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New York International Chapter News

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of the New York State Bar Association

A Word From Our Immediate Past Chair

It has been my privilege to have served as Chair of the International Law and Practice Section for the past year. I believe that it has been a productive one in most respects. I am especially pleased by the success of the Fall Meeting in Santiago described and pictured elsewhere, our Canadian initiative (including the Executive Committee Retreat in Montreal, the IL&PS panel at the Barreau de Quebec annual meeting in Quebec City, the ongoing discussions with the Law Society of Upper Canada and the recent Canadian Program at the recent IL&PS Annual Meeting), and the recognition of the Section's efforts in recent years by President Standard's creation of the Association's Committee on Cross Border Legal Practice, all of whose members also are members of the IL&PS.

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A Word From Our New Chair

Honored and Impressed. The first is what I am to be selected Chair of one of the best and most active sections in the New York State Bar Association. The second is what the lawyers in New York State and around the world are by the members of our Section and its activities.

Coming off a spectacular November 2004 meeting in Santiago de Chile, where we exchanged ideas and mingled with lawyers from almost every South and Central American country, our Section followed up with another terrific substantive program at the NYSBA's and our Section's Annual Meeting in New York City at the end of January. Among other benefits, the Santiago meeting resulted in increased membership in the Association and the Section, pushing our Section over the 2,000-member mark. The meeting also

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There also are a number of areas where I continued the efforts of my predecessors as Chair, but where more needs to be done. These include the creation of new substantive law and regional law Committees, as well as the appointment of new Co-Chairs of those and existing Committees, and the creation of new Chapters in areas of the world of interest to New York lawyers and the appointment of Co-Chairs of those Chapters. Similarly, the already impressive activities of the Women's Interest Networking Group and the Section's membership efforts need to be expanded, not only to attract more women and younger lawyers to the IL&PS, but also to keep the Section's number of members above 2,000, thereby entitling the IL&PS to three Delegates to the NYSBA House of Delegates.

We have been fortunate that members of the Section have come forward to propose new committees, such as on International Privacy and Entertainment Law, as well as on South Asian and Middle Eastern Law. Similarly, new Chapters have been created and Co-Chairs appointed in cities or countries from Brussels to Pakistan to Greece and to several cities or countries in both Central and South America, the latter development as a result of the large Latin American participation in the Santiago meeting in November. Seizing upon the opportunity presented, several of the Officers and the International Division Vice Chairs have been engaged since the meeting in selecting Co-Chairs for Chapters, both existing and newly created, for all of the Latin American countries. I know that process will continue under my successor as Chair, Bob Leo.

I am less certain about the revival of the International Intern Program started several years ago, not because of any lack of interest on the part of the Section or the students, as we have received over 100 applications each time. However, there are logistical problems involved and the reality that many of the firms likely to be interested in hosting such students operate their own intern programs. However, the large number of students attending law schools in New York who are interested in the practice of international law and the earlier mutually beneficial results of the IL&PS Internship Program indicate to me, at least, that the Section should renew that effort.

Lastly, I want to thank all of the Officers, the Meeting Chairs, the Executive Editors and Editors of the Section's publications, the Past Chairs and other Members of the Executive Committee, the Committee and Chapter Co-Chairs and many others too numerous to list, except one, our Section's NYSBA staff liaison in Albany, Linda Castilla, for their assistance and support during my year as Chair and over the years I was either an Officer or the Meeting Chair in Rome. It has been a rewarding year for me personally and, I hope, for the Section.

Paul M. Frank, Immediate Past Chair
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A Word from Our New Chair
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renewed interest in our existing Chapters, and the addition of new Chapters throughout the Americas.

Before you continue reading, I want to take this opportunity to thank Paul Frank of Alston & Bird, LLP for his outstanding job as Chair over the past year. His tireless efforts, high energy and enthusiasm for our Section, our members and our activities made our successes in 2004 possible. His is a hard act to follow and I am glad to know that he will remain active in our Section and available to advise all of us.

This fall, our 2005 Seasonal Meeting will be held in London from October 18–23, in cooperation with the Law Society of England and Wales. The theme will be "Cross Atlantic Legal Practice in a Time of Global Change," and the meeting will be held at the Law Society's Headquarters on Chancery Lane in the heart of "Legal London." In addition to the substantive programs, there are planned social events where you will be able to meet your fellow Section members and the solicitors and barristers of the Law Society. I, for one, am already practicing the "Queen's English."

In addition to these meetings, our Section continues to be involved in many important issues that affect our practice and more importantly, the individuals and companies that rely on lawyers, our clients. This is only possible through the hard work of our members and committees, and the leadership of past Chairs, delegates, Officers and Program Chairs. Members of our Section have been U.N. Election Observers and are advisors to our and other governments. Members have also studied and lectured here and abroad on the extraterritorial effect of U.S. laws, like the "Patriot Act" and the international and ethical impact of "SOX," the Sarbanes-Oxley Act affecting public entities.

Our Section is also proud that NYSBA President Ken Standard takes a great interest in our activities, and building on the previous work of Section members, appointed a new NYSBA committee, the Committee on Cross-Border Legal Practice. That committee is comprised of our Section members, including former Chairs, and is studying practice eligibility and admis-

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Our Co-Editor

This newsletter is always a terrific means for our Section to share the knowledge and information that we as a group possess. As part of the global village, it is important to stay abreast of the developments that affect our practices throughout the world.

Being the co-editor of the *New York International Chapter News* allows me the opportunity to develop relationships with legal practitioners in many countries that might otherwise pass me by if I were not involved with this publication. As a Canadian lawyer whose firm has a presence in New York, I value the discussions I have with colleagues in other countries concerning the differences between jurisdictions and how we can integrate the services our different firms provide.

I attended the 2004 Fall Meeting in Santiago in November. This was one of our Section's most successful meetings, and that could not have been possible without the sponsorships provided by so many firms. At the helm of this meeting was Oliver Armas, Program Chair and Paul Frank, 2004 Section Chair. I want to thank them both for their commitment in making this year's meeting such a success.

And speaking of Paul Frank, I would like to thank him for presiding so capably over our Section as Chair in 2004. I look forward to being able to call on him when his sage advice is needed. I also wish to congratulate Bob Leo on his new role as Section Chair.

As far as my role as Co-editor, I continue to be impressed by the many articles submitted to this publication, providing us with information on laws from countries around the world. In this issue you will hear from Argentina, Brazil, Chile, Pakistan, and the United States, to name a few. I remind you that we also welcome submissions of your firm news, upcoming events, meetings, speaking engagements that involve a member of your firm, pro bono activities and community events that your firm, or a member of your firm is involved in, and of course, your articles.

Richard A. Scott, Co-Editor
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IL & P Country News

Argentina

Supreme Court Ruling on Pesification of Bank Deposits

1. Background

After almost three years since the first questions lodged at Court by reason of the restrictions imposed on the availability of funds and the "pesification" of obligations according to Emergency Law 25,561 and other further emergency regulations, the National Supreme Court of Justice ("Supreme Court") ruled that the "pesification" of bank deposits is not unconstitutional.

On October 26, 2004 in *Bustos, Alberto Roque et al v. National Government et al re. Proceedings to enforce constitutional rights,* the Supreme Court modified a prior opinion that, when comprised by different members, the same Court had upheld on March 5, 2003 in *San Luis Province v. National Government re. Proceedings to enforce constitutional rights*. In *Bustos*, the Supreme Court returned to the doctrine the Supreme Court rendered in *Peralta* (1990), in which it had declared the constitutionality of the regulations whereby the then existing government, in an emergency situation, had exchanged bank deposits for government bonds.

The Supreme Court judgment contains one partially dissenting vote cast by Justice Carlos Fayt. The remaining five members have voted in favor of the constitutional nature of "pesification," although in the majority of cases they have done so on the grounds of their own arguments, and in some cases, with important shades of difference as compared to the remaining votes.[1]

In support of its conclusions, the Supreme Court mentioned two precedents of the U.S. Supreme Court, namely: *U.S. v. Bankers Trust Co.* (294 U.S. 240) and *Perry v. United States* (294 U.S. 330). In those cases, involving situations similar to those undergone by Argentina during the emergency, the U.S. Supreme Court rendered a decision in favor of the constitutionality of measures that limited the right to property based on monetary restrictions arising from the serious 1929 crisis and the change in the gold value of the United States dollar.

2. Preliminary Conclusions

Upon reviewing the judgment referred to above, the following preliminary conclusions may be drawn:

- Due to the complexity of the matter, the nature of the Court proceeding used by plaintiffs (*"amparo"*) is not admissible as a valid procedural means to question the constitutionality of the laws on "pesification."
- However, the grounds invoked to dismiss the claim exceed the objections to the procedural means (*"amparo"*) chosen by plaintiffs. Therefore, such grounds may also be invoked in ordinary proceedings.
- The judgment rendered in *Bustos* exclusively refers and applies to relationships arising from deposits or obligations related to the financial system. Relationships unrelated to the financial system arising from agreements between individuals do not fall within the scope of this decision, although some of the grounds invoked could validly apply to these cases.
- It is not possible, at this stage, to have a clear signal of the Supreme Court with respect to the constitutionality of the emergency regulations applied to other situations different from the one analyzed in *Bustos*. Indeed, except for Justice Fayt, even though the justices agreed on the constitutionality of the pesification of a bank deposit and that the *amparo* was not the procedural means to analyze the issue, all of them voted using different arguments in support of their votes.[2] As a result of this, it is possible that lower courts will continue accepting *amparos* in amounts lower than US $70,000, since, for instance, Justice Zaffaroni, in his vote, expressly excluded them from the pesification.
- The Supreme Court has not advanced in finding a solution to one of the most serious issues that is still pending resolution: the likely action for recovery against savers of the amounts already collected by them (in United States dollars or Pesos at the free market exchange rate) as a result of petitions for precautionary measures and *amparos* already granted in their favor. However, upon casting their votes, some Supreme Court members made express references to this issue.[3]

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Indemnity for Dismissals without Cause—Unconstitutionality of the Legal Cap

The National Supreme Court of Justice (CSJN) ruled that the cap indemnity established by Section 245 of the

Employment Contracts Law (LCT) is unconstitutional and thus amended the stance this Supreme Court had sustained in prior cases dealing with the same subject.

Section 245 of the LCT establishes that in those cases of dismissal resolved by employer, without just cause, the latter must pay the worker an indemnity equivalent to one month's salary per year of employment or fraction thereof in excess of three months. The calculation is based on the best regular and habitual monthly remuneration collected during the last year or during such time as services were rendered, when the latter is lower. However, Section 245 also establishes a legal limit since the resulting indemnity cannot exceed the equivalent of three times the monthly sum resulting from the average of all remuneration established by the Collective Labor Convention applicable to the worker at the time of dismissal, or in the Collective Convention applicable to the establishment where the latter renders services, in the event of an employee who is not covered by Collective Convention.

In the final judgment rendered in the case *Vizzoti, Carlos Alberto v. AMSA S.A. re. dismissal*, the Supreme Court considered that the legal indemnity system was unconstitutional. Indeed, in *Vizzoti*, the cap established by the Collective Labor Agreement was roughly 33% of the actual salary of Mr. Vizzotti. The Supreme Court ruled that the cap should not be lower than 66.66% of the highest regular and habitual monthly salary collected by Mr. Vizzoti during the last year of his labor relationship.

Even though the Supreme Court decisions are not mandatory, it is expected that the lower Labor Courts will resolve in line with the new criteria and will consider the base salary to calculate seniority compensation may be no lower than 66.66% of the best regular and normal monthly salary of the employee.

At the time of the dismissal with which this judgment deals, the double compensation ordered by the Economic Emergency Law was not in force, hence the criterion upheld by the CSJN could be amended in respect of dismissals which occurred as from January 2002.

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New Criterion Regarding "Vehicle" Corporations

One year ago General Resolution No. 7/2003 (GR 7/03) of the General Inspection of Corporations (GIC). GR 7/03 established the requirements that foreign companies have to comply with in order to register with the Public Register of Commerce for acting as branches or participate as partners in local companies.

The main purpose of GR 7/03 was to limit and control the activities in Argentina of companies owned by Argentine residents but incorporated abroad to infringe tax laws and/or conceal Argentine assets. For this purpose, GR 7/03 basically required foreign companies to effectively demonstrate that their principal place of business is outside Argentina and that they have significant assets abroad compared with those existing in Argentina.

However, GR 7/03 was drafted in such a manner that several foreign companies were unable to comply with the requirements provided for therein (basically, the existence of assets in other jurisdictions in those cases in which the entity to be registered in Argentina was a vehicle), even though it was clear that they belonged to worldwide recognized economic groups and they were not owned by Argentine residents.

As a result, and primarily due to the criticism GR 7/03 received, the GIC has just issued General Resolution 22/2004 dated September 22, 2004 ("GR 22/04"). GR 22/04 stipulates that in those cases in which the entity to be registered in Argentina is merely a vehicle or an investment instrument of another company of a corporate group, it is possible to obtain registration if the controlling company of such vehicle complies with GR 7/03 and provided:

(i) A document issued by the Board of both the Vehicle and the direct or indirect controlling companies ("Parent") is submitted, stating that the Vehicle is exclusively a mere vehicle or an investment instrument used for such purpose only by another company of the group that directly or indirectly controls the Vehicle;

(ii) The Parent (and not the Vehicle) complies with the requirements provided for in GR 7/03; basically, submitting a certificate issued by a Certified Public Accountant or any other document showing assets, classified into current and non current assets, located outside Argentina as of the fiscal year-end, in order to evidence that the company has significant assets outside Argentina; its principal place of business is outside Argentina; and its administration is conducted from abroad.

(iii) The legal representative in Argentina of the Vehicle files, under the form of a sworn statement, a chart of the corporate group's structure and relevant information of the Vehicle's and Parent's direct or indirect shareholders.

The grounds on which GR 22/04 has been issued are controversial, since even though the GIC is only a registration agency and does not have authority to

interpret the law or act as a court, it stated that it is accepting to loosen the tight procedure of GR 7/03 and is creating a special procedure for registration of vehicle companies because: *"[P]iercing the corporate veil and attaching liability to the parent of the vehicle for the acts of the latter is clearly possible when this kind of vehicles are used. . . ."*

Even though it is a debatable issue, according to this resolution, the GIC may argue that the parent company that applies to this special procedure is liable for the acts of the Vehicle.

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Occupational Risks Law—Unconstitutionality

In the judgment rendered in the case *Aquino, Isacio v. Cargo Servicios Industriales S.A. re. accident*, the National Supreme Court of Justice (CSJN) declared that Section 39, point 1 of Occupational Risks Law (LRT) is unconstitutional. This Section releases employer from all civil liability towards workers for exposure to the risks originated by reason of occupational accidents and diseases, except in the event of fraud committed by employer.

This case refers to the claim lodged by a worker who sustained an accident when he was 29 years old, which caused him total and permanent employment disability.

The CSJN ordered that the indemnity be calculated according to damages effectively sustained, appraised in accordance with the general criteria established by the Civil Code and that the monetary compensations stipulated by the LRT only indemnifies the loss of profits but not the moral, physical and psychological damages among others that—if proved in the case—should also be indemnified.

From a first analysis of the judgment rendered by the CSJN, it is possible to conclude that:

(i) Although an indemnity rates system is not, in itself, unconstitutional, it does become unconstitutional when it entails a violation of the guarantee set by Section 19 of the National Constitution which provides for the general obligation of not inflicting damages on third parties.

(ii) When the indemnity calculated according to the LRT does not reasonably cover the full damages sustained by the worker, including the moral damages and the loss of future opportunities, the worker would be entitled to claim the respective supplement or difference from the employer until the full indemnity is reached according to damages sustained.

(iii) The foregoing does not release the Employment Risks Insurers (ART) from complying with their obligations for the services stipulated in the LRT.

It should be borne in mind that at the time Mr. Aquino suffered the accident, the A $55,000 cap was in force, which was thereafter increased to A $180,000. We are of the opinion that the criterion adopted by the Supreme Court will not necessarily be the same concerning the permanent disability cases which occur or have occurred as from the cap was increased.

The judgment rendered in respect of Aquino entails reopening the possibility of claims for occupational accidents and/or diseases which have not yet become statute barred.

It is expected that as from the date of this judgment a new analysis will be undertaken as to whether insurance companies may be authorized to grant coverage for occupational accidents and/or diseases, within the terms and conditions and scope of Civil Law.

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Promotion of the Software Industry Law

Law No. 25,922 for the Promotion of the Software Industry was published in the Official Bulletin on September 9, 2004 ("the Law"). It establishes a promotional tax system for physical persons and corporate entities established in Argentina whose main activity is the software industry.

The Law provides several tax benefits, which will be applicable provided the beneficiaries in question have been complying regularly with their tax and social security obligations and avail themselves of the provisions stipulated by this system via registration in the respective Register.

(i) **Fiscal stability over a ten-year term**: The beneficiaries of this system may not have their aggregate national tax onus increased during a ten-year term. Fiscal stability includes all national levies (direct taxes, rates and contributions).

(ii) **Fiscal credit for employer contributions**: Those parties who engage in software investigation and development within Argentine territory and/or processes for the certification of software quality and/or exports of software, may convert up to 70% of the social security

contributions they have effectively paid as employers in respect of all the members of their corporate payroll, into a fiscal credit bond which cannot be transferred. These bonds may be used to pay national taxes—accrued subsequent to the incorporation of the beneficiary to this promotion system—originated by reason of the software industry and, in particular, Value Added Tax (VAT) or other national taxes and their advance payments, excluding income tax.

(iii) **Partial exemption from Income Tax**: A 60% exemption shall be applied to the full income tax amount determined for each period. This benefit shall be enjoyed by those beneficiaries who evidence expenses spent on research and development and/or qualify certification processes and/or software exports, in amounts to be established by the Secretariat of Industry, Commerce and Small and Medium Companies.

(iv) **Exclusion of restrictions on the remittance of foreign currency**: Imports of computer products by the beneficiaries of this promotion system shall be excluded from any kind of present or future restriction on the remittance of foreign currency to pay for imports of hardware and other computer science components required to produce software.

Moreover, the Law creates the Fiduciary Fund for the Promotion of the Software Industry (Fonosoft), in order to finance research and development projects for the software industry and assistance programs to set up new undertakings.

Failure to comply with the provisions of the Law by the beneficiaries may be penalized by cancellation of registration in the Register set up by the Law and forfeiture of those taxes not paid under the promotional system. Moreover they may be disqualified from further registration in the Register.

