
INTERNATIONAL CORPORATE PRACTICE



PLI'S COMPLETE LIBRARY OF TREATISE TITLES

ART LAW

Art Law: The Guide for Collectors, Investors, Dealers & Artists

BANKING & COMMERCIAL LAW

Asset-Based Lending: A Practical Guide to Secured Financing
Equipment Leasing—Leveraged Leasing
Hillman on Commercial Loan Documentation
Hillman on Documenting Secured Transactions: Effective Drafting and Litigation
Maritime Law Answer Book

BANKRUPTCY LAW

Bankruptcy Deskbook
Personal Bankruptcy Answer Book

BUSINESS, CORPORATE & SECURITIES LAW

Accountants' Liability
Anti-Money Laundering: A Practical Guide to Law and Compliance
Antitrust Law Answer Book
Broker-Dealer Regulation
Conducting Due Diligence in a Securities Offering
Consumer Financial Services Answer Book
Corporate Compliance Answer Book
Corporate Legal Departments: Practicing Law in a Corporation
Corporate Political Activities Deskbook
Corporate Whistleblowing in the Sarbanes-Oxley/Dodd-Frank Era
Covered Bonds Handbook
Cybersecurity: A Practical Guide to the Law of Cyber Risk
Derivatives Deskbook: Close-Out Netting, Risk Mitigation, Litigation
Deskbook on Internal Investigations, Corporate Compliance, and White Collar Issues
Directors' and Officers' Liability: Current Law, Recent Developments, Emerging Issues
Doing Business Under the Foreign Corrupt Practices Act
EPA Compliance and Enforcement Answer Book
Exempt and Hybrid Securities Offerings
Fashion Law and Business: Brands & Retailers
Financial Institutions Answer Book: Law, Governance, Compliance
Financial Product Fundamentals: Law, Business, Compliance
Financial Services Mediation Answer Book
Financial Services Regulation Deskbook
Financially Distressed Companies Answer Book
Global Business Fraud and the Law: Preventing and Remediating Fraud and Corruption
Hedge Fund Regulation
Initial Public Offerings: A Practical Guide to Going Public
Insider Trading Law and Compliance Answer Book
Insurance and Investment Management M&A Deskbook
International Corporate Practice: A Practitioner's Guide to Global Success
Investment Adviser Regulation: A Step-by-Step Guide to Compliance and the Law
Life at the Center: Reflections on Fifty Years of Securities Regulation
Mergers, Acquisitions and Tender Offers: Law and Strategies
Mutual Funds and Exchange Traded Funds Regulation
Outsourcing: A Practical Guide to Law and Business
Privacy Law Answer Book
Private Equity Funds: Formation and Operation
Proskauer on Privacy: A Guide to Privacy and Data Security Law in the Information Age
Public Company Deskbook: Complying with Federal Governance & Disclosure Requirements
SEC Compliance and Enforcement Answer Book
Securities Investigations: Internal, Civil and Criminal

Securities Law and Practice Handbook
The Securities Law of Public Finance
Securities Litigation: A Practitioner's Guide
Social Media and the Law
Soderquist on Corporate Law and Practice
Sovereign Wealth Funds: A Legal, Tax and Economic Perspective
A Starter Guide to Doing Business in the United States
Technology Transactions: A Practical Guide to Drafting and Negotiating Commercial Agreements
Variable Annuities and Variable Life Insurance Regulation

COMMUNICATIONS LAW

Advertising and Commercial Speech: A First Amendment Guide
Sack on Defamation: Libel, Slander, and Related Problems
Telecommunications Law Answer Book

EMPLOYMENT LAW

Employment Law Yearbook
ERISA Benefits Litigation Answer Book
Labor Management Law Answer Book

ESTATE PLANNING AND ELDER LAW

Blattmachr on Income Taxation of Estates and Trusts
Estate Planning & Chapter 14: Understanding the Special Valuation Rules
International Tax & Estate Planning: A Practical Guide for Multinational Investors
Manning on Estate Planning
New York Elder Law
Stocker on Drawing Wills and Trusts

HEALTH LAW

FDA Deskbook: A Compliance and Enforcement Guide
Health Care Litigation and Risk Management Answer Book
Health Care Mergers and Acquisitions Answer Book
Medical Devices Law and Regulation Answer Book
Pharmaceutical Compliance and Enforcement Answer Book

IMMIGRATION LAW

Fragomen on Immigration Fundamentals: A Guide to Law and Practice

INSURANCE LAW

Business Liability Insurance Answer Book
Insurance Regulation Answer Book
Reinsurance Law

INTELLECTUAL PROPERTY LAW

Copyright Law: A Practitioner's Guide
Faber on Mechanics of Patent Claim Drafting
Federal Circuit Yearbook: Patent Law Developments in the Federal Circuit
How to Write a Patent Application
Intellectual Property Law Answer Book
Kane on Trademark Law: A Practitioner's Guide
Likelihood of Confusion in Trademark Law
Patent Claim Construction and *Markman* Hearings
Patent Law: A Practitioner's Guide
Patent Licensing and Selling: Strategy, Negotiation, Forms
Patent Litigation
Pharmaceutical and Biotech Patent Law
Post-Grant Proceedings Before the Patent Trial and Appeal Board
Substantial Similarity in Copyright Law
Trade Secrets: A Practitioner's Guide

LITIGATION

American Arbitration: Principles and Practice
Class Actions and Mass Torts Answer Book
Electronic Discovery Deskbook
Essential Trial Evidence: Brought to Life by Famous Trials, Films, and Fiction
Expert Witness Answer Book
Evidence in Negligence Cases
Federal Bail and Detention Handbook
How to Handle an Appeal
Medical Malpractice: Discovery and Trial
Product Liability Litigation: Current Law, Strategies and Best Practices
Sinclair on Federal Civil Practice
Trial Handbook

REAL ESTATE LAW

Commercial Ground Leases
Friedman on Contracts and Conveyances of Real Property
Friedman on Leases
Holtzschue on Real Estate Contracts and Closings: A Step-by-Step Guide to Buying and Selling Real Estate
Net Leases and Sale-Leasebacks

TAX LAW

The Circular 230 Deskbook: Related Penalties, Reportable Transactions, Working Forms
The Corporate Tax Practice Series: Strategies for Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations & Restructurings
Foreign Account Tax Compliance Act Answer Book
Internal Revenue Service Practice and Procedure Deskbook
International Tax & Estate Planning: A Practical Guide for Multinational Investors
International Tax Controversies: A Practical Guide
International Trade Law Answer Book: U.S. Customs Laws and Regulations
Langer on Practical International Tax Planning
The Partnership Tax Practice Series: Planning for Domestic and Foreign Partnerships, LLCs, Joint Ventures & Other Strategic Alliances
Private Clients Legal & Tax Planning Answer Book
Transfer Pricing Answer Book

GENERAL PRACTICE PAPERBACKS

Anatomy of a Mediation: A Dealmaker's Distinctive Approach to Resolving Dollar Disputes and Other Commercial Conflicts
Attorney-Client Privilege Answer Book
Drafting for Corporate Finance: Concepts, Deals, and Documents
Pro Bono Service by In-House Counsel: Strategies and Perspectives
Smart Negotiating: How to Make Good Deals in the Real World
Thinking Like a Writer: A Lawyer's Guide to Effective Writing & Editing
Working with Contracts: What Law School Doesn't Teach You

**Order now at www.pli.edu
Or call (800) 260-4754 Mon.–Fri., 9 a.m.–6 p.m.**

**Practising Law Institute
1177 Avenue of the Americas
New York, NY 10036**

When ordering, please use Priority Code NWS9-X.

INTERNATIONAL CORPORATE PRACTICE

A Practitioner's Guide to Global Success

**Edited by
Carole Basri**

Incorporating Release #13
January 2018
#237710

**Practising Law Institute
New York City
#10623**

This work is designed to provide practical and useful information on the subject matter covered. However, it is sold with the understanding that neither the publisher nor the author is engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

QUESTIONS ABOUT THIS BOOK?

If you have questions about replacement pages, billing, or shipments, or would like information on our other products, please contact our **customer service department** at info@pli.edu or at (800) 260-4PLI.

For any other questions or suggestions about this book, contact PLI's **editorial department** at: plipress@pli.edu.

For general information about Practising Law Institute, please visit **www.pli.edu**.

Legal Editor: Keith Voelker

Copyright © 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018 by Practising Law Institute. All rights reserved. Printed in the United States of America. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of Practising Law Institute.

LCCN: 2009217943

ISBN: 978-1-4024-0879-3

About the Editor

CAROLE BASRI is the editor of this book and an author or coauthor of several of its chapters. She is a 1976 graduate of New York University School of Law, where she was a member of its national moot court team. She was an assistant counsel for the Senate Antitrust and Monopoly Subcommittee from 1976 to 1977. From 1978 to 1980, she was an attorney at the Federal Trade Commission. Between 1980 and 1986, Ms. Basri was Assistant General Counsel at the advertising firm of NW Ayer, Inc. She then became an associate at Baker & McKenzie, and later at Hall, Dickler, Lawler, Kent & Friedman. From 1988 until 1993, Ms. Basri was Assistant General Counsel at Maidenform, Inc. She was a consultant to the Perrier Group, Inc. from 1994 to 1996. Since 1994, she has been a consultant to Deloitte & Touche, LLP. She was also General Counsel to China Online, Inc. from 1999 to 2001. Ms. Basri's current professional affiliations include: President of the Corporate Lawyering Group LLC; Executive Director, Greater New York Chapter, American Corporate Counsel Association; Co-chair, PLI Conference on Compliance; Co-chair, Corporate Counsel Committee, International Law Section, New York State Bar Association; Co-chair, International Employment Law Committee, International Law Section, American Bar Association; Director, International Advertising Association (U.S. Chapter); and member, PLI Corporate General Counsel Advisory Committee. As a teacher, Ms. Basri's assignments have included serving as Adjunct Professor of Corporate Law, Benjamin N. Cardozo School of Law, and Director, Corporate Lawyering Conference, New York University School of Law. Since 1994, Ms. Basri has been Adjunct Professor of Corporate Law at the University of Pennsylvania School of Law and in 1997 to 1998, she was the Grant Irely Lecturer. In October 2001, she received the LexisNexis Corporate Legal Times Award for Distinguished Legal Services. She is coauthor, with Irving Kagan, of PLI's *Corporate Legal Departments*.

About the Contributors

ISABEL C. FRANCO (chapter 2) is a senior partner of the Brazilian law firm of KLA—Koury Lopes Advogados. Her practice is concentrated predominately on matters of business law, assisting multinational clients in their investments in her native Brazil, and advising on matters relating to Brazilian laws, especially relating to corporate, mergers and acquisitions, contracts, and corporate compliance (including FCPA matters).

Ms. Franco joined the law firm of Demarest e Almeida in 1981 and left temporarily in 1988 for an internship in Freshfields' Hong Kong office. In 1990, she moved to New York to launch Demarest e Almeida's New York office where she stayed until 2003 when she moved back to Demarest e Almeida's main office in São Paulo. She left Demarest e Almeida in 2009 to join KLA—Koury Lopes Advogados.

She graduated from Universidade de São Paulo—School of Law, in 1978, with an LL.B., and in 1996 received an LL.M. from Fordham Law School. She is admitted to the Brazilian Bar and is licensed under New York law as a Foreign Legal Consultant. Furthermore, she completed the Program of Instruction of Lawyers at Harvard University in 1992.

She is engagingly active in the legal community, having served on the Council of the American Bar Association (Section of International Law and Practice) until 2002 and the American Bar Association-UNDP International Legal Resource. Ms. Franco was the Chair of the New York State Bar Association (International Section of Law and Practice) in 2001, having been the editor of the International Chapter Newsletter for more than three years. She is a member of the American Bar Association's especially created Working Group on Attorney-Client Privilege. Ms. Franco was also very active in the Brazilian community in New York, where she was a Director of the Brazilian-American Chamber of Commerce in New York, having been a Secretary of the Board of Directors (1997–1998) and a Vice President (1996–1997).

Additionally, she served as an Adjunct Professor at the Joseph Lauder Institute of the Wharton School, University of Pennsylvania, in 1991 and 1993. She has written several articles on Brazilian Law, and has lectured extensively on Brazil and its legal system all over the world. In Brazil, Ms. Franco serves on the committee of International Relations of the Brazilian Bar Association (OAB). She was on the board of directors of the American Chamber of Commerce (Amcham), where she served as legal counsel for the term 2003–2005.

BRIAN S. COUSIN (chapter 3) is a member of Dentons US, LLP's Litigation and Arbitration, ERISA and Employment Litigation, and Labor Relations practices and specializes in ERISA law and employment litigation. He has extensive experience in commercial litigation, employment litigation and arbitration matters throughout the country involving such claims as theft of trade secrets, fraud, breach of contract and fiduciary duty, defamation, violation of restrictive covenants, unfair competition, discrimination and retaliation, and violations of the ERISA and civil RICO statutes.

Mr. Cousin advises U.S. and multinational companies and executives in all aspects of employment law, including drafting and negotiating employment and separation agreements, corporate restructurings and reductions in force, internal corporate investigations, handbooks and policy manuals, sexual harassment and other sensitivity training, protecting against employee raiding and theft of confidential information, and compliance with all federal, state and local discrimination laws.

RICHARD I. SCHARLAT (chapter 3) is a partner in Dentons' 425-member global Employment and Labor practice, and a member of its Steering Committee. Mr. Scharlat has twenty years' experience in employment litigation defending management in many industries and in complex commercial litigation and class actions. He manages global employment projects for multinational companies all over the world, including key employment policies, recruiting challenges, licensing issues, corporate social responsibility initiatives, and data privacy concerns. A seasoned trial lawyer, he has tried bench and jury cases in federal and state courts in numerous jurisdictions in the United States, as well as arbitrations before FINRA and American Arbitration Association panels. He also regularly handles matters before the New York Division of Human Rights and the New Jersey Department of Labor.

Mr. Scharlat has substantial experience advising and counseling companies and executives on employment and labor issues, and dealing with equal employment, diversity, and discrimination counseling. He has a particularly deep background with employment issues in the health care field and with skilled nursing facilities.

Mr. Scharlat also has significant experience defending management in trade secret litigation, employee poaching/raiding cases, employment contract negotiations, executive compensation, restrictive covenant disputes, and unfair competition matters.

MATTHEW D. LOEB (chapter 3) is a member of Dentons' Capital Markets practice.

About the Contributors

VÍCTOR XERCAVINS (chapter 4) is a partner at the Spanish law firm Cuatrecasas. Mr. Xercavins has extensive experience in the corporate sector, particularly in joint ventures, company restructurings and mergers and acquisitions. He is presently co-director of Cuatrecasas' New York Office.

Mr. Xercavins has been invited to lecture at highly reputable business schools such as ESADE and INESE, and has also been a guest lecturer at the Universidad Internacional de Catalunya.

