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Practitioner's Pathfinder for Approaching Foreign Investment in Oil & Gas Real Property in Texas and New Mexico

**By
Dr. Christopher S. Kulander**

The United States is organized as a federal system. This system grants each state the power to approve its own constitutional provisions and pass statutes that regulate and, in some cases, restrict ownership of real property located in that state by non-residents, non-citizens or companies organized outside the state. Most states allow full alien¹ ownership of real property and, while some states have restrictions and reporting requirements, no state has a complete prohibition on alien ownership. Differences abound among the states. Some, like Texas and New Mexico, have passed laws that expressly give all aliens the right to buy and own real property. Other states, such as Oklahoma and South Dakota permit aliens to own non-agricultural land, but limit ownership of agricultural land and ownership of other rural lands in excess of what is "necessary" for the purpose of the business. A smaller group of states, including Mississippi and Connecticut, distinguish between non-resident and resident aliens, and permit ownership only by aliens "residing" in that state.

This article details certain regulations, restrictions, reporting rules and treaties that govern, encumber and protect the direct purchase and ownership of oil and gas real property within the United States by companies organized outside the United States, with the aim of providing a roadmap for domestic or foreign practitioners considering questions of direct or subsidiary foreign investment in oil and gas real properties located, more specifically, in Texas or New Mexico.

A. Federal Statutes, Acts and Treaties

Overlying the patchwork of state statutes are federal laws and treaties that supersede the state laws. A foreign investor in real estate needs to remember that federal laws and treaties override state law if there is a conflict between the two. For example, even if a particular state's law provides for equal rights between a foreign investor in real estate and a

similar investor who is a U.S. citizen, a federal law that subjects only the foreign investor to certain restrictions or scrutiny will effectively nullify the promise of equality the state law attempted to provide. Different legal standards and procedures will apply under federal law, depending on the type, location and amount of assets sought, as well as the alien's home country.

Territorial Land Act of 1887

Congress enacted the Territorial Land Act of 1887 (the "Territorial Act") to prohibit non-resident aliens who had not declared their intent to become United States citizens from purchasing land in United States territories.² The Territorial Act was intended to prevent aliens from acquiring large tracts of land in the Western territories. The law remains effective, long after the Western territories were settled and became states. While the law does not apply, generally, to individual states, the regulations recite that aliens may not acquire or hold any direct or indirect interest in oil and gas leases with federal lessors (that is, leases from a federal agency), except that aliens may own or control stock in corporations holding leases if the laws of their country of citizenship do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to U.S. citizens, the application of that corporation to lease or to accept an assignment of a lease will be denied.³

Foreign Investment and National Security (FINSA)

Perhaps the most difficult investment restriction facing foreign entities⁴ that are investing in the United States is the Foreign Investment and National Security Act of 2007 ("FINSA"). The federal government has been concerned that control over strategically important domestic assets might pass into the hands of unwelcome

foreign corporations, governments or individuals. The “Exon-Florio provision,” first implemented in 1988, gives the President the power to “suspend or prohibit any acquisition, merger, or takeover, of a person engaged in interstate commerce” by a foreign entity, if the President determines that the acquisition will threaten the national security of the United States.⁵ After being signed by President George W. Bush on January 26, 2007, FINSA became law on October 24, 2007. The Treasury Department issued proposed regulations in April 2008, and held a public hearing to discuss them in Washington, D.C., on May 2, 2008.⁶ Once the final form of the regulations are agreed upon, FINSA will take the Exon-Florio provision one step further by essentially codifying the regulations and guidelines created by the Committee on Foreign Investment in the United States (“CFIUS”). CFIUS was created by Presidential order and is a federal inter-agency group of twelve members chaired by the Secretary of the Treasury. Since 1988, CFIUS has been the tool the executive branch uses to wield the power vested by the Exon-Florio provision. The law requires a mandatory investigation of any transaction involving an “entity controlled or acting on behalf of a foreign government.”⁷

FINSA requires a foreign entity to address several concerns when seeking approval of an acquisition or merger. First, and most importantly, the foreign entity must address the extent to which the transaction will affect the nation’s “critical infrastructure” in national security. Based on the extent to which the transaction will impact this critical infrastructure, government regulators may impose a “mediation agreement” on the parties seeking CFIUS approval for the transaction.

