



May 2011 e-Bulletin

MEMBER NEWS

- ▶ Davis Wright Tremaine Adds Prominent Entertainment & New Media IP Lawyer in Los Angeles
- ▶ Gide Loyrette Nouel Hires Development & Communication Head
- ▶ Hogan Lovells Former US Senator Joins Firm
- ▶ NautaDutilh to Host PRAC Conference May 21-25
- ▶ Wilson Sonsini IP Litigation and Medical Device Practice Experts Join Firm

COUNTRY ALERTS

- ▶ **AUSTRALIA** Government Reveals Latest Legislative Priorities for Telecommunications **CLAYTON UTZ**
- ▶ **BRAZIL** Doing Business with Petrobras **TOZZINI FREIRE**
- ▶ **CANADA** Canadian Securities Administrators Propose New Regime for Securitized Products **FRASER MILNER CASGRAIN**
- ▶ **CHILE** New Regulations for “Huasa Bonds” **CAREY ABOGADOS**
- ▶ **CHINA** Supreme People’s Court and The Company Law - Presumptions and Gap-Filling Round Three **KING & WOOD**
- ▶ **COLOMBIA** Mining Code Ruled Constitutional - Moors and Wetlands Will be Protected **BRIGARD & URRUTIA**
- ▶ **INDONESIA** Fiscal Incentive Announced for Oil & Gas and Geothermal Activities **ABNR**
- ▶ **MEXICO** Landmark Trademark Counterfeiting Sentence in Alcohol Beverage Industry **SANTAMARINA**
- ▶ **NEW ZEALAND** Simplifying Trans-Tasman Investment- Another Small Step **SIMPSON GRIERSON**
- ▶ **NETHERLANDS** Salary Freezes in 2011 and 2013 Wage Increases Now Illegal **NAUTADUTILH**
- ▶ **SINGAPORE** High Court Confirms Recognition of Foreign Liquidators **RODYK**
- ▶ **TAIWAN** Procedure for Business Tax on Collateral **LEE and LI**
- ▶ **UNITED STATES**
 - ▶ Growing Opportunities - Threats Highlight Importance of China IP Strategy **BAKER BOTTS**
 - ▶ New Guidance on Clean Water Act Jurisdiction Longer Federal Reach Less Certainty **DAVIS WRIGHT**
 - ▶ ATM Operators Beware EFTA Notice Requirements in Play **LUCE FORWARD**
 - ▶ Supreme Court Issues Significant New Decision Regarding Class Action - Ruling Rejects California Decision Prohibiting Class Action Waivers in Arbitration Agreements **WILSON SONSINI GOODRICH & ROSATI**

CONFERENCES & EVENTS

- *PRAC Members Gathering @ INTA San Francisco - May 14, 2011*
Details at www.prac.org/events.php
- *49th International PRAC Conference - Amsterdam - May 21-24, 2011*
Registration Open www.prac.org/events.php
- *50th International PRAC Conference - Singapore October 15-18, 2011*
Details at www.prac.org/events.php
- *PRAC Members Gathering @ IBA Dubai—October, 2011*
details tba

PRAC Conferences and Events are open to PRAC Member Firms only

MEMBER DEALS MAKING NEWS

- ▶ **BAKER BOTTS** Acts for PT Nusantara Regas in Charter Signing Establishing First LNG Regasification Terminal in Indonesia, First FSRU Project in SE Asia
- ▶ **CLAYTON UTZ** Acts in Barrick Gold CAN\$7.3 Billion All-Cash Takeover Offer to Acquire ASX and TSX Listed Equinox Minerals Limited
- ▶ **FRASER MILNER CASGRAIN** Acts for HRT Participações em Petróleo S.A in Share Acquisition UNX Energy Corp
- ▶ **GIDE LOYRETTE NOUEL** Advises IFC on its USD\$307 Million Investment in Vietnam Joint Stock Commercial Bank for Industry and Trade (VietinBank)
- ▶ **HOGAN LOVELLS** Advises on Landmark Financing Relating to Cayman Islands Merger
- ▶ **KING & WOOD** 21Vianet Lists on NASDAQ
- ▶ **NAUTADUTILH** Advises Mediq on Acquisition of Pannen Beheer Groep
- ▶ **RODYK** Acts for CapitaLand in Development Sale of D’Leedon
- ▶ **SKRINE** Selected by Government of Brunei to Draft Brunei National Standards Act
- ▶ **WILSON SONSINI** Represents TiVo in \$500 Million Settlement of Patent Litigation

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DAVIS WRIGHT TREMAINE ADDS PROMINENT ENTERTAINMENT AND NEW MEDIA IP LAWYER IN LOS ANGELES

James D. Nguyen joins the firm as partner

LOS ANGELES, APRIL 13, 2011 — Jimmy Nguyen, a highly regarded intellectual property lawyer with a particular focus in the emerging worlds of new media as well as traditional entertainment industries, has joined Davis Wright Tremaine LLP as a partner in the firm's Los Angeles office. Nguyen was previously with Wildman, Harrold, Allen & Dixon LLP in Beverly Hills.

Nguyen handles a broad range of complex counseling, transactions and litigation matters, including: IP, new media, entertainment, advertising, technology, and privacy matters. Working with clients such as LEGO Systems (entertainment and new media deals), Kia Motors America, Inc. (advertising, marketing and media), Journal Communications, Inc. (new media transactions and litigation), and Major League Baseball Properties, Inc. (IP disputes), he has built a substantial reputation as a go-to lawyer for high-stakes IP and cutting-edge new media issues.

Nguyen began his legal career after graduating from University of Southern California Law Center at 22 years old, the youngest in his class. He would go on to become a partner at Foley & Lardner LLP, where he co-founded and co-chaired that firm's Entertainment & Media Industry Team and served as a vice-chair of the Intellectual Property Litigation practice. In 2010, Nguyen was Chair of the State Bar of California's IP Law Section, and was a long-time member of its Executive Committee.

Nguyen earned numerous honors as his career progressed, including being selected by the Century City Bar Association as its IP Lawyer of the Year (2011), being named one of the Top 20 Lawyers under 40 in California by the Daily Journal (2010), recognized as one of the Best LGBT Lawyer under 40 by the National LGBT Bar Association (2010), receiving a Founders Award from the Association of Media & Entertainment Counsel (2009), and being selected to the Lawdragon 500 Leading Lawyers in America (2008). Outside the legal arena, he was named to the Advocate magazine's "Forty under 40" list of top LGBT persons (2010).

A recognized diversity leader, Nguyen serves on the Board of Directors for the California Minority Counsel Program and was CMCP's co-chair in 2010. Nguyen also serves on the Board of Directors for Equality California.

Mary H. Haas, partner-in-charge of Davis Wright Tremaine's Los Angeles office, notes that Nguyen's practice will blend seamlessly with the team of lawyers in the office. "The 'perfect match' cliché applies here," said Haas. "Two of our core strengths are our IP work and our counseling, transactional and litigation work for media and entertainment companies. Jimmy excels in these areas, and it's a win for our clients and for us to have him join our team."

For more information, visit www.dwt.com

About Davis Wright Tremaine

Davis Wright Tremaine LLP is a national law firm with more than 500 lawyers representing clients based throughout the United States and around the world.

GIDE LOYRETTE NOUEL HIRES DEVELOPMENT & COMMUNICATION HEAD

Sophie Boyer Chammard joins Gide Loyrette Nouel as Head of Development and Communications:

Sophie Boyer Chammard joins business law firm Gide Loyrette Nouel where she will take charge of development and communications. A graduate of INSEAD and holder of a postgraduate degree in Business Law and Tax (Paris I) and an LL.B. (King's College, London), Sophie Boyer Chammard has a dual experience acquired over 20 years working for law firms:

- As a law practitioner, specialising in finance law and mergers and acquisitions for two international law firms from 1990 to 1996: Sophie Boyer Chammard was based in Paris and Warsaw, where she helped to set up and develop the Polish office of Gide Loyrette Nouel in 1991, and also worked for Clifford Chance in 1993.

- As a coordinator of development projects: first as Strategy Manager at Accenture from 1998 to 2000 before becoming Head of Strategy and Development at Clifford Chance Paris for eight years. She also founded Alkor Conseils, a consultancy specialising in strategy and development for law firms.

Pierre Raoul-Duval, Senior Partner, comments, "We are delighted that the Firm is once again benefiting from Sophie's many talents. Her functional and operational skills are key qualities which ensure that we are always in touch with our clients and aware of their needs in all areas of business law".

For additional information visit www.gide.com



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Saturday, May 14, 2011

3:30 pm – 5:30 pm

@

St. Regis Bar

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St. Regis San Francisco

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Invitation is open to PRAC Member Firms only

FORMER U.S. SENATOR NORM COLEMAN JOINS HOGAN LOVELLS AS SENIOR GOVERNMENT ADVISOR

WASHINGTON, D.C., 26 April 2011 – Hogan Lovells US LLP announced today that former United States Senator Norm Coleman has joined the firm as a Senior Government Advisor in its Washington, D.C. office. Senator Coleman represented Minnesota from 2003 – 2009. Prior to his election to the U.S. Senate, Senator Coleman was the mayor of St. Paul, MN from 1994 – 2002.

“Senator Coleman’s career, spanning decades of service in the Minnesota Attorney General’s Office, then as the chief executive of one of the state’s largest cities, and later as a U.S. Senator, has given him invaluable insights from all angles of the practice and crafting of law that affect businesses and governments alike,” said Warren Gorrell, Co-CEO of Hogan Lovells. “He maintains close ties with former congressional colleagues as well as foreign dignitaries, businessmen, and ambassadors. Our clients with international business interests, particularly in Israel, China, and Latin America, will appreciate Senator Coleman’s perceptive understanding of the geopolitics of those regions.”

“Senator Coleman served on the Foreign Relations Committee, the Agriculture Committee, and as Chairman of the Permanent Subcommittee on Investigations while he was in the Senate. He also developed major public-private partnerships while he was mayor of St. Paul, including the return to Minnesota of a National Hockey League presence,” said Mike House, Director of Hogan Lovells’ Legislative group. “With this breadth of experience and contacts, Senator Coleman will offer our clients and our lawyers expansive knowledge of international, energy, enforcement, and public-private issues.”

