PACIFIC RIM ADVISORY COUNCIL

Pacific Rim Advisory Council

September 2021 e-Bulletin

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PRAC Let's Talk!

upcoming virtual meetings
September 27/28, 2021

International Conference - New Delhi Hosted by KOCHHAR & Co. TBA
International Conference - Mexico City Hosted by Santamarina y Steta TBA
International Conference - Paris Hosted by GIDE TBA

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Coronavirus
COVID-19

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

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MEMBER DEALS MAKING NEWS

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COVID-19 SITE FOR ALL UPDATES

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DWT'S INFORMATION SECURITY TEAM LAUNCHES FIXED-FEE INCIDENT RESPONSE WORKSHOPS

08 AUGUST, 2021: Amid daily reports of serious cybersecurity threats—from ransomware to malicious insiders to state-sponsored hacking—clients have been asking us how they should approach their cyber incident response planning:

- Do they need a better incident response plan (IRP)?
- How should they engage cybersecurity experts in light of recent court decisions on attorney client privilege and work product?
- Are they prepared to respond to post-breach investigations?
- What happens if their systems are encrypted and they can't do business?
- What are the risks of paying a ransom?

To help our clients address these and other common questions about cyber incident preparedness, DWT's information security and data breach response group has launched two fixed-fee services geared towards small and medium-sized businesses: the Incident Response (IR) Readiness Workshop and the Ransomware Readiness Workshop.

IR Readiness Workshop

Our IR Readiness Workshop helps clients take their IRPs and response procedures to the next level. For a fixed-fee of $17,000, our attorneys will:

- Review your IRP and core response procedures and provide recommendations for improvement
- Facilitate a live tabletop exercise to test your response procedures and educate your leaders and stakeholders
- Provide guidance on engaging cybersecurity experts and other vendors to best preserve attorney-client privilege and work product

Clients that purchase the IR Readiness Workshop will also receive an allotment of 40 discounted hours of IR services in the event of a cybersecurity incident.

Ransomware Readiness Workshop

Our Ransomware Readiness Workshop helps tackle some of the key issues our clients have faced before and after a ransomware attack. It is designed to be an enhancement to the IR Readiness Workshop but can be performed on its own. For a fixed-fee of $10,000, our attorneys will:

- Perform a high-level review of your relevant security controls to identify any controls that should be added or enhanced based on regulatory guidance and recent enforcement actions
- Work closely with your stakeholders to develop a risk-based, prioritized plan for recovering from a significant ransomware attack, tailored to your legal and contractual obligations, business needs, and other factors
- Customize DWT's Ransomware Response Guide to serve as a playbook in the event of a ransomware attack

Please note that various terms and conditions apply to both workshops.

For More Information

If you'd like to learn more about our two IR workshops or would like to discuss our services generally, please contact ANY member of our information security and data breach response team https://www.dwt.com/expertise/practices/technology-privacy-security/privacy--security/information-security-and-data-breach-response?tab=our-team .

For more information visit us online at www.dwt.com

HOGAN LOVELLS WELCOMES FORMER FERC CHAIRMAN

WASHINGTON, D.C., 30 August 2021 – Global law firm Hogan Lovells today added former Federal Energy Regulatory Chairman Neil Chatterjee to its Energy regulatory practice as a Senior Advisor in Washington, D.C.

Appointed and confirmed by the Senate as FERC Chairman in 2017, Chatterjee has championed several strategic initiatives during his time leading FERC. Those initiatives include improving FERC's liquid natural gas application review and approval process, ensuring new technologies can compete freely in energy markets, securing the nation's energy infrastructure from physical and cyber threats, along with a constant focus on improving the U.S. energy infrastructure. Prior to his tenure at FERC, Chatterjee served as an advisor to Senate Majority Leader Mitch McConnell (R-KY), where he played an integral role in the passage of major energy, highway and agriculture legislation.

"I'm thrilled to join Hogan Lovells. Throughout my experience at FERC, I worked closely with the firm on many occasions and always came away impressed by not only the quality of their work but with the way its attorneys carried themselves," Chatterjee said. "The dedication to producing best-in-class service from a first-rate team of energy lawyers that are backed by an extraordinarily deep bench of regulatory lawyers in the U.S. and around the globe is one of the many reasons I look forward to taking the next step in my career with Hogan Lovells."

As a member of our Energy regulatory practice, Chatterjee's broad knowledge and experience at the highest levels of energy policymaking at FERC and on Capitol Hill will provide our clients with a significant advantage in the increasingly complex and evolving energy market.

"I could not be more excited to have Neil join our team," said Stefan Krantz, who serves on Hogan Lovells' Global Regulatory & IPMT leadership team and heads the firm's FERC practice. "While he was FERC Chairman and Commissioner, I always appreciated his candor and willingness to work with our clients to move the industry forward. Our clients will benefit greatly from his insight and experience at the highest levels of government."

"The regulatory and economic environment for energy companies is rapidly changing and growing more complex by the day. Neil is the perfect addition to help clients navigate these changes and emerge stronger because of it," said Amy Roma, leader of Hogan Lovells Energy regulatory practice.

In addition to his successful career as a policymaker, Chatterjee has also developed a reputation as a collaborative leader who encourages thoughtful discourse and supports innovation wherever possible. For example, in 2019, Chatterjee launched the EnVision Forum to bring together thought leaders and new voices in the energy world.

"As Hogan Lovells continues to invest in the D.C. market, it's a testament to our strong reputation that we have added yet another government leader who is respected on both sides of the aisle to our bench" said Michele Farquhar, office managing partner for the Washington, D.C. office. "I look forward to having Neil join our D.C. office community, and know that his counsel and experience will be of great value to our people across practices and industries."

Chatterjee is the latest of several senior government officials to join Hogan Lovells. At the partner level, recent additions include Timothy Bergreen, the former staff director of the House Permanent Select Committee on Intelligence joined, former Chief Counsel and Acting Deputy Administrator at the Federal Aviation Administration Arjun Garg, and former Deputy Assistant to the President for International Economic Affairs and Deputy Director of the National Economic Council Kelly Ann Shaw.

For additional information visit www.hoganlovells.com

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Visit us online for full coverage

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ARIFA

ADVISED EMERGENT LATAM IN ACQUISITION OF PANAMA-BASED GALORES GROUP

PANAMA CITY, 01 September 2021: ARIFA has acted as legal advisor to Emergent LatAm, Latin America's newest temperature-controlled warehousing and logistics provider, in the acquisition of Panama-based Galores Group, the largest 3PL cold storage facility in Central America and the Caribbean based in Panama City. This is Emergent LatAm's second acquisition and first investment in the Central American region, which immediately established the company as a market leader in this strategic geography.

Emergent LatAm is investing in existing leading cold storage operators and new greenfield projects throughout Latin America to expand its footprint of modern cold storage facilities and consistently bring the highest quality service to customers across the entire region.

ARIFA M&A group led by partner Andres N. Rubinoff and Associate Ana I. Quijano was also comprised by international associate Donald P. Canavaggio and associate Daniel Abad; and strengthened by a multi-disciplinary team of legal experts covering all major aspects of this complex transaction, including senior associate Vivian D. Holness in labor and employment relations, senior associate Carin Stelp in the field of real estate, senior associate Maria C. Guardia in various fiscal matters, and Melissa Del Beusto in the review of intellectual property matters.

For additional information visit www.arifa.com

GIDE

COUNSEL TO CAMUSAT ON SIGNING AN INNOVATIVE MULTI –COUNTRY FINANCING FACILITY

PARIS, 09 September 2021: Gide has advised Aktivco, Camusat group's ESCO investment vehicle, market leader in Africa in assets management for telecoms energy infrastructure, on the signing of a EUR 60 million multi-country financing facility to boost its energy efficiency business growth.

Through an innovative financing structure arranged by FEI, the Facility for Energy Inclusion fund managed by Lion's Head Asset Management, Aktivco will be able from now on to directly finance each of its local operating companies.

This deal strengthens Aktivco's capacity to fund and rapidly deploy new ESCO projects, and therefore its ability to expand faster on new markets to reach its target of 10,000 ESCO sites by 2025.

Gide was legal counsel on the operation, with a team comprising partner Marie Bouvet-Guiramand, and associate Claire Labouré.

For additional information visit www.gide.com

HAN KUN

ASSISTS KIDSWANT IN APPLYING FOR ITS INITIAL PUBLIC OFFERING ON THE A-SHARE MARKET AND LISTING ON THE CHINEXT BOARD AND OBTAINING CSRC APPOVAL

BEIJING, 25 August 2021: On August 25, 2021, Kidswant Children Products Co., Ltd. ("Kidswant") obtained CSRC approval for its initial public offering on the A-share market and listing on the ChiNext board.

Kidswant principally operates as a retailer of mother and baby care products and relevant value-added services. As a leading retailer in the mother-and-baby care industry in China, Kidswant has established a comprehensive retail network supported by both offline and online retail channels. With over 400 physical stores nationwide, it also has established an online retail network covering mobile apps, WeChat official accounts, applets, and WeChat malls.

Han Kun, as the issuer's counsel, advised Kidswant on its initial public offering and listing on the ChiNext board.

For additional information visit www.hankunlaw.com

BAKER BOTTS

REPRESENTS TALLGRASS ENERGY IN $500 MILLION OFFERING OF SENIOR NOTES AND CASH TENDER OFFER FOR ITS 6.000% SENIOR NOTES DUE 2024

HOUSTON, 12 August 2021: Deal Description: On August 11, 2021, Tallgrass Energy Partners, LP ("TEP") announced that it, along with Tallgrass Energy Finance Corp., a wholly-owned subsidiary of TEP, priced an offering (the "Notes Offering") of $500 million in aggregate principal amount of 6.000% senior unsecured notes due 2031 at an offering price equal to 100% of par.

The Notes Offering is expected to close August 18, 2021, subject to satisfaction of customary closing conditions.

TEP intends to use the net proceeds of the Notes Offering, together with borrowings under its existing senior secured revolving credit facility, to fund a concurrent cash tender offer (the "Tender Offer") to purchase any and all of its outstanding 5.50% Senior Notes due 2024 (the 2024 Notes"), and to redeem the 2024 Notes that remain outstanding following the consummation of the Tender Offer. The Tender Offer is being made pursuant to an Offer to Purchase dated August 11, 2021.

Baker Botts L.L.P. represented TEP in the Notes Offering and the Tender Offer. Baker Botts Lawyers/Office Involved: Corporate: Mollie Duckworth (Partner, Austin); Justin Hoffman (Partner, Houston); Grace Matthews (Senior Associate, Austin); Dillon Sebasco (Associate, Austin); Jenna Kabrich (Associate, Austin); Brian Golde (Associate, Austin) Tax: Michael Bresson (Partner, Houston), Chuck Campbell (Special Counsel, Houston).

For more information, please visit www.bakerbotts.com

BRIGARD URRUTIA

ADVISES COLOMBIAN TELECOMS COMPANY COLTEL ON ITS ACQUISITION OF FIXED INTERNET BUSINESS

BOGOTA - June, 2021: Colombian telecoms company Coltel has hired Brigard Urrutia to buy the fixed internet business of the local branch of US satellite television service DirecTV. The parties signed the deal on 24 May for an undisclosed value.

