

Emerging Markets

Although the emerging markets have shared in the pain of the global slowdown, well-structured deals continue to close.

In this review, we highlight some of our more notable work during the last 12 months. We also turn the spotlight on a key compliance issue for financial institutions operating in the emerging markets.

Award-winning transactions

For most of the recent market disruptions, the emerging markets held up better than the G8 economies and we participated in a number of notable deals around the world.

Among the highlights for us during the last 12 months were acting on the following award-winning deals:

- *Project Finance Magazine's*
Latin American Deal of the Year
- *Project Finance Magazine's*
Latin American Private Equity Deal of the Year
- *IFLR's*
Project Finance Deal of the Year
- *Global Trade Review's*
Deal of the Year
- *Total Securitization's*
Emerging Markets Deal of the Year

Details of each of these transactions are provided in this review, along with examples of our other recent work in the emerging markets.

Spotlight on FCPA Compliance

In this review, we also include an article on the Foreign Corrupt Practices Act (FCPA), which is likely to have an increasing impact on financial institutions and other companies that operate in the emerging markets.

Under the FCPA, it is unlawful for a US person, firm or certain foreign issuers of securities to make a payment to a foreign official for the purpose of retaining business for, or directing business to, any person. Financial institutions and other companies face increased scrutiny from US enforcement officials and the real prospect of severe monetary penalties.

In his article on page 6, Simeon M. Kriesberg, a partner in our Government and Global Trade Practice, looks at a combination of recent developments in this area and their implications for financial institutions.

More detailed information on this topic can be found in our Pocket Guide to the FCPA on our website at www.mayerbrown.com/fcpa. For a hard copy of the guide, please email smcbride@mayerbrown.com.

Latin America

Despite the difficult market conditions, our Latin American practice has seen some significant successes: the expansion of our office in São Paulo, the increasing flow of work from borrowers, lenders and funds, and, of course, our work on five transactions that were honored as Deals of the Year by various financial publications.

We featured two of these transactions (the Panama Canal Expansion Project and the tender offer by Cerveceria Nacional Dominicana, C. por A.) in our last review—the other three are described below.

We also welcome a new partner, Christopher Erckert, to the firm. Christopher is an experienced projects attorney with an impressive track record in Latin America.

Bank Lending

Brazil. We represented Telemar Norte Leste S.A. in connection with a \$300 million loan facility arranged by China Development Bank Corp. The facility will be used to expand Telemar's network in Brazil.

Brazil. We represented Companhia de Saneamento Básico do Estado de São Paulo (Sabesp) in a \$250 million two-part finance package from the IADB.

Dominican Republic. We represented The Bank of Nova Scotia, as global coordinator, joint lead arranger and joint bookrunner, on a \$350 million syndicated facility that partly financed the acquisition of Aerodom, the operator of six airports in the Dominican Republic, by Advent International. This was the first leveraged buyout in the Dominican Republic and was named *Project Finance Magazine's* Latin American Private Equity Deal of the Year.

Peru. We represented the arranger of a \$130 million credit facility for the Peruvian mining company, Compania Minera Milpo S.A.A., in connection with its acquisition of a controlling interest in Compania Minera Atacocha S.A.

Regional. We represented Standard Bank in its \$85 million multi-currency, multi-tranche secured financing for Phoenix Packaging Group, the Latin American plastic

packaging company with operations in Colombia, Mexico and Venezuela.

Capital Markets and Securitization

Brazil. We acted for the arranger and investor in a series of diversified payment rights offerings in Brazil with an aggregate value of \$800 million.

Brazil. We acted as US counsel for Telemar Norte Leste S.A., as issuer, in connection with a \$750 million 144A/Reg S senior note offering listed on the Luxembourg Stock Exchange.

Dominican Republic. We represented Weston International Capital Markets, Inc. as financial advisor to Cap Cana, the luxury resort in the Dominican Republic, in an exchange offer of its outstanding 9.625% Senior Secured Notes due 2013.

Ecuador. We represented Standard Bank as solicitation agent in the Consent Solicitation by Banco Pichincha C.A. for \$25 million Floating Rate US Treasury-Collateralized Convertible Bonds due 2012. This transaction was a modification of the first collateralized bond offering ever completed in Ecuador.

Peru. We represented BBVA Banco Continental in a \$250 million securitization of its diversified payment rights.

