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Combating counterfeiting and piracy

Brazil - a world of opportunity

MENA supplement

Asset management - a client partnership

Q&A with Scott McMunn, CEO of RBS Asset Management

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Is the west history?

Will Chindia or Chimerica rule the world in 2050, or America after all? HSBC and Citigroup have recently come up with radically different pictures of what the world will look like in 2050. Which of the two is closer to the mark will determine whether the west hangs on, or disappears as a relevant voice in global affairs.

For those who believe the west is finished Citigroup's Willem Buiter offers some thought-provoking projections. Buiter expects strong growth in the world economy until 2050; the world is going to become richer and richer as developing economies play catch up. As a result world GDP should rise in real PPP-adjusted terms from $72 trillion in 2010 to $380 trillion dollars in 2050. If he is right power will shift from the west to the east very quickly.

China will overtake the United States to become the world's largest economy by 2020, only to in turn be eclipsed by India by 2050. Developing Asia and Africa will be the fastest growing regions, driven by population and income per capita growth, followed in terms of growth by the Middle East, Latin America, Central and Eastern Europe, the CIS, and finally the advanced nations of today.

There will also be a shift in the balance of global economic power. North America and Western Europe's share of real global GDP will likely drop from 41 per cent of global GDP in 2010, to just 18 per cent by 2050. On the other hand, developing Asia's share of real global GDP is likely to jump from 27 per cent to 49 per cent by 2050.

The big game-changers have been globalisation – which has allowed for the freer movement of goods and factors of production – and the spread of the free-market economic model. The opening up of the economies and political systems of former communist and centrally planned economies are now seen as a key engine to increase economic growth and enhance development around the world.

The convergence will take decades. China will be on top by 2020, and then India will have the biggest economy by 2050, he predicts. Both countries are the world's fastest-growing economies. China predicts its economic growth will be 9% this year, while India's could hit 9.25%.

HSBC's report also sketches an era of unparalleled prosperity, yet the west does not sink into oblivion. China overtakes the US, but only just, and then loses momentum. Americans remain three times richer than the Chinese in 2050. The US economy still outstrips India by two-and-a-half times. This is an entirely different strategic outcome.

The two studies differ on how easy it is to handle population collapse. The great unknown is what rapid ageing does to creative zest, and how many decades it takes to turn the demographic super tanker. China's workforce peaks in absolute terms in four years. While the population keeps growing until the tipping point in the mid 2020s, it is ageing very fast.

The question is has the global credit crisis finished the west and served as catalyst for a permanent hand-over to Asia? Perhaps the 21st century will be America's after all, just like the last.

The financial crisis was not a mass extinction event for the west. None of this changes the long term picture of an ascendant China. Size of population alone makes China and other fast growing emerging market economies a much more potent challenge to traditional western supremacy than past pretenders such as Japan.

Looking at the world today you see very little sign of the west being lost. The over-riding picture remains one of progressive westernisation. But there is an important change. The west may have created today's global economy, but it no longer runs it. True enough, the next century is unlikely to be American, but nor will it be Asian. Instead, it will be the world's first ever truly global century. ■

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Contents

6 Building respect for intellectual property
Johannes Christian Wichard

10 Pirate attacks on shipping routes increase as causes not addressed
International Chamber of Commerce's (ICC) International Maritime Bureau

12 Combating counterfeiting and piracy must be part of an overall IP strategy in Europe
Ilias Konteas

16 Counterfeit medicines: a challenge for criminal regulations
Alejandra Castro

19 Hazardous omission of contractual trademark provisions
Bogdan Fischer

20 Asset management - a client partnership
Scott McMunn and Jane Kawar

22 North Rhine-Westphalia: Leading location for medical technology in Germany
NRW Invest

26 Brazilian economic growth will be preserved
Robson Braga de Andrade

26 Brazil - a world of opportunity
Marcelo Rebanda

30 Global economic competition and EU Millennium Development Policy
Oladiran Bello

32 Software support thrives in Bermuda
Bermuda Department of E-Commerce

36 Not just the Oktoberfest – Bavaria, an attractive business location
Johann Niggl

40 Increased carried interest taxation everywhere - is there a way out?
Jos Peters

42 Acquisitions in Ukraine: 12 tips on making a successful deal
Mykola Stetsenko

44 Austria: Important changes in company law in 2011
Jürgen Brandstätter

46 Polish public procurement market – a tidbit or a bureaucratic trap?
Anna Piecuch

NINE COUNTRIES. TWO CONTINENTS.

ONE PERSPECTIVE

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Finance Monthly Magazine, 2010 Portugal

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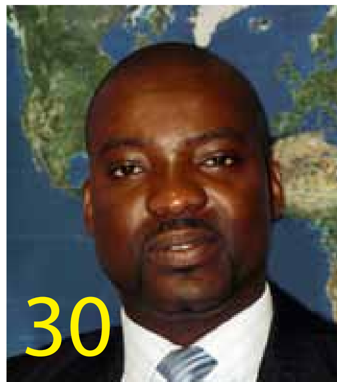
Contents



MENA Supplement

i Annual Lunch highlights Middle East Association's key role at a time of uncertainty
The Middle East Association

ii Infrastructure in the MENA Region
Robert Graham

vi Largest ever MEA trade mission to Algeria
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Building respect for intellectual property

Johannes Christian Wichard, Deputy Director General of the World Intellectual Property Organization, in a Q&A with World Commerce Review, discusses WIPO's role in addressing the serious global impact of the growing trade in counterfeit and pirated goods

Targeted, creative actions are needed to counter the threats that counterfeit and pirated goods pose to consumer health and safety. Please describe WIPO's role liaising with governments and NGOs.

Counterfeiting and piracy have serious economic and safety implications. In addition, they undermine innovation and creativity. As an organization mandated with promoting innovation and creativity through use of the intellectual property (IP) system, one of WIPO's strategic goals is building respect for IP. As such, WIPO is dedicated to informed and empirically well-founded policy discussions at the international level to support the creation and development of an enabling environment promoting respect for IP in a sustainable manner. The Organization also helps to strengthen the capacities in member states, so requesting, to effective enforcement of IP rights, taking into account the social and economic circumstances prevailing in these countries.

Within WIPO's institutional framework, the Advisory Committee on Enforcement (ACE) provides a forum for discussion among member states on concrete issues relating to the enforcement of IP rights in the framework of its strategic goal relating to building respect for IP. In addition to administering this forum, the WIPO Secretariat, through its Building Respect for IP Division, provides assistance to requesting member states to update legal frameworks within which to enforce IP rights, as well as organizing capacity building events for agencies involved in the enforcement of IP rights. Extensive work is being done in this domain. Another important objective is international cooperation, notably with partnering international organizations. The most recent example is the 6th Global Congress on Combating Counterfeiting and Piracy, co-organized by WIPO, INTERPOL, the World Customs Organization and the private sector, notably the International Chamber of Commerce, through its BASCAP (Business Action to Stop Counterfeiting and Piracy) initiative, and the International Trademark Association (INTA).

WIPO receives extensive requests for technical assistance to member states in order to combat counterfeiting goods which pose health and safety hazards to consumers. The Organization acts as a catalyst to build effective and balanced cooperation among potential providers of assistance. In this regard WIPO is dedicated to further enhancing relations with intergovernmental organizations (IGO's - notably the WHO, WTO, WCO and INTERPOL), NGO's and industry groups concerned by these phenomena. It is only through pooling expertise among all stakeholders that requesting member states can be assisted in strengthening their technical capacity in a cost-effective and value adding manner.

Please describe the areas covered at the 6th Global Congress on Combating Counterfeiting and Piracy in Paris in February.

The 6th Global Congress on Combating Counterfeiting and Piracy was hosted by the French Institut National de la Propriété Industrielle in Paris and was held under the chairmanship of WIPO. The theme of the Congress was *"Building respect for IP: Sustainable Solutions to a Global Problem"*. Almost 900 delegates from governments and the private sector, as well as IGO's and NGO's, from more than 105 countries convened in Paris to address the serious global impact of the growing trade in counterfeit and pirated goods and the need to build respect for intellectual property in a balanced and sustainable way.

The discussions during this Congress covered a broad range of issues, including the methodologies to measure the scope and impact of counterfeiting and piracy; how to preserve a balance between the interests of right holders and broader public needs, including those of consumers; how building respect for IP can contribute to sustainable development; innovative options to help financing enforcement of IP rights; how to dispose of counterfeit goods in an eco-friendly and socially equitable way; how corporate social responsibility by right holders can contribute to nurturing respect for intellectual property; how to deal with the growing phenomenon of counterfeiting and piracy on the internet; ways of securing the supply chain in the fight against counterfeiting and piracy; the link between consumer safety and the fight against counterfeiting and piracy; potential new approaches in raising public awareness; and the pros and cons of various governmental agreements and initiatives, such as through bilateral and plurilateral agreements, in combating counterfeiting and piracy.

A summary of these discussions as well as the video recordings of the sessions will be made available on the website of the Global Congress, at http://www.ccapcongress.net/.

Counterfeiting and piracy cost governments and businesses billions in revenue each year, and the social and health risks they have on the public are alarming. In today's interconnected world, these risks are no longer isolated to one country, region, demographic or economic class. How is WIPO facilitating a constructive and balanced international policy dialogue?

Gathering information and facilitating communication and cooperation between various law enforcement officials are key elements in combating counterfeiting and piracy. This is true at both at the national and international level.

As mentioned earlier, WIPO's facilitates the dialogue among member states to encourage international cooperation on building respect for IP. The ACE is a privileged forum to ensure such constructive dialogue.

In addition, WIPO is involved in extensive capacity building activities at the national and regional levels, in close cooperation with other organizations and the private sector.

What do you believe the future role of WIPO in the field of building respect for IP will be?

WIPO will further develop its role of facilitating international cooperation between all member states in building respect for IP

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Opening of the 6th Global Congress with the heads of the partner organizations

in a sustainable manner; a balanced approach is essential to ensure the credibility of enforcement systems in the interest of right holders and consumers. WIPO will also continue to respond to the increasing number of requests from member states for technical assistance.

What are the benefits and how does the Madrid system aid trademark owners?

The Madrid system[1] is an international mechanism for the registration of trademarks. In its 120 year history it has constantly expanded and evolved in tandem with the changing commercial landscape. It offers a simple, cost-effective, efficient and user-friendly option for registering and subsequently managing trademarks in more than 80 countries and the European Union (EU). The Madrid system is of benefit to trademark owners as well as the national authorities responsible for administering trademark registration systems. It is a "one stop shop" for the registration and renewal of trademarks. By submitting one trademark application to one office, paying the associated fees in one currency, it is possible to register a trademark in as many as 85[2] countries.

In using the Madrid system, trademark owners can take advantage of a simple, efficient and cost-effective means of obtaining and maintaining the protection of their marks abroad. It is a very effective system, as one single international application produces the same legal effect in many countries and there is a fixed dead line for confirmation or refusal of the legal effect in each country concerned.

The Madrid system also supports economic growth and international trade insofar as it enables companies to gain access to new markets and to develop their export potential. It further creates a more favourable climate for foreign investment in home markets.

What services does WIPO offer to industry?

WIPO is at the service of the intellectual property user community. The Organization offers a range of cost-effective services that help obtain international protection for new inventions, brands and designs. Every year, WIPO manages over 160,000 international patent applications, 40,000 international trademark registrations, a growing number of international design registrations and the WIPO Arbitration and Mediation Center offers a range of dispute resolution services that

WIPO HQ in Geneva, Switzerland

provide an attractive alternative to lengthy and costly litigation. In particular, the Center is recognized as the leading dispute resolution service provider for disputes arising from the abusive registration and use of internet domain names. The WIPO-administered Patent Cooperation Treaty (PCT) is the backbone of the international patent system, allowing inventors to file a single application in one language and gain the benefit of potential protection in 142 countries, with the option of waiting up to 30 months to decide which markets justify the expense of pursuing national patents.

WIPO also develops and coordinates global infrastructure for the knowledge economy. This includes free databases of brands, designs, and technology disclosed in patent documents; as well as platforms to facilitate work-sharing amongst IP Offices and to add transparency to the functioning of technology markets. ■

1. The Madrid system is governed by 2 treaties: the Madrid Agreement Concerning the International Registration of Marks (1891) and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989)
2. Applicants much first register their trademark in their home country before registering internationally using the Madrid System.

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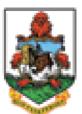

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Pirate attacks on shipping routes increase as causes not addressed

More people were taken hostage at sea in 2010 than any other year on record. This takes a terrible toll on individuals, disrupts shipping routes, and has a huge financial impact on businesses. While international efforts have been stepped up to attend to the problem, more needs to be done by governments and the United Nations to tackle its causes.

The number of pirate attacks on ships has risen every year for the last four years, according to the International Chamber of Commerce's (ICC) International Maritime Bureau 2010 annual piracy report. Ships reported 445 attacks in 2010, up 10% from 2009. While 188 crew members were taken hostage in 2006, 1,050 were taken in 2009 and 1,181 in 2010.

The attacks are not only alarming because their incidence is on the rise, but also because they feature increasingly sophisticated tactics. Pirates off the coast of Somalia have begun to use hijacked, ocean-going fishing or commercial vessels as bases for further attacks, and have heavy weapons, such as rocket-propelled grenades, at their disposal.

The global epicentre for piracy is on the high seas off Somalia, where 92% of all ship seizures took place last year. Pirates hijacked 49 vessels and took 1,016 crew members hostage, according to the International Maritime Bureau (IMB) report. They also reached an unprecedented range – venturing some 1,400 nautical miles from Somalia's coast.

"You have a country in Africa with one of the longest coastlines, which is utterly lawless and hence becomes very attractive for pirates to operate," said IMB Director, Captain Pottengal Mukundan.

This has imperilled a web of shipping routes going to and from a multitude of destinations in the Indian Ocean. The total economic cost of piracy was somewhere between US$7 billion and US$12 billion in 2010, according to Oceans Beyond Piracy, a project from the private foundation One Earth Future. This estimate includes the cost of ransoms, insurance premiums, re-routing ships, security equipment, naval forces, prosecutions, anti-piracy organizations, as well as costs to regional economies.

The average amount of ransoms has increased exponentially since 2005, with US$238 million paid out to hijackers last year. But the financial impact to ship owners does not stop here. Hijacked vessels are often held for seven months or more, meaning ship owners must incur the costs of delays, as well as moving the vessel, which is often damaged, to a safe port for refurbishment. For many, this situation has gone too far.

"Somali piracy is reaching a crisis point. It is vital that governments increase naval presence in the region and deal robustly with captured pirates," said Captain Mukundan.

Around 30 navies are patrolling the Indian Ocean in an unprecedented international collaboration that has made for unlikely bedfellows. But this naval presence is not enough, given the enormous area that needs to be covered. The shipping industry says that these measures tackle the outcome of the problem and not its root.

"We need governments and the United Nations to refocus their efforts on getting some kind of administrative infrastructure in south central Somalia. No matter what efforts you make at sea to take on the pirates, you will not have an impact until you deal with the problems ashore in that region," Captain Mukundan said.

Somalia has not had a working central government since President Siad Barre was overthrown in 1991. The situation in the country has grown dire amid an ongoing battle between warlords, and blights of famine and disease that have killed as many as one million people.

Helping Somalia would help thwart escalating cases of piracy. While piracy in other parts of the world features a mix between armed robbery and hijackings, every incident off the coast of Somalia is

The Liberian-flagged oil tanker MV Sirius Star. The very large Saudi-owned crude carrier was hijacked by Somali pirates in November 2008 off the coast of Kenya. US Navy photo by Aviation Warfare Systems Operator 2nd Class William S Stevens

International Maritime Bureau Director, Captain Pottengal Mukundan

Piracy incidents worldwide © Google Maps

aimed at hijacking, according to Captain Mukundan. The effects of armed robbery, though detrimental, have less of an impact than hijackings as thieves tend to board and leave vessels quickly.

The Gulf of Aden provides a positive example of how collaboration between international governments can successfully reduce the frequency of piracy. Attacks have dropped more than 50% in these waters, where the Maritime Security Centre for the Horn of Africa (MSCHOA) established the Internationally Recommended Transit Corridor (IRTC).

The IRTC is patrolled by naval and air forces from participating countries and makes a safer route through the Gulf of Aden, a passage for 20% of global trade. Unfortunately, it has displaced the problem to the Indian Ocean and the Arabian Sea, which are too large to have a protected corridor, according to Captain Mukundan.

Violent attacks are not isolated to these areas though. In 2010, insurgents in Nigeria's oil-producing region continued to carry out attacks on ships in the Gulf of Guinea, while armed robberies increased off the coasts of Bangladesh and Indonesia.

Ship owners have begun taking deterrence into their own hands through the use of security equipment and armed guards. This is not considered an optimum solution as it can cross into a legal grey area, and is dangerous and very costly. Security equipment alone costs ship owners between US$363 million and US$2.5 billion per year, according to Oceans Beyond Piracy.

Visit, board, search and seizure team members approach a suspected pirated vessel in the Gulf of Aden. US Navy photo by Mass Communication Specialist 2nd Class Ja'lon A Rhinehart

IMB strongly recommends that ships implement self-protection measures as outlined in *Best Management Practices*, a booklet published in 2010 by the shipping industry and navies. The use of these practices has helped to diminish attacks in areas such as the Gulf of Aden. The booklet, which can be downloaded on the MSCHOA website, offers practical recommendations such as for ships to travel as quickly as possible in high risk areas. *"To date, there have been no reported attacks where pirates have boarded a ship that has been proceeding at over 18 knots,"* it states.

In 1992, IMB established the 24-hour IMB Piracy Reporting Centre (PRC) in Kuala Lumpur, Malaysia to address the already escalating level of piracy. It gives shipmasters a place to turn to if their ships are attacked, and also allows IMB to advocate for adequate resources from governments for tackling piracy.

"The information that we provide has historically been a catalyst for proper response from government law enforcement agencies. It works well because the IMB has no commercial interest and our approach to this problem is always apolitical," said Captain Mukundan.

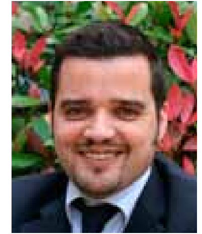
Everybody suffers from the intensifying piracy crisis. The pirates, themselves a product of a desperate community accustomed to violence, lead a precarious existence, while crews and their families live in fear. Ship operators incur costs from the incidents that eventually trickle down to the consumer. The UN and governments must take further action to secure shipping routes and to develop administrative infrastructures in lawless countries in order to help ensure the safe flow of trade. ■

The International Maritime Bureau is part of ICC's Commercial Crime Services. Find out more online at: www.icc-ccs.org/

Best Management Practices (Version 3) can be downloaded on the MSCHOA website at:
www.mschoa.org/bmp3/Pages/BestManagementPractises.aspx

IMB offers the latest piracy reports free of charge. To request a PDF version of the report by email, please visit: www.icc-ccs.org/requestreport

Combating counterfeiting and piracy must be part of an overall IP strategy in Europe



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Innovation, creativity, competitiveness, new products and services that benefit societies at large and transform economies rely on intellectual property. Intellectual property (IP) provides the market-based incentives and rewards for a constantly improving stream of innovations and creative products. It improves the overall state of knowledge in a society, through disclosure of new inventions and wider dissemination of information and creative expression.

However, as the knowledge-based, entertainment and cultural sectors have grown, unfortunately so has the magnitude of counterfeiting and piracy worldwide affecting a wide range of industries. Any type of product protected by an intellectual property right in the market is today a target for counterfeiters. As technology is constantly evolving, counterfeiting and piracy do not only take place at the present time within the traditional stream of commerce, but more and more on the Internet as well. In addition, there is a growing health and safety risk.

Counterfeiting and piracy have a profound impact on the world economy — causing a significant loss of jobs and hundreds of billions of dollars every year. The Organisation for Economic Co-operation and Development (OECD) estimated that the value of counterfeited and pirated goods moving through international trade alone equalled US$250 billion in 2009. Furthermore, the International Chamber of Commerce (ICC) produced a study in February 2011 estimating that the total global economic value of counterfeit and pirated products is as much as US$650 billion every year, the global economic and social impacts of counterfeiting and piracy could reach US$1.7 trillion by 2015 and put 2.5 million legitimate jobs at risk each year.

"Counterfeiting and piracy have a profound impact on the world economy — causing a significant loss of jobs and hundreds of billions of dollars every year"

It is essential for the European Union (EU) to ensure protection and enforcement of the intellectual property of Europe's innovators as this goes to the heart of its ability to compete in the global economy. EU action on improving the protection and enforcement of intellectual property rights (IPRs) has been based on an internal and external pillar.

Internal EU actions

In 1998, the European Commission adopted a Green Paper on tackling the problem of counterfeiting and piracy in the single market followed by an action plan with concrete proposals in 2000. On the basis of that action plan, the Directive on the enforcement of intellectual property rights was adopted in April 2004. The Directive sets out common measures, procedures and remedies in the area of civil law for member states to apply against those engaged in counterfeiting and piracy, to create a level playing field for right holders in the EU. The Enforcement Directive extended throughout the EU, among others, injunctions to halt the sale of counterfeited or pirated goods, provisional measures such as precautionary seizures of suspected offenders' bank accounts, evidence-gathering powers for judicial authorities and powers to force offenders to pay damages to right holders to compensate for lost income. It should be noted, however, that this Directive went through a long transposition process that was not completed in most member states until 2009. The European Commission is currently reviewing the implementation of this directive.

