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FINANCIAL SERVICES

Sovereign Entities Practice Guide

Overview

Question 1: What is a sovereign entity?

In the context of international securities transactions, a sovereign entity generally means a government or political subdivision thereof, which includes not only national governments and their ministries and departments but also subsovereign entities such as regional governments and municipalities. Securities issued or guaranteed by US governmental entities are generally exempted securities under Section 3(a)(2) (15 U.S.C. § 77c) of the US Securities Act of 1933, as amended (the Securities Act). Since this exemption does not apply to non-US sovereign entities, their securities offerings must be registered with the US Securities and Exchange Commission (SEC) unless another exemption applies. Registered US offerings by non-US sovereign entities are made under Schedule B to the Securities Act (Schedule B). While Schedule B may also be used by certain government owned or controlled companies and international organizations, the focus of this guide is on securities offerings by non-US governments or political subdivisions thereof, and the term "sovereign entities" is used herein accordingly.

As governmental entities cannot issue equity securities, securities offerings by sovereign entities generally only include debt securities offerings.

Sovereign bond offerings can be domestic offerings or external offerings. Domestic sovereign bond offerings are offerings of local currency–denominated bonds which are sold in the issuer's domestic market mainly to domestic investors. External sovereign bond offerings, on the other hand, are offerings of bonds denominated in US dollars or another hard currency, which are offered in various jurisdictions outside of the issuing country and which trade internationally. Domestic sovereign bond offerings are different from external ones in both the way they are conducted and documented. In particular, domestic bonds are typically sold via local auctions and with minimal disclosure or other documentation, whereas external sovereign bond offerings are generally conducted and documented in the same manner as other international debt securities offerings. This guide is focused on external offerings.

Sovereign bonds have been issued by many countries around the world over many years. Sovereign entities that have issued bonds externally include developed countries, developing countries, offshore centres, and regions and municipalities. Some countries have been issuing sovereign bonds for many

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years and have various series of bonds outstanding, whereas others may only have issued sovereign bonds once or a few times.

Similar to other international debt securities offerings, the main players in the sovereign bond offering market are investment banks, institutional investors, law firms, trustees, financial advisory firms, and other financial service providers. While international financial institutions such as the International Monetary Fund (IMF) and the World Bank play a key role in supporting and developing the sovereign debt markets generally, they are not directly involved in the process of offering sovereign bonds.

Applicable Securities Laws and Regulations

Question 2: What are the relevant statutes and regulations governing securities offerings by sovereign entities?

The relevant laws and regulations for a sovereign bond offering are the domestic laws and regulations in the issuer's country, the governing law of the bonds and other transaction documents, and the securities laws in the jurisdictions where the bonds are offered and sold.

Domestic Laws and Regulations

The relevant domestic laws and regulations for sovereign bond offerings vary from country to country. Particularly important domestic laws and regulations applicable to an external bond offering are those dealing with the authorization of the bond issue. For example, there are typically debt laws and budget laws that limit the level of governmental external debt that may be outstanding at a given time or may be incurred within a particular fiscal period. Approvals by parliament, government ministries, and the central bank may also be required for transaction. For example, domestic laws in some countries allow the governmentto issue bonds directly, whereas in others, the bonds must be issued via the country's central bank, its ministry of finance, or another governmental entity. Public procurement laws and regulations may also apply to the process of appointment of investment banks, lawyers, and other parties to the transaction.

External Laws and Regulations

External sovereign bonds are typically governed by English or New York (state?) law, in contrast with domestic bonds, which are governed by local law. In international sovereign bond offerings, it is generally considered important that the bonds be governed by a law other than the law of the issuer's jurisdiction, because a sovereign issuer has the ability to change its own laws.

Regardless of the governing law of the bond documents, external bond offerings by sovereign entities, like other debt securities offerings, must be conducted in compliance with the securities laws of the jurisdictions where the offering is made and the securities are listed.

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The following are some of the relevant statutes and regulations for external sovereign bond offerings generally:

US Securities Act

If a sovereign bond offering is made into the United States, it will need to be registered with the SEC or be exempt from the US registration requirements. Offerings outside the United States will need to be conducted in compliance with Regulation S (17 C.F.R. §§ 230.901–905) under the Securities Act (Regulation S). For SEC-registered offerings by non-US sovereign entities, a registration statement under Schedule B must be filed at the time of the offering, and annual reports must be filed thereafter on Form 18-K. The disclosure requirements under Schedule B are very limited compared to the disclosure requirements applicable to foreign private issuers, and in practice the disclosure in a sovereign bond prospectus goes significantly beyond the requirements set out in Schedule B for marketing reasons as well as general disclosure and liability considerations for the underwriters and the issuer. Offerings made under Rule 144A (17 C.F.R. § 230.144A) of the Securities Act (Rule 144A) by sovereign entities customarily meet the same disclosure standards as SEC-registered offerings. Under Regulation S, securities that are backed by the full faith and credit of a foreign government are Category 1 securities and accordingly a pure Regulation S offering by a sovereign issuer must only comply with the "offshore transaction" and "no directed selling efforts" conditions in Regulation S.

U.S. Foreign Sovereign Immunities Act (FSIA)

The FSIA is important for sovereign bond offerings that are made into the United States. Among other things, the FSIA includes a "commercial activity" exception, which provides that a non-U.S. sovereign state does not have immunity from the jurisdiction of the US court where it is being sued based on commercial activity in (or having substantial contact with or a direct effect in) the United States (although there is uncertainty as to whether this exception extends to actions under the US federal securities laws). While this exception (which has been held by the US Supreme Court to apply to sovereign bonds) on its own may be sufficient to preclude a sovereign issuer from successfully claiming sovereign immunity from the jurisdiction of the US courts with regard to its sovereign bond obligations, it is customary for a sovereign issuer to also execute, in its sovereign bond documentation, a waiver of any sovereign immunity it may have under the FSIA or on any other basis.

European Union Prospectus Directive (Directive 2003/71/EC, as amended, hereinafter the Prospectus Directive)

If a sovereign entity (including any regional or local authority) that is not a European Economic Area (EEA) member state conducts a public offering of its securities in the EEA or lists its securities on an EEA-regulated market, then that issuer generally is required to prepare a prospectus that meets the disclosure requirements of the Prospectus Directive and to have that prospectus approved by an EEA regulator and published.

Such a prospectus would be subject to the disclosure requirements in Annex XVI to the Prospectus Directive ("Minimum Disclosure Requirements for the Registration Document for securities issued by Public International Bodies and for debt securities guaranteed by a member state of the OECD (schedule)"). EEA member states are exempt from the requirement to produce a Prospectus Directive—compliant prospectus under the Prospectus Directive, even if they are conducting a public offering in the EEA or listing their securities on an EEA–regulated market. Nonetheless, both for marketing reasons and for general disclosure and liability considerations for the underwriters and the issuer, EEA member states conducting sovereign bond offerings in the EEA customarily produce an offering circular that meets the general international disclosure standards for sovereign bond offerings. See Question 4.

US Trust Indenture Act of 1939 (Trust Indenture Act)

Debt securities issued or guaranteed by a foreign government or its subdivisions are exempt from the requirements of the Trust Indenture Act under Section 304(a)(6). As a result, a non-US sovereign entity conducting an SEC-registered bond offering can issue the bonds under a fiscal agency agreement instead of an indenture that meets the requirements of the Trust Indenture Act.

Treaties or Conventions on Recognition and Enforcement of Judgments and Arbitral Awards

A sovereign entity will invariably be required to submit to the jurisdiction of certain external courts (such as English or New York courts) and/or agree to resolution of disputes by an international arbitration tribunal in any proceedings arising out of its external sovereign bonds. However, it may not be possible to enforce in the issuer's country a judgment from an external court or an arbitral award from such tribunal unless there is an applicable bilateral or multilateral treaty on the reciprocal enforcement of judgments, or the issuer's country is a party to an arbitration convention providing for recognition of such arbitral awards. Accordingly, it is important to determine what treaties or conventions may be relevant for the offering and to include appropriate disclosure in the disclosure document regarding the risks associated with recognition and enforcement of judgments or arbitral awards.

Securities Offering Process

Question 3: What is the typical process for securities offerings by sovereign entities, including general steps, timeline, key transaction documents, due diligence process and required regulatory and stock exchange filings?

Typical Offering Process

The typical offering process for sovereign bonds is similar to the offering process for other types of debt securities. For example, international sovereign bond offerings may be SEC-registered, issued to US investors in a private

placement exempt from the US registration requirements, or conducted outside the United States pursuant to Regulation S under the Securities Act.

Differences between sovereign bond offerings and other offerings of debt securities include the following:

- Sovereign bond offerings do not involve financial statements, auditors, or auditor comfort letters.
- The authorization process for a sovereign bond offering may require approvals from government ministries and/or the parliament or the central bank in the issuer's country, whereas such approvals are generally not required for authorization of a corporate bond issue. See Question 2 above.
- The documentary due diligence process for a sovereign bond offering is largely based on official government documents and data, which are usually publicly available.
- There are special requirements for SEC-registered offerings of sovereign bonds under Schedule B, including special procedures (pursuant to SEC interpretive guidance and no-action letters) for shelf registrations of SEC-registered sovereign bonds which are different from the procedures applicable to shelf registrations by corporate issuers, as described below.

Sovereign bonds may be listed or unlisted. Sovereign bonds that are not SEC-registered are typically listed on a European stock exchange. In recent years, the Luxembourg Stock Exchange has been the most popular listing venue for sovereign bonds, although sovereign bonds are listed on many other stock exchanges. Stock exchange filings for sovereign bonds are similar to those that are required for other debt securities.

Key Transaction Documents

The principal documents used in external sovereign bond offerings, which are similar to those for other debt securities offerings, include:

- **Prospectus or other disclosure document.** The disclosure document may be referred to as a prospectus, offering circular, offering memorandum, or listing particulars, depending on the features of the offering.