Under FINSA, the CFIUS review process has been codified and made more rigorous. It is important to note that the pre-notification provisions under FINSA remain voluntary (that is, the parties to a transaction are not required to obtain pre-acquisition clearance from any federal agency). Although there is no requirement that a foreign entity seek CFIUS approval for a proposed transaction before it occurs, the federal government may suspend or unwind any transaction after closing if it determines that transaction represents a threat to the critical infrastructure described above. Before involving CFIUS, one should consider two threshold questions:

1. Does the transaction give a foreign entity control over a U.S. firm?
2. Does the acquisition implicate interests that could be characterized as important for national defense?

When considering the first question, one should keep in mind that the regulations promulgated under Exon-Florio define “control” as the power to direct key matters affecting that firm, such as the power to sell off the corporation’s assets, dissolve the firm, close its facilities, and terminate its contracts.⁸ In addition, it is important to remember that seemingly benign relationships could trigger the statute. For example, a U.S. branch office or subsidiary of foreign company can be deemed a U.S. person, and therefore the statute could be applied if a different foreign entity acquires the domestic subsidiary.⁹ As for the second question, prior actions by CFIUS show that oil and gas asset purchases are considered to implicate interests that could be characterized as important for national defense¹⁰ and oil and gas interests are considered strategic, as are the companies that own them.¹¹ Note, however, that the only recent acquisitions of oil and gas interests by foreign entities that have given rise to CFIUS concerns have been proposed acquisitions of large corporations with extensive oil and gas operations by foreign entities that are citizens of countries that represent a potential strategic threat to the United States. In addition, CFIUS review generally is not required for asset acquisitions; therefore, the acquisition of a passive investment (for example, a non-operating interest) does not require CFIUS review.

Trading With the Enemy Act of 1970

The Trading with the Enemy Act of 1970 and the two related groups of laws within it, the Foreign Assets Control Regulations and the Alien Property Custodian Regulations, represent federal attempts to curtail investment by and in countries deemed to be hostile to the United States (for example, North Korea and Cuba). Investments in real property by foreign entities from these restricted countries is prohibited.

Federal Use Restrictions

Another group of laws governing the use of federally owned lands by aliens are laws

primarily designed to regulate the development of federal lands by any person. These laws permit the Mineral Management Service (the “MMS”) and the Bureau of Land Management (the “BLM”) to promulgate regulations to facilitate the orderly disposal of exploitation rights. Most of the alien-related restrictions in these older codes deal with the rights of aliens versus citizens regarding mining claims and do not curtail the purchase of non-working interests such as Nonparticipating Royalty Interests (“NPRIs”) or overriding royalties.¹²

As for taking leases from the government or accepting the assignment of a federal lease, under 30 U.S.C. § 22, aliens who have declared their intention to become United States citizens are eligible to buy oil and gas properties and other mineral deposits in lands belonging to the federal government (with some geographical exceptions) under regulations prescribed by law. This restriction is relevant during lease auctions held periodically by the MMS and the BLM.

Leases or interests in leases in oil and gas under public domain lands and lands returned to the public domain are subject to lease under the Mineral Leasing Act of 1920,¹³ and its amendments, and may be acquired and held by aliens only through stock ownership, holding or control, and only if the laws, customs, or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States.¹⁴ Offshore federal oil and gas leases are also covered under this umbrella.¹⁵ Aliens may not acquire or hold any direct or indirect interest in mineral prospecting permits or mineral leases,¹⁶ except aliens may own or control stock in corporations holding such leases or permits if the laws of their country do not deny similar or like privileges to citizens of the United States.¹⁷ If any appreciable percentage of stock of a corporation is held by aliens who are citizens of a country denying similar privileges to United States citizens, that corporation's application or bid for a lease will be rejected, and that corporation's lease is subject to cancellation.¹⁸

International Investment Survey Act of 1976

With the globalization of capital markets and the influx of foreign investment in the United States, the U.S. Congress has sought to provide the President with the tools to monitor alien investment in and control of U.S. securities. These laws reflect a desire to gather information

on the amount and control of domestic securities through the collection of survey information under the International Investment Survey Act of 1976 (the “Survey Act”).¹⁹ This information is collected by the Bureau of Economic Analysis (the “BEA”).

