



INSIDER

News and
Information
for Members
and Friends
of GGI

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LMBE
to host the
Inaugural GGI
French-Speaking
Chapter

Editorial

Dear GGI Members,
Dear Friends,

Welcome to the spring issue of the INSIDER. We hope that you, your families and friends enjoyed a very happy Easter or Passover. You'll find that this issue is jam-packed with wonderful articles from all across the globe.

We have had a few events since the last issue. At the GGI European Regional Conference in Brussels, hosted by DGST Reviseurs d'Entreprises and DALDEWOLF, we heard from the two Keynote Speakers, Olivier Boutellis-Taft and Dr Patrick Dixon, both of whom delivered thought-provoking presentations to conference participants. Featured articles include synopses from the GGI Italian Business Summit, Naples 7-9 April 2017 and the Indirect Taxes PG winter meeting. Furthermore, we look forward to the inaugural GGI French-Speaking Chapter with an article by Michael Skaarup from one of our Parisian firms, LMBE Avocats.

In this issue of INSIDER, GGI members report on their collective successful mandates as well as share other internal news. For instance, Joe Horn-Phathanothai hosted an event in Bangkok to commemorate the passing of His Majesty King Bhumibol Adulyadej, who happened to also be an accomplished composer. Read on to hear our members' opinions on diverse articles from

tourism to the enforcement of arbitration clauses, investments and Brexit from our members in Europe, Canada, Brazil and Asia.

Our members have had a great start to the year with awards and accolades, such as Kutchins, Robbins & Diamond, Ltd. being named as one of the 2017 Best Places to Work in Illinois. Jakoby Dr. Baumhof celebrates their 30th anniversary this year and Robert Thompson, from Ward Hadaway, edited again Sinclair on Warranties and Indemnities on Share and Asset Sales. Moritt Hock & Hamroff LLP and Haines Watts have both added to their offices with expansions in New York and Leicester, respectively.

Turn to the GGI Practice Group (PG) pages to read additional articles from the following PGs: Corporate, Commercial & IP; Debt Collection, Restructuring & Insolvency; Global Mobility Solutions; International Taxation (ITPG); Labour Law; Litigation & Dispute Resolution; M&A; and Real Estate.

We wish you an enjoyable read and if you are interested in having your voice heard or if you have some interesting company news to share, please let us know.

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Diary

- **15-17 June 2017**
GGI Australian Business Summit
Sydney, Australia
- **22-25 June 2017**
GGI North American
Regional Conference
Vancouver, Canada
- **29 June-01 July 2017**
GGI Latin American
Regional Conference
Santiago de Chile, Chile
- **06-08 July 2017**
GGI French-Speaking Chapter
Paris, France
- **08-10 September 2017**
GGI German Speaking Chapter
Kassel, Germany
- **14-16 September 2017**
GGI Nordic-Baltic Meeting
Leiden, The Netherlands
- **21-23 September 2017**
GGI North American Best
Practices & Developing
Leaders Conference
Pittsburgh, PA, USA
- **19-22 October 2017**
GGI World Conference
Vienna, Austria
- **02-04 November 2017 (TBC)**
GGI Litigation & Dispute
Resolution PG
Extraordinary Meeting
Miami, FL, USA
- **10-12 November 2017 (TBC)**
GGI EasyMeet
Milan, Italy
- **30 November-
03 December 2017 (TBC)**
GGI Asia-Pacific
Regional Conference
Bali, Indonesia
- **02-04 February 2018**
GGI PG Chairpersons Meeting
Zurich, Switzerland

Please refer to our website
for actualised information
and additional events:
www.ggi.com > Events.



Sydney, Australia



Sydney, Australia | 15-17 June 2017

GGI Australian Business Summit

McCabes Lawyers will be hosting a regional GGI Australian Business Summit during 15-17 June 2017, especially for our members in Australia and New Zealand.

The Summit will take place in Sydney against the backdrop of Vivid Sydney – an annual outdoor festival, which immerses the city in an impressive and colourful display of lighting installations designed to both entertain and amaze. Managing Principal of McCabes, Andrew Lacey says, “June is a wonderful time to visit Sydney. We have a very mild winter,

and there is always a good atmosphere around Vivid in the Sydney CBD.”

The GGI Australian Business Summit’s programme allows GGI members to socialise and further establish relationships. It also provides an opportunity to hear from two guest speakers: Ian Marshall, Divisional Director from Macquarie Bank, and Pat McCabe, Lawyer and former Wallaby (Australian Rugby Union player).

Ian Marshall is considered to be at the forefront of professional services

practice management research. Having researched and presented widely on the topics of current challenges and opportunities in the industry, Ian will share Macquarie’s view on the current state of technological change in professional services with an emphasis on the legal sector, but with reference to the broader professional services market and Macquarie’s own experience.

Ian says, “The quantum of this change is being driven by technology. What is widely known as the 4th industrial revolution is pulling apart traditional business models and giving power back to the consumer. Sitting still is not an option, I will talk about how the best performing firms are embracing this change and adapting the way they deliver their services, run their firms and engage with a new generation of client.”

The second event speaker, who will be presenting over lunch, will be Pat McCabe. Pat, who is now a lawyer, represented Australia playing rugby union at the highest level, earning 66 caps as a Brumby and 24 test matches as a Wallaby. Pat is known in Australia as a man



Andrew Lacey



Steven Humphries

of determination, grit and great leadership qualities. He has been described as the “ultimate team man”. After suffering a series of devastating neck injuries, Pat retired from rugby in 2014, and has now gone on to practice law. Pat will be talking about what it takes to ‘get back

up’ and to face and overcome obstacles.

The Australian Business Summit will also provide an opportunity for participants to enjoy local attractions and

events, such as climbing the Sydney Harbour Bridge, a historical guided walk through the city or attend the Australia vs Scotland rugby union test match.

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Attend the Australia vs Scotland rugby union test match

GGI North American Regional Conference
Vancouver, Canada | 22-25 June 2017

Vancouver at a Glance: Diversified, Green + Growing

Metro Vancouver with a population of 2.5 million is one of the world's most liveable cities with the aim to be the ‘Greenest City’ by 2020. Situated in British Columbia (BC), the most western province of Canada, Vancouver is North America's gateway to the Asia-Pacific region. With historical ties to China and India, Vancouver employs a diverse multicultural citizenry.

Growth in Traditional and New Manufacturing Sectors

The BC manufacturing and distribu-

tion sector is enjoying a resurgence in growth due to rising e-commerce activities – reflected in its growing labour force.

BC is known for family businesses and entrepreneurial companies. Some notable Vancouver non-tech start-up companies, which have gone public in recent years, include Lululemon (“LULU”) and Aritzia (“ATZ”).

Vancouver is also the craft beer capital of Canada and home to the over 40 craft breweries! New rules allow small brewers to open tasting rooms, sparking an explosion of new micro-breweries.

Walkable clusters of exciting new breweries have sprung up in Brewery Creek (Mount Pleasant), East Vancou-

ver (“Yeast Van”) and on the downtown peninsula.

Finance Fuels Business Activities and Expansions in Vancouver

Approximately 60,000 people work in finance in Vancouver. A robust, diversified economy and very favourable tax environment make Vancouver's financial services sector highly competitive.

The provincial government recently
...next page

announced a \$100-million BC Tech Fund to help BC tech companies access the early stage venture capital they need to grow and stay in BC, help diversify the economy and create high-paying jobs (BCTECH).

Technology with Green Economy is Double the Growth of BC Economy

Vancouver is also home to three of Canada's four tech unicorns (start-ups valued at more than \$1 billion): Slack, Hootsuite and Avigilon. The industry includes nearly 101,000 tech professionals across BC, with 75,000 working in Vancouver alone. BC tech is growing at roughly double the rate of the BC economy.

Adding more fuel to BC tech growth is the advanced manufacturing sector, which creates high-skill, well-paying jobs and supports innovation in the economy. This includes the Green Economy comprised of local food, green buildings, clean-tech and sustainability services, a sector that is growing faster than all the traditional sectors of the economy.

Digital, Entertainment & Interactive: Third Largest in North America

Vancouver's Digital, Entertainment & Interactive (DE&I) industry has close to 1,000 businesses supporting more than 40,000 jobs. Vancouver is the third largest Film & TV production centre in North America. Film and TV production is worth more than \$2 billion a year in BC (Vancouver Economic Commission).

Vancouver is preferred for its proximity to Los Angeles and beneficial tax credits, becoming a production mecca for not just Hollywood films, but a new generation of scripted television.



Inukshuk landmark in Vancouver

Record Sales in Vancouver Real Estate and Construction

Much of BC's recent economic growth is concentrated in Vancouver's hot housing market. Vancouver had record job creation in 2016 (60,000), record new housing starts (27,000) and GDP growth rate of 4% (Conference Board of Canada). Housing affordability continues to be an issue with the most-densely populated city in Canada. The municipal plan is to increase density near transit hubs, streamlining the proposal process for developers, and giving away city land to build targeted housing and more affordable rental units in Vancouver.

BC Retail Leads in Canada as Vancouver's Luxury Zone Expands

BC leads Canada in retail sales growth in 2016. This performance is expected to continue in 2017 and again

exceed the national average in retail sales growth.

Vancouver's 'Luxury Zone' between the Fairmont Hotel Vancouver and the Shangri-La Hotel along Alberni and Georgia Streets, is introducing a new iconic building in 2017. Robson Street will also see exciting new retailers on its 1100-block (Cushman Wakefield).

World Leadership in Social Enterprise with Millennials

Vancouver is a world leader in social enterprise with over 750 social enterprises, including non-profits, co-operatives, credit unions, B-Corps and social venture business. The fastest-growing social enterprise subsector is for-profit ventures that are environmentally conscious. Many are owned and operated by impact-conscious millennials, the next generation of entrepreneurs (Vancouver Economic Commission).

Business Families in Transition with Retiring Baby Boomers

With aging baby boomer business owners entering retirement, there has been a rise in exit planning. Not surprisingly, mergers and acquisition activities in British Columbia are at a nine-year high. This will continue to come from changing demographics as the baby boomer wealth transfer continues. CIBC estimates that people between the ages of 50 and 75 will inherit an estimated \$750 billion over the next decade in BC.

Conference in June

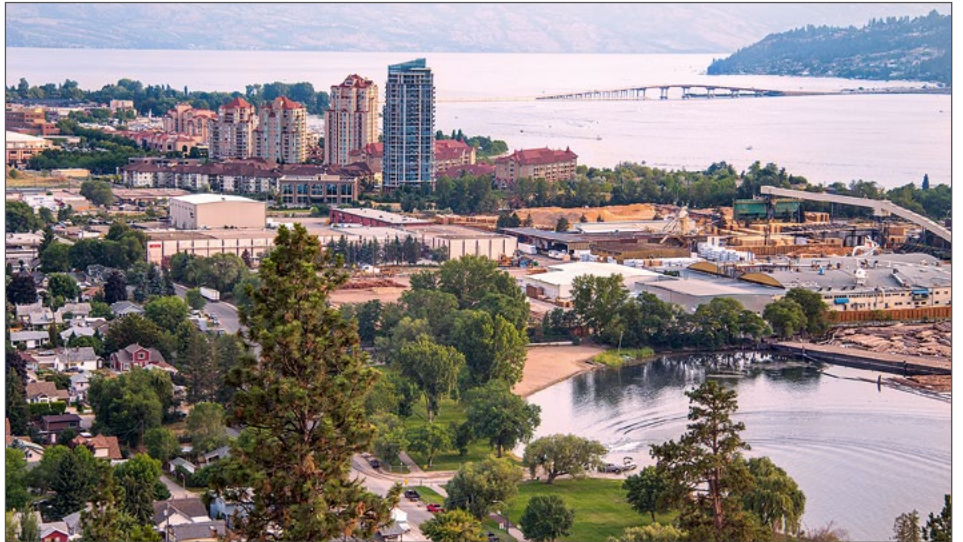
GGI member firm, Walsh King Chartered Professional Accountants, look forward to welcoming GGI members from North America and further afield

to the upcoming GGI North American Regional Conference in Vancouver in June.

We are fortunate to have three exciting Keynote Speeches planned. The first one will be by Eric Termuende, who is a thought-leader on optimizing workplace culture, the future of work, and engagement in the workplace. He believes that if he can help make people's lives better at work; he can make people's lives better. Eric has been featured in Forbes, Inc., Thrive Global, the Huffington Post and many other prominent media organizations. He has been recognised as one of only '100 emerging innovators under 35' globally by American Express and an active 'Global Shaper' with the World Economic Forum.

The second Keynote Speech of the Conference will be by Erick C. Christensen and Alexander Russell of Pro-tiviti. The title of their talk is "Navigating Financial Intelligence in Today's World", covering regulatory risk and compliance expectations facing the financial services and banking industries and their relevance to professional service providers who support them.

Finally, to close the Conference, we welcome back as a Keynote Speaker, Daniel L. Stover. Daniel manages the



Vancouver, Canada

west coast office for Integrated Leadership Systems from Los Angeles, California. He will be talking about "Creating Accountability with Passive-Aggressive and Aggressive Communication", which essentially covers the neuroscience of leadership and how we innately communicate in ways that are ineffective.

Overall, there is an exciting programme planned, with dinner on the Friday evening at the Vancouver Convention Centre overlooking the water and a black-tie Gala Dinner on the Saturday evening in the Vancouver Art

Gallery. Make sure to bring your dancing shoes!

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Paris, France | 6-8 July 2017

LMBE to Host the Inaugural GGI French-Speaking Chapter "Sommet Francophone"

GGI member firm LMBE Avocats (Lawyers) will be hosting the first ever GGI French-Speaking Chapter (or "Sommet Francophone") on 6-8 July

2017. The meeting will be conducted in French and will be held at the Westin Paris-Vendôme Hotel, near Concorde Place and the Tuileries garden. It's

a fabulous central location, minutes away from the Louvre museum, the Avenue des Champs-Élysées and many
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other attractions, such as the large department stores.

GGI members from French-speaking countries (or any other GGI member willing to participate) will have the opportunity to exchange ideas, network and collaborate. The programme itself will be finalised in the coming days, but the presentations will focus on various subjects linked to French-speaking legal aspects, culture and conducting business.

The capital of France will provide the backdrop for two enjoyable dinners: a cruise on the river Seine on Thursday and a surprise Friday evening involving a little bit of wine.

French is not only a diplomatic language but also the language used on a daily basis by many countries (there are an estimated 274 million French speakers worldwide), organisations and companies throughout the world. The term 'Francophone' can refer to people speaking French, governmental and non-governmental organisations, a cultural entity or also to humanist values.

Paris is more than the beautiful city described in the previous issue of INSIDER. It is also where the International Organisation of LA FRANCOPHONIE has its head office. Created in 1970, and currently with 84 states and governments (including 26 observers) across five continents, this organisation promotes the French language, cultural and linguistic diversity,



Jean-Yves Larangot

peace, democracy and human rights, supporting education, training and scientific research, and expanding cooperation for sustainable development. TV5 Monde, the French-speaking international television network, is one of the five operating agencies enabling the International Organisation to carry out its mandate.

Our host, GGI member LMBE Avocats (Lawyers), was founded in 2005 by partners from highly-regarded large law firms in Paris, desiring to maintain their standards of quality whilst having the necessary flexibility to support their clients with their development projects. LMBE is an independent, full-service law firm with a personal touch. Expertise and know-how are centred on all areas of business law. Its organisa-



Michael Skaarup

tion by departments allow the needs of its French and international clients to be met in a pragmatic and efficient manner.

Today, LMBE is strongly focused on international matters, bringing together more than 30 lawyers, including 16 Partners, involved in all strategic areas of business law with the promotion of an approach that combines innovation and reactivity.