In the United States, he is a Foreign Legal Consultant in the State of New York and is a member of the American Bar Association (ABA), New York State Bar Association (NYSBA), American Foreign Law Association (AFLA), and the Out-of-State Foreign Law Firm Group. He is co-chair of the Foreign Legal Consultant Committee and vice-chair of the Student, LLM and New Lawyer Outreach Committee, both in the framework of the ABA Section of International Law. He also serves as secretary of the American Foreign Law Association (AFLA).

MARCO A. SANZ (chapter 4) is a corporate associate at the Spanish law firm Cuatrecasas. He is now based in Barcelona, after having spent time studying and working in the United States. He received his LL.M. from the New York University School of Law.

REBECCA WALKER (chapter 6) is a partner in Kaplan & Walker LLP, a law firm specializing in corporate compliance and governance located in Santa Monica, California and Princeton, New Jersey. Ms. Walker advises clients on the development and implementation of ethics and compliance programs. She assists companies in developing compliance and ethics programs tailored to each client's legal risks and business needs, and that conform to appropriate government requirements and pronouncements regarding effective compliance programs. Ms. Walker has worked with numerous companies in diverse industries on the design and implementation of their compliance programs, including risk assessment, compliance training, monitoring and auditing systems, supervisory structure and program documentation. She has also conducted numerous assessments of companies' compliance and ethics programs. Her clients have included companies from the consumer products, apparel, financial services, pharmaceutical, healthcare, banking, advertising, consulting, telecommunications, energy, retail and airline industries, including many companies in the Fortune 500.

Ms. Walker received her B.A. (magna cum laude, Phi Beta Kappa) from Georgetown University and her J.D. (cum laude) from Harvard Law School. She was formerly associated with the law firm of Skadden, Arps, Slate, Meagher & Flom, LLP, where she practiced in the Compliance Practice Group. She is the author of *Conflicts of Interest in Business and the Professions: Law and Compliance*,

published by Thomson West in 2005. She has published numerous articles regarding corporate compliance and is a contributing editor of *ethikos*, a leading compliance and ethics journal. Ms. Walker chairs the Practising Law Institute's annual Corporate Compliance Institutes in New York and San Francisco and their annual Advanced Compliance Workshops. She is a frequent speaker on ethics and compliance issues, including for PLI, the American Law Institute-American Bar Association, the Ethics and Compliance Officer Association and other legal and business groups. Ms. Walker serves on the Advisory Boards of the Society for Corporate Compliance and Ethics and the Corporate Compliance Center at the Southwest Texas College of Law.

SALAH HUSSEINI (chapter 7) is Senior Analyst, International Labor Standards, at the Walt Disney Company, in Burbank, California.

HENRY KLEHM III (chapter 9) is a partner at Jones Day. His practice focuses on regulatory examinations, investigations, enforcement actions, and other proceedings with United States and foreign regulators as well as on corporate governance matters.

CHARLES D. SCHMERLER (chapter 10) is a partner in Fulbright & Jaworski LLP, practicing in the New York office's litigation and international groups. He has extensive experience representing foreign and domestic clients, including governments, corporations and financial institutions, in both finance matters and dispute resolution. He has acted as lead counsel in arbitrations before the AAA and International Chamber of Commerce, and has appeared regularly before federal and state trial and appellate courts located in New York and other jurisdictions throughout the United States.

EDWARD G. KEHOE (chapter 11) is a partner in King & Spalding's New York office, specializing in international arbitration.

VIREN MASCARENHAS (chapter 11) is counsel in King & Spalding's New York office, and is a member of the International Arbitration Practice Group.

THOMAS J. DOUGHERTY (chapter 12) is a partner in the law firm of Skadden, Arps, Slate, Meagher & Flom LLP and author of *The Directors' Handbook*, published by CSC.

KURT P. RAMIN (chapter 13) is a former Partner of PricewaterhouseCoopers (PwC), New York and a past director and consultant at the IFRS Foundation at the IASB, London, where he also served as a

About the Contributors

Global Chairman of XBRL. He was a member of the EU Commission's High Level Expert Group on Intangibles and a treasurer of IUCN (International Union for Conservation of Nature), the world's largest association of nature and conservation agencies, headquartered in Gland, Switzerland.

Earlier in his career, he worked in key finance and operating positions in the U.S. and Germany.

Kurt Ramin is a member of Financial Executives International: Member, Committee on Governance, Risk and Compliance; AICPA (American Institute of Certified Public Accountants); and the Association of Certified Fraud Examiners (ACFE).

EBERHARD H. RÖHM (chapter 13) is widely recognized as one of the leading attorneys practicing in cross-border transactional matters between U.S. and German parties. He has extensive experience in developing, negotiating and completing complex corporate, securities and merger and acquisition transactions and in representing diverse clients such as purchasers, sellers and investors, financial advisors, underwriters and governments. Working in multidisciplinary teams of legal, tax and business professionals on complex transactions and cases, Eberhard advises European and other foreign clients on the legal aspects of their business activities in the United States and compliance with U.S. laws in connection with their U.S. activities. Eberhard is a partner of Duane Morris LLP, resident in the New York office. He previously was a partner of Arent Fox LLP; of Donahue & Partners, a law firm allied with Ernst & Young; and of Fulbright & Jaworski. He is admitted to practice in New York and Illinois as well as in Germany. He holds law degrees from Fordham University and the Universities of Heidelberg and Bonn.

MICHAEL C. DURST (chapter 14) is an attorney in private practice in Washington, D.C., and also serves as Special Counsel to Steptoe & Johnson LLP. He is a former director of the IRS's advance rulings program in transfer pricing matters, the Advance Pricing Agreement Program. His current practice involves planning, compliance, and defense in tax controversies.

LEO COOK (chapter 14) is Director, Legal, for HD Supply.

CATHERINE COFFEY (chapter 15) is an International Tax Partner at Deloitte Tax LLP.

AYAZ R. SHAIKH (chapter 16) is a partner at Sidley Austin LLP, an international law firm. He is an internationally recognized project

finance lawyer with a broad global practice representing sponsors, lenders, governments and multilateral agencies in major energy, infrastructure, satellite, mining and other projects. He brings twenty-four years of experience in over thirty-five countries in North and South America, Asia, the Middle East, Europe, and Africa on various types of projects and public private partnership (P3) structures. Mr. Shaikh has led pioneering projects, such as the World Bank's first investment implementing the Kyoto Protocol and establishing the model framework for acquiring emissions credits to enable clean energy projects. He has advised a Middle East government in establishing the first IPP in a country; an SOE on a US\$7 billion railroad project in Mongolia; project sponsors on the first IPPs in multiple countries in Asia; and a prominent Silicon Valley company on satellite projects as part of its initiative to expand Internet connectivity in Africa and Asia.

Mr. Shaikh has lectured and published widely, including authoring a book on *Project Finance Fundamentals*. He is consistently ranked among top project finance and energy lawyers by *Chambers Global*, *Euromoney*, *Who's Who*, and *The Legal 500*, among others, and in 2015, received *Smart CEO* magazine's Esquire Award. He was also selected as an American Council on Germany *Young Leader*.

Mr. Shaikh is a graduate of Yale College (cum laude) and Georgetown Law Center (magna cum laude; Order of the Coif) where he served on the *Law Review* board and was a John M. Olin Law & Economics Fellow. Following law school, he clerked in the Southern District of New York and worked at the U.S. Department of Justice. He serves on the Board of the Asian American Legal Defense and Education Fund (AALDEF), and the National Advisory Council of the North American South Asian Bar Association (NASABA). Mr. Shaikh has also worked as a Wall Street banker at Goldman Sachs (Fixed Income Group) and Bankers Trust (Derivative Products Group).

AYDIN S. CAGINALP (chapter 17) is a partner in Manatt, Phelps & Phillips, LLP. Mr. Caginalp's practice concentrates on business transactions, including acquisitions, mergers, joint ventures, private equity and general corporate and commercial matters, with an emphasis on international matters, entertainment and new media. He is listed in *The Best Lawyers in America*. He has worked extensively in the media and e-commerce field in connection with the acquisition of technology companies, music, broadcast and production companies throughout the world. In connection with Internet activities, he has worked in the establishment of ISP services, search engine companies, e-commerce companies and various initiatives involving delivery of music and entertainment products through the Internet, as well as digital rights management.

About the Contributors

DON ZARIN (chapter 18) is a partner in the Washington, D.C. office of Holland & Knight, co-head of the International Trade Practice Group, and head of the Foreign Corrupt Practices Act Team. He is the author of *Doing Business Under the Foreign Corrupt Practices Act*, a leading textbook on the subject.

DEBORAH R. SROUR (chapter 19) is an attorney at Cox Padmore Skolnik & Shakarchy LLP. She concentrates her practice in the areas of preventing money laundering, terror financing and bank fraud, as well as international commercial agreements and cross-border transactions. She has assisted many foreign financial institutions and companies in establishing offices in the United States, in compliance programs and in asserting claims in the United States and state courts. She has also assisted several clients in establishing offices in New York for corporations. Ms. Srouer applies her expertise in commercial law and cross-border transactions to assist in the detection of money laundering, terror financing and bank fraud and in the protection of the interests of financial institutions in the face of these threats.

CURTIS L. MO (chapter 20) is a partner in Wilmer Cutler Pickering Hale and Dorr LLP. Mr. Mo is recognized as a leading corporate and securities lawyer in Silicon Valley. He has represented emerging growth companies, major public companies, investment banks, venture capital funds and private equity funds in hundreds of public offerings, mergers and acquisitions, buyouts, venture capital financings and other complex transactions. He has extensive experience in corporate governance matters and regularly acts as general outside counsel to public and private companies at all stages of development, particularly in the technology, life sciences and consumer sectors. Representative clients have included Cisco Systems, Digital Island, Doubletree Hotels, E*TRADE Group, JetBlue Airways, Restoration Hardware and many top-tier investment banks and venture capital funds.

Mr. Mo has lectured extensively at seminars sponsored by the Practising Law Institute and other professional groups, and has given expert legal commentary on emerging growth companies and the technology sector for CNN Moneyline, CNBC Business Center, and various publications. Mr. Mo is the founder and co-chair of PLI's Advanced Venture Capital conference, served as co-chair of the Annual Institute on Securities Regulation from 2001–2006, and has been a member of the advisory board for the Annual Securities Regulation Institute in San Diego. He serves a number of community organizations, including as a member of the board of directors of the influential Joint Venture: Silicon Valley Network.

PHILIP M. BERKOWITZ (chapter 21) is a shareholder in Littler Mendelson and is the U.S. practice co-chair of Littler's International Employment Law Practice Group. He advises multinational and domestic companies in a wide range of industries on employment-related matters. He has significant experience advising multinational companies regarding U.S. and overseas employment and executive compensation practices. He represents employers in individual and class action lawsuits and arbitrations, and he appears in U.S. federal and state courts and before administrative agencies and international arbitration tribunals. Mr. Berkowitz handles all regulatory facets of employment law. His diverse selection of clients includes companies in financial services, oil and gas, pharmaceuticals and chemicals, publishing, and fundraising.

A respected authority on international employment law issues, Mr. Berkowitz conducts training worldwide on labor and employment matters. He is a frequent speaker before the American Bar Association, the International Bar Association, the Japan Society, and other prominent international organizations. Mr. Berkowitz is the chair of Practising Law Institute's 2013 Annual International Employment Law Conference.

TRENT M. SUTTON (chapter 21) is an associate at Littler Mendelson. He concentrates his practice on all phases of employment law, including international labor and employment issues. He regularly counsels employers in a variety of employment-related contexts, including discrimination, harassment, wage-and-hour obligations, hiring and termination practices, diversity, employee discipline, and recordkeeping. Mr. Sutton also regularly advises companies on their international employment needs, including secondment agreements, global mobility programs, and global policies.

ELLEN G. YOST (chapter 22) is a partner in Fragomen, Del Rey, Bernsen & Loewy, LLP, based in the New York office. A member of the New York Bar and the Flemish Bar of Brussels, Ms. Yost is a member of the ABA's Commission on Immigration and is the ABA representative to UNECOSOC in Geneva, in which capacity she assisted the Global Commission on International Migration to prepare its 2005 report "Migration in an Interconnected World: New Directions for Action."

SONYA B. COLE (chapter 22) is a Global Writer in the Worldwide Standards and Knowledge Team in Fragomen, Del Rey, Bernsen & Loewy, LLP.

JACQUELINE KLOSEK (chapter 23) is senior counsel in the Business Law Department of Goodwin Procter LLP. Her practice focuses on advising

About the Contributors

clients on various issues related to data privacy and security. She also drafts and negotiates various technology agreements and advises on different aspects of the law related to intellectual property and technology. She is a frequent writer and lecturer. Her books include *War on Privacy* (Praeger Publishers, 2006); *The Legal Guide to e-Business* (Greenwood Publishing, 2003); and *Data Privacy in the Information Age* (Greenwood Publishing, 2000). She is a Certified Information Privacy Professional and serves on the Advisory Board for *The Privacy Advisor* and the Educational Advisory Board of the International Association of Privacy Professionals. Jacqueline has been recognized for her professional expertise. In 2004, Ms. Klosek received *NJBiz* magazine's "40 Under 40" award, given annually to the top forty achievers in New Jersey with an established record of leadership who have taken on key decision-making roles at an earlier-than-usual stage in their lives. She was also the recipient of the Telford Taylor Fellowship in Public International Law.

ROBERT BLASI (chapter 23) is an attorney in Goodwin Procter's Business Law Department, specializing in intellectual property transactions and strategies for Goodwin's technology clients. He is a graduate of Harvard Law School and holds a graduate degree in engineering from the University of California at Berkeley. Mr. Blasi has been named a "Massachusetts Rising Star" by *Law & Politics* magazine for three consecutive years. He has published various articles addressing issues in intellectual property law and has presented to a variety of audiences, including the MIT Entrepreneurs Club and York University's Osgoode Professional Development Program.

KEVIN LAM (chapter 23), an associate in Goodwin Procter's Business Law Department and a member of Goodwin Procter's Intellectual Property Transactions & Strategies Practice, focuses his practice on a wide range of intellectual property, technology company and business-related matters, including intellectual property licensing, providing intellectual property support to a variety of corporate transactions, advising and counseling clients on intellectual property portfolio management and other general corporate transactions. Mr. Lam has substantial intellectual property transactional experience within the digital media, life sciences, software, medical device, defense, consulting services, financial services and retail industries.

MICHELLE R. GONNAM (chapter 23), an associate in Goodwin Procter's Litigation Department and a member of Goodwin Procter's Intellectual Property Litigation Practice, focuses her practice on patent, copyright and trademark litigation. She is a graduate of the University of Virginia School of Law and Syracuse University. Prior to joining Goodwin

Procter, she served as law clerk for Justice Susan Calkins on the Maine Supreme Court.

