

International Corporate Structures

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

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My first experience of legal due diligence was for a Franco-German electrical group, which was buying a UK company. I remember my colleague Bryan patiently explaining what due diligence was (what a strange expression for it!). It seemed a truly herculean task to read all the legal documents involved, let alone write about them. Tax and financial matters were a complete mystery to me – “something for the accountants”. And hopefully the clients knew what they were doing, why they were buying the company, and what they were going to do with it ... because I certainly had no clue.

A few years later, I moved to KPMG and started working in multi-disciplinary teams on restructuring projects for large corporates. My experiences in this environment prompted a dawning realisation of how the different aspects of due diligence investigations might fit together, and it all seemed a little less mysterious.

And of course it's really just common sense: unless the leadership of an organisation believes in gambling as a business strategy, due diligence investigations are a key step before any group reorganisation or corporate transaction. It's

nothing more than an expression of the old adage “look before you leap”.

In most cases, the method for handling due diligence seems obvious – decide which disciplines are relevant (e.g. legal, tax, commercial, HR), ask each function to investigate and report on issues, and then decide whether and how to proceed. Most of the time, this seems to work fine. However, the apparent obviousness of this approach masks a considerable amount of complexity and subjectivity. The due diligence team may be working on the basis of assumptions which are not correct. Apparently insignificant facts which are uncovered by one part of the team may have very material consequences for other disciplines. And different individuals bring different experiences and may have very different views about what's important.

Often, this complexity may only come to light if the organisation is involved in repeated due diligence, such as in a large-scale legal entity reduction programme, or in a series of acquisitions. This is because the due diligence team may not otherwise receive feedback from

the actual operation of the new structure, and therefore the organisation as a whole may not learn from its mistakes.

It is almost inconceivable that the business environment will become simpler over time, and almost inevitable that the complexity of regulation will increase rather than decrease. In light of that, here are five suggested principles or keys for effective due diligence. Continued on next page >

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

My day with the 'tax guns'

By **Ian Barron**



I've had some interesting and amusing experiences handling many tax audits in many countries but one in particular in Southern Europe makes me smile now, but didn't at the time.

Ironically, it wasn't even a planned audit but an unannounced routine visit which unfortunately coincided with my arrival from the UK for meetings with local colleagues on a variety of tax matters.

On arrival at our office I went through security and noticed I was being followed in by men in uniforms. This unnerved me greatly. I then saw my host for the day who pulled me to one side and told me the men in uniform were the tax police on a routine check.

When I looked closer at the men's military style uniform, I was horrified to see they had holsters which my host confirmed contained a gun, evidently a part of their standard attire.

By this time I was getting increasingly anxious and wondered why nobody had forewarned me, especially as in all my years of dealing with UK tax inspectors, the only uniforms they wore were business suits and their lethal weapons were no more threatening than a briefcase and an umbrella!

Now all this happened in the days before anyone had mobile phones so it had not been possible to alert me prior to my arrival. Although the tax police were not known to speak English, it seems they became interested when I'd asked at Reception for my host who also happened to be theirs too.

My host quickly ushered me into an empty office and explained that the tax police would only be there for a few hours collecting and looking at routine papers. My host also suggested I kept a low profile because they might be interested in the purpose of my visit. I had no problem keeping out of the way and happily met with other colleagues. Trouble was, wherever I went, the tax police appeared which greatly increased my paranoia.

After what seemed an eternity, my host found me to announce the tax audit had finished but the tax police had asked why I was there. He answered that I was from Regional HQ Finance also paying a routine visit.

I had no prior knowledge of the various kinds of tax inspectors in this particular country and their

specific responsibilities but I had a quick lesson from my host. I thought he was exaggerating when he told me about the capability and approach of the different levels of inspectors.

All those years ago, it was customary to smoke everywhere and on the unforgettable day I met the 'tax guns', I had no qualms following that custom. (Thankfully I have since quit smoking.) As I smoked I reflected on my 'tax guns day' and wondered what I could learn from the experience.

Better observation sprang to mind. I should have realised that nobody else had reacted badly to seeing the armed tax police. It was a routine event that didn't faze them. I should have noticed that and acted similarly.

In later years I discovered first hand that my host on that day was not exaggerating. For example, when tax inspectors in that country demanded a dedicated office for their sole use during their onsite stay, the office had to be locked and the entrance sealed daily. If the seal was broken when they returned, the nominated (by the inspectors) local company tax representative would be arrested!

This kind of approach was amazing, but for me, nothing surpassed the sight of uniformed and armed tax inspectors which completely threw me. Although I can see the funny side now, at the time I was definitely outside my comfort zone.

