

**Pacific Rim Advisory Council  
November 2019 e-Bulletin**

**MEMBER NEWS**

- ▶ ARIAS Expands Disputes Practice with Veteran Hires
- ▶ BENNETT JONES Adds to Pensions & Benefits Team
- ▶ GOODSILL Welcomes Litigation Associates
- ▶ HOGAN LOVELLS Boosts APME Practice with new HK Partner
- ▶ MUNIZ Designates Three New Principal Partners
- ▶ NAUTADUTILH Strengthens Data Protection Practice

**COUNTRY ALERTS**

- ▶ **ARGENTINA** Environmental Guidelines for Managing Plastics and Micro Plastics ALLENDE & BREA
- ▶ **AUSTRALIA** NSW Govt Excludes Scope 3 Emissions From Mining Assessment CLAYTON UTZ
- ▶ **BRAZIL** New Regulatory Framework for Telecommunications in Place TOZZINIFREIRE
- ▶ **CANADA** Securities Administrators to Conduct Review of Automatic Securities Disposition Plans BENNETT JONES
- ▶ **CANADA** Privacy Law and Social Media in Hiring Decisions RICHARDS BUELL SUTTON
- ▶ **CHILE** Central Bank's Public Consultation on Close-Out Netting is About to Expire CAREY
- ▶ **CHINA** Record-Filing and Review Management of Online Extracurricular Training Institutions Sees Gradual Progress HAN KUN
- ▶ **COLOMBIA** Court Rules Finance Law Unconstitutional BRIGARD URRUTIA
- ▶ **EL SALVADOR** E-Commerce Law Approved ARIAS
- ▶ **FRANCE** G7 and G20 Reports on Stablecoins Lessons and Opportunities for Industry Players GIDE
- ▶ **MEXICO** New Federal Agency of Aviation Created SANTAMARINA
- ▶ **NEW ZEALAND** Cross Border Data Controls - Are You Compliant? SIMPSON GRIERSON
- ▶ **SINGAPORE** Playing Fair - Avoiding Deceptive Pricing Practices DENTONS RODDYK
- ▶ **TAIWAN** Impact on Taiwan Branch of Foreign Company from 2018 Amendment to Company Act LEE AND LI
- ▶ **UNITED STATES** DOJ Forms New Criminal AntiTrust Strike Force BAKER BOTTS
- ▶ **UNITED STATES** The Battle Over Encryption DAVIS WRIGHT
- ▶ **UNITED STATES** PHMSA Proposes New Rule Authorizing Transport of LNG by Rail HOGAN LOVELLS

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Mexico City - Hosted by Santamarina y Steta  
Fall, 2020

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**MEMBER DEALS MAKING NEWS**

- ▶ ARIAS Nicaragua advises Banpro with two loans totalling US\$90 million
- ▶ ARIFA Advises Syndicate of US and Latin American Banks on US\$130 Million Loan to Panamanian Bank Aliado
- ▶ BAKER BOTTS Bristow Group Emerges from Chapter 11
- ▶ BENNETT JONES Assists New Pacific Metals Corp with \$17.25 Million Prospectus Offering
- ▶ CAREY Advised IMD Group on a credit for USD\$70 million Telcoms Acquisition Financing
- ▶ CLAYTON UTZ Advised ConocoPhillips on \$US1.39 Billion Sale of Australia-West assets to Santos Limited
- ▶ DENTONS RODDYK Advises Seppure Ltd in Seed Funding
- ▶ GIDE Advises Angelo Gordon & AQ Group on Acquisition of 5 hotels From Gecina
- ▶ HAN KUN Advises Aesthetic Medical International Holdings Group Limited on its U.S. IPO
- ▶ HOGAN LOVELLS Secures Mile High Stadium Naming Rights Deal with Empower Retirement for home of the Denver Broncos
- ▶ MUNIZ Advises China Yangtze Power (CYP) buy US Sempra Energy's Peruvian Business for US\$3.6 Billion, in the Largest Overseas M&A Transaction by a Chinese Company in 2019
- ▶ NAUTADUTILH Assists in Raising up to USD 627.6 Million for Three Biotech Companies within 48 hours
- ▶ SANTAMARINA Assists Conglomerate Grupo Industrial Saltillo Obtain US\$245 Million Loan from a Group of Lenders Led by HSBC
- ▶ SIMPSON GREIRSON Advises Watercare on Landmark \$2.4 Billion Construction Partnership

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## ARIAS EXPANDS DISPUTES PRACTICE WITH TWO VETERAN HIRES

**COSTA RICA September 2019:** ARIAS welcomes partner **Víctor Garita** and senior counsel **Abraham Balzer** to the firm.

Víctor Garita joined Arias on 1 September after nearly 35 years as partner at Facio & Cañas, which is respected for its disputes practice. He has extensive experience representing national and multinational companies in court proceedings and has appeared as an expert witness in multiple US arbitration proceedings and trials. Garita also practises corporate law.

Arias partner Vicente Lines has known Garita for more than 30 years. "His professional practice has always been renowned and a reference throughout Central America," he says. "The market recognises his abilities as an exceptional litigator and legal scholar."

Arias also recruited senior counsel Abraham Balzer from another local firm known for its strong disputes offer. Balzer practises arbitration and litigation, but also lends a hand on commercial matters.

The firm's managing partner in Costa Rica, Carolina Flores, says the Central American firm has worked hard to combine legal talent and experience to form a single disputes unit that can serve regional clients. She adds that the firm is privileged to have Garita and Balzer onboard. "Our clients will have the best talent working for them."

Arias now has nine partners in Costa Rica.

For additional information visit [www.ariaslaw.com](http://www.ariaslaw.com)

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## BENNETT JONES ADDS TO PENSIONS & BENEFITS TEAM

**TORONTO, 02 October 2019:** Jordan Fremont has joined Bennett Jones as a partner on the Pensions & Benefits team in Toronto. He provides employers, plan administrators and service providers with strategic and practical pension, benefit and executive compensation advice.

He advises on plan design, compliance, governance, administration, regulatory investigations, disputes and business transactions—including downsizings, spinoffs, M&A and wind-ups. He also has deep expertise in broader employment-related tax issues. Jordan has been widely recognized for his work in the area of pensions & employee benefits, by the Canadian Legal Lexpert Directory, Chambers Canada and Best Lawyers in Canada.

Jordan is the Past Chair of the Canadian Pension and Benefits Institute, a member of the Board of Directors of the Pension Office of the Anglican Church of Canada, a member of the Board of Trustees for the Anglican Church of Canada's pension and benefits plans, and a member of the Benefits Canada Pension & Investment Advisory Board.

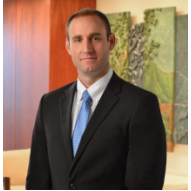
Jordan was previously a partner in the Toronto office of a large employment and human resources boutique law firm.

For additional information visit [www.bennettjones.com](http://www.bennettjones.com)

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**GOODSILL WELCOMES TWO LITIGATION ASSOCIATES**

**HONOLULU, November, 2019:** Goodsill recently welcomed Associates ***Forest B. Jenkins*** and ***Rachel A. Zelman*** to the firm.



Forest is a graduate of the University of Iowa, College of Law and focuses his practice on business litigation.

Forest began his career as a Hawaii state prosecutor assigned to felony cases, and served as lead trial attorney in over ten jury trials. He went on to become a member of an in-house legal team for a California based construction company. Prior to joining Goodsill, Forest practiced for three years with a mid-sized law firm in Honolulu focusing on commercial and construction litigation.



Rachel is a graduate of George Washington University School of Law and focuses her practice on business and commercial litigation.

Rachel began her career with a national law firm in Washington, D.C. After moving to Hawai'i, she clerked for the Honorable Jeannette H. Castagnetti before returning to private practice as a civil litigator at several firms in Honolulu.

For additional information visit [www.goodsill.com](http://www.goodsill.com)

## HOGAN LOVELLS STRENGTHENS APME PRACTICE WITH NEW CORPORATE PARTNER IN HONG KONG

**HONG KONG, 29 October 2019:** Hogan Lovells announced today that Laurence Davidson will be joining the firm as a partner in the Corporate practice and will be based in the Hong Kong office. Laurence will be joining from Chinese investment conglomerate, HNA Group, where he handled a number of major transactions in the aviation, logistics and real estate sectors in his role as senior counsel. Prior to this, he worked at Hogan Lovells for fifteen years, based in London and Hong Kong. His first day back with Hogan Lovells will be 11 November.

Laurence is a highly regarded corporate lawyer with a regional practice focusing on public and private M&A and private equity. Based in Hong Kong since 2006, he has extensive experience advising clients throughout the Asia-Pacific region and across a variety of sectors, with a particular focus on infrastructure, natural resources and real estate. Laurence is known for his dedication and commercial acumen, which he brings to bear to deliver successful outcomes for his clients in even the most complex multi-jurisdictional transactions.

Commenting on Laurence's arrival, Global Head of the Hogan Lovells Corporate practice David Gibbons, said:

"As a firm, we remain focussed on building our capabilities in the region and Hong Kong continues to serve as an important gateway for cross-border business. Following Stephanie Tang's arrival earlier this year, Laurence's appointment demonstrates our ongoing commitment to the Hong Kong and Greater China practice. His strong client relationships, coupled with his great track record across a range of sectors and China deal making experience, make him an ideal fit for our global team."

Laurence Davidson added:

"I am delighted to be returning to the Corporate practice at Hogan Lovells and working with a team I know well. The firm's global footprint and integrated nature provide the ideal platform for me to further develop my practice and service my clients."

For more information visit [www.hoganlovells.com](http://www.hoganlovells.com)

## NAUTADUTILH STRENGTHENS DATA PROTECTION PRACTICE

**BRUSSELS, 04 November 2019:** NautaDutilh has appointed legal technologist Peter Craddock as counsel, effective 4 November 2019, to lead its Data Protection, Cybersecurity and IT practice in Brussels and further help develop the firm's cross-Benelux expertise in these fields.

Peter's unique combination of legal expertise and experience as a software developer allows him to provide targeted advice to SMEs and global players in a manner that reconciles business, technical and regulatory requirements. He has extensive experience handling complex projects in the fields of privacy and data protection, cybersecurity, e-commerce, software contracting and procurement, and the outsourcing of IT services. He also regularly assists clients with projects relating to new technologies and new ways of using data.

Peter has assisted in the development of various tools for clients, particularly in the fields of data protection and cybersecurity, including a tool to assess the severity of data breaches and a smart checklist for compliance monitoring purposes.

"We are convinced that with his unique combination of legal expertise and experience as a software developer Peter is perfectly suited to further strengthen our Data Protection, Cybersecurity and IT practice as well as the firm as a whole. We wish Peter all the best in his new role", says Dirk Van Gerven, Managing Partner of NautaDutilh Brussels.

For additional information visit [www.nautadutilh.com](http://www.nautadutilh.com)

**MUNIZ DESIGNATES THREE NEW PRINCIPAL PARTNERS**

**LIMA, September 2019:** Muñiz, Olaya, Meléndez, Castro, Ono & Herrera Abogados recently promoted three partners, Marta Fernández Pepper, Eduardo González Espinoza and Andrés Kuan-Veng Cabrejo, to principal partners. There are now nine principal partners in the firm.



Marta Fernández Pepper, Eduardo González Espinoza & Andrés Kuan-Veng Cabrejo

**Marta Fernández Pepper** is Director of the Intellectual Property Law practice group. She earned a law degree from the Peruvian Catholic University School of Law and has been President of the Peruvian Industrial Property and Copyrights Association (APPI). The most important legal guides (Chambers, Legal 500, Leaders League) describe her as a well-known intellectual property specialist in Peru.

**Eduardo González Espinoza** is Director of the Foreign Trade Law practice group. He earned a law degree from the Peruvian Catholic University School of Law and has been President of the Peruvian Association of Customs Law and International Trade (Apdaci) and has worked as a law professor at several Peruvian universities (UPC, Universidad de Lima, Universidad de San Martín de Porres, etc.). Chambers & Partners describes him a leading expert in international trade.

**Andrés Kuan-Veng Cabrejo** is Director of the Capital Market and Bank Regulation practice group. He earned a law degree from the University of Lima School of Law and holds an LLM in Securities and Financial Regulation from Georgetown University. He currently serves on the Board of Procapitales, an agency whose purpose is to strengthen Peru's capital market. The most important legal guides (Chambers, Legal 500, Leaders League) describe him as a well-known banking and capital markets expert.

For additional information visit [www.munizlaw.com](http://www.munizlaw.com)



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**ARIAS**

ADVISES BANPRO WITH TWO LOANS TOTALLING US\$90 MILLION

**MANAGUA, 30 September 2019:** Nicaragua's largest bank, Banpro relied on Hogan Lovells LLP in New York and Arias (Nicaragua) for the deal for two loans totalling US\$90 million from investment bank Credit Suisse. The deal closed on 18 September. Mayer Brown LLP in Chicago and Consortium Legal (Nicaragua) in Managua advised Credit Suisse, the lead agent for the group of lenders.

Banpro will lend the funds to exporters in Nicaragua, including to agribusiness and small and medium-sized enterprise clients.

Counsel to Banpro Hogan Lovells LLP Partner Emil Arca and associates Lauren Kimmel and Favio Averbug in New York; and Arias (Nicaragua) Partners Bertha Argüello and Gustavo-Adolfo Vargas, and associate Rodrigo Ibarra in Managua.

For additional information visit [www.ariaslaw.com](http://www.ariaslaw.com) [www.hoganlovells.com](http://www.hoganlovells.com)

**ARIFA**

ADVISES SYNDICATE OF US AND LATIN AMERICAN BANKS ON US \$130 MILLION LOAN TO PANAMANIAN BANK ALIADO

**PANAMA, October 2019:** Skadden, Arps, Slate, Meagher & Flom LLP in New York and Arias, Fábrega & Fábrega in Panama City have helped a syndicate of US and Latin American banks arrange a US\$130 million loan for Panamanian bank Aliado.

The borrower relied on Arnold & Porter in Washington, DC and Alfaro, Ferrer & Ramírez in Panama City for the deal, which closed on 30 September.

JP Morgan, Banco Latinoamericano de Comercio Exterior and Banistmo were joint lead arrangers and bookrunners. The syndicate of lenders remains undisclosed.

The loan will be used to replenish cash Aliado used to finance its US\$200 million acquisition of Banco Panama in May.

Counsel to JPMorgan Chase, Banco Latinoamericano de Comercio Exterior and Banistmo Skadden, Arps, Slate, Meagher & Flom LLP (New York); and Arias, Fábrega & Fábrega Partner Estif Aparicio, international associate Cedric Kinschots and associate Fernando Arias in Panama City

For additional information visit [www.arifa.com](http://www.arifa.com)

**BAKER BOTTS**

BRISTOW GROUP EMERGES FROM CHAPTER 11 AFTER BAKER BOTTS-LED CONTESTED CONFIRMATION HEARING

**HOUSTON, 01 November 2019:** Bristow Group, the world's leading industrial provider of helicopter transportation and search and rescue services, successfully emerged from Chapter 11 on October 31, 2019. Bristow Group Inc. and certain of its U.S. and Cayman Islands subsidiaries entered chapter 11 with \$1.6 billion of debt, consisting of seven secured and unsecured debt issuances and credit facilities. Within two days prior to the chapter 11 filing, Bristow secured a \$75 million term loan to provide additional cash in hand on the filing date and a commitment for another \$75 million more as a debtor-in-possession loan. In addition, with the assistance of Baker Botts and Bristow's other professionals and the approval of the Bankruptcy Court, in less than 6 months, Bristow shed over \$900 million of debt, optimized its aircraft fleet, implemented employee incentive programs to achieve critical safety, financial and restructuring objectives, and restructured many of the Company's aircraft lease and secured equipment facility obligations – all without any disruption in worldwide operations. Bristow also exited chapter 11 with \$535 million of fresh capital, providing the company with liquidity to continue its industry-leading global operations. The targeted U.S. chapter 11 filing involved eight of Bristow's more than 60 entities worldwide.

