



Corporate Client e-Newsletter

December 2014

Welcome to the last edition of the Primerus Xpress in 2014. I understand that you are all busy enjoying the festivities of the season, but I hope you will take the time to read through this edition, as it contains some very valuable legal information that may affect your business or its international components. 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 LDingman-Nowicki@primerus.com.

Happy Holidays and Best Wishes for a Successful New Year from all of us at Primerus!

Sincerely,
Lisa N. Dingman-Nowicki, Esq.
General Counsel
International Society of Primerus Law Firms

In this Issue...

Primerus Events

Articles:

[Business](#)

[Employment](#)

[International Business](#)

[Doing Business in the Asia Pacific Region](#)

[Paradigm Magazine](#)

[Resources](#)

[About Primerus](#)

Primerus Events

Primerus Defense Institute Transportation Seminar

February 19-20, 2015

The Westin San Diego Gaslamp Quarter - San Diego, California

[Agenda](#)

Primerus Asia Pacific Institute/Corporate Client Networking Event

April 2-3, 2015
Singapore

Primerus Defense Institute Convocation

April 23-26, 2015
The Ritz-Carlton - Amelia Island, Florida

[Agenda](#)

Primerus Latin America & Caribbean Institute/Association of Corporate Counsel Brazil Networking Event

May 14, 2015
Sao Paulo, Brazil

Association of Corporate Counsel Annual Meeting

October 18-21, 2015
Boston, Massachusetts - Primerus will be a corporate sponsor

To learn more about these events, please contact Lisa N. Dingman Nowicki via email at L.Dingman-Nowicki@primerus.com

Business

CANADA

Successful Business Essentials

By: *Houser Henry & Syron LLP*
Toronto, Canada

Successful businesses are built on a solid foundation in which business owners have essential elements in place to promote growth. These elements allow business owners and their team to spend more time delivering value to customers.

In recognition of last month's celebration of Small Business Week we offer 3 fundamental elements that are crucial to ready a business for sale and successfully transition it to the next generation:

- (i) Business Structure;
- (ii) Governing Agreements and Contracts; and
- (iii) Employment Agreements.

[Full Article](#)

UNITED STATES

How Can Non-Profits, Particular in Health Care, Obtain Federal Funds Now: Focus on Federal Agency Grants

By: *Kathleen Hatfield, Esq.*
Stewart and Stewart

Washington, DC

In this difficult economic environment, the U.S. government has targeted non-profits for the continued distribution of funds through a number of continually-evolving mechanisms, some of which we have discovered do not involve "traditional" competitive grant requests. As explained below, at least one \$230 million health care program we've found is formula-based - meaning eligible applicants who submit a properly completed application will be funded.

[Full Article](#)

Employment

UNITED STATES

Hospital Immune from Monetary Damages in Lawsuit Brought by Disciplined Physician

By: *Thomas Paschos & Associates, P.C.*
Haddonfield, New Jersey

In *Hurwitz v. AHS Hospital*, 2014 N.J. Super. LEXIS 161 (Nov. 24, 2014), plaintiff, Dr. James Hurwitz filed a lawsuit against Overlook Hospital (legally known as AHS Hospital) after the hospital's board of trustees

stripped him of his surgical privileges. Hurwitz, who earned operating privileges at Overlook in 1998, came under review by the hospital in 2010 after shortcomings were revealed in the care that plaintiff had provided to certain patients. Over the next two years the investigation grew. In August 2010, his privileges were temporarily suspended pending the outcome of the investigation. After extensive administrative hearings conducted within the hospital, in which plaintiff and his attorney participated, the hospital's Board of Trustees revoked Hurwitz's clinical privileges. Hurwitz contended that the actions taken against him by the hospital were arbitrary, unreasonable, and unduly punitive. He sought relief in the trial court, based on several legal theories. Specifically, Hurwitz alleged breach of contract, breach of the implied covenant of good faith and fair dealing and violation of his due process rights.

