



612 - Expanding Your Company's Financial Services Offerings in the EU & Asia

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Faculty Biographies

Nicholas Rockerfeller
Chief Legal Officer
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Mark L. Shwartz

Mark L. Shwartz is the senior vice president and senior counsel at Capmark Financial Group Inc. in Horsham, Pennsylvania. Capmark is a leading international commercial real estate finance company. Mr. Shwartz's practice areas for Capmark include: mergers and acquisitions, securities, human resources, corporate governance, compliance, global facilities, and information technology.

Prior to joining Capmark, Mr. Shwartz was vice president for business development and senior counsel, manager at CA, Inc. (formerly Computer Associates International, Inc.) Previously, Mr. Shwartz was a corporate attorney at Fried, Frank, Harris, Shriver & Jacobson. Mr. Shwartz served as special assistant for international policy to the Secretary of Defense in Washington DC where, among other things, he represented the U.S. Government in numerous international negotiations. Mr. Shwartz also served as the political-military advisor to the Secretary of State's commission on security and economic assistance. Subsequently, Mr. Shwartz was the founder and principal of Transatlantic Consulting Services, advising European defense, electronics, and aerospace companies on expanding market share in North America. Mr. Shwartz was co-chair of the Practicing Law Institute's first program on India and has numerous publications on a wide range of legal, business, security, and international topics.

He holds a B.A. and M.A. from the University of Pennsylvania and has a J.D. from Columbia University.

Charlotte Stalin

Charlotte Stalin is a partner at Simmons & Simmons in London. She is a financial services lawyer who specialises in UK and European regulatory matters. She advises financial institutions operating in the financial sector on a wide range of regulatory matters. In her recent work she has advised EU and non-EU investment firms and banks on the provision of financial services across Europe. This work involved advising on numerous regulatory issues - ranging from licensing, marketing and selling restrictions in respect of a wide range of products (including commodity derivatives) and client types. She also advises: the EU and non-EU investment firms and banks on establishment and structuring issues across Europe; the UK and European firms on the implementation of various European directives (including the markets in financial instruments directive), in the UK and the rest of Europe; fund managers on regulatory issues relating to the distribution of regulated and unregulated funds on a global basis; and international private banks on various regulatory matters. She also counsels on general regulatory matters, including UK FSA handbook and documentation.

Before joining Simmons & Simmons she worked at Clifford Chance LLP.

Gregory Terry

Gregory James Terry is chairman, South East Asia of Morgan Stanley based in Singapore.

Prior to joining Morgan Stanley he was a partner of Lovells and head of its Asian corporate practice. Mr. Terry was CEO and managing director of Brierley Investments Limited (BIL). Mr. Terry joined BIL from Credit Suisse First Boston where he was managing director and vice chairman of the Pacific Region. In that capacity he headed the CSFB teams as joint global coordinator on Telstra 2 and the IPO of AMP. Prior to this, Mr. Terry was an executive director and chief legal counsel of Hong Kong conglomerate Jardine Matheson Limited, and a director of a number of Jardine Group companies. Mr. Terry began his career in the Australian diplomatic service, serving in Vientiane, Washington, Jakarta, and at the United Nations in New York. He served as senior adviser to cabinet in the department of the Prime Minister and cabinet, and was principal private secretary to E.G. Whitlam, Q.C., MP. Mr. Terry was also a law partner with Holding Redlich & Co. in Melbourne and with Perkins Coie in Seattle. Mr. Terry remained in Seattle as vice president and secretary of Burlington Northern Inc. Mr. Terry became a partner at Baker & McKenzie Hong Kong.

Mr. Terry has a Bachelor of Law from the University of Melbourne and a Master's from the Fletcher School of Law and Diplomacy.



Provision of Financial Services in Europe

Charlotte Stalin
Partner
Simmons & Simmons

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What this talk will cover:

- Setting the scene
- Key regulatory hurdles
- Regulatory reform
- The future

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Setting the scene

- What do we mean by 'Europe':
 - The European Union (EU)
 - The European Economic Area (EEA)
 - The European Free Trade Association (EFTA)
 - The rest..
- 'Harmonised' financial services regulation:
 - Limited to EU & EEA
 - Deposit taking, investment services, insurance, mutual funds....
 - Not harmonised for non-EEA incorporated firms

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Setting the scene



- This presentation focused on investment services into EEA..

