Hogan Lovells

Global Accountants' Liability Update
January and February 2017

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Welcome

Hogan Lovells' global team of securities and professional liability lawyers is uniquely positioned to monitor legal developments across the globe that impact accountants' liability risk. Our team recently researched legal and regulatory developments related to auditors' liability in China, Dubai, England/Wales, Germany, Hong Kong, Italy, Mexico, the Netherlands, Spain, and the United States. We have experienced lawyers in each of these jurisdictions ready to meet the complex needs of today's largest accounting firms as they navigate the extensive rules, regulations, and case law that shape their profession. This month, our team identified developments of interest in China, Dubai, England/Wales, Germany, Hong Kong, Italy, Mexico, the Netherlands, and the United States, which are summarized in the pages that follow.

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Recent Court Decisions

In January 2017 the Cassation Court of Dubai issued a judgment that established important principles of accountant liability under the Dubai civil code (an unofficial English language translation of the judgment is available on request). The claim was brought against a Big 4 accounting by an investor in a company audited by the firm. The audit client's financial statements were infected by a fraud committed by senior management, and the audit did not detect the fraud. The audit client failed and the investor lost all its money. The investor sued the accounting firm, alleging audit negligence.

The Cassation Court entered judgment in favor of the accounting firm. The Court said: (1) Where two actors cause a loss to a third party and one actor's conduct was intentionally wrongful and the other's only negligent, the negligent actor has no liability to the third party. Joint and several liability applies only where the actors' conduct is of relatively similar culpability. (2) An auditor does not have a duty to detect fraud. (3) The element of causation in the statutory claim of a third party against an accountant based on incorrect financial statements requires reliance. In this case, the investor plaintiff invested while the audit was under way, but before the audit opinion was issued. The plaintiff alleged that had the auditor not been negligent it would have detected the fraud and that detection would have set in motion a series of events that would have led the fraud to unravel before the investment closed. In addition to these three legal propositions, the Cassation Court imposed a due diligence obligation on the investor. This element of the judgment is somewhat fact-specific, and the ability to generalize may be limited.

England

No duty to disclose confidential information gained from one client to another

In a decision of the Technology and Construction Court from December 2016, the Court found that where an accountant has confidential information from an audit of client A that is relevant to client B, the accountant owed no duty to disclose the confidential information to client B.

In 2008, Harlequin engaged a contractor (ICE) to build a holiday resort. Harlequin alleged that ICE's work was delayed or not undertaken at all and furthermore, that it had overpaid for the work. Harlequin terminated the agreement with ICE some two years after work had begun. Both Harlequin and ICE engaged the Defendant accounting firm. Harlequin later brought proceedings against the accounting firm for failure to disclose that it had information suggesting ICE was misappropriating funds.

The Judge found there was a clear conflict of interest between Harlequin and ICE and that the Defendant accountants should never have agreed to be retained by ICE because they were already engaged by Harlequin. However, the Court found that there was no duty to disclose the confidential information of one client to another, even where the information could indicate fraud. The fact that the accountants should not have accepted the engagement by ICE did not create an exception to this rule.

Instead, the court explained that had the Defendant accountants discovered information that suggested fraud on the part of ICE, the proper course of action would have been for the accountant to resign its retainer to ICE and report ICE to the Serious Fraud Office.

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Firms that prepare financial statements must inform their clients about a potential need to file for insolvency

Germany

A recent judgment (BGH, Jan 26, 2017, docket no: IX ZR 285/14, 2017) issued by the highest German civil court, the Federal Court of Justice (Bundesgerichtshof) considered a professional negligence claim filed by an insolvency administrator against the former tax consulting firm (hereinafter "TC") of the insolvent company (hereinafter "IC").

The TC prepared the IC's annual financial statements and those statements showed that IC's deficits were not covered by equity capital. Under German law, a company with such financial statements is required to file for insolvency absent a positive going concern prognosis. Here, the TC did not analyze whether there was a positive going concern prognosis and did not ask IC's directors to provide TC with such a prognosis. Nonetheless, TC assumed a positive going concern prognosis when preparing the financial statements. Later, it turned out that IC was insolvent and insolvency proceedings were commenced. The insolvency administrator subsequently filed suit against the TC seeking damages related to the delay in filing for insolvency.

