

Table of Contents

CHAPTER 1. CORPORATE SOCIAL RESPONSIBILITY AND THE ROLE OF THE LAWYER

§ 1:1	Introduction
§ 1:2	The role of transnational corporations (TNCs) in the global economy
§ 1:3	Corporate codes of conduct
§ 1:4	Corporate Social Responsibility and enforcement of CSR norms
§ 1:5	How to define corporate social responsibility?
§ 1:6	The rise of corporate social responsibility
§ 1:7	Competing theories: shareholder theory v. stakeholder theory
§ 1:8	State action and corporate social responsibility: a partnership between the two approaches
§ 1:9	The rise of stakeholder related risks to large development and extractive projects
§ 1:10	CSR as a means to obtain a social license to operate
§ 1:11	Ethical investing by large institutions
§ 1:12	Rights-sensitive branding
§ 1:13	A pluralistic approach to enforcing CSR norms
§ 1:14	Successful initiatives—The UN Principles for Responsible Investment
§ 1:15	—The United Nations Global Compact
§ 1:16	—U.S. federal law
§ 1:17	—U.S. state law
§ 1:18	—UN Guiding Principles on Business and Human Rights
§ 1:19	—The rise of CSR rankings
§ 1:20	The Alien Tort Claims Act (ATS)
§ 1:21	The role of the corporate lawyer in CSR
§ 1:22	Why should TNCs be more socially responsible?
§ 1:23	Corporate social responsibility—An appraisal
§ 1:24	Conclusion
Appendix 1A.	United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, March 21, 2011
Appendix 1B.	UN Guiding Principles Reporting Framework
Appendix 1C.	European Parliament Committee on

Employment and Social Affairs, Report on
corporate social responsibility: a new
partnership (2006)

Appendix 1D. Caux Round Table Principles for Business

Appendix 1E. The “Equator Principles”

Appendix 1F. CERES Principles

Appendix 1G. ICC Business Charter for Sustainable
Development

CHAPTER 2. ESTABLISHING AN EXTRATERRITORIAL PRESENCE: CHOOSING BUSINESS ENTITIES ABROAD

§ 2:1 Introduction

§ 2:2 A practical framework for foreign business entity
selection

§ 2:3 —Burden of organizational formalities

§ 2:4 —Arrangement of affairs by agreement

§ 2:5 —Flexibility of economic structure

§ 2:6 —Formation of predictable exit strategy

§ 2:7 —Implementation of efficient management structure

§ 2:8 —Protection of the foreign entity and fiduciaries from
liability

§ 2:9 —Minimization of overall tax exposure

§ 2:10 Corporations, joint stock companies, share companies,
and the like

§ 2:11 —Organizational formalities

§ 2:12 — —Common law jurisdictions

§ 2:13 — —Civil law jurisdictions

§ 2:14 — —Note on Delaware formations

§ 2:15 —Ability to contract

§ 2:16 — —Common law jurisdictions

§ 2:17 — —Civil law jurisdictions

§ 2:18 —Flexibility of economic structure

§ 2:19 — —Common law jurisdictions

§ 2:20 —Civil law jurisdictions—A note on minimum capital
requirements

§ 2:21 — —Delineation of economic rights

§ 2:22 —Predictable exit strategy

§ 2:23 — —Transfers and redemptions in common law
jurisdictions

§ 2:24 — —Transfers and redemptions in civil law
jurisdictions

§ 2:25 — —Dissolution in common law jurisdictions

TABLE OF CONTENTS

§ 2:26	— —Dissolution in civil law jurisdictions
§ 2:27	—Efficient management structure
§ 2:28	— —Number and other qualifications of directors in common law jurisdictions
§ 2:29	— —Number and other qualifications of directors in civil law jurisdictions
§ 2:30	— — —Board of director structure
§ 2:31	— — —Bifurcated management committee and supervisory board structure
§ 2:32	— —Duty of care and loyalty by directors in common law jurisdictions
§ 2:33	— —Duty of care and loyalty of directors in civil law jurisdictions
§ 2:34	— —Officers in common law jurisdictions
§ 2:35	— —Officers in civil law jurisdictions
§ 2:36	—Limitation of liability
§ 2:37	— —Common law
§ 2:38	— —Civil law jurisdictions
§ 2:39	—Minimization of tax exposure
§ 2:40	General and limited partnerships
§ 2:41	—Organizational formalities in common law jurisdictions
§ 2:42	—Organizational formalities in civil law jurisdictions
§ 2:43	—Ability to contract in common law jurisdictions
§ 2:44	—Ability to contract in civil law jurisdictions
§ 2:45	—Flexible economic structure
§ 2:46	— —Common law
§ 2:47	—Predictable exit strategy in common law jurisdictions
§ 2:48	—Predictable exit strategy in civil law jurisdictions
§ 2:49	—Efficient management structure
§ 2:50	—Limitation of liability under common law
§ 2:51	—Limitation of liability under civil law
§ 2:52	—Minimization of tax exposure
§ 2:53	Limited liability companies
§ 2:54	—Organizational formalities under common law
§ 2:55	—Organizational formalities under civil law
§ 2:56	—Ability to contract under common law
§ 2:57	—Ability to contract under civil law
§ 2:58	—Flexible economic structure in common law jurisdictions
§ 2:59	—Flexible economic structure in civil law
§ 2:60	—Predictable exit strategy in common law jurisdictions
§ 2:61	—Predictable exit strategy in civil law jurisdictions

- § 2:62 —Efficient management structure in common law jurisdictions
- § 2:63 —Effective management structure in civil law jurisdictions
- § 2:64 —Limitation of liability in common law jurisdictions
- § 2:65 —Limitation of liability in civil law jurisdictions
- § 2:66 —Minimization of tax exposure in common law jurisdictions
- § 2:67 —Minimization of tax exposure in civil law jurisdictions
- § 2:68 —Note on single-member entities
- § 2:69 Other entities
- § 2:70 —Limited liability partnerships and limited liability limited partnerships in the U.S
- § 2:71 —Limited liability partnerships in the UK
- § 2:72 —Société par actions simplifiée
- § 2:73 —Nonexistence of European entities
- § 2:74 Mergers
- § 2:75 Conversions
- § 2:76 Employee incentives in common law jurisdictions
- § 2:77 Employee incentives in civil law jurisdictions
- § 2:78 Securities law compliance
- § 2:79 Accounting and audits in common law jurisdictions
- § 2:80 Accounting and audits in civil law jurisdictions
- § 2:81 Local registration of parent companies or branches
- § 2:82 —Intra-U.S. state registration of entities and branches
- § 2:83 Conclusions

CHAPTER 3. FORUM SELECTION IN TRANSNATIONAL CONTRACTS

I. INTRODUCTION

- § 3:1 In general

II. FORUM SELECTION AS A THRESHOLD ISSUE

- § 3:2 In general
- § 3:3 The Supreme Court decisions

III. LAW APPLICABLE TO FORUM SELECTION

- § 3:4 U.S. Supreme Court decisions
- § 3:5 Restatement (Second) of Conflict of Laws and the Model Choice of Forum Act
- § 3:6 Federal court decisions

TABLE OF CONTENTS

IV. ARBITRATION AGREEMENTS

- § 3:7 In general
- § 3:8 Scope of arbitration clauses
- § 3:9 Forum selection/arbitration clauses in franchise agreements

V. BANKRUPTCY

- § 3:10 In general

VI. ENFORCEMENT OF FORUM SELECTION CLAUSES AND EXCEPTIONS TO ENFORCEMENT

- § 3:11 In general
- § 3:12 Section 1404 after *Atlantic Marine*
- § 3:13 Gross inconvenience or denial of an effective remedy
- § 3:14 Fraud, overreaching, or unconscionable conduct
- § 3:15 Violation of public policy or otherwise unfair, unreasonable, or unjust forum selection clause
- § 3:16 Changed circumstances

VII. FORUM SELECTION CLAUSES AND E-COMMERCE

- § 3:17 In general

VIII. MANDATORY VERSUS PERMISSIVE LANGUAGE

- § 3:18 In general

IX. BRUSSELS' MANDATORY PRESUMPTION

- § 3:19 In general

X. THE 2005 HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS

- § 3:20 In general
- § 3:21 Scope of the convention
- § 3:22 Jurisdiction
- § 3:23 Recognition and Enforcement
- § 3:24 Selected issues
- § 3:25 Preliminary questions and intellectual property rights
- § 3:26 Transition provisions
- § 3:27 Contracts of insurance and reinsurance

- § 3:28 Relationship with other international instruments
- § 3:29 Implementation of the convention in the united states
- § 3:30 Appraisal and recommendation

XI. SELECTED AREAS OF PRACTICE

- § 3:31 In general

Appendix 3A. Convention on the Jurisdiction and Enforcement of Judgments (“The Brussels Convention”)

Appendix 3B. EC Regulation 44/2001

Appendix 3C. Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters

Appendix 3D. Hague Convention on Choice of Court Agreements

CHAPTER 3A. CHOICE OF LAW IN TRANSNATIONAL CONTRACTS

I. CHOICE OF LAW CLAUSES

- § 3A:1 In general
- § 3A:2 U.S. law and practice—Generally
- § 3A:3 Contracts with choice of law and forum selection clauses
- § 3A:4 U.S. law and practice—Restatement (Second) of Conflict of Laws
- § 3A:5 —Uniform Commercial Code
- § 3A:6 —Judicial decisions
- § 3A:7 —Statutory developments
- § 3A:8 Arbitration clauses
- § 3A:9 —Supreme Court decisions
- § 3A:10 —Federal and state court decisions

II. MULTILATERAL CONVENTIONS AND OTHER NATIONS’ PRACTICES ON CHOICE OF LAW

- § 3A:11 In general
- § 3A:12 The Brussels Convention
- § 3A:13 —Judicial decisions
- § 3A:14 The Brussels Regulation
- § 3A:15 Brussels recast
- § 3A:16 The Rome Convention
- § 3A:17 The Rome I Regulation