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Minimum Environmental Protection Standards For The Overall Management of Household Waste

Law No. 25,916 (the "Law"), published in the Argentine Official Bulletin on September 7, 2004, establishes the minimum environmental protection standards for the overall management of *household waste* of residential, urban, commercial, medical care, health, industrial or institutional origin.

As stipulated by the Law, *"household waste"* means things, objects or substances that, as a result of consumption processes and the development of human activities, are discarded and/or abandoned. Although the wording is not clear and may include any type of waste, we believe that the Law is intended to govern the generation and management of ordinary waste not regulated by other specific laws, such as hazardous (Law No. 24,051), industrial and service activities (Law No. 25,612), pathologic (Law No. 24,051) and other waste.

The Law is aimed at achieving a proper and rational management of household waste, raising awareness as to the importance of household waste, lessening its negative effects and reducing the quantity of waste intended for final disposal.

Each local jurisdiction shall define the entities responsible for the overall management of household waste generated in its specific jurisdiction. Such entities will establish a management system consistent with the special characteristics of the place and lay down supplementary regulations to enforce the Law.

The Law defines *"generator"* as any individual or legal entity producing household waste and draws a distinction between *"individual generators"* and *"special generators."* Special generators are defined as those producing household waste of a quality, in quantities and under conditions that, at the discretion of the authority, require the implementation of special waste management programs, which shall be approved prior to their implementation. Instead, individual generators are those that do not need special waste management programs.

The Law imposes on generators the obligation to take care of the initial gathering and initial disposal of household waste and sets the general guidelines for collection, transportation, treatment, transfer and final disposal.

Lastly, the Law establishes that the breach of the provisions thereof shall render the infringer liable to warning, fines ranging between AR $2,800 and AR $56,000, disqualification from business up to one year and closure of the premises.

Guillermo Malm Green, Esq.
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New Regulations Impact on Foreign Companies in Argentina

For the past year and a half, the General Inspection of Corporations (GIC) has been passing several resolutions which have caused great controversy in academic,

economic and political fields. These restrictions have had a deep impact on corporate management and day-to-day running of companies in Argentina.

The GIC is the public agency in charge of the surveillance of business companies domiciled in the City of Buenos Aires, which is the Argentine capital city. Although its jurisdiction is limited to said territory, the effect of its resolutions is broadened by the fact that most business companies in Argentina have their legal domicile within the limits of this City.

With the new regulations the GIC focused particularly on foreign companies doing business in Argentina, either by setting up branches or participating as shareholders, quotaholders or partners in companies organized in Argentina.

Resolution 7/2003, enacted on 19-Sep-2003, is aimed to detect which foreign companies doing business in Argentina have as main purpose (or actual main activity) conducting business in Argentina but, nevertheless, are not registered as Argentine companies under Argentine law. Pursuant to this Resolution 7/2003, foreign companies must evidence that their principal place of business is located abroad, that their administration is conducted from abroad and that they hold substantial assets in their jurisdiction of origin or elsewhere outside Argentina vis-à-vis the assets directly or indirectly held in Argentina. Otherwise, they would be considered Argentine entities, they should adjust their by-laws to Argentine legislation, or might be subject to judicial request by the GIC for cancellation of their registration as foreign companies doing business in Argentina.

Other resolutions were also enacted to supplement Resolution 7/2003.

In view of the difficulties that these new regulations were causing (mainly by substantially delaying registration process of acts involving foreign companies), Resolution 22/2004 was passed on 21-Sep-2004 to allow registration of foreign companies that did not meet the new requirements, but instead proved to be a financial or investment vehicle of another foreign company that did comply with the new regulations.

Said "vehicle companies" are exempted from compliance with Resolution 7/2003, provided however that their relevant parent company evidences compliance therewith and expressly acknowledges that it has organized the vehicle company registered in Argentina as an investment or financial instrument. References made by the GIC to the possibility of "*piercing the corporate veil and attaching liability to the parent*" gave rise to more controversy.

Recently, on 16-Feb-2005, the GIC passed Resolution 2/2005 which simply prohibits the registration of so-called off-shore companies. Off-shore companies are only allowed registration in case they are vehicles of another "lawful" company, pursuant to the above-referenced Resolution 22/2004. For the purposes of this resolution off-shore companies are defined as those which bear restrictions or prohibitions to conduct their business in their jurisdiction of origin.

This new resolution renewed the debate on these matters, and it is likely that foreign companies seeking registration in Argentina will begin to request such registration in a jurisdiction other than the City of Buenos Aires, especially in view of the delays in the registration process caused by these new regulations.

Endnotes

1. For example, Justice Eugenio Zaffaroni proposed that savers having deposits under US $70,000 should immediately receive the amounts in question in their original currency, without the "pesification" of their deposits.
2. Except for Justices Belluscio and Maqueda, who shared their arguments.
3. Justices Belluscio and Maqueda stated that the beneficiaries of such measures (that is, those who succeeded in withdrawing their savings, in full or in part, in the currency of origin) obtained an "undue profit" at the expense of the system, the country and the remaining savers. On the other hand, Justice Zaffaroni stated that the judgment rendered is not applicable to the amounts already withdrawn which—as a general rule—"must be regarded as finally consolidated."

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Brazil

Responsibilities of Foreign Quotaholders in the Liquidation of a Sociedade Limitada (Limited Liability Companies) in Brazil

In general, due to the principle of the continuance of the legal entity, in a company with unlimited duration, the stockholder who wishes to exit the company will sell his stock (having in mind the limits applicable to the due case by the law or contract), when he will be responsible jointly with the purchaser of the quotas before the company and third parties, for the obligations he had as a partner at the time of the sale until two years after the sale (Article 1.003 of the Brazilian Civil Code). It must be noted that any sale shall be in accordance with the Articles of Association and/or Quotaholders Agreement of the company, and shall obey any restrictions and conditions which may be provided for in such agreements.

Attention should be called to the changes in the law applicable to the Sociedades Limitadas (limited liability companies). The New Civil Code of January 2002 established some new rules regarding legal entities, as well as required due adaptation to these new rules, to take place before January 2005. If the due adaptation is not fully completed, and the company is not duly registered, the quota holders may be held responsible. The extent of responsibility will vary in accordance to whatever adaptation is not completed. If all amendments are duly effected, there will be no change in responsibility other than hereunder explained. We will make the comments under the assumption that all amendments were made. In order to verify due accomplishment, a further analysis of the company's act would be necessary.

The Sociedade Limitada, named before the Civil Code of 2002 as Sociedade por Quotas de Responsabilidade Limitada, grants to the quota holders limited responsibility as long as there is no illegal act by such quota holders, or else:

(i) If the company's capital stock is not completely paid in, the quota holders will respond up to the total value of the capital stock not paid in. Such contribution may be required from any quota holder independently if such party has already paid in his part of the capital stock. The quota holder that pays in more than his percentage in the capital stock may then demand from the other quota holder(s) the due repayment; or

(ii) If the company's capital stock is completely paid in, the quota holders, if no exceptions apply, do not respond for debts of the company of higher value than the one of his quotas, which may be sold in order to pay the due debts.

This general rule does not apply when the quota holders authorize an illegal act. As so, if a quota holder approves a corporate decision that is against the law, he will respond for such acts unlimitedly (Article 1.080 of the Brazilian Civil Code).

Liquidation of the Company

The New Civil Code establishes that Sociedades Limitada will be subsidiarily governed by rules of the Sociedade Simples, except if the Articles of Association establishes the subsidiary ruling of the Business Corporation Law (Art. 6.404/76). Below we briefly outline the responsibilities and liquidation possibilities.

Brazilian Civil Code

The Civil Code rules that a stockholder may leave a company with unlimited duration by notifying his partner with 60 days in advance. If the company has a limited duration, the stockholder must prove fair cause in court.

The Articles of Association may establish causes for dissolution. The law establishes that there is dissolution when there is consent of all stockholders or majority vote deliberation in an unlimited duration company. There may be a judicial dissolution when the constitution is annulled, when the corporate purpose is concluded or verified its non-enforceability.

Brazilian Business Corporation Law (Law 6.404/76)

The causes for dissolution of the company are similar to the rules of the Civil Code with some specific rules that are irrelevant at this time.

In general, a stockholder may leave the company except if the company has a limited duration or a contractual obligation impeding such act.

Regarding the unenforceability of the corporate purpose, Fabio Ulhoa Coelho understands that the lack of market and losses with no possible recuperation, would be a possibility of dissolving the company (Business Corporation Law Art. 206, II, b, Civil Code Art. 1.034, II) or in case of grave conflicts among the stockholders that difficult the furtherance of the corporate purpose.

In the liquidation of a company, Article 1.110 of the Brazilian Civil Code and Article 218 of the Business Corporation Law establish that the stockholder will be held responsible up to the limit received from the company. There may be a demand for losses against the liquidator, responsible for the liquidation, when damages are proved during his activities in such duty.

Responsibilities of the Quota Holder Regarding Commercial and Civil Debts

The general rule applies to the commercial debts. As so, unless there is an illegality, the quota holder's responsibility will be limited to the value of the capital stock as explained above. The quota holders will be responsible also for the valuation of assets in case of payment of the subscribed capital with such assets.

Responsibilities for Consumer Debts

The quota holder is responsible for consumer debts when acting with excess of power, illegally or in violation of the Articles of Association (Article 28 of the Brazilian Consumer Defense Code), that authorizes personal responsibility.

Responsibility for Labor Debts

The Superior Labor Court (TST) understands that the piercing of the corporate veil is a means to enable the due guaranty for employees' rights.

Responsibility for Tax Debts

The quota holder is not responsible in general for tax debts of the Sociedade Limitada before the Brazilian Tax Authorities. The Brazilian Tax Code in Art. 135, III, establishes that the manager may be held responsible, however. Nevertheless, an irregular dissolution of the company, having the due taxes not been paid, may lead to personal responsibility for the quota holders.

Responsibilities for Social Security Contributions

The responsibility for social security contributions are the same as for tax debts, as Articles 149 and 145 of the Brazilian Federal Constitution consider such contributions similar to taxes.

Criminal Responsibility of the Quota Holder

There may be responsibility in case of verification of illegal acts.

Environmental Responsibility

Authors interpret Article 4 of Law 9.605/98 as granting the same responsibility as in consumer cases.

Disregard of Legal Entity Doctrine

Initially in the common law countries (England and United States of America), case law and Authors, to avoid the use of legal entities to harm its creditors, developed the disregard doctrine (Disregard of Legal Entity, Piercing the Corporate Veil or Lifting the Corporate Veil), consisting in the disregarding of the legal entity, imposing personal liability on partners who committed fraud against their creditors, with the separate existence from the company and limited liability being ignored by the Courts.

Such theory, that establishes the power of the courts to disregard the corporate formalities and set aside the status of the legal entity, holding the stockholders unlimitedly responsible, requires the evidence of complete domination of the corporate formality used to commit a fraud or wrong that causes injury.

Internationally, case law and Authors exemplify what would be considered as factors that could imply in cause for declaration of the piercing of the veil: disregard of the corporate formalities, thin capitalization, when capitalization (at the time of incorporation) is very small in relation to the nature of the company's business and to the risks that the business necessary entails, alter ego (which means "second self"), when the separate personalities of the company and its partners do not exist, with the company being a mere instrument of them, small number of shareholders, active involvement by shareholders in management, among others.

We shall note that the legal entity existence is not terminated if the requirements for incorporation were duly observed and will be maintained by Court. However, if equity holders use the corporate form with malice, the legal separation of the company and its equity investors shall be ignored.

In Brazil, the disregard doctrine was first introduced in the sixties. Now our legislation has some provisions regarding the disregard doctrine.

Brazilian Legal Literature have established cases where the disregard theory is applicable: (i) fraud and abuse of power, where one or even more legal entities are used by its equity holders to harm creditors, employees, government authorities and/or third parties, and/or (ii) lack of economic (very similar to the alter ego theory) and legal autonomy, where the legal entities and equity holders do not have the required separation regarding its assets and will, as the requirements to pierce the corporate veil of a company.

Case law confirms such understanding regarding fraud and abuse of power and lack of economic autonomy, especially in companies used by individuals to buy assets of personal use, and in economic groups where the "control is under a management, labor and economic unity, constituting one unique formal structure, and, as so shall being regarded as a single company."

In Brazil, one of the main arguments for defendants who face a disregard doctrine pleading is to require a specific law suit with the purpose of obtaining the judicial declaration that the partners are personally liable, observing the constitutional due process of law principle.

However, our *Superior Tribunal de Justiça—STJ* does not consider the necessity of a specific suit, understanding that "once the due requirements are verified, the judge may, in the enforcement action, pierce the corporate veil to deem liable the partners involved in the illegality, intending to prevent fraud against the law or third parties."

Nevertheless, the general understanding in Brazil, is that such theory must be applied with caution as in general the limited responsibility is the rule for stockholders. There is a tendency of increasing the responsibility of the stockholders when regarding labor, consumer and tax debts due to the legal dispositions mentioned above.

Regarding labor debts, the risk is increased due to the labor judge trend to grant protection to the employees.

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Chile

One of the major challenges during the negotiation of the Free Trade Agreement (FTA) between Chile and the United States was the intellectual property aspect.

As a result the 17th Chapter of this treaty addresses the issue of Intellectual Property. It constitutes the most detailed chapter on that matter in a free trade agreement ever signed by Chile. As a matter of fact, for a country like the United States, the intellectual property area is an essential aspect of international trade. However, in Chile, intellectual property law is still not regarded as a key aspect of business and trade.

Legal Framework of Intellectual Property in Chile

First of all we will describe the legal framework in the field of "right of author" which protects artistic and literary creations, such as books and other literary works, plays, audiovisual work, music and software, amongst others. Copyright is mainly protected by Law N° 17.336 with recent modifications introduced by Laws N° 19.912 and N° 19.914 to adapt such law to the standards of the agreement on intellectual property of the World Trade Organization (WTO), to which we will refer here, as well as its adaptation to the intellectual property chapter in the free trade agreement with the United States.

In the field of industrial property, which involves the protection of inventions, which applies to industry and refers to categories of rights as patents of invention, utility models, industrial, and trademarks are regulated in Chile by Law N° 19.039 on Industrial Property. Chile is still in the process to fully adopts TRIP´s standards. A law bill is pending before Congress and is expected to be approved soon. It will introduce new categories of intellectual property in Chile as integrated circuits, non divulgated information, denomination origin for food, and improved civil procedures and legal resources for infringement of Intellectual property rights.

Chile has just set up a legal framework to comply with the border measure Chapter of the TRIPS Agreement and it is contained in the above-mentioned Law N° 19.912. Such law regulates border measures to be adopted in Chile in cases of infringement of intellectual property protected goods. It includes judicial procedures before civil courts and detention of counterfeit merchandise in customs, concerning copyright and industrial property.

Another category of intellectual property right important to Chile is the protection of the denominations of origins, currently regulated by Law 18.450 for wines only, and its rules and regulations. The law establishes a division of the various winemaking valleys of the national territory from north to south, based in parallels.

As another important category of intellectual property in Chile, we have Law Nº 19.342 regarding the right of the breeders of new plant varieties in compliance with the standards of UPOV 1978 ratified by Chile. Under the FTA signed between Chile and the United States Chile has obligated to sign UPOV 1991 and to implement patents for the protection of new plant varieties.

In addition to the laws mentioned above, the legal framework of intellectual property in Chile is composed of several international treaties signed by Chile as Berna Convention, Paris Convention, UPOV 78 Convention, and a schedule agreed of several treaties to be adopted by Chile under the obligations of the FTA signed with the United States and also derived of the Treaty signed with Europe.

Competent Authorities in the Field of Intellectual Property Rights

Industrial property rights regulated by Law N° 19.039 (patents, trademarks, designs and utility models) are granted through a registration process at the Department of Industrial Property depending of the Ministry of Economy, and the second instance the Arbitral Court of Industrial Property (T.A.P.I.). In case of a new plant variety registration, the competent authority is the Seeds Department of the Cattle and Agriculture Service (S.A.G.) depending of the Ministry of Agriculture, and the second instance is also the Arbitral Court of Industrial Property.

Concerning **right of author,** according to the law, such rights are granted to the author from the moment of the creation, without necessity of registration. However registration can be done at the Department **Right de Author** depending the Ministry of Education.

The above-mentioned Department of Industrial Property is competent to refuse or approve registration of an application, such as trademarks, patents of invention, utility models, and industrial designs.

Both departments lack competence in case of a trial or lawsuit for infringement of Intellectual Property. Competent authorities are ordinary civil and criminal courts.

Chile has not established a special and independent court for legal actions for intellectual property infringement. Therefore, the Chilean system of competent authorities establishes the described registration authorities and ordinary courts for infringements.

Intellectual Property, Economic Development and International Trade

The advantages of using intellectual property for the development and trade of products and services with a major added value can be easily identified. In this respect, we can observe the gap between the number of applications for patents, for example in a country as Japan, reaching 400,000 applications each year, compared to Chile who only registers approximately 3,000 applications a year, and the difference in the value of exportation products in both cases. Without any doubt the rate of patent applications is a valid element to illustrate the degree of economic development of a country.

What is the existing relation between international trade, the goods exported by Chile, and intellectual property? Why is intellectual property so relevant for a developed country as the United States to include this topic in the FTA? Why didn't developing countries like Chile, whose economy is based on exportations, promote, respect and develop intellectual property?

To answer these questions it is necessary to consider the knowledge, experience and complete legislation on intellectual property that exists in countries like the United States, Europe and Japan, and moreover the international context after the Uruguay Round which can particularly affect developing countries who rely on a strong international trade. This is because developing countries exporting goods are obligated to respect intellectual property worldwide, otherwise they can be subject to border measures worldwide.

This is an aspect that countries exporting several goods like Chile, and especially agriculture products, should pay attention, since exports can be inspected in customs to make sure they respect intellectual property, according to Section 4 of the TRIPS agreement on border measures which allows any member state of the WTO to avoid in its borders the admission of counterfeit products or goods affecting intellectual property rights.

Intellectual Property and Solutions of International Disputes

The TRIPS agreement sets forth that countries that do not respect the standards and obligations of TRIPS can submit to the mechanism of the Dispute Settlement of the WTO.

The same TRIPS agreement establishes the meaning of intellectual property for its application and the respect of standards in each case. It establishes that intellectual property includes all the categories mentioned in this same agreement, that is to say copyright, trademarks, denominations of origin, industrial designs and models, layout of integrated circuits, protection of information not disclosed, patents and also protection of plant varieties and plant patents.

The Process to Adopt the TRIPS Agreement in Chile

The deadline for the countries to adapt their legislation to this agreement expired on January 1, 2000. In this respect, Chile is four years late. Some areas of necessary adaptation are already completed as such concerning border measures and **right of author**.

