PACIFIC RIM ADVISORY COUNCIL

Pacific Rim Advisory Council

JULY 2022 e-Bulletin

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CONFERENCES & EVENTS

PRAC Let's Talk!

Virtual meeting - August 2022
International Conference - Mexico City Spring, 2023 Hosted by Santamarina y Steta
International Conference - New Delhi Hosted by KOCHHAR & Co. TBA
International Conference - Paris Hosted by GIDE TBA
Visit www.prac.org/events

Member Events

July 29, 2022 ARIAS Webinar: ESG As a New Perspective in the Due Diligence Standard Info: https://register.gotowebinar.com/register/6630594300255502349?source=LexSocial1

July 22, 2022: SKRINE Webinar: Impact of the latest Federal Court decision on the defence of parallel importation in claims for trademark infringement & passing off. Info: https://www.skrine.com/news-events/upcoming

Coronavirus
COVID-19

Visit us online for the latest up-to-date, country specific information
www.prac.org/member_publications.php

MEMBER DEALS MAKING NEWS

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►BENNETT JONES | Assists Royal Helium LTD with Agreement to Effect Arm's Length Acquisition of Imperiod Helium Corp through Plan of Arrangement
►BRIGARD URRUTIA | Assists Emergent Cold with Colombia storage facilities acquisition in the region
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PRAC TOOLS TO USE
COVID-19 SITE FOR ALL UPDATES

PRAC CONTACTS MEMBER DIRECTORY EVENTS

ARIAS CONTINUES GROWTH ACROSS CENTRAL AMERICA

	July, 2022 Our team in Nicaragua continues to grow! We welcome Ashley Amilkar Tórrez, who joins as an Associate specializing in the Compliance area.
	June, 2022 For us it is important to promote our young talent, so we welcome Juan Carlos Batres as a new associate in Guatemala, a young professional committed to serving our clients.
	June, 2022 We continue to grow! With enthusiasm we announce the incorporation of Estaymer Mendoza, who is part of our legal team in Guatemala, as Associate.
	June, 2022 We continue to grow! With enthusiasm we announce the incorporation of Douglas Vásquez, who is be part of our legal team in Nicaragua as Associate.

BENNETT JONES' NEW YORK OFFICE MOVES TO ICONIC ROCKEFELLER PLAZA

03 June, 2022: Bennett Jones' New York office has moved to the iconic Rockefeller Plaza in Midtown Manhattan. The move will build on the firm's long history of supporting U.S. and international clients, and their legal and financial advisors, on commercial transactions and investments in Canada.

The New York office practises Canadian law only and continues to be led by Gordon Cameron, Principal, Head of New York Office. With his deep ties to the New York business and legal community, Gordon's practice is primarily focused in the areas of Canadian corporate and securities law, with a particular emphasis on cross-border private equity.

Over the years, Bennett Jones (US) has expanded its presence in key U.S. markets in order to provide U.S. clients with quick and seamless access to our legal services north of the Canadian border. The team includes:

Melanie Aitken, Managing Principal of Bennett Jones (US) LLP: Melanie served as Canada's Competition Commissioner, in charge of the Canadian Competition Bureau from 2009 to 2012. Located in Washington, DC she is the co-chair of the firm's Global Antitrust and Competition Law group. Her practice is also exclusively in Canadian law.

Brian Rose, Senior Counsel: Brian leads a number of the firm's global business activities, including initiatives to support international clients operating and investing in Canada. He is also based in New York.

Bennett Jones' new address in New York is:

45 Rockefeller Plaza, Suite 2606
New York, NY 10111
United States

For additional information visit www.bennettjones.com

PACIFIC RIM ADVISORY COUNCIL

PRAC Let's Talk!

Join us in 2022 for our monthly live one-hour virtual meetings

Registration required

Visit www.prac.org for details

PRAC Let's Talk! events are open to PRAC Member Firms only

CAREY APPOINTS TWO NEW DIRECTORS

José Ignacio Mercado
Counsel
https://www.carey.cl/en/resume/jose-ignacio-mercado/

Jose Ignacio Mercado is part of the Data Protection; Telecommunications, Media and Technology; Pharmaceutical and Biotechnology; and Licensing, Franchising and Distribution groups. He graduated from University of Chile's Law School and focuses his practice on matters related to privacy, data protection and cybersecurity, as well as intellectual property, including preparation, negotiation and implementation of technology transfer agreements such as licensing agreements, franchising agreements, distribution agreements, etc. He also has experience assisting technology companies with the preparation and implementation of commercial scaling-up and go-to-market actions, both in Chile and abroad. His practice also includes advise on regulation in the pharmaceutical, cosmetic, food, and medical devices industries, as well as on topics regarding marketing and promotion of these products.

Jorge Fuentes
Director – IP/IT
https://www.carey.cl/en/resume/jorge-fuentes/

Jorge Fuentes is part of the Intellectual Property group and specializes in advising companies on the design and implementation of transformative innovation strategies based on the use of intellectual property. He also provides expert advice on the processes of obtaining patents before the Chilean Institute of Industrial Property (NAP) and several other authorities in the field around the world. He has been a teacher and lecturer in multiple national and international courses and conferences. He is a Civil Engineer from Universidad de Chile, has a Master's degree in Business Management and Administration from the same university. He is currently a Ph.D. student at Pontificia Universidad Catolica de Chile, focusing on his research on corporate strategies for innovation, entrepreneurship and intellectual property.

For additional information visit www.carey.cl

PACIFIC RIM ADVISORY COUNCIL

Coronavirus
COVID-19

The coronavirus (COVID-19) health pandemic continues to impact countries around the globe, presenting a large scale public health crisis.

Visit us online for the latest up-to-date, country specific information on potentially relevant legal questions and issues relating to the coronavirus pandemic.

Visit us online for full coverage
http://www.prac.org/member_publications.php

DAVIS WRIGHT TREMAINE COMPLETES COMBINATION WITH MCGONIGLE P.C., ESTABLISHES 70+ LAWYER FINANCIAL SERVICES TEAM

SEATTLE, 01 JULY 2022: Davis Wright Tremaine LLP has completed its combination with McGonigle P.C., establishing a leading, full-service, financial services practice team encompassing more than 70 attorneys across a half-dozen offices.

"To go from partnership vote to close in just three weeks is reflective of the extraordinary strategic fit of our combined platforms," said Bradford Hardin, co-chair of Davis Wright Tremaine's financial services group. "We're thrilled to get started bringing our clients the benefits of this team's deep and integrated expertise."

The combined financial services team brings a strong record of excellence, which has been widely noted by the country's leading lawyer directories. Recent recognition includes being named:

- One of the top 6 firms in Financial Services Regulation: Broker Dealer - Compliance & Enforcement (Chambers);
- One of the top 13 firms in Financial Services Regulation: Banking - Compliance (Chambers);
- One of the top 50 firms in fintech (Chambers);
- 2021 and 2022 "Law Firm of the Year" in Securities Regulation – U.S. News and Best Lawyers
- One of the top 30 firms for Financial Services Regulation – Legal 500.

"From consumer and bank regulatory work to commodities and derivatives to digital assets and blockchain, we look forward to handling our clients' most consequential financial services matters," said practice co-chair Elizabeth Lan Davis. "This team is characterized by exceptional responsiveness and enthusiasm, practical solutions, and deep industry insight and I'm tremendously excited about the future we have together."

For additional information visit www.dwt.com

GOODSILL WELCOMES ADDITION TO CAPTIVE INSURANCE TEAM

HONOLULU, 22 June 2022: Tate L. Castillo has joined Goodsill Anderson Quinn & Stifel as an Associate focusing on corporate and insurance regulatory law, with emphasis in captive insurance.

During law school, Tate clerked for the Honorable Lawrence M. Reifurth at the Hawaii State Intermediate Court of Appeals, externed in the Legal Department of the Hawaiian Electric Company (HECO), clerked for a law firm in downtown Honolulu, and interned with the In-House Counsel at Elemental Excelerator – a Hawaii-based climate technology and innovation startup accelerator. Tate is a graduate of the University of Hawaii, William S. Richardson School of Law, Class of 2021.

Tate L. Castillo

Tate will focus his work with clients of the Firm's Captive Insurance and Insurance Regulatory Practice Group, where he will assist on corporate governance issues as well as various operational and transactional business matters for the practice group's clients, whose parent companies include privately-held entities and publicly-traded Fortune 500 and Fortune Global 500 companies. Tate's practice will also focus on practical, regulatory, and strategic risk management concerns regarding the formation and operation of LLCs, Corporations, Nonprofits, and other entity structures.

Tate was born and raised in Hawaii and is a graduate of Kamehameha Schools – Kapālama. He is also a small-business owner and startup founder. Tate is passionate about sustainability, innovation, and supporting the local community of Hawaii. In his free time, Tate likes to relax at Hoomaluhia Botanical Gardens in his hometown of Kāneohe, write poetry in Native Hawaiian, play guitar, and spend time with friends and family. "Tate will be a valuable addition to our team" said Gerald Yoshida, Partner.

Goodsill Anderson Quinn & Stifel LLP, has over 50 attorneys representing local, national and international clients. Goodsill lawyers handle a wide range of business and legal matters, extending personalized legal services with cutting-edge resources.

For additional information visit www.goodsill.com

HOGAN LOVELLS CONTINUES TO GROW CORPORATE & FINANCE CAPABILITIES IN NEW YORK WITH TAX LAWYER

NEW YORK, 05 July 2022 – Global law firm Hogan Lovells is pleased to announce the arrival of tax lawyer Jessica Millett as a partner in the firm's Corporate & Finance practice group in New York. She is the sixth Corporate & Finance partner to join Hogan Lovells' New York office this year. Millett joins from Duval & Stachenfeld, a boutique law firm, where she served as chair of that firm's tax practice.

Corporate & Finance Practice Group Leader James Doyle commented: "We have been significantly investing in our Corporate & Finance capabilities over the past two years, particularly in New York. Jessica will support the development of our growing transactional practice in New York with Jessica focussing on tax advice in relation to joint ventures and partnerships, real estate-related matters, and funds."

Millett focuses her practice on U.S. tax issues that arise in complex real estate transactions, notably real estate private equity investments, Qualified Opportunity Fund structures, and cross-border investments. She regularly advises clients on tax structuring and documentation for real estate acquisitions, joint ventures, restructurings and refinancing arrangements, including inbound and outbound investments, and structures involving REITs.

Her practice also includes representing sponsors and managers of, and institutional investors in, private investment funds including real estate, distressed debt, and hedge funds, and advising on tax-efficient structures for cross-border securities offerings (debt and equity) and private equity transactions. Millett has experience advising financial institutions on a variety of tax and compliance issues including U.S. withholding and information reporting rules, and tax treaty planning.

Siobhan Rausch, who serves as co-Practice Area Leader for Hogan Lovells' Tax practice, remarked: "Jessica brings extensive experience in the very complex tax rules applicable to partnerships and joint ventures, which are the vehicle of choice for real estate investments and transactions, as well as the core structure for investment funds and major corporate transactions. She will be dually adept at servicing stand-alone tax clients and providing tax advice and structuring support on corporate and finance matters."

Millett added: "I am delighted to be joining Hogan Lovells. I was attracted by the firm's predominant REIT and real estate practice, and I am eager to bring my extensive experience with Qualified Opportunity Fund structures to Hogan Lovells to grow that practice on a larger platform. Additionally, the firm has a national and global reach that will allow me to expand my practice and provide me with the opportunity to support a greater number and variety of transactions."

Millett is chair of the Subcommittee for Foreign Investors of the ABA Tax Section Real Estate Committee.

Millett earned her law degree from Duke University School of Law and her B.A. from Johns Hopkins. Following graduation from Johns Hopkins, she spent two years in the Peace Corps as an education volunteer in Burkina Faso, West Africa.

For additional information visit www.hoganlovells.com

NAUTADUTILH STRENGTHENS CORPORATE M&A TEAM

AMSTERDAM, 07 June 2022: Willem Bijveld has joined NautaDutilh's Corporate M&A practice as counsel as of 1 June 2022. Willem has 10 years' experience representing corporate clients and financial sponsors in domestic and cross-border private and public M&A transactions. He has extensive experience in bilateral and auction sale processes, take-private transactions, hostile takeovers and shareholder activism matters. His practice also includes advising clients on fiduciary duties of boards, equity investments, stock market disclosures rules, and takeover defences.

"We are very pleased to have Willem join NautaDutilh," says managing partner Lieke van der Velden. "His arrival fits in perfectly with our ambition of offering our international and national clients the practical and business-oriented advice they need when it matters most. With his knowledge of and experience in high-end private and public M&A transactions, including bet-the-company work, Willem further strengthens our Corporate M&A practice."

Willem Bijveld: "I'm thrilled to join NautaDutilh and its stellar team of lawyers. NautaDutilh's Corporate M&A practice has a strong reputation in the market for handling large, complex transactions and it is a privilege to join the ranks. It will be a pleasure to work together with the team and other colleagues across the firm, in particular the Capital Markets team, to deliver high-quality, practical solutions for our clients' business needs."

