

The Law of Transnational Business Transactions

Edited by
Ved P. Nanda

Volume 1
International Business & Law Series



CLARK
BOARDMAN
CALLAGHAN®

DEERFIELD, IL • NEW YORK, NY • ROCHESTER, NY
Customer Service: 1-800-323-1336

(Release #18, 6/94)

Copyright © 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988,
1989, 1990 by Clark Boardman Company, Ltd.
All rights reserved.

Copyright 1991, 1992, 1993, 1994 Clark Boardman Callaghan, a
division of Thomson Legal Publishing, Inc.

Release #18, 6/94

Library of Congress Cataloging in Publication Data

Main entry under title:

The Law of transnational business transactions.

(International business & law series; v. 1)

Includes index.

Contents: U.S. lawyers and international business transactions /
Donald W. Hoagland—Foreign business organization / Ralph
Lake—United States taxation of foreign investors / Herrick K.
Lidstone and Robert S. Rich—[etc.]

1. Commercial law—Addresses, essays, lectures. 2. International
business enterprises—Law and legislation—Addresses, essays,
lectures. 3. Foreign trade regulation—Addresses, essays, lectures.
4. Commercial law—United States—Addresses, essays, lectures. I.
Nanda, Ved P.

II. Series.

| | | |
|--------------------|--------|---------|
| K1005.6.L38 | 346.07 | 81-2392 |
| ISBN 0-87632-342-5 | 342.67 | AACR2 |

PUBLISHER'S NOTE

Clark Boardman Callaghan's *International Business & Law Series* is the response to the perceived need for an integrated and comprehensive reference library of writings on international business and law. The Series begins at a time when the world economy is in a period of rapid transition, and when United States dominance in international trade has been seriously eroded.

Changing legal implications of international trade and transnational negotiations have obliged lawyers, both in the United States and other jurisdictions, to become aware of such effects in practice. The Clark Boardman Callaghan *International Business & Law Series* is designed to provide accurate and authoritative information to lawyers who must advise clients in international transactions. Often a detailed knowledge of the national laws which may affect the international transaction must be obtained, a complex process involving interpretation of multiple legal disciplines.

Recent and important changes in international trade and customs laws of the United States signaled this as an opportune time to commence the *International Business & Law Series*. As a result of the passage of the Trade Act of 1974, the Customs Procedural Reform and Simplification Act of 1978, the Trade Agreements Act of 1979, and the Customs Courts Act of 1980, more changes in customs and international trade law were enacted than at any time in the past forty years. The establishment of the United States Court of International Trade is clearly attributable to the increased importance of international business transactions not only in the United States, but throughout the world as well.

The *International Business & Law Series*, it is anticipated, will in time focus on parallel business and legal developments in the industrialized nations of the world. Transnational practitioners will have available in looseleaf format, with periodic updating, the significant literature in the field of international law and business. It is hoped that this reference collection will

TRANSNATIONAL BUSINESS

be of considerable service to the bar and to businesspeople throughout the world.

Clark Boardman Callaghan

PREFACE

During the past decade, new centers of international commercial activity have arisen in every country. No longer does the specialized lawyer alone handle transnational transactions, for it is not uncommon for lawyers primarily in domestic practice to advise clients on issues and transactions which are transnational in scope.

It is the purpose of this book to provide assistance to attorneys and students at different levels of expertise, from international lawyers to those in domestic practice to students generally interested in the field. The authors bring varied backgrounds and rich experience to this project. They are associated with multinational enterprises, large and small law firms, law schools, and government agencies.

In planning the book, I made two decisions at the outset: first, to treat only selected aspects of the subject, and second, to discuss those aspects both from a theoretical point of view and in terms of their practical consequences.

During the two-year period it took to complete the book, my associates and former students at the University of Denver College of Law have been of significant help both as authors and advisers. Nancy Nones, Administrator of the International Legal Studies Program, and several of my research assistants, especially David Pansius and Christina Neslund, provided substantial aid which I gratefully acknowledge. I would like to thank Tom Costner, Vice-President, Publishing at Clark Boardman Callaghan, to whom I am deeply indebted for his helpful suggestions, and William Cubberley, Administrative Editor, and his associates, for their assistance in the publication process.

Finally, this book is presented to the reader with an invitation that any suggestions regarding revision of these materials be forwarded to the editor.

Denver, Colorado

Ved P. Nanda

TABLE OF CHAPTERS

Volume 1

- 1 - U.S. Lawyers and Transnational Business Transactions—An Introduction
- 2 - Foreign Business Organization
- 2A - Legal Aspects of Franchising Internationally
- 3 - United States Taxation of Foreign Investors
- 3A - Foreign Tax Provisions of the 1984 Tax Act
- 3B - The Foreign Investment Real Property Tax Act
- 4 - Selected Clauses in Transnational Contracts
- 5 - International Technology Transfers
- 6 - International Technology Transfer Agreements
- 7 - Foreign Natural Resource Investment
- 7A - Energy and Mineral Joint Ventures in China
- 8 - Forum Selection and Choice of Law Clauses in Transnational Contracts
- 9 - Antitrust Aspects of International Business Operations
- 10 - Jurisdictional Problems in the Application of the Antitrust Laws

Volume 1A

- 11 - Enforcement of the European Community's Antitrust Laws—The Single Enterprise Theory
- 12 - Foreign Trade and Economic Injury—A Survey of U.S. Relief Mechanisms
- 13 - International Boycotts
- 14 - International Capital Markets and Securities Regulation

Volume 1B

- 15 - Dismissals in Europe

(Release #18, 6/94)

TRANSNATIONAL BUSINESS

- 16 - Regulation of Multinational Enterprises: International Codes of Conduct
- 17 - International Economic Institutions
- 18 - Recognition of Foreign Bankruptcies in a Transnational Setting: An Analysis of the Laws of the United States
- 19 - International Commercial Arbitration in Europe
- 20 - Expanded Philanthropy: American Corporations Worldwide

TABLE OF CONTENTS

Volume 1

| | |
|----------------------------------------------------------------------|---------------------------------------------------------|
| CHAPTER 1 | |
| U.S. Lawyers and Transnational Business Transactions—An Introduction | Donald W. Hoagland..... 1-1 |
| CHAPTER 2 | |
| Foreign Business Organization | Ralph B. Lake |
| § 2.01 | Introduction and General Considerations 2-2 |
| § 2.02 | Forms Not Involving a Foreign Presence 2-6 |
| [1] | Agency Arrangements 2-6 |
| [a] | Nature of the Relationship..... 2-7 |
| [b] | Foreign Laws Affecting Agency Relationships..... 2-9 |
| [i] | Requirement of Local Representation 2-9 |
| [ii] | Prohibition of Local Agents 2-10 |
| [iii] | Registration and Disclosure 2-10 |
| [iv] | Limitation of Commissions..... 2-10 |
| [v] | Exclusivity..... 2-11 |
| [vi] | Restrictions on Termination 2-11 |
| [c] | Representation Agreement Form 2-13 |
| [2] | Distributorships 2-20 |
| [a] | Nature of the Relationship..... 2-22 |
| [b] | Exclusivity 2-23 |
| [c] | Payments 2-24 |
| [d] | Prices 2-25 |
| [e] | Termination 2-25 |
| [f] | International Distributorship Agreement Form 2-31 |
| § 2.03 | Forms Involving a Foreign Presence 2-40 |
| [1] | Liaison Offices..... 2-40 |

TRANSNATIONAL BUSINESS

| | | |
|--------------|------------------------------------------------------------------------------|------|
| [2] | Branches | 2-41 |
| [3] | Foreign Subsidiaries | 2-47 |
| | [a] General | 2-47 |
| | [b] France | 2-50 |
| | [i] Société Anonyme..... | 2-51 |
| | [ii] Société á Responsabilité Limitée | 2-53 |
| | [iii] Partnerships..... | 2-55 |
| | [c] Federal Republic of Germany. | 2-55 |
| | [i] Aktiengesellschaft (AG) | 2-56 |
| | [ii] Gesellschaft mit besch- ränkter Haftung (GmbH)..... | 2-57 |
| | [iii] Partnerships..... | 2-59 |
| Appendix 2A: | Russian Regulations on Stock Associa- tions: Analysis and Commentary..... | 2-65 |
| Appendix 2B: | RSFSR Regulations on Stock Associa- tions | 2-87 |

CHAPTER 2A

Legal Aspects of Franchising Internationally

Ralph B. Lake

| | | |
|---------|-----------------------------------------------------------------|-------|
| § 2A.01 | Why Franchise Internationally? | 2A-2 |
| § 2A.02 | U.S. and Foreign Laws Affecting Franchis- ing | 2A-5 |
| | [1] U.S. Regulation of International Franchising | 2A-6 |
| | [a] Federal Regulation | 2A-6 |
| | [b] State Regulation | 2A-7 |
| | [2] Foreign Governmental Regulation of Franchising..... | 2A-8 |
| | [a] EEC Antitrust Regulation | 2A-8 |
| | [b] Canadian Registration and Dis- closure Requirements..... | 2A-13 |
| | [c] French Pre-Sale Disclosure Re- quirements | 2A-14 |
| | [3] Other Foreign Laws Affecting Franchising | 2A-15 |
| | [a] Contract Law..... | 2A-16 |

TABLE OF CONTENTS

| | | |
|---------|------------------------------------------------------|-------|
| | [b] Legislative Limitations on Contract Terms..... | 2A-16 |
| | [c] Agency and Distributorship Laws | 2A-18 |
| | [d] Foreign Investment Laws | 2A-18 |
| | [e] Technology Transfer Laws..... | 2A-19 |
| | [f] Antitrust Laws | 2A-20 |
| | [g] Trademark Laws | 2A-21 |
| | [h] Exchange Control Laws..... | 2A-21 |
| | [i] Tax Laws..... | 2A-21 |
| § 2A.03 | Structuring an International Franchise Network | 2A-22 |
| | [1] Direct Franchising..... | 2A-22 |
| | [2] Area Development Agreements | 2A-23 |
| | [3] Master Franchise Agreements | 2A-24 |
| § 2A.04 | International Franchise Agreements..... | 2A-26 |
| | [1] Dispute Settlement Provisions | 2A-27 |
| | [2] Antitrust Provisions | 2A-29 |
| | [3] Language | 2A-29 |
| | [4] Payments..... | 2A-30 |

CHAPTER 3

United States Taxation of Foreign Investors

Laurence E. Nemirow and Robert S. Rich

| | | |
|--------|------------------------------------------------------------------------|------|
| § 3.01 | Federal Income Taxation of Foreign Investors..... | 3-3 |
| | [1] Basic Concepts | 3-9 |
| | [a] Source of the Foreign Investor's Gross Income and Deductions | 3-9 |
| | [i] Interest | 3-10 |
| | [ii] Dividends | 3-10 |
| | [iii] Personal Services | 3-11 |
| | [iv] Rentals and Royalties.... | 3-13 |
| | [v] Sale or Exchange of Real Property | 3-13 |
| | [vi] Sale or Exchange of Personal Property | 3-13 |
| | [vii] Source of Deductions.... | 3-19 |