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Key regulatory hurdles

- Multiple parallel regimes:
 - Licensing requirements
 - Product restrictions
 - Marketing restrictions
 - Other restrictions – e.g. consumer protection
- Firms must make sure to meet all of these!

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Licensing requirements

- Minimum harmonisation
 - EU Directives setting minimum standard (e.g. Banking Consolidation Directive & Investment Services Directive)
 - Each state may regulate more.... & many do
- What services?
 - E.g.: Deposit taking, investment services (e.g. dealing; managing; advising; arranging deals; underwriting), provision of insurance
- What products?
 - E.g.: Deposits; lending; mortgages; investments (e.g. securities (equity/debt); funds; derivatives (futures, options, CFDs)); life policies etc.

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Licensing requirement

- When?
 - Solicitation/territorial application
 - Exemptions
 - Intermediation
- How?
 - Licensing process varies (EEA firm/non-EEA firm)
 - EEA firm – right to passport services in to all of EEA
 - Non-EEA firm may be required to establish branch/subsidiary
- Consequences? May include:
 - Criminal offence (e.g. prison; fines)
 - Administrative offence (e.g. fines)
 - Contractual impact (e.g. unenforceability/void & null)

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Product restrictions

- Restrictions on offering or marketing particular products:
 - Securities
 - Funds
 - Derivatives
- Limited harmonised regimes:
 - Public offers of securities (Prospectus Directive)
 - Offering of registered mutual funds (UCITS Directives)

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Product restrictions

- Securities:
 - Wide public offer definition
 - Harmonised private placement regime, includes offers to:
 - Qualified Investors;
 - Less than 100 Qualified Investors;
 - Minimum denomination/subscription of EUR50,000
 - Ability to 'passport' prospectus



Product restrictions

- Funds:
 - Locally registered funds (e.g. UCITS):
 - 'Fast track' registration process
 - Process too complicated and subject to review
 - Unregistered funds (e.g. hedge and other non-EEA funds):
 - No harmonised regime
 - General restriction/prohibition on offering
 - Some jurisdictions have private placement regimes



Product restrictions

- Derivatives:
 - No harmonised regime
 - Generally subject to conduct of business rules
- Consequences - may include:
 - Criminal offence (e.g. prison; fines)
 - Administrative offence (e.g. fines)
 - Contractual impact (e.g. unenforceability/void & null)



Marketing restrictions

- Restrictions on how to contact/market to an investor:
 - Cold calling restrictions (e.g. not to contact an investor by phone or email without invitation)
 - Specific marketing regimes (e.g. Demarchage Rules in France; Financial Promotion regime in the UK or Promotore Finanziario in Italy)
 - Language requirements (e.g. Loi Toubon in France)
- Consequences: similar to breach of licensing and product restrictions



Regulatory reform

- Markets in Financial Instruments Directive (MiFID)
 - Into force 1 November 2007
 - Harmonises further regulation of investment services (including commodity derivatives trading)
 - Limited impact on transatlantic business (other than scope of services/products within regulation)
- Harmonisation of funds regime
- Better regulation/principles based regulation

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The future

- Continued harmonisation
- Expansion
- Single European regulator
- Transatlantic solution

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Expanding your Company's Financial Services Offerings in South East Asia

August 2007

**Greg Terry
Chairman South East Asia
Morgan Stanley**

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Introduction

- No Such thing as “Asia”
- Morgan Stanley responds to 30+ regulators in 15 jurisdictions in Asia and unlike Europe every one has different regimes.
- Whilst most participate in global bodies like IOSCO and some like Hong Kong and Singapore seek to harmonize regulation with global best practices, local often protectionist, rules prevail.
- However, the trend is generally positive in terms of freer market access for financial services.

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CHINA: Progress in Financial Liberalisation

China has made substantial progress in financial liberalization since accession to WTO in 2001:

- It has removed many barriers against foreign investment in financial services. By the end of this year, foreign commercial banks can enter the market without geographical or customer restrictions.
- Securities, asset management and life insurance sectors can enter China only through joint ventures, but it is a matter of time before these conditions are eliminated.
- China has started to partially privatize its state-owned banks, starting with the landmark listing of China Construction Bank in 2005.
- It has introduced foreign investment in the domestic RMB capital markets through the Qualified Foreign Institutional Investor (QFII) program. 35 foreign institutional investors with over \$5.7 billion investment quota have been approved.
- Last year China launched the State Share Reforms, an ambitious program to convert the illiquid state ownership of 1,400 listed companies into tradeable shares within two years.

