Paradigm

INTERNATIONAL SOCIETY OF PRIMERUS LAW FIRMS

WINTER 2012

Mining for Diamonds

It's a Small World: Globalization of the Legal Market

Current Legal Topics:

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Every lawyer in Primerus shares
a commitment to a set of common values
known as the Six Pillars:

Integrity

Excellent Work Product

Reasonable Fees

Continuing Legal Education

Civility

Community Service

For a full description of these values,
please visit www.primerus.com.

About our cover

Primerus helps businesses by going around the world mining diamonds – some of the best quality boutique law firms who offer quality legal services for reasonable fees.

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Primerus

Built on Integrity. Driven by Innovation.

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The Primerus Paradigm – Winter 2012

President's Podium

John C. Buchanan

Mining for diamonds

In 2011, I traveled to Dubai in the United Arab Emirates, Singapore, Costa Rica and London to introduce law firms to the International Society of Primerus Law Firms. Wherever I go, I find that more and more people – law firms and clients alike – are excited about the Primerus concept and want to be part of it.

I believe that Primerus is exactly what the business and legal world needs right now. All around us, we see evidence that the marketplace is truly global. As recently as 10 years ago, many middle market companies and the small to mid-sized law firms that serve them did very little business in the international sphere. That's certainly not the case anymore. More and more middle market companies need lawyers who can efficiently and economically handle international transactions for them.

On top of all the other challenges in a competitive global marketplace, businesses are left with the onerous job of seeking out quality law firms who can handle international work for them – all for a price that fits into their ever-tightening budgets. That's where Primerus is here to help.

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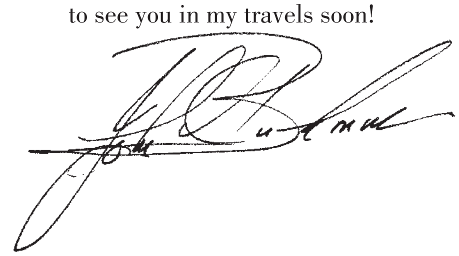
What we do for you is go around the world mining diamonds. We search for high quality boutique law firms who are committed to performing excellent work for reasonable fees. We submit them to stringent screening before they are admitted to the society, and then continue to review their performance every year they remain members. We do the work to find these diamonds so that you don't have to. But our work doesn't end there. We bring these firms together – in the same way you would put hundreds of diamonds together to create a stunning necklace – into a society to work together for you.

Because most of our firms in 33 countries around the world are local firms, they are able to meet a full range of client needs in their respective countries, while American firms with offices in foreign cities are severely limited by regulatory restrictions in the services they may provide to clients. Primerus member firms frequently work together to meet their clients' needs seamlessly. And if Primerus doesn't have a law firm to meet your needs in a particular city, our staff works through our networks to find a highly recommended firm that can help you.

Just as globalization represents opportunity for many, it comes with its share of challenges. We frequently hear from our clients how pleased they are that we can help them when they need representation in a new jurisdiction. No longer do they have to worry about finding law firms and screening them for quality and reasonable fees, because we have done the work for them.

In this issue, you will read about examples of our firms working together to help clients around the world. You also will see examples of the vast body of legal expertise our member firms offer. We hope this collection of articles offers information that's helpful to you as you navigate this competitive economy.

Primerus now has over 190 member firms with nearly 3,000 lawyers in 33 countries. I am thrilled to travel around the world mining diamonds to add to our society and showing clients how we can help them in the international marketplace. For more information about Primerus, visit www.primerus.com. I hope to see you in my travels soon!



It's a Small World: Globalization of the Legal Market

Globalization has turned the world into one vast legal marketplace. As the world becomes more interconnected, businesses increasingly foster relationships and conduct legal transactions across national borders, creating new opportunities in many sectors.

But along with opportunity, globalization also brings challenges – for law firms as well as clients. Legal departments in corporations of all sizes must not only find legal expertise to help with these cross-border business interactions, but they must find it economically. And lawyers must be willing to embrace creative solutions to help them do this, breaking some of the traditional molds of the legal industry. Meanwhile, regulatory bodies are working to determine how their countries will structure regulations over foreign attorneys practicing within their borders. Here, we examine some issues raised by globalization and how lawyers and clients around the world can work together to navigate this new, smaller world.

Disappearing borders

"The law practice, like most other businesses, is changing and old borders are quickly disappearing," said Robert Bivins, partner at Primerus member firm Bivins & Hemenway, P.A., of Valrico, Florida. Bivins is the new chairperson of the North America chapter of the Primerus Business Law Institute (PBLI). "With those disappearing borders comes new risks to businesses as they compete in the global market. Law firms can either adapt and prosper or hold to old ways of doing business and risk becoming irrelevant in the new economy."

According to James Wilber, principal at the legal consulting firm Altman Weil and co-leader of the firm's department that serves corporate law departments, the firm receives more requests than ever to help inside counsel figure out how to do legal business outside of the United States.

And it's not just large law firms who are impacted by this trend. Even small law firms now report a significant part of their business involves clients with international connections. An August 2006 study conducted by Walker Clark, LLC, a legal consulting firm in Fort Myers, Florida, led that firm to conclude that "globalization, as evidenced by local clients with international business interests and by foreign clients, is more extensive and has permeated more deeply into the legal profession than we originally supposed." And while the firm has not updated its survey results in the last five years, firm founder Norman Clark is confident the trend is far more pervasive now. Also, the survey revealed that international clients do not limit themselves to large, national or international law firms. "Even in firms with fewer than 20 lawyers, a significant number of clients have business interests in other countries and, even more significantly, there are foreign clients," the survey results said.

Bivins verifies this trend from his experience in his own firm, as well as the PBLI. "This historic default position of international companies looking to large or mega-firms as the reliable source for quickly obtaining quality legal services in multiple jurisdictions seems to be changing," he said. He points to two reasons – the need for more cost-effective legal services, which translates to lower billing rates, and the availability of law firm networks like Primerus which offer high quality, carefully screened law firms around the world for reasonable fees. "Once general counsel reaches a comfort level with this type of network, it can greatly lighten the burden on general counsel who must otherwise research, qualify and at times negotiate with multiple international firms when legal needs arise in other jurisdictions."

Single network, global reach

The PBLI, Primerus' body of business law firms, now includes firms throughout its four chapters – North America, Latin America & Caribbean, Europe, Middle East & Africa, and Asia/Pacific. "Through the coordination of PBLI firms, the client can also be sure that if any firm it selects might not be the most appropriate to meet its needs, the law firm of original contact can help that client find the right firm through its network partnership. The combined expertise and resources of the PBLI group is never more than a phone call away should it be needed," Bivins said.

According to Bob Weiss, president and CEO of legal consulting firm Alyn-Weiss & Associates in Denver, Colorado, networks such as Primerus offer smaller firms a competitive edge in this global marketplace. A smaller firm offers attributes that can help companies during times of growth, Weiss added. "Sensitivities and efficiencies, many of them intangible, are only found in a small firm and they contribute to a client's growth," he said. "That same small firm sensitivity is what clients need when they have problems in emerging foreign states and markets. That's why a network of independent local and regional law firms makes business sense."

James Wilber said that in order for a network such as Primerus to effectively help corporations with their global needs and compete with the larger law firms, it must do three things: ensure that you are indeed delivering services more cost effectively than larger law firms, maintain control of the quality of all member firms and then get the message out that you're doing the first two things.

Law firms can help inside counsel by being open to creative solutions to their problems, he said. In most cases, the best strategy for corporate legal departments includes a mix of inside and outside lawyers, so firms can help companies figure out inside staffing in other parts of the world.

"There are all kinds of possibilities for how to do that," Wilber said. "Any client's need for legal work is going to change over the years based on a number of factors. Their mix of inside and outside legal work changes as well. By helping general counsel get it right today, the short term view might be that we're helping them not need us. But in the future, the mix may change."

By partnering with them now, you're likely to be establishing a long-term relationship, he said. "What still, more than anything, defines the potential for future work is the relationship between the lawyer and the client managing the case. Being seen and believed to be the trusted advisor is what every lawyer needs to do. Relationship is everything."

Navigating global landscapes

An international society of law firms such as Primerus also can help corporations understand the legal environment in other parts of the world. "The role of a lawyer in Japan is very different from the role of a lawyer in Western Europe. If somebody can help translate those substantive and cultural differences, that would be a great benefit."

LiPu Lee, partner at Primerus member firm Formosan Brothers in Taipei, Taiwan, said his law firm has seen more and more demand for international legal services. Because Taiwan is a small island, its economy depends heavily on international trade, and following the trend of globalization, more Taiwanese have cross-border investments and transactions, Lee said.

"We have observed that in recent years, more and more domestic clients encounter offshore legal disputes, including but not limited to the issues of fair trade, IP infringement, security law compliance, investment protection, insolvency, default payment, etc.," he said. For instance, recent mergers and acquisition cases usually include various entities throughout the Asia/Pacific region or even other continents. "These kinds of cases were hardly found 10 or 20 years ago in Taiwan," Lee said.

To adjust to this trend, Formosan Brothers has hired more English-speaking associates with foreign law degrees. The firm also joined Primerus in May to better serve its clients. "Given that we are entirely based in Taiwan, we need to have close connection with foreign law firms in order to provide one-step service to our clients."

Since May, the firm has worked with fellow Primerus firms in France and New Jersey and is discussing several cases with firms in Germany, the Cayman Islands, Ohio and India.

"We have found that Primerus law firms are able to provide prompt and competent services to meet our clients' needs with reasonable charges," Lee said. "It saves us much time that we don't have to research and find quality law firms in jurisdictions where we didn't have a connection before. Our clients are impressed that we can always suggest cooperative firms in foreign jurisdictions in a prompt manner."

Globalization also is pointing out the limits of what are, in some cases, antiquated legal regulation structures, according to a November 2011 article in the American Bar Association (ABA) journal titled, "Despite Globalization, Lawyers Find New Barriers to Practicing Law Abroad." According to the article, the ABA's Commission on Ethics 20/20 is studying the impact of technology and globalization on professional conduct rules for lawyers in the United States. The commission plans to submit proposed revisions to the ABA Model Rules of Professional Conduct in August 2012. Many other countries also are reexamining their policies governing foreign lawyers.

Primerus President and Founder John C. Buchanan said Primerus offers the perfect solution to many of these regulatory concerns because its firms around the world are local firms that can practice in local jurisdictions. "We now have a society of more than 190 law firms in 33 countries around the world," he said. "These are local firms who are best equipped to handle matters within their own jurisdictions, and they're committed to doing it for reasonable fees. Primerus represents an ideal solution for middle market companies in a global marketplace." P

Douglas R. Ferguson

Robert B. Bliss

Using the Franchise Business Model to Expand Your Business into International Markets

If you operate, or if you represent someone who operates, a business that has proven successful and is growing in the United States, at some point you will no doubt begin considering expansion into international markets. Entering an international market presents many unique business, legal and cultural challenges that are not encountered in domestic growth. Directly opening and operating a company-owned location internationally is the first and most obvious option, but the expense and social barriers may be too much for many businesses. Whether your (or your client's) business has franchised in the U.S. or not, you should consider using the franchise business model for international expansion.

What is Franchising?

Franchising typically involves one party, the franchisor, granting rights to an independent third party, the franchisee, to use the franchisor's trademark and business concept. The franchisor is entitled to fees and exercises some level of control and supervision over the franchisee's business, but the business is owned and operated by the franchisee. The trademark license, fee payment, and control aspects are the key elements that usually characterize a franchise, although each country's laws differ slightly in defining a franchise.

The key benefit of the franchise business model in international expansion is the ability to leverage the experience and resources of the franchisee. A local franchisee familiar with another country's business practices and culture will presumably have advantages in operating in that country. Further, the franchisee usually incurs the costs of opening and operating the business, thus reducing the franchisor's expenses.

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Types of Franchises

Broadly speaking, there are two types of franchise models that can be used in international expansion: "Unit Franchises" and "Master Franchises."

A Unit Franchise refers to the standard franchise arrangement, where a franchisor grants the franchisee the right to operate one or more franchised business outlets.

In a Unit Franchise arrangement, the franchisor is contracting directly with the unit franchisee. This gives the franchisor direct control over the unit franchisee. The franchisor, however, also has direct responsibilities to the unit franchisee. The franchisor may find it difficult to supervise and enforce obligations against a franchisee outside the U.S.

A Master Franchise involves granting a franchise to a single person, the master franchisee, for a large territory, which may be an entire country, in which the master franchisee is authorized to grant

Unit Franchises to third parties. Essentially, the master franchisee is granted the restricted right to act as the franchisor within its territory. The unit franchisees in the territory usually sign their franchise agreements with, and pay their fees to, the master franchisee instead of the franchisor. The master franchisee typically pays the franchisor a percentage of the fees it receives.

A Master Franchise program allows the franchisor to pass on the responsibility for building and overseeing the franchise system in the master franchisee's territory. There is less direct responsibility on the franchisor to deal with the other country's unique business and cultural issues or to deal directly with the local unit franchisees. The master franchisee can also help with compliance with local laws. As such, the Master Franchise arrangement is recognized as having unique advantages in international expansions. The disadvantage is that the franchisor gives up some control. And, it is imperative that a trustworthy and capable master franchisee be found, or there can be serious damage to the franchisor, its brand, and the franchise system.

International Laws

No matter what type of franchise is used, there are a number of legal issues, some specific to franchising and some generally applicable to all types of businesses, that are involved in expanding internationally. In some cases, the master franchisee may have the responsibility for these obligations, or it may be possible for a master or unit franchisee to contractually assume some of them.

Franchise Specific Laws

In some countries,[1] there are specific franchise disclosure laws requiring the disclosure to prospects of specified information regarding the proposed franchise. These disclosure obligations differ from country to country and even within a particular country, presenting administrative challenges to a franchisor offering franchises in multiple jurisdictions. While a single "disclosure document" for multiple jurisdictions is tempting and sometimes used, the requirements in certain countries often require the franchisor prepare separate disclosure documents.

Some countries[2] require the registration of the franchisor, the franchise system, or the disclosure document, prior to or within a specified time after engaging in franchising activities in that country. The burden, cost, and time involved in the registration process varies widely by country. The disclosure document and franchise agreement may need to be translated. Further, some countries require renewal filings on a regular basis or upon material changes in the franchise system or the franchisor.

Many countries also have franchise relationship laws that impose requirements on the ongoing franchise relationship between the parties. Some common examples are laws that (i) require the parties to act in good faith, (ii) restrict the rights of the franchisor to terminate the franchise agreement except in certain situations, and (iii) provide territorial protection to the franchisee.

Generally Applicable Laws

There are also a number of other laws that affect international expansion generally. Laws regarding intellectual property are among the most important to consider. Prior to expanding into another country whether directly with company-owned stores or through a franchise program, a business should determine and take the action necessary to protect its brand. In the franchise context, since the primary intellectual property involved is usually the franchisor's trademark, this means registering or at least applying to register the trademark in a country before selling a franchise in that country. International trademark laws differ greatly between countries in regard to the protection afforded registered and unregistered marks, the registration process, and other matters.

Additional general laws encountered in an international expansion include (i) exchange control laws regulating the transfer of money into and out of a country; (ii) import and export restrictions; (iii) both the U.S. and other country's anti-terrorism laws; (iv) anti-corruption laws, including the U.S. Foreign Corrupt Practices Act; (v) antitrust laws, which may impact certain "restraints" on trade; (vi) general business and contract laws; and (vii) industry specific laws, which may affect the type of business franchised.

A thorough survey of all laws that affect international expansion is beyond the scope of this article. In an international expansion, each country's laws should be considered individually, and the method of expanding there decided accordingly. It is advisable and often necessary to consult with local legal counsel.

Conclusion

While there are certainly challenges involved in international franchising, they are often outweighed by the unique benefits, especially when you consider the business, legal, and cultural challenges, and expenses, involved in the alternative option of opening company-owned businesses in foreign countries. In our experience, the franchise business model can be a cost-effective and efficient way for existing U.S. businesses to expand into international markets. P

1 Australia, Belgium, Brazil, Canada (four provinces), China, France, Indonesia, Italy, Japan, Korea, Macao, Malaysia, Mexico, Romania, Spain, Sweden, Taiwan, and Vietnam.

2 Belarus, Brazil, China, Indonesia, Korea, Lithuania, Malaysia, Russia, Spain, and Vietnam. In addition, certain countries have registration requirements for trademark licenses, which also apply to franchises.


