

Index

AGREEMENT FOR PURCHASE AND SALE

Generally, § 9:15 et seq.
Bulk Sales Act, § 9:33
Delivery, § 9:19
 Sample Clause, § 9:19
Description of Assets, § 9:16
 Sample Clause, § 9:16
Governing Law, § 9:32
Indemnity, § 9:31
Pricing, § 9:17
 Allocation of Purchase Price,
 § 9:18
 Asset Valuation, § 9:17
 Sample Clause, § 9:17
Representations and Warranties,
 § 9:20
 Completeness, § 9:23
 Condition of Assets, § 9:22
 Sample Clause, § 9:22
 Contracts, § 9:25
 Disclaimer, § 9:27
 Sample Clause, § 9:27
 Encumbrances, § 9:24
 Sample Clause, § 9:24
 Knowledge, Information and
 Belief, § 9:26
 Non-Waiver, § 9:30
 Sample Clause, § 9:30
 Power and Authority, § 9:21
 Sample Clause, § 9:21
 Survival, § 9:28
 Title, § 9:24
 Sample Clause, § 9:24
 Transfer of Title, § 9:29
 Sample Clause, § 9:29
Schedules, § 7:5

AGREEMENT FOR PURCHASE AND SALE—Cont'd

Termination
 Assignment-Back, § 9:14
 Customer, § 9:3
 Service Provider, § 9:5

AGREEMENTS

Generally, § 5:1
Asset Purchase Agreement
 Generally, § 5:6
 See also AGREEMENT FOR
 PURCHASE AND SALE
Employment Agreement
 Generally, § 5:7
 See also EMPLOYMENT MAT-
 TERS AGREEMENT
Framework, § 5:2
 Document Preparation, § 5:3
 Unique Elements, § 5:2
Master Agreement
 Generally, § 5:4
 See also MASTER AGREE-
 MENT
Real Estate Agreement, § 5:8
Schedules, § 7:1
Services Agreement
 Generally, § 5:5
 See also SERVICES AGREE-
 MENT

ASSET PURCHASE AGREEMENT

See AGREEMENT FOR
PURCHASE AND SALE
Sample, **App D**

ASSET PURCHASE/TRANSFERS

Generally, § 9:1

OUTSOURCING TRANSACTIONS

ASSET PURCHASE/TRANSFERS —Cont'd

Agreements

See AGREEMENT FOR
PURCHASE AND SALE

Allocation of Purchase Price, § 9:18

Bulk Sales Act, § 9:33

Customer Buy-back, § 5:6

Delivery, § 9:19

Due Diligence, § 9:6 et seq.

Inspection, § 9:7

Searches, § 9:8

Third Party Contracts, § 9:8

Encumbrances, § 9:8

Regulatory Issues, § 9:35

Competition Law, § 9:35

Foreign Investment Restrictions,
§ 9:35

Representations and Warranties,
§ 9:20

Tax Issues, § 9:34

Goods and Services Tax, § 9:34

Income Tax, § 9:34

Retail Sales Tax, § 9:34

Third Party Contracts, § 9:10 et
seq.

Adjustments, § 9:13

Assignment, § 9:11

Assignment-Back, § 9:14

Due Diligence, § 9:9

Managed Contracts, § 9:12

AUDITS

Generally, § 10:45

Disclosure Controls and
Procedures, § 14:18

Financial, § 10:45

Independent, § 10:48

Information Security Audits,
§ 14:25

Intellectual Property, § 10:47,
§ 36:20

Litigation, § 10:47

Officer's Certificates, § 10:49

AUDITS—Cont'd

Service Audits, § 12:19

OSFI Guideline, § 12:20

Others, § 12:21

Standards, § 10:48

CICA Internal Control over
Financial Reporting, § 14:18

Third Party Contracts, § 10:47

BANKRUPTCY AND INSOLVENCY

Anti-Assignment Clauses, § 28:7,
§ 28:10

Asset Return, § 28:20

Assignment, § 28:7

Avoiding, § 28:15

Bankruptcy and Insolvency Act
("BIA"), § 28:3

Canada

Canadian Bankruptcy and
Insolvency Law, Generally,
§ 28:2, § 28:6

Companies' Creditors Arrangement
Act ("CCAA"), § 28:4

Confidentiality, § 28:19

Corporations Law, § 28:20

Critical Response Plan, § 28:23

Disclaimer, § 28:7

Avoiding, § 28:16

Intellectual Property Licences,
§ 28:7

Statutory Reforms, § 28:7

Early Warning Mechanisms,
§ 28:14

Eastern Europe, § 21:11 to § 21:13

Employee Issues, § 28:19

Confidentiality, § 28:19

Non-Solicitation, § 28:19

Executory Contracts, § 28:7

Intellectual Property Licences,
§ 28:7, § 28:17

Ipso Facto Clauses, Definition,
§ 28:6

Effectiveness, § 28:13 et seq.,
§ 28:18, § 28:21

United States, § 28:11

**BANKRUPTCY AND
INSOLVENCY—Cont'd**

- Leases, § 28:20
- Letters of Credit, § 28:22
- Liquidation, § 28:3
- Non-Solicitation, § 28:19
- Novation Agreement, § 28:22
- Parental Guarantees, § 28:22
- Partially Performed Contracts,
§ 28:7
- Performance Bonds, § 28:22
- Proposals, § 28:3
- Real Estate, § 28:21
- Receiverships, § 28:5
- Restructuring, § 28:3
- Source Code Escrow, § 28:18
 - Alternatives, § 28:18
 - Deposit Materials, § 28:18
 - Enforceability, § 28:18
 - Escrow Fees, § 28:18
 - Limitations, § 28:18, § 28:23,
§ 28:24
 - Notice Provisions, § 28:18
 - Parties to Agreements, § 28:18
 - Scope of Licence, § 28:18
 - Transition Out, § 28:18
 - Trigger Events, § 28:18
 - Two Party versus Three Party,
§ 28:18
- Stays, § 28:8
 - Avoiding, § 28:14
- Termination
 - Trigger Events, § 28:14, § 28:18,
§ 28:24
- Transition Services, § 28:16
 - Transition-In, § 28:20, § 28:21
 - Transition-Out, § 28:18
- United Kingdom, § 22:98 et seq.
 - Equivalent to Canadian Reorga-
nization Provisions, § 22:99
- United States, § 28:9
 - Anti-Assignment Clauses,
§ 28:10
 - Assignment, § 28:10
 - Bankruptcy, § 28:10, § 28:11

**BANKRUPTCY AND
INSOLVENCY—Cont'd**

- United States, § 28:9—Cont'd
 - Bankruptcy Code, § 28:3
 - Intellectual Property Licences,
§ 28:17
 - Ipsso Facto Clauses, § 28:11,
§ 28:14
 - Reorganization, § 28:10

**BASEL OUTSOURCING
GUIDELINES**

- Generally, App E, § 4:2

BENCHMARKING

- Generally, § 11:1
- Alternatives, § 11:13
 - Gainsharing, § 11:13
 - Sample Clause, § 11:13
- Pricing Review, § 11:13
 - Sample Clause, § 11:13
- Short-Term Deals, § 11:13
- Benchmarking, § 11:7
 - Sample Clause, § 11:7
- Costs, § 11:10
 - Allocation, § 11:10
- Data, § 11:9
 - Sample Clause, § 11:9
- Most Favoured Customer Clause,
§ 11:1
- Peer Group, § 11:8
 - Sample Clause, § 11:8
- Perspectives
 - Consultant, § 11:4
 - Customer, § 11:2
 - Service Provider, § 11:3
- Procedure, § 11:11
 - Sample Clause, § 11:11
- Remedies, § 11:12
 - Adjusting Fees, § 11:12
 - Adjusting Service Levels,
§ 11:12
 - Termination, § 11:12
 - Sample Clause, § 11:12
- Theory, § 11:5

OUTSOURCING TRANSACTIONS

BENCHMARKING—Cont'd

Timing, § 11:6

Sample Clause, § 11:6

BIDDER

Request for Proposal (“RFP”),
§ 3:4

BULGARIA

See EASTERN EUROPE

BULK SALES ACT (ONTARIO)

Generally, § 9:33

BUSINESS CONTINUITY PLAN

See REGULATORY GUIDELINES

BUSINESS PROCESS

OUTSOURCING (“BPO”)

Generally, § 1:3

Service Standards, § 8:6

CASE COMMENTS

De Beers U.K. Ltd. v. Atos Origin
IT Services U.K. Ltd., § 35:9

Re Stelco Inc., § 26:2 et seq.