TABLE OF CONTENTS

§ 3A:18	The United Nations Convention on Contracts for the International Sale of Goods
§ 3A:19	The Hague Principles on Choice of Law in International Commercial Contracts
§ 3A:20	Other conventions
§ 3A:21	Approaches of selected countries
§ 3A:22	Conclusion
Appendix 3A-1.	Sample Choice of Law and Choice of Forum Clause
Appendix 3A-2.	Convention on the Law Applicable to Contractual Obligations (“The Rome Convention”)
Appendix 3A-3.	Organization of American States Fifth Inter-American Specialized Conference on Private International Law: Inter-American Convention on the Law Applicable to International Contracts [Done at Mexico City, March 17, 1994]
Appendix 3A-4.	The United Nations Convention on Contracts for the International Sale of Goods (CISG)
Appendix 3A-5.	Proposal for a Regulation of the European Parliament and the Council on the law applicable to contractual obligations (Rome I)
Appendix 3A-6.	The Hague Principles on Choice of law in International Commercial Contracts

CHAPTER 4. TRANSNATIONAL CONTRACT LAW

I. INTRODUCTION

§ 4:1 In general

II. THE PRECONTRACTUAL PROCESS

A. OVERVIEW

§ 4:2 In general

B. ENFORCEABILITY OF LETTERS OF INTENT

§ 4:3 In general

C. COMMON LAW COUNTRIES

§ 4:4 Precontractual agreements

- § 4:5 Party negation of contractual obligation
- § 4:6 Precontractual documents that contemplate subsequent contracts
- § 4:7 —England
- § 4:8 —The United States

D. CIVIL LAW COUNTRIES

1. France

- § 4:9 In general
- § 4:10 Precontractual documents that contemplate subsequent contracts

2. Italy: “Contratti Preliminari” and “Precontratti”

- § 4:11 In general

3. Germany

- § 4:12 In general
- § 4:13 Precontractual documents that contemplate subsequent contracts

E. ENFORCEABLE LETTERS OF INTENT

- § 4:14 In general
- § 4:15 Offers
- § 4:16 Acceptances
- § 4:17 Precontractual agreements
- § 4:18 Complete contracts
- § 4:19 Enforceable parts
- § 4:20 Contracts to negotiate

F. TYPES OF LETTERS OF INTENT MORE LIKELY TO BE ENFORCED AS COMPLETE AGREEMENTS

- § 4:21 Common law countries—England
- § 4:22 —The United States
- § 4:23 Civil law countries
- § 4:24 Letters of intent which authorize or permit commencement of performance

G. PRECONTRACTUAL LIABILITY

- § 4:25 In general
- § 4:26 Common law countries—England

TABLE OF CONTENTS

- § 4:27 —The United States
- § 4:28 Civil law countries
- § 4:29 —France
- § 4:30 —Italy
- § 4:31 —Germany

III. FORMATION OF CONTRACTS

A. COMMON LAW COUNTRIES

- § 4:32 In general
- § 4:33 Elements of the offer
- § 4:34 Elements of the acceptance

B. CIVIL LAW COUNTRIES

1. France

- § 4:35 In general
- § 4:36 Elements of the offer
- § 4:37 Elements of the acceptance

2. Italy

- § 4:38 In general
- § 4:39 Elements of the offer
- § 4:40 Elements of the acceptance

3. Germany

- § 4:41 In general
- § 4:42 Elements of the offer
- § 4:43 Elements of the acceptance

4. An Evolutionary Trend in Common and Civil Law

- § 4:44 In general

5. The UNIDROIT Principles

- § 4:45 In general

IV. BREACH OF CONTRACT AND ENTITLEMENT TO DAMAGES

- § 4:46 In general
- § 4:47 Common law concepts regarding entitlement to damages
- § 4:48 Civil law concepts regarding entitlement to damages
- § 4:49 The practice of international business contracts

V. QUANTIFICATION OF DAMAGES

- § 4:50 In general
- § 4:51 Common law principles
- § 4:52 —English law
- § 4:53 —United States law
- § 4:54 Civil law principles
- § 4:55 The practice of international business contracts
- § 4:56 —“Consequential damages”
- § 4:57 —Interest and currency fluctuations
- § 4:58 —Mitigation

VI. CHANGED CIRCUMSTANCES AND CONTRACT ADAPTATION

- § 4:59 In general
- § 4:60 Adaptation clauses in international business contracts
- § 4:61 —Clauses aimed at maintaining the original economic value of the parties’ obligations unchanged
- § 4:62 —Clauses aimed at adjusting the contract to unforeseen changes of circumstances
- § 4:63 Contract adaptation in municipal law
- § 4:64 Changed circumstances in treaty law: The “rebus sic stantibus” clause
- § 4:65 Contract adaptation in the *lex mercatoria*
- § 4:66 —Events triggering the application of hardship clauses
- § 4:67 —Impact the events must have on the parties’ obligations
- § 4:68 —Effect of hardship clauses
- § 4:69 International arbitration case law
- § 4:70 Conclusion

Appendix 4A. UNIDROIT Principles of International Commercial Contracts

CHAPTER 4A. CONTRACT LAW IN THE EUROPEAN UNION

I. INTRODUCTION

- § 4A:1 In general

II. EU LEGISLATION ON CONTRACTS

- § 4A:2 In general
- § 4A:3 Directives and Regulations with effect on contracts
- § 4A:4 Overview of selected community legislation

TABLE OF CONTENTS

§ 4A:5 Anticipated measures

III. LAW ENFORCEMENT AND CIVIL PROCEDURE

§ 4A:6 EU legislation and European treaties on private international law and civil procedure

§ 4A:7 Choice of law

§ 4A:8 Jurisdiction, recognition, and enforceability of judgments in contractual matters

§ 4A:9 Enforcement of consumer law

§ 4A:10 Anticipated measures

IV. BREXIT

§ 4A:11 Consequences on EU Legislation

§ 4A:12 Consequences on Civil Procedure

V. PRINCIPLES OF EUROPEAN CONTRACT LAW

§ 4A:13 In general

§ 4A:14 Scope of applicability to contracts

Appendix 4A-1. Principles of European Contract Law, Parts I & II

Appendix 4A-2. Principles of European Contract Law, Part III

CHAPTER 5. LEGAL ASPECTS OF FRANCHISING INTERNATIONALLY

§ 5:1 Introduction

§ 5:2 Why franchise internationally?

§ 5:3 U.S. and foreign laws affecting franchising

§ 5:4 —U.S. regulation

§ 5:5 —U.S. regulation of international franchising—Federal regulation

§ 5:6 — —State regulation

§ 5:7 —Foreign governmental regulation of franchising

§ 5:8 — —EU antitrust regulation

§ 5:9 — —UK antitrust regulation

§ 5:10 — —Canadian pre-sale disclosure requirements

§ 5:11 — — —Alberta

§ 5:12 — — —Ontario

§ 5:13 — — —Québec

§ 5:14 — —French pre-sale disclosure requirements

§ 5:15 — —Mexican pre-sale disclosure and registration requirements

§ 5:16 — —Brazilian pre-sale disclosure requirements

- § 5:17 — —Spanish pre-sale disclosure requirements
- § 5:18 — —Russian registration requirements
- § 5:19 — —Australian pre-sale disclosure requirements
- § 5:20 — —South Korean pre-sale disclosure requirements
- § 5:21 — —Japanese pre-sale disclosure requirements
- § 5:22 — —China's franchise measures
- § 5:23 — —Other foreign laws affecting franchising
- § 5:24 — —Contract law
- § 5:25 — —Legislation limitations on contract terms
- § 5:26 — —Agency and distributorship laws
- § 5:27 — —Foreign investment laws
- § 5:28 — —Technology transfer laws
- § 5:29 — —Antitrust laws
- § 5:30 — —Trademark laws
- § 5:31 — —Exchange control laws
- § 5:32 — —Tax laws
- § 5:33 —Franchise association codes of conduct
- § 5:34 Structuring an international franchise network
- § 5:35 —Direct franchising
- § 5:36 —Area development agreements
- § 5:37 —Master franchise agreements
- § 5:38 International franchise agreements
- § 5:39 —Dispute settlement provisions
- § 5:40 —Antitrust provisions
- § 5:41 —Language
- § 5:42 —Payments

Appendix 5A. UNIDROIT Model Franchise Disclosure Law

CHAPTER 6. INTERNATIONAL TECHNOLOGY LICENSING

I. INTRODUCTION

- § 6:1 Definition of international technology licensing
- § 6:2 Role and purpose of international technology licensing

II. BENEFITS AND RISKS OF INTERNATIONAL TECHNOLOGY LICENSING

- § 6:3 Benefits to licensor
- § 6:4 Risks for licensor
- § 6:5 Benefits to licensee
- § 6:6 Risks for licensee

TABLE OF CONTENTS

**III. TYPES AND SUBJECT MATTER OF
INTERNATIONAL TECHNOLOGY LICENSES**

- § 6:7 Patent licenses
- § 6:8 Know-how licenses
- § 6:9 Trademark/service mark licenses
- § 6:10 Technical assistance, management assistance, and
training
- § 6:11 Turnkey operations

**IV. REGULATION AND LEGISLATION AFFECTING
TECHNOLOGY LICENSING AGREEMENTS IN
U.S., EU, UK AND SELECTED COUNTRIES IN
LATIN AMERICA AND ASIA**

- § 6:12 Introduction to types of legal issues

A. REGULATION IN THE U.S.

- § 6:13 Antitrust law and the Department of Justice
guidelines
- § 6:14 Patent misuse
- § 6:15 Export control law

**B. REGULATION IN THE EUROPEAN UNION AND
UNITED KINGDOM**

- § 6:16 EU and United Kingdom competition law
- § 6:17 National technology transfer laws in Europe
- § 6:18 European national intellectual property law
- § 6:19 Withholding taxes

C. REGULATION IN MEXICO

- § 6:20 Technology transfer legislation and registration
- § 6:21 Exchange controls
- § 6:22 Taxation

D. REGULATION IN BRAZIL

- § 6:23 Technology transfer legislation and registration
- § 6:24 Exchange controls
- § 6:25 Taxation

E. REGULATION IN ARGENTINA

- § 6:26 Technology transfer legislation and registration
- § 6:27 Exchange controls

