Business Opportunities in California: The Legal Landscape

California-South Korea
Globalizing Trade & Investment

J.W. Marriott Hotel
Seoul, Korea

September 13, 2010
presented by:
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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
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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
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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