Coltel bought DirecTV's wireless network and the internet services of around 200,000 of its clients. Of those clients, about 60% will keep their satellite television services from DirecTV.

Coltel, which operates as Movistar Colombia, is the local subsidiary of Spanish telecoms company Telefónica, which operates in 20 Latin American countries, including Brazil, Chile and Mexico.

Counsel to Coltel Brigard Urrutia Partner Darío Laguado and associates Daniel Moncaleano, Catalina Manga and María Márque.

For additional information visit www.bu.com.co

NAUTADUTILH

ASSISTS XENIKOS ON SECURING EUR 40M IN CONVERTIBLE DEBT FINANCING

AMSTERDAM, 08 September, 2021: Xenikos B.V., a clinical-stage biopharmaceutical company currently developing a novel therapy for treating immune related disorders, announced today the closing of EUR 40M in convertible debt consisting of two equal tranches of EUR 20M. The financing was led by Veloxis Pharmaceuticals, Inc., with participation from existing investors, Medicxi, RA Capital Management, Oost NL and Sanquinnovate. In connection with the financing, Veloxis will obtain two sequential call options, each becoming active upon the release of its associated tranche, which provides Veloxis the exclusive option to exercise its right to acquire all of Xenikos' outstanding shares.

Xenikos will use the proceeds of the financing to initiate a registrational Phase 3 clinical trial in the US and EU, which is designed to evaluate the efficacy and safety of their flagship product T-Guard® for the treatment of steroid-refractory acute graft-versus-host disease (SR-aGVHD) in patients following allogeneic stem cell transplantation versus ruxolitinib.

NautaDutilh's deal team consisted of Sybren de Beurs, Jeanine Evertse, Frans Ruijs (Corporate M&A), Florine Kuiperi (Corporate M&A notarial), Nina Kielman and Ashley Beesemer (Tax).

Goodwin Procter LLP acted as US counsel to Xenikos.

For additional information visit www.nauadutilh.com

HOGAN LOVELLS

ADVISES VICI PROPERTIES, INC. ON US $17.2 BN ACQUISITION OF MGM GROWTH PROPERTIES

WASHINGTON, D.C., 04 August 2021 – Global law firm Hogan Lovells is advising VICI Properties, Inc. (VICI) on its US$17.2bn strategic acquisition of MGM Growth Properties LLC, (MGP), a transaction which will create America's largest owner of experiential real estate.

VICI, MGP and MGM Resorts International, MGP's controlling shareholder, announced today that they have entered into a definitive agreement for VICI to acquire MGP for total consideration of US$17.2bn, inclusive of the assumption of approximately $5.7bn of net debt.

Upon completion of the merger, the combined company will have an estimated enterprise value of US$45bn, firmly solidifying VICI's position as the largest experiential net lease REIT by market cap while also advancing VICI's strategic goals of portfolio enhancement and diversification.

A Hogan Lovells team advising VICI is led by Global Managing Partner of the Corporate practice David Bonser, M&A partner Stacey McEvoy and tax partner Cristina Arumi in Washington, D.C. Key support includes M&A partner Bruce Gilchrist, employment partner George Ingham, antitrust partners Chuck Loughlin and Michele Harrington, debt capital markets partners Eve Howard and Evan Koster, capital markets partner Andy Zahn, banking partner Nathan Cooper, employee benefits and executive compensation partner Meg McIntyre, real estate partner Lee Berner, and environmental partner Scott Reisch.

Additional team support includes capital markets counsel Tifarah Allen, senior associates Dan Levisohn (M&A), Caitlin Piper (tax), Malaz Moustafa (employee benefits and executive compensation), Amy Kett (labor and employment), Leslie Graham (real estate), Ao Chen (banking), Marta Orpiszewska (environmental), Conlon Danberg (capital markets), and associates Lena Al-Marzoog (capital markets), Dylan Hays (tax), Billy Clinton (tax), Nirupa Persaud (employee benefits and executive compensation), Zachary Siegel (labor and employment), Lauren Kimmel (debt capital markets), Sarah Branch (capital markets), and Jason Lee (corporate and finance).

Hogan Lovells has advised VICI on a number of transactions including on its US$3.2bn partnership with Eldorado Resorts, Inc. in connection with Eldorado's combination with Caesars Entertainment Group and simultaneous US$2.47bn equity offering, the largest REIT follow-on offering in history.

The firm has also advised on the tax aspects of VICI's recent US$4bn acquisition in cash of all the land and real estate assets associated with The Venetian Resort Las Vegas and the Sands Expo and Convention Center from Las Vegas Sands Corp.

VICI's latest transaction has been approved by the Board of Directors of each of MGM Resorts, MGP and VICI (and, in the case of MGP, the Conflicts Committee). The transaction is expected to close in the first half of 2022, subject to regulatory approvals and approval by the stockholders of VICI.

For additional information visit www.hoganlovells.com

RICHARDS BUELL SUTTON

WINS LANDMARK DECISION: GOVERNMENT LIABLE FOR TRADEMARK INFRINGEMENT

VANCOUVER, 21 June 21, 2021: In a landmark case involving multiple levels of appeal, RBS successfully represented a Vancouver-based energy consulting business against the Government of Ontario for trademark infringement. The decision established that public bodies can also be held liable for trademark infringement when adopting an official mark that may be confused with a prior registered trademark.

Full overview follows:

In Quality Program Services Inc. v. Ontario (Energy), 2018 FC 971, aff'd 2020 FCA 53 (leave to appeal to SCC denied), RBS LLP partner Jonathan M.S. Woolley successfully protected our client's registered trademark "EMPOWER ME" from infringement by the Government of Ontario. The Government of Ontario was ordered to pay damages of $10,000 to Quality Program Services Inc. (QPS) on the basis that the Ontario Ministry of Energy's campaign slogan "emPOWERme" and website launch of the same name was confusing with, and therefore infringed, QPS's registered mark. The key issue in this decision was whether the Government of Ontario could become immune to an infringement claim by adopting QPS's mark "emPOWERme" as an "official mark" of the government, even though it had been already registered by and accumulated goodwill associated with QPS.

Significance:

Under the Trademark Act, government and public authorities are entitled to adopt particular marks as "official marks". Once notice of the adoption is provided, these marks become removed from the realm of commerce, and any use of the official mark, or any mark confusing with it, becomes strictly prohibited. The trademark Registrar is not entitled to decline the registration of an official mark, no matter if it is confusing with, or even identical to, a company's pre-existing trademark. Examples of symbols intended to be protected by "official mark" status include the Canadian flag and the crests of Crown corporations.

The case is a landmark decision, as it is the first time anyone has ever successfully defended its trademark against a government agency seeking "official mark" or "super trademark" status for the same mark. The Federal Court of Appeal not only upheld the lower court's decision and sided with QPS, it sent the strong message that "a public authority that chooses to use a mark that is confusing to a registered trademark does so at its peril". As this case illustrates, official marks are controversial. They offer extremely broad protections, with few limitations. This decision changed the law by delineating the limitations of official mark protection.

The decision is significant to trademark and intellectual property professionals, and has received media attention. For example, CBC article "Move to 'emPOWER' Ontario energy consumers ends in $10K trademark confusion". https://www.cbc.ca/news/canada/british-columbia/power-trademark-ontario-slogan-1.4867595.

Factual Background:

QPS is a BC company that originated and used the phrase "EMPOWER ME" in connection with energy awareness since 2013, when the mark was displayed at QPS's booth at a festival in Surrey, BC. The trademark application for exclusive use of the mark was granted by the Canadian Intellectual Property Office on July 23, 2014.

In 2015, QPS became aware of the Government of Ontario's website using the name "emPOWERme" in connection with a campaign to educate Ontario residents about Ontario's energy system and energy conservation. QPS wrote to the Government of Ontario, requesting that it cease and desist its use of the mark. The Government of Ontario refused. Subsequently, it attempted to adopt PQS's mark "emPOWERme" as an official mark of the government pursuant to s. 9(1)(n) of the Trademark Act.

The Federal Court found that QPS owned the trademark EMPOWER ME for use in association with energy awareness, conservation and efficiency services, and that QPS has the exclusive right to the use of such trademark not only in BC, but throughout Canada. The Government of Ontario had wrongfully infringed QPS's trademark, contrary to the Trademark Act. The adoption of an official mark is powerful as it prohibits use by others, but does not go as far to protecting the government agency from itself contravening the Act, nor does it eliminate rights already conferred upon the owner of a registered trademark.

As a result, the Government of Ontario was ordered to pay $10,000 in damages to QPS. The Government of Ontario was unsuccessful in challenging the decision in the Federal Court of Appeal. The Supreme Court of Canada refused to grant leave to appeal, effectively solidifying QPS's win in the lower courts.

More Information: At RBS, we have a knowledgeable and experienced group of trademark agents and lawyers who manage all aspects of trademark portfolios in Canada, the USA, and around the world. For more information on protecting your trademark, or for general inquiries about trademark registration, please contact our Technology & Innovation Practice Group Leader Sze-Mei Young at syeung@rbs.ca.

For additional information visit www.rbs.ca

PRAC EVENTS
BULLETIN BOARD

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.

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

NEW DELHI - 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)

PRAC EVENTS


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PRAC @ SAO PAULO
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PRAC @ Taipei 2014


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Bennett Jones

Brigard Urrutia

/Carey

CITY-YUWA PARTNERS

GIDE
GIDE LOYRETTE NOUEL

Davis Wright Tremaine LLP

DENTONS RODYK

Hogan Lovells

KOCHHAR&CO.
ADVOCATES & LEGAL CONSULTANTS

GOODSILL

漢坤律師事務所
HAN KUN LAW OFFICES

KIM, CHANG & LEE

理律法律事務所
LEE AND LI
ATTORNEYS-AT-LAW

LEGA
ABOGADOS

Mulla & Mulla
& Craigie Blunt & Caroe
Advocates, Solicitors and Notaries

ESTUDIO MUÑIZ
MUÑIZ OLAYA MELÉNDEZ CASTRO ONO & HERRERA
Abogados

NautaDutilh

RBS
RICHARDS BUELL SUTTON LLP
Established in 1871

Santamarina + Steta

SKRINE

SyCip Salazar Hernandez & Gatmaitan

TozziniFreire
ADVOGADOS

The Argentine Central Bank authorizes new forms of financing to individual residents and companies for the cancellation of obligations

On August 26, 2021, through Communiqué "A" 7348 (the "Communiqué"), the Argentine Central Bank (the "Central Bank"), established an exception to allow local residents and entities to refinance outstanding commercial debts into financial loans.

Under this Communiqué, local individuals and local legal entities that obtain, enter and settle in the Foreign Exchange Market (the "FX Market") new financings from foreign residents, may apply the pesos resulting from the settlement to the payment through the FX Market commercial debts for imports and services in force as of June 30, 2021, excluding them from the prior authorization of the Central Bank. This exception applies even for the payment of services to foreign related parties.

This exception is applicable upon compliance with the following requirements:

- Refinancing of commercial debt of up to USD 5 million (five million US dollars);
- The new financial debt must (i) be for an amount not less than the amount of the commercial debt so refinanced; (ii) have an average duration (including principal and interest) of not less than two years from the settlement of the funds in the FX Market and (iii) no principal maturities for the first three months after settlement.

