

Corporate immigration advisers – Australia



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Parish Patience Immigration provides a full range of immigration and visa services. Meanwhile, managing partner David Bitel is accredited as Specialists in Immigration Law by the Law Society of New South Wales.

Parish Patience Immigration began as the law firm of Walter Parish in 1888. John Patience joined the firm in 1937, and for many years Parish Patience was a leading commercial law firm in Sydney.

Mr. Bitel later joined the firm in 1976 and, following significant changes to Administrative and then Immigration Law in the 1980s, began to specialise in immigration law. The Parish Patience migration law section has since grown into one of the largest specialist immigration law practices in Australia.

In September 2000, following a restructure, the firm repositioned itself as a boutique immigration practice and its name changed to Parish Patience Immigration. Recent staff accomplishments include having acted as instructing solicitors in the important High Court case of Plaintiff S157 of 2002 v Commonwealth.

Mr. Bitel and other staff regularly present papers at major Australian and international conferences, and have assisted thousands of visa applicants at every stage of the application and appeal process.

Today, Parish Patience Immigration is a well-known and reputable firm within the immigration industry.

Partner profile – David Bitel

David Bitel is accredited by the Law Society of New South Wales as an Honorary Accredited specialist in Immigration Law, and has been admitted as a solicitor of the NSW Supreme Court and the High Court of Australia since 1976. He was a consultant author of Australian Immigration Law, a loose-leaf service published by LexisNexis Butterworths, which is the major regularly updated professional publication in the field. With more than 30 years of experience providing legal advice on immigration matters, Mr. Bitel is an acknowledged leader in the field.

Mr. Bitel has particular interest in the problems of refugees. He was President of the Refugee Council of Australia from 1995-2005 and is now Immediate Past President. He has been chairman of the Australian Refugee Foundation since 1998 and was founding chairman of the Refugee Advice and Casework Service. David helped to found and subsequently was Chairman of the Immigration Advice and Rights Centre (IARC), the Gay and Lesbian Immigration Task Force (GLITF), and the Australian Forum of Human Rights Organisations (AFHRO).

He was also awarded Austcare's prestigious Paul Cullen Humanitarian Award in 2002 and has been a member of various committees of the Law Society of NSW, including its specialist accreditation committee, the Law Council of Australia and the International Bar Association, the world body of lawyers.

He is a registered migration agent, 9255523.

For more information please visit www.ppilaw.com.au

Family Law in Brazil

Pinheiro Neto Advogados was founded in 1942 and is one of the largest law firms in Latin America and one of the most well-established in Brazil. It is a full-service, 350-lawyer firm, with offices in the cities of São Paulo, Rio de Janeiro and Brasília. The firm's practice is divided into four major areas: Corporate; Litigation; Tax; and Labour.

Pinheiro Neto Advogados' family and succession law team draws on over 30 years of experience and is inserted in the litigation area. It is highly qualified to assist clients in preventing and resolving disputes of this kind.

The firm's advisory and litigation practice in this area involves: alimony (request for granting, review, exemption and enforcement); marriage (property ruling and premarital agreements); divorce; gifts; custody and minor visiting regulations; interdiction; estate and succession planning; probate proceedings and simplified probate proceedings; filiations (adoption and parenthood investigation); precautionary measure for listing of assets; precautionary measure for separation of spouses; appointment of assets; wills; guardianship; and stable union (recognition and dissolution).

Flávio Lemos Belliboni, partner and head of the area based at São Paulo's offices, explained that

"As a full-service firm, we count with an interdisciplinary team which is ready to complement the services whenever they involve corporate and tax related issues. This is very usual in family and succession law cases, such as, for example, when we are dealing with more sophisticated and complex structures of family, estate and succession planning," said Mr. Belliboni. "Furthermore as a big law firm in Brazil, we have been increasingly attending foreign clients with family and succession law issues in Brazil as well as supporting, in cooperation with law firms in other countries, Brazilian clients with family and succession law issues abroad."

Mr. Belliboni observed that most issues in the family and succession area, in Brazil and elsewhere, frequently lead to emotional and psychological strain for the parties involved, demanding a special effort from the lawyer, who must go beyond correct application of the law and a strong defense of his client's interests.

"Many family conflicts derive from the lack of knowledge of the parties involved when it comes to the main family and succession rules," said Mr. Belliboni. He concluded: "Other matters drag on for years because of improper advice and strategically wrong decisions."



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Competition & Antitrust Law in China

Founded in 1992, Dacheng Law Offices is one of the premiere partnership law firms in China, and has been consistently named Chinese top tier Law Firm of the Year by the Ministry of Justice since 1998. Moreover, Dacheng is one of the few firms in the country that are able to provide a comprehensive range of services.

An extensive global network

Dacheng has established an extensive global legal service network, covering most of the major cities and regions in the world. Apart from its headquarters in Beijing, Dacheng currently has 33 branch offices in virtually all regional business centres of China, including Shanghai, Shenzhen, Xiamen, Wuhan, Chongqing, Harbin and Qingdao.

In addition, the firm has set up six overseas offices including locations in Paris, Los Angeles, Singapore, New York, Hong Kong and Taiwan, and has established close and active working relationships with the Chinese authorities. It has forged long-term cooperative relationships with large providers of tax, accounting, auditing, business evaluation and management consulting services.

There are currently some 2,600 lawyers and staff members working for Dacheng, most of whom are graduates from leading law schools within China or overseas. Dacheng was recently nominated as one of best law firms within the practice area of competition by a leading legal magazine based in Asia. Mr. Dai, the head of the antitrust/competition department within Dacheng, has been invited to write the annual review of the application and enforcement of the Anti-monopoly Law (AML) in China by the aforesaid magazine.

Antitrust theory and practice

Dacheng was one of the first firms in China to develop a specialised focus on new trends in antitrust theory and practice – most specifically, the adoption of the AML, which came into place on the 1st of August, 2008. Dacheng is able to provide clients with legal advice pertaining to the various aspects of AML, including abuse of market dominance, merger filing for M&A transactions, as well as representing clients in AML related civil litigation, administrative reconsideration and administrative litigation.

According to Ken Dai, head of the antitrust department, the firm has taken an active role in the legislation process of AML. For example, Dacheng has worked closely with the Chinese government on antitrust legislation, assisting in the promulgation of the AML's guidelines and regulations. Mr. Dai noted: "Our Antitrust department maintains a close working relationship with China's antitrust enforcement authorities – enabling us to be one of the first firms to learn about developments in AML's regulations."

Regulatory hurdles

As regards some of the issues arising for companies operating in China pertaining to antitrust law, Mr. Dai said: "Where companies have significant turnover in China, many of their M&A transactions will trigger the Chinese merger filing thresholds and will require a mandatory filing with the Ministry of Commerce (MOFCOM) – even if the transaction itself has little or no nexus with the Chinese domestic market."

He added: "MOFCOM is familiar with the concepts of unilateral effect, coordination effect and foreclosure effects. Therefore, if a market's degree of concentration is high, and the business operators involved in the transaction have significant market shares, MOFCOM may be inclined to believe that a transaction between them may eliminate or restrict competition in the market."

