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Pacific Rim Advisory Council

February 2012 e-Bulletin

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CONFERENCES & EVENTS

- *2012 28 February - PRAC @ IPBA New Delhi*
- *2012 6 March - PRAC Members Gathering @ PDAC Toronto*
- *2012 April 21-24 - 51st International PRAC Conference - Houston Hosted by Baker Botts LLP*
- *2012 May 5 - PRAC Members Gathering @ INTA Washington*
- *2012 October - PRAC Members Gathering @ IBA Dublin*
- *2012 October 20-23 - 52nd International PRAC Conference - Buenos Aires Hosted by Allende & Brea*

Details at www.prac.org/events
PRAC Conferences and Events are open to PRAC Member Firms only

MEMBER DEALS MAKING NEWS

►ARIAS & MUNOZ Advises HSBC Central America in Sale of Assets to Banco Davivienda of Colombia for US $801 Million
►ARIFA Advises Goldman and CitiGroup on Debt Reduction Transaction for Republic Of Panama
►BAKER BOTTS Acts for Hunt Oil Sale to Marubeni Eagle Ford Limited Partnership of 35 percent Interest in an Eagle Ford Shale Oil and Gas Play
►CAREY Y CIA Acts for ING Group in US$3.8 Billion Sale of Latin America Assets to Grupo de Inversiones Suramericana
►CLAYTON UTZ APLNG Latest Project Milestone - China Petrochemical Corporation (Sinopec) Enters Formal Agreement for further 3.3 million tonnes of LNG per year to 2035, and increase in Sinopec's Equity State in APLNG from 15% to 25%
►FRASER MILNER CASGRAIN BP Canada US $1.67 Billion Sale of its Natural Gas Liquids to Plains Midstream Canada ULC
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►HOGAN LOVELLS Advises Goldman Sachs on 4.8% Investment in Trade & Development Bank of Mongolia LLC
►KING & WOOD Weichai Holding Group Acquires 75% Stake in Ferretti Group
►NAUTADUTILH CBRE Global Investors NL EU56 M Building Sale to Hansainvests
►RODYK Sing Holdings Buys Robin Road Site for $52 Million in Collective Sale
►TOZZINIFREIRE Assists Coyote Trail LLC in the acquisition by Banco Panamericano S.A. and Banco BTG Pactual S.A. of Brazilian Finance & Real Estate S.A. from Ourivest Real Estate Holding S.A., TPG-Axon BFRE Holding, LLC and Coyote Trail LLC.

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FMC APPOINTS ELEVEN LAWYERS TO PARTNERSHIP

February 1 2012

Fraser Milner Casgrain LLP (FMC), one of Canada's leading business and litigation law firms, is pleased to announce the admission of eleven lawyers to its partnership. These appointments add to the firm's bench strength and enhance its client service, in Canada and internationally.

"At FMC, we are committed to supporting our clients with strong business solutions based on an in-depth understanding of their business and their industries," said Chris Pinnington, Chief Executive Officer, FMC. "In achieving this objective, the quality of our people is undoubtedly one of our greatest strengths. Developing and promoting our lawyers is an ongoing effort at our firm, and we are immensely proud to announce our newest partners."

FMC's new partners bring a wealth of expertise across industry sectors, including insolvency and restructuring, corporate and commercial law, corporate governance, energy, oil and gas, environment, financial services, employment and labour, franchising, litigation and dispute resolution, mergers & acquisitions, public-private partnerships (P3), mining, construction and infrastructure, real estate, tech companies and venture capital, land use planning and leasing, securities and corporate finance, technology, tax and wealth management.

Among the 11 new partners are:

FMC Montréal – Mélanie Jacques and Jacques Plante

FMC Toronto – Julie Robbins and Doug Stewart

FMC Edmonton – Heather Barnhouse,
Mercedes Hitesman, Anna Loparco, and Sarat Maharaj

FMC Calgary – Correna Jones

"These individuals have excelled in their respective areas of expertise, and are essential members of our team," said Chris. "Time and again they have reached the high standards of FMC, and met the critical needs of our clients."

For additional information visit www.fmc-law.com

BAKER BOTTS ELECTS NEW MANAGING PARTNER

ANDREW M. BAKER ELECTED MANAGING PARTNER AT BAKER BOTTS L.L.P.

HOUSTON, February 7, 2012 -- Andrew M. Baker was today elected to be the next Managing Partner of Baker Botts L.L.P., succeeding current Managing Partner Walter J. Smith as the 14th person to hold that position in the firm's 172-year history.

"I have practiced law with Andy for more than three decades, and I am confident that he possesses the qualities necessary to continue the tradition of leadership that has served the firm and our clients well throughout our history," said Smith, who was elected Managing Partner in March 2002 and will retire at the end of this year.

Baker joined the Houston office of Baker Botts in 1979, shortly after graduating from Cornell Law School. In 1985, he moved to Dallas to help open the firm's office there. He has practiced corporate law throughout his career and currently serves on the firm's Executive Committee. He will be based in Houston once he assumes the Managing Partner position in April.

"I am honored that my partners have placed their confidence in me to continue building on Baker Botts' reputation as a 'best in class' law firm representing clients globally in complex matters," Baker said. "During my career, I have been privileged to participate in the firm's growth, while at the same time gaining a genuine appreciation of its heritage and the importance we place on contributing to the quality of life in the communities where we work and live."

Baker's corporate practice includes counseling public and private companies on deal execution in connection with mergers and acquisitions, joint ventures, securities and other finance transactions. He also represents companies, boards and audit committees in corporate and SEC investigations and counsels on corporate governance, crisis response, dispute resolution, strategic planning and communications.

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

DAVIS WRIGHT TREMAINE ADDS THREE ATTORNEYS TO LABOR & EMPLOYMENT LAW PRACTICE

SEATTLE, FEB. 3, 2012 -- Davis Wright Tremaine has added three associate attorneys to its growing Bellevue office. Peter Finch, formerly of the National Labor Relations Board (NLRB), Justin Dolan, and Kate Tylee join the firm's 60-plus national labor and employment law practice group.

"We are delighted to have been able to find and hire such talented attorneys," said Mark Berry, partner-in-charge of Davis Wright's Bellevue office. "We now have ten employment lawyers in our Bellevue office. As client needs dictate, we will continue to make strategic additions that focus on growth around our office's core practices."

"Peter, Justin, and Kate perfectly complement our expanding national practice," said Henry Farber, chair of the firm's labor and employment law practice group. "They will bring valuable and diverse expertise to our clients, and add to our great depth in labor and employment law."

Peter Finch joins DWT after spending 14 years with the NLRB, where he worked in the St. Louis and Seattle Regional Offices, as well as the Division of Advice in Washington, D.C. While at the NLRB, Finch was the primary attorney assigned to a wide spectrum of unfair labor practice allegations, including bad faith bargaining, surface bargaining, unlawful union signatory agreements, strike misconduct, lockouts, retaliatory discharges, Beck objections, and unions' failure to fairly represent employees.

Finch has significant experience investigating, analyzing, and litigating charges of unfair labor practices. Finch earned his J.D. from Seattle University Law School in 1997 and his B.A. in writing/media, from Loyola University of Maryland in 1990. "I'm looking forward to sharing my board experience with DWT's clients," said Finch.

Justin Dolan joins the firm after serving three years as a visiting professor of legal writing at Seattle University, the top-ranked legal writing program in the country. Prior to his stint in academia, Dolan was an associate at Garvey Schubert for six years handling a variety of litigation matters, including a number of employment cases involving claims of discrimination, harassment, negligent supervision and hiring, retaliation and wrongful termination. He has extensive deposition, motion and appellate briefing experience and second-chaired a successful three-week jury trial.

Dolan received his J.D. from the Seattle University School of Law, summa cum laude, in 2002. He served as associate editor of the school's Law Review and was a member of the Dean's list. He received his B.A. in history from the University of Wyoming in 1997.

Kate Tylee has handled all aspects of litigation, including serving as the lead associate on a six-week jury trial that resulted in a defense verdict for her client. She has also conducted workplace investigations and handled employment counseling inquiries. Prior to joining DWT, Tylee spent three years as an associate at Patterson Buchanan Fobes Leitch & Kalzer where she litigated a variety of cases, primarily on behalf of school districts.

Tylee graduated from Gonzaga Law School in 2008, where she was managing editor of the Law Review, a member of their National Moot Court team, and was named Best Oralist in Gonzaga's Moot Court competition. She earned her undergraduate degree at the University of Washington in Society and Justice in 1999. She was named to the University of Washington Husky Hall of Fame in 2008 based on her outstanding rowing career at UW. She was a four-time Pac-10 Champion and a two-time NCAA Champion.

For more information, visit www.dwt.com

GIDE LOYRETTE NOUEL WELCOMES EMPLOYMENT AND LABOR SPECIALIST

Specialists Anne Boileau and Alain Coeuret join the Gide Loyrette Nouel Employment Law practice group as partner and senior counsel respectively

31 January 2012 - Gide Loyrette Nouel is delighted to announce the strengthening of its Employment Law practice group, with Anne Boileau, partner, and Alain Coeuret, senior counsel, joining the 25-strong practice group in Paris.

- A specialist in employment law, Anne Boileau joins Gide Loyrette Nouel to assist the Firm's clients in both the day-to-day management of employment relationships and the social aspects of large projects, on national and international scales alike. Her experience will assist in reinforcing such activities with our international client base, namely in English-speaking countries.

Anne Boileau advises French and non-French clients on their individual and collective employment relationships. To this end, she acts in very diverse fields, including employment agreements, executive compensation plans, expatriation and secondment, workforce restructuring, employee representation, management of relations with employee representatives and unions, and collective agreements. Anne Boileau lived and studied in the United States, where she obtained a Master in Comparative Law from the University of Michigan, Ann Arbor. After establishing the Labour & Employment Practice in the Jones Day Paris office and managing that practice for thirteen years, she was European Business Coordinator in employment law within the same firm. Thanks to her extensive experience in M&A acquired over nearly 17 years (from 1977 to 1994), including ten years as partner, Anne Boileau is a recognised professional in dealing with the social aspects of major M&A transactions. Anne is cited yearly as one of the best employment lawyers in France in the major international legal guides (*Chambers Europe*, *PLC Which Lawyer?*, and *The Legal 500 EMEA*).

Alain Coeuret is a professor at the Cergy-Pontoise University and the Sorbonne's *Ecole de Droit* (Law School), and joined Gide Loyrette Nouel's Employment Law practice as senior counsel on 2 November 2011. Professor (*Agrégé*) at the Faculty of Law and former extraordinary Counsel to the Supreme Court of Appeal, Alain Coeuret is in charge of the Employment Law Master's Degree (*Master de Droit Social*) at the Cergy-Pontoise University. He also acts as mediator in employment-related collective conflicts. Specialised in employment law, criminal law in business and European employment law, he has published several books and academic articles including a criminal labour law manual republished in 2012 and two books on labour law.

Baudouin de Moucheron, GLN's Senior Partner, commented, *"I am very pleased to welcome Anne Boileau and Alain Coeuret to the firm. With 50 lawyers and legal consultants, our Employment Law practice is now even better placed to advise our clients in all aspects of employment law disputes and protection, both in France and abroad. The team had already been strengthened in January by the appointment of Foulques de Rostolan as partner, and now totals six partners"*.

Anne Boileau stated, *"I am delighted to join Gide Loyrette Nouel and bring my contribution to the development of this large team that is a reference in the market"*.

"I wish to be as close as possible to the teams to bring them my expertise and help keep knowledge up to speed with the latest law changes", added Alain Coeuret.

For additional information visit www.gide.com

LUCE FORWARD HAMILTON & SCRIPTS LLP TO MERGE WITH MCKENNA LONG & ALDRIDGE LLP

January 17, 2012 - The international law firm of McKenna Long & Aldridge LLP (MLA) and the California-based law firm of Luce, Forward, Hamilton & Scripps LLP (Luce Forward) have set a target merger date of March 1, 2012, following a recent vote by the firms' partners. This combination will enhance the legal services provided to clients in litigation, real estate, insurance, government contracts, government affairs and corporate law. The merger will also strengthen MLA's California foothold and increase Luce Forward's national and international presence.

The combined firm will continue as McKenna Long & Aldridge LLP, and will operate with more than 600 attorneys and public policy advisors in 15 offices in the United States and internationally. The integrated resources and leveraged capabilities of the combined firm will place it among the top 80 largest law firms in the U.S. It will also rank among the 20 largest firms and the third largest real estate practice in California, and will have more than 120 practicing litigation attorneys in the state.

"We took a long look at ways to better meet the growing needs of our clients on the West Coast," stated MLA Chair Jeff Haidet. "The market for legal and regulatory work in California is growing, and Luce Forward's statewide platform represented a perfect fit for our firm. MLA and Luce Forward share similar values and cultures, and are fully committed to delivering innovative solutions to our clients. Combining with Luce Forward is part of our common strategic vision to pursue growth opportunities in our clients' industries, to strengthen our core practice areas, and to further extend our culture of collaboration to our client relationships."

