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July 2013 e-Bulletin

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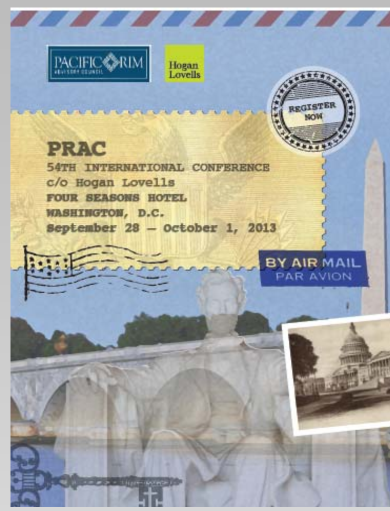

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BRIGARD & CASTRO PARTNER APPOINTMENT

BOGOTA, July 4 2013 - Brigard & Castro is pleased to announce ***María Fernanda Castellanos*** as its new partner.

María Fernanda joined Brigard & Urrutia in 1996 as member of the telecommunications, mergers and acquisitions and corporate teams, managing also some topics related to intellectual property. In 2005, she became part of the Brigard & Castro team, structuring the litigation and strategic advisory practice.

María Fernanda advices national and international clients in the use, monitoring and protection of the intellectual property assets, in litigation for infringement and unfair competition, as well as alternative dispute resolution. She participates in the preparation and negotiation of all types of agreements related to intellectual property, strategic planning and risk management, intellectual property in transactions, due diligence processes and intellectual property audit; as well as regulatory and life sciences matters.

For additional information visit www.bc.com.co

GIDE LOYRETTE NOUEL MOSCOW PARTNER APPOINTMENT

Gide Loyrette Nouel is delighted to announce the appointment of ***Tim Thėroux*** as partner of its Moscow office.

Specialising in Banking and Finance law, Tim Thėroux joined Gide Moscow in 2011 as Counsel. He practices English law, is admitted to the New York Bar and is a member of the Law Society of Alberta. He advises financial institutions, investment funds, companies, as well as government and multilateral institutions on cross-border financings in Russia. He acts in particular in the natural resources, infrastructure and energy sectors.

Prior to joining our Gide office in Moscow, Tim worked for Blake, Cassels & Graydon LLP in Calgary, and for Allen & Overy in London and New York. He holds law degrees from McGill University (BCL and LL.B) and a BA from the University of Victoria in Canada.

For additional information visit us at www.gide.com

DENTONS CANADA LLP EXPANDS EMPLOYMENT & LABOUR GROUP

July 3, 2013 - Dentons Canada LLP is pleased to welcome ***Jeff Mitchell*** as partner in our Employment and Labour Group.

"Jeff is an exciting addition to our strong Employment and Labour Group in Toronto," says Mike Kaplan, Managing Partner of Dentons' Toronto office. "Jeff's 15 years of experience advising employers in both unionized and non-unionized environments will be a valuable asset to Dentons."

Jeff represents public and private sector employers in the areas of employment and labour relations law, human rights and occupational health and safety. He regularly acts as counsel before employment tribunals and all levels of the Ontario courts. He also advises employers on contractual and labour issues, as well as advising employers proactively on strategies to effectively manage human resources issues.

In addition to his practice, Jeff has been on the Board of Directors (2001-2009) and was Past Chair (2007) of the Industrial Accident Prevention Association.

Jeff was elected by peers for inclusion in the 2011 and 2012 editions of Best Lawyers in Canada (Labour and Employment Law).

For additional information visit www.dentons.com

HOGAN LOVELLS EXPANDS NEW YORK CORPORATE PRACTICE

*Hogan Lovells Expands New York Corporate Practice With Addition of Partner **Michael Gilligan***

NEW YORK, 8 July 2013 – Hogan Lovells today announced that Michael Gilligan has joined its Corporate practice as a partner in the New York office. Gilligan joins from Allen & Overy LLP where he was a partner in the Corporate and M&A practice.

Gilligan's work focuses on both cross-border and domestic public and private M&A transactions, including significant representation of financial sponsors and portfolio companies. He has represented clients in proxy contests and spin-off transactions, and issuers in initial public offerings, secondary equity offerings, Rule 144A offerings and exchange offers. Michael brings considerable expertise with insurance industry transactions, complementing our recent additions to our internationally preeminent corporate insurance practice. Michael also has focused recently on Latin American transactions, another area where Hogan Lovells in New York has shown recent growth.

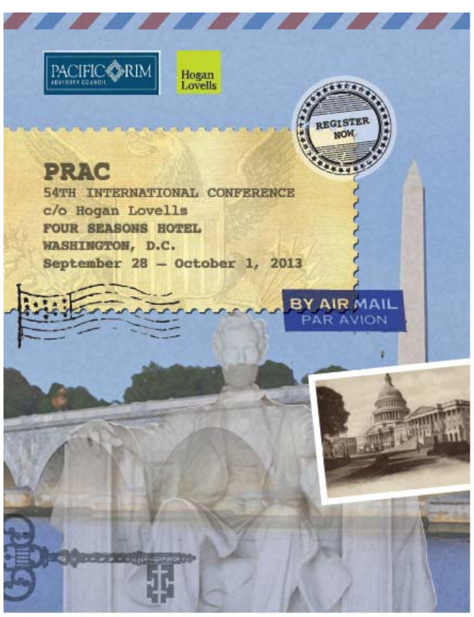
"Michael brings a wealth of corporate transactional experience, and is a great addition as we continue to expand and strengthen our New York corporate practice," said Hogan Lovells' Co-CEO Warren Gorrell. "He will be a tremendous asset to our clients."

Gilligan advised a leading domestic petroleum producer on the disposal of its downstream business in Chile, and counseled an international fund on their investment of US$200 million to acquire a 5.5 percent stake in a leading Latin American financial services company.

"Hogan Lovells provides the opportunity to expand my practice in New York, nationally, and internationally," Gilligan said. "I look forward to working with my new colleagues to further strengthen the Corporate practice."

Gilligan holds a J.D. from Fordham University School of Law, where he graduated magna cum laude, and a B.S. from The Johns Hopkins University.

For additional information visit www.hoganlovells.com



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BAKER BOTTS

ADVISES BOWIE RESOURCES IN ACQUISITION OF CANYON FUELS

HOUSTON, July 1, 2013 - On June 27, 2013, Bowie Resources, LLC ("Bowie") entered into a purchase agreement with Arch Coal, Inc. ("Arch") under which Arch will sell to Bowie its wholly-owned subsidiary, Canyon Fuel Company, LLC ("Canyon Fuel"), for $435 million in cash, subject to customary adjustments for working capital and other items.

To finance the acquisition, Bowie has obtained a committed equity financing from Galena Private Equity Resources Fund, who will provide a cash investment in return for a minority equity stake in Bowie, and a committed debt financing led by Morgan Stanley Senior Funding Inc. and Deutsche Bank AG New York Branch. The acquisition and the related financings are expected to be completed in the third quarter of 2013.

Baker Botts represented Bowie in connection with the acquisition and the related financing commitments.

For additional information visit www.bakerbotts.com

CAREY

ACTS FOR WARBUG PINCUS AND GENERAL ATLANTIC IN 50% ACQUISITION OF SANTANDER'S GLOBAL ASSET MANAGEMENT BUSINESS

Carey acted as Chilean counsel to Warburg Pincus and General Atlantic in the agreement for the acquisition of 50% of Santander´s global asset management business (SAM), which spans eleven countries, mainly in Latin America and Europe, for US$924 million.

Carey advised Warburg Pincus and General Atlantic through a team led by partners Cristián Eyzaguirre and Salvador Valdés, and associates Cristián Figueroa, Juan Pablo Navarrete, Gonzalo Suffioti and Ignacio de Solminihac.

For additional information visit www.carey.cl

GIDE LOYRETTE NOUEL

ACTS FOR ORYX ENERGIES ON ACQUISITION OF BP AND MASANA PETROLEUM SOLUTION'S LPG BUSINESSES IN SOUTH AFRICA

Gide Loyrette Nouel advises Oryx Energies, wholly owned by the private group AOG and one of Africa's largest independent providers of oil and gas products and services, on the acquisition of the liquefied petroleum gas (LPG) distribution businesses of BP and Masana Petroleum (in which BP has a 45% stake) in South Africa.

This acquisition follows BP's global announcement last year of its intent to sell its LPG bottles and bulk business, as well as some of its wholesale LPG activities in the UK, Portugal, Austria, Poland, Netherlands, Belgium, Turkey, China and South Africa.

The deal is expected to be completed during the third quarter of 2013, subject to completion of all the required legal and regulatory approvals.

Gide Loyrette Nouel partner Christophe Eck and Cécile Davanne-Mortreux acted for Oryx Energies.

For additional information visit www.gide.com

CLAYTON UTZ

ADVISES BANK OF AMERICA MERRILL LYNCH AND RBS MORGANS ON $250 MILLION CROMWELL EQUITY RAISING

Sydney, May 27, 2013 - Clayton Utz has advised Bank of America Merrill Lynch and RBS Morgans as joint lead managers (JLMs) and underwriters on the $250 million equity raising by Cromwell Property Group, announced to the market on 23 May.

The raising is being conducted by way of a $128 million placement to institutional shareholders and a $122 million non-renounceable pro-rata entitlement offer.

Stuart Byrne, the head of the national Equity Capital Markets practice at Clayton Utz, together with Director - Equity Capital Markets, Natasha Davidson, advised the JLMs and underwriters on the raising.

Stuart said the raising reaffirmed that equity funding is available in the current environment for quality property stocks.

For additional information visit www.claytonutz.com

DENTONS CANADA LLP

ADVISES CANADIAN WHEAT BOARD ON LANDMARK $150 MILLION INFLATION LINKED ANNUITY POLICY AGREEMENT

June 19, 2013 - Dentons Canada LLP is proud to be Canadian Wheat Board's legal advisor regarding a $150-million inflation-linked annuity policy agreement – the first such transaction in Canada. The agreement, signed by Canadian Wheat Board (CWB) and Sun Life Assurance Company of Canada, a wholly-owned subsidiary of Sun Life Financial Inc. (TSX/NYSE: SLF), transfers investment and longevity risk from CWB's defined benefit pension plan to Sun Life Financial.

The project was led by Scott Sweatman and Mary Picard, Partners in Dentons Canada's Pension & Benefits group, with additional counsel from pension Associate Colin Galinski. The team provided legal advice to CWB, supporting the organization in navigating a complex business and legal landscape to arrive at an optimal pension solution for CWB. Based on a creative "annuity buy-in," this solution delivers long-term security for CWB pension plan members.

"At Dentons, we are excited to be an integral part of the effort that launched this unique annuity product," said Scott Sweatman. "This transaction would not have been possible without the innovative thinking of CWB and the close working relationship with the project teams at Aon Hewitt and Sun Life."

An annuity buy-in is a type of investment held in a pension fund that allows investment and longevity risk to be transferred to an insurance company, while preserving members' pension benefits. This investment strategy increases long-term pension security for plan members by better aligning pension plan promises and investment assets. A $150-million inflation-linked annuity policy agreement between Canadian Wheat Board and Sun Life is the largest single-day purchase of inflation-linked annuities in Canada and the largest single-day purchase of a next-generation annuity buy-in in the country.

"A buy-in annuity does not transfer plan administration obligations to an insurance company. Instead, it's designed to relieve employer headaches caused by the uncertainty of future contribution obligations," said Mary Picard. "That makes it an interesting choice in the toolbox of de-risking strategies available to employers who sponsor defined benefit pension plans."

For additional information visit www.dentons.com

SCYCIPLAW

ADVISES MERCURY MEDIA HOLDINGS LTD IN PURCHASE OFPDR'S ISSUED BY ABS-CBN HOLDING CORP FROM MARATHON ASSET MANAGEMENT LLP

Manila, June 14, 2013 - SyCipLaw advised Mercury Media Holdings Ltd. in the purchase of Philippine Depositary Receipts ("PDRs") issued by ABS-CBN Holdings Corporation ("Issuer") from Marathon Asset Management LLP. The purchase, which closed in May 2013, cost approximately Php2.3 billion.

Each PDR is backed-up by one common share (an "Underlying Share") in ABS-CBN Corporation ("ABS-CBN") owned by, and registered in the name of, the Issuer. Each PDR grants the holder thereof the right to: (i) the delivery or sale of the Underlying Share; (ii) additional PDRs or adjustment to the terms of the PDRs upon the occurrence of certain events ; and (iii) distributions of cash in respect of cash dividends relating to the Underlying Share.