According to Mr. Dai, companies should make pre-notification contact with MOFCOM as this may help in identifying potential competition concerns. They should also collect data on the competition within the relevant

market in China – which is often difficult to obtain from public sources such as the National Bureau of Statistics. Therefore, it may be necessary to engage a qualified People's Republic of China (PRC) market-research firm to collect such information.

Ensuring compliance

When asked about the measures that companies can put in place to ensure compliance with China's competition rules, Mr. Dai added that for the companies with significant business operations in China, it is advisable to take the relevant measures to ensure compliance with AML. This includes, without limitation, the ad hoc compliance guidance in Chinese, training courses on AML to staff, as well as reviewing existing business agreements to check whether any provisions therein will contravene AML.

Mr. Dai added: "In terms of monopoly agreements and abuse of market dominant position, violation of AML can lead to severe penalties. A company can be fined up to 10% of its annual turnover; however, at this stage of enforcement there is still uncertainty as to whether the Chinese or the global turnover has to be taken into consideration for the purpose of fine assessment. The enforcement agencies' approach is currently made on a case-by-case basis."

Meanwhile, at the end of 2010, two regulatory agencies released implementing rules on AML. These included the China's National Development and Reform Commission (NDRC)'s implementing rules, namely the Rules against Price Monopoly and the Procedural Rules on the Administrative Law Enforcement against Price Monopoly.

As for the merger control, on February 3, 2011, China's State Council published a new circular: Notice on Establishment of National Security Review Mechanism Regarding Mergers and Acquisition of Domestic Enterprises by Foreign Investors.

Mr. Dai concluded: "The Notice is deemed to be the supplementary provisions of Article 31 of the AML, which provides that all foreign funded mergers and acquisitions of domestic enterprises involving national security will be reviewed for national security issues. This Notice entered into force in March 2011. Also in March, MOFCOM issued the Tentative Provisions on Matters Relevant to the Implementation of the System for Security Review of Acquisition of Domestic Enterprises by Foreign Investors. These provisions were open to public comment until the end of August, 2011 – and a formal text has been enacted recently."



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Updated National Security Review Rules: A Justifiable Cause of Anxiety?

On 1 September 2011, the Ministry of Commerce (MOFCOM) enacted the MOFCOM Rules for Implementation of Relevant Issues regarding National Security Review Mechanism for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (NSR Rules).

The major change we see in the NSR Rules is that MOFCOM clearly states that the authority will assess the applicability of the national security review (NSR) process from the substance and actual impact of a transaction; also, that foreign investors shall not evade the NSR regime via alternative transaction structures.

According to Susan Ning, senior partner at King & Wood PRC Lawyers in China, this change shows that the authority would take a rather strict approach in the enforcement of the NSR regime.

Ms. Ning noted: "It is fair to say that it would be very hard for foreign companies to try to circumvent the NSR process by designing complex transaction structures, including by means of variable interest entities (VIEs). It is expected that the NSR Rules will have a far-reaching effect on the landscape for foreign mergers and acquisitions in China."

Further, during the foreign investment approval process, the local commerce departments – local counterparts of MOFCOM – are charged with the responsibility to screen transactions that are subject to the NSR regime, yet are not voluntarily filed. A list of sectors that are subject to the NSR process has been circulated to local commerce departments. Although the list is not publicly available, the scope of industries included therein is said to be broader than expected.

She added: "According to the Notice on Establishing National Security Review Mechanism for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors issued by the State Council (NSR Notice), MOFCOM has the sole discretion in determining whether a transaction is subject to the NSR process."

Once the NSR process is initiated, the proposed transaction would face a compulsory suspension period of 15 working days or longer. If a proposed transaction is deemed by MOFCOM to be within the scope for national security review, the investor should expect another 30 to 90 working days to obtain the final decision by the Joint Committee.

Ms. Ning concluded: "The procedural framework of the NSR process is very close to that of the merger control process under the Anti-Monopoly Law (AML). Based on our experiences in handling AML filings, nowadays a greater portion of the AML filings enter Phase II – equivalent to the special review period in the NSR process. It is yet to be seen whether this would be the same case in the NSR process.

"Since there is no requirement under China's NSR rules for publication of NSR decisions, it is not entirely clear how many NSR filings MOFCOM has accepted thus far and whether MOFCOM has approved – or disapproved – a transaction under the NSR regime. As part of the government approval procedures for foreign investment in China, the impact of the NSR process on inbound M&As is hard to be neglected. Foreign investors should always keep the NSR process in mind, plan ahead – and put in place a well-thought-out strategy."



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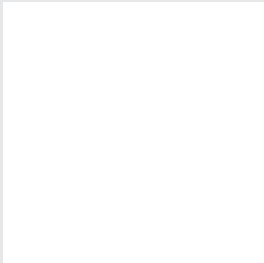
With its headquarters in Limassol, A.G. Paphitis & Co. LLC is a Cypriot law firm comprised of Cypriot lawyers, barristers and solicitors, with representative offices in Greece and Dubai as well as representative lawyers in Paris, Moscow and Kiev.

The firm provides comprehensive assistance and advice on every aspect of commercial and private real estate issues, including acquisition of immovable property in Cyprus by foreigners or by companies belonging to foreigners.

The partners are proud of A.G. Paphitis & Co.'s personal attention and commitment for excellence; meanwhile, the firm has rapidly expanded since its foundation in 2006 to develop its current service offering, including:

Real Estate

A.G. Paphitis & Co. LLC provides assistance and advice on every aspect of commercial and private real estate issue, including acquisition of immovable property in Cyprus by foreigners or by companies belonging to foreigners.



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Services include:

- Drafting, reviewing and negotiating sale and purchase contracts;
- Drafting, negotiating, assigning, terminating and renewing leases;
- Applications to relevant authorities for necessary permits in respect of acquisition of real estate in Cyprus;
- Obtaining bank finance for property purchases;
- Estate planning and administration; as well as
- Wills, probate and re-sealings as well as estate administration.

Banking and Finance developments – Cyprus

Stelios Americanos & Co, Advocates - Legal Consultants is a full service commercial law firm with its headquarters in Nicosia, Cyprus, specialising in corporate and commercial law, banking finance, litigation, tax and financial advisory.

As far as international practise is concerned, the firm has an impressive list of clientele that includes major financial – banking institutions, investment funds, leading international law firms, multinational corporations and high net worth individuals.

When asked to outline the work that Stelios Americanos & Co. does, and the ways in which the firm is distinguished in the provision of banking and finance advice, Stelios Americanos, partner, provided comment.

“Our key areas of practice are Banking and Finance, International Tax Planning and M&A, from and throughout Cyprus,” said Mr. Americanos, adding that further advantages are provided by the practicality and business orientation of the English law fundamentals that are in place in Cyprus. In addition, for years the country’s low taxation has attracted the international business world to Cyprus as well as the firm. “Crucially, our Banking and Finance team has accumulated many years of experience providing tailor made solutions to our clients,” he explained.

As regards Cyprus’s business climate in general, Mr. Americanos said that, as a result of Russia and certain European countries “kick-starting” their economies again after the global downturn, volumes of transactions involving Cypriot entities have shown a significant increase. As a result, Stelios Americanos & Co. has been involved in a considerate number of cross-border transactions this year, including acting in diverse projects for EBRD, OJSC Bank - Saint Petersburg, Amsterdam Trade Bank, ING Romania, Immofinanz,

Raiffeisenbank, Unicredit Bank, Bank of Moscow, Marfin Popular Bank and Nordea Bank.