At Hogan Lovells, Senator Coleman will counsel clients on a wide range of regulatory and government affairs issues.

“I am delighted to be joining Hogan Lovells,” said Senator Coleman. “This practice is uniquely positioned in the global legal market place with world-class lawyers throughout the world’s business and financial centers practicing in areas where business and government intersect. I look forward to working with my new colleagues spanning the globe.”

About Senator Coleman

In addition to serving a combined 14 years in public office as a U.S. Senator and as mayor of St. Paul, MN, Senator Coleman spent 17 years in the Minnesota Attorney General’s office from 1976 – 1993. While he served in the state’s Attorney General’s office, Senator Coleman served as both the highest-ranking civil and criminal lawyer in the Office as Solicitor General and Chief Prosecutor, respectively. During his six years in the U.S. Senate, Senator Coleman served on the Foreign Relations Committee and was Chair of the Western Hemisphere subcommittee and ranking member of the Near East subcommittee for two years. His experience in the U.S. Senate also expanded to agriculture where he served on the Agriculture Committee and chaired the renewable fuel caucus in the Senate.

Senator Coleman received his J.D. with high honors from the University of Iowa College of Law in 1976, and he earned his B.A. from Hofstra University in 1971.

For more information visit www.hoganlovells.com

About Hogan Lovells

Hogan Lovells combines the breadth of business-oriented legal advice and high-quality service that clients have come to expect through working with its two founding firms – Hogan & Hartson and Lovells.

Hogan Lovells (the “firm”) refers to the international legal practice comprising Hogan Lovells International LLP, Hogan Lovells US LLP, and their affiliated businesses, each of which is a separate legal entity. Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG. Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia.

The word “partner” is used to refer to a member of Hogan Lovells International LLP or a partner of Hogan Lovells US LLP, or an employee or consultant with equivalent standing and qualifications, and to a partner, member, employee or consultant in any of their affiliated businesses who has equivalent standing. Rankings and quotes from legal directories and other sources may refer to the former firms of Hogan & Hartson LLP and Lovells LLP. Where case studies are included, results achieved do not guarantee similar outcomes for other clients.

IP LITIGATION AND MEDICAL DEVICE PRACTICE EXPERTS JOIN WILSON SONSINI GOODRICH & ROSATI

Pharmaceuticals Expert Jeffrey Alan Hovden and IP Counseling & Patents Expert James Heslin Join Firm

PALO ALTO, CA (May 9, 2011) - Wilson Sonsini Goodrich & Rosati, the premier provider of legal services to technology, life sciences, and growth enterprises worldwide, is pleased to announce that Jeffrey Alan Hovden and James M. Heslin have become partners at the firm.

Jeffrey Alan Hovden An experienced intellectual property litigator and counselor with particular expertise in pharmaceuticals, Hovden formerly was a partner at Katten Muchin Rosenman. He will be based in the firm's New York office.

"In recent years, I'm proud to say that the firm has established one of the top generic pharmaceutical practices in the nation, with a unique integrated approach across a broad array of legal disciplines," said CEO Steve Bochner. "Jeff is a terrific IP litigator with exactly the type of knowledge and experience that our pharmaceutical clients most need and value. He will help us further grow the practice and lends additional strength to our overall East Coast litigation capabilities."

Hovden specializes in patent litigation with a focus on pharmaceutical cases under the Hatch-Waxman Act and within the biotechnology industry more broadly. He has litigated numerous patent infringement and invalidity actions, including many cases involving top-selling, global prescription drugs for both generic and name-brand pharmaceutical companies. In addition to his robust litigation practice, Hovden advises clients on their intellectual property portfolios. He has extensive experience with the Food, Drug, and Cosmetic Act's drug-approval provisions and their attendant regulations, and provides infringement, validity, and due diligence opinions. In addition, Hovden has experience with copyrights, particularly ones involving functional works, and counsels his biotechnology clients regarding licensing matters.

Prior to his tenure at Katten, Hovden was a partner at Frommer Lawrence & Haug. Conversant in Japanese, he received his J.D. from the Columbia University School of Law in 1993 and a B.A., *summa cum laude*, with majors in biology and philosophy from the University of Minnesota in 1988.

James M. Heslin The former founder and leader of the medical device technology patent group at Townsend and Townsend and Crew (now Kilpatrick Townsend), Heslin will be based in the firm's Palo Alto office.

"The medical device industry has been a key area of focus for the firm for many years, and we've been fortunate enough to have built a practice that assists many of the companies that are transforming healthcare today," said CEO Steve Bochner. "Hiring someone with Jim's particular expertise is a natural extension of our services, and we are extremely pleased to welcome him to the firm."

"Simply put, Jim is the best medical device patent attorney in the country, and we have long admired his work," said partner Casey McGlynn, one of the leaders of Wilson Sonsini Goodrich & Rosati's life sciences practice. "His extensive experience with both medical technology companies and the venture capital firms that invest in them make him a terrific asset for our clients as they seek to accelerate their businesses."

For more than 20 years, Heslin has advised medical device clients on the most effective and efficient ways to obtain and protect their intellectual property rights, both in the U.S. and abroad. His clients span a broad array of medical and surgical device technologies, including angioplasty, atherectomy, stent delivery, arthroscopy, suturing devices, ultrasound imaging and therapy, gynecology devices, minimally invasive surgical equipment, hearing aids, drug delivery systems, orthodontics, orthopedics, and diagnostics. Heslin also has extensive experience in due diligence and portfolio evaluation, licensing, and preparation of patent validity and infringement opinions. In addition to his tenure at Townsend, he served as general counsel for Align Technology at the time of their public offerings. Heslin received his J.D. from the UC Berkeley School of Law in 1978 and a B.S. degree in chemical engineering from the University of California, Santa Barbara, in 1973.

For more information, please visit www.wsgr.com.

About Wilson Sonsini Goodrich & Rosati

Celebrating its 50th anniversary in 2011, Wilson Sonsini Goodrich & Rosati offers a broad range of services and legal disciplines focused on serving the principal challenges faced by the management and boards of directors of business enterprises. The firm is nationally recognized as a leader in the fields of corporate governance and finance, mergers and acquisitions, private equity, securities litigation, employment law, intellectual property, and antitrust, among many other areas of law. With long-standing roots in Silicon Valley, Wilson Sonsini Goodrich & Rosati has offices in Austin, Hong Kong, New York, Palo Alto, San Diego, San Francisco, Seattle, Shanghai, and Washington, D.C.

NAUTADUTILH SET TO HOST PRAC AMSTERDAM CONFERENCE



PRAC 49th International Conference

May 21—24, 2011

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Business Sessions include:

One on One Meetings

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Banking & Workouts -

"Future Role and Form of Disclosure Documents"

Corporate Commercial & International Trade -

"Negotiation Dynamics"
featuring guest facilitator Ingemar Dierickx

PRACTice Management -

"Exploring BRIC Opportunities"

Litigation & Dispute Resolution -

"Resolving Issues in the International Marketplace"

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BAKER BOTTS

ACTS IN CHARTER SIGNING ESTABLISHING FIRST LNG REGASIFICATION TERMINAL IN INDONESIA, FIRST FSRU PROJECT IN SE ASIA

May 4, 2011 -- PT Nusantara Regas is scheduled to begin operating Indonesia's first floating LNG regasification terminal next year, after executing a time charter for a floating storage and regasification unit (FSRU) with Golar LNG Energy on April 20, 2011. The terminal will be Southeast Asia's first floating LNG facility outside Dubai.

The FSRU will be able to store around 125,000 cubic meters of LNG and deliver up to 500 million cubic feet of regasified LNG through PT Nusantara Regas's 15 km pipeline, fuelling power plant owned and operated by Indonesian national power company, PLN.

Baker Botts acted for PT Nusantara Regas, a joint venture between Indonesian state oil company, Pertamina, and gas company, PGN. Among the many legal issues the project confronted, the project was the first of its kind to have been implemented under Indonesia's new cabotage regime.

For additional information visit www.bakerbotts.com

WILSON SONSINI

REPRESENTS TIVO IN \$500 MILLION SETTLEMENT OF PATENT LITIGATION

On May 2, TiVo, DISH Network Corporation, and EchoStar Corporation announced that they have settled all of their ongoing patent litigation. Among other terms, DISH Network and EchoStar agreed to pay TiVo \$500 million, and the three parties agreed to dismiss all pending litigation between the companies with prejudice.

For more information visit www.wsqr.com

FRASER MILNER CASGRAIN

HRT PARTICIPAÇÕES EM PETRÓLEO SA ACQUIRES UNX ENERGY CORP.

On April 29, 2011, HRT Participações em Petróleo S.A. ("HRT") completed its acquisition of all of the issued and outstanding common shares (the "UNX Shares") of UNX Energy Corp. ("UNX") by way of plan of arrangement (the "Arrangement"). Pursuant to the Arrangement, shareholders of UNX received common shares of HRT ("HRT Shares") which were put on deposit with Deutsche Bank Trust Company Americas (the "Depositary") in exchange for global depositary shares ("Global Depositary Shares") representing the HRT Shares. Each such Global Depositary Share represents a 1/100th interest in an underlying HRT Share and is held by the Depositary through a depositary receipt program.

Under the Arrangement, 64,277,400 Global Depositary Shares were issued (representing 642,774 HRT Shares on deposit with the Depositary) to acquire of all of the outstanding shares of UNX in a transaction that valued UNX at approximately \$700 million. The Global Depositary Shares were listed on the TSX Venture Exchange (the "TSXV") at the opening of markets on April 29, 2011 under the symbol "HRP" and the UNX Shares have been voluntarily delisted from the TSXV.

This is only the third listing of depositary shares in Canada and the first transaction where Canadian-listed depositary shares were issued as consideration. A global depositary share program presents an innovative and effective alternative for foreign companies seeking to invest and list in Canada.