CHANGE MANAGEMENT

Generally, § 12:11

See also TRANSITION-IN

Elements, § 12:13

Master Agreement, § 6:5

Sample Change Control Process
Schedule, § 11:110

Scope, § 12:12

CIS GENERAL INSURANCE V IBM UK

Background, § 41:2 et seq.

Business Transformation Project,
§ 41:2

Three Phases, Three Agreements,
§ 41:3

Introduction, § 41:1

Issues, § 41:4 et seq.

Breach of MSA Representations
and Warranties, § 41:7

Due Diligence, § 41:8

CIS GENERAL INSURANCE V IBM UK—Cont'd

Issues, § 41:4 et seq.—Cont'd

Breach of MSA Representations
and Warranties, § 41:7
—Cont'd

“Out of the Box” and UK
Compatible, § 41:9

Delays, § 41:4

Invoice

Generally, § 41:10

Amount on Invoice, § 41:14

Formality Requirements,
§ 41:13

Governance Committee’s
Agreement Binding on
Parties, § 41:12

Improper Issuance of, § 41:17

Milestone Document Sign Off
Process, § 41:15

Approval of, § 41:15

Invoicing of, where the
Previous Milestones
not yet Achieved,
§ 41:15

Rights of Termination, § 41:11
Immediate or on Expiration,
§ 41:16

Lessons Learned, § 41:18 et seq.

Agile Projects, Client Require-
ments, § 41:23

Formal Dispute?, § 41:20

Governance Committee’s Agree-
ment Binding on Parties,
§ 41:19

Milestone Payments, Ambiguities
re, § 41:21

“Out of the Box” Software
Meaning, § 41:24

Right to Terminate, Immediate or
on Expiration, § 41:25

Termination for Non-Payment,
Ironclad Provisions for,
§ 41:22

CLAUSES, SAMPLE

Agreement for Purchase and Sale

Condition of Assets, § 9:22

CLAUSES, SAMPLE—Cont’d

Agreement for Purchase and Sale

—Cont’d

Delivery, § 9:19

Description of Assets, § 9:16

Disclaimer, § 9:27

Encumbrances, § 9:24

Non-Waiver, § 9:30

Power and Authority, § 9:21

Title, § 9:24

Transfer of Title, § 9:29

Valuation, § 9:17

Asset Purchase Agreement, **App D**

Benchmarking

Alternatives

Gainsharing, § 11:13

Pricing Review, § 11:13

Benchmark, § 11:7

Data, § 11:9

Peer Group, § 11:8

Procedure, § 11:11

Termination, § 11:12

Timing, § 11:6

Change Control Process Schedule,
§ 11:110

Employment Matters Agreement,
App C

Fee Schedule, § 9:180

Governance Schedule, § 11:100

Master Agreement, **App A**

Services Agreement, **App B**

Tax Issues, § 16:50

Termination

Breach, for, § 13:13

Convenience, for, § 13:12

Expiration of Term, § 13:17

Extension, § 13:17

Insolvency, for, § 13:14, § 28:14

Partial Termination, § 13:15

Restrictions on Dispositions/

Acquisitions, § 13:16

Restrictions on Encumbrances,
§ 13:16

COMPETITION LAW

Asset Transfers, § 9:35

Transition Issues, § 13:9

CONFIDENTIALITY

Generally, § 14:3

Breach of Confidence, § 14:3

CONSUMER PROTECTION

Generally, § 14:11

**CONTRACT A/CONTRACT B
ANALYSIS**

See REQUEST FOR PROPOSAL
("RFP")

CONTRACTS

See AGREEMENTS

**CORPORATE SOCIAL
RESPONSIBILITY**

Generally, § 33:2

Advisors, § 33:13

Customers, § 33:11

Environmental Issues, § 33:5

Global Standards, § 33:7

Providers, § 33:12

Social Issues, § 33:6

Sustainability, § 33:3

**COUNTY OF ORANGE VS. TATA
CONSULTANCY SERVICES
LTD.**

Background, § 38:4

Amendments, § 38:7

Development, § 38:6

Negotiations, § 38:5

Preparation, § 38:4

Termination, § 38:8

County's Claims, § 38:13 et seq.

Breach of Contract, § 38:21

Fraudulent Concealment, § 38:22

Misrepresentations

Generally, § 38:14

Amendment, § 38:17

Cost, § 38:16

Experts, § 38:20

OUTSOURCING TRANSACTIONS

COUNTY OF ORANGE VS. TATA CONSULTANCY SERVICES LTD.—Cont’d

County’s Claims, § 38:13 et seq.
—Cont’d

Misrepresentations—Cont’d

Performance, § 38:14

Personnel, § 38:19

Quality, § 38:18

Timeline, § 38:15

Damages, § 38:23

Lessons Learned, § 38:25 et seq.

Customer Counsel, § 38:26

Provider counsel, § 38:27

Strategies of the Case, § 38:24

CROSS-BORDER OUTSOURCING

Canadian Human Resources Issues,
§ 19:8 et seq.

Employment Issues

Generally, § 19:8

Immigration Issues, § 19:10

Moral Rights, § 19:11

Pensions Issues

Generally, § 19:9

Federalism, § 19:2

OSFI Guideline, § 9:4 et seq.

Privacy, § 19:4 et seq.

Patriot Act, § 19:5

British Columbia, § 19:5

Effect, § 19:5

Federal, § 19:6

Future Restrictions, § 19:7

Private Sector, § 19:4

Public Sector, § 19:4

Quebec Issues

Generally, § 19:13

See also QUEBEC ISSUES

Tax Issues

Generally, § 19:12

See also TAX ISSUES

CUSTOMER

Generally, § 1:7

CUSTOMER—Cont’d

Counsel, § 38:26

Contract, § 38:26

Prospective Warranties and
Covenants, § 38:26

Exit Plan, § 38:26

Timeline, § 38:26

Structure, § 38:26

Perspectives, § 1:7

Benchmarking, § 11:2

General, § 1:7

Pricing and Payment, § 10:2

Schedules, § 7:3

Tax Issues, § 17:2

Transition, § 12:3

Records Retention, § 10:41

Request for Proposal (“RFP”)

Advantages and Disadvan-
tages, § 3:3

CZECH REPUBLIC

See EASTERN EUROPE

DAMAGES

See also RISK ALLOCATION

County of Orange vs. Tata
Consultancy Services Ltd. et.
al., § 38:23

Master Agreement, § 6:14

Quebec, § 18:19

DE BEERS U.K. LTD. V. ATOS ORIGIN IT SERVICES U.K. LTD

See CASE COMMENTS

DISCLAIMER

Generally, § 6:11

See also RISK ALLOCATION

Agreement of Purchase and Sale,
§ 9:27

Sample Clause, § 9:27

Master Agreement, § 6:12

DISPUTE RESOLUTION

Generally, § 12:22

Arbitration, § 12:26

DISPUTE RESOLUTION—Cont'd

Continuation of Services, § 12:28
 Dispute Management, § 12:23
 Eastern Europe, § 21:15
 Expedited Disputes, § 12:27
 Internal Procedure, § 12:26
 Payment, § 10:50

DUE DILIGENCE

Asset Transfers, § 9:6 et seq.
 Inspection, § 9:7
 Searches, § 9:8
 Third Party Contracts, § 9:8
 Employment Issues, § 15:2
 Information Security, § 14:26
 Offshoring, § 20:16
 Request for Proposal, § 3:5, § 3:11

EASTERN EUROPE

Bulgaria
 Generally, § 21:4, § 21:17
 Arbitration, § 21:15
 Bankruptcy
 Enforceability of Licence,
 § 21:13
 Software Escrow, § 21:12
 Choice of Laws, § 21:8
 Customer Employee Transfer,
 § 21:8
 Damages
 Liquidated Damages, § 21:14
 Punitive Damages, § 21:14
 Economy, § 21:4
 Employee Transfer, § 21:7
 Intellectual Property, § 21:10
 Copyright, § 21:10
 Economic Rights, § 21:10
 Fair Use, § 21:10
 Moral Rights, § 21:10
 Transferability, § 21:10
 Labour Laws, § 21:8
 Legal System, § 21:4
 Non-competition Clauses, § 21:9
 Non-solicitation Clauses, § 21:9

