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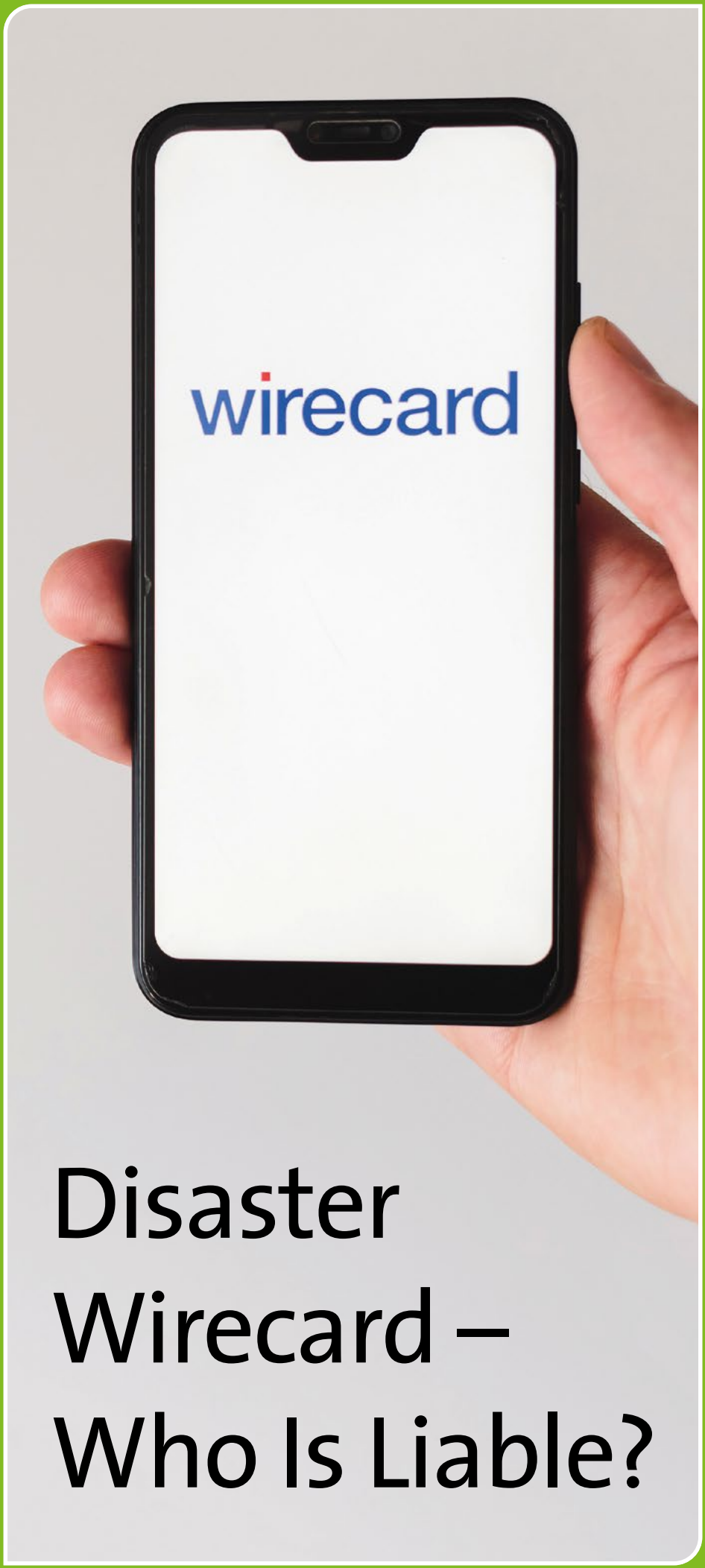
News and Information for Members and Friends of GGI



Disaster Wirecard – Who Is Liable?

Issue No. 108 | July 2020

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Editorial

Dear Reader,

As this edition of INSIDER is going to press, many countries around the globe are experiencing the second wave of the COVID-19 pandemic. Since mid-June, coronavirus infections experienced an upsurge here in Switzerland. Quarantine requirements have been tightened again – from 06 July, anyone entering the country from any of the "29 high-risk countries" has to undergo a ten-day quarantine.

Different jurisdictions have responded to the pandemic with different regulations and measures. GGI members have reported in GGI COVID-19 newsflashes, newsletters and webinars on the latest changes and happenings, and discussed possible steps on how to best deal with regulatory hurdles and ideally advise their clients.

GGI webinars have been a great tool for staying connected during these disruptive times, in which no conferences and personal meetings are possible. Read about the successful first round of GGI webinars (since the May INSIDER edition) and get a taste for some of the webinars scheduled from September onwards (after the summer break).

In this issue of INSIDER, GGI members also continue to keep readers updated with the latest happenings in their companies, or to share expert articles that may be of interest to other members.

Dr Thomas Ditges (DITGES Rechtsanwälte Wirtschaftsprüfer Steuerberater, Germany) discusses the Wirecard case and its consequences. Who will be liable? Why have the auditors, who signed off on the company's books for a decade, not noticed anything? Are the auditing tools sufficient? To what extent can an auditor uncover fraud? What are the processes, what went wrong, what should be improved? Can the auditors be held responsible for not detecting this organised fraud, fake accounts, and false confirmations and statements with regard to escrow accounts? What can we learn from this case?

Ioana Hategan (Hategan Attorneys, Romania) writes about "The Conflict of Interests vs the Common Interest: Will we see a paradigm shift after COVID-19?"

Adrienne Drew (Globalization Partners, USA) points out why non-EU companies should re-evaluate whether they may now have GDPR (General Data Protection Regulation) compliance obligations. Firms expanding into Europe often use third party employers; they need to consider GDPR when choosing their partner.

Kristina Ikayeva (Nektorov, Saveliev & Partners, Russia) updates the readership on M&A trends in Russia during the COVID-19 pandemic. What are the consequences for M&A transactions of restrictions and measures implemented in response to COVID-19?

Evis Jani (Gjika & Associates, Attorneys at Law, Albania) explains how Albania is adapting to European standards; a new law has been approved by the Albanian Parliament on "Undertakings for Collective Investment".

Krystyne Rusek (Pallett Valo LLP, Canada) demonstrates, with a concrete case, what can go wrong when lawyers act as fiduciaries.

GGI Practice Groups continue to be active, as you will have seen in the

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many webinars. For the Business Development & Marketing (BDM) Practice Group (PG), Kait LeDonne, guest speaker at the May webinars, shares her insights on how to create LinkedIn content that effectively drives leads to your practice. Jim Ries (Global Chairperson of the BDM PG, Offit Kurman, USA) and Talia Berger (Global Vice Chairperson of the BDM PG, Soroker Agmon Nordman | IP & beyond, Israel) present results from their BDM PG survey and discuss training in the areas of Business Development and Marketing within GGI member firms and how your firm can benefit from proper training in this area.

We wish you an enjoyable read and, of course, a relaxing and pleasant summer break.

Your GGI Team

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Virtual ITPG Meetings Around the Globe

Although the International Taxation Practice Group (ITPG) was probably the only GGI Practice Group that was able to enjoy a personal meeting of members this year at the ITPG Global Tax Summit at the end of February in Frankfurt/Germany, there has been a considerable need for exchange of knowledge and experience through the pandemic.

For this reason, a total of four virtual ITPG meetings took place in the past two months.
In order to give as many members as possible access to an ITPG meeting and not to require anyone to get up in the middle of the night, we offered each webinar twice: a first one in the morning (CEST), which was mainly attended by members from Europe, MEA, Asia and Australia, and one in the afternoon (CEST) for members from the Americas and Europe.

The first two events took place on 26 May. ITPG Global Chairperson Oliver Biernat (Benefitax GmbH, Germany) focussed on the exchange of information from individual countries on the current status of the pandemic,

Oliver Biernat

Ashishkumar Bairagra

Alan Rajah

its economic and social impact, and the governmental and, in particular, fiscal measures that have been taken to mitigate its effects. Together, more than 50 members attended those two webinars. Everyone was very relieved to hear that none of the participants had fallen ill with COVID-19 and were looking forward to further ITPG webinars in which technical issues would also be discussed.

The decision to offer further meetings was taken shortly after the first two sessions. These took place on 29 June, again with a morning session and another in the afternoon.

The morning session was hosted by Global Vice Chairperson Ashishkumar Bairagra (M L BHUWANIA AND CO LLP, India) and, after words of welcome and introduction, included the following contributions:

- Ashishkumar Bairagra (M L BHUWANIA AND CO LLP, India): “Relaxation in tax residency rules in India”;
- Tony Nunes (Kelly+Partners Chartered Accountants,

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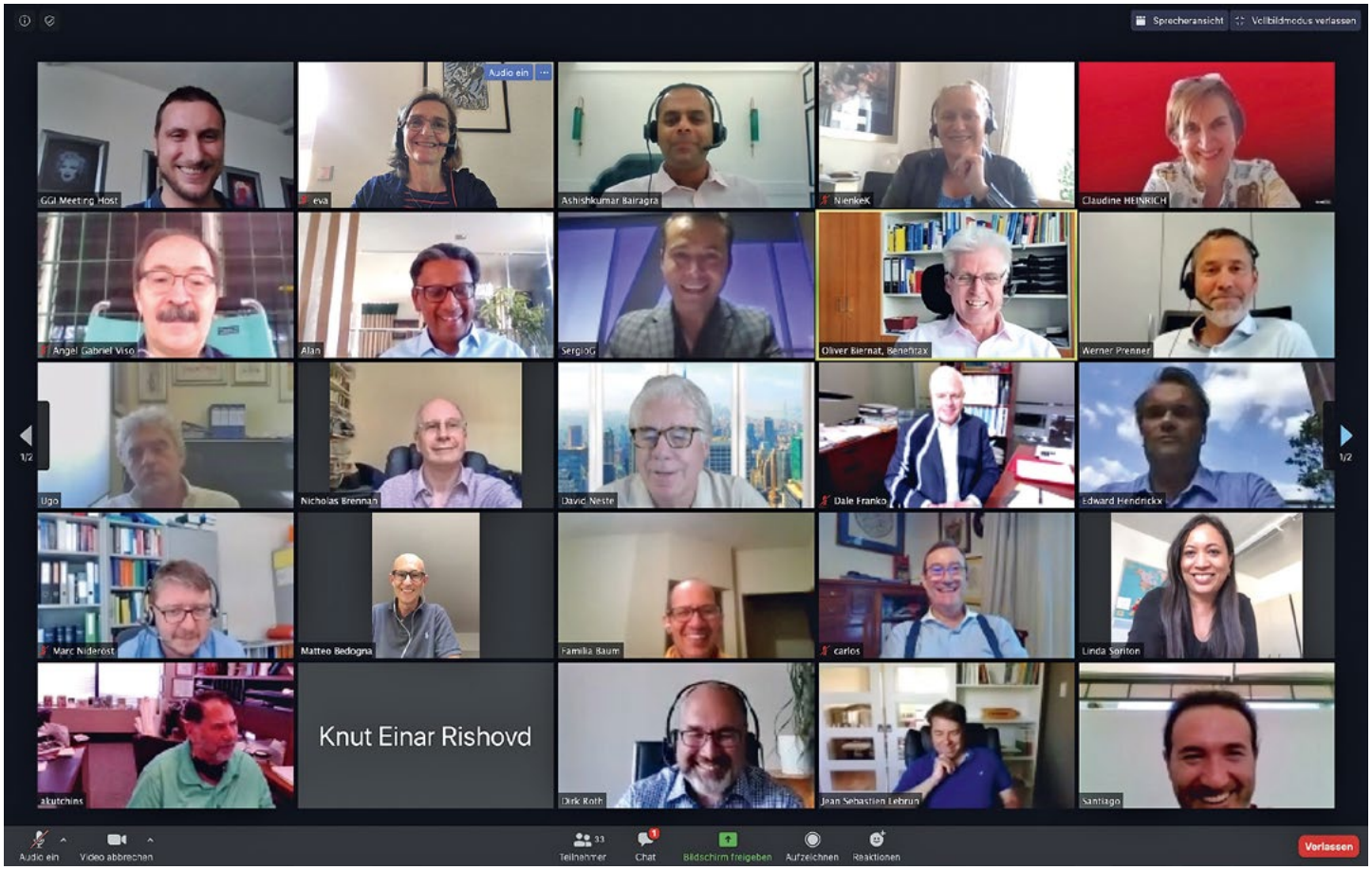