Through the merger, MLA attorneys and clients will gain access to Luce Forward's significant litigation, real estate, insurance and corporate capabilities throughout California. The merger provides Luce Forward attorneys and clients access to the nation's largest and oldest government contracts practice and a nationally-recognized government affairs practice.

"Our focus for the past 138 years has always been to provide our clients with the highest level of service and legal experience," said Luce Forward Managing Partner Kurt Kicklighter. "By combining with McKenna Long & Aldridge, we provide our clients with an international network of talented attorneys who can service any needs they might have beyond California."

About McKenna Long & Aldridge LLP

McKenna Long & Aldridge LLP is an international law firm with 475 attorneys and public policy advisors. The firm provides business solutions in the areas of complex litigation, corporate, government contracts, health care, intellectual property, technology, environment and energy regulations, climate change, finance, international law, public policy and real estate.

To learn more about the firm and its services, visit www.mckennalong.com.

About Luce Forward

Founded in 1873, Luce, Forward, Hamilton & Scripps LLP is a full-service California law firm with offices in San Diego, San Francisco, Los Angeles, Carmel Valley/Del Mar, Orange County and Rancho Santa Fe.

For more information, visit www.luce.com

MUNIZ RAMIREZ PEREZ-TAIMAN & OLAYA ANNOUNCES PARTNER PROMOTIONS

Peru's largest Firm Muñiz, Ramírez, Pérez-Taiman & Olaya has promoted five senior associates to partner bringing the firm's partnership to 37.

José Ballón Espejo, Héctor Figari Costa, Daniel Lovón Lillicrap, Rolando Salvatierra Combina and Roger Zavaleta Rodríguez, have been all promoted to partnership.

José Ballón Espejo (38) focuses on Corporate Law and M&A. He holds a Master's degree in Corporate Law from the University of Navarra (Spain) and has worked as foreign associate at Cuatrecasas (Madrid) in 2008. He joined the firm in 1998.

Héctor Figari Costa (39) focuses on Competition Law. He holds an LLM from Northwestern University. He is a specialist in competition, telecommunications and regulatory matters, with more than 13 years of experience, both at the Peruvian Competition Tribunal and in the private sector, providing legal advice in some of the most important cases in Peru. He joined the firm in 1997.

Daniel Lovon Lillicrap (37) focuses on Capital Markets and Banking & Finance. He holds a Master of Arts degree in Banking & Finance from the Frankfurt School of Finance and Management and a European Master in Law and Economics from the Erasmus University (Rotterdam). He joined the firm in 2005.

Rolando Salvatierra Combina (49) is an expert in Electricity and Administrative Law. Currently he is professor of Administrative Law at the School of Law of the Catholic University of Peru. Before joining Muñiz, he worked as a legal adviser to the Office of Electricity Audit at OSINERGMIN, the Peruvian regulator in electricity matters. He joined the firm in 2007.

Roger Zavaleta Rodriguez (38) is an expert in Litigation Law. He holds a Master's degree in Juridical Argumentation from the University of Alicante (Spain) and a Post-Graduate degree in Procedural Law from the Catholic University of Peru. He has published several articles related to matters dealing within his sphere of competence. He joined the firm in 2001.

Jorge Pérez-Taiman, principal partner of the firm, says the promotions "reflect our long-standing policy of recognizing the talent and outstanding contributions of our attorneys to the success of our organization".

For additional information visit www.munizlaw.com

HOGAN LOVELLS APPOINTS NEW CHAIR

Hogan Lovells has appointed Nicholas Cheffings who will serve as Chair of Hogan Lovells beginning 1 May 2012 and serve in the post for three years. Nicholas will take over from current co-Chairs Claudette Christian and John Young. John will be retiring from the firm on 30 April 2012 while Claudette will continue with her practice.

The Chair is a member of the Board and oversees our ethos and standards, nurtures our culture around the world, exemplifies the commitment and behaviors expected of partners in serving both clients and the firm, and plays an advisory role in relation to partners as required.

Nicholas is one of the top tier real estate litigators in the UK and has handled a number of precedent-setting disputes. He has also been a leading market player in a number of cutting edge leasehold liability transactions. He joined the-then Lovells in 1999 and previous management positions include being a member of the Lovells Partnership Council and Conflicts Panel. His current internal responsibilities include being a Board member, chair of the Partner Admission Committee and member of the Audit Committee.

Commenting on the appointment of Nicholas, Hogan Lovells' current co-chairs Claudette Christian and John Young said:

"Nicholas is a highly regarded partner who has a long track record of managing significant partnership and client issues with tact and diplomacy."

Says Nicholas Cheffings:

"This is a great firm and we are at an important moment in our development, occupying a unique position in the legal landscape, and looking to cement our place amongst the global elite. I am looking forward to transitioning into this new role over the next few months while continuing with my practice."

For additional information visit www.hoganlovells.com

TILLEKE CORPORATE PARTNER APPOINTMENT

Tilleke & Gibbins is proud to announce the appointment of Michael K. Lee as a Partner of the firm, effective January 1, 2012.

Michael counsels clients and manages cases on a wide range of corporate matters, including mergers and acquisitions, licensing, commercial transactions, real estate, regulatory affairs (particularly for the life sciences and high-technology industries), FCPA compliance, and labor. In 2011, he was identified as a leading lawyer in Vietnam in the areas of Corporate and M&A (by *Chambers Asia-Pacific*) and Real Estate (by *Asialaw Leading Lawyers*).

In addition to his role as a Partner, Michael will continue to serve as Department Head – Corporate/Commercial for the firm's Vietnam offices, a position he has held since 2010.

"Over the past two years, Tilleke & Gibbins has seen tremendous growth of our corporate and commercial practice in Ho Chi Minh City and Hanoi," said Tiziana Sucharitkul, the firm's Co-Managing Partner. "Michael's leadership has been invaluable to our continued development of this key practice area."

Michael received a B.A. in Anthropology from the University of California, Los Angeles (UCLA) in 1991 and a J.D. from McGeorge School of Law, University of the Pacific in 1995. In December 2006, he completed his LL.M. in International Legal Studies at the American University, Washington College of Law. Based in the firm's Ho Chi Minh City office, Michael is a Registered Foreign Lawyer in Vietnam. Also a licensed lawyer in California (1996), Texas (1997), and Colorado (1998), Michael has extensive experience litigating civil and criminal matters in the United States. He is fluent in English and Korean.

"Michael is a talented lawyer who works hard to understand his clients' needs and provide excellent service," added Darani Vachanavuttivong, Co-Managing Partner of Tilleke & Gibbins. "We are confident that our clients will benefit from Michael's addition to our partnership."

For additional information visit www.tillekeandgibbins.com

SIMPSON GRIERSON APPOINTS TAX SPECIALIST TO PARTNERSHIP

Simpson Grierson is delighted to welcome tax specialist Barney Cumberland to the partnership effective 1 January 2012.

Barney has made a significant contribution to the firm over the last 14 years with involvement in a number of significant tax cases, including handling the largest corporate tax dispute in New Zealand history. Barney's practice encompasses specialist advice in all aspects of New Zealand's domestic and international tax law, tax disputes and litigation, investment, governance and finance transactions - both domestic and cross-border.

"We are delighted to welcome Barney to the partnership" says Kevin Jaffe, Simpson Grierson's chairman. "His significant experience in both large domestic and cross-border tax matters will add even greater value to our clients' businesses. His knowledge of both the transactional and dispute resolution aspects of tax means that clients benefit from a complete 'cradle-to-grave' service for all their tax needs".

Barney is based in Auckland and adds significant depth to the already outstanding team.

For additional information visit www.simpsongrierson.com

ARIAS & MUNOZ

ENEL GREEN POWER SPA WINS INTERNATIONAL ARBITRATION RULING OF ICC TO BECOME MAJORITY STAKEHOLDER OF LAGEO IN EL SALVADOR

In 2001 LaGeo placed an international public bid to choose its Strategic Partner in order to develop geothermal energy in El Salvador, offering as main attraction the eventual control of LaGeo by means of its capitalization of investment.

The public bid was won by ENEL and a Shareholder's Agreement was signed, which started being executed normally, but when ENEL wanted to capitalize the investments that would allow them to gain control over LaGeo, the governmental agency Comisión Ejecutiva Hidroeléctrica del Río Lempa ("CEL") and its subsidiary Inversiones Energéticas, S.A. de C.V. ("INE"), as share-holders of LaGeo and subscribers to the aforementioned Agreement, opposed to this, and by this the dispute arose that initiated he arbitration between ENEL and CEL and INE.

With the definitive grant of this arbitration process, the arbitrators have recognized and reconfirmed ENEL's right to capitalize investments that will allow them to become majority shareholders and gain control of LaGeo, all in accordance to the Shareholders Agreement that was originally signed.

Arias & Muñoz successfully represented ENEL in this arbitration process, as a plaintiff and as a defendant of the counterclaim promoted by CEL and INE in relation with the breach of the Shares Holder Agreement celebrated between them.

This is the first international litigation that is resolved in a dispute related to the geothermal energy sector in El Salvador, as well as the right that has been granted to ENEL to capitalize its investments in LaGeo for an amount over US $120 million. This represents an important investment for the country and will contribute to the development of such industry.

Enel Green Power is the company with which ENEL Group works in the development and generation of energy through renewable resources. It has presence in Europe, North, Central and South America and is a leader in this sector thanks to its 22 million kph generated by water, sun, wind and geothermy and that satisfy the energy needs of more than 8 million homes.

For additional information visit www.ariaslaw.com

CAREY Y CIA

COUNSEL FOR CANADIAN BROOKFIELD ASSET MANAGEMENT US$330 MILLION ACQUISITION OF ACS GROUP STAKE IN TUNNEL AND TOLL ROAD

Carey y Cía. acted as counsel to Canadian asset management company Brookfield Asset Management in the acquisition of Spanish construction company ACS Group's stake in Chilean San Cristóbal tunnel as well as ACS Group's and Spanish state and private-owned company COFIDES' stake in Chilean Vespucio Norte Express toll road for US$330 million.

Said transaction gives Brookfield a 54.55% equity stake in Vespucio Norte Express and a 50% equity stake in Túnel San Cristóbal. Vespucio Norte Express is a 30-year concession that is part of Santiago's beltway and was awarded to ACS in 2002 by the Chilean Ministry of Public Works (MOP).

Both Vespucio Norte Express and Túnel San Cristóbal are all -electronic free flow toll facilities. Closing took place on December 15, 2011. The transaction was financed in part by means of a back-to-back loan provided by HSBC Bank Canada, for US$221,400,000.

Carey y Cía. has advised Brookfield Asset Management through a team led by partners Salvador Valdés, Diego Peralta and Felipe Moro, and associates Juan José Bouchon, Fernando Noriega, Arturo Poblete and Felipe Garcés.

For additional information visit www.carey.cl

TILLEKE& GIBBONS CORPORATE PARTNER APPOINTMENT

Tilleke & Gibbins is introducing a new in-house investigation unit, a consumer hotline on counterfeit goods, and a coalition-based approach to dealing with landlords, as detailed below.

Tilleke & Gibbins Investigation Unit

We are pleased to introduce our in-house investigation team headed by Mr. Thammares Kittayatham. The Investigation Unit has recently been established as part of the firm's Intellectual Property Department, so that we can better serve, and respond to the needs of, IP owners and enhance our IP enforcement efforts.

Thammares has dedicated his skills and knowledge to the investigation and IP enforcement field for over 20 years. Prior to joining Tilleke & Gibbins, he was previously the Head of the Investigation and Suppression team for leading international movie and music associations, tasked with handling anti-piracy activities and government affairs in Thailand. The staff members of both the investigation and the enforcement team in the Tilleke & Gibbins IP Investigation Unit are professionally trained, reliable, trustworthy, and experienced individuals.

For more information on our investigation capabilities, please contact darani.v@tillekeandgibbins.com.

Report Thai Fakes Hotline

A hotline (+66 2653 5665) and an e-mail address (report@thaifakes.com) have been created by Tilleke & Gibbins specifically for the purpose of receiving information relating to IP piracy and infringement activities from members of the public. Through the hotline, Thais and foreigners can report tips on the existence of counterfeit or pirated goods, or other forms of IP infringement, occurring anywhere in Thailand or even in other countries. When receiving such information, our hotline response team will preliminarily verify its accuracy and the reliability of the source, while also investigating any relevant additional information about the infringement. We will then report the matter to the concerned IP owners.

Landlord Liability Action Project

As a means of tackling the problem of counterfeiting in Thailand, many IP owners have expressed an interest in holding landlords liable for IP infringements by their tenants. To accomplish this, Tilleke & Gibbins has been working with many of our top clients to forge coalitions of IP owners dedicated to pursuing actions against landlords. Through such cooperation, IP owners can increase their leverage in negotiating with the owners of well-known shopping malls and department stores in Thailand. In our experience, this type of collective action can lead to much more effective results for IP owners.