EASTERN EUROPE—Cont'd

Bulgaria—Cont'd
 Outsourcing Opportunities,
 § 21:4
 Privacy/Data Protection, § 21:11
 Secondment, § 21:7
 Taxes, § 21:4
 Tax Treaties, § 21:7, § 21:8
 Unusual Laws, § 21:16
 Visas, § 21:7, § 21:8
 Wages, § 21:3
 Czech Republic
 Generally, § 21:3, § 21:17
 Arbitration, § 21:3, § 21:15
 Bankruptcy
 Enforceability of Licence,
 § 21:13
 Software Escrow, § 21:12
 Customer Employee Transfer,
 § 21:8
 National Security Issues,
 § 21:8
 Damages
 Actual Damages, § 21:14
 Contractual Damages, § 21:14
 Liquidated Damages, § 21:14
 Economy, § 21:3
 Employee Transfer, § 21:7
 Intellectual Property, § 21:10
 Copyright, § 21:10
 Economic Rights, § 21:10
 Fair Use, § 21:10
 Moral Rights, § 21:10
 Transferability, § 21:10
 Labour Laws, § 21:8
 Legal System, § 21:3
 Non-competition Clauses, § 21:9
 Non-solicitation Clauses, § 21:9
 Privacy/Data Protection, § 21:11
 Secondment, § 21:7
 Taxes, § 21:3
 Tax Treaties, § 21:7
 Unusual Laws, § 21:16
 Visas, § 21:7, § 21:8
 Wages, § 21:3, § 21:8

OUTSOURCING TRANSACTIONS

EASTERN EUROPE—Cont'd

Hungary

- Generally, § 21:5, § 21:17
- Arbitration, § 21:5, § 21:15
- Bankruptcy
 - Enforceability of Licence, § 21:13
 - Software Escrow, § 21:12
- Customer Employee Transfer, § 21:8
- Damages
 - Liquidated Damages, § 21:14
- Economy, § 21:5
- Employee Transfer, § 21:7
- Intellectual Property, § 21:10
 - Copyright, § 21:10
 - Economic Rights, § 21:10
 - Fair Use, § 21:10
 - Moral Rights, § 21:10
 - Patents, § 21:10
 - Trade-marks, § 21:10
 - Transferability, § 21:10
- Labour Laws, § 21:8
- Legal System, Generally, § 21:5
- Non-competition Clauses, § 21:9
- Non-solicitation Clauses, § 21:9
- Privacy/Data Protection, § 21:11
- Secondment, § 21:7
- Taxes, § 21:8
 - Tax Treaties, § 21:7
- Unusual Laws, § 21:16
- Visas, § 21:7, § 21:8
- Wages, § 21:8
- Workforce, § 21:5

Russia

- Generally, § 21:6
- Arbitration, § 21:15
- Bankruptcy
 - Enforceability of Licence, § 21:13
 - Software Escrow, § 21:12
- Customer Employee Transfer, § 21:8

EASTERN EUROPE—Cont'd

Russia—Cont'd

- Damages
 - Actual Damages, § 21:14
 - Statutory (Pre-established) Damages, § 21:14
- Economy, § 21:6
- Employee Transfer, § 21:7
- Intellectual Property, § 21:10
 - Copyright, § 21:10
 - Fair Dealing, § 21:10
- Labour Laws, § 21:8
- Legal System, § 21:6
- Non-competition Clauses, § 21:9
- Non-solicitation Clauses, § 21:9
- Privacy/Data Protection, § 21:11
- Return on Investment ("ROI"), § 21:6
- Secondment, § 21:7
- Special Economic Zones, § 21:6
- Taxes, § 21:8
 - Tax Treaties, § 21:7
- Unusual Laws, § 21:16
- Visas, § 21:7
- Workforce, § 21:6

EFFORTS

- See RISK ALLOCATION

EMPLOYMENT ISSUES

- Generally, § 15:1
 - See also UNITED KINGDOM
- TUPE
- Cross-border Issues, § 19:8
- Due Diligence, § 15:2
- Employment Matters Agreement
 - See EMPLOYMENT MATTERS AGREEMENT
- Immigration, § 19:10
- Non-Unionized Employees, § 15:4
 - Constructive Dismissal, § 15:4
 - Employee Termination, § 15:4
 - Notice, § 15:4
 - Severance, § 15:4
- Employment Agreements, § 15:4

EMPLOYMENT ISSUES—Cont'd

- Non-Unionized Employees, § 15:4
 - Cont'd
 - Employment Standards Acts, § 15:4
- Unionized Employees, § 15:3
 - Collective Agreements, § 15:3
 - Contracting Out, § 15:3
 - Labour Code, § 15:3
 - Labour Relations Acts, § 15:3
 - Public Sector, § 15:3
 - Strikes and Lockouts, § 15:3
 - Successorship, § 15:3

**EMPLOYMENT MATTERS
AGREEMENT**

- Generally, § 5:7
- Sample, App C
- Schedules, § 7:5

ERP IMPLEMENTATION

- Generally, § 44:10, § 44:130
- Customer Shareholder Perspective, § 44:20
- Failure of, § 44:120
- Lachman v. Revlon
 - Class Action, § 44:90
 - Economic Harms, § 44:110
 - Overview, § 44:30, § 44:40
 - Risk Disclosure, § 44:100
 - SEC Filings, § 44:60, § 44:70, § 44:80

EXIT STRATEGY

- See TERMINATION

EXTRAORDINARY EVENT

- See FORCE MAJEURE

FAIRNESS

- Request for Proposal (“RFP”), § 3:8

FORCE MAJEURE

- Generally, § 43:1, § 43:2, § 43:18
- Asserting Force Majeure, Process for, § 43:9

FORCE MAJEURE—Cont'd

- Definition, § 43:3
 - Carve Outs from, § 43:4
- Ending Force Majeure Period, Process for, § 43:10
- Extraordinary Event, § 43:13
 - Asserting, Process for, § 43:14
 - Fees, § 43:17
 - Measures Triggered by, § 43:15
 - Period, § 43:16
- Reciprocity, § 43:5
 - Customer Obligations, § 43:5
 - Obligation to Pay, § 43:7
 - Obligation to Purchase, § 43:6
- Right to Terminate, § 43:12
- Try to Perform, § 43:11

GAINSHARING

- Generally, § 10:24
- Benchmarking, Alternative to, § 11:13
 - Sample Clause, § 11:13
- Pricing, § 10:24
- Services Agreement, § 8:13

GOOD FAITH

- Request for Proposal (“RFP”), § 3:8

GOVERNANCE

- Generally, § 12:7
- Committees, § 12:10
- Elements, § 12:8
- Goals, § 12:7
- Key Positions, § 12:9
 - Project Manager, § 12:9
 - Relationship Manager, § 12:9
 - Transition Manager, § 12:9
- Relationship Review, § 34:9
- Sample Governance Schedule, § 11:100

HUNGARY

- See EASTERN EUROPE

INDEMNIFICATION

- See also RISK ALLOCATION

OUTSOURCING TRANSACTIONS

INDEMNIFICATION—Cont'd

- Breach of Contract, § 32:6
- Excluding Infringement of Patent Claims, § 32:9
- Geographic Scope of Intellectual Property Claims, § 32:8
- New Trends, § 32:2
- Privacy Claims, § 32:7
- Sample Clause, § 32:13

INDEMNITY

- Generally, § 6:11
- See also RISK ALLOCATION
- Agreement of Purchase and Sale, § 9:31
- Payment Disputes, § 10:54
- Services Agreement, § 8:24

INDIA

- Choice of Law, § 23:14, § 23:14 et seq.
- Competition Law Issues, § 23:26 et seq.
- Anti-Competitive Agreements, § 23:27
- Horizontal Agreements, § 23:28
- Vertical Agreements, § 23:29
- Contract Law Principles in India, § 23:3 et seq.
- Acceptance, § 23:5
- Breach, § 23:11
- Capacity, § 23:6
- Compensation, § 23:11
- Consideration, § 23:7
- Free Consent, § 23:8
- Indemnity, § 23:12
- Liability, Limitations on, § 23:13
- Offer, § 23:4
- Performance, § 23:10
- Representations, § 23:9
- Warranties, § 23:9
- Data Protection Considerations, § 23:30 et seq.
- Clarification Issued on Applicability of IT Rules, § 23:33

INDIA—Cont'd

- Data Protection Considerations, § 23:30 et seq.—Cont'd
- Rules, § 23:32
- Dispute Resolution, § 23:14 et seq., § 23:15
- Employment Issues, § 23:16 et seq.
- Contract Labour Issues, § 23:17
- Immigration Considerations, § 23:19
- Redundancy in Cases, § 23:18
- Social Security Considerations, § 23:19
- History, § 23:1
- Legal and Legislative System in India, § 23:2
- Privacy Considerations, § 23:30 et seq.
- Clarification Issued on Applicability of IT Rules, § 23:33
- Data Protection Rules, § 23:32
- Taxation Issues, § 23:20 et seq.
- Evolution of Tax Laws, § 23:21
- Exceptions to the Rule of Permanent Establishment, § 23:23
- Morgan Stanley Case, § 23:24L3
- Permanent Establishments, § 23:22
- Service Tax Implications, § 23:25
- Taxation of Captive Outsourcing Entities, § 23:24

