



The EU Lisbon treaty at a glance



On 13 December 2007, EU leaders signed the Treaty of Lisbon, thus bringing to an end several years of negotiation about institutional issues. The Treaty of Lisbon amends the current EU and EC treaties, without replacing them. It should provide the Union with the legal framework and tools necessary to meet future challenges and to respond to citizens' demands.

A more democratic and transparent Europe

It has aimed to strengthen the role of the European Parliament and national parliaments; created more opportunities for citizens to have their voices heard and a clearer sense of who does what at European and national level. The European Parliament, directly elected by EU citizens, will see important new powers emerge over the EU legislation, the EU budget and international agreements. In particular, the increase of co-decision procedure in policy-making will ensure the European Parliament is placed on an equal footing with the Council, representing Member States, for the vast bulk of EU legislation.

There should be a greater involvement of national parliaments to have greater opportunities to be involved in the work of the EU, in particular thanks to a new monitoring mechanism designed to ensure that the Union only acts where results could be better attained at EU level (subsidiarity). Together with the strengthened role for the European Parliament, it should enhance democracy and increase legitimacy in the functioning of the Union.

There should be a stronger voice for citizens: thanks to the Citizens' Initiative, one million citizens from a number of Member States will have the possibility to call on the Commission to bring forward new policy proposals. There should be greater clarity about roles: the relationship between the Member States and the European Union should become clearer with the categorisation of competences.

The Treaty of Lisbon explicitly recognises for the first time the possibility for a Member State to withdraw from the Union.

A more efficient Europe

The new treaty has aimed to create more simplified working methods and voting rules, streamlined and modern institutions for an EU of 27 members and an improved ability to act in areas of major priority for today's Union. Effective and efficient decision-making is a key objective with qualified majority voting in the Council, which will be extended to new policy areas. From 2014 onwards, the calculation of qualified majority will be based on the double

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majority of Member States and people, thus representing the dual legitimacy of the Union. A double majority will be achieved when a decision is taken by 55% of the Member States representing at least 65% of the Union's population.

A more stable and streamlined institutional framework is envisaged. The Treaty of Lisbon creates the function of President of the European Council elected for two and a half years, and introduces a direct link between the election of the Commission President and the results of the European elections, providing for new arrangements for the future composition of the European Parliament and for a smaller Commission, and includes clearer rules on enhanced cooperation and financial provisions.

The Treaty of Lisbon improves the EU's ability to act in several policy areas of major priority for today's Union and its citizens. This is the case in particular for the policy areas of freedom, security and justice, such as combating terrorism or tackling crime. It also covers other areas including energy policy, public health, civil protection, climate change, services of general interest, research, space, territorial cohesion, commercial policy, humanitarian aid, sport, tourism and administrative cooperation.

A Europe of rights and values, freedom, solidarity and security



The Treaty introduces the Charter of Fundamental Rights into European primary law, providing for new solidarity mechanisms and ensuring better protection of European citizens. For example, the Treaty details and reinforces the values and objectives on which the Union is built. These values aim to serve as a reference point for European citizens and to demonstrate what Europe has to offer its partners worldwide. The Treaty of Lisbon preserves existing citizen's rights while introducing new ones. In particular, it guarantees the freedoms and principles set out in the Charter of Fundamental Rights and gives its provisions a binding legal force. The Treaty of Lisbon preserves and reinforces the "four freedoms" and the political, economic and social freedom of European citizens.

The Treaty of Lisbon provides that the Union and its Member States act jointly in a spirit of solidarity if a Member State is the subject of a terrorist attack or the victim of a natural or man-made disaster. Solidarity in the area of energy utilization is also emphasised. The Union will obtain an extended capacity to act on freedom, security and justice, which should bring direct benefits in terms of the Union's ability to fight crime and terrorism. New provisions on civil protection, humanitarian aid and public health also aim at boosting the Union's ability to respond to threats to the security of European citizens.

Europe on the global stage

The Treaty of Lisbon is aimed to give Europe a clear voice in relations with its partners worldwide by bringing together Europe's external policy tools, both when developing and deciding new policies.

There will be a new High Representative for the Union in Foreign Affairs and Security Policy, and Vice-President of the Commission, to help increase the impact, the coherence and the visibility of the EU's external action. A new European External Action Service will provide back up and support to the High Representative.

Finally, the Union becomes a legal entity. This implies the ability to enter into a contract, notably to be part of an international convention or be a member of an international organisation, but it is aimed at strengthening the Union's negotiating power, making it more effective on the world stage and a more visible partner for other countries.

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The UK AIM and PLUS markets for growing international companies.

This article provides an overview of some UK market options for growing international companies

AIM

Originally known as the Alternative Investment Market (AIM), it was launched by the London Stock Exchange in 1995. Since then it has become firmly established as a leading market, if not the world's leading market, for smaller growing companies from all parts of the globe who are at a stage of development where a listing on the main market of the Exchange is not yet appropriate. Over 2,800 companies have chosen to use the market to gain a public quote.

Why join a public market?

Companies might consider going public on the AIM market for various reasons, including:

- To provide access to capital for growth – this will give the company the opportunity to raise finance for further developments, both at the time of the flotation and later through further fund raisings.
- To create a market for the company's shares – this will broaden the shareholder base and give existing shareholders a valuation for their investment.
- To place an objective market value on the company's business.
- To incentivise and reward employee commitment - by the use of share option schemes.
- To increase the company's ability to make acquisitions – its quoted shares can be used as currency.
- To create a heightened public profile – increased press coverage and reports by analysts will help maintain liquidity in the company's shares.
- To enhance status with customers and suppliers – they will be reassured by the regulatory processes and disclosure involved in the AIM market.

Why do companies use AIM?

- The entry requirements are set up for smaller growing companies – no trading record is required (normally three years on the main market). There is no minimum level of shares to be in public hands (normally 25% for the main market). There is no minimum market capitalisation.
- Appropriate regulatory regime – this allows businesses to learn to deal with life as a public company. The admission documents are usually not checked first by the London Stock Exchange or by the UK Listing Authority (unless the admission document is also a prospectus under the EU Prospectus Directive).
- Straightforward acquisition rules – this facilitates growth by means of acquisition. No prior shareholder approval is required for most transactions (except for reverse takeovers or disposals resulting in a fundamental change of business).
- Unquoted status for tax purposes – this may be an advantage for some companies.