In addition to assisting Anglo-Saxon groups with the development of their activities in France, the firm regularly assists Danish, German and Italian companies, thanks to its dedicated International Desks of bilingual lawyers.

Registrations for the GGI French-Speaking Chapter in Paris are now open, and the **Early Bird Registration Deadline is 5 June 2017**. Please go to www.ggi.com > Log In > GGI Events > Upcoming Events > Locate the Event > external link.



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Woburn, UK | 17-19 March 2017

GGI Indirect Taxes Practice Group Winter Meeting

So, it came to pass that on 16 November in the year of our Lord 2016, I was informed that there was no room at the inn. Those of any faith familiar with the Holy Bible will know to what I refer and there is an analogy here. It was on this date that the Indirect Taxes Practice Group (IDT) was informed that there was no room at the inn at Schladming to run our meeting, at the same time as the GGI ITPG Global Tax Summit.

Assuming a March meeting of our own, we had only four months to make all arrangements. We had to make decisions based on expediency. The meeting had to take place where it would attract the most attendees, and that meant Europe. It had to be near great air links and somewhere where Toon Hasselman or I could directly influence arrangements. Therefore, we chose the London area.

I didn't want the meeting taking place in London, as it is very expensive and there are too many distractions. This dilemma required someone with a good analytical brain to determine exactly where near London we should meet. With that, my wife, Jill, said one day, "Why not Woburn?" Why not, indeed.

Woburn Itself

A typically quintessential Georgian country village, Woburn is situated in the English county of Bedfordshire: www.woburn.co.uk/woburn-village/. It is within 30 minutes to one hour's drive of three of London's airports: Luton, Heathrow and City (all three were used by attendees).

Woburn has many public houses, restaurants and hotels, including the Woburn Hotel, which is part of the his-

toric Woburn Abbey Estate, the home of the Duke of Bedford. The Woburn Hotel (see www.woburnabbey.co.uk/hotel/) became our venue for the meeting from Friday 17 to Sunday 19 March 2017. All pubs and restaurants used were within a 5-minute walk of the hotel.

It proved to be a wonderful place to hold our meeting.

A Day in the Life of a VAT Consultant

Some readers will be wondering what exactly VAT consultants do all day, right? I've heard this question before and I believe you deserve an answer! What we do is... rescue injured animals.

Toon and I travelled from Luton Airport to Woburn via country roads. It was a very nice journey too, until we happened upon an injured Muntjac deer. It had been hit by a motor vehicle and left in the road. Native to South East Asia, you may be wondering what a Muntjac was doing crossing an English country road. Easy, it was trying to get to the other side. Anyway, Toon removed the Muntjac to the grass verge and I called a veterinarian. The Muntjac was beyond help and humanely put to sleep.

Now the Less Serious Stuff

Proceedings started with an interactive and practical session on 'pro rates', looking at the methods by which businesses can recover VAT incurred that attaches to both its taxable and exempt supplies (or neither). Using the EU's



Steve McCrindle

Principle VAT Directive as our starting point, we built a picture of what in reality happens and could happen in those jurisdictions represented at the meeting: Cyprus, Germany, Italy, Netherlands, Norway and the UK. The purpose of the session was to show how pro rates could be used to increase VAT recovery for clients.

We adjourned to the hotel bar and then out to dinner at a local English Sicilian restaurant, Fratelli, where delicious Sicilian food was complemented by good Italian wine. Apparently, one of the waiters was trying to convince either Sergio Finulli or Francesco Milano that he was English. He's actually from Messina, Sicily. You've got to laugh! Later we retired to the Old Ale House, which serves delicious and mainly locally-brewed real ales.

The following morning, Toon provided an insight into the intended IDT website, which is an enormous undertaking for us. Its features were demonstrated and he discussed how we envisage it will be used and asked what attendees

...next page

wanted from it. We hope to go live in a few months' time. The website should be a great 'enabler' for our IDT community, giving us true global reach. I am excited by its possibilities.

Paul Malin made a presentation about international information exchange, how revenue authorities are using the information, and an expected resulting increase in direct and indirect tax investigations. This just goes to show what an inter-connected global tax arena we now work in and the importance of the work we are doing in IDT to put in place true global structure, activity and communication. As for the expected increase in indirect tax investigations, bring it on!

Following this, we travelled a few miles up the road to Bletchley Park, home of the British WWII code-breakers. A few years ago this site was occupied by a wonderful, albeit slightly run-down, old mansion house, but the code-breakers' 'huts' were in a very poor state of repair. Wind forward a decade and a lot of restoration work has been undertaken, resulting in a very interesting visitor attraction. The story of the code-breakers itself is worth the entrance fee. Bletchley Park is also where the world first computer, Colossus, was

built: www.bletchleypark.org.uk/content/visit/whattosee.rhtm. A mock-up of it is also onsite.

After a break, we went to the Black Horse English restaurant for dinner. Now for those of you who believe traditional English food and wine is poor, try this place. The English food with a few continental influences was washed down with Hattingley Valley Classic Cuvée, an English sparkling wine. Those partaking were most generous with their compliments.

Attendees

Given the short-notice for the meeting and its close proximity time-wise to the Schladming event, I had hoped for 10 attendees from an IDT membership of, then, approximately 85 people. We received 33 responses, 14 of them positive. I was delighted with the response and that we had got across an 'emotional' threshold in attendee numbers. Given more time to arrange, it could have been a much larger party.

Many thanks to those already mentioned as well as Bärbel Wierzoch, Knut Einar Rishovd, George Christou, Georgios Papadopoulos, Alan Rajah, Stuart

Eccles, Jason Croke and Paul Simmons for making it such a great meeting.

Next Year

It is intended that we run an Extraordinary Indirect Taxes PG Winter Meeting the day before and at the same venue as the GGI ITPG Global Tax Summit in Marbella. Discussions are taking place now in this respect, but the provisional date is Thursday, 22 February 2018. Make a note and save the date. I hope to see you there.

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Naples, Italy | 7-9 April 2017

GGI Italian Business Summit

The fifth edition of the acclaimed GGI Italian Business Summit took place in Naples during 7-9 April 2017 hosted by GGI member firm, Campagnola Advisers. We were delighted to welcome around 70 delegates from 15 different countries to the Hotel Excelsior. The event focused on M&A opportunities in southern Italy, providing interesting insights via various success stories of local businesses.

Early participants were welcomed on Thursday evening for an informal din-

ner organised at the exclusive Circolo Nautico Posillipo (Yacht Club Posillipo) where our host, Dr Aldo Campagnola, displayed the famous warm Neapolitan hospitality.

Friday morning featured an extra activity with a visit to the 'Voyage Pittoresque', a renowned art gallery in Naples where the artist Salvatore Regina showed the participants a mix of his magnificent award-winning art focused on Naples and its famous volcano, Mount Vesuvius. Participants were also treated to a

short film showing the artist in action.

The official programme began on Friday afternoon with opening speeches by Claudio G. Cocca, Chairman & Founder of GGI, and Dr Ugo Girardi, Managing Partner of S4B Solutions for Business and Founder of the Italian Business Summit.

We then had five Practice Group sessions: the M&A session was led by Claudio Cocca and Dr Aldo Campagnola, who illustrated the Italian context for M&A transactions in Italy and southern



M&A Practice Group Meeting at the GGI Italian Business Summit

Italy in the main sectors of reference (food, fashion and aerospace).

The International Taxation (ITPG) session was opened by Oliver Biernat (Benefitax, Germany), Global Chairperson of the PG, who gave an overview of the PG statistics and activities, as well as of the latest ITPG event organised in Schladming (Austria) in March. Further presentations were delivered by Andrea Fantozzi (Prager Metis, USA) on approaching international buyers and overcoming execution risk, Simona Cucchi (Comma 10, Italy) and Dr Ugo Girardi (S4B, Italy) on tips and suggestions for foreign consultants assisting investors in Italy and Dr Giacomo Perillo (Campagnola Advisers) on Italian tax scenarios in M&A operations.

After a coffee break, Johan Langelaar (TeekensKarstens, The Netherlands), Global Chairperson of the Litigation & Dispute Resolution PG, talked about his PG statistics before introducing Maddalena Biasiol (SLT Strategy Legal

Tax, Italy) who delivered a presentation about conservatory measures in arbitral proceedings. This was followed by Valerio Puri (S4B, Italy), who highlighted peculiarities for management of HR in M&A transactions in Italy.

Dr Attila Kovács (Kovács Réti Szegheő, Hungary) outlined the latest activities of the Debt Collection Restructuring & Insolvency PG, before handing over to Dr Claudio Ceradini (SLT, Italy) for a presentation about how lawyers, advisers, accountants and auditors can cooperate successfully for the reorganisation of a distressed company.

The last session of the afternoon programme was the Business Development & Marketing PG opened by Alan Rajah (Lawrence Grant, UK) who gave an overview of his PG and introduced Dr Federico Grossi (Studio Sistini-Grossi, Italy) who explained several strategies on how to attract Italian clients.

Once the afternoon session was over, all participants were invited to a walk-

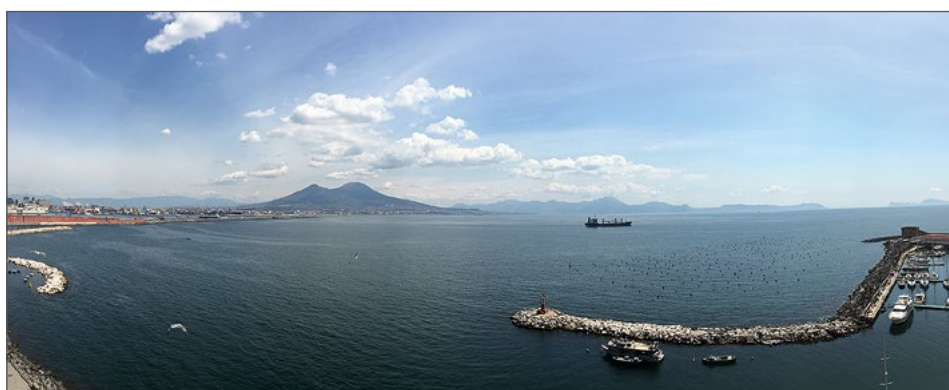


Dr Aldo Campagnola with artist Salvatore Regina

ing tour via the Piazza del Plebiscito and through the Royal Palace of Naples. The day ended with a dinner at the Rari Nantes Club, featuring local musicians, delicious food and a little bit of karaoke.

The programme on Saturday morning was at the 'Santa Maria La Nova', a beautiful Franciscan monastery booked exclusively for this GGI event. All delegates were taken on a private tour of the venue before the meeting began in earnest. Everyone was welcomed by representatives from GGI, the host firm Campagnola Advisers, S4B, the municipality of Naples, and the Institute of Chartered Accountants of Naples. The session was moderated by Patrizia Giannini and Dr Aldo Campagnola, who introduced the various

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View of Mount Vesuvius from the hotel

guest speakers who represented local business leaders in the food, fashion, aerospace and shipping industries, as well as prominent financial institutions.

Amedeo Giurazza, CEO of Vertis SGR, talked about the investment activities of a private equity fund in the southern companies, while Fabio Brigante from Borsa Italiana - London Stock Exchange, explained the outlook for the Italian market. Giuseppe Di Martino, CEO of Pastificio Di Martino Gaetano S.p.a., discussed the expansion strategies of his group which exports the vast majority of their production outside Italian territory. Meanwhile, Fabrizio Vettosi, Managing Director of Venice Shipping and Logistics S.p.a, highlighted the opportunities provided by the shipping industry in Italy. Further presentations included: Antonio Capaldo, Chairman of the Board of Directors of Feudi Di San Gregorio S.p.a.; Tommaso D'Alterio, Group Financial Manager of Isaia & Isaia; Carlo Palmieri, Vice President of Pianoforte Holding (Carpisa - Yamamay); Giovanni Abete, CEO of A. Abete S.r.l.; and Cono D'elia, Mayor of the town of Morigerati, who also highlighted the many exciting opportunities in the southern Italian tourism industry. The final presentation was delivered by Dr Aldo Campagnola, who discussed financial highlights at a glance for M&A business opportunities in southern Italy in the food, fashion and aerospace industries.

As a final contribution to the meeting, Dr Amedeo Lepore, Regional Councillor for Productive Activities in Campa-



Private tour of the Santa Maria La Nova

nia, described the various activities and projects put in motion by the region to foster the internationalisation and development of local companies. Dr Lepore also had an extensive discussion with Claudio Cocca, who is very much in

favour of supporting local enterprises to enhance their potential in terms of business opportunities and international exposure.

In the afternoon, all delegates were invited to a tour of the city centre, where they could visit renowned locations such as Spaccanapoli, Via Toledo, the old city's main squares and churches, and the Sansevero Chapel Museum with its famous masterpiece: the Veiled Christ.

The meeting came to an end with a gala dinner at the Hotel Excelsior, featuring live music, closing speeches and the delivery of special awards to the participants who had attended all the GGI Italian Business Summits organised since 2013: Dr Federico Grossi (Studio Sistini-Grossi, Italy), Alan Rajah (Lawrence Grant, UK) and our very own Claudio Cocca (GGI).

A special optional tour was also organised on Sunday to the famous Pompeii excavation site, followed by the stunning Amalfi Coast.

GGI Italian Business Summits take place once a year and are organised with two main goals: the internationalisation of the activities of small- to medium-size businesses, and the facilitation of business investment activities in Italy by companies around the world. The 2018 event will take place in Venice between 25-27 May (TBC), hosted by GGI member firm Dalla Libera & Partners. We invite all GGI members to this event to enjoy another splendid meeting together in Italy.



Patrizia Giannini



Attentive audience on the Saturday morning

Brussels, Belgium | 11-14 May 2017

GGI European Regional Conference

This year's GGI European Regional Conference took place in Brussels between 11-14 May, hosted by GGI member firms DALDEWOLF and DGST Reviseurs d'Entreprises. Over 230 delegates from all over the world participated at the event held at the renowned Steigenberger Wiltcher's Hotel.

The first activity was scheduled on Wednesday, when those who arrived early could participate in a tour to Antwerp, the largest city of Flanders and the most important harbour city of Belgium.

The Thursday programme also featured several optional tours, including a guided tour to Brussels city centre through the most important examples of Art Nouveau architecture and a beer-tasting tour aptly called "BrusselsBeer". In the afternoon, the International Taxation Practice Group (ITPG) was very well-attended, and featured highlights such as a memorable presentation by a couple of Americans wearing "MAGA" baseball caps plus a "beer-taxtasting" to end the afternoon. DALDEWOLF kindly opened their offices to welcome all GGI members for a Host Firms' Welcome Cocktail just before the official Welcome Reception. As usual, during the Welcome Dinner in the hotel, Michael Reiss von Filski, Global CEO of GGI, introduced the various new members and candidates who were attending a GGI Regional Conference for the first time.

Brussels traffic may not like to work with Swiss precision but after a little hiccup, proceedings kicked off on Friday morning with a Presidential Welcome from Claudio G. Cocca, Chairman and Founder of GGI. Both host firms, represented by Prof Michel de Wolf (DGST Reviseurs d'Entreprises) and Patrick de Wolf (DALDEWOLF), also extended a very warm welcome to their city, with Pat-



Gala Dinner at the Royal Museum of Fine Arts

rick also pointing out that he and Michel were not related although they share the same last name.

The session featured interesting contributions by the two Keynote Speakers: Olivier Boutellis-Taft and Dr Patrick Dixon.