INFORMATION SECURITY

- Generally, § 14:1
- Clauses, § 14:26
- Audit, § 14:26
- Confidentiality, § 14:26
- Due Diligence, § 14:26
- Indemnification, § 14:26
- Information Security Benchmarks, § 14:26
- Insurance, § 14:26
- Limitation of Liability, § 14:26
- Privacy, § 14:26

INFORMATION SECURITY

—Cont’d

- Clauses, § 14:26—Cont’d
 - Representations and Warranties, § 14:26
 - Testing, § 14:26
- Compliance, § 14:19 et seq.
 - Audit, § 14:25
 - Compliance Checklist, § 13:50
 - Information Technology Standards, § 14:24
 - Organizational Measures, § 14:22
 - Physical Measures, § 14:21
 - Reasonableness, § 14:20
 - Technological Measures, § 14:23
- Requirements, § 14:2 et seq.
 - Confidentiality, § 14:3
 - Consumer Protection, § 14:11
 - Corporate Governance, § 14:14
 - Audit, § 14:18
 - CICA Standard, § 14:18
 - Sarbanes-Oxley Act (“SOX”), § 14:15, § 14:17
 - Duty to Notify for Breach of Security, § 14:7
 - Electronic Documents, § 14:12
 - Document Retention, § 14:12
 - Evidence, § 14:13
 - Negligence, § 14:8
 - Canada, § 14:10
 - Invasion of Privacy, Tort, § 14:10
 - Class Actions, § 14:8
 - United States, § 14:9
 - Information Theft and “Special Relationship,” § 14:9
 - OSFI Guideline, § 14:5
 - Privacy, § 14:4
 - Private Sector, § 14:4
 - Public Sector, § 14:4
 - Trade Secrets, § 14:3

INSURANCE

- Additional Insured, § 29:10

INSURANCE—Cont’d

- Additional Named Insured, § 29:11
- Advancement, § 29:13
- Amount, § 6:13
- Bailee Insurance, § 29:2, § 29:4
- Business Interruption Triggers, § 29:2
- Certificate Holder, § 29:9
 - Risks of Being, § 29:15
- Compensatory Damages, § 29:7
- Consent Clause, § 29:6
- Contingent Business Interruption Coverage, § 29:5
- Costs, § 10:27
- Crime, § 29:2
- Criminal, Fraudulent or Dishonest Acts, § 29:2
- Criminal Penalties, § 29:18
- Direct Damage Triggers, § 29:2
- Double Dipping, § 29:11
- Double Indemnity, § 29:11
- Employee Liability, § 29:2
- Employment Practices, § 29:2
- Errors and Omissions, § 29:2
- Excess Policy, § 29:12
- Excise Taxes, § 29:18
- Exclusions, § 29:3 et seq.
 - First Party, § 29:5
 - Third Party, § 29:5
- Fidelity Bond, § 29:2
- First Party Triggers, § 29:2
- Force Majeure, § 29:5
- General Liability, § 29:2
- Guarantees, § 29:2, § 29:20
- Hammer Clause, § 29:6
- Inclusions, § 29:3 et seq.
 - First Party, § 29:4
 - Third Party, § 29:6
- Information Security, § 14:26
- Insurance Certificate, § 29:15
- Intellectual Property
 - Contract Indemnity, § 29:13
 - Patent Infringement/Enforcement, § 29:2, § 29:19

INSURANCE—Cont'd

Letters of Credit, § 29:20
 Loss Payee Provisions, § 29:12
 Managing Outcomes, § 29:13
 Master Agreement, § 6:13
 Material Failure to Perform, § 29:2
 Minimum Obligations, § 29:2
 Multiple Jurisdictions, § 29:17
 Notification Rights, § 29:11
 Other Insurance Clauses, § 29:11
 Outsourcing, Generally, § 29:2
 Performance Bonds, § 29:20
 Pre-Agreed Adjuster, § 29:13
 Pre-Agreed Counsel, § 29:13
 Pride Clause, § 29:6
 Primary Policy, § 29:11
 Property Insurance, § 29:2
 Property of Others Insurance,
 § 29:2, § 29:4
 Risk Profile, § 29:1
 Settlements, § 29:6
 Standard Mortgage Clauses,
 § 29:12
 Sureties, § 29:20
 Tangible Property, § 29:1
 Third Party Triggers, § 29:2,
 § 29:10
 Type, § 6:13
 Waivers of Subrogation, § 29:16

INTELLECTUAL PROPERTY

Assignments. See Transfers,
 Assignments and Licences
 Audits, § 10:47, § 36:20
 Cross-border Issues
 Moral Rights, § 19:11
 Eastern Europe, in, § 21:10
 Indemnification Claims and Exclud-
 ing Infringement for
 Patent Claims, § 32:9
 Indemnification Claims and Limit-
 ing Geographic Scope of
 IP Claims, § 32:8
 Licences. See Transfers, Assign-
 ments and Licences

**INTELLECTUAL PROPERTY
 —Cont'd**

Master Agreement, § 6:9
 Ownership, § 6:9, § 36:9 et seq.
 Copyright, § 36:11
 Patent and Industrial Designs
 Rights, § 36:10
 Registrable Intellectual Property
 Rights, § 36:2
 Domain Name Registrations,
 § 36:6
 Industrial Designs, § 36:5
 Patents, § 36:2
 Registered Copyright, § 36:4
 Registered Trade-marks, § 36:3
 Passing-Off, § 36:3
 Registered Trade-marks,
 § 36:3
 Unregistered Trade-marks,
 § 36:3
 Representations and Warranties,
 § 36:21 et seq.
 Generally, § 36:21
 Defining the Intellectual Property,
 § 36:22
 Infringement, § 36:28
 Generally, § 36:28
 Open Source Code/Software,
 § 36:29
 Ownership, § 36:23
 Corporate Families, § 36:24
 Employee Inventions and
 Ownership, § 36:25
 Validity, § 36:27
 Waiver of Moral Rights, § 36:26
 Request for Proposal (“RFP”),
 § 3:5
 Transfers, Assignments and
 Licences
 Generally, § 36:12
 Confidential Information, § 36:19
 Copyright, § 36:15
 Assignment, § 36:15
 Licence, § 36:16

INTELLECTUAL PROPERTY

—Cont'd

- Transfers, Assignments and
Licences—Cont'd
- Patents, § 36:13
 - Assignment, § 36:13
 - Voluntary Licence, § 36:14
- Trade-marks, § 36:17
 - Assignment, § 36:17
 - Licence, § 36:18
- Unregistered Intellectual Property
Rights, § 36:7
 - Confidential Information, § 36:8

INTERNATIONAL OUTSOURCING

- Canada-International
 - See OFFSHORE OUTSOURC-
ING
- Canada-United States
 - See CROSS-BORDER
OUTSOURCING

LABOUR ISSUES

- See EMPLOYMENT ISSUES

LACHMAN V REVLON

- See ERP IMPLEMENTATION

LEGAL COUNSEL

- Generally, § 2:4, § 7:1
- Choosing, § 2:4
- Request for Proposal (“RFP”),
§ 3:8, § 3:12
- Responsibilities, § 2:4

LIABILITY CAPS

- Generally
 - See RISK ALLOCATION

LIMITATION OF LIABILITY

- Generally, § 6:11
 - See also RISK ALLOCATION
- Information Security, § 14:26
- Master Agreement, § 6:12
- Mutually between Parties, § 32:3
- New Trends, § 32:2
- Privacy Claims, § 32:5

LIMITATION OF LIABILITY

—Cont'd

- Quebec, § 18:11
- Sample Clause, § 32:12
- Types of Liability, § 32:4
- United Kingdom, § 22:28 et seq.