- **Indenture, trust deed, or fiscal agency agreement.** Because sovereign entities are exempt from the Trust Indenture Act, sovereign bonds governed by New York law are often issued under a fiscal agency agreement rather than an indenture, even in SEC-registered offerings. English law–governed sovereign bonds are issued under a trust deed or fiscal agency agreement. Certain ancillary documents may be required pursuant to the indenture, trust deed, or fiscal agency

agreement, mainly relating to authentication and issuance of the bonds.

- **Terms and conditions of the bonds.** Many of the provisions in the terms and conditions of sovereign bonds are standard provisions found in debt securities generally. However, there are some provisions that are specific to sovereign bonds, such as waivers of sovereign immunity and collective action clauses (CACs). Sovereign bonds may bear interest at a fixed rate or a floating rate. They are typically unsecured but they may be secured or have other features. For example, a number of sovereign entities have issued Islamic bonds, which are structured to comply with Islamic law and are marketed to Islamic investors. The terms of sovereign bonds can vary considerably depending on whether they are issued as part of a restructuring (i.e., in exchange for existing bonds) or as part of a standalone capital raising. The terms of sovereign bonds issued in a standalone capital raising are typically fairly simple and highly standardized, whereas those issued as part of a restructuring are typically heavily negotiated and can include tailored and innovative features.

- **Underwriting agreement.** Consistent with market practice in debt securities offerings generally, the underwriting agreement may be referred to as an underwriting agreement, a purchase agreement, or a subscription agreement, depending on the features of the offering.

- **Legal opinions.** As in other international debt securities offerings, there is a requirement for legal opinions under the issuer's local law and under the law governing the bond documentation to be delivered to the underwriters. 10b-5 statements are delivered if the offering is SEC-registered or made pursuant to Rule 144A. Standard US no-registration opinions are provided in Rule 144A offerings. The local law legal opinion delivered by the issuer's counsel is often provided by the ministry of justice, the attorney general's office, or a senior lawyer within such a department. The underwriters typically also have their own external local counsel who provide them with a local law legal opinion.

- **SEC registration documentation.** A registration statement under Schedule B and related SEC registration documentation is required if the offering is registered with the SEC.

- **Listing application.** A listing application and supporting documentation is required if the bonds are to be listed on a stock exchange.
- **DTC documentation.** DTC documentation is required if the bonds settle and clear through DTC.

As sovereign entities are not businesses and do not produce financial statements, sovereign disclosure documents do not contain financial statements or audit reports, and auditor comfort letters are not issued in sovereign bond offering transactions.

Certain certificates, authorizations, or other documents may also be required under the issuer's domestic law. The types of authorizations that are required, from what bodies they are obtained, and the type of documentation that evidences them vary from one country to another depending on the features and requirements of the particular legal regime.

Provisions in the terms and conditions of sovereign bonds that are frequently negotiated include the following:

- **Negative pledge.** Common negotiating points in the negative pledge are the definition of the other debt to which the provision relates and the definition of permitted security interests.
- **Covenants.** Covenants tend to be minimal in sovereign bonds, and bonds of investment grade sovereign issuers frequently include only a negative pledge with no additional covenants. For developing country issuers or other sub-investment grade issuers, there may be a limited number of additional covenants, which would be negotiated. These covenants may include, for example, maintenance of the authorizations that are necessary for the issuer to comply with its obligations under the bonds, and maintenance of membership in and eligibility to utilize the general resources of the IMF (although these may sometimes be stated in the form of events of default rather than covenants).
- **Cross-default provision.** Common negotiating points in the cross-default provision are the definition of the type of debt that will be subject to the provision and the minimum level of debt that can trigger a cross-default.
- **Collective action clauses (CACs).** CACs are provisions that set out the bondholder voting requirements for approving amendments to the terms of the bonds, and provide that a specified percentage of bondholders (generally a supermajority) can agree to an amendment and the result will

be binding on all holders, including those who did not vote or who voted against the amendment. CACs are designed to facilitate a relatively quick and orderly bond restructuring in the event of a sovereign bond default. In particular, they make it more difficult for a minority of dissenting bondholders (so-called "hold-out creditors") to obstruct or delay a sovereign bond restructuring. In the past, the inclusion of CACs and their format has been a topic for negotiation; however, in recent years CACs have become widely accepted in sovereign bonds. In 2013, it became mandatory for all euro-area sovereign bonds (i.e., sovereign bonds issued by countries that have adopted the euro as their national currency) to contain an agreed model form of CACs. In 2014 and 2015, the International Capital Market Association (ICMA) published recommended model forms of CACs, which since then have been included in the terms of most non-euro area sovereign bonds with minimal negotiation.

- **Creditor engagement provisions.** Sometimes referred to as bondholder committee provisions, these define the circumstances under which bondholders can appoint a committee to represent their interests and what that committee's powers and functions will be.

Timeline

The steps in a sovereign bond timetable vary depending on the features of the offering including, for example, whether the offering is SEC-registered or conducted under Rule 144A or Regulation S, and whether the offering is a standalone offering or is instead being made pursuant to an existing shelf registration statement or issuance program. The key stages and steps in the timeline of a typical standalone sovereign bond offering are:

Preparation Stage

- Appointment of the parties, including underwriters, lawyers, trustee (if applicable), and agents;
- Conducting the due diligence process;
- Drafting the prospectus or other disclosure document, including comments from the working group and drafting sessions as required;
- Drafting and negotiation of the transaction documents, including trust deed, indenture, or fiscal agency agreement

(as applicable); terms and conditions of the bonds; underwriting agreement; paying agency agreement (if applicable); and ancillary documentation;

- Drafting and negotiation of the legal opinions;
- Obtaining governmental authorizations, as required;
- Applying for credit ratings for the bonds, which are typically assigned from one or more of the main international credit rating agencies, Fitch, Moody's, and Standard & Poor's;
- Beginning the process of review and approval by the SEC or other regulator or stock exchange for any registration or listing of the bonds being offered; and
- Finalizing and printing the preliminary prospectus or other disclosure document.

Marketing and Pricing

- Launch and announcement of the offering;
- Roadshow with investors, which is attended by senior representatives from the issuer's ministry of finance or similar department, together with representatives of the underwriters;
- Agreeing the pricing terms (including the principal amount of the bonds to be sold, the interest rate, and the maturity date) following the completion of the roadshow;
- Finalizing and printing the final prospectus or other disclosure document; and
- Signing the underwriting agreement.

Closing and Settlement (usually between three and five business days after pricing)

- Executing the bond documents (trust deed, indenture or fiscal agency agreement, and global bond certificates);
- Delivering the legal opinions and other conditions precedent documents; and
- Issuing the bonds and delivering the net cash proceeds to the issuer.

The overall length of time needed to complete a sovereign bond offering depends on a variety of factors, including

- whether the issuer has done offerings previously and, if it has, how recent those offerings were;

- the extent to which the issuer is able to complete authorizations and documentation steps (including providing information in the due diligence process) quickly and efficiently;

- the complexity of the terms of the bonds (including the extent of any tailored or innovative features); and

- the features of the offering (e.g., SEC-registered offerings generally take longer to complete than offerings made under Rule 144A and Regulation S, and offerings made pursuant to a shelf registration statement or under an existing issuance program can be done more quickly than standalone offerings).

As a rough indication of the time required to complete a sovereign bond offering, a typical standalone sovereign bond offering under Rule 144A and Regulation S can be completed in approximately eight to ten weeks. However, as noted above, this period may be longer or shorter depending on all of the characteristics of the issuer and the transaction.

Due Diligence Process

The due diligence process in a sovereign bond offering involves documentary review as well as meeting with senior representatives of various ministries of the issuer, representatives of the issuer's central bank, and other key government entities. Unlike in a corporate bond offering, where documentary due diligence will often consist of reviewing a large volume of contracts and other internal corporate documentation provided in response to a detailed document request list, the documentary due diligence process for a sovereign bond offering is largely based on official government documents and data, much of which are publicly available. See Question 3 above.

Required Regulatory and Stock Exchange Filings

Regulatory and stock exchange filings for offerings of sovereign bonds are similar to those that are required for other offerings of debt securities, and the requirements vary depending on the jurisdictions in which the offering is made and where the bonds are listed. See also Question 2 regarding approvals and authorizations that may be required in the issuer's own jurisdiction in connection with the issuance of the bonds.

For an SEC-registered offering by a sovereign entity, the issuer files a registration statement under Schedule B with the SEC for the

offering, and annual reports on Form 18-K going forward. While Rule 415 under the Securities Act regarding delayed or continuous offerings does not apply to registration statements filed by sovereign entities, SEC interpretive guidance and no-action letters support that certain sovereign entities can conduct shelf registrations either (i) by filing a Schedule B shelf registration statement followed by prospectus supplements for each offering, or (ii) by voluntarily filing an annual report on Form 18-K in advance of an offering (and updating it as necessary with filings on Form 18-K/A) and then incorporating by reference the Form 18-K and Form 18-K/A filings into a Schedule B shelf registration statement, with prospectus supplements filed for each offering. These shelf procedures are generally available only to "seasoned" issuers, which are issuers who have filed registration statements on Schedule B within the previous five years and which have not had any material defaults on their indebtedness in the previous five years. While the SEC staff has issued numerous no-action letters over a number of years supporting the foregoing shelf registration procedures, sovereign entities planning to effect shelf registrations should request a no-action letter from the SEC staff in advance if they have not done shelf registrations previously.

Stock exchange filings by sovereign entities listing their bonds generally consist of standard listing applications and submission of supporting documentation, similar to the documentation required for listings by corporate bond issuers.

Disclosure Obligations

Question 4: What information must be made available to potential investors in connection with securities offerings by sovereign entities?

