

Pacific Rim Advisory Council
August 2019 e-Bulletin

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CONFERENCES & EVENTS

66th International Conference
Seattle - Hosted by DAVIS WRIGHT TREMAINE
October 5 - 8, 2019
Registration Deadline September 01

67th International Conference
New Delhi - Hosted by KOCHHAR & Co.
March 14 - 17, 2020

Visit www.prac.org for Details

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BAKER BOTTS WELCOMES VETERAN FINANCIAL RESTRUCTURING LAWYER

NEW YORK, August 1, 2019 - Baker Botts L.L.P., a leading international technology and energy law firm, announced today that Robin Spigel, who regularly represents large and complex troubled companies in Chapter 11 and out-of-court restructurings, has joined the New York office as a partner in the Financial Restructuring practice.

For more than 20 years, Ms. Spigel has represented debtors, acquirers, creditors, landlords and professionals in various distressed company transactions. She has extensive transactional and courtroom experience, particularly with respect to debtor-side matters, which are core to Baker Botts' Financial Restructuring practice.

"Demand from the firm's clients for financial restructuring services continues to grow at a rapid pace," said John Martin, Managing Partner of Baker Botts. "The addition of Robin to our New York office will provide us with another seasoned restructuring lawyer to serve our diverse and highly active client base. We are delighted to welcome her to the firm."

"Robin's arrival at the firm could not come at a better time," said Renee Wilm, Partner-in-Charge of the New York office, East Coast Corporate Department Chair and a member of the firm's Executive Committee. "Robin is a highly experienced practitioner who will enhance the strength of our financial restructuring team at a time of increasing client demand. We are exceptionally pleased with the successful growth of our East Coast corporate group over the past two years, and we look forward to continued momentum."

"I am excited to join the financial restructuring team at Baker Botts and to enhance an already strong practice. Baker Botts has first-rate lawyers and an excellent culture. I look forward to continuing my career there and helping to further build a best-in-class restructuring practice," said Ms. Spigel.

Ms. Spigel earned her J.D. from Brooklyn Law School and her B.A. from Oberlin College.

Lawyers in Baker Botts' Financial Restructuring practice guide and advise their clients through the treacherous terrain of out-of-court workouts, reorganization cases and liquidations. The practice spans virtually every major industry and geographic region of the country and includes representation of financially troubled companies, creditors, committees, asset acquirers and financial institutions in every aspect of complex reorganizations.

For additional information visit www.bakerbotts.com



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Registration and full details online

www.prac.org

CLAYTON UTZ ANNOUNCES SPECIAL COUNSEL AND SENIOR ASSOCIATE PROMOTIONS

SYDNEY, 17 July 2019: Clayton Utz is pleased to announce 65 new Special Counsel and Senior Associate appointments, effective 1 July*.

Clayton Utz Deputy Chief Executive Partner - People and Development, Kate Jordan, said: "These appointments reflect the calibre of talent we have across the firm. We're delighted that these lawyers have chosen to build their careers with us."

Three promotions were also made in the firm's Forensic and Technology Services (FTS) practice group.

Special Counsel appointments:

Claire Bothwell - Intellectual Property & Technology, Brisbane
Kaia Duce - Public Sector, Brisbane
Mark Etherington - Environment & Planning, Perth
Cameron Forbes - Tax, Melbourne
Dean Gerakiteys - IP & Technology, Sydney
Craig Hine - Financial Services, Sydney
Andrew Holmes - Corporate, M&A & Capital Markets, Brisbane
Ashleigh Tang - Restructuring & Insolvency, Sydney
Natalie Krahe - Corporate, M&A & Capital Markets, Brisbane
Andrew Lassman - Corporate, M&A & Capital Markets, Melbourne
Erin McCormick - Public Sector, Brisbane
Shaun McNaught - Real Estate, Perth
Kate O'Donovan - Banking & Financial Services, Sydney
Gareth Oxley - Major Projects & Construction, Brisbane
Gavin Phillips - Major Projects & Construction, Melbourne
Laura Thomson - Major Projects & Construction, Melbourne
Seema Sandhu - Tax, Sydney
Erik Setio - Banking and Financial Services, Sydney
Allison Shannon - Workplace Relations, Employment & Safety, Melbourne
Natasha Smith - Public Sector, Canberra
Lisa Vo - Major Projects & Construction, Melbourne

Senior Associate appointments:

Katherine Agapitos - Major Projects & Construction, Sydney
Jay Capelli - Major Projects & Construction, Perth
Nicholas Chan - Real Estate, Melbourne
Julie Charles - Major Projects & Construction, Melbourne
Allison Clark - Public Sector, Darwin
Matthew Condello - Workplace Relations, Employment & Safety, Melbourne
Kym Condon* - Restructuring & Insolvency, Brisbane
Kylie Crawford - Public Sector, Canberra
Neil Cuthbert - Public Sector, Canberra
Simon Ellis - Competition, Sydney
Elias Eliadis - Commercial Litigation, Brisbane
Scott Findlay - Real Estate, Sydney
Allan Flick - Commercial Litigation, Sydney
Emily Flynn - Environment & Planning, Melbourne
Luke Furness - Commercial Litigation, Brisbane
Andrew Garcia - Major Projects & Construction, Melbourne
Sophia Giardini - Commercial Litigation, Sydney
Claire Gomo - Commercial Litigation, Melbourne

CONTINUES next page

CLAYTON UTZ CONTINUED**Clayton Utz Senior Associate Appointments** continued....

Eloise Hopkinson - Public Sector, Perth
Alex James - Public Sector, Brisbane
Nick Josey - Commercial Litigation, Brisbane
Tatiane Kelly - Public Sector, Darwin
Tyson Lange - Public Sector, Canberra
David Lee - Tax, Melbourne
Jessica Lee* - Major Projects & Construction, Melbourne
Kwan Leung* - Corporate, M&A & Capital Markets, Sydney
Rebecca Lobb - IP & Technology, Melbourne
Dennis Mak - Corporate, M&A & Capital Markets, Sydney
Sarah Mazzer - Real Estate, Canberra
Liam Meagher* - Workplace Relations, Employment & Safety, Sydney
Bianca Mendelson - Workplace Relations, Employment & Safety, Brisbane
Belinda Miller - Workplace Relations, Employment & Safety, Canberra
Byron Moore - IP & Technology, Melbourne
Grace Ness - Commercial Litigation, Melbourne
Rachel Noronha - Public Sector, Canberra
Louise Parry - Public Sector, Canberra
Gabrielle Scott-Jones - Commercial Litigation, Sydney
James Sin - Corporate, M&A & Capital Markets, Sydney
Lauren Smith - Environment & Planning, Sydney
Jack Steiner - Major Projects & Construction, Melbourne
Robert Stilling* - Environment & Planning, Melbourne
Louisa Tan - Restructuring & Insolvency, Sydney
Allison van Beers - Major Projects & Construction, Melbourne
Simon Vidovich - Commercial Litigation, Perth

Forensic and Technology Services appointments:

Lynden Philpott - Senior Manager, Perth
Gulsun Demirel - Manager, Melbourne
Gaurav Gupta - Manager, Melbourne

* Promotion took effect on 1 January 2019

For more information visit www.claytonutz.com

RICHARDS BUELL SUTTON WELCOMES THREE NEW ASSOCIATES

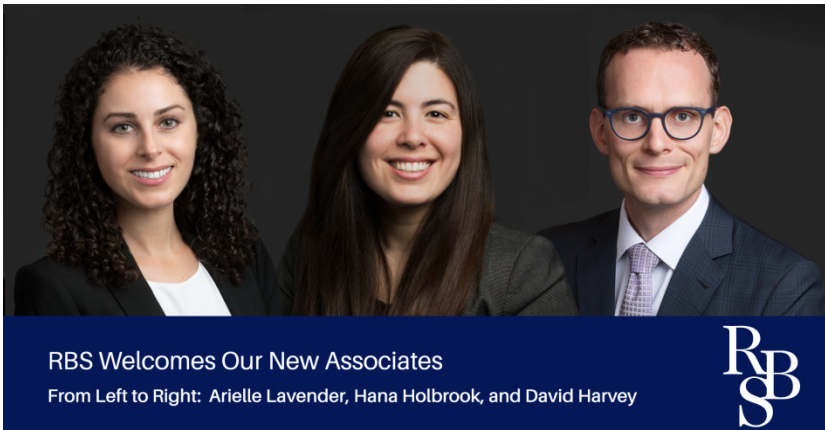
VANCOUVER, 01 August 2019: We are pleased to announce the arrival of **Arielle Lavender, Hana Holbrook** and **David Harvey** to the firm.

Arielle joins our Estate and Wealth Advisory Group, with a practice primarily focused on personal estate and incapacity planning, corporate reorganizations, and business succession planning.

Hana is a member of our Real Estate Group and assists clients with all aspects of real estate development, including purchases, financing, development and sales. She also acts for lenders in secured financing transactions and commercial loan transactions.

David joins our Business Law Group, assisting clients with mergers and acquisitions of privately owned businesses, corporate restructuring and reorganizations, lending and secured transactions, and general corporate commercial matters.

For additional information visit www.rbs.ca



RBS Welcomes Our New Associates

From Left to Right: Arielle Lavender, Hana Holbrook, and David Harvey



ARIAS

ADVISES BANCO LAFISE BANCENTRO ON A DPR TRANSACTION

MANAGUA, 01 August, 2019: Arias acted as Nicaraguan counsel to Banco Lafise Bancentro in the sale, assignment, transfer, and conveyance of all the bank's Diversified Payment Rights and all collections thereunder to a Cayman Islands entity, as well as an issuance of bonds with the participation of the Bank of New York Mellon, as program agent.

Arias likewise advised the bank on a US\$100 million loan granted by various financial institutions, including Credit Suisse AG, Cayman Islands Branch, Bancaribe Curacao Bank N.V., Multibank Inc., Finantia UK Limited, Pacific Life Insurance Company, and Société de Promotion et de Participation pour la Coopération Economique S.A., amongst others, destined to financing Nicaraguan exporters. The Firm's role included advising on the financial structure of the transaction, but most importantly on local banking and supervisory regulations, ensuring compliance of local laws, validity and enforceability of the transaction. The deal closed August 6th, 2019.

This transaction is particularly relevant, as it is the first of its kind in Nicaragua, opening possibilities to diverse and innovative financing structures to local entities.

Counsel to Banco Lafise Bancentro:

Hogan Lovells, US counsel.

Arias, Nicaraguan counsels where Partners Bertha M. Argüello and Gustavo-Adolfo Vargas and Rodrigo Ibarra, Associate.

For additional information visit www.ariaslaw.com

ARIFA

ADVISES CITIGROUP AND JP MORGAN IN REPUBLIC OF PANAMA'S DUAL OFFERING OF GLOBAL BONDS FOR AN AGGREGATE PRINCIPAL AMOUNT OF US\$2 BILLION

PANAMA, 01 August, 2019

Completion Date: July 23, 2019

Client: Citigroup Global Markets Inc. and JP Morgan Securities LLC

Matter Value: US\$2 billion

Arias, Fabrega & Fabrega advised Citigroup Global Markets Inc. and JP Morgan Securities, acting as underwriters, in connection with a dual public offering by the Republic of Panama of US\$1.25 billion aggregate principal amount of 3.160% Global Bonds due 2030 and US\$750 million aggregate principal amount of 3.870% Global Bonds due 2060.

The combined offering of US\$2 billion aggregate principal amount of Global Bonds represents one of the largest, if not the largest single-day public offering of sovereign debt in Panama's history.

All firms involved: Sullivan & Cromwell, Arnold & Porter

ARIAS FABREGA & FABREGA team led by Estif Aparicio, lead partner, Cedric Kinschots, international senior associate, Ricardo E. Arosemena, associate.

For additional information visit www.arifa.com

BAKER BOTTS

REPRESENTS SUNNOVA ENERGY INTERNATIONAL INC

HOUSTON, 29 July 2019: Deal Description: On July 29, 2019, Sunnova Energy International Inc. (NYSE: NOVA) closed its initial public offering of 14,000,000 shares of its common stock at a price to public of \$12.00 per share. The underwriters will have a 30-day option to purchase an additional 2,100,000 shares from Sunnova at the initial public offering price, less underwriting discounts and commissions. The shares will begin trading on the New York Stock Exchange on July 25, 2019 under the ticker symbol "NOVA" and the offering is expected to close on July 29, 2019, subject to customary closing conditions.

Sunnova Energy International Inc. intends to use the net proceeds from this offering to reduce existing indebtedness and for other general corporate purposes.