§ 6:28 Taxation

F. REGULATION IN KOREA

§ 6:29 Technology transfer legislation and registration

§ 6:30 Exchange controls

§ 6:31 Competition law

§ 6:32 Taxation

G. REGULATION IN INDIA

§ 6:33 Technology transfer legislation and registration

§ 6:34 Exchange controls

§ 6:35 Taxation

V. INTERNATIONAL CONVENTIONS AND ORGANIZATIONS AFFECTING TECHNOLOGY LICENSING

§ 6:36 In general

Appendix 6A. Sample International Technology License Agreement

CHAPTER 7. ANTITRUST/COMPETITION LAW ASPECTS OF INTERNATIONAL BUSINESS OPERATIONS

§ 7:1 Introduction

§ 7:2 The governing laws of the United States

§ 7:3 Competition rules in the European Union

§ 7:4 China's Anti-Monopoly Law

§ 7:5 International Antitrust Compliance

Appendix 7A. United States Sentencing Commission, 2016 Guidelines Manual Chapter Eight—Sentencing of Organizations

CHAPTER 8. INTERNATIONAL COMMERCIAL ARBITRATION

I. INTRODUCTION AND GENERAL CONSIDERATIONS

A. GENERAL

§ 8:1 In general

B. CHARACTERISTICS OF ARBITRATION

§ 8:2 Agreement to arbitrate is necessary

TABLE OF CONTENTS

- § 8:3 Choice of rules and governing law
- § 8:4 Place of arbitration
- § 8:5 Choice of arbitrator or arbitrators
- § 8:6 Other optional provisions
- § 8:7 Arbitration and litigation compared
- § 8:8 Ad hoc versus institutional arbitration
- § 8:9 Use of arbitration for certain types of transactions and legal issues

C. ENFORCEMENT OF ARBITRAL AWARDS

- § 8:10 The New York Convention

D. CLAIMS AGAINST STATES UNDER INVESTMENT TREATIES

- § 8:11 In general
- § 8:12 The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) and the International Centre for the Settlement of Investment Disputes (ICSID) Arbitration Rules

II. INTERNATIONAL ARBITRATION RULES AND ARBITRAL INSTITUTIONS

A. FUNCTION OF RULES AND ARBITRAL INSTITUTIONS

- § 8:13 In general

B. INTERNATIONAL ARBITRATION GUIDELINES AND PRACTICE

- § 8:14 In general

C. INTERNATIONAL CHAMBER OF COMMERCE (ICC) AND THE ICC ARBITRATION RULES

1. Introduction

- § 8:15 In general

2. Key Elements of ICC Arbitration Rules

- § 8:16 Jurisdiction and agreement to arbitrate
- § 8:17 Appointment of arbitrators
- § 8:18 Place of arbitration
- § 8:19 Governing law

- § 8:20 Language
- § 8:21 Proceedings
- § 8:22 Interim measures
- § 8:23 Confidentiality
- § 8:24 Award
- § 8:25 Costs

D. AMERICAN ARBITRATION ASSOCIATION AND
THE AAA/ICDR INTERNATIONAL
ARBITRATION RULES

1. Introduction

- § 8:26 In general

2. Key Elements of AAA/ICDR International
Rules

- § 8:27 Jurisdiction and agreement to arbitrate
- § 8:28 Appointment of arbitrators
- § 8:29 Place of arbitration
- § 8:30 Governing law
- § 8:31 Language
- § 8:32 Proceedings
- § 8:33 Interim measures
- § 8:34 Confidentiality
- § 8:35 Award
- § 8:36 Costs

E. LONDON COURT OF INTERNATIONAL
ARBITRATION (LCIA) AND LCIA ARBITRATION
RULES

1. Introduction

- § 8:37 In general

2. Key Elements of LCIA Rules

- § 8:38 Jurisdiction and agreement to arbitrate
- § 8:39 Appointment of arbitrators
- § 8:40 Place of arbitration
- § 8:41 Governing law
- § 8:42 Language
- § 8:43 Proceedings
- § 8:44 Interim measures
- § 8:45 Confidentiality
- § 8:46 Award

TABLE OF CONTENTS

§ 8:47 Costs

F. THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE (SCC) AND THE SCC ARBITRATION RULES

1. Introduction

§ 8:48 In general

2. Key Elements of SCC Rules

§ 8:49 Jurisdiction and agreement to arbitrate

§ 8:50 Appointment of arbitrators

§ 8:51 Place of arbitration

§ 8:52 Governing law

§ 8:53 Language

§ 8:54 Proceedings

§ 8:55 Interim measures

§ 8:56 Confidentiality

§ 8:57 Award

§ 8:58 Costs

G. SINGAPORE INTERNATIONAL ARBITRATION CENTRE (SIAC) AND THE SIAC ARBITRATION RULES

1. Introduction

§ 8:59 In general

2. Key Elements of the 2016 SIAC Rules

§ 8:60 Jurisdiction and agreement to arbitrate

§ 8:61 Appointment of arbitrators

§ 8:62 Place of arbitration

§ 8:63 Governing law

§ 8:64 Language

§ 8:65 Proceedings

§ 8:66 Interim measures

§ 8:67 Confidentiality

§ 8:68 Award

§ 8:69 Costs

H. UNCITRAL ARBITRATION RULES

1. Introduction

§ 8:70 In general

2. Key Elements of UNCITRAL Rules

- § 8:71 Jurisdiction and agreement to arbitrate
- § 8:72 Appointment of arbitrators
- § 8:73 Place of arbitration
- § 8:74 Governing law
- § 8:75 Language
- § 8:76 Proceedings
- § 8:77 Interim measures
- § 8:78 Confidentiality
- § 8:79 Award
- § 8:80 Costs
- § 8:81 Other notable international commercial arbitration institutions

III. NATIONAL LEGISLATION

- § 8:82 In general

A. WESTERN HEMISPHERE

- § 8:83 North America—United States
- § 8:84 —Canada
- § 8:85 Latin America and Caribbean—Overview
- § 8:86 Latin America—Argentina
- § 8:87 —Brazil—Arbitration legislation and practice
- § 8:88 — —Setting aside, recognition, and enforcement of awards
- § 8:89 — —Arbitral institutions
- § 8:90 —Mexico

B. WESTERN EUROPE

1. Introduction

- § 8:91 In general

2. Western Europe—England

- § 8:92 Introduction
- § 8:93 Arbitration legislation
- § 8:94 Jurisdiction
- § 8:95 Arbitration agreement
- § 8:96 Appointment of arbitrators
- § 8:97 Governing law
- § 8:98 Arbitration proceedings
- § 8:99 Interim measures
- § 8:100 Award

TABLE OF CONTENTS

§ 8:101	Enforcement of the award
3. Western Europe—Switzerland	
§ 8:102	Introduction
§ 8:103	Arbitration legislation
§ 8:104	Jurisdiction
§ 8:105	Arbitration agreement
§ 8:106	Appointment of arbitrators
§ 8:107	Governing law
§ 8:108	Arbitration proceedings
§ 8:109	Interim measures
§ 8:110	Award
§ 8:111	Enforcement of the award
§ 8:112	Arbitral Institutions in Switzerland
4. Western Europe—France	
§ 8:113	Introduction
§ 8:114	Arbitration legislation
§ 8:115	Jurisdiction
§ 8:116	Arbitration agreement
§ 8:117	Appointment of arbitrators
§ 8:118	Governing law
§ 8:119	Arbitration proceedings
§ 8:120	Interim measures
§ 8:121	Award
§ 8:122	Enforcement of the award
5. Western Europe—Germany	
§ 8:123	Introduction
§ 8:124	Arbitration legislation
§ 8:125	Jurisdiction
§ 8:126	Arbitration agreement
§ 8:127	Appointment of arbitrators
§ 8:128	Governing law
§ 8:129	Arbitration proceedings
§ 8:130	Interim measures
§ 8:131	Award
§ 8:132	Enforcement of the award
§ 8:133	Arbitral Institutions in Germany
C. CENTRAL AND EASTERN EUROPE (CEE)	
1. Introduction	
§ 8:134	In general

2. Central and Eastern Europe—The Russian Federation

- § 8:135 Introduction
- § 8:136 Arbitration legislation and practice
- § 8:137 Setting aside, recognition and enforcement of awards
- § 8:138 Arbitral institutions in the Russian Federation

D. ASIA AND OCEANIA

- § 8:139 Introduction
- § 8:140 East Asia—Hong Kong—Introduction
- § 8:141 — —Arbitration legislation and practice
- § 8:142 — —Setting aside, recognition and enforcement of awards
- § 8:143 — —Arbitral institutions
- § 8:144 —Singapore—Introduction
- § 8:145 — —Arbitration legislation and practice
- § 8:146 — —Setting aside, recognition and enforcement of awards
- § 8:147 — —Arbitral institutions
- § 8:148 —People’s Republic of China—Arbitration legislation and practice
- § 8:149 — —Setting aside, recognition and enforcement of awards
- § 8:150 — —Arbitral institutions
- § 8:151 —Japan—Arbitration legislation and practice
- § 8:152 — —Setting aside, recognition and enforcement of awards
- § 8:153 — —Arbitral institutions
- § 8:154 South Asia—India—Arbitration legislation and practice
- § 8:155 — —Setting aside, recognition and enforcement of awards
- § 8:156 — —Arbitral institutions

E. AFRICA, THE MIDDLE EAST AND THE GULF STATES

- § 8:157 Overview of Africa
- § 8:158 Overview of Gulf States
- § 8:159 Overview of the Middle East

Table of Contents

CHAPTER 9. RECOGNITION OF FOREIGN BANKRUPTCIES IN A TRANSNATIONAL SETTING: AN ANALYSIS OF THE LAWS OF THE UNITED STATES BEFORE THE ENACTMENT OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

I. INTRODUCTION; HISTORICAL DEVELOPMENT

- § 9:1 Introduction
- § 9:2 Historical development of United States law regarding
the recognition of foreign bankruptcies and foreign
representatives

