CICERO™

LEAGUE OF INTERNATIONAL LAWYERS

Newsletter

Autumn 2017

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Announcements

Holman Webb Australia

HOLMANWEBB LAWYERS

Holman Webb has bolstered the firm's property and construction practices with the merger of boutique Sydney law firm Bruce and Stewart. Partner, Robert Gorczyca and his team has joined the national firm bringing over 3 decades of expertise in the areas of property, construction, land subdivision, joint ventures, corporate advisory, airport regulation and airport development work. Most recently Robert has provided advice in connection with the Barangaroo precinct development in Sydney and various airports in NSW and Victoria. Over the last year expansion has been a key theme for the Sydney founded firm which recently opened an office in Adelaide. The merger announcement comes on the back of the firm's earlier acquisition of Insurance Partner and Financial Lines specialist, Mark Sheller, Property Partner Heath Gleig-Scott and a round of 10 internal senior promotions.

In other news partner, John Wakefield has been retained in a reference to the High Court of Australia sitting as the court of disputed returns. The matter involves a question under the Australian Constitution whether a Queensland Senator was ineligible to be elected to the federal parliament by reason of having acquired British citizenship by descent. This reference and six others are being heard by the High Court of Australia in mid-October.

For further information, contact:
John Wakefield
john.wakefield@holmanwebb.com.au

Ardent Advocaten Belgium

Ardent advocaten

Further growth for Ardent Advocaten

Ardent Advocaten has added a new senior associate.

Gregory Wilkin is an experienced insurance lawyer and a respected bankruptcy receiver with the Antwerp Commercial Court: he has joined Ardent Advocaten mid September, in the Antwerp branch.

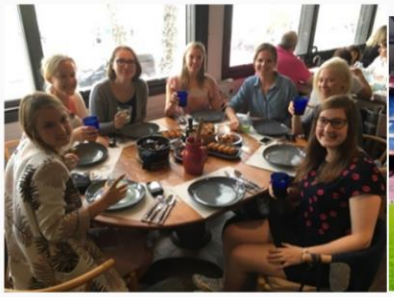
Ardent Advocaten
Belgium

New offices for Ardent Advocaten in Mechelen

Ardent Advocaten has opened an office in the city of Mechelen: it is now represented in the three major cities of the province of Antwerp and can now obtain mandates as bankruptcy receivers and liquidators from three commercial courts.

Ardent juniors spotted in Barcelona

The Ardent associates and trainees have spent the last weekend of September in Barcelona: they have enjoyed food and drinks and have experienced the referendum, witnessing the events we all see on TV. The team had tickets to see Barceona playing Las Palmas, but this part of the trip unfortunately (?) ended in a bar, the game being played behind closed doors…



For further information, contact:
Filip Duwaerts
f.duwaerts@ardent.be

Petrova & Partners
Bulgaria

We believe that our profession requires being a socially and environmentally responsible firm and pro bono work is a part of our practice development. Since the beginning of this year we have been advising the Multiple Sclerosis Society in Bulgaria to restructure and operate more efficiently. We also currently sponsor the amateur Squash League 4 You in Bulgaria!

We would also like to acknowledge the achievements of our young colleague Velislava Lyubenova in public awareness campaigns for protection of Rila National Park.

For more information, contact: Vesselina Petrova
petrova@pplf-bg.com

Mundays LLP
England

MUNDAYS.

1. Chambers HNW 2017

Chambers & Partners has released a new guide in the UK called 'Chambers HNW'. It features listings and information about many of the top accountancy and tax firms, private banks, wealth management firms and multi-family offices acting for high net worth individuals. We are pleased to announce that Mundays has been ranked in 'Chambers HNW 2017' for Private Wealth.

"They're a very good firm, they've got good credibility, they're thorough and their detail is second-to-none," says an interviewee. Another source praises them as "modern and forward thinking." A private wealth professional says: "They're technically very competent, but always practical in their approach. They're keen to share knowledge, network and work together to provide satisfactory solutions for clients."

Julie Man heads the firm's private wealth team and assists high net worth clients with a wide variety of matters. She advises on wills, capital tax planning, succession planning and the administration of estates. Man also works on elderly client matters, including lasting powers of attorney, Court of Protection applications and care funding. Described as "technically very, very able," Man is also praised for her client manner. "She's absolutely the bee's knees," says one client. Another interviewee comments: "She has a professional manner, she's very inclusive in all her dealings and is always able to see the problem and recommend a suitable course."

2. Partner arrival: Michael Nixon

Mundays LLP is pleased to announce that Michael Nixon has joined the firm as partner and head of Commercial Property. Michael, who is dual qualified in the UK and Australia has previously worked for a number of major global firms in London and Sydney, joins Mundays' Commercial Property Department. Michael specialises in commercial property with a particular expertise in acquisition and disposals ranging from single tenanted to large scale property portfolios, development and office and industrial leasing, as well as advising on the real estate aspects of a number of significant corporate transactions. His practice also acts for finance companies with property finance matters, with particular experience in the property matters of mergers and acquisitions.

"Michael is a valuable addition to Mundays and we are excited by the experience he will bring to the firm's Commercial Property Department. We are continuing the growth of our property offering and Michael brings that next step to the firm with the network of contacts has amassed during his career. We are delighted that Michael has brought many clients and contacts with him to our firm including Papa John's property work" said Valerie Toon, Mundays' managing partner.

"Michael fits perfectly into our property department's strategic plan to expand our presence in the London commercial property market with over 15 years' experience working with national and global clients" said Kevin Healy, Mundays' Head of Property.