Australia): "Relaxation in tax-residency rules in Australia";

- Graeme Saggers (Nolands SA, South Africa): "Relaxation in tax-residency rules in South Africa";
- Irina Orlova-Panina (Nektorov, Saveliev & Partners, Russian Federation): "Cross-border payment of interest, know-how charges and payment for services: what Russian tax authorities challenge now"; and
- Vijesh Zinzuwadia (Zinzuwadia & Co, India): "Transfer pricing consideration in light of COVID 19".

The afternoon session was hosted by Global Vice Chairman Alan Rajah (Lawrence Grant, Chartered Accountants, UK). After his words of welcome and introduction, the participants followed the following short presentations:

- Graeme Saggers (Nolands SA, South Africa): "Relaxation in tax residency rules in South Africa";
- Carlos Fruhbeck Olmendo (Ficesa Treuhand, S.A.P. Auditores y Asesores Fiscales, Spain): "Tax and financial measures adopted in Spain due to the COVID-19 crisis";
- Ali Nomani (Prager Metis International, USA): "The United States and global mobility tax considerations, COVID-19 update";
- Jennifer Medina (Guerrero y Santana, S.C., Mexico): "E-Commerce: digital platforms and new regulations in Mexico"; and
- Alan Rajah (Lawrence Grant, Chartered Accountants, UK): "Tax residency and permanent establishment during COVID-19".

Altogether, around 60 ITPG members showed up at these two sessions. Although the web meetings were originally designed as an "emergency solution" for the personal meetings that cannot take place currently, they have proven to be excellent tools for international exchange among ITPG members; both webinars were able to attract participants from different parts of the world on the same day and proved to be an extremely powerful tool to connect with like-minded professionals. Another highlight of the webinars was that we got to see more new faces than usual, compared to our meetings at conferences. And these new faces did not just watch and listen, but also provided valuable contributions during the meetings.

Thank you very much to everyone who contributed to the four webinars with a presentation; thank you very much also to Marco Izzo for technical support, and to Linda Soriton and the rest of the GGI team for organising the event and managing the registrations.

After the summer break, on Thursday, 03 September, at 16:00 pm CEST, there will be another ITPG online offering, just for youngsters: our Y(oung)ITPG webinar. Read more ablout it on page 13.

GCG M&A Dealmakers Online Meeting | 27 May 2020

GCG members continue to meet during these times of no travelling via a series of webinars and regional meetings. Particularly successful was the latest GCG M&A Dealmakers Online Meeting, which took place on 27 May 2020.

Some 35 M&A advisers from GCG member firms around the world joined this meeting and exchanged experiences, best practices, and deal opportunities with one other. The programme began with an official opening welcome from Tim van der Meer (Marktlink Fusies & Overnames B.V., The Netherlands), officially representing the GCG Strategic Committee.

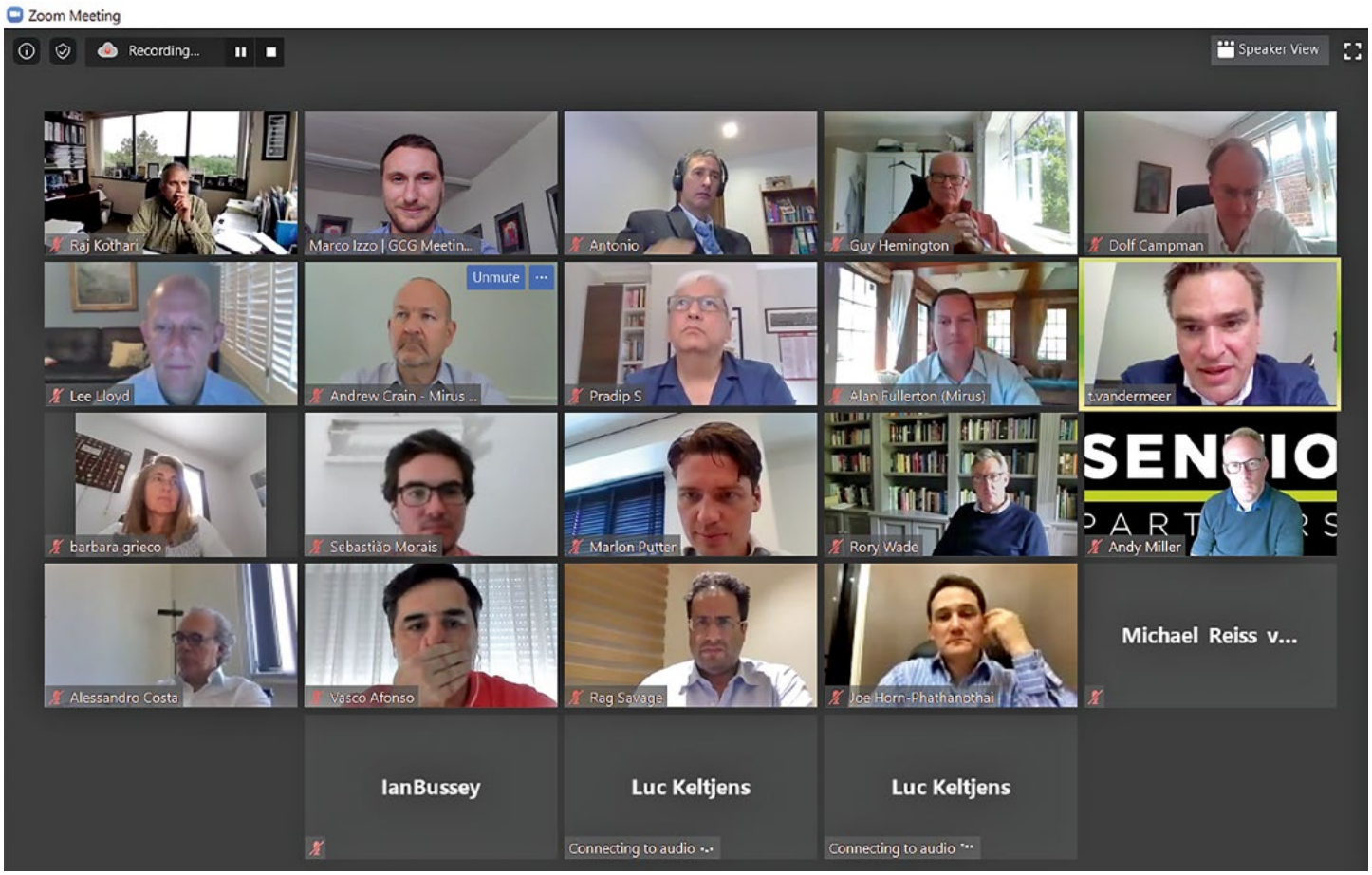
The first presentation was delivered by Pradip Somaia (Regent Assay, UK), who discussed current M&A trends in the TMT sector, welcoming views and comments from GCG members from different regions.

Rajesh Kothari (Cascade Partners, USA) then took the stage and provided a comprehensive update on the current situation in the US, exploring challenges and opportunities resulting from the COVID-19 crisis.

Raghu Marwah (RNM Capital Advisors, India) moved everyone's attention to the Asia-Pacific region, discussing M&A trends in Asia and involving fellow GCG members in an active discussion.

To close the first part of the meeting, Marco Izzo, COO of GCG and GGI, provided an overview of the developments within the GCG network, introducing new members, tools, and partnerships.

The GCG M&A Dealmakers Online Meeting closed with a "Dealmarket" session, where GCG member firms attending the event briefly introduced relevant cross-border deal opportunities that they wished to share with fellow participants.



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Business Development & Marketing PG | 28 May 2020

Commanding Your Brand in Turbulent Times

This webinar did not disappoint. On 19 May, guest speaker and branding expert Kait LeDonne guided well over 30 interested GGI members towards commanding their brand, showing them how to become a leader and establish their brand in a time of crisis.

We reported on the webinar in the previous *INSIDER* (107 – May 2020). This webinar was repeated on 28 May in order to meet European demand.

Read Kait LeDonne's follow-up article on "Creating LinkedIn Content That Effectively Drives Leads to Your Practice" on pages 32-34.

Jim Ries

Kait LeDonne

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Trust & Estate Planning PG | 03 June 2020

Despite the COVID-19 pandemic, the Trust & Estate Planning Practice Group was pleased to organise a GGI webinar and to use this occasion to meet so many members from all over the world.

Thirty-three members attended from Andorra, Brazil, France, Germany, India, Italy, Mexico, the Netherlands, Switzerland, UAE, the UK, the USA, and other countries. Speakers introduced the three topics on the agenda with brief presentations, followed by vivid discussions.

Prof Robert Anthony

Angela Cordasco

Angela Cordasco and Beatrice Molteni (Loconte & Partners, Italy) presented

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on the use of Italian companies for wealth planning. Darlene Hart (US Tax & Financial Services Sarl, Switzerland) shared her knowledge on "The use of US LLC's in foreign trust structures". Prof Robert Anthony (Anthony & Cie, France) provided a very interesting case study on "The forensic accounting on the origin of funds and the issues related to the compliance obligations in case of death of the settlor or of the beneficial owner of the trust".