TRANSNATIONAL BUSINESS

| | | |
|-------|---------------------------------------------------------------------------------------------|------|
| [b] | Engaged in a Trade or Business Within the United States..... | 3-19 |
| [i] | Trade or Business Under the Code..... | 3-19 |
| [ii] | Trade or Business Under Treaty— Permanent Establishment..... | 3-22 |
| [c] | Effectively Connected Income | 3-23 |
| [i] | Background..... | 3-23 |
| [ii] | Gain from Disposition of U.S. Real Property In- terests..... | 3-25 |
| [iii] | Other Income of a For- eign Investor Not En- gaged in U.S. Trade or Business | 3-26 |
| [iv] | Foreign Investor En- gaged in U.S. Trade or Business | 3-29 |
| [d] | Exempt Portfolio Interest..... | 3-34 |
| [i] | Exempt Registered In- struments | 3-35 |
| [ii] | Exempt Bearer Instru- ments | 3-35 |
| [iii] | Interest Received By 10 Percent Shareholders and Banks..... | 3-36 |
| [iv] | Estate Tax | 3-37 |
| [v] | Prevention of Tax Eva- sion | 3-37 |
| [2] | Federal Income Taxation of Individ- ual Foreign Investors | 3-37 |
| [a] | General Scheme of Taxation.... | 3-37 |
| [b] | Nonresident and Resident Alien Defined | 3-39 |
| [i] | Statutory Test..... | 3-39 |
| [ii] | Taxable Year; Dual Sta- tus Tax Year..... | 3-42 |
| [iii] | Expatriation | 3-43 |

TABLE OF CONTENTS

| | | | |
|--------|-----|--------------------------------------------------------------------------------|------|
| | [3] | Classification of Business Organizations for Federal Tax Purposes | 3-44 |
| | | [a] General Rules | 3-44 |
| | | [b] Classification of Hybrid Entities..... | 3-45 |
| | [4] | Federal Income Taxation of Foreign Corporations | 3-48 |
| | | [a] General Rules | 3-48 |
| | | [b] Branch Profits Tax..... | 3-50 |
| | | [i] Dividend Equivalent Amount..... | 3-50 |
| | | [ii] Coordination with Treaties | 3-51 |
| | | [iii] Branch-Level Tax on Interest..... | 3-52 |
| | | [c] Accumulated Earnings Tax and Personal Holding Company Tax | 3-53 |
| | | [d] Capitalization of Corporations. | 3-54 |
| | [5] | Federal Income Taxation of Partnerships and Partners | 3-55 |
| | | [a] General Scheme | 3-55 |
| | | [b] Taxable Year of a Partnership. | 3-57 |
| § 3.02 | | Treaties and Their Effect on Federal Income Taxation of Foreign Investors..... | 3-58 |
| | [1] | Background..... | 3-58 |
| | [2] | Taxes Covered..... | 3-59 |
| | [3] | Treaty Benefits..... | 3-60 |
| | | [a] Permanent Establishment | 3-61 |
| | | [b] Industrial or Commercial Profits..... | 3-62 |
| | | [c] Passive Income | 3-63 |
| | | [d] Capital Gains..... | 3-63 |
| | | [e] United States Source Real Property Income..... | 3-64 |
| | | [f] United States Source Real Property Income—Net Election..... | 3-65 |
| | | [g] Savings Clause and Tax Credit | 3-65 |

TRANSNATIONAL BUSINESS

| | | |
|--------|----------------------------------------------------------------------------------------------------|------|
| | [h] Requirement for Nondiscrimination | 3-66 |
| | [i] Exchange of Information, Competent Authority Procedures and Mutual Assistance Provisions | 3-66 |
| | [4] Treaty Shopping and Treaty Abuse | 3-67 |
| | [a] Treaty Shopping..... | 3-67 |
| | [b] Treaty Abuse..... | 3-68 |
| § 3.03 | State and Local Taxes..... | 3-70 |
| § 3.04 | Federal Gift and Estate Taxes..... | 3-72 |
| | [1] Direct Ownership of U.S. Tangible Property..... | 3-73 |
| | [2] Federal Estate and Gift Taxation of Partnership Interests..... | 3-73 |
| | [3] Ownership of Shares of Stock of U.S. Corporations | 3-74 |
| | [4] Ownership of Shares of Stock of Foreign Corporations | 3-75 |
| | [5] Bank Deposits and Other Debt Obligations..... | 3-75 |
| § 3.05 | Conclusion | 3-75 |

CHAPTER 3A

Foreign Tax Provisions of the 1984 Tax Act

Robert S. Rich

| | | |
|---------|-------------------------------------------------------------------------------------------------------------------------------------|------|
| § 3A.01 | Taxation of Certain Transfers of Property Outside the United States (IRC §§ 367, 1492, 1494, 7477, 7482 and new section 6038B)..... | 3A-6 |
| | [1] Present Law..... | 3A-6 |
| | [a] Taxation of U.S. and Foreign Corporations..... | 3A-6 |
| | [b] Tax-free Transfers and Perceived Abuse | 3A-7 |
| | [c] Correction of Abuse | 3A-7 |
| | [d] IRS Rulings Guidelines | 3A-8 |
| | [i] Active Conduct of a Trade or Business..... | 3A-8 |
| | [ii] Tainted Assets/Toll Charge..... | 3A-9 |

TABLE OF CONTENTS

| | | | |
|-----|-----|----------------------------------------------------------------|-------|
| | [e] | Tainted Assets..... | 3A-9 |
| | [f] | Recapture of Foreign Losses ... | 3A-9 |
| | [g] | Intangible Assets; Research and Development | 3A-10 |
| | [h] | Advance Ruling; Judicial Re- view | 3A-11 |
| | | [i] Advance Ruling | 3A-11 |
| | | [ii] Judicial Review | 3A-11 |
| [2] | | Reasons for Change..... | 3A-12 |
| | [a] | Principal Purpose to Active Trade or Business..... | 3A-12 |
| | [b] | Tainted Assets..... | 3A-12 |
| [3] | | Explanation of New Law..... | 3A-13 |
| | [a] | Elimination of Ruling Require- ment | 3A-13 |
| | [b] | Notification Requirement..... | 3A-13 |
| | | [i] Notification | 3A-13 |
| | | [ii] Penalty..... | 3A-14 |
| | | [iii] Statute of Limitations ... | 3A-14 |
| | [c] | Active Trade or Business..... | 3A-14 |
| | [d] | Assets Ineligible for Active Trade or Business Treatment .. | 3A-15 |
| | [e] | Intangibles..... | 3A-15 |
| | | [i] Taxable | 3A-15 |
| | | [ii] Defined..... | 3A-15 |
| | | [iii] Correlative Rules..... | 3A-16 |
| | [f] | Stock and Securities..... | 3A-16 |
| | | [i] Active Business Excep- tion | 3A-16 |
| | | [ii] Closing Agreement | 3A-17 |
| | [g] | Other Assets..... | 3A-18 |
| | | [i] Goodwill | 3A-18 |
| | | [ii] Marketing Intangibles... | 3A-18 |
| | | [iii] Leased Property | 3A-18 |
| | | [iv] Partnerships..... | 3A-18 |
| | [h] | Foreign Branch Losses..... | 3A-19 |
| | [i] | Regulations..... | 3A-19 |
| | [j] | Effective Date | 3A-20 |
| | | [i] Post 1984 Transfers..... | 3A-20 |
| | | [ii] Regulations | 3A-20 |

TRANSNATIONAL BUSINESS

| | | |
|---------|---------------------------------------------|-------|
| § 3A.02 | DISC to FSC (Prop. IRC §§ 921 to 927)... | 3A-20 |
| | [1] Present Law—DISC | 3A-20 |
| | [a] Tax Deferral..... | 3A-20 |
| | [b] DISC Defined | 3A-21 |
| | [c] Purposes of DISC Legislation.. | 3A-21 |
| | [2] Reasons for Change..... | 3A-22 |
| | [a] GATT Violation | 3A-22 |
| | [b] U.S. Response..... | 3A-22 |
| | [c] GATT Rules | 3A-22 |
| | [3] Explanation of Provisions—FSC..... | 3A-22 |
| | [a] In General | 3A-22 |
| | [b] Foreign Presence | 3A-23 |
| | [c] Exempt Foreign Trade Income | 3A-24 |
| | [d] Foreign Trade Income..... | 3A-24 |
| | [e] Foreign Management..... | 3A-25 |
| | [f] Foreign Economic Processes ... | 3A-25 |
| | [g] Transfer Pricing Rules (Prop. | |
| | IRC § 925) | 3A-26 |
| | [i] Administrative Transfer | |
| | Pricing Rule..... | 3A-26 |
| | [ii] Adjustments After Year- | |
| | End..... | 3A-26 |
| | [iii] No Loss Rule | 3A-26 |
| | [h] Taxation of a FSC | 3A-27 |
| | [i] Distributions to Shareholders .. | 3A-27 |
| | [j] Dividends from FSC..... | 3A-27 |
| | [k] Export Property (Prop. IRC | |
| | § 927(a))..... | 3A-28 |
| | [l] Election (Prop. IRC § 927(f)) ... | 3A-28 |
| | [m] Small Business (Two Alterna- | |
| | tives) | 3A-29 |
| | [i] Interest Charge DISC | |
| | (Prop. IRC § 995(f))..... | 3A-29 |
| | [ii] Small FSC | 3A-29 |
| | [n] Taxable Year of DISC and FSC | 3A-30 |
| | [o] Transition Rules..... | 3A-30 |
| | [p] Transfers from DISC to FSC ... | 3A-30 |
| | [q] Effective Date | 3A-31 |
| § 3A.03 | Repeal of 30 Percent Withholding on In- | |
| | terest Paid to Foreign Persons (IRC §§ 864, | |
| | 871, 881, 1441, 1442 and 2105)..... | 3A-31 |

TABLE OF CONTENTS

- [1] Present Law.....
 - [a] In General.....
 - [b] Eurobond Market and International Finance Subsidiaries.....
 - [c] IRS Attack
- [2] Reasons for Change.....
- [3] Explanation of Provision

 - [a] Phase-out of Withholding.....
 - [b] Categories of Debt Obligation Qualified
 - [c] Ineligible Persons.....
 - [i] Ten Percent Equity Interest in Payor.....
 - [ii] Foreign Banks.....
 - [iii] CFCs.....
 - [d] Estate Tax.....
 - [e] Prevention of Tax Evasion.....
 - [f] Obligation of U.S. Payors.....
 - [g] Effective Date