For further information, contact: Fiona McAlister, fiona.mcallister@mundays.co.uk

Corlett Bolton & Co.
Isle of Man

November 2017 sees the 25th Anniversary since Sally Bolton and John Corlett established the Corlett Bolton legal practice in 1992 to serve the needs both of our local Island community and those with business connections and dealings with the Isle of Man. At the same time as celebrating this achievement, we also acknowledge that it is paramount to move with the times and prepare for the future.

This is one of the reasons why Advocate Nadine Roberts has joined the practice. Nadine first worked with Corlett Bolton & Co as an articled clerk to Sally Bolton Nadine and will be based in our Port St Mary Office and will provide a general practice service to local and international clients. During her articles, Nadine gained a wealth of experience in a number of practice areas including landlord and tenant law, residential and commercial conveyancing, alcohol licensing and company and commercial law (including the drafting of legal opinions, share sale agreements and company restructuring). In 2010 Nadine left Corlett Bolton to join another Douglas firm. During this time she continued to pursue a career as a general practice lawyer and in particular strengthened her knowledge in Employment Law, Civil Litigation and Private Client services. Nadine has appeared before several tribunals and the High Court.

In addition to her work in civil litigation (which includes advising on road traffic accident, fatal accident and personal injury claims, matrimonial law, property possession and debt recovery) Nadine has a keen interest in Private client matters. For four years she was heavily involved in the day to day operation of what Deemster Corlett described as, "an unusually complex, high value [Mental Health Act] receivership," liaising with a number of institutions and authorities in the United Kingdom, Spain and the Isle of Man. Nadine is well versed in Will drafting and probate applications including those which involve an international element and has acted as a professional trustee for several high value estates. In 2016 she became a Notary which has complimented her private client and company and commercial skill set.

For more information, contact: Julie Ronan
Julie.ronan@corlettbolton.com

slac studio legale afferni crispo & c.

Studio Legale Afferni Crispo & C.
Italy

Lorenzo Schiano di Pepe has been awarded a Jean Monnet Chair for the three-year period 2017-2020. Jean Monnet Chairs are teaching posts with a specialisation in European Union studies for university professors funded by the EU. His duties will be carried out at the Department of Law of the University of Genoa and will focus on international and European law of the sea.

The Advocate General (AG) of the European Court of Justice (ECJ) Mr. Saugmandasgaard Øe issued on 21 September 2017 his opinion in a landmark case in which SLAC lawyers are involved as counsels and advocates for a consumer association which is a party to the proceedings.

The case originates from a preliminary reference to the ECJ by the Italian Council of State, the highest administrative court in Italy and relates to a possible restriction of competition in the pharmaceutical sector. The case had reached the Council of State as an appeal against a ruling of the Administrative Tribunal for the Lazio Region, which had confirmed a decision of the Italian Antitrust Authority.

In this opinion, which is not binding for the ECJ, the AG found *inter alia* that:

1. In the pharmaceutical sector, the content of marketing authorisations for medicinal products is not necessarily decisive in the determination of the relevant product market.

2. Collusion whereby two undertakings agree to communicate to third parties allegations of the lesser safety of one medicinal product by comparison with another, without being in possession of reliable scientific evidence to support those allegations or scientific knowledge indisputably contradicting them, constitutes a restriction of competition by object, within the meaning of Article 101(1) of the Treaty on the Functioning of the European Union, where those allegations are misleading, which it is for the national courts to verify.

The full text of the opinion is available on the website of the ECJ.

The judgment, to be delivered by the Grand Chamber of the ECJ, will be issued in the coming months.

For further information, contact:
Lorenzo Schiano di Pepe - lorenzoschianodipepe@slac.it.

Tamberga & Partneri
Latvia

"Tamberga un Partneri" provide legal support to the association which organizes Latvian centenary sports games in honour of the centenary of the Republic of Latvia (http://latvia.eu/latvias-centenary). It is planned that in the Latvian centenary sports games shall have participants from all over the world from ages 25 to 90+, in over 30 sports practices. The motto of the sports games is "The witnesses of Latvia's centuries. Meeting of All Latvians in the World".

For further information, contact: Anita Tamberga - tamberga@tamberga.lv

Quintero & Quintero Abogados
Mexico

Quintero & Quintero is honored to join the Cicero and thanks all the members for the acceptance. Quintero & Quintero intends to generate new international business working with fellow members.

Quintero & Quintero welcomes new partners, Mr. José Antonio Castelazo Albin, specializing in criminal litigation (white collar) and Mr. Francisco Javier Saldaña Galvan, expert in civil and commercial litigation.

For further information contact: Galdino Quintanilla gquintanilla@qyq.com.mx

Conner & Co
Russia

Luke Conner, Managing Partner and Founder, has recently been appointed President of the British Business Club in Russia with a mandate to revitalise the fortunes of the club and its members following the ongoing sanctions and stubborn recession in the country. Conner & Company is now looking forward to working with the British Business Club in Russia to assist Cicero's clients with entry into this exciting market, at a more positive juncture in the country's development.

For further information, contact: Luke Conner, lconner@connerco.ru

Bonaccord
Scotland

Bonaccord has recently won awards as UK Arbitration and Mediation Law Firm of the Year and Pharmaceutical Sector Law Firm of the Year in England.

Patricia Barclay's reputation in the mediation has been recognised by colleagues in the field with an invitation to contribute a paper on the Good Friday Agreement to a discussion on political mediation at the International Bar Association annual conference in Sydney. She will also chair a session sponsored by the Healthcare and Life science committee of the IBA on anti-microbial resistance at the conference. Her term of office as Chair of that committee has been extended for an additional year!

Patricia's skills as a conference chair are much in demand and she recently chaired the Law Society of Scotland's High Street and Sole Practitioners annual conference in Stirling.

