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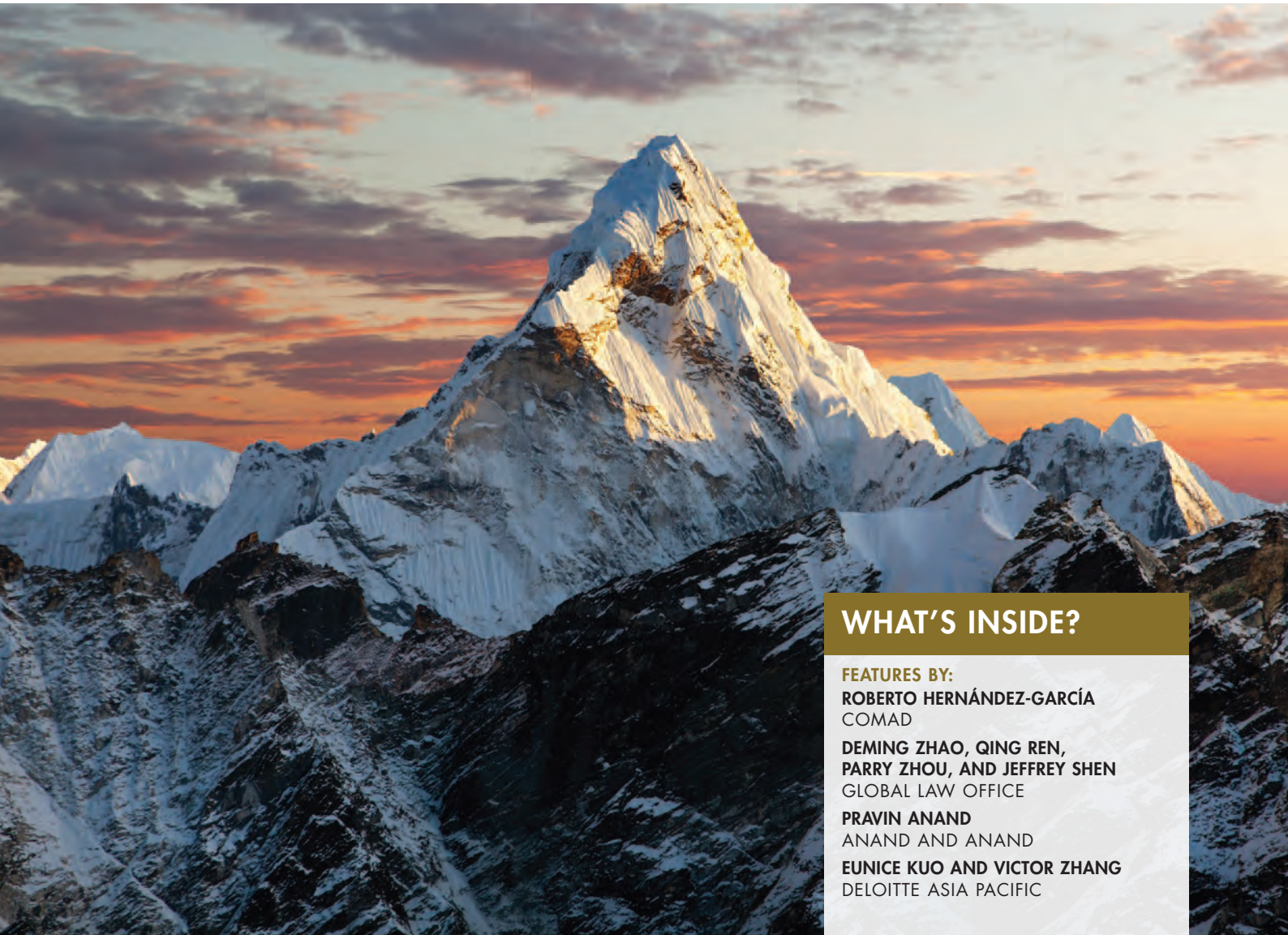

WHAT'S INSIDE?

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BEST OF THE BEST

Methodology

Welcome to the 2022 edition of the Best of the Best, the international legal market's leading guide to the top legal practitioners.

When first published in 1994, the Expert Guides were the first-ever guides dedicated to leading individuals in the legal industry. Since then we have continued to focus on individuals considered by clients and peers to be the best in their field. The Best of the Best compiles the top 30 practitioners in 15 areas of law. All the other practice areas we cover are included in the 2021 edition and will be updated in 2023. In the event of a tie on the number of nominations both practitioners are included.

Our research process involves sending over 4,000 questionnaires to senior practitioners or in-house counsel involved in each practice area in over 40 jurisdictions, asking them to nominate leading practitioners based on their work and reputation. The results are analysed and screened for firm, network and alliance bias. The list of experts is then discussed and refined with advisers in legal centres worldwide.

These specialists have been independently offered the opportunity to enhance their listing with a professional biography. The biographies give readers valuable, detailed information regarding each lawyer's practice and, if appropriate, their work and clients.

We owe the success of this guide to all the in-house counsel and firms that completed questionnaires and met our researchers. Thank you. We hope you find the guide to be a useful tool. All information was believed to be correct at the time of going to press.

Research team

EXPERT GUIDES RESEARCH

Expert Guides has been researching the world's legal markets for over 28 years, and has become one of the most trusted resources for international buyers of legal services.

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Our guides are distributed to and regularly used by the world's most prominent decision-makers and frequent buyers of legal services. Each guide has an extensive distribution list plus additional tailoring to its area of focus.

Each guide is also reprinted in full at www.expertguides.com

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Peter is a Partner and Head of our Aviation Practice in APAC at Clyde & Co. He is recognised as a leading individual specialising in aviation law across multiple jurisdictions. Peter is also a Fellow of the Royal Aeronautical Society.

Peter has over 29 years' experience working for the aviation industry, including working for a Hong Kong airline in the early 1990s and working for aviation legal practices in London, Singapore and Hong Kong over the last 26 years, 23 years of which have been Asia.

Peter advises on a range of legal issues in the lifecycle of the aviation industry, including ownership and control, licensing of aircraft and operations, market entry, crew employment, commercial contracts, sanctions, data privacy, contingency planning, emergency response, government investigations and prosecutions, civil liability claims, uninsured commercial disputes, corporate restructurings, enforcement against assets and insolvency. Examples of his work in the last 3 years includes advising on the termination of Boeing MAX 737 contracts, the restructuring of Cathay Pacific Airways, emergency humanitarian flights to/from China, the licensing of Greater Bay Airlines, numerous aircraft accidents and incidents around the world and the grand aircraft theft in Russia.

Peter is consistently recommended by legal directories such as Chambers Asia Pacific, Legal 500 and Who's Who Legal. Chambers notes "Peter Coles is singled out for his focus on the aviation industry. He has extensive experience when it comes to aviation-related insurance claims, and has worked on mandates across the Asia-Pacific region." Who's Who Legal notes Peter is described as "a bright and well known aviation lawyer, highly sought after by clients for his strong expertise on regulatory and liability matters."

Peter qualified in England and Wales in 1996 and Hong Kong in 2003.

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Laura Pierallini is the founder and name partner of the Italian aviation law firm Studio Pierallini.

She spent several years in the legal and tax department of Arthur Andersen, and was the managing partner of the international law firm Coudert Brothers in Rome (2001 to 2005).

She is a professor of commercial law and air law, at the LUISS University of Rome.

Ms Pierallini has practised aviation law since 1988, providing expert advice to clients across the whole of the international aviation sector, including aircraft finance and leasing; antitrust and regulatory advice; litigation and dispute resolution; employment; and corporate issues. Her clientele includes Italian and foreign airlines, manufacturers, lessors, financiers, airports, handlers and travel agents.

Ms Pierallini was recognised in the aviation (regulatory) section of Thought Leaders – Global Elite (2018-2022), and is recommended as a leading lawyer in the regulatory, contentious and finance sub-chapters of the aviation section of WWL: Transport. She has been consistently shortlisted for Best Aviation Lawyer at the Europe Women in Business Law Awards and was named Best Aviation Lawyer for Italy at the 2020 Client Choice Awards. She has been named Italian lawyer of the Year in Transport Law at TopLegal Industry Awards 2021 and 2022.

Ms Pierallini regularly attends and organises conferences on aviation, delivering speeches and moderating panels at various Italian and international symposia, in particular those organised by IATA, EALA, EAC, IBA, EBAA and LUISS.

She is a committee member of the European Air Law Association and a member of the International Aviation Women's Association and the European Aviation Club.

She is the author of many national and international publications on aviation, tourism and commercial law.

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Paul Ng is a partner in Milbank LLP. He is a member of the global Transportation and Space Practice and leads the aviation and asset finance practice in China and Asia.

Prior to joining Milbank, Paul was the global head of aviation for an international law firm based in Singapore.

Primary Focus & Experience

Mr Ng has helmed some of the most complex and first-in-the industry asset backed structured and receivables financings. He has thorough knowledge of the financing and leasing of aviation and maritime assets, rolling stock and other moveable assets. He is also experienced in tax based finance, leveraged finance, Islamic finance and export credit. He has acted for major lenders, operating and finance lessors, borrowers, lessees and arrangers in a wide range of banking, finance and leasing transactions for over 30 years. His experience includes advising:

- Lion Air on the purchase of over US$24 billion (catalog price) of 234 Airbus aircraft. The then largest acquisition of commercial aircraft of all time. Asia Business Awards overall deal of the Year.
- AirAsia on the portfolio sale of aircraft and aircraft engines to BBAM with enterprise value of US$2.8 billion, the largest ever done in Asia. Editor's Choice Deal of the Year, Airfinance Journal Global Awards 2019.
- Castlelake on the portfolio acquisition of assets held by China Minsheng Investment Group, aircraft leasing business one of the largest M&A transaction to complete in Asia in 2019 and, to date, largest aircraft leasing company sale in China.

Recognition & Accomplishments

Paul is listed as a Leading Individual for Asset Finance in Singapore by *Legal 500* and by all major legal directories as a tier 1 practitioner in Aviation and Transport, including Chambers Global. He has been the lead lawyer on many of the most significant and complex transactions to come out of Asia over the last two decades including the largest commercial aircraft acquisition of all time for Lion Air (largest airline in Indonesia and second largest low cost carrier in Asia). *Chambers Asia Pacific 2020* describes him as "*one of the biggest names in emerging Asia*" and clients have praised him as "*simply fantastic*". He sits as an executive member of the prestigious AWG (Aviation Working Group) and chairs the South East Asia Country Group. He has also been admitted to the panel of international mediators of the Singapore International Mediation Centre as an expert mediator in Transport and Aviation.

Paul speaks several Chinese dialects including Mandarin, Teochew and Cantonese. Paul is admitted as a New York attorney, Solicitor of Supreme Court of England and Wales, a Barrister at-law of Inner Temple and a Solicitor and Advocate of the Supreme Court of Singapore.

Paul is frequently consulted by the press for his views on aviation and transport and can be seen and heard on Channel News Asia, BBC, Reuters and Bloomberg.

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Dr Hans-Ruedi Grob is a partner with Blum&Grob Attorneys at Law and the head of the Blum&Grob **L2A Team** ("Law to Aviation") which consists of specialists in all relevant areas of aviation law. He and his team advise a substantial number of Swiss and foreign airlines and business jet operators on a wide variety of contractual, commercial, corporate, tax and contentious matters. Dr Grob and his **L2A Team,** furthermore, mainly advise high net worth individuals and aviation-related companies such as aircraft financiers (lessors, banks and other financial institutions), maintenance facilities, completion centers and other suppliers in the business aviation industry.

