GENEVA GROUP INTERNATIONAL

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DIARY

10-13 November 2005
World Conference Dubai

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11-14 May 2006
European Conference Ireland

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02-03 June 2006
Latin American Conference Venezuela

INTRODUCING GENEVALINKS – THE NEW COMMUNICATION TOOL OF GGI

Geneva Group International is proud to announce the introduction of a state-of-the-art internet based communication tool, GenevaLinks (GL). This will enhance and strengthen communication between GGI members. A modern contact management system to handle relevant data, to which all members will have access, this customized tool will also be the new business opportunity blackboard throughout the network. Designed to cope with the demands of firms with global operations, GenevaLinks brings contacts, precise information and business opportunities closer to all members. Mr. Norberto Levin, Chairman of Levin Global, a world leader in fixed asset optimization and MRO, appraisals and CRM, will give a presentation on GenevaLinks during the World Conference in Dubai. Levin Global has developed GenevaLinks and has serviced 1700+ customers in 53 years. With 12 offices worldwide, Levin Global has just joined Geneva Group International as a new member.

GenevaLinks is…

- a web-based customer relationship management system, designed for contact management and the sales organization.
- a management tool which handles all relevant contact and marketing information on customers, potential customers, vendors and personnel as well as professional and strategic contacts

Highlights

- fully web-based
- easy to install
- highly user-friendly
- outstanding functionality
- manages e-mail correspondence
- linked to BestNet callback service
- GGI network business opportunity matching

Opportunity Management

Firms and opportunities are profiled according to:

- field of practice
- country/region - geographic scope of services provided

Opportunities generated by any member will reach all firms matching the opportunity profile.

BestNetCall

- low-cost phone-to-phone calling: 5 to 6 US cents-per-minute international telephone calls
- one-click calling from the contact record
- telephone cost tracking per project

GL runs…

- on local network servers in multiple locations, and
- on individual notebooks

Synchronization

GL keeps all databases in sync, enhancing productivity for both LAN users and those working offline, who can synchronize when they are LAN or web-connected.

Confidentiality

Only network data are synchronized with GGI servers. Each firm's business contacts never leave the firm's server.

GenevaLinks Download

Detailed descriptions of the procedure for downloading and using GenevaLinks will be sent to GGI members individually after the Dubai conference.

LIECHTENSTEIN'S COMPANY LAW

by Urban B. Eberle, NewCenturyBank, Vaduz

NewCenturyBank is specialized in the provision of integrated advice for their clients and offers Family Office Services to private clients.

The Principality of Liechtenstein is a constitutional monarchy on a democratic basis with a Prince as the head of state and a sovereign parliament. The power is vested in the Prince and the citizens together. The reigning prince of the House of Liechtenstein is Prince Hans Adam II.

The country has a parliament whose members are elected by the citizens every four years. The government is elected by parliament. Liechtenstein is a civil law country with its own system of laws and courts. Some of the applicable laws are Austrian-like, some are Swiss-like. Banking law for example is a mixture of Swiss and European law standards.

For decades, Liechtenstein has been an important financial place as well as a centre for international companies, particularly for holding and domiciliary companies.
An up-to-date system of comprehensive laws provides an ideal basis not only for the creation and operation of such companies but also for banking, in particular private banking. A well established and internationally accepted banking law offers the highest level of confidentiality, even more than the Swiss law. Liechtenstein's geographical location, its political and economic stability, as well as the advantages offered by its company and tax law make this small European country a perfect place for business activities. In addition, a monetary and customs union with Switzerland which was signed in 1922 brings several advantages for the Principality.

In recent years, Liechtenstein has also achieved an increasing reputation in the global political scene, which can be illustrated by the country's membership of several international organizations. Liechtenstein became a member of the United Nations and the EEA (European Economic Area), just to mention two of the most important ones. The EEA is an agreement between the European Union and Norway, Iceland and Liechtenstein to create one open market. EEA membership in particular thus gave the small Principality in the heart of the Alps access to a market comprising more than 460 million inhabitants.

The company law system

The present company law system has existed since 1926. Within this legal framework it is possible to set up companies based on an internationally recognized company structure such as the company limited by shares or the limited liability company. Furthermore, these laws also provide for the creation of companies with non-divided capital. Among these non-divided capital firms we have the Foundation (in German: Stiftung), the Establishment (Anstalt) and the Trust Enterprise (Treuunternehmen). All these legal entities benefit from a special tax status: the profits generated by these companies are not taxed in Liechtenstein.

The Foundation

Under the laws of Liechtenstein, the foundation is defined as a legal entity created by means of a donation designated for a special purpose. This entails that the donated assets are regarded as a separate legal entity.