AIM's recent growth

In 2003 there were about 750 companies on AIM with a market value of £18 billion. There are now nearly 1,700 companies with a market value of over £100 billion.

The amount of money raised on AIM is growing even faster. In 2004 AIM companies raised 4.65 billion, in 2005 AIM companies raised £8.9 billion and in 2006 AIM companies raised over £15.6 billion. The value of shares traded has been increasing sharply during the last few years. In 2003 the turnover amounted to over £6.6 billion. This increased to over £18.1 billion in 2004, to over £42 billion in 2005 and over £58 billion in 2006.

More international

While AIM was initially launched as a market mostly for UK businesses, the market has been internationalised since 2000. In 2006 there were 124 new international joiners. As at today there are now over 450 overseas companies from nearly 30 countries who have joined AIM.

AIM has been focussing on mainland Europe, the US and the emerging markets of India, China and Russia. It has continued its long standing relationship with companies from territories such as Australia and Canada.





During 2006 AIM attracted issuers from countries such as the Netherlands, Italy, Sweden, Israel, Cyprus, the USA, India, Singapore, South Africa, Ireland and Bermuda, as well as many from the UK.

How to join AIM – getting the team together

The company will need to appoint advisors to assist it during the admission process.

- The 'nomad' – Every AIM company must appoint a nominated advisor, a firm of experienced corporate finance professionals approved by the exchange, who will support its application and help it meet its ongoing obligations. The nominated advisor (or nomad) must make a judgement that the company is appropriate for the AIM market. He will explain the AIM rules to the company's board and ensure that the directors are aware of their responsibilities, including for the accuracy of the information in the admission document. The role of the nomad is so important that if the company ceases to have a nomad, trading in its securities will be suspended.
- Broker – this is a securities house which is a member of the London Stock Exchange. It will be responsible for the fundraising at flotation and for ensuring a successful aftermarket in the shares by bringing together buyers and sellers. The broker may be the same firm as the nomad.
- The legal advisor – he will oversee issues such as due diligence on behalf of the nomad, changes to directors' contracts, and verification of the statements in the admission document. He should provide ongoing advice to the board on its legal responsibilities.
- The reporting accountant – he will conduct an independent review of the company's financial records and will assist in preparing the financial information required to be published.
- Public/investor relations advisor – the company may choose to appoint one to manage the flow of information during the flotation.
- Other advisors – other specialist advisors may be required depending on the type of business.

Admission document

The principal document to join AIM is known as the admission document. It must provide the market with all the information considered relevant to the company's trading on a public market and must remain available on the company's website after admission.

The contents of the admission document are set out in the AIM rules. They cover key areas of business operations, financial position and management that are important to investors, e.g. a description of the company's activities, historical financial information, details of the board of directors, details of the company's share capital, etc. Using the admission document shares are usually "placed" by the broker with professional investors.



Tjeerd Wiersma

In some instances the admission document may also need to comply with the requirements of the EU Prospectus Directive. This generally only applies in limited circumstance, particularly where a company is making a full public offer of its shares, a rights issue or, in some cases, a take over using their shares. In this instance further information will need to be included and the document will need to be approved by the UK Listing Authority.

In addition a pre-admission announcement needs to be made at least 10 working days before admission containing key information, with other supporting documents. There is an admission fee and an annual fee. A company's shares must be freely transferable and be capable of electronic settlement. Where a company has not been revenue earning or financially independent for two years, directors and substantial shareholders are restricted from selling their shares for a period of 12 months.





AIM designated markets for international companies

To make it easier for smaller growing companies across the world to join AIM, a fast track process for admission has been developed for companies who have their securities traded on certain other stock markets. Companies traded on such markets for at least 18 months can apply to have their shares admitted to AIM without publishing an admission document. Companies using this route need to make a detailed admission announcement at least 20 working days in advance which includes:

- Confirmation that the company has complied with the requirements of the AIM designated market.
- Details of the business of the company and its intended strategy.
- A description of significant changes in the financial trading position of the company since the last accounts.
- A statement that the directors have no reason to believe that the working capital will be insufficient for at least 12 months.
- The rights attaching to the shares and the arrangements for settling transactions.
- Any other information which would be required of an AIM applicant.
- The address of a website containing the company's last annual accounts, with a financial year end in the last nine months.

This process works on the basis that the overseas company is not making a public offer of its securities at the same time.

The stock exchanges designated by AIM currently include:

- Australian Stock Exchange
- Deutsche Borse
- Euronext
- Johannesburg Stock Exchange
- Nasdaq
- New York Stock Exchange
- Stockholm Sborsen
- Swiss Exchange
- Toronto Stock Exchange

Life as an AIM company

An AIM company is subject to ongoing regulations. The main principle is that the company must communicate with the market to ensure that investors are aware of its financial position and prospects and can make an informed decision on the value of the shares. So the market must be notified without delay of any developments that could have an impact on the company's share price.

An EEA incorporated business must also ensure that its published accounts conform to International Financial Reporting Standards are published within the required deadlines, six months for year end accounts and three months for half year accounts. For companies incorporated outside the EEA, other accounting standards may be accepted including US, Canadian and Japanese GAAP and Australian IFRS.

Timetable and cost of admission to AIM

24 weeks – appoint and instruct advisors and agree timetable.

12 weeks – review problem areas, produce draft admission document, produce other documents in first draft, initial review of pricing issues, review PR presentations, host analyst presentations.

6 weeks – continue drafting meetings, carry out due diligence, hold PR meetings and road shows, submit 10 day announcement to exchange of intention to join AIM.

1 week – all documents completed and approved, pricing and allocation of the offer, register admission document.

The cost of an AIM admission can be anything from £200,000 to £1 million in extreme cases, and the brokers will charge a fee of 2 – 5% of the funds raised. AIM is cost effective for companies seeking to raise funds of up to £100 million.

PLUS markets

The PLUS market is the re-branded Ofex market. It is now a recognised investment exchange for UK legal purposes. It has its own PLUS market. Around 1,000 small and mid cap companies are currently on the "PLUS





quoted" market. This offers a smaller alternative to AIM. PLUS also has a trading platform known as a "secondary market" for trading securities listed on AIM and other markets. "PLUS traded" describes companies which are listed/quoted on other markets but have their shares traded on PLUS.

