MEET THE MEMBERS
EUROPE

In the following pages you will hear from 56 our members throughout Europe about the important updates and opportunities available in their jurisdictions. Our member firms featured retain a global support network across 165+ jurisdictions via their IR Global membership, sharing a common vision of working collaboratively to achieve unrivalled results for their clients. **Read more here** www.irglobal.com/publications

IR Global – **Going Beyond Expectations**

IR Global was founded in 2010 and has since grown to become the **largest practice area exclusive network of advisors in the world.** This incredible success story has seen the network awarded Band 1 status by Chamber & Partners, and featured in Legal 500 and in publications such as The Financial Times, Lawyer 360 and Practical Law, among many others.

The group's founding philosophy is based on bringing the best of the advisory community into a sharing economy; a system that is ethical, sustainable and provides significant added value to the client.

Businesses today require more than just a traditional lawyer or accountant. IR Global is at the forefront of this transition, with members providing strategic support and working closely alongside management teams to help realise their vision. We believe the archaic 'professional service firm' model is dying due to it being insular, expensive and slow. In IR Global, forward-thinking clients now have a credible alternative, which is open, cost effective and flexible.

Our Founding Philosophies

- **Multi-Disciplinary**

We work alongside legal, accountancy, financial, corporate finance, transaction support and business intelligence firms, ensuring we can offer complete solutions tailored to the client's requirements.

- **Niche Expertise**

In today's marketplace, both local knowledge and specific practice area/sector expertise is needed. We select just one firm, per jurisdiction, per practice area, ensuring the very best experts are on hand to assist.

- **Vetting Process**

Criteria are based on both the quality of the firm and the character of the individuals within it. It's key that all of our members share a common vision towards mutual success.

- **Personal Contact**

The best relationships are built on trust and we take great efforts to bring our members together via regular events and networking activities. The friendships formed are highly valuable to the members and ensure client referrals are handled with great care.

- **Co-Operative Leadership**

In contrast to authoritarian or directive leadership, our group puts teamwork and self-organisation in the centre. The group has steering committees for 12 practice area and regional working groups that focus on network development, quality controls and increasing client value.

- **Ethical Approach**

It is our responsibility to utilise our business network and influence to instigate positive social change. IR Global founded Sinchi, a non-profit that focuses on the preservation of indigenous culture and knowledge and works with different indigenous communities/tribes around the world.

- **Trusted Partners**

Strength comes via our extended network. If we feel a client's need is better handled by someone else, we are able to call on the assistance of our partners. First priority is to always ensure the client has the right representation whether that be with a member of IR Global or someone else.

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FOREWORD

Europe: **a complex climate with strong frameworks**

It's been a turbulent three years for Europe, but business and commercial opportunities remain robust - if a little more complicated than the pre-pandemic period.

Europe features some of the largest economies in the world, with the likes of Germany, the UK, France and Italy sitting comfortably in the top ten highest grossing countries worldwide. Yet the overall economic picture of the continent is complex, with geopolitical events in recent years having a significant impact on the region, its financial health, and its legal landscape. These changes are not without their challenges for companies or individuals looking to do business in the area, but the region still holds a wealth of opportunities, too.

In the last three years, Europe has seen the UK's Brexit from the EU in 2020 and almost immediately after had to navigate the global Covid-19 pandemic, two events that took a serious toll on both the economic and social landscape of the continent. More recently, the outbreak of the Ukraine war in 2022 and Turkey's 5.6 magnitude Earthquake dealt further blows to specific areas that have had a ripple effect throughout the rest of the region, both in terms of their humanitarian impact and influence on supply chains and resource availability.

As a result of this complex landscape, the region's largest economies and the EU have all forecast low or no growth in 2023. Yet it's important to remember that while growth has slowed, these remain some of the world's most thriving economies, business districts and manufacturing hubs, as well as being desirable places to live that rank highly in terms of quality of life statistics.

Many of Europe's emerging economies, meanwhile, are set to achieve growth over the course of the year, with the likes of Romania and Poland set to continue their 2022 growth trend and reach an average 1.7% growth in GDP in 2023, driven largely by manufacturing. Other exciting emerging countries include Cyprus, Albania and Azerbaijan, all projected to reach 2.5% GDP this year.

Inflation has also become a prevalent issue across the continent, varying wildly from country to country: from highs of over 20% in the likes of Hungary and, unsurprisingly, Ukraine, and lows of 3.4% in Switzerland. Europe's financial giants all saw a spike in Inflation last year, with rates well above 5% in the UK, Germany, France and Italy.

Outside of Europe's complex financial landscape, there are many other considerations for those looking to enter into commercial activity in the region. Much like the rest of the world, Europe is undergoing a transformation in the way that it works and does business, fuelled by global digitisation.

Partly accelerated by the Covid-19 pandemic, and partly a consequence of the natural progression of Industry 4.0, Europe's relationship with technology continues to shift, as do the regulations and guidance needed to govern it. Across the continent, governments are introducing legislation in response to the varied technological changes taking place: from trademark and IP specifications around NFTs to clarifying legal standpoints in regard to cryptocurrencies.

By extension of this fast digital change, Europe is also formalising its stance on cyber threats, with cybercrime becoming a pressing concern for every European country. Last year, the EU updated its Network and Information Security Direction to bolster cyber-strength by introducing tighter risk assessments and reporting requirements for critical organisations. France, meanwhile, is introducing legislation to protect victims of ransomware, with victims able to seem reimbursement if they file a criminal complaint within 72 hours of the cyber-attack.

> **"Inflation has also become a prevalent issue across the continent, varying wildly from country to country."**

Overall, while Europe is perhaps a more complicated region than it was five years ago, it remains a robust commercial landscape. With the world's biggest single market, the EU, at its centre, and several business-friendly territories across the continent, it has largely strong institutional frameworks and cross-border relationships.

In the following publication, IR Global members across Europe share their expertise on some of the most pressing issues in their jurisdiction. From the broad-sweeping impact of Europe's recent geopolitical events to specific legislative changes that affect inhabitants on a more personal level, they cover a broad range of topics to provide insight into Europe's commercial landscape.

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IR Global members have a passion for knowledge sharing and developing professional relationships to support their clients' requirements. They not only network via our global conferences but they also take part in our virtual sessions to keep their presence up and continue to create and build on existing relationships.

MEET THE MEMBERS

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IR Global members from across Europe represent the world's leading legal, accountancy and financial advisers. These members are recommended exclusively by jurisdiction and practice area and use the network to support any client requirements.

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Understanding Belgium's 'Cayman Tax' rules

Over the past decade, tax authorities around the world have tightened measures to ensure proper tax compliance by resident taxpayers on their global assets and income.

In Belgium, the fiscal transparency rules for foreign investment structures that were adopted in 2015 are known as the 'Cayman tax' rules.

The Cayman tax can be considered quite unwelcoming to those who move to Belgium for their work, become residents, and therefore become subject to these taxes. Some estate planning structures (like trusts) which are common and fully legal in their former home country can become subject to far-reaching Belgian tax measures.

The Cayman tax applies to the following entities:

a) All trusts, known as Type 1 Structures.
b) Companies, associations, institutions, and any other entities with separate legal personalities that are not subject to income tax or which are subject to an income tax that is lower than 15%, as calculated by Belgian tax standards (Type 2 Structures).

Note: A Royal Decree includes a non-exhaustive list of entities established outside the European Economic Area that are presumed to be in scope. Entities established within the EEA are only targeted when they are blacklisted.

c) Contracts are also concerned, should the contract involve investment in Type 1 or Type 2 structures or provide for the distribution of assets of Type 1 or Type 2 structures (e.g. insurance contracts). These are known as Type 3 Structures.

The Cayman tax applies to Belgian residents who are the founders and/or beneficiaries of these entities. Whereas beneficiaries are only subject to the Cayman tax as and when they receive a distribution from a targeted entity, the founders of the entity will be taxed directly (this is known as transparent taxation).

With transparent taxation, the founders will be taxed on the income of the targeted entities as if the entity did not exist – as if they had received the income directly. Transparent taxation will not apply if the income received by the legal entity has effectively been paid or granted to the founder (or a beneficiary) in the same year that the targeted structure received it.

> "The Cayman tax has already been amended and contested several times during its relatively short existence."

Distributed assets and income are taxable as dividends at a flat rate of 30%. Beneficiaries are subject to this tax if they cannot demonstrate that this represents:

- The initial contribution
- Income that has already been subject to its appropriate tax regime in Belgium.

In this context, it should be noted that the initial contribution is deemed to have been distributed last. Income, on the other hand, is considered distributed on a FIFO basis.

Contribution of economic rights, shares or assets of Type 1 and Type 2 structures – and transfer of assets of Type 1 and Type 2 entities – to a nation with which Belgium has not concluded an agreement on the exchange of tax information will result in this tax being applied.

Those responsible for paying this tax include:

- The founder of the structure
- The individual or legal entity, subject to tax for legal entities (rechtspersonenbelasting) who contributed assets to the structure, where the structure itself was founded by a third party

> "Some estate planning structures (like trusts) which are common and fully legal in their former home country can become subject to far-reaching Belgian tax measures."

- Individuals who will directly or indirectly inherit from the founders, unless they can demonstrate that neither the direct heir nor the latter's heir will ever receive any benefit from the structure
- Individuals or legal persons subject to the tax for legal entities (rechtspersonenbelasting) who hold the shares or economic rights of Type 2 structures
- Individuals or legal persons subject to the tax for legal entities (rechtspersonenbelasting) who have concluded a Type 3 contract and in whose name the premiums were paid

Furthermore, Belgian residents that fall under the scope of the Cayman tax must report the existence of the targeted entity in their annual income tax return. Certain information about the entity, such as their name, legal form, address, identification number and details about the trustees (if applicable) must be declared.

The Cayman tax has already been amended and contested several times during its relatively short existence. On 28 January 2021, the Belgian Constitutional Court ruled to annul the taxation of distributions made by trusts without legal personality that are deemed as dividends (in the same manner as dividends distributed by offshore entities with legal personality.)

According to the Court, this taxation was discriminatory because offshore entities with legal personality were subject to the Cayman tax if their effective income tax rate is lower than 15% in their country of residence. This threshold tax burden was not similarly applied for trusts without legal personality. This meant that they would fall within the scope of the Cayman tax regardless of their effective income tax rate.

The Constitutional Court's annulment has a retroactive effect, meaning that the distributions made by trusts without legal personality that were taxed in this way were declared illegal. Beneficiaries of this income can claim a refund of the tax levied from the tax authorities.

In this context, determining tax residency status becomes an important factor for foreign individuals who decide to move to Belgium. Only Belgian resident taxpayers are subject to the Cayman tax, whereas those who qualify as non-resident taxpayers aren't.

It should also be noted that Belgium has a recently updated stipulation for ex-pats which states that if the ex-pat request is approved, they are considered to be a "non-resident" of Belgium. If the tax is applicable, it will be important for them to assess whether they are considered a founder or a beneficiary of the structure.

Stefan Geluyckens is a partner at Antaxius Advocaten, a boutique tax and business law firm, based in Antwerp, Belgium. He has more than 20 years of experience as a lawyer, which includes comprehensive experience in both tax law and mergers & acquisitions.

Stefan's expertise focuses on tax litigation and advice concerning M&A (partial) demergers, transfers of shares, and any type of corporate reorganization. He is also well-versed in discussion and settlement of potential disputes, and preparation of tax opinions and strategies.

Stefan is the author of the quarterly publication "Belgium – Individual Taxation Analyses" of the IBFD and has written several other articles on tax affairs as well.

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Antaxius is a tax and business-oriented law firm based in Antwerp that provides high-quality legal services to Belgian and international companies, as well as HNWI. Operating since 1995, the firm now comprises 20 legal professionals. The goal of Antaxius is to bring a down-to-earth, pragmatic and personal service to its clients.

Why Cyprus is the Ultimate Destination for Company Formation: A Business Perspective

For many years, Cyprus has been a popular choice for investors and entrepreneurs seeking a destination for their business ventures. Its location, favourable tax structure, and proficient workforce make it a prime choice for companies seeking to expand their operations. With all these benefits, it's not surprising that Cyprus is considered the ideal location to set up a company in the European Union.

Cyprus: An Overview
Cyprus is a small island nation of 1.2 million people. Despite its small size, it has a thriving economy with a GDP of $28.41 billion. The country's strategic location between Europe, the Middle East, and Africa makes it the ideal destination for businesses looking to expand their operations in these regions.

Benefits of Setting Up a Company in Cyprus

- **A Compliant and Business-Friendly Tax Regime**

Cyprus offers a conducive environment for businesses to thrive. It adheres to the standards and requirements set by the European Union (EU) and the Organization for Economic Co-operation and Development (OECD), and the country's tax laws comply with international best practices: this ensures transparency and accountability in tax administration.

Furthermore, Cyprus has an extensive network of double tax treaties, which provide businesses with access to a reduced tax burden and facilitate cross-border trade. By offering a stable and predictable tax environment, enterprises can plan strategies for growth and expansion while complying with the OECD and EU requirements.

- **A Stable Economy**

Cyprus has a remarkably resilient economy, consistently bouncing back from adversity, which is proof of the nation's strength. Despite facing multiple shocks in the past decade, the country has remained stable, diversifying, and drawing in fresh investment, earning its reputation as one of the EU's most robust economies.

- **Access to the EU Market**

Investment in Cyprus is a superb choice for foreign companies and international investors looking to access the markets of the EU. The island has been a member of the Eurozone since 2008 and has more than 40 trade agreements with countries outside the EU. This makes it a welcoming business environment in an excellent location that enjoys access to Europe and other significant regional business centres.

- **Access to well-educated, multilingual local and global talent**

Companies can benefit from several talent-related incentives for setting up in Cyprus. These include:

- Visa-free access to the EU labour market
- Streamlined processes for accessing the international talent pool
- Recently updated immigration policies that facilitate the recruitment of third-country nationals, where the right to family reunification is also provided
- Tax incentives for those willing to relocate and work in Cyprus for the first time
- Recent simplification of the naturalisation process

The country also has a high standard of living, with excellent healthcare and education systems, making it an attractive destination for employees and high-net-worth individuals.

Incorporating a Company Remotely in Cyprus
One of the other benefits of setting up a company in Cyprus is that anyone can set up their company remotely with the assistance of a licensed company service provider. Business owners do not need to be physically present in Cyprus to incorporate a company.

These factors make Cyprus an ideal destination for investors and entrepreneurs looking to set up a company.

Relocating your Headquarters to Cyprus
Cyprus is becoming an increasingly popular destination for HQ relocation, as the country offers an attractive environment for international companies to establish their base.

The Cypriot government has also introduced several incentives to attract more international businesses to the country, and many fintech companies have already done so successfully. Industries with headquarters in Cyprus include:

- Fintech and Electronic Money Institutions
- Foreign Exchange
- Shipping
- Gaming and entertainment
- ICT
- Crypto and blockchain (brokers, exchanges etc.)
- Private equity houses and investment funds
- Family offices

The list of large companies that have relocated to Cyprus is impressive, including: EcommPay, EcommBX, Exness, Nexters, My.Games, Wargaming, Celestyal Cruises, eToro, Nielsen, Amdocs, Sykes, Thomson Reuters and Argo Group Limited, among others.

Cyprus: A Gateway to Europe, the Middle East, and Africa
Cyprus is strategically located between Europe, the Middle East, and Africa, making it an ideal location for businesses looking to expand their operations in these regions. Cyprus has a well-developed transportation infrastructure, which includes two international airports and – as one of the world's leading maritime centres – three ports, and three specialised oil terminals. This makes it easy for companies headquartered in Cyprus to access markets in Europe, the Middle East, and Africa.

Cyprus is also a member of the EU, providing businesses access to the largest market in the world. With a highly developed financial sector, it's also an ideal destination for companies involved in fintech and other financial services.

The Competitive Advantage of Cyprus in the ICT Sector and IP Box
Cyprus has a competitive advantage in the ICT sector, with access to a highly skilled workforce within the country and beyond it, as well as a favourable regulatory framework.

The country has a thriving tech sector, home to many startups and established companies, and the Cypriot government has introduced several incentives to attract even more tech businesses.

The number of businesses in the global tech sector relocating or expanding their operations in Cyprus is on the rise, reflecting a positive trend in the country's business environment: securing intellectual property (IP) is a pivotal factor, particularly within the ICT and tech sectors.

Cyprus provides robust and advantageous IP protection via domestic laws and a comprehensive network of EU and international agreements. It also offers a favourable tax regime for companies with intellectual property rights, as companies that hold IP rights in Cyprus can benefit from a reduced corporate tax rate of just 2.5% on profits earned from using the IP.

Conclusion
With its favourable tax system, legal framework, stable economy, and skilled workforce, Cyprus offers a range of benefits for foreign investors. Establishing a business in Cyprus can be a wise business decision if you are a business owner or an organisation seeking to expand your operations worldwide, or set up your headquarters.

At SPL Audit we are ready to assist any entrepreneur in setting up their Corporate Structure and streamlining their business operations in Cyprus.

Andreas Georgiou studied in Greece at the University of Macedonia and holds a Bachelor of Science degree with Honours in Applied Informatics.

He is a Member of the Institute of Chartered Accountants of England and Wales (ICAEW) and a Member of the Institute of Certified Public Accountants of Cyprus (ICPAC). In December 2021, he completed the INSEAD FinTech Program. Since 2010, he has been a practising member of the Institute of Certified Public Accountants of Cyprus (ICPAC) and a certified public accountant in Cyprus.

Having worked with one of the world's leading and most prestigious professional firms, KPMG, for many years and through his exposure to varied and numerous forms of clientele both in the audit & assurance and international tax departments, he has gained considerable expertise in the fields of international tax planning, tax compliance and audit & assurance. He is a specialist in international taxation and VAT matters and in audit & assurance, with particular specialisation in information technology, online business engagements, the payment services industry and FinTech.

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SPL Audit (Cyprus) Ltd is an independent professional services firm based in Nicosia, Cyprus's capital city and financial centre. Their clientele consists of international businesses, local companies, and high-net-worth individuals. They have a team of over 30 professionals who boast extensive experience in accounting skills, tax specialists and advisors to help everyone achieve their goals.

SPL Audit works to create value for their clients' organisations so they can focus on their growth journey. They provide live support to any move they make and make sure the path is prepared in advance while also supporting them so that they have time to focus on what matters the most.

They work as a team, always characterised by professionalism, to ensure that they give the necessary attention to all their clients, satisfying their needs and expectations. Their professional team and staff share a familiar can-do spirit and approach clients' matters with the mindset of finding solutions to problems. They ensure to add value to their clients by looking at engagements on a case-by-case basis and from every possible angle.

A commercial perspective on developments in the Danish M&A market post Covid-19

11 March 2020 was the date when the Danish government chose to shut down large parts of society in order to contain the spread of Covid-19. Because of the global shutdown in March, large parts of the business world had to make hurried, difficult decisions and adopt wide-ranging measures to find a way through an environment that had changed drastically in a few weeks. To the M&A market, this meant that the longer-term strategic plans were put on standby, resulting in many proposed transactions being postponed, as uncertainty and the lack of clarity in the outside world made it a challenge for both buyers and sellers to make major decisions, including decisions on the purchase or sale of companies.

Several large, Danish law firms, including Holst, Advokater, experienced a significant decrease in the number of business transactions as activity on the market for business transactions fell by 37.5% in the first half of 2020 compared to 2019.

A record number of M&A transactions in the middle of a global pandemic

The uncertainty surrounding the handling of Covid-19 diminished, and the horror scenario of severe economic recession was not realised. The backlog in the M&A market sent demand and prices skyrocketing, and the market for business transactions made a huge comeback, as activity in the Danish M&A market in the fourth quarter of 2020 rose by 33.3% compared to 2019.

Further, an upturn in the stock markets meant that many of the transactions that had been put on standby in 2020 were resumed and completed, and 2021 ended as a record year in the M&A market with an increase of 46% more transactions in Denmark in 2021 than in 2019, which until 2021 held the record.

Although the record level in 2021 also included several transactions that had been postponed from 2020, 2021 was characterised by several other factors.

Many Danish companies had chosen to scrutinise their business and look at the structure for it to be able to withstand a longer economic crisis. Companies trimmed redundancies, bolstered liquidity with capital injections, expanded lines of credit and withheld dividend distributions to stakeholders.

Therefore, many companies suddenly found themselves with a strong and streamlined business and a solid capital base. At the same time, major trends such as sustainability, gender diversity and digitisation became even more relevant for companies and their strategy, and acquisitions made it possible to realise their strategy significantly faster than by organic growth of the companies. And so, the M&A activity in Denmark in 2022 almost balanced the record high level of 2021.

The rough times highlighted important aspects of the legal environment in Denmark. The Danish legal system is very liberal; it allows expeditious and creative solutions and allows direct access to courts and public authorities. This ensures that technically challenging transactions can be put together quickly, with very low transaction risks, even in uncertain times.

Further, Covid-19 revealed how extensive digitisation is in Denmark, compared to other surrounding countries. It seemed that Danish companies could more easily adapt when something unforeseen like Covid-19 happens. For instance, Danish companies readily switched distribution channels from physical stores to online trading. Many companies have been quick to do so, but Denmark has performed well above the European average, also in terms of successfully adjusting to remote work and conducting digital meetings. This has made Danish companies very attractive to foreign investors who were previously either reluctant to digitise or who focused on larger companies.

A substantial proportion of M&A in Denmark is therefore driven by companies that are very innovative and able to adapt to new conditions. This has opened the eyes of the international market to the investment potential in Danish companies.

> "The backlog in the M&A market sent demand and prices skyrocketing, and the market for business transactions made a huge comeback."

> "Covid-19 revealed how extensive digitisation is in Denmark, compared to other surrounding countries."

In a time of economic turmoil, the Danish M&A market has strengthened

At the beginning of 2023, the short-term economic outlook is characterised by fear of a global economic downturn, rising interest rates and record high inflation in many regions of the world.

The M&A market often tends to slow down during times of great uncertainty or market volatility in the value of investments. However, that can also be seen as an advantageous time for buyers, as valuations become more attractive during such periods. Challenging conditions create opportunities for skilled buyers to achieve better returns and even increase growth. Typically, there will also be less competition for companies entering the market, which creates opportunities for buyers who have funding.

Denmark is therefore well-placed for M&A if companies have carefully considered strategies and the financial resources for making transformation deals. Hence, it is quite possible that unexpected M&A opportunities lie ahead in 2023.

Danish investors and business leaders continue with M&A activities as there allegedly is a definite willingness to run short-term financial risks for achieving a long-term strategy for business transformation and outcome. Many continue to plan corporate deals in a market affected by political tensions, including the war in Ukraine, rising interest rates, steep declines in valuations and continued disruptions to supply chains.

For some industries, the M&A market has come to a stop. For others, e.g., industries with technology and digital/data-driven assets, the M&A activity increases. In 2022, M&A for small-medium sized companies increased and will assumably continue in 2023, as small-medium sized transactions will be easier to complete than bigger transactions given less reliance on financing, lower risk and less regulatory scrutiny.

The prospects for 2023 of course remain uncertain. It is therefore crucial that Danish companies enhance their resilience by means of operating efficiency and keeping costs down so that they are better prepared for the challenges of the future.

Anders has extensive insight into business law issues. He serves as a trusted advisor for several Danish companies and also advises international companies. Anders' core focus is on business transfers, M&A and international law, and he often leads a team of Holst advisors representing clients on either buyer's or seller's side of the table. He also serves on several boards.

Over the years, Anders has advised a number of leasing companies on their vehicle leasing models and related tax issues. With more than 30 years of experience as an attorney, Anders brought cases relating i.a. to commercial law before all instances of the Danish Courts, and also cases relating to customs and other tax issues before the European Court of Justice.

Anders has benefitted highly through IR Global and built a solid network, both in Denmark and abroad.

In 2022, Anders was awarded IR Global Gold Membership.

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Going for growth: commercial opportunities in the UK

It promises to be an exciting few months for Paul Beare's clients. 2023 is shaping up to be a pivotal year for the UK. Having shaken off the worst effects of the Covid-19 pandemic, the recent conclusion of the final act of Brexit means that British businesses are once again looking at ways to grow.

That's good news for UK accounting firm Paul Beare Ltd, now an IR Global Gold Member. The practice was started 8 years ago by Paul Beare, who says the recent improvements in the economy are being felt across the board.

"There's no doubt that it's been tough for years for businesses in the UK and beyond," he says. "The pandemic obviously took its toll, coming in the middle of the lengthy divorce process from the EU. Coupled with the war in Ukraine and the pressures that has created, it's not surprising that some firms have found it tough."

Encouraging signs

However, Paul says the resilience and innovative spirit of UK firms are shining through as growth begins to pick up. "We're certainly starting to see greater levels of investment come through in our client base."

That is reflected in a new survey that shows three-quarters of companies say they expect to grow in 2023. The research questioned 300 senior executives from UK companies, with nearly 3 in 4 (73%) business leaders saying they're optimistic about their company's performance, down 7% from 2022, and nearly 9 in 10 (89%) expect their revenues to increase or remain the same in the year ahead.

So, whether that's taking on more staff, investing in tech or developing new products and services, the market is buoyant for smaller firms looking to grow. "And that's where we come in," says Paul.

"There are some familiar issues that businesses face that we help them with: VAT in particular requires care if you're new to the UK, and pricing and cost calculations are massively important to understand, no matter what business you're in. In the UK, if you're selling to the consumer, the end price should include VAT. If you're selling business to business, then it's perfectly acceptable to add VAT to any rack rate you might charge."

Paul's team of accountants and tax specialists work with clients to put in place the right processes to help them grow. "We help them keep an eye on sales and pricing as they begin to grow. We'd advise putting the 20% VAT away in a separate account or perhaps making a watchlist in your accounting system's dashboard to ensure you haven't spent the VAT that you will owe over the reporting period. You don't want to be caught out, unable to pay your VAT liability."

Expert help

These are the kind of considerations that Paul has been helping his clients navigate over the past few years. And, while the firm has many UK clients on its books, Paul's sweet spot has increasingly centred on helping overseas companies set up operations in the UK. It's a thriving area and one where Paul is the resident expert.

He's keen to stress that his practice sits in a thriving ecosystem that can support those looking to set up in the UK. "From a broader perspective, I think it always helps to talk to those in the business that have already made some progress in their journey as a UK-inbound set-up. Also, talk to other bodies that might be able to help you. That might be Austrade, NZTE or the UK's Department for International Trade."

"Their services are largely free, and they can introduce you to local partners like us, along with lawyers, market entry consultants, sales professionals, and the rest. They can all help you land and expand as quickly as possible."

Landmark achievement

And 2023 sees Paul celebrate two major milestones for the business. February 2023 saw the firm reach the landmark 30th employee to come on board. We've come a long way since we launched eight years ago," says Paul. "I started the firm with just myself and two others, and we've since grown to thirty members of the team. And the fact that we have extended our presence beyond the UK too.

That was followed by the firm's award of Gold Status by IR Global. "It's a huge honour," says Paul. "It demonstrates that Paul Beare Ltd is now punching way above its weight in the international business world, and we're delighted that our work with IR Global has been recognised in this way."

The award marks out Paul Beare as the outstanding UK accounting firm within the IR Global network. It also demonstrates PB's dedication to IR Global and its efforts in promoting it across the world. Paul has also been firm in his commitment to the Corporate Services function and has contributed to various publications throughout his tenure, as well as actively participating at conferences and group collaboration calls.

"It's a real vote of confidence in what we're doing," says Paul, who is currently travelling extensively meeting new clients in the US, Australia, New Zealand and beyond. We've clearly carved out a really special niche as the leading accounting form for small but fast-growing businesses who want to enter the UK market.

We guide them through the process of setting up their banking, payroll and accounting functions and are with them at each step on their growth journey. The UK is a great place to invest and we're certainly seeing strong appetite among young businesses across the world keen to access the UK's skills and opportunities.

> "From a broader perspective, I think it always helps to talk to those in the business that have already made some progress in their journey."

> "Three-quarters of companies say they expect to grow in 2023."

Paul has been immersed in the corporate services sector since he was 15 and is still relatively young to be heading up such a business. His vast experience allows him to act as a trusted advisor to clients, taking care of a range of services from opening a bank account to setting up a payroll system.

He developed experience in international accountancy services working for his father's business and, having started and grown his own firm in London and the surrounding area, he has since expanded to Australia and New Zealand. He is currently a resident of Auckland but remains a frequent visitor to the UK and still has strong family and personal ties to the UK and a home in London.

He describes himself as passionate, flamboyant and committed to helping his clients no matter what they need.

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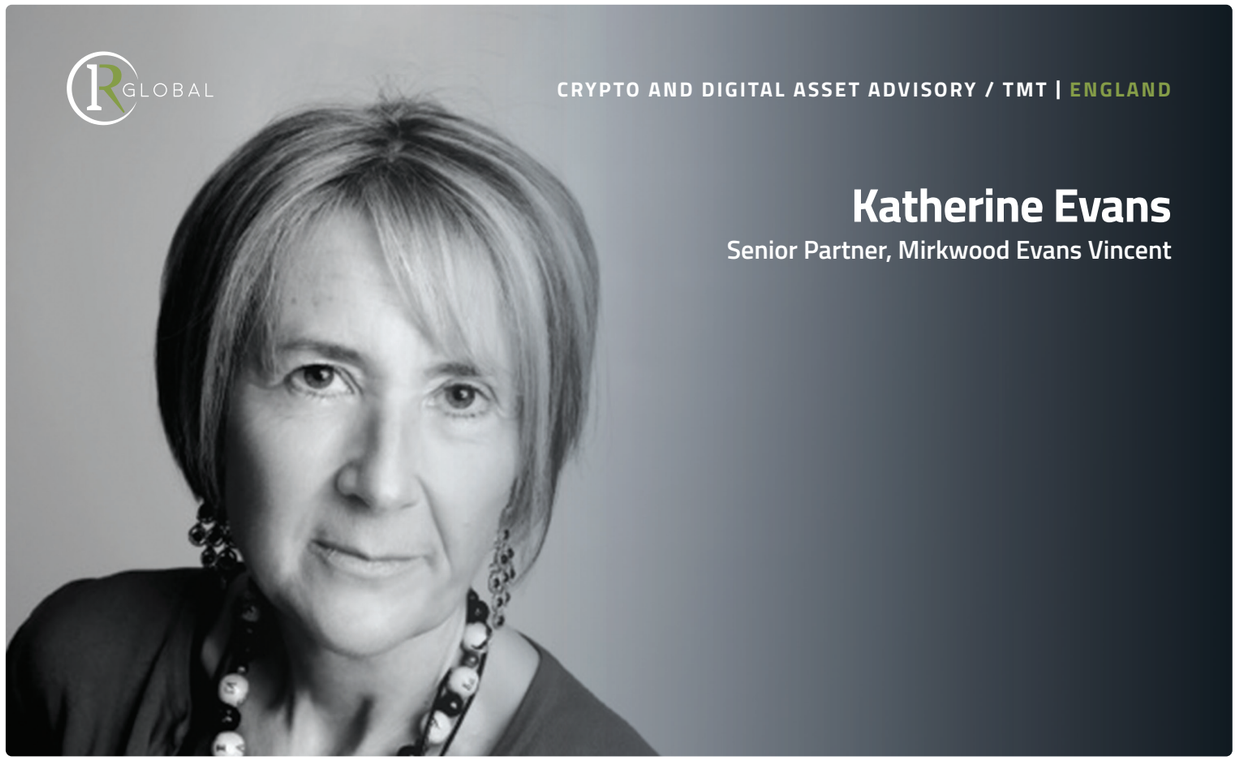
PaulBeare

Paul Beare started his accounting firm 8 years ago and it has since grown to employ 30 people. The business started in the Southeast of England and over the past few years, it has evolved, with team members working remotely from across the UK and beyond. In 2020 Paul moved to New Zealand and has led the team in helping clients navigate a whole range of issues.

The firm's clients include media companies, fintech, manufacturers and lifestyle businesses. They all rely on the team at Paul Beare to help them with the full spectrum of business set-up and administration tasks, from tax, payroll, accounting and banking. In 2022 the practice was awarded Gold Member status by IR Global.



Katherine Evans

Senior Partner, Mirkwood Evans Vincent

Regulation of digital currencies in the UK

What is a digital currency?

On the one hand, a great deal of the money in our economy is digital. Numbers on balance sheets and bank ledgers move around the world with no actual physical paper exchanging hands. However, the value of the currencies is protected to a significant degree by the assets of the governments which back them. It is confidence in the underlying strength of certain economies, which have made currencies such as the US dollar and the Euro among the preferred currencies in international trade.

Some cryptocurrencies called stablecoins have tried to pursue price stability by maintaining reserve assets (including property or gold) as collateral, but further regulation will be required before there is a high level of confidence that the relevant collateral is sufficient to protect investor interests in the majority of cases.

Bitcoin is the most widely used digital currency, but its value is highly volatile. The coin's value increased by more than 10x between March 2020 and April 2021 during the height of the Covid-19 pandemic but then halved again between April and June 2021. 'Stability' is supposed to be maintained due to the difficulty of finding or 'mining' additional coins.

New bitcoins are generated through the successful calculation of the next sequence in a complex algorithm. Huge amounts of computing power are deployed to try and generate the next sequence in the algorithm and 'mine' the next coin. Environmental campaigners point out that in a world where we are trying to reduce carbon emissions, generating electricity in an endeavour which gives rise to no 'real' economic activity is not a sustainable financial model.

So, why are advocates so keen on cryptocurrencies?

Cryptocurrency evangelists propose a world where a decentralised finance system liberates money from political control by governments or specific individuals. Furthermore, if governments do not control the movement of money, businesses and individuals may be able to avoid the tax half of the axiom that "the only things in life which are certain are death and taxes".

The holy grail of a decentralised finance system relies in part on the replacement of the traditional banking system with distributed ledgers, where each transaction has a unique encryption code and all stakeholders have copies of the ledgers, making it extremely difficult to generate a false ledger which agrees with every other corresponding ledger.

It sounds interesting but imagine the vast computing power required for every financial transaction to be held on millions of separate ledgers with each line encrypted. On the assumption that such computing power is not readily available in the medium term, the counter-suggestion is that 'trusted organisations' would hold the master ledgers. Problem: investors, consumers and all users of a financial system or organisation would need a high level of trust in the security of those ledgers and the trustworthiness of the 'trusted organisations' – and this is where the perceived requirement for governments to regulate those trusted organisations and the security of their systems comes back into focus.

Regulation vs Innovation

Governments around the world are rushing to try and regulate emerging financial markets, without appearing closed to the economic advantages of innovation. The UK's focus in common with other major economies is to strengthen its position as a leader in FinTech, recognising that sound regulation will be required (a) to secure trust from institutional investors and consumers, and (b) to address the potential for unregulated financial instruments to facilitate crime and money laundering. On the regulatory side of the equation, January 2020 saw crypto-asset exchanges and wallet providers in the UK become subject to a statutory obligation to conduct anti-money laundering checks on all users of their services.