Moreover, the Council Regulation (EC) No 1383/2003 regarding customs action against goods suspected of infringing certain intellectual property rights is also an important element in the EU's strategy to protect and enforce intellectual property. The Customs Regulation has provided an effective legal instrument in order to tackle counterfeiting at the external borders of the EU more effectively. In 2009 for instance, EU customs took action in 43,500 cases and 118 million articles suspected of being counterfeited or pirated were seized at the EU external borders. The customs statistics show that more and more counterfeiting and piracy touches on products that affect citizens' everyday lives. Cigarettes, clothing and brand labels were among the main articles stopped by customs on suspicion of IPR infringements. However, products for daily use and posing a potential danger to citizens' health, such as shampoos, toothpaste, toys, medicines or household appliances are nowadays hit to a greater extent than before.

The Commission has also attempted to harmonise criminal measures to combat IPR infringements. In July 2005, the Commission presented a double proposal for a directive and a Council framework decision aimed at introducing criminal sanctions for IPR infringements. The proposal was redrafted in April 2006, to take into account a decision from the Court of Justice, dating from 13 September 2005, which holds that the EU has powers to harmonise member states' criminal law, if required for the effective implementation of community law. Even though the European Parliament voted in favour of this proposal by excluding patents from its scope, discussions in the Council have frozen since, taking into account that this impinges on the sensitive issue of member states' competence in criminal matters. It is still not clear when the Commission will revisit this issue and come forward with a new proposal.

On September 2008 the Council adopted a Resolution on a comprehensive EU anti-counterfeiting and anti-piracy plan. This Resolution endorsed the need to step up the fight against fake goods and called for the creation of a body to that end. Shortly thereafter, the Commission created the European Observatory on Counterfeiting and Piracy with the aim of improving the quality of information and statistics related to counterfeiting and piracy on the internal market of the EU, identifying and spreading national best practice strategies and enforcement techniques from both the public as well as the private sector and raising public awareness. The Observatory should serve as an interactive platform bringing together representatives from the public and private sector involved in combating counterfeiting and piracy and a joint meeting was held in June 2010 in Madrid. So far, the Observatory has facilitated the adoption of reports by groups of legal experts by the private sector to assess the IPR legal framework, outline best practices and shortcomings and make recommendations. In addition, in March 2010 the Commission launched a tender for a contract for a comprehensive study that, through defining a methodology, would quantify the scope, scale and impact of counterfeiting and piracy on the European economy in the internal market. Currently, there are ongoing discussions on strengthening the European Observatory and the Commission is expected to make proposals in the first semester of 2011.

Business views on internal policies

BUSINESSEUROPE has always taken the stance that efficient enforcement mechanisms and procedures are essential to a well-functioning IP system and the value of intellectual property rights depends on the ability of their holders to enforce those against infringers. Well-functioning IPR enforcement mechanisms are the best means to fight against counterfeiting and piracy, including health and

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safety threats and the loss of jobs, to make sure that right holders and the society as a whole can enjoy benefits of the IP system and protect consumers' rights to make informed purchasing decisions.

In BUSINESSEUROPE's view, there is a harmonised civil framework in Europe in place regarding IPR infringements with the enforcement directive that provides an important and necessary tool for right holders. We have deplored the lack of a harmonised criminal framework for IP infringements and progress is needed there. Customs are an indispensable player in IPR enforcement as it is more effective to seize full consignments at borders than small amounts appearing in the market. We believe that future priorities in the field of customs should include increased protection through an improved customs regulation, strengthening customs/business partnerships, reinforcing and supporting international co-operation among customs authorities. BUSINESSEUROPE also supported the recent creation of the European Observatory and its main pillars of work. Currently being a light structure within the European Commission services, the Observatory, however, needs to be given the necessary means and resources so it can fulfil its mission and objectives.

External EU actions

Another key element of the EU's strategy to combat counterfeiting and piracy is its external component, in particular the respect of IPR standards by third countries.

The EU was one of the key supporters of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) within the World Trade Organisation to improve the protection and enforcement of IP rights. The EU also negotiates IPR provisions in its bilateral trade agreements and works closely at a technical level with its trading partners on IPR issues. It is important that the economic agreements and the free-trade agreements the EU negotiates include strong IPR provisions.

"Protection and enforcement of the intellectual property of Europe's innovators goes to the heart of the EU's ability to compete in the global economy"

With the authorities of certain third countries, the EU conducts IPR "political dialogues" through IP Working Groups (eg. China, Russia, Ukraine, Latin America countries) and/or runs technical cooperation programmes intended to help enhance the IP systems of those countries.

The most advanced IP dialogue of the EU is the one with China. European business attaches a lot of importance to a well-functioning and effective IP system in China. A remarkable evolution of China's attitude towards IP in a span of less than 30 years should be acknowledged. However, enforcement remains a big challenge. Still in 2009 for instance, 64% of the IPR infringing goods seized at the EU borders were coming from China. IP enforcement in overcrowded areas (Beijing or Shanghai) is improving. Beyond this region, lack of experience of local authorities and courts is witnessed. The complexity and need for transparency of the structure of Chinese public authorities responsible for IP should also be addressed and IP enforcement should be further simplified and strengthened.

The EU-China IP Working Group has already met 8 times to address specific problems faced by several sectors such as pharmaceuticals, ICT, engineering but also issues such as online piracy, trademark enforcement, patent enforcement, copyright and related rights. In addition, through the IPR2 programme Europe provides substantial technical assistance to China to improve Chinese legislative, judicial, administrative and enforcement agencies and institutions – with a particular focus on enforcement capacity. Main aim of the programme is to make IPR better used and understood as a strategic tool for business development by both Chinese and European right holders. The Commission also established a China IPR Helpdesk to help European small and medium-sized enterprises better protect their IPRs in China.

Are external actions effective?

BUSINESSEUROPE has consistently supported and provided industry's input to the bilateral IP dialogues the Commission has been conducting. However, we believe that these dialogues should produce measurable results in the countries or regions involved and the Commission should periodically assess their effectiveness. The EU-China IP Working Group should be used as a vehicle to achieve concrete results. Projects like IPR2 are useful and can provide tangible results and the expansion of this model in other countries should also be considered.

Moreover, European business has supported the ongoing cooperation process between EU and US on IPR enforcement. Future projects that this cooperation could focus on could include improving coordination on capacity building in third countries, improving consumer awareness together with consumer representatives and addressing the issue of free-trade zones.

The role of the Anti-Counterfeiting Trade Agreement (ACTA)

The EU has been among the leading negotiators of the Anti-Counterfeiting Trade Agreement (ACTA). The ACTA negotiations were launched in June 2008 and the negotiations apart from the EU included Australia, Canada, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States. Negotiations were concluded after 11 negotiating rounds in October 2010.

The main aim of ACTA is to improve the global enforcement of IPR and effectively combat counterfeiting and piracy by establishing a comprehensive, international framework, a catalogue of "best practices". The agreement covers civil measures, criminal measures, customs measures, internet enforcement measures, cooperation mechanisms among the ACTA parties. ACTA builds on the provisions of the TRIPs agreement. Since so far no international standard has been defined to address IPR infringements in the internet, ACTA, for the first time, creates a minimum level of harmonisation for IPR infringements. The ACTA negotiations raised a lot of controversy due to the fact that the negotiations were conducted outside the context of established international organisations. The European Commission on several occasions reiterated that ACTA will not change the body of EU law as it is already considerably more advanced than the current international standards. ACTA still needs to be approved and signed by the Council and receive the consent of the European Parliament (on the basis of the changes introduced by the Lisbon Treaty).

BUSINESSEUROPE has supported ACTA as a way to consolidate effective international standards to enforce IPRs. A potential rejection of ACTA by the European Parliament would set a negative precedent and have a negative impact on future efforts and initiatives to improve effective IPR enforcement. ACTA should help ensure that counterfeiting and piracy and their damaging effects on investment, creation, innovation, and jobs are addressed by raising the bar on enforcement, improving cooperation among countries, harmonising how we confront IP theft, addressing IP theft online, and setting a positive example for nations that aspire to have strong IP enforcement regimes. We welcome the possibility for other countries that did not participate in the negotiations to join ACTA as this would spread positive benchmarks of IPR enforcement.

Conclusion

There is no doubt that the EU has achieved positive results on IPR enforcement through its various actions and initiatives. However, a more strategic and integrated vision is needed. BUSINESSEUROPE believes that it is time for such an overall IP strategy in Europe that would also encompass IPR enforcement. Effective IPR enforcement protects inventors, artists, researchers, entrepreneurs, as well as consumers and employees. This is key for Europe's capacity to innovate, create jobs, prosperity and growth. ■

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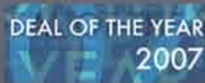

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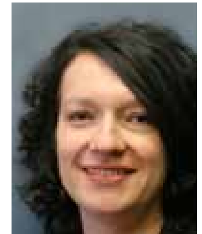
Counterfeit medicines: a challenge for criminal regulations



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Counterfeit medicine make up one of the most serious and lucrative criminal activities in the world. This is an activity which clearly shows the need to strengthen control measures when it comes to safety, quality and efficacy of medications. Counterfeit medicines are a major threat to public health. Many are visually indistinguishable from authentic drugs, and they pose a potentially serious health threat.

Counterfeit medicines

The World Health Organization (WHO) defines a counterfeit drug as a "medicine", which is deliberately and fraudulently mislabelled with respect to identity and/or source. Counterfeiting can apply to both branded and generic products and counterfeit products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient active ingredients or with fake packaging. The labels in these products include, in a deliberate and fraudulent manner, false information regarding its identity or are manufactured with the evident purpose to deceive consumers. Counterfeit medicines may be contaminated or contain inactive ingredients, incorrect ingredients, improper dosages, sub-potent or super-potent ingredients. As a result, patients may be at risk for serious adverse health consequences.

The rate of counterfeiting drugs in Central America is difficult to estimate. On a global scale, counterfeiting is a widespread problem, affecting developing and developed countries. The WHO reports that up to 25 % of medicines consumed in poor countries are counterfeit. In some countries up to 50% of drugs for sale are counterfeit.

This practice affects brand products as well as generics and it is urgent to impose the full weight of the law, for which the classifications of the crime must be clear and broad in order to have an efficient framework which encompasses every type of criminal behaviour associated with counterfeit medicine. This includes imposing criminal penalties in order to protect people's health and lives, inclusion of crimes against intellectual property rights and even crimes related to drug trafficking. We must take into account that in some cases, the product's composition is correct, but the packaging or labels have been forged, or are produced in unacceptable and unhealthy conditions, while in other cases, the composition is incorrect or else does not include the active ingredient or it is deficient. Thus, legislation must be able to punish every possible way in which criminals try to introduce these products into the market and dissemble the organizations behind these crimes.

> **"... enforcement authorities in the region can play a critical role in fighting IP crime"**

There are several major trends we need to face:

- Ineffective legislation due to low penalties which do not deter criminal offenders
- Lack of public awareness
- Weak law enforcement
- Unregulated and illegal channels of distribution (including the internet)
- Lack of coordination and collaboration (industries, law enforcement agencies)
- Lack of a coherent and effective systems to report to the relevant authorities
- Lack of a clear verification process for counterfeit medicines
- Weak controls on the traceability of the medicines
- Weak coordination among governments
- Lack of regulations to ban repackaging
- Lack of regulations to ban on line (ghost) pharmacies
- Lack of auditing procedures of the supply chain
- Absence of controls in parallel imports
- Lack of liability of parallel distributors

Each pharmaceutical product that a manufacturer produces has to comply with quality standards and specifications when it is released and throughout the product's shelf-life required by each country. Normally, these standards and specifications are reviewed, assessed and approved by the applicable national drug administration before the product is authorized to reach the market.

In order for medications to cause the expected therapeutic effects, they must be safe, effective and of good quality. This can only be achieved when countries have pharmaceutical regulating bodies equipped with enough human and technical resources necessary to control the production, import, distribution and sale of drugs.

As part of those efforts, countries such as Guatemala and Costa Rica, are currently promoting stronger regulations against counterfeiting. For instance, in Costa Rica there is a multi-sector anti-counterfeit committee that developed a law proposal to improve local regulations that is currently being discussed in Congress (Project of Law No. 17.831) and in Guatemala a law proposal was presented to the Congress after a local training led by the pharmaceutical industry raised concern among policy makers.

There is no doubt that intensifying activities which attempt to raise consumer awareness of the negative implications and risks of consuming counterfeit products is key to show the seriousness of the problem. Improving understanding at the political and policy-making level regarding the significant consequences of counterfeiting is necessary to improve regulations and policies. Thus, enforcement authorities in the region can play a critical role in fighting IP crime.

The supply chain

It is necessary to protect the pharmaceutical supply chain against the penetration of counterfeit products. Regulations should foster a safe and secure distribution system which includes product traceability throughout the supply chain. Repackaging and relabeling of pharmaceutical products should be limited, as these practices may represent a risk to the safety and security of the supply chain. Banned repackaging activities should include any activities which remove, cover up or obscure any safety features. The only exception to this rule applies to products used in clinical trials.

Most parallel trade distribution systems provides serious risks to the integrity of the supply chain, undermining patients' safety in the case of faulty products and facilitating entry of counterfeit medicines into the system. Parallel traders that import without any guideline are usually able to open and repackage medicine packs, and remove the original patient information leaflet in order to facilitate the exportation of medicines to other countries with different needs and packaging requirements.

Certain rules must be verified when allowing parallel imports:

- Abiding by good manufacturing and distribution practices
- Verifying the origin of the product
- Being an authorized distributor at the destination country
- The product and the package are identical to the original
- Intellectual property rights have expired
- The product is registered in the country of origin and the destination country
- Obtaining a marketing authorisation from the government of the country of origin
- Being similar enough to a product that has already been licensed by the government of the destination country
- Packaging and labelling of the drug are accurate: containing the same indications, contraindications, side effects, dosage and administration method as the original drug as well as the brand, logo, format and safety identification, etc.
- Annual review of the imported drug, in order to analyse compliance with the requirements (mandatory and/or random sample)
- Prior importation permit

While the pharmaceutical industry strives to maintain a high level of quality by the strict application of good practices to each stage of the pharmaceutical chain (good clinical, laboratory, manufacturing, and distribution practices) which is rigorously checked by a system of marketing authorizations and respected by all the actors in the production, storage and wholesale of drugs, often, parallel trade chain does not respect these standards. This can lead to problems of traceability of batches, loss of reactivity in the event of recall of products but also the facilitation of counterfeit products entering the market. This also raises a number of issues with respect to liability of the product on the part of the manufacturer versus the parallel trader.

The right to health

The right to live, and by extension, to health, aside from being guaranteed in the constitutional level, is also guaranteed in the Universal Declaration of Human Rights (articles 3 and 25), in the American Declaration of Human Rights and Duties (articles 4 and 26), International Civil and Political Rights Agreement (articles 6 and 7), International Socio-Economic and Cultural Rights Agreement (articles 5 and 12), Children Rights Agreement (articles 6 and 24). Likewise, the right to health is also acknowledged in the Additional Protocol to the American Agreement on Human Rights Regarding Socio-Economic and Cultural Rights (article 10). In this manner, the States' obligations regarding right to life and ensuring health for all people are specific.

The indiscriminate commercialization of counterfeited or adulterated medications by criminal groups who have found adulteration and falsification as a lucrative industry without any regard for the life and health of millions of people around the world, today, without a doubt makes up one of the greatest threats to health and consequently to life.

Criminal activity in adulteration and falsification has found fertile ground, specifically within the weak control systems regarding the commercialization of drugs. This is a logical consequence from the absence of control within commercialization chains and with the surge of electronic commerce through the internet, traits which facilitate the indiscriminate sale of counterfeit and adulterated medications.

Counterfeit medications are hard to detect and use of technology has made it easier to produce packages almost identical to the original ones, a fact that seriously affects not only the specific original medications, but also marketed food supplies and several other goods. All of this represents an immediate risk to the health of consumers who unknowingly acquire them, or else because they are supplied by the health professional who is also unaware of the situation, reason for which the state should deploy all of the actions required in order to guarantee the quality of products, in order to efficiently protect the health and life of consumers when they attain products through a legal commercial purchase.

This is why it is necessary to have legal frameworks to punish falsification and adulteration of medications criminally. The State should create criminal penalties based on crimes against public health, as well as, strengthening the rules to punish crimes against intellectual property and even crimes regarding drug trafficking.

The eradication of counterfeit drugs is everyone's responsibility. The first step is to be able to identify these products by their aesthetic characteristics:

- Differences in grammage and quality of the cardboard used
- Differences in the form and folding of prospects
- Differences in colour and size of the tablets
- Differences in text (missing letters, spaces between lines)
- Variation in the identification of the printing details of the entire product
- Different type of die, regarding form and printing
- Colour, brightness and printing quality of the sheets
- The ink in the identifying logo of the Laboratory is not even and appears shabby

There are additional measures anyone can adopt to fight these problems. A series of tips have been discussed to allow governments, professionals and civilians to take adequate measures against counterfeiting and contraband. Some measures are:

Patients and general public:

- Buy only in legally established places such as pharmacies and from appropriately qualified professionals such as pharmacists or chemists-pharmacists.
- Avoid buying divided or retail medications.
- Never buy medications through the internet, from illegal places or places with no controls which can hide their physical address and are not suitably supervised by health professionals.
- Report any suspicion regarding a counterfeit medical product to a trusted health professional
- Verify that the product has a health department registration in the country where it is being purchased

Health professionals:

- Build and promote together with health authorities and private companies report mechanisms for products suspected of being counterfeit. Some signs may be: a patient not responding to treatment or showing an unexpected response.
- Always purchase products from authorized distributors or legally

established wholesalers who are appropriately registered with the health authorities.

Government health representatives:

- Carry out an educational campaign directed towards patients and the general population on how to be protected from the dangers associated with counterfeit medications.
- Establish report systems allowing health professionals to report and obtain feedback regarding adverse events, problems associated with the medications, defects in the quality of products or the detection of counterfeit medicinal products.
- Research measures which could increase transparency and the possibility to control the distribution systems.
- Improve the ability to quantify the problem and its consequences.
- Develop programs to warn against buying medications from unknown sources such as the internet
- Promote national incentives in risk communication.

Legal systems:

- Make the prosecution of every type of criminal conduct linked to counterfeiting medication a priority
- Strengthen the relationship between innovative and generic pharmaceutical companies in order to develop joint actions which may help finance research and intelligence activities to stop drug counterfeiting.
- Work together with private companies to be able to identify criminal counterfeit networks and achieve an effective identification and criminalization of these behaviours.

"Governments should devise strategies to diminish corruption and criminal activity and to promote cross-sector cooperation between regulating bodies, the police, customs authorities and the judicial system"

Customs and police:

- Develop training material to increase the existing capabilities
- Promote trans-national programs to improve coordination and exchange of information
- Develop projects to improve communication and collaboration between law enforcement agencies
- Develop training materials and manuals to improve the capability of the police
- Keep a registration of the trademark owners in order to quickly identify a product title holder.

Legislators:

- Reinforce legislation to promote severe criminal and civil sanctions against counterfeiters and those who participate in any part of the criminal network regarding crimes against public health, as well as crimes linked to drug trafficking, and against intellectual property rights
- Implement these regulations effectively
- Analyze the current legislation in the country and develop a reference model
- Develop programs directed towards congress-people in order to implement appropriate legal measures
- Analyze the problem regarding consequent responsibility of exporting countries
- Research measures which could increase transparency and the possibility to control the distribution systems.

Pharmaceutical industry:

- Collaborate with governments in the development of information and awareness processes
- Provide resources to identify counterfeit merchandise and dismantle counterfeiting networks.
- Work together with police, customs and health agencies to dismantle counterfeiting networks.
- Evaluate techniques to make falsification more difficult and its detection easier, considering: feasibility, growth, each country's situation, and implications for regulating authorities.
- Facilitate the exchange of information with regards to technologies and how to implement them.
- Spread information and recommendations regarding advantages and limitations of different technologies.
- Notify the regulatory authority of new innovations in the packaging of products, changes in the presentation of products, or the withdrawal of a product from the market, etc.
- Inform authorities about suspicious situations regarding counterfeit drugs

The legislation should go hand in hand with efficient law enforcement. Governments should devise strategies to diminish corruption and criminal activity and to promote cross-sector cooperation between regulating bodies, the police, customs authorities and the judicial system, with the goal of achieving an effective control over the pharmaceutical market and the enforcement of the related regulation. Whenever the regulations are infringed, the imposed penalties on the production and distribution systems must be proportional to the crime committed. Thus, a simple economic penalty should not be enough to sanction offenders, as lives are threatened and consumer (patients and physicians) confidence is diminished. ■

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Hazardous omission of contractual trademark provisions

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Omission of certain provisions in trademark agreements may result in unexpected adverse legal effects. The risk is especially related to omission of regulations on those moments which seem to be obvious, eg. licensee's obligation to use the trademark. In this case a following question may arise: does the trademark protection right of the licensor, who undertook not to use this trademark within the scope of the license, cease? Is the quality of the goods signed with the trademark guaranteed when selling the trademark protection right?

