



GLOBAL PROFESSIONAL
EXCELLENCE



Let's Stay
Connected

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MAGAZINE

Editorial

Dear XLNC Member,

The worldwide spread of the coronavirus COVID-19 has had a major impact on our lives and the global economy. Some cities and countries are completely shut down, flights cancelled, events postponed, supply chains interrupted. Here at XLNC, we are continuing to monitor the situation on a daily basis as the safety of everyone involved, both members and staff, is of utmost concern.

We were forced to postpone the XLNC Spring Conference in Brussels, Belgium, to May 2021. We will keep you updated if any further measures related to other XLNC events need to be taken.

This new coronavirus, COVID-19, is part of our globalised, interconnected age. We are an increasingly mobile world, travelling more for both work and pleasure than ever before. Infectious diseases remain one of the top 10 risks in terms of impact for the next 10 years according to the World Economic Forum's Global Risks Report 2020. Given an increasingly connected society, fighting future epidemics will no longer be the sole responsibility of public healthcare experts.

Solutions require cooperation from a range of leaders, both public and private, as well as the help of the general population.

Working Together Will Be Key

Close international cooperation, exchanging best practices, knowledge, ideas, and experiences becomes more and more important in our interconnected world – and not only in the health sector for fighting epidemics, but also in our business lives. Our strong XLNC network helps to make the world smaller and future trends, developments, news, and valuable information from all over the world quickly accessible.

Even though the Brussels conference has been postponed, we can stay connected online. Read on the first planned XLNC webinars. We will continue to add more webinars to our calendar in the coming weeks.

This issue of the XLNC Magazine reports on the successful autumn conference which took place in Venice, Italy.

Following the news from our member firms and updates from XLNC Focus Groups we are pleased to have the following authors share their expertise:

Amal Shah talks about the Taxation of UK Residential Property, outlining the key elements which should be considered, from purchase through to disposal. Richard Kleiner discusses good

leadership skills. Chet Bowling keeps you up-to-date on "Current Must-Knows for Foreign CEPs in Russia", and James Berrio shares a "Tax and Legal Guide for Real Estate Investors in Spain". Albena Rasheva reports on "Residency and Citizenship for Foreigners in Bulgaria", while Dr Giulio Antoniotti informs on the topic of "Company Criminal Liability in view of the Italian Legislative Decree 231/2001".

XLNC members have also shared some updates related to COVID-19. Dra Laura Rozental informs on regulations in Argentina, which have been implemented in response to COVID-19. Vinay Khosla reports on the measures taken in Canada, while Louis Sapi is bringing an affordable emergency ventilator to market and shares his story with you. Gerald Paolilli updates with the USA response to the pandemic.

Last, but not least, we extend a very warm welcome to all of our new member firms.

We hope you enjoy reading this issue of XLNC Magazine.

May you, your families, and friends stay healthy and safe.

Your XLNC Team

Contents

■ EDITORIAL.....	02
■ CONTENTS, CONTACT, DISCLAIMER.....	03
■ XLNC EVENT NEWS	
→ XLNC Spring Conference in Brussels, Belgium, Postponed to May 2021..	04
■ XLNC EVENT REVIEW	
→ XLNC Autumn Conference 2019.....	04
■ XLNC WEBINARS	
→ Let's Stay Connected: XLNC Focus Group Webinars.....	07
→ Coronavirus and Your Business 22 May 2020	08
→ Marketing & Business Development Focus Group 28 May 2020.....	09
→ XLNC Tax Focus Group 17 June 2020.....	10
■ XLNC FOCUS GROUPS	
XLNC Arts & Media Focus Group	
→ WANTED: Lawyers.....	10
XLNC Tax Focus Group	
→ Update on Activities	12
→ Taxation of UK Residential Property.....	13
■ XLNC INTERNAL NEWS	
→ The IP Team of SCHLARMANNvonGEYSO has won a "Managing IP" Award ...	16
→ Vestius Advocaten in The Legal 500 and Chambers	16
→ Bercún Law Firm: Three Lawyers Promoted	17
■ COMMON INTEREST	
→ Leadership in a Crisis	18
→ Current Must-Knows for Foreign CEOs in Russia	20
→ Tax and Legal Guide for Real Estate Investors in Spain	21
→ Residency and Citizenship for Foreigners in Bulgaria	23
→ Around Company Criminal Liability: The Advantages of Corporate Compliance Pursuant to Legislative Decree 231/2001	26
■ COVID-19 UPDATES FROM DIFFERENT JURISDICTIONS	
→ Newsflash Series.....	28
→ Argentina: Suspension of Rentals and Freezing of Prices in Argentina	28
→ Canada: Navigating the COVID-19 Business Environment	30
→ Canada: Fighting Against the COVID-19 Pandemic.....	31
→ USA: Supporting Measures for SME	33
■ NEW XLNC MEMBER FIRMS	36

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Disclaimer

The information provided in this XLNC magazine came from reliable sources and was prepared from data assumed to be correct; however, prior to making it the basis of a decision, it must be double checked. Ratings and assessments reflect the personal opinion of the respective author only. We neither accept liability for, nor are we able to guarantee, the content. This publication is for XLNC internal use only and intended solely and exclusively for XLNC members.

XLNC Spring Conference in Brussels, Belgium, Postponed to May 2021

The worldwide spread of COVID-19 has forced us to postpone this year's XLNC Spring Conference in Brussels, Belgium, to May 2021. We carefully and constantly follow all developments around

the spread of the coronavirus COVID-19. We will keep you updated if any further measures related to other XLNC events need to be taken.

Venice, Italy | 15 – 17 November 2019

XLNC Autumn Conference

In light of the current situation in Italy, there is a sense of loss that one will not be able to enjoy the beauty of Venice for

quite some time to come.

We love that city, despite the fact that our conference took place

just days after flood levels reached their highest level since records began in 1923. The *acqua alta* may have wreaked havoc on our





XLNC Chairman Richard Kleiner welcomes XLNC members

excursions and dinners but thank goodness we were kept dry on the Isola San Clemente in the San Clemente Palace Kempinski.

During the low tides, some of us even managed to walk around the Piazza San Marco and the Rialto Bridge areas, where we saw how the locals simply got on with business.

Over the course of Thursday and Friday, XLNC members arrived with tales of their journey to the island.

...next page



5



Keynote Speaker William Johnson truly engaged everyone



Dr Udo von Fragstein during the Legal Focus Group meeting



Oscar Torres in the Technology Focus Group meeting



However, despite the weather, you could feel the energy as members and friends were reunited.



The hotel was an excellent host and backdrop for our event, and we were delighted that they easily took the last-minute changes we implemented – from extra boats to an additional dinner on Saturday night – in their stride.



Our Keynote Speaker, William Johnson, truly engaged everyone as he discussed how they represented their firms through differentiating and story-telling; so much so that there were some last-minute changes to the afternoon programme as so many wanted to continue to hear his thoughts in the Marketing & Business Development Focus Group.

Markus Leitner (Leitner Hirth

Rechtsanwälte, Graz, Austria) and Gautam Khurana (ILO Consulting Services Pvt Ltd, New Delhi, India) showcased how they were able to work together across borders, and provided some terrific ideas on how XLNC members can easily help one another to develop new, international business.

In the afternoon, the focus groups were certainly busy. Aside from the Marketing & Business Development session run by William Johnson, we also had the following breakout sessions: Tax, Legal, Technology, M&A and Corporate Finance, and Transfer Pricing.

It was wonderful to spend time connecting with one another and we look forward to meeting everyone once again at our next conference.



The joy of being reunited



6



Let's Stay Connected: XLNC Focus Group Webinars

7

While we might not be able to meet in person, we can certainly continue to stay connected online. Focus Group Chairpersons have started to plan webinars for all XLNC members. We have already launched a couple of them for the second half of May and June and will continue to add more to the programme in the coming weeks and months.

You can always view the list of webinars on our website xlnc.org >> Events, which will be updated regularly. We will only be scheduling webinars once approved by the appropriate Focus Group Chair.

Please reach out to Barbara Reiss at b.reiss@xlnc.org or to a Focus Group Chairperson if you would like to be actively involved in a webinar.

The objectives of our webinars are to:

- Offer a platform to support personal exchanges among like-minded professionals and friends;
- Ensure that the contact between members stays active, dynamic, and alive in times we cannot travel;
- Ensure the flow of professional information and the exchange of views and ideas about specific subject matters.

