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MEMORANDUM

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From: Yvonne Schuiling
Daisy van Ovost

Date: 13 October 2004

Re: Proposed introduction of Controlled Foreign Corporation legislation in Mexico

File: AMI15-MHT-01-02

I. General:

As part of their Tax Reform Bill the Mexican government has proposed Controlled Foreign Corporation ("CFC") legislation to the Mexican congress.

In short the proposed CFC legislation may be described as follows. Provided that the Mexican beneficial owner has controlling influence on the foreign companies, the Mexican beneficial owner of the foreign companies will be subject to tax in Mexico (i) for the passive income generated by companies resident in a blacklisted country as well as (ii) for the passive income generated by companies that are not resident in a blacklisted country, but have income that has not been subject to a minimum income tax.

We note that the proposed CFC legislation has not been drafted for indirect investments in which the average daily interest of the investor does not allow the investor to hold effective control (either directly or indirectly) over the time in which the income is to be distributed to the investor. In case of absence of this control, the investor may defer the income

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recognition until the profits are actually distributed. Therefore, in order to avoid the applicability of the proposed CFC legislation the controlling rights should be separated from the economic rights.

In our basic C.V. model we generally use as managing partner a foundation incorporated under Dutch law, with its main office in Denmark or in the UK. With respect to the proposed CFC legislation, in order to accomplish the separation of controlling rights from economic rights, a C.V. with two Dutch foundations can be incorporated (a Foundation as managing partner and as limited partner).

A Dutch foundation is an entity with legal personality with as its purpose to use its monies to realize certain objectives. A Dutch foundation is subject to Dutch corporate income tax, if it is engaged in a trade or business. Holding intangible assets and administering assets are not considered conducting a business. If a foundation is engaged in a trade or business outside the Netherlands, these profits realized by the foundation are exempted from Dutch corporate income tax under most of the tax treaties the Netherlands has entered into with other states. When the foundation is established in Denmark or in the UK the Danish or UK business income of the foundation is not taxable in the Netherlands under the tax treaties with Denmark or the UK.

II. Alternatives:

In order to avoid the applicability of the proposed CFC legalisation we suggest the following two alternatives.

2.1 Alternative 1:

In Article 5 Section 2 and 3 of our basic C.V. model certain legal actions of the C.V. require prior unanimous approval of all partners of the C.V. In order to separate the economic rights from the controlling rights, we suggest eliminating this paragraph. Furthermore, we suggest including in our basic C.V. model that the resolution to distribute the benefits of the C.V. must be adopted by unanimous consent of all partners. For this alternative just an amendment of our basic C.V. model is required.

2.2 Alternative 2:

In this alternative the limited partner will be a specific Dutch Foundation, called "Stichting Administratiekantoor," hereinafter referred to as



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"Stichting AK." The Stichting AK will, as limited partner, hold the ownership rights of the participation in the C.V. In exchange for these ownership rights the Stichting AK is obliged to issue depository receipts to the Mexican investor. The depository receipts will entitle the Mexican investor to the economic rights (the benefits) of the participation of the C.V. These depository receipts can be registered or may be issued in bearer form.

The legal ownership of the limited partners' interest in the C.V. will remain with the Stichting AK. Consequently this Stichting AK exercises the controlling rights with respect to the limited partners' participation in the C.V. This includes the effective control over the time in which the income is to be distributed to the holders of depository receipts. Furthermore under Dutch law upon the issuance of the depository receipts to the investor, in favour of this investor a right of pledge will be vested on the ownership in the C.V., held by the Stichting AK.

The objectives of the Stichting AK, as laid down in the articles of association of the Stichting AK will be: acquiring and administering the ownership of the C.V. under the title of administration, issuing depository receipts, distributing all benefits received by the Stichting AK to the holders of the depository receipts, as well as executing the controlling rights with respect to the ownership of the C.V.

The relationship between the Stichting AK and the holder of the depository receipts will be laid down in a separate notarial deed (the trust conditions). In principle the benefits remain within the C.V. In the C.V. deed it may be agreed upon that the resolution to distribute the benefits to the partners must be adopted by unanimous consent. In case by unanimous consent it is agreed that the benefits will be distributed to the partners of the C.V., based on the trust conditions the Stichting AK is obliged to directly distribute the benefits to the holders of the depository receipts.

An advantage of alternative 2 is the transferability of the depository receipts to third parties, such as the heirs of the investor. For the transfer of the ownership in a C.V. the unanimous consent of all partners of the C.V. is required (as in our basic model) because the economic as well as the controlling rights are transferred. In case of transfer of depository receipts just the economic rights will be transferred. If the depository receipts are



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registered, a private deed of transfer is required. If the depository receipts are issued in bearer form, just a transfer of the bearer depository receipt to the transferee is required. Under Dutch law the holder of a bearer depository receipts is considered to be the owner of this receipt.

Please do not hesitate to contact us for further discussions to get the best possible solution that is not only tax effective by also cost effective.