For more information about how we can help you to build coalitions within your industry and negotiate with landlords to stop IP infringement, we invite you to contact us at bangkok@tillekeandgibbins.com.

For more information visit us at www.tillekeandgibbins.com

WILSON SONSINI ELECTS NEW MANAGING PARTNERS

Wilson Sonsini Goodrich & Rosati Appoints Doug Clark and Jack Sheridan as Co-managing Partners ***-- CEO Steve Bochner Returns to Full-Time Corporate Practice --***

PALO ALTO, CA (January 10, 2012)- Wilson Sonsini Goodrich & Rosati, the premier provider of legal services to technology, life sciences, and growth enterprises worldwide, today announced that Douglas Clark and John T. (Jack) Sheridan have been named co-managing partners of the firm. They succeed Steven E. Bochner, who has decided to return full time to his corporate law practice. Bochner had been chief executive officer since August 2009, when he succeeded John Roos, who left the firm to become the U.S. Ambassador to Japan. The management transition will take place over the course of next month.

"Steve has presided over the firm during a period of significant growth and achievement, including expansion into new geographies—China, Delaware, and Brussels—and in a number of strategic practices, such as corporate governance, antitrust, global capital markets, and other key areas," said Chairman Larry Sonsini. "We are completing the best financial year in the firm's history, with record revenue and productivity, and have achieved many important successes on behalf of our clients. We cannot thank Steve enough for his distinguished service, and look forward to him continuing in a leadership role at the firm as a board member and senior partner."

"I am deeply grateful for the opportunity to have served as CEO," said Steve Bochner. "Working alongside the board of directors and partnership in this capacity has made me even more appreciative of the strength of this organization and the terrific people who work for it. But working with clients always has been my passion, and I felt that the time was right to return to full-time practice. We are fortunate to have Doug and Jack ready to step in as co-managing partners. They have been key members of the management team for some time, and they'll make terrific stewards of the firm."

An attorney at Wilson Sonsini Goodrich & Rosati since 1993, Doug Clark served as the head of the litigation department for six years. He has chaired many of the firm's key committees and is also a member of its Policy Committee. Clark's litigation practice focuses primarily on the defense of securities class actions, and he has represented numerous companies in SEC investigations and exchange inquiries.

Jack Sheridan joined the firm in 1986 and has been head of the Business Law Department for five years. He, too, has chaired and participated in many of the firm's key committees. Sheridan's practice focuses on the corporate governance, intellectual property, and other corporate legal needs of public and private companies in the technology, life sciences, and retail sectors. He has represented them in public offerings, mergers and acquisitions, venture financings, and other sophisticated transactions.

"Both Doug and Jack have superb strategic and operational expertise that makes them uniquely qualified to pick up the mantle from Steve," said Sonsini. "They know the firm, its people and operations, and the legal business inside out. The board and I look forward to working with them as the firm continues to evolve and explore promising opportunities, and we thank them for assuming this important new role."

For additional information visit www.wsgr.com

ARIAS & MUNOZ

ADVISES HSBC CENTRAL AMERICA IN SALE OF ASSETS TO BANCO DAVIVIENDA OF COLOMBIA US$801 MILLION

The offices of Arias & Muñoz in El Salvador and Costa Rica advised HSBC in the sale process of its assets in El Salvador, Honduras and Costa Rica to Banco Davivienda of Colombia for US $801 million. It was announced that HSBC would sell its assets, which include 136 branches, to Davivienda as part of its global cost-cutting initiative.

The Arias & Muñoz team, which included Partners Armando Arias, Roberta Gallardo and Ana Mercedes López in El Salvador, and José Antonio Muñoz and Daniel Araya in Costa Rica, was in charge of providing the advice related to the transaction in those countries.

For additional information visit www.ariaslaw.com

ARIFA

ADVISES GOLDMAN AND CITIGROUP ON DEBT REDUCTION TRANSACTION FOR REPUBLIC OF PANAMA

Panama, February 2012

ARIFA advised Goldman Sachs & Co. and Citigroup Global Markets Inc. as joint dealer managers in connection with a modified Dutch auction for the Republic of Panama. Holders of Panama's US$1.4 billion 7.25% Global Bonds due 2015 were invited to exchange those bonds for 6.7% US Dollar-Denominated Amortizing Global Bonds due 2036 issued by Panama plus cash.

The transaction successfully allowed Panama to purchase all itsUS$258 million aggregate principal amount of 2015 bonds submitted in non-competitive offers pursuant to the offer. Panama will issue US$249 million aggregate principal amount of 2036 bonds in exchange. Simultaneously, Panama accepted for purchase US$250 million aggregate principal amount of 2015 bonds, pursuant to the cash invitation. Some US$500 million aggregate principal amount of 2015 bonds had been submitted in non-competitive offers, which have been accepted pro rata at a proration factor of 50%.

Panama was also able to raise approximately US$400 million through an issuance of local Panamanian bonds. Altogether, Panama has been able to significantly reduce its exposure of US$1.4 billion for the 2015 bond to approximately US$521 million as a result of the combined exchange offer, cash invitation and local issuance.

Key attorneys acting in the matter are Ricardo M Arango, partner; Estif Aparicio, partner; Andrés N Rubinoff, international associate.

For additional information visit www.arifa.com

BAKER BOTTS

ACTS FOR HUNT OIL SALE TO MARUBENI EAGLE FORD LIMITED PARTNERSHIP OF 35% INTEREST IN AN EAGLE FORD SHALE OIL AND GAS PLAY

On January 6, Marubeni, a Japanese company, announced that Marubeni Eagle Ford Limited Partnership, a U.S. subsidiary, entered into an agreement with Dallas-based Hunt Oil to acquire 35 percent of Hunt's working interest in an Eagle Ford shale oil and gas play covering about 52,000 acres of oil and gas leases in Texas.

The agreement calls for several hundred wells to be drilled over the next five to 10 years, with a total development cost of $1.3 billion, including Marubeni's acquisition costs, the company wrote in a statement. Also as part of the deal, Hunt Oil and Marubeni agreed to jointly make more acquisitions in the Eagle Ford shale oil and gas area.

For additional information visit www.bakerbotts.com

CAREY Y CIA

ACTS FOR ING GROUP IN US$3.8BILLION SALE OF LATIN AMERICA ASSETS TO GRUPO DE INVERSIONES SURAMERICANA

Carey y Cía. acted as counsel to ING Group, in connection with the Chilean part of the US$3.8 billion sale of ING's assets in LatAm to Colombian financial holding company Grupo de Inversiones Suramericana (Grupo Sura). The deal included ING's pension, insurance and investment management assets in Colombia, Mexico, Chile, Uruguay, and Peru.

Carey y Cía. has advised ING through a team led by partners Diego Peralta, Jessica Power and Felipe Moro, director Paulina Miranda, and associates Felipe Tupper and Vesna Camelio.

For additional information visit www.carey.cl

NAUTADUTILH

ADVISES CBRE GLOBAL INVESTORS NL EU56 MILLION BUILDING SALE TO HASAINVESTS

12 January 2011 - NautaDutilh's Benelux Real Estate Group has advised CBRE Global Investors NL on the sale of office building Nijenburg to Hansainvests (Hanseatische Investment GmbH) for EUR 56 million.

CBRE Global Investors NL has sold the assest on behalf of the CBRE Dutch Office Fund. The property is a 12,100 m2 office scheme on Oosterdokseiland in Amsterdam. With 7,410 m2 Vodafone is the main tenant of the office building.

For additional information visit www.nautadutilh.com

FRASER MILNER CASGRAIN

BP CANADA US $1.67 BILLION SALE OF ITS NATURAL GAS LIQUIDS TO PLAINS MIDSTREAM CANADA ULC

FMC has, once again, played a key role representing our long-standing client, BP Canada. BP Canada has announced the US$1.67 billion sale of its natural gas liquids (NGL) business to Plains Midstream Canada ULC. The transaction is expected to closed during the first half of 2012. This is the most recent of several billion-dollar-plus transactions FMC has acted on for BP.

The NGL business owns, operates and has contractual rights to assets that run the gamut of production and distribution functions, from extraction through to wholesale distribution of NGL product across Canada and in the Midwest United States. Among these assets, for example, are approximately 4,000 kilometers of pipeline systems and a storage capacity of 21 million barrels of NGLs.

A sizeable FMC team across three of our offices is representing BP on the matter, with Mike Hurst taking the lead. The team also included (in alphabetical order) George Antonopoulos, Julie Bedford, Courtney Burton, Ryan Exon, John Goetz, Correna Jones, Steven London, Trevor Morawski, Joe Palin, Dale Skinner, Sandy Walker and Barry Zalmanowitz, Q.C., with substantial assistance provided by Tamara Wall and the Calgary Word processing team.

Congratulations to Mike Hurst and this team for their dedicated efforts on behalf of BP Canada.

For additional information visit www.fmc-law.com

CLAYTON UTZ

APLNG LATEST PROJECT MILESTONE - CHINA PETROCHEMICAL CORPORATION

Sydney, 23 January 2012: Clayton Utz congratulates client Australia Pacific LNG Pty Ltd (APLNG) on achieving the latest milestone in its Queensland coal seam gas to liquefied natural gas project – one of the most significant energy and resources projects being undertaken in the country, and on which Clayton Utz continues to provide advice.

APLNG has entered into formal agreements with China Petrochemical Corporation (Sinopec) for the supply by APLNG to Sinopec of a further 3.3 million tonnes of LNG per year to 2035, and an increase in Sinopec's equity stake in APLNG from 15 per cent to 25 per cent.

A Clayton Utz team led by Corporate national practice head and Energy and Resources partner Graham Taylor, and including Energy and Resources senior associate Samy Mansour, advised APLNG on the issue of further equity to Sinopec. Commenting on the latest project milestone, lead partner Graham Taylor said: "The APLNG project continues to go from strength to strength, and will deliver significant economic benefits to the state of Queensland. We're proud to be associated with the project."

In April 2011, Graham led a Clayton Utz team including Energy and Resources partner Andrew Smith as well as Samy Mansour, in advising APLNG on the issue of a 15 per cent equity interest to Sinopec in the APLNG joint venture for a net consideration of US$1.5 billion, and an agreement for the supply of up to 4.3 million tonnes each year of LNG to Sinopec, for 20 years.

APLNG began as a joint venture between leading Australasian integrated energy company Origin Energy, and major global energy provider ConocoPhillips, to deliver coal seam gas to an LNG plant at Laird Point on Curtis Island near Gladstone, Queensland. LNG exports from the APLNG project are expected to commence in 2015.

Clayton Utz was appointed project counsel to the APLNG project in 2008, with Graham Taylor and Andrew Smith the firm's key partners.

For additional information visit www.claytonutz.com

GIDE LOYRETTE NOUEL

LEGAL ADVISOR TO RUSMOLCO ON LANDMARK INVESTMENT PROJECT IN RUSSIAN DAIRY CATTLE HUSBANDRY AND PLAN GROWING PROJECT

2 February 2012

The Moscow office of Gide Loyrette Nouel (GLN) acted as an advisor to Rusmolco, a Russian dairy company, on a major investment project between Rusmolco and the Singapore company Olam International, the largest in the field of dairy cattle husbandry and plant growing. The project involves Olam International investing in the share capital of Rusmolco. It is planned that before 2015, the aggregate investments will amount to about USD 400 million and will be used for forming a herd of 20,000 head and increasing the area of farmland to 106,000 ha. During the following three or four years, it is planned to double the production volume by way of increasing the herd to 50,000 head, and the area of farmland to 130,000 ha.

The transaction was signed on 30 January 2012 in the presence of Yelena Skrynnik, Agriculture Minister of the Russian Federation, and Andrei Danilenko, Chairman of the Board of the National Dairy Producers Union ("Soyuzmoloko").

Rusmolco was established in 2007. It comprises nine farms in the Penza Region and specialises in dairy cattle husbandry and plant growing. The Singapore company Olam International Limited is one of the world leaders in the production and delivery of agricultural products and ingredients for the food industry, trading in 65 countries. The company has been present in Russia since 1993.

Boris Arkhipov, partner in the Moscow office of Gide Loyrette Nouel and head of the team of lawyers who acted on this project, said: *"We were happy to represent the interests of Rusmolco in this project which opens further development possibilities for the company, as well as an opportunity to enter the international market. We have substantial experience in legal support of such kinds of transaction, including the industry in question, both on the Russian market and abroad. This project is characterised by the grand scale of the investments and a complicated structure. We would also like to congratulate Rusmolco on the fact that in the course of negotiations, we managed to observe the interests of our client in all matters of principle."*

For additional information visit us at www.gide.com

RODYK

SING HOLDINGS BUYS ROBIN ROAD SITE FOR $52 MILLION IN COLLECTIVE SALE

Rodyk is acting for Sing Holdings in the acquisition of 16-unit apartment located at Robin Road by way of collective sale which is subject to the approval of Strata Titles Board. This site will combine with three other adjoining properties with the collective purchase price of S$176 million for all the four sites (for which Rodyk acted) and will have a combined area of 8,171.6 sq m. The new development will have at least 150 units.