A law bill is now pending before the Chilean Congress to adapt the legislation to the TRIPS agreement. It will adapt to TRIPS standard aspects Law N° 19.039; this is trademarks, patents, integrated circuits and denomination of origin, enforcement in courts, and other modifications. Specifically, the proposed law will improve the proceedings in court by creating new civil actions, measures prior to legal actions, and other benefits for those who have intellectual property rights. The Chilean ordinary courts will have to enforce these new provisions related to intellectual property susbstantive rights and use the new procedures of the proposed law.

Intellectual Property and the Future of Chile

Why didn't Chile, a country which adopted a free market economy system in 1973 and a country committed to increase the value and the number of products to be exported, consider the importance of intellectual property laws an institution? Why didn´t our authorities discover the value of Intellectual Property as one of the engines on which the free market system relies and the key importance of the legal appropriation of I&D results? To me it is not an easy question to answer yet. Thinking about it, perhaps after having been a closed economy and having an all fashion market of goods and services, it was first necessary to bring up-to-date our products and services, but afterwards it was and still is necessary to use, integrate, and strengthen intellectual property law. Our degree of open and free economy doesn't match well with the weak situation of the education and utilization of the benefits of intellectual property.

Very recently, we can observe in Chile's public opinion an interest for innovation, more than for intellectual property, which constitutes a step ahead However, common people and business persons don't realize yet the value of respect and acquisition of intellectual property rights. We don't give the issue the importance it is given by developed countries.

The respect of intellectual property and the use of its advantages are part of the international rules. It is necessary for Chile to integrate intellectual property, now with urgency. We need to achieve a cultural change to favor respect of intellectual creations. As previously mentioned, intellectual property has been

included as a chapter in the recent treaties adopted by Chile with the European Union, Korea and the United States, in some areas including provisions beyond the TRIPS agreement. It is not far from the possibility that intellectual property standards could be achieved more because of the strength of our commercial partners, rather than because of our own will.

I am convinced that in Chile a vigorous capacity to create inventions and innovations qualifying for protection exists. Examples of our ingenuity are recorded daily and we need to capture its economic value by using the intellectual property legislation.

Intellectual property has come to stay, with no return. Even if we are not sure what we will be able to achieve, we have to introduce the use of intellectual property institution in Chile. We need to construct the connection between creators and inventors and the law to benefit from the legal advantages of Intellectual property rights. Intellectual property could be seen as sleeping beauty waking up in our country now or remaining asleep for longer and therefore preventing us to advance in a world in which the only way to develop economically implies considering seriously and with urgency institutions like intellectual property.

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Jordan

Commercial Agency and Distributorship Law in Jordan

The Jordanian government has issued a number of important commercial laws in recent years, liberalizing local trade rules and better integrating Jordan into the global marketplace. Jordan acceded to the World Trade Organization (WTO) in April 2000, and a Free Trade Agreement between Jordan and the United States entered into force in December 2001. At least in part, Jordan's recent legislative and regulatory reforms were part of that process. Among the more important recent developments, new Jordanian laws have been issued applicable to investment, commercial companies, custom duties, bankruptcy, income taxation and, the subject of the following summary, commercial agency and distributorship.

Although Jordan revised its commercial agency law to meet WTO requirements, some of these revisions paradoxically increase the so-called "dealer protections" available to local commercial agents and distributors. For example, one of the more significant changes from earlier (1985) Jordanian commercial agency law, the current law expands the definition of "commercial agency" to more clearly include buy-sell distributorships. This revision closes a loophole that had existed in the earlier Jordanian commercial agency law, whereby distributors might not have benefited from the termination protections applicable to qualified local commercial agents.

1. Applicable Law

The primary Jordanian law governing commercial agency and commercial intermediation is Law No. 28 of 2001 (the "Commercial Agency Law"). Jordan has also enacted special regulations governing commercial agency and distributions in some specific industries (*e.g.*, pharmaceuticals) that are beyond the scope of this brief summary.

2. Definitions

Article 2 of the Commercial Agency Law defines "commercial agency" as:

> A contract between the principal and the agent, obliging the agent to import the products of its principal, or the distribution, sale or display of such products, or providing commercial services within the Kingdom, or for its own account on behalf of the principal.

The Commercial Agency Law also defines "commercial intermediary" as a person undertaking commercial intermediation between two parties (one of those parties, registered abroad, being the producer, distributor or exporter), paid for the conclusion or facilitation of a contract, without being affiliated with either of those parties. Many, but not all, of the provisions of the Commercial Agency Law apply both to commercial agents and commercial intermediaries.

3. Qualifications for Commercial Agents

Article 3 of the Commercial Agency Law imposes a nationality requirement on the commercial agent. The commercial agent must either be a Jordanian national (if a natural person) or a Jordanian registered company. In general, foreign companies may not undertake commercial agency or intermediation work in Jordan for other foreign companies.

4. Direct and Exclusive Relationship

The Commercial Agency Law does not require a commercial agent to have a direct relationship with the principal in the country where the goods originated, *i.e.*, regional distributors or other intermediaries may be interposed between the principal and the Jordanian commercial agent.

Similarly, the Commercial Agency Law does not contain any express requirement that a Jordanian commercial agent be appointed on an exclusive basis. In general, we understand that exclusivity is considered to be a matter of negotiation between a foreign principal and its Jordanian commercial agent, and primarily governed by the terms of the parties' agreement.

5. Mandatory Use of Commercial Agents

In general, Jordanian law does not require the use of an authorized commercial agent for the importation, sale and distribution of foreign products.

Foreign companies may sell directly to the Jordanian government without the use of a local commercial agent or intermediary, although the use of such agents or intermediaries in government contracting is generally common and proper, with some significant exceptions discussed below.

6. Restrictions on Using Commercial Agents

Article 11 of Regulation No. 50 (1994), concerning the Higher Authority for Government Purchases, states:

> Regardless of provisions in any other legislation, all contracts pertaining to supplies, procurement and services as determined by the Council of Ministers and pertaining to the Jordanian Armed Forces, the Security Services and Royal Jordanian [Airlines] should be carried out directly with the manufacturers, producers or suppliers without any intervention from agents, commercial intermediaries or consultants. The Council of Ministers has the right to include any [government] department under these provisions of this article.

Article 12 of the Commercial Agency Law contains a more elaborate restriction:

> A. Notwithstanding the provisions of this Law or any other legislation, Jordanians and non-Jordanians are prohibited from performing commercial agency or commercial intermediation activities in the importation or sale of arms, spare parts therefor, parts used to supplement or develop such arms (including maintenance of such arms and spare parts and the warranty thereof), or ammunition supplied to the Jordanian Armed Forces and security organizations.
>
> B. Upon the recommendation of a competent authority, the Council of Ministers may prohibit the performance of commercial agency or commercial intermediation activities, or the intervention of commercial agents and commercial intermediaries, in any contracts concerning the importation of supplies, equipment, materials, machines, and replacement parts for the Jordanian Armed Forces and security organizations. Such prohibition may also cover maintenance of these materials or warranty therefor, and any other services that may be offered pertaining to same.

A violation of the prohibition is punishable by a jail sentence and fines, including forfeiture of the commission/compensation paid, agreed or promised.

7. Registration Requirements for Commercial Agents

The Jordanian Commercial Agency Law requires Jordanian commercial agents and intermediaries to register in special registries at the Ministry of Industry and Commerce. According to Article 6 of the Commercial Agency Law, a commercial agent must submit its registration application with, among other things, a duly authenticated copy of the commercial agency agreement.

Article 5 of the Commercial Agency Law states that no person shall undertake commercial agency or commercial intermediation in Jordan unless registered in the proper registry. In addition, Article 10(A) provides that an unregistered commercial agent shall not be entitled to any privilege granted by law. (However, third parties have the right to take legal action based on an unregistered agency if it was proven that such agency existed in fact.) Moreover, Article 10(B) states that an unregistered commercial intermediary is not permitted to sue any party to a concluded contract for which the intermediary conducted intermediation activities.

8. Termination or Non-Renewal

Article 14 of the Commercial Agency Law states:

> If the principal cancels the commercial agency before the expiration of its term without fault by the agent, or for any illegitimate reason, the agent shall have the right to claim compensation from the principal for damages incurred and for lost profit.

This legal provision is generally interpreted to mean that a principal is not liable to pay any special termination compensation to its Jordanian commercial agent if the commercial agency agreement simply expires according to its terms, *e.g.*, non-renewal rather than termination.

Article 15 of the Commercial Agency Law also provides that the principal and the replacement commercial agent shall be liable, jointly and severally, to purchase relevant inventory held by the former commercial agent, at purchase price or local market price, whichever is less, and to fulfill all obligations to third parties arising from the former commercial agency.

9. Choice of Law and Dispute Resolution

Article 16(A) of the Commercial Agency Law instructs Jordanian courts to take cognizance of all disputes regarding protected commercial agency agreements. This rule might be considered a matter of Jordanian public policy and, if so, Jordanian government ministries, departments and courts might refuse to enforce foreign arbitration clauses as conflicting with such public policy. Jordanian courts will not apply a foreign law if it conflicts with matters regarded as Jordanian public policy. Jordanian courts might be most inclined to view the "dealer protections" favoring the Jordanian commercial agent (such as the rules of Articles 14 and 16(A) of the Commercial Agency Law) as public policy to be applied irrespective of the foreign governing law.

The purpose of this summary is to highlight selected aspects of Jordanian commercial agency and distributorship law, but it is not intended to provide legal advice on any specific question of local law. Readers with any questions or comments may reach Mr. Stovall by e-mail, Howard@Stovall-Law.com.

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Pakistan

The South Asian Free Trade Agreement (SAFTA): Towards a Multilateral Framework

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Introduction

The South Asian Free Trade Agreement (SAFTA)[1], signed by the member states of the South Asian Association for Regional Cooperation (SAARC) at Islamabad, Pakistan on the 6th of January 2004, presents the seven South Asian countries[2] with numerous opportunities for participating in the multilateral trade agenda. Coming at a time when diplomatic relations between the nations of South Asia show definitive signs of improvement (specifically the thaw in relations between the governments of the two major economies of India and Pakistan), the conclusion of SAFTA represents a positive indicator of enhanced and mutually beneficial regional cooperation for the countries and provides a framework for concrete opportunities for trade between the signatory countries.

SAFTA proposes to build on the SAARC Preferential Trade Agreement (SAPTA)[3] signed in 1993 between the six countries by taking the scope and depth of concessions and envisaged reductions of tariff and non-tariff barriers to intra-regional trade to a greater level than previously afforded by the states in the region.

SAFTA seeks to change the emphasis of SAARC economic regional cooperation from a policy of sustenance[4] to actively enhancing[5] it. SAFTA's ambitions extend to increasing the scope of the South Asian regional trade dialogue to include issues of competition[6]; trade and transport[7] facilitation through progressive harmonization of legislation[8]; banking procedures[9]; macroeconomic consultations[10]; communications[11]; foreign exchange regulations[12]; and immigration (currently SAFTA is only concerned with the facilitation of business visas).[13] SAFTA also introduces a specific Trade Liberalisation Programme[14] that phases down tariffs and eliminates quantitative restrictions in consonance with the obligations imposed by the WTO.[15] Article 20 of SAFTA also provides for a detailed dispute settlement mechanism[16] under the auspices of a Council of Experts analogous to the Dispute Settlement Body (DSB) of the WTO. SAFTA also becomes the umbrella RTA for the region unlike SAPTA,[17] which specifically envisaged the conclusion of other agreements between contracting states on a sectoral basis.

SAFTA comes during a period where regional trade agreements (RTA) world-wide are proliferating. In fact, the period following the launch of the Doha Development Agenda in November 2001 has been one of the most prolific in terms of notifications to the WTO of RTAs under Article XXIIV of the GATT 1947: During this two-year period a total of 33 RTAs have been notified, of which 21 cover trade in goods, and 12 cover trade in services. In 2003 alone, 12 RTAs have been signed, negotiations have started on 9 new RTAs, and 13 have been proposed worldwide.[18] The reasons for the proliferation involved a variety of economic and political factors including the fact that more and more regions in the world feel the need to pool their resources in an increasingly globalized world.[19] Large economic groups like the EU are looking to extend cross-continental/regional ties, whereas, predominantly in the Asian region (e.g., ASEAN etc.), other countries are looking towards cementing relationships with their natural trading partners.

The aim of this article is to highlight issues dealing generally with the use of SAFTA as a framework towards building an understanding of the workings of the multilateral trading system that will be beneficial for the members of SAFTA. In this regard, the overall philosophy of SAFTA (as well as the way SAFTA adds to SAPTA) can be considered to specifically illustrate issues for the multilateral trading system from which the developing countries of SAARC can gain a degree of exposure which can lead to their more proactive participation in the WTO. This article will posit that the original conception of RTAs as a building block towards free trade[20] as envisaged by the drafters of Article XXIV of the GATT in 1947 holds true for SAFTA and SAFTA ought to be viewed as an opportunity towards enhancing participation in the WTO and multilateral cooperation rather than necessarily perpetuating a parochial protectionist sentiment.

The Philosophy of RTAs—Lessons From Brazil

The extraordinary and unprecedented level of activity post-Cancun regarding negotiations and explorations of future RTAs[21] reflects the fact that confidence in aspects of the multilateral system has suffered a setback after the stalemate between the Brazil- and India-led G-20 group of developing countries and the rest of the "developed" world. Certain advocates of SAFTA within the South Asian region view SAFTA as falling within the larger construct of building South-South cooperation predicated on the political vision of the Non-Aligned Movement of the 1970s.[22] This view of building a southern block of developing countries is given further impetus by the fact that one of the world's largest markets, the EU, has the highest concentration of RTAs in the world, numbering over 100 RTAs within the European continent.[23] The Brazilian President, Mr. Luiz Inacio Lula da Silva (a former trade union organizer), is one of the more vocal proponents of South-South cooperation and has been instrumental in the formation of the G-20 block.[24] The political vision underlying Brazil's endeavors stem from the ultimate aim of achieving a permanent seat at the UN Security Council—an issue on which both India and South Africa, two of the major players in the G-20, have a convergence of interest with Brazil.[25]

At the same time, Brazil has also increased its multilateral participation by recently entering into a Mercosur RTA between the countries of that region and is seeking to increase its participation by entering a mega block of the Free Trade Agreement of the Americas (FTAA) as well as an EU-Mercosur Trade Agreement. Thus by becoming a "hub" country capable of enjoying the benefits of various trade agreements, Brazil is seeking to expand its exports with North-South trade while also pursuing a policy of South-South Trade. This reflects an understanding of priorities that are instructive for all developing countries: Brazil is aware that although China has fast become Brazil's third-biggest trading partner, Brazil's major export market is still the US, EU and Mercosur nations. Brazil's exports to India only amount to US $550 million[26] thus emphasizing the fact that, despite its political aspirations, Brazil will still need to remain committed to the globalized multilateral trade agenda due to economic expediency.

The Structure of SAFTA
Rules of Origin

The text of the Agreement of SAFTA is sparse on the details of implementing the policies which it propounds. The Agreement reflects more of a policy document that apes the WTO's structure in terms of the issues adopted and, apart from the cursory Trade Liberalisation Programme is sparse on practical provisions and details requisite for a harmonious RTA.

Specifically, the most important aspect of an RTA, which can be a powerful trade policy instrument, are the Rules of Origin (RoO), (both preferential and non-preferential) negotiated under an RTA. The negotiation of a Rules of Origin Agreement will be determinative of SAFTA being either a trade creating or a trade diverting RTA.

Under Article XXIV, the WTO specifically provides for the creation of RTAs which can seek to achieve unilateral trade liberalization within a certain region. To oversee this process, the WTO has also set up a standing Committee on Regional Trade Agreements (CRTA) that oversees the compliance of RTAs notified to the WTO under Article XXIV with the provisions of the WTO. In this regard one of the major compliance issues of an RTA is embodied in Article XXIV:4 which states:

> 4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to ***facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories***. (Emphasis added.)

One of the responsibilities of the CRTA and the signatories to SAFTA will be a careful study of the RoO established under SAFTA to ensure that they do not end up raising barriers to trade of third parties to SAFTA.[27] The aim of the CRTA is to adopt a rules-based approach

to balancing the requirement of an RTA to derogate from the provisions of the WTO with the need to ensure the smooth functioning of the WTO trading systems. In this regard, the CRTA will be employing the decisions on interpretations laid down by the DSB and the Appellate Body (AB)[28] to balance its quasi-executive/administrative findings. The position is still unclear whether the CRTA would be open to a process akin to judicial review by the DSB.[29]

The importance of RoO in multilateral agreements is underscored by the fact that the CRTA has raised the preferential RoO to a systemic issue in the negotiation agenda. Meanwhile, the WTO Committee on Rules of Origin is making strides towards finalizing the process of harmonizing non-preferential RoO at the global level.[30] This reflects the trade distorting effects that RoO may potentially have on an RTA. Specifically, the most important consideration to be guarded against is that RoO should not lead to trade diversion in the shape of the substitution of a more costly source of supply within the area for a less costly source outside the area.[31] The aim instead should be trade creation defined as "the substitution of a lower cost source of supply within the area for a more costly source in the importing country."[32]

At the Seminar on Regional Trade Agreements & the WTO held on 14th November 2003, Estevadeordal & Suominen, of the Integrated, Trade and Hemispheric Issues Division, Integration and Regional Programs Department Inter-American Development Bank Washington, DC, in their paper "Rules of Origin in the World Trading System," have made three basic contentions on RoOs:

> First, the design of rules of origin regimes has important implications to trade flows: the more restrictive the RoO, the larger the trade diversion and other negative economic effects they create. Second, despite an ostensive de facto global convergence toward a few ostensibly similar preferential RoO regime models, even slight existing inter-regime differences can have important implications to firms' outsourcing and investment decisions the world over, and potentially lead to the rise of exclusive trade- and investment-diverting hubs. Third, the Doha Trade Round presents a unique and most timely opportunity for attacking the distortions generated by restrictive and divergent RoO through multilateral means.[33]

Estevadeordal & Suominen also propose that the drafting of RoOs should be harmonized amongst the world's RTAs in order to ensure that the least degree of distortions take place within intra-regional trade.

