

# International Corporate Structures

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

April 2017



## The two worst days of my professional life

This is a story about the time shortly after I joined KPMG's law firm in the early 2000s. It's a true story, although my mind seems to have blanked a lot of the details, possibly because of the trauma of it all.

At the time, I was a 'Senior Solicitor' in KPMG's law firm (then called 'KLegal'). I was on the extremely painful track for promotion to Director. This involved business cases and 360 degree reviews and assessment centres and so on – the kind of 'big firm' thing you may well be very familiar with. As part of all that, there were courses I was supposed to go on, including one on presentation skills.

This particular course on presentation skills was not the kind of course you could just turn up to, make a few notes, and then go on your merry way. It was a two-day course, during which you had to practice and repeat presentations in front of a video camera. Even worse, you had to watch yourself on screen afterwards, and sit there while other people discussed how stiff and awkward you looked. You even got a video cassette to take home afterwards.

In all honesty, this felt like a living hell for me. I had previously been the kind of person to avoid any kind of public speaking, at all costs. Which often involved extreme efforts. For example, at my school, there was a tradition that each sixth former, in turn, would stand up and read a couple of verses from the Bible at morning assembly reading in front of the whole school. There was a rota in alphabetical order. Given the size of the annual class intake, you could expect to do this two or three times over the course of the lower sixth and upper sixth form years. I managed to duck out every time, through feigned illness, extended shoelace-tying or whatever excuse I could think of.

Even during my early legal career, I was still terrified. I somehow forced myself to make presentations from time to time – for example, seminars on commercial law for the German and French Chambers of Commerce. Looking back, I would like to extend my sincere apologies to the audience members for the dismal, wooden performance I must have presented. I still remember the baffled looks on the faces of the seminar attendees in Frankfurt, as I painfully read from my notes about the commercial agents regulations.

## In this issue...

**What to insist on**  
when documenting your  
intercompany agreements

**In house or outsource?**  
The tax function for corporates

**Meet Derek**  
A personal account from our  
charity partners XLP

**Free resources, Diary Dates,  
Evolution of a Corporation: ROLEX**

So anyway, back to those awful two days in a meeting room in KPMG's offices in Dorset Rise, off Fleet Street. I am amazed that I took in anything in at all. I remember the dreaded video camera on its tripod in the corner. And the TV on a school-style metal stand on wheels. And the lower lip of the main trainer – called Bob – moving as he spoke. Everything else is a bit of a blur. I certainly never dared to watch the video back home. I have no idea where that VHS cassette ended up.

This did not all sink in immediately. It took a while.

*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

## What to insist on when documenting your intercompany agreements

"I didn't have time to write a short letter, so I wrote a long one instead."

**Mark Twain (1835-1910)**

This sentiment applies as much to contracts as it does to letters – particularly the Anglo Saxon, "all you can eat" style of drafting. Very often, if you ask a lawyer to draft intercompany agreements for you, their first step will be to find some kind of precedent (the longer the better), insert some more sections to cover possible eventualities (the more obscure the better), and generally add as many bells and whistles as possible. They will want to put in some important-sounding recitals at the start, and ideally a bit of latin here and there. Usually the end product will involve at least 15 pages of definitions and four pages of 'boilerplate', so that you have to read 20 pages or more before you actually find out what the contract is actually about. And usually the commercial terms like price and payment and the description of the products or services involved are dotted around the document in schedules and appendixes, so that you have to flip backwards and forwards to keep track.

The problem with this is that not many contracts are designed to be referred to purely by legal professionals – and this is certainly not the case with intercompany agreements. And the longer and more densely written a contract is, the more likely it is that:

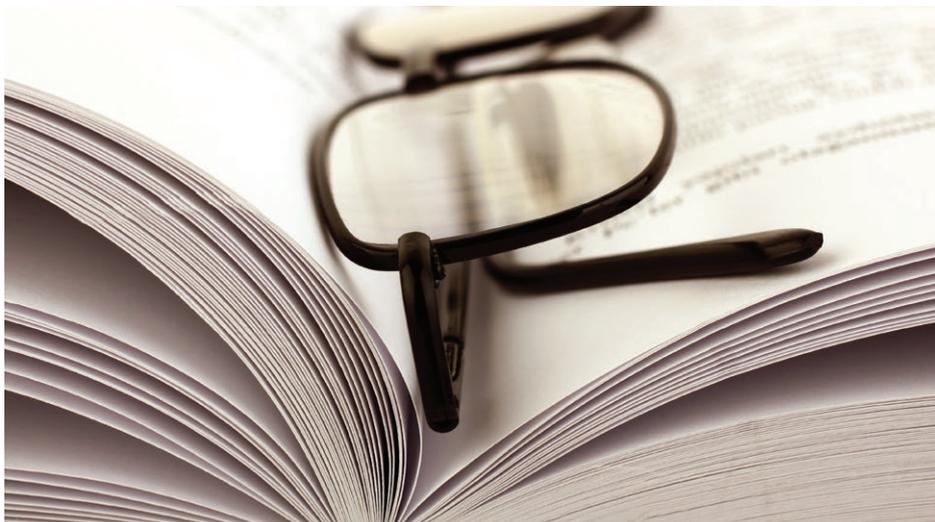
- it will not match the factual scenario it is supposed to deal with – because it will have

been adapted from a document which was created with a completely different purpose in mind;

