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**Connecting professionals around the world**

**International Practice Group, is an international association of independent firms, with a Secretariat, which meets clients' needs for legal, taxation and accountancy services throughout the world**

## **2011 PRAGUE CONFERENCE HOSTED BY ADVOKÁTNÍ KANCELÁŘ KŘÍŽ A BĚLINA S.R.O.**

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As the registration for our Prague Conference (October 6-9, 2011) is already closed, we strongly believe that most of you are registered and will participate at the Prague Conference. Our law firm Advokátní Kancelář Kříž a Bělina s.r.o. is more than happy to welcome all of you and also IPG's new members in Prague.

The Conference takes place in the Intercontinental Hotel which has a great location directly in the centre of Prague. We have prepared for you a rich programme including the possibility of attending the opera in the old Municipal Theatre, a sightseeing tour focusing on Prague castle, which is the main tourist attraction of Prague, or dinners at the special places such as the old Prague brewery or steamboat. For more details please see the programme for the Prague Conference which was distributed to all of you.

We believe that organising the Prague Conference brings your bigger attention to our law firm, business in the Czech Republic and the whole region of Central and Eastern Europe, as it is one of the main goals of IPG's recruitment to expand to our region.

We look forward to seeing and hosting all of you in Prague on October 6-9, 2011.

Advokátní kancelář Kříž a Bělina s.r.o.

Jan Kříž and Tomáš Bělina



**ADVOKÁTNÍ KANCELÁŘ  
KŘÍŽ & BĚLINA**



## And in the Red Corner: It's BOTH Louboutin and YSL



Footwear designer Christian Louboutin is seeing red after an American judge ruled that it could not prevent fashion house Yves Saint Laurent (YSL) from selling shoes with Louboutin's characteristic "Chinese Red" soles. Although District Judge Victor Marrero conceded "the red outsole became closely associated with Louboutin" – and even quoted a Jennifer Lopez lyric celebrating the pricey shoes – he denied Louboutin's preliminary injunction to stop further sales of YSL's scarlet-soled footwear. Judge Marrero claimed the decision would avert a potential "fashion war", where designers could claim a virtual monopoly over specific colours, as Intellectual Property Assistant Avi Toltzis explains.

Although the court refused to cancel Louboutin's US trademark for the design element on the present motions, the nullification of the mark remains a

possible outcome of the trial. The United States Patent and Trademark Office initially refused to register the red soles as a trademark, but Louboutin persisted and ultimately obtained the registration in 2008. In its defence, YSL claims it has sold shoes with red soles since the 1970s.

The decision is likely to have a deep impact across a range of sectors. Designers of all stripes will be left to wonder whether, and to what extent, they can rely on trademark law to protect design elements of their products. Although specific design protection is available in most jurisdictions, it typically lasts a maximum of 25 years – whereas a trademark can be renewed in perpetuity.

The Louboutin judgment may also concern firms that use colour as an essential component of their branding. How willing will courts be to protect Tiffany's trademarked blue

hue? These companies will hope the ruling is limited to cases where the colour is used as a design element. If courts follow Marrero's "colour-depletion arguments", T-Mobile's garish magenta tones may soon look a lot dimmer.

Despite the setback, Louboutin will dig in its, erm, heels. Louboutin's attorney promised to "fight like hell" – a strange thing to say, considering the devil's well-documented preference for Prada.

For advice on any aspect of design or trademark rights, please contact Avi Toltzis [amt@silvermansherliker.co.uk](mailto:amt@silvermansherliker.co.uk) or any member of the Intellectual Property team on +44 (0) 20 7749 2700.

## Stock Exchange of Mauritius: One of only two exchanges in Africa currently recognised by HMRC

**Mauritius has further advanced its international financial centre status and obtained recognition as a Recognised Stock Exchange for UK tax purposes. The Stock Exchange of Mauritius (SEM) is one of only two exchanges in Africa cur-**

**rently recognised by HMRC. This latest development enables SEM to position itself as an attractive listing venue for global and specialised funds, as well as other investment entities including global companies and structured products.**

The Stock Exchange of Mauritius ("SEM") achieved major recognition recently with the Designation by the United Kingdom's Revenue and Customs department (HMRC) of the SEM as a "recognised Stock Exchange". As a result of this development, securities

admitted to trading and listed on the Official Market of the SEM will meet the HMRC interpretation of “listed” as set out in section 1005 (3) (a) and (3) (b) Income Tax Act 2007.