There are minimal specific disclosure requirements applicable to sovereign entities from regulatory authorities (including SEC requirements under Schedule B) or stock exchanges. However, there is a well-established and highly standardized market practice regarding the content of disclosure documents in international sovereign bond offerings, as discussed below.

A. Risk Factors

Please describe the common risk factors that are specific or unique to issuers in this industry. Have there been any recent developments or changes that counsel should be aware of when preparing these risk factors?

Investment grade sovereign issuers tend to have limited risk factors sections, and some have no risk factors section at all. On the other hand, subinvestment-grade sovereign issuers and those from

emerging markets often have extensive risk factors sections similar to those that would be included in the disclosure documents for corporations in emerging markets or high-yield corporate bonds.

Risk factors that are common in sovereign bond disclosure documents include:

Risks Related to the Issuer

- **Vulnerability to adverse developments in the global economy.** Risk factors related to global economic conditions have become more common in light of recent global economic developments.
- **Dependencies in the economy.** For example, a risk factor may be included to address a dependency on budget revenues from the country's natural resources, such as oil or metals, or a dependency on revenues from tourism.
- **Other country-specific risk factors.** There may be other risk factors included to address any country-specific economic, monetary, political, or social risks.

Recent examples of risk factors related to the issuer include the following:

Adverse external factors, instability in international financial markets and adverse domestic factors could lead to reduced growth and decreased foreign investment in Mexico. High international interest rates could increase Mexico's expenditures, low oil prices could decrease the Mexican government's revenues, and recession or low growth in Mexico's main trading partners could lead to fewer exports. A combination of these factors could negatively affect Mexico's current account. Instability or volatility in the international financial markets could lead to domestic volatility, making it more complicated for the Mexican government to achieve its macroeconomic goals. This could also lead to declines in foreign investment inflows, and portfolio investment in particular. Adverse domestic factors, such as domestic inflation, high domestic interest rates, exchange rate volatility and political uncertainty could lead to lower growth in Mexico, declines in foreign direct and portfolio investment, and potentially lower international reserves. *(United Mexican States, Prospectus dated February 8, 2016)*

High inflation could have a material adverse effect on Ghana's economy and its ability to service its debt, including the Notes. Historically, inflation in Ghana has fluctuated significantly from year to year. The annual inflation rate increased from 8.8% as of 31 December 2012 to 17% as of 31 December 2014. The annual

inflation rate subsequently increased to 17.7% as of 31 December 2015, primarily due to increased utilities tariffs and fuel prices and the depreciation of the cedi over the period, but decreased to 16.7% in July 2016. For more information on historical inflation rates, please see "Monetary and Financial System—Monetary Policy—Inflation". Although tighter monetary and/or fiscal policies may help curb inflation, the impact on inflation of food, fuel and other import prices is beyond Ghana's control. There can be no assurance that the inflation rate will not continue to rise in the future. Significant inflation could have a material adverse effect on Ghana's economy and the ability to service the government's debt, including the Notes. (*The Republic of Ghana, Prospectus dated September 13, 2016*)

Risks Related to the Bonds and the Offering

- **Enforceability of judgments.** This is a standard risk factor for sovereigns and is specific to sovereign issuers due to their status as sovereign entities. However, the specific wording of the risk factor varies depending on the particular characteristics of the issuer, including the treaties or conventions to which it is a party for recognition and enforcement of judgments and/or arbitral awards. See Question 2.

- **Sovereign immunity.** While sovereign issuers generally waive sovereign immunity in the bond documents, there are usually certain limits to this waiver under domestic and other laws, which may warrant risk factor disclosure, depending on the extent of such limitations.

- **CACs.** A risk factor is sometimes included in order to caution the investor that the bonds contain CACs and accordingly the bonds may be amended without the consent of all bondholders, including the investor.

- **Reliability of statistics.** This risk factor is particularly relevant for sovereigns that are (or are political subdivisions of) developing countries, as much of the disclosure in a sovereign disclosure document is based on official statistics produced by the issuer, and the calculation and presentation methodology used may not be in line with international standards and may have risks of unreliability.

Recent examples of risk factors related to the bonds and the offering include the following:

The notes contain provisions that permit Turkey to amend the payment terms without the consent of all holders. The notes contain provisions regarding acceleration and voting on amendments, modifications, changes and waivers, which are

commonly referred to as "collective action clauses". Under these provisions, certain key provisions of the notes may be amended, including the maturity date, interest rate and other payment terms, with the consent of the holders of 75% of the aggregate principal amount of the outstanding notes. (*Republic of Turkey, Prospectus Supplement dated January 18, 2017*)

Suriname is a sovereign state and, accordingly, it may be difficult to obtain or enforce judgments against it. Suriname is a sovereign state. As a result, it may be difficult or impossible for investors to obtain or enforce judgments against Suriname, whether in an investor's own jurisdiction or elsewhere. In particular, the government has been advised by its Surinamese counsel that foreign judgments, including in respect of civil liabilities predicated upon applicable securities laws, cannot be enforced in Suriname unless there is a bilateral or multilateral treaty on the reciprocal recognition of judgments. Suriname currently has such a treaty only with the Netherlands. Even if an applicable treaty were in effect, the recognition and enforcement of a foreign judgment in Suriname will in all cases be subject to exceptions and limitations under the laws of Suriname, including, for example, that assets meant for public service cannot be seized. Absent a treaty on reciprocal recognition of judgments, the case will need to be submitted to a Surinamese court, which will reconsider the merits of the case. Such a submission will require, among other things, the translation into Dutch of all documents related to the foreign judgment. As a result, it may be difficult to obtain recognition or enforcement in Suriname of a foreign judgment in respect of the Notes. (*Republic of Suriname, Offering Circular dated October 19, 2016*)

B. MD&A and Business

Please provide the key discussion points that counsel should consider when preparing the business and MD&A sections for issuers in this industry.

While there are no business or MD&A sections in a sovereign disclosure document, there are certain disclosure sections that are similar and give rise to similar drafting considerations. These sections include Economy, Balance of Payments and Foreign Trade, Public Finance, Public Debt, and Monetary and Financial System. See Question 4(C) below. While some of the data presented in such sections may be calculated and presented in accordance with IMF methodology or other international standards, a substantial amount of the data will often be official data produced by the issuing country itself (or its central bank) using its own methodology. It is common for certain parts of the country disclosure to include an MD&A-style

discussion and analysis of trends in economic and financial data. For example, some sovereign disclosure documents will include an MD&A-style discussion of gross domestic product (GDP) by economic sector across the years presented. For the discussion and analysis of trends in economic and financial data in a sovereign disclosure document, the same principles that underlie good MD&A drafting should be followed.

C. Other Prospectus Disclosure

Is there any other additional or special disclosure that should be included in the prospectus or registration statement for issuers in this industry, required by either the SEC or market practice?

Based on market practice, the following are typical disclosure topics in sovereign bond disclosure documents (with variation as to terminology and locations of subtopics within main sections):

- **Main country disclosure:** Population; demographics; geography; history; branches/structure of government, constitution, and political parties; international relations; memberships in international organizations; and antiterrorism, anti-money laundering and anticorruption institutions and initiatives;

- **Economy:** Recent economic trends; economic policies; GDP by source; GDP by use; principal sectors of the economy (including industrial sectors and natural resources); inflation; employment/unemployment; wages and income; social benefits; education; healthcare; pension system; environment; state-owned enterprises; and privatization;

- **Balance of payments and foreign trade:** Current account; capital account; financial account; composition of trade; direction of trade; and foreign direct investment;

- **Public finance:** National budget process; fiscal policy; budgets and budget performance; sources of budget revenues (tax and nontax); budget expenditure items; and relationship between national budget and local budgets;

- **Public debt:** Debt management policy; external debt and debt service; domestic debt and debt service; relations with international financial institutions; debt ratings; and description of any prior defaults; and

- **Monetary and financial system**: Central bank; monetary policy; money supply; foreign reserves; interest rates; exchange rates; banking industry; financial performance of the banking sector; banking supervision and regulation; foreign exchange markets; and capital markets.

Data in tables is usually presented for the last five completed fiscal years, together with any available interim data since the end of the most recent fiscal year.

D. Additional Disclosure Issues

Please discuss any other special disclosure issues or advice applicable to issuers in this industry.

Official data must be presented clearly and consistently, and the methodology for preparing and presenting such data must be clearly and accurately identified in the prospectus. Similar to good practice in drafting MD&A sections for corporate issuers, the prospectus should contain a meaningful discussion of monetary and economic trends and uncertainties, political factors that may impact the issuer's ability to make payments due on the bonds, and vulnerabilities in the issuer's economy.

Underwriting Agreements

Question 5: What types of underwriting arrangements are commonly used? What are some of the standard and heavily negotiated clauses in an underwriting agreement in connection with an offering by a sovereign entity?

Underwriting arrangements in sovereign bond offerings are generally the same as in corporate bond offerings. In particular, one or more investment banks will act as lead underwriters and will manage the transaction and lead the marketing of the deal, as well as underwrite the offering on a firm commitment basis. As is the case in the corporate bond market, an initial purchase and resale structure is used in a Rule 144A offering of sovereign bonds, whereby the underwriters purchase the notes from the issuer at a discount to the offer price and then resell the notes to investors, with the discount representing the underwriting commission.

Sovereign bond underwriting agreements are very similar to underwriting agreements used in corporate bond offerings, with the style and content of the agreement varying depending on its governing law. Many of the business and financial representations and warranties that are customary in corporate bond underwriting agreements are not applicable to sovereign entities, and conversely there are some provisions that feature in sovereign bond

underwriting agreements that are specific to sovereign issuers or that are tailored for sovereign issuers. For example, sovereign bond underwriting agreements usually include representations and warranties focused on the power and authority of the issuer to issue the bonds, the necessary governmental approvals being in place, compliance of the issuance of the bonds with the fiscal budget and borrowing limits, and enforceability of the issuer's obligations. Submission to jurisdiction and waiver of sovereign immunity provisions are often a focus of negotiations.