Real estate partner Norman Ho led on this matter assisted by associate Chau Shang Chai.

For additional information visit www.rodyk.com

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PDAC Toronto 2012
PRAC Members Gathering - Tuesday, March 6

PRAC Houston Conference 2012 - April 21-24
Hosted by Baker Botts LLP

INTA Washington, DC 2012
PRAC Members Gathering—May 5, 2012

IBA Dublin 2012
PRAC Members Gathering

PRAC Buenos Aires Conference 2012 - October 20-23
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KING & WOOD

WEICHAI HOLDING GROUP ACQUIRES 75% STAKE IN FERRETTI GROUP

On January 10th, 2012, Weichai Holding Group ("Weichai Group") successfully reached agreement with the major creditors of the world's largest luxury yacht maker, the Italian company Ferretti Group ("Ferretti"), to acquire a controlling interest in Ferretti through Ferretti's debt restructuring procedure. According to such agreement, Weichai Group will acquire a 75% interest in the yacht maker through a total investment of Euros 374 million, which consists of Euros 178 million of equity investment and Euros 196 million of debt financing.

Ferretti, founded in 1968, has some of the world's most advanced naval research and development centers and first -class team of architects and designers. Ferretti has eight highly regarded and recognized yacht brands, including Riva, Ferretti Yachts, Ferretti custom line, Pershing, Bertram, Itama, Mochi Craft and CRN and owns a total of 8 shipyards in Italy as well as in Miami, USA. Due to the effect of the global financial crisis in 2008, Ferretti has been facing with debt difficulties.

Weichai Holding Group Co., Ltd., founded in 1946, is the largest wholly-owned subsidiary of Shandong Heavy Industry Group. Weichai Group offers a broad range of high quality commercial vehicles, construction machinery and other heavy-duty industrial products and is one of the most complete equipment manufacturing groups in China. Weichai Group employs over 40,000 people worldwide and the three public companies under the Group have combined market capitalization of closer to RMB 100 billion. In 2010, the Group recorded operating income of RMB 91.1 billion.

This project was led by Xu Ping, a senior partner of King & Wood based in Beijing. Acting as the lead counsel, Ms. Xu was in charge of facilitating and coordinating the entire project, including, inter alia, the coordination amongst the various Advisors inside and outside of China and initiated the communications and negotiations with Ferretti and its majority creditors. Because the project involves, inter alia, many different parties and complex shareholding and debt structures, the designing and implementation of the restructuring plan faced many challenges and obstacles. To overcome such difficulties, Ms. Xu and her King & Wood team, has been acting as the lead counsel to the transaction. Together with the Italian, and other counsels , the King & Wood team structured the innovative equity investment + debt financing restructuring plan, participated numerous rounds of negotiation with stakeholders, and finally enable the parties to agree on the terms and completed the signing of the agreement.

For additional information visit www.kingandwood.com

HOGAN LOVELLS

ADVISES GOLDMAN SACHS ON 4.8% INVESTMENT IN TRADE & DEVELOPMENT BANK OF MONGOLIA LLC

ULAANBAATAR, 9 February 2012 - Hogan Lovells has advised Goldman Sachs Group Inc. on the Mongolian aspects of their purchase of a 4.8% equity stake in the Trade & Development Bank of Mongolia LLC.

The Trade & Development Bank of Mongolia LLC, a major lender in the Mongolian market, is predicting an investment of US$68 billion within four years in new mines, roads and housing.

Hogan Lovells was the first global law firm to establish a permanent presence in Mongolia and is advising on a number of significant foreign direct investment transactions and projects in the energy, mining and infrastructure sectors.

The Hogan Lovells team which advised Goldman Sachs was led by Partner Michael Aldrich, along with associates Delgermaa Altantuya, Solongoo Bayarsaikhan and Nominchimeg Odsuren in Ulaanbaatar, supported by Asia Head of Corporate Jamie Barr and Senior Associate Laurence Davidson in Hong Kong.

Commenting on the transaction, Michael Aldrich, who leads Hogan Lovells' practice in Mongolia said:

"This transaction is yet another example of the investment opportunities present in the Mongolian market. As the country builds the infrastructure needed to grow its mining and energy industries, we can expect to see further foreign investment."

For additional information visit www.hoganlovells.com

TOZZINI FREIRE

ASSISTS COYOTE TRAIL LLC

TozziniFreire assisted Coyote Trail LLC in the acquisition by Banco Panamericano S.A. and Banco BTG Pactual S.A. of Brazilian Finance & Real Estate S.A. from Ourivest Real Estate Holding S.A., TPG-Axon BFRE Holding, LLC and Coyote Trail LLC. The deal pending and the value is R$ 1.215.360.500,00.

The purchase fits within BTG Pactual's drive into consumer and mortgage lending as demand for commercial and residential real estate rises in Latin America's largest economy.

Partner Cintia Vannucci Vaz Guimarães acted in the transaction.

For additional information visit www.tozzinifreire.com.br

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ALLENDE & BREA
ABOGADOS

Recent hydrocarbons discoveries in Argentina: challenges and opportunities

YPF S.A., the biggest E&P Argentine company, has recently announced the discovery of conventional oil at the Chachahuén block located in south Mendoza province, within the Neuquina Basin. The announcement indicated that the finding, equivalent to 40 million barrels, comes as a result of the 2010-2014 Exploration Development Program launched by the company in 2009. The test drillings proved the presence of 500 barrels of oil per day with an average density of 24° API. The third drilled well is still being tested. YPF informed that it will carry out significant exploratory investment in the Chachahuén block by acquiring 3D seismic covering 550 square kilometers (212 square miles) and drilling 28 wells.

This announcement was made two months after the release of a huge unconventional hydrocarbons discovery, following exploratory efforts in the Vaca Muerta formation in Neuquén province, also at the Neuquina Basin.

At that time, the company had confirmed recoverable resources of 927 million barrels of oil equivalent of unconventional hydrocarbons, 741 million of which are high quality oil in an area of 428 square kilometers (165 square miles) of Loma La Lata Norte in Neuquén. This area is part of the 12,000 square kilometers to which YPF owns rights in the Vaca Muerta area, site of one of the world's largest (30,000 square kilometers/ 11,583 square miles) and highest quality unconventional resources.

YPF has also begun exploration and production activities in another discovery spot, a 502 square kilometers (194 square miles) producing area in the same Vaca Muerta formation. The well is producing 400 boepd of high quality shale oil (35° API).

These announcements, as long as similar ones made in the last few months by other E&P companies operating in Argentina, evidence the possibility of a significant increase in the country's recoverable reserves. Undoubtedly, these are good news, but they also bring enormous challenges and opportunities: the need for substantial investments to continue exploratory efforts, update existing production, refining, transportation and distribution facilities and construct new ones. All of that aimed at making hydrocarbons and by-products available to eagerly demanding users across Argentina, be them industrial, commercial or residential.

Besides, the Argentine industry is close to use its maximum installed capacity, since it reached an almost 85% average-level by the end of 2011, leaving small room to growth unless new investments in infrastructure are carried out.

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CLAYTON UTZ

31 January 2012

Queensland's new Strategic Cropping Land Act 2011 now in force

Queensland's new Strategic Cropping Land Act 2011 (Qld) commenced on 30 January 2012, with important implications for the development and resource industries.

It deals with competing land uses by establishing a process for identifying and validating land as strategic cropping land (**SCL**) and for assessing and managing the impacts of development on that land. Approvals may be granted which allow impacts on SCL, but whether they will be granted will depend on the categorisation of the land as within either a protection area or management area, as well as the nature and duration of the impacts.

While there are several exemptions to the application of the Act, it will generally affect existing and future applications for approvals and can be expected to have time and cost implications for many applicants.

What does the Strategic Cropping Land Act do?

The Act seeks to gives effect to the Queensland Government's policy that the best cropping land should be protected from development that leads to its permanent alienation or diminished productivity.

Amongst other things, the Act provides:

- a process for identifying and validating SCL;
- a process for assessing impacts of development on SCL;
- requirements that impacts on SCL be mitigated in certain circumstances; and
- exemptions from the Act for certain projects and activities.

Identifying and validating strategic cropping land

The Department of Environment and Resource Management has released trigger maps showing areas of Queensland where SCL may exist (**potential SCL**). All potential SCL has been mapped within either a protection area or a management area.

The trigger maps can be searched free of charge on the Department's website, but they are only the starting point for identifying SCL. A proponent that is not satisfied that land identified on the trigger maps is SCL may wish to undertake an on-ground assessment and apply to the Department for a decision (referred to as a "validation decision") on whether:

- the land complies with the criteria for SCL applicable to the relevant zone; and
- if the land is located within a management area, the land has the required cropping history.

The onus of demonstrating that the trigger maps are inaccurate will lay with the person asserting it. We expect that the process of making a validation application will in many cases be time consuming and costly. Further, some proponents may experience difficulties carrying out on-ground assessments as the Act does not provide for rights of access to land for that purpose.

Assessing impacts of development on strategic cropping land

If a validation decision confirms that land is SCL, or a proponent elects to accept that the trigger maps correctly identify land as SCL, the Act requires that the impacts of a proponent's development on SCL be assessed as part of the existing assessment processes under the Environmental Protection Act 1994 (Qld) and/or the Sustainable Planning Act 2009 (Qld).

For resource activities, including mining and petroleum projects, impacts on SCL will effectively be assessed as part of a proponent's environmental authority application. If a project is located on SCL, the environmental authority will not be granted until the Department has assessed the impacts of the project on SCL and decided whether conditions will be imposed. This is referred to in the Act as a "SCL protection decision".

As an alternative to applying for a SCL protection decision and undergoing a full assessment under the Act, proponents of certain resource activities can instead apply to operate under the standard conditions code. The code applies to resource activities that have a temporary impact and pose a relatively low risk of adversely impacting on SCL and is designed to expedite the approval processes for those activities.

For development under the Sustainable Planning Act, the assessment manager will assess the development application against the State Planning Policy "Protecting Queensland's strategic cropping land". However, this will only apply to certain applications, including for reconfiguring a lot where any resulting lots are less than 15 hectares in size and material changes of use where the lot is at least 5 hectares in size.

The Act will have the greatest impact on projects with permanent impacts on SCL, as permanent impacts will only be permitted in a protection area in exceptional circumstances. Even in a management area, permanent impacts on SCL will require mitigation measures that may add significant costs to a project. Permanent impacts are defined in the Act to include impeding the land from being cropped for at least 50 years, open-cut mining (irrespective of the life of the mine) and storing hazardous mine wastes (eg. tailings dams or overburden).

The mitigation requirement

It will be an offence for the holder of an environmental authority, resource authority or development approval to carry out development that permanently impacts on SCL unless those impacts are mitigated.

The requirement to mitigate can be satisfied by a payment to the mitigation fund (calculated at the rate per hectare prescribed by regulation), or by entering into a mitigation deed.

Exemptions

The Act is subject to a number of exemptions. For example, the Act does not apply to an environmental authority, resource authority or development approval in force before 30 January 2012 (although the amendment, renewal or re-grant of such authorities may be affected).

You might also be interested in ...

- Strategic cropping land – drawing the boundaries
- Strategic Cropping Policy for Queensland
- Queensland shakes up its strategic cropping land framework

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JANUARY 2012

1 Competition and Foreign Investment in Canada: Taking Stock of 2011 and Looking Ahead to 2012

2 Contact Us

Competition and Foreign Investment in Canada: Taking Stock of 2011 and Looking Ahead to 2012

By Sandy Walker

2011 saw a very active enforcement year for the Competition Bureau, while foreign investor jitters about Canada's openness to investment following the Government's rejection of BHP Billiton's bid for Potash Corporation of Saskatchewan were somewhat allayed. This review highlights the most significant events in competition law and foreign investment review in 2011 and identifies developments to watch out for in 2012.

A. Taking Stock of 2011

I. Competition

The Competition Bureau was active in both criminal and civil enforcement under the *Competition Act*.

Criminal Conspiracies

In 2011, the Competition Bureau actively pursued domestic cartel activity, including a gasoline price fixing conspiracy in Quebec[1] , as well as bid-rigging. In January 2012, a price-fixing cartel for polyurethane foam was the first conviction under Canada's amended conspiracy provision, which does not require the prosecution to demonstrate that the agreement has an adverse impact on competition.

Abuse of Dominance (Civil)

Taking another swing at the real estate industry on the heels of its challenge (and ultimate

[1] Press Release, Competition Bureau, Two Individuals Plead Guilty in Quebec Gasoline Price-Fixing Cartel (June 10, 2011), available at http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03382.html.

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settlement) of certain restrictive practices of the Canadian Real Estate Association, the Competition Bureau has alleged that the Toronto Real Estate Board (TREB) is abusing its dominant position in the supply of residential real estate brokerage services in the Greater Toronto Area (GTA). According to the Commissioner of Competition's application, TREB has enacted and implemented restrictive rules and policies respecting the use of its Multiple Listing Service to discipline and exclude innovative brokers.

