PACIFIC RIM ADVISORY COUNCIL

Pacific Rim Advisory Council
March 2019 e-Bulletin

MEMBER NEWS

►ARIAS Set to Host PRAC 65th International Conference
►ARIAS Announces Merger with top IP Firm
►BAKER BOTTS Elects Next Managing Partner
►BENNETT JONES Adds Corporate Partner Expertise to Firm
►BRIGARD URRUTIA Announces Four Partner Appointments
►DAVIS WRIGHT Expands Its White Collar and Government Investigations Practice in California
►HOGAN LOVELLS Launches Cyber Risk Services

COUNTRY ALERTS

►ARGENTINA City Reforms Incorporate Digital Identity Misappropriation ALLENDE BREA
►AUSTRALIA Reporting Changes Ahead For ASX-listed Oil and Gas Entities CLAYTON UTZ
►BRAZIL Cybersecurity and Data Privacy – Bill of Law Alters Rules of Positive Enrollments awaits Senate decision TOZZINIFREIRE
►CANADA Not All Breaches of Contract Are Created Equal BENNETT JONES
►CANADA Mitigating Due Diligence Issues Within a Business Transaction RICHARDS BUELL SUTTON
►CHILE CMF Establishes Deadlines CAREY
►CHINA Securities Regulatory Commission to Introduce Guidelines on Manager of Manager Products - MOM Guidelines - for Institutions Engaged in Securities or Fund Business HAN KUN
►GUATEMALA Are Shareholder Agreement Valid in Guatemala ARIAS
►MALAYSIA Avoiding Corporate Criminal Liability SKRINE
►MEXICO Merger Review Notification Thresholds SANTAMARINA
►NETHERLANDS New Rules for Partnerships NAUTADUTILH
►NEW ZEALAND NZ and EU Free Trade Negotiations - Geographical Indications on the Menu SIMPSON GRIERSON
►SINGAPORE Budget 2019 Tax Developments DENTONS RODYK
►TAIWAN New Rules for Assessment of Unity of Invention from 01 January LEE & LI
►UNITED STATES Energy Update: 2018 - The Year of the Special Situation BAKER BOTTS
►UNITED STATES Dept of Labor Proposes to Raise FLSA Salary Exempt Threshold Starting in 2020 DAVIS WRIGHT TREMAINE
►UNITED STATES DEA Launches new ARCOS Enhancement to Help Manufacturers and Distributors “know your customer” and Detect Suspicious Orders HOGAN LOVELLS

CONFERENCES & EVENTS

65th International Conference
Costa Rica - Hosted by ARIAS
April 6 - 9, 2019

IPBA Singapore Member Hosted Reception
April 25, 2019

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

Visit www.prac.org for all events and details

MEMBER DEALS MAKING NEWS

►ARIAS El Salvador Assists Bank of Nova Scotia in Sale of its Operations to Imperia Intercontinental
►BAKER BOTTS Acts for PAO Novatek on the 10% Sale in Arctic NG 2 Project
►CAREY Assists Acciona Energía in VAT loan for Chilean wind farm
►CLAYTON UTZ Advises Australia Pacific LNG on the purchase of the Ironbark project
►DAVIS WRIGHT TREMAINE Secures Favorable Ruling for BuzzFeed in High-Profile Defamation Suit
►GIDE Counsel on Vinci's issuance of €75,000,000 CMS linked notes
►HAN KUN advises on Weidai Ltd.'s U.S. initial public offering and listing on NYSE: WEI
►HOGAN LOVELLS Represents Papa John’s in US$200 Million Strategic Investment from Starboard
►MUNIZ Assists Citibank in Asset Backed Financing to Savia Peru
►NAUTADUTILH Assists Arvelle Therapeutics on Acquiring Exclusive Rights to Develop and Commercialise Anti-epileptic Drug
►SANTAMARINA Assists Grupo Industrial Saltillo, S.A.B. de C.V. in Sale to Italian group of 100% of its water heating and pipe fitting business

PRAC TOOLS TO USE

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

ARIAS SET TO HOST PRAC 65TH INTERNATIONAL PRAC CONFERENCE

The Pacific Rim Advisory Council ("PRAC") member law firm Arias will host the 65th International PRAC Conference, April 6 – 9 in Costa Rica. Member Firm delegates from around the globe will gather to participate in the various business sessions featuring topical professional development programs and business development opportunities. Included among the business sessions on tap:

- **Business Session #1** | Host Firm Briefing presented by Arias

- **Business Session #2** | Special guest presentation by Costa Rica former minister of foreign trade
"The Pacific Alliance - a Light in the Dark Night of Protectionism"

- **Business Session #3** | PRACtice Development
"Cannonballs, Flies and Avoiding Crossfire: Avoiding Criminal Prosecution in Tax Collection."

- **Business Session #4** | PRACtice Management
"Diversity & Inclusion - Key Takeaways for Law Firms" - guest participation with Korn Ferry

- **Business Session #5** | PRAC Business Development
(a) Member Firm Spotlight – City-Yuwa Partners; (b) Group Roundtables - Bring a Message"

- **Business Session #6** | PRACtice Development
"Antitrust in Central America - Catching up with International Standards"

- **Business Session #7** | PRACtice Development
"Hits and Misses of the Knowledge Economy in Emerging Markets"

- **Business Session #8** | PRACtice Management
"Transition Challenges in Law Firms"

Arias Arias is an internationally recognized Central American law firm. With seven offices in six countries across Central America, Arias is unique as it operates as a single firm rather than an alliance or network. ARIAS has become not only a solid, but also an innovative legal firm that continues to spread its influence throughout the region. For clients, choosing the right legal partner is key. Arias has specialized attorneys, with extensive experience over a wide range of practice areas and industries, that can unlock the regions intricacies and subtle differences in laws. The firm is truly a one-step, one-stop law firm that offers clients the benefits and demonstrated advantages that come from having all their regional businesses served from one, fully integrated base. For more information about Arias visit www.ariaslaw.com

PACIFIC RIM ADVISORY COUNCIL **ABOUT US**: The Pacific Rim Advisory Council is an international law firm association with a unique strategic alliance within the global legal community providing for the exchange of professional information among its 29 top tier independent member law firms. Since 1984, Pacific Rim Advisory Council (PRAC) member firms have provided their respective clients with the resources of our organization and their individual unparalleled expertise on the legal and business issues facing not only Asia but the broader Pacific Rim region. Whether you are an institutional client or an emerging business our member firms are leaders in their fields and understand your business needs and the complexities of your industry.

With over 12,000 lawyers practicing in key business centers around the world, including Latin America, Middle East, Europe, Africa, Asia and North America, our prominent member firms provide independent legal representation and local market knowledge. For additional information about Pacific Rim Advisory Council or our member law firms, visit us online at www.prac.org

ARIAS AND CASTRO & PAL MERGE THEIR OPERATIONS

COSTA RICA February, 2019: Law firms **Arias** and **Castro & Pal** have merged its operations; with this merger, Arias strengthens its Intellectual Property area, Castro & Pal is a recognized expert due to its successful and long-standing track record of more than 25 years.

Castro & Pal is the go to firm in Costa Rica for Intellectual Property Law advice. The firm has stand out as one of the main voices regarding Intellectual Property in the country, providing specialized advice on protection and defense of intangible assets of innovative people and companies. It is also a great opportunity for Castro & Pal's expertise to reach all the region, through the merger with an innovative and strong firm such as Arias, that has offices in **Guatemala**, **El Salvador**, **Honduras**, **Nicaragua**, **Costa Rica** and Panama.

Castro & Pal serves a wide variety of clients such as public sector institutions, multinational companies, universities from Costa Rica and abroad, as well as other private firms that work in the fields of research and development and technology. With this merger, Arias becomes the leader in Intellectual Property in Costa Rica and Central America.

Castro & Pal's highly qualified and experienced team will continue serving its clients at Arias' offices located in Avenida Escazú, starting this February 26th.

For additional information visit www.ariaslaw.com

PACIFIC RIM ADVISORY COUNCIL

PRAC 65th International Conference
Cost Rica
Hosted by ARIAS
April 6 - 9, 2019

Arias

PRAC 66th International Conference
Seattle
Hosted by Davis Wright Tremaine
October 5 - 8, 2019

Davis Wright Tremaine LLP
DEFINING SUCCESS TOGETHER

BAKER BOTTS ELECTS NEXT MANAGING PARTNER

John W. Martin Elected as Next Managing Partner of Baker Botts

HOUSTON, February 13, 2019 - Baker Botts L.L.P., a leading international law firm, today announced that John W. Martin has been elected as the firm's 15th Managing Partner. Mr. Martin's four-year term will commence April 1, 2019.

"John is a bold and dynamic leader, and the perfect choice to lead our 179-year old firm in these changing times. I know that with John's selection the future of the firm is in great hands," said Andrew M. Baker, the current Managing Partner of Baker Botts.

"Baker Botts is known for providing world class, professionally excellent client service in our key industry segments of technology and energy, and is ideally situated to continue growing our target markets on both the East and West coasts, in London and in Texas," said John Martin, Managing Partner-Elect. "I want to take this opportunity to thank my partners for the trust they have placed in me. Being elected as our firm's next Managing Partner is a great honor," added Mr. Martin.

Mr. Martin is currently the Partner-in-Charge of the firm's Palo Alto office, the firmwide Partner-in-Charge of Recruiting and a member of the firm's Executive Committee. He has over 30 years of experience with Baker Botts representing clients in mergers & acquisitions, corporate governance, capital markets and complex technology transactions.

Mr. Martin succeeds Andrew M. Baker, who served two terms as Managing Partner, was first elected in 2012 and who after 40 years at Baker Botts is subject to mandatory retirement at the end of 2019.

"A special thanks to my friend and colleague, Andy Baker, for his enduring contributions over the past seven years. During Andy's tenure, we enhanced a world class platform that continues to set the bar for professional excellence and extraordinary client service, increased top line revenue and profitability, and expanded in key geographic markets while strengthening our industry leading position in Texas," said Mr. Martin.

"In these days of dynamic change in the legal industry, innovation has been critical. Working as Managing Partner to lead our reevaluation of and reinvestment in every part of our industry-leading platform has been a tremendous honor," said Mr. Baker.

A biography of John Martin is available at http://www.bakerbotts.com/people/m/martin-john-w

For more information, please visit www.bakerbotts.com

BENNETT JONES ADDS CORPORATE PARTNER

TORONTO - 06 March 2019: Curtis Cusinato has joined Bennett Jones LLP as a partner in the firm's Toronto office. He brings 25 years of experience in corporate and securities law, with a focus on cross-border mergers and acquisitions, private equity and capital markets transactions.

"Curtis is a brilliant lawyer and a consummate deal-maker," says Hugh MacKinnon, Chairman and Chief Executive Officer of Bennett Jones. "He's highly respected for his legal and business acumen in Canada, the United States and globally. We're very pleased to welcome him to Bennett Jones."

Curtis advises leading public and private companies and private equity groups on domestic and cross-border mergers and acquisitions, divestitures, leveraged and management buyouts, going private transactions, initial public offerings and other capital markets transactions. His practice covers a wide range of industries and he serves various clients including multinational companies, Canadian chartered banks, investment and merchant banks, private equity groups and other varied funds.

“I’m excited to be joining Bennett Jones. The firm has an outstanding reputation for its work on multifaceted deals and its deep relationships in the global business community,” says Curtis. “Today’s legal landscape is interconnected and complex. Bennett Jones, through its first-class network and team, is ideally positioned to support clients in navigating this environment.”