Continuous Disclosure and Corporate Governance

Question 6: What specific continuous disclosure and corporate governance requirements apply to sovereign entities?

For sovereign bonds that are registered with the SEC under Schedule B and listed on a US stock exchange, the sovereign issuer will be required to file annual reports on Form 18-K with the SEC. Sovereign entities are not subject to the Sarbanes-Oxley Act of 2002 certification and auditor attestation requirements.

Sovereign issuers with bonds listed on a non-US stock exchange need to consider the applicability of the ongoing obligations for listings on such stock exchange. For example, if the issuer becomes subject to the European Union Market Abuse Regulation (Regulation 596/2014) due to having its securities listed on a European stock exchange, the issuer would become subject to ongoing obligations regarding control and disclosure of inside information, the compliance with which may be difficult for a sovereign entity.

Stock Exchange Requirements

Question 7: Are there any special listing or corporate governance standards required by major stock exchanges, including NYSE and NASDAQ?

While the concept of corporate governance generally does not apply to sovereign issuers, there are some special listing and disclosure requirements that are applicable to sovereign entities that list on a US stock exchange or a European stock exchange. See Questions 2 and 6.

Other Key Laws and Regulations

Question 8: What are other key laws and regulations that a securities lawyer working with a sovereign entity needs to be aware of?

If you are acting as counsel on a sovereign bond offering, you should be aware of, in particular:

- **Laws and regulations applicable to international securities offerings generally**. These may include the US securities laws (in particular the Securities Act and the exemptions

from the registration requirement thereunder), the Prospectus Directive, and the laws and regulations (as well as liability regimes) applicable to offerings in any other jurisdiction into which the bonds will be offered and sold.

- **Laws related to submission to jurisdiction and enforceability of judgments**. It is standard practice for a sovereign issuer to be required to submit to the jurisdiction of external courts (typically English or New York courts), or to agree to the resolution of disputes by arbitration, in the underwriting agreement and the terms of the bonds. Submission to the jurisdiction of English or US courts requires the appointment of a process agent, which is often the embassy or consulate of the issuer in England or the United States, as the case may be. Arbitration provisions may be included if there are issues with regard to the enforceability of court judgments by the relevant issuer, depending on whether the issuer's country is a party to an applicable convention providing for recognition of arbitral awards. It is important to note that submission to jurisdiction and enforceability of judgments are two different things. It may be possible to obtain a judgment or an arbitral award against a sovereign issuer but it may be difficult to enforce that judgment or award against the issuer's assets.

- **Laws related to sovereign immunity**. See Question 2 above.

- **International Capital Market Association (ICMA) model sovereign bond provisions**. ICMA is an industry group focused on the international debt capital markets, whose membership includes issuers, intermediaries, investors, and capital market infrastructure providers in approximately 60 countries worldwide. ICMA has published model CACs and *pari passu* clauses. See Question 9.

Regulatory Tends

Question 9: What are the major regulatory trends affecting sovereign entities?

Key trends affecting sovereign issuers (which are not of a regulatory nature per se but are of a legal nature) include the recent market developments in CACs*, pari passu* clauses, and creditor engagement provisions.

In 2014, ICMA published model English law–governed CACs and *pari passu* and creditor engagement clauses after an extensive consultation process that involved a wide range of issuers, investors, and other market participants. The model CACs are aimed at preventing future disorderly and costly sovereign bond restructurings of the type that had been experienced in the sovereign bond restructurings of Argentina and Greece. ICMA has recommended the use of these standardized provisions to facilitate orderly and efficient future sovereign debt restructurings. The model provisions also include *pari passu* and creditor engagement clauses for sovereign bonds. The most novel feature introduced in the model CACs—which received the endorsement of the IMF—is the so-called single-limb aggregated voting mechanism. This mechanism enables aggregation of votes across multiple series of bonds when agreeing to changes in bond payment terms, such as maturity extensions or principal reductions, with bondholders in each affected series being bound by the outcome of a single cross-series vote. Following their publication, the ICMA model CACs were included in full in the English law–governed bond offering by Kazakhstan, and several other countries, including Vietnam and Mexico, subsequently included ICMA's model voting provisions in their New York law–governed bonds. However, the New York law–governed bonds contained a modified formulation of the clauses that was designed to conform to market practice for New York law–governed documentation.

In 2015, ICMA published a revised version of its model CACs for sovereign bonds governed by English law, together with new model CACs for sovereign bonds governed by New York law. The updated model clauses were aimed at achieving consistency between the English law and New York law provisions while at the same time taking into account market differences. One of the key changes in the revised model clauses was an amendment to the definition of the term "Uniformly Applicable," which is a key condition to the use of the single-limb aggregated voting mechanism. The amendment is intended to clarify when that voting mechanism can be used.

The ICMA model CACs have generally gained market acceptance, and should this continue they are expected to create greater consistency in the sovereign bond markets and to facilitate smoother and more efficient sovereign bond restructurings. In particular, the standardization of creditor engagement provisions included in the ICMA model CACs is important because, as demonstrated by practical experience over the last several decades, creditor committees are valuable for addressing identified risks and achieving prompt, fair, and sustainable restructuring of sovereign bonds.

Commercial Trends

Question 10: What are the major commercial trends affecting sovereign entities?

A recent commercial trend in the area of securities offerings by sovereign entities is a focus on the role of GDP-linked securities in the sovereign debt markets. GDP-linked securities can take many forms, but they have the common feature that payments on them are dependent on the level of GDP recorded in the issuer's country. In the past, GDP-linked warrants (and similar instruments) have been issued in certain sovereign restructurings, in order to give investors who restructured their bonds (and typically made sacrifices in doing so) the opportunity to share in the upside that may be achieved following that restructuring. Thus far, GDP-linked securities generally have only consisted of GDP-linked warrants (and similar instruments) issued in the context of restructurings of existing bonds rather than as new issuances in capital raisings. However, in March 2017, an ad hoc working group consisting of investment managers, lawyers, and economists from the Bank of England, with support from ICMA and other trade associations, produced a model set of terms and conditions for English law–governed GDP-linked bonds, which are debt securities in respect of which interest and principal payments are indexed to GDP so as to allow both the burden of servicing interest payments and repayment of principal to adjust with the sovereign's ability to pay. In 2016, the G20 forum called for further analysis of GDP-linked bonds, and the IMF is expected to produce a paper on GDP-linked bonds in advance of the G20's 2017 spring meeting. It is contemplated that GDP-linked bonds, if accepted by the market, could be issued either as part of restructurings or in capital raisings outside of the restructuring context.

There are a number of active initiatives involving the IMF, World Bank, and various financial markets industry groups that are aimed at making the sovereign bond markets more efficient, and a number of innovative ideas are being considered. These efforts have intensified in the wake of the Argentina and Greece sovereign debt crises. The IMF has been actively involved in a number of reforms (including the CAC and *pari passu* reforms discussed above) designed to reduce the costs of sovereign debt restructurings for the benefit of debtors, creditors, and the system more generally.

Practice Tips

Question 11: What practice points can you give to lawyers working with sovereign entities?

FINANCIAL SERVICES

Lawyers working with sovereign entities should be mindful of the differences between the way governmental entities function as compared with corporations. For example, when working with a sovereign entity as issuer's counsel, it is necessary to obtain, manage, and synthesize input from various ministries, departments, and other governmental bodies such as the central bank, with regard to both disclosure and legal issues in relation to the transaction.

With regard to the terms of sovereign bonds, it is particularly important to focus on how the provisions in the bonds work in the event of a default and restructuring. This is the case because, unlike corporations, sovereign entities are not subject to insolvency regimes and accordingly the contractual terms in the bonds form the primary basis for resolving a default and effecting a restructuring. It is for this reason that CACs and creditor engagement provisions are particularly important.

China Cracks Down on Commercial Bribery in the Private Sector

Background

The Chinese government has intensified probes into commercial bribery in the private sector, with a particular focus on sales incentive programs, as part of its broader crackdown on corruption, which may result in increased risks for companies doing business in China. Local bureaus of China's State Administration of Industry and Commerce (SAIC) enforce commercial bribery laws and investigate bribery cases. In recent months, the SAIC, through a series of enforcement actions, has targeted the tire manufacturing industry. Media reports also suggest that there may be some ongoing investigative activity in the healthcare sector. The SAIC's recent investigations into commercial bribery and the resulting enforcement actions involving the tire manufacturing industry suggest the following:

- Any benefits paid to distributors by manufacturers in addition to regular compensation with the intention of increasing sales or reducing competition may constitute commercial bribery under Chinese law.

- Illegal "improper benefits" may include reward travel arranged by the manufacturer, incentive credits that can be exchanged for gift cards or other goods, shopping cards tied to a distributor's purchase volume, and direct rebates to distributors in the form of gift cards or gasoline cards.

- When calculating illegal gains, Chinese regulators typically take into account sales revenue realized by distributors and retailers under the relevant improper incentive programs.

Recent Enforcement Actions

- Michelin (China) Investment Co., Ltd. was found to have violated Chinese law by implementing a rebate scheme under which third-party distributors were awarded points for facilitating sales of Michelin tires. Distributors could use these points to redeem merchandise, including Amazon gift cards, from the Michelin Distributor Club website. Michelin China recorded the gift cards as "sales expenses" and did not issue any related invoices. The distributors were not required to and did not record their receipt of the gift cards in their books and records. Since the third-party distributors typically sold several tire brands other than Michelin, the SAIC found that Michelin China's scheme violated the Chinese Anti-Unfair Competition Law because it was improperly designed to increase sales revenue by squeezing out competitors. Additionally, the government found that the monetary value of the incentives was

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enough to adversely affect market order, thus constituting commercial bribery. Penalties included disgorgement of RMB 18,442,865.44 ($2,676,680.75) and a fine of RMB 160,000 ($23,221.39).