LINDSEY REPOSE (chapter 23), an associate in Goodwin Procter's Litigation Department, focuses her practice primarily on providing patent opinions and counseling clients on issues involving infringement, validity, enforceability and freedom to operate. Ms. Repose advises clients in the pharmaceutical, biotechnology and medical device industries on a variety of intellectual property issues. In particular, she prepares invalidity and non-infringement opinions, undertakes freedom to operate studies and intellectual property due diligence and prosecutes patent applications before the U.S. Patent and Trademark Office.

DONALD C. DOWLING, JR. (chapter 24) is an international employment lawyer in New York City. Don focuses extensively on international privacy and data security matters, including especially issues arising under the European Union data protection directive. Much of this practice is in the Human Resources Information System context, but Don also works on cross-border privacy projects outside the employment area (for example, regarding financial services and airline data, and data breaches). A graduate of the University of Chicago and the University of Florida College of Law, Don teaches law school courses in European Union Law and International Employment Law; leads XBHR, a cross-border human resources professionals' group; served as officer of the ABA Section of International Law and chaired its International Employment Law Committee; and chaired the International Law Committees of both the Chicago and Cincinnati Bar Associations.

JEREMY M. MITTMAN (chapter 24) is an associate in the Labor Department of Proskauer Rose LLP, based in the firm's Los Angeles office. His practice focuses on labor and employment law, with an emphasis on international labor and employment issues. Jeremy works with clients on multi-country HR projects involving issues such as data privacy in global Human Resources Information Systems, multi-country employment contracts, international background checks, terminations, and other HR actions. He is a graduate of the University of Southern California Law School, where he was Articles Editor for the *University of Southern California Law Review*.

THOMAS B. MCVEY (chapter 25) is the Chair of the International Practice Group of Williams Mullen, where he practices in the areas of international business and corporate finance. Mr. McVey was a

About the Contributors

member of the U.S. Delegation to the United Nations Commission on International Trade Law (UNCITRAL), 23rd Plenary Session. He is a graduate of Columbia University (B.A.) and Georgetown University (J.D.).

SAUL P. MORGENSTERN (chapter 26) is a member of the law firm of Arnold & Porter Kaye Scholer LLP, resident in the firm's New York office. He litigates complex disputes, class actions and multi-jurisdictional cases before U.S. federal and state courts, international arbitral tribunals, the Federal Trade Commission and the U.S. International Trade Commission, and represents companies and individuals in Department of Justice, Federal Trade Commission and Securities and Exchange Commission investigations. He has counseled and represented clients in the agricultural chemical, computer hardware and software, diamond, energy, entertainment, insurance, investment banking, leasing, leisure, luxury consumer goods, petrochemical, pharmaceutical, publishing, real estate, specialty chemical, telecommunications and toy industries.

MARGARET A. ROGERS (chapter 26) is an associate in the New York office of Arnold & Porter Kaye Scholer LLP.

CHARLES A. KREAFLE (chapter 26) is an associate in the New York office of Arnold & Porter Kaye Scholer LLP.

NIGEL PARR (chapter 26) leads the Ashurst EU and competition practice in London. He specializes in all aspects of antitrust law, particularly merger control and cartel and abuse of dominance investigations, together with the effect of antitrust law on intellectual property rights. He has substantial experience in dealing with the EC Commission, U.K. regulatory authorities, privatized utilities regulators and antitrust authorities in other jurisdictions.

JOANNA CHRISTOFOROU (chapter 26) is a senior associate in the Ashurst EU and competition group in London. She has considerable experience in dealing with the EC Commission, U.K. regulatory authorities and the antitrust and merger authorities of other jurisdictions in relation to both merger control and the application of antitrust law to a wide range of commercial agreements and practices.

ERIC B. ROTHENBERG (chapter 27) is a partner and practice group leader in the O'Melveny & Myers Environmental Practice Group, which has attorneys located in the firm's New York, Washington,

D.C., Los Angeles, San Francisco, London, and Shanghai offices. He is a graduate of Harvard University (B.A.), the Harvard School of Public Health (M.P.H.), and Northeastern Law School (J.D.). He was an environmental engineer and consultant for three years before practicing law. He is currently active in all areas of the firm's environmental practice, including risk assessments in conjunction with lending, securities, financial, and other business transactions, hazardous substance litigation, and regulatory counseling.

BOB NICKSIN (chapter 27) is a counsel in the Los Angeles office of O'Melveny & Myers, a member of the Transactions Department, and a member of the Project Development and Real Estate Practice group. He has more than twenty years' experience in environmental litigation, due diligence, compliance, policy development, and advocacy.

Mr. Nicksin's practice covers a wide range of environmental issues, including air quality, climate change and greenhouse gas regulation, reporting obligations, permitting issues, orders for abatement, and enforcement actions. He also handles national and international environmental diligence associated with mergers, acquisitions, and financings. He has significant experience with Superfund and hazardous waste law, as well as the redevelopment, transfer, and cleanup of contaminated property. He has also handled numerous actions brought under the California Safe Drinking Water and Toxics Enforcement Act, better known as Proposition 65.

JEREMY M. KING (chapter 28) is a partner in the litigation practice of Olshan Frome Wolosky LLP. Mr. King concentrates his practice on insurance coverage actions and other civil litigation matters. He has extensive involvement in complex insurance coverage disputes in numerous states across the country. His work on cutting edge insurance issues has given him broad experience in complicated multiparty insurance litigation and deep insight into the strategies necessary to bring these complex cases to a resolution. His practice focuses on representing corporate policyholders in disputes with their insurers.

LINDSEE P. GRANFIELD (chapter 29) is a partner at Cleary Gottlieb Steen & Hamilton LLP in the New York office. Her practice includes restructuring, bankruptcy, work-out, bankruptcy litigation, and acquisition advice to debtors, creditors, and strategic investors, with substantial experience in international restructurings and complex cross-border issues involving the United States and other jurisdictions.

SEAN A. O'NEAL (chapter 29) is an associate at Cleary Gottlieb Steen & Hamilton LLP in the New York office. His practice includes

About the Contributors

restructuring, bankruptcy, work-out, bankruptcy litigation, and acquisition advice to debtors, creditors, and strategic investors, with substantial experience in international restructurings and complex cross-border issues involving the United States and other jurisdictions.

TIMOTHY S. MEHOK (chapter 29) was formerly a partner at Breazeale, Sachse & Wilson, LLP in New Orleans, practicing in the area of Bankruptcy, Loan Restructuring, and Commercial Litigation.

MADELEINE SCHACHTER (chapter 30), a partner based in Baker & McKenzie's New York office, is Global Director of Corporate Social Responsibility. She works exclusively on corporate social responsibility, including in an active pro bono practice with an emphasis on humanitarian rights and global health issues. Ms. Schachter helps oversee the firm's international and cross-border pro bono practice and community service activities and the firm's pro bono teaming practice and the implementation of the firm's global diversity and sustainability strategies. She has written three books, *Law of Internet Speech, Informational and Decisional Privacy*, and *The Law Professor's Handbook: A Practical Guide to Teaching Law*; chapters on pro bono published in *Pro Bono Service by In-House Counsel: Strategies and Perspectives* and *Corporate Legal Departments*; and articles in medical and legal journals. Ms. Schachter currently holds a faculty position at Weill Cornell Medical College, where she teaches Medical Ethics, and previously was an adjunct professor at the Fordham University School of Law. Ms. Schachter is Co-Chair of the International Pro Bono Committee of the American Bar Association's Section of International Law, was a founding member and former Chair of the Corporate Counsel Pro Bono Coordinators, previously chaired the New York City Bar Association Committee on Pro Bono and Legal Services, and is a member of the Advisory Board of the Bellevue/NYU Program for Survivors of Torture. She received her J.D. degree from New York University School of Law, where she was a Root Tilden Scholar, and she received her B.A. degree summa cum laude from the University of Pennsylvania, from which she graduated Phi Beta Kappa.

PHIL SUSE (chapter 30) is Baker & McKenzie's Chair of the Global Pro Bono & Community Service Committee, the Managing Partner of the firm's North America region, and a member of the firm's Executive Committee. A partner based in the firm's Chicago office, Mr. Suse advises companies across a broad range of industries, including public utilities, manufacturing, petrochemicals, and airlines, in connection with their acquisition and divestiture of activities in the United States and abroad. His practice includes work on joint ventures, securities

offerings, transactions, securities compliance, and corporate governance. Mr. Suse's volunteer service includes his participation on the Board of Directors of LINK Unlimited, which provides educational college preparatory opportunities for economically disadvantaged African-American high school youth. He is a member of the American Bar Association and the Illinois Bar Association. A summa cum laude graduate of College of the Holy Cross, Mr. Suse was an ITT International Fellow of the University of Riyadh, and received his master's and juris doctor degrees from the University of Pennsylvania School of Law.

Table of Chapters

- Chapter 1 Global Law Department Management**
- Chapter 2 International Attorney-Client Privilege**
- Chapter 3 International Law Firm Network**
- Chapter 4 Foreign Legal Consultants**
- Chapter 5 Outsourcing and the Use of Contract Attorneys**
- Chapter 6 International Corporate Compliance**
- Chapter 7 Corporate Social Responsibility Standards and Monitoring Programs**
- Chapter 8 International Crisis Management**
- Chapter 9 International Internal Investigations**
- Chapter 10 International Litigation Management**
- Chapter 11 International Business Arbitration**
- Chapter 12 Global Corporate Governance Standards**
- Chapter 13 International Financial Reporting Standards**
- Chapter 14 Transfer Pricing**
- Chapter 15 International Tax Aspects of Mergers and Acquisitions**
- Chapter 16 Project Finance**
- Chapter 17 International Aspects of Mergers and Acquisitions**
- Chapter 18 International Antibribery Laws**

- Chapter 19 Money Laundering and Terrorism Financing**
- Chapter 20 International Securities Offerings Under U.S. Securities Law**
- Chapter 21 International Labor and Employment Law**
- Chapter 22 Immigration Considerations for International Assignments**
- Chapter 23 International Intellectual Property**
- Chapter 24 International Data Protection and Privacy Law**
- Chapter 25 Overview of U.S. Export Control Laws**
- Chapter 26 Competition and Antitrust Law**
- Chapter 27 International Environmental Law**
- Chapter 28 Purchasing Insurance in the International Market**
- Chapter 29 International Insolvency and Bankruptcy**
- Chapter 30 Strategic Globalization of Pro Bono Service**

Table of Contents

About the Editor	vii
About the Contributors	ix
Table of Chapters	xxiii
Introduction	lxiii

Chapter 1 Global Law Department Management

Carole Basri

§ 1:1	Introduction	1-1
§ 1:2	The Importance of a Shared Culture	1-3
§ 1:3	Organizational Models	1-4
§ 1:3.1	Reporting Lines.....	1-4
§ 1:3.2	Department Structure.....	1-6
§ 1:4	Staffing	1-6
§ 1:4.1	Attorneys	1-7
§ 1:4.2	Support Staff.....	1-8
§ 1:5	Outsourcing and Legal Work.....	1-10
§ 1:6	Communication and Coordination.....	1-14
§ 1:7	International Attorney-Client Privilege	1-14
§ 1:8	Law Office Management	1-15

Chapter 2 International Attorney-Client Privilege

Isabel C. Franco

§ 2:1	Introduction	2-2
§ 2:1.1	Civil Law System.....	2-3
§ 2:1.2	Common Law System	2-4
§ 2:1.3	Civil Law System Versus Common Law System.....	2-6
§ 2:2	Analysis of the Principle in Selected Jurisdictions	2-7
§ 2:2.1	United States.....	2-7
§ 2:2.2	Europe	2-8
[A]	Austria	2-9
[B]	Germany.....	2-10
[C]	Belgium.....	2-11
[D]	France	2-12
[E]	Italy	2-13

[F]	Portugal	2-14
[G]	Spain.....	2-15
[H]	The Netherlands.....	2-15
[I]	England and Wales.....	2-15
[J]	Scotland.....	2-16
[K]	Ireland	2-17
[L]	Switzerland	2-17
[M]	Turkey.....	2-17
[N]	Greece.....	2-18
[O]	Scandinavia (Denmark, Sweden, and Norway).....	2-19
§ 2:2.3	North America (Other than United States).....	2-21
[A]	Canada	2-21
[B]	Mexico.....	2-22
§ 2:2.4	South America.....	2-22
[A]	Argentina	2-22
[B]	Brazil	2-23
[C]	Chile.....	2-24
[D]	Colombia	2-24
[E]	Peru	2-27
[F]	Venezuela.....	2-27
§ 2:2.5	Asia.....	2-28
[A]	China.....	2-28
[B]	Japan.....	2-28
[C]	Korea.....	2-28
[D]	Hong Kong.....	2-28
[E]	Thailand	2-29
[F]	India	2-29
§ 2:2.6	Other Countries	2-29
[A]	Australia	2-29
[B]	Russia	2-30
[C]	South Africa.....	2-30
[D]	United Arab Emirates (UAE).....	2-31
[E]	Egypt.....	2-31
[F]	Israel.....	2-31
[G]	Saudi Arabia	2-31
§ 2:3	The Threat to the Principle.....	2-32
§ 2:4	Conclusion	2-33

Chapter 3 International Law Firm Network

Carole Basri, Brian S. Cousin, Richard I. Scharlat & Matthew D. Loeb

§ 3:1	Introduction	3-2
§ 3:2	Law Firms As Providers of International Legal Services	3-4
§ 3:3	Affiliations As Providers of International Legal Services.....	3-8

Table of Contents

§ 3:4 Creating an International Law Firm Network to Provide International Legal Services..... 3-10

§ 3:5 Other Resources for Creating an International Law Firm Network 3-13

 § 3:5.1 Consultants 3-13

 § 3:5.2 Accountants..... 3-13

 § 3:5.3 Bar Associations 3-14

 § 3:5.4 Foreign Legal Consultants 3-16

§ 3:6 Conclusion 3-16

Appendix 3A Checklist for Creating an International Law Firm Network (The “Special Teams” Structure) App. 3A-1

Appendix 3B Maps Illustrating International Law Firm Networks..... App. 3B-1

Chapter 4 Foreign Legal Consultants

Víctor Xercavins & Marco A. Sanz

§ 4:1 Introduction 4-2

§ 4:2 Development of FLC Rules in the United States 4-4

§ 4:3 Principal Provisions of the FLC Rules 4-7

 § 4:3.1 General Requirements 4-7

 [A] Admission in the Foreign Jurisdiction 4-7

 [B] Professional Experience..... 4-9

 [C] Character and Fitness..... 4-10

 [D] Minimum Age 4-11

 [E] Office in the United States 4-11

 § 4:3.2 Scope of Practice Permitted 4-13

 [A] Appearance Before Courts 4-13

 [B] Property in the United States 4-14

 [C] Family Law 4-14

 [D] Local Law..... 4-14

 [E] Title and Designation Restrictions 4-16

 § 4:3.3 Other Provisions..... 4-16

 [A] Reciprocity 4-16

 [B] Affiliation with Other Members of the Bar 4-17

§ 4:4 State Variations..... 4-18

 § 4:4.1 Professional Experience 4-18

 § 4:4.2 Reciprocity 4-19

 § 4:4.3 Scope of Practice 4-20

§ 4:5 Proposed Amendments to the Model Rule..... 4-20

 § 4:5.1 Discretion of the Court 4-21

 § 4:5.2 Professional Experience 4-21

 § 4:5.3 Minimum Age Requirement..... 4-22

§ 4:5.4	Scope of Practice.....	4-22
§ 4:5.5	Reciprocity	4-22
Appendix 4A	ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants	App. 4A-1

