PACIFIC RIM ADVISORY COUNCIL

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DAVIS WRIGHT TREMAINE CONTINUES LOS ANGELES GROWTH

Seth Levy

Joseph Paunovich

LOS ANGELES, JANUARY 20 – Davis Wright Tremaine LLP has added two new patent attorneys to its 50+ lawyer intellectual property practice group. Seth Levy and Joseph Paunovich, formerly of Pillsbury Winthrop, have joined Davis Wright Tremaine's Los Angeles office. The firm's IP lawyers represent clients in the areas of patent, trademark, copyright, licensing and litigation from offices in Los Angeles and San Francisco, Seattle, Portland, Washington D.C. and New York.

"We are very happy to have Seth and Joe as part of our team here in Los Angeles , said Rick Ellingsen, firm-wide managing partner, resident in the Los Angeles office. “We see them as an integral part of our continued growth in the Southern California marketplace and as valuable additions to our IP, as well as life sciences, practice groups.”

"Seth and Joe bring with them an excellent array of patent experience, and they are a great asset for our clients, said Alexandra Nicholson, co-chair of the IP practice group. “We are focused on expanding our IP practice on the west coast,” said co-chair Stuart Dunwoody, “and particularly in California . These two attorneys are welcome additions to our group.”

Seth Levy, who has joined the firm as of counsel, focuses his practice on patent prosecution and related corporate counseling, and has extensive experience working with biotechnology companies, research institutions, consumer products, health care, and other technology companies. He is a graduate of the University of Southern California Law School and Cornell University .

Joe Paunovich, associate, graduated from the University of Michigan Law School, and received his undergraduate degree from the University of Michigan in Microbiology. Prior to joining Davis Wright he was an associate practicing in the Intellectual Property group of Pillsbury Winthrop LLP. His practice focuses on patent prosecution and providing litigation support in the field of Life Sciences.

About Davis Wright Tremaine LLP

Davis Wright Tremaine is a national business and litigation firm with more than 420 attorneys in nine offices located throughout the Pacific Northwest , Anchorage , Los Angeles , San Francisco , New York and Washington D.C. The firm also has an office in Shanghai , China . The firm represents clients across the Unites States and around the world through a combination of nine offices, and a relationship with an international network of independent law firms.

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GOODSILL ANDERSON QUINN & STIFEL ANOUNCES NEW PARTNERS

Honolulu, Hawaii (January 24, 2005) - Goodsill Anderson Quinn & Stifel LLP is pleased to announce that **Evelyn J. Black**, **Joachim P. Cox**, and **Donna H. Kalama** have been named as the newest partners in its Litigation Group. Distinguished for helping clients find effective and innovative solutions to their disputes, Goodsill Anderson Quinn & Stifel is one of Hawaii's top litigation groups in Chambers & Partner's ranking of America's Leading Lawyers. Through their work on some of Hawaii's most complex and high-profile cases, Goodsill litigators have helped to shape Hawaii case law in a number of areas.

Evie Black concentrates her practice in the area of admiralty and maritime litigation. With an extensive background in investigation and handling of marine-related losses, she provides innovative and experienced representation to local boating operators, as well as national and international cruise lines. Black also represents clients' interests in a wide range of maritime-related matters ranging from longshore claims to diving related accidents.

Joachim Cox represents a broad array of clients in commercial and business disputes, including class action claims, environmental and personal injury litigation. Formerly a Special Assistant United States Attorney in the District of Hawaii, Cox also handles Qui Tam and white collar criminal defense matters.

Donna Kalama concentrates her practice in the area of litigation with emphasis on complex commercial and real property litigation, creditor's rights, Native Hawaiian rights, and appellate advocacy. Kalama also represents clients in cases involving personal injury, wrongful death, product defects and construction defects.

"With proven knowledge and experience in Hawaii's legal services industry, Evie, Joachim and Donna have also demonstrated a strong commitment to excellence and service," said Miki Okumura, managing partner, Goodsill Anderson Quinn & Stifel. "They are valuable assets to both our firm and our clients, and we are proud to welcome them as partners."

Black attended the University of Southern California and the University of Hawaii at Manoa, where she received a Bachelor of Education degree. As a police officer with the Maui County and Honolulu Police Departments, she honed her investigative skills before going on to earn her Juris Doctor from the University of Santa Clara School of Law. Prior to joining Goodsill, Black formed Marine Adjusting Services Corp., a risk management and adjusting services company for maritime insurers, vessel owners and marine related entities. In 1998, her company was acquired by John Mullen & Co., where she served as the Director of Marine Claims for five years before joining Goodsill in 2003.

Cox holds a Bachelor of Science degree from the United States Naval Academy, and a Juris Doctor from the University of Colorado School of Law. Prior to joining Goodsill, he served as a criminal defense counsel for the United States Navy, and as a civil trial attorney with United States Attorney's Office in the District of Hawaii. He continues to serve with the Naval Reserves as a Lieutenant Commander attached to United States Pacific Command. He is licensed to practice law in Hawaii, California and Colorado.

Kalama received her Bachelor of Arts degree from Willamette University before going on to earn her Juris Doctor from the University of Hawaii William S. Richardson School of Law where she was also a member of the Law Review. Kalama served as a law clerk to the Honorable Samuel P. King, senior judge of the United States District Court for the District of Hawaii.

About Goodsill Anderson Quinn & Stifel LLP
Goodsill Anderson Quinn & Stifel LLP traces its roots back to1878. It has grown to a firm of more than 65 attorneys who provide their clients with high quality services and innovative solutions in the areas of corporate law and securities, banking, real estate, tax, trusts and estates, international matters, public utilities and all types of civil litigation, and in specialized areas such as: health care, labor and employment, aviation, maritime, media, entertainment, environmental, administrative law, and technology. Goodsill has been named one of the top law firms in Hawaii by Chambers & Partners in its America's Leading Lawyers rankings.

For more information on the law firm, visit its website at www.goodsill.com.

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PACIFIC RIM ADVISORY COUNCIL

HOGAN AND HARTSON ELECTS 22 NEW PARTNERS AND DESIGNATES NINE COUNSEL

WASHINGTON, February 7, 2005 – Hogan & Hartson L.L.P. announced today the firm has elected 22 new partners and elevated nine associates to counsel. These appointments are effective January 1, 2005.

"This group of talented, highly regarded attorneys adds significant value to our firm's global practices," said Hogan & Hartson chairman, Warren Gorrell. "We are proud of their achievements and the contributions they have made to our firm and our clients."

