SPRING 2014 LEGAL UPDATE

"We are delighted to announce that as of 1st January 2014 Cicero League of International Lawyers has been incorporated. It is now a company limited by guarantee under English Law as agreed by the members at the meeting in Hamburg in November 2013. Prior to this Cicero was an unincorporated association but the incorporation now gives it a more appropriate legal structure for an organisation of its size and our potential growth."

INTRODUCTION

Our chairman reflects on the birth of Cicero League of International Lawyers

When preparing the invite for the Porto meeting, Filipa Pires from our Portuguese member, summed up Cicero with these words: If Cicero network were a river, it would be Douro. Cicero network does not have one spring, it is supplied by many springs that join together to turn this river into a golden one, with great values and work. Cicero meetings are the current that leads this river, its main source of wealth. Juniors, the young tiny drops of water, are now running in this golden river and we have an important rule to develop". A perfect description.

During the 1990's I had developed a close working relationship with a law firm in Hamburg and another in Dublin. At this time I was advising an American client on a number of European transactions and other clients on mergers and acquisitions in European transactions. In 2001 I advised Fine Fragrances & Cosmetics in its sale to an Irish quoted company represented by Eileen Grace joined Eugene F Collins.

I met Eileen with David Cantrell of Eugene F Collins in Dublin to discuss working with them on future transactions in Ireland. By pure chance that very same day a lawyer from Frankfurt, Florian Wolff, was visiting Eugene F Collins and I met briefly with him. He was a partner of Rossbach & Fischer a firm that subsequently became (together with Eugene F Collins) a founder member of Cicero, so out of my trip to Dublin the seeds were sown for the creation of Cicero.

In 2003 Mundays moved into their new offices and my colleagues and I decided to host a dinner and invite lawyers from other jurisdictions with whom we worked. Florian Wolff attended on behalf of Rossbach & Fischer, Andreas Neocleous (who I have known for over 30 years) from Cyprus and David Cantrell together with some 10 other lawyers from France, Italy, Spain, Portugal. We had a most enjoyable evening and at the end of the dinner Florian invited everyone back to Frankfurt in the coming November for a reunion; an invitation not to be refused.

In the intervening months Florian and I began to discuss the creation of an international network embracing the Mundays and Rossbach's connections which led to the invite to the November 2003 dinner being headed "Best Friends Circle Dinner". A brief agenda was agreed for that meeting and the most significant item was whether the lawyers present were interested in the creation of a network and if so how often should we meet. The upshot was that yes we were keen to start our own network and that we should meet twice a year.

Andreas Neocleous invited us to Cyprus for May 2004. It was a particularly important event for Elias Neocleous, because there he met Eugenia Ortiz Rodriguez from Spain and they subsequently married. (The marriage brokerage fee is still unpaid!!!). In Cyprus it was agreed that our network needed a name so in November 2004 in Madrid, our current name Cicero was approved. My recollection is that Konrad Lenneis proposed this name - now trade marked within the EU and elsewhere.

Since our inception Cicero has met twice yearly in the following locations starting with Frankfurt, Germany, in November 2003, Limassol, Cyprus, Madrid, Spain, Vienna, Austria, Lisbon, Portugal, Dublin, Eire, Bahrain, Edinburgh and Glasgow, Scotland, Milan, Italy, London, England, Istanbul, Turkey, Niagara on the Lake and Buffalo, USA, Copenhagen, Denmark, Amsterdam, Netherlands, Paris, France, Porto, Portugal, Limassol, Cyprus, Antwerp, Germany, Haifa, Israel, Budapest, Hungary and latterly Hamburg, Germany.

Over the last 10 years Cicero has grown substantially and year by year there has been an increased work flow between member firms. Additionally many new friendships have been created and the Junior League is proving a successful forum for young lawyers to meet and exchange ideas and gain experience in international transactions.

The future is bright for Cicero.

Peter Munday

BELGIUM

White / blue collar discrimination ended

For decades trade unions, employers, organizations, governments and Courts have tried to mitigate and even eliminate the different statutory treatment of white and blue collar workers and to harmonize their situation.