Under the Survey Act, ownership or effective control of 10 percent or more of a corporation's voting securities indicates a “lasting interest in” or a “degree of influence over” management of a corporation to sufficiently constitute direct alien investment. Therefore, foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one alien individual or entity, of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or the equivalent amount in an unincorporated U.S. business entity.²⁰

While the Act does not impose restrictions on domestic investment by alien entities, it does generally require that any alien investor (a) with more than \$5,000,000 invested in domestic assets through direct investment, (b) that has more than \$5,000,000 net income, or (c) owns more than 200 acres of land, to submit initial and subsequent periodic reports, as well as reports of certain business activities as they occur.²¹

More specifically, these reports require information on the balance of payments and the direct investment position data, financial and operating data of U.S. affiliates, and entity establishment and acquisition data. The reports also must contain the following disclosures: abbreviated income statements and balance sheets, employment and employee compensation, a separation of sales data into components (including bills of sale, sales of services, and sales to U.S. citizens or to foreign persons), structure and source of external financing, capital expenditures, changes in property, plant, and equipment, research and development expenditures, taxes paid, trade in goods, and numerous other data.²²

In addition, every five years, the U.S. Department of Commerce issues a mandatory survey requesting information on the amount and type of foreign direct investment in U.S. business enterprises. This survey is known as the Form BE-12 Benchmark Survey. All foreign corporations, organizations, associations, branches or ventures investing in U.S. real property must complete the report. The data obtained remain confidential and are used by the Bureau of

Economic Analysis for evaluating the effect of foreign investment on the U.S. economy. The most recent survey was due May 31, 2003. Failure to report may subject the foreign entity to a civil penalty of \$2,500 to \$25,000. A willful refusal to file may result in a criminal penalty of up to \$10,000 and/or up to a year in prison.²³

Foreign Investment in Real Property Tax Act of 1980

The U.S. Congress passed the Foreign Investment in Real Property Tax Act of 1980 (“FIRPTA”)²⁴ to make equal the tax treatment of domestic and foreign investors in U.S. real property. Before the passage of FIRPTA, profits from the sale of real property were taxed only if “effectively connected” to a trade or business of the United States. In contrast, FIRPTA subjects all income from sales of U.S. real property to federal taxation, because FIRPTA treats all dispositions of domestic real property interests by alien entities as “effectively connected” to a trade or business of the United States.

Patriot Act

The USA PATRIOT Act,²⁵ commonly known as the ‘Patriot’ act (“Patriot Act”), was signed into law after attacks on September 11, 2001 by terrorists. The Patriot Act expands the authority of U.S. law enforcement agencies for the stated purpose of fighting terrorism in the United States and abroad. Among its provisions, the Patriot Act increases the ability of law enforcement agencies to search telephone, email communications, financial and other records and expands the Secretary of the Treasury’s authority to regulate financial transactions, particularly those involving foreign individuals and entities. The Patriot Act also expands the definition of terrorism to include domestic terrorism, thus enlarging the number of activities to which the Patriot Act’s expanded law enforcement powers can be applied.

However, provided that a foreign purchasing entity successfully navigates the other federal requirements detailed above, the Patriot Act does not further hinder purchasers of oil and gas property. Section 352 of the Patriot Act requires financial institutions to establish anti-money laundering (“AML”) programs. These AML programs should include “(A) the development of internal policies, procedures, and controls; (B) the designation of a compliance officer;

(C) an ongoing employee training program; and (D) an independent audit function to test programs.”²⁶ The Patriot Act incorporates the definition of “financial institution” found at Section 5312(a)(2) of the Banking Secrecy Act, which includes “persons involved in real estate closings and settlements.”²⁷ However, the Financial Crimes Enforcement Network of the Treasury Department continues to maintain a temporary exemption from the AML requirements for certain classes financial institutions, including “persons involved in real estate closings and settlements.”²⁸ For the time being, persons involved in real estate transactions remain exempt from the requirements placed on certain other financial institutions by the Patriot Act. No special provisions are made for real estate involving oil and gas.

Outer Continental Shelf Act

The Outer Continental Shelf Act²⁹ (“OCS Act”) are statutes promulgated for the management, protection and development of oil and gas in the U.S. continental shelf, the broad and shallow marine plain off the coast of most of the United States. The OCS Act covers natural resources in the subsoil and seabed of the coastal zone, including oil, gas and minerals. However, while the provisions of the OCS Act apply to oil and gas real property located on the offshore areas described therein, and should be known and followed by any entity investing in and developing offshore oil and gas reserves, the OCS Act does not specifically target oil and gas real property purchased or owned by foreign entities and does not directly affect onshore oil and gas real property.