- Giti Tire Corporation was found to have provided improper and illegal sales incentives to retailers in the form of travel tour programs. Giti invited distributors and retailers to participate in tours in Europe and Taiwan and covered all transportation, accommodation, and related travel costs through travel agencies. Government authorities ordered the disgorgement of illegal income in the amount of RMB 10,459,508.08 ($1,518,026.79) and imposed a fine of RMB 130,000 ($18,867.38).

- Bridgestone (China) Investment Co., Ltd. was found to have made improper payments to distributors in order to encourage their facilitating tire sales. Bridgestone paid distributors who met or exceeded quarterly purchase targets with gift cards for an online shopping website. Bridgestone also promised to give retailers tour cards if they purchased 500 tires before a certain deadline. The SAIC investigation concluded that Bridgestone's incentive programs constituted commercial bribery in violation of Chinese law, and the SAIC imposed a disgorgement penalty of RMB 17,395,026.49 ($2,524,604.03) and a fine of RMB 150,000 ($21,770.05).

- Yokohama Tire Corporation implemented an incentive program in which it agreed to pay distributors "golden tokens" as an award for facilitating sales of Yokohama tires. The distributors could exchange the tokens for online gift cards via the Yokohama website. Yokohama recorded the payments as "promotional and advertising fees." Government regulators imposed disgorgement penalties of RMB 5,149,867.57 ($2,198,755.88) and a fine of RMB 100,000 ($14,513.37).

- Kumho Tire Co., Ltd. was found to have provided its distributors with rebates in the form of gas cards and online shopping gift cards. Kumho recorded these rebates as "promotional expenses." The SAIC deemed this practice to be commercial bribery and imposed a disgorgement penalty of RMB 7,403,492.83 (1,074,496.09) and a fine of RMB 100,000 ($14,513.37).

Ongoing Investigative Activity

Chinese media reports suggest that there may also be ongoing investigations in the healthcare sector. China Central Television reported on 24 December 2016 that there were doctors at Shanghai's Huashan Hospital at the center of an antibribery investigation by government authorities for allegedly receiving monetary rebates from sales representatives of foreign pharmaceutical companies in return for prescribing medicines to boost sales volumes for the companies. On 26 December 2016, the Shanghai Health Bureau announced the results of its preliminary investigation: the misconduct was substantiated and the doctors involved were suspended. To

date, the investigation and resulting punishment have focused solely on the physicians. It is still unknown whether the pharmaceutical companies and their representatives are or will be subject to investigation. Because so many hospitals in China are fully or partially owned by the government, the Chinese authorities' focus on corrupt payments to physicians by foreign entities also raises issues under the US Foreign Corrupt Practices Act.

Going Forward

Corruption in China presents high risks for those businesses operating or planning to operate in the country. The Chinese government's anticorruption initiative focused initially on bribery of public officials, but it has recently expanded into graft in the private sector. In light of the aggressive crackdown on corruption and bribery, and the recent focus on commercial bribery, companies are advised to carefully consider the type and value of any incentives, gifts, or benefits provided to third-party distributors, agents, or consultants. Companies with existing incentive or benefits programs should consider conducting thorough reviews of such, including evaluations of the structure, implementation, and anticorruption and antibribery compliance of such programs.

Japan Releases Draft "Principles for Customer-Oriented Business Conduct"

On January 19, the Financial Services Agency of Japan (JFSA) released a draft of its "Principles for Customer-Oriented Business Conduct" applicable to Financial Business Operators (FBOs) licensed and registered in Japan (FBO Principles Statement).

The FBO Principles Statement was drafted based on suggestions made in a report published by the Working Group on Financial Markets (MWG) of the Financial System Council (FSC) on 22 December 2016. The public comment period on the FBO Principles Statement ends on 20 February 2017.

The FBO Principles Statement adopts a "principles-based" (rather than "rules-based") approach to financial services supervision and compliance. FBOs are expected to absorb the spirit of the FBO Principles Statement and use it as guidance to establish and follow clear policies that focus on the interests of customers.

Background

At the general meeting of the FSC on 19 April 2016, the Minister for Financial Services requested that the FSC conduct an extensive review of issues relating to the financial markets and financial instruments exchanges, with the aim of securing the steady growth of the economy and steady accumulation of household financial assets in Japan. The MWG, which is part of the FSC, understands that customer-oriented business conduct is critical for the steady accumulation of household financial assets and, as such, the MWG reviewed various issues from this perspective. On 22 December 2016, the MWG published a report that suggested adopting a "principles-based" approach instead of a "rules-based" approach to financial services supervision and compliance.

The section of the FBO Principles Statement titled "Background" notes that the MWG suggested the following in its report:

- Although in the past, relevant laws and regulations were revised to protect investors by making financial products easier to understand . . .as a side effect this regulatory framework came to be used as a minimum standard which . . . encouraged FBOs to superficially follow regulatory formalities.
- It is more desirable that FBOs demonstrate originality and ingenuity . . . to achieve best practices and to compete in providing high-quality, customer-oriented financial products and services, so that customers will be able to select among FBOs based on the quality of the services provided.

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- It would be more effective to shift to a "principles-based approach" from a conventional "rules-based approach. More specifically, it would be appropriate that the regulators draft the FBO Principles Statement and encourage FBOs to adopt it, seriously consider the interests of their customers and compete in providing better, customer-oriented financial products and services.

Scope of Application

Although the FBO Principles Statement does not explicitly reference the financial institutions it covers, the broad description of FBOs suggests that all registered Financial Instruments Business Operators (FIBOs)—banks, trust banks, insurance companies, moneylenders, and other financial services providers—will be covered by the FBO Principles Statement.

We anticipate that, going forward, the FBO Principles Statement will be implemented in both the supervisory and inspection context by the relevant divisions and bureaus of the JFSA. Thus, we believe that all foreign financial groups with regulated financial intermediaries active in Japan will need to understand and implement the FBO Principles Statement.

Approach and Process

The FBO Principles Statement indicates that "when FBOs adopt the FBO Principles Statement, they are required to establish and follow a clear policy to implement customer-oriented business conduct." Moreover, where any part of the FBO Principles Statement cannot be put into practice in light of the FBO's circumstances, such part may be excluded, but the FBO is "required to fully explain the reasons therefor." We believe that this "comply or explain" approach mirrors, in the financial supervisory context, the principles-based approach adopted in Japan's recently implemented Japan's Corporate Governance Code and Japan's Stewardship Code.

More specifically, when FBOs adopt the FBO Principles Statement, they are required, pursuant to Principle 1 (described further below), to

- "establish" and "publish" a clear policy to implement customer-oriented business conduct,
- regularly "publish" the status of relevant activities covered by the policy, and
- "review" the policy adopted on a regular basis.

With respect to Principles 2 through 7 of the FBO Principles Statement (set out below), an FBO's policy needs to describe the following in an easily understandable manner:

- Where the Principles are adopted, the measures by which the Principles

are adopted and the measures by which the Principles (including the Notes to the Principles) will be implemented; and

- where the Principles are not adopted, the reason for not adopting (part of) the Principles and what alternative measures will be taken.

The Principles

The FBO Principles Statement sets forth seven principles, which are as follows:

Principle 1. FBOs should establish and publish a clear policy for the implementation of client-oriented business conduct, and publish reports on the status of activities relating to this policy. The policy needs to be regularly reviewed to improve business conduct.

Principle 2. FBOs must demonstrate a high level of expertise and professional ethics and operate their businesses in an honest and fair manner for the best interest of their clients. FBOs must endeavor to make this approach a part of their corporate culture.

Principle 3. FBOs should accurately monitor potential conflicts of interest with their clients in transactions and, when they become aware of the possibility of a conflict, manage such conflict appropriately. FBOs must have an established policy to specifically deal with such situations in advance.

Principle 4. FBOs must provide detailed information regarding commissions and fees to be borne by clients, regardless of how they are named, including a description of the services for which the fees are incurred, in a manner comprehensible by clients.

Principle 5. Considering the asymmetrical distribution of information between FBOs and clients, FBOs must provide clients with important information, including information relating to sales and recommendations of financial products and services as well as the information described in Principle 4 above, in an easy-to-understand manner.

Principle 6. FBOs must obtain information regarding a client's assets, trading experience, knowledge, needs, and purposes in relation to a transaction, and provide suitable services to clients in the creation, sale, and recommendation of the financial products.

Principle 7. FBOs must adopt remuneration and performance evaluation systems that encourage employees to act in the best interest of clients and treat clients fairly and that facilitate the proper management of conflicts of interest and similar issues, must provide employee training programs and other appropriate incentives, and must establish appropriate governance structure to achieve these objectives.

Notes to the Principles

For each principle (except for Principles 4 and 7), the FBO Principles Statement includes one or more "Notes" that elaborate on the expected implementation of the principle. While providing some clarification of the relevant principle, the Notes themselves highlight several "hot button" business issues that adoption of the principles will bring into focus for individual FBOs, especially those owned or controlled by foreign financial intermediaries.

For example, the Notes to Principle 3 stress that, when FBOs evaluate the possibility of conflicts of interest, FBOs *must consider the impact on their transactions or business* in scenarios where

- the FBO (as distributor) receives commissions from the financial product provider (rather than the customer) in connection with the sale or recommendation of financial products to customers;
- the FBO (as distributor) sells or recommends to a customer a product provided by a group affiliate; and
- the FBO (or the FBO group) has both a corporate business department and an investment management department, and the investment management department decides to invest in a company that has a business relationship with the corporate business department.

Unfortunately, it is not clear from Principle 3 and its Notes that mere disclosure to the customer will be sufficient to address these potential conflicts of interest.