PLUS quoted market

PLUS quoted is the market that is dedicated to the needs of smaller growing companies seeking access to equity finance. PLUS is proving to be a successful source of equity finance for companies too small to list on the AIM market.

The advantages of a quotation on PLUS are the same as those for AIM:

- Enhance the company's profile.
- Give the market confidence that the company has gone through a rigorous scrutiny process.
- Provide an independent valuation for the business.
- Allow the company to use its shares as an acquisition currency.
- Help existing shareholders to realise the value of their investment.
- Support employee share schemes to incentivise staff.
- List a cash shell under £3 million.

International companies on PLUS

PLUS can provide international companies who are already listed in their home jurisdiction with a straightforward and simple admission process, as all the documentation required should already have been filed. Providing that this documentation is up to date and that there has been no material change in the business, the company can use its existing filings as a basis for satisfying the admission requirements of PLUS.

International companies who want a primary market quotation on PLUS will follow the same admission process as a UK company which applies to PLUS.

Admission process to PLUS

The process is more flexible than AIM. The main requirements are:

- The company needs to appoint and retain a PLUS corporate advisor.
- The company is likely to need to retain a broker if it wants to maintain good investor relations or raise funds.
- The company should have one independent non executive director.
- Published reports and accounts no more than nine months old.
- Adequate working capital.
- No restrictions on the transfer of shares.
- Shares which are eligible for electronic settlement.
- A number of other advisors will need to be appointed including solicitors, accountants, a registrar and possibly a PR agent.

Timetable and costs of admission

Joining PLUS can be cost effective for those companies looking to raise funds initially of up to £5 million. It normally costs at least £100,000 to raise these sort of funds. It costs less than this if the shares are simply being introduced. Admission can take less than 2 months to arrange.



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Factors to consider when starting a U.S. business

The following are some suggested issues, from a Florida based perspective, which should be reviewed with attorneys and accountants prior to undertaking business in the United States.

Trademarks

Frequently a name is valuable and should be trademarked throughout the United States by registering it in Washington, D.C. This will involve a name search of all uses throughout the United States. If not used by other persons, the trademark and logo can be registered. If the name is already being used, but only in one particular state or location, then it may be possible to register and protect its use throughout the United States with the exception of that particular area. Filing of a fictitious name application alone does not give any ownership rights of that name to the person who registered such name. The only method of legal protection is the registration of the same with The U.S. Patent and Trademark office in Washington, D.C.

Legal entity: operations

Choice: To avoid a double tax called a "branch profits tax" and also to prevent disclosure of foreign financial statements in the United States and possible reallocation of profits between a foreign country and the United States by the United States taxing authorities (IRS), a separate Florida corporation, and not the foreign parent or another offshore company, is generally organized to operate the United States business. In the case of possible expansion outside of Florida into other states, the Florida corporation would either register to do business in those states (a relatively simple procedure) or most likely incorporate a subsidiary to operate in the new state so that profits in each state will be separate for state taxes.

Formation: A Florida company is easily formed. A Florida corporation requires only one director and a President and Secretary who may all be the same person. This person and any stockholders can be foreign. Any additional number of directors and other corporate officers can also be named, and there is no fixed number of stockholders nor is there any minimal capital. A company can be organized with \$1.00 of capital. Organization takes only a few days, and costs are minimal.

Accountant: There are no requirements to have an accountant although one is usually retained to help organize the initial books and then to provide private monthly statements to the company's officers and to file the annual tax return.

Banking: Once a bank account is opened, generally the banking institutions require copies of the corporate documents, acts approving the signatories and some knowledge of the persons involved with the company.

Employees: There are no minimum requirements to the number of employees. Employees have few governmental prescribed rights: they generally may be hired or fired at will without indemnification and employment is usually a matter of private agreement. Usually a clerk will have two weeks vacation, 3-5 sick days and work 9:00 a.m. to 5:00 p.m. Of course, this may vary by agreement. Usually employers also pay health insurance, which can cost between \$3,000 to \$5,000 annually depending on the plan and age of the employee. Coverage for an employee's dependents is often paid by the employee.

Immigration: Employees must have work visas. Non-management employees will need permanent residency visas, often called "green cards". There is a large Portuguese - Spanish speaking population in Miami, and no problems should be encountered in finding highly qualified personnel. Employees from a foreign country may be transferred by means of an L-1 Visa or an H-1 Visa and if the country qualifies by treaty with the United States - an E-1 or E-2 visa. The H-1 Visa is used to bring a foreign employee on a temporary or seasonal basis. This visa category is reserved for foreign employees of "distinguished ability or merit" and "professionals". In addition, a B.A. or B.S. degree from an accredited U.S. or foreign University is required to qualify for this visa. Also, the job position an employee will assume should be the type which necessitates such a degree. The L-1 visa is available for business executives who are transferred to the United States, have continuously worked in an executive position for over a year, and will come to the United States to assume a similar position in the same company, subsidiary or affiliated branch. Also the L-1 visa is issued to personnel with specialized knowledge of firm operations. E Visas require substantial investment or an import-export business with the home country.





Insurance: The United States is a litigious society. Some possible actions are lawsuits filed against companies or individuals, such as (a) Personal injury suffered as a result of a slip or fall at a place of work or on another premises. Damages could be based on physical injury, doctors costs, lost wages, mental distress, and at times, punitive damages may be awarded by a judge; (b) Damages as a result of discrimination at work or in business. Discrimination may be as a result of race, religion, age, sex or physical disabilities. A related cause of action is sexual harassment between co-workers and/or two individuals; (c) Employee liability if they are hurt or cause hurt in the course of their employment; (d) Malpractice liability by a professional in the course of performing services to a client; (e) Product liability – injury or loss caused by product manufacture defects.

These risks are usually covered by insurance for workmen’s compensation, liability insurance for third party legal suits, and also all risk insurance, to protect property against fire, storm and other casualties.