Project Finance and Infrastructure

Brazil. We represented the borrower, ViaQuatro, and the Brazilian concession company, CCR, as lead sponsor in connection with the long-term limited recourse financing for the São Paulo Metro Line 4 Project. The project is the first PPP project in Brazil to be financed in the international markets and was named *Project Finance Magazine's* Latin American Deal of the Year 2008.

"a great infrastructure practice in Latin America"

Chambers Global 2009

Peru. We represented BNP Paribas as arranger of an approximately \$254 million 144A/Reg S offering of three series of Pass-Through Notes by a special purpose entity supported by future payments by the government of Peru under obligations relating to a construction concession for the Tramo 5 segment of the IIRSA Sur toll-road project.

Trinidad & Tobago. We acted for HSBC in the financing of the construction of a 64Mw dual fuel power plant in Tobago by Wartsila Power Plants. *Global Trade Review* chose this transaction as its Deal of the Year 2008.

Debt Restructuring/Special Situations

Mexico. We are representing Barclays Capital in connection with the bankruptcy filing in Mexico of Controladora Comercial Mexicana, S.A. de C.V. (CCM), arising from CCM's liability under currency exchange derivatives contracts.

Mexico. We are representing the Special Master in *United States v. Michael Kelly*, a case involving a Ponzi scheme related to investments in Mexican real estate. Our role is to assist in the defendant's restitution to the victims by taking control of, and then selling, the Mexican real estate assets.

M&A/Joint Ventures

Caribbean. We represented Grupo Colte and Pegaso Television in multiple investments in CaribeVision Holding, Inc. and CaribeVision TV Network LLC.

Colombia. We advised Kappa Energy Holdings, the largest independent oil and gas exploration and production company in Colombia, on its sale to Pacific Rubiales (a TSX listed company) for \$168 million.

El Salvador. We represented Dell Inc. in the sale of its El Salvador call center operations to Stream Global Services, Inc., a leading provider of integrated business process outsourcing services.

Mexico. We represented George Weston Limited, one of North America's largest food processing and distribution groups, in the sale of the US fresh bread and baked goods business of its subsidiary Dunedin Holdings S.à r.l. to Grupo Bimbo, S.A.B. de C.V. for approximately \$2.5 billion.

Real Estate

Mexico. We represented The Prudential Insurance Company in a joint venture for the \$1 billion acquisition and development of land in Baja California for a hotel, golf course and housing complex.

Mexico. We represented Lion Mexico Fund in the projected \$40 million Program Agreement with a Mexican housing developer to acquire properties in target markets in Mexico for development of low and moderate income single-family housing.

Asia

Our clients continue to benefit from the synergies brought by our combination with JSM in Asia.

We are delighted that the strength of our Asian network continues to be recognized in the market, with JSM once again named Hong Kong Law Firm of the Year by both *IFLR* and *Asian Legal Business*. The following transactions represent just some of the work that our 300 attorneys in Asia have handled over the last year.

Bank Lending

China. We advised Industrial and Commercial Bank of China (Asia) Limited on a HK\$2 billion loan facility to finance the acquisition of shares in a Beijing property developer.

China. We represented Hang Seng Bank Limited on HK\$500 million loan facilities to two joint ventures of Grosvenor International S.A. and SEB Asian Property Fund to refinance property acquisitions in Shanghai.

“a superb top player in finance”

Chambers Asia 2009

Pakistan. We advised Augere in relation to the vendor-financing of WiMax equipment to be installed in Pakistan.

Thailand. We advised a leading European bank regarding a financing arrangement on a number of aircraft lease arrangements with a Thai airlines company.

Vietnam. We advised ABN, ANZ and HSBC as the mandated lead arrangers on the \$115 million pre-delivery and post-delivery debt financing for a Vietnamese company of a non-propelled mobile offshore drilling unit currently under construction in Singapore.

Capital Markets and Securitization

Korea. We advised on three cross-border Korean RMBS transactions for the Hong Kong Mortgage Corporation (HKMC) where HKMC purchased Notes backed by a portfolio of Korean residential mortgages.

Malaysia. We acted as international counsel to HKMC and Cagamas Berhad (the national mortgage corporations

of Hong Kong and Malaysia, respectively) in preparing master program documentation for the Malaysian joint venture that they established to provide residential mortgage guarantees to Malaysian mortgage lenders. The program offers two types of products initially—a conventional guarantee in the form of a bespoke credit default swap based on ISDA documentation and an Islamic guarantee in the form of a Kafalah/Wakalah structure.

Regional: We continue to advise the provisional liquidators of Lehman Brothers entities in Asia on the unwinding of various securitization/CLO transactions and the closing out of intercompany swaps.