By Statute of 26 December 2013 most of the distinctions have now been eliminated:

- terms of notice have been unified for both white and blue collars leading to shorter terms for whites and longer terms for blues (however, seniority rights built up in the past are saved).
- trial periods are no longer allowed in most of the employment contracts.
- any employee on sick-leave will be paid as from the first day.
- any employee is now entitled to outplacement.
- additional pension rights will gradually be unified.

If you want more information on these changes, that have a major impact on Belgian employment relations, please contact Inez Van Loock (**i.vanloock@ardent.be)** or Jean-Philippe Sel (**j.sel@ardent.be)** of Ardent Advocaten.

USA

Dunnington Attains Victory for German Museum in U.S. Court Battle

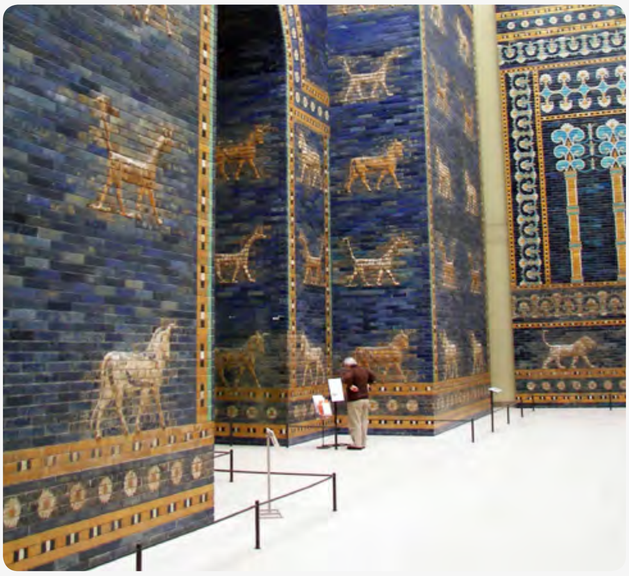
On November 14, 2013, Cicero Member Dunnington Bartholow & Miller LLP triumphed in a major case for Germany's Vorderasiatisches Museum (part of the Pergamon Museum), obtaining the return of a 3,200-year-old Assyrian amulet in a landmark decision, Matter of Flamenbaum, by the New York Court of Appeals, New York's highest court. The tablet was excavated from the Ishtar Temple in modern-day Iraq in 1913 and went missing during World War II when the Pergamon Museum, located in East Berlin, was occupied by Soviet troops.

Both the oral argument before the New York Court of Appeals and the decision were reported widely in the international press and have been carefully watched by the international museum community. The Flamenbaum decision reaffirms New York State's commitment to the common law rule protecting true owners of lost or stolen property. Under the U.S. legal system, federal courts are bound to apply the law of the state in which they sit, absent a conflict of laws rule or agreement to the contrary. The Flamenbaum Court rejected the contention that the Museum had lost its rights under the laches doctrine, which, under certain circumstances, may cut off the rights of true owners of lost or stolen property where lack of diligence has prejudiced a person who acquires property in good faith. More significantly for the museum community, the Court disallowed the "spoils of war" argument, based on the claim that because the Soviet government gained the Museum's property as a "spoil of war" when it invaded, the transfer of title from the soldiers to Flamenbaum was valid. Rejection of this doctrine makes clear that the U.S. policy against pillaging of cultural artifacts, which dates to the WWII era, is still very much alive.

Following the successful appeal on December 4, 2013, Surrogate Edward McCarty of Nassau County supervised the return of the Ishtar Tablet to a museum representative. The Museum is planning an exhibition in Berlin in which the Ishtar Tablet will be made available to the public and to scholars.

Raymond J. Dowd, who successfully argued the Museum's case, is the author of Copyright Litigation Handbook. Mr. Dowd serves on the Board of Directors of the Federal Bar Association.

Mr Dowd serves on the Board of Directors of the Federal Bar Association and may be contacted at **rdowd@dunnington.com**



Third Party Violations on the Internet

Who is liable for third party violations on the internet?