United States Taxation

Federal & State Income taxes - In the United States, all individuals are subject to Federal income taxes at tax rates ranging from 15% to 39.6%. Individuals who are considered U.S. persons, which include U.S. citizens and resident aliens, are subject to tax on their worldwide income, while individuals who are classified as non-resident aliens for tax purposes are taxed on their U.S. sourced income. Certain types of income are subject to a flat 30% rate to individuals who are non-residents for tax purposes. Generally U.S. individuals pay capital gain taxes at a rate of 20%, while non-resident aliens are exempt from capital gain tax on their non-real estate capital gains.

A non-resident alien's status is determined based on whether they have a green card, and on the number of days present in the U.S. Accordingly, an analysis of whether an individual will be considered a U.S. person for tax purposes is very important, and planning ahead for a future change of status can be invaluable. It is important to note that non-resident alien status for immigration purposes is not necessarily equivalent to the individual's status for U.S. income tax purposes. Individuals that reside in Florida are not subject to a state income tax, since Florida does not impose such a tax. However, the majority of the states do impose income taxes on individuals, and many cities and local municipalities do as well.

Domestic corporations, and foreign corporations doing business in the U.S. are subject to Federal graduated tax rates ranging from 15% to 35%. A company computes taxable income by taking their gross revenues and deducting their business expenses. U.S. corporations that pay dividends to a foreign shareholder, or other types of fixed, determinable periodic income to a foreign shareholder or other foreign person or corporation, will be required to withhold tax at a 30% rate, unless a lower tax treaty rate applies. However, distributions paid to a foreign shareholder upon the liquidation of a U.S. company would generally not be subject to withholding tax. Corporations doing business in Florida are subject to Florida income tax at a flat rate of 5.5% on Florida taxable income in excess of \$5,000. The initial \$5,000 of taxable income is not subject to Florida income tax. A corporation will generally be subject to tax in all states that it is considered to be doing business. In addition, city and local taxes may apply in certain areas of the Country.

Payroll Taxes - The taxable wage base subject to the social security tax is \$65,400 applied at a 12.4% rate, of which 50% is paid by the employee and 50% is paid by the employer. In addition, all wages are subject to medicare taxes at a rate of 2.9%. Like the social security tax, the medicare tax is paid 50% by the employee and 50% by the employer, but there is no wage base limit on this tax. The Federal Unemployment Tax Rate is 6.2% on the first \$7,000 of wages for each employee. This tax is paid entirely by the employer. Other state and local payroll taxes may apply, for example in Florida where wages are subject to Florida unemployment tax at a maximum rate of 5.4% on the first \$7,000 of wages for each employee. This tax is credited against the Federal Unemployment tax so that it usually does not result in an additional tax burden to a company.

Sales Tax - Florida has a 6.5% sales tax on sales of merchandise at retail, added to the invoice. Sales that are to be shipped out of the United States, are not subject to sales tax. Each state and city within the United States has its own sales tax laws.

Finally, many persons desire anonymity in their United States operations and often use Americans as their corporate officers to avoid disclosure of their own names and employ foreign corporations incorporated outside the U.S. to hold the stock of their U.S. corporations.

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The New Luxembourg Specialized Investment Fund is born

On 13th February 2007, the Luxembourg Parliament passed a law that introduced the specialized investment fund (SIF) regime. The new law provides a more flexible framework for specialized investment funds. The SIF is a lightly regulated and tax efficient fund. The SIF gives fund promoters an on shore alternative to consider (as compared to traditional offshore jurisdictions such as Cayman and BVI) when deciding on the jurisdiction for setting up a fund and the type of fund vehicle to use. What are the features and benefits of a SIF?

Eligible investors – broad application

The SIF law offers a broader field of application compared to the law of 1991. Even though it is also reserved to certain investors only (the law of 1991 only concerned institutional investors), there is a wider range of eligible investors, which are included in the notion of well-informed investor:

- institutional investors (entities that invest ...);
- professional investors (entities with the meaning of...); and
- and any private individual who (a) confirms formally that he adheres to the status of well-informed investor AND (b) invests a minimum of 125.000 EUR or has obtained a certificate of (i) a credit institution or (ii) of another professional of the financial sector certifying his experience and his knowledge in appraising the contemplated investments.

Investment flexibility

Large scope of eligible assets and investments as any type of asset can be integrated to the SIF and any type of investment strategies can be pursued. It includes but is not limited to equities, bonds, derivatives, structured products, real estate, hedge fund and private equity investments;

Assets of an SIF should be valued at a fair value but it can be determined in its management regulations (if it takes the form of a "*fonds commun de placement*") or its by-laws (if it takes the form of a SICAV or another statutory form);

Although no detailed investment restrictions are imposed on them, SIFs are subject to the principle of risk-spreading. The Luxembourg regulator should issue a circular letter containing rules of risk-spreading for SIFs.

Light supervision

The SIF must be approved by the Luxembourg regulator (the "CSSF"). Directors must be approved by the CSSF, however an SIF does not need to be set up by an institutional promoter. The SIF can start its activity before the CSSF has granted approval, provided the request for authorization is filed with the CSSF within one month after the SIFs creation.

A depositary bank and administrative agent must be appointed. However the role of the depositary bank has been reduced. It does only need to have knowledge at any time of how the assets of the SIF are invested and where and how these assets are available. The depositary bank does not need to perform any monitoring duties as is the case with other Luxembourg mutual funds (for instance ensuring that the sale, issue, redemption and cancellation of units effected are carried out in accordance with the law and the articles of incorporation; ensuring that the income of the fund is applied in accordance with the management regulations or the articles of association; etc.).

Flexible organizational structure

A SIF can be created under different forms: an FCP (*fonds commun de placement* (contractual type of fund), a SICAV (corporate type of fund) or any other legal form available under Luxembourg law. Another original concept of the SIF law concerns the capital requirement: the amount of 1.250.000 Euro must be reached within the 12 months following the authorisation by the CSSF, compared to 6 months for other UCIs, governed by the law of 2002. (*The amount that must be reached within the 6 months of the agreement does not relate to liberated capital but to subscribed capital and share premium included*). In a SIF constituted under a statutory form (SICAV or other), 5% of each share issued must be liberated. No debt-equity ratio must be respected. There are no issue, redemption or distribution restrictions (but the net assets or the capital may not fall below 1.250.000 Euro);





valuation of the assets is based on fair value; there is no semi-annual report required (only annual report); and no obligation to publish the net asset value.