Curtis is ranked in multiple legal directories as one of the leading lawyers in M&A, corporate and commercial law in Canada, the United States and internationally. In addition to the law, Curtis is actively involved in his community. Most recently Curtis joined a team of cyclists as they undertook the Wellspring Peloton Challenge—riding from Toronto to Las Vegas in support of the Wellspring Cancer Support Foundation.

For additional information visit www.bennettjones.com

BRIGARD URRUTIA ANNOUNCES PARTNER APPOINTMENTS

BOGOTA, February 2019: Brigard Urrutia is pleased to announce partner promotions of María Catalina Jaramillo, and Andrés Hernández, Claudia Navarro and César Felipe Rodríguez. The promotions were made official on 1 January.

L-R María Catalina Jaramillo, Andrés Hernández, César Felipe Rodríguez and Claudia Navarro

For additional information visit www.bu.com.co

DAVIS WRIGHT TREMAINE EXPANDS ITS WHITE COLLAR AND GOVERNMENT INVESTIGATIONS PRACTICE IN CALIFORNIA

04 MARCH 2019: Stephen A. Cazares, a former federal prosecutor with two decades of experience handling complex corporate and securities fraud investigations and litigation, has joined the renowned white collar and government investigations team at Davis Wright Tremaine LLP, as a partner. He will serve clients across the country from the firm's Los Angeles and San Francisco offices.

Most recently the Deputy Chief of the Major Frauds Section of the U.S. Attorney's Office in Los Angeles, Mr. Cazares played a leading role in many of Southern California's largest and most high-profile white collar investigations and prosecutions of the last 14 years. Mr. Cazares also served as a staff attorney in the SEC Division of Enforcement, where he investigated and prosecuted a wide range of financial fraud cases. Many of his investigations involved parallel civil litigation and/or SEC regulatory investigations and litigation.

"From the investigation stages through jury trial, Stephen brings to our firm years of experience managing high-stakes matters," said Rob Maguire, chair of the litigation practice group at Davis Wright Tremaine. "Our clients in tech, healthcare, financial services, and many other industries will benefit from his dual civil and criminal regulatory expertise. We look forward to him increasing our depth in California."

During his time at DOJ, Mr. Cazares was lead or co-lead counsel in 16 federal jury trials to verdict, as well as principle author and oral advocate in a dozen appeals before the 9th Circuit Court of Appeals.

His high-visibility cases while with DOJ included:

prosecution of a hedge fund manager in a net asset value fraud case;

prosecution of a former executive of a publicly traded food company in relation to a revenue inflation scheme;

prosecution of a former CIA agent for defrauding investors in independent films; and

prosecution of former Major League Baseball star Doug DeCinces for insider trading.

As Deputy Chief of the Major Frauds Sections, Mr. Cazares was also responsible for the training and supervision of other federal prosecutors, including trial attorneys in the DOJ Health Care Fraud Strike Force in Southern California.

Mr. Cazares's investigations and prosecutions while at the SEC included cases of accounting fraud, insider trading, investment adviser fraud, market manipulation, and public company disclosure violations. During his SEC tenure, he was also tapped to spend a year and a half as a Special Assistant U.S. Attorney for the Central District of California to assist in the prosecution of securities fraud cases.

"Davis Wright's team is handling some of the country's most-watched white collar cases right now," said Mr. Cazares. "I look forward to partnering with this well-regarded team, and the full range of the firm's practice groups, to put my government experience to work for Davis Wright clients."

Mr. Cazares received his B.A. from the University of California, Berkeley, and his J.D. from UCLA Law School.

For more information, visit www.dwt.com

HOGAN LOVELLS LAUNCHES CYBER RISK SERVICES

WASHINGTON, DC - 01 February 2016: In an effort to help business leaders navigate the complex and cross-disciplinary challenges of today's cyber threat environment, Hogan Lovells announced today the launch of its Cyber Risk Services business unit, expanding the capabilities of the firm's market-leading Cybersecurity Solutions Group.

The formation of a dedicated unit of technical and risk professionals responds to client demand for the comprehensive services already offered by the firm's global team of experienced cybersecurity lawyers and professionals. Working side-by-side, the Hogan Lovells team will provide clients with cybersecurity program development, risk management, incident preparedness, breach response and investigations counsel, regulatory enforcement, litigation, and crisis management assistance.

The newly formed Cyber Risk Services team will partner closely with the firm's lawyers on:

Program development: This includes the evaluation of an organization's cyber risk and threats; governance and preparedness; review of policies, procedures and technical capabilities against appropriate standards of due care; development of policies and procedures for oversight and management of cyber risk; and evaluation of vendor cybersecurity practices.

Incident and crisis response. This includes the development of plans and procedures for investigating and responding to cybersecurity incidents, testing response capabilities, management and oversight of response efforts, providing technical and procedural recommendations, and leading highly complex incident response activities and investigations.

Regulatory compliance (HIPAA, ITAR, NNPI, etc.). This includes the development of governance programs, policies, procedures, and the technical cybersecurity requirements needed to comply with regulatory demands; review of existing policies, procedures, and capabilities; and advice on how to respond to regulators when faced with compliance issues.

Training and Awareness. This includes an evaluation of the cyber risk associated with employees, contractors, vendors, and other third-parties; analysis of the capability to protect against inside and outsider threats; evaluation of internal cultural awareness; and delivery of a comprehensive program to develop and evolve organizational cybersecurity awareness and best practices.

"As cybersecurity risk continues to occupy the top tier of corporate counsel and management agendas across sectors, Hogan Lovells' creation of a Cyber Risk Services business unit is a groundbreaking step in response to the demand clients have for the firm's unique blend of legal, technical, and management capabilities," said Harriet Pearson, partner and head of the firm's multi-disciplinary cybersecurity practice.

"By formalizing and expanding our team of technical and risk professionals who work in conjunction with our market-leading awyers, we're able to offer clients comprehensive support to see them through every phase of a cybersecurity matter," said Deen Kaplan, partner and co-head of the new Cyber Risk Services unit.

Members of the firm's Cybersecurity Solutions Group include deeply experienced regulatory lawyers, many of whom are former senior government officials; veteran litigators experienced in assessing litigation risk and defending a wide range of matters; seasoned investigative lawyers including former cybercrime prosecutors; individuals with high-level security clearances; and technical and management professionals with significant operational and leadership experience working inside some of the world's largest and most sophisticated organizations -- all of whom understand how to engage in complex, nuanced and high-stake situations.

Jeffrey Lolley, newly appointed Managing Principal of Hogan Lovells Cyber Risk Services, added, "I am excited by the opportunity to work directly with clients drawing on my two decades worth of experience as a technologist, global chief information security officer, and risk consultant."

Hogan Lovells has had a longstanding top-rated cybersecurity practice – the Cybersecurity Solutions Group -- that serves communications, health, energy and utility, technology, defense, insurance, financial services, professional, and other services companies of all sizes, helping them to address their most challenging matters.

More information on Hogan Lovells Cyber Risk Services and Cybersecurity Solutions Group is available at: http://www.hoganlovells.com/cybersecurity/

For additional information visit www.hoganlovells.com

ARIAS - EL SALVADOR

ASSISTS BANK OF NOVA SCOTIA IN SALE OF ITS OPERATIONS TO IMPERIA INTERCONTINENTAL

EL SALVADOR, March 2019: Arias El Salvador successfully advised the bank of Canadian origin (Bank of Nova Scotia) in the sale of 100% of its operations in favor of the buyer Imperia Intercontinental, the main shareholder of Banco Cuscatlán, S.A. and Seguros e Inversiones, S.A. (SISA), reaching an agreement in the process of the sale that is subject to the authorizations of the corresponding regulatory entities.

Arias participated in this process advising on the negotiation and signing of the sale agreement between the parties.

With its solid expertise and as a strategic partner, Arias accomplished this important agreement that will benefit the parties involved, but above all, the economy of the country.

Arias team of advisors included Ana Mercedes López – Partner; Mario Lozano – Senior Associate and Rafael Burgos - Associate.

For additional information visit www.ariaslaw.com

BAKER BOTTS

ACTS FOR PAO NOVATEK ON THE 10% SALE IN ARCTIC LNG 2 PROJECT

MOSCOW and LONDON – 05 March 2019: A cross border team of Global Projects lawyers at Baker Botts, a leading international law firm, has acted for PAO Novatek ("Novatek"), one of the largest independent natural gas producers in Russia, on the sale of a 10% participation interest in the Arctic LNG 2 project. The transaction signed on 4 March and will close by the end of the first quarter of 2019.

The Arctic LNG 2 project envisages constructing three LNG trains, each with a capacity of approximately 6.6 million tons per annum, using gravity-based structure (GBS) platforms. The Project is based on the hydrocarbon resources of the Utrenneye field. Novatek estimates total project costs to be in the region of US$20 billion to US$21 billion.

The Baker Botts team that acted for Novatek included: Special Counsel Konstantin Litvinenko; Senior Associate Oleg Orekhov, and Associates Natalia Mikheeva and Nikolai Gryzunov, all of the Moscow office, and Partner Mark Rowley and Senior Associate Matt Lewy of the London office.

For additional information visit www.bakerbotts.com

CAREY

ASSISTS ACCIONA ENERGIA IN VAT LOAN FOR CHILEAN WIND FARM

SANTIAGO - February 2019: Carey has helped Spanish power company Acciona Energía obtain a loan worth US$27 million to cover the VAT costs associated with the 180-megawatt San Gabriel wind farm in south-central Chile.

Santander provided a non-revolving door credit line to Acciona's Chilean subsidiary.

Acciona is developing the 61-turbine wind farm in Chile's Araucania region. The project is expected to create more than 500 jobs during construction and power 270,000 homes once complete next year. The deal closed on 17 December.

Acciona Energía Chile In-house counsel – Fernando Beguiristáin and Felipe Olivares

Counsel to Acciona Energía Chile Carey team led by Partner Felipe Moro and associates Fernando Noriega, José Luis Enberg and Nadia Jara Astudillo

For additional information visit www.carey.cl

CLAYTON UTZ
ADVISES AUSTRALIA PACIFIC LNG ON THE PURCHASE OF THE IRONBARK PROJECT

SYDNEY - 04 March 2019: Clayton Utz has advised Australia Pacific LNG Pty Limited (APLNG) on its agreement to purchase the coal seam gas project, Ironbark from Origin Energy Limited (Origin) for $231 million.

Clayton Utz Corporate Partner, Stuart MacGregor led the transaction with key support from Competition Partner, Linda Evans and Senior Associates, Andrew Holmes, Prue Warner and Sunita Kenny. Origin was advised by King & Wood Mallesons.

The transaction involved cross-collaboration across practice group areas including Corporate (Energy & Resources), Competition, Major Projects, Tax, Property, and Environment.

APLNG will be able to realise value from Ironbark by utilising its existing nearby gas and water processing infrastructure to efficiently bring the gas to market.

For additional information visit us at www.claytontuz.com

DAVIS WRIGHT TREMAINE
SECURES FAVORABLE RULING FOR BUZZFEED IN HIGH-PROFILE DEFAMATION SUIT

WASHINGTON, 20 December 2018: A team from Davis Wright Tremaine successfully prevailed in a defamation suit against BuzzFeed brought by Russian businessman Aleksej Gubarev.

On December 19, U.S. District Judge Ursula Ungaro in the Southern District of Florida granted the legal team's request for summary judgment, finding that the dossier at the heart of the case met the criteria under the fair report privilege, thereby ending the case.

"We are extremely pleased that Judge Ungaro affirmed our client's First Amendment rights in this matter. Fighting against restraints on reporting and maintaining public confidence in the constitutionally-mandated right to a free and unfettered press is vitally important, perhaps more so now than ever," said lead counsel Katherine Bolger.