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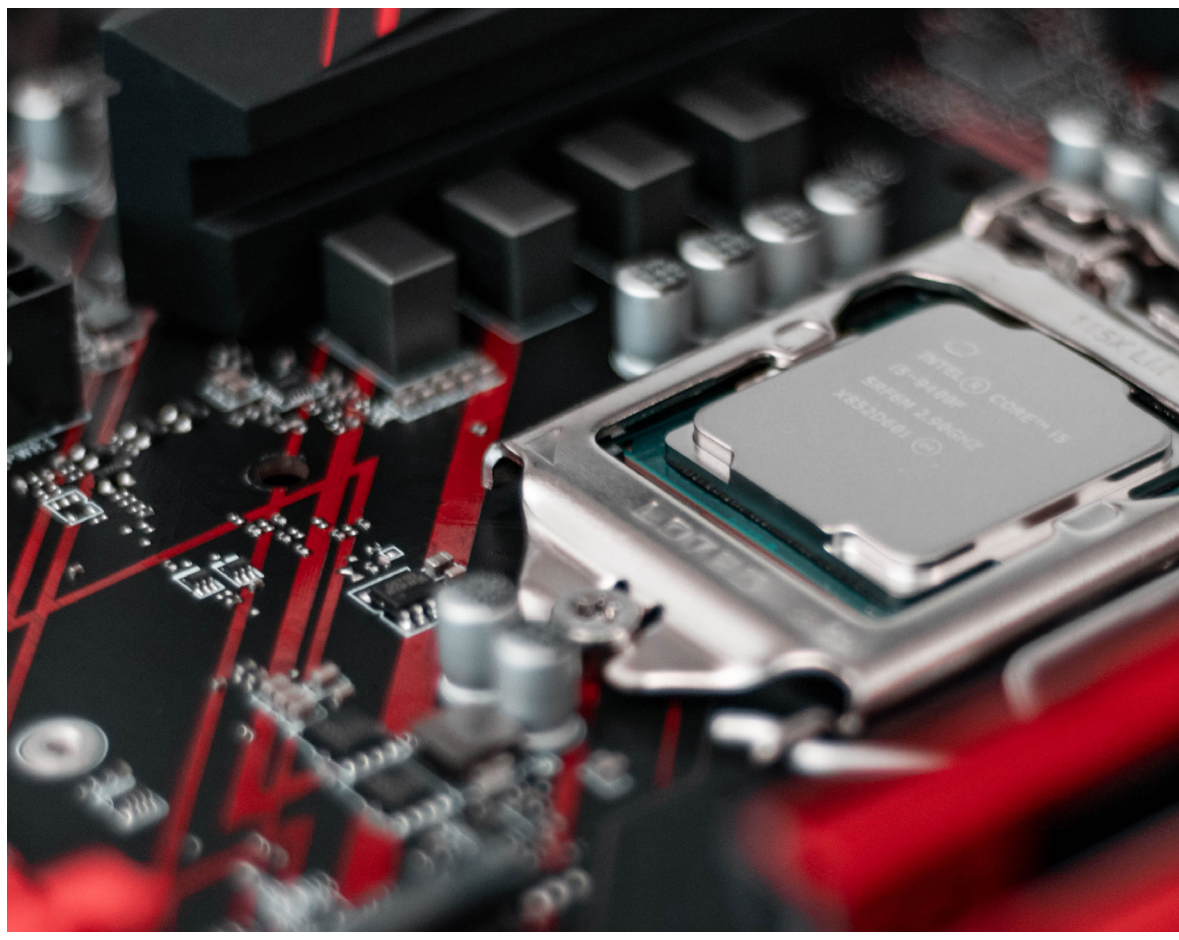
TOZZINIFREIRE ADVOGADOS

Brazilian Context

Electronic means of payment industry supports Bill that discusses storage of consumer data by providers



Representatives of the electronic means of payment industry have supported the new version of Bill No. 786/2019, which discusses the storage of consumer payment data by service providers and product suppliers, pending before Consumer Defense Commission of Brazilian Chamber of Deputies. It is important to note that the previous version of the Bill prohibited the storage of data relating to credit and debit cards and other means of payment, without the consumer's prior authorization.

Under the original terms of the Bill, if the data subject consented to the storage, this authorization would be valid for a period of twelve (12) months, with the possibility of revocation at any time. It is also noteworthy that, with the consumer's consent, the service provider and product supplier could not use the data for new purchase operations, nor transfer them to third parties, without the data subject's prior authorization.

During the Commission's debate, the representatives argued that Brazilian General Data Protection Law (LGPD) already sufficiently provides for consumer security and that there is already strong regulation about these transactions by Brazilian Central Bank. As the representatives pointed out, the original text of the Bill would lead to too much bureaucracy, without stimulating more security. In their words, most frauds that harm consumers are not related to data storage by payment institutions.

In this regard, the industry representatives also highlighted the market growth, during the first three months of 2021, with a 17.3% increase in transactions with credit, debit, and prepaid cards, totaling more than BRL 500 billion, compared to the same period last year. Finally, it was highlighted the 35.6% increase in remote purchases, in the first quarter of this year, reaching more than BRL 120 billion, which could be negatively impacted by the original Bill, according to the industry representatives.

Newsletter content produced by TozziniFreire's Cybersecurity & Data Privacy practice.

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Summary of Bill 206 and Proposed Amendments to the Responsible Energy Development Act

Written by Daron Naffin, Tim Myers and Erin Anderson

Bill 206, *Property Rights Statutes Amendments Act*, 2020, 2nd Sess, 30th Leg, Alberta, 2020 (Bill 206) is a private member's bill currently at second reading in the Alberta Legislature. It includes amendments to Alberta's *Responsible Energy Development Act* (REDA) to require the Alberta Energy Regulator (AER) to provide notice and procedural rights to those who could be directly and adversely affected by its decision on an application.

The Bill would amend the *Alberta Bill of Rights*, RSA 2000, c A-14, to recognize an entitlement to compensation, and recourse to the courts to determine compensation payable, for the Crown's expropriation of property. It also amends the *Alberta Land Stewardship Act*, SA 2009, c A-26.8, including as it relates to rights to apply to the Crown for compensation when regional plans affect property rights. Moreover, it creates a new right to bring a claim against the Crown when regional plans affect statutory consents. It would end rights of adverse possession (squatter's rights) through amendments to the *Land Titles Act*, RSA 2000, c L-4, and the *Limitations Act*, RSA 2000, c L-12. It amends the REDA to require the AER to provide notice and procedural rights to those who could be directly and adversely affected by an application that the AER receives.

Proposed Amendments to the REDA

Section 5 of Bill 206 would amend the REDA to impose on the AER additional obligations from an application, such as an application under an energy resource enactment.

Currently, when the AER receives an application it must "ensure that public notice of the application is provided in accordance with the rules." The AER typically posts public notice of an application on its website. Any person who thinks they would be directly and adversely affected by the application can then file a statement of concern with the AER. The AER decides whether to conduct a hearing on the application and decides the application. If the AER conducts a hearing, then "a person who may be directly and adversely affected by the application is entitled to be heard at the hearing."

Bill 206 would replace the current notice provision in section 31 of the REDA and require the AER to take steps in addition to public notice. It would require the AER to "determine if the decision on the application could directly and adversely affect a person" and, if so, provide them with notice of the application and certain procedural rights. The proposed procedural rights include a reasonable opportunity for the person to learn about the application, to file a statement of concern, and to submit evidence that relates to the application or contradicts or explains material in the application. If the person would not have a fair opportunity to contradict or explain certain items without cross-examining the applicant, then they would be entitled to do so. The AER would also need to provide the person with an adequate opportunity to "make representations by way of argument to the AER or its hearing commissioners." As long as the person would have "an opportunity to make the representations adequately in writing," then the AER would not have to let them make oral representations, and also would not have to allow them legal representation except when a statutory provision requires a hearing.

Notably, these amendments would require the AER to determine whether its decision on an application could directly and adversely affect a person at first instance, as compared to the current process where it typically does not make that determination unless a person files a statement of concern or a request to participate in a hearing. This change may result in increased participation by property owners in application processes before the AER.

Coming into Force and Possible Changes

As currently drafted, the section of Bill 206 amending the *REDA* would come into force on January 1, 2021, along with the sections amending the *Alberta Bill of Rights* and *Alberta Land Stewardship Act*. The sections dealing with adverse possession would be considered to have come into force on the date of first reading (October 28, 2020). Bill 206 is still at second reading and is currently referred to a committee, so its contents and coming into force dates may change.

A member of the Bennett Jones Energy Regulatory group would be pleased to discuss Bill 206 and how the legislative amendments proposed may affect your business or energy resource project.

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Posted on: September 9, 2021

NOTICE TO RBS CLIENTS: LAND OWNER TRANSPARENCY ACT – IMPORTANT DETAILS TO KNOW FOR UPCOMING NOV. 30, 2021 DEADLINE

By November 30th, 2021, every corporation and trust (including an unregistered trust) in British Columbia, that is the legal owner of land or has certain interests in land, is required to file a transparency report ("**Transparency Report**") pursuant to the *Land Owner Transparency Act* ("**LOTA**"). A Transparency Report is designed to disclose the ultimate beneficial individual(s) or controlling individual(s) of such land, or other interests in land, which other interests include leases of more than 10 years including renewals.

Since November 30th, 2020, Transparency Reports have been filed in connection with any legal transfers of new land transactions carried out by every corporation and trustee registered as the owner of the land. Transparency Reports are also required for nominees who are registered on title to the land on behalf of any other individual or entity, including a partnership, whether such nominees are corporations, trusts or individuals.

LOTA requires disclosure of the individuals who are the "interest holders" of land or certain interests in land. Interest holders may include shareholders, directors, partners of a partnership, trustees and/or trust beneficiaries. In most instances, determining who the interest holders are will be a straight-forward process. In more complex ownership structures, however, it may be necessary to work our way down the ownership structure to identify the individuals who are the ultimate interest holders.

A Transparency Report requires disclosure of the full legal name, address, citizenship, residency, social insurance number, birth date, and other information of each interest holder.

These disclosure obligations are an ongoing requirement, and an updated Transparency Report may need to be filed whenever there are changes in the interest holders, which can involve the transfer of shares, sale of the beneficial interest of land, the addition or removal of a partner in a partnership, or even the death or birth of an individual who may have an interest in the land, partnership or company.

The party signing the Transparency Report, which is typically the registered owner of the land, or in the case of a company, a director or officer of the company, is also required to notify each interest holder before and after they complete the Transparency Report, and keep records of such interactions. The attached Schedule

"B" to this Notice is a checklist for to be used to collect the relevant information from interest holders.

Failure to file or incorrectly filing a Transparency Report could result in fines starting at the greater of $25,000 for individuals, $50,000 for a company or up to 15% of the value of the land or interest in land. You must file the Transparency Report before November 30, 2021, or risk facing such a fine.

Please note that this is a different registry and reporting obligation from the registry of significant individuals required for companies under the *Business Corporations Act* ("**BCA**"). The LOTA disclosure obligations are broader and distinct from those under the BCA and may require disclosure of parties that were not previously caught by the BCA disclosure obligations.