The court held that a tax consulting firm has a duty to assess whether the information it has been provided indicates a negative going concern prognosis. This may be the case when the company suffered extraordinary losses or has excessive debt. In these limited circumstances, a tax consulting firm must either prepare a detailed going concern prognosis on its own or, alternatively, ask the company's directors to provide it with such an analysis. Furthermore, the court held that tax consultant firms are obliged to inform their clients about potential reasons for insolvency and about the directors' duty to file for insolvency unless the client is already aware of the reasons. When a tax consulting firm breaches these duties, it must compensate the company for the losses caused by the delay in filing for insolvency.

Because the lower instance court had not clarified all material facts necessary to decide the case, the German Federal Court of Justice remanded the case for consideration in accordance with its opinion.

This decision departs from a 2013 decision of the German Federal Court of Justice that addressed the same issue (Mar 7, 2013, docket no: IX ZR 64/12, 2013). The 2013 decision held that tax consulting firms are not obliged to inform their clients about potential reasons for insolvency unless specifically instructed to do so. This new decision thus increases the professional liability risk for professionals preparing financial statements.

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A questioning mind: standards of conduct depend on one's professional role

Hong Kong

The Hong Kong Market Misconduct Tribunal recently released a decision addressing allegations that officers of the Greencool group disseminated misleading information following accounting frauds that took place between 2000 and 2004. The report reached different conclusions for each officer and culpability did not always require actual knowledge of the fraud.

The group financial controller, despite not having actual knowledge of the fraud, was held to a higher standard than a director, because he was responsible for ensuring the financial integrity of the accounts. The Tribunal found that the financial controller, who was also the group qualified accountant and company secretary, was negligent in failing to ensure the Greencool group accounts were not false or misleading. The Tribunal found that (i) the falsification of the subsidiaries' accounts was the work of a core group of senior directors and (ii) the controller had no access to the financial records of the subsidiaries nor any ability to monitor the subsidiaries' compliance with the appropriate financial standards. The result was that the group financial controller had lost the ability to exercise adequate financial supervision and control over the subsidiaries.

The Tribunal reasoned that if the financial controller had properly exercised his supervisory role, he may have detected potential wrongdoing. The Tribual also recognized that he was expected to exercise a higher duty of care than the Independent Non-Executive Directors when investigating these matters.

This report is a useful reminder of the importance of having a questioning mind and that the standard to which a senior financial officer is held may be higher than that of a director.

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Hong Kong Court of Appeal dismisses appeal of sanctions for professional misconduct

The Hong Kong Court of Appeal dismissed an appeal by CPA Leung Kam Man Victor (Mr Leung) challenging a decision rendered by the Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants' (HKICPA's), which found he had engaged in professional misconduct. Although the appeal was dismissed, the Court did examine whether the penalty imposed by HKICPA was appropriate.

In doing so, the court noted that where a sanction is imposed by a specialist tribunal whose members consisted of members of the same profession and possessed the expertise and knowledge in professional standards, the court will interfere only if the sanction imposed is plainly wrong. But, as long as a sanction falls within the reasonable range, which may be quite varied, the court will not intervene.

The Netherlands

Dutch Supreme Court outlines accountants' duty to third parties when conducting non-statutory work

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Introduction

Accountants owe a duty of care not only to their clients but also to third parties in some circumstances. The Dutch Supreme Court outlined the legal framework for a third party's liability claim against an accountant arising from the accountant's exercise of statutory duties (e.g. audit of financial statements) in 2016. However, non-statutory accountants – until recently – were thought to only owe a duty of care toward clients. A recent ruling from the Dutch Supreme Court outlines the circumstances in which an accountant may owe a duty of care to third parties relating to non-statutory work. In that case, the Supreme Court upheld a ruling of the Court of Appeal, which had set out a legal framework to determine when an accountant is liable to third parties for negligent non-statutory work.

Facts and proceedings

The underlying matter related to the purchase of shares from the widow of a deceased shareholder who had acquired the shares at issue by succession. The company's articles of association required the widow to offer the shares for sale and the widow had unsuccessfully attempted to negotiate a sale with the remaining shareholders. The court thus appointed an independent auditor to value the shares. But circumstances at that time made a valuation impossible.

The company was also in a difficult financial position after losing a significant customer. In preparation for a restructuring, the shareholders, management board, and supervisory board engaged an accountant to report on the valuation of the company's assets and liabilities. When issued, this report did not include a statement that it should not be used for share valuation and eventually served as a basis for the price of the widow's shares.