For further information, contact: Patricia Barclay - patricia@bonaccord.eu

Ceca Magan Abogados
Spain

Ceca Magán Abogados, following its growth policy, has brought on board a new partner in the procedural law area: Daniel Gómez De Arriba. Daniel is a renowned lawyer with over 20 years' experience in the practice of Law, He is specialized in Commercial Law, specifically, in Bankruptcy Law.

Daniel is an expert in providing advice to start-ups and entrepreneurs. He has also offered comprehensive counselling in the sports and entertaining industries, as he has provided advice to leading soccer clubs in "La Liga" and in the preparation of agreements between prominent sports agents internationally.

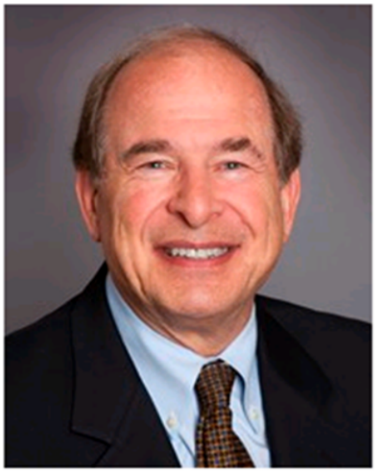
For further information, contact:
Jorge Sarazá <jsaraza@cecamagan.com>

BRS Avocats
Switzerland

A poll has been conducted in Switzerland made for the first time in 2017 by the "Le Temps", "Bilanz" and "Statista", to 6500 participants. They sent questionnaires to 6500 persons, law firms and corporations, asking which firm they considered as the best in different areas of activities and BRS Avocats has been nominated as one of the top five Law Firms in Switzerland for the current year. This award has been granted because of the outstanding activities of the Family Law Department of the Office.

For further information, contact
Jean de Saugy - desaugy@brslaw.ch

Dunnington, Bartholow & Miller LLP
USA



Mr. D'Ambrosio is a new addition to DBM's corporate, litigation/arbitration and international practice groups. His practice focuses on international corporate transactions, mergers and acquisitions, and international arbitrations. He has clients within the United States and in other countries, representing multinational corporations, foreign central banks and other sovereign government institutions.

During his prominent career, Mr. D'Ambrosio has acted as principal counsel to major multinational corporations, governmental entities, and negotiated and structured complex international business transactions. He has handled multi-jurisdictional commercial and corporate matters, sovereign debt and investment matters as well as complex information technology matters. In addition to this, he has also been principal counsel in multi-jurisdictional litigations and arbitrations.

Mr. D'Ambrosio has been recognized as a leading practitioner by Chambers US among other national and international groups. He has been honored by the Republic of Italy for his professional achievements and his philanthropic activities. Mr. D'Ambrosio also lectures and teaches at the University of Chicago School of Law.

For further information, please contact: adambrosio@dunnington.com

Dunnington, Bartholow & Miller
USA

DUNNINGTON
BARTHOLOW & MILLER LLP
ATTORNEYS AT LAW

Dunnington welcomes Lily Belhadia as its newest Associate. Prior to joining Dunnington, Lily worked at the Legal Support Office of the United Nations Development Program in New York and in the Ethics and Compliance Department at Vallourec Tubes in Paris.

She received her Law Degree from the University Pantheon-Assas in Paris and her Master in Legal Studies from the University of Oxford. She graduated cum laude from an L.L.M in Corporate Compliance at Fordham School of Law.

Ms. Belhadia is admitted to practice in New York State.

She is a French native.

E-mail: lbelhadia@dunnington.com

Carolina Pineda Martinez has recently joined DBM as International Legal Intern and she is also the Editor for our Cicero Newsletter. Prior to joining DBM, she was Legal Manager and International Trade Counsel for Latin America at Procter & Gamble Colombia.

Carolina holds a law degree from Pontificia Universidad Javeriana in Bogota, Colombia. She graduated cum laude from an L.L.M in Corporate Compliance at Fordham School of Law last May.

Carolina sat for the July 2017 New York Bar Exam and passed and is admitted to practice law in Colombia.

Email: cpineda@dunnington.com

Articles

Al Gharib & Associates Advocates and Legal Consultants - UAE

The United Arab Emirates (the "UAE") enacted a new companies law (i.e., the Federal Law No. 2 of 2015 on Commercial Companies) (the "Law"), which abolished and replaced Federal Law No. 8 of 1984 on Commercial Companies.

One could say that the main features of the abolished law were re-imported in the new law. However, the new Law tends to follow the laws of international business hubs in Europe and Asia by introducing new concepts not provided for in the abolished law. This was clearly provided for in Article 2 of the Law that states "The Law has for objective to contribute to the development of the working environment and capacities of the State and its economic position in regulating companies according to the various international norms related to governance rules and the protection of shareholders and supporting foreign investment and promoting the corporate social responsibility of companies".

Main features of the Law:

1. While the abolished law provides for seven types of companies, the new Law provides for five types only. These are (i) Joint Liability Company, (ii) Simple Commandite Company, (iii) Limited Liability Company, (iv) Public Joint Stock Company, and (v) Private Joint Stock Company.

2. No change took place with respect to the stake that shall be held by foreigners. With the exception of Joint Liability Companies and Simple Commandite Companies (where all the joint partners shall be UAE nationals), any company established in the UAE shall have one or more UAE partners holding at least 51% of the share capital of the company.

3. The new Law introduced and recognized, for the first time in the UAE (and possibly in the Middle East), the concept of the one-man company. This is a general rule provided for in Article 8/2 of the Law. However, the picture is different with respect to limited liability companies. Here, a natural or a juristic person may set up a limited liability company wholly owned by him/it provided that such person should be a UAE national.