Exclusive licenses may be divided into strong and weak licenses. The difference between them is that in the case of a strong license, the licensor undertakes not to use the trademark in the scope covered by the license. The Act on intellectual property does not govern the licensor's obligations under the license agreement directly. Obligation to use the trademark does not constitute a substantial provision of the license agreement, however it plays a significant role in practice. The aforementioned obligation is usually duly regulated in the license agreement, in particular in the case when the amount of licensor's remuneration depends on sales volume of the goods achieved by the licensee. In the case when such provisions were not included into the agreement, certain doubts as regards the obligation to use the trademark by the licensee may arise.

A lack of compulsory obligation to use the trademark shall be considered on the basis of the forms of use of a trademark, according to the above mentioned Act. One of the said forms of use by the authorized person is granting the right to use the trademark to third parties. Such a use may have a form of a license agreement. The problem may occur in a situation when a strong license agreement is concluded and the licensee does not use the trademark in trading. Not always does the licensor realize that the trademark protection right may cease after a five year period in the case when the trademark was not used in trading by the authorized person.

"A transfer of the trademark into a misleading one – as regards of the origin and features of the product – may, according to the Act, constitute the ground for cessation of the trademark protection right"

In the case of a strong license agreement, when the licensor cannot use the trademark and the licensee does not exercise his rights in this regard, the trademark protection right may cease, unless it is justified by objective reasons.

When it comes to concluding strong license agreements, relevant contractual provisions stipulating the obligation to use the trademark by the licensee should be included thereto. This necessity results from a decision on cessation of the trademark protection right, which may be made by the Polish Patent Office on request of a competitive entity.

Less doubt relate to non-stipulation of the contractual obligation to use the trademark in a weak license agreement. In this case, although the trademark is not used by the licensee, the licensor shall be able to prevent the trademark protection right from cessation due to the fact that such right was not limited in the agreement and he has right to use it.

Regulations on the quality of the goods with trademark

Defining the quality of the goods signed with a certain trademark in license agreements constitutes one of the most important regulations. A different case is when stipulations on the quality of the goods signed with the mark being sold are omitted. The most valuable are trademarks with well-established and recognized business standing. The entrepreneur, who acquired a protection right from another party (from an economically related party in our case), in order to do some savings, may launch goods of a worse quality. The question is: does the quality of the goods signed with the trademark acquired remain at the same level as that established by the transferor?

The quality feature is also a substantive function of a trademark. Trademark constitutes information on the quality of the goods purchased. There is no doubt that the trademark protection right may constitute an object of trading, notwithstanding the enterprise in whole. It should be a matter of essence for the trademark purchasers that the goods signed with the trademark are of the same quality as the goods offered by the transferor of the trademark protection right. Hence, in case of selling goods of a worse quality, the transferee may be charged of misleading clients as regards of the quality of the goods as they may be associated with the goods offered by the transferor. On the other hand, the transferor shall be interested in remaining the quality of the goods of the transferee at the same level, unless he wishes to be associated with the transferee of the trademark protection right by the clients (provided that they are still economically related).

A transfer of the trademark into a misleading one – as regards of the origin and features of the product – may, according to the Act, constitute the ground for cessation of the trademark protection right. Maintaining the quality level of the transferee's goods in the aforementioned cases is justified both for the transferor and the transferee of the goods. Hence, such agreements should include relevant provisions stipulating the obligation to assure the quality of the goods, e.g. by using the same technology, machinery and devices in the goods and packaging manufacturing process.

The goods' quality reduction is less possible, when the trademark protection right is transferred together with the whole enterprise. In such cases, the same technical workshop should assure comparable quality. However, other factors causing the difference in quality, such as using materials of poorer quality or changes in staff, cannot also be excluded.

The above mentioned problem may get more serious in case of ineffective quality assurance regulations included in the exclusive license agreements. ■

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Asset management - a client partnership

Scott McMunn (CEO of RBS Asset Management) and Jane Kawar (Head of Product Development, RBS Asset Management) in a Q&A with World Commerce Review, discuss RBS's active asset management capabilities and the future of asset management.

Please describe the role of RBS Asset Management

SM: RBS Asset Management is RBS's active asset management business and sits within RBS Global Banking and Markets. Our main activities relate to the management of short and medium term fixed income assets for a broad array of external clients and also internal portfolios held for regulatory and liquidity reasons.

JK: We currently manage over $30bn of assets, half of which are in traditional money market funds, the other half in segregated short term fixed income accounts for internal and external clients. Our investment universe includes sovereign, supra and financial institution debt, asset backed securitisation as well as vanilla money market instruments. Our portfolios can include all of these asset types, albeit in different maturity ranges.

SM: Now we have built a core base of business in our traditional money market funds we are deliberately building on our capabilities and moving to play to our key strengths for analysing and managing short term fixed income assets. This means offering the ability to structure bespoke solutions for clients. For example many clients are looking for higher returns than traditional money market funds or require very specific investment criteria. Our style of investment lends itself to dealing with a smaller number of large ticket clients, providing tailored products likely in the form of a segregated account.

Scott McMunn has over 16 years' experience within the fixed income markets. He joined RBS as the Head of Credit Investments in 2007 from Deutsche Bank where he was a Managing Director in Global Markets (Winchester Capital) running the investment and portfolio management side of the business. Prior to joining Deutsche Bank in 2002, Scott spent eight years as a senior portfolio manager at Abbey National Treasury Services ("ANTS") where he had overall responsibility for the CDOs and CMBS investment portfolios and was responsible for establishing the credit derivative and acquisition finance investments. While at ANTS Scott had charge over the structuring of a number of synthetic CDOs for balance sheet and risk weighted capital management and grew the bridge and warehouse financing lending to highly levered transactions. Scott holds a BA in Economics from Heriot Watt University.

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Why is fixed income an important asset class?

SM: Global bond markets are estimated to be worth more than $80 trillion with the US markets totalling around 40% of this figure. Global stock markets are estimated to be worth $55 trillion. A market that large needs to be considered when deciding on any form of asset allocation. Fixed income markets can provide a solid income stream and be a relatively safe haven for investments. In addition fixed income is often less volatile than the stock market and so it can act as a useful diversifier within a portfolio. Fixed income assets include government bonds, agency bonds (eg. debt of the World Bank), corporate bonds and securitisations (eg. mortgage backed securitisations) and so there are a large range of assets available for investment that come with their own return potential, associated risks and liquidity profiles.

Investors who are concerned about protecting their initial principal may want to invest in government bonds, however the returns will probably be lower than a portfolio of corporate bonds. A good fixed income manager will seek to understand a client's requirements concerning risk, return, liquidity and structure the portfolio accordingly. It's a risk/return pay off and it's often beneficial to diversify investments in a portfolio to seek to maximise return within an agreed risk framework. So an allocation to government bonds or agency bonds can provide more stability and risk control with maybe an allocation to corporate bonds or mortgage backed securitisations to seek to improve returns.

Why are money market funds useful for treasurers?

SM: Money market funds offer daily liquidity and aim to never reduce capital by investing in short term, highly rated securities. They are usually AAA rated, are ring-fenced from the sponsor's balance sheet, highly diversified and actively managed by investment professionals who are aiming to outperform deposit rates. As such they can be very suited to the daily working capital needs of a treasurer.

What key areas can you assist clients with?

SM: In addition to what we feel is a best in class investment management service we are also able to provide clients with help whether they are starting out and exploring what to do with excess cash or indeed how to set a target benchmark. We also speak to sophisticated investors who may be looking for some additional input into appropriate asset allocation relative to a defined strategy. Furthermore we can provide asset valuation services and with the new regulatory requirements on structured finance we can provide credit review and monitoring services to ensure compliance with local mandatory criteria.

JK: As we are running internal RBS money as well as external client cash we are acutely aware of the affects that changes in regulation have on the way our clients can invest and what is concerning them. For example we manage securitisations that sit on balance sheet and so have had to navigate our way through the new Capital Requirements Directive. We can share our own thoughts and solutions on such issues with our clients as we have experienced these challenges at the sharp end.

SM: I would also add that with the redistribution of global wealth and cash balances growing for corporates there remains a desire to place these monies, but clients may not be able to evaluate counterparty risk, liquidity risk or how to even source the risk in markets they are not familiar with. We can assist in this regard.

What differentiates RBS from other providers in the field?

SM: I would differentiate our business across a number of themes. First we are a dedicated short term fixed income manager. We are a niche player and therefore experts in our field as this is our bread and butter. Secondly and unlike much of the competition, we don't believe in a

one size fits all approach to asset management. We want to engage with our clients, get a deeper understanding of their challenges and objectives and structure an appropriate solution around this. As Jane has already mentioned, we run internal bank money and so we understand many of the challenges that our clients face and can share solutions in this regard. Finally, we are part of a large institution that has a solid framework and stable structure. This means we have strong negotiating power when dealing with the market and access to strong research and support capabilities.

JK: Absolutely. We are in this fantastic position where we can be as flexible and entrepreneurial as a smaller business, but have the strength and support of the parent for resource such as technology and research. Flexibility is key as many clients are increasingly looking at products to be tailored exactly to their needs.

Are there conflicts of interest associated with working within such a large organisation?

SM: There could be, yes. However, RBS Asset Management is a separate legal entity from the investment bank. We have our own board and our own corporate governance structure. In addition, we are completely segregated from the relevant trading desks and in fact, less than 20% of our assets are bought from RBS. You can't forget however that RBS is a massive player in the fixed income market and so we include RBS as part of our best execution practice.

How would you describe the key benefits of RBS Asset Management?

SM: We are not the biggest manager out there, but we believe this allows us to be more fleet of foot and able to react more quickly to our clients' needs. Certainly looking at the last few years and one of the catalysts of the global financial crisis was some fund and asset managers wanting to push certain products rather than listen to the client and tailor a specific idea around their needs. Whilst we have scale and significant volume to be viewed as a major investor gaining access to best ideas and high allocations to deals in the market we are more focussed on providing clients with a bespoke solution.

Jane Kawar heads a team responsible for managing RBS Asset Management's (RBSAM) largest internal client relationships and developing and enhancing the RBS AM product suite. She joined RBS in 2002 and has been responsible for the development of a range of private equity funds, fund of hedge funds and more traditional fixed income and money market products. Before joining RBS Jane was a product specialist within the fixed income team at Schroders. After gaining her degree in Industrial Economics from the University of Nottingham, she began her career as a journalist, covering the European securitisation market.

Jane.kawar@rbs.com

JK: We pride ourselves on having strong relationships with our clients and a focus on their requirements. This has led us to develop a customised suite of products. For example, at the start of 2009 when investors wanted to de-risk we launched two government funds that invest only in AAA rated government debt and provide daily liquidity and relatively low market risk compared to non triple-A rated government investments. As risk appetite returns we have added a new product to our range aiming to provide higher returns than traditional money market funds, but with the aim of principal protection.

SM: As a manager we believe in a strong credit and portfolio management style. The point of money market funds is to maintain a stable net asset value, in order words to not lose investors' initial capital. Due to our high quality investments, we were one of a very small handful of managers who did not need to support our funds during the financial crisis where certain assets saw a drop in value. Additionally we believe in complete transparency and provide same day reporting on all our holdings giving clients real time access.

Has your investment strategy changed since the onset of the "Credit Crunch" in 2007?

SM: Basically it hasn't because it didn't have to change. We have managed our products in a very conservative and disciplined way since launch and so the financial crisis didn't hit us as much as many other managers. As I've said we avoided any significant credit issues within our portfolios and have never had to support our funds or restrict redemptions. The list of eligible investments on our credit list has shrunk, but that's about it, our fundamental investment strategy is still the same.

JK: Actually, during the crisis we used our credit expertise to assist a client who had exposure to a non-liquid, hugely discounted asset within a fund and help them work through that situation.

What are clients' main concerns at the moment?

JK: I'd say that liquidity remains a concern. Many treasurers, especially on the corporate side, are sitting on surplus cash as a result of the de-risking that has taken place in recent years. The question now is what to do with this surplus cash and how best to manage it. We are also seeing clients searching for higher yield, but there is a reluctance to take on the additional risk that comes with this. That's an education piece really and starts with managing clients' expectations as to what they can realistically achieve return-wise for the amount of risk that makes them feel comfortable.

How do you see this sector developing in the future?

SM: Clients have been highly critical of managers over the last 3 years or so as they have had little or no control over investments and very little input save through the agreements and style laid out in the product's prospectus. Therefore, the biggest change I see is something I have already alluded to. It is imperative for managers now to embrace clients like a strategic partner particularly when we consider the developing world and the rapid rise in wealth. At the simple level this relates to a partnership approach and solutions based ideas rather than a one fund fits all. It's also important not to stretch the ideas too thin and run too lean so a choice is required regarding what to manage. At a more complicated level we believe the partnership angle will develop into shared expertise and almost a university of management with the better asset managers providing education, sharing of tools and systems allowing the investors over time to wean themselves away from reliance on third parties where appropriate and run their own investments in-house. ■

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North Rhine-Westphalia: Leading location for medical technology in Germany

Medical technology is one of the fastest growing industries of the future, in which Germany occupies a leading position. The industry features electro-medical devices, implants, doctor's office and hospital fixtures and fittings, disability aids and appliances, optical aids and surgical and dental instruments. Medical devices, ie. diagnostic products as well as certain biomaterials and accessories are also included.

Germany – the largest market for medical devices in Europe and the third-largest in the world

Some 1,200 companies employ nearly 90,000 people, generating sales of 18.8 billion euros. With an annual sales growth of up to seven percent in the last ten years, medical technology is one of the major growing industries in Germany.

The export rate is just under 65 percent and one third of the industry's sales in Germany is generated with products which are less than three years old. Medical technology is therefore one of the industries in which innovation is and will continue to be of great importance. This is already made evident by the number of patent applications, with Germany occupying second place behind the USA.

According to the European Patent Office in Munich, medical technology heads the list of patents filed at over 16,700 (2008), which is 11.4 percent of all patent applications. This industry lies ahead of electronic telecommunications with 10 percent of all patent applications and EDP with 6.7 percent. Medical technology is therefore a dynamic and highly innovative industry, and the German medical technology companies are among the most innovative in the world. They invest around nine percent of their sales revenue in research and development. A study of medical technology conducted by the Federal Ministry of Education and Research shows that the research and development share of the production value is more than twice as high as that for industrial goods overall. By comparison: The share of expenditure for research and development of sales is "only" 5 percent in the highly innovative chemical industry and "only" 3.8 percent in the manufacturing industry.

North Rhine-Westphalia – the optimum location for medical technology companies from the USA

North Rhine-Westphalia (NRW) lies at the centre of Europe. It is the economically strongest and most densely populated of Germany's 16 federal states. The opportunities for the booming industry growth of medical technology were recognized here at an early stage. The industry has considerable innovation and employment potential and North Rhine-Westphalia has set the goal of taking up the existing strengths of medical technology and positioning itself as the nationally and internationally competitive location of an innovative and sustainable healthcare industry.

Many renowned American companies have chosen North Rhine-Westphalia for their European headquarters, such as Medtronic, a company which makes more than half of the cardiac pacemakers implanted worldwide.

Medtronic has operated successfully in the German market for some 50 years and has been based in North Rhine-Westphalia since 1986. The company values the location and scientifically oriented medical environment with its numerous university clinics as this favours and promotes the development and introduction of their medical technology products.

> *"Our branch moved into its new headquarters in Meerbusch in 2008. This location offers Medtronic a healthy basis for the further development of its business in Germany, not least due to the availability of qualified employees. When deciding in favour of a location in North Rhine-Westphalia the support provided by the economic development agency also played a major role,"* says Christian Weinrank, CEO, Medtronic GmbH

About NRW.INVEST

NRW.INVEST GmbH serves as the central contact point for investments in North Rhine-Westphalia. It provides potential investors from Germany and abroad with a one-stop service ranging from location information and business premises searches to arranging and guidance through negotiations and approval procedures. In addition to subsidiaries in Japan and the USA, NRW.INVEST operates foreign branch offices in China, India, Korea and Turkey. In China, NRW.INVEST is represented by three offices in Nanjing, Peking and Shanghai.

3M Medica also recognized the locational advantages of North Rhine-Westphalia very early on. The company "Minnesota Mining & Manufacturing GmbH," established a branch in 1951 in Düsseldorf. Since 1973, it has been successful as 3M Deutschland GmbH, with its head office in Neuss. A further milestone was the establishment of manufacturing plants in North Rhine-Westphalia: In Hilden (near Düsseldorf) and Kamen, production takes place for the German and

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European markets – and for 3M companies all over the world. In 1994, the European Distribution Centre was built in Jüchen near Neuss. Since its expansion in 2001, it is the largest and most advanced 3M logistics centre in Europe. In the same year, the Customer Technical Centre in Neuss also went into operation. The ultra-modern new building is considered a showcase for innovative research and development both in Europe and beyond.

The business division 3M Health Information Systems, which has had the largest team of developers outside the USA since 1996, is the market leader for medical quality assurance, as well for coding and grouper software.

And just recently, in 2010, COOK MEDICAL also decided to expand into North Rhine-Westphalia.

COOK MEDICAL, with its headquarters in Indiana/USA and production plants worldwide, is one of the world's largest owner-managed medical technology companies and active in the development and manufacture of a wide range of medical technology products. The company manufactures over 10,000 different medical technology products and is a pioneer in particular when it comes to products for minimally invasive operations.

Bill Doherty, Executive Vice President, EMEA, COOK MEDICAL

> *"When COOK MEDICAL was looking for an ideal location for its consolidated European distribution centre, the advantages of the German state of North Rhine-Westphalia, were realized at an early stage of the decision process. The combination of a central location within the relevant European market and the state's sophisticated transportation infrastructure was very attractive. And the efficient support we received both on state and local levels led to a quite fast and smooth decision in favor of the Aachen region. Here in the city of Baesweiler will be COOK MEDICAL's home away from home, and we are sure that we will be able to serve our European clients from here efficiently."*

North Rhine-Westphalia – a land of researchers and developers
North Rhine-Westphalian companies, including Brasseler, Meyra and Sarstedt, also value their own state as an innovation and research location.

The KOMET brand of the Brasseler company is now a globally recognized benchmark for precision and reliability in the dental sector, and MEYRA-ORTOPEDIA is firmly established as one of the world's best-known and most successful manufacturers of wheelchairs and rehabilitation aids. Also, the Sarstedt Group develops, produces and sells, among other things, consumables and analysis equipment for medical diagnosis.

The need for networking with universities and other educational institutions is becoming increasingly important for companies. The products are growing in complexity due to more and more interfaces to other disciplines, and the establishment and promotion of regions and clusters have been consistently gaining importance. Knowledge is networked here and different disciplines interact via different interfaces, giving rise to innovations in medical technology.

In the medical technology sector, North Rhine-Westphalia boasts an outstanding spectrum of research and development facilities. The state is home to numerous hospitals, universities, and research and technology centres specializing in medical technology. The most important centres of innovation include the medical faculties of the seven university clinics in Aachen, Bochum, Bonn, Cologne, Düsseldorf, Duisburg-Essen and Münster. Three Fraunhofer Institutes for Applied Sciences, two internationally recognized Max Planck Institutes and two national research centres concentrate on medical technology. Of the roughly 50 technology centres in North Rhine-Westphalia, nine have a medical technology focus: Aachen, Bochum (2x), Dortmund, Düsseldorf, Duisburg, Essen, Hamm and Münster.

The following describes some of the highlights of the dense research and development landscape in North Rhine-Westphalia.

The medical technology region Aachen (1)
Since the 1980s, the Aachen region has been evolving from a rural region associated with the mining industry into a technology region. Its stimuli originate in the universities and research institutes (RWTH Aachen University with the Helmholtz Institute for Biomedical Technology and the University Clinic, the Aachen-Jülich University of Applied Sciences, the Jülich Research Centre, and other research and development centres working in the fields of medicine and technology).

Besides the established companies, the number of innovative, research-intensive spin-offs is growing disproportionately – more than twice as fast as the German national average (1.0 percent vs. 0.4 percent). Approximately 200 start-ups in the field of life sciences have developed in the Aachen region over recent years: approximately 75 percent medical technology and 25 percent mostly biotechnology. The Aachen region is thus one of Germany's strongest start-up regions for medical technology, and is the strongest in North Rhine-Westphalia.

Numerous R&D projects and initiatives in the interactive environment between medicine and technology have attracted interest nationwide:

- Aachen Centre of Competence for Medical Technology
- Medical Export: IT platform for process optimization in care
- Med-on-@ix, Germany's largest nationwide emergency telemedicine project
- orthoMIT minimally invasive orthopedic therapy
- Jülich-Aachen Research Alliance (JARA)

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- JARA-BRAIN for research into brain diseases
- JARA-SIM for simulation and modeling – increasingly also in health technology

- LifeTecAachen-Jülich

For all these reasons and more, one thing is quite clear: the Aachen region is currently a major medical technology region today. Although less than two percent of Germany's population live here, it is home to ten percent of the country's scientists. With a high number of newly established companies as well as traditional firms, the Aachen region makes its mark in medical technology and biotechnology worldwide.