Routinely, in the case of internet entries which constitute a violation of the law, there is an issue as to who may request the deletion or blocking of the violating internet site if the party responsible is not available. Usually, this either concerns the violation of commercial property rights such as product offers which violate trademark or copyright law, or entries which constitute damage to someone's reputation or personal rights. In recent years, German courts have had to evaluate if, and to what extent, providers are responsible for third party violations, be it operators of search engines, internet forums or auction portals, telecommunication providers or domain registries such as the German Denic eG. According to a recent decision of the District Court Saarbrücken of 15 January 2014 (*file no. 7 O 82/13*), there is now the additional category of the so-called "Domain Name Registrars" (registrars) such as United Internet (1&1) or Strato. A registrar acts as an agent between the competent domain registries, such as Denic eG in Germany, for instance, and the domain registrant (registrant), in some cases involving further so-called resellers.

Recourse to the domain name registrars for omission

In the case at hand, a music album which was to be published two days later was offered for downloading on the relevant internet site. The German record label wanted to take action against this offer. However, the responsible domain holder was a letter-box company in Seychelles, the host server was located in the Netherlands and the registry of the .com domain in question was based in the USA. The record label therefore identified the German registrar, pointed out the offer for downloading which constituted a violation of the law, and requested deletion. The registrar communicated the host server data as well as the contact details of the responsible reseller and the owner of the domain but refused any further liability. A registrar only has the option to delete or de-connect the domain name whereas in both cases, the queried content would remain on the server and would still be retrievable by directly entering the IP address. Therefore, the record label applied for an injunction which, after there had been an appeal of the registrar in the meantime, has been confirmed with the present decision.

Liability privilege applicable to registrars?

The decision is interesting insofar as the registrar claimed the legally authorized liability privilege of domain registry Denic eG. This privilege is substantiated with the fact that Denic, as a purely technical domain registry, does not intend to realize profit and acts in the interest of all internet users and therefore also for the public benefit. Consequently, Denic only has limited examination duties in the registration process. Even in the

event of a respective hint to a violating domain, Denic is only liable if the violation is evident and can be readily determined, which is to be the case only if there is a valid judgment or obtruding violations. As a result, the District Court has not decided whether or not Denic's liability privilege should also apply to registrars. According to the District Court, the relevant violation of copyright law was evident and readily determinable for the registrar.

Circle of liable internet providers is expanding

Even though the present first-instance judgment was only passed in summary proceedings and is not yet valid, it is part of a number of recent judgments which also justified more responsibility of neutral service providers under certain circumstances; such as Google's obligation to delete violating auto complete entries. For the respective holders of the rights, this provides additional possibilities to proceed against violating internet entries which are either anonymous or hard to determine for other reasons. Internet service providers should therefore implement organizational measures to ensure that they can temporarily remove or delete violating third party entries within their reach.

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NETHERLANDS

Dismissal Law as of 2015

The main aim of the new law will be to reduce the high level of employment protection in the Netherlands. Nonetheless, many employment law lawyers do not believe that it will make it easier for employers to make employees redundant. Redundancy payments will be lower though, thus making employees redundant will on the whole be less expensive for employers. The current sub-district court formula (roughly 1 month's salary per year of employment) will be replaced by a transitional allowance (roughly 1/3 month's salary per year of employment). Any employees made redundant from 2015 onwards will therefore receive a lower redundancy payment.

Uniform employment termination procedures as of 2015

Employers will no longer have a choice when it comes to making employees redundant as of 2015. Employers currently have two options: either arranging the redundancy through the Employee Insurance Agency (UWV) or by applying for permission to terminate a contract with the sub-district court. As of 2015, any redundancies as a result of reorganisation will always have to go through the UWV, while individual dismissals on the grounds of poor performance or conflicts will have to go through the sub-district court.

The new law will, however, allow employees to lodge an appeal against a ruling of the sub-district court to allow the termination of their employment contract. This is currently not possible. In other words, employees will be given an additional way of contesting a dismissal. Dismissal procedures via the courts might therefore last even longer.