The case is Gubarev et al. v. BuzzFeed Inc. et al. The Davis Wright Tremaine team was led by partners Katherine M. Bolger and Nathan Siegel and included associates Adam Lazier and Alison Schary.

For more information, visit www.dwt.com

GIDE

COUNSEL ON VINCI'S ISSUANCE OF €75,000,000 CMS LINKED NOTES

PARIS - 07 March 2019: Gide has advised Crédit Agricole Corporate and Investment Bank on the standalone issuance by Vinci of €75,000,000 notes linked to CMS rates due March 2039.

The notes include a conversion option to fixed rate at the noteholder's discretion and are admitted to trading on Euronext Paris.

Gide's team was led by partner Hubert du Vignaux and counsel Laurent Vincent, assisted by Aude-Laurène Dourdain and Stéphanie Trost.

For additional information visit www.gide.com

HAN KUN

ADVISES ON WEIDAI LTD'S U.S. INITIAL PUBLIC OFFERING AND LISTING ON NYSE: WEI

January, 2019: Han Kun advised and acted as the PRC counsel to the joint bookrunners on Weidai Ltd.'s U.S. initial public offering and listing on the New York Stock Exchange (NYSE: WEI).

Weidai Ltd. is a leading auto-backed loan and internet finance information service provider in China.

For additional information visit www.hankunlaw.com

MUNIZ

ASSISTS CITIBANK IN ASSET BACKED FINANCING TO SAVIA PERU

LIMA - 06 March 2019: Muñiz, Olaya, Melendez, Castro, Ono & Herrera helped Citibank grant an assett backed loan worth US$42 million to hydrocarbons company Savia Perú. The deal closed on 15 February.

The financing was secured by cash flows from payment rights of state-owned oil company PetroPerú, which have been assigned to a trust administered by Citibank. The loan will be used by Savia Perú for general corporate purposes.

Counsel to Citibank del Peru (trustee) Muñiz, Olaya, Melendez, Castro, Ono & Herrera team led by Partners Mercedes Fernandez and Andres Kuan-Veng, and associate Alesandra Azcarate.

For additional information visit www.munizlaw.com

HOGAN LOVELLS

REPRESENTS PAPA JOHN'S IN US$200 MILLION STRATEGIC INVESTMENT FROM STARBOARD

WASHINGTON D.C., 04 February 2019: Hogan Lovells is representing the world's third-largest pizza delivery company Papa John's International, Inc. (NASDAQ: PZZA) in a US$200 million strategic investment with Starboard Value LP. The transaction also includes an option to make an additional US$50 million investment through March 29, 2019. More about the deal can be found in the company press release.

The Hogan Lovells team was led by John Beckman and

included corporate and securities attorneys Joe Connolly, Alan Dye, Alex Bahn, Tiffany Posil, Peter Trentman, Weston Gaines, Brendan Oldham and Nick Eckstein.

For more information, visit www.hoganlovells.com

NAUTA DUTILH

ASSISTS ARVELLE THERAPEUTICS ON ACQUIRING EXCLUSIVE RIGHTS TO DEVELOP AND COMMERCIALISE ANTI-EPILEPTIC DRUG

AMSTERDAM - 20 February 2019: NautaDutilh assisted Biotech company Axovant Sciences and newly created company Arvelle Therapeutics B.V. - alongside Cooley acting as US Counsel - on acquiring the exclusive rights from SK Biopharmaceuticals to develop and commercialise Cenobamate in Europe. Cenobamate was discovered by SK Biopharmaceuticals and is a novel investigational anti-epileptic drug for the potential treatment of focal seizures which is a form of an epileptic seizure. Arvelle will provide SK Biopharmaceuticals with an upfront payment of USD 100 million with a future milestone potential of up to USD 430 million upon achievement of certain regulatory and commercial milestones in addition to royalties on net sales generated in Europe.

Arvelle Therapeutics B.V. received one of the largest initial financing commitments for an European-focused biopharmaceutical company from a global syndicate of investors that include NovaQuest, LSP, BRV Capital Management, Andera Partners, and H.I.G. BioHealth Partners.

Amongst others, the NautaDutilh team consisted of Ruud Smits, Sybren de Beurs, Marieke Pols and Daan Hannema (Corporate M&A), Wijnand Bossenbroek and Daan Hagelstein (Corporate Notariaat), Antonia Netiv and Joppe Schoute (Capital Markets) and Michelle van Doren (Finance).

For additional information visit www.nautadutilh.com

SANTAMARINA

ASSISTS GRUPO INDUSTRIAL SALTILLO, SAB DE CV IN SALE TO ITALIAN GROUP

MEXICO CITY - 14 January 2019: Santamarina y Stea advised Grupo Industrial Saltillo, S.A.B. de C.V. in sale to an Italian group the 100% of its water heating and pipe fitting business for $2,787 million mexican pesos.

Santamarina y Steta, represented by its partner Carlos Argüelles González and associate Bárbara Asiain, acted as lead counsel for Grupo Industrial Saltillo, S.A.B. de C.V. and oversaw the due diligence and sale processes.

Grupo Industrial Saltillo, S.A.B. de C.V. sold 100% of the shares of its water heating and pipe fitting businesses, operated in Mexico and in the USA by Calentadores de América, S.A. de C.V., Fluida, S.A. de C.V. and Water Heating Technologies Corp. to Ariston Thermo, S.p.A. Italian group.

The transaction is subject to pre-merger clearance by the Mexican Federal Competition Commission. Jurisdictions involved: United States and Mexico.

Other firms involved: Galicia Abogados, S.C. acted as legal counsel for Ariston Thermo, S.p.A.

For additional information visit www.s-s.mx

PACIFIC RIM ADVISORY COUNCIL

PRAC 65th International Conference
Cost Rica
Hosted by ARIAS
April 6 - 9, 2019

Arias

PRAC 66th International Conference
Seattle
Hosted by Davis Wright Tremaine
October 5 - 8, 2019

Davis Wright Tremaine LLP
DEFINING SUCCESS TOGETHER

PRAC EVENTS


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


PRAC @ Taipei 2014


PACIFIC RIM
ADVISORY COUNCIL


PRAC @ IPBA Vancouver


PRAC @ Vancouver 2015


PRAC @ INTA San Diego


PACIFIC RIM
PRAC
SPAULO.17
TOZZINIFREIRE
PACIFIC RIM
ADVISORY COUNCIL


PRAC @ Brisbane 2015


PRAC @ IPBA Hong Kong


PRAC @ PDAC Toronto 2014

PACIFIC RIM ADVISORY COUNCIL

The Pacific Rim Advisory Council is an international law firm association with a unique strategic alliance within the global legal community providing for the exchange of professional information among its 29 top tier independent member law firms.

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

www.prac.org

With over 12,000 lawyers practicing in key business centers around the world, including Latin America, Middle East, Europe, Asia, Africa and North America, these prominent member firms provide independent legal representation and local market knowledge.

ALLENDE & BREA

Arias

ARIFA
ARIAS, FABREGA & FABREGA

BAKER BOTTS LLP

Bennett Jones

Brigard Urrutia

Carey

CITY-YUWA PARTNERS

CLAYTON UTZ

Davis Wright Tremaine LLP
DEFINING SUCCESS TOGETHER

DENTONS RODYK

GIDE
GIDE LOYRETTE NOUEL

GOODSILL

漢坤律師事務所
HAN KUN LAW OFFICES

Hogan Lovells

KOCHHAR & CO.
ADVOCATES & LEGAL CONSULTANTS

KIM, CHANG & LEE

理律法律事務所
LEE AND LI
ATTORNEYS-AT-LAW

LEGA
ABOGADOS

Mulla & Mulla
& Craigie Blunt & Caroe
Advocates, Solicitors and Notaries

ESTUDIO MUÑIZ
MUÑIZ OLAYA MELÉNDEZ CASTRO ONO & HERRERA
Abogados

NautaDutilh

Simpson Grierson

r | b | s
richards buell sutton LLP

Santamarina + Steta

SKRINE

SYCIP SALAZAR HERNANDEZ & GATMAITAN

TOZZINIFREIRE
ADVOGADOS

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

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

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

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

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

For more information visit www.allendebrea.com.ar

CLAYTON UTZ

Reporting changes on the way for ASX-listed oil and gas entities

BY BRETT COHEN, LIZ HUMPHRY AND SAM PULLIN

Listed oil and gas entities should consider updating their reporting systems to align with the revised Petroleum Resources Management System and prepare for formal consultation with ASX on Chapter 5 Listing Rule changes later this year.

Listed oil and gas companies must report and classify their petroleum resources in accordance with the Australian Securities and Exchange (**ASX**) Listing Rules and the Society of Petroleum Engineers – Petroleum Resources Management System.

In June 2018, the Society of Petroleum Engineers approved and released a revised version of the 2007 Petroleum Resources Management System (**PRMS 2007**).

The revised PRMS (**PRMS 2018**) maintains the foundation principles contained in the PRMS 2007, while providing additional guidance in areas aimed at improving the integrity of reported estimates of petroleum resources and making these estimates more easily understood by investors.

Currently, the PRMS 2007 underpins the reporting requirements relating to petroleum resources in ASX Listing Rule Chapter 5, which states that petroleum resources:

- must be classified in accordance with the PRMS; and
- reported in the most specific resource class in which the petroleum resources can be classified under the PRMS.

Although the updated PRMS (**PRMS 2018**) has not yet been adopted by ASX, ASX has stated that it is supportive of many of the changes and oil and gas entities can expect formal consultation on Listing Rule changes later this year in response to the PRMS 2018.

The key changes from the PRMS 2007 to the PRMS 2018, and their likely impact on ASX's reporting requirements for oil and gas entities, are outlined below.

Classification Framework (ASX LR 5.25.2)

To add clarity over the commercial status of a resource and enable investors to more easily determine whether a resource actually has a prospect of commerciality:

- New classifications have been included for the incremental uncertainty categories of Reserves and Contingent Resources. These resources should also be sub-classified based on project maturity.

- The Prospective Resources classification has been revised to include new abbreviations for the cumulative uncertainty categories in place of "Low", "Best" and "High".
- The PRMS 2018 also provides additional explanation of the resource classes to make them easily identifiable to investors.

Entitlement Volumes (ASX LR 5.25.5)

The reporting of entitlement volumes under production sharing contracts and other contracts has been clarified to eliminate confusion as to which net recoverable resources should be evaluated and reported.

Commercial producibility of a project (ASX LR 5.26.1)

In order for an economic project to be considered commercially viable and for Reserves to be assigned, the PRMS 2018 has introduced seven new criteria for commerciality. The additional conditions imposed by the PRMS 2018 will require oil and gas entities to provide additional evidence showing the viability of the project.

Fuel Volumes as Reserves (ASX LR 5.26.4)

Produced petroleum volumes used for fuel may be included as Reserves for any project, but must be reported separately. However, this information must not be included in project economics as they do not have an associated cost or revenue.

Determination of Discovery (ASX LR 5.33.2)

The requirements for a discovered petroleum accumulation have been amended. When an oil and gas entity publicly reports estimates of contingent resources in relation to a material oil and gas project for the first time, it must include "evidence of producibility" and in addition to testing, sampling and/or logging, suitable producing analogues may now be used. These updates will make it easier to disclose discoveries of untested conventional petroleum.

Split Conditions and Classification

The PRMS 2018 states that a project can no longer have quantities classified in both Reserves and Contingent Resources. Oil and Gas entities will no longer be able to apply different commercial conditions when categorising resources, in effect mixing chance of commerciality (classification) with uncertainty (categorisation) which previously allowed Probably and Possible Reserves to be assigned without Proved Reserves.