Beatrice Molteni

Darlene F. Hart

The webinar was extremely useful, providing a general overview and different perspectives on each topic. The topics around inheritance and wealth planning in particular are widely discussed at the moment. In order to get a complete picture, it is necessary to hear different points of views and gain insights from different jurisdictions, so this was a very valuable session.

Staying connected with the TEP PG members was also a wonderful fringe benefit of this webinar.

We thank all contributors and all participants and look forward to meeting you soon (online or in person).

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Corporate & Tech PG | 09 June 2020

Artificial Intelligence: Ethical and Legal Implications

Rens Goudsmit

First and foremost, it was great to see well over 30 PG members in good physical condition.

Led by Global Vice Chairperson Rens Goudsmit (TeekensKarstens advocaten notarissen, The Netherlands) participants enjoyed a 90-minute session about the legal and ethical implications of the use of artifical intelligence (AI).

Rens discussed the definition of AI, the (legal) differences between machine learning and deep learning, the legal landscape from

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an international level to the private level and the (governmental) principles on the use of AI.

At the end of the presentation, all participants were able to put all information into practice with a test:

You are invited to do the same in order to experience the (ethical) difficulties faced with the supervised learning of autonomous vehicles.

Afterwards, there followed a very engaging discussion where PG members exchanged valuable know-how and best practices in the field of AI.

All PG members are very much looking forward to the next – physical or digital – session(s)!

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Swiss Members | 10 June 2020

COVID-19: Experiences and Best Practices in Switzerland

It was fruitful to exchange experiences and best practices with other Swiss GGI members during this webinar, taking a look at their own businesses as well as Switzerland as a whole. Speakers briefly introduced their topic, followed by a discussion.

Ion Eglin (Bratschi AG) introduced the topic "General assembly and board meetings under COVID-19 Regulation II", while Mirco Ceregato (Bratschi AG) talked about "Deferral of bankruptcy".

Claudia Mattig (Treuhand- und Revisionsgesellschaft Mattig-Suter & Partner) shared information on "Short-time work allowance from practice", as well as "Welfare fund benefits for short-time work as a result of the corona pandemic". She also had a look at the consequences of those measures on accounting and financial reporting.

Philipp Akeret (Schweizerische Treuhandgesellschaft AG) introduced the topic "Loss of capital and over-indebtedness in the context of the COVID-19 emergency law regulation".

He also gave an overview of "OR-725-II-moratorium for boards of directors and auditors", as well as "Legal dividend payment constraints when using COVID-19 loans". Eduard Maibach (Schweizerische Treuhandgesellschaft AG) talked about "COVID-19 and the creation of provisions", with a focus on deadlines and default interests.

Matthias Schläfli

Michael Reiss von Filski (GGI Global CEO) reported on Swiss COVID-19 loans in general. He also spoke about business organisation (home office).

Michael A. Barrot (Bratschi AG) covered the topic "Doing business in Switzerland: lump-sum taxation, company tax, etc."

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Matthias Schläfli (Schweizerische Treuhandgesellschaft AG) closed the meeting with an exchange of business (special know-how). All attendees agreed it was absolutely worthwhile, spending the 1½ hours with each other, and it was agreed that this was the kick-off webinar for further meetings in the future.

Leadership & Transformational Change SIG | 24 June 2020

Redefining Business Post COVID-19

On 24 June, the Leadership & Transformational Change Special Interest Group Chairperson Sameer Kamboj (SKC World, India) hosted a webinar on "Redefining Business Post COVID-19", along with co-host Ashishkumar Bairagra (M L BHUWANIA AND CO LLP) and special guest and non-GGI member Mrinal Sinha(Virana Technologies, India).

Sameer Kamboj

Ashishkumar Bairagra

Sameer began the webinar with a discussion on how client priorities are changing in the times of COVID-19, along with researched data and survey results to show various impacts of COVID-19 on Income Patterns, Consumption Patterns and Spending Patterns of people around the globe. He also shared insights on what would be the new priorities for businesses post COVID-19. These were cash flows, people and culture, sales forecasts, maintaining emotional balance and risk mitigation, and contingency planning. These points helped members gain much-needed insights on how to change or adapt their strategies going forward.

Ashish addressed insights about the changing compliance and regulatory aspects around the globe, raising valuable points like common regulatory concerns for businesses, how businesses can raise capital, raising and repayment of debt, direct and indirect taxes, contractual obligations, and where to find the opportunities for compliance.

Mrinal brought the analytical side of the business during the webinar by sharing the macroeconomic forecast of post COVID-19 and sharing the typical worries for businesses. The discussion led to many insights on how members could think about the different strategic alternatives available for their businesses. The takeaways from Mrinal's presentation asked members to think deeply about "Why do I do what I do?" and "What will happen if I stopped doing what I do, and something else?"

The webinar was so gripping that it extended the scheduled time of 60 minutes and members stayed beyond 90 mins, fully involved in the discussion. Sameer, Ashish and Mrinal will be doing a follow-up webinar in the autumn on a similar subject.

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Litigation & Dispute Resolution PG | 25 June 2020

During this meeting, participants focused on the impact and effects the COVID-19 pandemic has had on different jurisdictions—what are the consequences now and what will they most likely be in the future?

At the beginning, participants chatted about their well-being, their business situations during the pandemic, how they have organised home offices, and discussed challenges and benefits of this new organisational structure. It was a relief to hear that all attendees were doing well. Besides this valuable general exchange, litigation and dispute-resolution related matters were on the agenda.

Patrizia Giannini (S4B Solutions for Business, Italy) updated participants on the situation in Italy. Almost all court hearings were postponed or delayed and in a later stadium conducted online. Patrizia raised the question of whether a new era has begun, meaning that more and more hearings will be online in the future. She discussed the advantages and disadvantages of those changes, of which the most important were that parties do not meet face-to-face in a courtroom anymore and the influence of judges and lawyers is very much reduced.

Leslie A. Berkoff (Moritt Hock & Hamroff LLP, USA) discussed the use of online platforms in the US

Johan F. Langelaar

to conduct both court hearings and mediations. Her experience up until now shows that judges, at least in the state of New York, are very reluctant to use online platforms. She is of the opinion that the situation in other states will not be different. Further, both judges and parties are sometimes using different systems and are not used to working with online platforms. Thus, court sessions in the US are also delayed or postponed. She also informed participants briefly about the racial crisis in the US.

Cornelia van Heerden (Heyns and Partners Inc, South Africa) updated on the situation in South Africa, which has one of the strictest lockdowns in the world. She further informed on the relatively small numbers of infections and casualties in South Africa. Despite the lockdown, judges demanded parties and their attorneys appear in person in court, raising the question how people can obey the rules to prevent spreading of COVID-19 in this way.

Finally, Dr Ilia Rachkov (Nektorov, Saveliev & partners, Russia) delivered a presentation on commercial contracts and moratorium on bankruptcy in Russia in connection with COVID-19. Although legislation was put into place rapidly, Russian courts have not given any decision yet on this new legislation. He also informed participants about the present situation in Russia, especially in Moscow, where many people have been affected by the virus.

Global Chairperson Johan F. Langelaar (TeekensKarstens advocaten notarissen, The Netherlands) thanked everybody for joining the webinar and especially gave his gratitude to all those who presented.

Following this successful webinar, the next LDR PG webinar has been scheduled for 17 September 2020, at 16:00 CEST.

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Corporate Governance & Compliance | 30 June 2020

The topic of this Corporate Governance & Compliance Special Interest Group (SIG) webinar was a brief recap of the General Data Protection Regulation (GDPR) – a law that has significantly overhauled the EU's data protection rules at a time when information systems and digital business grow ever more important to society.

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Key aspects of the GDPR were concisely summarised and main actions that organisations should take to achieve compliance with data protection were highlighted. Recommendations for the realisation of the GDPR in a company according to the European Compliance Standards were also offered. Furthermore, legal consequences of non-compliance with leading cases were illustrated, in addition to an examination of specific topics in data processing areas such as social networks or labour law.

The impact of BREXIT was outlined and therefore the further procedure of data processing in "third countries".

Cybercrime from an organisational risk and compliance perspective has been tackled. Subject specialists examined the dangers posed to organisations by malware, hacking, phishing scams, spam, and other internet-based threats. For businesses, cybercrime falls into two major areas: the first comes in the form of attacks against computer hardware and software from threats such as viruses, malware, botnets, and network intrusion. The second is financial, and can include fraud, theft of financial information, and phishing.

Speakers illustrated this very clearly by providing statistics showing cybercrime is a serious challenge, independent of the scale of the company.

Besides the consequences of a possible cyber-attack, preventive measures, and solutions in case of emergency were recommended.

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Global Political Economy & International Relations: Understanding the International Economic Order | 01 July 2020

Will the Coronavirus Crisis Burst the Debt Bubble?

More than 40 participants joined this webinar to listen to GGI Founder and Chairman Claudio G. Cocca's presentation and exchange views and experiences from their jurisdictions.

It is clear from the current figures that the coronavirus crisis will leave no business completely unscathed. Thinly capitalised businesses have been hit particularly hard. It is not just the absolute number of feared bankruptcies that gives cause for concern, but also the rapid rise in concrete insolvency worries recorded within the space of just a few weeks. As a result, many companies are trying to stay afloat by making redundancies or through short-term work. It is therefore little wonder that the coronavirus pandemic has caused the labour market situation in many countries to deteriorate dramatically. In terms of a fiscal policy response to the crisis, countries all over the world have incurred mountains of debt in order to put together enormous bailout and recovery packages. The world's central banks are currently intervening in the global financial arena on an unprecedented scale, thereby triggering extreme market distortions. Ever more financial experts are now asking themselves the question: will the coronavirus crisis burst the debt bubble?

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The webinar went far beyond the topic as GGI members from literally all over the world were actively participating and sharing their views and experiences, information on the current situation in their home countries, as well as careful predictions regarding the businesses of their clients, their firms and the economy in general. Apart from the various views on political and economic situations throughout the world, the fact that so many GGI members were keen to attend and to share underlined the importance of staying connected. Despite the difficult economic climate and the challenging forecasts, being part of an organisation like GGI is essential to addressing the future.

Claudio G. Cocca

03 September 2020 | 16:00 pm CEST

Young ITPG

After the summer break, on **Thursday, 03 September, at 16:00 pm CEST,** there will be another ITPG online offering that is only for youngsters: the Y(oung)ITPG webinar.