Olivier Boutellis has been the CEO of Accountancy Europe (Federation of European Accountants) since 2006. He talked about "Professional Services in a

New Era" and how, as the environment in which the various providers of professional services operate is being rapidly transformed by technology, society's expectations and political pressure, in the face of such challenges, we have no choice but to reinvent ourselves. He argued that while politicians can, for the time being, get away with alternative facts, society's demand for ethics, transparency, and

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Presidential Welcome by Claudio G. Cocca, Chairman & Founder of GGI



Patrick De Wolf, Michael Reiss von Filski, Olivier Boutellis-Taft, Claudio G. Cocca and Prof Michel De Wolf

social responsibility from business has never been higher, and tax is a prime example of these changes. Since professional activity only exists so far as it creates value and responds to the needs of society, the value proposition of the profession's value should change, as these needs are quickly evolving.

The second Keynote Speaker of the morning was Dr Patrick Dixon, who is often described in the media as Europe's leading futurist. Dr Dixon advises many of the world's largest corporations on key trends, managing uncertainty, identifying risk and developing opportunities. He digs deep into the strategy of each organisation and creates a unique presentation for each event, besides having successfully identified hundreds of future business innovations. Dr Dixon has been ranked as one of the 20 most influential business thinkers alive today. He covers several positions as director, has advised many international boards, and is a published author. Dr Dixon's web pages have been visited by some 15.5 million people and are a rich source

of substantive thought leadership on a very wide range of topics.

His presentation, "Take Hold of the Future", stressed that law and accountancy firms must respond to rapidly unfolding client trends. He went on to discuss the secret of staying ahead, and how paying attention to small things can have such a huge impact in business. His speech was dynamic, provocative and entertaining, and involved plenty of audience participation.

On Friday afternoon, two rounds of various practice groups took place, during which experts from all over the world exchanged technical knowledge and visions as well as explored opportunities for future joint business projects.

While the delegates were busy working, their accompanying guests had the option of going on a guided walking tour to discover Brussels' most famous sights and also participate in a chocolate-making workshop given by master chocolatiers.

After a very interactive day, everyone was invited to an informal dinner

at TrainWorld, a railway museum in the buildings of Schaarbeek railway station, Belgium's oldest surviving station. As they arrived, delegates were welcomed to the venue by Tintin, Snowy and Thompson & Thomson (or Tintin, Milou and Dupond & Dupont ... or Tim und Struppi and Schultze & Schulze ... or Tintin, Bobbie and Jansen & Janssen ... depending on which language you read the comics as a child). The museum itself had many beautiful and unique trains from the history of Belgian railways, and they were a joy to look at and climb aboard.

The Saturday morning session featured a third round of Practice Group meetings and five workshop sessions. For the workshops, Steve Rubin (Moritt Hock & Hamroff LLP) led a session on "How to limit your potential legal exposure from a data breach", Jeffery Mowery (Mowery & Schoenfeld LLC) discussed "Making Your Firm the Best Place to Work", Rudi Jensen (ACCOA, external speaker) talked about "The Revenue Maximiser – how to impress clients, maximise client retention and increase word-



Friday evening at TrainWorld



Tintin & Co. welcomed everyone to the venue



Keynote Speaker Dr Patrick Dixon, Europe's leading futurist



Cristina de Canals from GRUP VILAR RIBA, Vic, Spain



Joseph Ni from Good Earth CPA, Taipei, Taiwan

of-mouth referrals", and Pierre Goffinet (DALDEWOLF) discussed "Competition Law in an International Context".

The Saturday morning session also featured the first meeting of the Geneva Capital Group (GCG) network, the M&A unit of GGI. The session was attended by approximately 30 delegates who took the opportunity to introduce their firms, exchange potential deals, and listen to a case study presentation delivered by Dr Herbert Pock and Dr Gerald Sitte (AUSTIN | BFP). During the meeting, GCG's future strategy, current network development and GCG tools were also discussed. The meeting was chaired by Claudio G. Cocca, Michael Reiss von Filski and Tim van der Meer (Marktlink Mergers & Acquisitions), all members of the GCG Strategic Committee.

During the second half of the day, delegates and accompanying persons could enjoy a number of optional sightseeing tours, including a "Comics Walk" during which an experienced guide led the participants past the most impressive parts of Brussels' comic strip trail across the city, a



Waiting patiently for dinner

guided walking tour of Brussels' city centre, and a tour to Brewery Timmermans.

The Conference ended on a high note with a Gala Dinner at the Royal Museum of Fine Arts, where delegates were able to privately view the art collection before enjoying a splendid dinner by one of the city's finest caterers.

The final optional activity scheduled in the programme took a group of over

20 participants to visit the city of Bruges on Sunday, a full-day tour that provided many interesting and memorable experiences.

The next GGI European Regional Conference will take place in Berlin, Germany, on 19-22 April 2018. GGI is pleased to invite all members to this event and hope that you will already save the dates in your calendar.



Enthralled by the entertainment



A real-life tribute to Rembrandt's "Night Watch"

In Commemoration of His Majesty King Bhumibol Adulyadej

On 5 February 2017, Joe Horn-Phathanothai (from GCG Capital member Strategy613) hosted an event in Bangkok in remembrance of His Majesty King Bhumibol Adulyadej.

The event, attended by the Swiss Ambassador to Thailand, H.E. Ivo Sieber, was a wonderful spectacle of music and dance with live performances from the Kirichenko Twins and the Stradivari Quartett. There was also music by the great Argentinean tango composer, Astor Piazzolla, and some special pieces that had been composed by His Majesty King Bhumibol Adulyadej.

Members of the Stradivari Quartett only play Stradivari instruments, which are known as one of the world's top three exquisite string instruments; only approximately 1,100 string instruments still exist today. These instruments were crafted by Antonio Stradivari (1644~1737) in Cremona, Italy, between 1700 and 1720. The Quartett was formed in 2007 with support from the Habisreutinger, a Swiss-based foundation, and is composed of four members: Xiaoming Wang, Sebastian Bohren, Lech Antonio Uszynski and Maja Weber.

The Kirichenko Twins, Oleksandr and

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The Kirichenko Twins with H.E. Ivo Sieber and Monika Mathier

Sergiy Kirichenko, are internationally acclaimed dancers and masters of their profession. Aside from their technical abilities, the Kirichenko Twins possess enormous expressiveness and artistic exhibition. Their performances and choreography are a fusion of dance and visual sensation: a wonderful sight to behold.

Guests were treated to pieces by Astor Piazzolla, whose opus, comprising more than 1,000 works, forms a characteristic career with undoubted Argentinian flavour that continues to influence the best musicians in the world of all generations.

The ensemble also played arrangements composed by His Majesty King Bhumibol Adulyadej, who was an accomplished jazz musician and composer. The King wrote a total of 78 songs over a period of five decades. According to the website of the Royal Thai Embassy in Singapore, his early arrangements were mostly in the “blues” style, using the chromatic musical scale. Even af-



Peter Kaeser and Joe Horn-Phathanothai

ter he was crowned, King Bhumibol continued to produce a steady stream of compositions, with tracks such as “Blue Day”, “Dream of Love, Dream of You” and “Love Light in My Heart”. The King's compositions can often be heard at social gatherings and are performed in concerts today.

The enchanting evening ended with a garden reception, where guests were treated to a selection of Thai delicacies.

Albania

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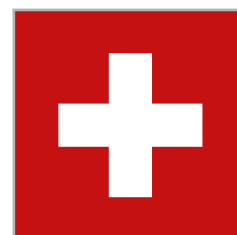
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Roberto Pezzoli



Ivano D'Andrea

WE WISH TO EXTEND A VERY WARM WELCOME TO OUR NEW DISTINGUISHED MEMBERS.

Ward Hadaway Lawyer Writes the Book on Deal-Doing – Again!

A lawyer from North law firm Ward Hadaway can justifiably claim to have written the book on deal-doing for lawyers – for the fifth time in a row.

Robert Thompson, a Corporate Partner at the Newcastle office of Ward Hadaway, has edited the tenth edition of *Sinclair on Warranties and Indemnities on Share and Asset Sales*, a leading reference book widely regarded as the key text for corporate transactions subject to English law.

The book is used in a wide range of deals by corporate lawyers, both nationally and internationally.

The latest edition of the text is the fifth one edited by Robert, a highly regarded corporate lawyer with over 25 years' specialist experience in this field.

The book also features contributions from expert colleagues at Ward Hadaway in areas including tax, property, pensions, employment, insolvency, IT and data protection.

Publishers Sweet & Maxwell are expecting strong sales for the book across 18 different countries, includ-



Writing the book on deal-doing – Ward Hadaway Corporate Partner Robert Thompson, who has edited the tenth edition of Sinclair on Warranties and Indemnities in Share and Asset Sales.

ing Hong Kong, Malaysia and Australia, as well as the UK and the EU.

Robert Thompson said: "Historically, editing a guide of this importance was the preserve of the larger London firms. As regional firms developed their expertise, that is no longer the case. These days, clients need look no further given the in-depth specialism that exists at the leading regional firms and often at a fraction of the cost of their London counterparts. The fact that I and some of my colleagues at Ward Hadaway have now edited this work for the last 13 years speaks for itself. Warranties and indemnities are a fundamental part of every deal given they are the tools lawyers use to apportion risk between the "buy" and "sell"

side. This reference book provides the practitioner with what they need to approach that task with confidence and understanding, as well as providing the reader with the latest legislation, common law, best practice and convention in an otherwise complex area of law and practice. This book is likely to find a place in the library of virtually every legal academic institution and law firm in the country as well as in many firms abroad who practise English law on share and asset sales."

John Pacione, Commissioning Editor at *Sinclair on Warranties* publisher Sweet & Maxwell, said: "*Sinclair on Warranties* is a key title in Sweet & Maxwell's Commercial Series – we are therefore very pleased it is in such expert hands with Robert and his team at Ward Hadaway. Given the often-detailed nature of warranties, the guidance provided by Robert and his colleagues at Ward Hadaway in the tenth edition of the book is invaluable in helping guide practitioners safely through the thickets of this particular area of legal practice.

There is a strong demand for the book – which is available in print, as a Proview e-book and online as a West-law commentary title – and we expect sales in around 18 other countries in addition to the UK; in EU territories and further afield as we have strong overseas reach into Commonwealth jurisdictions with an underpinning of English Common Law."

The tenth edition of *Sinclair on Warranties and Indemnities on Share and Asset Sales* is out now with further details available at www.sweetandmaxwell.co.uk.

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KRD Recently Named as one of the 2017 ‘Best Places to Work in Illinois’

Kutchins, Robbins & Diamond, Ltd. (KRD) was recently named as one of the 2017 Best Places to Work in Illinois. This state-wide survey and awards programme was designed to identify, recognise and honour the best places of employment in Illinois, benefiting the state's economy, workforce and businesses. The 2017 Best Places to Work in Il-



linois list is made up of 29 companies in the small employer category (15-99 US employees), 25 companies in the medium employer category (100-499 US employees) and 21 companies in the large employer category (500 or more US employees). KRD has been named one of the Best Places to Work in Illinois in the small category.

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Board Appointment to Santiago Stock Exchange for Antonio Castilla

Antonio Castilla, Partner at the Chilean GGI member firm ACN (Acender Capital Network), was elected member of the board of the Santiago Stock Exchange (SGO), the main stock exchange of Chile.

ACN is a holding company founded in 1992 with wide and varied experience in both the local and regional markets, having advised clients in transactions worldwide, and in various industries. Antonio, who was elected for the 2017-2020 term, is also Global Vice-Chairperson of the GGI

M&A Practice Group.

Located in Santiago, the SGO is the premier stock exchange of Chile. It trades stocks, bonds, investment funds, derivatives, and gold and silver Chilean coins. It also has an electronic trading platform called Telepregon, which trades US dollars. The SGO was founded in 1893 and posts three major indices, the General Stock Price Index, the Selective Stock Price Index and the Inter-10 Index.

The SGO has several markets,
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which currently trade over USD 2 billion a day in equities, fixed income securities, money market instruments, investment fund shares and foreign securities.

During the last decade, the exchange has expanded and evolved into a global point of interest for investors and a strategic partner for regional stock markets. Furthermore, the SGO has prioritised offering new financial instruments, such as ETFs and derivatives.

Antonio represents a group of independent shareholders. As a member of the board, he was also appointed to the Independence and Audit Committee and the Risk Compliance Committee. A board member position is a prominent one that requires members



Antonio Castilla

be 'au fait' with the Chilean stock market and insurance superintendence as



Bolsa de Comercio de Santiago

well as with all of the stocks and financial market players.

Jakoby Dr. Baumhof Celebrates Their 30th Anniversary

GGI member firm Jakoby Dr. Baumhof, experts in the field of auditing, tax, legal and business consulting, is celebrating their 30th anniversary in 2017.

The interdisciplinary company is led by the six senior Partners: Eugen Jakoby, Brigitte Jakoby, Katrin Köhnlein (German CPAs and tax consultants), Otto Schöller (tax consultant), Dr An-

gelika Baumhof and Christoph Richter (lawyers). Additionally, there are nine professionals practicing as tax consultants and lawyers, and another approximately 60 employees with a wide range of qualifications as specialists in tax, payroll, auditing, accounting, jurisprudence, economics and IT, all working for the success of their clients.

The company was founded in 1987 by Eugen and Brigitte Jakoby in Rothenburg ob der Tauber, a city of medieval origin in southern Germany. Their main field of activity was in the area of tax consulting, payroll, accounting and preparing of financial statements.

Over time, the company expanded their services to include business consulting and auditing, and an additional office in Ebersberg near Munich. As the number of the clients grew, their business flourished; in 1996, Jakoby Dr. Baumhof added a legal department un-



Brigitte Jakoby

der the guidance of Dr Angelika Baumhof. The aim was and still is to provide a full service for clients.

In 1999, as the businesses of the cli-

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ents developed internationally, Jakoby Dr. Baumhof joined GGI so they could better meet their clients' needs. It was important for the firm to be able to provide a full service to their clients both nationally and internationally.

To date, 500 SME clients make use

of the advice and experience of Jakoby Dr. Baumhof, with some having sales of approximately EUR 100 million. The international businesses of their clients benefit from the support of GGI and its members.

The celebrations of the anniversary

took place in the mighty baroque castle of Schillingsfürst. The Prince of Hohenlohe-Schillingsfürst was pleased to provide his private rooms for this wonderful occasion. Everybody enjoyed the extraordinary setting and the exceptional food.

Moritt Hock & Hamroff LLP Expands Its Presence in New York City

On 5 April 2017, the law firm of Moritt Hock & Hamroff held a private cocktail reception for clients and friends of the firm in celebration of the relocation and opening of its New York City office. The firm commemorated the event with a traditional ribbon cutting ceremony. Moritt Hock & Hamroff signed a 10-year lease with Shorenstein Properties for 9,592 square feet on the 39th floor at 1407 Broadway in New York City.

"As our firm has continued to grow during the past several years, it has become increasingly evident that we needed an even larger Manhattan presence," said Marc Hamroff, Managing Partner. "The 1407 Broadway location is a perfect match for our current needs and provides a quality facility that will help to further our firm's dedication to our clients. Our initial move into New York City proved to be a significant milestone in the firm's history and this expansion represents an exciting new chapter for us."

The new office location provides Moritt Hock & Hamroff enhanced infrastructure capabilities necessary to compliment the ongoing expansion of its staff and overall business. The firm had previously been located at 450 Sev-



Ribbon ceremony

enth Avenue in New York City.

Positioned between 38th and 39th streets in Manhattan, 1407 Broadway is steps from some of New York City's most important transportation hubs – Times Square, Penn Station, Herald Square and the Port Authority. The firm's new space boasts outstanding light and 360-degree views of the Midtown skyline.