Under existing Philippine law, the Underlying Shares may not be owned by, or registered in the name of, non-Philippine nationals. In the event of exercise of the right of delivery of the Underlying Share by a PDR holder that is not a Philippine national, the Underlying Share will be sold by an eligible broker in the open market to a qualified person, and the proceeds of the sale will be paid to or to the order of the PDR holder.

Mercury Media Holdings Ltd. is an affiliate company of The Capital Group of Companies, one of the world's largest investment management organizations. ABS-CBN, on the other hand, is one of the Philippines' leading information and entertainment multimedia conglomerates.

The sale and purchase of the PDRs was effected as a special block sale on the Philippine Stock Exchange.

The SyCipLaw team was composed of partner Mia G. Gentugaya and senior associates Jennifer Jill I. Lim and Jose Florante M. Pamfilo.

For additional information visit www.syciplaw.com

HOGAN LOVELLS

ADVISES UBS AND STANDARD CHARTERED BANK AS CO-FINANCIAL ADVISERS ON US$1.63 BILLION DAIRY ACQUISITION

HONG KONG, June 21, 2013 - Hogan Lovells has advised UBS AG ("UBS") as lead financial adviser and Standard Chartered Bank (Hong Kong) Limited ("Standard Chartered Bank") as joint financial adviser to China Mengniu Dairy Company ("Mengniu") on its voluntary general offer for Hong Kong-listed Yashili International Holdings ("Yashili"), one of the largest domestic pediatric milk formula producers and retailers in China. The cash and share offer values Yashili at HK$12.64bn (US$1.63bn).

The offer is for all outstanding shares in Yashili not already owned by Mengniu.

Mengniu is one of the leading and biggest dairy product manufacturers in China. The acquisition enables both parties to leverage on each other's capabilities and resources in order to further penetrate the growing pediatric milk formula market in China.

Commenting on the transaction, Head of Asia Corporate Jamie Barr said,

"We are delighted to be working again with UBS, and now Standard Chartered Bank as well, on another headline public M&A transaction in Hong Kong, which underscores the strength of our practice in this area."

The Hogan Lovells corporate team was led by Jamie Barr and supported by consultant Charles Butcher and trainee lawyer Vanessa Fullerton. Banking partner Gary Hamp advised on the banking elements of the transaction.

For more information, see www.hoganlovells.com

KING & WOOD MALLESONS

ADVISES WEICHAI POWER IN EXERCISING ITS CALL OPTIONS TO INCREASE EQUITY STAKE IN KION AFTER LISTING TO ACCELERATE ITS GLOBALIZATION STRATEGY

July 4, 2013 - KION Group was successfully listed on the Frankfurt Stock Exchange in Germany on July 2, 2013. King & Wood Mallesons successfully advised Weichai Power through its wholly owned Luxembourg subsidiary to increase its equity stake in KION to 30% of the total issued shares after listing through exercising its call options to further strengthen its control of KION.

This also marked the completion of phase 2 of the acquisition of Kion Group by Weichai Power. Previously, in 2012, King & Wood Mallesons successfully advised Weichai Power to invest a total of EUR 738 million in KION, of which EUR 467 million was used to acquire a 25% stake in KION by way of capital increase. The remaining EUR 271 million was used to acquire a majority stake of 70% in KION’s hydraulics business, which was carved out from Linde Hydraulics under KION.

Weichai Power has a long track record of success and enhances its competitive edge with “Operating Capital and Product Management” as the cornerstone of its international strategic management. Weichai Power has become one of the most comprehensive businesses among leading auto and equipment manufacturers in China by successfully developing its four major businesses , namely power assembly (engine, gearbox, axle), vehicles and machines, hydraulic control and automobile electronics and parts, with the most complete and competitive industrial chains, core skills and products in the industrial equipment industry.

Comprised of dozens of lawyers, the King & Wood Mallesons legal team was fully engaged in the whole facet of the Kion’s IPO plan, the design of the deal structure, drafting of the legal documents, negotiations with Kion Group and the financing arrangements.

King & Wood Mallesons acted as the lead counsel in this project and was led by Partner Xu Ping.

For additional information visit www.kingandwood.com

KOCHHAR & CO.

ASSISTS OIL INDIA LIMITED (OIL) IN $2.47 BILLION GAS PROJECT DEAL

June 25, 2013 – Oil India Limited (OIL) and ONGC Videsh Limited (OVL) have signed definitive agreements with Videocon Mauritius Energy Limited for acquiring 100% shares of Videocon Mozambique Rovuma 1 Limited, which holds 10% participating interest (worth US$ 2,475 million) in a giant gas project in Rovuma Area 1 Offshore Block in Mozambique. OVL and OIL will make the acquisition through a newly formed entity in which OVL shall own 60% and OIL 40% stake respectively.

Kochhar & Co. advised OIL on all the transactional documents, litigation, taxation and general corporate issues involved. The team was led by Delhi Partner, Ngangon Junior Luwang with Associates, Avichal Prasad and Tarana Khan.

MCKENNA LONG & ALDRIDGE

ADVISES GENERAL STEEL, INC. IN SALE TO TRIP S STEEL HOLDINGS

ATLANTA, July 9, 2013 - McKenna Long & Aldridge LLP ("MLA") announced this week that the Firm advised Macon-based General Steel, Inc. in its sale to Houston-based Triple-S Steel Holdings, Inc. ("Triple-S") for an undisclosed amount.

Triple-S moves more than 600,000 tons of steel every year and has plants in Texas, Louisiana, Tennessee, Utah, Colorado and California, as well as holdings in Colombia and Chile. General Steel, a 57-year-old family-owned business, will operate as a subsidiary of Triple-S and will keep all of its 45 employees. Henry Oliner, son of General Steel's founder and a well-recognized leader in the steel industry, will become Senior Vice President of Triple-S Steel of Georgia with a focus on the Southeast steel market. Triple-S expects to continue to grow and add additional employees this year.

"It was an honor to represent the owners of General Steel in this important, value-realizing transaction," said Wayne Bradley, lead partner on the transaction. "The similar cultures of General Steel and Triple-S will no doubt lead to continued success and expansion."

In addition to Bradley, MLA's team included Partners Ann Murray and Todd Silliman and Associates Rachel Fox and Crystal Clark.

For additional information visit www.mckennalong.com

TOZZINI FREIRE

ADVISES H.B. FULLER ON ACQUISITION OF PLEXBOND QUIMICA S.A.

July, 2013 - TozziniFreire advised H.B. Fuller, a US-based industrial adhesives manufacturer, on the acquisition of Plexbond Química S.A., a provider of chemical polyurethane specialties and polyester resins. The deal will enable H.B. Fuller to operate with its own production plant in Brazil, providing adhesives solutions – untapped by the company in the country –, especially flexible packaging, for the whole Latin America.

The results of this business will be included in the H.B. Fuller's Latin American adhesives operating segment in the future and is expected to support the company's increasing presence in South American market. Plexbond Química business generated nearly $20 million in revenue in 2012, while H.B. Fuller generated fiscal 2012 net revenue of $1.9 billion.

Fernando Cinci Avelino Silva, partner at Mergers and Acquisitions TozziniFreire's practice group, was in charge of the assistance for H.B. Fuller.

For additional information visit www.tozzinifreire.com.br

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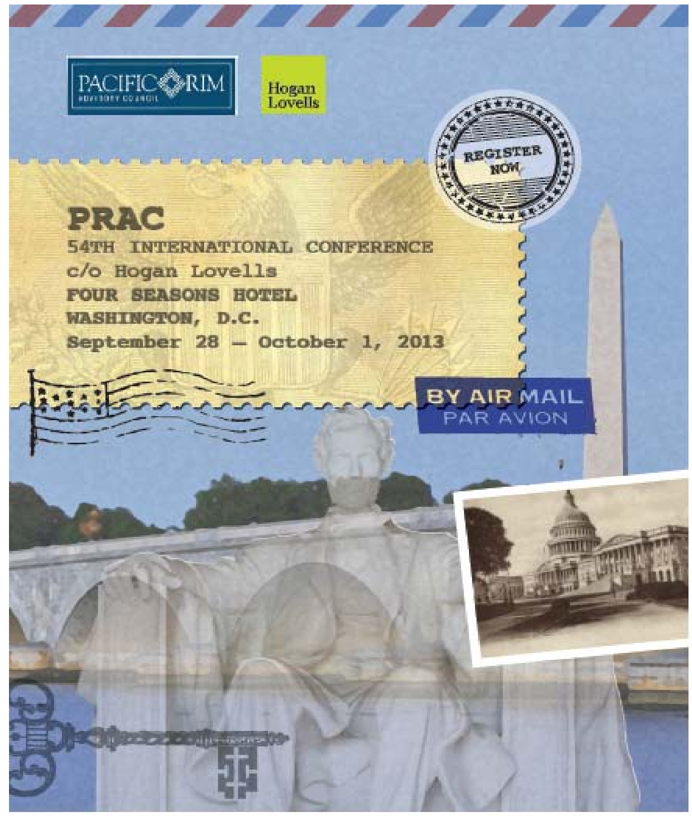

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Clayton Utz Insights

04 July 2013

ACCC tries to make its informal mergers process clearer

By Michael Corrigan.

Key Points:

Draft Guidelines for the ACCC's informal merger process respond to some (but not all of) the concerns of the market.

There might be some greater clarity about the ACCC's informal merger process if proposed changes to its Merger Review Process Guidelines are adopted.

Seven years after its last major revision, the Guidelines are being revised, with changes that respond to some – but not all of – the concerns of the market. The draft Guidelines certainly are shorter and more user-friendly, and include more detail about the process. Parties to a merger needing more certainty about the time required for an ACCC review will not get a guaranteed decision date, but they will get a provisional timetable and some useful rough estimates of how much that timetable might be extended, depending on the complexity of the issues and degree of market concern.

The Guidelines also usually summarise the conditions where the Commission will be likely to want to review a merger proposal, noting that any request for clearance is voluntary under Australian law (there is no notification obligation).

Setting provisional dates for the ACCC's decision and indicative timetables

In the past indicative timetables have been published to give parties a rough idea of when an ACCC decision will be made. The standard periods for all public reviews have not, however, necessarily been observed, with the more complex proposed mergers taking six or seven months or more. The Commission is unapologetic in response to recent calls that decisions are taking longer and parties are being required to submit a great deal more information than they anticipated at the outset.

As a result the ACCC will be moving from standard periods to a more bespoke approach, based on the perceived complexity of the merger under review. Additionally, more steps will be identified. Of course, timetables will be subject to revision along the way.

The new Guidelines also recognise that the ACCC now deals with many matters under a "pre-assessment review" or "quick look", which may lead to a decision that no public review is warranted. These pre-assessment decisions can often be obtained within one-two weeks of approaching the Merger Branch at the Commission.

For most reviews, the provisional decision date will be between six-12 weeks. This might be adjusted, but generally this will happen after:

- the ACCC gives its feedback to the parties on issues arising from market inquiries; or
- the ACCC has considered their response to that feedback,

whichever is the latest. If it does need adjustment, it would typically be to add another four weeks to the process.

The market concerns letter recognised as part of the informal mergers process

Although market concerns letters have been frequently used in the informal mergers clearance process, they have not been formally recognised in the Guidelines. The revised Guidelines would rectify this, making them a clear step in the process.

Information requirements

The Guidelines note that the Commission will take a "scaled approach" to information requirements, under which a "complete information package" will not necessarily be required upfront, but additional information may be requested during the review. The Commission expects the parties to have that information readily available and will stop the clock if time is required to respond.

And our own experience confirms that the Commission is increasingly using its compulsory powers under section 155 to compel the production of relevant information from the merger parties and other market participants.

When will Reasons or Public Competition Assessments be published?

The number and timing of Public Competition Assessments has dropped off in recent years , and there are market concerns that the Commission has changed its priorities towards providing the same level of transparency for its major decisions that was experienced between 2003 and 2010.

We understand in some matters the Commission decided not to publish reasons publicly because the merger parties indicated they wished to revise the proposal and/or consider a challenge to the decision.

The revised Guidelines do not commit the ACCC to a set time for release. It notes that where a PCA is warranted, the complexity of the issues involved requires careful drafting.

The Commission has clearly stated that when it opposes a merger and there is a prospect of litigation, no PCA will be published until the parties confirm the merger will not proceed. If they do litigate, generally no PCA will be published at all.

Stopping the clock while overseas regulators do their job

If a merger is being reviewed by overseas competition regulators, the draft Guidelines say the ACCC can suspend its review until it has had discussions with those agencies, or even until those agencies have completed their reviews.

