



Business Opportunities in California: The Legal Landscape

California-South Korea Globalizing Trade & Investment

J.W. Marriott Hotel
Seoul, Korea

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presented by:

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CENTURY CITY | DEL MAR HEIGHTS | LOS ANGELES | ORANGE COUNTY | SAN DIEGO | SAN FRANCISCO | WALNUT CREEK



I. SCOPE OF PRESENTATION

II. INITIAL CONSIDERATIONS

III. COMMENCING BUSINESS OPERATIONS IN CALIFORNIA

IV. MAKING AN INVESTMENT IN CALIFORNIA

V. MAKING A LOAN

VI. CASE STUDY

VII. CONCLUDING REMARKS

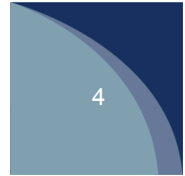


I. SCOPE OF PRESENTATION

1. Commencing Business Operations in California
2. Inbound Investments: Buying, Investing or Joint-Venturing in an Existing Business in California
3. Making a Loan

II. INITIAL CONSIDERATIONS

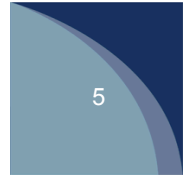
1. Business Objectives
2. Tax Consequences



III. COMMENCING BUSINESS OPERATIONS IN CALIFORNIA

1. Application of U.S. and California Taxes
 - a. Tax Rates
 - b. Avoiding “Double” Taxation

2. “Doing Business” in California
 - a. Maintaining an Office
 - b. Employees vs. Independent Contractors
 - c. Formation of California Entity
 - d. Frequency of Transactions



III. COMMENCING BUSINESS OPERATIONS IN CALIFORNIA

3. Enforcement of Contracts
 - a. Qualification vs. Non-Qualification
 - b. Governing Law

4. California Labor and Employment Laws
 - a. Wages and Overtime
 - b. Non-Discrimination
 - i. Race, Ethnicity, Gender, Sexual Preference
 - c. Sexual Harassment



III. COMMENCING BUSINESS OPERATIONS IN CALIFORNIA

5. California Environmental Laws
6. Non-competition and Solicitation of Employees



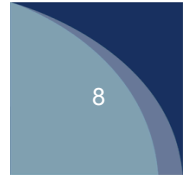
IV. MAKING AN INVESTMENT IN CALIFORNIA

1. Structuring the Investment

- a. Predicting the Tax Rate
 - i. Korea/U.S. Tax Treaty
 - ii. Offshore Structures

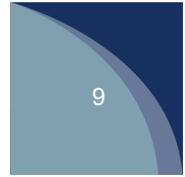
- b. Securities Laws
 - i. U.S. and California

- c. Anti-Trust Laws
 - i. Hart-Scott-Rodino



IV. MAKING AN INVESTMENT IN CALIFORNIA (continued)

- d. Choosing an Entity: Direct Investment vs. Joint Venture
 - i. Limited Liability
 - 1. Requirements for Maintaining
 - ii. California vs. Delaware
 - iii. Tax Pass-Through Entity vs. Tax at Entity Level (Profits and Losses)
 - iv. Multiple Classes of Ownership
 - v. Control and Governance
 - vi. Subsequent Private Investors and Public Markets



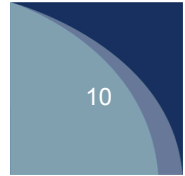
IV. MAKING AN INVESTMENT IN CALIFORNIA (continued)

d. Choosing an Entity (continued)

vii. Available Entities

1. General Partnerships

- a) Pass-Through Tax Treatment
- b) All Partners Have Joint and Several Liability
 - 1) Indemnity Agreements
- c) Partnership Agreement (Oral vs. Written)
- d) Separation of Control from Ownership
- e) Multiple Classes of Ownership
- f) Cost of Documenting



IV. MAKING AN INVESTMENT IN CALIFORNIA (continued)

d. Choosing an Entity (continued)

vii. Available Entities (continued)