Medical technology region East Westphalia-Lippe (2)

The region's outstanding research institutions include Germany's only faculty for health sciences, the cluster "Cognitive Interaction Technology," the Heart and Diabetes Centre NRW in Bad Oeynhausen, and the Epilepsy Centre of the von Bodelschwingh Foundation Bielefeld-Bethel. In cooperation with the Jülich Helmholtz Centre, the Heart and Diabetes Centre Bad Oeynhausen developed a fully implantable artificial heart and tested it successfully in an animal experiment in January 2009. At the beginning of February 2011, a self-expandable stent with a drug coating was successfully implanted in a patient for the first time worldwide at the Cardiology Clinic of the Heart and Diabetes Centre in Bad Oeynhausen.

"We are very proud that this innovative stent has been used for the first time outside a clinical trial with excellent results here in Bad Oeynhausen," said Professor Dieter Horstkotte, Director of the Cardiology Clinic. Measuring 22 to 27 millimetres in length, the stent is no larger than a fingernail. Thanks to the drug coating, foreseeable inflammatory responses in the vascular wall and the resulting formation of scar tissue are reduced significantly. The first use of a self-expanding, drug-coated stent gives new hope to around 1.5 million patients who suffer from coronary heart disease in Germany alone.

Health region South Westphalia (3)

The health region South Westphalia holds a leading position in the development of medical products for seniors and disabled individuals, as well as in the supply industry. Research and consulting institutes operating throughout Germany are part of the regional spectrum. This includes companies in the fields of medical and dental technology, metal and plastic processing, materials testing and prototyping. They manufacture products for medical technology and above all, they perform an important supplier function for the healthcare market.

Health Campus North Rhine-Westphalia in Bochum (4)

The Health Campus North Rhine-Westphalia is based on the framework of the National Institutes of Health (NIH) in the USA.

The mission of the Health Campus North Rhine-Westphalia is to gain new insights and develop new therapies from these. One of the major issues concerning the Health Campus North Rhine-Westphalia is the aging population. Whether it be cancer, Alzheimer's or Parkinson's disease, many illnesses pose great challenges to society – particularly in Germany, which will have to cope with a constantly growing proportion of elderly people in the overall population over the coming decades.

With this strong influence, the Health Campus North Rhine-Westphalia is set to lead European healthcare research with excellent research and development.

Bochum has developed into an attractive location for life sciences in the Ruhr region. The city offers medical technology, biomedicine and biotechnology companies optimum conditions for establishing, locating and growing their business. Over 100 life science companies have already settled in and around Bochum. The know-how present in the universities of the Ruhr region and in particular at the Ruhr University Bochum in the fields of medicine, medical technology, biochemistry and biophysics offers companies a wide range of possibilities for collaboration as well as the opportunity to acquire highly qualified specialists and managers from these areas.

One of the characteristic features of Bochum is the distribution of the medical faculty and also research throughout several clinics and hospitals. The clinic of Ruhr University Bochum includes 15 medical institutes, centres and departments. The seven hospitals located in Bochum and Herne are affiliated with the university, as is the Heart and Diabetes Centre in Bad Oeynhausen.

The main areas of medical research at the Ruhr University are surgery, cardiology, dermatology, microtherapy, orthopedics and the neurosciences. In the field of medical technology, Bochum has been able to distinguish itself as a location firmly in the following areas: imaging procedures, telemedicine, minimally invasive operating

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techniques, implants, biomaterials and the monitoring and recovery of organic functions.

In order to further extend this leading position in research and development, the training of specialized workers is an indispensable necessity. To this end, RWTH Aachen University, the University Witten/Herdecke, the Ruhr University Bochum and the universities of applied sciences in Aachen, Gelsenkirchen and Münster offer highly complex and highly specialized courses of study. As medical technology is an absolute future industry, varying courses and training in this field play an important role. Graduates of these courses of study undergo a highly diversified education ranging from mechanical engineering, physics, medicine and informatics through chemistry and biology to business administration and law.

North Rhine-Westphalia – home of MEDICA, the world's largest medical trade fair

MEDICA, which is held annually in Düsseldorf, North Rhine-Westphalia, is a highlight of the trade fair culture. Every year, the leading trade fair is a meeting ground for the international medical industry and one of the best platforms for the international marketing of new products.

Higher life expectancy, medical advances and people's growing awareness of their health are increasing the demand for state-of-the-art treatment methods. MEDICA provides a platform for innovative products and systems which make an important contribution to the efficiency and quality of patient care. In November 2010, around 137,200 professional visitors came here from over 100 countries. The proportion of international visitors was about 50 percent. Over 4,400 exhibitors presented products, services and procedures for the entire spectrum of out-patient and in-patient care.

COMPAMED, the international trade fair for the supplier market in medical production, is held in conjunction with MEDICA. In November 2010, 575 exhibitors presented an extensive range of high-tech solutions for use in the medical technology industry to over 16,000 visitors.

Visit MEDICA (November 14-17, 2011) or COMPAMED (November 16-19, 2011) and learn of the advantages of the state of North Rhine-Westphalia firsthand. ■

Or get information locally from:

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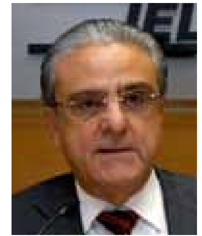
Brazilian economic growth will be preserved



Robson Braga de Andrade is the President of the National Confederation of Industry, Brazil

Brazilian President Dilma Rousseff's inaugural speech to Congress on January 1st is very much in line with the general views of business institutions, such as the National Confederation of Industry (CNI). Ms Dilma Rousseff pledged in her address to prevent the return of inflation and ensure the continuation of economic growth.

The Brazilian economic growth cycle interrupted by the international financial crisis has receded. Gross Domestic Product increased significantly by 7.5% in 2010, the largest expansion in a decade. Industrial performance – which grew over 10% - led all the other sectors.

The Brazilian economy, however, is facing rising prices, with inflation – close to 6% – ahead of the government's 4.5% target. Inflation has been 'fuelled' partly by rising international food commodity prices but price rises have spread to other sectors as the fast growth in Brazil's economy exerts pressure on supply.

As an immediate response to stave off inflation Ms Rousseff decided on a public spending cut of over 50 billion Reais without affecting her commitment of eradicating poverty through diverse social programs. Brazil's Central Bank in the forthcoming months is expected to raise interest rates in the attempt to combat rising prices.

In her address to Congress keeping with CNI proposals Rousseff emphasised the necessity of simplifying the country's tax system and is also expected to give priority to modernising the country's infrastructure. The recovery of the Brazilian economy, the discovery of oil reserves in the pre-salt layer, and the holding of the 2014 football World Cup and 2016 Olympic Games in Brazil afford unprecedented opportunities for the Nation to advance and invest more in infrastructure.

Continuing cutting public costs and lowering taxes make it likely that the Brazilian economy will continue to grow and with this perspective new jobs will be generated along with an increase of the boundaries of social inclusion.

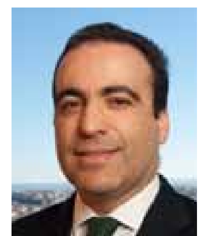
CNI prepared an agenda for the nation containing proposals to tackle problems that reduce the country's potential to grow and build new competencies as required in an innovative, highly productive, and environmentally sustainable economy. To achieve it, Industry must be at the centre of the strategy for economic growth for it plays a powerful role due to its impact on the economy's overall productivity and multiplier effect on growth. Competitiveness and innovation are at the core of CNI's agenda.

"... cutting public costs and lowering taxes make it likely that the Brazilian economy will continue to grow"

Brazil had a profound positive change in the transition to the 21st century. The next four year presidential term will be a decisive period. The nation can grow at rates in excess of 5% a year, provided it respects lessons on the importance of stability, gives priority to competitiveness, and makes further progress in modernizing economic and political institutions.

The future scenario is therefore optimistic. ■

Brazil - a world of opportunity



Marcelo Rebanda is a Senior Associate at Raposo Bernardo

Brazil's economy has grown up to a point where the country has become a world of opportunity, after being one of the world's most promising economies.

In fact, the biggest country in Latin America – 180 million habitants in a territory of 8.5 million km^2 - is nowadays an important player in the world economic scenario, and no longer an expecting or emerging one, offering opportunities and prospects for investment in many areas and sectors.

Foreign investment has increased in the last years at the same rhythm as the economy. The political situation has stabilized in a country that initially concentrated its investments in the infrastructure sector, and now is changing them to the industrial, services, telecommunications, energy and transport sectors.

The country has already confirmed the hosting of several international events, such as FIFA 2014 – World Cup, in the cities of Belo Horizonte, Brasília, Cuiabá, Curitiba, Fortaleza, Manaus, Natal, Porto Alegre, Recife, Rio de Janeiro, Salvador, São Paulo, cities where important investments in infrastructure are expected, and also the Olympic Games of 2016, in Rio de Janeiro.

Besides the strengthening of its economy and consequently of its companies, Brazil has also increased its development through investments abroad. These turned out, on one hand, for the appreciation of its currency, a factor that makes investments abroad cheaper and allows a faster return on investment. On the other hand, mostly stimulated by the existence of protectionist policies imposed by many countries on Brazilian products, Brazilian companies decided to install themselves, closer to their export markets, thus leading

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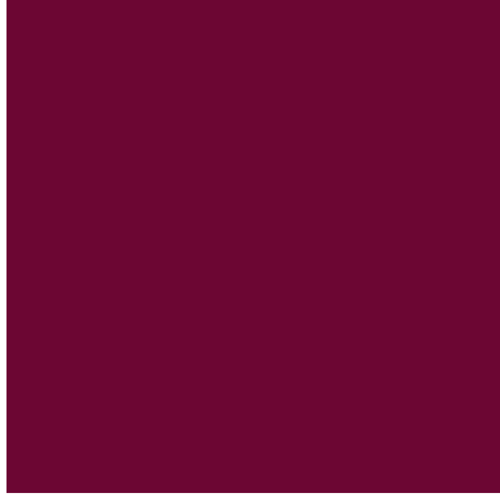

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Brazilian entrepreneurs to make a remarkable effort to establish outside of Brazil. This effort was not only possible because of the existence of a highly developed industry, but also allowed it to be reinforced and to become what today is a prominent player in the global scenario, competing on equal terms with other international companies.

In fact, several of the leading Brazilian companies, for example Petrobras, Embrarer, WEG, Odebrecht, Grupo Votorantim, Vale, Aracruz, Camargo Correia, CSN (Companhia Siderúrgica Nacional), have begun to shine internationally, competing with world leading companies in their specific area of business, with great technology and competitiveness, high standards of quality production, intensive investment in research and development and establishing their production in foreign markets.

Another factor that made Brazil achieve its current development level was precisely the protection it gave to its industry and agriculture. Concerning agriculture, in August 2010 the Brazilian government imposed limits to the purchase of land in Brazil.

Trying to avoid what (by then) President Lula called *"invasion of foreign investors,"* he has signed a decree that limited the purchase of land between 250 and 5,000 hectares, depending on the region, by companies with more than 50% foreign capital. Currently it is still forbidden for foreigners to buy more than 25% of the area of a given municipality.

In fact, by having facilitated in 1995 the selling of land to foreign investors during the privatization period, Brazil does not know how concentrated in the hands of the same investors is the property in the country. Some estimation for 2010, by INCRA, the National Institute of Colonization and Agrarian Reform, indicates that 5.5 million hectares are held by foreign investors.

President Lula saw fit to take that kind of decision, to guarantee food production, which the Brazilian government considered a matter of national security, along with biodiversity conservation and the mineral wealth of the Brazilian soil.

More recently, after having experienced the first negative growth in its GDP (-0.2%) in recent years, Brazil surprised the world economic community by announcing an expansion of 9% for the first quarter of 2010 and a yearly forecast of 7%, after having experienced an average growth of 4.8% between 2004 and 2008. These are results most of the government leaders of the world don't even dare to dream about. These results combine with relative moderate inflation growth, around 4%, for such an active economy and a fiscal surplus that moves around 2.4% of the GDP.

Brazil is amongst the leading emerging stars of the world economy; a group that also includes India, Russia and China (BRIC) and is a doorstep to the MERCOSUR, the South American common market established between Brazil, Argentina, Paraguay and Uruguay with the objective of promoting the free trade of goods, people and currency between the member states and of fixing a common external tariff and adopting a common trade policy with regard non-member states and regional communities. Amongst the MERCOSUR objectives we can also find the one of establishing a coordinated policy in economic sectors related with foreign trade such as, for example, agriculture, industry, taxes, monetary system and exchange policy, amongst others.

Although being generally considered as a country presenting good conditions and opportunities for foreign investment, Brazil has some aspects that still need to be reformed, namely the indirect tax system. The VAT correspondent tax in Brazil is the ICMS which is not a federal tax but a state level tax, thus leading some states to use it as policy instrument for attracting investment to that state. The central government has already taken the first steps towards a reform of the tax system that will make the ICMS more homogeneous throughout the entire territory.

Also, Brazil benefits from having important natural resources that make it one of the most dynamic raw materials markets of the entire world. The richness and beauty of the country also make it one of the top tourist destinations, still with many unspoiled destinations.

Brazil has developed a high quality university level teaching system, also due to a close academic relation with the United States and Europe. The high teaching standards Brazil has achieved allows the country to provide high quality professionals in every field. For that reason, and also due to the high investment in research and development, the country can be considered a leading country in many industries and services. The dynamics, quality and economic capacity of Brazilian companies, make the country not only a FDI (foreign direct investment) receiver, but also an important investor in other markets.

"Brazil is amongst the leading emerging stars of the world economy; a group that also includes India, Russia and China (BRIC) and is a doorstep to the MERCOSUR"

Further all, Brazil has now great political and economic stabilities, with the new President, the first woman to be elected for the position in the country's history (elected on the 31 of October 2010) and with the real (R$), that became one of the strongest currencies in the international market.

For the purpose of this article we would like to outline the existing relations with Portuguese and Brazilian law firms, linked not only by the same language, but also with the existing community of more than 220 million Portuguese speakers that integrate countries in four continents: Europe – Portugal; Africa – Angola, Cape Verde, Guinea-Bissau, Mozambique and São Tomé and Principe; Asia – East Timor, and, of course, South-America, with Brazil.

The investment flows between these countries don't have a single direction. We can indistinctively see Brazilian companies investing in Angola (or other African country) or Portugal, Portuguese companies investing in Brazil and Angola or Angolan companies investing in Portugal and Brazil.

Raposo Bernardo has close links with these markets by being present at these jurisdictions, together with other European countries like Spain, Poland and Romania, with offices in Madrid, Warsaw and Bucharest, working with direct experience of assisting some investment projects developed between all of these countries, attesting and recognizing the importance and the dynamics of the investment flows between them. ■

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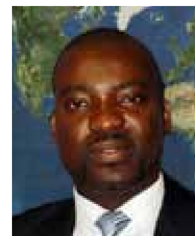
Global economic competition and EU Millennium Development Policy



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Introduction

The financial crisis and accompanying structural changes in the global economy are exposing gaps in EU approaches to the Millennium Development Goals (MDGs). The goals were consensually agreed at the 2000 UN Millennium Summit. A split has since emerged not only on their future directions but also over the once consensual principles that underpin international development cooperation broadly. The approaches of traditional western donors including the EU now contrast sharply in many respects to the evolving roles and emphasis of emerging donors like China, Brazil and South Korea.

First, the seemingly inexorable shift in global economic power towards Asia in particular is challenging Europe's once solid economic dominance over a region like Africa. The nascent shift in thinking in many developing regions of the global south also tend, broadly speaking, in the direction of a new assertive discourse of growth models and development paths being promoted by the non-western emerging powers.

In geopolitical terms, this debate appears skewed against the west. For Europe, the largest source of global development aid, this shift portends serious policy implications. If a graphic illustration is needed, the west and the emerging world's contrasting rhetoric at the September 2010 UN Summit on the MDGs served as a timely reminder of the still elusive quest for a post-Washington Consensus.

"The financial crisis and accompanying structural changes in the global economy are exposing gaps in EU approaches to the Millennium Development Goals (MDGs)"

Second, real world geopolitical transformations have fed more fundamental doubts over the MDGs – their underlying focus, ambitions, conceptualisation and measurement and suitability to a global economy in rapid transition. This further puts question marks over EU development cooperation policies and practices, currently buffeted by the twin pressure of post-Lisbon institutional revamps and a bloc economy in crisis and incipient decline.

Third, the evolving international agenda has accelerated EU introspection around aid efficiency concerns and Policy Coherence for Development (PCD). A coordinated western approach to the 2011 High Level Forum on aid effectiveness to be held in South Korea seems ever more urgent, while the EU must work to restore European leadership on the development chapter of the G-20 under France's presidency in 2011. Debates have being stimulated also by the European Commission green paper for public consultations published in late 2010. Yet, fundamental challenges remain.

I. EU geopolitical challengers and 2010 UN MDG Summit

More than the symbolic closing of ranks in support of poverty eradication efforts at the September 2010 MDGs Summit, the spectre of an increasingly illusive search for shared consensus on the modalities, ends and funding of development assistance post-Washington Consensus hung over proceedings. Two fundamental ferments, both intrinsically connected to the MDGs debate, were on display. First, emerging economic powers, led vocally by China and South Korea in the run up to the summit, were themselves asserting worldviews and setting out development priorities which seemed to differ radically – sometimes in content, oftentimes in approach – from those of traditional western powers. South Korea, recently admitted to the western-dominated Development Assistance Committee (DAC) of the OECD, maintained a position more in line with the economic growth emphasis of the emerging world.

Emerging powers have moved in less than a generation from low-income category (with less than 970 dollars per capita) to joining the group of middle-income countries (MICs), characterised by rapidly changing social structures and expanding middle classes. As dynamic growth nodes driven by search for energy and other industrial inputs, as well as expanding market opportunities, they have continued to offer up their own export-driven modernisation as an alternative model for developing countries. Meanwhile, narrow debates in many western capitals remain unwisely focused on whether China and others' "resource-for-infrastructure" strategy should count as Official Development Assistance to developing countries.

Second, the EU's developing world partners expressed frustration at what they criticise as the west's habit of breaking aid pledges, ignoring the transparency bargain binding both sides. Countries in the Africa, Caribbean and Pacific (ACP) grouping, which historically have been locked into a special development partnership with Europe, also lamented the EU's weakening commitment to the Cotonou Accords amidst the intensifying battle of ideas with emerging donors. Southern economies complain that the north is failing to engage constructively the broad array of stakeholders on leveraging emerging opportunities in the global economy to meet MDG challenges.

From developing countries' perspective, many indices in the new global economy point to converging parameters for wide-reaching realignment of development efforts towards more beneficial, practical collaboration joining older and newer donors. Africa in particular is being boosted by better governance, sustained high commodity prices and falling debt burdens. Yet, progress in south-south cooperation is only now gathering pace and link-up with more advanced economies has been slow. The developing world rallied around a strong summit message of outlining shared visions on sustainable, self-help development which better capitalises on growth potentials in developing regions.

The EU's clout and size marks it out to play a coordinating role, helping to bring about a paradigmatic shift in which fairer trade, inter-polar coordination and progressive access to vital technologies serve as the triple engines for transforming the human material condition. Yet, nagging concerns about competiveness at home and hesitancy on the part of emerging powers themselves is also holding up practical progress.

The EU's own response at the summit was neither coordinated nor inspired. Facing demands for clearer additionality and timelines, European donors shifted emphasis. The MDGs narrow agenda clearly needed broadening, but major European donors instead anchored summit message on transparency and governance challenges in recipient countries. The case for efficient aid use and accountability could clearly be extended to EU donors' responsibilities to free up development spending, transcending mere rhetorical commitments really to allow recipients determine priority programmes and projects. Many developing world delegates were unsurprisingly quick to dismiss what they see as backdoor attempts to reintroduce controversial governance conditionality, even suspecting European determination further to trim development budgets amidst the sovereign debt crises.

MDG-type social progress are seen by emerging powers themselves in geostrategic terms: a cornerstone of their growing commercial expansion into emerging southern markets as traditional western engines of global growth and consumption decelerate in decades ahead. In general, as developed regions like the EU demand MICs assume a fairer share of responsibilities for global development, the latter have countered with proposals expressly aligned to specific national geostrategic projections and commercial priorities. Specifically, they warn with increasing unanimity that the MDG targets of halving extreme hunger and poverty, attaining universal primary education and reducing child/maternal mortality, among other headline goals, will be invariably missed in Africa except global economic and development policies bolster their growing roles in trade and development cooperation with southern countries.

For late developers advocating "selling" an alternative development model to Africa, positions coalesce around a broad-based development approach, explicitly linking questions about the narrow objectives of the MDGs to the emerging economic renaissance in Africa. In this thinking, more explicit effort ought to be made to connect a broader conception of development in Africa to the extant re-balancing and transformations sweeping the global economy, and the renewed impetus that emerging economies in particular provide for sustained economic growth in Africa and elsewhere. While the EU appears set on pressing ahead with the original technocratic framing of the MDG campaign, emerging powers have sought a bigger say in the global governance of development, without unquestioning acceptance of ideas, assumptions – much less, 'consensus' – that previously underpinned western aid efforts.