Mergers Under the Gun

The Commissioner of Competition challenged two mergers within the first six months of 2011 – a relative rarity in Canada where competition concerns are typically addressed by consent agreement. One of these mergers involves two landfill companies in northern British Columbia, CCS Corporation and Complete Environmental. The case is significant for a number of reasons. The transaction was not notifiable under the *Competition Act*, underscoring the Bureau's willingness to scrutinize smaller transactions that may not have a significant national or even regional impact but may still have potentially substantial adverse consequences in an isolated or local geographic area. In addition, the case is notable because Complete had not yet commenced its operations and therefore, the Commissioner's case is based on the theory that competition will be substantially prevented. The case is also of interest because the transaction was challenged following its closing. Finally, the Commissioner is also seeking dissolution as a remedy. Dissolution is not a typical remedy and can be punitive for a vendor who has already made a decision to exit the business.

The other case being challenged under the merger provision of the *Competition Act* involves the proposed joint venture of Air Canada and United Continental on 19 transborder routes. The Commissioner is also challenging the airlines' coordination of "key aspects of competition" on transborder routes under the relatively new civil provision relating to agreements between competitors causing a substantial lessening of competition.

Enhanced Transparency: Guidelines, Interpretation Guidelines, Merger Register

The Competition Bureau produced a number of guidelines and other communications designed to increase transparency in 2011. Notable among these was the issuance of revised *Merger Enforcement Guidelines* (MEGs). The revised MEGs de-emphasize market definition, stating that it is not a required step in the Bureau's analysis but rather only an analytical tool in assessing competitive effects. In addition, they eliminate the two-year timeline for potential entry into a market, provide additional guidance on buyer power, and elaborate on the Bureau's treatment of minority interests and interlocking directorates.

The Bureau has also issued policies on hostile transactions, is planning to publish "position statements" setting out the Bureau's analysis in complex cases and will be establishing a merger register listing transactions that have received clearance from the Bureau.

Misleading Advertising

A number of significant misleading advertising cases were pursued in the telecommunications sector in 2011. Bell agreed to pay a $10 million administrative monetary policy (the maximum under the *Competition Act*) for price-related advertising of its services that the Bureau regarded as misleading. The Commissioner also continued to pursue its case against Rogers Communications for making allegedly unsupportable claims about its Chatr discount cell phone and text service. In January 2012 Rogers challenged the constitutional validity of imposing administrative monetary penalties for false or misleading claims before the Ontario Superior Court.

II. Foreign Investment Review

Potash II Averted?

With the abandonment of the London Stock Exchange Group's bid for the TMX Group (which owns the Toronto Stock Exchange), the Canadian Government was spared making a potentially contentious decision following its rejection of the bid by BHP Billiton for Potash Corporation of Saskatchewan (PotashCorp) in November 2010[2]. In February 2011, the London Stock Exchange announced its bid for the Toronto Stock Exchange – a transatlantic merger subject to review under the *Competition Act* and ministerial approval under the *Investment Canada Act* as well as a number of provincial regulators. The merger agreement was terminated in June 2011 as a result of insufficient TMX shareholder support.

Investments by Chinese State-Owned Enterprises (SOEs) Approved

The Canadian Government approved a number of state-owned investments in 2011, including Sinopec's proposed acquisition of Daylight Energy, a Canadian oil and gas company, and CNOOC's acquisition of oil sands company, OPTI Canada. CNOOC acquired OPTI's 35 percent working interest in Long Lake and three other project areas located in northeastern Alberta. Both investments would have been subject to the Government's guidelines on state-owned investors which consider the SOE's corporate governance and commercial orientation in assessing whether the transaction would be of "net benefit" to Canada.

Enforcement of Undertakings

In 2010 the Canadian Government sued US Steel for alleged non-compliance with its employment and production undertakings. This represented the first time an investor has been taken to court over a failure to comply with undertakings. In December 2011 US Steel settled the dispute with the Canadian Government, committing to make additional capital investments in its Canadian facilities and to operate certain Canadian plants until 2015.

Review of Investment Canada Act

After its rejection of BHP Billiton's bid for PotashCorp, the Canadian Government indicated its willingness to review the *Investment Canada Act*. In the winter of 2011, the Parliamentary Standing Committee on Industry, Science and Technology invited foreign investment experts to speak about their views on the Investment Canada process (e.g., its transparency, the criteria for review). However, there has been no public indication since the Government won a majority in the May 2011 federal election that it intends to resume its reconsideration of the statute.

B. Looking Forward:

I. Competition

Monitoring Key Cases

2012 will be busy for the Competition Tribunal. For example, in the spring, the Tribunal will hear the Commissioner of Competition's case against Visa and MasterCard for implementing and enforcing agreements allegedly imposing significant restrictions on the terms upon which credit card network services are supplied to merchants. In the fall, the Commissioner's

[2] Technically as the application by BHP Billiton for Potash Corp. was withdrawn following the Minister of Industry's initial rejection of the deal, there was no final formal rejection of the bid. Nevertheless, BHP Billiton had offered extensive undertakings and withdrew the application because it felt it could not reasonably satisfy the Canadian Government. Its press release states: "In view of the reasons underlying the Minister's interim decision of November 3, the company believes that the Minister of Industry would have required additional undertakings beyond those BHP Billiton had already offered which would have conflicted with BHP Billiton's business strategy and been counter to creating shareholder value". See http://www.bhpbilliton.com/home/investors/news/Pages/Articles/BHP%20Billiton%20Withdraws%20Its%20Offer%20To%20Acquire%20PotashCorp%20And%20Reactivates%20Its%20Buy-back%20Program.aspx,

application against the Toronto Real Estate Board will be heard. In addition, given that the CCS/Complete case was heard by the Tribunal in late 2011, we can anticipate a decision by the Competition Tribunal.

SOE Acquisitions – Who is in the family?

Acquisitions by SOEs have raised questions about whether other entities owned by a foreign state will be treated as “affiliates” - part of the same “family” of companies under the *Competition Act*. (This is not an issue for Canadian SOEs as there is a specific exemption for affiliates owned by the federal or provincial crown.) This has implications both for determining whether a transaction is notifiable (i.e., who is included as an affiliate of the acquiring SOE under the size of parties notification test) and the assessment of whether a transaction will lead to a substantial lessening or prevention of competition. As Chinese and other foreign SOEs continue to acquire Canadian companies, the Competition Bureau will need to clarify how it treats these issues over the coming year.

II. Foreign Investment Review

Post Potash Anxiety Lifts?

In the immediate aftermath of the Canadian Government’s rejection of BHP Billiton’s bid, foreign investors questioned whether there would be a sea-change in Canada’s previous openness to foreign investment. While the failed bid by the LSE for the TMX removed the possibility of another potential rejection, foreign investors, including SOEs, have not been dissuaded from investing in Canada. Despite this, a run at Canadian icons such as RIM by a foreign suitor could again thrust questions of foreign ownership of “national champions” or “strategic” sectors into the public arena. Potential acquirors of such targets will need to develop strategies at an early stage to address government and public relations in order to pre-empt, or at least mitigate, any public backlash.

Review Threshold Increases Incrementally

It is expected that the threshold for review of investments by WTO investors will be a book value of the target company’s assets of $330 million for 2012. The official threshold will be published in the *Canada Gazette* in early 2012. However, what may be of greater interest to foreign investors is whether the Canadian Government finally implements regulations bringing into force amendments made to the *Investment Canada Act* three years ago. These amendments would raise the review threshold to $600 million in the target’s “enterprise value” for the two years following implementation, to $800 million in the two subsequent years and to $1 billion thereafter (indexed to GDP), thereby further reducing the number of investments subject to Investment Canada review.

Measured Undertakings

The US Steel case underscores both that the Canadian Government will enforce undertakings in appropriate circumstances (although variations are still possible) and that when formulating 3 to 5 year commitments in relation to an acquisition, foreign investors must carefully consider their ability to meet such undertakings in light of the vagaries of economic conditions. Investors should also learn from the US Steel experience to manage public and government relations proactively when compliance with undertakings proves difficult.

Contact Us

For further information, please contact a member of our National Competition | Antitrust | Foreign Investment.

Landmark Copyright Case on Computer User Interfaces

By Sun Mingfei*

China Bulletin January 2012

As Chinese courts rarely accept copyright disputes concerning computer user interfaces, the case of *Shenzhen TP-LINK Technologies Co., Ltd vs. Shenzhen Tenda Technology Co., Ltd and Zhang Yabo* (the "**TP-LINK Case**") represents a significant precedent in dealing with similar cases. It is highly controversial even for copyright or computer experts to answer questions such as whether computer user interfaces are under the protection of China's Copyright Law or how to judge originality of a work in the case.

I. Whether a router's user interface is under the protection of Copyright Law

Based on Copyright Law principles, only expressions of ideas that have original characters are protected by Copyright Law, from which ideas themselves, crafts, operating methods and mathematical concepts are excluded. The idea-expression divide differentiates between ideas and expression, and states that copyright protects only the original expression of ideas, and not the ideas themselves. In the TP-LINK Case, user interfaces on both parties' routers is similar: a logo in the upper-left corner; a slogan appearing above; function menu and press-buttons on the left, which explains and are part of the operating method. The above-mentioned operating methods are without Copyright Law protection.

II. Determining the originality of the user interface

Whether a user interface belongs to "works" and has the characteristic of originality is the key issue in a Copyright dispute. According to Article 2 of the *Implementing Regulations of the Copyright Law of the People's Republic of China* (the "**Implementing Regulations**"), the term "works" used in the Copyright Law refers to original intellectual creations in the literary, artistic and scientific domains, in so far as they can be reproduced in a certain tangible form. Originality is the aspect of created or invented works that are new or novel, and thus can be distinguished from reproductions or plagiarism. Originality is the precondition and legal basis to determine copyright infringement, but also the most difficult issue to define.

Judicial practice differs greatly in courts throughout the country due to diversity of standards in determining originality. In theory, there are three academic points of view. The prevailing view is that if a work is completed on one's own without plagiarism, it is an original work. Some people think an original work must have individual composing characteristics in a formed arrangement, material selection and public introduction, while others have argued from the perspective of the "original proportion" theory in German law. International standards are varied, from "skill, efforts and judgment" in England, "reflect individual personality" in France, or "certain creativity" in the United States.

According to Article 3 of the Implementing Regulations, the term "creation" in the Copyright Law refers to intellectual activities from which literary, artistic and scientific works directly result. An original work is created with a unique style and substance, not received from others nor copied based on the work of others. "Complete a work independently" is the common way to determine originality in Chinese Copyright Law, and means that the author completed a work with independent ideas and individual skills without plagiarism; this is the minimum requirement. Some degree of creativity is another necessary condition. A creative work is the intellectual achievement of author's efforts and reflects unique personality characteristics. One purpose of the copyright system is to encourage creation and transmission of outstanding works, as legitimate works should make contributions to human civilization. The degree of creativity would be determined according to each individual case.

The user interface (often composed of windows, icons, menus and other visual layouts) is an effective operation and control of the machine by referring to the graphical, textual and auditory information the program presents to the user, and ultimately controlling the sequences the user employs to control the program. Taking user interfaces as a whole, the TL-R460 (the disputed router model in the case) used a common layout for its user interface and has no unique characteristics to gain special protection from the Copyright Law.

III. Balance of interest

Copyright provides the creators of original literary, artistic or scientific works with exclusive rights to control and profit from their works, and also encourages the copyright holders to transmit outstanding works for public interest. Meanwhile, Copyright Law sets certain limitations and exceptions to avoid overprotection and excessive monopoly. Therefore, the Copyright system attempts to balance between individual rights and the public interest.

In this case, the user interfaces from both parties' routers share many similarities. However, the usage of the router determines the compatibility characteristics of this product. Router user interfaces are designed to satisfy a user's demand and to facilitate the user's operation of the equipment, thus it is inevitable to have similar designs, in a sense that user interfaces have design limitations. Shenzhen TP-LINK Technologies Co., Ltd adopted a universal design and had no right to a monopoly of the general expression of user-friendly ideas. Otherwise, such protection could go against the purpose of the copyright system and be damaging to the computer industry and the public interest.

(This article was originally written in Chinese, the English version is a translation.)

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Extension of the Suspension in the Receipt of Minint Application

February 02, 2012

NEWS BRIGARD& URRUTIA

Natural Resources and Environmental Law News Flash Number: 139
Extension of the suspension in the receipt of mining application

On February 2, 2012 the Ministry of Mines and Energy issued Resolution No. 180128, whereby it extended for two (2) additional months the suspension of the receipt of mining concession applications as well as of mining legalization requests. The term is counted as of February 6, 2012.

The decision was adopted by the Ministry of Mines and Energy in order to take a decision with respect to the 19,629 applications and requests that were filed as of February 1st, 2011, when the suspension was initially decreed.