Employees made redundant from 2015 onwards will always receive a transitional allowance

Whereas some employees currently do not receive a redundancy payment if the termination procedure is arranged via the UWV, as of 2015 all employees made redundant will receive a transitional allowance. The only condition will be that the employee must have been employed for at least two years. The amount of the transitional allowance will be much lower than the redundancy payments under the current dismissal law, which are often based on the sub-district court formula. Whether or not an employee will be better or worse off after 2015 will differ from one situation to the other. The transitional allowance has to be used to help find a new job (outplacement) or for a training course that will improve the likelihood of success on the labour market.

Higher redundancy payment for wrongful dismissal by the employer

If the employer is found guilty of wrongful dismissal, then this can result in a higher redundancy payment.

As of 2015, the maximum redundancy payment (transitional allowance) will be € 75,000 or one year's salary. However, if the employer is found to be seriously culpable for ending of the employment contract, an additional payment can be awarded to the employee without a maximum limit. The key issue will be how sub-district courts will evaluate whether or not the employer is seriously culpable.

Termination by mutual consent and settlement agreement unchanged

All in all, employees will still have considerable employment protection rights in 2015 and beyond. But although employers will have to go through the two official termination procedures, there will still be the option of termination by mutual consent. This means the employer and the employee will negotiate the termination of an employment contract under mutually acceptable terms. Employers sometimes prefer this route to avoid the costs and unpredictable outcome of long procedures. Employees can also benefit because it means, for example, they can negotiate a higher redundancy payment based for example on the sub-district court formula. This amicable settlement is then to be laid down in a settlement agreement.

Unemployment benefits for shorter period

The maximum period for unemployment benefits is currently 38 months. As of 2015, this will be reduced to 24 months. Employers and employees can deviate from this in collective bargaining agreements by agreeing that after the 24 months of statutory unemployment benefits, an additional 12 months of unemployment benefits will be paid to the employee by the employer.

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INDIA

The Evolution of the Indian patent regime and its effect on Indian generic players and MNCs in the Pharma sector

Patents confer on the inventor (the patentee) the right to prevent others from using their invention. However, such exclusive rights cannot ever be unbridled and some qualifications are necessary to check the scope and operation of such rights. It is this inherent paradox that has been at the centre of recent debates around the development of the Indian patent regime, especially those governing the pharmaceutical sector.

This article gives an overview of the Indian patent regime's evolution, analyses recent legal developments in the pharma sector and sets out the effects that these have had on both Indian generic players and multi-national corporations (MNCs).

Brief history:

In India, the concept of patent protection, which originated in 1856, finds its eventual place in the Indian Patent Act, 1970 (Act). Up until 2005, the Act only provided process patents for certain sectors such as food, pharmaceuticals and chemicals; and abolished product patents in these fields entirely. However, in 2005, India amended the Act to introduce a product patent regime to meet its obligations under the Agreement for Trade Related Aspects of Intellectual Property Rights (TRIPS). India, along with many of the developing countries, attempted to incorporate TRIPS flexibilities in their domestic law.

Pre-TRIPS and Post-TRIPS

Over the years, the public health spend in India has fallen short of expectations and consequently access to affordable healthcare has only remained a dream for millions of low income Indians. In addition, the country's healthcare landscape has also been characterised by the co-existence of communicable diseases in addition to the emerging epidemic of non-communicable diseases. These factors have only fuelled the growing need for affordable medicines.

As a result, there was a dire need for India to develop an effective domestic pharma industry that could deliver cost-effective solutions. This was made possible thanks to the absence of product patents, which enabled domestic companies to easily develop generic drugs that were far cheaper than the expensive alternatives marketed by the pharma MNCs in India.

In the ten years it took between the signing of the TRIPS and the introduction of product patents in India, the generic drug players in India had already built themselves a reputation for being global leaders in manufacturing affordable medicines.

Moreover, the regulatory environment enhanced competition amongst the generic producers as no single company enjoyed a monopolistic right over a pharma product.

However, progress was set to be interrupted with the introduction of the new patent regime to comply with India's obligations as a signatory to the TRIPS. Indian companies were legally prevented from introducing generic versions of the patented medicines. These medicines could now only be accessed through a compulsory licence or a government use authorization. This led to a situation wherein generic companies could only produce off-patented medicines, thereby resulting in the denial of new medicines that were earlier available at affordable prices. In the meantime, pharma MNCs have aggressively marketed newly patented and expensive drugs whilst expanding their presence considerably in the generics segment through M&As and strategic alliances with domestic players.