RTAs as a Laboratory-SAFTA

The example of the EU quoted above can lead to the impression that the number of RTAs within a region are what matter. However, it is a recognized fact that the actual number of RTAs that a county enters into are not determinative of its economic importance, instead it is the sizes of the economies involved in that RTA that matter. *"For example, while the United States participates in only three of the some 180 FTAs notified to the WTO as of October 2003, the size and importance of the U.S. economy mean that these FTAs account for a significant share of world trade: in 2002, intra-NAFTA merchandise imports accounted for 9% of world imports, while intra-NAFTA merchandise exports accounted for 10% of world exports."*[34]

In this regard, it is instructive for the member states of SAFTA to follow Brazil's policy of economic expediency and keep a focus on the multilateral agenda for trade. The spirit of regional cooperation provides a building block for SAARC developing countries to test and experience negotiations at the multilateral level. Ways in which these countries may find themselves able to gain a measure of rules-based multilateral experience can come from their participation in trade negotiations; both in negotiating concessions on tariff barriers as well as corollary RoO agreements, etc. Also, SAARC developing countries can use the CoE of SAFTA to gain exposure to the settlements of trade-related disputes (especially in relation to safeguard[35] and balance of payments[36] measures that may be required); thus building an institutional memory on dealing with trade-related dispute settlement that can prove invaluable in contesting claims before the WTO's DSB.

Further, the unilateral liberalization that is envisaged in taking place in SAFTA can also lead to teething issues in participating in the WTO being mitigated and easier to handle. This is reflective in the fact that trade liberalization under SAFTA requires legislation to be harmonized to allow investment and trade and transport facilitation; part of the major so-called Singapore issues of the WTO. In this manner, a RTA generally, and SAFTA specifically, can potentially lead to a more phased-in approach to reaching a *de minimus* standard from which the jump up to full WTO compliance can be facilitated. By recognizing the member states' obligations under the WTO,[37] SAFTA seems to envisage this process and it is hoped that the negotiations that are to follow will be in line with the requirements of the WTO so as to allow SAFTA to be a controlled laboratory within which the member developing countries can test their abilities at multilateral trade negotiations.

In addition, with a successful experiment under SAFTA in relation to the trade in goods, further liberalizations[38] on other issues of importance such as Sanitary and Phitosanitary Measures, TRIPS, Intellectual Property Rights Measures, Services, etc. can also be undertaken.

Conclusion

The conclusion of SAFTA is an important first step towards forming a building-block towards greater multilateral integration in trade. The follow-up agreements on concessions, dispute settlement, Rules of Origin, etc. have to be carefully monitored and should be seen as opportunities towards gaining experiences for the WTO's more complex rules. The philosophy of SAFTA should be to view it as a stepping stone towards greater integration into the world economy and the WTO as well as a laboratory for understanding the WTO's complexities. This is imperative for the developing countries in the region since a myopic focus on regional cooperation will only lead to the perpetuation of parochial protectionism within the region and defeat the purpose of the enthusiastic first step that SAFTA can represent. Such a view can only result in harming the countries involved with SAFTA through a self-imposed isolation from the international trading community.

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Pakistan

Bilateral Investment Treaty—Pakistan and the United States

Pakistan's High Commissioner to Britain, Dr. Maleeha Lodhi, has said that Pakistan will have to balance risks and benefits while considering the proposed bilateral investment treaty (BIT) between Pakistan and the United States, says a press release.

She was speaking at a symposium of international lawyers held here on the "Implications of a Potential US-Pakistan Bilateral Investment Treaty (BIT)." Organised by Mehnaz Malik of the British Pakistan Law Council in collaboration with the American Bar Association's International Law section and the New York State Bar Association, the symposium saw lively debate and discussion on issues relating to investment treaties between developing and developed states.

Maleeha told the participants that Pakistan took its international obligations and commitments very seriously. Therefore, a discussion at such a high level of calibre and expertise on the legal implications of a proposed investment treaty was of great interest to the government and people of Pakistan.

She said the broader objective of the deliberations was to encourage the concept of consultation and debate with respect to government policy in Pakistan.

Maleeha detailed Pakistan's economic reform efforts and stressed that the country viewed FDI as the key to enable it to develop its full potential and achieve economic progress.

Endnotes

1. The text of the treaty is available at: http://www.saarc-sec.org/summit12/saftaagreement.htm on 15th February, 2004.
2. The seven nation signatories to SAFTA and SAARC include the nations of the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan, and the Democratic Socialist Republic of Sri Lanka.
3. See Recitals 4 & 6, and Article 22 of SAFTA.
4. Article 2(1) of SAPTA.
5. Article 2 of SAFTA.
6. *Id.* Art. 3(1)(b) & 8(j).
7. *Id.* Art. 8(g) & (k).
8. *Id.* Art. 3(2)(e) & 8(a)-(e).
9. *Id.* Art. 8(f). Article 8(j) specifically mentions venture capital as being an issue for liberalization.
10. *Id.* Art. 8(i).
11. *Id.* Art. 8(k).
12. *Id.* Art. 8(l).
13. *Id.* Art. 8(m).
14. *Id.* Art. 7.
15. *Id.* Art. 7(5).
16. Compare with Article 20 of SAPTA.
17. SAFTA Art. 1(6).
18. Clem Boonekamp "The Changing Landscape of RTAs," Regional Trade Agreements Section Trade Policies Review Division of the WTO Secretariat, 2002.
19. SAFTA recognizes this proliferation in Recital 5.
20. Lloyd & MacLaren, *infra* note 21, pg 1.
21. P.J. Lloyd & Donald MacLaren, "The Case for Free Trade and the Role of RTAs," University of Melbourne, 2002 at pg 23.
22. The Economist, "Looking south, north, or both?" February 7th, 2004 pg. 37.
23. *See* Boonekamp, *supra* note 18, pg. 1.
24. *See supra* note 22.
25. *Id.*
26. *See supra* note 22.
27. In the Turkey-Textiles case, the Appellate Body of the WTO has held that Article XXIV does not merely constitute an exception to the Most Favoured Nation (MFN) provisions of the WTO, but in fact the AB has interpreted Article XXIV as potentially constituting a departure from other provisions of the WTO. At the same time, to restrict a carte blanch interpretation and to restrict RTAs from going too far, the AB establishes the burden of proof on the RTA to assert an affirmative defense to a derogation from the GATT principles. In this regard, the AB lays down a two-pronged test for such an affirmative defense that states:

a) that the arrangement overall meets the conditions of paragraphs 5 and 8 of Article XXIV; and

b) that the infringement between members is necessary in order to complete the arrangement.

28. James H. Mathis, Ch.11 "Systemic issues in the CRTA" Regional Trade Agreements in the GATT/WTO, Asser Press, 2002 at para 11.2.
29. *Id.*
30. Estevadeordal & Suominen, *infra* note 33, pg 1.
31. Lloyd & MacLaren *supra* note 21, pg 1.
32. *Id.*
33. Estevadeordal & Suominen, pg 1. The authors move on to analyse the trade distorting/creating effects of different types of RoOs namely the Change in Tariff Classification (CTC), the exceptions attached to a CTC (ECTC), Value Content (VC) and Technical Requirements (TECH).
34. Regional Trade Agreements Section Trade Policies Review Division WTO Secretariat Paper, prepared for the Seminar on Regional Trade Agreements & the WTO held on 14th November 2003 pg 1.
35. Art. 16 of SAFTA.
36. Art. 15 of SAFTA.
37. Art. 3(2)(b) SAFTA.
38. Envisaged by Art. 3(1)(d) of SAFTA.

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United States

Expand Your Brand Into the U.S.

This article originally appeared in the October 1, 2004, issue of *The Lawyers Weekly*.

Imagine a toy company in Toronto gearing up to globally market a mechanical marvel by Christmas. At the same time, a hotel in Montreal is readying a new Web site that is expected to be viewed by prospective American revelers planning their New Year's Eve celebrations. Across the country, in Vancouver, a clothing manufacturer has grand plans to set a fashion trend next fall with its new line of clothing and accessories. All three Canadian companies have their eyes set on selling and advertising their goods and services in the United States and expanding their brands across international borders.

Central to brand expansion into the United States is the strategic development of a strong trademark/service mark portfolio that sufficiently protects the source identity of a company's important intellectual property assets. Building such a portfolio in the United States carries significant benefits for Canadian companies. Competitors are likely to keep a close watch on marks used (or anticipated to be used) in a particular industry. Inclusion of a company's marks in a government database accessible by anyone worldwide at USPTO.GOV should send a strong signal to competitors to avoid choosing a similar brand name that is likely to cause confusion in the marketplace. This advantage starts several weeks after filing an application as records of newly filed trademark and service mark applications are constantly added to the database at USPTO.GOV. Other benefits of registering marks with the United States Patent and Trademark Office include (1) nationwide trademark and service mark priority rights, (2) presumption of validity and exclusive rights to use the mark in the United States, (3) availability of "incontestable" status after five years of continuous use (a type of immunity from many types of challenges that can be filed by third parties against the registration), (4) reliance by the USPTO upon a federal registration in rejecting a third party's application that is confusingly similar, (5) ability to use the registration symbol, "®", to give nationwide notice of trademark rights, (6) potential availability of recovering treble damages and attorneys' fees in an infringement proceeding, and (7) ability to block the importation of infringing goods through the assistance of the U.S. Customs Service by recording the trademark registration details.

Before rolling out new products or advertising services in the United States, it is recommended that companies conduct a full U.S. trademark/service mark search. With the assistance of U.S. trademark counsel, companies should assess whether a particular brand name, slogan, or logo is available for use and registration in the United States. A thorough search should include research and analysis of pending and registered federal trademarks and service marks, state trademarks and service marks, common law marks, filings made pursuant to the Madrid Protocol, Internet domain names, and Web sites. Receiving the green light from counsel is only a preliminary step for brand expansion into the United States. Canadian companies seeking to conduct business in the United States should also consider registering their trademarks and service marks with the USPTO. The benefits of registration will likely outweigh the initial costs of obtaining the registration. Presently, the official filing fee charged by the USPTO is US $ 335.00 per class of goods or services listed in the application. It is possible to file a multiple class application covering a wide range of goods and services. Companies should also budget for legal fees and costs associated with the preparation and prosecution of the application.

Enjoying the benefits of a United States trademark or service mark registration may not be possible if a Canadian company is unable to demonstrate its priority rights in a particular mark in the United States. Use of a mark in Canada does not automatically confer priority rights in the United States. Therefore, the adage "timing

is everything" can be considered a guiding principle for brand expansion into the United States. In order to secure valuable priority rights in the United States, it is essential that trademark or service mark applications be filed early on in the development of the product or service.

Canadian companies seeking to file applications to register marks in the United States may base their applications on use (shipping goods into or advertising and rendering services in the United States), intent-to-use (based upon a bona fide intent to use the mark in commerce), ownership of a Canadian or other non-U.S. registration, or ownership of a Canadian or other non-U.S. trademark application (trademark priority is accorded provided that the U.S. application is filed within six months of filing the Canadian or other non-U.S. trademark application). It is usually the case that a Canadian company with plans to expand into the United States will already own a Canadian trademark registration or a pending Canadian application for the same goods or services. Ownership of these intellectual property assets should be communicated to counsel in the United States before filing an application in the United States. Such information is helpful in determining the availability of basing trademark rights pursuant to Section 44 of the Lanham Act. Under this section, non-U.S. nationals may identify the non-U.S. application or registration, such as a Canadian application or registration, along with a statement that the applicant has a bona fide intention to use the mark in commerce on or in connection with the underlying goods or services. The advantage to such a Section 44 filing is that a Canadian company need not prove use of the mark in the United States in order to obtain a United States registration. Moreover, dates of use or trademark specimens are not required at the time of filing. It is important to note that the mark must be used in commerce with or in the United States after the registration issues in order to maintain the registration. Failing to do so places the registration at risk for cancellation.

Another strategic advantage offered under Section 44 of the Lanham Act is the ability to claim trademark priority rights in the United States based upon an earlier filed application in another country under Section 44(d). This option is only available if the U.S. application is filed within six months of the filing date of the non-U.S. application. For example, if an application is filed in Canada on October 1, 2004, the corresponding application must be filed with the USPTO no later than April 1, 2005 in order for the applicant to claim the earlier October 1, 2004 priority filing date in the United States. This earlier date could prove to be very helpful during trademark priority disputes with third parties with respect to priority rights in the United States. An applicant under Section 44(d) of the Lanham Act must still assert a bona fide intent to use the mark in commerce on or in connection with the underlying goods or services.

In the absence of Canadian or other non-U.S. applications or registrations, Canadian companies may also base their applications upon use in commerce or upon intent-to-use. Critical to brand development and expansion into the United States is the prompt filing of an intent-to-use trademark application when applicable. Under the intent-to-use system, no use need be made or shown in the United States at the time the application is filed. However, proof of use will be required to be filed after a Notice of Allowance issues. The Notice of Allowance can be expected to issue eleven or twelve months after the application is filed provided the USPTO has not issued an Office Action and third parties have not opposed the application. In addition, the Canadian company may seek extensions of time to prove use in commerce. Filing an intent-to-use trademark application requires the Canadian company to simply have a bona fide or "good faith" intent to use the mark in commerce in connection with its goods or services. Priority in the mark can be obtained before outlaying considerable funds for advertising, marketing, and packaging. It is helpful to keep records consisting of corporate minutes, business plans, contracts, receipts or other evidence should the company be required, for example, during litigation enforcing its trademark rights, to demonstrate that it had a bona fide intent to use the mark in the United States when it filed its application with the USPTO.

From start-ups eager to enter the American market, to companies that have successfully built brands that have spanned borders worldwide, it is critical to have a trademark strategy in place now and for the future. Making the necessary trademark filings today will likely serve pivotal roles in future opportunities for licensing and franchising, combating infringing and gray market goods at the border, and providing the best level of protection for a company's valuable intellectual property assets.

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United Nations

This article originally appeared in the December 12, 2003 issue of *The Lawyers Weekly*.

UN Sale of Goods Convention May Be Trap for the Unwary

The United Nations Convention on the International Sale of Goods (CISG) governs a trade between Cana-

da and the United States, as well as among 60 other signatory states. Despite the CISG's far-reaching consequences, many North American legal practitioners on both sides of the border are barely aware of the CISG, which was enacted in 1980 and adopted by the United States and Canada in 1988 and 1992, respectively.

Equally striking, Canadian and U.S. courts have only limited experience in applying the CISG. There are only a handful of published U.S. opinions that discuss any of its numerous provisions in detail, and there is even less Canadian caselaw. It appears likely that courts are continuing to apply Canadian or U.S. law even where the CISG clearly ought to govern.

These circumstances suggest that while the CISG was enacted with the laudable goal of promoting uniformity in international transactions, the opposite may be occurring. At least in North America, the CISG may be a trap for the unwary—a set of only partially tested and poorly understood rules which courts neither uniformly nor predictably apply.

Applicability

In the absence of contrary agreement, the CISG applies to "contracts of sales of goods between parties whose places of business" are in different CISG contracting (*i.e.*, signatory) states. (CISG Art. 1(1)).

(The full text of the CISG is available, among other sources, at the website of the Institute of International Commercial Law of Pace Law School (*www.cisg.law.pace.edu*).)

In addition, the CISG applies where only one of the parties has its place of business in a contracting state, if private international choice of law principles lead to the application of that state's law. (CISG Art. 1, (1)(b). The U.S., however, has opted out of this provision.)

The CISG thus generally applies whenever parties whose respective places of business are the U.S. and Canada contract for the sale of goods. (See, *e.g.*, *Chicago Prime Packers v. Northam Ford Trading Co.*, 2003 WL 21254262 (N.D. Ill. 2003).) Even this proposition is not as simple as it may seem, given the realities of modern business.

For example, what does "contracts of sales of goods" mean? "Goods" presumably refers to movable, tangible objects and excludes real estate and services. The CISG further explicitly excludes goods brought for personal or household use, at auction, as well as ships, aircraft, and securities. (CISG Art. 2)

Nevertheless, it is not clear to what extent the CISG applies to certain forms of intellectual property. Are "shrink-wrap" computer programs goods? Downloads?

Academic commentary further suggests that the CISG applies to true sales only and not to leases and licenses. But, as any commercial practitioner knows, distinguishing a true sale from something else is not always simple. The CISG does not define "sale," so a court would have to resort to other law to resolve this question.

No less complicated is the term "place of business." The CISG provides that "if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance." (CISG Art. 10).

But assume that Company A, a Canadian manufacturer, through an American sales office contracts to deliver widgets to Company B, an American company, at its German distribution centre. Company A's widgets are custom-designed in Canada but manufactured in Ireland, a non-contracting state. Where is Company A's place of business?

Differences from North American Common-Law Traditions

The often nebulous question of the CISG's applicability might not be so disconcerting if its substantive provisions were consistent with existing North American law. The CISG, however, varies significantly from both the U.S.'s *Uniform Commercial Code* (UCC) and applicable Canadian law, including the *Sale of Goods Act*.

For example, the CISG is less formal with respect to contract formation than the UCC. There are no CISG counterparts to such familiar doctrines as the *Statute of Frauds* and the Parol Evidence Rule. (*See M.C.C. Marble Ceramic Center, Inc. v. Ceramica Nuova D'Agostina S.p.A.*, 144 F.3d 1384, 1388-89 (5th Cir. 1998).) Significantly, the CISG emphasizes subjective rather than objective intent in determining whether a contract has been formed, unlike common-law traditions. (CISG Art. 8/1, (2).) Courts are to give "due consideration . . . to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, and any subsequent conduct of the parties." (CISG Art. 8/3).)

Another important area of departure is the absence of the perfect tender rule, which permits a buyer to reject non-conforming goods without question. Instead, the buyer may declare the contract avoided only if "the failure by the seller to perform . . . amounts to a fundamental breach of contract." (CISG Art. 49(1)(a).) Further, many courts have construed CISG notice provisions as requiring a high degree of specificity, and the CISG limits the default notice period to two years. (CISG Art. 39(2).)

These are just a few of many differences between the CISG and North American law. Perhaps outweighing the significance of individual variations, however, is the paucity of guiding North American precedent. Indeed, given the CISG's international character and explicit goal of promoting legal uniformity, many believe that courts interpreting the CISG should look primarily to academic commentary and foreign precedent for authority. However laudable in theory, such an approach, if applied, will hardly simplify the essential tasks of advising clients and weighing litigation risks for practitioners schooled in the common law.

Given the uncertainty associated with the CISG, international sellers and buyers are well advised to consider specifying the application of other law.

Nevertheless, the CISG will often be unavoidable. Parties are not always willing to consider choice of law provisions. Moreover, even very significant agreements are often made orally. In such cases, attempts to insist upon written choice of law terms will fail unless there is an explicit, subsequent mutual agreement. (*See Chateau des Charmes Wines Ltd. v. Sabate USA Inc.*, 328 F.3d 528 (9th Cir. 2003).)

