



Corporate Client e-Newsletter

February 2014

I am pleased to provide the February 2014 edition of *Primerus Xpress*, our monthly e-Newsletter for corporate clients.

I hope you will take a moment to look through this month's collection of articles, all of which are authored by Primerus lawyers to provide corporate clients and in-house counsel relevant and up-to-date news regarding current developments, best practices, and legal trends from around the world.

You can find out more about any of the authors in our e-Newsletter by simply clicking on their name. I also invite you to explore the resources available at primerus.com, including a directory of Primerus firms complete with practice area and bio information, as well as the current electronic version of our *Paradigm* magazine.

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Sincerely,
Nick Kacher
Sr. Vice President and General Counsel
International Society of Primerus Law Firms

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Paradigm Magazine

Resources

Business

USA

Raising Money from Accredited Investors through General Solicitations and Advertisements: The Amendments to Rule 506

By: [Mark W. Klein, Esq.](#)

Brody Wilkinson PC

Southport, CT

On September 23, 2013, the amendments to Rule 506 of Regulation D under the Jumpstart Our Business Startups Act (known as the "JOBS Act") became effective following the adoption of implementing rules by the Securities and Exchange Commission ("SEC"). These amendments lift the longstanding ban on general solicitations and advertisements to accredited investors. As a result, companies can now pitch their private investment opportunities to accredited investors through newspaper, television and website advertisements, and other previously prohibited means, if they comply with certain requirements. This will significantly increase the number of potential investors for small businesses and start-up companies.

[Full Article](#)

USA

Alert-Qualified Small Business Stock (QSBS) Retroactive Tax

By: [Ryan W. Lockhart, Esq.](#)

Buchman Provine Brothers Smith LLP

San Francisco, CA

In 1993, California adopted a statute which provided for the exclusion or deferral of gain from the sale or exchange of qualified small business stock ("QSBS"). In order to qualify as QSBS, the stock must be in a domestic C corporation which has aggregate gross assets of less than \$50,000,000. In addition, at least 80% of the C corporation's business must be an "active business," rather than investment activity or certain service provider businesses. The California statute generally mirrored the federal tax statute, but added a requirement that at least 80% of the company's payroll at the time that the stock was purchased be within California and at least 80% of the assets of the company be located within California during the holding period for the stock in order to qualify for the QSBS exclusion or deferral.

[Full Article](#)

Environmental

USA

Avoiding Superfund Liability: EPA Adopts New Standard for Phase I Environmental Site Assessments

By: [Sedina L. Banks, Esq.](#) and [Brian E. Moskal, Esq.](#)

Greenberg Glusker

Los Angeles, CA

On November 6, 2013, ASTM (formerly known as the American Society for Testing and Materials) revised its standard for conducting Phase I environmental site assessments, known as Standard E1527-13 ("Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process"). ASTM E1527-13 is the first revision to the ASTM Phase I standard since its 2005 revision of the standard (known as ASTM E1527-05).

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International Business

THE NETHERLANDS

New Laws, New Opportunities in 2014

By: [Russell Advocaten B.V.](#)

Amsterdam, The Netherlands

As of 1 January 2014, public limited companies and financial institutions are enabled to revise or to claim back excessive or incorrectly paid executive bonuses ("clawback"). In addition, the legislation includes rules for the settlement of stock exchange profit by members of the management board and the obligation to account for the bonus policy through the annual report towards the shareholders. Generally, this will be the task of the Supervisory Board.

[Full Article](#)

MEXICO

Energy Reform-Mexican Constitution

By: [Sergio Mario Ostos, Esq.](#) and [Antonio Franck, Esq.](#)

Cacheaux Cavazos & Newton

Mexico City, Mexico

On December 21, 2013, the decree that reformed Articles 25, 27 and 28 of the Mexican Constitution relating to the energy, electric and hydrocarbon sectors came into effect. This decree is best known as the "Energy Reform."