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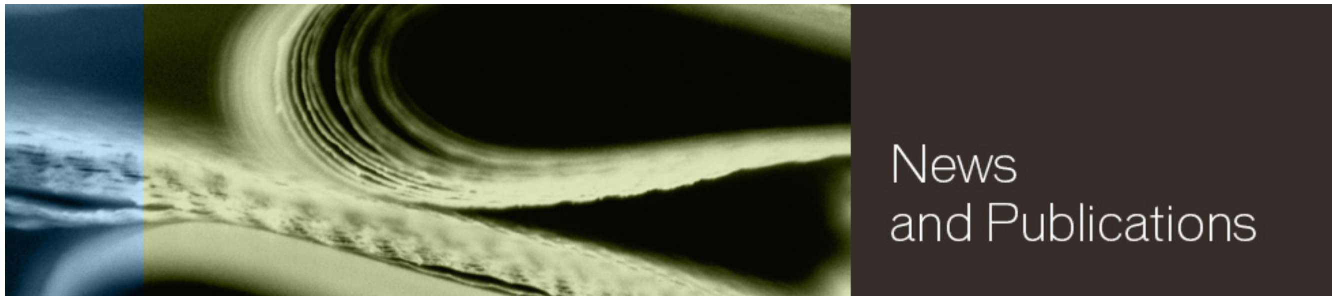

NEWS DETAIL Back

08/02/2012

NEW RULES ON TAX RESIDENCY

The Tax Office issued new rules on the determination of tax residency. The new rules are packaged under its Director General's Regulation No. PER-43/PJ/2011, which came into force on 28 December 2011 ("The Regulation").

The Regulation sets forth new qualifying conditions for tax residency, as follows.

An individual is qualified as a resident for tax purposes if he/she:

- resides or is domiciled in Indonesia;
- is present in Indonesia for more than 183 days within a 12 months period;
- stays in Indonesia and intends to reside in Indonesia. The intention is indicated by the individual's:

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1. possession of a work permit or a Limited Stay Permit Card (KITAS);
2. having entered into a contract of employment;
3. business or other activities in Indonesia for more than 183 days;
4. having leased a place to stay; or
5. having moved his family members to Indonesia.

The resident status commences as of his/her making an earning of an amount that exceeds the non-taxable income threshold.

A legal entity is qualified as a resident for tax purposes if:

- it is established or domiciled in Indonesia;
- its head office or centre of administration or finance office or controlling head office is in Indonesia;
- its management resides or is domiciled in Indonesia;
- its management board meetings in which strategic decisions are made are held in Indonesia.

The regulation also has a section on foreign tax subjects. It defines foreign tax subjects as individuals who do not reside in Indonesia, or who are present in Indonesian for not more than 183 working days within a period of 12 months; or entities that are not established or domiciled in Indonesia which (a) conduct business or activities either through a permanent establishment; or (b) may receive or make earnings from Indonesia not from such activities. (by: Ilham Wahyu)

2012 BUDGET HIGHLIGHTS

Melvyn Seah provides a summary of the salient points of the 2012 Budget

On 7 October 2011, the Prime Minister and Finance Minister of Malaysia, Dato' Sri Mohd Najib Tun Abdul Razak, tabled to the nation the Government's proposed budget for the Year 2012. The theme of the 2012 Budget was "*National Transformation Policy: Welfare for the Rakyat, Well-Being of the Nation*".

The 2012 Budget focuses primarily on five areas, namely:

1. Accelerating Investment;
2. Generating Human Capital Excellence, Creativity and Innovation;
3. Rural Transformation Programme;
4 Strengthening the Civil Service; and
5. Easing Inflation and Enhancing the Well-Being of the Rakyat.

Amounts of RM181.6 billion and RM51.2 billion will be allocated for operating expenditure and development expenditure respectively. Against that, the Government expects to generate RM186.9 million in revenue in the Year 2012. With the implementation of the 2012 Budget, the Prime Minister estimates that the government deficit will improve from 5.4% of the Gross Domestic Product (GDP) of the country to 4.7% of GDP in 2012.

> **"RM20 billion (has been allocated) to assist the private sector to develop projects with strategic value"**

To further boost economic growth in Malaysia, the Government has drawn up several proposals targeted at attracting foreign investment and improving the physical and economic infrastructure of Malaysia to make it a more vibrant and attractive choice for investors. Some of the key proposals affecting corporations and businesses are set out below.

ACCELERATING ECONOMIC DEVELOPMENT

The Government has allocated RM20 billion under the public-private partnerships Facilitation Fund to assist the private sector to develop projects with strategic value.

A further sum of RM978 million is provided to accelerate the development of the five regional corridors in Malaysia. Among the projects to be implemented are the construction of a coastal highway in the Iskandar Development Region, a heritage tourism project in the Northern Corridor, an agropolitan scheme in the East Coast Economic Region, a palm oil industrial cluster project in the Sabah Development Corridor and a water supply project in the Sarawak Corridor of Renewable Energy.

KUALA LUMPUR INTERNATIONAL FINANCIAL DISTRICT

The Kuala Lumpur International Financial District ("KLIFD") forms part of the Government's aim to transform Kuala Lumpur into an international hub for banking and finance and related professional services.

The following incentives are proposed to accelerate the development of KLIFD:

1. KLIFD status companies will be given 100% income tax exemption for 10 years and stamp duty exemption on loan and services agreements;

2. KLIFD Marque Status Companies will be given industrial building allowance and accelerated capital allowance; and

3. Property developers in KLIFD will be given income tax exemption of 70% for 5 years.

LIBERALIZATION OF THE SERVICES SECTOR

To improve Malaysia's competitiveness in an ailing global economy, the Government proposes to further liberalize the services sector. Seventeen service sub-sectors will be liberalised in phases in 2012. These sub-sectors include private hospital services, medical and dental specialist services, architectural, engineering, accounting and taxation services, legal services, education and training services and telecommunication services.

The Prime Minister stated that up to 100% foreign equity ownership will be allowed in selected sub-sectors but did not identify the sub-sectors that will be fully liberalized.

TREASURY MANAGEMENT OPERATIONS

The Prime Minister has proposed several incentives in the 2012 Budget in order to attract multi-national corporations to establish their Treasury Management Centre ("TMC") in Malaysia. A TMC provides financial and fund management services to a group of related companies within or outside the country.

The proposed incentives to attract the establishment of TMCs by multi-national corporations include a 70% tax exemption on statutory income for a period of 5 years. Statutory income comprises all fee income and management income from providing qualifying services to related companies within or outside Malaysia, interest income from related companies within or outside of Malaysia, foreign exchange gains from managing risks for the group and guarantee fees.

The qualifying services of a TMC are cash management, current account management, financing and debt management, investment services, financial risk management and corporate and financial advisory services.

In addition, interest payments on borrowings by TMCs to overseas banks and related companies will be exempted from withholding tax. Full exemption from stamp duty will be given on all loan agreements and service agreements executed by TMC in

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Malaysia for qualifying activities.

Expatriates working in a TMC will only be taxed on the portion of their chargeable income attributable to the number of days they are in Malaysia.

Applications for the establishment of TMCs received by the Malaysian Industrial Development Authority (MIDA) from 8 October 2011 to 31 December 2016 will enjoy the above benefits.

ISLAMIC SECURITIES

An extension of the tax exemption period for years of assessment 2012 to 2014 will be given for activities relating to the issuance and trading of non-ringgit *sukuk* (Islamic bonds) on the following types of income:

1. Fees received by qualified institutions in undertaking activities related to arranging, underwriting and distribution of non-ringgit sukuk originating from Malaysia; and

2. Profits of qualified institutions received from the trading of non-ringgit sukuk originating from Malaysia.

The existing tax exemption for expenses incurred on the issuance of Islamic securities under the principles of *Mudharabah, Musyarakah, Ijarah, Istisna', Murabahah* and *Bai Bithamin Ajil* based on *Tawarru*, will be extended to securities issued under the *Wakalah* principle which are approved by the Securities Commission or the Labuan Financial Services Authority.

THE LOSERS OF THE 2012 BUDGET: INSURANCE AND SHIPPING COMPANIES

Government assistance towards the insurance and shipping companies will be reduced following the 2012 Budget.

Insurance companies

The allowable deductions for the purposes of income tax computation for insurance companies will be reduced. Currently, an unabsorbed business loss of an insurer is allowed to be set off against the statutory income for the year of assessment.

However, from 2012, the Government proposes that only the adjusted loss from a life fund for a year of assessment is allowed to be deducted against the statutory income of the life fund of the insurer for subsequent years of assessment until it is fully utilized. Also, any adjusted loss or unabsorbed business loss apart from those accruing from the business of a life fund of an insurer is not allowed to be deducted against the aggregate statutory income for the year or subsequent years of assessment.

Shipping companies

Income tax exemption for shipping companies will be reduced from 100% to 70% of statutory income following the implementation of the 2012 Budget. The income derived from each Malaysian ship will be treated as income from a separate and distinct business source.

TAX-RELATED MATTERS

Real Property Gains Tax (RPGT)

With the aim of curbing real estate speculative activities and to relieve pressure on the prices of real estate, the Government proposes to implement the following increases in RPGT. Companies and individuals disposing property within 2 years of ownership will be subject to RPGT of 10% while a disposal between 2 to 5 years will be subject to RPGT of 5%. Any disposal after 5 years will not be subject to RPGT.

Tax Audit

Presently, the time bar for a tax audit is 6 years from the date on which the tax assessment is made. In order to enhance investor confidence and to increase certainty in the cost of doing business, the Government proposes to reduce the time bar for a tax audit to 5 years from the date of the tax assessment being made. This will not be applicable for cases of false declaration, wilful late payment and negligence and will not alter the requirement to keep records for 7 years in accordance with sections 82 and 82A of the Income Tax Act 1967. This proposal will come into effect from the year of assessment 2013.

Late Refund of Income Tax

A compensation of 2% per annum on the amount of income tax refunded late will be imposed on the Inland Revenue Board (IRB). The calculation for late payment will commence 1 day after 90 days from the due date for e-filing or after 120 days from the due date of manual tax filing. This proposal will be effective from the year of assessment 2013.

CONCLUSION

The 2012 Budget includes many initiatives by the Government to boost investor confidence and enhance the efficacy of doing business in Malaysia. In the light of the uncertainties during these economically trying times, such initiatives will enhance the attractiveness of Malaysia as an investment hub.

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KEY POINTS OF RULES GOVERNING FOREIGN ISSUER'S REPURCHASE OF LISTED SECURITIES

◎Hsin-Lan Hsu/Nelson Wu

Against a backdrop of deepening turmoil in global economy and volatile stock markets this year, uncertain outlook has led to significant correction in share prices of many technology companies. To maintain the stock price, those companies repurchased their shares as treasury stock. For foreign companies who conducted initial public offering ("IPO") in Taiwan and are not listed in any other exchange ("Primary Listed Companies"), given that the draft amendment to the Securities and Exchange Act (the "SEA"), which dedicated a special chapter with regard to foreign issuers, has not yet been passed by the Legislative Yuan, it raises an issue on whether foreign issuers are subject to the SEA when they buy back their shares, in particular on how to apply the SEA to foreign issuers incorporated in the Cayman Islands where there is a discrepancy between the Cayman Islands law and the SEA.

In the past, the Taiwan Stock Exchange Corporation (TWSE) granted approval for foreign issuers' repurchase of shares through the listing contract on a case-by-case basis. However, considering the increasing number of foreign issuers and their need for repurchase of shares, in order for Primary Listed Companies to repurchase their shares and to make the legal basis clear, the TWSE promulgated the Taiwan Stock Exchange Corporation Rules Governing Foreign Issuers' Repurchase of Listed Securities (the "Repurchase Rules") on 27 October 2011. The Repurchase Rules also incorporate provisions regarding repurchase of Taiwan Depositary Receipts ("TDRs") for the purpose of regulatory integration and the TWSE's rules governing the repurchase of TDRS no longer apply. The Repurchase Rules were drafted with reference to the regulations governing shares buy-back applicable to local listed companies. Thus, matters regarding repurchase procedure, limitation on price and volume of repurchase, the repurchase method, restrictions on repurchase, and public announcement are similar to those concerning local companies. The Repurchase Rules took effect immediately upon their announcement and Taiwan Stock Exchange Corporation Rules Governing the Secondary Listed Company's Repurchase of Taiwan Depositary Receipts were abolished. The key points of the Repurchase Rules are summarized below:

- Common Regulations (applicable to both the primary listed companies and secondary listed companies)

  1. Scope of listed securities

     The securities that can be repurchased on the TWSE include the listed shares of Primary Listed Companies listed in the ROC and the listed TDRs of foreign companies whose shares are listed on a foreign country's stock exchange ("Secondary Listed

Companies").

2. Board approval

A foreign issuer repurchasing its listed securities on the TWSE should obtain approval from a majority of the directors at a meeting attended by at least two-thirds of the total number of the directors, subject to laws and regulations of the country where it is incorporated and the country where it is listed. However, for those Primary Listed Companies whose articles of incorporation provide that repurchase of shares should be further approved by the shareholders' meeting, such companies would be required to obtain shareholders' approval before conducting the share repurchase. The board of the foreign issuer shall report the repurchase of listed securities, status of execution of repurchase as well as situations where the foreign issuer fails to Repurchase its listed securities for any reasons at the next shareholders' meeting.