If your ownership structure is simple, such as any land owned by the company that is not held in trust, or a simple bare trust for another individual or company, we would encourage you to fill in the attached Schedule "B" for each individual that falls within the definition of "interest holder". Kindly return the completed Schedules "A" and "B" to us via email, and one of our Paralegals or Lawyers will be in touch with follow up questions, or a prepared Transparency Report for your review and certification/signing.

The Transparency Report can be complex, and you may require our assistance in situations where multiple companies, trusts, partnerships or shareholder agreements are in place, or in situations where it is unclear whether or not an individual has sufficient ownership or other interest to be considered an interest holder.

The Land Owner Transparency Register has been designed to be accessed only by legal professionals with a land title office online account, and therefore, the Transparency Report can only be prepared and submitted by a legal professional.

We are here to help. If you have any questions or require support in preparing and filing the Transparency Report prior to November 30, 2021, please let us know.

We have included a list of questions in Schedule "A" that will help guide us in the preparation of the Transparency Report, if required, and if any further information or due diligence may be required by us in order to prepare the Transparency Report for you.

We have also included a checklist in Schedule "B", which includes most of the information necessary for our office to prepare the Transparency Report. Please ensure that you fill out every box in full and return it to us via email once complete.

If you answered "no" to questions 1, 2 and 3 on Schedule "A", likely you are not required to file a Transparency Report.

If you would like further information, please contact the lawyer(s) you primarily work with at RBS, or contact Real Estate lawyer, Ryan Klassen, by phone at 604.595.9930 or by email at rklassen@rbs.ca. Alternatively, you may go to this website, which also has resources available: https://landtransparency.ca/.

Thank you.

Click here to complete the online form consisting of the Schedule “A” Questionnaire, and the Schedule “B” Interest Holder Disclosure.

/Carey

News Alerts

September 1, 202

Border closure for foreigners is extended until September 30

Kindly note that Decree No. 221, of the Ministry of the Interior and Public Security, was published today, extending the validity of Supreme Decree No. 102, of 2020, of the Ministry of the Interior and Public Security, which provides for the temporary closure of places authorized for the entry and exit of foreigners, due to public health emergency of international importance given the outbreak of the new Coronavirus (2019-NCOV) , until September 30, 2021.

The foregoing, notwithstanding the fact that it may be modified, in view of the evolution experienced by the outbreak of COVID-19, in the national territory.

Exceptionally, Chilean nationals and foreign residents in Chile will be allowed to exit the country provided that:

1. They have a valid Mobility Pass, according to the applicable health regulations and exit the country through the Santiago´s Airport; or
2. Request via the Virtual Police Station platform, an extraordinary authorization form for the travel of people abroad, for urgent and qualified reasons, notwithstanding the sanitary measures indicated in the country of destination, in the following cases:
    a. for humanitarian reasons;
    b. as essential for the health of the applicant;
    c. to carry out the steps necessary for the proper running of the country; and
    d. for or to reside abroad.

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Brief Comments on the Personal Information Protection Law

Authors: Kevin DUAN | Kemeng CAI | Tina WANG | Minzhe HU

On August 20, 2021, the *Personal Information Protection Law of the People's Republic of China* (the "**PIPL**") was officially promulgated, which will come into effect on November 1, 2021. The PIPL will become the first systematic and comprehensive law in China that focuses on the protection of personal information.

The final draft of the PIPL (the "**Final Draft**"), on the basis of the second reading draft (the "**Second Reading Draft**"), further strengthens the requirements for personal information protection and improves the legal bases for personal information processing. The Final Draft also emphasizes the provisions on "big data discrimination" and "right to data portability" in the context of ensuring the orderly development of the platform economy, and further strengthens protections for the rights of personal information subjects and the public interest. In addition to administrative supervision, the Final Draft also further strengthens the provisions on personal litigation rights and public interest litigation. These diversified means for personal information subjects to protect their rights will further enhance the deterrence effect of the PIPL.

However, the Final Draft also takes into account the operability and feasibility of these regulations, includes human resources management as a legal basis for processing, and adds concepts such as "small personal information handler". It moderately relaxes restrictions on processing public personal information, and improves certain provisions in light of specific scenarios.

If the Cybersecurity Law opened a new stage for personal information protection in China, the PIPL brings personal information protection into a new era. Its fundamental institutional framework and wide application will have a profound impact on the digital society, including online retail, artificial intelligence, autonomous driving, healthcare, and the Internet of Things.

Please visit us online for our full reporting and interpretation of the PIPL in light of the major changes in the Final Draft. You can find the full reporting here:

https://www.hankunlaw.com/downloadfile/newsAndInsights/55aaef24b8fbd535361fe5c1155656d6.pdf

*Due to report length, this update redirects readers to the original publication which can be found at the link noted.

Brigard Urrutia

Colombian Round advances: Addendum No. 21 to the PPAA

The National Hydrocarbons Agency published Addendum No. 21 to the PPAA that modifies terms for the Fourth Cycle.

September 7th, 2021

Within the Colombian Rounds, the National Hydrocarbons Agency ("ANH") published Addendum No. 21 to the Permanent Bidding Process ("PPAA") by means of which the schedule of PPAA's Fourth Cycle is modified.

Specially, Addendum No. 21 to the PPAA modified the terms for the submission or adjustment of the documents for the qualification of interested parties. Likewise, the terms for the submission of offers and counteroffers and for the awarding of contracts were also modified, as follows:

Interested parties will have until September 30, 2021 to submit the documents to obtain or update their qualification.

The publication of the final list of qualified companies will take place on October 10, 2021.

The ANH will publish the land map with the areas that will be part of the Fourth Cycle of the PPAA on November 3, 2021.

As of November 16, 2021, qualified companies may submit offers on the areas of the PPAA. The ANH will publish the final eligibility list on December 22, 2021.

Finally, as of December 13, 2021 the ANH will award the contracts subject to the PPAA.

Please click on the following link to see the Addendum No. 21 to the PPAA: https://www.anh.gov.co/Asignacion-de-areas/Documentos%20PPAA/Cronograma%20PPAA.%20Adenda%20No.%2021.%2002-09-21.pdf

For more information contact our team info@bu.com.co

www.bu.com.co

COSTA RICA

NEW ANTITRUST RULES DURING COVID-19 CRISIS

Aug/2020

The Costa Rican Antitrust Authority ("COPROCOM"), with the purpose of supporting the economic reactivation of the country, issued new provisional rules for the treatment of agreements among competitors to collaborate or coordinate certain actions. These rules establish that the following actions will not be sanctioned, provided they meet certain conditions:

Collaboration between competing companies to make joint purchases and ensure the supply and distribution to consumers, either private or public, of essential products.

Joint offers between competitors to supply needs of the public sector.

Additionally, strategic alliances between competing companies that must be notified to COPROCOM may be justified in this exceptional context; which will be taken into consideration by the Authority when analyzing these transactions.

Finally, transactions in which the "failing firm" argument is alleged will be prioritized.

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Combating money laundering and terrorist financing (AML/CFT): a European Commission proposal for a stronger European Framework

21 July 2021

On 20 July 2021, the European Commission published a set of proposals to improve the fight against money laundering and terrorist financing in the European Union (AML/CFT). Its aim is to strengthen its provisions in this area, ensuring in particular that they are suited to market developments, particularly with regard to the development of crypto-assets. The European Commission is also proposing the creation of a European authority on AML/CFT.

On 20 July 2021, the European Commission published four reform proposals aimed at comprehensively strengthening AML/CFT in the European Union. These proposals include:

- a draft European regulation for the creation of a European AML/CFT authority, with specific tasks and powers *vis-à-vis* certain market players and national supervisory authorities;
- a draft directive, known as the "Sixth Directive", to amend the existing EU directive governing AML/CFT in the European Union;
- a draft regulation, which would complement the above-mentioned Sixth Directive to provide directly applicable rules within Member States in the areas of customer due diligence and beneficial ownership for obliged entities;
- a draft amendment to EU Regulation 2015/847/EU on money transfers, to provide for specific obligations on crypto-asset service providers, in line with the recent work of the Financial Action Task Force (FATF).

The publication of these proposals was announced in May 2020 by the European Commission in its AML/CFT Action Plan and taken up in July 2020 in the Commission's Communication on the European institutions' Security Union Strategy.

This initiative marks a strong political will to make the European Union a reference in AML/CFT with regard to international standards, by reinforcing the obligations of the players and the effectiveness of the supervision mechanisms. To this end, the proposals pay particular attention to certain issues, particularly the crypto-assets sector and coordination with third countries.

These proposals will now be submitted to the European Parliament and the Council, with the aim of having this reform operational by 2024. Their publication by the European Commission also gives market players the opportunity to actively contribute to the definition in the European Union of a regulatory framework that is relevant to their activities.

Useful link: Beating Financial Crime (europa.eu)

Hogan Lovells

Fashionista – Hong Kong court rejects winding-up adjournment citing "problematic business model"

8 September 2021

A fashion brand insolvency has become the latest to come before the Hong Kong companies court, with the court refusing to adjourn the petition in favor of a proposed restructuring which the court said was in fact nothing of the sort.

Branded goods

Trinity (Management Services) Limited (Company) is a subsidiary of Trinity Limited (Holdings), a Bermuda-based, Hong Kong listed garment designer, manufacturer and retailer. The company defaulted on its HK$150 million bank facility, guaranteed by Holdings, in November 2019.

On 4 December 2019, the bank served a statutory demand. Discussions about restructuring the loan went nowhere. On 8 December 2020, the bank presented a petition in Hong Kong seeking the winding up of the Company and a petition in Bermuda seeking the winding up of Holdings.

On 8 March 2021, pre-empting the bank's application for a winding-up order in Hong Kong, Holdings applied for the appointment of provisional liquidators in Bermuda. On 26 March 2021, Holdings' application was approved and the petition was adjourned for three months which gave the Company time, with the assistance of the provisional liquidators, to progress a restructuring of Holdings. On 26 June 2021, the petition was adjourned for a further month.

At the time of the substantive hearing of the winding-up petition regarding the Company in Hong Kong, the substantive hearing of the petition regarding Holdings in Bermuda had not yet taken place.

Style guide

Before the Hong Kong court, the Company proposed that the petition be adjourned in order to progress a restructuring, a term which Harris J described as a "misnomer for what is proposed."

Holdings was proposing to sell one of its best known brands, Cerruti 1881, and to pay the bank and other bank creditors in full from the proceeds. No restructuring of the bank debt or other liabilities was under consideration and neither did it appear there was any plan to rehabilitate what Holdings' board recognized was a "problematic business model."

Yet exactly when the petitioning bank would be paid was uncertain. On the Company's own evidence, it was unlikely that any binding agreement for the sale of Cerruti would be signed before the end of the year. It followed that the bank would have to wait until the following year to receive payment.

Harris J observed that the application for the appointment of provisional liquidators in Bermuda appeared to have been motivated by Holdings' wish to adjourn the Hong Kong petition and to bolster its application by offering the appointment of insolvency practitioners on a provisional basis as providing some independent oversight on its sale process.

Akin to a "debtor in possession process" which Hong Kong does not favor, the provisional liquidators' role in Holdings was "more in the nature of an independent financial adviser, who can report to the court its views on the progress of the sale of Cerruti, which is a process managed by the Board."

In this regard, Harris J expressly noted that the Hong Kong court is likely to look carefully in future at the recognition of foreign provisional liquidators "appointed on such carefully circumscribed terms."