After securing the approval of Bristow's chapter 11 plan by its creditors, Baker Botts led the chapter 11 plan confirmation hearing that was contested by a group of Bristow's former equity holders. After a two-day trial, Chief United States Bankruptcy Judge David R. Jones confirmed the plan over the objection and "compliment[ed] everyone for the way that [the contested confirmation hearing] ha[d] been done," noting that it was "the most fun [he'd] had since [he's] been on the bench." He said the lawyers "advocated for their clients in an effort to be what a lawyer is supposed to be." Judge Jones also praised Bristow's management, stating that he "really like[d] the approach that the company has with respect to generating its financial models and making strategic decisions." Referring to the direct testimony of the company's witnesses, he said "this particular case is a great case study of why, when you have competent people, you don't do affidavits. You let people's talent come through."

A cross-disciplinary team at Baker Botts led by Manny Grillo, Jim Prince, Omar Alaniz, Tom O'Brien, Rachael Lichman, Justin Hoffman, John Geddes, A.J. Ericksen, and Gail Stewart, working closely with other professionals at Wachtell Lipton Rosen & Katz, Houlihan Lokey, Alvarez & Marsal and DLA Piper (UK), represented Bristow and its affiliates.

For additional information visit [www.bakerbotts.com](http://www.bakerbotts.com)

**BENNETT JONES**

ASSISTS NEW PACIFIC METALS CORP WITH \$17.25 MILLION PROSPECTUS OFFERING

## Mandate Details

Date Announced:	October 02, 2019
Date Closed:	October 25, 2019
Deal Value:	\$17,250,000
Client Name:	New Pacific Metals Corp.

New Pacific Metals Corp. closed its bought deal short form prospectus offering of common shares for total gross proceeds of \$17.25 million, which included the exercise of the over-allotment option granted to the Underwriters in full. The offering was completed by a BMO Capital Markets. A total of 4,312,500 common shares of New Pacific Metals Corp. were sold under the offering at a price of \$4.00 per Common Share.

For additional information visit [www.bennettjones.com](http://www.bennettjones.com)

**CAREY**

ADVISED IMD GROUP ON A CREDIT FOR USD 70 MILLION TELCOMS ACQUISITION FINANCING

**SANTIAGO, 15 October, 2019:** Carey has helped UK media company IMD Group obtain a US\$70 million loan for the acquisition of a Chilean telecoms provider. HSBC was lender and enlisted Arteaga Gorziglia for the transaction. It is thought that Hogan Lovells LLP also advised the banks, but this could not be confirmed prior to publication.

IMD will use the funds to buy Transmisión y Almacenamiento. The deal closed on 30 August.

Counsel to IMD Group Carey Partner Jorge Ugarte and associates Solange González and Francisca Hernández.

For additional information visit [www.carey.cl](http://www.carey.cl)

**CLAYTON UTZ**

ADVISES CONOCOPHILLIPS ON \$US1.39 BILLION SALE OF AUSTRALIA-WEST ASSETS TO SANTOS LIMITED

**SYDNEY, 17 October 2019:** Clayton Utz has acted as legal advisers to NYSE-listed ConocoPhillips on its arrangements with Santos Limited to acquire ConocoPhillips' Australia-West and East Timorese assets and operations for \$US1.39 billion (\$A2.2 billion), announced to the market on 13 October.

Led by Corporate partner and energy and resources specialist Emma Covacevich, a cross-specialist Clayton Utz team worked alongside ConocoPhillips' legal, tax and commercial teams for over six months on all aspects of this strategic sale process. Other core team members were partners Peter Feros (Tax), Saul Harben (Workplace Relations), Cameron Gascoyne (IT/IP) and Linda Evans (Competition), and senior associate Katy Warner (Corporate, Energy and Resources).

Under the terms of the deal, ConocoPhillips will sell all of its Australian and East Timorese assets, with the exception of its interest in the Australia Pacific LNG (APLNG) project.

The assets comprise a 37.5 percent interest in the Barossa project and Caldita Field, its 56.9 percent interest in the Darwin LNG facility and Bayu-Undan Field, its 40 percent interest in the Poseidon Field, and its 50 percent interest in the Athena Field. ConocoPhillips will retain its 37.5 percent interest in the APLNG project.

Emma said the team welcomed the opportunity to work with ConocoPhillips on a transaction of such scale and strategic significance to the business. "We enjoyed the challenge of being able to bring our team's expertise across a whole range of areas - in this case, tax, intellectual property, corporate, competition, and oil and gas - to navigate often complex issues and achieve a great outcome for our client. We congratulate both ConocoPhillips and Santos and their teams on reaching an agreement that meets both of their strategic objectives."

Subject to securing all necessary regulatory approvals, the sale will take retrospective effect from 1 January 2019, with completion expected in the first quarter of 2020.

For more information visit [www.claytonutz.com](http://www.claytonutz.com)

**DENTONS RODYK**

ADVISES SEPPURE LTD IN SEED FUNDING

**SINGAPORE, October, 2019:** Dentons Rodyk acted for Singapore-based chemical separation technology startup Seppure Pte Ltd and its founders in its seed fund-raising round worth US\$2.55m led by US deep tech investor SOSV. Other investors in the round include accelerator Entrepreneur First, deep tech investor SGIInnovate and venture firm 500 Startups.

This is one of the largest deals for a seed fund-raising round for a company graduating from the Entrepreneur First accelerator programme. The Company will use the seed funding to scale up production of chemical-resistant nanofilters and run industrial pilots with potential customers.

Dentons Rodyk Partner Sunil Rai led the deal with support from associate, Ann Chia.

For additional information visit [www.dentons-rodyk.com](http://www.dentons-rodyk.com)

**GIDE**

ADVISES ANGELO GORDIN AND &amp; AQ GROUP ON ACQUISITION OF 5 HOTELS FROM GECINA

**PARIS, 08 November 2019:** A joint-venture between Angelo Gordon and EQ Group has finalised the acquisition of Gecina's portfolio of hotels. The portfolio, valued at EUR 181 million, consist of the walls and business assets of five hotels located in the Paris region, i.e. Paris, Boulogne-Billancourt, Bougival and Roissy.

The hotels are operated in management of franchise agreements, under Marriott and Intercontinental brands.

GIDE Partners Nadège Nguyen and Hugues Moreau advised the purchasers on this transaction, with a multi-disciplinary team comprising: Ghizlen Sari-Ali and Armelle Royer (corporate); Sibylle Chomel de Varagnes and Lauriane Marache (real estate); partner Rémi Tabbagh, Faten Anis and Maouel Annabi (financing), partner Foulques de Rostolan and Maxime Redon (employment), partner Franck Audran, Charles Terdjman and Mehdi El alem Champeaux (management and franchise agreement).

For additional information visit [www.gide.com](http://www.gide.com)

**HAN KUN**

ADVISES AESTHETIC MEDICAL INTERNATIONAL HOLDINGS GROUP LIMITED ON ITS U.S. IPO

**BEIJING, 25 October 2019:** Han Kun advised and acted as the PRC counsel to Aesthetic Medical International Holdings Group Limited in its U.S. initial public offering and listing on the Nasdaq Global Market under the symbol "AIH".

Aesthetic Medical International Holdings Group Limited is a leading provider of aesthetic medical services in China.

For additional information visit [www.hankunlaw.com](http://www.hankunlaw.com)

**HOGAN LOVELLS**

SECURES MILE HIGH STADIUM NAMING RIGHTS DEAL WITH EMPOWER RETIREMENT FOR HOME OF THE DENVER BRONCOS

**DENVER, 09 October 2019:** A team from global law firm Hogan Lovells has advised Denver's Metropolitan Football Stadium District in the negotiation of a naming rights agreement with Empower Retirement. The deal will rename the Denver Broncos NFL home stadium as Empower Field at Mile High.

The transaction, worth US\$63 million to the District over the 21-year life of the contract, involves sponsorship exclusivity in the retirement benefits category, the sale of rights to name the stadium, exterior signage on the stadium, and exclusivity and signage in surrounding areas.

Based in the Denver metropolitan area, Empower Retirement is the nation's second-largest retirement plan provider.

The naming rights deal at Mile High is the second naming rights deal handled by our Denver office in 2019, following January's work on behalf of Oracle to secure naming rights for Oracle Park, the home of MLB's San Francisco Giants, another iconic venue for American professional sports.

The Hogan Lovells team was led by partner Craig Umbaugh, alongside senior associates Ryan Adrian and Katy Raffensperger, with support from fellow partners David London and Matt Eisler and senior associate Jordan Chase.

For additional information visit [www.hoganlovells.com](http://www.hoganlovells.com)

**MUNIZ**

ADVISES CHINA YANGTZE POWER (CYP) BUY US SEMPRA ENERGY'S PERUVIAN BUSINESS FOR US\$3.6 BILLION IN THE LARGEST OVERSEAS M&A TRANSACTION BY A CHINESE COMPANY IN 2019

**LIMA - October, 2019:** Baker McKenzie LLP's Chicago and Miami offices and **Muñiz, Olaya, Meléndez, Castro, Ono & Herrera** in Lima have helped China Yangtze Power (CYP) buy US Sempra Energy's Peruvian business for US\$3.6 billion, in the largest overseas M&A transaction by a Chinese company in 2019.

White & Case LLP in New York, Shanghai and Beijing and Rodrigo, Elías & Medrano Abogados in Lima advised Sempra Energy. Sullivan & Cromwell LLP in New York advised BofA Merrill Lynch as financial advisor to Sempra.

The deal was announced on 30 September and is expected to close during the first quarter of 2020.

Once complete, CYP will obtain an 83.6% stake in Peru's largest electricity company – Luz del Sur – which operates in the southern part of the Lima region. The transaction includes an interest in Luz del Sur's power generation business Inland Energy and energy infrastructure company Tecsur, which provides services to Luz del Sur.

Sempra Energy has agreed on the sale to focus on its operations in North America, particularly in California and Texas. It holds electricity assets in Chile too, which it expects to divest later this year.

Counsel to China Yangtze Power International Baker McKenzie LLP (Miami); **Muñiz, Olaya, Meléndez, Castro, Ono & Herrera** Partners Andrés Kuan-Veng, Jorge Muñiz, Rolando Salvatierra, Mercedes Fernandez, Jorge Otoy, Guillermo Flores, Frezzia Saavedra and Renato de Vettori, and associates Alesandra Azcarate, Raul Alosilla, Milagros Mejía, José Ângulo, Francisco Quevedo, Denisse Valderrama, Hilda Fernández, Emmanuel Polando and Germán Gomez in Lima

For additional information visit [www.munizlaw.com](http://www.munizlaw.com)

**NAUTADUTILH**

ASSISTS IN RAISING UP TO USD \$627.6 MILLION FOR THREE BIOTECH COMPANIES WITHIN 48 HOURS

**AMSTERDAM, 07 November 2019:** On November 5 and 6, NautaDutilh assisted argenx and Merus in their follow-on offerings and Centogene in its Nasdaq IPO, raising a total of up to USD 627.6 million for these companies within 48 hours.

On November 5 and 6, NautaDutilh assisted argenx and Merus in their follow-on offerings and Centogene in its Nasdaq IPO, raising a total of up to USD 627.6 million for these companies within 48 hours. Antonia Netiv and her team acted as underwriters' counsel in the up to USD 484 million argenx global follow-on offering. Paul van der Bijl and his team acted as issuer's counsel to Merus and Centogene on their up to USD 79.2 million follow-on offering and up to USD 64.4 million Nasdaq IPO, respectively.

With these transactions, NautaDutilh demonstrates its position as market leader in these types of deals, having been Dutch counsel in 65% of initial public offerings of all current Nasdaq-listed Dutch companies and more of their follow-on offerings than any other Dutch law firm.

For additional information visit [www.nautadutilh.com](http://www.nautadutilh.com)

**SANTAMARINA Y STETA**

ASSISTS CONGLOMERATE GRUPO INDUSTRIAL SALTILO OBTAIN US\$245 MILLION LOAN FROM A GROUP OF LENDERS LED BY HSBC

**MONTERREY October, 2019:** Thompson & Knight LLP in New York, Santamarina y Steta in Monterrey and Cuatrecasas in Barcelona have helped Mexican conglomerate Grupo Industrial Saltillo obtain a US\$245 million loan from a group of lenders led by HSBC.

Santamarina y Steta acted as lead counsel for Grupo Industrial Saltillo.

The deal closed on 11 September and includes a six-year US\$195 secured term facility and a US\$50 million revolving credit facility. The loan also involved collateral governed under Spanish law.

Saltito will use the proceeds to refinance the company's existing debt and for general corporate purposes.

**Counsel to Grupo Industrial Saltillo** Thompson & Knight LLP (New York); Cuatrecasas (Barcelona); and Santamarina y Steta Partner Carlos Argüelles and associate Bárbara Asiain in Monterrey.

For additional information visit [www.s-s.mx](http://www.s-s.mx)

**SIMPSON GRIERSON**

## ADVISES WATERCARE ON LANDMARK \$2.4 BILLION CONSTRUCTION PARTNERSHIP

**AUCKLAND, 09 October 2019:** We recently advised Watercare on a landmark \$2.4 billion, 10-year construction partnership with Fulton Hogan and Fletcher Construction.

As part of this work, our construction team assisted in the development of a new contracting method to meet Watercare's vision for an innovative and collaborative method of infrastructure delivery that would also deliver on its 40/20/20 vision (40% less carbon, 20% less cost and 20% improved H&S).

The resulting Enterprise Model Agreement is a collaborative arrangement that focuses on a long-term programme of works (rather than delivery of individual projects), and how it can be coordinated and resourced to achieve the client's long term goal.

This collaborative arrangement allows the client, contractors, designers and the supply chain to work together from the early stages of the programme cycle, to optimise procurement efficiency and programme delivery.

The model requires all parties involved (eg contractors, designers and client) to work together to achieve the key performance criteria and the 40/20/20 goal, as the performance incentive regime is based on an "all win, all lose" criteria.

Infrastructure New Zealand CEO Paul Blair has heralded the partnership as a "positive development for the wider infrastructure industry that will lead to better outcomes for all parties."

Partner Mike Weatherall and special counsel Lisa Curran led our construction team on this work, which included senior associates Sonia Vitas and Genevieve Cox.

For additional information visit [www.simpsongrierson.com](http://www.simpsongrierson.com)

## PRAC EVENTS





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## Environmental - Guidelines for Managing Plastics and Micro plastics

On October 21st, 2019, Resolution N° 407/19 issued by the Secretary of the Government of Environment and Sustainable Development was published in the Official Gazette of the Argentina Republic, approving the guidelines for the environmentally sound management of plastics throughout their lifecycle.

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Resolution N° 407/19 approved the guidelines tending to achieve environmental sound management of plastics throughout their lifecycle, in order to mitigate the advance of contamination of water bodies due to plastic and micro plastic waste and its consequent impact on the environment.

### Guidelines for handling plastics

The following is a description of the guidelines proposed by the Secretary of the Government of Environment and Sustainable Development ("SGAyDS" for its acronym in Spanish) for the environmentally sound management of plastics throughout their lifecycle, with focus on 5 work axes and 45 actions to be developed together with the competent authorities and other stakeholders.