II. STATUTORY PROVISIONS AND CASE LAW REGARDING THE RECOGNITION OF FOREIGN BANKRUPTCIES AND FOREIGN REPRESENTATIVES AND THE OPTIONS AVAILABLE TO A FOREIGN REPRESENTATIVE FOR PROTECTING THE ASSETS OF A FOREIGN DEBTOR IN THE UNITED STATES AND SEEKING A TURNOVER OF SUCH ASSETS TO A FOREIGN PROCEEDING

- § 9:3 The United States Bankruptcy Code
- § 9:4 Section 304 (cases ancillary to foreign proceedings)
- § 9:5 —Commencement of the Section 304 case
- § 9:6 —Jurisdiction and venue
- § 9:7 —Form of relief
- § 9:8 —Criteria for granting relief under Section 304
- § 9:9 —Section 304 cases
- § 9:10 Section 303(b)(4) (involuntary cases commenced by
foreign representatives)
- § 9:11 Section 305 (abstention)
- § 9:12 Section 508

III. STATUTORY PROVISIONS AUTHORIZING A UNITED STATES TRUSTEE TO SEEK THE ASSISTANCE OF FOREIGN COURTS IN PROTECTING THE FOREIGN ASSETS OF A UNITED STATES DEBTOR INVOLVED IN A FOREIGN BANKRUPTCY PROCEEDING AND IN SEEKING THE TURNOVER OF SUCH ASSETS TO THE UNITED STATES

§ 9:13 Generally

IV. CONCLUSION

§ 9:14 Generally

APPENDIX 9A. Convention on International Aspects of
Bankruptcy

**CHAPTER 9A. TRANSNATIONAL
INSOLVENCY: A GUIDE TO CROSS-BORDER
BANKRUPTCY PROCEEDINGS**

- § 9A:1 Introduction
- § 9A:2 The purpose of Chapter 15
- § 9A:3 Chapter 15's key terms of art
- § 9A:4 —Debtor
- § 9A:5 —Foreign court
- § 9A:6 —Foreign proceeding
- § 9A:7 —Foreign representative
- § 9A:8 —Foreign main proceeding
- § 9A:9 —Center of main interests
- § 9A:10 —Foreign non-main proceeding
- § 9A:11 —Establishment
- § 9A:12 —Recognition
- § 9A:13 Implementation—The reach of Chapter 15—
Facilitating inbound and outbound foreign
proceedings
- § 9A:14 —Summary of the process of recognizing a foreign
proceeding
- § 9A:15 —Overview of the entry and effect of an order of
recognition
- § 9A:16 —Fostering of communication, cooperation, and
diplomacy
- § 9A:17 —Simplified and streamlined procedures—Tools
available to a foreign representative from the
inception of filing a petition for recognition

TABLE OF CONTENTS

- § 9A:18 — —Once recognition is granted
- § 9A:19 —Protecting the creditors and other interested parties
- § 9A:20 Application of Chapter 15 in Russian Bank case
- § 9A:21 Final comments

CHAPTER 10. UNITED STATES TAXATION OF FOREIGN INVESTORS

I. INTRODUCTION

- § 10:1 Generally

II. CLASSIFICATION OF TAXPAYERS

A. INDIVIDUALS

- § 10:2 In general
- § 10:3 Treaty rules
- § 10:4 Entering and leaving the United States
- § 10:5 Special rules for spouses
- § 10:6 U.S. estate and gift tax considerations

B. DOMESTIC AND FOREIGN ENTITIES

- § 10:7 Corporations
- § 10:8 Partnerships
- § 10:9 Trusts

III. NONBUSINESS INCOME

A. BACKGROUND

- § 10:10 Generally

B. INCOME SUBJECT TO FDAP WITHHOLDING

- § 10:11 Source of income
- § 10:12 Interest
 - § 10:13 —Portfolio interest exception
 - § 10:14 —Bank deposit interest exception
 - § 10:15 —80/20 company exception (repealed)
 - § 10:16 —Original issue discount
- § 10:17 Dividends
 - § 10:18 —Earnings and profits requirement
 - § 10:19 —Stock dividends
 - § 10:20 —Certification procedures

THE LAW OF TRANSNATIONAL BUSINESS TRANSACTIONS

- § 10:21 Rents
- § 10:22 Royalties
- § 10:23 Capital gains
- § 10:24 Financial derivatives
- § 10:25 —Securities lending
- § 10:26 —Forwards, futures, and options
- § 10:27 —Equity swaps and other notional principal contracts
- § 10:28 Insurance premiums
- § 10:29 Exception for business income

C. TREATY RELIEF

- § 10:30 Generally

D. WITHHOLDING AGENTS

- § 10:31 Generally

E. WITHHOLDING PROCEDURES

- § 10:32 In general
- § 10:33 Partnerships and trusts
- § 10:34 Reporting

IV. BUSINESS INCOME

- § 10:35 Generally
- § 10:36 U.S. trade or business
- § 10:37 Effectively connected income
- § 10:38 Treaty rules
- § 10:39 Allocation and apportionment of deductions
- § 10:40 Branch profits tax
- § 10:41 Branch level interest tax
- § 10:42 Foreign partners and partnerships
- § 10:43 Services income

V. FOREIGN INVESTMENT IN U.S. REAL ESTATE

A. OVERVIEW

- § 10:44 Generally

B. OPERATIONS

- § 10:45 Generally
- § 10:46 Direct foreign ownership and the net election
- § 10:47 U.S. corporate ownership
- § 10:48 Pass-through entities

TABLE OF CONTENTS

C. DISPOSITIONS (FIRPTA)

1. Overview

§ 10:49 Generally

2. Direct Interests in U.S. Real Property

§ 10:50 In general

§ 10:51 Special rules

3. Interests in U.S. Real Property Holding Corporations

§ 10:52 Generally

§ 10:53 General test for USRPHC status

§ 10:54 Exception for interests solely as a creditor

§ 10:55 Exception for publicly traded stock

§ 10:56 Exception for taxable sale of all U.S. real property

§ 10:57 Exception for stock in domestically controlled REIT

4. Interests in Pass-Through Entities

§ 10:58 Generally

5. The I.R.C. § 897(i) Election

§ 10:59 Generally

6. Corporate Distributions

§ 10:60 Generally

§ 10:61 Distributions by domestic corporations

§ 10:62 Distributions by foreign corporations

7. Nonrecognition Transactions

§ 10:63 Generally

8. Withholding and Compliance

§ 10:64 Generally

§ 10:65 Withholding

§ 10:66 Entity withholding rules

§ 10:67 Compliance

VI. FINANCING U.S. OPERATIONS

§ 10:68 Generally

§ 10:69 Foreign parent/U.S. subsidiary

§ 10:70 —Transfer pricing

§ 10:71 —Earnings stripping

§ 10:72 —Withholding taxes

- § 10:73 —Treaties and treaty shopping
- § 10:74 U.S. branch of foreign corporation
- § 10:75 A note on reporting

VII. TAX TREATIES

A. INTRODUCTION

- § 10:76 Purposes of U.S. tax treaties
- § 10:77 Background
- § 10:78 Scope of treaties

B. TREATY BENEFITS

- § 10:79 Generally
- § 10:80 Permanent establishments and business profits
- § 10:81 FDAP income
- § 10:82 Capital gains
- § 10:83 U.S. real estate income

C. TREATY ADMINISTRATION

- § 10:84 Exchange of information and administrative assistance
- § 10:85 Competent authority and mutual agreement procedures
- § 10:86 Nondiscrimination

D. TREATY SHOPPING AND LIMITATION OF BENEFITS

- § 10:87 Generally

- Appendix 10A. U.S. Income Taxation of Foreign Persons
- Appendix 10B. Classification of Individuals
- Appendix 10C. Classification of Corporations
- Appendix 10D. Effectively Connected Income (before treaties)
- Appendix 10E. U.S. Subsidiary v. Branch
- Appendix 10F. Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Income with Respect to Taxes on Income [September 20, 1996]
- Appendix 10G. U.S. Model Income Tax Convention
- Appendix 10H. UNITED STATES MODEL INCOME TAX CONVENTION [2016]
- Appendix 10I. U.S.—Bulgaria Double Taxation Treaty

TABLE OF CONTENTS

**CHAPTER 10A. US EXPATRIATION TAX
RULES: THE HEART ACT AND THE
INTERNATIONAL EXECUTIVE**

- § 10A:1 Introduction
- § 10A:2 Brief history of expatriate taxation
- § 10A:3 —Under FITA
- § 10A:4 —Under HIPAA
- § 10A:5 —Under the AJCA
- § 10A:6 Gain recognition by covered expatriates
- § 10A:7 —Definition of “covered expatriate”
- § 10A:8 —Exceptions from mark-to-market regime
- § 10A:9 —Taxation of covered gifts or bequests
- § 10A:10 —Reporting requirements
- § 10A:11 —Applying the HEART Act: open issues
- § 10A:12 —Significant exposure for the international executive
- § 10A:13 —Issues of constitutionality
- § 10A:14 Sound tax policy?