The widow subsequently sought a declaratory judgement that the accountant acted unlawfully towards her.

Non-statutory duty

The court examined the extent to which an accountant has a duty of care towards third parties with regard to non-statutory duties such as the value assessment at issue in this case. The decision indicates that the foreseeability that third parties may review an auditor's report and to what extent reviewing the report could influence third parties' behavior is of key importance to determine whether an accountant has breached any duty to a third party. Where such reliance is foreseeable, the accountant should take action to prevent third parties from attaching incorrect significance to the report. The Court of Appeal identified measures an accountant could (or should) implement when such reliance is foreseeable, including a statement in a report that declares:

> The report is solely designated for certain parties, the report should not be made available to third parties, and third parties should not attach any significance to the report. In addition, the report includes a statement of the underlying objective of the report and note that it cannot be used for other purposes.

Moreover, if an accountant knew, or ought to have known, that a report would be used by third parties or that intended parties would use it for purposes other than the stated objective, the accountant should take additional measures. These measures may include warning third parties or protesting against the improper use of the report.

In the case before it, the Court of Appeal held that the accountant had a duty of care towards the widow despite the fact that he was performing non-statutory duties because he knew that his engagement

to make a valuation of the company coincided with the dispute between the shareholders. Thus, even though the actual reason for the valuation engagement was the financial restructuring plan, he should have known that the report might be relied upon for share valuation.

The Court of Appeal concluded that the accountant breached his duty of care to the widow because he did not explicitly include a statement in the report that the report should not be used for a share valuation in any way. Additionally the Court of Appeal noted that the valuation report neither explicitly identified its purpose nor limited its purpose.

Conclusion

Accountants performing non-statutory duties may be liable for breach of duty of care to third parties. The scope of an accountant's duty to third parties in those circumstances is dictated in part by the foreseeability that a third party may rely on the report. The procedures identified by the Court of Appeal in this case highlight a number of actions accountants can take to minimize their exposure to claims by third parties.

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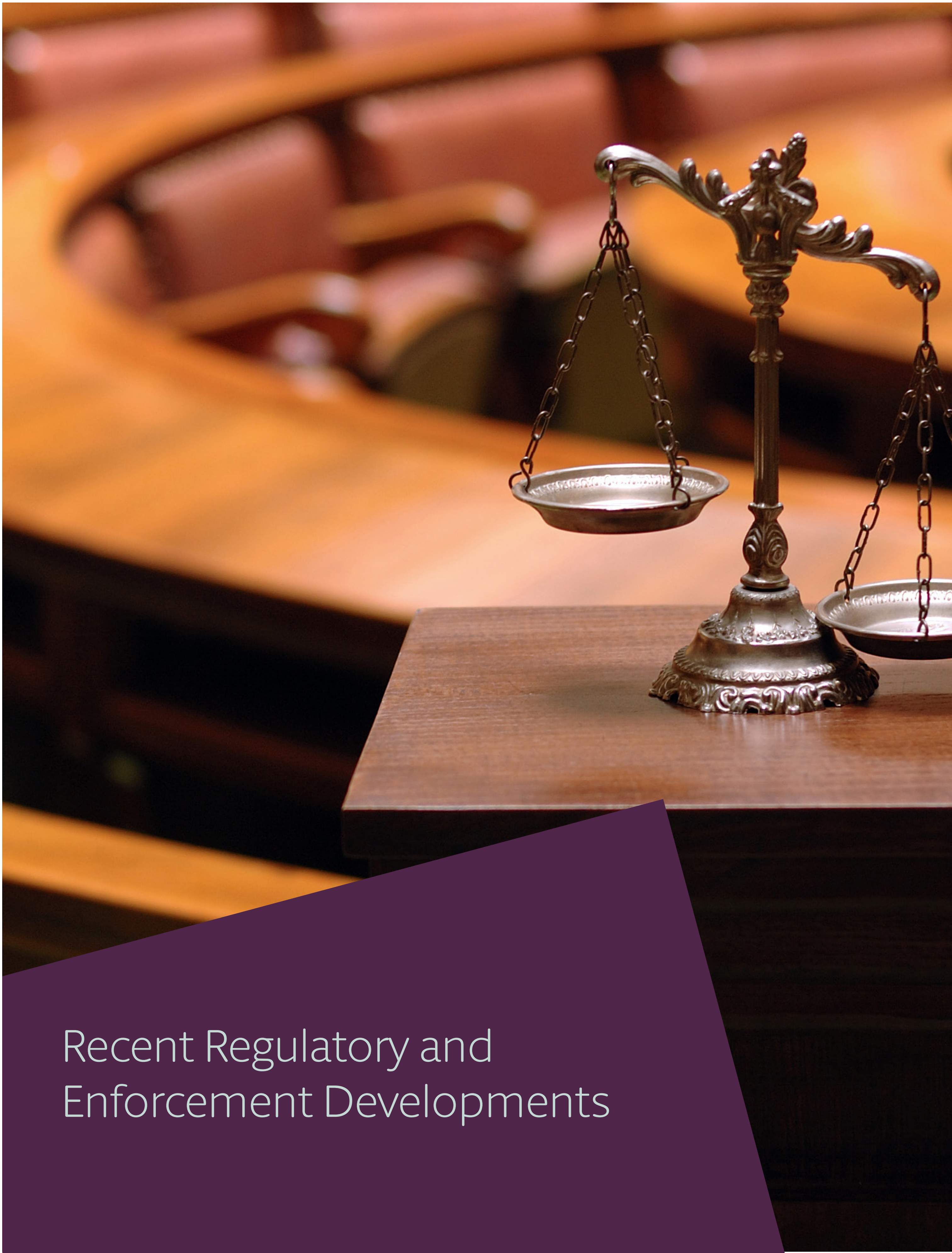
The United States

