

# International Corporate Structures

The monthly newsletter for clients and friends of LCN Legal  
and for anyone involved in creating and maintaining corporate structures.

March 2017



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## Does the plan work for everyone?

In the early days of LCN Legal we ran a campaign based on family photos, with images provided by our friends at Word of Mouth (who also design this newsletter).

We chose a family theme for two reasons. One is that the members of a corporate group are like members of a family. Although they have common ties, they also have distinct interests which must be respected, and this needs to be reflected in the way that the relationships between them are managed. This is usually the first issue that we look at whenever we're considering any proposed Intercompany Agreement or group structure. If it does not make commercial sense for each member of the group, then something probably needs to change.

The other reason was more personal, and goes to the heart of why we set up LCN Legal in the first place. If you're familiar with the work of entrepreneurship guru Michael Gerber, you'll know his saying that "Every business is a family business." Meaning that every business depends on the personal contributions of its

members of staff. And those members of staff need the support of their families and friends, in order to be able to contribute to the wellbeing of the business and its customers.

I believe that this is true, whatever the size of the organisation concerned. In my experience, it's particularly true in the corporate and professional world which often requires late nights, frequent travel and demanding deadlines. Maybe you've come across the book "Lean In" by Cheryl Sandberg, the COO of Facebook. It's a very powerful account of what it takes to succeed in a corporate career, especially as a mother. Personally, I found it almost unbearable to read – not because I disagree with anything she said, but because of the sheer determination she needed to fight against a prevailing culture, and all the micro-decisions that seemed to be required on the way.

When we first set up LCN Legal, part of our vision was to create a genuinely family-centred company, without sacrificing the quality of our work or the quality of the clients we serve. That's still the case as we've

expanded. We now have the good fortune of having a team with skills and pedigree which far exceed my own. Each of our core team has children, and each of us wants to be fully involved in family life. It's not easy to make this vision a reality. But it's certainly a goal worth working for. This is not about trying to demand superhuman effort from part-time workers. It's about creating an environment in which everyone is in safe hands.

*Continued >*

**Paul Sutton is co-founder of LCN Legal and a corporate lawyer with over 20 years' experience of international corporate structures, including as a Director of KPMG's law firm in the UK and as a corporate partner in international law firm Pinsent Masons. He has lead the legal aspects of group reorganisation projects involving assets totaling over US\$25 billion and is a contributor to the LexisNexis online Transfer Pricing resources.**



*Paul Sutton*  
**Paul Sutton**  
Co-Founder, LCN Legal



## The **Anti-Bucket** list

By Leo Babauta

### **Have you ever made a bucket list?**

For me, they're incredibly seductive: I love reading other people's bucket lists, and making my own.

**But I'd argue that there's a downside to them. In fact, they may even do more harm than good. Here's what happens when you make a bucket list:**

- 1 You put a huge burden on yourself to get the list accomplished. As if we don't already have enough on our to-do lists!**
- 2 If you don't do well at pursuing the things on the list, you feel guilty or under-accomplished.**
- 3 If you do well at pursuing the list, you are probably pursuing less-than-meaningful activities. They're usually just there because they sounded cool to do.**

The truth is, most of the things we put on bucket lists are just ideas that popped into our heads, not anything connected to meaning. We put things like 'skydiving' and 'learn to surf' and 'visit the Amazon rainforest' and 'kiss in the rain'. All of those are excellent activities... but we rarely put things like, 'change someone's life' or 'find meaningful work that I care about' or 'be compassionate towards my family'.

Why put pressure on ourselves to achieve a huge list of things that aren't that meaningful? Why feel guilty if we're not pursuing them? Why not let them go?

Life isn't a big to-do list, nor is it about optimising all the things we do in life.

The most amazing things are right in front of us, right where we are. Right now. We don't have to go anywhere or see some incredible sights or do daring activities to experience the wonder of life.

And we can do meaningful work, right where we are. What would a shorter list of meaningful activities look like? What would your anti-bucket list contain?

And if you don't know what's meaningful to you... isn't that what you should be pursuing instead of a bucket list?

Leo Babauta is the author of zenhabits.net

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We don't pretend to have all the answers but, for example, we encourage everyone in our team to raise any issues they have. The concept of "everyone in safe hands" also drives our strategy of focusing on a narrow range of areas – notably Intercompany Agreements and international structuring. So not only are we confident that we can do a "good job", but, more importantly, our clients know that our assistance will be grounded in experience of working with a number of clients with similar circumstances.

### Quote of the month

"The truth will set you free, but first it will piss you off."