Vietnam. We advised the Bank for Investment and Development of Vietnam on the offering of VND1,000 billion bonds by Hoang Anh Gia Lai, one of the largest companies on the stock market of Vietnam.

Vietnam. We advised ANZ Investment Bank on the up to VND2,000 billion CDs offering of Australia and New Zealand Banking Group Limited, Hanoi Branch.

Project Finance and Infrastructure

China. We advised HSBC Bank (China) on a \$55 million loan to finance the development of a residential project in Shanghai, and a RMB 700 million (US\$102 million) loan to finance a retail development project in Shenyang, a second-tier city in China.

Malaysia. We advised Aqua Resources Fund Limited, a LSE listed closed ended investment company, on its first investment and international joint venture with the Ranhill Group, a Malaysian listed company, to form Ranhill Water Technologies (Cayman Ltd.). The joint venture will invest in water and waste water operations in the People's Republic of China and Thailand.

Vietnam. We acted for Vinacomin in relation to the Vinh Tan 1 Built-Operate-Transfer (BOT) power project (1200MW capacity).

Vietnam. We acted for Vinacomin in a joint venture with AES Corporation in relation to the Mong Duong 2 BOT project (1200MW coal fired capacity). We also advised the government on the drafting of the BOT regulations as part of the Infrastructure Group of Vietnam Business Forum and provided training to the Ministry of Industry and Electricity of Vietnam on BOT projects.

M&A/Joint Ventures

China. We advised Dah Chong Hong Holdings Limited on the acquisition of a half stake in a group of companies engaging in vehicle sales and after market services for the “FAW Toyota” and “Lexus” brands in the greater Guangzhou area for a total consideration of HK\$14.3 million.

“long-standing experience in Asia-Pacific affairs”

Chambers Global 2009

China. We advised ProLogis, a leading global provider of distribution facilities, in the \$1.3 billion sale of its operations in China and property fund interests in Japan to GIC Real Estate Pte Ltd, the real estate investment company of the Government of Singapore Investment Corporation.

China. We represented Tsingtao Brewery, one of China's oldest breweries, in its sale of a minority stake to Japan-based Asahi Breweries, Ltd. for \$667 million.

India. We advised Infrastructure India on the UK/US aspects of incorporation and its IPO as well as its acquisition of a minority stake in Shree Maheshwar Hydel Power Corporation Ltd.

India. We represented W.W. Grainger in connection with its acquisition of a 49.9 % stake in Asia Pacific Brands India Ltd., one of India's largest industrial and electrical wholesale distributors.

Vietnam. We advised HSBC on its local incorporation in Vietnam—making it one of the first foreign banks to take this step.

Vietnam. We advised Banyan Tree Indochina Hospitality Fund on a fund raising round which enabled it to proceed with the development of the first phase of an integrated resort development on the central coast of Vietnam.

Vietnam. We advised Mapletree Investment on its \$400 million investment in a new business park development in the southern province of Binh Duong, Vietnam.

Emerging Europe, the Middle East and Africa

We have continued our track record of working on award winning transactions in the EMEA through our role on the *Total Securitization Emerging Markets Deal of the Year*.

The deal, first described in our review of last year, was a diversified payments rights securitization for BTADPR Finance in Kazakhstan where we acted for ABN AMRO, JP Morgan Securities and Standard Chartered Bank. Recently, the transaction successfully paid out in full.

Bank Lending

Africa. We advised on a syndicated credit facility for BRAC, a not-for-profit microfinance and developmental organization in Bangladesh. Approximately \$63 million was raised from several international lending groups, including the Overseas Private Investment Corporation (OPIC), to develop microfinance lending operations in Tanzania, Uganda and Southern Sudan.

“a great niche in emerging markets”

Chambers Global 2009

Africa. We advised the mandated lead arrangers in connection with a \$400 million, five-year facility for First Quantum Minerals Ltd., relating to the refinancing and development of copper and gold mines in the Democratic Republic of the Congo (DRC), Zambia and Mauritania.

Ghana. We advised the mandated lead arranger, Standard Chartered Bank, on a \$30 million revolving loan facility to Golden Star Resources Ltd., the owner and operator of the Wassa Gold mine in Ghana. We advised Standard Chartered Bank on the original project financing of the mine in 2003.

Israel. We represented Wells Fargo Foothill, as debt provider to Vector Capital, in Vector Capital’s acquisition of Aladdin Knowledge Systems Ltd., a provider of solutions for software and Internet security. The transaction is valued at approximately \$160 million.