3. Registration requirement

A foreign issuer is unable to repurchase its listed securities on the TWSE without registration with the TWSE pursuant to the Regulations Governing Investment in securities by Overseas Chinese and Foreign Nationals and the TWSE's business regulations. In other words, a foreign issuer must open a FINI account with the TWSE before repurchasing its securities on the TWSE.

4. Prohibition of disposal of listed securities by the foreign issuer's insiders and related parties during the repurchase period

During the period when a foreign issuer repurchases its listed securities on the TWSE, its affiliates (defined under the laws and regulations of the country where it is incorporated and the country where it is listed), its directors, supervisors, managers and their spouse, minor children or nominees should not dispose of their shares or TDR holdings in the foreign issuer.

5. Restriction on repurchase method of listed securities

A foreign issuer should execute the repurchase of its listed securities during trading hours via TWSE's automated computer trading system, and should not execute the repurchase by means of block trading, odd-lot trading, tender offer, auction, or after-market fixed-price trading.

6. Limitations on volume and total monetary amount of securities to be repurchased

(a) The aggregate volume of shares repurchased by a Primary Listed Company and TDRs repurchased by a Secondary Listed Company should not exceed 10% of total issued shares or total TDR units of such company. Primary Listed Companies are also subject to an additional cap on total monetary amount of repurchase (please refer to II. 1 below).

(b) The repurchase volume per day by a foreign issuer during the repurchase period should not exceed one third of the total number or units scheduled for the repurchase but the above limitation does not apply if the repurchase volume of

shares or TDRs is not more than 200,000 shares (applicable to Primary Listed Companies) or 200,000 units (applicable to Secondary Listed companies) per day. The foreign issuer should not provide price quotes before regular trading hours begin, and should appoint not more than two securities brokers to execute the repurchase.

7. Restriction on repurchase purpose

(a) Primary Listed Companies may Repurchase their shares for any of the following purposes:

(i) Where the repurchase is for transferring shares to its employees;

(ii) Where the repurchase is for the repurchased securities to be transferred for conversion from exercise of corporate bonds with warrants, preferred shares with warrants, convertible corporate bonds, convertible preferred shares, or share subscription warrants; or

(iii) Where the repurchase is for maintaining the company's credit and protecting shareholders' rights and the shares so purchased will be cancelled.

The shares repurchased in accordance with subparagraph (iii) of the preceding paragraph shall be cancelled within six months from the date of repurchase, and the shares repurchased for the purposes of the above subparagraphs (i) and (ii) shall be transferred within three years from the date of repurchase. The shares not transferred within the three-year period shall be deemed as not issued by the company. The shares repurchased by a Primary Listed Company shall not be pledged and the Primary Listed Company is not entitled to any shareholders rights with respect to the repurchased shares.

A Primary Listed Company may, after obtaining the board's approval which shall be approved by a majority of the directors at a meeting attended by at least two-thirds of the total number of the directors, report the amended purpose of share repurchase within two months upon expiration of the repurchase period, and report such change to the Financial Supervisory Commission of Executive Yuan ("FSC").

(b) For Secondary Listed Companies, all of the shares underlying the repurchased TDRs should be withdrawn from the TDR facility, and be cancelled, within six months after repurchase in accor-dance with the laws and regulations of the country where the Secondary Listed Company is incorporated.

8. Restriction on repurchase period

(a) For Primary Listed Companies, share repurchase should be completed within two months of the Reporting Date (as defined below), and, upon expiration of said two-month period or within five days of completion of the repurchase (whichever is earlier), the Primary Listed Company should submit a report to the FSC together with the transaction statement and relevant information, and announce the status of execution of the repurchase. If the repurchase has not been completed upon expiration of said two-month period and the issuer wishes to conduct another repurchase, another repurchase proposal shall be approved by the board of

directors.

(b) For Secondary Listed Companies, TDRs repurchase should be completed within two months of the Public Announcement Date of TDRs Repurchase (as defined below), and, upon expiration of said period or within five days of completion of the repurchase (whichever is earlier), the Secondary Listed Company should submit a report to the TWSE together with the downloaded information and relevant documents, and announce the status of execution of the repurchase. If the repurchase has not been completed upon expiration of said period and the issuer wishes to conduct another repurchase, another repurchase proposal should be approved by the board of directors.

9. Information Disclosure

(a) A Primary Listed Company repurchasing its shares should, within two days of the day on which the board of directors approves the share repurchase, announce the repurchase, and report the following items to the FSC ("Reporting Date"); share repurchase should not proceed prior to public announcement and reporting:

(i) Purpose of the repurchase.

(ii) Types of shares to be repurchased.

(iii) Ceiling on total monetary amount of the repurchase.

(iv) Scheduled period for the repurchase, and number of shares to be repurchased.

(v) Repurchase price range.

(vi) Repurchase method.

(vii) Number of shares held at the time of reporting.

(viii) Any repurchases within three years prior to the time of reporting.

(ix) Any repurchases that have been reported but not completed.

(x) Board meeting resolution to Repurchase shares.

(xi) Rules for transfer of shares to employees (please refer to II. 2. (a) below for the required contents of the rules).

(xii) Rules for conversion of shares or Rules for subscription of shares.

(xiii) Declaration that the financial condition of the company was considered at a meeting of the board of directors and that the capital maintenance of the company would not be affected by the repurchase.

(xiv) Appraisal by a certified public accountant or securities firm of the reasonableness of the repurchase price.

(xv) Other items prescribed by the FSC.

In addition to the information and documents prescribed above, the Primary Listed Company should also submit a compilation of share repurchase regulations of the country where it is incorporated and its articles of incorporation to the FSC and explain the ground(s) for share repurchase, transfer and cancellation, and subsequent handling after expiration of the period for share repurchase or completion of repurchase.

(b) A Secondary Listed Company should, within two days of the day on which the board of directors approves the repurchase of TDRs, announce the following items via the Market Post Observation System maintained by the TWSE ("Public Announcement Date of TDRs Repurchase"), and submit the downloaded information and relevant documents to the TWSE:

(i) Date of board resolution and the manner of resolution.

(ii) Purpose of the repurchase (withdrawal and cancellation of the underlying shares).

(iii) Ceiling on total monetary amount of the repurchase.

(iv) Scheduled period for the repurchase, and volume of TDRs to be repurchased.

(v) Repurchase price range of the TDRs.

(vi) Repurchase method.

(vii) Ratio of TDR units to be repurchased to total units of issued TDRs.

(viii) Any repurchases within three years prior to the board resolution date.

(ix) Scheduled or actual date for cancellation of underlying shares.

(x) Other items prescribed by the TWSE.

To closely monitor whether an insider has sold any TDR during the period when the company repurchases its TDRs, the Secondary Listed Company should simultaneously report or change information relating to its insiders via the Market Post Observation System when making the public announcement according to the preceding paragraph.

(c) Whenever the cumulative number of shares repurchased by a Primary Listed Company reaches 2% of its total issued shares, or the cumulative value of shares repurchased reaches NT$300 million, the company should, within two days upon occurrence of either, make an announcement of the date, number and type of shares, and repurchase price.

(d) Whenever the cumulative volume of TDRs repurchased by a Secondary Listed Company reaches 2% of total units of issued TDRs, or when the outstanding TDRs is less than 12 million units, the company should, within two days upon occurrence of either, make an announcement of the date, volume, and price of TDRs repurchased via the Market Post Observation System.

- Special Rules Applicable to Primary Listed Companies

1. Limitation on total monetary amount of share repurchase

For a Primary Listed Company repurchasing its shares, the total monetary amount of share repurchase should not exceed the balance of the retained earnings deducting earnings distribution approved by the board of directors or shareholders' meeting plus the following realized capital gains:

(a) proceeds from disposal of assets that have not yet been booked as retained

earnings; and

(b) income derived from the issuance of new shares at a premium and income from endowments received by the company; provided, however that where the endowment received is the company's own shares, the income shall not be recorded until the shares have been sold.

Calculation of the total monetary amount of share repurchase shall be based on the latest financial report audited or reviewed by a certified public accountant in accordance with law prior to the board resolution. The financial report must include an unreserved audit opinion or standard review opinion. This restriction, however, does not apply to interim financial reports which were issued a reserved opinion by the accountant as the long-term equity investments and associated gains and losses were measured based on financial reports of the invested company which were not audited or reviewed by a certified public accountant.

2. Transfer repurchased shares to employees

(a) Rules for transfer of shares to employees should be adopted in advance

A Primary Listed Company which Repurchases its shares for the purpose of transferring them to its employees should first adopt rules for transfer of shares to employees. The rules for transfer of shares to employees should include at least the following items:

(i) Types of shares to be transferred, a description of the rights attaching thereto, and any restrictions on such rights.

(ii) Transfer period.

(iii) Eligibility requirements for transferees.

(iv) Procedures for transfer of shares.

(v) Agreed transfer price per share. The price should not be less than the average actual repurchase price. However, the transfer price can be subject to anti-dilution adjustment. The company is also allowed by a shareholder resolution to transfer shares to its employees at a price below the average actual repurchase price (please refer to II. 2. (b)).

(vi) Rights and obligations subsequent to execution of the transfer.

(vii) Other rights and obligations related to the company and its employees.

(b) Transfer shares to employees at a price below the average actual repurchase price

To transfer shares to employees at a price below the average actual repurchase price, a Primary Listed Company must have obtained the consent of at least two-thirds of the voting rights present at the most recent shareholders' meeting attended by shareholders representing a majority of total issued shares, and must have listed and explained the following matters, which should not be raised by means of an extraordinary motion, in the convention notice of shareholders' meeting (matters that the company is required to submit to the shareholders' meeting for approval shall be set out in its articles of incorporation):

(i) The transfer price, discount percentage, calculation basis and the reasonableness thereof.

(ii) The number of shares to be transferred, the purpose, and the reasonableness thereof.

(iii) Eligibility criteria for employees subscribing for shares, and the number of shares they are allowed to subscribe for.

(iv) Factors affecting shareholders' rights:

(A) The amount which can be charged as exprenses, and dilution of the company's earnings per share.

(B) Explanation on financial burden to be imposed on the company by transferring shares to employees at a price below the average actual Repurchase price.

The aggregate number of shares of the company which have been transferred to its employees at a price below the average actual repurchase price as approved by shareholders' meetings should not exceed 5% of the total issued shares of the company, and the aggregate number of shares subscribed by any single employee should not exceed 0.5% of total issued shares of the company.

- Special Rules Applicable to Secondary Listed Companies

A Secondary Listed Company and its shareholders should not, within the period for Repurchase of TDRs and within one month upon expiration of period for the repurchase or completion of the repurchase (whichever is earlier), re-issue the TDRs within the amount of withdrawal of the original facility, or within the scheduled issuance period and permitted volume of units for issue under a shelf registration for TDRs offering.

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Davis Wright Tremaine LLP

Business Associates Beware: First HIPAA Enforcement Action Against a Business Associate (And the Plot Thickens with Transparency Demands)

02.06.12

By Adam H. Greene and Rebecca L. Williams

On Jan. 19, 2012, in the wake of the theft of an unencrypted laptop computer containing approximately 23,500 patients' records, the Minnesota attorney general brought the first formal enforcement action against a business associate, Accretive Health, Inc., for an alleged violation under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), using her authority under the Health Information Technology for Economic and Clinical Health ("HITECH") Act. Additionally, the attorney general appears deeply unsettled by the amount of information that Accretive Health collected about patients without the patients' knowledge, alleging that this lack of transparency represents deceptive and fraudulent practices under Minnesota law.

Although the U.S. Department of Health and Human Services ("HHS") has indicated that it will not enforce the HITECH Act (such as with respect to the application of HIPAA against business associates) until the final omnibus regulation becomes effective, the Minnesota suit against Accretive Health is a reminder that the HITECH Act's statutory provisions with respect to business associates currently are in effect and that state attorneys general (as well as the U.S. Department of Justice) are not bound by HHS' enforcement discretion when considering the exercise of their authority to enforce HIPAA.

Business associates may want to review whether they currently are complying with the statutory privacy and security requirements of the HITECH Act, such as requirements to:

- Limit uses and disclosures of protected health information
- Perform and document risk analysis and risk management processes
- Implement reasonable and appropriate administrative, physical, and technical safeguards, particularly with respect to electronic protected health information
- Formalize privacy and security efforts through policies and procedures
- Appoint a security officer (and perhaps a privacy officer)
- Verify compliance with existing business associate contracts – failure to comply may result in increased liability beyond breach of contract.

Additionally, business associates should monitor this suit because the Minnesota attorney general's request for Accretive Health to affirmatively disclose to patients its collection of health information could represent a fundamental shift in the relationship between business associates and patients and may create substantial additional notification obligations and costs.