All of our webinars are held on Zoom, for XLNC members only. The webinars are free of charge but you will need to register in order to receive the meeting ID and password. Registration is super easy: you will only need to enter your email address and name.

We would very much encourage you not only to participate but also to invite along your colleagues who might not be actively involved within XLNC yet, but who would benefit from the topics. Please email Anita Szoeko at szoeko@xlnc.org to add your colleagues to our invitee list.

22 May 2020

Coronavirus and Your Business

Join Richard Kleiner, our Chairman, and Lauren Kelly, Chairperson of the Marketing & Business Development Focus Group – both from XLNC



Richard Kleiner



Lauren Kelly

member firm Gerald Edelman (London, UK) – to focus on the challenges and opportunities the coronavirus pandemic has created.

Friday, 22 May 2020

10:00 CEST (Central European Summer Time)

17:00 CEST (Central European Summer Time)

Both meetings will have the same content; simply select the time that suits you.

Please click on the registration link in the invitation email sent out to all members.

If you have not received this, please email Anita Szoeki (szoeki@xlnc.org), indicating the specific webinar you would like

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to attend, and she will be happy to send you the link to register.

Follow us on social media!

Have you visited XLNC's social media sites? Go to **LinkedIn, Facebook, twitter** and **Instagram** and get connected – an easy way to share information and stay abreast of latest developments.



Marketing & Business Development
Focus Group | 28 May 2020

How You React Now Will Determine How You are Judged in the Future

People are watching how brands respond to the coronavirus. According to the Edelman Trust Barometer, 71% of people agree that brands that put profits before people during the crisis will lose their trust forever.

Already in the UK we have seen businesses face a backlash because they have put profits first, such as premiership football club Tottenham Hotspur who hastily announced they would be furloughing some non-playing employees without accompanying it by senior pay cuts. This was



Lauren Kelly

until negative publicity led them to reverse the decision. Yet other businesses are giving back during the pandemic. For example, Uber Eats has waived commission fees for independent restaurant partners, and Unilever has donated EUR 100 million to fight the pandemic and pledged to pay small suppliers early to help their cashflows.

In professional services, it is no different. The support and advice we provide to clients and employees now is how we will be judged going forward. We must be seen to be doing the right thing. This will create loyalty and strong relationships that will be hard to break after the crisis.

To help us navigate this crisis, we invite you to join our "virtual roundtable" where we will share ideas, experiences, and advice for keeping relationships with employees and clients strong. This includes discussions on:

- Internal communications: keeping employees productive (and happy).
- External communications: including digital marketing strategies to engage clients.
- Business development: are you still engaging international clients and, if so, how?

The Marketing & Business Development Focus Group allows members to share and develop ideas and strategies for the future growth of their business. Any XLNC member is welcome to join the group and attend the upcoming webinar on 28 May 2020. Please note that both meetings will have the same content; simply select the time that suits you.

Thursday, 28 May 2020

10:00 am CEST

(Central European Summer Time)

16:00 pm CEST

(Central European Summer Time)

Please click on the registration link in the invitation email. If you have not received this, please email Anita Szoeki (szoeki@xlnc.org), indicating the specific webinar you would like to attend, and she will be happy to send you the link to register.

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17 June 2020

Tax Focus Group

Due to the cancellation of the Tax Focus Group's meeting at the XLNC Spring Conference in Brussels, we have decided to hold our first virtual meeting. During this time, we will include a panel discussion on the Post-COVID global tax environment, as well as several (non-COVID) Country Tax Reports



Graham Busch



Dr Benjamin Cortez

Wednesday, 17 June 2020

09:00 am CEST (Central European Summer Time)

17:00 pm CEST (Central European Summer Time)

Both meetings will have the same content; simply select the time that suits you.

Please click on the registration link in the invitation email. If you have not received this, please email Anita Szoeki (szoeki@xlnc.org), indicating the specific webinar you would like to attend, and she will be happy to send you the link to register.

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► XLNC ARTS & MEDIA FOCUS GROUP

WANTED: Lawyers

■ **By Dr Alessandro Stradi**

"Seeing something again is an important aspect of art. You don't ever see all at one time. You could see it indefinitely, and there

would always be something you haven't seen, because art is a product of the intuitive – the most powerful instrument within us. The intuitive is the most accurate sense we have." – Louis I. Kahn, Architect

Since the beginning, when this journey started, we have put "ART" at the centre of the project, well knowing how artists respond to and participate in the intellectual, social,



and cultural contexts of their time. Art and economics have always been in constant connection; the birth of modernism and modern art can be traced to the Industrial Revolution, a period of rapid changes in manufacturing, transportation, and technology, profoundly affecting the social, economic, and cultural conditions of life.

The same happened later and will happen again, due to the current economic crisis. Now that the Art & Media Focus Group has been established, despite the global pandemic that prevented us from planning a meeting in person this spring, the aim is to accompany changes in the economy and art, moving from team-building to team-bonding, enhancing professional and social relations, and defining roles within the Group – a way of doing economics, of practicing consultancy, paying attention to economic and social changes, with a look at the world as a whole.

The new scenario invites us to change, taking inspiration from art, creating a dialogue between the established and the experimental, the past and the present, making connections and understanding the issues and ideas that shape our world.



Dr Alessandro Stradi

Our Focus Group, which brought together mainly accountants (and is now looking for lawyers), has the objective of bringing together like-minded and business-oriented professionals, close to the protection of the family heritage but also open to the capital market.

The analysis of the modern art market shows how large capitals are increasingly attracted to investments in the world of art, as a possible alternative to other types of investment: a phenomenon not unlike that of precious metals and cryptocurrencies.

Diversification in investments requires legal, tax, and accounting skills. In addition, professional activity requires a great attention to compliance issues, from the AML to the CRS, up to the FATCA provision of the US government; not to mention indirect taxes, from VAT to customs duties.

For this reason, the team naturally built itself between the large markets and economies of the world, in compliance with and through knowledge of national regulations. The USA, Europe, and the Far East have always been the territories of greatest vocation for investments in the art market.

Continental Europe, the “old Continent”, is today one of the purchasing territories; the USA and the Far East countries are the main buyers. Switzerland and the city of London, historic commercial and financial centres, still firmly at the helm of the art market, would deserve a particular discussion in a group in which the old states and emerging economies can dialogue and grow together.

The group’s goal is therefore to consolidate an international professional network for the benefit and service of buyers and sellers.

Having a look at the trends, in 2019, global sales of art and antiques reached an estimated USD 64.1 billion. The three major art hubs, the US, the UK, and China, continued to account for a majority of the value of global sales. The US was the largest
...next page

market worldwide and accounted for 44% of global sales by value. After two years of resilient growth, given the country's turmoil with the rollout of Brexit, the UK market declined by 9% in 2019. In China, it fell by 10% in 2019 to reach USD 12 billion, a second year of declining sales and accounting for 18% of the global market (*Source: Art Market 2020*).

Now it is essential for our Focus Group to grow, increase our international presence, improve skills and knowledge, and allow individual professional firms to become national references in the field of professional assistance in the art market.

Art needs professional services, being the markets with the largest and most complex distribution levels: dealers, fairs, auctions, online commerce – each segment requires professional, legal, labour law, tax knowledge, and much more.

It is also a sector that hires and invests. It is estimated that there were approximately 310,000 businesses operating in the global art and antiques market, employing about 3 million people, and relatively stable.



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There were more than 2.7 million people employed worldwide in the gallery and dealer sector, and over 50% were under 40 years of age. The auction sector was estimated to have employed about 280,000 people worldwide. It is also estimated that the global art trade spent USD 20 billion on a range of ancillary and external support services directly linked to their businesses.

Safe haven, investment asset, and working capital are just some of the functions performed by the masterpiece.

The XLNC Art & Media Focus Group is a blank canvas, ready to draw the first line...

If you are an XLNC member interested in joining this Focus Group, please email us at info@xlnc.org. You can see the list of all current Focus Group members on xlnc.org/focus-groups/12-art-media.

► XLNC TAX FOCUS GROUP

Update on Activities

■ **By Graham Busch and Dr Benjamin Cortez**

The Tax Focus Group (TFG), as the central group for expert practitioners of XLNC member firms engaging in the field of taxation, offers members a knowledge hub and platform for exchange amongst members.

The Tax Focus Group strives to be the key point of contact for XLNC members on issues relating to cross-border tax matters.