The following counsel were elected to the partnership effective January 1, 2005:

Baltimore A. Lynne Puckett, corporate and securities practice

Miami Paul Hancock, litigation practice

New York Lee Samuelson, real estate practice

Washington, D.C. Alice Valder Curran, health practice

The following associates were elected to the partnership effective January 1, 2005:

Berlin Dirk Besse, corporate and securities practice

Denver Scott A. Berdan, corporate and securities practice

Miami Craig H. Smith, health practice

Northern Virginia Victoria F. Sheckler, intellectual property and corporate and securities practices

Washington, D.C.

John B. Beckman, corporate and securities practice
Mary Ellen Callahan, antitrust, competition, and consumer protection practice
Christopher P. Cardaci, litigation practice
Adam S. Feuerstein, tax practice
Joseph E. Gilligan, corporate and securities practice
Christopher T. Handman, litigation practice
Adam K. Levin, litigation practice
Robert G. Malkin, health practice
R. Latane Montague, environmental practice
Edward B. Parks, II, litigation practice
Siobhan C. Rausch, tax practice
Corey W. Roush, antitrust, competition, and consumer protection practice
Charles E. Sieving, corporate and securities practice
Michael J. Vernick, government contracts practice

In addition, the following associates were elevated to counsel effective January 1, 2005:

Boulder Keith M. Olivia, corporate and securities practice
Kraig S. Washburn, intellectual property, and corporate and securities practices

Denver Stuart M. Altman, litigation practice

Los Angeles
Soyeon P. "Karen" Laub, intellectual property practice
Manuel C. Nelson, intellectual property practice
Robin J. Samuel, labor and employment, and litigation practices

New York
Bart G. Van de Weghe, litigation practice
Jaime L. Weiss, litigation practice

Washington, D.C. James M. Wickett, legislative practice

About Hogan & Hartson

Hogan & Hartson is an international law firm headquartered in Washington, D.C., with over 1,000 attorneys practicing in 21 offices around the globe. The firm's broad-based international practice cuts across virtually all legal disciplines and industries.

Hogan & Hartson has European offices in Berlin, Munich, Brussels, London, Paris, Budapest, Prague, Warsaw, and Moscow; Asian offices in Tokyo, Beijing, and Shanghai; and U.S. offices in New York, Baltimore, Northern Virginia, Miami, Los Angeles, Denver, Boulder, Colorado Springs, and Washington, D.C.

For more information about the firm, visit www.hhlaw.com.

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Another Prosecutor from Elite Enron Task Force Joins Morgan Lewis

San Francisco, January 26, 2005: Morgan, Lewis & Bockius LLP announced today that John H. Hemann, previously with United States Attorney's Office for the Northern District of California, will be joining Morgan Lewis in San Francisco as a partner in the litigation group. He joins recent hires Leslie Caldwell, the former head of the Enron Task Force and former director of the criminal division in the U.S. Attorney's Office in San Francisco, and Lisa Tenorio-Kutzkey, also of the U.S. Attorney's office and Department of Justice Antitrust Division, to bolster the firm's outstanding Corporate Investigations and Criminal Defense practice.

Mr. Hemann joins Morgan Lewis after 10 years with the United States Department of Justice, having served most recently on the special task force created by the Department of Justice to investigate and prosecute criminal conduct associated with the Enron corporate scandal. As part of the Enron Task Force, Mr. Hemann prosecuted former Enron Chief Financial Officer Andrew Fastow.

Prior to his work with the Enron Task Force, Mr. Hemann served as an Assistant United States Attorney for more than eight years. During that time, he tried approximately 20 criminal and civil cases, and briefed and argued many appeals in the Ninth Circuit Court of Appeals. Mr. Hemann has tried five criminal securities fraud cases to juries, obtaining guilty verdicts in each. He also prosecuted public corruption offenses, obtaining convictions of the former mayor of East Palo Alto and a high-ranking San Francisco Housing Authority executive. His experience with the U.S. Attorney's Office also includes the prosecution of civil fraud cases, including one of the most significant HUD fraud cases in the country, and the defense of civil employment and tort actions filed against federal agencies and employees.

Mr. Hemann has been honored with awards such as the U.S. Department of Justice Director's Award for Superior Performance as an Assistant U.S. Attorney (2002)**,** U.S. Department of Justice Director's Award for Superior Performance in Affirmative Civil Litigation (1998)**,** HUD Inspector General's Award (1997). He was identified by the *American Lawyer* in May 2003 as one of 11 top federal prosecutors in the United States.

Morgan Lewis Continues to Strategically Add Laterals in California

San Francisco, January 26, 2005: Morgan, Lewis announced today that Joan M. Haratani, previously with Shook, Hardy & Bacon in their San Francisco office, is joining Morgan Lewis as a partner in its litigation practice. Joan has an extensive trial and pre-trial practice ranging from products liability to securities fraud. She is also past president of the Asian American Bar Association of the Greater Bay Area, which is one of the country's largest local minority bar groups, and has received numerous awards for both her practice accomplishments and service on behalf of minority practitioners.

Joan was recently nominated by the corporate members of the Minority Corporate Counsel Association as a "Female Litigator on the Rise - A Woman's Place is in the Courtroom" in *Diversity and the Bar*, Vol. 6, No. 2. (March/April 2004). Currently, she serves as treasurer to the Bar Association of San Francisco (BASF), is regional governor to the National Asian Pacific American Bar Association (NAPABA) and is secretary to the Lawyers' Committee for Civil Rights. She is the AABA's 2001 award recipient for "exceptional legal advocacy."

Joan is a former Advisory Committee member of the ABA Conference on Minority Law Firm Partners and Majority-Corporate Law Firms and has been recognized as one of the 500 most influential Asian Americans by *Avenue Asia Magazine*. She is currently co-chair of the committee in the ABA Science and Technology Section. She is a member of the DRI and California Women Lawyers. Joan was listed as one of "California's Top Rainmakers" in 1996, 1997, 1999 and 2001 (California Law Business).

Morgan Lewis Continues to Expand in Northern California Adds Premier Immigration Partners from Cooley Godward and IP Partner from Dechert

Morgan Lewis announces the expansion of its immigration practice with the addition of Cooley Godward attorneys Lance Nagel, 59, and A. James Vazquez-Azpiri, 42. The addition will add high-level inbound immigration capacity on the West Coast, and will further support outbound immigration services—placing American workers in foreign countries—to large corporate clients, including Japanese and Korean companies and technology companies in the Silicon Valley.

The Firm also increases its Northern California presence with the addition of David C. Bohrer, 47, who joins the Palo Alto office as a partner in the intellectual property litigation group. Mr. Bohrer, whose practice focuses on patent litigation, was formerly with the Palo Alto office of Dechert.

The San Francisco-based immigration team led by Lance Nagel includes an associate and a team of paralegals who are exclusively dedicated to immigration law. This expansion exponentially enhances Morgan Lewis' existing immigration presence and gives clients on the West Coast immediate access to immigration legal services within their own time zone.