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

"Your work is love made visible."
Khalil Ghibran

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1. Start with the end in mind: create a brief description of the purpose of the project, and the likely end result in the medium term. For example: not just the removal of a legal entity, but the likely long-term destination structure for the group; not just the acquisition of a business, but the high level approach for integrating it and creating value from it.
2. Identify and involve all stakeholders and functional teams. Ensure regular communication between stakeholders and functional team leads.
3. Decide and communicate a materiality threshold: a monetary value for the impact of issues which will be considered material. Not every impact can be directly translated into money, but at least it provides a yardstick.
4. Decide and communicate any key parameters: such as deadlines, or structures or counterparties which are not to be impacted without consent.
5. Ensure that the due diligence requests and due diligence reports prepared by each function are read by the same person or people. This is the only way to identify potential mismatches in assumptions, or the potential relevance of facts identified by one functional team to the analysis carried out by another.

LCN Legal publishes various free resources to help with project planning and due diligence. See the back page of this newsletter for further details.





Top holiday destinations for tax and transfer pricing professionals

For some, it's the summer holiday season. Here's a quick run-down of some holiday destinations recommended by senior tax and transfer pricing people, based on interviews featured on our website lcnlegal.com

Goa, India – Renu Narvekar, former Global Head of Transfer Pricing and Regional Head of Tax, Europe at HSBC

Bali – Nina El-Imad, director of Simpson Booth

Mauritius – Sam Barrett, Head of International Tax & Global Transfer Pricing at Sandvik

Jamaica and the Caribbean
Bill Dodwell, Head of Tax Policy at Deloitte

Casey Key Beach, Florida
Sam Cicogna, Vice President and Head of Onesource Transfer Pricing at Thomson Reuters

La Manga Club in Spain
Justin Walton, former Head of Tax at John Laing Group

Almost anywhere in Italy and the Bahamas – Ray McCann, former HMRC inspector and responsible for the introduction of DOTAS

The Dalmatian Coast off Croatia
Iain Stewart, Global Head of Tax of Damco

Cote D'Azur, France
Alan Kennedy, Managing Director of Trident Tax Limited

South-west France – Andy Hewitt, Head of Tax of the online fashion and beauty retailer ASOS.com

Villard Reculas, the French Alps – Peter Dobson, Regional Head of Tax for Ferrovial

The Alps – Paul Barnes, Director of Tax at Visa Europe

Porlock, Exmoor, UK
Lee Holloway, Group Head of Tax of Next

Scottish Highlands
– our very own Ian Barron

Abel Tasman National Park, New Zealand – Gareth Green, Founder of Transfer Pricing Solutions

The Impenetrable Forest in Uganda – Agnes Lingane, Director of Taxation for the Asia, Pacific and Japan region of Open Text Corporation

Machu Pichu, Peru
Nana Afua Okoh, Tax Advisor for Gold Fields Ghana Limited

Jackson Hole, Wyoming
Keith Brockman, VP Global Tax at Welbilt

China especially the historical parts of Beijing
Sherullah Khan, Vice President and Head of Taxation at American Express for the JAPA Region

LCN Legal celebrates its fourth birthday

On 24th July, LCN Legal celebrated its fourth birthday (counted from the date when it was approved by the Solicitors Regulation Authority).

From a beginning with just one laptop and no clients, over our four years we have worked with multinational and domestic clients on a global scale in countries such as Australia, Austria, Bulgaria, Canada, China, France, Germany, Guernsey, Hong Kong, India, Isle of Man, Italy, Jersey, Malaysia, the Netherlands, Serbia, Switzerland and the USA. We've published 285 articles and posts on our website, and we have hosted seminars and workshops for more than 54 large corporates and financial institutions.

Needless to say, we are hugely grateful to all our clients and all the other professionals we work alongside, and we look forward to continuing to be of service.

And last but definitely not least:

Venice, Italy – recommended by no less than three of our interviewees, namely Tony Hooper, the former head of treasury and tax of Pennon Group plc, Samar Farooq, Group Head of Tax of Care UK and David Mackay, Head of Tax & Treasury Manager at SThree PLC

Pictured: the Dalmatian coast off Croatia (above) and Venice, Italy (below).



Cherry's story

Working with XLP has changed me for the better and I've learned how to develop aspects of my character, which were once holding me back, to my benefit".

LCN Legal has pledged to donate US\$1,000 in cash to youth work charity XLP for every qualifying instruction in 2017 (see lcnlegal.com/csr/ for details). You can make us give more by recommending us for legal projects in our specialist areas of group structures and intercompany agreements, where we are acknowledged as experts. Just send us the details by email to info@lcnlegal.com, or call us on +44 20 3286 8868.