II. MDG pessimism and EU Development Policy

To the extent that the core objective of EU development cooperation is poverty reduction, recent interesting trends in the transforming global economy present a mixed, sometimes confusing, picture. On the one hand, evidence shows that there are no automatic correlations between high economic growth figures and the progressive emergence of large populations from poverty. According to one UNCTAD study, some 53 million people in the developing world have fallen below the poverty line and more than 100 million additional people are going hungry since the start of the economic crisis. Even impressive growth performance figures recently delivered by Africa shows that gains have been concentrated primarily in a minority of countries like Nigeria, South Africa, Angola and Algeria (indicating high extractive resource and energy-related component of recent growth). It is within this mix that the EU and other established donors have to formulate policy. Recent EU discourse around equitable growth also reflects the recognition that income inequality and unevenly distributed benefits of growth within countries are unlikely to enhance poverty reduction and promote broader MDGs agenda.

Yet, ferment over the MDGs focus, and doubts over the 2015 deadline, are inspired in large part on the recent successful experience of emerging economies like Brazil, India and China. Critics contrast the MDGs' emphasis on specifically non-trade-related, social sectors with the state-directed production and export drive which has brought success to emerging economies and their sub-regions. Sustained periods of impressive growth in "catch-up" economies have also coincided with corresponding improvements in social development indicators. Between them, they halved extreme poverty in populations representing nearly a third of the combined world total. Similar gains are being recorded in healthcare delivery and education. Although the social accomplishments correspond in many respects to MDGs-type measures, how they are functionally connected to MDG policies remains a hotly disputed topic. Nonetheless, the qualitative dimensions, speed and scope of improvements – driven primarily by production boom and expanding exports – have impressed many observers who point out that they in fact transcend the restrictive, technical headline goals of the MDGs.

Critics like William Easterly question the very design and underlining measurement of the eight MDG goals, arguing they 'make Africa look worse than it really is'. The skewed weighting of growth in poverty reduction, and the unjustified choice of 1990 as baseline year – taking in a decade in which African economies performed woefully before the MDGs were designed in 2000 – are seen as setting up Africa to 'fail to meet' the goals. The approach of allocating zero value to growth which increases the income of individuals below the poverty line (counting only growth accruing to those above the line) is criticised for distorting the picture in sub-Saharan Africa where the initial headcount of extreme poverty was disproportionately high.

Some MDGs benchmarks evaluate progress in positive terms while others measure changes in negative terms. Besides, the arbitrary choice between measuring relative or absolute change was applied inconsistently across the goals. The consequence is that choices made in many of the goals actually disadvantaged Africa. Meanwhile, unrealistic and historically unprecedented levels of growth required to meet MDG targets also underplay Africa's recent economic achievements. As the 2010 UN MDGs Summit acknowledged, the continent's progress towards the eight MDGs goals has been slow, but beyond higher levels of external aid, a redoubling of support for key productive sectors will be vital to giving the MDGs additional internal impulse. Rhetoric aside, EU approaches remain poorly aligned with evolving regional economic realities.

III. MDGs and Economic Partnership Agreements in Africa: an incongruous mix

Specific short-term measures to restore European competitiveness may clash with commitments to support faster economic growth to bolster MDGs across the developing world. In some regions, there have been obvious political ramifications as failed EPA negotiations poison wider EU-Africa relations. The EU is failing to craft a convincing "aid-for-trade" development narrative with its African partners at the same time that the continent has come to occupy an increasingly pivotal role in a transforming global economy. Resource and commodity scarcity in the long term and commodity price increases imply Africa's role at the base of the global raw material chain is now more important than ever.

This transformation has implications for the MDGS and assumptions about development paths. Europe will be a more credible voice if it grasps more fully Africa's truly improving prospects, reflecting more directly the continent's changing economic fundamentals in the concrete design and implementation of development programmes. The emerging debate compels the EU at least to take the lead in envisioning a post-MDG framework ahead of the 2015 deadline. This should include a "MDGs +" plan in which aid spending is more explicitly targeted to foster African and developing countries' growth opportunities. The move towards EU strategic partnerships with developing regions better to support integrated programmes of beneficial investment, trade and institution-building relations is a right step in the right direction.

In practice however, EPA negotiations between the EU and Africa have recorded meagre progress after more than ten years. Issues came to a head during the 29-30 November Africa-EU Summit in Libya when the modest agenda – focused on investment, jobs creation and economic growth – was upended by assorted thorny issues, including Europe's perceived economic bad-faith. In the EPA negotiations, a wide gap persists between the two sides, as revealed in a vitriolic paper released by five African Regional Economic Communities (RECs) and the African Union Commission shortly before the summit. EU EPA demands include elimination of tariffs on a full 80 percent of African imports, but Africans contend this will spell disaster for domestic production and customs revenue. African leaders argue that Europe's tough negotiating stance contradicts its commitment to support developing economies to achieve the MDGs.

Disagreements invariably seeped into other areas, undermining European hopes of forging a common position with Africa on climate change in the lead up to the November 2011 climate conference in Cancun. Africa rejected a proposed joint climate declaration as non-reflective of African priorities. EU officials argue the lack of sync between trade agreements and mainstream development policy will be progressively addressed as intercontinental processes take shape amidst profound institutional changes on both continents. Yet, a more coherent approach cannot wait indefinitely if European pledges on MDG achievement by 2015 are to retain credibility. Developing countries must do their part but MDG objectives will not be realised without traditional and emerging donors, along with the

EU, better matching the spirit of the 9th MDG goal on effective Global Partnership for Development.

The key difficulty for the EU remains how to combine pressing demands for restoring competitiveness and structural rebalancing internally with its avowed ambition of putting effective development cooperation at the heart of external action in a highly competitive global environment. The "Seoul Consensus" unveiled at the November 2011 G20 summit rightly emphasises trade, greater internal resource generation and the private sector as engines of developing countries growth, but leading economies must collectively translate words into action. Europe requires stronger political leadership better to educate the public on the imperative of meeting development commitments amidst a serious financial crisis, and perhaps even explaining how assistance to Africa and least developed countries is the core of an effective response to strategic challenges facing Europe from rivals. ■

Software support thrives in Bermuda

As Bermuda's international financial services sector has developed, ancillary service industries have grown in tandem. Bermuda companies are now as likely to find solutions across the road as they once were across 800 miles of the Atlantic Ocean.

Nowhere is that more true than in the area of software development, which is one of Bermuda's best-kept secrets. The traditional reasons for locating in Bermuda — geographic location at the crossroads of Europe and the Americas; tax neutrality; time zone convenience; an educated workforce; and an infrastructure built to serve international businesses — may now be added one more good reason for choosing Bermuda as a jurisdiction: customised IT development from a nearby firm with deep knowledge of the business sector being supported.

Bermuda has developed a deep talent pool in this area, with development firms employing staff on and off the island (in North America, Asia and Europe), enabling them to bring the right resources into play as customers' needs demand.

Early in March, a panel of Bermuda-based software providers discussed their industry and highlighted the wide range of services they make available. The participants were:

- Michael Branco, managing director, Ignition/Fireminds
- Danny Dunlop, sales manager, BCS-IBM
- John Kyle, general manager, Gateway Systems Limited
- Paul McLeod, president, Bespoke Software
- Sandra De Silva, managing director, Nova Limited
- Michelle Walkes, acting president, GMD Consulting Limited

What types of software development do you provide for clients? Do you write bespoke or customised applications for an individual client?

De Silva: Nova has developed many successful custom and proprietary applications for many clients in Bermuda.

Kyle: We too write software for specific clients.

Branco: The majority of Ignition/Fireminds' software development is bespoke, building custom applications on SharePoint, Joomla and .NET.

Dunlop: The main IBM software applications offered through BCS Agencies are packaged applications for a myriad of business and technical solutions. We offer these licensed applications, together with installation and customisation services — which can include software development.

McLeod: Bespoke Software's main focus is on building customised data warehouse and business intelligence solutions, specifically for the insurance, reinsurance and banking sectors. We build client/server and web-based business applications for a diverse range of clients to fulfil their unique business requirements that cannot be met by off-the-shelf applications. We also extend the functionality of existing in-house systems or packaged solutions that cannot meet all the business needs of the client, especially in the areas of sophisticated business intelligence, data analysis, enterprise reporting and systems integration.

"... there is significant opportunity to provide hands-on software development expertise to local and international companies"

Walkes: GMD Consulting Limited provides customised website application development to meet the needs of our clients. We have the capacity to develop solutions for business in other areas and in multiple other languages, but our success and core business has been in website development. Whether we are contracted for large government projects, or small businesses, our clients retain ownership of their applications or software.

Do you also write applications and sell them to more than one client?

Kyle: We write applications for niche markets and sell to multiple customers. Examples include our Automated Bermuda Customs application and GIPHS, our insurance policyholder search software.

Branco: Some of the Ignition/Fireminds applications have been packaged into a saleable application for multiple customers, such as our FirePay payment module for Joomla.

McLeod: We have focused on one-off applications customised for a specific client and its unique needs. We have, however, come across several business applications that we believe could lend themselves to the development of a solution that would be applicable to more than one client and are investigating ways to bring these ideas to market.

What is your opinion of the state of software development in Bermuda?

McLeod: Given Bermuda's unique position of being a financial hub in the global economy, we believe there is significant opportunity to provide hands-on software development expertise to local and international companies operating here. While being locally based has its advantages, including fast response time and the ability to nurture closer working relationships with the client, to be successful in Bermuda, any software development company must conduct its business under world-best software development practices, because many of our clients have access to off-island world-class IT resources at competitive rates.

Walkes: Most companies in Bermuda have traditionally relied on off-the-shelf solutions that fit 'most' of their needs, even though there has been a wide base of developers on the island that could provide customised solutions. Most developers resident in Bermuda are here to support and enhance proprietary systems of one sort or another. There has been a vast improvement in the quality of software development in Bermuda, which has been displayed in recent software development initiatives such as the Blackberry application development competition, Apptitude.

De Silva: The need for software development is very healthy. Getting into software engineering is a complex undertaking — done right, it can become very rewarding for anyone involved.

Branco: Software development in Bermuda is growing due to the efforts of companies such as Nova, Ignition/Fireminds & Decisions.

How would you see software development in Bermuda evolving?

Walkes: There is an ever-widening scope to how and for what software is being developed as we see more and more computing done in a mobile forum. Languages are also evolving and access to the tools needed to build solutions is also changing. Bermuda is poised to meet these trends with the access to infrastructure, finances and intellectual capital needed to leverage the opportunities.

De Silva: The future is very promising as corporations continue to do business here and to recognise the value of using software as a strategic competitive advantage. Nova is the proud founder of a local not for profit association called the Bermuda Dot Net User Group, an association providing free education and networking to intermediate and senior level professionals within the software development community. Acceptance by and interest from the local community has been overwhelmingly positive.

Branco: Subject matter experts (SMEs) with a technology background (ie. computer science plus MBA) will be able to lead application development projects in Bermuda, using high-end resources on-island and farming out the heavy lifting to less expensive software development shops nearshore in North America, where the work product quality is good.

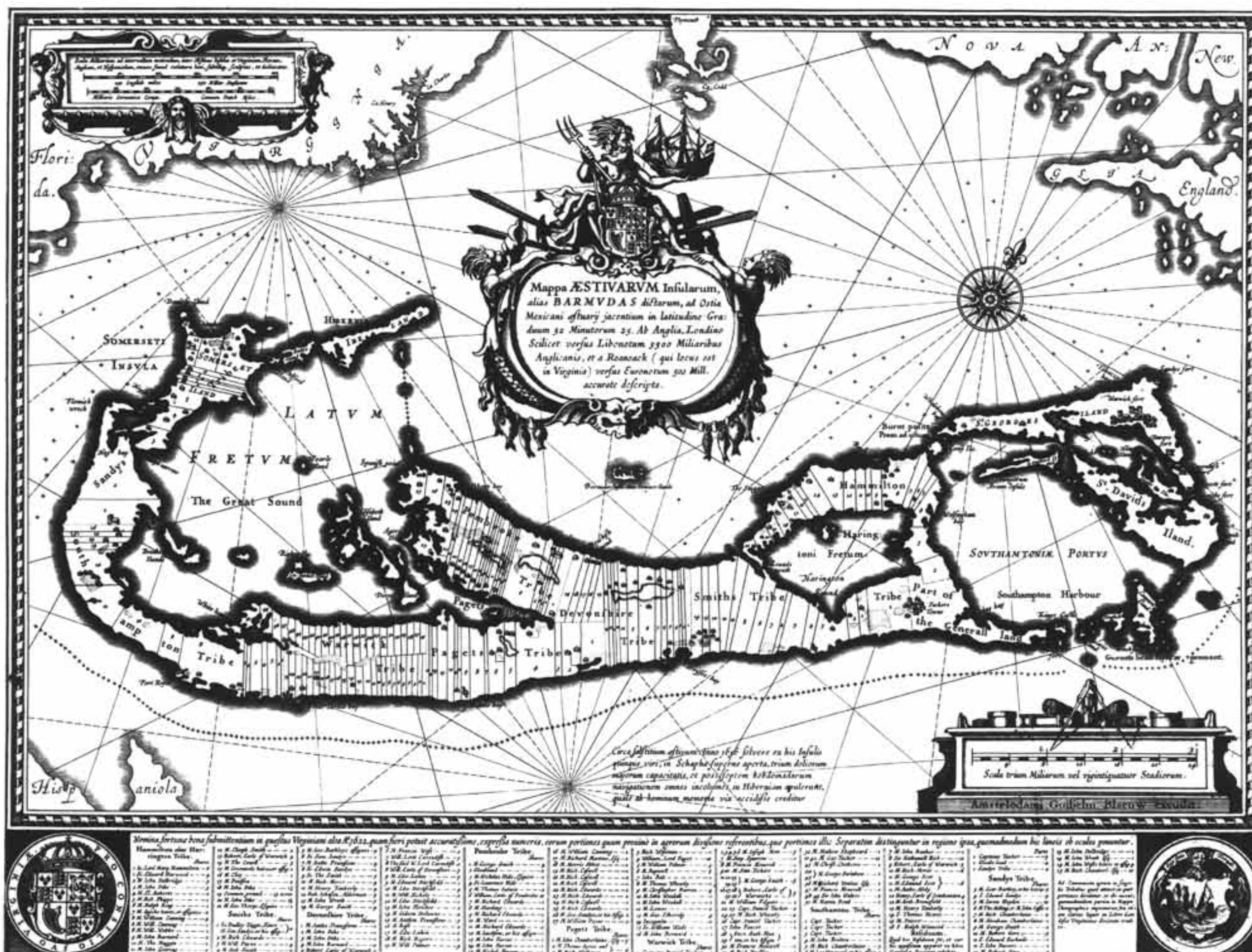
McLeod: Bermuda's biggest advantage is having a high concentration of world-class financial clients on-island. Software development companies that work on the island benefit by seeing the emerging patterns and trends in the business needs of this concentrated market and are therefore often a step ahead of developers who are just as good with their tools, because we have deep business knowledge of the industries that they deal with. The pivotal factor in ensuring software development success in Bermuda is going to lie with growing creative, intelligent developers who are not only well-versed in the technology of the moment, but also have the ability to absorb and harness business knowledge of the sectors that they deal with.

What are the strengths of software development in Bermuda?

De Silva: Knowing how to use technology properly to achieve the goals driving local business and recognising the need to properly scale the solution as a company grows is important. Strength in a software engineering vendor lies in tangible results enabling growth and process refinements for its clients.

Kyle: Businesses in Bermuda benefit from dealing with people on the island. Much was said about moving development to India several years ago, but it did not work out quite as planned. Language and culture play a significant part in interpreting business needs, as much as a written specification does. Doing business In Bermuda eliminates the 'open to interpretation' element that can happen. Project management, the critical and most expensive part of any development (after

Early map of Bermuda © Bermuda National Museum



business requirements) is therefore greatly reduced. Bermuda development houses are really good for doing small jobs. They are quick and nimble and easy to change for larger jobs (and those that require some additional definition) so that overseas development becomes viable.

Branco: One strength is in building applications specific to the offshore markets, such as insurance apps, trust or corporate administration apps, etc. There is still huge potential in Bermuda and other offshore jurisdictions. More software development innovation is coming from Bermuda and is being led by the next generation of technologists, who are hybrid SMEs and software engineers, able to straddle business and technology seamlessly.

"In Bermuda, they will find a wealth of talent, creativity and tailored solutions to help drive their businesses forward"

McLeod: Among the strengths are the ability to gain a deep industry knowledge from exposure to the high concentration of clients in the re/insurance and financial sectors, and thus be able to provide insightful, creative solutions to this sector's business problems.

Walkes: Bermuda is relatively small, which makes it a perfect hub for implementing software development pilot programmes. These applications could be used in other countries, such as those in the Caribbean, which may require similar solutions. Bermuda's jurisdiction from a legal standpoint contains the infrastructure required to support software development, which includes intellectual property legislation. Bermuda also has access to high-speed communications, as well as the necessary hardware platforms needed for developers in this space.

Would you care to share a success story from your experience that can be used as an illustration?

Kyle: We have had great success with development around specific Bermuda requirements, such as Automated Bermuda Customs (ABC). Many of our clients benefited significantly by implementation. A previous two-day exercise to clear an imported container of goods was reduced to less than five hours for some of the larger importers.

Branco: Ignition/Fireminds created the latest version of the Bermuda Laws website (bermudalaws.bm), which is built on a SharePoint platform. This project required subject matter expertise on the different ways to search and organise the law and legislative libraries. The Bermuda Laws site was built by two Bermudian developers who worked hand-in-hand with the Attorney General's (AG) Chamber. The site, hosted by Ignition, has been live for almost a year. Ignition/Fireminds has also led the way on payment engine integration in Bermuda, enabling millions of online transactions in Bermuda, allowing Bermuda-based businesses the ability to process with the major banks.

Dunlop: IBM's Pacific Development Centre (PDC) in Vancouver has been working closely with Bermuda Customs for many years, developing the application to address Bermuda's specific Customs requirements.

McLeod: Oil Insurance Limited referred to Bespoke Software as their 'go-to' technology company in a recent customer testimonial (available on our website, bespoke.bm). This high praise was the direct result of our ability to surface crucial, time-sensitive information through a data warehousing solution and to provide management and resources on a complex, highly time-sensitive system development, neither of which could have been effectively achieved without our deep understanding of the Insurance business.

Walkes: With one of the highest Blackberry penetration rates in the world, before the summer of 2009, Bermuda could not boast any Bermuda-centric Blackberry apps. But during 2009, GMD Consulting was able to successfully develop and launch Bermuda's first Blackberry application, todo.bm, by the end of the summer. The application was developed to help solve the age old question: "What's going on tonight?" With a highly visible launch and co-ordinated marketing push, our app received more than 2,000 downloads in the first two weeks.

De Silva: Nova has a client who used a series of spreadsheets and access databases to manage various reinsurance functions. This process was created manually by a key employee within the company and required in-depth knowledge of the inner workings of the company to operate, making it difficult to welcome other co-workers into the solution. Nova replaced the distributed spreadsheets and databases, piece by piece, into a consolidated enterprise solution. This has allowed the freeing up of the key individual.

Before Bermuda began playing host to large international companies 50 years ago, it was a tourist destination known as the "Isles of Rest". Technology has outdated that description. To satisfy clients who have global operations in business around the clock, Bermuda's software developers have learned being as good as developers overseas is not enough; they have to go one better.

The need to innovate has been met with a hearty response. Companies considering jurisdictions in which to locate their operations will naturally include software development and support high on their list of desired services.

In Bermuda, they will find a wealth of talent, creativity and tailored solutions to help drive their businesses forward. ■

St George's Island from the air © Bermuda National Museum

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Not just the Oktoberfest – Bavaria, an attractive business location

Globalization has opened the international marketplace and given rise to new business opportunities. However, when considering how to best take advantage of these opportunities, many essential questions emerge. A targeted strategy must be followed in order to identify optimal location and market conditions.

Dr Johann Niggl is Executive Director of Invest in Bavaria, the Business Promotion Agency of the State of Bavaria. In the following interview he discusses important factors for choosing a business location, and points out the many advantages of Bavaria. As Germany's largest state with more than 12.5 million inhabitants, Bavaria encompasses an area of more than 70 thousand square kilometres. In terms of purchasing power, it is one of the strongest and most fertile in the world with a per capita GDP well above German and even European averages.

Dr Niggl, advocates of Bavaria often refer to it as being at the "hub" of all European markets, pointing to its premier location in the heart of Europe as one of its business benefits. However, this is an argument often used by other regions in Germany as well as throughout Europe. What really distinguishes Bavaria from other areas?

First of all, it is a fact that geographically Bavaria, which is in the south of Germany, is at the centre of Europe. That is a reason why the Munich airport attracts and transports more than 32 million passengers a year. From here business travellers are no more than a 3-hour flight away from well over 30 major cities in Europe. In addition, a multitude of direct flights connect Munich to major cities around the world.

Due to its prime location Bavaria is an especially convenient gateway to southeast and east European markets, giving companies access to over 500 million consumers. Besides the Munich airport, we have airports in Nuremberg and Memmingen as well as 26 regional and local public airfields. And Germany's largest airport in Frankfurt is on the northwest border of the state. So Bavaria is truly in a perfect position to develop business relations into a variety of directions.