Graham Busch



Dr Benjamin Cortez

With its inaugural meeting in Madrid on 15 September 2018, the TFG has set its goal of establishing itself as a dynamic and competent platform for

exchange and sharing of information and experiences in taxation, identifying, discussing, and finding solutions on tax-related topics, and

establishing a network and fostering professional and personal bonds between like-minded practitioners.

Since the Madrid meeting, the TFG has had bi-annual TFG meetings at all XLNC conferences and various WebEx conference calls. With meeting attendances of over 30, an active LinkedIn group, and a well-established network, the TFG has steadily increased its activities. International taxation, developments in regard to the OECD BEPS project, the issue of taxation, and the digital economy, as well as the taxation of high net worth individuals, are matters that the TFG has specifically focused on.

TFG Newsflash

With our goal of offering tax expertise and technical knowledge to all XLNC members, the TFG has actively addressed the current developments resulting from the reaction of the global governments to mitigate the burden on taxpayers resulting from the dramatic impact of the COVID-19 pandemic. With the TFG COVID-

Newsflashes, expert members of the TFG have highlighted the legislative reactions taken by various jurisdictions in regard to tax measures. Member firms willing to contribute to the COVID-Newsflashes are welcome to contact us.

The TFG welcomes all interested member firms to join and actively engage in the group. Please feel free to contact Graham Busch or Benjamin Cortez if you are interested

in joining or have questions that the TFG can help you with.

Looking for a tax expert in a certain country? Please check the XLNC Focus Group members page: xlnc.org/focus-groups/26-international-taxation.

Interested in joining the XLNC TFG LinkedIn group? Please contact Graham Busch or Benjamin Cortez to be added to the group.

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Taxation of UK Residential Property

■ By Amal Shah

The tax implications of owning UK residential property depend on many factors, including how it is held and its use. This article outlines the key points which should be considered, from purchase through to disposal.

Purchase

When buying a UK property, it is subject to Stamp Duty Land Tax (SDLT) in England and Northern Ireland, Land & Buildings Transaction Tax (LBTT) in Scotland and Land Transaction Tax (LTT) in Wales.

SDLT – SDLT on residential purchases starts at 2% for properties valued at more than GBP 125,000 and increases to a maximum of 12%. HMRC announced that it will introduce a 2% surcharge for UK residential
...next page

property acquired by non-UK tax residents from 01 April 2021. First time buyers purchasing a property for up to GBP 500,000 pay no SDLT on the first GBP 300,000 of the purchase price.

It is also important to note that worldwide ownership is considered when purchasing an additional residential property, meaning that a **3% surcharge** can apply to a first UK property purchase.

Companies Purchasing Residential Property – Where a company or other “non-natural person” acquires a property over GBP 500,000, SDLT may be payable at a 15% “super rate”.

Exemptions include certain properties used in a letting or property development business. The 3% SDLT and LBTT surcharge applies to all corporate purchases of residential property where the 15% rate does not apply.

Ownership

Who occupies the property? – Tax implications differ depending on who occupies a property. For individuals, it is relatively straightforward, but it can differ for trustees and companies.

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Amal Shah

Trustees – If the property is occupied rent-free by a beneficiary of a trust, the beneficiary will be in receipt of a trust benefit, which could be matched to underlying income and gains in the trust structure, giving rise to a UK tax charge.

The trustees should be aware of Principal Private Residence (PPR) relief and exercise their dispositive powers to permit the beneficiary to occupy the property.

Companies – The Annual Tax on Enveloped Dwellings (ATED) regime applies to companies owning UK residential property which is worth more than GBP 500,000. Where the property is occupied by an individual connected with the company, an annual flat rate tax (ATED) is due. For ATED charges applying from April 2018, the rate will be based on the property’s market value on 01 April 2017 or acquisition price if later.

Renting the Property?

Individual – An individual letting a UK residential property, whether a UK resident or not, is subject to income tax at their marginal rate. Deductions are available for revenue expenses. Relief for mortgage interest is restricted, and only the basic 20% rate tax relief will be available. Furnished holiday lets are subject to different rules.

Trustees – Both UK and non-UK resident trustees are

subject to income tax at 45% on their rental profit.

Companies – A UK resident company is subject to 19% corporation tax on net rental profits. Deductions are available for revenue expenses, with no restriction on financing costs.

Companies may be an appropriate acquisition vehicle for residential properties which are to be let out commercially (where no ATED or related charges should apply).

Non-Resident Landlords – Non-UK resident landlords are subject to 20% withholding tax on rents received unless an application is made to HMRC under the non-resident landlord scheme for rents to be paid gross.

Inheritance Tax

UK inheritance tax (IHT) applies to UK assets which are directly owned. IHT is chargeable at 40% in relation to assets held at death. IHT also applies to any gifts made within seven years prior to death.

Transfers of UK property into a trust attract a 20% IHT charge and the UK assets will be subject to a 6% IHT charge every 10 years, and a pro-rated 6% IHT charge on any distributions from the trust. Where the settlor of the trust retains an interest, in addition to these charges, the property will remain in their estate for IHT purposes.

Disposal

Generally, when disposing of a property gains must be reported on the relevant self-assessment tax return. However, non-resident capital gains tax (NRCGT) must be reported separately, within 30 days of the disposal taking place. Penalties apply to late returns.



The 30-day filing and payment deadline for disposals of UK residential property has been extended to UK tax residents for disposals on or after 06 April 2020.

Individuals – Individuals are subject to CGT on gains realised on the disposal of residential property. Individuals selling their only or main residence qualify for PPR relief, so the gain is not chargeable. CGT on residential property is charged at 18% or 28%, depending on whether the individual has any basic rate band remaining (after their income calculation).

Non-UK resident individuals are subject to gains realised by reference to the April 2015 market

value, or acquisition price if later.

Trustees – UK resident trustees are subject to 28% CGT on gains from a disposal. Non-UK resident trustees are subject to NRCGT at 28% on gains realised on disposal by reference to the April 2015 market value, or acquisition price if later.

Company – Companies are subject to CGT at 19% on residential property gains realised on disposal by reference to the April 2015 market value, or acquisition cost if later.

In addition, anti-avoidance legislation may attribute the gain of a non-resident company to the shareholders. This is subject to a motive defence where it can be

shown that the structure was not set up to avoid CGT or corporation tax.

CGT on Disposal of Shares and Commercial Property. From April 2019, all disposals of UK property by non-residents have been subject to CGT, as are disposals of indirect interests in such property. Gains on commercial property and indirect interests in all types of property have been rebased to April 2019, so that only the element of gain accruing from that date is taxable. Tax will be due at the same rate as an equivalent disposal by UK-resident companies.

The tax implications of purchasing UK property can be complex; therefore, it is imperative to be aware of the many changing factors.

SCHLARMANNvonGEYSO Wins a “Managing IP” Award

The IP team of XLNC member firm SCHLARMANNvonGEYSO has won an [🔗](#) “Impact Cases of the Year” accolade at the Managing IP Awards 2020, which took place on 05 March in London, UK.

They have been recognised for their work on the legendary KRAFTWERK music project. The award is related to its landmark case against Moses Pelham and others regarding the illegal sampling of “Metal on Metal”.



**Dr Hermann
Lindhorst**

The Managing IP Awards are run by Managing Intellectual Property magazine and recognise firms, individuals, and companies who have worked on the most innovative and challenging IP work over the past year.



**Ulrike
Hundt-Neumann**

Dr Hermann Lindhorst, SCHLARMANNvonGEYSO’s Head of IP/Sports/Franchise, who is supporting KRAFTWERK together with Ulrike Hundt-Neumann, said: “We’re excited to be recognised for our work on this historic case in

our fight against illegal sampling in favour for creative copyright owners.”

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Vestius Advocaten in *The Legal 500* and *Chambers*

XLNC member firm Vestius Advocaten has been included once again in The Legal 500 EMEA rankings and the Chambers Guide Europe.

The Legal 500 and Chambers and Partners annually publish leading guides in which only the best law firms and departments in each jurisdiction are listed. A listing in both

guides is a quality mark. The listings and recommendations are based, among other things, on interviews with clients and competing law firms.