Bilateral Investment Treaties

Bilateral Investment Treaties (“BITs”) help protect private investment by foreigners between the two countries that enter into the treaty. BITs that the United States enters into require that investors and their investments in the United States from the other signatory country be treated as favorably as United States domestic investors or investors from other countries. The treaties limit expropriation and attempt to provide adequate compensation when expropriation occurs. Investors from signatory countries can transfer investment-related monies into and out of the United States at market rates of exchange and allow covered investors to use managerial personnel

regardless of their nationality. Most importantly, BITs provide investors the protection of being able to submit an investment dispute with the government of the other party to international arbitration with no requirement that the investor use U.S. courts.³⁰

Tribal Lands

Some of the largest undeveloped acreage located onshore in the United States is to be found on Native American reservations (so-called “Indian land” or “Indian country”) in the western and southern United States. While Texas has very little tribal lands (and relatively little onshore federal land), New Mexico has large blocks of such property.

Two reasons exist for the slower pace of oil and gas development on Indian land. First, until the 1980s, under laws promulgated in the 1930s, the Bureau of Indian Affairs (the “BIA”) conducted all leasing and development of oil and gas on tribal or allotted Indian land through the Secretary of the Interior. This process resulted in delays and the application of inconsistent rules and regulations to such leases. After the United States Congress passed the Indian Mineral Development Act in 1982, tribes have been able, if they elect to do so (under minimum BIA and Interior supervision), to conduct their own mineral development negotiations. As a result, many tribes have become quite knowledgeable about oil and gas development and many of them now employ reputable legal counsel. Second, although some tribes are as sophisticated as any potential lessor or developer, some of the tribes are less sophisticated or have courts and arbitration protocols that are systematically unfair to parties adverse to the tribe.

When dealing directly with tribes, a foreign entity should employ knowledgeable local landmen, brokerage and legal counsel to successfully invest in the tribe’s oil and gas properties. To alleviate the risk of post-production difficulties, investors should consider investing in development projects on tribal lands as either a non-operating interest owner in leases (contributing money to an experienced operator knowledgeable about developing tribal lands through joint operating agreements) or through capital investments as non-operators in farmout opportunities.³¹ Using this strategy, an investing party can utilize the expertise and negotiation

skills of the operator or party in direct contact with the tribe. It is also important to know that all oil and gas leases with tribal authorities, or agreements with individual Native Americans with respect to their allotted land, require approval of the local federal district court. Without this approval, no agreement or lease of tribal land or allotted land owned by an individual Native American is valid.

B. Texas and New Mexico Laws

Despite the restrictions and regulations above, government control of the ownership of real property in the United States is still primarily an area of state concern. In this discussion, “alien” entities are considered business entities originating in a country other than the United States while “foreign” entities are business entities from a U.S. state different from the jurisdiction being considered. From the myriad state laws related to the treatment of foreign entities, however, one may discern three general rules common to both Texas and New Mexico:

- (1) Alien business entities are considered the same as foreign business entities;
- (2) Before transacting business in a state, as such activity is defined by state statute, a foreign business entity must register with the state. Foreign corporations, foreign limited liability partnerships (“LLPs”) and foreign limited liability companies (“LLCs”) are treated the same as the domestic version of the same entity once they become qualified to transact business in that state; and
- (3) Ownership of passive or non-possessory mineral interests does not, by itself, qualify as “transacting business” in a state.

Texas

In 1965, Texas repealed a comprehensive alien restrictive land law that placed restrictions on the acquisition of oil and gas leases by alien investors.³² The Texas Code now contains a provision that expressly confers aliens the same rights to own real property in Texas as U.S. citizens.³³

Alien corporations are treated by statute the same as corporations organized under the laws

of another state.³⁴ Upon registration with the state, such foreign corporations benefit from the same privileges and rights as domesticated corporations (including the power to buy and sell real property).³⁵ Other than the requirement to become qualified to do business in Texas if the foreign corporation will actively manage assets in the state, no other express restrictions on alien or alien-controlled corporations exist in Texas. Although the law is not clear, the statutory language appears to view alien LLCs the same as LLCs from other American states.³⁶ Foreign LLCs are permitted to conduct business in Texas when they have been qualified in the state.³⁷ Curiously, the statutory definition of a foreign limited partnership does not include alien limited partnership.³⁸

