PACIFIC RIM ADVISORY COUNCIL

Pacific Rim Advisory Council
May 2021 e-Bulletin

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CONFERENCES & EVENTS

PRAC - Let's Talk!

upcoming virtual meetings
May 31/June 1, 2021 | June 24/25, 2021
International Conference - New Delhi Hosted by KOCHHAR & Co. TBA
International Conference - New Zealand Hosted by Simpson Grierson TBA
International Conference - Mexico City Hosted by Santamarina y Steta TBA
International Conference - Paris Hosted by GIDE TBA

www.prac.org

Coronavirus
COVID-19

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

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

http://www.prac.org/member_publications.php

MEMBER DEALS MAKING NEWS

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►CAREY |Assists Lenders Group in Atacama Wind Farm Financing
►DENTONS RODYK Assists CEL Development Pte. Ltd., SingHaiyi Investments Pte. Ltd. and Chuan Investments Pte. Ltd. jointly in their enbloc acquisition of Maxwell House
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COVID-19 SITE FOR ALL UPDATES

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ARIAS ANNOUNCES TWO PROMOTIONS

GUATEMALA CD – April, 2021: Arias Guatemala, opened operations in 1998 and since then has positioned itself as a reference law firm in the country, having renowned lawyers, who with their talent and experience allow us to manage the most important matters. Considering the professional growth of lawyers, it is an honor to announce that **Rosa María Arenales,** has been promoted to Partner and **Fernando Zelada**, has been promoted to Senior Counsel.

Rosa María Arenales, has extensive and broad experience in labor counseling and immigration matters. Additionally, she has participated in multiple mergers and acquisitions of national and international companies, providing advice from the due diligence to the acquisition. Finally, she also has extensive experience in regulatory matters, in the food and pharmaceutical products sectors.

Rosa María has been recognized internationally by two of the most prestigious legal directories: Chambers and Partners and The Legal 500.

We are proud to have the talent and impeccable professionalism of Rosa María on our team for 11 years, we know that with her experience we strengthen our offer of legal services to our clients in key areas for them and for the firm.

Fernando Zelada has over 31 years of experience in the legal practice and 21 years specifically in the litigation practice area. He has been a member of the Dispute Resolution Department of Arias Guatemala since 2006, and a fundamental part of its growth and success, highlighting its commitment and involvement in the attention of clients, its tenacity and dedication with his great collaboration spirit. He has experience dealing with complex litigation matters of various kinds.

Fernando has been recognized by the most prestigious international legal directories as a leader and rising star.

We thank our clients for trusting us, our commitment is to continue serving in the best way with the most prestigious legal talent in the region.

Congratulations, Rosa María and Fernando - well deserved!

For additional information visit us at www.ariaslaw.com

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

CAREY APPOINTS THREE NEW PARTNERS

SANTIAGO – 01 May, 2021: Attorneys **Manuel Alcalde, Francisco Arce** and **Fernando Noriega** were promoted to partners at Carey, the largest law firm in Chile. With these promotions, the firm, which has more than 270 professionals in its legal area, now has 37 partners.

Manuel Alcalde is part of the Tax group and focuses his practice on structuring corporate, personal and family businesses, local and international tax consulting, mergers and acquisitions, project financing, cross-border operations and tax litigation.

He received his law degree from the Universidad Catolica and he has an LL.M. in International Taxation from the NYU School of Law as well as an Advanced Professional Certificate in Law and Business from New York University - Stern School of Business. He also earned an LL.M. in Tax Administration and Management from Universidad Adolfo Ibáñez. In addition, he is a professor of Tax Law at the Universidad de Los Andes. He has worked at Carey since 2006. In 2014 he served as a foreign associate at Linklaters law firm, in New York, and from 2018 to February of this year he served as Head of Tax Policy for the Ministry of Finance.

Francisco Arce is part of the Labor group and focuses his practice on comprehensive advice to employers in labor matters, be it corporate, contractual, union, collective bargaining or litigation. He received his law degree from Universidad Adolfo Ibáñez, has a Diploma in Labor Law and Social Security in Business from the Universidad Católica (2008) and a Master in Labor Law from Universidad Adolfo Ibáñez (2012).

Francisco has been recognized by various foreign publications such as Chambers & Partners and The Legal 500, among others, and is also a regular speaker at seminars on Labor Law, both in Chile and abroad.

Fernando Noriega is part of the Banking and Finance practice group, and focuses his practice mainly on banking law, credit operations, project financing, as well as the issuance of corporate debt securities, the stock market and foreign investment. He studied Law at Universidad de Chile and has an LL.M. in Banking Law and Financial Regulation from the London School of Economics and Political Science (LSE) (2015).

Between 2015 and 2016, Fernando worked as a foreign associate at White & Case in New York. He is the author and co-author of various publications related to Banking and Finance at a local and global level and has been recognized by various foreign publications for his work, including Chambers & Partners and The Legal 500.

For more information visit www.carey.cl

BAKER BOTTS WELCOMES LEADING FINANCE PARTNER

DALLAS - May 11, 2021: Baker Botts L.L.P., a leading international energy, technology and life sciences law firm, announced today that Shad Sumrow has joined the Dallas office as a partner in the Finance Section of the Corporate Department.

Sumrow joins Baker Botts from Thompson & Knight, where he was the firmwide Finance Practice Leader. He represents clients in lending and structured finance transactions, with an emphasis on oil and gas and asset-based transactions. He also regularly represents clients in connection with workouts, restructurings, bankruptcies and creditors' rights matters. His transactions have provided billions of dollars in working capital and acquisition funds to companies in various sectors of the economy. The addition of Sumrow comes a week after Baker Botts welcomed Doug Getten, former Chair of Paul Hastings' Houston Corporate Department, as a partner in Houston.

“The hiring of Shad will immediately add to the strong reputation of the firm’s Finance Section in Texas,” said John Martin, Managing Partner of Baker Botts. “His experience and market visibility will provide even more momentum for our practice as we attract additional clients in this active space.”

“Shad has a diverse practice representing both lenders and borrowers, with a focus on energy,” said Luke Weedon, Partner in Charge of the Baker Botts Dallas office and Firmwide Finance Section Chair of Baker Botts. “His market knowledge, extensive experience, deep client relationships and leadership experience will not only strengthen our Finance team firmwide, but will add to our representations of banks and nontraditional lenders.”

Sumrow’s accolades including being ranked for the last five years in Chambers USA for Banking and Finance, and also being ranked among the “Best Lawyers in Dallas” by D Magazine multiple times.

“Baker Botts is the go-to law firm in the energy space, and provides a broad, ideal platform for my practice,” Sumrow said. “I am excited to work closely with many lawyers with whom I have structured deals over the years, and I look forward to hitting the ground running.”

The Baker Botts Finance team, which includes lawyers in the American College of Investment Counsel and those who are recognized in multiple peer-based and client-based listings, represents financial institutions, corporate borrowers, securities issuers and other participants in complex debt financings and liability management transactions.

For additional information visit www.bakerbotts.com

DAVIS WRIGHT TREMAINE WELCOMES WHITE COLLAR PROSECUTOR

White-Collar Prosecutor With Extensive Experience in Healthcare Fraud Joins DWT Los Angeles, Augmenting Its Growing Team in California

LOS ANGELES – April 22, 2021: Davis Wright Tremaine LLP announced today it has added former Assistant United States Attorney Alexander F. Porter as a partner in the firm's white-collar, investigations, and government controversies group. With extensive trial experience, including more than eight years as a federal prosecutor, he brings significant depth to the firm's financial services and healthcare groups, particularly in connection with healthcare fraud investigations. He is the firm's fifth California addition with extensive healthcare experience in the past year.

Porter most recently served as a senior prosecutor in the Major Frauds Section of the U.S. Attorney's Office in Los Angeles. During his tenure as an AUSA, he prosecuted a broad range of white-collar criminal cases and developed extensive experience leading parallel criminal and civil government investigations involving healthcare and securities fraud matters. Porter was appointed the health care fraud coordinator for the Central District of California in 2017. In that capacity, he coordinated healthcare fraud law enforcement activities with federal and state agencies, including the FBI and the Office of Inspector General for the U.S. Department of Health and Human Services within the country's most populous federal judicial district, covering most of Southern California, including Los Angeles and Orange counties. Porter also served as acting deputy chief for the Major Frauds Section. Previously, he worked as a trial attorney within the U.S. Department of Justice's Fraud Section, where he served as a member of the Health Care Fraud Strike Force and prosecuted violations of the federal Anti-Kickback Statute and other healthcare offenses.

"Alex has proven himself as a leading white-collar prosecutor in Los Angeles with great trial experience. He already has a reputation as the one to call for major healthcare fraud actions on the West Coast," said Mark Bartlett, chair of Davis Wright Tremaine's white-collar, investigations, and government controversies practice. "He immediately deepens the bench of our white-collar practice and provides a great complement to our healthcare group as it continues to grow across California."

"I'm looking forward to putting the insights I've gained during the last eight years as a federal prosecutor to work for DWT's clients in healthcare, technology, and financial services. With the anticipated uptick in government enforcement actions and False Claims Act cases, I am well-suited to help clients navigate this difficult regulatory environment," said Porter. "The firm's strengths in white-collar and healthcare work made DWT an obvious destination for me."

During his time in government, Porter tried seven white-collar federal jury trials and handled multiple appeals in the U.S. Court of Appeals for the 9th Circuit. Previously, he practiced as a litigation associate at Irell & Manella LLP in Los Angeles, focusing on white-collar criminal defense and securities litigation. There he represented corporations and executives in complex civil litigation and government investigations, including the former CEO of a Fortune 100 company in defense of multiple shareholder class action securities lawsuits and an SEC enforcement action. He joined Irell & Manella following a federal clerkship in the Central District of California. Porter received his undergraduate degree from the University of San Francisco, summa cum laude, and his law degree from the University of Southern California.

For more information, visit www.dwt.com .

DENTONS RODYK ANNOUNCES PARTNER APPOINTMENT

Dentons Rodyk announces the promotion of Vanessa Tok to Partner

SINGAPORE— 05 May, 2021: Dentons Rodyk is proud to announce the promotion of Vanessa Tok from Senior Associate to Partner, with effect from 1 May 2021.

Vanessa joined the firm's Litigation and Dispute Resolution Department in 2014, and she handles a broad range of contentious and non-contentious civil, criminal and commercial litigation matters.

She has advised and acted for a wide spectrum of clients, ranging from corporate entities to high net worth individuals, in complex matters involving employment and labour-related disputes, non-compete disputes, medical negligence and personal injury disputes, insurance disputes, disputes relating to misuse of confidential information, contractual disputes, shareholder disputes, debt recovery and enforcement matters, criminal matters, as well as disputes involving breach of directors' and fiduciary duties.

For additional information visit www.dentons.rodyk.com

HAN KUN ENHANCES FRM'S PATENT AND IP EXPERTISE

BEIJING - 07 May, 2021: Han Kun Law Offices is pleased to announce that Dr. Li Ying has recently joined the firm, further strengthening Han Kun's IP practice. She will mainly be based in the firm's Beijing office.

Dr. Li's expertise covers patent prosecution, invalidation and litigation, patent searches, patent transactions, and other IP-related counseling. She has extensive experience in providing a range of legal services to both domestic and multinational clients and has assisted many industry-leading clients in obtaining patents in China. Prior to joining Han Kun, Dr. Li practiced for 16 years with CCPIT Patent and Trademark Law Office, where she was a group leader for 9 years.

Dr. Li's practice covers a variety of legal services, such as patent mining, drafting, and responding to office actions, prior art searches, freedom-to-operate (FTO) searches and analysis, and consulting. Additionally, Dr. Li has extensive experience using the STN database in FTO searches related to small molecule drugs and biological macro-molecules such as proteins and nucleic acids. Dr. Li has successfully represented many clients before the China National IP Administration and the courts in various patent invalidation and administrative litigation cases. She has taken charge of many large and complex cases and is widely recognized and trusted by her clients for obtaining excellent results and for her excellent communication skills.

Dr. Li received a Ph.D. in Microbiology and Biochemical Pharmacy in 2005 from the Institute of Medical Biotechnology, Peking Union Medical College. Prior to that, she received both her bachelor's degree and MSc in Microbiology and Biochemical Pharmacy from Jilin University and Shenyang Pharmaceutical University as part of a joint program in 1999 and 2002, respectively.

Dr. Li is a member of the PRC Patent Bar and has obtained PRC bar qualification. Her working languages are Chinese, English, and Japanese.

We believe that the addition of Dr. Li Ying will further boost the firm's IP practice capabilities and competitiveness.

For more information visit us www.hankunlaw.com

ARIAS

NICARAGUA ADVISES THE LARGEST PLACEMENT OF GREEN BONDS IN CENTRAL AMERICA AND THE CARIBBEAN

MANAGUA - 05 May, 2021: CMI Energy, of the CMI Latin American family corporation, financed the placement of US$700 million in green bonds, this being the largest placement of green bonds in Central America and the Caribbean. The successful transaction was executed within the celebration of CMI's 100th anniversary.