Moritt Hock & Hamroff, with offices on Long Island and Manhattan, provides a wide range of legal services to

businesses, corporations and individuals worldwide.

GGI member firm

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Haines Watts, Chartered Accountants and Business Advisors Acquisition of the practice of Gutteridge Scanlan in Leicester as of 1 April 2017

Andrew Scanlan has had an accountancy practice in Leicester since 1977 and recently decided the time had come to merge his business into something larger. He looked to Haines Watts, Leicester, who “have a great business reputation in the area.” He has known the Managing Partner, Sanjay Khullar, for many years. Andrew added, “I am looking forward to becoming an Associate Partner and working with my clients without the administrative burden of running my business. I had many interested parties

wanting to buy my practice, but I wanted to ensure that my clients received excellent service with a long established company and that is why I chose Haines Watts Leicester.”

The entire Scanlan team will transfer to Haines Watts as part of the acquisition to ensure clients continue to receive a personal service while the additional services provided by Haines Watts will be of benefit to the more progressive clients. There is also the advantage that the offices are within 100 yards of each other.

Managing Partner Sanjay Khullar said, “I am delighted to seal the deal with Andrew and look forward to working with him and our new clients. We are also delighted to welcome Andrew’s team into our offices, which we have had to expand. Our recent growth had already left us short of space, so we took the plunge, bought the adjacent office, and knocked through to give us scope for further growth.”

This move further demonstrates Haines Watts’s commitment to Leicester



Shazin Tayub

and comes on the same day that the firm announced the promotion of Tax Manager Shazin Tayub to Associate Partner. A qualified Tax Technician and Chartered Tax Advisor by profession, Shazin has been with the firm since 2014 and has been instrumental in developing the tax team who offer all taxation planning and compliance matters for a diverse portfolio

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lio of clients in the region. He will continue to work alongside Sanjay Khullar to develop the Leicester Office further. Sanjay commented, "This demonstrates our ongoing commitment to developing the team and recognises the hard work and enthusiasm demonstrated by Shazin."

Shazin is looking forward to the opportunities and challenges that the new appointment will bring. He says, "I enjoy getting to grips with business owners to find out what issues keep them awake at night, and how we can work together to resolve them. I am looking forward to working closely with Sanjay in developing our business strategy further."

About Haines Watts

Haines Watts is a Top 15 firm of Chartered Accountants that specialise in the owner-managed business sector. Haines Watts has a broad range of services and over 80 years' experience in working with privately-owned businesses. From accountancy, tax, VAT, payroll, financial services, expense control, corporate finance and business advice, they have the market understanding and expertise



From left to right: John Day, Andrew Scanlan and Sanjay Khullar

to make a difference to business.

With over 60 offices around the UK, and over 35,000 UK clients, Haines Watts aims to become the premier adviser to the owner-managed business sector.

They are able to offer a comprehensive range of national services without losing the personal attention to detail at a local level. This combination makes the Haines Watts offering unique.

Excellent Performance by Four GGI Members:

Germany's Top Tax Advisors 2017

We are proud to announce that four German GGI members have been awarded Germany's Top Tax Advisors 2017 by the famous German business newspaper, Handelsblatt.

Part of the Dieter von Holtzbrinck Media Group, Handelsblatt, which was established in 1946, is Germany's leading business and financial newspaper. The award is coveted by many tax

advisors for its esteemed reputation. Our members were recognised out of 1,400+ certified tax advisors, tax consulting companies and tax agents in Germany.

The multi-level online survey was conducted on behalf of the newspaper, which was carried out by the "Sozialwissenschaftliche Institut Schad" (S.W.I. FINANCE). Companies of all sizes were

allowed to participate and awards were received by a large variety of firms.

There were a few different steps involved in the awarding process. Firstly, advisors had to fill out a questionnaire about the structure and technical focus of their company. Secondly, they had to answer technical tax questions on basic as well as expert tax topics related

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Oliver Biernat, Benefitax



Detlef Bischoff, Connex



Thomas Ditges, DITGES

to the special technical tax focus they had indicated for their company. The survey was completed online, and allowed only 30 seconds per question to answer. This was implemented in order to avoid participants checking the answers online or asking other experts.

Other quality factors, such as the response time for answering an email request from a fictitious potential client and the employment of one or more spe-

cialist tax advisors, were also included in the evaluation.

Based on the survey results, the following German GGI member firms have been awarded Germany's Top Tax Advisor 2017:

- **Benefitax GmbH, Steuerberatungsgesellschaft, Wirtschaftsprüfungsgesellschaft**, is ranked among the 150 top tax advisors in Germany's largest 30 cities. Benefitax is located in Frank-

furt, one of the most competitive cities when it comes to tax advisory in Germany. Benefitax's Managing Partner and Global Chairperson of GGI's International Taxation Practice Group (ITPG), Oliver Biernat, says that "Benefitax is very proud to be among those companies that have been awarded. It was the first time that Benefitax participated in the event." Luckily, the company had just launched a new website shortly before the survey was carried out and thus were able to demonstrate their national and cross-border tax and financial compliance expertise in a new format, including appearances in social media and films on the Benefitax YouTube channel.

- **Connex Steuer- und Wirtschaftsberatung GmbH**, located in Leipzig, is among the top tax experts in the field of business succession. Detlef Bischoff, Executive Manager of Connex Steuer- und Wirtschaftsberatung, commented, "We are extremely proud of this award, which confirms the high quality of our consulting services, particularly as we were the only consulting partnership in Leipzig to receive an accolade within this specialised field." Entrepreneurs are increasingly confronted with the problem of finding a suitable successor for their company. Tax-related aspects play a prominent role in the succession concept as substantial tax burdens for both the senior entrepreneur and his successor can develop

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within this process. Connex accompanies every stage of the company succession, particularly in daily business during advanced entrepreneurial processes and other aspects of re-orientation, offering timely advice on advantages and disadvantages and familial consequences.

- **DITGES Partnerschaft mbB Rechtsanwälte Wirtschaftsprüfer Steuerberater** has been identified as the top tax accounting firm in Bonn. Thomas Ditzges, Managing Partner of DITGES, emphasised, “The award for our law firm acknowledges the expertise and the long-lasting work for our clients on a highest professional level, especially as we are a smaller-sized entity providing not only in tax advisory services, but also in all other relevant areas of commercial law.” DITGES is an expanding law and tax-consulting firm with a dynamic profile, held in high esteem by small- and medium-sized enterprises as well as by DAX-listed companies. The expertise of the partners and lawyers correspond accordingly. Internationally, one partner is admitted to the New



Bärbel Wierzoch and Philipp Stübben, Kieffer Stübben + Partner

York State Courts and the US Federal Courts. DITGES offers interdisciplinary, complex and one-stop solutions, not only focused on the court battles, but also on all methods of Dispute Resolution.

- **Kieffer Stübben + Partner mbB – Wirtschaftsprüfungsgesellschaft und Steuerberatungsgesellschaft** – located in Düsseldorf, was recognised as top accountants in the field of “international tax accountant, inheritance and donation.”

These awards show the excellence and expert knowledge of GGI member firms. Two of the major challenges of

our profession that were mentioned by the award-winning companies were recruitment and digitalisation. It was interesting to see that large companies (over 90%) seem to have more difficulties in finding qualified staff than smaller companies (approx. 70%). Mechanisation and digitalisation was named as the second largest challenge by almost 70% of the participants, while mid-sized and larger companies identified this as a future success factor.

The complete ranking is available at www.handelsblatt.com.

Nolands Launches Foundation in South Africa

By Clive Noland

On Monday, 13 February 2017, Nolands was privileged to host Dr Jane Goodall at Kirstenbosch Botanical Gardens in Cape Town, South Africa. The event centred on the introduction of the Nolands Foundation to clients, business partners and friends of the company.

Dr Goodall’s early-evening talk was nothing short of entrancing as she took the audience on the unique journey of her life, from a little girl growing up to a totally untamed, remote part of Africa at the age of 26, where she immediately found her passion and purpose in life. Here, in what is now Tanzania, she began her life-long study

of chimpanzees. For over 50 years, she built her reputation as the world’s leading authority on our animal cousins.

It is this standing in the international community that has led to her being appointed a United Nations Messenger of Peace, alongside a handful of other global icons. The Jane Goodall Institute

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Dr Jane Goodall at Kirstenbosch Botanical Gardens in Cape Town

and her educational organisation “Roots and Shoots” are established in over 100 countries. The Nolands Foundation will be looking at ways to partner with the Institute in helping to

encourage environmental protection education. At the age of 82, Dr Goodall spends 300 days of the year as an “activist”, travelling the world and spreading her conservation message.

The evening brought together the Nolands Foundation’s five valued partners: Standard Bank, Gunston’s Attorneys, Independent Wealth Management, Dale Capital Group and Tax Risk Underwriting Managers. Together, the Nolands Foundation will look to support initiatives aimed at improving the lives of young people. This will be through education and sport, in all its various forms.

Before Dr Goodall was introduced, a cheque for ZAR 20,000 was presented to the Langa Hockey Club from the

Foundation. While Nolands has supported the Club for many years, this was the first donation made under the Foundation banner and was a memorable moment.

Langa have been very innovative in using their sports clubhouse as a centre of extra-curricular education, last year presenting a course in robotics to children aged 11 and 12 years. It is this type of initiative that the Nolands Foundation is particularly keen to identify and support.

The launch of the Foundation and the event itself was extremely well received and the company looks forward many exciting and rewarding projects in the future.

GGI member firm

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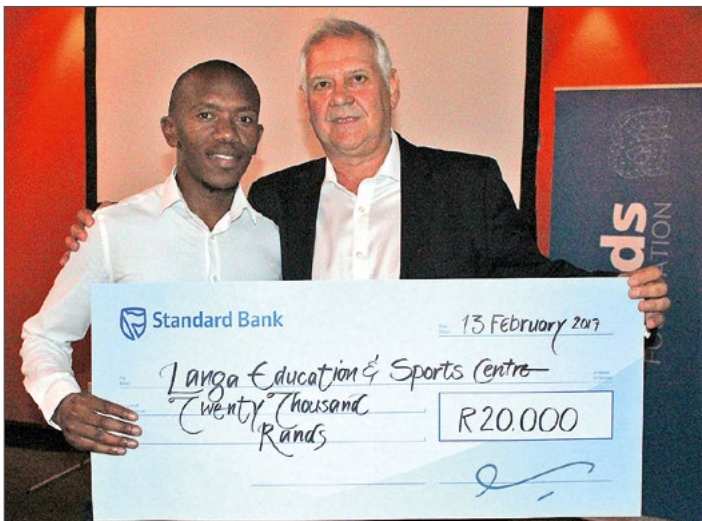
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Donation to the Langa Hockey Club



Clive Noland and Dr Jane Goodall

Spain, Leader in World Tourism

By Santiago Lapausa

For the past 11 years, the World Economic Forum has engaged leaders in travel and tourism to conduct an in-depth analysis of the travel and tourism competitiveness of 136 economies across the world; a report on this subject is published every two years. In the last report, "Trips and Tourism Competitiveness Index 2017", Spain achieved 1st place as the leader in world tourism, for the second consecutive edition.

The report highlights that Spain's success can be attributed to its unique offering of both cultural and natural resources, combined with sound tourism service infrastructure, air transport connectivity



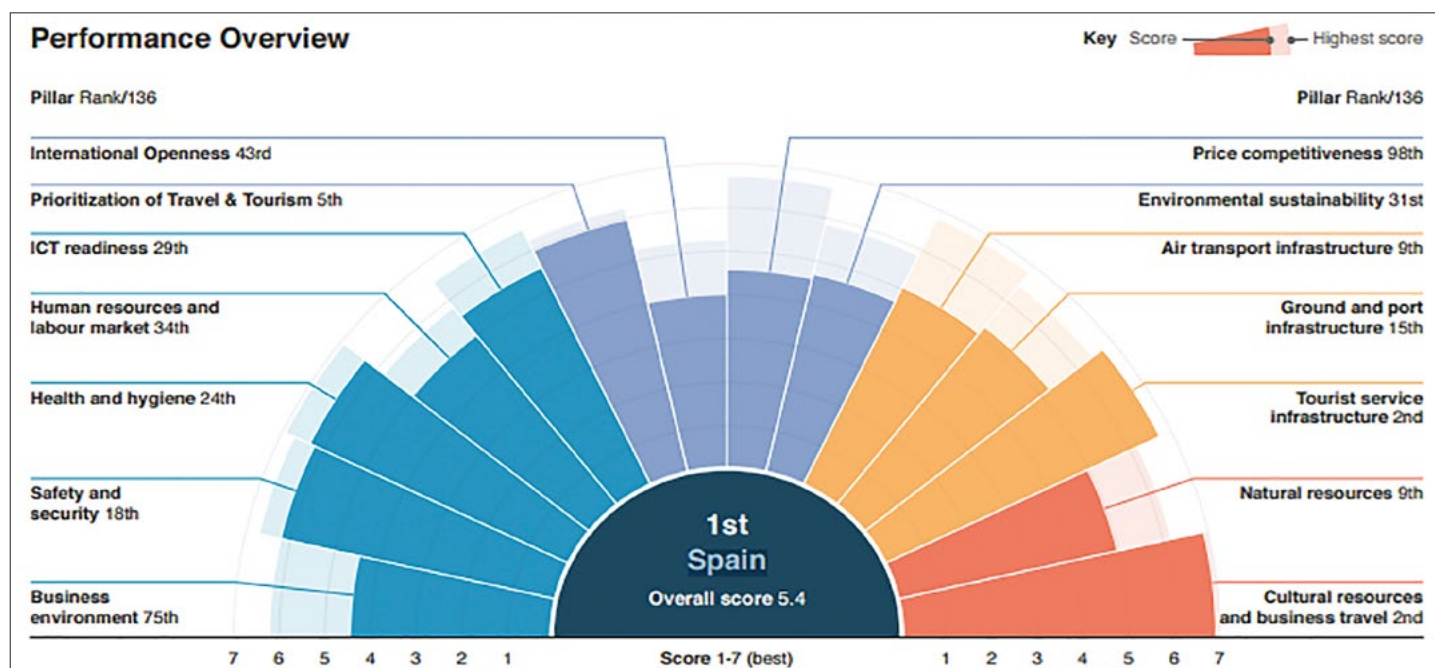
and strong support policy. Spain's travel and tourism sector has not only benefited from the recent ease of its fiscal policy, but also from diverted tourism from other areas of the world affected by security concerns. See: <http://reports.weforum.org>.

In 2016, Spain beat records for the seventh year in a row with more than 75 million tourists. This meant an economic outlay of EUR 77 billion. The UK headed the list of foreign visitors followed by France and Germany. La Costa del Sol in the south of Spain also beat records in 2016 with 12 million visitors and

...next page



Santiago Lapausa



26 million staying overnight with an economic impact of EUR 11 billion. The good results of the recent Easter holiday augurs another record-beating year for Spain's tourism and hotel sector in 2017.

La Costa del Sol regains its investor appeal. The latest projects in the area confirm the attractiveness for major investors, such as the deluxe 5-star skyscraper hotel in the Málaga harbour by the Qatar promoter Al Bidda Group with an investment of EUR 120 million, another deluxe 5-star hotel in Marbella by Hong Kong investors Platinum Estates

investing EUR 300 million, and the new shopping and leisure park in Torremolinos by British listed firm Intu with EUR 650 million (Intur plans to invest EUR 3.250 million in five shopping resorts in Spain).

Residential tourism is also boosting as well as the luxury sector in Marbella. Investment comes from Russians, Arabs and Nordics looking for their second home.

In sum, this is excellent timing for private or corporate real estate and tourism investment.