For now, key challenges associated with international transactions involving Cyprus encompass: ensuring that the provisions of Cypriot legislation are upheld, even though a transaction might be governed by the laws of foreign jurisdictions – as well as making sure that Cypriot law security documents allow swift out-of-court enforcement.

Mr. Americanos concluded: “Two years ago, the effects of the global economic downturn meant that investors were reluctant to open up to any new projects as they were safeguarding what they had in hand. As a result, debt restructuring was quite popular. However, the downturn has provided opportunities – and 2011 has rebounded strongly with clients willing to take a larger risk.”



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The Changing Face of Corporate Law in Cyprus

Pamboridis LLC is a general commercial and corporate law firm with offices in Cyprus (Nicosia and Limassol), Greece (Athens) and the UK (London). The firm was founded in 2003 and is headed by Dr George Pamboridis assisted by three other partners and a number of senior and junior associates and support staff.

Cyprus is a common law jurisdiction and, as a result, the basic principles of Cyprus company, contract and commercial law are aligned to those of English law. In addition, the Cyprus courts will look at case law of other common law jurisdictions for guidance in matters pertaining to commercial disputes.

According to Mrs. Yiota Kythreotou Theodorou, partner, the financial crisis only served to highlight the fact that business and commercial activity will always be in need of solid, reliable and timely legal advice. Pamboridis LLC has moved quickly in identifying the changing needs and demands of clients, and has adapted in order to best align its services with these needs and demands. The firm’s main strength is, unarguably, its lawyers who are comprised of a team of highly trained, experienced and dedicated legal practitioners who continuously devote resources to increasing their knowledge and skills.

When asked about some of the complexities associated with Corporate Law in cross-border issues, Mrs. Kythreotou noted that the majority of transactions that the firm is instructed to assist on, have an international dimension. Consequently, as Cyprus lawyers, Pamboridis LLC is required to understand and take into account the fact that the laws of other jurisdictions may have an impact on its advice.

Cyprus is a tax planning jurisdiction and, therefore, the Cyprus entity in a corporate structure is usually utilised to maximise tax efficiency. Pamboridis LLC’ lawyers must therefore be able to understand why a particular structure is in place and its commercial and tax advantages. In order to safeguard the interests of the client, the firm ensures that its advice does not compromise those advantages.

She concluded: “During the last couple of years, as a result of the financial crisis, we have seen an increased number of transactions involving restructuring and refinancing of debt as well as M&As. At the same time, the way that the market approaches new financings has changed. Negotiations on the finance terms are becoming protracted – increased emphasis is being placed on pre-closing due diligence and the security package is often the subject of intense and heated discussions.

“Moreover, in many instances in the last couple of years, we have also advised and guided banking and finance institutions on the process of enforcing Cyprus security following a default by the borrower. We were quick in identifying these changes in the international and domestic corporate and commercial environment and, we are proud to say that we have adapted well.

“Rather than being adversely affected by the financial crisis, we have found that it has opened up opportunities for our firm and has given us the chance to promote and expand our services. Despite the onset of the crisis, we have been able to open new offices: our Limassol office which was founded in October 2009, as well as our new London office, which is becoming operational in October 2011.”



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Germany – Product Liability adviser

"We have successfully assisted clients in defending multinational litigation in over 75 different countries around the world. More importantly, we have taken litigation matters to judgement in most of those jurisdictions – giving us a battle-tested perspective on the best approach to a client's cross-border legal needs." – Tim Smith

Carroll, Burdick & McDonough LLP has for more than a decade successfully managed high-exposure, cross-border litigation for numerous multinational clients. The firm specialises in cradle-to-grave legal advice, taking "lessons learned" from real world, international litigation experience and plowing those consideration back into the initial product design and development processes.

The firm's unique global litigation coordination model streamlines and makes manageable international litigation issues, prevents legal and factual misstatements during customer inquiries, criminal and government investigations and court cases, and ultimately saves clients money and protects trade secret information by eliminating duplication of legal efforts and centralising detail product knowledge and client-specific litigation experience in a small, core group of specialist, multi-lingual lawyers.

Tim Smith, a partner at the Stuttgart office, noted that the firm's main strength is its actual "in the trenches" cross-border litigation experience.

Mr. Smith said: "We have successfully assisted clients in defending multinational litigation in over 75 different countries around the world. More importantly, we have taken litigation matters to judgment in most of those jurisdictions – giving us a battle-tested perspective on the best approach to a client's cross-border legal needs."

Mr. Smith explained that, as a group, the firm's cross border specialists have the ability to speak 14 languages natively, and all the lawyers are assigned management responsibility across a variety of cultures to ensure adequate cultural sensitivities.

"Working hand-in-hand with clients, we research and analyse the anticipated speed and depth of government investigations and court processes, the level of involvement of various media outlets in country, and the relative, jurisdiction-specific risk exposure the client faces country-by-country to develop the most effective, cost-efficient manner of handling an international, cross-border issue," he added.

It would appear that the recent economic downturn has not affected the amount or type of work the firm handles.

However, as Mr. Smith pointed out, clients today are more sophis-

ticated purchasers of legal services, they hire good lawyers not law firms, and they are interested in more certainty and control when it comes to their legal costs.

He concluded: "As such, we have developed and successfully implemented, with nearly all of our clients, alternative billing methods for our work. These methods include fixed annual fee billing, fixed project fee billing, and blended rate work for clients. We feel such arrangements benefit both sides and represent the future of law firm billing."



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New outlooks on German IP law Finance experts in Guatemala



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KUHNEN & WACKER is an Intellectual Property (IP) law firm founded more than 35 years ago. Typical domestic clients include individuals or SMEs specialising in a particular technological niche or requiring world-wide protection for their technology. Overseas clients tend to be large corporations requiring domestic representation.

Rainer Kuhn, partner, noted: "A case from some time ago was the famous 'Epilady' case where, for the first time, the same European patent was enforced against the identical infringement form in many European countries in parallel."

This resulted in all manner of possible judgments in the different countries, including: held infringing (Germany and the Netherlands); not infringing (the UK and Italy); patent valid (all countries except Austria); as well as patent invalid (Austria).

"This dissenting judgments were the feared but expected outcome and fuelled the long-lasting discussion of a pan-European infringement court," said Mr. Kuhn, who went on to note that foreign clients, as well as domestic clients, should make sure not to infringe the older rights of third parties by their activities.

He added: "Our law firm offers suitable searches for all relevant fields and supports clients throughout the application process. Should disputes be unavoidable, KUHNEN & WACKER can provide expert service to clients based on litigation experience gained over many years."

Meanwhile, there is a differentiation between companies that are familiar with patents because they are innovative and need protection, and those that were sued for patent infringement in the past. "Innovative niche companies – 'hidden champions' – are usually well aware that their success depends on good protection," said Mr. Kuhn, "whereas producers of mass articles often do not pay attention to patents until they are copied or sued for the first time."

He concluded: "In the absence of a pan-European court, cross-border litigation normally requires an infringement suit of its own in each country, and thus is very cost-intensive and quite unpredictable as to outcome. Until recently, this could sometimes be avoided via a 'cross-border injunction' in which a national court decides upon an injunction also in parallel jurisdictions. However, the European Court of Justice has cut possibilities down so that such 'cross border injunctions' do not play a major role in practice any more.

