



# international legal news

*an international lawyers network publication*



**Tuesday, June 20, 2006**

## REGIONS

[CENTRAL AMERICA](#)

[ASIA PACIFIC](#)

[EUROPE](#)

[NORTH AMERICA](#)

[SOUTH AMERICA](#)

## NORTH AMERICA

[The Self-Critical Analysis Privilege: A Critical Analysis](#)

[Creditors Beware: Contractual Attorneys' Fees May Not Be Recoverable in the Debtor's U.S. Bankruptcy Case](#)

[Anatomy of a Cargo Claim](#)

[Superfund Redux: Will EPA's New Post Construction Policy Reopen Site Remedies?](#)

[Quebec Courts Question Tacit Acceptance of Forum Selection Clauses](#)

[Military Leave: A Look At Recent Case Law Developments and The New Regulations](#)

[Doing Business in Canada: A Practical Guide to Cross-Border Trade and Investment](#)

[Due Diligence: Checklists For Commercial Real Estate Transactions](#)

## ASIA PACIFIC

[Evidence required to draw an inference that a bankrupt had transferred property to defeat creditors.](#)

[Procurement and Risk Management - The Drafting of PPP Documents](#)

## CENTRAL AMERICA

[Advantages of the](#)

New York, June 20, 2006 - It is with great pleasure we announce the publication of the fifth issue of the International Legal News.

The International Lawyers Network is a highly successful group of independent, well-respected regional law firms with significant international legal business, particularly in areas such as corporate/finance, high technology and e-commerce.

For more information about our Group, please visit our website [www.iln.com](http://www.iln.com).

As the editor of the International Legal News & Executive Director of the International Lawyers Network, I would be happy to hear your comments or answer any questions about our group, please contact me: email [alangriffiths@iln.com](mailto:alangriffiths@iln.com) or telephone 201.594.9985 - Alan Griffiths

## China Issues Implementing Opinions on Approval and Registration of Foreign-invested Enterprises

Lehman, Lee & Xu, Beijing, China  
*by by Feng (Sandy) Lin*

LEHMAN, LEE & XU



On April 24, 2006, the State Administration for Industry and Commerce ("SAIC"), the Ministry of Commerce ("MOFCOM"), the General Customs Administration ("Customs") and the State Administration of Foreign Exchange ("SAFE") jointly

**VOLUME 3 ISSUE 1**

## FEATURED ARTICLES

[China Issues Implementing Opinions on Approval and Registration of Foreign-invested Enterprises](#)

[Do EU-Based Employees Have Extra Privacy Rights Over Their Personal Data?](#)

[Stockholm as a Neutral Place for Arbitration](#)

[Executive Compensation - New U.S. Tax Rules](#)



## INTERNATIONAL LAWYERS NETWORK

[an association of 87 high-quality, full-service law firms with over 5,000 lawyers world-wide](#)

## ARCHIVE

### [International Legal News](#)

December 28, 2005  
Vol. 2 Issue 2

### [International Legal News](#)

June 10, 2005  
Vol. 2 Issue 1

### [Bullet"iln" Volume 4 Issue](#)

**1**  
May 27, 2005  
Vol. 4 Issue 1

### [Bullet"iln" Volume 3 Issue](#)

**4**  
December 29, 2004  
Vol. 3 Issue 4

[Panamanian private interest foundation for the offshore investor](#)

#### EUROPE

[Bankruptcy - A New Guise](#)

[The Dutch Go Into the Offensive](#)

[Infiniteland Ltd and John Steward Aviss v Artisan Contracting Ltd \[2005\] EWCA Civ 758](#)

[Commercial agents - a new beginning?](#)

[Principles of new corporate income tax regime to become effective on 2009 disclosed for public debate in Estonia](#)

[From March 2006 Employers Have No Right to Terminate the Employment Contracts Due to the Age of the Employee](#)

[Re-evaluating Your Property Strategy is En Vogue in the Retail Industry](#)

[Difficult Times for Tenants](#)