Sunnova is a leading residential solar and energy storage service provider, serving more than 63,000 customers in more than 20 U.S. states and territories.

BofA Merrill Lynch, J.P. Morgan and Goldman Sachs & Co. LLC are acting as joint book-running managers for the offering. Credit Suisse is also acting as a joint book-running manager. KeyBanc Capital Markets, Baird and Roth Capital Partners are acting as co-managers.

Baker Botts L.L.P. represented Sunnova in the transaction. Principal Baker Botts Lawyers/Office Involved: Travis Wofford (Partner, Houston); Josh Davidson (Partner, Houston); Danny David (Partner, Houston); Sarah Dodson (Associate, Houston); Jennifer Gasser (Associate, Houston); Katie Belleville (Associate, Houston) Mitch Athey (Associate, Houston); Parker Hinman (Associate, Houston).

For additional information visit www.bakerbotts.com

BENNETT JONES

ASSISTS BUSINESS DEVELOPMENT OF CANADA IN \$5 MILLION SUBSCRIPTION SHARE

Mandate Details

Date Announced:	July 08, 2019
Date Closed:	June 28, 2019
Deal Value:	\$5,000,000
Client Name:	Business Development Bank of Canada

Bennett Jones LLP represented the Business Development Bank of Canada in the subscription by BDC Capital Inc., a subsidiary of BDC, for 987,763 Class D Preferred Shares of HiFi Engineering Inc. which closed on June 28, 2019. A strategic investor invested \$5,000,000 concurrently with the investment of BDC Capital.

For additional information visit www.bennettjones.com

CAREY

ASSISTS ENEL CHILE SYNDICATED LOAN POST REORGANIZATION

SANTIAGO, 01 August 2019: Carey in Santiago have helped electricity company Enel Chile obtain a US\$150 million syndicated credit agreement from Canadian, Japanese and Spanish banks BBVA, Scotiabank Chile and Mizuho.

The credit agreement provides for two loans of up to US\$100 million and 34 billion Chilean pesos (US\$48.6 million) combined.

Counsel to Enel Chile:

In-house counsel, and Winston & Strawn LLP

Carey Partners Diego Peralta and Alfonso Silva, and associates Angélica De la Carrera, Elvira Vial and Manuel José Garcés in Santiago.

For additional information visit www.carey.cl

CLAYTON UTZ

AADVISES GINDALBIE ON SUCCESSFUL DEMERGER OF CODA AND ACQUISITION BY ANSTEEL

PERTH, 24 July 2019: Clayton Utz has advised its longstanding client Gindalbie Metals Limited (ASX:GBG) on the successful implementation of its two key transactions announced in March.

Corporate partner Mark Paganin and special counsel Stephen Neale led the firm's team, with key support from lawyers Benjamin Depiazzi and Matthew Johns. Partner Cameron Belyea and lawyer James Sprivulis led the court aspects of the transactions.

Under the first transaction, Gindalbie's wholly owned subsidiary, Coda Minerals Limited (Coda), has been demerged to Gindalbie shareholders. Under the second transaction, Gindalbie has been acquired by its Chinese joint venture partner and major shareholder, Angang Group Hong Kong (Holdings) Limited (Ansteel). The transactions were implemented by way of two inter-conditional schemes of arrangement.

Gindalbie shareholders today received \$0.026 cash per share and eligible Gindalbie shareholders received one share in Coda for every 45 Gindalbie shares held.

Clayton Utz has acted as legal adviser to Gindalbie since 2006.

For more information visit www.claytonutz.com

DENTONS RODYK

ADVISES RED DOT PAYMENT IN ACQUISITION

Dentons Rodyk were exclusive legal advisers to the founder and selling shareholders in the acquisition by PayU, the payments and fintech business of Naspers, of a majority stake in Red Dot Payment ("RDP").

PayU's acquisition of the majority stake in RDP is at a valuation of RDP at US\$65 million.

The founder, Mr Randy Tan, will continue to retain a stake in RDP, while the majority of other shareholders will exit.

Formed in 2011 by a group of payment experts from various Fortune 500 companies in the industry, RDP has grown into Singapore's largest home-grown and trusted online payment solutions fintech company, delivering innovative, secure and customised payment solutions for all enterprise sizes across Asia and beyond.

Senior Partner Valerie Ong and Partner Eunice Yao led the deal, supported by Associate Lim Hui Qi.

For additional information visit www.dentons.rodyk.com

GIDE

ADVISES POLSKA MIEDZ S.A. ON SETTING UP A BOND ISSUE PROGRAMME OF UP TO PLN 4 BILLION

WARSAW, 04 July 2019: On 27 June, KGHM Polska Miedź S.A. issued two series of bonds, with a maturity of 5 and 10 years respectively, for a total amount of PLN 2 billion (approx. EUR 471 million).

The bond issue was carried out as part of a bond issue programme worth up to PLN 4 billion (approx. EUR 942 million) set up by KGHM on 27 May 2019.

To manage the programme, KGHM Polska Miedź S.A. appointed a consortium of dealers comprising PKO BP S.A., Bank Handlowy w Warszawie S.A., Bank Pekao S.A. and Santander Bank Polska S.A.

Gide's legal advice covered all stages from setting up the bond issue programme to its implementation, via transaction structuring, preparing the transaction documentation, and providing support for the registration and settlement of the first bond issue under the programme.

Additional advice regarded agreeing on the principles under which an international financial institution could take up bonds issued under the first bond issue of the programme.

Gide's team advising KGHM Polska Miedź S.A. on this operation comprised partner Robert Dulewicz, counsel Michał Śmiechowski, associate Natalia Skomorowska from Gide's Warsaw office, and associate Sarah Whitley from Gide's London office.

KGHM Polska Miedź S.A. is a State Treasury strategic company and one of the world's leading copper and silver producers.

For additional information visit www.gide.com

HAN KUN

ADVISES VIPSHOP ON ITS FULLY ACQUISITION OF SHAN SHAN COMMERCIAL GROUP CO LTD.

BEIJING, 11 July 2019: Vipshop, a leading online discount retailer for brands in China, has recently signed a share purchase agreement in Shanghai with Shan Shan Group Co., Ltd. and Ningbo Xingtong Chuangfu Equity Investment Partnership. Pursuant to this agreement, Vipshop will fully acquire Shan Shan Commercial Group Co., Ltd. for RMB 2.9 billion in cash installments through Vipshop International Holdings Limited, a Vipshop's wholly-owned subsidiary in Hong Kong.

Han Kun represented Vipshop in the transaction as its PRC legal counsel, and was fully involved in designing the transaction structure, drafting and revising the transaction documents, and other ancillary documents.

For additional information visit www.hankunlaw.com

HOGAN LOVELLS

FILES AMICUS BRIEF FOR MARCH FOR OUR LIVES IN SUPPORT OF SENSIBLE GUN VIOLENCE PREVENTION LAWS

WASHINGTON, D.C., 13 August 2019: Hogan Lovells filed an amicus brief in the Supreme Court Monday urging the court to preserve the ability of federal, state, and local legislatures to enact important gun safety measures.

The brief was filed pro bono on behalf of March For Our Lives, a non-profit organization of young people in the U.S. advocating for sensible gun violence prevention policies.

The case, *New York State Rifle & Pistol Association, Inc. v. The City of New York*, asks whether a New York City regulation restricting the transportation of handguns is constitutional.

We argue that the court should adhere to its stated position that the court's "Second Amendment jurisprudence 'by no means eliminates' the ability of Americans, and their governments, 'to devise solutions to social problems that suit local needs and values.' "A decision that cuts off the debate on gun rights by limiting legislatures' ability to pass gun safety laws would silence the voices of millions of Americans, the brief says.

Our brief details the stories of nine young people who were directly impacted by gun violence and have since risen up from that experience to advocate for change. The stories vary from experiencing a school shooting to living every day with gun violence in the community.

Brooke Harrison was in her freshman English class at Marjory Stoneman Douglas High School in Parkland, Fla. when a shooter opened fire on her classroom. Several of Brooke's classmates, including her best friend, were among the 17 people killed that day.

Trevon Bosley grew up on the South Side of Chicago, where rampant gun violence is the norm. When he was 6, his cousin was killed sitting in his car and when he was 7, his 18-year-old brother was shot and killed. "I learned not to plan too far ahead," he said.

"It is crucial that the justices do not silence young leaders in America with an overly restrictive ruling in this case," said Ira Feinberg, partner at Hogan Lovells and counsel of record for the amicus brief. "The advocacy spurred by March for Our Lives has started an important national conversation on sensible and urgently needed gun safety legislation, and the court would be remiss if it stifled that path towards change."

"Too often, our conversations about gun safety miss the very real and daily human tragedy of America's gun violence epidemic," said Jaclyn Corin, a co-founder of March For Our Lives. "Just as March For Our Lives has always done, this brief centers itself in the enduring trauma and suffering thrust onto gun violence survivors and our mass shooting generation writ large. We hope the court will issue a decision that will help put an end to our fears and the daily occurrence of gun violence in America."

The Hogan Lovells team was led by partner Ira Feinberg, senior associate Kirti Datla, and associates Andrew Bank and Evan Guimond.

For additional information visit www.hoganlovells.com

NAUTADUTILH

ADVISES HAL ON SALE OF ITS OWNERSHIP INTEREST IN GRANDVISION TO ESSILORLUXOTTICA AT A PRICE OF APPROXIMATELY EUR 5.5 BILLION

AMSTERDAM, 31 July 2019: HAL, GrandVision N.V. and EssilorLuxottica today announced that HAL will sell its 76.72% stake in Grandvision to EssilorLuxottica for approx. EUR 5.5. billion. GrandVision is a global optical retailer, operating in more than 40 different countries. Well-known GrandVision retail banners include Pearle, Eye Wish Opticiens, Apollo-Optik, Générale d'Optique and Vision Express. GrandVision's shares are listed on Euronext Amsterdam.

HAL has had an ownership interest in GrandVision since 1996. EssilorLuxottica is a global leader in the design, manufacture and distribution of ophthalmic lenses, frames and sunglasses, with a portfolio of iconic brands including Ray-Ban, Oakley, Persol and Vogue Eyewear. With this transaction, GrandVision will become part of a global eyecare and eyewear group having over 180,000 employees and with outstanding product innovation, manufacturing and commercialization, technology, brand portfolio, supply chain, talent development and digital expertise to foster a closer relationship with its wholesale and final consumers around the world.

In connection with HAL's sale of its stake in GrandVision to EssilorLuxottica, GrandVision has committed itself to support the transaction (including by cooperating with EssilorLuxottica in connection with the anti-trust clearance process). The transaction is expected to close in 12 to 24 months. After the transaction has been successfully concluded, EssilorLuxottica will launch a mandatory public offer for all remaining outstanding GrandVision shares and subsequently expects to terminate GrandVision's listing and acquire full control.

For additional information visit www.nautadutilh.com

PRAC EVENTS





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

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08 AUG 2019

Hold Your Fire! Anonymous tweeting can breach the APS Code of Conduct and justify termination

Yesterday the High Court handed down its highly anticipated judgment in *Comcare v Michaela Banerji* [2019] HCA 23 and found that an APS employee's anonymous tweets can breach the APS Code of Conduct and justify termination of employment. The High Court overturned the Administrative Appeals Tribunal's (**AAT**) decision and unanimously held that the restrictions imposed on public servant's abilities to express political views are lawful and constitutional.

The story so far

Between May 2006 and July 2012, Ms Banerji, an employee of the then Department of Immigration and Citizenship, tweeted a number of comments under the handle "LeLegale" that were critical of the Department and policies relating to immigration. The Department found that in making the comments, Ms Banerji had breached the APS Code of Conduct, which relevantly required her to behave honestly, take steps to avoid and disclose conflicts of interest and to be impartial.

Ms Banerji initially sought an injunction to prevent the Department terminating her employment. In *Banerji v Bowles* [2013] FCCA 1052, Justice Neville dismissed the application and noted that:

"the unfettered right asserted by the Applicant does not exist.... I do not see that Ms Banerji's political comments, 'tweeted' while she remains (a) employed by the Department, (b) under a contract of employment, (c) formally constrained by the APS Code of Conduct, and (d) subject to departmental social media guidelines, are constitutionally protected."

Ms Banerji then lodged a claim for workers compensation under the Safety, Rehabilitation and Compensation Act 1988 (Cth) (**SRC Act**), claiming aggravation of an underlying psychological condition as a result of the termination. Comcare refused her claim on the basis that her injury was a result of "reasonable administrative action taken in a reasonable manner in respect of the employee's employment".