2. Limited Partnerships

a) Pass-Through Tax Treatment

b) General Partner Has Unlimited Liability; Limited Partners Have Limited Liability

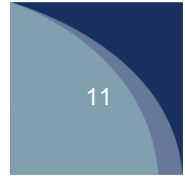
—Requirements for Maintaining Limited Liability

1) Use of Limited Liability Entity as General Partner

c) Separation of Control from Ownership

d) Multiple Classes of Ownership

e) Cost of Documenting



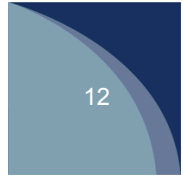
IV. MAKING AN INVESTMENT IN CALIFORNIA (continued)

d. Choosing an Entity (continued)

vii. Available Entities (continued)

3. Limited Liability Companies (LLCs)

- a) Pass-Through Tax Treatment
- b) Entity and Members Both Have Limited Liability
- c) Separation of Control from Ownership
- d) Multiple Classes of Ownership



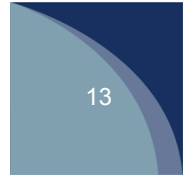
IV. MAKING AN INVESTMENT IN CALIFORNIA (continued)

d. Choosing an Entity (continued)

vii. Available Entities (continued)

4. Corporations

- a) Taxed at Entity and Shareholder Level
- b) Unless Modified, Ownership Determines Participation in Governance and Control
 - 1) Shareholders' Agreements
 - 2) Voting Trusts
- c) Ownership Interest Expressed as Stock
- d) Multiple Classes of Ownership

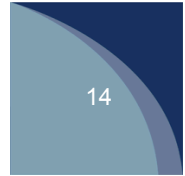


IV. MAKING AN INVESTMENT IN CALIFORNIA (continued)

d. Choosing an Entity (continued)

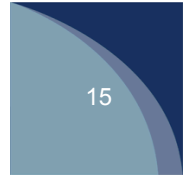
viii. Documenting the Investment

1. Letter of Intent vs. Definitive Agreements
 - a) Binding vs. Non-Binding
 - b) Lock-Up and Broken Deal Provisions
 - c) Expense Considerations
2. Due Diligence
3. Representations, Warranties and Indemnities
4. Closing Conditions
5. Hart-Scott-Rodino



V. MAKING A LOAN

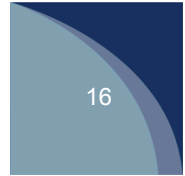
1. Applicable Law
2. Usury Laws
 - a. California Constitution
 - b. Risks
3. Servicing the Loan
 - a. UCC Application
 - b. Mixed Collateral (Real and Personal Property)



VI. CASE STUDY:

Chinese Company Purchasing Interest in Existing U.S. California-Based Company that Co-Finances Motion Pictures in Exchange for an Interest in Each Co-Financed Picture

1. Structuring of Transaction
 - a. Tax Considerations
 - i. U.S./China Tax Treaty
 - ii. Offshore Alternatives
 - iii. Blocker Corporations
 - iv. Need Expert Counsel and Advice
 - b. Purchase of Ownership of Existing Delaware LLC



VI. CASE STUDY (continued)

1. Structuring of Transaction (continued)

c. Choice of Entity for Purchaser

i. New Entity

ii. Special Purpose Entities

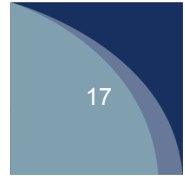
iii. Place of Organization

1) U.S. Partners vs. No U.S. Partners

2) Extent of Legal Precedent

3) Principal Place of Business

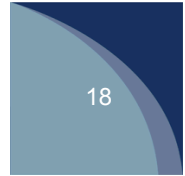
4) Protection of Shareholders



VI. CASE STUDY (continued)

1. Structuring of Transaction (continued)

- d. Partnership (General or Limited) vs. LLC vs. Corporation
 - i. Limited Liability
 - ii. Tax Attributes
 - iii. Confidentiality
 - iv. Control and Ownership