**CHAPTER 11. LIFE INSURANCE AS A
FINANCIAL INSTITUTION**

- § 11:1 Introduction
- § 11:2 History and development of insurance
- § 11:3 Ethical considerations in international estate planning
- § 11:4 Insurer regulation—Regulatory regimes
- § 11:5 — —Nongovernmental Organizations (NGOs)
- § 11:6 — —National markets—The United States
- § 11:7 — — —The European Union
- § 11:8 Taxes and securities regulation
- § 11:9 Insurance and money laundering
- § 11:10 Life insurance fundamentals
- § 11:11 —Survey of jurisdictions—Introduction
- § 11:12 — —The United Kingdom
- § 11:13 — —The United States
- § 11:14 The 2010 “FATCA” legislation and FBAR proposals
- § 11:15 Life insurance fundamentals—Survey of jurisdictions—The United States—California
- § 11:16 — — —Colorado
- § 11:17 — — —Florida
- § 11:18 — — —New York
- § 11:19 — — —General issues
- § 11:20 — — —New regulations finalized

- § 11:21 — — — IRS Guidance on protected cell companies
- § 11:22 — — — France—Insurer regulation
- § 11:23 — — — Creditor protection
- § 11:24 — — — The “offshore” jurisdictions
- § 11:25 — — — The Bahamas—Insurer regulation
- § 11:26 — — — Creditor protection
- § 11:27 — — — Barbados—Insurer regulation
- § 11:28 — — — Creditor protection
- § 11:29 — — — Bermuda—Insurer regulation
- § 11:30 — — — Creditor protection
- § 11:31 — — — Cayman Islands—Insurer regulation
- § 11:32 — — — Creditor protection
- § 11:33 — — — Isle of Man—Insurer regulation
- § 11:34 — — — Creditor protection
- § 11:35 — Other jurisdictions—Switzerland—Insurer
regulation
- § 11:36 — — — Anguilla—Insurer regulation
- § 11:37 — — — Switzerland—Creditor protection
- § 11:38 Subsequent IRS guidance
- § 11:39 The HEART of the matter revisited: Clarification of
the expatriation tax rules of the HEART Act by IRS
Notice 2009-85
- § 11:40 Conclusion

CHAPTER 12. INTERNATIONAL CAPITAL MARKETS AND SECURITIES REGULATION

I. CAPITAL FLOWS: THEORY AND REALITY

- § 12:1 The problem
- § 12:2 EC solution

II. THE INTERNATIONAL MARKET IN DEBT SECURITIES

- § 12:3 International bond market
- § 12:4 Lenders: The role of Eurocurrencies
- § 12:5 Borrowers: Public and private
- § 12:6 Equity related bonds
- § 12:7 Regulation of international bond issues
- § 12:8 Regulation of syndicated loans

III. STOCK EXCHANGES OF THE WORLD

- § 12:9 Generally

TABLE OF CONTENTS

IV. WORLD'S SECURITIES BUSINESS AND SECURITIES FIRMS

§ 12:10 Generally

V. NATIONAL CHARACTER OF CAPITAL MARKETS

§ 12:11 The United States

§ 12:12 Japan

§ 12:13 The United Kingdom

§ 12:14 Germany

§ 12:15 France

§ 12:16 The Netherlands

§ 12:17 Italy

§ 12:18 Hong Kong

§ 12:19 Mexico

§ 12:20 Australia

VI. INTERNATIONAL MARKET IN EQUITIES

§ 12:21 Generally

VII. INTERNATIONALIZATION OF PORTFOLIOS

§ 12:22 Generally

VIII. SECURITIES REGULATION

A. OVERVIEW

§ 12:23 Generally

B. U.S. DISCLOSURE SYSTEMS

§ 12:24 Registration of securities

§ 12:25 Exchange Act registration and continuous disclosure

C. THE UNITED KINGDOM

§ 12:26 Role of the stock exchange

§ 12:27 Flotation of securities

§ 12:28 1986 FSA regulation of prospectus and particulars

D. EUROPEAN COMMUNITY DISCLOSURE DIRECTIVES

§ 12:29 European prospectus

§ 12:30 Continuous reporting

**E. HARMONIZING ACCOUNTING STANDARDS
AND AUDITING PROCEDURES**

1. A Survey

§ 12:31 Generally

2. International Accounting Standards Committee

§ 12:32 Background and overview

§ 12:33 History and structure of IASC

§ 12:34 International accounting standards

§ 12:35 National and international reaction

3. International Auditing Practices Committee

§ 12:36 Introduction

§ 12:37 Purpose and structure of IAPC

§ 12:38 International Auditing Guidelines

F. INSIDER TRADING

§ 12:39 The United States

§ 12:40 The United Kingdom

§ 12:41 France

§ 12:42 Germany

§ 12:43 Canada

§ 12:44 Australia

§ 12:45 Japan

§ 12:46 Other countries

G. TAKE-OVER REGULATION

§ 12:47 The United States—Federal regulation

§ 12:48 —State regulation

§ 12:49 The United Kingdom

§ 12:50 Australia

§ 12:51 Canada

§ 12:52 France

§ 12:53 Other countries

H. PROXY REGULATION

§ 12:54 The United States

§ 12:55 Other countries

§ 12:56 German alternative

IX. INVESTMENT COMPANIES

§ 12:57 Generally

TABLE OF CONTENTS

§ 12:58 EC directive

X. THE FRAGILE NATURE OF INTERNATIONAL SECURITIES REGULATION

A. INTRODUCTION

§ 12:59 Generally

B. INTERNATIONAL ORGANIZATIONS AND PROCESSES: INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

§ 12:60 Background

§ 12:61 Substantive agenda—Multinational offerings

§ 12:62 —Regulation of secondary markets

§ 12:63 —Regulation of market intermediaries

§ 12:64 —Enforcement and the exchange of information

C. INTERNATIONAL ORGANIZATIONS AND PROCESSES: OTHER AUTHORITIES AND PROCESSES

§ 12:65 General Agreement on Trade in Services

§ 12:66 Organization for Economic Cooperation and Development

§ 12:67 United Nations Commission on Transnational Corporations

§ 12:68 Group of Thirty (Consultative Group on International Economic and Monetary Affairs)

§ 12:69 International Federation of Stock Exchanges

§ 12:70 International Society of Securities Administrators

§ 12:71 International Councils of Securities Dealers and Self-Regulatory Organizations

§ 12:72 Federation of European Accountants

§ 12:73 Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting

XI. OFFSHORE DISTRIBUTIONS

A. BACKGROUND; DEFINITIONS

§ 12:74 Regulation S and related initiatives

§ 12:75 Offshore distributions and Release Number 4708

§ 12:76 Distributions pursuant to Regulation S—Introduction

THE LAW OF TRANSNATIONAL BUSINESS TRANSACTIONS

§ 12:77 General Statement (Non-Safe Harbor) approach

§ 12:78 Definition of U.S. person

B. GENERAL CONDITIONS

§ 12:79 Offshore transactions

§ 12:80 Directed selling efforts

C. THE ISSUER-DISTRIBUTORS SAFE HARBORS

§ 12:81 Category 1: Offerings of foreign securities and overseas directed offerings

§ 12:82 Offering restrictions

§ 12:83 Category 2: Reporting issuers and debt, preferred, and asset-backed securities of non-reporting foreign issuers

§ 12:84 Category 3: Non-reporting U.S. issuers and certain equity securities of non-reporting foreign issuers

§ 12:85 Failure to comply with a safe harbor condition or restriction

D. RULE 904 SAFE HARBOR FOR REALES

§ 12:86 Securities distributed pursuant to Regulation S

§ 12:87 Resale of securities issued in reliance on an exemption

E. CONVERTIBLE SECURITIES AND WARRANTS

§ 12:88 Convertible securities

§ 12:89 Warrants

F. REGULATION S AND AMERICAN DEPOSITARY RECEIPTS

§ 12:90 Overview of American Depositary Receipts

§ 12:91 Impact of Regulation S—Sales to U.S. persons during restricted period

§ 12:92 —Substantial U.S. market interest

G. REALES IN THE UNITED STATES OR TO U.S. PERSONS

§ 12:93 Conceptual framework

§ 12:94 Regulation S and the releases

§ 12:95 Testing the premise—Some random scenarios

TABLE OF CONTENTS

H. SUMMING UP THE RESTRICTIONS ON SALES IN THE UNITED STATES AND TO U.S. PERSONS

- § 12:96 Generally
- § 12:97 Distributors
- § 12:98 Investors
- § 12:99 Professionals
- § 12:100 Offers and sales after the restricted period
- § 12:101 The legend

I. MISCELLANEOUS ISSUES

- § 12:102 Interrelationship of Regulation S and tax provisions
- § 12:103 Critique of Regulation S
- § 12:104 Applicability to investment companies

J. STATUS OF REGULATION S UNDER INTERNATIONAL LAW

- § 12:105 Introduction
- § 12:106 Selected terms and concepts
- § 12:107 Prescriptive jurisdiction
- § 12:108 Bases of jurisdiction to prescribe; Limitations
- § 12:109 Applicability to Regulation S
- § 12:110 Relationship to the Federal Securities Code

XII. REGISTRATION REQUIREMENTS APPLICABLE TO FOREIGN BROKER- DEALERS

- § 12:111 Background
- § 12:112 Sources of law
- § 12:113 General principle of territoriality
- § 12:114 Unsolicited transactions
- § 12:115 Provision of research by broker-dealers
- § 12:116 Direct transactions with U.S. institutions
- § 12:117 Transactions with certain persons
- § 12:118 Recognition of foreign broker-dealer regulation

XIII. RULE 144A AND THE PORTAL MARKET

- § 12:119 Interrelationship of Rule 144A, PORTAL, Regulation S, and Rule 144
- § 12:120 Initial proposed Rule 144A
- § 12:121 Qualified institutional buyer

- § 12:122 Eligible securities
- § 12:123 Informational requirements and other conditions
- § 12:124 Resales of Rule 144A securities
- § 12:125 Private placements after Rule 144A
- § 12:126 PORTAL, a closed market for Rule 144A securities
- § 12:127 The closed system
- § 12:128 Closing the loop—Qualified exit transactions
- § 12:129 Rule 144A disclosure and portal
- § 12:130 Primary placements
- § 12:131 Secondary trading
- § 12:132 Critique

XIV. EXTRATERRITORIAL APPLICATION OF THE ANTI-FRAUD PROVISIONS

- § 12:133 Generally

XV. REGISTERED INVESTMENT COMPANIES

- § 12:134 Generally

XVI. OFFSHORE FUNDS

- § 12:135 Generally

XVII. INTEGRATED DISCLOSURE FOR FOREIGN PRIVATE ISSUERS

- § 12:136 Introduction
- § 12:137 Form 20-F and Regulation S-K compared
- § 12:138 Distinctive aspects of Form 20—Including the financial statements

XVIII. REGULATION OF FOREIGN OFFERINGS IN THE UNITED STATES

- § 12:139 By foreign private issuers
- § 12:140 Foreign governmental issuers
- § 12:141 Foreign investment companies
- § 12:142 Exempt offerings
- § 12:143 Corporate combinations and exchange offers involving foreign issuers