Ms Banerji appealed this decision to the AAT. The AAT set aside Comcare's decision and found that sections 13(11) and 15 of the PS Act "unacceptably trespassed on the implied freedom of political communication".

The final chapter

The AAT decision was appealed to the High Court, who unanimously found that the application of the PS Code of Conduct to limit the ability of federal public servants to comment on government policy on social media was constitutionally valid and that, consequently, the termination of Ms Banerji's employment was not unlawful and she was not entitled to compensation under the SRC Act.

The primary issue in dispute was whether the relevant sections of the *Public Service Act 1999* (**PS Act**) unjustifiably burdened the implied freedom of political communication. All parties agreed that the relevant parts of the Act burdened the implied freedom of political communication, however the issue for the High Court to decide was whether this burden was **justifiable**. The High Court held that it was justifiable, on the basis that:

- The relevant parts of the PS Act were for a "legitimate purpose" consistent with the system of representative and responsible government in the Constitution because they were "attuned to the maintenance and protection of an apolitical public service that is skilled and efficient in serving the national interest".
- The law is reasonably appropriate and adapted to achieve that purpose. In finding that the relevant parts of the PS Act were suitable, the High Court referred to the importance of the APS being impartial and professional, regardless of the political persuasion of the government of the day. The fact that APS agencies were required by section 15(3) of the PS Act to establish procedures in relation to the determination of breaches of the Code and sanctions was also relevant to this finding.

Ms Banerji tried to argue that the Code did not extend to communications which were anonymous. The High Court did not make a ruling on this, as it differed fundamentally from the arguments Ms Banerji raised before the AAT, however they did provide some useful comments which suggest anonymous communications can still breach the Code. Specifically, the majority noted that there was no reason to suppose that anonymous communications would not breach the Code and that damage to the APS and an APS employee's agency could still occur even where the posting is done on an anonymous basis.

Their Honours also considered and rejected Ms Banerji's argument that the implied freedom of political communication was a mandatory consideration for a decision-maker when exercising the discretion whether to impose a sanction under section 15 of the PS Act.

What this means for you

This is a significant decision for APS employers. The High Court decision confirms the APS can lawfully regulate its employees' expression of political views and take disciplinary action, up to and including termination of employment, where an employee is critical of the APS and government, even if the views are expressed anonymously. This is also likely the case for state government employers.

GET IN TOUCH

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July 12, 2019

The Brazilian Data Protection Law is amended by Law No. 13,853/2019 (former MP No. 869/2018)

After months of voting procedures, the Law No. 13,853/2019 (former Provisional Measure No. 869/2018) was published on July 9, 2019. Its provisions amend the original text of the General Law on Data Protection (Law No. 13,709/2018 - LGPD).

One of the main changes is the creation of the National Data Protection Authority (ANPD), a public administration body responsible for overseeing, implementing and enforcing sanctions, as well as for the compliance with matters related to the personal data protection throughout the national territory.

ANPD will be composed of the Board of Directors, National Council for Personal Data Protection and Privacy, Legal Affairs, Ombudsman, its own legal advisory body and administrative units and specialized units.

In addition, nine vetoes were made to the law, and the National Congress shall still evaluate them.

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Blog

Quebec's Superior Court Leaves the Door Open to Canadian Climate Change Litigation

August 01, 2019

Written by Michael P. Theroux, Laura M. Gill and Stephanie Gagne

On July 11, 2019, Quebec's Superior Court rejected a class action lawsuit seeking federal action relating to climate change. The Court found that the questions raised by the plaintiff, Environnement Jeunesse, were justiciable but that a class action was not the right vehicle.

Background

As discussed in an earlier blog post, *Climate Change Litigation Comes to Canada*, Environnement Jeunesse, a group purporting to represent all Quebec citizens aged 35 years and under, filed a class action lawsuit in November 2018 against the federal government alleging that Canada failed to meet its greenhouse gas emission reduction targets in violation of its international obligations. The group also asserted that Canada's inaction on climate change constituted bad faith and was an unlawful and intentional interference with fundamental rights protected by the Canadian Charter of Rights and Freedom and the Quebec Charter of Human Rights and Freedoms.

Environnement Jeunesse sought a declaration from the Court that Canada violated the fundamental rights of its members by failing to implement the necessary measures to limit global warming. Environnement Jeunesse also sought an injunction ordering Canada to cease interfering with the rights of its members and over \$300 million in punitive damages. Environnement Jeunesse recognized that the payment of \$300 million in punitive damages would be too onerous and requested instead that the

Court the implementation of a restorative measure to slow down climate change.

In order for the claim to proceed, the action required certification by the Court. At the certification hearing, Canada argued that the issues raised by Environnement Jeunesse were non-justiciable (i.e., not appropriate for judicial determination due to their political nature) and therefore, the Court did not have jurisdiction to decide the case because it would interfere with the powers of the legislative and executive branches of government.

The Court's Decision

The Court recognized that the issues raised by Environnement Jeunesse are within the scope of the executive branch. While the Court does not normally intervene in the exercise of executive power, it should not decline jurisdiction on the basis of justiciability where a Charter violation is alleged. As a result, the Court concluded that questions raised by Environnement Jeunesse were justiciable and the Court had jurisdiction to determine those issues.

However, the Court took issue with the definition of the proposed class and rejected the claim on the basis that a class action was not the right vehicle. The Court found that, because Environnement Jeunesse did not provide a factual or rational explanation to justify the choice of age, the class was arbitrary, subjective and inappropriate, and it was impossible to objectively and rationally identify a class that would be efficient and equitable. As such, the Court stated that it expects that the issues raised by Environment Jeunesse would be subject to another action commenced by a single plaintiff.

Takeaways

Unlike several courts in the United States (including the United States Court of Appeals, the United States District Court for the Southern District of New York and the United States District Court for the Northern District of California) that have dismissed climate change claims based on the non-justiciability of the questions raised, the Quebec Superior Court determined that the issues relating to government inaction on climate change raised by Environnement Jeunesse were justiciable. Instead, the Court indicated that the biggest hurdle to a class action lawsuit relating to climate change may be the determination of an appropriate class, and suggested that a single person action will likely be a more suitable vehicle. As climate change litigation is still in its infancy in Canada, it is unclear whether other Canadian courts will follow the precedent set by the Quebec Superior Court in any future climate change class action lawsuit.

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BC Workplace Blog

Authored By Michelle Quinn & Colleagues

Highlight of the Amendments to the Employment Standards Act

By Elisabeth A. Sadowski

This post will take less than 6 minutes to read.

Over the past year, the B.C. government introduced many changes that have affected both employees and employers, such as, the [increases to minimum wage](#) and amendments to the [Employment Standards Act](#).

Minimum Wage Increase

As of June 1, 2019, the hourly minimum wage in B.C increased from \$12.65 to \$13.85 and the liquor server wage increased from \$11.40 to \$12.70 per hour.

An additional wage increase of 9.5% was implemented for resident caretakers and live-in camp leaders.

Amendments to *Employment Standards Act*

Last year, the government introduced several amendments to the *Employment Standards Act* including [changes to parental and maternal leave](#).

On May 30, 2019, the [Employment Standards Amendment Act, 2019](#) was made law with additional amendments centered on the government's four main priorities (as identified in the [government's media release](#) earlier this year). The changes were to:

- better protect children and youth from dangerous work;
- make it easier for workers to get help when they feel their rights have been violated;
- provide more job protection to people dealing with difficult personal circumstances; and
- ensure people are paid the wages they are owed — and that those that violate the law do not have an unfair economic advantage.

Some of the important amendments include:

Increases to the age a child may work

- The age a child may work has increased from 12 to 16 years of age.
- Tougher restrictions for children, from 16 to 18 years of age, with regards to the type of hazardous work they can be asked to perform.
- Exemptions allow children, 14 and 15 years of age, to perform light work that is safe for their health and development with the child's parent or guardian's written permission.
 - If the child is 14 or 15 years old and performing any work other than light work, the employer must have the [permission from the Director of Employment Standards](#) before the child can be hired.

New job-protected leaves for critical illness, injury, and domestic violence

- Under the Act, an employee is entitled to leave to **provide care or support to a family member** if a medical practitioner or nurse practitioner issues a certificate, which includes:
 - up to 36 weeks of unpaid leave to provide care or support to a family member who is under 19 years of age at the start of the leave; and
 - up to 16 weeks of unpaid leave to provide care or support to a family member who is 19 years of age or older.
- An eligible person who **experiences domestic violence** can receive up to 10 non-consecutive days of unpaid job-protected leave in each calendar year (to be taken in units of one or more days or in one continuous period) and up to 15 weeks of consecutive unpaid leave (to be taken as one unit of time, or more than one unit of time, with the employer's consent.)
 - If requested by the employer, the employee must, as soon as practicable, provide the employer with reasonably sufficient proof in the circumstances that the employee is entitled to the leave.

Tips and gratuities cannot be withheld unless they fall under a specified exception

An employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages.

The rules have a few exceptions, and they do not apply if:

- An employer is authorized or required under law to withhold gratuities from an employee, make a deduction from an employee's gratuities or require an employee to return or give the employee's gratuities to the employer.
- The law or court requires the employer to remit the gratuities to a third party and the employer fails to do so.
- The employer collects and redistributes gratuities among some, or all of the employer's employees. An employer must not redistribute gratuities among prescribed employees or classes of employees.
- An employer who is a sole proprietor or a partner in a partnership, a director or shareholder of an employer, may share in gratuities that are redistributed if the employer regularly performs, to a substantial degree, the same work performed by some or all of the employees who share in the redistribution, or employees of other employers in the same industry who commonly receive or share in gratuities.

Certain credit obligations may be honoured

An employer may honour an employee's written assignment of wages to meet any of the following credit obligations:

- an advance of wages to the employee from the employer, including vacation pay;
- an outstanding balance in respect of the purchase of goods or services from the employer by the employee; or
- an outstanding balance in respect of the personal use of real and personal property of the employer by the employee.

Increases to extension of liability for wages and claims

The amendments have extended the liability for wages and claims from 6 months to 12 months.

Increases to record-keeping

The amendments have extended the length of time employers must keep certain records. An employer must now keep payroll records for four years (formerly, two years after the employment terminates) after the date on which the payroll records were created.

Similarly, the amendments require that an employer will be obliged to retain an averaging agreement for four years after the following, as applicable:

- a) the expiry date set out in the averaging agreement, unless paragraph (b) applies;
- b) the expiry date set out in one or more agreements to repeat the averaging agreement, whichever date is the latest.

The amendments also extend the length of time an employer must retain records of agreements to substitute another day for a statutory holiday from two years to four years.

Employers must inform their employees of their rights

An employer must make available or provide to each employee, in a form provided or approved by the director (see below), information about the rights of the employee under the *Employment Standards Act*.

The approved information document that can be provided to employees and shared in the workplace can be in the poster format and/or information sheet format:

- [Working in B.C. \(poster format; pdf download\)](#)
- [Working in B.C. \(information sheet format; pdf download\)](#)

There are several additional amendments to the *Employment Standards Act* that may be relevant depending on your situation. If you have any questions about the *Act*, please feel free to reach out to me directly (esadowski@rbs.ca) or to one of the members of our [Employment & Human Rights team](#).

June, 2019

➤ LAW NO. 20,797 ON THE NEW VOLUNTARY REGISTRY OF AGRICULTURAL CONTRACTS

The new **Voluntary Registry of Agricultural Contracts** (the “Registry”), created by Law No. 20,797 (the “Law”) and its regulation (the “Regulation”) began operating on June 6, 2019.

Whoever enters into a term purchase agreement that refers to the first transaction of agricultural products (the “Agricultural Contract”), may voluntarily register its execution, amendments and cancellation in the Registry. Such registration triggers relevant legal consequences for the contracting parties, providing transparency to the agricultural industry, and simplifying compliance and enforceability of Agricultural Contracts.

Agricultural Contracts may be voluntarily and freely registered, whenever they are entered by an agricultural producer and, either: **a)** an intermediary (buys with the intention of reselling); or **b)** an agroindustrial party (processes and utilizes the produce).

Registrable Agricultural Contracts may refer to any vegetable or livestock related produce, already harvested or pending harvest.

Why would the parties of an Agricultural Agreement choose to register their agreement in the Registry?