**Greater accessibility to UK capital pools.**

This recognition offers the clients of Turnstone, in particular those who are making use of our fund services, a substantial benefit. Mauritius based funds and debt issuing corporates administered by Turnstone and listed on the SEM will now find they have access to capital pools in the UK which, until this recognition was granted, may have been off limits to them.

The main benefits include:

- UK pension schemes will be permitted to hold securities (including funds) listed on the Official Market of the SEM, giving companies and funds listed on SEM access to a larger market of sophisticated, well-capitalised investors.
- Securities listed on the Official Market of the SEM may be held in tax advantaged UK products such as Individual Savings Accounts (ISA’s) and Personal Equity Plans (PEP’s) by UK investors.
- Holders of debt securities satisfying the Eurobond exemption and listed on the Official Market of the SEM are exempted from withholding tax on distributions underlying

these debt securities.

- Inheritance tax advantages may accrue to UK holders of securities listed on the Official Market of the SEM.

SEM obtained this designation after undergoing a rigorous and in-depth application process to ascertain that the Exchange meets the requirements set out by HMRC in order to be designated as a ‘recognised Stock Exchange’. Speaking about this international recognition, SEM’s Chairman, Gaëtan Lan noted: “This is a significant milestone that reinforces SEM’s international presence and confirms that the Exchange maintains rules, operating procedures and standards that are in line with international requirements. This international recognition fits very well with the numerous initiatives pursued by the Government of Mauritius and regulatory institutions like the Bank of Mauritius and the Financial Services Commission to position Mauritius as a well-regulated jurisdiction.”

Deva Marianen, CEO of Turnstone Mauritius and a Member of the Listing Executive Committee of the SEM sees this designation as a further reinforcement of the attraction of Mauritius as a base for UK based money managers wanting to invest into Africa, India and South East Asia. Not only is Mauritius an attractive jurisdiction in respect of its extensive double taxation treaty network

(presently with 36 countries) from which it benefits with those countries which continue to attract substantial capital inflows, but if such structures are then listed on the SEM, they have enhanced access to the benefits described above.

SEM’s Chief Executive, Sunil Benimadhu, also commented on the HMRC designation stating, “The SEM is delighted to have been granted this important designation by HMRC. This status would enable securities and investment structures listed on the Official Market to obtain various tax-related exemptions from the UK by virtue of listing on SEM as a ‘recognised Stock Exchange’ and can potentially attract new business opportunities for Mauritius and for the SEM”.

In addition, the recognition of the SEM allows us to facilitate the access by fund managers and advisors to capital pools in the UK, and to introduce key players and authorised distributors to the marketplace.

For further information contact us at [pwservices@turnstone-europe.co.uk](mailto:pwservices@turnstone-europe.co.uk)



## BRAZIL — THE CURRENT ECONOMY



Brazil is located in South America, and its territory represents almost half of the continent with an area of 8.5 million square kilometers. With nearly 200 million inhabitants and a multicultural population, the Federal Republic of Brazil consists of 26 States and its capital is the federal district of Brasilia.

The country is divided geographically into 5 different regions:

**North:** The North region, where the Amazon basin is located, is composed of the following States: Acre, Amapá, Amazonas, Pará, Rondônia, Roraima e Tocantins;

**Northeast:** Composed of the following States: Alagoas, Bahia, Ceará, Maranhão, Paraíba, Pernambuco, Piauí, Rio Grande do Norte e Sergipe;

**West-Central:** Composed of: Goiás, Mato Grosso and Mato Grosso do Sul, along with Distrito Federal (Federal District) and Brasília;

**Southeast:** Composed of: Espírito Santo, Minas Gerais, Rio de Janeiro and São Paulo; and

**South:** Composed of the States of Paraná, Rio Grande do Sul and Santa Catarina.

Initially a colony of Portugal, Brazil is currently a nation with a solid democracy which adopted the presidential system as its political model.