Efficient tax regime

There is an annual subscription tax of 0.01% on the net asset value (calculated at the end of each trimester) (which is lower than the subscription tax applied to most of other undertakings of collective investments (0.05% according to the law of 2002); fixed flat capital duty of 1,250 Euro (due at incorporation); no corporate income tax; no wealth tax; no capital gains tax for non-resident investors; VAT exemption on management fees; and a choice between tax transparent SIF (in the form of an FCP) or non tax transparent SIF (in the form of a company).

Disclosure of required documents

An annual audited report and an annual offering document must be issued by the SIF. The offering document must include the information necessary for investors to be able to make an informed judgment of the investment proposed to them and, in particular, of the risks attached thereto. No prospectus is required to be issued by SIFs, which is a great difference compared to other UCIs and to SICARs. Nonetheless, it is recommended that the offering document meets all legal requirements imposed on prospectuses. SIFs are exempt from the obligation to consolidate their accounting.

In conclusion some of the key advantages are: on-shore profile; no prior approval required; no promoter required; no publication of NAV required; large eligible investor base - no minimum capital requirement (if conditions of well informed investor are met); time to market, in principle (can be fully operational and approved by the Luxembourg regulator within 2 to 3 weeks); no local directors required; units/shares of a SIF can be listed on a stock exchange.

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USA - O and P visas for persons of extraordinary ability, athletes, and entertainers

The O visa is available for foreign nationals who have demonstrated extraordinary ability or extraordinary achievement in a variety of fields, or those who have critical skills and experience with such an individual, in order to obtain a temporary work visa.

The O visa is set aside for foreign nationals of extraordinary ability in the sciences, arts, education, business, or athletics, certain foreign nationals accompanying or assisting the individual with extraordinary ability, and their family members. The foreign national would be required to prove that he or she possesses national or international acclaim or that he or she has received international awards. In addition, a foreign national who has critical skills and experience necessary to assist in the artistic or athletic performance of an O visa holder for a specific event, and who is also an integral part of the actual performance, may also qualify to obtain an O visa.

The law does not state a specific duration of the O visa. The initial period of stay can be approved for the time necessary to complete the event of activity or group of events or activities for which the foreign national is admitted into the US, up to a period of three years. Extension of an O visa and the supporting personnel can be granted in increments of up to one year to continue or complete the same event or activity for which they were admitted.

The position for which an O foreign national is being considered must meet at least one of the following criteria to establish that it requires someone of extraordinary ability:

- The services primarily involve a specific scientific or educational project, conference, convention, lecture, or exhibit sponsored by bona fide scientific or educational organization or establishments.
- The position or services to be performed involve an event or activity which has a distinguished reputation or is a comparable newly organized event or activity.
- The services to be performed are in a lead or critical role in an activity for an organization or establishment that has a distinguished reputation or record of employing extraordinary persons.





- The services consist of a specific business project that is appropriate for an extraordinary executive, manager, or highly technical person due to the complexity of the business project.

The foreign national must gather evidence that demonstrates extraordinary ability in the form of documentation of at least three of the following:

- A nationally or internationally recognized award or prize for excellence in their field.
- Membership in associations in the field for which the classification is sought, which require for membership outstanding achievement, as judged by national or international experts in their disciplines or fields.
- Published material in professional or other media about the alien. This should include the title, date, and author of the published material and any translation, if necessary.
- Evidence of the foreign national's participation on a panel or individually as a judge of the work of others in the same or an allied field.
- Evidence of the foreign national's original scientific, scholarly or business-related contributions of major significance in the field.
- Evidence of the foreign national's authorship of scholarly articles in the field in professional journals or the major media.
- Evidence that the foreign national has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.
- Evidence that the foreign national has commanded a high salary or other significantly high remuneration for services in relation to others in the field, as proven by contracts or other evidence.



The P non-immigrant visa is available to foreign entertainment groups, athletes, or entertainers who wish to enter the United States temporarily to perform under a reciprocal exchange program or a program that is uniquely cultural. The only other visa in which entertainers or athletes may be admitted to the United States is the H-2B visa, requiring a labor certification approval.

The P visa may be issued to a foreign national who is temporarily coming to the United States to perform individually or as part of a team at an athletic competition with an internationally recognized level of performance; to perform with an entertainment group that has been internationally recognized in its field, provided the individual has had at least a one-year relationship with the group as a performer or provides functions integral to the performance; to perform in a reciprocal exchange program between a US organization and one or more foreign exchange organizations that provide for the exchange of arts and entertainers; to perform, teach, or coach as an individual or part of a group on a program that is culturally unique; or is a dependent of a P visa holder in one of the above categories.

The O visa may be granted for the period of time required to accomplish the event or activities stated in the petition, but may not exceed three years. Further extensions are available.

P visas may be granted for the period required to complete the competition or event. The maximum initial term allowed for an individual athlete is five years, for a total period of stay not to exceed 10 years. The maximum initial term allowed for athletic teams, entertainers, and entertainment groups is one year. Extensions in these categories may be granted in increments of one year to continue or complete the activity or event for which they were admitted.

It should be noted that O and P visa holders may apply for permanent residence through a labor certification process or an extraordinary ability case. These individuals should consult with an attorney about the immigrant visa possibilities.

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Czech Republic - widening of cross-border merger regulations

The Czech Republic has introduced a draft act on the transformations of companies and co-operatives, implementing the EU Directive No. 2005/56 EC on cross-border mergers ("10th Directive"). It is currently being discussed by the Czech Parliament. The draft act largely takes over the current regulation of transformations of companies set out in the Czech Commercial Code, simplifies it and makes it more precise (in response to practical experience); and also introduces regulation of cross-border mergers.

The 10th Directive enables cross-border mergers of stock companies (*a.s.*, *s.r.o.*). However, the draft act also enables cross-border mergers of co-operatives and partnerships (*k.s.*, *v.o.s.*). Cross-border mergers will be admissible in respect of entities organized under laws of EU/EEA member states. In case of cross-border mergers, the act anticipates extensive consultation with employees of the companies involved.

As amalgamation of an entity with a sole shareholder will be regarded as a merger, the new legislation can be interpreted so that takeover of all assets and liabilities is not admissible with respect to a 100% subsidiary.