Jaap Stoop, who heads the Corporate M&A practice at NautaDutilh: "Willem's experience in both private and public M&A work, including advising companies on their interactions with hostile bidders and activist shareholders, is a valuable reinforcement for our Corporate M&A team and of course for NautaDutilh as a whole. As a firm, we have a strong position in regulated markets, and Willem's arrival will enable us to further build upon that. We are happy that Willem is part of the team and look forward to continue to make a difference for our clients."

For additional information visit www.nautadutilh.com

ALLENDE BREA

ASSISTS SOUTH AFRICAN MINER GOLD FIELDS ACQUIRE CANADIAN COUNTERPART YAMANA GOLD FOR US$5.7 BILLION

Allende & Brea assisted South African miner Gold Fields acquire Canadian counterpart Yamana Gold for US$5.7 billion in a deal that gives it assets across several jurisdictions in the region. Gold Fields has agreed to purchase all of Yamana's outstanding shares in the transaction, which marks the largest acquisition in Africa in almost a decade. The parties signed the deal on 31 May.

Also advising Gold Fields in local jurisdictions were Fasken Martineau DuMoulin LLP in Toronto, three Linklaters offices, Webber Wentzel (South Africa), Veirano Advogados (Brazil) and Larrain y Asociados (Chile).

Yamana relied on the Toronto offices of Cassels Brock & Blackwell LLP and Paul, Weiss, Rifkind, Wharton & Garrison LLP.

The all-stock merger will create a new Johannesburg-based company that will manage and operate 10 gold and other precious metal mines spread across the globe, including sites in Argentina, Brazil, Chile and Mexico, where Yamana currently operates.

Yamana operates silver, gold and copper mines in several Latin American countries. The Toronto-headquartered company, which produced 884,793 ounces of gold and 9.2 million ounces of silver in 2021, also owns 50% of Canadian Malartic, the North American country's biggest gold mine.

Counsel to Gold Fields— Allende & Brea Partner Florencia Heredia and associates Agostina Martinez and Valentina Surraco Urtubey in Buenos Aires.

For additional information visit www.allendebrea.com

BENNETT JONES

ASSISTS ROYAL HELIUM LTD WITH AGREEMENT TO EFFECT ARM'S LENGTH ACQUISITION OF IMPERIOD HELIUM CORP THROUGH PLAN OF ARRANGEMENT

CALGARY, 02 May 2022: Royal Helium Ltd. and Imperial Helium Corp. announced they have entered into an agreement to effect the arm's length acquisition of Imperial by Royal through a plan of arrangement. Bennett Jones is acting for Royal Helium.

Royal controls over 1,000,000 acres of prospective helium land in southwestern and south-east Saskatchewan. All of Royals' lands are in close vicinity to highways, roads, cities and importantly, close to existing oil and gas infrastructure, with a significant portion of its land in close proximity to existing helium producing locations.

Imperial Helium is focused on the exploration and development of helium assets in North America, initially through the anticipated commercialization of its Steveville, Alberta helium discovery.

More information on the arrangement, its strategic highlights and benefits are available here: https://royalheliumltd.com/news/royal-helium-ltd-enters-into-agreement-to-acquire-imperial-helium-corp/

For additional information visit www.bennettjones.com

BRIGARD URRUTIA

ASSISTS EMERGENT COLD WITH COLOMBIA STORAGE FACILITIES ACQUISITION IN THE REGION

BOGOTA, May 2022: Brigard Urrutia assisted Emergent Cold with its acquisition of cold storage facilities in Colombia, expanding its presence across the region with the purchase of Frigorífico Metropolitano (Frigometro) for an undisclosed amount. Seller relied on Colombian firm CH Mac Abogados.

In a separate deal, Ferrere (Uruguay) helped Emergent purchase Polo Logístico de Frío in Uruguay.

The deal closed on 29 April for a confidential amount.

With the acquisition of Frigometro, Emergent entered Colombia for the first time. Following the two latest deals, it now operates 13 cold storage facilities across a total of seven countries.

For the acquisition of Frigorífico Metropolitano - Counsel to Emergent Cold Latin America / Brigard Urrutia Partners Jaime Robledo and César Rodríguez, and associates Paola Ordoñez, Pablo Brando, Hui Min Zheng, Sebastian Ortegón, Antonio Garlatti, Juanita Bermudez and Laura Castellanos in Bogotá

For additional information visit www.bu.com.co

CAREY

ASSISTS CHILE'S CORPGROUP IN CHAPTER 11 PLAN APPROVAL

SANTIAGO, 30 June 2022: Simpson Thacher & Bartlett LLP in New York and Washington, DC and Carey in Santiago have helped Chilean financial holding company CorpGroup obtain approval for its Chapter 11 plan in New York.

The plan was approved on 15 June and subsequently confirmed by the US bankruptcy court for the district of Delaware after an evidentiary hearing.

CorpGroup will restructure nearly US$2 billion worth of debt in the Chapter 11 process, including US$500 million worth of bonds on which the company defaulted in 2020.

Counsel to CorpGroup Carey Partners Ricardo Reveco and Salvador Valdés, and associates Roberto Villaseca, Francisco Torm and Matías Garcés in Santiago

For additional information visit www.carey.cl

GIDE

COUNSEL TO INSTITUT MERIEUX ON SIGNING A LONG-TERM PARTNERSHIP WITH EXOR

PARIS, 04 July 2022: Gide has advised Institut Mérieux, an independent holding company owned by the Mérieux family and specialised in global health, on signing a long-term partnership with Exor N.V., a diversified holding owned by the Agnelli family.

Under the agreement, Exor will acquire, by way of a reserved capital increase, a 10% shareholding in Institut Mérieux, representing an investment of EUR 833 million.

The Gide team was made up of partner **Olivier Diaz** and associate **Corentin Charlès** on M&A/Corporate aspects.

For additional information visit www.gide.com

HAN KUN

ADVISES LI AUTO INC IN SALE OF DEPOSITARY SHARES THROUGH ATM EQUITY OFFERING PROGRAM IN US

BEIJING, 08 July 2022: Han Kun has advised and acted as the PRC counsel to Li Auto Inc., a company maintaining dual-primary listings in the U.S. and Hong Kong, on its sale of up to an aggregate of US$2 billion of American depositary shares through an ATM (at-the-market) equity offering program in the US.

Li Auto Inc. is a leader in China's new energy vehicle market. The company designs, develops, manufactures, and sells premium smart electric vehicles, providing families with safe, convenient, and comfortable products and services.

For additional information visit www.hankunlaw.com

KOCHHAR & CO.

ADVISES TECH MAHINDRA ON ACQUISITION OF LODESTONE

NEW DELHI, 10 May 2022 - Kochhar & Co. were the Indian advisors for technology giant, Tech Mahindra ("Acquirer") on the acquisition of US based Infostar LLC (Lodestone), a digital engineering quality assurance provider, for a consideration of USD 105 Mn.

As per Tech Mahindra's statement, the acquisition will bolster Tech Mahindra's digital engineering capabilities to effectively utilize data strategy and address machine learning challenges. The strategic announcement will further enhance Tech Mahindra's capability to provide end -to-end product quality assurance across hardware, software, and data layers to strengthen the company's positioning as a leading digital transformation enabler in the engineering space.

The transaction was led by Managing Partner Mr. Rohit Kochhar and managed by Partner Ms. Sarika Raichur with the support of Senior Associates Mr. Devashish Jad and Mr. Sidhartha Jatar and Associate Mr. Aatman Shukla. Senior Partners, Mr. Shahid Khan, Mr. Vijay Ravi and Mr. Nishant Menon provided inputs on taxation, labour & employment and litigation and dispute resolution respectively.

Our role involved conducting legal due diligence, liaising with Acquirer's in house teams; rendering structure advice; drafting, reviewing, negotiating, and settling of all transaction documents and providing all related legal advice till closing of the transaction as well as providing closing and rendering post-closing and integration related advisory and support.

For additional information visit www.kochhar.com

NAUTADUTILH

ADVISES BAIN CAPITAL WITH THE ACQUISITION OF A MAJORITY STAKE IN HOUSE OF HR

BRUSSELS/AMSTERDAM, 14 June 2022: We assisted our long-standing client Bain Capital with its proposed acquisition of a 55% stake in leading services group House of HR. The existing shareholders of House of HR, Naxicap, founder Conny Vandendriessche and certain members of management, will hold the remaining equity. This transaction is the largest private equity deal in Belgium to date.

NautaDutilh acted as Dutch and Belgian counsel alongside the French and German teams of Latham & Watkins.

"We are excited to have been able to assist Bain Capital on this transaction together with the Latham & Watkins teams. It was a high-paced deal, for which the smooth cooperation between all parties was key. It was a pleasure to work together!" says Willianne van Zandwijk, who co-leads the NautaDutilh team together with Nicolas de Crombrugghe.

One of our goals as a firm is to continuously contribute to our clients' success. Bain Capital's investment will undoubtedly be an accelerator for the further growth of House of HR, and we are looking forward to working with everyone involved to get this transaction to a successful close," adds Nicolas de Crombrugghe.

About House of HR: House of HR, headquartered in Roeselare (Belgium), is a European leader in HR services, placing over 57,000 people each month across companies in multiple jurisdictions, including Belgium, the Netherlands, France and Germany. House of HR is also known for its market leading digital solutions, such as NOW-JOBS, a digital matching platform for students and flexworkers. The group consists of ten companies ("PowerHouses") that together represent more than 40 brands ("Boutiques").

About our team: NautaDutilh's Belgian and Dutch corporate team was led by corporate partners Nicolas de Crombrugghe and Willianne van Zandwijk , and further consisted of Olivier van Wouwe, Lauren de Brauwer, Naomi Asscheman, Fleur Terlouw and Maarten Schellingerhout.

The due diligence team consisted of Eline van Marle, Dineth de Graaf, Mariska Kamta, Leanne Meurs, Sanne Mesu, Elodie Smits, Ramon Pop, Susanne van Leeuwen, Arjan Koorevaar, Albert van der Kolk, Pieter de Jong, David den Blaauwen, Robert Woudenberg, Terrence Dom, Sarah Zadeh, Fleur Folmer, Martijn Vreuls, Huub Verschoor, Marlous Schrijvers, Jinne van Belle, Jaco Belder, Ishan Ahmad, Grace Nonneman, Lentle Nijs, Heloise Noiset, Alexandra Watrice, Lore Van Hoegaerden, Didier de Vliegher, Louise-Anne Bertin, Stanislas Cartier, Philippe François, Thierry Duquesne, Diane de Muelenaere, Florence Verhoestraete, Carmen Schellekens, Sigrid Heirbrant, Sien Vandezande, Camille de Munter, Sophie Jacmain and Zoë Ledent.

For additional information visit www.nautadutilh.com

SANTAMARINA

ADVISED INVEX CONTROLADORA DEBT ISSUANCE

MEXICO CITY, 08 July 2022—Invex Controladora, S.A.B. de C.V. carried out the issuance of long-term debt certificates in the amount of $2,000,000,000.00 (two thousand million Mexican pesos) under the dual program of short and long-term debt certificates to the amount of $5,500,000,000 (five thousand five hundred million Mexican pesos). Invex Casa de Bolsa, S.A. de C.V., Invex Grupo Financiero was the underwriter of the transaction.

Santamarina y Steta, with the support of the team led by Sergio Chagoya, Diego Ostos, and José Antonio Lopez, acted as legal counsel to the company during this process.

For additional information visit www.santamarinasteta.mx

SKRINE

ASSISTS NASDAQ LISTED INSULET ON NEW RM878 MILLION INSULIN PLANT

KUALA LUMPUR, 01 July 2022: Nasdaq-listed Insulet Corporation, a US-based innovative medical device company has selected Gelang Patah in Johor, Malaysia for its new manufacturing facility to produce its Omnipod® Insulin Management System.

The new manufacturing facility will include approximately 400,000 square feet of manufacturing space. Insulet plans to invest approximately RM800 million over five years and hire more than 500 full-time employees once the facility is operating at full capacity.

Insulet was assisted in the legal aspects of establishing their Malaysian operations by Partners of Skrine, Fariz Abdul Aziz, Jesy Ooi, Shannon Rajan, Jillian Chia, Richard Khoo, Selvamalar Alagaratnam, and supported by Senior Associates, Manshan Singh, Tan Wei Xian and Rachel Chiah, and Associates, Jeremiah Ch'ng, Raaasi Laarnia, Jemima Tang and Vanessa Ho.

Media coverage of the transaction can be accessed at:

https://www.theedgemarkets.com/article/nasdaqlisted-insulet-set-manufacturing-facility-johor-bahru

https://www.nst.com.my/business/2022/06/801689/us-based-insulet-picks-malaysia-new-us200mil-insulin-plant

https://www.businesstoday.com.my/2022/06/03/insulet-corp-investing-about-rm1-billion-for-an-insulin-plant-in-johor/

For additional information visit www.skrine.com

PRAC EVENTS
BULLETIN BOARD

Like millions around the globe, the COVID-19 pandemic has impacted our members and how we work.
Our industry follows others with a mix of restart and pause.
We meet in person where and when we can
while continuing to also meet and talk virtually face to face
Across the miles, oceans and regions
In varying places and at all hours of the day and night.
It isn't the same. We can all admit to that.
We pivot. We adapt.
What remains the same is our commitment to continue forming new bonds
and strengthening our long-standing ties with our friends and colleagues around the world.