This transaction implicates CMI Energy's commitment to make sustainable investments and contribute to the reduction of GHG emissions, decarbonization and diversification of the regional energy network. It is the largest green bond placement made by a renewable energy company in Central America and the Caribbean to date and marks CMI Energy's entry into the international capital market.

The 4 eligible categories, covered under green bonds, which have aligned specific SDS (Sustainable Development Goals), are:

- Renewable energy: Renewable energy and climate action
- Energy efficiency: Renewable energy and climate action
- Green Buildings: Innovation and Infrastructure and Sustainable Cities and Communities
- Clean transport: Sustainable cities and communities

At Arias, as transaction advisers we carry out the corporate due diligence of contracts and regulations of Eolo Nicaragua, S.A. (as guarantor and applicant of the Transactions) and other related companies in Nicaragua. We advised on all the necessary documentation for the closing of the Transactions and afterwards to safeguard the interests of both parties, both the issuer and debtor as well as joint brokers and borrowers, all adjusted to local regulations. In addition, we provided advice on tax, regulatory and corporate matters, among others. Our team was also involved in the reviewing, advice and negotiations for the repayment terms of a current debt of the Borrower and the release of different guarantees and additionally, and we prepared the security agreement on the shares of Eolo Nicaragua, S.A. as a guarantee of the Transactions. We have a team of lawyers with vast experience in all areas of law, a multidisciplinary group that carried out this transaction in the best way possible.

The transaction comprised the following 2 parts:

(i) an issuance by Investment Energy Resources Limited of US $ 700,000,000,000.00 (principal amount) at an interest rate of 6.250% guaranteed maturing in 2029, and

(ii) a guaranteed credit in favor of Investment Energy Resources Limited for an amount of US $300,000,000.00, to refinance all its financial debt for the project.

Our lawyers involved were: Partners: Ana Teresa Rizo and Gustavo-Adolfo Vargas; Associates: Maryeling Guevara, Rodrigo Ibarra and Jeannette Franchini; Paralegal: Alejandro Grijalba.

We thank our client, CMI Energy, for trusting us in such a relevant transaction to the region and congratulate our multidisciplinary team of lawyers who with their work and effort MAKE THINGS HAPPEN. Congratulations!

For additional information visit www.ariaslaw.com

BAKER BOTTS

REPRESENTS ENLINK MIDSTREAM, LLC IN ACQUISITION OF AMARILLO RATTLER, LLC

DALLAS - 05 May 2021: Deal Description: On April 30, 2021, a subsidiary of EnLink Midstream, LLC ("ENLC") acquired all of the equity interests in Amarillo Rattler, LLC, which owns a gathering and processing system in the Midland Basin. The purchase price for the transaction was $60 million (including $10 million to be paid in 2022) and an earnout capped at $15 million based on Diamondback Energy's drilling activity on dedicated acreage above historical levels.

Baker Botts represented ENLC in the acquisition. Baker Botts Lawyers / Office Involved: Corporate: Preston Bernhisel (Partner, Dallas); Nic O'Brien (Associate, Dallas); Derek Gabriel (Associate, Dallas); Tax: Stephen Marcus (Partner, Dallas); Jordan Hahn (Senior Associate, Dallas); Environmental: Aileen Hooks (Partner, Austin)

For more information, please visit www.bakerbotts.com

CAREY

ASSISTS LENDERS GROUP IN ATACAMA WIND FARM US$230 MILLION FINANCING

SANTIAGO - 30 April, 2021: Carey (Santiago) assisted a national and international lenders group (The Bank of Nova Scotia, KfW IPEX, ING Capital, MUFG, Sumitomo Mitsui and Instituto de Crédito Oficial) with its US$217 million loan to a local subsidiary of Spanish renewables group Ibereólica to fund the operation of a wind farm in northern Chile. Scotiabank lent the remaining US$14 million as a VAT loan. The deal closed on 25 March. The project is a joint venture between Spanish power producers Global Power Generation and Grupo Ibereólica. It holds a 20-year power purchase agreement (PPA) with various Chilean distribution companies.

Local Counsel to The Bank of Nova Scotia, KfW IPEX, ING Capital, MUFG, Sumitomo Mitsui and Instituto de Crédito Oficial -Carey - Partner Felipe Moro and associates Fernando Noriega, Diego Lasagna, José Tomás Hurley, Nadia Jara and Rafael Mackay in Santiago.

For additional information visit www.carey.cl

PACIFIC RIM ADVISORY COUNCIL

PRAC-Let's Talk!

Join us in 2021 for our monthly live one-hour virtual meetings

May 31 / June 1, 2021

Session Topic: "The Art and Science of Client Satisfaction"

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

Registration required

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DENTONS RODYK

ADVISING CEL DEVELOPMENT PTE LTD, SINGHAIYI INVESTMENTS PTE. LTD. AND CHUAN INVESTMENTS PTE. LTD. JOINTLY IN THEIR ENBLOC ACQUISITION OF MAXWELL HOUSE

SINGAPORE – 07 May 7, 2021: Dentons Rodyk is acting for CEL Development Pte. Ltd., SingHaiyi Investments Pte. Ltd. and Chuan Investments Pte. Ltd. (collectively the "Joint Tenderers") jointly in their enbloc acquisition of the development known as Maxwell House at 20 Maxwell Road, Singapore 069113 (the "Property") for S$276.8 million.

The Property is currently zoned "commercial" with a plot ratio of 4.3. It is the intention of the Joint Tenderers to seek approval from the Urban Redevelopment Authority to redevelop the Property into a "Commercial and Residential" mixed-use development with a gross plot ratio of at least 5.6 and gross floor area ("GFA") of at least 21,746,48 square metres, for which the commercial component will be up to 20% of the total GFA (the "Planning Criteria").

The purchase of the Property is subject amongst others to the following being obtained:

- a sale order approving the enbloc sale of the Property,
- approval from the President of the Republic of Singapore as Lessor pursuant to the State Lease,
- an outline planning permission for the Planning Criteria; and
- in-principle approval from the Singapore Land Authority for a lease top-up in respect of the Property.

Senior Partner Liat Yeang Lee leads, supported by Partner Shang Chai Chua and Senior Associate Yi Rong Ang.

For additional information visit www.dentons.rodyk.com

GIDE

ADVISES BLACKROCK REAL ASSETS ON ACQUISITION OF 9/11 VILLARS, IN THE HEART OF PARIS' 7TH ARRONDISSEMENT, FOR ITS "CORE" REAL ESTATE FUND

PARIS - 10 May 202: Gide advised BlackRock Real Assets on the acquisition of 9/11 Villars, in the heart of Paris' 7th arrondissement (district), from the family investment holding company EXIMIUM for its Core real estate fund, BlackRock Eurozone Core Property Fund, which also holds a diversified portfolio in Germany, the Netherlands and Finland.

This asset, steeped in history and fully and recently restructured and labelled, benefits from a prime location in one of the most sought-after neighborhoods in Paris. It comprises two adjacent buildings and is fully leased to the Franco-American school The Lennen Bilingual School, historically located in the 7th arrondissement.

The Gide team was comprised of partner Laurent Modave, counsel Alexandre Bochu, associates Julien Aillet and Alan Sournac, for structuring and tax law aspects, and partner Stephane Puel, and Perrine Soupault, associate, for regulatory and structuring aspects of the investment fund.

BlackRock Real Assets was also advised by De Pardieu Brocas Maffei, on real estate law aspects, as well as by the notary firm C&C and Theop on technical and environmental aspects.

Eximium was advised by the notary office Barnasson and Alex Bolton.

For additional information visit www.gide.com

HAN KUN

ADVISES WATERDROP INC. ON ITS U.S. IPO

06 May, 2021

Han Kun has advised and acted as the PRC counsel to Waterdrop Inc. on its U.S. initial public offering and listing on the New York Stock Exchange under the symbol "WDH".

Waterdrop is a leading technology platform dedicated to insurance and healthcare service with a positive social impact. Through its medical crowdfunding and insurance marketplace, Waterdrop has built a massive social network of protection and support for people, raising awareness of insurance and ultimately providing insurance and healthcare service to consumers in China.

For additional information visit www.hankunlaw.com

HOGAN LOVELLS

ADVISES GP STRATEGIES CORPORATION ON SALE OF ETAPRO TO TOSHIBA

BALTIMORE and NEW YORK, 11 May 2021: Hogan Lovells is representing GP Strategies Corporation, a provider of organizational and technical performance solutions, in the sale of its EtaPRO business to Toshiba America Energy Systems Corporation (TAES), a global manufacturer of energy solutions.

The value of the transaction is confidential. The purchase includes the EtaPRO® trademarks and intellectual property rights, all customer contracts related to EtaPRO®, and all of its related services such as maintenance and remote monitoring. Upon closing, TAES will integrate EtaPRO® employees into its operations and will continue operating existing EtaPRO® office locations. Closing of the transaction is subject to customary closing conditions, and is anticipated to occur by the third quarter of 2021.

The Hogan Lovells team was led by M&A partners Kelly Tubman Hardy, Michael Kuh, senior associate Emma Dowell and associate Joely Grieff.

For additional information visit www.hoganlovells.com

KOCHHAR & CO.

ADVISES KIRLOSKAR OIL ENGINES LIMITED ON BUSINESS ACQUISITION OF M/S OPTIFLEX

NEW DELHI - 01 May, 2021: The Firm was the preferred counsel for M/s. Kirloskar Oil Engines Limited ("KOEL"), a listed company and a leading manufacturer of diesel engines and generating sets, in its acquisition of the business of the partnership firm M/s Optiflex which is engaged in manufacturing and selling of wires, cables etc. KOEL, through its subsidiary, acquired the business of M/s Optiflex by way of a slump sale.

The Kochhar team comprising its Senior Partner Rajarshi Chakraborty, Partner Sameena Jahangir, Senior Associate Tavishi Chandra and Associate Sneha Bhagwat advised KOEL on all aspects of the transaction including conducting a due diligence, drafting of the transaction and ancillary documents and assisting in the pre-closing, closing and post-closing formalities.

For additional information visit www.kochhar.com

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NAUTADUTILH

ASSISTS THOMAS H LEE PARTNERS AND AUTOMATE HOLDING ON $2.8 BILLION INVESTMENT BY SOFTBANK IN AUTOSTORE

LUXEMBOURG – 20 April, 2021: NautaDutilh Avocats Luxembourg, alongside Kirkland & Ellis LLP (Chicago, USA), advised Thomas H. Lee Partners in connection with the sale to Softbank of 40% of shares in AutoStore for $2.8 billion, from funds affiliated with Thomas H. Lee Partners, L.P. (“THL”) and EQT Private Equity (“EQT”), among other shareholders. THL will continue to be AutoStore’s majority shareholder, valuing AutoStore at a $7.7 billion enterprise value. The transaction closed on 13 April 2021.

About Thomas H. Lee Partners: Thomas H. Lee Partners, L.P. (“THL”) is a premier private equity firm investing in middle market growth companies exclusively in three sectors: Financial Services, Healthcare and Technology & Business Solutions. THL couples deep sector expertise with dedicated internal operating resources to transform and build great companies of lasting value in partnership with management. The Firm’s domain expertise and resources help to build great companies with an aim to accelerate growth, improve operations and drive long-term sustainable value.

About AutoStore: Founded in 1996, AutoStore is a robotics technology company that invented and continues to pioneer Cube Storage Automation, the densest storage technology. Its focus is to combine software and hardware with human capabilities to further develop the future of efficient warehouses.

NautaDutilh's Corporate team consisted of Greet Wilkenhuysen, David Al Mari and Frédéric Boidin.

Partner Greet Wilkenhuysen who led the team, comments: "special thanks to David and Frederic who assisted in this very fast moving transaction alongside Kirkland & Ellis."

For additional information visit www.nautadutilh.com

SKRINE

ACTS FOR IPC MALAYSIA BV IN ACQUISITION OF CARIGALI’S INTEREST IN BERTAM PSC

KUALA LUMPUR - 10 May 2021: Skrine is pleased to share that our Oil & Gas team led by Partner Fariz Abdul Aziz and supported by Senior Associates Karyn Khor and Tan Wei Xian acted as lead counsel for IPC Malaysia BV, a wholly owned subsidiary of International Petroleum Company, in respect of the withdrawal of PETRONAS Carigali from the Bertam Production Sharing Contract and the acquisition by IPC Malaysia of Carigali’s participating interest in the Bertam PSC, a historic transaction that represents the first ever withdrawal from an ongoing PSC by Carigali and the first time a foreign operator has secured a 100% participating interest in a Malaysian PSC.

A media report on this transaction is available at: https://www.offshore-mag.com/regional-reports/asia/article/14202733/international-petroleum-corp-takes-outright-ownership-of-bertam-oil-field-offshore-malaysia

For additional information visit www.skrine.com

PRAC EVENTS

UPCOMING EVENTS

PACIFIC RIM ADVISORY COUNCIL

Like millions around the globe, the COVID-19 pandemic has impacted our members and how we work.

We pivot. We adapt.