HRT Participações em Petróleo S.A. is one of the largest independent oil and gas exploration and production companies in Brazil. With its acquisition of UNX, HRT gained oil and gas interests in Namibia, including multiple petroleum exploration licences, all of which are offshore.

HRT was represented by its Manager for Corporate Affairs, Beatriz Marques de Barros, with a team that included Priscila Sarandy Domingues and Bianca Santoloni Sohn.

Fraser Milner Casgrain LLP acted as Canadian legal counsel to HRT with a team consisting of Frank Alexander and Adam Horne (energy and commercial); Dale Skinner, John Reynolds, Toby Allan, Tim Haney, Trevor Korsrud and Gwenneth Feeny (corporate and securities); Derek Kurrant (tax); and Correna Jones (employment).

For additional information visit www.fmc-law.com

CLAYTON UTZ

ACTS IN BARRICK GOLD CAN\$7.3 BILLION ALL-CASH TAKEOVER OFFER TO ACQUIRE ASX AND TSX LISTED EQUINOX MINERALS LIMITED

Sydney, 29 April 2011: Clayton Utz has acted as Australian counsel to global miner Barrick Gold in connection with its CAN\$7.3 billion (US\$7.7 billion) all-cash takeover offer to acquire ASX and TSX listed Equinox Minerals Limited, announced on 25 April 2011.

The takeover represents the largest Australian M&A transaction announced in 2011 year-to-date and is also the largest Australian resources inbound M&A transaction since ConocoPhillips' US\$7.9 billion acquisition of coal seam gas assets in 2008 (on which Clayton Utz acted for Origin Energy).

Clayton Utz's national M&A practice head John Elliott, with support from senior associate Adrian Beerworth, led the Clayton Utz team, which included partner Mark Friezer and senior associate Louisa Wu.

Commenting on the transaction, Mr Elliott said: "This is another example of the recent cross-border M&A activity we've seen in Australia and of the continued dominance of Energy & Resources sector deals in this market."

This transaction continues Clayton Utz's trusted adviser role to Toronto-based Barrick Gold – the world's largest gold miner – on a number of transactions, including Barrick's takeover of Tusker Gold Limited in 2010.

For additional information visit www.claytonutz.com

SKRINE

SELECTED BY GOVERNMENT OF BRUNEI TO DRAFT BRUNEI NATIONAL STANDARDS ACT

The Government of Brunei signed a consultancy contract with SKRINE in Bandar Sri Begawan on May 5, 2011 for the drafting of the Brunei National Standards Act.

SKRINE was selected by the Brunei Government from 6 law firms shortlisted after a tender process that included tenders submitted by various law firms from the region. SKRINE partners involved in the project are Janet Looi and Faizah Jamaludin. For additional details see the report in the Brunei Times <http://www.bt.com.bn/news-national/2011/05/05/brunei-enlists-msian-law-firms-help-draft-its-national-standard-act>.

For more information visit www.skrine.com

GIDE LOYRETTE NOUEL

ADVISES IFC ON USD\$307 MILLION INVESTMENT IN VIETNAM JOINT STOCK COMMERCIAL BANK FOR INDUSTRY AND TRADE (VIETINBANK)

Gide Loyrette Nouel (GLN) has assisted IFC (International Finance Corporation), a member of the World Bank Group, and IFC Capitalization Fund in investing up to USD 182 million in equity and USD 125 million in subordinated debt in Vietnam Joint Stock Commercial Bank for Industry and Trade, commonly known as VietinBank.

The equity investment represents approximately 10% of VietinBank's increased charter capital. It is a milestone in Vietnam as VietinBank is the first state-owned Vietnamese bank to allow a strategic foreign investor to take an equity stake. The subordinated loan has been structured to qualify as "Tier II" capital under new regulations in Vietnam.

IFC, a member of the World Bank Group, is the largest global development institution focused on the private sector in developing countries. The IFC Capitalization Fund is a global equity and subordinated debt fund founded by IFC and the Japan Bank for International Cooperation. It is managed by IFC Asset Management Company, LLC, and supports banks considered vital to the financial systems of the emerging market countries in which they operate.

The GLN legal team in Vietnam advising the client on this project was led by Samantha Campbell, resident partner based in Ho Chi Minh City, with assistance from senior associates Pham Bach Duong, Rebecca Finn and Huynh Tuong Long, and in cooperation with partners Rebecca Silli and Balbir Bindra.

For further information, please visit www.gide.com.

HOGAN LOVELLS

ADVISES ON LANDMARK FINANCING RELATING TO CAYMAN ISLANDS MERGER

HONG KONG, 2 May 2011 - Hogan Lovells acted as Hong Kong and New York law counsel to the lender on the financing of the acquisition and delisting from the NYSE of Tongjitang Chinese Medical Company ("Tongjitang") by Tonsun International, a Cayman Islands exempted company controlled by Hanmax Investment Limited and Fosun Industrial Co.

Tongjitang is a leading specialty pharmaceutical company focusing on the development, manufacturing, marketing and selling of modernized traditional Chinese medicine in China. The acquisition was originally announced on 1 November 2010 and was completed on 14 April 2011. Tongjitang continued its operations as a privately held company owned solely by Hanmax and Fosun, until it was de-listed its US Depository Shares from the NYSE on 21 April 2011. This was the first take private transaction to be effected under the new Cayman Islands merger statute.

Hogan Lovells was advising CITIC Bank International as lender on Hong Kong law, NYSE regulatory issues and PRC matters. Walkers was serving as Cayman Islands legal advisor to CITIC Bank International.

The Hogan Lovells team was led by Head of Hong Kong Banking Practice Gary Hamp, assisted by key team member Senior Associate Jenny Yim. Commenting on the transaction Gary Hamp said:

"We were very pleased to have advised on this landmark transaction which gave us the opportunity to demonstrate our ability to provide seamless advice on Hong Kong law, NYSE regulatory issues and PRC matters. There are a number of potential transactions out there involving structures of this nature and I am pleased that this deal as shown that such transactions are bankable in the current market."

For additional information visit www.hoganlovells.com

NAUTADUTILH

ADVISES MEDIQ ON ACQUISITION OF PANNEN BEHEER GROEP (PBG)

2 May 2011 - NautaDutilh is advising Mediq, an international provider of pharmaceuticals and medical devices, on the takeover of Pannen Beheer Groep (PBG). PBG will be purchased from Mentha Capital, a Dutch private equity firm, and from a private investor. PBG's products include medical devices for use by diabetics, general practitioners, midwives and other healthcare providers.

This acquisition will strengthen the position of Mediq in the Dutch market. The acquisition is yet to be approved by the Netherlands Competition Authority (NMa).

NautaDutilh's transaction team is led by Lieke van der Velden and has primarily provided advice on M&A, corporate and tax. In addition to this, Herman Speyart's team is looking after the required notification with the NMa while the team under Carla Schoonderbeek and Hein van den Bos is providing advice on life science.

For additional information visit www.nautadutilh.com



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Register online at www.prac.org



KING & WOOD

21 VIANET LISTS ON NASDAQ

April 21, 2011

21Vianet Group, Inc. (Nasdaq: VNET) successfully listed on the Nasdaq Stock Market in the United States. It priced its initial public offering of 13 million American depository shares ("ADSs") at USD\$15.00 per ADS, with a total offering size of USD\$195 million, assuming no exercise of the over-allotment option by the underwriters. Morgan Stanley, J.P. Morgan Securities LLC and Barclays Capital Inc. acted as joint bookrunners.

21Vianet is the largest carrier-neutral Internet data center services provider in China. It provides hosting and related services, managed network services and cloud computing infrastructure, improving the reliability, security and speed of its customers' Internet connections.

King & Wood advised 21Vianet on PRC law. The lead partners were Stanley Cha and Zhang Xiaolian.

For additional information visit www.kingandwood.com

RODYK

ACTS FOR CAPITALAND IN DEVELOPMENT SALE OF D'LEEDON

Rodyk acted for CapitalLand in its development sale of D'Leedon, a 99-year leasehold residential project comprising 1,715 units believed to be the largest single condominium project ever in Singapore, built on the site of the former Farrer Court. The new units are expected to be priced upwards of S\$1,600 psf.

In terms of the number of units, D'Leedon is believed to be the largest single condominium project ever in Singapore. Real estate partner Melanie Lim led this transaction.

Rodyk had also earlier acted in the record S\$1.3 billion collective sale of Farrer Court in 2007, which today remains Singapore's largest collective sale transaction.

For additional information visit www.rodyk.com

PRAC Singapore Conference

October 15-18, 2011

Hosted by Rodyk

Registration and Info online

www.prac.org



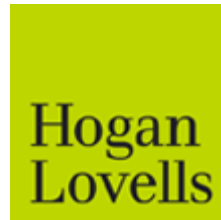


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Since 1984, Pacific Rim Advisory Council (PRAC) member firms have provided their respective clients with the resources of our organization and their individual unparalleled expertise on the legal and business issues facing not only Asia but the broader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

www.prac.org

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Gide Loyrette Nouel



PRAC e-Bulletin is published monthly.
Member Firms are encouraged to contribute articles for future consideration.
Send to editor@prac.org.
Deadline is 10th of each month.

CLAYTON UTZ

06 May 2011

Australian Government reveals latest legislative priorities for telecommunications and media

The Prime Minister has released the list of legislation proposed for introduction in the Winter sittings of Federal Parliament, starting Tuesday 10 May. Bills with an asterisk are Government priorities. Relevant Bills in the broadcasting and telecommunications sectors are:

Broadcasting Services Amendment (Anti-siphoning) Bill *

As we discussed last year, [the Government is reforming the anti-siphoning scheme](#). This Bill will bring about those reforms.

Broadcasting Legislation Amendment (Regional Commercial Radio Local Content) Bill

This Bill will modify local content requirements on regional commercial radio licensees, and reduce their compliance burden with respect to maintaining existing levels of local presence, and broadcasting material of local significance.

Broadcasting Services Amendment (Media Access) Bill

This main purpose of this Bill is to amend the television captioning requirements in the Broadcasting Services Act 1992.