Chapter 5 Outsourcing and the Use of Contract Attorneys

Carole Basri

§ 5:1	Outsourcing of Legal Services.....	5-2
§ 5:1.1	What Is Outsourcing?.....	5-2
§ 5:1.2	The Legal Profession’s Initial Use of Outsourcing.....	5-3
§ 5:1.3	Contract Attorneys	5-3
§ 5:1.4	Growing Acceptance of Contract Attorneys	5-5
§ 5:1.5	Legal Work Suited to Contract Attorneys.....	5-5
§ 5:1.6	Effect of E-Discovery.....	5-6
§ 5:1.7	Who Becomes a Contract Attorney and Why.....	5-7
§ 5:1.8	Common Myths About Contract Attorneys.....	5-7
§ 5:1.9	Benefits of Hiring Contract Attorneys.....	5-8
	[A] Cost Savings	5-8
	[B] Specialty Expertise	5-9
	[C] Handling Routine Legal Work	5-9
	[D] Meeting Deadlines.....	5-9
	[E] Adding Staff Without Adding Headcount	5-9
	[F] Filling in for Staff on Leave	5-10
	[G] Diversifying Client Base and Increasing Profits.....	5-10
	[H] Allowing Better Training for Associates and Corporate Counsel.....	5-10
	[I] Trying Out Potential New Staff	5-11
§ 5:1.10	How to Hire Contract Attorneys.....	5-11
	[A] Independent Contractors	5-11
	[B] Employees.....	5-11
	[C] Contract Legal Staffing Agency.....	5-12
§ 5:1.11	Rates and Billing	5-13
§ 5:1.12	Ethical Considerations	5-13
	[A] Applicability of Ethical Rules.....	5-13
	[B] Disclosure.....	5-13
	[C] Confidentiality.....	5-13
	[D] Fee Splitting.....	5-14
	[E] Preserving Independent Professional Judgment	5-14
	[F] Surcharges.....	5-14
§ 5:2	Outsourcing of Legal Services Overseas (“Offshoring”).....	5-14
§ 5:2.1	A Case Study of Offshoring in India	5-15
§ 5:2.2	Document Review Offshore?	5-16

Table of Contents

§ 5:3 “Onshoring” or “Nearshoring” of Document Reviews5-16
§ 5:4 Managed Document Review 5-17
§ 5:5 Conclusion 5-17

Chapter 6 International Corporate Compliance

Carole Basri & Rebecca Walker

§ 6:1 Introduction 6-2
§ 6:2 Why Implement an International Compliance Program? 6-3
 § 6:2.1 Global Economic Incentives 6-3
 § 6:2.2 United States Laws with Applicability to Conduct Outside the United States 6-4
 § 6:2.3 Other Countries’ Laws Encouraging Compliance 6-7
 § 6:2.4 Nongovernmental Organizations..... 6-11
§ 6:3 How to Develop a Global Compliance Program Using the Sentencing Guidelines..... 6-15
 § 6:3.1 Components of an Effective Compliance Program 6-16
 [A] Standards and Procedures..... 6-16
 [B] Responsible Individuals 6-17
 [C] Due Diligence in Hiring and Promotions..... 6-18
 [D] Communication of Standards and Procedures, Including Training 6-18
 [E] Auditing, Monitoring, and Reporting 6-19
 [F] Incentives and Penalties 6-21
 [G] Response to Wrongdoing 6-21
 § 6:3.2 Periodic Risk Assessment 6-22
 § 6:3.3 Relevance of Size of Organization 6-23
 § 6:3.4 Changes in the Sentencing Guidelines..... 6-23
§ 6:4 Other Frameworks for a Compliance Program..... 6-24
§ 6:5 Tailoring the Compliance Program to Individual Countries..... 6-28
§ 6:6 Practical Steps 6-29
Fig. 6-1 Compliance Program Rollout 6-30
Appendix 6A Whistleblower Hotlines and Data Protection Laws in Europe App. 6A-1
Appendix 6B Global Codes of Conduct..... App. 6B-1
Appendix 6C How to Implement a Cross-Border Code of Conduct or Other Human Resources Policy..... App. 6C-1

Chapter 7 Corporate Social Responsibility Standards and Monitoring Programs

Salah Husseini

§ 7:1	Overview.....	7-2
§ 7:1.1	What Is Corporate Social Responsibility?.....	7-2
§ 7:1.2	Why Should Corporations Engage in CSR?.....	7-4
§ 7:1.3	Conditions for a Successful CSR Program	7-6
§ 7:2	Key Components of CSR.....	7-7
§ 7:2.1	Standards.....	7-7
[A]	Topics to Be Addressed	7-7
[A][1]	Forced Labor.....	7-8
[A][2]	Child Labor	7-8
[A][3]	Freedom of Association and Collective Bargaining	7-9
[A][4]	Living Wage	7-9
[A][5]	Other Topics.....	7-10
[B]	Industry-Specific Codes of Conduct	7-10
[B][1]	Electronics Industry	7-11
[B][2]	Other Industries.....	7-11
[C]	Joint CSR Efforts	7-12
§ 7:2.2	Monitoring	7-14
§ 7:2.3	Scope of CSR Program.....	7-18
§ 7:3	Legal Issues	7-20
§ 7:3.1	Alien Tort Statute.....	7-20
§ 7:3.2	Product Safety Legislation	7-36
§ 7:3.3	Corporations' Susceptibility to Jurisdiction in Countries in Which Their Products Are Made.....	7-38
§ 7:3.4	Selected Federal Laws That Address Issues Encompassed by CSR Standards and Monitoring Efforts	7-39
[A]	Trade Act of 1930.....	7-39
[B]	Prison-Made Goods	7-40
[C]	Fair Labor Standards Act of 1938.....	7-40
[D]	Occupational Safety & Health Act of 1970.....	7-42
[E]	Federal Sentencing Guidelines.....	7-44
§ 7:3.5	Selected State Laws That Address Issues Encompassed by CSR Standards and Monitoring Efforts	7-45
§ 7:3.6	Other Selected Legislation	7-46
§ 7:4	Transparency and Disclosure.....	7-48
§ 7:5	NGOs and Their Campaigns	7-51
§ 7:6	Benefits to Corporations.....	7-53
§ 7:6.1	Brand Protection.....	7-53
§ 7:6.2	Risk Management.....	7-53

Table of Contents

§ 7:6.3 Investor Relations..... 7-54
§ 7:6.4 Attracting and Retaining Employees..... 7-55
§ 7:6.5 Profitability..... 7-56
§ 7:6.6 Consumer Relations 7-57
§ 7:7 Conclusion 7-59

Chapter 8 International Crisis Management

Carole Basri

§ 8:1 What Is Crisis Management and Why Should
Corporate Counsel Care About It?..... 8-2
§ 8:2 Forms of Corporate Crises 8-2
§ 8:3 Threats Posed by Corporate Crises 8-3
§ 8:4 Stages of a Corporate Crisis 8-3
§ 8:5 Crisis Manager 8-7
 § 8:5.1 Choosing the Crisis Manager..... 8-7
 § 8:5.2 Grants of Authority to the Crisis Manager 8-8
§ 8:6 Crisis Management Team 8-9
 § 8:6.1 Team Members 8-9
 § 8:6.2 Team Communications 8-9
 § 8:6.3 Team Goals..... 8-10
 § 8:6.4 Team Activities 8-10
§ 8:7 Long-Term Management of the Crisis Claims 8-16
§ 8:8 Cross-Border Crisis Management..... 8-16
 § 8:8.1 Planning 8-17
 § 8:8.2 Crisis Response Team..... 8-18
 § 8:8.3 Realistic Knowledge of the Foreign Situation 8-19
 § 8:8.4 Communications..... 8-19
§ 8:9 Conclusion 8-21

Chapter 9 International Internal Investigations

Henry Klehm III

§ 9:1 Introduction 9-2
§ 9:2 Planning the Investigation 9-2
 § 9:2.1 Scope of the Investigation 9-2
 [A] Developing the Investigation Plan and
 Time Frame 9-3
 [B] Parts of the Company Involved 9-4
 [C] Governments and Government Agencies..... 9-5
 § 9:2.2 Role of the In-House Lawyer 9-5
 [A] Applicable Ethical Rules 9-5
 [B] Unauthorized Practice of Law..... 9-6
 [C] Should Outside Counsel Be Retained? 9-6

§ 9:3	Preserving, Collecting, and Transferring Data	9-8
§ 9:3.1	Preservation of Data	9-8
§ 9:3.2	Methods and Scope of Data Collection and Review	9-8
[A]	Methods of Collection	9-9
[B]	Document Review Strategies	9-10
§ 9:3.3	Privacy Considerations and International Restraints on Transfer	9-10
[A]	Privacy Considerations	9-10
[B]	International Restraints on the Transfer of Data	9-11
§ 9:4	Interviewing Witnesses	9-12
§ 9:4.1	General Ethical Concerns	9-12
§ 9:4.2	Employee Witnesses	9-13
[A]	<i>Upjohn</i> Warnings	9-13
[B]	Foreign Application of <i>Upjohn</i> Warnings	9-14
§ 9:4.3	Blocking Statutes and Similar Laws	9-14
§ 9:4.4	Documenting the Interview	9-15
§ 9:5	Privilege and Work Product Concerns	9-16
§ 9:5.1	Privilege and Work Product Generally	9-16
§ 9:5.2	Country Examples	9-16
§ 9:5.3	Application to U.S. Litigation	9-18
§ 9:5.4	Waiver	9-18
§ 9:6	Whistleblowers	9-19
§ 9:6.1	Antiretaliation Provisions Protecting Whistleblowers	9-20
§ 9:7	Reporting and Disclosing Findings	9-21
§ 9:8	Conclusion	9-22

Chapter 10 International Litigation Management

Charles D. Schmerler

§ 10:1	Introduction	10-2
§ 10:2	Selecting Outside Counsel	10-2
§ 10:3	Locating Local Counsel	10-3
§ 10:4	Attorney-Client Privilege	10-6
§ 10:4.1	Trend in EU Cases	10-8
§ 10:5	Evaluating the Case	10-8
§ 10:5.1	Where to Sue	10-9
[A]	Personal Jurisdiction	10-9
[B]	Forum Selection Clauses	10-11
[C]	Forum Non Conveniens	10-12
[D]	Choosing the Most Favorable Law	10-16
[D][1]	New York Test	10-17
[D][2]	<i>Restatement</i> Test	10-19

Table of Contents

[D][3]	Leflar Test.....	10-20
[D][4]	California Test.....	10-20
[D][5]	Proof of the Relevant Foreign Law	10-20
§ 10:5.2	Service of Process.....	10-21
§ 10:5.3	Complaint Against the Company	10-23
§ 10:6	International Mediation	10-24
§ 10:7	Taking Discovery Abroad.....	10-26
§ 10:7.1	Federal Rules of Civil Procedure.....	10-27
§ 10:7.2	Hague Evidence Convention	10-28
§ 10:8	Conclusion	10-28

Chapter 11 International Business Arbitration

Edward G. Kehoe & Viren Mascarenhas

§ 11:1	Introduction	11-3
§ 11:1.1	Reasons for Arbitrating International Commercial Disputes.....	11-3
[A]	Right to Select Venue and Decision Makers.....	11-3
[B]	Finality	11-4
[C]	Enforceability of Arbitral Awards.....	11-4
[D]	Party Autonomy.....	11-5
[E]	Costs.....	11-5
[F]	Time	11-5
§ 11:2	Drafting the International Arbitration Agreement	11-5
§ 11:2.1	Essential Elements.....	11-6
[A]	Express Intent by Parties to Resolve Disputes by Arbitration	11-6
[B]	Scope of Arbitration.....	11-6
[C]	Location of the Arbitration.....	11-7
[D]	Institutional or Ad Hoc	11-7
[E]	Language of the Arbitration Proceedings	11-8
[F]	Number of Arbitrators	11-8
[G]	Governing Law	11-8
§ 11:2.2	Sample Clauses	11-8
§ 11:2.3	Optional Elements.....	11-10
[A]	Interim Measures	11-10
[B]	Confidentiality.....	11-10
[C]	Discovery	11-11
[D]	E-Discovery.....	11-11
[E]	Summary Disposition.....	11-11
[F]	Waiver of Sovereign Immunity	11-12
[G]	Exclusion of Punitive Damages	11-12
[H]	Apportionment of Costs and Attorneys' Fees	11-12
[I]	Interest	11-12

§ 11:3	International Arbitration Institutions	11-12
§ 11:3.1	Major Institutions	11-12
[A]	American Arbitration Association/International Center for Dispute Resolution.....	11-12
[B]	International Court of Arbitration of the International Chamber of Commerce	11-13
[C]	London Court of International Arbitration	11-13
§ 11:3.2	Other Important Institutions	11-14
[A]	International Centre for Settlement of Investment Disputes	11-14
[B]	Permanent Court of Arbitration	11-14
[C]	Regional Institutions	11-14
§ 11:4	Selecting the Arbitrators.....	11-14
§ 11:4.1	Independence and Impartiality.....	11-15
§ 11:4.2	Criteria for Selection	11-15
§ 11:4.3	Interviewing the Candidate	11-16
§ 11:4.4	Appointment	11-17
§ 11:4.5	Challenging an Arbitrator.....	11-17
§ 11:5	Choosing the Location	11-17
§ 11:6	Dealing with the Confidentiality Issue	11-18
§ 11:7	Prehearing Procedure.....	11-19
§ 11:7.1	Initiating an Arbitration.....	11-20
§ 11:7.2	Jurisdictional Objections	11-20
§ 11:7.3	Preliminary Conference.....	11-20
§ 11:7.4	Discovery.....	11-21
§ 11:7.5	Written Witness Statements Submitted Prior to Oral Hearing	11-23
§ 11:7.6	Memorials (Prehearing Briefs)	11-23
§ 11:7.7	Prehearing Dispositive Motions	11-24
§ 11:8	Evidence	11-24
§ 11:8.1	Documentary Evidence.....	11-24
§ 11:8.2	Testimony at the Hearing.....	11-25
§ 11:8.3	Admission of Evidence	11-25
[A]	Burden of Proof.....	11-25
[B]	Presumptions.....	11-26
§ 11:9	Experts.....	11-26
§ 11:9.1	Appointment	11-26
[A]	By Arbitrator.....	11-26
[B]	By Party	11-26
§ 11:9.2	Qualifications	11-27
§ 11:9.3	Nationality and Language.....	11-27
§ 11:10	The Final Arbitral Award	11-27
§ 11:10.1	Generally	11-27
§ 11:10.2	Enforcement	11-28
§ 11:10.3	Defenses to Enforcement.....	11-29