- § 3A.04 Withholding on Disposition by Foreigner of U.S. Real Property Interests (IRC §§ 6039C and new 1444).....
 - [1] Present Law.....
 - [2] Reasons for Change.....
 - [a] Evasion.....
 - [b] Reporting.....
 - [3] Explanation of Provisions.....
 - [a] Amount Withheld
 - [b] Time of Withholding.....
 - [c] Withholding Agent
 - [d] Transferor's Notice
 - [e] Liability of Transferor's Agent.....
 - [f] Exemptions from Withholding.....
 - [g] Partnerships
 - [h] Effective Date
 - [i] Repeal of FIRPTA
- § 3A.05 Resident Alien Defined (IRC § 7701(b)).....
 - [1] Present Law.....
 - [a] Taxation of Aliens

TRANSNATIONAL BUSINESS

| | | |
|---------|---------------------------------------------------------------------|-------|
| | [b] Definition | 3A-41 |
| [2] | Reasons for Change | 3A-41 |
| [3] | Explanation of Provision | 3A-41 |
| | [a] Generally | 3A-41 |
| | [b] General Test of Residence | 3A-42 |
| | [i] Green Card | 3A-42 |
| | [ii] Substantial Presence | 3A-42 |
| | [c] Less than 183 Days—Closer Connections Test | 3A-43 |
| | [i] 183 Day Test | 3A-43 |
| | [ii] Tax Home | 3A-43 |
| | [iii] Change of Status | 3A-43 |
| | [d] Exempt Individual | 3A-43 |
| | [i] Foreign Government— Related Individual | 3A-44 |
| | [ii] Teacher or Trainee | 3A-44 |
| | [iii] Student | 3A-44 |
| | [e] Annual Statements | 3A-44 |
| | [f] Medical Condition | 3A-45 |
| | [g] Fiscal Year | 3A-45 |
| | [h] Treaties | 3A-45 |
| | [i] Effective Date | 3A-45 |
| § 3A.06 | Factoring Trade Receivables (IRC §§ 553, 861, 954 and 956) | 3A-46 |
| | [1] Present Law | 3A-46 |
| | [a] Factoring Income | 3A-46 |
| | [b] Character of Discount Income | 3A-46 |
| | [2] Reason for Change | 3A-46 |
| | [3] Explanation of Provision | 3A-47 |
| | [a] Foreign Personal Holding Company Income | 3A-47 |
| | [i] Trade or Services Re- ceivable | 3A-47 |
| | [ii] Ten Percent De Mini- mus Rule Inapplicable | 3A-47 |
| | [iii] Exception for Certain Related Party Transfers | 3A-48 |
| | [b] Investment in U.S. Property | 3A-48 |
| | [i] U.S. Property | 3A-48 |
| | [ii] Indirect Investment | 3A-48 |

TABLE OF CONTENTS

| | | |
|---------|-----------------------------------------------------------------------------------------------------------------------|-------|
| | [iii] Exception for Export Property Receivables.... | 3A-49 |
| | [c] Possessions Corporations..... | 3A-49 |
| | [d] Source of Income | 3A-49 |
| | [i] Factoring Income | 3A-49 |
| | [ii] Distributions | 3A-50 |
| | [e] Effective Date | 3A-50 |
| § 3A.07 | Decontrol of Foreign Corporations (IRC § 1248)..... | 3A-50 |
| | [1] Present Law..... | 3A-50 |
| | [2] Reason for Change | 3A-51 |
| | [3] Explanation of Provision | 3A-51 |
| | [4] Effective Date | 3A-52 |
| § 3A.08 | Stapled Stock (New IRC § 269B) | 3A-52 |
| | [1] Present Law..... | 3A-52 |
| | [2] Reason for Change | 3A-53 |
| | [3] Explanation of Provision | 3A-53 |
| | [a] General Rule..... | 3A-53 |
| | [b] Stapled Entities | 3A-53 |
| | [c] Election to Treat Stapled For- eign Entities as Subsidiaries.... | 3A-54 |
| | [d] Treaties | 3A-54 |
| § 3A.09 | Foreign Investment Companies (IRC §§ 535 and 1246)..... | 3A-54 |
| | [1] Present Law..... | 3A-54 |
| | [a] U.S. Taxation of Foreign Corpo- rations..... | 3A-55 |
| | [b] Taxation of U.S. Shareholders of Foreign Corporations | 3A-55 |
| | [c] Accumulated Earnings Tax | 3A-56 |
| | [2] Reasons for Change..... | 3A-56 |
| | [3] Explanation of Provisions..... | 3A-57 |
| | [a] Foreign Investment Company | 3A-57 |
| | [b] Effective Date | 3A-57 |
| | [c] Accumulated Earnings Tax | 3A-58 |
| § 3A.10 | Miscellaneous Changes to Foreign Person- al Holding Company Provisions (IRC §§ 551, 552, 553, 554 and 951)..... | 3A-58 |
| | [1] Present Law..... | 3A-58 |
| | [a] In General | 3A-58 |

TRANSNATIONAL BUSINESS

| | | |
|---------|----------------------------------------------------------------------------------|-------|
| | [b] Technical Problems | 3A-59 |
| [2] | Attribution Rules | 3A-59 |
| | [a] Current Rule..... | 3A-59 |
| | [b] Problem | 3A-60 |
| | [c] Family Attribution..... | 3A-60 |
| | [d] Partner Attribution..... | 3A-60 |
| [3] | Coordination of Subpart F with Foreign Personal Holding Company Provisions | 3A-61 |
| | [a] Background | 3A-61 |
| | [b] New Law | 3A-61 |
| [4] | Same Country Dividend and Interest Rule..... | 3A-62 |
| | [a] Problem | 3A-62 |
| | [b] Correction | 3A-62 |
| [5] | Income Inclusion Through Foreign Entity | 3A-63 |
| | [a] Problem | 3A-63 |
| | [b] Correction | 3A-63 |
| § 3A.11 | Foreign Collapsible Corporations (IRC § 341)..... | 3A-63 |
| | [1] Present Law..... | 3A-63 |
| | [2] Reasons for Change..... | 3A-64 |
| | [3] Proposed Change..... | 3A-64 |
| | [4] Effective Date..... | 3A-64 |
| § 3A.12 | Other Changes in Foreign Provisions..... | 3A-64 |

CHAPTER 3B

The Foreign Investment Real Property Tax Act

Manuel D. Savage

| | | |
|---------|----------------------------------------|------|
| § 3B.01 | Introduction | 3B-2 |
| § 3B.02 | Law in Effect Prior to FIRPTA..... | 3B-3 |
| | [1] Installment Sale..... | 3B-4 |
| | [2] Nonrecognition under IRC § 337.... | 3B-5 |
| | [3] Sale of Corporate Stock..... | 3B-5 |
| | [4] Like Kind Exchange | 3B-6 |
| | [5] Tax Treaties | 3B-6 |
| § 3B.03 | General Approach of FIRPTA..... | 3B-7 |

TABLE OF CONTENTS

| | | | |
|---------|-----|-------------------------------------------------------------------------|-------|
| | [1] | Effect of Tax Reform Act of 1986 on FIRPTA..... | 3B-7 |
| | [2] | Definition of United States Real Property Interest | 3B-8 |
| | [a] | Direct Interest in United States Real Property..... | 3B-9 |
| | [b] | Indirect Interests in United States Real Property..... | 3B-10 |
| § 3B.04 | | Sale of Stock in a Domestic Corporation.. | 3B-11 |
| | [1] | A Basic Definition of United States Real Property Holding Company.... | 3B-11 |
| | [2] | Application of USRPHC Test | 3B-13 |
| | [a] | Attribution from Controlled Corporations..... | 3B-14 |
| | [b] | Attribution from Noncontrolled Corporations | 3B-14 |
| | [c] | Other Attribution Rules..... | 3B-14 |
| § 3B.05 | | Sale of Stock in a Foreign Corporation ... | 3B-15 |
| | [1] | Estate Tax Considerations..... | 3B-15 |
| | [2] | Indirect Taxation of Foreign Real Property Holding Companies..... | 3B-17 |
| | [3] | Tax Reform Act of 1986—Effect on General Utilities Doctrine..... | 3B-18 |
| | [4] | Tax Planning if the General Utilities Transnational Rule Applies..... | 3B-19 |
| | [a] | Section 897(i) Election | 3B-20 |
| | [b] | Form and Timing of IRC § 897(i) Election..... | 3B-20 |
| | [5] | Tax Planning if the General Utilities Transnational Rule Does Not Apply | 3B-22 |
| § 3B.06 | | Branch Profits Tax | 3B-22 |
| § 3B.07 | | Nonrecognition Provisions..... | 3B-23 |
| § 3B.08 | | Withholding..... | 3B-24 |
| | [1] | General Withholding Rule | 3B-25 |
| | [2] | Statutory Exceptions | 3B-26 |
| | [a] | Non-Foreign Transferors | 3B-26 |
| | [b] | Nonpublicly Traded Domestic Corporation Which Is Not USRPHC | 3B-26 |
| | [c] | Qualifying Statement Transactions | 3B-27 |

TRANSNATIONAL BUSINESS

| | | |
|---------|---------------------------------|-------|
| | [d] Sale of Residence | 3B-27 |
| | [e] Publicly Traded Stock | 3B-27 |
| | [f] Other Exceptions | 3B-28 |
| | [g] Advance Certification | 3B-28 |
| § 3B.09 | Conclusion | 3B-29 |

CHAPTER 4

Selected Clauses in Transnational Contracts

Mark S. Caldwell

| | | |
|--------|---------------------------------------------------------------------|------|
| § 4.01 | Introduction | 4-2 |
| § 4.02 | Definitions and Standardized Terms | 4-4 |
| § 4.03 | Choice of Language Clause | 4-7 |
| § 4.04 | Payment Clauses | 4-9 |
| | [1] General | 4-9 |
| | [2] Open-Price Clauses | 4-11 |
| | [3] Cost-Plus Clauses | 4-12 |
| | [4] Gold Clauses | 4-13 |
| | [5] Foreign Currency Clauses | 4-13 |
| | [6] Stabilization Clauses | 4-14 |
| | [7] Sample Clauses | 4-15 |
| § 4.05 | Force Majeure and Supravening Law Clause | 4-16 |
| § 4.06 | Government Approval, Local Taxation, and Fees | 4-19 |
| § 4.07 | Special Problems with Distributorship or Agency Agreements | 4-21 |
| § 4.08 | Arbitration Clauses | 4-24 |
| | [1] General | 4-24 |
| | [2] Should an Arbitration Clause Be In- cluded? | 4-25 |
| | [3] Choice of Arbitration Clauses | 4-27 |
| | [4] Model Clauses | 4-28 |
| | [5] Recommended Sample Clause | 4-29 |
| | [6] Enforceability of Arbitration Clauses | 4-34 |

CHAPTER 5

International Technology Transfers

Robert Y. Peters

| | | |
|--------|--------------------|-----|
| § 5.01 | Introduction | 5-1 |
|--------|--------------------|-----|