Jacob M. Lebowitz

Cost-Effective Foreign Corrupt Practices Act Compliance for Small and Mid-Sized Companies in an Era of Increased Anti-Corruption Vigilance

It used to be as compliance lawyers we had to explain to companies and executives what the U.S. Foreign Corrupt Practices Act (FCPA) was and what it prohibited. Those days are mostly gone. It is a hot compliance topic and should already be on the radar of every company, regardless of size – whether a U.S. company or a foreign company that does business in the U.S. Now the conversation usually starts with what do we need to do and how much will it cost. These are both good questions that more and more companies have been asking in the past five years. What has changed is the urgency for smaller companies to start asking those questions and the need for a cost-effective solution.

A new survey by Deloitte shows smaller companies are almost four times more likely (23 percent) than larger companies (6 percent) to have no written policy addressing anti-corruption. Smaller companies are also almost three times as likely (37 percent) as larger companies (13 percent) to fail to conduct internal audits of each of their foreign operations to identify potential corrupt activity. The two most common explanations from these smaller companies for their lack of compliance is that they don't need it because of their size and limited international operations or that they can't afford it. Neither reason is justifiable anymore as the risks, costs and severity of prosecutions increase.

The first excuse, we don't need it, and the first question, what do we need, go hand in hand and have evolved over the years as compliance enforcement has increased. The FCPA prohibits bribery of foreign officials by U.S. companies and their foreign representatives and requires such companies to maintain accurate books and records. It also extends to foreign companies that have a sufficient nexus with the U.S. The Act was passed in 1977 but was not seriously enforced until the last decade and did not become a serious compliance worry until after Sarbanes-Oxley started requiring corporate boards to certify company financial reports. A company can face fines in the tens or hundreds of millions of dollars for FCPA violations. Company employees and agents can also be fined individually (with the company prohibited from paying the fine on behalf of the employee or agent, or reimbursing the employee or agent who pays the fine), and can be imprisoned for up to five years for violating the FCPA. Additionally, and of potentially dire consequence to a small company, a company can be banned from contracting with the U.S. government.

Why do smaller companies need an FCPA compliance program? Most executives will tell you they know their international operations and they don't bribe anyone, so they should be fine. That, unfortunately, is not the case. The Act does not just prohibit bribes as the layman understands them. It prohibits payments of "anything of value" to foreign officials or other prohibited recipients with the corrupt intent to have such officials or recipients use their influence to assist that person obtain, retain, or direct business. The anti-bribery provisions explicitly prohibit not only payments made directly to a foreign official, but also to

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an intermediary while "knowing" that all or some of the payment will be passed on improperly to a foreign official. The FCPA defines "foreign official" broadly to include any officer or employee of a foreign government or a public international organization; the definition is generally understood to include officers and employees of a commercial enterprise owned by a foreign government as well as relatives of the officials. This broad definition of a "foreign official" is currently being challenged in the U.S. courts but the recent decisions suggest it will be read to be expansive. As such, companies need to vigilantly investigate their foreign agents, joint venture partners, business associates, and employees to make sure they do not fall within the definition unknowingly. Additionally, the Act has what is essentially strict liability for books and records violations, so a company that doesn't have compliance policies in place for its bookkeeping could be walking a dangerous path.

Knowing your foreign operations and partners is just the first step in FCPA compliance. The second part is having in place the proper compliance program. This is a critical compliance measure because it will educate your employees in the U.S. law, search out possible violations, and alert you to increased risks. Equally importantly, should your company face prosecution for a violation by a foreign employee, it will allow the company to argue to the government prosecutors that the U.S. operations and executives did not have the requisite "knowledge" of the payment. The Act prohibits payments made to a third party while knowing that they will benefit a government official. The Act's knowledge standard encompasses the concepts of "conscious disregard" and "willful blindness." Thus, a company that ignores red flags or doesn't have policies and procedures in place to prevent improper payments may be viewed as turning a blind eye. This can be an awful and costly surprise for a company.

The other reasons for a compliance program are the dramatic increase in criminal prosecutions, charges against individual executives, and fines. While we may never again see a prosecution like Siemens with fines and costs exceeding $1 billion USD, the average fine in an FCPA case is steadily increasing. In addition, most settlements with the government now require companies to install expensive and burdensome compliance programs with outside independent monitors. These forced compliance programs are almost always more expensive than the sensible policies a company can install without a government prosecutor overseeing and approving the program.

This brings us back to the difficult concern facing smaller companies and one of the reasons for the lag in FCPA compliance found in the Deloitte survey. Compliance programs can involve drafting policies, training employees in the U.S. and abroad, vetting foreign agents and subsidiaries, regular certifications, hotlines, and other measures that typically involve significant attorney time. This can be prohibitively expensive, especially in this tough economy, at the hourly rates charged by the big international law firms. It is important for smaller U.S. and foreign companies to consider compliance programs at a fixed rate or from small law firms that provide sophisticated compliance at an accessible rate.

Thomas Paschos

The Preservation of the Attorney-Client Privilege by Corporate Counsel

Introduction

In 1981, the United States Supreme Court extended the attorney-client privilege to in-house counsel. *Upjohn Co. v United States*, 101 S.Ct. 677, 449 U.S. 383, 66 L.Ed. 584 (1981). The issue in *Upjohn* was whether in the corporate context, the attorney-client privilege included communication between the attorney and low level employees of the corporation. The Supreme Court held that any information obtained by a corporate defendant's attorney that is sought for purposes of legal advice is protected by the attorney-client privilege. The client is not just the ranking officers of the corporation, but includes any employee from whom information is sought.

Significant is the fact that corporate counsel does not have the same capacity as outside counsel to have privileged communications with clients. The problem is that courts do not treat a communication as privileged simply because it was made by or to a person who is an attorney. A communication is privileged only if the primary purpose of the communication is to further the objectives of the attorney-client privilege. In other words, the communication must be made for the purpose of seeking, obtaining or providing legal assistance. Specifically, the attorney-client privilege protects communications between a lawyer and a client when the communications are 1) made for the purpose of seeking or providing legal advice, as opposed to business advice; 2) confidential when made; and 3) kept confidential by the client.

Who is the Client?

The scope of the attorney-client privilege is unique when an attorney represents a corporation. It is generally recognized that not all corporate employees are the "client." Courts have employed two theories to decide which corporate employees in-house counsel may communicate with in a privileged context.

One theory is the "control group test" under which only those conversations between in-house counsel and the corporation's controlling executives and managers are eligible for protection. Often, a company's "control group" is made up of a very limited number of corporate employees.

In *Upjohn, supra*, the Supreme Court expanded the control group test to include an inquiry into the subject matter of the communication. Under this theory, employees with relevant information regarding the subject matter are considered the "client" regardless of their position in the company. Therefore, it is possible for any corporate employee to have a privileged conversation with corporate counsel. However, the conversations are not always privileged. Issues arise because often many corporate employees are under the impression that they can discuss any corporate legal matter with a corporate attorney and it will be privileged. Not every corporate employee is entitled to a privileged communication on every legal matter. Unless the communication is within the scope of the employee's responsibility, it is not privileged. Further, some employees may be outside the scope of the privilege as to any legal matters. Issues arise when

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these employees attend meetings where corporate counsel gives legal advice.

Not all jurisdictions use the expanded test in *Upjohn*, some continue to employ the control group test.

Legal Advice vs. Business Advice

Most in-house attorneys have dual legal and business roles and some hold corporate titles such as Vice President or Secretary, in addition to the title of General Counsel. Often corporate legal advice involves at least some element of business advice, as a result in-house counsel face more scrutiny when it comes to applying the attorney client privilege. Generally, communications made by and to an in-house counsel with respect to business matters or business advice are not protected by the attorney-client privilege.

To invoke the attorney-client privilege, the communication must be primarily for the purpose of rendering legal advice. It is inevitable that legal advice is often intertwined with business advice. Some courts have approved redaction or exclusion of privileged portions of documents containing legal advice mixed with business issues.

Courts have held that there is a need for this heightened scrutiny when it comes to applying the attorney-client privilege to corporate counsel because of the chance that an attorney may participate simply to be able to assert the privilege and keep the documents off limits in discovery. Therefore, courts must often distinguish between a lawyer's legal and business work.

Further, the fact that counsel is carbon-copied on a document or attends a meeting, does not invoke the privilege. Typically, the privilege does not apply under these circumstances unless it can be demonstrated that the communication would not have been made but for the client's need for legal advice. If the purpose of the communication is not for the primary purpose of obtaining legal advice, it does not become privileged by adding counsel as recipients. Additionally, counsel's recommendation of, or involvement in, a business transaction does not necessarily place the transaction under the cloak of privilege.

Preserving the Attorney-Client Privilege

Communications subject to the attorney-client privilege remain protected unless the client affirmatively waives the privilege or it is indirectly released by the client's actions. The privilege which applies to information shared in representation of the corporation cannot be waived by an individual officer, director or employee without the proper authority.

While in-house counsel may communicate with any employee or agent of the corporation about their work as necessary to render legal services for the corporation, the following points should be kept in mind to ensure the attorney-client privilege is preserved.

- Distribute privileged information only on a confidential, need-to-know basis.
- Avoid disseminating privileged legal documents to outside third parties.
- Try to separate the legal information from the business information in sensitive communications.
- When acting in the capacity of General Counsel, do not use any non-legal titles (Vice President, Secretary, etc.)
- If possible, document the basis for distributing communications to numerous recipients. The writing should make clear why each recipient is receiving the memorandum.
- When applicable, written communications, including electronic mail and informal memos, should note that you are seeking legal advice. Writing "counsel is addressing the following legal issues" or "privileged attorney-client communication" at the beginning of communications expected to be privileged can be an added safeguard.
- Do not discuss privileged matters in business meetings attended by employees who do not have a direct interest in the matter.
- Consider retaining outside counsel to handle particularly sensitive matters. Confidential communications with outside counsel face less scrutiny when being characterized as legal advice.
- Corporate employees must be aware of the boundaries of the privilege. Corporate counsel should advise the corporate employees that not all communications are subject to the privilege.
- Counsel should refrain from sending e-mails and attachments to both lawyers and non-lawyers if the sender hopes to maintain privilege over the communication. If counsel receives an e-mail sent to both lawyers and non-lawyers, counsel should create a new document before commenting or making changes in order to reassert privilege over the new edits and communication.

Conclusion

By knowing the ground rules regarding the type of communication protected by the attorney-client privilege, the scope of the attorney-client privilege in a corporate setting, as well as considering the above points, corporate counsel should be able to ensure that the attorney-client privilege is preserved. P

Mark R. Kossow

Minimize Income Tax and Estate Tax By Using a Family Limited Partnership to Sell Closely Held Stock to an ESOP

Shareholders of closely held C corporations can sell stock to an employee stock ownership plan (ESOP) in a tax deferred "rollover" transaction under Section 1042 of the Internal Revenue Code. As long as the requirements of the Code are satisfied, the selling shareholder can elect to defer capital gains taxes by reinvesting the proceeds into qualified replacement property (QRP) – securities of domestic operating corporations. (Note that securities of international corporations T-bills or mutual funds will not qualify as QRP.) Capital gains tax is deferred until the QRP is sold. However, if the QPR is held until death, capital gains are forever eliminated.

For example, if a shareholder sells at least 30 percent of his or her stock or at least 30 percent of the value of the company to an ESOP for $20 million and elects Code Section 1042 treatment by reinvesting the proceeds in QRP within the applicable time period (generally, 12 months from the date of sale), the shareholder will avoid having to pay $3 million in federal capital gains tax (15 percent of $20 million). This example assumes that the shareholder's basis in the stock is zero. Furthermore, the tax savings can exceed 15 percent if the shareholder's state and locality also exempts the sale and reinvestment into QRP from state capital gains tax. If the shareholder keeps the QRP until death and his or her estate disposes of the QRP, the estate will have no capital gains tax exposure for the $20 million gain because under current law the estate takes the QRP with a stepped up basis equal to $20 million. If the estate sells the QRP for an amount in excess of $20 million, only the excess of the sales price above the estate's $20 million basis would be subject to capital gains tax.

Even though using this provision of the Internal Revenue Code is an excellent way to defer or eliminate capital gains tax, the shareholder can do even better by using another technique to reduce estate tax liability. Assume that the maximum estate tax rate is 45 percent. In the above example, the federal estate tax will reduce the shareholder's QRP portfolio from $20 million to only $11 million. Estate taxes will also reduce future income to Shareholder X's heirs. A $20 million QRP portfolio earning a 6 percent return would provide annual income of $1.2 million. After the estate tax reduces the value of the QRP to $11 million, the $1.2 million income stream is likewise reduced to $660,000 per year. This results in a loss of income of $540,000 per year. Assuming the children of the shareholder have a life expectancy of 30 years, the $540,000 loss of annual income amounts to an overall loss of $16.2 million in non-inflation adjusted dollars.

Under the right circumstances one technique that can reduce the estate taxes on the QRP is to have a family limited partnership (FLP) sell the stock to the ESOP. In order for this technique to be utilized, the shareholder must first contribute his or her stock to the FLP in a nontaxable exchange for a limited partnership interest in the FLP. After the FLP owns the shares, the FLP could then sell the stock to the ESOP, make a Code Section 1042 election and reinvest

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the proceeds in QRP. The FLP avoids having to pay capital gains taxes and, upon death of the shareholder (a limited partner of the FLP), estate taxes would be payable based only on the value of Shareholder X's interest in the FLP (which owns the QRP). If the rights of the limited partners in the FLP are restricted, the value of the partnership interest can be discounted. In some cases, FLP units can be valued for estate tax purposes with discounts for lack of marketability and minority interest that total more than 30 percent. This discounting effect greatly reduces estate tax liability.

For example, assume the shareholder forms a FLP and contributes his or her stock to the FLP in exchange for a 70 percent limited partnership interest. If the FLP thereafter sells the stock to an ESOP and reinvests the proceeds in QRP, the shareholder will avoid having to pay capital gain tax on the sale. Moreover, assuming the shareholder's rights as limited partner are restricted and that the FLP has a legitimate business purposes, the value of his interest in the FLP will be discounted for estate and gift tax purposes. If the FLP achieves a 30 percent valuation discount, the shareholder will have effectively converted $20 million of marketable securities into an illiquid limited partnership interest valued at $14 million, resulting in a savings of about $2.7 million in estate taxes upon his or her death.

The shareholder can further reduce the estate tax burden by making gifts of FLP interests to children. Under the annual exclusion rules of the Code and the discount rules, a FLP unit is also valued at less than the value of the underlying FLP assets. The shareholder might also consider using some or all of his lifetime gift exclusion to transfer the discounted FLP interests to children. For example, if over time the shareholder gave $3 million of FLP interests to children using a combination of annual exclusion gifts and unified credit gifts, the combined total estate tax savings from using the FLP would be an impressive $4,050,000.

The use of FLPs in estate planning must be done carefully. In recent years, the IRS has successfully challenged discounts taken on partnership interests. Often these outcomes result from poor planning (for example, the partnership was formed on the death bed). The cases have established important principles, however. In general, for the FLP to work, it must have a business purpose independent of the desire to reduce estate and gift taxes. In addition, the shareholder must give up direct and indirect control of the FLP (e.g. the shareholder cannot be the general partner or have control over the general partner).

Since one reason to form a FLP is to achieve valuation discounts, it is necessary that the FLP general partner (usually a newly formed corporation) hire an appraiser to value the FLP units. The amount of the discount is a decision for the appraiser and is dependent on the specific design of the FLP. FLPs can be designed to be restrictive or liberal with respect to voting, income and distribution rights. The more restrictive the FLP, the greater the valuation discount.

If done properly, the utilization of a FLP can be an effective way for reducing a selling shareholder's estate taxes as it relates to his QRP.

Many Primerus firms have the expertise to plan and use FLPs to minimize estate taxes. Combining this expertise with ESOP expertise can help closely held business owners protect more of the value they have worked so hard to build.

Terence P. Stewart

Recent Trade Legislation Offers Opportunities to Exporters, Importers and Workers

On October 21, 2011, President Obama signed into law legislation that implements three bilateral trade promotion or free trade agreements (FTAs) with South Korea, Colombia, and Panama, as well as legislation that renews three trade programs – the Generalized System of Preferences (GSP), the Andean Trade Preference Act (ATPA), and Trade Adjustment Assistance (TAA). Taken as a whole, this legislation offers opportunities to American companies that export or import goods and services to and from Korea, Colombia, and Panama, to American companies that import goods from Andean countries and developing countries, and to American companies and workers adversely affected by foreign trade. The relevant legislation is:

- US-Korea Free Trade Agreement Implementation Act (H.R. 3080; P.L. 112-41)
- US-Colombia Trade Promotion Agreement Implementation Act (H.R. 3078; P.L. 112-42)
- US-Panama Trade Promotion Agreement Implementation Act (H.R. 3079; P.L. 112-43)
- An Act to Extend the Generalized System of Preferences (H.R. 2832; P.L. 112-40)
- Extension of Andean Trade Preference Act (H.R. 3078; P.L. 112-42)
- Trade Adjustment Assistance Extension Act of 2011 (H.R. 2832; P.L. 112-40)

Korea, Columbia, and Panama Free Trade Agreements

Although the legislation implementing the three free trade agreements has been signed, the agreements themselves will not enter into force until the President determines that each country has enacted measures to comply with the agreements and formal diplomatic notes have been exchanged. The earliest that any of the three FTAs can enter into force is January 1, 2012.