Erroneous disclosures by oil and gas entities

ASX also released a compliance update in February 2019 which highlighted ASX's recent observance of oil and gas entities releasing announcements which do not comply with the requirements of Chapter 5 of the Listing Rules or are potentially misleading. In these circumstances, ASX may require an entity to publish an announcement which updates, corrects or retracts the non-compliant or objectionable disclosures.

The compliance update refers to:

- disclosures of project economics (particularly in project valuation for Prospective Resources);
- a need for cautionary statements for resource estimates; and
- other requirements when reporting Prospective or Contingent resources.

Clearly, ASX has recognised these erroneous disclosures and intends to stamp them out. It is likely ASX will address these issues during the formal consultation process with oil and gas entities later in the year.

What should you do to get ready for PRMS 2018?

ASX is providing a transition period for oil and gas entities to update their reporting systems to align with the PRMS 2018 and will allow oil and gas entities to satisfy their Chapter 5 obligations either by:

- continuing to report in accordance with the PRMS 2007; or
- making an early transition to reporting in accordance with the PRMS 2018,

provided they clearly disclose which PRMS version they are reporting under.

Due to the apparent inevitability of ASX Chapter 5 Listing Rule changes, listed oil and gas companies should strongly consider updating their reporting systems sooner rather than later to ensure they can meet the new requirements.

GET IN TOUCH

Brett Cohen

PARTNER, PERTH
+61 8 9426 8462
bcohen@claytonutz.com

Liz Humphry

PARTNER, PERTH
+61 8 9426 8471
lhumphry@claytonutz.com

Disclaimer

Clayton Utz communications are intended to provide commentary and general information. They should not be relied upon as legal advice. Formal legal advice should be sought in particular transactions or on matters of interest arising from this communication. Persons listed may not be admitted in all States and Territories.

CONTACT US

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

March 01, 2019

Cybersecurity and Data Privacy – Bill of Law that alters the rules of Positive Enrollments awaits the Senate decision

Cybersecurity & Data Privacy

On February 20, 2019 the Chamber of Deputies concluded the voting of the bill of law that turns automatic the registration to positive credit enrollments, and rejected of all the amendments filed by parliamentarians who were against the original wording. The modifications that intended to change specific aspects of the text were also deliberated.

According to the bill of law, consumers will be automatically included in the positive credit enrollments, which will indicate who pays tickets and invoices on due date – and, therefore, deserves smaller interest rate on loans –, and those who tend to default on payments, and, therefore, would have higher interest rates when borrowing money. From the Central Bank perspective, this would reduce the bank spread.

The bill of law had more than 10 amendments. The deputies that opposed to the amendment argued that the proposed system compromises consumers' bank secrecy and privileges banks, because banks that would be capable of selecting “good payers” and increasing the interest rates on defaulters, who usually belong to poorer sectors of population.

Currently, the customers choose to be registered in the positive enrollments.

The bill of law determines that the enrollments would be automatic, and customers would have to request their removal from the databases. Once the registration is enrolled, the credit bureaus would have to notify customers, which would have 30 days to refuse the registration. The communication to one credit manager should suffice so that the other credit managers are notified and the registration is automatically removed from all databases.

The bill of law moves to the Senate, which shall decide on the amendments made by deputies.

Partners Marcela Waksman Ejnisman

Associados Carla do Couto Hellu Battilana

www.tozzinifreire.com.br

Bennett Jones

Blog

Not All Breaches of Contract Are Created Equal

March 07, 2019

Written by Scott H. D. Bower, Russell J. Kruger and Alexandra Turecek

A breach of contract that deprives the innocent party of "substantially the whole benefit of the contract" gives the innocent party the option to terminate the contract and discharge the parties from future obligations, the Alberta Court of Appeal recently reminded us in *Booster Juice Inc v West Edmonton Mall Property Inc*, 2019 ABCA 58 [*Booster Juice*]. Normally a breach of contract only gives rise to the right to seek damages or an order enforcing compliance with the contract.

In *Booster Juice*, West Edmonton Mall Property Inc. (WEM) leased a kiosk to Booster Juice Inc. (Booster Juice) in West Edmonton Mall. After a successful run, the parties entered into a second lease for another kiosk in a different area of the mall. The relationship between the parties deteriorated, resulting in litigation. At trial, the Court of Queen's Bench found that both parties acted contrary to the second lease—Booster Juice failed to pay rent owed under the lease, while WEM breached the lease by unilaterally changing the location and orientation of the second kiosk.

The Court of Appeal affirmed the lower Court's ruling, focusing on WEM's breach as being "repudiatory". As the Court stated, "[i]t is well established that the innocent party to a breach of contract may be entitled to treat the breach as repudiatory where the breach is fundamental, because it deprives that party of substantially the whole benefit of the contract." There was no palpable and overriding error in the trial judge's finding that the "overall location and configuration" of the kiosk was "fundamental", and that WEM's "unilateral alteration of the agreed location" to a different spot with lower "traffic flow and with a different directional orientation" deprived Booster Juice of "substantially the whole benefit of the contract."

The Court of Appeal affirmed that "[w]here a repudiatory breach has occurred, '[i]f the other party accepts the repudiation, the contract is terminated, and the parties are discharged from future obligations.'" While acceptance of repudiation is "usually done by communicating the decision to terminate [to] the party in default," acceptance can also be accomplished by an "unequivocal overt act which is inconsistent with the subsistence of the contract." In particular, "there may be circumstances in which a continuing failure to perform will be sufficiently unequivocal to constitute acceptance of a repudiation." While WEM argued that Booster Juice never accepted its repudiation of the second lease, the Court of Appeal upheld the trial judge's finding that it did. Booster Juice "conducted itself in a manner inconsistent with its obligations under the contract...which was sufficiently unequivocal to constitute acceptance of the appellant's repudiation" by:

1. failing to commence construction at the second kiosk as requested by WEM;
2. raising the issue of the new location and orientation with WEM; and
3. continuing to fail to pay rent or arrears for the second location.

Palpable and overriding error with respect to acceptance of the repudiation was not made out. As such, the parties were discharged from future obligations under the contract as of the date of acceptance, and as a consequence, WEM was not entitled to damages after this date.

Booster Juice is a good reminder that not all breaches of contract are created equal. Where a breach is severe enough, the innocent party should consider whether it is repudiatory. If a repudiatory breach is established and accepted, obligations under the contract will be terminated and other claims for breach of contract may be affected.

Blog
February 27, 2019
Discouraging Family Fights from the Grave

Posted on: March 7, 2019

MITIGATING DUE DILIGENCE ISSUES WITHIN A BUSINESS TRANSACTION

Co-authored by Sze-Mei Yeung and Douglas G. Cottier

Due diligence allows a potential buyer or investor to evaluate, investigate and analyze a business to determine whether it is a worthy investment. This enables a buyer to identify governmental or third party consents required to proceed, and reveals issues and concerns, early in the process. Obtaining third party consents may be challenging since most third parties do not have a vested interest in the transaction proceeding quickly. If they are advised later, they could delay the closing of the transaction. For example, if a business has numerous locations, various landlords may need to conduct their own financial due diligence on the buyer before providing consents.

<u>When does due diligence result in a deal not proceeding?</u>

When issues are identified, whether or not a deal still proceeds depends largely on the appetite of the buyer and the significance of such issues. If the problems could be characterized as materially adverse to the target business and its financial condition, the parties may be unable or unwilling to recover the deal unless they are prepared to renegotiate different business terms. For instance, if a buyer discovers that certain key employees will resign after closing and are not bound by written non-competition or non-solicitation obligations, this could be devastating to a service-oriented business that largely depends on the goodwill of the customer base with such employees.

<u>How can parties compromise to move a transaction forward?</u>

If issues are less significant and the parties are still motivated to continue, there are ways that the parties can bridge gaps to move forward. A common risk management option for buyers is a holdback or post-closing escrow, which defers payment of a portion of the purchase price for some period of time after closing. This ensures that funds are set aside to set off against indemnity claims or other specific concerns. If there are issues identified by the buyer during due diligence (such as existing litigation or audits by governmental authorities), these could be addressed by strong indemnities provided by the seller, in conjunction with a sufficient holdback to protect the buyer against such risks.

Another option to consider is for the buyer to purchase only a portion (and not all) of the business. This

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

could be an effective strategy if the seller is willing to stay on and actively transition the goodwill and customer relationships to new management over time. The buyer would still require a robust shareholders agreement to ensure that there is a mechanism to buy out the remaining interests of the seller.

If the buyer is an acquisition vehicle strategically purchasing other target businesses in complementary industries, there may be value and long-term growth potential for the seller to take equity in the buyer, as part of the sale consideration. Under such circumstances, the seller should consider conducting due diligence on the buyer.

It is important not to underestimate the human side of a business transaction, and the importance of building trust between the parties during the course of negotiations. An aggressive negotiating stance may sour the discussions and cause a party to walk away. If the parties are motivated to work towards the common goal of closing the transaction, they may need to make concessions on less critical issues. Securing a good relationship with the seller may also aid a buyer when transitioning customers and employees post-closing.

Our M&A team have authored "*Make Your Move*"; a tool to support entrepreneurs who are considering buying or selling a business in British Columbia. Please email rbs@rbs.ca if you are interested in obtaining a copy of this guide.

This article was co-authored by Sze-Mei Yeung, Partner and Chair of the Business Transactions Practice Group, and Associate, Douglas G. Cottier. If you have any questions related to this article, please contact Sze-Mei directly at 604 661 9247 or syeung@rbs.ca.

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

/Carey

February, 2019

CMF ESTABLISHES DEADLINES FOR ISSUERS OF PUBLIC OFFERING SECURITIES, SPECIAL CORPORATIONS AND INVESTMENT FUNDS TO REPORT FINANCIAL STATEMENTS

On **February 12, 2019**, the Chilean Commission for the Financial Market ("Comisión para el Mercado Financiero" o "CMF") issued General Rule No. 431 ("NCG 431), regarding the deadlines for reporting of quarterly and annual reports and financial statements for the following entities:

1. **Issuers of Public Offering Securities;**
2. **Special Corporations** or those subject to obtaining a resolution authorizing their existence by the CMF; and
3. **Mutual Funds** and **Investment Funds** under the CMF's supervision.

NCG 431 establishes definitively the deadlines for reporting of financial statements to the aforementioned entities, which were previously set forth annually by the CMF, in accordance with the former provisions of General Rule No. 30.

In regard to terms, NCG 431 maintains those that are currently in force, except for mutual funds and investment funds, which are subject to the CMF's supervision. The terms for mutual funds and investment funds were increased in order to make them similar to those that are already established for other issuers of securities.

Entity	Deadline for reporting financial statements (EEFF)		
	EEFF March and September	**EEFF June**	**EEFF Annualy**
Issuers of Public Offering Securities	60 days	75 days	90 days
Special Corporations	60 days	75 days	90 days
Investment Funds	60 days	75 days	90 days
Mutual Funds	Not applicable	Not applicable	90 days

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

Salvador Valdés
Partner
+56 2 2928 2230
svaldes@carey.cl

Cristián Figueroa
Partner
+56 2 2928 2209
cfigueroa@carey.cl

Sergio Cifuentes
Associate
+56 2 2928 2230
scifuentes@carey.cl

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

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

The terms are of consecutive days and are counted as of the closing date of the relevant calendar quarter.