We continue to meet and talk virtually face to face

Across the miles, oceans and regions

In varying places and hours of the day and night.

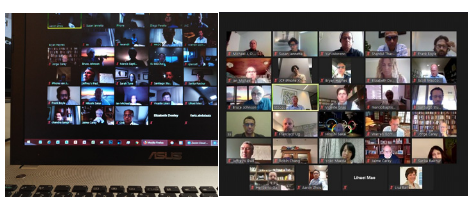
It isn't the same . We can all admit to that.

What remains the same is our commitment to continue forming new bonds

and strengthening our long-standing ties with our friends and colleagues around the world.

Together, we will see it through.

PRAC-Let's Talk!



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Registration required

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PRAC LET'S TALK!

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

NEW DELHI - 17 April, 2021: PRACites around the globe gathered online for PRAC @ New Delhi micro-conference hosted by member firm KOCHHAR & CO. Congratulations to the entire Kochhar Team for a successful e-hosting!

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

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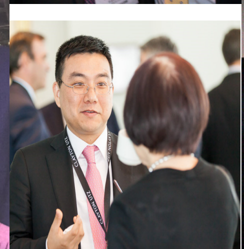


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ADVOGADOS

Argentina initiates antidumping investigations on imports of Ball Bearings from India and Glass Platelets from Turkey and Thailand.

On February 26, 2021, the Ministry of Productive Development of Argentina initiated, by means of Resolution No. 47/2021[1], an anti-dumping investigation in relation to exports from Thailand and Turkey to Argentina of glass platelets, with or without support, for mosaics or similar decoration, which are classified under Mercosur's Common Nomenclature (MCN) tariff position 7016.10.00.

The initiation of the investigation was requested by local manufacturer MURVI S.A. The alleged dumping margin for the opening of the investigation was estimated at 271.56% in relation to exports from Turkey, and 981.69% in relation to exports from Thailand.

Likewise, on the same date, the Ministry of Productive Development by means of Resolution No. 46/2021[2] initiated an anti-dumping investigation in relation to exports from India to Argentina of ball bearings, radial, single row ball bearings, of an external diameter of 30 mm or more but not exceeding 120 mm, and in excess of 0.025 kg/unit, (with the exception of ball bearings such as RST and extended inner rings of local production), which are classified under MCN's tariff position 8482.10.10. The initiation of the investigation was requested by local manufacturer SKF ARGENTINA S.A. The alleged dumping margin to open the investigation was estimated at 154.78%.

Companies located in Thailand, Turkey or India exporting the abovementioned products to Argentina, as well as local companies importing them, can appear before the Ministry of Productive Development and request the respective questionnaires to participate in these antidumping investigations.

[1] The Resolution is available at https://www.boletinoficial.gob.ar/detalleAviso/primera/241253/20210226

[2] The Resolution is available at: https://www.boletinoficial.gob.ar/detalleAviso/primera/241252/20210226

Practice Areas Antitrust

Lawyers:

Julián Peña
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NautaDutilh

Public Procurement

Belgium

When does the lease of a building by a public authority constitute a public procurement contract?

The Court of Justice reshuffles the deck

Friday, 23 April 2021

Under European public procurement law and its Belgian implementing legislation, the acquisition and lease of existing buildings or other immovable property are in principle excluded from the scope of the public procurement rules.[1]

In recent years, however, discussion has arisen over the concept of "existing buildings", particularly in the context of the lease by public authorities of buildings to be constructed. Does this type of transaction fall outside the scope of public procurement law or should it be regarded as a public works contract, on the ground that it concerns the construction of a building *"corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work"*?[2]

In October 2018, the Belgian Council of State recharacterised as a public procurement contract the lease by the Brussels-Capital Region of the Silver Tower, based on a number of factors indicating decisive influence by the Region on the nature or design of the building to be constructed. The Council of State ruled that this was the case even if the future construction was a "standard" office building, likely to meet the needs of both public and private tenants.[3]

This decision gave rise to ample discussion, and therefore both public authorities and property developers were eagerly awaiting a ruling by the Court of Justice of the European Union on this issue. They need wait no longer. A judgment was handed down on 22 April 2021 in *Commission v Austria*.[4]

In 2012, the City of Vienna concluded a long-term lease, without a competitive tender, for an office building to be constructed. The Commission launched infringement proceedings against the Austrian government, finding that the transaction constituted a public works contract.

In his opinion,[5] Advocate General Campos Sánchez-Bordona sided with the Commission and concluded that the contract should be reclassified as a procurement contract for several reasons: (i) at the time the contract was concluded, the developer had not begun any construction works and did not even have a building permit; (ii) the architectural plans had undergone significant changes at the request of the city; (iii) the city had appointed its own experts to monitor execution of the project, alongside the owner; (iv) had the contract not been signed, the building would not have been constructed; and (v) the building was to be almost entirely occupied by the city.

Remarkably, the Court of Justice disagreed with the Advocate General.

First, the Court expressed the general principle – for the first time in its case law – that decisive influence on the design of a building can be found if it can be demonstrated that influence is exercised over the architectural structure of the building, such as its size and external and load-bearing walls. Stipulations concerning interior fittings may be regarded as indicative of decisive influence only if they stand out due to their specificity or scale.

Subsequently, with regard to the building in question, the Court noted the following:

- At the time the lease agreement was negotiated, the architectural design of the building was fully complete.
- With regard to the lack of a building permit, the Court noted that large-scale architectural projects are usually let well before the detailed construction plans are finalised and the application for a permit is filed.
- The long term of the lease is not a relevant criterion.
- It is not unusual for a tenant to take steps to ensure that it is possible to move into the premises on the agreed date and to use specialised third parties to exercise control in this regard.
- The building was designed as a conventional office building, without targeting specific tenant groups or needs.
- It is customary for a tenant, whether private or public, seeking to lease an office building to specify certain wishes as to the characteristics the site should have. Such requests are not in themselves sufficient to recharacterise a lease agreement as a works contract.
- The city's requirements did not exceed what a tenant would usually require and did not demonstrate a

decisive influence on the design of the building.

It seems to follow from this judgment that a lease may only be reclassified as a public works contract if the requirements imposed by the public authority go beyond what a lessee can usually request with regard to a conventional office building.

The Court has thus provided public tenants with unexpected room for manoeuvre. It should be noted, however, that the Court did not rule here on the general principles of European law (transparency, equality and competition) which require the organisation of a competitive tendering procedure even for contracts that do not qualify as procurement contracts. It is therefore safe to assume that public real estate transactions will remain on the judicial radar.

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[1] Art. 10(a) of Directive 2014/24/EU of 26 February 2014 on public procurement; Art. 28 §1(1) of the Act of 17 June 2016 on public procurement.

[2] Art. 2(1)(6) of Directive 2014/24/EU; Art. 2(18) of the Act of 17 June 2016.

[3]Council of State, 23 October 2018, No. 242.755, *Fedimmo*.

[4]CJEU, 22 April 2021, C-537/19, *Commission v. Austria*.

[5] October 22, 2020.

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Brazilian Superior Court of Justice decides for annulment of the Power Bull trademark registration before BPTO

On April 13, 2021, the Brazilian Superior Court of Justice (STJ) unanimously decided for the provision of the Special Appeal No. 1,922,135 filed by Red Bull, regarding the improper association of its trademark Red Bull with the Power Bull trademark.

STJ ultimately decided to annul the registration of the Power Bull trademark before the Brazilian Patent and Trademark Office (BPTO) based on item XIX of article 124 of the Brazilian Industrial Property Law (Law No. 9,279/1996), which prohibits the registration of trademarks composed by reproduction or imitation, in whole or in part, of a registered trademark, to indicate an identical, similar or equivalent product or service, likely to cause confusion or association with another's trademark. Despite the lack of visual similarity between such trademarks, according to STJ's understanding, the Power Bull trademark would be a partial reproduction of the Red Bull trademark to identify similar products, which may cause confusion before the public or risk of improper association.

This decision reinforces the importance of the protection and monitoring of trademarks, in order to ensure the investment and efforts spent by their owners on the creation, development and dissemination of their trademarks, in addition to guarantee trademark protection to ensure the trademark owner the exclusive right to use its trademark, this measure also serves to avoid unfair competition and passing-off.

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BLOG

Canadian Government Proposes New CBCA Standard for Electing Directors (Updated)

May 11, 2021

Written by Denise Bright, Will Osler, Kristopher Hanc and Steven Bodi

This blog was originally published on May 4, 2021, and has been updated to reflect an announcement on May 6, 2021, that the new regulations will not come into force on July 1, 2021.

The federal government has introduced proposed regulations that would, among other things, change the director election process for certain corporations established under the *Canada Business Corporations Act* (CBCA). Following the end of the comment period on April 27, 2021, the government announced that the proposed regulations will not come into effect on July 1, 2021, as originally published. The government indicated that the delay was so that the changes to the director election procedure minimally disrupt the election of directors during this year's proxy season. A new date has not been confirmed; however, given the number of corporations with a calendar year end it is likely, but not guaranteed, that the Proposed Regulations will be in place for next year's annual meetings for many corporations. Once effective, the proposed regulations will require: (i) annual board elections; (ii) individual voting (i.e., slates will no longer be permitted); (iii) majority voting; and (iv) that shareholders be permitted to vote for or against each nominee (as opposed to a "withhold" vote).

Background

The proposed regulations implement changes contemplated under the *Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act* (Bill C-25). We have previously written about the proposed changes to the CBCA when Bill C-25 was introduced in 2016 and when it received Royal Assent in 2018. The key changes in the proposed regulations relate to the election of directors for distributing corporations—generally speaking, a public company—and will generally align the CBCA with the rules for issuers listed on the Toronto Stock Exchange (TSX). The proposed regulations also introduce new rules regarding retention of documents and certain other technical amendments to the CBCA.

Director Elections

Annual Elections

The CBCA currently requires that an election of directors be held once every three years and that a director's term expire within three years from the annual meeting at which the director was elected. Once the proposed regulations take effect, the board of directors of all distributing corporations will be required to be elected at each annual meeting of shareholders. This annual election requirement aligns with the rules applicable to TSX-listed issuers under the TSX Company Manual.

Individual Voting

Under the proposed regulations, the directors of distributing corporations will be required to be elected by individual voting. Slate voting will no longer be permitted for distributing corporations. The CBCA currently does not require slate or individual voting unless the corporation's constating documents have adopted such a system of voting. This change will not impact issuers listed on the TSX, as the applicable TSX rules require that shareholders vote on the election of each nominee individually.

Majority Voting

The CBCA currently allows shareholders to vote "for" or "withhold" their votes in respect of nominee directors. Shareholders are not provided the opportunity to vote "against" nominee directors, and the "withheld" votes are not counted in the tally of votes. As a result, a nominee director can be elected if only one vote is cast "for" such nominee, even if the majority of shareholders are opposed to the election of such nominee director. Under the new governance structure, nominees for the board of a distributing corporation must be elected by majority voting in an uncontested election (i.e., where only one nominee is proposed for each position). In an uncontested election, if a nominee fails to receive more votes "for" than "against", then that nominee cannot be appointed to the board, subject to limited exceptions to meet statutory requirements with respect to Canadian residents or non-employee directors.

This requirement aligns with the requirement for TSX-listed issuers (unless the issuer is majority-controlled) to have a majority voting policy that requires a director nominee to resign if they do not receive more votes "for" than votes "withheld" from that nominee's election. As drafted, the proposed regulations would also apply to majority-controlled corporations under the CBCA. If passed, the proposed regulations would effectively negate the need for majority voting policies for CBCA distributing corporations.

Voting "Against"

Under the CBCA, shareholders will now be able to vote "for" or "against" a nominee instead of the current scheme of voting "for" or to "withhold" the voting of shares. This new requirement under the CBCA differs from applicable Canadian securities laws, which require that a form of proxy allow shareholders to vote "for" or "withhold" their votes for the election of directors. Applicable securities laws contain an exemption from this requirement if: (i) the form of proxy complies with the laws pertaining to proxy solicitation in the statute under which the issuer is formed or continued and (ii) the statutory requirements are substantially similar to the securities laws requirements. The Canadian Securities Administrators have not released guidance confirming whether the new voting scheme under the CBCA is "substantially similar" to proxy requirements under securities laws.

Other Changes

The proposed regulations also introduce certain technical changes to the regulations under the CBCA and other legislation affected by Bill C-25 (i.e., the *Cooperatives Act* or *Canada Not-for-Profit Corporations Act*). These "housekeeping" changes relate to minor changes to the name granting rules for corporations, fixing certain time periods, and document retention by the "Director" or other government body responsible for administering the legislation.

The proposed regulations will change the time period for sending shareholder proposals to public companies under the CBCA. If enacted as written, shareholder proposals will need to be submitted within the 60-day timeframe between 90-150 days before the anniversary of the previous annual meeting of shareholders. This is a change from the current deadline under the CBCA of at least 90 days before the anniversary date of the notice of meeting provided in respect of the previous annual meeting.