Recent developments:

The seemingly good run that the pharma MNCs were having, or at least were expecting to have, has recently been marred by two landmark judicial pronouncements outlined below.

The Natco v. Bayer case: Compulsory Licensing

The Act provides for an option of compulsory licensing and governmental use, which essentially implies that any interested person may make an application for compulsory licensing on the grounds that the reasonable requirements of the public have not been satisfied, that the patented article is not available at an affordable price to the public or that the patented invention is not worked in the territory of India. Bayer (the patentee) owned patent no.215758 over a compound 'sorafenib tosylate', which it marketed under the brand name 'NEXAVAR' and used for the treatment of advanced stages of kidney and liver cancers. Natco Pharma (the applicant) had developed the process for manufacturing the drug and filed the instant application for compulsory license. The Controller of Patents held that all three grounds available for an application for compulsory licence under S.84(1) of the Act, as above, had been satisfied given that (a) the drug was not easily available and was in fact under-supplied, (b) the price of the drug at Rs.280,428 p.m. did not satisfy affordability parameters, and (c) the patentee did not 'work' the product i.e. either manufactured on its own or through a third-party, in India. Consequently, the Controller of Patents granted a compulsory license to Natco for manufacturing and selling the said drug for the remaining term of the patent at royalty of 6 per cent of net sales to be paid to the patentee.

This decision is the first instance of grant of a compulsory license under the Act. It is significant in more ways than one and particularly stands out because of a marked socio-political approach adopted by the regulator to suit India's healthcare needs as a developing country, protect the domestic generic drugs industry and its position as the pre-eminent exporter of affordable medicines in the global pharma market.

The Novartis case: Patentability criteria

The Act has sought to put restrictions on the grant of product patents by limiting the scope of patentability. This has been done by firstly providing a patentability criterion and secondly by excluding certain kinds of products as inventions.

However, the Supreme Court in Novartis interpreted the 2002 amendments to S.3(d) of the Act as setting up "a second-tier of qualifying standards for chemical substances, pharmaceutical products in order to leave the door open for true and genuine inventions but, at the same time, to check any attempt at repetitive patenting or extension of the patent term on spurious grounds" to reject the patent application of Novartis and hold that the beta crystalline form of Imatinib Mesylate, a therapeutic drug for certain tumours, does not qualify the test of S.3(d) of the Act.

Implications on the Industry

The above-mentioned developments could have the following short to mid-term implications on the pharma sector as a whole:

1. Increase in efficiencies: A natural result of the Natco decision is that more compulsory license applications will be made. This will prompt pharma companies to voluntarily grant licenses which will, in turn, increase efficiencies and decrease the gestation period in discovery of essential but affordable drugs. As a fall-out of the Novartis case, the industry may see a reduction in over-lapping patent applications, which are filed in order to pre-empt patent infringements and to make a strong entry-barrier.

2. Lowering of drug prices: A direct result of the Natco decision will be the voluntary decrease in prices of patented drugs in order to avoid applications for compulsory license and increase price-competitiveness of products.

3. Decrease in Foreign Direct Investment (FDI) and investments in new drug R&D: As a result of the above-mentioned recent developments, it will not be surprising to witness a decline in FDI in the pharma sector directly impacting in flow of capital into new drug R&D.

On one hand, the socio-political objectives of the Indian government in protecting domestic generic players and providing affordable drugs to India's poor proved to be a thorn in the side of pharma MNCs. They have cited the high R&D costs incurred when developing new drugs, but on the other hand pharma MNCs have been accused of maximising profits by not lowering drug prices and failing to invest in R&D in India or transferring technology.

Managing these conflicting interests in an increasingly globalised environment is proving to be a challenge for the Indian government. However, recent developments do point towards a protectionist trend that may not be conducive to India's ever-increasing need for foreign capital and technology in the pharma sector.