LIMITATION PERIOD

- See RISK ALLOCATION

LIQUIDATED DAMAGES

- See RISK ALLOCATION

MASTER AGREEMENT

- Generally, § 5:4, § 6:1
- Base Assumptions, § 6:3
- Change Management, § 6:5
- Confidentiality, § 6:8
- Disclaimer, § 6:12
- Dispute Resolution, § 6:16
- Exclusion of Indirect Damages,
§ 6:14
- Insurance, § 6:13
- Intellectual Property, § 6:9
- Limitation of Liability, § 6:12
- Overview, § 6:7
- Performance Guarantees, § 6:13
- Pricing, § 6:6
- Representations and Warranties,
§ 6:10
- Sample, **App A**
- Schedules, § 7:5
- Scope of Services, § 6:4
 - Examples, § 6:4; 8:2
- Statement of Objectives, § 6:2
- Term and Termination, § 6:17
- Transition and Orderly Termination,
§ 6:18

MILLERCOORS V HCL

- Background, § 42:2 et seq.
 - Agreements, § 42:3
 - Project, § 42:2
- Conclusion, § 42:22
- Introduction, § 42:1
- Issues, § 42:4 et seq.
 - Defects, § 42:10

OUTSOURCING TRANSACTIONS

MILLERCOORS V HCL—Cont'd

- Issues, § 42:4 et seq.—Cont'd
- Leadership, § 42:5
- Negligence and Wilful Misconduct (According to the Customer), § 42:12
- Responsibility to Learn Business, § 42:6
 - Failed Delta Blueprint Process, § 42:7
 - Failure of Knowledge Transfer, § 42:9
 - Failure of MillerCoors to Understand Own Business, § 42:8
- Scope Creep, § 42:11
- Staffing, § 42:4
- Was MillerCoors' Termination Wrongful?, § 42:13
 - HCL's Argument for Wrongful Termination, § 42:14
 - MillerCoors Rights to Terminate, § 42:13
- Lessons Learned, § 42:15 et seq.
 - Change Requests and Scope Creep, § 42:20
- Definition of
 - KT Process with an Exit, § 42:18
 - Leadership, § 42:17
 - Material Breach, § 42:21
- Key Personnel Provisions, § 42:16
- SLAs for Defects, § 42:19

MISREPRESENTATION

- Generally, § 38:14
- Amendment Misrepresentation, § 38:17
- Cost Misrepresentation, § 38:16
- Experts Misrepresentation, § 38:20
- Performance Misrepresentation, § 38:14
- Personnel Misrepresentation, § 38:19
- Quality Misrepresentation, § 38:18

MISREPRESENTATION—Cont'd

- Timeline Misrepresentation, § 38:15

MOST FAVOURED CUSTOMER CLAUSE

- Generally, § 1:14, § 10:34
- Benchmarking, § 11:1
- Pricing, § 10:34

MULTIVENDOR OUTSOURCING

- Contract Solutions, § 37:6 et seq.
 - Service Integration
 - Generally, § 37:7
 - Common Governance Regime, § 37:9
 - Co-operation Model, § 37:10
 - "Ecosystem," Creation of an, § 37:8
 - Mechanisms Fostering Collaboration, § 37:12
 - Service Definitions, § 37:11
- Development Towards Multisourcing, § 37:2
- Ecosystem, Implementing the Multisourced, § 37:13
- Key Challenges of Multisourcing Models, § 37:3 et seq.
 - Customer Organizational Challenges, § 37:3
 - Lack of Proper Governance, § 37:4
 - Lack of Proper Service Integration, § 37:4
 - Monopolistic Behaviour by Service Providers, § 37:5

NEGOTIATION

- Generally, § 2:1
- Choosing Legal Counsel, § 2:4
- Choosing Negotiation Team, § 2:3
- Multi-Party Negotiations, § 2:6
 - Multi-Vendor Pre-qualification, § 2:7
 - Parallel Negotiations, § 2:6
- Preparation, § 2:2
- Principled Negotiations, § 2:8

NEGOTIATION—Cont’d

Request for Proposal (“RFP”),
§ 3:3, § 3:13
Style, § 1:11

NON-RESIDENTS

Patriot Act, § 19:5
Effects, § 19:5
British Columbia, § 19:5
Federal, § 19:6
Future Restrictions, § 19:7
Transition Issues
Competition Law, § 13:9
Investment, § 13:9

OFFSHORE OUTSOURCING

Generally, § 20:1
Benefits, § 20:2
Global Services Provider
Domestic Office, § 20:12
Overseas Subsidiary, § 20:13
Planning, § 20:14
Agreements
Drafting, § 20:17
Enforcing, § 20:18
Domestic Employees, § 20:19
Due Diligence, § 20:16
Legal Counsel, § 20:15
Tax Issues, § 20:20
Requests for Proposal, § 20:3 et
seq.
Scenarios, § 20:3 et seq.
Service Providers, Offshore, § 20:4
Contractual Issues, § 20:5
Cultural Issues, § 20:9
Domestic Employees, § 20:10
Impact, § 20:11
Intellectual Property Issues,
§ 20:8
Privacy Issues, § 20:7
Regulatory Issues, § 20:6

OSFI GUIDELINE

See REGULATORY GUIDELINES

OUTSOURCING

Generally, § 39:1
Canada, § 39:2
U.K., § 39:4
U.S., § 39:3
Business Process
Generally, § 1:3
See also BUSINESS PROCESS
OUTSOURCING (“BPO”) Comparison of Canadian, U.S., and
U.K. Legislation
Generally, § 39:2
Compliance Challenges, § 39:23
Electronic messages, § 39:25
Low threshold, § 39:24
“Periods of Validity” of
contact information,
§ 39:27
Personal liability, § 39:32
Recognition of other jurisdic-
tion, § 39:29
Relationship with recipient,
§ 39:28
Software installation, § 39:26
Consent, § 39:9
Additional Exemptions,
§ 39:12
“Natural persons” versus
“legal persons,” § 39:11
“Opt-in” versus “opt-out,”
§ 39:10. 39:30
Content, § 39:13
Canada, § 39:14
U.K., § 39:16
U.S., § 39:15
“Electronic Message,” § 39:5
Canada, § 39:6
U.K., § 39:8
U.S., § 39:7
Enforcement, § 39:17
Generally, § 39:31
Canada, § 39:17
U.K., § 39:19
U.S., § 39:18

OUTSOURCING TRANSACTIONS

OUTSOURCING—Cont'd

Comparison of Canadian, U.S., and
U.K. Legislation—Cont'd
Jurisdiction, § 39:20
Canada, § 39:20
U.K., § 39:22
U.S., § 39:21

Cross-border
Generally, § 19:1
See also CROSS-BORDER
OUTSOURCING

Documentation
Generally, § 5:3
See also AGREEMENTS

Flexibility, § 1:10

History, § 1:2

Multivendor
See MULTIVENDOR
OUTSOURCING

Offshore
Generally, § 1:4
See also OFFSHORE
OUTSOURCING

OSFI Guideline
Generally, § 4:1, § 4:28
See also REGULATORY
GUIDELINES

Reasons, § 1:8

Services, Long-term, § 1:6

Unique Elements, § 5:2

PATRIOT ACT

Generally, § 19:5
Effects, § 19:5
British Columbia, § 19:5
Federal, § 19:6
Future Restrictions, § 19:7

PAYMENTS

Generally, § 10:35
Audits, § 10:45
Credits, § 10:37
Fee Schedule, § 9:180
Sample Schedule, § 9:180
Interest, § 10:39
Invoices, § 10:36

PAYMENTS—Cont'd

Monthly Fees, § 10:38
Payment Disputes, § 10:50
Guarantees, § 10:54
Indemnities, § 10:54
Notice, § 10:51
Set-Off, § 10:53
Suspension of Services, § 10:52
Payment Terms, § 10:35
Supporting Certificate, § 10:40

PENSION ISSUES

Generally, § 16:1
Asset Transfers, § 16:1
Assumption of Customer's Pension
Plan, § 16:10
Cross-border Issues, § 19:9
Options, § 16:2 et seq.
Future Service Pension Plan,
§ 16:7
No Pension Plan, § 16:3
Group RRSP, § 16:4
Unvested Pension Benefits,
§ 16:5
Wind-up, § 16:3
Pension Plan, § 16:6
Transfer, § 16:8
Wrap-Around Agreement, § 16:9

PIPEDA

See PRIVACY

PLANS

Generally, § 12:14
Applicable Contract Terms, § 12:15
Types, § 12:14

PRICING

Generally, § 10:1
See also PRICING FOR
CHANGE
Asset Transfer, § 9:17
Valuation, § 9:17
“Base Case,” § 10:4
Benchmarking, § 10:23
Changes, § 10:13
Additional Services, § 10:17

PRICING—Cont’d

- Changes, § 10:13—Cont’d
 - Adjustments Based on Actual Costs, § 10:20
 - Discontinued Services, § 10:16
 - Inflation, § 10:19
 - Pricing Review, § 10:21
 - Regulatory Changes, § 10:18
 - Scope of Services, § 10:15
 - Volume, § 10:14
- Currency, § 10:31
- Development Projects, § 10:22
- Expenses
 - Documents, § 10:30
 - Pass-through Charges, § 10:29
 - Travel, § 10:28
- Gainsharing, § 10:24
- General, § 1:14
- Insurance Costs, § 10:27
- Internal Costs, § 10:32
- Master Agreement, § 6:6
- Perspectives
 - Customer, § 10:2
 - Service Provider, § 10:3
- Service Level Price Adjustments, § 10:23
- Taxation
 - Other Taxes, § 10:26
 - Services, § 10:25
- Transfer Costs, § 10:33

