and 6.4 of the 2019 version).

3. The purpose of holding a hearing is to allow the IPO to verify relevant facts after both parties have submitted their evidence, rather than to give the parties an opportunity to submit new evidence or arguments. To prevent the parties from submitting new evidence or arguments and to avoid delaying the examination procedure, the 2019 version only allows the parties to submit a hearing statement or provide a further explanation of the evidence that has been submitted (see Articles 6.1(6), 8(1) and 9.9 of the 2019 version).

4. If either party considers that one or more of the examiners should be recused from the case, the party should submit the reasons for recusal within 10 days of receipt of the hearing notice (see Article 6.7 of the 2019 version).

5. If either party is late for the hearing, the examiner presiding over the hearing can allow the party to attend the hearing only if he/she considers that it is necessary for the party to clarify certain facts (see Article 8(7) of the 2019 version).

A hearing gives both parties an opportunity to provide the examiners with an explanation in person. The parties can present questions and issues to each other at a hearing, and thus a hearing is not limited to examination of written evidence only. Also, all hearings should be held by a three-examiner panel, which can avoid bias from a specific examiner. In addition, according to Article 109 of the Administrative Procedure Act, if either party is not satisfied with the decision made after a hearing, the party can directly file an administrative lawsuit without filing an appeal first. Therefore, the administrative remedy procedure has become simpler.

The IPO has introduced the availability of hearings in patent invalidation cases and amended relevant rules based on actual practices. It is expected that with a more comprehensive examination procedure and more administrative resources, the quality of examination of patent invalidation cases will be better and the decisions made will also be more credible.

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Insights

Texas in the Data Privacy Spotlight: Not to be Outdone, Texas Proposes Two Data Protection Statutes for California's One

17 April 2019
Firm Thought Leadership

May 25, 2018 and the shockwaves of the European Union's General Data Protection Regulation ("**GDPR**") set off intrigue and reflection all over the world. And in every jurisdiction--from the smallest to the largest, from cities and counties to states--a wave of consumer privacy laws has followed in the United States. First California in June 2018 with the California Consumer Privacy Act ("**California CPA**" or "**CCPA**"), closely followed by Colorado, Washington, New Jersey, Utah and others. And now Texas has become the latest state to introduce not one, but two simultaneous bills relating to consumer privacy and data protection. On March 8, 2019, legislators in Texas introduced: (1) H.B. No. 4518, cited as the Texas Consumer Privacy Act ("**Texas CPA**"), and (2) H.B. No. 4390, cited as the Texas Privacy Protection Act ("**TPPA**").

And as is often the case, the leader inspires and sets the tone for the others who follow. Several aspects of the Texas CPA bear strong similarity to the California CPA, such as the right to know what data is being collected, the right to opt out of that collection, and the right to disclosure of personal information collected by a business. The TPPA addresses similar privacy subjects, but instead of laying out enumerated consumer rights like the Texas CPA, the TPPA would regulate how businesses process, retain and destroy consumers' personal identifying information.

A key difference between the two bills is how each defines personal information. The Texas CPA regulates "personal information," which includes any information that identifies, relates to, describes, or could reasonably be linked to an individual consumer or consumer household. Whereas, the TPPA regulates "personal identifying information," which the bill defines as "a category of information relating to an identified or identifiable individual." In either case, it is notable that the definition of personal information is largely inspired by the GDPR.

Texas CPA

Individual Rights. The Texas CPA, closely mirroring provisions of the California CPA, would grant a set of rights to consumers, including:

1. *Right to disclosure of personal information collected by a business.*
2. *Right to deletion of certain personal information collected by a business.*
3. *Right to disclosure of certain personal information sold or disclosed by a business.*
4. *Right to opt out of the sale of consumer's information, inclusive of the requirement that businesses include a "do not sell my information" link on their website.*

Enforcement. The Attorney General will adopt the rules necessary to implement, administer and enforce the Texas CPA. The bill also allows for a business or third party to seek an opinion from the Attorney General for guidance on how to comply with the Texas CPA. The Texas CPA would impose civil penalties in the amount of $2,500 per violation or, if the violation(s) are intentional, $7,500 per violation.

Applicability and Scope. The Texas CPA would apply to any entity that does business in Texas and that collects consumer data, and that meets one of the following thresholds: (1) annual gross revenue exceeding $25 million; (2) collects information from at least 50,000 consumers, households or devices; or (3) derives at least half of its revenue from the sale of consumer personal information. Any business that is controlled by an entity that meets the above requirements would also be subject to the proposed legislation. The Texas CPA does not include any restrictions on the sale of data in the aggregate –where information cannot be linked to any individual.

If passed, the Texas CPA goes into effect on September 1, 2020.

TPPA

Business Regulations. The TPPA would regulate businesses that collect personal information on consumers by:

1. *Regulating the collection and processing of personal identifying information. A business may process personal identifying information only if the business (A) receives explicit consent from the individual whose information is being processed, or (B) is required to do so by law.*
2. *Requiring businesses to implement a data security program.*
3. *Requiring businesses to post a notice that includes how the business collects, processes, and discloses personal identifying information.*
4. *Requiring businesses to make their privacy policy publicly available.*
5. *Requiring businesses to allow consumers access to their personal identifying information.*
6. *Requiring businesses to delete consumers' personal identifying information. Businesses must stop processing personal identifying information on the date an individual closes their account with the business and delete such information within 30 days of closing the account, unless a longer retention period is required by law.*
7. *Requiring businesses to create an accountability program to ensure compliance with the TPPA.*
8. *Regulating consumer information that businesses share with third parties.*

Enforcement. The Attorney General will adopt the rules necessary to implement, administer and enforce the TPPA. Under the TPPA, the Attorney General may bring an action in the name of the state against the entity to recover civil penalties in the amount of $10,000 per violation, not to exceed a total amount of $1 million.

Applicability and Scope. The TPPA would apply to any entity that does business in Texas, has more than 50 employees, and that collects personal identifying information of more than 5,000 individuals, households, or devices, and that meets one of the following thresholds: (1) annual gross revenue exceeding $25 million; or (2) derives at least half of its revenue by processing personal identifying information. The TPPA includes no restrictions to the sale of data in the aggregate or anonymized –where information cannot be linked to any individual.

If passed, the TPPA takes effect on September 1, 2019.

US consumers are increasingly interested in where their personal information lies--how it is captured, where it is stored and who is profiting from it. Federal lawmakers have taken up the charge and are considering where to go next, while local jurisdictions are quickly passing laws to protect consumers and discourage once commonplace behaviors. US Companies need to be increasingly vigilant about how the data privacy playing field is changing and adapt quickly or better yet, move ahead proactively with the rising tide of consumer privacy and data protection.

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