"As regards the coming months, there will possibly be a breakthrough with a pan-European Patent Court and with the unitary EU patent – valid in the entire EU – both for the EU member states willing to compromise. Plans have been discussed for more than 10 years, but previously failed to get unanimous consent, primarily because an agreement could not be reached on the language regimes. Now, a limited number of EU countries who can reach consent want to realise the pan-European Patent Court and the unitary EU patent for their territories – with the small rest able to join in later."

For more than 100 years, Saravia & Muñoz has had a goal to provide legal services of the highest quality. The origin of the firm dates from 1805 when Don Juan Jose Saravia y Figueroa initiated his law practice.

Later in the year of 1890, siblings Jose Salvador Augusto Saravia y Conde and Jose Miguel Saravia y Conde established the law firm called "Hermanos Saravia" (Saravia Brothers).

Hermanos Saravia (Saravia Brothers) keeps operating under the management of the Attorney and Notary Public Salvador Augusto Saravia Enriquez, who in 1954 merged his practice with Attorney Juan José Muñoz Valdéz, establishing Saravia y Muñoz.

Both law practices being unified conform more than 100 years of distinguished history and complementary services.

Saravia & Muñoz has a priority to respond to the existing challenges of a commercial world focused in globalisation. Upon that reason the need to incorporate to the firm an intellectual elite formed by multilingual professionals with futuristic vision and knowledge not limited to the legal field.

Saravia & Muñoz is part of an ample network of lawyers and companies around the world, satisfying through that the needs of its clients who invest not only in Guatemala but in other countries.

The firm's lawyers and legal counsellors are distinguished from others through their forward looking culture based on important principles such as ethical, moral, consistency, teamwork and execution.

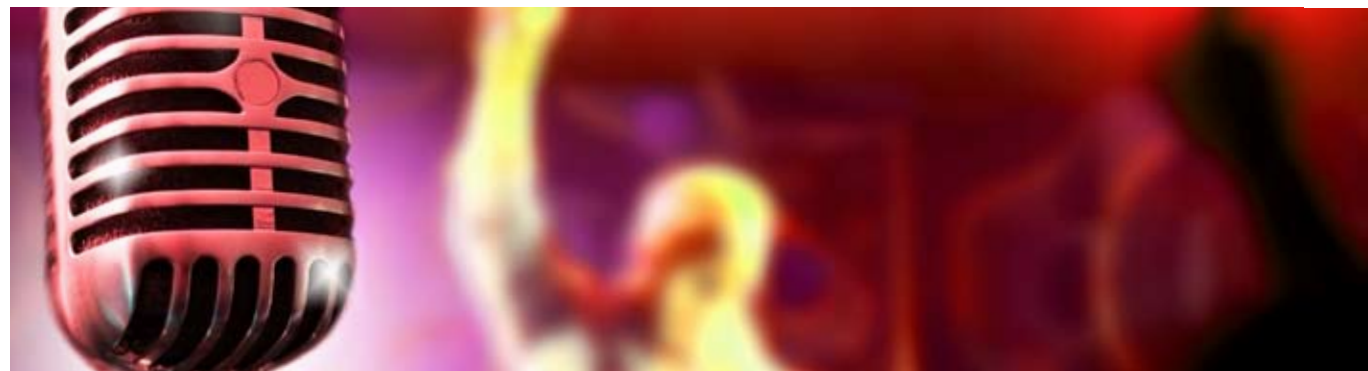
The firm offer its clients legal counselling with an eye on the future, which concludes bringing the talent and expertise to the table for the results expected by its clients.

Among the firm's clients are multinational corporations, as well as small and medium sized organisations.

The firm is a member of INTA – International Trademark Association; ASIPI – Inerantional Intellectual Property Associations; and IBA – International Bar Association.

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Lebanon: The Middle East’s entertainment law gateway



Lebanon is a small country when it comes to superficialities however Lebanon has incredible weight when it comes to its multi diverse culture and creativity. Any investment in the entertainment sector is not possible in the Arab world without Lebanon’s large creative community. The capital city, Beirut, is a major operations centre from where distribution takes place to other areas in the Middle East region.

“55% to 60% of the creativity in the Arab World is in Lebanon when it comes to music, book publishing and printing. Of course with the international finance crisis and the political instability in the Arab world, the entertainment industry has been affected. However because of its turbulent past, the Lebanese community is immune towards instability and it adapts itself as much as possible,” commented Walid Abou Farhat of the Abou Farhat Law Offices.

For the past 10 years the Abou Farhat Law Offices have been involved in many cases related to media and entertainment in general. The law offices have acted on behalf of author rights holders such as composers & writers, and have helped establishing music publishers, collective management societies whether related to music, books or reproductions rights. The law offices have worked with broadcasters, managers, sites, aggregators, and mobile operators (negotiated GSM licenses in Africa).

They have represented performers and initiated lobbying with ministries to implement copyright laws. Furthermore the law offices are connected to works with International organizations pertaining to copyright enforcement. While working in Lebanon the law offices operate via the Abou Farhat Law offices, thru Mobayed in the United Arab Emirates and the Abou Farhat consultancy and in Jordan via Kilani law firm.

Further practices of the law offices include collective management with ministerial authorities, discussions between authors’ rights holders and labels and publishers, negotiations between performers and sites, aggregator licensing deals, live events, digital artist management and sponsors deals. The law offices have been involved in much litigation as the Lebanese judicial system is very active and the Lebanese copyright law efficient. Walid Abou Farhat personally represents all the Majors in MENA, and in addition represents regional broadcasters in Lebanon.

According to a World Intellectual Property Organisation (WIPO) report which considers the total economic contribution of copyright-based industries to the Lebanese economy, the media and literature sector in Lebanon

has the potential to maintain its commanding position in the region because the strength of the publishing industry lies in the diversity and high quality of products in three languages. The dominant companies in this sector rely on their export capacity with most of their revenue generated from the sale of books aimed at the general public. The country’s shipping industry is a major contributor to the Lebanese economy and is a powerful asset for a variety of industries including media and distribution.

The report goes on to describe Lebanon as one of the countries with the greatest potential for developing its film industry with the aid of the resources at its disposal such as education, availability of human resources and input. The music industry in Lebanon is one of the more flourishing sectors with its pool of talent, availability of professionals, and the excellent reputation of its musicians. According to WIPO, the Lebanese are known to possess the necessary knowledge and professionalism, and to offer high-quality products and services. The report continued to find that core and interdependent media and publishing industries contribute 100 percent to GDP and employment while the partial and non-dedicated contribute to a lesser extent to GDP and employment figures.

Lebanon has a free-market economy and a strong laissez-faire commercial tradition. The government does not restrict foreign investment but the investment climate has been known to suffer from red tape, arbitrary licensing decisions, high taxes, tariffs, and fees. The country does however have strong copyright law.

Mr Abou Farhat concluded by pointing out some of the advantages and obstacles that face foreign investors looking to conduct entertainment business in the region:

“I think that political instability is the main issue for an investor who is not really adapted to work under such circumstances. The legal infrastructure is well established since Lebanon is a member to all international treaties except TRIPS but also because the country has recently adopted WCT & WPPT.”