Ukraine. We advised Morgan Stanley Bank International Limited in connection with a structured credit facility for Nadra Bank.

Capital Markets and Securitization

Azerbaijan. We advised Technikabank in relation to an LSE-listed Eurobond, the first ever international offering by an Azerbaijani issuer.

Bulgaria. We advised Eurolease Auto on Bulgaria’s first of its kind securitization of leasing receivables worth €200 million. Eurolease Auto is part of conglomerate Eurohold Bulgaria which is listed on the Sofia Stock Exchange and has subsidiaries in Macedonia and Romania.

Turkey. We represented Dexia Bank Brussels S.A. and Denizbank A.Ş. in a Reg S \$650 million offering of notes secured by dollar-, euro- and sterling-denominated diversified payment rights sold by Denizbank A.Ş.

Turkey. We represented ING Bank N.V., as arranger and initial purchaser, and Türkiye Garanti Bankası A.Ş. in connection with a \$225 million new issuance under an existing diversified payment rights securitization program.

M&A/Joint Ventures

Qatar. We advised LBO France in its €1.7 billion sale of Cegelec, the French electrical engineering firm, to Qatari Diar, a Qatar-based real estate investment company.

Regional. We represented Dow Automotive in the sale of its sealer and damper business in Europe and India, Middle East, and Africa (IMEA) to a group of investors led by Katzberg Invest AG.

Project Finance and Infrastructure

Burkina Faso. We advised Goldbelt Resources Limited, a fully owned subsidiary of Wega Mining ASA, a Norwegian based gold mining company, on its \$65 million financing for the construction and development of its Inata Gold Project. This is only the second project financing to have taken place in Burkina Faso.

“outstanding mining and project finance practice”

Chambers Global 2009

Turkey. We advised the mandated lead arranger, Bayerische Hypo- und Vereinsbank AG, on the \$62.5 million financing for the construction and development of the Çöpler gold mine in Turkey. This is one of the first completed project-financed mines in Turkey.

The Emergence of the Foreign Corrupt Practices Act

Until fairly recently, global financial institutions could look upon the US Foreign Corrupt Practices Act (FCPA) as someone else's compliance problem. While the intensity of enforcement actions and the size of penalties rose year after year, the authorities targeted non-financial sectors, such as oil and gas, medical devices, defense, and industrial products. But a number of recent developments suggest that financial institutions should no longer assume that the perfect storm of FCPA enforcement cannot reach them as well.

Growing international cooperation among enforcement agencies. The landmark fine of over \$1 billion against Siemens AG and affiliates late last year resulted from the close cooperation of anti-corruption authorities in the United States and Germany. For financial institutions, the implications of greater international cooperation were demonstrated by an announcement of the British Financial Services Authority (FSA) in January 2009. The FSA announced that it was fining the UK subsidiary of insurance broker Aon Corporation some \$8 million for inadequate internal controls, which led to some \$7 million in questionable payments in Bahrain, Bangladesh, Bulgaria, Burma, Indonesia, and Vietnam. The US parent had already disclosed that it was internally investigating possible FCPA violations; the US enforcement agencies have not yet announced the results of their examination.

New pressure on international bank secrecy practices. US authorities are pressing foreign jurisdictions, including Switzerland and Lichtenstein, to lift the longstanding veil of secrecy over account holders in those countries. Swiss bank UBS and Lichtenstein's LGT Bank have been among the financial institutions featured in a US Senate report about secret offshore accounts and allegations of tax fraud. How much information the authorities in Bern, Vaduz, and elsewhere will share with their US counterparts is not yet clear, but any disclosure of account information could lead to investigations into the corrupt use or derivation of funds in those accounts, and the role of global financial institutions in concealing information regarding corrupt activities. Indeed, the Senate report cited an LGT Bank document to the effect that some secret accounts had been used to commit bribery in the United States and elsewhere.

Heightened focus on the conduct of major financial institutions. Public officials in both the legislative and the executive branches of the US Government have turned the spotlight on virtually every major financial institution in recent months, partly to affix responsibility for the current financial crisis and partly to identify ways to achieve more effective regulatory oversight. This official attention is likely to put pressure on financial institutions to get their compliance houses in order and to disclose suspect situations sooner rather than later. In February 2009 of this year, Morgan Stanley disclosed in an SEC filing that it had uncovered possible FCPA violations by a real estate subsidiary in China, perhaps involving property investments with state-owned enterprises, an area in which some Chinese officials have been arrested for corruption in recent years.

