



Corporate Client e-Newsletter

April 2015

Welcome to the April edition of the Primerus Xpress. This month's edition contains several articles on emerging legal issues that may impact your business; including, healthcare, bankruptcy, customs challenges, data breaches, and employment developments. This edition also contains several informative articles covering a variety of international legal issues, including, but not limited to, exchange controls, contracts, real estate, plus the legal environments and opportunities in various countries. Each article shares insights into the author country's laws and judicial proceedings, which are all home to many multinational companies and subsidiaries.

The articles in this e-newsletter were authored by Primerus members and provide you with relevant information regarding legal developments, best practices, and trends from around the world. If you are seeking a specific article or legal development and don't find it in this e-newsletter, please feel free to contact me at csluss@primerus.com.

Below please find a list of upcoming events. If you or a colleague would be interested in attending, please let us know.

- May 13-14 - [Primerus Latin America & Caribbean Institute and ACC Brazil Client Networking Event](#) (Sao Paulo, Brazil)
- June 11 - [Primerus Business Law Institute Regional Symposium](#) (Dallas/Fort Worth, TX)
- October 1st - [Primerus Legal Risk Management Seminar: A Comparative Analysis by World Region](#)
 - To register, please contact csluss@primerus.com
- October 18-21 - Association of Corporate Counsel Annual Meeting (Boston, MA)
 - Primerus is a corporate sponsor of the ACC. Please stop by our booth in Boston.
- October 22-23 - Primerus Defense Institute Insurance Coverage & Bad Faith Seminar (New York, NY)
 - For more information, please contact Katie Bundyra - kbundyra@primerus.com

Primerus provides corporate clients with an alternative to the large law firms. Primerus firms are invited into membership and audited annually in order to provide clients with partner level service at reasonable fees anywhere in the world. Please visit the following link to find a [Primerus member near you](#).

Sincerely,
Chad Sluss
Senior Vice President of Services

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Healthcare

UNITED STATES

Morcellators: The 'Next Big Thing' for Medical Device Litigation?

By: [Jonathan M. Hooks, Esq.](#)

***Christian & Small LLP
Birmingham, Alabama***

"How big will my scar be?" As modern surgical techniques have improved over the last few decades, this is a question finally being answered to the delight of many patients. Whereas certain surgeries historically involved extensive scarring and long recovery times, the advent of newer technologies has rendered some of those surgical procedures minimally invasive.

[Full Article](#)

UNITED STATES

What Should You Do If the Government Comes Knocking?

By: [Drew Barnholtz, Esq.](#)

***Schneider, Smeltz, Ranney & LaFond PLL
Cleveland, Ohio***

Knock, Knock. Who's there? The Government. The Government Who? The Government, who's here to collect all of your computers and paperwork to see if you committed fraud." This is a terrible Knock Knock joke! No long-term care provider ever wants to look through the proverbial peephole in their front door and see a representative from the Office of the Inspector General (OIG), Department of Justice (DOJ) or Ohio Department of Health (ODH) staring back at them. Long-term care providers and their ancillary providers (i.e., Skilled Nursing Facilities (SNFs), Hospices, Home Health Agencies, transportation providers) can prepare themselves for routine and unannounced audits and investigations by ensuring they implement strong compliance programs, policies and procedures and training. This article will provide nuts-and-bolts ideas for ensuring SNFs and their ancillary providers avoid an investigation/enforcement action and the best response if they are the subject of an investigation or audit.

[Full Article](#)

Business

AUSTRALIA

Help! I've become bankrupt. What are the implications for me as the bankrupt spouse in Family Court property proceedings?

By: [HHG Legal Group](#)

West Perth, Australia

If you are the spouse in a Family Court proceeding who becomes bankrupt, your property is immediately vested in the Trustee in bankruptcy ("the Trustee") except for your:

1. superannuation. (However, if you made payments made to a superannuation fund in order to defeat creditors those payments can be clawed back);
2. necessary household goods (beds, fridges etc);
3. motor vehicles to a value of approximately \$7,200 (if the vehicle is worth more than this, the trustee can take the vehicle and must refund the bankrupt \$7,200);
4. tools of trade of approximately \$3,550; and
5. proceeds of certain damages claims for compensation, and any property purchased with, or substantially with, the proceeds of such a claim.

[Full Article](#)

AUSTRALIA

"Seller Beware" as important as "Buyer Beware" when selling 'off the plans'

By: [HHG Legal Group](#)

West Perth, Australia

Before signing a contract to buy real estate, buyers must make inquiries about what they are buying. Otherwise, they may lose their right to complain that they are not getting what they bargained for. However, this does not mean that sellers (and their agents) can avoid responsibility to make sure the property is properly described in the contract, particularly if they are sophisticated property developers.