The Notes to Principle 5 are particularly challenging for asset managers. Among the elaborations related to disclosures to customers, the Notes to Principle 5 state the following:

- The reasons for selecting a particular financial product or service promoted and any potential conflict of interest in offering the product or service and its impact on the transaction and the business is important information that must be provided to customers and should be explained.
- The possibility of "unbundling" products or services (including fee unbundling) should be indicated.
- Explanations made to customers should be proportional to the complexity of the product or service offered (including presenting information in a way that allows customers to compare financial products or services).

Recommendations for Non-Japanese Service Providers

The shift to a principles-based approach may be particularly challenging for foreign financial intermediaries with Japanese operations of modest or small size. Given the objectives and generality of the principles, it is likely that rudimentary compliance materials and irregular and perfunctory training programs will no longer be viewed as sufficient by Japanese regulators.

At a minimum, foreign financial groups with Japanese operations should start considering practical approaches to meet the expectations in the principles by doing the following:

- Scheduling and documenting meetings of head office and local management and compliance staff and putting in place an implementation plan for the FBO Principles Statement, including a policy statement incorporating and satisfying the "comply or explain" requirement.
- Establishing and publishing a written policy that is clear, non-formulaic, consistent with real situations, and developed to address the regulatory expectations in the FBO Principles Statement, including a training program for employees to explain the policy developed to address the FBO Principles Statement and develop a customer-oriented corporate culture.
- Periodically reviewing—both at satellite offices and the head office—the firm's policy incorporating the FBO Principles Statement to ensure that it is kept up to date with the expectations of Japanese regulators, and making such review available to the public.

Read the full text of the FBO Principles Statement (available in Japanese only).

NEWS

Chambers Asia-Pacific 2017: Firm Earns Top Marks

Morgan Lewis has been ranked in 10 practice areas in the Chambers Asia-Pacific 2017 guide, with 14 lawyers recognized in 16 practices, up from 13 lawyers ranked in 14 practices last year. For the third consecutive year, our Tokyo office received the highest Band 1 ranking for Investment Funds, while we were ranked Band 1 for Energy & Natural Resources in Kazakhstan. IM partner Christopher Wells (TO) has been ranked in Band 1 for Investment Funds; CBT partner Suet-Fern Lee (SI) maintained her Band 1 ranking in Corporate/M&A work; CBT partner Wai Ming Yap (SI) is ranked Band 1 for Gaming & Gambling; and CBT general director Aset Shyngyssov (AL) has again been ranked Band 1 in two practice areas: Corporate & Finance and Energy & Natural Resources. The Chambers & Partners guides are the culmination of thousands of in-depth interviews by its extensive research team to objectively rank the world's best lawyers and law firms.

The complete Chambers Asia-Pacific 2017 rankings for Morgan Lewis are below:

Practice Rankings

Japan

- Investment Funds (Band 1)

Singapore

- Banking & Finance: Domestic, Band 4
- Capital Markets: Domestic, Band 2
- Corporate/M&A: Domestic, Band 2
- Dispute Resolution: Arbitration, Band 4
- Dispute Resolution: Litigation, Band 4
- Restructuring/Insolvency: Domestic, Band 3

Kazakhstan

- Corporate & Finance (Band 2)
- Energy & Natural Resources (Band 1)
- Dispute Resolution (Recognised Practitioner)

Lawyer Rankings

Japan

- Christopher Wells, Investment Funds (Band 1)

Singapore

- Bernard Lui, Capital Markets (Band 2)
- Joo Khin Ng, Capital Markets (Band 2)
- Kelvin Aw, Construction (Band 3)
- Suet-Fern Lee, Corporate/M&A (Band 1)
- Wai Ming Yap, Corporate/M&A (Band 3)
- Daniel Chia, Dispute Resolution (Up and Coming)
- Justyn Jagger, Insurance (Band 3)

- Daniel Yong, Investment Funds (Band 3)
- Justin Yip, Restructuring/Insolvency (Recognized Practitioner)
- Wendy Tan, Shipping (Band 3)

Asia-Pacific Region

- Wai Ming Yap, Gaming & Gambling (Band 1)

Kazakhstan

- Klara Nurgaziyeva, Corporate & Finance (Band 4)
- Aset Shyngyssov, Corporate & Finance (Band 1) and Energy & Natural Resources

Shanghai Office Holds Seminar on Offshore Hedge Funds

Our Shanghai office hosted a seminar, "How to Establish and Operate an Offshore Hedge Fund," on February 23. IM partner Chris Wells (TO) invited client Gordian Capital, an asset management firm based in Singapore, to explain offshore hedge funds. Presenters from Gordian included Stanley Howard, founder and chairman; Mark Voumard, founder and CEO; Shuai Lu, head of trading; and Yue Sun of the investment operations department.

CBT partner Cindy Pan (SH) invited a dozen representatives from local investment companies, including Noah Holdings, MarineTech Capital, and China Valley Holdings. The seminar covered various topics including licensing requirements, offshore fund domiciles, fund structures, service providers and their roles, investor profiles, and marketing.

Acritas: Lawyers Named "Stars" in New Database for GCS

Thirty-six Morgan Lewis lawyers from our US, Tokyo, Frankfurt, Moscow, and London offices are named as "Star Lawyers" in a new database by Acritas. Acritas, which specializes in data collection and analysis for law firms, launched the global database of Star Lawyers in response to requests from the Acritas GC panel for an online database to find reputable local counsel and specialists. The database was compiled from interviews over the last 18 months with 3,000 chief legal officers worldwide and contains direct comments from in-house counsel about what makes the recognized lawyers excellent outside counsel.

Tokyo Office Holds Client Event, Highlights Asia Expansion

More than 120 Japanese CEOs, general counsel, executives, and government officials attended our Tokyo office's March 7 client event at the Imperial Hotel. IM partner Chris Wells (TO) gave the opening remarks, welcomed Japanese Minister of Health, Labour and Welfare Yasuhisa Shiozaki and other VIP attendees, and introduced our Tokyo partners and of counsel. Chris also highlighted our firm's recent expansion in Greater China. CBT partner Floyd Wittlin (NY) followed with a discussion on the increased attractiveness of

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Japanese investment in the United States under the administration of US President Donald Trump and how Morgan Lewis can help.

CBT partners Yoshihide Ito (WA) and Satoru Murase (NY) gave a short speech on the improving US investment climate and global trade challenges under the Trump administration's "America First" policy. Attendees included executives from clients Mitsubishi, Mitsui, Sumitomo, Sojitz, NEC, Seiko, State Street, METI, JETRO, JBIC, and Development Bank of Japan. CBT partner Bradley Edmister (NY) also attended the event.

Best Lawyers in Japan: Partners Recognised in 2018 Edition

Three partners have been named in the 2018 edition of *The Best Lawyers in Japan*. IM partner Christopher Wells (TO) is listed for Investment and Investment Funds; CBT partner Tsugumichi Watanabe (TO) is named in two practices, Energy Law and Project Finance and Development Practice; and CBT partner Satoru Murase (NY) is listed for Corporate and M&A Law. Best Lawyers recognizes lawyers who are nominated by their peers for consideration. The eighth edition of *The Best Lawyers in Japan* was published in March.

Welcome Edward Bennett: IM, Singapore

On February 27, our firm welcomed Edward Bennett to as a partner in our IM practice in Singapore. He joined us from Ashurst. Edward, whose prior work focused on cross-border business transactions in Southeast Asia, represents clients on private equity, mergers and acquisitions, capital markets secondary buyout, and refinancing matters. He has worked extensively on the structuring and formation of closed-ended buyout, infrastructure, and mezzanine funds; the secondary transfer of fund interests and subsequent closings; and the carried interest structuring for investment funds.

His arrival is a strong addition to the corporate, commercial, financial, and disputes practice for which our Singapore office has been widely recognized, and will further enhance our services to clients in this key gateway to Asia as well as the rest of the world.

Lawyers Participate in Medtech Startup Panel Discussion Event

IP partner Jeffry Mann (SF) served as the moderator during Biotech Connection Singapore's panel discussion event, "Our Entrepreneurial Journeys: MedTech Startups," on March 30 in Singapore. Singapore Office Managing Partner Suet-Fern Lee provided an overview and introduction of Morgan Lewis as she gave the opening address.

The panel discussion tackled the opportunities and challenges that local medtech startups face, and what is needed to build a vibrant life sciences ecosystem in Singapore. The event was attended by about 200 individuals from the academia, research and development industry, finance, and startup businesses in Singapore.

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Bernard Lui Presents at Course on Governance for Family Businesses

CBT partner Bernard Lui (SI) served as a speaker for "Governance for Family Business," a course organized by the Singapore Institute of Directors, on March 29 at the Marina Mandarin Singapore. Other speakers included Dennis Lee, director of RSM Risk Advisory; and Sovann Giang, senior director and head of the Board Leadership Advisory at RSM Risk Advisory. The course was designed for incoming and current directors of family businesses or listed companies that are closely held by individuals and/or families. It examined potential issues the board faces, and the initiatives that key players should take to create an effective board that operates in the interest of all stakeholders. The speakers also discussed how to build a family business that will last given the many real-life examples of disastrous transitions. Attendees included representatives from our client Sinarmas Land.

Suet-Fern Lee Addresses INSEAD Directors Forum

Singapore Office Managing Partner Suet-Fern Lee was the guest of honour and keynote speaker at the INSEAD Directors Forum on February 27 at the INSEAD Asia campus. The event hosted former participants of INSEAD's International Directors Programme, INSEAD alumni, and members of the Singapore Institute of Directors in board director or C-suite executive positions.