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CHINA: Progress in Financial Liberalisation

- China introduced a regulatory framework for interest rate and currency derivatives, with the promulgation of the CBRC derivatives regulation in 2004. This has continued into 2005 with the introduction of the RMB forwards market, warrants and a pilot securitization program.
- Pointing the way to future changes, China has revised the Securities and Company Laws which together will give greater flexibility in all aspects of capital contribution, use of assets, profit distribution, capital raising, securities products and services.
- China has given the National Social Security Fund and a handful of domestic asset managers and insurance companies the right to invest in offshore securities as so-called Qualified Domestic Institutional Investors (QDII).
- China's regulators are working on relaxing the separation between banking, securities and insurance by enabling the formation of financial holding companies.

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CHINA: Progress in Financial Liberalisation

- China has begun reform of the RMB exchange control mechanism.
- The RMB is fully convertible on the current account, that is, for trade in goods and services, but remains nonconvertible for capital account transactions, i.e., for both inward and outbound investments in assets.
- In July 2005, after more than a decade of strictly pegging the RMB to the U.S. dollar at an exchange rate of 8.28, the People's Bank of China announced a reevaluation of the currency to 8.11 RMB against the dollar and a reform of the exchange rate regime. China ended the US Dollar peg and announced a managed float targeting a reference basket of multiple currencies.

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CHINA: Soft Constraints on Access

- The Rule of One
- The Top Ten Principles
- Time
- Strategic Economic Dialogue – myth and reality
- Congressional Initiatives
 - risk for China or risk for USA and world economy?

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China Platform: Domestic License Regime

- Sino-foreign Securities JV (ala BNP Paribas, Credit Lyonnais) have primary underwriting capability but not equity brokerage and proprietary trading
- Trust license on the other hand, allows for proprietary trading capability

China's Domestic License Regime		CICC	Sino-Foreign Securities JV ⁽¹⁾	Domestic Securities Company ⁽²⁾	Bank: Domestic/JVB ranch	Trust Investment Company ⁽³⁾	Fund Mgmt Company ⁽⁴⁾
Fixed Income	Government and Financial Bond Sales & Trading						
	Corporate Bond Sales & Trading						
	FX Spot						
	Interest Rate, Currency and Credit Derivatives (excl. Futures)						
	OTC Interest Rate Futures Trading						
Banking	Commodity Futures						
	Government Bond Underwriting						
	Corporate Bond Underwriting						
	A-Share Underwriting						
Equity	Onshore M&A and Corporate Finance Advisory						
	A-Share Brokerage						
	A-Share Proprietary Trading						
Credit Services	OTC Equity Derivatives (excl. Futures)						
	Equity Index Futures Trading						
Asset Mgmt & Wealth Mgmt	Credit Cards						
	Lending						
Funding	Financial Planning						
	Fund Sponsorship and Management						
	Separate Account Management						
	Issuing Financial Bonds						
	Interbank Lending and Borrowing						
	Deposit Taking						

= Not Permitted
 = Permitted
 = Permitted w/ Approval or Limitations
 = Indeterminate

Notes
 1. Sino-foreign securities JV restricts foreign ownership to 33%.
 2. Foreign ownership of domestic securities firms up to 20% ownership per foreign investor (25% total).
 3. Restrictions on leverage and funding sources. Investment in other FIs cannot exceed 20% of capital.
 4. Can be owned by a bank or securities company.

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Hong Kong as Gateway to China

- China's financial liberalization provides great opportunities for Hong Kong to complement, support and benefit, with Hong Kong's natural strengths.
- One area of key advantage for Hong Kong that it has been building up over the past few years is its robust clearing and settlement systems for foreign exchange and bond trading. Hong Kong is establishing itself as an infrastructure center for origination, trading and settlement of trades in multicurrency financial products.
- Hong Kong is seeking to establish a multicurrency bond market to complement its efficient banking system and equity markets.

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Hong Kong as Gateway to China

Hong Kong has a well-developed system of corporate governance.