[Full Article](#)

GERMANY

Customs Law - Business Travel Under the Oversight of Customs

By: [Dirk Pohl, Esq.](#)

WINHELLER Attorneys at Law & Tax Advisors

Frankfurt, Germany

Business Travel Under the Oversight of Customs

Karl-Heinz Rummenigge has been through this: In 2013, the president of FC Bayern was stopped by customs at Munich Airport when arriving in Germany from Qatar with two luxury watches in his possession that he had failed to register as in free circulation and to pay customs duty on. He was fined a handsome sum of EUR 249,000, plus an entry relating to tax evasion was made in his certificate of conduct.

[Full Article](#)

INDIA

Exchange Control: Increase in the limit of Liberalised Remittance Scheme for Resident Individuals

By: [Seth Dua & Associates](#)

New Delhi, India

The RBI has decided to increase the limit under the Liberalised Remittance Scheme ("LRS") from USD 75,000 to USD 125,000 per financial year. Further, RBI has clarified that resident individuals can now invest upto USD 125,000 per financial year under this scheme for acquisition of immovable property outside India.

[Full Article](#)

NETHERLANDS

The Netherlands opens its doors to innovative entrepreneurs

By: [Ynze Kliphuis, Esq.](#)

Russell Advocaten B.V.

Amsterdam, Netherlands

Innovative international entrepreneurs will get more scope and time to establish a business in the Netherlands. To whom does this regulation apply and how can you use it as efficiently as possible?

There will be a special visa for ambitious, creative, and innovative entrepreneurs wishing to start a business in the Netherlands as self-employed professionals. These entrepreneurs will be provided with the opportunity to stay in the Netherlands for a maximum period of one year. During this period, they can set up their

company and, for instance, make the necessary contacts and take care of permits.

[Full Article](#)

TURKEY

Where Is Turkey In The "Offset"? Current Legal Environment And The Recent Legislation Change

By: [Serap Zuvin, Esq.](#) & [Beril T. Hepagir, Esq.](#)

Serap Zuvin Law Offices

Maslak Sisli/Istanbul, Turkey

The Turkish Republic currently has two types of offset implementations: military and civil. The military offset implementations in Turkey are regulated under the Law on the Establishment of the Undersecretariat for Defence Industries¹ and the Industrial Participation/Offset Directive² as issued by the Ministry of National Defence of Turkey. The minimum commitment ratio in military offsets must be equal to 50% of the value of the procurement agreement for industry participation/offset arrangements.

[Full Article](#)

UNITED STATES

Internal Email: You Own It, You Control It. Think Again.

By: [W. Steven Nichols, Esq.](#)

Christian & Small LLP

Birmingham, Alabama

Does your company have a policy similar to the following?

"Email is the sole and exclusive property of the Company, and should be used for business purposes only. Employees are prohibited from using the email system in connection with engaging in activities on behalf of organizations or persons with no professional or business affiliation with the Company, and from sending uninvited email of a personal nature."

[Full Article](#)

Employment

AUSTRALIA

Notes on a Scandal: some recent dubious marks versus the prohibition of scandalous trademarks under the Trade Marks Act

By: [Patricia Monemvasitis, Esq.](#) & [Kim Leontiev, Esq.](#)

Carroll & O'Dea

Sydney, Australia

Permitting a moment of reflection and looking back upon 2014, many big news items come to mind, and whilst no one event defines a whole year, some can certainly leave a prominent mark. The disappearance of Malaysia Airlines Flight MH370 just over a year ago to date, and the destruction of flight MH17 have been two of the most shocking, mysterious, perplexing, and tragic events - all the more intensified by the eerie coincidence and the widespread speculation that followed. Amidst all this, came also the IP scandals when both the MH370 and the MH17 became the subject of Australian trade mark applications lodged within days of the disappearance of MH370 (12 March 2014 "MH370" in Class 41, lodged by Aoan International), and within 24 hours of the crash of MH17 (18 July 2014 "MH17" in Class 41, lodged by Remit Now Int'l Ltd). Whilst not the most widely circulated of the "side-news stories" in each case, these quickly became particularly notorious and base examples of the problems surrounding the use of "offensive trademarks".

[Full Article](#)

AUSTRALIA

Employee Share Schemes Simplified

By: [HHG Legal Group](#)

West Perth, Australia

The Federal Government has recently released proposed changes to the tax treatment of Employee Share Schemes ("ESS") to make it easier for companies to set up an ESS. While some of the changes are aimed to assist start-up companies, other changes apply to all companies and will have a broader impact on how employers use an ESS as an incentive.

[Full Article](#)

HONG KONG

Anti-Sexual Harassment legislation in Hong Kong: a major step forward!