In the case of special corporations or those subject to obtaining a resolution authorizing their existence by the CMF, NCG 431 sets forth that they will be subject to these reporting obligations, unless:

1. They are registered in the Securities Registry of the CMF, in which case the reporting obligations as issuers of public offering securities will be applicable.
2. The CMF has established for them a shorter period for submitting the financial information, in which case they must comply with these special instructions.
3. They are not under the CMF's supervision.

Regarding other entities supervised by the CMF, NCG 431 does not make any modifications, therefore the relevant terms remain in force.

For further information, you may review the CMF's **Deadline Calendar for Supervised Entities** (in Spanish).

Legal Commentary

March 5, 2019

漢坤律師事務所
HAN KUN LAW OFFICES

BEIJING | SHANGHAI | SHENZHEN | HONG KONG

CSRC will introduce MOM to China's Fund Market

Authors: TieCheng YANG | Yin GE | Ting ZHENG

On 22 February 2019, the China Securities Regulatory Commission ("**CSRC**") issued a consultation draft of the *Guidelines on Manager of Managers Products for Institutions Engaged in Securities or Fund Business* (*《证券基金经营机构管理人中管理人(MOM)产品指引(征求意见稿)》* (the "**MOM Guidelines**") to solicit public comments. While MOM products are not new in international securities markets, they represent an innovative fund product for China.

Generally speaking, MOM is an investment strategy whereby an asset manager chooses other qualified managers to invest funds in specified portfolios and regularly monitors their performance. The rationale behind MOM is that a team of specialists together can achieve investment diversification and balance over time in a way that a single manager cannot.

In this article, we will introduce some key points of MOM products under the MOM Guidelines.

I. What is MOM?

The MOM Guidelines define MOM products as asset management products where an institution engaged in securities or fund business (the "**Manager of Managers**") entrusts part or all of the assets of the asset management product to more than one qualified third-party asset management institutions to provide investment advisory or management services to the Manager of Managers and the fund product (the "**Sub-Advisors/Managers**").

MOM products can be either publicly-offered securities investment funds or private asset management schemes.

II. How do MOM products work?

The Manager of Managers will divide a portfolio into certain "sub-asset units" and then choose Sub-Advisors/Managers for one or more of the sub-asset units. Each sub-asset unit will have securities and fund sub-account. The Manager of Managers and each of the Sub-Advisors/Managers will sign a service agreement specifying investment objectives, investment scope, investment strategies, each party's rights and obligations as well as other matters required by the MOM Guidelines. The Sub-Advisors/Managers will provide investment advisory or investment management services within their mandates with regard to such sub-asset units. The Manager of Managers is not relieved of its duties as a result of entrusting product assets to the Sub-Advisors/Managers.

III. What are the key roles for MOM products?

The key roles for MOM products are the Manager of Managers, Sub-Advisors/Managers and fund custodians. The MOM Guidelines specify the duties and prohibited conduct of each role in offering MOM products.

IV. Who can serve as a Manager of Managers and as a Sub-Advisor/Manager?

The MOM Guidelines provide detailed qualification requirements for the Manager of Manager and Sub-Advisor/Manager of a MOM product respectively.

A Manager of Managers must (i) be approved by CSRC to conduct asset management business; (ii) have a specialized investment and research team for MOM products and no less than three personnel engaging in MOM product investment and research; (iii) not have been subject to any administrative or criminal penalties due to significant violations of laws and regulations or serious dishonest conduct within the last year, and no cases exist in which an investigation has been opened into suspected illegal business operations or such operations are in the process of rectification.

Sub-Advisors/Managers of mutual fund MOM products are required to be mutual fund managers, including but not limited to mutual fund management companies and securities companies. Sub-Advisors/Managers of private fund MOM products are required to be institutions engaging in securities and futures business, asset management subsidiaries of commercial banks, insurance asset management institutions and other financial institutions recognized by CSRC. It is worth noting that a private fund manager can also act as a Sub-Advisor/Manager of a private fund MOM product if it satisfies the "1+3+3"[1] requirements and other conditions prescribed in the MOM Guidelines.

The MOM Guidelines also set out specific requirements for managers of private fund MOM products and mutual fund MOM products respectively.

V. What are the requirements to operate MOM products?

The MOM Guidelines prescribe requirements for how a Manager of Managers is to manage and operate MOM products. These requirements include, for example, establishing sound management systems and relevant policies and procedures to select, supervise, evaluate and manage Sub-Advisors/Managers, formulating clear and rational investment strategies for MOM products, and establishing controls for related-party transactions, etc.

[1] To satisfy the "1+3+3" requirements, a private fund manager must (i) be a registered member of AMAC for no less than one year and have no record of significant violations; and (ii) have at least three investment management personnel, each of whom has no fewer than 3 years of continuous and traceable securities/futures investment management experience and no record of professional misconduct.

Important Announcement

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

If you have any questions regarding this publication, please contact **Mr. TieCheng YANG** or **Ms. Yin GE**:

TieCheng YANG

TEL: +86-10-8516 4286
+86-139 1089 5267
Email: tiecheng.yang@hankunlaw.com

Yin GE

TEL: +86-21-6080 0966
+86-186 0175 1666
Email: yin.ge@hankunlaw.com

© 2019 Han Kun Law Offices. All Rights Reserved.

ARE SHAREHOLDER AGREEMENTS VALID IN GUATEMALA?

Companies and especially corporations by their characteristics are suitable vehicles for the development of commercial activities in an efficient and orderly manner.

It is usual that different interests exist in corporations when various shareholders participate, whether in regard to decision making, control of the company or to maximize the profits to be received. Therefore, shareholder agreements have been the mechanism which enable us to harmoniously adapt such diverse interests and not affect the functioning of the companies. However, in Guatemala there are doubts about their validity.

The Guatemalan Commercial Code prohibits shareholders from making reserved agreements against the content of the bylaws and articles of incorporation.

The Guatemalan Commercial Code prohibits shareholders from making reserved agreements against the content of the bylaws and articles of incorporation. Such a rule may raise doubts about the validity of shareholder agreements in Guatemala, but what is the scope of that rule? To clarify this issue, it is necessary to differentiate between agreements reserved and contrary to the bylaws, and those parallel agreements, which complement the content of the bylaws.

Reserved agreements are those that regulate issues about the corporation, which directly affect it and that although its content modifies the bylaws, they do not comply with the formality of registration. Reserved agreements are prohibited, since it is intended to protect third parties who, having no information regarding the existence and content of such agreements, could be affected when entering as shareholders in a corporation.

On the other hand, shareholder agreements are contracts that are parallel to the bylaws, which means they neither affect the content of the bylaws nor bind the corporation. Instead, they are agreements that only bind the shareholders involved in their celebration and its content is limited to the organization of the relationships between the shareholders. Therefore, these agreements are valid, as they do not bind third parties or the corporation.

Although the shareholders' agreements are valid in Guatemala, it is necessary to be careful in the drafting of them, since their content shall not contradict the bylaws. If this latter scenario occurs, its usefulness and effectiveness would be affected, because, when these contradictions take place, the content of the bylaws must prevail. Therefore, it is advisable that the content of the shareholder agreements does not interfere with the content of the bylaws.

Our team at Arias is integrated by professionals with broad expertise in law and corporate governance, who will gladly advise you in the drafting of shareholder agreements, complying with the necessary legal requirements, and focusing on the effectiveness of these, in order to allow you to take advantage of the benefits that these agreements entail.

Written by:

Herbert Rocael Girón
Associate
Herbert.giron@ariaslaw.com

Avoiding Corporate Criminal Liability for Corruption Offences

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

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

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

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

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

Sanctions for Corporate Liability Offence

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

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

Corporate Defence - Adequate Procedures

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

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

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

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

Top level commitment

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

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

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

Risk Assessment

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

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

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

Undertake Control Measures

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

LEVEL 8 · WISMA UOA DAMANSARA · 50 JALAN DUNGUN · DAMANSARA HEIGHTS · 50490 KUALA LUMPUR · MALAYSIA
T +603 2081 3999 F +603 2094 3211 E skrine@skrine.com W www.skrine.com

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

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

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

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

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

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

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

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

Systematic Review, Monitoring and Enforcement

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

LEVEL 8 · WISMA UOA DAMANSARA · 50 JALAN DUNGUN · DAMANSARA HEIGHTS · 50490 KUALA LUMPUR · MALAYSIA
T +603 2081 3999 F +603 2094 3211 E skrine@skrine.com W www.skrine.com

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

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

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

Training and Communication

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

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

Conclusion

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

SELVAMALAR ALAGARATNAM
(sa@skrine.com)

CAROLINE LEONG
(caroline.leong@skrine.com)

Selvamalar is the Co-Head of the Employment and Industrial Law Practice Group of SKRINE. Her practice includes compliance with anti-corruption laws.

Caroline is an Associate in the Dispute Resolution Division of Skrine. She graduated from the University of Southampton in 2013.

Santamarina + Steta

LEGAL UPDATE

January, 2019

Merger Review Notification Thresholds Update

On January 9, 2019 the National Institute of Statistics and Geography published the update of the Unit of Measure and Adjustment, "UMA" ("*Unidad de Medida y Actualización*"), that is used to determine the amount of the governmental duties to be paid to the Mexican governmental agencies.

After the update, the UMA's daily value for 2019 will be MX$84.49.

As a result of the update, the thresholds for determining if a concentration will require prior authorization from the Federal Economic Competition Commission ("COFECE") or the Federal Institute of Telecommunications ("IFT") beginning February 1, 2019, will be the following:

	Threshold in UMAs	Threshold in Mexican Pesos	Threshold in US Dollars[1]
I. When the act or succession of acts originating the transaction, regardless of the place of execution, amount, directly or indirectly, in the Mexican Republic, to more than eighteen million times the value of the unit of measure and adjustment;	18,000,000	$1,520,820,000.00	$79,044,698
II. When the act or succession of acts originating the transaction, imply the accumulation of thirty five percent or more of the assets or equity of an economic agent, whose assets are located in the Mexican Republic or sales originated in the Mexican Republic (measured on an annual basis), are valued at over eighteen million times the value of the unit of measure and adjustment; or	18,000,000	$1,520,820,000.00	$79,044,698

[1] Exchange rate of January 10, 2019 (MX19.24 por US$1.00).

III. When the act or succession of acts originating the transaction, imply an accumulation in the Mexican Republic of assets or equity valued at over 8.4 million times the value of the unit of measure and adjustment, and where two or more economic agents participate, whose assets in Mexico or annual sales in Mexico, either jointly or individually, are more than forty eight million times the value of the unit of measure and adjustment.	8,400,000	$709,716,000.00	$36,887,525
	48,000,000	$4,055,520,000.00	$210,785,862

Additionally, as established by article 77 of the Federal Law on Governmental Duties and Annex 19 of the Annual or periodic adjustments to Mexican tax laws (*"Resolución Miscelánea Fiscal 2019"*), those who notify a concentration to the COFECE or the IFT must pay the amount of MX$184,539 in governmental duties.

In case you require additional information, please contact the partner responsible of your account or any of the following attorneys:

Mexico City Office: **Mr. Ernesto Duhne B., eduhne@s-s.mx (Partner)**
Phone: (+52 55) 5279-5441

Monterrey Office: **Mr. César Cruz A., ccruz@s-s.mx (Partner)**
Phone: (+52 81) 8133-6000

Querétaro Office: **Mr. José Ramón Ayala A., jayala@s-s.mx (Partner)**
Phone: (+52 442) 290-0290

NautaDutilh

Corporate

Netherlands | EU

New rules for partnerships

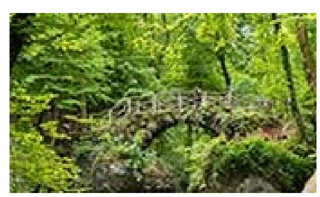
Monday 25 February 2019

The current rules on partnerships date back to the 19th century and are no longer deemed to meet present-day needs. To this end, on 21 February 2019, new rules on partnerships were submitted for consultation. An earlier draft was withdrawn in 2011, and an initiative was subsequently launched for a new proposal which culminated in the September 2016 report by the partnerships working group. This report largely forms the basis for the current bill ("the bill"). This newsletter covers the most important provisions of the bill and indicates differences with the current legislation, where relevant.