XIX. REGISTRATION AND REPORTING BY FOREIGN ISSUERS UNDER THE EXCHANGE ACT

- § 12:144 Exemptions

TABLE OF CONTENTS

§ 12:145 Registration and reporting on Form 20-F

XX. FOREIGN SECURITIES TRADED ON NASDAQ

§ 12:146 Generally

XXI. EXTRATERRITORIAL APPLICATION OF THE INVESTMENT ADVISERS ACT

§ 12:147 Generally

XXII. FOREIGN CORRUPT PRACTICES ACT

§ 12:148 Books, records, and internal accounting controls

§ 12:149 Corrupt payments

XXIII. MULTIJURISDICTIONAL DISCLOSURE SYSTEM: UNITED STATES

A. IN GENERAL

§ 12:150 Introduction

§ 12:151 An overview

§ 12:152 Some common definitions

XXIV. CROSS-BORDER RIGHTS, TENDER AND EXCHANGE OFFERS

§ 12:153 Cross-border rights offerings—Introduction

§ 12:154 —Exemption from registration

§ 12:155 —Registration

§ 12:156 —Common eligibility requirements

§ 12:157 Amendments to Form F-3

§ 12:158 Policy considerations

§ 12:159 International tender and exchange offers—Exchange offers and business combinations: Exemption from registration

§ 12:160 —Exchange offers and business combinations: Registration

§ 12:161 International tender offers and the Williams Act

§ 12:162 Related exemptions; U.K. exemptive order

XXV. TABLES

§ 12:163 Dollar value of international bond offerings: 1965–1988

§ 12:164 Foreign bond issues in selected capital markets

§ 12:165 Eurobond issues by currency of issue

THE LAW OF TRANSNATIONAL BUSINESS TRANSACTIONS

- § 12:166 Equity related international bond offerings
- § 12:167 Issuance of equity related bonds in international markets
- § 12:168 Market capitalization of world's stock markets
- § 12:169 Value of international stock offerings
- § 12:170 Domestic and foreign listed companies on major stock exchanges
- § 12:171 Overview of foreign investment by private sector pension funds
- § 12:172 Overview of global mutual funds
- § 12:173 Annual rates of return of stock price indexes in 10 major countries

APPENDIX 12A. United Nations Commission on
International Trade Law: Model Law on
International Credit Transfers [November
25, 1992]

Table of Contents

CHAPTER 12A. INTERNATIONAL SECURITIES REGULATION

§ 12A:1	Purpose & scope
§ 12A:2	Theory & practice
§ 12A:3	Capital markets
§ 12A:4	—The United States
§ 12A:5	—Europe and the European Union
§ 12A:6	—South Africa
§ 12A:7	—Argentina
§ 12A:8	—Brazil
§ 12A:9	—Australia
§ 12A:10	—Japan
§ 12A:11	—India
§ 12A:12	—Hong Kong
§ 12A:13	International securities regulation
§ 12A:14	—World Trade Organization: General Agreement on Trade in Services
§ 12A:15	—Organization for Economic Cooperation and Development
§ 12A:16	—International Organization of Securities Commissions
§ 12A:17	—United Nations Conference on Trade and Development
§ 12A:18	—Group of Thirty
§ 12A:19	—World Federation of Exchanges
§ 12A:20	—International Securities Services Association
§ 12A:21	—International Council of Securities Associations
§ 12A:22	International trends
§ 12A:23	—International disclosure standards
§ 12A:24	—International accounting standards
§ 12A:25	—International auditing practices
§ 12A:26	—Cryptocurrency regulation
§ 12A:27	Other trends
§ 12A:28	Conclusion
Appendix 12A-1.	General Agreement on Trade in Services
Appendix 12A-2.	Objectives and Principles of Securities Regulation [Excerpt]
Appendix 12A-3.	International Disclosure Standards for Cross-Border Offerings And Initial Listings by Foreign Issuers

Appendix 12A-4. Securities and Exchange Commission 17
C.F.R. Parts 210, 229, 230, 240, 244 and
249

CHAPTER 12B. AN OVERVIEW OF THE UNITED STATES FEDERAL AND STATE SECURITIES LAWS AND THE RULES AND REGULATIONS OF THE SECURITIES INDUSTRY SELF-REGULATORY ORGANIZATIONS

I. INTRODUCTION

§ 12B:1 In general

II. THE FEDERAL SECURITIES LAWS

§ 12B:2 The Securities Act of 1933

III. THE SECURITIES EXCHANGE ACT OF 1934

§ 12B:3 Overview

IV. THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§ 12B:4 In general

V. THE TRUST INDENTURE ACT OF 1939

§ 12B:5 Overview

VI. THE INVESTMENT ADVISERS ACT OF 1940

§ 12B:6 Functions of the Investment Advisers Act of 1940

VII. THE INVESTMENT COMPANY ACT OF 1940

§ 12B:7 Summary

VIII. THE SECURITIES INDUSTRY SELF- REGULATORY ORGANIZATIONS

§ 12B:8 Role of the Securities Industry Self-Regulatory
Organizations

IX. STATE SECURITIES LAWS—“BLUE SKY LAWS”

§ 12B:9 Blue Sky Law history and application

TABLE OF CONTENTS

X. CONCLUSION

§ 12B:10 Summary

CHAPTER 13. JURISDICTIONAL PROBLEMS IN THE APPLICATION OF THE ANTITRUST LAWS

- § 13:1 Introduction
- § 13:2 Foreign party's standing to sue
- § 13:3 The effects test of jurisdiction—The case law
- § 13:4 —Sherman Act Section 7
- § 13:5 — —U.S. exporters
- § 13:6 — —Consistent standard of effect
- § 13:7 — —The restatement
- § 13:8 The five-step method of jurisdiction—A proposed simplified balancing test
- § 13:9 —Balancing test and conflict of laws
- § 13:10 Application of the five-step rule—The effect on U.S. commerce
- § 13:11 —Effects with no conflict of laws
- § 13:12 —Weighing a nation's insubstantial interest
- § 13:13 —Conflicting substantial national interests
- § 13:14 —General rule of antitrust jurisdiction
- § 13:15 Forum non conveniens
- § 13:16 Sovereignty defenses
- § 13:17 —Sovereign immunity
- § 13:18 — —The commercial exception
- § 13:19 — —The international law exception
- § 13:20 — —Arbitration, waiver
- § 13:21 — —Suits involving the United States
- § 13:22 —Act of state doctrine
- § 13:23 Remedial sanctions imposed upon foreign defendants
- § 13:24 Venue and personal jurisdiction
- § 13:25 Extraterritorial discovery

CHAPTER 14. THE REGULATION OF CROSS-BORDER PUBLIC OFFERINGS OF SECURITIES IN THE EUROPEAN UNION: PRESENT AND FUTURE

- § 14:1 Introduction
- § 14:2 Evolution from pre-2000 Framework to the Capital Markets Union (CMU)—From Fragmentation to Harmonization

- § 14:3 The EU Regulatory Framework—2017 Prospectus Regulation
- § 14:4 —Markets in Financial Instruments Directive (MiFID II)
- § 14:5 —The Transparency Directive
- § 14:6 —The Market Abuse Regulation (MAR)
- § 14:7 —The Listing Act reforms
- § 14:8 —Other Measures
- § 14:9 Shortcomings of the EU Framework and possible reasons for the shortage of cross-border offerings
- § 14:10 Proposals toward harmonizing the cross-border offering system—Conclusion

CHAPTER 15. IMMUNITY OF INDIVIDUALS UNDER INTERNATIONAL LAW

- § 15:1 Introduction
- § 15:2 Head of state immunity
- § 15:3 —U.S. practice
- § 15:4 —International perspective
- § 15:5 Immunity for diplomatic officials
- § 15:6 —The Vienna Diplomatic Convention
- § 15:7 Immunity for consular officials—The Vienna Consular Convention
- § 15:8 Immunity for diplomatic officials—Immunity for officials of international organizations
- § 15:9 Immunity of foreign officials
- § 15:10 Immunity of state officials—Acts within official capacity
- § 15:11 —Acts beyond official capacity
- § 15:12 —Defining official capacity
- § 15:13 International Law Commission's report on the immunity of state officials from criminal prosecution
- § 15:14 Conclusion

Appendix 15A. Jurisdictional Immunities of Foreign States

CHAPTER 16. FOREIGN TRADE AND ECONOMIC INJURY—A SURVEY OF U.S. RELIEF MECHANISMS

- § 16:1 Introduction
- § 16:2 U.S. international economic policy: A historical overview of the free trade approach and its implementation

TABLE OF CONTENTS

§ 16:3	Antidumping and countervailing duties
§ 16:4	—Antidumping
§ 16:5	—Export subsidies and countervailing duties
§ 16:6	—Judicial review
§ 16:7	Relief from import injury
§ 16:8	—Import relief: Duties, tariff-rate quotas, quantitative restrictions, and orderly marketing arrangements
§ 16:9	—Adjustment assistance for labor
§ 16:10	—Adjustment assistance for companies
§ 16:11	—Adjustment assistance for communities
§ 16:12	Enforcement of U.S. rights under trade agreements
§ 16:13	Unfair methods of competition in importations: Section 337
§ 16:14	—Section 337: A procedural overview
§ 16:15	—The regulation of patent cases
§ 16:16	—Nonpatent cases
§ 16:17	—Section 337: A concluding analysis
§ 16:18	Antitrust relief
§ 16:19	Conclusion
Appendix 16A.	Trade Agreements Act of 1979: A Comparison of Provisions
Appendix 16B.	U.S. Antidumping and Countervailing Duty Investigations
Appendix 16C.	European Union Antidumping and Antisubsidy Proceedings (Reported as of 31 December 1996)
Appendix 16D.	Department of Commerce Regulations for Antidumping and Countervailing Proceedings (19 C.F.R. Part 351)
Appendix 16E.	Antidumping and Countervailing Duty Handbook
Appendix 16F.	Department of Commerce Antidumping Questionnaire
Appendix 16G.	Overview: EU Trade Barriers Regulation
Appendix 16H.	2007 Overview of Third Country Trade Defense Actions Against the European Community