Closing financial statements and opening balance sheets of participating entities will have to be audited if any of the participating entities is subject to a statutory audit. The time limit for filing of the application for registration of transformation in the commercial register will be prolonged from 9 to 12 months from the decisive day, i.e. an accounting date when the responsibilities transfer.



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Germany: new bill on inheritance and gift tax law

In November 2007 a working group of the governing parties reached an agreement on a bill to reform the inheritance and gift tax law. Reform was due because of a recent judgment of the German constitution court (*Bundesverfassungsgericht*) declaring that the valuation rules of immoveable property, that led to a taxation of only around 60 to 80 per cent of their market value, not consistent with the constitutional rule of equal taxation. The aim of the reform is that the transfers of assets because of death or gift are taxed according to their current market value.

To avoid a general tax increase, the reform will allow increased tax allowances for close relatives: for the spouse 500,000 Euro (at present 307,000 Euro), for each child 400,000 Euro (at present 205,000 Euro), for each grandchild 200,000 Euro (at present 51,200 Euro) that becomes 400,000 Euro if the parents of the grandchild have already died. For transfer to parents or grandparents because of the death of a child or grandchild there will be an inheritance tax allowance of 100,000 Euro. Other relatives or third parties will benefit from a tax allowance of 20,000 Euro.

Furthermore the limits of the tax brackets are going to be changed with substantial benefits for close relatives. Conversely, other heirs and donees will have to face higher inheritance and donation tax rates: 30% up to 6 millions Euro, 50% over 6 millions Euro.

Additionally, however, a substantial reduction of the inheritance and gift tax burden is provided for the transfer of business assets: 85 per cent of the value would be tax free but only if the heirs carry on the business for ten years and maintain the employment level. For business assets there is a general tax allowance of 150,000 Euro.

We wait to see if every point of the bill will be approved by the Parliament.



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France - recent tax changes

Following Nicolas Sarkozy's election as President of France, various new tax laws have been introduced, mainly with the aim of harmonisation with other neighbouring tax regimes but also with the aim of general reduction in some parts of the French tax regime. In particular, Law n°2007-1223, dated 21 August 2007, called *la loi 'TEFA'*, has particular affect on overseas purchase and ownership of French real estate.

Loans to buy residential real estate

For completions (*act de vente*) on or after 22 August 2007, the new law provides that a French resident who takes out a loan to buy or build his main home can claim a tax credit of 20% of the loan interest paid each year, to set against income tax. The maximum amount per year, which can be deducted, is €3,750 for a single person, €7,500 for a couple, plus €500 per relative. The deduction must be set directly against income tax, not income itself. The tax credit is allowed for the first five years following the purchase of the property.

The overall objective of this tax change is to help people with modest incomes to own properties. Interestingly, this new legislation does not require that the loan must be secured by a mortgage on the French property. The lender must however be a recognised financial establishment in the EU.

Gifts and inheritances between spouses/civil partners

France used to tax gifts and inheritances between spouses, although the surviving spouse obtained a tax free allowance of €76,000. The new law abolishes inheritance tax for the surviving spouse, but this only applies to inheritances, not lifetime gifts. Lifetime gifts are still subject to the €76.000 threshold. PACS (French civil partners) are exempt in a similar way.

Overseas couples, particularly British couples, moving to France often changed their matrimonial regime to *communauté universelle* as no tax was due on the estate received by the surviving spouse. However, though this change of matrimonial regime is no longer required for inheritance tax between spouses, it remains a required step to avoid the French inheritance rules. France applies a system of forced heirship meaning that you cannot disinherit your children. Therefore on the first death, the surviving spouse of a couple who was married under, for example, the English matrimonial regime (equivalent to a '*separation de biens*' in France) receives only part of his/her spouse's estate, the other part transferred to the children. Accordingly by changing your matrimonial regime to *communauté universelle* you avoid the forced heirship rules. However it is still a good idea to get married as France applies a rate of 60% for estates coming from a non-relative – which is how France treats unmarried partners.



Gifts and inheritances for other relatives – general rules

France applies a system of gift tax, with the donee rather than the donor paying the tax. The rate of the tax varies with the relationship between the donor and the donee and with the amount of money given.

France also charges inheritance tax on each beneficiary rather than on the estate. The rates also vary with the relationship between the deceased and the beneficiaries and with the amount of the estate. The 'TEFA' law has increased the allowances for gift and inheritance taxes. The new rates are as follows:

Previously there was a personal allowance of €50,000 for each child when one of its parents died or had made a gift. In addition an estate allowance of €50,000 was to be divided between all the beneficiaries. Under the new regime, the personal allowance has been increased to €150,000, but the estate allowance no longer exists.





Between siblings, the allowance has been increased from €5,000 to €15,000, which applies to gifts and inheritances. In addition, if the siblings are living together and are older than 50 or disabled, the estate of the deceased passes to his/her sibling without any inheritance tax. When a person makes a gift to a nephew/niece or when its estate passes to its nephew/niece, an allowance of €7,500 applies, replacing the previous allowance of €5,000.

Gifts of money

There was an allowance of €20,000 for every gift of money made between 1 June 2004 and the 31 May 2005 to a child or grand-child older than 18. This measure was then extended to gifts made to a great-grand child or to a nephew/niece, with the allowance increased to €30,000 and applied to every gift made before 31 December 2005. The new law provides that gifts made to a child, grandchild, great-grand-child and nephew/niece, when there is no ascendance, are free of any gift tax for gifts up to €30,000. The new law has the conditions that the donor must be under 65 when the gift takes place and the donee is over 18.

In France the estate allowance is renewed every 6 years. If you receive a gift of €130,000 from your father in 2008 you do not pay any gift tax as it is under the threshold of €150,000. However, if your father dies within 6 years (before 2014), you will be taxed on the money you receive from his estate with an allowance of €20,000 (€150,000 – €130,000). If your father dies after the period of 6 years, your estate allowance will be €150,000.

Interestingly the gift allowance of €30,000 described above is not part of the 6 years system. Therefore, an estate allowance will be calculated without taking into account the gift of €30,000. All these new rules applied from 22 August 2007.

Direct taxes

From 1 January 2008, the new law provides that the maximum amount of direct tax (called the '*bouclier fiscal*') which can be paid by a person is 50% of his global income, instead of the 60% rate which was the rate since 1 January 2007.