International practitioners therefore have little choice but to become well versed in the provisions of the CISG in order to safeguard their clients' interests.

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A Word from Our New Chair
(Continued from page 2)

sion standards for foreign and U.S. lawyers seeking to cross national borders.

Speaking of committees, I want to thank the most active of our committees, including the Tax Aspects of International Trade & Investment, Central & Eastern European and Central Asian Law, International Human Rights, International Banking, Securities & Financial Transactions, United Nations & Other International Organizations, International Privacy Law and the Women's Interest Networking Group for their continued work and programs. Also, although not technically a committee, I want to take special notice of the revitalized Western New York Chapter, which has held impressive programs and plans more for 2005. We look forward to the activities of all the committees (and chapters) and urge you to become active in as many as you can.

In addition to our committees, Section members are no doubt familiar with our three publications, the *New York International Law Review,* the *International Law Practicum,* and the *New York International Chapter News*. You are welcome to contribute to all three, which are circulated to all 2,000+ members of our Section, worldwide.

Whew! Our group certainly is active and I could go on and on . . . but won't as I am out of superlatives and have used up my quota of commas. Instead, I will simply say, "I look forward to seeing you at the Section and committee events and in London in October."

2005 will be another exciting year for our Section and we all hope you will be part of it.

Robert J. Leo, Chair
Meeks & Sheppard
New York, NY

Request for Contributions

Contributions to the *New York International Chapter News* are welcomed and greatly appreciated. Please let us know about your recent publications, speeches, future events, firm news, country news, and member news.

Oliver J. Armas
Richard A. Scott

Firm News

Hodgson Russ Partner Pamela Davis Heilman Inducted into Western New York Women's Hall of Fame

Pamela Davis Heilman, Esq., a partner and vice president of community relations at Hodgson Russ LLP, was recently inducted into the Western New York Women's Hall of Fame. She was one of five women honored this year for the ways in which they have enriched the community and inspired other women to succeed.

Ms. Heilman is one of the lead lawyers in the Firm's cross-border Canada/U.S. practice and regularly counsels Canadian organizations and businesses considering expansion into the United States. She also has extensive experience counseling nonprofit organizations and closely held businesses. Her career allows her to create opportunities for women on an international scale, advancing their business and professional status and sharing her leadership skills with businesswomen on both sides of the border. As the first woman to chair the United Way Board, she helped create the United Way's women in board governance program and the Western New York Women's Fund. Her success has earned her an Athena award and recognition from many community and academic organizations.

The Western New York Women's Hall of Fame was created by Project FLIGHT to honor women who serve as role models for other women to help enrich their lives, expand their expectations, and ensure their success. Project FLIGHT is a nonprofit organization of Buffalo State College devoted to promoting literacy in children, pre-kindergarten through high school, and their caregivers through school and family initiatives.

Member News

Arthur Anyuan Yuan, an attorney with the firm of McCabe & Mack LLP, Poughkeepsie, New York, a member of the Committee on Publications, and Committee on Asia Pacific Law and a practicing attorney from China, has recently published the following articles: Enforcing and Collecting on Foreign Judgments in China From a U.S. Creditor's Perspective, George Washington International Law Review, Vol. 36, No. 4 (Summer 2004); Investing in a Minority Position in China—Vulnerability, Vigilance and New Legislative Development, Harvard China Review, Vol. 4, No. 1 (Winter 2003). Mr. Yuan is a graduate of Albany Law School of Union University (magna cum laude) and People's (Renmin) University of China Law School.

Available on the Web

- *New York International Chapter News*
- *New York International Law Review*
- *International Law Practicum*

www.nysba.org/ilp

Back issues of the International Law and Practice Section's publications (2000-present) are available on the New York State Bar Association Web site.

Back issues are available at no charge to Section members. You must be logged in as a member to access back issues. For questions, log-in help or to obtain your user name and password, e-mail webmaster@nysba.org or call (518) 463-3200.

Indexes

For your convenience there are also searchable indexes in pdf format. To search, click "Find" (binoculars icon) on the Adobe tool bar, and type in search word or phrase. Click "Find Again" (binoculars with arrow icon) to continue search.

Event News

Mexico: News from the General Secretariat of the Arbitration Center of Mexico (CAM)

The *General Secretariat of CAM* has a new Secretary General, *Carolina Castellanos López*, which counts with the experience of his participation in CAM during the last years.

Furthermore, with the idea of fortifying CAM presence as arbitral institution in Mexico and Latinamerica, *Luis Manuel Pérez de Acha*, a recognized Mexican lawyer, and *Sofía Gómez Ruano*, former Secretary General of CAM, will participate as *Deputy General Counsil of CAM.*

Info: http://www.camex.com.mx

Cambios en la Secretaría General del Centro de Arbitraje de México (CAM)

A partir del pasado 1 de noviembre de 2004, la *Secretaría General del CAM* tiene un nuevo Secretario General, *Carolina Castellanos López*, quien cuenta con la experiencia teórica y práctica que le ha dado su participación en el CAM desde hace algunos años.

Asimismo, con la idea de seguir fortaleciendo la presencia del CAM como institución arbitral en México y Latinoamérica, se han integrado al *Consejo General* en carácter de Consejeros Adjuntos el licenciado *Luis Manuel Pérez de Acha*, reconocido jurista mexicano, así como la que fuera Secretario General del Centro los últimos cuatro años, *Sofía Gómez Ruano*.

Info: http://www.camex.com.mx

New York State Bar Association International Law and Practice Section Fall Meeting

The Section's Fall Meeting at The Ritz-Carlton Hotel in Santiago de Chile surpassed prior Fall Meetings in almost all respects. New peaks were reached with 300 participants from almost every country in Latin and North America, as well as a few from Europe, including practicing lawyers, corporate counsel, law professors, judges and government officials at 24 well-attended programs, in addition to the Opening and Closing Plenary Sessions, over two and one-half days. Prior to the substantive legal conference itself, there were meetings of the Latin American Chapter Chairs and of the IL&PS Executive Committee. Featured speakers included U.S. Ambassador to Chile, Craig A. Kelly; the Chilean Minister of Foreign Relations, Ignacio Walker Prieto; the Presidents of the Colegio de Abogados de Chile A. G., Sergio Urrejola, and of the New York State Bar Association, Kenneth G. Standard; the prominent businessman and lawyer, Ricardo Claro Valdés; a leading economist, Ricardo Matte Eguiguren, and the Director of the Chilean Internal Revenue Service, Juan Toro Rivera.

The social events also reached new levels of sophistication from the receptions at the U.S. Ambassador's Residence, followed by a garden reception and grand dinner at the nearby Club de Golf Los Leones in Las Condes, to a spectacular reception and gala dinner dance with a 20-piece orchestra playing classical music in the garden and dance music into the morning under a tent on the terrace of the magnificent Palacio Cousiño. There also was a reception and dinner at the Club Hipico, highlighted by the running of the 2004 NYSBA Cup race, and an exquisite reception in the garden and luncheon following at the beautiful and historic Viña Santa Rita owned by Don Ricardo Claro, as well as a Sunday brunch at the Art Gallery Animal in Vitacura exhibiting the work of the renowned Chilean artist Roberto Motta, and a lively reception at The Ritz-Carlton terrace on Tuesday evening for the Chapter Chairs and other early arrivals from Latin America and New York on the Steering, Local Organizing and Regional Advisory Committees.

Record sponsorship revenues from many law firms and corporations in the U.S., Latin America and Europe enabled the Committees to maintain moderate fees for the various events, while generating a respectable surplus. In implementing the plans developed on several of his trips in recent years while visiting Santiago, the Chair was greatly assisted by many people on the various Committees, especially Michael Grasty Cousiño, Francis Lackington G. and Cristian Eyzaguirre in Santiago; Soraya E. Bosi, who spearheaded the sponsorship effort; Linda Castilla, the IL&PS Meeting Coordinator; and, of course, the Chair of the Meeting, Oliver J. Armas.

Scenes from Santiago

International Law and Practice Section 2004 Fall Meeting

November 10-14, 2004


EMBASSY
UNITED STATES OF AMERICA



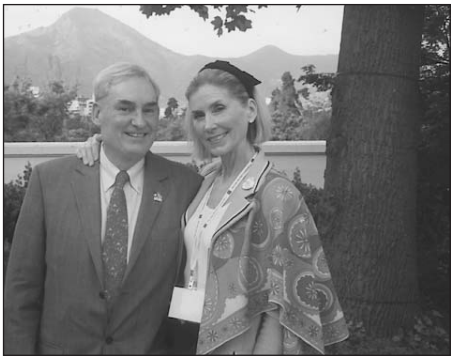






EMBASSY
UNITED STATES OF AMERICA



Summary of the MCLE Program at the Annual NYSBA ILPS Meeting

The Impact on International Commerce of the U.S.A. Patriot Act, Sarbanes-Oxley and other Recent U.S. Laws was the title of the MCLE program that The International Law and Practice Section presented at the Annual Meeting of the New York State Bar Association on Wednesday, January 26, 2005 at the Marriott Marquis Hotel in New York City. The Corporate Counsel Section co-sponsored the Program.

The Program focused on how recent U.S. legislation influences the international flow of people, labor, bribes, goods, data, securities and money.

The Program was divided into two parts. In Part I, moderated by Joyce M. Hansen, Esq. (the Federal Reserve Bank of New York), six New York practitioners addressed new developments in U.S. employment, immigration and anti-corruption laws.

The first panel, consisting of Jan H. Brown, Esq. (Law office of Jan H. Brown, P.C.), Allen E. Kaye, Esq. (Law Offices of Allen E. Kaye, P.C.) and Kenneth A. Schultz (Satterlee Stephens Burke & Burke, LLP), focused on the flow of people in a presentation entitled *The Impact of Antiterrorist Legislation on the Lawful Employment of Foreign Nationals in the United States and Related Concerns—The Immigration Issues.*

The second panel, consisting of Philip M. Berkowitz, Esq. (Nixon Peabody, LLP) and Donald C. Dowling Jr., Esq. (Proskauer Rose, LLP), focused upon international labor issues and introduced a theme of the morning's following panels: how recent U.S. legislation was part of an evolution to establish basic global standards for multi-national companies that operate throughout the world. The title of the second presentation was *The Emergence of Multinational Employment Law—The Extraterritorial Application of U.S. and Foreign Employment Laws.*

Professor Charles Biblowit of St. John's University School of Law concluded Part I of the Program with a presentation on *The Impact of the UN Convention Against Corruption on U.S. Business.* Professor Biblowit gave a synopsis of the UN Convention and compared it to a relatively early U.S. statute that affects international commerce, the 1977 Foreign Corrupt Practices Act.

In Part II of the Program, moderated by Lorraine Power Tharp, Esq. (Whiteman, Osterman & Hanna, LLP), former President of the New York State Bar Association, eight Canadian practitioners from four of Canada's most prestigious business law firms, addressed *The View From Canada*: how recent U.S. legislation affected international commerce between Canada and its southern neighbor.

Dunniela Kaufman, Esq. and Dalton Albrecht, Esq. from the Toronto office of Fraser Milner Casgrain, LLP addressed the flow of goods between U.S. and Canada in *Border Security: The New Normal and its Impact on North South Business Flows.*

Elizabeth L. McNaughton, Esq. and Richard F. D. Corley, Esq. from the Toronto office of Blake, Cassels & Graydon, LLP addressed privacy concerns and the flow of data in *Current Issues in Outsourcing Transactions: Canadian Privacy Laws, the Patriot Act and Other Considerations.*

Jeffrey A. Kaufman, Esq. and Geoff A. Clark, Esq. from the Toronto office of Fasken Martineau DuMoulin, LLP discussed the substantial impact of Sarbanes-Oxley and other U.S. securities laws on Canadian companies and Canadian regulation of securities in *Getting No Sleep In the Continental Bed: American Securities Enforcement Initiatives Reverberate in Canada.*

The final panelists were Alix d'Anglejan-Chatillon, Esq. and Kenneth G. Ottenbreit, Esq. from the Montreal and New York City offices, respectively, of Stikeman Elliott, LLP. They addressed the evolving global compliance standards for international financial institutions in *Cross-Border Anti-Money Laundering and Anti-Terrorist Financing.*

The Canadian panelists stressed that Canada was the United States' largest trading partner and that the economies of the United States and Canada were fundamentally interdependent.

Program Chair, John F. Zulack, Esq. (Flemming, Zulack & Williamson, LLP), closed the program by thanking the moderators and panelists for presenting a highly interesting, cohesive and educational MCLE program on a subject that is central to the Section's work.

SPECIAL MENTION:

We would like to specially thank the firms that helped make the NYSBA International Law and Practice Section Fall Meeting 2004 so successful. Without their generous sponsorship contributions, the meeting would not have had the same success:

Advocacia Celso Botelho de Moraes S/C

I. **General Firm Introduction**—We are a Brazilian Law Firm, established in 1978, with specialty in Corporate Law. Our clients are Corporations of various sizes and industries. Our Head Office is located at São Paulo, Brazil. Our branch offices in Brazil are in Brasilia, DF, Belo Horizonte, MG and in the US we have offices in Miami, FL and New York, NY.

II. **Areas of Practice—**Corporate Law, Tax Law, Tax Planning, M&A, Environmental Law, Labor Law, Litigation.

III. **Industries Served—**Chemical, Pharmaceutical, Automotive, Steel, Machinery, and others.

IV. **Matters/Deals—**Advisory on Contract Elaboration, Tax matters, Tax Planning Services, Litigation.

Beretta Kahale Godoy

I. **General Firm Introduction**—Beretta Kahale Godoy, or BKG as we are familiarly referred to in the market, is a dynamic law firm that caters for all the areas of the business practice through teams led by experienced and energetic partners and senior associates, with the support of carefully recruited associates and paralegals. Because we are a mid-sized firm, our clients receive the personalized support of the partner and senior associates handling matters entrusted to us. The members of our firm are prepared to provide services in English, French, Portuguese, Italian, and German.

BKG is a relatively young firm: The partners decided to merge and create a new firm in 2000. However, we are proud of having a long-standing client relationship for more than ten years. Our professionals have been active in the legal field during all the relevant years in Argentina, which means having done all the hard work during the country's first steps towards a modernization of the economy in the late 1980s, and having had direct responsibility for negotiating, designing and implementing the transactions involved in the dramatic opening of the economy to the world as from the early 1990s. Since 2000 we are facing the challenge of assisting our clients in times of variable economic conditions, where traditional investment needs to be sheltered and new transactions need careful planning. We also count with a strategic alliance with the Brazilian Veirano Advogados.

II. **Areas of Practice**—BKG provides counseling in cross-border ventures, M&A, financial transactions, capital markets, energy and natural resources, privatizations of public utilities, and has a leading practice in international tax and tax-free planning and reorganizations. Our firm has advised on the investment strategy and protection framework of privatizations in developing countries. BKG represents clients in judicial, administrative and arbitration courts, and advises clients on legal strategies to achieve, expedite, and practice in and out-of-court settlements. We have advised, negotiated, and obtained leading case solutions for our clients on bilateral investment treaties, temporary imports of high technology, antitrust and tax matters and have devised efficient financing structures.

III. **Industries Served**—BKG is a law firm oriented to the energy, mining, oil, gas and water sector, as well as technology infrastructure projects, telecommunications and manufacturing companies. We provide a comprehensive range of legal services for the business community in Argentina and the Latin American region. BKG has a wide-ranging client base that includes commercial and industrial companies, financial institutions, trade associations, regulatory bodies, professional associations and governmental entities. We represent overseas clients and have particularly strong connections with Brazil, Australia, Canada, France, Mexico, Germany, Italy, Japan, Scandinavia, the United Kingdom and the United States. BKG is well positioned to help our clients meet their business goals in Latin America, providing them with practical, efficient and accessible legal counseling.

IV. **Matters/Deals—**

- US $12.6m Stake Purchase: Beretta Kahale Godoy acted as legal counsels for an important mining project when a Canadian mining company acquired a 72% interest copper-gold-molybdenum world class project in the Province of Catamarca, Argentina.
- US $168m Debt Refinancing: Beretta Kahale Godoy assisted a French gas company in the Debt Refinancing of Bi-National Gas spanning from Mendoza, Argentina, up to the city of Santiago, Chile.
- BKG assisted a company that provides infrastructure, services and solutions for the information technology and communication industries, in the purchase of Argentine and Chilean telecom com-

panies with fiber optic technology linking their operations on both sides of the Andes.

$90m Acquisition: BKG assisted a major Brazilian oil company in the purchase of an Argentine subsidiary of a US upstream oil company.

Brons & Salas

I. **General Firm Introduction**—Brons & Salas—founded by Stanley A. Brons (1930-1983) and Acdeel E. Salas (1911-1981)—commenced to practice law in the sixties. As from its very inception, it has been proud of the quality of the services it renders, particularly emphasizing the personal attention with which it deals with its clients' needs, honoring the expeditious requirement for quality and speed required by its clients. It has nine partners, 70 bilingual lawyers, with its main offices in Argentina, Buenos Aires, and branches in Córdoba and Rosario and in Montevideo, Uruguay. It has correspondents throughout Argentina as well as worldwide relationships via international associations of law firms and its connections with individual lawyers.

II. **Areas of Practice**—The law firm renders legal advice in all areas of law related to business issues in general, except criminal law (major criminal cases are accepted upon request and handled jointly with specialized law firms). Some of these areas are Corporate Law, Administrative Law, Mining Law, Oil & Gas, Banking and Finance, Labor Law, Litigation and Bankruptcy, Tax Law, Environmental Law, Intellectual Property and related rights. It also has a permanent translation department, whose members are registered sworn translators—from and to the English language—and an extensive network of public translators for other languages.

III. **Industries Served**—Brons & Salas' clients are multinational companies with investments in Argentina and in local companies, belonging to the most diverse economic sectors: commercial and industrial, public services, banking and finance, insurance, telecommunications, etc. Free of charge it assists non-profit making entities and is party to the pro bono program organized by the Buenos Aires City Bar Association. It also participates in numerous Argentine and international entities connected with law and with industrial and commercial sectors.

Bufete Aguirre Soc. Civ.

I. **General Firm Introduction**—Established in 1940, Bufete Aguirre Soc. Civ. has a strong tradition of over 60 years in national and international legal services particularly in civil and commercial areas. Throughout its history it has deserved important recognitions as that of the Order of the British Empire conferred to its founder Dr. Carlos Aguirre Rodriguez (1915-1990) by Queen Elizabeth the Second in 1969, and that of the gratefulness of President Carter of the United States of America to Dr. Fernando Aguirre B. for his cooperation in the discussion of the Panama Canal Treaties, in 1978.