The Legal 500

The Legal 500 mentions the following about the Corporate Law department:



“Vestius is praised for its handling of mid-market deals, which it combines with ‘great communication’ and a

practical approach. Its client base includes venture capital and private equity firms, sustainable energy companies, e-businesses and transport and logistics companies. Team co-head Helger Kamerman is 'calm under pressure and a good negotiator' and fellow co-head and

'trusted adviser' Daan Van Noord provides a wealth of experience. Henk Brat's expertise includes buy-outs, mergers and acquisitions, stock and asset transactions and restructurings."

And about the Employment Law department: "Vestius's employment team is adept in advisory work for corporate clients, generally mid-market players, though the firm also acts for Dutch subsidiaries of large multinationals. It also assists individual employees, in a wide variety of litigation and advisory work.

Recent work has included litigation related to non-compete clauses, transfer of undertakings and redeployment of employees. Bart de Vroe and Michiel van Haelst jointly lead the employment team.

Chambers and Partners

Furthermore, the Employment Law department is listed in the Chambers Guide Europe. Chambers and Partners mentions the following about this department:

"The team offers a 'high standard of knowledge and clear communication', as well as providing 'clear, high-quality advice.'"

Once again Vestius Advocaten would like to thank their clients and team for this great result!

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Bercún Law Firm: Three Lawyers Promoted

XLNC member firm Bercún Law Firm, a well-reputed law firm in Buenos Aires, Argentina, announces

the promotions of Dras Adriana Flora Edith Habibo, Gisela Paula Beltrame, and Maria Laura Rozental.

Chair of Labour Law II of the Faculty of Social Sciences of the University of Buenos Aires.

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Dra María Laura Rozental

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Dra María Laura Rozental graduated from the Law School of the Universidad Católica Argentina in 1999 and in 2008 did a specialisation in business administration at the University of El Salvador in conjunction with the State University of New York at Albany, graduating as one of the best students in her year.

She was an assistant professor in the Chair of Mediation and Conflict Resolution at the Universidad Católica Argentina and held a

She joined Estudio Bercun in 2007 as a senior lawyer and later, in 2012, she was appointed as an associate. Dra Gisela Paula Beltrame graduated from the University of Buenos Aires Faculty of Law and Social Sciences, in 2002. Later, she specialised in business legal advice at the University of Buenos Aires. In 2016, she participated in talks to update the new Civil and Commercial Code of the Nation. In 2017 she completed a Diploma in bankruptcy and

...next page



***Dra Adriana
Flora Edith
Habibo***

bankruptcy proceedings before the Public Bar Association of the City of Buenos Aires. She also specialised in commercial law and labour law.

In 2003 she entered the Bercún Law Firm as a junior lawyer, continuing her career as a senior lawyer. In 2012,



***Dra
Gisela Paula
Beltrame***

she was appointed as an associate.

Dra Adriana Flora Edith Habibo started her career at Bercún Law Firm more than 36 years ago. She graduated from the Faculty of Law of the University of Buenos Aires in 1983 where she obtained her law degree.



***Dra
Maria Laura
Rozental***

The three new partners are working hard, together with their Senior Partner, Director Dr Eduardo Bercun, to continue the 72-year legacy that Bercún Law Firm possesses in their legal market.

Leadership in a Crisis

■ By Richard Kleiner

We are certainly in an age of disruption. Advances in technology and AI, the transition from compliance to consultancy, millennials shaking up the workforce, and now the coronavirus pandemic, mean our employee and client's needs are changing. To keep pace with expectations and help navigate firms, especially through the coronavirus crisis, leaders are paramount to the success of the business.

There are certain skills that partners need to possess to fulfil their responsibility and each partner will have their own management style. However, just because someone is a partner (or manager) does not mean they have leadership qualities. Therefore, it is essential we continue to research and develop our team's, and our own, leadership qualities and cultivate

new skills. Not only will this instil a better culture but will also enable us to recognise the natural leaders in our business, which we need to capitalise on now more than ever.

Connecting with the Team

Barriers have already started coming down between partners and employees, but there is still a need for partners to be closer to the team. This is especially true now, when people are working from home and there is less contact with partners and managers.

A great example of someone who has connected with his team is Delta Airlines' CEO Ed Bastian, who joined Instagram in 2019. Bastian joined the platform to connect with his team and be seen as a modern leader. He now uses the platform to celebrate the team's culture, the business,



Richard Kleiner

and set an example for others in his company. Recently, he has used the platform to spread positivity and showcase his business's support for front line workers during the crisis.

Now, we don't all need to jump on Instagram, but partners should be mindful of how they are connecting with their employees and ask themselves whether, through effective and proactive communication, they are leading by example.

Partners should demonstrate that they are passionate about their

job, that they truly believe in the firm's vision and that they live by the values they expect from the business and the team.

Essentially, a firm's culture is set by you and your partners, so it is vital your senior management abide by the values you want your team to embody and embrace.

Celebrate the Mistakes

Everyone makes mistakes: it's human, and we need our team to be open and transparent about errors so that we can all learn from them. If there is a culture or manager that comes down heavy on mistakes, how can we expect the team to come forward when they have done something wrong?

In my view, leaders should acknowledge mistakes and almost celebrate them. In that way, we can all work on the improvements that can be put in place to ensure they do not happen again, using them as an opportunity for advancements within the team and therefore for the business.

Decision-Making

When I am looking for a new leader, an essential skill I look for is the ability to be decisive and employ critical thinking. It is difficult to know, initially, whether every decision will be a success, but if it is well thought out and made with the business' best interests in mind, that is all you can ask.

If it works out that the decision was wrong, lessons can be learnt. Every problem has a potential solution; it is how partners react to the mistake that is critical. Ideally, partners should acknowledge the wrong decision,



without panicking, face the issue head on, and use that experience to influence future decisions.

Communication

Leaders must be able to communicate with their team clearly and honestly. Leaders should be able to have open conversations to discuss what is and is not working, helping to create a culture that is inclusive and transparent, where the team feels their views and input have been heard. It also ensures everyone is aware of the business goals and how to achieve them.

Listening is also integral. Your team will have ideas and insights into their role, which can be used to streamline and improve your business

processes. Listening to this feedback will not only empower the team and make them feel valued, but can also improve your way of working.

...next page

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Delegation

It is human nature to believe that no one can do a job as well as you can. You know the business and your clients inside out; and it is difficult to give that trust to someone else.

However, if you have made the right hires, you should have a team of people in place with the skill set needed to fulfil their

roles and deliver value to your clients. Your partners should be identifying and delegating tasks to these team members and trusting them to do their jobs, in turn, building a culture of trust. Doing so not only demonstrates good leadership skills, but frees up each partner's time to focus on business development activities and, as a result, growing their portfolio and generating wealth for the business.

These qualities are the key attributes I see in successful business owners that are not always capitalised on in our own sector. Management styles differ, but leadership qualities are shared.

If all partners are demonstrating these skills, a better culture will be developed that will lead our firms through this crisis.

Current Must-Knows for Foreign CEOs in Russia

By Chet Bowling

Practically every country comes with its national specifics. Some may be more current, others less – some legislation goes back to laws put into force 50 years ago or more. Some are more critical, others less.

Chet Bowling, who has lived and worked in Russia for almost 30 years and is a partner at Bellerage

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Alinga, a TOP-5 financial outsourcing company in Russia, shares with foreign CEOs five crucial specifics:

Russian Accounting Principles

Unlike the accounting principles used in Europe (IFRS) and the US (US GAAP), Russian accounting is based not on the business transaction, but on the document confirming it (i.e., the legal form is more important than the economic content). Another characteristic of Russian accounting is the strict regulation of the accountant's actions instead of the professional judgment principle used under IFRS; the Russian accounting system is governed by the state, including the chart of accounts, accounting principles, and statement forms. Therefore, over 90% of Russian companies use 1C, a local accounting software that makes it easy to report to the tax authorities.



Chet Bowling

Termination of Labour Contracts

The labour code of the Russian Federation is mostly aimed at protecting the interests of employees. With regard to personnel documentation, hard copies (non-electronic copies) of documents are prevalent; document forms and procedures are strictly regulated.

If an employee is to be dismissed without his consent, one has to either terminate his position, prove breach of discipline, or argue the employee's refusal to amend the terms of the employment agreement.

All three paths are strictly regulated, require thorough documentation, and may be challenged in court.

Violation of Migration Laws

If a company violates migration laws, fines may reach up to RUB 1 million, and business activities may be suspended for up to 90 days. Russian migration legislation is very demanding and strictly enforced.