Regarding its rates Brazil achieved one of the major rates of economic growth during the last Century. The economy at the beginning of the last century, which was rural, has become predominantly industrialized. Brazil is a member of respected international organizations such as the World Trade Organization and is part of the International Monetary Fund. The World Bank predicts that by 2014 Brazil will be the fifth largest economy in the world with less inequality in income distribution.

In this sense, only to illustrate, in 2009 exports surpassed US\$ 152,995 million and their main destinations were Asia, European Union, the United States, South America, and the MERCOSUR. In addition exports in the first semester of 2010 kept increasing totaling US\$ 106,860 million, with a growth of 27.1% over the same period of 2009, and, therefore, above the average world growth per year.

In accordance with the data from the Ministry of Development, Industry and Foreign Trade, the country's commercial balance during the first semester of 2010 registered an increase of almost 50% in the exports in relation to the same period of 2009.

Furthermore, it should be noted that the volume of Direct Foreign Investment (IED) destined to Brazil grew almost 40% from 2006 to 2009, a rate considerably favorable when com-

pared to this kind of investment in the world, which has decreased almost 25% due to the international financial crisis, as per a report prepared in 2010 by the United Nations Conference on Trade and Development. With these rates, Brazil became the Latin American country which received most of the foreign investments in the period. This record in collecting foreign resources led Brazil to overcome other emerging Latin economies, and Asian economies, such as Turkey, Korea and India.

According to the survey of United Nations Conference on Trade and Development, Brazil is one of the most attractive economies for the direct foreign investments.

The companies willing to be a part of the global economy must consider the Brazilian booming marketplace for their international market strategy because Brazil is already targeting the world. It will host the United Nations Conference on Sustainable Development in 2012, the Soccer World Cup in 2014 and the Olympic Games in 2016. Therefore, Brazil will offer excellent opportunities for exporters and investors over the next 5-7 years.

The Brazilian Government and entrepreneurs are engaged in the expansion and modernization of the Brazilian economy. This step has encouraged the entry of large foreign investments and led to the increase in international commerce.

## BRAZIL — THE CURRENT ECONOMY

Credit rating agencies Standard & Poors and Fitch Ratings upgraded Brazil to "A" investment grade ratings in April and May 2008. This increase shows the great maturity of Brazilian companies, which have been proven to improve the fiscal and external debt and the prospects for economic growth.

Regarding the stock market BM & FBOVESPA is Latin America's largest securities stock exchange market, moving more

than 900 billion in 2009. The BOVESPA market (Equities) represents more than 75% of the volume of shares in the region. The daily average of BOVESPA market was US\$ 3.21 billion.

Foreign investment represents 34.18% of total equity investments. In addition, the BOVESPA stock market is the third largest in the world. The development of the stock exchange clearly shows the evolution that

has been set forth in the Brazilian capital markets and the huge attraction of foreign investments.

In this sense, the interest of foreign investors in Brazil has grown significantly, and to approach the main legal aspects involved in the establishment of a new company in Brazil is a matter of paramount importance.



## BUSINESS OPPORTUNITIES IN THE BRAZILIAN MARKET

Initially, it is important to mention the possible business frameworks that can be adopted in order that the foreign investor participates in the positive results of the Brazilian economy.

In this respect, the most simple business framework that can be adopted by the foreign investor is the exportation of products or services to Brazil without hiring a representative or the establishment of a company in the country. This structure is commonly used by the investors who intend to try the Brazilian market prior to making a more firm investment decision. There is less commitment of capital and there is certainly less risk involved, although it is more difficult to approach customers.

Thus, foreign investors are willing to actually increase

their market share in Brazil, but without establishing a company in Brazil, you can choose to appoint a sales representative, distributor or a franchisor. To formalize any of the latter employments it is necessary to be cautious, being willing to sign an agreement which clearly describes the rights and obligations of each party. In general, the law protects Brazilian trade representative, distributor and franchisor, providing them with various legal mechanisms for their defence in the event of any arbitrary decision of foreign investors in relation to its scope.