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Effects of the Crisis in Luxembourg: What to Expect

Since early 2009, when the extent of the present financial crisis really began to take hold, there has been a considerable increase in disputes and litigation related directly to the crisis.

This has been particularly apparent within the areas of labour and employment law, real estate and the banking and finance industry. Luxembourg itself has seen banks close, funds go bust, companies go bankrupt, senior directors get fired and, in relative terms, big staff layoffs – with all the associated ‘social plan’ negotiations – as well as the more general turmoil experienced in Luxembourg and elsewhere around the world within the financial sector. For example: the subprime crisis, strife within the Icelandic banks, the Madoff scandal, Lehman Brothers, etc. – and now, sovereign debt and further major bank capitalisation scares.

According to Michel Molitor, partner at MOLITOR, these factors have certainly affected Luxembourg as a financial centre, “although one could argue that the effect has been much less severe in the Grand Duchy than elsewhere,” he added.

Resolving disputes made easier

More positively, said Mr. Molitor, at European level, the introduction of the European Enforcement Order has led to a noticeable simplification in the handling of cross-border disputes within the EU, with the advantage of reducing cost and time delays. This is part of a wider drive to improve judicial cooperation between European member states, which should be of great benefit to Luxembourg, whose economy, more than many of its European neighbours, depends on international and cross-border activity.

He added: “In the same context of reducing time and cost, Alternative Dispute Resolution techniques continue to become more interesting in Luxembourg – and there has been a steady growth in the use and sophistication of arbitration, mediation and conciliation, together with attention given to providing more efficient mechanisms to proceed via the ADR route.

“In arbitration, one or more persons are given authority to resolve a dispute by making a binding decision. Mediation involves a third party being given the role of creating dialogue, but without the power to make a binding decision. Meanwhile, conciliation is most appropriately applied in collective labour disputes. Arbitration and mediation methods under Luxembourg law are, except in criminal matters, only applied if the parties agree to them.”

The future

On the other hand, as regards the grim prospects of the ongoing financial crisis, until recently Luxembourg’s corporate finance community had reason to believe that the worst was behind it.

“Unfolding events in the Eurozone indicate that we are not yet out of the woods, and that the future remains uncertain,” said Mr. Molitor. “It seems clear that the world will be different in the years ahead. In such circumstances, Luxembourg has always benefitted from its stability, its nimble and informed decision-making at national level, and its highly-educated and talented workforce.”

The firm

Dispute resolution and litigation are a major part of MOLITOR’s practice. Its specialist lawyers, particularly partners Michel Molitor, Paulo Lopes da Silva and Nadine Bogelmann, take a robust, innovative and resourceful approach, and enjoy and thrive on complex, high-profile matters.



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The firm is regularly involved in cross-border cases and remains active in banking and finance litigation, which has kept its partners busy since the outbreak of the financial crisis.

Its client base is predominantly from Europe, North America and Asia, and is made up of local, international and global corporate clients including banks and financial institutions, commercial companies, industrial groups, government and public administration as well as top tier law firms from other countries.

Further, MOLITOR’s lawyers are consistently recommended as leading dispute resolution practitioners and continue to be ranked among the top litigation lawyers in the legal directories.

Examples of matters where the firm has been at the centre of dispute resolution in Luxembourg include: MOLITOR’s central involvement in the liquidation of Lehman Brothers (Luxembourg) S.A.

This very large and wide-ranging case brought great international exposure to MOLITOR in the banking world. The amounts involved (4.5 billion euro), the technical issues at stake, the cross-border nature of the transactions and the involvement of UK law, Luxembourg law and US law, makes this one of the most high-profile cases in Luxembourg and MOLITOR, led in this instance by Paulo Lopes da Silva and Laurent Fisch, was right at the heart of it.

Decrease in the number of business insolvencies in Latvia as the economy recovers from the recession



The year 2011 started in Latvia with hope for financial and economic growth. Today, towards the end of the year, it can be concluded that the hopes were justified and recovery from the crisis has begun. Growth, although slight, is felt both in the private and the public sectors.

In the first six months of this year, Latvia's GDP increased 4.6% as compared to the same period last year. Nevertheless, there is still anxiety regarding the likely second wave of the financial crisis that would become even more harmful for the economy, and the entrepreneurs are forced to be extra careful with their future investment and development plans.

Jānis Ešēnvalds, partner at Law Office "Rasa & Ešēnvalds", explained that there are three different regulations on insolvency cases in the Republic of Latvia, depending when the insolvency case was wind up. Current Insolvency Law came into force on 1st November 2010. The law includes two solutions for insolvent companies (bankruptcy proceedings and legal protection proceedings) and two solutions for individuals (bankruptcy proceedings and settlement proceedings).

According to the statistics, in the first half of 2011 insolvency proceedings were instituted in 739 cases, which is 50% less than in the same period last year. The number of insolvency cases of private individuals keeps on growing this year, up from 146 insolvency cases in the first six months of last year (9.87% from all cases) to 345 cases in 2011, which makes 46.62% of the total insolvency cases amount. Meanwhile, the number of insolvency cases for legal entities dropped by 70%.

Mr. Ešēnvalds noted that under the new provisions of the Insolvency Act the bankruptcy procedure in Latvia has been made faster. "It is no longer necessary to place different publications in newspapers, it is not necessary to have physical creditor meetings, and dissemination of information to creditors and information exchange with authorities has been digitalised," he said.

At the same time, due to the crisis, the government has withdrawn funding for insolvency proceedings where recovery of assets is not possible. Presently, creditors are offered to cover the administration costs for companies without assets at the point of takeover, if the creditors want due diligence of the company or litigation regarding recovery of assets.

"Due to trials being long and without results that can be forecasted, in most cases the creditors refuse to contribute funding to cover the administration costs, thus avoiding additional loss, which has made the new bankruptcy procedure less effective," commented Mr. Ešēnvalds.

He added that despite of amendments in regulation it is still possible to approve the bankruptcy protection proceedings plan both extra-judicially and at the court, allowing the companies with debts to settle their liabilities within two years wholly or partly, discharging without minimum limitation, however, all creditor claims proportionately, according to a plan developed by the company and approved by the majority of creditors.

"It should be mentioned, though, that an important amendment has been introduced here. It provides for capitalisation of the debtor's debts and transfer of the new shares to the creditors, given their claims are discharged under the procedure to the extent that exceeds 10% thereof."

IP matters in Mexico

Earlier this year the director of the Mexican Institute of Intellectual Property (IMPI), José Rodrigo Roque Díaz, commented in an interview that: "Piracy is not given due attention in Mexico, even though it is equivalent to the theft of a house or a car." Mexico has a good level of patenting with about 15,000 registered patents occurring each year. The state believes the protection of IP to be a top priority, and that the intellectual property of a business may be the most important asset that a business owns. The country operates on the belief that the distinctive creation, invention, method or recognition of a company is the result of investing personnel and financial resources to obtain its competitive advantage.

Langlet, Carpio y Asociados, SC, is an established law firm specialising in IP protection matters. The firm makes the best of its senior partners' combined experience of more than 10 years to provide truly specialised services.

The firm offers services in various branches of law, while maintaining its mission to offer the highest quality advice. Besides practicing law near their offices in Mexico City, the firm provides advice and sponsorship in various cities throughout the country and abroad, through conventions of representation and correspondence.