For example, upon conclusion or termination of an employment agreement with a foreigner, a notification has to be sent to the responsible government authority within three days.

Currency Control

Settlements between Russian-resident companies and individuals must be made only in Russian rubles. Prices in contracts may be indicated in any currency, but they must be converted into rubles when making payments.

Settlements between residents and non-residents may be made in any currency and are subject to mandatory currency control by the banks (even for settlements in Russian rubles). For certain import/export operations (including import/export of services), the related contract must be registered with the bank under a special procedure. Failure to comply with currency control requirements may result

in significant fines of up to 100% of the transaction amount.

General Director's Liability

A general director of a Russian company bears full responsibility for the activities of a company under labour, tax, customs, and criminal law. This results in a liability level immeasurably higher than would be the case in a Western company. For example, if a buyer does not provide the confirming documents for an advance payment in time, resulting in a violation of currency control, not only may the company be fined, but also the general director, which for foreigners might result in deportation.

Tax and Legal Guide for Real Estate Investors in Spain

■ By James Berrio

Spanish Legislation favours the entrance of foreign investments into Spain and, in this sense,



James Berrio

real estate properties are one of the most attractive assets for companies and individuals interested in investing in Spain.

Transfer of Ownership

On the basis that freedom of agreement is the principle that governs the Spanish legal system, to acquire a real estate property in Spain, the main requirement is

to close a valid sale and purchase contract. It is a common practice to first sign a private agreement, and then to later formalise a public deed in front of a public notary.

While registration of the public deed in the Land Registry is not compulsory for the valid transfer of the ownership, it has positive consequences since it grants protection against any "good faith" third party. Registration usually takes no longer than three weeks.

...next page

Property Acquisition Procedure

There are three different procedures to acquire a property in Spain:

1. Asset Deal

Investing directly via asset deal is the most extended way of structuring the operation of ownership transfer.

2. Share Deal

Property transfer could also be structured indirectly, so the investment would be made in a company that owns several properties.

3. Public auction

Promoted by courts or notaries, this way of transferring property has become more usual in Spain due to the high number of insolvency proceedings.

The acquisition of real estate in Spain by a non-tax resident company requires the non-resident entity to obtain a tax identification number (hereinafter NIF) in Spain. This NIF is provided by the Spanish Tax Office.

Acquisition of a Property – Taxation in Spain for an Individual vs Company

The **acquisition of real estate in Spain by an individual** might be subject to Value Added Tax (VAT) or Transfer Tax (ITPO) depending on whether the deal corresponds to the first or a later transfer of the real estate property. The transaction is subject to a 10% VAT rate (dwellings) if it is the first transfer of the real estate. In the case of a second or



later transfer of the real estate, the transaction would be subject to ITPO.

Transfer of the property by non-VAT taxpayers is always subject to ITPO at a rate ranging from 6% up to 11% (depending on the region where the property is located). ITPO is a tax paid to the Spanish regions, so the tax rate can be different in each one; for instance, in Madrid, the tax rate in 2020 is 6% (general tax rate for dwellings).

According to Spanish legislation, **real estate investments made by a company** have the following implications:

1. The transaction is subject to 10% VAT rate (dwellings) if it is the first transfer of the real estate. On the other hand, in the case of a second or later transfer of the real estate, the transaction would be subject to ITPO and exempted from VAT. However, the VAT law allows not applying the VAT exemption when certain requirements are met.
2. The VAT law provides a reduced tax rate of 4% for companies that acquire real estate properties and apply for the special tax

regime for entities engaged in rental business activities (renting of dwelling) provided in the Corporate Income Tax Law (hereinafter, CIT Law). Also, the ITPO law provides a relief of 95% of the ITPO to pay to those entities that have applied for the SOCIMI tax regime. The relief is applicable in the acquisition of dwellings that are going to be rented and the purchase of land to promote dwellings intended to be rented.

SOCIMI Tax Regime

One of the most extended investment vehicles in real estate is a publicly held corporation (Sociedades Anónimas) whose social object consists in the acquisition, promotion, and rehabilitation of urban real estate properties to be rented. The company must trade in a regulated market.

Tax regulation is given special consideration, with several benefits subject to accomplishment of requirements such as: a) dividends distribution of 50% of the benefits generated with asset transfer; b) 100% distribution of the benefits coming from other

SOCIMIs and c) 80% distribution of other benefits generated.

For SOCIMIs, the **CIT rate is 0%**, with some exceptions, **and a special levy** is established of 19% on dividends distributed to qualified shareholders (those whose interest in the entity's share capital is equal to, or greater than 5%), when such dividends are exempted or are taxed at a rate lower than 10% with certain exceptions.

Special Tax Regime for Entities Dedicated to the Renting of Dwellings

This special tax regime is regulated in art. 48 of the CIT Law and applies to those entities whose main economic activity is the rental of dwellings, located in Spain, which have been built, developed, or acquired.

In order to apply this special tax regime, it is mandatory that the number of dwellings rented or offered for rent is always eight or more. Also, the dwellings must be rented and offered for

rent for at least three years, after which they can be transferred.

The special tax regime allows the company to carry out other complementary business activities to the main rental activity. Nevertheless, if the entity develops other complementary activities to the main rental, at least 55% of the income for each tax period, must qualify to apply the relief established by this special tax regime.

In any case, the booking or accountancy of the development and renting of dwellings must be made separately for each dwelling, so that it is possible to identify the income and expenses of each activity (development vs renting).

It is important to mention that in order to be able to apply this regime the entity must carry out an economic activity. According to the CIT Law for the rental of dwellings, there is economic activity when at least one full-time employee is utilised to manage the rental activity. However, the Spanish Tax Administration has interpreted that if the management of the rental activity is subcontracted to a third party who has the personal

means necessary to carry out such activity, this requirement is also considered complied with.

As far as taxation is concerned, the companies included in this special regime are subject to the general tax rate of 25% (without prejudice to the application of the reduced rates of newly created entities) and they are also entitled to a relief of 85% of the part of the Corporate Tax corresponding to the income derived from the renting of dwellings. Hence the effective tax rate is 3.75%. It should be noted that this relief cannot be applied to income arising from the transfer of dwellings.

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Residency and Citizenship for Foreigners in Bulgaria

■ **By Albena Rasheva**

The requirements for residency and citizenship are listed in several legal acts, including the Constitution of the Republic of

Bulgaria; Entrance, Stay and Leaving of the Republic of Bulgaria by Citizens of the European Union and the Members of Their Families Act; and the Act for Foreigners and the Bulgarian Citizenship Act,

as well as the regulations for the application of the respective acts.

EU citizens and members of their families who are not EU citizens,
...next page

during their stay, have the same rights and obligations under Bulgarian laws and international contracts to which Bulgaria is a party, except those for which a Bulgarian citizenship is demanded.

Residency in Bulgaria for foreign physical persons depends on whether the person is or is not a European citizen.

After the latest changes in local legislation, we have two main acts that arrange the status of foreigners that want to acquire residency or citizenship.

1. If the person is a European citizen, she/he will have to obey the rules and procedures for EU citizens, required by the local Entrance, Stay and Leaving of the Republic of Bulgaria by Citizens of the European Union and the Members of Their Families Act.
2. If the person is a non-EU citizen, then she/he will have to obey the rules for entrance, stay and leaving Bulgaria under the requirements of the local Act for Foreigners.

Obtaining a Bulgarian citizenship, on the other hand, gives to the new Bulgarian citizen a free visa regime for a Bulgarian passport to more than 110 countries, including the EU, and a simplified visa-obtaining procedure for 46 other countries.

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Citizenship itself shows the legal-political relation between a physical person and a state that has established its powers over a certain territory and number of people. Having any citizenship gives to the individual an opportunity to travel, to have certain rights and obligations, to protect his/her rights in a certain way, etc.

Types of Residency Regime in Bulgaria: Terms and Conditions

For EU Citizens – EU citizens can stay in Bulgaria for three months without need for any permission. An EU citizen can obtain permission for long-term residency or permanent residency. The long-term residency is for a term of 5 (five) years. The long-term residency permit is issued for an EU citizen who meets one of the following requirements:

- Is a worker or self-employed in Bulgaria;
- Has health insurance and the necessary financial funds to cover the expenses for his/her stay and the members of his/her family, without the need to receive support from the local social-security system;
- Is a student at any university and has health insurance and the needed financial funds to cover the expenses for his/her stay in Bulgaria.