Each of the FTAs will significantly reduce tariffs once the agreements come into force. For instance, over 80 percent of U.S. exports of consumer and industrial products to Colombia and Panama will become duty free immediately, with remaining tariffs phased out over 10 years. The U.S.-Korea agreement will eliminate tariffs on over 95 percent of industrial and consumer goods within five years. The agreements also reduce tariffs on agricultural products.

Beyond tariff reduction, each of the agreements improves protection of intellectual property rights, creates new opportunities for exporters through establishment of non-discriminatory treatment in government procurement, and provides expanded access for American companies to the services markets of the respective FTA countries.

In addition, each of the FTAs include chapters addressing rules of origin, customs administration and trade facilitation, technical barriers to trade, investment, sanitary and phytosanitary measures, technical barriers to trade, telecommunications, electronic commerce, labor rights, the environment, trade remedies (including safeguards), and dispute settlement.

The Obama Administration views the Korea, Colombia, and Panama FTAs as

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integral parts of its strategy for doubling exports by the end of 2014. American companies should be aware of and take advantage of the export/import, services, investment, and other opportunities these new FTAs present to them.

Generalized System of Preferences (GSP)

The Generalized System of Preferences program has, since 1975 when enacted as part of the Trade Act of 1974 (19 U.S.C. § 2461), provided duty-free treatment to imports of designated products from designated beneficiary developing countries. Because the statutory authority for the GSP program lapsed on December 31, 2010, Congress enacted H.R. 2832 (P.L. 112-40), renewing and extending the GSP program through July 31, 2013.

As in the past, the legislation retroactively provides for GSP treatment for entries of goods made during the time that GSP had lapsed. Thus, entries that would have been GSP-eligible made after December 31, 2010 and before November 5, 2011 (the 15th day after enactment of the GSP renewal law) may be liquidated or reliquidated with preferential tariff treatment if a request for GSP treatment is filed with U.S. Customs by April 18, 2011 (i.e., 180 days after the enactment date of October 21, 2011) and the request contains sufficient information to enable U.S. Customs to locate the entry or to reconstruct the entry if it cannot be located. Customs will pay duty refunds, without interest, for such GSP-eligible entries not later than 90 days after the liquidation or reliquidation.

Andean Trade Preferences Act (ATPA)

The Andean Trade Preference Act was first enacted in 1991. It provides preferential tariff treatment to imports from designated Andean countries (Ecuador, Colombia, Peru, Bolivia) as a way to provide sustainable economic alternatives to drug-crop production in those countries. Current ATPA beneficiary countries are Colombia and Ecuador. Colombia's ATPA eligibility will end when the US-Colombia Free Trade Agreement comes into force. ATPA-eligibility for Bolivia was suspended in 2008, and Peru's eligibility expired at the end of 2010 and was not renewed because the US-Peru Free Trade Agreement is now in force.

The APTA expired at the end of December 2010, but Congress passed a six-week extension of the program that ended on February 12, 2011. As Title V (Section 501) to the US-Colombia Trade Promotion Agreement Implementation Act (H.R. 3078; P.L. 112-42), Congress renewed and extended ATPA tariff preferences through July 31, 2013.

As with GSP-eligible entries, Congress provided for retroactive preferential tariff treatment for entries of ATPA-eligible goods made during the time that the ATPA had lapsed. Thus, ATPA-eligible entries made after February 12, 2011 and before November 5, 2011 (the 15th day after enactment of the ATPA renewal law) may be liquidated or reliquidated with preferential tariff treatment if a request for ATPA treatment is filed with U.S. Customs by April 18, 2011 (i.e., 180 days after the enactment date of October 21, 2011) and the request contains sufficient information to enable U.S. Customs to locate the entry or to reconstruct the entry if it cannot be located. As with retroactive GSP entries, Customs will pay duty refunds, without interest, for ATPA-eligible entries not later than 90 days after the liquidation or reliquidation.

Trade Adjustment Assistance (TAA)

Trade Adjustment Assistance programs provide job-training and income assistance to workers, firms, farmers, and fishermen that have been adversely affected by foreign trade through increased import competition and offshoring of jobs. TAA was originally established in 1962 and was codified in the Trade Act of 1974 (19 U.S.C. § 2271). The TAA law was last amended in 2009 to improve its efficiency, accessibility, and effectiveness by expanding the pool of eligible TAA beneficiaries to include workers in the services sector and workers harmed by a shift in production to countries other than free trade agreement partners. The 2009 TAA amendments, however, expired in February 2011.

Included in the trade legislation signed October 21, 2001, was the Trade Adjustment Assistance Extension Act of 2011 (H.R. 2832; P.L. 112-40) in which Congress renewed (with certain modifications from the 2009 legislation) job retraining, monetary benefits, and other services for U.S. workers, firms, farmers, and fishermen adversely affected by global competition. H.R. 2832 (P.L. 112-40) extended TAA programs through December 31, 2013. The renewed TAA for Workers program provides job training and unemployment benefits to qualified individuals for up to 117 weeks. The TAA Extension Act continues to cover service workers, as well as manufacturing workers and workers whose jobs have shifted to China, India, and other countries. Certain elements have been eliminated from TAA coverage, however, including public sector workers (included under the 2009 law), certain formerly-allowed justifications for waivers from training requirements, most of the TAA for Communities program, and (after 2013) a 72.5 percent health care tax credit.

Conclusion

The package of trade legislation signed by President Obama on October 21, 2011 is a significant package and another tool for U.S. companies to expand their export opportunities and take advantage of reduced costs on imports. Important parts of U.S. trade policy that had lapsed legislatively have been restored including trade preferences for developing countries and certain Andean countries and assistance to workers displaced by expanding trade of goods and services. P

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Got Trade Secrets? Guess Again.

Like a king who secures the kingdom's treasures deep inside the castle walls, so too must lawyers help clients protect their trade secrets. If not vigilant, clients may lose the ability to protect the heart of their operations because of a quirky statute of limitations issue.

What are trade secrets?

A trade secret provides a business with a competitive economic advantage. Most states[1] have adopted the Uniform Trade Secrets Act (the UTSA), which defines a "trade secret" as information used in a trade or business, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Trade secrets are at risk when employees leave unhappy or are lured away by a competitor. Suppose a manager for your client is offended – or just ambitious – and decides to start a competing enterprise. Before leaving, however, he downloads hundreds of pages of confidential information. Soon he's competing and blatantly using the trade secrets, which took years and oodles of money to develop and perfect. But then the former employee suddenly shuts down the new enterprise. The old boss breathes a sigh of relief, grateful for not having to hire a lawyer to stop the misappropriation and then does nothing more about it.

No harm, no foul. Right?

Not necessarily. This is especially true if the ex-employee waits three years and a day[2] before dusting off the stolen trade secrets and resuming operations. Failing to act at the outset to protect his trade secrets could cause the old employer to lose the ability to protect his trade secrets.

How trade secrets are characterized affects how quickly the owner must act to safeguard his trade secrets. Courts have applied two theories. One says a trade secret is "property," having intrinsic value that can be damaged. Each misappropriation under the "property" theory gives rise to a new claim and, thus, a new limitations period. *See Microbiological Research Corp. v. Muna*, 625 P.2d 690, 696 (Utah 1981).

The competing theory says trade secrets are not property, have no intrinsic value, and their value arises from confidential relationships. Trade secrets are protected *only* if the owner vigilantly enforces the sanctity of the confidential relationship. Once the confidential relationship is breached, the owner of the trade secrets must act because he now knows the misappropriator cannot be trusted. Unless he acts to enforce and protect that confidential relationship, the owner risks losing control of his stolen trade secrets forever.

The UTSA advocates the "confidential relationship" theory. The influence of the *property* theory appears to be fading in favor of the *confidential relationship* theory. As states adopt the UTSA, courts that historically applied the property theory could begin to consider the issues

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in light of the confidential relationship between the parties. In Utah, for example, the *Muna* opinion recognized that trade secrets are *property* having intrinsic value. But the court also noted that the trade secret arose out of a confidential relationship,[3] leaving one to wonder which theory would apply. Either way, lawyers must be on their toes because they don't want to guess wrong.

The limitations question becomes less clear when there are "continuing misappropriations" or multiple misappropriators. California's courts have dealt with these questions in recent years. In *Cadence Design Systems, Inc.v. Avant! Corporation*, 57 P.3d 647 (Cal. 2002)[4], the California Supreme Court held that, under the UTSA, continued improper use of a trade secret by a single defendant is part of a single claim of continuing misappropriation accruing at the time of the *initial* misappropriation.

The UTSA does not define "continuing misappropriation." But the *Cadence* court defined it as "the continuing use or disclosure of a trade secret after that secret was acquired by improper means or as otherwise specified in [the statute]." *Id.* at 651. Thus, California considers a continuing misappropriation as a *single* claim for the purpose of the statute of limitations. See id.

The Cadence court also distinguished between continuing misappropriation by a single defendant, and multiple claims of misappropriation against multiple defendants. *Id.* The court observed, that continuing misappropriation may constitute more than one claim, each with its own limitations period, when multiple misappropriators are involved. *See id.* at 652. *See also PMC, Inc. v. Kadisha*, 78 Cal.App. 4th 1368 (Cal. App. 2000); *Global Compliance, Inc. v. Am. Labor Law Co.*, 2006 WL 1314171, *12-13 (Cal. Ct. App. 2nd, May 15, 2006) (Unpublished); *HiRel Connectors, Inc. v. United States*, 2005 WL 4942595, *3, (C.D. Cal., Jan 4, 2005) ("[T]here may be separate claims of continuing misappropriation among different defendants, with differing dates of accrual and types of tortuous conduct – some defendants liable for initial misappropriation of the trade secret, others only for later continuing use.").

Here are some recommendations:

1. Aggressively prosecute misappropriation.

Absent clear authority to the contrary, assume trade secrets are based on a "confidential relationship" theory. This will guide your response when your client calls to say his ex manager just opened a competing business with the owner's confidential information.

2. Be cautious in drafting settlement agreements.

When drafting settlement agreements, conscientious lawyers often include clauses to "*forever release and discharge the wrongdoer for, among other things, past and/or future known and unsuspected damages, claims, or causes of action, without limitation,*" or similar provisions. But if the trade secrets owner releases the wrongdoer for past and "future" misappropriations and damages, the owner may unintentionally release the misappropriator from claims of future misappropriations of the very same trade secrets.

3. Identify your trade secrets.

Client, customer, and supplier lists, recipes, renewal dates, salaries, pricing, contacts, and a host of other things can be trade secrets. Even compilations of publicly-available information gathered for a proprietary purpose can be protected as trade secrets. Employers must alert, and frequently remind, their employees of what they consider to be trade secrets. They should be marked on each page with something like this:

THESE MATERIALS ARE CONFIDENTIAL

TRADE SECRETS OF XYZ COMPANY.

DO NOT TAKE THEM HOME.
DO NOT DOWNLOAD.

DO NOT DISCLOSE,
MISAPPROPRIATE, OR STEAL.

Leave no room for doubt.

4. Guard your trade secrets.

Build walls around your clients' trade secrets. Lock them up. Employees have a common law duty in many states not to misappropriate trade secrets. But many employees may not know that they have such a duty or even that they are privy to their employer's trade secrets, and will not hesitate to walk out the door with them. Use appropriate non disclosure and properly tailored non competition agreements as part of your defenses to guard against trade secret theft.

Conclusion – Guard the Crown Jewels

Success sometimes breeds jealousy, justification, and rationalization among employees. The temptation to steal trade secrets for personal gain can be great. Trade secret thieves will use a business owner's trade secrets again and again unless they are stopped. Business owners must be vigilant. If they are not, their trade secrets, earned with time, sweat, and money, may end up lining someone else's pockets.

Like sandcastles on the beach with a rising tide, the stakes in today's economy for business owners are high. With modest planning, documentation, and a willingness to act promptly, lawyers can strengthen their clients' positions and prevent the liquidation of vital assets – trade secrets.

1 *See* Uniform Trade Secrets Act § 1 (4) (1985) (adopted by 45 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands).

2 The statute of limitations for misappropriation of trade secrets in Utah is three years. See Utah Code Ann. § 13-24-7.

3 *See Muna*, 625 P.2d at 696

4 The case was rendered moot when the parties settled, but published its opinion anyway because of heavy public.

Jeffrey D. Horst

The Effective Board of Directors: Limiting Risk/Maximizing Return

This article is written from the perspective of a trial lawyer who was brought in shortly before the commencement of a two-week trial to defend the chief executive officer and the executive vice president of a large financial institution who were defendants with the company in a shareholder derivative suit. This is not a tome on fiduciary duties of directors replete with footnotes and commentary on the nuances of the latest cases out of the Delaware Chancery court. Rather, this article is a short distillation of a presentation given to boards of directors coupled with some insights gained from trial – one of the few, if not the only, shareholder derivative cases ever tried in Georgia. The goal is to help directors not only lessen the likelihood they will become embroiled in a shareholder suit, but also to perform their responsibilities as a director more effectively which should, in turn, help their companies function better and more profitably.

A Real Case

The Clients – The CEO and EVP of a $1+ billion Georgia financial institution. Both had long, distinguished careers at their company, serving in multiple positions. The company was also a defendant.

The Plaintiff – A shareholder who also was the chairman of the county commission in the county where the case was to be tried.

The Claims – Breach of fiduciary duty arising out of the disposition of collateral from a foreclosed business/real estate loan.

Plaintiff's Attorneys – A very large, national firm headquartered in Atlanta, Georgia.

Time of Engagement – Two months before a specially set trial.

Challenges – Multiple:

1. No dispositive motions had been filed by the previous defense lawyers.
2. No exculpation provision in the charter.
3. No motion to recuse the judges of the superior court had been filed although the court received 30 percent of its budget from the county commission of which the plaintiff was the chair.
4. Substantial pre-trial publicity had occurred.
5. Plaintiff was a very powerful, influential businessman and politician in a relatively small county where the case was to be tried.
6. Finding an unbiased jury willing to rule against the chair of the County Commission.
7. Witnesses who were unwilling to testify on the defense's behalf because of the plaintiff's ability to influence zoning, tax, business incentive or other issues significantly affecting their business interests.

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Potential Exposure – Plaintiff was seeking substantial compensatory damages plus attorney's fees and punitive damages.

Principal Defense – Business judgment rule articulated in plain, ordinary common sense terms the jury could understand.

Trial – Eight days

Verdict – Defense verdict

Seven Major Issues for a Board to Address

1. Strategic Planning

The strategic plan should encompass both macro and micro components. On the macro level, the board should define what the company hopes to achieve and how to accomplish those objectives. On a micro level, the board should have specific benchmarks for how the company can achieve its vision. These benchmarks should include both financial – cash flow, profit, liquidity – as well as specific product, customer or market share criteria.

2. Choose the Right Team Members

If a vacancy occurs in either the CEO position or for board slots, the directors should first agree on the challenges and opportunities confronting the company and the criteria for addressing them. Then the directors should agree on three to four specific skills and abilities for the candidates. Finally, vigorous, objective vetting of candidates should occur. Even in mid-market companies, gone are the days where officers and directors were selected based on the "good old boy" network.

3. Establish and Properly Staff Committees

A board should have audit, compensation and governance committees. The committee members should be selected based on their experience and expertise in the area of the committee's responsibility.

4. Succession Planning

The directors should be aware of who is in the company's leadership gene pool. The directors should know the skills and capabilities of the top officers and insure that the right person is in the right position.

5. CEO Compensation and Performance Evaluation

At least annually, the board and/or the compensation committee should evaluate the CEO's performance and compensation. The compensation should be a mix of quantitative and qualitative measures such as leadership, strategic planning, financial results, succession planning, human resources, communication with shareholders, and working effectively with the directors.

6. Monitor Health, Risk, and Performance

All of the directors should be regularly reviewing and analyzing the

financial statements as well as tracking cash flow. The officers and directors must look to the future to anticipate risks, trends, or events that would impact the company.