Some investment activities do not constitute “doing business” in Texas and do not require registration with the state. Investing in royalties and NPRI interests in Texas, non-operating mineral interests, the execution of division orders, and ancillary activities related to owning these interests, such as executing contracts of sale and division orders, are not considered to be transacting business in Texas.³⁹

With no state income tax, Texas has relatively high property taxes. Texas-based oil and gas developers may have land appraised as open-space to limit the property taxes payable on the property. Land owned by an corporation controlled by nonresident aliens is not eligible for appraisal as open-space,⁴⁰ nor can land owned by an individual nonresident alien or foreign government be eligible for appraisal as timberland if federal law requires registration of ownership or acquisition of property (as detailed above).⁴¹

New Mexico

After the Territory of New Mexico was admitted into the United States, the original 1910 Constitution of New Mexico guaranteed that there would be no distinction between resident aliens and citizens regarding the ownership of property. This section was amended in 1921, fueled by concerns among the native population regarding an influx of Asian immigrants.⁴² Until quite recently, the constitution of New Mexico stated that:

Until otherwise provided by law, no

alien, ineligible to citizenship under the laws of the United States, or corporation, co-partnership or association, a majority of the stock or interest in which is owned or held by such alien, shall acquire title, leasehold or other interests in or to real estate in New Mexico.⁴³

This section was rendered ineffective by passage of legislation in 1975 permitting aliens to take title to property.⁴⁴ On November 9, 2006, New Mexicans voted to repeal the provision and allow ownership of land by persons not eligible for citizenship.⁴⁵ No state barrier currently remains to alien ownership of real property in New Mexico.

Alien corporations are statutorily treated as foreign corporations.⁴⁶ To enjoy the same rights and privileges as domestic corporations, including powers to buy and sell real property, a foreign corporation must become qualified to do business in the state by acquiring a “certificate of authority.”⁴⁷ Foreign corporations are not considered to be conducting business in New Mexico and do not need to acquire a certificate of authority by merely investing in or acquiring, through transactions outside New Mexico, royalties and other non-operating mineral interests or by merely participating in the execution of division orders, contracts of sale or other instruments incidental to the ownership of the non-operating mineral interests.⁴⁸

Alien LLPs appear to be statutorily treated the same as foreign LLPs.⁴⁹ Aliens LLCs are expressly considered foreign LLCs.⁵⁰ Before transacting business in New Mexico, a foreign LLP must file a “statement of foreign qualification.”⁵¹ New Mexico law provides that foreign LLPs are governed by the laws of the jurisdiction in which they are formed and cannot be denied a statement of foreign qualification because of differences between the laws of New Mexico and the laws of the state or country of origin of the partnership.⁵² As with foreign corporations, both foreign LLPs and LLCs are not considered to be transacting business in New Mexico by purchasing or owning securities such as royalties and other non-operating mineral interests, or conducting such activities related to owning them such as executing division orders, or entering contracts of sale and other instruments.⁵³

C. Conclusion

While this article is intended to provide a basic overview of the laws governing foreign investment in oil and gas properties located in Texas and New Mexico, foreign investors should seek the advice of legal counsel licensed in the state wherein lies the real property that is being considered for purchase. Of course, it is always important for attorneys to have accurate profiles of their clients' backgrounds, needs and circumstances.

Keep in mind, as the kaleidoscopic nature of the patchwork of federal law described above shows, real property investment advice for foreigners – and articles that posit to provide a path forward about same – have a limited shelf life. For example, the Treasury Department just promulgated regulations related to FINSA in on this year and even more recently held the first public hearing to discuss them in Washington, D.C. With the increase in foreign investment in the United States, the recent rise in energy prices and the heightened interest in security and anti-terrorism financial mechanisms, the web of laws governing such investment will get only more arduous in the future.

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¹ The relevant statutes typically use the term “alien” to refer to any such person and “alien ownership” to refer to ownership of real property by an alien. *E.g.*, the FINSA statutes, *supra*.

² 48 U.S.C. §§ 1501-07 (1988).

³ 43 C.F.R. §§ 3102.1, 3102.2 (1987) (leases or interests therein may be acquired and held only by citizens of the United States; associations, including partnerships and trusts, of such citizens; corporations organized under the laws of the United States or of any State or Territory thereof; and municipalities).