A well-structured air travel network is naturally important, but businesses also need strong local infrastructures. What can Bavaria offer?

Bavaria provides excellent connectivity throughout the state with a road network of 41,866 kilometres and an excellent railway system of over 6,200 kilometres. The North Sea and the Black Sea are also easily reachable over the Rhine-Maine-Danube waterway. In addition, the state has four large cargo transport centres.

Equally important to companies are partners with which they can expand R&D capabilities as well as suppliers and subcontractors to make those developments a reality. What can potential investors expect in this regard?

A wealth of hands-on as well as intellectual cooperation. Bavaria is home to a number of renowned enterprises, many of which are true global players. Those include companies like Siemens, BMW, Osram, MAN, Wacker, EADS, Adidas, Puma and many more. In addition, more than one quarter of German DAX companies are located in Bavaria.

However, I don't want to give the wrong impression. Actually, 95% of Bavarian businesses are made up of mid-sized and small companies. Those number over 400 thousand and include many so-called "hidden champions". One of those hidden champions is for example the Bayerschmidt Kunststoffe GmbH, which has become a world leader in plastics processing in just ten short years.

To get in contact with all the important players, the Bavarian Cluster Network is a good docking station for companies new in Bavaria. They help to find the right partners and bring together research institutions and companies, so that they can benefit from each other.

Munich Airport - Best in Europe SKYTRAX AWARD (5x) © Munich Airport

The range of fields as well as the different sizes of companies – global enterprises, mid-sized, small businesses and single entrepreneurs – makes the Bavarian economy strong and robust.

Exactly how robust is the Bavarian economy? Many other nations, and especially the US, are nowhere near the end of their economic crisis – and Bavaria has a strong reliance on exports.

As I said, Bavarian companies are spread over a wide variety of fields, and come in different shapes and sizes. This variation has helped keep our economy stable even during the recent economic crisis.

Yes, we also saw a decline in export. However, since our economy is very strong we were not as hard hit as other places and are already seeing indications that the situation is headed toward an upswing. In fact, Bavaria's Minister of Economic Affairs, Martin Zeil, recently stated that Bavaria will continue to be the *"growth engine"* of Germany and attributed that to its high educational standards and technical know-how.

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companies that have set up research, production, distribution and other facilities in Bavaria. So no, our focus has not changed, but we also continue to encourage other fields for a diversity of offerings to keep our economy strong.

Have economic policies enacted by the Bavarian government been a contributing factor to attracting the many foreign companies you mentioned?

The Bavarian economic policy is very much innovation-oriented. Bavaria has understood the potential of research institutes and centres as well as strong universities for the development of new technologies and innovative products. To that end the government has helped in establishing 8 Fraunhofer Institutes, 11 universities, 23 colleges of applied science, 12 Max Planck Institutes, 3 Helmholtz Association Institutes, 10 research and transfer centres and 14 research associations. The benefits of concentrated research institutes are immediately apparent to businesses considering locating in Bavaria.

You mentioned already the Bavarian Clusters. Could you please explain exactly what´s behind it and tell us why they are important for potential investors?

The Bavarian Cluster Initiative started in 2006 and is our strategy to enhance Bavaria's role as a top location for business and research. The initiative's target is to expand and strengthen state-wide cooperative networks between companies, universities and research institutions as well as B2B service providers and financial institutions. Our cluster policy concentrates on branches and technologies important to the future of Bavaria like E-mobility, energy, aerospace, finance, bio and medical technology AND ITC. The aim is to accelerate the process of innovation and invention to market-ready products and to link science and business. For companies new to Bavaria the cluster initiatives also help to quickly integrate them into local business communities.

The benefits of synergy can be seen in the e-mobility area, in which the state plays a leading role. Bavarian based AUDI opened a new development centre for hybrid and electric vehicles in the end of 2010. BMW plans for their E-car, the Megacity Vehicle, to go into full commercial production in 2013. The creation of this car involves the

Bill Gates once referred to Bavaria as *"Europe's High Tech Mecca"* and the Bavarian government has often stressed its position at the forefront of technology. Has the economic crisis of recent years caused a change in focus?

We know that Bavaria cannot compete in all production areas. Mass production of products has become a realm in which China, Eastern Europe or India have taken the lead. But what we have here are very high educational and training standards and technical know-how. And so our focus for the future will continue to be in the areas of research and development and highly technical production sectors. Those include information and communication technologies, the life sciences as well as energy and environmental technologies.

Especially in those areas, and the aerospace field, the state repeatedly scores high in international studies when it comes to quality locations for business. That fact is backed up by a large number of foreign

ICE 3 crossing Rhine–Main–Danube Canal © DB AG

development of entirely new components and subsystems involving many of the state's universities, research centres and of course suppliers.

On a worldwide level, communities are in keen competition with each other to attract business and are thus offering more and more services. Bavaria does this with your Business Promotion Agency Invest in Bavaria. Can you tell us what enterprises can expect when working with you?

Globally many locations may be potentially attractive to investors. That's why it's especially important to pinpoint the needs of businesses and offer targeted solutions. Our international Invest in Bavaria team offers personalised and confidential assistance and is able to quickly provide answers to specific problems. Our services range from the initial steps to set up a business operation and the identification of the optimal location in Bavaria to arranging contacts with potential employees and customers. We provide companies with business data and information on public support and incentive schemes. Invest in Bavaria facilitates initial contacts to relevant public administration departments, industry and business associations as well as key networks. This one-stop service is of course free of charge.

However, our work doesn't stop there. We have offices located in 23 countries so that a foreign based company with a subsidiary in Bavaria – or one that is thinking about opening a business here – always has a near-by contact person. In a similar way we are also able to help companies in Bavaria take advantages of the chances offered by globalization. We support them in finding programs and activities to help open up their markets in other countries, to foster international partnerships and to set-up international business.

Could you give us an example of a company that has successfully located in Bavaria?

I could give you many examples, but one that directly comes to mind is GE Global Research. It is one of the world's largest and most diversified industrial research institutions. In 2004 the company opened its research centre near Munich. The facility employs 200 specialists from around the world. Since opening, the company has invested more than 100 million Euros in infrastructure and research projects and opened two new centres. Their willingness to expand in Bavaria illustrates that they are extremely pleased with the location and the productive environment.

DOCOMO Communications Laboratories Europe GmbH is another success story. This Japanese company has been in Bavaria for 10 years. When they first considered locating here, we helped them find a suitable location. Today 50% of the company's employees consist of Japanese nationals; the other half is made up of people from around the globe.

Many foreigners have a picture of Bavaria as *"Oktoberfest and lederhosen"*. Is this image detrimental to attracting business?

It is true that the first thing many foreigners think of when they hear "Bavaria" are the Oktoberfest, fairy tale castles and traditional clothes. But that really isn't all bad. In fact, those are some of the many reasons why Bavaria attracts millions of visitors every year. In 2010 almost 23 million visitors arrived in Bavaria, breaking all previous records.

When we talk to potential investors, most already have a positive picture of Bavaria, because of the stereotypes. Munich was even ranked by Monocle, a high-end current affairs and travel magazine based in London, as the most liveable city in the world! Choosing it over top cities such as Copenhagen, Vancouver, Zurich or Amsterdam!

In closing, what would your one sentence message be for those businesses considering investing in Bavaria?

That's easy, because it's something I myself am really grateful for and feel privileged about: who wouldn't want to work and live where others vacation? Invest in Bavaria, you won't regret it! Oh, sorry that was two.

No problem, we understand your enthusiasm. Dr Niggl, thank you for this interview. ■

Dr Niggl Close-Up

Dr Niggl, how long have you lived in Bavaria?

I was born in Bavaria and I'm not planning on moving. I really enjoy living here.

Where do you go when you want to relax?

To one of the many Upper Bavarian lakes, for example Staffelsea, a small lake near the town of Murnau with a wonderful view to the highest mountains in Germany.

Many famous composers came from Bavaria, do you have a favourite?

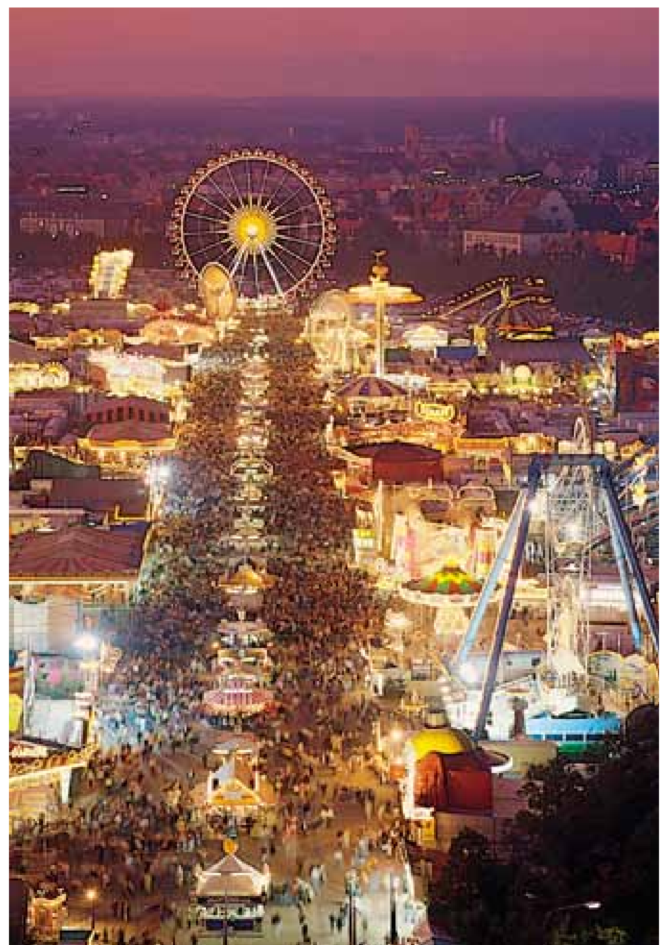
Yes, Karl Orff, I love Carmina Burana (Red: A vocal composition written by Orff in 1935 and 1936)!

Weisswurst, a white sausage, is a specialty of Bavaria. As a real Bavarian, tell us how is it best enjoyed?

Weisswurst is something I really like when sitting in one of Bavaria's plentiful beer gardens with friends.

The soccer team FC Bayern is known the world over – do you know any of the players personally?

Unfortunately not, but the top scoring player in the World Cup Games in South Africa is often in my neighbourhood. FC Bayern is very good for the image of Bavaria, and the team is typical for Bavaria: very professional and also loveable.



Oktoberfest by night © Alfred Mueller/TAM

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Bavarian Ministry of Economic Affairs,
Infrastructure, Transport and Technology

Increased carried interest taxation everywhere - is there a way out?

Jos Peters, Senior Tax Partner at Merlyn International Tax Solutions Group, describes a novel idea to reduce carried interest taxation by transforming this income part from locally sourced and locally taxable to foreign sourced and locally exempt.

Introduction

Over the last several years many countries have increased the personal income tax burden on carried interest income, earned by private equity investment managers; other countries are contemplating to do the same in the coming years. This is especially true in the European Union. One may wonder if, apart from the investment manager moving abroad and seeking a new job with an investment management group overseas, where the fiscal attitude towards private equity is more favourable (USA, Hong Kong, Singapore) something can be done about this.

Below I will discuss an idea which may help to - sometimes significantly - reduce carried interest taxation. I will address this tax planning opportunity in some detail, because the Netherlands seems to offer an opportunity to do so. I will focus on the EU, where the problems are clearly visible in the form of a drain of well-qualified investment managers to the USA and Asia.

The starting point of my "Dutch carried interest planning" is that certain income elements, if earned in the Netherlands, cannot be taxed again in the home country of the investment manager concerned, due to the presence of a tax treaty between the Netherlands and that other country. Seen in this light, the new carried interest taxation rules which have recently been introduced or will shortly be introduced in many EU countries may prove to be ineffective.

> **"... the new carried interest taxation rules which have recently been introduced or will shortly be introduced in many EU countries may prove to be ineffective"**

For example the French "Arthuis" rule which went into effect on 01/01/2011. Until then the French tax on carried interest income was a flat 30% income tax, but today carried interest is taxed in France under the progressive income tax scales, which will often imply that a large part is taxable against 50+%. And carried interest will from 1/1/2011 onwards also be subject to the French social security levies of 20+%. One should therefore not be surprised to see future carried interest rewards in France attracting a combined income tax plus social security contributions rate of well over 70%. The situation in other EU countries may be much the same.

But what would happen if this income comes from a Dutch legal entity in the group and qualifies for avoidance of double taxation in France under the Dutch/French tax treaty? Under the proper circumstances, France may not be allowed to tax such Dutch income elements. France may then only apply its progressive individual income tax rates to the French income parts earned by the French resident investment manager, and must leave the Dutch part untaxed. So under certain circumstances and with careful tax planning, France may often not be able to levy its 70% tax plus social security on carried interest income of French resident investment managers, because its tax treaty with the Netherlands got in the way. The same may be true for many other countries which have unilaterally increased carried interest taxation or are planning to do so.

The obvious next question then is: how high is the Dutch income tax on the carried interest rewards which the Netherlands may tax under the treaty? Is the Dutch tax rate better than 70%? The answer is mind boggling: with precise planning, the Dutch tax rate on carried interest rewards earned by non-Dutch residents with a non-Dutch EU passport can be kept at just 10% even for very considerable carried interest sums. This is true for employment income including some forms of deferred employment income like carried interest "bonuses" of up to €80,000 per year, so over an extended period of time for several hundred thousands of euros. Details of how this might work are not disclosed in this article but are based on the work I have done in the past for many HR departments of multinational enterprises and are available on request (jos@merlyn.eu).

Analysis

The above is just a "basic idea". It requires fine tuning (below) and a word of warning is needed too; with 27 EU countries which all have their own individual income tax and social security tax systems, including different ways to avoid double taxation on foreign income elements, my idea can be made to work in several situations, but not in all. In some EU countries the overall tax savings from routing carried interest rewards or parts thereof via the Netherlands may result in very considerable tax savings, especially those EU countries which apply an "exemption with progression clause" as a result of their tax treaty with the Netherlands, but in other EU countries, especially those where a tax credit system applies to foreign income, the Dutch carried interest planning may not make much difference at all. The question whether the home countries applies a so-called ceiling to the income amount, subject to social security charges is also important: the benefit might even be considerably higher if countries do apply such a ceiling.

For investment managers in non-EU countries, who may also be able to benefit from a tax treaty which their home country has with the Netherlands, the benefit calculation will co-depend on the question whether there is not only a tax treaty with the Netherlands but also whether there is a social security treaty.

So a general outcome cannot be given. Generally speaking the calculations come out best for investment managers from the following EU countries: Belgium/Luxemburg/France/Germany/the Czech and Slovak Republics/Spain/Hungary and Denmark ("exemption with progression" countries). For non-EU countries calculations will have to be made separately.

Investment managers from EU countries such as Italy/the UK/Poland/Ireland/Sweden/Greece/the Baltic States may not be able to realise any benefit from the low Dutch income tax which is also true for certain non-EU countries ("tax credit" countries).

Points of additional attention

I will now guide you through some important implementation details; just a good basic idea is of course never enough: it must be thought out in full, as if it had already been implemented, to the level of the future foreign income tax returns to be filed by the investment managers in their home country in the future which will contain the Dutch income elements. Only then can we be certain what the actual income tax savings for a particular investment manager in a particular country really are.

Challenge 1: the Dutch income must be income from Dutch employment, not from a Dutch shareholding

Not all income earned from Dutch sources is subject to the avoidance of double taxation rules in tax treaties. Especially carried interest, which often takes the form of shares which the investment manager

obtains in a given investment fund. Income from shares is always taxable in the country of residence of the investment manager, even if it would come from shares in a Dutch legal entity. So the first step must be to convert future income from carried interest shareholdings (ie. dividends and capital gains) into Dutch employment income. By itself this does not have to be a difficult exercise: the shares allocated to the investment managers should from the outset, before they have any intrinsic value, be allocated to a Dutch legal entity whereby the investment manager, in lieu for these shares, obtains an entitlement to an incentive payment from the Dutch entity, which qualifies as employment income (a "bonus"). This should be neutral to the Dutch entity: it will only have to pay these bonuses to its new foreign employees if and to the extent it will make a profit on the shares which it obtains from these employees. Investment managers who want to continue owning the shares in their fund(s) themselves cut themselves off from the tax treaty benefits described;

Challenge 2: what kind of Dutch employment contract is required: one for an employee or one for a director?

The big difference between income from regular employment as an employee and income from a directorship for the day–to-day application of tax treaties is the issue of where the work may be performed. In situations covered by the regular employment article of a tax treaty (usually article 15, exceptions noted) the foreign employee must perform his activities IN the Netherlands. This may of course practically limit the effectiveness of my tax panning idea. For a director, there is no need to spend time in the Netherlands; he can continue to work in his home country and/or in the investee company countries like before. So, generally speaking, from a tax treaty perspective, a Dutch directorship is "better" from an execution viewpoint than a regular Dutch employment contract as an employee.

But there is of course a general sort of restriction here: one cannot, practically speaking, make all foreign employees who are elected to participate in a Dutch carried interest transformation programme which would replace their original home country carried interest programme, directors of the Dutch legal entity (usually a "BV" company). That just is not workable and also not very logical. The home country may ignore such "directorships" if the person involved is not actually performing a director's function in the Netherlands based on "treaty abuse". The Netherlands would do so in the reverse situation, according to a guideline published by the Dutch Ministry of Finance: Dutch residents who want to benefit from exempt director's income from foreign legal entities but who do not travel to the country of the entity, will be denied tax treaty relief if their directorship is fake (there is no Dutch case law to confirm that this view has ever been the subject of a tax court case in my country, however).

And there is also a tax treaty relevance here: many countries treat foreign income from regular employment in the same manner as foreign directors' fees, but in some Dutch tax treaties, the method to avoid double taxation differs. Notably the Dutch tax treaties with "good treaty countries" France, Denmark and the Czech and Slovak Republics distinguish between employment income and directors" fees, whereby double taxation on directors' fees is avoided via the tax credit method. As explained above, the tax credit method is not the method which will bring the desired effect. So investment managers from these countries will have to accept a regular employment contract, with the consequence that they must perform their activities IN the Netherlands too. Entering into a directorship agreement would in such cases annihilate the tax benefit.

For social security, there may also be a distinction between an employee and a director: in some EU countries a director is treated as a self-employed person whilst the Netherlands will treat him/her as an employee (my country makes no distinction in these cases). Belgium is a good example here and additional precautions may be needed to avoid double social security levies.

In the French/Dutch situation I have asked my French network partners to make a number of calculations of what French tax and social security contributions savings might be achieved by routing €500,000 of carried interest income via the Netherlands over a 7 year period. As stipulated above, if the income would have been earned in France under the new French rules, these fine people would have paid 70% in France. In the Netherlands they would pay 10% only. Due to the progression clause in the French/Dutch tax treaty and due to the way the social security system in France treats foreign income, there would be some additional 25% French tax plus social security due, which brings the combined Dutch/French levy to 35%. This implies that French investment managers who would obtain their carried interest via a Dutch group entity would save themselves a whopping 50%, or €175,000, of tax NET from the idea as unfolded. How much additional gross income would one have to earn to arrive at a NET additional 175K euros? For some countries (where social security is tied to a "ceiling") the benefit could be even bigger.

Challenge 3: what Dutch legal presence is required? Do we need a Dutch "fund" or just a Dutch legal entity which owns shares in (a) foreign funds(s)?

It would of course be easiest to implement my carried interest transformation ideas in case the Dutch entity which is required to give the foreign investment managers access to the individual income tax benefits described, if the Dutch entity would be the investment fund itself. This would for instance eliminate much of the discussion above on whether there would actually be Dutch work-days, which may, as explained, be a big practical hurdle to affect my tax planning idea if the Dutch entity is not a fund itself. This question is a tough one to answer, however. From practice I know that the private equity sector is generally not keen on Dutch investment funds (exceptions noted!) for various tax and non-tax (regulatory) reasons. I can't comment to the regulatory issues for lack of sufficient knowledge, but from a tax viewpoint this question touches upon all the corporate taxation aspects of Dutch investment funds. Just briefly:

1) VAT; with VAT exemptions for banking and insurance activities (where a lot of the private equity money comes from) there is considerable risk of non-recoverable VAT; this risk is augmented by the fact that passive holding companies suffer from VAT exemptions themselves. Many private equity investor groups will therefore avoid any EU country to put their funds in and prefer the Channel Islands or Switzerland to get rid of non-recoverable input VAT.