The new partners bring with them a substantial practice with many impressive clients in Asia and the Silicon Valley—several of which already call upon Morgan Lewis lawyers for representation regarding intellectual property, employment and corporate law matters. Morgan Lewis provides companies with the full range of immigration law services, including compliance, outbound international services, training, and corporate management. Mr. Nagel and Mr. Vazquez-Azpiri have also established a comprehensive outbound practice and have tremendous experience in the Asian corporate market—a capacity that meshes well with Morgan Lewis' strong Asian company practice, as well as its growth in corporate and intellectual property law in California.

Morgan Lewis currently provides immigration services through an entrepreneurial division, Morgan Lewis Resources.

About Morgan, Lewis & Bockius LLP

Morgan Lewis is a global law firm with more than 1,200 lawyers in 19 offices located in Philadelphia, Washington, D.C., New York, Los Angeles, San Francisco, Miami, Pittsburgh, Princeton, Chicago, Palo Alto, Dallas, Harrisburg, Irvine, Boston, London, Paris, Brussels, Frankfurt and Tokyo.

For additional information visit www.morganlewis.com

BRIGARD & URRUTIA ACTS IN FIRST ISSUANCE OF STRUCTURED BONDS WITH SENIORITY

Colombian hydroelectric generator Central Hidroeléctrica de Betania SA (CEB) has successfully completed a Col$400 billion (US$168 million) local issuance of bonds, due 2011. The transaction closed on November 10.

Carlos Fradique-Mendez of **Brigard & Urrutia**, noted: “This was the first issuance in Colombia of bonds structured with seniority features, and with a fairly sophisticated and innovative financial and operative covenant package.”

Colombian bonds have typically been issued with fairly straightforward and simple covenants. In this case, in order to make the bonds consistent with outstanding indebtedness, the issuer is subject to a number of financial covenants that reference financial ratios, and to various other positive and negative covenants.

The bonds were issued in two tranches: the first one was fully placed on the closing date, for Col$300 billion; the second tranche, for Col$100 billion will be placed in 2006. Demand for the bonds reached 2.63 times the amount offered.

CEB is a subsidiary of Spain’s Endesa, one of the largest energy companies operating in Latin America. The funds raised through the issuance will be used for repayment of outstanding banking debt.

Corporación Financiera y Suramericana SA acted as lead arranger. Brigard & Urrutia was sole counsel on the deal, through partner **Carlos Fradique-Mendez** and associate **Margarita Llorent**

NAUTADUTILH’s CHARLES GIELEN IN TOP 100

The English legal magazine *The Lawyer* has just published a list of *The legal stars of 2004 and who to look out for in 2005*. The only Dutch lawyer on this Hot 100 2005 is Charles Gielen, partner of NautaDutilh. He helped make history when his client, Lancôme, won its groundbreaking copyright dispute.

For more information about this article or NautaDutilh visit www.nautadutilh.com

HOGAN & HARTSON ADVISES BRITISH TELECOM IN LANDMARK OUTSOURCING TRANSACTION

WASHINGTON, February 10, 2005 — Hogan & Hartson L.L.P. served as outside counsel to British Telecom subsidiary BT Americas (BT) in connection a complex outsourcing transaction with a U.S.-based Fortune 100 company, announced recently by BT. BT characterizes the transaction as a "landmark deal", under which it will manage the customer's local and wide area network infrastructure globally and migrate these services to a state of the art, high speed, IP-based global MPLS infrastructure.

Hogan & Hartson's multi-disciplinary outsourcing team includes lawyers experienced in intellectual property, data privacy, tax, labor, telecommunications regulation, Sarbanes - Oxley, and U.S. Food and Drug Administration matters. Kenneth Hautman, Joel Winnik, Paul Schwartz, Robin Everett, and Paul Skelly assisted in this transaction.

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LUCE FORWARD HAMILTON & SCRIPPS, WATER PURIFICATION START-UP AND RESCUE TASK FORCE UNITE TO BRING POTABLE WATER TO TSUNAMI-DEVASTATED SOUTHERN INDIA

January 5, 2005

Personnel of the four statewide offices of one of California's oldest law firms have joined forces with a start-up water purification technology company and a non-profit humanitarian aid organization to bring a dependable source of safe drinking water to villagers in southern India whose habitats were devastated by the Dec. 26 tsunami.

Employees of Luce Forward Hamilton & Scripps LLP donated more than $5,000, which was matched by $5,000 from the law firm to underwrite the expenses of sending the senior technical officer of Escondido-based Pure-O-Tech™ Inc. to southern India along with the parts and equipment he'll need to set up a portable water purification system. The system, which can convert up to 4,000 gallons of contaminated water to potable water every 24 hours, is expected to be in operation sometime next week.

The personal donations from employees and the management of the law firm's full-service offices in San Diego, Los Angeles, San Francisco and Carmel Valley/Del Mar in coastal north San Diego County, will be administered by Rescue Task Force, a San Diego-based 501© (3) non-denominational international relief agency whose president and vice president are top aides to U.S. Rep. Duncan Hunter, R-San Diego, chairman of the House Armed Services Committee.

"Personnel of every office of Luce Forward immediately sought input on how they as individuals could make a difference in helping survivors of the enormous devastation caused by the Dec. 26 earthquake and tsunami," said Robert J. Bell, managing partner of the 130-year-old California law firm.

"Just as we all were trying to comprehend the scope of the tragedy that occurred and what we as Californians and a law firm could do, our colleague, Partner William T. Earley, learned that Pure-O-Tech had a prototype portable water purification system already present in southern India and was seeking funds to send its vice president of research and development, Ben St. Onge, there to make it operable," he said.

The rest, Bell said, seemed easy: Working with Earley, who already was familiar with Pure-O-Tech's technology, and Luce Forward Director of Human Resources Darlene Hart, the law firm's Executive Committee approved assistance to Pure-O-Tech and notified all personnel the same day.

"The response was fantastic," Hart said. "We all were wondering what we could do to help, to really save lives, and all of sudden Bill Earley brought us the solution. Even on the eve of the holiday and with so many of our colleagues on a holiday schedule, by the afternoon of Jan. 3 our personnel had donated more than $4,000. With the matching $5,000 pledged by the Luce Forward Executive Committee, we were nearly where we needed to be to get Mr. St. Onge to India in less than two working days."

Also by Jan. 3, Pure-O-Tech CEO Can M. Sirin was overseeing travel arrangements and documentation for St. Onge while keeping in contact with Luce and with Rescue Task Force's president and vice president - Gary D. Becks and Wendall R. Cutting - who themselves were en route to Sri Lanka to help in the

humanitarian effort. Becks is Hunter's special assistant assigned to the California District office, and Cutting is Hunter's district chief of staff responsible for operations of congressman's district and Washington, D.C. offices.