In April 2022, the UK Treasury committed itself to introduce a new regulatory regime for crypto-assets. That consultation paper (the Paper) was published on 1 February 2023. It focuses on a proposed framework for crypto-assets used within financial services, with the aim being to regulate the businesses that conduct crypto-asset-related activities rather than the underlying assets themselves.

The intention is to create several new regulated or designated activities tailored to the crypto-asset market where these activities resemble regulated activities performed in traditional UK financial services. These would include:

- Operating a crypto-asset trading venue (such as FTX)
- Dealing in crypto-assets as principal or agent
- Facilitating crypto-asset deals
- Operating a crypto-asset lending platform
- Using crypto-assets to facilitate payments for goods and services.

Firms which intend to undertake one of these new activities (including firms already authorised to provide more traditional financial services) would be required to apply for FCA Regulation under the Financial Services and Markets Act 2000. We are told that the grant of new or additional authorisation will depend on the organisation being able to demonstrate the acceptable level of operational resilience and data reporting requirements felt to be required to support the liabilities that businesses would owe to their customers. The regulations will be extra-territorial, thereby helping to avoid a situation where businesses seek to move offshore to evade UK regulations.

The Paper also proposes requirements for a market abuse regime, a principal aim of which will be for regulated businesses to anticipate and mitigate against "pump and dump" schemes, whereby a new coin emerges with no real substance, stays in the market for a limited period and enables a minority of investors to make huge amounts of money before the coin then collapses and becomes valueless.

The Paper also asks interested stakeholders to provide evidence about the operation of a decentralised financial system and the sustainable regulation of crypto-assets. The consultation will close on 30th April 2023. Further regulations are anticipated at the end of that consultation period. Watch this space.

> "Cryptocurrency evangelists propose a world where a decentralised finance system liberates money from political control by governments or specific individuals."

> "The holy grail of a decentralised finance system relies in part on the replacement of the traditional banking system with distributed ledgers."

Katherine's legal practice is principally focused on clients in the international technology and telecommunications sectors.

After graduating from the University of Cambridge, Katherine pursued a first career in marketing and business development, before re-training as a lawyer in her mid-twenties. After completing articles with Eversheds, she was invited to join specialist shipping and international trade practice, Mills & Co, before going in-house to AT&T, where she held several positions, including as lead lawyer for their international outsourcing business.

At the end of 2006, Katherine left AT&T to found Legal Hobbit, the predecessor practice to Mirkwood Evans Vincent, to create a practice focused on the legal needs of technology and telecommunications clients. In recent years, her fintech practice has expanded, flowing from the shift of digital currencies from the fringe to the more mainstream economy and more clients developing business solutions based on distributed ledger technologies.

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Mirkwood Evans Vincent was founded in 2007, and is a UK law firm specialising in Corporate and Commercial Law, with particular emphasis on Technology Law, and Property and Construction Law.

They advise clients in the telecommunications and business technology sectors both in the UK and worldwide. Their expertise in telecommunications and business technology law means they can tackle complex legal cases that are beyond the scope of most other law firms.

In addition to their specialist departments focusing on business technology and commercial property/construction law, they also advise clients operating internationally across a wide range of industries, in a full range of commercial and corporate transactions, from company formations, shareholder, investment and corporate finance agreements, through the creation of standard terms of business and employment contracts; reviewing and negotiating complex multi-jurisdictional customer and supplier agreements; and providing sound business-focussed advice on corporate restructuring options.

VAT post-Brexit: does it need better PR?

VAT is indeed a slippery tax (which is why I love it). But, handled in the right way, we can all make sure that we're in that sweet spot of paying (or not paying, in some cases) the right amount at the right time.

As a VAT practitioner, I always think of VAT as the 'poor relative' in terms of the attention it gets from businesses when compared to other taxes; often only tended to when an issue crops up. With that in mind, here are some key areas to contemplate post-Brexit.

Ostensibly, the news of the Windsor Framework Agreement struck between Prime Minister Rishi Sunak and the EU is a timely reminder that this tax is constantly changing and keeping businesses on their toes.

Following Brexit, many businesses have been caught out, having to register for VAT outside the home territory and paying customs duty more than once. This is an administrative headache and a financial burden. So, how can this be avoided, or at the very least, managed?

Moving B2B goods across borders post-Brexit

Goods moving from the EU to the UK or vice-versa are now imports and exports respectively, whereas before Brexit, these supplies were effectively zero-rated, so, VAT is now chargeable. It is ultimately the importer/consignee that dictates who is liable to pay the import VAT, and this is often dictated by incoterms – a global set of international trade rules. Until Brexit, many businesses paid little attention to whether they were moving goods DDP, but now, it takes on a whole new meaning and responsibility.

If, as a supplier, you are moving goods across borders under DDP incoterms, you will be liable to pay import VAT and duty in the destination country. Without a local VAT registration, import VAT becomes costly. Similarly, goods sourced from the US or China and then sold and moved from the UK to the EU or vice versa will attract customs duties twice. Many businesses have not appreciated this, and so have made no alternative supply chain arrangements to avoid this additional cost.

> "Until Brexit, many businesses paid little attention to whether they were moving goods DDP, but now, it takes on a whole new meaning and responsibility."

Moving B2C goods across borders post-Brexit

For B2C supplies, the UK no longer has the distance-selling simplification (and it has disappeared for EU member states in its original form, too). Instead, we have the import One Stop Shop (iOSS) which, broadly speaking, allows a single VAT registration in the EU, and VAT accounting for all supplies of goods to consumers where transaction values do not exceed €150. Where the value of individual transactions exceeds €150 in each member state, VAT registration is required.

This significant shift has led many UK businesses to 'switch off' UK to EU B2C sales until such a time as the value would make it economical to do so, or until the business has the resources (human and financial) to deal with the individual EU VAT registrations.

Importing/exporting services post-Brexit

Brexit has had less of an impact on services. For B2B supplies, the rules are largely the same, although businesses must now focus more on whether any services (supplied or received) may be subject to the 'use and enjoyment' provisions that would see the place of supply change from being where the business belongs to where the services are used and enjoyed (think electronically supplied services and telecoms). For B2C supplies, the non-union OSS takes over from MOSS.

Financial services and VAT recovery

A great opportunity following Brexit sits with those providing financial services. Typically, the supply of such services is treated as VAT-exempt, meaning that any VAT incurred when making those exempt supplies is not recoverable. However, there is a lovely quirk of the VAT legislation that means when certain financial services are supplied outside the UK (previously outside the EU), VAT incurred when making those supplies is recoverable (known as exempt with credit). So, any UK businesses providing financial services to EU businesses now have an opportunity to reclaim more VAT on their direct costs and overheads.

If you'd like to discuss Brexit or any other VAT matters, get in touch with Kelly.

Coming to the UK

The UK has a Statutory Residence Test (SRT) that determines whether an individual and their family are deemed to be UK tax residents. Many people confuse tax residency with nationality or the country that has issued their passport, for example. They are completely separate matters.

The relevance of tax residency is that it determines which country you have an obligation to pay taxes in. The UK SRT is based on the number of connections the individual has to the UK, which in turn determines the number of days (midnights) the individual can spend in the UK before they become a tax resident.

When an individual is a tax resident in the UK, the default position is that they are taxable on worldwide income and gains in the UK. However, there are planning opportunities for individuals that are not originally from the UK. It is possible to benefit from a special tax regime that enables individuals to only pay tax on income brought to the UK (remittance basis). The earlier the planning can be done (ideally before they become resident in the UK) the greater the benefits this can present.

We would encourage any members with companies or individuals looking to come to the UK to get in touch for advice as early as possible.

> "It is possible to benefit from a special tax regime that enables individuals to only pay tax on income brought to the UK (remittance basis)."

Richard is a Senior Partner and Head of Tax at RPG Crouch Chapman with 23 years of experience. He works with individuals and companies to optimise their tax positions and ensure they access all available reliefs. He advises that "there have been regular changes to UK taxation policy and rules in recent years following the uncertain political landscape. This has created more potential traps for clients to fall into, leading to additional taxes and fines. It has never been more important to engage with dedicated tax experts to remain compliant and minimize taxes."

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Kelly heads up RPG Crouch Chapman's VAT practice with over 20 years of experience. Kelly focuses on planning and advisory work and specialises in VAT exemptions and reliefs. She advises that "any change in business structure, supply chains or the nature of the goods or services sold is likely to impact the VAT profile of the business, with any mistakes potentially having a major impact on the bottom line. VAT, like other taxes, can be daunting, but I aim to break it down into something clear and easy for businesses to deal with."

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RPG CROUCH CHAPMAN

RPG Crouch Chapman, based in Central London, is one of the UK's fastest-growing firms of accountants and businesses. Their clients range from owner-managed businesses to publicly listed companies.

Their approach is to provide their clients with access to leading expertise in all specialisms of Accountancy, whilst also offering them an approachable partner-led service.

They act for many international businesses and individuals, so they can assist companies and individuals looking to operate in the UK whilst working with their overseas representatives to ensure a joined-up service.

Doing business in the uk after Brexit – An update on current UK immigration rules

Introduction

Since 1st January 2021, the full effects of Brexit have come into effect and it is a new UK immigration world for European nationals and businesses wishing to do business or work in the UK. Citizens of EEA countries are now in the same position as any other foreign nationals who wish to work or undertake business activities in the UK.

Previously, under the EEA Freedom of Movement Rules, EEA nationals could work or undertake business in the UK without restriction and with no time restrictions. This is no longer the case.

EEA nationals can now spend up to six months in any rolling period of twelve months in the UK as visitors, but are subject to the restrictions of the "Business Visitor" Rules which prohibit working in the UK and restricts severely what business activities can be undertaken. For example, Business Visitors are allowed to come to the UK to attend meetings, undertake market research, and to meet with clients in relation to work that will then be undertaken exclusively outside the UK. In addition, there are specific areas for particular professions under the Business Visitor Rules, including those related to Permitted Public Engagements.

UK citizens now face exactly the same problems when travelling to Europe for business purposes, as well as having a restriction of no more than ninety days in any one hundred and eighty day period within the Schengen area. In addition, as there is no common European Immigration Law for Business Visitors, the rules vary between each of the twenty-seven EEA countries.

Starting a Business or Investing in the UK

The UK abolished the main business category, known as Tier 1 (Entrepreneur) in 2019 and in February 2022 the Tier 1 (Investor) Visa was abolished overnight, meaning that there is currently no passive investment option to gain residence rights in the UK and no "Golden Visa" or its equivalent. It is clear that the British Government has no intention to bring such a passive investment visa back in the short or medium term.

The Entrepreneur Visa was replaced by the "Innovator Visa" which has proved highly unpopular and little used. This visa required an applicant to prove that he/she is intending to start an "Innovative" business in the UK and is able to obtain endorsement for the Business Plan by one of the Endorsing Bodies, third party Companies licenced by the Home Office for the purposes of considering and granting endorsements. However, the Home Office have just announced that, with effect from 13th April 2023, the Innovator and Start-Up Visas will be abolished and replaced by the "Innovator Founder Visa". This visa will still require an endorsement from an Endorsing Body, but the minimum financial investment requirements have been removed and a successful applicant will be able to undertake secondary employment as well as their own business activities. It is too early to say whether this new route will be more popular than the previous Innovator Visa.

In the above circumstances, potential business applicants for the UK are now increasingly looking at the Skilled Worker Visa route, which

> "There is currently no passive investment option to gain residence rights in the UK and no 'golden visa."

replaced the Tier 2 category. This route requires a UK Company to have been established already and registered with HMRC as an employer, showing evidence of business activities, but such a Company can then potentially obtain a Sponsors Licence to enable it to bring across to the UK a key manager or investor to take up a senior position with the Company. There is no restriction on the percentage shareholding in a business which such a Skilled Worker can obtain, and this route is being regularly used now by foreign investors wishing to relocate to the UK, who are in a position to establish a business in the UK with a resident UK employee, before they acquire residence rights.

Global Mobility Visa

For those individuals who wish to establish businesses in the UK but are not able to follow the Skilled Worker route, there is the possibility of applying for a Global Mobility Visa under the Expansion Worker Category. This enables up to five individuals to come to the UK in the first instance to establish a UK Company, which must be a wholly owned subsidiary of the foreign parent Company.

The Global Mobility Visa does not lead of itself to any right to settlement in the UK. However, if the UK business is established successfully, it should be possible for a successful application to be made for the individual to switch to a Skilled Worker Visa within the period of the Global Mobility Visa, which is issued for one year initially and possibly extended for one further year. Once the individual switches onto the Skilled Worker route, it is a route leading to settlement in the UK after five years.

There are also other possibilities for foreign nationals to be transferred to the UK under the other subcategories of the Global Mobility Visa, namely:

- Senior or Specialist Worker.
- Seconded Worker.
- Service Supplier.

All of these categories have their own requirements, but none can lead to settlement in the UK.

Conclusion

Currently, there is no straightforward UK immigration option for the businessperson/investor who wishes to establish a UK business or invest in a UK Company. The Skilled Worker or the Global Mobility Visa – Expansion Worker are work-around solutions which many practitioners are using in the absence of a user friendly route.

Candidates at a very high level may also qualify for the Global Talent Visa.

Whilst the UK Government is currently focused on dealing with the "small boats" crisis across the channel, it is unlikely that there will be any substantial improvements to UK immigration law for foreign investors in the near future.

> "There is no straightforward UK immigration option for the businessperson/investor who wishes to establish a UK business or invest in a UK company."

Graeme Kirk is a Senior Counsel in the Immigration Department of Ellisons Solicitors, based in the London and Bury St. Edmunds offices. He has been the IR Global UK Immigration Law Expert for many years and has specialised in UK immigration law both for business and private clients since 1980. He is a former Chair of the International Bar Association's Immigration and Nationality Committee and has chaired and spoken at many international immigration conferences.

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Sohan Sidhu is a Partner and Head of Immigration at Ellisons Solicitors and has specialised in UK Immigration Law for over twenty years. He also deals with both business immigration and personal immigration and is a 'Rising Star' of IR Global. He is a member of the Immigration Law Practitioners Association and the IBA Immigration and Nationality Law Committee. He is a regular speaker at conferences and webinars.

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Ellisons Solicitors is a large full-service English law firm, established over 250 years ago, with its main office in Colchester, Essex and other offices in London, Chelmsford, Ipswich, Bury St. Edmunds and Frinton. The firm aims to provide cost-effective legal services of the highest quality whilst retaining its reputation for personal service.

The firm offers a full range of legal services to both businesses and private clients. They specialise in providing full legal assistance to foreign businesses wishing to establish themselves in the UK and transfer personnel to the UK, and they serve private clients wishing to live in the UK. The Ellisons Immigration Team is recognised in legal directories as one of the leading UK immigration law practices. Many other Ellisons lawyers are recognised as leaders in their field by legal directories.

Succession planning: protection for your family

Well-written Wills can afford you the reassurance that your family members are financially and emotionally protected.

Case Study

Trevor dies leaving his spouse, Shirley and two adult children from a previous marriage. Shirley has minimal financial reserves and has a poor relationship with her stepchildren.

Trevor's assets included the main property (£1.8million), personal chattels (£15,000), investments (£500,000), pension (£500,000) and two life assurance policies (£500,000) written in trust for the children.

The only Will Trevor had executed was signed before his marriage to Shirley, passing all his estate to his late wife, Sarah, and failing that, to their children, in equal shares.

The children want their inheritance and are demanding that the property is sold. Shirley does not have the means to buy out her stepchildren's share in the property and simply wishes to remain in the property for her lifetime.

The Will Trevor had executed was automatically revoked on his marriage to Shirley and therefore, without locating a Will dated after, or in contemplation of, the new marriage, Trevor has died intestate (without leaving a valid Will.)

The intestacy rules provide that Shirley would be entitled to a statutory legacy of £270,000, all personal chattels, and half the remaining asset.

Leaving aside the life assurance policies and pension, this would give her an approximate entitlement of £1,285,000. Shirley does not have the right to occupy the property, although the legislation allows her to request that the property is appropriated to her, provided she could "top up" with her own funds if her entitlement under intestacy is insufficient to acquire the entire property. Unfortunately, Shirley does not have the financial means to do so.

The life assurance policy has been written into trust and thus passes outside of the estate to the children and, as it was written into trust more than seven years ago, it should avoid attracting inheritance tax (IHT).

Trevor had not confirmed who should benefit from his pension and, consequently, it will be at the absolute discretion of the pension trustees as to who should receive any entitlement from the pension. The pension does not attract IHT but may attract income tax in the hands of the recipients.

Shirley is advised that she could pursue a claim under the Inheritance (Provision for Family and Dependants) Act 1975 if she feels that the Intestacy Rules do not make reasonable provision for her in all the circumstances. This could lead to costly litigation and a complete breakdown in the relationships between the parties.

From an IHT perspective, when a person dies, their estate has an allowance, referred to as the Nil Rate Band (NRB), which provides that the first £325,000 is exempt from IHT. Tax is levied at 40% on the estate in excess of the NRB. Any assets passing between spouses or civil partners are exempt from IHT.

The legislation provides that if an NRB was not used, or only partially used, on the first death (usually due to leaving assets to the surviving spouse), then the executors of the second spouse can claim the unused portion of the first NRB, as well as being entitled to that second spouse's NRB. So, in many cases, a double exemption can be claimed, amounting to £650,000.

There is also the Residence Nil Rate Band ("RNRB") to consider. This provides an additional £175,000 of IHT exemption when a residence is either passed on to a child/children or grandchildren (including stepchildren). The RNRB is transferable and can also be claimed on the death of the surviving spouse. However, there will be a tapered withdrawal of this additional RNRB for an estate of £2,000,000 at a rate of £1 for every £2 over this threshold. The only available RNRB including Sarah's transferable RNRB will be £35,000.

Offsetting the allowances would give an IHT liability on the children's share of £132,000. The children would receive £883,000.

Shirley will receive £1,300,000 IHT free.The property will likely have to be sold so all parties receive their entitlement.

Estate Planning

Trevor intended to provide for his wife during her lifetime but ultimately wanted his children to receive his estate in the most tax-efficient way. Had Trevor taken advice from a Private Wealth lawyer, this could have been achieved.

My advice would have been to incorporate an NRB Discretionary Trust into Trevor's will so that the unused NRB for Sarah could have been claimed primarily. The executors could have transferred a part of the property up to the value of the NRB into the Trust and allowed Shirley to live in that part for her lifetime. This would not form part of Shirley's estate for IHT.

Moreover, a life interest trust could have been incorporated over the remaining estate, allowing Shirley to have the ability to live in the remaining part of the property for her lifetime and have the right to income over the additional assets. The independent trustees could have had the ability to advance capital to Shirley if they thought it reasonable to do so. On the death or earlier termination of this trust, the remaining assets would have passed to the children.

If Shirley died whilst benefitting from this life interest trust, under the IHT legislation, Shirley is deemed to own the capital value of the underlying trust assets, and these will aggregate for IHT with her personal assets. However, on Shirley's death, her executors would claim the NRB and the RNRB for Trevor and Shirley. As the discretionary trust had, in effect, carved out Sarah's NRB of £325,000, this will have reduced the value of the life interest trust to below the £2m threshold, allowing more of the RNRBs to be claimed.

There would not have been any IHT on Trevor's death initially as the transferable NRB for Sarah was utilised and the rest passed to Shirley, thus qualifying for spouse exemption. Therefore, the approximate IHT liability would be £396,000, giving the children a possible entitlement of £1,919,000. This would have provided £1,036,000 more than intestacy but also furnished Shirley with what she wanted initially – the ability to continue to live in the property.

"Trevor intended to provide for his wife during her lifetime but ultimately wanted his children to receive his estate in the most tax-efficient way. "

Disclaimer

This information is for guidance only and should not be regarded as a substitute for full legal advice.

Alexandra is a Partner in the Private Client department who provides specialist advice on succession planning, inheritance tax planning, trust establishment, implementation and management of the administration of estates, powers of attorney and probate services.
She qualified in 2003 and has since given various seminars and written many articles on topics of interest within her specialist areas over her career.

She also specialises in:

- Wills & codicils
- Deeds of variation
- Court of Protection and incapacity issues
- Assistance with the management of financial affairs

She has also administered estates with assets in Barbados, France, Spain and the USA.

Accreditations & memberships

- Society of Trusts and Estates Practitioners (STEP)
- Solicitors For The Elderly

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Moore Barlow is a UK Top 100 law firm, focused on guiding clients through the legal complexities of personal, business and injury-related issues. They are a law firm that believes lawyers who care the most about clients and their needs get the best results.

Recognised as one The Times' 'Best Law Firms', they offer a breadth of industry-leading legal advice and focus on meeting the needs of affluent individuals, families, entrepreneurs and the leaders of mid-sized businesses & organisations.

This underpins the firm's approach to client service and ensures their lawyers combine expertise and empathy to guide a wide variety of clients through the opportunities, challenges, and sometimes life-altering circumstances that come their way. The firm has offices in Guildford, London (Richmond and the City), Lymington, Southampton and Woking.

Julian Potter
Partner, WP Thompson

The Unitary Patent and Unified Patent Court: the pitfalls and potential

After over 40 years in gestation, the long-awaited EU Unitary Patent package is coming into force soon. This entails:

- A Unitary Patent (UP) that will cover the European Union member countries that have ratified the Unitary Patent Agreement (applicants can obtain the UP by filing a request at the European Patent Office, the EPO).
- A Unified Patent Court (UPC) that will serve as a central body for litigation for both the new Unitary Patents and 'conventional' European patents and applications.

The Unitary Patent package is due to take effect on 1 June 2023. The system will increase the extent of patent coverage in Europe from European patent applications. Unitary patent protection can be requested only for a European patent granted on or after the date on which the Unitary Patent Regulation takes effect.

What is a Unitary Patent (UP)?
The UP is obtained through the EPO, with the prosecution process (up to grant) being the same as the current process for obtaining a European patent.

If a UP is required, then a request for the unitary effect of a European patent must be filed within one month of the grant. It has to be requested by the proprietor(s) (via their EP representatives), so it is essential to ensure that ownership is up to date on the EPO patent.

What is the Unified Patent Court (UPC)?
The UPC is a new European Union transnational court system for determining questions concerning the validity and enforcement of patents (including SPCs), established under the European Patent Convention, and other matters related to applications.

When will the Unitary Patent package happen?
Preparations for implementing the Unitary Patent package are in their final stages and will come into force on 1 June 2023. The opt-out 'sunrise' period will started on 1 March 2023.

Warning!
EP patents that would have fallen under the jurisdiction of national courts and treated in the 'classic manner', will now automatically fall under the exclusive jurisdiction of the UPC unless they are 'opted out' of the UPC system. EP applications may fall under the non-exclusive jurisdiction of the UPC system unless opted out.

Opt-out
EP applications and patents can be opted out of the new UPC system. This should be done as soon as possible if deemed that this system isn't suitable.

Experience and confidence
Many UPC judges will have been judges in patent cases in their national courts. Others will have recently completed role-specific training to prepare them for the UPC. We will have to wait until the court is active to see how balanced and effective it is in practice.

Effect of the UPC
Decisions of the UPC court will be effective automatically in all participating states. This is different from conventional national litigation routes where national patent rights, including nationally-validated EP patents, are litigated on a case-by-case basis in national courts.

Who will be in the UPC?
Initially, the UPC will cover at least 17 of the member states of the European Union (Contracting Member States).

The UK is not participating and so the existing procedure will apply when obtaining protection in the UK. Spain and Poland are examples of non-participating EU Member states, and Norway and Turkey are non-participating non-member states.

However, suitably qualified European Patent Attorneys, including UK nationals, will have rights of audience.

Opt-out sooner rather than later?
It will be possible to opt out of the UPC. We are in the three-month 'sunrise' period, which started on 1 March 2023 and now existing EP patents and applications can be opted out of the system.

It will not be possible to opt out of an application or patent if any UPC proceedings have been started, so those wishing to opt out should do so beforehand.

Delays to registering opt-out.
An opt-out request takes effect when it has been entered on the Register, not when the request is filed. Experience suggests it may take weeks for a request to be registered, and there will be a glut of opt-out requests filed toward the end of the sunrise period.

Should proprietors/applicants opt out?
There are at least two considerations proprietors/applicants should bear in mind:

1) Do applicants/proprietors want their existing EP patents/applications to fall under the exclusive jurisdiction of the UPC?
- If they do, then no action is required.
- If they don't, they must file a request to opt out of the UPC.

2) For EP applications approaching grant at the EPO, applicants should consider if they want to request a Unitary Patent, once the EPO grants the patent:
- If they don't, validation in the countries of interest can take place as normal.
- If they do, a request for unitary effect should be filed at the EPO within one month of the grant date of the patent. A human translation of the entire specification into English (or another EU language if it is already in English) must also be filed.

Validations may also be initiated for countries that are designated in the EP patent, but which are not taking part in the UP. A translation cost will be applicable.

Applicants and proprietors may find it difficult to know if they should opt out. They can refer to scenarios already taken with patent portfolios to determine whether or not to renew a patent or application. Generally speaking, these decisions should consider the value of IP rights to the business.

This decision-making process often identifies the most important rights to opt out. There may also be patents and applications that aren't considered worth maintaining, so proprietors may decide not to opt those patents and applications out.

That leaves some grey area in between. However, the process for determining which rights are absolutely 'opt-out' should also help you to identify those rights that you may decide to opt out purely as a precaution.

As you will appreciate, the decision-making process set out above gradually moves respective opt-out and opt-in thresholds closer together, making that final determination that much easier.

Julian's practice encompasses all physics-based disciplines and reflects his high academic qualifications and technical abilities. Julian's technical areas of expertise include telecommunications and associated technologies including design and fabrication; semiconductors; optics; control systems; software; cryptography; mechanical engineering; nanotechnology; mechanical devices; nuclear physics and imaging; electronics and microprocessor design; voice recognition and text-to-speech conversion and oil services technology.

He has wide experience in drafting and prosecuting patent applications and representing clients before both the UK Intellectual Property Office and the European Patent Office.

Julian is not only a Chartered Patent Attorney, European Patent Attorney and Trade Mark Attorney, but also an experienced Higher Courts Litigator and has been involved in both Patents Court and Intellectual Property Enterprise Court litigation covering a wide range of technologies from cryptographic key exchange architecture (Irdeto v Telewest), design methods for oil exploration drill bits (Halliburton v Smith), GPS applications (GPS industries v Prolink) and biofilms (Innovia Films Ltd v Frito-Lay North America Inc.).

Whilst managing the UK patent department of a leading global cellular telecommunications company, he gained wide experience of the commercial and strategic value of intellectual property on a global scale and regularly advises clients on the development, exploitation and enforcement of a global intellectual property portfolio.

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INTELLECTUAL PROPERTY

WP Thompson is a specialist intellectual property prosecution and litigation firm with years of experience in European patent prosecution. All our European Patent Attorneys are entitled to act before the UPC. Julian, David, Alistair and Stuart are all Chartered Patent Attorneys as well as European Patent Attorneys. Julian is also a UK Higher Courts Litigator and David, Alistair and Stuart are IPEC litigators. David is also a Registered Trade Mark Attorney, and Julian, Alistair and Stuart are also Design Attorneys.

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What Account Freezing and Account Forfeiture Orders mean for you

Since the introduction of the Criminal Finances Act 2017, which made amendments to the Proceeds of Crime Act 2002, law enforcement agencies in the U.K have had new tools to increase their powers to seize and forfeit suspected proceeds of crime and to disrupt money laundering - without the need for prosecution or a criminal conviction.

The Criminal Finances Act introduced Unexplained Wealth Orders (UWOs), Account Freezing Orders (AFrO) and Account Forfeiture Orders (AFOs).

UWOs, also known as 'McMafia Orders', have not had the desired results, with only a handful of cases being successful.

It is evident, however, that AFrOs and AFOs have been utilised much more frequently, with law enforcement agencies able to prevent the dissipation of assets while they are provided with time to investigate the source and intended use of the suspected funds.

Since 2018, it is believed that more than £300 million has been frozen because of AFOs granted by the courts.

An AFO can lead to catastrophic consequences for both individuals and businesses, either from a financial and/or reputational point of view.

Once an AFO has been made, law enforcement agencies can apply for AFrOs to permanently seize any frozen assets.

An application for an AFO is made in the Magistrates' Court under Section 303Z3(2) of the Proceeds of Crime Act 2002 and is usually made 'ex parte' (without notice.) This is to prevent any immediate disposal of the suspected funds.

The applicant is usually a law enforcement agency such as the Serious Fraud Office (SFO), National Crime Agency (NCA), Financial Conduct Agency (FCA), His Majesty's Revenue and Customs (HMRC) or the regional police.

AFOs are usually granted in the first instance before the court. This is because the threshold is very low. The applicant only needs to demonstrate that it has reasonable grounds for suspecting that the funds (held in a bank account, either in whole or in part) meet the following criteria:

- They are 'recoverable property'
- They have been obtained through unlawful conduct
- Or, they are intended by any person for use in unlawful conduct.

The court will grant the order on the civil standard on a balance of probabilities.

The low threshold and the ease of making an AFO have encouraged law enforcement agencies to utilise this method more frequently to freeze accounts and to prevent any suspicious funds from being dissipated.

It will often be the banks or building societies themselves who make a Suspicious Activity Report (SAR) to the National Crime Agency under anti-money laundering legislation, which can often be based on simple suspicious account activity alone.

If the NCA are satisfied with the intelligence, they may then instigate an application for an AFO (or pass it on to other law enforcement agencies to do so.)

The consequences of an AFO are that the account holder, signatory or beneficiary of the account is prevented from making withdrawals or payments for a maximum of two years, as long as there is a credit balance of at least £1,000.

Failure to abide by the terms of an AFO can be dire and may result in contempt of court proceedings and or imprisonment.

Any affected person can apply to the court to vary or discharge an AFO. Variations include:

- The need to pay for reasonable living expenses
- The need to continue with any trade, business, occupation, or profession
- It may also include the need to pay legal expenses to challenge the AFO

The courts will be reluctant to vary or discharge the AFO without compelling and cogent evidence, however.

What is evident is that despite the increase in law enforcement agencies using AFOs, there are a vast amount of AFOs which have been discharged and cases of applicants being successful in preventing any forfeiture of these assets — and having the assets subsequently returned.

The need for early, swift and sound legal advice, as well as the need to deploy a careful and measured strategy is a key ingredient to success.

ABV Solicitors regularly represents individuals, corporations, politically exposed persons (PEPs), high-net-worth Individuals and other people affected by AFOs and AFrOs, such as business associates and family members.

> "The low threshold and the ease of making an AFO have encouraged law enforcement agencies to utilise this method more frequently to freeze accounts."

> "The need for early, swift and sound legal advice, as well as the need to deploy a careful and measured strategy is a key ingredient to success."

Deepak Vij is the head of the Fraud and Complex Crime department at ABV Solicitors. Deepak specialises in high-profile, complex white and grey-collar cases of serious fraud, with over 25 years of experience in this field.

He has consistently been ranked in both Chambers & Partners and Legal 500 Band 1/ Tier 1 in financial crime and has been rated in the Times and Telegraph as one of the UK's top-rated solicitors in serious and complex fraud and money laundering cases.

Deepak is extremely sought-after and is regularly consulted on matters including investigations and prosecutions conducted by the Serious Fraud Office, the Financial Conduct Authority, the National Crime Agency, His Majesty's Revenue & Customs, and other law enforcement agencies.

His work includes advising clients and corporations both pre- and post-charge. These clients include companies, high-net-worth individuals, professionals, law enforcement offices and people in the public eye, both nationally and internationally.

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ABV Solicitors is a leading firm consistently and highly ranked in Chambers & Partners and The Legal 500 for Crime and Financial Crime, as well as being regularly cited in The Times Best Law Firms in the UK

The firm is instructed by clients both nationally and internationally on some of the most serious and complex cases prosecuted in the U.K on a private-client basis. They also provide some services on a public funding basis.

ABV Solicitors consists of a large team of highly regarded and dedicated lawyers. The firm has strong links to leading Barristers, King's Counsel and Forensic Experts to supplement their expertise.

ABV Solicitors have an exceptional reputation for providing high-quality representation covering the full spectrum of criminal offences, with expertise in robustly defending against allegations of serious crime particularly complex fraud, extradition, sexual offences, regulatory law and high-profile cases.

A new horizon for making the United Kingdom ‘the best regulated economy in the world”

The UK Government is preparing to finally unhitch itself from EU law as its Retained EU Law Bill seeks to end the temporary special status of retained EU Law in the UK on 31st December 2023. This is the culmination of the decision by national referendum taken on 23rd June 2016 to exit the EU, and is being heralded as the next step towards asserting the country’s post-Brexit identity.

It has also sparked widespread fears of an imminent “bonfire” of workers’ rights.

The objectives of the Retained EU Law Bill

If the Bill passes into law, it will abolish the special status of retained EU Law by the end of 2023 and will enable the Government, via Parliament to amend more easily, repeal and replace retained EU Law. The Bill will also include a sunset date by which all remaining retained EU Law – numbering over 2,400 pieces of retained EU law across 300 unique policy areas and 21 sectors of the economy – will either be repealed, or assimilated into UK domestic law. The sunset may be extended for specified pieces of retained EU Law, known as assimilated law, but only until 23 June 2026, which is the ten-year anniversary of the referendum.

The removal of the principle of EU supremacy broadly means that domestic legislation would no longer need to be interpreted in line with EU law. As such, the practice of reading words into domestic legislation to conform with the underlying EU law would come to an end.

The Bill also aims to provide domestic courts with greater discretion to depart from retained EU case law and would introduce new tests for higher courts to apply when considering departing from retained EU case law.

The Bill will create powers to make secondary legislation so that retained EU law can be amended, repealed and replaced more easily. The Bill also takes powers to specify, after the sunset, the body of law that will continue to apply in place of retained EU law, and how it should be interpreted.

According to the UK Government, these powers will be used to “ensure that only regulation that is fit for purpose, and suited for the UK will remain on the statute book”. This is remarkably vague and points to a significant transfer of power from Parliament to the Government.

> “The removal of the principle of EU supremacy broadly means that domestic legislation would no longer need to be interpreted in line with EU law.”

Employment law implications

In any view these are seismic changes and will have an immediate potential impact on certain key employment protections that are currently baked into UK employment law and may spell major changes in the workplace.