Langlet, Carpio y Asociados, SC specialises in the protection of intellectual property rights at a domestic and international level. Recently, the firm has developed a specialised area in the fight against forfeiting, piracy and unfair competition, which is currently consolidating as one of the most active in a domestic level in the preparation, organisation and carrying out of legal actions with the administrative, penal and civil authorities.

Some of the specific services the firm offers consist of the administration and registration of patents, industrial models, utility models, vegetable varieties, integrated circuits, trademarks, brand names, commercial adds, name of origin, domain names; copyright, including all kinds of works, software, related rights and reservation of rights for the exclusive use, license of rights and franchising, issues regarding advertisement and trade secrets, as well as carrying out sanitation registries.

Likewise, the firm represents its clients in jurisdictional and administrative proceedings of: lapsing of a trademark, infringement, voidance of industrial and intellectual property rights, mediation and arbitration, as well as the prosecution of crimes involving such rights.

Langlet, Carpio y Asociados, SC also provides advisory services on issues related to: the adequate type of company, administration regime, transformation of companies, mergers, spin off and liquidation of companies, preparation, negotiation, creation and execution of all kinds of agreements between private parties or with public entities, corporate labour and regulations due diligence, special purpose vehicle associations, joint ventures, companies, co-proprietorship, direct foreign investment shareholders agreements, license and technology transfer agreements, as well as multiple aspects related to international trade, public competitive bidding, obtainment of licenses, permits of authorisations from any administrative authorities.

The firm's main clients are divided among the branches of economic activities of financial entities, enterprises of the energy branch, sports services and entertainment, telecommunications, software, hardware, commercial, health industry, advertisement, cargo and maintenance airlines, pharmaceutical and the service industry.



Nigeria – M&A adviser

Chief G.O. Sodipo & Co. is a major Nigerian firm formed in the early 1960s, with a broad based range of legal services. Clients include individuals, corporate and governmental agencies; meanwhile, the firm provides advice to enhance sound analysis and decisions regarding the implementation of various transActions.

When asked to describe the current business environment in Nigeria, senior partner Dr. Bankole Sodipo noted that despite some identifiable challenges that could impede trade and investments, the companies that are tenacious and rely on experienced advisers are not only able to navigate the business environment ethically in Nigeria – they have also grown beyond business forecasts.

"The telecommunications industry is proof," he said. "While AT & T and some world leaders in the telecommunications industry restrained themselves from the Nigerian market, MTN, the South African group, has grown so much that it has been able to move its headquarters from South Africa to Nigeria."

He added that this is why Nigeria remains an investor's haven for the bold. Companies that have been fined for being unethical – for instance in contravention of the US Foreign Corrupt Practices Act – have adopted more ethical ways of doing business and have remained profitable and there have been a rise in the level of FDI.

"Meanwhile," he explained, "the scope and framework of M&A is governed by several statutes in Nigeria, the principal legislation being the Investment and Securities Act 2007 (the ISA) and its corresponding Securities and Exchange Commission Rules and Regulations. The Securities and Exchange Commission is the body established under the ISA to regulate and enforce the statute. Every merger, acquisition or business combination between compa-

nies is subject to their review and approval.

"Other statutes include the Companies and Allied Matters Act 2004, the Companies Income Tax Act, and the Investment and Securities Tribunal Procedure Rules. There are other regulations governing M&A in the finance and insurance sector – such as the Bank and Other Financial Institutions Act 2004, the Insurance Act, 2003 and the Central Bank regulations on M&A."

He concluded by noting that the ISA defines a merger as any amalgamation of the undertakings, or any part of the undertakings or interest, of two or more companies. It can also be classed as the undertakings, or part of the undertakings or interest, of one or more companies and one or more corporate bodies. A merger may be achieved in any manner including the purchase of shares, assets and the amalgamation of the company with another. The Act therefore contends that there are other methods of effecting a merger.

He said: "Three categories of mergers are provided in the Act and they are – dependant on the combined annual turnover or assets of the merging companies – classed as a small, intermediate or large merger.

"In considering a merger the commission must determine, among other factors, the implications of the merger on the competition."



Industry Update: The Competition Act of Pakistan

During the fourth quarter of 2010, Pakistan enacted Competition Act, 2010. The preamble of the Act states: "An Act to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti competitive behaviour."

The Act applies to all undertakings and all actions or matters that take place in Pakistan and distort competition within the country. "Undertaking" encompasses natural or legal persons, government bodies, regulatory authorities, companies, partnerships and associations, trusts or any other bodies involved in production, supply or distribution of goods or services.

According to Mohammad Fazil Bharucha, partner at Bharucha & Co., various aspects of anti-competitive activity fall under the purview of the Act. "As for IP matters," he said, "Section 10 of the Act deals with deceptive marketing practises and prohibits all undertakings from being involved in deceptive marketing practices."

Mr. Bharucha said that distribution of false or misleading information – which is capable of affecting the business interest of another undertaking – as well as distribution of false or misleading information to consum-

ers related to price, character, method or place of production, properties, suitability for use or quality of goods, fall under the purview of deceptive marketing practise. False or misleading comparison of goods or fraudulent use of anyone else's trademark, firm name or product labeling or packing is considered as deceptive marketing practice also.

As per the Act, any complaint constituting anti-comparative practise is to be lodged with the Commission, established under the Act, and has the same powers as those vested in a civil court under the Code of Civil Procedure, 1908. The Commission examines the complaint and conducts enquiry in relation thereto.

Mr. Bharucha added: "If it is satisfied that there has been a contravention of any of its provisions, it issues show cause notice to the undertaking against whom the complaint has been lodged. Upon receipt of response, the Commission fixes a hearing to give opportunity to both the parties to explain their position. During the proceeding, if the Commission deems necessary an interim order in the interest of the public may be issued."

He explained that upon conclusion of the proceeding, if the findings of the Commission are in favour of the complainant, the Commission may require the other party to take actions as specified in its order to restore the previous market conditions or confiscate, forfeit or destroy any goods having hazardous or harmful effect and may impose a penalty.

"Appeal from the order of the Commission, if passed by a single member of the Commission, lies to the Appellate Bench of the Commission," said Mr. Bharucha. He concluded: "However appeal against the order of two or more Members of the Commission, or the Appellate Bench of the Commission, lies before the Competition Appellate Tribunal. Finally, appeal from the decision of the Competition Appellate Tribunal lies before the Supreme Court of Pakistan."



Siguion Reyna, Montecillo & Ongsiako (“SRMO”) is an institution in Philippine law practice. It is one of the oldest firms in the Philippines, founded in 1901, and will be celebrating its 110th year of existence in November, 2011.

Some of the firm’s former partners are now in the Philippine senate, house of representatives and the Supreme Court. Over the years, the firm has assisted the formation of local companies, the establishment of partnerships and single proprietorship for domestic investors for its domestic clients.

For its foreign clients, SRMO helps them establish joint ventures, branches, representative offices, subsidiaries, and regional headquarters. The firm has also assisted foreign companies establish BPOs (Business Process Outsourcing), acquisition on worldwide basis of BPOs where the firm either represented the buyer or the seller, mergers of BPOs and for qualified enterprises, secure their registration under the Board of Investments (BOI) and Philippine Economic Zone Authority (PEZA). BOI or PEZA registration entitles a registered enterprise to certain tax and other incentives.