His practice concentrates on aircraft sales and purchases, operating leases (wet and dry) and finance leases, tax-optimised structures to operate aircraft of all categories, registration of aircraft and mortgages in all relevant jurisdictions, interior completions, enforcement of mortgages or other security interests, issues regarding Cape Town Convention, contracts with suppliers (maintenance, cargo, catering, etc.), advice in complex liability cases, regulatory matters (e.g. route licence applications, operating authorizations and AOCs for operators), representations before courts and any other competent authorities in connection with aviation and corresponding tax issues.

Dr Hans-Ruedi Grob graduated from the University of Zurich in 1993, obtained the Doctor of Law degree two years later and has been admitted to the Zurich Bar. He was the president of the Zurich Bar Association, is a member of the Zurich and Swiss Bar Association, the European Business Aviation Association (EBAA) the Swiss Business Aviation Association (SBAA) and the Swiss Air and Space Law Association (ASDA). Dr Grob is the author of several publications on aviation law.

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Ilene Knable Gotts is a partner in the New York City law firm of Wachtell, Lipton, Rosen & Katz, where she focuses on antitrust matters, particularly relating to mergers and acquisitions. Transactions in which Mrs Gotts advised include Publicis Groupe/ Epsilon, IFF/Frutarom, Salesforce/Mulesoft, Prysmian/General Cable, Mondelez/Tate's Bake Shop, CenturyLink/Level 3, Danone/WhiteWave Foods, Gaming and Leisure Properties/Pinnacle Entertainment, Faiveley/Wabtec, Charter/Time Warner Cable/Bright House, J.M. Smucker's/Big Heart Pet Brands, Publicis/Sapient, Essilor/PPG Industries, Deutsche Telekom/MetroPCS, ConAgra/Ralcorp, PPG Industries/Georgia Gulf, Aetna/Coventry, and International Paper/Temple-Inland. Mrs Gotts is regularly recognized as one of the world's top antitrust lawyers, including being recognized by *Euromoney's Women in Business Law* with a Lifetime Achievement Award in 2019, in the 2006-2018 Editions of The International *Who's Who of Business Lawyers* as one of the top five global competition lawyers, in the first tier ranking of Chambers USA Guide, the "leading individuals" ranking of *PLC Which Lawyer Yearbook*, the Antitrust Lawyer of the Year for 2016 by Best Lawyers, Top Lawyer of the Year for 2017 by Cablefax, and Number one North America Thought Leader in 2018 Edition of *Who's Who Legal.*

Mrs Gotts previously worked as a staff attorney in the Federal Trade Commission's Bureaus of Competition and Consumer Protection. Mrs Gotts is an officer of the IBA's Competition Committee. She served on the American Bar Association's Board of Governors from 2015-2018, having previously served as the Chair of the American Bar Association's Section of Antitrust Law. In 2006-2007, Mrs Gotts was the Chair of the New York State Bar Association's Antitrust Section, which recognized her service to the antitrust bar with the Lifland Service Award in 2010; she has been a member of the American Law Institute for over 20 years. Mrs Gotts is a frequent guest speaker, has had approximately 200 articles published on antitrust related topics, and served as the editor of the ABA's Merger Review Process book, Law Business Research's Private Competition Enforcement Review (2008-2019 Editions) and Law Business Research's Merger Control Review (2010-2019 Editions). She is a member of the editorial board of *The Antitrust Counselor, Antitrust Report*, and *Competition Law International* publications. Mrs Gotts is a member of the Lincoln Center Counsel's Council. BTI Consulting Group has recognized Mrs Gotts as a BTI Client Service All-Star for her level of dedication and commitment to exceptional client service.

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James Kwan is an International Arbitration partner in Hong Kong. He has extensive experience in arbitrations involving infrastructure, energy, engineering, technology, private equity and life sciences disputes. He has a range of international experience, having represented clients in arbitrations in Asia, the U.S., Middle East, and Europe under the major institutional and ad hoc rules, such as ICC, HKIAC, SIAC, CIETAC, LCIA, AAA, DIAC, and UNCITRAL. James has also sat as arbitrator and rendered awards in HKIAC, ICC, and DIAC arbitrations, and is on the CIETAC, LCIA, SHIAC and KCAB and AIAC panels. James is a solicitor advocate with Higher Rights of Audience before the Hong Kong courts.

James is widely recognised as a leading individual in International Arbitration by major legal directories, such as *Legal 500, Chambers Asia Pacific, Chambers Global, Euromoney's Guide to the World's Leading Arbitration Lawyers, Practical Law Company's Which Lawyer?, Benchmark Asia Pacific: Arbitration, Global Law Expert* and named one of *Asian Legal Business*' *Hot 100 Lawyers of 2008 and 2011.*

Chambers Asia-Pacific 2022 states "'A client describes [James] as a '*great practitioner who is very professional but also personable, dedicated, hard-working and very client-focused.*' Another client applauds him for '*always providing us with some insightful tactic for dealing with the case.*'"

Chambers Asia-Pacific 2021 states that "James Kwan is singled out by a client who notes his '*awesome and acute business sense coupled with outstanding technical knowledge and world-class client service.*'"

Chambers Asia-Pacific 2020 states that "'clients appreciate that James Kwan '*provides solid advice and recommends courses of action that are very effective in dealing with the issues*,' adding: '*He impressed us with his intelligent and structured approach to the case, his client focus and his hard work.*'"

According to *Legal 500 Asia Pacific 2022*: "'*James Kwan is active in the market and is proactive and forceful.*' '*Mr James Kwan is invariably thorough, meticulous and fair in his submissions, written or oral. This team is also able to turn around work in lightning speed, despite its obvious heavy workload.*' '*James Kwan who is professional and knows how to win legally with professional knowledge*'".

James was awarded the *Lexology Client Choice Award for Construction in 2020.*

James is the author of a chapter in *The Hong Kong Arbitration Ordinance Commentary and Annotations*, Sweet & Maxwell, 2015 (2nd edition); *Arbitration in China: A Practical Guide*, Sweet & Maxwell, 2004; and co-editor of *Construction Arbitration in Hong Kong: A Practical Guide*, 2015, Wolters Kluwer. He is one of the authors of the forthcoming publication *Comparison of Asian International Arbitration Rules*, 2022 (Third Edition), Juris Publishing.

Hogan Lovells

MEXICO

FIDIC model contracts in Mexico: why and how should they be used[1]

Roberto Hernández-García[2]
COMAD
Mexico City

Introduction; II. The Mexican construction industry. III. Standard Form contracts in Mexico. Status and the need for them.; III. FIDIC Model Contracts: fair playing field and best practices; IV. FIDIC Model Contracts: fair playing field and best practices in Mexico. ; V. Conclusions: FIDIC contracts in Mexico: more than model contracts for the benefit of the Mexican construction industry.

Introduction

Foreign contractors, construction lawyers and academics often ask if there are model contracts in Mexico and if FIDIC model contracts are used in this Latin American country.

The answer is straightforward: there are no model contracts in Mexico, and although there have been several private construction contracts in Mexico that used FIDIC model contracts, in no way these represent the large amount of contracts that are signed every day in our country.

Being the 16th economy of the world with 1,291 thousand million dollars of GDP; 2,000,000 square kilometers, and 129 million people, we would expect that the answer would be different.

This paper is intended to explain why, under the considerations of the author, we have found ourselves in a lack of tools that can provide to the construction industry better tools for their development, and this need is not only because we need "model contracts". It goes be

The Mexican construction industry

According to public numbers, Mexico had in 2021, approximately 27,300 construction companies[3] and an approximate value of 281,0000 million Mexican pesos,[4].

Being the 2nd economy in Latin America[5], Mexico has an incredible construction market of public and private projects. However the construction market tends to be like a heavy elephant that does require a lot of time to move and improve.

Construction companies and chambers have had for many years a way to do things that are "conservative" not to say "old" and "viced".

In my book "Construction Law in Mexico: perspectives and Challenges"[6] I explained that the construction sector in Mexico, still needs to develop areas such as:

a) Fight against corruption.
b) Adequate use of Technology
c) Effective Prevention and resolution of Disputes, and
d) Standard forms of contract.

Of course, this contribution focus on the latter, which I think is a very important area for the development of a well balanced and developed construction market in the country, but will explain why the

fight against corruption, the use of technology and effective dispute prevention and resolution, are concepts and issues directly related to the use of FIDIC contracts.

Standard Form contracts in Mexico. Status and the need for them

As previously said, there is little to discuss about standard forms of contract in Mexico: they are absolutely absent.

Ironically, the lack of discussion goes beyond: there are no organizations, associations or even serious academic discussions looking for them, and making a good if they are or not a good option for the country or for specific sectors or institutions: the conversation has never started in a formal way.

As I explained in my book:

"In general terms, we consider that the lack of model contracts in Mexico, leads to several practical matters such as the following:

1. *There are no objective texts that more that protecting one of the contracting parties, privilege the project and its execution.*
2. *The time that parties take to draft a contract, comment it, modify it and sign them, leads to a situation of delay in its formalization, that in many occasions generate that the parties, complete the project, without a signed contract and that its "signing" is more a formality, rather than a guide for its performance.*
3. *As no common drafts exist, there are no general interpretations that allow the improvement or evolution of the contracts, attending reality and practice. In this context, model contracts are sometimes interpreted*

MEXICO

Provision	Content
6.9 Contractor's personnel	The Contractor's Personnel (including Key Personnel, if any) shall be appropriately qualified, skilled, experienced and competent in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative and Key Personnel (if any), who: (a) persists in any misconduct or lack of care; (b) carries out duties incompetently or negligently; (c) fails to comply with any provision of the Contract; (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment; **(e) is found, based on reasonable evidence, to have engaged in corrupt,fraudulent, collusive or coercive practice; or** (f) has been recruited from the Employer's Personnel in breach of Sub-Clause 6.3 [*Recruitment of Persons*].
15.2 Termination for Contractor's default	15.2.1 Notice The Employer shall be entitled to give a Notice (which shall state that it is given under this Sub-Clause 15.2.1) to the Contractor of the Employer's intention to terminate the Contract or, in the case of sub-paragraph (f), (g) or (h) below a Notice of termination, if the Contractor: (…) **(h) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to the Contract.**
16.2 Termination by Contractor	16.2.1 Notice The Contractor shall be entitled to give a Notice (which shall state that it is given under this Sub-Clause 16.2.1) to the Employer of the Contractor's intention to terminate the Contract or, in the case of sub-paragraph (g)(ii), (h), or (j) below a Notice of termination, if: (…) **(j) the Employer is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to the Contract.**
Guidance, Clause 3.2.	In performing the Engineer's duties and in exercising his/her authority under the Contract, the Engineer should take due regard of: a) FIDIC's Code of Ethics for consulting engineers: http://fidic.org/about-fidic/fidic-policies/fidic-code-ethics†; and b) the duty to prevent corruption and bribery as described in the publications: - FIDIC Guidelines for Integrity Management (FIM) in the consulting industry, Part 1- Policies and principles first edition, 2011 (http://fidic.org/books/integrity-management-system-fims-guidelines-1st-ed-2011-part1†) and - FIDIC Guidelines for Integrity Management System in the Consulting Industry 1st Ed (2015) Part 2, FIMS Procedures (http://fidic.org/books/guidelines-integrity-management-system-consulting-industry-1st-ed-2015-part-2†).

by judges, arbitrators, and even academics, in such a way that to allow the prompt resolution of disputes, and a "bank of interpretations" that allow the parties to use such, and not in accordance to "self-made" interpretations that are far from reality"[7]

In this order of ideas when thinking of such an important country, with so many challenges and needs for public and private construction, it is clear that there should be important efforts to promote and foster the model contracts, such as FIDIC, as stated in my work, which explains:

In this context, and considering the above benefits, our proposal would be as follows:

"*1. That construction chambers, professional associations, and other interested groups in Mexico, seriously consider the possibility of using international model contracts, such as FIDIC, or take the initiative to create local contract models, based on national efforts, in order to improve the industry from the contractual and legal point of view.*

2. *That serious efforts be made to determine the desirability of adapting public procurement laws for works to Model contracts.*
3. *That working groups be established to monitor model contracts in public works to see their continuous evolution and improvement."*[8]

FIDIC Model Contracts: fair playing field and best practices in Mexico

As stated in the introduction of this contribution, we have identified during previous works, that several issues have to be present in the Mexican construction Market in order to provide better conditions for the construction players.