#### 1. Patterns for the sustainable production of plastic

Currently, most business models are designed and optimized to fit the linear system, in which negative externalities in the environment are not included in the prices of the resources.

Incorporating circular options allows the value of resources to be preserved. The categories for the efficiency strategies are:

- Extraction of materials: reduce new demands;
- Material processing: reduce emissions and pollution;
- Production: reduce the amount of materials, water, energy, packaging per product;
- Use phase: increase life cycle average, slow resource cycles; make more efficient use by reducing losses and waste, close loops;
- End- of- life treatment: increase material supplied by reuse, recycling and closure of resource cycles including energy recovery as a last resort.

## **2. Guidelines to promote responsible use and consumption**

Work should be done to reduce the single- use plastic articles and products that account for a significant proportion of all plastic used.

In the area of fisheries production, it is important to encourage the implementation of good practices to prevent fishing gear and plastic waste from being accidentally or intentionally dumped into bodies of water. To this end, management schemes should be established for fishing gear and its residues that guarantee the environmental management of these materials.

## **3. Integral management of plastics waste and prevention of pollution derived from its use**

Currently, the integral management of solid urban waste ("RSU" for its acronym in Spanish) has not been achieved in all the municipalities of the country and the garbage present in the bodies of water is, to great extent, product of this.

It is necessary to consider the treatment of marine waste, and in particular plastic waste, from the point of view of prevention, taking action to prevent this material and other waste from reaching the sea, polluting it and generating a negative impact on marine biodiversity.

The integral options should consider prevention in generation as the first alternative, then minimization in quantity and danger, reuse, valorization of one or more of its components and in all its forms, total or partial, energy valorization, leaving the final disposal as the last alternative.

## **4. In situ activities to mitigate marine garbage pollution in coastal and marine environments.**

In terms of prevention measures, the management plans of municipalities and coastal cities should strengthen waste management tools, promoting the reduction, recycling and reuse of these materials.

In terms of mitigations, the implementation of periodic activities and waste collection campaigns on beaches and coastal areas is a useful tool. Also, the cleaning of water bodies is possible.

## **5. Transversal tools for the fulfillment of the objectives**

The development of specific regulations, the establishment of mechanisms for participation and coordination of the different relevant actors, the development of specific action plans and mechanisms for monitoring and follow-up of all actions are highlighted.

### **Actions to be carried out in each of the axis of work included in the guidelines of the SGAYDS**

#### **Line of Work N° 1: Guidelines for the sustainable production of plastic:**

- 1.1 Promotion of productive innovation and sustainable production;
- 1.2 Promotion of research into more environmentally friendly materials such as biodegradable and compostable materials;
- 1.3 Use of alternative sources as raw material for the production of plastics;
- 1.4 Optimizing and reducing the use of plastics through the development of new technologies and eco- design to promote recycling;
- 1.5 Increase the use of recycled material in products;
- 1.6 Reduction of the use of substances hazardous to health and the environment in plastics;
- 1.7 Promotion of the production of reusable or recyclable plastic articles;
- 1.8 Promotion of correct labeling and identification of products;
- 1.9 Elimination of the use of primary micro plastics;

#### **Line of work N° 2: Guidelines to promote responsible use and consumption**

- 2.1 Promotion of environmental education;
- 2.2 Development of information and awareness campaigns;
- 2.3 Encourage the reduction of the consumption of single-use plastic products;

2.4 Promotion of good practices in ports and fishing activities;

2.5 Reduction of waste generation;

2.6 Promotion of proper waste disposal;

2.7 Promotion of sustainable tourism.

**Line of work N° 3: Integral options for the sustainable management of plastics and the prevention of pollution arising from their use**

3.1 Promotion of waste collection schemes encouraging differentiated collection;

3.2 Strengthening the infrastructure for waste disposal in public spaces;

3.3 Development of strategies to improve efficiency in recovery, reuse and the recycling of plastics;

3.4 Promotion of plastic recycling industry and the circular economy;

3.5 Promotion of Extended Producer Responsibility programmes ("REP" for its acronym in Spanish);

3.6 Promotion of best environmental practices and technologies available for treatment and disposal of the different plastic wastes according to the contaminants that accompany them;

3.7 Erradication of open dumps;

3.8 Development of efficient port facilities;

3.9 Integration of informal waste collection and management sectors;

3.10 Appropriate management of hazardous plastic waste;

3.11 Improved wastewater treatment to remove micro- particles including micro plastics;

3.12 Work on runoff and storm water management.

#### **Line of work N° 4: In situ activities to mitigate marine litter pollution in coastal-marine environments**

- 4.1 Implementation of standardized methods for collecting and analyzing comparable samples from global environmental monitoring;
- 4.2 Compilation and analysis of existing information and studies in the country on the problem, in particular impacts on threatened species and marine protected areas;
- 4.3 Strengthening of mechanisms for monitoring the state and quality of the environment;
- 4.4 Diagnosis of the situation and causes of the presence of marine garbage in critical areas such as the distribution of vulnerable marine species such as sea turtles or Franciscan dolphins;
- 4.5 Development of indicators that serve as a guide to measure the impact and prioritize the impacts, intervention actions;
- 4.6 Implementations of pollution prevention actions;
- 4.7 Cleaning of coastal and water areas.
- 4. 8 In situ activities to mitigate litter pollution in coastal marine environments;
- 4.9 Protection and conservation of biota.

#### **Line of work N° 5: Transversal tools to achieving objectives**

- 5.1 Increase of scientific knowledge, development of research capacity and transference of technology;
- 5.2 Promotion of legislation and strengthening of regulatory framework;
- 5.3 Strengthening of control and inspection instruments;
- 5.4 Development of technical guides and tools;
- 5.5 Promotion of women's and children's leadership;
- 5.6 Strengthening of coordination and information Exchange mechanisms;
- 5.7 Coordination and involvement of other actors such as the private sector and civil society;

5.8 Establishment and implementation of local, national regional and global action plans;

5.9 Communication of results, effects and achievements.

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For further information on this topic please contact **María Morena Del Río, Carola del Rosario Pignatelli** and **Martín A. Prieto** in Buenos Aires

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31 OCT 2019

# NSW Government excludes scope 3 emissions from mining assessment

BY CLAIRE SMITH, MARK GERITZ AND JASMIN SINGH

If passed, the new Bill will likely ease the approval of mining projects in NSW, although the impacts from GHG emissions are only one of a multitude of environmental and social impacts that will need to be considered by proponents.

The NSW Planning Minister, Rob Stokes introduced a Bill on Thursday 24 October 2019 which will create a set of measures aimed at preventing the regulation of downstream scope 3 greenhouse gas emissions (**Scope 3 emissions**) in relation to obtaining modifications or new approvals for mining, petroleum production or extractive industries in NSW. The Environment Planning and Assessment Amendment (Territorial Limits) Bill 2019 will, if enacted, remove the express requirement for proponents to carry out an assessment of the quantity or impact of Scope 3 emissions arising from the combustion of coal either domestically or overseas.

The new legislation has been introduced following a number of recent decisions by the NSW Land and Environment Court (**LEC**) and also the NSW Independent Planning Commission (**IPC**) that either refused new greenfield coal mining projects or approved expansions subject to extraterritorial conditions seeking to regulate which countries the coal was exported to. The recent decisions include:

- a groundbreaking decision of the Chief Justice of the Land and Environment Court (the Rocky Hill decision) which rejected a new open cut coal mine producing coking coal close to the town of Gloucester. Although the Chief Justice ultimately rejected the coal mine because of visual and other social impacts, the case provided an opportunity for the judiciary to comment on the climate change impacts of a new coal mine in the context of the Paris Agreement and the global carbon budget and explore the concepts of both intra-generational and inter-generational equity;
- the IPC's rejection of the proposed Bylong Valley coal mine in September 2019 where the IPC adopted the reasoning of the Chief Justice in respect of assessing Scope 3 emissions; and
- the imposition of an unprecedented export restriction condition on an open-cut coal mine project, United Wambo, by the IPC requiring coal to be exported to countries that were signatories to the Paris Agreement within the United Nations Framework Convention on Climate Change or countries who are signed off by the Secretary of the Department of Planning, Industry and Environment as having similar policies.

These decisions have been heavily scrutinised by both the Government and the Mining Industry with the United Wambo approval also drawing criticism from the NGOs. As anticipated, the Government has taken action to fill the legislative void in respect of how Scope 3 emissions are to be assessed.

The new legislation introduces changes, that, according to John Barilaro (Deputy Premier and Minister for Resources), "will help restore NSW law and policy to the situation that existed prior to the Rocky Hill decision and will provide the mining sector [and investors across the state] with greater certainty", while "driving investment opportunities and job creation".

In summary, the Bill makes the following key changes:

- amends the State Environment Planning Policy (Mining, Petroleum Production and Extractive Industries) (**SEPP**) to remove references in clause 14 to "downstream GHG emissions" thereby only requiring assessment of the GHG emissions "of the development". This means that in relation to coal use, there is no longer an explicit requirement to consider either domestic or international scope 3 emissions associated with the combustion of coal (though the Bill does not go as far as to exclude the ability to consider such matters and if it is intended that downstream emissions are not a "relevant consideration" for the IPC to consider in weighing up the environmental impacts of the project this should be made clear). The previous SEPP references to "downstream emissions" were an integral part of the regulatory framework that enabled the Chief Justice of the Land and Environment Court to consider the impacts of scope 3 emissions that would be generated from the Rocky Hill coal mine; and
- amends the Environment Planning and Assessment Act 1979 to prohibit any approval conditions that relate to impacts outside Australia or relate to activities carried out outside Australia. This effectively strips the IPC of the power to impose conditions that purport to have extraterritorial effect.

According to Minister Stokes, the Bill, "sends a clear message to all consent authorities about the limits of the NSW planning system" and "provides certainty to all players in the planning system about how extraterritorial impacts can be dealt with in NSW planning approvals".

The new legislation has been introduced amidst vehement opposition by environmental groups, such as the Nature Conservation Council and Lock the Gate, who condemn the NSW Government for effectively prohibiting planning authorities from considering the full extent of the effects that coal mining projects will have on the climate. Despite the opposition, the new legislation, if enacted, will likely ease the approval of mining projects in NSW although the impacts from GHG emissions are only one of a multitude of environmental and social impacts that will need to be considered by proponents of such projects.

At the time of the Rocky Hill decision, we had indicated that we considered that it was prudent for government to take steps through legislative or policy changes to

clarify the treatment of Scope 3 emissions. The NSW Government has, by introduction of the Bill, demonstrated that such a course of action was necessary but as noted above, the drafting may need some minor adjustments to reflect the legislative intention. Although to date, Queensland Courts have accepted Scope 3 arguments rejected in Rocky Hill such as market substitution, unless there are changes to relevant legislation in Queensland, it would still be open under this Queensland legislation for different judges to make inconsistent findings in this regard.

## RELATED KNOWLEDGE

- Taking responsibility for Scope 3 greenhouse gas emissions from burning coal: NSW makes a move
- Does latest NSW Land and Environment Court decision dampen interest in greenhouse gas emissions for coal projects?
- After the (coal) dust settles – Rocky Hill case and social impacts
- New decision rejects long-standing arguments concerning greenhouse gas emissions

## GET IN TOUCH



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October 15, 2019

## **New regulatory framework for telecommunications is in place**

### **Telecommunications & Information Technology**

The Bill of Law No. 79 of 2016, which established a new regulatory framework for the telecommunications sector in Brazil, was sanctioned without vetoes by President Jair Bolsonaro. The Law No. 13,879 entered into force on October 4, 2019.

The new telecommunications framework allows the fixed telephone concessionaires to adapt their agreements from a concession regime to an authorization regime. This change of concession to authorization must be requested by the concessionaire and it should be approved by the Brazilian National Telecommunications Agency (ANATEL). In return, concessionaires must, among other conditions, make investment commitments to expand their fixed broadband services, in special in areas without adequate competition for these services in order to minimize gaps and inequalities between Brazilian areas.

Note that the proceedings for adapting the concession for authorization regime, as well as the definition of the criteria for calculating investment commitments, still need to be regulated by the Federal Government and ANATEL.

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# Canadian Securities Administrators to Conduct Review of Automatic Securities Disposition Plans

November 08, 2019

Written by Kahlan K. Mills and Allegra Hessels

On October 24, 2019, the Canadian Securities Administrators (CSA) announced that it is undertaking a review of Automatic Securities Disposition Plans (ASDPs). ASDPs allow company insiders to sell their company securities through a broker in accordance with predetermined instructions. Currently, provincial and territorial securities laws provide an insider trading defence for trades made under automatic plans; however, there is no national framework governing such plans. The CSA's review of ASDPs will consider whether the regulatory framework should be enhanced and harmonized across Canada. Specifically, the CSA has indicated that the review will examine whether these plans provide appropriate constraints on trading activities of insiders and will be informed by relevant international developments in this area. Until the CSA completes its review and updates the market on its conclusions, CSA staff are unlikely to recommend new insider reporting relief for trades done under ASDPs. Existing insider reporting relief will be unaffected.

Insiders of public companies who wish to buy or sell shares in their company face a number of issues. The company's insider trading policy will likely permit insider trading only during certain "trading windows" after the quarterly release of the company's financial statements. In addition, under securities laws generally, the insider will be prohibited from trading whenever he or she is in possession of non-public material information regarding the company. These restrictions often result in insiders being unable to trade company stock for extended periods of time. ASDPs permit insiders to set up automatic trading plans with a broker at a time when the insiders are not in possession of non-public material information. The plans must be automatic in the sense that the following criteria must be met:

- At the time of entry into the plan, the insider is not in possession of any material undisclosed information in relation to the company.
- At the time of entry into the plan, in the case of plans that have not been established by the company, the insider provides the broker with a certificate from the company confirming that the company is aware of the plan and certifying that, to the best of its knowledge, the insider is not in possession of material undisclosed information about the company.
- The trading parameters and other instructions are set out in a written plan document at the time of the establishment of the plan.
- The plan contains meaningful restrictions on the ability of the insider to vary, suspend or terminate the plan that have the effect of ensuring that the insider cannot profit from material undisclosed information through a decision to vary, suspend or terminate the plan.
- The plan provides that the broker is not permitted to consult with the insider regarding any sales under the plan and that the insider cannot disclose to the broker any information concerning the

company that might influence the execution of the plan.

- The plan to purchase or sell securities was given or entered into in good faith and not as part of a plan or scheme to evade the insider trading prohibitions.

ASDPs have been under increased scrutiny from regulators and institutional investors in Canada and the United States. For example, some institutional investors have advocated for amendments to the requirements respecting ASDPs which would include providing that ASDPs be subject to a mandatory delay between the adoption of an ASDP and the execution of the first trade pursuant to such a plan and that company insiders should not be allowed to make frequent modifications or cancellations of ASDPs.

The CSA's review will also consider whether relief should continue to be granted from insider reporting for trades done under ASDPs and, if so, under what conditions. Such relief, while not requested by all issuers setting up ASDPs, has been granted several times in the last decade. Given the CSA's ongoing review, issuers who are looking to implement ASDPs at this time should seek legal advice.

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## BC Workplace Blog

Authored By Michelle Quinn & Colleagues

04

November

### Wait, Employers Can't Search Social Media? Privacy Law & Social Media in Hiring Decisions

👤 By Julie Facchin

*This post will take less than 8 minutes to read.*

There is a general perception that public social media posts are fair game for employers in the hiring process.

However, under BC's privacy legislation for both the private sector (the *Personal Information Protection Act*, S.B.C. 2003, c. 63, or "PIPA") and the public sector (the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, or "FOIPPA"), social media such as Twitter, Facebook, and Instagram are not considered to be "publicly available" and searching them is likely a breach of the legislation. LinkedIn is an exception to this rule, and can be searched in the hiring process.