Together, we will see it through.

PRAC Event Connect

As we begin to shift to in-person industry related events PRAC delegates can ***STAY CONNECTED!***
Let us know your plans to attend upcoming industry events and we will put you in touch
with other attending PRAC Delegates prior to event start
Contact Email: events@prac.org

PRAC Let's Talk!

Join us in 2022 for our live one-hour virtual meetings
PRAC - Let's Talk! events are open to PRAC Member Firms only
Register Email: events@prac.org

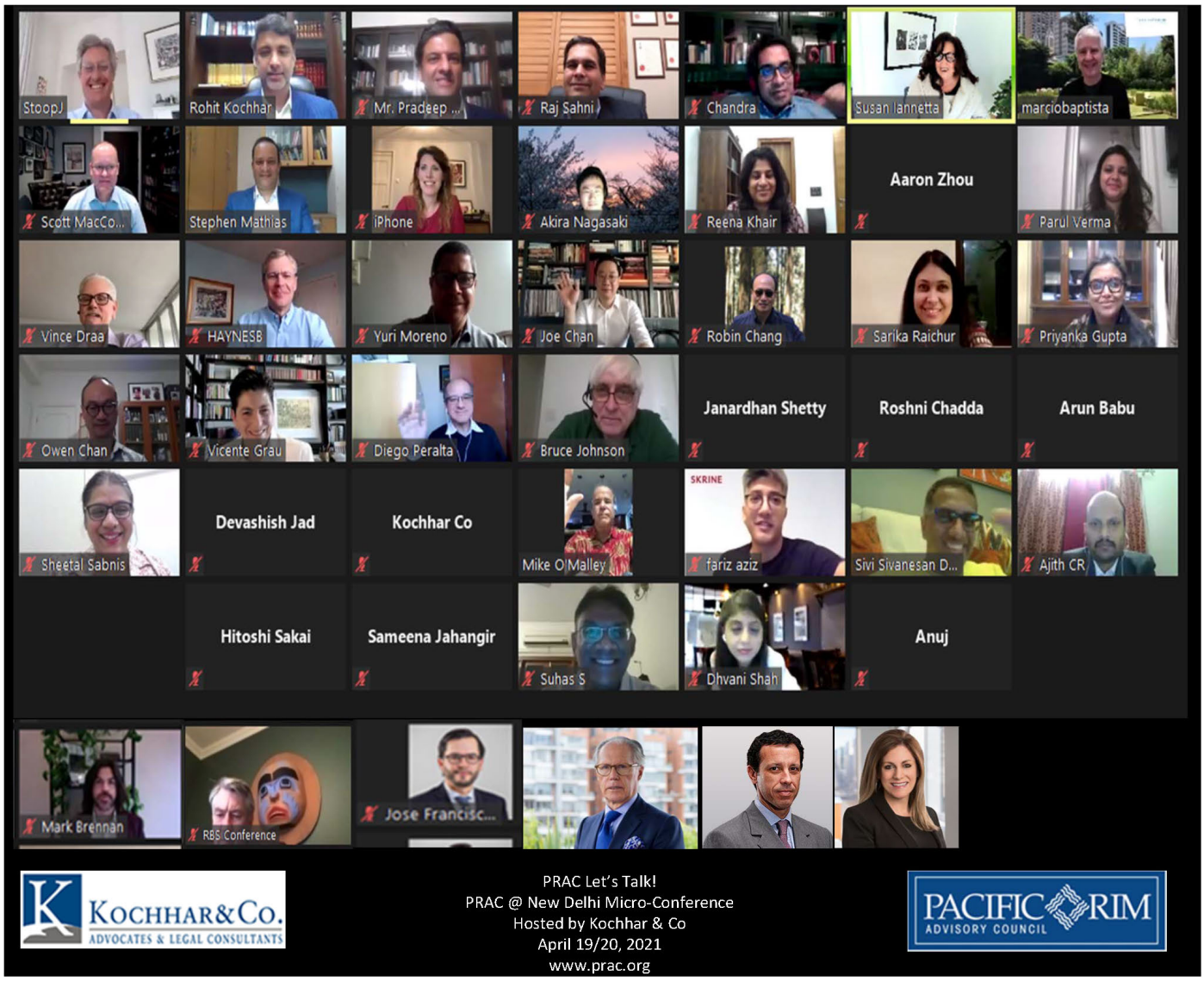
Visit www.prac.org

PRAC LET'S TALK!

PRAC @ NEW DELHI MICRO-CONFERENCE HOSTED BY KOCHHAR & CO.

NEW DELHI - 2021: PRACites around the globe gathered online for PRAC @ New Delhi micro-conference hosted by member firm KOCHHAR & CO. Congratulations to the entire Kochhar Team for a successful e-hosting!

Agenda
Opening Remarks - Jaap Stoop, PRAC Chair; Marcio Baptista, PRAC Vice Chair; Jeff Lowe, PRAC Corp Secretary
Greetings & Welcome - Rohit Kochhar, Chairperson and Managing Partner
Country Update - India - Pradeep Ratnam
Visual Presentation - Essense of India!
Kochhar Practice Update - M&A - Chandrasekhar Tampi
Kochhar Practice Update - Banking & Finance - Pradeep Ratnam
Firm update - Rohit Kochhar
Panel Discussion on "Regulation of Content on Social Media" - Moderator, Stephen Mathias, Kochhar & Co (Bangalore); Mark Brennan, Hogan Lovells (Washington); Mauricette Schaufeli, NautaDutilh (Amsterdam)



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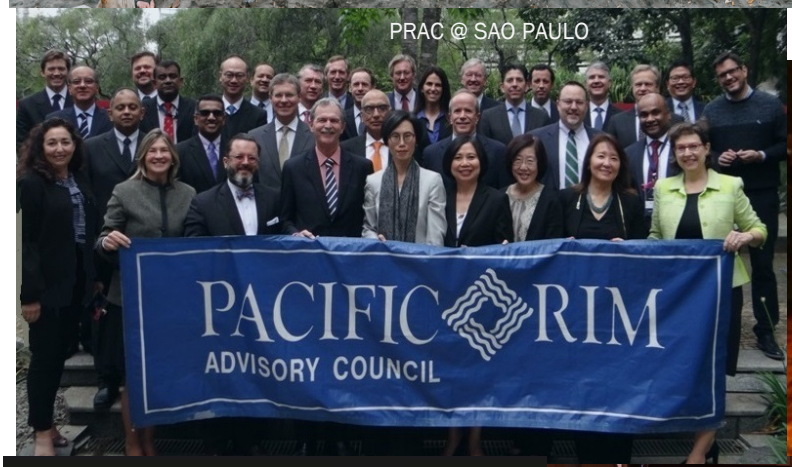
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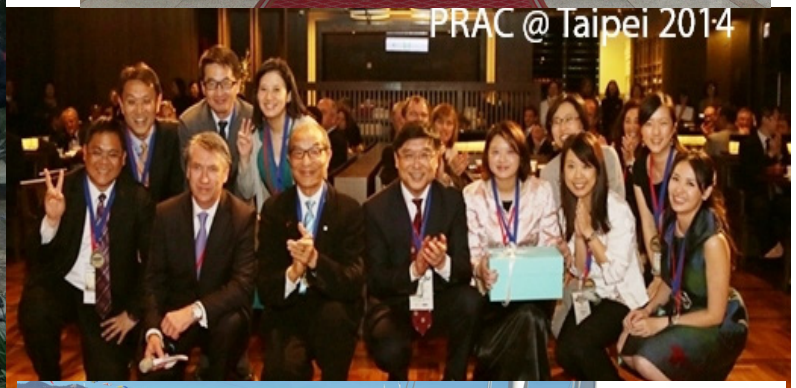
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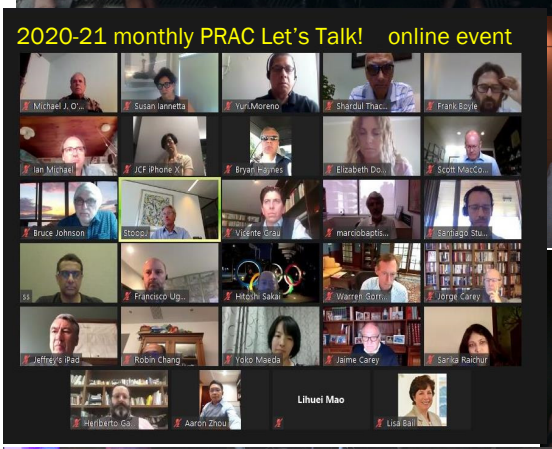
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Communiqué “A” 7518 from the Central Bank of Argentina - Allende & Brea

On June 2nd, 2022, by means of Communiqué “A” 7518, the Central Bank of Argentina established a new regime through which the collection of service exports for certain concepts is excluded from the mandatory local settlement (the “Regime”).

The Regime provides that (i) the funds from the export of services (the “Funds“) must be credited in a foreign currency account owned by the exporter of the services (the “Exporter“) in a local financial entity; and (ii) two tickets must be prepared without movement of pesos, the purchase ticket for the concept of services and the sale ticket which must be registered in the name of the Exporter under the concept “A22. Accreditation of service export collections”.
In this sense, when the Exporter is an individual, this mechanism can be used up to an equivalent of USD 12,000 (twelve thousand U.S. dollars) in the calendar year. For the calculation of such amount, the whole set of entities and concepts included by which the Exporter has entered the Funds must be contemplated.

When the Exporter is a legal entity, it shall (i) have a “Certification of increase of income from collections from exports of services in the year 2022” (“Certificate of Increase“); and (ii) nominate a local financial entity that will be responsible for issuing the corresponding Certificate of Increase and forwarding it to the entities through which the Exporter shall enter the Funds.

The financial entity in charge of issuing the Certificate of Increase shall be the one that has accumulated the most liquidations in relation to the concepts included in the Regime within the period as from January 2nd, 2022, to May 31st, 2022.

The local financial entity will be able to issue a Certificate of Increase, when all the following requirements are verified:

(i) The Exporter registered settlements in the foreign exchange market of service export collections for the concepts included in the Regime during 2021.

(ii) The value of the collections of exports of services for the concepts included in the Regime that the Exporter entered through the foreign exchange market in 2022, exceeds the value of the collections of exports for the set of concepts that the Exporter entered in 2021.

(iii) The total amount of all the Certificate of Increase issued, including the one requested to be issued, does not exceed the equivalent in foreign currency of the minimum of the following two equations:

a. 50% of the value by which the foreign exchange market receipts from service export collections in the current year exceed the amount received from such receipts during the entire previous year.

b. the amount in foreign currency equivalent to 20% of the gross salaries paid to the Exporter's employees in the previous calendar month in which the Certificate of Increase is requested, multiplied by the number of months remaining until the end of the year including the current month. The equivalent of the amounts paid in pesos will be calculated using the reference exchange rate published by Communiqué "A" 3500 at the end of the previous calendar month.

(iv) Finally, the local financial entity shall have an affidavit from the Exporter stating that:

a. It undertakes that the Funds deposited and not settled under this mechanism shall be used exclusively to pay the net salaries of its employees in foreign currency within the 20% limit provided for in Section 107 of the Labor Contract Law.

b. It agrees that the Funds that before the December 31st, 2022, have not been used to the pay employees' salaries shall be liquidated in the foreign exchange market within the following 5 (five) working days.

c. As of the date of issuance, the Exporter is not in fault in relation to the entry and settlement of service export collections.

d. In the 90 (ninety) calendar days prior and in the 90 (ninety) calendar days after the day on which the Certificate of Increase is requested, the Exporter has not arranged or will not arrange sales in the country with settlement in foreign currency of securities issued by residents, or exchanges of securities issued by residents for foreign assets or transfers thereof to depository institutions abroad, or the acquisition in the country with settlement in pesos of securities issued by non-residents

The concepts of services that are included within the Regime are the following: (i) maintenance and repairs; (ii) construction services; (iii) telecommunications services; (iv) information technology services; (v) information services; (vi) charges for the use of intellectual property; (vii) research and development services; (viii) legal, accounting and management services; (ix) advertising services, market research and public opinion surveys;(x) architectural, engineering and other technical services; (xi) trade-related services; (xii) other business services; (xiii) audiovisual and related services; (xiv) other personal, cultural and recreational services (including educational instruction); and (xv) other health services.

In this sense, through the Regime, access to foreign currency is favored for the Exporter and ultimately for the employee, provided that the Exporter shall apply the foreign currency entered and not settled in the foreign exchange market for the payment of the employee´s salaries in foreign currency.

July 07, 2022

INITIATION OF ANTI-DUMPING SUNSET REVIEW ON IMPORTS OF STEEL WIRE ROPES FROM CHINA

On July 1, 2022, SECEX Circular No. 30/2022 (https://www.in.gov.br/en/web/dou/-/circular-no-30-de-30-junho-de-2022-411855237) was published, initiating the sunset review of the anti-dumping duties applied to exports from China of carbon content steel wire ropes, with high mechanical strength, 3 or 7 strands, low relaxation (as known as "steel wire ropes"), commonly classified under the NCM code 7312.10.90.