New York Appeals Court upholds dismissal of accounting malpractice claims against KPMG due to inadequate allegations of linking conduct

A 5 January 2017 ruling by the First Department of the Appellate Division of the State of New York affirmed a judgment for the defendant, KPMG, on fraud and conspiracy claims and affirmed a lower court's ruling denying GSP Finance, LLC, the opportunity to amend its complaint to include a negligent misrepresentation claim. All of GSP's allegations related to KPMG's audit of Hicks Sports, to whom GSP had extended credit.

Prior to the trial, GSP had argued that it should have been allowed to file an amended complaint in order to include a negligent misrepresentation claim against KPMG—a claim that had been dismissed years earlier. The court originally dismissed GSP's negligent misrepresentation claim because it found GSP had not sufficiently alleged that it was a "known party" to KPMG or alleged the required "linking conduct" between GSP and KPMG in connection with the audit. GSP argued that because discovery on the other claims had established that KPMG did know that GSP was a lender who was relying on KPMG's audit report, GSP should be able to amend its complaint to revive its negligent misrepresentation claim. The trial court judge disagreed explaining that GSP was asserting the same allegations that the court had already ruled were inadequate.

The Appellate Division upheld the trial court decision denying GSP's motion to amend its complaint because, even as amended, the complaint did not adequately allege the required "linking conduct." In doing so, the Appellate Division expressly declined to follow a 2013 decision of the Appellate Division, Second Department, that had held that allegations that the accounting firm had "knowledge of plaintiff's needs" satisfied the "linking conduct" requirement. The Appellate Division further ruled that the trial court's exclusion of the accounting firm's audit manual was not reversible error, stating that the court had the discretion to exclude it if its probative value was outweighed by the prospect of juror confusion.



Recent Regulatory and Enforcement Developments

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MOF accounting department publishes key points of its work in 2017

On 3 March 2017, the Accounting Department under the Ministry of Finance of the People's Republic of China (the "MOF") published four key principles that will guide its work in the year 2017:

— Place equal emphasis on improving the accounting laws and strengthening daily supervision of accounting;

— Focus equally on the overall interests of China's social and economic development and key finance tasks;

— Balance efforts to streamline administration and delegate power to lower MOF arms with efforts to improve service quality; and

— Equally emphasize national strategies including the strategy of "bringing-in", "going-global" and "One Belt One Road."

A few specifics may be of particular interest:

First, the Accounting Department will cooperate with the Department of Treaty and Law to speed the pace of amending the Accounting Law of the People's Republic of China (the "PRC") and the PRC Certified Public Accountants Law. The amendments enhance the quality of accounting information and will perfect China's accounting liability regime and accountability mechanism. The Accounting Department aims to have such amendments on the State Council's 2018 legislative agenda.