Model principles

The court has discretion to adjourn a petition to allow a debtor more time to pay the creditor. What was at issue was the correct approach of the court to determining whether or not to grant an adjournment if the petitioner objects to a debtor being given more time.

Citing Snowden J's decision in Re Maud [2016] Bus LR 1243 (a decision which concerned personal bankruptcy) the court set out the principles, which it noted could also apply in corporate insolvency:

- Insolvency proceedings are class actions designed to secure distribution of an insolvent company's assets pari passu between all creditors, not merely a debt collection process.
- Delay in dealing with a petition is likely to have adverse consequences for creditors generally.
- The court has discretion to adjourn the petition only if there is a reasonable prospect of the petition debt being paid in full within a reasonable period.
- This practice can be viewed either as an exercise of the general discretion of the court to refuse to make a bankruptcy order and/or as an exercise of the discretionary case management powers of the judge to adjourn the petition. It is almost always exercised at the behest of the debtor in situations where the petition is not otherwise opposed.
- A debtor has to present the court with a proposal for repayment which is both precise and credible, for example where a debtor says it will be able to pay its creditor in full within 12 weeks, in order to have any prospect of the court exercising its discretion to adjourn a petition.

Here, the court had been presented with a justification for an adjournment that appeared to join different things, seeking time to pay a debt in full, restructuring a portion of corporate debt and protection of creditors' interests by the appointment of provisional liquidators. The court said the company was really only doing the first. The appointment of liquidators seemed to have been of limited effect in protecting creditors' interests.

The evidence filed by the Company and Holdings did not demonstrate that on the balance of probabilities the banks would be paid in full within a reasonable period. Even those banking creditors aside from the petitioner who had been prepared to agree to a short adjournment were now re-evaluating their stance with one now having elected to take enforcement action in the mainland.

It was reasonable for the court to proceed on the basis that the views of the board of Holdings reflected a desire to protect the enterprise value of the business and not the interests of the banks. The court granted the usual winding up order.

Fashion cents

This is the latest in a series of judgments where the Hong Kong court has criticized Hong Kong-listed companies that are incorporated offshore, carry on business primarily in the mainland and that use tactics which are arguably designed to frustrate the interests of creditors by engineering moratoria on winding-up actions or, once commenced, by seeking to adjourn the petition in favour of some vaguely conceived "restructuring" (see Hogan Lovells publication - *A "magical incantation" – Hong Kong court warns it will carefully examine restructuring viability)*.

The Hong Kong court will in future be far less likely to accept the appointment of short-term provisional liquidators in offshore jurisdictions as evidence of serious restructuring intent. It seems the fashion in the Hong Kong companies court is to get back to basics as far as winding-up proceedings are concerned.

Authored by Jonathan Leitch, Yolanda Lau, and Nigel Sharman.

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Half-hearted refunds for inverted duty structure supplies

By Reena Khair & Shreya Dahiya

Even after four years of the introduction of Goods and Service Tax, there is a lack of clarity on many substantive and procedural issues. One such issue is the absence of complete relief from the ill effects of an inverted duty structure, that is where the GST rate paid on purchases is more than the GST rate payable on sales, resulting in an accumulation of credits. The difficulty arises because the taxpayer has to pay tax to its vendors on its purchases in cash. If it is unable to fully offset this tax against its output supplies, there will remain balances in the Credit Ledgers, affecting liquidity as well as creating an additional tax burden.

Even though the accumulation of credit could be a result of the rate of tax on inputs or input services being higher than the rate of tax on output supplies, Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017 appears to provide for refund of accumulated credit only in respect of inputs. The fate of credits relating to input services remains unclear.

Initially, when GST was introduced in 2017, Rule 89 allowed refund of credits for both goods and services, but by a retrospective amendment, the refund of credit has been restricted to inputs. The retrospective amendment is not only inequitable but has resulted in litigation before different High Courts yielding divergent views on the issue.

The Gujarat High Court in its judgment, in the case of VKC Footsteps India Pvt. Ltd. Vs. Union of India has struck down that part of Rule 89 which denies refund of unutilized credit on input services as ultra vires Section 54 of the Act. The Gujarat High Court has observed that keeping in mind the scheme and object of the CGST Act, it cannot be the intent of the government, while framing the rules, to restrict the statutory provision providing for refund of tax paid on input services, as part of refund of unutilized tax credit.

Taking a contrary position, the Madras High Court, in the case of TVL. Transtonnelstroy Afcons Joint Venture Vs. Union of India, has held that Section 54 provides for benefit only on unutilized credit accumulated on account of inputs used in the provision of output supplies and not on input services. The High Court also holds that differentiation between inputs (goods) and input services is a valid classification and not violative of Article 14 of the Constitution of India.

Noting the difference in opinion of the Madras and Gujarat High court, the Supreme Court is now seized of the matter and will take a final view on the issue. In the interim taxpayers have

been left to suffer the ill effects of the inverted duty structure and face uncertainty in taking business and financial decisions.

The GST Council has also considered this issue from time to time but has not offered any tangible solutions to the problem, so far. The Government has assured industry, that this issue will be addressed by the Council in its upcoming meetings.

While we wait for the outcome of the cases pending before the Supreme Court, the government must look beyond revenue considerations, and remove the ambiguity in the GST law. This anomaly puts those facing inverted duty structure at a significant disadvantage as compared to other taxpayers, who are able to pass on their tax liability in full to their customers.
Needless to say, that the inverted duty structure is a creation of the Government and not the taxpayer, and therefore there appears to be no justification for the reluctance to allow refund of the tax paid on input services, where credits accumulate due to the lack of avenues for utilization.

The failure to adequately address this problem has meant higher manufacturing costs for production units in textiles, steel, rubber, footwear, etc., who are already suffering from the slow demand due to the covid pandemic. If the Government is serious about programs like the Make in India and Atmanirbhar Bharat, it will have to be more proactive in finding answers to problems affecting the viability and competitiveness of manufacturing in India.

For any queries, you may reach Reena Khair at reena.khair@kochhar.com

X----------X

SKRINE

Minimum Capital Funds Requirement for Merchant Acquiring Services

10 September 2021

The Financial Services (Requirements and Submission of Documents or Information) (Registered Business) (Amendment) Order 2021 [P.U.(A) 351/2021] ("the Amendment Order") was gazetted on 6 September 2021 and will come into operation on 1 October 2021.

The Amendment Order amends Part 1, Schedule 1 of the Financial Services (Requirements and Submission of Documents or Information) (Registered Business) Order 2013 [P.U. (A) 206/2013] ("the Principal Order") by including an additional requirement for a person who intends to carry on merchant acquiring services under the Financial Services Act 2013 ("FSA"). Merchant acquiring services is a "registered business" under the FSA.

Under the Amendment Order, an applicant which is not a financial institution regulated under the laws enforced by Bank Negara Malaysia ("BNM") is required to have a minimum capital funds of:

RM300,000, if the actual or projected amount of the average monthly transaction value is less than RM10,00,000; or

RM1,000,000, if the actual or projected amount of the average monthly transaction value is more than RM10,000,000.

The Amendment Order provides that the term "average monthly transaction value" refers to the calculation of:

the actual amount which is calculated based on a 12 month moving average; and

the projected amount which is calculated based on the estimated average monthly amount for a period of 12 following months.

The new minimum capital fund requirements under the Amendment Order are in addition to the existing requirements stipulated under the Principal Order, which include, among others:

that the applicant must be a company incorporated under the Companies Act 2016;

the shareholder, director or person concerned with the operation or management of the applicant has not been convicted of any offence under the FSA or an offence involving fraud or dishonesty under any other written law, and

the shareholder, director or person concerned with the operation or management of the applicant has not been involved with the management or operation of a person who has previously been deregistered by BNM.

These new requirements under the Amendment Order are consistent with the minimum capital fund requirements for non-bank acquirers pursuant to the exposure draft on Merchant Acquiring Services released by BNM on 17 July 2020. The final policy document for Merchant Acquiring Services has yet to be issued by BNM.

Alert by Lee Ai Hsian (Partner) and Tai Kean Lynn (Associate) of the Banking and Finance Practice of Skrine.

September 2021

IMSS approves transfer of disabled employees in employer substitutions due to the subcontracting reform

On September 8th, 2021, the Resolution ACDO.AS2.HCT.250821/213.P.DPES, issued by the Technical Council of the Mexican Social Security Institute ("IMSS" for its acronym in Spanish) in the ordinary session of August 25th, 2021, was published in the Official Gazette of the Federation ("DOF" for its acronym in Spanish). The Resolution approves that for one-time and without setting a precedent, employers who have made employer substitutions to comply with the subcontracting reform may unenrolled the employees with certificates of temporary disability and re-enrolled them with the substitute employer the following day, with the same contribution base salary.

This Resolution, which becomes effective the day after its publication, instructs the competent Departments of the IMSS to issue the necessary administrative measures for its correct execution.

The official publication can be consulted directly at the following link:
https://www.dof.gob.mx/nota_detalle.php?codigo=5629173&fecha=08/09/2021

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Modified entry into force of Management and Supervision of Legal Entities Act

24-06-2021

On 1 July 2021, the Management and Supervision of Legal Entities Act (Wet bestuur en toezicht rechtspersonen or WBTR) will enter into force. However, two parts will enter into force at a later – to be determined – date pursuant to the amended Act of 11 June 2021 (Stb. 2021, 284).

These parts concern the one-tier management model for associations, cooperatives, mutual insurance societies and foundations and the rules on absence and inability to act applicable to the board members of an NV. With regard to the one-tier management model, it did not yet appear technically possible to indicate in the trade register whether a board member is an executive or non-executive director. According to the minister for legal protection, these types of legal entities may still have a one-tier board structure, despite the current absence of a legal basis for this model. This practice can consequently continue unaffected. With regard to the rules on absence and inability to act applicable to the board members of an NV, it turned out that transitional provisions on this subject were inadvertently left out of the WBTR.

Therefore, it will be provided in a bill containing miscellaneous provisions, currently in preparation, that, upon the next amendment of their articles of association, NVs must include provisions governing the absence or inability to act of supervisory board members. This is in line with the transitional rules applicable to other corporate forms (the BV, association and foundation). In addition to this update on the new date of entry into force for certain parts of the WBTR, this newsletter provides an overview of the most important changes the WBTR will introduce.

Read the full newsletter here. (url: https://www.e-nautadutilh.com/40/4503/landing-pages/modified-entry-into-force-of-the-management-and-supervision-of-legal-entities-act.asp?sid=1ac34185-c0e9-4d26-bd75-6d9d79426976)

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Environmental, Social, and Governance (ESG) Investing in the Philippines

June 25, 2021

Broadly speaking, environmental, social, and governance (ESG) investing is understood as investing that incorporates ESG factors in investment decisions. It is often used interchangeably with the terms sustainable investing, responsible investing, ethical investing and impact investing.

The growing importance of ESG factors in investment decision-making was highlighted by Larry Fink, Chairman and Chief Executive Officer (CEO) of BlackRock, the world's largest asset manager, in his annual letter to CEOs in 2018. In the letter, Mr. Fink said, "[s]ociety is demanding that companies, both public and private, serve a social purpose. To prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society. Companies must benefit all of their stakeholders, including shareholders, employees, customers, and the communities in which they operate."[1]

In the Philippines, regulators have in recent years steadily deployed a stream of policy measures designed to enable investors to consider ESG factors in their investment, and to encourage companies to behave in a manner that benefits society and the environment. These policy measures are discussed below.