7. **Establish Procedures, Agendas, and Policies to Assure The Board Fulfills Its Duties and Responsibilities**
   Proper policies and procedures must be put in place to enable the directors to competently perform their monitoring and decision-making responsibilities. The policies and procedures should be reasonable and consistent with good corporate governance, and in the best interests of the company's stakeholders. Litigation risks can be lowered if the policies are followed.

Director Liability Under State Law

Fiduciary duties remain the primary source of director liability under state law. These fiduciary duties encompass the duties of care, loyalty, and good faith. The duty of care requires directors to act reasonably. This means director's decision-making should be reasonable, rational, and based upon accurate and complete information. The duty of loyalty requires directors to put the interests of the company ahead of their own. Directors cannot engage in self-dealing, conflict of interest transactions, or misappropriation of business opportunities that rightfully belong to the company. The duty of good faith requires not only that the directors do what is proper for the company, but also requires that the stockholders be treated fairly, their investments protected, and that the company be managed in a prudent manner for the benefit of all stockholders.

Principal Defenses.

1. **Exculpation**
   All companies should have an exculpation provision in their charter. The language states that a director cannot be personally liable to the company or its stockholders for any damages, losses, or expenses for the breach of any fiduciary duty unless the director is liable for (a) breach of the duty of loyalty; (b) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; or (c) any transaction from which the director derived an improper personal benefit. The bottom line is that if the director's conduct satisfies the exculpation provision, he or she is immunized from liability.

2. **Business Judgment Rule**
   The business judgment rule is a court created presumption designed to insulate officers and directors from liability. The presumption is that in making business decisions, the directors acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the company. In a shareholder derivative case, the plaintiff has the burden of overcoming this presumption. In practical terms, however, the directors should be prepared to prove they made reasonable, informed, common sense decisions in good faith that were in the best interest of the company.

3. **Reliance On Others**
   Under most states' laws, directors can be shielded from liability for a business decision if they relied on information, opinions, reports or financial

information prepared by reliable and competent persons inside or outside the company.

Defeating a Shareholder Claim

Following is an action plan directors should follow if they receive a demand letter from a shareholder alleging wrongdoing or if they or the company are sued in a shareholder suit.

1. Make sure the corporate charter documents contain an exculpation provision.
2. Notify the directors and officers insurance carrier immediately and insist on participating in the selection of counsel. The directors should be represented by a lawyer who has substantial corporate governance experience including trying a shareholder derivative case. Surprisingly, very few of these lawyers exist. The case will be prepared, defended, and presented at trial very differently by lawyers who have trial experience than those who do not.
3. Take the shareholder complaint/demand/lawsuit seriously. Many suits can be avoided if the board does not ignore or dismiss out of hand the allegations of wrongful conduct. While it is natural for the directors to be upset and disappointed and adopt a circle the wagons mentality, this is the wrong approach.
4. The directors need to conduct an independent investigation of the factual allegations in the demand or the lawsuit. This can be conducted by independent directors assisted by independent counsel. The company's regular outside counsel should not be used because it is too closely tied to the company.
5. The directors need to be educated about the case and kept informed.
6. Directors should not be "dumbed down" when preparing to testify during their depositions. Too many officers and directors are prepared by their lawyers to place responsibility on others, claim they were not directly involved, or to testify they just do not recall the details of what transpired. The problem with this approach is that if the case is not won on a dispositive motion, it makes it virtually impossible for the officers and directors to testify credibly during a jury trial. Yet, these senior officers and directors can be the most effective witnesses if they are informed, well prepared, and credible.
7. The business judgment rule is a safe harbor. Although the business judgment rule is a legal concept, it can be readily understood by most lay people, once put into common sense, practical terms, that the business people, while not infallible, tried to exercise their best judgment on behalf of their company. If the process is reasonable, the result does not have to be perfect.

Bottom line, if the board functions as it is supposed to, the likelihood of being sued is substantially diminished. If directors are sued, finding competent counsel will greatly assist the directors in satisfactorily resolving the case. P

Clayton E. Wire

Before Entering the Fray: Five Things Companies Should Consider in Order to Avoid Becoming a Legal Malpractice Plaintiff

Suing outside counsel for legal malpractice often results in throwing good money after bad. Not only has a bad result occurred, but now the company must engage in further litigation to recoup even a fraction of what was lost.

The same mistakes seem to repeat themselves in the majority of legal malpractice cases. Below are five common legal malpractice issues and a description of how these issues should inform companies' selection of outside counsel in order to avoid becoming a legal malpractice plaintiff.[1]

1. Only use outside counsel with sufficient experience in the area of law at issue.

Legal malpractice often occurs when an attorney takes on a case involving issues, laws and procedures outside of that attorney's comfort zone or area of expertise. Companies should only retain outside counsel with sufficient experience in the type of matter that has arisen.

As experienced legal malpractice trial attorney Michael Mihm has pointed out, attorneys may take on a case outside of their area of expertise for a multitude of honorable reasons. However, as Mr. Mihm also notes, in many cases there are less than honorable reasons for an attorney to take on a case outside their comfort zone, including a desire to increase their own business, fear of the client leaving them, arrogance over their vast legal knowledge, or simple ignorance of the things they do not know. Companies can greatly reduce the chance that they will be forced into suing outside counsel if they only hire attorneys that have expertise in the particular type of legal matter at issue.

2. Always have a written fee agreement and use outside counsel guidelines.

While it should go without saying, companies should never proceed forward with representation by outside counsel without a written fee agreement. Moreover, as an added layer of protection and consistency, all fee agreements should incorporate detailed Outside Counsel Guidelines (OCGs).

First, matter specific written fee agreements help define the parameters of the relationship between the company and outside counsel. By entering into a new fee agreement with outside counsel for every matter, even when that particular attorney or firm has previously represented or is currently representing the company, the company can define the specific responsibilities of outside counsel and dispel any ambiguities.

Second, by using matter specific fee agreements and OSGs, a company can increase its protection in the event

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that a legal malpractice claim has to be filed. Fee agreements and OCGs can ensure that outside counsel are covered by a sufficient level of professional liability insurance for the matter at hand and provide an additional contractual based claim in the event that a lawsuit is required. Although this may not help avoid the legal malpractice lawsuit in the first place, it certainly is worthwhile to verify sufficient insurance coverage and provide additional protection. Even worse than being forced to file a legal malpractice lawsuit against the company's former outside counsel is finding out that the attorney or firm's insurance will only cover a portion of the loss or that the company's sole claim is barred.

3. Evaluate outside counsel's security protocols for documents and funds.

In almost every situation in which a company retains outside counsel, whether for litigation or transaction purposes, that company will entrust funds and/or documents with the attorney or firm that it selects. More often than not, the documents that are given to the attorney are confidential in nature and the funds that are entrusted are substantial. Consequently, it is imperative that companies investigate and verify the security protocols that outside counsel have in place for documents and funds.

In the electronic age it is important to verify that outside counsel have policies in place regarding electronic document storage. The recent security problem that Dropbox had in June 2011, where a lapse in password protection briefly exposed any stored information, is just one example of how the new age of "cloud" computing can leave sensitive documents exposed if proper security measures are not taken. To reduce the chances of such security problems, a company should demand that outside counsel have a secure server and proper policies in place.

Additionally, potential outside counsel's policies regarding proper accounting and access to funds are important for companies to verify prior to retaining the attorney or firm. In a recent legal malpractice case, a real estate development company sued an international law firm for "improperly diverted" escrow funds in excess of $5 million that were allegedly taken by an associate attorney from the law firm's trust account. The company alleged that the law firm engaged in professional negligence and breached ethical and contractual duties when it failed to monitor the funds and failed to prevent its employees from improperly diverting such funds.[2] Such cases illustrate how deficiencies in outside counsel's internal policies can force companies into filing a legal malpractice lawsuit.

4. Avoid potential or actual conflicts of interest.

Conflicts form a common basis for legal malpractice lawsuits. In many of these cases the attorney attempts to represent multiple clients in a transaction or dispute and is accused of failing to properly advocate for one client's interests over those of the other client. In *Reserve Management Company, Inc. (RMCI) v. Willkie Farr & Gallagher LLP and Rose F. DiMartino*, a mutual fund management company, RMCI, brought legal malpractice claims against its former outside counsel. RMCI was the investment manager of a mutual fund, and the law firm represented both RMCI and the Fund. RMCI contends that, because the law firm was also representing the Fund at the time, the law firm failed to properly advise RMCI in negotiating its management agreement, which caused RMCI to not be indemnified by the fund for liabilities RMCI is now facing. Companies should identify such conflicts prior to the beginning of representation and either retain conflict-free outside counsel or demand that proper conflict walls be erected, to avoid being forced into legal malpractice litigation.

5. Always be aware of statutes of limitations and deadlines.

Another common basis for legal malpractice claims arise when the attorney missed an important date or deadline, effectively barring recovery or a beneficial result. Whether engaged in litigation or transactions, companies should always be fully informed of any applicable statutes of limitations, statutes of repose, deadlines or other critical timing issues. At the outset of any representation a company should require that outside counsel provide a memorandum on the critical dates and deadlines for the matter. Moreover, outside counsel should be required to provide periodic updates on how these deadlines have been met and how they have changed. By doing this, companies can monitor the progress of the matter and outside counsel is kept constantly aware of the dates and deadlines that it must abide by. Adopting this practice into OCGs can help to reduce the risk that a company will be forced to file a legal malpractice lawsuit. P

1 The author would like to thank Michael T. Mihm and Elizabeth A. Starrs for the use of their many presentations on legal malpractice prevention in the drafting of this article.

2 *Regal Real Estate, LLC, et al. v. Crowell & Moring, LLP*, Supreme Court of New York, County of New York.

Jeffrey Kaufman

A Quick Overview of the Bermuda Form Excess Insurance Policy

Companies buying higher level excess insurance coverage written on one of the Bermuda forms need to understand the differences in coverage provided from typical domestic or London excess forms. The differences are significant and can create gaps in coverage between lower level and upper level excess coverage.

This article is a quick overview of the Bermuda form. Its limitations should be understood before buying any Bermuda coverage.

A Brief History of Time: The Development of the Bermuda Excess Liability Form

After the collapse of the U.S. excess insurance market in the 1980s, Bermuda-based insurers developed policy forms on which to underwrite insurance for large multinational companies. What is commonly referred to as the "Bermuda form" is in substantial part a legacy of the insurance coverage wars in the late 1970s and early to mid-1980s over the liability from mass tort litigation. The court decisions on the trigger and scope of coverage under Comprehensive General Liability (CGL) and excess policies for asbestos, silica, pollution, DES and other claims largely went against insurers and took an expansive view of the coverage available under the policies. Some of those wars continue even today. Many courts found that injury in these tort claims occurred over time and triggered multiple policies, from first exposure (often as early as the 1940s) to as late as the date of claim or death. Some courts held each triggered insurance policy covered "all sums" the insured was liable to pay up to the policy limits. Excess policies were held to drop down whenever the lower level policy was exhausted or the insurer was insolvent. Some courts held that insureds could satisfy their Self Insured Retentions (SIRs) in one year by using coverage from another year. Defense obligations were also broadly construed. In general, insureds were largely protected from paying anything as long as they had any policies available to pay.

Understanding the typical Bermuda policy form provisions is much easier if one reads them with this history in mind. While the policies are often touted as being a balanced approach between the insurer and insured interests, they are really an effort to avoid the above historic expansive liabilities. Set forth below are some of the principle terms of the Bermuda form.

The Bermuda Policy Form

A. Coverage

The Coverage section is divided into Coverage A and Coverage B. Coverage A relates to the policy period, and Coverage B relates to the discovery period, which is after the termination of the policy. Coverage B is discussed further below.

Occurrence based policies were typically triggered by bodily injury or property damage occurring during the

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policy period. This led many courts to find that injuries from repeated exposures occurred over time, triggering multiple policies. The typical Bermuda form seeks to avoid this result in the Coverage section by requiring that *the occurrence or claim first be reported to the company within the policy period or the discovery period*. Unlike the occurrence policy, it is the notice to the company, not the occurrence of injury or damage, that defines which policy will apply. Unlike the typical claims made policy, it is the notice to the company, not receipt of a claim by the insured, that defines which policy will apply. This has led to the policy being referred to as an "occurrence-reported" policy. The applicable limits, retention, terms, conditions and exclusions are to be determined under the policy in effect on the date of first report of occurrence or claim. This difference in coverage can create discontinuities with lower level policies which apply on a typical occurrence or claims made basis.

The discovery period is like the extended reporting period in a claims made policy. For a premium, which is a percentage of the policy premium, the insured can extend the period for reporting additional occurrences and claims which came within the original policy coverage but were not known until after the termination of the policy. The purchase of the discovery period coverage does not extend coverage to occurrences or bodily injury or property damage after the policy has terminated. All occurrences and claims reported during the discovery period are handled under the policy terms and limits in the policy immediately prior to termination.

1. Occurrence

Additional limitations on coverage are derived from the "occurrence" definition. The definition is separately stated as to occurrences not involving the insured's products and occurrences involving the insured's products.

The definition of occurrences not involving the insured's products restricts the policy to occurrences that start after the policy inception or retroactive date, and before the termination date. This is also intended to prevent the claim from triggering multiple policies, as occurred under the CGL policies. This language also raises serious risks of occurrences or claims not being covered by any policy. Take, for example, a repeated exposure type of injury from being located near the insured's plant that starts during one insurer's policy period and continues during another insurer's policy period, when injury finally manifests and a claim is made. This claim would not meet the requirement of involving exposures commencing after the inception date of the second policy and it would not meet the requirement of reporting the claim during the first policy. Thus, it is very important whenever there is a policy change, the discovery period option be seriously considered. That would satisfy the reporting requirement under the first policy. For long tail type claims, where the time between first exposure and manifestation of injury is 10 or 20 or more years, it is likely that the discovery period option will not have been purchased and the claim will not be covered.

The occurrence definition with respect to the insured's products treats injuries spanning policy periods differently. Instead of requiring the event or exposure start after the Inception Date, the policy prorates the liability to that portion of the event or exposure which occurs during the policy period.

This definition still requires that the personal injury or property damage take place after the Inception Date or Retroactive Date and prior to the Termination Date, and also that it arise from the insured's products. If the personal injury or property damage commenced prior to the Inception Date or Retroactive Date, then the company is only liable for a pro-rata share based on the period of injury or damage during the policy compared to the total period of injury or damage.

This provision is intended to avoid the "all sums" rulings of the courts, in which each triggered insurance policy has to pay "all sums" for which the insured is liable up to its limit of liability, and many courts allowed the insured to pick which policy it wanted to apply, subject to rights of contribution among insurers.

It is questionable, however, whether this language accomplishes that purpose. While it limits the policy's liability for the bodily injury or property damage to a pro-rata share, that does not necessarily limit its liability for the damages caused by that bodily injury or property damage. The Coverage agreement applies to "damages" on account of bodily injury or property damage. With an indivisible type of bodily injury or property damage (such as asbestosis), liability for all the damages could be assessed to any part of the bodily injury, making all parts jointly and severally liable for all the damage. Indeed, in the liability case a manufacturer that is responsible for a portion of the claimant's exposure could be jointly and severally liable with all other defendants for all the damages assessed.

Perhaps a scenario more likely to be faced by an insured is one where its product causes injury over time and during that time the insured changes insurers and gets a new policy and doesn't buy Coverage B (the discovery period) from the first insurer. The second insurer might claim it is liable for only a portion of the damages. But the insured could be liable for all the damages because of the portion of the injury that occurs during either one of the policies. So the second insurer might be held liable for all the damages.

Other issues from the Occurrence definition arise from the requirement that the personal injury or property damage be "neither expected nor intended from the standpoint of the insured." This is a concept carried over from CGL policies. Some Bermuda forms contain what is called a "Maintenance Deductible." That is not a term which actually appears in the policies. What it does is recognize that some products are expected to cause a certain number of injuries, such as vaccines. In order to keep the insurer from arguing that all injuries from the vaccines are expected and intended, the policy preserves coverage to the extent the claims are "fundamentally differ-

ent in nature or at a level or rate vastly greater in order of magnitude" than expected injury. There is obviously a great deal of ambiguity in this concept. While it has been touted as showing how balanced the policies are, in practice it eliminates coverage for the "expected" claims when most courts would not have done so based on the expected or intended language.