"Two weeks ago we were engaged in the due diligence to select sites to demonstrate how our technology can provide safe drinking water to rural villages in southern India. We expected this work to proceed in an orderly fashion and at the time-table of national and international institutions that would underwrite water delivery infrastructure," Sirin said. "Since Dec. 26, we've been in a race against time to provide clean, safe drinking water to a devastated village. Through Rescue Task Force and the generosity of Luce Forward's personnel and management, we're making this possible."

Sirin noted that the confluence of several incidences over the last year and a half resulted in the presence in India at this time of extraordinary need of one of Pure-O-Tech's portable Enviro-Wash™ water treatment systems and two senior faculty members of San Diego State University's Department of Civil and Environmental Engineering who are well versed in the technology's applications.

In March 2004, senior representatives of Pure-O-Tech met with India President Abdul Kamal to discuss issues related to the provision of safe drinking water for the villages of rural India and the company's patented purification system employing ozone to disinfect contaminated source water. With them were Dr. Govindarajalu Krishnamoorthy, on sabbatical from the SDSU, and Dr. Mirat D. Gurol, the department's Blasker Chair Professor of Environmental Engineering.

At the president's request, Krishnamoorthy coordinated a demonstration of the Pure-O-Tech technology at Anna University in Chennai, in the Indian state of Tamil Nadu. In conjunction with the demonstration and subsequent tests by Anna University's Environmental Science Department, Gurol - an expert on treatment technologies of contaminated water, air and soil and of hazardous wastes who presently is on a leave of absence from SDSU -- lectured on the use of ozone to purify contaminated source water.

Sirin said that the response to the potential of the Pure-O-Tech technology was such that Krishnamoorthy decided to remain in his native India to seek government assistance in the selection of rural sites for water purification system demonstration projects and to coordinate with potential infrastructure underwriters, including The World Bank, USAID and the World Health Organization.

"We were engaged in the extensive due diligence process, and as a result our demonstration system is in southern India. Now Prof. Krishnamoorty is working with the government there to quickly identify the appropriate site to set up our system in response to the post-tsunami emergency," Sirin said. "Our highest priority is getting our colleague, Ben St. Onge, to India and the site selected along with spare parts and tools. He'll quickly have the system treating the contaminated ground water."

The capacity of the Pure-O-Tech system now in India can provide sufficient clean, safe drinking water for an estimated 1,000 people daily on a temporary basis, Sirin said. "We have the technology for a system that can purify drinking water for up to 150,000 persons a day," he said.

The Pure-O-Tech executive said that the demonstration system in India is an adaptation of proprietary technology already used in the U.S. to reclaim wastewater for landscape and agricultural purposes. In 2003, Pure-O-Tech earned an Environmental Responsibility Award from the Industrial Environmental Association and the California Manufacturers & Technology Association for its core technology and its applications.

In India alone there are approximately 700 million residents of some 600,000 villages without dependable sources of potable water, Sirin said.

"The devastation of Dec. 26 is incomprehensible," he said. "But what we've learned in the past year and a half is that there is an equally staggering need for safe drinking water in the world day in and day out."

For additional information visit www.luce.com

NAUTADUTILH Assists Ministry of Finance

The head office of the Ministry of Finance, located on the Korte Voorhout in The Hague, is to be renovated through a public-private partnership (PPP) under a DBFMO (Design, Build, Finance, Maintain and Operate) contract. Under the contract, activities ranging from the design, construction and financing of the project to the provision of some of the facility services for a period of 25 years are being put out to tender in a single integrated package.

Valued at approximately EUR 170 million, this is the first PPP project in the Netherlands involving a government building. Previous PPP projects have related to infrastructure, for example the HSL high-speed rail link, in relation to which NautaDutilh assisted the winning consortium.

The process of inviting tenders for the renovation of the Ministry of Finance building is now in full swing. The contract with the winning consortium will be signed around March 2006 and the renovations completed in 2008.

NautaDutilh is assisting the Ministry in the tendering process and drew up the draft DBFMO contract. Erik Geerling and David van Ee recently gave presentations about this contract (and the conditions under which alternative contract provisions will be considered) to the four consortia that have been selected to participate in the consultation phase of the tender and ultimately submit tenders.

The multi-disciplinary team handling this innovative deal is made up of members of NautaDutilh's Projects/Project Finance group (which brings together specialists from a variety of fields, such as banking & finance, construction/property and tax): Erik Geerling, Vanessa van Baasbank, David van EE and Lieuwe de Boer. The team is being assisted by: Chris Fonteijn, Stijn Franken, Bas Baks, Gaby Heere, Pieter de Jong, Maarten Meulenbelt, Robert Noordam, Trudi Perie, Derk Prinsen, Marinus Winters and Barbara Visser.

For additional information visit www.nautadutilh.com

The Federal Government has announced that it will amend the *Trade Practices Act* 1974 ("TPA") to introduce criminal penalties for serious cartel conduct. Although no Bill has yet been released, the Government has revealed some aspects of the new regime. In this Alert, we'll look at the implications of the proposed regime.

The penalties under the new criminal regime are significant.

The maximum term of imprisonment for an individual convicted of a criminal cartel offence will be five years, with a maximum fine of $220,000.

The Government has introduced the *Trade Practices Legislation Amendment Bill* that will amend the civil penalty regime for breaches of the competition laws. The maximum fine for corporations convicted of a criminal cartel offence will mirror these new penalties. The maximum penalty will be the greater of $10 million, or three times the value of the benefit from the cartel, or where the value cannot be readily ascertained, 10% of the annual turnover of the body corporate and all of its related bodies corporate.

The introduction of criminal penalties, together with the proposed increased penalties in civil proceedings, increase the need for corporations to take trade practices compliance responsibilities more seriously than ever.

The cartel offence

The cartel offence, which will apply to individuals as well as corporations, will prohibit a person from making or giving effect to a contract, arrangement or understanding between competitors that contains a provision to:

- fix prices;
- restrict output;
- divide markets; or
- rig bids,

where the contract, arrangement or understanding is made or given effect to with the intention of dishonestly obtaining a gain from the customers who fall victim to the cartel.

The Government has indicated that dishonest intent will be proved if a jury is satisfied that the cartel arrangement was dishonest according to the standards of ordinary people, and the defendant knew it was dishonest according to those standards.

The inclusion of the "dishonesty" element will therefore exclude from the criminal provisions conduct engaged in inadvertently or that the defendant genuinely did not believe to be illegal or improper. However, that kind of conduct can still be penalised under the civil standard of the existing TPA, which is strict liability.