TABLE OF CONTENTS

| | | |
|--------|----------------------------------------|------|
| § 5.02 | Why a Technology Transfer? | 5-5 |
| § 5.03 | Legal Restraints | 5-6 |
| | [1] Taxes | 5-7 |
| | [2] Export License | 5-8 |
| | [3] Protectability of Technology | 5-9 |
| | [4] Government Intervention..... | 5-10 |
| | [5] Competitive Effects | 5-11 |
| | [6] Antitrust Laws..... | 5-11 |
| | [7] International Accords..... | 5-17 |
| | [8] Selected Countries..... | 5-20 |
| | [a] In General | 5-20 |
| | [b] Japan..... | 5-21 |
| | [c] Mexico..... | 5-22 |
| | [d] Brazil | 5-25 |
| | [e] Australia | 5-25 |
| | [f] Venezuela..... | 5-26 |
| § 5.04 | Conclusion | 5-27 |

CHAPTER 6

International Technology Transfer Agreements

Michael Bard and Robert Y. Peters

| | | |
|--------|-------------------------------------------------------------------------|------|
| § 6.01 | Aspects of International Technology Transfer Agreements..... | 6-2 |
| | [1] Patent Assignment or License | 6-2 |
| | [2] License of Technical and Other Information Useful in Business | 6-6 |
| | [3] Computer Software License | 6-10 |
| | [4] Joint Development Project..... | 6-13 |
| | [5] Trademark License | 6-14 |
| | [6] Joint Venture..... | 6-15 |
| | [7] Sale of Assemblies, Subassemblies, Components, and Parts | 6-17 |
| | [8] Sale of Manufacturing Tools and Test Sets | 6-17 |
| | [9] Technical and Management Assistance..... | 6-18 |
| | [10] Training | 6-18 |
| | [11] Establishment of Manufacturing Facility..... | 6-18 |

TRANSNATIONAL BUSINESS

| | | |
|--------------|-------------------------------------------------|------|
| § 6.02 | Model Agreements..... | 6-19 |
| | [1] Patent License Agreement..... | 6-19 |
| | [2] Technology Transfer Agreement..... | 6-20 |
| Appendix 6A: | Sample Patent License Agreement.... | 6-21 |
| Appendix 6B: | Sample Technology Transfer Agree- ment | 6-41 |

CHAPTER 7

Foreign Natural Resource Investment

James E. Horigan

| | | |
|--------|-------------------------------------------------------------------|------|
| § 7.01 | Introduction and Objectives..... | 7-2 |
| § 7.02 | Changing Conditions Affecting Foreign Investment..... | 7-4 |
| § 7.03 | The Approach to Foreign Ventures..... | 7-5 |
| § 7.04 | The Foreign Petroleum Joint Venture | 7-6 |
| § 7.05 | Joint Venture Considerations..... | 7-7 |
| § 7.06 | Strategies in Applying for Petroleum Rights..... | 7-9 |
| § 7.07 | Joint Operating Agreements..... | 7-11 |
| § 7.08 | Resource Ownership and Title..... | 7-12 |
| § 7.09 | Nature of Rights Granted..... | 7-14 |
| § 7.10 | Special U.S. Tax Considerations | 7-15 |
| § 7.11 | Financing of Foreign Ventures..... | 7-16 |
| § 7.12 | Reference Literature..... | 7-19 |
| § 7.13 | Effect of Modern Trends on Foreign Pe- troleum Investment..... | 7-22 |
| § 7.14 | Nature of Foreign Concessions and Li- censes..... | 7-27 |
| § 7.15 | Early Petroleum Concessions..... | 7-28 |
| § 7.16 | Comparisons to Leasing Practices in the U.S..... | 7-30 |
| § 7.17 | Post-World War II Patterns..... | 7-31 |
| § 7.18 | Modern Petroleum Licenses and Conces- sions | 7-35 |
| § 7.19 | Role of State-Owned Petroleum Compa- nies..... | 7-36 |
| § 7.20 | Service Contracts..... | 7-38 |
| § 7.21 | Production Sharing Contracts..... | 7-39 |
| § 7.22 | Conclusion | 7-42 |

TABLE OF CONTENTS

CHAPTER 7A

Energy and Mineral Joint Ventures in China

Jennifer Cook Clark

| | | |
|---------|----------------------------------------------------------------------------------|-------|
| § 7A.01 | Introduction | 7A-1 |
| § 7A.02 | Development Policy of the People's Republic of China | 7A-3 |
| § 7A.03 | Legal Framework..... | 7A-6 |
| | [1] Joint Venture Laws | 7A-9 |
| | [a] Evolution of the Chinese Joint Venture Laws | 7A-9 |
| | [b] Types of Joint Ventures..... | 7A-21 |
| | [i] Equity Joint Ventures... | 7A-21 |
| | [ii] Contractual or Cooperative Joint Ventures..... | 7A-22 |
| | [2] Existing Joint Ventures..... | 7A-25 |
| § 7A.04 | The Impact of Energy and Mineral Industry on Chinese-Foreign Joint Ventures..... | 7A-28 |
| § 7A.05 | Conclusion | 7A-33 |

CHAPTER 8

Forum Selection and Choice of Law Clauses in Transnational Contracts

Ved P. Nanda

| | | |
|--------|-----------------------------------------------------------------------|------|
| § 8.01 | Introduction | 8-2 |
| § 8.02 | Choice of Forum Clauses..... | 8-5 |
| | [1] U.S. Law and Practice | 8-5 |
| | [a] The Supreme Court Decisions | 8-5 |
| | [i] Governing Law | 8-16 |
| | [b] Federal Court Decisions..... | 8-22 |
| | [c] <i>Restatement (Second)</i> and the Model Choice of Forum Act.... | 8-30 |
| | [d] Exceptions to the Enforcement of Forum Selection Clauses..... | 8-30 |
| | [i] Substantial Inconvenience or Denial of an Effective Remedy..... | 8-32 |
| | [ii] Fraud, Overreaching or Unconscionable Conduct | 8-37 |

TRANSNATIONAL BUSINESS

| | | | |
|--------------|-------|---------------------------------------------------------------------------------------------------|---------|
| | [iii] | Violation of Public Policy or Otherwise the Transaction Being Unfair, Unreasonable or Unjust..... | 8-43 |
| | [e] | Changed Circumstances | 8-58 |
| | [2] | Other Approaches | 8-61 |
| | [a] | Regional and Multilateral Conventions..... | 8-61 |
| | [i] | The European Communities Convention | 8-61 |
| | [ii] | Other Conventions..... | 8-62.9 |
| | [b] | Approaches of Selected Countries | 8-63 |
| § 8.03 | | Choice of Law Clauses | 8-66 |
| | [1] | General | 8-66 |
| | [2] | U.S. Law and Practice | 8-66 |
| | [a] | <i>Restatement (Second)</i> of Conflict of Laws | 8-67 |
| | [b] | Uniform Commercial Code..... | 8-71 |
| | [c] | Recent Judicial Decisions | 8-72 |
| | [3] | Other Approaches | 8-80.3 |
| | [a] | The European Communities Convention..... | 8-80.3 |
| | [b] | Approaches of Selected Countries and Other Conventions ... | 8-80.8 |
| | [4] | Arbitration Clauses..... | 8-80.11 |
| § 8.04 | | Conclusion | 8-80.13 |
| Appendix 8A: | | Sample Choice of Law and Choice of Forum Clause | 8-80.13 |
| Appendix 8B: | | Convention on Jurisdiction and the Enforcement of Judgments..... | 8-81 |

CHAPTER 9

Antitrust Aspects of International Business Operations Theodore L. Banks, Andrew I. Gavil and Paul T. Denis

| | | |
|--------|------------------------------------|-----|
| § 9.01 | Introduction | 9-3 |
| § 9.02 | Agreements among Competitors | 9-9 |

TABLE OF CONTENTS

| | | | |
|--------|-----|----------------------------------------------------------------------------------------------------------------|------|
| | [1] | The Antitrust Laws of the United States | 9-9 |
| | | [a] The Necessity of Collusion | 9-12 |
| | | [b] Effects on Competition | 9-16 |
| | | [c] U.S. Enforcement Policies | 9-21 |
| | [2] | The Regulation of Agreements among Competitors in the EEC | 9-25 |
| | | [a] The Origins of EC Competition Regulation | 9-25 |
| | | [b] A Comparison of Article 85 of the Treaty of Rome and Section 1 of the Sherman Act | 9-30 |
| § 9.03 | | Agreements Affecting the Sale and Distribution of Goods or Services | 9-34 |
| | [1] | Introduction | 9-34 |
| | [2] | Agreements between Buyers and Sellers Relating to Resale Price | 9-36 |
| | [3] | Agreements between Buyers and Sellers Regarding Nonprice Conditions of Sale and Resale | 9-41 |
| | [4] | Price Discrimination | 9-47 |
| | [5] | Exclusive Dealing | 9-50 |
| | [6] | Refusals to Deal | 9-52 |
| | [7] | Intellectual Property Licensing | 9-56 |
| | [8] | U.S. and EEC Enforcement Policies | 9-61 |
| | [9] | Arbitration | 9-63 |
| § 9.04 | | Monopolization and Abuse of Dominant Position | 9-64 |
| | [1] | The Antitrust Laws of the United States | 9-64 |
| | | [a] Section 2 of the Sherman Act | 9-64 |
| | | [b] U.S. Enforcement Policies | 9-67 |
| | [2] | A Comparison of Article 86 of the Treaty of Rome and Section 2 of the Sherman Act | 9-68 |
| § 9.05 | | Mergers, Acquisitions and Joint Ventures | 9-74 |
| | [1] | Introduction | 9-74 |
| | [2] | The Scope and Jurisdictional Reach of Antitrust and Competition Laws Applicable to Business Combinations | 9-75 |

TRANSNATIONAL BUSINESS

| | | | |
|--------|-----|---------------------------------------------------------------------------------|-------|
| | [a] | United States Antitrust Laws... | 9-75 |
| | [b] | Canadian Competition Act..... | 9-77 |
| | [c] | European Community Competition Law | 9-78 |
| | [3] | Enforcement Issues | 9-80 |
| | [a] | United States Enforcement Issues | 9-80 |
| | [b] | Canadian Enforcement Issues . | 9-83 |
| | [c] | European Community Enforcement Issues..... | 9-83 |
| | [4] | Filing Requirements..... | 9-84 |
| | [a] | United States Premerger Notification | 9-84 |
| | [b] | Canadian Premerger Notification..... | 9-87 |
| | [c] | European Community Premerger Notification..... | 9-88 |
| | [5] | Substantive Standards | 9-90 |
| | [a] | United States Standards..... | 9-90 |
| | [b] | Canadian Standards | 9-99 |
| | [c] | European Community Standards..... | 9-103 |
| § 9.06 | | Special Issues of Import And Export Commerce..... | 9-109 |
| | [1] | U.S. Import Laws..... | 9-109 |
| | [2] | U.S. Export Laws: Webb-Pomerene and the Export Trading Company Act of 1982..... | 9-110 |
| § 9.07 | | Conclusion An International Antitrust Law? | 9-112 |