Steel wire ropes, in civil construction, can be used in various fields of engineering: industrialized concrete construction (prefabricated); building construction; art works; cable-stayed bridges; vertical barriers or tension rods; wind-tower assembly systems; railway works (sleepers); and industrial flooring works.

The petition was filed by Belgo Bekaert Ltda.

The analysis of the likelihood of continuation or resumption of dumping considered the period from January to December 2021. And the analysis of the likelihood of continuation or resumption of injury considered the period from January 2017 to December 2021.

Considering the evidence of resumption of dumping during the anti-dumping duty period, the average domestic normal values in the Brazilian market and the average sales price of the domestic like product in the same market were constructed during the period of analysis of resumption of dumping, and the difference between the two (in absolute and relative terms) was not publicly disclosed.

Thus, it is concluded that, although they did not export the product during the resumption of dumping analysis period of this review, they would have to practice dumping to compete with the domestic like product, since the normal value of this origin in Brazil exceeds the price practiced by the domestic industry.

A public interest procedure will be optional, upon request submitted based on a duly completed Public Interest Questionnaire or ex officio at the discretion of SDCOM (Subsecretariat of Trade Defence and Public Interest). The public interest procedure aims to identify possible impacts of the imposition of the anti-dumping measure on economic agents, which could be potentially more harmful when compared to the positive effects of the application of the trade defense measure. It has the same deadlines as the anti-dumping sunset review.

The parties interested (Exporters, Importers, other Domestic Producers) can cooperate with the investigation by submitting their response to the Questionnaire, ensuring that the final decision is based on precise data, and also benefitting from an individual dumping margin (which tends to be lower than the margin calculated based on the facts available).

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The Supreme Court of Canada Renders its Decision in Abrametz

Written by Katherine Fisher and Natasha Laffin

Key Highlights

- The SCC has concluded that, unlike in criminal proceedings, delay alone will not constitute an abuse of process warranting a stay in administrative proceedings.
- Short of a stay of proceedings, the SCC has highlighted that some form of remedy, such as a reduction in sanction or variation of an award of costs, should be afforded in cases of inordinate delay amounting to an abuse of process.
- In a strong dissent, Justice Suzanne Côté suggests that the SCC's strict approach "invites complacency in administrative proceedings."

In an eight to one split decision, the Supreme Court of Canada (SCC) has rendered its long-anticipated judgment regarding delay in administrative proceedings in *Law Society of Saskatchewan v Abrametz [Abrametz]*, 2022 SCC 29. In its decision, the SCC concluded that, unlike in criminal proceedings, delay alone will not constitute an abuse of process warranting a stay in administrative proceedings.

The SCC in *Abrametz* was tasked with reviewing the law as previously set out by it in *Blencoe v British Columbia (Human Rights Commission) [Blencoe]*,2000 SCC 44, and seemingly varied by the Saskatchewan Court of Appeal (SKCA) in *Abrametz v Law Society of Saskatchewan [Abrametz CA],* 2020 SKCA 81. In *Blencoe*, the SCC called for a strict approach to be applied in administrative proceedings, holding that delay, without more, will not constitute an abuse of process warranting a stay of proceedings. This was the unwavering state of the law for over 20 years, until the SKCA in *Abrametz CA* ostensibly proposed lowering the standard to be more in line with the SCC's decisions in *R v Jordan* [*Jordan*], 2016 SCC 27 and *Hryniak v Mauldin,* 2014 SCC 7, where the need for timely justice in criminal and civil cases was prioritized.

In overturning the SKCA's decision, the majority in *Abrametz* seemingly affirmed *Blencoe*, rejecting the application of *Jordan*-like principles in the administrative law context, and confirming the applicable standard of review as correctness. In finding that delay of

roughly 6 years was "long, but not inordinate," the SCC highlighted factors for contextual review, including the nature and purpose of the proceedings, the length and causes of the delay, and the complexity of the facts and issues in the case (at para 51). The Court further held that, despite introducing evidence of prejudice resulting from media attention, practice conditions, and health and family impacts resulting from the delay, Mr. Abrametz had not provided *sufficient* proof of significant prejudice warranting a finding of delay amounting to an abuse of process (at para 124).

In upholding *Blencoe*'s strict approach, the majority in *Abrametz* reasoned that a stay should be granted only in the clearest of cases, "when the abuse falls at the high end of the spectrum of seriousness" (at para 83). However, the Court indicated that lesser, but nevertheless significant prejudice, could justify remedies other than a stay, noting that in such cases, the public interest may be properly served by continuation of the proceedings, while the applicant receives some compensation for the abuse suffered (at paras 89-90). In the context of a disciplinary tribunal, a stay of proceedings, a reduction in sanction, or variation of an award of costs are possible remedies (at paras 94-99). The Court noted that various tribunals may be empowered by their enabling statues to grant other remedies, and encouraged such tribunals not to hesitate to use tools to combat inordinate delay amounting to an abuse of process (at para 100).

Notably, in her dissenting opinion, Justice Suzanne Côté took issue with the Court's decision, commenting: "the majority's test is so onerous that it invites complacency in administrative proceedings" (at para 136). She further disagreed with the majority's articulation of the standard of review in the context of inordinate administrative delay, and their affording deference to an administrative decision maker's conclusion on whether delay is inordinate and their resulting choice of remedy. Justice Côté's dissent, while certainly more favourable to regulated professionals than the majority's position, provides insight into likely areas of discord between regulators and regulated professions in the future.

In anticipation of the SCC's decision, self-regulated professions, including various professional Colleges and their regulated members awaited further direction, anticipating change; however, it appears that the SCC has elected to maintain status quo, rather than recognizing an evolution in the law in the context of administrative proceedings. Notably, while the Court upheld the strict approach in *Blencoe* and reasoned that a stay should be granted in only the most serious of cases, the Court clearly articulated that some form of remedy, such as a reduction in sanction or variation of an award of costs, should be afforded in cases of inordinate delay amounting to an abuse of process.

Bennett Jones LLP remains at the forefront of administrative law as it pertains to professional Colleges and regulated members alike, and we are readily available to provide information and guidance on matters in this area as they arise.

Katherine J. Fisher, BScN, MN, JD
Natasha O.Q. Laffin, BComm, JD, MPH(c)

Authors

Katherine J. Fisher
780.917.4268
fisherka@bennettjones.com

Natasha O.Q. Laffin
780.917.4286
laffinn@bennettjones.com

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COURT ESTABLISHES SIGNIFICANT COSTS CONSEQUENCES FOR WRONGFULLY FILED BUILDERS LIENS

By: Ryan A. Shaw

A builder's lien is a powerful tool available to contractors to secure payment for work done or materials supplied to an owner's land. However, there are strict pre-conditions in the *Builders Lien Act* (the "BLA") that must be satisfied for a contractor to be entitled to a lien. A recent decision from the Supreme Court of British Columbia has established significant cost implications for lien claimants that fail to satisfy those pre-conditions.

Section 19 of the BLA creates a statutory right of recovery for costs and damages incurred by a landowner in circumstances where a claim of lien is improperly filed:

A person who files a claim of lien against an estate or interest in land to which the lien claimed does not attach is liable for costs and damages incurred by an owner of any estate or interest in the land as a result of the wrongful filing of the claim of lien.

However, the BLA is silent regarding the extent of, or the method of calculating, the costs and damages that are recoverable. The jurisprudence to date under s.19 similarly provided little guidance to would-be lien claimants and owners.

In *Century Group GP Co. Ltd. v KRS Excavating Ltd.*, 2022 BCSC 357 [*Century Group*], the Court considered the question as a matter of first instance in a summary trial application against a lien claimant who had been found to have registered a lien out of time. The owner had expended significant amounts of money to initially discharge and secure the claim of lien (by way of letter of credit) and on legal fees to establish that the claim of lien did not attach to the land.

In its summary trial application, the landowner advanced a claim for both the expenses incurred to secure the letter of credit and the actual legal fees incurred both to negotiate the security and establish that the lien was invalidly filed. The lien claimant argued that only party-and-party costs were recoverable by the landowner under s.19; a cost award that is assessed under the *Supreme Court Civil Rules* and inevitably significantly less than the actual legal fees paid.

In finding for the landowner, the Court found that legal expenses were clearly included within the term

"costs" in s. 19 of the BLA. The Court interpreted those "costs" as comprising two categories:

1. legal expenses incurred for releasing and replacing the lien, including expenses incurred in the investigation of the lien, the facts and law relevant to it, advising the client contemplating the discharge of the lien, and possibly including negotiating replacement security; and
2. legal expenses incurred in the legal proceedings taken to challenge the lien, which in this case included a court application to have the lien declared invalid and the within application under s.19 of the BLA.

The Court determined the actual reasonable legal expenses incurred under the first category of costs were recoverable on an indemnity basis, but those falling within the second category were to be assessed under the *Supreme Court Civil Rules*. In support of its analysis, the Court drew an analogy to the jurisprudence developed under BC's environmental legislation where the court had distinguished between "remediation legal costs" and "litigation legal costs". The Court likened the first category of "lien investigation/removal costs" to "remediation legal costs" which courts had found to be recoverable on an indemnity basis.

The Court also found that under s.19 the owner can recover any out-of-pocket 'costs' or other damages arising from the wrongful filing of the lien, which in this case included the costs related to the letter of credit which was initially posted by the owner as security for removing the lien from title to its property.

There are some important takeaways from *Century Group* for contractors and owners to consider when deciding to file or challenge a claim of lien, most notably the following potential cost consequences:

1. an owner who successfully challenges a wrongfully filed lien is entitled to recover its reasonable out-of-pocket legal expenses incurred in investigating and removing the lien before the commencement of litigation;
2. the owner is entitled to recover legal expenses incurred during the legal proceedings taken to challenge a lien, but those costs are to be assessed according to the Supreme Court Civil Rules, and will generally be on a party-and-party basis; and
3. the owner is entitled to recover damages for financial losses caused by the wrongful filing of the lien.

For lien claimants, it is important to note that these costs consequences flow from any lien that is found to have been improperly filed, regardless of whether the lien claimant believed at the time of filing the statutory pre-conditions were met. Accordingly, contractors and their legal counsel should take special care to ensure those pre-conditions are satisfied before filing a lien. Conversely, owners and their legal counsel should take time at the earliest possible stage to assess and determine the validity of a lien as most up-front legal expenses incurred will be recoverable if the lien is later found to have been improperly filed.

Century Group is a reminder of the importance of seeking timely legal advice in the context of any builders lien claim. For further information relating to claims of lien, or any other issues relating to construction projects, please feel free to contact Ryan Shaw.

/Carey

News Alerts

Chilean government announces its tax reform proposal

July 4, 2022

Through an announcement issued by the Ministry of Finance, Mario Marcel, the government presented the general outlines of its tax reform proposal.

This reform would consist of four bills (two of which would be submitted to Congress during July, and the remaining ones during the fourth quarter), which will be relevant to know in order to analyze the details of this announcement. On our web page (https://reformatributaria.carey.cl) we will keep you informed of the presentation of these bills, together with the news of their discussion.

The main outlines of this announcement are described below:

I.Income tax

1. A new disintegrated income tax system (classic tax system) for large companies, which separates the taxation of companies from the taxation of their shareholders. This new system would not affect SMEs or foreign investors residing in countries with double taxation agreements with Chile, for whom an integrated tax system (or dividend imputation tax system) would continue to apply where the corporate income tax is a credit against the withholding tax.
2. To incorporate a tax on dividends distributed to final taxpayers (individuals or foreign residents) at a rate of 22%. In the case of individuals resident in Chile, they may alternatively re-settle this tax, incorporating the dividend to the base of their personal income tax.
3. To reduce the corporate income tax rate from 27% to 25%, and incorporate a new tax called “Development Tax” of 2%, which could be paid by crediting expenditures aimed at improving the company productivity.
4. A new capital gain tax at a 22% tax rate.
5. To limit the use of tax loss carryforwards, to 50% of the net taxable income determined in each year.
6. To incorporate a 1.8% annual rate applicable to retained earnings in investment companies or other holding type of entities that receive income from passive income.

7. To amend the tax regime for investment funds. In particular, it is proposed that: (i) private investment funds become corporate income tax taxpayers (except those investing in venture capital); (ii) public investment funds continue not to be subject to corporate income tax, but that the distribution of dividends to legal entities be subject to such tax; and (iii) contributors residing abroad be taxed according to the general rules.
8. To modify the brackets and rates of the second category and personal income tax, starting with the middle brackets applicable to those with monthly income over US$ 4,200, approx. The new maximum marginal rate would be 43%, which would apply to those with monthly income over US$ 8,400, approx.
9. To include new personal income tax deductions, such as the expense for rental income (with a cap of US$ 490 approx. per month) and the expense associated with the care of children under 2 years of age and people with severe degrees of dependency (with a cap of US$ 600 approx. per month).
10. Other relevant changes such as modifying the rules for disallowed expenses, appraisal, transfer pricing, among others.