2. Integrated Occurrence

The policies use a concept called Integrated Occurrence to batch together claims from the same cause. For multiple claims arising from the same product or from exposures by two or more persons to the same general harmful conditions for longer than 30 days, the insured can elect to give a Notice of Integrated Occurrence. Such notice is not mandatory. The notice must be designated as a Notice of Integrated Occurrence. For an Integrated Occurrence, all of the occurrences or resulting claims that are part of it are subject to the limits, retention, terms, conditions and exclusions in the policy in effect on the date the Notice of Integrated Occurrence is given. Thus, all similar occurrences or claims for which regular notice has been given previously, and all subsequent similar occurrences and claims, even if after the policy terminates, are included.

There are several ramifications from the Integrated Occurrence concept. One is that all the claims are treated under the same policy and limit, so the insurer gets to limit its exposure to one policy. Another is that by telescoping claims into one period, the insured can more easily exhaust underlying limits or per-occurrence retentions. A third is that occurrences or resulting claims after the policy terminates can be brought under the policy's coverage if they arise from products or completed operations exposures. On the other hand, coverage can be lost for occurrences from other exposures that happen after the Notice of Integrated Occurrence.

3. Notice

Notice is a singularly important concept under the occurrence-reported policies. It is the triggering event for coverage under the policy. If any executive officer or manager or equivalent level employee of the insured's risk management, insurance or law departments becomes aware of an occurrence or claim that is likely to involve the policy, "written notice" must be given "as soon as practicable" during the policy period or the discovery period "as a condition precedent" to coverage. Failure to provide the required notice "shall result in forfeiture of any rights to coverage." In all likelihood, forfeiture will occur regardless of whether the insurer is prejudiced by the failure or delay. Most courts hold that failure to give timely notice under a claims made policy bars coverage regardless of prejudice to the insurer, and there is no reason to think a different rule will apply to notice under a Bermuda form.

The required contents of the notice are set forth in detail and are onerous. The notice must include copies of demands and complaints.

4. Retroactive Dates

The retroactive date, used in determining which occurrences are covered, is set forth in the declarations. It typically is the inception date of the insured's first policy with the particular insurer, but has in some cases been negotiated to be an earlier date.

B. Exclusions

The Bermuda form policies contain a large number of exclusions, many of which reinforce the limitations on coverage discussed above. Many others are found in typical CGL policies. The limitation on the length of this article precludes a discussion of individual exclusions.

C. Disputes

Bermuda policies have several features which make disputes more difficult for policy holders. First, they require all disputes be arbitrated in Bermuda (some policies specify London) by a three arbitrator panel. (Condition B). Second, they call for application of New York law, which is generally viewed as more favorable to insurers than other states' laws. (Condition M(1)). Third, they attempt to negate the universal principal that ambiguities in the insurance policy are to be construed against the insurer. They require that the policy be construed "without regard to authorship of language; without any presumption, arbitrary interpretation, construction in favor of either the Insured or the Company or reference to the 'reasonable expectations' of either party; and without reference to parol or other extrinsic evidence." (Condition M(2)). Then, buried in the Condition on Cancellation (Condition E(4)) is the right of the company to cancel the policy if the insured files or commences a suit or proceeding against the company other than as provided in Condition B, the Arbitration provision.

These provisions have many ramifications. Arbitrating in an unfamiliar venue is likely to be expensive and more difficult. Strategically, it will be best to retain both American and local lawyers, and arbitrators will have to be paid. The insurers, on the other hand, who arbitrate in Bermuda regularly will be playing on their "home court." It may be necessary to litigate in several venues, if not all involved insurers have these arbitration clauses, or call for London arbitrations. The elimination of the principles of contra preferentem (interpreting ambiguities against the insurer who drafted the policy) and reasonable expectations removes vitally important arrows from the policy holder's quiver. In the author's personal opinion, having practiced insurance law for over 30 years, those two principles have resulted in more policy holder victories than any other factor in insurance litigation. In addition, the effort to prohibit "extrinsic evidence" theoretically means that none of the discussions which put context around the language of endorsements or other policy provisions can be referred to. Further, because arbitrations are confidential and decisions are not officially reported, there currently is and likely will continue to be a dearth of decisions interpreting the policy language available to the policy holder. Yet, the insurers who are involved in multiple arbitrations will know about prior arbitration decisions.

There are many questions over the validity and enforceability of these provisions on disputes. A number of states have statutes which remove insurance claims from those subject to their arbitration statutes or which outright bar insurance policies from requiring arbitration. Also, some courts have ruled blanket arbitration clauses invalid. The effort to preclude reliance on well entrenched pro-policy holder interpretation principles and on otherwise relevant evidence might also be looked upon with disfavor.

D. Other Provisions

A number of other provisions in the policy forms bear highlighting:

1. Indemnity Policy

The policy is an "indemnity" policy which requires that the loss must actually be paid before the company can be called upon to reimburse the amount due.

2. No Duty to Defend

The policies state that the company has no duty to defend and shall not be called upon to assume charge of the settlement or defense.

3. Defense Costs Are Within Limits

Defense costs paid by underlying insurers or the insured are included in the determination of the exhaustion of underlying insurance and retentions, and are included in the policy limits of the Bermuda policies.

4. No Drop Down Over Uncollectible Coverage

The policy will not drop down over uncollectible coverage.

5. Other Insurance

The policy attempts to take advantage of all other valid and collectible insurance that might cover an occurrence or claim by making itself excess to all such insurance, whether issued before, during or after the policy period, except other insurance specifically issued in excess of the policy.

6. Aggregate Reinstatement

The policy allows for one reinstatement of the aggregate during the annual period of the policy.

7. Punitive Damages

The policy covers punitive damages. They are expressly included within the definition of "Damages." However, the definition of "Damages" also excludes civil or criminal fines and penalties.

Conclusion

Clearly understanding how the Bermuda policy is written is essential to getting the coverage expected. The Bermuda form is restricted in many ways. Insurance professionals need to assess whether it meshes with other insurance in the program and affords the coverage needed. P

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Ruth E. Hatt

Investment Vehicles and the Cayman Islands

A Champion in the Arena

The Cayman Islands continues to be one of the leading offshore jurisdictions for international business. While strong across all business sectors, the Cayman Islands are perhaps best known for being one of the leading offshore jurisdictions for banking and hedge funds. The Cayman Islands are the sixth largest banking center by assets at $1.75 trillion USD with 40 of the top 50 international banking organizations holding licenses in the Cayman Islands.[1] The fund industry really needs little introduction, as there are 9,431 licensed investment funds in the Cayman Islands as of September 30, 2011. Insurance is another success story, with the Cayman Islands being the leader for health care captives, with health care being the primary line of business for 256 of the 730 licensed captives.[2]

Why the Cayman Islands?

While the beautiful beaches and close proximity to the United States are an obvious draw, the Cayman Islands offer a first class business platform from which to do business.

The Cayman Islands legal statutory provisions together with the application of the English common law system have created an excellent legal framework to conduct business. The integrity and robustness of the Cayman Islands legal system and enforcement by the courts has proved a vital factor in attracting business.

The Cayman Islands are a tax neutral jurisdiction. The Government of the Cayman Islands relies on indirect taxation and does not levy income, profit or corporation taxes on businesses or individuals, there is no withholding or deduction of tax on payments to foreign investors and no exchange controls.

Cayman's Regulatory and Transparency Standards are among the Best in the World

Internationally acknowledged, the Cayman Islands have full tax transparency with the United States and proactive tax reporting with the 27 European Union member states. The Cayman Islands have entered into bilateral agreements with 27 countries for the provision of tax information including major economies such as the United States, the United Kingdom, Japan, China, Germany and Canada. The Cayman Islands are also on the Organisation for Economic Co-operation and Development's so-called "white list" of jurisdictions that substantially implement international tax standards.

The anti-money laundering legislation of the Cayman Islands has been evaluated by the International Monetary Fund and by the Financial Action Task Force and is found to be robust.

Regulatory Regime

The Cayman Islands Monetary Authority (CIMA) regulates certain activities such as the carrying on of banking business, the carrying on of trust business, the carrying on of insurance business, investment advisory business, company management and the offering of shares to the public through investment vehicles such as mutual funds or hedge funds. Before these activities can be conducted, the appropriate registrations or full applications must be made and licenses obtained from CIMA. CIMA has a reputation of sensible regulation comparable to other international financial centers with a focus on flexible relevant regulation. CIMA has actively participated in the setting of international regulatory standards and sharing of best practices. As a member of the International Organization of Securities Commissions (IOSCO) Cayman has full regulator to regulator disclosure with all IOSCO members.

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The Exempted Company

Cayman Islands investment vehicles are varied and have been developed to work in complicated and innovative international business structures. The Companies Law and other legislation of the Cayman Islands are reviewed constantly to ensure that the Cayman Islands keep abreast of the evolving economy.

The most popular company in the Cayman Islands is known as an exempted company. It is usually incorporated with a share capital and allows investors to limit their liability to the amount unpaid on their shares. To incorporate an exempted company, an individual may retain an attorney, accounting firm or other licensed service provider. After the relevant information has been provided, including references, identification material, source of funds certifications and business purpose, a service provider may cause the relevant corporate governance documentation which regulates the exempted company's affairs to be filed with the Registrar of Companies. The exempted company is formed on the same day of filing. An exempted company need only have one shareholder and that shareholder may appoint a director. More than one director is not required for unregulated exempted companies. The board of directors will run and manage the day-to-day operations of the company. There is no requirement to have Cayman Island resident directors or hold meetings in the Cayman Islands as a matter of Cayman Islands law.

The exempted company is required to maintain a registered office in the Cayman Islands where its books and records are kept and where documents may be served. Unregulated exempted companies are not required to have an annual audit or file annual accounts with the Registrar of Companies. Every year the company is required to file returns with the Registrar of Companies and pay a fee to maintain its registrations. The exempted company needs no governmental permission for incorporation or to carry on business in the Cayman Islands in furtherance of its international objectives. On application to the Governor in Cabinet it is possible to obtain a guarantee from the Government of the Cayman Islands that it will not be taxed for 20 years from the date of the certificate and an application to renew the guarantee may be made during the 20 years.

Alternative Investment Vehicles

In addition to the exempted companies, the Companies Law and other statutory provisions allow for a variety of corporate investment vehicles and structures. These include companies limited by guarantee, companies limited by duration, limited partnerships which provide limited liability protection for investors who hold partnership interests. The Cayman Islands, like other jurisdictions, has seen an increasing use of segregated portfolio companies. These companies allow for the creation of one or more segregated portfolios in order to segregate the assets and liabilities of the segregated portfolio company held within or on behalf of a segregated portfolio from the assets and liabilities of the segregated portfolio company held within or on behalf of any other segregated portfolio of the company. These types of structures are convenient for hedge fund operators and captive insurers, as investors in one segregated portfolio do not bear the risks of investors in another segregated portfolio within the same segregated portfolio company. Investment vehicles are used for many purposes and, subject to compliance with the Companies Law and corporate governance documentation, the company can remit capital or income earned to and from the Cayman Islands. Provided business is carried on in a legitimate manner, the laws of the Cayman Islands do not permit confidential information belonging to the company or an individual to be provided to third parties without the consent of management and or shareholders.

When considering establishing any structure to include incorporating an entity in the Cayman Islands, the promoter should not only take the appropriate legal and regulatory advice in the Cayman Islands, but they should also obtain competent advice on the relevant statutory provisions in their own jurisdiction or in those jurisdictions which the Cayman Islands entity is doing or will do business. P

1 The Bank of International Settlements July 2011 Report

2 CIMA published information see website www.cimoney.com.ky


José Miguel Olivares

International Private Investment and the Practice of Law

Memoirs of the Past

Until the early 1970s, the majority of Latin American legal systems were very restrictive to foreign investment, from and towards private entities.

The average Latin American law student had little or no interest in studying or working abroad, since the chances of achieving an international law practice were few, and the majority of them were tied to public law, governmental banks or entities, or to international diplomatic organizations.

The average private entrepreneur from the northern hemisphere was used to associating our continent with red tape, bureaucratic sluggishness, discretional powers of the authority, restrictive licenses required for foreign trade, discriminatory access to tax rates or foreign exchange rates, etc.

Growth of International Private Investment

Since those days, our countries (and many other nations on other continents as well) have been learning to welcome, foster and protect foreign private investment, and to encourage cost efficient foreign trade. The countries have adapted their economic systems consequentially.

Speaking as a layman in economics, these private equity investments in Latin America have been positive for our countries and hopefully will remain such in the future.

As for Latin American lawyers, this trend has strongly increased the importance of international law practice, and the number of potential clients for Latin American law firms has also experienced substantial growth.

Master of Laws studies in American universities, or equivalent programs in relevant European countries, have become a standard for those Latin American law graduates wishing to develop a fruitful career in private law. Practicing for some time at a foreign law firm has become an important goal.

All the above implies improvement of the legal profession in our countries that is obviously welcome.

The Contribution of the Legal Profession

There is another contribution to this process which would help both the host countries and the incoming foreign investors. The desks and computer screens of any businessperson in the northern hemisphere are constantly flooded with much economic information about our countries. Figures, statistics, graphics and reports on GBP, bond yields, interest rates, inflation rates, stock markets, exchange rates and many other economic facts, abound. Universities, thinks tanks and investment bankers, strive to keep that information updated. Thus, lawyers should focus on the Rule of Law, its present accomplishment and the improvement thereof, as our most relevant contribution to strengthen the benefits and to reduce the imperfect effects of foreign private investment in our countries.

Since their early days in university, lawyers learn that the law aims to provide certainty and safety for human

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relationships. Relationships between our authorities or governments, our local industrialists, financiers or businesspeopl and our foreign investors should not be excluded from this.

Validity of economic or financial analysis of foreign investments will also depend on the capability of the respective legal system to provide certainty and safety to those entrepreneurial endeavors, especially in the longer term.

This is the distinctive advice that we lawyers should always provide to our clients when assessing the capabilities of our countries to serve as hosts of foreign investments.

This approach goes beyond the detailed descriptions of laws and regulations available in as many "How to do business" booklets and reports. Obviously, we shall never disregard knowledge and efficient management of the tax and customs laws, of the foreign investment statutes, of the foreign exchange rules and of all other legal tools that a foreign investor needs to learn. This knowledge is necessary, but not enough to achieve a relevant professional performance.

The valuable analysis that only we lawyers may primarily provide to our foreign clients, is the accurate and honest assessment of the actual abidance of the law in our local institutions, governments, courts, entrepreneurs, etc. This analysis must be based upon objective parameters leading to professional conclusions. Lawyers' concern over these matters is not only a service for foreign clients, but also an ethical duty towards our national communities.

This contribution to the growth of international private investment is part of the essence of our professional training and furthers the prestige and dignity of the practice of law. I hope these ideas become another distinctive characteristic of Primerus lawyers, who share a commitment to the Six Pillars that mark the collective aims of this institution.

The Case of Chile

Chile has been subject to a thorough review in these regards, by the World Justice Project, while preparing their 2011 Rule of Law Index, released on June 13, 2011.

I encourage you to visit the website of the World Justice Project[1] and study this very important document. The methods and criteria of this report are certainly a solid benchmark in regard to recording and informing adherence to the Rule of Law on a worldwide prospective.

There are three new institutions that are specifically meant to reinforce the Rule of Law in Chile, in addition to the traditional courts and governmental control agencies, which are granted full legal recognition and operation in Chile.

The Court of Public Contracts *(Tribunal de Contratación Pública).*

This was created in 2003 by Law N° 19.886[2], as part of a general review and update of the Chilean state. This special court has free rein from all state dependency and is not part of the ordinary Chilean courts of justice. Nevertheless it remains submitted to the disciplinary authority of the Chilean Supreme Court.

Its purpose is to reinforce the guarantees of law abidance and transparency within the contractual activity of the state of Chile.

It has authority to learn and resolve accusations or complaints against illegal or arbitrary acts or omissions incurred by state entities throughout tenders and or related to the rejection or admittance of State contractors in the respective Official Registry.

The Council for Transparency *(Consejo para la Transparencia).*

This is a nonprofit legal entity, submitted to Public Law, created by Law N° 20.285 in 2008. Its purpose is to promote transparency and grant access to all citizens to state information, in order to foster public trust in the state authorities.

One of the main legal tools available to the Council is the General Instructions that it may issue, including requirements of publicity and accessibility that are mandatory for all governmental entities.

The Code of Ethics of the Chilean Bar Association

The new Code of Ethics and the Discipline Rules of the Chilean Bar Association *(Colegio de Abogados de Chile A.G.)* came into effect on August 1, 2011. They regulate the practice of law in Chile and grant effective means for complaints of the citizens in this regard.