In this section we will explain why using FIDIC model contracts can benefit the fostering of several of them:

a) Fight against corruption.
b) Adequate use of Technology
c) Effective Prevention and resolution of Disputes.

Fight against corruption

The use of FIDIC model contracts brings to the table of a country, a high respect for the construction contracts and projects. Usually, these contracts are used by the multilateral banks because of their balanced elements.[9]

FIDIC chief executive Dr Nelson Ogunshakin said:

"…that the World Bank has agreed to adopt our 2017 editions of the Rainbow suite of contracts and use them as a key part of their standard bidding documents. This will create more certainty in the market as by adopting the FIDIC contacts on major projects the World Bank is saying that they endorse.…the fair and balanced approach that these documents offer to parties on major construction contracts. The familiarity that the FIDIC contracts bring make it easier to get projects underway as many of the typical commercial risks are clearly addressed in the contracts and all the parties understand their obligations and responsibilities."[10]

Clear obligations and responsibilities allow parties to reduce their intention or will to abuse from the other party, by contractual or other malicious means.

But beyond the balance of the contracts, we can find specific anticorruption provisions in the FIDIC contracts, such as the following ones (see table on previous page).

Mexico is ranked in the Transparency International Index (2021), in position 124 out of 180 countries, from 1 being the less corrupt, to 180 being the most corrupt.[11]

Considering that "*The engineering & construction sector is the industry most affected by bribery and corruption. Nearly half of respondents experiencing economic crime say it included bribery and corruption, far more than the next closest sector*",[12] this mortal cocktail should be enough for Mexico to understand that we need international model contracts, meaning FIDIC, that foster integrity.

Also, it is clear that FIDIC has a whole anticorruotion and integrity group that can allow the adequate conduct of construction players.

Adequate use of Technology

Construction is one of the sectors that worldwide is using more technology: robotics, IA, Cloud Tools, digital twins and Building Information Modelling (BIM) represent only some of the major advances in the sector.

The 2019 editions of the FIDIC model contracts, have included what is called *"Advisory Notes to Users of FIDIC Contracts Where the Project is to Include Building Information Modelling Systems"*.

These "advisory notes" clearly establish that "

BIM is one of the digital data technologies used in all aspects of project planning, investigation, design, construction and operation. Digital data technologies include systems for: data acquisition; document management; design and process management; estimating, planning, and scheduling; contract management; performance management; and building information modelling.

BIM has varying degrees of complexity ranging from rather isolated use of computer aided design tools to full sharing of models and information by the entire project team. Currently, BIM is more often used and better understood in developed countries, many of which are encouraging or even mandating its use to improve quality, accuracy and delivery times for projects as well as to provide cost savings. BIM has the potential to dramatically improve productivity in the construction industry and reduce operational costs of facilities as well.

BIM is not a set of contract conditions; it is a mechanism to provide an environment where all parties have access to information relevant to their role in the design and construction of a project. Wherever possible, a combined (sometimes called federated or collaborative) model is developed for all parties to share, even if, as is often the case, various designers have used different computer aided design programs to develop their respective designs. Drawings and specifications are held in a common database accessible to everyone. These can be used for clash detection, coordination of designs, communication of changes, and construction sequencing."

In Mexico s complex projects in relatively common to see "BIM clauses"; however in many occasions, parties do not really understand the essence and use of BIM. This represents a major burden and challenge since BIM may be considered as a mere formality instead of a team approach.

As the advisory note says:

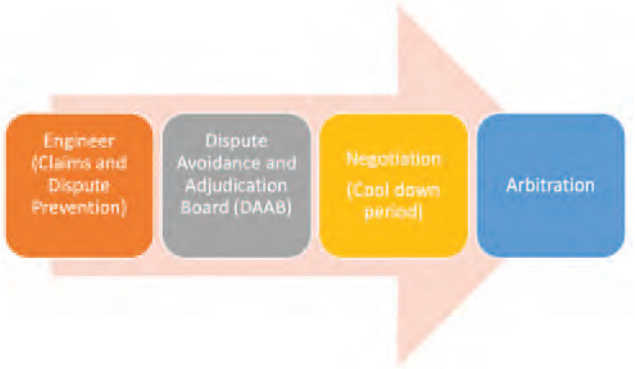
"FIDIC contracts are designed to be fair to all parties and are considered suitable for use with projects featuring the use of BIM – providing that the parties recognise the difference in approach and use the contract appropriately."

Therefore, using FIDIC contracts is a good way to promote the use of this technology to avoid situations that BIM can clearly resolve timely.

Effective Prevention and resolution of Disputes

Maybe one of the most important and needed tool in today s construction sector in Mexico is an accessible means of dispute prevention and resolution.

FIDIC is, without doubt, THE standard of dispute resolution in construction worldwide. FIDIC has included in its standard form of contracts, a multitier Dispute prevention and resolution series of mechanisms, that are explained as follows:



Explained as follows:

- **Engineer.-** Has to invite parties to reach amicable settlements; If not, engineer has to decide claims fairly

MEXICO

- **DAAB:** Has the power to prevent disputes as well to solve disputes that are final but not binding, allowing the parties to solve their discrepancies on time.
- **Negotiation (cool down period).-** Intended to allow the parties to solve their differences before going to arbitration.
- **Arbitration-.** As the last source.

In Mexico, the current system (in public and private construction contracts):

a) Does not include an engineer that has to decide with fairness;
b) There are no DABs, DAABs, or alike
c) Arbitration may be absent for public contracts and will be present in private contracts only in certain cases.

The closest effort to get Dispute Boards in the construction sector, was on March 18, 2020, when the College of Civil Engineers of Mexico, presented the "Legislative Initiative Project of the Public Works Law".

This document, product of the great impulse that this professional association has tried to give to the best practices in the field of construction of public works, contemplated in its proposal for article 122 the following:

"Article 122. Dispute Resolution Committees. Major works contracts entered into by the parties may incorporate in the contract or by separate agreement, subject to compliance with the requirements established in the contract, a permanent dispute resolution committee in charge of resolving differences of an economic or technical nature that arise, which will follow the guidelines of the institutional regulations derived from international best practices."

Unfortunately, this proposal has not seen the light and it is not expected to be approved or accepted in the following years.

The very urgent importance of having a mechanism such as a Dispute Board, is reflected in the "FIDIC Golden Principle", which state:

"Unless there is a conflict with the governing law of the Contract, all formal disputes must be referred to a Dispute Avoidance/Adjudication Board (or a Dispute Adjudication Board, if applicable) for a provisionally binding decision as a condition precedent to arbitration."[13]

This shows the importance of having effective and timely dispute resolution in the construction projects.

Conclusions: FIDIC contracts in Mexico: more than model contracts for the benefit of the Mexican construction industry.

For many years, I have heard in seminars, conferences and experts, why FIDIC contracts should be used in Mexico, mainly defending the need of model contracts themselves.

However, as we have briefly seen in this contribution, FIDIC has the virtue of not only being model contracts , but a way to include and promote some of the best needed practices in the construction markets.

In this contribution we have focused only in three topics (Integrity, technology and dispute avoidance and resolution), however FIDIC contracts have given so many benefits to the world that it would take a whole book to explain the good that this would make to a country as Mexico.

We hope that this contribution helps interested parties to understand that the construction sector needs to evolve in order to be at the level of the global expectations.

And Mexico has to be in that level considering its importance in America as a whole, in order to provide trust and confidence to the construction players.

1. This paper will be published in the "Construction Law Journal" published by Sweet and Maxwell.
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Roberto Hernández-García is a Mexican attorney specialized in national and international, public and private construction projects, public procurement, and dispute resolution related to these areas of practice. He is the managing partner of COMAD, SC, a prestigious boutique law firm established in 1965 and based in Mexico City, with a focus on public procurement, construction and compliance in these areas.

Since 1989, he has advised top-class European, American and Mexican construction, engineering and architect firms in relevant construction projects in Mexico and Central America in the energy, oil, health, water, sewage, gas, petrochemical, parks, transportation, airports and building sectors, among others. Mr. Hernández has been involved in many relevant complex construction projects, acting in different capacities.

One of Mr Hernández' strengths in the construction area is his experience in dispute boards and arbitration of construction disputes in Latin America. He is a certified FIDIC adjudicator and arbitrator under LCIA, ICC, ICDR and CIADI rules.

Mr Hernández is a former chair of the international construction projects committee of the International Bar Association (IBA) and the current chair of the construction disputes committee of ICC Mexico. Mr Hernández is a member of the steering committee of the Division 8 Construction Forum of the American Bar Association (ABA). He is a regional director of the North American Society of Construction Law.

Mr Hernandez has published several books as consulting editor and co-author including "Construction Law in Mexico", "COVID-19 and construction", and "Dispute Boards: theory and practice" from Wolters Kluwer.

He has participated as a speaker in several countries by international institutions and organizations such as King's College, the IBA, the ABA, the ICC; the Peruvian University of Applied Sciences, the University of Lima and the Canadian Commercial Corporation, the OECD, the government of Brazil and the government of Colombia, among many others in matters related to public procurement, construction and compliance.

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David is a full time international arbitrator, with extensive experience in over 180 arbitrations in Asia, the Middle East, Africa, Europe, and South America.

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In the Best of the Best Expert Guides, David was named as one of the world's leading experts in commercial arbitration, and construction.

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Sarah Biser is a partner in the New York office of Fox Rothschild LLP, a national firm with 27 offices and about 950 attorneys. Ranked by Chambers USA as a leader in construction law for 14 consecutive years, Sarah represents owners, contractors, developers, architects and engineers, both in the United States and abroad, in all stages of the construction process.

As Co-Chair of the firm's national Construction Law and International Arbitration groups, Sarah focuses her practice on large, capital-intensive construction projects, with a particular emphasis on drafting and negotiating contracts for complex and unique construction and infrastructure, as well as litigating disputes both in the courtroom and in domestic and international arbitration. She represents the Panamanian contractor that was part of the consortium that built the third lane (expansion) of the Panama Canal.

Sarah has been involved in the construction of industrial smelters, power plants, waste ammonia recovery systems, solar power installations, museums, manufacturing facilities, gambling facilities, educational institutions, health care facilities and other commercial and infrastructure projects. She defended a European construction company in connection with Defense Base Act claims arising out of the 1968 crash of a B-52 bomber carrying four nuclear warheads at an airbase in Thule, Greenland. Sarah prevailed in Administrative Law Court, at the Benefits Review Board, at the 1st Circuit U.S. Court of Appeals and at the U.S. Supreme Court.

Sarah, who also co-chairs the firm's Israel Practice Group, represented Technion-Israel Institute of Technology in connection with the Technion-Cornell joint venture, in the construction of a new applied science university and related facilities on Roosevelt Island in New York City. She was involved in the construction of InterActive Corporation's futuristic headquarters and AOL's headquarters, including the CNN newsroom, in the Time Warner building.

Sarah is co-author of the leading treatise on New York construction law, the New York Construction Law Manual. She also authors the chapter on New York law in Fifty State Construction Lien and Bond Law (3rd Edition) and the New York chapter in State-by-State Guide to Architect, Engineer and Contractor Licensing. Sarah also co-authored the chapter on "Legal Relationships" in Temporary Structures in Construction (3rd Edition).