Working with several non-EU based funds such as Channel Islands companies creates considerable risks in other corporate tax areas, by the way. Such set-ups bring along the need to interpose all kinds of special purpose companies in between, say, Jersey and the investee countries. But the tax authorities of those investee countries are increasingly challenging such SPC's for lack of substance and lack of beneficial ownership. It is expected that the OECD will soon publish a guideline on beneficial ownership, which will make the situation even worse. Such problems do not exist with investments from most EU jurisdictions, which can be described as "general purpose companies". But a VAT problem is about "known amounts of money today" and a beneficial ownership or substance issue is about "unknown amounts of money tomorrow" so most private equity investors seem to opt for the short term VAT recovery rather than avoidance of future capital gains tax;

2) The applicability of the Dutch participation exemption to foreign dividends and capital gains on exit; the Dutch tax authorities show an amazing hesitation to apply the Dutch participation exemption to private equity funds, advance ruling are hard to get in my country and the ones I have obtained contain side conditions which make the structure de facto unworkable. Despite the fact that the Dutch tax treaty network all by itself, plus the new participation exemption provisions as from 1/1/2007, would be ideal for private equity investment purposes;

3) Some technical opinions I have seen from other tax advisers that comment to "which country is best for investment funds" stipulate that a Dutch legal entity other than a fund would need to own at least 5% of the shares in a foreign investment fund to ensure the Dutch participation exemption on future dividend income and capital gains; this is not true, however: an entity in the group to which the Dutch entity belongs (in fact: the foreign fund) has to own 5% together with the Dutch entity; the Dutch

entity itself may own percentages below 5% (the "carry along rule").

So despite the fact that on paper the Netherlands is an almost ideal country to host private equity investment funds, this has not materialized. The corporate tax aspects of private equity will be addressed by me in more detail in a future article. But if the doubt which the private equity industry now has toward putting funds into the Netherlands remains, this may have a drawback on the practical feasibility of any carried interest transformation programme, of course.

Conclusions

The Netherlands offers an opportunity for non-Dutch resident employees and directors of Dutch entities to earn a substantial income part of up to several hundreds of thousands of euros over a period which should coincide with the duration of the investment fund, against a 10% effective Dutch tax plus social security rate. This rate is not available to Dutch residents, by the way. If structured well, such Dutch income elements cannot again be taxed in the home country of the investment manager, but must be exempted, under the tax treaty of that home country with the Netherlands. Since carried interest income is subjected to ever increasing tax and social security levels in parts of the world, certainly in the EU, such a "transformation" of carried interest income from locally sourced to Dutch sourced, may bring very considerable tax benefits. Both in the areas of the "progression" clause which is usually part of that same treaty and due to the social security system of the home country, part of the initially very large tax differential between the Netherlands and the home country may wash out, but even then, tax savings of 50% on carried interest income seem possible and plausible.

The precise structuring of the tax solution I have described is an exercise all by itself, due to a number of additional constraints which have to be taken into account as explained. But there certainly is hope! ■

Acquisitions in Ukraine: 12 tips on making a successful deal

Mykola Stetsenko is the Managing Partner at Avellum Partners

With the global financial crisis approaching its end, the mergers and acquisitions (M&A) activity is picking up in Ukraine. Foreign buyers are again looking at the Ukrainian market as sellers have adjusted their pricing expectations to reasonable levels. With this trend in mind, it could be useful to reiterate a few basic aspects of investing in Ukraine.

1. Any serious deal in Ukraine is done under English law. Why so?

While Ukrainian contract law is fairly developed by standards of continental Europe, our corporate law and judicial system leave much to be desired. The adoption of the new law on joint stock companies is just the first step in the chain of many reforms, which need to be undertaken to bring Ukrainian corporate law framework up to European standards. In the meantime, any acquisition of the size above US$10 million in Ukraine is structured under English law. In addition, it is often structured offshore to optimize taxation and completely eliminate impact of Ukrainian judiciary.

> **"With the global financial crisis approaching its end, M&A activity is picking up in Ukraine"**

English common law gives a choice of legal instruments currently unavailable in Ukraine. Warranties and indemnities serve as a good example. Option agreements and other instruments common in Western shareholders' agreements also prove difficult to structure and enforce in Ukraine. English law also boasts a few centuries of precedents which encompass virtually every business situation.

Having said this, a foreign buyer should be aware that Ukrainian mandatory rules will apply when buying Ukrainian shares. For instance, a Ukrainian securities broker may be required for the acquisition of shares and the settlement will have to be structured via investment bank accounts in Ukraine.

2. Legal due diligence: what to expect?

It goes without saying that legal due diligence is necessary before signing the deal. In our practice, we have come across a few problems, which are common to almost any business group.

Corporate law violations – you will certainly find them in any transaction. This is due to the past history of group's growth by way of acquiring new companies. It is very rare for assets to be purchased in Ukraine, because of taxes and loss of permits and licenses. Share acquisitions would often breach pre-emptive rights of other shareholders or lack spousal consents. Sometimes unpaid shares are sold, which is prohibited under Ukrainian law.

Public registers are not fully reliable, especially registers of court judgments, and most such remain inaccessible via the internet, meaning it is necessary to visit a notary or state authorities to obtain this information. For some registers, it takes more than 10 days to get an official response.

Past real estate acquisitions are rarely free of procedural violations. First of all, it is worth noting that Ukrainian law treats land and buildings as separate objects. Thus, title to land and buildings located on it may belong to different owners, while registration of their title is reflected in different public registers. Ukrainian land law was actively changing in the last few years, while the construction legislation has undergone at least three major reviews in the last 10 years. These legislative changes contributed greatly to varying practice and numerous inconsistencies in the procedure for the sale of land and construction permitting.

Pensions and the environment are not yet hot topics in Ukraine. Thus, the buyer should not expect extensive discussions on these matters with the sellers. The pension system is still run by the state and no issues of private pension plans will arise in the near future.

The majority of commercial contracts in Ukraine are short-term. A contract for one year is considered quite long, while a 3-year contract is definitely long-term. Apart from sophisticated office leases, a commercial contract would rarely contain notice periods for termination of more than one month.

Regulatory issues are quite common among manufacturing and FMCG companies, but so far the level of fines and penalties imposed for regulatory violations is relatively low and the enforcement of ordinances of regulatory authorities is of limited efficiency.

3. Seller's lawyers – insist on having ones from the start

Many Ukrainian sellers are not used to engaging a professional legal advisor when buying or selling business. They tend to rely heavily on their in-house legal advisor, who often has limited practical experience in sophisticated M&A. However, there is some danger in allowing a seller to negotiate with a western buyer without professional seller's advisors at the table. The buyer and its legal counsel may spend days explaining the mechanics of an English common law agreement and giving up some valuable commercial points in exchange for progress with the documentation. What often happens next is the Ukrainian seller will realize that it desperately needs professional legal advice. Eventually, the Ukrainian seller will realise the need for professional legal advice and hire a law firm to advise him on an agreement already negotiated! The seller's counsel will often bring up a lot of legal points, which the buyer thought had been already settled earlier. Hence, our strong advice – insist on having seller's lawyers at the table right from the start!

> **"The seller's counsel will often bring up a lot of legal points, which the buyer thought had been already settled earlier. Hence, our strong advice – insist on having seller's lawyers at the table right from the start!"**

4. Warranties and indemnities – strange animals for Ukrainian sellers

Ukrainian sellers are unfamiliar with the notion of warranties and indemnities, which do not exist under Ukrainian law. This means, a regular seller will often resist giving extensive warranties and will refuse to give any indemnities at all. In the view of a Ukrainian seller, once the deal is closed, it will not refund any money to the buyer. It requires great effort and professional legal help on both sides to explain to the Ukrainian seller how warranties and indemnities operate and what mechanisms are available to the seller to protect him against excessive claims from the buyer.

5. Disclosure letter – warn the seller that you want one at the start

It may sound counterintuitive to a sophisticated foreign buyer to insist on the disclosure letter, if the seller does not want to provide it. However, we strongly recommend requesting one early in the negotiations, even if the seller is reluctant to bother with preparing the disclosure letter. The simple reason for this is that the disclosure letter could flush out any "skeletons in the closet", not previously disclosed the buyer in the course of the legal due diligence. While this fact is true in many Western jurisdictions, it is especially true in Ukraine.

6. Who gives the warranties? Get proper guarantors!

It is important to bear in mind that the warranties and indemnities are worth as much as the party giving them. If the seller is dealing through its off-shore holding company, it is likely that such a company has few assets and may not be around if the buyer raises a warranty claim. Thus, we always recommend either (a) to withhold a sufficient portion of the purchase price keeping it in escrow to cover potential losses, or (b) to have a financially strong company acting as guarantor of the seller's obligations under the share purchase agreement. Personal guarantees seem to re-appear in practice, but one should remember of their limited enforceability in Ukraine.

7. Buying "as is" – risk and understanding

Ukrainian sellers will often treat the sale of business as a sale "as is" and push the buyer to accept this approach. There is great inherent danger in accepting such approach, because the buyer will expose itself to the following risks: (a) the seller may not always be co-operative in providing all requested information, (b) the financial and legal due diligence could not be sufficient to uncover all "skeletons in the closet", and (c) as discussed above, unless limited warranties on title to shares are backed by a financially viable seller or guarantor, the value of even title warranties may be very limited.

8. Deal structuring and group restructuring – discuss as early as possible

It is always a good idea to discuss early whether an on-shore or an off-shore structure will be used in your acquisition. Ukrainian sellers will often have tax minimization or reputational concerns and insist on selling a foreign holding company (Cyprus is a common domicile) with Ukrainian assets underneath it. If agreed, insist on starting the restructuring as soon as possible and monitor it closely. It normally takes around three months to properly complete a corporate restructuring for the off-shore structure.

Internal group restructuring is often required, too. Many business groups historically tend to use "nominal" shareholders, in order to avoid transfer pricing restrictions and reputational concerns. In the course of a sale to a new buyer, all independent subsidiaries will need to be brought under one roof, which also takes from 2 weeks to 2 months, depending on various factors.

9. Escrow arrangements – some work and some don't in Ukraine

A popular and handy mechanism in the west, escrow arrangements do not formally exist in Ukraine. Some commercial banks offer a similar alternative, which works perfectly with the sale of shares of a Ukrainian joint-stock company. A sale of participatory interests in a limited liability company requires a very sophisticated structuring. As a rule of thumb, documentary escrows are generally possible in Ukraine, while cash escrows are not.

10. Signing and closing – warn the sellers that you expect proper authorizations in place

As in any M&A transaction, it is worth raising the issue of proper authorizations and corporate approvals well in advance. Involvement of off-shore holding companies adds some complication to language of resolutions and powers of attorney due to the additional local law element (eg, Cypriot law), while the on-shore sale in Ukraine may require approvals of shareholders' meetings of the sellers and could impact the timing of the transaction.

11. Non-compete and non-solicitation clauses are not easily enforceable in Ukraine

Common clauses in Western share purchase agreements, non-compete and non-solicitation clauses are not easily enforceable in Ukraine. Non-compete will formally require a prior approval of the antitrust authorities of Ukraine. Non-solicitation obligations will be limited by mandatory rules of Ukrainian labour law.

12. Antitrust approvals – materiality thresholds in Ukraine are extremely low!

Virtually all good acquisitions in Ukraine are likely to require the prior approval of Ukrainian antitrust authorities against concentration. This is due to the fact that financial thresholds under Ukrainian competition law remain very low, with €12 million as the minimum turnover or total assets requirement and only €1 million for at least two of the participants in the acquisition (provided that one of the participants has €1 million in Ukraine in assets or turnover). ■

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Austria: Important changes in company law in 2011

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The Austrian legislator has the intention of changing important areas of company law in 2011. As a consequence he has drafted two new laws and made the drafts available to the public which we shall summarize briefly in the following:

The first draft is the Registered Share Conversion Act. Companies not registered at the stock exchange will have to change their shares from bearer shares to registered shares.

By this law the Austrian legislator will implement a recommendation made by the Financial Action Task Force (FATF), in its report regarding Austria published on December 1, 2009. As known, the Financial Action Task Force was set up by the leaders of the G7 countries and the President of the EC Commission at their summit meeting in Paris in June 1989, as a group of experts with the task to analyze the methods of money laundering and to develop counter measures. The measures proposed by the FATF in 2009 are a further improvement of existing regulations to combat money laundering and terrorism financing.

"The act will change the Austrian Stock Corporation Act, the Division of Companies Act, the EU Merger Law, the Limited Liability Company Act, the SE-Code and the Company Register Code, in order to simplify mergers and divisions"

To increase transparency of the shareholders structure of joint stock companies, they may in future only issue registered shares. They will have to include the following information about their respective shareholders in the company share register:

- (Company) name of the shareholder and address for service, for individuals also date of birth;
- Quantity of shares or stock identification number of shares held by the shareholder;
- Shareholders' bank account number at a credit institution, which can be used for all payments of the company to the shareholder;
- If the shareholder holds shares in trust, the prior two requirements apply to the beneficial owner.

Only listed joint stock companies are exempted from the obligation to issue registered shares and may continue to issue bearer shares. However, in the future bearer shares of listed joint stock companies must be issued in collective share certificates, to be deposited in a depositary bank. From now onward, it is prohibited for listed joint stock companies to issue share certificates to individual shareholders.

The draft of the amendment has already been issued and was sent for review to interested parties by the Federal Ministry of Justice a few weeks ago. This amendment to the Stock Corporation Act shall come into force on May 1, 2011. Joint stock companies incorporated after that date must already comply with the new regime. If necessary, existing joint stock companies will have to adapt their articles of incorporation to the new regulations until April 30, 2013.

The second draft by the Austrian legislator is the Restructuring Simplification Act. Through this code, the Austrian legislator will implement regulation 2009/109 EC by the European Parliament and the Council from September 16, 2009 regarding the reporting and documentation requirements in the case of merger and divisions (demergers) of companies.

The act will change the Austrian Stock Corporation Act, the Division of Companies Act, the EU Merger Law, the Limited Liability Company Act, the SE-Code and the Company Register Code, in order to simplify mergers and divisions.

Upstream mergers, ie. mergers of 100 per cent subsidiaries with their parents, will be simplified by dropping certain reporting requirements. Company divisions where the proportion of the participation of the shareholders will be kept unchanged will also require less reporting. Another regulation which will be eliminated by the new act is the supervisory board's duty to compile a report regarding the company division (or merger for that matter).

In case of a company division or merger, companies listed on the stock exchange will no longer be required to publish an interim financial statement. Publication requirements will be less which will reduce costs since it will no longer be necessary to publish such acts in the official pages of the *Wiener Zeitung (Amtsblatt der Wiener Zeitung)*. It will suffice to submit the documents electronically to the website *("Ediktsdatei")* of the courts.

The draft of the new law however does not only propose simplifications, it also improves the standing of creditors of companies involved in a merger or division. Creditors threatened by a company division shall henceforth have an actionable right to collateral.

In earlier changes of the Austrian Stock Corporation Act, the Austrian legislator already included regulation which requires a listed company to publish certain information regarding the company on their website. The legislator therefore has come to view a company's web-site as a means to publish important company relevant information. As a consequence, he now mandates that a company, registered at the stock exchange and thus required by law to maintain a web- site, shall register the web-address of the company web-site, hence the URL, with the company register. Companies not listed at the stock exchange will have the choice whether they want to register their web-address with the company register.

Also this draft law is in the review process and the law shall come into force later in the year.

The above summary only represents general information with regard to the proposed statutory amendments. They cannot and should not substitute legal counsel in individual cases. ■

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Polish public procurement market – a tidbit or a bureaucratic trap?

Anna Piecuch, Attorney at Law, is Head of the Department of Public Procurement at Chałas & Partners Law Firm

More and more tenders submitted in the Polish public procurement come from foreign entrepreneurs. Until recently, the subject of their interest were construction works, especially multimillion dollar contracts to build the motorways, while now it also includes, for example, telecommunications services or supplies of advanced medical equipment.

The Polish procurement market is very attractive for international concerns planning to acquire new areas of their activity. In order to achieve this goal they set up in Poland new companies or open new branches. Submitting offers, the international concerns are present in the consortium together with their Polish companies, or they take their chances with the pervasive bureaucracy, and a foreign and incomprehensible practice of clerical and, above all, legal regulations.

"The Polish procurement market is very attractive for international concerns planning to acquire new areas of their activity"

The lack of ability to correctly interpret the rules is – apart from the ignorance of the local market – the largest risk for the foreign business, including financial risk. It might appear that they haven't signed a new contract, but that they also suffer a loss due to the withdrawal of the guarantee paid earlier by the offeror.

The contract award procedures are neither simple nor transparent, even for the domestic entrepreneurs – especially at first contact. Moreover, the judicature decisions of the National Appeal Chamber (KIO), currently the sole arbiter in disputes between the awarding entity and contractor in terms of interpretation and application of rules, are uniform to avoid doubt. After a recent amendment to legislation, the fee for application for KIO decisions increased so drastically that this makes this remedy illusory.

The first barrier that the foreign entrepreneur encounters when submitting a tender is the language. The proceedings are conducted in Polish and all documents prepared by the offeror have to be prepared in Polish. This lengthens and increases the cost of its preparation. Often in the specification of essential terms of contract, especially in the case of the construction works, the offeror imposes on the contractor the obligation of the inspection of the scene of the future construction. Although such an inspection increases the cost of preparing the offer, resigning from conducting it increases the risk of performing works not covered in the documents submitted by the awarding entity, that can be found during the inspection. Also, it increases the risk of a refusal by the offeror to pay any additional fees for the construction works if the remuneration shall be paid in a lump sum.

The next barrier is the documentation that the foreign entrepreneur must submit as a proof of fulfilment of the conditions for participation in the proceedings, and that the entrepreneur is not excluded from the proceedings. This barrier can result from an incorrect interpretation of the regulation on the types of documents by the offeror, from the diversity of Polish legislation, and from the country of the offeror company's registered office. An example may be a certificate on the payment of social security and health. In Poland, the body issuing such certifications is a state organisational unit – Social Insurance Institution (ZUS). Issuing this kind of certification is formalized.

In other countries, especially where the system of social insurance has been privatized for a long time, there are no counterparts to the ZUS, and the private insurance companies often smile at the request for a certification, claiming that every insured entity has an unique customer number and that they can log into the system anytime and get an information on the amount of the insurance premiums, the dates of their payment etc. However, such a printout from the system does not fulfil the requirements of certification, and cannot be submitted as the document confirming up-to-date insurance premiums. Many entrepreneurs who are unaccustomed to such far-reaching formalism and bureaucracy are perplexed by the fact they are being called to fill the documents confirming the fulfilment of this condition – in their belief they have already supplied those documents and so they often ignore the reminder to do it.

The formalism connected with the awarding of the public contracts also concerns the matter of the experience of the contractor as well as the references held by them. The victims of such formalism are often international – it is very hard for them to understand why the offeror does not recognize the experience gained during the accomplishment of any project by one of the subjects being part of the concern while the concern claims it to be the common good. According to the provisions of the Public Procurement Law, the experience of one of the group companies cannot be treated as the experience of the whole concern; it can be used by this company being a part of the concern that submits an offer. However, it must present the required documents. In such a case, the incomprehension of the provisions and the in consequence calling of the offeror to fulfil the documents, who can also end up losing the deposit.

Thus, should foreign entrepreneurs omit the Polish public procurement market? Certainly not. Nonetheless, if the offeror would like to submit an offer, it should be thoroughly prepared or, in the best case, they should find a proper partner who could safely shepherd them through the whole mass of the rules and provisions. ■

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MENA Supplement

Annual Lunch highlights Middle East Association's key role at a time of uncertainty

Infrastructure in the MENA Region

Largest ever MEA trade mission to Algeria

The Middle East Association – promoting business and good relations between the UK and the MENA (Middle East and North Africa) region

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Annual Lunch highlights Middle East Association's key role at a time of uncertainty

A record 503 members and guests attended the Middle East Association (MEA) Annual Lunch at The Dorchester Hotel, London, on 15 March. The event, which launched the Association's 50th Anniversary celebrations, was sponsored by Europe Arab Bank. Guest of Honour was HRH Prince Turki Al Faisal bin Abdulaziz Al Saud, the former Saudi Ambassador to London.

Opening the proceedings, MEA Chairman Terry Stone commented,

"We meet at a time when there is uncertainty as to the future political and economic shape of some countries in the region. We all hope these current uncertainties will soon be resolved, in line with the wishes of each country's citizens.

"The Middle East Association was formed with the objective of promoting and encouraging closer trade relationships with the countries of the Middle East... during the past 12 months we have taken over 220 executives on 12 trade missions to the region, held 6 major conferences, 11 business briefings, 2 major lunches such as this and 18 VIP lunches.

"The Middle East market is vitally important to us...our exports to the MENA region are still more than those to China, India and Brazil combined.

"There will be a continuing need to inform and encourage UK business to look to the region for export potential and investment opportunities. The Middle East Association will be there to help and facilitate participation in these exciting markets with their enormous potential."

HRH Prince Turki Al Faisal gave a keynote speech charting the Kingdom of Saudi Arabia's political history. He highlighted in particular the Kingdom's recent achievements under King Abdullah, from the acquisition of membership of the WTO to the establishment of King Abdullah University for Science and Technology and the establishment of a dialogue between religions and cultures. He concluded *"The Kingdom is a place of progress and stability. And this progress and stability have been hard won by actions of the past which continue very much today as the nation strives for a better future."* He added, *"The Saudi leadership will tirelessly pursue its agenda of improving the government institutions to better address and improve the lives of its people - an agenda it has been pursuing for over 80 years."*

Antoine Sreih, CEO, Europe Arab Bank, commented on the Middle East Association's role over the past fifty years in fostering relationships between the UK and the MENA region, and Europe Arab Bank's role as a bridge between the UK, Europe and the region. *"I hope the coming year will see the MENA region return to stability and prosperity,"* he concluded.