- Hong Kong benefits from the Common Law legal system, an independent judiciary, good ethical standards, well-developed accounting, legal and financial professional service providers following global standards of practice.
- At the government level, there is the Securities and Futures Commission and Hong Kong Monetary Authority, which regulates financial services, institutions and markets.
- There is generally a high degree of transparency, predictability and reliability when establishing a company and engaging in commercial activities in Hong Kong.

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Hong Kong as Gateway to China

So what does all this mean for Hong Kong's role for financial Services companies?

- Firstly, of course, it is the right place geographically. Hong Kong truly is the gateway to China.
- Secondly, many of the things China needs to achieve are already present in Hong Kong.
 - Capital markets capable of forming the capital needed for China's growth – Morgan Stanley's listing of CCB demonstrated that even the biggest Chinese companies do not need to go outside their own country to raise the capital they need.
 - the rule of law and a highly sophisticated financial legal system
 - the world's freest economy and a totally open banking and financial services system.

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Hong Kong: The Aberration

- The one aberration in the world's freest economy is with respect to Hedge Funds.
- Most Hedge Funds register in Singapore rather than Hong Kong because the Hong Kong registration requirements are onerous and time-consuming.

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Hong Kong License Status

Type of Regulated Activity	Type 1	Type 2	Type 3	Type 4	Type 5	Type 6	Type 7	Type 8	Type 9
	Dealing in Securities	Dealing in Futures Contracts	Leveraged Foreign Exchange Trading	Advising on Securities	Advising on Futures Contracts	Advising on Corporate Finance	Providing Automated Trading Service	Securities Margin Financing	Asset Management
By Business Unit/ Division									
Fixed Income Division (Convertible Bonds)	✓								
Fixed Income Division (Others)	✓	✓							
Investment Banking Division (Including Corporate Finance, Mergers, Acquisitions and Restructuring Department/Global Capital Markets and Real Estate Fund)	✓					✓			
Prime Brokerage	✓								
Institutional Equity Division	✓	✓		✓	✓		✓		
Merchant Banking (Including Investment Management and Private Equity Group)	✓								
Private Wealth Management	✓	✓							
Research/ Equity & Fixed Income Division	✓			✓	✓				
Operations Division (Derivatives)	✓	✓							
Operations Division (Others)	✓								

* If Type 8 license is required only if the individual plans activities as specified in column 8 or 9 only.
 ** If Type 9 license is required only if the individual plans activities as defined in column 9 or 10 only.

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TAIWAN: Current Issues

- Major opportunity for commercial banking:
 - Acquisitions
 - branches
- New Integrated Securities House License facilitates investment banking business.
- Generally open market
- The China Factor

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TAIWAN Domestic License Regime

Division	Restricted Activities	Securities - Domestic/IV /Branch	Bank - Domestic/IV /Branch	SICE	SITE	Unregulated Entity
Fixed Income	Government and Financial Bond Sales & Trading					
	Corporate Bond Sales & Trading					
	FX Spot					
	Interest Rate/Credit Derivatives (excl. Futures)					
	Currency Derivatives					
	TC Interest Rate Futures Trading					
	Commodity Derivatives					
Investment Banking	Government Bond Underwriting					
	Corporate Bond Underwriting					
	Security Underwriting					
Consolidate Equity Division	Options M&A and Corporate Finance Advice					
	Security Brokerage					
Credit Services	Security Proprietary Trading					
	TC Equity Derivatives (excl. Futures)					
	Equity Index Futures Trading					
Wealth & Investment Management	Credit Cards					
	Lending					
Funding	Financial Consulting Advisory					
	Fund Sponsorship and Management					
Deposits	Separate Account Management					
	Issuing Financial Bonds					
	Interbank Lending and Borrowing					
	Deposit Taking					

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KOREA: Current Issues

- OTC license freeze closes derivatives market
- Soft barriers:
 - Onshore requirements for controllers, audit, risk management
 - Korea language systems required by Regulators.
- Potential Risk
 - the Lonestar Saga

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KOREA Platform: Domestic License Regime