The main objective of the Young ITPG webinar is to share experiences and best practices regarding international taxation between "younger" members in the ITPG, i.e. below the age of 40. The meeting will be chaired by Susanne Schorel-Willems (Schipper Accountants B.V., The Netherlands). Susanne was at the ITPG Global Tax

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Summit in Frankfurt this February and is known to some of you already.

There will be a mix of subjects, covering both tax topics and personal development. During the tax-related section, we are planning to have some discussions regarding the coming mandatory disclosure directive/exchange of information.

We will discuss the impact on our daily work and the expectations of how this will work out in the future.

For the personal development portion, we will be sharing best practices for achieving visibility and creating opportunities while working from home.

Susanne Schorel-Willems

It is an excellent opportunity for the young professionals of ITPG (including those tax experts in your company who do not normally attend the larger conferences). You are welcome to register here. If you are willing to contribute or have any suggestions, please contact Susanne directly: sschorel@schipperaccountants.nl.

This webinar is for members of the GGI International Taxation Practice Group (ITPG) and any GGI members wishing to join the PG. Please check within the internal area of ggi.com for the link to register or click on the button below. We use Zoom for our meetings. Meeting and login details will be emailed to you once you register.

REGISTER NOW
for the 03 September WEBINAR

If you are unable to register, it might mean that we do not have you in our database. Please email Anita Szoeke (szoeke@ggi.com) so that we can add you to the invitee list.

17 September 2020 | 16:00 pm CEST

Save the Date: Litigation & Dispute Resolution PG

The programme is still open. Any interested Practice Group member is welcome to present (10 minutes each). Please email your topic suggestions directly to Linda Soriton (soriton@ggi.com).

This webinar is for members of the GGI Litigation & Dispute Resolution Practice Group and any GGI members wishing to join the PG. Please check within the internal area of ggi.com for the link to register or click on the button below. We use Zoom for our meetings. Meeting and login details will be emailed to you once you register.

REGISTER NOW
for the 17 September WEBINAR

If you are unable to register, it might mean that we do not have you in our database. Please email Anita Szoeke (szoeke@ggi.com) so that we can add you to the invitee list.

Johan F. Langelaar

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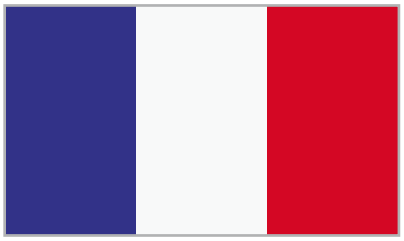

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The 60th Anniversary of Mattig-Suter and Partner

A Review and Outlook Shaped by Three Generations

The stability and long-term success of the economy not only depends on large companies but above all on small and medium-sized enterprises (SME) such as Mattig-Suter and Partners in Switzerland.

The last 60 years, as well as three generations, have shaped Mattig-Suter and Partners. All of the three chairmen have managed the company with similar core values, which left an impressive imprint on our company culture and have led us to celebrate our 60th anniversary this year. Since the founding of Mattig-Suter and Partners, the following characteristics have emerged and are integral to our current corporate identity.

Three generations have shaped the company: Walter Suter, Claudia Mattig, Franz Mattig

Courage to take risks: The beginnings of Mattig-Suter and Partners go back to its founder, Walter Suter, and his business partner, Alfred Suter, who started working on two desks and on two chairs, which were provided by their landlord. This business risk paid off, as our company is celebrating its 60th anniversary, and the third generation, this year. Yet, without the courage of the founders to take bold but coolly calculated risks, this celebration would not take place.

Modesty: The founder of the company despised any pomposity and his spirit lives on and shapes the attitudes of our employees and partners today.

Integrity: Respecting ethical values is part of our company's DNA.

Cosmopolitanism: Continuously exploring new opportunities, Mattig-Suter and Partners have founded several branches in Switzerland and south-eastern Europe. As part of our cosmopolitan identity, Mattig-Suter and Partners also joined GGI Geneva Group International and actively participates by connecting and cooperating with other like-minded independent firms across the globe.

High level of expertise and professional competence: All our employees and partners strive to continuously learn and gain additional skills. This pursuit of expertise and professional competence is embedded within our corporate culture and fostered by all partners.

Finding solutions together with our clients: Among our company's guiding principles is our approach to listening to our clients, as well as finding practical and long-term solutions by working together, instead of only

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presenting a ready-made solution. This approach is part of our custom-centric way to provide our services.

Imagination: Creativity and logical thinking must always complement each other, as rationality on its own does not leave room to create something new. Yet, it generally has to be established whether a creative solution is also the right path to correctly solving a problem.

Vision: Micro-tactical hopping on the spot is enough to overcome simple, routine hurdles and allows short-term continuity.

60th anniversary celebrations

But strategic thinking reaches far into the future and is a requirement to enable sustainable developments.

We hope that you, our readers, partners, colleagues, and clients, aside from ensuring your future, can also take some time to concentrate on your values and gain the confidence to tackle any future economic challenges.

Brand Refresh for Wright, Johnston & Mackenzie LLP as the Law Firm Gears Up to Help Clients Post-COVID

Scottish law firm Wright, Johnston & Mackenzie LLP (WJM) has unveiled a new-look brand identity that underlines its commitment to delivering a quality service for clients in the face of the current pandemic.

Prior to the COVID-19 outbreak, WJM carried out extensive research with staff, which has shaped a suite of new marketing assets. These reflect the firm's core values and reinforce the brand promise that it remains "client-service driven".

Fraser Gillies, Managing Partner at WJM, said: "Our brand purpose is to do the right thing, make a difference and build trusted relationships.

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Before the pandemic, people across the business contributed to the development of our new promise and refreshed brand collateral, and, as restrictions begin to ease, we feel the time is right to roll these out and give continued confidence that we are client-service driven.

Despite challenging circumstances, our values remain resolute and our clients are at the heart of everything we do. We want to remind businesses across the country, which are preparing their recovery strategies, that our experts are here for them.

WJM's new marketing campaign will be rolled out over the next few months on social channels. The new collateral will reflect the main pillars of the business – service excellence,

Fraser Gillies

valuing people, being accountable, and pride in heritage. With a fresh, modern look, the overriding message is that WJM is a people-first firm."

You can find out more about WJM on its website, on LinkedIn, or on Twitter.

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Rajesh U. Kothari: Dealmaker of the Year

DBusiness magazine partnered with the Association for Corporate Growth, Detroit Chapter, to honour its recipients of the 12th Annual M&A All-Star Awards for 2019 Activity.

Rajesh U. Kothari, Founder and Managing Director of GCG Capital member firm Cascade Partners LLC, has been awarded Dealmaker of the Year.

Even as the COVID-19 pandemic slowed down business activities,

Rajesh U. Kothari

Cascade Partners, a boutique investment banking firm in Southfield, reached out to its client base and sought out new relationships. The firm is coming off its best year on record; last year, it closed nine M&A deals, and three of the transactions totalled more than USD 100 million each in value.

"This year won't be as strong as last year, due to the virus, but we are going to see a good diversity of deals and we just picked up a new client," says Kothari, who helps lead divestitures, recapitalisations, acquisitions, and other strategic transactions for clients in the health care, industrial, business services, and technology sectors.

Two deals stood out last year. Remington Products Co., a third-generation, family-owned manufacturer of aftermarket footwear insoles and foot-care products, based in Wadsworth, OH, west of Akron, had received an unsolicited offer from Gridiron Capital in New Canaan, CT. Founded in 1934, Remington was structured as an ESOP (140 employees), which made the deal more complicated.

Remington was unsure of how to proceed and did not know if an investment banker could add value to its operations. Ken Marblestone, a Managing Director at Cascade, says one of the benefits of the deal was Gridiron's ability to provide capital for growth.

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In another deal, the Michigan Eye Institute in Flint was eager to grow, but the group of physicians at the helm found the addition of new locations brought on more management responsibilities. The principals turned to Cascade, which helped arrange a financial partnership with Midwest Vision Partners in Chicago.

"We were impressed by the strength of Midwest's leadership team and refreshed by their emphasis on honesty and transparency," says Dr Gary Keoleian, a Principal of the Michigan Eye Institute. "We aligned quickly after learning about their commitments to patients and the infrastructure they are building to empower physicians to focus on clinical care."

This article was previously published in DBusiness (May – June 2020), written by R. J. King.

Penteris and Poland Drive Ahead Despite COVID-19

Lockdowns and layoffs, downturns and dismissals – the world has been reeling from the consequences of the COVID-19 pandemic. However, there is light at the end of the tunnel and there are places, enterprises, and people who are bucking the trend. One particular transaction, involving several successfully cooperating companies across the world, is drawing attention from investors, economists, and commentators.

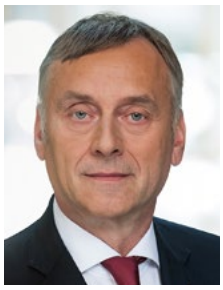
"It has required a different approach not only to how we function as a business at the macro level but how we coordinate and manage projects at the micro level. It's business on a completely different scale; it's business for a new era," says Andrzej Tokaj, Senior Partner, Head of Real Estate Practice, Penteris.

GGI law member firm Penteris, based in economically bustling Warsaw, demonstrates the "new normal" in practice. This dynamic and highly competent team guided, advised, and represented Apollo-Rida, a consortium based in Houston, Texas and Warsaw, Poland as well as US- and UK-based Ares Management, in their purchase of three buildings in the beautiful, historic city of Kraków. The acquisition of the A-class Equal Business Park, developed by the innovative team at Cavatina Holding, was worth a cool EUR 100 million; one of the biggest transactions of its kind during the global lockdown.

"I was amazed at the level of detail and communication involved. I've experienced nothing like it before," says Izabela Bogucka, who only recently joined Penteris.

In fact, the project began during the complete lockdown of Poland, one of the first countries to take this decision, and thus required a complete re-think of how to do business.

"We implemented guidelines for the use of home-office technology, literally as soon as the lockdown came. In effect, we made the complete transition to working online in mid-March, weeks ahead of many other companies and countries," adds Katarzyna Sawa-Rybaczek, Partner, Penteris.



Andrzej Tokaj

This standout project was managed and coordinated in real-time, both online and "offline", which meant having to put together all necessary pieces of a complex jigsaw with many moving parts, drawing know-how and expertise from specialised teams involved in financing, transactional affairs, real estate investment, and tax and corporate, as well as shareholder matters.

"To say this was a mammoth project is an understatement. Kudos and thanks to every member of the team for being able to support each other despite what was going on around us. Their ability to get the job done, competently, smoothly, and cooperatively is something I am extremely proud of," says Andrzej Tokaj.