4. One of the important features of the Law which must be carefully dealt with is the non-applicability of the Law on certain types of companies. The Law does not apply to:

(a) Companies exempted under a Cabinet Decision and each of those whereby a special provision to that effect is contained in the Memorandums of Association or Articles of Association of such companies according to the controls issued by a Cabinet Decision;

(b) Companies held in full by the Federal Government or the Local Government, and any other companies held in full by such companies if a special provision to that effect is contained in the Memorandum of Association or Articles of Association of such companies.

(c) Companies in which the Federal Government, the Local Government or any of the establishments, authorities, departments or any companies controlled or held by any of them directly or indirectly, and having at least 25% of the shares of such companies, which operate in oil exploration, drilling, refining, manufacturing, marketing and transportation or operating in the energy sector of all kinds or in the electricity generation, gas production or water desalination, transmission and distribution, if a special provision to this effect is contained in the Memorandum of Association or Articles of Association of such companies.

(d) Companies exempted from the provisions of Federal Law No. 8 of 1984 on Commercial Companies and its amendments, prior to the effective date of this Law; and

(e) Companies exempted from the provisions of this Law under special Federal Laws.

The companies referred to in (b, c and d) should adjust their position in accordance with the Law if such companies sell or publicly offer any percentage of their share capital or lists their shares in any of the financial Markets in the UAE.

5. In addition to the above exempted companies, the Law does not apply to companies established in the free zones of the UAE if a special provision to this effect is contained in the laws or regulations of the relevant free zone. However, such companies shall be governed by the new Law if such laws or regulations permit to conduct the activities of such companies outside the free zone, i.e., inside the UAE mainland.

6. Any company established in the UAE shall bear the nationality thereof, but this does not entail that said company shall necessarily enjoy the rights exclusive to UAE nationals. For example, a company registered in the UAE with 49% foreign shareholding will not be able to form another similar company with a foreigner because the stake of the UAE national in the new company will be less than the statutory limit, i.e., less than 51%.

7. Banking, insurance and investment of funds for the account of third parties are confined to public joint-stock companies.

8. The Memorandum of Association of a company must be drafted in the official language of the country, i.e., the Arabic language. It should also be attested by the Notary Public. Failure to adhere to the foregoing will render the Memorandum of Association void ab initio. If the Memorandum is drafted in Arabic and any other language, the Arabic version will prevail.

9. In spite of the void Memorandum of Association referred to in item 7 above, however, third parties may prove the existence of the Memorandum or any amendment thereto by all means of proof. Such a third party may invoke the existence or the invalidity of the company against the shareholders. If the invalidity of the company is established based on third party request, the company shall be deemed void ab initio vis-à-vis that third party, in consequence, persons who have contracted with such third party in the name of the company shall be personally and jointly liable for the obligations arising from such contract. In all cases where the company is held invalid, it shall be liquidated in accordance with the terms and conditions of liquidation provided for in the Memorandum. The debtors of the company may not invoke invalidity in order to be discharged from their debts to the company.

10. The capital of the company may be in-cash or in-kind or in either of them. Contribution by work is confined to a joint-liability partner. In other words, limited liability partner may not contribute by work. Further, no contribution in the capital by the goodwill and reputation of a person.

11. As long as the company is a going concern, its capital is protected vis-à-vis creditors of the shareholders. In other words, a creditor of a shareholder may not claim settlement of his dues from the stake of that shareholder. However, the creditor may claim such dues from the profits of his debtor. The picture is different if the company is dissolved, in which eventuality the creditor may claim his dues from the shares of his debtor.

12. The abolished law prohibits exempting the Chairman and members of the Board of Directors from liability for their acts of fraud and abuse of power. However, the new Law went further and provided that any provision in the Memorandum or Articles of Association of the company authorizing it or any of its subsidiaries to exempt any person from any personal liability that such person bears in his capacity as a current or former officer of the company shall be void.

13. The new Law adopted the concept of ostensible authority with regards to transactions concluded by the company's managing body with third parties. In such cases, the company is not allowed to deny liability on the grounds that the managing body of the company was not appointed in the manner prescribed by the law or the Articles of Association. However, the third party must establish that he was a bona fide dealer when he transacted with the company.

14. It is mandatory for limited liability companies and public companies to appoint auditors. Other types of companies may do so, however it is not mandatory.

15. Provided that the company keeps proper accounting records and books, the statutory period for keeping such books in the head office of the company is five years from the end of the financial year in question. This is a new concept not provided for in the abolished law.

By Tayeb Hassabo (tayeb@alghariblawfirm.com)

Graf von Westphalen - Germany

New EU State Aid Rules for Ports, Airports, Culture, Sport and Multifunctional Recreational Infrastructures

On 20 June 2017, the European Commission's Regulation (EU) No. 2017/1084 was published in the Official Journal of the European Union. The Regulation contains new state aid rules amending the so-called General Block Exemption Regulation (GBER), according to which in particular special public funding initiatives for ports, airports, culture, sport and multifunctional recreational infrastructures and certain outermost regions of the European Union are no longer subject to prior Commission approval.

On the one hand, the Amending Regulation, which entered into force beginning of July 2017, exempts further categories of subsidies from the obligation of prior notification and approval pursuant to Article 108 (3) of the Treaty on the Functioning of the European Union (TFEU), and on the other hand, it in part increases the thresholds for projects that were already exempted before. As a result, public investments that create jobs and promote economic growth are supposed to be facilitated without impacting competition.