The *bouclier fiscal* is aimed to protect people from paying too much tax. The government limits the portion of your tax in regards to your income. Accordingly if your total income (salary, rental income, dividends, capital gains etc.) is €300,000 a year, the maximum tax you will pay is €150,000. The *bouclier fiscal* takes into account income tax, wealth tax (ISF), *taxe fonciere* (land tax) and *taxe d'habitation* (local council tax) regarding your main home.

Wealth tax

The previous discount for the main residence in the calculation of French wealth tax (ISF) was 20%. It has now been increased to 30%. You deduct 30% from the value of your home before working out the wealth tax payable. The current threshold for ISF is €760,000.

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World Link for Law launches new international company formation guide.

What are the different types of company that are available to be incorporated in various countries around the world? What documents are required to incorporate these companies and what are the other registration requirements? How long does this process take from start to finish? What are the capital requirements (minimum amounts, types of capital, limits of shareholders liability etc)? What is the minimum management requirements (e.g. types of office holder or nationality requirements, etc.)? Approximately, what is the local currency cost in relation to formation expenses and taxes? What publicity is required (e.g. filing of accounts, publication of other information)?

To access this information go to: www.worldlink-law.com/publications.htm





Purchase of real estate in Bulgaria

The Bulgarian real estate market is attracting more and more investors from abroad, in particular from the UK and Germany. Fair and reasonable prices for properties on the Black Sea coast or in the mountain ski resorts and especially the prospect of increases in value after Bulgaria joins the EU in 2007, has convinced many people to buy a flat, house or even building plots for a residential home. The legal environment of such a purchase is often very vague and unknown for investors, due to the large number of unregistered and unqualified real estate brokers that can sometimes provide inadequate information. Intending purchasers need to be careful.

The situation can be summarised as follows:

Most investors start their search for real estate in Bulgaria via internet search engines, where a number of properties may be offered by real estate agents. Caution is required at this stage! Some of these properties may be sold already or its description may not correspond with the real situation. It is very important to check the agent in terms of credibility and reliability. Any investor should supplement internet searches with specific site visits to see other properties (which are likely to be cheaper than those offered on the web) and to get an impression about the market, and the surrounding infrastructure and services.

Once a property has been chosen it is common practice to sign a preliminary contract to reserve the estate and to fix the purchase price, the terms and obligations of the parties. This contract does not yet transfer the ownership. The buyer will have to pay a holding deposit and get a receipt for the paid money or a purchase deposit of about 10% of the purchase price by signing the preliminary agreement. It is inadvisable to transfer any deposits without such receipt or preliminary agreement, or in the event of a dispute or withdrawal, the paid funds can not be claimed back.



Bulgarian Law allows foreign persons to purchase apartments and buildings directly, but not the ground itself. The constitution and legislation has been changed recently to entitle foreign persons to obtain ownership rights to land as well, but these regulations will come into effect only after a transition period of at the least 7 years after Bulgaria has joined the EU (which means in 2014). A change may occur earlier, depending on relations between the EU and Bulgaria. Therefore the old regulations are still in effect and investors would be required to register a company in Bulgaria if they want to own land.

Some of the real estate agents offer Errand Agreements according to which they are entitled and committed to acquire the land in their own name during the process of registering the company and transfer it thereafter into the name of the company. After registration the company will pay the purchase price for the property, the costs and expenses and the social insurance costs for the director of the company. Therefore the type of the company should be considered before registration.

The purchase is to be completed in a formal agreement signed at a notary. It is common practice – although legally controversial – to determine the tax value of the property and not the real purchase price in the notarial deed. The tax value is up to 10 times lower than the actual market value in rural areas, so the purchaser may save substantial funds in taxes. A purchase is subject to land transfer tax of 2% of the purchase price, plus a state tax for the registration of the deed in the real estate register of 0.1% of the purchase price; and approximately 1% in notarial fees and expenses. If the tax value is determined in the notarial deed all these taxes and costs are obviously lower.

It is crucial to check carefully the documentation and the legal situation for each property. The seller is obliged to provide for such documentation and to guarantee his exclusive ownership. Since many properties have been privatised in the last decade including lengthy law suits between heirs and siblings, it makes sense to have a close look onto the history of the owners.

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The class-action arrives in Italy

The legal rules for the protection of the collective interests of consumers (as well as users) has been recently approved by the Italian senate with the *Legge Finanziaria 2008* (financial law for the year 2008), conforming to EU law.

Planned for implementation on the 30th of June 2008, this new category of action for the compensation of damages will be enforced by numerous consumer associations that have been officially recognized by the *Consiglio nazionale dei consumatori ed utenti* (in brief: CNCU, the Italian national council for consumers and users) at the *Ministero dello Sviluppo economico* (the Italian ministry for economical development). The official legislation is called the *Codice del Consumatore* (consumer code).

At present, there are 16 acknowledged associations, who are enabled to represent, nationwide, different classes of consumers and users (you can find the updated list on the following website: www.tuttoconsumatori.it). This list is reviewed on an annual basis, since the law requires an accurate control of the legal requirements of each admitted association. Those indicated in this list are legally authorised to act for claims, which is also understood to be the legal instrument that grants the protection of specific legal situations, for example, the use of abusive clauses by the stronger contracting party. It has also been foreseen that other associations with an analogous right/power might be identified afterwards by law, by the *Ministero della Giustizia* (The Italian ministry for justice).

Apart from the right of the single citizen to claim for the protection of his/her own right and legitimate interest in accordance with article 24 of the Italian Constitution, now the new legal measures allow the possibility of different associations to claim compensation, both individually and collectively, for damages, as well as the repayment to the single consumer or user, as a result of: (a) illegal acts committed within strict contracts, which the consumer is unable to negotiate or modify; (b) extra contractual illegal acts; (c) illegal commercial practice; (d) the unfair competition practice of companies, who supply goods and offer services both nationwide and locally, when violating the rights of large consumer groups or users. However, a claim can be declared to be inadmissible if the claim is evidently not justified; there is a conflict of interest; or there is no need to protect a collective interests. But if those requirements are fulfilled, the judge will order the best way to communicate the claim in order to give the chance to the widest possible range of consumers and users to be involved.

The competent jurisdiction for the collective claims promoted by the enabled associations will be the Court of the respondent's location; and this will override any pre-existing claims in connection with the same matter.