Table of Contents

§ 11:11	International Investment Arbitration.....	11-30
§ 11:11.1	Background and History.....	11-30
§ 11:11.2	Forums	11-31
[A]	ICSID	11-31
[B]	ICC.....	11-32
[C]	UNCITRAL	11-32
[D]	International Tribunals.....	11-32
[E]	National Courts.....	11-33
§ 11:11.3	Political Risk Insurance.....	11-33
§ 11:11.4	Sovereign Immunity and the Enforcement of State Awards.....	11-33
§ 11:11.5	Conclusion	11-34

Chapter 12 Global Corporate Governance Standards

Thomas J. Dougherty

§ 12:1	Why U.S. Corporations Need to Know About Corporate Governance Practices Abroad	12-1
§ 12:2	United Kingdom—“Comply or Explain”	12-3
§ 12:3	European Union	12-5
§ 12:4	East Asia.....	12-6
§ 12:5	Mexico.....	12-7
§ 12:6	Synthesis? OECD Guidance.....	12-7
§ 12:7	From Governance to Political Economy.....	12-8
Appendix 12A	Sources on International Corporate Governance	App. 12A-1

Chapter 13 International Financial Reporting Standards

Kurt P. Ramin & Eberhard H. Röhm

§ 13:1	Introduction	13-3
§ 13:2	Trends.....	13-6
§ 13:2.1	IFRS and Legal Objectives	13-7
§ 13:2.2	Convergence of IFRS and U.S. GAAP	13-8
§ 13:2.3	Reconciliation to U.S. GAAP.....	13-10
Fig. 13-1	Differences Between IFRS and U.S. GAAP.....	13-11
§ 13:2.4	IOSCO, Regulators, and Enforcement.....	13-12
§ 13:3	The IASB and the IFRS Foundation.....	13-14
§ 13:3.1	History, Structure, Accountability, and Funding ...	13-14
[A]	History.....	13-14
[B]	Structure.....	13-15
Fig. 13-2	Organization of the IFRS Foundation	13-16
[C]	Governance and Accountability Arrangements	13-16
[D]	Funding.....	13-17

Fig. 13-3	Funding of the IFRS Foundation	13-17
§ 13:3.2	Monitoring Board	13-18
§ 13:3.3	IFRS Foundation Trustees	13-18
§ 13:3.4	IASB Members.....	13-21
§ 13:3.5	Due Process of Standard Setting.....	13-23
Fig. 13-4	Standard-Setting Process	13-24
§ 13:3.6	IFRS Interpretations Committee	13-25
§ 13:3.7	IFRS Advisory Council	13-27
§ 13:4	Framework, Standards, and Interpretations of IFRS	13-28
§ 13:4.1	Framework.....	13-28
[A]	Revision of Framework.....	13-28
[B]	Current Framework for the Preparation and Presentation of Financial Statements	13-29
[C]	Accessing IFRS	13-31
§ 13:4.2	Standards.....	13-31
[A]	International Financial Reporting Standards.....	13-32
[A][1]	IFRS 1: First-Time Adoption of International Financial Reporting Standards	13-32
[A][2]	IFRS 2: Share-Based Payment	13-35
[A][3]	IFRS 3: Business Combinations.....	13-38
[A][4]	IFRS 4: Insurance Contracts	13-42
[A][5]	IFRS 5: Noncurrent Assets Held for Sale and Discontinued Operations.....	13-46
[A][6]	IFRS 6: Exploration for and Evaluation of Mineral Resources	13-49
[A][7]	IFRS 7: Financial Instruments Disclosures.....	13-51
[A][8]	IFRS 8: Operating Segments	13-55
[A][9]	IFRS 9: Financial Instruments	13-57
[A][10]	IFRS 10: Consolidated Financial Statements....	13-58
[A][11]	IFRS 11: Joint Arrangements	13-61
[A][12]	IFRS 12: Disclosure of Interests in Other Entities.....	13-62
[A][13]	IFRS 13: Fair Value Measurement.....	13-65
[A][14]	IFRS 14: Regulatory Deferral Accounts.....	13-68
[A][15]	IFRS 15: Revenue from Contracts with Customers.....	13-70
[A][16]	IFRS 16: Leases	13-73
[A][17]	IFRS 17: Insurance Contracts.....	13-77
[B]	International Accounting Standards.....	13-79
[B][1]	IAS 1: Presentation of Financial Statements....	13-79
[B][2]	IAS 2: Inventories	13-82
[B][3]	IAS 7: Cash Flow Statements	13-84
[B][4]	IAS 8: Accounting Policies, Changes in Accounting Estimates, and Errors.....	13-86

Table of Contents

[B][5]	IAS 10: Events After the Balance Sheet Date....	13-88
[B][6]	IAS 11: Construction Contracts	13-90
[B][7]	IAS 12: Income Taxes	13-91
[B][8]	IAS 16: Property, Plant, and Equipment	13-94
[B][9]	IAS 17: Leases	13-97
[B][10]	IAS 18: Revenue.....	13-99
[B][11]	IAS 19: Employee Benefits	13-102
[B][12]	IAS 20: Accounting for Government Grants and Disclosure of Assistance.....	13-106
[B][13]	IAS 21: Effects of Change in Foreign Exchange Rates.....	13-107
[B][14]	IAS 23: Borrowing Costs.....	13-110
[B][15]	IAS 24: Related Party Disclosures	13-112
[B][16]	IAS 26: Accounting and Reporting by Retirement Benefit Plans.....	13-113
[B][17]	IAS 27: Consolidated and Separate Financial Statements.....	13-115
[B][18]	IAS 28: Investments in Associates.....	13-117
[B][19]	IAS 29: Financial Reporting in Hyperinflationary Economies.....	13-118
[B][20]	IAS 31: Interest in Joint Ventures.....	13-121
[B][21]	IAS 32: Financial Instruments Presentation ...	13-123
[B][22]	IAS 33: Earnings per Share	13-128
[B][23]	IAS 34: Interim Financial Reporting.....	13-130
[B][24]	IAS 36: Impairment of Assets.....	13-133
[B][25]	IAS 37: Provisions, Contingent Liabilities, and Contingent Assets.....	13-137
[B][26]	IAS 38: Intangible Assets	13-140
[B][27]	IAS 39: Financial Instruments: Recognition and Measurement	13-144
[B][28]	IAS 40: Investment Property.....	13-149
[B][29]	IAS 41: Agriculture	13-151
[C]	IFRS for Small- and Medium-Sized Enterprises.....	13-154
§ 13:4.3	Interpretations of Standards	13-157
§ 13:5	IFRS Practice Statement Management Commentary	13-159
§ 13:6	New Presentation Formats	13-161
§ 13:6.1	Model Financial Statements.....	13-161
§ 13:6.2	New Financial Statement Presentation	13-164
Fig. 13-5	Presentation Formats for Financial Statements	13-165
Fig. 13-6	Presentation Formats for Financial Statements— with Totals and Subtotals.....	13-166
§ 13:7	Glossary for IFRS	13-167
§ 13:8	Abbreviations.....	13-247

§ 13:9	Suggested References	13-250
§ 13:9.1	Websites.....	13-250
§ 13:9.2	Publications	13-251

Chapter 14 Transfer Pricing

Michael C. Durst & Leo Cook

§ 14:1	Significance of Transfer Pricing Rules.....	14-2
§ 14:2	Background.....	14-2
Fig. 14-1	14-3
Fig. 14-2	14-4
Fig. 14-3	14-5
§ 14:3	Transfer Pricing Issues Involving High-Tax Countries Versus Issues Involving “Tax Havens”.....	14-6
§ 14:3.1	“Double Tax” Situations	14-7
§ 14:3.2	Cases Involving Low-Tax Countries	14-9
§ 14:4	Brief History of Transfer Pricing Rules in the United States and Abroad	14-9
§ 14:4.1	Before World War II.....	14-10
§ 14:4.2	Revenue Act of 1962 and the 1968 Regulations.....	14-11
§ 14:4.3	Perceived Problems Under the 1968 Regulations; Transfer Pricing Wars of the 1980s and Early 1990s....	14-13
§ 14:5	Transfer Pricing Methods and Practices Today.....	14-16
§ 14:5.1	The U.S. Regulations and the OECD Guidelines....	14-16
§ 14:5.2	Penalty Rules and “Contemporaneous Documentation”	14-18
§ 14:5.3	Advance Pricing Agreements	14-19
§ 14:6	Interaction of Transfer Pricing Rules with Other Tax and Customs Rules	14-21
§ 14:6.1	Subpart F and Related “Anti-Deferral” Rules	14-21
§ 14:6.2	Branch Rules.....	14-21
§ 14:6.3	Customs Rules	14-22
§ 14:6.4	State Tax Rules	14-22
§ 14:7	Topics of Special Current Interest	14-23
§ 14:7.1	“Principal” Structures	14-23
§ 14:7.2	Cost Sharing.....	14-24
§ 14:7.3	Role of Contracts Generally	14-25
§ 14:8	Conclusion: Role of the Corporate Counsel.....	14-26

Chapter 15 International Tax Aspects of Mergers and Acquisitions

Catherine Coffey

§ 15:1	Introduction	15-2
§ 15:2	Asset Versus Share Acquisitions.....	15-3
§ 15:2.1	Benefits of an Asset Purchase.....	15-3
§ 15:2.2	Potential Obstacles to an Asset Purchase.....	15-5
§ 15:2.3	U.S. Step-Up Elections—Deemed Asset Acquisitions....	15-6
Fig. 15-1	Section 338 Election.....	15-7
§ 15:3	The Tax Due Diligence Process.....	15-9
§ 15:3.1	Access to Tax Personnel.....	15-10
§ 15:3.2	T’s Tax Function	15-11
§ 15:3.3	Structure.....	15-11
Fig. 15-2	U.K. Hybrid.....	15-13
§ 15:3.4	Transactional History	15-14
§ 15:3.5	Trapped Cash.....	15-16
§ 15:3.6	Tax Reserves	15-16
§ 15:3.7	Audit History.....	15-17
§ 15:3.8	Tax Returns	15-18
§ 15:3.9	Tax Attributes—Net Operating Losses.....	15-19
§ 15:3.10	Tax Attributes: Foreign Tax Credits, E&P, and Credit Pools.....	15-20
§ 15:3.11	Tax Basis.....	15-22
§ 15:3.12	Transfer Pricing with Respect to Intercompany Transactions	15-22
§ 15:3.13	Phantom Income Inclusions—Intercompany Transactions	15-24
§ 15:3.14	Withholding Taxes.....	15-25
§ 15:3.15	Taxable Presence/Permanent Establishment	15-25
§ 15:3.16	Indirect and Other Taxes.....	15-26
§ 15:4	Structuring the Transaction.....	15-26
§ 15:4.1	Tax Haven Parented or Inverted Structure.....	15-28
Fig. 15-3	Tax Haven Parent	15-29
Fig. 15-4	Summary of Tax Implications of Case I Versus Case II....	15-32
§ 15:4.2	U.S.-Parented Holdco Structure.....	15-33
Fig. 15-5	Holdco Structure	15-34
§ 15:4.3	Finco Structure and Debt Pushdown.....	15-37
[A]	Debt Pushdown Process	15-38
[B]	Example.....	15-40
§ 15:5	Conclusion	15-41
Appendix 15A	International Tax Due Diligence Request List.....	App. 15A-1

Chapter 16 Project Finance*Ayaz R. Shaikh*

§ 16:1	Introduction	16-4
§ 16:2	Project Finance Structure and Key Participants.....	16-6
§ 16:2.1	Project Parties	16-7
Fig. 16-1	Example of a Project Finance Contract Structure	16-9
[A]	Project Owner	16-10
[B]	Sponsors	16-10
[C]	Host Government.....	16-11
[D]	EPC Contractor	16-12
[E]	O&M Contractor or Operator	16-12
[F]	Fuel/Feedstock Supplier.....	16-12
[G]	Long-Term Service and Spare Parts Provider.....	16-13
[H]	Insurer	16-13
[I]	Output Purchaser	16-13
[J]	Financing Parties	16-13
[K]	Swap Providers.....	16-14
§ 16:3	Project Structuring.....	16-14
§ 16:4	Risk Allocation in Key Project Documents	16-17
Fig. 16-2	Key Project Contractual Relationships	16-18
§ 16:4.1	Commercial Risk.....	16-19
[A]	Construction Phase Risks.....	16-19
[B]	Operating Phase Risks	16-20
§ 16:4.2	Political Risks	16-20
[A]	Principal Political Risks	16-20
[B]	Legal Infrastructure.....	16-21
[C]	Physical Infrastructure.....	16-22
[D]	Managing Political Risks	16-22
§ 16:5	Major Project Documents	16-23
§ 16:5.1	Implementation or Concession Agreement.....	16-23
§ 16:5.2	Site Acquisition Agreement	16-26
§ 16:5.3	Engineering, Procurement, and Construction Contracts	16-27
[A]	Mechanisms for Allocation of Risks.....	16-27
[B]	Lump-Sum Turnkey Contract; Selection of Contractor	16-28
[C]	Scope of Work.....	16-29
[D]	Performance Guarantees.....	16-30
[E]	Liquidated Damages/Bonuses	16-31
[F]	Change Orders.....	16-32
[G]	Payment Terms.....	16-34
[H]	Defaults and Remedies	16-35
[I]	Dispute Resolution	16-36

Table of Contents

	[J]	Split EPC Contracts.....	16-36
	[K]	Miscellaneous Considerations	16-36
§ 16:5.4		Offtake Agreement.....	16-37
	[A]	Types of Offtake Agreements	16-37
	[B]	Key Provisions	16-39
	[C]	Term of Offtake Agreement	16-40
	[D]	Construction; Environmental Issues	16-40
	[E]	Testing and Commissioning.....	16-41
	[F]	Conditions Precedent	16-42
	[G]	Outages.....	16-42
	[H]	Pricing.....	16-42
	[I]	Operating Obligations	16-45
	[J]	Metering and Measurement	16-45
§ 16:5.5		Fuel/Feedstock Supply Agreement	16-45
	[A]	Nature of Fuel Supply Obligations	16-45
	[B]	Commissioning and Testing of the Project.....	16-46
	[C]	Term of Fuel Supply Agreement	16-46
	[D]	Fuel Supply and Transportation Pricing	16-47
	[E]	Failure to Deliver.....	16-48
	[F]	Feedstock Supply to LNG Receiving Terminals	16-49
§ 16:5.6		Operation and Maintenance Agreement	16-50
§ 16:6		Project Financing Documentation.....	16-51
§ 16:6.1		Commercial Bank Financing	16-52
§ 16:6.2		Capital Markets Financing	16-53
§ 16:6.3		Combination Commercial Bank and Capital Market Financing	16-55
§ 16:6.4		Lease Financing	16-56
§ 16:6.5		Local Financing	16-56
§ 16:6.6		Multilateral and Bilateral Agencies; Export Credit Agencies.....	16-57
§ 16:6.7		Subordinated Debt.....	16-57
§ 16:6.8		Hedge Funds/Term B Loans.....	16-57
§ 16:7		Standard Terms in Financing Documents.....	16-58
§ 16:7.1		Limited Recourse	16-58
§ 16:7.2		Representations and Warranties	16-59
§ 16:7.3		Covenants.....	16-60
§ 16:8		Security Documents	16-62
§ 16:8.1		Personal Property.....	16-62
§ 16:8.2		Real Property	16-63
§ 16:8.3		Pledge of Deposit Accounts	16-63
§ 16:8.4		Collateral Assignment of Project Documents	16-64
§ 16:9		Common Concepts in All Project Finance Documents	16-65
§ 16:9.1		Force Majeure	16-65
§ 16:9.2		Choice of Law.....	16-67