[Full Article](#)

International Business

AUSTRALIA

Ditelo in Italiano! Five Star Inventiveness makes a golden trade mark brew in Cantarella Bros Pty Limited v Modena Trading Pty Limited [2014] HCA 48

By: [Patricia Monemvasitis](#), and [Kim Leontiev](#)

Carroll & O'Dea

Sydney, Australia

The fight over the registrability of Italian laudatory expressions as trade marks for coffee in Australia has finally reached the bottom of the cup last week (3 December 2014) with the High Court delivering its verdict. In a 4:1 ruling the High Court has read the grounds in favour of Cantarella Bros Pty Limited ("Cantarella"), overturning the decision of the Full Federal Court and thus allowing the maintenance of registration of Cantarella's trademarks: "Oro" and "Cinque Stelle," which translate from Italian as "gold" and "five star."

The decision marks an important clarification by the High Court on the capacity for inherent distinctiveness of foreign language words used as trade marks in Australia, and one that has significantly expanded the possibilities of registration for present and future trade mark owners.

[Full Article](#)

AUSTRALIA

Not your Domain! DC Court sides with ICANN blocking the attempt to seize international-top level domain names via the US Federal Court

By: [Carroll & O'Dea](#)

Sydney, Australia

Earlier this year we reported via this Blog about the attempt by a group of judgment creditors of a successful civil claim against the government of Iran to satisfy part of their award by obtaining the issue of writs of attachment - seizure orders for a number of country-code top level domain (ccTLDs) such as .ir (Iran), .sy (Syria) and .kp (North Korea) [see link to article Whose Domain is it anyway? The startling attempt to seize international top-level domain names via the US Federal Court]. The US District of Columbia Court (DC Court) has now issued its ruling - upholding ICANN's application and ordering that the writs of attachment should be quashed.

[Full Article](#)

HONG KONG

Green Light for Liquidators to Assign Equitable Interests in Debt Recovery Action to Litigation Funding and Recovery Agent

By: [ONC Lawyers](#)

Hong Kong, Hong Kong (SAR)

It is not uncommon for liquidators to identify actionable claims when looking into the affairs of a winding-up company, however, it may not always be feasible to pursue such claims either because the winding-up company lacks sufficient funds or there are high uncertainty in the chance of successful recovery.

[Full Article](#)

HONG KONG

Recent Changes of the Foreign Exchange Control Regulation on Cross-Border Guarantee of the PRC

By: [ONC Lawyers](#)

Hong Kong, Hong Kong (SAR)

In the context of PRC cross-border financing, cross-border guarantee and security ("CBG") means the act of guarantee or provision of security (collectively as "Guarantee") which (1) involves a written binding commitment by the guarantor or security provider (collectively as "Guarantor") to pay the creditor and (2) might cause cross-border payments and receipts, transfer of property ownership, or other transactions affecting the balance of payments of the PRC.

INDIA

Routing of funds raised abroad to India

By: [Seth Dua & Associates](#)

New Delhi, India

It has come to the notice of RBI that some Indian companies are accessing overseas market for debt funds through overseas holding / associate / subsidiary / group companies. It has also been reported that such borrowings are raised at rates exceeding the ceiling applicable in terms of extant FEMA regulations and that the funds so raised are routed to the Indian companies which accounts for sole/major operations of the group. Different modalities/structures are resorted to for channeling such funds for Indian operations including investment in rupee bonds floated by the Indian company.

[Full Article](#)

INDIA

Sikkim Government Issues First Regular License for Online Gambling

By: [Seth Dua & Associates](#)

New Delhi, India

In a recent major development, the Indian online gambling industry received an impetus with the grant of the first online gambling regular license for operations in India.

The Government of the State of Sikkim, which allowed online gambling activities with passing of the Sikkim Online Gaming (Regulation) Act, 2008 and the rules thereunder, has after a passage of 5 years granted the first regular license. The license has been granted to M/s. Future Gaming Solutions Private Limited, headed by lottery king Santiago Martin.

[Full Article](#)

MEXICO

Migration of Contracts for the Production of Hydrocarbons and Financed Public Works Contracts

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

Cacheaux Cavazos & Newton

Mexico City, Mexico

This article offers information about the procedures known as "migration" of contracts provided for in the Hydrocarbons Law and the Hydrocarbons Income Law, through which Petróleos Mexicanos (PEMEX) can request from the Department of Energy (SENER) the transformation of certain Contracts for the Production of Hydrocarbons (CIEPs) and the Financed Public Works Contracts (COPFs) to any of the following four new types of Exploration and Extraction Contracts (CEEs): license, production sharing, profit sharing and services contracts.