The current default time period the Director must retain most documents filed with the government is six years. The proposed regulations will modify the blanket six-year retention period based on the type of disclosure document: charter documents (e.g., articles, bylaws, and lists of directors) will need to be kept indefinitely; annual returns will be required to be kept for two years; financial statements for three years; and proxy circulars (including diversity disclosure) for six years. Upon dissolution of a corporation, the person specified must retain the corporate records for six years.

Key Takeaways

All distributing corporations established under the CBCA will now be required to follow governance practices for electing directors which are generally consistent with the current rules of the TSX. Public companies will now be required to elect all directors annually and to permit shareholders to vote separately "for" or "against" each nominee, and directors will be required to be elected based on a majority voting standard. These new standards apply broadly to distributing corporations governed by the CBCA, including those listed on the TSX Venture Exchange, Canadian Securities Exchange, and NEO Exchange. Non-distributing companies—generally, private companies—will be permitted to adopt the new corporate governance standards or continue under the previous rules governing corporations established under the CBCA.

Certain amendments to the CBCA proposed by Bill C-25 with respect to the availability of notice-and-access procedures of providing documents to shareholders have yet to be implemented. It is also worth noting that the corporate governance standards proposed for CBCA distributing corporations will not apply to public companies incorporated under provincial statutes and which are listed on an exchange other than the TSX. We will monitor whether this change by the federal government results in similar modifications to provincial corporate legislation.

Bennett Jones has extensive experience in corporate and governance matters. We will be monitoring developments for the proposed regulations, including the updated date that these are expected to come into force. If you have questions regarding the corporate governance impacts of the proposed regulations, please contact a member of our Capital Markets or Corporate Governance groups.

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Posted on: April 15, 2021

COURT OF APPEAL CONFIRMS REPLACEMENT COST AVAILABLE WITHOUT REBUILD

By: Ryan A. Shaw

In most contexts, insureds will only be entitled to replacement cost value ("RCV") under a property insurance policy if in fact they rebuild. However, in the context of a legal action that is not always the case. The Court of Appeal's recent decision in *Alvaro v. InsureBC (Lee & Porter) Insurance Services Inc*., 2021 BCCA 96 ("*Alvaro*"), affirms that in appropriate circumstances insureds may be entitled to RCV even when they don't rebuild. The decision also serves as a reminder to brokers of the risks involved at the time of policy placement or renewal and that homeowners can be found contributorily negligent for failing to read their policy.

THE FACTS

The appellant homeowners (the "Homeowners") owned a number of rental properties, which they insured through the defendant broker. They evicted a tenant from one of the properties without informing the broker. The dwelling on that property was destroyed by fire when it was vacant and undergoing renovations. The insurer denied coverage on the grounds of a vacancy exclusion in the insurance policy (the "Policy").

The subject property had been insured through the same broker and insurer for at least six years prior to the fire. The insurance coverage was renewed annually and last renewed approximately eight months prior to the fire. While renewing the Policy, the broker learned that the property was being used as a rental property but failed to advise the Homeowners that the Policy contained a vacancy exclusion. The Homeowners were not sophisticated and had experienced difficulty understanding the terms of the insurance coverages obtained for them. They did not read the Policy wordings and were therefore not aware of the vacancy exclusion. They claimed they would have rebuilt the dwelling had there been coverage afforded under the Policy.

The Homeowners sued the broker for failing to bring the vacancy exclusion in the Policy to their attention.

THE RULING

The trial judge found the broker breached its duty by failing to specifically inform the Homeowners of the vacancy exclusion at the time of the Policy renewal, particularly given the broker knew the properties in question were rental units which implied periods of vacancy between tenants. On the issue of damages, the trial judge turned to the provisions of the Policy to determine what position the Homeowners would have been in had effective coverage been obtained. The trial judge noted that under the Policy, the Homeowners could only choose RCV if they actually rebuilt, otherwise they would be entitled to the actual cash value ("ACV") of the destroyed property. The trial judge found that because the Homeowners did not rebuild, they were only entitled to the ACV of the property, which in this case was approximately $100,000 less than the RCV. The trial judge dismissed the claim of contributory negligence against the Homeowners on the basis that their failure to read the Policy did not cause their loss; he found they would not have understood the coverages and/or lack of coverage even if they had read the Policy.

The Homeowners appealed alleging the trial judge erred in his assessment of damages based on ACV. The broker cross appealed alleging the trial judge erred in dismissing the argument the appellants were contributorily negligent.

The Court of Appeal allowed the appeal on the damages issue finding that the trial judge committed a legal error in his damages analysis because he asked the wrong question. The Court ruled that where, as in this case, insureds do not have effective coverage, the simple fact they have not replaced the property does not disentitle them from seeking to be indemnified by the agent responsible for the loss of the right to opt for RCV. The Court noted that, as in all contract cases, the court must examine the evidence to determine what position the insureds would have occupied had they obtained that for which they bargained. The Court found the evidence adduced at trial by the Homeowners was sufficient to show that they would have opted to replace the dwelling if they had effective coverage. The fact that they chose not to rebuild without coverage was immaterial. Accordingly, the damages award at trial based on ACV was set aside and the Court substituted a significantly higher award based on RCV.

In dismissing the broker's cross-appeal, the Court confirmed that insureds may be found at fault for failing to read an insurance policy, but noted that will more likely be found where the problem arises from inadequate values rather than gaps in coverage. The Court upheld the trial judge's ruling on the basis that he was in the best position to assess the parties' relative responsibility based on hearing and weighing the evidence of their comparative experience, sophistication and knowledge of insurance.

PRACTICAL CONSIDERATIONS

Alvaro serves as an important reminder to insurance brokers of the risks involved at the time of policy placement and renewal. To mitigate against these risks, brokers should:

1. Obtain all of the necessary facts from clients that could affect the coverage they require;

2. Review key insurance policy wordings with clients before placement and upon each renewal; and
3. Obtain written confirmation from clients that they are aware of and understand the contents of the policy and any relevant exclusions.

Alvaro is also a reminder that in claims brought against brokers a contributory negligence argument is always open where the insureds fail to read or understand the policy wordings. In such cases, it is important to investigate the personal circumstanchttps://www.rbs.ca/members/sohani/es of the insureds at an early stage to determine the relative strength of that argument.

Should you have any questions about this article, contact Insurance Lawyer, Ryan A. Shaw here.

May, 2021

NEW INFORMATION REQUIREMENT FOR PRODUCERS OF PRIORITY PRODUCTS IN THE CONTEXT OF THE EPR LAW

By means of Resolution No. 375, dated May 3, 2021, the Ministry of the Environment has instructed a new information request for producers of priority products, in the context of Law No. 20,920 on Waste Management, Extended Producer Responsibility and Recycling Promotion ("EPR Law").

Purpose

The information request is part of the obligations established for producers of priority products subject to recovery and valuation goals and obligation under the EPR Law, as well as for producers of priority products not subject to such goals or obligations, according to article 11 of the EPR Law.

Recipients

The information request is applicable to producers of the following priority products:

1. Lubricating oils
2. Electrical and electronic equipment
3. Batteries
4. Containers and packaging
5. Tires
6. Batteries
7. Newspapers and magazines

Obligation to report

Under this request, producers must inform, through the Registry of Emissions and Transfer of Pollutants (Registro de Emisiones y Transferencia de Contaminantes, RETC), the amount -units, cubic meters and/or tons- of priority products brought into the market, within the country, during the year 2020.

Deadlines

The information must be provided as of the publication of this resolution and until 2:00 p.m. of July 2, 2021.

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Private Equity Law

Analysis of Beijing's New QFLP Scheme

Authors: Lu RAN | Qing JING

Beijing is one of China's first QFLP pilot zones—second only to Shanghai, which announced its own QFLP pilot scheme at the end of 2010 and heralded QFLP pilot work in other cities. Beijing announced its QFLP policies as early as February 2011, making Beijing a pioneer city and providing guiding significance. In recent years, a new era of QFLP investment has arrived, owing to China's continuous opening-up policies and expanding foreign exchange reforms, together with the increase of China assets allocation by foreign investors. Zhuhai, Suzhou, Xiamen, Hainan, and Shenzhen have each issued or updated new QFLP policies to further attract foreign investment in China. Beijing officially released the *Interim Measures on the Pilot Scheme of Qualified Foreign Limited Partners in Beijing* on 6th May, 2021 (hereinafter referred to as the "**New QFLP Measures**"), which improves Beijing's current QFLP policies. In this article, we introduce and analyze the provisions and specific requirements of the New QFLP Measures.

Supervisory mechanism

The New QFLP Measures call for a "pilot joint review mechanism," which means the establishment and operation of QFLPs will be jointly supervised and examined by various regulatory authorities as follows:

1. The members of the pilot joint review work committee include the Municipal Financial Supervision Bureau, the Market Supervision Bureau, the Operations Department of the People's Bank of China, and the Beijing Branch of the State Administration of Foreign Exchange;

2. The pilot joint review office is established by the Municipal Financial Supervision Bureau;

3. The Municipal Financial Supervision Bureau, through the pilot joint review office, is responsible for daily affairs, and takes the lead in advancing pilot work, daily management and risk control, as well accepting application materials and other relevant documents and coordinating relevant pilot joint review committee members in reviewing application materials. The Municipal Market Supervision Bureau is responsible for coordinating and guiding the registration of pilot enterprises. The Operations Department of the People's Bank of China and the Beijing Branch of the State Administration of Foreign Exchange are responsible for the supervision and control of foreign

exchange registration, account opening, capital exchange, cross-border RMB transactions, and other matters related to the New QFLP Measures.

Requirements for pilot fund management enterprises and pilot funds

Under the New QFLP Measures, in principle, **pilot fund management enterprises** and **pilot funds** (collectively referred to as "**Pilot Enterprises**") should be registered and established in Beijing. The application requirements are as follows:

Pilot fund management enterprises (corporations and partnerships are both acceptable)	Pilot fund management enterprises are categorized into domestic fund pilot fund management enterprises and foreign-invested pilot fund management enterprises. 1. The controlling shareholder, actual controller, or executive partner of a private investment fund management enterprise shall be one of the following: a financial company (which is approved by the relevant national or regional regulator and holds a certificate issued by local regulators to engage in relevant financial services) or a management enterprise with fund AUM of not less than RMB 100 million or its foreign currency equivalent; 2. Private investment fund management enterprises or their shareholders operate normally, have sound governance structures and internal control systems, and have not been subject to disciplinary sanctions by judicial authorities or relevant regulatory agencies within the past three years; 3. At least two senior officers of a private investment fund management enterprises have at least three years' experience in equity investment or equity investment management with good personal credit records; 4. Private investment fund management enterprises that continue to operate shall register with the Asset Management Association of China ("**AMAC**") if they are so required in accordance with the current regulations; 5. Other terms required by pilot joint review members. **Han Kun Note: The New QFLP Measures allow for the domestic manager-foreign investor model, foreign manager-foreign investor model, and foreign manager-domestic investor model. Pilot fund management enterprises are required to have specified AUM and personnel headcounts, but not all are required to register with AMAC.**
Pilot funds (may be incorporated or organized as a partnership, or formed as a contractual fund)	1. A single fund shall not in principle be less than RMB 100 million (or its foreign currency equivalent), and a private investment fund management enterprise may subscribe for a certain proportion of the fund interests; 2. Other terms required by pilot joint review members;

	3. Newly-established pilot enterprises shall complete registration and filing formalities with AMAC in accordance with the prevailing provisions. **Han Kun Note: funds are subject to a minimum size threshold, i.e., RMB 100 million for each fund.**
Qualified limited partners of pilot funds	1. Institutions or individuals that have corresponding risk identification and tolerance capabilities as well as relevant investment experience; 2. Institutional investors shall have sound governance structures and well-developed internal controls and not have been subject in the past three years to disciplinary sanctions by national or regional judicial authorities or relevant regulatory agencies. In the case of foreign institutional investors, each shall possess net assets of no less than USD 5 million or its equivalent and make single investments of no less than USD 1 million or its equivalent. In case of domestic institutional investors, each shall possess net assets of no less than RMB 10 million and make single investments of no less than RMB 1 million; 3. With respect to domestic and overseas individual investors, each shall possess net financial assets of not less than RMB 3 million and possess financial assets of not less than RMB 5 million or have average annual income of not less than RMB 500,000 over the past three years, and make single investments of not less than RMB 1 million; 4. Other terms required by pilot joint review members. **Han Kun Note: Domestic institutional investors are subject to the same requirements as domestic qualified investors of private investment funds. Foreign institutional investors are subject to stricter requirements than domestic institutional investors. Domestic and foreign individual investors are subject to higher asset requirements than domestic qualified individual investors of private investment funds.**
Use of capital converted from foreign exchange settlement	1. Equities of non-listed companies; 2. Ordinary shares privately issued and traded by listed companies (including new private share issuances, block trades, negotiated transfers, etc.), preferred shares convertible to ordinary shares, shares converted from debt and convertible bonds, and participation as existing shareholders in private placements by listed companies; 3. Mezzanine investments, investments in private bond issuances, and non-performing assets; 4. Investments in domestic private investment funds; 5. Other business permitted by laws and regulations. Without approval, pilot funds shall not use funds raised to make investments outside China.