Essentially, these rules establish a Secretary Counsel who keeps initial records of all complaints and supports claimants with the preparation and submission of written complaints. An instructing lawyer who verifies admissibility thereof, conducts the investigation and, eventually, raises the charges against the defendants. At the top of the system there is a Court of Ethics, whose members include the Board of the National Bar Association, plus 10 to 50 independent lawyers, all of whom serve their positions *pro bono*. This court works and resolves each complaint through committees of up to five members each.

Membership in the National Bar Association of Chile is voluntary. Precisely for this reason, membership therein and submission to the authority of the new Court of Ethics are an important guideline to confirm professional trust in Chilean lawyers.

Grupo Vial Abogados is proud that one of its partners has been elected as a member of the Court of Ethics of the National Bar Association of Chile.

1 Botero, J and Ponce. A.(2011) "The World Justice Project Rule of Law Index," available online at: www.worldjusticeproject.org

2 Ley de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios

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Ecuador: Finally a Competition Law

Background

At the end of the 1970s, Ecuador underwent a reform process for *return to democracy*, ending up in a *referendum* approving the Political Constitution of the Republic. Enacted in the year 1979, the Ecuadorian Constitution set forth that the *economy's organization and operation must abide by the principles of efficiency*. Furthermore, the 1979 Constitution provided that *any form of abuse of economic power, including unions and groups of corporations purporting to dominate national markets, eliminate competition or arbitrarily increase profits, are prohibited and punishable by law*.

In spite of the constitutional advances made in 1979, the competition law and policymaking processes in Ecuador have been sluggish. During the 1980s, the implementation of a system for competition rules was virtually nonexistent. In the 1990s and the first decade of the new century, legal and constitutional reforms were introduced for market liberation and deregulation. The liberation process focused on sectors involving the exploitation of natural resources and the provision of public services; nonetheless, a comprehensive and complete set of competition rules applicable to all sectors of the economy was not provided. Conversely, the amendments addressed only certain regulated natural resource and public service sectors, were disperse and lacked content. Competence over competition matters was afforded to a plurality of authorities, which were vested with limited investigation and punishing powers.

In 2005, the Andean Community of Nations issued the *Rules for Protecting and Promoting Free Competition in the Andean Community* (CAN Decision 608). The community rules introduced the prohibition of abuse of dominant position and anticompetitive agreements, the notion of a single authority, and application to all sectors of the economy. Although Decision 608 took effect in Ecuador in July 2005, it was only applied in year 2009, when Executive Decree 1614, providing for the *Rules for Application of CAN Decision 608*, was enacted. This decree has turned out to be intrinsically insufficient though, as it bears limitations proper to the its rank within local legislation, to the extent that certain significant aspects, i.e., the power to investigate, procedures and, particularly, penalties and sanctioning powers, are subject to the principle of reserve of law.

In 2008, Ecuador went through a new reform process where a new Constitution was drawn up. The Constitution of October 2008 (i) acknowledges the right *to have access to optimum quality goods and services and to freely choose them*; (ii) guarantees the right *to carry out economic activities, the right to have access to quality goods and public and private services, provided efficiently, efficaciously and under fair treatment*; (iii) sets as one of the trade policy's objectives, *to deter anticompetitive practices, namely, in the private sector, and other practices that may affect market operations*; (iv) places on the State the obligation *to regulate, control and intervene, when necessary, in commercial trade and transactions*, (…) *to determine sanction mechanisms for deterring private anticompetitive practices or abuse of dominant position at the mar-*

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ket, as well as other unfair competition practices, and; (v) establishes the State's duty *to reduce distorted intermediation and ensure market transparency and efficiency, while fostering competition in equal conditions and opportunities, which are to be defined in the law*.

Recently Enacted Legislation

On September 29, 2011, the Ecuadorian legislature approved the Organic Law of Market Power Control and Regulation (LCPM, for its acronym in Spanish), enacted on October 13th this year. In line with the current Constitution, the LCPM prohibits abuse of dominant position or market power, abuse of dominant position in situations of economic dependence, cartelization and unfair competition practices. It establishes an ex ante notification system for the authorization and control of economic concentration operations; and provides for a scheme of action of State and State aid. The LCPM creates a single competition authority for enforcing the law, with competence on all economic sectors, a governmental body with regulatory powers, and a procedural and sanction framework for judging forbidden conducts as well as the offenses listed in the law.

The application of the LCPM is subject to the principles of nondiscrimination, transparency, proportionality and due process. Prohibited conducts will be judged on the basis of the principle of rule of reason. For restrictive agreements, the LCPM includes an exemption for efficiency and the *de minimis* rule. Furthermore, the LCPM will be applied subject to the primacy of reality principle. The LCPM applies to all economic agents, understood as any person, whether natural or legal, public or private, national or foreign, for profit or nonprofit, currently or potentially doing business in all or part of national territory, their associations, and anyone carrying out economic activities outside the country, when their acts, activities or agreements produce or may bear detrimental effects on the domestic market.

The ex ante notification system for concentration operations applies to any integration or take over processes, whether vertical or horizontal, at the same or different relevant markets. The application authority has the power to reject, condition or authorize an operation that has been reported. Efficiency gains are taken into account when assessing potentially restrictive concentration operations.

The State may define deliberate restraints on competition in specific cases, under conditions of copulative compliance and for reasons of public interest. Furthermore, State aides may be granted in specific cases on a temporary and exceptional basis. The application authority has the power to oversee compliance with the conditions justifying the establishment of competition restraints or the granting of State aids.

Sanctioning procedures may be started ex officio or as a result of a denunciation. Such procedures comprise a denunciation admission stage, an investigative and evidentiary stage, and a stage for providing arguments and settling the case. The competition authority may implement precautionary measures before, during or after the procedure. The competition authority's ruling may be appealed at the administrative or court level, without entailing the suspension of the ruling, unless a bond equal to 50 percent of the sanction is provided. Sanctions may run up to 8, 10 or 12 percent of the agent's turnover, depending on the character of the offense. Certain sanctions are placed on directors and managers. The authority may apply coercive fines and corrective measures, including structural and behavioral remedies. Sanctions will be applied in light of attenuating and aggravating circumstances. The authority may grant clemency and accept cessation agreements. Cessation agreements do not imply the removal of a sanction, unless the market has not suffered adverse effects for this reason. Within five years from the final administrative ruling, the accusing party may sue the offender for damages at civil courts, following common civil law rules. P

Marissa R. García

Free Trade Agreement between Panama and the United States

After several years of negotiations, the Republic of Panama and the United States of America have just ratified a Free Trade Agreement for the purpose of further developing and strengthening bilateral trade structures and eliminating tariff barriers between the two countries.

Trade agreements constitute liberalization of trade of specific or of all kinds of goods between signatory countries. By becoming a signatory of this type of agreement, countries gain a great reduction or complete elimination of existing tariff and non-tariff barriers. In such scenarios, to the extent determined in the agreement, each country continues to be sovereign in its own commercial policies with the rest of the world.

The negotiations of this agreement are the result of four presidential administrations in Panama, which involved different political parties looking for ways to strengthen and increase the commercial relationship between Panama and the U.S. Such negotiations involved the presence of various sectors of the Panamanian society. Particularly the private sector was constantly making proposals for conditions of the agreements approved and now ratified.

It is important to consider that this Trade Agreement seeks the creation of new opportunities of access to an immensely important international market for the Panamanian private sector, which made important contributions during the negotiations of the Agreement.

Together with the private sector in Panama, the Panamanian Ministry of Commerce and Industry installed a commission called "National Commission of International Commercial Negotiations," formed by government employees and representatives of the private sector. This Commission took part in all the meetings held for submitting and analyzing proposals during the negotiations of the Agreement.

In addition to the above, the content of the Agreement was submitted to the academic sector, working class leaders, professionals, independent citizens and the civil society in general. During this process these sectors were given the opportunity to submit their proposals and objections during the negotiations.

It was clearly understood that the entire society had to be considered at the time of negotiating this type of Agreement, since it was to affect positively, negatively, directly and/or indirectly every sector of the society. As a matter of fact, from the year 2004 more than 350 consultations have been made for the process of negotiating with the U.S.

As a result of the ratification of this Agreement, Panama and the U.S. will substantially reduce the tariffs applied to the bilateral trade of goods, services and investments, and it will promote higher standards of protection of rights related to intellectual property, electronic products and related industries, customs, as well as dealing with disputes, among many other things.

It is said that the importance of the Free Trade Agreement between Panama and the U.S. is based on the impact the U.S. has on the economic and commercial transactions conducted in Panamanian territory. The U.S. is our most important commercial partner. In 2010 the U.S. imported $2,518 million USD from Panama and Panama exported $211 million USD to the U.S.

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The following should be mentioned concerning commercial transactions between Panama and the U.S.:

- The commercial exchange between Panama and the U.S. is constant. Products are imported and exported from and to both countries constantly. Sugar, coffee and all kinds of products of the sea are some of the popular items which Panama usually exports to the U.S.
- The Colon Free Zone carries on a strong commercial exchange with U.S. companies.
- The U.S. is one of the most important clients of the Panama Canal.

Taking into consideration the above, Panama will enjoy the following advantages once the Agreement is implemented:

- The commercial development possible with a Free Trade Agreement is much stronger than with the multilateral rules established in the World Trade Organization, since a wide space exists in the multilateral framework used for applying undercover restrictions in commercial transactions. Such restrictions may be avoided through a Free Trade Agreement.
- A system of commerce without specific restrictions for investments creates a positive environment for growth and for the expansion of new opportunities for business and related activities.
- As to the expansion of commercial and economic activities between Panama and the U.S., the Free Trade Agreement enables Panama to be in a better position for exporting products to a country with more than 300 million inhabitants, and allows Panamanians the possibility of enjoying products from the U.S. at lower prices.
- Industries of third countries may consider establishing in Panama in order to take advantage of the benefits Panama shall gain by the ratification of this Agreement.

Is this Agreement the solution for problems the countries currently face?

Certainly, a Free Trade Agreement with the U.S. is a valuable tool of commercial policies to promote commerce between the U.S. and Panama and to generate economic growth and development. However, agreements are not by themselves the solution to all the problems; instead, they are an important piece of the macroeconomic politics of the country.

The ratification of this Agreement brings positive expectations to certain sectors of the country; however, the agricultural sector is concerned about the benefits this Agreement may bring since they are not prepared for its implementation in Panama.

They doubt that in a short term they might be able to compare themselves positively to the productivity of the U.S.'s agricultural sector, which enjoys considerable subsidies and other benefits from the government, making many products extremely competitive.

A large amount of products from the U.S. will not have tariffs to pay upon the implementation of the Agreement, leaving Panamanian producers with a short time to manage how they are going to compete with the products imported at more accessible prices.

In reply to such concern, Panamanian authorities have already considered the development of a logistic in ports, airports, streets, customs and migration in order to make the country a place in which products can be manufactured and produced at low prices to be more competitive and for exporting to the U.S. as well.

The Panamanian Government must keep supporting the small entrepreneurs, especially in the agricultural sector, in the areas of finance, education, technology, and development of their processes in order to be able to profit from the advantages of the possible benefits that the Free Trade Agreement creates, increase their possibilities to compete, and access the new market.

The main challenge for Panama will be the adaptation of the agricultural sector to be more competitive and capable of selling quality products at the level of countries that can produce at lower costs.

The implementation of this Agreement has several benefits for Panama as well as several challenges, and the positive or negative form of acceptance of them shall depend on how it is evaluated. The truth is that for the effectiveness of agreements of this type, both countries must receive benefits from them at the same scale or at least at a very similar scale. We will only be in the position to determine if the Agreement was positive or negative for Panama when enough time has passed and the effects of the Agreement can be appreciated in all sectors of the local economy. P

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Mihaela Cracea

Cross Border Employment: A Guide for Foreign Workers in Romania

The access of foreign citizens to the Romanian employment market is recognized by domestic laws and has been proven to be a very dynamic and valuable influx channel providing a highly qualified and trained work force.

The most demanding industries for skilled foreign work force in Romania are, broadly, the automotive industry, telecommunications, trade and petroleum industry, etc. While the most desired job positions are CEO, CFO, sales managers, marketing managers, supply planning manager, as well as the technical positions of engineer, operations specialist and others.

Moreover, multinational companies are frequently appointing employees of the parent companies as directors of their Romanian subsidiaries. In most of the cases, they decide to relocate the directors to oversee the development and all the activities of the subsidiary company, and sometimes they apply to obtain a residence permit for such directors in Romania.

Factors including how easy it is to access the Romanian employment market, how many documents need to be submitted to public authorities, and how long and time consuming the procedures are, vary depending on the type of residence you want to obtain for foreign citizens. (In this article, the term "foreign citizen" refers to citizens outside UE/SEE/Swiss Confederation. The citizens of the latter are assimilated with Romanian nationals and benefit from the same treatment with regard to access to the Romanian employment market.)

Consequently, in relation to foreign citizens, the most commonly used procedures are those related to the following types of residence permits: (i) for commercial activities; (ii) as director of a Romanian company; (iii) for assigned employee; (iv) as employee of a Romanian company.

The common feature of all the above types of residence permits is the initial term of validity, which is one year. Further extensions, where possible, are also provided for successive terms of one year.

In other words, in order to maintain the right of residence in Romania for more than one year, irrespective of the type of such residence, foreign citizens are required to apply each year for the relevant extensions.

Regarding the differences between the above options, although we are not aiming here to provide a detailed description of each procedure, we will try to provide an overview of the essential features of such procedures, in terms of the main conditions to be accomplished when accessing them.

The residence permit for commercial activities is open to the shareholders of Romanian companies, either limited liability companies or joint-stock companies.

The approval of the Romanian Centre for the Trade and Foreign Investments Promotion (RCTFIP) is the main and preliminary condition for obtaining the residence permit as shareholder of a Romanian company.

Such approval is issued under the following conditions: the value of the shares the applicant owes within a Romanian company is at least EURO 100,000, if the company is a limited liability one and of EURO 150,000 if the company is a joint-stock company. Moreover, the applicant is required to submit a 12-month business plan regarding the development of such a Romanian company. For further

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extensions of the residence permit, proof that the applicant has actually implemented the business solutions outlined in the business plan and that it has created at least 10 job positions within the company (for limited liability companies) and at least 15 job positions (for joint-stock companies) is an important requirement.

The second type of residence permit, **namely the residence permit as director of a Romanian company**, is obviously open to the directors registered with the Romanian Trade Registry. The most important restriction of this type of residence permit is related to the number of directors of the same company able to obtain such residence permit. Only one director may obtain this permit. Moreover, this director must not have been a shareholder within the company or within any other Romanian company in the past two years. Further, it is mandatory for the company to have a share capital of at least EURO 50,000. or to have acquired technology with a value of at least EURO 50,000. Fulfilment of such conditions is also required for all further extensions of the residence permit.

The third type of residence permit is **the residence permit for assigned employees**. The employees' assignment from a foreign company to a Romanian one is, in most of the cases, an intragroup practice. Foreign citizens, employed with a company from their home country, are usually assigned to a Romanian company pertaining to the same group of companies in order to support a specific business division of the host company in relation to which they have previously acquired significant expertise.

Such residence permit implies, as a preliminary step, the recognition by the Romanian Ministry of Education of the assigned employee's professional education.

This certificate of recognition is one of the documents which should be submitted for obtaining the work authorization as assigned employee. Absent such work authorization, no residence permit can be granted.

The most important documents that need to be submitted to the Romanian authorities for obtaining the work authorization are, in addition to the recognition certificate, the services agreement executed between the assignor and assignee companies, the assignment order, the criminal record of the employee, the fiscal certificate proving that the Romanian company has no outstanding payments to the Romanian public budget.

The downside of this type of residence permit is that it cannot be renewed. It is valid only for one year.

The fourth type of residence permit, and the most common one, applies to the **employment of foreign citizens by Romanian companies**.

Although more difficult to obtain, it might be renewed on yearly basis, for an unlimited period of time.

The preliminary procedures are the same as for the residence permit for assigned employees, with one additional requirement which implies a specific recruitment procedure to be carried out by the Romanian employer.

Such procedure is meant to verify if the position for which the foreign citizen is going to be hired might be occupied by a citizen of UE/SEE/Swiss Confederation.

In this respect, the company should notify the Labour Force Agency in relation to the vacant position, asking if any citizen of UE/SEE/Swiss Confederation with a proper qualification is recorded in their dabatase and is fit for the envisaged position. After perfoming the necessary searches within its internal database, the Labour Force Agency will issue a certificate attesting the vacancy of the position or, on the contrary, will inform the company that a citizen of UE/SEE/Swiss Confederation has been identified as suitable for that specific job position.