II Wealth tax

1. To incorporate a wealth tax, which would be levied on the wealthiest individuals domiciled or resident in Chile.
2. This tax would contemplate progressive rates based on three brackets; (i) assets valued up to US$ 5 million approx. would be exempt from the tax; (ii) the portion of assets valued between US$ 5 and 15 million approx. would be subject to a 1% rate; and (iii) the portion of assets exceeding US$ 15 million would be subject to a 1.8% rate.

III Mining royalty

1. To incorporate a new mining royalty, which would apply for mining companies whose production exceeds 50,000 metric tons of fine copper per year.
2. This tax would have two components: (i) ad valorem, whereby a rate would be applied on sales, ranging from 1% to 4%, depending both on annual production and the price of copper; and (ii) profitability, with rates ranging -depending on the price of copper- from 2% to 32% of the companies' operating income.

IV Tax exemptions

1. To eliminate the non-taxable income that benefits individuals in relation to the amounts obtained from the rental of housing according to the Decree with force of Law No. 2 of 1959.
2. To limit the presumptive income regime to micro enterprises with income up to US$ 85,000 approx.

V Anti-avoidance related measures

1. To modify the general anti-avoidance rule (GAAR) to allow its administrative application by the Chilean IRS.
2. Incorporate a registry of beneficial owners, whereby all companies must inform the Chilean IRS about the individuals or final taxpayers that directly or indirectly with have a participation equal or greater than 10% in their ownership.
3. Creation of the anonymous whistleblower in tax matters.

All these measures together aim to raise additional revenue of around 4% of GDP (*i.e.*, US$ 12 billion approx.) by 2026.

AUTHORS: Jaime Carey, Jessica Power, Manuel José Garcés, Manuel Alcalde.

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

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Legal Commentary

July 7, 2022

HAN KUN
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Swap Connect on Its Way

Authors: TieCheng YANG | Yin GE | Ting ZHENG | Eryin YING | Krystal HE

Background

Overseas investors' participation in the China Inter-bank Bond Market (CIBM) has been steadily increasing in recent years due to the implementation of various opening-up regimes that allow access to the CIBM, such as the CIBM Direct, Bond Connect and QFI regimes, and the inclusion of China bonds in major international indices. At the end of 2021, overseas investors held RMB bonds of RMB 4 trillion, accounting for about 3.5% of the total market size of the CIBM.

On 4 July 2022, the People's Bank of China (PBoC), the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) released a joint announcement[1] (the "**Joint Announcement**") on the Swap Connect (the "**Swap Connect**"), which is intended to meet the increasing demands of overseas investors to manage interest rate risk that arises from their bond holdings in the CIBM. The Swap Connect will promote the development of mutual access between the Hong Kong and Mainland interest rate swap (IRS) markets and facilitate IRS trading, among other derivatives products, in both markets through collaborative efforts among the China Foreign Exchange Trade System (National Interbank Funding Center) (CFETS), the Shanghai Clearing House (SHCH), and the OTC Clearing Hong Kong Limited (OTC Clearing, together the "**Infrastructure Institutions**"). PBoC has further released a Q&A[2] to clarify certain issues related to the Swap Connect.

Key takeaways

1. ***Launch time***. The Swap Connect is expected to be officially launched within about six months, after the finalization of relevant rules, completion of system development and other necessary preparations, according to the Joint Announcement.

[1] English version available at: https://www.sfc.hk/en/News-and-announcements/Policy-statements-and-announcements/Joint-Announcement-of-the-PBoC-the-SFC-and-the-HKMA.
Chinese version available at: http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/4592580/index.html.

[2] English version available at: http://www.pbc.gov.cn/en/3688110/3688172/4437084/4596781/index.html.
Chinese version available at: http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/4592586/index.html.

2. ***Trading and clearing links***. Similar to the Bond Connect regime, the Swap Connect will consist of two links: (a) the Northbound Trading, which allows overseas investors to participate in the Mainland interbank financial derivatives market through mutual access between Hong Kong and Mainland Infrastructure Institutions in respect of trading, clearing and settlement; and (b) the Southbound Trading, which allows Mainland investors to access the Hong Kong financial derivatives market through mutual access between Infrastructure Institutions in both locations.

   At the initial stage, the Northbound Trading will commence first while implementation of the Southbound Trading will be explored in due course.

3. ***Northbound trading and settlement model***. According to the PBoC Q&A, in general, the Swap Connect will leverage the framework and experience of the Bond Connect. Specifically:

   - Overseas investors may follow their existing trading practices under the Bond Connect Northbound Trading to conclude transactions on CFETS via its connections with international electronic trading platforms to trade eligible derivatives (i.e., RMB IRS) under the Swap Connect.

   - The Swap Connect Northbound Trading will adopt the quoting institution trading model, which is similar to that under the Bond Connect Northbound Trading, i.e., overseas investors can obtain quotes from various PRC onshore dealers by sending request for quotes (RFQs) and confirm transactions after receipt of response from dealers. The concluded RMB IRS transactions will be relayed in real time to OTC Clearing and SHCH as the qualifying central counterparties (QCCP) for central clearing and settlement.

   - OTC Clearing and SHCH, as the clearing Infrastructure Institutions in both markets, will jointly provide centralized clearing services in respect of RMB IRS for overseas investors.

     While the detailed settlement rules are yet to be issued by the relevant clearing Infrastructure Institutions, we anticipate that OTC Clearing may become a clearing member of SHCH and be responsible for clearing and settlement with all overseas investors and may in turn settle with SHCH. SHCH may be responsible for the central clearing with the relevant PRC onshore dealers. and

   - The Swap Connect may be subject to a trading quota by reference to that under the Stock Connect.

4. ***Eligible instrument***. Initially RMB IRS will be the only eligible instrument for Northbound Trading under the Swap Connect while other derivatives products, such as bond forwards and credit default swaps, may be included in due course depending on market conditions.

5. ***Hedging requirement***. On 27 May 2022, PBoC, jointly with other financial regulators, released the *Announcement on Issues Concerning Further Facilitating Investment in China's Bond Market by Overseas Institutional Investors*, which provides that overseas investors are allowed to trade relevant derivatives products for risk management purposes in China's bond market. As of today, overseas investors are able to trade RMB IRS for hedging purposes under the CIBM Direct and QFI regimes. Therefore, the investments in RMB IRS under the Swap Connect by overseas investors should also comply with this hedging requirement.

6. ***Transaction documentation***. While it is yet to be confirmed by the final implementing rules of the Swap Connect, as overseas investors are already able to choose ISDA or NAFMII master agreements to document their RMB IRS transactions under the CIBM Direct and QFI regimes, we believe the same documentation would apply to the Swap Connect Northbound Trading.

7. ***Collateral***. SHCH currently accepts cash and eligible bonds that are custodied with SHCH to meet margin requirements (i.e., policy bank bonds, financial bonds, non-financial enterprise debt financing instruments, such as commercial paper, and negotiable certificates of deposit). Treasury bonds and local government bonds are not accepted as collateral by SHCH, as they are custodied with China Central Depository & Clearing Co., Ltd. (CCDC). However, it is still unclear what assets OTC Clearing will accept as collateral, which awaits further clarification in the implementing rules.

8. ***Applicable laws***. The Swap Connect is subject to the relevant laws and regulations of both markets. The Swap Connect Northbound Trading will follow the existing policy framework for the opening-up of the Mainland interbank financial derivatives market and take into account international practices.

9. ***Regulators' cooperation***. The regulators of the financial derivatives markets in Hong Kong and the Mainland will cooperate with each other to timely handle any misconduct on both sides to maintain the stability, fairness and orderly trading of financial markets.

Outlook

The Swap Connect Northbound Trading will be warmly welcomed by the overseas investment community to meet their increasing demands for interest risk management. However, there are still several issues pending clarification by the competent regulators or the Infrastructure Institutions. These include, among other things:

I. Compliance with overseas regulatory requirements

As the intention of the Swap Connect Northbound Trading is to provide overseas investors access to the PRC derivatives market, the Infrastructure Institutions will have to consider overseas regulatory requirements in order for them to provide services to overseas investors.

For example, the U.S. Commodity Futures Trading Commission (CFTC) Letter 20-46[3] extends relief to SHCH to the earlier of (i) July 31, 2022 or (ii) when the CFTC exempts SHCH from registration as a derivatives clearing organization under Commodity Exchange Act Section 5b(h), and expands the product scope under the previous relief from "swaps subject to mandatory clearing in China" (only selected RMB IRS products are subject to the mandatory clearing requirement under PRC laws)[4] to be the clearing of "swaps accepted for clearing by SHCH". Therefore, SHCH is able to rely on this relief to clear swaps for the proprietary trades of SHCH clearing members that are U.S. persons or

[3] Available at https://www.cftc.gov/csl/20-46/download.

[4] On 28 January 2014, PBoC released the *Notice on Establishing a Centralized Clearing Mechanism for OTC Financial Derivatives & Carrying out Centralized Clearing Business for Renminbi Interest Rate Swap* which requires the IRS referencing FR007, Shibor ON and Shibor_3M with a term of less than 5 years (including 5 years) entered into between financial institutions to be mandatorily submitted with SHCH for central clearing.

affiliates of U.S. persons.

However, the imminent expiration of the CFTC relief and the uncertainty as to its extension may restrict U.S. investors from trading RMB IRS under the Swap Connect.

There are also similar issues for SHCH and other Infrastructure Institutions to provide relevant services under the Swap Connect to overseas investors in other different jurisdictions.

II. Trading of "standard" RMB IRS accepted by SHCH for central clearing under the Swap Connect Northbound Trading

Pursuant to the Joint Announcement and relevant Q&A, it appears that all IRS transactions will have to be submitted for central clearing and settlement, but bilateral settlement will not be available under the Swap Connect.

The upside of the mandatory central settlement is that overseas investors will be exposed to fewer risks and need less capital for the trading in IRS, as both SHCH and OTC Clearing are QCCPs under local laws.

However, the existing SHCH central settlement rules may limit the available product suite under the Swap Connect Northbound Trading as in current onshore market not all products can be accepted by SHCH for central clearing. To provide practical color, SHCH now conducts an element compliance check against its own standards[5] on the transaction elements of RMB IRS transactions, the data of which is received from CFETS in real time, and decides whether to accept such RMB IRS transaction for novation, central clearing and settlement. SHCH will reject the RMB IRS transaction that fails to pass the element compliance check.

As the bilateral settlement is not available under the Swap Connect, it appears that IRS products available to overseas investors may be those "standard" IRS that are acceptable by SHCH for central clearing, subject to specific implementing rules to be issued by SHCH for Swap Connect.

III. Collateral accepted to meet margin requirements

As discussed above, it is still unclear what assets OTC Clearing will accept as collateral. Considering that most of the bonds held by overseas investors in China are treasury bonds and policy bank bonds[6], if these bonds cannot be used as collateral to meet margin requirements for trading IRS under the Swap Connect, overseas investors will need to use alternative assets (e.g., cash) that are acceptable by OTC Clearing to meet the margin requirements, which may affect the costs of overseas investors.

After the Joint Announcement, the regulators and the Infrastructure Institutions will continue to collaborate with each other to formulate detailed implementation rules for the Swap Connect. We will keep a close eye on material developments and update you in a timely manner.

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[5] The standards are available in the central clearing guideline of SHCH: http://english.shclearing.com.cn/ccpservices/rules/guidelines/202108/t20210811_913499.html?xyz=0.38717110390523524.

[6] Policy banks may be custodied with either CCDC or SHCH.

Important Announcement

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

If you have any questions regarding this publication, please contact:

TieCheng YANG

Tel: +86 10 8516 4286
Email: tiecheng.yang@hankunlaw.com

Yin GE

Tel: +86 21 6080 0966
Email: yin.ge@hankunlaw.com

Ting ZHENG

Tel: +86 21 6080 0203
Email: ting.zheng@hankunlaw.com

Arias

COSTA RICA

ENACTMENT OF AMENDMENT TO GENERAL CUSTOMS LAW INCLUDES LARGE SCALE CHANGES TO CUSTOMS OPERATIONS

July, 2022

On June 29, 2022, Law 10271 that amends the General Customs Law, Law 7557 was published in Alcance 132 of La Gaceta 121. This amendment was approved in second debate on May 22, 2022, and signed by the President of the Republic, Dr. Rodrigo Chaves Robles, on June 22, 2022.

The amendment includes large-scale changes to customs operations, including:

- Compulsory registration in the Tax Registry: all users must be duly registered in said registry for the processing of their customs operations and must be up to date in their payment of their tax, customs, and employer-worker obligations.
- New regime of rented goods or with leasing contracts: for a period of five years, the entry of ships, aircraft, machinery, and equipment will be allowed, for use and destination in the productive activity.
- Impossibility to request non established requirements: no official of the National Customs Service may demand for the application or authorization of any act, procedure or procedure, regime, the fulfillment of requirements, conditions, formalities, documents or information, that are not previously included in customs, administrative or foreign trade regulations. The official who does so will incur in serious misconduct.
- Non-intrusive inspection: the auxiliaries of the customs public function must have the equipment and technological means for non-intrusive inspection, excluding the merchandise scanning equipment, which ensure the customs control exercised by the National Customs Service, for the entry, revision, permanence and exit of the goods.
- Possibility of deferred payment: the customs authority may accept the deferred payment of the self-determined customs tax obligation, within a period of one month from the date of acceptance of the customs declaration, in some specific cases.
- Term for the General Customs Management to issue the resolution. The General Mangement must issue the resolutions that resolve appeals within twenty business days following the date of their reception and their respective administrative file.