	Han Kun Note: Permitted use of funds includes investments in primary and semi markets, mezzanine investments, investments in privately issued bonds, and non-performing assets. FOF investments and feeder vehicles are also permitted.
Use of foreign exchange settlement quotas	Where a pilot fund management enterprise initiates the establishment of pilot funds, the aggregate foreign exchange settlement quotas for all funds so established shall not exceed the foreign exchange settlement quota of the fund management enterprise as approved by the pilot joint review office. Unless otherwise provided, a pilot fund management enterprise may freely adjust the foreign exchange settlement quotas for each fund it establishes with the aggregated quotas for all funds capped by the foreign exchange settlement quota of the pilot fund management enterprise. **Han Kun Note: Pilot fund management enterprises may initiate the establishment of several pilot funds, and there is flexibility such that foreign exchange settlement quotas for each fund may be adjusted with the aggregate quotas of all funds capped by the foreign exchange settlement quota of the pilot fund management enterprise.**

In terms of procedures, the New QFLP Measures provide that parties eligible to submit applications for pilot enterprises are private investment fund management enterprises, their controlling shareholders, actual controllers, or executive partners. Application materials are submitted to the pilot joint review office, which will then decide whether to approve the applicant's application. If the pilot joint review office approves the application, it will issue to the applicant a review opinion with a stated pilot quota amount.

Information reporting and supervision during the term of the pilot enterprise

The New QFLP Measures stipulate rules for supervising pilot enterprises (particularly pilot funds) during their terms. The detailed rules are as follows:

Pilot fund management enterprises	1. Periodically submit to the pilot joint review office business reports (including funds settlement and investment income), fund custody reports issued by a custodian bank, annual financial reports audited by certified public accountants, and quarterly reports of major events occurring with investment operations, and copy relevant authorities.
Custodian bank	1. Keep complete information on the revenues and expenditures of pilot enterprise accounts for a period of 20 years for future inspection by the relevant authorities; 2. Supervise the use of funds in pilot enterprise escrow accounts, review the authenticity of the use of funds, and review the written opinions issued by the competent departments necessary for the investment. Reporting to the joint review

	office and other member units without delay upon detection of any irregularities with respect to the accounts; 3. Prepare a report on cross-border fund receipts and payments and foreign exchange settlement and sale of funds for the pilot enterprises each quarter, which shall be provided to the pilot joint review office and copied relevant authorities.

Conclusion

Beijing, among the pioneers of QFLP pilot cities, has always been a popular place for establishment of foreign equity investment enterprises. The city's attractiveness will be further strengthened by the promulgation of the New QFLP Measures. The New QFLP Measures will create a favorable and convenient investment environment for overseas investors in Beijing by following the policy's original regulatory logic while considering the actual needs of overseas investors and referring to QFLP policies in other regions. We will continue to watch the implementation of the New QFLP Measures and relevant implementation rules and hope it opens a path for more foreign investors to participate in the thriving Chinese private investment industry.

Important Announcement

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

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COLOMBIA SIGNS TRANSIT AGREEMENT THAT SIMPLIFIES THE FLOW OF KNOWLEDGE

Eight Ibero-American countries signed an agreement to facilitate the mobility between their territories of researchers, businessmen, entrepreneurs and internship students in order to promote the exchange of knowledge and scientific and intellectual creation, within the framework of the Ibero-American summit in Andorra.

The foreign ministers of the signatories (Spain, Portugal, the Dominican Republic, Brazil, Colombia, Nicaragua, Panama and Guatemala), endorsed the text shortly before the start of the XXVII Ibero-American Summit in Andorra.

"The circulation of talent within the Ibero-American space will favor the transfer of knowledge, scientific and intellectual creation and innovation," they said.

On the other hand, at the summit, the countries of Latin America and the Iberian Peninsula rejected the 'hoarding' of vaccines. The final declaration, agreed by the 22 countries of the bloc, requested "that access, purchase and distribution of vaccines (...) be universal" and that "hoarding" of vaccines be avoided.

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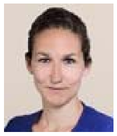
Anna Dias



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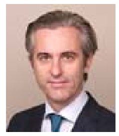

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European Commission Proposes New High-Potential Foreign Subsidies Control System

5 May 2021

Client Alert | European Commission | Foreign Subsidies

The European Commission is adopting today a proposal to investigate foreign subsidies that distort the internal market and to redress such distortions. This is an important step towards a true level playing field for companies in Europe, to ensure a healthy competitive environment benefitting consumers as well as European jobs. Today, an asymmetry exists as companies operating in the EU are subject to control when they benefit from subsidies from EU Member States, while control does not exist when such benefit comes from third countries. This new instrument is also innovative, as it combines well-established rules and practices from the World Trade Organisation (WTO) with principles stemming from EU State aid rules, public procurement regulation and merger control legislation.

The proposal is based on both Trade policy (Article 207) and Internal market policy (Article 114). It is comprehensive and covers three situations where foreign subsidies may distort the internal market: 1) subsidising the operations of a company operating in the EU, 2) subsidising the take-over of a EU company, and 3) subsidising a bidder in a public tender in the EU :

1. *Ex officio* review of foreign subsidies. A foreign subsidy to the operations of a company operating in the EU may be considered to distort the internal market when it improves its competitive position. That said, it is presumed that foreign subsidies for a total amount below EUR 5 million received over a period of 3 years are unlikely to distort the internal market. The definition of the foreign subsidies concerned is broad and inspired by an interesting combination of the relevant WTO and EU State aid definitions. When a distortion is identified, the Commission may accept commitments or impose measures, such as reducing capacity or market presence, refraining from certain investments, divestment of certain assets, or repayment of the foreign subsidy to the third country.
2. Concentrations. In the event of concentration, the requirement of a 'change of control' or a joint venture being established on a lasting basis applies, as considered under EU competition law. The notification thresholds consist in an EU turnover exceeding EUR 500 million over the past 3 years, and a foreign subsidy of more than EUR 50 million received over a 3-year period. The latter may be considered to distort the internal market when it improves the competitive position of the company concerned by the concentration. Where the relevant thresholds are met, the proposed regulation imposes an obligation to notify the merger *ex ante*. Following its investigation, the Commission can decide to either prohibit the concentration, accept commitments (as mentioned above), or state its absence of objections.
3. Public procurement. For procedures of an estimated value in excess of EUR 250 million, foreign subsidies that enable the submission of a tender that is unduly advantageous are targeted. The proposal requires all foreign subsidies received during the 3 years to be notified to the contracting authority, which will then alert the Commission. The Commission can then initiate a 60-day review, after which it may launch an in-depth investigation that can last up to 6 months. The result of this investigation may be to conclude that there is no distortion, to accept commitments as above, or prohibit the award of the contract to the company concerned.

It is also important to note that a common feature of the three modules described above (i.e. operations in the EU, concentrations, and public procurement) is that failure to provide information or refusal to submit to inspections in the Union, in the context of the relevant investigations may result in fines: up to 1% of the annual turnover of the company concerned; 5% of daily turnover per day of non-cooperation; while failure to implement commitment or measures imposed by the Commission may result in fines of up to 10% of its annual turnover and 5% of daily turnover per day of non-enforcement.

The proposed Regulation is not only welcome, it is a much-needed EU tool to address distortive behaviours affecting fair competition in the internal market. The latter, largely open to international competition, is subject to numerous interferences from third countries in key strategic sectors, which the other available instruments, including the screening of foreign direct investments, cannot fully address. In the course of the negotiation and implementation of this proposal, the following key factors are likely to determine the success or failure of this new instrument:

- ***Scope & applicable threshold:*** the Commission significantly raised some of the thresholds it had considered in its June 2020 White Paper. Question marks will remain regarding the appropriate thresholds; the Commission provided however for the possibility to amend them via Delegated Acts.
- ***Causality***: the proposal expects that a distortion on the internal market will be deemed to exist where a foreign subsidy is "*liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market*". It may be difficult to establish that the said subsidy result in an improvement of the operation of a foreign company in Europe, when it is indirect or granted as a general support to all activities of the company, whether domestic or export.
- ***Market/non-market economies***: in this respect, the proposal clearly targets the aggressive subsidisation by the third countries of key companies in selected sectors. However, the opacity and unreliability of accounting practices combined with the lack of transparency of state actors will be an important challenge in the deployment of the instrument. The recent experience of DG Trade in identifying foreign subsidies in the field of trade in goods (e.g. recent CVD glass fibre case) will be extremely useful.
- ***Control of direct foreign investment***: the EU introduced last year a new instrument that enables a better coordination of Member State measures to control foreign investment. There is an obvious link between this instrument and the takeover section of the foreign subsidy proposal: both will need to be well articulated, especially in terms of procedures, to minimise administrative burden for companies and authorities, all the while remaining effective.
- ***Complementary nature of the instrument***: the proposal complements the International Procurement Instrument proposal of the Commission, which aims to improve the access of European companies to public procurement markets outside the EU. It is also consistent with EU trade policy and complements existing trade instruments such as the EU anti-subsidy and, to a certain extent, the anti-dumping regulation that allows the EU to react to unfair competition where imported goods have been manufactured with the support of non-EU subsidies. When adopted, EU businesses will benefit from a range of legal tools they can draw on to counter distortions of competition caused by the behaviour of companies receiving foreign subsidies.
- ***Balance of interests***: The proposal states that the negative effects of a foreign subsidy should be balanced "*with positive effects on the development of the relevant economic activity*" where warranted. This provision is very broad, and somewhat unclear. It is reminiscent of the so-called "Union interest" examined by the Commission in anti-dumping proceedings before deciding to take measures. Special attention will be needed to avoid leaving excessive room for interpretation or discretion if not properly framed.
- ***Teams***: In practice, given the complexity of the investigations and analyses that will need to be carried out abroad, the new instrument would likely gain in efficiency if jointly operated by the Commission departments responsible for Competition and Trade. Officials from DG Trade are experienced in investigating non-market economies, and international public and private accounting practices, which will be crucial to the success of the new instrument, while officials from DG Competition have extensive practice in dealing with State aid and concentration issues.
- ***Transitional measures:*** the new instrument will not apply to concentrations realised prior to the date of application; however, transitional periods are provided for, whereby the Regulation could apply to other cases of foreign subsidies granted up to 10 years prior to the start of application of the Regulation.

To conclude, the Commission's proposal is very ambitiousand well-constructed. The change of attitude, of "philosophy", is striking. With the devil always being in the details, it remains to be seen what will come out of negotiations in the Council, and the lobbying of third countries. In any event,the initiative should be unquestionably welcomed as a positive sign that "naivety" is beginning to give way to a better understanding of the new world. The text of the proposal should be strongly supported by the EU Parliament and industry. While adoption and actual implementation will inevitably take some time, the clock is ticking: there is no time to lose, the challenges are already here and will not wait.

Engage

Legal insight and analysis

Hong Kong Corporate & Regulatory Insights – March 2021

23 April 2021

Hogan Lovells' Hong Kong Corporate & Regulatory Insights March 2021 edition is published today to keep you abreast of the recent legal and regulatory developments in the Hong Kong corporate market.

The topics covered in the newsletter of this month provide an overview of key developments in equity capital markets, financial services regulation and data protection, which include, amongst others:

- The Stock Exchange of Hong Kong Limited sought views on reforms to enhance listing regime for overseas issuers.
- Legislative amendments for implementation of uncertificated securities market regime and enhancement of over-the-counter derivative regulatory regime gazette.
- Enhanced licensing conditions for licensed money lenders.
- Enhanced Currency Conversion Arrangement Involving Onshore RMB under Northbound Bond Connect.
- Privacy Commissioner calls for greater vigilance in relation to phishing emails or messages issued by bogus government departments or banks.

Please click here to read the full newsletter. https://www.engage.hoganlovells.com/knowledgeservices/attachment_dw.action?attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAVTMsHbzvCk5g3GADvL72gZ&nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQbuwypnpZjc4%3D&attdocparam=pB7HEsg%2FZ312Bk8OIuOIH1c%2BY4beLEAeyJUX6pySvqM%3D&fromContentView=1

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SKRINE

Employment Law: Minimum Wage Being Reviewed

04 May 2021

In conjunction with his Labour Day address on 1 May 2021, the Prime Minister of Malaysia, Tan Sri Muhyiddin Yassin, announced that a review of the **Minimum Wages Order 2020** ("**the 2020 Order**") is being conducted.[1] The Prime Minister also called upon all stakeholders to give their proposals.

No deadline has been announced for the submission of proposals, nor has any indication been given as to when a new minimum wage may take effect.

The 2020 Order, which came into operation on 1 February 2020, introduced a two-tiered minimum wage based on the place of employment of an employee.