Sarah is a frequent lecturer on construction issues, such as:

- Enforcing Domestic and International Arbitral Awards-Licenses and Franchise Issues
- Construction of the Third Lane of Panama Canal
- Beyond Covid-19: Impact on Construction Contracts and Projects
- Challenging and Enforcing Domestic and International Arbitral Awards
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Andrew R Brownstein has been a partner at Wachtell, Lipton, Rosen & Katz since 1985 and serves as co-chair of the firm's Corporate group. His practice concentrates on mergers and acquisitions and corporate governance matters, and he has been engaged in many high-profile matters that include cross-border transactions, leveraged buyouts, complex restructuring deals, proxy fights and takeovers. Mr Brownstein is consistently listed in the top ranks in his areas of expertise by the *Chambers Guide, International Who's Who of Business Lawyers* and other similar publications.

Mr Brownstein's significant representations include: Hewlett Packard in its separation into two new publicly traded Fortune 50 companies; Perrigo in its defense against a takeover bid by Mylan; Samsung C&T in its merger with Cheil Industries and its response to an activist campaign by Elliott Management; Johnson Controls in its merger with Tyco and the separation of its automotive business; Sotheby's in responding to an activist campaign by Third Point; Walgreen Co. in its entry into a long-term partnership with Alliance Boots and AmerisourceBergen, its acquisition of a 45% stake in Alliance Boots GmbH and its later acquisition of the remaining 55%, for an aggregate value of approximately $27 billion; ConocoPhillips in its $33 billion spin-off of its downstream businesses as Phillips 66 and in its $35.6 billion acquisition of Burlington Resources, as well as Phillips Petroleum in its $35 billion combination with Conoco; Forest Laboratories in successive proxy contests with Carl Icahn and in its $25 billion merger with Actavis; Genzyme in its $20 billion sale to Sanofi-Aventis; Novartis in its $49.7 billion multistep acquisition of Alcon; Schering-Plough in its $41 billion combination with Merck and its $14 billion acquisition of Organon; and BEA Systems in responding to an activist campaign by Carl Icahn and in its merger with Oracle.

Mr Brownstein is a 1979 honors graduate of Harvard Law School where he was an articles editor of the *Harvard Law Review*. He holds an MBA degree (1976) from the Wharton School of the University of Pennsylvania and also has undergraduate degrees in English and Economics (1975) from the University of Pennsylvania, where he was elected to Phi Beta Kappa. Following law school, Mr Brownstein clerked for the Honorable Leonard I. Garth of the US Court of Appeals for the Third Circuit.

Mr Brownstein is a frequent author and lecturer on corporate-related topics. He has been an adjunct professor of securities law at Rutgers University Law School, serves on the Executive Planning Committee and is past chairman of the Ray Garrett Jr. Corporate and Securities Law Institute at Northwestern University School of Law.

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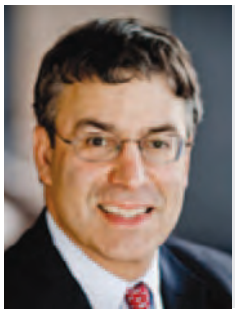

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Mr Katz taught *Mergers and Acquisitions* at New York University School of Law for over 15 years and previously co-taught a joint law and business short course on mergers and acquisitions at Vanderbilt University Law School with Delaware Chief Justice Leo Strine. He is co-chair of the Tulane Corporate Law Institute.

In 2004, he was chosen by *The American Lawyer* as one of the 45 highest-performing members of the private bar under the age of 45; in 2005, 2012 and 2015, he was selected by *The American Lawyer* as a Dealmaker of the Year; in 2016, he was named by NACD Directorship as one of the 100 most influential players in corporate governance for the seventh time; in 2013 he was named Lawyer of the Year by Global M&A Network; in 2014 and each of the five prior years he was named *Who's Who Legal's* Mergers and Acquisitions Lawyer of the Year, in 2014 was also named *Who's Who Legal's* Corporate Governance Lawyer of the Year and in 2015 and 2016 was named *Who's Who Legal's* Corporate Governance and M&A Lawyer of the Year; and in 2015 he was elected by The American College of Governance Counsel as an Inaugural Class Fellow.

Mr Katz is a member of the American Bar Association, Section on Business Law, where he founded the Committee on Mergers and Acquisitions Task Force on the Dictionary of M&A Terms and a member of the Committee on Mergers and Acquisitions Subcommittee for Acquisitions of Public Companies. Mr Katz is also a member of the Federal Securities Laws Committee, the New York State Bar Association and the Association of the Bar of the City of New York. Mr Katz is a member of the Society for Corporate Governance and the National Association of Corporate Directors. He sits on the Board of Directors of The Partnership for Drug-Free Kids and is a member of the Advisory Board at the John L. Weinberg Center for Corporate Governance at the University of Delaware. He writes a bi-monthly column on corporate governance for the *New York Law Journal* with his colleague Laura McIntosh.

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Mr Neff lectures frequently on topics relating to his professional interests, was featured in American Lawyer's "Dealmaker of the Year" article in 2001, 2012 and 2015 and is listed in *Chambers Global Guide, Chambers USA Guide, The Best Lawyers in America* and *Lawdragon's* 500 Leading Lawyers of America.

Among the significant matters he has handled are the successful defense of Airgas against a hostile takeover bid by Air Products and Chemicals (2009-2011), the sale of Airgas to L'Air Liquide S.A. and the $130 billion acquisition by Verizon Communications of the 45% interest in Verizon Wireless owned by Vodafone plc.

Mr Neff graduated *magna cum laude* from Brown University and from the Columbia University School of Law, where he was notes and comments editor of the *Columbia Law Review.*

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GAMING AND GAMBLING

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Stefano Sbordoni is a Supreme Court attorney-at law. He teaches Tax Law on gaming at the University of Salerno and has taught Information Technology law at the Tuscia University. He has been a lecturer at Scuola Superiore di Economia e Finanza and at the University of Malta.

Stefano is a consultant to most of the gaming State licensees in Italy and to many foreign leading gambling operators.

He supports ADM (Gaming Regulator) on legal issues related to the gambling and lotteries industry,

He assisted operators in all the tenders for gaming licenses issued by ADM. He managed the introduction of Bingo in Italy, the re-organization of the betting licensing sector, the privatization of the instant and traditional Lotteries, and the marketing of Italian pool games and lottery networks in more than 40 countries worldwide.

In Italy, Europe and overseas, Stefano Sbordoni and his firm are considered between the most qualified and experienced in Gaming law.

Stefano worked on the harmonization of the Italian Penal Code with the current gaming regulations.

He has published articles for the Academy of European Law, and handouts for the Tuscia University and for the School of Economics and Finance.

He is the author of the monographs *Giochi concessi e giochi on line and Web libertà e diritto.*

Stefano is the author of Guida di leggi e regolamenti di giochi e scommesse.

As a journalist, Sbordoni cooperates with the major trade publications on betting in Italy.

He is a member of IMGL, Secretary General of UTIS, the oldest association of gaming retailers, member of the Osservatorio Internazionale del Gioco at the University of Salerno.

Mr Sbordoni has a PhD in political sciences at the university of Salerno with a thesis on "comparative gaming regulations in Italy Germany Spain and Malta"

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Greg Kanargelidis has more than 30 years of experience practicing in the areas of customs, international trade, and commodity tax law. Greg opened his own law practice after a rewarding career at a large full-service firm based in Toronto, Ontario, the last 26 years as a partner and head of the firm's International Trade Group. Greg is recognized as one of the leading international trade and customs lawyers in Canada and the world.

Greg has extensive experience representing Canadian and foreign clients on global trade and investment matters. He is a noted expert in all areas of customs law, including planning and compliance with respect to all aspects of the importation and exportation of goods and services, such as tariff classification, customs valuation, rules of origin, export and import controls, economic sanctions, marking rules, seizures and ascertained forfeitures, administrative monetary penalties, and voluntary disclosures.

Greg has considerable experience in trade remedy matters, including anti-dumping and anti-subsidy investigations, inquiries, expiry and interim reviews, and safeguards. Greg regularly appears before the Canadian International Trade Tribunal as well as dealing with the Canada Border Services Agency, among other government departments, on behalf of clients.

Greg regularly represents clients with respect to cross-border trade and investment issues, including compliance with international agreements (such as NAFTA/USMCA/CUSMA, CETA, CPTPP, the World Trade Organization and its various agreements), and other bilateral and regional trade and investment agreements.

Greg also advises clients with respect to the Goods and Services Tax/Harmonized Sales Tax, excise duties and levies, and other commodity taxes.

Greg is very active in legal organizations. He is a member of the Border Commercial Consultative Committee (BCCC) trade compliance and recourse subcommittee, the CITT advisory committee, immediate past chair of the Canadian Bar Association's Commodity Tax, Customs and Trade Section, as well as a past-chair of the Customs Law committee of the American Bar Association Section of International Law, and of the Ontario Bar Association International Law Section.

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GLOBAL TRADE & CUSTOMS LAW

CHINA

China export controls, sanctions and customs supervision (2022)

Deming Zhao, Qing Ren, Parry Zhou, and Jeffrey Shen
Global Law Office
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China export controls

On December 29, 2021, the State Council Information Office released the China's Export Control White Paper, which sets out its basic export control position as truly multilateral, fair and non-discriminatory. Accordingly, China export control regime manifests itself in the following features: (a) Items on the multilateral non-proliferation control lists constitute the main body of China dual use export control lists; (b) China does not adopt the dual-use control lists under the Wassenaar Arrangement ("WA") as China views WA as discriminative; (c) The speedy enaction of China Export Control Law ("ECL") was prompted by the need to counter the abusive export control measures taken by the United States against entities in China. In the absence of abusive export control practice of a foreign country, the Chinese government may show self-restraints in enforcing the extraterritorial provisions of ECL in line with the fair practice of China against abusive foreign export control measures.

Obviously ECL which came into effect on December 1, 2021, has drawn upon some export control supervision measures under the US Export Administration Regulations ("EAR"). As an instance, under ECL the controlled export activities cover cross-border transfer of controlled items from China to abroad, the deemed export as well as the overseas re-export; entities or persons undertaking the export control obligations include "export operators" in China, as well as overseas importers, end-users and re-exporters. The extraterritorial authority exists in the provisions of re-export controls, sanctions against overseas importers and end-users in violation of ECL, and the strict liability on overseas re-exporters, analogous to that of export operators in China. The sanctions against the foreign entities or persons in violation includes denial of access to China's controlled items. Overseas re-exporters who violate ECL may face the administrative penalties of five to ten times of the value of re-exported controlled items. In ex-ordinary circumstances, overseas importers, end-users or re-exporters may also be exposed to criminal consequences.

Given the consequences of export control violations, export operators in China, as well as overseas importers, end-users and re-exporters, may need to establish and implement an internal compliance program ("ICP) pursuant to ICP Guidelines by MOFCOM.

China's economic sanctions

China's economic sanctions regime is defensive rather than aggressive in nature. Apart from following the multilateral sanctions adopted by the United Nations Security Council, it primarily aims at countering abusive sanctions by foreign countries against China. In terms of countermeasures, MOFCOM has issued two departmental rules, namely, the Provisions on the Unreliable Entity List (issued in September 2020) and the Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures ("Blocking Rules") (issued in January 2021). Under the Provisions on the Unreliable Entity List, where a foreign entity cuts off supply or imposes other discriminatory measures against Chinese entities and thus endangers the national sovereignty, security or development interests of China, the same foreign entity will be designated onto the "Unreliable Entity List" and restricted from engaging in China-related trade and investment activities. As of this article's date, no foreign entities are so designated. Per the Blocking Rules, the entities in China, if affected by any sanctions imposed by a foreign country against a third country, shall report to MOFCOM, and foreign sanctions may be blocked by China in the future. Currently China has not yet blocked any foreign sanctions against a third country.