PRICING FOR CHANGE

- Generally, § 24:1
- During Development and Implementation, § 24:2
 - Business Requirements, § 24:2
 - Extraordinary Changes in Costs, § 24:3
 - Service Provider Bases Costs, § 24:3
 - Value-Based vs. Cost-Plus Pricing, § 24:3
- During the Services Phase, § 24:4
 - Assumptions: Extraordinary Events, § 24:9

PRICING FOR CHANGE—Cont’d

- During the Services Phase, § 24:4—Cont’d
 - Maturing Services, § 24:7
 - Regulatory Framework, § 24:8
 - Scope of Services
 - Generally, § 24:5
 - Addition of Services, § 24:6
 - Controlling Change Control, § 24:6
 - Reduction in Services, § 24:6
 - Service Demand: Volume-Based Pricing, § 24:5

PRIVACY

- Generally, § 14:2 et seq., § 19:4 et seq., § 25:1
- Canadian Model for Extra-Jurisdictional Processing and Storage, § 25:3
- Private Sector Restrictions, § 25:5
- Public Sector Restrictions, § 25:4
- Class Actions, § 14:10
- Eastern Europe, § 21:11
- Indemnification for Breach of Privacy Claims, § 32:7
- Limitation of Liability for Breach of Privacy Claims, § 32:5
- Outsourcing Generally, § 25:2 et seq.
 - Canadian Privacy Patchwork, § 25:2
 - Processing by a Service Provider, § 25:3
- Private Sector, § 14:4
 - British Columbia, § 14:4, § 19:4
 - Personal Information Protection Acts, § 14:4, § 19:4
 - Quebec, § 14:4
- Request for Proposal (“RFP”), § 3:5
- Revisions to Existing Canadian Privacy Laws, § 25:6
- Overview of key amendments, § 25:6

OUTSOURCING TRANSACTIONS

PRIVACY—Cont'd

Tort of Invasion of Privacy, § 22:46
et seq.

UK, § 22:46 et seq.

PROJECT MANAGEMENT

See RELATIONSHIP MANAGEMENT

QUEBEC ISSUES

See also RISK ALLOCATION

Breach

Generally, § 18:14

Default, § 18:15

Contractual Terms

Implied Terms, § 18:13

Limitation of Liability Clauses,
§ 18:11

Misrepresentations or Fraud,
§ 18:10

Penalty Clauses, § 18:12

Cross-border Issues, § 19:13

Licence Agreements, § 18:29

Nominate Contracts, § 18:22 et seq.

Contract for Services, § 18:25

Contract of Enterprise, § 18:25

Obligations, § 18:26

Resiliation, § 18:28

Rights, § 18:26

Scope, § 18:25

Warranties, § 18:27

Contract of Sale, § 18:23

Warranties, § 18:24

Privacy, § 14:4

Remedies, § 18:16

Damages, § 18:19

Resiliation, § 18:18

Specific Performance, § 18:17

REAL ESTATE AGREEMENT

Generally, § 5:8

RECORDS RETENTION

Generally, § 10:41

Customer Records, § 10:41

RECORDS RETENTION—Cont'd

OSFI Guideline, § 10:44

Document Retention, § 14:12

Electronic Commerce Act,
§ 14:12

Legal Requirements, § 14:12

PIPEDA, § 14:12

Evidence, § 14:13

Evidence Acts, § 14:13

Legal Requirements, § 14:13

National Standards, § 14:13

Other Issues, § 10:43

Service Provider Records, § 10:42

REGULATORY GUIDELINES

Generally, § 4:1; § 4:28

Basel Guidelines

Foundational Principles, § 4:2

OSFI Guideline B-10, § 4:25

Generally, § 4:3

Criticality vs Materiality, New
Assessment of, § 4:12

Expanded Scope of, § 4:10

FRFIs, Key Issues

Concentration Risk, § 4:16

Contract Requirements, § 4:17

Due Diligence, § 4:15

Exit Strategies, § 4:18

Next Steps and Adoption,
§ 4:21

Risk Identification and Assess-
ments (“RIAs”), § 4:14

Standardized Contracts, § 4:20

The Cloud, § 4:19

Memorandum on New Technol-
ogy-Based Outsourcing
Arrangements, § 4:15;
§ 4:19

Cloud Computing

Location of Records, and,
§ 4:18

Special Considerations,
§ 4:16

Confidentiality, Security, and
Separation of Property,
§ 4:17

REGULATORY GUIDELINES

—Cont'd

OSFI Guideline B-10, § **4:25**

—Cont'd

Third-party Risks

Identification of, § **4:11**

Risk Management Framework,
§ **4:13**

Risk Management Program,
§ **4:13**

OSFI Guideline B-13, § **4:22**

Adapting to Guideline B-13,
§ **4:27**

Cyber Security, **4:26**

Governance and Risk Manage-
ment, § **4:24**

Structure of, § **4:23**

Technology Operations and
Resilience, § **4:25**

REGULATORY ISSUES

See COMPETITION LAW; NON-
RESIDENTS; REGULATORY
GUIDELINES

RELATIONSHIP MANAGEMENT

Project Management, § **30:3**

Collaboration with Other
Organizations, § **30:6**

Committees, § **30:4**

Communication, § **30:3**

Definition, § **30:1**

Documentation, § **30:4**

Terms of Reference Document,
§ **30:4**

Executives, § **30:3**, § **30:4**

Future Planning, § **30:5**

Managing, § **30:4**

Project Constraints, § **30:7**

Project Manager, § **30:3**, § **30:6**

Project Team, § **30:2**

Risk Log, § **30:6**

Risk Management, § **30:6**

Future Risks, § **30:6**

Staffing, § **30:2**

RELATIONSHIP MANAGEMENT

—Cont'd

Project Management, § **30:3**

—Cont'd

Terms of Reference Document,
§ **30:4**

Relationship Health

Generally, § **34:1**

Relationship Review, § **34:3 et seq.**

Business Outcomes, § **34:8**

Governance, § **34:9**

Relationships, § **34:12**

Vendor Performance, § **34:4**

RELATIONSHIP REVIEW

See RELATIONSHIP MANAGE-
MENT

REPORTS

Generally, § **12:16**

Applicable Contract Terms, § **12:17**

OSFI Guideline, § **12:18**

Types, § **12:16**

REPRESENTATIONS AND WARRANTIES

Agreement of Purchase and Sale,
§ **9:20**

Completeness, § **9:23**

Condition of Assets, § **9:22**

Sample Clause, § **9:22**

Contracts, § **9:25**

Disclaimer, § **9:27**

Sample Clause, § **9:27**

Encumbrances, § **9:24**

Sample Clause, § **9:24**

Knowledge, Information and
Belief, § **9:26**

Non-Waiver, § **9:30**

Sample Clause, § **9:30**

Power and Authority, § **9:21**

Sample Clause, § **9:21**

Survival, § **9:28**

Title, § **9:24**

Sample Clause, § **9:24**

REPRESENTATIONS AND WARRANTIES—Cont’d

Agreement of Purchase and Sale, § 9:20—Cont’d
 Transfer of Title, § 9:29
 Sample Clause, § 9:29
 Intellectual Property, § 36:21 et seq.
 Master Agreement, § 6:10
 Services Agreement, § 8:24

REQUEST FOR INFORMATION

See REQUEST FOR PROPOSAL (“RFP”)

REQUEST FOR PROPOSAL (“RFP”)

Advantages, § 3:3
 Bidder, § 3:4
 Choosing Service Provider, § 2:5
 Content, § 3:6, § 3:8
 Contract A/Contract B Analysis, § 3:4
 Definition, § 3:2
 Disadvantages, § 3:3
 Dissemination, § 3:11
 Drafting, § 3:6
 Avoiding Formal Tender Characterization, § 3:8
 Due Diligence, § 3:5, § 3:11
 Fairness, § 3:8
 Formal Tenders
 Contrast with, § 3:4
 Drafting to Avoid Formal Tender Characterization, § 3:8
 Good Faith, § 3:8
 Impact on In-House Personnel and Assets, § 3:5
 Intellectual Property, § 3:5
 Legal Counsel, § 3:8, § 3:12
 Level of Detail Required, § 3:6, § 3:8
 Multi-Vendor Pre-qualification, § 2:7
 Negotiation, § 3:3, § 3:13
 Parallel Negotiations, § 3:13