In most instances, the term “foundation” is associated with a public body or a religious or charitable institution. Liechtenstein law does not only enable the creation of these types of foundations:
Liechtenstein foundations are known for their flexible structure and they can be set up for all kinds of purposes such as the assistance to family members.

Foundations can gain the status of a legal entity easily, provided that they do not engage in any commercial activity. A simple deposition of the constitutional documents is all that is needed. There are no disclosure requirements imposed by Liechtenstein authorities regarding the name of the donor, the name of the beneficiaries or the planned and authorized distributions.
In addition, no reporting is required by the Liechtenstein authorities. The founder is not obliged to present himself to any Liechtenstein authority nor does he have to sign any official documents. It is not possible for outside persons to have access to any information referring to deposited foundations.

The terms under which the beneficiaries may benefit are usually set down in the foundation’s by-laws at the time of the creation of the foundation, but these details may be changed at a later date. The donor may choose family members as well as other physical or legal persons as beneficiaries. The donor himself may be one of the beneficiaries.

The Establishment

The establishment (Anstalt) is a separate legal entity under Liechtenstein law. It is independent, has a commercial purpose and is registered in the firm register.

The establishment is free to engage in the same activities as a company limited by shares. The main difference between both types of companies lies in their respective capital structure: the capital of an establishment is generally not divided into shares. All rights and privileges belong to the founder of the firm or his legal heirs or successors; the founder or his successor determines all matters of organization. The founder's rights can be compared to those of the general meeting in the case of a stock company. An auditor is required, if the establishment's objectives are commercial. If this is the case a balance sheet must be filed with the Liechtenstein authorities.

The Trust

The trust was first used in the Middle Ages and has constantly evolved ever since. Liechtenstein is one of the few non Anglo-Saxon countries which have included trust law in their legal framework. A trust can be set up without having to create a separate legal entity. Although Liechtenstein has incorporated trust law into its legal framework it has modified some aspects considerably.

Liechtenstein has not adopted the rule against perpetuities which states that a trust must have a certain duration.

Moreover, the profits of a trust can be capitalized for an unlimited period of time without having to be distributed.
This is not allowed in most Anglo-Saxon countries where the rule against accumulation is in place.

A trust is a legal relationship between a settlor, a trustee and his beneficiaries whereby the trustee is obliged to manage or to distribute the assets confided to his care by the settlor for the benefit of the named beneficiary or beneficiaries. However, the trust cannot be regarded as a separate legal entity. The assets are confided to the care of the trustee who is obliged to manage these assets in accordance with the provisions of the agreement set up between the settlor and the trustee. This agreement is called "trust deed". It is not accessible to third parties.

The assets are held by the trustee on a fiduciary basis only. The settlor can be the sole beneficiary or one among a number of beneficiaries. The income received, the profits made and the benefits distributed are all free of any kind of taxes in Liechtenstein.

Urban B. Eberle, CEO
Head Private Banking and Chief Investment Officer

IN THE MINEFIELD OF EUROPEAN INSOLVENCY LAW

by Michael Wendler and Beata Kosny
Law firm Wendler Tremml

Michael Wendler

Beata Kosny

Council Regulation (EC) No. 1346/2000 of May 29, 2000 on insolvency proceedings (European Insolvency Regulation, or EIR) provides for a single main insolvency proceeding to be opened in the member state where the debtor has his center of main interests (COMI). That member state's locally competent insolvency court alone has international jurisdiction to open insolvency proceedings. Just where the debtor's center of main interests is situated, however, is the subject of highly differing European court rulings based on varied criteria. Yet against the backdrop of insolvency petition requirements and the risk of criminal delays in filing insolvency petitions, a transnational corporation's legal adviser must often face this question in the run-up to a court decision. In the face of the fast-paced development of European insolvency law, this task is as exciting as it is difficult.

Where, for instance, is the center of debtor's main interests of a closed corporation registered in Germany ("GmbH") if its corporate headquarters are situated in Poland and the strategic decisions are made in their entirety by its Polish parent company?

With the country's accession to the European Union, the Insolvency Regulation came into force in Poland as well. While not offering a definition of the term, Article 3 (1) EIR clarifies that the jurisdiction of the debtor's registered head office bears only the significance of a rebuttable presumption in determining the COMI. Thus the insolvency court's interpretation is required which turns out most different in the various member states.