[1] Larry Fink's 2018 Letter to CEOs: A Sense of Purpose, available at https://www.blackrock.com/corporate/investor-relations/2018-larry-fink-ceo-letter.

Securities and Exchange Commission

Code of Corporate Governance.

In 2016, the Philippine Securities and Exchange Commission (SEC) issued the Code of Corporate Governance for Publicly-Listed Companies (CG-PLC),[2] which superseded the Revised Code of Corporate Governance and related issuances insofar as they relate to publicly-listed companies (PLCs). Significantly, the CG-PLC adopted an expansive view of corporate purpose, reinforced the idea of stakeholder governance, and introduced sustainability reporting in the governance framework of PLCs.

The CG-PLC defines corporate governance as "the system of stewardship and control to guide organizations in fulfilling their long-term economic, moral, legal and social obligations towards their stakeholders." It further states that the purpose of corporate governance is to maximize an organization's long-term success, creating sustainable value for its shareholders, stakeholders, and the nation. It defines the term "stakeholder" to include customers, creditors, employees, suppliers, investors, as well as the government and community in which an organization operates.[3]

Principle 10 of the CG-PLC states that a company should ensure that material and reportable non-financial and sustainability issues are disclosed. Pursuant thereto, the CG-PLC recommends that the board of directors have a clear and focused policy on the disclosure of non-financial information, with emphasis on the management of economic, environmental, social and governance issues of its business which underpin sustainability. It also recommends that companies adopt a globally-recognized standard/framework in reporting sustainability and non-financial issues.

On the other hand, Principles 14 to 16 of the CG-PLC articulate a company's duties to its stakeholders. Principle 16 states that a company should be socially responsible in all of its dealings with the communities where it operates, and should ensure that its interactions serve its environment and stakeholders in a positive and progressive manner that is fully supportive of its comprehensive and balanced development. Among others, the CG-PLC recommends that a company recognize and place importance on the interdependence between business and society, and promote a mutually beneficial relationship that allows the company to grow its business, while contributing to the advancement of the society where it operates.

In 2019, the SEC issued the Code of Corporate Governance for Public Companies and Registered Issuers (the *CG-PC & RIs*).[4] The CG-PC & RIs is the counterpart of the CG-PLC for public companies and registered issuers. It contains the same concepts, principles and recommendations on stakeholder governance and sustainability reporting as those in the CG-PLC.

[2] Please see SEC Memorandum Circular No. 19 s.2016 at https://www.sec.gov.ph/wp-content/uploads/2019/11/2016_memo_circular_no.19.pdf for reference.
[3] While a similar definition of the term "stakeholders" and the duties of the board of directors towards a corporation's stakeholders (alongside its duties to the corporation's shareholders) were first introduced in a 2014 amendment to the Revised Code of Corporate Governance, the latter did not go as far as to explicitly recognize that corporate purpose encompasses creating sustainable value for a corporation's stakeholders.
[4] Please see SEC Memorandum Circular No. 24 s.2019 at https://www.sec.gov.ph/mc-2019/mc-no-24-s-2019-code-of-corporate-governance-for-public-companies-and-registered-issuers/ for reference.

Sustainability Reporting Guidelines for Publicly-Listed Companies

In 2019, the SEC took a step further and transformed the recommendation under the CG-PLC that PLCs report on their non-financial and sustainability issues into a mandatory requirement. The SEC's *Sustainability Reporting Guidelines for Publicly-Listed Companies* (the *Sustainability Reporting Guidelines*)[5] require PLCs to submit a sustainability report together with their Annual Report.

The Sustainability Reporting Guidelines seek to, among others, help PLCs identify, evaluate and manage their material economic, environmental, and social risks and challenges, and measure and monitor their contribution towards achieving universal targets of sustainability, such as the United Nations Sustainable Development Goals (SDGs), and national policies and programs. Its reporting template draws heavily from the Global Reporting Initiative's (GRI) *Sustainability Reporting Standards*, the Sustainability Accounting Standards Board's (SASB) *Sustainability Accounting Standards*, and the recommendations of the Task Force on Climate-related Financial Disclosure (TCFD).

Recognizing that sustainability reporting is a journey in which PLCs would be at different levels, with some being in a more advanced stage than others, the Sustainability Reporting Guidelines adopt a "comply or explain" approach for the first three years of its implementation. This means that reporting companies are required to attach the reporting template to their Annual Report but they can provide explanations for items where they still have no available data on.

The Sustainability Reporting Guidelines is on its second year of implementation.

Guidelines on the Issuance of Green, Social and Sustainability Bonds

In 2018 and 2019, the SEC promulgated, in series, guidelines on the issuance in the Philippines of green, social and sustainability bonds under the *ASEAN Green Bond Standards*, the *ASEAN Social Bond Standards*, and the *ASEAN Sustainability Bond Standards*, respectively (collectively and for ease of reference, the *ASEAN Bond Standards*). The ASEAN Bond Standards were developed by the ASEAN Capital Markets Forum based on the International Capital Markets Association's *Green Bonds Principles*, *Social Bonds Principles* and *Sustainability Bond Guidelines*.

The SEC's *Guidelines for Issuance of ASEAN Green Bonds*[6] govern the issuance of ASEAN Green Bonds where proceeds will be exclusively applied to finance or refinance, in part or in full, new and/or existing eligible "Green Projects". Eligible Green Project categories include, but are not limited to, the following:

- Renewable energy;
- Energy efficiency;
- Pollution prevention and control;
- Environmentally sustainable management of living natural resources and land use;
- Terrestrial and aquatic biodiversity conservation;
- Clean transportation;

[5] Please see SEC Memorandum Circular 4 s.2019 at https://www.sec.gov.ph/corporate-governance/sustainability-report/ for reference.
[6] Please see SEC Memorandum Circular No. 12 s.2018 at https://www.sec.gov.ph/wp-content/uploads/2019/11/2018MCNo12.pdf for reference.

- Sustainable water and waste water management;
- Climate change adaptation;
- Eco-efficient and/or circular economy adapted production technologies and processes; and
- Green buildings which meet regional, national or internationally-recognized standards.

Green Projects may relate to more than one category. Fossil fuel power generation projects are excluded from the *ASEAN Green Bonds Standards*.

On the other hand, the SEC's *Guidelines on the Issuance of Social Bonds Under the ASEAN Social Bond Standards in the Philippines*[7] govern the issuance of ASEAN Social Bonds where proceeds will be exclusively applied to finance or refinance, in part or in full, new and/or existing eligible "Social Projects". Eligible Social Project categories include, but are not limited to, the following:

- Affordable basic infrastructure;
- Access to essential services;
- Affordable housing;
- Employment generation;
- Food security; and
- Socioeconomic advancement and empowerment.

Social Projects may relate to more than one category. Projects which involve activities that pose a negative social impact related to alcohol, gambling, tobacco and weaponry are excluded from the *ASEAN Social Bond Standards*.

Lastly, the SEC's *Guidelines on the Issuance of Sustainability Bonds Under the ASEAN Sustainability Bond Standards in the Philippines*[8] govern the issuance of ASEAN Sustainability Bonds where proceeds will be exclusively applied to finance or refinance a combination of both Green and Social Projects that respectively offer environmental and social benefits.

According to the SEC, the Philippines is a leader in the issuance of ASEAN-labelled Green, Social and Sustainability Bonds,[9] with Philippine companies accounting for 35% of such issuances as of May 31, 2021.[10]

Insurance Commission

Following the lead of the SEC, the Insurance Commission issued the *Revised Code of Corporate Governance for Insurance Commission Regulated Companies*[11] (ICRCs) in June 2020. Like the CG-PLC, the *Revised Code of Corporate Governance for ICRCs* incorporates the concepts of stakeholder governance and sustainability reporting in the governance framework of

[7] Please see SEC Memorandum Circular No. 9 s.2019 at https://www.sec.gov.ph/wp-content/uploads/2019/10/2019MCNo09.pdf for reference.
[8] Please see SEC Memorandum Circular No. 8 s. 2019 at https://www.sec.gov.ph/wp-content/uploads/2019/10/2019MCNo08.pdf for reference.
[9] Keynote Address of SEC Commissioner Ephyro Luis B. Amatong at the webinar on "Green Social Sustainable Bonds (GSSBs): Launching the Philippine Initiative" held on February 24, 2021.
[10] Sustainable Finance Market Update As of May 31, 2021 available at https://www.sec.gov.ph/cm-sustainable/sustainable-finance-market-update-9/.
[11] Please see IC Circular Letter No. 2020-71 at https://www.insurance.gov.ph/wp-content/uploads/2020/06/CL2020_71.pdf for reference.

ICRCs. It mirrors the definitions of "corporate governance" and "stakeholders" in the CG-PLC, and its principles and recommendations on the disclosure of non-financial and sustainability issues, and on a company's duties to its stakeholders.

Bangko Sentral ng Pilipinas

In April 2020, the *Bangko Sentral ng Pilipinas* (the Philippine Central Bank or *BSP*) issued *Circular No. 1085* or the *Sustainable Finance Framework*.[12] It requires banks to embed sustainability principles, including those covering environmental and social risk areas, in their corporate governance framework, risk management systems, and strategic objectives consistent with their size, risk profile and complexity of operations. It imposes corresponding obligations on the board of directors and senior management of a bank. It also requires banks to disclose matters relating to their sustainability strategy, standard and practices, and environmental and social risks in their Annual Report. Banks were given a period of three years from the issuance of the Circular within which to comply with its provisions.

Very recently, the BSP issued a press release[13] stating that it will engage banks in discussions during the three-year transitory period before the full implementation of Circular No. 1085. Within that period, banks are expected to identify and execute specific actions on the implementation of board-approved strategies and policies on the integration of sustainability principles into their strategic objectives, corporate governance, risk management systems, and operations.

The BSP is also working closely with the Department of Finance and other government agencies to embark on the development of a principles-based taxonomy to facilitate the mobilization of funds towards green or sustainable projects. Meanwhile, the industry associations, in collaboration with the World Wide Fund for Nature Philippines, are developing an analytical framework to assess the impact of climate physical risks on the loan portfolio of banks.

Conclusion

It is widely expected that the flow of capital towards undertakings that contribute to sustainable development will further intensify in the foreseeable future. Many international investors have long acknowledged that companies must not only deliver financial performance, but also make a positive contribution to society. On the other hand, Philippine regulators have more than amply demonstrated their willingness to use their regulatory powers to encourage companies to align their activities with environmental, social and sustainability goals, and to direct investors towards companies that do so. Together, the international investment climate and local policy environment present tremendous growth opportunities for Philippine companies. However, market analysts have noted that, at present, very few companies in the Philippines integrate sustainability goals into their business operations.[14] It would therefore serve Philippine companies well to take steps re-assess their business model and strategies to examine how they can address sustainability goals and "produce profitable solutions to the problems of people and planet."[15]

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[12] Please see BSP Circular No. 1085 at https://bsp.gov.ph/regulations/issuances/2020/c1085.pdf for reference.
[13] Please see BSP's Press Release at https://pia.gov.ph/news/articles/1076543 for reference.
[14] *The Philippines sees first SDG-focused fund* by Francis Nikolai Acosta available at https://esgclarityasia.com/the-philippines-sees-first-sdg-focused-fund/.
[15] This view on corporate purpose is espoused by Prof. Colin Mayer of the Said Business School, University of Oxford.