⁴ Federal statutes typically use the term “foreign entity” to refer to any business organization organized outside the United States. State statutes typically use the term “foreign entity” to refer to any business organization outside the

particular state and “alien entity” to describe non-American business organization.

⁵ Section 5021 of the Omnibus Trade and Competitiveness Act of 1988 amendment to Section 721 of the Defense Production Act of 1950. The President can exercise this authority under section 721 (also known as the “Exon-Florio provision”) to block a foreign acquisition of a U.S. corporation only if he finds:

(1) there is credible evidence that the foreign entity exercising control might take action that threatens national security, and

(2) the provisions of law, other than the International Emergency Economic Powers Act do not provide adequate and appropriate authority to protect the national security.

⁶ Press release, U.S. Dept. of Treasury, Treasury Issues Proposed CFIUS Regulations; Lowery to Hold Briefing Today (Apr. 21, 2008), *available at* <http://www.treas.gov/press/releases/hp937.htm> (last visited June 30 2008).

⁷ Leon B Greenfield, *The CFIUS Process: A Primer*, 6 THE THRESHOLD 10 (Winter 2005/2006).

⁸ 31 C.F.R. § 800.204 (2006).

⁹ *Id.*

¹⁰ Steve Lohr, *Unocal Bid Opens Up New Issues of Security*, N.Y. TIMES, July 13, 2005, at C1.

¹¹ For example, in 2005, the Chinese National Offshore Oil Company sought to bid on Unocal, seeking a stock-takeover, led to such controversy that Unocal instead took the offer of Chevron and the Chinese withdrew their offer. More recently, CFIUS approved the sale of port authority management from a British firm to Dubai Ports World. This move by CFIUS was attacked in Congress by those who felt that a strategic interest of the United States was being sold to a purchaser from a region beset with terrorists.

¹² Nonparticipating Royalty Interests (NPRI) are royalty interests that are expense-free interests in oil and gas when produced. The word “nonparticipatory” means that the interest does not share in bonus or rentals, nor is the NPRI owner able to execute leases or explore and develop himself. Overriding royalty is a royalty interest taken on a particular oil and gas lease; when the lease expires, the overriding royalty interest disappears.

¹³ 30 U.S.C.A. §§ 181 to 196 (1920).

¹⁴ *Id.* at § 181.

¹⁵ 43 U.S.C.A. § 1331 (2006).

¹⁶ 43 C.F.R. § 3502.10.

¹⁷ *Id.* at §§ 3472.1-2(d), 3502.13.

¹⁸ *Id.* at § 3472.1-2(d).

¹⁹ 21 U.S.C. §§ 3101-3108 (1988), amended by the Trade and Tariff Act of 1984, Pub. L. No. 98-573, § 306(b)(1), 98 Stat. 2948, 3009 (1984); Pub. L. No. 101-533, § 6(A), Nov. 7, 1990, 104 Stat. 2348.

²⁰ Alicia M. Quijano, *A Guide to BEA Statistics on Foreign Direct Investment in the United States - Bureau of Economic Analysis*, SURVEY OF CURRENT BUSINESS (Feb. 1990). Any foreign investment that is not direct investment by this definition is considered portfolio investment. Data on

portfolio investment are collected by the Treasury Department.

²¹ Quijano, *supra*; note, however, that there are several exemptions mentioned in the statute that may exempt certain foreign entities from being required to file the reports.

²² *Id.*; see also Ralph H. Kozlow, *An Overview of U.S. Bureau of Economic Analysis Statistics on Multinational Companies*, from the Organization for Economic Co-operation and Development (OECD) Workshop on International Investment Statistics, Paris, France, Mar. 22-24, 2004.

²³ Quijano, *supra*, note 20.

²⁴ 26 U.S.C. §§ 861, 871, 882, 897, 6039C, 6652 (1988).

²⁵ Pub. L. No. 107-56-Oct. 26, 2001. The laborious acronym stands for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.”

²⁶ Patriot Act § 352; 31 U.S.C. 5318(h) (2007).

²⁷ *Id.* at § 352; 31 U.S.C. § 5312(a)(2).

²⁸ 31 C.F.R. § 103.170 (2007).

²⁹ 43 U.S.C. § 1331 *et seq.*; 43 U.S.C. § 1801 *et seq.*

³⁰ Summary of U.S. Bilateral Investment Treaty (BIT) Program, Office of the United States Trade Representative, February 24, 2006. For a list of the countries with whom the United States has signed a BIT, please see the website maintained by the United Nations Conference of Trade and Development (UNCTAD) at <http://www.unctad.org/Templates/Page.asp?intItemID=2344&lang=1> (last visited May 25, 2008).