- Several key statutory frameworks are likely to be affected and will potentially fall away, including these:
- Working Time Regulations 1998 (governing daily and weekly rest breaks for workers, as well as statutory paid annual leave);
- Maternity and Parental Leave etc Regulations 1999 (which provide the right to paid maternity, paternity and parental leave);
- Agency Workers Regulations 2010 (entitling agency workers to the same basic working and employment conditions as if they had been employed directly);
- Part-Time Workers Regulations 2000 (ensuring part-time workers are not treated differently to full-time workers);
- Transfer of Undertakings (Protection of Employment Regulations) 2006 TUPE (which preserves automatic transfer of employment and the protection of employees on the transfer of a business).
- Sections of the Equality Act 2010 (Includes a general framework for equal treatment in employment and occupation and prohibits unlawful discrimination etc on the grounds of religion and belief, disability, age and sexual orientation)
- Health and Safety (Display Screen Equipment) Regulations 1992 (governing safety of workstations and display screen equipment, including the provision of eyesight tests and corrective eyewear to users);
- Sections of the Employment Rights Act 1996 (including the right to receive written employment particulars;
- Management of Health and Safety at Work Regulations 1999 (health and safety at work of workers who are pregnant, have recently given birth or are breastfeeding); and
- Trade Union and Labour Relations (Consolidation) Act 1992 (requirements for collective consultation and notification to a relevant public body in the event of collective redundancy).

> “The so-called “Bonfire Bill” is steadily progressing towards the statute books and seems likely to come into force during 2023.”

All of the above are sourced within retained EU Law and will come to an end unless the government specifically legislates to either preserve or extend them. However even where specific revocations are postponed, their lease of life will come to an end within only 3 more years.

The future

The so-called “Bonfire Bill” is steadily progressing towards the statute books and seems likely to come into force during 2023. Yet there is no clarity regarding the UK Government’s plans for employment law and it seems very unlikely that a formal review of all of the affected legislation will be possible before the sunset happens on 31 December 2023. This suggests that most of the affected employment legislation will be preserved for an interim period at the very least.

It is also noteworthy that any changes to existing levels of employment protection that affect trade or investment would be subject to the “level playing field” provisions of the UK-EU trade and co-operation agreement (TCA) and could potentially expose the UK to enforcement action by the EU.

The threat of a bonfire of fundamental employment rights in the UK is real, but the Government will surely be loath to permit a damaging cliff-edge scenario where the underlying employment laws are revoked on a wholesale basis at the end of 2023.

There will inevitably be twists and turns ahead as the UK seeks to put a legislative seal on Brexit and reclaim the sovereignty of Parliament. It remains to be seen how this will ultimately impact workers’ rights, and how the Government will use these new freedoms to achieve its bold aim of “transform[ing] the UK into the best regulated economy in the world”.

Shilpen has a dual practice focused on dispute resolution and employment law. His expertise as a litigator is in high-value commercial dispute resolution and contentious corporate matters, often involving an international element. He has conducted a number of reported cases and cross-border disputes. Shilpen also advises and represents employers, employees and professional clients in all aspects of employment law. He has particular expertise in acting for senior executives, self-employed professionals and company directors in connection with their entire employment needs, including claims in the Employment Tribunal and the High Court.

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gunnercooke is one of the UK’s fastest-growing law firms, providing a wide range of corporate and commercial legal services to businesses, banks and financial institutions. The firm was founded in 2010 to challenge, improve and evolve the way that legal services are delivered. We believe that the legal industry serves neither clients nor lawyers the way it should. Our founders set about doing things differently from day one, flattening out the traditional hierarchy and establishing a new model based upon flexibility, transparency and freedom.

All gunnercooke lawyers have a client-focused approach and at least 10,000 hours’ practising experience. They also operate on a fixed-fee basis, meaning work is scoped out from the outset and cost certainty is guaranteed. As a result, all clients have access to trusted advisors who have a breadth of experience and knowledge, enabling them to work on all matters from straightforward transactions to complicated cases that require complex solutions.

The firm has been recognised for 44 industry awards and currently employs over 330 legal professionals and management consultants across offices in London, Manchester, Leeds, Birmingham, Edinburgh, Glasgow, Berlin and New York.

Géraldine Brasier Porterie
Partner, Baro Alto

Agathe Barril
Associate, Baro Alto

Cyber risk and insurance in the French and international landscape

The development of the cyber risk

Cybercrime has been steadily increasing for several years, with rates of increase in recorded offences ranging from 10% to 20% from one year to the next. Companies, whatever their size, sector or geographical location, are nowadays facing this new large-scale systemic cyber risk.

In the US, Jerome Powell, US Federal Reserve Chairman, considers cyberattacks on businesses to be the biggest risk to the US economy today. In France, the observation is the same, even more so since the Covid-19 crisis. Cybercriminals have indeed taken advantage of this, with a 400% increase in phishing attacks between March 2020 and February 2021 and a fourfold increase in the number of ransomware attacks between 2019 and 2020.

No more is cyber criminality exclusive to hackers, but has widened to States, terrorists and even white-collar crime. It is not unusual in a process of acquisition to face cyberattacks organised by a competitor or even a partner to weaken the target and lower the price.

Besides consequences that threaten business continuity and financial viability, companies also face liability towards their clients for sensitive data breaches.

While cybersecurity is a threat to businesses, it is also an opportunity for insurers to develop a promising market. In France, this sector represents a turnover of €13 billion and is growing rapidly. It generates €6.1 billion in value and employs 67,000 people. The global cybersecurity market is expected to be worth $150 billion by 2023 worldwide.

Despite the development of cyberattacks and a highly structured and regulated insurance market in France, the French cyber risk insurance market remains a niche market, mainly driven by large companies. Indeed, the recognised market players in the cyber insurance market have historically and essentially come from the United States and Great Britain.

Insurers are now offering cyber risk insurance in specific cyber risk policies rather than traditional policies.

The cyber risk coverage

Cyber risk can be defined as an operational risk to the confidentiality, integrity, or availability of data and information systems.

Cyber risk covers both malicious acts and unintentional incidents. There are several forms of cyberattacks: phishing, ransomware, denial of service or access attacks, sabotage and espionage.

The coverage of cyber risk by insurers raises several questions.

In the context of strong development of ransomware, the insurability of ransomware payment remained uncertain in France until recently. The payment of the ransom by the insurer is not authorised all around the world, due to the risk of violating anti-money laundering rules and anti-terrorist financing reporting obligations (AML/ATF).

For a while, French law did not explicitly prohibit the insurance of cybercrime ransom, however most of the practitioners considered it a breach of AML/ATF regulation.

Since law n°2023-22 dated 24 January 2023, the reimbursement of ransom by the insurer is authorised provided that the victim files a criminal complaint with French authorities within 72 hours. This provision will enter into force as of 24 April 2023.

The law specifies that "In parallel, and in order to break the business model of cybercriminals, the clauses on ransom reimbursement by insurance against cyberattacks will be better regulated and ransom payments will have to be reported to the security forces or to the judicial authority, so that the competent services have the necessary information to pursue the perpetrators. Thus, an insurance clause to cover such a risk could only be implemented if the security forces or the judicial authority have been informed by a complaint."

> "It is not unusual in a process of acquisition to face cyberattacks organised by a competitor or even a partner to weaken the target and lower the price."

It should be noted that a decree issued on 13 December 2022, which entered into force on 1 January 2023, stipulates that "property damage and pecuniary losses resulting from attacks on information and communication systems" are now expressly covered by the insurance code.

As a comparison, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a policy that prohibits the payment of cyber ransom by insurers.

Disregarding the acceptability or not of such payment, a pragmatic consideration is that unfortunately most of the time the ransom costs less than the resulting damages to the company.

Finally, it is important that every company is aware that cyber risk can jeopardise its business activity. Some protection exists, amongst which is insurance (understanding insurers require serious and solid audits and protection measures before granting guarantees).

Our teams in Baro Alto provide advisory work on prevention and insurance covers, we actively work with a network of professionals to assess the risk exposure of the company for its activity and towards its clients and third parties. We audit, advise on insurance, and assist our clients in cyber criminality and its consequences.

Géraldine Brasier Porterie has been a member of the Paris Bar since 1996 and began her career in the litigation and insurance departments of PwC law firm before joining Stehlin & Associés law firm in 2003. She became a partner in 2007 and created and headed the litigation and arbitration department. She created Baro Alto Law Firm with Caroline Joly in 2015.

She graduated from the University of Paris II Pantheon Assas (Master I in Litigation), the University of Paris Pantheon Sorbonne (Master II in Insurance Law) and the Queen Mary and Westfield College London. Géraldine is a member of the AMRAE and also is a member and leads the legal and regulatory commission of the FG2A.

She advises in significant and complex French and international business litigation, particularly in commercial law, economic law, banking and financial law, insurance liability, industrial risks, and banking and insurance regulations before any jurisdiction: civil, commercial or criminal courts, regulatory authorities and European courts. She also practices as a counsel regarding insurance and life and non-life insurance contracts and regulations.

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Agathe Barril joined Baro Alto in 2023. She holds a Master's degree in Business Law Practice and a specialized Master's degree in International Law and Management from ESCP Business School. She particularly practices in commercial litigation, business criminal law, banking and finance law, and insurance law.

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How a talent shortage affects company restructuring

Company restructuring often involves reducing employee numbers, too. In times of crisis, companies can reduce their personnel costs. However, even during an economic boom, personnel adjustments may still be necessary due to technological developments. For example, in Germany, the transition to electric vehicles will almost certainly lead to a loss of some jobs in the car industry.

Talent shortages give employees new power

However, the situation for employees affected by downsizing has changed. Whereas employees in the past often had trouble finding a new employer, this has changed significantly as a result of the talent shortage. In a so-called 'employee's market', many employees will be able to start a new employment relationship immediately after their notice period expires. The open labour market also favours older workers, who often couldn't find employment because of their age, but who can now return to work with confidence.

Training or Severance Pay?

In times of technological change, it is more important than ever to keep learning new skills.

Employee training is vital for a company to stay competitive. The level of training an employee has also determines how easily they find new work when their current job comes to an end.

For this reason, plans for staff reductions increasingly include provisions for further training or even retraining of employees. The resulting costs for the company can be considerable and can lead to a reduction or total elimination of severance pay. This is often supported by trade unions, who correctly consider finding employment with another company to be more important than the payment of a severance package.

The open labour market may also affect the amount of severance pay an employee receives. Employees who find work soon after termination will be inclined to accept customary severance payments, which are in the range of 0.5-1.0 times their gross monthly salary per year of employment, in order to avoid a lengthy litigation process with an uncertain outcome.

What the law says about staff layoffs

Unlike in English or French law, an unlawful termination doesn't lead to an employee filing a claim for damages: it can lead to the termination being labelled invalid.

The consequence is that the employment contract continues, and the employer is deemed in arrears after the notice period expires. This represents a considerable 'default of acceptance' risk for the employer due to the 'fixed debt' nature of the employee's work performance, which the employer can't dispute. This is why companies are often inclined to offer attractive severance payments to mitigate this risk.

From the employer's point of view, for every dismissal – and particularly for mass layoffs – they need to meet the requirements for termination for urgent operational reasons within the meaning of Section 1 of the German Dismissal Protection Act (Kündigungsschutzgesetz), which apply if:

- The company dissolves
- There are no other opportunities to employ them in another vacant job
- The dismissal meets 'Social Selection' (Sozialaushwahl) criteria

In the case of mass dismissals, social selection, according to length of service, age, maintenance obligations and severe disability can be a difficult and error-prone process. While the employer's determinations around these four criteria appear to be simple enough, the difficulty arises when considering which employees are comparable with one another.

In many cases, this question can't be answered with legal certainty, not even with computer programs for personnel reduction. According to case law from the 'Federal Labor Court', only those employees who are employed at the same hierarchical level, who are transferred to the workplace of another employee by way of the right to issue instructions, and who can familiarise themselves there within a short period (maximum three months) are comparable.

Since so-called 'transfer clauses' are agreed upon in many employment contracts in Germany, the group of employees that can be considered for social selection is often sizeable. As a result, it isn't always possible to determine with legal certainty which employees are subject to social selection rules, which can lead to a termination being deemed legally invalid. It's an easy case for an employee to win in court.

Against this backdrop, voluntary programs offered in the case of mass layoffs are vital, as they give employees additional financial incentives for concluding a termination agreement without resorting to legal action.

Finally, in the event of a mass dismissal, a so-called mass dismissal notice must be submitted to the Employment Agency in accordance with Section 17 (1) of the Dismissal Protection Act before notices of termination can be issued and termination agreements concluded.

Staff reductions and collective labour law

If a company that has a works council wishes to terminate a large number of employees, it must respect the information and co-decision rights of the co-determination bodies.

The works council and the economic committee (if any) must be informed early and fully of any measure, and if there are several branches in a company, they must also clarify whether the works council of the respective branch or the company's central works council is responsible.

If the planned staff reduction reaches the scale of a 'mass layoff' as defined by Section 17 of the Dismissals Protection Act (e.g. 10% of the employees in companies with between 50 and 500 regular employees), the following co-determination provisions must be taken into account:

- Negotiation of a reconciliation of interests under § 111 of the Works Constitution Act (Betriebsverfassungsgesetz)
- Conclusion of a social plan under § 111 of the Works Constitution Act
- Participation of the works council under § 17 Par. 3 Dismissal Protection Act

In practice, the involvement of the works council under Section 17 (3) of the Dismissal Protection Act also entails negotiations on a reconciliation of interests and the conclusion of a social plan. Redundancies can only be implemented by the company once the negotiations on a reconciliation of interests have concluded or demonstrably failed. Failure is regularly assumed after the first meeting of the conciliatory body, which is why it is advisable not to wait too long before gathering the conciliatory body in the case of time-critical personnel reduction measures.

To increase the willingness of employees to terminate their employment without taking legal action, it is advised to offer further financial incentives, such as increased severance pay, special payments or even personnel placement measures in a voluntary company agreement. If the employee doesn't accept these offers in a set period defined by the company, they forfeit the right to these incentives and must accept the lower offers in the social plan.

Finally, it is worth mentioning the possibility of training and qualifying employees in transfer companies, which are financially supported by the employment agency. Given the shortage of skilled workers and the open labour market, however, transfer companies have become less important and are often only of interest to low-skilled employees.

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ACURIS is a partnership of highly qualified attorneys-at-law based in central Munich who share one goal: a dedication to find the best solution for their clients in each individual case. They provide counsel to national and international clients on complex legal and strategic issues, and represent their clients in and out of court, as well as in arbitration proceedings. ACURIS offers tailored legal advice, handling each mandate with a high level of commitment and a strong sense of responsibility. Strategic thinking, top-quality legal expertise, specialization, long-standing experience in their legal areas and thorough understanding of complex economic relations enable them to successfully assert their clients' interests. ACURIS advises especially in the fields of Company Law, Mergers & Acquisitions, Employment Law, Commercial Law and Data Protection. They leverage their network of leading law firms and tax advisory firms in Germany, Europe, the United States and many other countries.

Further details about the firm can be found on their homepage at www.acuris.de.

The five ways of financing an acquisition

Financing corporate acquisitions is an essential part of the M&A process, and it can take several forms. As with other forms of financing, such as corporate financing, acquisition financing can essentially be provided by equity, debt and mezzanine capital, as well as by special forms of financing used in acquisition financing – vendor loan and earn-out (or a combination of the two).

Which forms of financing are preferable depends on a business' individual circumstances. While many factors are involved, it usually comes down to the value of the purchase price, available equity, the value of the company and the maximum possible debt capital – depending on the loan-to-value ratio (LTV).

These forms of acquisition financing can be summarized as follows:

1. Equity Financing

One of the most common forms of acquisition financing is equity financing. In order to close the acquisition, the buyer pays the purchase price (or part of the purchase price) using its available liquidity. Although the buyer loses liquidity as a result, no interest is charged on the loan and no collateral has to be provided.

> "Mezzanine financing combines equity and debt elements into a hybrid form of financing and can be seen as a bridge between equity and debt."

Financing can also be provided by the target company in such a way that the liquidity available within the company is at least partially used to pay the purchase price to the vendor. This is done using a so-called upstream loan, which is a loan from the company to the buyer wherein payment on the purchase price claim is made directly by the company to the vendor.

2. Debt Financing

In the of case debt financing, the required capital (the purchase price minus any equity required) is raised by taking on debt from lenders such as banks or other financial institutions. Typically, the company or assets, such as the company's properties or equipment, serve as collateral for the loan. In this respect, there are two possible ways this unfolds:

- Either the company itself becomes the borrower and passes on the loan amount to the buyer by way of a so-called upstream loan, who settles their purchase price vis-à-vis the vendor. In this case, payment is made directly from the lender to the vendor.
- Or, the buyer becomes the borrower and the company or properties and other assets of the company serve as collateral for the buyer's loan.

In both ways, the vendor's involvement in the financing is required. After all, the loan is taken out or the collateral is provided at a time when the buyer is not yet the owner of the company. The vendor, in turn, does not want to relinquish control of the company before the purchase price has been paid. At the same time, the vendor (or vendor's MD) doesn't want to become liable for a loan that benefits the buyer. Therefore, a structured closing process is required in which all risks are taken into account, and which leads to a solution that is acceptable to all parties.

3. Mezzanine Financing

Mezzanine financing combines equity and debt elements into a hybrid form of financing and can be seen as a bridge between equity and debt.

> "By linking the purchase price to the future earnings of the company, the vendor signals that they believe in the company's business plan."

Mezzanine capital providers receive a higher interest rate than conventional lenders because they bear a higher risk. In return, however, they also receive a portion of the company's profits or a significantly higher interest rate, and they may have the right to convert their mezzanine capital into shares in the company.

Mezzanine capital can thus be understood as a collective term for various hybrid financing instruments. Typical forms are subordinated loans, participating loans, convertible loans, convertible bonds, bonds with warrants, profit participation rights (or profit participation certificates) and silent partnerships.

Profit-participation rights, profit-participation certificates, convertible bonds, bonds with warrants and atypical silent partnerships are equity mezzanine instruments, while subordinated loans, participating loans and typical silent partnerships are debt mezzanine instruments.

In the context of acquisition financing, both variants are possible – depending on whether they are structured as debt or equity mezzanine instruments. This involves:

(i) Either the raising of mezzanine capital by the company and transfer of this capital amount to the buyer by way of a so-called upstream loan.
(ii) Or, the raising of mezzanine capital by the buyer.

4. Vendor Loan

The vendor loan is one granted by the vendor of the company to the buyer to finance the purchase, either in full or in part. However, this form of financing requires trust between the vendor and the buyer, as vendor loans are usually granted as unsecured loans. Therefore, the vendor bears the insolvency risk of the buyer.

That being said, the vendor may be able to enforce a favourable interest rate.

The advantage for the buyer is that they do not need capital from a capital market provider, such as a bank. In addition, the vendor loan can also serve as security for the buyer's guarantee or indemnity claims.

On the other hand, the vendor usually benefits from a higher price made possible by the vendor loan, if the transaction is not even made possible only by the vendor loan.

5. Earn-out

Earn-out is a form of acquisition financing in which part of the purchase price is paid later and is subject to the future earnings of the acquired company. The purchase price is usually paid in instalments, depending on the achievement of certain targets or key performance indicators.

By linking the purchase price to the future earnings of the company, the vendor signals that they believe in the company's business plan. A disadvantage is that they continue to bear entrepreneurial risk after closing, even though they no longer have any influence on the company.

Earn-out, as a variable purchase price component, is initially deferred for the buyer (deferral effect) and payment is only made in the event of good performance, and it can even derive from the cash flow of the target company at a later point in time (known as financing function).

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Successfully securing wealth with foundations in Germany

Besides large companies, small and medium-sized enterprises still form the backbone of corporate Germany. Among them are numerous outstanding family-owned businesses, that have grown sustainably over decades or even generations. Guided by shared values such as tradition, vision and innovation, as well as a forward-looking leadership culture, many have reached the status of hidden champions in the global market.

But what happens if a successful entrepreneur does not manage a feasible succession plan for the future of his or her business these days?

Right now, the publicly discussed (even notorious, some may say) case of an extremely successful venture, Bavarian Knorr-Bremse Group, with a turnover of roughly €7 billion, serves as an example of how problematic succession and wealth management can go off the rails, if business succession planning has not been thoroughly engaged.

The late entrepreneur, one can understand from various press reports, drew up a will which provided for a foundation to primarily hold the shares of Knorr-Bremse Group. It was planned, that major stakes in Knorr-Bremse and in Vossloh, as well as a block of Lufthansa shares, should be safely wrapped in a foundation, along with other assets. But the last will, unfortunately, remained a work in progress. Consequently, a dispute sparked in the family about the immense inheritance. Because of emotions or even bad advice, the last will did not provide a clear roadmap but left essential points of design to "post-mortem arrangements". The case is still pending, but could in a worst-case scenario – according to the well-known German paper FAZ – result in taxes of approx. €5 billion – a massive blow even for this outstanding business.

Generalising from that backdrop, the increasing importance of foundations can be vividly illustrated by their statistical development in Germany. While there were only just under 10,000 foundations in 2001, the number has more than doubled to 24,650 foundations within 20 years. In 2021 alone (i.e. even in the pandemic), 863 new foundations were established (cf. https://www.stiftungen.org/stiftungen/zahlen-und-daten/statistiken.html).

No wonder, more and more entrepreneurs are planning to arrange their business succession based on a foundation. The establishment of a foundation is not only something for UHNWI, as in the Knorr-Bremse case. In Germany, § 80 of the German Civil Code (BGB) stipulates the existence of sufficient capital as an essential characteristic of a foundation- however, without specifying the exact amount of this capital cushion. Among experts values between €25,000 and €250,000 are discussed as a minimum threshold. Overall, the equity of about 80 % of the foundations is less than one million €, for about 14 % it's up to 10 million €, and only about 2.9 % of German foundations have even a more substantial capital buffer. Given current market circumstances, we normally advice on a minimum capital of approx. 800,000 € to 1 million € (cf. https://www.stiftungen.org/fileadmin/stiftungen_org/Verband/Was_wir_tun/Publikationen/Zahlen-Daten-Fakten-zum-deutschen-Stiftungswesen.pdf).

Two types of foundations are relevant in the market: a privately organised family foundation or a non-profit foundation (recognising that there are several kinds of hybrids also available).

"More and more entrepreneurs are planning to arrange their business succession based on a foundation."

"Many entrepreneurs simply start "toying" with their business succession too late."

The main reason why a foundation solution can be attractive is that it can be a cost- (and sometimes also tax-) efficient vehicle for typical motives in complex situations. Predominantly, such motives may include providing financial security to family members, avoiding asset fragmentation, avoiding inheritance disputes, and maintaining corporate stability in the long term. Using a broad brush here, wealth management and financial security for family members can be reached as goals based on cascades of distributions to specified beneficiaries (whereby these beneficiaries do not receive any enforceable or forfeitable rights). Given that, asset protection can be achieved by such wrapper structures.

But establishing a foundation to secure business succession is not as easy as it may sound at first. For the careful planning of a smooth succession, it is necessary to deal with material questions at an early stage in order to avoid problems such as those that occurred in the Knorr-Bremse case. Many entrepreneurs simply start "toying" with their business succession too late. Often, even an emergency plan, such as a provision in the will, is not properly designed and safeguarded by adequate triggers. The Knorr-Bremse case for example shows that the entrepreneur had been working on his will since 2015. In the end, it was still not enough. Therefore, it is advisable to draw up a will with a contingency plan right at the beginning of setting up a business, should the worst-case scenario occur (ideally, also already with an eye on the reform of German foundation law in July 2023). Professional advisors such as lawyers, tax consultants and chartered accountants should be pulled into the process early on.

Hope for the best, but plan for the worst – that's the spirit of a true founding father or mother. They do understand the deeper meaning of "semper fidelis".

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Fair competition through transparency: recent developments in German law

The main objective of the German Unfair Competition Act (UWG), which is based on the European Directive against Unfair Commercial Practices, is to enable consumers to make their economic decisions on a sufficiently informed basis.

In addition to the general prohibition of misleading advertising, this is to be ensured by numerous statutory information obligations. These are partly contained in the Unfair Competition Act and partly in other laws, non-compliance with which can be sanctioned as an unfair commercial act under the Unfair Competition Act.

In 2022, the legislator focused in particular on the platform economy and established special information and transparency rules for ratings, rankings and influencers.

1. Transparency of online search results on online marketplaces

Communication and transactions in digital markets are usually automated. Consumers often assume that search engines of online marketplaces display results based on objective criteria.

In fact, search results also contain paid advertising. Furthermore, it is possible to improve the ranking of products through direct or indirect payments.

The law does not prohibit this in principle. The legislator counters the impairment of consumer interests by imposing information obligations on the marketplace operator.

Where a marketplace offers consumers the possibility to search for goods or services offered by different traders or by consumers, the marketplace shall indicate the main parameters used to determine the ranking of the goods or services presented to the consumer as a result of his search query and the relative weighting of the main parameters used to determine the ranking compared to other parameters.

Paid advertising with search results is not generally illegal, but qualified as unfair competition if it is not disclosed that paid advertising or special payments are used to achieve a higher ranking for the respective goods or services.

It has to be stressed that this provision of Section 5b (2) UWG applies to online marketplaces, i.e. services that enable consumers to conclude contracts with various other traders or consumers.

2. Transparency in advertising with consumer ratings

Another transparency regulation concerns advertising with consumer ratings.

Visible reviews of goods and services are an important means of orientation for consumers in online business. Consumers are looking for orientation aids because when buying online they cannot directly inspect the products to be purchased before buying.

As studies show, reviews by other people who have already bought the product are of considerable importance for the consumer's business decision. People do not want to rely solely on the company's advertising statements because they fear a lack of objectivity.

Based on this knowledge, providers try to influence consumer decisions in an unfair way by generating a higher number of positive ratings in a dubious manner and advertising with them.

Known methods are the purchase of positive customer reviews, their delivery via Clickworker or bot programmes, the promise of a service in return for the submission of a review, such as the free delivery of products, the reimbursement or write-off of an invoice amount after the submission of the review, reviews by the company to be assessed itself or its employees, or the submission of a review that does not correspond to any actual experience.

"An influencer who does not receive consideration is not acting for commercial purposes and does not have to label the contribution as advertising. However, the receipt or promise of consideration is presumed."

Based on the new version of the UCP Directive, three new offences have been added to the Annex to Section 3 of the Unfair Competition Act. No. 23c prohibits businesses from giving or commissioning fake consumer reviews.

No. 23b of the Blacklist prohibits the claim that consumer reviews exist if no reasonable and proportionate steps have been taken to verify the existence of such assessments.

If a trader makes available reviews that consumers have made with regard to goods or services, he or she must, according to Section 5b (2) UWG n.F., provide information on whether and how he ensures that the published reviews originate from such consumers who have actually used or purchased the goods or services.

Finally, according to Section 5b III UWG 2022, the entrepreneur must inform whether and how they ensure that consumer ratings made available are checked for their origin.

However, there is no obligation to carry out such a review. Those who do not check anything only have to disclose that in order to fulfil their duty.

3. Compulsory labelling of advertising

The following new regulation is of particular importance for influencers.

Pursuant to Section 5a (1), (2) and (4) of the Unfair Competition Act (UWG), advertising for other companies must be labelled as such.

The main issue for influencers in this context is whether their posts have a commercial purpose.

An act in favour of another's enterprise (advertising) does not have a commercial purpose if the person acting does not receive any payment or similar consideration for the act from the other's enterprise or if he/she allows himself/herself to be promised such consideration.

Therefore, an influencer who does not receive consideration is not acting for commercial purposes and does not have to label the contribution as advertising. However, the receipt or promise of consideration is presumed unless the influencer can credibly prove that they did not receive such consideration. The burden of proof therefore lies with the influencer.

In this context the term "similar consideration" also includes commissions, products sent by the other company which the influencer may use or keep, as well as press trips, provision of equipment or assumption of costs. The consideration may also be temporary. The mere increase of one's own awareness, for example of influencers, through such actions, however, cannot be considered as consideration.

It remains to be seen whether these new regulations will actually lead to the desired improvements in consumer protection.

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Michael's major clients include big department stores and the digital commerce sector. He is certified as a specialist lawyer in intellectual property law and information technology law and as a data protection auditor.

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Corporate management during a crisis: the importance of financial planning

The new year begins as the old one ended – the list of economic crises is longer than ever and the outlook for companies is constant at best. While companies in the service sector are only just recovering from the pandemic, the next growth brakes are already on. Staff shortages and supply difficulties, strong inflation and the rise of interest rates are having a massive impact on almost all sectors, and in recent months the market environment is becoming more and more of a hurdle race for companies.

The dramatic increase in the price of energy and the energy shortage is now hitting key energy-intensive industries in particular. Even though the price of gas in particular has already fallen sharply again, uncertainty about future prices is paralysing production in countries with high energy prices like Germany.

Thanks mainly to massive state aid and adjustments to insolvency law, many companies have mastered the crises so far. The number of insolvencies in Germany in 2021 was at a ten-year low, but they are now picking up again. However, the effects of the energy crisis are likely to be cushioned at most by further aid packages. If production were to be curtailed or even halted, particularly in energy-intensive companies, there would be a shortage of important primary products for other sectors of industry. This threatens to set a dangerous vicious circle in motion.

However, economic difficulties are not solved by state aid, but merely postponed. Now everyone is wondering whether their own company will be affected by the various challenges. This question is easy to answer, because everyone will feel the effects in one way or another – to what extent and what possible solutions are available, that is the more difficult question to answer.

External crises, such as the current ones, often lead to the uncovering of internal weaknesses but crises often start insidiously, and their severity is underestimated. Slowly melting retained earnings or dwindling liquidity reserves are usually countered with short-term solutions such as bridging shareholder loans. Most short-term measures to secure liquidity do not promise long-term success, so an economically efficient fight against the causes remains essential.

Where to begin? In our many years of experience, we found one tool to be imperative to identify possible problems, which is the first step for finding a long-term solution: liquidity planning. Not every crisis is reflected in the (backwards oriented) balance sheet. Rather, there is a need for a dynamic set of figures that can take exogenous shocks into account and model the effects on the company and its business model. It can help to find an answer to the question of whether the problems lie within the company or whether, as the case may be, the entire business model is no longer competitive.

Every business, regardless of its size, should assess, plan and monitor all incoming and outgoing payments on a weekly basis and consolidate the results with the existing liquidity in a second step. Changes that occur in the market, such as the current high energy prices, can thus be incorporated into a simulation and highlight potential liquidity risks at an early stage. This is particularly important because the success of

“The challenge of the present is to initiate change while in crisis mode, and in a highly-strained economic funding environment.”

“Not every crisis is reflected in the (backwards oriented) balance sheet. Rather, there is a need for a dynamic set of figures.”

restructuring projects usually depends on the timely release of liquidity.

The measures to be initiated depend both on the size of the liquidity gap and on whether external or internal factors are responsible for it. Short-term remedy can be provided by prioritising expenses respectively by the timely generation of incoming cash. This might involve cutting back on discretionary spending, negotiating lower prices for essential goods and services, or delaying non-essential purchases just as focusing on early invoicing, requirements for down payments, factoring or the reduction of an inventory level.

Since rapid financing by credit institutions is usually out of the question in an active crisis, financing measures beyond those mentioned above usually require the support of professional partners like FRTG Group’s business consultants and restructuring experts. We specialise in risk identification within companies and the development of solutions based on individual assessments. We check the potential solutions for their interdependencies with the balance sheet and tax laws to exclude delayed financial consequences. After promising measures have been selected, the last step is to support the execution and/or negotiations with potential financing partners and to accompany the following process.

In times of crisis, financing instruments that are not dependent on creditworthiness, such as the sale and leaseback method or asset-based credit, are favoured. This type of internal financing not only closes the acute liquidity gap, but also increases the equity ratio, which in turn sends a strong signal to potential traditional financing partners. This can only be the first step in restructuring the business. In most cases, the urgent need to adapt to a new market reality has not yet been realised or implemented. However, in Confucius’s words: “A man who has committed a mistake and doesn’t correct it is committing another mistake.”

The challenge of the present is to initiate change while in crisis mode, and in a highly-strained economic funding environment. In the future, investment in automation, individualisation and digital business models will determine who remains competitive in the long term and who does not. Only those who see change as an opportunity will emerge from the crisis stronger. Despite the necessity for innovations and change, in order not to grope in the dark, proven business management tools, especially liquidity planning, as well as the support of trustworthy and competent partners, are still essential. We will be happy to accompany you on your individual path.

Andrea has been working for the FRTG Group since her studies in business administration and has been employed full-time since 2012. During her long affiliation with the company, she has driven the digitalisation of the firm and its services. In her daily work, she mainly advises small and medium-sized corporations on business and tax issues. In 2017 she acquired the title of tax consultant and has become the team leader of the tax department at the head office in Düsseldorf. Her goal is to provide each client with the best possible basis for their operational success through specific advice.

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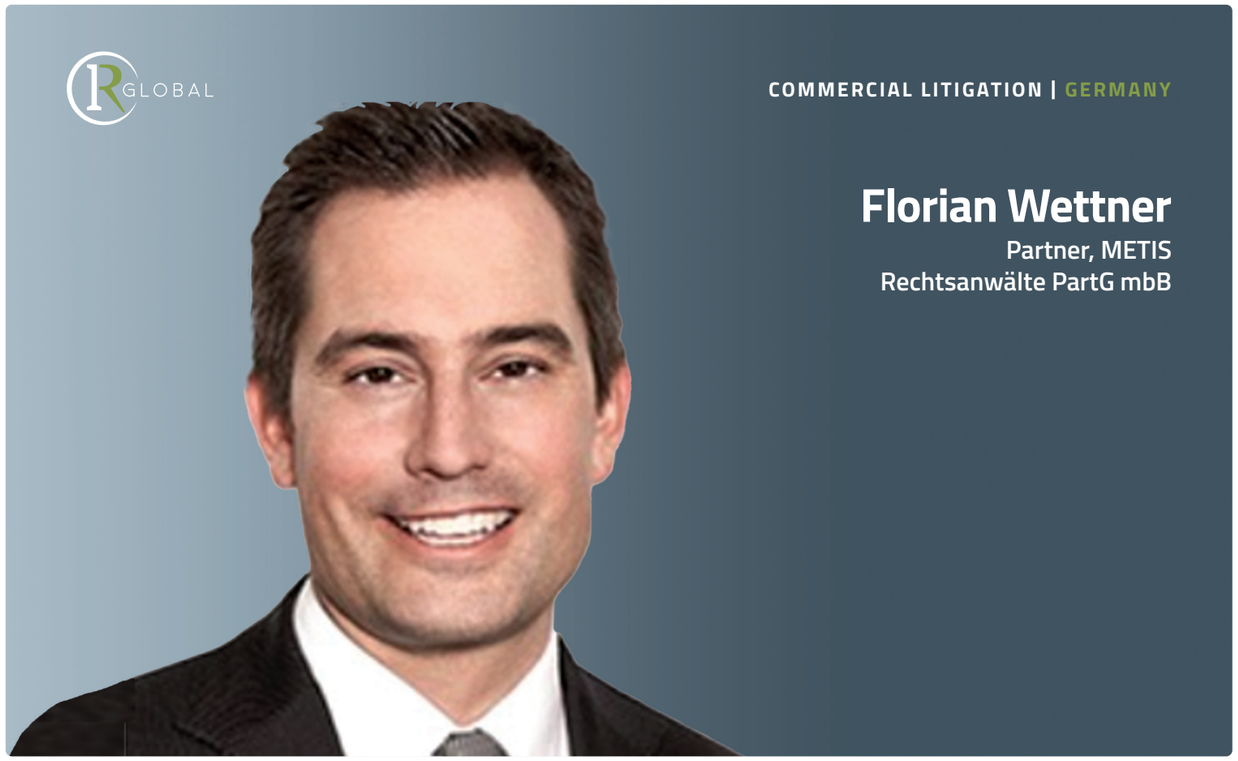

ESG in Germany: act on Due Diligence in Supply Chains

The last few years have seen European legislators give greater importance to social and environmental concerns when defining corporate governance standards. In the EU, the Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464) entered into effect on 5 January 2023. This required affected companies to report on their sustainability goals and the impact of sustainability initiatives on their business.