The long-term residency permit is issued after a list of documents are presented, mainly to prove the fulfilment of the conditions, set above. The permanent residency permit is issued on the same day, when all the documents are provided in person by the EU citizen.

The right for entrance and the right for stay in Bulgaria of an EU citizen or a member of his/her family can be limited in exceptional cases and based on reasons concerning national security, public order, or public health.

The administrative measures which can be imposed on an EU citizen or a member of his/her family are:

- deprivation of right to residency in Bulgaria;
- expulsion;
- restriction on entering Bulgaria.

For Members of Families of EU Citizens, who are not EU Citizens

– Members of the families of EU citizens can also obtain a permission for residency in Bulgaria if they meet certain criteria. Members of the families of EU citizens can enter with a valid passport and an issued visa on their name. Members of the families of EU citizens can stay in Bulgaria after they present, in person, a valid passport, a document proving that he/she is a member of the family of an EU citizen, and a document for a paid state fee. The permission for long-term residency in Bulgaria is issued on the same day as the documents are applied.

Residency in Bulgaria for Non-EU Citizens

A foreigner under the definitions of the Bulgarian Act for Foreigners is every person who is not a

Bulgarian citizen. A foreigner may be also defined as a person who does not have any citizenship.

Foreigners can reside in Bulgaria based on the following legal reasons: visa; international agreement or agreements of the EU with third countries for visa-less regime; legal acts of the EU, or permission from the foreigners administrative control bodies, after receiving a written statement from the National State Security Agency. Foreigners and the members of their families can reside in Bulgaria as follows:



- **Short term** – up to 90 days in every 180-day period after the date of their entrance into Bulgaria;
- **Continuous term** – for up to one year;
- **Long term** – for up to 5 (five) years, when the initial term can be prolonged;
- **Permanent term** – for an unlimited period of time.

In a shorter term, and covering different requirements, foreigners can obtain permission for permanent residency if they:

1. Have invested BGN 1 million or have increased their investment by acquiring:
 - a. stocks at a Bulgarian commercial entity, listed at the Bulgarian regulated market;
 - b. obligations or state bonds and their derivatives, issued by the state or the municipalities, with remaining due date not less than six months;
2. Have a right over a part of the property of a Bulgarian company with more than 50% state or municipality participation at the capital;
3. Have rights over a Bulgarian intellectual property;

4. Have rights under concession agreements on the territory of Bulgaria;
5. Have deposited BGN 1 million at a Bulgarian credit institution for a term not less than 5 years;
6. Have invested at a Bulgarian legal entity, which stocks are not traded at the regulated market, for an amount not less than BGN 6 million.

In the abovementioned situations, the competent body of the Ministry of Interior shall make a decision on the request for permanent residency for up to a three-month term after applying it.

Citizenship for Foreigners

The Bulgarian Citizenship Act defines that a person who is not a Bulgarian citizen can acquire Bulgarian citizenship if he/she, by the date of the application of the request, cumulatively:

- is an adult;
- has received permission for a permanent or long-term residency not less than 5 (five) years ago;
- has not been sentenced to a penalty for a crime;

- has an income or a profession which gives him/her an opportunity to meet his/her expenses;
- speaks Bulgarian;
- is free of his/her current citizenship or will be by the date of acquiring the Bulgarian citizenship.

There is an easier procedure for acquiring a Bulgarian citizenship, if the foreign citizen is investing in the Bulgarian economy, as follows:

1. In a term less than a year, has received permission for a permanent residency in Bulgaria and has increased his/her investment up to BGN 2 million, or has invested not less than BGN 1 million for a priority project in Bulgaria, certified under the requirement of the Bulgarian legislation;
2. In a term more than a year, has received permission for a permanent residency and has received a certificate for investments A class from the Ministry of Economy.

The term for acquiring Bulgarian citizenship can be, depending on the different hypothesis, between two and 18 months, after the application with all the relevant documents has been submitted.

Around Company Criminal Liability: The Advantages of Corporate Compliance Pursuant to Legislative Decree 231/2001

■ By Dr Giulio Antoniotti

The adoption of the Organisation Management and Control System and the implementation of the Supervisory Board as an exempting cause in the event of a crime committed in the interest of the Company.

Legislative Decree 231/2001, in order to effectively fight corporate crime, introduced, for the first time in our legal system, criminal liability of companies and bodies.

This liability model is intended to prevent the commission of certain

crimes in the interest or for the benefit of the company itself (the so-called predicate offences) by subjects included in the corporate structure.

More precisely, the company that gave rise to the offense is liable for the offenses committed in its interest or to its advantage both by top management (people who perform functions of representation, direction or administration of the company) and by people who de facto manage and control the same, or even by subordinate employees, that is, subject to the direction and/or supervision of one of the subjects indicated above.

In order for the legal entity to be called to respond pursuant to Legislative Decree 231/2001, it is also necessary that the same has not taken steps to organise its business in such a way as to prevent unlawful conduct (organisational fault).

In this perspective, the offense is attributable to the company when it is the result of a company policy that has not implemented a preventive "legality model" and/or an efficient control system such as to ensure compliance with management and supervisory obligations.



**Dr Giulio
Antoniotti**

There are four types of sanctions that can be applied, even cumulatively between them:

1. Financial penalties;
2. Interdiction measures such as disqualification from the exercise of the activity; suspension or revocation of the authorisations, licenses or concessions functional to the commission of the crime; prohibition to contract with the public administration; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods and services;
3. Confiscation of the price or profit of the crime;
4. Publication of the sentence.

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The company, however, may be exempt from liability whether (prior to the commission of the offense by its representatives) it has adopted and effectively implemented "organisation and management systems suitable for preventing crimes of the type that occurred" (exempting cause).

The Company does not incur liability if it can demonstrate that:

- It has adopted and effectively implemented a suitable organisational model;
- It has entrusted the task of supervising the functioning and observance of this model and of updating it to a board endowed with autonomous powers of initiative and control (the supervisory board);
- The offense was committed by fraudulently circumventing this system;
- There was no omission or insufficient supervision of the functioning and observance of the model.

Therefore, the adoption and effective implementation of a suitable organisation, management and control system takes on an important role, as the possibility of a positive defence of the company in criminal proceedings for liability pursuant to Legislative Decree 231/2001 depends on it.

It is important to highlight that adopting and implementing an organisational model for preventing crimes does not constitute an obligation of the company, but it is rather a condition for benefiting from a possible exemption from liability if a crime is committed by representatives of the company itself.

However, the lack of a suitable model may constitute a violation of the managers' duties and, in particular, of the duty of adequacy of the organisational, administrative,



and accounting structure (art. 2381 cc) and of the general duty to manage diligently (art. 2392 cc).

As the Court of Milan stated (Milan Civil Court, section VIII, 13/02/2008 No. 1774), in fact, "where the risk of crime and therefore the risk of sanction for the company is not insignificant, failure to prepare the model also constitutes a breach of the managers' obligations to provide adequate organisational structures".

It should be noted that the adoption of an organisational system, in addition to the appreciable advantages in terms of fairness, transparency, and consistency of the management, determines favourable results both from an economic and a competitive and reputational point of view. In the regulation implementing the legality rating published by the Competition and Market Authority (with resolution no. 27165 of 15 May 2018) it is in fact provided that one of the conditions for the attribution of the legality rating is the adoption "of an Organisational System pursuant to Legislative Decree 231/2001". The consequent advantages consist of facilitations in

obtaining public contributions and access to credit. The ANAC Guidelines no. 6 of 16 November 2016, identify among the self-cleaning measures relevant for the purposes of art. 80 of the Tender Contracts Code, the adoption of effective organisation models among the measures that allow to overcome the exclusion from participation in public tenders for economic operators.

Finally, the Italian Stock Exchange Market Regulation has included among the corporate governance requirements for obtaining the STAR qualification, the adoption on a mandatory basis of the Organisation, Management and Control System set forth by articles 6 and 7, D. Lgs. 231/2001, underlining its importance. Our firm therefore assists companies by offering a global coverage, either from a legal (Avv. Paola Ciccarelli) or from an accountant point of view (dott. Giulio Antoniotti) with the tailor-made creation of the organisational system and with its implementation by the supervisory board. The company is thus able to focus on its productivity, being sure of receiving a constant legality control and an essential operational support.