[What To Do When Things Are Going Really Wrong](#)

[The New Building Act in the Czech Republic- A short leap forward](#)

#### SOUTH AMERICA

[The New Brazilian Legal Process for Bankruptcy Protection](#)

issued the Implementing Opinions on Certain Issues Concerning the Application of Laws Governing the Approval and Registration of Foreign Invested Companies ("Implementing Opinion"). Subsequently, in order to clarify certain provisions under the Implementing Opinions, SAIC issued a circular ("SAIC Circular") on May 26, 2006. Both the Implementing Opinion and the SAIC Circular were issued to deal with the confusions caused by the overlaps or conflicts between China's foreign investment regime and the newly revised Company Law of the People's Republic of China ("Company Law") and the Regulations of the People's Republic of China on the Administration of Company Registration ("Company Registration Regulations"), both of which became effective on January 1, 2006, and guide the approval and registration of foreign investment enterprises ("FIE") in China.

[\[FULL STORY\]](#)

### Bankruptcy - A New Guise

PETERKA & PARTNERS v.o.s., Prague, Czech Republic  
*by Michal Spinar*



## PETERKA & PARTNERS

Advokátní kancelář, Law Offices, Cabinet *ďavocats*  
It has been 15 years now since bankruptcy law was reinstated in the Czech Republic. In the course of that period, it has been changed and adapted several times. Now, both businessmen and non-businessmen resident in the Czech Republic may look forward to seeing a brand-new bankruptcy law coming into practice. The modern concept of bankruptcy for both natural and legal persons in the form of the new Insolvency Act has recently passed through the legislative process and will become effective as of 1 July 2007. However, only practise will tell if this fresh and new concept will be capable of assisting in remedying the malaise that the Czech Republic has suffered from in resolving the problems of excessively indebted or insolvent entrepreneurs during the last 15 years.

[\[FULL STORY\]](#)

### The Self-Critical Analysis Privilege: A

#### [International Legal News](#)

December 10, 2004

Vol. 1 Issue 2

## Critical Analysis

Arnstein & Lehr LLP, Miami, USA

by Jeffrey B. Shapiro and Harley J. Storrings



Often, when a company decides to take corrective action concerning a particular product, it is prompted by the results of an internal investigation which finds a defect in the product. Regarding information obtained during the investigation, the company will seek ways to shield the documents and/or information generated through some form of legal privilege or other available mechanism. However, this goal can be extremely difficult to achieve since the materials gathered typically fall outside the scope of well-established privileges (attorney-client, work product, etc.).

[\[FULL STORY\]](#)

## Do EU-Based Employees Have Extra Privacy Rights Over Their Personal Data?

Epstein Becker & Green, P.C., New York, USA

by A. Jonathan Trafimow



A look at the Potential Liability, and how Employers can find a Safe Harbor Multinational companies transferring employees from nations in the European Union to the United States must cope with legal restrictions on the transfer of their employees' personal data into the United States. These restrictions are complex; for example, it can be hard even to determine which jurisdiction's privacy laws apply to a particular employee's information. How are employers supposed to abide by the law when it is complicated even to determine what the law is?

[\[FULL STORY\]](#)

## Creditors Beware: Contractual Attorneys' Fees May Not Be Recoverable in the Debtor's U.S. Bankruptcy Case

Howard Rice Nemerovski Canadv Falk & Rabkin. San

Francisco, USA  
*by Gary M. Kaplan*



Many if not most commercial contracts in the United States provide for a party to recover its legal expenses, including attorneys' fees, in enforcing its rights under the agreement. Although the language of such provisions can take a variety of different forms, it typically provides that if one party is required to expend attorneys' fees in protecting its contractual rights, it can recover these fees from the other party, whose conduct resulted in the first party incurring such expenses. A party to such a contract may understandably expect that its recovery rights would apply equally to attorneys' fees incurred in the bankruptcy case of its counterparty.