As for substantive due diligence requirements, the European Commission published the "Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937" in February last year.

In Germany, requirements related to human rights and environmental infringements are already laid down in the Act on Corporate Due Diligence in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (the 'Supply Chain Act') which entered into effect on 1 January 2023. This article gives a short overview of its contents and implications.

Companies affected by the Act

Any company that has its head office, headquarters, administrative office or statutory seat in Germany has to comply with the Supply Chain Act if they employ 3000 or more employees. From 1 January 2024, the Supply Chain Act will apply to companies with over 1000 employees.

However, even if a (foreign) company does not fall under this scope, it might be affected by the Supply Chain Act. For example, the act requires an affected company to agree with its suppliers on control mechanisms to verify the supplier's compliance with the company's supply chain policy statement (see below).

Beyond that, it is expected that many of the directly affected companies will, to some extent, contractually 'pass on' their obligations under the Supply Chain Act to their (smaller) suppliers.

Specific requirements

Under the Supply Chain Act, companies are not required to successfully prevent human or environmental rights infringements. However, they do have to implement organisational and procedural measures to reduce the risks of these happening. Those measures mainly concern the company's operations and those of its direct suppliers and include:

- Establishing "appropriate and effective" risk management
- Appointing an individual responsible for supervising the company's risk management
- Establishing a complaint system to enable stakeholder reports on infringements
- Conduct a risk analysis regarding the company's operations and its direct suppliers at least once a year
- Issuing – based on the yearly risk analysis – a policy statement describing the risk management processes, the identified risk(s) and the company's expectations towards its employees and suppliers
- Setting up control mechanisms regarding its direct suppliers based on the policy statement (see above)

> "Many of the directly affected companies will, to some extent, contractually 'pass on' their obligations under the Supply Chain Act to their (smaller) suppliers."

All of the company's due diligence measures have to be documented and the company has to issue a yearly report covering the relevant risks the company has identified and the company's due diligence measures. The report is to be made available to the public and submitted to the Federal Office for Economic Affairs and Export Control, no later than four months after the end of the business year.

Failure to comply

Failure to comply can lead to fines of up to €800.000 for the company's management and, additionally, fines of up to €8.000.000 or 2% of the annual turnover for the company (whichever is higher).

A company might try to hold its management liable for these fines, based on them breaching their duty to properly organise the company. It might also claim damages from its suppliers based on contractual due diligence provisions. That being said, the cases in which fines can be claimed as damages haven't been comprehensively clarified by German case law yet, and management liability is a particularly controversial topic.

While introducing standing for German trade unions and NGOs in specific cases, the Supply Chain Act does not include a new statutory civil course of action for due diligence infringements that could be invoked by victims of human rights violations occurring in a company's supply chain. The Federal Ministry of Labour and Social Affairs also clarified that violating the Supply Chain Act does, by itself, not give rise to (general) tort claims, as the Supply Chain Act does not constitute safeguard legislation (Schutzgesetz).

Outlook – Directive Proposal

This lack of civil liability is one of the reasons that many NPOs have criticised the Supply Chain Act as a paper tiger – and welcomed the European Commission's Directive Proposal, which aims to be stricter.

The proposal would apply to more companies, including non-member state companies, provided they have generated a certain yearly net turnover in the EU. It would also require companies to implement due diligence measures regarding their whole supply chain, including indirect suppliers as well as customers, provided there is an 'established business relationship'. In order to ensure effective compensation of victims, it also would require member states to implement civil liability for cases of due diligence infringements.

As was the case in the legislative process leading to the Supply Chain Act, the idea of civil liability for infringements has been met with criticism by industry and legal professionals. Critics are pointing out the many unknowns regarding the specific requirements companies have to fulfil to be considered as having taken 'appropriate' risk management measures.

If, as European Commission proposes, due diligence requirements were to be extended to a company's customers and indirect suppliers, this would only cause more uncertainty. Therefore, it remains to be seen how much of the proposal will survive the legislative process this time around.

> "This lack of civil liability is one of the reasons that many NPOs have criticised the Supply Chain Act as a paper tiger ."

Florian Wettner specialises in domestic and international litigation and arbitration with an emphasis on disputes in capital markets and corporate matters. Furthermore, he focuses on advising companies on compliance issues and internal investigations. Florian also has extensive experience in handling complex claims and liability cases related to insurance law (particularly in the area of D&O and other indemnity insurance).

Florian Wettner studied at the universities of Freiburg, Florence and Heidelberg. After obtaining his doctorate, he spent seven years with one of the leading German corporate law firms. From 2007 to 2008 he worked for an international corporate law firm in London in internal investigations. In 2011 he was seconded to the compliance department of a DAX-listed company. He advises clients in German and English and speaks Italian.

The current ranking list published by leading German business newspaper Handelsblatt and U.S. publisher 'Best Lawyers' ranks Florian Wettner as one of the Best Lawyers in Germany for Litigation.

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METIS offers legal consultancy services. Metis is a quality partner for strategic planning and assisting clients in key decisions and complex transactions. Their practice includes domestic and cross-border transactions, as well as representing clients in commercial negotiations and before the German courts.

They focus on the following key areas: Mergers & Acquisitions, Corporate Law, Employment Law and Dispute Resolution

METIS has links to several prestigious law firms in Germany and abroad. This network enables them to provide our clients with comprehensive legal advice across all practice areas and most jurisdictions.

Ireland: a gateway to Europe for foreign investors

Ireland has built a strong reputation globally as a leading destination for foreign direct investment (FDI). This is evidenced by the long-standing presence of a large number of multinational companies in a variety of sectors including technology, manufacturing, life sciences and financial services. Ireland is often ranked in the top 15 best countries for business.

The attraction of Ireland as an investment location can be attributed to low corporate tax rates, a strategic location, and a robust legal and regulatory framework. Ireland's attractive business environment also provides many advantages for companies seeking expansion opportunities.

Ireland is the gateway to Europe

Ireland is in a strategic location for companies interested in doing business in the European market. The country serves as a "gateway to Europe" and is a global business hub. Many companies use Ireland as their EMEA headquarters as it provides access to over 700 million customers.

Following Brexit, Ireland is now in a unique position in that it's the only European country that has EU membership, Eurozone membership and English as a native language of the territory.

Attractive tax environment

The base corporate tax rate in Ireland is currently set at 12.5%. The government charges a low corporate tax rate of 6.25% for revenue that is tied to a business's patent or intellectual property, where the related R&D has taken place in Ireland.

Ireland provides a business-friendly tax environment. Tax initiatives are designed to foster support for business activities, especially those in research and development and innovative projects. Key elements of the Irish corporate tax regime that make Ireland one of the most attractive jurisdictions in which to do business include:

- Tax amortisation for qualifying intellectual property in respect of capital expenditure incurred on the acquisition of intangibles that is deductible against taxable income derived from such intangibles.
- A refundable R&D tax credit regime that gives enhanced tax relief to businesses that carry out R&D in Ireland. R&D tax credits are available to reduce taxable income and credits can also be surrendered to key employees engaged in R&D activities in certain circumstances. R&D credits may also result in cash refunds.
- An attractive holding company regime that includes a substantial shareholder's exemption from capital gains tax on qualifying disposals of shares in subsidiaries.
- Dividend receipts from Irish tax resident companies are exempt from tax and a nil effective Irish tax rate can generally be achieved on dividends received from non-Irish subsidiaries as a result of the 12.5% tax rate for dividends paid out of trading profits and availability of foreign tax credits which can be pooled and carried forward.
- Broad exemptions from withholding tax on interest, royalties and dividends. Generally, no withholding obligation will arise where the recipient is located in a tax treaty country or an EU member state.
- An extensive and expanding double tax treaty network that includes most of the world's largest economies. Ireland has signed comprehensive tax treaties with 76 countries and has implemented the multilateral convention to implement tax treaty-related measures to prevent base erosion and profit shifting (MLI).

"Many companies use Ireland as their EMEA headquarters as it provides access to over 700 million customers."

"Dividend receipts from Irish tax resident companies are exempt from tax and a nil effective Irish tax rate can generally be achieved on dividends."

- Attractive tax regimes for international financial services operations. Ireland has special tax regimes for regulated investment funds and unregulated securitisation companies that are efficient, clear and certain.

Research and development

Ireland's pro-business infrastructure is reflected in the fact that one-third of companies supported by the IDA have been in Ireland for 20 years or more. IDA is a semi-state agency, meaning it is a state-owned enterprise that is technically commercially run. The organisation partners with potential investors to establish operations in Ireland. Funding and grants are also available to those considering foreign direct investment.

Skilled workforce

Ireland is home to one of the most skilled workforces worldwide. A large percentage of young adults complete postsecondary education, and advanced education is more common in the region than in other parts of the world. The country's education system ranks in the top 10 globally and Ireland has one of the youngest populations in Europe.

Brexit

The exit of the UK from the EU has presented numerous challenges for UK businesses that want to expand in Europe. UK businesses have found Ireland a good place to act as their base of EU trading so that they have access to the Single Market. Ireland also has a comparable legal and tax system to the UK.

Structure

If a business is expanding into Ireland, it will need to choose the type of corporate structure it wishes to adopt: Private Company Limited by Shares (LTD); Designated Activity Company (DAC) Limited by Shares; Company Limited by Guarantee (CLG) having a Share Capital; and External Company (Irish Branch).

At least one of the directors must be a resident of a member state of the European Economic Area (EEA) unless the company has a prescribed form of bond or the CRO certificate.

While it is usually preferable to establish a separate legal entity in Ireland, in some cases, the establishment by a foreign company of an Irish branch may be the better option.

Holding Company structure has many advantages to businesses, particularly at the expansion stage of the business life cycle. When the business is branching into new sectors, locating in a new geographical area, or offering new products or services, it needs to give regard to how that expansion will be funded and how to protect the current business from the risks associated with new enterprises.

This structure enables companies to protect the existing business, create a Special Purpose Vehicle for new ventures, utilise the contacts and goodwill of the existing business, manage tax efficiently and access retained earnings in the company for expansion and investment.

James Coyle is an experienced accountant and principal of Coyle & Company. James and his colleagues can assist businesses who want to expand to Ireland with company formation, tax planning and ongoing compliance requirements. Due to the ever-changing business world, the role of the advisor is becoming more and more important. James is focused on providing a high quality of service to clients. He is a technology devotee and is driven to find a better and more efficient way of doing things.

James is a graduate of NUI Galway and a member of Chartered Accountants Ireland. He also holds diplomas in Corporate Finance and Taxation and has served on the board of Credit Unions and entrepreneurial support groups.

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COYLE & COMPANY
CHARTERED ACCOUNTANTS

Coyle & Company is an innovative accountancy practice that offers a full range of accounting, audit, taxation and business consulting services to a wide variety of industries. The firm is a registered auditor with Chartered Accountants Ireland.

The firm provides services in the following areas:

- Audit and accountancy
- Tax compliance and tax planning
- Bookkeeping & VAT compliance
- Payroll reporting
- Company secretarial filings

Established in 1985, Coyle & Company have offered a professional, reliable and first-class service to clients in Ireland and beyond. The firm believes its lasting client relationships are a testament to the level of knowledge and service that it provides.

Coyle & Company pride itself on going the extra mile for its clients and endeavour to exceed their expectations. The firm aims to become the advisor of choice to its clients regardless of the size, type, or scale of the services or advice required.

Legaltech: past the tipping point

Lawyers tend to be sceptical – a character trait which comes in handy when assessing risk, but which is not so handy in the context of innovation. Given our natural bias towards the status quo, it is hardly surprising that, pre-pandemic, lawyers were not at the forefront of technological change. However, lockdowns and work-from-home orders changed all that.

Progress that might have taken months, or even years, took mere weeks as law firms were forced, almost overnight, to embrace existing technology and start thinking about new ways in which computers could aid us in our work.

This is evidenced by the boom in the Legaltech industry which had an estimated market value of $17.18 billion in 2020 and which was expected to grow at a compound annual growth rate of 20.6% from 2021 to 2028.

And, just as we caught our breath, the landscape shifted yet again. Towards the end of 2022, OpenAI launched ChatGPT which, in its own words, is "a large language model (LLM)... trained on a massive amount of text data, allowing it to generate natural language responses to a wide variety of questions and prompts".

It seems certain that LLMs are going to impact how lawyers do their work. But, before considering the future, it is useful to consider how Legaltech is already altering more traditional ways of doing business.

It is particularly interesting to think about the way in which technology can impact the legal profession in the context of another by-product of the pandemic – an increased focus on employee wellness and strategies to avoid burnout. Ideally, technology should be able to eliminate the more time-consuming and mundane aspects of work (not just in the legal sphere) which should, in turn, free up time to undertake more satisfying and meaningful work.

In the M&A context, there are three obvious areas in which technology is already assisting lawyers. These are:

- Due diligence
- Drafting transaction documents
- Transaction management

Due Diligence

Machine learning algorithms are available to assist lawyers in performing due diligence – an often time-consuming and labour-intensive part of a transaction. After all, what is DD other than data analysis?

Historically, the bulk of due diligence work was data gathering, in the sense that lawyers would manually comb through documents to identify a repetitive set of clauses (like Change of Control provisions). Machine learning programmes which have been trained on jurisdiction-specific data sets can now assist lawyers in gathering the data by running a review of the documents in a VDR and identifying pre-selected and specific clauses.

This frees up lawyers' time for data analysis, which has two benefits for a transaction: the work is more satisfying for lawyers, and it adds more value for the client.

> "Technology should be able to eliminate the more time-consuming and mundane aspects of work and free up time to undertake more satisfying and meaningful work."

> "At the risk of drawing back the curtain, a lot of non-legal work goes into managing a transaction."

Drafting transaction documents

Preparing the first draft of a suite of transaction documents is time-consuming and it ranges from preparing the bespoke drafting that may be required in the SPA to the more mundane job of filling out party details across the ancillary documents.

As things stand, there are automated drafting programmes that can assist lawyers in preparing a standardised set of transaction documents in significantly less time than it would take to prepare a pack from scratch. While computer programmes cannot prepare bespoke drafting just yet, they can certainly take the pain out of preparing the stock standard provisions and replicating information across the documents.

It does seem inevitable that LLMs will improve this offering significantly in the future.

Transaction Management

At the risk of drawing back the curtain, a lot of non-legal work goes into managing a transaction. Depending on the size and complexity of a deal, it can sometimes be a job in and of itself.

The traditional low-tech solution to this problem is a checklist in a Word document which is continually updated. There are now numerous transaction management software options available to lawyers which automate much of the mundane and administrative aspects of transaction management. There are platforms in which the checklist is managed online and can be updated continually. Documents can be uploaded to a central repository, so version control is managed via the platform. Depending on how you configure the particular programme, these kinds of platforms can also offer transparency to a client – they can simply log on and view the status of the matter.

Transaction management programmes can also streamline the execution and completion process. Electronic signatures are now ubiquitous allowing documents to easily be executed virtually from a signatory's home, office or holiday destination! On an exit, there is no longer any need to lock founders in a room with a trainee, a pen and 200 documents.

Conclusion

The Law of Accelerating Returns posits that the rate of change in, amongst other things, the growth of technology tends to increase exponentially. Practically, this means that there is no solid ground – there is no comfort zone. ChatGPT and other generative AIs are just the most recent example of this.

As such, the culture of innovation in law firms ushered in by the pandemic must be nurtured and developed to allow lawyers to continue to embrace technological innovation. This helps to improve the service we offer to our clients and the environment we cultivate for our employees.

Patrick is an experienced corporate lawyer and is a Partner in the firm's corporate team. Patrick qualified in 2011 and, prior to joining Wallace Corporate Counsel LLP in 2018, spent several years working in Dublin's largest M&A corporate team. Patrick has advised on several high-profile public transactions in Ireland and regularly advises Irish and international clients on all aspects of corporate and company law.

Areas of expertise include: M&A, corporate finance, private equity and venture capital transactions, corporate governance issues, joint ventures, shareholder agreements and corporate reorganisations and restructurings.

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Wallace Corporate Counsel LLP is a boutique Dublin-based law firm specialising in corporate and commercial transactions. Established in 2011, the firm has established a strong reputation in the Irish corporate legal market.

The firm's clients range from start-up enterprises to public companies and cover a multitude of industry sectors, with a particular focus on technology, education, property, retail, food and beverage and health.

The firm advises on the full range of corporate transactions, in particular on mergers & acquisitions, private equity, debt and equity capital raising and joint ventures, as well as advising on all forms of commercial contracts.

We are also proud to have developed a significant practice in the area of technology start-ups / emerging stage companies, helping to support entrepreneurs throughout the full corporate life cycle from incorporation through structuring, trading and financing matters, and ultimately advising on their exit.

TMT / FDI | IRELAND

Edon Byrnes
Partner,
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AI creditworthiness checks in Ireland and the EU

The draft EU Artificial Intelligence Act, when in force, will classify AI systems that evaluate the creditworthiness of people or establish their credit score as 'high risk' and will require fintech companies in Ireland and the EU to ensure compliance with the proposed regulation relating to high-risk AI systems.

Traditional credit-checking methodologies have tended to rely on a 'check the box' approach to assessing a person's creditworthiness, based primarily on the subject's assets and earnings and prior behaviour related to the servicing of their debt. Advances in AI have meant that technology can now be used to provide a much more nuanced and accurate means of assessing the credit risk of individuals and companies, particularly with regard to income forecasting and spending behaviour, delving down (at least in theory) to a person's browsing history or their Google footprint.

While this provides lenders with more certainty and speed, as well as having the potential to free up funding opportunities that benefit both lenders and borrowers, risks are inherent in the use of this technology, both for its users and those who are subjected to it.

After its introduction in April 2021, the Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (the AI Act) was discussed for the eighth time in the European Council, with several amendments being proposed to it in December 2022. The AI Act may be passed by the European Parliament this year.

As a Member State, Ireland will be obliged to implement the AI Act and to adapt its legislation to conform with the AI Act's requirements once it is enacted. For many of the hundreds of fintech companies operating in Ireland, this means they will be required to adhere to the AI Act's risk-based approach to the regulation of AI, which categorises the risks posed by AI systems as either unacceptable, high, or low/minimal, with different requirements and regulations applying to each category.

> "A key feature of AI is its potential to detract from the freedom and autonomy of those who use it."

AI Systems

In essence, an AI system is defined by the AI Act as a category of software, developed using one or more of a defined set of techniques and approaches which, for a given set of (human-provided) objectives, generates outputs capable of influencing the environments the software interacts with.

A degree of autonomy of the AI is envisaged, recognising that a key feature of AI is its potential to detract from the freedom and autonomy of those who use it or – in the case of people whose creditworthiness is checked - are subjected to it. Such systems effectively take or inform decisions and produce results, which are generated artificially by software.

High-Risk AI systems

An AI system that is intended to evaluate the creditworthiness of natural persons or establish their credit score is one of several AI systems that is specifically categorised as 'high risk'.

This means that Irish fintech companies (as well as those in other EU member states) who use an AI system to undertake creditworthiness checks would be required to comply with several requirements set out in Chapter 2 of the AI Act. While several of these requirements may already be met by responsible operators under their obligations (in terms of data protection, money laundering and consumer protection regulations) most existing practices will not be sufficient and will require adjustment.

Fintech companies that use AI systems to undertake creditworthiness systems would have to abide by the requirements outlined below:

- A comprehensive risk management system will be required. It will have to be regularly and systematically updated, and identify, assess, and manage all risks, including residual risks associated with the use (or foreseeable misuse) of the system. It would have to communicate the residual risks to its users.
- Where the AI system involves training models with data, those systems will need to be developed based on data sets that comply with specified criteria. This requires that the data sets be 'relevant, representative, free of errors and complete', and take into account anything particular to the specific geographical, behavioural or functional setting within which the high-risk AI system will be used.
- Technical documentation related to the AI system must demonstrate that the system complies with the requirements imposed on high-risk AI systems. At a minimum, it will require all information to be provided in Annex IV of the AI Act.
- The capacity for record keeping and event logging while the system is operating will be required, and logging capabilities will have to conform with recognised standards or common specifications.
- The operation of all high-risk AI systems must be 'transparent' and be accompanied by instructions for use, the requirements of which are comprehensively set out in the AI Act. This includes a requirement to disclose their level of accuracy, robustness and cybersecurity.
- Human oversight will always be required, and the AI Act sets out the terms, including that a person may decide not to use the system or disregard, override or reverse the output it gives.
- High-risk AI systems must provide 'appropriate' accuracy, robustness and cybersecurity, and perform consistently throughout their lifecycle.

Chapter 3 of the AI Act also imposes a range of additional obligations on providers, users, importers and distributors of high-risk AI systems. It will require a documented system covering:

- Strategy for regulatory compliance
- Thorough design and design verification measures
- Quality control measures
- Testing, specifications, and standards
- Systems for data use and management
- Post-market monitoring and reporting
- Resource management and accountability

Ireland

In Ireland, where several hundred fintech companies operate, the government has prepared a National Artificial Intelligence Strategy, which recognises both the advantages to be gained from the implementation and use of effective AI systems in Ireland, as well as the potential pitfalls that are inherent in AI: under-regulation, intrusiveness and low trustworthiness.

The Irish strategy document largely replicates the risk-based approach apparent in the AI Act. Institutions that undertake creditworthiness evaluations using AI systems will be among the many that should be preparing for further regulation.

> "A person may decide not to use the system or disregard, override or reverse the output it gives."

Edon is a partner in the Ogier Leman Corporate team. His practice covers a range of corporate transactional and advisory work, commercial contracts, equity finance, corporate structuring and reorganisations and he has worked closely with clients in the healthcare, software, facilities and renewables sectors.

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Ogier Leman Solicitors are Ireland's most innovative full-service law firm. They specialise in Financial Services, Real Estate, Commercial and Technology. Their vision is to be a unique legal business providing an outstanding client experience by the most efficient means. They have four key dedicated departments: Real Estate, Corporate, Dispute Resolution and Employment.

Awards

Ogier Leman Solicitors were recognised as one of the Top 20 Best Workplaces in Ireland in 2021.

This is their fourth year to be named as a top Irish workplace, once again moving up the rankings in the Best Small Workplace category, which is assessed through Great Place to Work's robust 'Trust Index©, employee survey and a thorough 'Culture Audit©, assessment of their policies and practices.

TAX (ACCOUNTANTS) | ITALY

Ferruccio Bongiorni

Founder and Managing Partner,
Studio Bongiorni

Tips for business in Italy: how to set up a company

With a population of more than 60 million, and a GDP per capita of more than $30,000, Italy represents one of the world's top economies and markets to invest in.

The renowned fame of the brand "Made in Italy" is well deserved due to several factors, such as the role of a key global player in manufacturing and export, the highly competitive machinery sector, excellence in R&D and innovation, the skilled and competitive workforce together with an unparalleled cultural offer and the country brand. That's why Italy represents the perfect European hub for FDI.

Italy offers a wide range of choices of legal forms for setting up companies depending on the company's organisational model, its commercial objectives, the level of capital to be committed, the extent of liability and tax and accounting implications. There are two main types of companies:

- Limited liability company (S.r.l.)
- Stockholding companies (S.p.A)

The liability of the shareholders/quota holders is limited to the amount of their contributions to the company.

The main differences between the two legal forms are related to:

1. Corporate Capital:

The Law establishes different minimum thresholds for each kind of company:

- The S.p.A. company structure has a minimum share capital of £50,000 and shares do not need to reflect overall investment in the company. Shares are freely transferable, making it suitable for substantial investments and being listed on the stock exchange
- The S.r.l. has a minimum capital of £10,000 with quotas as the capital, and at least 25% of the capital must be paid to the directors. The transfer of quotas may be limited or prohibited, but shareholders can withdraw and receive reimbursement for their quotas

2. Equity contributions:

In both S.p.A. and S.r.l., the equity contribution can be made in cash as well as in-kind, subject to the evaluation of an expert

3. Voting rights and special rights:

- The voting rights in S.p.A. might not be proportional to the percentage of corporate capital subscribed by the shareholders and the by-laws can provide different types of shares
- in the S.r.l. the voting rights are proportional to the percentage of corporate capital subscribed by the quota holders

4. Governance:

- the S.p.A. can establish different governance models: traditional system, one-tier system and two-tier system
- In S.r.l., different management structures are allowed, including appointing a Sole Managing Director, a Board of Directors, or a management structure where Directors can exercise their powers jointly or separately, or both, depending on the corporate governance model

> "A corporate income tax equal to 24% is applied to all income produced by companies and institutions."

Accounting requirements

There are two main compulsory accounting systems available depending on the company's features and the amount of income declared in the previous year: one ordinary and one simplified for small entities with a simple organisation. The ordinary accounting scheme is compulsory:

- for a company providing services with a turnover exceeding €500,000 yearly
- for companies with a turnover exceeding €800,000 yearly

Companies with share capital are also required to prepare their annual Financial Statements, and to file them with the Companies Register, within 30 days of their approval by shareholders.

Annual accounts must be presented to and approved by the shareholders' annual general meeting within 120 days from the company's financial year-end.

Audit requirements

Auditing is required for:

- all companies exceeding two of the following limits for 2 consecutive years:
  - total assets of €4,000,000
  - sales and services revenues of €4,000,000
  - an average of 20 employees during the year
- all companies which control another company subject to statutory audit
- all companies drawing up consolidated Financial Statements
- listed companies
- banks, stock broking companies, fund management companies, and regulated financial institutions

In Italy, the statutory audit can be assigned to a Board of Statutory Auditors, a sole auditor, an audit firm or an external auditor. Under some conditions, the audit can be performed by the Board of Statutory Auditors which may be in charge of both Supervisory activities, including compliance with the law and the Articles of Association, and the statutory audit of the financial statements.

Alternatively, the statutory audit of the financial statements (including the quarterly checks on the accounts) can be assigned to an audit firm or an external auditor.

Corporate income Tax (i.e ires – Imposta sui reddit delle societa)

A corporate income tax equal to 24% is applied to all income produced by companies and institutions.

The tax period is generally 12 months, and payment is made in three instalments, with two initial payments and one balance payment.

Limited liability companies, cooperative companies, and mutual insurance companies resident in Italy, as well as public and private institutions, are liable to pay IRES.

Non-resident companies and institutions are also liable if they produce income in Italy or have a branch in Italy. Companies and institutions are considered residents if their registered or administrative offices are in Italy or if their main activities are located in Italy. Withholding taxes are generally deductible from IRES.

The profit taxable to corporation tax (PCTCT) is determined on a worldwide basis by applying increases and reductions to profit as stated in the statutory financial statements prepared in accordance with Italian accounting standards. To calculate taxable income, expenses incurred for company activities are fully deductible, but expenses incurred for both company and private purposes are only partially deductible.

Only costs recorded in the profit and loss statement can be deducted for tax purposes. Some expenses are fully deductible, some are partially deductible, and some are not deductible.

Transfer pricing rules are based on the OECD guidelines, and transactions subject to transfer pricing rules are taxable or deductible based on the Arm's Length principle. Dividends received by Italian entities are subject to taxation, while capital gains on shareholdings meeting specific conditions are largely exempt.

Ferruccio Bongiorni is the Firm's founder and managing director. Ferruccio is a Dottore Commercialista (qualification comparable to Certified Public Accountant) and he provides tax and accounting services to national and international companies.

Over the years he has earned significant expertise in corporate tax consultancy in particular company reorganisation, mergers and acquisitions, and generational transfers. Ferruccio has assisted a high number of companies operating in several industries, often serving them as a de facto in-house counsel for the most complex administrative matters. Clients appreciate Ferruccio's ability to give practical corporate advice specifically tailored to their unique needs.

He is also a member of the Board of Statutory Auditors of important national and international companies. He believes in collaboration among professionals and the empowerment of young people, as the key to delivering quality service and expanding the company.

Ferruccio speaks Italian, English, Spanish, and French.

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Studio Bongiorni

Studio Bongiorni is Milan's number one young firm providing consultancy services for medium to large-sized companies.

Studio Bongiorni is a tax firm boutique which operates in an international environment and provides corporate and tax services to medium and large-sized companies as well as multinational groups.

The young and dynamic organisation is focused on providing high-quality tax services to the firm's Clients thanks to its efficient and professional approach and its expertise acquired over the years in both national and international tax matters. Our business can start with ordinary tax and accounting services (tax declarations, ordinary and consolidated financial statements), or we can enter a second stage and develop extraordinary business, such as:

- Corporate reorganisation
- Optimisation of the tax burden
- Tax benefits
- Audit of accounts
- ESG and sustainability report

In our firm, the founding values are merit, commitment, trust and respect, which is why each professional supports the client with the utmost commitment and active participation.

Five mistakes to avoid while negotiating with an Italian company

Country Economic Snapshot
With strong integration in the EU value chain, Italy is the 2nd largest manufacturing economy in Europe, the 5th largest globally, and the 8th largest exporter in the world.

The key sectors of the Italian economy include machinery and robotics, engineering, design, automotive parts, chemicals, pharmaceuticals, fashion, textiles, and food.

Foreign companies can find extensive networks of SMEs and manufacturing clusters in Italy, able to supply high-quality intermediate products specifically tailored to meet customers' needs in a wide range of sectors, including industrial machinery, metals, chemicals, plastics, paper, ceramics, textiles, and marine industries.

However, foreign enterprises should be savvy in mitigating possible legal risks while doing business with an Italian company, particularly regarding contract risks, since even minor mistakes can result in lengthy and costly disputes.

Five mistakes to avoid while negotiating commercial contracts with an Italian company
Negotiating a business contract with an Italian company can be a challenging experience. Italian culture and traditions can greatly influence business negotiations, and the Italian legal system is not famous for being business-friendly.

Here are five common mistakes that should be avoided when negotiating a business contract with an Italian company.

#1: Failing to understand Italian business culture
A large number of Italian enterprises are family-owned SMEs. Italians place a high value on personal relationships and trust. Negotiations may require sufficient time and a cooperative approach, with a focus on building a relationship and finding a mutually beneficial solution.

In addition, Italians tend to be indirect in their communication style, and understanding non-verbal signs and body language may be useful to conduct a successful negotiation.

#2: Failing to consider the legal and regulatory environment
A wide range of legal and regulatory requirements must be considered when drafting an agreement that is relevant to the Italian jurisdiction. Failure to consider these requirements can result in a contract that is unenforceable or exposes one or both parties to legal liability. For example, commercial contracts may be subject to laws and regulations governing consumer protection (or other "weak" parties, including commercial agents and subcontractors), product liability, intellectual property, antitrust, and formal requirements of the contract itself.

It is important to ensure that the contract complies with all applicable laws and regulations and that the language used in the contract is consistent with legal standards.

#3: Failing to address possible exceptional events
In spite of the Covid-19 outbreak, the war in Ukraine, and skyrocketing energy costs, it is not yet uncommon to see commercial contracts failing to address, in a proper way, the occurrence of exceptional events that may affect the fulfilment of the obligations envisaged by the contract. More specifically, force majeure clauses should be included in the contract to govern cases where performance has become (temporarily) impossible due to an event beyond one party's control, and hardship clauses regarding cases where, due to an event beyond one party's control, performance is still possible but much more burdensome.

> "Culture and traditions can greatly influence business negotiations, and the Italian legal system is not famous for being business-friendly."

The United Nations Convention on Contracts for the International Sale of Goods (CISG – Vienna Convention of 1980) governs force majeure when it is not addressed in the contract. However, the CISG is not always applicable. When it is, the solution envisaged by it is not necessarily suitable for the specific case.

Additionally, the CISG does not provide any remedy with respect to possible cases of hardship. In this respect, the Italian civil code provides that the party affected by an extraordinary and unforeseeable event, in which performance has become excessively onerous, can judicially demand the termination of the contractual relationship. The party against whom termination is demanded, if it has an interest in maintaining the contractual relationship, may offer to modify the conditions of the contract equitably. Therefore, based on the Italian civil code, the party affected by the extraordinary event may not request and/or obtain a modification of the contractual conditions but only withdraw from the performance of the contract, invoking its termination before the court of competent jurisdiction.

#4 Failing to include a unilateral termination clause
The parties to a long-term commercial contract sometimes find themselves "trapped" in the relationship for lack of a provision entitling either party to unilaterally terminate the relation, at will or upon the occurrence of a contractual breach.

Regarding this last point, it is worth noting that, to be effective under Italian law, the early clause must precisely and clearly indicate what are the contractual obligations whose non-performance results in the termination of the contract. Therefore, a clause containing a generic reference to the non-performance of all contractual obligations will not entitle termination, should any generically and comprehensively considered breaches occur.

#5 Failing to include a suitable and effective dispute resolution mechanism
One of the biggest mistakes that can be made is failing to include a properly drafted dispute resolution clause. Litigation in Italy is often considered extremely challenging, if not a nightmare. There is still limited use of alternative dispute resolution methods, such as mediation or arbitration. The state judicial system is widely known for its slowness, as court proceedings often take years to resolve. This is due to the Italian court system being overburdened with cases and to the overly complicated legal procedures and rules laid down by the legislator.

In the framework of the Next Generation EU (NGEU) program, Italy has adopted its National Recovery and Resilience Plan (NRRP), a large-scale plan of action (worth around €235 billion up to 2026) aimed at modernising the country in different sectors, including the judicial system. The implementation of the NRRP is underway, and some reforms in the civil judicial system came into effect at the beginning of 2023. It is not yet possible to predict whether such reforms will solve the long-standing problems of the justice system. However, a cautious approach is imperative, and it is absolutely recommended to take any measures to properly handle possible disputes arising from the contract.

Tommaso Mancini specialises in national and international commercial transactions, with a particular focus on commercial contracts, antitrust, e-commerce, and litigation.

Tommaso advises Italian and foreign SMEs and multinational groups in many industries, including machinery, robotics, automotive, chemicals, pharmaceuticals, fashion, food and beverage.

He regularly holds lectures and seminars on legal matters related to his practice areas.

Tommaso is a member of the International Distribution Institute and a member of Italian International Lawyers (Court of Appeal of Ancona chapter).

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BACCIARDI PARTNERS
legal tax finance

Bacciardi Partners is a business law firm based in Italy focusing on cross-border commercial, corporate and M&A transactions, employment, tax, and customs.