Second, the Accounting Department will continue its effort to improve accounting standards for enterprises. This year, three more accounting standards will be issued – No.14 Enterprise Accounting Standard – Revenues, No.16 Enterprise Accounting Standards – Governmental Subsidiaries, and

– No. XX Enterprise Accounting Standards Hold for Sale Illiquid Assets, Treatment Group and Operation Termination.

Third, the Accounting Department will officially release several guidelines on management accounting based on feedbacks collected from the public. More guidelines are under development and will be issued in coming years.

The CICPA warns accounting firms of audit risks of listed companies

On 27 February 2017, the Chinese Institute of Certified Public Accountants (The "CICPA") on its website warned accounting firms that some listed companies were making material revisions to their accounting policies at the very end of fiscal periods, which increases the risk that these companies have inflated revenues, underestimated costs and overvalued assets. The CICPA urged accounting firms to pay particular attention to: (i) the risk of fraud by management personnel; (ii) the legitimacy of revisions to accounting policies; (iii) the impact of such revisions on annual operation achievement; and (iv) the reasonableness of any change in fair values of assets that result from revisions to accounting policies.

CICPA to strengthen supervision of accounting firms qualified to audit companies that have issued public securities

On 20 December 2016, the China Securities Regulatory Commission (the "CSRC") announced that all relevant parties in capital market must observe Chinese Certified Public Accountant Standard No.1504 – Communication of Critical Audited Matters in Audit Reports and six other standards (the "New Standards"). Public companies listed at Shanghai, Shenzhen stock exchange centers, companies applying for initial public offerings, and non-listed public companies whose shares can be publicly transferred at the National Equities Exchange and Quotations System, etc., shall implement the New Standards as of 1 January 2018.

A 4 January 2017 CIPA announcement echoed these new requirements and called on all accounting firms qualified for securities auditing work to prepare to strictly comply with the New Standards.

Local financial bureaus in China suspend account qualification examination

Although PRC accounting law explicitly requires that anyone who engages in accounting work must first secure an accountant qualification certificate, recent developments relating to the examinations required to earn this certificate have caused confusion and concern in the accounting industry.

First, on 8 December 2015, in the Decision of the State Council on the Cancellation of Certain Occupation Qualification Approval and Accreditation, the State Council proposed eliminating the accountant qualification examination. Then on 16 December 2016, the Ministry of National Human Resources and Social Securities published a national occupation qualification catalogue that no longer listed the accountant qualification examination. Although the future of the examination is uncertain, many provincial financial bureaus including Hainan, Jiangsu, Shandong, Henan suspended enrollment of accountant qualification examinations indefinitely beginning in 2017.

On 3 March 2017, the head of the Accounting Department confirmed that the accountant qualification examination would be removed in the near future, and that conflicting provisions in the PRC Accounting Law would be amended. Accountant qualification certificates that have already been issued will remain valid as evidence of the proficiency of certificate holders.

MOF issues regulations on accounting treatment of Enterprise Liquidation

On 20 December 2016, the MOF circulated the Regulations on Accounting Treatment of Enterprise Liquidation (the "Liquidation Regulations"), which took effect on the same day. The Liquidation Regulations apply to enterprise legal persons that are declared bankrupt by Chinese courts and are under liquidation.

The Liquidation Regulations require that enterprises that declare bankruptcy via courts must provide a liquidation financial statement to a bankruptcy administrator on the date determined by courts or creditors' meeting. This financial statement must disclose detailed information about assets, any off-the-book assets recovered by the bankruptcy administrator in accordance with the PRC laws, pledged properties and retained properties recalled by the bankruptcy administrator, debts that are not confirmed by courts, and wages and salaries payable to employees.

The Liquidation Regulations further require that assets and debts remaining on the date of bankruptcy

declaration must be confirmed and measured in accordance with the net liquidation value rules for of bankrupt assets and debts. The margin between assets and debts shall be considered liquidation net value.

MOF issues regulations addressing on the accounting treatment of value-added tax

Following the end of the public comment period on draft Regulations on the Accounting Treatment of Value-added Tax in August 2016, the MOF, on 3 December 2016 released the official version (the "Official Regulations"). Compared to the draft version, the Official Regulations makes some changes to subsidiary account titles and to accounting treatment including those summarized below.

The Official Regulations add more subsidiary account titles under account title "tax payable." They are value added tax ("VAT") credit, simplified taxation, VAT payable for transferring of financial products, VAT withheld. The Official Regulations also provide a brief explanation of each of these subsidiary account titles.