§ 16:9.3	Dispute Resolution	16-69
§ 16:9.4	Default and Remedies	16-71
§ 16:10	Environmental Issues	16-72
§ 16:10.1	IFC Sustainability Policy and Performance Standards	16-73
[A]	Environmental and Social Review Summary	16-74
[B]	Environmental and Social Action Plans	16-75
[C]	Environmental and Social Categorization	16-75
[D]	Communication and Disclosure	16-76
§ 16:10.2	World Bank Extractive Industries Review	16-76
§ 16:10.3	OECD Guidelines for Multinational Enterprises	16-77
§ 16:10.4	Equator Principles	16-78
§ 16:11	Insurance	16-79
§ 16:12	Tax Planning and International Project Finance	16-82
§ 16:12.1	The Project Entity	16-82
§ 16:12.2	Contract Structuring Issues	16-83
§ 16:12.3	Effects of Ownership Structure	16-84
§ 16:13	Unique Risks in Projects Requiring Foreign Investment	16-85
§ 16:13.1	Currency Risk	16-86
[A]	Currency Inconvertibility and Transfer Risk	16-86
[B]	Currency Devaluation Risk	16-88
§ 16:13.2	Political Risk	16-89
[A]	Political Violence	16-89
Table 16-1	Definition of Political Violence	16-89
[B]	Expropriation Risk	16-90
[C]	Change in Law Risk	16-91
§ 16:13.3	Host Government Agreements and the Limits of Contractual Risk Allocation	16-92
§ 16:13.4	Case Study: Venezuelan Heavy Oil Projects	16-93
§ 16:13.5	Political Risk Insurance	16-95
Fig. 16-3	Political Risk Insurance Claim Process and Timeline	16-96
§ 16:13.6	Limitations	16-97
§ 16:14	Export Credit Agencies; Bilateral and Multilateral Institutions	16-97
§ 16:14.1	Reasons to Include ECAs and MLAs	16-97
[A]	Differences Between MLAs and ECAs	16-98
§ 16:14.2	World Bank Group and OECD Guidelines for ECAs	16-98
[A]	World Bank Group	16-99
[B]	OECD Consensus Guidelines	16-99

Table of Contents

Table 16-2	OECD Terms and Conditions Applicable to Project Finance Transactions	16-100
§ 16:14.3	Case Study: West African and Caspian Cross-Border Pipeline Projects	16-101
[A]	Chad-Cameroon Pipeline	16-101
[B]	Baku-Tblisi-Ceyhan (BTC) Pipeline.....	16-102
[C]	Delay	16-103
§ 16:14.4	Conclusion	16-104
Appendix 16A	Listing of Multilateral and Bilateral Lending Agencies	App. 16A-1

Chapter 17 International Aspects of Mergers and Acquisitions

Aydin S. Caginalp

§ 17:1	Introduction	17-2
§ 17:2	Establishing the Right Team.....	17-2
§ 17:3	Communication and Exchange of Information.....	17-3
§ 17:4	Critical Issues.....	17-3
§ 17:4.1	Fundamental Business Objectives	17-3
§ 17:4.2	Critical Regulatory Compliance Issues.....	17-4
Fig. 17-1	17-6
§ 17:5	Due Diligence.....	17-7
§ 17:5.1	Initial Preparation	17-7
§ 17:5.2	Due Diligence Report	17-7
§ 17:5.3	Insulation of Competitive Information	17-8
§ 17:5.4	Preparing for the Failed Transaction.....	17-9
§ 17:6	Acquisition Structure.....	17-9
§ 17:7	Acquisition Agreement.....	17-10
§ 17:7.1	Who Is the Seller	17-10
§ 17:7.2	Who Is the Buyer.....	17-11
§ 17:7.3	Preacquisition Operation	17-11
§ 17:7.4	Compliance with Antitrust Directives	17-11
§ 17:7.5	Representations and Warranties	17-12
§ 17:7.6	Applicable Law and Dispute Resolution	17-13
§ 17:7.7	Indemnification	17-13
§ 17:7.8	Timing of the Closing	17-14
§ 17:8	Organization of the Closing Process	17-14
§ 17:9	Post-Closing	17-15
§ 17:10	Integration.....	17-16
§ 17:11	Conclusion	17-17

Chapter 18 International Antibribery Laws*Don Zarin*

§ 18:1	Introduction	18-1
§ 18:2	Summary of the OECD Convention	18-3
§ 18:2.1	Prohibited Conduct	18-3
§ 18:2.2	Applicability to “Any Person”	18-3
§ 18:2.3	Offer, Promise, or Payment, Directly or Indirectly	18-3
§ 18:2.4	Foreign Public Official	18-3
§ 18:2.5	Jurisdiction	18-4
§ 18:2.6	Scope of Business Activity	18-4
§ 18:2.7	Sanctions	18-4
§ 18:2.8	Exception for Facilitating Payments	18-5
§ 18:2.9	Accounting Requirements	18-5
§ 18:2.10	Mutual Legal Assistance and Extradition	18-5
§ 18:2.11	Monitoring and Follow-Up	18-6
§ 18:3	Other Multilateral Efforts Against Corruption	18-7
§ 18:4	Impact of the OECD Convention and Other Multilateral Agreements	18-9
§ 18:4.1	United States	18-10
§ 18:4.2	Other OECD Member Countries	18-12
§ 18:5	Conclusion	18-17

Chapter 19 Money Laundering and Terrorism Financing*Deborah R. Srou*

§ 19:1	Introduction	19-2
§ 19:2	Definition of Money Laundering	19-4
§ 19:3	The Laundering Process	19-6
§ 19:3.1	Introduction	19-6
§ 19:3.2	Placement	19-7
§ 19:3.3	Layering	19-7
§ 19:3.4	Integration	19-7
§ 19:4	Industries Affected	19-8
§ 19:4.1	Financial Institutions	19-8
[A]	Banks	19-8
[B]	Insurance Companies	19-9
[C]	Securities Industry	19-10
[D]	Informal Money Remittance Systems	19-13
§ 19:4.2	Emerging Payment System Products	19-15
§ 19:4.3	Other Means to Launder Money	19-16
§ 19:5	Evolution of Money Laundering and Terrorism Financing Legislation	19-16
§ 19:6	USA PATRIOT Act	19-23
§ 19:7	Gatekeeper Initiatives	19-29

Table of Contents

§ 19:8 Compliance Programs to Combat Money Laundering and Terrorism Financing 19-32

 § 19:8.1 Setting Up a Program 19-33

 § 19:8.2 Check the OFAC List and Other Lists 19-35

 § 19:8.3 Maintaining Records 19-36

 § 19:8.4 Areas of Focus 19-37

§ 19:9 Dealing with an Investigation 19-37

 § 19:9.1 Records 19-37

 § 19:9.2 Retaining Outside Counsel..... 19-38

 § 19:9.3 Onset of the Investigation 19-38

 § 19:9.4 What the Authorities Want 19-39

 § 19:9.5 Sentencing Guidelines Considerations 19-40

§ 19:10 Recent Enforcement Cases 19-40

§ 19:11 Conclusion 19-42

Chapter 20 International Securities Offerings Under U.S. Securities Law

Curtis L. Mo

§ 20:1 Introduction 20-2

§ 20:2 Overview of Federal Securities Laws..... 20-3

§ 20:3 Securities Act of 1933 20-5

 § 20:3.1 Disclosure and Registration..... 20-5

 [A] Registration..... 20-6

 [A][1] Pre-Filing Period 20-7

 [A][2] Post-Filing/Pre-Effectiveness Period 20-8

 [A][3] Post-Effectiveness Period 20-9

 [B] Exemptions from Registration 20-10

 § 20:3.2 Antifraud Provisions 20-12

 [A] Section 11 Liability..... 20-13

 [B] Section 12 Liability..... 20-13

 [C] Section 17 Liability..... 20-13

§ 20:4 Securities Exchange Act of 1934 20-13

 § 20:4.1 Registration 20-13

 § 20:4.2 Public Company Reporting..... 20-14

 § 20:4.3 Antifraud Provision 20-16

§ 20:5 U.S. Regulation of Foreign Offerings—

 AIM Market 20-16

 § 20:5.1 Background..... 20-17

 § 20:5.2 Regulation S Issuer Safe Harbor 20-18

 § 20:5.3 Regulation S Resale Safe Harbor..... 20-19

 § 20:5.4 Rule 144 20-20

 § 20:5.5 AIM 20-20

 § 20:5.6 Application of U.S. Securities Laws..... 20-21

 § 20:5.7 Registration Under the Exchange Act..... 20-24

Appendix 20A	Article on Capital Markets Alternatives	App. 20A-1
Appendix 20B	Securities Act Form Types for Foreign Private Issuers	App. 20B-1
Appendix 20C	Exempted Transactions Under the Securities Act of 1933	App. 20C-1
Appendix 20D	Regulation D Exemptions: Rules 504, 505, and 506.....	App. 20D-1
Appendix 20E	Resale of Securities: Rule 144	App. 20E-1

Chapter 21 International Labor and Employment Law

Philip M. Berkowitz & Trent M. Sutton

§ 21:1	Overview.....	21-2
§ 21:2	Extraterritoriality of U.S. Employment Laws	21-6
§ 21:2.1	Application of Nondiscrimination Laws.....	21-6
§ 21:2.2	Foreign Law Defense	21-10
§ 21:2.3	Sarbanes-Oxley and Dodd-Frank Acts	21-12
§ 21:2.4	State Law Claims	21-17
§ 21:3	Liability of Foreign Companies for U.S. Employment Practices	21-20
§ 21:3.1	The Legal Standard.....	21-20
§ 21:3.2	Observations on Parent Liability	21-26
§ 21:3.3	Recommendations	21-26
§ 21:3.4	A Defense for Foreign Companies: The FCN Treaty	21-27
[A]	Relationship Between the FCN Treaty and Title VII.....	21-28
[B]	Parties Entitled to FCN Treaty Protection	21-30
[C]	Elements of the FCN Treaty Defense	21-32
[D]	Reconciling Competing Objectives of Foreign Parent and U.S. Subsidiary	21-34
§ 21:4	Data Protection	21-35
§ 21:4.1	Overview.....	21-35
§ 21:4.2	Essential Provisions of the Directive	21-36
§ 21:4.3	Essential Provisions of the GDPR	21-38
§ 21:4.4	Litigation and Penalty Assessment.....	21-42
§ 21:4.5	Cross-Border Personal Data Transfers to Non-European Jurisdictions	21-42
[A]	EU-U.S. Privacy Shield	21-42
[B]	Standard Contractual Clauses	21-45
[C]	Binding Corporate Rules.....	21-46
[D]	Derogations	21-46
§ 21:4.6	Impact of Brexit on Data Protection	21-47

Table of Contents

§ 21:4.7 Privacy Initiatives in the United States 21-47
 [A] Federal Laws 21-47
 [B] State Laws..... 21-48
§ 21:4.8 Data Protection Concerns Under
 Sarbanes-Oxley Requirements 21-50
§ 21:4.9 Recommendations for Employers 21-51
§ 21:5 International Employment Standards 21-52
 § 21:5.1 Employment Standards 21-52
 § 21:5.2 International Labor Standards 21-53
 § 21:5.3 OECD Guidelines for Multinational Enterprises.....21-56
 § 21:5.4 The United Nations Global Compact 21-57
 § 21:5.5 United Nations Guiding Principles on
 Business and Human Rights 21-58
 § 21:5.6 International Framework Agreement or
 Global Framework Agreement 21-61
 § 21:5.7 U.S. Model Business Principles and Fair Labor
 Association Guidelines 21-62
 § 21:5.8 Alien Tort Claims Act: Liability for Human
 Rights Abuses 21-63
 § 21:5.9 Discovery of Overseas Employment Practices 21-68
 [A] Cross-Border Discovery 21-68
 [B] Attorney-Client Privilege Across Borders..... 21-70
 § 21:5.10 Enforcing Restrictive Covenants Across
 National Borders..... 21-74
 § 21:5.11 Factors Militating Against Imposing
 International Labor Practices..... 21-77
 [A] Potential Overseas Local Liability..... 21-77
 [B] Increased Likelihood of Liability Under U.S. Law.....21-78
§ 21:6 Recommendations 21-79

**Chapter 22 Immigration Considerations for
International Assignments**

Ellen G. Yost & Sonya B. Cole

§ 22:1 Introduction 22-2
§ 22:2 Global Migration Trends 22-3
 § 22:2.1 The Changing Nature of International
 Assignments and New Challenges for Employers22-3
 § 22:2.2 The Effects of Global Economic Factors,
 the Influx of Refugees and Migrants, and
 Security Concerns..... 22-4
 § 22:2.3 Intergovernmental Discussions on
 Labor Migration..... 22-8
§ 22:3 Increasing Governmental Emphasis on Compliance 22-9

§ 22:4	Critical Factors When Planning an International Assignment.....	22-12
§ 22:4.1	Determining the Type of Assignment and Any Visa Requirements	22-12
§ 22:4.2	Anticipating Processing Times	22-13
§ 22:4.3	Documentary Requirements	22-14
§ 22:4.4	Compensation Requirements	22-14
§ 22:4.5	Family Members.....	22-15
§ 22:4.6	In-Country Obligations	22-15
§ 22:4.7	Entry Procedures and Regional Arrangements.....	22-16
§ 22:5	Conclusion and Best Practices	22-19
Appendix 22A	Basic Requirements for Business Visits and Short-Term Temporary Work Assignments in Select Jurisdictions.....	App. 22A-1

Chapter 23 International Intellectual Property

*Jacqueline Klosek, Robert Blasi, Kevin Lam,
Michelle R. Gonnam & Lindsey Repose*