Bacciardi Partners offers almost fifty years of proven experience and operates with a team of over thirty who, for the last twenty years, have exclusively concentrated on working at an international level, through the handling of challenging and complex multi-jurisdictional cross-border transactions, deals and disputes.

More specifically, Bacciardi Partners provides services in the practice areas listed below:

- Domestic and International Trade and Business
- Domestic and International Commercial Contracts
- Tenders and Procurement
- Ship and Yacht Registration and Management
- Real Estate
- Inheritance and Trust
- Formation and incorporation of companies and joint ventures in Italy and overseas
- Domestic and cross-border corporate transactions
- Mergers and Acquisitions transactions
- Intellectual and Industrial property and Anti-Counterfeiting matters
- Employment issues as well as expatriate and inpatriate planning and structuring
- EU and International tax law, Transfer Pricing, International strategic tax planning
- VAT in cross-border transactions
- EU Customs matters
- International Transport and carriage of goods
- Domestic and International Litigation and Arbitration

Bacciardi Partners also maintains an M&A division which strictly deals with the management of Mergers and Acquisitions and Corporate Finance.

How to set up and prepare solid Transfer Pricing documentation under Italian regulations

Transfer Pricing is a discipline aimed at ensuring that companies belonging to a multi-national enterprise group ("MNE Group") determine, for tax purposes, the transfer prices applied to their intra-group commercial and financial transactions at arm's length, and, consequently, that a fair share of taxable profits is allocated between the different countries where the MNE Group operates.

According to Italian tax laws, Italian taxpayers can prepare and adopt a transfer pricing documentation ("TPDOC") in order to demonstrate vis-à-vis Italian tax authorities that prices applied to their intra-group transactions comply with the OECD arm's length principle.

In Italy, TPDOC is not mandatory. However, an Italian taxpayer who adopts TPDOC can benefit from a special penalty protection regime in case Italian Tax Authorities make adjustments to the prices applied to intra-group transactions and, thus, increase the business profits to be subject to tax in Italy.

The Italian TPDOC consists of two sets of documents, namely a Masterfile and a Countryfile (in Italian named "Documentazione Nazionale"):

- The Masterfile, on one hand, gathers information about the MNE Group, and it describes its business operations, global value chain, intangibles owned, and intra-group financial activities.
- The Countryfile, on the other hand, gathers information about the Italian resident company or the Italian permanent establishment ("hereinafter "PE") of a foreign company, and it analyses the transactions occurring with foreign-related entities in view of supporting intra-group transfer prices applied by means of economic analyses (so-called benchmark studies). Italian TPDOC regulations were enacted in 2010 and were amended in 2020.

> "An Italian taxpayer who adopts TPDOC can benefit from a special penalty protection regime ."

The following are the main novelties recently introduced.

The first main novelty requires that, as of the fiscal year 2020, the Italian subsidiary, as well as the Italian PE of a foreign company, belonging to a foreign MNE Group must prepare the Master File in addition to the Countryfile, or submit the Masterfile prepared by the MNE Group.

The Masterfile must be formed according to the OECD standards, taking care, if necessary, to adapt its structure and contents to the provisions set forth by the Italian TPDOC regulations.

The aforesaid requirement may be particularly burdensome for those entities belonging to a foreign MNE Group which has not put in place any Masterfile or is unable/reluctant to provide all the necessary MNE Group-related information to allow the Italian subsidiary drafts its own Masterfile.

The second main novelty is the need to provide the TPDOC with electronic signature and time stamp before the date of filing the annual tax return related to the fiscal year concerned.

The aforesaid requirement is not set forth by the OECD TP Guidelines. It has a direct impact on the timing by which the TPDOC must be finalised and ready, and it has arisen some concerns by Italian taxpayers from a procedural/operating perspective.

Therefore, it is now essential that Italian entities, which intend to draw up a TPDOC fully compliant with Italian TPDOC regulations, begin duly in advance compared to the date of filing of the annual tax return related to the fiscal year concerned.

For those companies approaching the Transfer Pricing matter for the first time, it is advisable that they carefully consider this matter from the outset when they structure the MNE group and the intra-group transactions occurring between the various related entities.

Besides that, it is also very important that the aforesaid entities have a robust and well-drafted set of intra-group contracts.

For those companies that, instead, have already implemented a TP policy and/or have already adopted the TPDOC, it is advisable that they periodically verify (at least on an annual basis) that the TP policy, the intra-group contracts, and the information contained in the TPDOC reflect the actual conduct of the parties involved in the intra-group transactions.

Arranging and keeping updated an appropriate intra-group TP policy as well as having a solid TPDOC is useful for Italian entities (subsidiaries/PEs) belonging to a foreign MNE Group to:

- avoid transfer pricing adjustments by Italian tax authorities on the costs incurred and/or revenues earned by the Italian entity (subsidiary/PE);
- monitor and, to the maximum extent possible, reduce the tax risk associated with intra-group transactions; and
- ensure that the Italian entity maintains its business value, also in view of a possible future acquisition by third-party investors.

Our firm has developed and keeps the necessary expertise and experience to assist MNE Groups which hold subsidiaries / PEs in Italy and wish to adopt a TPDOC in compliance with Italian regulations.

Tommaso is a partner at Bacciardi Partners and the Head of its International Tax Department as well as of its Customs and Transport Law Department. He specialises in the various fields of international taxation, such as Transfer Pricing, double tax treaty application, tax residency of corporations and individuals, taxation of Italian resident companies and controlled foreign companies (CFC), existence and profits attribution to permanent establishments, taxation of domestic and cross-border M&A transactions as well as taxation of expatriates and residents. He further focuses on VAT matters in cross-border transactions as well as on European Union and international customs law and international transport matters.

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Denis is an associate at Bacciardi Partners practising in its International Tax Department. He specialises in Transfer Pricing and related international tax matters, such as tax residency of corporations, taxation of Italian resident companies and controlled foreign companies (CFC), attribution of profits to permanent establishments, and tax aspects of business restructurings.

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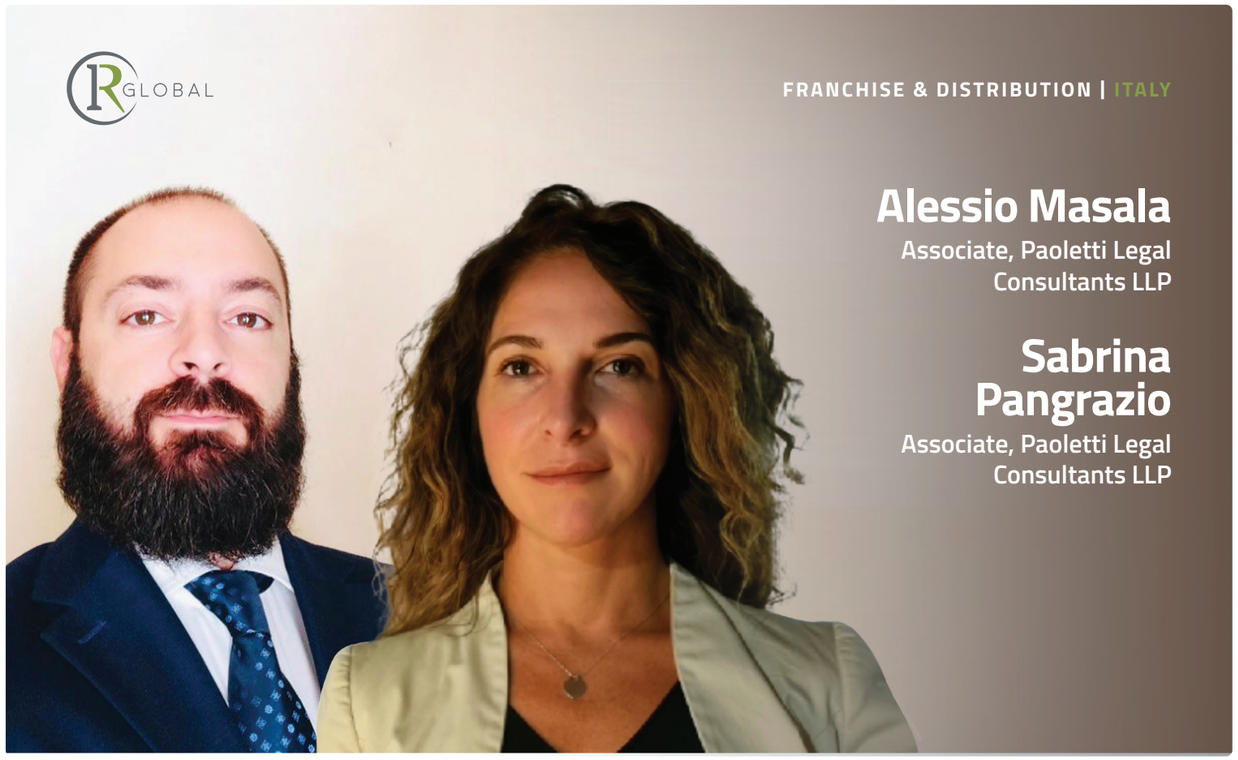
Bacciardi Partners also maintains an M&A division which strictly deals with the management of Mergers and Acquisitions and Corporate Finance.

The M&A division provides the strategic and financial advisory services listed below:

- Strategic and industrial business plans and business valuation
- Company reorganisation, asset allocation and corporate governance
- Scouting, matching and developing investment opportunities
- Assistance in the preparation of teasers and information memorandum
- Support in structuring acquisition financing
- Assistance in the buy-sell process of shareholding interests, line of going concerns, brands or technology
- Assistance in the listing at Borsa Italiana on the Alternative Investment Market-AIM



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The contracts of the future and the new challenges for the protection of contractual parties

In 1994 for the first time the cryptographer Szabo had the idea of being able to record contracts by computer code establishing that their activation was subject to the occurrence of certain conditions. This function took place and still happens through the if/then computer language typical of computer software and protocols.

For example, when a given event (if) occurs, certain effects are produced (then), which are predetermined by the parties themselves, based on rigid instructions (for example, if there is a deadline, then payment is automatically made).

The technology of his time, however, was not compatible with his project and in fact to see the first smart contract in history operational we had to wait before 2009 with the advent of Blockchain technology and then 2015 when the founder of Ethereum made the first smart contract in history operational.

Only more recently have smart contracts become the focus of numerous debates, not only because they can find multiple applications but because they are strongly connected to the phenomenon of the "blockchain", which is increasingly imposing itself on the international scene.

The main feature of this type of contract is that the operation can be carried out peer-to-peer, i.e. directly between two users, without the intermediation of a central control and verification entity, which for example establishes exchange rates.

All this is made possible thanks to the use of "blockchain" technology (literally "chain of blocks"), thanks to which inputs and outputs deriving from the contract become blocks of encrypted language, stored on a public register (so-called ledger), which exploits the characteristics of a computer network of "nodes" (the various participating subjects), whose data are managed and updated in a unique and secure way and cannot be distorted, nor modified.

It is the immutability of data in the blockchain that allows you to create a relationship of trust, in a totally disintermediated environment, between parties who, although not knowing each other at all, want to carry out transactions and financial operations. It is also the most critical node in the use of this type of contract, because as we will see later a system based on the immutability of data does not reconcile with the GDPR widespread in European countries.

In the smart contract included clauses and conditions that this is able to execute and enforce automatically when pre-established conditions occur.

Transactions made through smart contracts, being based on cryptography and blockchain technology, are safer, more reliable, cheaper, faster and more transparent than traditional ones and everything is managed through computer keys.

Having defined what a smart contract is in technical terms, let's see what the types of protection are provided for the parties.

In a system characterised by the immutability of the data provided, the main need was to understand if a smart contract could somehow be dissolved or if it was possible to provide forms of protection for the contractual parties.

The dissolution of the contract is possible thanks to the provision of the kill clause, currently present only in the most advanced blockchains such as Ethereum.

With this clause, the self-destruction of the contract itself is regulated.

In essence, we are going to discipline the elimination of smart contract software as it would happen for any software no longer useful or in cases where you want to make the performance of the blockchain more efficient.

Another possibility is that the parties establish the suspension of the contract itself and the cases of reactivation.

In the event that only one party is in default, and, in the event that the service is not provided, the preparation of these clauses will allow the entitled party to resort to legal action to obtain the contractual termination or even the "elimination" of the contracted by the blockchain through the self-destruction function, it being understood that access to the system for any modification will be allowed only to the judicial authority.

As mentioned, this new type of contract has been the subject of judgmental and even political reflections in various countries such as the United States, where, in the State of Tennessee, Senate Bill no. 1662 of 26 March 2018, modifying the Tennesse Code, has inserted the definition of "Distributed Ledger Technology" and set a new regulation for the smart contract.

Even in Europe we have dealt with smart contracts, but some countries are still in a phase of proposing a regulation while the European Parliament, in the "Resolution of the European Parliament of 3 October 2018 on distributed ledger technologies and create trust by disintermediating (2017/2772(RSP))"

With regards to smart contract, it underlined:

- the need for the Commission to carry out a thorough assessment of potential and legal implications, such as jurisdiction-related risks
- the need to give certainty to the validity of an encrypted digital signature as a fundamental step to favour smart contracts

The field in which smart contracts have found greater application is certainly the one connected to the crypto world.

Smart contracts can be concluded both off-chain and therefore outside the blockchain and both within the blockchain.

In the first case, the contract formalises all parts of the subsequent stages, containing the discipline of the agreements made and the provisions on their execution. In this case, the agreement is visible only to the parties who sign it and who establish the essential elements and conditions under which the contract will become operational.

When the contract is concluded in the blockchain, the contract will be public and visible to all participants in the network in which it was inserted and within which it was created, clauses and conditions will be communicated to all participants in the Blockchain and the contract will be impossible to modify or cancel

A particularly controversial issue concerned the protection of data entered in the smart contract.

The regulatory solution was to set up the system according to the principles of co-ownership and reciprocity.

According to these principles, each contracting party will be both the owner for itself and the other data.

In reality, this would seem to be a valid solution that has put crisis in the GDPR system which, being oriented to the control of their data by the interested parties including the possibility of requesting its modification and cancellation, clashes with the Blockchain system in which instead the principle of immutability of the data provided and unlimited storage of the latter applies.

In this regard, the question has been raised as to whether there is the possibility of integrating the architecture of the GDPR and smart contracts.

The main issue to be addressed from a GDPR perspective is that concerning the public key, that is, the code referring to a specific data or transaction of a certain user; can this code be considered as personal data?

Although public keys do not allow the contractual parties to trace the user at the same time allow the provider to do so by tracing back to the contractual party via IP address, the latter setting would qualify such data as pseudonymised and therefore subject to the GDPR.

The future of smart contracts is far from written the provision of a type of contract that provides for its drafting in a single language (Solidity) implies that the use of this type of contract is reserved for connoisseurs of this language and the impossibility for the state to use different languages to get to the drafting of the same contract.

The Ethereum Foundation for the research and correction of errors related to smart contracts is more active than ever as the programmers who are trying to apply the Lity language to smart contracts. The real impact of smart contracts in Web 3.0 is yet to be seen.

Alessio Masala is a qualified lawyer and member of the Bar Association of Rome.

Alessio has dedicated himself to both criminal law and insolvency proceedings, enriching his skills over time and moving more and more towards the corporate aspect.

In 2019 he collaborated in the foundation of FIAP, the Italian Heavy Athletics Federation of which he is currently President and for which he takes care of relations with the highest Italian sports bodies.

In 2020 he became DPO (Data Protection Officer) with the passing of the enabling Eipass exam and since then he has been managing relations with the Privacy Guarantor for SMEs.

In 2021 he also attended the course for business crisis manager, curator, judicial commissioner, liquidator attestor and registered with the OCRI at the Ministry of Justice in Italy From 2023 he collaborates with APS Italian Heavy Athletics as lawyer.

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Sabrina Pangrazio is a lawyer registered with the Verona Bar, since 2016. In the years 2013 and 2014 she attended the two-year course of technical and ethical training for the Criminal Lawyer at the Criminal Chamber of Verona - Union of Criminal Chambers of Verona, Vicenza and Bassano del Grappa.

In her work, she developed her passion in the nautical field, dealing with disputes – also in the international field – in the law of navigation for dealers of the main Italian shipyards. No less important is the marked propensity for inheritance matters, which affects both the private and corporate spheres, often interconnected.

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Kazakhstan: complex risk advisory in the heart of Central Asia

Kazakhstan as an independent country is a little over 30 years old. Yet for a thirtysomething, it is a complicated entity, and one with which our team has been closely and professionally acquainted for much of its lifetime.

The changes in our Kazakh casework at Urus over the years prove how the country has significantly stabilised and grown as an economy and a polity. But we also see how, to the outsider, it has become increasingly perplexing: on the one hand it has some of the trappings of a sophisticated, internationalised business setting; on the other, it is pressured from multiple sides, especially as the geopolitics of its region heat up.

For decades, the Nazarbayev presidential vector was firmly in place. Media reporting and investment analysis would take this political mainstay into account, while traditionally agreeing the likelihood of major tremors at the top was low. Yet for all the political stability, the country was not devoid of thorny business issues such as clan-based nepotism, grand corruption – and major banking fraud.

These are problems inside many emerging markets; Kazakhstan is no exception. Despite housing untold natural resources, and managing to list more companies on foreign exchanges than its local peers, going back to the 1990s, some woeful corporate tales have included Astana's unbuilt LRT line – the 'monument to corruption' – and the 2009 BTA Bank fraud, one of the world's largest, totalling $5 billion in stolen funds. Our work has seen us study close-up both these phenomena and many more, piecing together the commercial and political jigsaw that led to such events.

Due diligence projects were numerous throughout the 1990s and into the 2000s, as investors roared into the country. Yet questions of beneficial control and ultimate alignment with sub-clans underneath the presidency were increasingly pertinent. Major fines under FCPA rules for activities in the region brought home the importance of 'doing your homework' before committing to a project. In Kazakhstan, this has meant deciphering the meaning of allegiance to one domestic group or another, outside ties into the heavily sanctioned landscape of Russia, and the financial viability of businesses that look attractive from the outside.

Over this time, other socio-political issues have arisen: crackdowns in China's Xinjiang saw tensions in Northern Kazakhstan, while 2011 saw regional discontent bubble over in Zhanaozen (Mangistau) with strikes and social protests by workers of Kazakh state oil companies. Yet Kazakhstan has not undergone post-Soviet conflict anything like that felt in Tajikistan or Uzbekistan, nor had the revolutions of Kyrgyzstan – and it retains the greatest wealth distribution in Central Asia. Although a low marker, this shows that genuine efforts have been made in recent years to fix Kazakh inequality.

The reward has been a steady investment scene over the years. The country receives 70% of all FDI into Central Asia. Since the early 1990s Kazakhstan has represented a diversification of oil supplies for global consumers, first and foremost for the US. Chevron's investment in the Tengiz oil field alone nears $40 billion.

"While the corporate landscape in Kazakhstan is quite rich in data, its access and presentation are usually poor."

"What Kazakhstan may still lack in data transparency, it makes up for in its open hospitality."

Kazakhstan's successful multilateral foreign policy proves it can ally itself with competing forces. But increasingly the region is being pulled in at least three directions: western investment programmes, the backdrop of Russian security (under the CSTO) and the Eurasian Economic Union, with growing Chinese ambitions, primarily in the form of the Belt and Road. After all, it was in Astana in 2013 that Xi Jinping announced the BRI. All these factors come into consideration as we assist clients in Kazakhstan. The last 12 months have been even more exceptional: heavy unrest in January 2022 led to CSTO/military action at home, the context of the Ukraine war has loomed, with all the accompanying Russian sanctions and heavy inward migration. Now Kazakhstan is under pressure from all sides, not least logistically, while also gaining a new significance. Antony Blinken's recent visit to the region underscores its geostrategic importance to the US.

And all the while, the country, under the new and now distinct leadership of President Tokayev continues to pursue privatisation programmes (albeit with slow roll-out), cautious financial reform, and redistribution of wealth (by some estimates, at the end of Nazarbayev's rule, around 40% of the country's capital was controlled by the president's extended family).

Transparency remains an issue for many clients. While the corporate landscape in Kazakhstan is quite rich in data, its access and presentation are usually poor. Outdated interfaces and closed registries have driven our team to develop efficient in-house solutions – such as ClearPic.ai, which can run background screening on a semi-automated level – and these are contrasted with noble initiatives such as the Astana International Financial Centre, governed by English Law and offering investors a break from bureaucracy. That said, efficiencies do not all trickle into economic zones quickly, and even glossy presentation cannot force the country to shed procedural habits immediately.

What Kazakhstan may still lack in data transparency, it makes up for in its open hospitality. And the instinctive welcoming culture in-country is a serious factor in its attractiveness for capital flows. Whether by accident or design, the blending of secularism and Islam, and of nomadic traditions and new-found urbanisation, render it an eclectic and vibrant place. So, while travel to the country suffers at present from limited overland options and closures of airspace, once arrived, the business visitor or tourist gets drawn in. For the most part, inhospitable winter temperatures contrast with the hosts themselves, and the severity of the seasonal elements show us how far the country has come.

Alexander Teddy has worked for over 15 years in risk consulting, engaged in multi-jurisdictional problem-solving and market-entry risk advisory for many FTSE-100/ Fortune-500 clients.

His experience is widespread, ranging from stints in FSU finance, financial reporting and inside business ventures in Europe. British originally, he speaks several languages, including fluent Russian and French with much time spent working and travelling in the regions he covers.

As managing partner of Urus Advisory, he has seen the company become one of the leading names for providing research and advice on risks in the FSU region, and Eurasia as a whole.

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Urus Advisory

Urus Advisory is a specialised and experienced business and political risk advisory firm. With vast experience researching and advising clients on risk in post-Soviet Eurasia, Urus is well-known among global consultancies and service firms in the region.

Our services range from micro-level work on specific companies and individuals, such as pre-transactional due diligence reporting or KYC / compliance-driven research, to more complex problem solving, including in dispute situations – such as forensic support and asset tracing. On a macro footing, we advise clients in-depth on sectoral, legal environmental changes – including detailed monitoring, as well as on crisis planning and sanctions risks.

Headquartered in the UK, our work also covers key jurisdictions of Russia, Kazakhstan, Uzbekistan and Ukraine. Over the years we have also fanned out into other jurisdictions in wider Eurasia. Our team of over 20 specialist analysts is spread over several countries and now includes Kazakhstan, Turkey, Latvia and Spain.

Evelyn Maher
Partner, BSP

Luxembourg: the jurisdiction of choice for your fund vehicle

Luxembourg is the second largest fund centre in the world after the United States and offers a vast range of investment vehicles. In this article, we set out the advantages associated with choosing Luxembourg as the jurisdiction for your fund vehicle, and provide a brief introduction to the various fund vehicles that are available in Luxembourg.

Why Luxembourg should be the jurisdiction of choice for your fund vehicle

Luxembourg has earned itself a reputation for excellence in the investment sector. As of the end of 2022, there were over €5 trillion in assets under management in Luxembourg, making it the largest fund domicile in Europe. These funds are distributed globally resulting in Luxembourg being a leading pan-European and global distribution centre.

Luxembourg is a trusted jurisdiction for investment. Factors that contribute to this reputation are its AAA credit rating, low crime rate, and its fiscal stability. There is also significant political ambition and support to grow Luxembourg into a dominant alternative fund centre.

As a founding Member State of the European Union (the "EU"), Luxembourg acts as a gateway to Europe. Funds and their managers can benefit from management and marketing passports in growing their business within the EEA. The international and multilingual business environment as well as its central location in Europe attracts a highly educated talent pool from neighbouring countries, the wider EU and the rest of the world. The three official languages of Luxembourg are Luxembourgish, French and German, however there is a multitude of languages spoken in the jurisdiction, including English.

Fund promoters are also attracted to the jurisdiction by the tax environment applicable to funds. Luxembourg funds are, for the most part, subject to minimal or no Luxembourg tax and Luxembourg has an extensive tax treaty network.

There exists a pragmatic legal and supervisory framework. The regulatory environment is accessible, as it is led by a multilingual regulator, which accepts application files and communications in English, French and German. An e-filing system is also available. Furthermore, the regulator for the financial sector, the Commission de Surveillance du Secteur Financier (the "CSSF") is largely responsive and maintains a strong relationship with the investment management industry, with the objective of designing an efficient operating framework, while at the same time keeping investor protection to the forefront.

The fund industry is constantly seeking to improve Luxembourg legislation in order to retain its competitive edge and fulfil business needs. It is actively engaged in reviewing and being prepared for new legislation coming from the European legislative process. A case in point is the upcoming amendments to Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers (the "AIFMD"). This steady growth and forward-looking mindset demonstrate the likelihood of Luxembourg continuing to thrive as a fund domicile.

> "Luxembourg is a trusted jurisdiction for investment. Factors that contribute to this reputation are its AAA credit rating, low crime rate, and its fiscal stability."

The final reason why Luxembourg should be the jurisdiction of choice for your fund vehicle is the exceptionally innovative toolkit of investment products that it boasts. These dedicated vehicles range from those regulated vehicles available to retail investors such as Undertakings for Collective Investment in Transferrable Securities (UCITS) and Part II Funds to slightly less regulated vehicles available to more sophisticated investors such as the Specialised Investment Funds (SIFs) and investment companies in risk capital (SICARs), to non-regulated funds such as Reserved Alternative Investment Funds (RAIFs) and limited liability partnerships.

Fund vehicles available in Luxembourg

- **Funds regulated and supervised by the CSSF**

UCITS are the highest-ranked vehicles for global distribution, and invest mainly in listed securities. This type of fund is available to both retail and institutional investors. There is a requirement for UCITS to be managed by a European-based management company with an authorised investment manager. A UCITS fund can be sold throughout the EEA to any type of investor with minimal notification requirements.

Part II funds are alternative investment funds that are permitted to be marketed to retail investors and are subject to a less stringent diversification policy and investment rules than UCITS. They are fully subject to the supervision of the CSSF. Part II funds can rely on the AIFMD marketing passport in order to be marketed throughout the EEA to professional investors and they are accepted by many jurisdictions for marketing to retail investors.

SIFs are fund vehicles dedicated specifically to institutional or professional investors and high-net-worth clients. They can only be marketed to well-informed investors. SIFs are used to invest in all types of investment strategies with minimum diversification.

SICARs are designed specifically to invest in risk capital, which includes private equity and venture capital strategies. There are no diversification limitations. These funds are only available to well-informed investors.

In the case of a SIF or a SICAR any delegated portfolio manager needs to be authorised and licensed to carry out such activity for the fund vehicle. Depending on how it is structured the SIF or SICAR may also use the services of an Alternative Investment Fund Manager. To the extent the AIFM is fully authorised under AIFMD it can market the shares or units of a SIF or SICAR throughout the EEA to professional investors.

- **Unregulated funds**

A RAIF is a fast-to-market vehicle, available only to well-informed investors. RAIFs can invest in all investment strategies with potentially minimum diversification. This type of fund must be managed by an authorised Alternative Investment Fund Manager (AIFM) and thus its units/shares can be marketed throughout the EEA relatively easily to professional investors.

Finally, and increasingly, funds are being created in the form of Luxembourg limited partnerships that appoint fully authorised AIFMs. There are minimal requirements from a legal and corporate perspective governing such funds, which provides great flexibility, but funds do need to comply, through the AIFM, with the provisions of AIFMD and would, as a result, benefit from the marketing passport to professional investors throughout the EEA.

Evelyn Maher is Head of BSP's Investment Management department. She has been active in the Luxembourg investment fund market since 2001 assisting fund promoters and asset managers in relation to the structuring and establishment of a wide range of funds including private equity, venture capital, loan origination, loan participation and real estate.

She provides advice on compliance with all aspects of the regulatory regime applicable to investment funds and in particular the alternative investment fund managers directive (AIFMD). Following the launch of the fund, Evelyn offers ongoing assistance in relation to closings, investments, divestments, liquidation and general issues arising throughout the life of the fund. She has also provided assistance in relation to the listing of securities on both the regulated and Euro MTF markets operated by the Luxembourg Stock Exchange.

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Dunstan Magro
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Doing business in Malta: understanding tax and infrastructure

Malta – a brief background

Strategically located in the Mediterranean Sea between Sicily and Tunisia, Malta is arguably at the centre of the world. When you look at the flat map of the globe, the very first thing that catches your eye is the Mediterranean Sea in the middle of the map, and right at the centre of that is the sun-kissed island nation of Malta.

Although Malta is the smallest state in the European Union, and the10th smallest state in the world, it has become one of the preferred locations for doing business. The ability to keep abreast of current events and developments has given it a cutting edge when competing with other countries, regardless of size.

Malta has seen it all, and in its 7,000 colourful years, it has carved its place in history. It features two of the most famous UNESCO archaeological sites (Ħaġar Qim and Ġgantija), has seen bloody battles from the Knights of Malta, European empires, and the Second World War, won independence from the British Empire in 1964, and was granted EU accession in 2004.

Modern Malta is the home to so many different people and cultures. Today almost 25% of Malta's population are foreigners. With English being an official language of the island, these EU and non-EU nationals have chosen Malta as their home away from home, and consider the island to be a great meeting place from which to grow their business interests.

> "There are a number of fiscal measures which may substantially reduce the effective tax rate."

Why Malta?

The country's attractiveness for business and for high-net-worth individuals stems from a number of factors:

- It is an ideal business hub with its strategic position in the centre of the Mediterranean and excellent communication infrastructure
- A stable and fast-growing economy with record-low unemployment of 3% as of January 2023, one of the lowest inflation rates in the eurozone, and highest GDP growth rate in the EU27 in 2022
- A robust legal framework and regulatory regime that are able to keep pace with global changes
- A tax-efficient base with an extensive network of over 70 double taxation treaties
- Rated as one of the safest places to live, with excellent healthcare, educational services and a family-friendly environment

The Maltese Government is also at the forefront in promoting Malta as a centre of excellence and supporting business investors. Recent years have seen Malta pitching itself as a hub for financial services, life sciences companies, aviation and maritime business, digital gaming, IT, blockchain services, fintech, and technologically innovative companies. Such industries facilitate and add value to the whole process of conducting business in Malta.

Corporate structures

Although subject to rigorous due diligence procedures, setting up a company in Malta is relatively straightforward, with the most popular corporate structure being the limited liability company. Malta is also a favourable jurisdiction for the setting up of trusts and foundations.

> "Resident but non-domiciled individuals can use such programmes to pay a 15% rate of taxation."

Taxation and business incentives

The transparent, fully onshore, yet remarkably competitive and EU-compliant tax system is undoubtedly an important factor in attracting investors to Malta. For example, although profits of Maltese registered companies are taxed at a corporate rate of 35%, there are a number of fiscal measures which may substantially reduce the effective tax rate in the hands of shareholders, subject to certain criteria being met.

Characteristics of the Maltese tax framework include, amongst others:

- Full imputation system being applied whereby tax is only paid at source.
- Qualifying shareholders may claim a refund of tax incurred on distributed profits. Various refunds apply, the most common being the 6/7 refund of Malta tax paid.
- A number of tax reliefs, such as the unilateral relief or flat-rate foreign tax credit. Double taxation agreements with over 70 countries allow for double tax treaty relief.
- A flat rate of 15% is applied on income remitted to Malta, under the Residence Programmes aimed to attract EEA/non-EU individuals to take up residence in Malta and the Retirement Programmes targeted at EU/EEA/Swiss and United Nations pensioners.
- Expatriates eligible under the Highly Qualified Persons Rules or the Qualifying Employment in Innovation and Creativity Rules are subject to a flat rate tax of 15% on their employment income.
- Notional Interest Deduction and Patent Box regimes, both being compliant with the OECD modified nexus approach and the EU Code of Conduct on Business Taxation.

Once a business is established in Malta, there are various financial incentives and enterprise support measures that may be availed of under the Malta Enterprise Act, the Income Tax Act and the Business Promotion Act. These incentives vary from tax credits / deductions / exemptions, reduced rates of tax, incentives for job creation and training, to cash grants for part-financing of expenditure (such as on research and development).

Malta residence and citizenship programmes

Over the years, the government established programmes for high-net-worth individuals to take up Maltese residence (Malta Permanent Residence Programme / Malta Retirement Programme / United Nations Pensions Programme / The Residence Programme / The Global Residence Programme) or even citizenship by naturalisation for those who contribute to the country's economic development over time.

Subject to certain conditions, resident but non-domiciled individuals can use such programmes to pay a 15% rate of taxation, on a remittance basis.

Since Malta is part of the EU and the Schengen Area, non-EU applicants benefitting under the Programmes benefit from significantly improved mobility within the EU and EFTA member states. They are also able to avail themselves of visa-free travel to more than 160 countries, including the UK, US and Canada.

During the summer of 2021, Malta created a digital nomad visa calling remote workers to come and take advantage of what the islands have to offer.

Dunstan Magro is the Managing Partner of WDM International, an IR Global Member firm from Malta. Dunstan, a graduate of the University of Malta, is an accountant by profession, having obtained his warrant and practising certificate in auditing in 2001. During his early career, Dunstan carried out numerous financial audits of companies across different industries. Over the past 25 years, he has advised many local and international clients on tax, corporate and business advisory matters. He is an active member of the Malta Institute of Accountants and sits on a number of committees of the Institute. Dunstan is also a member of the Malta Institute of Taxation and the Malta Institute of Financial Services Practitioners. A great believer in knowledge sharing and networking, Dunstan loves building bridges and creating meaningful relationships with people. He is also an avid reader with a passion for exceptional culinary experience, good wine, cigars, whiskies, and the arts.

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WDM International is a Malta-based multidisciplinary firm offering audit, tax, legal, corporate and advisory services, tracing its origins way back to 1994. Truly entrepreneurial in character and form, the firm offers its services to a local and international clientele.

WDM International strives to create value through focused excellence and constantly aims to continue growing, not only organically, but even by attracting new clients who could benefit from our approach.

The firm prides itself on a wide client portfolio spread over a broad range of industries, from financial services operators to entrepreneurs and high net worth individuals.

WDM International provides a tailor-made service throughout, dedicating our energy to turn our clients' business dreams into a successful reality. We have the know-how and practical experience to guide clients throughout their business needs, whilst taking advantage of all the benefits Malta has to offer.

Join our community: Zirkzee Group merges with Activa

On 1 January of this year, Zirkzee Group merged with Activa Accountants & Tax Consultants. From now on, these firms will act as the premier partner for entrepreneurs and companies in financial, fiscal, business and legal advising. Zirkzee and Activa serve clients in the Netherlands and abroad from three locations in the west of the Netherlands (Schiphol-Amsterdam, Noordwijk and Gouda). Together they form a healthy and agile learning organisation where job satisfaction, collaboration, lasting relationships and teamwork are top priorities.

The aim of the new organisation, whose name will be announced later this spring, is to contribute to society in a professional, innovative and sustainable manner. "We are the trusted party in the field of accounting and tax-related matters in the Netherlands. We support our clients in providing accurate and reliable financial information, and ensuring compliance with laws and regulations for various stakeholders," says Martin Verhoeff, one of the five equity partners since the merger.