Maintenance of the names and formation requirements for partnerships

The bill does not distinguish between private partnerships *(maatschappen),* general partnerships (*vennootschappen onder firma*) and limited partnerships (*commanditaire vennootschappen*). Rather provision is made for only two legal forms, namely the partnership *(vennootschap)* and the limited partnership (*commanditaire vennootschap*), with no distinction based on whether the entity is intended for the conduct of a business or a profession. It should be noted that parties can still opt to designate their partnership as a general partnership or a private partnership, for business or professional activities, respectively. The bill does distinguish, however, between partnerships that are registered with the trade register and those that are not (with the exception of limited partnerships, which must be registered). The bill makes no changes to the formation requirements for partnerships.

Introduction of legal personality



One noteworthy new feature of the bill is the principle that partnerships are endowed with legal personality upon entry into the partnership agreement. Registration with the trade register is not required to this end but failure to register will result in limited legal capacity. There is no limited liability. The parties can choose not to opt for legal personality by acting solely in their own name and entering into agreements which provide that the partnership's profits shall be allocated to the assets of one or more partners.

Partnership assets

Under current law, it follows from Supreme Court decisions that general partnerships and public partnerships must hold separate assets. In the bill, this requirement applies to all partnerships. There is a restriction, however, with regard to unregistered partnerships, which cannot receive registered property (such as real estate) and in general cannot inherit. If the parties have entered into a partnership but have not registered it with the trade register, there will be no separate assets. In case there are joint or common assets, however, the partners are deemed to form an indivisible community to which Title 7 of Book 3 of the Dutch Civil Code applies.

Management and representation of partnerships (directory rules of law)

Responsibility for the partnership's management would, in principle, continue to be vested in all of the partners (with the exception of limited partners in the case of a limited partnership). In principle, each partner is authorised to represent the partnership. Any possible restrictions on this power should be recorded with the trade register in order to be enforceable against third parties. As opposed to current law, this also applies to private partnerships *(maatschappen)* as the bill does not distinguish between private and general partnerships. Moreover, all partners are now jointly and severally liable. After much criticism of the *Biek Holding* decision, it is proposed, upon the acceptance of an assignment, that only those partners entrusted with performance of the assignment be jointly and severally liable along with the partnership.

Obligations of new and departing partners

As a new arrangement, it is proposed that joining partners be bound only by obligations contracted by the partnership prior to their arrival which become due and payable after the partner joins the partnership. Exiting partners remain liable for the partnership's obligations for a period of up to five years following their departure. The concept of obligations includes all obligations arising from legal acts, legislation and wrongful acts.

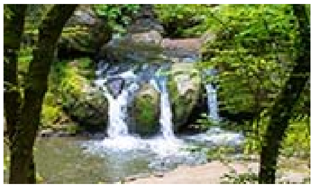
Financing of partnerships

New rules are proposed regarding the creation of usufruct and the pledge of a partner's rights arising from the partnership agreement. Connected control rights can be granted to the usufructuary or pledgee. In this way, the bill intends to align the possibilities available to partnerships with those available to private limited liability companies (*besloten vennootschappen).*

Restructuring of partnerships

The legislature has decided to launch another legislative procedure for rules on the restructuring of partnerships.

Dissolution, liquidation and continuation



The bill expands on and clarifies current law. There is a new provision regarding the dissolution of an irregularly formed partnership. This is linked to the rules for Book 2 legal entities and also applies to the liquidation of a partnership. The starting point remains that liquidation is handled jointly by all partners. There is the possibility for the court to appoint a liquidator, but the liquidator is always accountable to the partners or their successors. In addition, the bill provides for the possibility for the remaining partner to continue the business as a sole proprietorship. Here as well a distinction is made between registered and unregistered partnerships.

Special provisions on limited partnerships

According to the bill, limited partnerships will have to be registered as an unregistered limited partnership creates too much uncertainty for third parties. In the event of failure to register, third parties may assume that all partners can be held liable without restriction. In the absence of registration, each partner is fully liable and there can be no limited partner. Under current law, a limited partner is prohibited from acting on behalf of the partnership, even if the partner is granted a power of attorney for this purpose. In practice, however, this prohibition is nuanced in the case law. The bill opts for a fundamentally different approach: a limited partner is allowed to act on the partnership's behalf pursuant to a power of attorney.

Next

We wholeheartedly welcome the initiative to reform the legislation on partnerships. Although many issues regarding partnerships are arranged by contract, practice benefits from an under-standable and comprehensive statutory framework that provides guidance to partners and third parties. The bill is, in our opinion, clear and pragmatic and makes understandable amendments to the report. It would have been better had restructuring arrangements been included, as there is clearly a need for such provisions, but it is expected that the bill will nonetheless make restructuring easier in practice, given that partnerships will have legal personality.

Contact me

Geert Raaijmakers | Amsterdam | +31 20 71 71 992

Marianne de Waard - Preller | Rotterdam | +31 10 22 40 269

Suzanne Rutten | Amsterdam | +31 20 71 71 954

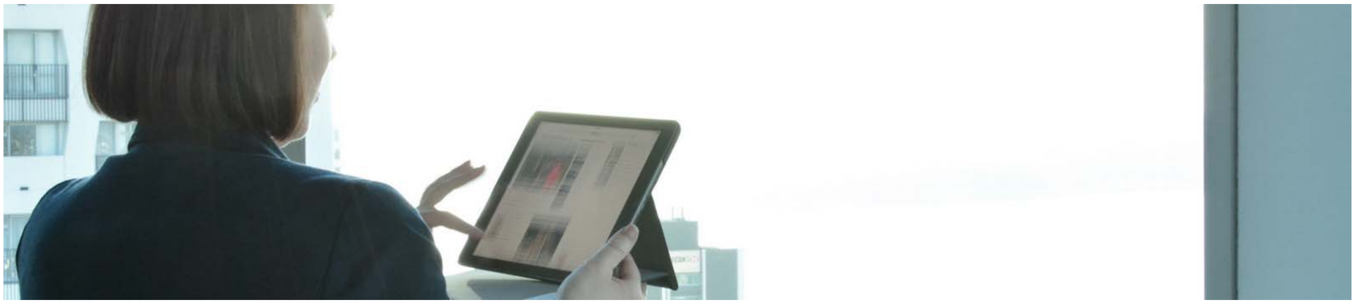
NautaDutilh

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

DISCLAIMER

This publication highlights certain issues and is not intended to be comprehensive or to provide legal advice. NautaDutilh N.V. is not liable for any damage resulting from the information provided. Dutch law is applicable and disputes shall be submitted exclusively to the Amsterdam District Court. To unsubscribe, please use the unsubscribe link below. For information concerning the processing of your personal data we refer to our privacy policy:https://www.nautadutilh.com/en/privacy-cookie-policy/.

Simpson Grierson



NZ and EU free trade negotiations: geographical indications on the menu

February 28, 2019

Contacts

Partners Richard Watts (https://www.simpsongrierson.com/people/richard-watts)
Special Advisors Sarah Chapman (https://www.simpsongrierson.com/people/sarah-chapman)
Senior Associates Raymond Scott (https://www.simpsongrierson.com/people/raymond-scott)

Scotch Whisky, Scotch Beef, Prosecco, Kalamata, Feta, Gorgonzola and Gruyère are some of the names on the menu that the European Union wants to be recognised as geographical indications (GIs) in New Zealand.

These names, were presented by the European Union along with names of other wines, spirits and foodstuffs as part of the free trade agreement negotiations with New Zealand.

Current protection for GIs in New Zealand

A geographical indication is a sign that indicates that a product comes from a particular geographical location and possesses particular qualities or characteristics as a result. For example "Champagne" indicates sparkling wine from the Champagne region and "Roquefort" is a sheep's milk blue cheese from the South of France.

GIs can be registered in New Zealand under the Geographical Indications (Wine and Spirits) Registration Act 2006 (the GI Act). As reported in our earlier article (https://www.simpsongrierson.com/articles/2017/geographical-indications-act), the GI Act was brought into force in 2017. Although other countries include protection for a variety of products, for example, tea, cheese or ceramics, New Zealand's legislative protection is limited to wines and spirits. So, as the law currently stands, Roquefort could not be registered as a GI here.

The process for registering a GI under the GI Act is similar to the trade mark application process where an application is examined, advertised once accepted, and then subject to an opposition period. A GI registration is effective for a period of five years and may be renewed, meaning that like trade marks, GIs could remain in force in perpetuity.

The Australia New Zealand Food Standards Code (Food Code) also places restrictions on the use of GIs in relation to spirits. Under the Food Code, a GI can only be used if the spirit in question was produced and actually bottled in the country, locality or region indicated.

Protection sought by the European Union

The names presented by the European Union for consideration for GI protection in New Zealand cover wine (https://www.mfat.govt.nz/assets/FTAs-in-negotiations/EU-FTA/EU-FULL-LIST-ON-WINES.PDF), spirits (https://www.mfat.govt.nz/assets/FTAs-in-negotiations/EU-FTA/EU-FULL-LIST-SPIRITS-GI.PDF), and other food products (https://www.mfat.govt.nz/assets/FTAs-in-negotiations/EU-FTA/181001_GI-Foodstuffs-shortlist_NZ.DOCX) currently protected as GIs in the European Union. The scope of protection that the European

Union is seeking would require New Zealand to enhance its regulatory framework so that it applied to foodstuffs as well as wine and spirits.

The European Union wishes to protect against use of the names in New Zealand for products that do not originate from within the European Union and that do not comply with the relevant European Union product specification. A product specification sets out the name and description of the product, as well as the geographical area relating to its production.

The European Union also wants to restrict other uses, such as use of the protected names together with expressions such as “style”, “type”, “flavour”, “like”, or similar, and representations that are likely to mislead consumers as to the origin or qualities of a product.

If the European Union ’s proposal is accepted, this would mean, for example, that a New Zealand-made cheese could not be marketed in New Zealand as “Feta”, “Feta style”, “like Feta”, or “Feta flavour”.

Consultation with the New Zealand public

New Zealand’s Ministry of Foreign Affairs and Trade (MFAT) is seeking public submissions on the names presented by the European Union. There are various grounds that the public can rely on to raise an objection to a name. These include:

- if the name is used in New Zealand as the common name for the relevant good;
- if the name is identical or similar to an existing New Zealand trade mark registration or application;
- if the name is the same or confusingly similar to a trade mark or GI currently in use in New Zealand; or
- if protection of the name is likely to offend a significant section of the community, including Māori.

There is also a parallel opportunity for New Zealand to negotiate for recognition of New Zealand names as GIs in the European Union. MFAT is therefore also seeking nominations for New Zealand names to be submitted to the European Union for reciprocal consideration as GIs in Europe. In order to qualify for consideration these names must be registered either under New Zealand’s GI Act or the Trade Marks Act 2002.

The public consultation period ends on 19 March 2019. Further details about how to make submissions are available on MFAT’s website. (https://www.mfat.govt.nz/en/trade/free-trade-agreements/agreements-under-negotiation/eu-fta/consultation/)

For advice on implications of the European Union’s proposal and on making submissions to MFAT, please get in touch with our team (https://www.simpsongrierson.com/expertise/intellectual-property/team).