- it will not be read or understood by the people who need to review it and comment on its suitability – who has time to read through 40 pages of legalese, and filter out the commercial nuggets?;
- for the same reason, it will not be read or understood by the directors who will need to sign it, or the people who will need to operate it; and
- it will not actually make sense.

To help you strike a blow for sanity and against legal gobbledygook, here's a short list of what you should insist on the next time that you ask anyone to help to create legal agreements to document your intercompany supplies or business restructurings.

- 1. Make each contract as short as reasonably possible. Every clause should justify its existence.**
- 2. Wherever possible, put the commercial terms together in one place, so that they can be reviewed easily.**
- 3. Use simple words and short sentences.**
- 4. Avoid quoting statutes and regulations unless it's absolutely necessary. This is particularly important for international.**
- 5. Avoid archaic words like "aforesaid" and "heretofore" and "witnesseth".**



*Continued from cover*

I don't know how it happened, but after that I found myself, rather strangely, actually wanting to present. Starting with internal training. Then more formal sessions for KPMG's tax teams, and then regular slots at KPMG's Tax Business School. The biggest thing was having a structure I could use. You know when you go to a seminar, and it's 6.15 in the evening, and you've been sitting there for half an hour and you have no idea whether the speaker is winding up or just getting started? It's about wanting to save an audience from that feeling, and knowing that you can share something of value.

I still would not consider myself a "natural" at this kind of thing. I'm not "Mr Personality", making relaxed small talk in front of the enraptured throng. But I do enjoy it. It has become a key part of our approach of sharing legal knowledge and practical advice to clients here at LCN.

I would like to think I'm getting better at it over the years and I now have the support of a team of experienced lawyers behind me. If you would like to see our current **legal training programme**, just give us a call on **+44 20 3286 8868** or email us at **info@lcnlegal.com**. And if you would like to arrange a session and critique our performance, I would be delighted.

### THE SIX C'S of Intercompany Agreements

- 1 Coverage:** of all significant intercompany supplies, prioritising the ones associated with the highest risk
- 2 Content:** appropriate level of detail, matching the legal and operational reality of the group
- 3 Contemporaneous:** agreements created as contemporaneously as possible with the commencement of the supply
- 4 Consistent:** to enable the portfolio of agreements to be managed more efficiently
- 5 Communication:** with parent and subsidiary boards, to support rather than undermine corporate governance
- 6 Controls:** ongoing controls, policies and procedures for creation, review, updating, archiving and retrieval



# The tax function for corporates in house or outsource?

By **Ian Barron**

In January 2017, PwC issued a press release announcing the onboarding of GE's tax talent to PwC. Clearly this is a major outsourcing to a professional services firm.

In their press release, PwC seemed to justify the switch on the grounds that "professional services are simply not part of GE's core business."

The press release also stated that the model goes beyond tax and could apply to a company's other in house functions such as internal audit and data processing. Presumably though the PwC logic could also apply to all in house staff functions including finance, legal and human resources.

In my opinion, such wholesale outsourcing of core staff functions should be treated with extreme caution as in the longer term they tend not to be economically beneficial to the company, and the quality of service may not prove "best in class".

Am I against outsourcing? Absolutely not, but I do believe a company's overall tax objectives are best achieved by a combination of in house tax resources and external tax advisers.

The level of each at any point in time will depend upon the stage the company is at in its development.

A newly established business will generally tend to rely upon its external tax advisers for compliance and planning support. At this stage, in house tax resource is neither economically viable nor necessary.

However, as a company grows, its staff function needs to change in all areas. **So what benefits are there to having dedicated in house tax resources?**

**The answer can be summarised as:**

- **costs more controllable**
- **greater business knowledge**
- **expertise on call for the company and not a broader client portfolio**
- **better able to define and achieve the company's tax strategy**
- **problems handled from start to finish**
- **ability to act proactively and speedily without other client conflicts**
- **able to develop ongoing day to day relationships with tax authorities.**

An in house tax function takes time to build. Before that, the CFO will need to obtain approval to invest in appropriate resources over a number of years, and then maintain that investment.