Interaction between the civil and criminal provisions

The Government has also proposed the introduction of a new civil cartel offence into the TPA. There will be no requirement for dishonesty in order to breach the civil cartel provisions.

It is envisaged that the most serious cartel conduct would be pursued under the criminal provisions, and other cartel conduct would be litigated civilly.

It is unclear how the cartel offence will interact with the existing prohibitions on exclusionary provisions and price fixing. This is something that will need to be considered closely in the drafting of the new cartel provisions.

Joint operations of the ACCC and the DPP

The Australian Competition and Consumer Commission will investigate, and the Commonwealth Director of Public Prosecutions ("DPP") prosecute, criminal cases. Cartel proceedings would be tried before a jury.

It is proposed that the DPP and ACCC will enter into a formal, publicly available Memorandum of Undertaking, establishing procedures for the investigation of cartel offences and the circumstances in which the ACCC will refer a case to the DPP for prosecution instead of pursuing civil penalties itself.

When deciding whether to refer a matter to the DPP for possible criminal prosecution, the ACCC must consider whether:

- the alleged conduct was longstanding or had, or could have, a significant impact on the market in which the conduct occurred; or
- the alleged conduct caused, or could cause, significant detriment to the public, or a class thereof, or one or more customers of the alleged participants; or
- one or more of the alleged participants has previously been found by a court to have participated in, or has admitted to participating in, cartel conduct, either criminal or civil.

The final form of the Memorandum of Understanding and the interaction between the ACCC and the DPP will be critical to the operation of the criminal regime in practice.

When the Australian Securities Commission first began briefing the DPP when serious criminal offences were introduced for breaches of the Corporations Law, there were considerable difficulties and prosecutions were very slow. Mr AG Hartnell, the then Chairman of the ASC, said:

"The only way I know to speed up the process is to integrate the offices of the DPP more closely with the offices of the ASC from the start of a serious (ie. perceived as significantly criminal) investigation."

A similar approach has taken place in the Canadian Competition Bureau and the UK Office of Fair Trading upon the introduction of criminal penalties. In those countries, criminal prosecutors have been co-located with the competition regulators for the purposes of prosecuting cartel offences.

The final form of the MOU will determine the effectiveness and closeness of the co-operation between the DPP and the ACCC. It may be that, as in overseas jurisdictions, it provides for the DPP to become involved in cartel matters at an early stage. This could quite dramatically change the nature of the ACCC's investigations.

Small business carve out

It is proposed that the ACCC would need to consider whether the value of affected commerce exceeds $1 million within a 12 month period or, for bid rigging cases, the value of the successful bid or series of bids exceeded $1 million within a 12 month period, before referring a case to the DPP. Thus, some cartel behaviour by small concerns will escape criminal sanctions.

Immunity and leniency

The ACCC has, over recent years, developed a comprehensive Leniency Policy in relation to cartel conduct (it is currently under review). However, this policy applies only to civil proceedings by the ACCC.

To deal with leniency applications under the new criminal regime, the *Prosecution Policy of the Commonwealth* must be amended so that immunity can be granted to cartel whistleblowers at an early stage in the investigation. The Government has foreshadowed that immunity can only be granted if the ACCC is not already aware of the conduct, and recommends to the DPP that immunity be granted. It is proposed that the applicant must also meet the following conditions:

- they are the first to come forward;
- they are not a clear individual leader in the cartel;

- they did not coerce others to join the cartel; and
- they co-operate fully with the ACCC and attend court to give evidence if required.

It is unclear whether any form of immunity also will be available to subsequent applicants, nor whether the ACCC will amend its Leniency Policy in respect of civil proceedings to make it consistent with the Prosecution Policy.

This aspect of the regime will become clearer as the details of the legislation and the amendments to the Prosecution Policy are released.

More about penalties

In addition to the jail sentences and financial penalties, proposed amendments to the TPA will give the court the option to disqualify an individual implicated in a contravention from managing a corporation.

The criminalisation of cartel conduct means that the *Proceeds of Crime Act* 2002 will apply. Broadly, this Act enables a court to order that proceeds of a criminal offence be forfeited to the Commonwealth. The implication of this is that revenue that a company achieves as a result of a market sharing or price fixing arrangement could be forfeited to the Government, in addition to any financial penalty imposed.

The importance of compliance

The proposed introduction of criminal penalties, together with the proposed increased penalties in civil proceedings, highlight the need for corporations to take trade practices compliance responsibilities more seriously than ever.

A corporation's compliance program will be important for three main reasons:

- it should assist in preventing cartel conduct from occurring;
- it will be a relevant factor in the penalty phase of cartel proceedings;
- if a company faces a significant financial penalty (for example a penalty based on the company's turnover), the absence of an effective compliance program could leave the door open in some cases for shareholders to take action against company directors for breach of directors' duties.

Tozzini Freire Teixeira e Silva Advogados

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BRAZIL: JUDICIARY REFORM SHOULD EXPEDITE RATIFICATION OF FOREIGN JUDGEMENTS AND ARBITRATION AWARDS

Amendment 45 to the Brazilian Constitution, known as the Judiciary Reform, was published on December 31, 2004.

Among other changes, Amendment 45 shifted jurisdiction over the ratification of foreign judgements and arbitration awards from the Brazilian Supreme Court (which functions as a constitutional court) to the Brazilian Superior Court of Justice (higher federal court in charge of non-constitutional matters).

At first, the ratification procedures and requisites will remain unchanged, since any modification would require new regulations to be issued by the National Congress and the Superior Court of Justice.

Nevertheless, it is expected that, considering the different structures and organization of the Brazilian Supreme Court and the Brazilian Superior Court of Justice, the shift in jurisdiction will substantially shorten the duration of ratification procedures.

Such time-saving efforts in the ratification of foreign judgements and arbitration awards should enhance the credibility of improvements being made in Brazilian institutions. In addition, they shall give effect to the command also established by Amendment 45 which requires all court and administrative proceedings to be completed within a reasonable timeframe.

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Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters

by Dou Shaowu and Liu Qian*

Jurisdictional power is the very core of a country's judicial sovereignty, which in itself is a significant component of its national sovereignty. National sovereignty is sacred and inviolable as the very foundation on which the nation is built on. Therefore, most countries did not traditionally recognize and enforce judgments made by foreign courts. However, as transnational commercial activities pick up steam and the development of various economies, in turn, becomes more and more interconnected in the form of either mutual constraints or synergy, recognizing and enforcing judgment or arbitral awards made under other jurisdictions substantially promotes cross-border trade and economic co-operation. Thus, under certain conditions, based on the principle of mutual benefit, recognition and enforcement of foreign judgments has become the trend of legislative development.