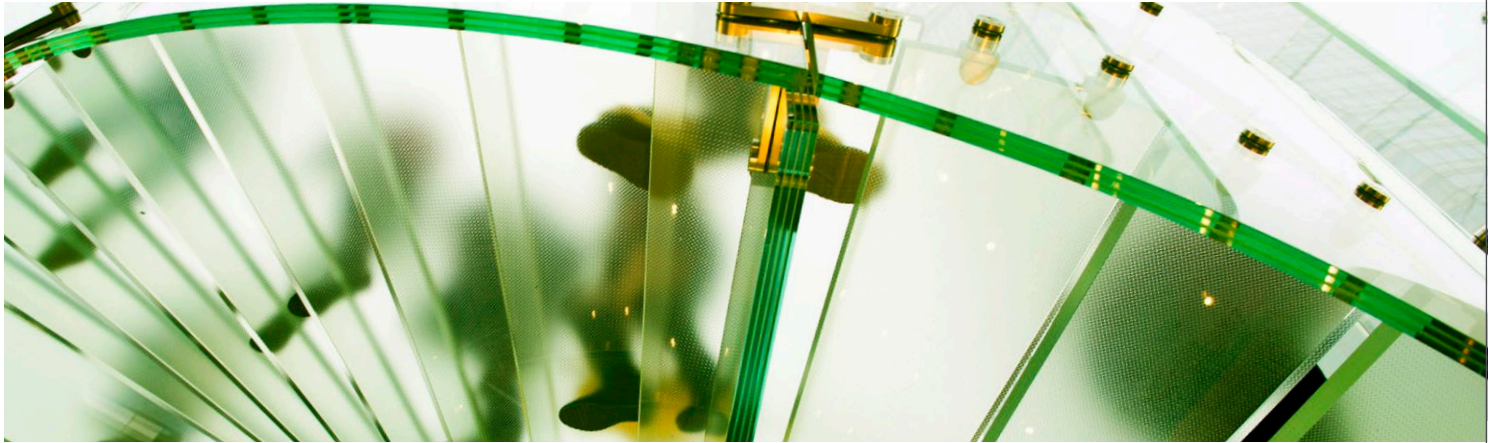
**Gloria Steinem**

## **Top Ten Pitfalls**

relating to Intercompany Agreements for Transfer Pricing

- 1 No agreements / missing agreements / unsigned agreements**
- 2 Key terms missing (subject matter, price)**
- 3 Duplication of agreements for the same supply**
- 4 Agreements don't match the way the group operates**
- 5 Agreements too long / hard to understand**
- 6 Agreements don't match ownership and flow of IP**
- 7 No provisions for allocation of cost between multiple service recipients**
- 8 Warranties and indemnities reflect inappropriate risk allocation**
- 9 Inappropriate termination provisions**
- 10 No paper trail to reflect consideration given to the agreements by subsidiary boards**

# Our five-step process for creating or reviewing template Intercompany Agreements



When putting new Intercompany Agreements in place, one of the key tasks is to create appropriate template agreements for each relevant type of supply. As with any other project, a clear process is essential to avoid unnecessary errors and delays.

At LCN Legal we use the five-step process outlined below. It is applied for each type of intra group supply which is to be documented within the relevant group.

## Step 1: Scoping

The first step is to confirm the basic scope of the Intercompany supply which needs to be documented. This includes the subject matter of the supply, the proposed pricing and payment method / practices and the anticipated supplier(s) and recipient(s) within the group. The identity of each proposed party is relevant not just as a name on a contract; it may also indicate what level of risk and recourse each party is able to bear.

As part of this step, the proposed effective date of the new agreements should be ascertained (if known), and of course the deadline for having the new agreement in place.

## Step 2: Identifying stakeholders and key issues

The next step is to identify all the stakeholders for the relevant group (both internal and external) which will need to be consulted. Clearly, the Finance, Corporate Tax / Transfer Pricing reports, and Legal / Company Secretarial functions will often form part of the core team. Other stakeholders may include VAT, HR, Treasury, Regulatory, and the relevant Business Units, as well as the boards of the relevant group companies. Any known issues which may affect the form or content of the agreement(s), such as regulatory or corporate governance issues, should also be identified.

## Step 3: Reviewing related documents and assets

This step entails identifying and reviewing all related documents, and identifying all relevant assets. These would often include:

- Group structure charts
- Transfer Pricing reports / policies / country by country reports and Masterfile, as required by BEPS measures (if available)
- Existing Intercompany Agreements in place governing the relevant supply
- Existing Intercompany Agreements governing related supplies (which may need to be differentiated from the current one)
- Ownership / intended ownership of intellectual property and recipients of licenses
- Other relevant agreements in the supply chain (inbound and outbound)
- House style for internal briefing notes and board papers

## Step 4: Preparing rough draft of the template agreement

In general, the draft should be kept as brief and as easy to read as possible. Often, lengthy documents and complicated formulations mask a lack of understanding of the important issues, as well as making it harder for all concerned to review them quickly. The draft should be circulated for comment to the core team and the wider stakeholders, as appropriate.

## Step 5: Preparing the final draft template agreement

This may often be accompanied by a briefing note / board paper for proposed signatories.

Once the form of the template agreement has been finalized, consider how it should be put in place between the relevant group entities. This may involve the use of electronic signatures, which can form part of our service at LCN Legal.



Often, lengthy documents and complicated formulations mask a lack of understanding of the important issues.

## Sephton's story

LCN Legal has pledged to donate US\$1,000 to youth work charity XLP for every qualifying instruction in 2017 (see [lcnlegal.com/csr/](http://lcnlegal.com/csr/) for details). Here's an inspiring personal account from Sephton Henry, one of the young people XLP has helped.