Upscaling, synergy and continuity

The other four equity partners are Robin de Raad (from Zirkzee, like Martin Verhoeff) and, from Activa: René 't Lam, Ruud Bouman and Willem Verhoeff. Together with Peter Walter (salary partner from Zirkzee), they form the management team of the new organisation. Willem Verhoeff, Martín's brother, has come to Zirkzee's Noordwijk office (on the Dutch coast) to discuss the added value of this merger. "Upscaling, synergy and continuity," Willem says straight away.

"We are now one of the larger SME players in the region," Martin adds. "We have 80 people, more accountants and tax specialists, and three locations. The Activa office is close to Schiphol Airport, which ties in perfectly with Zirkzee's international services. At the same time, Activa is more at home in the agricultural world than we are, with a fantastic base of loyal clients. This gives us a very good risk spread in terms of our client portfolio. And because of our size and broader expertise, we are better equipped than ever to put together tailor-made teams for our clients."

Appeal

More appealing employership is another key advantage of this merger. "This was more of a challenge for us than for Zirkzee," Willem explains. "The average age is a lot lower there, the organisation is larger and they are more innovative in the areas of IT and hybrid workspaces. Zirkzee was quite successful in attracting new talent and giving these people opportunities for growth, but that was more difficult for us. This synergy will also make us more appealing to young people with ambition."

Martín: "The added value for us is that Activa has more senior-level professionals than we do, especially when it comes to the number of Certified Public Accountants."

Willem: "We had an inverted pyramid, as they say. That all fits together very well now, which allows us to divide the work much more efficiently. We also didn't have any dedicated HR staff of external communications officers, but Zirkzee did."

Martín: "For me and Robin, it's also really nice and helpful to suddenly have three new equity partners to chat with!"

Strengthening each other

One day the brothers got to talking about the possibilities to strengthen each other. The fact that they are brothers was definitely an item on the agenda in the discussions with the other three partners at the start of the process. "We had open conversations about this and in the end everyone was positive about it," Willem says.

For both parties, the current number of partners is a solution with a view to the future and to continuity, mainly for clients, staff and the partners. "For Martin because he's no longer the only accountant of the equity partners in his organisation, and for me because there's now a greater chance that I'll be able to sell my shares in a few years," explains Willem, who is 58 years old. "So we're also strengthening each other in that way!"

For the entire network

For both parties, this partnership is characterised by mutual trust, lasting relationships, putting the client's interests first, mutual integrity and collaboration in accordance with professional standards and rules of conduct, all with a focus on the interests of various social and other stakeholders. "We are taking a wonderful step forward together, with a view to the future, for our entire network," Martin concludes. "We can't reveal our new name yet, but stay tuned and keep an eye on our social media channels, LinkedIn and Instagram (@zirkzeegroep). Be part of our community!"

"Partnership is characterised by mutual trust, lasting relationships, putting the client's interests first, mutual integrity and collaboration."

Martín is an international accounting partner at Zirkzee Group accountants and tax specialists, a top 75 office in the Netherlands, with 2 equity partners (and since the merger with Activa Accountants 5 equity partners) and 60 professionals working from two offices in Noordwijk and Gouda. Martin has approximately 20 years of work experience in the (international) accounting arena. Within Zirkzee Group, Martín is responsible for no-hands and data-driven accounting processes (for both customers and internally), corporate ID and activity-based work environment.

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Willem has over 37 years of experience in accountancy. Once started as an employee, then as a partner and finally founded his own office in 2002. Since the merger, he has been responsible for the three branches in Gouda, Hoofddorp (Schiphol-Amsterdam) and Noordwijk, where he manages the office directors. He is also the eldest brother of Martín.

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Zirkzee Group

accountants, auditors, tax lawyers
expat, payroll and trust services

The Zirkzee Group (founded in 1960 as an administrative office) is an accounting and tax consulting firm with over 60 employees and multiple locations. Zirkzee (with offices in Noordwijk and Gouda) is the premier professional partner for financial and tax-related matters that every entrepreneur has to deal with. Entrepreneurs want to get the best out of their company, and they do this based on a business plan, an effective sales team or that one unique product, but your success ultimately depends on well-organised and accurate administration. This provides management information that forms the basis for making important decisions at the right time. Zirkzee Group as a business partner.

As a modern firm, Zirkzee's aim is not to get ahead of the curve, but rather to be in the driver's seat when it comes to efforts like the efficient application of all new technologies in the area of hands-free administration, tax returns and reporting. Zirkzee also strives to be a leader in hybrid activity-based working, with a strong focus on sustainability and vitality. The building in Noordwijk, for example, has a neutral CO_2 footprint.

About Activa

Launched in 1988 as administrative firm De Bruin & Van der Voet, Activa has undergone a number of changes over the years. The current management team, consisting of Ruud Bouman, René 't Lam and Willem Verhoeff, has since found its way and has been at the helm of Activa since 2017. Activa's office is located in Hoofddorp, near Amsterdam and Schiphol Airport.

With 25 employees, Activa may be a relatively small consulting firm, but it is big on advice.

Entrepreneurs and private clients can turn to this firm for everything relating to administration, accounting and tax advice. Activa values engagement and attention, and sees itself as more than just an accountant or tax consultant. "We go beyond that. We are there for you as a sparring partner, brainstormer and sounding board."

Corporate Finance and Business Valuation in the Netherlands

Perhaps you are considering expanding your business in the Netherlands. Or you might have a business in The Netherlands that you're considering selling. Or you want to restructure your group. One of the first questions that might pop into your mind is, what is the value of this business? And what does the process of acquiring or selling a business look like? That is the moment you need a business valuator and corporate finance adviser.

First of all, there is no such thing as a uniform value of a business. The value fully depends on the viewer and his or her possibilities with the business. The value differs depending on the chosen view. For example stand-alone, or taking into account any synergy advantages; going concern or on a liquidation basis; as is, or after the envisaged enhancement. The value of a company differs depending on the chosen view. But after the correct view has been chosen by you and your business valuator, the outcome of the valuation is of a high added value to you. It is starting point for negotiations between you and the counterpart. Because remember value is not the same as price. The difference? Price is what you pay, value is what you get.

A business valuation can also be very useful in a case where there is no such thing as an active market. Hence there are no independent negotiations. This situation occurs, for example, when a business is sold within a group or when a business is transferred within the family. Such a transaction might have a tax impact if conducted against an incorrect value. A valuation report is indispensable in such a situation.

After the business valuator has made the calculations and you are satisfied with the results, it is time for the next phase. You want to buy or sell the business. But do you get in touch with the counterpart? This might be easier if you are in the market for buying a business, but more difficult if you want to sell your business. Where do you find any potential buyers? That is where the network and experience of a corporate finance adviser become relevant. Such an adviser knows the market, but also who is in the market for buying or selling a business. Together with your adviser, you can decide to approach potential counterparts directly or by using a marketplace for business. However, if you are in the market for selling your business, an information memorandum is indispensable. Your adviser can draft such a document, which is basically a brochure with the highlights of your business.

The next step is the negotiations between buyer and seller. Negotiations can be done in a meeting, but more often they are done in writing. A potential buyer shall possibly demand a period of exclusivity to perform due diligence. Exclusivity is agreed in a letter of intent. Such a letter sets out the main terms of the agreed transaction, but often under the condition of a positive outcome of a due diligence process and drawing sufficient finances to acquire a business. This approach is recommended if you are on the buyer's side. However, this approach is less profitable for the seller. The seller has less advantage of a period of exclusivity since the seller is not allowed to negotiate with any other parties allowing the potential buyer to renegotiate the price. An alternative to a process of exclusivity is the controlled auction. During such an auction, multiple potential buyers are allowed to perform a due diligence process after which they must file a final bid.

The last step in the process of acquiring or selling a business contains all the legal documentation. That would include the share purchase agreement, a shareholder agreement in case of a transaction with less than 100% of the shares, a vendor loan agreement and all the necessary documents to finalise the sale of a business, for example minutes of the shareholder meeting.

A major part of the share purchase agreement contains the guarantees. The buyer often demands several guarantees from the seller regarding how he ran the business in the past. You can think of guarantees regarding the legal status of the business. Does the business for example exist from a legal perspective, and does it have all the permits? Is the company the legal owner of tangible and intangible fixed assets? Most buyers probably also demand guarantees regarding the financial status of the business. Were all taxes for example calculated correctly and paid on time? Does the business have obsolete stock? Were all provisions correct and completely accounted for? Should any of the guarantees be incorrect and should the buyer suffer any costs due to an incorrect guarantee, then the buyer has the right to claim this damage from the previous owner.

As you understand, it is very important that you use the expertise of a specialised M&A lawyer or M&A legal adviser who understands all special aspects of such a contract. But such an adviser is also aware of any permits that you need from governmental authorities, for example authorities who oversee competition, or permits that you need from labour unions.

The last and final step of a transaction is often at the premises of a notary and contains the transfer of the shares. Depending on how you decide to shape your transaction, this is also the moment when you officially sign all legal documents. And the transfer officially ends with a popping bottle of Champagne!

> "There is no such thing as a uniform value of a business."

> "A business valuation can also be very useful in a case where there is no such thing as an active market."

Robin van Denderen is a certified auditor and certified business valuator at Schuiteman M&A – Corporate Finance. He acts as corporate finance adviser both from a sell side and buy side perspective. He serves his clients when they only need a business valuation, but also if they require advice on a complete transaction. He is also a member of the Dutch Foundation of the national register of judicial experts, and acts as either an independent expert or party expert in judicial cases.

Robin obtained a master's degree in accounting at the Nyenrode Business Universiteit. He also obtained a master's degree in Business Valuation and in Finance both from the TIAS School of Economics and Finance.

Robin started his career at Ernst & Young. After having worked for several accounting firms he joined Schuiteman M&A – Corporate Finance in 2019 where is currently a senior manager in corporate finance.

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SCHUITEMAN
M&A - CORPORATE FINANCE

Corporate Finance is part of **Schuiteman Accountants & Adviseurs**, a full-service accounting firm in the central part of The Netherlands. Schuiteman M&A – Corporate Finance is the legal entity in charge of everything involving mergers, acquisitions and corporate finance. The company employs M&A experts both with a financial and legal background, allowing them to offer the full package needed in a transaction. This gives Schuiteman M&A – Corporate Finance a unique position in the market. The collaboration of financials and legal experts in one company limits the time (and cost) involved compared to hiring financial and legal advisers from different firms. The company services both national clients who act on the international stage and international clients who are looking to do business in The Netherlands. The focus is mainly on transactions in the midmarket, up to €100 million.

Debt and asset recovery in The Netherlands: keep it simple

For entrepreneurs, unpaid debts can be irritating at best and crippling at worst. Recovery of debts and assets should preferably be quick, cheap, and effective. Even if the debtors or assets are located abroad. Compared to most other jurisdictions, Dutch law offers creditors two relatively easy tools that in many cases meet those needs: the prejudgment attachment and the bankruptcy petition.

Prejudgment attachment

Especially when recovery possibilities are in danger of disappearing, it is vital to freeze a debtor's assets, so as to preserve the creditor's rights. An additional advantage is that attachments can sometimes be used as a means of exerting pressure on the debtor, for example in order to force a settlement. To levy an attachment, many countries require at least 1) solid substantiation of a claim and 2) proof that a debtor will make recovery by the creditor significantly more difficult by disposing of its assets. However, in The Netherlands it has always been fairly easy to have the goods of a debtor attached before a court renders judgment about the existence of the creditor's claim.

Essential principles in ordinary Dutch civil proceedings, such as an adversarial process, a public hearing and a motivation for the decision, hardly play a role in prejudgment attachments. One reason for this is practicality: once a debtor is informed about an intended attachment on its assets, it is possible that it would allow assets to disappear. The possibility of taking protective measures at a stage where the creditor has not yet obtained a judgment in legal proceedings, is considered of great value in The Netherlands. A creditor's interest in not running the risk of being left with an irrecoverable claim after obtaining an enforceable title, in general, outweighs a debtor's interest in not having their assets "frozen".

> "Essential civil procedure principles, such as an adversarial process, hardly play a role in prejudgment attachments."

Levying a prejudgment attachment in The Netherlands cannot be done without leave from a judge in preliminary relief proceedings. This leave is petitioned for by an attorney. The legal requirements the petition must meet, differ depending on the type of attachment. In short, the petition must include a brief statement of the – alleged – claim against the debtor or the right in rem (ownership, pledge, mortgage, etc.) to the asset. The more straightforward the claim, the shorter the explanation can be. The nature of the intended attachment object must also be indicated (e.g. the debtor's bank account, car or real estate).

In order to somewhat address the debtor's disadvantaged position in this procedure – the attachment will come as a complete surprise to them – a working group of judges has created guidelines for assessing prejudgment attachment petitions. Pursuant to these, a petition must also describe why the attachment is necessary, why this particular object was chosen, and why a less onerous attachment is not possible (e.g. attachment of someone's real estate rather than a bank account).

The preliminary relief judge assesses the creditor's petition prima facie; "summierlijk" in Dutch. As a rule, if a petition is somewhat logically constructed, the preliminary relief judge will grant the petition within 1 or 2 days. The preliminary relief judge may conclude in their balancing of interests that the attachment intended has too far-reaching consequences for the debtor, but in practice this rarely happens. If the petition is granted, the judge also establishes the (maximum) amount for which assets may be attached. Subsequently, the bailiff levies the attachment, after which the debtor is no longer able to transfer or the attached goods or dispose of the frozen bank balance.

It must be kept in mind that a prejudgment attachment is no carte blanche for a creditor to start executing their claim on the attached goods. To do so, they must first obtain a judgment ordering the debtor to pay or hand over the asset. If no main proceedings are initiated within a set, short period of time, the attachment lapses. Should a debtor want to have the attachment lifted before the main proceedings are carried out, then all they can do is try to lift the attachment by means of preliminary relief proceedings.

> "Both a prejudgment attachment and a bankruptcy request often trigger negotiations on partial payments or payment arrangements."

Bankruptcy petition

While the prejudgment attachment is a powerful tool in debt and asset recovery, filing a bankruptcy petition with the court may in some situations be preferable. Especially if the situation mainly calls for leverage, a bankruptcy petition could prove a better means to place the desired pressure on the debtor, as not every attachment will effectively impede a debtor's actions. As the consequences of bankruptcy are obviously tremendous, the threat of it can set a lot in motion. The filing of a bankruptcy petition often triggers negotiations on partial payments or payment arrangements.

A bankruptcy petition should be filed with the court by an attorney. Such a petition must state that 1) the creditor has a claim on the debtor and the basis thereof, 2) two or more creditors are being left unpaid and 3) the debtor has ceased to pay their debts. As attorneys, we have ways of finding out whether a debtor is letting a second creditor go unpaid. In the bankruptcy procedure also, the court will only assess prima facie whether the above requirements for bankruptcy have been met, departing from the basic rules on the duty and burden of proof. A bankruptcy petition is not without risks: if it comes to an actual bankruptcy, creditors are often left empty-handed. The aim is usually not to actually have the court declare bankruptcy, but to exert the pressure of its threat, if necessary for a longer period of time.

Both the prejudgment attachment and the bankruptcy petition are simple and cost-effective ways of debt and asset recovery in The Netherlands. As in many cases, tailor-made solutions remain necessary. We help clients choose the right measure depending on the specific situation.

Peter Bos has been practising corporate law in the broadest sense for over 16 years. He conducts legal proceedings, draws up contracts, provides advice and carries out attachments and executions. His work covers a wide range of subjects: from commercial transactions to acquisitions and restructurings; from shareholder agreements and company contracts to directors' liability proceedings. In addition, Peter has specialised in insolvency law. He is a receiver in bankruptcies, advises companies in financial distress and advises and litigates for creditors in bankruptcies.

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Sandrine Piet specialises in all facets of corporate law. She can assist in all matters you may encounter as an entrepreneur, such as shareholder agreements and disputes, financing and securities, contracts, debt and asset recovery, directors' liability claims and related matters. Additionally, Sandrine practices insolvency law. She is a receiver in bankruptcies and assists clients with restructuring enterprises, restarting after bankruptcy, bankruptcy fraud and all types of liability issues.

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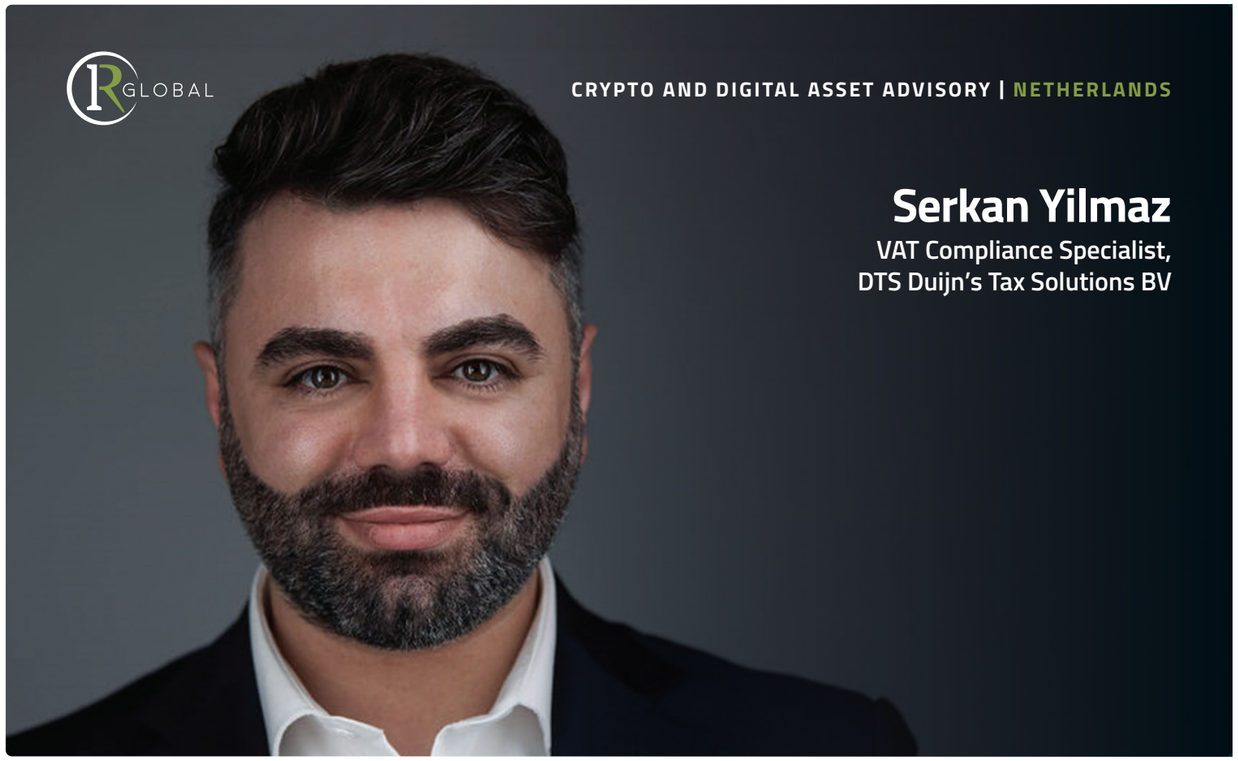
Bos Law is a boutique law firm in the heart of Amsterdam. We do what we are good at: advising and litigating in the broad field of corporate law and insolvency law. Real specialists who think along with you. No woolly stories, but answers to your questions. Our clients are national and international companies. We also have a social heart. That is why we devote part of our time to subsidised legal aid for those who cannot afford a lawyer, often in the field of contract law. With the same quality and attention that our paying clients receive.

Our key areas of advice include:

- shareholder disputes
- director's liability
- contracts
- bankruptcies and other insolvencies
- financing and security
- mergers, acquisitions, and restructurings
- debt and asset recovery
- business and corporate litigation
- companies and legal entities



VAT treatment of NFTs in The Netherlands

Why is it important to know how to manage your NFT-related tax matters?

The digital era is progressing rapidly nowadays. Technology that started in the path of trends, is now making a big impact in business prospectives. An example of this are Non-Fungible Tokens (NFTs). NFTs are unique digital assets that are stored on a blockchain. These tokens have revolutionised the way we think about ownership, enabling individuals and businesses to buy, sell, and trade digital assets like never before. Businesses that are involved in practices involving NFTs are inevitably going to be confronted with some fiscal obstacles.

When a company is doing business in the Netherlands, it is very important that the tax rules are complied with. The Dutch Tax Authorities are specific when it comes to the control of legal and tax-related responsibilities. Moreover, as the Dutch legal system is considered to be a complicated tax system, as a business owner, you may wonder about the tax treatment of NFTs according to the Dutch VAT rules.

Therefore, if you are thinking about buying or selling NFTs, it is important to be aware of the potential VAT implications. In general, the sale of NFTs will be subject to VAT in the same way as other goods and services are. However, there are some specific considerations that businesses should take into account when dealing with NFTs. This blog post will provide you with some useful information on the topic by first shortly talking about what NFTs entail followed by the current VAT treatment.

What are NFTs and how do they work?

NFTs are essentially unique digital assets that are unchangeable and cannot be replicated. They are used as proof of ownership for digital or tangible items such as artwork, music, video clips, and much more. A key feature of NFTs is that they are indivisible — meaning they cannot be broken down into smaller units like currencies. NTFs can also be programmed to have certain features such as scarcity or exclusivity, making them attractive to collectors and investors.

With NFTs, the ownership of a certain item is tracked on the blockchain and coded in such a way that guarantees its authenticity, rarity, and value. This whole process has become much simpler with the emergence of Web 3.0 browser wallets and direct payments that are enabled through them. NFTs offer new opportunities for creators to monetise their work without relying on online platforms, allowing them to retain greater control over their intellectual property rights.

The application of NFTs even stretches to the area of real estate, where they can represent both physical as well as virtual properties, making it important to have knowledge about the rules regarding real transfer tax and VAT.

The current VAT treatment of NFTs

The European Union (EU) has been relatively slow in developing VAT rules specifically related to NFTs. At the moment, the EU's VAT Directive does not provide any specific guidance on how NFTs should be treated.

For now, each member state is responsible for determining its own VAT rules with regard to NFTs, while still making sure those rules comply with the current EU law. VAT may be due on any services or activities associated with the sale of NFTs. This can include a fee charged by a marketplace for buying and selling NFTs, or any underlying asset or service that is sold alongside an NFT.

> "Businesses that are involved in practices involving NFTs are inevitably going to be confronted with some fiscal obstacles."

Additionally, transactions between countries inside and outside of the EU that generate income from a sale of an NFT may also be subject to VAT.

It would be smart for business owners to take note of this important information when deciding how they want to maximise their profits while avoiding possible legal complications that may arise due to improper taxation on NFTs.

In the Netherlands, there are no specific rules yet regarding the VAT treatment of NFTs. However, the sale of any underlying asset or service associated with an NFT may be subject to VAT. Additionally, if a transaction of an NFT is taking place from, to, or within the Netherlands, then VAT may be applied to any income generated from the sale of that NFT. This can be frustrating for businesses and individuals who generate income through NFT sales as it can be difficult to determine which VAT rules NFTs fall under since the application possibilities are very broad. Determining this is important as it can impact taxes, cash flow, earnings, and finances of a business. The answer to how NFTs should be treated for VAT purposes depends on the facts and circumstances and therefore can differ each time.

It is important to note that the VAT rules are constantly evolving and being updated as tax legislation is released or amended constantly. Therefore, businesses and those who sell NFTs frequently should stay informed and regularly review changes to the existing VAT rules in order to ensure compliance. Businesses may also need to reinvest in their practices in case they are impacted by any changes in the law to make sure they are organized appropriately according to their legal obligations.

Overall, the details of taxation for NFTs in the EU remain largely unsettled. As countries continue to develop their own specific regulations, given that the crypto market is so volatile, it is important that companies are aware of their obligations in time to prevent any unwanted consequences. Taking timely action can also be important when structuring certain business processes. To ensure compliance with current legislation, businesses should seek professional advice on best practices when dealing with digital assets.

Serkan started in 2015 with a bachelor's from the 'European Law School' at the Radboud University in Nijmegen, and pursued a Master's degree in Tax Law. During his studies he did internships where he gained knowledge and experience in the field of tax law.

In 2022, Serkan started working at DTS Duijn's Tax Solutions and decided that he wanted to focus on indirect taxes. Within a year he has assisted in many complicated VAT matters and grown to be an important addition to the VAT team of DTS.

As a young and driven tax specialist, he wants to stay on top of the game and up to date with the latest technological developments, especially in the field of digital assets. The rise of the digital market in modern society creates new challenges which Serkan is eager to explore.

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DTS is uncompromising in its commitment to legal excellence and client service in the field of Dutch corporate income tax. We are proud of the continuous recognition we received from our clients for our commitment to client satisfaction. We value their satisfaction as the best measure of our success.

DTS acknowledges its social responsibility and supports communities through community commitment, charitable giving and promoting diversity. We believe that we collectively and individually can make a positive difference in our community and in the workplace. When providing the best Dutch tax advice, we also take other factors such as corporate social responsibility into consideration. We believe that it is beneficial for our clients not only to know what is legally possible, but also what is ultimately desirable (fair) from a corporate perspective.

This provides for a continued collaborative relationship with the Dutch tax authorities.

The Dutch tax advisors at Duijn's Tax Solutions have been providing businesses and individuals with Dutch tax advice in The Netherlands for over 15 years. With our well-established network of tax consultants in The Netherlands and our Dutch tax expertise, we provide a broad range of Dutch tax consulting services. We have valuable expertise of Dutch taxation in digital assets and corporate tax. Through our international tax network of tax advisors, we are able to provide seamless cross-border tax advice to over 100 countries.

As an international tax consultant, we combine our technical tax expertise with our accounting knowledge so that businesses and individuals doing business in The Netherlands receive the best Dutch tax advice possible. We focus on businesses and entrepreneurs with transboundary investments and international operations.

Expanding into or via the Netherlands

The Netherlands: the gateway to the EU

Before going into detail about "how" let's first have a look at "why". Why is it attractive to do business in the Netherlands?

The Netherlands has a century-long history of international trading and business, which has resulted in a very open economy. The country itself has a wealthy and highly-educated population, which is more often than not multi-lingual, as well.

Key to the international role in trade and business is its geographical location in North-Western Europe and its strong transport infrastructure. This includes the large seaport of Rotterdam and Schiphol Amsterdam airport. However, the Dutch have also adapted to more recent developments, and IT companies value the Netherlands for its digital infrastructure, offering almost 100% coverage of fast broadband. The Amsterdam Internet Exchange (AMS-IX) offers worldwide internet connectivity.

The stable political system, modern, business-friendly legislation and fiscal system are further reasons why it is favourable to do business and invest in the Netherlands.

The route to expansion in the Netherlands

A branch or a subsidiary?

To start doing business in the Netherlands, it is important to distinguish between two options: setting up a branch or incorporating a company. In general, registering a branch may be seen as a 'light-touch' way of getting started. It should be noted, however, that registering a branch also involves certain necessary formalities and may be less appropriate once the business grows.

On the other hand, incorporating a Dutch company (a BV), is a relatively easy procedure, even if it will involve a civil-law notary. With the right assistance, a good notary (and providing the right documents on time), incorporation is possible within a week. Regardless of our client's choice, Maprima
will assist in a smooth registration/incorporation process and handle all formalities including KYC processes of the notary, tax registrations, registrations at the trade register and UBO register.

If applicable Maprima will also be able to coordinate an advance tax ruling, giving certainty about how profits will be taxed. This may be of particular relevance when considering inter-company relations.

An office or another facility?

At a minimum, a company must have a registered address. What the client intends to do will determine whether more is needed. If staff need to be employed, it may be more appropriate to have a physical office, even if some employees will work from home. Depending on the client's activity, a warehouse, laboratory, or even production facilities may be needed. Maprima may be able to provide a registered address and can assist in your search for other facilities if needed.

Is a Local Director needed?

Dutch companies are not obliged to have a local director. A foreign individual or even a foreign legal entity can be the director of a Dutch company. However, for tax purposes, a minimum connection to the Netherlands may be needed. For example, a holding or financing company may need a Dutch (co-) director.

"With the right assistance, a good notary (and providing the right documents on time), incorporation is possible within a week."

"Maprima can advise in the hiring stage, and also coordinates the monthly payroll process on an ongoing basis."

Maprima is licensed by the Dutch Central Bank to offer this service in case the client does not have a local candidate of its own. In cases where a business has organised to hire local staff and have a physical presence imminently, a local director may not be required, but still advisable.

Staffing and Human Resources

The Netherlands, in line with other European countries, is employee-friendly. There is some flexibility in the way that Dutch payroll can be set up, but some planning and thought should go into its preparation.

With the right preparation, setting up a payroll in the Netherlands can be done efficiently and at short notice. And, even while the company is still waiting for the authorities to issue their payroll tax registrations, the employees can already be hired and actively work for the company.

Setting up the desired benefits, ranging from pensions or specific insurance policies to company cars and expense management: these can all be handled at short notice as well, and almost fully tailored to the needs and wishes of the employers and employees – if the minimum requirements are respected.

Apart from hiring Dutch citizens on payroll, it can also be attractive to move staff from abroad to the Netherlands, as they will be able to use the '30% ruling' that allows the company to pay them up to 30% of their total salary tax-free. To qualify for this, the employee has to meet a few requirements. Both parties will need to file an application in which they demonstrate that the employee:

- Was hired from abroad.
- Lived at least 150 kilometres from the Dutch border in the period before moving to the Netherlands
- Meets the minimum salary thresholds.

Maprima can advise in the hiring stage, and also coordinates the monthly payroll process on an ongoing basis.

Corporate secretarial

For all formal obligations, such as filings, annual meetings and drafting all kinds of resolutions, it is important to be sure you meet all legal and statutory obligations: particularly in the area of AML, where legislation is evolving rapidly.

Think, for example, about (public) UBO registers or KYC questions asked by banks. Complicated terminology and documentation can make assistance by qualified local professionals a necessity – Maprima is aware of the latest local requirements and can assist here as well.

Bookkeeping, fiscal compliance, accounting

Typically, companies must file annual accounts. The level of detail depends on the size of the company. Corporate income taxes are due annually and VAT returns are due every quarter. Depending on the client's organisation and existing relations of accountants/advisers, Maprima is happy to fill the gap and assist where needed.

For international clients, Maprima is a trusted partner and central point of contact – offering assistance where and when you need it. For more information please don't hesitate to contact us.

Hub completed both his Bachelor of Economics as well as his Post-Bachelor degree in accountancy (AA) at Hogeschool Zuyd, in Sittard. Before joining Maprima in 2019, he worked for various accounting firms, and as an interim financial controller.

At our office in Maastricht, Hub holds the position of Senior Business Support Manager, and as such is responsible for identifying and fulfilling the business needs of our national and international clients and their companies.

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Justin completed his Master's degree in tax law at Maastricht University. Before joining Maprima in 2016 he worked at PwC and Hertoghs Advocaten.

At Maprima, Justin is a Senior Account Manager and is based in our Maastricht office. He assists both national and international clients with their holding, financing and operational companies. His area of expertise lies in asset protection and real estate investment companies.

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Maprima is an established professional service provider with a track record of almost 25 years. The practice is a BeNeLux-based firm with offices in the Netherlands, Luxembourg and Belgium. Most of its clients are internationally-active companies and wealthy families, who have long-standing relationships with Maprima.

The firm has been advising and servicing international clients and high-net-worth individuals since 1999. They offer services to corporate clients and start-ups as well as wealthy individuals and their families through various service lines, including corporate services, business support and real estate support.

The firm was among the first to obtain a license from the Dutch Central Bank for corporate services. The internationally-focused team offers a one-stop solution. The services include company set-up, HR- and payroll support, fiscal compliance, and accounting, which can be combined with management and/or domiciliation services. A service-minded and proactive approach defines our way of work.

Transfer pricing: the key issues in Poland

Key issues
Regulations on transferring income between related parties have existed for a long time in Polish tax law. However, transfer pricing matters have gained importance in Poland relatively recently. Even though Polish transfer pricing regulations are aligned with the OECD Guidelines, they are at the same time highly detailed. Simply relying on the OECD Guidelines in Poland is not enough. Thus, there are separate and local requirements in place, and ignoring them may trigger TP risks. Given the number of legal regulations applicable, fulfilling all TP obligations in Poland may prove quite challenging.

How to fulfil transfer pricing obligations: The ABC of a Polish Taxpayer
The first step is to identify the relationship that exists between entities engaging in transactions. Whenever the relationships are not obvious, the so-called 'significant influence of one entity on another' must be verified. The legislator has defined areas of significant influence, so entities may be related when, for example, one of them holds a minimum of 25% of all shares in the other. Moreover, the significant influence may also be between spouses, relatives, and affinities to the second degree. Affiliations are also formed by unincorporated companies and their partners, or the taxpayer and its permanent establishment.

The next step is to verify whether the transactions made with a related party exceeded the documentation threshold. This is where Polish regulations are of use since they introduce the exact amounts: PLN 10,000,000 (for financial transactions) and PLN 2,000,000 (for service and other transactions). These thresholds should be determined for transactions of a homogeneous nature. This means that the obligations may apply to transactions between more than 2 entities, where – although each transaction separately is not subject to the documentation obligation – their total sum exceeds the threshold.

> "Whenever the relationships are not obvious, the so-called 'significant influence of one entity on another' must be verified."

Is documentation enough? Not necessarily.
There are certain obligations associated with transfer pricing in Poland, such as preparing local transfer pricing documentation (the Local File). Nevertheless, the Local File is not enough – almost every piece of documentation must include a benchmarking study that verifies comparable market transactions and confirm that the price established in the transaction corresponds to market prices.

Last but not least, there is also the need to have group documentation (the Master File). It applies when the cumulative revenues of a group of related parties exceeded PLN 200 million (or equivalent) in the previous fiscal year.

Be aware that the Master File received from another group company must always be reviewed for compliance with the requirements stated in Polish regulations. In each case, it is the taxpayer who is responsible for the Master File's compliance with Polish law, even if it has been prepared by another group entity.

Further details
Exceeding the materiality threshold also triggers the obligation to prepare a TP-R form. It is a highly detailed statement and requires specific information about transactions. Data from the

TP-R is used when selecting entities for tax checks.
The TP-R form requires a wide range of detailed information on the entity's financial position, the type and value of controlled transactions, information on the prices or profitability of transactions, transfer pricing verification methods and benchmarking study results, etc.

> "The need to prepare transfer pricing documentation is not only applicable to transactions where goods and services are exchanged."

Unusual Transactions
The need to prepare transfer pricing documentation is not only applicable to transactions where goods and services are exchanged. It may also be necessary for most economic activities in which related parties are involved. An example of a transaction that requires related parties to prepare the relevant transfer pricing documentation is business restructuring. Mergers, division or acquisition of companies, share capital increases or other transactions involving shares, stocks and other participation rights may give rise to transfer pricing obligations as well.