Legal Field Growth is Rooted in Lateral Recruitment

By Timothy C. Lynch

*First published in the
Legal Intelligencer*

Special to the Legal Will Rogers once said, "Even if you are on the right track, you'll get run over if you just sit there." He was not talking about the legal industry, but his humorous quip is something that law firm leaders should be mindful of when they are developing their strategic plans because most industry analysts agree that the demand for legal services as a whole, which has been flat for several years, does not appear to be improving anytime soon. In fact, Thomson Reuters Peer Monitor Index (PMI) found that the demand for legal services was negative in the latter part of 2016. This means that most firms (and lawyers) are finding it hard to grow organically.

The reasons for this flat to negative demand for legal services are the subject of many articles and books. Richard Susskind has written several books on the future of the legal profession – one being "Tomorrow's Lawyer." Susskind



Timothy C. Lynch

writes about factors that have led and will continue to lead to obstacles when it comes to resolving the growth challenges in the legal industry. Susskind identifies technology and client-driven cost pressures as two of the primary reasons why the demand for legal services is not growing.

Before the age of the internet and the growth of non-traditional legal service providers, such as LegalZoom, lawyers were the primary source of knowledge

and service for all clients. Susskind and other pundits have opined that this greater access to information coupled with the economic shift caused by the Great Recession has led many legal consumers (large and small) to cut back on the amount that they are spending on traditional legal services. Instead, they are relying more on in-house legal expertise, using online and non-traditional legal services, and demanding alternative fee structures to meet their legal needs.

Adding to the industry problem of the tightening demand for legal services is the "Graying of the Bar", which is a demographic reality. The American Bar Association tracks some of these demographics in its Lawyer Statistical Report, last issued in 2016. In 1991, 46 percent of the bar was under the age of 40 and 20 percent of the bar was over the age of 55. In 2005, these percentages changed dramatically with only 26 percent of the bar then under the age of 40 compared to 34 percent being over 55. Although the ABA study does not show the current percentages, conventional thinking is that that disparity

is even wider today due to decreasing law school admissions over the last decade and a still-troubled entry-level job market. The ABA's Lawyer Statistical Report shows that law school enrolment dropped by almost 20,000 from 2011 to 2014. Further, the ABA also reports that less than 60 percent of the 2015 graduating class had full time employment within 10 months of graduation. Therefore, the industry has fewer and fewer new lawyers while the average age of the bar continues to increase.

Adding to the issue of an aging bar is the pending retirement of the Baby Boomer lawyers. Many large firms offer generous retirement and pension benefits to its partners, but many of these plans are unfunded. Dewey & LeBoeuf, Heller Ehrman and WolfBlock are just a few law firms that went under, in part, because younger rainmakers left their firms. Some of those departures were no doubt fuelled by concern that more law firm profits were needed to meet the obligations of the retiring partners. Julie Triedman of "The American Lawyer" has been regularly reporting on the risks to firms relating to pension liabilities and that more than half of the AmLaw 200 partners are Baby Boomers. Additionally, Altman & Weil has reported that 63 percent of firms they surveyed in one study reported that more 25 percent of firm revenue was tied to lawyers over the age of 60. So, there is a lot of revenue connected to these aging lawyers.

Despite these economic and industry challenges, law firms remain profitable and many are reporting rising revenue. Some of the rise in revenue and profitability is due to rate increases, but most firms that are growing are doing so by lateral acquisition of legal talent. Altman & Weil's Merger Line shows that there has been a dramatic increase in law firm mergers since 2010, when 39 law firm mergers were reported. From 2013 through 2016, the average number of law firm mergers has skyrocketed to 87.5 a year.

Most law firm leaders now recognise that growing by lateral acquisition is essential for growth. For those firms that have unfunded pension liabilities, it is



essential to have an increasing pool of revenue and profits so that they cannot only pay their younger rainmakers, but also pay the Baby Boomers out in retirement. If the soon to be retiring partners feel insecure about their retirement nest eggs, not only will younger rainmakers depart for greener pastures, but the industry will see more Baby Boomers parting ways with their current firms and moving their business to firms that can pay them what they are worth today as well as in retirement.

This is good news for those lawyers who are looking to leave their current firms because the market for lateral recruiting is and will continue to be a "seller's market" for the next decade. Lateral partners need to become savvier in asking questions about their potential new firm's long-term financial soundness as well as management's plan to help integrate them into the firm culture. As more senior level lawyers look to leave their firms, they will be looking for their new firm to help their team, which likely includes younger service partners with little or no experience with client acquisition, with organic growth. Very few firms today offer meaningful training and development programmes for service partners to become rainmakers.

For buying law firms to compete successfully in this increasingly competitive marketplace, they will likely need to develop a lawyer-centric mentality. Law firm leaders will have to build and strengthen platforms and programmes that will allow laterals to integrate into

the new firm's culture and not just survive, but also thrive. That means that the law firms that are most likely to "win" in this marketplace will need to implement development programmes for lateral teams to help with client acquisition. These law firms should follow Susskind's advice and continually innovate in order to satisfy not just the evolving client needs but also those of the senior rainmakers who may be losing confidence in their existing firm's ability to survive their retirement.

While law firm succession planning is a topic for another article, the firms that develop succession plans that not only account for paying out the Baby Boomers, but also to develop and encourage the next generation of law firm leaders to successfully transition the firm clients to a generation of lawyers that heretofore have largely been following the lead of the Baby Boomers when it comes to law firm management – are the ones that will be on buy-side of the mergers for years to come.

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Brexit Begins as Article 50 is Triggered

By Alan Rajah

The UK finally triggered Article 50 after the British public voted to leave the EU on 23 June 2016. The die has been cast and there is no turning back for the UK. Donald Tusk, the President of the European Council was handed a 6-page letter signed by Theresa May to signal the start of the negotiating process. There was a sign of dejection within various EU members while the UK has seen a division in opinion among British politicians with the Scottish Parliament voting to trigger a second referendum for Scotland to leave the UK. The Welsh Parliament was not consulted on the exact wording of the 6-page letter and was concerned with the potential loss of valuable subsidies from the EU.

Both the UK and EU are in uncharted territory, and this is the biggest event in post-war history. The UK will need to start divorce proceedings with complicated negotiations on the horizon. Neither party would want to show any sign of weakness and it is predicted that negotiations are going to be protracted, especially on trade deals, and the expected divorce bill for leaving the EU could be in the region of GBP 50 billion.

The EU has lost an influential mem-



Alan Rajah

ber with significant military capability and one of the largest contributors to the EU coffers. The EU will need to reinvent itself to ensure that no other members leave the Union.

There is little doubt that the UK will use its military intelligence and capability to negotiate for a fair deal for the UK. This was clearly stated in Theresa May's letter to the EU where she mentioned that the failure to reach an agreement will result in a weakened fight against crime and terrorism.

At the same time, EU members will be targeting UK's lucrative financial markets, which have fuelled the British economy over the years. Major financial institutions have already relocated some of their services to Brussels and other major cities in the EU, and there is no doubt that other companies will follow suit. The UK will need to explore other markets to continue to maintain its international status in the financial sector.

However, the UK economy remains resilient since the public voted for BREXIT. There has been an increase in foreign direct investment in the UK of more than GBP 15 billion since the EU

referendum. The UK labour market has not shown any signs of slowing down and unemployment figures have fallen in the months after the BREXIT vote. The gross domestic product (GDP) has increased by 0.7%, up from 0.6%, according to the Office for National Statistics (ONS).

Sterling is expected to maintain a positive outlook against the US Dollar and the Euro following speeches from Theresa May and Donald Tusk. The FTSE 100 continues to climb and reflects investor confidence in the UK market.

Angela Merkel has stated that the UK will need to complete the exit deal first before negotiating any trade deals; however, the UK wants to link the two events together. There is no doubt that the battle lines have been drawn and the UK will need to continue to maintain a strong relationship with other EU members to achieve its objective of negotiating a fair deal for the UK.

The majority of the British people voted for BREXIT on the promise that instead of contributing to the EU, these funds were to be diverted to fund the National Health Service (NHS) and that immigration would be controlled. The UK has confirmed that it would protect EU citizens that are currently in the UK and will want to protect the rights of British people who are residing in the EU. However, politicians are back-tracking on the amount of savings that would be made from exiting the EU.

Both the UK and the EU will need to draw up new rules of engagement and navigate through the political landscape in Europe where we have seen some European leaders putting politics ahead of practical negotiations.

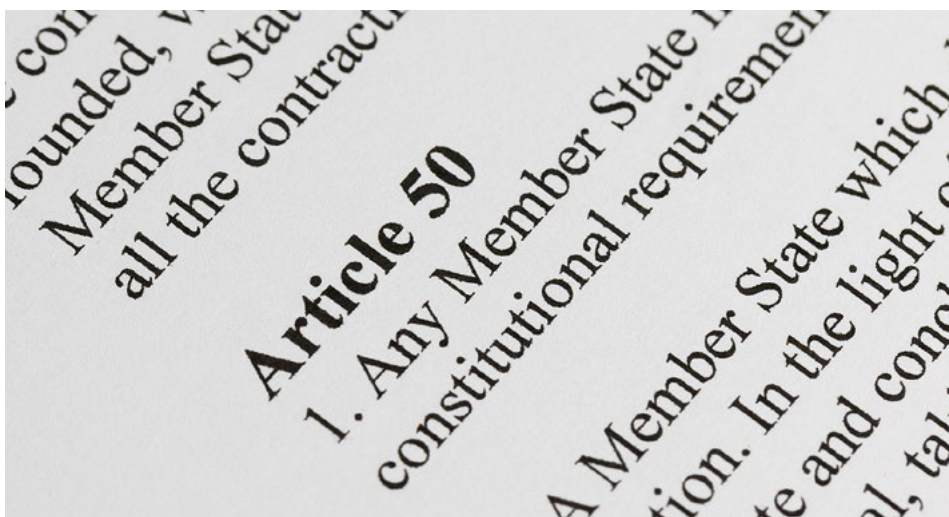
The objective of the UK would be to negotiate successfully with the Eu-

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European Commission for a comprehensive free trade deal with the EU. Two key events that will determine how negotiations proceed will be the general elections in France and Germany in May and September, respectively.

The clock is ticking and UK companies will need to be aware of the impact that BREXIT could mean to the UK economy, and will need to take steps to ensure the future viability of their business.

One hopes that the UK will be able to negotiate a smooth exit rather than a quick and messy divorce.



Family Limited Partnerships

By Dennis L. Nerland

A Family Limited Partnership (“FLP”) is nothing more than a limited partnership, created as a vehicle to transfer income and title to assets from the family head to other family members, rather than to a non-family business associate. When the owner of a business is in a high income tax bracket, this transfer can drastically reduce any personal liability and taxes.

In the case of an FLP, property with a high appreciation potential is the best type of contribution. It can be transferred under a freeze-style transaction with all taxes deferred.

At first, this may seem like a drastic surrender of wealth to children, but it's not. Children as limited partners have no control over the assets. A parent or parents as 5% managing general partners have the control. They make the decisions in respect of cash distributions, including what salary is paid to the managers, meaning themselves, and what investments are made. Although the limited partners own the assets, they are inactive titleholders, forbidden by law to control those assets lest they jeopardise their partnership status and their limited liability.



Dennis L. Nerland

An FLP offers the advantages of a precise agreement defining the parties' rights, allows withdrawal of property with far fewer tax problems and operates under no shareholder restrictions. It also allows for effectively freezing the value of an individual's own interest, which allows for the prediction of tax liability while accruing future growth to children as limited partners.

This means greater freedom of movement and flexibility all around.

Transferring real property to the partnership eliminates probate of property located in jurisdictions other than that

of a donee's residence at the time of death. Most jurisdictions exempt partnership property from probate.

Since a partnership isn't a taxable entity, making gifts to children or other family members through the medium of a fairly constructed partnership avoids the burden of double taxation to which personal net income is subjected in a corporation. A partnership is a flow-through vehicle, so income will only be taxed once and, as discussed above, will freeze an individual's interest for a predictable tax bill.

In summary, when formulated correctly, the FLP is an excellent means of shifting income, conducting a family business where the corporate form presents tax problems, maintaining control of assets while passing them on to others, estate planning and insulating wealth from creditor attacks.

A family limited partnership in itself doesn't guarantee either increased income or absolute asset protection benefits. As with any asset protection structure, an FLP's value comes from creation of the proper governance structure, continued good management of the underlying assets and wise decisions during the life of the partnership.

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Additionally, the limited partnership offers an established tool, recognised in law, which can enable one to reach their desired financial goals. The province or the state of location for partnership formation should be chosen to maximise protection. For instance, Delaware and other states with favourable partnership

laws should be considered. Asset protection benefits accompany this choice.

The legal forms or identities of the partners themselves aren't important. A partnership interest can be transferred to, and owned by, an irrevocable trust, with spendthrift provisions created for the benefit of the children. Even the parents' partnership interest can be held by irrevocable trusts, offering yet another layer of protection.

Remember that this form of asset protection and family business ownership has been around for a long time. The pitfalls and ways to avoid them are documented above. There are no shortcuts, but there are many tangible rewards to the proper creation and operation of an FLP.



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Winds of Change

By Miguel Mantelli

During 12 years of President Cristina Fernández de Kirchner's government and her late husband, President Néstor Kirchner, Argentina isolated the world by nationalising foreign companies, curbing imports and cutting normal ties with the International Monetary Fund. The Kirchners once left behind Carly Fiorina, the then CEO of the American computer giant Hewlett-Packard, when she went to visit them at Government House.

Some countries in Latin America never turned their backs on globalisation, especially those on the Pacific coast, including Chile, Mexico and Peru. However, others did. Stimulated by the record prices of their raw material exports, they turned themselves over and subjected their economies to state controls, repeating to a lesser extent the model that had failed in the region in the 1970s.

President Macri's initiative is not the only sign of a renewed Latin American desire to connect with the

world. The Brazilian Congress is set to overturn a law that gave Petrobras, the state-controlled oil company, a monopoly over deepwater operations. President Michel Temer, who recently took over from the impeached President Dilma Rousseff, seeks to relax the rules that govern national content in the oil industry.

In Ecuador, President Rafael Correa, a leftist populist who boasted that his country was doing well because it ignored IMF prescriptions, plans to leave the presidency next year amid a recession. His government has already accepted a USD 364 million unconditional loan from the IMF for reconstruction following an earthquake, and whoever wins the election will likely seek a conventional IMF programme.

These changed attitudes are in response to a harsh reality. Due to the end of the commodities boom, 2016 will be the sixth consecutive year of economic slowdown in Latin America. It is true that the IMF's prediction of a cumulative contraction of 0.4 percent

this year is depressed by recessions in Argentina, Brazil and Venezuela. The fund assumes that the first two will recover during this year, and that the region will see a return to growth of 1.6 percent. In other words, even those countries that followed responsible macroeconomic policies are growing at a mediocre rate of approximately 3 percent.

The IMF estimates that the region's potential, ergo, non-inflationary, growth rate has fallen from 4.5 percent to 3 percent. That is not enough to satisfy the aspirations of an extended middle class, nor to complete the task of eliminating poverty.

So, what can be done? Due to better policies, some countries have seamlessly adapted to the prices of the lowest raw materials. Their currencies have depreciated without triggering high inflation. As central banks now set out to reduce interest rates, cheaper currencies should trigger strong export-led growth.

Unfortunately, there are few signs of this. During the boom years accompa-

nied by strong currencies, many Latin American manufacturing companies lost links with the export markets they once had. Resetting them will require time and effort. It is even more difficult because world trade is now growing at a much slower pace than in the recent past.