Although all the above procedures might be perceived, to some extent, complicated and time consuming, if the legal terms are observed and the documents have the accuracy required by the legal provisions, the obtainment of either of the above types of residence permits might become flexible and easy to accomplish. P

Irene Christodoulou

The Cyprus Holding Company from an International Investor's Point of View

Why Cyprus?

Cyprus' strategic location has been a key feature in its development into an international business center. In combination with the island's excellent infrastructure, a legal system based on English common law, high quality of life and low cost of living, shared with its well-educated labor force, good industrial relations and munificent tax incentives, Cyprus is now deemed and ranked as an ideal business center.

Introduction to the Cyprus Holding Company

Holding companies are set up as the vehicle to hold investments in a subsidiary or associate company. Their primary income derived from their holding activities is dividend income and profits from the disposal of their investments, mainly shares.

Matters relating to the holding activities, which are set out in this article, are considered to be the main criteria for the selection of a prime location to set up a holding company in conjunction with the particular circumstances of the investor. Such matters for setting up a holding company include:

- Incoming dividends remitted by the subsidiary to the holding must either be exempted from or subject to low withholding tax rates relying on any applicable foreign legislation or any applicable double tax treaty. Further, any dividend income received by the holding company must either be exempted from or subject to low corporate income tax rates in the holding company's jurisdiction. Also, outgoing dividends paid by the holding company to its ultimate shareholders must either be exempted from or subject to low withholding tax rates. Equally, profits realized by the holding company on the sale of shares in the subsidiary must either be exempted from or subject to a low rate of capital gains tax.
- Other additional tax considerations, which may identify whether a particular location is suitable for a holding company to be established may include for instance, the existence of flexible re-organization rules, group relief and possibility of losses to be carried forward; the existence of Controlled Foreign Company (CFC) rules; the existence of thin capitalization provisions and the ability to obtain interest deduction as an expense in full; the possibility of re-domiciliation to other jurisdictions and the possibility of listing in international stock exchanges. Moreover, additional considerations may include any favorable provisions regarding the taxation of interest and royalties, whether any withholding taxes are payable on interest and royalties, whether there is any obligation of the company to be registered with the VAT authorities of the particular jurisdiction, the taxation of assets which have been distributed and applicable liquidation provisions, tax rates in respect on other such income and lastly, any stamp duty law that may apply.

Having in mind the above considerations, jurisdictions which provide some or all of the above criteria at low tax rates are considered to be prime locations for such holding companies – Cyprus being one of these prime locations.

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The Cypriot Tax Regime for Holding Companies

The favorable tax regime of Cyprus is ideal for investors wishing to set up a holding company. Cyprus has signed an extensive number of double tax treaties with countries not only within the European Union but also outside of it. Within the sphere of the European Union, the Parent Subsidiary Directive is applicable.

- **Incoming dividends - Withholding tax in foreign jurisdiction:**

A first criterion that a holding company will need to satisfy is the ability to extract dividends from its subsidiaries at a zero or low tax rate. The Cypriot holding company achieves this with the extensive double tax treaties that Cyprus has signed and which are applicable both to countries outside the EU or within the EU. Within EU countries in which the Parent Subsidiary Directive (PSD) is not applicable, then the relevant Double Tax Treaty (DTT) if one exists will apply.

Even if the DTT or the PSD are not providing sufficient protection or if their criteria are not met for implementation, Cyprus applies unilateral tax credit relief in the form of tax credit by operation of its local laws.

- **Outgoing Dividends**

Dividends payable by a Cypriot resident company to its foreign shareholders (whether a company or individual) are not subject to any withholding tax in Cyprus.

The non-resident shareholder of a Cyprus company receives the dividends free from any withholding tax. Effectively, Cyprus provides full exemption on the payment of dividends to its non-resident shareholders giving Cyprus an actual advantage over other traditional holding jurisdictions.

If the person receiving the dividend is a Cyprus resident, then withholding tax is payable at a rate of 17 percent. There is no withholding tax on dividends payable from one Cyprus tax resident company to another Cyprus tax resident company. The relevant legislation provides for deemed distribution of dividends every two years in the case of tax resident shareholders.

According to Cypriot tax legislation, foreign dividend income received in Cyprus by a Cyprus tax resident company will not be taxed under the Income Tax law but under the special contribution of the Defense law.

Effectively, there is full tax exemption upon income tax-dividends received from Cyprus companies (either resident or non-resident) or dividends received from overseas companies (foreign) do not bear any corporation tax. Additionally, there is no special defense contribution tax on dividends received from another Cyprus resident company.

There is full exemption from any type of tax on profits from the sale of titles (shares, bonds, debentures, and founders' shares) as well as full exemption from any capital gains tax from profits realised from the disposal of titles.

Effectively, any profits from the disposal of titles are free from any taxation in Cyprus unless the company is the owner of immovable property in Cyprus.

In conclusion, the new Cypriot tax legislation has created a unique environment for holding companies. It has introduced numerous advantages making Cyprus a prime holding location in the international field of holding regimes. P

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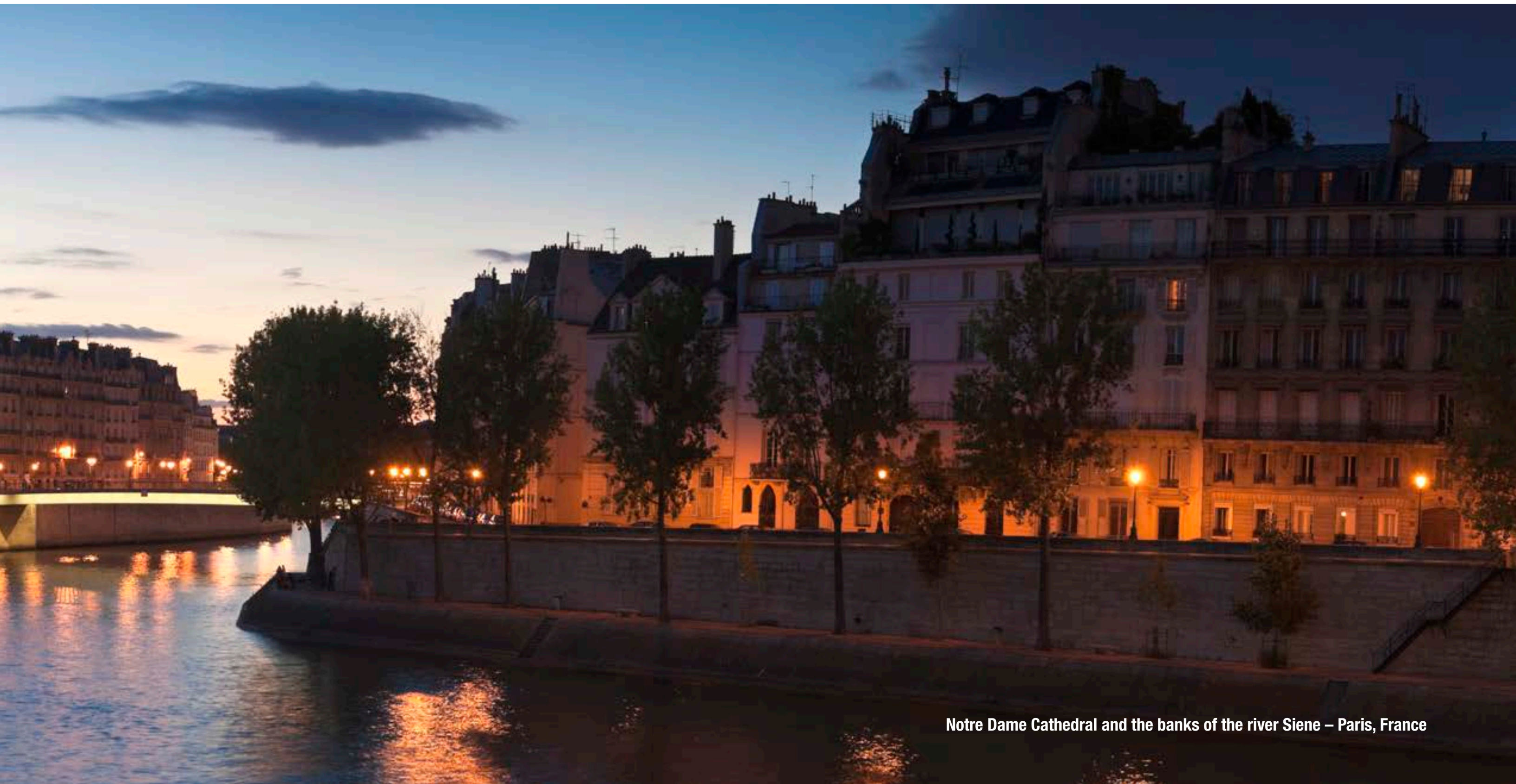

Notre Dame Cathedral and the banks of the river Siene – Paris, France

Yun-Jae Baek

Foreign Direct Investment In Korea

I. Concept of Foreign Direct Investment

In Korea, Foreign Direct Investment ("FDI") refers to the investment made by a foreigner with the goal of establishing continuous economic relations with and participating in the management of a Korean corporation or a company run by a national of the Republic of Korea. FDI differs from ordinary investment, in that it is designed to exercise substantial influence over management of a company. FDI also means an investment made to create wealth via the transfer of tangible or intangible assets, such as intellectual property rights and real estate; and where a foreigner purchases stocks or shares of a domestic company for the purpose of participating in the management. FDI is regulated by the Foreign Investment Promotion Act.

II. Types of Foreign Direct Investment

FDI includes (i) acquisition of shares or stocks of a Korean corporation or a company run by a national of the Republic of Korea, (ii) supply of a long-term loan to a foreign-invested corporation, (iii) a contribution to a non-profit corporation, etc.

1. Acquisition of Shares or Stocks of a Domestic Company

Acquisition of shares or stocks of a domestic company refers to a case in which a foreigner purchases shares or stocks of a Korean corporation (including a Korean corporation in the process of being established) or a company run by a national of the Republic of Korea, for the purpose of establishing a continuous economic relationship with and participating in the management of the said Korean corporation or company.

Under the Foreign Investment Promotion Act, FDI should meet the following conditions:

- The amount of investment should be 100 million won or more.
- A foreigner should own 10 percent or more of either the total number of voting stocks, or the total equity investment. (Foreign Investment Promotion Act 2-2)

If the number of relevant investors is two or more, each should meet the above conditions. The foreign investment ratio is measured when the investment is completed (Foreign Investment Promotion Act 2-3). However, when a foreign investor of a registered foreign-invested company makes an additional investment, there is no limitation in the amount and ratio. The investment, stated in the foregoing sentence, should include the possession of shares by a foreign investor, following the capitalization of legal reserves by a foreign-invested company (Article 2 (3) of the Enforcement Decree of the Foreign Investment Promotion Act, taken into effect on October 6, 2010).

Although there are no exceptions in regard to the investment amount, exceptions may be allowed for the foreign investment ratio. Even if the foreign investment ratio is less than 10 percent with the amount of the foreign investment being 100 million won or more, the investment may be exceptionally qualified as FDI in one of the following cases.

- A contract for dispatching or electing officers;
- A contract for delivery or purchase of raw materials or products for the period of one year or more; and
- A contract for furnishing or introducing technology, or for joint research and development

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2. Long-Term Loans

FDI includes loans with maturity of not less than five years, which is supplied to a foreign-invested company by (i) an overseas parent company of the foreign-invested company, (ii) a foreign investor, or an enterprise with capital investment relationship with the investor in an overseas parent company of the foreign-invested company or (iii) a foreign investor (based on the period for loan specified in the loan contract that has been made for the first time).

3. Contribution to a Non-Profit Corporation

A contribution to a non-profit corporation is recognized as a foreign investment when the non-profit corporation has independent research facilities in the field of science and technology, and meets the conditions as provided in the Foreign Investment Promotion Act and the other relevant laws.

III. Procedure for the Foreign Direct Investment

Foreign investment procedures consist of foreign investment report, remittance of investment fund, registration of incorporation and business, and registration of a foreign-invested company.

1. Foreign Investment Report

A foreign investor or an agent may report their investment at Invest KOREA (KOTRA), Korea Business Centers (KBC) of KOTRA, headquarters and branches of domestic foreign exchange banks, or domestic branches of delegated foreign banks. The reporting person should be a foreign investor or its agent. The processing period for a foreign investment report is just one day.

Where a foreigner intends to make an investment by means of purchasing stocks newly issued by a Korean corporation or a company run by a national of the Republic of Korea, the foreigner should report such fact in advance (pre-report). In such case, the following basic documents are necessary:

- Two copies of the report form of foreign investment by acquisition of newly issued stocks;
- Documents certifying a foreign investor's nationality

Where a foreign investor makes an investment in kind with the capital goods, a foreign investor is required to apply for the examination and confirmation of the specification of the imported capital goods prior to customs clearance, after reporting the foreign investment by acquisition of newly issued stocks, etc.

Where a foreigner intends to make an investment by acquisition of stocks which have already been issued by a company run by a national of the Republic of Korea or a Korean corporation, he/she should report the fact in advance (pre-report).

Where an overseas parent company of a foreign-invested company, a foreign investor, or an enterprise with capital investment relationship with the overseas parent company or the investor intends to make a foreign investment in form of long-term loans with maturity of not less than five years supplied to the foreign-invested company, the foreign investment shall be reported in advance (pre-report). In such case, the following documents are required:

- Two copies the report form of the foreign investment in form of long-term loans (A letter of attorney should be included in case an agent reports the foreign investment.)
- Copy of the loan contract
- Documents certifying the capital investment relationship, and documents certifying the lender's nationality

2. Investment Fund Remittance

In principle, investment funds should be remitted through a foreign currency bank under the name of the foreign investor. Funds from domestic sources are not recognized as foreign investments. In the process of paying up for stocks, a bank issues a certificate of paid-up stocks (required in case of registration of incorporation) and a certificate of foreign currency purchase (required in case of registration of a foreign-invested company).

3. Registration of Incorporation and Business

A foreigner should get required documents to register incorporation and business at a jurisdictional court and tax office. When registration of incorporation and business is completed, a new company becomes a legally valid corporation. A bank requests required documents and transfers paid-in capital to the account of the newly established corporation.

4. Registration of a Foreign-Invested Company

A foreign investor (or an agent) or a foreign-invested company should register the foreign-invested company at delegated authorities within 30 days after the occurrence of any of the following cases. Then all the necessary procedures for the FDI should be deemed completed. P

Shinji Itoh

An Introduction to the Japanese Lease Law

Non-Japanese clients who are entering into a lease contract for an office space or a residence often find it difficult to understand the provisions in the contract. Some provisions of the law are mandatory despite the stipulations in a lease contract. In this article, we offer guidance on certain items in a lease which often confuse non-Japanese clients. The main sources of Japanese law on real estate lease are the Act on Land and Building Lease *(shakuchi shakkka ho)* (the "Act") and the Civil Code *(minpo)*.

Standard Lease vs. Fixed-Term Lease

A "standard lease *(futsu chintaishaku)*" refers to a lease with generally a term of one or two years, *renewable*. A "fixed-term lease *(teiki chintaishaku)*" refers to a lease with a fixed term, e.g., three years, *non-renewable*.

Under the Act, a lessor of a standard lease may not reject a renewal of the term unless the lessor has "justifiable reasons *(seito jiyu)*". The justifiable reasons are determined by taking any relevant facts into consideration, such as the necessity for the lessor to use the building, current conditions of use by the lessee, and the payment of compensation by the lessor. If the lessor lacks any justifiable reason, the lease is deemed as renewed with the same conditions; provided that the term of the lease becomes "unspecified". A standard lease with unspecified term may be terminable by notice of a lessor with a grace period of six months, but the lessor must again have justifiable reasons for the termination.

For a fixed-term lease, the Act requires a lessor to provide a written statement of non-renewable nature with a lessee when entering into a lease contract. The Act also requires the lessor to give notice of termination to the lessee one year to six months prior to the end of the term.

Termination

In general, unless otherwise specified in a lease contract, parties to a standard lease may not terminate the lease until the term expires.

Also, parties to a fixed-term lease may not terminate the lease until the term expires. Under the Act, however, a lessee of a residence of smaller than 200 square meters may terminate the fixed-term lease if he/she has unavoidable reasons such as transfer of work place, medical treatment or care of his/her relatives.

The case law has developed a "doctrine of destruction of the confidential relationship *(shinraikankei hakai no hori)*". The doctrine restricts a lessor of a standard lease or a fixed-term lease from exercising its termination right for a reason of a breach of contract or any default event specified in the contract, unless such reason is tantamount to a destruction of the confidential relationship. For example, if a lessee fails to pay rent for one or two months, a lessor may not exercise its termination right under the contract. Under the doctrine, a court would not find that such failure would be tantamount to a destruction of the confidential relationship.