CHAPTER 10

Jurisdictional Problems in the Application of the Antitrust Laws David K. Pansius

| | | |
|---------|---------------------------------------|-------|
| § 10.01 | Introduction | 10-2 |
| § 10.02 | Foreign Party's Standing to Sue..... | 10-3 |
| § 10.03 | The Effects Test of Jurisdiction..... | 10-5 |
| | [1] The Case Law | 10-5 |
| | [2] Sherman Act Section 7 | 10-10 |

TABLE OF CONTENTS

| | | |
|---------|---------------------------------------------------------------|---------|
| | [a] U.S. Exporters..... | 10-11 |
| | [b] Consistent Standard of Effect.. | 10-13 |
| | [c] The <i>Restatement</i> | 10-17 |
| § 10.04 | The Five-Step Method of Jurisdiction..... | 10-18 |
| | [1] A Proposed Simplified Balancing Test..... | 10-18 |
| | [2] Balancing Test and Conflict of Laws | 10-21 |
| § 10.05 | Application of the Five-Step Rule | 10-30 |
| | [1] The Effect on U.S. Commerce..... | 10-30 |
| | [2] Effects with No Conflict of Laws | 10-32 |
| | [3] Weighing a Nation's Insubstantial Interest | 10-40 |
| | [4] Conflicting Substantial National Inter- ests..... | 10-45 |
| | [5] General Rule of Antitrust Jurisdic- tion | 10-47 |
| § 10.06 | Forum Non Conveniens..... | 10-48 |
| § 10.07 | Sovereignty Defenses | 10-48 |
| | [1] Sovereign Immunity..... | 10-48.1 |
| | [a] The Commercial Exception | 10-49 |
| | [b] The International Law Excep- tion..... | 10-52 |
| | [c] Arbitration, Waiver..... | 10-53 |
| | [d] Suits Involving the United States | 10-54 |
| | [2] Act of State Doctrine..... | 10-54 |
| § 10.08 | Remedial Sanctions Imposed Upon For- eign Defendants | 10-76 |
| § 10.09 | Venue and Personal Jurisdiction | 10-79 |
| § 10.10 | Extraterritorial Discovery..... | 10-83 |

TABLE OF CONTENTS

Volume 1A

CHAPTER 11

Enforcement of the European Community's Antitrust Laws—The Single Enterprise Theory

Lillian Heimke Filegar and Lisa L. Helling

| | | |
|---------|-------------------------------------------------------------------------|-------|
| § 11.01 | Introduction | 11-2 |
| § 11.02 | The Single Enterprise Theory: An Over- view | 11-4 |
| § 11.03 | Jurisdiction in International and Commu- nity Law | 11-5 |
| | [1] The Basis of the Community's Au- thority | 11-5 |
| | [2] Legislative Jurisdiction | 11-8 |
| | [a] In Public International Law ... | 11-8 |
| | [b] In the European Community .. | 11-9 |
| | [3] Enforcement Jurisdiction | 11-10 |
| | [a] Basis in Public International Law | 11-10 |
| | [b] Scope of the Commission's Au- thority | 11-12 |
| | [i] Power to Investigate.... | 11-12 |
| | [ii] Enforcement and Prohi- bitions | 11-13 |
| | [iii] Appeal to the Court of Justice | 11-18 |
| | [iv] Enforcement Against the Single Enterprise.... | 11-20 |
| § 11.04 | Piercing the Corporate Veil..... | 11-21 |
| | [1] Limited Liability and Remedies Based on Unlawful Activities..... | 11-21 |
| | [2] Piercing as a Statutory Requirement | 11-23 |
| § 11.05 | The Evolution of the Single Enterprise Theory | 11-24 |
| | [1] The Case Law | 11-25 |
| | [a] The ICI Case..... | 11-25 |
| | [b] Continental Can | 11-28 |

TABLE OF CONTENTS

| | | |
|---------|------------------------------------------------------|-------|
| | [c] Commercial Solvents..... | 11-29 |
| | [d] United Brands and Hoffman-La Roche..... | 11-31 |
| | [2] Limitations to the Single Enterprise Theory..... | 11-33 |
| | [3] The Hybrid Nature of the Theory .. | 11-35 |
| § 11.06 | Conclusion | 11-38 |

CHAPTER 12

Foreign Trade and Economic Injury—A Survey of U.S. Relief Mechanisms Paul Stephen Dempsey

| | | |
|---------|-------------------------------------------------------------------------------------------------------------------|-------|
| § 12.01 | Introduction | 12-2 |
| § 12.02 | U.S. International Economic Policy: A Historical Overview of the Free Trade Approach and its Implementation | 12-3 |
| § 12.03 | Antidumping and Countervailing Duties. | 12-9 |
| | [1] Antidumping..... | 12-10 |
| | [2] Export Subsidies and Countervailing Duties..... | 12-13 |
| | [3] Judicial Review..... | 12-17 |
| § 12.04 | Relief from Import Injury | 12-18 |
| | [1] Import Relief: Duties, Tariff-Rate Quotas, Quantitative Restrictions, and Orderly Marketing Arrangements..... | 12-19 |
| | [2] Adjustment Assistance for Labor..... | 12-24 |
| | [3] Adjustment Assistance for Companies | 12-28 |
| | [4] Adjustment Assistance for Communities..... | 12-29 |
| § 12.05 | Enforcement of U.S. Rights Under Trade Agreements | 12-30 |
| § 12.06 | Unfair Methods of Competition in Importations: Section 337 | 12-32 |
| | [1] Section 337: A Procedural Overview | 12-34 |
| | [2] The Regulation of Patent Cases..... | 12-43 |
| | [3] Nonpatent Cases | 12-45 |
| | [4] Section 337: A Concluding Analysis | 12-51 |
| § 12.07 | Antitrust Relief | 12-55 |

TRANSNATIONAL BUSINESS

| | | |
|---------------|------------------------------------------------------------------|-------|
| § 12.08 | Conclusion | 12-56 |
| Appendix 12A: | Trade Agreements Act of 1979: A Comparison of Provisions..... | 12-59 |

CHAPTER 13

International Boycotts Stephen J. Doyle

| | | |
|---------|-----------------------------------------------------------------------------|-------|
| § 13.01 | Introduction | 13-2 |
| § 13.02 | The Arab Boycott..... | 13-3 |
| | [1] The Arab Boycott Laws..... | 13-3 |
| | [2] Boycott Documentation..... | 13-6 |
| | [3] Removal from the Blacklist | 13-7 |
| | [4] The Arab Boycott and U.S. Policy... | 13-8 |
| § 13.03 | Historical Background to the Antiboycott Laws of the United States | 13-10 |
| § 13.04 | The Export Administration Act..... | 13-12 |
| | [1] General Scope of the Antiboycott Provisions | 13-12 |
| | [2] Prohibited Activities..... | 13-14 |
| | [a] Refusal to Do Business..... | 13-15 |
| | [b] Discrimination | 13-17 |
| | [c] Furnishing Information..... | 13-18 |
| | [d] Exceptions to the Prohibitions | 13-20 |
| | [i] Import Requirements... | 13-21 |
| | [ii] Document Require- ments | 13-22 |
| | [iii] Unilateral and Specific Selection | 13-23 |
| | [iv] Export Requirements ... | 13-25 |
| | [v] Visa Requirements | 13-25 |
| | [vi] Local Law | 13-26 |
| | [3] Reporting Requirements..... | 13-27 |
| | [a] Reportable Requests to Com- ply with a Boycott | 13-28 |
| | [b] Boycott-Related Requests which Are Not Reportable..... | 13-29 |
| | [4] Penalties | 13-31 |
| § 13.05 | Tax Code: "International Boycott Deter- minations" | 13-32 |

TABLE OF CONTENTS

| | | |
|---------------|------------------------------------------------------------------------------------------|-------|
| | [1] Agreements to Comply with the Boycott..... | 13-33 |
| | [2] Penalties | 13-35 |
| | [3] Reporting Requirements | 13-36 |
| § 13.06 | Letter of Credit..... | 13-37 |
| | [1] Application of the Export Administration Act and Tax Code to Letters of Credit | 13-37 |
| | [2] Prohibited Clauses and Acceptable Alternatives..... | 13-39 |
| | [3] Sanctioned Clauses..... | 13-41 |
| § 13.07 | Examples of Antiboycott Law in Overseas Operations | 13-43 |
| § 13.08 | Compliance Program..... | 13-45 |
| Appendix 13A: | Export Administration Act Report of Request Form—Single Transaction. | 13-47 |
| Appendix 13B: | Export Administration Act Report of Request Form—Multiple Transactions..... | 13-48 |
| Appendix 13C: | Tax Code Schedule C—Tax Effect of the International Boycott Provisions | 13-50 |

CHAPTER 14

International Capital Markets and Securities Regulation Harold S. Bloomenthal

| | | |
|---------|---------------------------------------------------|-------|
| § 14.01 | Capital Flows: Theory and Reality | 14-9 |
| | [1] The Problem..... | 14-9 |
| | [2] EC Solution..... | 14-14 |
| § 14.02 | The International Market in Debt Securities..... | 14-16 |
| | [1] International Bond Market..... | 14-16 |
| | [2] Lenders: The Role of Eurocurrencies..... | 14-20 |
| | [3] Borrowers: Public and Private..... | 14-23 |
| | [4] Equity Related Bonds..... | 14-24 |
| | [5] Regulation of International Bond Issues | 14-25 |
| | [6] Regulation of Syndicated Loans..... | 14-29 |
| § 14.03 | Stock Exchanges of the World..... | 14-32 |

TRANSNATIONAL BUSINESS

| | | |
|---------|-------------------------------------------------------------------|--------|
| § 14.04 | World's Securities Business and Securities Firms..... | 14-33 |
| § 14.05 | National Character of Capital Markets..... | 14-37 |
| | [1] The United States..... | 14-37 |
| | [2] Japan..... | 14-38 |
| | [3] The United Kingdom..... | 14-42 |
| | [4] Germany..... | 14-45 |
| | [5] France..... | 14-49 |
| | [6] The Netherlands..... | 14-53 |
| | [7] Italy..... | 14-57 |
| | [8] Hong Kong..... | 14-59 |
| | [9] Mexico..... | 14-64 |
| | [10] Australia..... | 14-68 |
| § 14.06 | International Market in Equities..... | 14-73 |
| § 14.07 | Internationalization of Portfolios..... | 14-76 |
| § 14.08 | Securities Regulation..... | 14-79 |
| | [1] U.S. Disclosure Systems..... | 14-80 |
| | [a] Registration of Securities..... | 14-80 |
| | [b] Exchange Act Registration and Continuous Disclosure..... | 14-80 |
| | [2] The United Kingdom..... | 14-81 |
| | [a] Role of the Stock Exchange..... | 14-81 |
| | [b] Flotation of Securities..... | 14-83 |
| | [c] 1986 FSA Regulation of Prospectus and Particulars..... | 14-88 |
| | [3] European Community Disclosure Directives..... | 14-93 |
| | [a] European Prospectus..... | 14-93 |
| | [b] Continuous Reporting..... | 14-101 |
| | [4] Harmonizing Accounting Standards and Auditing Procedures..... | 14-104 |
| | [a] A Survey..... | 14-104 |
| | [b] International Accounting Standards Committee..... | 14-110 |
| | [i] Background and Overview..... | 14-110 |
| | [ii] History and Structure of IASC..... | 14-114 |
| | [iii] International Accounting Standards..... | 14-116 |