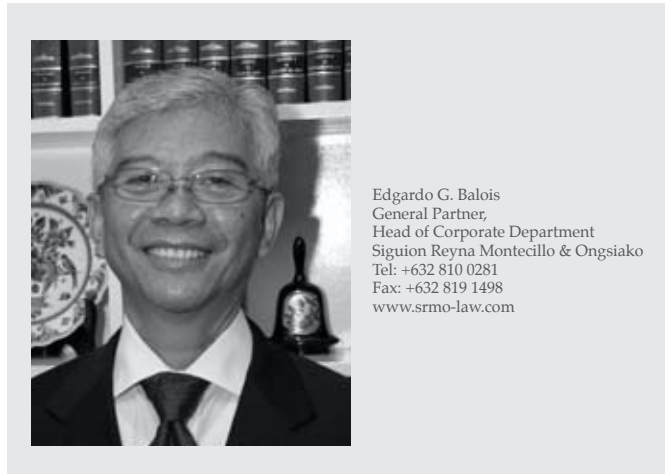
In certain nationalised industries such as, but not limited to, mining, land ownership, public utilities and mass media, SRMO gives specialised legal advice on compliance with the Anti-Dummy Law and how to be vigilant in preventing any direct or indirect violation or other modalities of violation by the corporation, its directors, officers and managers.

“There is a growing awareness of this law both from the regulatory and enforcement levels which can trip the unwary,” said Edgardo G. Balois, general partner and head of corporate.

Mr Balois noted that there is an influx of direct and indirect foreign investments in the Philippines in BPOs, mining and natural resources, infra-

structure, power (renewable and non-renewable energy sources) and retailing. He believes that the Philippines has a “robust and growing business formation environment.”

Finally, Mr Balois explained that there is a pending proposed comprehensive legislation on anti-trust. Meanwhile, to insure compliance with discrete anti-monopoly statutes, the Department of Justice is now constituted as the Competition Authority pursuant to EO No, 45 dated 9th June 2011.



Swiss Banking: Developments & Trends

Founded in 1993, FBT Avocats SA (FBT) is a recognised business law firm with offices in Geneva, Lausanne and Paris. FBT enjoys an undisputed reputation advising private and corporate clients in Switzerland and abroad with a special focus on France. In addition, FBT assists its clients with domestic and cross-border transactions in banking, tax, corporate and litigation matters. Its objective is to offer its clients effective and cost-efficient services.

When asked about the ways in which FBT is distinguished from its competitors, Frédérique Bensahel, partner and head of Banking and Finance at the firm, noted that FBT’s Banking and Finance Group has considerable savoir-faire and experience assisting foreign and Swiss financial institutions in their complex legal and regulatory issues and procedures. At all times, FBT’s partners dedicate their entire attention to their clients and their legal issues.

“Specifically,” said Ms. Bensahel, “FBT’s dedicated investment fund team is recognised by the banking and fund industry for its knowledge and expertise. It advises Swiss and foreign investment funds and related parties with regard to fund set-up, authorisation, restructuring, distribu-

tion and taxation. FBT also assists these players in drafting the numerous contractual agreements necessary for the funds industry.”

Switzerland responded to the financial crisis mainly by toughening its banking and finance regulations, and responding to the various attacks against its banking secrecy and the tax issues thereto related. However, although regulation has become tougher, Switzerland still offers interesting opportunities for financial actors.

According to Ms. Bensahel, Switzerland is still attractive to foreign banking activities owing to its political stability and strong currency. Trading companies specialised in commodities still consider Geneva to be one of the world’s top centres – due to the interesting tax rulings granted to these companies, as well as its proximity to banks specialised in trade finance.

She added: “Indeed, a great deal of the transactions taken care of by FBT have a cross-border nature – with an emphasis on the US, the UK and France. FBT’s expertise in Swiss-French cross-border issues is greatly recognised within the financial sector. Meanwhile, to further improve its services, FBT has opened a branch in Paris as of June.

« Also of note, FBT has played an important role in the French disclosure program, and advises on the transfer of foreign companies to Switzerland, helps out high net worth individuals and foreign companies settling in Switzerland, and advises banks on complex cross-border issues. »

Ms. Bensahel concluded: «Recently, most of the attention given to the Swiss financial centre stems out from England and France – primarily within the financial industry.

« Swiss businesses are mainly seeking acquisition opportunities in other jurisdictions when they want to expand themselves in a given sector. In particular, Swiss investment managers and banks have recently sought to establish abroad, particularly in France and in the US – either to expand their business or for the benefit of a specific status allowing them access to the local clientele. »



The rise of arbitration in Turkey

Güner Law Office is a full service law firm, specialising in corporate and commercial matters in addition to its wide range of specialisms, including M&A, banking, energy, media, intellectual property and commercial contracts.

According to Ece Güner, founding partner, arbitration has become a more commonplace avenue for the resolution of commercial disputes involving foreign investors in Turkey. He added that Turkey experienced sustained economic growth in the last decade and this, too, has let to arbitration being used more commonly as a dispute resolution mechanism in Turkey.

Mr Güner explained that the most important difficulty when trying to solve a commercial dispute using arbitration in Turkey, particularly in international arbitration, is the language barrier, as most commercial law firms in Turkey employ only Turkish speaking fee earners in their dispute resolution and litigation teams. He added that members of Güner Law Office’s team are capable of handling all aspects of arbitral proceedings in both English and Turkish with equal ease.

The new Code of Civil Procedure (“new CCP”), which came into force on 1st October 2011, and the International Arbitration Law (IAL) introduced “enabling and encouraging provisions” with a view to encourage the use of arbitration in Turkey, especially in the resolution of complex and technical matters.

“There are also efforts to promote and raise the profile of local arbitration as an alternative to litigation,” commented Mr Güner. “Disputes involving large international companies have in recent years begun being resolved by arbitration.”

According to Mr Güner, litigation in Turkey involves cumbersome court bureaucracy and protracted proceedings.

“The civil courts in Turkey are overburdened with their caseload, which results in even relatively simple cases being resolved in over a number of years, and there is very little room for parties to maintain the confidentiality of the dispute between them,” he said. “Arbitration is a relatively quicker way to resolve such disputes, and foreign investors have the added advantage of being able to have a say in the applicable law, venue and the manner in which the disputes shall be resolved.”

Mr Güner added that complex and technical matters in dispute are particularly suited to be resolved by arbitration. Multinational companies with worldwide affiliates especially choose arbitration to resolve disputes by way of arbitration.

The global economic downturn had a lesser impact on the Turkish economy compared to many other companies. The Turkish economy has experienced sustained economic growth in the last decade and the same level of economic growth is expected in the next few years. Turkey has particularly experienced a substantial increase in foreign direct investment, and Mr Güner expects that, as this trend continues to grow, arbitration will continue to gain popularity amongst Turkish and foreign investors as a choice of ADR.

“Turkish law firms, including ours, are actively engaged in raising the profile of arbitration as an effective, quick and simple way of resolving complex commercial disputes,” said Mr Güner. He concluded: “We expect that as this awareness becomes more widespread, more and more local and foreign investors will consider arbitration as an alternative to litigation in Turkey.”