Division	Restricted Activities	Securities Branch?	Foreign Bank Branch	Onshore Investment Advisory Company	Offshore Investment Advisory Company
Fixed Income	Government and Financial Bond Sales & Trading		Note 2		
	Corporate Bond Sales & Trading		Note 2		
	FX Spot				
	Interest Rate, Currency and Credit Derivatives (excl. Futures)				
	OTC Interest Rate Futures Trading				
Banking	Commodity Futures				
	Government Bond Underwriting				
	Corporate Bond Underwriting				
	Share Underwriting				
	Onshore M&A and Corporate Finance Advisory				
Equity	Share Brokerage				
	Share Proprietary Trading				
	OTC Equity Derivatives (excl Futures)				
	Equity Index Futures Trading				
Credit Services	Credit Cards				
	Lending				
Asset Mgmt & Wealth Mgmt	Financial Planning				
	Fund Sponsorship and Management				
	Investment Advisory				
Funding	Separate Account Management				
	Issuing Financial Bonds				
	Interbank Lending and Borrowing				
	Deposit Taking				

= Not Permitted
 = Permitted
 = Permitted, but limited in scope
 = Indeterminate

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SINGAPORE: Current Issues

- Enhanced competitiveness vis a vis Hong Kong for non-China Asian borrowers because of practical factors:
 - Schooling
 - Costs
 - pollution
- Significantly more attractive for Hedge Funds
- Benefiting from ASEAN resurgence.

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SINGAPORE

Division	Restricted Activities	Representative Office	Securities Company*	Local and				Finance Company*
				Foreign Bank*	Wholesale Bank*	Offshore Bank*	Merchant Bank*	
Fixed Income	Government and Financial Bond Sales & Trading							
	Corporate Bond Sales & Trading							
	FX Spot							
	Interest Rate, Currency and Credit Derivatives (excl. Futures)							
	OTC Interest Rate Futures Trading							
Banking	Commodity Futures [1]							
	Government Bond Underwriting							
	Corporate Bond Underwriting							
	Share Underwriting							
	Onshore M&A and Corporate Finance Advisory							
Equity	Share Brokerage							
	Share Proprietary Trading							
	OTC Equity Derivatives (excl. Futures)							
	Equity Index Futures Trading							
Credit Services	Credit Cards							
	Lending		(B)		(B)			(F)
Asset Mgmt & Wealth Mgmt	Financial Planning							
	Fund Sponsorship and Management							
	Separate Account Management							
Funding	Issuing Financial Bonds				(B)	(B)		
	Insurance Lending and Borrowing							
	Deposit Taking				(4)	(B)		

= Not Permitted
 = Restricted
 = Corporate entity exempt from licensing, notification to regulator required. Representatives must pass relevant licensing examination.
 Indeterminate

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INDONESIA: Current Issues

- Judiciary and the Rule of Money versus the Rule of Law
- BA market is ignoring the risks
 - APP disclosure
- Licensing process tends to be slow and complex
- But market basically open

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Indonesia – Domestic License Regime

Indonesia—Domestic License Regime											
As of July 2007											
Division	Restricted Activities	Representative Office ("RO") (1)	Underwriters License	Dealer's License for "Dealing in Securities"	Investment Advisor's License for "Provision of Advice"	Investment Manager License	Commercial Bank	Business Advisory Services (11)	Futures License for Commodity Derivatives	Finance Company	Foreign Exchange Broker
Fixed Income	Government and Financial Bond Sales and Trading		(2)	(2)		(3)	(4)				
	Corporate Bond Sales and Trading					(5)					
	FX Spot										
	Interest Rate, Currency and Credit Derivatives (Excl. Futures)										
	OTC Interest Rate Futures Trading										
Banking	Commodity Futures										
	Government Bond Underwriting										
	Corporate Bond Underwriting					(6)					
	Domestic Share Underwriting					(7)					
	Onshore M&A and Corporate Finance Advisory			(7)		(7)					
Equity	Domestic Share Brokerage										
	Domestic Share Proprietary Trading					(8)					
	OTC Equity Derivatives (excl. Futures)					(9)					
	Equity Index Futures Trading			(9)	(9)	(8)					
Credit Services	Credit Cards										
	Lending			(10)	(10)						
Asset Mgmt. and Wealth Mgmt.	Financial Planning										
	Fund Sponsorship and Management										
	Separate Account Management										
Funding	Issuing Financial Bonds										
	Interbank Lending and Borrowing										
	Deposit Taking										