[Full Article](#)

MEXICO

Round One of Hydrocarbon Bids: Executive and Technical Sessions in Houston, Texas

By: [Alejandra Bueno, Esq.](#)

Cacheaux Cavazos & Newton

Mexico City, Mexico

On October 20, slightly more than two months after the preliminary announcement of the blocks to be bid on in the so called "Round One" for the exploration and extraction of hydrocarbons, the Department of Energy (SENER), the National Hydrocarbons Commission (CNH) and the Department of Finance (SHCP) convened a public meeting in Houston, Texas, entitled: Mexico Round One - Executive and Technical Sessions.

[Full Article](#)

TURKEY

Occupational Health and Safety

By: [Serap Zuvin Law Offices](#)

Istanbul, Turkey

Doh! Over the last seven (7) years Turkish companies have not made much progress in decreasing workplace injuries. According to official statistics, which are publicly available at the Turkish Statistical Institute, the number of the employees having an occupational accident stayed steady between 2007 and 2013 although the number of the employee increased during the same years. Therefore, the number of reported injuries for the respective period seemed to coming down due the fact that the number of the registered employees increased during such period. However, unofficial statistics may actually indicate a higher rate because of unregistered employees. Furthermore, in 2013, 17 percent of employees were reported to be at risk of an accident. In response, the Turkish government has responded to help fix the issue by updating legislation, and thus spawned a new field of trained work place professionals.

[Full Article](#)

TURKEY

Turkey's Journey, from Ratification to the Implementation of the Cape Town Convention: Turkey is on the Cape Town List!

By: [Serap Zuvun Law Offices](#)

Istanbul, Turkey

The Cape Town Convention on International Interests in Mobile Equipment ("CTC") is a multinational convention intending to harmonize and standardize transactions, involving certain movable assets. The CTC establishes global requirements and standards in terms of registration of sales contracts, leases, security interests as well as setting out legal remedies for events of defaults.

As of today, 74 states are parties to the CTC, yet the CTC has been ratified/accepted or approved by 62 of them.

[Full Article](#)

UNITED ARAB EMIRATES

An Introduction to Personal Guarantee

By: [Hassan Mohsen Elhais](#)

Al Rowaad Advocates & Legal Consultants

Dubai, United Arab Emirates

The economic boom in UAE has resulted in huge developments and a considerable increase in trade. This in turn has led to a rise in transactions which require a fast debt recovery mechanism. According to common practice in the UAE, the most secure and quickest method is the post-dated - and in some cases undated - cheque. This is often requested by creditors (financial institutions) and sellers, mostly in real estate transactions and trade. The rationale is mostly economic to individuals who are issuing the cheque, and how does personal guarantee play a role? In this Article, we attempt to analyze and overview UAE laws on Personal guarantee.

[Full Article](#)

UNITED ARAB EMIRATES

Arbitration in the UAE (Part IV of V): Enforcing Arbitration Awards

By: [Hassan Mohsen Elhais](#)

Al Rowaad Advocates & Legal Consultants

Dubai, United Arab Emirates

Therefore, parties wanting to enforce an award under the New York Convention must satisfy the requirements of the UAE Civil Code. In practice, enforcing arbitration awards can be a lengthy and unpredictable process. It is common for the UAE courts to require that the foreign award satisfies the rules and procedures of the UAE, and may refuse to enforce it if there is a violation of local laws. One potential difficulty arises in convincing the UAE Court that it did not have jurisdiction to hear the dispute in the first place (irrespective of the arbitration agreement between the parties). The UAE Court normally has a fairly broad jurisdiction over disputes including, for example, claims connected to monies or assets within the UAE and claims arising out of contracts executed or to be performed in the UAE, as well as claims over foreigners' resident in the UAE. Therefore, it is difficult to prove that the UAE Court did not have jurisdiction over the order.

[Full Article](#)

Doing Business in the Asia Pacific Region

Doing Business in the Asia Pacific Region

The following guide (see link below) is intended to be a helpful tool for clients and companies who are exploring, plan on, or currently provide legal services in the Asia Pacific region. Assembled by some of the world's finest law firms, this guide will prove valuable in addressing many frequently asked questions within the region.

[Doing Business in the Asia Pacific Region Guide](#)

Paradigm Magazine



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