Amendment of the General Block Exemption Regulation

Provided that the criteria of the GBER which entered into force in 2014 are met, the EU Member States are able to implement various measures that constitute state aid within the meaning of Article 107 (1) TFEU without prior Commission approval, because the respective projects are unlikely to distort competition. According to these provisions, approx. 95 percent of the state aid measures implemented by the Member States with a total annual expenditure of approx. EUR 28 billion are exempted. Consequently, the number of notifications to the Commission for state aid has significantly decreased since 2014.

Below, please find an overview of the latest amendments to the GBER that have been initiated in the context of the Regulatory Fitness and Performance Programme (REFIT).

New Exemptions for Airports

Investments for regional airports handling up to three million passengers per year are now exempted from the notification obligations. This requires that there is no other airport in a catchment area of 100 km or 60 minutes travel time respectively. The aid may only cover the funding gap, i.e. must not be higher than required in order to prompt companies to make the desired investment. Furthermore, it is required that the aid only accounts for a particular percentage of the total investment costs that is dependent on the size and location of the airport - for instance in an outermost region. Finally, the infrastructure that is funded has to be used to the full extent and must not be planned larger than required on the basis of expected demand. The exemption is supposed to facilitate public investment in more than 420 airports in the European Union that account for approx. 13% of air traffic.

With regard to smaller airports handling up to 200,000 passengers per year, more flexible rules for investment aid are established in the Regulation and aid to cover operating losses is permitted. In this context, the Commission points out that the small airports account for almost half of all the airports in the EU, but only handle 0.75% of the air traffic. Consequently, with regard to these airports it would be unlikely that the intra-Union trade between the Member States would be impaired.

New Exemptions for Ports

Moreover, in future, the Member States can now make public investments with a threshold of up to EUR 150 million for sea ports and up to EUR 50 million for inland ports without prior Commission control, since these aids are now also exempted from the notification obligation. In this context, the threshold is dependent on whether the port is part of a core network corridor within the meaning of Regulation (EU) No. 1315/2013 on Union Guidelines for the Development of the Trans-European Transport Network (TEN). In addition, it is now possible to cover the costs of dredging in ports and access waterways. Again, further requirements are, amongst others, that the aid may only cover the funding gap and may only account for a particular percentage of the investment costs depending on the volume and type of the investment as well as the location of the port in an outermost region, as the case may be.

Further Simplifications

In accordance with the Commission's decision practice since the GBER was adopted in 2014, there are more flexible regulations also in other fields. For example, the limit for the exemption of aid for culture projects was increased to EUR 150 million per project and year for investments, whereas the limit for operating aid is now EUR 75 million.

The upper limit for aid for sports infrastructures and multi-purpose recreational infrastructures was also increased. According to the Commission, the public funding measures in this field would hardly ever constitute state aid since they would usually not concern economic activities. Even if they constitute state aid, they are unlikely to distort competition, according to the Commission's view, as long as the criteria of the amended GBER are met.

Moreover, it is now possible for the Member States to cover transportation costs as well as other additional costs for companies in order to support the EU's outermost regions so that the problems and special challenges these companies are facing (e.g. their remoteness and dependence on a few traded products) can be better considered in funding measures.

Besides, start-up aid for small companies that have been entered into the commercial register no more than five years ago are now permitted. This is supposed to take into consideration the fact that newly-founded companies in fields requiring a lot of research and development effort often generate losses in the first few years despite the fact that they show dynamic development and growth.

The »simplified cost options« (= simplified methods to calculate the costs eligible for support) that are used in the context of the European Structural and Investment Fund can also be applied pursuant to the GBER now, so that discrepancies between different fields of EU law as well as administrative burdens are reduced.

Conclusion

The changes in the GBER are to be welcomed and (further) facilitate public investment in the aforementioned areas. The project is part of the Commission's efforts to focus state aid control on bigger cases that significantly impact competition in the Single Market. The facilitations have to be considered in connection with other measures the Commission took last year in order to modernize state aid law. This includes in particular the notice on the definition of state aid that was adopted in May 2016 as well as the Commission resolutions on purely local funding measures of September 2016 and April 2015.

With the reference to clear thresholds – in particular in the public funding of regional ports and airports – Member States will are now able to grant a wide variety of aid with legal certainty and without prior notification, in addition to the existing facilitations pursuant to the GBER. This constitutes a significant facilitation in practice. However, the recipients and donors of aid always bear the risk of a refund claim or of aid-related contracts to be void due to a breach of the prohibition on putting measures into effect of Article 108 (3) TFEU. Against this background, it is necessary to carry out a careful assessment of the individual case in order to minimize state aid-related risks.

BY: Dr. Gerd Schwendinger, LL.M. - g.schwendinger@gvw.com

Corlett Bolton & Co – Isle Of Man

Bitcoin & Block-Chain: How The Isle Of Man Gained The Global Cryptocurrency Crown

On the 1st April 2015 the Isle of Man introduced new regulation for Bitcoin businesses to respond to the growing interest in digital currencies and changing regulatory environment both locally and internationally and has since warmly welcomed FinTech business and successfully promoted a vibrant crypto-currency culture on the Island.

Bitcoin Island

The Isle of Man is a successful self-governing international financial centre which is independent of the United Kingdom. This very independence in respect of its laws enables the Isle of Man to offer extremely attractive advantages to local residents, individuals and companies around the world and provide the necessary oversight faster than other jurisdictions. The Isle of Man Government is fully supportive of crypto-currency business initiatives; at the same time it recognises that the industry needs some regulation to enable it to thrive. The introduction of the Island's regulation for digital currency businesses was therefore a logical progression in expanding and diversifying its global business and the Island's digital business sector.