Legislative change is unlikely due to other privacy concerns with the use of social media.

This blog post will explain the legislative framework, and then answer some common questions.

#### Legislative Framework

##### General Principles of Privacy Legislation

Privacy legislation, for the public and private sectors, and for all parts of Canada, is built on a few foundational principles. Four of the foundational principles are especially important in this context.

1. Personal information is information about an identifiable individual. Clear examples of this include a person's name, address, picture, and driver's licence. Other examples include location data (if, for example, the person "checks in" to a place on Facebook), family status, health information, and sexual orientation.
2. An organization or public body can only collect, use, or disclose personal information that is relevant to a decision, program, or other purpose. For example, even though a person's driver's licence number is a useful identifier, unless you

need to know it (for example, because you are renting a car to the person), you should not be asking for it.

3. The organizations or public bodies are responsible for complying with the legislation – not the individuals whose personal information they are collecting, using, or disclosing. Even if an individual agrees to give you certain information, or voluntarily discloses it, the organization or public body must ensure that it can have that piece of information.
4. An organization can be found to have “collected” someone’s personal information without keeping a record of it. Viewing a job candidate’s Facebook profile is “collecting” the personal information on that page, even if the hiring manager does not print it or make any notes.

#### **What does PIPA say?**

*PIPA* applies to private sector organizations – companies, non-profits, and other private groups.

*PIPA* is based on the idea of consent. That is, it allows the collection, use, and disclosure of personal information so long as the individual has consented. However, there are restrictions on what consent can be obtained, as well as limited situations where information can be collected, used, or disclosed without consent.

The primary restriction on consent is relevance. Regardless of consent, organizations may only collect, use, and disclose personal information “for purposes that a reasonable person would consider appropriate in the circumstances” (s. 2).

That is, an organization can only collect personal information if the purpose of the collection is reasonable and appropriate. As a result, obtaining consent to collect irrelevant personal information does not fix the breach of *PIPA*.

There are two exceptions to consent, or situations where consent is not needed, under *PIPA* which appear at first glance to apply to social media searches in the context of hiring. However, on deeper examination, these exceptions do not apply.

The first potential exception is the exception for “employee personal information”. Under s. 13 of *PIPA*, employees may collect “employee personal information” without consent. However, the definition of “employee personal information” specifically excludes “personal information that is not about an individual’s employment” (s. 1).

As I will discuss further below, one of the primary concerns with social media is that it frequently includes irrelevant information – that is, information which is not “about an individual’s employment”. As a result, social media searches do not fall within the exception to consent for “employee personal information.”

The second potential exception is the exception for personal information that is “available to the public” (s. 12(e)). Many people assume that any social media posts which are set to “public” fall under this exception. However, this exception is limited to four categories of public records set out in the regulations (s. 6):

1. Telephone books, including their online equivalents;
2. Professional and business directories;
3. Government registries such as court registries and the Land Title Office; and
4. Magazines, newspapers, and books, in hardcopy or electronic formats.

LinkedIn is the only social media which is considered to fall within one of these categories, as a professional or business directory. The personal information on LinkedIn is also more clearly relevant to a hiring decision. As a result, LinkedIn is the only social media which employers can search during the hiring process without breaching *PIPA*.

Finally, organizations are obliged to make “a reasonable effort” to ensure that personal information collected is “accurate and complete” (s. 33).

## **What does FOIPPA say?**

FOIPPA applies to the public sector in BC. The result under FOIPPA is the same as under PIPA, although the legislative provisions are slightly different.

Like private organizations, public bodies are required to have consent to search social media. This is an exception to the usual rule (different from the rule applicable to private organizations) that public bodies can collect information without consent. However, this usual rule is limited to collecting information directly from an individual. Social media searches are a form of indirect collection, and so consent is required (s. 27(1)(a)(i)).

Public bodies are also limited in their collection of personal information by relevance. The definition of relevance for public bodies is very narrow – only information which “relates directly to and is necessary for a program or activity of the public body” is relevant (s. 26(c)). This is a narrower view of relevance than applies to private organizations under PIPA.

Further, public bodies have notification and accuracy obligations. Specifically, they must notify an individual when that individual's personal information is being collected (s. 27(2)). They must also “make every reasonable effort to ensure that the personal information is accurate and complete” (s. 28).

## **What are the privacy concerns?**

There are five main privacy concerns around social media searches in hiring:

1. Irrelevant information;
2. Excessive information;
3. Inaccurate information;
4. Collection of other individuals' information; and
5. Lack of notice.

The first two concerns, irrelevant and excessive information, are interrelated. Social media profiles contain a wealth of information – that is why they are so commonly searched. However, much of that information, such as a person's family status, is both irrelevant to the hiring process and the potential source of a human rights complaint.

Regarding the third concern, inaccuracy of information, it can be difficult for a hiring manager to tell if a social media profile is accurate. It may contain errors, or otherwise present a misleading view of the person.

In addition, there may be a number of people with the same name. This can lead a hiring manager to view the social media profile of someone other than the job candidate and collect information that is not accurate to the job candidate at all.

This example of viewing the wrong person's social media profile also relates to the fourth concern. In this example, the personal information of someone other than the job candidate is being collected.

Further, even the job candidate's profile will likely contain photos or other personal information of other people. None of this information belonging to other people has any relevance to the hiring decision.

The final concern arises since employers do not usually tell job candidates that there will be social media searches. This is a particular problem for public sector employers under FOIPPA due to the notice requirements.

## **Common Questions**

### **Can't I just get the candidate's consent?**

Unfortunately, getting the candidate's consent to do social media searches is not enough.

Getting consent does not address the fundamental concerns about relevance,

excess, accuracy, and other people's personal information.

As a result, even if you have the candidate's consent, you are likely in breach of the privacy legislation.

### **What about using recruiters to do the searches for my organization or public body?**

Employers use recruiters for many reasons.

However, using one does not shift responsibility for complying with privacy legislation. Instead, both the recruiter and the employer bear the same responsibilities for collecting, using, and disclosing personal information.

### **Everyone searches social media before hiring – should the legislation match societal norms?**

It is true that many, if not most, employers search social media before making a hiring decision, especially for senior positions. It is equally common for job seekers to be advised to make sure their social media feeds do not contain any embarrassing information.

In that sense, the legislation is out of step with current societal norms. In many contexts you would expect to see a movement to change the legislation to make it match societal norms.

However, it is unlikely that the legislation will change in the near future. The fundamental concerns of irrelevant information, excessive information, inaccurate information, and other people's information would remain, even with a legislative change.

### **This information is important to hiring decisions – can I ever search social media?**

The information available from social media searches can be very important to potential employers. At the end of the day, employers need to make a business decision based on their assessment of overall business risks, and not just based on the legal advice I can provide.

From a purely legal standpoint, you can always search LinkedIn. However, for hiring decisions, you cannot search other social media if you want to comply with privacy legislation.

You should also consider the risk, in your industry, of a job candidate or disgruntled former employee reporting your use of social media to the Office of the Information and Privacy Commissioner, along with the cost, disruption and reputational risk of any investigation that follows.

### **What about other internet searches?**

Although this post has focused on social media searches, the same logic applies to internet searches more generally. Collecting information from an internet search (unless you are a private sector organization using one of the public record sources set out above) is likely a breach of the privacy legislation.

### **What about using social media in managing or terminating an employee?**

Employers have more discretion to use social media once a person has been hired, for the purpose of managing or terminating an employee. Please contact me if you would like more information on that topic.

If you have any questions about social media in hiring, or any other privacy issues, please feel free to contact me directly at [jfacchin@rbs.ca](mailto:jfacchin@rbs.ca).

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October, 2019

## DERIVATIVES TRANSACTIONS: CENTRAL BANK'S PUBLIC CONSULTATION ON CLOSE-OUT-NETTING IS ABOUT TO EXPIRE

On September 13, 2019, the Central Bank of Chile published, for public consultation purposes, a proposed amendment to the regulations applicable to framework agreements on bilateral derivatives, set forth in Chapter III.D.2 of its Financial Regulations Compendium, which will be available for comments or observations until October 30, 2019.

The main amendments included in this proposal are the following:

- 1. To harmonize the Central Bank regulations with the provisions set forth in Law 21,130, which modernized the Chilean banking legislation,** introducing certain adjustments to reflect the new provisions regarding management of banking solvency issues;
- 2. To simplify the Central Bank regulations, setting a two-banking days term (extendable by the parties), that shall pass before early termination to be valid, to apply derivatives netting, regarding events of default related to financial instability, deficient management, or other situations prior to a forced liquidation of banks and other institutional investors.**
- 3. To set the relevant early termination events applicable to institutional investors.**



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# Legal Commentary

October 15, 2019



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## Record-filing and Review Management of Online Extracurricular Training Institutions Sees Gradual Progress

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On July 15, 2019, the Ministry of Education promulgated the *Implementing Opinions on Regulating Online Extracurricular Training* (Jiao Ji Han [2019] No. 8) (“**Circular 8**”). Circular 8 provides for the record-filing and review management of online extracurricular training activities targeting primary and middle school students which involve use of Internet technology (“**online extracurricular training**”), puts forward requirements for training institutions, training content and teachers of institutions applying for record-filing, and authorizes the provincial governments (autonomous regions, municipalities directly under the central government) to develop specific record-filing rules. In order to implement the requirements of Circular 8, the Ministry of Education promulgated on September 24, 2019 the *Announcement on the Work of Record-filing for Institutions Carrying out Subject-based Online Extracurricular Training through the National Online Extracurricular Training Management and Service Platform*, which requires the online extracurricular training institutions to make record-filings through the National Online Extracurricular Training Management and Service Platform<sup>1</sup> (the “**Management Platform**”), and requires online institutions that have already carried out training activities to register on the Management Platform as soon as possible and to complete and submit the relevant record-filing materials before October 31, 2019.

As of October 9, 2019, Guangdong, Beijing and Sichuan have successively promulgated detailed rules to implement online extracurricular training record-filing. Specifically, on September 25, 2019, the Guangdong Provincial Department of Education issued, for public comment until October 9, 2019, the *Guangdong Province Implementing Rules on Administration of Record-filing of Online Extracurricular Training (Guangdong Province Special Work Plan for Online Extracurricular Training) (Draft for Comment)* (the “**Guangdong Draft**”). On October 8, 2019, the Beijing Municipal Education Commission promulgated the *Beijing Municipal Rules for Implementation of Record-filing of Online Extracurricular Training (for Trial Implementation)* (the “**Beijing Rules**”), which sets forth requirements for the work of online extracurricular training record-filing. The Sichuan Provincial Department of Education and five other departments promulgated on September 30, 2019 the *Sichuan Provincial Plan for Implementing the Regulation of Online Extracurricular Training* and, on October 9, 2019, the *Circular on Fulfilling the Work of Record-filing and Review of Online Extracurricular Training* (the “**Sichuan Notice**”), which stipulates

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<sup>1</sup> <http://xspk.eduyun.cn>

clear requirements for the record-filing and review of online extracurricular training and contains a list of materials required for the record-filing and review.

Considering that Circular 8 clearly requires institutions that have started online training activities to submit relevant record-filing materials by October 31, 2019, and requires the competent authorities to complete audits of online extracurricular training and training institutions nationwide by the end of December 2019, we expect that governments of other provinces (autonomous regions and municipalities directly under the Central Government) other than in Beijing, Guangdong and Sichuan will also successively promulgate detailed rules or relevant documents for record-filing and review of online extracurricular training activities. This article will analyze relevant content of the Guangdong Draft, the Beijing Rules and the Sichuan Notice.

## Specific record-filing requirements

Record-filing Requirements	Guangdong	Beijing	Sichuan
<b>Applicable Scope</b>	Applies to online extracurricular training institutions <b>domiciled</b> within the jurisdiction of Guangdong Province. The scope of “subject-based” curricula provided by online extracurricular training institutions includes Chinese, mathematics, English, physics, chemistry, politics, history, geography, and biology.	Applies to online extracurricular training institutions whose <b>business license registration address</b> or <b>ICP record-filing</b> is registered in Beijing. “Primary and middle school students” targeted by online extracurricular training institutions refer to students in all types of <b>publicly and privately-run compulsory education schools, regular senior middle schools, and secondary vocational schools</b> (excludes students at the kindergarten, post-secondary vocational, undergraduate levels and above). “Subject-based” curricula provided by online extracurricular training institutions include Chinese, mathematics, English, physics, chemistry, politics, history, geography, biology, etc.	Applies to online extracurricular training institutions whose <b>business license registration address</b> or <b>ICP record-filing</b> is registered in Sichuan. The Sichuan Notice does not define the scope of students or subjects provided by online extracurricular training institutions.
<b>Types of Training Platforms Subject to Record-Filing Management and Persons Responsible for applying for Record-filing</b>	<p>Training platforms subject to record-filing include the following two types:</p> <ul style="list-style-type: none"> <li>■ <b>Institution self-operated platforms:</b> refer to proprietary online training platforms operated by online extracurricular training institutions. These platforms are either acquired through technical procurement or are independently established. Online extracurricular training institutions shall voluntarily apply for review.</li> <li>■ <b>Integrated third-party service platforms:</b> The platform host builds the platform and then invites course suppliers to join the platform, the parties will jointly operate the platform. The platform host will apply for review.</li> </ul> <p>In addition, the record-filing of <b>online extracurricular training activities carried out by using artificial intelligence</b> shall be conducted by enterprises on voluntary basis, and shall be guided and regulated by the provisions of the <i>Guangdong Provincial Rules on Implementing Administration of Record-filing</i>.</p>	<p>Online extracurricular training institutions subject to record-filing include the following two types:</p> <ol style="list-style-type: none"> <li>1. <b>Self-operated service platforms that institutions self-build or acquire</b> extracurricular training institutions shall apply for record-filing. Subject to rules substantially the same as those applicable “institution proprietary platforms” in the Guangdong Draft.</li> <li>2. <b>Integrated third-party service platforms:</b> Platform hosts apply record-filing. Essentially the same rules apply as those for “integrated third-party service platforms” under the Guangdong Draft, except it is emphasized that both the platform host and teaching services providers are responsible for the content and results of their record-filings.</li> <li>3. <b>Online extracurricular training platforms other than the above two categories:</b> The party which signs service contracts with the trainees applies for record-filing.</li> </ol>	No specific rules.

Record-filing Requirements	Guangdong	Beijing	Sichuan
		In addition, <b>new types of platforms and new forms of teaching</b> that use artificial intelligence, teaching aids, tools, etc. may apply for record-filing on a voluntary basis.	
<b>Conditions for Record-filing</b>	<p>Aside from reaffirming requirements found in Circular 8, such as healthy content, appropriate time length, qualified teachers, information security, and standardized business operations, the Guangdong Draft further provides the following:</p> <ul style="list-style-type: none"> <li>■ <b>Artificial intelligence:</b> Online extracurricular training involving the use of artificial intelligence is subject to basic business operating principles in accordance with relevant rules and regulations; business shall be conducted in a manner that complies with laws and regulations, benefits society, promotes fairness, improves quality, protects privacy and avoids discrimination. Trainings are subject to comprehensive monitoring and the influence of artificial intelligence on students and their learning activities will be evaluated.</li> <li>■ <b>Teacher qualifications:</b> Each online extracurricular training institution <b>shall have no less than five full-time teachers. Subjects taught by full-time teachers at the institution shall be consistent with those specified</b> in their teacher qualification certificates. Teachers required to teach subjects other than those specified in their teacher certificates shall hold qualifications for and be capable of teaching multiple subjects. <b>The number of full-time teachers that teach subjects outside their teacher qualifications shall not exceed 15%</b> of total number of teachers holding teacher qualifications.</li> <li>■ <b>Foreign teachers:</b> (1) A foreign teacher who teaches online extracurricular language lessons <b>in China</b> shall, in principle, <b>teach his or her native language, hold a bachelor's degree or above and have more than two years of language teaching experience</b> (however, those</li> </ul>	No specific rules are provided.	No specific rules are provided.