The foremost breakthrough in this aspect of judicial reform is the recognition and enforcement of foreign arbitral awards. The status of arbitral bodies differs from that of the national judiciary. Arbitral bodies are non-government in nature; their basis for jurisdiction in a given case lies in an arbitration agreement or contract arbitration clause which clearly indicates the parties' intention. Most arbitration relates to civil and commercial disputes or technical and quality disputes, areas in which a country's jurisdictional sovereignty is not affected. China has already joined the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in 1986. In accordance with Article 3 of the Convention, "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles". However, each country places stricter requirements on recognition and enforcement of foreign court judgments or orders.

I. Chinese law regulating recognition and enforcement of foreign judgments or orders

People Republic of China's approach in regard to recognition and enforcement of foreign judgments or written orders is in accordance with the 1991 Civil Procedure Law of the People's Republic of China (Civil Procedure Act), the official interpretation of the Civil Procedure Act, and various judicial assistance conventions entered into between China and other countries. The principal requirements for recognition and enforcement of foreign judgments or written orders are set out in section 267 and 268 of the Civil Procedure Act, mainly dealing with the following:

1. Acceptance of a case:

Section 267 of the Civil Procedure Act prescribes, "If a legally effective judgment or written order made by a foreign court requires recognition and enforcement by a people's court of the People's Republic of China ("PRC"), the party concerned may directly apply for recognition and enforcement to the intermediate people's court of the

PRC which has jurisdiction. The foreign court may also, in accordance with the provisions of the international treaties concluded or acceded to by that foreign country and the PRC or with the principle of reciprocity, request recognition and enforcement by a People's Court."

i. Applicant: To be eligible to submit an application to a People's Court to recognize and enforce a foreign judgment or written order, the applicant must be a party to the foreign judgment or written order; otherwise be in accordance with any relevant bilateral agreement between that foreign court and the PRC, or any multilateral treaty to which the PRC is a party, or any circumstances of reciprocal relations exist between that foreign country and the PRC.

ii. Court with jurisdiction: A party should apply for recognition and enforcement of a foreign judgment or written order to the Intermediate People's Court of the PRC having jurisdiction over the subject matter.

2. Basis for examining foreign court judgments or written orders

When accepting an enforcement request from a foreign party or court, the examining court should first examine whether any relevant bilateral treaties exist to which China and that foreign country have concluded or acceded to, or whether any precedent of reciprocity exists. If such treaties or precedent exist, the people's court shall follow the language of the treaty together with any relevant provisions of Chinese law in performing further examination on the specific foreign court judgment or written order; if no such treaties or precedent exist, the case shall be terminated due to insufficient grounds to perform further examination on that foreign judgment or written order.

3. Content of examination

If and only if the preliminary examination by the people's court reveals that a bilateral judicial assistance treaty exists, or that both countries have joined the international convention on recognizing and enforcing foreign court judgments or written orders, or that precedents of reciprocity exist, should the court undertake further examination on that foreign judgment or written order to determine whether it can ultimately grant recognition and enforcement.

i. A foreign court judgment or written order claiming recognition and enforcement must be a legally effective judgment or written order in accordance with the law of the applicant foreign country. After the People's Court accepts the application, if the court is uncertain as to whether it is legally effective, the applicant should present to the court evidence from the foreign court issuing the judgment or order.

ii. The judgment must not be in contravention of the basic principles of the Chinese law, national sovereignty, security and public interest.

iii. Treaty obligations and the relevant provisions of Chinese Law must be satisfied in recognizing and enforcing judgments or written orders: These conditions normally include (a) the foreign court had sufficient jurisdiction over that the subject matter; (b) the result of the judgment or written order

strictly accords with the procedural requirements of the law of the foreign country, and that the losing party had an adequate opportunity to defend; (c) Chinese courts have not yet accepted or heard the same case, or have neither reached a judgment nor have it recognized the judgment or written order made by that foreign court.

iv. It is not necessary to examine the substance of the foreign court judgment or written order.

4. Recognition and enforcement

After the examination detailed above, the people's court should recognise the foreign judgment or written order if the listed requirements are met. For those judgments which require enforcement, an enforcement order should be issued and enforcement should be carried out strictly in accordance with the Chinese law. The People's Court should not recognize those foreign judgments not satisfying the requirements.

5. Determination of whether to recognize and enforce foreign court judgments or written orders under circumstances in which neither treaties nor international conventions have been concluded or acceded to by PRC and that foreign country in which the judgment or written order was issued, and no precedents of reciprocity exist

It can be observed on the basis of the above analysis that the most important premise in obtaining recognition and enforcement for a foreign court judgment or written order is to determine the existence of some form of bilateral or multilateral treaty relevant to recognition and enforcement of foreign judgments or written orders, or precedents of reciprocity. People's Republic of China is a State member of the "Hague Conference on Private International Law" and actively participated in the drafting of the Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters. However, as that convention has not yet formally come into effect, there are still legal obstacles to overcome in recognizing and enforcing foreign judgments or written orders for the moment.

Under circumstances in which neither relevant treaties, nor international conventions have been signed or joined, and no circumstances of reciprocal relations exist, "the advisory opinion of Supreme People's Court on several issues concerning application of Civil Procedure Law of PRC" establishes principles regarding recognition and enforcement of foreign judgments and written orders. Article 318 provides that: "where a party applies to a competent Intermediate People's Court of the PRC for recognition and enforcement of a legally effective judgment or written order made by a foreign court, if the country in which such foreign court is located and the PRC have not concluded or acceded to an international treaty and have no reciprocal relations, the party may initiate an action in the People's Court and in such case the competent People's Court will make a judgment and enforce the judgment or written order of the People's Court".

In accordance with that Article, where neither treaties, nor international conventions have been concluded or acceded to, and no precedents of reciprocal relations exist, the party may initiate a new suit in a people's court which has sufficient jurisdiction. Based on the same set of facts, a people's court will substantively re-examine the case and render a judgment. In reality, this procedure is not an example of recognizing and enforcing foreign judgments or written orders, since it is an independent judgment made by the people's court after exercising sufficient jurisdictional power and undertaking substantive re-examination on the facts of the case.

II. Relevant international conventions acceded to by the PRC , and bilateral treaties relating to recognition and enforcement of foreign judgments or written orders

As mentioned above, the Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters is the most significant achievement in regard to recognition and enforcement of foreign judgment. If it can be acceded to and subscribed by majority of the countries, it will no doubt become the most authoritative basis for recognition and enforcement of foreign judgment in civil and commercial matters.

Moreover, China has already joined the Hague Convention on the Service Abroad of Judicial and Extra-judicial document in Civil and Commercial Matters. Even though it does not deal with the recognition and enforcement of foreign judgments or written orders, it facilitates voluntary execution via servicing legally effective foreign judgment or written order to a party within Chinese territory.