Persistent corruption in emerging markets. Few developing countries have been able to disown the legacy of corruption. As global financial institutions continue to increase their exposure to the BRIC countries (Brazil, Russia, India, and China), as well as many others in Africa, Asia, and Latin America, they inevitably face greater risks of FCPA violations. The governments in these countries typically control large sectors of the economies, making it more difficult for financial institutions to conduct business there without requiring a range of regulatory or transactional approvals from government officials. Such circumstances are rife with FCPA risks, and only those financial institutions with the most effective FCPA compliance programs are likely to emerge unscathed.

One that did not is the hedge fund Omega Advisors. It was caught up in a continuing scandal over corrupt payments related to the proposed privatization of the Azerbaijan state oil company, Socar, in which the fund not only lost its \$100 million investment but also was subject to a \$500,000 civil forfeiture as part of a settlement with the FCPA enforcement authorities. The Omega Advisors penalty is hardly likely to be the last for financial institutions active in the emerging markets.

This confluence of recent developments should send the warning that the FCPA storm is gathering strength and that, from a compliance standpoint, everything needs to be shipshape.

Simeon M. Kriesberg
skriesberg@mayerbrown.com

Our Emerging Markets Team

As a leading international law firm, Mayer Brown recognized the importance of the emerging markets many years ago. This early introduction means our worldwide team has significant experience in every region and in almost every type of cross-border transaction, all of which is complemented by the deep pool of knowledge available through our 1,800 lawyers.

Our Emerging Markets group brings together lawyers from across practice areas to offer our clients the cross-disciplinary knowledge that is needed in the emerging markets. The areas in which we most often work include:

- Bank financing/debt trading
- Capital markets and securitization
- Global projects
- Government and global trade
- Intellectual property
- International arbitration and litigation
- International tax
- Investment funds
- Mergers, acquisitions and joint ventures
- Real estate-related transactions
- Restructuring

Our in-house capabilities are further extended by strong independent alliances with leading law firms in jurisdictions where we do not have an office. Our alliance firms include Jáuregui, Navarrete y Nader, S.C., one of Mexico City's most respected law firms, and leading Spanish firm Ramón & Cajal of Madrid. We also have an alliance with the Italian firm Tonucci & Partners, which has offices in Italy and Eastern Europe.

For more information

For more information, please contact your usual Mayer Brown attorney or:

ASIA

Peter Burke

peter.burke@mayerbrownjism.com

Jeff Chen

jchen@mayerbrownjism.com

Alastair MacAulay

acm@mayerbrownjism.com

Dao Nguyen

dao.nguyen@mayerbrownjism.com

EUROPE, THE MIDDLE EAST AND AFRICA

Ian Coles

icoles@mayerbrown.com

Jim Patti

jpatti@mayerbrown.com

Drew Salvest

dsalvest@mayerbrown.com

LATIN AMERICA

Peter Darrow

pdarrow@mayerbrown.com

Doug Doetsch

ddoetsch@mayerbrown.com

Stephen Hood

shood@mayerbrown.com

Jim Patti

jpatti@mayerbrown.com

Mayer Brown is a leading global law firm with approximately 1,000 lawyers in the Americas, 300 in Asia and 500 in Europe. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest investment banks. We provide legal services in areas such as Supreme Court and appellate; litigation; corporate and securities; finance; real estate; tax; intellectual property; government and global trade; restructuring, bankruptcy and insolvency; and environmental.

OFFICE LOCATIONS AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, São Paulo, Washington
ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai
EUROPE: Berlin, Brussels, Cologne, Frankfurt, London, Paris

ALLIANCE LAW FIRMS Mexico (Jáuregui, Navarrete y Nader); Spain (Ramón & Cajal); Italy and Eastern Europe (Tonucci & Partners)
Please visit our web site for comprehensive contact information for all Mayer Brown offices.
www.mayerbrown.com

This Mayer Brown publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed herein.

© 2009. Mayer Brown LLP, Mayer Brown International LLP, and/or JSM. All rights reserved.

Mayer Brown is a global legal services organization comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; and JSM, a Hong Kong partnership, and its associated entities in Asia. The Mayer Brown Practices are known as Mayer Brown JSM in Asia. "Mayer Brown" and the "Mayer Brown" logo are the trademarks of the individual Mayer Brown Practices in their respective jurisdictions.

Attorney advertising