USO Entity Bill

Telecommunications Legislation Amendment Bill

Telecommunications Industry Levy Bill

This package of Bills will

- establish a Government entity for delivering the Universal Service Obligation
- establish the USO framework; and
- revise current industry level arrangements so that industry contributes to the full range of USO functions

Communications (Miscellaneous Amendments) Bill

This Bill will make two sets of changes. The first relates to submarine cables under Schedule 3A of the Telecommunications Act 1997 and other issues arising from the recent review of Schedule 3A by the Australian Communications and Media Authority. The second updates the reference in the Radiocommunications Act 1992 to the Western Australian anti-corruption body listed and the WA legislation under which the body is established.

Disclaimer

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Petrobras is currently getting ready to play the role of sole operator in the exploration and production of the accumulations discovered in the Pre-Salt

Introduction

The production sharing law will create major opportunities for players in the oil industry to work together with Petrobras in the pre-salt projects.

Scenario

Petrobras' growth and international expansion since the relaxation of the state monopoly over oil activities in 1997, the recognition of its broad experience and technology in deep waters, as well as the recent oil and gas discoveries in the region named Pre-Salt, allowed the company to occupy a prominent position internationally. It is currently getting ready to play the role of sole operator in the exploration and production of the accumulations discovered in the Pre-Salt, under a production sharing system, as established in Law 12,351 of December 22, 2010.

Thanks to an enormous volume of purchases, the company is able to enter into large, long-term contracts with its suppliers, provide support to strategic vendors, secure funds and attract new partners.

Petrobras is subject to some rules imposed to state-owned companies, such as procurement for the contracting of goods and services. However, exceptions to these rules and a more aggressive procurement program could help the company face the major challenges of the coming years.

Partnerships for oil and natural gas exploration and production

Petrobras develops projects together with national and international financial agents and with companies of oil and energy sectors. The formation of such partnerships is extremely relevant in the E&P segment. The relaxation of the monopoly brought opportunities for the formation of consortia and other types of associations between companies, new financing modalities, conjugation of techniques, creation of markets and specializations.

In the production sharing system applicable to the Pre-Salt, E&P consortia may be formed between Petrobras and private companies, with Petrobras having the right to the operation and a minimum share of 30% in all consortia.

Contracting of goods and services by Petrobras through procurement

The contracting of goods and services, when subject to a procurement process, is governed by Petrobras' Simplified Procurement Process Regulation. This Regulation not only defines the procurement systems and the respective judgment criteria, but also establishes the



possibilities in which Petrobras may contract directly with its vendors and partners without a procurement process. Such possibilities include, for example, the acquisition of goods destined for technological research and development, as well as the maintenance of Petrobras' competitiveness in the market through urgent contracts.

Classification of Qualified Suppliers

Petrobras keeps a list of suppliers qualified to participate in its procurement processes. In order to keep this list organized and updated, it publishes periodical invitations to interested companies. The list includes providers of both goods and services. Interested companies must prove their legal qualification, technical, generic, specific and operational capacity, economic-financial qualification and good standing with the tax authorities.

A supplier that has its initial registration or a renewal or expansion of scope approved receives a Supplier Certificate of Registration (CRCC in the Portuguese acronym), valid for up to one year.

Letter of invitation

With the facilitation of the procurement process through the list of suppliers and the pre-qualification of companies, the letter of invitation system ends up being widely used for the contracting of goods and services. This system may be used whenever there are at least three qualified individuals or legal entities that can be invited to participate in the dispute.

Petrobras develops projects together with national and international financial agents and with companies of oil and energy sectors

Goods and services commonly contracted

Among the various categories of services contracted by Petrobras, there are general studies and projects, specialized technical services, civil construction works, industrial installations and assemblies, industrial maintenance, construction, naval maintenance and repairs, well drilling and production services, transportation services, general services, institutional relations services, health, environment and safety services, and subsea engineering services.

Regarding the materials acquired through contracts, a countless number of goods include minerals, textiles, chemical and biochemical products and gases, fuels, mining machinery, power generation and distribution equipment, tools and machines for general use, cleaning equipment and supplies.

Vendor List

The Vendor List is a document presented by Petrobras to contractors that contains a list of suppliers previously qualified. Such list will then be used by the contractor in



TozziniFreire has comprehensive experience in advising clients in the oil and gas industry, and offers legal assistance in tax, contractual, and regulatory matters

the acquisition of goods and/or services for a given project. This system is used mainly with respect to two types of contracts: Global Cost of a main contractor, and Engineering, Procurement and Construction.

TozziniFreire and its Oil and Gas Practice Group

TozziniFreire is one of the leading law firms in Latin America and was one of the first Brazilian firms to create a group focused on the oil and gas industry. This special practice group has developed the legal expertise and the specialized technical knowledge so that any legal matters regarding the upstream, midstream and downstream activities in the industry can be properly addressed.

TozziniFreire's professionals are ready to assist suppliers in the oil and gas industry interested in being registered as qualified suppliers of Petrobras and obtaining the corresponding CRCC, thereby facilitating their participation in future procurement processes.

TozziniFreire has comprehensive experience in advising both local and foreign clients in the oil and gas industry, and offers efficient legal assistance in tax, contractual, and regulatory matters.

Through a professional approach, combined with prompt solutions and unity of purposes with the client, TozziniFreire has achieved global recognition in the industry. As a result, some of the major oil and gas companies in the world benefit from TozziniFreire's services.

The professionals in TozziniFreire's Oil and Gas practice group are specialized in regulatory, contractual, corporate, tax, and maritime law. Additionally, they take advantage of the firm's full-service approach and nation-wide presence, particularly by working together with other practice groups specially in environmental, constitutional, administrative, labor, capital markets, and antitrust law. These special characteristics render TozziniFreire the ability to effectively and efficiently support its clients in the oil and gas business.

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APRIL 2011

- 1 CSA Proposes New Regime for Securitized Products
- 2 Contact Us

CSA Proposes New Regime for Securitized Products

By Steven London

The Canadian Securities Administrators (“CSA”) have published, for a 90-day comment period (expiring July 1, 2011), proposed new rules that will fundamentally change the existing regulatory framework applicable to the offering of securitized products in Canada. The proposal would impact securitized products offered by prospectus as well as those offered in the exempt market.

Securitization refers to the process by which a special purpose vehicle is used to create securities that entitle holders to payments that are supported by the cash flow from a pool of financial assets held by the special purpose vehicle. In Canada, common types of financial assets include credit card receivables, automobile leases and residential mortgages. Less frequently, the assets may themselves be securitized products, such as residential mortgage-backed securities, or may be “synthetic assets” created through the use of derivatives.

The CSA proposal follows from an industry-wide review of securitized products by a variety of international bodies (including the International Organization of Securities Commissions and the United States Securities and Exchange Commission), as well as significant legislation in the United States – the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the “*Dodd-Frank Act*”). In the United States, the SEC has already implemented a variety of rules implementing certain provisions of the *Dodd-Frank Act* relating to enhanced disclosure around securitized products, and others are in the proposal stage.

According to the CSA, there are two main features of the proposed securitized products rules. Specifically, the rules are intended to provide enhanced disclosure for securitized products issued by reporting issuers, and secondly, provide new rules that narrow the class of investors who are permitted to buy securitized products on a prospectus exempt basis, and require that issuers of exempt securitized products meet initial and ongoing disclosure obligations. Certain of the initiatives brought forward in the United States have been incorporated into the CSA proposal, although the CSA have indicated that certain other (potentially more onerous) features of the U.S. regime may or may not ultimately be included in the final CSA position.

With respect to prospectus qualified securitized products, the CSA are proposing a new form requirement (Form 41-103F1) as a supplement to the existing prospectus disclosure regime. The new prospectus disclosure requirements are proposed to include:

- detailed descriptions of the identities and roles of all parties involved in the securitization transaction;
- disclosure of relationships among the named parties and conflict of interest disclosure with respect to investors;
- disclosure of significant obligors along with applicable financial information or financial statements;
- detailed information regarding the pool assets including selection criteria, material pool characteristics, delinquent and non-conforming assets, sources of pool cash flow, representations and warranties regarding the pool assets, claims on pool assets, information on pre-funding or revolving periods, and transaction agreement terms governing modification of pool asset terms;
- static pool information if it would be material to an investor, and if none is provided, the

prospectus must explain why disclosure is omitted;

- whether any party is retaining any portion of the assets and whether it has been hedged;
- information about the flow of funds for the securitized product transaction, the distribution frequency and cash maintenance in respect of the product, all fees and expenses, excess cash flow, issuances of additional series or classes by master trusts, any optional or mandatory redemption or termination features, and prepayment, maturity and yield considerations;
- detailed description of material external and internal credit enhancements or support, as well as each derivative instrument used to alter the payment characteristics of the payments on the securitized product; and
- identification of providers of significant credit support and derivative counterparties, and depending on their significance, issuers may be required to include selected financial information or financial statements for those parties.

In addition to significantly enhanced prospectus disclosure requirements, the CSA are proposing a new continuous disclosure regime applicable to securitized products, and in that regard, the CSA have indicated that they are not proposing to “grandfather” any current outstanding securitized products or implement any transition period. Among other things, prescribed reports must be filed within 15 days after each payment date on each series or class of securitized product, and issuers must report significant events. Additionally, the proposed continuous disclosure rules set out servicing standards related to servicing activities, and require that any entity providing any such service to the extent of more than 5% of the pool assets must assess its compliance and prepare a report stating whether or not it has complied with each standard during the reporting issuer’s most recently completed year; this service report must be

audited and certified and be provided to the reporting issuer, who in turn must file it with the securities regulatory authorities.

The changes proposed by the CSA with respect to the distribution of securitized products on a prospectus exempt basis are extensive. Of particular note, it is proposed that a number of the most common prospectus exemptions will no longer be available for distribution of securitized products. In their place, it is proposed that a new prospectus exemption will be implemented that will apply only to exempt securitized products. Under the proposal, securitized products will only be available for sale to an “eligible securitized product investor” purchasing as principal; the definition of this permitted investor is largely the same as the definition of ‘permitted client’ in National Instrument 31-103 – with the most material distinction from the “accredited investor” exemption being that non-individual purchasers must meet a \$25 million net asset threshold instead of \$5 million. In addition to a restricted category of potential investor, issuers will be required to deliver an information memorandum to each purchaser, with different disclosure requirements applying depending on whether the securitized product is short term (less than one year) or not.

