

The LCN Legal Process for Creating and Maintaining Intercompany Agreements

Step 1: Scope

We are often brought in at the stage when work has begun on creating or revising a group's TP policies, but before those policies have been finalized. The initial legal work required is often to validate the structure from a legal perspective, and design appropriate template ICAs for each of the key types of intercompany supply. Even where the client has a large in-house legal team, that team is often unfamiliar with transfer pricing issues and how ICAs differ from conventional contracts.

Based on the preliminary information you share with us, we can often give fixed price quotes for the creation of tailored template ICAs.

Step 2: Review

Our detailed review will include the draft transfer pricing policies and reports, the group structure chart and any existing intercompany agreements which are already in place. During this phase we will confirm the legal templates required to document the key transaction types involved. These may include:

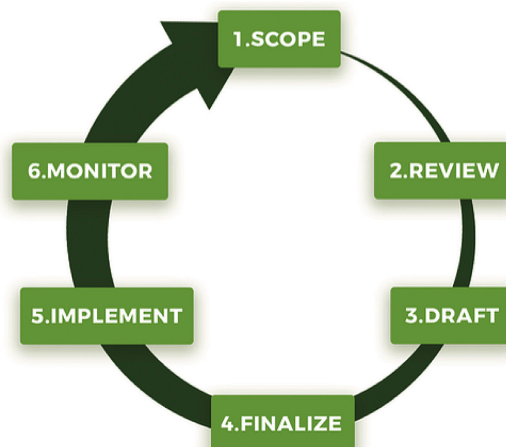
- Back office services
- Strategic management services
- Licences of intangibles / internal franchise agreements
- Distribution of goods or software
- Toll or contract manufacturing
- Loans and cash pooling

As part of our review, we may identify issues which require further consideration – such as whether the proposed allocation of risk is consistent with the legal duties of subsidiary directors. We raise any such issues with you first, so that you can consider what impact they may have on your TP advice.

On occasion, the adoption of new transfer pricing policies may entail a restructuring of the relevant group. In that case, we co-ordinate you to plan and develop an appropriate approach.

Step 3: Draft

In this stage we prepare discussion drafts of the template ICAs for each of the key transaction types, based on the relevant provisions of the OECD's Transfer Pricing Guidelines. We strongly believe that ICAs should be expressed in as simple language as possible, and kept as brief as possible, whilst addressing all the legal and commercial functionality needed to support the group's compliance objectives.



Step 4: Finalize

We finalize the template ICAs based on feedback received from the different stakeholders involved, making sure that you are comfortable with the final versions.

If the client has specific requirements as to governing law, then we will co-ordinate as needed with local lawyers from our network of relationships, or with the client's in-house legal function. This input rarely has a significant effect on the substance of the ICA templates, because by definition the focus of the templates is to describe the legal allocation of functions and risks in clear language.

Step 5: Implement

The implementation phase of a typical project includes preparing execution versions of the individual ICAs, arranging for them to be signed (using electronic signatures where appropriate), and collating and archiving the signed versions. It usually also involves preparing briefing notes for directors, to respect the governance process and the separate legal status of subsidiary entities.

Step 6: Monitor

As for any structure, intercompany agreements require ongoing monitoring and maintenance to ensure they reflect changes in the composition of the group, its business model, the tax / transfer pricing environment or other external factors. We recommend that clients ensure that their ICAs are reviewed at least on an annual basis, and often more frequent review (e.g. quarterly) is more appropriate.

We support clients by providing an ongoing monitoring and maintenance service, and we can also carry out spot-checks as to implementation.

NEW: Our book on intercompany agreements