These examples best illustrate that the concept of a controlled transaction is not limited to events of a repetitive nature. Business restructuring is a one-off event, yet it involves a series of actions of a legal and factual nature and so qualifies as an economic activity.

Also, be aware that remuneration itself is not a prerequisite for a transaction between entities to be subject to documentation obligations – the transfer of gratuitous consideration to a related party qualifies as a controlled transaction. A common example is a no-fee guarantee or the granting of a license for the use of a trademark with no fee. Consequently, despite the lack of a price, this transaction requires transfer pricing documentation.

DOs AND DON'Ts when entering into related-party transactions in Poland
Meeting TP obligations in Poland is extremely important since these transactions are checked and tax authorities can easily find entities in need of inspection.

Since possible irregularities uncovered in a tax check may involve severe sanctions, it is of paramount importance to have documentation prepared completely. It should prove beyond any doubt that the transaction made in the tax year with a related party was in line with the arm's length principle.

Taxpayers must pay special attention to identify the business events performed correctly and in detail. This is because in practice each business activity they undertake may be examined in terms of documentation obligations.

Magdalena Marciniak s a leading expert in Poland according to the "Women in Tax" ranking, International Tax Review (2023, 2022). Recognised expert in transfer pricing.

Manages MDDP's practice of more than 50 people – one of the largest and most awarded transfer pricing practices on the Polish market.

Leads projects on documentation of transaction flows in capital groups and valuation of goods and services transactions between related entities.

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Magdalena Dymkowska specializing in transfer pricing since 2009. Received individual distinctions for the best tax experts in the field of transfer pricing in World Transfer Pricing 2022 and 2023. Head of Working Group no. 7 with the TP Forum in Poland (in charge of TPR declaration – Q&A document). Involved in projects related to designing intra-group settlement models (including based on the profit split method) and their defense during tax audits, preparing transfer pricing policies and filing applications for Advance Pricing Agreements.

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MDDP is the most successful independent Polish tax advisory firm, operating in the market since 2004.

Our team comprises nearly 200 experts in VAT, income taxes, transfer pricing, international taxes, domestic taxes, tax and court proceedings, and customs and excise duties. We conduct innovative, pioneering tax cases and projects in Poland.

We are involved in issues we consider to be important. We actively participate in consultations of draft legislation; we are experts for the European Commission, business organisations, and trade associations. Our experts have authored several books and articles in professional publications.

Our transfer pricing team was established in the same year as MDDP itself. Since then, the team has expanded to more than 50 transfer pricing specialists who are available on a regular basis to answer questions and clarify issues, ensuring a personal approach to each client's needs.

Robert Lewandowski
Partner, DLP Dr Lewandowski & Partners

The importance of compliance in public companies: best practice 2021

A compliance system is an important business tool to avoid the risks and consequences of breaching the law, or failing to observe standards ensuring the continuity of business operations. It is also important in preserving a company's good name and competitiveness. Compliance rules have become more important in recent years due to more regulations and sanctions being imposed by the legislator in this respect. However, apart from public companies of a special kind such as financial institutions, public companies in Poland are not formally obliged to implement compliance systems within their internal organisation.

An important step towards the functioning of a compliance system was the introduction of the "Best Practice 2021" package. This is a new edition of the code of corporate governance applicable to public companies listed on the Warsaw Stock Exchange (GPW) in Poland, reflecting the recent corporate governance trends in this sphere. Drafted by experts on the GPW Corporate Governance Committee and introduced on 1 July 2021, "Best Practice 2021" contains the following sections: (1) disclosure policy and investor communications, (2) management board and supervisory board, (3) internal systems and functions, (4) general meetings and shareholder relations, (5) conflict of interest and related party transactions, and (6) remuneration.

According to these guidelines, publicly listed companies must provide reliable information about their affairs, make their financial statements and data public, maintain steady communication with shareholders, and act upon investors' requests without undue delay. To ensure high-quality communications with stakeholders, as a part of the business strategy, companies publish on their website information concerning the framework of the strategy, measurable goals, including in particular long-term goals, and planned activities and their status, defined by measures, both financial and non-financial.

Members of the management board and supervisory board must act in the interest of the company and be independent in their decision-making process and judgements. Furthermore, listed companies maintain efficient internal control, risk management, and compliance systems and an efficient internal audit function adequate to their size and the type and scale of their activity. Regarding holding the general meeting, board members are required to encourage and promote an active role of shareholders in such meetings. Since the Covid-19 pandemic, companies have also been required to enable their shareholders to participate in a general meeting by means of electronic communication if justified, and to equip them with the technical infrastructure necessary for the general meeting to proceed.

To avoid any conflict of interest, members of the management board and members of the supervisory board shall notify each other about the lack of their impartiality. In addition, companies may buy back their own shares only in a procedure which respects the rights of all shareholders. If a transaction concluded by a company with an affiliate requires the consent of the supervisory board, before giving its consent, the supervisory board assesses whether to consult a third party for a valuation of the transaction and an assessment of its economic impact.

"Compliance rules have become more important in recent years due to more regulations and sanctions."

"Since the Covid-19 pandemic, companies have also been required to enable their shareholders to participate in a general meeting by means of electronic communication ."

The company's remuneration policy is also important. The remuneration of members of the management board and members of the supervisory board and key managers should be sufficient to attract, retain, and motivate persons with the skills necessary. The level of remuneration should be adequate for the tasks and responsibilities delegated to individuals and their resulting accountability. Incentive schemes should be structured in a way necessary, among other things, to tie the level of remuneration of members of the company's management board and key managers to the actual long-term standing of the company, measured by its financial and non-financial results as well as long-term shareholder value creation, sustainable development and the company's stability.

If companies' incentive schemes include a stock option program for managers, the implementation of the stock option program should depend on the beneficiaries' achievement, over a period of at least three years, of pre-defined, realistic, financial and non-financial targets, and sustainable development goals adequate to the company. The share price or option exercise price for the beneficiaries cannot differ.

"Best Practice 2021" is an element of soft law, and is non-binding. It is rather a form of self-regulation of the market participants, and fills the gap between the statutory law and the capital market. In line with the recommendations of the European Commission, within the limits of the EC's powers, companies are monitored with respect to compliance with the corporate governance principles with a special emphasis on the quality of explanations published according to the comply-or-explain approach. Issuers listed on the GPW are required to cooperate in this respect and provide on request any information necessary to verify their explanations and the status of their compliance with the principles of "Best Practice 2021". Companies' commitment to quality corporate governance will benefit their reputation and relations with stakeholders as well. Bearing this in mind, publicly listed companies need to apply "Best Practice 2021" as broadly as possible, as this has implications for their image and standing.

Dr Robert Lewandowski who leads DLP Dr Lewandowski & Partners sp.k , studied mathematics and German philology at the University of Warsaw and law at the University of Mainz, Germany, and later joined the list of German lawyers at the Frankfurt Bar Association in Germany and the list of legal advisers at the District Chamber of Legal Advisers in Warsaw. For almost 20 years, Robert has specialised in corporate law, with a focus on private Mergers & Acquisitions, cross-border work, general corporate advice, and litigation. His sector focus covers also regulated industries and private equity. Robert is the author of over one hundred articles and many legal books and commentaries on business law published in Poland and abroad.

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DR LEWANDOWSKI & PARTNERS
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The Polish branch of **DLP Dr Lewandowski & Partners** is a well-known and established firm offering a comprehensive range of services and advice, fully tailored to our Polish and International clients' demands and expectations. We specialise in assisting foreign clients to enter the Polish business sector and offer our expertise regarding the setting up and acquisition of subsidiaries, representing foreign clients in litigation cases before Polish state and arbitration courts and enforcing (cross–border) judgment. Our multi-lingual staff provides services in Polish, English and German.

We have advised a Chinese construction giant in setting up a Polish subsidiary and assisted them in entering the lucrative Polish market of road building, sports stadia and shopping mall investment. Additionally, we have represented Warsaw City Council during negotiations with UEFA regarding the staging of the 2012 European Football Championship in Poland and Ukraine.

We have acted on behalf of relatives of Jewish families in accessing Polish archives in order to procure documentation and establish restoration claims. Currently, we are advising companies seeking to establish biogas plants in the lucrative sector of renewable energy which is of high interest to new investors as the Polish government introduced new favourable laws to boost this area.

Why Portugal? Understanding the region's opportunities

Most of the things that create Portugal's appeal are intangible: the generous light, the mood and warmth of its people, the ever-changing landscape, its cosmopolitan diversity, and its position at the westmost tip of Europe.

Facts are also important. It has one of the lowest crime rates in Europe (and in the world), one of the best free universal healthcare systems, a stable democratic and progressive political system, and respect for all creeds and lifestyles.

There's an enticing special tax regime for newcomers, from pensioners, to skilled workers, to entrepreneurs. There are specially devised government incentives for urban rehabilitation, the rental market, technology, and R&D, and a patent box regime for the development of new intellectual property.

There's an arbitration regime for tax disputes up to €10 million, the rule of law is strong, there are no barriers or limitations for foreign direct investment, and business have freedom of establishment, and to trade goods and services.

Investing in real estate: spotting the investment opportunities and finding the right corporate and tax structure, project management

The real estate market has been hot in Portugal in the last seven years. As the market marches towards maturity, and with rising inflation and interest rates, structuring your investment becomes paramount.

We have a housing problem in Portugal: luxury accommodation keeps being sold off-plan, and there's an absolute scarcity of housing for the middle classes, with demand far outpacing supply. It's a situation that many countries in Europe experience.

Once you have decided on your investment (location, size, purpose, capital expenditure and financing mix), it's time to think about Special Purpose Vehicles (SPVs).

We at VCA are very keen on SICAFI; it is a (lightly) regulated company type, structured as an investment fund, which means that there are several exemptions and reductions in applicable taxes. Taxation is due at reduced rates when dividends are distributed, meaning in general terms that companies will benefit from participation exemption, and there is also a general reduction or exemption in capital gains from the redemption or sale of the shares of the SICAFI.

The SICAFI are especially tax-effective for non-residents, either private citizens or companies.

The government has just launched the program "Mais habitação" currently under public discussion with civil society stakeholders (VCA participated), and in the parliament from the end of March 2023. The intent is to accelerate the zoning and licensing process committed to the local city authorities to increase volumes of construction. Substantial tax incentives are being designed to encourage "build to let" or "buy to let".

There are special reduced tax rates for investment in urban development, available throughout the major banks.

You can either buy a ready and approved project and save two years,

"There's an enticing special tax regime for newcomers, from pensioners, to skilled workers, to entrepreneurs."

"There are special reduced tax rates for investment in urban development."

or choose a local architect and have your bespoke project presented to the city council. VCA can help you with both options. We have strong ties with the relevant real estate brokers and the renowned architects who can make a difference in finding the right location and adding brand value to the project. Once you have made your acquisition, is time to think about developing.

With increasing prices in manpower, materials and financing costs, project management is crucial for the financial success of your venture. VCA will see you through the tenders to choose contractors and will manage the legal aspects of your project to completion.

Either you are looking at a short or long term investment there is a roadmap for success which is partly based on sound legal advice from the first stages of the project to actual delivery and management.

VCA is in a very strong position to deliver the advice and support you need.

João is based in Lisbon and is widely known among IRGlobal members, having joined the network in 2014, and never missing a conference since.

Joao is also the secretary of the Senior Lawyers Committee of the International Bar Association (IBA) and member of its Real Estate and Private Clients Committee. He is also a member of the American Bar Association – International Law Section, and the International Fiscal Association.

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VALADAS CORIEL & ASSOCIADOS

Valadas Coriel has over twenty years' experience in catering for the needs of foreign investors, might they be individuals, family offices, or larger corporations.

Our multilingual partners and associates can converse with you in English, French, Spanish, Ukrainian Italian, or Russian.

We're a firm of seasoned lawyers, complemented by young blood.

We are a specialised law firm, focusing in tax, real estate, corporate, litigation and immigration.

Under the large umbrella of dispute resolution we advise on labour, maritime, commercial, insolvency, tax, and administrative law.

Within the scope of immigration, we have assisted thousands to get visas, get Portuguese nationality, relocate, find houses and jobs and navigating the inevitable bureaucracy.

We are involved in large real estate developments from the identification of opportunities, through the negotiation and acquisition to incorporation of vehicles to project management until delivery. Our tax advice is bold, clear, and strategic.

Headwinds and tailwinds in EU's banking & finance sectors

Sanctions 2022 (Ukraine)

In 2022, the European Union (following closely with the United States and the United Kingdom) imposed new sanctions against Russia in response to its ongoing war against Ukraine. These sanctions have brought about a number of novelties in terms of their scope and impact and have presented significant challenges for the banking and insurance sectors.

The sanctions imposed have targeted a wide range of individuals and entities, including Russian oligarchs, government officials, and companies that are believed to have been supportive of the Russian aggression against Ukraine. In addition, the sanctions have also targeted key sectors of the Russian economy, such as energy, finance, and defence.

One of the key novelties of these sanctions is the way in which they have been designed to maximise their impact while minimising their potential negative consequences. For example, the sanctions imposed by the United States have been targeted specifically at Russian state-owned banks and energy companies, rather than at the Russian people as a whole. This approach is intended to avoid causing unnecessary harm to ordinary citizens, while still putting pressure on the Russian government to change its behaviour.

Similarly, the European Union's sanctions have been designed to target specific individuals and companies, rather than the Russian people as a whole. This approach has been achieved by imposing travel bans and asset freezes on key individuals and companies, rather than imposing broad economic sanctions on the Russian economy as a whole.

> "Many banks and insurers have been forced to re-evaluate their exposure to Russia."

However, despite these efforts to minimise the negative consequences of the sanctions, they have still presented significant challenges for the banking and insurance sectors. For example, many banks and insurers have been forced to re-evaluate their exposure to Russia, as the sanctions have made it much more difficult to do business with Russian companies and individuals.

One of the greatest challenges involving the banking sector and, in many instances, their legal counsels, is related to the interpretation of the (in)famous criteria for the determination of the "control" and of the coverage area of the freezing of funds, when it comes to groups of controlled by a sanctioned person or entity. Recent practice has shown that, the criteria are quite wide and thus present a twofold problem. On one hand, they put the banks/other EU market players in a difficult position when striving to identify which are the clients/transactional parties in scope for freezing of funds/payments (EU banks and other players being "forced" to over-freeze for fear of regulatory sanctions). On the other hand, they void the effort of the legal counsel when trying to provide valuable legal advice to the EU market players, since the understanding of such criteria exceeds the rules of legal and grammatical interpretation and, rather, such understanding lies in an obscure interpretation which is purely economically or even politically driven. In fact, such wide and ambiguous interpretation of the "control" gives rise to the question of whether the sanctions applied by the EU work against the Russian economy or, rather against the EU economy (given that there are many reputable EU companies with stakes are owned by Russian oligarchs, through EU stock exchanges).

Another relevant example is the sinuous evolution of article 5b under the EU Regulation 833/2014 regarding the prohibition (for EU banks) to hold Russian persons/entities' "deposits" greater than €100,000. It started by imposing this prohibition to citizens and residents of Russia, while, based on a much debated and contested answer of the European Commission in its FAQs section around the 25th of March 2022, the EC issued an interpretation whereunder the restrictions applied to EU based companies owned by Russian beneficial owners, too (!).

> "One of the key novelties of these sanctions is the way in which they have been designed to maximise their impact while minimising their potential negative consequences."

This lasted for a couple of weeks (despite the apparent paradoxical and illogical situation) and has been eventually solved by publishing updates to the FAQs section and amending of the EU Regulation.

To summarise, the issue might lie in the fact that the EU regulations in the sanctions area often seem to fail in legal drive and clarity. Going through the documents, one might assert that they are written exclusively by economic experts in concert with political factors.

EU AML Package

On December 7th '22 the European Council agreed its position on the new AML Regulation and new AML directive (AMLD 6), Together with the recast of the transfer of funds Regulation, these will form the new EU AML rulebook.

The AML Regulation might be enforced by 2024 while the entire package might be adopted by the end of 2025.

Some of the new rules embraced under the new package bring about new and/or stricter standards in terms of: coverage of rules to crypto-assets service providers; beneficial ownership identification (e.g. mandatory consultation of UBO Register plus the use of another reliable source for the verification of the identity; reporting duties to the Central; new rules on multilayered ownership and control structure; no exception from UBO identification/verification for listed companies or government bodies/companies; need to document the nature and extent of the UBO interest in the legal entity), or CDD rules.

As a matter of detail, when implementing the 4th AML Directive, Romania's legislative body and local regulators in the banking and insurance sectors have chosen the harsher path and introduced CDD rules which are, in fact, identical or similar to the ones predicted to be laid down in the foreseen EU AML Package. Hence, due to the harsh vision of the local authorities, at least in theory, the local regulation/legislation is more or less aligned with the foreseen new rules.

Madalina founded the Hristescu & Partners Law firm in 2010 in Bucharest, Romania. Later on, she developed a branch of the firm in Rome. As a Founder and Managing Partner, she is involved daily in administration, talent acquisition and business development. As a Lawyer, she counsels clients on Banking, Non-Banking and Financial Services, Corporate Governance, Employment & HR, Real Estate sectors, and coordinates Mergers & Acquisition transactions. As an Entrepreneur, she understands and supports the daring challenge of the status quo, by investing resources in start-ups that may shape our future.

Madalina is a graduate of the Bucharest Faculty of Law and her professional training includes also London School of Business and Finance LSBF, Boston University School of Law – Contracts & International Business Transactions, Churchill College, Cambridge – Leasing school Program.

Previously, Madalina has led the Legal Department of an international corporation and she currently acts as a Council Member of the European Regional Forum- International Bar Association (IBA) and an Official Partner of the Financial Institutions' Association in Romania (ALB).

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Hristescu & Partners
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Hristescu & Partners is a law firm that provides legal services for Romanian and international companies, including assistance and representation, with strong credentials in business law.

We aim to provide our clients with a completely different consultancy approach, as we grow into a partnership that our clients never had, and we answer questions they never knew they had to ask.

The language we use is "business", as we are entrepreneurs too and we have to deal daily with an ever-changing and challenging business environment. It is our empathy, sharp minds, and experience that give us the power to comprehend your business, to be by your side and share advice that goes beyond mere legal expertise. We are team players, your team player!

Personal relationships and common values matter most to us, both in life and in business, so we cultivate new encounters and we weigh in carefully the long-term dealings. When we connect, we become part of your business. But we also have the courage and courtesy to refer you elsewhere, if we are not able to fully support your needs.

Are labour costs in Romania an opportunity for new investors?

Labour costs in Romania can be seen as an opportunity for the new investors, particularly for businesses looking to establish or expand their operations in the country. However, at the same time it can be a concern for some, depending on their industry and business model.
The Romanian payroll system is generally seen as complex and challenging compared to other European countries. The tax laws and regulations in Romania can be difficult to navigate, and compliance requirements can be costly for employers. The country's tax system is also subject to frequent changes, which can make it challenging to keep up with the latest requirements.

Employers in Romania are required to comply with a number of regulations related to payroll, including reporting requirements, tax filings, and social contribution obligations. Failing to comply with these regulations can result in penalties and fines.

The official language in Romania is Romanian, and many of the tax forms, platforms and other documents related to payroll are written in Romanian. This can be a challenge for foreign companies who may not have staff who are fluent in the local language.

These aspects can be challenging for foreign companies looking to set up operations in Romania.

Despite these challenges, Romania has a highly educated and skilled workforce, and labour costs are generally lower than in many other European countries. It's important to note that employment costs can vary widely depending on factors such as industry, job type, and employee qualifications.

This has made Romania an attractive destination for companies looking to establish operations in Eastern Europe, particularly in industries such as IT, manufacturing, and services.

Our suggestion is to avoid solely considering the gross salary when comparing costs and not because of it's value level. This is because, starting from 2018, a substantial portion of the company's contributions have been shifted to the employees' side, with the employee contribution currently standing at 45%, while the employer's contribution above the gross income is only 2.25%.

There is a cost arbitrage between Bucharest and other cities in Romania, but it is diminishing as more industries adopt the remote work model. Bucharest is generally the most expensive city in Romania, with higher living costs, wages, and rental prices compared to other cities. Nevertheless, the city also boasts the largest pool of skilled labor and the highest concentration of businesses, which may help balance out some of the higher costs.

Romania has made efforts in recent years to simplify and modernise its payroll system, including introducing electronic payroll reporting and streamlining certain tax procedures. The government has also implemented a number of tax incentives and other measures designed to encourage foreign investment and support businesses operating in Romania.

The use of digital technology is increasingly important in the payroll industry, and this trend has been accelerated by the COVID-19 pandemic. For example the electronic payslips are becoming the norm for many companies. Additionally, an increasing number of companies, regardless of their size, are opting to use electronic time and attendance systems to track employee work hours and absences.

It is also worth mentioning that digitalization has made significant progress in Romania. For example, registration and deregistration of employees, as well as changes to employment contracts, are now processed through electronic platform. Tax returns are also filed online and communication and exchange of documents between companies and authorities is mostly done through the electronic channel known as the Virtual Private Space. In addition, the implementation of the electronic invoicing (E-Factura) is applicable in some industries and is likely to be implemented for all companies in the future.

Given that Romania has become a significant player in the global IT industry and is widely recognized as an "IT territory" with a strong focus on software development, there are promising opportunities to advance administrative digitization.

Furthermore, the government provides subsidies to non-IT companies for the purpose of digitalisation.

The employee's gross salary is determined by the employment contract and can include various components, such as the base salary, bonuses, and benefits. The employer is responsible for calculating and deducting the applicable taxes and social contributions from the employee's gross salary before making the net payment.

It's important to note that the specific benefits offered by employers can vary widely depending on the industry and company size. Employers are not required by law to provide benefits beyond those imposed by the Labour Code, but it's a common practice to offer additional benefits to attract and retain employees.

There are several ways you can structure your employee salary package to be tax efficient in Romania, such optimising salary components. Some salary components, such as meal cost and transportation expenses, are exempt from income tax and social contributions, up to certain limits. By increasing the non-taxable components and decreasing the taxable components, it is possible to decrease the overall tax burden for both the employer and the employee.

Or you might consider providing non-taxable benefits. You can provide non-taxable benefits to employees, such as

- benefits based on the mobility clause
- the value of the food provided by the employer
- accommodation and the value of the rent for the accommodation spaces
- the value of tourist and/or treatment services, including transport during the leave period
- contributions to an optional pension fund
- voluntary health insurance premiums
- medical services provided in the form of a subscription
- the allowance granted to telework employees, sport subscriptions all together within the limits prescribed by law, not exceeding 33% of base salary

Do not exclude training and development opportunities, or stock options or equity compensation, which can provide tax advantages and potentially increase employee motivation and retention.

Overall, while the Romanian payroll system may have its challenges, the country's business-friendly environment, skilled workforce, and strategic location in Europe make it an attractive destination for foreign companies looking to expand their operations.

That being said, setting up a payroll process in Romania can be complicated for companies, and there are many regulations and compliance requirements that you must follow. It is recommended that you seek the advice of a local payroll service provider to help you navigate the process and ensure that you are complying with all legal requirements.

"Romania has a highly educated and skilled workforce, and labour costs are generally lower than in many other European countries."

Daniela Zsigmond's primary focus is on business development and overseeing all aspects of the company's operations. With over 20 years of experience in the payroll field, and extensive experience in outsourcing, she has had the opportunity to work with clients from various industries, both local and global, and manage multiple implementation projects with customised setups. Despite her vast experience, she remains passionate and enthusiastic about the consultancy industry, constantly seeking new challenges and leveraging technology to meet clients' evolving expectations. In her current role, she dedicates a significant amount of her time to ensuring the smooth running of the organisation while driving growth and development.

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BUSINESS PROCESS INNOVATION

BPiON – Business Process InnovatiON provides new wave accounting, payroll and administration outsourcing across Europe. Smart use of technology, process-driven thinking, and more than 100 years of combined professional experience – coming from diverse industries – makes BPiON an important player on the CEE regional market.

BPiON supports its clients, including organisations of all types and sizes, who have a desire for intelligent and tailor-made Business Process Outsourcing (BPO) services in Romania, Hungary, Poland, or across Europe through a broad network of partners, which are selected carefully based on high-quality standards. Through the professional network, a local and international knowledge can be combined for all the core services provided regarding accounting, payroll & HR administration, regulations, outsourcing and technology digitisation processes.

BPiON prioritises making clients' lives easy and effective, by providing single point of contact for project management, and sharing up-to-date knowledge regarding legislation changes, which may have an impact on the clients' industries, even at international level.

BPiON brings together the best of generations X and Y, combining persistence, enthusiasm for lifelong learning, a proactive attitude, and an ability to make connections in a friendly and open manner. At the same time, it embraces and integrates new digital-age technologies into all of its work.

CORPORATE LAW | SPAIN

Bosco de Gispert

Lawyer, BPV

The reality of company sustainability reporting obligations

The European Parliament and Council's Corporate Sustainability Reporting Directive (CSRD), (which has amended Regulation (EU) 537/2014, Directive 2004/109/EC, Directive 2006/43/CE and Directive 2013/34/UE) has come into force. This means that more companies are required to report on corporate sustainability issues.

The world and the economy are changing, and the CSRD is adapting to new sustainability demands. The importance of sustainability reporting is now on par with financial reporting.

Initially, the Non-Financial Reporting Directive (NFRD, 2014/95/EU) known in Spain as the Law 11/2018 on Non-Financial Information and Diversity, introduced the obligation to report non-financial information statements for certain large companies and groups. However, the CSRD's scope has now extended this obligation to a larger number of companies due to the update of the scope of application included in the CSRD.

In Spain, the local law mentioned above was a step forward for reporting non-financial information and, some years later, we are still noticing areas for improvement, which has been one of the catalysts behind this new directive.

It is estimated that the number of affected companies required to provide sustainability information is expected to increase fourfold, from around 11,000-12,000 to 48,000-50,000.

The CRSD not only requires companies to provide information on results, development, and financials in their management report, but also information that clarifies the impact of the company's activities around sustainability.

> "The importance of sustainability reporting is now on par with financial reporting."

Member states will have until 6 July 2024 to transpose the CSRD and it will be implemented in four phases:

1. Large companies already subject to the previous non-financial reporting directive will be required to report on sustainability in 2025 for the financial year beginning January 1st, 2024.
2. Large companies and parent companies of large groups of companies (more than 250 employees and/or a turnover of €40 million and/or €20 million of assets) not subject to the previous directive and domiciled in the European Union, will be required to report on sustainability in 2026 for the financial year beginning January 1st, 2025.
3. Small and medium-sized companies (SMEs) – excluding micro-sized companies – whose securities are admitted to trading on a regulated market in the Union or which have a public interest, and which are domiciled in the European Union, must submit in 2027 sustainability information for the financial year starting January 1st, 2026.
4. Third-country companies with a subsidiary or branch in the European Union that meet certain requirements (mainly, to have a €150 million annual net turnover in the European Union) must submit sustainability disclosures in 2029 for the financial year beginning January 1st, 2028. This measure is intended to level the playing field for companies based in the EU, irrespective of where the company is based.

In any case, the CSRD establishes common, verifiable standards for sustainability reporting (Sustainability Reporting Standards or ESRs) that can be digitised to monitor and check them for compliance. The European Commission is expected to adopt delegated acts to establish sustainability reporting standards.

Furthermore, sustainability information will have to be verified by an auditor or by an independent service provider. In this regard, the auditor or certifier will have to ensure that the sustainability information complies with the standards that have been adopted by the EU.

> "Although sanctions for non-compliance with the CSRD are expected to be significant, it is not known when the EU Commission will start imposing them."

Although sanctions for non-compliance with the CSRD are expected to be significant, it is not known when the EU Commission will start imposing them on companies that fail to comply. The nature of the sanctions or fines will depend on the individual Member States.

In short, this directive introduces additional, more detailed obligations for companies in areas such as the environment (circular economy, use of resources and adaptation to climate change), human rights, social (equality measures, working conditions or inclusion) and governance (ethical values, control systems and risk management).

This represents an important step forward in terms of establishing sustainability standards at a global level. The improved reporting driven by the CSRD will facilitate the transition to a more sustainable economy by allowing investors to better identify the activities and projects into which they should channel funds.

In any case, we will have to wait for the transposition of the CRSD Directive into each country's legal system and the regulation imposed at a national level to ensure compliance with these regulatory obligations.

Lastly, we must consider that although the transition to implementing the CRSD Directive is set in different timeframes as established above, it is important to start working on the new features imposed by the CRSD Directive.

Why? Because companies probably will not know what is needed to comply with the new regulation, and so they must ensure that they have the means to provide all the data they need to be compliant.

Bosco has more than 20 years of professional experience working across Litigation and Arbitration, Restructuring and M&A and Commercial Areas, especially in matters of shareholder conflicts and other corporate matters. He has been shortlisted in the Chambers and Partners Rankings for Restructuring and Insolvency two years in a row.

He has taken several specialisation courses in arbitration, insolvency and commercial law, including the CIAMEN Advanced Arbitration Course in partnership with the CIARB (Chartered Institute of Arbitrators) in London and the Executive Training Program at IESE Business School. (PDG 2016). He also completed the Erasmus program at the University of Bologna.

Currently, he is a member of the Spanish Arbitration Club and the London Chartered Institute of Arbitration (CIARB). In addition, he is an arbitrator of the European Arbitration Association and the Barcelona Arbitration Court, as well as a member of the IBA.

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BPV is an independent law firm with specialised teams that provides comprehensive legal advice across sectors in all areas of law.

They work for companies and groups from a local to a multinational level, as well as for organisations in the public sphere.

Among their clients are industry-leading firms in technology, finance, transport, renewable energies, pharma, health, biotech, startups, business angels, venture capital, hotels, family businesses, and many other sectors.

Their commitment to their customers has garnered success and recognition, and they will continue to grow with them to consolidate their leadership in a global market where people are the priority.

Protecting against volatility: different preliminary agreements in Spanish property law

In Spain, two types of real estate purchase agreements can be used to protect buyers and vendors from market volatility. Which party is better protected depends on which agreement is reached, its clauses, the amounts paid, and the wider market situation.

The most important step when exchanging property in Spain involves the parties granting a public deed before a notary, which is then entered into the Property Registry. This is necessary for the buyer to become publicly recognised as the owner of a property, and for them to hold full protection from any third-party intervention.

However, not many people are aware of the nature and consequences of so-called preliminary agreements.

In this article, we will understand the nature, main clauses and consequences of two types of preliminary agreement common in property transactions:

- Deposit agreements (contrato de arras)
- Private purchase agreements (private simply means that it isn't a public deed signed before the notary, but just between the two parties, buyer and seller)

Deposit Agreements

A deposit agreement contains the commitment by the buyer to purchase and the vendor to sell a given property at a price, deadline and terms agreed by both parties, inclusive of any additional clauses (i.e. mortgage, repairs, encumbrances, transfer to another buyer, etc.)

In this type of agreement, the buyer pays the vendor a deposit between 10% and 20% of the agreed price (with this amount sometimes being held by a broker.) The vendor keeps the property until the public deed is signed before the deadline by the parties involved.

During this period, the parties prepare the transaction (e.g. by granting a POA, clearing encumbrances, or obtaining the necessary funds) and in most cases, the time it takes for the public deed to be signed is usually short (1-3 months at most.)

However, in some cases, the agreed period in this situation could be much longer, as the vendor may have to complete certain legal actions, including:

- Cancelling any encumbrances
- Amending the legal description of the property
- Terminating lease agreements
- Vacating the property
- Conducting maintenance and repairs to the property

The defining characteristics of the deposit agreement are the consequences should any of the parties decide to cancel it.

If the vendor refuses or fails to sell the property by the agreed date, they should reimburse the buyer double the deposit paid. If the buyer fails to purchase, the buyer would keep the deposit, and in any case none of the would be entitled to claim any further damages. The vendor would be free to sell the property to a third party.

> "The defining characteristics of the deposit agreement are the consequences should any of the parties decide to cancel it."

In a wider market context of price deflation, a buyer might find that, after having signed a deposit agreement, the property is valued at less than the agreed price, or that their financial situation has worsened. In this case, they may prefer the vendor to keep the deposit amount that they already paid to avoid paying the remaining amount. The only option the vendor would have would be to keep the deposit amount, even if the property would have to be sold at a lower price.

On the other hand, during inflation, a vendor may be prepared to give twice the value of the deposit back to the buyer in order to sell the property to someone else. The buyer would be at a disadvantage as they would be unable to claim damages and must settle for a similar property at a higher price.

> "A vendor may be prepared to give twice the value of the deposit back to the buyer in order to sell the property to someone else."

Private Purchase Agreements

Private purchase agreements have a very different set of obligations and consequences. In this type of agreement, the buyer purchases the property from the vendor: a part of the price is paid at its signature, the terms to pay the rest of the price (normally in several instalments) are written, and the transfer of the possession can take place at a time agreed by the parties, but usually once the full price has been paid, and at this moment the public deed is granted. This option is widely used by developers when they sell properties that are still under construction.

The main feature of this type of agreement is that the parties cannot cancel it as easily as the deposit agreement. In the case of breach of contract, one party could even require the other to fulfil the terms of the contract (to buy or sell the property), pay compensation for damages or both.

For example, during the Covid-19 pandemic, many buyers who had entered into private purchase agreements with developers wanted to terminate these for various personal reasons, whereas developers often wanted to maintain the agreements. If the document signed had been a deposit agreement, it would be easy for the buyers to back out, but as they had signed a private purchase agreement, the vendor would be able to force them to complete the purchase.

Many developers faced the same situation after the real estate crash in 2008. Here, buyers would prefer to give up the amount they had already paid to avoid buying a property that had become more expensive than the market price. As a result, developers had to go to the Courts of Justice to force buyers to fulfil their obligations as per the private purchase agreement.

In summary, deposit agreements provide more flexibility to cancel a transaction, with both parties in agreement on the consequences of either doing so. Private purchase agreements have no exit route – and each party could force the other one to fulfil their side of the agreement.

Mercedes has 30+ years of experience as a lawyer, and from the early stages of her career, she has been involved in international property transactions, with clients across the Middle East, Asia, and the West.

Her experience includes advising foreign clients on investing and divesting – from simple residential property purchases (which, nevertheless, have grown more complicated as of late) to advising on establishing the suitable legal structure and means for corporate acquisitions. This includes tax and corporate advice, due diligence on lease agreements and land planning.

She is also a seasoned lawyer in landlord and tenant issues, and she has advised in multipart acquisitions of high street commercial premises for well-known brands: these are always complex transactions because the demand is greater than the supply in lease agreements within shopping centres. In such cases, the position of both landlord and tenant could be in jeopardy in M&A operations where the main asset is a property (e.g. in hotels and wine cellars.)

In summary, her familiarity with Spain's market situation and customs, combined with her legal know-how allows her to navigate property transactions safely and effectively.