The Island first attracted the attention of digital businesses in 2014 when it announced that the Department of Economic Development ("DED") and the Isle of Man Financial Services Commission ("FSC") were working together to produce a framework for regulation of digital currencies which would promote business opportunities whilst applying appropriate anti-money laundering ("AML") requirements. It acted to bring digital currency businesses within the FSC's AML regime by amending Schedule 4 of the Proceeds of Crime Act 2008 ("POCA") and Schedule 1 of the Designated Business (Registration and Oversight) Act 2015 and making the FSC rather than industry bodies responsible for oversight of the adherence with the AML Code.

As an aspiring global cryptocurrency leader, the inclusion of the new business categories that potentially pose a higher money laundering and terrorist financing risk brings the Island in line with the current requirements of the Financial Action Task Force ("FATF"), further aiding it in meeting its obligations under international requirements and align with the FSC's regulatory objectives which support the Island's economy and its development as an international financial centre.

Consequently this tiny Island just 32 miles long and, at its widest point, 14 miles wide situated in the middle of the Irish Sea off the north-west coast of England has become a world leader in bitcoin related industries being described by many crypto-currency supporters as a safe haven for Bitcoin. It has aptly coined the title of "Bitcoin Island" as well as being referred to as a "Crypto Haven" and rather fittingly given its rich culture steeped in Viking history as a "Bitcoin Valhalla" at the heart of a crypto-currency gold rush.

With its flexible regulatory position, low taxes, stable and progressive government, simple tax strategy and a high-tech internet infrastructure and technological expertise to boot, the Isle of Man is an **attractive destination** to many companies operating in various sectors. It already has a thriving e-Gaming sector in place and is known for innovation and high quality service in the financial services and online gambling industries.

The Island offers a user-friendly, financially attractive and highly supportive location for e-Business companies, especially considering the environment in the United Kingdom following BREXIT. As well as a well-established support industry of corporate services providers, accountants and lawyers already making the Island attractive for Bitcoin and FinTech businesses and creating a favourable regulatory landscape for crypto-currency businesses to seriously consider the question of locating in the Isle of Man.

Whilst recognising the considerable potential of crypto-currencies, the importance for the industry to deter "bad businesses" and address areas seen as being vulnerable to money-laundering is not underestimated. The reduction of financial crime is an overriding objective in the application by the FSC of the AML rules to the industry in order to uphold the Isle of Man's strong reputation and good-standing with the International Monetary Fund.

Bitcoin Basics

Bitcoin is a decentralized "digital" or "crypto" currency which uses peer-to-peer technology to operate without having to rely on banks or card companies. **The** removal of the bank in payment processing and the associated costs otherwise incurred by retailers is a huge appeal of the digital currency which works using mathematical codes "mined" by powerful computers and then recorded on a publicly held database, known as a "block-chain" or distributed ledger. In layman's terms block-chain is a decentralised ledger kept running by "miners" that verifies each coin and records each transaction.

Born from the libertarian ideal, the system has no central authority, **nobody owns or controls bitcoin. B**itcoin is open-sourced, **its design is public,** managing transactions and the issuing of bitcoins is carried out collectively by the network, **allowing individuals and corporations** to diversify their reliance on banking and insurance companies **and control bitcoins via their digital** "e-wallet". This permits the coins to be accessed from anywhere in the world by logging on to a computer or using a mobile phone app **and t**ransfers to be made from person to person no matter where they are in the world via the internet.

Bitcoin is a borderless currency; it has the same value in every jurisdiction as well as a much easier overseas payment mechanism.

From an AML perspective it can be argued that digital currencies such as Bitcoin are superior to physical cash, as the transactions a digital coin is used for are recorded on a block-chain ledger which attaches to the coin and transfers along with its value when it is used as payment, making tracing easier than following the flows of cash.

Without having to rely on banks or card companies, bitcoin fees including transfers, point of sale and overseas payments are extremely low or non existent and bringing the prospect of bank accounts for digital currencies one step closer.

The Regulatory Positon

The POCA as amended by the Proceeds of Crime (Business in the Regulated Sector) Order 2015 ("the Act") brings digital and crypto-currency businesses on the Island under regulation and within the remit of the FSC and the AML laws. The updates to the list of relevant businesses "in the regulated sector" cover bitcoin companies, such as exchanges operating from the Island making them subject to the AML provisions and control of terrorist financing provisions of the Act.

Amendments to Schedule 4 of the Act state *"businesses involved in the issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies, including crypto-currencies or similar concepts where the concept is accepted by persons as a means of payment for goods or services, a unit of account, a store of value or a commodity"* will have to adhere to AML requirements.

As with other businesses operating in the financial services industry on the Island, such as legal and accountancy businesses the new regulations mean that crypto-currency businesses now have to adopt and implement formal compliance and AML and know-your-customer ("KYC") procedures. Collecting identification information so this can be passed on to the authorities if they suspect money-laundering activity and assisting in identifying individuals they believe to be involved.

With the launch of the Designated Businesses (Registration and Oversight) Act 2015 ("2015 Act") the Isle of Man Government passed Designated Businesses (Registration and Oversight) (Amendment) Order 2015 amending Schedule 1 to add these businesses not previously subject to registration and oversight under the 2015 Act and bringing digital and cypto-currency businesses under regulation. Such companies operating from the Island are thereby required to register their business with the FSC as the supervisory authority for AML matters and comply with Anti-Money Laundering and Countering Terrorist Financing legislation.

The FSC publishes and maintains a register of "Designated Businesses". These businesses must submit annual returns confirming compliance with AML requirements and detailing any instances of non-compliance. The AML code also requires long-term record-keeping. The FSC will carry out on-site inspections and have the power to request information, issue public statements and impose civil penalties.