The firm's attorneys count with wide experience in different areas of specialization, strongly working in corporate law and related matters. All have received postgraduate education outside of Bolivia.

The responsible, efficient and honest work of the firm's members is highly valued by the generality of its clients.

Bufete Aguirre Soc. Civ. currently has four partners and two associates with main offices in La Paz, Bolivia.

LANGUAGES: Spanish, English, French, German

II. **Areas of Practice**—Commercial, Corporate, Business, Banking, Financing, and Tax Law: incorporation of companies, general aspects of companies and corporations legal framework, corporate governance, securities and stock transactions, international commercial contracts involving foreign investments, privatization, mergers and acquisitions, joint ventures, banking, general and specific taxation, project finance.

Civil and Administrative Law: inheritance law, property law, obligations, constitution of associations and foundations, NGOs, administrative proceedings.

Telecommunications, Mining, Energy and Hydrocarbons Law: general aspects of telecommunications, mining, energy and hydrocarbons companies and investments, contracts and joint ventures.

Intellectual and Industrial Property: registrations, renewal, oppositions or defense, annulment or cancellation or other infractions and representations.

Arbitration: Bolivian and international.

III. **Industries Served**—*Private Commercial Sector*, corporations with activity devoted to mining, hydrocarbons, electricity/energy, administration of pension funds, soft drinks, telecommunications, pharmaceutical, banking and financing, commerce, among others.

Private Sector Non Commercial, associations, foundations and non-governmental Organizations in general, devoted to small credits and technical assistance, rural development services, ecology and environment among others.

Public Sector, Foreign Embassies, bilateral or multilateral agencies and entities and occasionally Governmental Organizations.

IV. **MATTERS/DEALS**—IFC Loan to Transportadora de Electricidad S.A. and loans to Banco Solidario S.A., Caja Los Andes S.A., FIE FFP S.A., Prodem.

OPIC and KREDITANSTALT FÜR WIEDERAUFBAU in the Cuiaba Pipeline Project Financing.

OPIC in its financing to Banco Sol S.A.

AES Communications Bolivia S.A in credit from Interamerican Development Bank.

ABN Amro Bank N.V. in a Bridge Loan to Nuevatel S.A. and its refinancing through a credit assignment to OPIC

The OPEC Fund for International Development in credit Lines to Banco Bisa S.A. and Caja Los Andes S.A.

Hidroeléctrica Boliviana S.A. on a Bond Issue project financing for US $65.000.000.

COMMONWEALTH DEVELOPMENT CORPORATION—CDC Capital Partners on various of its investments and financings in Bolivia, Sociedad Boliviana de Cemento S.A., Banco Solidario S.A., Compañía Minera Colquiri S.A. y Banco de Santa Cruz S.A.

Interamerican Investment Corporation in various local medium financings.

Corporación Andina de Fomento in financings to Compañía Boliviana de Energía Eléctrica S.A. (COBEE), Sociedad Boliviana de Cemento S.A. (SOBOCE) y Gas Transboliviano S.A. (GTB) (suspended) together with Exim Bank and Citibank.

Services either on a permanent basis or on specific matters on different corporate, commercial, tax and civil matters, amongst them to: Empresa Minera Inti Raymi S.A. (Newmont International Inc.); Repsol YPF Bolivia and its related companies; Transredes S.A.; Iberdrola group of companies in Bolivia; Ferroviaria Oriental S.A. (Genesee & Wyoming, Inc.); Embotelladoras Bolivianas Unidas S.A. (Coca Cola bottlers in Bolivia); Productos Farmacéuticos S.A. de C.V., Mexico; Schering Boliviana Ltda.; Futuro de Bolivia S.A. and related companies of Zurich Financial Group; Parfums Givenchi, France; BSI Inspectorate Ltd., England and a number of others as well as to non-governmental organizations, old and new the Catholic Church and the Embassies of Great Britain and the U.S.

Duane Morris LLP

I. **GENERAL FIRM INTRODUCTION**—Duane Morris LLP, among the 100 largest law firms in the United States, is a full-service firm of approximately 550 lawyers. The firm represents clients across the nation and around the world through a combination of 18 offices and a relationship with an international network of independent law firms. Throughout its 100-year history, Duane Morris has fostered a collegial culture, where lawyers work with each other to better serve their clients. Lawyers who are leaders in a range of legal disciplines and have diverse backgrounds join Duane Morris in order to use the latest technology, professional support staff and other resources in pursuit of clients' goals.

Evolving from a partnership of prominent lawyers in Philadelphia a century ago, Duane Morris now has offices in many major markets and, according to *The National Law Journal*, is one of the fastest growing law firms in the United States. The firm has doubled in size in the past five years, and continues to expand across the country and overseas through nonmerger growth. Throughout this expansion, Duane Morris remains committed to preserving the collegial culture that has attracted so many talented attorneys. The firm's leadership believes this culture is truly unique among large law firms, and that outstanding legal work is best accomplished by skilled professionals who respect each other and work well together.

II. **AREAS OF PRACTICE**—Duane Morris LLP is a full service law firm providing valuable counsel and service to its clients in the following practice areas: Business Reorganization and Financial Restructuring; Corporate; Employment; Benefits & Immigration; Energy and Resources; Environmental; Estates and Asset Planning; Finance; Health Law; Insurance and Financial Products; Intellectual Property; International; Real Estate; Tax; Technology and Trial.

III. **INDUSTRIES SERVED**—

Some of the industries we serve include:

- Automotive
- Capital Markets
- Commercial Lending
- Construction

- Energy
- Financial Markets
- Financial Services
- Information Technologies and Telecom
- Insurance
- Manufacturing
- Pharmaceutical & Biotechnology

IV. Matters/Deals—

Automotive—Counsel manufacturers, OEMs, Tier 1 and 2 suppliers, dealers and franchisees of trucks, passenger, off-road and recreational vehicles.

Capital Markets—Advise clients on financing techniques, including securitizations, PIPEs and private REITs.

Commercial Lending—Clients access team of commercial lending and financial services attorneys.

Construction—Advice concerning contract formation, private/public contracts and protests, complex litigation, surety claims and handling, ADR, environmental, insurance, and property damage issues, labor and employment counseling.

Energy—Clients include national, state and local governments and agencies setting policies, rules and regulations; producers and distributors of energy; and energy companies, whether chemical, oil, pharmaceutical or industrial companies.

Financial Markets—Advice concerning trading on Electronic Communications Networks (ECNs); compliance with PATRIOT Act and Financial Privacy Act; and formation and purchase of trading, advisory or investment firms.

Financial Services—Counsel clients in capital markets, financial markets, banking and institutional lending, insurance and commercial lending sectors.

Information Technologies and Telecom—Advise multinational corporations, major online companies, high-tech start-up companies, governmental entities and entrepreneurs.

Insurance—Represent property, casualty, health, disability, life, and professional liability insurance providers; underwriting companies; HMOs and PPOs; captive insurers offshore; alternative market entities; and guaranty associations.

Manufacturing—Among others, counsel clients in aerospace and defense; chemicals and gases; electronics; semiconductor; retail products; and heavy machinery industry sectors.

Pharmaceutical & Biotechnology—Advice concerning development, manufacture, marketing and sales of medical devices, technology and drugs.

Estudio Aurelio Garcia Sayan

I. **General Firm Introduction**—Estudio Aurelio Garcia Sayan (Lima–Peru) is one of the best known Peruvian law firms, with a long-standing reputation of integrity and excellence. Its founding members were highly distinguished lawyers practicing in Lima since the turn of the century, being incorporated in 1985 as a limited liability consulting company. Its offices are located in the city of Lima.

All the Firm attorneys are graduates of the best law schools in Lima; many of them with post graduate studies and trainee practices at law firms in the United States. All are fluent in English in addition to Spanish; two of our associates are also fluent in French.

The Firm is the only Peruvian member of MERITAS, a legal service model that offers high-quality worldwide legal services through a closely integrated group of full-service law firms. The Firm is also a member of the American Chamber of Commerce, the Lima Chamber of Commerce and The Rocky Mountain Mineral Law Foundation.

II. **Areas of Practice**—Estudio Aurelio Garcia Sayan provides first-class legal counseling mostly on corporate, commercial, civil, tax, hydrocarbons, energy, mining, litigation, labor, environment, patents and trademarks and competition laws. It is particularly active in international financial transactions and, in general, in issues related to the domestic and the international securities and capital markets.

The firm is actively involved in assisting private foreign investors interested in participating in the Government's privatization and concession program, and has successfully participated in some of the major deals resulting in the transfer or concession to national and foreign private investors of State-owned companies or utilities.

III. **Industries Served**—Several international banks and various United States, European, Asian and South American manufacturing, mining, oil, service and commercial multinational companies are clients of Estudio Aurelio Garcia Sayan. An important number of Peruvian-owned companies and individuals are also clients of our law Firm, providing all of them a diversified and flexible source of legal assistance.

IV. Matters/Deals—

Banking and Financing:

- Aguaytía Energy del Perú S.R.L. and its subsidiaries in the negotiation of the US $80 million syndicated loan made by Banco de Crédito del Perú, Banco Wiese Sudameris, Citibank, N.A., Sucursal de Lima and Banco Sudamericano.
- JP MORGAN/WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION in the issuance of Senior Secured Notes by Global Crossing North American Holdings, Inc. for US $200,000.
- INTERNATIONAL FINANCE CORPORATION in a US $25,000,000 loan granted to Gloria S.A.
- AGUAYTIA ENERGY S.R.L. in the negotiation of a US $80,000,000 syndicated loan granted by several local banks:
- VOLCÁN COMPAÑÍA MINERA S.A.A. in a US $40,000,000 loan granted by Glencore International AG:

Energy and Mines:

- PETRO-TECH PERUANA S.A. in the negotiation of a Contract for the Construction and Assembly of a Cryogenic Plant and the correspondent loan agreements with Eximbank and Citibank.
- CHINA NATIONAL OIL AND GAS EXPLORATION AND DEVELOPMENT COMPANY in the due diligence and negotiations for the acquisition of the 45% of the Pluspetrol Norte S.A. shares.
- BURLINGTON RESOURCES INC. In the execution of the Block 90 License Contract for the exploration and exploitation of hydrocarbons:

Commercial/Corporate:

- SOCIEDAD MINERA EL BROCAL S.A.A. in its transformation to a public corporation (*Sociedad Anónima Abierta*).
- HILTI INC., in the sale of its Peruvian subsidiary:

F.A. Arias & Muñoz—Central America

I. General Firm Introduction—Our firm dates back to 1942, with the establishment of Bufete F. A. Arias in El Salvador, which in 1998 merged with the Costa Rican firm J.A. Muñoz and P. Muñoz, to create F.A. Arias & Muñoz. We are leaders in the region, having created an innovative approach: a firm with its own offices in the five countries of Central America. F. A. Arias & Muñoz offers legal services of the highest quality and efficiency. It represents a number of well known international companies from North and South America, Europe and the Far East, many of them included on the Fortune 500 list. Our firm has participated in a wide range of international transactions in Central America, which include project finance, commercial contracting, issuances, joint ventures, mergers and acquisitions, among others. F. A. Arias & Muñoz is staffed with more than 60 attorneys, who are highly qualified professionals, multilingual and specialize in a variety of legal fields. Our lawyers are authorized to practice in their own jurisdictions, and some of them in the countries of Europe and in the United States of America.

II. Areas of Practice—

Administrative Law
Aviation Law
Banking Law
Capital Markets
Civil Law and Notary
Competition Law
Concessions and Privatizations
Corporate Law
Energy Law
Environmental Law
Foreign Investment and Free Trade Zones
Immigration
Insurance and Reinsurance
Intellectual Property Law
International LawMergers and Acquisitions
Judicial Practice
Labor Law
Oil and Gas Law
Pharmaceuticals
Project Financing
Real Estate Law
Taxes and Fiscal Planning
Telecommunications Law

III. Industries Served—

Our firm services a wide variety of industries. The most important are the following:

Banking

F. A. Arias & Muñoz has ample experience providing legal advice to important local and international finance and banking Institutions. Our clientele in this sector include some of the world's largest private banks and financial institutions. Our legal staff specialize in banking and finance work in the following areas:

- Structuring and granting of simple and complex loans and their warranties
- Debt re-structuring
- Issuance of Negotiable Securities

- Project Financing
- Assets Securitization
- Incorporation of Banks and Financial Institutions
- Advice in regulatory issues

Telecommunications

F. A. Arias & Muñoz has advised multiple national and international companies in the telecommunications field in the Central American region.

We offer creative solutions for their legal needs and assist them to benefit from new business opportunities in this dynamic sector.

Retail

Our firm represents one of the largest retail companies in the region, providing legal counsel on corporate issues, mergers & acquisitions, and intellectual property matters.

Real Estate

Our firm provides our clients a specialized team with broad experience in Real Estate law.

We strive to offer the most accurate and comprehensive advice in all real estate actions such as:

- Real Estate purchase and sale
- Properties re-measure
- Water and way rights
- Mortgages
- Leasing
- Purchase and sale of buildings, shopping centers
- Advising in construction contracts
- Contracts of warranties transactions
- Taxes related to the transfer of properties
- Creation and installment of special condominium regulations and for other properties and co-properties for real estate development.

Energy

The Energy sector in Central America is mostly privatized, through the sale of stocks of the energy distributing companies, to foreign investors. Our lawyers, specialized in this field, have contributed to successfully develop different projects and have legally advised in the following areas:

- Privatization
- Legal counsel to energy distributing companies
- Legal counseling in regulatory issues and rates before the Public Controlling Entities.

Aviation

F. A. Arias & Muñoz has experience in advising aviation, as well as aircraft leasing companies. The counsel provided to this sector includes:

- Aircraft leases
- Aircraft acquisition and registration
- Aircraft financing
- General assessment in corporate, commercial and regulatory issues.

Capital markets:

In this field, **F.A. ARIAS & MUÑOZ** has counseled important corporations in their financial activities, fostered by short- and long-term loans.

Our firm has provided legal advice specially for the following :

- Bonds Issuance and other type of Securities
- Legal structuring of securities negotiation in the stock market
- Registration and de-registration procedures of issuers and/or issuances in the stock market.

IV. MATTERS/DEALS—

1. Local counsel to Citibank NA and Citigroup Global Markets in bonds issuance by the Republic of El Salvador, for an amount of US $286.4 million. October 2004.
2. Lead counsel to Hoteles Decamerón in their initial investment in Club Salinitas, a beach club located on the east coast of El Salvador. This is part of Hoteles Decamerón's first investment project in the Central American region. September 2004.
3. Legal advice to an European bank (Deutsche Bank London Branch) and a Swedish financial entity (Ericsson Credit AB) in connection with the assignment of a syndicated and a facility loan agreement granted to a local telecommunications operator (Digicel) for the amount of US $10,723,700. June 16, 2004.
4. Regional counsel to Telefónica Móviles in the countries of El Salvador, Guatemala and Nicaragua concerning the acquisition of Bell-South, being part of a large-scale regional transaction across Latin America. March-October, 2004.

5. Legal advice to an international financial organization (IFC) in connection with the granting of a subordinated loan and a credit line agreement to a local bank for the amount of US $10,000,000. April 6, 2004.

6. Acquisition of a major real estate holding in the Guanacaste area for a US-based developer. Based on our continuing counseling to the Hacienda Pinilla development, we were recommended to a major developer of residential and tourism real estate in US, and have assisted them in the acquisition and negotiation of major real estate holdings in the Guanacaste area.

FERRERE Abogados

I. **General Firm Introduction**—**Ferrere** Attorneys at Law was created in the fifties and is currently the largest firm in Uruguay. In 1996 the firm received the National Quality Award from the President of Uruguay for its outstanding application of Total Quality principles.

Ferrere Attorneys at Law has an outstanding team and a unique culture that results from a very strong mutual commitment between the firm and its members. **Ferrere** is an equal opportunity firm not only in words but also in fact. We are committed to hiring and promoting only the best lawyers, irrespective of any other consideration.

Ferrere Attorneys at Law opened offices in Asuncion, Paraguay, in early 2003, with the support of a number of our multinational clients. Additionally, since many multinationals working in South America operate Uruguay, Paraguay and Bolivia as a single regional unit, in January 2004 we launched operations in La Paz and Santa Cruz, Bolivia.

II. **Areas of Practice**—Ferrere Attorneys at Law is a full service firm. We are a leader in telecommunications, information technology, energy, pharmaceuticals, insurance, complex commercial litigation, and virtually all business areas that have evolved in recent times. The firm is a key player in virtually all banking and securities deals, representing local and international banks, pension funds and multilateral lending organizations. We have the largest tax practice of any local law firm, providing full service to clients both in their day to day operations and in their M&A deals. Our labor law department is a recognized leader in collective bargaining, and our IP/IT group is at the forefront of the protection of owners' rights in all newly developed technologies.

III. **Industries Served**—Advertising/Market Research, Agriculture/Forestry, Automotive Industry, Banking & Finance, Chemicals, Clothing, Communications & Internet, Computers & Software, Construction, Consumer goods, Education, Energy, Home Appliances, Human Health, Insurance, Media, Pharmaceuticals, Printing, Intellectual Property and others.

IV. **Matters/Deals**—Sale of the Uruguayan operation of BellSouth to Telefónica S.A., Building and Operation of a port on the Uruguay River by Archer Daniels Midland (ADM), IDB Loan to finance the construction and operation of a new river port facility, Amcor's purchase of Alcoa's pet business in Uruguay, Securitization of rice exports, Securitization of contribution on milk sales, SmithKline Beecham-GlaxoWellcome merger (GSK), Rhone Puolenc Rorer-Hoechst merger (Aventis Pharma).

Fraser Milner Casgrain LLP

I. **General Firm Introduction**—For over 165 years, Fraser Milner Casgrain LLP (*"FMC"*) has distinguished itself as a leading Canadian business law firm, introducing American and international clients to the Canadian business advantage.

FMC's clients include major national and international corporations (both public and private) that are actively engaged in Canada and cross-border projects involving Canadian business matters. With over 550 lawyers and offices located in Montréal, Ottawa, Toronto, Edmonton, Calgary, Vancouver and New York City, FMC experts leverage accessibility and depth of experience across several key economic sectors, providing trusted legal advice to help its clients succeed.