However, under the Anti-Foreign Sanctions Law ("AFSL") (June 10, 2021), the execution of discriminatory restrictive measures which interferes in China's internal affairs ("Intrusive Measures") by a Chinese or foreign individual or entity constitutes violation of AFSL. Besides designation of the foreign politicians and institutions advancing the Intrusive Measures, AFSL also provides that the aggrieved party in China affected by such Intrusive Measures may file a lawsuit with the competent court in China against the Chinese or foreign individual or entity executing such Intrusive Measures, to seek the legal remedy of ceasing the infringement and claim for damages.

As a compliance measure, entities in China are recommended to screen their counterparties against the United Nations Security Council sanctions lists and China's ASFL List and avoid transactions with the designated parties on sanctions lists. Both Chinese and foreign entities also need to proactively identify, assess, and prevent the risk of being sued in China by reason of executing the Intrusive Measures.

China customs supervision

In terms of import and export transactions, the importer and exporter in China also face customs supervision and severe penalty risks. Firstly, China customs is the only administrative organ with policing powers in China. An investigation may turn out to be a criminal one if there is evidence of fraudulent declaration of imported or exported commodities. Secondly, the automated clearance mechanism without routine prior examination by the customs makes it difficult for importing or exporting entities to aware of non-compliance incidences during customs clearance if there is no advance ICP in place relevant to import and export declarations. As a result, the legal exposure of repeatedly false declarations will accumulate all the time and become severe upon explosion of the risks. Thirdly, China Customs has recently adopted the joint supervision scheme across different customs regions (e.g., in the Yangtze River Delta). By reason of such joint supervision, the subsidiaries in China of multinational companies will be lineated as different compliant companies and such compliance lineation or penalty decision will be shared among the customs authorities across the regions. As a result, if one subsidiary in a region incurs large amount of duty compensation or is otherwise fined, another subsidiary in other regions under the joint supervision scheme may be audited or investigated by another customs authority, probably due to correlative risk indicators in their joint supervision system. Lastly, China Customs has also strengthened the joint supervision on import transfer pricing and outbound payment of royalties on the part of multinational companies. Such supervising authorities include the Tariff Division of the General Administration of Customs, the regional Tax Collection Bureaus, the regional customs, and the local supervising customs.

In view of the above customs supervision trends and risks, it is desirable for companies in China to take the following ICP measures: (a) regular trade compliance health check on import and export declarations with the customs; (b) internal compliance process controls and (c) thorough exploration of legal defenses and supporting evidence during the health checks and customs dawn raids before the position of the company can be accepted by the customs.

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- Client Choice: Top 20 Lawyers in China, the First Survey by ALB, 2012
- Chambers recommended lawyers, Band One, Customs, Export Control and Economic Sanctions, 2021 & 2022
- Also with expertise in corporate and regulatory compliance, M&A, shipping and logistics, insurance, and litigation & arbitration.

Dr Zhao has won wide recognition among multinational clients. In the practice of customs & trade compliance, Dr Zhao has advised, represented or defended many renowned multinational companies in connection with transfer pricing and valuation consultation, valuation, tariff classification, country of origin, customs survey and inspection, and import & export license. Deming Zhao has also advised, represented and defended many corporate clients in administrative and criminal cases concerning customs audits, ASB investigations and criminal cases with smuggling or other charge. He is also a pioneer who has developed the legal practice of customs & trade compliance in China.

Dr Zhao advises and trains many clients on export control or economic sanctions, and frequently makes speeches on China export control and customs supervision practices at symposiums or seminars in Europe. In 2019, Dr Zhao was invited by the International Anti-Corruption Academy to lecture on China and US export control practices in Seoul to professional audiences from Asian countries. In an administrative review case, Dr Zhao successfully defended a multinational client against the export licensing requirement for a given chemical product. In 2020-2021, Dr Zhao supervise the export control program for a Chinese transnational company covering countries in Asia, America, South America, Europe and Africa. In 2022, Dr Zhao also advises clients on export controls and sanctions against Russia.

View Deming Zhao's online biography at:
www.glo.com.cn/en/Professionals/DemingZhao.html

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PATENTS

Feature for:

INDIA

On the culture of time-slots in litigation - A half yearly assessment

Pravin Anand
Anand and Anand
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Overflowing dockets and an ever-increasing list of pending cases has been one of the most pressing problems that remain to be addressed by the Indian judiciary. One of the most pressing needs for a cultural shift in the Indian litigation landscape is optimizing the time taken by Courts to hear and decide cases. Given that judicial time is a public commodity, lawyers, litigants and the Court itself need to prioritise resolving disputes by utilising the least amount of time possible.

The trend of having limited arguments and following a disciplined time-slot principle seems to be catching up. Certain Judges have been passing orders limiting each party to a specific time-limit, but currently, this is mostly when both parties are agreeable to such an arrangement.

The Supreme Court in *Ajit Mohan vs. Legislative Assembly, NCT of Delhi*, WP (C) 1088 of 2020 by an order dated July 08, 2021 had observed that there is a grave need to cap the time taken for arguments. Recently, the legal news reporter "Bar and Bench" quoted a Senior Judge of the Supreme Court as having said the following, in separate proceedings:

> *"No system permits everybody to argue for 2 hours … The US Supreme Court gives half an hour to present at the Highest Level… We don't follow that practise does not mean we will listen for days together.*
>
> *…The dispute regarding President Al Gore, both sides were given 45 minutes each.*
>
> *… I am given to understand that you have to seek permission to complete even a sentence after your time period elapses…"*

The next question is whether parties are respecting such time-sots in the few cases in which they are being ordered by the Court. This, to a great extent, depends upon the counsel(s) involved , as some counsel take their commitment to the court more seriously than others. To a certain extent, this also depends upon the ability of the Judge to cut short arguments.

A large and substantial number of Judges believe that parties should have a full say, for proper justice to be done in a matter, and this understanding needs a serious relook.

Just as major changes in procedural law reform came about at a first inflection point in 2002, when the Code of Civil Procedure 1908 was amended and then in 2015, when the Commercial Courts Act, 2015 was enacted, we are now seeing quantum leaps on account of the Intellectual Property Division and the new rules such as the Delhi High Court Original Side Rules, 2018 and the Delhi High Court Patent Rules, 2022.

"GIVEN THAT JUDICIAL TIME IS A PUBLIC COMMODITY, LAWYERS, LITIGANTS AND THE COURT ITSELF NEED TO PRIORITISE RESOLVING DISPUTES BY UTILISING THE LEAST AMOUNT OF TIME POSSIBLE"

There have been rather unusual cases in the recent days, when final arguments in a matter were concluded in less than 1 hour, mainly on account of the clarity of the documentation and the issues and a strong will of counsel to conclude the matter.

There is one trend which needs to change, if the flow is to continue smoothly. A lot of time of Courts is wasted on the following activities, which are only illustratively provided herein, namely:

- Dictation of an *ex parte order* where there are previous orders on similar facts and where, the Judge is agreeable to grant relief. Some counsel carry draft orders on a pen drive saving substantial time for the Court ;
- Applications for extension of time; condonation of delay; filing of additional documents etc. which as a matter of strict principle, should be limited to a 10-15 minute type argument; and
- Applications under Order 7 Rule 10 and 11 of the CPC, where despite the law being very well settled, tend to slow down the trial of a lawsuit;
- Reading full paragraphs and pages of case-law on well-known propositions of law. In some of the more advanced legal jurisdictions, the case is simply pointed to without more.

INDIA

There are a few creative practices, which are being observed for rapid disposal of lawsuit. Some examples are:

1. The practice of clubbing different lawsuits which involve similar issues of law, and hearing them together.
2. The practice of the Judge dictating the arguments of counsel as soon as they have been made, on the same day, so that should the case go to another day, the effort of the previous hearing has been captured.
3. In the event that there is a contradiction in the pleadings by a party, the summoning of the party to the Court for recording all of his/her statement under Order X Rule 1 and 2 of the CPC to chisel out the main issues in controversy.

As regards creation of deterrence, there is a recent trend to impose actual costs (including counsel fee) as held in *Sholay Media v Yogesh, CS (COMM) 8 of 2016* and *Uflex Limited v State of Tamil Nadu, CA 4862-63 of 2021*.

A fascinating development that appears to be taking place is a diverse range of complex IP issues coming up before the Courts. Perhaps at no time in the past has such a rapid exposure of issues been experienced. The habit of Indian courts to look at global jurisprudence to assist them in solving what are truly global problems is helping not only in moving solutions in a parallel way to the manner in which they are being resolved overseas, but Courts have started to contribute newer ideas to those problems which are being looked at by overseas jurisdictions as possible solutions. This is a major qualitative change. Examples include

a) The debate over global injunctions and their enforcement through technologies such as geo-blocking;
b) Granting Anti-anti-suit-injunctions and orders which indemnify one party against the penalty imposed on it by a foreign court;
c) Proposing trials in Standard Essential Patents (SEP) disputes which are restricted to the issues concerning FRAND (Fair, Reasonable and Non-Discriminatory) terms;
d) Denying safe harbour to intermediary organisations in the finding that their very business model is intended to facilitate IP infringement, and that wilful blindness is not a criteria for availing safe harbour.

Conclusion

The one major reform that is still awaited is a uniform development of IP enforcement in other High Courts and at the various District Courts of India, as the creative energy of a young India is now loudly visible with hundreds or thousands of startups, products and ideas buzzing around, and while IP law is providing full support at the moment, the support is not uniformly spread out.

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Pravin Anand is the Managing Partner and Head of Litigation at Anand and Anand.

Awarded the AIPPI Award of Merit, INTA's President's Award, recognised as the "Most Innovative Lawyer" by Financial Times and the first Indian to be inducted in the IAM IP Hall of Fame, Pravin has an experience of appearing in over 2500 cases and successfully establishing hundreds of landmarks in over 43 years of his practice as an IP lawyer.

Pravin has strengthened India's IP jurisprudence with practice encompassing all facets of IP.

To his credit are patent lawsuits that have transformed the pharmaceutical and bio-technology enforcement regime in India including Merck Vs. Glenmark (First Patent lawsuit to be decided in plaintiff's favour post trial under Patents Act); Roche Vs. Cipla; the Monsanto case; and a large number of other suits on behalf of Pfizer, BMS, AstraZeneca, etc which provided answers to complicated questions on genus and species patents.

Pravin has broken new grounds in Indian IP jurisprudence with India's first Anti-anti-suit injunction (*InterDigital v Xiaomi*); Nokia-Lenovo multi-technology multi-year agreement; Software Patent law suit conferring protection (*Ferid Allani* case); development of damages culture in large number of cases that recognized not only punitive, but compensatory, exemplary and aggravated damages (*Philips Vs. AmazeStore*); India's first post-trial SEP judgment (*Philips Vs. Bhagirathi*); development of unique remedies such as the "Tree Planting Order" (Merck case); and order benefitting adolescent girls (Hermes case).

In addition to his regular practice, Pravin writes for 'Halsbury's Laws of India on Intellectual Property'; Famous and Well-known Marks, An International Analysis (Legislative history and analyses of national laws) published by International Trademark Association; besides a large number of Chapters in International IP Publications like GTDT, AsiaIP, MIP etc.

He is spreading the message of IP through pioneering initiatives like the Raj Anand Moot Court Competition since 1997; 'Anaryst' – an IP Board Game; 'Brainchild - First IP-themed play; 'Adventures of Mr. IP' – an IP Comic; and 'IPONOMICS' – a Coffee Table Book (https://updates.anandandanand.com/iponomics/).