In addition to written disclosure requirements, all information memoranda must describe statutory or contractual rights of action for misrepresentation, describe resale restrictions that apply, and contain certificates signed by the issuer’s CEO, CFO, promoter and sponsor as to the lack of any misrepresentations. As well, each information memorandum must contain a certificate signed by each underwriter as to no misrepresentation in the document to the best of its knowledge, information and belief. The CSA are proposing that an information memorandum must be posted on a website at the same time or before it is delivered to a purchaser.

In addition to the information memorandum requirement, the CSA are proposing a number of ongoing reporting and continuous disclosure

obligations, which are similar to the reporting and continuous disclosure obligations imposed on reporting issuers who distribute securitized products under a prospectus.

With respect to resale, it is proposed that first trades of securitized products distributed under the securitized product exemption be deemed distributions, and as a result the only prospectus exemption that would be available for resale would be the securitized product exemption – which in effect creates a specialized ‘closed system’ for securitized products. With respect to statutory civil liability and withdrawal rights, the CSA have stated that they believe that investors should have the right to sue the issuer, the sponsor and each underwriter for damages if the information memorandum required by the securitized product exemption contains a misrepresentation. The CSA also believe that the right of action should be available without the investor being required to prove reliance on the misrepresentation. With respect to withdrawal rights, in those jurisdictions where statutory provisions provide an investor with a right to withdraw from the purchase of a security within two days of receipt of a prescribed offering document, staff in those jurisdictions are now considering whether the two day withdrawal right is appropriate in the case of securitized products.

In general, while the CSA have indicated in the notice that there are a number of issues which they are continuing to consider, and they have requested industry comment with respect to 47 questions, the policy position of the CSA is fairly evident from the proposal document. As a result, issuers who are active in the securitized product market should begin considering possible impacts of the CSA proposal on their business.

Contact Us

For further information, please contact a member of our [National Securities | Corporate Finance Group](#).



New regulations for the “Huaso Bonds”

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

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In Chile, the debt market has continued modernizing and taking steps towards global integration. Besides the amendments already enacted that enabled the simplification of bond issuances on a local basis and that enabled the issuance of securitized bonds through the system of bond lines, now there has been an improvement in the regulations applicable to the placement of bonds in Chile by foreign companies. Such placement of bonds in Chile by foreign companies is also known as the “Huaso Bonds”.

On April 1, 2011 the Generally Applicable Rule (“NCG” for its Spanish acronym) No. 304, issued by the Superintendency of Securities and Insurance (“SVS”) was enacted. Such NCG No. 304 abrogated NCG No. 193, under which América Móvil carried out its Huaso Bonds issuance.

Under the provisions of NCG No. 304, foreign states, through their central governments, public treasury, ministries, central banks and other governmental agencies and international or supranational organizations and other corporate entities, will be able to issue debt titles in Chile.

To that effect, NCG No. 304 requires that the aforementioned entities are incorporated in countries which sovereign debt has at least 3 risk classifications. They also must be a member of the Financial Action Task Force (“FATF”) or of any intergovernmental organization of an equivalent regional base as FATF, destined to fight money launderings and the financing of terrorism. Regarding the international or supranational organizations, NCG No. 304 requires that such entities belong to organizations in which at least 2/3 of their state members comply with the abovementioned requirements.



Among the innovations of NCG No. 304, we find that foreign issuers which are members of the International Organization of Securities Commissions ("IOSC"), will be able to file in Chile the information already delivered to their relevant regulators. Such information can also be delivered by the foreign issuers indicating the web sites where such information is being published, provided however they comply with certain requirements. The aforementioned, shall be applicable to the issuers and to the information they must provide in Chile on a continuous basis.



Article 34 of the Colombian mining code is constitutional

Friday, 06 May 2011 00:00



Natural Resources
News Flash Número: 115

The Colombian constitutional court held that the modification of article 34 of the mining code is constitutional

By means of decision C-273 of 2011 the Colombian Constitutional Court ruled that the modification made by Law 1382 of 2010 to Article 34 of the current Colombian Mining Code is constitutional. Such modification held that the moors and wetlands considered to be of international concern by the Ramsar Convention were to be protected, thereby preventing any mining activity within those areas.

The Court considered that the decision made by the Senate of including the moors and wetlands as protected areas was not improvised or arbitrary. It was the result of the work of many Senators that took the decision of expanding the protection to those areas in a more clear and determined manner, taking into account that the current mining regulations that seek the progress of mining activities in Colombia respect and protect the environment and the rights of access to water, right to life, health and minimum living conditions.

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LEGAL
NEWS LETTER



TAX
CALENDAR

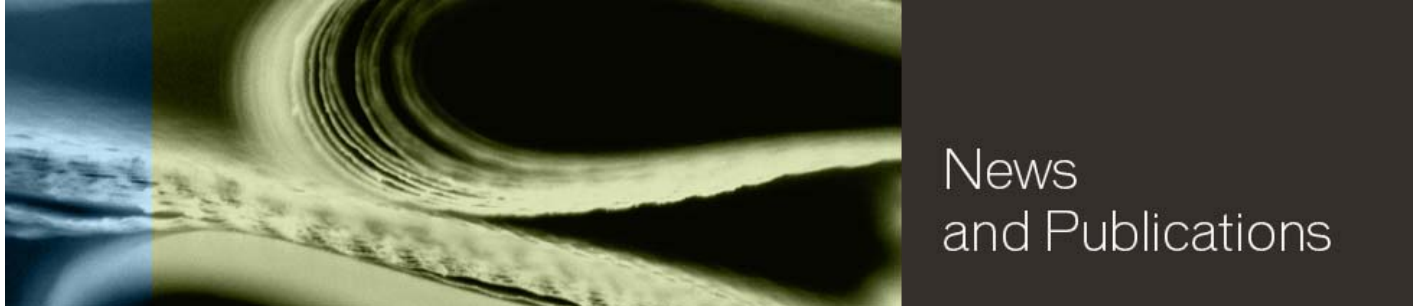


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NEWS DETAIL

27/04/2011

FISCAL INCENTIVE FOR OIL AND GAS, AND GEOTHERMAL EXPLORATION ACTIVITIES

The government took a step to address the country's declining oil production by providing a fiscal incentive to business players in the oil and gas industry. The incentives are embodied in Regulation of the Minister of Finance No. 22/PMK.011/2011, which stipulates that the Value Added Tax on goods imported for the purposes of upstream oil and gas as well as geothermal exploration activities for the budget year of 2011, is borne by the government (the "Regulation").

Goods required for the explorations are qualified for the VAT incentive if they fulfill the following requirements: (i) they are not yet produced locally; (ii) they are produced locally, but the locally produced goods do not meet the required specifications, or (iii) they are produced locally but the amount produced is not sufficient to meet the industry's need.

Article 3 of the Regulation stipulates that entrepreneurs doing oil and gas and geothermal business activities are qualified for the VAT incentive if: (i) they have a binding joint operation contract with the government in oil and gas activities; or if (ii) they have a binding contract with the government in geothermal activities or have obtained a Geothermal Mining Business License after 31 December 1994; or have been assigned by the government to conduct initial surveys to identify geothermal potential.

The application for the VAT incentive is to be submitted to the Director General of Customs and Excise by attaching to the application the Goods Importation Plan (Rencana Impor Barang) that has been approved and validated by the Director General of Oil and Gas or the Director General of Renewable Energy and Energy Conservation.

The Regulation has been in force since the day of its issue on 7 February 2011, and is effective until 31 December 2011. (by: Hamud M. Balfas).

Newsflash

Employment & Pensions

Salary Freeze in 2011 and 2012: Wage Increases Now Illegal

3 May 2011

This newsletter is sent by NautaDutilh

The socialist and liberal unions recently rejected the 2011-2012 draft interprofessional agreement (IPA), a cross-industry framework agreement concluded every two years that covers a number of important employment-related issues, such as the applicable percentage by which wages can be increased. Due to rejection of the IPA, this percentage has been fixed by means of a royal decree. Based on this royal decree of 28 March 2011, the applicable percentage for 2011 and 2012 is 0% and 0.3%, respectively. It should be noted that this provision is not related to the automatic indexation of salaries, which continues in effect based on the applicable industry-level collective bargaining agreements. In addition, wages can still be increased further to the application of existing salary scales.

Moreover, certain types of benefits, i.e. profit-sharing plans and employee participation in a company's capital and profits, contributions to so-called social pension plans, and one-shot innovation premiums within the meaning of the Act of 3 July 2005, are not taken into account for the purpose of determining whether an employer complies with this percentage.

When an IPA is approved by the unions, its provisions are generally deemed to carry the weight of a gentlemen's agreement, meaning they are not legally binding. However, the above percentages are now of mandatory application as they have been fixed by means of a royal decree, which entered into force on 1 April 2011. In other words, all wage increases in excess of the applicable percentages are unlawful. Thus, employers could refuse to grant wage increases due pursuant to a collective bargaining agreement if doing so would cause them to violate the terms of the royal decree. Moreover, employers can be fined for failure to comply with these percentages.

Needless to say, these new provisions could jeopardise the implementation of attractive employee compensation and benefits policies. Indeed, in the present context, it is not clear whether employers can continue to grant employees unilateral increases, benefits such as non-recurring bonuses, etc.

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CORPORATE ADVISORY

SIMPLIFYING TRANS-TASMAN INVESTMENT: ANOTHER SMALL STEP

The New Zealand and Australian Governments signed an Investment Protocol in February 2011. The protocol aims to cut the amount of red tape involved in investment between the two countries. This article provides background on the Investment Protocol, and briefly explains how it will work in practice.

BACKGROUND

New Zealand entered into its first free trade agreement with Australia in 1983 - the Closer Economic Relations Trade Agreement (CER). CER has become an iconic and integral part of the relationship between Australia and New Zealand. It is considered internationally to be one of the most comprehensive and effective free trade agreements in the world.