Is there a blueprint for coming out of this corona crisis? It is not easy to answer the question, but perhaps Penteris may provide some clues on how to go about it the right way.

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Disaster Wirecard: Who Is Liable?

By Dr Thomas Ditges

The case is unprecedented. A DAX company is insolvent! The market capitalisation was higher than that of Deutsche Bank AG, but the company's rise was also faster, and the claims of the board of managing directors were more flamboyant. There was no lack of alarms. Since the middle of 2019, the journalists of the Financial Times have remained undaunted. They did not let themselves be dissuaded from their complaints about discrepancies. Banks refused to provide financing. Now, the German Handelsblatt has been reporting on fictitious profits stated for years. The share price has dropped from EUR 295 to almost zero. Customers, suppliers, employees, and shareholders are aggrieved, and the reputation of those responsible, the executive board, supervisory board, the German government with its Corporate Governance Codex, the German Federal Financial Supervisory Authority (BaFin), and the auditing profession have been affected. Some also benefit, such as the stock market traders who made their exit on time, the tax authorities with tax revenues from fictitious profits, and possibly also the insolvency administrator.

Dr Thomas Ditges

Who is liable for the wronged shareholders, from the small shareholder to the institutional investor? All responsible actors can be considered as parties against whom claims may be asserted. The closest to the damage are probably the members of the management board. Their version of being victims of speculation by short sellers is hardly sustainable and not very credible. Legally, liability for breach of the management board contract and for tort comes into consideration. Nevertheless, in the process, presentation and proof of subjective responsibility can encounter difficulties in the individual cases.

Prior to this, the question of the enforceability of the claims at the end of the proceeding has to be raised. What about the presumed amount of the assets generated after taxes during the rise of the company, adding the pro-rata volume of the D & O insurance and a surcharge for miscellaneous and for future earnings prospects? If we compare the result with the loss of the stock market capital of EUR 24 billion, or even part of it, there will hardly be anything left for the shareholder suing for compensation. If there is any doubt about this, the insolvency administrator's claim against the Board of Management should be taken into account. The latter's recourse will be in competition with the insolvency administrator and will be strategically more promising due to better knowledge of the company's internal circumstances.

It will hardly be possible to make use of the liability profile of possibly inattentive authorities, which is oriented on wilful intent.

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The whole world (cf. South China Morning Post, 06 July 2020) is looking at the disgraced German financial centre and asking for accountability from Ernst & Young, the annual auditor for 11 years, and one of the Big Five. Until 2018, the audit certificate was unrestricted. The possibilities of the audit are limited. It is based on accounting and not forensic principles. Some complain about the nonsense of annual auditing as a gigantic bureaucratic monster. Nevertheless, the question remains as to whether there were any errors in the auditing methodology. What should the auditors of the annual financial statements have recognised and objected to in any case within the scope of their limited methodology? We are talking about EUR 1.9 billion in bank receivables in the Philippines. These are increasingly proving to be non-existent. This is an amount that cannot be easily overlooked. The auditor certifies what he sees. The inventory of the money is no different from that of the goods. The counting of bank receivables is typically done on the basis of bank statements. However: "nothing easier than that" would be exaggerated. This follows from the bank-related and technically difficult peculiarities of the payment service business operated by Wirecard, noble FinTec on the one hand, little standardisation on the other. Corporate sub-divisions are outsourced to second, third, and other acquirers, possibly together with the associated liquidity. Then, indirect information may have replaced the otherwise evident bank statement. There is talk of confirmations by a Philippine lawyer. From an audit point of view, the question arises whether the auditor has carried out suitable substitute audit procedures. In view of the significant volume, there are doubts about this. This has considerable advantages for laying claims to the auditor. The claimant does not need to track down fictitious profits in the balance sheet, but simply ask for an inventory of the liquidity. Violation of the auditing obligation opens up liability.

From experience in more than 100 cases in the special field of professional liability of auditors and tax consultants, and after well over 1,000 cases of bank liability, I can state that the plausibility check of the connections in court is not always successful without further ado, but that it is rather an inter-professional task of coming to terms with the conflicting demands of procedural law, professional liability, annual financial statements, etc. This requires an experienced and strategically skilfull and comprehensible presentation. Claims can be raised out of court or at the general place of jurisdiction at the headquarters of the auditing company in Germany or – depending on local law, at a special foreign place of jurisdiction, for example in the USA, to be recognised in Germany in accordance with § 328 of the Code of Civil Procedure.

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The Conflict of Interests vs. the Common Interest:

Will We See a Paradigm Shift After COVID-19?

By Ioana Hategan

Sooner or later, any contract negotiation fits the paradigm of the conflict of interests or the opposing interests. Any business lawyer is inevitably taking sides by protecting the interest of one party "at the expense" of the other. This is the way this profession works pro parte, therefore, it is divisive in most cases. You are someone's lawyer, you defend someone's interests, you represent a certain party. It is either you or the other party's lawyer who is right. There is hardly a middle way. If one wins, the other one inevitably loses. For this reason, contracts also become more and more complex. From the very beginning, a simple fact is clear: the conflict of interest in unavoidable throughout the negotiation process and therefore the clauses in the contract need to prevent or avoid that situation.

The current COVID-19 crisis we are experiencing, and which affects our businesses, sheds a whole new light not only on human relations

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but also on business relations. We now realise more than ever that we are an integral part of the economic chain just like in a castle of cards where the cards support each other.

Our interdependence, however, should make us search for the common interest. If one is well, this resonates in the entire economic chain. Nonetheless, if one card goes down, the entire castle falls apart. This crisis gave us the opportunity to realise that if we look at "the big picture", it is better to have a "common interest" than to be in a "conflict of interests".

In this new paradigm, the main concern should not be how a company makes more profit by cutting its costs. It should rather seek what is necessary for all the contractual partners to be satisfied in their needs, while at the same time searching for a higher goal, that of serving the community and the eco-system that we are all part of.

The common interest means to re-discuss, re-schedule, do common concessions, postpone, understand each other in the way we have been affected, and, above all, carry on TOGETHER, for a higher common goal, rather than an individual one.

I hope that once this pandemic is over, we will have learnt our lessons. First of all, the negotiations should (by any possible means) prioritise equally the needs of every party and focus on the way these needs can be met through the contract, while

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focussing also on the common goal of the parties. The goal should be oriented beyond the mere financial gain (but without disregarding it), towards the objective of the contract and what its benefits for the parties involved are, as well as the impact on the indirect beneficiaries of the contract's implementation.

Consequently, the role of a business lawyer could be transformed, in a creative way, from the defender of one party's interest into a facilitator who identifies the mechanisms to meet the needs of every party, with the aim of creating added value for the final beneficiaries of the contract. Such a negotiation will be carried in harmony, transparency and openness and will give each party the reassurance that what they agree upon is sustainable and mutually beneficial, while responding also to the higher goal of living in a society in which what we do serves us all and we all benefit from the result of our work.

Utopic? Unrealistic? Not at all. I will emphasise below a simple and efficient example of implementation of such principle. The mandatory conditions for the validity of a contract are: ability to contract, parties' consent, a determined object and a cause (scope) that should be licit and moral. It is interesting that the moral aspect, although regulated as a mandatory condition for the validity of a contract is often disregarded or left aside. In the new paradigm, the process should work from the other direction, having as a starting point of any negotiation the moral cause that should guide both contractual parties throughout the entire process of negotiating a contract.

According to our Civil Code, in order to have a valid cause, this has to meet three conditions:

i) the cause should exist;
ii) it should be licit;
iii) it should be moral.

Lack of cause leads to annulment of the contract. The third condition which refers to the moral aspect should become relevant in the current context. In an economic ecosystem, with a high degree of interdependence such as ours, the moral aspect should be interpreted as the common interest and not (solely) the individual one.

By being aware, both as companies, as well as business lawyers, that we are an inherent part of this ecosystem, we will sit at the negotiation table, either to conclude a contract or to re-discuss it and we will meet the following steps:

1. Firstly, we identify the cause of the contract (its purpose) and we consider the moral aspect of the clause.

2. We discuss openly and honestly what are the NEEDS of every party in order to fulfil the scope of the contract (thus we grant importance not only to the OBLIGATIONS, but also to the NEEDS of every party).

3. We regulate these needs in the negotiated contract.

4. We discuss and agree the financial conditions, payment/reschedules/ postponements, that will also be subject to the scope of the contract.

5. We regulate realistic deadlines for the fulfilment of the scope of the contract, thereby considering again these needs.

6. We regulate warranties for non-compliance, just as until now,

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although, if we apply steps 1 to 4, the need of regulating warranties will decrease significantly.

7. We regulate the implementation mechanism that is the subject to the scope of the contract.

8. We regulate the applicable law and the settlement of litigation, although, if we apply steps 1 to 7, we will create the premises of a substantial decrease of the disputes that need court settlement.

How many of the contract negotiations are focused nowadays on the scope of the contract? How many of the contracts concluded during the current period have a focus on the moral aspect of their scope? Which are the means to measure it? By giving importance to the cause (scope) of the contract, we will subject our actions and regulations to this and we will act having more or less the same objective, not objectives and interests that are in conflict.

This way, all the participants in the economic ecosystem can win and we will live in an economy that will be more harmonious, more productive and less conflictual.

GDPR: Questions to Ask About HR Data and Third-Party Employers

By Adrienne Drew

The European Union's General Data Protection Regulation (EU) 2016/697 of 27 April 2016 (GDPR) is now two years old, and the European Union—and the entire world—has changed in innumerable ways. Following the two-year anniversary of GDPR implementation, companies doing business in the EU should evaluate whether all aspects of their data processing are in compliance. Remembering that the Directive applies to actors within the EU but also that GDPR has an extraterritorial scope, companies in the US and elsewhere who did not previously need to comply with the Directive should re-evaluate whether they now may have GDPR compliance obligations.

Adrienne Drew

Entities who have vendor or employer relationships with EU-based individuals should specifically ensure their GDPR compliance efforts include their human resources data as well. A good starting point is to determine why GDPR applies. Companies with vendor, contractor, or employer relationships might have to comply with GDPR because GDPR applies to those who "monitor" the behaviour of individuals located within the EU (Article 3). GDPR doesn't define "monitor", but human resources functions such as tracking activities in order to review workers' performance, reimbursing expense claims, and tracking time (the European Court of Justice held last year that EU employers must track time for all employees: curia.europa.eu), and administering leave programmes require some degree of monitoring. Thus, a multinational entity that has contractors or employees in the EU has obligations under GDPR even if it doesn't have an EU presence or sell goods or services into the EU, and even if its EU-based employees are not EU citizens.