COVID-19 Updates from Different Jurisdictions

As the global COVID-19 pandemic continues to spread and create challenges for businesses worldwide, XLNC member firms update their clients on new regulations and measures. Some XLNC members share their resources here to help you address some of the challenges you and your business may be facing.

In addition to the following information, the **Tax Focus Group** has published a multi-part series of tax-related email newsflash updates as response to COVID-19. If you would like to publish a brief update in one of the next editions, please get in contact with Barbara at b.reiss@xlnc.org.

The **Legal Focus Group** also just started to publish regular COVID-19 updates in form of an email newsflash (series). All interested authors may email Barbara Reiss at b.reiss@xlnc.org in order to receive details.

Argentina:

Suspension of Rentals and Freezing of Prices

■ **By Dra María Laura Rozental**

Decree 320/2020 established:

Suspension of Evictions

The eviction of real estate for non-compliance with rental payments is suspended until 30 September 2020 throughout Argentina. The property must be in the possession of the tenant, his successors, or a sublocation. Evictions that were carried out by 29 March are suspended until 30 September. The limitation

periods are suspended until 30 September 2020 in the eviction sentence execution processes.

Contract Extension

Real estate rentals that expired on 20 March, and all rents that expire before 30 September 2020, are extended until 30 September 2020, provided that the property is held by the tenant, his followers, successors, or sub-tenants.

Contracts in which the rental term expired and the tenant continues to possess the property are also extended until 30 September 2020.



Dra María Laura Rozental

The tenant can choose to keep the expiration date of the agreed rental or extend it for a shorter term than 30 September 2020. The tenant must reliably notify the landlord of what he decides at least 15 days before the agreed maturity, if possible. The extension of the



contractual term will imply the extension, for the same period, of the obligations of the surety.

Freezing Prices

Until 30 September 2020, real estate rental prices are frozen at the rental price for the month of March 2020. This also applies to the monthly fee to be paid by the tenant if the parties agreed to a full contract price. The other periodic payment benefits assumed by the tenant will be governed according to what is agreed by the parties.

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Exception to Price Freezing

Price freezing does not apply to rental contracts in which the rental is necessary to cover the basic needs of the lessor, his primary and living family group. This must be credited.

Bond Keeping

Bonds are extended until 30 September 2020. Until 30 September, or until the extension expires, the rules on the expiration of sureties provided for in article 1225, or paragraphs b) and d) of article 1596 of the National Civil and Commercial Code will not apply.

Debts for Price Differences

The price difference between the amount set in the contract and that corresponding to pay for the price freeze must be paid in at least three, and at most six, monthly,

equal, and consecutive installments. The first of those installments will expire in October 2020.

Debts for Non-Payment

Debts generated from 29 March to 30 September 2020 due to non-payment, or payments made outside the agreed deadlines, or partial payments, must be paid in at least three, and a maximum of six, monthly, equal, and consecutive installments.

The first of these installments will expire in October 2020. Compensatory interest may be applied, which may not be higher than the 30-day, fixed-term interest rate in pesos, paid by Bank Argentina Nation.

No punitive or default interest, or any other penalty, may be applied. The obligations of the surety party will remain in force until the total cancellation of the debt.

Canada: Navigating the COVID-19 Business Environment

■ **By Vinay Khosla**

As the COVID-19 situation rapidly develops, we will do our utmost to communicate with you what government programmes are available to support you during these challenging times, in addition to other relevant business updates.

Federal Programmes

Special measures have been introduced under the **Work-Sharing programme** to help employers and employees avoid layoffs where there is a temporary reduction in the normal level of business activity that is beyond the control of the employer. These measures include:

- extending the Work-Sharing agreements by an additional 38 weeks;
- waving the mandatory waiting period between agreements; and
- easing the recovery plan requirements.

The Business Development Bank of Canada (BDC) and Export Development Canada (EDC) have been allocated an **additional CAD 10 billion in funds** to support small- and medium-sized businesses.

However, further to our discussions with various representatives at BDC/EDC, the details with respect to

how these funds will be utilised are in the process of being finalised.

The one-week waiting period for **Employment Insurance (EI) benefits** has been waived to help self-isolating employees.

Provincial Programmes

The **Government of Ontario** intends to introduce legislation that provides job-protected leave for employees unable to work for the following reasons:

1. The employee is under medical investigation, supervision, or treatment for COVID-19, they are acting in accordance with an order under the Health Protection and Promotion



Vinay Khosla

Act, they are in isolation or quarantine and they are acting in accordance with public health information or direction.

2. The employer directs the employee not to work.
3. The employee needs to provide care to a person for a reason related to COVID-19 such as school or day-care closure.

Planning and Next Steps for Businesses

If you find it difficult to fund your business's salaries/wages, consider a temporary layoff of workers with a record of employment so they may collect EI immediately due to the waiver of the EI waiting period (previously one week).

Since no details have been provided on how to obtain BDC COVID-19 related financing, if you have a relationship with BDC, you should reach out to your account manager. While no measures have been

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announced by the big banks, we expect to hear more from them soon.

Every company needs to assess their individual payment plans to landlords and other business partners and negotiate some working capital assistance on a case-by-case basis. Stay up to date with daily updates from Health Canada officials at noon EDT.

The Federal Government has not announced any extensions to the upcoming personal/trust/partnership tax return deadlines.

Bateman MacKay's COVID-19 Action Plan

Further to our Action Plan released

on 13 March 2020 (you can review our latest update here), we have recently recommended our staff to work from home. If client documents cannot be sent electronically, they can still be dropped off in containers just inside our office doors, which are monitored and scanned/circulated to the appropriate Bateman MacKay team member regularly.

Canada: Fighting Against COVID-19 Pandemic

■ By Louis Sapi

With Ontario calling on its “best and brightest minds” to combat coronavirus, an Orangeville CPA businessman, a Nigerian doctor, and their partners, are close to bringing an affordable emergency ventilator to market.



Louis Sapi

“It is portable, very small, and easy to carry. It is like carrying a bankers box. It is about that size”, said Orangeville businessman and CPA, Louis Sapi, who partnered with former Nigerian doctor, Dayo Olakulehin, on the project several years ago.

“Progress was slow as we invested just enough to build a prototype but there was no interest from anyone else to help invest”, he added. “COVID-19 changed everything.”

Dubbed the LifeAir G1, Sapi said the emergency ventilator was initially designed to be sold for about CAD 1,000, making it more affordable for poor and remote hospitals and clinics in the developing world.

The business group recently received CAD 150,000 in funding from an American seed money startup accelerator called Y Combinator, which Sapi said has helped finalise the prototype and get the emergency ventilator closer to Health Canada for possible certification.

“With LifeAir, you don’t need an intensive care unit bed. You do not need an anaesthesiologist and you don’t need a ventilator specialist. You can put this in a nursing home for these elderly people who are starting to suffer”, Sapi explained. “This one would be sufficient for the majority of cases that are currently on ventilators”, he added. “On a scale of 1 to 10 of respiratory distress – one is low,



Dr Dayo Olakulehin

10 is you need to be on an iron lung – we can handle up to a level 6 or 6.5.”

Sapi said the group’s next step will be to approach the province. The government recently announced it would invest CAD 20 million into the advancement of medical research and tools to combat infectious diseases through an Ontario COVID-19 Rapid Research Fund.

“Our province, our country and the entire world face an unprecedented situation, and the innovation and expertise of our research community is needed now more than ever”, said Ontario Minister of Colleges and Universities, Ross Romano.

...next page



The LifeAir G1 is based on an initial design by Olakulehin

“We have some of the best and brightest minds anywhere in the world right here in Ontario”, added Ontario Premier, Doug Ford.

“Whether it’s developing a vaccine, using 3-D printers to make personal protective equipment, or designing better portable ventilators, our brilliant researchers are leading the charge in the fight against COVID-19.”

First known as the D-box, the LifeAir G1 is based on an initial design by Olakulehin, a former doctor in Nigeria who immigrated to Canada with the concept of designing an inexpensive ventilator that could save lives and be

affordable for developing nations.

Sapi first met Olakulehin after he had finished guest lecturing for the Research Innovation and Creation (RIC) Centre, an Ontario program that provides advice to startup companies. When Olakulehin approached him, Sapi saw how much the prototype meant to him.

“There were almost tears in his eyes – how many deaths he saw that were needless. Children, adults, that really affected him”, Sapi recalled, stating that more than 100,000 people die in Nigeria alone every year from respiratory distress, largely due to malaria.

