



# California Corporate & Securities Law

## A Reason To Reincorporate In Nevada (Or California Or Delaware)?

July 18, 2011

Why read the papers when you can watch the video?

In this month's issue of *California Lawyer* magazine, Thomas Brom [writes](#) about an unusual opportunity to watch an arbitration proceeding between a Canadian gold mining company, PacRim Cayman LLC, and the Republic of El Salvador. The proceeding was held at the World Bank's International Centre for Settlement of Investment Disputes. You can watch the hearing [here](#). The dispute concerns alleged violation of the Dominican Republic–Central American Free Trade Agreement of 2005 (DR–CAFTA).

Will reincorporate for treaty rights?

Note that I referred to PacRim as a “Canadian gold mining company”. There's the rub. Canada is not a party to DR–CAFTA. According to Mr. Brom's article, the Republic of El Salvador is claiming that the company “reincorporated” in Nevada to gain jurisdiction under the treaty. (PacRim's name suggests that it is a limited liability company, not a corporation, and the Nevada Secretary of State's website [lists](#) a LLC by the same name.) This is the first example that I've heard of someone incorporating in a state for the purpose of availing itself of a U.S. treaty.

Choice of law provisions may not exclude treaties

While on the subject of treaties, many lawyers may not recognize that usual choice-of-law provisions such as “this agreement will be governed by and construed and enforced in accordance with the laws of the State of California” *may* not necessarily exclude the application of treaties such as the U.N. Convention on Contracts for the International Sale of Goods. *See, e.g., Asante Technologies, Inc. v. PMC–Sierra*, 164 F.Supp.2d 1142 (N.D. Cal. 2001):

*Thus, under general California law, the CISG is applicable to contracts where the contracting parties are from different countries that have adopted the CISG. In the absence of clear language indicating that both contracting parties intended to opt out of the CISG, and in view of Defendant's Terms and Conditions which would apply the CISG, the Court rejects Plaintiff's contention that the choice of law provisions preclude the applicability of the CISG.*

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## California's NAFTA reservations

My own brief exposure to treaties came when I was working as Deputy Secretary and General Counsel to the California Business, Transportation & Housing Agency where I was responsible for overseeing the State of California's reservations under Chapter 12 (trade in services) of the North American Free Trade Agreement.

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