TABLE OF CONTENTS

| | | | |
|---------|------|------------------------------------------------------------------------------------------------------|--------|
| | [iv] | National and International Reaction | 14-119 |
| | [c] | International Auditing Practices Committee | 14-121 |
| | | [i] Introduction..... | 14-121 |
| | | [ii] Purpose and Structure of IAPC..... | 14-124 |
| | | [iii] International Auditing Guidelines | 14-125 |
| [5] | | Insider Trading | 14-128 |
| | [a] | The United States | 14-128 |
| | [b] | The United Kingdom | 14-130 |
| | [c] | France | 14-135 |
| | [d] | Germany | 14-137 |
| | [e] | Canada | 14-140 |
| | [f] | Australia | 14-142 |
| | [g] | Japan..... | 14-144 |
| | [h] | Other Countries | 14-146 |
| [6] | | Take-Over Regulation..... | 14-149 |
| | [a] | The United States | 14-149 |
| | | [i] Federal Regulation..... | 14-149 |
| | | [ii] State Regulation..... | 14-149 |
| | [b] | The United Kingdom | 14-150 |
| | [c] | Australia | 14-161 |
| | [d] | Canada | 14-163 |
| | [e] | France | 14-164 |
| | [f] | Other Countries | 14-165 |
| [7] | | Proxy Regulation..... | 14-168 |
| | [a] | The United States | 14-168 |
| | [b] | Other Countries | 14-168 |
| | [c] | German Alternative..... | 14-172 |
| § 14.09 | | Investment Companies | 14-174 |
| | [1] | Generally | 14-174 |
| | [2] | EC Directive | 14-176 |
| § 14.10 | | The Fragile Nature of International Securities Regulation | 14-184 |
| | [1] | Introduction | 14-184 |
| | [2] | International Organizations and Processes: International Organization of Securities Commissions..... | 14-193 |
| | | [a] Background | 14-193 |

TRANSNATIONAL BUSINESS

| | | |
|---------|------------------------------------------------------------------------------------------------------------|--------|
| | [b] Substantive Agenda | 14-196 |
| | [i] Multinational Offerings | 14-196 |
| | [ii] Regulation of Secondary Markets | 14-199 |
| | [iii] Regulation of Market Intermediaries..... | 14-199 |
| | [iv] Enforcement and the Exchange of Information | 14-203 |
| | [3] International Organizations and Processes: Other Authorities and Processes..... | 14-205 |
| | [a] General Agreement on Trade in Services | 14-205 |
| | [b] Organization for Economic Cooperation and Development | 14-206 |
| | [c] United Nations Commission on Transnational Corporations.. | 14-208 |
| | [d] Group of Thirty (Consultative Group on International Economic and Monetary Affairs) | 14-211 |
| | [e] International Federation of Stock Exchanges..... | 14-212 |
| | [f] International Society of Securities Administrators..... | 14-213 |
| | [g] International Councils of Securities Dealers and Self-Regulatory Organizations..... | 14-214 |
| | [h] Federation of European Accountants..... | 14-215 |
| | [i] Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting..... | 14-215 |
| § 14.11 | Offshore Distributions | 14-216 |
| | [1] Regulation S and Related Initiatives | 14-216 |
| | [2] Offshore Distributions and Release Number 4708..... | 14-224 |

TABLE OF CONTENTS

| | | |
|------|--------------------------------------------------------------------------------------------------------------------------|--------|
| [3] | Distributions Pursuant to Regulation S—Introduction | 14-228 |
| [4] | General Statement (Non-Safe Harbor) Approach..... | 14-230 |
| [5] | Definition of U.S. Person..... | 14-232 |
| [6] | General Conditions..... | 14-234 |
| | [a] Offshore Transactions..... | 14-234 |
| | [b] Directed Selling Efforts..... | 14-239 |
| [7] | The Issuer-Distributors Safe Harbors | 14-245 |
| | [a] Category 1: Offerings of Foreign Securities and Overseas Directed Offerings..... | 14-245 |
| | [b] Offering Restrictions | 14-252 |
| | [c] Category 2: Reporting Issuers and Debt, Preferred, and Asset-Backed Securities of Non-reporting Foreign Issuers..... | 14-254 |
| | [d] Category 3: Non-reporting U.S. Issuers and Certain Equity Securities of Non-reporting Foreign Issuers..... | 14-257 |
| | [e] Failure to Comply with a Safe Harbor Condition or Restriction..... | 14-259 |
| [8] | Rule 904 Safe Harbor for Resales.... | 14-260 |
| | [a] Securities Distributed Pursuant to Regulation S..... | 14-260 |
| | [b] Resale of Securities Issued in Reliance on an Exemption..... | 14-264 |
| [9] | Convertible Securities..... | 14-265 |
| [10] | Warrants | 14-270 |
| [11] | Regulation S and American Depository Receipts..... | 14-274 |
| | [a] Overview of American Depository Receipts | 14-274 |
| | [b] Impact of Regulation S | 14-277 |
| | [i] Sales to U.S. Persons During Restricted Period..... | 14-277 |

TRANSNATIONAL BUSINESS

| | | | |
|---------|------|-------------------------------------------------------------------------------------|--------|
| | [ii] | Substantial U.S. Market Interest | 14-280 |
| [12] | | Resales in the United States or to U.S. Persons | 14-281 |
| | [a] | Conceptual Framework | 14-281 |
| | [b] | Regulation S and the Releases | 14-286 |
| | [c] | Testing the Premise—Some Random Scenarios | 14-292 |
| [13] | | Summing Up the Restrictions on Sales in the United States and to U.S. Persons | 14-295 |
| | [a] | Distributors | 14-295 |
| | [b] | Investors | 14-296 |
| | [c] | Professionals | 14-297 |
| | [d] | Offers and Sales After the Restricted Period | 14-297 |
| | [e] | The Legend | 14-298 |
| [14] | | Interrelationship of Regulation S and Tax Provisions | 14-301 |
| [15] | | Critique of Regulation S | 14-306 |
| [16] | | Applicability to Investment Companies | 14-308 |
| [17] | | Status of Regulation S Under International Law | 14-314 |
| | [a] | Introduction | 14-314 |
| | [b] | Selected Terms and Concepts | 14-316 |
| | [c] | Prescriptive Jurisdiction | 14-317 |
| | [d] | Bases of Jurisdiction to Prescribe; Limitations | 14-319 |
| | [e] | Applicability to Regulation S | 14-321 |
| | [f] | Relationship to the Federal Securities Code | 14-323 |
| § 14.12 | | Registration Requirements Applicable to Foreign Broker-Dealers | 14-324 |
| | [1] | Background | 14-324 |
| | [2] | Sources of Law | 14-326 |
| | [3] | General Principle of Territoriality .. | 14-327 |
| | [4] | Unsolicited Transactions | 14-328 |

TABLE OF CONTENTS

| | | |
|---------|------------------------------------------------------------------------------|--------|
| | [5] Provision of Research by Broker-Dealers..... | 14-330 |
| | [6] Direct Transactions with U.S. Institutions | 14-331 |
| | [7] Transactions with Certain Persons.. | 14-332 |
| | [8] Recognition of Foreign Broker-Dealer Regulation..... | 14-334 |
| § 14.13 | Rule 144A and the PORTAL Market..... | 14-335 |
| | [1] Interrelationship of Rule 144A, PORTAL, Regulation S, and Rule 144 | 14-335 |
| | [2] Initial Proposed Rule 144A..... | 14-339 |
| | [3] Qualified Institutional Buyer..... | 14-341 |
| | [4] Eligible Securities..... | 14-348 |
| | [5] Informational Requirements and Other Conditions | 14-351 |
| | [6] Resales of Rule 144A Securities..... | 14-354 |
| | [7] Private Placements After Rule 144A | 14-355 |
| | [8] PORTAL, A Closed Market for Rule 144A Securities..... | 14-359 |
| | [9] The Closed System | 14-362 |
| | [10] Closing the Loop—Qualified Exit Transactions | 14-364 |
| | [11] Rule 144A Disclosure and PORTAL | 14-369 |
| | [12] Primary Placements | 14-370 |
| | [13] Secondary Trading | 14-376 |
| | [14] Critique..... | 14-379 |
| § 14.14 | Extraterritorial Application of the Anti-Fraud Provisions..... | 14-380 |
| § 14.15 | Registered Investment Companies..... | 14-397 |
| § 14.16 | Offshore Funds | 14-399 |
| § 14.17 | Integrated Disclosure for Foreign Private Issuers | 14-401 |
| | [1] Introduction | 14-401 |
| | [2] Form 20-F and Regulation S-K Compared | 14-402 |
| | [3] Distinctive Aspects of Form 20—Including the Financial Statements | 14-408 |
| § 14.18 | Regulation of Foreign Offerings in the United States..... | 14-410 |

TRANSNATIONAL BUSINESS

| | | | |
|---------|-------|-----------------------------------------------------------------------------------------|--------|
| | [1] | By Foreign Private Issuers..... | 14-410 |
| | [2] | Foreign Governmental Issuers..... | 14-419 |
| | [3] | Foreign Investment Companies | 14-420 |
| | [4] | Exempt Offerings | 14-422 |
| | [5] | Corporate Combinations and Exchange Offers Involving Foreign Issuers..... | 14-426 |
| § 14.19 | | Registration and Reporting by Foreign Issuers Under the Exchange Act..... | 14-426 |
| | [1] | Exemptions | 14-426 |
| | [2] | Registration and Reporting on Form 20-F | 14-431 |
| § 14.20 | | Foreign Securities Traded on NASDAQ... | 14-435 |
| § 14.21 | | Extraterritorial Application of the Investment Advisers Act..... | 14-437 |
| § 14.22 | | Foreign Corrupt Practices Act | 14-444 |
| | [1] | Books, Records, and Internal Accounting Controls | 14-444 |
| | [2] | Corrupt Payments | 14-449 |
| § 14.23 | | Multijurisdictional Disclosure System: United States..... | 14-454 |
| | [1] | Introduction | 14-454 |
| | [2] | An Overview | 14-461 |
| | [3] | Some Common Definitions..... | 14-464 |
| | [4] | Basic MJDS Forms and Cross-Border Registration Forms and Eligibility Requirements | 14-468 |
| | [a] | MJDS Forms..... | 14-468 |
| | [b] | Forms F-11 and F-12 | 14-472 |
| | [c] | Proposed Amendments to Form F-3 | 14-476 |
| | [5] | Common Requirements | 14-477 |
| | [a] | A Three-Year History of Continuous Reporting | 14-477 |
| | [b] | Substantiality Requirements | 14-478 |
| | [c] | Financial Statements | 14-480 |
| | [i] | Under MJDS | 14-480 |
| | [ii] | Forms F-11 and F-12.... | 14-482 |
| | [iii] | Comment | 14-482 |