The forum, "Transforming Boards and Businesses," examined the innovation of business models and discussed how change from external pressures affects corporations and industries, and how boards can tackle the issue strategically. Led by INSEAD Corporate Governance Initiative faculty Serguei Netessine, Timken Chaired Professor of Global Technology and Innovation; and Ludo Van der Heyden, INSEAD Chaired Professor of Corporate Governance and the academic director of the Corporate Governance Initiative, the forum provided theoretical and practical frameworks to directors who aim to have a positive and insightful approach to today's business world.

Edward Bennett Participates in Cyberattack Simulation Exercise

IM partner Edward Bennett (SI) served as a panelist during a recent cyberattack simulation exercise at the Monetary Authority of Singapore, an event co-hosted by the Hedge Fund Standards Board. The panel discussion was attended by more than 150 hedge fund market participants and tackled the anatomy of a cybersecurity breach, cybersecurity risk management, data theft, crypto-ransomware, and financial infrastructure attacks.

Seven in Singapore Recognised as Best Lawyers

Seven lawyers from our Singapore office are set to be featured in the ninth edition of *The Best Lawyers in Singapore*. Singapore Office Managing Partner Suet-Fern Lee will be recognized as the 2017 Corporate Law "Lawyer of the Year" for Singapore. The award is given to lawyers with the highest overall

peer feedback for a specific practice area and geographic region.

Our lawyers to be featured are:

- Litigation partner Justyn Jagger: Arbitration and Mediation
- Singapore Office Managing Partner Suet-Fern Lee: Banking Law, Capital Markets Law, Corporate Law, Mergers and Acquisitions Law
- CBT partner Bernard Lui: Capital Markets Law
- CBT partner Joo Khin Ng: Capital Markets Law
- Litigation international consultant Richard Tan: Construction Law, Project Finance and Development Practice
- Litigation partner Wendy Tan: Maritime Law, Trade Law
- CBT partner Wai Ming Yap: Mergers and Acquisitions Law

Recognition by *Best Lawyers* is based entirely on peer review. Its methodology is designed to capture the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographical area and legal practice area.

Singapore Office Hosts Seminar on Regulatory Changes

Our Singapore office hosted a seminar, "Swimming with the Regulatory Tide," on February 6, updating Singapore Exchange's Catalist-listed companies on regulatory changes and issues relevant to their businesses. The event covered topics such as proposed amendments to the Singapore Companies Act, corporate governance disclosures, recommended practices for listed companies, and sustainability reporting. Presenters included Singapore Office Managing Partner Suet-Fern Lee; CBT partners Elizabeth Kong, Bernard Lui, Joo Khin Ng, and Wai Ming Yap; and Stamford Corporate Services Director Elaine Lim.

The seminar was attended by representatives from various industries, including from clients AA Group Holdings, Addvalue Technologies, Annica Holdings Ltd., ecoWise Holdings Ltd., Edition Ltd., GSS Energy Ltd., Koh Brothers Eco Engineering Ltd., LionGold Corp., Magnus Energy Group Ltd., and Ocean Sky International Ltd.

Justyn Jagger Presents at Business Interruption Insurance Seminar

Litigation partner Justyn Jagger (SI) presented a seminar, "Business Interruption Insurance: Tackling the Tough Issues," which was hosted in the Singapore office. Other presenters included Jonathan Ellis, director of Accuracy; Tim Reid, director of Ferrier Hodgson; and Phillip Taylor, director of MDD Forensic Accountants. The event, held on January 24-25 and February 8-9, provided an analysis of the legal, accounting, and claims handling issues presented by major business interruption losses occurring in the construction, mining, hospitality, and power generation industries in Asia over the last 10 years. Attendees included representatives from various industries, including current and prospective clients Aon Risk Solutions, ENGIE, JLT, Marsh (Singapore) Pte. Ltd, Soletanche Bachy, Willis Singapore Pte. Ltd., Willis

NEWS

Towers Watson, Allianz Global Corporate & Specialty SE Singapore Branch, Allied World Assurance Co. Ltd., Beazley, Cranmore Asia Pte. Ltd., Cunningham Lindsey (Singapore) Pte. Ltd., FAS Global, and Liberty International Underwriters Pte. Ltd.

China Business Law Journal: Singapore Team Leads Deal of the Year

Morgan Lewis has been recognized by China Business Law Journal in its Deals of the Year 2016 report for our role as Singapore counsel to China International Capital Corp. (Singapore) Pte. Ltd. We represented the client as the sole issue manager, global coordinator, book-runner, and underwriter in the fully underwritten initial public offering (IPO) of China Jinjiang Environment Holding Co. Ltd. on the mainboard of the Singapore Exchange on August 3. The S$197 million ($146.6 million) IPO is the second non–real estate investment trust IPO on the Singapore Exchange's mainboard in 2016.

The representation was named by the Vantage Asia publication among the 30 outstanding deals that affected the Chinese market in 2016 based on the sophisticated efforts undertaken by legal counsel. Our team on the deal was led by CBT partner Bernard Lui (SI), and associates Ting Chan (SI) and Calvin Soon (SI).

Orientation Hosted for Arrivals in Hong Kong, Shanghai , Beijing

Senior HR Director Sandra Butler (LO) and Director of Professional Development Noelani Walser (LA) visited the Hong Kong office on February 27-28 and the Beijing office on March 1-3 to host an orientation on Morgan Lewis for our Greater China arrivals. Sandra introduced the new teams to our firm's history, culture, leadership, practices, departments, and employee benefits. Lani discussed firmwide training, development programs for lawyers, and pro bono projects. Sandra and Lani also hosted an evening cocktail event for our new colleagues, who gave positive feedback and are particularly looking forward to the buddy program and upcoming training and academy programs.

Welcome: New Teams in Hong Kong, Mainland China

Morgan Lewis has formally welcomed our new colleagues in Hong Kong, Beijing, and Shanghai. Our plans to establish a significant new presence in China were unveiled in February. The arrival of this corporate, capital markets, mergers and acquisitions, and private equity team represents another very significant step in expanding our services to our Asia-based clients and those wishing to do business there. With the addition of these 40 new lawyers and legal professionals, we have more than doubled the size of our previously established China team.

HEADLINE MATTERS

HT: Singapore Court Issues Guidelines on Landmark Hacking Appeal

The Singapore Court of Appeal, the country's highest court, issued its long-awaited written judgment in a case where hacked attorney-client communications were placed on WikiLeaks. In the case, our client Italian security technology company HT Srl successfully obtained an order restraining its opponents from using such material. The lengthy written judgment in *Woon v. HT* was issued on March 30, and has already been widely studied and commented on.

In the judgment, the Court of Appeal unanimously agreed with our client that the court had the jurisdiction to restrain use of privileged attorney-client communications that had been hacked. The court ruled that information posted on the internet could still remain confidential. Although the information had been posted on WikiLeaks, it had not been shown that it had actually been widely accessed by the public. The Court of Appeal placed weight on a number of factors, including the fact that the hacked information contained express statements asserting confidentiality, and that Morgan Lewis had acted swiftly to prevent the opponent from admitting the hacked information into court. The Court of Appeal dismissed allegations that the material contained evidence of wrongdoing, and should therefore be admitted, ruling there was no basis for making such allegations.

The team was led by litigation partner Adrian Tan (SI), with assistance from Litigation associates Jean Wern Yeoh (SI) and Hari Veluri (SI).

Arup Singapore: Conclusion of Landmark Trial

Morgan Lewis recently completed a nearly 60-day trial in the High Court of Singapore for longtime client Arup Singapore Pte. Ltd. on liability issues relating to the fall of two 500-pound granite panels off a 45-story office building in Singapore's business district. We are currently awaiting a decision (The trial ended in early March. Is decision still pending?). Our client, one of the largest professional engineering firms in the world, was joined as a defendant and third party in the lawsuit. Five parties represented by four legal teams, including two senior counsel (Singapore's equivalent of Queen's Counsel), sought to recover about S$150 million ($106 million) in damages for costs associated with the replacement of the defective facade and loss of rental income during the rectification work by our client.

The liability phase of the trial involved our trial team cross-examining 16 factual witnesses and an additional 16 expert witnesses including stone facade, geotechnical, and vibration experts, and quantity surveyors. With 21 lawyers on record at one time and close to 60 days of hearings over three years, it is a landmark trial and likely to go

down as one of Singapore's longest civil trials even before the quantum of damages tranche of the trial is heard.

The trial team was led by Litigation partners Adrian Tan (SI) and Daniel Chia (SI), with assistance from Litigation associates Amarjit Kaur (SI), Thenuga Vijakumar (SI), Yanguang Ker (SI), and Kenneth Kong (SI).

Hatten Land: Listing on Singapore Exchange

Morgan Lewis acted as transaction counsel in the listing of Sky Win Management Consultancy Pte. Ltd. via a reverse takeover of VGO Corp. Ltd. Upon completion of the reverse takeover, VGO was renamed Hatten Land Ltd., a leading property developer in Malaysia with a current property development portfolio of four key assets valued at about $427.3 million and access to more than 20 prime land bank and development rights for future development.

Hatten Land's shares debuted on the Catalist board of the Singapore Exchange on February 28 at the opening price of S$0.295 ($0.21), a 5.36% premium over the offer price of S$0.28 ($0.20) from its compliance placement. Its compliance placement involved 95 million new shares offered, raising gross proceeds of S$26.6 million ($18.8 million). As of February 28, the market capitalization of Hatten Land is approximately S$440.5 million ($311.7 million).

Hatten Land intends to use part of its compliance placement proceeds to fund corporate activities, including acquisitions, joint ventures and/or strategic alliances, and for general working capital purposes. The company announced recently that it has signed a memorandum of understanding to acquire five development sites and entered into conditional sale and purchase agreements for two of them. The team was led by litigation partner Adrian Tan (SI), with assistance from litigation associates Pei Ching Ong (SI), Jean Wern Yeoh (SI), and Hari Veluri (SI).