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POLAND

Website owners cannot feel above the law

On 10th October 2013, the European Court of Human Rights (ECHR) issued a judgment in Delfi AS v. Estonia (no. 64569/09), which is a groundbreaking ruling on the possibility of holding the website owner liable to payment of compensation for third-party comments posted on their website. Delfi AS (the owner of one of the leading news websites in Estonia) was obliged by an Estonian court to pay compensation to the entity which had been defamed in comments which appeared on the news portal owned by Delfi AS. Delfi AS did not agree with the decision of the Estonian court and complained about it to the ECHR, claiming that the decision violated the right to freedom of expression, i.e. article 10 of the European Convention of Human Rights.

According to the current Polish law, the person held liable for violation of personal interests is the violator, e.g. the author of a defamatory comment. Unfortunately, as the number of offensive comments on the Internet has been growing, it became necessary to tackle the question of whether or not it is really possible to hold authors of such comments liable to damages. People who write comments on message boards often use nicknames and, therefore, it is difficult and sometimes even impossible to establish their real personal details. If the personal details are unknown, the violator cannot be sued.

The solution to this stalemate was brought by the judgment issued by the ECHR. In this judgment, the Court decided that it is possible to hold the website owner liable in place of the author of the comment themselves on condition that two issues are taken into consideration: one is the context of the comment and the other is the measures taken by the website owner to prevent the publication of offensive comments (e.g. in the form of a warning about criminal responsibility for libel). Furthermore, the ECHR pointed that it is practical to allow the aggrieved party to claim damages from the website owner instead of the anonymous author of the comment.

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Business trip vs. secondment - the issue of social insurance contributions

Despite having their permanent offices in Poland, most business entities, especially from the construction and IT sectors, conduct extensive business operations abroad. As a consequence, companies often send their employees to work abroad for several months. The problem arises whether such journey should be categorised as a business trip or secondment. This distinction is vital when it comes to calculating the amount of social security contributions and contribution assessment basis.

This matter was an object of litigation in the court case between a Wrocław-based company from the construction sector and the Social Security Institution. The company maintained that it is admissible, from a legal point of view, to send an employee to work abroad and to treat such a journey as a business trip and, as a result, pay him or her both remuneration (based on which social security contributions are made) and subsistence allowance (without paying social security contributions) which is several times higher than the remuneration. The Social Security Institution did not agree with this stance and maintained that in the above-mentioned situation sending an employee to work abroad should be treated as secondment.

The courts of both instances as well as the Supreme Court in its judgement of 14 November 2013 (case no. II UK 204/13) adjudicated the case in favour of the Social Security Institution so social security contribution on the entire amount paid out to the employee.

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AUSTRALIA

Privacy Law Reform in Australia

Significant changes to the *Australian Privacy Act* (Act) have been implemented, providing enhanced powers for the Australian Information Commissioner and changes to credit reporting laws.

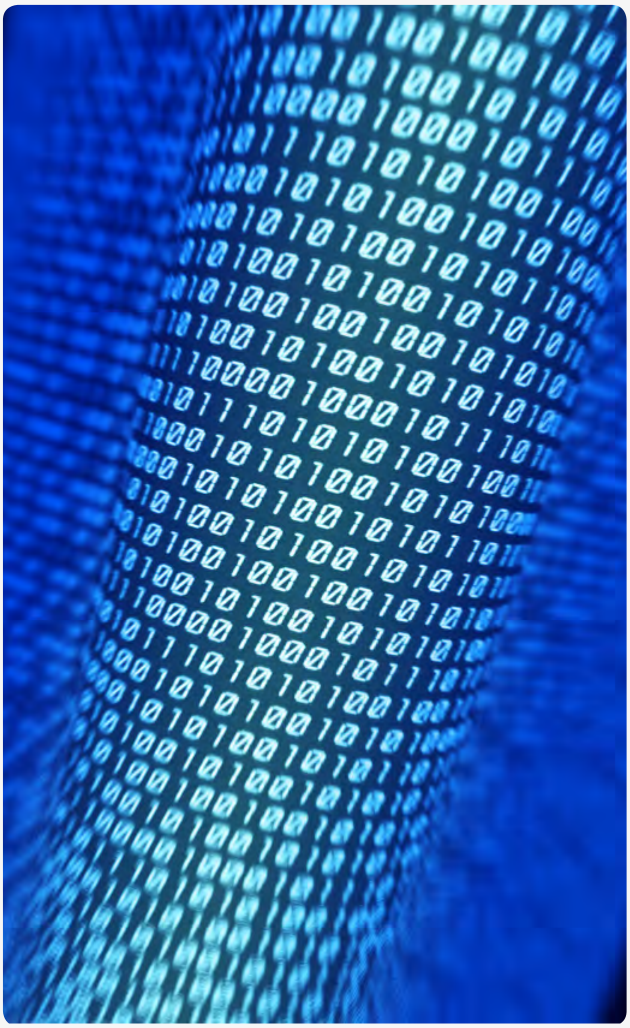
The Act applies to both the public and private sector (in respect of companies with a turnover greater than $AUD3,000,000 per year). These principles will become known as the Australian Privacy Principles (APPs). These replace the existing Information Privacy Principles that apply to the public sector and the National Privacy Principles that apply to businesses.