Record-filing Requirements	Guangdong	Beijing	Sichuan
	<p>who have obtained a bachelor's degree or above in education, language or from a teaching training school, or have obtained a teacher's qualification certificate from his or her own country or have obtained an international language teaching certificate may be exempt from the teaching experience requirement; (2) A foreign teacher who gives language lessons remotely to students located within mainland China from his or <b>her country of residence (a foreign country) shall obtain a teacher qualification certificate issued by his or her home country or obtain an international language teaching certificate</b> (TESOL/TEFL, etc.); (3) A foreign teacher who teaches <b>Chinese or history</b> shall provide a <b>full description of his or her life experiences</b> in China and <b>guarantee or promise</b> compliance with and recognition of the principles established by the Constitution of China.</p> <ul style="list-style-type: none"> <li>■ <b>Use of personal information:</b> No training platform may obtain privacy system privileges that are unrelated to study, nor collect or use personal information of students and parents that is not related to the functions of the training platform; the training platform host shall keep confidential user accounts, passwords, registered mobile phone numbers, etc. Platforms shall stop the collection and use of a user's personal information and shall assist the user in canceling his or her account after the user terminates use of the platform's services.</li> <li>■ <b>Internal control systems:</b> Online extracurricular training institutions shall establish systems including a sound internal audit system, financial risk control system, user complaint handling system, etc., and have human resources sufficient to implement internal audit and management requirements, and implement strict internal</li> </ul>		

Record-filing Requirements	Guangdong	Beijing	Sichuan
	review and management of online extracurricular training activities.		
<b>Record-filing Process</b>	<ol style="list-style-type: none"> <li><b>Submission of materials:</b> Online extracurricular training institutions shall submit record-filing materials through the Management Platform and via email by October 31, 2019.</li> <li><b>Government review:</b> The Guangdong Provincial Department of Education, together with other departments, will review and verify submitted materials by December 31, 2019, and complete the record-filing within 60 days if the materials submitted fulfill the requirements.</li> </ol>	<ol style="list-style-type: none"> <li><b>Submission of materials:</b> The party responsible for the record-filing shall voluntarily submit the record-filing materials by October 31, 2019, with record-filing materials to be submitted through the Management Platform, and supporting materials to be submitted via email.</li> <li><b>Government review:</b> The Beijing Municipal Education Commission will, <b>together</b> with other departments, complete the review of record-filing materials by December 31, 2019. Applicants shall be required to re-submit record-filing materials if the submitted materials do not meet the requirements or are insufficient. The Beijing Municipal Education Commission shall complete the examination of re-submitted materials within 60 days from the date of receipt.</li> </ol>	<ol style="list-style-type: none"> <li><b>Submission of materials:</b> Record-filing materials are to be submitted through the Management Platform, and simultaneously submitted through the Sichuan Government Service Network<sup>2</sup> by October 31, 2019.</li> <li><b>Government review:</b> The Sichuan Provincial Department of Education will, together with the relevant departments, organize experts to review and verify the submitted record-filing materials, and make record-filings of online extracurricular training institutions that meet the requirements, and make an announcement through media including the Management Platform, the provincial official website, and the WeChat public account.</li> </ol>
<b>Supervision and Punishment Measures</b>	1. Online extracurricular training platforms in violation of rules and regulations shall be gray-listed and be ordered to make rectification within specified time limit. Those	1. Subject-based online training platforms that teach lessons to primary and middle school students without completing record-filing shall be investigated and punished in accordance with law.	No specific rules are provided.

<sup>2</sup> www.sczwfw.gov.cn

Record-filing Requirements	Guangdong	Beijing	Sichuan
	<p>platforms which refuse to rectify or fail to rectify within the specified time period shall be blacklisted.</p> <p>2. Training platform hosts which submit with subjective malice false or fraudulent record-filing materials or test samples, or extracurricular training platforms that are gray-listed upon receiving a yellow card warning violate provisions of the <i>Guangdong Provincial Rules on Implementing Administration of Record-filing</i> again shall be blacklisted.</p> <p>3. From July 1, 2020, the government shall investigate and handle online extracurricular training institutions which have not completed rectification within the prescribed time limit or fail to complete rectification as required, and impose penalties based on the circumstances, including orders to suspend or stop business operations of the training platforms, remove training applications, shut down WeChat public accounts (applet) or imposing economic punishment, etc.</p>	<p>2. Platforms subject to the record-filing requirements that fail to complete the record-filing shall assume the following consequences: (1) be unable to be whitelisted on the Management Platform; (2) be investigated and punished by the relevant departments in accordance with laws and regulations.</p>	

## Record-filing materials

	Record-filing Materials
<b>National Online Extracurricular Training Management and Service Platform</b>	<p>According to the operating manual and “Q&amp;A” section displayed on the Management Platform, record-filing materials mainly include five aspects: institution information, service information, training personnel, training content and institution commitments.</p> <p>1. <b>Institution information:</b> includes legal person information, the institution's registered and contact addresses, business license, contact person and contact information, etc.</p> <p>2. <b>Service information:</b> includes basic information, ICP record-filing number and screenshots, telecommunications business license number and screenshots, user complaint report link and screenshots, and user service agreement record-filing. Basic information includes information on Party organization establishment, fund management methods, security conditions, service commitments, training platform technical support, etc.</p> <p>3. <b>Training personnel:</b> includes name, gender, nationality, identification number and other basic information, as well as teacher qualification certificates, etc.</p>

	<p>4. <b>Raining content:</b> includes basic information such as course titles, subjects, course content, teaching methods, tutors, class schedules, class lengths and other relevant information, as well as relevant certification materials (including whether foreign courses have been undertaken, screenshots of public information of teachers, screenshots of fee-based programs, fee standards and refund methods, screenshots and links of course user complaints, etc.)</p> <p>5. <b>Institution commitments:</b> includes the institution's commitment to compliance with relevant laws and regulations; automatically generated by the Management Platform.</p>
<b>Guangdong</b>	<p>In addition to the requirements of the Management Platform, the Guangdong Draft stipulates the following detailed requirements for the record-filing materials to be submitted by extracurricular training institutions in Guangdong province:</p> <ol style="list-style-type: none"> <li>1. As for two different types of platforms, i.e. training websites/online schools and training apps, requiring them to fill out two different application forms.</li> <li>2. As for basic information of online extracurricular training institutions, requiring to further disclose the basic information of online extracurricular training institutions, including information of decision-making institutions and training services (including purposes of training courses, business scope, basic personnel information and management systems, decision-making mechanisms, fee agreements, security conditions and service commitments, etc. If foreign courses are introduced, relevant certificates or commitments shall be provided in accordance with relevant regulations, such as a commitment to comply with relevant Chinese laws and regulations and ideological management requirements), technical protection instructions for training platforms (including business system data interaction and processing capability certification, personal information protection system, network security management system, security protection technology measures, etc.)</li> <li>3. Extracurricular training institutions are required to submit a Standardized Business Operation Commitment, to commit that the institutions have credibility or ability to provide long-term services for schools, teachers and students, and are in compliance with other conditions specified in relevant laws and regulations and other documents promulgated by State Council, the Ministry of Education, and the Guangdong Provincial Department of Education.</li> <li>4. Institutions are required to submit a specialized system for "Institutions (Enterprises) Implementing the Guangdong Province Special Work Plan for Online Extracurricular Training", which describes the institution's emphasis on internal reviews, review processes, reviewers and internal review statements of the contents released on online extracurricular training platforms.</li> </ol>
<b>Beijing</b>	<p>Compared to the Guangdong Draft, the Beijing Rules only require online extracurricular training institutions to submit basic record-filing materials through the Management Platform, and recommend the institutions to submit other certifying materials to prove the platform's risk prevention and teaching capabilities, including award certificates, information on social welfare activities, etc.</p>
<b>Sichuan</b>	<p>Consistent with the Management Platform, the Sichuan Notice requires institutions to submit basic information about training institutions, teachers and training content.</p>

## Our observations

### **I. Issues ambiguous under Circular 8 await clarification in the *Regulations for the Implementation of the Law on the Promotion of Privately-run Schools***

Circular 8 and the corresponding local supervision rules reflect the regulatory trends of the education administration at all levels toward regulation of online extracurricular training activities, but skip certain issues including the boundary between subject-based trainings and quality-based trainings and whether online extracurricular training institutions are required to obtain a school-running license. Those issues remain to be clarified in the *Regulations for the Implementation of the Law on the Promotion of Privately-run Schools*.

### **II. Record-filing and review practices to differ among provinces**

The Guangdong Draft, which has completed its public comment period but has not yet been officially promulgated, puts forward more detailed and stringent requirements for record-filing of online extracurricular training institutions compared to the Beijing Rules and the Sichuan Notice, based on certain basic requirements shared by all three documents. With respect to the record-filing application materials, the Guangdong Draft puts forward more detailed requirements for materials and certification documents to be submitted for record-filing. In light of the review requirements, the Guangdong Draft stipulates more stringent requirements for the qualifications of full-time teachers (including the number of full-time teachers, requirements for cross-subjects teaching, etc.), the qualifications of foreign teachers, the protection and use of personal information, the construction of internal management systems for online extracurricular training institutions. Going forward, we expect to see differences in record-filing practices among provinces following their promulgation of detailed implementation rules.

### **III. Online extracurricular training conducted with use of artificial intelligence enters the view of regulators, but record-filing thereof is still not a compulsory requirement**

Online extracurricular training conducted with the use of artificial intelligence, although untouched in Circular 8, are referenced in both the Guangdong Draft and the Beijing Rules. Under these two departmental rules, record-filing of artificial intelligence-based online training activities is not compulsory, and is only to be conducted voluntarily or at the institutions own initiative. The qualifications of teachers remain the regulatory focus of the Circular 8, the Guangdong Draft and the Beijing Rules, considering teachers currently carry out most online extracurricular training activities. However, it is undeniable that the application of artificial intelligence has become common in the education and training fields, which is a trend that has drawn the attention of education regulators but has yet to become a regulatory focus, as indicated by the relevant requirements of the Guangdong Draft and the Beijing Rules. In the future, we expect relevant normative documents to be formulated by the education administration if the application of artificial intelligence becomes more widespread in the field of education and training.

### **IV. Local supervision rules emphasize the principle of dynamic supervision, online extracurricular training activities should continuously meet regulatory requirements**

Both the Guangdong Draft and the Beijing Rules clearly stipulate that being “whitelisted” following

review and approval merely indicates that an online extracurricular training platform satisfies the relevant filing requirements at the time of record-filing. In fact, in addition to the requirements for record-filing, Circular 8 also puts forward requirements for daily supervision of online extracurricular training institutions in terms of training content, course length, faculty, fees and information security, and requires the establishment of a daily inspection and spot-check system. So, online extracurricular training institutions that have passed the preliminary review and have been whitelisted should remain vigilant. In practice, some whitelisted enterprises can still be gray-listed or even blacklisted by the local regulatory authorities because of failure to meet the relevant regulatory requirements. In daily operations, online extracurricular training institutions still need to continuously track and ensure compliance with the national and local regulatory requirements that may be updated by the education administrations from time to time.

## ***Important Announcement***

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

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## Colombian Constitutional Court ruled Finance Law as unconstitutional

The Colombian Constitutional Court ruled that the Finance Law (Law 1943) is unconstitutional. The decision will be effective as of Jan 1, 2020.

The Colombian Constitutional Court ruled today, 16 October 2019, that the Finance Law (Law 1943) that was passed by Congress last December 2018 is unconstitutional. According to the press release, the decision of the Court will be effective as of Jan 1, 2020. Therefore, the Law will continue to have full effect for the full fiscal year 2019.

The Court informed that the reason to declare that the law is unconstitutional lies in certain procedural mistakes during the discussions that led to its approval by Congress. As a consequence, President Ivan Duque has informed that he has instructed the Minister of Finance to prepare and submit to Congress a new bill that contains substantially all the changes and additions that were introduced by the Finance Law (Law 1943), with the purpose of being enacted before December 31, 2019. Please bear in mind that it will be necessary to follow up on the specific text that will be proposed, as well as the potential modifications that could be introduced in the course of legislative discussions.

**If the bill to be submitted by the Government in the oncoming weeks is not approved by Congress before December 31, 2019**, tax rules that applied before the Finance Law was enacted will apply as of January 1, 2020, as follows:

### Income Tax

- Corporate Income Tax: The corporate income tax rate applicable before the Finance Law was enacted was 33%. In this sense, the gradual reduction established by the Finance Law (2020: 32%; 2021: 31% and from 2022: 30%) will not apply in the upcoming years.
- Financial entities: The 3% surcharge for financial entities will not be applicable in 2020.
- Presumptive Income: The reduction of the presumptive income rate set forth in the Finance Law (1,5% for 2020, and 0% as from 2020) will not be applicable anymore. Hence, presumptive income will be 3,5% in 2020 and onwards.
- Fixed assets: VAT paid on the acquisition, creation or construction of real productive fixed assets will not be treated as a credit for income tax purposes as from 2020 and onwards. However, the old benefits that allowed taxpayers to take as deductible the VAT paid in relation to these assets, as well as the VAT paid on the importation of heavy machinery from the basic industry, will apply.

- Dividends: Dividend distributions to foreign companies and non-residents individuals would be taxed at a 5% rate (not at a 7.5% rate). The dividends tax rate for resident individuals will be 0% or 10%, depending on the amount of the distribution (not 0% or 15%). Moreover, this tax will not apply to dividends distributed to Colombian entities anymore (under the Finance Law the dividends tax was extended to Colombian companies, except in the case of Colombian companies that were part of a registered economic group or to distributions to Colombian entities qualifying for the new CHC regime).
- Indirect sales / transfers of Colombian assets: Under the Finance Law, profits derived from indirect transfer of shares in Colombian entities and rights or assets located in Colombia through the transfer of shares, participations or rights of foreign entities were taxed in Colombia as if the underlying Colombian asset had been directly transferred. Hence, such indirect transfer regime will not apply as from 2020.
- Resident individuals: Five different income schedules will apply to individuals as from 2020 (not three baskets, as was determined in the Finance Law). The highest bracket rate applicable to the labor income basket will be 33% and the highest bracket rate applicable to capital and non-labor baskets will be 35%. This also will have an effect with respect to withholdings taxes.
- Thin capitalization rules: A 3:1 debt-to-equity ratio will be the thin capitalization limit and will apply to debt between related and/or unrelated parties.
- Deductible taxes: The possibility of deducting (for income tax purposes) 100% of the taxes, fees and contributions effectively paid will be eliminated, as well as the possibility of taking as a tax credit 50% of the industry and commerce tax effectively paid.
- Withholding tax for payments to non-residents: Payments for technical assistance services, assistance services, consulting services and other services rendered from abroad will be subject to a 15% withholding tax rate (not to the current 20% rate).
- Private equity funds and collective investment funds: Rules and limits for the realization of income introduced by the Finance Law will not apply anymore.
- Orange Economy: This exempt income regime would be eliminated, and such income will be taxed as of 2020. In any case, it would be important to perform a case-by-case analysis of the companies that have already made investments to access to such regime, in order to determine the possibility of considering that there is a consolidated legal situation (which would eventually allow them to benefit from the regime).