The development of the new regulations must be carried out via regulations within a period of six months, so we will continue to be attentive to the incidents that the new regulations generate in customs procedures.

Our International Trade specialist team in is ready to answer your questions and contribute their experience to your business. Contact us.

Rolando García
Senior Counsel
rolando.garcia@ariaslaw.com

Jossué Chacón
International Trade Specialist
jossue.chacon@ariaslaw.com

DIGITAL FINANCE: AGREEMENT REACHED ON EUROPEAN CRYPTO-ASSETS REGULATION (MICA) UNDER THE AEGIS OF THE FRENCH PRESIDENCY OF THE EUROPEAN UNION

On 30 June 2022, twenty-one months after the publication of its draft by the European Commission, the European regulation "Markets in Crypto-assets" or "MiCA", which aims to regulate and harmonise the market for crypto-assets within the European Union, the Council presidency and the European Parliament reached a provisional agreement on the markets in crypto-assets (MiCA) proposal, under the aegis of the French Presidency of the European Union.

In voting for this text, the European Union aims to set itself apart and become a strong zone for crypto-assets, a market that is constantly developing and creating new services attached to this family of digital instruments.

The "crypto" ecosystem should welcome this outcome that heralds the end of several months of negotiations, while ensuring that the interpretation of the text, or its revision already announced by some, does not hinder the development of their activities internationally.

The aim of the MiCA Regulation is to create a regulatory framework for the crypto-asset market that supports innovation and harnesses the potential of crypto-assets in a way that preserves financial stability and protects investors.

Partly inspired by the Markets in Financial Instruments Directive (MiFID) and the French regulatory framework dedicated to initial coin offerings (ICOs) and digital asset service providers (DASPs), MiCA consists of three main regimes:

- a framework for ICOs that includes the publication of an information document and allows issuers to issue their tokens within the 27 Member States;
- a framework for crypto-asset service providers (CASPs) subject to a mandatory authorisation to provide one of the services provided for in the text;
- and a general framework for fixed value tokens ("stablecoins") that distinguishes between tokens that fall under the e-money regime and tokens that refer to assets.

In its publication, the Council of the EU states that *"non-fungible tokens (NFTs), i. e. digital assets representing real objects like art, music and videos, will be excluded from the scope except if they fall under existing crypto-asset categories. Within 18 months the European Commission will be tasked to prepare a comprehensive assessment and, if deemed necessary, a specific, proportionate and horizontal legislative proposal to create a regime for NFTs and address the emerging risks of such new market".*

Through a passport mechanism, the MiCA Regulation will enable EU crypto players to develop their activities within the 27 Member States, while providing their clients with a level of legal certainty that has; until now; been very uneven from one jurisdiction to another.

The text needed to strike a balance between the principle of technological neutrality and a regulation that takes into account the specific characteristics of the underlying technology, i.e. blockchain,.

French players who had been able to enjoy a certain "regulatory lead" thanks to the PSAN and ICO regime introduced by the French “Loi Pacte”, will undoubtedly be able to move forward more easily to obtain their authorisation, as provided for in the MiCA regulation.

The provisional agreement is subject to approval by the Council and the European Parliament before going through the formal adoption procedure.

As soon as the text is finally adopted, Gide will host a conference on this regulation. If you wish to be informed of the date of this conference and its content, you can register beforehand here.

To structure your "crypto" activities, or to find out more about changes to the related regulatory context, please contact our Gide 255 team.

CONTACTS

FRANCK GUIADER
franck.guiader@gide.com

MATTHIEU LUCCHESI
matthieu.luccesi@gide.com

JOHN LE GUEN
john.leguen@gide.com

Hogan Lovells

Welcome Leverage – Hong Kong Court of Final Appeal confirms mere threat of winding-up is enough to confer jurisdiction

12 July 2022

In Shandong Chenming Paper Holdings Limited v Arjowiggins HKK2 Limited [2022] HKCFA 11, the Court of Final Appeal has confirmed that the "leverage" created by the prospect of a winding-up – as opposed to the making of a winding-up order – provides a legitimate form of "benefit" for the purposes of satisfying the second of the three "core requirements" for winding up a foreign incorporated company in Hong Kong.

The three "core requirements", as explained in *Kam Leung Sui Kwan v Kam Kwan Lai* (2015) 18 HKCFAR 501 (the "Yung Kee" case) and pursuant to section 327(3) of the Companies (Winding Up and Miscellaneous Provision) Ordinance (Cap. 32), are:

1. There has to be a sufficient connection with Hong Kong, but this does not necessarily have to consist of assets present within the jurisdiction.
2. There must be a reasonable possibility that the winding-up order will benefit those applying for it.
3. The court must be able to exercise jurisdiction over one or more persons in the distribution of the company's assets.

The appeal was concerned with the second requirement, with the question before the CFA being whether the Hong Kong court should exercise its winding-up jurisdiction over foreign companies on the basis that a "benefit" is made out if such "benefit" does not arise as a consequence of the winding-up order being made, but rather, would only ever be realised if the winding-up order were either avoided or discharged.

Background

Shandong Chenming was a company incorporated on the mainland and registered as a non-Hong Kong company under Part 16 of the Companies Ordinance (Cap. 622), having a place of business in Hong Kong. Shandong Chenming and Arjowiggins established a joint venture in the mainland and following a dispute, Arjowiggins commenced an arbitration in October 2012 pursuant to a joint venture agreement. In November 2015, the arbitral tribunal rendered an award ordering Shandong Chenming to pay RMB167,860,000 to Arjowiggins.

Arjowiggins obtained a court order granting it leave to enforce the award in December 2015 and soon afterwards, Shandong Chenming applied to set aside the order and the award. The application was dismissed.

On 18 October 2016, Arjowiggins served a statutory demand on the Shandong Chenming in respect of contractual damages and legal fees. Shandong Chenming paid nothing, instead obtaining an interim injunction order to prevent Arjowiggins from presenting a petition to wind it up. Leave was granted to allow Arjowiggins to seek a declaration that, since Shandong Chenming was an unregistered company, Arjowiggins would not be able to satisfy the three core requirements for the Hong Kong court to exercise its jurisdiction.

Shandong Chenming accepted that the first and third core requirements were met. The argument was whether the second requirement was met.

Shandong Chenming argued that it conducted no business in or from Hong Kong, had no assets in Hong Kong and that its only connection with Hong Kong was its listing. Shandong Chenming argued there was no reasonable prospect that Arjowiggins would benefit from the making of a winding-up order in Hong Kong and that it should take steps to enforce the award in the mainland instead.

The real benefit

The Court of Final Appeal (Chief Justice Cheung, the Honourable Messrs Justices Ribeiro PJ, Fok PJ, Lam PL and Lord Collins of Mapesbury NPJ) observed that it is "entirely proper to seek to enforce payment of an undisputed debt by the presentation of a winding-up petition" and that "pressure on a debtor to pay an undisputed debt is a proper benefit of allowing a winding-up petition to proceed" (see our alert Hong Kong court sets high bar for injunctions restraining presentation of winding-up petitions).

The Court of Final Appeal also emphasised that the benefit need not flow from an administration of the assets after a winding-up order is made, noting that there was "no doctrinal justification for confining the relevant benefit narrowly to the distribution of assets by the liquidator in the winding up of the company". Once it was accepted that commercial pressure to achieve the repayment of an undisputed debt is "an entirely proper purpose for a creditor's winding-up petition", it was "difficult to see any principled basis for excluding that commercial pressure as a relevant benefit for the purposes of the second requirement".

The "essential consideration" was whether a reasonable possibility exists of a "sufficient benefit accruing to the petitioner from being permitted to set in motion winding-up procedures in Hong Kong in respect of a non-Hong Kong company". The court said that benefit would exist even "where setting those procedures in motion results in the payment of an undisputed debt."

The Court of Final Appeal said that "leverage" was "always in the background of any instance of civil litigation" and that a winding-up petition was no different. In the present case, that leverage stemmed from the adverse consequences on Shandong Chenming's listing status in the Hong Kong Stock Exchange.

A broad interpretation

The CFA judgment confirms that the Hong Kong courts are prepared to apply a broad interpretation of where "benefit" lies in the context of winding-up foreign companies. However, there are limits to the discretion.

In *Re Grand Peace Group Holdings Limited* [2021] HKCFI 2361 for example, the Honourable Mr. Justice Harris observed that the second core requirement could be satisfied if it could be demonstrated that the centre of main interests was in Hong Kong and what was sought was the making of applications pursuant to the new Hong Kong-mainland China insolvency arrangement (see our alert Real and discernible benefit – Hong Kong court sets out principles for winding-up offshore holding companies).

The decision in *Shandong Chenming* represents a welcome development for creditors seeking repayment of debts from foreign companies that have a substantial connection to Hong Kong.

Authored by Jonathan Leitch, Yolanda Lau, Nigel Sharman, and Fiona Wong.

Contacts

Chris Dobby
Partner
Hong Kong
chris.dobby@hoganlovells.com

Jonathan Leitch
Partner
Hong Kong
jonathan.leitch@hoganlovells.com

Mark Lin
Partner
Hong Kong
mark.lin@hoganlovells.com

Antonia Croke
Partner
Hong Kong
antonia.croke@hoganlovells.com

Byron Phillips
Partner
Hong Kong
byron.phillips@hoganlovells.com

Yolanda Lau
Senior Associate
Hong Kong
yolanda.lau@hoganlovells.com

Nigel Sharman
Senior Knowledge Lawyer
Hong Kong
nigel.sharman@hoganlovells.com

Supreme Court Ruling Sets the Foundation for GST on Secondment of Employees

AUTHOR: REENA ASTHANA KHAIR
SENIOR PARTNER AND HEAD INTERNATIONAL TRADE & INDIRECT TAXATION
KOCHHAR & CO.
EMAIL: reena.khair@kochhar.com

Japanese Multinational companies often share their talent pool across borders and jurisdictions by secondment of Japanese nationals. This enables the group to understand cultural differences and for the affiliates to take advantage of the experience of the parent or group company. It also creates an opportunity to strengthen the relationship within the group.

A secondment is an arrangement, where an employee has a relationship both with the seconding and host Company. As an example, a Japanese multinational, may provide an employee on secondment to an Indian subsidiary / group company. During the period of secondment, the employee's status with the Overseas Group company is dormant, as if the employee is on long leave, and that with the Indian Company ('Host Company') is active. The employee remains on the payrolls of the Group company in Japan and receives its salary in Japan. The Indian Company or host reimburses the whole or part of the salary of the employee to the Group Company in Japan. The seconded employee operates and works under the control and supervision of the host company. On completion of secondment, the employee reverts to the Group Company.

The Service Tax authorities have in the past contended that host company receives 'manpower services', for which the host company pays a consideration, in the form of reimbursement of salary to the overseas Group company. The CESTAT (Customs, Excise & Service Tax Appellate Tribunal) has ruled, that in a secondment, an employer- employee relationship comes into existence between the seconded employee and the host, and hence there is no supply of manpower.

The Supreme Court of India in a recent ruling, in the case of Commissioner *of Customs, Central Excise & Service Tax-Bangalore (Adjudication) Vs. M/s Northern Operating Systems Pvt. Ltd.* has made a departure from this settled legal position and held that service tax is applicable, on secondment of employees by an Overseas Company to an Indian Company, where the salary is disbursed by the Overseas Company and the same is later reimbursed by the Indian Company on actuals.

The Supreme Court Decision in The Northern Operating Case

In the Northern Operating case, the Indian host Company was providing Backoffice Support Services, to the Overseas Group Company and seconded employees were working in connection with these Backoffice Support Services.

The Court held that the crux of the issue is the taxability of the cross charge, which is primarily based on who should be reckoned as an employer of the secondee. The critical fact was that overseas group companies' business was to secure contracts, which can be performed by its highly trained and skilled personnel. Accordingly, the Overseas Group Company would enter into contracts with host companies, for providing such services, by seconding its employees.

The Court noted that the overseas employer, deploys the employees to the host company on secondment, in relation to its own business. Further, the overseas employer, pays them their salaries. Their terms of employment – even during the secondment – are in accord with the policy of the overseas company, who is their employer. Upon the end of the period of secondment, they return to their original places, to await deployment or extension of secondment.

Considering the above arrangement, the Supreme Court held that *quid pro quo* is implicit, as both the parties are deriving economic benefit from the arrangement. The Overseas Company gets the benefit of quality work from the Indian Company and the Indian Company is able to get business due to presence of expert seconded employees. In this context, the Court held that secondment of employees is a taxable service of 'manpower supply'.