Having 'designated business' status facilitates Isle of Man crypto-currency exchanges as having a license increases their credibility in securing banking and merchant facilities.

Gambling Regulation Package 2016

Last year changes were approved to the Island's gambling regulation to allow virtual currencies **to be accepted as equivalent to cash thereby** making it possible for gambling operators to accept virtual currencies in a **safe and risk-free manner.** The developing relationship between the bitcoin and e-gaming sectors is a positive approach for the bitcoin industry.

The regulation is known as the Gambling Regulation Package 2016. In addition to the acceptance of bitcoin and other virtual currencies, it also incorporated other changes such as expanding the voluntary gambling controls offered to players by gambling operators.

The changes in the gambling regulation in terms of bitcoin and the rest of the cryptocurrencies are a significant change further embracing and promoting the economic development and technology innovations in the area.

If the Isle of Man wants to maintain its crypto-currency crown as the jurisdiction of choice for digital currency companies, it must keep up with international expectations for an established well-regulated international finance centre for this fast paced industry.

So far the Isle of Man Government is not standing still and is making the right moves whilst retaining its position at the forefront of legislative developments by offering supportive and proportionate regulatory oversight, aiming to attract the businesses to the Island that it does want and to deter those that it does not.

Currently in progress is the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Bill 2017, which will provide the necessary powers to conduct regulatory oversight of the gambling sector's compliance with AML and Countering the Financing of Terrorism legislation; to provide sanctions for non-compliance; and for connected purposes.

Is Block-chain the future for Bitcoin Island?

With the introduction of higher standards in the industry the Isle of Man government has taken positive measures for bitcoin businesses to gain credibility and legitimacy with lenders and customers to combat bad publicity and perceived risks.

As a result the Isle of Man is turning its attention to block-chain to boost its FinTech and digital payments sector as it continues its efforts at establishing digital businesses on the island. This is an exciting and potentially explosive development in information technology and the Isle of Man is right at the forefront, being one of the first jurisdictions to use the block-chain, to store a register of the Islands cryptocurrency companies and leading experts and market analysts to speculate that Isle of Man is most likely aimed at becoming the **key block-chain destination of Europe** thus maintaining its position as global leader in the sector.

The technology is transformational and could also be used within the legal and financial sectors for other code driven transactions such as property purchases, allowing contracts to be uploaded to the block-chain. It is supported by the Isle of Man's strong intellectual property laws in establishing successful e-Business infrastructures which allow full ownership of the intellectual property and paving the way for an explosion of 2.0 businesses which can be built up and sold as part of their exit strategy without liability to capital gains tax on the profits, inheritance tax or tax on dividends.

Thanks to the recent policy of the local government **to boost its attractiveness** for both licensed gambling operators and their customers in terms of bitcoin and other cryptocurrencies usage, bitcoin has already become well established as a currency for daily transactions on the Isle of Man. An increasing number of businesses on the Island now accept bitcoins as payment for everyday transactions alongside sterling. Banks are also turning around to this new technology which will allow them to cut costs and pass on the savings to their customers and there is now a global consortium of banks developing block-chain technology. 2017 has seen the rapid price appreciation of bitcoin and other crypto-currencies nearly triple enticing investors and for the first time the value of bitcoin has exceeded that of an ounce of gold. Continued gains can however only further accelerate with acceptance from governments and regulation and on this front the Isle of Man is two steps ahead of the game.

While some jurisdictions, continue to be cautious of crypto-currencies the Isle of Man have openly sided with the pro-crypto-currency side of the international debate. The Island's resident's ability to use a digital form of currency that many still view with scepticism is representative of the Island's wider embrace of crypto-currencies. The UK is also changing its stance towards digital currencies with recent changes in the status of bitcoin and block-chain creating positive prospects for "Bitcoin" or perhaps more fittingly "Block-chain" Island's continued success.

Corlett Bolton & Co together with its Corporate and Trust services provider Corlett Bolton Administrative Services Limited ("CBAS") has a wealth of financial services experience and is up to date with the local Anti-money laundering laws.

If you would like if you more information regarding the legal and financial implications and benefits of setting up your business in the Isle of Man and to discuss your needs to ensure that the structure adopted is appropriate to your particular circumstances and in full compliance with the Isle of Man law; please contact us please contact us by telephone on 01624 676868 or by email at mail@corlettbolton.com.

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A United Approach To Estate Planning Benefits And Dangers Of Lifetime Revocable Trusts For Nationals And Internationals In The Uk

The United States and the United Kingdom have been described as two nations divided by a common language. Like our language, the establishment of New York's common law is a legacy of our nations' pre-revolution connections, but that too has evolved on both sides of the Atlantic to create distinct approaches to estate planning. A UK citizen with assets in or currently living in the US, or a US citizen living in the UK, needs to be aware of the difference in these approaches when preparing Wills and lifetime trusts to avoid an unexpected tax in one or both countries.

Revocable trusts (also known as living trusts) are a popular estate planning device for national and international clients owning US property. Both in and out of the US, revocable trusts solve problems that arise when you die owning US property. Without a trust, the court process (known as probate) freezes property held in your name at death. No one can access or manage the property until the court confirms the validity of the Will (if there is one) and appoints someone resident in the US (your executor) to be responsible for managing the property, paying debts, expenses and US taxes, and ultimately distributing the assets to beneficiaries. In the US, revocable trusts also provide flexibility in case of illness and incapacity.

These court proceedings for probate or administration in the US can take months to conclude and are expensive. The problem is worse when a person owns property in multiple US states or in different countries: probate (or a similar process) must be brought in each location. Revocable trusts enable US property holders to escape probate in the US entirely.