Although no multilateral conventions presently exist which are recognized and obeyed by a majority of countries, the bilateral judicial assistance treaties that China has concluded or acceded to with other countries or territories in regards to mutual recognition and enforcement in civil and commercial matters became the fundamental source when determining relevant issues between China and those countries, or territories. For instance, the Supreme People's Court enacted The Provisions on the People's Court's Recognition of the Verdicts on Civil Cases Made by Courts of Taiwan Province. Therein, the Court lays out requirements and procedures for recognizing and enforcing judgments or written orders in civil matters made by Taiwan courts. This provision constitutes the basis for recognition and enforcement of judgments rendered by Taiwan courts in civil matters.

III. Conclusion

Throughout the above analysis, it may be concluded that whether the foreign court judgment or written order can be recognized and enforced foremost depends on whether any international, bilateral, or multilateral conventions exist in regard to the recognition and enforcement of foreign judgments or written orders, or whether any circumstances of reciprocal relations exist. When there are, the request may be examined and decided based on provisions of the convention and requirements of Chinese law; it cannot be recognized otherwise. Special provisions in the Chinese law in regard to recognition and enforcement of certain foreign judgment or written order are exceptional.

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While legislation is moving towards making lenders' recovery rights tighter, the aim now is to truncate the time line for recovery to make it purposeful in reaching the reduction of the large Non Performing Asset ("NPA") value presently creating a domino effect on the banks and weakening the banking structure. With reduction in the NPA level, the banking industry would be able to lend for value creation.

The Government of India recently promulgated an ordinance named '*Enforcement of Security Interest and Recovery of Debt Laws (Amendment) Ordinance, 2004'* amending the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('Sarfaesi Act'). The amendment was necessitated by a decision of the Supreme Court of India in Mardia Chemicals Limited and Others V/s Union of India and Others.

The Sarfaesi Act deals with interalia enforcement of security by banks and financial institutions. The Act allows banks and Financial Institutions to attach the properties and assets of defaulters, without intervention of Courts and Debt Recovery Tribunals (DRT).

The Supreme Court held Section 17(2), which provided for a deposit of 75% of the amount claimed by the lender to be deposited by the appellant borrower as a prerequisite for preferring an appeal to the DRT, to be unconstitutional.

The significant amendments that have been proposed are:

- The secured creditor will be able to take possession of the secured assets of defaulting borrowers only after reasons for not accepting the borrower's objections have been communicated to the borrowers in writing. After possession of such assets, the borrower can file an application before the DRT without any deposit.

- If the DRT does not dispose off the petition within 4 months, the borrower or the secured creditor can move the Debt Recovery Appellate Tribunal (DRAT) for directing the DRT to expeditiously dispose off the application. This will simplify the process of transfer and restructuring of assets.

- The borrower can appeal to the DRAT against the DRT by depositing 50% of the claimed amount. This reduces the scope of filing an appeal, smoothening the path of recovery.

- To confer power upon the DRAT to transfer all pending applications before multiple DRTs to a single DRT. A single tribunal can effectively act as a clearing house for different appeals.

- To empower the Reserve Bank of India to call for periodic returns and information from securitization companies and asset reconstruction companies. It is envisaged that this may bring about a certain degree of transparency to the process.

- Additional powers have been conferred on banks to enable them to takeover the management of the business of the borrower, including the right of transfer by way of lease, assignment or sale, for realizing the secured assets. The proposed amendments allow management takeover of a business by lenders. This could result in an increase in mergers & acquisitions.

With this ordinance being promulgated, it instills confidence in lenders in view of the lenders having superior rights of enforcement and at the same time it is more equitable to borrowers as they do not have to deposit as much as before.

For additional information contact Mulla and Mulla and Craigie Blunt and Caroe in Mumbai.

The Indonesian government issued its Regulation No. 2 of 2005 on Intellectual Property Rights (“IP”) Consultants, on January 4, 2005, which sets forth the procedure to become an IP consultant (“Regulation”). The term “IP consultant” that is used in all of the Indonesian IP laws such as the Patent Law, Trademark Law, Copyright Law, Industrial Design Law, Trade Secret Law and Integrated Circuit Lay-Out Design Law is similar to the terms “patent attorney” and “trademark attorney” that are used in other countries

The Indonesian government issued its Regulation No. 2 of 2005 on Intellectual Property Rights (“IP”) Consultants, on January 4, 2005, which sets forth the procedure to become an IP consultant (“Regulation”). The term “IP consultant” that is used in all of the Indonesian IP laws such as the Patent Law, Trademark Law, Copyright Law, Industrial Design Law, Trade Secret Law and Integrated Circuit Lay-Out Design Law is similar to the terms “patent attorney” and “trademark attorney” that are used in other countries. The Regulation defines IP consultants persons who are certified and registered with the Directorate General of Intellectual Property Rights (“DGIPR”) as providers of services relating to the filing, registration and processing of IP applications. IP applications are defined as applications for the registration of intellectual property rights, such as patents, trademarks, copyrights, industrial designs, trade secrets and integrated circuit lay-out designs. In principle, IP consultants are not licensed to handle IP cases in the court, except where there they are also a licensed advocate. The DGIPR is the institution that appoints IP consultants, evaluates their work, and dismisses them. As regards patent consultants who are already registered in accordance with the Government Regulation No. 33 of 1991 regarding Special Registration Requirement for Patent Consultants, the Regulation obliges these patent consultants to to re-register with the DGIPR, within 6 months as of January 4, 2005

For more information visit www.abnrlaw.com

TAIWAN – Lee and Li – New Pension System to Take Effect July 1, 2005

Jason Lee

The Labor Pension Act (LPA) was enacted on 11 June 2004, and is scheduled to take effect on 1 July 2005. The main thrust of the legislation is to institute a defined-contribution pension system, under which workers will draw a monthly retirement pension, to replace the defined-benefit scheme currently prescribed by the Labor Standards Act (LSA), under which workers receive a single lump-sum retirement payment. The main points of the LPA are as follows:

Applicability
The LPA applies to all workers of ROC nationality who are subject to the LSA. In addition, any worker of ROC nationality to whom the LSA does not apply, may pay voluntary contributions and receive a pension under the LPA if the employer agrees to deduct pension contributions and pay them in according to the scheme. The LPA explicitly excludes non-ROC workers.