The proceeding can be brought to an end either with a definitive verdict to pay damages in favour of the consumers or with a judicial transaction, making every other action against the same violators un-proceedable for the same violation. Judicial measures must be rendered public in order to allow the information to be divulged to a wide audience. In case of victory, even if only partial, the respondent is obliged to pay legal costs, but they are limited to 10% of the value of the claim.

For the liquidation of damages, the Court must establish an appropriate conciliation committee, composed equally by the defendants and the respondent(s), as well as by a nominated conciliator of proved professional experience, who is registered in a special roll for this purpose. This conciliation committee must be formalised, (through the help of an association, if required) and it has the duty to define the way, terms and amounts of the sums to be given to the consumers. If no amicable settlement can be reached the consumer or user has the right of court action.

The claim procedure is intended to be both a right and a duty that will hopefully be used in the future with caution by legitimate parties. The hope is that the violated consumer will benefit from the new legislation, rather than the association.

However, the legislation has not been received entirely favourably. For example, the OUA, the unitary body of Italian lawyers has widely criticized the overriding beneficial position given to the associations of the consumers and users.

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World Link for Law member news

Recent new member appointments

The Board of World Link for law is pleased to announce the appointment of the following new member firms in the last few months:



Schott Law Associates, LLP, Washington, D.C., USA.

Schott Law Associates, LLP was formed in 2001 and consists of multilingual attorneys who provide professional and personalized legal services to a variety of clients ranging from large businesses seeking contract review and negotiation to individuals needing to resolve disputes through administrative procedures. The attorneys are also experienced in European law, particularly German law, and have worked within many countries, with a special focus on Africa. Schott Law Associates attorneys are admitted to practice in Federal Courts, the District of Columbia and the states of New York and Georgia as well as the Federal Republic of Germany. English, German and French languages are spoken.



JP O´ Farrell Abogados S.A., Buenos Aires, Argentina

J P O´ Farrell Abogados is a 6 partner full service law firm based in Buenos Aires, Argentina, with a strong emphasis on corporate, tax, litigation, environmental, intellectual property and labor law. The firm was formed in 2005 by a group of lawyers from a well known Argentinian firm and includes highly qualified professionals, including many with Masters degrees from prestigious universities in the USA and Argentina (one of the partners is also admitted to practice law in the State of New York). The firm also includes ex-members of the Argentine Federal Courts of Justice.



Nelson Slosbergas P.A., Miami, Florida, USA

Nelson Slosbergas P.A. is a small boutique firm, based in Miami, specialized in the representation of foreign clients doing business in the United States. They have represented many foreign companies and high net worth individuals in their investments in the U.S. and elsewhere. This includes the preparation of immigration visas, the planning, structuring, and implementation of the legal structure to invest in the U.S. They are very active in tax planning for foreign investments in the U.S., the acquisition and financing of real estate properties, and the incorporation of business entities including preparation of operating, shareholder, and partnership agreements. English, Portuguese and Spanish languages are spoken.

Accolade for Warsaw member firm

The member firm of Leśnodorski, Ślusarek i Wspólnicy, Warsaw, Poland has been recognised as a leading firm in Poland by the the *Gazeta Prawna*, particularly concerning its intellectual property *pro bono* work for young aspiring Polish artists. For many years, this firm has devoted much time to *pro bono* activities alongside its strongly established commercial law work.

Paris member firm acts on large waste management acquisitions

World Link member firm, KL & Associates, Paris, has recently acted for Veolia Environmental Services (a leading waste management group) in the acquisition of the Bartin Recycling Group, the French number 3 in the recovery and recycling of ferrous and non-ferrous metals. The acquisition is in line with Veolia Environmental Services' strategy of "turning waste into a resource" and of continuing to develop its waste management business in the recycling segment. The Bartin Recycling Group specializes in the collection and recycling of industrial waste, in particular ferrous and non-ferrous metals. It generated revenue of €249 million in 2006 and recycles 780,000 metric tons of metals per year.

With the support of World Link for Law member firm in Brazil, Höfling, Kawasaki, Thomazinho Advocacia, KL & Associates have also acted for Veolia on a large due diligence exercise in advance of an \$40m acquisition in Brazil.





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New trademark book launched



International publisher Wolters Kluwer has launched a new Book of 1200 pages in German, edited by two partners of Lippert, Stachow & Partner, Germany (Members of World Link for Law & the BrandVue trademark search initiative). The work is a compilation of the most important forms and documents practitioners may require in trademark law in their daily work. It provides many ideas and commentary concerning the proceedings of German, European and International Trademark Law.

Hoffmann / Kleespies / Adler (Hrsg.)
Formularkommentar Markenrecht
2008, ISBN 978-3-452-26153-3

World Link for Law, formerly Euro-Link for Lawyers, is one of the largest facilitators of international legal services, bringing together the combined strengths of 60 commercial legal practices to create an international team of powerful advisors. World Link for Law member firms collectively have over 300 partners, approximately 900 lawyers and 68 offices worldwide in 42 countries.

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Collyer Bristow LLP, London, acts for international footballer in successful, high profile libel action

Collyer Bristow LLP, London, acted for Italian footballer Marco Materazzi in an action against the *Daily Star* newspaper, London, in connection with their coverage of the World Cup Final between Italy and France in July 2006. In a series of articles the *Daily Star* claimed, quite wrongly, that Marco Materazzi had used vile racist abuse during the World Cup Final including calling the mother of his opponent Zinedine Zidane "a terrorist whore", thus goading Zidane into losing his temper and causing Zidane to head-butt Materazzi.

Marco Materazzi's lawyer Steven Heffer of Collyer Bristow LLP said "The *Daily Star* now accepts that these allegations are wholly untrue and there is no question of Marco Materazzi having said anything of a racist nature to Zidane whatsoever".

Mr Heffer went on to say: "The *Daily Star* has agreed to apologise publicly to Marco Materazzi, both in the newspaper and by way of a statement in court. The *Daily Star* will also be paying my client substantial damages and his legal costs".

Collyer Bristow LLP, issued a High Court action for damages for libel in July 2007.

The firm has also issued proceedings on behalf of the footballer against the London based *The Sun* and the *Daily Mail* Newspapers.

This newsletter is not a substitute for professional advice which will take account of your specific circumstances.

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