For an employee whose place of employment is in any of the 16 City Council areas or the 40 Municipal Council areas specified in the Schedule to the 2020 Order, the minimum wage rates are as follows–

Minimum wage rates				
Monthly	Daily			Hourly
	Number of working days in a week			
	6	5	4	
RM1,200.00	RM46.15	RM55.38	RM69.23	RM5.77

For an employee whose place of employment in Malaysia is in any area other than the City Council areas or Municipal Council areas specified in the Schedule to the 2020 Order, the minimum wage rates are as follows –

Minimum wage rates				
Monthly	Daily			Hourly
	Number of working days in a week			
	6	5	4	
RM1,100.00	RM42.31	RM50.77	RM63.46	RM5.29

Comments

As the economy of the country is still recovering from the economic downturn caused by the outbreak of the Covid-19 pandemic, and many employers are also having to incur significant expenses to upgrade workers' accommodation to comply with the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990, it is likely that employers and their trade associations will voice concern on the wisdom of implementing a wage hike at this juncture.

Conversely, an increase in the minimum wage would be a populist move that will be welcomed by employees at the lower end of the wage spectrum, who are undoubtedly also affected by the economic downturn.

In coming to a decision on whether to increase the minimum wage, the Government will have to tread the fine line between implementing a populist move and avoiding measures that could affect the viability of businesses that are already struggling to survive the downturn.

Our summary of the 2020 Order is available **here**. https://www.skrine.com/insights/alerts/january-2020/employment-law-new-minimum-wage-rates-to-take-effe

Alert by ***Siva Kumar Kanagasabai*** *and* ***Selvamalar Alagaratnam****, Partners in the Employment Practice of Skrine.*

[1] *Minimum wage being reviewed*, *The Star*, 2 May 2021.

May 2021

Amendments to the Hydrocarbons Law

On May 4, 2021, the Ministry of Energy published, in the Federal Official Gazette, the decree amending the Hydrocarbons Law (the "**Decree**"). The Decree was published following the bill to amend the aforementioned law filed by the Federal Executive before the Congress, which was approved by a majority vote of both Chambers.

The Decree intends to reverse the energy reform enacted by the end of year 2013, which main purpose was the opening of a free market and to promote free competition. Notwithstanding the foregoing, the Decree aims to reposition Petróleos Mexicanos ("**Pemex**", for its acronym in Spanish) as the major participant in the market, granting it advantages in detriment of other participants.

In this line of thinking, the Decree presents serious risks of unconstitutionality in matters of economic competition, free competition, discriminatory treatment, legality and legal certainty, retroactivity, respect for fundamental rights, among others, due to the fact that the Federal government is aiming to implement mechanisms and instruments that benefit Pemex over other participants of the market, in order for the State to regain control in the energy sector and rescue Pemex.

There are arguments and legal defense mechanisms for the participants and affected parties in order to maintain and respect the balance and certainty of the regulatory framework currently in force in the sector, fulfilling the obligations and commitments that Mexico has assumed in terms of climate change, investment protection, principles applicable to economic competition and other applicable matters.

Our energy practice lawyers have broad experience in the regulatory and contractual analysis of projects and collaborate closely with our antitrust, administrative, civil, commercial and arbitration litigation teams, offering an integral service that includes *ad hoc* defense strategies and a full knowledge of the available means of defense.

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Feltex class action finally at an end

The Supreme Court has put the final nail in the coffin of the Feltex class action, more than 13 years after it was first filed in the High Court.z

In a decision released yesterday, the Supreme Court dismissed an application by the representative investors for leave to appeal against an "unless order" made in the High Court which resulted in the proceeding being struck out.

The representative proceeding had been filed on behalf of more than 3,600 investors who had bought shares in Feltex Carpets Limited pursuant to a prospectus issued in an initial public offering in 2004. The company subsequently went into receivership and then liquidation in 2006. The plaintiffs claimed they had relied on statements in the prospectus that were misleading, and had suffered loss as a result.

At a stage one hearing to determine common liability issues, the Supreme Court ultimately found that the prospectus did contain an untrue statement for the purposes of the Securities Act 1978, and that the statement also amounted to misleading conduct under the Fair Trading Act 1986. The next step was then to consider issues of causation and loss at a stage two hearing, but the investors were ultimately unable to pull together the $1.65 million in security for costs required by the High Court for that hearing in time. As a result, their claim was struck out.

This long-running case underscores the need for a specific regime in New Zealand to manage and regulate class action proceedings and litigation funding in order to protect the interests of all concerned. The Law Commission is continuing with its work in this area and is due to make its final recommendations to the Minister of Justice in May 2022.

For more information visit www.simpsongrierson.com

Arias

NICARAGUA

DEMATERIALIZATION OF SECURITIES IN TIMES OF COVID-19

Apr/2021

Securities, according to our General Law of Securities, Decree No. 1824, are documents that allow the execution of the literal and autonomous right that are consigned in them. They represent tangible property of a mercantile nature and their creation, issuance, transfer and other operations stipulated therein are always acts of commerce.

Undoubtedly, the isolation caused by COVID-19 has changed the way of doing business around the world. Considering this circumstance, the implementation of technological mechanisms that allow business and transactions to be carried out, which originally used to be done through physical supports and in person, has become popular.

Originally, securities (i.e. checks, promissory notes, checks) arose with the purpose of achieving a more agile and secure circulation and transmission of credit rights and goods; becoming the most popularly used legal instrument and of high affluence in the legal traffic. Due to the advantages they provided, the use of securities spread very rapidly at a global scale, especially in the field of transferable securities, to the point of their massification.

It is important to mention that, due to their mass production and circulation, securities reached a level of diffusion that was not foreseen within their normal functioning, and certain inconveniences began to appear, such as losses or increases in the costs of issuing them.

Therefore, the use of large quantities of securities, originally intended to facilitate the circulation of rights, came to cause the collapse of traffic, becoming an obstacle in terms of costs and logistical organization to achieve the objectives of agility and efficiency that at the time justified their creation. "The advantages of paper led to the disadvantages of paperwork".

Although the rights embodied in paper are easy to transmit; when the number of titles that make up the object of a single transaction exceeds the limits of what is foreseeable, the fact that there is a document for each circulating right ceases to be an advantage and becomes a disadvantage that affects procedural issues and difficulties for the transmission of the rights embodied.

In addition to this, there are other disadvantages that refer to the inconveniences intrinsic to the corporeal materiality of the securities, such as the possibility of destruction, theft or robbery of the security, thus harming the security of the traffic.

Considering the above, the new era of the dematerialization of securities was born, which has become part of the post-pandemic situation of all countries due to the multiple benefits it entails.

The dematerialization of securities includes all those circumstances, both factual and normative, by virtue of which the existence, transmission or exercise of the right originally incorporated in the paper becomes independent of the presentation of the title in which it was documented. In this sense, the excessive circulation of a security is mitigated and is replaced by book entries, i.e., an accounting record which is administered through centralized securities depositories.

Dematerialization only becomes full when no paper is issued, and the ownership of securities is reflected in mere accounting records. For example, the Rule on Registration of Dematerialized Securities, No. CD-SIBOIF-558-1-OCT29-2008, defines "Dematerialized Securities" as those securities that, lacking a physical substrate, are represented by electronic records, also called "electronic book entries".

Said Rule establishes the general guidelines that regulate the incorporation and negotiation of dematerialized securities of public and private issuers in order to not only develop and streamline the local securities market, but also to facilitate its incorporatioh to globalized markets.

The COVID-19 pandemic has presented an opportunity to streamline commerce through the use of dematerialization, responding to the health risks involved in the physical movement of securities, providing greater ease in the circulation of securities and reducing the risks of loss, transfer, deterioration, destruction, theft, robbery and counterfeiting of securities.

Although there are already regulations applicable to dematerialized securities in relation to financial entities, in order to make viable and massify the use of them, it would be advisable to incorporate amendments to the Nicaraguan legal framework, in order to make its application more flexible to the largest possible number of securities (such as purely electronic share certificates, recorded in accounting records without the existence of any physical document), and adapt it to the international guidelines of current trade and market needs, paying special attention to the limitations imposed by the COVID-19 pandemic.

This is why dematerialization is a necessary and unquestionably favorable transition at the time of issuing and trading securities in a safe, agile and reliable way. A trend that is being adopted by most issuers, both public and private, in the securities markets worldwide, and encouraging entrepreneurs towards new investment opportunities within the dematerialized securities market.

If you have any questions or would like to learn more about this topic, please do not hesitate to contact us.

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The FIST Act (Republic Act No. 11523): A Relief Measure for the Philippine Banking Industry

March 22, 2021

Republic Act No. 11523, also known as “An Act Ensuring Philippine Financial Industry Resiliency Against the COVID-19 Pandemic” (FIST Act)[1], which seeks to assist banks and financial institutions (FIs) in dealing with the adverse effects of the COVID-19 pandemic, took effect on February 18, 2021 upon its publication in the Official Gazette and in a newspaper of general circulation. This law provides a legal framework for the full transfer of the bad loans and assets of banks by allowing them to clean their books and re-channel their resources to improve liquidity in the financial system.

The Securities and Exchange Commission (SEC), jointly with the Bangko Sentral ng Pilipinas, Department of Finance, Bureau of Internal Revenue, and the Land Registration Authority, are tasked to issue implementing rules and regulations within 30 days from the effective date of the law.

Repeal of the Special Purpose Vehicle Act of 2002

The main mechanism under the FIST Act is to allow for the establishment of special purpose corporations, known as Financial Institutions Strategic Transfer Corporations (FISTC). The law then provides tax and other incentives for the FISTCs, as well as for the transfer of non-performing assets (NPAs) to and from these FISTCs.

The FIST Act repeals Republic Act No. 9182, as amended, or the Special Purpose Vehicle Act of 2002 (SPV Act). The SPV Act was passed to help banks dispose of their NPAs in the aftermath of the Asian financial crisis by providing a legal framework for this purpose and granting fiscal incentives. However, banks have stopped setting up SPVs under the SPV Act because transactions are no longer entitled to incentives. The law provided limited periods for transfers to or by SPVs to qualify for incentives and these periods have now expired.

The FIST Act is essentially the same as the SPV Act in terms of the creation and powers of the special purpose company, the conditions for the disposition of NPAs, and the incentives given at the various stages of the contemplated transactions.

SPVs created under the SPV Act may avail of the privileges and incentives granted under the FIST Act.

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[1] https://www.officialgazette.gov.ph/downloads/2021/02feb/20210216-RA-11523-RRD.pdf

How to Set Up a FISTC

A FISTC must be a stock corporation with the power to invest in, or acquire NPAs of FIs and to engage third parties to manage, operate, collect and dispose of NPAs acquired from FIs, among other powers.

A FISTC must be established within 36 months from the effectiveness of the FIST Act (or by February 2024).

A FISTC must also submit a FISTC Plan to the SEC within the period to be prescribed by the SEC. Once the FISTC Plan is approved by the SEC, the FISTC would be authorized to sell and distribute investment unit instruments pursuant to the FIST Act.

Tax Incentives

The transfer of NPAs from an FI to an FISTC, and from an FISTC to a third party, or a dation in payment by the borrower or by a third party in favor of an FI or an FISTC, is exempt from the following taxes, when applicable: (a) documentary stamp tax; (b) capital gains tax on the sale of certain capital assets, or creditable withholding tax on the income from the sale of ordinary assets; and (c) value-added tax.

These transfers are also subject to reduced fees on the following: (a) registration and transfer fees on the transfer of real estate mortgage and security interest to and from the FISTC; (b) filing fees for any foreclosure initiated by the FISTC in relation to any NPA acquired from an FI; and (c) land registration fees.

The incentives are time bound. For example, transfers of NPAs from FIs to an FISTC must be done with two (2) years from effectiveness of the FIST Act, while transfers from a FISTC to third parties are given a five (5)-year window from the acquisition of NPAs to dispose of the same with incentives.

The FIST Act also gives tax exemptions and privileges to FISTCs, including exemption from income tax, documentary stamp tax, and mortgage registration fees on certain new loans. FISTCs are also exempt from documentary stamp tax in case of capital infusion to a borrower with non-performing loans.

FIST Act v. SPV Act

As the FIST Act mirrors the provisions of the SPV Act, it remains to be seen if this measure will be more effective than its predecessor in addressing the problems of the financial sector with non-performing assets.

One provision of the FIST Act that may provide relief to FIs and FISTCs is the prohibition on the issuance of injunctive reliefs by courts, other than the Supreme Court and the Court of Appeals, against certain transfers of assets involving FISTCs and participating FIs. This provision was not in the SPV Act.

Another factor that favors this new measure is that it will operate under a different insolvency regime, the Financial Rehabilitation and Insolvency Act, which allows more options for, and expedites, the rehabilitation of distressed companies. The SPV Act operated under the Insolvency Act, an archaic legal framework that was passed in 1909.

Similar to the SPV Act, the period to establish a FISTC and the incentives provided under the FIST Act remain time-bound. FIs may see this as a negative feature of the law, given the slow judicial processes in the country and the various approval and regulatory requirements to set up and operate a FISTC and to transfer assets.

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The Banking, Finance and Securities Department of SyCip Salazar Hernandez & Gatmaitan advises a host of Philippine and international banks and financial institutions on different types of financing transactions and on regulatory matters. In the regulatory sphere, our services include reviewing bank forms and templates for compliance with legal requirements, advising on new financial products and services, responding to jurisdictional queries and providing periodic updates on new laws and regulations, and assisting with regulatory compliance and investigations.