[\[FULL STORY\]](#)

## **Stockholm as a Neutral Place for Arbitration**

Hellström, Stockholm, Sweden  
*by Staffan Michelson and Hiba Sabbagh*



There are a lot of factors to encounter before submitting to an agreement to arbitrate. In the face of contemporary globalisation, it is of great importance to have sufficient information concerning the law applicable to the contract as well as the law applicable to the arbitral proceeding before submitting to arbitration. Once the dispute has arisen, it may however end up being very time consuming and costly to acquire knowledge both on the substantive foreign laws, as well as of the laws governing the conduct of the arbitration, the *lex arbitri*. The ingenious global arbitration community offers great guidance and assistance in this respect in terms of the arbitration institutes that have been

established for this purpose. Once the formal requirements for a valid arbitration clause are met and the arbitration institute admits its own competence to rule on the subject matter, focus can be directed towards where it is best needed – resolving the dispute and settling the conflict.

[\[FULL STORY\]](#)

## **The Dutch Go Into the Offensive**

Udink & De Jong, The Netherlands  
*by Peter Kirpensteijn and Bereket Gündüz*



Amendments towards a more competitive tax system

- Reduction of the corporate income tax rate from 29.6 % to 25.5%;
- Reduction of the dividend withholding tax rate from 25% to 15%;
- Introduction of a royalty box with an effective tax rate of 10%;
- Introduction of an interest box for group interest income with an effective tax rate of 5%;
- Favorable amendments to the so-called participation exemption, under which benefits derived from participations (including capital gains realized and dividends received) are exempt.

### 1. Executive summary

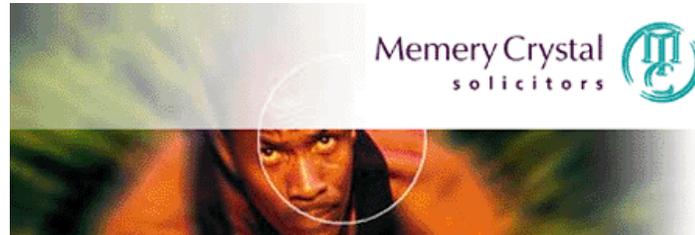
For decades The Netherlands was well known as attractive (tax) residency country for international operating groups. Its assets were an attractive tax climate, a favorable geographic location, a good physical infrastructure, a highly educated working population and a stable political and social environment. As a consequence, The World Economic Forum ranked The Netherlands in the world top five of most attractive countries of residence.

[\[FULL STORY\]](#)

**Infiniteland Ltd and John Steward Aviss v  
Artisan Contracting Ltd [2005] EWCA Civ**

**758**

Memery Crystal, London  
*by Nicholas Scott*



All English corporate lawyers and, many of their clients, will be intimately familiar with the process of negotiating warranties and disclosures as part of commercial deals. The functions of those warranties and any disclosures are well known: to elicit information about the target and to qualify any warranties given. What is less well understood, but of crucial significance to both parties, is the extent of disclosure that must be made by a vendor to forestall any warranty claims and whether, in the context of such a claim, a purchaser will be prevented from suing for breach of warranty because his agents were aware of it before entering the agreement. A recent decision of the English Court of Appeal makes clear that the English courts will look to the terms of the agreement to determine both of these points. Accordingly, anybody concluding a contract subject to English law should take particular care to negotiate and correctly document the position in relation to these areas.

[\[FULL STORY\]](#)

## **Advantages of the Panamanian private interest foundation for the offshore investor**

Quijano & Associates, Panama  
*by Randall S. Webster*



The private interest foundation ("PIF") was created in the Republic of Panama by Law No. 25 of June 12, 1995, which is the main specific legislation governing said legal entities. In a mere decade it has become a favorite vehicle for investments due to its simplicity and flexibility. Although the law of Family and Mixed

Foundations of the Principality of Liechtenstein was taken into consideration at the time of drafting the bill, the Panamanian legal entity was given certain unique features that made it more attractive. In addition to this, its establishment and annual maintenance charges amount to considerably less than the Liechtenstein counterpart. Undoubtedly, the Republic of Panama's long-standing tradition as a haven for investors played a key role in establishing the Panamanian PIF among the investment capital community, and in turn, it has reinforced Panama's preeminent position as a leading global offshore center for the 21st century.