Transition from LSA to LPA
After the new LPA system comes into effect, workers covered under the old LSA system can choose whether to change to the new system, or continue with the old one. If a worker opts for the new system, his contributions from the old system will be retained until he becomes eligible to receive severance pay or a lump-sum retirement payment under the LSA, on condition that he does not change employers. At this point his employer will pay out severance pay or a retirement payment according to the number of years' contributions retained. Alternatively, an employer may agree with a worker to pay out the retained contributions at a rate not less than that stipulated for retirement payments under the LSA. Where workers choose to continue with the old system, their employer must make monthly contributions to its pension reserved fund deposited in the Central Trust of China, to bring the fund up to an adequate level, as indicated by actuarial calculations, within five years after the implementation of the new system. Such workers' applications for severance pay and retirement payments will continue to be handled under the provisions of the LSA.

If all of an employer's employees opt for the new system, and labor and management agree to contributions made under the old system being paid out at a rate not less than that prescribed for retirement payments under the LSA, the employer will no longer have an obligation to retain workers' old contributions, and there will thus no longer be any reason for the employer to maintain its pension reserved fund deposited in the Central Trust of China (CTC). Accordingly, the Council of Labor Affairs has made a policy decision to allow an employer that has paid off its employees' former contributions as described above to withdraw the remainder of its pension reserved fund deposited in the CTC. It is estimated that the pension reserved funds currently deposited in the CTC amount to some NT$350 billion. Allowing withdrawal in this way will provide employers with greater flexibility in their use of funds, and relieve them of the financial pressure of having to top up their worker retirement funds within five years if workers opt to continue with the old pension system.

All workers hired after the new system takes effect may participate only in the new scheme. If the employment of a worker to whom the new system applies is terminated on any of the grounds set out in the LSA for compensated termination, his severance pay should be calculated according to the number of year of contributions under the new system, at a rate of half of a month's average wages per full year worked, plus a proportional amount for any part year, up to a maximum of six months' average wages.

Contributions
An individual pension account (IPA) should be set up with the Bureau of Labor Insurance (BLI) for each worker. The employer should pay pension contributions into each worker's IPA at a rate of not less than 6% of the worker's monthly wages. An employee may also choose to make additional voluntary contributions into the IPA of up to 6% of monthly wages. Such voluntary contributions are exempt from personal income tax. The draft contributions table published by the Council of Labor Affairs (CLA) divides monthly incomes into 61 bands, with the top band in the amount of NT$147,901. Contributions for all incomes above this maximum will be rated at 6% of NT$150,000. To protect workers' pension rights, the LPA specifically provides that an employer may not substitute another pension scheme of its own for the pension scheme under the LPA.

Pension payments
A worker under the new system who has reached age 60 and has at least 15 contributing years under the new system may collect a monthly pension from the BLI. When a worker begins to draw the monthly pension, he must also withdraw a certain sum to purchase an extended life annuity, to provide continued pension payments if he lives beyond his residual life expectancy. However, a worker who, upon reaching age 60, has a contribution record of less than 15 years will receive a lump-sum retirement payment

The amount of monthly pension payable is calculated from the principal and accumulated earnings in the worker's IPA, according to annuity life tables to be drawn up by the BLI, on the basis of average residual life expectancy and interest rates. In the case of a worker who receives a single lump-sum retirement payment, the amount payable is the sum of the principal and accumulated earnings in the worker's IPA.

Annuity insurance
With the consent of its labor union or at least half of its workforce, and with the approval of the CLA, an employer with 200 or more employees may take out annuity insurance for its employees under a policy that complies with the requirements of the Insurance Act, in lieu of its duty to pay pension fund contributions under the new system. However, the premiums paid by an employer for such annuity insurance should not be less than 6% of its workers' monthly wages.

Employers' liability and penal provisions
A worker who suffers loss due to an employer's failure to duly make monthly payments into the employee's IPA may seek damages from the employer.

An employer that fails to report and pay pension fund contributions, and fails to rectify the situation within a period specified by the competent authority, or fails to bring its worker retirement fund carried over from the old system up to the required level of contributions within five years, may be penalized with an administrative fine of NT$20,000–100,000, which may be repeated monthly until the situation is rectified.

If an employer fails to pay pension fund contributions on time and in full, an additional late payment penalty will become payable, at 3% of the amount overdue per day. If the amount remains overdue and the cumulative late payment penalty becomes equal to the amount overdue, the penalty will double. A monthly penalty that is applicable to part of a month will be calculated proportionately.

For additional information visit www.leeandli.com

UNITED STATES – Davis Wright Tremaine LLP – Washington Vested Rights Doctrine

By Traci L. Shallbetter
[February 2005]

In a decision handed down on Jan. 25, 2005, the Division II Court of Appeals for the state of Washington held that the vested rights doctrine does not allow a developer to selectively waive its vested rights in order to benefit from newly-enacted regulations. *East County Reclamation Company v. Bjornsen*, ___P.3d.____, 2005 WL 148769 (Jan. 25, 2005). The case involved a developer who had applied for permits to construct a landfill in Clark County in 1989 and 1991. At the time the applications were deemed complete, the 1985 Solid Waste Management Plan governed landfill development. That plan was amended in 1994. The developer finalized its environmental impact statement (EIS) in June 2001. The adequacy of the EIS was challenged, forcing the examiner to address the threshold question of which law applied to the project: the 1985 solid waste management plan in effect at the time the application was filed, or the amended version of 1994. In reviewing a challenge to the adequacy of the EIS, a hearing examiner held that the developer could waive its vested right to have the proposal reviewed under the 1985 Solid Waste Management Plan in effect at the time of the application, and instead elect to have it reviewed under the 1994 amended plan. At the same time, the examiner held that the developer could avoid compliance with concurrency and critical area requirements of the amended plan by claiming vested rights under the 1985 plan. The examiner then proceeded to evaluate the EIS accordingly.

The Superior Court reversed the examiner's decision, finding that inappropriately allowed a selective waiver of land use regulations. The Court of Appeals affirmed the Superior Court, holding that the vested rights doctrine does not allow a developer to selectively waive its vested rights so it can benefit from parts of newly-enacted regulations without having to comply with other parts of those same regulations. The Court of Appeals acknowledged that the vested rights doctrine exists for the benefit of developers, and, like other due process rights, can be waived. It held, however, that allowing a selective waiver of applicable laws would actually run contrary to the purpose of the vesting doctrine—to fix the land use statutes and ordinances that govern an application. Once a developer files a complete application, they vest to the land use laws in effect at such time and cannot have their application considered under subsequently enacted laws without having to comply with all other parts of the new regulations. According to the *East County* decision, if an applicant wishes to take advantage of a change in the law, the applicant must withdraw its original application and submit another. In reaching this decision, the Court of Appeals affirmed that the land use regulations that govern a land use permit application are those in effect at the date of complete application, not those regulations enacted subsequently—regardless of whether subsequently enacted regulations are more or less favorable to the applicant.

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