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For more information about other regulations covered by our other briefings, please contact your account partner or sshg@syciplaw.com or info@syciplaw.com.

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Copyright reform in Singapore continues release of draft Bill for public consultation

April 30, 2021

In February 2021, Ministry of Law (MinLaw) and Intellectual Property Office of Singapore (IPOS) released a draft Copyright Bill (the draft Bill) for public consultation. The draft Bill is significant because it is the first time the existing Copyright Act (the Act) is being restructured and rewritten as a whole. Piecemeal legislative amendments over decades have kept the Act relevant to technological advancements, especially with the dawn of computers and the Internet. However, the amendments have made the Act more lengthy and complex. An overhaul is needed to make the law more understandable and accessible to the public. The draft Bill also aims to implement wide-ranging changes proposed in the Copyright Review Report published by MinLaw and IPOS in 2019. This article summarises some key changes.

Stylistic changes

The draft Bill uses plain English for clarity and simplicity, wherever possible. For example, it replaces the phrase "edition which is stored on any medium by electronic means" (in Section 7(2A) of the Act) with "electronic edition" (in Clause 47(1)(b) of the draft Bill). The draft Bill also abolishes the distinction between "works" and "subject-matter other than works" in the Act and, instead, uses the term "works" for both categories. This allows for a more streamlined and logical arrangement of topics.

Creators have default ownership of certain commissioned works

The draft Bill provides that the creator of a commissioned photograph, portrait, engraving, sound recording or film is, by default, the owner of the copyright to the work. This reverses the position under the Act where it is the party that commissioned the work who owns the copyright by default. Creators and commissioners may nevertheless agree in their contract that they will not adopt the default position.

Creators' right of attribution

The draft Bill introduces a new right for creators of authorial works to be identified whenever their works are used by others, as well as for performers to be identified in relation to their performances. This is a change from the Act, which only grants creators the right to prevent false attribution of authorship or performer's identity. This change is in recognition that works are easily misattributed or not attributed at all, especially in the digital age. Proper attribution would help creators and performers build their reputation and be incentivized to create new works. The right of attribution is not transferable but may be waived by the creator or performer.

A general “fair use” exception

The draft Bill provides for a more open-ended general “fair use” exception. Under the current act, such an exception applies only to authorial works (literary, artistic, dramatic and musical works) and adaptations thereof. The exception in the draft Bill clarifies that it will apply to all works, including sound recordings, films, TV or sound broadcasts and recordings of performances. The list of mandatory factors for determining whether or not the exception would apply is also shortened in the draft Bill. This means, when deciding whether or not a work is fairly used, it would no longer be mandatory for the court to consider whether the user of the work could have purchased a licence from the rights holder within a reasonable time at an “ordinary commercial price”.

Facilitating text and data mining

The draft Bill creates an exception to allow the copying of copyrighted works and recorded performances for the purpose of computational data analysis, including text and data mining, analytics, and machine learning. Without the exception, there is a risk that such copying could amount to copyright infringement. Whilst there are other exceptions which may potentially apply to excuse to such copying, the new exception provides more certainty and encourages data analysis activities. This is important in light of the valuable insights which could potentially be generated from data analysis. The exception will not apply if no computational data analysis is carried out. The person using the work for analysis must have lawful access to the work, such as a paid subscription to the relevant database.

No contracting out of certain copyright exceptions

The draft Bill provides that the following copyright exceptions cannot be restricted or excluded by contract: (a) certain uses by galleries, libraries, archives, and museums; (b) certain uses and copying of computer programs (such as making a back-up copy); (c) text and data mining; and (d) uses for judicial proceedings or for obtaining or giving professional advice. Any contractual provision which purports to restrict or exclude the application of these exceptions will be void. Other exceptions would be non-mandatory and could be restricted or excluded by contract if the contract were individually negotiated and the restriction or exclusion were reasonable.

Streaming of media on unauthorised set-top boxes

The draft Bill introduces civil liability for making, selling, importing or distributing set-top boxes which can stream audio-visual content from unauthorised sources, or for offering services (such as a subscription service) to facilitate access to such content. Such acts may also attract criminal liability if done wilfully, either to gain a commercial advantage or if the extent of the infringement is significant. These draft provisions are aimed at curbing the availability of illicit set-top boxes and related services that enable the content to be streamed without permission from rights owners.

The new Copyright Act is expected to be passed in the third quarter of 2021, and for most provisions to commence 1 month later.

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Newsletter

Recent Amendments to Taiwan Laws Pertaining to Investments and Technical Collaborations in the PRC – Summary and Analysis

04/30/2021

Susan Lo/ Derrick Yang/ Judy Lo

Under the tide of globalization where highly customized skillful works becomes more prevalent, there are increasingly diverse applications and frequent exchanges of proprietary technologies and intellectual property rights among enterprises from different countries. Against such backdrop, in a bid to protect the fruits of Taiwanese companies' R&D efforts, on December 30, 2020, the Investment Commission ("**IC**") under Taiwan's Ministry of Economic Affairs promulgated the amendments to Article 5 of the Regulations Governing the Approval of Investments or Technical Collaborations in the People's Republic of China (PRC) (the "**Approval Rules**") and Article 4 of the Regulations Governing the Review Criteria for Investments or Technical Collaborations in the PRC (the "**Review Criteria**") to further prevent any direct or indirect transfer or licensing of Taiwanese proprietary technologies or intellectual property rights to individuals or corporations of the PRC without prior approval. A summary and analysis of the amendments are as follows:

一、 Summary of the Amendments

（一）The types of technical collaborations in the PRC that are subject to regulatory approval now include those involving the transfer and/or licensing, either directly or indirectly through a third-area company, of Taiwanese technologies or intellectual property rights.

Before the amendment to Article 5 of the Approval Rules, "technical collaborations in the PRC" meant the **licensing** of proprietary technologies or intellectual property rights of and by individuals, corporations, groups or other organizations in Taiwan ("**Taiwan Nationals**") to individuals, corporations, groups or other organizations in the PRC ("**PRC Nationals**") in exchange for compensation other than equities (where equities were involved, the IC would usually consider it as an investment, instead of a technical collaboration in the PRC), while the **transfer** of such technologies or intellectual property rights to the PRC Nationals, and the transfer or licensing of such technologies or intellectual property rights **indirectly through a third-area company** were not covered or expressly regulated under the Approval Rules.

Under the newly amended Article 5 of the Approval Rules, all the events described above are defined as technical collaborations and are subject to regulatory approval, i.e., all future transfer and licensing of technologies or intellectual property rights by the Taiwan Nationals to the PRC Nationals, either directly or indirectly through a third-area company, will fall within the scope of technical collaborations that are covered by the Approval Rules and therefore subject to the IC's prior approval.

（二）Investments and technical collaborations in the PRC are now subject to different review procedures.

The IC's review procedures for investments and technical collaborations in the PRC by the Taiwan Nationals are set forth under the Review Criteria. Before the amendments, such investments and technical collaborations were subject to the same review procedure.

Given the fundamental differences between an investment and a technical collaboration, the amended Article 4 of the Review Criteria prescribes different review procedures for investments and technical collaborations in the PRC. That is, a Taiwan National who plans to invest in the PRC is required to either apply for prior approval or report the investment afterwards depending on the amount of investment, and such prior approval can be applied for through simplified or standard procedure. Meanwhile, a Taiwan National who plans to carry out a technical collaboration in the PRC must file for prior approval. When reviewing such applications, regardless of the value of the technologies/intellectual property rights at issue, the IC will always take into consideration factors such as the collaboration's impact on the core competitiveness of Taiwan companies, Taiwan's research and development roadmaps in the relevant industries, and any potential infringement on the intellectual property rights of any other entities in Taiwan. Such applications may also be further reviewed at the Commissioners' Meetings of the IC if special circumstances necessitate a closer scrutiny.

二、 Analysis and Potential Issues

While the Approval Rules and the Review Criteria were newly amended at the end of 2020, as the technical collaborations between the Taiwan Nationals and the PRC Nationals are being implemented in various forms, even after the amendments, the Approval Rules and the Review Criteria may not necessarily capture every possible type of such technical collaborations, thus leaving much room for interpretations by the competent authorities. If the competent authorities are to adopt an overly broad interpretation on the definition of **transfer** or **licensing**, the business operations of the Taiwan Nationals (especially those with subsidiaries in the PRC) might be affected.

The IC's overall position is that the Approval Rules and the Review Criteria were amended for the purpose of preventing substantial disclosure of technologies to the PRC Nationals, without interfering with the regular operation of Taiwan enterprises or the intra-group function allocation. Therefore, regarding the cross-strait transfer/licensing of proprietary technologies or intellectual property rights between parents and subsidiaries within the same group, if there is no substantial disclosure of technologies, such transfer or licensing will not be considered as a technical collaboration under the Approval Rules. For example, where a Taiwan parent company engages its PRC subsidiary to provide R&D services, consequently licenses certain technologies to the PRC subsidiary and owns the works thus created, the Taiwan parent company would not be required to apply with the IC for prior approval for the technical collaborations in the PRC; similarly, where a Taiwan parent company engages its PRC subsidiary to provide after-sale services to customers in the PRC and consequently licenses certain technologies to the PRC subsidiary which are required for the provision of such services, the Taiwan parent company would not be required to apply for prior approval, either.

In addition, for Taiwan enterprises that have subsidiaries in the PRC, the IC has already examined the technical aspects of their PRC investments when they applied for the establishment of a subsidiary in the PRC; hence these Taiwan enterprises do not need to apply for prior approval for technical collaborations in the PRC (unless such Taiwan parent company subsequently transfers or licenses other proprietary technologies or patent rights to the PRC subsidiary, in which event prior approval for technical collaborations in the PRC from the IC would be required).

In practice, the IC will determine on a case-by-case basis whether a specific transfer or licensing constitutes a technical collaboration under the amendments. Although the IC's objective is to prevent substantial disclosure of technologies without affecting the regular business arrangements between Taiwan enterprises and its PRC presence, whether certain transfer or licensing constitutes any substantial disclosure of technologies would still be subject to the review and determination of relevant competent authorities. While there are various types of transfers and licensing of proprietary technologies and intellectual property rights, how the competent authorities will view such transfers and licensing will become clearer only after they are presented with an actual case seeking their review. Therefore, to avoid any inadvertent violation of the laws, companies that plan to participate in any cross-strait or cross-border cooperation involving proprietary technologies or intellectual property rights should conduct a thorough assessment in determining whether or not to apply for the IC's prior approval.

The Unstoppable Rise of Contactless Payments | Thought Leadership | Baker Botts

7 May 2021

As we continue to navigate the socially-distanced world triggered by the COVID-19 outbreak, there are many aspects of our former lives that we hope will return. Conversely, there are many pandemic-defining behaviours that will remain once lockdown has been lifted. These include how we make payments. From a sharp increase in online sales, to the deployment of contactless payment remotely or at the point-of-sale, the rapid shift in consumer behaviour has been remarkable.

The coronavirus pandemic resulted in an almost-immediate adoption of contactless payments in the UK. This rapid uptake was caused by a number of factors, including:

(i) the presumed danger associated with touching 'infected' objects and the consequential demise of the use of banknotes;

(ii) the increase in the maximum contactless spending limit (in the UK it was raised from £30 to £45 in April 2020, and the FCA announced that it would be further raising the single contactless payment limit to £100 (with the threshold for multiple transactions raising from £130 to £300) pursuant to the UK Chancellor of the Exchequer's 2021 Budget announcement in March 2021: a post-Brexit change given that the UK is no longer bound by the EU-wide cap of EUR 50 equivalent) meaning that more than relatively small purchases were covered;

(iii) those essential businesses that were allowed to open during the pandemic insisting on payment by card rather than cash – this shift to entirely cashless premises being in line with the UK Government's unprecedent public safety advice to utilise contactless payment solutions, wherever possible;

(iv) emergency legislation approved by UK Parliament at various stages during the different lockdowns requiring non-essential purchases (from clothes to alcohol) to be pre-ordered and pre-paid (via 'click and collect' or delivery services), thus allowing non-essential businesses to trade whilst limiting encounters between workers and customers at the point-of-sale, and also between customers from different households in store; and

(v) 'shielding' advice from the UK Department of Health and Social Care to protect the more vulnerable members of UK society by granting them priority grocery delivery slots (with goods to be ordered and paid for by payment card online) by major UK supermarkets for those individuals.

At the point-of-sale, contactless payments are made possible by two similar technologies: radio frequency identification (RFID) technology and near field communication (NFC) technology. RFID technology enables a secure connection from the chip in the customer's payment card to the merchant's payment terminal to effect purchases up to the relevant payment limit. Contactless payment via smartphone apps (linked to an underlying payment card) however enables users to exceed the £45 contactless option, and is powered by NFC technology. NFC technology works by securely connecting the mobile wallet on the customer's smartphone to the merchant's payment terminal. Both NFC and RFID technologies work by assigning a unique digital signature to each new payment, which is much more secure than the traditional 'chip and pin' method, which has the disadvantage of potentially allowing a bad actor to clone a card and obtain the associated PIN.