British courts favor a broad interpretation finding the debtor's center of main interests where essential strategic decisions are taken and the corporation's financing is provided. In the insolvency of a company group operating within the European Union whose group headquarters are situated in Great Britain, courts regularly open insolvency proceedings according to the British Insolvency Act 1986 with regard to subsidiary companies situated outside of Great Britain, thereby paving the way for the entire group's reorganization in accordance with *lex fori concursus* for the purpose of Art. 4 EIR. These rulings are met by harsh criticism in part as it leads to the establishment of international jurisdiction over group insolvencies at the location of the group management which is not intended by the Insolvency Regulation.

Italian insolvency courts tend to relocate the foreign subsidiaries' headquarters to the Italian parent company's head office by means of some kind of control theory in order to presume the subsidiary's center of main interests in Italy and to affirm their own jurisdiction over the subsidiary companies as well.

The broad interpretation of the term COMI by these member states' insolvency courts allowing the entire group's reorganization under a uniform insolvency law *(lex fori concursus)* brings about the unwelcome phenomenon called *forum shopping* in that some debtors will pick the place of jurisdiction which appears most favorable.

An overall view of the latest European insolvency court rulings shows that an economic-administrative approach increasingly comes to the fore. It has a tendency to determine the debtor's center of main interests where the actual head office is located and the head office functions are executed. A case in point, the Amtsgericht (district court) Siegen has held that the COMI of a GmbH registered in Austria is located in Germany if its head office is there, no separate management is established in Austria, and the debtor is economically dependent on the German parent company.

However, these factors must be recognizable by the corporation's creditors. According to Recital No. 22 to the EIR, the center of main interests is presumably the place where the debtor "conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties". Obviously the legislator lays emphasis on the COMI's recognizability by the creditors and on risk calculation in the case of insolvency thus made possible. Merely internal processes are hence to be left out of consideration. It therefore should be inconsequential if a subsidiary is both controlled strategically and financed by its parent company as long as these aspects are not discernible from outside.

If it not ascertainable by the creditors in the example introduced above that the actual head office of the GmbH is situated at the Polish parent company's headquarters, the COMI of the GmbH would have to be in Poland. Accordingly, the Polish insolvency court would have international jurisdiction. Given the inconsistent rulings the risk remains, however, that the court will dismiss the insolvency petition for want of jurisdiction. Decisions by Polish insolvency courts on the interpretation of the term of COMI have not been made known throughout Europe.

With doubts about international jurisdiction remaining, the question comes up what a corporation's representatives must do to observe the statutory duty to file an insolvency petition. Does the managing director of the GmbH in the above-mentioned example fulfill his duty to petition in Germany if he files the insolvency petition at the Polish insolvency court?

Since an opened main insolvency proceeding must generally be acknowledged by other EU member states according to Art. 16 EIR and because this maxim finds its limits only in an evident violation of the principle established by the *ordre public*, initiating the opening of a main insolvency proceeding with regard to the corporation's assets fulfills the duty to petition. The debtor's duty to petition under domestic law is therefore fulfilled by the bankrupt corporation's representative if the petition filed abroad does not prove inadmissible.

Hence the exemplary managing director runs the risk of failing to fulfill his statutory duty to petition if the Polish court negates its international jurisdiction over opening the main insolvency proceeding.

The legal adviser consulted in this matter may be tempted to recommend the simultaneous filing of petitions at the locally competent German and Polish insolvency courts in order to terminate this risk. However, this would only result in a race of competing courts. And because it is not yet foreseeable how the prosecuting authorities are going to deal with these issues, it is advisable to lodge the petition with the German insolvency court in the case of registered headquarters in Germany. If it considers want of jurisdiction it must issue a corresponding judicial indication according to Section 4 InsO (Insolvenzordnung – Insolvency Act) read in conjunction with Section 139 ZPO (Zivilprozessordnung – Civil Procedure Act). Following the predominant opinion, the managing director fulfills his duty to petition if he files a new petition at the court of international jurisdiction after receiving judicial indication.

Against the background of the numerous risks involved, the recent referral to the European Court of Justice (ECJ) by the Supreme Court of Ireland aiming for the heart of the matter of group insolvencies is to be welcomed. The extensive list of questions includes, among others, the following essential ones:

Where is the center of subsidiary companies' main interests to be situated?
On what scale may subsidiaries be relocated to the location of the parent company's head office?

The answers to these questions are expected with rapt attention. Let us hope the ECJ will clear a path through the minefield of European insolvency law.