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This is a briefing from the Banking, Finance, and Securities Department and Corporate Services Department of SyCipLaw.

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SPAC - SINGAPORE'S PLACING ANOTHER CHOICE

DENTONS RODYK

September 6, 2021

The Singapore Exchange Securities Trading Limited (SGX-ST) is the first bourse in Asia to allow special-purpose acquisition companies (SPAC) to be listed.

The interest in SPACs became significant at about the time the COVID-19 surfaced and now in Singapore, conditions for a SPAC listing on the SGX-ST have now finally been cast by way of amendments to the SGX-ST Mainboard Rules effective 3 September 2021.

The South-China Morning Post reports that while SPACs have been around for decades, SPACs really only came around in 2020 and became one of the hottest fundraising trends globally in the last 18 months. At the end of 2020, Goldman Sachs observed that the record fundraising by SPACs is expected to continue in 2021 and could result in a wave of some US$300 billion in mergers and acquisitions in Asia and other parts of the world over 2021 and 2022.

Tan Boon Gin, CEO of SGX Regco, said in an announcement on 2 September 2021 that the SPAC process is to result in good target companies listed on SGX-ST, providing investors with more choice and opportunities. He adds that "to achieve this, you can expect us to focus on the sponsors' [being the founding shareholders'] quality and track record. We have also introduced requirements that increase sponsors' skin in the game and their alignment with shareholders' interests".

A SPAC listing on the SGX-ST will be on the Mainboard of the SGX-ST. The Mainboard Rules regarding SPACs cover the listing criteria, pre-business combination (de-SPAC) and de-SPAC conditions. The issuer is permitted to further raise funds after the IPO and before the de-SPAC, subject to the conditions set out in the Mainboard Rules. A summary of the foregoing is set out below:

At IPO

At the initial public offering (IPO), the main conditions to be met for a SPAC listing are as follows:

a. the issuer must have a market capitalisation of not less than S$150 million based on issue price and post-invitation issued share capital;

b. the founding shareholders and management team must subscribe for a minimum value of equity securities (based on IPO subscription price) in accordance with the following:

Market Capitalisation	At least 150 or less than 300
Proportion of	3.5%
Market Capitalisation	At least 300 or less than 500
Proportion of	3.0%
Market Capitalisation	At least 500
Proportion of subscription	2.5%

c. the aggregate equity interests in the issuer acquired by founding shareholders, management team and their associates at nominal or no consideration shall not exceed 20% of the issued share capital of the issuer (on a fully diluted basis) immediately following closing of the IPO;

d. the issue price of the securities (for example, warrants/shares) offered for subscription or sale must be at least S$5/- each;

e. for a SPAC, no dual class share structure is allowed at IPO;

f. the existing moratoriums set out at Rules 227, 228 and 229 of the Mainboard Rules apply. There is a 6-month moratorium after de-SPAC and for applicable issuers, a further 6-month moratorium thereafter on 50% of shareholdings;

g. at least 25% of the total number of issued shares (excluding treasury shares) must be held by at least 300 public shareholders; and

h. the majority of each of the board committees performing the functions of an audit committee, a nominating committee and a remuneration committee, including the respective chairmen, must be independent. The issuer is not allowed to adopt any security-based compensation arrangement before the completion of the de-SPAC.

IPO proceeds to be in escrow

At least 90% of the gross funds raised must be placed in an escrow account opened with and operated by an independent escrow agent (being independent of the founding shareholders, management team and their associates) which is a financial institution licensed and approved by the Monetary Authority of Singapore. IPO proceeds that are not placed in escrow, interest or other income earned on the escrowed funds from permitted investments may be applied as payment for administrative expenses incurred by the issuer in connection with the IPO for general working capital expenses and for the purpose of identifying and completing the de-SPAC.

The issuer (through the escrow agent) shall only be permitted to hold its assets in permitted investments in the form of cash or cash equivalent short-dated securities of at least A-2 rating or equivalent until completion of the de-SPAC that meets the SGX-ST requirements.

This amount in escrow cannot be drawn except for the purpose of the business combination, on liquidation of the issuer or otherwise set out in Practice Note 6.4 of the Mainboard Rules. The escrow agreement must provide for termination of the escrow account, including:

a. release of the escrowed funds on a pro rata basis to shareholders who exercise their redemption rights and the remaining escrowed funds to the issuer if the de-SPAC is completed within the permitted time frame; and

b. distribution of the escrowed funds to independent shareholders in accordance with the Mainboard Rules.

Further fund raising prior to completion of de-SPAC

Before completion of the de-SPAC, the issuer may be permitted to raise additional funds by way of equity issuances. In the case of warrants or other convertible securities, these must:

a. have exercise price of at least the price of the ordinary shares offered for the IPO;

b. not be exercisable before the completion of the de-SPAC;

c. not have entitlement to the funds held in the escrow account upon liquidation of the issuer or redemption of the ordinary shares by shareholders;

d. expire on the earlier of the permitted timeframe for completion of the de-SPAC or the maximum tenure under the issuance terms stated in the prospectus issued in connection with the IPO; and

e. comply with the usual provisions of Part VI of Chapter 8 of the Mainboard Rules.

The issuer must establish a percentage limit of not more than 50% as to the maximum dilution to the issuer's post-invitation issued share capital with respect to the conversion of any convertible securities issued by the issuer in connection with the IPO.

Funds raised are subject to escrow requirements and can only be raised for purposes of financing the de-SPAC and/or related administrative expenses. The issuer is not allowed to obtain any form of debt financing (excluding short term trade/accounts payables in the ordinary course of business) other than contemporaneous with the de-SPAC. Funds in escrow cannot be used as collateral or be encumbered for debt financing. No form of financial assistance is permitted by the issuer to any person/entity until the issuer has fully financed or satisfied the consideration of the de-SPAC and completed the acquisition underlying the de-SPAC.

Contingencies

If before completion of the de-SPAC, a material change occurs in relation to the profile of the founding shareholders and/or management team which may be, in the words of the Mainboard Rules, "critical to the successful founding of the issuer and/or successful completion" of the de-SPAC, the issuer is required to seek approval of a majority of at least 75% of the votes cast by independent shareholders for the continued listing of the issuer. The SGX-ST will determine what a circumstance an event of material change is for this purpose.

Also, where the issuer does not complete the de-SPAC in accordance with the permitted time frame and criteria or is directed to delist by the SGX-ST, it shall be liquidated. The amount held in escrow at the time of liquidation distribution and such other amounts held by the issuer, net of taxes and liquidation distribution expenses, shall be distributed to the shareholders on a pro rata basis as soon as reasonably practicable, subject to applicable law. Interest, income derived and deferred underwriting commissions accrued in escrow shall be part of liquidation proceeds. Founding shareholders and the management team (including each of their associates) must waive their rights to any deferred underwriting commissions deposited in the escrow account in such a liquidation event. On or about the date of completion of liquidation distribution, the issuer will be delisted by the SGX-ST.

De-SPAC

On a more positive note, the de-SPAC must complete no later than 36 months from the date of listing (subject to conditions being fulfilled). The de-SPAC also requires more than 50% of the issuer's independent directors approving the transaction and more than 50% of shareholders voting in support of the transaction.

The de-SPAC must result in the resulting issuer having an identifiable core business of which it has majority ownership/management control. The SGX-ST also retains a general discretion to delist the issuer if it is deemed to not be in the best interest of the SGX-ST and the public for the continued listing of the issuer after completion of the proposed de-SPAC.

The initial business or asset acquired pursuant to the de-SPAC must have a fair market value of at least 80% of the amount in escrow at the time of execution of the definitive agreement for the de-SPAC. Multiple concurrent acquisitions/ mergers are permitted but there must be at least one initial acquisition that satisfies the requirement of having a fair market value constituting at least 80% of the amount in escrow. Concurrent transactions must be in separate resolutions and conditional upon the initial acquisition completed simultaneously on or around the same day within the permitted timeframe. A financial adviser (who is an issue manager in a conventional IPO process) must be appointed to advise on the de-SPAC.

A competent and independent valuer must also be appointed if the de-SPAC involves a placement for an issuer's equity securities by institutional investors/accredited investors not conducted contemporaneously with the de-SPAC, or the de-SPAC involves a mineral oil and gas or property investment/development company. At the discretion of the SGX-ST, the issuer may also be required to appoint a competent and independent valuer to value the business/assets to be acquired. The resulting issuer must satisfy, where applicable, Rules 210(1) to 210(10) and 222 of the Mainboard Rules. Where it is an interested person transaction, the regime pursuant to Chapter 9 of the Mainboard Rules apply.

Any other extensions of time to complete the de-SPAC must be approved by the SGX-ST and with approval of at least 75% of the votes cast by shareholders of the issuer (in this regard, the founding shareholders, management team and their associates are not permitted to vote with shares acquired at nominal or no consideration prior to or at IPO of the issuer). The issuer must justify a compelling reason for the extension of time and any application to the SGX-ST for such extensions must be submitted at least two (2) months before the expiry of the permitted timeframe. The SGX-ST may reject an application for time extension if in its opinion, there is no compelling justification or is in the interest of the public to reject the application.

Redemption of ordinary shares by independent shareholders

All independent shareholders (other than founding shareholders, management team and their associates) are entitled to redemption rights of their ordinary shares (not preference shares but ordinary shares) for a pro rata portion of the amount in the escrow account at the time of the de-SPAC general meeting, provided that the de-SPAC is approved and completed in accordance with the Mainboard Rules. Such amounts must be paid to the electing independent shareholder as soon as practicable upon completion of the de-SPAC and the ordinary shares tendered in exchange for cash must be cancelled.

Conclusion

Even before the Singapore SPAC regime became official, the consultation process mounted by the SGX-ST already sparked interest and discussion amongst various stakeholders in the industry. It is a happy development for the door to finally be opened to SPAC listing on the SGX-ST, in a period of many closed doors/borders brought about by COVID-19. Being the first bourse outside America to cast these consultations into rules reflects the SGX-ST's fortitude to take the first step here in Asia to create even more choice investment opportunities in the region and at the same time promulgate safeguards for independent shareholders and their investments.

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Newsletter

search

The "Precautions for Institutions to Implement Labor Duty Day (Night)" will cease to apply from January 1, 2022

08/31/2021

Shi Yinghong /Fu Jialing

The Ministry of Labor has set out the "Precautions to be Taken by Institutions in Implementing Labor Duty Day (Night)" for day and night shifts. But because "night duty" and "overtime" confusing, at the request of the parties to the review, Lao Dongbu in 2019 Nian 3 Yue 11 modified "Shiyedanwei enforcement of labor duty (night) should be performed considerations" day, updating pregnant breast-feeding There are two major regulations on the allowances that women cannot work night shifts and the allowances they must pay on duty to protect the rights and interests of workers. However, the Ministry of Labor considers that even if workers are on duty during the day (night) shift, it is still inevitable to avoid the employer's command and supervision. Shiyedanwei human impact on business is too large, Lao Dongbu in 2019 when modifying precautions years, also announced that the Notes will be 2022 years 1 Yue 1 shall cease to apply from the date.