The need for Latin America to conquer new markets occurs while globalisation is retreating elsewhere. In April, after years of procrastination, the Mercosur trade group based in Brazil and Argentina began formal negotiations for a trade pact with the European Union. Due to the agricultural protectionism of France and others, Europeans are unlikely to offer anything useful.

Earlier this year, Chile, Mexico and Peru signed the proposed Transpacific Treaty Association (TPP), which unites 12 countries. This pact now seems to have failed because both candidates in the US Presidential Election were opposed to it. President Donald J. Trump threatens to erect tariff barriers around what remains largely, despite



Dr Miguel Mantelli

the rise of China, Latin America's largest export market.

At the beginning of the century, parts of Latin America suffered the kind of negative reaction against globalisation that has now arisen in Europe and the USA. Kirchner and Venezuelan President Hugo Chavez attacked "neoliberalism" and "savage capitalism", referring to free trade and free markets that are the basis of glo-

balisation. They attributed the extreme inequality that affects Latin America to "imperialism", just as Trump now blames foreigners for the loss of US industrial jobs.

A lesson from Latin America is that governments can alleviate inequality through social programmes. Another is that the disconnection of the world makes the situation worse for the poor, as is the case now in Venezuela.

After going through its anti-globalisation reaction, Latin America is finding that the world now offers fewer easy benefits than in the past. It will be difficult to make up for lost time, but at least the region, for the most part, is on the right track again.

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Attractiveness for Investing Environment and Development Perspectives in Armenia

By Arman Varosyan

The main spheres for foreign investments are information technologies, tourism, energy, including alternative energy production, mining, ore processing, industry and agriculture.

In order to attract investors, the government of Armenia has created an electronic platform that includes the investment plans. This website is a unique bridge between investors and investment seekers. There are also projects on granting customs and tax

privileges, exemption from custom's taxes and delayed payment of VAT for 3 years. Some of the projects require government-private sector format, which involves modification of the land purpose usage or delay of amounts payable because of modification.

The establishment of the free economic zone (FEZ) in the area bordering Iran in the fall of 2017 will promote the country's economic development. FEZ will occupy an area of 10-15 hectares, with the possibility of extension to 45 hectares. The project was estimated to be worth approximately USD 30 million, and will establish more than 2,500 workplaces. According to the forecasts, 100 companies from the EU, Russia, Iran and China will operate in the FEZ, and will annually export products worth USD 80-100 million. The target destinations for FEZ are Europe, the EEU, CIS, Iran, the Middle East and China.

KPMG together with the RA government has developed a guideline "Armenia: Great Country, Smart Opportunities". The guideline includes the necessary information on current economic reforms, investment oppor-

tunities, tax and regulatory environment and the investment potential of the country.

Partnerships with US companies are also developing. Synopsys Armenia is one of the largest Synopsys branches outside the US, providing R&D and product support in the areas of EDA, design for manufacturing and the development of semiconductor IP.

IBM Innovative Solutions and Technologies Center and Microsoft Innovation Center are currently successfully operating. A number of agreements are signed with Microsoft envisaging support to create the Cybersecurity Center, and the establishment of regional centre for cloud and mobile solutions based on the Microsoft Innovation Center.

Future endeavours include a Silicon Valley in Armenia: an engineering city for approximately 40 companies on 3 hectares of land.

In the next few years, American companies ContourGlobal and Lydian are going to invest USD 500 million in Armenia's energy and mining sectors. Additionally, there are currently discussions with a Chinese company on construction of the Copper Smelting Plant worth USD 450 million.

Large investments in the energy sector are expected from Ocean Holding (UAE), which aims to invest USD 100 million beginning in 2017 to construct and operate solar batteries stations, using the best avail-



Arman Varosyan

able technologies of the sphere.

Armenia has serious potential to become the most effective country of the region. Indeed, this has been proven by the study of Soviet Armenia's economic results of the 1980s. In particular, it appears that the production level was 5-6 times higher than it is today, and constituted 68% of the gross national product.

Making up only 1.1% of the population of the Soviet Union, Armenia produced 35% of the military-industrial and cosmic complex technologies, microelectronic devices and computers for the USSR. Armenia also boasts 700 large factories whose products were exported to 70 countries. In particular, there were approximately 33,000 scientists in Armenia: 10 scientists per 1,000 population, which was the basis for ensuring high economic growth. By this index, Armenia not only ranked first among the 15 states of the Soviet Republics, but also led worldwide.

The above-mentioned inspires confidence that implementation of radical reform programmes will lead to the rapid development of Armenia.

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Immigration and President Donald Trump – The First 100 Days

By Robert F. Loughran

29 April 2017 marked the 100th day of Donald J. Trump's presidency, the period in US politics that sets the tone for the remainder of his four-year term. Although President Trump attempted to push through other measures, US immigration policy appeared to be the focus of the first one hundred days.

Initial Presidential Executive Orders and the Travel Ban

On 25 January 2017, President Trump began by signing two executive orders focusing on border security and interior immigration enforcement, having an immediate impact on the interpretation and enforcement of US immigration law. These orders related to policies that the president campaigned on, including the building of a wall along the US border with Mexico, the abolishment of "sanctuary cities", and the removal of undocumented immigrants from the US. Coming less than a week after President Trump's inauguration, these orders set the enforcement tone of the new administration's immigration policy.

Two days later on 27 January 2017, President Trump issued a third executive order entitled "Protecting the Nation from Foreign Terrorist Entry into the United States." Although further clarified, enjoined by US courts from enforcement, and subsequently abandoned by the Trump Administration, the order would have restricted travel to the US by foreign



Robert F. Loughran

nationals, including US lawful permanent residents, from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen. The order also would have suspended immigration benefits to refugees and eliminated the limited exceptions to the interview requirement during the visa process. A revised version of this executive order was issued on 6 March 2017, but US courts similarly enjoined its enforcement, and it should remain unimplemented due to litigation for months, if not years, to come.

Increased Scrutiny at US Consulates and Ports of Entry

Following the injunction on enforcement of President Trump's revised travel ban, US Secretary of State, Rex Tillerson, issued diplomatic cables on 17 March 2017 to direct all US consular posts to increase scrutiny of visa applications

and applicants themselves for security threats. US Consular Officers are expected to ask more detailed questions about the applicants' background. US Consular Officers also are required to refer applicants to the Fraud Prevention Unit for mandatory social media history checks if applicants were present in an area at the time it was controlled by the "Islamic State" (ISIS) or if the officer determines that an applicant may have ties to ISIS or other terrorist groups. This directive has caused a slowdown in visa issuance and an increase in visa denials.

Once issued a visa or traveling without a visa under the US Electronic System for Travel Authorization (ESTA) programme, US Customs and Border Protection (CBP) has been reported to have increased scrutiny and raised usual lines of questioning, specifically for business travellers and those entering on a US work visa. Travellers under the Visa Waiver Program should be prepared for questioning if a CBP Immigration Inspector determines that they have not been previously interviewed and sufficiently vetted prior to travel.

Recent "Buy American and Hire American" Executive Order Targets H-1B Program Abuse

On 18 April 2017, President Trump signed the "Buy American and Hire American" Executive Order, which set forth his administration's policy to

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“maximise...the use of goods, products, and materials produced in the United States” and to “rigorously enforce and administer the laws governing entry into the United States of workers from abroad.”

The “Hire American” portion of the order called on the US Secretaries of State, Labor and Homeland Security, and the Attorney General to “propose new rules and issue new guidance to supersede or revise previous rules and guidance if appropriate, to protect the interests of US workers in the administration of our immigration system, including through the prevention of fraud or abuse.” Specifically, the agencies are directed to “suggest reforms to help ensure that H-1B Specialty Occupation Nonimmigrant Visas are awarded to the most-skilled or highest-paid petition beneficiaries.”

While stating the broad policy and directives to the agencies, the order does not set forth specific ideas or proposed actions to further the policy. Regulatory action might include a change in administration of the annual H-1B quota to favour petitions that offer the highest salaries or are filed for those with advanced degrees. The US Immigration & Nationality Act provides that the H-1B quota



numbers are to be allocated “in the order in which petitions are filed for such visas,” and current regulations award H-1B visas under the annual quota by random selection, which is referred to as an annual April “lottery.” President Trump has criticised this process and preferred movement to a merit-based allocation system based on highest wages or highest education or skill level.

In addition to directing agencies to consider changes in the H-1B lottery system, the Executive Order also called for rigorous enforcement of immigration laws. Immigration attorneys have already

seen an increase in the rate of Requests for Further Evidence issued by US Citizenship & Immigration Services (CIS). Such requests challenge the nature of the position offered – whether it is a “specialty occupation” that normally requires a bachelor’s degree or higher in a specific specialty field – and question the individual’s qualification for employment in the specific specialty field. Specific areas of scrutiny will be entry-level computer programmers and analysts, as well as staffing companies and foreign workers involved in “third party placement,” which is when the usual place of activity is at a client site rather than the employer’s premises. This trend is likely to continue as CIS and other agencies move forward in implementation of the new Administration’s enforcement-driven policies.

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Brazil: New Rules to Improve the Investment Environment

By **Thiago Hohl**

Brazilian maestro Tom Jobim once said, “Brazil is not for beginners.” The last decade proves that the maestro was right. During this period, Brazil moved from 10th to 6th place among the world’s largest economies and then fell back to the 8th position. It faced a period with an annual growth rate of 8% and then lived with negative figures, while hosting a World Cup and the Olympic Games.

The reasons to invest in Brazil are well-known: a domestic market of more than 200 million inhabitants, easy access to raw materials, a diversified economy that is less vulnerable to international crises, and a strategic geographic position that allows easy access to other South American countries. However, Brazil is also the place where bureaucracy and corruption collect their token from investors. In this sense, since 2015, after a presidential impeachment and a large corruption

scheme was revealed, the government realised that strong measures were required to encourage the return of foreign direct investors (FDI), such as reducing red tape, assuring legal certainty for contracts and enforcing compliance rules.

FDI Representation

An FDI can only invest in Brazil by appointing a legal representative in

the country. However, it is common to have in expired power of attorneys still in place. Authorities and creditors only become aware that an FDI does not have legal representation when actually needing to serve them. There is also no certainty whether only government authorities or interested party could summon an FDI through a legal representative. For that reason, in 2017, it has been determined that FDI's power of attorneys must have an undetermined expiration term and express provisions granting powers to receive court summons in any type of lawsuit, thus reducing transactional insecurity to all interested parties.

Central Bank Red Tape

The Brazilian Central Bank also began a process to reduce bureaucracy and costs, as well as to adapt regulations for technological innovations. Brazilian banks can now accept electronic signatures of foreign exchange contracts, which previously could only be signed in ink or electronically through digital certificates issued by the Brazilian Public Key Infrastructure. Another breakthrough introduced this year was the new system for registration of foreign investments in Brazil, which must be made through the Electronic Declaratory Registration of FDI. This system was subject to important changes, such as the automatic investment registration and the revocation of the investor duty to proceed with a previous registration of funds to be sent to Brazil and the later registration of the funds effectively sent. Now, any amounts derived from international transactions, such as direct foreign investments, transfers between different registered foreign capital categories, international transfers of shares, remittances of dividend, interest on net equity and capital reductions to foreign investors will be automatically registered in the electronic system based on the information of the respective exchange transaction or the international money transfer in BRL, reducing transaction time and cost.

New Investment Vehicles

A new law also introduced positive changes for angel investors, contributing to the high-tech and innovation environment by providing transparent and safer rules regarding seeding investment for micro and small size companies and safe harbour with regard to the startup's debts. The terms of investments shall be governed pursuant to a specific investment agreement entered into by the parties whose main guidelines are provided by this new legislation.

Another recent development is the possibility of a legal entity with headquarters in Brazil or abroad to be the owner of an Individual Limited Liability Company - EIRELI, eliminating the need for a second shareholder. Therefore, an investment vehicle that has existed since 2012 but rarely used, can now be a real alternative for investors.

New Code of Civil Procedure

In 2016, the new Brazilian Code of Civil Procedure ("CPC") came into effect, introducing important innovations to reduce the backlog of cases piling up in courts. In addition to reducing the number of admissible appeals, the new CPC also seeks to ensure procedural celerity upon extending the fines to punish the use of such instruments with the only purpose of slowing down the proceedings.

Another old problem in Brazil was the selection of foreign jurisdictions in private agreements. The "old" CPC was not clear on the subject so the view of the Superior Court of Justice was that when the main obligation/object of an agreement was to be performed in Brazil, the selection of a foreign jurisdiction would not prevent the parties to file a lawsuit in Brazil. The new CPC explicitly provides that Brazilian courts have no jurisdiction over proceedings when a foreign jurisdiction clause is provided



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in the agreement. Consequently, parties are now free to choose an international jurisdiction and law to govern their affairs without bearing the risk of such choice of law and foreign jurisdiction being considered null and void.

Compliance Rules

Lastly, since the regulation of the Brazilian Anticorruption Law in 2015, several new rulings in different areas have been enacted to implement compliance rules. Specifically related to FDI, Brazilian IRS updated the rules on Corporate Taxpayer Registry ("CNPJ"), with the purpose of helping the fight against corruption, money laundering and tax evasion and increase transparency of resources invested in Brazil. Now, in order to obtain or update a CNPJ, an FDI must provide information on its legal representatives and shareholding structure until its ultimate beneficiary or equivalent entity. Specific rules to trusts and other entities acting as fiduciary owners of property, which must enrol before the CNPJ exclusively to carry out investments in the financial or capital markets, were also introduced.

Conclusion

The measures above are just some steps taken by the government in the
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last couple of years to facilitate foreign direct investment and to prove to investors that Brazil no longer wants to be the country that averts beginners. Other reforms are undergoing accelerated discussions and should only increase this perception, such as labour and tax reforms that aim at simplifying the legislation in force. Results are just beginning to appear: the official inter-

est rate is declining, inflation is again within the government's target, BRL value is appreciating and growth projections are again positive. Expectation is that FDIs will realise that the Brazilian business environment is regaining its high level of attractiveness.

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News in the German Restructuring Market

By **Bernhard Schwechel**

The German Federal Fiscal Court (Bundesfinanzhof) rejected a "Restructuring Decree" issued by the German Tax Authorities, with the court concluding that the tax benefits granted by the decree with respect to the treatment of "restructuring profits" violated a constitutional principle for administrative actions.

A "restructuring profit" arises when a creditor waives (partly or in full) its debt claims against a distressed business entity for enabling a successful restructuring of the business. Such waiver results in a book profit for the debtor and gives rise to income from the cancellation of indebtedness, which is generally taxable.

In the past, income caused by waiver of debt to restructure a company has been exempted from both corporate income tax and trade tax under certain circumstances. Although not stipulated by law, German tax authorities grant relief from a generally taxable income in the form of the so-called Restructuring Decree (Sanierungserlass) if the waiver granted a probable going-concern for the company. Consequently, the restructuring process had not caused any tax payments. This treatment was an es-

sential instrument to make the restructuring a success.

Now, the German Federal Fiscal Court decided in November 2016 to cancel the debt waiver option. The court was of the opinion that the common practice of the tax authorities is not in accordance with fundamental constitutional rights. Thus, income created by waiver of debt will increase the taxable income in restructuring cases and will lead to tax payments, even if tax loss carry forwards exists. Due to this decision, the entire restructuring success may be put at risk due to cash tax payments.