By: [QNC Lawyers](#)

Hong Kong, Hong Kong (SAR)

The Sex Discrimination Ordinance of Hong Kong ("SDO") was recently amended to provide "new" protection

to employees of the service industries (e.g. flight attendants, crew members on ships and sales representatives) against sexual harassment by customers and prospective customers.

[Full Article](#)

HONG KONG

Insurance & Personal Injury - Employer Found Vicariously Liable for Assault Committed by Their Employees

By: [ONC Lawyers](#)

Hong Kong, Hong Kong (SAR)

In our previous newsletter "Employer's Liability Towards Unauthorized Act of Employees", we have outlined the "close connection test" formulated by the Court of Final Appeal¹. In gist, the Court will look at whether a close connection is found between the employee's unauthorized tortious act and his employment to make it fair and just to hold his employer vicariously liable. Close connection is the basic criteria for employer's vicarious liability in regard to all torts committed by an employee during an unauthorized course of conduct.

[Full Article](#)

INDIA

Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 ("LE Amendment Act")

By: [Seth Dua & Associates](#)

New Delhi, India

Original Act: Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 ("LE Act")

In terms of the LE Act, employers of 'very small establishments', i.e. establishments in which not more than 9 (nine) persons are employed or were employed on any day of the preceding 12 (twelve) months ("Very Small Establishments") and 'small establishments', i.e. (establishment in which not less than 10 (ten) and not more than 19 (nineteen) persons are employed or were employed on any day of the preceding 12 (twelve) months ("Small Establishments") were exempted from furnishing returns or maintaining the registers under certain labour legislations as set out in the LE Act, provided that returns specified under the LE Act were filed by the employer.

[Full Article](#)

UNITED STATES

Anti-Harassment Policy a Defense to Supervisory Sexual Harassment Claim

By: [Thomas Paschos, Esq.](#)

Thomas Paschos & Associates, P.C.

Haddonfield, New Jersey

In *Aguas v. State of New Jersey*, 2015 N.J. LEXIS 131 (Feb. 11, 2015), Ms. Aguas was a corrections officer who alleged serious sexual harassment by two of her male supervisors at the New Jersey Department of Corrections (DOC) facility where they worked. While the DOC had a written anti-discrimination policy and provided training to its employees, Ms. Aguas did not file a written complaint but rather she informally reported the harassment in conjunction with another work issue. The corrections facility conducted a full investigation and concluded the allegations could not be substantiated. Although Ms. Aguas could appeal the investigation findings, she never did and instead filed suit against the DOC under the New Jersey Law Against Discrimination (NJLAD).

[Full Article](#)

UNITED STATES

NLRB General Counsel Issues Guidance on Common Employee Handbook Policies that his Office on NLRB Considers Unlawful

By: [Peter Bennett, Esq.](#) & [Frederick B. Finberg, Esq.](#)

The Bennett Law Firm, P.A.

Portland, Maine

On March 18, 2015, NLRB General Counsel Dick Griffin reported on recent NLRB cases arising in the context of employee handbook rules. In recent years, the NLRB General Counsel, in concert with the NLRB (a Board that is controlled by Democrats), has pursued complaints against employers relating to the employers' employee handbooks. In short, the NLRB theorizes that certain common employee handbook policies are unlawful because of the mere possibility that an employee may interpret an otherwise reasonable workplace policy as one that inhibits employees' rights to act in concert with one another with regard to terms and conditions of employment (referred to as an employee's right to engage in Section 7 activity). These complaints have nothing to do with a change in the law, but rather are about a different and aggressive interpretation of existing law.

[Full Article](#)

Primerus Member Supreme Court Update

UNITED STATES

Supreme Court Issues Favorable Opinion on behalf of Wisconsin Industrial and Commercial Users of Natural Gas - Could return hundreds of millions of dollars to the Wisconsin Economy

**By: Robert L. Gegios, Esq.
Kohner, Mann & Kailas, S.C.
Milwaukee, Wisconsin**

Primerus member Kohner, Mann & Kailas, S.C. (KMK), announced that the Supreme Court of the United States has issued an opinion in favor of KMK's clients that strongly protects Wisconsin businesses and could return hundreds of millions of dollars to the Wisconsin economy. The opinion addresses lawsuits KMK brought, on behalf of Wisconsin industrial and commercial users of natural gas, to address alleged price-fixing in the natural gas industry.

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We seek out, accept and retain only the best firms for membership. Each firm is screened to ensure its commitment to excellence as embodied in the Six Pillars: Integrity, Excellent Work Product, Reasonable Fees, Continuing Legal Education, Civility and Community Service. After more than 20 years, in which Primerus has experienced tremendous growth in membership and expansion of services, we have never wavered from this commitment, and we never will.

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