

**Take Home Exam: University of Houston Law Center, January 2013. Professor Walker's class on Transnational Legal Practice.**

**Examination:** The examination will be administered on a take home basis. The examination is based on the course work. However, you are encouraged to undertake further research. The maximum total limit on answers (excluding footnotes) is 5000 words. You have until COB 31 January 2013 to complete the take home exam. Hard or soft copies of your exam paper should be delivered to Maria Lopez at the Law School.

**Fact Pattern:** You are an associate in a Houston law firm. Your firm acts for a number of experienced property developers in Texas. One of these firms is called, "Pacrim Properties" (PP). PP holds cash in bank of USD500 million and other assets. Amongst its other assets is a world-wide patent for a construction system that has not been licensed into Australia or New Zealand.

PP has undertaken market research on the property market in Australia and New Zealand. It has discovered that a number of wealthy USA citizens are investing in residential property in the South Island of New Zealand near the summer and winter resort of Queenstown. It has also discovered that there is USA demand for residential properties in Queensland, Australia, where prices for beachfront property are much lower than in the USA. PP has decided to enter these markets by buying land and building residential properties for sale or lease. PP's ultimate aim is to make a profit over a 3-5 year time frame.

PP wants to incorporate one company in Australia and one company in New Zealand to hold its property acquisitions. PP seeks your law firm's advice and specifically requests that you blend "commercial" advice with your legal advice.

The request for advice has come to a partner in the firm. The partner has asked that you do the preliminary work on the file.

Question One (10 marks): Can you advise PP direct on foreign law? If not, why not? What is the proper course of action? Write a short internal memo to partner on this point. Suggested length of answer: 1 page.

Question Two (30 marks): Write a *brief* internal memo to partner on the following matters as regards each jurisdiction: (1) the preferred type of company to use; (2) the incorporation process including the decision on mode of shareholding; (3) the significance or otherwise internal governance rules of each company bearing in mind the commercial realities; (4) the appointment of directors, (5) the initial capitalisation of each company as regards the debt/equity split and thin capitalisation and (6) FIRB and OIC consents. Suggested length of answer: 4 pages.

Question Three (this question is in two parts for a total of 40 marks): Time passes. You are now a senior associate in the same Houston law firm. PP's property acquisitions and construction projects in Australia and New Zealand have proved a success.

Facts: Assume a combined balance sheet of the Australian and New Zealand companies that shows AUD25m equity and AUD75m debt against assets (land and real property) of AUD200 million. The assets are supported by registered valuations. Assume also that the real estate assets can support an annual cash flow of at least AUD25m. No IP appears on the books of either company at present although note that the construction of properties in Australia and Zealand employed the IP of the parent company.

Question 3A: A "trade sale" is a possibility. Discuss the advantages of a trade sale as opposed to a listing. Discuss the overseas Chinese business networks in your answer. Suggested length of answer: 2 pages (20 marks).

Question 3B: In the event, the directors of PP decide that it is now a good time to list their companies and raise further capital while retaining control of the newly listed entities. PP now contemplates listing the two companies in Australia and New Zealand or in one of these countries pursuant to the mutual recognition regime. Ideally, PP seeks to recoup expenditures of AUD100m and obtain a control block of shares in the listed entity. Advise PP on structuring the transaction and listing (20 marks). Suggested length of answer: 3 pages.

Question 4 (20 marks): Assume PP has achieved a listing on the ASX (Listco). Listco engages an full service investment bank (Megabank) in Australia to advise on a private placement. Megabank's corporate advisory group (CAG) has the carriage of the mandate. Megabank constructs an internal "Chinese Wall" to insulate the activities of the CAG from Megabank's share trading group (STG). The CAG identifies a candidate (Investco) for the placement and negotiations between Listco and Investco occur. Investco is controlled by a number of ultra high net worth family offices from Asia.

Question 4A: Should Listco advise the market of the negotiations? (5 marks).

Subsequently, Listco and Investco enter into a binding agreement for a private placement.

Question 4B: Should Listco advise the market of the concluded agreement? (5 marks).

Prior to the conclusion of the agreement between Listco and Investco, Alex, a member of the CAG, has lunch with Fred, a member of the STG and a number of their friends from other broking houses. At the end of a long lunch, Alex tells those present at the lunch that Listco is about to enter into a private placement agreement with Investco and that, in his view, Listco is a "buy". In the result: (a) Fred does not buy shares in Listco; (b) none of the brokers from other broking houses buy shares; (c) the waiter at the lunch table buys shares in Listco the day after the lunch when the deal is announced in the newspapers and (d) one of the brokers at the lunch mentions Alex's comments to a friend who buys shares in Listco the same day.

Question 4C: Have any of the above parties violated the Australian prohibition on insider trading? (10 marks).

Suggested length of answer: 2 pages.

Note: The *maximum* length of your answer should be 20 A4 pages at 250 words per page (5000 words). You should be able to cover all matters in about 15 pages. Brevity is encouraged.

## **RECEPTION OF ENGLISH LAW**

A note on terminology: the laws we are examining all flow from England. England later became part of Great B