CHAPTER 17. INTERNATIONAL BOYCOTTS

I. INTRODUCTION

§ 17:1	Background and summary
--------	------------------------

II. THE ARAB BOYCOTT

- § 17:2 The Arab boycott laws
- § 17:3 Boycott documentation
- § 17:4 Removal from the blacklist
- § 17:5 The Arab boycott and U.S. policy

III. HISTORICAL BACKGROUND TO THE ANTIBOYCOTT LAWS OF THE UNITED STATES

- § 17:6 Historical background

IV. THE EXPORT CONTROL ACT OF 2018

A. GENERAL SCOPE OF THE ANTIBOYCOTT PROVISIONS

- § 17:7 Export Administration Regulations

B. PROHIBITED ACTIVITIES

1. In General; Specific Prohibited Activities

- § 17:8 Passive and active compliance with boycotts
- § 17:9 Refusal to do business
- § 17:10 Discrimination
- § 17:11 Furnishing information

2. Exceptions to the Prohibitions

- § 17:12 Exceptions
- § 17:13 Import requirements
- § 17:14 Document requirements
- § 17:15 Unilateral and specific selection
- § 17:16 Export requirements
- § 17:17 Visa requirements
- § 17:18 Local law

C. REPORTING REQUIREMENTS

- § 17:19 Reporting
- § 17:20 Reportable requests to comply with a boycott
- § 17:21 Boycott-related requests that are not reportable

D. PENALTIES

- § 17:22 Generally

V. TAX CODE: “INTERNATIONAL BOYCOTT DETERMINATIONS”

- § 17:23 Generally

TABLE OF CONTENTS

- § 17:24 Agreements to comply with the boycott
- § 17:25 Penalties
- § 17:26 Reporting requirements

VI. LETTERS OF CREDIT

- § 17:27 Application of the Export Administration Regulations and Internal Revenue Code to letters of credit
- § 17:28 Prohibited clauses and acceptable alternatives
- § 17:29 Permissible clauses

VII. EXAMPLES OF ANTIBOYCOTT LAW IN OVERSEAS OPERATIONS

- § 17:30 Generally

VIII. COMPLIANCE PROGRAM

- § 17:31 Generally

APPENDIX 17A. International Boycott Report

CHAPTER 18. FOREIGN CORRUPT PRACTICES ACT—ANTIBRIBERY PROVISIONS

I. THE FOREIGN CORRUPT PRACTICES ACT

- § 18:1 Background of the law
- § 18:2 Business impact of the FCPA
- § 18:3 Foreign Corrupt Practices Act
- § 18:4 To whom does the FCPA apply?
- § 18:5 The FCPA and issuers
- § 18:6 The FCPA and domestic concerns
- § 18:7 The FCPA and regulated foreign concerns
- § 18:8 The FCPA and foreign persons and officials
- § 18:9 The FCPA and subsidiaries and parent corporations

II. VIOLATIONS OF THE FCPA'S ANTIBRIBERY PROVISIONS

- § 18:10 What is a violation of the FCPA's antibribery provisions?
- § 18:11 A corrupt payment or offer to pay anything of value
- § 18:12 The FCPA and customary courtesy expenses
- § 18:13 The FCPA: "Anything of Value"
- § 18:14 The FCPA and charitable donations

THE LAW OF TRANSNATIONAL BUSINESS TRANSACTIONS

- § 18:15 The FCPA: “Foreign Official”
- § 18:16 The FCPA: “Any Person While Knowing the Payment Will Be Offered to a Foreign Official, Party, or Candidate”
- § 18:17 The FCPA: payment is made to assist in obtaining or retaining business or directing business to any person
- § 18:18 Exception for routine government action
- § 18:19 Affirmative defenses
- § 18:20 Local law defense
- § 18:21 Promotional expenses defense

III. THE OECD CONVENTION AND THE FCPA

- § 18:22 The OECD Convention and the 1998 Amendments
- § 18:23 Effects of the OECD Convention on the FCPA
- § 18:24 —Jurisdiction over non-United States persons acting inside the United States
- § 18:25 —Jurisdiction over United States persons acting outside the United States
- § 18:26 —Payments made to secure an “Improper Advantage”
- § 18:27 —New definition of “Foreign Official”
- § 18:28 —Exemption of certain non-United States nationals

IV. FCPA ENFORCEMENT AND PENALTIES

- § 18:29 Enforcement of the FCPA
- § 18:30 Prosecution under other federal statutes
- § 18:31 Liability under foreign statutes
- § 18:32 Liability of corporate officers
- § 18:33 Statute of limitations
- § 18:34 Department of Justice opinions
- § 18:35 Indemnification and reimbursement of FCPA defendant’s attorney’s fees
- § 18:36 Summary of prosecutions
- § 18:37 Sentencing: penalties under the FCPA
- § 18:38 Federal Sentencing Guidelines
- § 18:39 Compliance—General discussion
- § 18:40 —Due diligence
- § 18:41 —“Red Flags” in retaining foreign representatives
- § 18:42 —Written policies and procedures for monitoring and enforcement
- § 18:43 —Sample code of conduct
- § 18:44 —Sample questionnaire
- § 18:45 —Sample agency agreement provision
- § 18:46 —Training

TABLE OF CONTENTS

- § 18:47 —Administrative structure
- APPENDIX 18A. Recognized Public International Organizations
- APPENDIX 18B. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- APPENDIX 18C. Council of Europe: Criminal Law Convention on Corruption
- APPENDIX 18D. Council of Europe Civil Law Convention on Corruption
- APPENDIX 18E. Inter-American Convention Against Corruption
- APPENDIX 18F. Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations 2005
- APPENDIX 18G. Business Principles for Countering Bribery

CHAPTER 19. U.S. EXPORT CONTROLS AND COMPLIANCE

I. IN GENERAL

- § 19:1 Introduction
- § 19:2 An overview of export controls
- § 19:3 Licensing requirements in general
- § 19:4 Changes to general licensing requirements

II. EXPORTS OF TECHNOLOGIES COVERED BY THE EAR AND OTHER REGULATIONS

- § 19:5 Generally
- § 19:6 BIS's inadvertent invitation for noncompliance
- § 19:7 Treasury department's sanctions and embargoes
- § 19:8 Special licensing ability of USPTO
- § 19:9 EAR and compliance programs in general
- § 19:10 Changes in the EAR policy statement requirements

III. RETAINING ELEMENTS OF EXISTING COMPLIANCE PROGRAMS

- § 19:11 Compliance statement
- § 19:12 Customer screening
- § 19:13 Controlled destinations
- § 19:14 Changes in country-specific controls

THE LAW OF TRANSNATIONAL BUSINESS TRANSACTIONS

- § 19:15 Red flag screening
- § 19:16 —Reforms
- § 19:17 Product classification
- § 19:18 Changes in product classification
- § 19:19 Creation of the 600 series
- § 19:20 New definition of “specially designed”
- § 19:21 Scope of the EAR
- § 19:22 Changes to the scope of the EAR
- § 19:23 Licensing requirements/prohibitions and exceptions
- § 19:24 Changes in licensing requirements—Generally
- § 19:25 Changes to license exceptions—STA
- § 19:26 Changes to other license exceptions—TMP, RPL, GOV, TSU
- § 19:27 Denied persons list
- § 19:28 Licensing procedure
- § 19:29 —Reforms
- § 19:30 Special licensing
- § 19:31 Problem management protocol
- § 19:32 Export document requirements
- § 19:33 Changes in export documentation requirements
- § 19:34 Recordkeeping
- § 19:35 Changes in recordkeeping requirements
- § 19:36 Anti-boycott regulations

IV. ENFORCEMENT

- § 19:37 General considerations
- § 19:38 Export Administration Act
- § 19:39 Arms Export Control Act

V. VOLUNTARY SELF-DISCLOSURE

- § 19:40 Generally

VI. ENFORCEMENT ACTIONS AS REPORTED BY THE COURTS

- § 19:41 Generally

A. THE GENESIS OF EXPORT VIOLATIONS: THE *ACTUS REUS* AND HOW EXPORTERS GET CAUGHT

- § 19:42 Violating the EAR
- § 19:43 Providing false information to the U.S. government
- § 19:44 Anti-boycott

TABLE OF CONTENTS

§ 19:45 How the defendants get caught

B. KNOWINGLY VIOLATING THE EAR: THE *MENS REA* ELEMENT

§ 19:46 Generally

C. CHALLENGING EAA CONVICTIONS

§ 19:47 Successful challenges of EAA convictions—Search and seizure

§ 19:48 —Abuse of discretion—Fining violators

§ 19:49 Unsuccessful challenges of the EAA convictions—
Authority to criminally sanction behavior by
regulation

§ 19:50 Unsuccessful challenges of EAA convictions—Void for
vagueness of the EAA

§ 19:51 —Expiry of the EAA under which defendant is
charged

§ 19:52 Unsuccessful challenges of the EAA convictions—
Double jeopardy

§ 19:53 Unsuccessful challenges of EAA convictions—Abuse of
discretion by the Secretary of Commerce regarding
which items to control

§ 19:54 Unsuccessful Challenges of EAA convictions—First
Amendment and free speech

D. EXPORT VIOLATIONS IN CIVIL LITIGATION

§ 19:55 Criminal investigations

§ 19:56 Injunctions

§ 19:57 Anti-boycott

§ 19:58 Takings and forfeiture

§ 19:59 RICO

§ 19:60 Export enforcement—Reforms

VII. CONCLUSION

§ 19:61 Generally

CHAPTER 20. EXPANDED PHILANTHROPY: AMERICAN CORPORATIONS WORLDWIDE

I. INTRODUCTION

§ 20:1 Generally

II. CHOICES FOR CORPORATE OVERSEAS GIVING

- § 20:2 Generally
- § 20:3 To make a gift to a U.S. charity that will use the fund overseas
- § 20:4 To make a cash gift from a foreign branch or affiliate of the U.S. parent company to an overseas charitable or governmental agency
- § 20:5 To provide in-kind goods or services to benefit the foreign charity
- § 20:6 To make a cash grant from the U.S. corporate foundation to a foreign charity