Any business subject to the Act that collects, uses or discloses personal information, maintains a client or customer database or uses a cloud computer system, will be affected by the changes. Penalties for breaches are being significantly increased up to $1,700,000 for businesses and $340,000 for individuals.

The privacy laws protect personal information and sensitive information. Personal information includes information or an opinion about a person whose identity is apparent or can be reasonably ascertained from that information. The truth of the information is irrelevant. Sensitive information relates to an individual's race or ethnic origin; political opinion; memberships of a political association; religious beliefs; philosophical beliefs; membership of a professional or trade association; membership of a trade union; sexual preferences or practices; and criminal record. Particular reference is made to health information and genetic information.

The amendments impose greater obligations on entities who disclose personal information about an individual to an "overseas recipient". Disclosure could mean storing data in the Cloud where the cloud service is located outside Australia. Entities must take such steps as are reasonable in the circumstances to ensure that the overseas recipient does not breach the APPs in relation to the information (subject to specified exceptions noted below). The party that discloses the personal information to the overseas entity will be liable under Australian privacy law for breaches of the APPs committed by the overseas entity. Where a business sends personal information (including health information) to organisations overseas (for example for reporting of tests, records management or marketing), it must ensure that exemptions apply or the person from whom that information is collected is expressly aware of and consents to this. More detailed information will also need to be included in a business' corporate privacy policy.

The overseas disclosure of personal or sensitive information between related companies will be affected. The actions of the overseas entity might well impact upon the local subsidiary



and put it at risk of fines or damages pursuant to a breach of the APPs. Accordingly, care must be taken to ensure that corporate privacy principles in multinational organisations, large and small, are designed to meet the requirements of Australian legislation where a breach might lead to loss. Generally, employment records are not caught up by the Act.

APP 8.1 provides that before an APP entity discloses personal information about an individual to a person (the overseas recipient):

a. who is not in Australia or an external Territory; and

b. who is not the entity or the individual;

the entity must take such steps as are reasonable in the circumstances to ensure that the overseas recipient does not breach the APPs (other than Australian Privacy Principle 1) in relation to the information.

For example, the disclosing entity should adopt stringent contractual terms addressing data management, or otherwise not deal with the overseas recipient.

AUSTRALIA (continued)

Furthermore, the prohibition on the disclosure of personal information about an individual to the overseas recipient does not apply if (in the case of businesses):

a. the entity reasonably believes that:

   i. the recipient of the information is subject to a law, or binding scheme, that has the effect of protecting the information in a way that, overall, is at least substantially similar to the way in which the APPs protect the information; and

   ii. there are mechanisms that the individual can access to take action to enforce that protection of the law or binding scheme; or

b. both of the following apply:

   i. the entity expressly informs the individual that if he or she consents to the disclosure of the information APP 8.1 will not apply; and

   ii. after being so informed, the individual consents to the disclosure; or

c. the disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order; or

d. a permitted general situation (which is described in a table) exists in relation to the disclosure of the information by the APP entity.