As US companies expanding into Europe increasingly use third-party employers to help manage their

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global workforces, they need to consider GDPR when choosing their partner. When a company entrusts its workforce to a partner, it is also trusting that partner to manage HR data properly. The following questions may help in making that choice.

What Is Their Approach to Global Data Security Requirements?

Global partners should be familiar with the laws governing data compliance in every territory in which a company will hire employees. These laws include more than just GDPR in the EU. There are robust data-privacy laws in many other countries that are high priorities for expansion, such as Singapore, Argentina, South Korea, Hong Kong, Australia, and Malaysia.

It is prudent to confirm the partner is aware of and complies with the laws in each jurisdiction where an organisation has targeted expansion.

Can They Validate a Legal Basis for Their Data-Collection Practices?

One of the most dramatic impacts that GDPR has had on employer data management is to largely disqualify employee consent as a means to authorise the employer's collection and processing of data. GDPR requires any consent to be freely given, specific, informed, and revocable (Article 7). Consent in the employment context is unlikely to qualify as freely given because the imbalance of power between an employer and employee means an employee is unlikely to refuse consent even if he or she has concerns. As an alternative to consent, a service provider should be able to articulate a legal basis for their data collection and processing practices (Article 6).

What About International Transfer Requirements?

A frequent feature of global data privacy laws is a restriction on the ability to transfer personal data outside of the country of origin. Some countries require data-subject consent prior to an international transfer, and, in some cases, valid consent requires the data subjects to have received explanatory material about what information will be transferred, how, and to where. GDPR and other global privacy laws require additional legal safeguards before data may be transferred across international lines.

Find out what safeguards are being used, and where. The EU/US and Swiss/US Privacy Shields are an example of a safeguard that authorises the transfer of data from within the European Economic Area (EEA) to the US.

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Are They Authorised to Make Cross-Border Transfers of HR Data?

It is important that the provider is authorised to transfer the correct type of data across international lines. The Privacy Shield is one way a US-based company can obtain authorisation to transfer personal data out of the EEA.

When a company certifies to the Privacy Shield, it commits to having a uniform methodology to approach, manage, and protect data that originates in the EEA. US companies may certify under the Privacy Shield for Non-HR Data, and for HR Data. Most HR services providers deal with human resources data, so they should certify their compliance with Privacy Shield accordingly. Evaluate whether the provider's international transfer mechanism covers the correct type of data.

Importance of Privacy Notices

Many global privacy laws, including GDPR, require the data subject to be informed of the manner in which personal data will be collected and processed. Privacy notices, made available to the data subject at the time of collection, are critical to recognising the data subject's rights under these laws. Ask the provider to show you their privacy notices for review, and to explain their data-collection practices.

Understanding an organisation's data-privacy obligations, including the types of data those obligations attach to, is an essential component of any compliance programme. Asking questions about the issue included above can help focus a growing company on important aspects of its relationship with a third-party employer.

M&A Trends with Regards to COVID-19 in Russia

By Kristina Ikayeva

The COVID-19 pandemic and the unprecedented restrictive measures introduced by the Russian government to combat the virus have had, and continue to have, a significant impact on various aspects of business. M&A transactions are certainly not an exception to this.

The first quarter of 2020 did not fully reflect the crisis caused by the pandemic in the M&A market. Statistics show that in the first quarter the M&A market showed an increase in activity compared to the same period of the last year. However, this was most likely due to the agreements of the parties to M&A transactions on their closing dates, the implementation of which occurred in the first quarter of 2020. Later, the COVID-19 pandemic caused business

Kristina Ikayeva

to make adjustments, and since the beginning of the period of restrictive measures **(quarantine)**, introduced by the executive Order of the President of Russia on 02 April 2020, there has been a significant decrease in the number of M&A transactions, and this tendency is expected to remain till the end of this year.

Meanwhile, active growth in M&A transactions is expected in those industries that maintained business activity during the period of quarantine: industries such as medicine/pharmaceuticals, online services, and IT. A rise in M&A activity is also expected in those industries and for those companies that require redistribution of property due to financial difficulties caused by restrictive measures. Several key trends that will determine M&A activity in 2020 in connection with the pandemic should be highlighted.

First, the variety of sectors of the economy in which M&A transactions are concluded has been reduced and will continue to be. This trend will increase as investors are less interested in the industries that suffered during the period of quarantine. Nevertheless, M&A activity should increase in industries that are able to actively work and develop

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during the period of quarantine. Second, foreign participation in M&A transactions will be in decline. This is due not only to the negative consequences of quarantine, but also to continuing sanctions against Russia. It is expected that the United States and European Union will impose tougher sanctions and Western and European investors will be extremely cautious about getting involved with Russian business. At the same time, sanctions open access to the Russian market for other investors, for example, from Asia (subject to limitations associated with the US secondary sanctions).

Third, a change in the structure of M&A transactions is expected. M&A transactions are usually structured as a sale of company shares (share deal) when the buyer acquires an active business with its assets and liabilities. As a result of quarantine and the crisis, it is expected that M&A transactions will be structured as a sale of assets (asset deal), and not as a sale of shares (share deal). The buyer will seek to acquire only the needed assets that bring benefits. Thus, uncollectible receivables, disputed payables, fines, litigation, and other liabilities will remain with the company itself and will not be transferred to the buyer.

Fourth, the conditions for closing transactions will be tightened. This trend is already actively in place, and not only in relation to M&A transactions. The conditions for concluding a transaction are dependent on issues that are studied as part of the due diligence of the target company. The buyer seeks to assess the degree of negative consequences for the target in connection with the crisis, including the following issues: risks of non-fulfilment or termination of key agreements, bad receivables with poor possibility of collection, debts, and disputed accounts payable.

The buyer should also determine whether the target company belongs to the sectors affected by the COVID-19 pandemic, since the government provides support for recovery and development for such companies. Also, special attention should be paid to the conditions of exclusion and limitation of liability, and the representations of the seller and the target company as for the consequences of restrictive measures affecting the financial condition of the target.

Fifth, there will be a change in the procedure for evaluating a business and, accordingly, determining the value of a transaction. When determining the value of a business, mechanisms for adjusting the price of a business will be more actively used based on the financial condition of the company at the closing date of the transaction, and not, for example, at the date of the latest reporting. Such an evaluation of the business will most realistically reflect the financial condition of the target and will ensure the interests of the buyer in terms of the fair value of the acquired business.

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It is evident that negative consequences of restrictive measures and the ongoing crisis will push sellers to look for sources of investment capital to prevent the undesirable ramifications. Many companies have seen their financial indicators abruptly worsen, so multiple transactions will be of a forced nature. Therefore, sellers will be interested in merging with the major players in the relevant markets, including on unfavourable conditions, in order to save their businesses. Otherwise, sellers will have to sell a non-core business, at a below-market price, so that the proceeds of the sale are used as urgent support for the main business.

As for potential business acquirers, the falling price of the assets will certainly create new possibilities for them. Investors who are ready to take on increased risks in a situation where the target business is in a situation of uncertainty, due to the consequences of restrictive measures, will be able to purchase the asset at a low cost.

Undertakings for Collective Investment: Albania Adapts Itself to European Standards

By Evis Jani

The Purpose of the New Law

On 30 April 2020, the Albanian parliament approved Law 56/2020 "On the Undertakings for Collective Investment" **(Law 56/2020)** which entered into force on 20 June 2020. This legal change is being undertaken at a time when the market dynamics of investment funds have undergone major developments that do not meet the requirements of European markets.

Law 56/2020 regulates the establishment, registration, and operation of (i) fund managing companies, (ii) managing companies of undertakings for collective investment with public offer and alternative investment fund managers **(AIFM),** (iii) depositary of undertakings for collective investment, and (iv) undertakings for collective investment **(UCI).**

Further, the new law regulates the sale and marketing of UCI established in Albania or abroad, through local and foreign fund managing companies, and marketing and management of UCI outside Albania by management companies established in Albania.

Law 56/2020 intends partial harmonisation of Albanian legislation with the EU directives, namely, Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations, and administrative provisions relating to undertakings for collective investment in transferable securities **(UCITS Directive),** and Directive 2011/61/EU of the European Parliament and of the Council of 08 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 **(AIFMD Directive).**

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Additionally, such law intends to (i) make the fund sector more attractive to the investors, create a wider range of funds suitable for Albanian and European markets, mobilise more savings in capital markets and the economy, and (ii) increase the protection of the investor by increasing the requirements related to the evaluation and calculation of the price of collective investment enterprises with public offer.

Main New Provisions Introduced by Law 56/2020

1. In line with EU requirements, the management company wishing to manage both undertakings for collective investment on transferable securities (UCITS) and open-ended funds or public offering intervals that are alternative investment funds, must have two licenses: (i) a license as a management company of UCITS and (ii) a license as alternative investment fund managers (AIFM). The same need for two licenses would apply to the depositor of UCITS and alternative investment fund (AIF). However, as a transitional provision until Albania joins the EU as a member, the law provides for the possibility of operating with a single license as a management company and as depositors, thus enabling the entity that has a license as a management company of UCITS, to manage AIF as well.

2. Investors are classified into professional investors and non-professional investors.

3. Foreign investments are recognised for public offering, based on the UCITS Directive.

4. New forms of organisation are introduced, such as AIF, in compliance with the UCITS Directive.

5. There are specific rules for the licensing, operation, and supervision of AIFM for professional clients and the managing companies authorised for the management of funds with public offer.

6. More competencies for Financial Supervisory Authority (FSA) as the regulatory authority have been introduced, such as the right to conduct investigations, in addition to inspections, of any entity established and licensed under this law.

7. There are specific rules on the cross-border management and marketing of UCI to comply with the requirements of the UCITS. However, such provisions shall enter into force upon issuance of specific regulation by FSA, but not later than the date Albania joins the EU.

8. There are specific rules on the procedures related to the merger and acquisitions of funds, as well as on the liquidation and dissolution of the funds, the managing companies, and the depositors.

Key Issues

The following types of UCI may be established under Law 56/2020:

1. UCI with public offer, which may be established only by licensed companies established in Albania and may be organised as:

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a. Undertakings with open participation in the form of a contract (investment fund); or

b. Contract-shaped interval funds; a new form that suits low-liquidity securities markets because they sell and repay quotas only twice a year (technically these are alternative investment funds); or

c. Enterprises with closed participation in the form of a company (fixed capital investment company) and in the form of a contract (investment funds) which are suitable for non-liquid investments, such as real estate.

2. Foreign investments recognised for public offering under the UCITS Directive and any UCITS licensed in an EU country may be advertised in any EU member state or EEA. This is possible by the "recognition" process of UCITSs. However, the automatic "recognition" of UCITS will be applicable when Albania becomes an EU member.