III. OVERSEAS GRANT MAKING BY U.S. CORPORATE FOUNDATIONS

- § 20:7 General
- § 20:8 Taxable expenditures
- § 20:9 Charitable purpose
- § 20:10 Expenditure responsibility

IV. OVERSEAS GRANTEE CATEGORIES

- § 20:11 General
- § 20:12 Grants to governmental units
- § 20:13 —Charitable purpose
- § 20:14 —Expenditure responsibility
- § 20:15 Grants to 501(c)(3) organizations and “501(c)(3) equivalents”
- § 20:16 —Charitable purpose
- § 20:17 —Expenditure responsibility
- § 20:18 Grants to organizations that are not governmental units, not 501(c)(3) organizations, and not equivalents to 501(c)(3) organizations
- § 20:19 —Charitable purpose
- § 20:20 —Expenditure responsibility

V. RELATED CONSIDERATIONS

- § 20:21 “Earmarking”
- § 20:22 Program-related investments
- § 20:23 Public relations

VI. CONCLUSION

- § 20:24 Generally

TABLE OF CONTENTS

- APPENDIX 20A. Contributions to Be Used in a Foreign Country
- APPENDIX 20B. IRS Sample Agreement
- APPENDIX 20C. Sample Grant Application

CHAPTER 21. LABOR AND EMPLOYMENT LAW IN THE INTERNATIONAL CONTEXT

- § 21:1 Introduction and context
- § 21:2 What “international labor and employment law” is
- § 21:3 Foreign employment law and practice
- § 21:4 —Foreign law
- § 21:5 —Individual employment contracts
- § 21:6 —Labor unions
- § 21:7 Treaties and the international labor organization—
EU, NAFTA, and other trade blocs
- § 21:8 —GATT, GATS, and WTO
- § 21:9 —Friendship, commerce, and navigation treaties
- § 21:10 —International labor organization
- § 21:11 Extraterritorial effect of U.S. employment law
- § 21:12 —Discrimination law
- § 21:13 —Labor union law
- § 21:14 —Employee benefit law and policy in the expatriate context
- § 21:15 How international labor and employment issues arise in practice
- § 21:16 —Transactional context
- § 21:17 —Adversarial context
- § 21:18 Conclusion
- APPENDIX 21A. Ten-Point Checklist for Addressing Employment Issues In International Transactions
- APPENDIX 21B. Sources for Researching Labor and Employment Law in the International Conflict

CHAPTER 22. CHOICE OF BUSINESS ENTITY ABROAD—GERMANY AND THE EUROPEAN UNION

A. INTRODUCTION AND BACKGROUND

- § 22:1 Generally

B. SELECTED BASIC PRINCIPLES OF COMMERCIAL LAW

- § 22:2 Generally
- § 22:3 Gesellschaften des Zivilrechts (civil law societies)
(societies)
- § 22:4 Personengesellschaften (partnership entities)
- § 22:5 Körperschaften (corporate entities)
- § 22:6 Representation vis-à-vis third parties
- § 22:7 Organ: Legal representative vis-à-vis third parties
- § 22:8 Relevance of a legal representative vis-à-vis third
parties
- § 22:9 Detailed example of personal liability for a legal
representative
- § 22:10 Different categories of legal representation
- § 22:11 Kaufleute (sophisticated person[s])
- § 22:12 Categories of sophisticated parties under German law
- § 22:13 Sophisticated person under European law
- § 22:14 Handelsregister (commercial registry)
- § 22:15 Winding up under German law

C. CORPORATE ENTITIES

- § 22:16 GmbH—Limited Liability Company (LLC)
- § 22:17 Legal character
- § 22:18 Applicable law
- § 22:19 Formation
- § 22:20 Capitalization—Minimum capitalization
- § 22:21 —Contributions in kind
- § 22:22 Registration and publication
- § 22:23 Quota holder and rights of and among quota
holders—Quota holder
- § 22:24 Transfer of LLC quotas
- § 22:25 Rights of and between quota holders
- § 22:26 Corporate actors: Managing director and shareholder
meeting
- § 22:27 Legal representative: Managing director
- § 22:28 Legal representative versus service agreement
- § 22:29 Legal representatives: Managing director and third
parties
- § 22:30 Control by the quota holders over the management
- § 22:31 Facultative and mandatory supervisory board
- § 22:32 LLC and U.S.-style board of directors
- § 22:33 Limited liability
- § 22:34 Winding up
- § 22:35 AG (Corporation)—Legal character

TABLE OF CONTENTS

§ 22:36	Applicable law
§ 22:37	Formation
§ 22:38	Capitalization
§ 22:39	Registration and publication
§ 22:40	Shareholders and shareholder rights
§ 22:41	Corporate actors: Management, supervisory board and shareholder meeting
§ 22:42	Legal representative: Board of management
§ 22:43	Service agreements for members of the board of management
§ 22:44	Legal representative: Board of management and third parties
§ 22:45	Mandatory supervisory board
§ 22:46	Limited liability
§ 22:47	Winding up
§ 22:48	Societas Europaeae (European company)
§ 22:49	Legal character
§ 22:50	Applicable law
§ 22:51	Formation
§ 22:52	Registration and publication
§ 22:53	Minimum capitalization
§ 22:54	Corporate actors—Management, supervisory board, and shareholder meeting
§ 22:55	—One manager, council, and shareholder meeting
§ 22:56	Common rules for the one- and two-tier structure

D. PARTNERSHIP ENTITIES: DIFFERENT CATEGORIES OF PARTNERSHIPS

§ 22:57	Generally
§ 22:58	GbR (Civil Code Partnership)
§ 22:59	Legal character
§ 22:60	Applicable law
§ 22:61	Formation
§ 22:62	Capitalization, registration, and publication
§ 22:63	Representation vis-à-vis third parties: Joint representation
§ 22:64	Liability: Personal liability
§ 22:65	Winding up
§ 22:66	Contractual joint ventures and construction consortium
§ 22:67	Partnership of professionals
§ 22:68	OHG (Commercial Trade Partnership)
§ 22:69	Legal character
§ 22:70	Applicable law

- § 22:71 Formation
- § 22:72 Capitalization, registration, and publication
- § 22:73 Representative: Individual representation by partners
- § 22:74 KG (Limited Partnership) (LP)
- § 22:75 Stille Gesellschaft (Silent Partnership)
- § 22:76 European Economic Interest Grouping (EEIG)
- § 22:77 Legal character
- § 22:78 Applicable law
- § 22:79 Formation
- § 22:80 Capitalization, registration, and publication
- § 22:81 Representative: Any partnership entity or institutional entity
- § 22:82 Unlimited liability

E. GMBH&CO.KG (LIMITED LIABILITY LIMITED PARTNERSHIP) (LLLP)

- § 22:83 Generally

F. ANALYSIS: CHOICE OF BUSINESS ENTITY

- § 22:84 Relevant legal and practical aspects
- § 22:85 General considerations
- § 22:86 Specific aspect: Withdrawal of the minimum capitalization amount
- § 22:87 Specific aspect: Benefit of a European company
- § 22:88 Specific aspect: Consideration of a partnership entity
- § 22:89 Civil law environment
- § 22:90 Vertical relationship: Interplay between European and German law
- § 22:91 Horizontal relationship: Interplay between different German codes

G. CONCLUSION AND OUTLOOK

- § 22:92 Conclusion

Appendix 22A. Listing of Referenced Codes

CHAPTER 23. FOREIGN INVESTMENT

- § 23:1 Introduction
- § 23:2 The changing landscape
- § 23:3 Legal and non-legal risks associated with FDI
- § 23:4 Trade-related investment measures
- § 23:5 Governance issues—Governance by host state
- § 23:6 —Governance by home state

TABLE OF CONTENTS

§ 23:7	Governance issues by host nation—Governance by intergovernmental organizations
§ 23:8	Restrictions on FDI
§ 23:9	—Restrictions upon entry
§ 23:10	—Restrictions after entry
§ 23:11	—Restrictions upon withdrawal
§ 23:12	Ownership considerations and other restrictions
§ 23:13	Foreign investment in the U.S. and abroad—National security concerns
§ 23:14	Ownership considerations and other restrictions—Limits on foreign ownership
§ 23:15	—Screening and approval procedures
§ 23:16	—Operational restrictions
§ 23:17	—Questions to consider
§ 23:18	Types of FDI: choosing your approach
§ 23:19	—Greenfield investments
§ 23:20	—Mergers and acquisitions (M&A)
§ 23:21	—International joint venture
§ 23:22	—International franchising
§ 23:23	—International distributorships
§ 23:24	International investment treaties
§ 23:25	Bilateral investment treaties—An introduction
§ 23:26	—A history
§ 23:27	—Typical structure of a BIT
§ 23:28	Bilateral investment treaty—Defining investment and investor
§ 23:29	Bilateral investment treaties—Substantive provisions
§ 23:30	—Dispute resolution
§ 23:31	—Investing abroad—Specific examples
§ 23:32	Project finance—An introduction
§ 23:33	—Stages of development
§ 23:34	—Participants
§ 23:35	—Project finance risks
§ 23:36	—Common reasons for project failure
§ 23:37	—Feasibility study
§ 23:38	—Risk mitigation
§ 23:39	—Project finance structures
§ 23:40	Other issues in FDI; free trade or special economic zones—Investment contractual considerations
§ 23:41	Dispute resolution

CHAPTER 24. LETTERS OF CREDIT

§ 24:1	Introduction
§ 24:2	Letter of credit transactions
§ 24:3	Laws governing letters of credit

THE LAW OF TRANSNATIONAL BUSINESS TRANSACTIONS

- § 24:4 The Uniform Customs and Practice for Documentary Credits (UCP)
- § 24:5 The Uniform Commercial Code (UCC)
- § 24:6 Principle of independence
- § 24:7 Principle of strict compliance
- § 24:8 Clean and documentary letters of credit
- § 24:9 Commercial and standby letters of credit
- § 24:10 Revocable and irrevocable letters of credit
- § 24:11 Transfer and assignment of letters of credit

Table of Laws and Rules

Table of Cases

Index