Process issue in the case of ASX listed target entities

An acquirer whose target is an ASX listed entity where an ACCC clearance may be required may wish to consider the implications of the likely approach to be taken by the ACCC in its case in relation to the timing of the despatch of offer documents to shareholders or, in the case of a scheme of arrangement the holding of the First Court Hearing to convene the shareholder meeting.

When are comments due?

The closing date is Friday 19 July. The ACCC has not yet set a date for the release of the finalised new Guidelines.

You might also be interested in...

- ASIC's new takeovers policies

BRAZIL: ANP LAUNCHES RULES FOR PRE-SALT BIDDING ROUND

On July 1st, 2013, the Brazilian Agency of Petroleum, Natural Gas and Biofuels ("ANP") published the rules detailing the procedures for the bidding round of blocks located in the Pre-Salt polygon and strategic areas for exploration and production of oil and natural gas under the production sharing regime.

The rules divide the bidding into 7 phases:

(i) *Publication of Preliminary Tender Protocol*: ANP submits the previous version of the tender protocol to analysis and suggestions from the general public;

(ii) *Public Hearing*: hearing in which the blocks to be offered will be officially informed and a public debate about the Preliminary Tender Protocol takes place;

(iii) *Publication of the Tender Protocol*: to occur at least 45 days before the date of submission of offers;

(iv) *Qualification*: up to 15 days after the publication of the Tender Protocol, bidders shall submit documents for technical, financial and legal qualification, meeting minimum standards set forth in the Tender Protocol. ANP may use a record of companies, in order to accelerate the qualification procedure. Foreign companies shall submit documentation evidencing regular operation in accordance with the laws of their countries, in addition to a commitment to incorporate a company under Brazilian laws in case they win the bidding;

(v) *Submission of Offers and Bidding Judgment*: qualified companies that submitted the bid guarantees (to be delivered at least 10 days before the bidding) may submit offers to be ranked according to the highest amount of profit oil offered to the Brazilian Government, subject to a minimum percentage to be fixed by the National Council of Energy Policy ("CNPE") and informed in the Tender Protocol;

(vi) *Award of Contract and Bidding Approval*: ANP'S Board of Directors shall ratify the results verified by the Special Bidding Committee;

(vii) *Signature of Production Sharing Contract:* after the publication of results, the winners will be notified to sign the contract with the Brazilian Ministry of Mines and Energy, according to the deadline set forth in the Tender Protocol.

In order to sign the contract, the winning bidder must enter into a consortium contract with Pré-sal Petróleo S.A. and Petrobras, and must indicate the latter as the sole operator of the block. Petrobras will hold a minimum participation in blocks tendered, not lower than 30%, as established by CNPE and informed in the Tender Protocol. Still before the signing of the contract, the winning bidder must provide a financial guarantee in the amount of the minimum exploratory program, and demonstrate the payment of the signature bonus (both set forth in Tender Protocol).

The first bidding round of Pre-Salt areas under the production sharing regime should take place in October, in Rio de Janeiro. The only area to be offered will be Libra, with expectations of reservoirs containing 8 – 12 billion barrels of recoverable oil.

Canada Strengthens its Laws Against Bribery of Foreign Public Officials

June 20, 2013

Amendments to the *Corruption of Foreign Public Officials Act* (CFPOA) that were proposed in Bill S 14 earlier this year were passed into law on June 19, 2013.

The amendments are aimed at addressing international criticism of Canada's efforts to implement the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (the Convention). Specifically, the amendments address certain criticisms from the Organisation for Economic Co-operation and Development (OECD), an international organization of 34 countries of which Canada is a member. The OECD's Working Group on Bribery had criticized the CFPOA as deficient in certain respects in a report issued in March 2011, but endorsed Bill S 14 in its follow-up report issued in May 2013 on Canada's progress in implementing its obligations under the Convention.

The CFPOA makes it a crime to bribe a foreign public official in order to obtain or retain an advantage in the course of business. To date, three companies have pleaded guilty and been convicted of offences under the CFPOA, the latter two resulting in fines of approximately $10 million each. There are approximately 35 active investigations currently underway by the Royal Canadian Mounted Police (RCMP).

As a result of the passage of Bill S 14 into law, the CFPOA has been amended as follows:

- the offence of bribing a foreign public official has been expanded beyond business carried on "for a profit" to include activities not carried on for profit. As a result, the CFPOA will apply to charities and other not-for-profit organizations in addition to for-profit corporations;
- the maximum period of imprisonment for bribing a foreign public official has been increased from 5 years to 14 years;
- instead of requiring a "real and substantial connection" between Canada and the location where acts of bribery occur as was previously the case, the CFPOA now applies to acts of bribery anywhere in the world where such acts are conducted by Canadian citizens, permanent residents present in Canada, Canadian corporations or other entities created under the laws of Canada or a province;
- "facilitation payments" (generally, payments to a public official to expedite a routine governmental act that is part of the official's duties, and not to obtain or retain business or any other undue advantage) will be eliminated as an exception to the offence of bribing a foreign public official and will therefore become illegal at a future date to be set by the Governor in Council;
- a new offence of manipulation or falsification of accounting records to conceal bribery has been created, which attracts a maximum sentence of 14 years in prison; and
- the RCMP have been given exclusive jurisdiction to charge persons for offences under the CFPOA.

It is important for companies operating internationally, especially in developing nations, to have appropriate policies and procedures in place to ensure compliance with the CFPOA and other applicable anti-bribery legislation throughout the world. When entering into transactions with companies that also operate internationally, it is important to ensure appropriate due diligence is conducted and appropriate language is contained in contracts relating to the transaction to minimize the possibility that your corporation will attract liability under the CFPOA and other applicable anti bribery legislation through its association with proposed business partners or other counterparties.

Dentons' team of seasoned professionals throughout Canada, the US, Europe, Russia and the CIS, Africa, Asia Pacific and the Middle East represents corporate clients, boards of directors, board committees, hedge funds, partnerships and joint ventures, audit firms and individuals in connection with all aspects of anti-corruption compliance, enforcement and defence.

Chinese Regulators Contemplate Antimonopoly Immunity Scheme for Airline Operators

By King & Wood Mallesons on July 10, 2013

By **Susan Ning**, **Kate Peng** and **Li Rui**

On May 29, 2013, the National Development and Reform Commission ("**NDRC**") and the Civil Aviation Administration of China ("**CAAC**") held a seminar discussing the potential issues in setting up an antimonopoly immunity scheme under Chinese Antimonopoly Law ("**AML**"). Chinese regulators and representatives from the International Air Transport Association ("**IATA**") participated in the seminar and exchanged views on the antimonopoly review policy in the aviation industry and the possible outlooks of the contemplated immunity scheme. The immunity scheme under consideration, once came into effect, could have material effects on the cooperation between airlines operators.

Antitrust Issues Stemming from Cooperation between Airlines

Article 13 of AML prohibits various monopoly agreements between competitors containing certain restrictions regarding (among other things) price-fixing, market sharing and collective boycotts. [1] In the past two decades, airlines frequently enter into agreements with each other to coordinate capacity, schedules, routes and revenue sharing. Depending on the depth and breadth of the agreements, agreements between airlines operators may appear as collusion or price-fixing and thus violate Article 13 of Anti-Monopoly Law ("AML"). However, it is recognized in other jurisdictions that antitrust immunized cooperative agreements could benefit consumers. In order to limit the airlines operators' exposure to antitrust risks and protect the consumers against potential abuses, competition authorities around the globe promulgated rules and guidelines under domestic competition laws to assist airlines operators obtaining antitrust immunity to minimize competition concerns. It is therefore necessary to examine relevant rules under AML which may provide the basis for and shape the outlooks of the Chinese antitrust immunity programs.

Statutory Authority for the Chinese Antitrust Immunity Programs

Article 15 of AML provides the potential basis for antitrust immunity program. Under Article 15, an agreement prohibited by Article 13 can be exempted under the conditions that: 1) the agreement shall not substantially restrict competition in the relevant market; 2) the consumers can benefit from the agreement; and 3) the agreement is entered into for the stated justification and purposes. The stated justification and purposes include *inter alia* R&D, products development and upgrades, efficiency improvement and costs reduction.[2]

The common justifications and purposes offered by airlines operators in seeking immunity for cooperative agreements include: 1) expand into new routes and increase consumers' choice in schedule and routes by linking to commercial partners; 2) improve efficiencies and realize consumer benefits through coordinated schedules, single on-line prices, reciprocal frequent flyer programs, and service upgrade potential; 3) gain wider brand recognition; or 4) meet challenges brought by other airlines.

Although some of the foregoing justifications and purposes may arguably fall within the permitted scope under Article 15 as specified above, it should be noted that the pro-competitive justifications offered by the airlines operators shall be weighted against the possibility of reduced competition and increased market power in the horizontal and vertical markets and the potential for collusion on fares, code sharing and capacity allocation. As demonstrated by the controversies over a recent IATA Resolution, this balancing approach adopted under AML can some times prove to be a daunting task to competition authorities.

On March 11, 2013, IATA filed an antitrust immunity application at the United States Department of Transportation for approval of an XML schema. IATA alleged *inter alia* that the computer communications protocols will improve the display of fares and facilitate the offering of ancillary services. However, various consumer groups and trade associates voiced opposition to the proposed XML schema, contending that the schema shall raise the fares by allowing the airlines operators to engage in price discrimination. The Department of Transportation extended the public comment period for the resolution and has yet to make a decision on the application.

Ex Ante **Review and** ***Ex Post*** **Control**

The enforcement activities undertaken by NDRC and SAIC have centered on *ex post* prohibition of monopoly agreements. Furthermore, AML does not provide guideline as to how Article 15 shall apply to *ex ante* review. This creates uncertainty for airlines companies considering entering into agreements that may enhance efficiency but appear as monopoly agreements.

The United States establishes an *ex ante* review of agreements. The Department of Transportation ("**DOT**") has the statutory authority to approve and immunize from the U.S. antitrust laws agreements relating to international air transportation.[3] DOT may grant antitrust immunity to inter-carrier agreements if it finds that immunity is required by the public interest.[4] DOT has granted immunity to over twenty international alliance agreements, permitting immunized participants to enter into agreements on prices, schedules, marketing, and others.[5]

In Europe, the Commission has the sole authority to immunize certain cooperative agreements between airlines. Unlike the United States, the Commission has adopted *ex post* control for the cooperative agreements.

It is a worth-noting move for NDRC to explore the establishment of an *ex ante* review mechanism under Article 15. The U.S. experiences may be particular useful in devising our own immunity programs.

Conclusion

The immunity programs in other jurisdictions are said to lead to pro-competitive changes in industry structure and consumer benefits in the form of improved service and price reductions. In light of increasing cooperation between airlines on domestic and international flights, the contemplated antitrust immunity application program is a significant step towards certainty by aligning the international practices with that of China.

1 Article 13 of AML prohibits the competitors from reaching with each other agreements to: 1) fix or change the price of commodities; 2) restrict the production quantity or sales volume of commodities; 3) divide the sales market or the raw material supply market; 4) restrict the purchase of new technology or new facilities or the development of new technology or new products; 5) jointly boycott transactions; or 6) other monopoly agreements as determined by the Anti-monopoly Law Enforcement Agency under the State Council.

2 Article 15 Where the business operators can prove that a monopoly agreement reached by them falls under any of the following circumstances, the monopoly agreement shall be exempt from Articles 13 and 14 of this Law:

(1) For the purpose of improving technologies, researching, and developing new products;

(2) For the purpose of upgrading product quality, reducing costs, improving efficiency, unifying product specifications or standards, or carrying out professional labor division;

(3) For the purpose of enhancing operational efficiency and reinforcing the competitiveness of small and medium-sized business operators;

(4) For the purpose of realizing public interests such as conserving energy, protecting the environment and providing disaster relief, etc.;

(5) For the purpose of mitigating the severe decrease of sales volume or obviously excessive production during economic recessions;

(6) For the purpose of protecting the justifiable interests of the foreign trade or foreign economic cooperation; or

(7) Other circumstances prescribed by the law or the State Council.

3 49 U.S.C. § 41308(b) (2009).

4 49 U.S.C. § 41309.

5 Antitrust Immunity and International Airlines Alliances, U.S. Department of Justice, February 2011, available at http://www.justice.gov/atr/public/eag/267513.htm.