The foreign investor that is not very familiar with the Brazilian market can also opt for a joint venture combining their technology, know-how and brand to the local knowledge and the structure of the Brazilian partner.

It is worth mentioning that, to carry out an undertaking in Brazil, a possible format of a commercial partnership is also the consortium between the foreign investor and the Brazilian partner.

The consortium is not equipped with a legal personality and its participants respond only to the obligations they accounted for, without presuming solidarity. The consortium contract must be filed at the Board of Trade (Junta Commercial), and it must envisage the purpose of the partnership, the duration, address and form of solution of disputes, obligations and responsibilities of each consortium participant, results allocation, accounting norms, representation, management fees and the form of deciding on common interest issues. The consortium format is widely adopted for major undertakings

to be contracted by the Brazilian government, through public bids.

In a partnership like this one, it is essential to sign a shareholder agreement and/or a shareholder agreement that encompasses the financial contributions promised, voting agreements, preference rights, tag along, drag along, and shares purchase and sales options, among other relevant issues, in order to protect the foreign investor's interests.

In summary, these are some forms of investment in the Brazilian market, emphasizing that the country has never been so consolidated economically and politically.



René van den Outenaar

As mentioned during the last Spring Conference in Dortmund, it's now, since June 2011 official!

I'm pleased to announce that in addition to Molade Trust Management, I've started another company: *Crown Licensing Holding B.V.*

A brief introduction:

**Crown Licensing's** core business is in the licensing & royalty sector. Located in The Netherlands as this country has a well-established reputation for its royalty structures and to realize maximum profit. It's a well-known fact that the band The Rolling Stones have had their royalty-headquarters here for over 40 years!

*Crown Licensing* is a dedicated partner, who provides the best business instruments for marketing your clients product, trademark, or IP, and receiving royalties that will build their wealth.

We specialise in:

- Setting up royalty & licensing structures including agreements
- Optimize the tax structure within the royalty structure
- Receiving and payment of royalties via separate Dutch entity

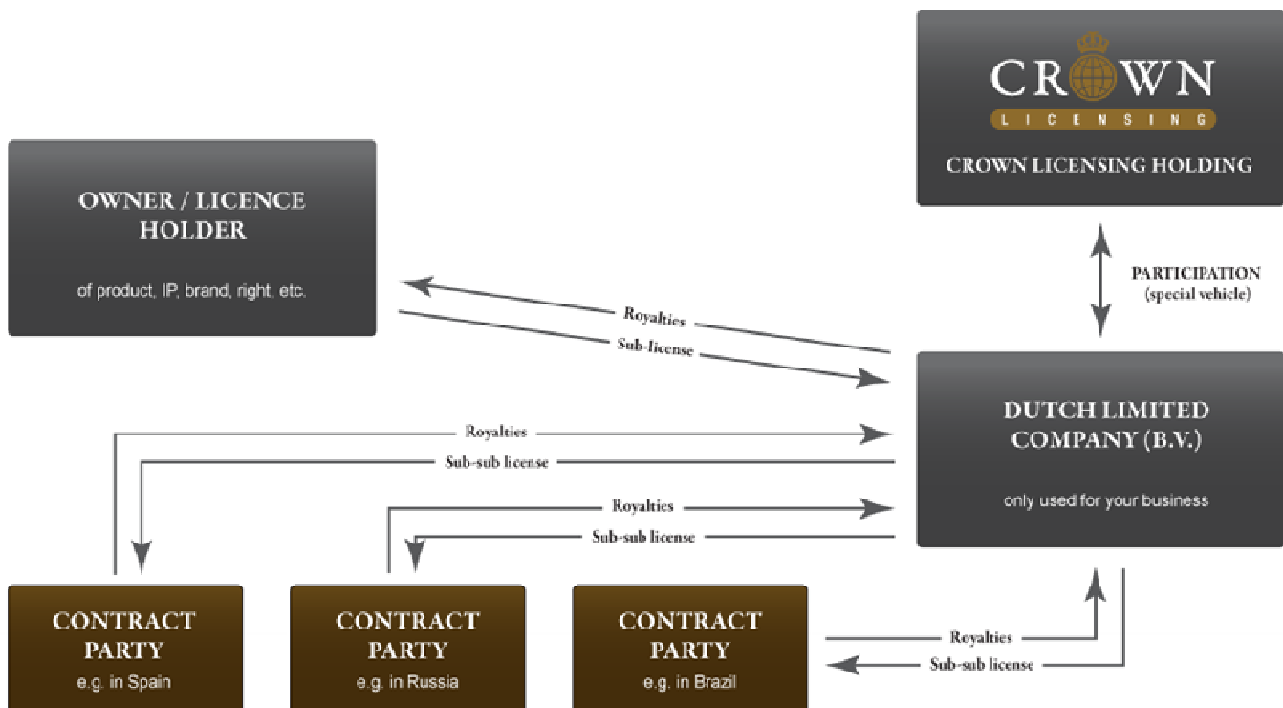
We work according to a unique and highly successful business