FBC Manby Bowdler – Top Corporate Lawyers in the West Midlands, UK



FBC Manby Bowdler's Corporate Team (left to right) James Sage, David Preece, Leanne Consiglio, Stuart Downes, Stuart Rea, Kam Johal, David Hughes, Hannah Jennings.

FBC Manby Bowdler LLP is ranked in the top tier of corporate and commercial UK law firms in the West Midlands, based outside Birmingham.

Serving clients across the wider Midlands from its main offices in Wolverhampton, Telford and Shrewsbury, the law firm is one of the largest in the region.

Its corporate team was ranked top for the second year in succession by the Legal 500, the leading independent guide to law firms, which also singled out for praise corporate partners James Sage and Kam Johal, and consultant Gavin Southall, and deemed the corporate team as a whole to be 'commercial and personable'.

The corporate team offers specialist legal services in relation to all corporate and company commercial matters. Recognised for its expertise and sector specific knowledge, the team has the reputation, strength in resources and depth of experience to cover transactions of all sizes and at all levels.

In the last financial year, the team completed corporate deals worth more than £105 million, advising clients from multinationals, UK plc's, family firms and owner-managed businesses to sole traders on a range of transactions, including business sales and purchases, banking and finance issues, administrations and receiverships, franchise agreements, partnership and shareholder agreements, succession planning, and intellectual property, information technology and e-commerce.

James Sage, partner and head of Corporate, noted: "Our approach is to understand your business aims and objectives and to act as your trusted

professional business adviser – providing you with the most appropriate legal advice and guidance to secure success.

"Our team is practical and hands-on, working closely with other departments in the firm and other professional advisers to provide you with complete commercial solutions and dynamic strategic advice. Thorough and flexible, we are committed to exceeding client expectations."

Because the firm is involved in so many aspects of so many deals in the Midlands, its partners are able to remain up-to-date with the latest trends and challenges when it comes to successfully completing corporate transactions.

Mr. Sage added: "The changes in the corporate finance market, and the great uncertainties of running a business over the past three years, have led many management teams to realise that they cannot simply continue to trade as they used to.

"Whereas previously the bank manager might have been the first they turned to for advice, increasingly it is the corporate lawyer who fulfils that role. We are working with a growing numbers of companies on both their immediate and long term needs."

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Pensions advice in the UK

PWT Advice advises on all UK pension issues but with a special focus on offshore pension arrangements such as qualifying recognised overseas pension schemes (QROPS) and qualifying non-UK pension schemes (QNUPS).

The firm works with wealthy individuals, pension trustees, trust providers and intermediaries such as IFAs, private banks and accountancy firms.

PWT Advice combines expertise in international tax planning and pensions. Jo Summers, partner, is recommended in Legal500 2011 on the tax side and regularly speaks at international tax conferences, in London and overseas. She is the author of 'A UK Tax Handbook for Offshore Trustees', which is being published by Euromoney Books, as well as co-author on a book about Shari'a wills and succession.

Rhys Thomas is the firm's pensions consultant. He has a particular interest in offshore and tax planning issues. He has taken the International Employee Benefits Association's diploma in International Employee Benefits (obtaining the Part 1 prize) and regularly speaks and writes on international pensions topics. His most recent article was on QNUPS, published in the Trusts and Estates Law & Tax Journal (September 2011 edition). He is due to speak on Pension planning and disguised remuneration at LexisNexis' private client tax planning conference in Manchester on 22 November 2011.

Ms Summers believes that PWT Advice distinguishes itself from its competition through its expertise on offshore pension arrangements.

"This is a growing area in which few other law firms have much experience," she commented. "We also tend to work on a fixed fee basis, which is increasingly popular with clients but again many law firms are not willing to take this approach."

PWT advice recently worked with an IFA to prepare a detailed note of advice for a UK resident individual (who was considering moving abroad but not yet made a final decision) on the potential advantages of transferring his accrued UK pension funds to a QROPS. The note analysed the various tax and other legal implications of each of the various possible future factual scenarios.

The firm also recently worked with an offshore pension trust company to ensure they properly administer the offshore pensions with UK resident members, including advising on the tax issues relating to draw-down and lump sums.

Mr Thomas describes the current pensions system in the UK as "drowning in red tape and becoming more rather than less complex", however she notes that it still offers significant tax savings for those who make effective use of the domestic and offshore arrangements available.

"The whole UK pensions system is very complex," he explained. "The delicate 'power sharing' structure of traditional pension schemes (with employers and trustees each having extensive but often unclear roles) has always produced complications. From the mid 1970s on, pensions legislation (e.g. the introduction of the new preservation rules) added to the complexity. From the mid 1990s on, new pensions legislation changed from a trickle to a torrent."

Ms Summers observed that the "A Day" legislation introduced in 2006, coupled with the recent overhaul of the annual allowance etc. has significantly changed the benefit and tax structure of pension schemes, but has made the law more rather complex, despite the supposed "pensions simplification" drive. She added that issues such as preservation and "section 75" employer debts continue to be "horrendously complex".

"The offshore pensions legislation is relatively new (the concept of



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a QROPS did not exist before 2006 and QNUPS were not defined before 2010)," continued Ms Summers. "As a result, there is often a lack of judicial and HMRC guidance on how to interpret this legislation. Also, offshore pension planning is very much tax driven and there are also complex tax issues to consider. Our expertise in both pensions and tax issues, and experience in advising on offshore issues, enables us to advise clients and other professionals effectively on these matters."

Commenting on the current key issues, Ms Summers noted the Finance Act 2011, which has big implications for both UK and offshore pension schemes. The Act's disguised remuneration provisions have greatly reduced the attraction of employer-financed retirement benefits schemes (EFRBS). Other provisions in the Act radically change the tax treatment and benefit flexibility under both UK pension and certain offshore pension schemes. The dramatic reduction in the annual allowance (from £255,000 to £50,000) has increased the attraction of efficient pensions/offshore tax planning.

A significant recent development is the enactment of QNUPS regulations last year, which has resulted in huge interest in these types of scheme as a possible alternative to EFRBS.

"Properly used, QNUPS and other types of offshore vehicles can offer huge advantages," explained Mr Thomas. "However, the law is complex and the internet is awash with inaccurate claims as to the nature of these schemes and what they can achieve. The HMRC clampdown on Hong Kong and Singapore QROPS and continued government 'sabre rattling' about tax loopholes/saving beyond the pensions annual allowance and lifetime allowance shows the need for caution, in order to ensure that the real tax planning opportunities are identified and properly used."

PWT advice expects to see growing interest in QNUPS as an alternative to EFRBS and for personal pension planning. The firm also expects to see more HMRC guidance, and possible "spotlights" (clamping down on blatant tax avoidance strategies). A court case on QNUPS is also likely to emerge before too long, noted Ms Summers, particularly if HMRC see QNUPS being used solely for tax avoidance.

"On the domestic side, various factors (e.g. falling asset values, increasing longevity and the forthcoming introduction of workplace pension arrangements) are all hastening the closure of traditional final salary pension schemes," explained Mr Thomas. He concluded: "We may well see some radical new proposals designed to remove red tape and some of the potential financial risks associated with final salary schemes (such as the more draconian and unclear aspects of the employer debt legislation) in an effort to halt or reverse this trend."