MOFCOM and SAIC Appointed New Vice Ministers in Charge of Anti-Monopoly Division The Second RPM Investigation by NDRC within this Year

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BRIGARD & URRUTIA

Mon, 07/08/2013 - 11:05

Panama request Colombia for consultations regarding measures to the importation of textiles, apparel and footwear

Last June 18th, Panama notified the WTO Secretariat of a request for consultations with Colombia regarding customs measures to the importation of textiles, apparel and footwear.

The measure at issue is a compound tariff that Colombia has imposed by Decree No. 074 of 23 January 2013, on the importation of certain textiles, apparel and footwear. Article 1 of the Decree provides an ad valorem tariff, expressed as a percentage of the customs value of the goods and a specific tariff according to the unit of measurement. Both tariffs apply at the moment of importation. This tariff is applied to the products classified in Chapters 61 (articles of apparel and clothing accessories, knitted or crocheted), 62 (articles of apparel and clothing accessories not knitted or crocheted), 63 (other made up textile articles; sets; worn clothing and worn textile articles; rags) and 64 (footwear, gaiters and the like; parts of such articles) of Colombia's Tariff Schedule.

According to Panama, the compound tariff is an ordinary custom duty whose application results in the imposition of tariffs in excess of those resulting from the application of the ad valorem tariff bound in Colombia's Schedule of Concessions in the WTO. Furthermore, Panama argues that the measure at hand grants the affected imports a treatment less favorable than that provided by Colombia's Schedule of Concessions.

The request for consultations formally initiates a dispute in the WTO. The Member to which the request is made, Colombia, must reply to the request within 10 days after the date of its receipt and must enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. Consultations give the parties an opportunity to discuss the matter and to find a satisfactory solution without proceeding further with litigation. After 60 days, if consultations have failed, the complainant may request adjudication by a panel.

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What's Up with Apps in Hong Kong

July 2013

In May this year, the Hong Kong Privacy Commissioner for Personal Data ("**Privacy Commissioner**") joined the Global Privacy Enforcement Network ("**GPEN**") to conduct a privacy review to evaluate the transparency in the collection and use of personal data online by corporate data users, with a focus on information collected via software applications ("**Apps**"). This review highlights the rising concern of data privacy enforcement authorities and the public on the collection and use of personal data by App providers, both in Hong Kong and worldwide.

In November 2012, the Privacy Commissioner issued an information leaflet, "*Personal data privacy protection: what mobile apps developers and their clients should know*" (the "**Privacy Information Leaflet**", which can be accessed here), to provide App developers and users with practical guidance on how to comply with the Personal Data (Privacy) Ordinance Cap. 486 ("**PDPO**").

In this article we discuss the review being carried out by the Privacy Commissioner and highlight the major recommendations made in the Information Leaflet, and highlight some of the direct marketing issues to be taken into account in light of the recently enacted Personal Data (Privacy) Amendment Ordinance ("**Amendment Ordinance**"). Our newsflash regarding the Amendment Ordinance can be accessed here.

APPS ON THE RADAR

Apps are a great way for organisations across a multitude of industries to promote and market their businesses. However, due to events over the last year, concerns regarding data privacy in respect of Apps are on the rise.

In a survey commissioned by the Privacy Commissioner on or around November 2012, it was found that less than half of the App users being surveyed knew what personal data on their phones was being accessed through the Apps installed on their devices, e.g. by the App developers, including those who commissioned and/or operate the App.

INTERNET PRIVACY SWEEP

The Privacy Commissioner conducted an Internet Privacy Sweep in Hong Kong from 6 to 12 May 2013, along with other members of the GPEN across the globe. The GPEN consists of nineteen privacy enforcement authorities from around the world (including the Privacy Commissioner, and privacy enforcement authorities in the UK, Australia and the US). This is the first annual international Internet Privacy Sweep being conducted by members of the GPEN. The aim of the Internet Privacy Sweep is to increase awareness of privacy rights and responsibilities, both by the public and organisations; to identify privacy concerns that need to be addressed; and to encourage compliance with the local privacy laws.

As part of the Internet Privacy Sweep, the Privacy Commissioner examined the availability, clarity and accessibility of privacy policies and Personal Information Collection Statement ("**PICS**") that local Apps provide to users upon installation of the Apps.

The results of the Internet Privacy Sweep will be announced by the Privacy Commissioner in July/August this year, and may lead to follow up actions being taken by the Privacy Commissioner, such as the issuance of enforcement notices.

PRIVACY INFORMATION LEAFLET

Apps usually collect a significant amount of data about their users or require access to data stored on a user's phone, e.g. accessing calendars, UDIDs, address books, photo albums, etc. The collection of such a wide range of data may, collectively, make it possible to identify an individual, and would therefore constitute personal data that is subject to the protection of the PDPO.

It is essential for App developers (including those who commission the development of an App) ("**App Developers**") to be open and transparent about what personal information will be collected and used, in a way which can be easily understood by users and provided on or before the time of collection, to enable users to make an informed decision.

The Privacy Information Leaflet provides practical guidance to App Developers to ensure compliance with the PDPO. Whilst some of the guidance in the Privacy Information Leaflet is not specifically required under the PDPO, compliance with it is still encouraged as a matter of good practice. Further, any non-compliance with the Privacy Information Leaflet may be used by the Privacy Commissioner against an App Developer in its investigation into any alleged breach of the PDPO.

Building Privacy into the Design of the App

App Developers should adopt the approach of embedding privacy into the Apps design specifications right from the outset (i.e. a "Privacy by Design" approach), whereby the following principles should be applied:

(a) a proactive and preventative data protection approach should be adopted;
(b) the default position should be personal data protection;
(c) personal data protection should be embedded in the Apps design, and not bolted on after the App has been developed;
(d) there should not be a trade-off between privacy, security and functionality;
(e) personal data protection should cover personal data from the time of collection to erasure;
(f) the protection should be open and transparent; and
(g) it should be user-centric.

The Privacy Commissioner also recommends that a privacy impact assessment be carried out to evaluate the design of the App to determine any risks in relation to data privacy, and to assess how to such risks can be minimised and avoided.

Personal Information Collection Statement

Personal data of a user should only be collected by the App Developer to the extent necessary in order for the user to be able to use the App, or any other purpose consented to by the user. The personal data must also be collected in a manner that is lawful and fair, and the purpose for collection must be directly related to a function or activity of the App Developer.

Under the PDPO, App Developers must inform users of the following on or before the time of collection of his/her personal data (e.g. prior to the user's installation of the App onto his/her mobile phone): (i) whether it is obligatory or voluntary for users to provide the personal data, and the consequences of failing to do so; (ii) the purpose of collection of the data; (iii) the classes of persons to whom the data may be transferred to; and (iv) details about the user's right to request access to and correction of his/her data. The Privacy Information Leaflet recommends that the above information be set out in a personal information collection statement ("**PICS**").

The PICS must clearly set out the circumstances in which personal data of a user will be collected, accessed or shared (i.e. what type of data will be collected, accessed or shared) and for what purpose. The PICS must be clearly presented to the users before they agree to install the App on their mobile device. For example, upon clicking the "install" button in the App Store, a message may appear on the screen containing the PICS, which the user must confirm acceptance of by clicking a button, before it can proceed with the installation of the App.

Any new use of personal data by the App Developer, that is not directly related to the purpose originally communicated to the users upon collection (e.g. under the PICS), must be expressly and voluntarily consented to by the user before the App Developer may use the data for such new purpose. App Developers are recommended under the Privacy Information Leaflet to consider incorporating a permission-based access model, whereby permission must be obtained from the user whenever the App Developer wishes to access, transmit or share for the first time a new type of information not covered in the PICS. This will ensure that users will have actual knowledge about the type of data being accessed, used or transmitted. The App should be developed to enable users to choose the type of personal data that the App Developer can have access to, and for the App to only access, use or transmit data in accordance with such permission. For example, if a user accesses a new feature of an App that will require the collection of, say, the user's address book, the App should have a pop up notice notifying the user (before the information is collected), amongst other things, that such information will be collected, the purpose for such collection and any third parties that the information may be transferred to. The user may then provide its consent for such collection by clicking a button.

Unnecessary Retention of Personal Data

Under the PDPO, App Developers are required to take all practical steps to ensure that personal data of a user is not kept longer than is necessary for the fulfilment of the purposes for which the data is used. The Privacy Information Leaflet recommends that App Developers consider completely deleting information uploaded or stored in its back-end servers as soon as it is no longer necessary for the use of the App. For example, if the current location of a user must first be uploaded to the server each time the App is to function, there should be a mechanism in place to erase the previously uploaded location information of the user as soon as the use of the App is complete.

The Privacy Information Leaflet also advises that any account information of a user (including uploaded or shared information) should be completely removed by the App Developer upon the user's request or his/her termination of his/her account, unless there is a legal or regulatory reason not to do so. Such an account removal function should be easily accessible, e.g. including "delete" buttons in appropriate locations on the App.

Security of App

Pursuant to the PDPO, App Developers must ensure that they take all reasonably practicable steps to protect the personal data of users being held by them, so that there is no unauthorised or accidental loss, access, processing, erasure or use of the personal data.

For example, the Privacy Information Leaflet advises App Developers to only use reliable or official versions of software development tools to develop their Apps in order to avoid any "Trojan horses" or "backdoor" codes being unknowingly introduced into the Apps, which may access a user's device without authorisation. App Developers should also follow best industry practices in secure coding, and ensure all information transmitted to and from their Apps or stored on backend servers are encrypted and protected by access control to avoid any unauthorised interception or access.

Prior to the launch of an App, App Developers should perform a code review and testing of their App to ensure that the App does not access any information of a user that is inconsistent with its design specifications.

Privacy Policy Statement

Under the PDPO, App Developers are required to take all reasonably practicable steps to make their personal data privacy policies and practices generally available (including information on the type of personal data held by them and the purposes for which the data will be used).

The Privacy Information Leaflet advises App Developers to have in place a privacy policy statement that outlines their personal data policies and practices. It must be easily readable and understandable by the user, and of an appropriate length. Technical and elusive language should not be used, and App Developers should give real-case examples in relation to the App, to help users understand how their personal data will be used and why such information needs to be collected or shared.

The privacy policy statement should also be located on the App in a prominent place. For example, a link to the privacy policy statement could be included at the bottom of the main page of the App. It is also recommended that the privacy policy statement also be included on the App Developers normal website.

Often App Developers simply apply their privacy policies for their general websites to their Apps. However, such website privacy policies may not be relevant or accurate in respect of the type of personal data being collected, shared or used by the Apps, and may not be sufficient to comply with the PDPO. A privacy policy statement should be developed by an App Developer which is accurate and specific for each individual App.

Users' Access

Users are entitled, under the PDPO, to find out from an organisation (e.g. an App Developer) whether it holds his/her personal data, to obtain a copy of such data, and to request the correction of his/her data held by it.

Apps should include the contact details of the App Developer (including the name or title of the relevant individual to contact), in order to facilitate a user to make a data access or correction request. The App Developer is also advised by the Privacy Information Leaflet to have in place a procedure to ensure that any data access or correction request is complied with (or refused, as applicable) within 40 days from receipt of the request.

Third Party Processor

The PDPO specifically requires any data user who engages a data processor (i.e. a person who processes personal data on behalf of another and not for its own purposes), to adopt contractual or other means to prevent any personal data transferred to the data processor from: (i) any unauthorised or accidental access, loss, erasure or processing; or (ii) being kept longer than is necessary for the processing of it.

In the event that any third party is engaged by a company to develop or operate an App, the Privacy Information Leaflet requires contractual or other means to be adopted in order to require such third parties to:

(a) keep logs on access and use of personal data;
(b) erase personal data under specified circumstances and intervals;
(c) use industry-standard data erasure software;
(d) provide a timely report on the erasure actions taken;
(e) use genuine (i.e. not counterfeit) and reliable development tools and software;
(f) maintain formal access control on personal data by its staff;
(g) promptly report any data privacy breaches to the App Developer;
(h) not further sub-contract or further outsource the work unless the same level protection can be assured; and
(i) enable the App Developer or an independent party to conduct a review and audit of that third party.

App Developers should also refer to the "Information Leaflet: Outsourcing the Processing of Personal Data to Data Processors", published by the Privacy Commissioner on 27 September 2012 (available here).

DIRECT MARKETING

In the event that an App Developer intends to use any personal data of a user to provide direct marketing materials, e.g. to advertise a new App via push notifications, or to transfer any personal data to a third party for that third party to use the data for direct marketing purposes, then it must comply with the new direct marketing requirements under the PDPO.