He serves as the Chairman of Confederation of Indian Industry's (CII) Sub-Committee on Intellectual Property Rights and as the Chair of National Council on Intellectual Property Rights at Associated Chambers of Commerce and Industry of India. In addition, he serves as the Technical Committee Member, Legal Services Sectional Committee Bureau of Indian Standards and as the Honorary Member to the Managing Committee PHD Chamber of Commerce and Industry. He has also served as the President of Indian Groups of AIPPI, APAA and FICPI besides being an ex-member of INTA Board of Directors.

Pravin has been consistently acknowledged by IBLJ, ABLJ, MIP, WTR, Who's Who Legal, Expert Guides, Chambers and Partners, World IP Review, GIPC and IAM as a leading IP lawyer.

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James M Campbell focuses his practice on civil litigation and the defence of catastrophic environmental, product liability, toxic tort, medical device, pharmaceutical, professional liability and negligence matters throughout the United States. Mr Campbell is president of Campbell Conroy & O'Neil, PC, and has been with the firm his entire career. He has tried more than 100 cases in 15 states and is a fellow of the American College of Trial Lawyers, the International Society of Barristers and the Litigation Counsel of America, as well as a diplomate of the American Board of Trial Advocates (ABOTA). Mr Campbell is recognised as a leading lawyer by The Legal 500, Chambers USA, Who's Who Legal, Best Lawyers in America and Super Lawyers.

Mr Campbell serves as trial counsel for clients in industries including water engineering, automobiles, pharmaceuticals, medical devices, construction, heavy equipment, recreational products, chemicals, and material handling. He also defends a variety of professions in connection with alleged negligence, malpractice and breach of fiduciary duty claims. One of the firm's principal trial attorneys, Mr Campbell serves as national, regional and local trial counsel for a variety of major national and international corporations and insurers, and is responsible for supervising and coordinating litigation not only throughout New England, but other regions of the country.

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Paul Riley is Deloitte's Global transfer pricing leader & a senior transfer pricing partner in Tax & Legal practice in Australia. Paul has over 38 years of experience, including ten years with the Australian Taxation Office and 28 years in public practice, with experience serving clients throughout Australia, Asia Pacific, Europe and the US. Paul spent two years with Deloitte's Global Transfer Pricing team in its Los Angeles office, working with US multinational companies on a variety of transfer pricing assignments.

Paul has held many senior positions during his 24 year career at Deloitte including Managing Partner of Deloitte Australia Tax & Legal (2012-2015), Victorian Tax & Legal leader (2011) and Deloitte Asia Pacific Transfer Pricing leader (2009-2012). Paul was appointed leader of Global Transfer Pricing Practice effective from January 2017.

In his global Transfer Pricing role, Paul is responsible for overseeing Deloitte's global transfer pricing strategy. He is Chair of the Global Transfer Pricing Leadership Executive and is an executive member of Deloitte's transfer pricing global deal review board and Deloitte's Global TP Technology COE. Paul and the global team are focused on ensuring that Deloitte listens and understands the nuances of the clients' organization, provides the clarity needed in light of the changing international tax landscape for the business to succeed, consistency that is now critical with increase in transparency by adopting globally consistent documentation processes and provides the tax function the confidence to add value to the organisation.

Paul is experienced in all facets of transfer pricing, including successfully resolving numerous transfer pricing audits and advance pricing arrangements (APA), large-scale global, regional and local documentation studies, helping global clients to transform their operations by focusing on standardising and streamlining their compliance and reporting requirements (TP Operate), analysis and review of value chains and IP alignments, and planning for cross border transactions for global businesses across numerous industries.

Paul has been selected as one of Euromoney's World's Leading Transfer Pricing Advisers since 2008. He is a regular presenter at external transfer pricing conferences and has spoken at public seminars in Australia, US, Europe and throughout Asia. He is one of the leaders in shaping the thinking in this currently changing tax landscape by regularly submitting Deloitte's view on policy matters to government.

Paul is also the Lead Tax Partner for several ASX100 companies leading Deloitte's SMEs to deliver the full suite of tax services and to provide valuable insights to the tax functions on how best to transform its operations to be the busines partners that they want to be, while introducing technology to support their compliance and reporting requirements globally.

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CHINA

Key Transfer Pricing Considerations in the Energy and Resources Industry: Observations from China

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In the context of the macro economic turbulence and geopolitical tension, the prices of energy and resources ("E&R") supplies have been under substantial fluctuation. This also give rise to challenges to the relevant multinational companies ("MNCs") in their transfer pricing ("TP") management.

Very commonly, the E&R giants have made significant tax payment contributions to the communities; at the same time they have also contributed quite some landmark TP controversy court cases (to name a few: in Canada and Australia) that give rise to profound impacts to the global TP practice.

While the E&R businesses normally have multiple steps in the value chain (e.g., location and feasibility assessment, exploration, exploitation/mining, processing/refining, logistics, sales, and sometimes also with waste management), the most significant intercompany transactions in term of transaction values often take place when the mining/ processing entity in one jurisdiction selling to the trading entity (or marketing hub) in another, or the group's off-shore procurement/trading center reselling to its affiliates. This article would focus on the E&R intercompany buy-sell transactions based on our observations in the market, including both China in-bound (e.g., with MNC's Mainland China trading entity for import and local sales) and out-bound (e.g., with China headquartered group's Hong Kong entity as trading and financing platform) arrangements.

Industry features

We would start with examining a few special features of the E&R industry, which could help set the stage for further elaborating how these features leading to TP challenges for MNCs.

- Price volatility: It is almost like a gambling if someone tries to predict a precise price of E&R supplies, and not surprisingly there are stories about players having suffered fatal losses due to the wrong judgment on the price trend (and lack of internal control). The large customers with strong bargaining power often prefer to enter into long term contracts with the suppliers, in order to smooth out the price fluctuation impact over time. On the other hand, the customers with smaller volume/ weaker financial capability, or those with unexpected short-term demand, would have to purchase at the spot contract price. These are two quite fragmented markets, and sometimes the prices could be very different.
- Use of hedging: As a natural solution to manage the price volatility, E&R suppliers often collaborate with the financial institutes to hedge against the risk via the use of derivatives in the commodity exchanges. Needless to say, the hedging strategy, decision and work protocol could be critical to the group's business sustainability; those are often managed and supervised by the group's centralized specialist team, rather than discretion of the local subsidiaries.
- Inventory risk management: Given the nature and volume of E&R supplies, there is not many alternatives of the logistics arrangement and inventory management. If any default on a large transaction after shipping, the supplier may not immediately find another customer, and basically it is not feasible to return the goods. Therefore in a third party arrangement the supplier would often require protective clauses in the offtake agreements (e.g., by imposing stiff financial penalty in the event of default), limiting the buyer's ability to cancel the contract; the supplier would also require down-payment/deposit before shipping. MNCs would often mimic such industry practice in the intercompany contracts.
- Environmental, Social, and Governance ("ESG") sustainability: As a top priority, large E&R companies must fully comply with the highly regulated requirements by acting as responsible social citizens. This could be witnessed in their comprehensive annual ESG reports, with attention to labour safety, environment protection,

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and collaborations with stakeholders in the community, etc. There is increasing awareness and demand for ESG disclosures to serve the public interest, and E&R players must commit more resources to evaluate and manage the ESG risks of their operations. As part of it, carbon neutrality has become the key topic when setting up the future business strategy, in particular for those suppliers of "traditional" energy and resources.

Potential mismatches of people functions, risks and assets

It is not unusual to see a few mismatches within the same MNC group in the industry: one entity with key headcounts manage the physical goods trade, but the legal title of goods and the large transaction revenue is held in another entity. The latter entity, though with fewer headcounts, is exposed to inventory risk and market risk. To make it more complex, the group may have different entities dealing with goods trade and hedging/paper trade respectively, and the profit and loss would sit in different entities.

As a common TP method, one might tend to decide which entity(ies) could be viewed as the least complex for the application of transactional net margin method ("TNMM"). This may not necessarily work well given the mismatches in the industry. Different TP policies would need to be considered, including the profit split, in order to decide the proper approach for alignment amongst jurisdictions.

In practice, the buy-sell entities (i.e., Mainland China entities import from overseas affiliates for resales, or Hong Kong entities acting as the buy-sell platform for the China based groups) could apply different TP policies. We would further discuss the risk-taker model and the limited risk model, not because they are the only two available, but they could well illustrate some typical issues in the industry.

Risk-taking buy-sell entity

For the risk-taking entities, normally they would set the intercompany prices following the market prices. The first step is to define whether the controlled transactions are regulated by long term supply contracts or spot contracts, since the third party pricing of these two markets could be quite different. In case one entity has both long term supply contract and spot contract with its affiliate, two separate economic tests would likely be required.

While there are public market price indices for common E&R commodities and could usually be taken as reference to set the prices in third parties contracts, the pricing formula may not be very straightforward. Instead, there could be multiple invoicing arrangements, and the final invoice price could be a function of various parameters such as price index in a certain period, weight, quality (after verification), freight, insurance premium, and interest, etc., even not taking into account blending or processing fee charges. As a result, the application of comparable uncontrolled price ("CUP") method would require a detailed comparison between the intercompany pricing and the third party pricing.

There are also cases that no public available market price index for supplies of certain specifics, or no available third party transactions with equivalent volume in the relevant time period. And for spot price transactions, sometimes the price fluctuated even on the same day. In this regard, the intercompany pricing would have to make adjustment on top of the reference price based on reasonable working assumptions, and more difficult to illustrate the arm's length compliance.

Given the large and frequent changes of market price, a risk-taking entity may have very unstable profit and loss results year over year (or even huge differences within the same fiscal year), which would be a challenge if the entity intends to finance its operation from local bank loans. As a result, parent guarantee may need to be in place to enhance the repayment ability; alternatively the entity may also use internal shareholder loans, but need to take into account the China foreign exchange borrowing limit of overseas loans and also the thin capitalization regulation.

Limited risk buy-sell entity

The TP policy of rewarding a limited risk entity a stable return may generally work better if the market price is relatively stable, but this is not the case for the E&R business. So the very practical issue is how to implement such model in reality.

If the buy-sell entity is incorporated in Hong Kong without foreign exchange control and indirect tax (e.g., customs duty), MNCs could easily implement an adjustment on the prices of prior transactions in order to align the buy-sell entity margin with the intended range. In Mainland China, however, such one-off TP adjustment would need to detour a series of road blocks including foreign exchange, customs, and VAT implications. Given the practical difficulties, some China entities in the industry had to create new transactions such as intercompany service fee payment/ income to adjust the local margins; even this is for the good purpose of TP compliance, without business substance it may give rise to other unfavourable consequence.

Over the recent years, China government authorities have heard about the taxpayers' comments, and we do see a few new initiatives that aim to facilitate the compliance and implementation of cross-border intercompany transactions.

- In 2020, State Administration of Foreign Exchange ("SAFE") published the bulletin of the guidelines for the administration of foreign exchange accounts for the current items, with an update in 2021 to provide instruction on how the banks proceed with the profit compensation under TP adjustment for MNCs. In particular, the banks shall review relevant documents from tax or customs authorities, profitability adjustment agreement, and invoices, etc.
- In 2021, State Taxation Administration ("STA") announced the program of the simplified procedure to apply for unilateral Advance Pricing Arrangements ("UAPA"), aiming to shorten the timeline of UAPA negotiation for taxpayers qualifying the pre-conditions.
- In 2022, a pilot program in Shenzhen would allow taxpayers to reach agreements with both local Customs and tax authorities at the same time in relation to the pricing of future goods imports from overseas affiliates, which may effectively help the taxpayers to address the different concerns on the related party import price from Customs and tax authorities. It is expected that similar programs would be rolled out to other cities in future.

While it is always a big decision for MNCs to step into an APA/ advanced ruling application, E&R companies could carefully review if the above programs may be useful to address the current TP challenges and achieve more certainty.