Our view on Implications under the GST regime

This decision is significant as it upsets the previous jurisprudence on the issue of taxability of reimbursements for seconded employees. The Supreme Court has treated secondment as a manpower supply, only where the seconded employees are involved in the provision of a service by the host Indian company to the overseas company. While this ruling may not apply to all cases of secondment, it will open such transactions for scrutiny, having regard to the overall arrangement between the parties, especially as the authorities are likely to apply this ruling to current transactions under GST.

Japanese Companies will need to revisit the clauses of their inter-company services agreements, secondment agreements, and letters issued to seconded employees, especially in cases where the Indian host Company is providing a service to the Overseas Company, and seconded employees are working in relation to such service. Companies will also need to maintain necessary documentation for identifying the purpose of secondment keeping in mind this judgment.

SKRINE

Climate Change reporting and stress testing for Financial Institutions gain momentum

06 July 2022

As with practically all other business sectors, there are growing concerns as to the impact of climate change on financial institutions and their business. In this regard, two notable publications were released last week.

First, the Task Force on Climate-Related Financial Disclosures ('TCFD') Application Guide for Malaysian Financial Institutions ('TCFD Application Guide') was released by the Joint Committee on Climate Change (JC3) on 29 June 2022. The TCFD Application Guide seeks to support the progressive implementation of climate-related disclosures by financial institutions that are aligned with TCFD recommendations[1]. The guide was developed by the Malaysian financial industry within the context of the Malaysian economy and financial system and is designed for the following financial institutions: (a) commercial banks, (b) Islamic banks; (c) investment banks; (d) development financial institutions; (e) insurance and reinsurance companies; (f) takaful and retakaful operators; (g) fund management companies; and (h) institutional investors. The TCFD Application Guide can be accessed **here**. https://www.bnm.gov.my/documents/20124/3770663/TCFD_Application_Guide.pdf

Second, the Discussion Paper on the 2024 Climate Risk Stress Testing ('CRST') Exercise ('Discussion Paper') was issued Bank Negara Malaysia on 30 June 2022 to seek feedback on the proposed design of the industry-wide CRST exercise to be conducted in 2024. Bank Negara Malaysia has proposed in the Discussion Paper that the following financial institution participate in the 2024 CRST exercise: (a) licensed banks, licensed investment banks and licensed insurers, including licensed professional reinsurers under the Financial Services Act 2013; (b) licensed Islamic banks and licensed takaful operators, including licensed professional retakaful operators under the Islamic Financial Services Act 2013; and (c) prescribed development financial institutions under the Development Financial Institutions Act 2002. The Discussion Paper can be accessed **here**.
https://www.bnm.gov.my/documents/20124/3770663/DP_2024_CRST.pdf

The deadline for providing feedback to Bank Negara Malaysia on the Discussion Paper is 30 September 2022.

Alert by Kok Chee Kheong (Partner) of the Corporate Practice of Skrine.

[1] The Final Report on the Recommendations of the Task Force on Climate-related Financial Disclosures can be accessed **here**. https://www.fsb.org/wp-content/uploads/P290617-5.pdf

GUATEMALA

NEW ELECTRONIC INVOICE REGIME FEL

Jun/2022

Through resolution No. SAT-DSI-1240-2021, published in the Official Gazette, it was established that all VAT taxpayers must issue Electronic Tax Documents (hereinafter DTE) and register under FEL regime no later than July 1st, 2022.

What to expect in the future?

The FEL regime will be the only means for the issuance of invoices, so the printed invoices pre-authorized by SAT will no longer be valid or have their fiscal effects of VAT credit or to support a deductible expense.

For printed invoices it is recommended to give notice of cancellation of documents through the Virtual Agency, in the menu of Fiscal Registry of Printers, since after July 1st 2022 taxpayer will no longer be able to issue or receive printed invoices due to their lack of authorization.

Although FELs are issued electronically, the issuer may deliver printed copies to the taxpayers for their records. Taxpayers have also the possibility of activating notifications in their Virtual Agency to receive email when a FEL is issued.

Last June 29th, SAT declared through an institutional publication that the implemented electronic controls including the obligation to register under FEL system have improved the collection of income tax for 2022.

The FEL regime grants greater control to the Tax Administration over VAT tax credits and debits, since it will automatically detect if the credits have been reported within the 2 months prescribed by law.

Requirements for a DTE to be valid?

A DTE must be certified by a SAT-authorized certifier who verifies and authorizes the DTE.

The authorized certifier will assign a unique number with an advanced electronic signature to the file.

For a DTE to be valid, it must be accepted by SAT. The integrated SAT verifier, allows you to enter the issued DTE information to verify that it is valid.

The electronic invoice, in cases of sale must be issued at the time the good has been delivered. In services rendered, it will be issued at the time the remuneration for the service is received.

Override -FEL-

The FEL cancellation process will be through the issuer's Virtual Agency.

The date of the document cannot exceed the expiration date of the monthly VAT return for the period to which the document you wish to cancel corresponds.

DTE certifiers authorized by SAT

Guatemala Chambero f Commerce	COFIDI
Comercializadora guatemalteca mayorista de electricidad	CONTAP
Corposistemas	DIGIFACT
Formularios continuos de Centroamérica	G4S Documenta
GOM Solutions	Guatefacturas
Guatemala tecnologías de información	Indrese
Infile	Inforum Consulting
Megaprint	Operadora Económica
Soluciones Globales	Tekra

New tax audit models.

On June 29, the Tax Administration gave a conference, highlighting new tax audit models focused on economic sectors and subsectors, depending on the size of taxpayers.

This analysis focuses on the average payment of the different taxes in the sector and is measured taxpayer by taxpayer. This can be done as a result of the implementation of several technological tools, including DTEs. So, we can expect a change on tax audit that is more focused on taxpayers who on average report less taxes.

This will progressively decrease the tax audits to the one previously used.

Ximena Tercero
Partner
ximena.tercero@ariaslaw.com

Estaymer Mendoza
Associate
estaymer.mendoza@ariaslaw.com

Singapore: Exemption of connected fund managers under the Singapore Code on Take-overs and Mergers

DENTONS RODYK

July 5, 2022

Introduction

With an SGX-listed entity, a successful takeover is a means for a party (whether existing shareholder or not) to obtain control (referred to as the offeror). The conduct of the takeover is a highly regulated activity and is principally governed by the Singapore Code on Take-overs and Mergers (Code), issued by the Securities Industry Council of Singapore (SIC). The Code regulates not only the offeror, but also parties that are "acting in concert" with the offeror. It is typical for the offeror to appoint a financial adviser to advice on strategy, pricing and execution and the financial adviser will be regarded as a party that is so acting in concert.

Impact of takeovers on financial advisers in a large financial group

Where the financial adviser is a part of a large financial group, it is common for the financial adviser to make an application to the SIC to exempt the other members of the financial group (that have no involvement in the particular takeover activity, and whom also exercises separate autonomy from the financial adviser) from similarly being regarded as "acting in concert". This application is made at the outset of the takeover and exemption is single use and applicable only to that takeover.

Without such an exemption, past and present activity of such other member of the financial group that are regarded as "acting in concert" will have implications on the takeover. For example,

- any purchases (in the past or during the conduct of the takeover) by such members of the financial group might impact the price at which the takeover is conducted; and
- sales of any securities in the target company are generally restricted, except in certain circumstances.

The "Exempt Fund Manager" regime and its implications for financial advisers

On 1 May 2018, the SIC introduced an "Exempt Fund Manager" regime whereby such a financial adviser will not need to make ad-hoc applications when advising on each takeover; instead, the financial adviser is invited to make an initial application, for exemption, for its other members of the financial group and if granted the exemption can be renewed annually (subject to conditions). Indeed, the initial application can (and is typically) made when the financial adviser is

not currently mandated on a takeover, and is in anticipation of a busy year ahead filled with takeover mandates.

This exemption regime is particularly useful where the other members of the financial group comprise, *inter alia*, independently operated wealth management and trading arms. It should be said that having been so exempted, a trading arm of the financial group can still participate in the active and deliberate execution of the takeover – just that in so participating, it will no longer fall within the protection of the exemption and will then be regarded as "acting in concert".

Scope of the exemption regime and its benefits

Under the "Exempt Fund Manager" regime, the SIC may grant exempt status to fund managers that are regarded as "acting in concert" for a period of time. Such exempt status is granted in recognition of the fact that certain dealing activities are carried out separately from, and are not influenced by, the corporate finance operations of the financial adviser. Once exempt, an exempt fund manager will not normally be regarded as acting in concert with the client of the financial adviser, **provided that** the sole reason for the connection with an offeror or offeree company is that the exempt fund manager is in the same group as the financial adviser.

For exempt fund managers, their exempt status applies to **all discretionary dealings in client funds** managed by the exempt fund manager. Where dealings by an exempt fund manager fall outside the scope of this exemption (e.g., non-discretionary dealings), such an exempt fund manager will not benefit from its exempt status and will continue to be regarded as "acting in concert" in relation to such dealings.

Notwithstanding their exempt status, it should also be noted that exempt fund managers would still have to disclose, either publicly or privately, to the SIC, its dealings in relevant securities in accordance with Rule 12 of the Code.

Please feel free to contact us should you have any queries on this exemption regime.

Your Key Contacts

Eng Leng Ng
Senior Partner, Singapore
D +65 6885 3636
engleng.ng@dentons.com

Tony Toh
Partner, Singapore
D +65 6885 3696
tony.toh@dentons.com

Chee Yang Teh
Associate, Singapore
D +65 6885 3602
cheeyang.teh@dentons.com

Substantial Operating Business in Taiwan CFC Rules

06/30/2022

Frank Lin/ **Alvin Chen**/ **Peter Wu**

In order to prevent profit-seeking enterprises or individuals from setting up controlled foreign companies (hereinafter referred to as "CFCs") in countries or regions with low-tax burden to retain surplus without distribution and avoid Taiwan's (Republic of China) tax burden, Taiwan promulgated Article 43-3 of the Income Tax Act on July 27, 2016 and Article 12-1 of Income Basic Tax Act on May 10, 2017 to establish a CFC system for profit-seeking enterprises and individuals, and both have been approved by the Executive Yuan and will come into effect in 2023.

Generally speaking, because the main purpose of a profit-seeking business or an individual to establish a CFC is to retain overseas surplus, the CFC is usually a paper company that does not rent offices or hire employees, and does not actually operate a specific business. Therefore, one of the elements for foreign profit-seeking enterprises to constitute a CFC and apply to Taiwan CFC system is "insubstantial operating business". According to Article 43-3, Paragraph 1, Subparagraph 2 of the Income Tax Act and Article 12-1, Paragraph 1 of the Income Basic Tax Act, if an overseas affiliated enterprise carries out substantial operating business in the country or region of domicile, the profit-seeking enterprises or individuals are exempted from including the surplus of overseas affiliated enterprises in the income tax.

In this regard, the Ministry of Finance promulgated the "Regulations Governing Application of Accrued Income from Controlled Foreign Company for Profit-seeking Enterprise"(hereinafter referred to as the "Profit-seeking Enterprise CFC Regulations") and the "Regulations Governing Application of Income Calculations from Controlled Foreign Company for Individual" (hereinafter referred to as the "Individual CFC Regulations") on September 22 and November 14, 2017, respectively, which clearly state the requirements for substantial operating business as following (see Article 5, Paragraph 2 of the Profit-seeking Enterprise CFC Regulations, and Article 5, Paragraph 2 of the Individual CFC Regulations):

1.The controlled foreign company has a fixed place of business location in its registered place and recruits employees to carry out substantial operating business at the local area; and

2.The sum of its investment income, dividends, interest, royalties, rental income, and profits resulting from the sale of assets (referred to as "passive income") accounts for less than 10% of the sum of its net operating revenue and non-operating revenue, provided that, however:

(1) The revenue and income of its overseas branches is calculated neither in the numerator nor the denominator of the fraction.

(2) Where a controlled foreign company develops intangible assets, or develops, builds, and produces tangible assets at its registered place, the royalty income, rental income, and sales profits derived from such assets shall not be calculated in the numerator of the fraction.

In addition, Article 5 Paragraph 2 of the Profit-seeking Enterprises CFC Regulations stipulates that, where a controlled foreign company under the control of a bank, securities company, futures company, or insurance company approved by the competent authority of the Republic of China is mainly engaged in the respectively approved banking, securities, futures, or insurance business at its registered place, the core business income of such controlled foreign company shall not be calculated in the numerator of the fraction. This is considering that these financial industries are licensed industries in most countries, and their operations are usually licensed and highly regulated, therefore, there is less tax avoidance.

To sum up, the formula for calculating the passive income ratio is as following:

(Current Year Investment Income + Dividends + Interest + Royalties + Rental Income + Profits from the Sale of Assets – A – B – C) / (Net Operating Revenue + Non-Operating Revenue – A) < 10%

Profits resulting from the sale of assets	= According to the Q&A of the Ministry of Finance, they only refer to the profits from the sale of assets. If there are any losses from the sale of assets, they are excluded.
A	= The revenue and income of the overseas branches.
B	= The royalty income, rental income, and sales profits derived from assets (excluding loss from the sale of assets) that are intangible assets developed by CFC or tangible assets developed, built and produced by CFC at its registered place.
C	= The core business income of CFC, where a CFC under the control of a bank, securities company, futures company, or insurance company approved by the competent authority of the Republic of China is mainly engaged in the respectively approved banking, securities, futures, or insurance business at its registered place.