As of 1 April 2013, the PDPO requires App Developers to provide the following additional notification to its App users before using personal data for direct marketing:

(a) a notice of their intention to use the user's personal data for direct marketing purposes (and that they cannot do so without consent);
(b) the types of personal data that will be used for direct marketing purposes;
(c) the categories of goods/services that may be marketed; and
(d) if the personal data may be transferred to a third party for direct marketing purpose, the following must be provided in writing:
    1. notice of their intention to transfer the personal data for direct marketing purposes (and that they cannot do so without his/her consent);
    2. the type of personal data to be transferred;
    3. the classes of transferees;
    4. the categories of goods and services that may be marketed by the transferees; and
    5. the fact that the data will be sold or otherwise transferred for gain (if applicable).

The foregoing notification will usually be contained in the PICS. The users must be given a way of either opting-in or opting out of such direct marketing activities, e.g. a tick box in the PICS for data subjects to click on if they wish to opt-out of direct marketing. It should be noted that silence / non-response from a user does not constitute sufficient consent.

For further details regarding the new direct marketing requirements, please see our Newsflash on the new guidance on direct marketing issued by the Privacy Commissioner, which may be accessed here.

Many OS vendors prohibit the practice of sending push notifications for advertising or promotional purposes.

IMPLICATION FOR APP DEVELOPERS

Breach of the direct marketing provisions in the PDPO constitutes an offence, which may result in a maximum fine of HK$500,000 and 3 years imprisonment. Where the App Developer has sold (or otherwise transferred for gain) the personal data of a user to a third party for direct marketing purposes, in contravention of the PDPO, the maximum fine is increased to HK$1,000,000 and 5 years imprisonment.

Non-compliance with the Privacy Information Leaflet does not of itself constitute an offence, but breach of the data protection principles of the PDPO upon which the Privacy Information Leaflet is based upon may result in an investigation by the Privacy Commissioner (either commenced on its own initiative or as a result of a complaint filed with the Privacy Commissioner). If after the investigation the App Developer is found to have breached the PDPO, the Privacy Commissioner may issue an enforcement notice requiring certain remedial action to be taken. Any breach of an enforcement notice will constitute an offence. Non-compliance with the Privacy Information Leaflet may be used by the Privacy Commissioner as evidence against an App

Developer of breach of the PDPO in the event of an investigation.

Following the amendments to the PDPO which took effect on 1 October 2012, the Privacy Commissioner is now empowered to issue an enforcement notice where a contravention has been found, irrespective of whether there is evidence indicating that the contravention is continuing or is likely to be repeated. The Privacy Commissioner has been active recently in using these enhanced powers. The fact that the Privacy Commissioner issued an information leaflet providing guidance specifically relating to Apps, and has just completed the Internet Privacy Sweep with a focus on Apps, is a likely indication that he intends to pay close attention to this area in the future.

App Developers are advised to conduct a comprehensive review of their data protection policies, procedures and practices to determine whether they comply with the requirements set out in the Privacy Information Leaflet and the new direct marketing requirements in the PDPO (e.g. revising personal information collection statements, retention policies, security measures, direct marketing activities, etc.).

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ABNR
COUNSELLORS AT LAW

15/05/2013

PRESIDENTIAL REGULATION ON MANAGEMENT OF OIL AND GAS ACTIVITIES BY SKK MIGAS

As a follow up of Decision of the Minister of Energy and Mineral Resources Number: 3135 K/08/MEM/2012 which transfers the duties and functions of the Executive Agency for Upstream Oil and Gas Business Activities (BPMIGAS) to the Executive Task Force for Upstream Oil and Gas Activities (SKK MIGAS), the President of the Republic of Indonesia issued Presidential Regulation No. 9 of 2013 regarding Implementation of the Management of Upstream Oil and Gas Activities (the “Regulation”).

The Regulation basically stipulates that until the issue of a new law in the field of oil and natural gas, the management of upstream oil and natural gas activities is put in the hands of a special task force named Special Executive Task Force for Oil and Gas Activities or “SKK Migas”. This SKK Migas will work under the supervision of a supervisory commission which is chaired by the Minister of Energy and Mineral Resources (ESDM) with the Vice Minister of Finance as the Vice Chairman, and the Head of BKPM and the Vice Minister of ESDM as the members.

Other highlighted provisions of the Regulation are as follows:

- The Head of the SKK Migas is directly responsible to the President and must sign and submit an Integrity Pact and Performance Contract to the President;
- SKK Migas may recruit a civil servant or a non civil servant as employee, but it must first recruit former employees of the BP Migas. All SKK Migas employees must sign an Integrity Pact;
- SKK Migas is given the authority to use BP Migas’ assets. The assets must be used by applying the optimum and efficiency principles.

The Regulation was issued on 14 January 2013 and has been in force since the date of its issue, with the exception of the provisions of Article 18 regarding operational costs, which came into force retroactively on 13 November 2012. (by: Ayik Chandawulan Gunadi).

SKRINE

STRICT ADHERENCE TO THE STATUTORY SCHEME

Loo Peh Fern provides a summary of a landmark case on private caveats in Malaysia

INTRODUCTION

The Federal Court in *Score Options Sdn Bhd v Mexaland Development Sdn Bhd* [2012] 7 CLJ 802 emphasised that all interests in land in Malaysia are creatures of the National Land Code 1965 ("NLC") and protection can only be extended to such interests which are the subject of the schemes of dealings as provided under Division IV of the NLC.

BRIEF FACTS

The Appellant landowner entered into a joint venture cum project management agreement ("Agreement") with the Respondent to develop part of its land into a housing estate ("the project land"). The remaining part of the land had been sold to another company which was not involved in the case. Upon executing the Agreement, the Appellant and Respondent simultaneously executed two powers of attorney whereby the Respondent was granted certain rights in respect of the development project.

Under the Agreement, the parties had agreed that the Respondent would launch the development project by 1 June 2006. The Agreement also expressly permitted the Respondent to enter a private caveat on the project land. The Respondent entered a private caveat on the entire land, instead of the project land. Subsequently a dispute arose between the parties and the Appellant sought to terminate the Agreement on the ground that the Respondent had breached the agreement by failing to launch the development project by 1 June 2006.

The Respondent commenced a suit against the Appellant for wrongful termination of the Agreement. In the meantime, the Appellant applied to the Registrar of Titles to remove the caveat entered on the entire land. When the Respondent received notice of this application, it made an *ex-parte* interlocutory application to extend the caveat until the final determination of its suit against the Appellant.

The High Court dismissed the Respondent's application on the grounds that it had no caveatable interest to lodge or extend the caveat.

The Respondent, dissatisfied with the High Court's decision, appealed to the Court of Appeal. The Court of Appeal, by a 2:1 majority decision, allowed the Respondent's appeal.

The Appellant then obtained leave to appeal to the Federal Court on the following questions of law –

(i) With reference to section 326(2) of the NLC, what are the requirements to be satisfied by a caveator before the court may allow an extension of a private caveat on an *ex-parte* basis?

(ii) Whether a party to a joint venture agreement to develop land for profit has a caveatable interest in land?

(iii) Whether a private caveat lodged over the whole of a land can be permitted to remain if the caveator's alleged interest is only limited to part of the land?

(iv) Whether a person must demonstrate that he comes within section 323(1) of the NLC to be entitled to lodge/maintain a private caveat on the land, notwithstanding the existence of an agreement which allows him to so enter such private caveat?

THE PARTIES' CONTENTIONS

It was the Appellant's case that the Agreement, including the powers of attorney created thereunder, only gave the Respondent a contractual right to manage and develop the project land and not a right of ownership or any caveatable interest in the land.

On the other hand, the Respondent claimed that it had a registrable interest in the land by virtue of the Agreement. The Respondent argued that by virtue of the powers of attorney executed under the Agreement, the Appellant had relinquished its ownership of the land to it. The Respondent further submitted that clause 6 in the Agreement had given it the right to lodge the caveat.

DECISION OF THE FEDERAL COURT

Tun Arifin bin Zakaria CJ, in delivering the judgment of the Federal Court, stated that the sole question for determination by the Federal Court was whether or not the Respondent had a caveatable interest as contemplated by section 323(1)(a) of the NLC.

Caveatable interest

Having considered the analysis by Gopal Sri Ram JCA (as he then was) in *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng* [1995] 1 MLJ 719 as to the scope of protection under section 323(1)(a) of the NLC, the learned Chief Justice went on to hold that the only parties who are authorised to lodge a private caveat are those who may effect dealings in a particular interest in the land, and such interest was either (i) a registered title; or (ii) a registrable interest that falls short of ownership, such as leases, charges and easements; or (iii) a claim to an interest that falls under (i) or (ii).

Tun Arifin bin Zakaria CJ held that a caveat is a creature of the NLC and can only be lodged by a claimant who has a caveatable interest under the NLC. His Lordship then stated that section 323(1) of the NLC which governs the entry of a private caveat only permits a party to lodge a private caveat if he has a "registrable interest" in the land. To be caveatable, the interest must be an interest in land or that interest must be capable of registration. In other words, it must represent a transaction that can ultimately lead to its registration on the register.

Applying the law to the facts of the case, His Lordship held that although the Appellant had conferred numerous rights on the Respondent under the Agreement and the powers of attorney, all those rights were merely rights to develop the land that would give rise only to a monetary interest, i.e. a right *in personam* against the Appellant, and did not create any interest in the land.

His Lordship held that the case *Zemine Development Sdn Bhd v Hong Kong Realty Sdn Bhd* [2009] 5 CLJ 218, cited by the Respondent, was distinguishable on the facts. His Lordship observed that both the High Court and the Court of Appeal held that the respondent in that case had a caveatable interest by virtue of its entitlement to 80% of the subdivided lots of the land. This was unlike the present case where the Respondent was not entitled to any share of the subdivided units under the Agreement but only to a share in the profits of the development.

Potential interests

The learned Chief Justice also held that it was the considered view of the Court that a caveator under section 323(1)(a) of the NLC must have a present interest, as opposed to a potential interest, in the land. The caveator must be limited to those who are claiming an existing interest in the land or a right to such existing interest and could not include potential interest or interest *in futuro*.

The learned Judge referred to *Goo Hee Sing v Will Raja Peruma & Anor* [1993] 3 MLJ 610 where Mahadev Shankar J (as he then was) expressed this proposition in the following terms –

"*The point however is that the claim must be to title or a right thereto in praesentii, and not to some contingent title or right thereto in futuro.*"

His Lordship held that the *Torrens* system, which is the applicable land registration system in Malaysia, would not have room for interests in the land which are unascertainable and cited *Tan Heng Poh v Tan Boon Thong & Ors* [1992] 2 MLJ 1 as an authority for this principle. The Federal Court also noted that this principle is applied by other jurisdictions which have adopted the *Torrens* system.

Turning to the instant case, Tun Arifin bin Zakaria CJ held that even though the Respondent was given the option to purchase the units it developed and to transfer the units to itself if it chose to do so, that right had yet to be exercised at the time when the caveat was lodged. Therefore, the right had not ripened into an interest in land.

His Lordship reiterated that a caveat was purely a creature of statute and could only be lodged and maintained according to the statute by a person who was authorised to do so by the statute. Accordingly, His Lordship held that parties could not by agreement between themselves create a caveatable interest.

His Lordship also approved of the judgment in *Wong Kuan Tan v Gambut Development Sdn Bhd* [1984] 2 MLJ 113, where it was held that a contract could not override a statute by inventing a right which is not recognised by the statute and that the court could not give recognition to such a right (see also *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng @ Tan Tien Chi & Anor*).

Tun Arifin bin Zakaria CJ also held that the burden is on the caveator to show that his caveat comes within the scope of section 323 of the NLC.

As the Court concluded that the Respondent did not have a caveatable interest in the project land under section 323 of the NLC, the Court allowed the appeal and ordered the private caveat lodged by the Respondent to be removed. Accordingly, the Court answered question (ii) in the negative and question (iv) in the positive. The Court also ruled that it was not necessary to answer the remaining questions.

CONCLUSION

This decision of the Federal Court is significant in three respects. First, it clarifies the meaning of '*registrable interest'* in section 323 of the NLC. Second, it makes it clear that only a person who has a present interest, as opposed to a future or contingent interest, in land is entitled to lodge a caveat. Third, it affirms that an agreement between parties to allow a caveat to be entered on title cannot in itself create a caveatable interest for the purposes of the NLC.

The principles laid down by the Federal Court in *Score Options* will provide guidance for the Malaysian courts in subsequent cases.