The Official Regulations also dictate the account treatment in relation to income received prior to the comprehensive replacement of business tax by VAT. Finally, the Official Regulations make material changes to accounting treatment of export rebates as well as accounting treatment of input tax deduction changes. A new accounting rule for small and micro enterprises was also added to guide the accounting treatment for sales revenues for such enterprises.

EQUAL

Hong Kong

Financial Secretary delivers budget speech

On 22 February 2017, the Hong Kong Financial Secretary, the Hon Paul MP Chan, delivered the annual Budget Speech. His remarks mentioned two items of interest to auditors.

Stronger auditor oversight proposed

In our July 2015 newsletter, we reported on reform of the regulatory regime for listed entity auditors that aimed to make the oversight regime more independent from the audit profession. The Financial Secretary's speech announced plans to introduce a bill in the second quarter of this year that will strengthen the functions of the Financial Reporting Council (FRC), enabling the FRC to provide independent oversight over entity auditors.

Combating money laundering

Since the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO) was implemented in April 2012, the Government has spoken of extending its provisions to regulate other designated non-financial businesses and professions – including accountants. The Financial Secretary's recent speech announced that the Government is now consulting with stakeholders on legislative proposals to accomplish this. The Government aims to introduce the relevant amendment bills in the Legislative Council in the middle of this year.

AMLO, in line with the Financial Action Task Force recommendations, currently places a statutory obligation on specified financial institutions, including banks, securities firms, insurance companies and intermediaries, and others, to conduct customer due diligence (CDD) on their customers and keep the relevant records for a specified period. Non-compliance can lead to civil and criminal sanctions.

The current proposal is to amend AMLO to include statutory CDD and record-keeping requirements for accountants, lawyers and others when these professionals engage in specified transactions. The stakeholder consultation will end on 5 March 2017 after which, the bill (draft law) is expected to be presented.

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Italy

Brand new rules for Italian audits

As we previously reported, Italy recently implemented Directive (EU) 2014/56/EU on statutory audits of annual accounts and consolidated accounts through Legislative Decree no. 135/2016, which amended existing Legislative Decree no. 39/2010.

The Directive modified sanctions the Ministry of Economy and Finance ("MEF") may impose on auditing firms and auditors through amendments to existing Article 24 (which confirmed sanctions already in place under previous law and added new sanctions) and the addition of two new articles (Articles 24bis and 24ter).

The amended version of Article 24 confirmed that the MEF may impose (i) a fine of 1,000 to 150,000 Euros for auditors/auditing companies; (ii) the suspension of the responsible person from the auditors' register, for no longer than 5 years; (iii) the revocation of one or more tasks; and (iv) the removal from the register for auditors/auditing companies. In addition, the MEF may impose the following sanctions:

- Warning auditors/auditing firm to immediately cease the misconduct and to abstain from repeating the misconduct;
- Declaring that the audit report does not meet the legal requirements;
- Issuing a public written reprimand – also published on the auditing company's website – indicating the person responsible and the nature of the breach.

Under the previous law, sanctions could be imposed by the MEF only for irregularities in performing the auditing activity or if information that is required by law to be included in the auditors' register (such as auditors' name and/or auditing firm's corporate name, address of the office, tax/VAT code, certified email address, the existence of auditing activity at public entities) was omitted. The recent change enables the MEF to also impose sanctions if auditors fail to comply with the training obligation. In addition, if the auditing company fails to implement proper internal alert systems, the MEF may impose a fine of 10,000 to 500,000 Euros and/or order the company to cease the misconduct.

Sanctions will be announced on the MEF website (in the section relevant to auditing services) and, if the sanctioned auditor/firm challenges the sanctions, the news and the status of the proceedings shall be reported as well. These announcements will remain on the MEF website for five years, running from the termination of the proceedings for annulment or, in case the sanction is not challenged, from the expiration of the relevant term. Under some circumstance, the sanctions may be reported on anonymous basis.

The recent reform also grants auditors and auditing companies that have been removed from the register a right to apply for a re-enrollment once 6 years have passed from their exclusion. Finally, the reform allows the MEF to suspend, on precautionary basis, from the register those auditors who are involved in criminal proceedings with restriction of their personal liberty and those who omitted to pay the register's annual fee.