§ 23:1	Introduction	23-2
§ 23:2	Protecting IP in the International Marketplace.....	23-3
§ 23:2.1	Patents.....	23-3
[A]	Overview.....	23-3
[B]	Patent Cooperation Treaty	23-4
[C]	Paris Convention	23-4
[D]	Direct National Filings.....	23-4
[E]	Advantages of the PCT.....	23-5
[F]	PCT Procedures.....	23-5
[G]	Avoiding Statutory Bars in Foreign Countries.....	23-7
[H]	Disclosure of the Invention	23-8
[I]	Filing a U.S. Application Without Public Disclosure.....	23-9
[J]	Filing Continuation Applications	23-9
§ 23:2.2	Copyrights	23-10
[A]	Overview.....	23-10
[B]	International Treaties and Conventions	23-10
[C]	Protecting an Author's Works Abroad.....	23-13
[C][1]	Compliance with Formalities	23-14
[C][2]	Researching Foreign Law	23-15
§ 23:3	Commercializing IP in the International Marketplace....	23-16
§ 23:3.1	International Licensing of Technology.....	23-16
§ 23:3.2	Patent Licenses	23-20
[A]	Patent Misuse	23-21
[B]	Patent Exhaustion.....	23-22
[C]	Unpatentable Subject Matter.....	23-22

Table of Contents

[D]	Implied Patent Licenses	23-22
[E]	Working Requirements	23-23
§ 23:3.3	Trademark Licenses	23-23
§ 23:3.4	Copyright (<i>i.e.</i> , Software) Licenses.....	23-24
§ 23:3.5	Other Intellectual Property Licenses.....	23-26
§ 23:4	E-Commerce in the International Community.....	23-27
§ 23:4.1	Terms of Use	23-28
[A]	Overview.....	23-28
[B]	International Jurisdiction	23-28
[C]	Arbitration Provisions.....	23-30
§ 23:4.2	Electronic Signatures	23-32
[A]	Overview.....	23-32
[B]	International Enforceability of Electronic Signatures	23-32
Appendix 23A	PCT Member States (As of June 11, 2009).....	App. 23A-1

Chapter 24 International Data Protection and Privacy Law

Donald C. Dowling, Jr. & Jeremy M. Mittman

§ 24:1	International Corporate Practice and Data Privacy Law	24-3
§ 24:2	Data Privacy Regulation Outside the United States: A Clash of Jurisprudential Perspectives.....	24-4
§ 24:3	The European Union Data Privacy Directive.....	24-6
§ 24:3.1	What the EU Data Directive Does.....	24-7
§ 24:3.2	Social and Legal Context Underlying the EU Data Directive	24-8
§ 24:3.3	Terminology.....	24-10
§ 24:3.4	Data Processing Rules Domestically Within Europe	24-11
[A]	Complying with Data Quality Principles and Rules	24-11
§ 24:3.5	Disclosing to Data Subjects.....	24-14
§ 24:3.6	Reporting to State Agencies	24-15
§ 24:3.7	EU Draft Legislation Package	24-17
§ 24:4	Transfers of Data to Countries Outside Europe	24-20
§ 24:4.1	Data Transfers Allowed to “Third Countries”—and Companies Abroad	24-21
§ 24:4.2	Safe Harbor.....	24-24
§ 24:4.3	The Seven Safe Harbor Principles	24-27
[A]	Notice	24-28
[B]	Choice	24-29
[C]	Onward Transfer.....	24-29

[D]	Security.....	24-30
[E]	Data Integrity	24-30
[F]	Access	24-30
[G]	Enforcement	24-31
§ 24:4.4	Self-Certification Process	24-32
§ 24:4.5	Criticisms of Safe Harbor	24-34
§ 24:4.6	Binding/Standard Contractual Clauses	24-37
§ 24:4.7	Obligations of the Data Exporter and Data Importer.....	24-39
§ 24:4.8	Liability.....	24-40
§ 24:4.9	Binding Corporate Rules.....	24-41
§ 24:5	“Transposition” (Adoption) of the Directive in European Union Member States	24-45
§ 24:5.1	Denmark	24-46
§ 24:5.2	England.....	24-47
§ 24:5.3	France	24-47
§ 24:5.4	Germany.....	24-48
§ 24:5.5	Italy	24-50
§ 24:5.6	Netherlands	24-50
§ 24:5.7	Spain.....	24-51
§ 24:6	Data Privacy Laws Beyond the European Union.....	24-52
§ 24:6.1	Argentina.....	24-53
§ 24:6.2	Australia	24-54
§ 24:6.3	Brazil	24-56
§ 24:6.4	Canada	24-58
§ 24:6.5	China.....	24-61
§ 24:6.6	Colombia.....	24-63
§ 24:6.7	Costa Rica	24-64
§ 24:6.8	Dubai.....	24-65
§ 24:6.9	Hong Kong	24-66
§ 24:6.10	India	24-68
§ 24:6.11	Israel.....	24-69
§ 24:6.12	Japan.....	24-70
§ 24:6.13	Malaysia	24-71
§ 24:6.14	Mexico.....	24-71
§ 24:6.15	Russia	24-73
§ 24:6.16	Singapore.....	24-76
§ 24:6.17	South Korea	24-78
§ 24:6.18	Switzerland.....	24-79
§ 24:6.19	Taiwan	24-80
§ 24:6.20	Thailand.....	24-81
§ 24:6.21	Ukraine.....	24-82
§ 24:6.22	Uruguay.....	24-82

Chapter 25 Overview of U.S. Export Control Laws

Thomas B. McVey

§ 25:1	Introduction	25-3
§ 25:2	Scope of Penalties	25-3
§ 25:3	Export Administration Regulations	25-5
§ 25:3.1	Introduction.....	25-5
§ 25:3.2	Commerce Control List.....	25-5
§ 25:3.3	Dual-Use Items and Military Items	25-5
§ 25:3.4	End-Use-Based Controls.....	25-6
§ 25:3.5	Restricted Parties	25-6
§ 25:3.6	Reexports	25-7
§ 25:3.7	Software and Technology.....	25-7
§ 25:3.8	Other Regulatory Requirements	25-7
§ 25:3.9	Penalties	25-8
§ 25:3.10	Export Control Reform.....	25-8
§ 25:4	U.S. Sanctions Programs	25-8
§ 25:4.1	Introduction.....	25-8
§ 25:4.2	Countries Covered.....	25-9
§ 25:4.3	Comprehensive Sanctions	25-9
§ 25:4.4	Partial Sanctions.....	25-9
§ 25:4.5	Restricted Persons and Entities	25-9
§ 25:4.6	Application of U.S. Sanctions Programs.....	25-10
§ 25:4.7	Penalties	25-11
§ 25:5	Arms Export Control Act (International Traffic in Arms Regulations)	25-11
§ 25:5.1	Introduction.....	25-11
§ 25:5.2	Regulation of Defense Articles.....	25-11
§ 25:5.3	U.S. Munitions List.....	25-11
§ 25:5.4	Technical Data and Software	25-12
§ 25:5.5	Defense Services	25-12
§ 25:5.6	Overlap with Export Administration Regulations.....	25-12
§ 25:5.7	Requirements Under ITAR	25-12
§ 25:5.8	License Certifications	25-14
§ 25:5.9	Penalties	25-15
§ 25:6	Other Export Statutes.....	25-15
§ 25:7	U.S. Antiboycott Laws.....	25-15
§ 25:7.1	Overview.....	25-15
§ 25:7.2	Prohibited Activities	25-15
§ 25:7.3	Exceptions to Prohibitions.....	25-16
[A]	Import Requirements of a Boycotting Country	25-17
[B]	Shipment of Goods to a Foreign Country	25-17
[C]	Import and Shipping Document Requirements.....	25-17

[D]	Compliance with Unilateral Selection.....	25-17
[E]	Shipment and Transshipment of Exports Pursuant to a Boycotting Country's Requirements	25-18
[F]	Immigration, Passport, Visa, or Employment Requirements of Boycotting Country	25-18
[G]	Compliance with Local Law	25-18
[H]	Activities Exclusively Within a Foreign Country	25-18
[I]	Compliance with Local Import Law	25-18
§ 25:7.4	Reporting Requirements	25-19
§ 25:7.5	Evasion	25-19
§ 25:7.6	Antiboycott Tax Laws	25-19
§ 25:7.7	Sanctions	25-20
§ 25:8	Export Compliance Programs.....	25-20
§ 25:8.1	Benefits.....	25-20
§ 25:8.2	Substantive Laws Covered.....	25-20
§ 25:8.3	Other Relevant Legal Standards.....	25-21
§ 25:8.4	Parties Covered.....	25-21
§ 25:8.5	Elements of the Program.....	25-22
[A]	Adoption at Senior Company Level.....	25-22
[B]	Compliance Official.....	25-22
[C]	Written Materials.....	25-22
[D]	Education.....	25-22
[E]	Update Function.....	25-23
[F]	Periodic Audit	25-23
[G]	Mechanism for Dealing with Suspected Violations	25-23
[H]	Enforcement	25-23
[I]	Record Keeping	25-23
§ 25:9	Steps to Take If an Export Violation Is Discovered	25-24
Appendix 25A	U.S. Export Control Laws	App. 25A-1
Appendix 25B	Steps in Implementing an Export Compliance Program	App. 25B-1

Chapter 26 Competition and Antitrust Law

Saul P. Morgenstern, Margaret A. Rogers, Charles A. Krafle, Nigél Parr & Joanna Christoforou

§ 26:1	Introduction	26-5
§ 26:2	U.S. Federal Antitrust Law.....	26-6
§ 26:2.1	Introduction.....	26-6
§ 26:2.2	Statutory Framework.....	26-7
§ 26:2.3	Discerning Competitive and Harmful Practices	26-11
[A]	“Ancillary” and “Naked”.....	26-11

Table of Contents

[B]	“Per Se” Versus “Rule of Reason”	26-12
[B][1]	“Horizontal” Versus “Vertical”	26-12
[B][2]	Per Se Practices	26-14
[B][3]	“Pro-Competitive” and “Anticompetitive”	26-15
[B][4]	Market Analysis Under the Rule of Reason	26-16
[B][4][a]	Market Definition.....	26-17
[B][4][b]	Market Players.....	26-19
[B][4][c]	Market Shares.....	26-19
[B][4][d]	Barriers to Entry	26-20
[B][4][e]	Competitive Effect.....	26-20
§ 26:2.4	Concerted Action Under Section 1 of the Sherman Act.....	26-21
[A]	The Single-Entity Doctrine.....	26-21
[B]	Awareness of Consequences of Actions.....	26-24
[C]	Conscious Parallelism.....	26-25
[D]	Facilitating Practices	26-26
[E]	Coercion	26-27
[F]	Dealer Termination Based on Complaints	26-27
§ 26:2.5	Restraint of Trade	26-28
[A]	Price and Output Restraints	26-28
[A][1]	Horizontal Price and Output Restraints.....	26-28
[A][2]	Vertical Price and Output Restraints.....	26-30
[A][3]	Market Allocation	26-33
[A][3][a]	Horizontal Market Allocation.....	26-33
[A][3][b]	Vertical Market Allocation.....	26-34
[B]	Tying Arrangements	26-34
[C]	Group Boycotts.....	26-36
[D]	Distribution Agreements	26-37
[E]	Most-Favored-Nation Clauses	26-39
[F]	Nondiscriminatory (Anti-Steering) Provisions	26-41
[G]	Covenants Not to Compete.....	26-42
[H]	Collaborations Among Competitors.....	26-42
[I]	Exchanging Information	26-44
§ 26:2.6	Section 2 Liability.....	26-46
[A]	Refusal to Deal	26-48
[B]	Tying Arrangements	26-51
[C]	Other Exclusionary Practices	26-51
§ 26:2.7	The Robinson-Patman Price Discrimination Act	26-56
[A]	Liability Under Section 2(a) of the Act.....	26-56
[A][1]	Primary-Line and Secondary-Line Injury.....	26-57
[A][2]	Affirmative Defenses	26-58
[A][2][a]	Functional Availability.....	26-58
[A][2][b]	Meeting Competition	26-58
[A][2][c]	Cost Justification.....	26-59
[A][2][d]	Changing Conditions	26-60
[B]	Liability Under Sections 2(d) and 2(e) of the Act.....	26-60

§ 26:2.8	Mergers.....	26-60
§ 26:2.9	Antitrust and Intellectual Property.....	26-67
[A]	Patent Monopoly	26-67
[B]	Conduct Exceeding the Patent Monopoly.....	26-68
[C]	Patent Litigation Settlement Agreements	26-69
[D]	Licensing Agreements.....	26-74
§ 26:2.10	Right to Sue and Enforce.....	26-77
[A]	Government Enforcement of U.S. Antitrust Laws.....	26-77
[B]	Private Enforcement of U.S. Antitrust Laws	26-79
[B][1]	Antitrust Injury and Standing.....	26-80
[B][2]	Proving Antitrust Damages	26-81
[C]	Pleading Antitrust Claims	26-81
[D]	Class Actions.....	26-82
§ 26:2.11	Exemptions from the Sherman Act.....	26-87
[A]	State Action Doctrine	26-87
[B]	Petitioning the Government: <i>Noerr-Pennington</i> Doctrine.....	26-89
[C]	Implied Immunity Doctrine	26-90
[D]	Other Immunities	26-91
§ 26:3	EU Competition Law	26-92
§ 26:3.1	Overview.....	26-92
§ 26:3.2	Statutory Framework—Introduction to Articles 101 and 102	26-97
[A]	Market Definition.....	26-98
[A][1]	Definition of Relevant Product Market and Relevant Geographic Market	26-99
[A][2]	Demand Substitution.....	26-99
[A][3]	Supply Substitution.....	26-101
[A][4]	Potential Competition.....	26-101
[A][5]	Evidence Gathering	26-102
§ 26:3.3	Article 101	26-102
[A]	Article 101(1).....	26-103
[A][1]	Undertakings.....	26-103
[A][2]	Agreements, Decisions by Associations of Undertakings, and Concerted Practices	26-104
[A][3]	Unilateral Conduct and Article 101.....	26-107
[A][4]	Horizontal and Vertical Agreements	26-109
[A][5]	Single Economic Entity Doctrine	26-110
[A][6]	Object/Effect Distinction	26-112
[A][6][a]	Object	26-112
[A][6][b]	Effect.....	26-114
[A][7]	Effect on Trade	26-115
[A][8]	Appreciability and the De Minimis Doctrine....	26-119
[B]	Article 101(2).....	26-121