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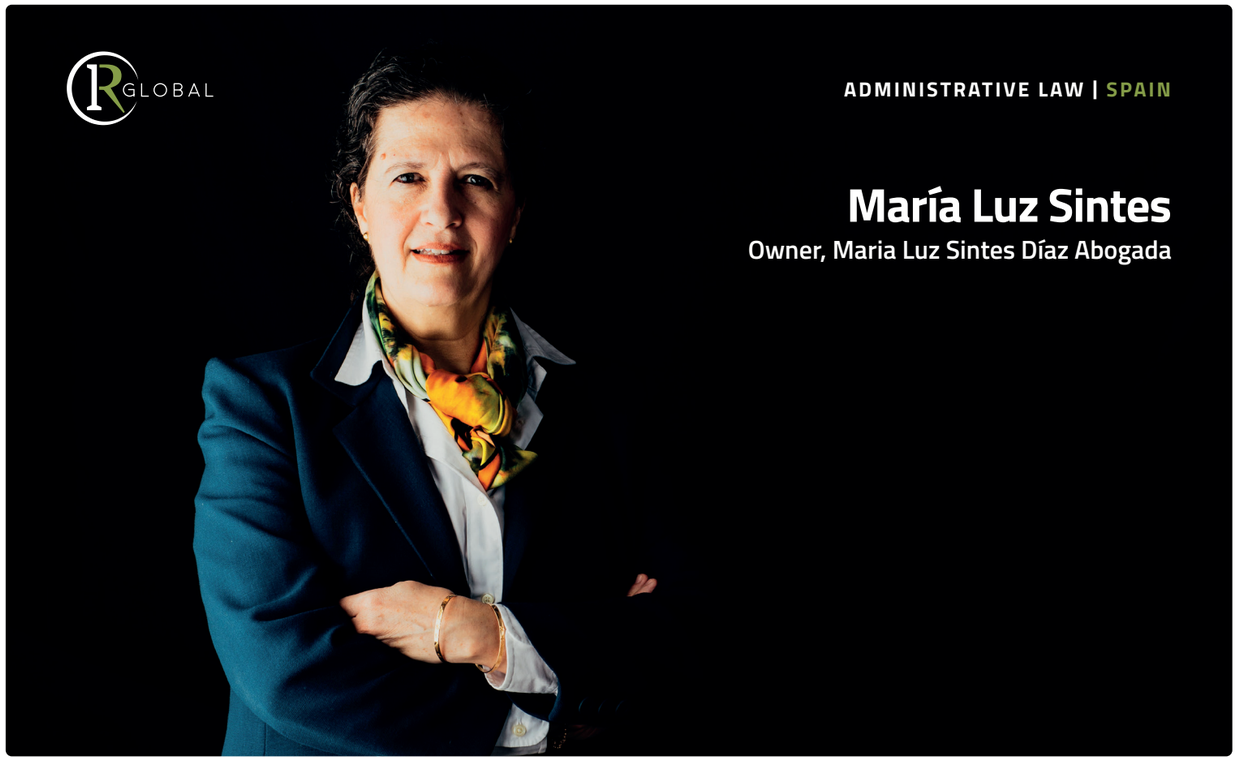
A R C O
ABOGADOS Y ASESORES TRIBUTARIOS

Arco can provide a 360º range of property law services: from legal and tax planning advice before a transaction to litigation, including due diligence, restructuring, negotiations, drafting and reviewing agreements, litigation and injunctions.

Arco is an advisor to several relevant public and private partnership projects in Barcelona, including port, underground and tramway infrastructure They are also proud to advise private clients – both corporate and individual – in their real estate transactions.

Arco Abogados has a total of 5 offices in Spain (Barcelona, Valencia, Madrid, Palma de Mallorca and Ibiza) but it can be considered a boutique law firm because of the highly specialised nature of its services and the close-client relationships it fosters.



Canary Islands: investment and economic development

The Canaries is an archipelago made up of 8 islands and 5 islets located in the North Atlantic. Its geographical situation is privileged and for centuries it has been a connection point between America, Europe and Africa. Barely 100 kilometer (62 miles) separate the islands at their closest point from the African continent.

The Canary Islands is one of the 17 autonomous communities in which the Kingdom of Spain is territorially organised. Fully integrated in Europe, it participates in the European internal market and common policies, through measures adapted to its particular situation and its belonging to the Outermost Regions of the EU, while maintaining its Economic and Tax Regime, hereinafter REF (its acronym in Spanish)

The Canarian REF is part of the historical heritage of the islands, which since the 16th century have enjoyed fiscal and commercial singularities to compensate for their remoteness and insularity.

The Spanish Constitution of 1978 recognises the Canary Islands REF in its third additional provision. The Statute of Autonomy of the Canary Islands, amended by Organic Law 1/2018, of November 5th, basic institutional norm of the Autonomous Community, also contemplates it in article 166.

REF is an evolutive regime, in the words of the Constitutional Court of Spain (SSTC 164/2014, 62/2003, 16/2003). Law 20/1991, of June 7, amending the fiscal aspects of the REF of the Canary Islands; European Council Regulation (ECC) No 1911 of 26 June 1991 on the application of the provisions of Community law to the Canary Islands; European Council Decision 91/314/CE of 26 June 1991, setting up a programme of options specific to the remote and insular nature of the Canary Islands (Poseican); Law 19/1994, amending the Economic and Tax Regime of the Canary Islands, developed by Royal Decree 1758/2007, of December 28, which approves its Regulations, in matters relating to tax incentives in indirect taxation, the Reserve for Investments in the Canary Islands (RIC) and the Special Zone of the Canary Islands (ZEC).

Among all the measures collected in the REF we are going to focus now on:

The Special Zone of the Canary Islands (ZEC)

The ZEC (its acronym in Spanish) was created by Law 19/1994, (Title V, articles 28 et seq.) but it was not applied until after the European Commission concluded its compatibility with the common market in accordance with exception a) of paragraph 3 of article 87 of the EC Treaty and letter a) of paragraph 3 of article 61 of the EEA Agreement, due to the modifications that would be introduced by Royal Decree-Law 2/2000, of July 23, of Modification of the Economic and Fiscal Regime of the Canary Islands, and other tax regulations. (Letter to the Spanish Minister of Foreign Affairs, of February 4, 2000, State Aid Nº 708/98- Canary Islands-Spain).

We are going to follow the structure of Law 19/1994 in its most recent version, updated in accordance with European Union requirements.

ZEC is a low-tax area created for the purpose of promoting the economic and social development of the islands and the diversification of their production structure (article 28).

It is articulated through a system of prior authorisation and registration that will allow, under certain conditions, registered entities to enjoy tax advantages to offset the costs of remoteness and insularity and improve their competitiveness.

The ZEC shall remain in force until 31st December 2027, and may be extended beyond that date on the authorisation of the European Commission (article 29).

Notwithstanding the foregoing, authorisation to register in the Official Registry of Entities of the Special Zone of the Canary Island (ROEZEC, its acronym in Spanish) shall cease on 31st December 2023 (article 29).

> **"ZEC is a low-tax area created for the purpose of promoting the economic and social development of the islands."**

The geographical scope of the ZEC extends to the entire territory of the Canary Islands (article 30).

ZEC entities are newly created legal entities and branches that are registered in ROEZEC and (article 31):

- Have their registered office and effective management headquarters in the geographical area of the ZEC.
- At least one administrator or, in the case of branches, a legal representative resides in the Canary Islands.
- Constitute its corporate purpose for the performance in the Canary Islands of the activities included in the Law Annex.
- In the first two years from registration, make a minimum investment in fixed assets of 100,000 euros in the capital islands (Gran Canaria and Tenerife) or 50,000 euros in the case of non-capital islands (El Hierro, La Gomera, La Palma, Lanzarote and Fuerteventura). In addition, within six months of registration, 5 jobs must be created in the case of the capital islands or 3 jobs, in the case of non-capital islands, and, in any case, maintain at least that annual staff average as long as the entity remains in the ZEC. Registration or permanence in the ZEC regime of entities that do not meet the investment requirement may be authorised, provided that the number of jobs to be created and the annual staff average exceed the minimum required.
- Submit a descriptive report of the main economic activities to be developed.

ZEC is managed by a consortium (CZEC), a public entity attached to the Ministry of Finance of the Government of Spain. The Spanish Central Government and the Canary Islands Government participate in the Consortium Board (articles 32 et. Seq.)

The CZEC is responsible for authorising registration in the ROEZEC, an essential requirement to enjoy the benefits. The procedure for registration requires prior authorisation from the Consortium Board. Once the authorisation has been obtained the applicant must present the documents accrediting the constitution of the entity in accordance with the law to the ROEZEC (article 41).

The tax regime, if the conditions established by Law 19/1994 are met (we refer you to the articles cited), consists of:

- Reduction of the corporate tax rate (IS) by applying a special rate of 4% (articles 42 a 44)
- Tax exemption on dividends and interest paid (article 45)
- Exemption from Property Tax and Stamp Duty (ITPJAD) for the acquisition of assets and rights destined to the development of its activity, corporate operations (with the exception of the dissolution of the company) and some legal acts (article 46)
- Exemptions from the general indirect Canary Islands tax (IGIC) for activities related to the delivery of goods and provision of services for companies that operate in the ZEC; furthermore, importing of goods by ZEC entities shall be exempt (article 47). (*VAT is not applied in the Canary Islands; the equivalent tax is the general indirect Canarian tax (IGIC) with a general tax rate of 7%, lower than the general VAT rate which in Spain is 21%)

María Luz Sintes has more than three decades of professional experience, and extensive expertise in Spanish Public Sector and Administrative Law. Before opening her own Law Firm, Mrs. Sintes was a lawyer for the Legal Services of the Government of the Canary Islands (Servicios Jurídicos del Gobierno de Canarias) (Public Administration of the Autonomous Community of the Canary Islands), performing legal assistance functions (advice, and representation and defence in courts). Mrs. Sintes earned a Licenciatura en Derecho in 1986 (Colegio Universitario CEU San Pablo, Complutense University of Madrid), and a Licenciatura en Ciencias Políticas y Sociología (Section: Ciencia Política y de la Administración) in 1988 (Complutense University of Madrid).

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Sintes
Law Firm

Maria Luz Sintes Díaz Abogada's goal is to provide strategies and solutions that simplify the complex and solve problems, acting with diligence and ensuring to be in regular, close communication. In short, getting to the bottom of the matter, to ensure maximum peace of mind for the client. Sintes advises and defends in courts to public agencies and enterprises, SMEs, self-employed people and individuals. Sintes provides services throughout Spain and internationally, thanks to its membership of IR Global.

Sweden: a cold country with a warm climate for business

Sweden provides every opportunity to do great business. Ideas thrive, expertise is plentiful, and strikes are rare.

Sweden and the Nordic Region in general have a low level of corruption. Swedes are well-educated, hard-working, and self-motivated. The tax system is efficient and predictable. In the Swedish labour market, flat organisations and personal responsibility prevail. The legal system is competent, evolved, and predictable, both in the courts and in arbitration institutes. Compared to the rest of the world, the Swedish system for entrepreneurship is remarkably robust and designed for long-term business.

Inventiveness

Sweden has long produced innovations in a variety of areas. Famous Swedish inventions range from wrenches and disposable diapers to geothermal heat and lighthouses. Dynamite, respirators, zippers and Spotify, as well as Bluetooth, pacemakers, walkers, and parental leave, are all Swedish innovations that have changed the world. Well-known brands to come out of Sweden include Volvo, IKEA, Ericsson, H&M, Absolut, etc.

Green Technology

In the north of Sweden, millions will be invested to reach a fossil-free society when industry, government and universities cooperate closely. Several of the world's IT giants have invested heavily in Sweden's north to build server halls. An international working group within the technical university in Luleå is developing batteries for the future, and the whole city of Kiruna is being moved to make it possible to develop mining of precious materials that will contribute heavily to the green revolution in Europe.

Innovation and Business Presence

Since 2007, the UN World Intellectual Property Organization (WIPO) has been assessing the innovation capacity of countries. Results are presented annually in The Global Innovation Index. This year, out of 132 countries, Sweden ranked third.

Despite Sweden being a small country, its exports are significant, giving Sweden a major presence in many different markets. Sweden also has a great business climate, with a high level of trust in government services and a low level of bureaucracy and corruption.

Knowledge

Sweden also stands out in the ranking as a knowledge-intensive country. In terms of investment per capita in research and development, Sweden ranks third in the world. In combination with many high-ranking universities, this provides great conditions for innovation. According to the British research company QS, both Lund University and KTH Royal Institute of Technology are ranked among the world's top 100 universities. Sweden not only has top universities, but also a breadth of universities in many different locations across the country. This is a strength that enables Sweden to translate its innovations into new products and services.

Low Corruption

A low level of corruption is crucial for the development of healthy businesses and for focus to be placed on the issues that are important for good business. The Nordic countries can all be found in the top five in the 2022 Corruption Perception Index.

A Stable Labour Market

Through a long-established system, with strong worker and employer organisations that negotiate and, by tradition, resolve issues regarding wages, working hours, leave, etc. by consensus, conflicts are avoided,

"Social partners take great responsibility for avoiding strikes and other things that interfere with production and working life."

and social partners take great responsibility for avoiding strikes and other things that interfere with production and working life.

Through social partner agreements, new rules have recently come into law that satisfy both employers' needs for flexibility and employees' needs for security.

Taxation

Sweden's corporate tax rate and tax levies are in line with those of other countries, which means that Sweden has a relatively high total tax levy compared to many other countries. However, the difference between Sweden and the OECD and the EU averages has been decreasing since the 2000s.

Since the late 1990s, Sweden has lowered taxes on labour by nearly 5% of GDP, although from an international perspective, taxes on labour remain high. Another area in which Sweden stands out, although in the other direction, is the comparatively low property tax. Inheritance and gift tax as well as wealth tax have been abolished, and the real estate tax has been reduced. This makes the current property taxation in Sweden around 1% of GDP, compared to 2.3% in EU-15.

SCC Arbitration Institute

The SCC Arbitration Institute has provided a neutral, independent, and impartial forum for prompt and efficient commercial dispute resolution around the world since 1917. The SCC is a pioneer when it comes to making changes to meet the growing needs of businesses, with a variety of solutions that safeguard procedural interests as well as different solutions to keep costs down. The SCC has long been known for providing a neutral platform between East and West and North and South for dispute resolution between states and state-owned businesses. For a closer review of the Swedish court system, we have compiled an overview.

Independia Law

At Independia Law, we focus on helping our clients manage their businesses and any disputes in an efficient manner. With our strong and extensive network, we can handle all issues relating to setting up businesses in Sweden, be it incorporation, premises, visas, administration, taxes, intellectual property protection, regulatory compliance, etc., and can help our clients build a strong structure for their Swedish operation. Independia Law is a natural hub for anyone wanting to start a business in Sweden.

When a business conflict arises, or when there's a potential dispute in the air, there may be a need for concrete advice or representation in court or through arbitration. At Independia Law, we have been handling these types of cases with great success for the past 30 years.

Thanks to our long and broad experience, regularly representing states, state companies, and businesses in most sectors, we can quickly grasp new circumstances, whether they pertain to real estate, B2B, intellectual property law, labour law, or other fields. Within the framework of our organization, we serve clients who speak English, French, Arabic and Swedish.

As members of IR Global and a range of other national and international connections, we have valuable insight into other cultures and can handle complex international issues with great efficiency.

Claes Ottosson, founder and CEO of Independia Law Firm AB, doesn't only offer general legal counsel to clients on business law matters – he is someone clients turn to when legal problems arise, or when a partnership starts to go south.

Claes can often identify problems early on, which contributes to cost-effective and professional solutions. With considerable experience in both disputes and business law, Claes takes on cases in several areas, ranging from retail and restaurants to real estate and B2B. Cases can involve everything from construction, pre-sold goods, labour law, intellectual property, financing, or corporate law.

In his work, Claes emphasises problem-solving, handling frequent arbitration proceedings as well as disputes before Swedish courts at all levels and all over the country with accuracy and great focus.

In addition to an LL.M. from the University of Gothenburg, Claes has a second master's in quality management and leadership, focusing on negotiation and communication. Claes is also a highly-regarded lecturer and coach in negotiation techniques.

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INDEPENDIA

Independia Law Firm AB is a legal firm with strong integrity that maintains long-term and strategic partnerships with a network of lawyers and advisors.

Based in Stockholm, the firm operates all over Sweden and has a representation office in Lugano, Switzerland. Their focus is on dispute resolution and general business-related problem solving. Independia Law Firm AB is a full-service law firm specializing in corporate and commercial law, as well as regulatory, dispute resolution, and intellectual property law.

The firm is characterised by strong personal commitment, and they place great value on direct communication and their close and trusting partnerships with clients, many of whom have trusted Independia for a long time. Independia evolves with the times and has built systems to handle cases remotely, doing so cost-effectively.

Since 2019, Independia has been an exclusive member of IR Global for Sweden for commercial dispute resolution. Through IR Global, Independia is an integral part of an international network of more than 1,200 advisors in over 115 countries.

White collar crime: money laundering in Sweden – risk assessment and/or opportunity?

As a businessperson, you often only know that an investigation is taking place when the investigator performs a raid and conducts a search of your premises, usually very early in the morning. Company representatives and/or employees are interrogated, and any electronic materials and other written documentation are confiscated. The investigation may have been ongoing for a long time before that, without you even knowing.

White-collar crime cases are often highly intricate, due to the amount of documentation involved and the complexity of the matters at hand.

At present, a lot is being done to combat white-collar crime, such as money laundering and fraud. Large-scale investigations involving many other member states within the EU and other jurisdictions are taking place. Currently, I'm involved in investigations and trials including countries such as the Netherlands, Germany, Lithuania, and countries outside the EU.

In the last ten years, Swedish authorities have taken several actions against organised crime, with the main goal of preventing money and companies from being used in criminal activities. The main reason for this is that criminals are more regularly using serious businesses and businesspeople to commit crimes. Often, these serious businesses and businesspeople are not aware that they are helping them.

> "If you are thinking about setting up a franchise operation, you should protect your business idea as much as possible from the early planning stages."

One of the main targets for criminal activities in Sweden now is our welfare system. Companies are used by criminals as tools to exploit the system and obtain funds, such as government support payments after the Covid-19 pandemic and electricity support due to price inflation.

The Swedish authorities have taken several actions to prevent these crimes from succeeding. Sweden has approved several agreements, such as the Joint Investigation Team (JIT) and agreements with previous tax havens, to enable international cooperation in cross-border criminal matters, as well as being members of several organisations. As a member of the EU, Sweden has approved all Money Laundering and Terrorist Financing Acts and has implemented related laws, even interpreting these laws more widely in Sweden.

The fight against money laundering relies on two types of regulations in Sweden: administrative and criminal justice regulations:

- Administrative regulations are critical: they aim to prevent financial and other business activities from being used for money laundering.
- The criminal legal framework is used to punish money laundering offences and hand out penalties for the financing of serious crimes.

In certain cases, the latter aims to prosecute people who carried out, assisted in, or enabled money laundering actions. This could be done intentionally or unintentionally by a person, and in some cases, there is no need for any money laundering to have occurred. Criminal liability can be proved if a person has acted in a way that could have enabled 'black money' to change hands, or they had been used as a 'tool' without questioning why.

> "Criminals are more regularly using serious businesses and businesspeople to commit crimes. Often, these serious businesses and businesspeople are not aware that they are helping them."

As in most countries, the targets most at risk for money laundering in Sweden are the banking and financial sectors, which also includes foreign exchange offices and the extensive unregistered trade in virtual currencies. Trade-in goods, as well as company founders, company brokers and trust managers are also considered high-risk branches of money laundering. Estate agents, gambling companies and, to some extent, the law firms that handle large amounts of money in a client's account are also considered to be high-risk targets for money laundering.

The actions taken by the Swedish authorities to minimise the risk of money laundering include mandatory registration of the actual head of a company with the Swedish Companies Registration Office, which ensures that it's not only the legal head whose name is public. Swedish authorities have also implemented and expanded reporting requirements, making it harder to exploit identities, and they have also extended the requirements for 'Know Your Customer' (KYC) reporting in many high-risk sectors.

Administrative sanctions against money laundering could be imposed with up to SEK 10 million for a company, whereas sanction fees also can be imposed. A well-known case is one where a Swedish bank received a warning and a sanction fee of kr4 billion. Company representatives who have failed to implement anti-money laundering rules risk fines or imprisonment of up to six years.

As a lawyer within this area, there is a need to inform all clients of the risks of being unintentionally involved in money laundering. Clients must consider what products and services they offer to their customers. They must also consider which geographical areas they are working in, what distribution channels they are using and also who their customers are. Compliance is an area considered to be difficult, time-consuming and/or extensive for many companies, and this is often the reason why this work is ignored in favour of core business activities.

Conclusion

All over the world, our clients risk a visit or an interrogation by the authorities. In all the jurisdictions we serve, these risks are similar, and we can find best practices through cooperation. Most of the money laundering cases in Sweden involve many other jurisdictions, not only within the EU.

To prevent the risk, we can be proactive by guiding our clients with our expertise and drawing on experience from colleagues within our network. In doing so, we can find common cases and business opportunities for our clients. If you and/or any of your clients have businesses in Sweden and are interested in preventing future problems, please contact me. You are also more than welcome to contact me if you have an ongoing case in Sweden and need assistance in any way.

Cristina works as a private and public defender/counsel in corporate criminal law such as bribery, perjury, fraud, and money laundering. She has a background as a company lawyer as well as experience in the Swedish Tax Agency and is therefore often called upon for advice in corporate criminal law.

Cristina has participated in several high-profile cases concerning white-collar crime, such as cases involving Bombardier and Telia abroad. In addition to corporate criminal law, Cristina also works in general dispute resolution and labour law issues, mainly within franchise chains/companies in Sweden and abroad.

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ASTRA ADVOKATER

ASTRA ADVOKATER is a business law firm with broad competence and long-term relationships at its heart. Through long-term, close cooperation with our clients, we can provide sound advice for each specific situation. Thanks to our international network, we can provide counselling in legal, procedural, and practical matters, regardless of where an investigation is taking place.

We provide fast and flexible service to our clients in various matters related to corporate law. We provide counselling regarding shareholder agreements, corporate governance, risk management and complex structural projects, to name a few specialisms.

If you are thinking about setting up a franchise operation, you should protect your business idea as much as possible from the early planning stages. When it is up and running, there are always legal matters to contend with. A dispute with a supplier, a franchisee or an authority can create big problems for the entire chain. These legal matters are best managed by lawyers who are knowledgeable in franchising and who can protect your interests.

ASTRA ADVOKATER also works with other distribution forms, such as retail and commercial agencies, and advises on those which are the most suitable for your business purposes.

Acquiring a Swiss company without its real estate

These days, an increasing number of buyers of Swiss companies require that the real estate of the target is taken out of the deal and that the company enters into a lease agreement for its facilities. There are good reasons for that, but also legal considerations to consider.

The buyer's reasons are several. First, an operational buyer will want to buy an income stream at a multiple. With a lease instead of ownership of the facilities, the EBITDA is easier to calculate and project in the long term.

Second, with a lease, the buyer has more flexibility to move to larger or smaller spaces and thus adapt to business developments.

Third, real estate is almost always a time bomb in terms of deferred taxes, as Swiss companies often purchase real estate and depreciate it entirely (a method allowed by Swiss accounting standards) to reduce taxes, at the same time creating considerable hidden reserves that will be taxed upon a resale of the property.

From the seller's point of view, removing real estate can also make sense. Private sellers will often keep it as their retirement's recurring income stream. Corporate sellers will try to maximise the return on their real estate by selling it independently.

Indeed, there are many funds and investors that acquire Swiss commercial real estate aggressively and at high prices. Its appeal is as a hard asset, in a low-tax country. One should also note that foreigners can only buy commercial and industrial real estate in Switzerland (apart from specific and limited holiday residences in tourist resorts) making commercial and industrial real estate even more attractive.

There are numerous legal issues to be dealt with when stripping out the real estate of an acquired business.

First, for industrial sites particularly, environmental issues will remain with the operating company. According to the Contaminated Sites Ordinance, the required measures (investigation, monitoring, remediation, follow-up) required in relation to contaminated sites will in principle be carried out by the owner of the polluted site. However, the authority may also require the party responsible for the pollution to carry out the preliminary investigation, the monitoring measures or the detailed investigation. The same applies to the preparation of the remediation project and the implementation of the remediation measures. As a result, the purchased operating company may remain liable for the pollution even if it no longer owns the property. Environmental due diligence may thus remain necessary.

Second, refinancing issues will often arise for the target. Swiss banks generally grant operating loans with a mortgage on real estate as security. Taking out the real estate will then cause the operating loans to be terminated and additional security may have to be provided by the buyer, often in the form of a pledge on the target's shares.

If the buyer cannot pledge the target's shares (because they are already pledged to finance the acquisition), the buyer will often want to finance the target to reimburse the target's debts and request that assets of the target be pledged in its favour to secure its own financing. This will however generally be considered an illegal upstream guarantee and alternatives will have to be examined.

Third, the stripping of the real estate may trigger transfer taxes. Since the landmark Supreme Court decision obtained by the Python law firm in 2009 (ATF 2C_641/2009, see link), the tax authorities cannot levy transfer taxes on the sale of a company owning real estate, even if such real estate is very substantial. As a result, if a purchaser acquires a company and transfers its assets (but not the real estate) in an asset deal in a second stage, no transfer taxes should be levied.

In a second case (ATF2C_199/2012), the Supreme Court declared that a transfer of all the real estate within a group, even if it was owned by a foundation or an entity abroad, could qualify as a merger and should also be exonerated from transfer taxes. However, if the transfer is made directly to an individual, transfer taxes (around 3% of the real estate value, without deduction of related debts) will be levied. As it appears from the foregoing, there are various ways to separate real estate from operations, but not all of them have the same tax results.

Fourth, income taxes may be triggered on the difference between the actual value and the book value of the real estate in the accounts of the target and the seller may be held liable for such income taxes. Considering that the seller is a related party to the target, if the transfer of the real estate is made at book value the tax authorities will not treat such a transfer as being at arm's length. An independent expert opinion on the fair market value of the real estate will thus be necessary and this valuation will depend largely on the lease agreement concluded between the target and the seller as the new owner of the real estate.

In the same manner, a split of the company between an operating company and a real estate company will trigger taxes if the real estate company cannot show an independent activity. A residual commercial activity for the real estate company would avoid all profit taxes, whereas should the sole activity of the real estate company be to lease the properties, a profit tax will be levied.

> "With a lease instead of ownership of the facilities, the EBITDA is easier to calculate and to project in the long term."

> "There are numerous legal issues to be dealt with when stripping out the real estate of an acquired business."

Christophe de Kalbermatten obtained law degrees from the Universities of Geneva (J.D.), Heidelberg (LL.M.) and New York (M.C.J.). Since 2003, he is an equity partner with Python, having previously practised for several years in a global law firm in the USA. Christophe is a pragmatic lawyer with an excellent knowledge of the legal affairs of large and medium corporations. This enables him as a lawyer and notary public to lead complex mergers & acquisitions, particularly with international or real estate components. Christophe also advises the board of several manufacturing companies on a permanent basis and is active in the reorganisation and insolvency field, acting regularly as liquidator of regulated entities on the mandate of the Swiss regulator FINMA.

Christophe regularly advises and represents clients in M&A cases such as, in the last few years, the Steinhoff group (a publicly listed retail group owning brands such as Conforama) in connection with a multinational transaction involving several brands and factories, the Boas Yakhin group in connection with the sale of its retirement homes division, and the IT group T2i in the sale of a majority stake to Swiss Post.

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PYTHON is a highly recommended business law firm established in 1981 with five offices across Switzerland and a presence in Brussels, capital of the EU. Our skilled, experienced, multilingual attorneys are greatly appreciated for their client-orientated focus and commitment to our core principles of efficiency, flexibility, independence, responsiveness and creativity.

Thriving to be at the edge of innovation, our firm was for example at the start of Swisslex, the most used Swiss legal database.

PYTHON is active in the fields of arbitration, banking and finance, commercial contracts, corporate and M&A, Litigation and Insolvency and for private clients.

Our corporate and M&A group, led by Christophe de Kalbermatten, has been advising on corporate matters and transactions for over 40 years. We have been assisting our clients in all types of domestic and cross-border transactions including stock and asset deals, mergers, spin-offs and co-investments. We also advise multinational companies in their restructuring projects or when they establish a presence in Switzerland.

Our primary goal is to serve our clients with business-oriented and sound advice. With our unique experience, we can provide quick and efficient solutions to all kinds of legal issues.

Trademark protection in the virtual world

The Metaverse as the new digital world is gaining immense importance for businesses, since retail will grow into one of the largest sectors in it. It will become a new market for products and services, and the impact on businesses' marketing and branding will be immense. Many questions have already arisen around intellectual property rights in the digital world, including trademark rights.

One of the most discussed cases is the matter Hermès International, et al. vs. Mason Rothschild. In November 2021, the digital artist Mason Rothschild created and sold on OpenSea one hundred NFTs called "MetaBirkins", linking to a depiction of a virtual Hermès Birkin handbag. He also registered the domain name www.metabirkin.com and promoted the sale on social media by using @metabirkins. By January 2022, Rothschild has sold "MetaBirkin" NFTs in excess of $1 million.

In January 2022, Hermès sued Rothschild in the U.S. District Court for the Southern District of New York for trademark infringement and dilution, misappropriation of its BIRKIN trademark, cybersquatting, false designation of origin and description and injury to business reputation. Furthermore, Hermès was seeking monetary damages, including the profits that Rothschild made in selling the NFTs, and its injunctive relief to bar him from making further use of its trademarks. Hermès has also requested that Rothschild deliver the MetaBirkin NFTs for destruction. The difficulty there is that the NFTs exist on the blockchain and can't be destroyed or amended easily.

Rothschild moved for dismissal of all claims with the main argument that his "MetaBirkin" works are artistic expressions and the use of "MetaBirkin" is artistically relevant and is not misleading. In the letter to Hermès, which Rothschild posted to the MetaBirkins Instagram account he stated: "I am not creating or selling Birkin bags. I've made artworks that depict imaginary, fur-covered Birkin bags."

Under U.S. law, the right to free speech in connection with titles of artistic works would normally bar any claim of trademark infringement unless the use of the mark either had no artistic relevance to the work or, while artistically relevant, the use was expressly misleading as to the source of the works.

Rothschild's motion was denied by the court. In summary, the court held that the "MetaBirkin" images are artistic works even though they are linked to NFTs, which are simply codes containing information about the image and this does not make the image a commodity without legal protection. In this first decision issued on May 18, 2022, the court found that Hermès had alleged sufficient facts to claim that the use of MetaBirkin through Rothschild was not artistically relevant to the works.

The case was decided in February 2023. Rothschild was held liable on the claims for trademark infringement, dilution, and cybersquatting. But it seems not entirely clear which of the two grounds was decisive (i.e., if the MetaBirkin NFTs were already found to lack artistic relevance, or whether the use was considered to explicitly mislead consumers). However, the matter was handled like real-world fakes. Therefore, the Metaverse may not open too much room to launch versions of brand owners' products that would provoke disputes in trademark and unfair competition law.

> "If brand owners enter the virtual market, the relevant territory of sale might be much larger than in the real world. "

Takeaways

- **An NFT is not the good itself**

Generally, an NFT represents a digital or non-digital asset, but it is not the good itself. It is a code containing information about the asset. It is therefore possible that somebody else than the owner of the NFT is the owner of the property rights or the intellectual property rights.

> "Generally, an NFT represents a digital or non-digital asset, but it is not the good itself."

- **Trademark offices are incorporating a new type of (virtual) good**

WIPO has incorporated "downloadable digital files authenticated by non-fungible tokens [NFTs]" in class 9 in the 12th Edition of the Nice Classification (in force since January 1, 2023).

The EUIPO states that an acceptable specification would be. "downloadable music authenticated by NFTs" in class 9 or "providing an online virtual environment for trading virtual art and virtual art tokens" in class 35. In Switzerland, the IPI accepts "downloadable digital files authenticated by non-fungible tokens [NFTs]" or "Software, which can represent goods virtually" in class 9.

- **Seek appropriate trademark protection in the virtual world**

Brand owners should be aware that protection in the non-digital area (e.g., shoes or clothing in class 25) may not always be sufficient to defend their rights in the digital world. While big brands can rely on their reputation, smaller brands will be much more affected if they are not protected for virtual goods in class 9 (and eventually the services in classes 35 and 41). However, the big brands are in a much better position as well if their trademarks are protected in the virtual world.

- **Define licenses and terms of use**

For the virtual marketplace of brand owners, suitable licenses and appropriate terms of use in relation to the brands should be considered.

- **Ensure trademark protection in the relevant countries**

If brand owners enter the virtual market, the relevant territory of sale might be much larger than in the real world. Customers in many countries will be reached. It is therefore advisable to review the current trademark portfolio and extend the trademarks of interest for the real goods and the virtual goods to the new relevant countries. Certainly, similarity searches need to be conducted prior to filing the new trademarks.

- **Request for permission to use a trademark**

Prior to the creation and selling of NFTs, it should be verified that no unauthorised use of a third party's trademarks will take place through an NFT or an item in the Metaverse. Otherwise, permission from the trademark owner needs to be requested.

- **Review licenses**

Brand owners should adapt their existing license agreements regarding the virtual use of their trademarks.

- **Monitoring the virtual use of brands**

To react as soon as possible against the use of a business's brand in the virtual world without authorisation, the digital marketplace should be monitored.

Ursula In-Albon has been on the team of Troller Hitz Troller since 1999 and became a partner in 2003. She has been an active practitioner in the IP field for over twenty years. In addition, Ursula served as a judge on the Federal Board of Appeals for Intellectual Property.

Over the years, and as the only female partner, she has embraced challenges and intensive work to guarantee success. She is working in the Bern office, and together with a team of qualified professionals, they provide a high-quality service.

Her primary professional field of activity practice areas is intellectual property law and unfair competition law, advertising law, and domain-name law. She represents clients before courts and state authorities. One focus of her work is on advising brand owners on the development of trademarks.

Ursula has been ranked and recommended continuously, notably by Who's Who Legal and IP Stars, Best Lawyers and in Legal 500, where she was nominated as one of the Leading Individuals.

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Troller Hitz Troller was founded in 1941. Our main practice areas are intellectual property law and competition law. As a renowned IP boutique, we act as consultants and advisors for our clients, and we also act on their behalf before the Courts. Our law firm is active throughout Switzerland and, by tradition, internationally as well. We have a well-coordinated worldwide network of foreign associates.

Troller Hitz Troller has in recent years been recommended in international rankings such as World Trademark Review (WTR), Chambers Europe, Who's Who Legal and IP Stars. In WTR 2023 we were ranked for having

"The World's Leading Trade Mark Professionals, Gold Band for Trademark Enforcement and Litigation as well as Trademark Prosecution and Strategy".

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