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NautaDutilh

Banking & Finance Update

Commission on the Structure of Dutch Banks: "Towards a serviceable and stable banking system" / Commissie Structuur Nederlandse Banken: "Naar een dienstbaar en stabiel bankwezen" 9 July 2013

This newsletter is sent by NautaDutilh

Commission on the Structure of Dutch Banks publishes its report "Towards a serviceable and stable banking system"

28 June 2013 the Commission on the Structure of Dutch Banks (the "Commission") published its report "Towards a serviceable and stable banking system". The Commission analyses the current stance of affairs in the Dutch banking landscape and provides eleven recommendations to improve serviceability and stability of the Dutch banking sector. In this newsletter we will provide you with some background on the Commission and its report and we will summarize its recommendations.

Contents

International developments

Following the start of the financial crisis in 2007, a separation between retail banking activities and merchant banking activities has been considered on various levels. In the US, the Volcker Rule has been introduced as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Volcker rule boils down to a ban on trading for own account for deposit taking banks. In the UK, the Independent Commission on Banking chaired by John Vickers recommended to separate deposit taking business from merchant banking activities. On a European level in October 2012 similar recommendations were made by the European Commission's High-level Expert Group on Bank Structural Reform headed by Erkki Liikanen.

Appointment and instruction of the Commission

In April 2012, the Dutch Minister of Finance published 40 measures aimed at reforming the financial sector in the Netherlands. Consequently, the Commission on the Structure of Dutch Banks was appointed. Herman Wijffels, member of the Liikanen Group, former Chairman of the Social-Economic Council (*Sociaal-Economische Raad*) and former CEO of Rabobank, was appointed Chairman of the Commission.

The Commission was instructed by the Dutch government to investigate a) the possibilities to implement the recommendations of the Liikanen commission in the Netherlands and b) how to improve the possibilities to smoothly resolve Dutch banks in case of an emergency. In its investigation the Commission was requested to take into account the serviceability desired form banks, the urge to regain confidence of society, the European and national legislative framework and cost efficiency of measures proposed.

The Dutch Government has indicated that it will respond to the Commission's report following the Parliament's summer recess.

Report

In its report, the Commission first addresses developments over the last two decades in the Dutch banking sector, including measures already taken following the financial crisis. The Commission consequently describes serviceability and stability desired for banks and reforms needed to achieve such serviceability and stability.

Pursuant to the Commission, serviceability means that Dutch banks provide for all products and services required with a view to the development of the internationally orientated Dutch economy, its citizens and its enterprises. An important pre-condition for serviceability is adequate competition, which actually has decreased in the Dutch banking landscape following the financial crisis. Alternative financing methods such as credit unions (*kredietunies*), crowd funding and SME bonds (*MKB-obligaties*) are also considered to contribute to adequate competition by the Commission.

The Commission view stability as Dutch banks being able to effectively fulfilling their economic functions and being shock proof. In order to increase stability and limit the risk profile of Dutch banks, the Commission proposes a number of measures, which are partially in line with European initiatives.

The recommendations to the Dutch Government and the Dutch banking sector in the report of the Commission will be discussed below.

Recommendations

1. Towards a serviceable and stable Dutch banking sector

Strive for a serviceable and stable Dutch banking sector. This means that banks must be structured in such a way that future risks of banks calling for state aid are reduced. Furthermore, banks should avoid risks not stemming from servicing clients.

2. Diversification

The banking sector needs to get as diversified as possible, in order to ensure adequate competition. In the view of the Commission both specialised banks, as well as universal banks offering a wide variety of services are needed.

3. Strengthening of competition

Competition needs to be further increased by:

- privatising state owned banks as soon as circumstances allow the State to do so;
- removing the financing advantages of systemic owing to their implicit government guarantee;
- completion of the European banking union;
- policy making and legislative initiatives aimed at stimulating alternative financing methods such as credit unions, crowd funding and SME bonds;
- introduction of comprehensible standard versions of high impact retail products (such as mortgage loans and savings for pensions).

4. Strengthening of governance

The role of supervisory boards of Dutch banks needs to be increased by ensuring their members have more sector-specific knowledge and ensuring their members spend more time in the fulfilment of their tasks.

5. Reforms of the Dutch residential mortgage loans market

- setting up a national mortgage institute allowing institutional investors to invest in mortgages and as such contributing to better availability and pricing of Dutch residential mortgage loans;
- decreasing the loan-to-value ratio for residential mortgage loans to 80%, resulting in customers having to find other means to finance the remaining 20% of their residential properties (which although customary in some other EU jurisdictions, would mean a significant decrease of the LTV-ratio allowed in the Netherlands);
- targeted restructuring of the housing market (such as a reform of the tax treatment of residential mortgage loans);
- introduction of "mortgage saving", allowing first time buyers on the Dutch residential property market to use part of their pension savings to acquire such residential property.

6. Strengthening of capital buffers

Improving the stability of banks by increasing the capital buffers they need to maintain. In the view of the Commission this entails amongst others that any bank becoming subject to direct ECB supervision should comply with Basel III requirements at that same point in time.

7. Bail-in

Strive for a bail-in system for banks at an EU-level. Such bail-in system should result in losses of a bank being attributed to its creditors instead of to the state. Creditors claims should be written-off or converted into financial instruments in case of emergency.

8. Ringfencing of trading activities

Trading activities exceeding certain thresholds should be legally, economically an operationally ringfenced from other banking activities, such as deposit taking. This is in line with recommendations of the Liikanen Group, which means that trading activities should be ringfenced if they exceed 15 to 25% of a bank's balance sheet total or EUR 100 billion as well as exceed a pre-determined ratio between trading assets and balance sheet total. Furthermore, Dutch banks should refrain from trading for their own account.

9. Living-will

Dutch banks need to be organised in such a way they can be easily resolved in case of emergency, whereas their systemically relevant activities can be separated and continued.

10. Resolution mechanism

In forming the European banking union, simultaneous introduction of European supervision and a resolution mechanism should be aimed for.

11. Social statute

Dutch banks should draw up a social statute reflecting their views on how to increase serviceability and stability. Such social statute should be made subject to a public dialogue.

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MEDIA LAW & REPUTATION

NEW ZEALAND COMES TO THE MEDIA REGULATION PARTY

An overhaul of media regulation is an international trend. The difference in New Zealand's case is that the overhaul will not come about because of evidence of an unethical or untrustworthy media, but as a response to the disruptive influence of new media.

The Law Commission has now released its report *The News Media Meets 'New Media' - Rights, Responsibilities and Regulation in the Digital Age*.

A NEW ORDER DEMANDED BY TODAY'S MEDIA LANDSCAPE

The report calls for a single independent standards body, the News Media Standards Authority (**NMSA**), to provide effective and meaningful redress when news media breach standards. The new body would be voluntary rather than a creature of statute and would deal with all complaints about the news media regardless of the delivery platform; in short, whether it be broadcasting, print or online. This would do away with the current format-based complaints bodies such as the Press Council. It would also largely strip the Broadcasting Standards Authority and recently formed Online Media Standards Authority of the ability to deal with complaints about news and current affairs.

Recognising that the NMSA would falter if news media elected to opt out, the Commission's model is incentive based. The incentives are four-fold with the most important being that the privileges and exemptions currently enjoyed by news media would extend only to members of the NMSA. Those privileges include the right to attend court hearings which other members of the public have no right to attend, or to communicate electronically from the court room, exemption from the Information Privacy Principles of the Privacy Act and the presumption of non-disclosure of sources (aka a press shield law. Whether the current presumption in the Evidence Act applies to bloggers is unclear).

A further carrot dangled by the Commission is its recommendation that public funding, such as that from NZ on Air would only be accessible to members of the NMSA. (The impact of this on the online community, which is not yet a major primary news gatherer, will be slight initially.)

NEWS MEDIA - THE WHO AND WHY

Membership of the NMSA would be open to entities meeting the following criteria:

- A significant element of their publishing activities involves the generation and/aggregation of news, information and opinion of current value
- They disseminate this to a public audience
- Publication is regular and not occasional

The Commission recommends that Online Content Infrastructure Platforms (**OCIPs**) such as Twitter, YouTube and Facebook should be treated as falling outside these criteria, possibly because they play a minimal, if any, editorial or curatorial role in relation to the content they host.

'News' is defined in the report as any publication purporting to provide factual information and involving real people. In this way, documentaries and reality programmes depicting real people would be included, along with sports programmes. A news media journalist tweeting on behalf of his or her news outlet would presumably be caught but personal tweets on the same platform may not.

POWERS TO HOLD THE NEWS MEDIA ACCOUNTABLE

The adjudication powers of the NMSA would include being able to require:

- Publication of an adverse decision in the medium concerned, directing prominence and positioning
- A take-down of specified material from the website
- Incorrect material be corrected
- A right of reply
- Publication of an apology

In addition, the NMSA would have the ability to censure a member but would not be able to award compensation or any monetary relief. The thinking behind this, says the Commission, is to avoid weighing down the complaints system by an adversarial process or increased legalism in the handling of complaints. (This is a disappointing aspect of the report; damage to reputation is sufficiently serious to warrant expert advice to deal with it. Inability to recoup the costs associated with making a complaint undermines the adequacy of redress.)

The NMSA will be required to recognise and act in accordance with the principles of the New Zealand Bill of Rights which guarantees freedom of expression although that guarantee is not absolute.

There would be a right of appeal to a media appeals body, much like the Advertising Standards regime.

SETTING THE STANDARDS

Aspects of the report of particular interest are the expectations around the standards to be set by the NMSA. The traditional journalistic standards of accuracy, correction of error, separation of fact and opinion, fairness, good taste and decency, protection of privacy and the interests of children are uncontroversial but the Commission also acknowledges the different public expectations of bloggers. This is a way of saying that context is all important. It is likely that the blog sphere will not be expected to adhere to balance in the same way mainstream media might, for example.

The Commission also has expectations for standards about news gathering practices, not just content which is published. It suggests that the NMSA will need to consider whether prior notice ought to be given to a person before a negative story is published about him or her, an issue which has been hotly debated in the United Kingdom.

Finally, there is a prospect that the NMSA will provide a mediation service for resolving defamation complaints and avoiding costly and protracted litigation.

> '...Ironically, given that accountability for reputation damage is one of the purposes of the NMSA, one of the incentives to encourage membership is the reputation or brand advantage. '

AND FOR THE OUTLIERS?

Those who sit outside the NMSA will still be subject to existing laws. Potentially these include the additional measures recommended by the Commission in its Briefing Paper to deal with communication harms, including a new Communications Tribunal which will likely have the power to issue take down orders. Members of the NMSA would not be subject to the Communications Tribunal.

COMMENT

The report recognises the importance of reputation in today's world and the persistent impact of damaging content in the digital environment. It also acknowledges the need to protect the media's core purpose in a democracy and the capacity of new technologies to strengthen democracy. Extending the definition of news media, provided those entities accept accountability to the NSMA, achieves the requisite balance in principle. Simplifying the regulatory systems to avoid multiple bodies operating under different criteria is a necessary and positive step.

Ironically, given that accountability for reputation damage is one of the purposes of the NMSA, one of the incentives to encourage membership is the reputation or brand advantage. Membership, the Commission says, will denote that medium as responsible and reliable as a source of information, potentially a critical differentiator for online publications. Proof positive of the primacy of reputation in today's online environment.[1]

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[1] Tracey Walker *Reputation Matters: A Practical Guide to Managing Reputation Risk* (CCH, Auckland, 2012)

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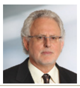

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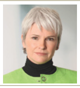

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THE APOSTILLE CONVENTION COMES INTO EFFECT IN NICARAGUA

We inform you that the "Convention Abolishing the Requirement for Legalisation of Foreign Public Documents (from October 5, 1961) - Apostille Convention" came into effect on May 14, 2013.

By virtue of the foregoing, the public documents issued by duly authorized public servants in connection to their position and competence may be legalized through the process of apostille at the Consular General Office of the Ministry of Foreign Affairs (Apostille authority), to produce effects abroad. The apostille will only have effects in the countries that are part of the Apostille Convention.

Nicaragua shall maintain the legalization process with those countries that are not part of the Apostille Convention, so that public documents will be legalized and will complete the authentication chains as to this date.

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Revised Property Loan Rules - Guarantee No More

Introduction

The Monetary Authority of Singapore (MAS) announced on 28 June 2013 the introduction of further measures to fine-tune residential property loan rules, which came into effect on 29 June 2013. MAS Notice 632 has been amended to reflect these new rules, and MAS has also issued a new Notice 645, setting out details as to how banks and financial institutions are to compute the total debt servicing ratio for property loans.