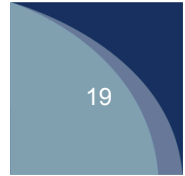
VI. CASE STUDY (continued)

1. Structuring of Transaction (continued)

e. Transaction-Based Considerations

i. Asset Purchase vs. Purchase of Ownership Interests

- 1) Tax Consequences
- 2) Transferability of Seller Ownership Interests
 - a) Rights of Owners under Seller Organizational Documents
 - b) Loans and Credit Agreements
 - c) Higher Tier Interest Purchases
- 3) Effect on Target Contracts
- 4) Loan and Credit Agreements
- 5) Customer and Supplier Contracts
- 6) Leases and Other Occupancy-Related Issues



VI. CASE STUDY (continued)

1. Structuring of Transaction (continued)

e. Transaction-Based Considerations (continued)

i. Asset Purchase vs. Purchase of Ownership Interests (continued)

7) Employment Contracts

a) Change of Control Clauses

b) Change of Authority

ii. Period of Exclusive Negotiations

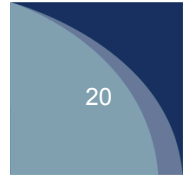
iii. Filing/Approvals

1) Lenders

2) Governmental Filings

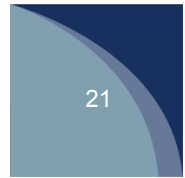
a) Hart-Scott-Rodino

3) Confidentiality and Public Announcement



VI. CASE STUDY (continued)

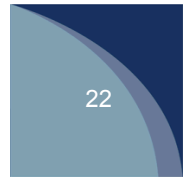
1. Structuring of Transaction (continued)
 - f. Due Diligence
 - i. Business vs. Legal
 - ii. In-House vs. Outside Counsel



VII. ALLEN MATKINS (www.allenmatkins.com)

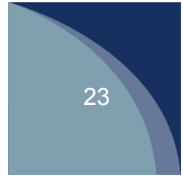
1. 240-Attorney California-Based Firm

- a. Offices in Los Angeles, Century City, Orange County, San Diego, Del Mar, San Francisco, Walnut Creek
- b. Full Range of Practice Areas and Specialties
 - i. Corporate
 - 1) Securities
 - 2) Finance and Capital Markets
 - 3) Private Equity
 - 4) Emerging Companies and Venture Capital
 - 5) Mergers and Acquisitions
 - 6) Trade Secrets and Non-Competition Covenants
 - ii. Tax and Joint Ventures



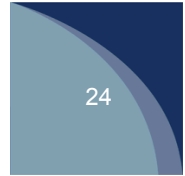
VII. ALLEN MATKINS (www.allenmatkins.com) (continued)

- a. 240-Attorney California-Based Firm (continued)
 - ii. Full Range of Practice Areas and Specialties (continued)
 - 3. Technology and Intellectual Property
 - a) Trademarks
 - b) Patents
 - c) Trade Secrets
 - d) Green Technology and Business
 - 4. Entertainment and Media



VII. ALLEN MATKINS (www.allenmatkins.com) (continued)

1. 240-Attorney California-Based Firm (continued)
 - b) Full Range of Practice Areas and Specialties (continued)
 - v. Real Estate
 - 1) Purchases and Sales
 - 2) Financings, Refinancings and Workouts
 - 3) Land Use, Environmental and Natural Resources
 - 4) Governmental Advocacy
 - 5) Hotels and Resorts
 - 6) Water Rights and Resources
 - 7) Construction
 - 8) Green Construction



VII. ALLEN MATKINS (www.allenmatkins.com) (continued)

1. 240-Attorney California-Based Firm (continued)
 - c. Energy (Including Alternative Energy)
 - d. Litigation (Court Actions, Mediations and Arbitrations)
 - e. Labor and Employment
 - f. Employee Benefits
 - g. Bankruptcy and Creditors Rights
 - h. Health Care Law
2. Chambers USA Rankings
3. Large and Middle Market Clients
4. Committed to Achieving Client Objectives
5. Emphasis on Partner Level Service

VIII. CONCLUDING REMARKS

Questions



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