Let us take an example. Taiwan Company A wholly owns Cayman CFC. Cayman CFC rents offices and recruits employees in Cayman. Its main business is the research and development of artificial intelligence software, and Cayman CFC's financial information for a certain year is as following:

(1) The sum of its investment income, dividends, interest, royalties and rental income for the year was US$1 million, US$100,000 of which is the income of overseas branches of Cayman CFC.

(2) Cayman CFC developed artificial intelligence software in Cayman and authorized Company B in the United States for use, and obtained a royalty income of US$700,000 in that year.

(3) Cayman CFC also sold two real estates in that year, one of which earned US$500,000, and the other lost US$600,000.

(4) Cayman CFC's net operating revenue and non-operating revenue for that year was US$5 million.

Based on the above information, the passive income ratio of Cayman CFC for that year is calculated as following:

(1,000,000 + 500,000 - 100,000 - 700,000) / (5,000,000 - 100,000) ≅ 14% > 10%

Even though Cayman CFC has an office in Cayman and recruits employees for software research and development, the passive income ratio accounts for more than 10%, which does not meet the requirements of substantial operating business.

Whether CFC has substantial operating business is not only determined by whether their renting offices or recruiting employees, but also by the detailed analysis of CFC's annual financial information. Therefore, it is recommended to consult professionals for assistance in processing CFC filings, so as not to get penalty from the competent authorities for failing in declaration. Lee and Li's tax team is composed of tax experts with domestic and foreign attorney's and accountant's licenses. We are familiar with the latest trends in domestic and international tax laws, and work closely with L&L, Leaven & Co., CPAs with a deep understanding of tax collection practices. If you have any questions about the new CFC tax system, please feel free to contact our tax team at any time.

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Financial Services

FDIC False Advertising Rule Now Effective

By Alexandra Steinberg Barrage and Matthew B. Bornfreund

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On May 17, 2022, the FDIC board approved a final rule, effective July 5, 2022, addressing false advertising, misuse of the FDIC's name, and misrepresentations about deposit insurance, based on section 18(a)(4) of the Federal Deposit Insurance Act (FDIA). This section prohibits any person from engaging in false advertising by misusing the name or logo of the FDIC or from making knowing misrepresentations about the existence of or the extent or manner of deposit insurance.

Acting FDIC Chairman Martin Gruenberg observed that an increasing number of firms or individuals, including what he called "scammers[,] . . .

have misused the FDIC's name or logo, or have made false or misleading representations about deposit insurance."

The final rule adds a new subpart B to 12 CFR part 328 , and it provides clarity about the FDIC's process for identifying and investigating conduct that may violate the statute, the standards under which such conduct will be evaluated, and the procedures that the FDIC will follow when taking formal and informal enforcement actions to address violations of the statute.

Below is a summary of the final rule's main points:

1. The FDIC's Independent Enforcement Authority

The FDIC has independent authority to investigate and take administrative enforcement actions, including the power to issue cease and desist orders and impose civil money penalties, against any person (including any nonbank or individual) who misuses the FDIC name or logo or makes misrepresentations about deposit insurance. This authority over nonbanks pursuant to 12 U.S.C. § 1828(a)(4)(E)(i) was granted to the FDIC in section 126 of the Emergency Economic Stabilization Act of 2008, the law that created the TARP program at the beginning of the financial crisis.

2. Where Nonbank Entities Make Unsubstantiated Claims

The final rule requires nonbanks, when highlighting the FDIC's name or logo or representing that cash held is insured by the FDIC, to support those claims and identify the bank or banks with which they have existing business relationships and into which consumers' deposits may be placed. This information can play a key role in enabling consumers, and the FDIC, to evaluate the accuracy of any nonbank claims about deposit insurance, including when interacting with nonbank crypto

firms and FinTech companies.

Understanding the prominent role of online advertising, the FDIC provides some flexibility regarding how this information is provided to consumers. For example, the final rule states, "a non-bank entity [that] places deposits through a deposit network . . . may satisfy this requirement by identifying the deposit network and each insured depository institutions (IDI) in the deposit network or by providing a hyperlink to a current list of all the IDIs that are part of such a network."

3. Complaints and Investigations

The final rule creates a process by which institutions and members of the public can report suspected instances of false advertising, misuse, or misrepresentation regarding deposit insurance. Under 12 CFR 328.103 , any person who believes someone is, or may be, acting in violation of section 18(a)(4) or who has questions regarding the accuracy of deposit-related representations may make an inquiry or complaint to the FDIC.

The FDIC will then investigate any such inquiry or complaint to determine if there is a potential violation. After the investigation, a course of action will be decided depending on the findings.

- If no violation is found, the FDIC can choose not to pursue the matter further.
- If a violation is found but it falls within a different jurisdiction, the FDIC will refer the matter to the appropriate authority.
- If a violation is found within the FDIC's jurisdiction, the FDIC may pursue informal resolution or formal enforcement.

4. Informal Resolution

The final rule creates an informal resolution process, which generally codifies a process the FDIC had already been using in connection with enforcement of the false advertising statute. Under the informal process, the FDIC issues an advisory letter that gives the person an opportunity to correct the violation without any further negative consequences. If the FDIC issues an advisory letter, the recipient will be requested to:

1. Take appropriate actions to prevent future violations;

2. Commit in writing to refrain from future violations; and

3. Verify in writing that stated issues have been addressed and resolved.

The recipient of an advisory letter will be given the chance to submit supporting evidence to demonstrate there was no violation. The FDIC will give the recipient at least 15 days to either provide the requested information or submit a justification, so long as such a grace period would not be deemed harmful to consumers or IDIs.

If compliance and remediations concerning all of the above have been verified, the FDIC will usually take no further enforcement action against the recipient. If the recipient fails to reply or comply with the advisory letter, the FDIC is entitled to pursue all stated remedies.

The FDIC can skip or end the advisory letter process and proceed to formal enforcement action at any time to prevent harm to consumers or IDIs, or if the recipient has previously received a similar advisory letter from the FDIC.

5. Formal Enforcement

Formal enforcement actions under the final rule are conducted in

accordance with the FDIC's administrative enforcement authority under 12 U.S.C. §1818(b), (c), and (i). The rules of practice and procedure for these actions are also the same as those for other enforcement actions, as provided in subparts A through C of 12 CFR part 308 . This means that persons who violate section 18(a)(4) of the FDIA , including the institution-affiliated parties of such persons, are potentially subject to civil money penalties.

Takeaways

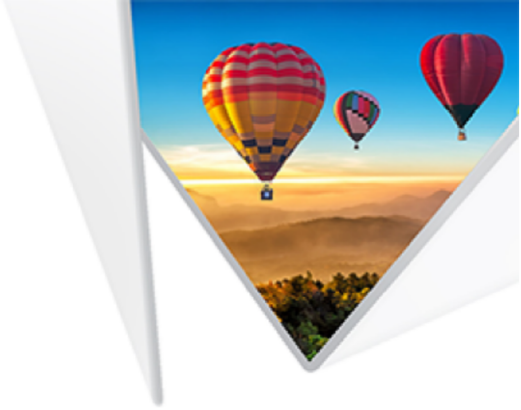
The final rule is a first step in a broader effort to revise and clarify how banks represent their products and use the FDIC logo in their marketing. A complementary sign and advertising rulemaking, expected later this year, is anticipated to "enhance consumers' awareness of when they are doing business with an insured institution and when their money is insured."

More broadly, the final rule can be viewed, together with Acting Chairman Gruenberg's priorities for 2022 and an accompanying statement by Acting Comptroller and FDIC Board Member Michael Hsu, as way to highlight potentially misleading statements regarding the applicability of deposit insurance to digital assets.

According to the Acting Comptroller, the final rule is "especially important in light of the growth of nonbank crypto firms and fintechs and their relationships with banks [where the] potential for consumer confusion about the status of cash held at these firms is high." CFPB Director and FDIC Board Member Rohit Chopra also noted concern about "potential misconduct involving novel technologies, including so-called stablecoins and other crypto-assets. While new technologies may yield significant benefits for households, workers, and small businesses, they nonetheless pose risks to consumers who may be baited by misrepresentations or false advertisements about deposit insurance."

Nonbank crypto firms and FinTech companies should remain aware of the FDIC's focus and jurisdiction to investigate and assess civil money penalties on this issue, including consideration of all aspects of their online communications with consumers. DWT is assisting clients to review their compliance with the FDIC rules.

Hogan Lovells



FDA releases updated priority list of food guidance documents intended for publication in 2022

12 July 2022

The U.S. Food and Drug Administration (FDA) recently released an updated list of priority draft and final guidance documents related to foods and dietary supplements that the agency intends to publish by the end of this year.

FDA last updated this list in January 2022.[1] The updated list[2] omits seven guidance documents that the agency published in the first half of the year and adds one new draft guidance document, related to preparation of premarket submissions for food contact substances. The food and dietary supplement items on the list are as follows:

List of Planned Guidance Documents to Be Published in 2022

Title of Guidance	Category
Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling and Consumer Protection Act of 2004 (Edition 5); Draft Guidance for Industry	Allergens
Policy Regarding N-acetyl-L-cysteine; Guidance for Industry	Dietary Supplements
New Dietary Ingredient (NDI) Notifications and Related Issues: NDI Notification Procedures and Timeframes; Guidance for Industry	Dietary Supplements
Best Practices for Convening a GRAS Panel; Guidance for Industry	Food Additives
Premarket Consultation on Cultured Animal Cell Foods: Draft Guidance for Industry	Food Additives
Preparation of Premarket Submission for Food Contact Substances (Chemistry Recommendations): Draft Guidance for Industry	Food Additives

Foods Derived from Plants Produced Using Genome Editing; Draft Guidance for Industry	Food Safety
Inorganic Arsenic in Apple Juice: Action Level; Draft Guidance for Industry	Food Safety
Action Levels for Lead in Food Intended for Babies and Young Children; Draft Guidance for Industry	Food Safety
Detention Without Physical Examination (DWPE) of Fish and Fishery Products Due to the Appearance of Adulteration by Bacterial Pathogens, Unlawful Animal Drugs, Scombrotoxin (Histamine), or Decomposition – Evidence Recommended for Release of Goods Subject to DWPE and Removal of a Foreign Manufacturer's Goods from DWPE; Draft Guidance for Industry	Food Safety
Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation (Layers with Access to Areas Outside the Poultry House): Questions and Answers Regarding the Final Rule; Guidance for Industry	Food Safety
Compliance Policy Guide Sec. 555.320 Listeria monocytogenes in Human Food; Draft Guidance for FDA Staff	Food Safety
Hazard Analysis and Risk-Based Preventive Controls for Human Food; Appendix 1: Potential Hazards for Foods and Processes; Draft Guidance for Industry	FSMA
Hazard Analysis and Risk-Based Preventive Controls for Human Food; Chapter 11: Food Allergen Controls; Draft Guidance for Industry	FSMA
Hazard Analysis and Risk-Based Preventive Controls for Human Food; Chapter 16: Validation of Process Controls; Draft Guidance for Industry	FSMA
Hazard Analysis and Risk-Based Preventive Controls for Human Food; Chapter 17: Classifying Food as Ready-To-Eat or Not Ready- to-Eat; Draft Guidance for Industry	FSMA
Hazard Analysis and Risk-Based Preventive Controls for Human Food; Chapter 18: Acidified Foods; Draft Guidance for Industry	FSMA
Refusal of Inspection by a Foreign Food Establishment or Foreign Government; Guidance for Industry	FSMA
Foreign Supplier Verification Programs for Importers of Food for Humans and Animals; Guidance for Industry	FSMA
Compliance with and Recommendations for Implementation of the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption for Sprout Operations: Guidance for Industry	FSMA
Labeling of Plant-based Milk Alternatives; Draft Guidance for Industry	Labeling
Labeling of Plant-Based Alternatives to Animal-Derived Foods; Draft Guidance for Industry	Labeling
Questions and Answers About Dietary Guidance Statements in Food Labeling; Draft Guidance for Industry	Labeling

Protein Efficiency Ratio (PER) Rat Bioassay Studies to Demonstrate that a New Infant Formula Supports the Quality Factor of Sufficient Biological Quality of Protein; Draft Guidance for Industry	Nutrition

Next steps

FDA plans to update the list every six months. The ambitious agenda signals FDA's commitment to the food program and continuing efforts to expand the use of guidance.

We will continue to monitor the FDA's issuance of guidance documents affecting the food and dietary supplement industries. Please do not hesitate to contact us with any questions.

Authored by Maile Gradison and Connie Potter.

References

1 FDA releases updated priority list of food guidance documents intended for publication by January 2023, Hogan Lovells Engage (Feb. 3, 2022

2 Foods Program Guidance Under Development, FDA

Contacts

Maile Gradison
Partner
Washington, D.C.
maile.gradison@hoganlovells.com

Connie Potter
Associate
Washington, D.C.
connie.potter@hoganlovells.com