3. AIF offered to professional clients, which can be open-funded, open-ended, or closed-ended investment funds, closed-end investment companies, or limited partnerships. AIF offered only to professional investors must be registered with the FSA for sale to professional investors in Albania, regardless of whether they are domestic or foreign funds.

For the purpose of operating as a UCI, a fund-management company, AIFM, depositor, or AIF depositor, a license should be obtained from the FSA. As soon as it is licensed or recognised by the FSA any UCI, fund management company, AIFM, depositor, or the depositor of AIF should register. The registration of the each of the above is published in the FSA website.

For tax purposes, the UCI is considered as the owner of the securities or all assets, as well as the last beneficiary. The management services provided to UCIs is VAT exempted.

Lawyers as Fiduciaries: When Things Go Wrong

By Krystyne Rusek

When choosing an executor or estate trustee for your estate, a lawyer can be a good option. As regulated professionals, lawyers are scrutinised by the Law Society of Ontario to ensure they refrain from "professional misconduct or conduct unbecoming a licensee"[1]. This extends to non-legal activities, such as when a lawyer is an estate trustee. Because lawyers are held to such high standards, beneficiaries can usually have confidence that their lawyer-trustee will act in their best interests. But, as illustrated in the recent case of the *Law Society of Ontario vs Comartin,* occasionally, a lawyer may abuse the authority granted and act in a way to further his or her own interests to the detriment of the estate and beneficiaries.

Krystyne Rusek

Mr Comartin had been a practicing lawyer in Ontario since his call to the bar in 1992. In 2004, he was appointed as a co-trustee of an estate worth about CAD 600,000, the other trustee being a family friend of the deceased. He and the co-estate trustee were responsible for the administration of the estate and trusteeship of the testamentary trust created in favour of the deceased's son, who was mentally disabled.

Mr Comartin was also appointed as co-attorney for property over the mentally disabled son, with a friend of the family as his co-attorney. As attorneys for property, Mr Comartin and the co-attorney had the responsibility of managing the disabled son's finances, including money received from the deceased's estate.

Lastly, Mr Comartin was also the estate solicitor, and both

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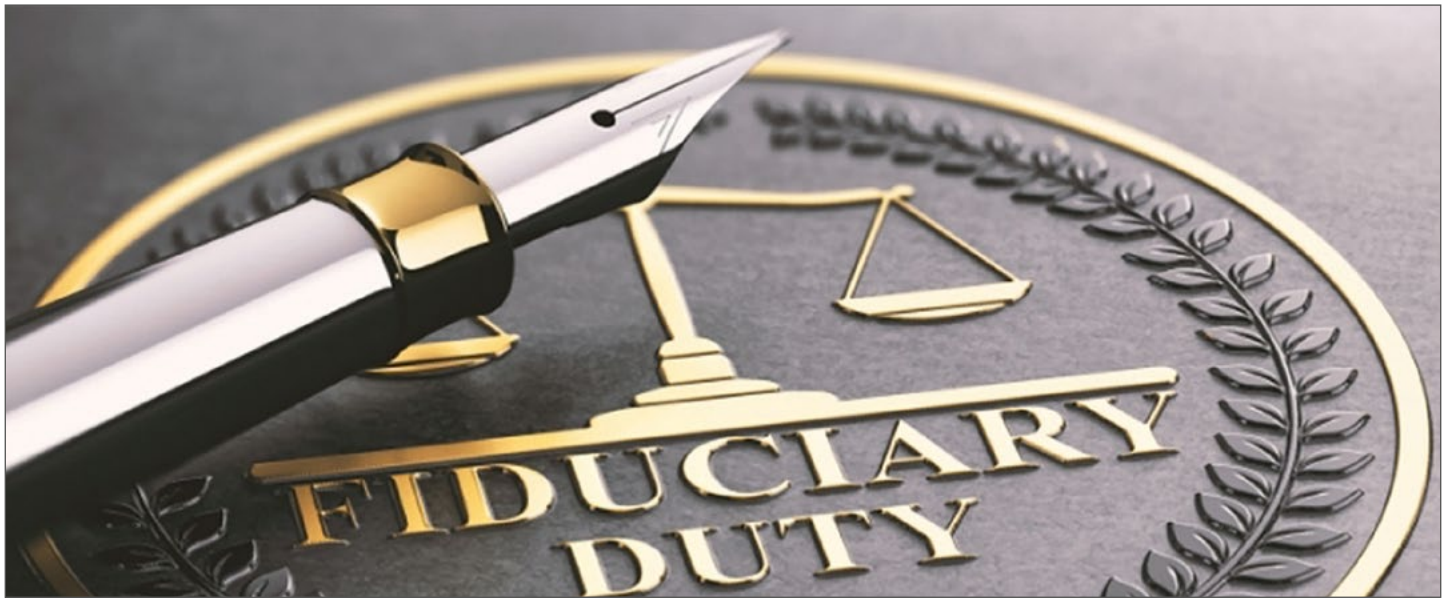

his co-trustee and co-attorney were his clients by virtue of their appointments.

The beneficiary could not care for himself, and all parties had fiduciary obligation to act in his best interests. Unfortunately, this did not happen. Over the course of 11 years, Mr Comartin intentionally and repeatedly abused his authority in his roles as attorney for property, estate trustee, and solicitor for the estate. Neither the co-estate trustee nor the co-attorney was aware of the misconduct, and it was only during a spot audit of Mr Comartin's law practice by the Law Society that concerns were raised.

The Law Society investigated, and it was revealed that between 2004 and 2015, Mr Comartin had systematically pilfered money from the estate to pay over CAD 350,000 in false legal costs for his trustee and attorney work. When he was forced to pass his accounts, he misled the court with respect to the approval of the accounts by the co-estate trustee, as well as the disability of the beneficiary. He served the accounts only on the disabled son, despite a legal obligation to serve the co-attorney, the co-estate trustee and the Public Guardian and Trustee.

During disciplinary proceedings by the Law Society, the co-attorney testified that she did not know she was attorney for property. The co-estate trustee had made attempts to become involved in the estate administration but was rebuffed by Mr Comartin. He stated that he eventually gave up his efforts to be involved in the estate administration and relied on Mr Comartin to act properly and honestly because he was a lawyer. In the end, Mr Comartin was found to have breached his professional obligations. The Law Society Tribunal permanently revoked Mr Comartin's licence and ordered him to pay substantial costs.

This unfortunate situation shows that abuse of fiduciary powers can persist for too long before there is accountability. In the case of lawyers, the Law Society can conduct spot audits to ensure lawyers adhere to their professional obligations, but it does not monitor the actions of lawyers who act as estate trustees or attorneys for property.

It is up to the people who are appointed as co-fiduciaries to ensure that obligations are met. Had the co-trustee or co-attorney taken action, it is possible that the financial harm suffered by the estate and the disabled son would have been far less.

Fiduciary roles are onerous and should not be undertaken lightly. If an estate trustee or attorney for property is being excluded by a co-fiduciary, that excluded person has an obligation to pursue information and documents with respect to all transactions that have occurred. If a person is unable to obtain information from the co-fiduciary, he or she should immediately seek independent legal advice. There are various ways that an attorney for property and a trustee can be forced to disclose information and documents and account for transactions.

Failure to take proper steps can result in personal liability to the fiduciary. In the case of *Cahill vs Cahill*[2], a co-estate trustee was found to be negligent and liable for breaching her fiduciary duty, despite the fact that she was not actively involved in the estate administration, nor did she benefit in any way. It remains to be seen in the Comartin case whether the co-fiduciaries will be held to account at some point in the future.

The author would like to thank Ryan Deshpande, summer student-at-law, for his assistance with this article.

1 Law Society Act, s. 33.
2 2016 ONCA 962.

BUSINESS DEVELOPMENT & MARKETING (BDM) PRACTICE GROUP

Creating LinkedIn Content That Effectively Drives Leads to Your Practice

By Kait LeDonne

By now, you have probably heard marketers tout the power of LinkedIn for driving leads to your practice. You have personally experienced it or have seen competition or colleagues continually "pop up" on your LinkedIn newsfeed. It's for good reason – consider that LinkedIn has 675 million monthly users (more than double Twitter) and that four out of every five users "drive business decisions". (Source: Hootsuite) Your average cost per lead on the platform is a whopping 28% lower than Google AdWords, and you are dealing with a more sophisticated audience with larger buying power (source: Hootsuite). So, for all of these compelling statistics, why can creating content on LinkedIn feel like an uphill battle?

First and foremost, it is important to understand that building a personal brand is a slow burn. It can take months, sometimes years, for a personal brand to finally "pop". Heck, it took me about three years to gain even nominal traction for my personal brand on Facebook and a bit longer on LinkedIn.

As I so often share in articles, building a personal brand is like rolling a snowball up a hill. It can feel fruitless and tiring, but at a certain point, you will reach a tipping point and the branding ball will roll, gaining more and more momentum on its own. Then you cry happy tears and dance in your living room because of all the requests that come in (my routine...feel free to adopt your own).

I say all of that to place this article in proper context, because this is not a silver branding bullet to guarantee leads. **And yet,** when we are ready to turn on the faucet of business development at LeDonne, this is **the** formula we use.

It is a copywriting framework that reverse-engineers the sale process to "breadcrumb hungry prospects" straight to your LinkedIn inbox. Without further ado, I present the five steps for creating content that will coach a viewer straight to your inbox.

Five-Part Lead-Generation, Copy-Creation Framework

1. Nail down your niche, then address it – My followers have heard me say this once, twice, and 20 million times. If you want to go fast, go narrow.

> You: "My niche is narrow, Kait. I target 'accountants'."
> Me: "No, I said narrow."
> You: "OK, accountants who are in Maryland."
> Me: "No, I said narrower."

Kait LeDonne

> You: "OK, female accountants in Maryland who only prepare 1040's."
> Me: "Go narrower."
> You, audibly sighing: "OK, how about female accounts in Maryland who only prepare 1040s, have adult children, own a family practice for over 10 years that was their parents', have a second home with their husband in Dewey beach and multiple dogs? Is that what you want!? **That is too narrow.**"
> Me: "Now, **that** is a niche. Bravo!"

Imagine scrolling down the LinkedIn feed and you fit the above profile and you see a post that says:

> *Hey, accounting owners preparing 1040's right now,*
>
> *Did you know XYZ about IRS updates? Wild, right? Especially when you're a second-generation business owner trying to migrate from your parents' way of doing business to your own, onboard new business, and still have time to sneak away to your second home to breathe a bit. It can feel like a lot.*

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Here is what we are finding that can help: insert some top-level advice.