[\[FULL STORY\]](#)

### **Commercial agents - a new beginning?**

Fladgate Fielder, London, England  
*by Andrew Kaufman*



The vexing problem relating to the issue of the calculation of compensation payable to commercial agents on termination of their agency agreement has arisen once more in the revolutionary judgment of the Court of Appeal in the case of *Lonsdale v Howard & Hallam Limited* [2006] EWCA Civ 63 made on 6 February 2006.

[\[FULL STORY\]](#)

### **Executive Compensation - New U.S. Tax Rules**

Wolf, Block, Schorr and Solis-Cohen LLP, Philadelphia, Pennsylvania  
*by Warren Fusfeld*



Executive employees of U.S. companies, and executives in the U.S. of companies with U.S. operations. often are parties to employment

agreements that are intended to provide assurances against unanticipated changes in circumstances (such as a change in control of the employer), and participate in arrangements that are intended to provide retirement or similar benefits which will be taxable only at the time the payments or benefits are actually received.

[\[FULL STORY\]](#)

### **Evidence required to draw an inference that a bankrupt had transferred property to defeat creditors.**

Gadens Lawyers, Sydney, Australia

*by Simon Lipp*



On 7 March 2006, the High Court of Australia handed down a unanimous decision in *The Trustees of the Property of John Daniel Cummins, A Bankrupt v Mary Elizabeth Cummins* [2006] HCA 6, which addressed, among other things, the issue of the evidence required to draw an inference that a bankrupt had transferred property to defeat creditors.

[\[FULL STORY\]](#)

### **Principles of new corporate income tax regime to become effective on 2009 disclosed for public debate in Estonia**

Law Office Tark & Co, Tallinn, Estonia

*by Piret Jesse*



Recently Ministry of Finance disclosed the proposal to introduce the taxation of accumulated profits of the corporations on an annual basis at the rate of 10%

from the beginning of 2009.

[\[FULL STORY\]](#)

## **Anatomy of a Cargo Claim**

Fogler, Rubinoff LLP, Toronto, Canada

*by Leah Price*



Anatomy is basic to medicine. The human body is comprised of bones, muscles, joints and organs. But the relationship between the parts is as important as the parts themselves. One cannot cure disease if one does not know the relationship of the parts to the whole. Similarly, litigation is made up of many interlocking parts. Each part must be carefully fitted with each other part. Each step is linked to the next. One cannot succeed in a cargo claim unless one knows its anatomy. Let me therefore be the anatomy professor, and demonstrate, in general outline, how to construct a cargo claim – step by step.

[\[FULL STORY\]](#)

## **The New Brazilian Legal Process for Bankruptcy Protection**

Marcondes Machado, Britto e Pimentel Advogados in association with Nehring e Associados Advocacia – São Paulo, Brazil.

*by Nelson Marcondes Machado and Gonzalo Antonio Zurita*



The new Brazilian Bankruptcy and Business Restructuring Law (“Business Restructuring Law”) – Law 11.101/2005 – was enacted on February 9, 2005. Its judicial application, however, was only to commence 180 days after its enactment. Thus, at less than one year from its inception as an applicable legal instrument, it has not yet been sufficiently tested to provide a comprehensive review as to its use and actual applicability. Nevertheless, it potentially represents a significant step forward when

compared to the virtually archaic legislation that since 1945 had been in force. The bankruptcy protection process of the old legislation was referred to as Concordata Preventiva (“Concordata”)\*1. Four specific issues are worth reviewing while comparing both decrees in order to fully understand the innovations introduced by the new bankruptcy code. [\[FULL STORY\]](#)

Published by [Alan Griffiths](#)  
Copyright © 2006 International Lawyers Network. All rights reserved.

[TELL A FRIEND](#)

Powered by [IMN™](#)