The external adviser remains a critical player in a company's tax world but working with the in house team – each provides its own specialist knowledge and expertise.

In addition to headcount needs, the company's current and future requirements will necessitate up to date technology, adapted as necessary to the company's business activities.

An intermediate step might be to have a mix of permanent and interim staff. The benefit of interim help is the short term nature of assignments, and contracts can be for specified periods which can be renewed or not.

During the development stage of building an in house tax team, day to day tax tasks need to be performed. Having suitable interims on hand to fill that requirement on a temporary basis is generally beneficial. This does need proper managing as the cost of an interim is higher than permanent staff but generally lower than external adviser charges.

External tax advisers can then be engaged to work with the in house team on specific projects such as general planning, tax audit resolution, transfer pricing strategy and M & A.

The external adviser remains a critical player in a company's tax world but working with the in house team – each provides its own specialist knowledge and expertise.

To me, the most critical step for larger businesses is to get the balance right between in house tax expertise and ongoing use of tax advisers.

So, I reiterate my view that outsourcings like the PwC/GE model need to be treated with caution. I do not share the view that a company's tax function is not core to a business.

**Ian Barron is a strategic tax consultant to LCN Legal. Prior to this, Ian had a long tax career at American Express where he was Vice President and Head of Corporate Tax for the EMEA Region for 19 years.**

### Quote of the month

"The main business of a lawyer is to take the romance, the mystery, the irony, the ambiguity out of everything he touches"

**Antonin Scalia**

## "I see life in a totally different way now. I even look different! I smile all the time now".

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 Derek, one of the young people XLP has helped.

Since starting school I have been the target of bullies. It started out when I was younger as being picked on and called names by others because of how I looked or dressed. My reaction to this was to lash out, getting into loads of fights. Pretty soon anger problems meant I was getting into trouble with teachers and the bullying got worse. I was an ok student academically but up until I got involved with XLP, I never really had any friends and was getting excluded from school on a regular basis because of my anger and fighting.

Eventually, in Year 10 I had to change schools because the bullying had got so bad. It had begun to badly affect my self-esteem, I was very angry most of the time, I trusted no-one and I had almost no confidence in what I looked like or even who I was. It also affected my relationship with my family – I'd go home upset and angry and have fights with my brother. It was a bit like the bullying at school was, emotionally, like being stabbed in the back and I'd go home still hurt and 'bleeding' and take it out on my family.

XLP became a part of my life 3½ years ago because of my mum. She knew Hannah who ran a mentoring project and through Hannah I was introduced to Kevin, who became my mentor for the next 3 years. At first I wasn't sure what to expect, but Kevin really helped me. He acted as a kind of guide, helping me face my fears and encouraging me to believe in myself and be my own man. He didn't just listen, he also challenged me – and he accepted me. He really

brought out the good side in me. I passionately love music and got to take part in the XLP Arts Showcase where I felt part of a team which made me feel really proud of myself.

I see life in a totally different way now. I even look different! I smile all the time now. Recently on some of the mentoring outings XLP runs, I've met some of the people who used to bully me and I'm able to chat and laugh with them. I just want to make peace with them.

Without XLP and Kevin mentoring me, I'd probably still be angry and scared. I'd have no confidence. That's why, when I was 16 I decided to start my own social media campaign. I wanted to share my life and struggles with others so that they would know they weren't alone and that someone was there to listen to them, just like Kevin did with me. In my life I have seen the power of words – the damage they can do. I wanted to start something where words would help others. Now through twitter and facebook, I find myself giving advice to young people and parents.

I'm planning on going to university to study business and then go on to get a job in the city. After that I'd love to set up my own business – something that will help others who need help or motivation in life like I did, people who are lost and just need some help. Maybe my experience and story can change things for them. Mentoring has helped me trust people again and maybe I'll even become an XLP mentor myself one day!

### 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.

**Wednesday 5 April 2017**

**Thursday 27 April 2017**

**Thursday 11 May 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: ROLEX

**1905** Established in London by Hans Wilsdorf, 24, and brother-in-law Alfred Davis. Wilsdorf & Davis imports watch movements from Switzerland and sells in watch cases

**1908** The trade mark "Rolex" is registered

**1919** Rolex moves to Geneva, Switzerland, due to UK taxes on luxury goods

**1960** Hans Wilsdorf dies

**1947** Chuck Yeager breaks the sound barrier wearing a Rolex

**1926** The "Oyster" is patented as the first air, dust and waterproof watch

**1962** Sean Connery wears a Rolex in "Dr No", the first James Bond movie

**2016** Forbes ranks Rolex as the 64th most powerful global brand

**2017** The Hans Wilsdorf Foundation continues to hold all the shares in Rolex

## 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