Other payment technologies have also been piloted during the pandemic, including voice-authentication for transactions, which would enable all ATMs to become contactless, biometric payments using facial recognition or fingerprints and the use of cryptocurrencies for merchant payments and merchant processing.

Populations that were previously averse to using contactless payments over security concerns have quickly shifted their thinking as new payment systems have increased safety (the fear of catching the virus overriding their fears of new technology and concerns regarding theft and card fraud). Secure verification powered by NFC and RFID technologies coupled with the reduced health risk associated with touching a payment terminal that has been used by countless customers before has ultimately proven contactless payments to be much safer than other forms of settlement during the pandemic. Merchants have also welcomed the move to contactless payment, because of the lower costs associated with processing contactless card payments rather than dealing with cash, and increased safety for both their staff and customers by reducing direct and indirect physical contact.

With the recent innovations in technology - especially financial technology (FinTech) - smartphone users can use apps and mobile wallets not only for spending at the point-of-sale, but also to deposit, store, transfer, exchange, invest and earn currency (including fiat and crypto), and to access alternative payment services (including those involving cryptoassets or backed by gold) and benefits not normally offered by traditional banking services (such as "borderless" bank accounts and payment cards). The added benefit of rapid (and in some cases 'real time') transactions and funds flow from a digital system is also helpful to those who work in the gig economy or rely on ad-hoc or freelance work and need to ensure that payment for their services (including receipt of tips from customers) is as immediate as possible.

The continuing interest in developing mobile payments and app-based currency platforms is shared by traditional financial and challenger institutions alike: the possibility of growing market share and increasing their customer base (both in the developed and developing world) mixed with environmental, social and governance (ESG)-focussed considerations is compelling. For example, in Africa and China, the use of digital payments and mobile wallets is commonplace, and has disintermediated traditional financial institutions, especially where such institutions have been reluctant to operate. The rise of FinTech has significantly unlocked new opportunities and delivered financial freedom to huge swathes of the world population that have been excluded from the traditional banking system. Whilst many citizens in the developing world do not have access to a formal bank account, large proportions of this "unbanked" population will however have access to a smartphone. Thus, whilst many may be financially-excluded, they are not digitally-excluded, and may benefit from such improved FinTech and the growing provision of payment systems that fall outside of the traditional banking regime.

With the attention of consumers, companies, Governments and multinational organisations firmly on ESG risk and strategy, there is a real opportunity here to demonstrate leadership in corporate citizenship and social responsibility, in ensuring that contactless payment systems are fit for, and inclusive of, all members of society. A total shift to a cashless society must consider all members of society, in particular those that are still not able to procure access to new or traditional banking facilities, for cultural, legal or economic reasons (i.e. the financially excluded or "underbanked"), and those that cannot keep up with the pace of technological change - including an ageing demographic, those with disabilities, or residents in remote areas without reliable internet access (i.e. the digitally excluded).

The move towards widespread acceptance of contactless payment solutions was already in motion. However, it is undeniable that the coronavirus outbreak has acted as a catalyst for this rapid uptake in consumer adoption. In a climate of COVID-19 recovery, rebuilding consumer confidence, and spotlight on ESG considerations, one can only expect this trajectory to continue and to further develop as new technological FinTech innovations are released, and the world pushes forward with decisive adoption of contactless payment solutions. Whatever the "new norm" looks like, one thing is for certain: contactless payments are here to stay.

Davis Wright Tremaine LLP

ADVISORIES

Foundations & Nonprofits

Washington's New Nonprofit Corporation Act: Is Your Nonprofit Ready?

By David A. Lawson

05.04.21

Yesterday, Governor Inslee signed into law an all-new Washington Nonprofit Corporation Act (New Act). The New Act will completely replace the current Washington Nonprofit Corporation Act, which has seen only minor updates since its adoption in 1967.

Nearly all of the New Act's provisions will take effect **January 1, 2022.**

While the New Act makes changes to many different aspects of Washington nonprofit corporate law, it makes major, overarching changes in three areas:

- **Modernization:** Many provisions of the current Act are out-of-date or do not reflect currently recommended practices in nonprofit governance. The New Act modernizes those provisions.
- **Charitable Assets Held by Nonprofit Corporations:** The New Act adds a new set of provisions intended to protect charitable assets held by nonprofit corporations. Such assets are currently regulated under trust law in Washington, the application of which is not always straightforward in the context of nonprofit corporations.
- **Membership Organizations:** The New Act adds a comprehensive set of rules governing the relationship between membership nonprofits and their members, an area in which the current Act has skeletal provisions that often raise more questions than they answer.

What It Means for Existing Nonprofits

Non-Membership Organizations

Most Washington nonprofits that do not have members will not need to amend their governing documents (either articles of incorporation or bylaws) to be in compliance with the New Act when it takes effect. The New Act will nevertheless present opportunities to many nonprofits to streamline and improve their governance if they wish to do so.

Some of those opportunities are described more completely below. Nonprofits may wish to have legal counsel review their articles of incorporation and bylaws to ensure that they are compliant with the New Act and positioned well to take advantage of its improvements.

Membership Organizations

Nonprofits that have members may need to amend their documents to address new rules governing membership qualifications, powers, notices, meetings, and voting. The New Act also presents opportunities for many membership nonprofits to improve their membership structures.

Donor-Restricted Assets

The New Act's rules governing use and management of charitable assets are significantly different from those found in Washington trust law. The new rules instead conform to Washington's Uniform Prudent Management of Institutional Funds Act (**UPMIFA,** Chapter 24.55 RCW), which applies to all nonprofit corporations that hold charitable assets.

Nonprofits that hold assets subject to donor-imposed restrictions (such as endowments and assets subject to donor-imposed restrictions on use) should work with legal counsel to review their policies and procedures governing the use, investment, and management of those assets, to ensure compliance with the New Act.

Out-of-State Corporations

Nonprofit corporations formed outside of Washington that operate within the state will likely face little change as a result of the New Act. The rules governing registration and operation of out-of-state nonprofit corporations do not change substantially in the New Act.

Key Provisions of the Act

While the New Act contains too many new and revised provisions to describe in a single advisory, some provisions are likely to have immediate real-world effects. We list some of those key provisions below.

Electronic Notices and Meetings

The current Act has antiquated rules requiring members, directors, and officers to opt in affirmatively, in writing, before they may receive any email notices from the corporation. The New Act permits email notices by default, with an opt-out option in case a particular member, director, or officer does not want to receive them.

The New Act also clarifies that meetings of members, directors, or officers may be held either fully or partly online, unless the corporation's articles or bylaws expressly prohibit electronic participation in meetings. Online meetings may take place by videoconference, telephone, or in any other real-time medium through which participants may simultaneously understand one another. (This does not include asynchronous media such as email.)

Membership Corporations

The current Act has only skeletal provisions concerning the relationship between a nonprofit corporation and its members. The New Act includes a comprehensive set of provisions on the topic including rules governing members' rights and duties, notices to members, membership meetings, voting by members, and inspection rights. It also expressly provides for delegates of members to carry out some of the members' duties, an organizational concept that is particularly common in religious organizations.

The New Act clarifies that members generally do not have fiduciary duties to the corporation and sets out complete procedures for membership voting by ballot. Because of the incomplete nature of current law in Washington governing membership, our experience suggests that many nonprofits have bylaws that will not comply in all respects with the New Act. Membership corporations should work with legal counsel to ensure that their governing documents are consistent with the New Act.

Board of Directors

- **Board Size:** Organizations that are classified for federal tax purposes as Section 501(c)(3) organizations and as public charities are required under the New Act to have at least three directors on their boards. That rule is consistent with informal IRS policy regarding public charities. Section 501(c)(3) organizations that are classified as private foundations for federal tax purposes may continue to have one or two directors.
- **Fiduciary Standards:** The New Act clarifies that directors of charitable nonprofits have the traditional fiduciary duties of corporate directors rather than the substantially stricter duties that apply to trustees of a charity formed as a trust—and arguably to nonprofit directors as well, under some interpretations of current law. This change should reduce potential liability exposure for directors of charitable corporations and encourage service on boards. Finally, the New Act expressly allows organizations to have youth representation on their boards, subject to a number of specific conditions.

Supervision of Charitable Assets

The New Act significantly revises the rules governing how organizations must handle charitable assets, including all assets held by Section 501(c)(3) organizations. The rules introduce new procedures for managing assets subject to donor restrictions that are designed for consistency with UPMIFA.

The New Act establishes specific procedures for modifying gift restrictions, preventing charitable assets from being distributed improperly, handling charitable assets in transactions such as mergers and dissolutions, and reporting certain major changes in a charitable organization's activities or purposes. It also provides new procedural guidance to the Attorney General's office with respect to investigations of potential misuse or mishandling of charitable assets.

"Fundamental Transactions"

The New Act has all-new provisions governing so-called "fundamental transactions"—mergers, dissolutions, dispositions of assets, and other similar transactions. The new provisions are intended to guide nonprofits through the process of a fundamental transaction with more clarity, including especially how to treat charitable assets throughout the process.

The New Act also adds for the first time provisions expressly allowing corporations to "redomesticate," or change their state of incorporation, if the other state allows such transactions as well. Finally, the New Act will allow corporations to convert from for-profit to nonprofit status, or vice versa, without reincorporating if certain conditions are met and other applicable laws allow the conversion.

Transition Provisions

On the effective date of January 1, 2022, all nonprofit corporations currently governed by Chapter 24.03 RCW will automatically be subject to the New Act. Other types of nonprofit corporations governed by other chapters of Title 24 RCW, including Chapter 24.06 miscellaneous corporations, will continue to be subject to existing law.

Corporations that have assets subject to donor restrictions on use or management may elect to use and manage their gift-restricted assets under current law (including current procedures for modification under charitable trust law) during a one-year grace period, ending on January 1, 2023, but will still be subject to the New Act in all other respects on January 1, 2022.

Conclusion

The New Act is the culmination of over a decade of work by a Washington State Bar Association committee, and also reflects extensive input from stakeholders across Washington's nonprofit sector as well as Washington's nonprofit regulators. The author became the recorder for the project in 2013 and is the primary drafter of many provisions, and other DWT attorneys provided significant input.

We are uniquely positioned to advise nonprofits on all aspects of the transition, including updating governing documents for compliance and taking advantage of potential opportunities afforded by the New Act.

Can Your Business Enforce a Noncompete Agreement With a Worker?

Goodsill | May 4, 2021 | Business Litigation

Businesses often have unique ways of operating that can help make them more competitive or profitable. Trade secrets like special formulas, secret recipes, confidential client lists and even unique manufacturing processes can give one business a real edge over their competition.

Protecting those secrets is crucial to the company's continued success. Unfortunately, every employee who has access to trade secrets is a possible source of risk and vulnerability for the company. Workers could potentially sell that information to competitors or even use it to start their own business in the future.

Can your company require its staff members to sign noncompete agreements? Can you enforce the agreement through the Hawaii court system if that employee goes to work for another business in your industry or tries to start their own company?

Hawaii has specific laws addressing restrictive covenants

Restrictive covenants like noncompete agreements can prevent workers from capitalizing on their experience or education. They can have a chilling effect on fair competition and undermine the ability of workers to seek gainful employment.

Hawaii is now one of several states that refuses to enforce noncompete agreements. In fact, the state doesn't just use legal precedent but actually has a law that makes noncompete agreements unenforceable. Although any business can add restrictive covenants to their employment contracts, they will have few options to enforce that agreement if a worker does not comply with it.

Getting help drafting workplace contracts or learning about your options as an employer can help you make better hiring and business choices that protect your company and its trade secrets.

Second Circuit doubles down on insider trading liability for corporate outsiders

04 May 2021
Investigations, White Collar, and Fraud Client Alert

The Second Circuit recently affirmed the 2018 insider trading conviction of Benjamin Chow, a corporate outsider who was found guilty of tipping his former colleague about a potential acquisition of a U.S. publicly traded company.

The case, *United States v. Chow*, involved allegations that Chow, a managing partner of one potential acquiror and founder of a second potential acquiror, breached non-disclosure agreements (NDAs) with the potential target company, and provided his former colleague with nonpublic information about the acquisition. No. 19-0325 (2d Cir. 2021). The Second Circuit addressed – for the second time in a year – the issue of whether the breach of a duty of confidentiality created by an NDA can form the basis for insider trading liability. Relying on its September 2020 decision in *United States v. Kosinski*, 976 F.3d 135 (2d Cir. 2020), the Second Circuit affirmed Chow's conviction, again ruling that a breach of an NDA can lead to insider trading liability.

Read More: Second Circuit doubles down on insider trading liability for corporate outsiders

https://www.hoganlovells.com/en/publications/second-circuit-doubles-down-on-insider-trading-liability-for-corporate-outsiders

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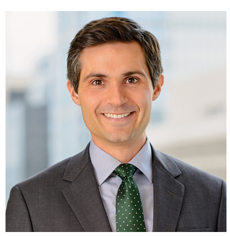

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