During their registration, Agricultural Agreements are:

1. Enforceable against third parties;
2. Produce legal evidence between the parties as to the fact of its execution and its essential terms, and;
3. Grant the rights and impose the obligations set out by the Law and its Regulation, of which we highlight:
 - a. *Legal solidarity in double sales hypothesis:* Should a person/entity different than the buyer in the registered Agricultural Agreement acquire the relevant products; such person/entity will be jointly and severally liable with the selling person/entity, for damages caused to the registered buyer.
 - b. *Speedy resolution of disputes:* Any dispute regarding the interpretation, application or execution of a registered Agricultural Agreement will be substantiated by the rules of the summary procedure.



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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- c. *Proof of the Act of God or Force Majeure*: Declarations of emergency or agricultural catastrophe issued by local authorities will be considered as basis for a legal presumption about the occurrence of an Act of God or Force Majeure; softening their burden of proof, in order for a producer to be exempt from liability arising from a breach of contract.

What is included in the Registry and becomes public?

By including an Agricultural Contract in the Registry, not all their terms and conditions will become public. Although it is possible to upload full scanned agreements to the online platform, the Registry does not require them. Instead, a form has to be completed, with certain “essential mentions” of the contract.

Among such essential mentions, are included: (i) the agreement’s parties, (ii) the relevant agricultural produce; and (iii) the real estate where production occurs.

Price of the Agricultural Contract is not included as an “essential mention” by the Regulation, and therefore, its disclosure is not necessary for registry.

The Registry’s platform operates online at www.registrodecontratosagricolas.cl, which is managed by the Ministry of Economy, Promotion and Tourism.

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

1. New Filing Rules for Online Extracurricular Training Institutions

Authors: Gloria XU | Jiaxin LIU | Joseph LI | Huanhao HE | Qiongxing WANG

Since the beginning of 2018, education administrative departments, in conjunction with other government departments, have been strengthening the supervision of extracurricular training institutions by emphasizing regulatory focus on offline extracurricular training institutions. However, the compliance requirements for online extracurricular training institutions have been unclear, with respect to both legal provisions and enforcement. On July 15, 2019, the Ministry of Education issued the *Implementing Opinions of the Ministry of Education and Five Other Departments on Regulating Online Extracurricular Training Institutions* [Jiao Ji Han (2019) No. 8] (“**Circular 8**”) which, according to a person in charge of the Department of Basic Education of the Ministry of Education, is the first national-level normative document to focus on the regulation of online extracurricular training institutions. Circular 8 specifies that online extracurricular subject-based training institutions need to record-file with a provincial-level education administrative department, and stipulates the general regulatory requirements for online training institutions. This article will analyze the main contents of Circular 8.

Provincial-level Education Administrative Department Record-Filings

I. Overall requirements

- A. Applicable for: **subject-based** online extracurricular training institutions¹
- B. Filing departments: **provincial-level** education administrative department
- C. Time requirements:
 - a. Institutions that have started online training business should submit relevant filing materials by October 31, 2019; newly established online training institutions should submit relevant materials in accordance with the filing requirements;
 - b. Online extracurricular training institutions that are found to have problems following an investigation should make rectifications in accordance with the authorities suggestions, and should complete the rectifications and re-submit relevant filing materials by the end of June 2020.
- D. Consequences: The authorities will investigate and handle those online extracurricular training institutions that fail to make rectifications or fail to do so timely, and may order such institutions to suspend or stop operating their training platforms, take down apps, shut down WeChat public accounts (mini apps), and impose economic penalties in accordance with law. During the press briefing for Circular 8, the head of the Department of Basic Education of the Ministry of Education

¹ The term “subject-based” here refers to those institutions whose courses are based on national standard curricula and are intended to supplement school coursework and enhance performance at school or on entrance examinations. Under the relevant rules, “subject-based” courses are distinguished from “quality-based” courses, which are instead designed to enhance a student’s qualitative abilities, such as foreign language fluency, team building or social awareness.

also mentioned that the department has been developing penalty measures for non-compliant extracurricular training institutions.

II. Record-filing application documents

Circular 8 stipulates three categories of materials required to be submitted to make the record-filing, as shown in the below.

A. For training institutions, the applicant needs to provide:

- Relevant licenses of the training institution such as an internet content provision (ICP) record-filing, telecommunications services operating license (if applicable), etc.;
- Information on the establishment of party organizations;
- Information on fund management, guarantee conditions and service commitments, etc.;
- Internet platform information and data interaction and processing capabilities, personal information protection systems, network security management systems, security protection technology measures, statement regarding servers located in mainland China.

B. In respect of training content, materials that need to be submitted include course introductions, course arrangements, enrollment rules, etc. Introduction of foreign curricula requires submission of certificates in accordance with relevant regulations.

C. In respect of teachers, subject-based training personnel record-filing materials include: basic information, teacher qualification certificates (for foreign teachers, a description of study and work experience, teaching qualifications or description of teaching ability).

Circular 8 authorizes the provinces (autonomous regions and municipalities directly under the Central Government) to develop specific record-filing rules, so it is possible that the provincial-level education administrative departments may impose more detailed filing requirements.

III. Record-filing procedures

The record-filing procedures are divided into two steps:

- Step one: Obtain telecommunications operating qualifications, including ICP record-filing (and telecommunications service operating license, if applicable), cybersecurity classified protection system record-filing certificate and evaluation report;
- Step two: Make a record-filing for the online extracurricular training institution. Submit relevant materials to the provincial-level education administrative department of the place where the institution is located. The provincial-level education administrative department will, together with other relevant departments, review and verify the materials submitted by the applicant. For online extracurricular training institutions that meet the requirements, the department will register the filing and circulate an announcement.

As mentioned above, record-filing submissions are to include a “cybersecurity classified protection

record-filing classification certificate and evaluation report.” According to the *Measures for Administration of Classified Protection of Information Security*, an information system may be classified into one of five classes, Class I to V. Entities that operate information systems of Class II or above are required to undertake record-filing procedures with the local public security bureau of municipalities divided into districts and above. The public security bureau will issue a protection system classification record-filing certificate for information systems that conform to the classified protection requirements after making the record-filing. In addition, the operator, user or the competent department in charge of information systems will select a qualified evaluation agency to conduct regular evaluations of the security classification status of information systems Class III and above.

IV. Amendment filings

Online training institutions are required to promptly submit the descriptions of changed items and relevant materials if any change occurs to information of the online training institutions, content of training courses, or teachers. The provincial-level education administrative department will review the submitted amendment filing materials according to the filing requirements.

General Regulatory Requirements

Based upon regulatory ideas of *Opinions of the General Office of the State Council on Regulating the Development of Extracurricular Training Institutions* (Guo Ban Fa [2018] No. 80) (“**Circular 80**”), Circular 8 places requirements on online extracurricular training institutions from five aspects, including the course content, duration of classes, faculty, tuition and information security.

- A. Course content: The content of subject-based courses may not exceed the corresponding national curricular standards, and must be matched with the grades of the students and adapted to their abilities. Course content, data and information must be retained for one year or more, and live video lectures must be retained for at least six months.

The competent education administrative departments have issued several notices to repeatedly emphasize the requirements that extracurricular training institutions cannot “teach beyond curricular standards” or “teach ahead of curricular standards,” but they have not specified how to determine “beyond” or “ahead of.” In respect of this issue, officials of the Ministry of Education mentioned at the Circular 8 press briefing that the education department will formulate specific evaluation rules for courses “beyond” or “ahead of” curricular standards.

- B. Duration of class: The duration of each class must not exceed 40 minutes, and the interval between two classes is to be no less than ten minutes. The schedule of live courses must not conflict with the class arrangements of primary and middle schools. No after-school assignments are allowed for primary school students of grades 1 and 2. The livestreaming of classes for students in compulsory education must conclude before 21:00. Online teaching platforms shall have eye protection and parental supervision functions.

Compared with Circular 80, Circular 8 adds requirements for the duration of each class and the interval between two classes, and delays the conclusion of classes to 21:00, which is later than

20:30 as specified in Circular 80.

- C. Faculty: Online training institutions may not employ teachers serving in primary and middle schools. Teachers engaged by institutions to teach subject knowledge must have the relevant teacher qualifications prescribed by law, including for Chinese, mathematics, English, ideology and politics, history, geography, physics, chemistry, biology, etc. The employment of foreign teachers must comply with relevant national provisions. Teachers' names, photos and teaching qualifications must be displayed at a prominent position on the training platform and course pages. In the case of foreign teachers, a description of work and teaching experience must be displayed.
- D. Tuition: For courses charged on a per-class basis, one-time fees cannot exceed 60 classes; for courses charged on a training period basis, one-time fees cannot exceed three months.

Compared with Circular 80, Circular 8 adds the requirement that "one-time fees per subject shall not exceed 60 classes," which aims to exercise more comprehensive supervision on the pre-payment activities of training institutions.

- E. Information security: Training institutions are to adopt the principle of "compulsory real-name registration, voluntary real-name logins," and verify student identities upon approval of students and their guardians. Training institutions must take effective measures to protect student information and data and prevent privacy disclosures, and must not illegally sell or provide data of students to others. User activity logs must be retained for one year or more.

Circular 8 requires the establishment of routine and random inspection systems, the construction of a national online extracurricular training institution management and service platform, and the provision of technical support for local governments' filing and management work for online extracurricular training institutions. Under the leadership of the education departments, the cyberspace, public security, telecommunications, radio and television administration, and "anti-pornography and illegal publications" departments will jointly supervise the activities of online extracurricular training institutions within scope of their respective authorities. In addition, Circular 8 retains the requirement of Circular 80 that requires the establishment of "black and white lists." The online extracurricular training institutions that comply with the relevant regulations will be whitelisted; institutions that violate relevant regulations will be graylisted and ordered to rectify within a time limit; non-compliant institutions that refuse to rectify or fail to complete rectification timely will be blacklisted. Blacklisted online extracurricular training institutions will be strictly dealt with in accordance with law. The "black and white lists" will be announced by the provincial-level education administrative departments on the national online extracurricular training institutions management and service platform, and will be updated in a timely manner.

Our Observations

I. Are online language training institutions subject to the record-filing and review system?

Merely looking at its provisions, Circular 8 applies to "subject-based" online extracurricular training courses, but does not currently apply to "quality-based" training courses. However, the standards for distinguishing "subject-based" and "quality-based" courses have so far been unclear.

Taking English training as an example, both Circular 8 and Circular 80 clearly use the expression “subject-based courses including Chinese, mathematics, English, etc.”, which indicates that online English training constitute subject-based training. However, some online “one-on-one student-teacher” youth English training courses are not directly related to entrance examinations, but rather focus more on oral communication skill improvement and introducing the cultural environment. The *Regulations for the Implementation of the Law on the Promotion of Privately-run Schools (Draft for Review)* (“**Draft Regulations**”) attempts to distinguish between the two different kinds of English trainings and categorizes private training and education institutions whose courses contribute to quality and personal development as quality-based training institutions, such as courses on language skills, arts, sports, science and technology, research, etc. In other words, the Draft Regulations classify English training as either quality-based English training or subject-based English training, depending on the specific content of the training. However, the Draft Regulations have not been formally promulgated, and Circular 8 and Circular 80 do not specify rules to distinguish between the two different kinds of English training. In practice, some quality-based English training courses also include subject-based content. Therefore, it remains to be observed as to whether some business types that are ambiguous in nature will be included in the applicable scope of Circular 8 and the results may vary across jurisdictions.

II. Do online extracurricular training institutions need to obtain a school running license?

Circular 8 is not the first to propose a record-filing and review system. The *Circular on Improving Several Working Mechanisms for the Special Management and Reform of Extracurricular Training Institutions* (Jiao Ji Ting [2018] No. 10) (“**Circular 10**”) promulgated by the General Office of the Ministry of Education and other departments on November 20, 2018, stipulates that online subject-based training institutions are required to file the name of the courses, the course content, enrollment targets, course schedule, and class duration with the provincial education administrative department of the place where the institution is located. However, as far as we know, most provinces and cities have not officially opened the relevant record-filing channels after the release of Circular 10. Circular 8 clearly provides for the establishment of a national online extracurricular training institutions management and service platform to provide technical support for the building of local filing and management channels.

However, neither Circular 10 nor Circular 8 explicitly require a school running license. According to the previous Circular 80, extracurricular training institutions need to obtain a school running license and a business license (or a corporate legal person certificate or a private non-enterprise unit registration certificate) to engage in business, regardless of whether the institution is online or offline. Therefore, a question that still remains is whether online extracurricular training institutions need to obtain a school running license to start business.