Speaking after the lunch MEA Director Charles Hollis commented, *"The record number of people attending the lunch today is an indication of the importance of the MENA region to British business. The Middle East*

MEA Annual Lunch at the Dorchester Hotel, 15 March 2011

Association has played a vital role over the past fifty years in assisting and guiding British companies in doing business with the region, a role which is more important than ever given the current uncertainties."

The Middle East Association (MEA) is the UK's premier organisation for promoting trade and good relations with the Middle East, North Africa, Turkey and Iran. The MEA is an independent and non-profit making association founded in 1961 and based in London. It represents some 400 large and small companies from all business and industry sectors who together account for the majority of UK trade with the region. The Patron of the Association is HRH The Duke of York, UK Special Representative for International Trade & Investment.

"The Middle East market is vitally important to us...our exports to the MENA region are still more than those to China, India and Brazil combined"

The MEA is playing a leading role in advising British companies on the implications of the current upheavals in the MENA region. It recently held a briefing on Libya and is planning two further briefings in April on the ongoing political and economic developments in the region. ■

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HRH Prince Turki Al Faisal, (front row fourth from right); Alan Duncan MP, Minister for International Development (front row far left); MEA President, Vice Presidents and Executive Committee members; Arab Ambassadors and VIPs at the MEA Annual Lunch, Dorchester Hotel, 15 March 2011

Infrastructure in the MENA Region

Robert Graham is an Associate in Pinsent Masons' Projects and Construction Group

Many countries in the MENA region have extensive and occasionally highly ambitious infrastructure investment programmes, which present significant opportunities for contractors and suppliers across a wide range of sectors.

In this article we consider the procurement strategies that are being adopted to deliver the relevant infrastructure and the challenges that will have to be overcome together with a discussion some specific upcoming projects. However, at the time of writing, the question that is occupying most peoples' mind is what impact the current unrest will have on the project pipeline and the delivery of infrastructure.

Civil unrest

In recent weeks the world's attention has been caught by the civil unrest that has rippled through various countries in the MENA region. Already we have seen Zine al-Abidine Ben Ali ousted in Tunisia, Hosni Mubarak's resignation in Egypt and uprisings in Bahrain, Jordan, Libya and Yemen. It remains to be seen whether any more regimes will be toppled or whether the unrest will continue or spread to as yet relatively unaffected countries. Certainly governments in the region are taking notice and are attempting to quell public dissatisfaction, including in relation to escalating food prices, before material protests erupt.

Some countries in the region will be almost entirely unaffected by any form of protest. Furthermore, irrespective of whether regimes are maintained or replaced, there will continue to be a compelling and sometimes fundamental need for much of the infrastructure that has been slated for development. Whilst it is still early days, clients in the region appear to remain fully committed to the development of infrastructure in the majority of the affected countries.

There also appears to be a continued desire from the affected countries themselves to push forward with planned projects. In Egypt, for example, whilst the date for submitting proposals for the Rod El Farag Axis Road PPP has been pushed back to August and similar delays are anticipated in respect of Alexandria Hospitals PPP and both 6th October and Abu Rawash Wastewater Treatment PPPs, the PPP Central Unit has stated that the government will make available all necessary guarantees to the equity providers participating in the PPP projects and that appropriate risk mitigation mechanisms will be implemented. These are encouraging signs.

Time will tell whether the countries affected by the unrest will be able to push forward their infrastructure programmes. Much will depend on the degree of stability that is achieved following the uprisings and, for infrastructure being procured on a Public-Private Partnership (PPP) basis, the ratings allocated to the countries by Fitch, Moody's and Standard and Poor. However, for the time being, it is very much a case of business as usual albeit on a slower timeline. Indeed, there is optimism in some countries that the shifts and restructuring that are being achieved will make the procurement of infrastructure fairer, more transparent and less vulnerable to corrupt practices.

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Procurement strategy

After a relatively slow start, procuring infrastructure on a PPP basis would appear to gaining popularity in the MENA region.

Where infrastructure is "traditionally" procured, the private sector is engaged to build or design and build the relevant infrastructure and, essentially, the procuring authority pays for the infrastructure as it is progressed. Under the PPP model, instead of the procuring authority paying for the relevant infrastructure upfront, the private sector is engaged to design and build the infrastructure, raise the necessary financing and then operate and maintain the relevant infrastructure for a substantial period of time, typically between twenty and thirty years. The capital and operational costs of the infrastructure are then paid off during the life of the project either by the procuring authority or through the revenue generated by the relevant infrastructure.

One of the key perceived benefits of the PPP model is that it engages private sector expertise and drives innovation in all aspects of the construction and operation of the infrastructure. The aim being to reap the benefit of private sector efficiencies whilst also ensuring that the infrastructure is operated and maintained so as to achieve its optimum useful life. It is a common feature in the region that there is little or no maintenance of infrastructure once it has been constructed, with the result that it deteriorates much faster than would otherwise be the case.

"... procuring infrastructure on a PPP basis would appear to gaining popularity in the MENA region"

The fact that the PPP model requires the private sector to raise the finance to construct the relevant infrastructure is both an advantage and disadvantage. The advantage is that it allows countries that don't have sufficient funds to procure infrastructure now and repay the relevant costs over the life of the project, much like a mortgage. The disadvantage is that infrastructure can only be procured on a PPP basis if there is sufficient liquidity in the financial markets. The global financial crisis and its repercussions has meant that there has been very little liquidity over the last three years and has, accordingly, severely curtailed the number of successful PPP infrastructure projects in that period. Liquidity now appears to be returning to the market and it is becoming easier to raise financing for the "right" project.

The rise of PPP?

The way in which infrastructure is procured in the MENA region differs from country to country and is generally a mix of traditional procurement and PPP. Historically, the PPP model has been most successfully rolled out in respect of independent power and water projects (IWPPs) and independent power projects (IPPs), with such projects having achieved financial and commercial close in a range of countries including Bahrain, Oman, Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates.

Whilst some countries appear to be turning their back on the PPP model other countries are embracing it.

The Kingdom of Saudi Arabia has restructured a number of would be PPP projects into traditionally procured projects. An example of this is Ras Az-Zour IWPP which was re-tendered as two EPC Contracts, one for power generation and one for desalination. Abu Dhabi also seems to be undecided on the benefits of PPP. The procurement of Mafraq-Ghweifat Highway PPP project is suffering significant delays as the private sector is being asked to reduce its price substantially and we understand that a traditional procurement model has be selected for a second highway project in preference to PPP.

Unless properly structured, PPP projects can sometimes lack flexibility and remove a procuring authority's ability to respond to demands and circumstances as they occur during the life of the infrastructure. Requiring the private sector to raise finance will almost inevitably cost more than it would cost the government to do so. Against this back drop it is perhaps unsurprising that oil rich countries such as Abu Dhabi, Qatar and the Kingdom and Saudi Arabia pick and chose which projects are procured on a PPP basis. That is not to say that PPP is entirely out of favour in such countries, the Kingdom of Saudi Arabia has recently procured the PP11 IPP project on a PPP basis and the Abu Dhabi Department of Transport is currently seeking to procure a number of car parks on a PPP basis.

A number of countries are actively embracing PPP, for a variety of reasons.

Egypt passed its PPP law in 2010, has formed a PPP Central Unit to oversee the procurement of PPP infrastructure projects and, just before the unrest erupted, published the long awaited Executive Regulations to the PPP law. With the path finding New Cairo Wastewater Treatment PPP project recently having achieved commercial close, Egypt is hoping to drive through an ambitious pipeline of PPP projects in a range of sectors including power, highways, hospitals and waste water treatment plants notwithstanding recent events.

Kuwait has also passed a PPP law and has formed the Partnerships Technical Bureau to oversee the delivery of up to thirty two PPP infrastructure projects. The nature of the identified projects and the anticipated delivery schedule is highly ambitious, but the Partnerships Technical Bureau is well advanced in the appointment of transaction advisors for a number of projects including in respect of a metro, a railway, airport infrastructure, the development Failaka island, a waste water treatment plant, a telecommunication network and a postal network. One of the key drivers behind Kuwait's PPP program is the development of a sizable and efficient private sector as well as the delivery of overdue infrastructure.

Dubai is on the cusp of issuing a PPP law and is contemplating implementing several PPP projects, including in respect of water taxis and hospitals. Notwithstanding the fact that it is still subject to emergency decree, Syria is experimenting with PPP and is seeking to procure the development of Damascus airport and highways on that basis. Iraq is seeking to procure up to four power plants using the IPP model.

Infrastructure opportunities

Whether infrastructure is to be procured on a traditional basis or a PPP basis is likely to be largely immaterial to the majority of people, other than equity investors, debt providers and financial, technical or legal advisors.

The key issue is that a number of MENA countries have a clear and well developed strategy to make a massive investment in infrastructure over the next ten to twenty years and that, accordingly, there are significant opportunities in the region. At a time when many companies are facing difficult and uncertain times in their domestic jurisdiction, the pipeline of MENA projects could be a blessed relief.

In addition to the PPP programmes referred to above, several themes of infrastructure investment in the region can be identified.

Power and water

The region's consumption of power and water endlessly increases year upon year, even in the face of the global financial crisis. Until there is a political will to temper consumption either by seeking to pass the actual cost of producing power and water on to the consumer or by other means this is unlikely to change. As a result, there will continue to be investment in power generation and desalination infrastructure in the region.

It is possible to detect the slow development of a consciousness of environment issues in the region. Accordingly, whilst wastewater is not yet considered the asset that it ideally should be, there is a requirement to install wastewater treatment capacity in almost every country in the region and this is likely to continue for the next decade at least. As water becomes increasingly scarce and increasingly costly to produce, as it inevitably will, the importance of effective and efficient wastewater treatment facilities will increase.

Another sector of infrastructure development that is of particular interest is that of nuclear power. The United Arab Emirates is leading

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the region in the development of peaceful nuclear energy, with the procurement of up to four nuclear power plants at the Braka site close to the border with Saudi Arabia. However, other countries have stated that they are also considering nuclear power, including Bahrain, Egypt, Jordan, Kingdom of Saudi Arabia and Kuwait. Whilst it is unlikely all of these countries will ultimately embark on nuclear programmes, at least some will.

Railways

One of the more curious recent trends in the MENA region is the desire to develop heavy and light rail systems. Last year saw the full opening of the first stage of Dubai's metro system, the red line, which has been hailed a success by the Roads and Traffic Authority in Dubai. Since the inception of the Dubai metro many other metros have been proposed in the region, with a significant number being at advanced stages of procurement. Notable examples include Abu Dhabi metro, Doha metro, Kuwait City metro and Mecca metro.

In addition there are also plans for a Gulf Cooperation Council (GCC) railway network. The GCC railway is intended to connect the GCC countries, being Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. The railway is likely to be close to two thousand kilometres long, has an anticipated completion date of 2017 and is currently estimated to have a total project value of twenty five billion US dollars.

Each country in the GCC is also seeking to develop its own domestic railway network which will link with the GCC railway. The total railway network could cover as much as nineteen thousand kilometres.

The Kingdom of Saudi Arabia the most advanced in developing its rail infrastructure and has three projects currently under construction, being the one thousand kilometre East to West Saudi Landbridge project, the two thousand four hundred kilometre North to South railway and the Haramain high speed rail link between the holy cities of Mecca and Medina.

Other GCC countries are also taking significant steps to develop their rail networks. The United Arab Emirates has established the Union Railways Company to deliver its rail network, with the first packages expected to be tendered this year. Qatar has engaged a joint venture of Qatari Diar and Deutsche Bahn to develop Qatar's railway and metro system, including the "Friendship Bridge" to Bahrain. Kuwait's Partnership Technical Bureau is in the process if procuring a transaction advisor for Kuwait's rail road, which will be procured under the PPP law.

Whilst the GCC railway will undoubtedly benefit the region, it remains to be seen whether full extent of the heavy rail network will be realised or whether all of the currently proposed metro systems will make it off the drawing board. Much will depend on whether real benefits will be derived from their development rather than them simply being trophy assets.

Qatar

Qatar is coming to the end of a period of significant development of its hydro-carbon infrastructure and is beginning to reap the return on its investment. The Qataris are now looking to direct the resultant revenue stream into developing their social infrastructure. This would have been the case in any event, but there is now the additional infrastructure requirement of hosting the 2022 World Cup.

There is no doubt that those companies that are already established in Qatar are in a prime position to win a significant amount of work over the next decade. Furthermore, there may still be opportunities for new entrants to participate in the development of world beating infrastructure.

Conclusion

As can be seen, there is no shortage of infrastructure opportunities in the MENA region. It is likely that the region will lead the way out of the global downturn and could provide welcome work flow for companies that are facing challenging times in other jurisdictions.

Whilst the world is currently focused on the MENA region because of the current unrest, it is to be hoped that it will prove to be only a temporary distraction and that stability is achieved quickly. For the time being it appears that projects will progress albeit on revised timelines.

In any event, some of the countries with the most extensive infrastructure investment programmes are likely to be immune from events that are being played out elsewhere in the region and should provide infrastructure opportunities irrespective of what happens elsewhere. ■

Middle East Association

Largest ever MEA trade mission to Algeria

The Middle East Association's Tom Cook, accompanied by Director General Charles Hollis, led a highly successful trade mission to Algeria in January 2011, building on the January 2010 mission led by Feride Alp. With 36 delegates representing 24 companies it was the largest UK delegation to visit the market for many years and sent a positive signal to the Algerians of the strong British interest in the market. The mission was very well received, obtaining extensive coverage in both the Arabic and French local press.

With its economic strength and plans for significant government spending over the next five years, Algeria is a market of huge potential for British companies. GDP growth in 2010 is estimated at 4.5%, and Algeria enjoys one of the largest GDP per capita income rates in Africa as a result of its oil and gas wealth. There is a $286 billion spending programme for 2010 - 2014 focusing on infrastructure projects including housing, schools hospitals, water and sewerage systems, roads, railways and new port facilities. New measures to attract investment have been introduced, such as tax exemptions. As Algeria reassesses its relations with France and seeks to diversify its trading partners, British companies are knocking at an open door. UK exports to the market have doubled in the last five years and reached £320.5 million in January-November 2010.

The MEA delegation comprised representatives of both large companies such as Rolls Royce, AstraZeneca and BAE Systems, as well as SMEs such as Alperton International, Grama Media and SeerPharma. It also included representatives from UKTI and ECGD (Export Credits Guarantee Department). Sectors ranged from pharmaceuticals, education and training, agriculture, and engineering, to healthcare, communications and insurance.

The mission was inaugurated with a very successful reception, hosted by HM Ambassador Martyn Roper. Kindly sponsored by United Insurance Brokers (UIB) and AstraZeneca, it was very well attended by senior officials and local businessmen and set the tone for the rest of the mission. The reception was highly appreciated by all the delegates. Mr Said Moussi, Under Secretary for Europe and the North at the Ministry of Foreign Affairs, welcomed the delegation and reiterated his government's support for British business, stressing the importance of partnerships. He was a key figure in organising the many high level meetings which took place at the various Ministries.

On the following morning, a B2B meeting, sponsored by RedMed Group, was opened by Mme Fatima Zohra Bouchemla, a partner of Lefevre Pelletier & Associés, who outlined the key elements of the

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new investment laws in Algeria and reiterated the government's support for foreign investment and partnerships. The many meetings were fruitful, with one company signing up a local partner.

At the Ministry of Telecommunications, delegates were met by a strong team of Ministry department heads and very positive discussions were held. One delegate discussed a potential agency agreement on behalf of Algérie Telecom; another secured a follow-up meeting the next day for a drill down presentation of training and security software. Meetings were also held with senior officials at SONATRACH and SONELGAS (the state oil company and state electricity and gas utility respectively), each attended by more than 25 delegates. Meetings at this level in these two key pillars of the Algerian economy are notoriously hard to obtain, and so mission delegates were pleased at this access. Both meetings led to follow up sessions and opportunities for several companies.

At a meeting at the Ministry for Industry and Investment, Ministry representatives and directors of three large public companies were present, and good contacts were established for follow up. Delegates also attended a presentation at ANDI (*Agence Nationale de Développement de l'Investissement*) where the Director General, M. Mansouri, briefed them on the various Algerian government bodies established for the support of inward investment.

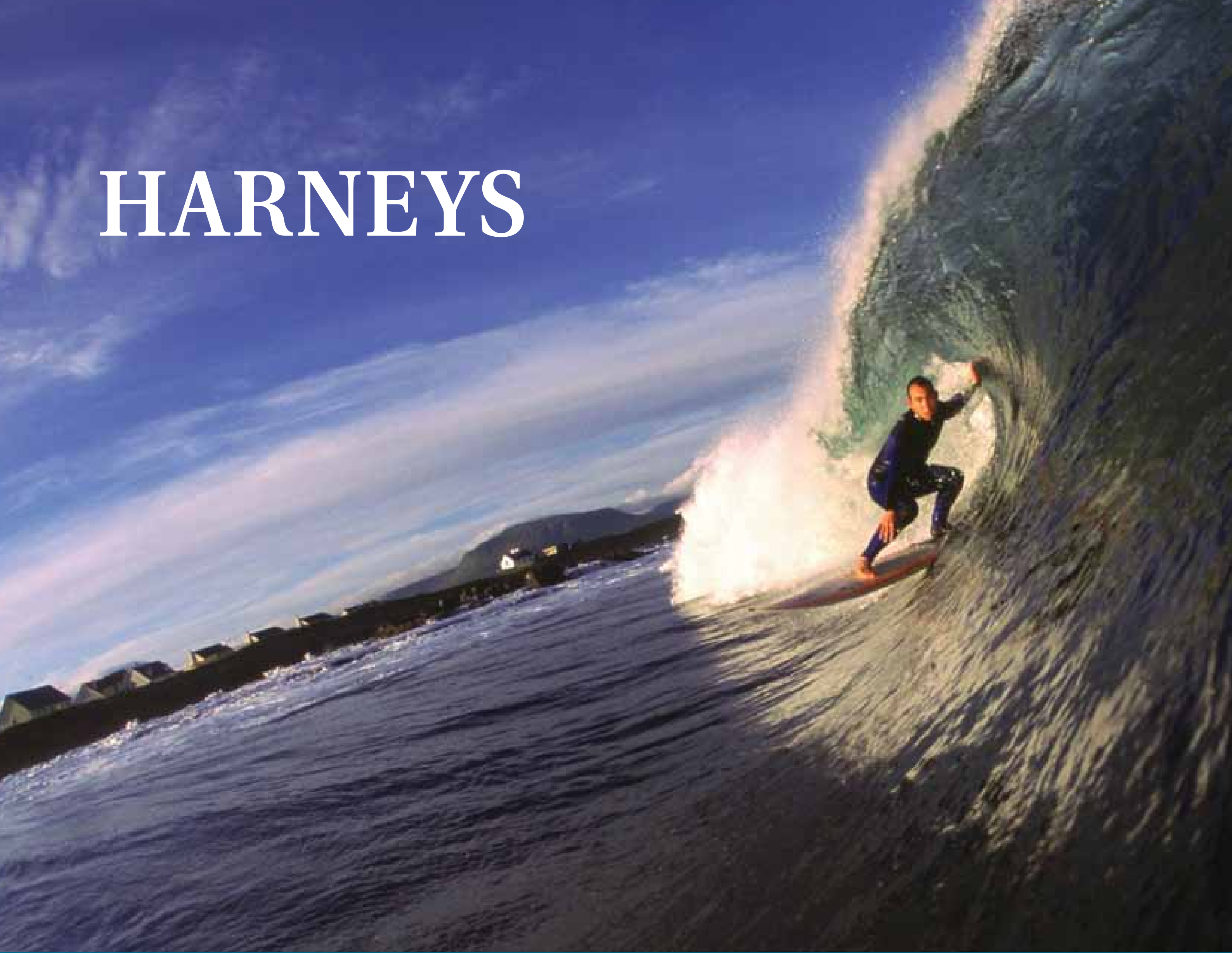
The key messages throughout the mission from the MEA side were that British business is looking for long term relationships for sustainable business partnerships, and from the Algerian side that they are looking to lower their import requirements by promoting local manufacture.

Investment is welcomed through local partnerships with Algerian entities. The Algerians are keen for the transfer of technology and expertise, and the training companies on our mission were particularly well received.

Feedback from mission delegates has been extremely positive. Ian Mann, Managing Director of LCT (London Corporate Training), represented the company on its first venture into the Algerian market and commented, *"The mission has been a great success. The organisation was excellent; and the Embassy staff are to be congratulated and thanked for all the hard work that went into the arrangements. Meetings with major organisations and government Ministries went like clockwork, and the reception at the British Embassy was one of the best I have ever attended. For LCT the icing on the cake has been the appointment of a first class agent who has hit the ground running, attended meetings with me and looks certain to find us a lot of business. We see great prospects for success in Algeria."* ■

For further information on the Middle East Association's Algeria initiatives, contact Tom Cook, tel: 00 44 (0)20 7839 2137, email: tom@the-mea.co.uk.

Charles Hollis, Director General MEA (front row, third from left) with Mebrouk Bouzenboua, Director of Distribution, SONELGAZ (front row, centre) and MEA mission members'



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