Here's a personal account from Cherry, one of the young people whose lives have been transformed by XLP's work.

"When I first got involved with XLP I was a very angry person. I would get wound up by the smallest things. I would verbally attack people, even when it provoked threats in return. I hated college so much that I stopped going for two months. My home life was hard too; my parents are separated and weren't as supportive as they could have been. My mum wasn't in a place where she could bring up my sister and so I took responsibility for her, raising her myself. I had to grow up fast in a short space of time. Socially, I kept myself to myself. I didn't see the point in letting anyone get close to me as I thought they would let me down like people always did.

But youth workers at XLP challenged me to open up, and to change my attitude by taking small steps. For example, they encouraged me to make the decision to try going one week without insulting anyone and over time it became easier

and easier to not do it at all. After a while, XLP encouraged me and three other girls to form a girl group together which we called 'Skinni Latte'. Being in the group gave me a whole new outlook on life and through it I have been given so many opportunities and have met some amazingly inspirational people. I have become so much more positive and now have the confidence to step out of my comfort zone and meet new people; I hadn't realised that there were so many people out there who would be supportive and willing to believe in me.

Working with XLP has changed me for the better and I've learned how to develop aspects of my character, which were once holding me back, to my benefit. For example, when XLP encouraged me along with some others to apply to the Barclays Apprenticeship Scheme, I channelled my stubbornness to keep me focused through XLP's interview training and the assessment days ... and I got the apprenticeship! I have been at Barclays for almost a year now. I have won awards for Cashier of the Month and Most Improved Cashier, and have even had dinner with Antony Jenkins, CEO of Barclays. I can now see the benefit of working hard and being consistent. I am a role model to my siblings and that is one of the best feelings in the world.

I feel so grateful to XLP for the opportunities they've found for me. I've been through a lot but XLP have stuck with me and given me the guidance to prevent me becoming just another statistic."



LCN Legal Intercompany Agreements Toolkit

Includes tried-and-tested template agreements, so you can create appropriate documentation more quickly, and avoid the typical pitfalls which create unnecessary Transfer Pricing risks.

A 20% discount is available for LCN Legal clients and subscribers.
For more information, email us at info@lcnlegal.com, or call on +44 20 3286 8868.

Free resources for due diligence and project planning

Here is a small selection of the free legal resources which LCN Legal publishes:

- Project planning form for group reorganisations
- Project planning form for creating or updating intercompany agreements for transfer pricing compliance
- Due diligence log and checklist for corporate simplification projects
- Key feasibility issues for Eurobond listings
- Key legal due diligence issues for intra-group business transfers
- Guide to liquidation demergers

To get your copies of these or other free resources, go to our website www.lcnlegal.com or email us at info@lcnlegal.com.

Evolution of a Corporation: Peugeot

1810 Jean-Pierre and Jean-Frédéric Peugeot diversify their grain mill by manufacturing saws, steel strips and steel springs

1842 The business starts production of coffee, pepper, and salt grinders

1858 Émile Peugeot applies to register the lion trademark

1882 The company begins the manufacture of bicycles

1958 Peugeot begins selling cars in the USA

1910 'Automobiles Peugeot' is re-merged with the family company to create 'Automobiles and Cycles Peugeot'

1896 Armand Peugeot creates 'Automobiles Peugeot', as a separate company

1889 The first Peugeot-branded car is a steam-driven 3-wheeler

1965 PSA (Peugeot Société Anonyme) is founded as the group's holding company

1976 PSA becomes 'PSA Peugeot Citroën' through a merger with Citroën S.A.

2012 General Motors buys a 7% share in PSA for €320m and sells it in 2013 at a loss of around €70m

2015 Indian automotive giant Mahindra & Mahindra purchases a 51% share in Peugeot Motorcycles for €28m

Testimonials for LCN intercompany agreements

"I worked with Paul Sutton for many years, in my role as Group Tax Manager of Sumitomo Electric Wiring Systems (Europe) Ltd (SEWS-E Ltd), and also for a period as SEWS-E Ltd Company Secretary. In this time I had extremely valuable assistance and advice from Paul, not only as regards general corporate law matters, but also particularly across a wide spectrum of legal aspects of SEWS-E Ltd group transfer pricing policies, implementation, inter-group agreements and legal compliance."

Martin L Kinsey, Former Group Tax Manager, Sumitomo Electric Wiring Systems (Europe) Limited