TABLE OF CONTENTS

| | | |
|------|------------------------------------------------------------------------------------|--------|
| [6] | Special Aspects of Exchange Offers and Business Combinations..... | 14-484 |
| | [a] Exchange Offers..... | 14-484 |
| | [b] Business Combinations..... | 14-485 |
| | [c] Successor Corporation of a Business Combination | 14-486 |
| | [d] Other Aspects | 14-488 |
| [7] | MJDS Prospectus | 14-490 |
| | [a] Wrap-Around Prospectus..... | 14-490 |
| | [i] Under MJDS..... | 14-490 |
| | [ii] Forms F-11 and F-12.... | 14-493 |
| | [b] The Legends..... | 14-494 |
| | [c] Exclusions from the Prospectus | 14-496 |
| [8] | MJDS Registration and Content of the Registration Statement | 14-497 |
| | [a] The Mechanics of Registration | 14-497 |
| | [b] Exhibits | 14-497 |
| | [c] Undertakings and Signature Page..... | 14-499 |
| | [d] Inapplicability of Regulation C | 14-499 |
| | [e] Filing and Effective Dates..... | 14-500 |
| [9] | Form F-X and Consent to Service of Process | 14-501 |
| [10] | Civil Liability..... | 14-502 |
| [11] | Continuous Reporting and Registration Under the Exchange Act | 14-503 |
| | [a] Introduction | 14-503 |
| | [b] MJDS, Continuous Reporting, Exchange Act Registration-Herein of Form 40-F..... | 14-506 |
| | [c] Summary of MJDS Continuous Reporting and Exchange Act Registration | 14-509 |
| [12] | Tender Offers and the MJDS..... | 14-511 |
| | [a] Introduction | 14-511 |
| | [b] Bids Under Canadian Law | 14-513 |
| | [c] Tender Offers Under MJDS..... | 14-514 |
| [13] | Rules 10b-6 and 10b-13 | 14-519 |
| [14] | Multijurisdictional Disclosure System and Blue Sky Laws..... | 14-520 |
| | [a] Coordination of State Registration with the MJDS | 14-520 |

TRANSNATIONAL BUSINESS

| | | |
|---------|--------------------------------------------------------------|-----------|
| | [b] Financial Statements and the MJDS | 14-527 |
| | [c] Rights Offerings and the MJDS | 14-528 |
| | [d] Secondary Trading and the MJDS | 14-528 |
| | [e] Filing of Documents and Sales Literature | 14-529 |
| | [f] Form F-X and Consent to Service of Process | 14-530 |
| | [g] Merit Requirements and the MJDS | 14-531 |
| | [h] Exemption Alternative | 14-532 |
| | [15] NASD Corporate Financing Rule and the MJDS | 14-533 |
| § 14.24 | Multijurisdictional Disclosure System: | |
| | Canada | 14-534 |
| | [1] Introduction | 14-534 |
| | [2] Overview | 14-535 |
| | [3] Financing in Canada Under Current Law | 14-537 |
| | [4] Definitions | 14-541 |
| | [5] Common Requirements | 14-546 |
| | [6] Prospectus Offerings | 14-547 |
| | [7] Business Combinations and Securities Exchange Bids | 14-552 |
| | [8] Prospectus Filing and Other Procedures | 14-555 |
| | [9] Liability and Continuous Disclosure | 14-556.6 |
| | [10] Tender Offers | 14-556.8 |
| | [11] Conclusion | 14-556.8 |
| § 14.25 | Cross-Border Rights, Tender and Exchange Offers | 14-556.9 |
| | [1] Cross-Border Rights Offerings | 14-556.9 |
| | [a] Introduction | 14-556.9 |
| | [b] Exemption from Registration | 14-556.15 |
| | [c] Registration | 14-556.20 |
| | [d] Common Eligibility Requirements | 14-556.25 |
| | [2] Amendments to Form F-3 | 14-556.29 |

TABLE OF CONTENTS

| | | |
|---------------|----------------------------------------------------------------------------------------|-----------|
| | [3] Policy Considerations..... | 14-556.31 |
| | [4] International Tender and Exchange Offers | 14-556.34 |
| | [a] Exchange Offers and Business Combinations: Exemption from Registration | 14-556.34 |
| | [b] Exchange Offers and Business Combinations: Registration .. | 14-556.38 |
| | [5] International Tender Offers and the Williams Act..... | 14-556.42 |
| | [6] Related Exemptions; U.K. Exemp- tive Order | 14-556.44 |
| Table 14-1 | Dollar Value of International Bond Of- ferings: 1965-1988..... | 14-557 |
| Table 14-2 | Foreign Bond Issues in Selected Capital Markets | 14-558 |
| Table 14-3 | Eurobond Issues by Currency of Issue | 14-560 |
| Table 14-4 | Equity Related International Bond Of- ferings..... | 14-562 |
| Table 14-5 | Issuance of Equity Related Bonds in In- ternational Markets..... | 14-563 |
| Table 14-6 | Market Capitalization of World's Stock Markets | 14-564 |
| Table 14-7 | Value of International Stock Offerings | 14-565 |
| Table 14-8 | Domestic and Foreign Listed Compa- nies on Major Stock Exchanges..... | 14-566 |
| Table 14-9 | Overview of Foreign Investment by Private Sector Pension Funds..... | 14-567 |
| Table 14-10 | Overview of Global Mutual Funds..... | 14-568 |
| Table 14-11 | Annual Rates of Return of Stock Price Indexes in Ten Major Countries | 14-569 |
| Appendix 14A: | Council Prospectus Directive..... | 14-571 |
| Appendix 14B: | Council Listing Particulars Direc- tive..... | 14-588 |
| Appendix 14C: | Council Amendment to Listing Par- ticulars Directive | 14-629 |
| Appendix 14D: | Council Integration Directive | 14-635 |
| Appendix 14E: | Council Listing Conditions Direc- tive..... | 14-638 |

TRANSNATIONAL BUSINESS

| | | |
|---------------|------------------------------------------------------------------------------------------------------|--------|
| Appendix 14F: | Council Half-Yearly Reports Directive..... | 14-658 |
| Appendix 14G: | Council Banking Directive..... | 14-666 |
| Appendix 14H: | Council Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive..... | 14-695 |
| Appendix 14I: | Council Insider Trading Directive . | 14-732 |

TABLE OF CONTENTS

Volume 1B

CHAPTER 15

Dismissals in Europe Roel Nieuwdorp

| | | |
|---------|---------------------------------------------------------|-------|
| § 15.01 | Introduction | 15-2 |
| § 15.02 | General Observations | 15-3 |
| § 15.03 | Belgium | 15-6 |
| | [1] Administrative Procedure | 15-6 |
| | [2] Individual Dismissal Procedure | 15-6 |
| | [a] Salaried Employees | 15-6 |
| | [b] Manual Workers | 15-11 |
| | [3] Collective Dismissal | 15-12 |
| § 15.04 | Netherlands | 15-14 |
| | [1] Administrative Procedures | 15-14 |
| | [2] Individual Dismissal Procedures | 15-17 |
| | [a] The Notion of "Clearly Unfair Dismissal" | 15-17 |
| | [3] Collective Dismissals | 15-18 |
| § 15.05 | France | 15-21 |
| | [1] Administrative Procedures | 15-21 |
| | [a] Duty to Provide Information | 15-21 |
| | [b] Prior Authorization | 15-22 |
| | [2] Individual Dismissal Procedure | 15-23 |
| | [a] Conditions of Form (Proce- dure) | 15-23 |
| | [i] Meeting with the Em- ployee | 15-23 |
| | [ii] Notice of Termination .. | 15-24 |
| | [iii] Communication of Rea- sons for Dismissal | 15-25 |
| | [b] Conditions of Substance | 15-25 |
| | [c] Severance Pay | 15-26 |
| | [d] Sanctions | 15-27 |
| | [i] Irregular Dismissal | 15-27 |
| | [ii] Abusive Dismissal | 15-28 |
| | [3] Collective Dismissal | 15-28 |

TRANSNATIONAL BUSINESS

| | | |
|---------|-----------------------------------------------------------|----------------|
| | [a] Collective Dismissal of Less Than Ten Employees | 15-28 |
| | [b] Collective Dismissal of More Than Ten Employees | 15-29 |
| | [4] Summary Schedule of Procedures... United Kingdom..... | 15-30 15-31 |
| § 15.06 | [1] Administrative Procedures..... | 15-31 |
| | [2] Individual Dismissal Procedures..... | 15-31 |
| | [a] Length of Notice..... | 15-31 |
| | [b] Redundancy Payments..... | 15-33 |
| | [c] Unfair Dismissal..... | 15-34 |
| | [i] The Basic Award | 15-35 |
| | [ii] The Compensatory Award | 15-36 |
| | [3] Collective Dismissals | 15-36 |

CHAPTER 16

Regulation of Multinational Enterprises: International Codes of Conduct Paula R. Rhodes

| | | |
|---------|----------------------------------------------------------------------------|-------|
| § 16.01 | Introduction | 16-2 |
| § 16.02 | Definition of a Multinational Enterprise.. | 16-5 |
| § 16.03 | Reasons Underlying Regulation of Multinational Enterprises | 16-6 |
| § 16.04 | National Regulation of Multinational Enterprises..... | 16-10 |
| § 16.05 | The Role of Codes of Conduct in Regulating Multinational Enterprises | 16-12 |
| § 16.06 | Major Codes of Conduct | 16-16 |
| | [1] ILO Tripartite Declaration..... | 16-17 |
| | [2] U.N. Restrictive Business Practices Code | 16-18 |
| | [3] Draft Code on the Transfer of Technology..... | 16-20 |
| | [4] OECD Guidelines for Multinational Enterprises | 16-23 |
| | [5] Draft U.N. Code of Conduct on Transnational Corporations..... | 16-26 |
| § 16.07 | Codes of Conduct on Doing Business in South Africa..... | 16-30 |
| § 16.08 | Conclusion | 16-33 |