ENERGY & RESOURCES: SPECIAL FEATURES OF THE INDUSTRY CALL FOR DIFFERENT TRANSFER PRICING METHODS

Considerations on hedging arrangements

E&R companies often use the hedging transactions to manage the market price risk. In a TP context, we have two common questions: 1) Which legal entity would enter into the hedging contract? 2) Which legal entity(ies) would benefit from such hedging (or what is the scope of hedging)?

To start with a simple scenario, a Hong Kong buy-sell entity holds the title of inventory, and it enters into a hedging contract for its own assets with its own funding to limit the market price exposure; it also receives guidance from its HQ on the hedging strategy. Given the hedging is for Hong Kong entity's own position, the only TP consideration in this case may be whether it should pay a service fee for the HQ guidance, depending on the functional and risk profiles.

As a more complex situation, the Hong Kong entity has a cash surplus, and it receives instruction from HQ to enter into hedging contract against the overall position of the other group affiliates (not just for Hong Kong entity). Understandably, the OECD TP Guideline (2022) could only provide general comments on the hedging in the chapter of *Transfer pricing aspects of financial transactions*. In this regard, the group would need to delineate the transactions and assess whether the Hong Kong entity should pass through the hedging gain/loss to the affiliates, and if needed, how to implement such in practice.

Considerations on ESG

In the past ESG was often viewed as a back-office function (rather than a key business driver), and part of it maybe as shareholder activity. Nowadays obviously ESG is not just compiling an annual report at the group level, but all the operating entities would need to follow the ESG requirements. In particular, more and more E&R companies now have developed new ESG oriented organizational and governance structure, setting up ESG goals as corporate vision, and linking the management performance with ESG KPIs. From a TP perspective, it is worth reviewing if the ESG could become a more important value driver in the E&R business, as opposed to a cost center.

On the other hand, it is expected E&R companies would substantially increase the functions and activities on carbon neutrality, such as internal carbon pricing, internal campaigns/ management measures of reviewing and promoting the reduction of carbon emission, external trading of carbon credits and derivatives. Accordingly, the companies and the TP practitioners would need to revisit the existing group TP policies and address the relevant TP challenges in this cutting-edge area, with considerations including: how to remunerate the new functions, who should ultimately bear the expenditure, and allocation of benefits arising from deliberate concerted group actions, etc.

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She has experiences in providing cross-border tax service for more than 30 years. Before joining Deloitte China in 2010, she was the tax practice leader and led transfer pricing and international tax services of Deloitte Taiwan. Eunice has many years of providing transfer pricing and cross-border tax services. She started up Deloitte Taiwan's transfer pricing practice. She has worked for preparation of transfer pricing report, planning for cross-border transactions including supply chain issues, value chain analysis, advice on global transfer pricing policy, transfer pricing due diligence at M&A projects and helping mitigate transfer pricing risk, assistance in tax audits, help with conclusion of advance pricing agreements and mutual agreement procedures, and advice on business restructure. Eunice has led mutual agreement procedure and advance pricing arrangement projects and also significant tax dispute cases and has successfully helped clients close the cases. Her clients include multinational companies operating in China as well as Chinese headquartered companies with overseas operations. Eunice is experienced in solving complex and difficult tax dispute cases for clients. She has helped clients go through formal tax controversy process and also has helped clients close tax disputes through negotiation and settlements. Eunice is a Taiwanese certified public accountant (CPA) as well as Chinese CPA. Eunice has been named the leading TP advisor consecutively every year by Euromoney. She was also been named as the Best of the Best 2013-2015, 2016-2018 and 2019-2021 in transfer pricing area by International Tax Review. Eunice is a frequent speaker at public seminars and also trainings of tax authorities. She has also been active in associations in Shanghai and has been invited to speak for the enterprises. Eunice has also been contributing articles in transfer pricing area to International Tax Review and other publications.

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Henrik Lund is an international tax and transfer pricing partner with KPMG Acor Tax in Denmark. He is responsible for providing transfer pricing and international tax services to a wide range of the largest Danish and international multinationals with global operations. Henrik has been part of KPMG's Global Transfer Pricing Services network since 2001 and has worked at KPMG in London and for three years with KPMG Meijburg in the Netherlands. He is one of the founding partners of KPMG Acor Tax and is part of the daily management team.

Due to the Danish tax authorities' intense focus on transfer pricing and substantial adjustments imposed on multinationals, Henrik created and has been leading KPMG Denmark's transfer pricing audit and dispute resolution task force. Subsequently, this has developed into a full-service tax dispute management and controversy practice, which assists clients with resolution and prevention of tax disputes and strategic handling of processes connected with international tax and transfer pricing audits.

As such, Henrik has been the leading adviser with respect to negotiating numerous tax cases and many of the MAPs and APAs involving the Danish competent authority. He was also the advisor for the taxpayer in the very first Danish landmark Supreme Court transfer pricing case, which ruled in favor of the Danish taxpayer in 2019.

In addition, Henrik has been the lead in launching a KPMG tax dispute resolution and controversy network in Denmark that brings together tax dispute resolution and controversy in-house specialists to share best practices. KPMG Acor Tax has been recognised by International Tax Review as a leading tax controversy firm in Denmark every year since 2014.

Henrik features as a lecturer and speaker on numerous tax and transfer pricing conferences and seminars in Denmark and abroad and is the author of multiple articles on international transfer pricing. Henrik also established a separate transfer pricing module as part of a Master in Tax education at the Copenhagen Business School and is recognised in the "Guide to the World's Leading Transfer Pricing Advisers".

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Axel Eigelshoven is a transfer pricing partner in PwC's Düsseldorf office and serves as head of the PwC's German transfer pricing practice. He has more than 20 years of experience in international taxation and transfer pricing.

Axel is working on wide variety of transfer pricing projects including tax audits, IP migration, tax effective supply chain management, permanent establishment issues, APAs and competent authority procedures under the tax treaty and the EU arbitration convention. His clients involve a number of DAX 30 companies, large multinationals and midsize companies. Axel is focused on the automotive, engineering and chemical industry.

Axel lectures at the Mannheim Business School, the Vienna University of Economics and Business and is frequent speaker on transfer pricing at national and international seminars. He is co-author of Vogel/Lehner, Doppelbesteuerungsabkommen, a leading commentary on tax treaties, co-author of Kroppen, Handbuch der Verrechnungspreise, a leading publication on transfer pricing and is contributing the German country chapter in IBFD's Global Transfer Pricing Explorer. Moreover, he has published numerous articles in national and international tax journals.

Axel holds a degree in Business Economics (Diplom-Kaufmann) from the University of Cologne. He is a Certified Tax Advisor (Steuerberater) and is a member of the Tax Advisors Association and the International Fiscal Association.

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Prof Dr Axel Nientimp is a tax and transfer pricing partner at WTS located in the Düsseldorf office. He is the Head of Transfer Pricing Strategy & Dispute Resolution. Axel has 25 years of experience in international taxation and transfer pricing.

Over the years, he has delivered a broad range of transfer pricing solutions to companies in various industries. His projects cover all aspects of designing, implementing and documenting transfer pricing solutions including the attribution of profits to permanent establishments as well as large supply chain reorganisations. Axel has significant experience in defending multinationals in transfer pricing tax audits and Mutual Agreement Procedures as well as negotiating bilateral and multilateral APA's.

Axel holds a PhD in Business Taxation and a degree in Economics (Diplom-Ökonom) from the University of Bochum. He is a Certified Tax Advisor (Steuerberater), a Certified Tax Advisor for International Taxation (Fachberater für Internationales Steuerrecht) and a member of the Tax Advisors Association. Axel has published a volume on the profit allocation of multinational enterprises and a broad range of articles on transfer pricing and international taxation for professional journals. He is the co-editor of Germany's leading compilation of transfer pricing laws and regulations and commentator of the transfer pricing regulations in Germany's Foreign Tax Code. He is an honorary professor on international taxation at the University of Duisburg-Essen and a regular speaker at universities as well as at national and international conferences and seminars.

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Prof Dr Stephan Rasch is a transfer pricing partner in PwC's Munich office. He has twenty-years years of experience in international taxation and transfer pricing. Before joining PwC in December 2013, Stephan worked with another Big Four firm as transfer pricing partner. Stephan advises clients in tax matters associated with cross- border transactions, including permanent establishment issues and value chain transformations (VCT) projects. He has worked on a broad variety of transfer pricing projects for various industries, including the automotive and automotive supplier industry as well as chemical and pharmaceutical industries, the machinery tool, and IT sectors. Stephan's clients include German-based DAX companies as well as European and US multinationals. He serves as a Global Relationship Partner for two largeGerman-based companies as well as Lead Partner for two Dax-30 companies.

One of his focus areas is transfer pricing controversy. Stephan serves as Global Lead for PwC's Transfer Pricing Controversy team. He is successfully involved in German and European tax/transfer pricing audits defending the restructuring and/or the transfer of intangible property in business model reorganizations. Stephan's experience with Mutual Agreement Procedures include bilateral and multilateral cases as well as the negotiation of bi-and multilateral Advance Pricing Agreements. Finally, he is involved in tax court litigation relating to transfer pricing cases.

Stephan has led numerous global documentation projects, inter alia for German-based multinational entities implementing and maintaining a modular global core documentation concept. He has also gained significant experience in VCT projects during the last two decades.

Stephan has published a volume on transfer pricing legislation in international German, bilateral and European tax law. He is co-editor and co-author of one of the leading transfer pricing publications in Germany, Kroppen/Rasch, Handbuch Internationale Verrechnungspreise, and co-editor and co-author of Gosch/Kroppen/Grotherr/Kraft, DBA-Kommentar, a leading commentary on double tax treaties. He is editor of the Internationale Steuer-Rundschau (ISR), a German international tax journal and contributes articles to national and international tax journals on a regular basis. Stephan is professor of international tax law at the University of Augsburg and is a frequent speaker on transfer pricing at national and international seminars.

Stephan is a member of the Munich Bar, the International Fiscal Association (IFA) and the IFA Bavaria board. Stephan holds a PhD in International Tax Law and a degree in law from the University of Bochum. He is a tax lawyer (Rechtsanwalt/Fachanwalt für Steuerrecht) and has recently been awarded an Executive MBA from Quantic School of Business and Technology.

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Dr Achim Roeder is a transfer pricing partner with more than 20 years of experience in international taxation and transfer pricing. His clients include leading German and international multinationals from diverse industries with an emphasis on large German corporates. His projects cover transfer pricing planning in respect of European supply chain reorganisations as well as transfer pricing implementation and documentation. Achim is regularly involved in German-centric transfer pricing controversy and has been appointed as an expert witness in transfer pricing court cases.

Achim lectures on international tax law at the University of Bochum and is a frequent speaker at German and international conferences. His publications include a volume on the economics of anti-avoidance legislation in international German tax law as well as various other publications covering a broad range of transfer pricing and economic topics. Achim holds a PhD in Business Taxation, a Diploma in Business Economics, and a Master of Arts from the University of Bochum. He is a certified German tax advisor (*Steuerberater*).

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Stephan Schnorberger works for international businesses to:

- coordinate global tax and transfer price projects;
- facilitate cross-border activity in today's tax environment;
- represent business in complex transfer price controversies

Areas of particular expertise of Stephan are bi-/multilateral audits, transfer price litigation, transfer pricing and business restructuring, supply chain modeling and tax planning. Stephan also acts as an independent court expert in transfer price matters.

In addition, he supports businesses by economic analysis and advocacy in competition matters, such as business combinations, cartel damages cases, and questions of abuse of market power.

For numerous years Stephan has been recognized in the Euromoney Expert Guide survey among "The Best of the Best" Global Tax Advisors and Global Transfer Pricing Advisors.