Amendments to MAS Notice 632

MAS Notice 632 applies to loans taken for the purchase of residential properties (Housing Loans) and loans which are not taken for the purchase of residential properties but are otherwise secured by residential properties (Equity Loans). With these most recent amendments, MAS has plugged certain loopholes which some borrowers have used to circumvent the reduced loan-to-value (LTV) limits introduced in the earlier rounds of cooling measures.

All guarantors must be borrowers

Any person who contributes towards any part of the monthly repayment instalment of a credit facility granted to another person who has been assessed by a bank to be unable to pay any part of such instalment must now be included and named as a co-borrower of the credit facility, and not just merely a guarantor.

This new rule applies to all Housing Loans where the option to purchase was granted on or after 29 June 2013 and to Equity Loans applied for on or after 29 June 2013, as well as to the re-financing of such Housing Loans and Equity Loans.

This amendment prevents a person from indirectly obtaining more than one 80% loan (assuming he is less than 35 years old and the loan tenure is less than 30 years) by being a guarantee under one loan (say, an 80% loan where the borrower is his wife, but he effectively pays all or part of the monthly instalments) and obtaining another 80% loan in his own name for another property.

All borrowers must be mortgagors

MAS Notice 632 has always made reference to the “Borrower”, who is the person applying for the credit facility, but there was never a distinction made between a borrower and a mortgagor, as mortgagors were usually the borrowers of a property. However, with the various reductions in LTV limits in the last few years and the introduction of Additional Buyer’s Stamp Duty (ABSD), more and more property purchasers have turned to using family members’ names to purchase residential property, thus being able to obtain higher loans based on higher LTV limits and/or avoiding or reducing the amount of ABSD payable.

With the latest amendment, all borrowers of a Housing Loan, an Equity Loan, or a loan taken to re-finance a Housing Loan or an Equity Loan must now also be a mortgagor of the residential property for which the loan is taken. Similar to the rule on guarantors, this will also apply to all Housing Loans where the option to purchase was granted on or after 29 June 2013 and to Equity Loans applied for on or after 29 June 2013, as well as to the re-financing of such Housing Loans and Equity Loans.

The new rules effectively prevent one from circumventing the rules on lower LTV limits and/or avoiding or reducing the amount of ABSD payable.

It is interesting to note that where one is refinancing a Housing Loan, the above rules requiring all borrowers to be mortgagors and requiring guarantors to be borrowers only apply if the option to purchase for the residential property in question was granted on or after 29 June 2013. This would mean that someone who is re-financing a Housing Loan taken, say, in 2008 can still enter into a third-party mortgage, where the borrower need not be a mortgagor, and where the guarantor need not be brought in as a borrower.

One area which MAS did not address directly is the situation where a borrower (Party A) is applying for a credit facility in relation to one property (the second property), and is a mortgagor of another property (the first property), but without being a borrower under credit facilities granted for the purchase of the first property or otherwise secured by the first property. In such a situation, would a bank granting a facility for the purchase of the second property have to consider the outstanding amount of the credit facility secured by the first property in determining the LTV limit that it can grant to Party A? Arguably, yes, since in-principle, Party A is jointly and severally liable for the loan with the borrower of the first property (notwithstanding that he is not named as a borrower of that loan) and it boils down to the same reason for mandating that all guarantors must now be a borrower of a loan.

In determining a borrower's monthly total debt obligations MAS did provide in MAS Notice 645 that, where a borrower is a guarantor, not less than 20% of the monthly repayment instalment of any other outstanding relevant credit facility in respect of which the borrower is a guarantor will have to be taken into consideration. In light of this, in the example above where a mortgagor is akin to being a guarantor, banks and financial institutions may have to consider taking into consideration the outstanding loan secured on the first property, in determining the LTV limit of the loan to be granted to Party A for the credit facility to be granted for the second property.

Introduction of loan tenure for Equity Loans

Equity Loans and loans which are taken to refinance an Equity Loan will now also be subject to a maximum tenure of 35 years. There was previously no limit on the tenure of an Equity Loan, and this new requirement was probably meant to tie in the rules on loan tenure with that for Housing Loans. However, an Equity Loan and a credit facility for the re-financing of an Equity Loan both cannot exceed 35 years, so it appears that one can keep re-financing an Equity Loan for a fresh term of 35 years each time.

Weighted average age of borrowers

Previously, there was no clear rule on how banks and financial institutions are to treat the age of borrowers in determining the loan tenure of a loan where there is more than one borrower, except that a "bank shall use the age of the borrowers that the bank uses for its credit assessment of the credit facility". Some banks had used the youngest age, which resulted in a longer tenure, while some banks had used the oldest.

To address such inconsistency, under the amended rules, where there are two or more borrowers, banks and financial institutions will now have to use the weighted average of the ages of the borrowers, weighted based on their gross monthly income[1]. Hence, weight is given to both the age and income of the borrowers, and the average is taken.

Credit bureau checks

Previously, banks and financial institutions need not carry out checks with Credit Bureau (Singapore) or with Housing Development Board (HDB) if:

(1) they are granting loans equal to or less than the minimum 40% LTV and where the cash component payable by a purchaser is equal to or more than 25% of the purchase price of the property;

(2) they are granting a credit facility for the refinancing of a Housing Loan; and

(3) bridging loans (which are to be repaid within six months).

Now, they will still have to do so in the above situations, but only for purposes of assessing the credit worthiness of the borrower.

New MAS Notice 645

Apart from the amendments to MAS Notice 632, MAS introduced a new Notice 645, which also came into effect on 29 June 2013, and which sets out in detail the framework for computing the total debt servicing ratio (TDSR) for property loans. This somewhat complements the guidelines on LTV limits set out in MAS Notice 632 and is aimed at standardising credit underwriting practices, so that there is a consistent approach across all banks and financial institutions in determining a borrower's ability to repay his loan.

A borrower's TDSR is determined as follows:-

$$\frac{\text{The borrower's monthly total debt obligations}}{\text{The borrower's gross monthly income}} \times 100\%$$

For a start, all property loans cannot exceed a TDSR threshold of 60%, to give both lenders and borrowers time to get used to this new regime. MAS has indicated that it will monitor and review the threshold over time.

This new framework will apply to a borrower of:

(1) any loan for the purchase of a property;

(2) any loan otherwise secured by property; and

(3) any re-financing loan in respect of a loan in (1) and (2).

It applies to loans to individuals, including sole proprietorships established inside and outside of Singapore, and any vehicle which is set up by a natural person solely to purchase property. It also applies to all types of property loans, whether residential or non-residential, and also covers properties both in and outside of Singapore.

The new rules set out in detail how banks and financial institutions should calculate a borrower's monthly total debt obligations and gross monthly income, as well as how banks and financial institutions must verify such information.

Some of the measures which banks and financial institutions will have to observe when determining the TDSR are as follows:-

(1) to calculate the monthly interest payable under the credit facility on the basis of a medium-term interest rate of 3.5% for residential property loans and 4.5% for non-residential property loans;

(2) where a borrower has variable income, a maximum of 70% of the average of his monthly variable income earned in the preceding 12 months can be taken into consideration in assessing his gross monthly income; and

(3) where a borrower has rental income, a maximum of 70% of the monthly rental income may be included as part of the gross monthly income, and there must be a remaining rental period of at least six months.

While MAS has set out an avenue for borrower's self-declaration on his sources of income and debt obligations, banks still have to make their own independent checks with Credit Bureau (Singapore) and HDB (to verify a borrower's debt obligations) and now obtain statements from the CPF Board and IRAS (to verify the sources of income of a borrower).

The tricky part is where a borrower has certain outstanding credit facilities which are obtained from a financial institution outside of Singapore, for example, where the borrower has an outstanding loan taken for the purchase of a property in Australia from a bank in Australia. Under the definition of "Outstanding Relevant Credit Facility", such debts would have to be taken into consideration by a bank in determining the total debt obligation of the borrower.

How is a bank to verify such debts then? Given the framework of the regulation, the logical approach would be to rely on the borrower's self-declaration and in this regard, the declaration ought to be made as comprehensive as possible, setting out questions which will prompt a borrower to give all the information that may help the bank in determining if there are any such overseas debt obligations, and perhaps in a similar vein, any overseas income. On the bank's part, if there is additional information which puts the bank on notice that there may be overseas debt obligations on the part of the borrower, the bank should then ask for additional information and documentary evidence from the borrower in order to satisfy the bank of such debt. In the example above, the bank should ask for a letter of offer from the Australian bank, as well as the bank statements in relation to the outstanding loans.

Credit facilities exempted from the new framework

The TDSR rules will not apply to:

(1) bridging loans (which are to be repaid within six months); and

(2) a credit facility which is secured by a pool of collaterals which includes property, where the market valuation of the property comprises less than 50% of the market valuation of the pool of collaterals at the time of application of the said credit facility.

The TDSR threshold of 60% can also be exceeded in the case of a re-financing facility for the purchase of a residential property if:

(1) the option to purchase was granted prior to 29 June 2013;

(2) the residential property is the only property (including non-residential properties) that the borrower owns, either by himself or jointly with others;

(3) the borrower is one of the occupiers of the residential property;

(4) the borrower does not have any other outstanding credit facility (either in his own name or jointly with others) for the purchase of any property or the re-financing of such a credit facility, other than the residential property being re-financed; and

(5) the borrower does not have any other outstanding credit facility (either in his own name or jointly with others) otherwise secured by any property, including the residential property being re-financed, or the re-financing of such a credit facility[2].

Banks and financial institutions are to obtain documentary evidence to verify all the above.

There is a similar exemption for borrowers who are owner-occupiers and are unable to meet the existing 30% mortgage servicing ratio limit on re-financing loans in respect of HDB flats.

These exceptions allow people with only one residential property (and no other properties, (residential or otherwise) and no other outstanding loans secured on properties (including Equity Loans secured on the residential property)) to be able to re-finance their Housing Loans, which were taken before these new rules were implemented, without which they may not be able to refinance their existing Housing Loans and enjoy lower interest rates.

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Impact of changes

Banks and financial institutions already have their own internal assessment criteria of a borrower's debt servicing ratio even before the implementation of the new rules on the TDSR, so it could be that the new rules which crystallise and standardise these criteria may not differ too much from what banks have already set in place, except that it gives the banks less room to grant exceptions. Probably when one approaches a bank for a loan now, there are likely to be less variances between the banks in the amount of loan that the banks can grant.

On the other hand, the amendments to MAS Notice 632 may seem like minor clarifications, but they could have a larger impact (than the new TDSR rules) in reducing the demand for property purchases and loans, in that one may not simply use another's name to purchase property and/or to obtain a loan so easily.

Only time will reveal the true impact of these changes, but in the meantime, expect a longer waiting time for your loan applications to be approved!

[1] As determined in accordance with MAS Notice 645

[2] This exception is not set out in the MAS Notice 645 but has been included as in exception in MAS' "Guidelines on the Application of Total Debt Servicing Ratio for Property Loans" under MAS Notices 645, 1115, 831 and 128 dated June 2013.

WERKSMANS
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PORTFOLIO COMMITTEE APPROVES LABOUR RELATIONS AMENDMENT BILL

ISSUE IN DISPUTE

Parliament's Labour Portfolio Committee has recently approved a number of amendments to the Labour Relations Amendment Bill ("Bill"). Of particular import, the approved amendments have removed the requirement that trade unions and their members hold a ballot before embarking upon strike action. This requirement sought to avoid the position where the majority of employees were coerced by a minority to engage in unwanted strike action and resembled the provisions contained within the 1956 Labour Relations Act.

Further amendments have seen the additional curtailment of the activities of temporary employment service providers ("labour brokers"). The definition of what constitutes temporary services has been amended to mean *inter alia* work performed for a period of no longer than 3 (three) months (the period was previously 6 (six) months) or work performed for an employee who is temporarily absent (such as a replacement for an employee on maternity leave). It seems that individuals who earn below the current earnings threshold (R183 008) and who are employed in excess of the 3 (three) month period and who are not replacing an absent employee will be presumed to be the permanent employees of the labour broker's clients and not the labour broker. Individuals supplied by a labour broker to act as a substitute for an employee of the client who is temporarily absent, such as, for example, an employee who is on maternity leave will, presumably, not be restricted to the 3 (three) month period.

In addition, prior versions of the Bill contained a provision which allowed for the automatic presumption of a fixed term employee being deemed a permanent employee after a period of 6 (six) months. It appears that this period has also been reduced to 3 (three) months. As such, employers utilizing fixed term employees for a period in excess of 3 (three) months will have to ensure they have valid reasons for doing so failing which they run the risk of said employees being regarded as permanent employees.