Contributors georgia.fishwick@simpsongrierson.com (mailto:georgia.fishwick@simpsongrierson.com)

Singapore Budget 2019: Tax Developments

DENTONS RODYK

February 25, 2019

Introduction

As Singapore progresses into its bicentennial year this 2019, Singapore's Finance Minister Mr Heng Swee Keat delivered the Budget Statement in Parliament on 18 February 2019, announcing various tax and policy changes aimed at building a long-term and fiscally sustainable future.

At a glance, the key tax changes affecting individuals and businesses include:

a. Personal income tax rebate for resident individuals;
b. Lapse of Not Ordinarily Resident (NOR) scheme to attract foreign talents;
c. Reduced GST import relief for travellers; and
d. Extension of tax incentives for the financial sector and fund industry.

We discuss these changes in turn below. While some of these changes do not appear to significantly impact individuals and businesses in Singapore, they reflect recent tax trends and build on existing initiatives in previous years' Budgets.

We also provide an important update on the recent implementation of the **IP Development Incentive** below, which was announced in the Budget 2017 as part of Singapore's effort to address Base Erosion and Profit Shifting (BEPS).

Personal Income Tax Rebate for Individuals

All Singapore tax resident individuals will be granted a 50% personal income tax rebate of up to S$200 for the Year of Assessment (YA) 2019.

Lapse of NOR Scheme

The NOR scheme was introduced in the Budget 2002 to attract foreign talents to relocate to Singapore. Under the scheme, an eligible individual granted NOR status is entitled to tax concessions over a five-year period.

The NOR scheme will lapse after YA 2020. In our view, this is reflective of the current environment, where there is less impetus to attract foreign talent to Singapore. Further, Singapore remains a popular destination for individuals to relocate for numerous reasons, including its status as a financial hub in Asia, favourable business and tax environment, well-developed economic and social infrastructure, political stability and commitment to the rule of law.

Individuals with an existing NOR status will continue to be granted tax concessions until their NOR status expires, if they continue to meet the conditions.

Reduced GST Import Relief

GST is generally imposed on goods imported into Singapore, unless specifically exempted or relieved.

From **19 February 2019**, travellers will be entitled to reduced GST import relief for goods bought overseas (excluding intoxicating liquors and tobacco, and goods imported for commercial purpose), at the following amounts:

i. Spending less than 48 hours outside Singapore: relief for first S$100 only (reduced from S$150) of the value of the goods bought overseas; and

ii. Spending at least 48 hours outside Singapore: relief for first S$500 only (reduced from S$600) of the value of the goods bought overseas.

The above changes build on GST measures introduced in the Budget 2018 to level the playing field between local and foreign suppliers, where a supplier who belongs in Singapore would be required to charge GST on goods and services supplied to customers in Singapore, while an overseas supplier would not. GST on imported services was therefore introduced, including:

i. a reverse charge mechanism for business-to-business supplies of imported services made to GST-registered persons; and

ii. an overseas vendor registration regime for business-to-consumer supplies of imported digital services to non-GST registered persons.

Similarly, the reduced GST import relief reduces discrimination against local suppliers of goods by creating disincentives to purchase goods overseas and import them into Singapore on the basis that GST payment will be relieved.

However, some discrimination still persists arising from the **exemption** from import GST on goods imported by post or air (e.g. parcels) with a cost, insurance and freight (CIF) value of below S$400. This represents a leakage yet to be plugged, and we will be looking to see whether such exemption will be adjusted in subsequent Budgets.

Extension of Tax Incentives for Financial Sector and Fund Industry

a. Writing Down Allowance (WDA) for Intellectual Property Rights (IPR)

Under section 19B Income Tax Act (Cap. 134) (the ITA), a company or partnership is entitled to a WDA on capital expenditure incurred in acquiring qualifying IPRs for use in its trade or business, including patents, trademarks, registered designs, copyrights and trade secrets or information with commercial value.

The WDA will be extended to the **last day of the basis period for YA 2025**, meaning it will cover capital expenditure incurred in respect of qualifying IPRs acquired on or before such revised date.

b. Investment Allowance (IA) under the Automation Support Package (ASP)

Under the ASP which was announced in the Budget 2016, a 100% IA is granted to companies on approved capital expenditure of up to S$10 million per project, net of grants, on projects approved by Enterprise Singapore (ES) during the approval period.

The IA will be extended and will apply to projects approved by ES during the period from **1 April 2019 to 31 March 2021**.

c. Income tax concessions and GST remissions for Singapore-listed Real Estate Investment Trusts (S-REITs), REITs Exchange-Traded Funds (ETFs) and Registered Business Trusts (RBTs)

Existing income tax concessions for S-REITs and REITs ETFs will be extended till **31 December 2025**. In addition, GST remissions granted to S-REITs and RBTs will be extended till **31 December 2025**. All other conditions of the existing income tax concessions and GST remissions above will remain the same.

Further details on these changes are to be released by MAS by May 2019.

d. Tax incentive schemes (Section 13 CA, 13X, 13R) and GST remissions for funds managed by Singapore-based managers

Existing tax incentive schemes and GST remissions for qualifying funds managed by Singapore-based fund managers will be extended till **31 December 2024**. These tax incentive schemes include the offshore fund tax exemption (Section 13CA), onshore fund tax exemption (Section 13R) and enhanced-tier fund tax exemption (Section 13X) as set out under the ITA.

In addition, the schemes will be refined to ease taxpayers' compliance burden, including the following:

<table>
<tr><th></th><th>Section 13X</th><th>Section 13CA</th><th>Section 13R</th></tr>
<tr><td rowspan="4">Key changes</td><td colspan="3">For income derived on or after 19 February 2019:

(i) Expanded list of designated investments (DI): removal of counter-party and currency restrictions, inclusion of credit facilities and advances and Islamic financial products that are commercial equivalents of DI. Further, the condition for unit trusts to wholly invest in DI will be removed

(ii) Expanded list of specified income: inclusion of income in the form of payments that fall within the ambit of section 12(6) ITA</td></tr>
<tr><td>-</td><td colspan="2">From YA 2020, removal of the condition that the fund must not have 100% of the value of its issued securities beneficially owned by Singapore persons</td></tr>
<tr><td>From 19 February 2019:

(i) Enhanced to apply to co-investments, non-company SPVs and more than two tiers of SPVs

(ii) Committed capital concession extended to debt and credit funds, allowing such funds to use secured committed capital to meet the minimum fund size condition. Currently, this concession is available only to real estate, infrastructure funds and private equity funds only

(iii) Enhanced to include managed accounts i.e. dedicated investment accounts where an investor places funds directly with a fund manager without using a separate fund vehicle</td><td colspan="2">-</td></tr>
<tr><td colspan="2">Qualifying non-resident funds will be entitled to the 10% concessionary tax rate applicable to qualifying non-resident non-individuals when investing in S-REITs and REITs ETFs, in respect of distributions made during the period from 1 July 2019 to 31 December 2025</td><td>-</td></tr>
</table>

IP Development Incentive (IDI)

In the Budget 2017, IP income was removed from the scope of the Development and Expansion Incentive-Services/Headquarters (DEI) and Pioneer-Services/Headquarters Incentive (PC-S). In place of such removal, the IDI was introduced as a standalone incentive, specific to IP income.

(Background: The DEI and PC-S are administered by the Economic Development Board (EDB) and awarded to companies making significant economic contributions to Singapore. Under the DEI and PC-S, approved companies can enjoy tax exemptions and concessions on income arising from qualifying activities.)

As of 1 July 2018, the IDI has been implemented under Section 43ZI ITA. The EDB has also released further details of the criteria to be satisfied in its IDI Circular. Applications to the EDB for the IDI are now open to companies.

Under the IDI, an approved company is eligible for a reduced corporate tax rate of either 5% or 10% (subject to increments of 0.5% at regular prescribed intervals) on a percentage of qualifying IP income derived by it during an initial incentive period of up to 10 years.

The above measures were taken in view of Singapore's participation in the BEPS Project since June 2016. In particular, the key differences in the treatment of IP income under the IDI (as opposed to under the DEI and PC-S previously) include:

1. The percentage of qualifying IP income is determined by the BEPS-compliant **modified nexus approach**, which permits a country to provide benefits (e.g. tax incentives) to income arising from an IP right, so long as there is a **direct nexus** between the income receiving benefits (e.g. IP income qualifying for tax incentives) and the expenditures contributing to that income (e.g. R&D expenses); and
2. Stemming from the above, the research and development (R&D) activities undertaken to produce the qualifying IP income must be **conducted in Singapore** in order to receive benefits under the IDI. Previously under the DEI and PC-S, there was no strict requirement for this.

The IDI is similar to patent box exemptions in other jurisdictions such as the UK, which grants tax benefits to companies which have been properly involved in the creation and innovation of the patent, as opposed to merely owning the patent. Similarly, through the IDI, Singapore complies with the BEPS principle that the holding of IP in itself is not a substantive economic activity.

Companies applying for the DEI and PC-S schemes should also consider applying for the IDI if they perform substantial R&D activities in Singapore which generate IP income.

Dentons Rodyk acknowledges and thanks practice trainee Audrey Thng for her contributions to this article.

Your Key Contacts

Edmund Leow, SC
Senior Partner, Singapore
D +65 6885 3613
edmund.leow@dentons.com

Jia Xian Seow
Partner, Singapore
D +65 6885 3658
jiaxian.seow@dentons.com

© 2019 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. Please see dentons.com for Legal Notices.

BAKER BOTTS

Insights

2018 - The Year of the Special Situation

11 March 2019

Firm Thought Leadership

Contributors: Megan Berge, Jonathan Bobinger, Joshua Davidson, Michael Didriksen, James Douglass, A.J. Ericksen, Peter Farrell, Jennifer Golinsky, Adam Griffin, Leah Burcat Hastings, Kyle Henne, Thomas Holmberg, Jeff Kayes, Bill Lamb, Aaron Lee, Don Lonczak, Martin Menski, Steven R. Miles, Jon Nelsen, Jay Ryan, Carlos Solé, Mark Spivak, Martin Toulouse, Susan Toumanian, Elaine M. Walsh

TO: CLIENTS AND OTHER FRIENDS OF THE FIRM

Each year around this time we take the opportunity to review select electric and gas transactions and other significant industry developments over the past year and offer our views on what they may mean for the coming year.

The dollar volume of mergers and acquisitions in the U.S. electric and gas (excluding upstream oil and gas) industry during 2018 set a new high-water mark. Deal volume for transactions in the United States was over $359 billion, well above the $213 billion recorded in 2017.[1]

The entire increase, however, was the result of increased activity in the midstream, pipeline and MLP space where transaction volume was over $285 billion, more than twice the volume recorded in any previous year. As we discuss in more detail below, two factors were driving this extraordinary transaction volume – MLPs being acquired by their sponsors and continued consolidation in the sector. Transactions among regulated electric utilities also decreased slightly to $32.7 billion from $36.5 billion in 2017. The two largest transactions involving regulated electric companies were Dominion Energy's acquisition of SCANA Corporation and the acquisition of Vectren Corporation by CenterPoint Energy. Among LDCs, volume dropped to $4.8 billion from a relatively high $8.6 billion in 2017. The only major LDC transaction announced in 2018 was the acquisition of Pennsylvania Natural Gas by Aqua America from SteelRiver Infrastructure Partners. Volume of transactions announced involving electric generation assets fell dramatically to $7.3 billion from $32.5 billion in 2017 due to the absence of any major transactions like Calpine's going private transaction and the merger of Dynegy and Vistra Energy, both of which were announced in 2017. Transaction volume for renewable generation assets also jumped to $21.4 billion in 2018, up from $13.1 billion in 2017, which in turn was a significant increase from $6.6 billion in 2016. The water sector also was unusually active during 2018. Deal volume was over $6 billion, most of which was accounted for by the struggle for control of Connecticut Water Service and SJW Group. Some of these transactions are discussed in more detail below.