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Mexico

Mexico City constitution provides for a Superior Auditor and establishes liability regime for public servants

Background

On 29 January 2016 the Federal Constitution was amended to establish a new and autonomous political regime for Mexico City. The fundamental change is that prior to this amendment, Mexico City was not an independent state but was, rather, a federal district similar to the District of Columbia in the United States. It was also the capitol of the country. Since the former Federal District (now Mexico City) was not a state, it heavily relied on the Mexican federal government. Due to this amendment, Mexico City has become the 32nd sovereign state of the country with a self-regulating legal framework.

On 5 February 2017, the New Constitution of Mexico City was issued. It includes new and progressive rights, comparable to other state Constitutions in Mexico (each state has its own constitution). The Mexico City Constitution now controls issues related to accountability and liability of the government and public servants.

February Update

Article 62 of the Mexico City Constitution provides that the City will have a Superior Auditor in charge of inspecting the expenses made by all entities of the City government. It is important to note that if in the performance of its duty, the Superior Auditor detects illegal conduct, then it can initiate disciplinary or criminal procedures before the Administrative Courts or the Anticorruption Prosecutor's Office.

The Superior Auditor function will be fulfilled by a board. Members of the board must:

a. Have 5 years of experience in financial audit and administrative liabilities (e.g. Accountant or auditor).

b. Be Mexican

c. Have lived 2 years in Mexico City prior to the designation

d. Others established by supplementary law

Article 64 of the New Constitution establishes the liability regime for public servants. Since the members of the board of the Superior Auditor are public servants, they must observe the obligations contained in this article, such as the wealth declaration and conflict of interests declaration.

Although the New Constitution maintains the status quo in several subjects, it also implements new rights and obligations in different matters that will be developed in detail in statutes pending of enactment.

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The United States

SEC ALJ rules that auditors can be subject to Rule 102(e) disciplinary proceedings and sanctions for improper conduct on audits of private companies

In a 6 January 2017 ruling, an SEC Administrative Law Judge held that Rule 102(e) sanctions can be imposed on an auditor for improper professional conduct that occurs in the course of an audit of a private company.

The SEC alleged that Adrian Beamish, a partner at PricewaterhouseCoopers involved in the audits of a private San Francisco-based venture capital fund, violated professional standards by: (i) failing to scrutinize the advanced management fees taken by the General Partner for several audit years; (ii) failing to accurately and consistently disclose the nature of the advanced management fees; and (iii) issuing a clean opinion of the fund's year-end financial statements in 2012 despite knowing that the fund had overpaid more than $7 million in fees over ten years. The SEC argued that sanctions under Rule 102(e) of the Commission's Rules of Practice were proper because the auditor's first two failures constituted repeated instances of unreasonable conduct, and the third failure constituted an instance of highly unreasonable conduct that warranted heightened scrutiny considering the millions of dollars in advanced fees that had been siphoned out of the fund.

The PwC partner submitted a motion for judgment on the pleadings pursuant to recently adopted Commission Rule 250(a) arguing that he could not be sanctioned because he did not practice before the SEC for the audit work at issue. The ALJ ruled that since the partner conducts audits of both public and private entities, he qualifies as practicing before the Commission for the purpose of Rule 102(e) sanctions. The ruling went on to state that it is irrelevant that the partner may not have been practicing before the SEC in connection with the specific audits at issue. In so holding, the ALJ relied on dictum from a 2005 order.

In addition, the ALJ rejected Beamish's statute of limitations argument. The ALJ held that associational bars that are remedial in nature are not subject to the statute of limitations, and that Rule 102(e) sanctions are assumed to be remedial in nature and thus not subject to a statute of limitations. The ALJ further held that even if the older audit work was subject to the statute of limitations, it could still be considered in order to establish the partner's motive, intent, or knowledge in committing violations that are within the statute of limitations.

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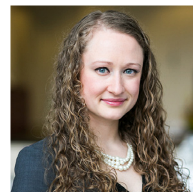

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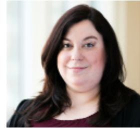

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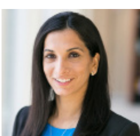

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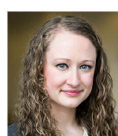

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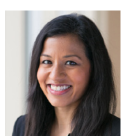

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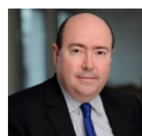

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