³¹ A farmout agreement is between an oil and gas leaseholder who is willing to give up a portion of his lease, for a fee or interest, to another party, who agrees to drill a certain number of wells. Typically, if production occurs, the leaseholder formally assigns a portion of the lease in return for an overriding royalty interest and/or a retention (a “back-in”) of a portion of the working interest of the lease.

³² 1981 Tex. Gen. Laws ch. 297, repealing arts. 1302-4.01 through 4.07.

³³ Tex. Rev. Civ. Stat. Ann. art. 2 § 5.005.

³⁴ Tex. Bus. Corp. Act Ann. arts. 1.02(A)(2) (Vernon 1980) (definition of foreign corporation), 8.01(A) (Vernon Supp. 1986) (reference to foreign country).

³⁵ *Id.* at arts. 8.02(A) (powers of foreign corporation), 2.02(4), (5) (Vernon Supp. 1986) (powers of domestic corporation).

³⁶ Tex. Civ. Stat. Ann. art. 1528n-1.02A(9) (foreign limited liability company is an entity formed under the laws of a jurisdiction other than the state of Texas); Tex. Civ. Stat. Ann. art. 1528n-7.05A(4) (reference to a country in which a foreign limited liability company is formed).

³⁷ Tex. Civ. Stat. Ann. art. 1528n-7.07A (a certificate of authority is required to do business).

³⁸ Tex. Civ. Stat. Ann. art. 6132a-1.02(3) (foreign limited partnership means a limited partnership formed under the laws of another state); Tex. Civ. Stat. Ann. art. 6132a-1.02(14) (state means any state of jurisdiction of the United States). The author perceives no reasonable basis for a distinction between foreign LLCs and foreign LLPs and

speculates that the omission of foreign LLPs from the statute may be a mere oversight, with no practical effect on the ability of an alien LLP to conduct business in the state.

³⁹ Tex. Bus. Corp. Act Ann. arts. 8.01(B)(13) (covering corporations), Tex. Bus. Org. Act Ann. § 9.251 (13-14) (covering foreign limited partnerships, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity).

⁴⁰ *Alexander Ranch, Inc. v. Central Appraisal Dist. of Erath County*, 733 S.W.2d 303 (Tex. Civ. App.—Eastland 1987 *ref. n.r.e.*) (noting that Tax Code § 23.56 was enacted after Property Code § 5.005).

⁴¹ Tex. Tax Code § 23.77. *et seq.* Texas has special rules regarding land classified as “Timber Land.” Timber Land is that which is currently and actively devoted principally to production of timber or forest products to the “degree of intensity” common in the region for commercial timber operations with an intention to produce income and which has maintained such a status for a least five of the last seven years. If these requirements are met, approval as Timber Land can result with property tax advantages for the owner.

⁴² *Constitutional Amendments Proposed by the Legislature Appearing on the November 7, 2006, General Election Ballot*, New Mexico Legislative Council Service, P. 5. A copy of this document is maintained online at legis.state.nm.us/lcs/lcsdocs/prosandcons2006.pdf.

⁴³ N.M. Const. art II, § 22 (amendment of 1921).

⁴⁴ N.M.S.A. 1978, § 45-2- 111.

⁴⁵ 2005, S.J.R. 10, § 1.

⁴⁶ N.M.S.A. 1978, §§ 53-11-2(B) (definition of foreign corporation), 53-17-1 (reference to foreign country), 53-17-5 (1983) (reference to foreign country).

⁴⁷ *Id.* at §§ 53-17-2 (powers of foreign corporation), 53-11-4(D), (E) (1983) (powers of domestic corporation).

⁴⁸ *Id.* at § 53-17-1 (K).

⁴⁹ *Id.* at § 54-1A-101(4) (“‘foreign limited liability partnership’ means a partnership that is formed under laws other than the laws of this state and has the status of a limited liability partnership under those laws”).

⁵⁰ *Id.* at § 53-19-2.

⁵¹ *Id.* at § 54-1A-1102.

⁵² *Id.* at § 54-1A-1101.

⁵³ *Id.* at §§ 54-1A-1104 (definition for LLPs), 53-19-54 (A)(9) (definition for LLCs).