model outlined below that aims to create the highest possible return for our clients at relatively low costs.

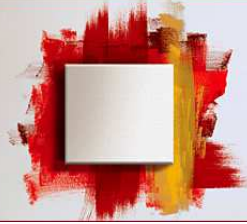
I will be happy to provide members of IPG with more information by phone, mail, or even in person at the Prague Conference! You can also visit [www.crownlicensing.com](http://www.crownlicensing.com) for more details.

Kind regards,

René van den Outenaar



Original thinking



volaw

## Zero/Ten approved by Europe

**Robert Christensen, Managing Director of Volaw, welcomes the announcement that Jersey's tax system has been found compliant with the European Union's Code of Conduct on Business Taxation.**

In June 2008 the States of Jersey introduced changes to Jersey's system of corporate taxation in the form of its 'Zero/Ten' tax regime.

The new regime was formulated to comply with the EU Code of Conduct on Business Taxation, while retaining Jersey's competitive position as a leading international finance centre. The standard rate of corporate income tax was fixed at 0%, with most financial service companies taxed at a rate of 10%.

European criticism that the 'deemed distribution' provision of Zero/Ten did not comply with the 'spirit' of the Code led the States of Jersey to amend the Income Tax Law to remove the controversial element.

On 14 September 2011, Jersey's Chief Minister, Senator Terry Le Sueur, confirmed that Jersey's tax structure has now found favour in Europe:

"Following the ongoing Review of our Business Tax Regime, the Treasury Minister proposed, and the States then agreed, legislative amendments which aimed to remove elements of our legislation that were considered harmful by the Code Group.

"At its meeting yesterday, 13 September, which was attended by Jersey officials, I am pleased to report the Code of Conduct Group accepted that our rollback proposal would remove the harmfulness of our regime. This has to be ratified by ECOFIN in December at the end of the Polish Presidency. This is excellent news for Jersey, and vindicates the consistent stance maintained by the Treasury Minister and myself over a long period.

"We must not underestimate the assistance of Senator Cohen, Assistant Chief Minister for External Relations, who has been invaluable in communicating the Island's position with the UK. I would like to thank our advisor on International Affairs and the director of Tax Policy who both presented the Island's case at the Code Group and have supported ministers over many months.

"In these challenging times it is good to be able to present members with some very positive news which should serve to significantly strengthen confidence in our Island's future."

**For further details about how Volaw can structure entities using Jersey's tax system for international business and wealth structuring purposes, please contact Robert Christensen.**

For further information please contact:

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The contact details for the Chairman and Secretariat of the group are shown at the bottom of this page, but detailed below is a list of contact details and areas of responsibility for the Management Committee:

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#### **And finally - Newsletter distribution**

Finally, we would ask that you pass this newsletter on to all members of your firm who could usefully be aware of IPG. If you wish to supply the Secretariat with a general email address which acts as a distribution list for your firm then we would encourage you to do so. This way each firm can keep their internal distribution list up to date and the Secretariat can send newsletters, etc. to the widest possible number of people. If you have any questions please contact Hiacenta Leutert Klages.

If you have any matters you would like including in the newsletter then please let the Secretariat know.

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