In response to this matter, the person in charge of the Department of Basic Education of the Ministry of Education mentioned at the Circular 8 press briefing that online training institutions and offline training institutions will be managed separately based upon their respective characteristics. Specifically, offline training institutions will be subject to county-level examination and approval and “permit-before-business-license” management, while online training institutions will be subject to a

record-filing and review system. “Considering online training institutions are flattening, are of wide coverage and large scale, and changing rapidly, we have changed the management mode of online training institutions from county-level approval to provincial-level filing, with the aim to reduce intermediate links and improve the regulatory level. On the one hand, upgrading regulatory level will guarantee the authority, reasonableness and normality of supervision. On the other hand, it will also help reduce enterprises’ burden and improve the transparency of information.” The Ministry of Education also made a similar reply at a special press briefing on July 15, 2019. We understand that the school running license requirement is temporarily not applicable to online extracurricular training institutions. However, Circular 8 authorizes the provinces to formulate specific record-filing rules, so we cannot rule out that the provincial-level education departments may hold different attitude toward this issue. We expect the ambiguity can be clarified in the finalized *Regulations for the Implementation of the Law on the Promotion of Privately-run Schools*.

III. What are the qualification requirements for teachers (including foreign teachers)?

Circular 8 reiterates the requirement of Circular 80, which stipulates that teachers engaged by online subject-based training institution shall have the relevant teaching qualifications prescribed by law. It is worth noting that, according to the *Education Law* and the *Regulations on Teacher Qualifications*, persons who are not graduates of normal colleges or schools may need to attend interviews and study courses in education, psychology, etc. in order to apply for teacher qualifications. And teachers need go through a probationary period to start their teaching careers. As far as we know, a large proportion of teachers in online academic-based training institutions are not graduates of normal colleges or schools. And it is also unclear whether teachers at online extracurricular training institutions targeted at primary and middle school students need to pass the “Primary and Middle Schoolteachers Qualification Examination.” Therefore, in practice, it is possible there will also be an accommodation process for teachers at online extracurricular training institutions to apply for teacher qualifications.

One concern in the industry has consistently been whether foreign teachers employed by training institutions need to obtain teacher qualifications. According to the *Teachers Law* and the *Regulations on Teacher Qualifications*, only Chinese citizens can obtain a Chinese teaching qualification certificate, while foreign citizens cannot obtain a Chinese teacher qualification certificate. Circular 8 puts forwards different requirements for foreign teachers and stipulates that a foreign teacher must provide a “description of study and work experience, teaching qualifications or description of teaching abilities,” but does not require a foreign teacher to provide a teacher qualification certificate. In addition, the employment of foreign teachers must also “comply with relevant state provisions.” We understand that the online training institutions must apply for and obtain a foreigner’s work permit in China for foreigner teachers, in order to satisfy relevant requirements under foreigner worker-related regulations in China.

IV. Do online extracurricular training institutions need to obtain a telecommunications services operating license?

The Draft Regulations for the first time categorize privately-run education and training institutions as offline training institutions and online training institutions, based upon the use of internet technology.

Online training institutions are required to obtain corresponding internet business licenses, but the Draft Regulations do not specify what types of Internet business licenses are required to be obtained. Circular 8 clearly requires online extracurricular training institutions to obtain telecommunications business operating qualifications before record-filing, including an ICP filing, cybersecurity classified protection system record-filing certificate and evaluation report, as well as a telecommunications business operating license if telecommunications services are involved.

According to the *Regulations on Telecommunications, Classification Catalog of Telecommunications Services*, and *Measures for Administration of Internet Content Provision Services*, operators of commercial internet content provision services are required to obtain a telecommunications services operating license (“**ICP license**”) whose business scope includes “internet content provision services.” Online courses provided by online extracurricular training institutions constitute commercial internet content provision services and therefore require an ICP license, considering that online courses generally involve charging of additional fees, such as fees for instructional videos, fees for downloading courseware, and fees for online teaching. In practice, it is also very common for online extracurricular training institutions to obtain an ICP license.

Telecommunications services operating licenses are granted and regulated by the telecommunications departments, while the registration of extracurricular training institutions is made with the provincial-level education administrative departments. Although both the Ministry of Education and the Ministry of Industry and Information Technology are issuers of Circular 8, Circular 8 does not clearly specify the manner for review of the qualifications for operating telecommunications services. After the commencement of the record-filing work, it still remains to be seen whether the provincial-level education administrative departments will cooperate with other departments to consider the necessity of the telecommunications services operating license requirement, or whether they will require the institutions that apply for filing to obtain an ICP license by considering the fact that most online extracurricular training institutions have already obtained an ICP license in practice.

V. Strengthening the supervision and management of teachers serving in primary and middle schools taking part-time work at online extracurricular training institutions

Circular 8 is not the first to restrict the teachers serving in primary and middle schools from taking part-time work at online training institutions. The Ministry of Education strictly forbid teachers who work at primary and middle schools from also taking part-time work at extracurricular training institutions for compensation when it promulgated on May 29, 2015 the *Provisions on Prohibition of Teaching Supplementary Classes for Compensation by Primary and Middle Schools and Teachers Serving Primary and Middle Schools*. Circular 80 requires extracurricular training institutions to have a relatively stable faculty and not to employ teachers who serve at primary and middle schools. Circular 8 further clarifies that online extracurricular training institutions should not hire teachers serving at primary and middle schools, and requires the submission of relevant information of teachers of online subject-based training institutions, and requires institutions to publish information of teachers in a prominent location on the training platform and course pages.

Compared with offline training institutions, there is greater difficulty in supervising online training

institutions and preventing them from engaging teachers of primary and middle schools as part-time teachers. Circular 8 requires online subject-based training institutions to submit teachers' information (including basic information, teacher qualification certificates, etc.) in the record-filing, and requests to publish the teachers' information, which will help the education administrative and other departments to identify violations of extracurricular training institutions if they engage teachers serving at primary and middle schools and increases supervision of institutions both in the process of record-filing review and in routine audits.

VI. How will prepaid tuition be supervised?

To tackle the problems of excessively high prepaid tuitions, difficulty in reasonably obtaining tuition refunds, and high user consumption risk, Circular 8 stipulates that the total scale of prepaid tuition collected by online training institutions should match the institution's service ability and prepaid tuition can only be used for education and training services but should not be used for other investments, and imposes limits on the amount of one-time fees that may be charged for courses both on a per-class and training cycle basis, but does not clearly stipulate how to regulate prepaid tuition. It is worth noting that Ni Minjing, deputy director of the Shanghai Municipal Education Commission, stated at a special press briefing of the Ministry of Education on July 15, 2019, that Shanghai will promote the implementation of the "single-purpose commercial prepaid card" system and strengthen the safeguarding of prepaid tuition funds at training institutions.

At present, the *Measures for Administration of Single-purpose Commercial Prepaid Cards (for Trial Implementation)*, as revised and effective on August 18, 2016, requires enterprises engaged in retail, accommodation and catering, and residential services in China to make a record-filing to carry out single-purpose commercial prepaid card services (i.e. issue prepaid cards to redeem for goods or services). However, the single-purpose commercial prepaid card record-filing requirement does not currently apply to online or offline education and training institutions. If the tuition collected by online education and training institutions is classified as single-purpose commercial prepaid card services, the tuition collected by online education and training institutions may be subject to the following requirements stipulated in the *Measures for Administration of Single-purpose Commercial Prepaid Cards (for Trial Implementation)*:

- A. A single real-name single-purpose prepaid card is limited to a maximum of RMB 5,000, and a non-real-name single-purpose prepaid card is limited to a maximum of RMB 1,000;
- B. Prepaid funds can only be used for the enterprise's principal business, and cannot be used for real estate, equity and securities, etc. investment and lending;
- C. The balance of prepaid funds must not exceed a certain percentage (for example, the balance cannot exceed a certain percentage of the income of the principal business, registered capital, etc.);
- D. Large scale card-issuing enterprises, card-issuing enterprise groups or franchised card-issuing enterprises are also subject to the fund deposit requirements, and are required to sign a fund deposit agreement with a depository bank;

- E. Prepaid card business information is required to be regularly submitted to the Ministry of Commerce.

If the single-purpose commercial prepaid card requirements are also applicable to extracurricular training institutions, the amount and use of prepaid tuition will be subject to additional restrictions in addition to the restrictions on the limits as stipulated in Circular 8. Although the current single-purpose commercial prepaid card rules do not target the education and training industry, it still remains to be observed whether these regulations will be extended to extracurricular training institutions or whether new rules will be promulgated for single-purpose prepaid cards in the education and training industry.

Draft Constitutional Amendment of the Royalty System Moves Forward

August 1, 2019

The National Government aims at reforming the Royalties System.

The National Government issued Decree 1297 of 2019 by means of which it ordered the publication of the draft Constitutional Amendment of article 361 of the Political Constitution regarding the Royalties System.

The National Government issued Decree 1297 of 2019 by means of which it ordered the publication of the draft Constitutional Amendment of article 361 of the Political Constitution regarding the Royalties System (the "Draft").

Currently, royalties are distributed in equal parts among all departments and municipalities of the country and are destined to various funds with the purpose of promoting science, technology and innovation, public savings, among others.

With the amendment proposed by the Draft, the distribution of royalties will change dramatically as indicated below:

- 34% for regional investment projects of regional governments, prioritized on the base of criteria of unsatisfied basic needs, population and unemployment.
- 20% for departments and municipalities in which exploitation of non-renewable natural resources is carried out, as well as municipalities with ports used for transporting such resources or their by-products. In addition, municipalities where non-renewable natural resources are produced will be entitled to an additional 5% participation on royalties.
- 15% for municipalities with the lowest income in the country, prioritized based on criteria of unsatisfied basic needs.
- 10% for investments on science, technology and innovation.
- 3% for the performance, operation and administration of the Royalty System, for the oversight of exploration and exploitation of deposits, the study and drafting of geological cartography of the subsoil, the evaluation and follow-up on the environmental licensing of exploration and production projects involving non-renewable natural resources, among others.
- 1% for the conservation of strategic ecosystems, national parks and water sources, as well as the national fight against deforestation.
- The remaining 17% will be destined to savings for pension liabilities and for the stabilization of the investment.

In addition, transitional paragraph 2 of the Draft sets forth that the National Government will have a maximum term of six months, counted as from the enactment of the Constitutional Amendment, to file before Congress a bill that adjusts the General Royalty System to the new text of article 361.

After this first round of debates before Congress, the Project will have to undergo a second round of four debates in which it will have to be approved by absolute majority in both, the Senate and the Chamber. This second round of debates must conclude before December 16, 2019, date in which the ordinary period of sessions of Congress ends.

For more information contact our team info@bu.com.co

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Bill No. 21.292 intends to allow non-resident banks to open a local branch in Costa Rica

August, 2019

As part of the process of entering the OECD and with the aim of guaranteeing financial stability, the Costa Rican congress recently approved a Bill of Law allowing branches of foreign banks to operate in Costa Rica and form part of the National Banking System.

Currently, only locally constituted corporations (sociedades anónimas) can obtain a banking license and perform financial intermediation which allows them to receive deposits from the public and use that money in lending or other financial activities (lending activity per se by local or foreign lenders does not require a banking license).

With this legal reform, foreign banks will be allowed to establish a local branch and perform financial intermediation as well as all financial activities authorized to private banks in Costa Rica. These branches will be considered as extensions of the foreign bank and not as a separate legal entity.

To register a branch of a foreign bank, the law establishes the following requirements:

- a)** Proxy to a local representative who will head the branch, in accordance with the requirements established in Article 226 of the Code of Commerce;
- b)** Proof that the foreign bank is duly authorized by the competent authority in its country of origin;
- c)** An indication that the object of the branch is exclusive and limited to the banking activity in accordance with Costa Rican laws;
- d)** Indication of the domicile in which the branch will have its physical presence;
- e)** The branch shall have assigned a minimum capital, in accordance with the regulations issued by CONASSIF;
- f)** The foreign bank is subject the regulations and competent financial supervisor in its country;
- g)** The competent authority in the country of the foreign bank shall grant a "no objection" with respect to the creation of the branch.

Additionally, CONASSIF (the financial regulator) will need to issue further regulations detailing additional requirements that must be met to register foreign bank branches (including capital requirements). These branches will also be supervised by the banking regulator (SUGEF).

Bill 21.292 has already been approved in Congress and is awaiting the signature of the President and publication in the official newspaper to become a law.