CER has provided many benefits, enabling efficient movement of goods, services and people. It has always lacked specific tools to accelerate and encourage investment between the two countries. The new Investment Protocol aims to change this, by relaxing the financial thresholds at which government approval is required for investment between the two countries.

Negotiations for the protocol began in 2005 and were concluded in 2010. The protocol is separate from the New Zealand Government's recently concluded review of overseas investment laws.

WHAT ARE THE CHANGES?

New Zealanders investing in business assets in Australia currently require approval from the Australian Foreign Investment Review Board for any investment exceeding A\$231 million. The new Investment Protocol increases this threshold to

A\$1.005 billion. Similarly, the Overseas Investment Office (OIO) approval threshold for Australians investing in New Zealand business assets will be increased from NZ\$100 million to NZ\$477 million.

This may appear to be a significant relaxation, but Australian investors, like any other foreign investor, will still require OIO approval for any investment that involves "sensitive land" in New Zealand. Large-scale investments almost invariably involve sensitive land which includes any lease of sensitive land for a term of three years or more. OIO consent will continue to be required for investments by Australians involving sensitive land, even if the total monetary value of the investment is under NZ\$477 million.

The Investment Protocol was signed in February and is expected to come into force in the second half of 2011, following completion of certain procedural formalities.

CONCLUSION

The Investment Protocol will make it easier for Australians to undertake large-scale investments in New Zealand, where there is no sensitive land involved. Sensitive land is almost always involved in an investment and we do not expect that the overall effect of the Investment Protocol will be significant.

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RESOURCES

Foreign Liquidators Of Unregistered Foreign Companies

March 2011 | Litigation & Arbitration | Insolvency | Litigation Brief

Rodney KEONG
Melvin SEE

Introduction

The Singapore High Court has confirmed that it will recognize the status and powers of a foreign liquidator in the liquidation of an unregistered foreign company in Singapore.

Life cycle of a company

Statistics from the Accounting and Corporate Regulatory Authority ("ACRA") of Singapore reveal that the increasing number of companies formed in Singapore (2004:17,151; 2009:26,414) is matched by a corresponding increase in the number of companies ceasing operations (2004:5,882; 2009:22,388).

Arguably, the most traumatic way in which a company ceases operations is compulsory liquidation; where its creditors apply to court to appoint a liquidator to collect, realise and distribute its assets among its creditors. According to the Insolvency & Public Trustee's Office, the number of Singapore companies that faced this fate increased from 106 in 2007 to 142 in 2010.

The Companies Act governs the entire life cycle of a Singapore company – from its incorporation to its liquidation and eventual dissolution.

Foreign companies in Singapore

What about foreign companies? Section 368 of the Companies Act requires foreign companies to register with ACRA if it establishes a place of business or carries on business in Singapore. Once registered, such foreign companies would be governed by the Companies Act.

The Companies Act provides that a registered foreign company may be wound up in Singapore by the Singapore court appointing a Singapore liquidator. If a registered foreign company is wound up in its country of incorporation and a foreign liquidator is appointed by the court in its country of incorporation, the Companies Act recognises the authority of that foreign liquidator, who shall have the powers of a Singapore liquidator (section 377(2)(b), Companies Act).

What if a foreign company does not register with ACRA? The Companies Act provides that an unregistered foreign company may be wound up in Singapore by the Singapore court appointing a Singapore liquidator. However, there is no corresponding provision in the Companies Act recognising the foreign liquidator of an unregistered foreign company that is wound up in its country of incorporation.

There is a common mistaken assumption that all foreign companies that are listed on the Singapore Exchange Securities Trading Limited ("SGX") are registered in Singapore. However, this is not the case because a foreign company is not regarded as carrying on business in Singapore just because, among other things, it:

- (1) is listed on the SGX;
- (2) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
- (3) maintains any bank account;
- (4) creates evidence of any debt or creates a charge on movable or immovable property;
- (5) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
- (6) invests any of its funds or holds any property; or
- (7) establishes a share transfer or share registration office;

in Singapore.

There are numerous examples of foreign companies incorporated abroad in countries such as Australia, China, Hong Kong and the United Kingdom, in tax havens such as Bermuda, British Virgin Islands and Cayman Islands, and even in exotic locales such as the Marshall Islands and Mauritius, that are listed on the SGX but are not registered in Singapore

If such unregistered foreign companies are wound up in their country of incorporation, what are the rights of the foreign liquidator appointed by the court in the country of incorporation, given that there is no express provision in the Companies Act recognising his authority?

China Sun Bio-Chem Technology Group Company Limited

This question arose in the case of China Sun Bio-Chem Technology Group Company Limited ("CSBC").

CSBC is a company incorporated in the Cayman Islands and was listed on the SGX although trading in its shares has been suspended since 25 March 2009. As CSBC's substantial assets and businesses are operated by its wholly-owned subsidiaries in China, CSBC is not registered with ACRA in Singapore. In other words, it is an unregistered foreign company.

On 4 October 2006, CSBC issued US\$100,000,000 Zero Coupon Convertible Bonds convertible into shares of CSBC ("Bonds"). The bondholders of the Bonds exercised the right at their option to require CSBC to redeem all or part of the Bonds such that US\$93,900,000 was payable by CSBC to the bondholders on 5 October 2009.

CSBC was unable to do so and a winding up petition was presented on behalf of the bondholders against CSBC on 20 April 2010 in the Cayman Islands. An application for the appointment of provisional liquidators of CSBC was also presented by CSBC, pursuant to which the Grand Court of the Cayman Islands appointed two joint provisional liquidators based in the Cayman Islands and in Hong Kong ("foreign liquidators").

The foreign liquidators wrote to CSBC's former bankers and accountants in May 2010 requesting information relating to CSBC to identify assets of and to understand the affairs of the CSBC group. The former bankers and accountants were naturally hesitant to furnish the foreign liquidators with the information sought because the Companies Act did not expressly provide for or otherwise recognise the authority of a foreign liquidator of an unregistered foreign company such as CSBC.

Rodyk acted for the foreign liquidators in making an unprecedented application to court for declarations that the foreign liquidators had, among other powers, power to collect, recover, take possession and control of, and deal with assets of CSBC, similar to a Singapore liquidator.

This was a novel application in Singapore because, prior to that, there was no reported decision in Singapore of a similar application made by a foreign liquidator of an unregistered foreign company. There is also a dearth of reported cases from the familiar common law jurisdictions of Malaysia, England, Hong Kong, Australia and Canada.

The Rodyk team relied on the decision of *Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors of Navigator Holdings plc and others* [2007] 1 AC 508 ("Cambridge Gas"), a decision of the Privy Council on appeal from the Staff of Government Division of the High Court of Justice of the Isle of Man. The Privy Council is the apex court in the Isle of Man judicial system. The Isle of Man is a small island roughly the size of Singapore in the Irish Sea between the islands of Great Britain and Ireland.

In Cambridge Gas, European investors borrowed US\$300 million on the New York bond market to purchase five vessels and commenced trading. These investors became insolvent and petitioned for relief under Chapter 11 of the United States Bankruptcy Code which allowed insolvent companies to negotiate a plan of reorganisation with their creditors. The Federal Bankruptcy Court for the Southern District of New York confirmed a plan providing for the assets to be taken over by the creditors and ordered it be carried into effect. The vessels were owned and managed by a group of Manx companies, each ship owned by a separate subsidiary of a management company, and all the shares in the management company held by a holding company N, which was in turn held through a web of companies incorporated in other offshore jurisdictions, including Cambridge Gas Transportation Corporation ("CG"), a Cayman company, which owned 70% of the shares in the holding company. The plan envisaged that the shares in the holding company would be vested in the creditors' representatives. The creditors' representatives petitioned the Manx High Court for an order vesting the shares in them. CG cross-petitioned to ask the Manx High Court not to recognise or enforce the plan. The Privy Council held that the Manx High Court had jurisdiction to assist the committee of creditors as the appointed representatives under the Chapter 11 order and to give effect to the plan.

The Privy Council was of the view that the principle of universality meant that a person who is empowered under foreign bankruptcy law to act on behalf of the insolvent company should be recognised as being entitled to do so locally. In coming to this conclusion, the Privy Council cited a 1906 Transvaal case where a liquidator appointed in England was empowered to deal with the company's Transvaal assets. Transvaal was a crown colony of the British Empire and is today part of the Republic of South Africa.

Rodyk argued before the Singapore High Court that an unregistered foreign company that does not carry on business in Singapore should be in a no less advantageous position than a registered foreign company carrying on business in Singapore, when it comes to recognition by the Singapore court of a foreign liquidator appointed by a court in its place of incorporation. This is especially when there is a lower likelihood of the existence of Singapore creditors given that it does not carry on business in Singapore.

The High Court accepted these arguments, and made the declarations sought, expressly recognising the authority of the foreign liquidators over the Singapore assets of CSBC. This paved the way for cooperation from the former bankers and accountants.

Conclusion

With SGX's recent appointment in October 2010 of Ms Paulina McGroarty to head its Europe, Middle East and Russia listings business, its stated pursuit of Japanese listings at a seminar titled "SGX – An Asian Platform for International Listings" held on 18 January 2011, as well as its planned merger with ASX, the number of foreign companies listed on SGX that are unregistered is likely to rise further in the near future.

Should such unregistered foreign companies be wound up in their country of incorporation, then on the basis of the precedent set in CSBC's case, the foreign liquidator would be able to seek recognition of his powers in Singapore, pending, or in lieu of, any step to wind up the unregistered foreign company in Singapore via the appointment of a Singapore liquidator.

BUSINESS TAX ON COLLATERALS SOLD IN COURT-ORDERED SALE BY OR ASSIGNED TO ASSET MANAGEMENT COMPANY

©Josephine Peng/Rita Li

The business tax leviable on an asset management company ("AMC") for collecting its non-performing loans ("NPLs") through the court compulsory enforcement procedure is as follows:

- **Collecting NPLs through Court-Ordered Sale**

If an AMC collects NPLs through a court-ordered sale, the portion the AMC actually receives out of the proceeds obtained by the court after the sale of the collateral should be considered payment for the NPLs, which less the cost of the NPLs is subject to 2% business tax after deducting the cost of the NPLs.