When it comes to anger, anger is like a driving force to hide the emotions that you are actually going through. I got rejected and rejection is a pain, so I put up these walls and anger in the forefront of it all. I wanted people to fear me so they couldn't really see me. So my anger was a lie.

I ran away from home when I was young. I was angry with everybody. I used to sleep on kitchen floors. The older guys would come and kick me in the head to wake me up. They would give me a fiver to take something and give it to other men. I didn't know what it was until later on when I saw a man 'OD'ing on the floor. I realised that was the stuff that I was giving to those men. I didn't know how to get out of the situation – I just knew that I didn't want to be in it. I started defending myself. By the age of 13 I started a gang. I have been in jail seven times. The second time was when the violence and anger got worse. There wasn't one person I could have turned to and seen hope.

I remember sitting on a wall, and I saw this van. I thought to myself, what? The windows were blacked out and it looked weird. What was it doing on the estate? And then I walked over to the van and Ethan (X Mobile Project Manager with XLP) opened the door – I looked in and realised it was a recording studio in the van. I was shocked. I asked him "Can I use it?" and he said "Yeah!". Then I was even more shocked.

I would do my lyrics. Ethan would always compliment me. It was just really good to escape from my other life. We stayed in contact, even though I was hard work. There were many times I was shouting on the phone saying that I wanted to hurt somebody and Ethan was able to calm me down. It's funny because no one could calm me down but somehow he always did.

I took steps from what Ethan said. Started changing small things and the small things that I changed made a big difference. I remember coming out of the police station one day, and I prayed a prayer. I said "I believe that you came to die for my sins. I need forgiveness for the things that I've done. And I promise you that I'll make something of my life; I'll change it around. I'll live my life for you."

XLP saw my potential. They asked me to start mentoring other youth. They accepted me and now that's who I am. I am a mentor and I train government staff to help them understand street culture.

I have become more than what I ever expected. XLP helped make it possible. All that anybody really needs is help and understanding – then they are good to go.

**Sephton Henry**  
XLP Mentor

REVISED AND UPDATED:

## FREE Guide to putting in place Intercompany Agreements for multinational corporates

*"Really useful"*

**Head of Tax**, FTSE 100 Group

*"Highly appreciated and valuable for supporting us in our efforts."*

**Transfer Pricing Manager**,  
Global Pharmaceuticals Group

**TO GET YOUR FREE COPY**,  
visit [www.lcnlegal.com/](http://www.lcnlegal.com/)  
Or email us at [info@lcnlegal.com](mailto:info@lcnlegal.com)

## Diary Dates:

## FREE Legal surgeries on Intercompany Agreements for Transfer Pricing

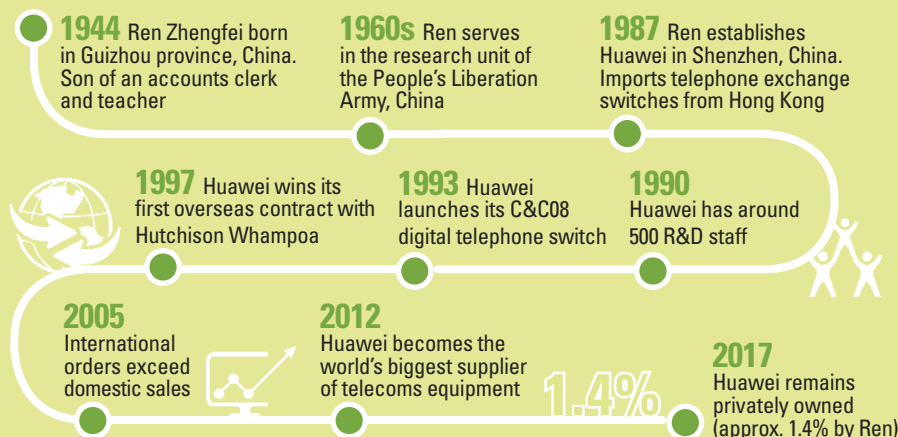
LCN Legal offers free telephone surgeries on Intercompany Agreements for tax, Transfer Pricing and legal professionals.

**Thursday 16 March 2017**  
**Wednesday 5 April 2017**  
**Thursday 27 April 2017**

14.30–16.30 UK Time / 15.30–17.30 CET / 09.30–11.30 EST

To book a session please call us on **+44 20 3286 8868** or email us at [info@lcnlegal.com](mailto:info@lcnlegal.com).

## Evolution of a Corporation: Huawei



## Testimonials for LCN seminars, events and materials

*"Excellent coverage of a complex topic."*  
**Partner**, Tax Advisory Practice

*"This was a thought-provoking seminar with great and relevant discussion."*  
**Founder**, Tax Advisory Practice

*"I really like the format! It is very clear and easy to follow. Can you teach our lawyers to write so clearly? I wonder sometimes if they are being paid by the word."*  
**Director, International Tax and Transfer Pricing**, Fortune 500 Company, commenting on our template agreements