Written by:

Diego Gallegos-Senior Associate

Felipe Volio –Paralegal

www.ariaslaw.com



Non-Hong Kong Companies – new disclosure obligations from 1 August 2019

**Hogan
Lovells**

8 August 2019

Non-Hong Kong Companies – new disclosure obligations from 1 August 2019

Summary

A new regulation came into effect on 1 August 2019 to align certain disclosure obligations of non-Hong Kong companies to those of local companies. These obligations mainly surround the display of company names and place of incorporation, as well as disclosure of liability status. There are criminal consequences for failing to make the disclosures.

Contents and Manner of Disclosure

Under the Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation (Cap. 622M) (the "**Regulation**"), three key types of information will need to be disclosed by a non-Hong Kong company:

1. Name and place of incorporation

This information must be displayed continuously and legibly at every business venue of the non-Hong Kong company and positioned so that they are easily seen by any visitor to that venue. The business venue includes where the non-Hong Kong company carries on its business that is open to the public or its principal place of business in Hong Kong. The same details must also be set out in every communication document¹ and transaction instrument² of the non-Hong Kong company in Hong Kong.

If:

- (i) the business venue is host to more than 6 non-Hong Kong companies, and
- (ii) an electronic device is used to display the required information, then the information must be
 - a. displayed for at least 15 continuous seconds at least once in 4 minutes; **or**

- b. capable of being displayed within 4 minutes upon request through that electronic device.

2. Whether the members have limited liability

If the liability of its members is limited, then the non-Hong Kong company must exhibit and state in legible characters that fact at every business venue and in every communication document and transaction instrument of the company in Hong Kong.

3. If it is in liquidation

A non-Hong Kong company in liquidation must:

- In every advertisement of the company in Hong Kong, state its name and place of incorporation and where applicable, that the liability of its members is limited.
- When displaying its name,
 - For companies name in any language other than Chinese, add the phrase "in liquidation" after the name.
 - For Chinese company names, add the phrase "正進行清盤" after the name.
 - For companies with a name in Chinese and a in a language other than Chinese, add "正進行清盤" after the name in Chinese as well as "in liquidation" after the name in that other language.

Penalties and liabilities

Contravention of this regulation is a criminal offence and the company, every responsible person or agent of the company who authorizes or permits the contravention may be liable to a level 3 fine, currently HKD\$10,000.

What you need to do

An internal compliance check should be conducted to ensure the display and disclosure requirements will be met for the non-Hong Kong company's physical premises as well as its communication and transaction documents. For businesses such as company secretarial

¹ Includes a business letter, notice or other official publication of the non-Hong Kong company in hard copy, electronic or any other form.

² Includes a (i) contract or deed, (ii) bill of exchange, promissory note or endorsement, (iii) cheque or order for money or goods; (iv) a consignment note, invoice, receipt or letter of credit of the non-Hong Kong company, in hard copy, electronic or any other form.

services providers that host more than 6 non-Hong Kong companies and use electronic displays, you should ensure that the electronic device timing requirements can be met.



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OVERSEAS OFFICES: Atlanta, Dubai, Singapore, Jeddah (affiliate office)

www.kochhar.com

Dear Sirs,

We are writing to you to provide an update on the current development in the Companies Act, 2013. We hope that the update would be useful to you, your organisation and your clients.

Warm regards,

Kochhar & Co.

MCA UPDATE – JULY 2019

What	When	Summary	Resources
<p>1. Notification of Ministry of Corporate Affairs ("MCA") with regards to filing / verification of KYC details of the directors</p>	<p>25.07.2019</p>	<p>The Ministry of Corporate Affairs ("MCA") has notified the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019. With the notification of these Rules, the ambiguity as regards the filing of KYC details of the directors every year has been removed. As per the aforesaid Rules, every director (who is having a Director Identification Number (DIN) as on March 31, 2019 is required to file / update / verify his KYC details with the MCA on or before September 30, 2019.</p> <p><u>Who has to file DIR-3 KYC</u></p> <ol style="list-style-type: none"> 1. Every director who holds DIN as on March 31, 2019. Those directors who have already filed DIR-3 KYC last year and there are no changes in the details furnished earlier, have to verify the details through <u>(Web Service) DIR-3 KYC-Web</u>. No documents are required to be submitted in such a case. However, an online verification shall be done through an OTP, to be generated and sent on the mobile number and e-mail id of the director (as furnished last year while filing the KYC). 2. However, in the event there is any change in the information (with regards to the e-mail id and mobile number) provided earlier, the directors have to file an online Form DIR-3 KYC. For filing the Form DIR-3 KYC, we would require the following documents / information. 	<p><u>KYC Directors.pdf</u></p> <div data-bbox="1646 451 1696 509" data-label="Image"> </div> <p>MCA notification KYC.pdf</p>

		<p><u>Information required</u></p> <ul style="list-style-type: none"> • Personal mobile number along with country code • Personal e-mail id <p><u>Documents required</u></p> <p>➤ <u>Foreign citizen</u></p> <ul style="list-style-type: none"> • Notarised and apostilled copy of passport; • Notarised and apostilled copy of bank statement / mobile bill / electricity bill / telephone bill in the name of the applicant (any one)- not older than 2 months <p>➤ <u>Resident of India</u></p> <ul style="list-style-type: none"> • Self-attested copy of passport / voter id / aadhaar card / driving license (self-attested) • Self-attested copy of PAN Card (self-attested) • Self-attested copy of bank statement / mobile bill / electricity bill / telephone bill in the name of the applicant (any one)- not older than 2 months (self-attested) <p>3. For a director who has not filed the KYC earlier, the documents / information would remain same as mentioned in Point 2 above.</p>	
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7 August 2019

Workers' Minimum Standards of Housing and Amenities (Amendment) Act 2019

Introduction

The Workers' Minimum Standards of Housing and Amenities (Amendment) Bill 2019 (“**the Bill**”) was passed by the House of Senates on 31 July 2019 and is currently going through the necessary procedures before it comes into force. The Bill aims to raise the housing minimum standard and provision of basic amenities for workers in all employment sectors by amending the Workers' Minimum Standards of Housing and Amenities Act 1990 (“**Act 446**”). This is in line with the evolution of international labour standards especially in terms of compliance with the standards as practiced by developing countries. The Bill aims to help sustain the economic growth of the country and attract foreign investments especially in high-tech industries.

Key issues to be aware of

1. Scope of the Bill
- The Bill extends its scope to cover other employment sectors in addition to the estate sector in that Act 446 will be amended to now have the power to regulate minimum standards of accommodation for employees whose place of employment is other than the estates.
 - Act 446 which currently applies throughout M:alaysia will be amended to only apply to Peninsular Malaysia and the Federal Territory of Labuan.
2. Definition of ‘employees’
- A general amendment is made to the English language text of Act 447 by substituting the word “worker” for the word “employee” to be consistent with the Employment Act 1955. The definition of the word “employee” has the meaning assigned to it in subsection 2(1) of the Employment Act 1955.
3. Nursery
- The Bill further provides that an employer may be ordered by the Director General to provide a nursery if the employees collectively have at least 5 dependants under 4 years of age living with them. Currently, an employer is under such duty if there are at least 10 such dependants.
4. Accommodation for employees working other than in an estate
- New sections are introduced to provide accommodation for employees who are employed to work at places other than in an estate. An employer or a centralised accommodation provider shall obtain a Certificate for Accommodation from the Director General. Failure to comply shall render the employer or centralised accommodation provider guilty of an offence. The accommodation provided to employees must be in compliance with the minimum standards required and necessary certifications for the building and construction must be secured. Decent and adequate amenities must also be provided to the employees.
 - It is the employer's obligations to inform the Director General if his employee has occupied any accommodation provided by him or by a centralised accommodation provider.
 - It is the duty and responsibilities of the employer and centralised accommodation provider to ensure the safety and health of employees who are provided with the accommodation, including taking preventive measures relating to fire safety, containing the spread of infectious disease and maintaining the accommodations.
 - The employer and centralised accommodation provider must also appoint at least one person in charge of the accommodation who will be responsible for the employees' welfare and discipline.
 - An employer who provides accommodation for his employee is not obligated to also provide accommodation for the employees' dependants.
5. Offences and penalties
- New sections 28A and 28B are introduced into Act 446 for compounding offences. The proposed new section 28B protects the Minister, Director General and officers vested with powers from any action, suit, prosecution or other proceedings in respect of any act, neglect or default done or omitted in good faith.
 - New section 29A is also introduced to provide that where an offence is committed by a company, limited liability partnership, firm, society or other body of persons, the director, compliance officer, partner, manager, secretary or other similar officer of the company, etc. may be charged severally or jointly in the same proceedings with the company, etc. and if the company, etc. is found guilty, the director, compliance officer, partner, manager, secretary or other similar officer shall be deemed to be guilty.
 - The penalties are increased for an employer who fails to comply with any order made under section 5, 8, 12, 15 or 19 of Act 446. On conviction, employers will be liable to a fine not exceeding fifty thousand ringgit and to a further fine of one thousand ringgit a day for each day during which the offence continues.
 - Any resident manager who fails to comply with section 20 Act 446 or with any requirement of the Medical Officer of Health under section 21 Act 446 commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit and to a further fine of one thousand ringgit a day for each day during which the offence continues.

Our Employment Team will be happy to provide support in devising or reviewing the system(s), policies and guidelines to ensure compliance with the Bill and/or to mitigate risks.

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New plan to combat money laundering

July 15, 2019

A ban on cash payments to traders of more than EUR 3,000, a commitment to withdrawing the EUR 500 banknote from circulation, greater strengthening the cooperation and information-sharing between banks, an improved information position for investigation authorities, and making more funds available – these are some of the measures proposed in the joint plan of action to combat money laundering that the Dutch Ministers of Finance and Justice and Security submitted to the House of Representatives on 30 June 2019. The measures are intended to make it more difficult for criminals to launder money. The plan was drawn up in consultation with various regulatory and investigation authorities and relevant parties in the financial sector.

Background

It became apparent last year that on a number of occasions, banks in both the Netherlands and Europe had been seriously remiss in tackling money laundering. The submission letter accompanying the plan referred to the transaction of the ING case as an example. Moreover, the amounts involved in money laundering in the Netherlands rises into the billions; it is estimated that EUR 16 billion is laundered in the Netherlands each year. This mainly involves the proceeds of drugs-related crime and fraud, approximately half of which originates abroad. The shortcomings in tackling money laundering and the large sums involved prompted the Ministry of Finance and the Ministry of Justice and Security to draw up a joint plan to combat the problem.

New measures

The measures proposed in the plan are grouped into three main categories, aimed at (i) increasing the barriers against criminals channelling illegally obtained income into the financial system; (ii) increasing the effectiveness of the “gatekeeper” function and how it is supervised, thus excluding the proceeds of crime from the financial system; and (iii) reinforcing investigation and prosecution, so that criminals can be dealt with even more quickly and effectively. These categories are emphatically interlinked; the proposed measures are intended to ensure a more effective approach and better protection of our financial system.

The first category, increasing the barriers, involves preventing money laundering “at the frontline”, thereby limiting the channelling of proceeds of crime into the financial system and making criminal activity more difficult. One of the measures proposed in this context is aimed at preventing the misuse of large amounts of cash. The introduction of a ban on cash payments to traders of more than EUR 3,000 is intended to make it more difficult to launder large amounts of criminal assets by means of cash. Currently, an obligation to report cash payments in excess of EUR 10,000 applies to professional or commercial purchasers or sellers of goods. The ban on cash payments of more than EUR 3,000 does away with that obligation. The aim is to have the ban become law by 2021. The plan also involves withdrawing the EUR 500 banknote from circulation in order to prevent high-denomination laundering of the proceeds of crime. The European Central Bank (ECB) already stopped printing and issuing EUR 500 banknotes in 2019. The Dutch Central Bank will now call on the ECB to take the EUR 500 denomination out of circulation permanently.

One of the second-category measures – which focus on increasing the effectiveness of the “gatekeeper” function and how it is supervised – involves improving how private institutions cooperate and share information. It is important to note that the exchange of information envisaged in the plan will not replace such institutions’ own responsibility for screening their clients, properly monitoring transactions, and reporting unusual transactions to the Dutch Financial Intelligence Unit (FIU). Within this category of measures, various ways of sharing information are being introduced, including increasing the effectiveness of joint transaction monitoring by banks by means of a “TM utility”. According to the plan, the value of joint transaction monitoring lies in the ability to detect unusual transactions that are not assessed (or cannot be assessed) as unusual by an individual bank, but when viewed in combination with transactions by the same client at other banks do indicate (or may indicate) money laundering. At present, national legislation still prevents sharing information in this way because outsourcing the transaction monitoring is prohibited under the Money Laundering and Terrorist Financing (Prevention) Act (Wwft). Moreover, transactions contain sensitive information and sharing information counts as a new way of processing personal data, meaning that a legal basis for processing will have to be incorporated into the Wwft to allow banks to share this data within the framework of the GDPR. The plan states that a bill for amending this legislation will follow shortly.