The explanatory memorandum that accompanied the Act's introduction noted that it is not intended to apply where information is merely routed through servers that might be outside Australia. Risk management procedures should be in place to prevent access to data in these cases.

For further information, contact Jonathan Casson (**jonathan.casson@holmanwebb.com.au)**

CYPRUS

Double tax treaty roundup

On 1 January 2014 five new agreements for the avoidance of double taxation (DTAs) between Cyprus and other countries took effect. The new agreements are with Estonia, Finland, Portugal, Spain and Ukraine. The first four are entirely new agreements, extending the Cyprus network of DTAs. The agreement with Ukraine replaces the agreement between Cyprus and the USSR.

The new DTAs with Estonia, Finland, Portugal and Spain are expected to lead to a substantial expansion of economic ties and reciprocal investment activities between Cyprus and the countries concerned.

The revised agreement with Ukraine retains one of the principal benefits of the DTA it replaced, namely the highly favourable provisions regarding capital gains on disposal of shares in property-rich companies. Movable property including shares is taxable only in the country of residence of the owner.

Since Cyprus imposes no tax on disposals of shares except and to the extent that the gain is derived from real estate in Cyprus, Cyprus companies have become an ideal means of holding real estate in Ukraine, effectively allowing property to be disposed of tax-free.

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ENGLAND

Fracking

In the United Kingdom, "fracking" is a hot topic in the press. The Coalition government, which has voiced its support for shale gas exploration, has recently announced a government "package" of financial benefits and tax breaks to help incentivise local authorities. Foreign investors are also showing significant interest in the UK shale gas market; French oil giant, Total, has recently agreed a deal to acquire a 40% stake in two shale gas exploration licences based in Lincolnshire, UK, making it the first global oil "major" to invest in the UK shale gas market.

Fracking, short for hydraulic fracturing, involves pumping high-pressure water through a borehole to release the gas from shale beds. Reports suggest that the UK harbours a sizeable resource of this "unconventional" gas, both onshore and offshore.

There is a strict regulatory regime in place covering all oil and gas exploration in the UK. Shale gas is owned by the Crown rather than by individual landowners, and operators must obtain a government licence, planning permission and a raft of additional environmental consents and permissions both before and during exploration.

Fracking was briefly banned in the UK after two minor earthquakes occurred in May 2011 near an extraction site near Blackpool. The ban on fracking was only lifted by the government in late 2012 on the grounds that the environmental and health and safety risks associated with fracking could be effectively managed and monitored.

Although shale gas exploration is still in its very early stages in the UK, it has already been widely used in other parts of the world including in Canada, Poland, China, and most notably in the United States where shale gas has been hailed a "game changer."

If found to be economically viable, shale gas exploration could help in diversifying the UK's energy mix, easing the country's reliance on expensive fossil fuel imports and moving towards a low-carbon future. But will shale gas be a game changer for the UK as it has been in North America? Watch this space.

An extract of this article appeared in the Guardian National newspaper on 10 May 2014 ***http://www.theguardian.com/big-energy-debate/fracking-energy-security***.

For more information on shale gas exploration and how Mundays LLP can assist, please contact Catherine Wigmore by email at **catherine.wigmore@mundays.co.uk**
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IRELAND

New Company law

A new Companies Act, (the Companies (Miscellaneous Provisions) Act 2013), has been implemented to reflect the economic and corporate climate in Ireland, with new provisions regarding personal insolvency legislation, a new examinership option for small private companies and increased emphasis on corporate governance and compliance.

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Whistleblower protection

Recent cases involving the Gardai, (police), and other organisations have focused media attention on the role of whistleblowers in highlighting shortcomings in corporate governance and regulation. While tribunals are already awarding significant sums of up to two years' pay to whistleblowers under unfair dismissal law, in order to encourage more workers to "speak up" new legislation is being introduced. The Protected Disclosure Bill will allow for awards of up to five years' remuneration even where a worker has not been dismissed and give Ireland a "world class" whistleblower law.

For further information contact:
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Future Conferences

- **15-17 May 2014**
  Poznań, Poland, hosted by WBW
- **20-22 November 2014**
  Vienna, Austria
- **May 2015**
  Stockholm, Sweden

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