The court criticised the violation of the constitutional principle of legality of administrative actions and argued that the German tax authorities were not in accordance with legal principles by introducing the Restructuring Decree on two exceptional provisions in the German tax legislation that allows in single cases for a tax exemption in the event of financial hardship. As argued by the court, the tax authorities are obliged to levy the taxes prescribed by law. They may only refrain from levying such taxes if this is inequitable in the individual case for objective or personal reasons. These provisions are only applicable if the hardship results



Bernhard Schwechel

from the application of specific tax laws and if the hardship is determined on the basis of the individual case. Thus, other reasons, e.g. in the field of economics or labour, cannot be subsumed under this principle. As the application of the Restructuring Decree was not subject to the condition that a hardship is caused by a specific tax law and determined on an individual case, the court stated a lack of a legal basis for this Decree.

The question now becomes what alternatives are available to achieve a similar result in a restructuring process.

There are a number of tax structures, which may provide an alternative:

Alternative 1: Debt-Asset Swap

In this scenario, a company might also contemplate separating the assets together with a sustainable portion of the debt by transferring both assets and debts into a new corporate structure together with a subordination of the claim of the unsustainable part of the debt. After that, the old structure is subject of a silent liquidation. Because of the challenging insolvency law, which might be applicable, this scenario must be checked carefully, together with a risk check from a taxation perspective to exclude the risk that the NewCo might be liable for tax liabilities of the old structure.

Alternative 2: Debt Assumption

As an alternative, a non-recourse debt assumption could be considered, whereby the debt is shifted from the debtor to its parent. Contrary to a debt waiver, the deletion of the liability at the level of the debtor by way of a non-recourse assumption may not trigger adverse tax consequences. Simultaneously to the debt assumption, it is essential that the parent waive any (downstream) recourse claim against the debtor. While parent and debtor both remain liable for the debt until the creditor approves the assumption, the debtor has an (up-stream) recourse claim against the assuming parent. According to a decision of the German Federal Fiscal Court, this should be regarded as a tax neutral contribution-in-kind of the (up-stream) recourse claim – even if the claim of the creditor against the debtor would no longer be deemed valuable (due to the financial situation of the debtor). If the creditor agrees to the assumption or the parent pays the outstanding debt, the liability against the creditor and the (up-stream) recourse

claim against the parent will both be deleted from the debtor's books; this should not result in a taxable gain. The assumption of debt is treated differently than the waiver of a shareholder loan, which is treated as a constructive equity contribution only to the extent of the valuable portion (see above). While structuring a debt assumption, particular attention should be paid to the details since depending on the circumstances, even an advance ruling may have to be considered.

Alternative 3: Tranching of shareholder loans

Taxable income in case of a debt waiver in Germany is triggered only in respect of the worthless portion of the debt. As a waiver of a third party claim causes taxable income in any case, the tranching is only an option for shareholder loans. If the debt is divided in two parts, the debt waiver on the part of the shareholder loan that is still unimpaired does not cause any taxable income.

Alternative 4: Subordination of claims

Claims can be subordinated directly by the lenders to the most extent legally possible to come near to equity qualification without triggering a taxable income. Deferring the payment of principal and interest on the debt can achieve the desired economic outcome in many cases without losing the characterisation of debt for tax purposes.

Conclusion

This decision creates uncertainty for



current and future restructurings. The tax authorities have indicated that they will no longer apply the principles of the Reorganisation Decree and will not grant binding rulings on the tax treatment of restructuring gains until a revised law has been enacted.

A debt restructuring is therefore associated with several tax issues that make the restructurings more complex and stolid.

Several members of the German parliament recently announced to put forward a legislative proposal implementing, broadly speaking, the main principles of the Reorganisation Decree into the German tax codes. The aim is to complete such legislative procedure in any case before the German elections taking place in September 2017.

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CORPORATE, COMMERCIAL & IP

Belgium Repeals Patent Box, Introduces Larger Innovation Box

By **Olivier Bertin**

Belgium was one of the countries offering a tax advantage for income derived by companies, directly or indirectly, from patents. Said regime, granting an 80% exemption of the gross income, has been repealed as of 30 June 2016. It is now replaced by a larger “innovation income deduction”, organised in a statute of February 2017, but (retrospectively) applicable as of 1 July 2016.

In the new regime, the exemption has been increased to 85% of the net income (see below) and more items are now likely to produce qualifying income. In addition to patents and supplementary protection certificates, plant-variety rights, orphan medicinal products, copyright-protected software, and exclusivity of data granted by public authorities may now qualify. Like before, a company that does not grant licenses on those items,

but uses them for its actual production of goods and services is eligible for the deduction.

Capital gains on the disposal of the qualifying items may also enjoy the 85% exemption. However, the company must reinvest within five years from the disposal the sale proceeds into other qualifying R&D expenses. Failing to do so, the company will be taxed on the amounts previously exempted.

There are other positive evolutions from the previous regime. For instance, the exempted income may be carried forward if the company concerned does not have enough taxable profit. It is also possible for a company to enjoy the exemption when the request for protecting the intellectual property right is still pending. In said scenario, the exemption is provisional and the advantage becomes definitive if the company achieves protection. On the negative side, there is a correc-



Olivier Bertin

tion (taxable income) for the year during which the protection is denied.

Thus, the 85% exemption only applies to net income. Therefore, R&D expenses incurred by the company must first be deducted from the gross innovation income. In addition, if there are R&D expenses subcontracted to related companies or if the company acquired the qualifying items from third parties, the exempted income is reduced (but not cancelled).



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DEBT COLLECTION, RESTRUCTURING & INSOLVENCY

Cross-Border Debt Recovery:

A European Regulation on the Seizure of Bank Accounts Comes into Force

By Mariangela Buongiorno
and Eugenia Notarangelo

Debt recovery will be easier and faster thanks to the European Account Preservation Order procedure to facilitate the seizure of bank accounts: this is the expected new communitarian regulation.

Starting from 18 January 2017, the Commission Implementing Regulation (EU) 2016/1823 of 10 October 2016 establishing the forms referred to in Regulation (EU) No 655/2014 (per breviter "Regulation") of the European Parliament and of the Council was entered into force, in which the UK and Denmark did not take part.

The system set out by EU authorities, which empowers the civil judiciary cooperation between the state members, establishes a European Account Preservation Order procedure to facilitate cross-border debt recovery "EAPO". The purpose of this new instrument is to forbid the debtor from dissipating or destroying his assets within the period needed by the creditor to execute his credit. Bank deposits are encompassed in a category of goods that the debtor can easily distract from the creditor with activities not mandated to be publicly disclosed.

A claimant will be able to make an application to the courts of one Member State to obtain a Preservation Order (PO) only for financial credit regarding civil and commercial cross-border matters, independently from the judiciary author-



Mariangela Buongiorno

ity interested. The procedure could be used for cross-border cases according to the following stipulations: 1) the Member State in which the creditor is domiciled is different from the one where the bank account or accounts preserved; and 2) the Member State of the court seized of the application for the PO is different from the one where the bank account is set. However, the creditor cannot apply multiple time to several judiciary authorities versus the same debtor.

Firstly, this procedure is characterised by rapidity with which the court sifts through the creditor's application. The court decides within and not more: a) 5 working days from the commencement of the application, if the creditor has obtained a judgment, court settlement or authentic instrument that requires



Eugenia Notarangelo

the debtor to pay the creditor's claim; b) 10 working days from the application deposit, if the application is presented before the creditor has obtained a judgment, court settlement or authentic instrument.

Secondly, this procedure is unexpected: the debtor is not informed about the application of the creditor before the PO is issued. In other words, when the creditor obtains a sentence, a settlement or a deed, the PO could be passed by the authorities of the State Member where the sentence was issued, the settlement was agreed or the deed was drafted. If the creditor has not obtained a judgment, the jurisdiction for issuing the PO lies with the courts of the Member State that have jurisdiction on the substance of the matter in accordance with the applicable



rules. Moreover, if the application was presented before the start of the trial, the creditor has to start the trial within 30 days from the presentation of the application for the PO or within 14 days from the date the ordinance was issued, if this is posterior.

If the creditor cannot prove the commencement of the trial within the aforesaid terms, the effects of the PO will be revoked and the parties will be informed. Thus, it is important to underline that, if a judgment, court settlement or authentic instrument has not been obtained, the PO can only be granted if the creditor presents relevant facts that claim it is in urgent need of judicial protection, and that those facts are reasonably corroborated by evidence of the real risks, in which defect the consecutive execution of the credit will be compromised or will be made substantially more difficult.

If the court believes that the grounds provided by the creditor are not sufficient, the authority can ask the creditor to integrate documentation, if the national set of laws allows it, or to use any other instrument to support the grounds.

Another interesting innovation relates to the applying methods for the PO (art. 8 Reg. n. 655/2014). It is sufficient that the creditor fills the standard forms with the requirements of Reg. n. 655/2014 and deposits it, without needing any legal advice, to any juridical authority. With a simplifying purpose, the European Regulation indicates that the creditor can request information regarding the debtor's bank accounts and ask the

court with which the creditor has lodged the application for the PO to request that the information authority in the Member State where the account is located, obtains the necessary information to identify the bank and the debtor's account.

The creditor can apply for the PO even if he does not own any information about the debtor's bank account and even if he has not obtained yet a judgment, court settlement or authentic instrument.

Personal data cannot be retained over the period of time necessary to absolve its purpose that in every case does not exceed 6 months from the end of the proceeding. In order to protect the debtor from any abuse of the creditor and, with the purpose to balance all parties interests, the Regulation expresses that, in case the creditor has not obtained a judgment, court settlement or authentic instrument, the court may force the creditor to make a sufficient deposit in order to avoid any abuse of the procedure and guarantee compensation for any damage that the debtor could bear.

The PO is issued with a Form (All. 2 Reg. n. 1823/2016) that contains all elements indicated by art. 19 of the Regulation and, once adopted, is automatically recognised in all other Member States (art. 22 Reg. n. 655/2014).

Regarding the fulfilment of the procedure, the PO has to be immediately transferred to the bank where debtor's bank account is set in order to freeze the sum indicated on the PO or, alternatively the sum has to be transferred to an account used for the procedure. By the end

of the third working day after the PO, the bank or any other party responsible for the execution of the order in the Member State of the execution must disclose the declaration of seizure indicating the precise sum on the bank account that has been forfeit.

After the above declaration has been issued, the debtor is informed about the seizure though the notification of the PO and its attachments. The debtor can activate his right to defence and ask to revoke or modify the order or to limit his effects.

In conclusion, the PO – so expected on the European overview – represents an alternative instrument used by the creditor to protect his credits, with particular focus on small and medium companies that register enormous annual losses caused by inefficiency and red tape in cross-border debt recovery.

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New Exceptions with Respect to Acquisition of Turkish Citizenship

By **Duygu Özmen**

The Regulation Regarding the Implementation of the Turkish Citizenship Law has been amended by the Regulation on Amending the Regulation Regarding the Implementation of the Turkish Citizenship Law, which was published in the official gazette on 12 January 2017 (“Amendment Regula-

tion”) and the Amendment Regulation has come into effect on the same date. As per the new amendments, individuals who satisfy any one of the conditions listed below may acquire Turkish citizenship upon a proposal by the Ministry of Interior and the decision of the Council of Ministers:

- a) Making a fixed capital investment in the amount of minimum USD 2,000,000, provided that the investment is identified by the Ministry of Economy.
- b) Acquisition of real property worth at least USD 1,000,000 on the condition that a restriction with respect to sale of the real property for a period of three years is registered onto land registry records, provided that the acquisition is identified by the Ministry of Environment and Urbanisation.



Duygu Özmen

- c) Employment of at least 100 persons, provided that the employment be identified by the Ministry of Labour and Social Security.
- d) Depositing a minimum amount of USD 3,000,000 in banks operating in Turkey with the condition of not withdrawing the same for a period of three years, provided that the deposit is identified by the Banking Regulation and Supervision Agency.
- e) Purchase of government bonds worth at least USD 3,000,000, provided that they are not sold for a period of three years and that the purchase is identified by the Turkish Treasury.

As per the Amendment Regulation, the effective selling rate of the Central Bank of the Republic of Turkey at the time of identification shall be taken into account while determining the above-mentioned monetary values.

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INTERNATIONAL TAXATION PRACTICE GROUP (ITPG)

Tax Regime for Non-Regular Residents in Portugal: A Competitive Advantage Beyond Borders

By José Alves do Carmo
and Tânia Sofia Rosário

Sun, sea, reduced cost of living, safety, but mainly a lower tax burden. Portugal has long since ceased to be just a country at the tail of Europe. Its potential is known globally, being one of the most sought countries for investing and establishing residence. Approved in 2009, the Tax Regime for Non-Regular Residents (NRR) is yet another step towards international tax competitiveness.

The NRR is aimed at independent professionals and pensioners who wish to establish permanent residence in Portugal, as well as non-residents, dependent or independent workers, including members of statutory bodies of collective entities, who wish to es-

tablish a temporary residence due to expatriation or deployment.

Its main advantage, compared with other countries, is the special tax rate of 20% applicable for 10 years to income from activities of “high scientific, artistic or technical added value”, associated with the possibility of tax exemption for foreign sourced income, such as labour and property income, capital gains,

interest or dividends. The creation of privileged income tax regimes results



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from the intersection of a country's need to attract foreign investment and the market's demand for favourable

tax schemes. In an ever more globally-competitive context with increasing mobility of people, fiscal policy is be-

coming a crucial instrument of economic recovery, expanding taxation beyond a simple domestic matter.

LABOUR LAW

Working Environment 4.0 and German Labour Law

By Prof Dr Renate Dendorfer-Ditges

Social Media, Web 2.0, Facebook or Twitter – even during working hours, employees make use of various internet applications. Under German labour law, the employer solely decides on the scope of media usage. If the employer does not permit the usage of social media, or if the employee exceeds the time allocated for private “surfing” (e.g. breaks, before and after working hours), such behaviour is regarded as a violation of obligations.

In consequence to such violation, the employer is entitled to give a written warning. Repeated violations can lead to a dismissal with notice on grounds of bad conduct or – in extreme cases – to a dismissal without notice.

The same procedure applies in cases the employee publishes – with or without intention – internal information, employer-related insults, untruths or defamatory criticism on the Web 2.0.

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The work-agreement obliges the employee to considerate respect and discretion. Whilst the right to free speech limits this obligation, this limit is easily exceeded.

Numerous companies have installed whistleblowing-systems that oblige employees to report on any misconduct of other employees. A general obligation to report can only be established within the working-agreement or company-agreements. If the employee addresses the public about misconduct without notifying his employer prior, such behaviour can be considered as material grounds for dismissal. As for recruiting, human resource departments more regularly collect information on their applicants from Google and LinkedIn. As long as information is publicly ac-

cessible on the internet, it can be used by the employer – without violating data protection laws. Different to that is the case of leisure-orientated networks, such as Facebook. Data protection laws prohibit the usage of this kind of information.

Digital progress allows the employee to be more flexible as to work time and location. Even complex production processes can be handled anywhere and at any time of the day. Laws on working hours often do not hold up to the actual demand. Maximum working hours, minimum rest periods, rules on breaks, night-shifts, working Sundays and bank holidays, as well as on-call duty are to be reviewed by legislation.

“Crowdworking“, meaning the tender for work via web-based platforms, enables location-independent work. Workforce shortages can be compensated and order-peaks can be dealt with flexibly. It is yet unclear how crowdworkers are to be classified in terms of labour law, as they are not part of the customer's employment structure. The laws on pseudo self-employment need to be reviewed and fit to the standards of the Working Environment 4.0.

The worker's participation through work councils and employee's representatives also needs to be reshaped in this digital working environment. Globally connected IT-systems lead to new global innovations in companies.

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The introduction of new technologies is tied to worker's participation, if objectively being used to supervise employee's performance. This can slow down or even restrict technical progress in

companies, as digital systems enable inevitably the recording and evaluating of work and performance behaviour.