- **Taking Assignment of Collateral by Settling NPLs in Full First and Reselling Collateral**

Disposal of NPLs and resale of the collateral are different transactions and should each be subject to business tax. Regarding the business tax on the disposal of NPLs, the auction price of the collateral less the original cost of the NPLs is subject to 2% business tax. As for the resale of the collateral, the actual price is the sales revenue subject to business tax. If the AMC is a GBRT (gross business receipt tax) operator, and the collateral is classified as a fixed asset rather than an inventory for purposes of regular buy-sale transactions, such resale is exempt from business tax.



[IP Report Homepage](#)

INTELLECTUAL PROPERTY REPORT

Articles

Growing Opportunities, Threats Highlight Importance Of China IP Strategy

[Danielle Mihalkanin](#)

Recently, the Berkeley Center for Law and Technology held a conference entitled "Beyond Piracy: Managing Patent Risks in the New China." Speakers and panelists from the United States Patent and Trademark Office ("USPTO"), the International Trade Commission ("ITC") and various technology corporations discussed the intellectual property landscape in China, including the Chinese Indigenous Innovation Policies, practical considerations for patenting in China, and patent litigation in China involving foreign companies. Due to the considerable growth and expansion of the intellectual property laws in China in such a short period of time, some stakeholders fear that foreign companies may be at a significant disadvantage attempting to procure and enforce their intellectual property rights ("IPR") in China. Throughout all of the discourse, one theme became abundantly clear: opting out of the China intellectual property market is not a very viable long-term option for most large multinational companies.

Recent Developments In Chinese Patent Law

Since Chinese patent law was initially enacted and the State Intellectual Property Office of China ("SIPO") was formed in 1985, there have been many developments in the patent laws. China joined the World Trade Organization in 2001, and to date most of China's IP protection laws are compliant with WTO's TRIPs Agreement. China has also improved many of its IP offices and their functions. However, there are still potential concerns in areas such as standards setting bodies and their effect on IP rights, technology transfer, and IP enforcement.

Recent initiatives have focused on China harnessing its own technological prowess within China, such as with the China Indigenous Innovation Policies of 2006. Indigenous innovation is a massive and complicated plan to turn the Chinese economy into a technology powerhouse by 2020 and a global leader by 2050. Through the Indigenous Innovation Policies, China seeks to bring about the "great renaissance of the Chinese nation" by enhancing its capacity for innovation through reduction of Chinese dependence on foreign technologies and developing science and technology throughout China.¹ In a December 2010 report, the ITC noted that some U.S. companies believe China's indigenous innovation policies may create new barriers to U.S. foreign direct investment and exports to China.² Admittedly, the ITC did not proffer much concrete data to support this speculation, and the Commission thus plans to issue a second report in May 2011 that attempts to quantify the impact of China's indigenous innovation policies and the effects of historic systemic Chinese IPR infringement on U.S. interests.

In the Fall of 2010, the Chinese government introduced the "Special Campaign on Combating IPR Infringement and Manufacture and Sales of Counterfeiting and Shoddy Commodities" ("Special Campaign") that lasted from October 2010 to March 2011.³ The Special Campaign was carried out in three steps: the mobilization period (October 2010); the implementation period (November 2010 to February 2011); and the acceptance inspection period (March 2011). The stated goals of the Special Campaign were to increase source control of production, enhance market supervision and administration, intensify IP protection on imports and exports on the Internet, intensify criminal and judicial enforcement of IPR, urge governmental bodies nationwide to use genuine software, and enhance promulgation of IP protection. Through such government efforts, China seeks to strengthen foreign investors' confidence and improve the domestic IP environment.

In November 2010, SIPO released China's new "National Patent Development Strategy (2011-2020)" ("NPDS").⁴ The NPDS is a long term and overall plan for enhancing China's core competitiveness by making use of the patent system and its resources. The NPDS also seeks to move toward creating a favorable international environment and to combine protecting innovation with safeguarding the public interests. In 2009, there were a combined total of about 977,000 patent applications (invention, utility and design) filed in China. Strategically, the NPDS seeks to reach a

combined 2 million patent applications filed annually by 2015. In contrast, there were about 500,000 patent applications filed at the USPTO in 2009. This sharp growth of patent filings is indicative of China's commitment to innovation going forward.

Recent trends in damages awarded in infringement actions indicate that companies seeking aggressive IPR enforcement may also have success, even in China. In the first landmark damages case, *Chint Group v. Schneider* (2008), the Chinese courts upheld a \$40 million judgment against defendant Schneider, and the case later settled for RMB 157 million, approximately \$23 million. In *Neoplan v. Beijing Zhongtong Xinghua Automobile Selling Co., Ltd., et al.* (2009) the Chinese courts held that the defendant Chinese automakers had infringed patent claims to bus design and held them liable for RMB 20 million, approximately \$3.1 million, in damages. Even though most of the top large damages awards have been against foreign companies, the recent results in infringement cases show that Chinese courts may today award significantly larger damages than have in the past been available in patent infringement cases.

Patenting Strategies In China

The Chinese patent system is a first-to-file system and patent applications may be filed in the name of a corporation as well as an individual inventor. There are three types of patents: (1) the invention patent; (2) the utility model; and (3) the design patent. The invention patent and the utility model are most relevant to this discussion. The invention patent is analogous to the US utility patent because it has a 20-year term, it is substantively examined by SIPO, and it takes about three to five years to issue.⁵ The utility model, to which there is no analogous US counterpart, is not substantively examined, has a 10-year term, and takes about 10-months to one year to grant.

The utility model in particular possesses unique strategic value in China, but there is a significant opportunity for maximizing patent rights by utilizing both the invention patent and the utility model. The Chinese utility model covers only apparatus claims, not method or process claims, and it is not possible to maintain patents for a utility model and an invention patent for the same invention. But that does not prevent simultaneous filing of both type of patents for the same invention. If companies utilize what is called a "double patenting" strategy, by filing both the utility model and invention patent application at the same time, and then abandoning the more quickly-issued utility model immediately before the invention patent is granted, they can obtain IPR quickly with the utility model, and then eventually gain more comprehensive IPR with the invention patent. There is no data indicating that a utility model would be any more difficult to assert or any less likely to sustain validity as compared to an invention patent, which is an important consideration as it would likely undergo reexamination, and substantive challenge, as part of the litigation process anyway.

Litigation Strategies For Foreign Corporations In China

In 2009, there were 30,626 first instance IP-related cases accepted by the Chinese courts and 30,509 cases were decided. Even though the vast majority of IP cases were copyright and trademark cases, 4,422 were patent cases. Of the total number of cases decided, 1,361 were foreign related IP cases, 3,660 cases were IP infringement related criminal cases, and of the criminal cases, 5,832 people were found guilty. In comparison, there were about 8,000 US IP cases in 2009. Obviously China's numbers are amplified by its population size, but overall IP litigation seems to be on the rise in China. Additionally, the winning rates vary by jurisdiction, but in 2007-2008, foreign plaintiffs asserting their IP rights have an overall winning rate of 71% as compared with the total plaintiff's winning rate of 72% throughout all of China's courts.

China has a dual-channel patent litigation system. The IP court, a branch of the judicial system, may only rule on infringement issues, whereas the Patent Reexamination Board ("PRB") of SIPO only has the power to rule on patent validity. Procedurally, China represents a true "rocket docket." The time to completion is six months to one year for cases of first instance. Once an infringement case is filed, the defendant may utilize an invalidation proceeding, within the answer period, to buy time in the litigation. A formal discovery system, such as the lengthy US discovery process, is not available. Instead, there is an evidence exchange day, and the trial is held shortly thereafter. Trials can last as short as several hours and as long as (rarely) up to several days.

Strategically, companies may attempt to avoid IP litigation in China by filing their own Chinese patent applications or defensive publications, by conducting infringement analysis of competitive Chinese patents, by considering design-arounds, and by monitoring patent portfolios or product developments of the competitors. Should companies fail to avoid litigation in China, litigation costs are most likely significantly cheaper than in the US due to the shortened litigation period, and the winning rate appears to be overall favorable to IPR holders on average.

Conclusion

Even though China has an ever-changing web of governmental policies and there are

risks associated with attempting to navigate China's patent landscape, it is clear that opting out of a China IP strategy is increasingly a suboptimal option. To stay competitive, companies must plan to proactively manage their IP risks in China. With recent developments in Chinese patent law, and patent damages on the rise, companies may increasingly look to utilize the Chinese patent system to procure and enforce their IPR in China.

¹ For more information on the Indigenous Innovation Policies, see "The National Medium- and Long-Term Plan for the Development of Science and Technology (2006-2020)".

² [USITC](#)

³ [China IPR](#)

⁴ [NPDS](#)

⁵ A note here - business methods and software are not patentable in China.

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New Guidance on Clean Water Act Jurisdiction: Longer Federal Reach, Less Certainty

05.04.11

By Richard M. Glick and Michael J. Gelardi

On May 2, the Environmental Protection Agency and the Army Corps of Engineers jointly published [new guidance](#) on how the agencies will determine which waters and wetlands are subject to jurisdiction under the Clean Water Act.

The new guidance is the third attempt by the agencies to bring clarification from the muddled 2006 U.S. Supreme Court decision in *United States v. Rapanos*. In that case, the Court gave three different approaches to jurisdiction, causing considerable uncertainty among courts, agencies, and developers.

The guidance indicates that the sweep of federal jurisdiction will grow substantially. Having received a number of unfriendly comments even before the guidance was formally published, including a letter signed by 170 members of Congress, the agencies have indicated in the guidance that a formal rulemaking will follow. Comments on the new guidance will be accepted until July 1, 2011.

For more information, please see our article "[New Post-Rapanos Guidance—Longer Federal Reach, Less Certainty](#)" to be published in the May 15 issue of The Water Report.