☐ = Not Permitted ☐ = Permitted Services by Holder of Corresponding License/s

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JAPAN: Some Current Issues

- Need to develop principles based regulatory framework.
- Hedge Funds
 - Need to change the rules to allow all facets of their business through a single legal entity.
 - Tax users – aggregation of partnership interests.
 - Disclosure requirements too onerous.
- Human Resources issues

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JAPAN

Division	Restricted Activities	Securities	Asset Investment	Residential Loans	Real Estate Asset Management
Fixed Income	Government and Financial Bond Sales & Trading				
	Corporate Bond Sales & Trading				
	PI Edge				
	Interest Rate, Currency and Credit Derivatives (incl. Futures)				
	OTC Interest Rate Futures Trading				
	Commodity Futures	None 1			
Banking	Government Bond Underwriting				
	Corporate Bond Underwriting				
	Share Underwriting				
	Onshore M&A and Corporate Finance Advisory				
Equity	Share Brokerage				
	Share Proprietary Trading				
	OTC Equity Derivatives (incl. Futures)				
	Equity Index Futures Trading				
	Equity Option Trading/Equity Index Options Trading				
Credit Services	Credit Cards				
	Lending				
Asset Mgmt & Wealth Mgmt	Financial Planning				
	Fund Sponsorship and Management				
	Investment Advisory				
	Separate Account Management				
Funding	Issuing Financial Bonds				
	Interbank Lending and Borrowing				
	Deposit Taking				
Others	Lending	None 2			None 3

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Notes:
1. Reference to and approval for proprietary bonds not to cover the limited sale office practice
2. Money Market Funds, Structured Securities
3. Residential Mortgage Lending

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VIETNAM: Current Issues

- Regulatory system evolving and often unclear.
- Dodge City: two types of trading
- Omnipresence of Government culture
- But, major opportunity – the next Tiger

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Vietnam Platform: Domestic License Regime

Division	Restricted Activities	Representative Office	Securities Company ⁽¹⁾	100% Owned Bank	Foreign Bank Branch	Finance Company	Fund Mgmt. Company ⁽²⁾
Fixed Income	Government and Financial Bond Sales and Trading						
	Corporate Bond Sales and Trading						
	FX Spot						
	Interest Rate, Currency and Credit Derivatives (Excl. Futures)						
	OTC Interest Rate Futures Trading						
Banking	Commodity Futures						
	Government Bond Underwriting						
	Corporate Bond Underwriting						
	Share Underwriting						
Equity	Onshore M&A and Corporate Finance Advisory						
	Share Brokerage						
	Share Proprietary Trading						
Credit Services	OTC Equity Derivatives (Excl. Futures)						
	Equity Index Futures Trading						
	Credit Cards						
Asset Mgmt. and Wealth Mgmt.	Lending						
	Financial Planning						
	Fund Sponsorship and Management						
Funding	Separate Account Management						
	Issuing Financial Bonds						
	Interbank Lending and Borrowing						
	Deposit Taking						

☐ = Not Permitted ☐ = Permitted ☐ = Permitted with Approval or Limitation ☐ Indeterminate

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PHILIPPINES: Current Issues

- Market size – why bother?
- Focus on banking and fixed income products
- Private Equity opportunities

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Philippines – Domestic License Regime

Division	Restricted Activities	Nonresident Office	Securities Broker/Dealer	Investment House	Universal Bank	Commercial Bank	Trust Bank
Fixed Income	Development and Financial Bond Sales and Trading				☐	☐	☐
	Corporate Bond Sales and Trading				☐	☐	☐
	FX Spot				☐	☐	☐
	Interest Rate, Currency and Credit Derivatives (Excl. Futures)				☐	☐	☐
	OTC Interest Rate Futures Trading				☐	☐	☐
	Commodity Futures				☐	☐	☐
Banking	Lending				☐	☐	☐
	Securitization		☐	☐	☐	☐	☐
	Government Bond Underwriting				☐	☐	☐
	Corporate Bond Underwriting				☐	☐	☐
Equity	Domestic Share Underwriting				☐	☐	☐
	Domestic M&A and Corporate Finance Advisory				☐	☐	☐
	Domestic Share Brokerage				☐	☐	☐
	Domestic Share Proprietary Trading				☐	☐	☐
	OTC Equity Derivatives (Excl. Futures)				☐	☐	☐
Asset Mgmt. & Wealth Mgmt.	Equity Index Futures Trading				☐	☐	☐
	Financial Planning				☐	☐	☐
	Fund Sponsorship and Management				☐	☐	☐
	Separate Account Management				☐	☐	☐
	Brokerage Business with FINW				☐	☐	☐
Funding	Distribution of Fund Products		☐	☐	☐	☐	☐
	Distribution of Offshore Equity-Linked Structured Products		☐	☐	☐	☐	☐
	Referral of Offshore Clients to Offshore	☐					
	Issuing Financial Bonds				☐	☐	☐
Others	Merchant Lending and Borrowing				☐	☐	☐
	Deposit Taking				☐	☐	☐
	Margin Financing & Securities Lending		☐	☐	☐	☐	☐
	Non-Listed Share Agency Business				☐	☐	☐
	Issue of Warrants				☐	☐	☐