TABLE OF CONTENTS

| | | |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Appendix 16A: | Excerpts from ILO Tripartite Declaration of Principles Concerning Multilateral Enterprises and Social Policy | 16-34 |
| Appendix 16B: | Excerpts from United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices..... | 16-39 |
| Appendix 16C: | Excerpts from Draft International Code on the Transfer of Technology | 16-42 |
| Appendix 16D: | OECD Guidelines and Decisions on Multinational Enterprises | 16-57 |
| Appendix 16E: | Draft United Nations Code of Conduct on Transnational Corporations | 16-74 |
| Appendix 16F: | Excerpts from 1979 and 1984 Reviews of OECD Guidelines and Decisions | 16-99 |
| Appendix 16G: | Code of Conduct for European Community Companies with Subsidiaries, Branches or Representation in South Africa..... | 16-141 |
| Appendix 16H: | Sullivan Principles for U.S. Corporations Operating in South Africa | 16-144 |
| Appendix 16I: | WHO International Code of Marketing of Breast-milk Substitutes.... | 16-151 |

CHAPTER 17

International Economic Institutions

David A. Chaikin

| | | |
|---------|----------------------------------------------------------|-------|
| § 17.01 | Introduction | 17-2 |
| § 17.02 | General Agreement on Tariffs and Trade | 17-2 |
| | [1] Historical Overview | 17-2 |
| | [2] Functions and Principles..... | 17-3 |
| | [3] The Treaty Structure | 17-6 |
| | [4] Membership | 17-7 |
| | [5] Institutions | 17-8 |
| § 17.03 | United Nations Conference on Trade and Development | 17-10 |

TRANSNATIONAL BUSINESS

| | | |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------|--------|
| § 17.04 | Organization for Economic Cooperation and Development | 17-12 |
| § 17.05 | The Customs Cooperation Council..... | 17-14 |
| § 17.06 | International Monetary Fund | 17-15 |
| | [1] Functions and Principles..... | 17-15 |
| | [2] Membership and Withdrawal..... | 17-17 |
| | [3] Organizational Structure and Voting | 17-18 |
| | [4] Resources of the Fund..... | 17-19 |
| | [5] Drawing Rights and Fund Policies.. | 17-20 |
| | [6] Legal Character of Fund Transac- tions | 17-23 |
| § 17.07 | The World Bank..... | 17-25 |
| | [1] Role, Membership, and Governance | 17-25 |
| | [2] Capital Structure and Resources | 17-28 |
| | [3] Lending and Related Operations | 17-29 |
| § 17.08 | The International Development Associa- tion..... | 17-31 |
| § 17.09 | The International Finance Corporation... | 17-33 |
| § 17.10 | Conclusion | 17-35 |
| Appendix 17A: | Treaty Establishing the African Eco- nomic Community..... | 17-36 |
| Appendix 17B: | Brunei Darussalam Framework Agreement on Enhancing ASEAN Economic Cooperation..... | 17-98 |
| Appendix 17C: | Brunei Darussalam Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA).... | 17-104 |
| Appendix 17D: | Maastricht Treaty on European Union and Final Act..... | 17-112 |

CHAPTER 18

Recognition of Foreign Bankruptcies in a Transnational Setting: An Analysis of the Laws of the United States Charles D. Booth

| | | |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------|------|
| § 18.01 | Introduction | 18-2 |
| § 18.02 | Historical Development of United States Law Regarding the Recognition of For- eign Bankruptcies and Foreign Represen- tatives | 18-4 |

TABLE OF CONTENTS

| | | |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| § 18.03 | 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 | 18-21 |
| [1] | The United States Bankruptcy Code | 18-21 |
| [2] | Section 304 (Cases Ancillary to Foreign Proceedings)..... | 18-22 |
| [a] | Commencement of the Section 304 Case | 18-26 |
| [b] | Jurisdiction and Venue | 18-28 |
| [c] | Form of Relief | 18-35 |
| [d] | Criteria for Granting Relief Under Section 304 | 18-41 |
| [e] | Section 304 Cases..... | 18-44 |
| [3] | Section 303(b)(4) (Involuntary Cases Commenced By Foreign Representatives)..... | 18-58 |
| [4] | Section 305 (Abstention)..... | 18-60 |
| [5] | Section 508..... | 18-66 |
| § 18.04 | 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..... | 18-67 |
| § 18.05 | Conclusion | 18-70 |
| Appendix 18A: | Convention on International Aspects of Bankruptcy | 18-71 |

CHAPTER 19

International Commercial Arbitration in Europe

David K. Schollenberger

| | | |
|---------|-----------------------------------------|------|
| § 19.01 | Introduction and General Considerations | 19-3 |
| [1] | General | 19-3 |

TRANSNATIONAL BUSINESS

| | | | |
|---------|-----|-----------------------------------------------------------------------|-------|
| | [2] | Characteristics of Arbitration | 19-3 |
| | [a] | Agreement to Arbitrate is Necessary | 19-3 |
| | [b] | Similarities and Differences Between Arbitration and Litigation | 19-4 |
| | [c] | Ad Hoc v. Institutional Arbitration | 19-6 |
| § 19.02 | | National Legislation | 19-7 |
| | [1] | Introduction | 19-7 |
| | [2] | United Kingdom | 19-8 |
| | [a] | History and General Characteristics | 19-8 |
| | [b] | Arbitration Agreement—Form and Content | 19-9 |
| | [c] | Arbitration Proceedings | 19-11 |
| | [d] | Enforcement of Agreement to Arbitrate | 19-12 |
| | [e] | Enforcement of Arbitral Award | 19-12 |
| | [f] | Challenges to the Award | 19-12 |
| | [3] | France | 19-13 |
| | [a] | History and General Characteristics | 19-13 |
| | [b] | Arbitration Agreement—Form and Content | 19-15 |
| | [c] | Arbitration Proceedings | 19-16 |
| | [d] | Enforcement of Agreement to Arbitrate | 19-17 |
| | [e] | Enforcement of Arbitral Award | 19-17 |
| | [f] | Challenges to the Award | 19-18 |
| | [4] | Federal Republic of Germany | 19-19 |
| | [a] | History and General Characteristics | 19-19 |
| | [b] | Arbitration Agreement—Form and Content | 19-20 |
| | [c] | Arbitration Proceedings | 19-21 |
| | [d] | Enforcement of Agreement to Arbitrate | 19-22 |
| | [e] | Enforcement of Arbitral Award | 19-22 |
| | [f] | Challenges to the Award | 19-23 |

TABLE OF CONTENTS

| | | |
|---------|----------------------------------------------------------------------|-------|
| § 19.03 | International Arbitration Rules | 19-24 |
| | [1] International Chamber of Commerce | 19-24 |
| | [a] Introduction | 19-24 |
| | [b] Jurisdiction | 19-25 |
| | [c] Appointment of Arbitrators | 19-25 |
| | [d] Place of Arbitration | 19-26 |
| | [e] Governing Law | 19-26 |
| | [f] Pretrial Process | 19-26 |
| | [g] Discovery | 19-27 |
| | [h] Language | 19-27 |
| | [i] Proceedings | 19-27 |
| | [j] Award | 19-28 |
| | [k] Costs | 19-28 |
| | [2] United Nations Commission on International Trade Law Rules | 19-30 |
| | [a] Introduction | 19-30 |
| | [b] Jurisdiction | 19-30 |
| | [c] Appointment of Arbitrators | 19-31 |
| | [d] Place of Arbitration | 19-32 |
| | [e] Governing Law | 19-32 |
| | [f] Pretrial Process | 19-33 |
| | [g] Discovery | 19-33 |
| | [h] Language | 19-33 |
| | [i] Proceedings | 19-34 |
| | [j] Award | 19-35 |
| | [k] Costs | 19-35 |
| | [3] London Court of Arbitration Rules | 19-36 |
| | [a] Introduction | 19-36 |
| | [b] Jurisdiction | 19-36 |
| | [c] Appointment of Arbitrators | 19-37 |
| | [d] Place of Arbitration | 19-38 |
| | [e] Language | 19-38 |
| | [f] Governing Law | 19-38 |
| | [g] Pretrial Process | 19-38 |
| | [h] Discovery | 19-39 |
| | [i] Proceedings | 19-39 |
| | [j] Award | 19-40 |
| | [k] Costs | 19-40 |
| § 19.04 | International Conventions | 19-41 |

209

JNCZ 77

TRANSNATIONAL BUSINESS

| | | |
|---------------|-----------------------------------------------------|-------|
| | [1] Introduction | 19-41 |
| | [2] New York Convention of 1958 | 19-42 |
| | [3] European Convention of 1961 | 19-44 |
| § 19.05 | Conclusion | 19-45 |
| Appendix 19A: | National Arbitration Legislation in Europe | 19-46 |

CHAPTER 20

**Expanded Philanthropy: American Corporations
Worldwide** Carole S. George and Richard F.
Larkin

| | | |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| § 20.01 | Introduction | 20-2 |
| § 20.02 | Choices for Corporate Overseas Giving ... | 20-4 |
| | [1] To Make a Gift to a U.S. Charity That Will Use the Fund Overseas..... | 20-4 |
| | [2] To Make a Cash Gift from a Foreign Branch or Affiliate of the U.S. Parent to an Overseas Charitable or Gov- ernmental Agency | 20-6 |
| | [3] To Provide In-kind Goods or Ser- vices to Benefit the Foreign Charity | 20-6 |
| | [4] To Make a Cash Grant from the U.S. Corporate Foundation to a Foreign Charity | 20-7 |
| § 20.03 | Overseas Grant Making by U.S. Corporate Foundations..... | 20-7 |
| | [1] General | 20-7 |
| | [2] Taxable Expenditures | 20-8 |
| | [3] Charitable Purpose..... | 20-9 |
| | [4] Expenditure Responsibility | 20-9 |
| § 20.04 | Overseas Grantee Categories..... | 20-15 |
| | [1] General | 20-15 |
| | [2] Grants to Governmental Units..... | 20-15 |
| | [a] Charitable Purpose | 20-16 |
| | [b] Expenditure Responsibility | 20-17 |
| | [3] Grants to 501(c)(3) Organizations and "501(c)(3) Equivalents" | 20-17 |
| | [a] Charitable Purpose | 20-20 |
| | [b] Expenditure Responsibility | 20-20 |

TABLE OF CONTENTS

| | | |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------|--------|
| | [4] Grants to Organizations That Are Not Governmental Units, Not 501(c)(3) Organizations, and Not Equivalents to 501(c)(3) Organizations..... | 20-21 |
| | [a] Charitable Purpose | 20-21 |
| | [b] Expenditure Responsibility | 20-22 |
| § 20.05 | Related Considerations..... | 20-22 |
| | [1] "Earmarking" | 20-22 |
| | [2] Program Related Investments..... | 20-24 |
| | [3] Public Relations..... | 20-25 |
| § 20.06 | Conclusion | 20-26 |
| Appendix 20A: | Contributions to Be Used in a Foreign Country | 20-28 |
| Appendix 20B: | IRS Sample Agreement | 20-30 |
| Appendix 20C: | Sample Grant Application | 20-32 |
| | Index..... | Ind.-1 |