The third category of measures focuses on investigation and prosecution. One measure involves improving the information position of the investigation authorities, for example by increasing the scope for Wwft regulators to share information with bodies within the Financial Expertise Centre (FEC) (a partnership between authorities charged with combatting, detecting, and prosecuting money laundering). This option for sharing information is already included in the Fourth Anti-Money Laundering Directive (Implementing) (Amendment) Act, which is expected to enter into force in January 2020. In addition to improving the information position of the investigation authorities, more funds will be made available to the Fiscal Intelligence and Investigation Service (FIOD), the FIU, and the Public Prosecution Service to enhance detection of money laundering, combat fraud, and prevent undermining by criminal activities. This will involve a structural sum of EUR 29 million from 2021 onwards, making it possible to launch additional projects and investigations.

Follow-up

The aim of the plan and the associated measures is to guarantee a secure and honest financial system. Preventing and combating money laundering requires a joint approach by government, regulators, the FIU, the Public Prosecution Service, the FIOD, and relevant parties in the financial sector such as banks, accountants, and insurers. Closer cooperation between all these parties and their joint efforts are aimed at stepping up the battle against money laundering. The Ministers' submission letter makes clear that the Netherlands intends to be one of the international leaders in that battle. The plan will therefore make a significant contribution to boosting the effectiveness of the Dutch financial system. In this context, the forthcoming evaluation of the country's measures to combat money laundering and terrorist financing and their effectiveness by the Financial Action Task Force (2021) will be an important indicator of what has been achieved.

At the end of this year, the Ministers of Finance and Justice and Security will consult again with the parties involved to discuss the progress and effectiveness of the planned measures, with agreements also being made about the follow-up, so as to ensure continued focus. At the end of the year, the Dutch House of Representatives will be informed of the results and current situation as regards the measures envisaged.

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Government to establish water quality watchdog

August 02, 2019

Local Government and Health Ministers Nanaia Mahuta and David Clark have confirmed long-anticipated plans to establish a dedicated water quality regulator, as the centrepiece of regulatory reform that aims to ensure safe drinking water and deliver better environmental outcomes from New Zealand's wastewater and stormwater systems.

In Summary - what you need to know

- The new regulatory system is proposed to be implemented over a five year period, with staggered timeframes for compliance. The regulatory regime will capture all water suppliers except individual household self-suppliers.
- The Government intends to decide later in 2019 how to address the cost implications of complying with the enhanced regulatory regime, including whether financial assistance from central government needs to be provided.
- It's not yet known if the Government intends to require aggregation of drinking water suppliers, however, the new compliance obligations create strong incentives for territorial authorities/drinking water suppliers to aggregate voluntarily.
- Proposals in respect of wastewater and stormwater are directed at improving transparency through reporting requirements and providing greater guidance to local authorities and service providers, with support from a central regulatory agency.
- Later this year Cabinet will consider whether the same regulator will be responsible for the drinking water supply, wastewater and stormwater functions.

Background

The Government estimates that 34,000 people across New Zealand become ill as a result of poor quality drinking water every year. Establishing a dedicated drinking water regulator was a key recommendation of the Government Inquiry into Havelock North Drinking Water which followed the 2016 outbreak of campylobacter in that town.

The Government's announcement also signals an intention for greater regulation of wastewater and stormwater as well, reflecting concerns with wastewater and stormwater discharges, and their impact on bathing water quality in particular, that have been prominent throughout New Zealand over recent years.

Cabinet papers released with the Ministers' announcement indicate that these proposals will be implemented through the Water Services Bill which the Government is aiming to introduce to Parliament by the end of the year, with possible enactment by mid-2020.

Responsibilities of the regulator

The functions of the regulator will include: sector leadership, setting standards, compliance, monitoring and enforcement, capability building, information, advice and education, and performance reporting. It can be inferred from the Cabinet paper released by the Government that the regulator's mandate is to address public health issues. There is no indication that the drinking water regulator will have any economic regulatory functions equivalent to those held by the Commerce Commission.

The details of the regulator will be the subject of further Cabinet consideration later this year. The question of whether the same regulator will be responsible for the drinking water supply, wastewater and stormwater functions is also to be considered as part of the business case prepared later this year.

A better system for regulating drinking water and protecting source water

The new regulatory system is proposed to be implemented over a five year period, with timeframes for compliance being staggered. This allows water suppliers to adjust to the regulations, with support and assistance from the new regulator. The regulatory regime will capture all water suppliers except individual household self-suppliers.

There are requirements for registration of drinking water suppliers, preparation of and compliance with drinking water safety plans and compliance with other regulatory requirements.

Wastewater and stormwater services

Compared to the drinking water proposals, the proposals in respect of wastewater and stormwater do not involve such a significant structural shift from the status quo. They are directed at improving transparency through reporting requirements and providing greater guidance as to what is expected of regional councils and service providers, with support from a central regulatory agency. Regional councils would remain the primary environmental regulators.

Implications of the announcement

The Government acknowledges it will be challenging for smaller drinking water suppliers to comply with the new regulatory framework. It intends to decide later in 2019 how to address the cost implications of complying with the enhanced regulatory regime, including whether financial assistance from central government needs to be provided. Both Local Government New Zealand and Water New Zealand have already called for this, since the Government's announcements on Wednesday evening.

There may also be scope for smaller suppliers to work together and pool resources to achieve compliance with the new regime. In some cases this may prove an efficient way of spreading the costs of compliance over a broader

base. The Government has still to make announcements on whether it intends to require aggregation of drinking water suppliers - an issue flagged earlier in the Government's Review of Three Waters Infrastructure. However, the new compliance obligations create strong incentives for territorial authorities and other drinking water suppliers to aggregate voluntarily. They may also reduce resistance from the sector, should the Government introduce legislation that requires aggregation to occur.

Another one to keep an eye on - Health (Drinking Water) Amendment Act

The Health (Drinking Water) Amendment Act received the Royal Assent on 31 July 2019.

This Act tightens the provisions in Part 2A of the Health Act in relation to compliance obligations for water supply and drinking water standards. It is going to be easier for the Minister/Ministry of Health to change drinking water standards, and the duties on those implementing water safety plans are clarified and made more rigorous. Further, those implementing water safety plans will have fewer excuses for not implementing water safety plans fully and promptly.

The Cabinet paper proposes to repeal this part of the Health Act 1956, which regulates drinking water, and to carry over existing provisions into the Water Services Bill, with amendments as appropriate (in some cases to reflect that the regulator would have a role in the process).

For more information on these developments and assistance in making a submission on the Water Services Bill, contact Partners Padraig McNamara, Matt Conway, Gerald Lanning, Bill Loutit, Jonathan Salter, Sarah Scott, James Winchester; Senior Associates Tim Fischer

New Measure in Managing Priority Claims of a Design Patent Application

08/01/2019

David C. L. Chen

The Taiwan Intellectual Property Office (TIPO) announced on 12 July 2019 a new measure in managing priority claims of a design patent application: "In the future, the examiner will not evaluate the validity of the priority claim of a patent application based on priority documents, unless he/she finds - through a search - that there is a pending patent application or prior art whose filing date or date of disclosure falls between the priority date and the filing date of the later-filed application. If no pending patent application or prior art is found, the TIPO, in principle, will publish all the priority claims the applicant asserts on the Patent Gazettes. This measure will come into effect on the publication date of volume 46, issue 22 of the Patent Gazettes (1 August 2019)."

Pages 3-5-3 and 3-5-4 of Chapter 3 of the current Patent Examination Guidelines stipulate the following regulations:

"(4) The design disclosed in the drawings of a design patent application is required to comply with the requirement of 'one design for one application.' Accordingly, a design patent application can only claim one priority date for the claimed design. Claim to multiple priorities or a partial priority should not be accepted."

"(5) If a pending application or prior art - whose filing date or date of disclosure falls between the priority date and the filing date of the later-filed application - is found during the process of searching, it is required to check if the priority claim(s) is valid in view of the priority documents. In addition, reasons are required to be given if the priority claim(s) is deemed invalid. If necessary, the applicant should be notified and required to submit a full or part of Chinese translation of the priority documents. If such Chinese translation of the documents fails to be submitted, the priority claim(s) should not be accepted."

In the past, during the process of substantive examination of a design patent application, the TIPO would check to see whether the design disclosed in the claimed priority basic application is the same as that disclosed in the design patent application. If not, an Office Action requesting the applicant to respond would be issued by the TIPO. Where a design patent application claims multiple priorities, an Office Action requesting the applicant to select one of the priority claims would also be issued by the TIPO. In the future, the examination of the priority claim for a design patent application will be in accord with that of an invention patent application, namely, the priority claim(s) will not be substantively examined first. That is, an applicant will be allowed to claim multiple priorities. The examination of whether the priority claim(s) corresponds to the later-filed application will be

conducted only if there is a prior-filed application or prior art whose filing date or date of disclosure falls between the earliest priority date and the filing date of the later-filed application (the same also applies to the proceedings of a cancelation action). If no such prior-filed application or prior art is found, the TIPO will publish all the priority claims the applicant asserts on the Patent Gazettes.

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Amendments to the banking law on the restructuring of debts owed to the financial sector

26 July 2019

Client Alert | Turkey | Banking & Finance

On 19 July 2019, certain amendments to the Banking Law No 5411 (the "**Banking Law**") concerning the restructuring of debts owed to the financial sector entered into force. Although standalone drafts had been distributed to the members of the Banks Association of Turkey from time to time since last summer, the Turkish government finally decided to insert a "**Provisional Article 32**" into the Banking Law, setting out all the provisions related to this issue, rather than having a separate restructuring law.

Under Provisional Article 32, the general procedures and principles of financial restructuring regulated by the Regulation on the Restructuring of Debts Owed to the Financial Sector (the "**Regulation**") have been reformulated, and several new tax exemptions for the actors of restructuring have been introduced.

Provisional Article 32 is applicable for a period of two years from 19 July 2019, and the President of the Republic of Turkey can extend this period for an additional period of two years. Having said that, the tax exemptions – briefly explained below – are not subject to these time limitations.

Below you can find the key changes introduced under Provisional Article 32:

- The definition of creditor institutions now includes (i) non-resident banks and other financial institutions that have directly lent to a Turkish resident borrower; (ii) institutions and multinational banks that have directly invested in Turkey and (iii) special purpose vehicles (companies) established by these institutions to collect receivables, and investment funds established for the same purpose.
- Provisional Article 32 covers all kinds of measures related to the financial restructuring process that were previously set out in the Regulation, including term extension, the extension of new loans, write-downs and the conversion of debt into equity by creditor institutions.
- The borrower's repayment ability and the evaluation about the feasibility of financial restructuring is either assessed by independent audit firms or, subject to the prior approval of the borrower, by the creditor institutions.

- In order to give some comfort to the officials and directors of financial institutions, in particular to bank directors, it is further emphasised that a decline in collaterals/securities, write-offs of the principal amount and other receivables and similar transactions within the scope of restructuring will not be considered as embezzlement (*zimmet suçu*, in Turkish).
- Several tax exemptions have been introduced for the transactions and documents to be entered into within the scope of financial restructurings, such as exemption from stamp duty, the resource utilisation support fund, as well as banking and insurance transaction tax etc.
- These tax exemptions are not applicable to the disposal of assets and collaterals/securities that have been directly or indirectly acquired by the creditor institutions within the scope of financial restructuring transactions. Having said that, transfers between creditor institutions and/or to the borrower are also considered to be covered by the exemptions.

In addition to these changes introduced under Provisional Article 32, an additional paragraph has been added to Article 53 of the Banking Law. Accordingly, loans that have been written-down due to an inability to collect relevant receivables will be considered as “*bad debt*” under the Tax Procedure Law No. 213, on the condition that a special reserve is allocated for the loans.

In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

This client alert is not intended to constitute legal advice and should not be taken as a recommendation to take action or withhold from taking action.



Arpat Şenocak



IRS Warns Taxpayers Regarding Virtual Currency Compliance

31 July 2019

On July 26, 2019, the Internal Revenue Service issued a press release, [IR-2019-132](#), announcing that it has begun sending letters to taxpayers with virtual currency transactions, advising them to pay back taxes and file amended returns. By August 2019, more than 10,000 taxpayers will receive these letters.