REQUEST FOR PROPOSAL (“RFP”)—Cont’d

Preparation, § 3:5
 Principled Negotiations, § 2:8
 Privacy, § 3:5
 Request for Information (“RFI”), § 3:2, § 3:11
 Request for Qualifications (“RFQ”), § 3:2
 Request for Quotations (“RFQ”), § 3:2
 Responding to, § 3:12
 Terms, § 3:3
 Timeframe, § 3:11
 Win/Win Solution, § 3:13

REQUEST FOR QUALIFICATIONS

See REQUEST FOR PROPOSAL (“RFP”)

REQUEST FOR QUOTATIONS

See REQUEST FOR PROPOSAL (“RFP”)

RE: STELCO INC

See CASE COMMENTS

RISK ALLOCATION

Breach
 Canada, § 31:11, § 31:12
 France, § 31:14
 India, § 31:15
 United Kingdom, § 31:18
 Canada
 Generally, § 31:3
 Damage Disclaimers
 Canada, § 31:23
 France, § 31:26
 India, § 31:27
 United Kingdom, § 31:28
 United States, § 31:25
 Efforts
 Canada, § 31:49
 France, § 31:55
 India, § 31:56
 United Kingdom, § 31:57

RISK ALLOCATION—Cont'd

- Efforts—Cont'd
 - United States, § 31:54
- Exclusion Clauses
 - Canada, § 31:11, § 31:12
 - France, § 31:14
 - India, § 31:16
 - United Kingdom, § 31:19
 - United States, § 31:13
- France
 - Generally, § 31:7
- Indemnities
 - Generally, § 9:31
 - Canada, § 31:43
 - France, § 31:45
 - India, § 31:46
 - United Kingdom, § 31:47
 - United States, § 31:44
- India
 - Generally, § 31:8
- Liability Caps
 - Canada, § 31:11
 - France, § 31:14
 - India, § 31:15
 - United Kingdom, § 31:18
 - United States, § 31:13
- Limitation Period
 - Canada, § 31:37
 - France, § 31:39
 - India, § 31:40
 - United Kingdom, § 31:41
 - United States, § 31:38
- Liquidated Damages
 - Canada, § 31:30
 - France, § 31:33
 - India, § 31:34
 - United Kingdom, § 31:35
 - United States, § 31:32
- Penalties
 - Canada, § 31:30
 - France, § 31:33
 - India, § 31:34
 - United Kingdom, § 31:35
 - United States, § 31:32

RISK ALLOCATION—Cont'd

- Practice
 - Canada, § 31:11
 - France, § 31:14
 - India, § 31:17
 - United Kingdom, § 31:20, § 31:21
 - United States, § 31:13
- Public Policy
 - United States, § 31:13
- United Kingdom
 - Generally, § 31:9
- United States
 - Generally, § 31:6

RUSSIA

- See EASTERN EUROPE

SCHEDULES

- Generally, § 7:1
- Asset Purchase Agreement, § 7:5
- Employee Agreement, § 7:5
- Fee Schedule, § 9:180
- Internal Referencing, § 7:6
- Legal Counsel, Role of, § 7:7
- Master Agreement, § 7:5
- Perspectives, § 7:2 et seq.
 - Customer, § 7:3
 - Service Provider, § 7:4
- Services Agreement, § 7:5
- Structure, § 7:5 et seq.
 - Attachments, § 7:5
 - General Principles, § 7:5
 - Layout, § 7:5
 - Organizational Structure, § 7:5
 - Subject Matter, § 7:5

SERVICE LEVEL AGREEMENT

- Generally, § 8:26 et seq.
- Stay Back Team, § 27:2

SERVICE LEVELS

- Generally, § 8:26 et seq.
- Breach, § 8:8
- Describing, § 8:30

OUTSOURCING TRANSACTIONS

SERVICE LEVELS—Cont'd

- Developing, § 8:28
 - Baseline Service Levels, § 8:28
 - Prioritizing, § 8:29
- Incentives, § 8:11
- Measurement, § 8:8
 - Standards, § 8:8
- Operational Auditing, § 8:12
- Reporting, § 8:8
 - Methods, § 8:8
- Root-Cause Analysis and Resolution, § 8:9
- Transition-In Phase, § 8:31

SERVICE PROVIDER

- Global
 - Domestic Office, § 20:12
- Offshore, § 20:4
- Perspectives, § 1:7
 - Benchmarking, § 11:3
 - General, § 1:7
 - Pricing and Payment, § 10:3
 - Schedules, § 7:4
 - Tax Issues, § 17:7
 - Transition, § 12:4
- Records Retention, § 10:42
- Request for Proposal (“RFP”)
 - See REQUEST FOR PROPOSAL (“RFP”)

SERVICES

- Master Agreement, § 6:4
 - See also MASTER AGREEMENT
- Services Agreement, § 8:2 et seq.
 - See also SERVICES AGREEMENT

SERVICES AGREEMENT

- Generally, § 5:5, § 8:2 et seq.
- Core Elements, § 5:5
- Deliverables, § 8:15
 - Acceptance Testing, § 8:15
- Gainsharing, § 8:13
- Indemnities, § 8:24

SERVICES AGREEMENT

—Cont'd

- Personnel, § 8:20
 - Non-solicitation, § 8:21
 - Subcontractors, § 8:22
- Pricing and Payment, § 8:23
- Provisions, Basic, § 5:5
- Regulatory Requirements, § 8:24
- Representations, Warranties and Covenants, § 8:24
- Sample, Appendix B, § 11:110
- Schedules, § 7:5
- Scope of Services, § 8:2
 - Base In-Scope Services, § 8:2
- Service Level Agreement
 - See SERVICE LEVEL AGREEMENT
- Service Levels, § 8:7
 - Breach, § 8:8
 - Credits, § 8:10
 - Incentives, § 8:11
 - Measurement, § 8:8
 - Standards, § 8:8
 - Operational Auditing, § 8:12
 - Reporting, § 8:8
 - Methods, § 8:8
 - Root Cause Analysis and Resolution, § 8:9
- Service Management, § 8:3
- Service Standards, § 8:4
 - Generally, § 8:5
 - Applicable Laws, § 8:6
- Technology Management, § 8:14
 - Costs, § 8:4
 - Principles, § 8:14
 - Provisions, Basic, § 8:14

STAY BACK TEAM

- Budget, § 27:2
- Collaborative Outsourcing, § 27:2
- Committees, § 27:4
- Composition, § 27:4
- Contractual Compliance, § 27:2
- Core Team, § 27:4
- Cultural Fit, § 27:4

STAY BACK TEAM—Cont'd

- Definition, § 27:1
- When to Get it Involved, § 27:5
- Guidance and Direction, § 27:2
- Involvement, § 27:5
- Managerial Role, § 27:2
- Master Service Agreement (“MSA”), § 27:2
- Measuring Success, § 27:6
- Membership, § 27:4
- Service Level Agreement (“SLA”), § 27:2
- Size, § 27:3
- Standards/Architectural Compliance, § 27:2
- Statement of Work (“SOW”), § 27:2
- Value Generation, § 27:2

SUSTAINABILITY

- See CORPORATE SOCIAL RESPONSIBILITY

TAX ISSUES

- Cross-border Outsourcing, § 19:12
- Friction Points, § 17:11 et seq.
 - Allocation of Purchase Price, § 17:15
 - Sales Tax Clearance Certificates, § 17:14
 - Withholding Taxes, § 17:12
- General, § 17:1
- Goods and Services Tax, § 17:3
 - Asset Transfer, § 9:34
 - Excise Tax Act, § 17:3
 - Harmonized Sales Tax, § 17:3
 - Inputs, § 17:9
 - Input Tax Credits, § 17:3
 - Quebec Sales Tax, § 17:3
 - Registration, § 17:8
- Non-Residents, § 17:7, § 19:12
 - Customers, § 17:8, § 19:12
 - Service Providers, § 17:7
 - Income Tax, § 17:10
 - Inputs, § 17:9

TAX ISSUES—Cont'd

- Perspectives, § 17:2, § 17:7
 - Customer, § 17:2
 - Service Provider, § 17:7
- Registration, § 17:8
- Sales Tax, § 17:4
 - Asset Transfer, § 9:34
 - Clearance Certificates, § 17:14
 - Foreign Sales Tax, § 17:5
 - Inputs, § 17:9
 - Registration, § 17:8
 - Retail Sales Tax, § 17:4
- Sample Clauses, § 16:50
- United Kingdom, § 22:105
- Withholding, § 17:10