[Full Article](#)

MEXICO

The Importance of Designating Successor Trust Beneficiaries in Real Estate Management Trusts

By: [Marimar Perez-Cacheaux, Esq.](#) and [Ramon Concha, Esq.](#)

Cacheaux Cavazos & Newton

Mexico City, Mexico

There exist many trusts in Mexico that were created in order for foreigners to acquire and own real estate in the restricted zone (a strip of 50 kilometers - approximately 31 miles - along the coast, or 100 kilometers - approximately 62 miles - from the border). In any of these situations, a foreigner contracts a Mexican bank (the "Trustee"), so that real estate is transferred to the trust and the foreigner, in his/her capacity as trust beneficiary, has the right to use and enjoy the real property. If the trust was duly structured and formalized, the foreigner, as trust beneficiary, shall designate successor trust beneficiaries, meaning that he/she will name the person or persons who will replace him or her in the event of death.

[Full Article](#)

USA

U.S. Economic Sanctions Laws: 5 Things Every Company Engaged in International Transactions Should Know and Best Practices for Compliance

By: [Alan M. Dunn, Esq.](#), [Jennifer M. Smith, Esq.](#) and [Jumana M. Misleh, Esq.](#)

The Law Offices of Stewart and Stewart

Washington, DC

This is the second in a series of articles by Stewart and Stewart on Best Practices in International Transactions and Trade. Last month's article covered U.S. Export Control laws. In this month's article, we address issues every company engaged in international transactions and trade needs to know about U.S. economic sanctions laws and best practices for compliance with these laws. Please watch for future articles covering best practices for compliance with the Foreign Corrupt Practices Act (FCPA), Antiboycott Regulations, and other customs and foreign trade laws.

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USA

Trade Adjustment Assistance: Rapidly Increasing Use by Workers Whose Employers Are Moving Production Offshore in the Past Decade

By: [Terence P. Stewart, Esq.](#)

The Law Offices of Stewart and Stewart

Washington, DC

The Trade Adjustment Assistance ("TAA") program has been part of the political compromise behind trade liberalization since the Trade Expansion Act of 1962. TAA is based on the concept that, while trade liberalization should be an economic benefit for the nation as a whole, there are workers, industries, and communities who will be adversely affected by trade liberalization and who would benefit from training and other benefits to help them adjust to the changing business environment in the United States.

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Labor & Employment

USA

Alert-Cal. Supreme Court Re-Visits Mandatory Arbitration Clauses in Employment Contracts: *Sonic-Calabasas A, Inc., v. Moreno*

By: [Horace W. Green, Esq.](#)

Buchman Provine Brothers Smith LLP

San Francisco, CA

In 2011, the California Supreme Court held that an employment contract requiring an employee to arbitrate all claims, which effectively acted to waive the employee's right to bring a claim to the Labor Commissioner alleging the employer's failure to pay wages (known as a "Berman" hearing), violated public policy and was therefore unlawful. *Sonic-Calabasas A, Inc. v. Moreno* (2011) 51 Cal.4th 659 (*Sonic I*). The Court also held that this rule was not preempted by the Federal Arbitration Act ("FAA") because it did not discriminate against arbitration agreements. However, in October 2011 the United States Supreme Court vacated the judgment and remanded the case for further consideration in light of *AT&T Mobility LLC v. Concepcion*, 563 U.S. ____, 131 S.Ct. 1740 (2011) (*Concepcion*). *Concepcion* held that, in light of both federal law providing that arbitration agreements are enforceable in the same manner as other contracts, and liberal federal policy favoring arbitration, the FAA preempts any state law which prohibits outright arbitration of a particular type of claim.

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MEXICO

Minimum Wage Increased by 3.9% in Mexico

By: [Pablo Saenz, Esq.](#)

Cacheaux Cavazos & Newton

Mexico City, Mexico

On December 18, 2013 the National Commission on Minimum Wages (the "Commission") approved a 3.9% increase in the minimum wage, the same which became effective on January 1, 2014. Such increase is relevant in that employees in Mexico have a right to receive wages that are not less than the general or professional minimum wages.

[Full Article](#)

Products Liability Defense

USA

Sophisticated Users Failure to Warn

By: [Tonya D. Hubinger, Esq.](#)

Buchman Provine Brothers Smith LLP

San Francisco, CA

In a recent California appellate court decision, *Pfeifer v. John Crane, Inc.*, the Second Appellate District opined on the "sophisticated intermediary" defense. In a unanimous decision, the court held that when a manufacturer provides hazardous goods to a "sophisticated" intermediary that supplies the goods to its employees or servants, the supplier is subject to liability for failure to warn of the hazards, absent some basis for the manufacturer to believe that the ultimate users know or should know the hazards.

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Paradigm Magazine

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