These letters are part of the IRS's larger efforts to expand its oversight of transactions involving virtual currency. In 2018, the IRS launched a Virtual Currency Compliance campaign of outreach and examinations. The IRS has begun training staff on virtual currency and intends to remain actively engaged in addressing noncompliance through a variety of efforts, ranging from taxpayer education to audits to criminal investigations.

According to the IRS, virtual currency (including cryptocurrencies, such as Bitcoin, Ether, and Ripple) is not "currency" for tax purposes. Instead, the IRS treats virtual currency that can be converted into traditional currency as "property" for tax purposes, resulting in tax consequences that may not be intuitive to a lay person. For example, a typical exchange of one virtual currency for another (e.g., Bitcoin for Ether) is a taxable transaction (at least for exchanges after December 31, 2017, which under tax reform are not eligible for tax-deferred like-kind exchange treatment), creating gain or loss to the taxpayer and a reporting obligation on IRS Form 8949. Other transactions, such as mining of virtual currency or receipt of units like Bitcoin Cash in the August 2017 hard fork, can also create current tax obligations. Unfortunately, the IRS has issued only limited guidance on the tax treatment of virtual currency, resulting in a trap for the unwary.

The IRS's increased focus on virtual currency stems in part from a significant reporting gap identified in 2017 between the number of virtual currency users and the significantly smaller number of users reporting gains or losses to the IRS. As part of a federal "John Doe" summons on Coinbase, Inc., the IRS has received, or will receive, names and personally identifiable information of more than 14,000 virtual currency account holders. The John Doe summons was the same tool the IRS utilized to discover foreign bank accounts that drove over 45,000 U.S. taxpayers to self-disclosure, culminating in the Offshore Voluntary Disclosure Program ("OVDP") for taxpayers to mitigate their criminal and civil exposure.

The IRS is also increasing its use of data analytics to identify taxpayers who have potentially failed to properly report virtual currency transactions. Between this and the use of “John Doe” summons, the IRS can gather information on virtual currency transactions from all over the world. Moreover, while the blockchain for cryptocurrency is inherently anonymous, as a public ledger, it is also inherently traceable. Cryptocurrency owners may find it difficult to remain anonymous from the IRS, particularly when they eventually convert their cryptocurrency to cash, which tends to require personal identification at the exchange. “No one should assume we don’t know you hold virtual currency,” Darren Guillot, director (field collection), IRS Small Business/Self-Employed Division, reported to Tax Notes in January 2019.

U.S. taxpayers who have held any virtual currency should be mindful of the increased IRS scrutiny in this area. With limited IRS guidance on virtual currency available, taxpayers should establish a clear reporting plan as soon as possible.

Disclosing virtual currency transactions early—ideally prior to government contact—is important for avoiding or reducing civil and criminal penalties. So long as noncompliance was not deliberate or fraudulent, a taxpayer can generally avoid civil penalties by filing a qualified amended return. If noncompliance was deliberate or fraudulent, then a taxpayer may want to consider disclosing its noncompliance voluntarily—before government contact—to avoid criminal prosecution. Although these options may not be available to taxpayers who have already been contacted by the IRS regarding their virtual currency transactions, it is important to have a lawyer, well-versed in the issues, who can negotiate the best resolution on the taxpayer’s behalf.

If you have questions about this IRS press release, the tax treatment of virtual currency generally, or whether/how to make a disclosure to the IRS, please contact any member of the Baker Botts Virtual Currency IRS Task Force.

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ADVISORIES

Technology Transactions

Trump Administration Issues Interim Rule Banning Agencies' Procurement of Telecom Equipment and Services from Huawei, ZTE and Other Designated Chinese Companies

By Burt Braverman

08.08.19

As mandated by Section 889 (a) (1) (A) of the 2019 National Defense Authorization Act ("NDAA"), the Defense Department, General Services Agency and NASA have issued the pre-publication version of an interim rule that bars executive agencies, government contractors (and subcontractors), and companies that receive government loans or subsidies, from procuring or obtaining equipment, systems or services from Huawei Technologies Company or ZTE Corporation and, in somewhat narrower circumstances, from Hytera Communications Corp., Hangzhou Hikvision Digital Technology Company, Dahua Technology Company and other companies that may be designated in the future. The interim rule, which amends the Federal Acquisition Regulation, will be published in the Federal Register on or before August 13, after which it will become effective. Issuance of the rule is no surprise, and its timing was driven by the implementation requirement of the NDAA – which Huawei already has challenged in court on constitutional grounds – not by trade war negotiating strategy.

Nonetheless, its issuance, the inclusion of three new named Chinese entities in addition to previously targeted Huawei and ZTE, and the tit-for-tat tenor that the Huawei dispute has assumed (with China now creating its own “Unreliable Entities List” in response to Huawei being added to the U.S. Entities List), may please some hardline members of Congress but may not help the trade war adversaries get to "yes".

The interim rule forbids executive agencies, contractors, subcontractors and companies receiving government loans and subsidies from procuring or obtaining equipment, systems or services that use "covered telecommunications equipment or services" as a substantial component of any system, or as a “critical technology” as a part of any system, after August 13, 2019. "Covered telecommunications equipment" includes:

1. any telecommunications equipment manufactured by Huawei or ZTE,

- or any of their affiliates or subsidiaries;
 - 2. for purposes of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, equipment produced by Hytera Communications Corp., Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company;
 - 3. telecommunications or video surveillance services provided by any of those companies or using such equipment; or
 - 4. telecommunications or video surveillance equipment or services provided by a company that the Secretary of Defense believes is owned or controlled by, or otherwise connected to, a "covered foreign country".
- The interim rule defines "covered foreign country" as the Peoples Republic of China, and adopts the broad definition of "critical technologies" that is used in the Foreign Risk Review Modernization Act.

The prohibition will be enforced through the federal procurement contract solicitation process, in part by including required disclosures and representations that are intended to reveal the presence of any covered telecommunications equipment or services in a system or network being procured by the government. Based on a risk assessment of the FAR Council, the determination has been made to apply the interim rule to acquisitions below the dollar floor of the Simplified Acquisition Threshold, as well as to the procurement of commercial and commercial-off-the-shelf ("COTS") items. The rule will apply to solicitations issued after August 13, 2019, to solicitations issued before August 13 where the award occurs subsequent to that date, as well as to, e.g., post-August 13, 2019 installments of pre-August 13 indefinite delivery contracts.

Comments on the interim rule will be received for a period of 60 days following publication of the interim rule in the Federal Register. The interim rule authorizes some limited one-time, case-by-case waivers where national security will not be impacted.

A separate, even more sweeping provision of the 2019 NDAA (Section 889 (a)

(1) (B)), which forbids an executive agency from entering into a contract with an entity that uses any equipment, system or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, will be the subject of a separate rulemaking. Section 889 (a) (1) (B) requires that proceeding to be completed, and implementing regulations to be issued, by August 13, 2020.

New draft guidance on MR compatibility for medical devices

13 August 2019

The U.S. Food and Drug Administration (FDA) has published a new draft guidance titled "[Testing and Labeling Medical Devices for Safety in the Magnetic Resonance \(MR\) Environment](#)." Once finalized, this document will supersede FDA's 2014 guidance titled "Establishing Safety and Compatibility of Passive Implants in the Magnetic Resonance (MR) Environment" and will complement FDA's 2016 guidance "[Assessment of Radiofrequency-Induced Heating in the Magnetic Resonance \(MR\) Environment for Multi-Configuration Passive Medical Devices](#)."

Although some of the general principles of the original 2014 guidance are retained, the new draft has been significantly expanded to:

- Provide more guidance regarding how to apply the standardized test methods in terms of specifying the worst-case device and when testing is not needed.
- Include considerations specific to electrically active devices.
- Include nonimplanted devices that are expected to enter the MR suite.
- Expand the required content of MR Conditional labeling.

Under the proposed draft guidance, FDA retains the classification terminology of ASTM F2052 of MR Safe, MR Unsafe, and MR Conditional. FDA has clarified the parameters of when devices can be defined as MR safe using a rationale, as opposed to testing, as a device that is electrically nonconductive (defined as conductivity less than 1 S/m), nonmetallic, and nonmagnetic. Most plastics, glass, and many ceramic materials are MR Safe.

In determining what testing must be performed to support the use of a device in the MR environment, the guidance addresses four specific hazards, consistent with the hazards addressed in the current guidance, but FDA has now specified acceptance criteria and worst-case scenarios that should be tested. The four potential risks, their applicability, recommended testing methods, and acceptance criteria are summarized in Table 1, below.

Table 1. Hazards in the MR Environment

Risk	Risk applies to	Mitigation method	Acceptance criteria	Worst case device for testing
Magnetically induced forces	All medical devices intended to enter the MR environment	ASTM F2052	Magnetic force < gravitational force	Most magnetic material
	In MR scanner room, but outside bore	Dead man breaks, gauss meters/alarms, tethers	N/A	N/A
Magnetically induced torque	Devices intended to enter the bore of the MR system	ASTM F2213	Magnetic torque < gravitational torque	Longest device
Heating				
<ul style="list-style-type: none"> Radiofrequency Heating 	Devices intended to enter the bore of the MR system	ASTM F2182 for fully implanted passive devices ISO/TS 10974 For electrically active devices	2°C	See FDA Guidance ¹
<ul style="list-style-type: none"> Switched magnetic field heating 	Devices intended to enter the bore of the MR system	ISO/TS 10974	2°C	Not specified
Image artifact	All medical devices intended to enter the MR environment	ASTM F2119	N/A	Most magnetic material

With the expansion of the guidance to include electrically active devices, the guidance identifies several new risks that are specific to these devices that do not apply to passive devices. The new risks include:

- Gradient induced vibration which may lead to device malfunction or tissue damage.
- Unintended stimulation which is caused by the generation of voltage in the electrodes of a fully or partially implanted devices in contact with muscle or nerve tissue.
- Temporary device malfunction during the MR scan or permanent malfunction even after the scan.
- Presence of the active device impact operation of MR system or degrades MR image quality.

Testing to address each of the risks should be performed and FDA refers companies to evaluate these specific risks in accordance with ISO/TS 10974, though, unlike the other tests listed in Table 1 above, it does not define a worst-case or acceptance criteria for these tests noting that in many cases the acceptance criteria will depend on the type of device, where it is located, its intended use, and benefit/risk. Of note, regardless of test outcomes, the draft guidance indicates the electrically active devices should never be labeled as MR Safe due to their electrically conductive components.

¹ "Assessment of Radiofrequency Induced Heating in the Magnetic Resonance (MR) Environment for Multi-Configuration Passive Medical Devices."

As before, FDA expects that results of MR compatibility testing are presented in any FDA marketing application and that pertinent results of the tests be summarized in the device labeling under its own section titled "MRI Safety Information." The draft guidance provides new, recommended language for devices that are MR Unsafe or MR Conditional. The labeling for MR Conditional devices must also either provide the conditions for safe MRI scanning or direct users where this information can be found. The specific safety information depends on if the device is expected to be within the bore of the MR system or not, with FDA proposing inclusion of significantly more detail than the type of information than has previously been required. Additional labeling requirements apply for implanted devices where such devices should be provided with a patient card which identifies the MR safety information.

Importantly, despite the heavy emphasis on risks and testing in the draft guidance, the document proposes to continue allowing companies to proceed to market without evaluating the MR safety of certain devices. Devices with established MR safety, and which are not novel, contain ferromagnetic materials, or are electrically active, may be supported by a rationale regarding the MR safety of the product and accompanied by labeling with a disclosure statement that the device has not been evaluated for safety and compatibility in the MR environment.

In sum, it is clear that FDA has a strong focus on MR safety of medical devices. This is the third version of this guidance to be published in the past 10 years, and FDA has also published related guidance clarifying how to assess radiofrequency heating. This guidance provides more prescriptive information regarding the scope of testing, labeling requirements, and further clarity on when testing may not be necessary and the device can be considered MR Safe. The draft guidance now also extends beyond passive, implanted devices to also address nonimplanted devices in the MR suite and electrically active devices. The guidance will require substantial testing for any electrically active device that may enter the MR suite, either due to its intended use or because it is attached to the patient. Aside for reference to ISO/TS 10974, little guidance such as determination of worst-case or acceptance criteria in regards to how this standard should be applied to active devices is provided as specific risks will be based on the specific use conditions and situations.

FDA is accepting comments to this draft until 1 October 2019 to docket number: [FDA-2019-D-2837](#).

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