II. **Areas of Practice**—

Administrative and Regulatory Law
Alternative Dispute Resolution
Banking and Financial Services
Commercial Real Estate
Commodity Tax
Competition Law and Government Regulation
Constitutional
Construction
Corporate/Commercial
Corporate Governance
E-Commerce
Employment and Labour Law
Energy and Natural Resources
Government Relations
Insolvency and Workout
Insurance
Intellectual Property and Technology

International Trade
Life Sciences
Litigation and Advocacy
Mergers and Acquisitions
Mining
Municipal Law
Not-for-Profit
Pensions and Benefits
Private Client Services
Private Equity/Venture Capital
Privatizations
Professional Liability
Securities
Taxation
Telecommunications
Wills, Estates and Trusts

III. **INDUSTRIES SERVED**—FMC's clients include major corporations (both private and public) in all sectors of the economy, national and international companies active in Canada and abroad, entrepreneurs and emerging businesses. Our clients are active in financial services, communications, advanced technologies, e-commerce, pharmaceuticals and biotechnology, oil and gas, energy, insurance, healthcare, manufacturing, real estate, construction, retail, professional services, transportation, forestry, mining and many other industries.

IV. **MATTERS/DEALS**—*Petro-Canada Completes $3.2B Secondary Offering (CALGARY)*—On September 29, 2004, the largest share offering in Canadian history was completed when the Government of Canada sold its remaining 19 percent stake in Petro-Canada, one of Canada's largest oil and gas companies. Fraser Milner Casgrain LLP was selected to represent the syndicate of investment dealers led by RBC Dominion Securities, CIBC World Markets, and Merrill Lynch & Co.

Air Canada: Restructuring—Air Canada filed for protection under the Companies' Creditors Arrangements Act (CCAA) on April 1, 2003. The company emerged from bankruptcy on September 30, 2004, after an Ontario superior court approved its restructuring plan. Numerous law firms and numerous clients were involved in the restructuring. Fraser Milner Casgrain LLP acted as outside counsel for Purchaser and Lender, AMEX Bank of Canada (Toronto).

DuPont Sells Textiles and Interiors Business to Koch (TORONTO)—E.I. du Pont de Nemours and Co. completed the sale of its INVISTA fibres unit to subsidiaries of Koch Industries, Inc. for a purchase price of US $4.2 billion on April 30, 2004. INVISTA, formerly a business unit of DuPont, is the largest fibre and intermediates business in the world. The acquisition required antitrust approvals worldwide as well as Competition Act approval and Investment Canada Act approval in Canada. Fraser Milner Casgrain LLP advised Koch with respect to Canadian competition law and foreign investment matters.

KeySpan Facilities Completes Public Offering (CALGARY)—KeySpan Facilities Income Fund completed a long form follow-on public offering of trust units on April 1, 2004 for total proceeds of $196.8 million. Net proceeds from the offering were used by the Fund to increase its partnership interest in KeySpan Energy Canada Partnership. The underwriters were represented by Fraser Milner Casgrain LLP.

Garrigues

I. **General Firm Introduction**—Founded in 1941, Garrigues is the largest and leading law firm in Spain. Garrigues is an independent firm and is committed to remaining so. Garrigues' main pillars are quality and service, combined with a commitment to find and implement the most appropriate solutions to meet each client's needs. As an independent firm, in an ever-tougher competitive environment, our success depends solely on client satisfaction and our distinctive feature must be quality efficient delivery. The Firm boasts of the largest office network in Spain with 23 offices; we offer our professional services and deliver solutions in every legal aspect of the business world, including emerging fields which are at the forefront of our profession. As for international coverage, Garrigues has its own offices in New York, Brussels and Lisbon. Garrigues is also present in Argentina, Brazil and Mexico through its Latin-American alliance with the leading firms of these countries, promoted by Garrigues. The firm also belongs to the World Services Group, a network that brings together the full spectrum of leading professional services firms and companies in all of the five continents.

II. **Areas of Practice—**

Administrative Law
Commercial
Corporate
Energy, Telecommunications & Utilities
Environmental
EU and Anti-Trust
Finance: Banking, Securities, Insurance
Foreign Investments
Human Capital Services
Intellectual Property

Labour Law
Litigation and Arbitration
Maritime
Mergers & Acquisitions
New Technologies
Planning & Zoning
Real Estate
Sports & Entertainment & Transactions
Tax
The Family Business

III. **INDUSTRIES SERVED**—Industries served are many and varied including consumer products, oil and gas, electricity, water and waste, financial markets, pharmaceutical, real estate and construction, technology, media and telecommunications, transport, sports and entertainment, etc.

IV. **MATTERS/DEALS**—

A few noteworthy recent acquisitions:

- Acquisition by Inmobiliaria Colonial of a stake corresponding to the 55.6% of the stock capital of Société Foncière Lyonnaise (SFL) from Aviva France, Exor Group, Geneval and Grosvenor.
- Sale and purchase of 100% of the share capital of Naviera Fernández Tapias, the number one Spanish oil and gas shipping company, to Teekay Shipping Corporation, also the number one worldwide oil and shipping company. The total value of this transaction has been estimated at 1,200,000,000 Joint Venture among the present shareholders of NFT and Teekay Shipping Corporation for future projects.
- Joint venture between The Polestar Group, Prisa and Inversiones Ibersuizas: creation of Dédalo Grupo Gráfico.
- Acquisition of the main assets of the distribution business of KIA Motors in Spain. Resolution of the distribution agreement with Kia Motors Corporation.
- Sale of Seguros Bilbao by Catalana Occidente to Fortis Insurance Group.

A few noteworthy mergers:

- FCC—Portland Valderrivas merger.
- Mergers between Banco Bilbao Vizcaya and Argentaria (financial services industry).
- Advice to Altadis, S.A. (Tabacalera, S.A.) on the process of integration with the French tobacco company Seita.
- Merger between Obrascón Huarte, S.A. and Construcciones Laín, S.A.
- Merger between Pryca and Continente.
- Merger between Dexia Banco Local and Banco de Crédito Local.
- Merger between Sacyr and Vallehermoso.
- Merger of the subsidiaries Benajer, S.A. and Contigo Jerez 1, S.L., by their Sole Share Holder, Red Acción 7, S.L

Take Over Bids:

- Banco Zaragozano-Barclays
- Telefónica-Terra Networks
- NH Hoteles-Hesperia
- Credit Agricole-Crédit Lyonnais
- AGF Unión-Fénix, Finanzauto
- Citroen, Asland
- Tabacalera-Seita
- NH Hoteles-Krasnapolsky
- Ferroatlántica-Hidrocantábrico
- Acesa-Aurea-Iberpistas
- Caprabo-Enaco

Grasty, Quintana, Majlis & Cía

I. **GENERAL FIRM INTRODUCTION**—Grasty, Quintana, Majlis & Cía ("GQMC") is a Chilean law firm, based in Santiago and established in 1987. GQMC is structured as a partnership and is managed by a small executive committee.

GQMC is composed of 23 attorneys, most of them multilingual and with different specialties. GQMC is a member of the International Bar Association and the International Section of the New York State Bar Association, Chilean Bar Association and the Chilean-German, French, Chinese, Bolivian, Canadian and American Chambers of Commerce (Michael Grasty, Senior Partner, being Vice-President of the latter).

II. **AREAS OF PRACTICE**—GQMC is a multi-service firm, with a strong interest in corporate/commercial, international arbitration, litigation, securitization, finance, private public partnerships and infrastructure projects, mergers and acquisitions, mining, labor, technology, telecommunications, environmental and international trade and investment.

III. **INDUSTRIES SERVED**—Telecommunications, mining, sanitary services, international trade and investment, biotechnology, fisheries, securities, financial.

IV. **MATTERS/DEALS 2004**—Investment Arbitration before ICSID—Representing MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile (ICSID Case N°. ARB/01/07).

- Supporting in acquisition of large mining project for major mining company in Latin America.
- Participation in various mining contracts, acquisitions and sales of mining projects.
- Consulting for Sernageomin, Chilean National Geology and Mining Service, Creation of legislation framework for Chile in respect to abandoned mining sites.
- Counsel in refinancing of investment in infrastructure projects—highway concessions—Los Vilos—La Serena and Rio Bueno—Puerto Montt.
- Counsel for Corporación de Fomento de la Producción (CORFO) in the merger of sanitary services Companies owned by the State of Chile.
- Counsel for Avanza Grupo, a Spanish operator of public transportation services in the tender for a concession of urban public transport in the city of Santiago.
- Counsel for Bouygues, a French Construction Company in the tender process for construction of a bridge over Canal a Chacao (Chiloe).
- Counsel for Telefónica del Sur (Telsur) in various relevant operational and financing agreements.
- Counsel for Nutreco in global merger of Nutreco-Stolt (Chilean chapter).
- Finalization of restructuring of the companies of the principal shareholders of Falabella S.A.C.I.
- Sale of the retail stores of Bridgestone Firestone Chile S.A.

Guevara & Gutierrez S.C. Servicios Legales

I. **GENERAL FIRM INTRODUCTION**—Established in 1989, GUEVARA & GUTIERREZ S.C. Servicios Legales, has become one of Bolivia's leading commercial and litigation law firms. Operating from two main offices in La Paz and Santa Cruz, and through a network of affiliates, the firm provides high quality and effective legal service in all of Bolivia.

The Firm counts with 15 attorneys. The founding partners Ramiro Guevara & Primitivo Gutiérrez work closely with 5 other partners and 8 associates providing high-quality advice and legal services in diverse areas of practice. During 2003, our firm entered into a strategic alliance with the Muñiz Forsyth Ramirez Perez-Taiman & Luna-Victoria law firm of Peru and Peña, Larrea, Torres & Paredes law firm of Ecuador.

Languages: Spanish, English, Portuguese, French, Italian, German

II. **AREAS OF PRACTICE**—Planning and advice on efficient forms of doing business through Corporations, Privatizations & Mergers in Bolivia.

Innovation in **Project Finance, Capital Markets** and **Banking** through effective security structures which enable risk management in highly regulated sectors.

Ample experience in **International Tax and Financial Planning** in complicated investment and payment structures.

Vast experience in advising in administrative procedures in **Regulated Industries** that deal with energy and natural resources.

Precise and timely management of **Dispute Resolutions and Litigation** including negotiations, assisted mediations, domestic and international arbitration.

The Firm also has specialized practice groups in **Intellectual Property, Labour** and **Social Security.**

III. **INDUSTRIES SERVED**—Bolivia is rich in **Energy** resources allowing a strong practice in the regulated energy sectors of **Electricity, Oil** and **Natural Gas**.

The Firm has expertise regarding the exploitation, management and development of **Regulated Natural Resources** including land, water, mining and forest products.

The Firm has participated in the expansion and development of **Telecommunications** projects, acquiring specific expertise in the very competitive and rapidly growing telecommunications market.

The Firm provides seasoned advice to several **Exporting and Importing Industries** in International Business Transactions.

IV. **MATTERS/DEALS**—Representation of International Financing Institutions in the development of a parallel natural gas pipeline to Brazil to duplicate Bolivia's exportations thereto.

Representation of several Investment Banks in separate telecommunications deals in the financing of data and voice transmission projects for approximately 80 million dollars and wireless networks for 50 million dollars. Representation of all natural gas producers in joint regulatory claims against the regulator. Success in the recognition of judgments

issued in London before the Bolivian Supreme Court. Advice to all electric distributors in the controversy with the regulator regarding the determination of tariffs. Representation of several clients in national and international arbitrations. Mergers and other corporate structures to create more tax efficient businesses and provide larger corporate synergies.

Meeks & Sheppard

I. **General Firm Introduction**—Meeks & Sheppard as a firm has always specialized in customs and international trade matters and the members of the firm have well over 100 years of experience combined, in the area. The practice was started over 20 years ago and 10 years ago began to practice as Meeks & Sheppard. Today, the firm has grown to three offices in New York, Connecticut, and California. Meeks & Sheppard delivers effective and cost efficient counsel to its clients, nationwide and internationally, before the international trade agencies and if necessary, in the federal courts.

II. **Areas of Practice**—The firm represents clients before the principal international trade regulatory agencies, including the U.S. Customs and Border Protection Bureau, the U.S. International Trade Commission, the U.S. Department of Commerce, the Office of the U.S. Trade Representative, the Bureau of Industry and Security, the Food and Drug Administration and the Department of Agriculture. In addition, the firm handles litigation related to agency actions before the U.S. Court of International Trade, the U.S. Court of Appeals for the Federal Circuit, and various other federal district and appellate courts.

Counseling importers and exporters on customs and international trade matters is the main focus of our practice. Our attorneys advise clients on a broad range of customs issues including the performance of comprehensive reviews of general import compliance, as well as providing specific assistance on tariff classification, valuation and appraisement of merchandise, country of origin determinations, penalty proceedings, and intellectual property recordations.

The firm is frequently called upon to assist clients in structuring product and sales transactions to minimize customs duties while complying with U.S. law by taking advantage of special trade agreements such as the North American Free Trade Agreement ("NAFTA"), the Generalized System of Preferences ("GSP") and the Caribbean Basin Initiative ("CBI") and other special programs such as Temporary Importation Bonds ("TIB"), Foreign Trade Zones ("FTZ"), bonded warehouses and duty drawback. We are increasingly involved with companies' efforts to address liabilities posed by Customs' implementation of recent legislation on importer/exporter responsibility and Customs' systems modernization. We work with importers and exporters to review and put in place internal compliance programs that demonstrate that they are exercising "reasonable care" in their import and export activities.

III. **Industries Served**—Meeks & Sheppard has clients, companies and individuals in almost every industry. They import and export all types of articles—agricultural, foodstuffs, chemicals, pharmaceuticals, textiles, home fashion and apparel, automotive, machinery, electronics, hardware, software and medical devices. Our firm's clients include Fortune 100 companies as well as sole proprietorships.

IV. **Matters/Deals**—We take pride in our efforts to achieve cost savings and refunds of Customs duties and taxes whenever we can identify such opportunities. In one instance, we assisted a pharmaceutical company in saving over $100 million in a ten-year period through the use of a preferential trade program and Customs administrative rulings. More recently, we obtained several million dollars in refunds for a precision instrument company by having their products re-classified in duty-free provisions. We also have counseled clients facing audits or "Focused Assessments" from Customs relating to imports and exports, and facing investigations from the Department of Commerce relating to exports. More importantly, we have assisted these clients to conduct internal reviews before any notification of interest by a federal agency to ensure that their policies and practices meet U.S. legal requirements.

In addition, we have assisted clients to determine proper origin marking for their products through proper application of U.S. law and regulations. Increasingly, our clients are requesting information on export compliance as well as complying with the import laws of foreign countries.

Peroni Sosa Tellechea Burt & Narvaja

I. **General Firm Introduction**—The firm was founded in 1968 by Dr. Guillermo F. Peroni and Dr. Demetrio Ayala. In 1973 it began publishing the legal review *La Ley Paraguaya,* the first Paraguayan legal review devoted to jurisprudence, legislation and national doctrine. *La Ley* was published under the direction of Dr. Juan Guillermo Peroni, in cooperation with the Argentine legal review *La Ley*, a collaborative effort which continued for 20

years, until the former became an independent editorial firm, in which PSTBN partners became shareholders. In 1997 new partners were incorporated, and the firm changed its name to *PERONI SOSA TELLECHEA BURT & NARVAJA* (PSTBN). It currently has seven partners, fifteen associates, and three paralegals. It is presently located at Eulogio Estigarribia 4846, Asunción, Paraguay. Telephones 595 21 663 536; Fax 595 21 600 448

II. **Areas of Practice**—PSTBN offers a wide variety of legal services in Paraguay for international and local investors. It specializes in banking and finance operations, mineral-related investment projects, telecommunications, hydrocarbon exploration, foreign investment, maritime and aeronautical law, as well as representation and advisory services in civil, commercial, labor, tax, and intellectual property issues.

PSTBN is a member of the prestigious international networks Lex Mundi and Club de Abogados, as well as the editor of the Paraguayan Law Digest for the Martindale-Hubbell Law Directory.

III. **Industries Served**—Finance, reforestation, minerals and hydrocarbon exploration and production, industrialization and export of agricultural products, beer and soft drinks production and marketing, telecommunications, bilateral and multilateral trade issues, antidumping, foreign investment, maritime and aeronautical law.

IV. **Matters/Deals**—Cargill Inc., merger of Cargill Paraguay SA with Cargill Agropecuaria SA.

Acquisition by Uruguayan investors of Forestal Yguazú SRL quotas (large reforestation project) held by Shell Petroleum NV, the firm represented the buyers and subsequent corporate conversion of Forestal Iguazú SRL (Limited Liability Company) into Forestal Yguazu Sociedad Anonima (Corporation).

Votorantim Cimentos dumping claim by Industria Nacional del Cemento. YPF S.A. successful representation in public tenders for the supply of diesel oil to Petropar S.A.

Hydrocarbon Exploration Concession granted to Morrison Mining Company over 2.5 million hectares in the Paraguayan Chaco.

Thacher Proffitt & Wood LLP

I. **General Firm Introduction**—A firm that focuses on the capital markets and financial services industries, Thacher Proffitt & Wood LLP advises domestic and global clients in a wide range of areas. The Firm began in 1848 and today has more than 200 lawyers located in New York, NY, Washington, DC, White Plains, NY, Summit, NJ and Mexico City, Mexico.

II. **Areas of Practice**—Corporate and financial institutions law, securities, structured finance, swaps and derivatives, cross-border transactions, real estate, insurance, admiralty and ship finance, litigation and dispute resolution, technology and intellectual property, taxation, executive compensation and employee benefits, trusts and estates, bankruptcy, reorganizations and restructurings.

III. **Industries Served**—Thacher Proffitt represents financial institutions, investors and corporations throughout the U.S., Latin America and Europe. While we have experience in numerous industries, we are known for our strength and particular expertise in the following: Automotive, Aviation, Banking, Construction, Consumer Products, Energy & Utilities, Financial Services, Food & Beverage, Government, Insurance, Manufacturing, Maritime, Media, Pharmaceutical, Professional Services, Real Estate, Retail, Structured Finance, Technology, Telecommunications and Transportation.

IV. **Matters/Deals**—Represented the State of Veracruz and the State of Mexico in securitizations of payroll taxes and tax receivables—the first of their kind for state-issued short-term securities. Advised the State of Puebla in the design of the structure and the preparation of the documentation to carry out a securitization of payroll taxes. We advised the State of Mexico and the State of Tabasco in several matters related to public finance.

Facilitated a $100 million U.S. securitization of Salvadoran residential mortgages, and an $80 million private equity offering which created Mexico's third largest mortgage SOFOL. We represented Sociedad Hipotecaria Federal in the preparation of the master documentation for the securitization of its fixed rate peso deal mortgage program and currently represent it in several matters related to the RMBS industry.