Background

According to the Minnesota attorney general's complaint, Accretive has a controversial history in Minnesota with respect to its arbitration and collection of consumer debts. Accretive Health is a "portfolio company" of Accretive, LLC, which allegedly tried to create a "comprehensive, alternative legal system" for debt collection by taking a governing interest in the National Arbitration Forum (the nation's largest arbitration firm for consumer credit card collections), forming Axiant (a large national debt collection agency for the credit card industry), and acquiring the assets and collections of Mann Bracken law firm (the nation's largest collection law firm). The Minnesota attorney general filed a lawsuit against the National Arbitration Forum in 2009 for allegedly misleading consumers, and it is through this lens that the attorney general apparently viewed the activities of Accretive Health.

According to the complaint, on July 25, 2011, an Accretive Health employee allegedly left a password-protected, unencrypted laptop containing the patient information regarding two hospitals in the back seat of a rental car, where the laptop was stolen. Accretive Health provided revenue cycle management activities to the two hospitals, ranging from "front office" (scheduling, registration, and admissions), "middle office" (billing), to "back office" (collections). Additionally, with respect to one of the hospitals, Accretive Health provided "quality and total cost of care" activities, in which Accretive helped the hospital negotiate contracts with certain insurance companies in which the hospital would receive incentive payments for cutting health care costs, with Accretive receiving a portion of any incentive payments in exchange for "managing the care coordination process". Based on these activities, the stolen laptop allegedly contained names, addresses, dates of birth, social security numbers, Accretive-derived scores to predict the "complexity" and likelihood of inpatient admission of patients, and information regarding whether patients had any of 19 conditions (e.g., HIV, diabetes, schizophrenia, and depression).

Security Allegations

The attorney general's complaint alleges eight security violations of HIPAA, such as a failure to implement policies and procedures to prevent, detect, contain, and correct security violations, to effectively train employees, and to implement policies regarding the receipt and removal of hardware and electronic media containing electronic protected health information. Since the HITECH Act authorizes state attorneys general to obtain statutory damages in the amount of up to $100 per violation, limited to up to $25,000 per calendar year for multiple violations of an identical provision, the alleged continuing violation of eight provisions (potentially over multiple years) could represent hundreds of thousands in statutory damages. Additionally, the attorney general seeks injunctive relief and attorneys' fees pursuant to the HITECH Act and Minnesota law.

Deceptive Practices Allegations

While the importance of the first HIPAA enforcement action against a business associate should not be understated, what may make this case particularly significant is the attorney general's allegation that Accretive Health participated in deceptive and fraudulent practices by failing to affirmatively disclose to patients the amount of health information it was collecting. The attorney general claims that:

In sharp contrast to the lack of information provided by Accretive to Minnesota patients, it provides much more detailed information to Wall Street investors about its role in the health and lives of patients. Minnesota patients are entitled to know the information that Accretive amasses about them and its extensive role in their health care so that they can make informed choices about their health care and medical records.

The attorney general claims that this alleged lack of transparency violated the Minnesota Prevention of Consumer Fraud Act and Uniform Deceptive Trade Practices Act.

The allegations of deceptive and fraudulent trade practices raise the question as to whether other entities collecting health information while operating on behalf of health care providers must affirmatively disclose such collection practices to patients to comply with Minnesota law (and similar laws in other states). It is unclear from the suit, for example, whether there is a particular threshold in which third parties must affirmatively disclose the collection of health information.

While the goal of increased transparency with respect to health information may be a noble one, this lawsuit has the potential to set some dangerous precedent, resulting in health care consumers being inundated with hundreds of notices of the collection of health information by third party vendors, at great expense to the vendors. The complaint seeks Accretive Health's affirmative disclosure to patients regarding the information Accretive Health collects, suggesting that this information is necessary to enable patients to make informed choices about their health care and medical records. But, if the attorney general obtains such relief and other business associates follow suit and affirmatively disclose to patients any time the patient's information is collected, then health care consumers may find themselves drowning in a sea of notices by entities who likely are unknown to the consumer but who receive the consumer's health information on behalf of the consumer's health care providers. These additional notices may raise the costs of business associates and, in turn, the costs consumers must pay for health care.

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Hogan Lovells

Government Contracts and Intellectual Property Update

February 8, 2012

New rules on technical data rights and independent research and development

The National Defense Authorization Act for Fiscal Year 2012: additional changes in technical data rights

The National Defense Authorization Act (NDAA) for Fiscal Year 2012 (FY12), *P.L. 112-81*, made a number of changes concerning technical data rights and validation of proprietary data restrictions, which took effect December 31, 2011. These changes are noteworthy for any companies that supply non-commercial technology to the U.S. Department of Defense (DoD). Here are some of the changes, which are codified in sections 2320 and 2321 of Title 10 of the United States Code.

Section 2320: Rights in Technical Data

- The FY12 NDAA added a new circumstance in which the government may release or disclose technical data related to technology developed by a contractor exclusively at private expense. The government may release or disclose the data to persons outside the government if it "is necessary for the segregation of an item or process from, or the reintegration of that item or process … with other items or processes." As with other such exceptions, the data may go no further than the person or entity to whom it was released, and the government must notify the contractor who supplied the data.

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- Previously, the statute provided that the respective rights of the government and the contractor in technology developed with a combination of public and private funding would be negotiated. Now, by default the government has government purpose rights (i.e., the right to use and license the data for future government purchases), unless the Secretary of Defense finds negotiation of other rights is in the best interest of the United States. This change may have little impact in practice, however, as implementing regulations in the Defense Acquisition Regulations Supplement already make government purpose rights the standard outcome.

- The FY12 NDAA repealed a change made only a year ago in the FY11 NDAA concerning the impact of indirect federal support for independent research and development (IR&D) on data rights. Research and development that a company conducts on its own, rather than under contract to a federal agency, is characterized as IR&D. If the company has cost-type government contracts, however, it may recover a portion of that research expense as an element of its indirect cost rate. The FY12 amendment re-establishes the principle that the government only has limited rights in the fruits of IR&D, notwithstanding the fact that a portion of the cost may be financed through indirect cost rates. In other words, IR&D investment —

including the reimbursed portion, if any — is treated as "private expense" for intellectual property purposes.

- Finally, the law broadens the government's ability to require delivery of technical data generated or utilized in performance of a contract, even after performance of the contract is complete and even if the contract did not initially require delivery of such data. Use of the data is not subject to license fees; the government will only compensate the contractor for reasonable costs of reproducing the data for its use.

Section 2321: Validation of Proprietary Data Restrictions

- The government now has six years, rather than three years, to challenge a restriction on use or release of proprietary data asserted by the contractor. *Section 2321(d)(2)*. As before, the clock starts running either on the date on which final payment is made or the date on which the technical data are delivered, whichever is later. No change was made, however, to the requirement that the government review asserted use or release restrictions within three years.
- The former three-year statute of limitations did not apply if the government believed the contractor had erroneously asserted a use or release restriction — an exception that arguably swallowed the rule. *Section 2321(d)(2)(C)*. The FY12 NDAA replaced that language with an exception to the new six-year limitation period applicable only if the technical data involved "are the subject of a fraudulently asserted use or release restriction." *Section 2321(d)(2)(A)(iv).*

Reporting of IR&D projects

On January 30, 2012 DoD issued a final rule requiring quarterly online reporting of IR&D projects by defense contractors. Any project not reported will be ineligible for cost reimbursement as an element of indirect costs allocable to government cost-type contracts. *77 Fed. Reg. 4632 (Jan. 30, 2012) (to be codified at 48 C.F.R. pt. 231)*. The primary motivation behind the rule is to give DoD science and technology and acquisition program planning personnel additional insight into industry IR&D activities to ensure that those activities "meet DoD needs and promote the technical prowess of our industry."

- *To whom does the rule apply?* The rule applies only to "major contractors," which are defined as "contractors whose covered segments allocated a total of more than US$11,000,000 in IR&D/bid and proposal costs to covered contracts during the preceding year." The final rule raised the threshold from the originally proposed US$50,000 in response to commenters concerned about the impact on small businesses. Nevertheless, DoD encourages businesses of all sizes to submit project descriptions, even if not required to do so.
- *What must be reported and how?* Contractors will submit information to the Defense Technical Information Center via an online form, available at http://www.dtic.mil/ird/dticdb/index.html. The requested information includes project title, project number, anticipated expenditures, project description, keywords, and technology readiness level. DoD says it needs only a "concise one-and-a-half to two-page overview" and that the specificity of the information submitted is up to the contractor. Therefore, according to DoD, the rule does not force contractors to file patent applications earlier than they otherwise would to avoid the public disclosure bar to patentability. *See 35 U.S.C. 102*.
- *Who will have access to the submitted information?* Contracting personnel, primarily, will have access to the information to determine whether IR&D projects are of potential interest to the government, rendering their cost allowable under cost-type contracts. The rule does not change the standard for allowability or allocation to government cost-type contracts, but it remains to be seen whether review of ongoing projects at an earlier stage will lead to greater disallowance of IR&D costs than has been the case in the past. In response to concerns that contracting personnel will not have the technical expertise to evaluate projects' potential, DoD assures that the contracting officers will consult those with specialized experience as necessary. Submitted information is deemed to fall under Freedom of Information Act (FOIA) exemption (b)(4) and will not be released in response to a FOIA request. While DoD believes the online system is secure, only unclassified information should be submitted.

Hogan Lovells has an experienced team of government contracts and intellectual property lawyers who are available to assist contractors with issues associated with these new laws. Please

contact one of the authors listed, or the Hogan Lovells lawyer with whom you work, if you have any questions.

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WSGR ALERT

JANUARY 2012

CALIFORNIA LABOR COMMISSIONER ISSUES ANOTHER REVISED SET OF FAQS CONCERNING NEW CONTROVERSIAL WAGE NOTICE REQUIREMENT

As of January 1, 2012, California Labor Code Section 2810.5 requires employers to provide a notice that contains very specific information, including wage rates and details regarding the employer's payday and workers' compensation carrier, to every new non-exempt employee in California. On January 23, 2012, the California Labor Commissioner's office issued yet another updated frequently asked questions (FAQ) document relating to the new wage notice requirement. The FAQs are a partial attempt to address industry questions and concerns expressed to the Division of Labor Standards Enforcement (DLSE) regarding the new requirement. The updated FAQs can be found at http://www.dir.ca.gov/dlse/FAQs-NoticeToEmployee.html.

While we cannot predict how many more versions of the FAQs the Labor Commissioner will issue, most observers believe that the most recent draft will be in place for some time. The DLSE Wage Notice form itself still raises unresolved issues, but the Labor Commissioner's FAQs provide some additional guidance to employers and should be examined closely.

On October 14, 2011,[1] and January 10, 2012,[2] Wilson Sonsini Goodrich & Rosati issued alerts providing background and information on the new wage notice requirement. The link to the FAQs in the January 10 alert is still the correct link, but employers should note that the actual FAQ document has been updated and now contains additional information. FAQ Nos. 16-25 are completely new, and information has been added to FAQ Nos. 2 and 12.

While the updated FAQs respond to some of the concerns raised by employers, the document does not address all of the compliance issues that have been raised. Some important items to note include the following:

- The updated FAQs do not clarify whether the Labor Commissioner found the additional requirements that appear in the Labor Commissioner's wage notice template but not in the statute to be "material and necessary." The statute sets forth the information that must be provided in the wage notice but indicates that the Labor Commissioner has the authority to require additional "material and necessary" information.
- Although the statute only requires that the wage notice be provided to new hires, updated FAQ No. 2 now states that it is a "best practice" for employers to provide the wage notice to current employees as well.
- FAQ No. 22 clarifies that instead of providing updated wage notices, employers can notify employees of changes to their workers' compensation policy information by posting the current policy information in the workers' compensation notice already required by the California Labor Code.
- The updated FAQs do not provide any additional guidance regarding the requirement that the employer identify "any other business or entity" that the company uses to "hire employees or administer wages or benefits."

Industry organizations are still urging the Labor Commissioner to further revise and clarify the wage notice template. In the interim, employers are advised to review the updated FAQs to the extent that doing so helps them comply with the wage notice requirement.

Wilson Sonsini Goodrich & Rosati is actively following these developments and participating in the industry dialogue. The firm is available to assist employers in addressing any of the issues raised by the wage notice requirement or the Labor Commissioner's template and FAQs. For more information, please contact a member of the firm's employment law practice.

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[1] The October 14, 2011, WSGR Alert titled "New Changes to California Employment Laws Signed by Governor Brown" can be found at http://www.wsgr.com/WSGR/Display.aspx?SectionName=publications/PDFSearch/wsgralert-california-employment-law-changes.htm.

[2] The January 10, 2012, WSGR Alert titled "Wage Notice Requirement Effective January 1, 2012: Labor Commissioner Issues Controversial Template" can be found at http://www.wsgr.com/WSGR/Display.aspx?SectionName=publications/PDFSearch/wsgralert-wage-notice-requirement.htm.

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Wilson Sonsini Goodrich & Rosati
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