The discussion below covers the following areas:

- Regulated Utilities
- Independent Power Producers and Generation Assets
- Master Limited Partnerships and YieldCos
- Renewables
- Tax Reform Act – Impact on Renewables
- Environmental Regulation and Litigation
- Liquified Natural Gas (LNG)
- Project Finance
- Latin America and the Caribbean
- Africa

To read the full article visit: http://www.bakerbotts.com/insights/publications/2019/march/2018-the-year-of-the-special-situation

[1] Source: S&P Global, SNL Energy, transactions with announced transaction values of $100 million or more.

# # #

About Baker Botts L.L.P.

Baker Botts is an international law firm of approximately 725 lawyers practicing throughout a network of 14 offices around the globe. Based on our experience and knowledge of our clients' industries, we are recognized as a leading firm in the energy and technology sectors. Throughout our 179-year history, we have provided creative and effective legal solutions for our clients while demonstrating an unrelenting commitment to excellence. For more information, please visit BakerBotts.com.

Share

Follow

Davis Wright Tremaine LLP
DEFINING SUCCESS TOGETHER

U.S. Department of Labor Proposes to Raise FLSA Salary Exempt Threshold to $679 Per Week Starting January 1, 2020

03.08.19

By Michael J. Killeen, Sheehan Sullivan, and Ryan Hess

The U.S. Department of Labor has issued a formal notice of proposed rulemaking increasing the salary threshold for exempt employees under the FLSA starting January 1, 2020. The proposed new salary threshold is $679 per week, equivalent to $35,308 annually, paid on a salary or fee basis (the current standard salary threshold of $455 per week was set in 2004). There will be a 60-day comment period after which the Department will analyze the comments, decide whether to make any revisions, and, if there are none, publish the proposed rule as a final rule. Based on the history leading to the development of the proposed amendments, it is highly likely that the final rule will be the same as the proposed rule and will take effect January 1, 2020.

The new threshold of $679 per week is equivalent to a salary of $35,308 on an annualized basis. The methodology the Department used to set the new salary threshold follows the methodology it used in 2004 when it adjusted the salary threshold upward at approximately the 20th percentile of earnings for full-time salaried workers in the lowest-wage Census region and in the retail sector. This methodology was deemed by the Department to be the most appropriate to achieving the salary level's purpose, namely, to set a floor "to screen out the obviously nonexempt employees." Stated another way, the proposed new salary level of $679 per week will screen out positions highly unlikely to have exempt duties as the primary duty. While a small percentage of positions paying less than $679 per week might meet the duties test, the administrative convenience for the Department, employers, and employees of having a bright line standard salary test outweighs the unfortunate exclusion of a small percentage of otherwise exempt employees due solely to the failure of the position being paid at the $679 salary level.

Other Features of the Proposed Rule

The Department proposes to permit nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level for the executive, administrative, and professional exemptions, provided that such bonuses or payments are paid annually (or more frequently).

The Department proposes to permit employers to make a final "catch-up" payment within one pay period after the end of each 52-week period to bring an employee's compensation to the required level so long as the employer has paid at least 90 percent of the standard salary level in prior weeks.

The Department propose to raise the standard salary threshold for the highly compensated employee (HCE) test to $147,414, of which $679 must be paid weekly on a salary or fee basis (the current HCE salary test is $100,000).

Going forward, the Department intends to propose "updates" to the standard salary level and HCE total compensation threshold, using the formal notice-and-comment rulemaking process, every four years.

Employers Must Still Comply With State Laws That Define Exemptions More Narrowly

Just because an employer pays a salary that satisfies the new federal threshold does not mean that the employee is exempt under the minimum wage law of a state where the employee works. Some states have a higher salary threshold than the federal law (or have no HCE exemption or no credit for bonuses/commissions against the salary level or have more narrow duties requirements). Employers must examine state wage laws and regulations to be sure they are in compliance with both state and federal law. For example, the 2019 salary threshold in California is $880 (employers with 25 or fewer employees)

RELATED PEOPLE

Michael J. Killeen

Sheehan Sullivan

Ryan C. Hess

RELATED PRACTICES

Employment, Labor & Benefits

Employment Counseling

and $960 (for employers with 26 or more employees) and will increase in 2020, under California's methodology, when the state minimum wage goes up. See our advisory, *Changes to Minimum Wage Laws in 2019 Will Affect Nonexempt and White Collar Employees as Well as Commissioned Inside Salespeople*. The threshold in New York for executive and administrative exempts currently ranges from $832 to $1,125 (depending on size and location). See our advisory, Employers Beware Critical Changes to New York Minimum Wage and Exempt Salary Threshold Take Effect December 31, 2018. Pennsylvania is considering whether to adopt a salary threshold in the range of $923 per week. And, the state of Washington is on the verge of adopting a threshold that could be as much as $1,346 per week.

Consequently, before classifying an employee as exempt, an employer needs to check the salary threshold in the state where the exempt employee works and not simply rely on the federal salary threshold as sufficient compliance.

Employers Should Start Planning Now Regarding Exempt Positions Currently Paying Less Than $679 per Week

The Department of Labor estimates there will be 1.3 million currently exempt positions affected by the new threshold level. Employers who currently have exempt employees making less than $679 per week must decide for 2020 whether increasing the salary amount for a position to qualify for exempt status is economically justifiable (given revenue and market conditions). Small business, nonprofits, retailers, hospitality employers, state and local government, and higher education (among others) especially will be challenged.

Even for employers who increase salaries to meet the new threshold there are issues to consider such as expansion of duties, internal salary scale compression, or pay equity concerns.

For employers unwilling or unable to increase salaries to meet the $679 threshold, there are many potential disruptions to address and mitigate.

1. Employee relations/morale issues. Employees who are exempt currently will often feel they have been demoted if converted to nonexempt.
2. Payroll administration and recordkeeping burden. Employers will have to enforce timekeeping requirements with respect to employees who formerly did not have to record their time.
3. Compliance with employment standards applicable to non-exempt employees. Employers will be required to provide newly nonexempt employees with rest and meal periods or other requirements under federal, state or local law for nonexempt employees.
4. Controlling overtime. Employers will be challenged in managing overtime if the formerly exempt employee previously worked more than 40 hours a week.
5. Determining the appropriate hourly rate. Employers will have to set an appropriate hourly rate, taking into account the amount of overtime anticipated, so that they are not over-budget on labor costs.
6. Compliance with state/local leave laws. Nonexempt employees are often eligible for paid sick leave under state or local law that they would not have been eligible for as exempt employees.
7. Impact on CBAs. Employers with collective bargaining agreements will have to assess the impact on whether or not an employee is in the bargaining unit due to non-exempt status and, if so, how this impacts pay and benefits.
8. Staffing and coverage issues. To limit individual overtime, employers may have to reconfigure job duties, consider part-time employees, or revamp shift coverage and scheduling practices.
9. Eligibility for/discontinuance of perks. Employees who are converted to nonexempt status may lose certain perks or other benefits.
10. Control of after-hours/off -premises use of e-devices. Employers will need to educate newly nonexempt employees regarding restrictions on use of electronic devices after hours or off premises because such use could inadvertently create hours worked.

Will the Propose Rule Be Challenged?

The 2016 proposed rule was successfully challenged and blocked in federal court. The Department of Labor has gone through great pains to tailor it new proposed rule to avoid the factors identified by the court as impermissible under the FLSA. Thus, while there may be challenges, the current proposal makes it very difficult for any court challenge to be successful. Employers should assume that the proposed rule is likely to become a final rule effective January 1, 2020.

Disclaimer

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

©1996-2019 Davis Wright Tremaine LLP. ALL RIGHTS RESERVED. Attorney Advertising. Prior results do not guarantee a similar outcome.

Hogan Lovells

DEA launches new ARCOS enhancement to help manufacturers and distributors "know your customer" and detect suspicious orders

March 4, 2019

The U.S. Drug Enforcement Administration (DEA) announced last week that it launched a new tool for its Automated Reports and Consolidated Orders System (ARCOS) Online Reporting System that "will allow DEA-registered manufacturers and distributors to view and download the number of distributors and the amount (anonymized data in both grams and dosage units)" of a controlled substance that "each distributor sold to a prospective customer in the last available six months of data."

Under the Controlled Substances Act (CSA) and DEA regulations, manufacturers and distributors are required to design and operate a system that discloses suspicious orders of controlled substances, and to report such suspicious orders to DEA upon discovery. The agency has stated that in order to fulfill this obligation, manufacturers and distributors should "know your customer." According to DEA, "manufacturers and distributors have consistently expressed a desire for assistance from DEA in fulfilling these obligations and have requested ARCOS information to help them make informed decisions about whether new customers are purchasing excessive quantities of controlled substances."

ARCOS is DEA's online system that monitors the distribution of controlled substances from the point of manufacture through commercial drug supply-chain channels to the point of sale to the retail level (e.g., pharmacies, hospitals/clinics, and practitioners). The new ARCOS tool will provide additional information to manufacturers and distributors to assist them in their suspicious order monitoring obligations. According to the agency, "if a query resulted in a large number of suppliers who have recently sold unusual quantities of opioid analgesics to a prospective purchaser, this may represent a 'red flag' to the new distributor and foster a dialogue between that distributor and the pharmacy."

This new ARCOS tool is required by the "Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act," which we summarized here. The law requires DEA to provide drug manufacturers and distributors with access to anonymized information through ARCOS to help drug manufacturers and distributors identify, report, and stop suspicious orders of opioids and reduce diversion rates.

The SUPPORT Act amended the CSA to require manufacturers and distributors to review this information now made available through the new ARCOS tool. The amendments also provided for civil penalties or criminal fines for manufacturers and distributors of opioids who fail to review the most recent information related to their customers that has been made available through the new ARCOS tool. Additionally, the amendments allow the U.S. Department of Justice (DOJ) and DEA to "take into account" ARCOS data made available to a registrant through the new ARCOS tool in determining whether to initiate proceedings against the registrant for failure to maintain effective controls against diversion.

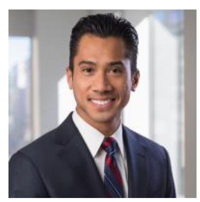
We will continue to closely monitor the implementation of the new ARCOS tool and its functionality. To the extent that you would like additional information on the new ARCOS tool or would like assistance in evaluating the robustness of your firm's suspicious orders monitoring and reporting system, please contact one the authors of this article or the lawyer at Hogan Lovells with whom you regularly work.

Contacts

Jason Hadges
Partner, Washington, D.C.
T +1 202 637 5785
jason.hadges@hoganlovells.com

Lynn Mehler
Partner, Washington, D.C.
T +1 202 637 6419
lynn.mehler@hoganlovells.com

Delia A. Deschaine
Senior Associate, Washington, D.C.
T +1 202 637 5547
delia.deschaine@hoganlovells.com



Lowell M. Zeta
Senior Associate, Washington, D.C.
T +1 202 637 3567
lowell.zeta@hoganlovells.com

www.hoganlovells.com

“Hogan Lovells” or the “firm” is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.
The word “partner” is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.
For more information about Hogan Lovells, the partners and their qualifications, see www. hoganlovells.com.
Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.
© Hogan Lovells 2019. All rights reserved.