Disclaimer

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ATM Operators Beware**Aaron T. Winn***Partner*

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In the past few weeks, there have been several class action lawsuits filed against ATM operators for allegedly failing to comply with the ATM notice requirements of the Electronic Fund Transfer Act (EFTA). To avoid becoming the next target of one of these class action lawsuits, immediately check your ATMs to ensure that they comply with EFTA's notice requirements.

The Notice Requirements

EFTA requires ATM operators to notify consumers of ATM fees in two locations: on the screen *and* on the machine itself.

The notice on the screen must state that a fee will be imposed and state the amount of the fee. (This notice may also be provided on paper so long as it is delivered to the consumer after the transaction begins but before the consumer is committed to paying the fee.)

The notice on the machine must state that a fee will be imposed. (If there are circumstances when a fee is not imposed, the notice may state that a fee "may" be imposed.) And the notice must be posted in a prominent and conspicuous location.

The Consequences for Failing to Post the Required Notice

ATM operators that fail to comply with EFTA's notice requirements may be liable to consumers for actual damages (i.e., the amount of the transaction fee), statutory damages, and attorney fees.

In class actions, the amount of the statutory damages is determined by factoring the frequency, nature, and persistence of noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional. But under all circumstances, statutory damages cannot exceed the lesser of \$500,000 or 1% of the defendants' net worth.

Potential Defenses

There are some limited defenses to alleged violations of EFTA's notice requirements. For example, ATM operators are not liable for technical violations if (1) the on-machine notice was removed, damaged, or altered by someone other than the operator of the ATM; (2) the on-screen notice was inadequate because of a technical malfunction that the consumer knew about when initiating the transaction; or (3) the violation was not intentional and resulted from a bona fide error notwithstanding reasonable maintenance procedures.

If ATM operators are aware of some period of noncompliance, but have not yet been sued, they can also limit or avoid statutory damages by notifying consumers who used their noncompliant ATMs and paying the actual damages incurred by the consumers.

EFTA class actions are also subject to traditional class action arguments, e.g., atypical claims, predominance of individualized issues, insufficient class size, and inadequate class representation.

Don't Delay

To avoid becoming the next target of an EFTA class action, immediately confirm that your ATMs comply with EFTA's notice requirements, regularly inspect your ATMs to ensure that the on-machine notice has not been removed or damaged, and document the dates and results of your inspection and maintenance efforts.

To learn more about avoiding and handling class action litigation, including EFTA class actions, contact Aaron Winn at awinn@luce.com or 619.699.2579.

WSGR ALERT

APRIL 2011

U.S. SUPREME COURT ISSUES SIGNIFICANT NEW DECISION
REGARDING CLASS ACTION LITIGATION*Ruling Rejects California Decision Prohibiting Class Action Waivers in Arbitration Agreements*

On April 27, 2011, the United States Supreme Court issued an opinion in *AT&T Mobility LLC v. Concepcion* that will have far-reaching implications for class action lawsuits and arbitration agreements. Indeed, many commentators have described *AT&T Mobility* as the Supreme Court's most important decision regarding class action suits, and two U.S. senators already have announced their intention to introduce legislation to amend the federal law upon which the Supreme Court relied.

As explained below, the *AT&T Mobility* decision will be especially significant to companies that transact with consumers pursuant to agreed-upon terms of use or similar agreements, or that have pre-dispute arbitration agreements with employees, because it may allow those companies to avoid class action litigation through properly drafted arbitration clauses.

Background

In recent years, many states—including California—largely have prohibited arbitration agreements that contain “no class action” provisions. Most notably, in *Discover Bank v. Superior Court*,¹ the California Supreme Court held that arbitration agreements prohibiting class actions are, for the most part, unconscionable under

California law and therefore unenforceable in its courts. In yesterday's decision, the United States Supreme Court held that this “*Discover Bank* rule” is preempted by the Federal Arbitration Act (FAA) because it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” in enacting the FAA, namely, ensuring the enforcement of arbitration agreements according to their terms so as to facilitate streamlined, efficient proceedings.

Discover Bank v. Superior Court

In *Discover Bank*, a California resident filed suit against Discover Bank alleging that the bank had a practice of representing to cardholders that late payment fees would not be assessed if the payment was received by a certain date, whereas in actuality the fees were assessed if payment was received after 1:00 p.m. on the due date. Although the plaintiff's personal damages were small, Discover Bank's potential liability would be significant if the potential damages of all of its customers were aggregated in a class action lawsuit.

Discover moved to compel arbitration pursuant to the arbitration clause in its standard form agreement with its customers. The arbitration agreement mandated that all disputes be arbitrated and expressly

precluded consumers from bringing class claims in arbitration. The trial court granted Discover's motion, but ruled that the class arbitration waiver was “unconscionable” under California law. The trial court therefore allowed the plaintiff to pursue class claims in the arbitration. Discover successfully appealed; the appellate court held that the FAA preempts the state law rule that class arbitration waivers are unconscionable. Discover's victory was short lived, however. The California Supreme Court reversed, holding that the FAA does not preempt California's law and that “under some circumstances, the law in California is that class action waivers in consumer contracts of adhesion are unenforceable, whether the consumer is being asked to waive the right to class action litigation or the right to classwide arbitration.”

Discover Bank established a three-part test to determine whether a class action waiver is unenforceable: (1) the contract was one of “adhesion”; (2) the disputes between the parties were likely to involve small amounts of damages; and (3) the party with inferior bargaining power alleged a deliberate scheme to defraud. If these three factors are met, the class action waiver is deemed unconscionable under California law and is not enforceable. Under this test, class action waivers in arbitration agreements with

¹ See *Discover Bank v. Superior Court*, 36 Cal. 4th 148 (2005).

Continued on page 2...

U.S. Supreme Court Issues Significant New Decision . . .

Continued from page 1...

consumers almost always would be unenforceable in California.

In the years since *Discover Bank* was decided, California courts—and courts throughout the country applying the laws of other states—have refused to enforce class action waivers in a variety of contexts. For example, in *Gentry v. Superior Court*,² the California Supreme Court adopted a stringent set of requirements that would need to be met before it would enforce a class action waiver in an employment arbitration agreement.

AT&T Mobility v. Concepcion

In February 2002, Vincent and Liza Concepcion (the plaintiff-respondents) purchased cellular phone service from AT&T Mobility LLC, which was advertised as including a free phone. After the Conceptions were charged \$30.22 in sales tax on the retail value of the phones, they sued AT&T in federal district court in California, alleging that it was deceptive for AT&T to advertise the wireless phone as “free” without disclosing that a \$30.22 fee would appear on their first bill.

In March 2008, AT&T moved to compel arbitration, pursuant to a clause in its service agreement requiring arbitration of all disputes between the parties. The clause required that claims be brought in the parties’ “individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding.” The district court denied AT&T’s motion after concluding that AT&T’s arbitration provision was unconscionable under *Discover Bank*. The Ninth Circuit affirmed, agreeing that the provision was unconscionable under California law and holding that the FAA did not preempt its ruling. On April 27, 2011, the Supreme Court reversed.

The Supreme Court’s Analysis

In a 5-4 decision, the Supreme Court held that California’s *Discover Bank* rule is preempted by the FAA. Justice Antonin Scalia’s opinion for the majority explained that the “principal purpose” of the FAA is to “ensur[e] that private arbitration agreements are enforced according to their terms” and emphasized that “[t]he point of affording parties discretion in designing arbitration processes is to allow for efficient, streamlined procedures tailored to the type of dispute. It can be specified, for example, that the decision-maker be a specialist in the relevant field, or that proceedings be kept confidential to protect trade secrets. And the informality of arbitral proceedings is itself desirable, reducing the cost and in-creasing the speed of dispute resolution.”

The Court recognized that many advantages of arbitration are lost when it is conducted on a classwide basis. “Classwide arbitration sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment.” At the same time, according to the opinion, classwide arbitration “greatly increases risks to defendants” because the “absence of multilayered review makes it more likely that errors will go uncorrected. Defendants are willing to accept the costs of these errors in arbitration, since their impact is limited to the size of individual disputes, and presumably outweighed by savings from avoiding the courts. But when damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once, the risk of an error will often become unacceptable.”

Because California’s *Discover Bank* rule undermines the principal advantages of arbitration and is “an obstacle to the

accomplishment and execution of the full purposes and objectives” of the FAA, the Supreme Court concluded that the *Discover Bank* rule was preempted as a matter of federal law.

Implications of the *AT&T Mobility* Decision

The Supreme Court’s decision in *AT&T Mobility* has significant implications for companies that transact with their customers pursuant to agreed-upon terms of use or similar agreements, or that have arbitration agreements with employees. While class waivers outside of arbitration agreements are likely not valid in California and many other states, yesterday’s decision provides powerful ammunition to companies that would prefer to resolve claims through individual arbitration rather than through the court system. Indeed, requiring consumers to pursue claims through arbitration on an individual basis, rather than classwide arbitration or litigation, may significantly decrease the “chance of a devastating loss” and “‘in terrorem’ settlements” described in the majority’s opinion.

In light of *AT&T Mobility*, companies that already have agreements in place with consumers should consider whether to include provisions requiring arbitration with a class action waiver, and how to do so in a way that would ensure that such agreements are enforceable. In addition, companies that do not already form agreements with consumers, employees, or others should consider implementing agreements that include carefully drafted arbitration clauses in order to avail themselves of individual arbitration claim resolution. While arbitration may have significant drawbacks such as the lack of appellate review of an arbitrator’s decision—indeed, the district court recognized that AT&T’s arbitration clause puts

² See *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007).

³ See *America Online, Inc. v. Superior Court*, 90 Cal. App. 4th 1 (2001).

Continued on page 3...

U.S. Supreme Court Issues Significant New Decision . . .

Continued from page 2...

plaintiffs in a better position than they would be in if they were members of a class—companies should consider whether those drawbacks outweigh the burden and risk of defending against a class action lawsuit.

For more information about the *AT&T Mobility* decision, arbitration, or class action litigation, please contact a member of Wilson Sonsini Goodrich & Rosati's litigation practice.



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