Table of Contents

[C]	Article 101(3).....	26-121
[C][1]	Exemption Criteria.....	26-121
[C][2]	The Effect of Modernization and the Introduction of Self-Assessment.....	26-123
[C][3]	Block Exemptions—General.....	26-123
[C][4]	Vertical Agreements Block Exemption	26-125
[C][5]	Technology Transfer Block Exemption	26-130
[D]	Article 101 and Non-Full-Function Joint Ventures	26-132
Table 26-1 List of Major Commission Decisions on Article 101 Cases Between January 1, 2000, and July 11, 2014		
§ 26:3.4	Fines, Leniency, and Settlement.....	26-150
§ 26:3.5	Article 102.....	26-158
[A]	Introduction and Overview.....	26-158
[B]	Dominance	26-159
[B][1]	Market Share.....	26-160
[B][2]	Other Factors	26-161
[C]	Substantial Part of the Common Market and Effect Trade.....	26-163
[C][1]	Substantial Part of the Common Market.....	26-163
[C][2]	Effect on Trade	26-164
[D]	Abuse.....	26-165
[D][1]	General Principles	26-165
[D][2]	Commission’s Guidance on Exclusionary Conduct	26-168
[D][3]	Predatory Pricing.....	26-171
[D][4]	Excessive Pricing	26-178
[D][5]	Discriminatory Pricing.....	26-181
[D][6]	Margin Squeeze	26-186
[D][7]	Exclusivity and Related Exclusionary Conduct	26-190
[D][8]	Tying, Bundling, and Portfolio Effects	26-195
[D][9]	Refusal to Supply and the “Essential Facilities Doctrine”.....	26-199
[D][9][a]	Refusal to Supply Goods or Services.....	26-199
[D][9][b]	Essential Facilities Doctrine	26-200
Table 26-2 List of Major Commission Decisions on Article 102 Cases Between January 1, 2000, and July 11, 2014		
§ 26:3.6	Competition/Intellectual Property (IP) Interface....	26-209
[A]	Parallel Importation and Articles 101 and 102.....	26-209
[B]	Refusal to License Intellectual Property Rights.....	26-212
[C]	From <i>Magill</i> to <i>Microsoft</i>	26-213
[C][1]	<i>RTE v. Commission (Magill)</i>	26-213

[C][2]	<i>IMS Health</i>	26-214
[C][3]	<i>Microsoft</i>	26-216
[D]	“Exceptional Circumstances” Versus “Totality of the Circumstances”	26-222
[E]	EU/U.S. Contrast.....	26-223
[F]	Common Themes in Refusal to Supply/Refusal to License IPRs Case Law.....	26-225
§ 26:3.7	Merger Control—General.....	26-227
[A]	Concentrations	26-228
[B]	Community Dimension	26-231
[C]	Substantive Test.....	26-233
[C][1]	SIEC Test.....	26-233
[C][2]	Commission’s Substantive Analysis.....	26-234
[D]	Full-Function Joint Ventures.....	26-238
[E]	Procedure	26-240
[E][1]	Notification	26-240
[E][2]	Referral of Cases to and from the Commission.....	26-242
[E][3]	Suspension	26-242
[E][4]	Timetable and Outcome	26-243
§ 26:3.8	Right to Sue and Enforce—Private Actions for Damages	26-245
§ 26:3.9	Commission’s Investigative Powers.....	26-252
[A]	Dawn Raids	26-253
[A][1]	Scope and Relevance	26-257
[A][2]	Legal Privilege.....	26-257
[A][3]	Rule Against Self-Incrimination	26-258
[A][4]	Sensitive and Confidential Information	26-258
§ 26:3.10	State Aid.....	26-259
[A]	Situations in Which State Aid Is Unlikely to Arise	26-262
[B]	Block Exemptions	26-264
[C]	Economic Assessment	26-264
[D]	State Aid for Rescuing and Restructuring Firms in Difficulty.....	26-265
[E]	Procedure and Consequences of Unlawful State Aid	26-270
§ 26:3.11	Extraterritorial Effect of EU Competition Law	26-271
Appendix 26A	Group Turnover	App. 26A-1
Appendix 26B	Joint Venture Turnover	App. 26B-1

Chapter 27 International Environmental Law

Eric B. Rothenberg & Bob Nicksin

§ 27:1	Introduction	27-3
§ 27:2	Global Treaties	27-3
§ 27:2.1	Greenhouse Gases (Kyoto Protocol and Paris Agreement).....	27-3
§ 27:2.2	Persistent Organic Pollutants (Stockholm Convention)	27-7
§ 27:2.3	Biosafety (Cartagena Protocol)	27-9
§ 27:2.4	Ozone-Depleting Substances (Montreal Protocol).....	27-9
§ 27:2.5	Law of the Sea	27-10
§ 27:3	EU Law.....	27-12
§ 27:3.1	Carbon Dioxide Emissions Trading.....	27-12
§ 27:3.2	Integrated Facility Permits: Directive on Industrial Emissions.....	27-14
§ 27:3.3	Major Accident Prevention and Response (Seveso III)	27-17
§ 27:3.4	Chemical Safety (REACH).....	27-19
[A]	Registration.....	27-20
[B]	Evaluation.....	27-21
[C]	Authorization.....	27-21
§ 27:3.5	Electrical and Electronic Equipment (WEEE/RoHS)	27-22
§ 27:3.6	Public Access to Information.....	27-24
§ 27:3.7	Asbestos-Containing Materials.....	27-26
§ 27:3.8	Environmental Liability Directive	27-27
§ 27:4	Hazardous Site Cleanup	27-29
§ 27:4.1	England, Wales, Scotland, and Northern Ireland	27-30
[A]	Overview.....	27-30
[B]	Cost Recovery and Voluntary Cleanup Agreements.....	27-33
[C]	Liability of Appropriate Persons.....	27-34
[D]	Liability Exemptions and Exclusions	27-34
[E]	Implementation	27-35
§ 27:4.2	Argentina	27-37
§ 27:4.3	Australia	27-37
§ 27:4.4	Austria	27-39
§ 27:4.5	Belgium	27-40
[A]	Soil and Groundwater Legislation	27-40
[B]	Flemish Region.....	27-41
[C]	Walloon Region.....	27-41
[D]	Brussels-Capital Region	27-42
§ 27:4.6	Brazil	27-43
§ 27:4.7	Canada	27-45

§ 27:4.8	China.....	27-47
§ 27:4.9	Czech Republic	27-51
§ 27:4.10	Denmark	27-52
§ 27:4.11	Finland	27-53
§ 27:4.12	France	27-54
§ 27:4.13	Germany.....	27-55
§ 27:4.14	Hong Kong	27-56
§ 27:4.15	Hungary.....	27-57
§ 27:4.16	India	27-58
§ 27:4.17	Indonesia	27-59
§ 27:4.18	Ireland	27-59
§ 27:4.19	Italy	27-60
§ 27:4.20	Japan.....	27-63
§ 27:4.21	Malaysia	27-64
§ 27:4.22	Mexico	27-64
§ 27:4.23	Netherlands	27-64
§ 27:4.24	New Zealand	27-65
§ 27:4.25	Norway.....	27-66
§ 27:4.26	Peru	27-67
§ 27:4.27	Portugal	27-67
§ 27:4.28	Romania	27-68
§ 27:4.29	Slovakia	27-68
§ 27:4.30	Slovenia	27-70
§ 27:4.31	Spain.....	27-70
§ 27:4.32	Sweden	27-71
§ 27:4.33	Switzerland.....	27-71
§ 27:5	Sample Due Diligence Request.....	27-73

Chapter 28 Purchasing Insurance in the International Market

Jeremy M. King

§ 28:1	Introduction	28-2
§ 28:2	Placing the Coverage	28-3
§ 28:2.1	Clauses That Should Be Included in Policies Purchased from Foreign Insurers.....	28-3
§ 28:2.2	Alternative Risk Management Techniques Also Bring Policyholders into Contact with the Foreign Insurance Market.....	28-7
§ 28:2.3	Policyholders Should Pay Attention to Dispute Resolution Provisions in Policies Sold by Foreign Insurers.....	28-12
[A]	Choice of Law.....	28-13
[B]	Choice of Forum.....	28-16
[C]	Service of Suit.....	28-21

Table of Contents

§ 28:3 Whether or Not the Policyholder Should Agree to Arbitrate 28-22

§ 28:3.1 Applicable Laws 28-23

§ 28:3.2 Other Factors to Consider 28-25

[A] Speed 28-25

[B] Economy 28-26

[C] Limited Discovery 28-26

[D] Confidentiality 28-26

[E] Parties Are Limited 28-27

[F] Issues May Be Limited 28-27

[G] No Rush to the Courthouse 28-28

[H] Focus on Business Custom and Practice Rather Than on the Law 28-28

[I] No Jury Trial 28-28

[J] Enforceability 28-29

[K] No Appellate Review 28-29

[L] Award of Attorneys' Fees 28-29

[M] Arbitration Is Mandatory 28-29

Appendix 28A Arbitration Endorsement App. 28A-1

Chapter 29 International Insolvency and Bankruptcy

Lindsee P. Granfield, Sean A. O'Neal & Timothy S. Mehok

§ 29:1 Introduction 29-3

§ 29:2 Jurisdiction and Choice of Law 29-4

§ 29:2.1 United States 29-5

§ 29:2.2 Examples from Other Jurisdictions 29-5

[A] Japan 29-5

[B] European Countries 29-6

§ 29:3 Form of Proceeding 29-8

§ 29:3.1 United States 29-9

§ 29:3.2 Examples from Other Jurisdictions 29-10

[A] England 29-10

[B] Korea 29-12

[C] Mexico 29-13

[D] Canada 29-14

[E] Italy 29-17

§ 29:4 Control and Management of Debtor 29-20

§ 29:4.1 United States 29-21

§ 29:4.2 Examples from Other Jurisdictions 29-22

[A] Canada 29-22

[B] England 29-23

[C] Mexico 29-23

[D]	Korea.....	29-23
[E]	Italy	29-24
§ 29:5	Participation in Proceedings	29-24
§ 29:5.1	United States	29-25
§ 29:5.2	Examples from Other Jurisdictions	29-27
[A]	Mexico	29-28
[B]	Korea.....	29-28
[C]	Canada	29-29
[D]	Italy	29-30
§ 29:6	Rights of Secured Creditors.....	29-31
§ 29:6.1	United States.....	29-32
§ 29:6.2	Examples from Other Jurisdictions	29-34
[A]	Japan.....	29-34
[B]	Germany.....	29-34
[C]	Italy	29-35
§ 29:7	Priority Schemes.....	29-36
§ 29:7.1	United States.....	29-37
§ 29:7.2	Examples from Other Jurisdictions	29-38
[A]	Japan.....	29-38
[B]	Germany.....	29-39
[C]	Canada	29-40
§ 29:8	Status of Contractual Obligations	29-41
§ 29:8.1	United States.....	29-41
§ 29:8.2	Examples from Other Jurisdictions	29-42
[A]	Korea.....	29-42
[B]	Mexico.....	29-43
[C]	Italy	29-44
§ 29:9	Financing of Company Undergoing Restructuring.....	29-45
§ 29:9.1	United States.....	29-45
§ 29:9.2	Examples from Other Jurisdictions	29-46
[A]	Japan.....	29-46
[B]	Germany.....	29-46
[C]	Canada	29-47
[D]	Italy	29-47
§ 29:10	Avoidance Actions	29-47
§ 29:10.1	United States.....	29-48
[A]	Preferences.....	29-48
[B]	Fraudulent Conveyances.....	29-49
§ 29:10.2	Examples from Other Jurisdictions	29-50
[A]	England.....	29-50
[B]	Korea.....	29-51
[C]	Italy	29-52
§ 29:11	Liability for Directors and Officers.....	29-53
§ 29:11.1	United States.....	29-53

Table of Contents

§ 29:11.2 Examples from Other Jurisdictions 29-55
 [A] England..... 29-55
 [B] Canada 29-57
 [C] Italy 29-58
§ 29:12 Ancillary Proceedings and International
 Insolvency Treaties 29-58
 § 29:12.1 The Model Law and Chapter 15 29-59
 § 29:12.2 The EU Regulation 29-64
§ 29:13 Conclusion 29-67

Chapter 30 Strategic Globalization of Pro Bono Service

Madeleine Schachter & Phil Suse

§ 30:1 Conceptualizing Pro Bono Service..... 30-2
§ 30:2 Factors That Affect Development of Pro Bono
 Cultures..... 30-7
 § 30:2.1 Regulatory Regimes 30-7
 § 30:2.2 Cultural Norms 30-8
 § 30:2.3 Market Forces 30-10
§ 30:3 Legal and Ethical Considerations 30-11
 § 30:3.1 Conflicts of Interest..... 30-11
 § 30:3.2 Unauthorized Practice of Law 30-12
 § 30:3.3 Competency..... 30-14
§ 30:4 Vetting Considerations 30-15
§ 30:5 Engagement with Global Emerging and
 Other Markets 30-18
§ 30:6 Strategic Approaches 30-19
 § 30:6.1 Developing a Global Practice..... 30-19
 § 30:6.2 Assessing the Impact of Global Projects..... 30-20
 § 30:6.3 Engaging in Strategic Collaborations..... 30-23
 § 30:6.4 Aligning and Leveraging with Other
 Corporate Social Responsibility Initiatives 30-27
§ 30:7 Conclusion 30-29

Index I-1

Introduction

International Corporate Practice: A Practitioner's Guide to Global Success will give you a practical understanding of the legal framework and issues that every corporate lawyer operating in a global environment should know. The purpose of this treatise is to enable the lawyer, whether in-house or outside counsel, to operate efficiently on the global stage. This treatise explores the responsibilities and opportunities to foster the rule of law in a corporate setting. Too often, attorneys lack the "tool kit" and knowledge to recognize and appreciate the issues that arise in a corporate environment. Frequently, they are acquainted only with common law jurisdictions or only with civil law jurisdictions; yet knowledge of both systems is critical. Further, the issue of cross-border versus global legal solutions is beyond the strategic knowledge of most practitioners.

In response to the impact of globalization on operations, global solutions are essential. These and other difficult issues are discussed throughout the treatise through an analysis of how to create an international legal department, operate an international law firm network, and deal with critical international substantive areas such as employment law, intellectual property law, environmental law, securities law, project finance, competition and antitrust law, insurance, and bankruptcy. Further, such areas as crisis management; corporate compliance; internal investigations; litigation management; alternate dispute resolution and arbitration; corporate governance; global tax, accounting, and transfer pricing; and mergers and acquisitions will be analyzed in terms of cross-border and global solutions.

Until recently, cross-border transactions were the typical international corporate issues. Now, true international expertise is necessary to properly represent clients on global issues. This treatise covers the basics for in-house and outside counsel to spot issues as follows:

- How do you manage an international law department?
- What is the extent of international attorney-client privilege?
- Is there a global solution or only a cross-border remedy to solve your strategic needs?
- Are there alternatives to hiring a global law firm using foreign consultants and/or outsourcing and using temporary legal staff?

- Should international corporate responsibility be a critical component of your strategic plan?
- What best practices are emerging in the area of corporate compliance?
- What anticorruption trends exist in such areas as money laundering, terrorist financing, and antibribery?
- What are the pitfalls and opportunities of seconding employees in a global marketplace?
- Export controls, customs, and international technology transfers: what are the key issues?
- How do the European Union data protection requirements impact privacy concerns for employees and consumers worldwide?
- What alternate dispute resolution issues should you consider in drafting cross-border contracts?

CAROLE BASRI