Probate is necessary for US property held in your individual name, such as a home, investment accounts and tangible personal property. But some assets don't require probate to be transferred at death, such as a US home held with a spouse with right of survivorship; the house goes directly to the surviving spouse, bypassing the Will and probate. Similarly, a financial asset such as an IRA with a designated beneficiary goes directly to that beneficiary on death.

Assets titled in this fashion bypass your Will and the required court proceeding; there is no need for a revocable trust. (However, if you are planning for illness or incapacity, you may want to retitle even these assets to a revocable trust. The trust organises your assets into one convenient ownership "package" and enables a co-trustee to act immediately should you become too ill to manage your financial affairs).

How a Revocable Trust Works

You are the trustee of your own trust. You simply name the trust as the owner of each of your assets. You access the assets the same way you did before. The co-trustee you appointed under the trust instrument steps in only if you become incapacitated or die. There is no need for probate. There is no tax impact in the US because you maintain the right to revoke or amend the trust and the trust is identified by your social security number.

On death, the trust functions like a Will. Your co-trustee functions like an executor: he/she manages the property in the trust, pays your bills, debts and taxes and finally distributes the property to your beneficiaries according to the instructions in the trust. A revocable trust provides the same continuity of management after your death that it does after a disabling illness.

Property in Multiple Jurisdictions

Often people don't realise that owning property in their name in different US states will require their executor to bring separate court proceedings (called "ancillary probate") in each state where property is located. For example, if you own real estate in Florida, New York and Maine, your executor may have to bring separate court proceedings in each state to gain control of each piece of property. No one can access, transfer or sell the Maine property, for instance, until a Maine court issues the appropriate papers empowering someone to act in Maine. Similarly, if you own property in different countries, your executor will have to comply with each nation's procedures to access property after your death.

Probate and ancillary probate procedures are time consuming and require attorney and court fees for each jurisdiction. You can skip this entirely if all your US property is held by a revocable trust. Then, there is no disruption in access, management and control. The trust significantly reduces the expense and time before the property is distributed to a beneficiary.

Problems with Setting Up Revocable Trusts in the UK

Problems arise when a person domiciled in the UK puts assets into a revocable trust. Setting up a US revocable trust while still UK domiciled can expose you to an immediate charge to Inheritance Tax (at the rate of 20%) on the value of assets transferred over the current maximum threshold of £325,000 (no matter where the assets are located).

If a US citizen or resident, before moving to the UK, uses assets located outside of the UK to establish a revocable trust, the wording of the agreement should allow for a completed gift for UK tax purposes and an incomplete gift for US tax purposes. An attorney can advise how to fit your revocable trust into both categories. With correct language, the trust will be considered an "excluded property trust" producing in the UK the desired result that the assets are excluded from UK Inheritance Tax even if the US person becomes domiciled in the UK. Therefore, it is vital for US and UK advisors to dovetail their estate planning advice to ensure their clients avoid the UK tax (or mitigate it as far as possible). In addition, if the US revocable trust is to determine how assets are distributed on death, an effective UK Will is needed to transfer to the trust any assets outside the trust at your death. The Inheritance Tax consequence of this arrangement needs to be checked.

Domicile and Inheritance Taxation in UK vs US

People living in the UK should be aware of the distinction between "domicile," "residence" and "citizenship." For Inheritance Tax, the UK has chosen the concept of domicile to determine how to tax a person on death. Domicile is where you call home; and under common law is determined by (i) residence in a country with (ii) the intention of remaining permanently. (You can also be deemed domiciled for Inheritance Tax purposes if, before your death, you have accumulated 15 years of residency in the UK out of the last 20). The US also uses the concept of domicile to determine estate taxes, but adds the additional classification of citizenship. "US citizens" have to pay US estate tax on their worldwide assets no matter where they are domiciled. A US citizen permanently domiciled in the UK or another country could therefore owe estate tax to both countries. (The US-UK estate tax treaty attempts to address this, but does not do so perfectly). In contrast, a UK citizen domiciled in another country is only responsible for paying UK Inheritance Tax on assets located within the UK.

Probate for UK Property Owners Domiciled in Other Countries

The UK has a procedure similar to US ancillary probate when an overseas Will is presented to transfer UK assets. In the UK, this is largely a paper procedure that doesn't require physical attendance in court. However, the procedure can involve multiple steps such as preparing affidavits by lawyers qualified in the appropriate jurisdiction, translation of these documents, liaising with notaries overseas and with the UK's tax authority (HM Revenue and Customs) to ensure Inheritance Tax attributable to UK assets has been paid. With these costly and time-consuming hurdles in mind, it is easy to see the benefits of a device such as a revocable trust to bypass them, particularly for the immediate family tasked with administering the estate at a time of grief.

Problems when Spouses have Different Domiciles

Married couples can avoid UK Inheritance Tax on the first death by leaving assets directly to a spouse as an outright gift or by using an "Immediate Post Death Interest Trust" ('IPDI') written in the Will itself. This device permits a 100% exemption from UK Inheritance Tax (provided assets are not passing from a UK domiciled spouse to a non-domiciled spouse). An English Will passing assets to a US revocable trust also requires review to ensure that the UK spouse exemption can be obtained. A co-operative approach between US and UK advisors will ensure the best outcome for your estate planning objectives.

Conclusion

Revocable trusts and other estate planning devices offer valuable tools which provide efficiencies and savings for estates of international clients. In a global environment, it's easier than ever to get tripped up by conflicting inheritance, tax and anti-money laundering laws of different countries. And these laws themselves are constantly evolving. A knowledgeable adviser with international partners and resources is well positioned to protect your interests and keep you up to date on effective wealth planning strategies.

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