TERMINATION

- Generally, § 13:1
- Agreement of Purchase and Sale, § 9:3, § 9:5, § 9:14
- Covenants, § 13:16
 - Compliance with Laws, § 13:16
 - Maintenance of Assets, § 13:16
 - Restrictions on Dispositions/Acquisitions, § 13:16
 - Sample Clause, § 13:16
 - Restrictions on Encumbrances, § 13:16
 - Sample Clause, § 13:16
 - Restrictions on Key Employees, § 13:16
- Exit Strategy, § 13:1
 - Description, § 13:2
 - General Principles, § 13:3
- Expiration, § 13:17
 - Automatic Renewal, § 13:17
 - Expiration of Term, § 13:17
 - Sample Clause, § 13:17
 - Extension, § 13:17
 - Sample Clause, § 13:17
- Master Agreement, § 6:17
- Partial Termination, § 13:15
 - Sample Clause, § 13:15

OUTSOURCING TRANSACTIONS

TERMINATION—Cont'd

- Reasons, § 13:11
 - Breach, § 13:13
 - Sample Clause, § 13:13
 - Convenience, § 13:12
 - Sample Clause, § 13:12
 - Insolvency, § 13:14
- Services, § 12:29
- Transition-Out, § 13:5
 - Consents and Approvals, § 13:9
 - Regulatory Issues, § 13:9
 - Competition Act, § 13:9
 - Investment Canada Act, § 13:9
 - Fees, § 13:6
 - Incidental Costs, § 13:10
 - Transfer of Assets, § 13:7
 - Sample Clause, § 13:7
 - Transfer of Employees, § 13:8
 - Mobility Restrictions, § 13:8
 - Sample Clause, § 13:8
 - Offers of Employment, § 13:8
 - Sample Clause, § 13:8
 - Transition Plan, § 13:4

THIRD PARTIES

- Contract Management, § 1:16

TRANSITION-IN

- Changes, § 12:6
- Delays, § 12:6
- Insolvency, and, § 28:20, § 28:21
- Master Agreement, § 6:18
- Termination, § 12:6
- Transition Plan, § 12:5

UNIONS

- See EMPLOYMENT ISSUES

UNITED KINGDOM

- Arbitration, § 22:57
- Bankruptcy and Insolvency
 - Generally, § 22:98 et seq.
 - Administration, § 22:99

UNITED KINGDOM—Cont'd

- Bankruptcy and Insolvency
 - Cont'd
 - Anti-Avoidance, § 22:103
 - Administrator's Powers, § 22:103
 - Good Faith, § 22:103
 - Company Directors, Issues, § 22:104
 - Contribution, § 22:104
 - Wrongful Trading, § 22:104
- Liquidation, § 22:100
 - Compulsory Liquidation, § 22:100
 - Creditors Voluntary Liquidation, § 22:101
 - Liquidation Committee, § 22:102
 - Liquidator's Powers, § 22:102
 - Members Voluntary Liquidation, § 22:101
 - Official Receiver, § 22:102
 - Private Examination, § 22:102
 - Voluntary Liquidation, § 22:99
- Moratorium, § 22:99
- Winding Up
 - See Liquidation, *supra*
- Business Visitor, § 22:27
- Choice of Law, § 22:3
- Civil Procedure Rules, § 22:37
- Combined Code
 - See Corporate Governance, *infra*
- Common Platform Firm, § 22:39
- Competition Law
 - Generally, § 22:59 et seq.
- English Law
 - Generally, § 22:74
 - Complaints, § 22:75
 - Disqualification, § 22:75
 - Public Procurement, § 22:76
- European Law, § 22:60
 - Abuses of a Dominant Position, § 22:71
 - Anti-competitive Agreements, § 22:63

UNITED KINGDOM—Cont'd

Competition Law—Cont'd
 European Law, § 22:60—Cont'd
 Block Exemption Regulations, § 22:64
 Horizontal Agreements, § 22:69
 Mergers, § 22:73
 Non-compete Obligation, § 22:65
 Penalties, § 22:72
 RampD, § 22:67
 Scope of European System, § 22:62
 Specialization Agreements, § 22:68
 Subcontracting, § 22:70
 Technology Transfer, § 22:66
 Vertical Agreements, § 22:65
 Consumer Protection
 See Electronic Commerce:
 Consumer Protection, *infra*
 Contract Issues
 Generally, § 22:77 *et seq.*
 Breach, § 22:95
 Certainty, § 22:84
 Completeness, § 22:84
 Conditions, § 22:90, § 22:91
 Confidential Relationships, § 22:80
 Consideration, § 22:79, § 22:85
 Damages, § 22:96
 Fair Dealing, § 22:80
 Fiduciary Relationships, § 22:80
 Force Majeure, § 22:97
 Formalities, § 22:82
 Good Faith, § 22:80
 Harmonization, § 22:81
 Implied Terms, § 22:89
 Indemnities, § 22:94
 Intention to Create Legal Relations, § 22:86
 Intermediate Terms, § 22:90, § 22:91
 Negotiation, § 22:88

UNITED KINGDOM—Cont'd

Contract Issues—Cont'd
 Offer and Acceptance, § 22:83
 Provisions, § 22:88
 Specific Performance, § 22:96
 Substance of the Contract, § 22:87
 Warranties, § 22:90, § 22:91
 Writing Requirements, § 22:82
 Corporate Governance
 Governance Practices, § 22:44
 Data Privacy
 Generally, § 22:46 *et seq.*
 Communications Data, § 22:55
 Data, § 22:46 *et seq.*
 Data Controller, § 22:47, § 22:48
 Data Processor, § 22:48
 Data Protection Act, § 22:47, § 22:48
 Human Rights Act, § 22:54
 Personal Data, § 22:46 *et seq.*
 Policies, Adopting, § 22:51
 Privacy Policy, § 22:51
 Reform of data privacy regime, § 22:53
 Regulation of Investigatory Powers Act (“RIPA”), § 22:55
 Relevant Filing System, § 22:46 *et seq.*
 Sensitive Personal Data, § 22:46 *et seq.*
 Transfers of Personal Data
 Outside the EEA, § 22:50
 Disclosure, § 22:37
 Discovery, § 22:37
 Dispute Resolution, § 22:57
 Document Management, § 22:37
 Documents, § 22:37
 Employment
 See TUPE, *infra*
 England, § 22:2
 Evidence, Generally, § 22:37
 Exclusion of Liability
 See Limitation of Liability, *infra*

OUTSOURCING TRANSACTIONS

UNITED KINGDOM—Cont'd

Financial Services Authority
("FSA"), § 22:38 et seq.
FSA Handbook, § 22:38 et seq.
Financial Services Authority
Guidelines
Generally, § 22:38 et seq.
Applicability, § 22:39
Auditors, § 22:40
Confidential Information, § 22:40
Disaster Recovery, § 22:40
International guidance, § 22:42
Investment Firms, § 22:39
Markets in Financial Instruments
Directive ("MiFID"),
§ 22:41
Material Outsourcing, § 22:38 et
seq.
Outsourcing by insurers, § 22:43
Requirements, § 22:39
Risk Management, § 22:40
Freedom of Information Act,
§ 22:56
Hearsay, § 22:37
Immigration Considerations,
§ 22:23
Interest, § 22:58
International Organization of Secu-
rities Commissions
("IOSCO"), § 22:42
Legal System, § 22:2
Limitation of Liability
See also RISK ALLOCATION
Generally, § 22:28 et seq.
Against Public Policy, § 22:35

UNITED KINGDOM—Cont'd

Limitation of Liability—Cont'd
Appropriateness, § 22:29
Construction, Rules of, § 22:34
Enforceability, § 22:31
Entire Agreement Clauses,
§ 22:28 et seq.
Fairness, § 22:33
Illegality, § 22:35
Insurance, § 22:36
Misrepresentation Clauses,
§ 22:28 et seq.
Prohibited by Statute, § 22:35
Set-off Clauses, § 22:28 et seq.
Severance, § 22:35
Types, § 22:30
Unfair Contract Terms Act,
§ 22:32
Litigation, § 22:57
Markets in Financial Instruments
Directive ("MiFID"), § 22:39
MiFID Connect, § 22:41
Material Outsourcing, § 22:38 et
seq.
Northern Ireland, § 22:2
Pensions
See TUPE, *infra*
Records, § 22:37
Scotland, § 22:2
Senior Management Arrangements
Systems and Controls
("SYSC"), § 22:40
Tax Issues, § 22:105
Trends, § 22:1
Wales, § 22:2