See how different that is than a vanilla post about IRS updates aimed at accountants? That prospect is going to be putty in your hand. They will feel so seen and heard and you will generate such rapport in the content that they are primed for conversion.

Moving right along to step 2...

2. Identify their pain. Really lean into it. – People spend **way** too much time touting their solutions on LinkedIn and not empathising with their prospects' pain. One of my favourite marketing adages is, "You can lead a horse to water, but you can't force him to drink... however, you can salt the food."

Look, I'm not saying be a fear-monger here. I'm just saying that no one cares about your solution when they are in a world of hurt. You think someone on a surgeon's table, about to get an appendectomy, wants to hear the nitty-gritty features of the surgeon's blade and how she's going to cut into them? Negative, Ghost Rider. They're too busy writhing in pain. They just want you to tell them it will stop.

So, stop writing so much about your solution, and start leaning into your audience's pain in content. Personally, I'm always a fan of the "Hey, I get it" approach.

Hey, aspiring online course creators, I get it. You want to launch that course so you can generate passive income but you're so busy keeping up hourly work and earning active income to pay for the course launch that you have zero time to actually produce the thing. That's even harder when you have young kids and are in charge of everything from bedtime to, now, home-schooling. Oy vey!

Here's what's going to happen when an aspiring course-creator reads that post. They will subconsciously start nodding their head and agree with the all-too-familiar discomfort, and that pain will push them...straight to your inbox.

3. Bridge the pain to a promise. – In neuro-linguistic programming, they call this "future pacing". You've accurately described their painful present, now you want to paint their pleasant future.

Let's build on the above:

Hey, aspiring online course creators, I get it. You want to launch that course so you can generate passive income but you're so busy keeping up hourly work and earning active income to pay for the course launch that you have zero time to actually produce the thing. That's even harder when you have young kids and you're in charge of everything from bedtime to, now, home-schooling. Oy vey!

That's why we encourage our clients to do agile builds. What do we mean? We mean you sell the course before you even create it. Just imagine, you make a course offer so irresistible that you get people to pre-order for a total of USD 12,000, allowing you the financial freedom to give up hourly work and then actually build and deliver the course.

Oh man, doesn't that just sound delicious? If you properly salt their food in step three, by now they are salivating like a Pavlovian dog that just heard the bell, and ring-a-ding-ding, you're on the right track with your content.

4. Offer social proof. – People buy emotionally to justify their purchase decision logically, and typically that justification can come in the form of social proof. The easiest way to do this? Offer up an example of a client who did what you just said. Here's what I mean in the above example...

Hey, aspiring online course creators, I get it. You want to launch that course so you can generate passive income but you're so busy keeping up hourly work and earning active income to pay for the course launch that you have zero time to actually produce the thing. That's even harder when you have young kids and you're in charge of everything from bedtime to, now, home-schooling. Oy vey!

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That's how we helped Karen, mom of two who was stuck on her course for three years, do just this last week when she launched her program and earned USD 15,000.

What?! Karen did that? And you helped her? Man, I gotta' talk to you.

5. Obvious, yet often omitted – convert them in the copy by spelling out the action they should take. – At this point, all of your compadres on LinkedIn are practically banging down the door of your inbox to help themselves to your Calendly link, but let's just make it even easier for them and remove the door. If I were you, I would close that scrumptious content with a final dollop of:

*Listen, if you've been sitting on your online course while the digital-course industry is skyrocketing right now (especially during social isolation) you are **losing** money.*

We can help you launch quickly. Sign up using the scheduling link in the comment section.

Et voila, folks. There you have it. My five-part framework for booking your calendar with leads primed for conversion.

Now, like I said before, you have to actively build your brand and your audience so you can deliver this fire to your newsfeed and have it converted for you, and that is a long play. But when you really want to go for it and close, this little formula is sure to help.

About Kait LeDonne

Branding expert Kait LeDonne was guest speaker at the Business Development and Marketing Practice Group Webinar: "Commanding Your Brand in Turbulent Times".

Kait LeDonne is the founder of LeDonne Brands, a personal-brand consultancy based in New York, which builds executive personal brands using content marketing strategies through social media. Kait has authored the book "The Attraction Magnet: "The 7 Insider Secrets the World's Biggest Brands Use to Attract Customers Who Can't Wait to Buy from Them" and is regularly featured in national and international publications as a commentator on celebrity and corporate brands.

LeDonne Brands also developed one of the first online courses centred around LinkedIn, The Influence Academy, to teach executives how to position themselves as thought leaders in their respective spaces. To date, over 100 executives have completed the programme.

The PG webinars led by Kait did not disappoint and she guided interested GGI members towards commanding their brand, showing them how to become a leader and establish their brand in a time of crisis.

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BDM PG Survey results #4

Dear GGI Member,

In this edition of INSIDER, we will review the results from our BDM survey regarding **Business Development and Marketing training amongst GGI member firms.** The issue of Sales and Marketing training is very rarely attended to by small and medium firms, although often these firms could benefit exponentially from training their team to market themselves better.

Jim Ries

Talia Berger

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Noteworthy: Most of the firms polled do not offer Business Development or Marketing training to their professional staff.

This is surprising as from a business development perspective – each of the firms' professional team members have existing, relevant and, in many cases, dormant networks that the firm could benefit from. From a marketing perspective, each professional team member is an ambassador of the firm and hence should know how to "market" themselves and the firm.

Rainmakers, a rarity amongst associates. Associates are often never required to bring new business to the firm and, in many cases, can become partners based on longevity, hard work, long hours, and persistence. Trying to leverage your team's networks could benefit both the individual and the firm.

Offering internal or external training to learn to better network within existing and/or new circles could bring surprising results. Often, associates finish university and their internship, and then find a position in which they are not required to bring work, but over their lives they have acquired networks that might possess value they don't know about! Training your team to access their natural networks, e.g. school, sports teams, university alumni, PTA, etc., and providing them with the skills to reach out and listen and learn of any opportunities might just pay off!

It is hard to assess the cost of training and to know ahead of time the return on your investment, but with the right guidance and given the right tools, your associates might be able to win new business for your firm.

Marketing training is all about learning how to "market" yourself to your surroundings.

Think of all the times we've been asked: "what is it you do?" Most associates and service professionals will answer: "I'm a lawyer", "I'm an accountant"...There is no bigger conversation stopper! And often, the conversation does just stop there! Training your people could lead to longer conversations, leading to more brand awareness, understanding of what your firm does, and even to new business.

When asked what you do, being passionate and interested when answering can really resonate with people and next time they or someone they know will mention needing a "tax expert", "international tax lawyer", "trademark lawyer", "cannabis expert lawyer", they will most definitely remember the person they met who took the time to tell them a little anecdote from their job, and as such, positioned themselves as experts in their field. Everyone in your firm is an ambassador and, as such, teaching them to discuss their work and specialty could reflect greatly on your firm's reputation.

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Leading with Gratitude: Eight Leadership Practices for Extraordinary Business Results

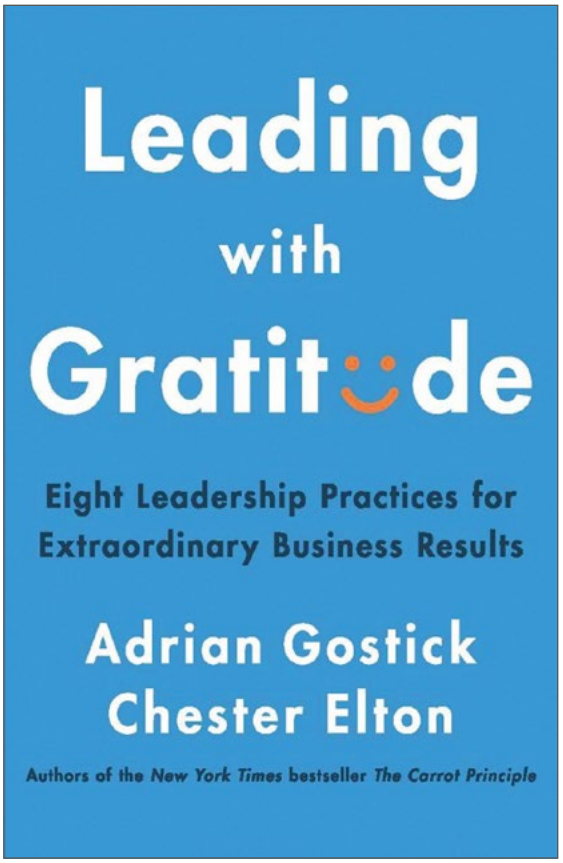
By Adrian Gostik and Chester Elton

The influential New York Times bestselling authors—the "apostles of appreciation", Chester Elton and Adrian Gostick—provide managers and executives with easy ways to add more gratitude to the everyday work environment to help bolster morale, efficiency, and profitability.

Workers want and need to know their work is appreciated. Showing gratitude to employees is the easiest, fastest, most inexpensive way to boost performance. New research shows that gratitude boosts employee engagement, reduces turnover, and leads team members to express more gratitude to one another – strengthening team bonds. Studies have also shown that gratitude is beneficial for those expressing it and is one of the most powerful variables in predicting a person's overall wellbeing – above money, health, and optimism. The WD-40 Company knows this first-hand. When the leadership gave thousands of managers training in expressing gratitude to their employees, the company saw record increases in revenue.

Despite these benefits, few executives effectively utilise this simple tool. In fact, new research reveals "people are less likely to express gratitude at work than anyplace else". What accounts for the staggering chasm between awareness of gratitude's benefits and the failure of so many leaders to do it – or do it well? Adrian Gostick and Chester Elton call this the gratitude gap. In this invaluable guide, they identify the widespread and pernicious myths about managing others that cause leaders to withhold thanks.

Gostick and Elton also introduce eight simple ways managers can show employees they are valued. They supplement their insights and advice with stories of how many of today's most successful leaders – such as Alan Mulally of Ford and Hubert Joly of Best Buy – successfully incorporated gratitude into their leadership styles.



Showing gratitude isn't just about being nice, it's about being smart – really smart – and it's a skill that everyone can easily learn.

Tiltle: **Leading with Gratitude: Eight Leadership Practices for Extraordinary Business Results**
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Have you got news to share?

A new partner perhaps?
Or new offices?
Or even new service offerings?

Keep us up-to-date with the latest happenings in your company or on any successful dealings you had with fellow GGI members! In this publication, you will be able to announce if your firm added a new partner, if your company won an award, if you moved offices, if you offer new additional services, etc.

We invite you to share your views, thoughts and interests, and the latest news from your profession with the entire GGI Insider readership by contributing an article.

This is your journal. All submissions are invited. The deadline for inclusion in the next issue is 31 August 2020. Please email Barbara Reiss at b.reiss@ggi.com with your contribution.

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