The challenges for labour law in times of the Working Environment 4.0 are sub-

stantial. Legislation and labour-courts must take changing work and living conditions into account by applying and passing laws flexibly and according to the changing reality of professional life.

LITIGATION & DISPUTE RESOLUTION

The Enforcement of Arbitration Clauses in Quebec, Canada

By Francis P. Donovan

The ever-mounting costs and delays associated with formal civil and commercial litigation are well known. More than ever, the parties involved in commercial disputes choose to resolve their differences by having recourse to dispute resolution mechanisms outside the judicial system, and most notably mediation and arbitration. Again, in many jurisdictions, the legislature has taken steps to facilitate and to encourage alternative dispute resolution.

Canada is a federal state, in which contractual matters, and generally the area of property and civil rights, fall under provincial jurisdiction. The province of Quebec, a largely French-speaking civil law jurisdiction representing somewhat more than 22% of the Canadian population, adopted a new Code of Civil Procedure in 2016, which effected a major shift in the pre-existing legal culture. The 2016 Code of Civil Procedure, often referred to as the "new" Code of Civil Procedure ("NCCP"), although far from doing away with traditional civil and commercial litigation, has at its core a legislative mission to encourage alternative dispute resolution mechanisms.



Francis P. Donovan

Indeed, Article 1 of the NCCP provides that to prevent a potential dispute or resolve an existing one, the parties concerned, by mutual agreement, may opt for a private dispute prevention and resolution process. This Article goes on to create a positive obligation on the part of the parties to consider private prevention and resolution processes before referring their disputes to the court.

Furthermore, once the parties have chosen to settle their dispute by an alternative dispute resolution mechanism, their choice is normally respected by the

courts of the province. Article 622 of the NCCP provides that, unless otherwise provided by law, the issues on which the parties have an arbitration agreement cannot be brought before a court even though it would have jurisdiction to decide the subject matter of the dispute. Further, a court seized of a dispute on such an issue is required, on a party's application, to refer the parties back to arbitration, unless the court finds the arbitration agreement to be null.

This is not just a matter of procedure in Quebec, but also a matter of substantive law inasmuch as the Civil Code of Quebec provides that Quebec authorities have no jurisdiction where the parties have chosen by agreement to submit their dispute to an arbitrator, unless the defendant submits to the jurisdiction of the Quebec authorities.

These principles found application in the recent decision of the Superior Court of Quebec in the matter of *Team Productions v. Bieber*¹. In this case, Team Productions, a Montreal-based event promoter, entered into an agreement

1) *Team Productions v. Bieber*, 2017 QCCS 1110. NB: At the time of writing, the deadline for appeal had not yet expired.

with the popular singer and social media personality Justin Bieber, to secure his presence at an event to take place in Montreal. Following a disagreement between the parties, Mr Bieber decided not to attend the event and issued a “tweet” to his estimated 80 million plus followers consisting of a terse statement of his reasons for not attending.

Considering the contents of the tweet to be defamatory, Team Productions sued Mr Bieber in the Superior Court of Quebec for CAD 650,000 (approximately USD 450,000). Counsel for Justin Bieber countered with a motion to refer the parties to arbitration under the terms of an arbitration clause in the agreement between the parties. The court granted Mr Bieber’s motion and referred the parties to binding arbitration, thus putting an end to the proceedings before the Superior Court of Quebec.

The court, following in this regard the jurisprudence of the Supreme Court of Canada, stated that they have no discretion and must refer the dispute to arbitration if the validity of the agreement and the applicability of the clause are not contested. If, as in this case, there is such contestation, and it requires review of evidence, then again

the matter should be sent to arbitration. The arbitrator or arbitration panel itself is competent to rule on its own jurisdiction. An exception to this rule is only made where the contestation of the arbitrator’s competence is exclusively a question of law or if any factual questions can be answered by a superficial examination of the documentary evidence.

The court further emphasised the broad and liberal interpretation that is to be given to an arbitration clause contained in a commercial agreement. Indeed, the plaintiff argued that the action was not based on breach of contract, but rather on extra-contractual liability stemming from Mr Bieber’s allegedly defamatory tweet.

The court noted firstly that the arbitration clause in question was itself drafted in very broad terms, covering “all disputes arising under, concerning, relating to or touching on this agreement”. Secondly, the court noted that, although the essence of the claim rested on defamation, the circumstances and the source of the attacked statement originated from the contract, and that this was sufficient to bring the dispute within the purview of the arbitration clause.

On a final note, this case serves as an example of the careful consideration that is to be given to the inclusion of arbitration clauses in commercial agreements. Although the legislative encouragement of recourse to arbitration is intended to simplify dispute resolution and reduce costs and delays, the enforcement of arbitration clauses can have the perverse effect of placing one party at a strategic disadvantage. In this case, the plaintiff sued in its home forum, namely the Superior Court of Quebec. The enforcement of the arbitration clause, resulted in the parties being referred to arbitration in California, arguably increasing the costs and complexity associated with the dispute for the Montreal-based plaintiff.

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M&A

Due Diligence in Business Acquisitions: Thriller, Drama or Happy Ending?

By **Bart Steenmeijer**

Due diligence is a much-feared subject in business acquisitions. Many

entrepreneurs believe that buyers are looking for a pretext to considerably lower the purchase price or wriggle out of the deal. Marktlink has investigated

whether they are right. The result? Of 25 reviewed acquisitions in 2016, 24 were continued after signing the letter
...next page

of intent. In 38% of these cases, the purchase price was slightly adjusted.

What is a due diligence?

After a letter of intent concerning the acquisition of a company has been signed by both parties, the buyer is given the opportunity to verify the business information provided during the preliminary stage in a due diligence investigation. Specialists, engaged by the buyer, perform this due diligence. Sellers often fear that previously made agreements are at stake, or that the deal will be cancelled entirely.

Why a Due Diligence?

A due diligence is of major importance for both parties. The buyer wishes to verify the provided information and to establish whether he is willing to continue the transaction under the same conditions. For the seller, however, due diligence also has a great significance. In general, for anything a buyer has verified during the due diligence, the seller no longer needs to provide guarantees.

Deal or No Deal

To establish whether the fear of a due diligence is justified, Marktlink consultant Bart Steenmeijer reviewed 25 recent due diligence investigations they assisted in in 2016. Of these 25 reviewed transactions, 24 were com-



Bart Steenmeijer

pleted successfully after signing the letter of intent. The only process not to pass the due diligence is currently on hold and will most likely be concluded at a later date. In conclusion, the fear that a deal will be called off because of the due diligence appears to be exaggerated.

Adjustments

A vast majority of all transactions crosses the finish line after signing the letter of intent. Adjustments in the agreements made should be taken into account however, for example, in purchase price, transaction structure or acquisition balance sheet. In 87% of the 24 completed transactions, a final amendment was made with respect to agreements in the letter of intent. In 38% of the transactions, the purchase price was adjusted. The reason usually being that profitability in the year of transaction departed from the issued forecasts. Although downward adjustments are more common, in two cases it was adjusted upwards. On average, the adjustment of the purchase price amounts to approximately 4%, including a few outliers of more than 20%. Thus, adjustments of the purchase price after a due diligence are rather modest.

A significant portion of adjustments concerns transaction structure rather than purchase price. An example of an

adjustment in the transaction structure is to make part of the agreed purchase price conditional to future earnings (an “earn-out”). A different option is an adjustment in ownership structure. The transaction structure was adjusted in 9 out of 24 transactions (38%).

In addition to purchase price and transaction structure, the acquisition balance sheet is the third item frequently subject to adjustments. In most transactions, a business will be delivered based on a balance sheet, free of excess cash and debt. The exact debt position is not always straightforward and therefore often subject of debate. In 48% of the transactions, an element of the acquisition balance sheet was adjusted.

The most common issues in the reviewed due diligence investigations:

- Derogations with regard to profit development / achieving forecasts
- Working capital
- Contracts (e.g. change-of-control clauses)
- Margin pressure
- Debt position
- Stock and stock records

Profit development and realisation of the forecast proved to be the most common issue. Buyers are cautious to purchase ‘a pig in a poke’. Not achieving a forecast is regarded an indicator for poorer results in the next few years. Consequently, the buyer expects this to be taken into account in the transaction. Our advice to a seller is therefore to issue a realistic forecast, and to make sure the business performs at its best in the year of transfer.

Preparation

A solid preparation is crucial to prevent a due diligence from becoming the final stage of an acquisition process. This begins with an assessment of common problems at the start of the process. Issues with staff, pensions or contracts may be solved right away, avoiding difficulties later in the process.

One of the most important next steps is providing accurate informa-

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tion to the buyer. In general, it is wise to provide potential buyers with the relevant information prior to them submitting their bids. Possible discussions will then take place in an early stage in which several candidates are still involved. This way the targeted buyer is spared any unpleasant surprises. Besides, since no exclusivity has been

granted at this stage, the seller benefits from a stronger negotiating position. Timely provision of information limits the risk of termination of the process. Finally, a well-structured data room is vital, ensuring a smoother and shorter process.

The due diligence is an intensive stage in an acquisition process. As-

essment of their own company by external specialists renders many entrepreneurs uncomfortable. With the right specialists and consultants involved, however, fortunately a due diligence only rarely leaves anyone empty-handed.

REAL ESTATE

New Building Contract Law in Germany

By **Dr Rainer Kohlhammer**
and **Sebastian Schreiber**

On 2 March 2016, the Federal Government in Germany adopted a draft for an “act for the reformation of the building contract law”. It is now most likely that the new act will enter into force before parliamentary elections in Germany in October 2017.

The bill provides for a variety of changes to which consumers, building companies and property need to pay attention. The main objectives are to implement material provisions of the widely used VOB/B (the model standard terms on building contracts) into the German Civil Code (BGB), to establish significant regulations for building contracts for the first time and to adjust existing law with regard to consumer protection.

Most notably, the principal will be entitled by law to demand variations of the concluded services (“Anordnungsrecht”), which he may even enforce by preliminary injunction in cases of assumed urgency and reasonableness. The remuneration will be determined on the basis of the actual costs plus surcharges (so far under the VOB/B



Dr Rainer Kohlhammer

the contractor had to calculate the payment on the basis of his original calculation).

Additionally, a consumer building contract will be established for the first time. These rules only apply if a contract with a consumer provides for the erection of a complete building or equally substantial construction works. The contractor is then obliged to draft and provide a detailed building description of the promised service. The consumer will have a right of revocation.



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Yes, And

How Improvisation Reverses “No, But” Thinking and Improves Creativity and Collaboration-Lessons from The Second City

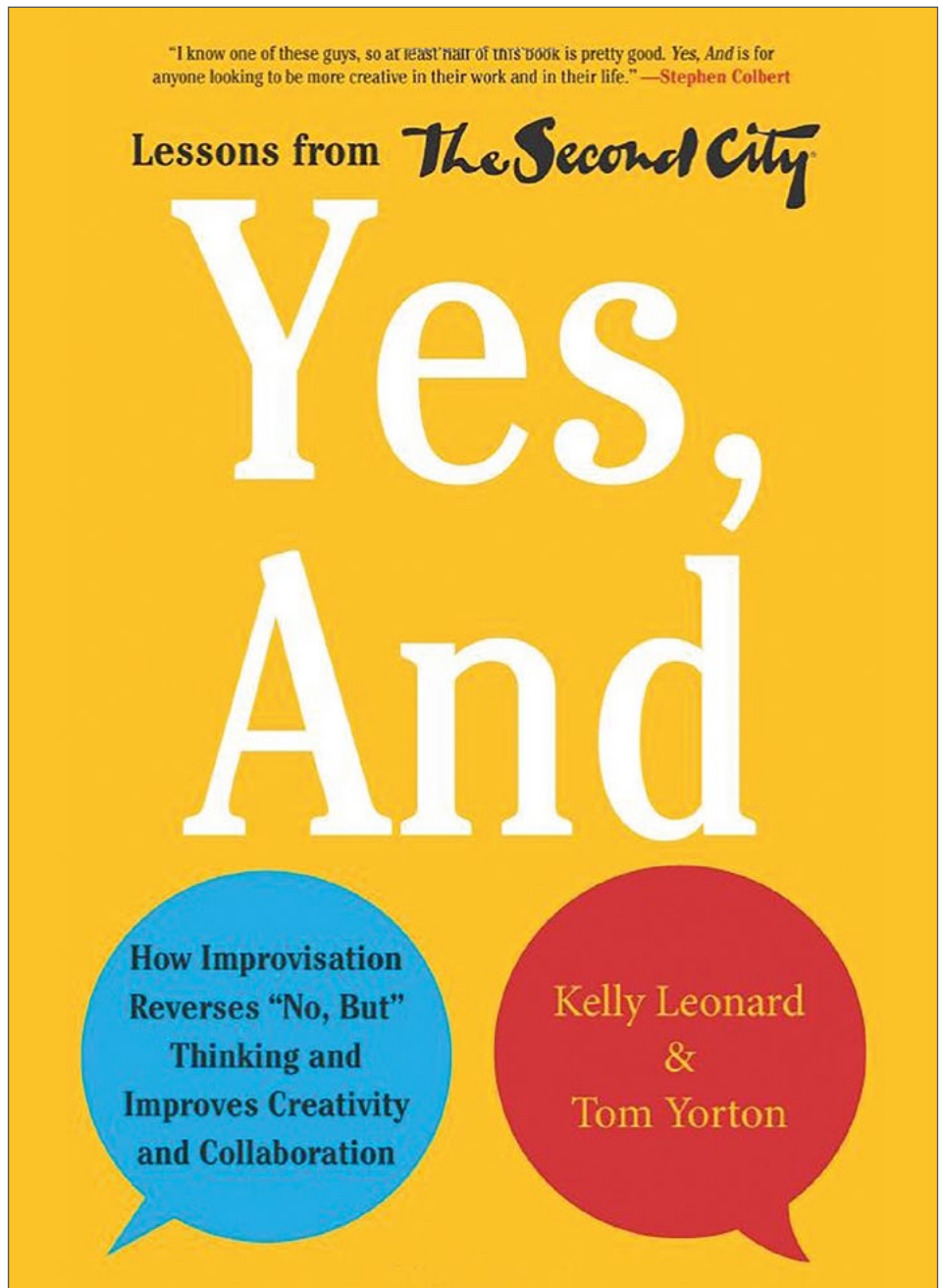
Executives from The Second City – the world’s premier comedy theater and school of improvisation – reveal improvisational techniques that can help any organization develop innovators, encourage adaptable leaders, and build transformational businesses.

For more than fifty years, The Second City comedy theater in Chicago has been a training ground for some of the best comic minds in the industry – including John Belushi, Bill Murray, Gilda Radner, Mike Myers, Steve Carell, Stephen Colbert, and Tina Fey. But it also provides one-of-a-kind leadership training to cutting-edge companies, nonprofits, and public sector organizations – all aimed at increasing creativity, collaboration, and teamwork.

The rules for leadership and teamwork have changed, and the skills that got professionals ahead a generation ago don’t work anymore. Now The Second City provides a new toolkit individuals and organizations can use to thrive in a world increasingly shaped by speed, social communication, and decentralization. Based on eight principles of improvisation, *Yes, And* helps to develop these skills and foster them in high-potential leaders and their teams, including:

- Mastering the ability to co-create in an ensemble
- Fostering a “yes, and” approach to work
- Embracing failure to accelerate high performance
- Leading by listening and by learning to follow
- Innovating by making something out of nothing

Yes, And is a must-read for professionals and organizations, helping to develop the invaluable leadership skills needed to succeed today.



Yes, And

How Improvisation Reverses “No, But” Thinking and Improves Creativity and Collaboration-Lessons from The Second City

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