## **Value Added Tax (VAT)**

- VAT responsible taxpayers: The classification between "VAT responsible" and "VAT non-responsible" will not apply anymore. Hence, the simplified VAT regimen (applicable before the Finance Law) will apply again.
- The general VAT rate was not modified by the Finance Law. Hence, VAT rate will continue to be 19%.

VAT continued...

- There are goods and services that were excluded or exempted by the Finance Law. Hence, those goods and services will return to the "tax classification" that was applicable before the Finance Law.
- Taxpayers who carry out food and beverage activities (services) under a franchise agreement will be subject to the Consumption Tax.
- National Consumption Tax – Real Estate disposal
- As of 2020, the transfer (or disposal) of real estate whose value is higher than 29,800 Tax Assessment Units (COP\$918.436.000 for 2019) will not be subject to the National Consumption Tax (which currently accrues at a 2% rate). However, VAT would be accrued again on sales of new housing whose value exceeds 26,800 Tax Assessment Units.
- VAT responsible taxpayers: The classification between "VAT responsible" and "VAT non-responsible" will not apply anymore. Hence, the simplified VAT regimen (applicable before the Finance Law) will apply again.
- The general VAT rate was not modified by the Finance Law. Hence, VAT rate will continue to be 19%.
- There are goods and services that were excluded or exempted by the Finance Law. Hence, those goods and services will return to the "tax classification" that was applicable before the Finance Law.
- Taxpayers who carry out food and beverage activities (services) under a franchise agreement will be subject to the Consumption Tax.

#### **National Consumption Tax – Real Estate disposal**

- As of 2020, the transfer (or disposal) of real estate whose value is higher than 29,800 Tax Assessment Units (COP\$918.436.000 for 2019) will not be subject to the National Consumption Tax (which currently accrues at a 2% rate). However, VAT would be accrued again on sales of new housing whose value exceeds 26,800 Tax Assessment Units.

#### **Equity Tax**

- As from 2020, the Equity Tax will not apply.

#### **Procedural issues**

- Terminations by mutual agreement and settlements executed until October 31, will not be affected by the Court's decision.
- The reduction of interests and the possibility of paying reduced penalties will be eliminated.
- The new system of automatic VAT refunds will not have a legal basis.

#### **Normalization Tax**

- To the extent that the Court's decision will be effective as of January 1, 2020, the normalization tax will not be affected.

### **Colombian Company Regime (CHC)**

- The CHC regime would be eliminated.

### **Mega investments**

- As from 2020, this regime will not apply.

### **SIMPLE Tax Regime**

- The SIMPLE regime would be eliminated.

Notwithstanding the above, please note that **if the bill proposed by the Government is approved by the Congress before the end of the year, it is expected that the content of the new law will be substantially similar to what was initially included in the Finance Law.**

We will be constantly monitoring the bill in order to identify its development and main impacts and will keep you timely informed.

For more information contact our team [info@bu.com.co](mailto:info@bu.com.co)

[www.bu.com.co](http://www.bu.com.co)

PRESS ROOM

## THE ELECTRONIC COMMERCE LAW IS APPROVED IN EL SALVADOR

*November, 2019*

On October 31<sup>st</sup>, 2019 the Salvadoran Legislative Assembly approved the Electronic Commerce Law, which establishes the legal framework of electronic commercial relations and the validity of contracts [electronically](#) executed.

The approval of this law implies that in El Salvador, as of the date in which is coming into force: (i) Any person, established in El Salvador, that performs by itself or through intermediaries, commercial transactions through the use of any kind of technology or through interconnected communication networks, must comply with all the obligations imposed by that law; (ii) Contracts electronically executed will produce all the effects provided by law for traditional contracts, when the consent has been given and all the other legal requirements necessary for its validity have been complied; and (iii) Invoice electronically issued, will have the same accounting and tax validity as the conventional invoice, provided that they comply with the applicable legislation

An innovation that this law is introducing to the Salvadoran legal system the specific requirements that the suppliers of goods and services must fulfill in order to conduct unsolicited electronic commercial or promotional communications.

The law has not yet been sanctioned by the Salvadoran President, so it may be modified in the forthcoming days, however its current version can be consulted through the following link: <https://bit.ly/2JDC8zU> (Only available in Spanish).

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## G7 AND G20 REPORTS ON STABLECOINS

### Lessons and opportunities for industry players

On 18 October 2019, the G7<sup>1</sup> and the Financial Stability Board (FSB)<sup>2</sup> respectively published their first analyses of projects aiming to launch digital tokens with a relatively stable value, also called “stablecoins”<sup>3</sup>. The interest in these new instruments demonstrates that **international authorities are recognising their existence** and hope to anticipate their development outside of any adapted regulatory framework.

The first conclusions of the G7 and FSB reports are clear: considering the potential risks that **innovative projects enabling simplified international payments** are placing on the **monetary policy, the financial stability and integrity of the markets**, these initiatives will only be able to develop if they strictly comply with all the applicable international rules and standards.

The standards in question are not restricted to anti-money laundering and combating the financing of terrorism (AML-CFT). On the one hand, the G7 insisted on respecting (i) standards in terms of **operational resilience and cybersecurity**; (ii) rules ensuring the **protection of data**; and (iii) those pertaining to the **protection of consumers and investors**. On the other, the FSB report announced future works to facilitate the emergence of regulatory and supervisory approaches suited to these global projects.



*"We agree that no global stablecoin project should begin operation until the legal, regulatory and oversight challenges and risks are adequately addressed, through appropriate designs and by adhering to regulation that is clear and proportionate to the risks. Beyond regulation, the preservation of public prerogatives or core elements of monetary sovereignty will have to be taken into account".<sup>4</sup>*

### Background elements: work carried out by central banks and finance ministers of G7 and G20 countries

- ◆ Following the announcement of the LIBRA project, **the G7**, under French presidency, initiated in the summer of 2019 an *ad hoc* workgroup on stablecoins chaired by **Benoit Coeuré** (member of the ECB board). This group had a dual assignment. The first consisted in analysing the risks inherent to this type of project that, considering their worldwide nature, could represent a systemic hazard; the second consisted in identifying potential shortfalls in terms of regulation and supervision in order to limit regulatory arbitrage possibilities. The report, published on 18 October 2019, was presented during the annual meetings of the IMF and the World Bank in October 2019, and followed by an official statement by the heads of the G7.
- ◆ The FSB (and the **G20**, of which it is an offshoot) also took up the subject in the summer of 2019 considering its potential impacts on the current operation of the international financial system. At the Osaka Summit of June 2019, G20 leaders encouraged the FSB, as well as relevant international standard-setters (including the FATF<sup>5</sup>), to continue its investigations<sup>6</sup>. The October 2019 progress report announces the **conduct of an inventory of the various national regulatory and supervisory approaches** in order to (i) identify gaps

<sup>1</sup> G7 Working Group on stablecoins, "[Investigating the impact of global stablecoins](#)", October 2019.

<sup>2</sup> FSB, "[Regulatory issues of stablecoins](#)", October 2019.

<sup>3</sup> Excerpt of the FSB report: "A stablecoin can be defined as a crypto-asset designed to maintain a stable value relative to another asset (typically a unit of currency or commodity) or a basket of assets. These may be collateralised by fiat currency or commodities, or supported by algorithms. The term is used to describe a particular set of crypto-assets with certain design characteristics or stated objectives, but the use of this term should not be construed as any endorsement or legal guarantee of the value or stability of these tokens" p.1.

<sup>4</sup> [Official statement on stablecoins by G7 heads](#), 17 October 2019.

<sup>5</sup> Financial Action Task Force.

<sup>6</sup> [Excerpt of the G20 statement, Osaka Summit](#) (June 2019): "While crypto-assets do not pose a threat to global financial stability at this point, we are closely monitoring developments and remain vigilant to existing and emerging risks. We welcome on-going work by the Financial Stability Board (FSB) and other standard setting bodies and ask them to advise on additional multilateral responses as needed".

and/or deficiencies in national approaches and (ii) work towards the development of possible multilateral solutions

### Main risks identified by the G7

- ◆ The G7 report confirms the **reticence of central banks and governments vis-à-vis private initiatives aiming to facilitate cross-border payments**. Such reticence is justified by (i) the broad spectrum of certain projects, and (ii) their associated risks.
- ◆ The G7 report is targeting **global stablecoin** projects, i.e. stablecoin projects that may have a quick and massive uptake given the prior existence of an acquired client base (which is precisely the case of LIBRA). These global stablecoins, with their global reach, may potentially affect the stability of the international financial system. Since they aim to store values and be used as a means of international exchange, they could also come to **substitute traditional currencies** and thereby constitute **a danger for the sovereignty of monetary policies**.
- ◆ The report also highlights the concerns raised by these projects with regard to **compliance with competition and anti-trust rules**. It calls for increased vigilance by supervisory authorities on anti-competitive practices, abuses of dominant position, **market concentration** (in particular due to the network effect or the use of proprietary systems), and the emergence of oligopolies and monopolies.

### Main focus points for players as per the G7 report

- ◆ **Clear legal qualification: an essential prerequisite to launch a stablecoin project**

The G7 states that all stablecoin projects (regardless of their size) **must have a solid and secure legal basis**.

*"A stablecoin must be underpinned by clear legal terms that define and govern, with certainty and predictability, material aspects of how the underlying technical arrangements are utilised by parties".<sup>7</sup>*

- ◆ **Solid governance**

The G7 states that all stablecoin projects must come with a solid governance mechanism that guarantees the safety and efficiency of payments or the execution of stablecoin-related services.

*"Sound and efficient governance promotes the safety and efficiency of payments and related services. The governance structure of the arrangement must also be clearly defined and conveyed to all ecosystem participants".<sup>8</sup>*

- ◆ **Applicability of international AML/CFT standards**

The G7 states that the FATF international standards applicable to "virtual assets" must apply to stablecoin projects and to stablecoin providers. Supervisory authorities shall check that this is indeed the case.

*"[...] providers of stablecoins and other entities that are part of a stablecoin ecosystem should comply with the highest international standards for AML/CFT and countering the financing of the proliferation of weapons of mass destruction".<sup>9</sup>*

- ◆ **Applicability of international standards ensuring the safety, efficiency and integrity of payment services**

The G7 states that stablecoins, if they effectively aim to ease payment activities, must comply with international standards in the field.

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<sup>7</sup> G7 report, p.5.

<sup>8</sup> Ibid. p.6.

<sup>9</sup> Ibid. p.6.

*"Stablecoin arrangements are expected to meet the same criteria and abide by the same requirements as traditional payment systems, payment schemes or providers of payment services (i.e. same activities, same risks, same regulations). Innovation should support interoperability and seek to mitigate systemic interdependencies".<sup>10</sup>*

### ◆ Necessary implementation of mechanisms that ensure the operational resilience and cybersecurity of stablecoin projects

The G7 report states that the public supervisory authorities shall demand the implementation of tailored procedures and checks to ensure the resilience and cybersecurity of stablecoin projects.

*"Stablecoins may be subject to laws, regulations and guidance, and may also fall within the scope of international standards on operational risk".<sup>11</sup>*

### ◆ Respect of rules applicable as regards data protection

The G7 highlights the need to guarantee the protection of personal data in stablecoin projects and to ensure the protection of consumer rights (e.g. right of withdrawal and right to forget).

*"Authorities will apply appropriate data privacy and protection rules to stablecoin operators, including how data will be used by the participants in the ecosystem and shared between the participants and/or with third parties".<sup>12</sup>*

## Next steps for stablecoin players: a unique opportunity to discuss with international institutions and regulatory authorities and to put forward proposals

### ◆ FSB - Upcoming workstream aiming at mapping national regulatory approaches with a view to developing possible recommendations (e.g. multilateral solutions).

⇒ **The FSB will consult stakeholders** (roundtables, interviews, etc.).

### ◆ International standard-setters (Basel Committee, CPML<sup>13</sup> and IOSCO<sup>14</sup>) - Ongoing work to (i) adapt existing standards and (ii) draft new standards.

⇒ **Window of opportunity to present ongoing stablecoin projects, objectives, and related regulatory implications.**

### ◆ EU level & nationally - Foster a constructive dialogue with supervisory authorities and governments

⇒ **Promote to public authorities solid stablecoin projects that can position France as a pioneering jurisdiction in Europe.**

⇒ **Feed public authorities on the necessary regulatory changes for the viable and long-lasting development of innovative stablecoin projects, all the while upholding the stability of the financial system and the protection of potential consumers.**

### ◆ EU level & nationally - Ongoing discussions on the development of central digital currencies

⇒ **Contribute to ongoing discussions on the implementation of central digital currencies (e.g. cooperation between public institutions and the private sector).**

<sup>10</sup> Ibid. p.8.

<sup>11</sup> Ibid. p.8.

<sup>12</sup> Ibid. p.10.

<sup>13</sup> Committee on Payments and Market Infrastructures (CPMI).

<sup>14</sup> International Organization of Securities Commissions (IOSCO).

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# INTELLECTUAL PROPERTY: 10 RECOMMENDATIONS TO PREVENT RISKS IN SOCIAL NETWORKS

A MONTHLY NEWSLETTER FROM ARIAS, THE LAW FIRM OF C.A.



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**T**he World Intellectual Property Organization (WIPO) defines intellectual property as the property related to the creations of the mind: inventions, literary and artistic works, as well as symbols, names and images used in commerce. It is a very simple concept, easy to understand, which includes some of the most specific rights of this branch of law.

The importance of intellectual property for companies lies in the fact that technical knowledge, trademarks, drawings, models and other rights arising from the creative activity, are intangible assets, likely to be valued, sometimes even with greater value than the physical assets of companies, such as buildings, machinery, infrastructure, etc.

Currently, due to the boom of technology, Internet and social networks, companies need adaptation to reach consumers. This implies the exposure of some of the intangible assets of companies on the Internet and social networks, so it is necessary to take measures to maximize the exploitation of social networks, without neglecting the protection of the intellectual property of the company.

Social networks in computer science are online platforms that allow groups of people to interact with each other. Among the best known are Facebook, Instagram, Tumblr, Twitter, Snapchat, LinkedIn, among others.

Currently, a considerable number of companies have chosen to use social networks to promote their products and services and interact with their customers or potential customers, as they are an accessible tool, easy to use and with a very wide territorial scope. However, in order to take full advantage of this tool, it is necessary for companies to review carefully the content they publish on them, so here are some recommendations to avoid taking risks on social networks:

**1. Create the users of your company in social networks.**

Social networks have significant potential for brand positioning, so it is recommended that you create your user on social networks Facebook, Instagram, LinkedIn, Twitter, etc. Depending on the type of company, there are certain networks that are more recommended than others, but, even if you don't use them all, don't forget to create your profile to prevent someone from getting ahead of you. Social networks usually work based on first in time, first in law.

**2. Register your trademarks.** Make sure your trademarks are registered primarily in the countries where you offer or sell your products or services. Registrations in the countries in which you have a short- or medium-term interest can be planned according to your business plan and budget. This issue is of the utmost importance because a significant number of countries recognize the ownership of trademarks based on registrations, not in use, although there are some exceptions.

**3. Verify that you have authorization from the author or right holder.** Verify that you have authorization to use the texts, videos or photographs you publish on social networks, either because you have the corresponding rights or have a license to use them. Be careful with trending topics. Not for being a trending topic you can use images, videos and other content in your social networks, without authorization of their owners. For example, regularly to use images from television series or movies you need authorization from the right holder.

**4. Verify that you are authorized to use the image of the people who appear in your publications.** If you use the image, portrait, filming, or voice of a person, for advertising purposes, you must have their express authorization, especially if they are minors.

For example, if you are going to use videos or images of models, influencers or people who have won a promotion, you must have their authorization to use their image.