Protected the U.S. assets of one of the largest Colombian pharmaceutical companies by successfully vacating a temporary restraining order and preliminary injunction.

Served as counsel for a major Mexican company in a multi-million dollar arbitration of a joint venture dispute with a U.S. company, for a Brazilian sports club in a $45 million arbitration of a licensing dispute, and for an Argentine investment fund in a $70 million arbitration with a Spanish bank over an Internet venture.

Defended one of Mexico's largest industrial cleaning contractors before the labor board and the circuit court against a hostile union's lawsuit.

Guided the largest real estate development in Latin America (Mexico) as it established its utility services, including the obtainment of the self-supply of electricity permit with the biggest number of off-takers ever authorized by the Mexican Energy Regulatory Commission.

Veirano Advogados

I. **General Firm Introduction**—Veirano Advogados is a general practice firm founded in 1972 and presently has offices in the Brazilian cities of Rio de Janeiro, São Paulo, Brasilia, Porto Alegre, Recife, Fortaleza, João Pessoa and Macaé. Veirano has 250 attorneys, 150 trainees and a total of 800 professionals, including staff members.

II. **Areas of Practice**—Veirano has expertise in all areas of corporate law such as commercial, tax, civil, labor, intellectual property, energy, telecommunications, administrative, mergers and acquisitions, environmental, anti-trust, product liability, mining, project finance, foreign trade, real estate and related litigation.

III. **Industries Served**—Veirano has clients in all fields of the industry, commerce and services, including, but not limited to food and drug companies, real estate, shopping centers, franchising, media and communications, oil & gas, chemicals, cosmetics, beverages, aviation, financial institutions, computer and software, Internet, liquors, tobacco, mining, shipping, utilities, information technology, agribusiness, and many others.

IV. **Matters/Deals**—We cannot mention deals without the express consent of our clients.

The Velo & Associati Law Firm

I. **General Firm Introduction**—The Velo & Associati Law Firm was founded in the year 1982 by Attorney at Law, Lucio Velo, who has a degree in law and political sciences, and primarily specializes in business law. The firm is one of the largest law firms in the Italian-speaking area (Canton Ticino) of Switzerland and its headquarters is situated in Lugano. The firm also has an office in Geneva, which was opened in 1984. The firm presently consists of 12 lawyers and four practitioners in its Lugano office, and conducts business in English, French, German and Spanish.

II. **Areas of Practice**—The firm's main areas of practice are:

Corporate: (in particular assistance in formation of domestic and/or foreign Companies, consulting regarding corporate structures.)

Real Estate: among the attorneys the Firm has several Public Notaries. We provide assistance to clients interested in the purchase or selling of properties in Switzerland with regard to the "Lex Friederich" authorization to buy properties for foreigners.

Taxes: we assist clients in all aspects of tax and estate planning. We provide tax advice and opinion for corporations as well for individuals.

International contracts: drafting and advising our clients with respect to all types of legal agreements. Including but not limited to trusts and foundations arrangements, corporate re-structuring, organization of Swiss corporations, holdings, branches and representative offices. Shareholder representation and fiduciary advisory. Trademarks, copyright and licensing.

Contracts: Distribution, franchising, agency, licensing, loans, joint ventures.

Banking: as Lugano is one of the main Swiss financial centers, the firm operates as counsel for several banks and some of its lawyers are members of the Board of Directors of several Swiss Banks.

Litigation: we represent the interest of individuals and corporations at all levels of Swiss judicial proceedings.

Arbitration: the arbitration services are rendered in particular through the Geneva office, as Geneva is one of the most important international centers of arbitration proceedings.

Immigration: we provide assistance to our clients in obtaining work or residency permits and dealing with all local and governmental authorities.

III. **Industries Served**—The clientele of the Firm is largely in the banking and financial sectors. There is an important portion of individuals and families seeking advice on family business governance issues such as cohesiveness, integrity, projection and preservation over time.

Following present law and in adherence with the ethics of the legal profession the Firm does not reveal the names of its clients nor the specific type of business they are engaged in.

Vitale, Manoff & Feilbogen

I. **General Firm Introduction**—Vitale, Manoff & Feilbogen is a prestigious and dynamic international Law Firm. Its mission is to offer its knowledge, commitment, experience and creativity to its clients, so that they may achieve their legitimate objectives with optimum solutions. All cases are handled by a group of well-trained and experienced professionals who are closely supervised, achieving a satisfactory efficiency-cost of service ratio.

Vitale, Manoff & Feilbogen's main office is conveniently located in the City of Buenos Aires. In addition, the firm has developed a network of its own and associated law offices covering the whole territory of Argentina. Also it keeps fluent professional contact with important and successful law firms and lawyers in Latin America, the United States, Europe, Asia and Oceania. Thus, when our action in international transactions is required, we are very well prepared, both as to the necessary legal and judicial knowledge and practice, as to the relationships with the relevant international players.

II. **Areas of Practice**—Vitale, Manoff & Feilbogen's professional practice includes the different areas of the law which allows it to take care of its clients comprehensively. Its team is specialized in the following areas or practice:

Corporate Law and Practice; Mergers and Acquisitions; Bankruptcy; Banking Law and Capital Markets; Structured Finance—Securitization; Trademark and Patent; Copyright; Internet, Media & Entertainment; Telecommunications; Technology Law; Tax Law; Energy Mining and Natural Resources; Customs and International Trade; Dumping—Antitrust; Litigation and Arbitration; Labor Law; Insurance; Maritime Law; Administrative Law and Governmental Agencies; Real Estate and Construction Law.

III. **Industries Served**—Vitale, Manoff & Feilbogen has provided, for over 50 years, a wide range of legal services to numerous individuals and industrial, financial and commercial companies. We are proud to say that Vitale, Manoff & Feilbogen has provided appropriate advice to the needs of our clients, enabling them to obtain the benefits of their business opportunities and to settle their conflicts successfully.

The industries Vitale, Manoff & Feilbogen services are: Telecommunications, Entertainment, Pharmaceutical, Technology, Maritime, Food, Medicine, Retail, Appliances, Insurance, Banking, Public Services, Construction, Financial Services, Universities, Transportation, IT Business, Real Estate.

IV. **Matters/Deals**—

1. Acquisition of the local subsidiary of a vessel company by Hvide Marine, now Seabulk, Offshore Inc. Advisors of the buyer. $12,000,000 dollars.
2. Securitization: First Argentine transaction of export receivables guaranteed by warrants contracts. ProArg-I-Oliva. Legal advisors of the transaction. $3,000,000 dollars.
3. Inea Internet Services acquired by Diveo Corp. Advisors of the seller. $12,000,000 dollars.
4. Restructuring of Municipal debt, Rawson, Chubut province. Advisor of the Municipality. $10,000,000 dollars.
5. Fiduciary Fund exploitation of Neuquen riverside coast. (At a project stage). Advisor of the real estate developer. $100,000,000 dollars.
6. Tower Records Argentina S.A. plan of company reorganization.
7. Dark Fiber Agreement between Diveo Argentina and Bellsouth Argentina S.A. $4,000,000 dollars.
8. Management Buyout—advising the buyers—of Tech Data Argentina S.A.
9. Advisors of many deals of "turn key agreements" related to wireless and fiber networks
10. Local counselors of Diveo Argentina and Diveo Inc. related to the credit agreement with Ericsson Credit $ 700,000,000 dollars.
11. Hotel Elevage Buenos Aires. Transaction of $14,000,000 dollars.

White & Case LLP

I. **General Firm Introduction**—Founded in New York in 1901, White & Case has lawyers in the United States, Latin America, Europe, the Middle East, Africa and Asia. Our clients are public and privately held commercial businesses and financial institutions, as well as governments and state-owned entities, involved in sophisticated corporate and financial transactions and complex dispute resolution proceedings.

International practice is the foundation of our firm, and we have been involved in transactions in virtually every corner of the world. Our commitment to each region of the world is substantial. We have a critical mass of U.S., English, and domestic

lawyers throughout the world who are either native to or fully integrated in the regions where they are based.

White & Case is distinguished not only by the depth and scope of its legal advisory services, but also by unmatched experience in the international arena, particularly in providing legal advisory services to, and in, developing or emerging countries. The Firm's lawyers have decades of experience in multijurisdictional issues in numerous legal systems—some well established, some in their infancy—as well as in transitional economic and political systems. Consequently, we are known for unusual effectiveness in helping clients accomplish their objectives in environments others find daunting and unfamiliar.

Our knowledge, like our clients' interests, transcends geographic boundaries. All of our clients have access to the expertise of our lawyers, wherever they are based. As a single partnership, White & Case functions as an integrated team. Our lawyers are linked by constant interaction and an electronic infrastructure that allows us to bring the Firm's wealth of experience and all its global resources to bear on clients' most demanding business and legal issues—promptly and efficiently.

On a daily basis, our clients are involved in undertakings documented under four or five governing laws and of interest to as many taxing authorities; in transactions involving principals and lenders from a dozen countries; or in disputes involving assets in multiple countries. We move quickly, efficiently and with substantial knowledge of the differing terrains to complete deals, mitigate problems, obtain information and resolve complexities simultaneously in many places and across numerous dimensions.

II. Areas of Practice—

Antitrust
Asset Finance
Bank Advisory
Bank Finance
Banking
Capital Markets
Construction and Engineering
Corporate
Corporate Defense and Special Litigation
Energy, Infrastructure and Project Finance
Environmental
European Union
Executive Compensation and Employee Benefits
Financial Restructuring and Insolvency
Global Equity Based Compensation
Insurance
Intellectual Property
International Arbitration
International Trade
Investment Funds
Labor, Employment and Immigration Law
Latin America
Legislative/Law Reform
Litigation
Mergers and Acquisitions
Privacy
Private Clients
Privatization
Public Finance
Public International Law
Real Estate
Securities
Securitization
Sovereign
Tax
Technology
Telecommunications
Trade and Commodity Finance

New York State Bar Association
International Law and Practice Section

SAVE THE DATES

FALL MEETING 2005

LONDON, ENGLAND
OCTOBER 18-23, 2005

"Cross Atlantic Legal Practice in a Time of Global Change"

The 2005 Fall Meeting of the New York State Bar Association's International Law and Practice Section will be held in London, England from Tuesday, October 18 through Sunday, October 23, 2005. The theme will be "Cross Atlantic Legal Practice in a Time of Global Change," and MCLE credit will be available. The meeting will address practice issues across a wide spectrum of legal disciplines and specialties, with a view to strengthening the quality of legal practice among the United States, United Kingdom, the countries of the European Union and the Americas.

The educational programs will be held in cooperation with, and at the Headquarters of the Law Society of England and Wales on Chancery Lane in the heart of "Legal London."

Hotel accommodations include the Chancery Court Hotel and Kingsway Hall.

Planned social events include dinner at Middle Temple and a gala dinner at Somerset House, home of the Courtauld Gallery and the Gilbert Collection. Spousal trips are also being planned.

Sponsorship opportunities for the meeting will be available soon.

Mark your calendar now and plan to attend!!

International Law and Practice Section

New Section Members

Saboor H. AbdulJaami
Rashmi Elizabeth Abraham
Karen Elizabeth Abravanel
Sarah Adler
Anil Advani
Alvaro J. Aguilar
Iboroma Tamunoemi Akpana
Jean C. Albert
Jawad I. Ali
Reema Ibrahim Ali
Cary Cameron Allen
Peter Allen
Sergio Alves
David A. Amamoo
Yuliya B. Andresyuk
Tanweer Sheikh Ansari
Minoru Aosaki
Jonathan P. Armstrong
Jose Maria Arrufat Gracia
Kamilla Aslanova
Marine Assadollahi
Amjad Hashem Atallah
Nebiat Zemicael Baarez
Jessica Bailess
Paula J. Bailey
Jessica M. Baker
Diego Baldomir
Michael Opeyemi Bamidele
Che L. Banjoko
Amy Jeanne Bann
Florence Gwennola Barc
Daniela Barthels
Ciatta Z. Baysah
Denis A. Bazlov
James J. Bee
Mischa Z. Beitz
Fiona Bell
Saul Ben-Meyer
Jamie McQuerrey Bennett
Lauren Jennifer Berrol
Dmitry Ruslanovich Besedin
Susan M. Betz Jitomir
Leila Sultana Bham
Monika Ona Bileris
Andrea Bisconti
Yasmin Adelle Blackburn
Angelyn M. Bohland
David Christopher Boles
Nathaniel B. Bolin
Laurence Drew Borten
Jutta Elisabeth Bosch
Francesco Boschini
Marie-Celine Bouvier
Caesar Brazza
David Aiden Bredin
Franklin K. Breselor
Zygmunt Brett
Michael Brewer
Peter L. Briger
J. Philippe W. Brisson
Lara Brook
Mary Sue Brooks
Catherine Ann Bump
Taras Burhan
Michael Burian
Robert Burk
Albert A. Byer
Theodore S. Calabrese
Cynthia Carlson
Gavin Carrucan
Jennifer Carton
Antonio Caruso
Valeria R. Casale
Ernesto Franco Cavelier
Michael V. Cerny
Linda S. Chan
Min Chan
Hsin Yi Sheana Chen
Hui-wen Chen
Hanz Giovanni Chiappetta
Christopher Ken Chinn
Chiyoung Cho
John Jong-wook Choe
Chi Chung
Keeyong Chung
James F. Clark
Lance A. Clarke
Olive Roxane Coffi
David M. Cohen
Helayn Cohen
Kevin E. Colby
Mattia Colonnelli De Gasperis
Pierre-Henri Conac
Nilo V. Concepcion
Meredith Wells Cook
Aisling Gillian Costello
Charles Corwin Coward
Evan James Criddle
John E. Cullen
Cara Dee Cutler
Tony L. D'Anzica
Ari S. Davis
Evan A. Davis
Alberto De La Pena
Harry A. DeMell
Fatos Dervishi
Briana Devaser
Lloyd DeVincenzi
Herman Singh Dhade
Nicholas Robert Diamand
S. Lynn Diamond
Brian DiBenedetto
Alexandra Diehl
Stephanie Madeleine Djian
Patrick J. Donovan
Lisa Karol Doran
Yvon Dreano
Leigh Duffy
Isabelle Dunn
Matthew Stuart Dunn
Matthew Stanton Dunne
Elizabeth Anne Duwe
Heather Anne Eisenlord
Alina Dawson Eldred
Mitchell Ryan Emig
Howard Henry Engelskirchen
Jeffrey Dale Engle
Jonathan A. Espiritu
Enrique Antonio Javelosa Esquivel
Jeremy Wade Estabrooks
Allyson G. Evans
Carla V. Faraldo
Teresa Maurea Faria
Zhen Feng
Christopher Richard Fenton
Edward J. Ferraro
Gilbert C. Ferrer
Chad Fights
Dante Figueroa
Daniel S. Finnegan
Nuria Crystal Flores-Conticello
Ruben S. Fogel
S Elizabeth Foster
Glenn G. Fox
William Wesley Frame
Kenji Fukuda
Reiko Fukushima
Fernando Gandioli
Kiera Susan Gans
H. Douglas Garfield
Aoife Marguerita Gaughan
Liam Ge
Michael Gerard
Wendy B. Gerber
Joanna Beatrice Gerson
Aravinda Ghosh
Cynthia L. Giagnocavo
Simon James Gildener
Lale P. Giray
Ilana Golant
Jeanette Goldsberry
Marc J. Goldstein
Jose R. Gonzalez
Ronald Emil Marburg Goodman
Janelle L. Gordon
Ernest Gorriti
Jennifer L. Gorskie
Viviana Lopez Green
Brian Ira Greene
Michael Spitzer Greene
Naima Gregory
Shamilah Grimwood
Michelle R. Gross
Henry Gordon Grossberg
Nicole Bragg Gryzenia
Guiying Guo
Anjum Gupta
Victoria J. Hadfield
John Halski
Cynthia A. Hamra
Lana S. Han
Adam Hanan
Allison Harder
David Tipp Hardin
Harold Stephen Harris
Charlotte Jayne Hart
William Hay
Maura Hayes-Chaffe
Sadeka Hedaraly
Andrew Hehir
Sera Heo
Nicolas Jorge Herrera
Paul J. Herrmann
Niamh Mary Herron
Karen Denise Heymann
Erica Lynn Hicks
Neal Leigh Higgins
Sarah Frances Hill
Anna Hock
Kyle Andrew Hollingsworth
Kimberley Hunt
Kristopher M. Hyman
Jama A. Ibrahim
Kumi Tiara Ikeda
Jorge Luis Inchauste
Natsue Ishida
Saori Ishida
Ren Ito
Rajan Sandeep Jain
Felix Levon James
Michelle M.L. Jenab
Barbara Johnston
Everett Francis Jones
Susan Zetta Jorgensen
Kevin Jost
Jerome Jotterand
Johannes Karl-Heinz Juette
Nicole M. Junco
Yevgeniya Kagan
Stephen Kalman
Adrienne Kalosieh
Peter K. Kamran
Jean Paul Kandolo
Hyeon Kang
Suesie Kang
Jacob Max Kaplan
Nicholas Hull Kappas
Lara Karam
Eloise M. Kauvar
LaShon Kimberly Kell
Donatella Petrucci Keohane
Christoph Kerres
Sam Khantsis
Golzar Kheiltash
Margaret Anne F. Khoury
Kim Killion
Kwang Woong Kim
Victoria L. King
George Klidonas
Kuniaki Kobayashi
Maryana A. Kodner
Mario A. Koenig
Alexander W. Koff
Natasha G. Kohne
Kevin Kolben
Irina Kolmakova

Albert J. Kostelny
Jaromir Kovarik
Jacqueline E. Kozary-Scott
Valeria Kozhich
Torsten M. Kracht
Goergina Kracun
Alexandra Decamp Kremer
Chris D. Krimitsos
Darlene Palaganas Kurt
Richard Kuslan
Grant Martin Lally
David Tenyu Lan
Michelle N. Langhoff
Eleni A. Larcombe Day
Genevieve K. Larobardier
Susan M. Lazorchick
Christopher John Le Mon
Alan G. Lebowitz
Min-Kyong Lee
Young Jun Lee
Robert Lefkowitz
Devin S. Lei
Paul Nicholas Lekas
Kevin J. Lennon
Glenn David Leonardi
Michael A. Levine
Ilona Lewyckyj
Wen-chun Li
Enrique E. Liberman
Emma Louise Lindsay
Joan C. Lipin
Amy Norris Lippincott
Barra Ross Little
Howard M. Loeb
Eleanor Anne Loukass
Zheng Lu
Sönke Lund
Bing Luo
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