The Bill will now be forwarded to the National Assembly for further comment. In the event of the National Assembly rejecting the revised Bill it may be sent back to the portfolio committee for further debate.

Werksmans' Labour department will continue to keep you updated on all the latest developments in this regard.

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LEE AND LI
ATTORNEYS-AT-LAW

Restriction on Voting Rights of Pledged Shares by Director

◎Julia Kuei-Fang Yung

According to Article 197-1 of the Company Act, if a director of a public reporting company pledges over 50% of his/her shares in the company after his/her election, the director will not have voting rights for the shares exceeding such 50%.

In this connection, pursuant to a ruling issued by the Ministry of Economic Affairs (MOEA) on 29 December 2011, the number of the pledged shares subject to such a restriction should mean that of the pledged shares recorded on the shareholders roster as of the day immediately preceding the day on which the suspension period for share transfer commences for a shareholders meeting ("Record Date"). The MOEA further issued another ruling on 25 April 2013 stating that the said number of the pledged shares should mean the total number of the shares of the director being pledged as recorded on the company's shareholder roster on the Record Date, regardless of whether the shares are recorded as being pledged by the director in the capacity of a director or in the capacity of a shareholder.

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Learn more about our Energy Litigation Practice.

LITIGATION UPDATE - JULY 3, 2013

2013 Texas Legislative Update

Baker Botts lawyers were active at the Texas Capitol this legislative session, working with our energy clients to monitor and participate in legislative deliberations on important policy issues.

The regular session of the 2013 Texas Legislature has adjourned, and a great deal of the session's activity involved the state's oil and gas industry. In general, several pieces of legislation passed by the Legislature aid the industry, and none of the legislation passed does any great harm. However, the Legislature also failed to take action on common carrier status, an important topic where the industry needs relief and clarification in light of the demands for more energy infrastructure.

Major energy-related legislation passed in 2013 includes:

Water Infrastructure. A primary concern in Texas is ensuring a water supply sufficient to meet the long-term needs of a growing Texas. Through a trio of bills (SJR 1, HB 4 and HB 1025), the Legislature provided initial funding to begin implementing the state's long-neglected State Water Plan. Subject to voter approval in November 2013, $2 billion from the Rainy Day Fund will begin to finance new water infrastructure projects.

Water Recycling & Reuse. Industry worked with the Legislature to encourage water recycling and reuse in exploration. HB 2767 enhances predictability and fairness by transferring ownership of waste material from the producer to the recycler, and by limiting liability for the recycler with regard to future uses of the waste material.

Transportation. HB 2300 and SB 1747 create a $225 million grant program through which counties can access state funds to build and repair roads impacted by energy production. The bills also authorize counties to establish County Energy Transportation Reinvestment Zones in order to direct local property tax revenues toward these road needs. HB 2741 significantly increases penalties for non-compliance of vehicle weight limits.

Environmental Permitting. HB 788 streamlines permitting and reduces federal involvement by authorizing the Texas Commission on Environmental Quality (TCEQ) to adopt a greenhouse gas emissions permitting program that includes and reflects federal regulations.

Well Logs. HB 878 allows for electronic filing of well logs with the Railroad Commission.

Railroad Commission Modernization. HB 1025 appropriated $24.7 million toward much-needed information technology modernization at the Railroad Commission.

Several major pieces of energy legislation did not pass in 2013:

Common Carrier. HB 2748 was sorely needed legislation to address the uncertainty and vulnerability created by the recent *Denbury* decision on establishing "common carrier" status. Unfortunately, a coalition of landowner rights activists, agricultural interests and trial lawyers succeeded in blocking this bill, so the threat of county by county litigation remains.

Water Well Permitting. HB 873 on water well permitting was opposed by the industry because it would have totally removed the long-standing exemption for water used in production. This bill was defeated, but all observers expect this issue to return next session.

Hydraulic Fracturing. HB 448 would have imposed an unworkable requirement that oil and gas operators provide advance disclosure and notification to landowners adjacent to a production site of the chemicals used in hydraulic fracturing. This and other similar bills restricting fracing were defeated.

Foreclosure Sale of Property. HB 2590 would have provided that a lease for the production of minerals survives foreclosure of a property. However, this bill was vetoed by the Governor.

Advisories

DOMA Decision: Same-Sex Couples Can File Marriage-Based Immigration Petitions

07.03.13

By Christopher R. Helm

Last week, the U.S. Supreme Court in *United States v. Windsor*, 570 U.S. ___ (2013) ruled that Section 3 of the Defense of Marriage Act (DOMA) was unconstitutional. Shortly after, Janet Napolitano, the Secretary of the Department of Homeland Security (DHS), announced that President Obama had directed federal departments to ensure that the decision and its implications for federal benefits for same-sex legally married couples are implemented swiftly and smoothly. This means that same-sex couples who are legally married under the laws of any U.S. state or foreign country that recognizes same-sex marriages may sponsor and be the beneficiary of marriage-based relative visa applications where one spouse is a U.S. citizen or lawful permanent resident. Some immigration practitioners report that they have already received approvals for petitions on behalf of same-sex couples that had been filed prior to the DOMA decision, and held at the U.S. Citizenship and Immigration Services (USCIS) until now.

Below is a link to a webpage containing Secretary Napolitano's statement and a list of FAQs regarding the immigration implications of the Supreme Court decision. The first point is that any U.S. citizen or lawful permanent resident may file a Form I-130 petition to sponsor his or her spouse and such petition will not be denied merely because the marriage is not between a man and a woman. The second point is that individuals will be permitted to benefit from the Supreme Court decision even if they do not live in a state that recognizes same-sex marriage. As long as an individual was married in a state or country that does recognize same-sex marriage, they may take advantage of this immigration benefit. At this time, it is not clear whether a civil union or domestic partnership would provide the same benefit as a state-recognized same-sex marriage.

DHS Issues Guidance on DOMA Implementation

The immigration lawyers at Davis Wright Tremaine LLP are available to answer your questions and to assist you in filing a marriage-based petition if you are eligible. Please note that the ruling does not change the current law with respect to marriage-based visas on behalf of a spouse who is currently in the U.S. out of status or in an undocumented status. All such individuals should seek the advice of counsel before applying for a green card.

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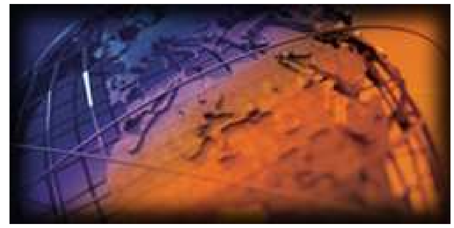

MLA Client Advisory

JULY 11, 2013

EU-U.S. Free Trade Agreement Negotiations Spell...OPPORTUNITY

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On June 17, 2013, U.S. President Barack Obama and European Commission President José Manuel Barroso announced the launch of sweeping negotiations for a U.S.-EU free trade agreement on goods, services and investment called the Transatlantic Trade and Investment Partnership ("TTIP") agreement. With the negotiations kicking off on July 8th, if completed and approved as envisioned by either side, TTIP will amount to one of the largest and most comprehensive trade deals ever, eclipsing in potential scale and scope any other agreement which the U.S. is currently negotiating.

All U.S. and EU based businesses with operations on either side of the Atlantic will likely be affected. Here is how:

- **Tariffs.** TTIP could eliminate an estimated $10.5 billion in annual duties paid in bilateral trade, helping manufacturers of all kinds – chemicals, machinery, autos, consumer products, etc.– headquartered in the U.S. or in Europe. Tariff cuts may be more difficult to achieve for sectors such as agriculture and textiles which are substantial and have strong political constituencies.
- **"Regulatory Coherence."** This is a key focus of the talks – not so much changing the fundamentals of each side's regulatory regimes such as REACH (the EU's toxic substances rules) that may be significantly different from TSCA (U.S. Toxic Substances Control Act requirements), but finding ways to ease trade notwithstanding the differences and rationalizing, where possible, disparate agreements. Already, U.S. and EU auto manufacturers have specifically proposed such efforts, seeking to reduce costs that arise from competing rules by recognizing the other side's rules in an effort to find regulatory "equivalence." It will not be easy, but progress could be made in fostering the end to unnecessary and self-defeating rules while retaining legitimate regulatory objectives.
- **Agriculture.** Long thought to be a reason why a U.S.-EU agreement could not get started, there is now at least the prospect of movement in areas such as genetically modified crops, tariff reductions and a transition for access in product areas with strong political sensitivities, such as dairy. Still, rough sledding is likely for U.S. exports of beef (which use hormones to increase yield), poultry and pork, in terms of increased access to the EU. There will be plenty of discussion around "region of origin rules," such as regarding French Champagne. The fact that talks are contemplated at all in this area creates opportunities.
- **Privacy.** Data transfers could be enabled in ways that smooth cross-border exchanges, something that technology companies would benefit from achieving, but may have implications for requirements that currently exist that favor the use of domestic infrastructure. Recent revelations of U.S. surveillance programs notwithstanding, progress in this area is desperately needed as data flows increase and technology advances.
- **Government Procurement Rules.** These will be discussed in an effort to enhance mutual access to markets on both sides of the Atlantic and in all administrative levels (national, regional and local).
    - ***EU Restrictions.*** EU barriers in public procurement include a 50 percent local content requirement applicable to foreign suppliers in sectors such as: urban transport, energy systems and water infrastructure; burdensome qualification requirements (Greece); transparency problems (Czech Republic, Bulgaria, Italy, Greece, Hungary); offset requirements (Romania, Austria) and a pervasive "buy national" bias in the defense establishment (France, UK).
    - ***U.S. Restrictions.*** European exporters complain of numerous discriminatory practices by U.S. defense procurement entities. This includes a complex set of rules and de facto practices designed to impose domestic source restrictions on U.S. defense procurement, specific requirements to produce on U.S. soil and application of "maximum foreign content" threshold requirements. European exporters also are

Client Alert: New Circular Provides Details on Telecom Licensing

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Technology, Media, and Telecommunications

July 11, 2013

A new circular, which came into effect last week, sets out the conditions that must be fulfilled for enterprises to be granted a license for telecom business in Vietnam, including requirements on:

1. Registered business lines
2. Financial conditions
3. Organizational structure and personnel
4. Technology and business conditions
5. Telecom infrastructure safety and information security.

The financial conditions include prerequisite amounts of legal capital and investment commitment. For example, the legal capital required for provision of public telecom services is VND 5 billion to 300 billion (approximately USD 240,000 to 14.1 million) depending on the area of service provision, with an investment commitment of VND 100 billion to 3 trillion (approximately USD 4.7 million to 141.3 million).

Application dossier

An enterprise can simultaneously submit an application dossier for both a license of establishment of a public telecom network and a license for providing telecom services using this network. In addition to the normal corporate documents required, the applicant must submit a five-year business plan and technical plan in statutory form, and/or the draft telecom services contract with end-users.

Timeline for license granting

A telecom license is supposed to be granted within 45 business days for a new application and 40 business days for renewals or amended cases.

A combined license for establishment of a telecom network and provision of telecom services is required to be converted into two separate licenses before the end of this year. However, the legal capital and investment commitment requirements are exempted in the case of a conversion to a license for establishment of a telecom network.

More information

To learn more about the licensing requirements under the Ministry of Information and Communications Circular No. 12/2013/TT-BTTTT, please contact vietnam@tilleke.com or visit www.tilleke.com concerned about various “Buy American” procurement rules and seek access to procurement by the U.S. states.

- **Other Issues.** *Intellectual property* will be a topic of negotiations, as will *financial services*, particularly regarding legal protections for investors, level playing field issues, financial stability measures and freer transfers of capital.

This kind of transatlantic opportunity is extremely rare and on this scale, unprecedented.

The role of counsel:

In our experience, the opportunity exists in such a negotiation for a client’s longstanding problems to be solved, and to anticipate and deal with new problems that arise in the negotiations. The TTIP negotiations are likely to take three years to conclude, if not more, and will involve constant interaction and advocacy by interested businesses and groups with USTR negotiators, the other Executive Branch agencies involved and with Congress. In this process, there are also significant opportunities to engage with EU industry and government counterparts to help deliver the support needed to achieve specific results. How information is fashioned for use by negotiators is key. Government negotiators require industry input, and generally welcome being educated on essential issues. Experienced counsel, who have themselves served as negotiators in similar circumstances, have a key role to play for both industry and government. Securing industry consensus on issues is often vital to gaining commitment from negotiators, and experienced counsel will be capable of assisting clients in such efforts and to gain and leverage support for issues on both sides of the Atlantic.

For further information, please contact members of our International Trade Practice.

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