**5. Quote the author.** When you publish or share a post of any news or content, first confirm the source, and then quote the source and the author to ensure that your company does not participate in the so-called fake news. For example, if it is a publication about the death of a celebrity, publish it or share it only if you verify that it is a real event.

**6. Do not post confidential or sensitive information.** Your posts should not contain confidential or sensitive information about the company, its employees or third parties. For example, in social networks you should not publish photographs that directly or indirectly show a confidential procedure of the company, or photographs of activities with family members of collaborators, such as a year-end celebration in which minors appear with their parents.

**7. Follow the Creative Commons licensing rules.** If you publish content with Creative Commons licenses, make sure you follow the rules of this type of license. Creative Commons licenses are a special type of use license that allows users or licensees to use copyrighted works (photographs, videos, texts, etc.) without requesting permission from the author of the work, granting some basic rights, such as distributing, retouching, creating derivative works, etc.

**8. Respect consumer rights.** Consumers have the right, among others, to receive truthful, enough, clear and timely information about goods and services, so your posts or publications must respect them. If you receive comments or complaints from upset consumers, you must have an action plan on how to deal with these cases, since social networks require immediate attention. Misleading advertising is prohibited in several countries, including Guatemala.

**9. Implement rules or policies for the use of social networks.** It is advisable to implement the rules or policies of using your company's social networks. These rules can be very simple guidelines that guide people involved with the administration of social networks on how to act on a day-to-day basis and in certain situations. For example, if the policy will only be to publish your own photographs, then it must be previously defined.

**10. Supervise.** In the company there must be a person in charge of administering social networks and a person who supervises that the company's rules or policies are complied with.

These recommendations are not ordered based on their level of importance. These same recommendations can be applied to social networks and other commercial and advertising uses. However, due to the scope and speed of social networks, it is necessary to be more alert to protect the intellectual property rights of the company and act in emergent situations where complaints or comments are received that should be addressed as soon as possible, unlike other means of advertising in which response times are not so short.

At Arias we have a team of highly trained professionals that can give you precise advice on intellectual property issues. For questions or more information, do not hesitate to contact us.

## Written by:



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October, 2019

**Amendment to the Law on Equality between Women and Men of the State of Nuevo Leon**

On October 16<sup>th</sup>, 2019, the Decree No. 171 was published in the Official Newspaper of the State of Nuevo Leon, through which Article 19, Section V, of the Law on Equality between Women and Men of the State of Nuevo Leon was amended, with the intention of achieving wage and occupational equality between women and men.

Such amendment provides that the State Policy on Equality between Women and Men, developed by the Executive Branch of the State of Nuevo Leon, which purpose is to promote substantive equality in the economic, labor, political, social and cultural levels, shall observe the principle of equal treatment and opportunities in order to avoid occupational segregation and eliminate wage differences by promoting practices that make effective the equitable payment of wages between women and men for work of equal value, as well as through incentives for companies who apply actions to achieve such goal, including acknowledgements, incentives and equality certificates.

The Decree came into force on the day following from its publication (October 17<sup>th</sup>, 2019). The official publication can be consulted directly at the following link: [http://sgi.nl.gob.mx/Transparencia\\_2015/Archivos/AC\\_0001\\_0007\\_00167932\\_000001.pdf](http://sgi.nl.gob.mx/Transparencia_2015/Archivos/AC_0001_0007_00167932_000001.pdf)

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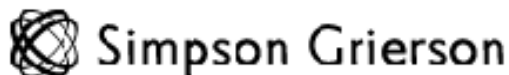
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# PRIVACY



## Privacy law update: Cross-border data controls - are you compliant under the new rules?

November 01, 2019

A major overhaul of New Zealand's privacy laws is underway and you need to be ready when it comes into force (currently expected to be mid-2020).

This is the second of four briefings to help you and your organisation prepare.

- ☒ Check whether your organisation sends data offshore, regularly or otherwise, through service provider arrangements (particularly cloud service providers) or directly
- ☒ Review your policies to ensure that they cover the off-shoring of your data, and are compatible with the new cross-border data flow rules
- ☒ Review any service provider arrangements or agreements that you have involving the sharing, storage or processing of your data to assess whether they might involve the disclosure of your data to a "foreign person or entity", and if so, that they:
  - are subject to New Zealand privacy laws, the laws of a prescribed country, or a prescribed binding scheme; or
  - are required to protect the information in a way that, overall, provides comparable safeguards to those in the Bill (for example, under the terms of the agreement that you have with them).

### Cross-border data compliance - do you know where your data goes?

You will need to know if your organisation sends any data overseas - you might be surprised to learn where your client, customer or employee data ends up being stored or processed by your service providers. If you don't know already, you need to find out.

If you are an offshore agency and you carry on business in New Zealand, you will also be subject to the new laws.

### Matters to think about

- What data do you hold that is stored or processed by you offshore?
- What data do you hold that is stored or processed by third parties - including related companies within your group?
- Do you know who the data is being sent to?
- Have you taken reasonable, proactive measures to protect the end use of the data?
- If you do disclose data overseas, have you taken reasonable steps to make sure at least one the following apply:
  - Disclosure is to an agency that is subject to New Zealand privacy laws, is in a prescribed country or is participating in a prescribed binding scheme\*?

- Disclosure is to an agency that is required to protect the information to New Zealand standards (for example under an agreement between you and the agency)?
- The individual concerned is expressly informed that their personal data is being sent to an agency in a jurisdiction that does not have protections to New Zealand's standard, and the individual authorises the disclosure?

\*The prescribed schemes and countries will be provided in regulations. We anticipate these will be released prior to the Act coming into force.

## Privacy Bill progress update

The Second Reading of the Bill indicated a commencement date of 1 March 2020, however we anticipate a six-month transition period from when the Act is passed with commencement in mid-2020.



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# Playing Fair: Avoiding Deceptive Pricing Practices

November 1, 2019

## Executive Summary

In an age of intense market competition, businesses have resorted to various novel marketing and pricing practices to capture the attention of consumers. Many of these practices may potentially run afoul of the law and businesses are now put on notice that such practices are now being scrutinised and may be subject to enforcement action.

## CCCS: The New Consumer Sheriff in Town

On 1 April 2018, the Competition and Consumer Commission of Singapore (CCCS) assumed the role of the administrator and enforcer of the Consumer Protection (Fair Trading) Act (Cap. 52A)(CPFTA) from SPRING Singapore. This additional role runs concurrent with its role as the competition watchdog pursuant to the Competition Act (Cap. 50B)(CA). Within days of assuming its new role, the CCCS announced that it was conducting market studies on the online travel booking sector in Singapore.

(Background: Competition watchdog to study online travel booking sector, data portability issues)

## Flagging Out Deceptive Practices

True to its word, the CCCS released the findings of its market study on 30 September 2019 in which it flagged four common practices adopted by online travel booking operators which gave rise to consumer protection concerns:

- **Drip Pricing:** This involves the non-disclosure of both mandatory and optional charges upfront which then lures consumers into making a purchase based on incomplete price information. Examples include published prices that are initially stripped of taxes and fees to lure consumers before such charges are added to the final prices at the point of payment.
- **Pre-Ticked Boxes:** This happens when options for add-ons are pre-ticked for the consumer which can result in consumers buying unwanted add-on products (if they fail to opt-out by unchecking the pre-ticked boxes).
- **Strikethrough Pricing:** This involves the striking through of a previous higher price alongside the new and purported lower price offered. This can mislead consumers into making a purchase (or even paying a higher price) should the comparison between a current and a crossed-out price be false or misleading.
- **Pressure Selling:** Using false or misleading claims which can create a false sense of urgency for consumers to make a purchase based on inaccurate or misleading information. This may include assertions that the price is for a limited time only, that there are limited stocks remaining (when this is not true) or there being high demand or

interest in the product or services that the consumer is seeking (thereby inducing immediate purchase on false information).

The CCCS signalled that it is concerned with these practices which are common in the Singapore context. Indeed, many of us would have had first-hand experience of such practices.

## Online Travel Sector Not Alone

The online travel sector is not alone in being singled out for consumer protection issues. Since April 2019, the CCCS had commenced two separate investigations against food restaurant, *Charcoal Thai 1* and automotive retailer, *SG Vehicles* for unfair trading practices.

### Not So Thai-rific

In the former investigation, CCCS had found that *Charcoal Thai 1* had advertised discounts for meals which are either available for a “limited period only” or “Ending Soon! 50% Discount” when the discounts actually continued for a period of two years since February 2016. The CCCS found that such claims not only misled consumers into believing that there is a price benefit and scarcity in the availability of the promotional prices but also gave *Charcoal Thai 1* an unfair advantage over other businesses that complies with the CPFTA. The CCCS investigations was subsequently closed when *Charcoal Thai 1* agreed to cease the unfair practice and not to engage in unfair practices under the CPFTA.

### COE No Enough

In the latter investigation, the CCCS commenced investigations into complaints against *SG Vehicles* for unfair trade practices relating to misrepresentations over the terms and conditions of the sale agreement, mainly relating to the delivery dates of motor vehicles and the bidding for certificates of entitlement (COE). While the *SG Vehicles* did not dispute the CCCS’s investigations, it declined to enter into a voluntary compliance agreement to stop engaging in unfair trading practices when it was requested to by the CCCS. The CCCS subsequently made an injunction application against *SG Vehicles* and a court order was subsequently issued by the parties’ mutual agreement. The court order prohibits *SG Vehicles* from, among others, whether by itself, its directors, servants, agents or otherwise engaging in unfair practices under the CPFTA or doing or saying anything, or omitting to do or say anything, if as a result a consumer might reasonably be deceived or misled into believing that the purchase price and/or COE is/are fixed or guaranteed.

## Play Fair or Be Prepared to Pay

Introduced in 2004, the CPFTA was enacted to provide consumers against unfair practices and to give consumers additional rights in respect of goods that do not conform to contract. The CPFTA stipulates the following as instances of unfair practices:

- To do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- To make a false claim; or
- To take advantage of a consumer if the supplier knows or ought to reasonably now that the consumer is not in a position to protect his own interests or is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction.

The above instances are not exhaustive and the Second Schedule of the CPFTA provides twenty-four specific instances that would constitute unfair practices. Consequences of breaching the CPFTA includes being subject to a declaration or injunction application taken out by the CCCS against the errant business. If granted, the courts can declare that the practice engaged in by the business (i.e. the supplier) is an unfair practice and an injunction is made to restrain the business from engaging in such unfair practice. Additionally, the courts can, when issuing such declaration or injunction make orders for the business to notify its customers in writing of the declaration or injunction that is in force against it and obtain the customers' written acknowledgment of the written notice. The court can also order that a statement that a court issued declaration or injunction has been issued against the business to be published on every invoice or receipt issued to a consumer. These are, without doubt, very catastrophic consequences for the business' market reputation.

(Background: Pursuant to Section 9 of the CPFTA)

## Playing Fair

In its draft *Guidelines on Price Transparency*, the CCCS has outlined several actions that will help improve price transparency. These includes:

- **Comprehensive Headline Pricing:** Businesses should ensure that any unavoidable or mandatory fees or charges are included in the total headline price or displayed prominently at the outset so that consumers can make informed decisions and are notified of all such fees and charges upfront.
- **Adopt Opt-In Approach for Optional Add-ons:** Add-ons should operate on an opt-in basis (i.e. not pre-ticked) and where pre-ticked boxes are used, businesses should disclose their qualifiers, terms and conditions upfront.
- **Using Genuine Price References:** Businesses should, when making price comparisons, use previous prices that has been offered on a regular basis or for a reasonable period. Here, businesses should also not raise prices before the discount period to create the impression of a greater price benefit when the discounts are eventually offered.
- **State Terms Clearly:** All terms and conditions including the right of cancellation, the right of refund (including the specified period for refund), trial periods, etc. should be displayed upfront and prominently.

(Background: The Draft CCCS Guidelines on Price Transparency was released on 30 September 2019 and is presently undergoing a public consultation phase.)

It should be noted that the above is not an exhaustive list of action items that can help improve price transparency. Similarly, other types of misleading pricing strategies that are not flagged out by the CCCS are not to be considered legal or permitted. Admittedly, these action items are not unduly onerous or difficult to observe and businesses ought to carefully consider their commercial and pricing strategies and steer clear of conduct that may be ultimately flagged as an unfair or anti-competitive practice. Businesses should seek legal advice when in doubt if a commercial or pricing practice infringes the CPFTA and/or the CA.

## Conclusion

All said, declarations and injunctions alone are not the most punitive consequences for being caught out for engaging in unfair or deceptive practices as against consumers. Any reputable business worth its weight would fear the loss of one thing above all else – it's hard earned market reputation. It therefore pays to play fair and all the more imperative for businesses to take heed of the practices that have been flagged out by the CCCS and take a fresh look at their selling and pricing practices. The new sheriff has, after all, only just started its rounds.

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# Impact on the Taiwan Branch of a Foreign Company from the 2018 Amendment to the Company Act

10/29/2019

Ken-Ying Teng, Gary Chen

The 2018 amendment to the Company Act in Taiwan (the "**2018 Amendment**") does not significantly affect the establishment, operation or cessation of a foreign company, since most of the amendments relevant to foreign companies are changes to article numbers, wording and referred articles. However, whether the interpretation issued by the Ministry of Economic Affairs (**MOEA**) on May 28, 2004 (Jing-Shang-Zi No. 09302079890; "**2004 Interpretation**") (i.e., for the foreign company's convenience of continuously operation in Taiwan, the recognized foreign company may apply for change of the recognition and change of the registered name of its Taiwan branch to generally assign a part of its business that can be separated from others, including the assets, liabilities and operation of the Taiwan branch, to another foreign company) still applies after the 2018 Amendment is an issue that is worth discussing.

For the convenience of discussion, the following scenario is assumed.

Alpha Company is a foreign company registered in the US and is recognized by the MOEA in accordance with the Company Act before the 2018 Amendment. It has established a Taiwan branch named Alpha Company, Taiwan Branch. A few years later, for some reasons, the business (including the assets, liabilities and operation) of Alpha Company, Taiwan Branch is to be generally assigned to Beta Company, a Japanese corporation. Beta Company is neither recognized in Taiwan, nor has a branch in Taiwan.

## 1. Before the 2018 Amendment (Recognition was Required for a Foreign Company)

### (1) Before the publication of the 2004 Interpretation

While Beta Company must apply for recognition and for the establishment of a Taiwan Branch before its general assumption of the assets, liabilities and operation of Alpha Company, Taiwan Branch. Alpha Company must apply for the cancellation of its recognition and its Taiwan branch's registration. In such a situation, the different VAT (GUI) numbers between Beta Company, Taiwan Branch and Alpha Company, Taiwan Branch may result in inconvenience in the operation of Beta Company, Taiwan Branch after the business assignment. In the worst case scenario, the cessation of operation of the Taiwan branch may occur.

(2) After the publication of the 2004 Interpretation

Beta Company only needs to apply for change of Alpha Company's recognized name and the Taiwan branch's registered name. After receiving approval from the authorities, "Alpha Company" and "Alpha Company, Taiwan Branch" will become "Beta Company" and "Beta Company, Taiwan Branch," respectively, and Beta Company, Taiwan Branch will assume the assets, liabilities and operation of Alpha Company, Taiwan Branch. In addition, Beta Company and its branch will be able to assume the VAT (GUI) numbers of "Alpha Company" and "Alpha Company, Taiwan Branch," which will not affect the operation of the branch.