☐ = Not Permitted ☐ = Permitted Services by Holder of Corresponding License ☐ = Requires Additional License / Registration with Regulators

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THAILAND: Current Issues

- Political instability affecting the market
- But substantial potential for financial resources
- License regimen theory open
- In practice, approvals may not be forthcoming
- Current focus is on structured products, simple derivatives and fixed income generally. No ECM and limited M&A activity.

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Thailand – Domestic License Regime

Key Businesses and the Types of Presence	License Required										
	Derivatives (Exchange-Traded)	Derivatives (OTC)	Equity (Listing)	Equity (Private Placement)	Equity (Public Offering)	Equity (Private Placement - MS)	Equity (Public Offering - MS)	Equity (Private Placement - No MS)	Equity (Public Offering - No MS)	Equity (Private Placement - No MS - MS)	Equity (Public Offering - No MS - MS)
Securities											
Fixed Income											
Commodity											
Banking											
Equity											
Asset Mgmt. (Investment Advisor)											
Funding											
Other											

= No license required = Required and can be obtained by MS = Required and cannot be obtained by MS
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MALAYSIA: Current Issues

- Bumi Putera rules limit establishment of financial services businesses.
- Growing interest in Islamic Finance opportunities
- Strength of the local big banks.

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Malaysia — Domestic License Regime

Division	Restricted Activities	Establishing a Representative Office	Dealer's license for "trading in securities"	Investment adviser's license for "provision of advice"	Fund Mgmt license	Futures license for derivatives
Fixed Income	Government and Financial Bond Sales & Trading				■	
	Corporate Bond Sales & Trading				■	
	FX Spot					
	Interest Rate, Currency and Credit Derivatives (incl. Futures)					
	OTC Interest Rate Futures Trading					
Banking	Commodity Futures					
	Government Bond Underwriting					
	Corporate Bond Underwriting					
	Domestic Share Underwriting					
	Company M&A and Corporate Finance Advisory					
Equity	Domestic Share Brokerage				■	
	Domestic Share Proprietary Trading					
	OTC Equity Derivatives (incl. Futures)		■	■	■	
	Equity Index Futures Trading					
Credit Services	Credit Cards					
	Lending					
Asset Mgmt & Wealth Mgmt	Financial Planning					
	Fund Sponsorship and Management		■			
	Separate Account Management				■	
Funding	Issuing Financial Bonds					
	Interbank Lending and Borrowing					
	Deposit Taking					

■ Not Restricted ■ Restricted Activities by Nature of Underwriting Process

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INDIA: Some Current Issues

- Basically, open and welcoming
- Banking License
 - Geography
 - business mix
- Interplay to achieve a similar mix
 - NBFC
 - Primary Dealer
 - Merchant Bank
 - Securities Broker
- SEBI and the regulatory culture

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India Domestic License Regime