“He had no money. He was a poor doctor who cannot practice as a doctor in Canada. It is a typical story”, Sapi said. “He was just trying to find work and at the same time, help this project be born.”

The cost of most ventilators, Sapi said, starts at about CAD 10,000 on the “low end” and can reach up to CAD 30,000 or 40,000. He said Olakulehin and his partners have designed a prototype that could cost about CAD 1,000. Sapi said the group is about three

to four weeks away from having its prototype tested to World Health Organization (WHO) parameters. He said the finalised design is now with Health Canada for certification. “The WHO knows about us. The United Nations know about us”, Sapi explained. “They wanted us to get this product to market but we didn’t have the money.”

The LifeAir G1 emergency ventilator can control tidal volume, breathing rate, inspiration/expiration ratio and pressure safety systems and alarms. While it does not require intubation, Sapi said it comes with an attachment allowing a patient to be intubated if required.

“For the non-intubation, we free up the need to intubate which frees up the specialist. That also frees up an anaesthesiologist. That also frees up an ICU bed”, he said.

“Instead of shipping [seniors] to hospital where the coronavirus is running rampant, you can keep them in their own room with their own personal emergency ventilator”, he said, “That’s freeing up [hospital] resources, fighting the pandemic, helping long-term care facilities.”

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USA: Supporting Measures for SME

■ By Gerald Paolilli

The US Congress has enacted several provisions to support small business in this difficult period. XLNC member clients with US subsidiaries should advise their clients to take advantage of these programmes.



Gerald Paolilli

The following is a summary: There are many challenges that we are all facing due to the recent COVID-19 pandemic, and many businesses have been hit particularly hard and are looking for ways to manage their finances during this time. Recently, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was passed and signed into law in order to provide some relief. Not all aspects of the act will apply to all organisations, but we believe some of these items may be helpful to your business, and so we have provided a summary to help you take full advantage of provisions that may be helpful to you.

Paycheck Protection Program (PPP)

The Paycheck Protection Program (PPP) is administered by the Small Business Association (SBA) and is a loan programme with loan forgiveness provisions available if the business retains its employees. A business could potentially have 100% of this loan forgiven if they meet the requirements which will be summarised here. This programme is designed to encourage businesses to keep their current workforce employed. Although it appears from its name that this loan only pertains

to payroll costs, several other types of expenses are covered as well.

A business that has been in operation since 15 February 2019 may borrow 2.5 times its average monthly payroll costs. The average monthly payroll costs are calculated based on the payroll cost for the twelve months preceding the loan.

Payroll costs for the purposes of the monthly average calculation include the following items:

- Salaries, wages, commissions, or similar compensation up to USD 100,000 per employee;
- Various types of leave including vacation, parental leave, and medical or sick leave;
- Allowances for dismissal or separation of an employee;
- Payments required for group health insurance benefits;
- Employer contributions to retirement plans such as 401(k)s, IRAs, and similar accounts;
- State and local taxes that are assessed based on the compensation of employees;
- Compensation to sole proprietors/independent contractors of up to USD 100,000 per year.

Note: Federal employment taxes are not included.

The business may use these funds to pay the following expenses incurred from 15 February 2020 to 30 June 2020:

- Salaries and other payroll costs;
- Costs related to group health care coverage benefits;
- Mortgage payments;
- Rent and utilities;
- Interest on debt obligations.

Not all loan amounts will necessarily be forgiven under this relief. The amount of the loan that is forgiven is based on the amount of the expenses listed above paid within the eight weeks beginning when the loan was made.

The amount of loan forgiveness may be reduced if the business does not maintain its full staffing level. To determine the amount of the loan that is forgiven, the total expenditures in the eight-week period is multiplied by either:

- The average number of full-time equivalent (FTE) employees for the eight weeks following the loan, divided by the average number of FTE employees during the period from 15 February 2019 to 30 June 2020, or
- The average number of FTE employees for the eight weeks following the loan, divided by the average number of FTE employees during the period from 01 January 2020 to 29 February 2020.

In the paragraph above, the ratio used to calculate the amount of the loan forgiven is at the borrower's discretion.

...next page

Salary reductions may also reduce the amount of the loan that is forgiven under this programme. If the employer reduces the salary of an employee earning less than USD 100,000 by more than 25% during the eight-week period following the loan, that reduction must be subtracted from the loan amount that will be forgiven.

Businesses who choose to lay off employees or reduce their salaries between 15 February 2020 and 26 April 2020 can disregard these types of reductions in working through the loan forgiveness reductions above if they reverse the lay-offs and salary reductions by 30 June 2020.

Please note that the forgiveness of these loans will not be included as federal taxable income. The maximum interest rate of any PPP loan is 4%, and any portion of the loan that is not forgiven will mature no more than ten years from the date the borrower applies for loan forgiveness.

If you believe that this type of loan may help your business through these difficult times, we encourage you to reach out to your current bank as soon as possible to begin this process. We will be happy to assist you in preparing and assembling any financial data they may request to assist you with this loan.

Economic Injury Disaster Loan Program (EIDL)

The CARES Act has expanded the Economic Injury Disaster Loan Program (EIDL), which is a loan programme administered directly through the SBA rather than through individual banks. These loans are for up to USD 2 million if a business has economic injury

as a result of the disaster. The maximum interest rate on these loans is 3.75% and the maximum term of these loans is 30 years.

In the past, this type of loan was reserved for specific disaster areas; however, the CARES Act has expanded this loan programme to every state and has expanded the list of entities who may be eligible to include sole proprietorships or independent contractors.

In addition, the CARES Act lifted the restrictions stipulating that the business must have existed for at least one year, and that the recipient is not able to obtain credit elsewhere. In order to qualify, the business must have been in existence since 01 January 2020.

A business can only use both the EIDL and PPP under one of two circumstances:

1. The EIDL is received after 31 January 2020 but before PPP is available, and the funds are used for purposes other than those allowed under PPP; or
2. The business receives an EIDL for a disaster other than COVID-19.

SBA Application Requirements and Emergency Advances

A significant change recently is that the SBA is now allowed to approve an application based on the applicant's credit score alone and is not restricted by requiring an applicant to submit a tax return. Additionally, the SBA is now permitted to use alternative methods to determine if an applicant is able to repay.

The SBA can also make an emergency advance of USD 10,000 within three (3) days of a loan application being submitted. To get this emergency advance, the applicant must self-certify under penalties of perjury. Advances do not have to be repaid, even if the application is later denied, although this is subject to other limitations.

Deferring Payroll Taxes

The CARES Act allows for some relief measures which are available without applying for any type of loan. Employers may delay payment of the employer portion of Social Security payroll taxes on the wages paid between 27 March 2020 and 31 December 2020. Those taxes will later be due in two instalments of 50% each, which are due 31 December 2021 and 31 December 2022. This deferral is not available to taxpayers who receive loan forgiveness under PPP.

Getting a Payroll Tax Credit

Employers may also be eligible for a credit equal to 50% of the first USD 10,000 of wages paid to

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employees during the COVID-19 crisis. This credit is only available to employers that:

1. Fully or partially suspended operations due to an order to shut down as a result of COVID-19; or
2. Experienced a decline in gross receipts of over 50% as compared to the same quarter in the previous year.

Regardless of whether the business is open or subject to a shutdown order, businesses with 100 or fewer full-time employees qualify for this credit. This credit for wages is limited to the first USD 10,000 of compensation paid to an employee. Health benefits are included in this wage amount, and the credit is available for wages paid or incurred from 13 March 2020 through 31 December 2020. This credit is

not available to those employers that participate in the PPP.

If you would like assistance with implementing any of these programmes, please contact any of our staff members or, if you would like to schedule a telephone call at a convenient time, [click here](#).

Have you got news to share?

Keep us up-to-date with the latest happenings in your company or on any successful dealings you had with fellow XLNC members! In this magazine, you will be able to announce if your firm added a new partner, if your company won an award, if you moved offices, if you offer new additional services, etc. We invite you to share your views, thoughts and interests, and the

latest news from your profession with the entire XLNC magazine readership by contributing an article. This is your magazine. All submissions are invited.

The deadline for inclusion in the next issue is 31 August 2020. Please email Barbara Reiss at b.reiss@xlnc.org with your contribution.

New XLNC Member Firms

We present the new member firms that have joined our alliance since the previous issue of this Magazine. We warmly welcome all of you!

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