2. After the 2018 Amendment (No Recognition is Required for a Foreign Company)

(1) The 2004 Interpretation may not apply

Since the word "recognition" is used several times in the 2004 Interpretation, and foreign companies need not be recognized after the 2018 Amendment, it seems that the 2004 Interpretation may not apply after the 2018 Amendment. In such case, the two foreign companies can no longer use the aforesaid method, i.e., apply for change of the branch's registered name to generally assign the assets, liabilities and operation of the Taiwan branch, which may result in the cessation of the operation of the branch.

(2) The 2004 Interpretation may still apply

During our discussion with the MOEA, the MOEA indicated that the 2004 Interpretation may still apply even though foreign companies need not be recognized. Therefore, Beta Company needs to apply for the change of the registered name from "Alpha Company" to "Beta Company" and change the registered name of the branch from "Alpha Company, Taiwan Branch" to "Beta Company, Taiwan Branch."



## **DOJ Forms New Criminal Antitrust “Strike Force” Focused on Investigating Price Fixing and Bid Rigging For Government Contracts**

7 November 2019

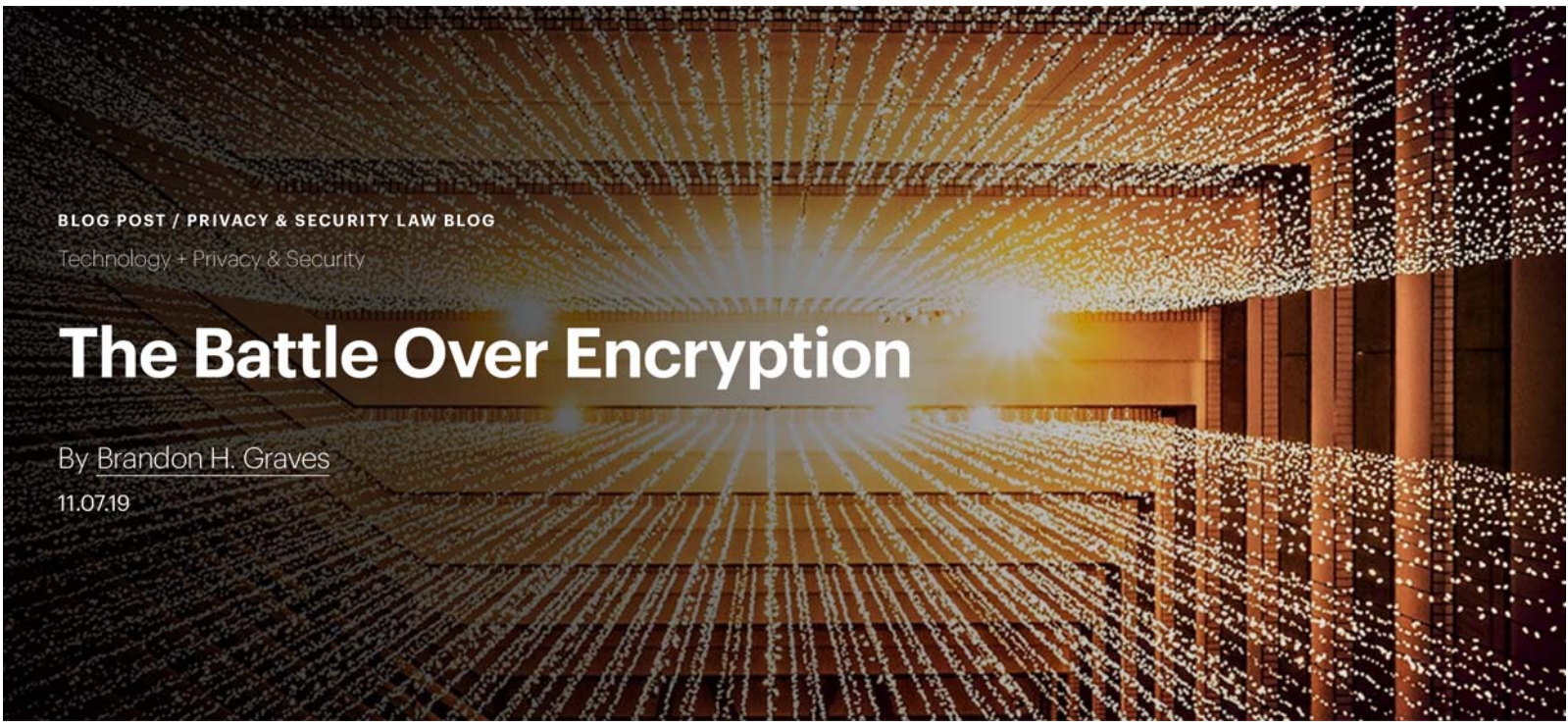
On November 5, 2019, the U.S. Department of Justice (“DOJ”) announced the creation of a new “strike force” designed to combat criminal antitrust violations in the government procurement process. The newly-formed Procurement Collusion Strike Force (“PCSF”) will include prosecutors from DOJ’s Antitrust Division and 13 U.S. Attorneys’ Offices, as well as investigators from various partner agencies such as the Federal Bureau of Investigation, the Department of Defense Office of Inspector General, and the U.S. Postal Service Office of Inspector General.

At a press conference announcing the formation of the PCSF, Antitrust Division head Makan Delrahim said the strike force will train procurement officials to prevent and identify collusion and other crimes that may occur in the process of awarding government contracts and grants. It will also look for ways to identify potentially collusive conduct using data analytics programs and government procurement data.

In recent years, DOJ has become increasingly focused on collusion in public procurement. In 2018, Delrahim announced that DOJ would “investigate aggressively and prosecute without hesitation companies who cheat the United States government and the American taxpayer.” Delrahim also said DOJ would exercise its authority under Section 4A of the Clayton Act to seek treble damages in parallel civil actions when the government is harmed by an antitrust violation. In the last two years, at least nine individuals have been indicted as a result of investigations into bid rigging related to government procurement activities. Similarly, companies have paid over \$150 million in criminal fines and reached separate civil settlements with the DOJ totaling over \$200 million.

This news underscores the need for clients that do business with the federal government to ensure their compliance and training efforts are not only up-to-date, but also effective. This is truly an area where an ounce of prevention is much better than what could be pounds of cure. Corporate fines for criminal violations of the antitrust laws routinely top tens of millions of dollars, and are often in the hundreds of millions. A robust compliance program is critical to ward off the increased focus that will follow this announcement and will help protect the company against actions by rogue employees. Earlier this year, the Antitrust Division announced for the first time that it would take the existence of a defendant’s compliance program under consideration when prosecuting criminal antitrust violations. This marks a sea change in the Antitrust Division’s approach and more closely aligns its treatment of antitrust compliance programs with those in other DOJ divisions. We strongly recommend clients revisit their compliance programs now to take advantage of this change before the coming heavier scrutiny from the PCSF.

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BLOG POST / PRIVACY & SECURITY LAW BLOG

Technology + Privacy & Security

# The Battle Over Encryption

By [Brandon H. Graves](#)

11.07.19

Since encryption was developed, governments have sought to break it. Initially, these efforts were focused on breaking encryption used by other governments, as sophisticated encryption was beyond the capability of most private citizens.

Today, however, practically unbreakable encryption is available to almost everyone, in devices we carry around in our pockets. Wide availability of strong encryption has been a boon to consumers, whose digital data enjoys greater protection today as a result.

It creates problems for law enforcement, however, which may be unable to access information on phones or computers that contain evidence essential to their investigation of criminal behavior. Governments, on behalf of both law enforcement and national security entities, have asked companies to create “backdoors” in encryption algorithms to enable government access to protected information in time of need.

Tech companies, however, have uniformly resisted these requests, arguing that backdoors could undermine the very protection that consumers have come to expect. For this reason, the companies and privacy advocates have long resisted efforts by government to mandate backdoors.

Government calls for encryption backdoors have recently resumed, due in part to the extension of end-to-end encryption to more products and the pending [U.S.-U.K. Bilateral Data Access Agreement](#), the [first Executive Agreement under the CLOUD Act](#).

## Why End-to-End Encryption?

Companies can use two methods to encrypt consumers’ messages.

- The first, more traditional method is to encrypt the message from the sender to the company, decrypt the message for processing, and re-encrypt for transmission to the recipient. This, of course, permits the company to see the message, and even store it on central servers for later retrieval.

- The second method, end-to-end encryption, encrypts the message on the sender's device, and only decrypts it at its destination, on the receiver's device. If the message is stored at the company at all, it is stored in an encrypted format that the company cannot decrypt.

End-to-end encryption offers a number of benefits to consumers, and companies have started highlighting end-to-end encryption as a selling point in their offerings. Properly implemented, end-to-end encryption prevents companies from viewing customer data. This means that the companies can't use the customers' messages to build profiles, target advertising, or re-identify de-identified information.

Indeed, end-to-end encryption has potential to mitigate or eliminate many end-user privacy concerns.

End-to-end encryption also helps consumers prevent third parties, including governments, from accessing private conversations. This has been touted as critical for activists under repressive regimes who are seeking freedoms that many take for granted. But it can also assist criminals in avoiding law enforcement.

### Why Can't Companies Give Law Enforcement the Keys?

Many people have asked why companies cannot develop backdoors to their encryption solutions and provide access exclusively to law enforcement, thereby providing the privacy benefits while eliminating the costs to law enforcement. For many reasons, this is not likely to work.

- **First**, no encryption scheme is perfect. In theory, we have developed encryption that is so strong that it cannot be broken until the heat death of the universe (or the advent of quantum computing).

Unfortunately, in practice we often find out that the implementation of the encryption is flawed. Encryption algorithms are difficult to implement.

To implement an algorithm that permits a reliable, secure backdoor is infinitely harder. So it is likely that the encryption itself will have exploitable flaws.

- **Second**, in practice the process of implementing the backdoor will itself be likely flawed. Threat actors often find a way to exploit any backdoor reliable enough for law enforcement use. These backdoors will be high-value targets for criminals, who could either exploit the backdoors or sell them to other criminals.

For example, some years ago, the cell phones of many Greek government officials were tapped by means of unauthorized use of the wiretapping capabilities that, by law, are built into traditional communications networks.

- **Third**, it will be difficult for companies to resist demands for the keys from authoritarian regimes once the backdoors are built. Because these regimes exercise governmental authority in their respective countries, they have the legal power to demand that companies wishing to do business in their country turn over the keys to any backdoor that has been developed.

And, of course, the broader the distribution of these keys, the more likely they are to fall into the wrong hands, subjecting communications to unauthorized decryption.

- **Finally**, some privacy advocates are concerned that U.S. law enforcement will use data sharing agreements to get around the Fourth Amendment. Backdoors into consumer encryption will only facilitate such access.

### What Should We Do?

Those who call for backdoors, both for communications and the devices used to communicate, often claim dire

consequences will ensue without them, but provide little factual support for their claims. Although it is possible for criminals to use encrypted communications to elude law enforcement, it is far from clear how often encryption actually prevents law enforcement from solving cases.

At least one law enforcement official has claimed to have a number of [encrypted devices](#) sitting useless in evidence, but fails to state how many prosecutions were thwarted because of encryption. The most [famous example](#) of an encrypted device that posed problems for law enforcement was resolved without the company at issue having to implement a backdoor (the FBI paid a “mysterious third party” who unlocked the device). And the FBI never disclosed what benefit it got from accessing the device after it bypassed the encryption.

Law enforcement access to encrypted information is not a simple problem to solve. Encryption backdoors could potentially have an adverse impact on consumers’ data security. Therefore, all potentially affected parties should weigh in on whether the potential cost is worth the purported benefits.

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# PHMSA proposes new rule authorizing the transport of LNG by rail

7 November 2019

The U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (NPRM) to authorize the transport of liquefied natural gas (LNG) by railroad tank car on 18 October 2019. The [proposed rule](#) would authorize the movement of LNG by rail in DOT-113 specification tank cars, which are currently used to transport other cryogenic liquids, including liquid hydrogen and ethylene. Although PHMSA's hazardous materials regulations (HMR) permit the transport of LNG by highway and barge, the HMR have never authorized transport of LNG by rail tank car. Comments on the NPRM are due on or before 23 December 2019.

Citing LNG's expanding role as a critical domestic and international energy resource, PHMSA proposes to permit the transport of LNG by rail tank car to meet the demand for greater flexibility in the modes of transportation available to transport LNG. The proposed rule would facilitate harmonization across the North American rail network. In Canada, LNG is already authorized for transport in DOT-113 equivalent specification rail tank cars (TC-113C120W).

## Packaging requirements

In the NPRM, PHMSA proposes the following packaging controls:

- Authorized transport of LNG by rail in DOT-113C120W tank cars. DOT-113 tank cars are vacuum-insulated and consist of an inner stainless steel tank enclosed with an outer carbon steel jacket shell specifically designed for the transportation of refrigerated liquefied gases.
- Amend the Pressure Control Valve Setting or Relief Valve Setting Table in 49 Code of Federal Regulations § 173.319(d)(2) by adding a column for methane, thus identifying the pressure relief valve requirements for DOT-113s transporting methane.

## Operational controls

PHMSA is not proposing new operational controls for transport of LNG by rail tank car. However, PHMSA notes the operational controls (e.g., speed restrictions) set forth in the Association of American Railroads (AAR) Circular OT-55 would apply to the bulk transport of LNG by rail in a train composed of 20 car loads or intermodal portable tank loads in which LNG is present along with any combination of other hazardous materials. OT-55 is a detailed protocol establishing railroad operating practices for the transport of hazardous materials that has been voluntarily adopted by the industry.

**Safety case for LNG-by-rail**

DOT-113 specification tank cars, including DOT-113C120W tank cars, include a stainless steel inner vessel and a thick steel outer vessel (or jacket); there is an insulated vacuum space between the two vessels to minimize the rate of heat transfer from the atmosphere to the refrigerated liquid during transport; and the cars include pressure relief devices, vents, and valves to prevent or minimize overpressure releases.

**Additional requests for information**

In addition to commenting on the specific packaging requirements listed above, the NPRM asks the public to comment on the following topics that are within the scope of the NPRM:

- Whether the authorized transport of LNG by rail has the potential to reduce regulatory burdens, enhance domestic energy production, and impact safety.
- Whether there is a reasonable basis for limiting the length of a train transporting LNG tank cars and what length is appropriate.
- Whether there is a reasonable basis for limiting the train configuration, such as by limiting the number of LNG tank cars in a train consist or by restricting where LNG tank cars may be placed within the train.
- Whether PHMSA should consider any additional operational controls and whether such controls are justified by data on the safety or economic impacts.

Comments on the LNG-by-rail NPRM are due on or before December 23, 2019.

**Additional background on LNG-by-rail**

On 17 January 2017, AAR submitted a petition for rule-making to PHMSA (P-1697) requesting revisions to the HMR that would permit the transportation of LNG by rail in DOT-113 tank cars. This NPRM is responsive to P-1697 and indicates which aspects of the petition the agency is incorporating into this rule-making. The NPRM also is the result of President Trump's April 2019 Executive Order on Promoting Energy Infrastructure and Economic Growth, wherein the president ordered DOT to initiate rule-making within 100 days of the executive order and to publish a final rule within 13 months (i.e., on or before 10 May 2020). Also pending before PHMSA in a separate docket, PHMSA-2019-0100, is an existing request for a special permit that seeks to authorize shipments of LNG in DOT specification 113C120W tank cars subject to certain operational conditions that would be used to transport LNG to ports or the applicant's domestic customers. Although the comment period closed on 7 August 2019, PHMSA has not yet made a final determination on this special permit application. Finally, on 12 September 2019, U.S. House Transportation and Infrastructure (T&I) Committee Chairman Peter DeFazio, D-Ore., introduced legislation (H.R. 4306) that would require a comprehensive review into the transport LNG by rail tank cars. As of publication of this alert, the bill is currently under review by the House T&I committee.

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