Division	Activity	License / Membership	Regulator	Comment
Regulatory	Bank Insurance	Bank Insurance membership	IRBI / RBI / RBI	
	Bank Deposits	Bank Deposits membership	IRBI / RBI	
	Bank Finance	Bank Finance membership	IRBI / RBI	IRBI/ RBI/ RBI/ RBI
IRBI	Banking	Banking	IRBI	IRBI/ RBI/ RBI/ RBI
	Banking Finance	Banking Finance	IRBI	IRBI/ RBI/ RBI/ RBI
Financial Institutions (NBFC & MUDRA & NBFI)	Banking Finance	Banking Finance	IRBI (Sec 51)	IRBI/ RBI/ RBI/ RBI
	Banking	Banking	IRBI	IRBI/ RBI/ RBI/ RBI
RBI	Financial Institution - primary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - secondary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - primary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - secondary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - primary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - secondary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - primary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - secondary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - primary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - secondary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - primary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - secondary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - primary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - secondary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI
	Financial Institution - primary	Financial Institution	IRBI	IRBI/ RBI/ RBI/ RBI

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**Practical Approaches
for
INDIA**

October 2007

**Mark L. Shwartz
Senior Vice President & Senior Counsel
Capmark Finance Inc.**

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1. India's Economic and Geo-Political Potential– More Real Than Hype

- No shortage of statistics, data and other metrics
- Some hyperbole and exaggerations
- Pay-off may be longer-term than projected (case-by-case)
- But, in the end, more real than hype

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2. We Don't Always Speak the Same Language

- The meaning of “Done”
- Optional punctuation
- Writing numbers (Lakhs and Crores)
- IST vs. Time is of the Essence
- Standards for legal drafting and precision
- Is a Deal a Deal?

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3. Inconsistent Enforcement of Laws and Contracts

- Vague, ambiguous and conflicting laws and regulations
- Subjective interpretations (political, personal) of regulations, convoluted tax structure, judicial opinions, *inter alia*
- Competing authorities/tension within and between Central, State and Municipal agencies
 - All levels of Government and Bureaucracy
- Exceedingly slow (and costly) dispute/conflict resolution
 - Challenge: availability and veracity of documents
- American vs. Indian view of contracts differ (binding vs. baseline for renegotiation)

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4. Marketing is No Substitute for Actual Experience

- Limited number of US lawyers have actual legal or business experience in/with India
- Indian lawyers tend to be less specialized than US clients are accustomed
- Be wary of lawyers building a “specialized *practice area*” appealing to business endeavors in India e.g., “We have an India/FDI/Outsourcing group”
 - Generalized experience
 - Problem-solving “philosophies
 - “Can do; anything is possible” attitudes
 - Pedestrian analysis

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5. Engage In-House Corporate Counsel

- Legal Expertise Is No Substitute for Understanding of Client's Business (and vice versa)-- especially true in India, whether:
 - conducting business
 - complying with law/regulations or
 - providing legal services
- Local Counsel: local law, advice and work-product
- In-House Corporate Counsel: bridge communications between business goals/requirements and local practice, using US counsel as needed
 - Enormous legal and operational cost-savings
 - Functionally replaceable by business manager + Outside Counsel and/or In-House Local Counsel. Cost-effective?
- US Counsel: align local work-product with client demands/expectations; monitor/enforce quality

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6. Confidentiality & Conflicts

- Perspectives on proprietary information
- Communicate clearly and firmly the need for confidentiality
- Double-check business conflicts as well as legal conflicts

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7. Triangulate Local Advice and Advisors

- Pose same question to and request information from multiple sources
- Statutory and regulatory ambiguities can be inescapable; but not always
- Consider relationship between local advisors, governmental authorities and competitors
- Like US law firms and advisors, Indian firms/advisors consider future business and growth

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8. People Matter(s)

- Legal requirements vs. customary practices
- Cultural differences (US vs. India) especially keen in employment matters
 - Brand matters
 - Responsibility and Title vs. Compensation
 - Loyalty
 - Parental and family considerations
- Retention and Turnover Challenges
- Middle management
- Work Ethic vs. Holidays, Natural Disasters, Infrastructural Disruptions and Family Obligations
- Opportunities to train and work in US

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9. Pay Attention to Quality Control

- Establish standards and measures of success; confirm common understanding
- Business operations, management, line workers/staff and legal services
- Records Management
- Communications
- Execution
- Follow-up

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10. Gratifying Success Will Come

- India's elite are smart, dedicated, talented and frustrating
- Key ingredients:
 - Long-term perspective
 - Committed but flexible strategy
 - Fully engaged corporate-level management, including in-house counsel
 - Patience and Firmness
- When frustrations and setbacks exceed expectations and rewards, remember . . .

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