After the foregoing precautions cease to apply, if future employers require workers to work day (night) shifts, they shall count working hours and pay overtime pay in accordance with the Labor Standards Law, and shall not work more than 12 hours a day. The principle of overtime hours per month Must not exceed the 46- hour limit.

As the aforementioned precautions will soon cease to apply, companies are particularly reminded to pay attention to whether the company has relevant day and night shifts, and if so, they should coordinate with adjustments to relevant regulations. If you have any questions, please feel free to contact us.

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BLOG POST / EMPLOYMENT ADVISOR

Employment Counseling

Employer Obligations Under New York's HERO Act Are Triggered by Declaration That COVID-19 Is an Airborne Infectious Disease

By Roy P. Salins, Michael Goettig, Kaitlyn E. Fallon, and Rodrigo Tranamil

09.09.21

As detailed in our prior advisories, New York's HERO Act requires all employers to develop an airborne infectious disease prevention plan, which is to be activated in the event that the New York State Department of Health (NYSDOH) declares an infectious disease outbreak. On September 6, 2021, the NYSDOH made that designation in light of the continued community spread of COVID-19.

To satisfy the HERO Act's prevention plan requirements, an employer had to either adapt the template relevant to the employer's industry or establish an alternative plan that meets or exceeds the minimum standards set forth in regulations promulgated by the New York State Department of Labor (NYSDOL). If the latter option was chosen, the plan had to be developed with the "meaningful participation" of employees where no collective bargaining representatives exist or, in a unionized workplace, in collaboration with representatives of the bargaining unit. Employers were required to distribute their prevention plans to employees, post a copy of the plan in a visible and prominent location, and include the plan in employee handbooks on or before September 4, 2021.

In light of the NYSDOH's September 6, 2021, designation, the prevention plans must now be implemented. Thus, in addition to distributing the prevention plans, employers now must:

1. Immediately review and update prevention plans, if necessary, to ensure that they incorporate current information, guidance, and mandatory requirements issued by federal, state, or local governments related to COVID-19;

2. Finalize and promptly activate the prevention plan;

3. Provide verbal review of the plan with employees (as set forth below);

4. Provide each employee with a copy of the prevention plan, either in English or in Spanish (if that is the employee's primary language);

5. Post a copy of the prevention plan in a visible and prominent location at the worksite (except when the worksite is a vehicle); and

6. Ensure that a copy of the prevention plan is accessible to employees during all work shifts.

The NYSDOH's declaration is in place until September 30, 2021, at which point the NYSDOH Commissioner will review the level of transmission of COVID-19 in the state and determine whether to continue the designation. While the designation remains in effect, employers must ensure that the prevention plan is effectively followed by:

1. Assigning enforcement responsibilities to one or more supervisory employees and ensuring that adequate enforcement of the prevention plan

takes place;

2. Maintaining and monitoring exposure control measures; and

3. Regularly checking for updated information and guidance provided by the NYSDOH and the Centers for Disease Control and Prevention (CDC) regarding COVID-19 so that the plan reflects current control measures.

Verbal Review

With the NYSDOH's September 6, 2021, designation, employers are now required to tell employees verbally about the prevention plan, other applicable policies, and employees' rights to form a safety committee and be free from retaliation in connection with concerns that they may raise about the plan.

The verbal review must be provided in a manner most suitable for the prevention of an airborne infectious disease, whether in person in a well-ventilated environment with appropriate face masks or personal protective equipment or via audio or video conference technology. For ease of administration, large employers may wish to record an initial verbal review and make the recording available to employees who were unable to attend the live review.

Required Exposure Controls

Health Screenings, Testing, and Return From Quarantine

Employers are required to once again conduct health screenings for COVID-19 at the beginning of the workday, in accordance with guidance from the NYSDOH and the CDC, as applicable. In June 2021, the NYSDOH updated its guidance for office-based work (which was subsequently archived once 70 percent of the New York adult population received their first immunization, but which remains available as a resource) to call for responsible parties to screen employees and guests as follows:

- Is the individual currently experiencing or has the individual recently (within the past 48 hours) experienced any symptoms of COVID-19?
- Has the individual had close contact in the past 10 days with any person confirmed by diagnostic test or suspected based on symptoms to have COVID-19?

- Has the individual tested positive for COVID-19 through a diagnostic test within the past 10 days?

Employers must limit the exposure of individuals to employees demonstrating any symptoms of COVID-19 that are not readily attributable to a pre-existing condition. They must also follow applicable NYSDOH and/or CDC guidance concerning protocols for testing, isolation, and quarantine before allowing employees to return to the worksite and inform employees of the same.

The CDC recommends that fully vaccinated people who have come in close contact with a person suspected of or confirmed as having COVID-19 should be tested three to five days after exposure, and to wear a mask in public indoor settings for 14 days or until they receive a negative test result.

Face Coverings

Employers must also provide, at no cost to employees, face coverings in accordance with guidance from the NYSDOH or the CDC, as applicable. Employers must require employees to wear appropriate face coverings when physical distancing cannot be maintained.

While it remains the case that the NYSDOH has lifted mask mandates in New York (its guidance that "fully vaccinated individuals do not need to wear masks or be socially distanced" remains the most recent specific guidance on masks), the CDC recommends that fully vaccinated individuals wear masks in public indoor settings in areas of substantial or high transmission (which includes New York).

Additional Exposure Controls

In addition to health screenings and face coverings, employers must also implement the following exposure controls:

- **Physical distancing:** When possible, keeping employees at least six feet apart from other individuals or as recommended by the NYSDOH or the CDC, as applicable.
- **Hand hygiene facilities:** Providing handwashing facilities with an adequate supply of tepid or warm potable water, soap, and single-use towels or air-drying machines. If handwashing facilities are not feasible, the employer must

provide hand sanitizing facilities or supplies effective against COVID-19 with at least 60 percent alcohol or other composition determined by the NYSDOH or the CDC, as applicable.

- **Cleaning and disinfection:** The type and extent of cleaning obligations is based on the location, facility type, type of surface(s) to be cleaned, type of material present, tasks or procedures being performed in the areas, as directed by the NYSDOH or the CDC.

Vaccinated Employees

Neither the HERO Act nor the NYSDOL's regulations contains any reference to an airborne infectious disease for which there is a vaccine. Accordingly, absent additional guidance from the NYSDOL, these steps must be followed, even for vaccinated employees and those employers that have a fully vaccinated workforce.

Definition of "Work Site"

The HERO Act's definition of a "work site" specifically excludes an employee's residence (unless that residence is provided by the employer). Accordingly, employers with a fully remote workforce need not implement a response plan for employees' home offices.

However, employers that have adopted a hybrid working model (in which employees are expected to be at the worksite only certain days of the workweek) or an optional workplace attendance policy remain under a duty to comply with the HERO Act's requirements.

Penalties

Under the HERO Act, the NYSDOL may assess a civil penalty of $1,000 to $10,000 for failure to abide by a prevention plan, which includes implementation of a prevention plan during a designated outbreak. Employers that fail to adopt a prevention plan are subject to a civil penalty of not less than $50 per day. The NYSDOL may also order other appropriate relief including enjoining the conduct of any person or employer.

Next Steps

As of the time of this advisory's publication, neither the NYSDOL nor the NYSDOH has provided any date by which employers must comply with the obligations

described above. Accordingly, employers should immediately take all steps to comply with the prevention plans they have implemented and to advise all employees who perform services in New York that the prevention plan is in effect. Furthermore, employers should immediately conduct the verbal review with all applicable employees.

We will continue to monitor the NYSDOL's website for further guidance and will provide additional advisories once that guidance is issued.

GOODSILL

COVID-19 Employer Update: New Honolulu County Order Requiring Full Vaccination or Weekly Testing for Employees of Certain Entities Goes into Effect September 13, 2021

On August 30, 2021, Honolulu Mayor Rick Blangiardi announced that effective September 13, 2021, businesses covered by the Order must require patrons, full or part-time employees, interns, volunteers, or contractors to either show proof of full vaccination or proof of a negative COVID-19 test result, and proof of identity, for entry into covered businesses. Individuals who opt for testing will need to ensure they utilize an FDA approved, or FDA EUA approved, molecular or antigen test. Patrons opting for testing must show proof of a negative COVID-19 test result taken within 48 hours of entry into the covered premises. Full or part-time employees, interns, volunteers, or contractors opting for testing must show proof of a negative COVID-19 test result taken within seven (7) days of entry into the covered premises. Individuals who remain on premises for 15 minutes or less per 24-hour day are exempted from these requirements.

Important things to know about the new Order:

- Employers must also develop a written protocol for ensuring compliance with the new Order, which should describe the process for collection and/or examination of proof of vaccination or test result and also, for patrons, proof of identification bearing the same identifying information as the proof of vaccination or testing.
- Covered businesses will need to post an 8.5 x 11 inch (minimum) sign in a conspicuous place viewable to patrons entering the establishment of the COVID-19 vaccination requirement and informing them that both patrons and employees are required to show proof of full vaccination or satisfy an exception (including a negative COVID-19 test).
- Covered businesses will need to submit a signed attestation for compliance with the Order that can or will soon be available at this link: https://www.oneoahu.org/test-attestation.

Covered businesses include:

- Entertainment and recreational settings (bowling alleys, movie theatres, aquariums, etc.)
- Restaurants/bars
- Indoor gym and fitness facilities (includes hotel gyms, etc.)

Tips for employers:

- Identify an individual who will be responsible for collecting and managing proof of vaccination and/or negative COVID-19 test results.
- For employees, proof of vaccination and/or COVID-19 test results should be stored separate from employee personnel files and kept in a confidential manner with limited and defined access to the individual(s) identified to manage this documentation. Treat the documentation as you would any other medical documents to maintain employees' privacy.
- The Order does not appear to prohibit a covered business from instituting a vaccination mandate without offering a testing option for Employees. However, any such requirement should provide for exemptions for employees who have medical or disability or sincerely held religious reasons that prevent them from receiving a COVID vaccine. If issues arise regarding an employee's medical or religious exemption, speak with Human Resources or legal counsel before taking any action against an employee.
- Limit requests for proof of vaccination or negative COVID-19 test results to just that—do not ask employees for detailed health information.

Before the Order goes into effect, employers should consult with their Human Resources and/or legal counsel to ensure proper policies and protocols are in place, including contemplating how the employer will handle non-compliance by employees. The full Order is available at this link: http://www.honolulu.gov/rep/site/may/may_docs/2108156-CCH_Second_Amendment_to_Order_Implementing_Tier_5_certified_-_signed.pdf

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Goodsill's attorneys practicing in the Labor and Employment Practice Group serve the needs of Hawai'i's employers and are thoroughly versed in the ever-changing maze of federal and state regulations governing employment practices and employer-employee relations. We provide a complete range of services striving to assist employers in maintaining positive relations with their employees. We work with multinational, national and local corporations; nonprofit organizations; small businesses; and individual entrepreneurs in the areas of civil litigation, agency practice, labor relations, collective bargaining and union activities, counseling services, prevention and training and business transactions and employment-related legal documentation.

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