WENDLER TREMML
RECHTSANWÄLTE

DUESSELDORF MUNICH BERLIN BRUSSELS WARSAW

The law offices of Wendler Tremml are currently represented by 23 attorneys at five European locations. The law firm's main strength is its specialization and focus on selected fields of law. One main focus of activity of our Düsseldorf and Warsaw locations is on giving legal advice to Polish and German companies with regard to their transnational operations covering the entire scope of commercial law.
Michael Wendler founded the law firm in 1986 in Düsseldorf. His areas of expertise include European law and company law. Beata Kosny works as an attorney at the Düsseldorf office of Wendler Tremml. She specializes in insolvency law and also offers legal counsel in company law focusing on restructuring.

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PPP – WHERE ARE THEY HEADING?

At the European Conference of GGI and Law Span International in Malta early in 2005, 10 participants met in a workshop to discuss the main issues of the development of PPP models and their implementation in Europe. As a result of the discussion to which representatives from Italy, the Netherlands, Germany and the UK as well as Hungary and Poland contributed, the following principle issues were identified.

Legislation

Estimating the economy of PPP models remains a difficult undertaking unless reliable public legislation is in place, in particular tax laws concerning sales tax issues. This is an obstacle to nation-wide application in many countries, especially in Germany. The extent to which the “Law to accelerate the implementation of private-public partnerships” adopted by the German parliament on 30 June 2005 can contribute effectively to this target remains to be seen. It is a step in the right direction, anyway.

Financing

Another problem area is financing because the public partner – the community or state or equivalent entity – cannot provide the required bank security in several countries. This results in high expenditure for financing, including advance financing.

The workshop participants were agreed that both license and operator models will become ever more important in Europe and throughout the world in view of the improvement of the economic efficiency by the involvement of private companies in PPP projects.

Positive prospects

This is also shown by a study* prepared by “Deutsches Institut für Urbanistik” for the PPP Task Force in the “Bundesministerium für Verkehr, Bau- und Wohnungswesen” (German federal ministry of transport, building and housing). The study is a current and comprehensive stocktaking document of PPP projects at federal, state and local levels in Germany. The object of the study was PPP projects for project-related infrastructural measures – intentionally not included were so called institutional PPPs (permanent duties, e.g., public utility companies, supply and disposal). The study includes 1500 cities, towns and communities. Despite the fact that PPP projects have existed for many years, a real boom occurred only in 2004. At present, over 200 projects are included with project profiles, 143 underpinned with contracts. It is estimated that over 300 projects are either at the planning or Implementation stage. They comprise total (estimated) investments of some 3000 million Euro. In comparison with total capital expenditure on public physical assets, PPP-related expenditure is low, amounting to a mere 5 per cent at present. The total available amount (federal/state projects) is around 70 million Euro on average, municipal projects account for some 15 million Euro.

Efficiency boost as motivation

A major reason for the numerical increase in the number of projects is the expectation of higher efficiency; these projects are not in the first line tools for overcoming financial bottlenecks. Following the underlying concept of the PPP which implies that the cost development should be optimized for the full life cycle of a project, operating expenses must be looked at closer, the study says. In some cases, these are higher than the original investment. PPPs are an important consideration in many areas (schools, administration buildings, tourism, etc.). All interviewed believed that PPP would become even more important in future. Despite this development, there are no PPP projects in over 3 of 4 municipalities, mainly smaller ones. Reasons for this include no need or lack of required funds for start-up financing. Though often maintained, it is not in the first place legal matters (most of all public procurement law or law of contract) that make these projects a failure, including in large communities. These are seen as a challenge and generate need for action. At the world conference of GGI in Dubai in November, another workshop will discuss latest developments in legislation and the consequences this has for the planning / design of PPP models. In this context, the question of whether lobbyists should press for a general directive for such models to be developed and submitted through GGI will also be discussed. In view of the fact that the structuring and implementation of PPI models is of crucial importance to many building concerns and medium-size firms clients of GSI advisers, the participants in this workshop in Dubai could take appropriate decisions.

Detlef Bischoff, lawyer
CEO CONNEX Group

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When the new members were introduced in the August issue an error was made. The correct details of our new member in Switzerland are as follows:

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NEW GGI MEMBERS

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Costa Rica

The Compiller Group has signed a GGI Cooperation Agreement being effective from 01st January 2006

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Further independent Conferences and Events

Please find below some independent conferences and events which could be of interest for our members.

Tax Strategies
23rd November 2005
Singapore, Singapore

Criminal Tax Fraud 2005
30th November – 2nd December 2005
San Francisco, United States

Contract Risk Management in China's Oil and Gas
29th – 30th November 2005
Beijing, China

Certificate In Management Consulting Essentials
23rd – 27th January 2006
Gatwick Airport, United Kingdom

Please doubleclick on the topic of the conference in order to obtain further information from the website

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