Rent

Parties may stipulate the rent on which they have agreed in the lease contract. Under Article 32 of the Act, a lessor or a lessee may claim increase or decrease in the rent if it becomes inappropriate due to increase/decrease in tax or other costs, changes in economic environment such as appreciation or depreciation of the asset value, or when compared with the level of the rent of the buildings of neighboring area. Typically, such a claim is settled through a court process.

If a contract of a standard lease stipulates no increase in the rent for a certain

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period, Article 32 of the Act does not apply to such standard lease. If a contract of a fixed-term lease stipulates provisions relating to amendment to the rent (including a provision not to increase the rent), Article 32 of the Act does not apply to such fixed-term lease.

Security Deposit

Usually, a lessee is required to make deposit of money (shiki-kin) with a lessor to secure obligations of the lessee under the lease contract. The amount of such security deposit is typically two to three months' rent for a residence, and six to twelve months' rent for an office, but may vary depending on the area, the class of the building and so on. The security deposit is only returnable after the lessee has evacuated the leased space, minus any costs (such as cleaning) incurred by the lessor for the recovery. There is no legal obligation for a lessor to keep the security deposit in safe custody; so a lessee may need to confirm with a lessor whether it will cause any guarantee of a third party or any insurance to be available to secure the security deposit.

Commission

It is a standard practice that a lessee pays certain amount of money (typically in the same amount of the security deposit) to a lessor when they enter into the lease contract. This money is called a commission or "thank-you money *(reikin)*", which is non-refundable.

In the downward trend in the leasing market, it appears that an increasing number of lessors would require little or no security deposit and/or commission. Usually, a licensed real estate broker acts as an intermediary between a lessor and a lessee. A lessee is required to pay a brokerage fee, which is regulated under the Building Lots and Buildings Transaction Business Act *(takuchi tatemono torihikigyo ho)*. Under such Act, the broker must deliver an "explanation sheet of important matters *(juyo jiko setsumeisho)*" to a lessee, which describes detailed information on the building and the lease.

Traditional dragon statue on temple – Taipei, Taiwan

2012 Member Listing – Asia Pacific

Primerus Business Law Institute (PBLI)

Australia PBLI

Kells The Lawyers

Level 15, 9 Castlereagh Street
Sydney, NS Australia 2000

Contact: Roger Downs
Phone: (02) 9233 7411
Fax: (02) 9233 7422
www.kells.com.au

Japan PBLI

Hayabusa Asuka Law Offices

4th Floor
Kasumigaseki Building
3-2-5 Kasumigaseki
Chiyoda-ku Tokyo 100-6004
Japan

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Fax: +81-3-3595-7105
www.halaw.jp

China PBLI

Diaz, Reus & Targ, LLP

Plaza 66, Tower 1, 39th Floor
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Shanghai 200040
China

Contact: Xin "Joe" Zhang
Phone: +86 21 6103 8595
Fax: +86 21 6103 8596
www.diazreus.com

South Korea PBLI

Hanol Law Offices

17th and 19th Floor, City Air Tower
159-9 Samsung-Dong, Kangnam-Ku
Seoul, KR Korea, South 135-973

Contact: Yun-Jae Baek
Phone: +82-2-6004-2500
Fax: +82-2-6203-2500
www.hanollaw.com

China PBLI

Hengtai Law Offices

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Shanghai 200052
China

Contact: Edward Sun
Phone: +86-021-62262625
www.hengtai-law.com

Taiwan PBLI

Formosan Brothers

8F, No. 376 Section 4
Jen-Ai Road 10693
Taipei, TW Taiwan

Contact: Li-Pu Lee
Phone: +886-2-2705-8086
Fax: +886-2-2701-4705
www.fblaw.com.tw

India PBLI

Advani & Co.

10, Thakur Niwas, Level 2
173, Jamshedji Tata Road
Mumbai, IN
India

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Phone: +91 22 22818380
Fax: +91 22 22865040
www.advaniandco.com

Primerus 2011 Community Service Award Winner and Finalists

"We are a collection of individuals who believe that one of our obligations is to give back to the community."

— Michael Quinn

If you want to hear how a law firm's community service efforts can make a profound difference in a community, talk to the executive director of DuPage (Illinois) Habitat for Humanity.

Sarah Brachle will tell you about the hundreds of hours attorney Michael Quinn of Kubasiak, Fylstra, Thorpe & Rotunno, P.C. has donated – and how the firm's work ensured one family who lost their mother to breast cancer could stay in their home.

Thanks to their efforts with Habitat for Humanity, as well as other nonprofit groups, Kubasiak, Fylstra, Thorpe & Rotunno of Chicago, Illinois, won the 2011 Primerus Community Service Award, as announced at the Primerus Annual Conference in October. Primerus names two finalists in addition to the winner. This year's finalists are Rothman Gordon of Pittsburgh, Pennsylvania, and Hull Barrett, PC of Augusta, Georgia.

Kubasiak, Fylstra, Thorpe & Rotunno

From September 2010 to September 2011, this law firm donated more than 300 hours of legal work to DuPage Habitat for Humanity, located in the western suburbs of Chicago. Led by the efforts of Michael Quinn, the firm provided legal counsel for a range of projects, including multifamily real estate development, single-family closings, donations of land and property and the purchase of an office building.

"[The firm] has responded quickly and professionally to any request for assistance, despite the fact that we have never paid for their services," Brachle said.

Quinn said his relationship with Habitat for Humanity began when he was working at another law firm and learned they were seeking an attorney with expertise in real estate, land use and environmental law. "I do all three, so I figured it was fate," Quinn said. Since then, he has become a believer in the program, which "provides desperately needed housing in a community where otherwise there wouldn't be any options like that."

According to Brachle, Quinn's support was instrumental in keeping one family together. One homeowner – a single mother with three children who worked as a teacher – died one year after purchasing her home due to complications from breast cancer. Her sister assumed guardianship of the children and estate. The firm's attorneys helped Habitat work with the court-assigned attorney for the children, the County funders and the family to find a solution that allowed transferring the home to the sister. "This has been a long process that would have cost us thousands of dollars in legal fees, but instead, at no cost [the firm] has ensured that family can stay together despite a terrible loss," Brachle said.

Quinn said he was most proud of the firm's award application, though, because it reflected the dedication of nearly all the firm's attorneys to community service. "We are a collection of individuals who believe that one of our obligations is to give back to the community," Quinn said.

The firm's other community service efforts include:

- Doug Hewitt organized, supervised and participated in a mentoring program for at-risk boys at the Marillac Social Center on Chicago's west side for more than 15 years.
- Bernie Peter handles food stamp cases for the Legal Assistance Foundation of Chicago.
- Dan Kubasiak has served as a board member of the Poshard Foundation for Abused Children since its formation in 1999.
- David Shaffer has raised money to create an exhibit a film about the life and work of the late Rev. James J. Close, a Roman Catholic priest and the long-time president of the Mercy Home for Boys and Girls.

Rothman Gordon

When the Pittsburgh Marathon is held this May, it is thanks in part to the community service work of Rothman Gordon. The marathon was cancelled in 2004 when the lead sponsor pulled out and the city was on the verge of bankruptcy. Rothman Gordon attorney Louis Kushner was instrumental in bringing it back, serving as chair and president of the marathon board until the marathon was back on. He continues to serve as Chair as the revived marathon begins its fourth year. The law firm also provides pro bono legal advice to the race, helped draft their 501(c)(3) application to obtain charitable exemption and continues to attend board meetings, review and/or draft sponsor contracts and provide labor and employment counsel, free of charge.

The firm also supports Big Brothers/Big Sisters of Greater Pittsburgh, Habitat for Humanity, Neighborhood Legal Services Association and Squirrel Hill Health Center, in addition to other organizations.

Hull Barrett

While the attorneys of Hull Barrett have always been community service-minded, in recent years the firm increased their giving efforts in honor of one of their own.

In 2009, Brennan, the son of Hull Barrett attorney Tara Rice Simkins and grandson of attorney Patrick Rice, was diagnosed with acute myeloid leukemia on the eve of his 8th birthday. After four bone marrow transplants and spending three birthdays in a row in the hospital, the family returned home from St. Jude's Children's Research Hospital in Memphis, Tennessee, in August 2011, excited to have fought off the disease.

Since Brennan's first diagnosis, the family founded the Press On Foundation and raised close to half a million dollars to fund cancer research. Press On provides funding to cancer treatment trials that are ready to go into final test. Employees of the firm rallied around the effort by raising money, making and distributing bumper stickers, wearing wrist bands with Brennan's name on them, holding two Dress Down to Press On fundraising days, forming a team for the 2011 Relay for Life and participating in the bone marrow registry drive.

In addition to helping fight childhood cancer, the firm also has supported Lee National Denim Day for breast cancer, American Red Cross tornado relief, Golden Harvest Food Bank, and the Salvation Army's Kroc Center.

Please join us in congratulating these fine Primerus law firms for their work and for exemplifying the Community Service pillar to all Primerus members.

Primerus Institutes and Practice Groups

The International Society of Primerus Law Firms contains three main institutes, allowing clients and attorneys to gather for educational and social events including conferences, webinars and conference calls.

The Primerus Business Law Institute (PBLI) brings together top-quality law firms to meet the challenges businesses face in a global economy. With broad legal expertise in locations around the world, the PBLI offers the same resources as large law firms, along with the value businesses today demand. PBLI member firms are based in countries and territories including Argentina, Australia, Belize, Brazil, British Virgin Islands, Canada, Cayman Islands, Chile, China, Cyprus, Ecuador, Egypt, England, France, Germany, Greece, Guatemala, Hungary, India, Ireland, Italy, Japan, Mexico, Nigeria, Panama, Puerto Rico, Romania, South Korea, Switzerland, Taiwan, The Netherlands, United States, and Turkey. If you're seeking an attorney outside the United States, the PBLI has the experienced, trusted legal advisors you need to thrive in a global economy.

The Primerus Consumer Law Institute (PCLI) is a group of plaintiff and consumer law firms dedicated to meeting the needs of their clients. With broad expertise and law firms in multiple jurisdictions, PCLI members share a commitment to continuing legal education, knowing that improving their expertise helps them win cases for clients.

The Primerus Defense Institute (PDI) includes more than 800 of the world's finest independent defense attorneys with expertise in nearly every aspect of corporate defense litigation. Formed for the purpose of lowering business litigation costs and reducing clients' exposure to liability, the PDI is a valuable resource for corporations seeking outside counsel around the world.

Primerus Practice Groups

In addition to its three main institutes – Primerus Business Law Institute, Primerus Consumer Law Institute and Primerus Defense Institute – Primerus also has organized several practice groups to allow members to better serve clients. Practice groups allow attorneys to offer clients big law firm resources for reasonable fees.

Primerus Practice Groups are:

- Bankruptcy
- Commercial Law
- Energy and Environment Law
- Family and Matrimonial Law
- Insurance Coverage and Bad Faith
- Intellectual Property
- International Dispute Resolution
- International Operational Services
- International Transactional Services
- Labor and Employment
- Liquidation of Commercial Debt
- Premises Liability – Retail, Hospitality, Entertainment Liability
- Product Liability
- Professional Liability
- Real Estate
- Securities
- Transportation
- Workers' Compensation

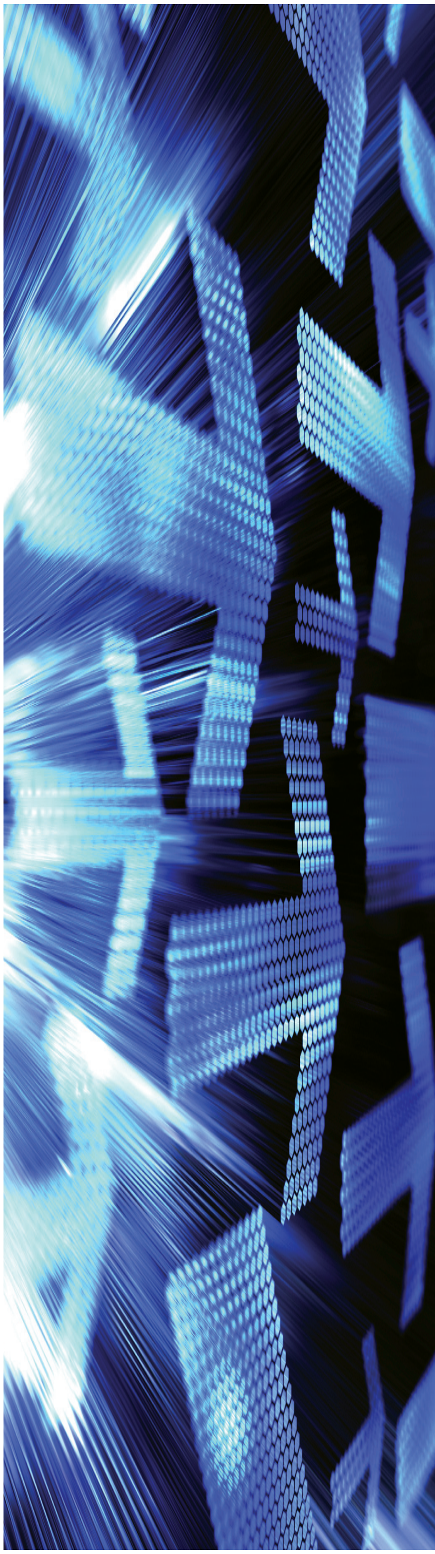
For more information about each Practice Group, visit www.primerus.com and click on Resources.

2012 Member Locations – International Society of Primerus Law Firms

United States

Alabama (1)
Arizona (1)
Arkansas (1)
California (12)
Colorado (3)
Connecticut (3)
District of Columbia (3)
Florida (11)
Georgia (4)
Hawaii (2)
Illinois (4)
Indiana (2)
Iowa (1)
Kansas (1)
Kentucky (3)
Louisiana (4)
Maine (1)
Maryland (1)
Massachusetts (2)
Michigan (8)
Minnesota (3)
Mississippi (2)
Missouri (6)
Nebraska (1)
Nevada (2)
New Jersey (4)
New York (7)
North Carolina (7)
Ohio (7)
Oklahoma (5)
Oregon (2)
Pennsylvania (4)
South Carolina (5)
Tennessee (4)
Texas (11)
Utah (2)
Virginia (2)
Washington (4)
West Virginia (1)
Wisconsin (2)

Argentina
Australia
Belize
Brazil
British Virgin Islands
Canada
Cayman Islands
Chile
China
Cyprus
Ecuador
Egypt
England
France
Germany
Greece
Guatemala
Hungary
India
Ireland
Italy
Japan
Mexico
Nigeria
Panama
Puerto Rico
Romania
South Korea
Switzerland
Taiwan
The Netherlands
Turkey



2012 Calendar of Events

Scan this with your smartphone to learn more about Primerus.

January 18-20, 2012 – Primerus Young Lawyers Section Deposition Skills Workshop
Miami Beach, Florida

February 1-5, 2012 – Primerus Consumer Law Institute Winter Conference
San Juan, Puerto Rico

February 10, 2012 – Midwest U.S. Regional Members Meeting
Cleveland, Ohio, hosted by Schneider, Smeltz, Ranney & LaFond

March 1-2, 2012 – Primerus Defense Institute Transportation Seminar
Las Vegas, Nevada

March 9, 2012 – Western U.S. Regional Members Meeting
Phoenix, Arizona, hosted by Burch & Cracchiolo

March 23-24, 2012 – Latin America & Caribbean Chapter Members Meeting
Santiago, Chile, hosted by Grupo Vial Abogados

March 30, 2012 – Northeast U.S. Regional Members Meeting
New York, New York

April 19-22, 2012 – Primerus Defense Institute Convocation
San Diego, California

May 20-23, 2012 – International Council of Shopping Centers Recon Academy
Las Vegas, Nevada
Primerus will be a corporate sponsor

May 20-22, 2012 – Truckload Carriers Association Safety & Security Meeting
Norman, Oklahoma
Primerus will be a corporate sponsor

June 21-22, 2012 – Primerus Business Law Institute Symposium
Chicago, Illinois

September 30 - October 3, 2012 – Association of Corporate Counsel Annual Meeting
Orlando, Florida
Primerus will be a corporate sponsor

November 1-4, 2012 – Primerus Annual Conference
Scottsdale, Arizona

Many additional conferences and events are being planned for 2012. Please visit the Primerus events calendar at www.primerus.com/events.

For additional information, please contact Chad Sluss, Primerus Vice President of Services, at 800.968.2211 or csluss@primerus.com.

Primerus
Built on Integrity. Driven by Innovation.

International Society of Primerus Law Firms

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