The team was led by CBT partner Bernard Lui (SI), associates Zi Han Shiah (SI), Sophia Tan (SI), and Aaron Leong (SI).

NETS: Acquisitions of Oversea-Chinese Banking Subsidiaries

We represented Network for Electronic Transfers (Singapore) Pte. Ltd. (NETS), Singapore's leading payment network operator, in its proposed acquisition of the entire share capital of Banking Computer Services Pte. Ltd. (BCS) and BCS Information Systems Pte. Ltd. (BCSIS). BCS and BCSIS are currently wholly owned by Oversea-Chinese Banking Corp. Ltd., one of Singapore's largest local banks. The share sale agreement was signed on April 11 for a cash consideration of S$38 million ($27.2 million).

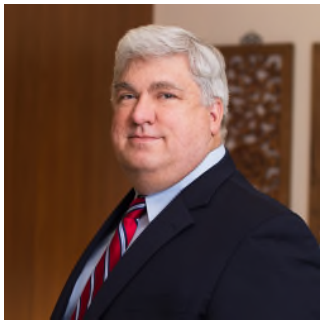
BCS operates the Singapore Automated Clearing House and implements, manages, and operates clearing and payment infrastructure in Singapore, including Fast and Secure Transfers, eGIRO, Cheque Truncation System, and

Certificate Authority. BCSIS is a systems integrator for real-time payment infrastructure and its Real-Time, Bulk Payment, Cheque Truncation solution, and Gateway systems are relied upon by clients from Bahrain to Brazil, China, Hong Kong SAR, Indonesia, Malaysia, Singapore, Sri Lanka, Taiwan, and Thailand.

The team was led by IM partner Daniel Yong (SI), with assistance from IM associate Yu Kwang Lui (SI) and CBT associate Gabriel Lee (SI). CBT partner Elizabeth Kong (SI) advised on the competition law aspect.

COFFEE WITH . . .

Mitch Dudek



Mitch Dudek is the Managing Partner of Morgan Lewis's Shanghai office.

After growing up in a small rural Ohio town, I moved to College Station, Texas, for college and graduate school at Texas A&M University, before returning to Columbus, Ohio, for law school at The Ohio State University, with summers throughout the 1980s spent studying law, business administration, and the Chinese language at a number of leading universities in greater China, including Beijing University, Fudan University, Qinghua University, Xiamen University, Hong Kong University, and National Taiwan University.

I visited China in the early 1980s and was hooked—the country was just opening up and trying to move past the closed-door policies and turbulence of the Cultural Revolution, which, many of us forget, only ended in the late 1970s. While China had more than its fair share of economic and social problems at the time, there was already an air of excitement among an increasing number of local Chinese—particularly college students—that things could only get better. And did they ever get better. At that time, nobody, including me, could have imagined the modern prosperous China that we see today.

Unlike many of my good friends and colleagues at Morgan Lewis and elsewhere, I did not come from a family of lawyers, nor did I ever dream about becoming a lawyer. I studied industrial engineering as an undergraduate student, and since I had always been rather entrepreneurial, I decided to attend graduate business school. The two-year MBA program came with an added bonus of enabling me to spend two additional summers in China.

I spent the summer of 1985 studying business at Qinghua University in Beijing, where we spent the entire summer studying China's "five-year plan," which was the country's only predictable source of economic activity at the time. As China was still a top-down command economy, its business schools didn't teach capitalist-style market economics or business at the time. At the end of the program, we were encouraged to go back to our respective home countries to help convince foreign companies to invest in those projects specifically delineated for foreign investment in the national economic plan.

Foreign investment into China remained anemic at under $1.7 billion for all of 1985, and at that time China still prohibited virtually all types of private investment in companies by Chinese individuals. But the country was spending heavily on infrastructure development, and small-scale individual (ge-ti-hu) market-based business activities were already being tolerated, and in some cases, even encouraged. Virtually all of the foreign investors I met along the way remained optimistic that China was on the cusp of a great awakening, and the US and British lawyers in particular seemed to have the most exciting jobs. They were bridging the gap between the market-driven business objectives of western investors on the one hand and the reality of a China just coming out of deep socialist central planning on the other. The opportunity to spend three more summers in China, while preparing for what I thought would be an exciting career there, convinced me that I should study law.

I had the privilege of studying at Beijing University while I was completing law school in the spring of 1989. In February 1989, I interpreted for CBS News anchors and journalists including Dan Rather, Charles Kuralt, and Susan Spencer during the summit meeting of the late China Paramount Leader Deng Xiaoping and then-US President George H.W. Bush, and again later that spring during what was expected to be the historic thawing of superpower relations when Deng Xiaoping met with then-Soviet Union President Mikhail Gorbachev. What started as student-led protests prior (but initially unrelated) to Gorbachev's visit spun out of control by late spring, and the events surrounding June 4 made it impossible for me to continue studying or working in mainland China for the next several years.

With a US law degree in hand, I moved to Taiwan in the fall of 1989 to continue my studies at National Taiwan University's law school, and for a period I interpreted for Mike Wallace of CBS's *60 Minutes*. My first full-time legal job was as an associate in the newly opened Taipei, Taiwan, office of an international law firm in the fall of 1990, from which I circled around to the firm's Hong Kong office in 1993, and then moved back to Shanghai permanently in 1999 to set up that firm's first mainland China office. Morgan Lewis partner Alex Wang joined me soon after that, followed by Todd Liao, and then Lesli Ligorner, Cindy Pan, and Eddie Hsu. It has been a wonderful career journey, full of unexpected twists and turns.

As one of the few Americans living and working in China in the 1980s and 1990s, I was honoured to be invited to all kinds of interesting events and gatherings, such as being saluted by literally hundreds of Chinese navy officers as I walked along the Naval base parade route to join a dinner party jointly hosted by the commanders of the US Seventh Fleet and China's People's Liberation Army (PLA) Navy aboard the Seventh Fleet's command ship, USS Blue Ridge, docked in Shanghai.

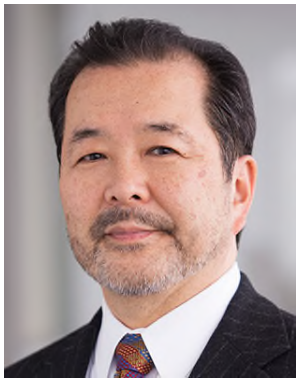
Or the private dinner I had with the late US Supreme Court Justice Antonin Scalia and his wife, Maureen, where we swapped stories about life in Ohio. Or the time I discussed the building of the George Bush Presidential Library at my alma mater, Texas A&M University, with President Bush himself. I also

had the opportunity to meet many of the world's titans of industry and commerce personally as they came to China one by one, often meeting them along with their senior management teams on their very first visits to China.

But one of my most memorable experiences is when my mother, Sharon, and I spent a day touring Shanghai with former US Supreme Court Justice Sandra Day O'Connor and her husband, John. After bumping into Justice O'Connor on a domestic flight in China, and noting that I was scheduled to meet her at a dinner party organized by the US Consul General in Shanghai the next evening in my then-capacity as China managing partner for one of the largest American law firms, she mentioned that she and John had no plans for the following day in Shanghai, and asked if Sharon and I would be interested in showing them around the city. Naturally, we agreed, so early the next morning, off we went for a day filled with unscheduled tours, fun, and food with Justice O'Connor and her husband, John. An unforgettable experience, just ask my mom; she still talks about it!

THE LAST WORD

The Last Word is a regular segment giving you a lighthearted insight into the personalities at Morgan Lewis.



"Are you Japanese or American?" "I'm a New Yorker!"

That's my answer to a question I'm often asked in Japan when my conversation counterpart discovers I'm a dual national. I look Japanese, speak Japanese (more or less I have to add, if I'm being honest), have a fully Japanese name (with difficult Chinese characters! 渡邉嗣道), and can act appropriately Japanese when required. But my English is flawlessly American and my apparel choices are, I am told, occasionally too loud or too casual to be truly Japanese.

"I'm a New Yorker" is a good answer because everyone has their own preconception of what that means; the questioner is embarrassed to probe further lest his perception be revealed as simplistic, and the conversation quickly moves to other topics. But what is a New Yorker really? I grew up in Brooklyn, one of the five boroughs that comprise New York City, went to elementary and middle school there, and spent the first 20 years of my professional life in Manhattan. Although I studied here and there in the UK and Japan for short spells at various stages of my adolescence, in my mind New York has always been home. But being a New Yorker describes how you view the environment around you more than just your address.

A New Yorker luxuriates in the mix, as well as the clash, of ethnicities, nationalities, cultures, cuisines, religions, and languages that stimulate the eye, the mind and the soul 24/7, keeping you alert and your mind engaged. When I travel around Tokyo, I don't listen to music or talk on my mobile, not just to enjoy Tokyo's hustle and bustle but also perhaps out of habit from my years of navigating the subways and streets of New York as a youth when being aware of your immediate surroundings was important to ensuring your physical safety.

Non-New Yorkers complain that the city and its denizens are too busy, too rushed, and too disorganized, and ultimately that the experience is too exhausting. And yes, it's true that, without energy and confidence, life in New York can be enervating. But if you embrace it, the Big Apple offers limitless choices for personal, social and professional exploration and development.

On a recent New York subway ride in the early morning hours after a late night out, my fellow passengers included many service industry workers going home after a long day. While English was not the native language for most, the car was abuzz with conversation in numerous varieties of accented English, with occasional words and phrases in Spanish, Chinese,

Russian, Korean and other languages, about the universal topics of jobs, politics, sports, families and the weather. Truly a melting pot of people from all corners of the world, all having the concerns and worries common to peoples everywhere. Many of them came to New York, just as my parents did, for the opportunities it offers and no doubt were proud to be New Yorkers, just as I am.

Tsugumichi Watanabe, Managing Partner, Tokyo

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