Among his representative cases are:

- impact analysis of Pillar II implementation;
- successful deflection of a multilateral tax audit by litigation;
- representing a global business in a bilateral tax audit on transfer prices;
- transfer price APAs with various countries including Switzerland;
- litigation against taxation of a transfer of functions;
- complex and high value transfer price audits;
- litigation against adjustment of IP valuation;
- reviews of IP structures from a BEPS perspective;
- strategic reviews of business models to optimise customs and transfer pricing;
- tax planning, transfer pricing, and valuations for the outbound transfer of intellectual property;
- tax planning and implementation of an Irish principal structure for a German multinational;
- competent authority procedures within Europe and with the U.S.

Stephan regularly writes articles and speaks at tax conferences and academic events.

He holds a German doctoral and a master's degree in business administration as well as a US master's degree in economics.

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Susann accumulated 25 years of experience in consulting multinationals in the field of international tax and transfer pricing. Her expertise encompasses transfer pricing structuring, operational implementation and transfer pricing process design, advise connected to Advance Pricing Agreements/Mutual Agreement Procedures, Joint Audits and tax audit defense.

Susann's clients include several DAX 40 multinationals, as well as other US, European and Asian corporations representing a wide range of industries. During the last years, Susann led a number of projects involving permanent establishments, complex restructurings including transfer of functions and post-merger integrations. Susann is PwC's EMEA Consumer Market Tax Leader and the Leader of PwC's International Consumer Market Transfer Pricing Network. As such Susann has in-depth knowledge of industry-specific transfer pricing aspects.

Susann is a frequent speaker at various international tax conferences including but not limited to tax conferences held by the Vienna University, the International Fiscal Association (IFA), the Federal Chamber of Tax Advisor and by PwC. In addition, Susann frequently publishes articles in German and international tax magazines, is a contributor to leading transfer pricing literature and co-editor of the No. 1 German publication on transfer pricing regulations ("Vögele Handbuch Verrechnungspreise"). Susann is chief of the board of the IFA Germany Rhein-Ruhr and board member of the German Women in IFA Network. In that role she frequently organizes tax and transfer pricing seminars with top ranking representatives of tax administration, tax jurisprudence, scholars, inhouse tax specialists and advisors.

Susann studied business economics and tax law at the Dresden Technical University, Germany, and Japanese and International Tax Law at the KEIO University Tokyo, Japan. She later enrolled at Maastricht University for postgraduate studies of international tax law. She is a German certified tax advisor (Steuerberater).

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Antonio Russo is an established practitioner of international tax law with Baker McKenzie Amsterdam. He is Chair of the Global Tax Practice, comprising 1000+ practitioners and co-heads the Amsterdam Transfer Pricing Team. Antonio lectures at numerous seminars and conferences around the world, as well as contributes articles to several international tax reviews. He has been a member of the International Fiscal Association (IFA) since 2001.

Practice Focus
Antonio specializes in Transfer Pricing design, implementation and valuation of investments and intangible assets. He has extensive experience in tax planning / restructuring engagements, and has performed Transfer Pricing studies for clients in numerous industries. Antonio also provided assistance to clients in developing strategies for the conclusion of APA's as well as tax audit defense in Europe, the USA and Asia.

Antonio is contributing, and has in the past actively contributed, to the OECD consultations on the revision of the OECD Transfer Pricing Guidelines. Antonio lectures at various seminars and conferences in Europe, Americas and Asia. He is involved with training Tax Authorities on transfer pricing: Italian, Danish, Singaporean and Korean Tax Authorities among others. He is a Fellow of the International Tax Center of the University of Leiden where he regularly teaches transfer pricing. He has been visiting lecturer with other universities, such as the Nanyang Technological University (Singapore), University of Padova (Italy), the European Tax College at the University of Leuven (Belgium) and the Aarhus University (Denmark). Furthermore, Antonio regularly lectures at the IBFD International Tax Academy (ITA). He built up a diverse portfolio of publications from the IBFD to BNA publications, and contributes articles to *Intertax, International Tax Review, the Journal of International Taxation* and *Highlights & Insights on European Taxation*. He is been ranked among the best experts in transfer pricing for several consecutive years on the Euromoney Expert Guides, Legal 500 and Chambers. According to the Legal 500 survey, Antonio Russo is 'by far one of the most qualified transfer pricing experts'.

Professional Associations and Memberships
International Fiscal Association, Dutch Association of Tax Advisers (NOB),Dottori Commercialisti (Revisori Ufficiali dei Conti)

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University of Leiden (2004), University of Edinburgh (2003) Universitá dell'Insubria (2001), Bocconi University of Milan (1997)

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Harmen van Dam is a tax expert in the Multinationals group and Transfer Pricing team. For a diverse group of clients, including Fortune 100 companies, Harmen avoids or resolves transfer pricing disputes by means of Advance Pricing Agreements, audits procedures, corresponding adjustments, mutual consultation procedures and litigation. Many projects involve the concentration of activities.

With actions taken by the OECD, new regulations, and more scrutiny from the tax authorities, we are seeing an overall increase in audits (in both rigor and quantity) and a growing tendency towards litigation in the Netherlands. Similar developments are taking place within the EU, where we see "transfer pricing" state aid procedures. With this in mind you need a team that is one step ahead of the latest regulations and fine points of law, is able to help you avoid litigation where possible (but ready to litigate when necessary), and can guide you through the increasingly detailed and often conflicting statutory transfer pricing rules in multiple jurisdictions. Loyens & Loeff 's experienced Transfer Pricing team of over 40 people advises businesses in Planning & Strategy, Dispute Resolution (including litigation and State Aid procedures), and Documentation (Master File, Local File and ountry-by-Country report). Small and client-focused teams provide premium advice, both pragmatic and precise.

With more than 900 tax and corporate lawyers Loyens & Loeff is unique in its multidisciplinary services. Our approximately 350 tax specialists represent the largest tax practice of any law firm in Europe, if not worldwide. According to the tier-1 rankings of International Tax Review (World Tax and World Transfer Pricing), Chambers Europe and Legal 500 our tax practice is unrivalled within the Benelux.

Overall Loyens & Loeff is an independent law firm which provides tax advisory, notarial and civil law services with its primary offices in the Netherlands, Belgium, Luxembourg and Switzerland. In addition, we have offices in many financial capitals throughout the world.

Harmen holds a law degree from the University of Leiden (1991) and a degree from the New York University School of Law (LLM in taxation, 1996). He teaches regularly at the International Tax Center in Leiden and the Dutch Association of Tax Advisors. Reflecting the firm's own integrated approach, he also advises on Dutch corporate tax and dividend tax in international tax structures.

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Luis Coronado is a Partner based in Singapore and is the Global Tax Controversy Leader and Global Transfer Pricing Leader.

Luis has worked in Asia since 2005 and has more than 25 years of advisory experience in international tax, transfer pricing, tax policy and controversy issues.

Before relocating to Asia, Luis spent several years serving domestic and multinational companies in Latin America, namely Mexico, Brazil, Argentina, Colombia, Peru, and Venezuela. He has advised companies on the negotiation of bilateral advance pricing agreements and competent authority resolutions with Australia, Hong Kong, Korea, Indonesia, Germany, Israel, Luxembourg, Singapore, Switzerland, Thailand, Canada, China, Japan, Malaysia, United Kingdom, Mexico, and the US. He has also served many German multinational companies and is fluent in German, having lived in Düsseldorf as a student. He has also worked in Tijuana, Mexico City, Amsterdam, Washington D.C. and Shanghai.

Luis is a frequent speaker at tax seminars and universities in the Americas, Asia, and Europe. He has been an instructor at the International Bureau of Fiscal Documentation (IBFD)'s program for introducing transfer pricing to Latin American governments, as well as in their programs in Amsterdam, Kuala Lumpur and Singapore. He has also taught at the Yangzhou Taxation Institute in China. He has advised the Inter-American Development Bank, the UN's Economic Commission for Latin America and the Caribbean and the World Bank on tax policy issues especially on transfer pricing policy and legislation.

Luis was an international tax professor at Universidad Iberoamericana and Universidad Panamericana in addition to having participated in multiple training sessions for the Tax Administration Service in Mexico. Until recently he was also part of the Accountancy Faculty at Singapore Management University

Credentials

Luis has a Bachelor's degree in International Trade and Customs (Honors) from the Universidad Iberoamericana and a Masters in Business Administration from the University of Southern California. He has also taken courses at American University, IBFD's International Tax Academy, New York University, Harvard University, and Vienna University.

He is a member of the International Fiscal Association and has been voted numerous times into Euromoney's Guide to the World's Leading Transfer Pricing Advisors and Best of the Best. He is also a member of Bloomberg BNA Transfer Pricing Advisory Board and was awarded Asia-Pacific's Transfer Pricing Practice Leader of the Year at International Tax Review Asia Tax Awards 2019. Luis was bestowed the prestigious medal of "Mexicano Distinguido" by the Government of Mexico in 2018.

Luis is the President (Designate) of the Singapore-Mexico Chamber of Commerce, Vice Chairman of the Latin American Business Group's Executive Committee of the Singapore Business Federation and Member of the International Committee of Advisors to the President of the CONCAMIN (Confederation of Industrial Chambers of Mexico).

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Elvira Barriga Allvin, a tax partner of Deloitte in Sweden, is the leader of the Swedish transfer pricing practice, which was recognized as *Sweden Transfer Pricing Firm of the Year* in 2022 by International Tax Review. She has over 20 years of experience as a transfer pricing adviser in various jurisdictions. Elvira's international experience encompasses four years of work in the US and Germany with transfer pricing teams in New York, Boston, and Duesseldorf, as well as fluency in multiple languages (i.e., English, Swedish, German and Spanish) in which her advisory services may be rendered.

Elvira has extensive experience advising a broad portfolio of many of the largest Swedish multinationals, as well as other global players, on business model optimization, policy implementation, controversy management including APAs, MAPs and litigation, and effective documentation strategies. More recently, Elvira has advised her clients how to holistically align their transfer pricing models with evolving BEPS requirements while achieving sustainability, compliance and efficiency. Given the increasing need for digital transformation, Elvira is also assisting clients with related operational transfer pricing issues, as well as policy alignment needs. Elvira is frequently invited to participate in technical discussions with the Swedish Tax Agency and has offered technical training to judges ruling in transfer pricing matters in the Swedish courts.

Elvira's education includes a BA in International Studies and Economics from Boston College and graduate management courses at Harvard University. Elvira is a certified tax adviser and has been recognized by numerous prestigious guides, such as *Best of the Best*, *World's Leading Transfer Pricing Advisers* and *Women in Tax Leaders*. Elvira has also held various leadership positions within Deloitte, such as Nordic Transfer Pricing Leader and Global Advisory Council member.

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Mike Patton is a senior counsel in DLA Piper's Tax practice, based in Los Angeles. He focuses his practice on international transfer pricing.

Mr Patton has assisted many multinational corporations in a variety of industries in resolving IRS or foreign tax authority transfer pricing and other tax disputes as well as in planning major cross-border transactions. He was instrumental in obtaining the world's first Advance Pricing Agreement and he has assisted clients in negotiating more than 100 APAs.

Mr Patton was previously an attorney in the IRS Chief Counsel's Office where he had national responsibility at IRS for technical issues, regulations and litigation of cases relating to transfer pricing. Mr Patton was editor of and a major contributor to the Treasury/IRS *Transfer Pricing White Paper.* The *White Paper* laid the theoretical groundwork for the profit-based transfer pricing methods adopted by the US and the OECD.

Mr Patton has been named one of the *Best of the Best* US transfer pricing advisors as well as one of the leading Asia Pacific tax advisors by *Euromoney* and the Legal Media Group. He is an editorial advisory board member of Tax Management, Inc. and is the author of the Bloomberg Tax Management tax portfolio *Transfer Pricing: Advance Pricing Agreements.*

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