

WHAT'S

 **AVRIO** ADVOCATI
Managing legal risks in Europe and beyond.

HOT



LATEST NEWS
FROM AVRIO

SECOND EDITION 2018



Introduction from the Chairman

Welcome to our second edition of "What's Hot" for 2018.

Thanks to you, we have some very interesting reading in "What's Hot" so I will keep my introduction very short. As all of you by now know, our previous General Secretariat Heather Williams stepped down from her role in Avrio Advocati and our new General Secretariat Marina Papadakis took over the role just before our Brighton Conference. Those of you attending Brighton conference had a chance to meet Marina and see that she was doing rather well in her new role.

I would like to thank all of you who provided us with your testimonials for the Avrio Advocati website and who shared your ideas for the next issue of "What's Hot". Please, do not forget that "What's Hot" is aimed to be "our" publication, presenting both the work that we do as Avrio Advocati and as individual law firms. But for this, we need your constant contribution in order to keep our publication useful and up-to-date. So please, keep providing us stories that you wish to see published in "**What's Hot**" by sending them to Marina at info@avrioadvocati.com.

I have the pleasure to inform you that on our General Meeting in Brighton two new members were accepted – Planinić, Šoljić and Partners from Croatia and Urquidi Abogados from Chile. Welcome!

We've enjoyed an excellent Avrio Spring Conference 2018 in Brighton – our hosts Irwin Mitchell did an amazing job, delivered us a very successful conference and made us familiar with the charms of Brighton in no time thanks to an incredible social agenda (surprisingly good weather did help a bit!).

Nonetheless, our Autumn conference in Fribourg promises to be equally successful as our Spring conference was. Just to give you a hint – our host AVOPARTNER managed to provide distinguished speakers who will talk about Swiss banking, International Arbitration and International Lobbying. The conference booklet with detailed agenda will be distributed shortly. I hope to see you all soon in Switzerland – it would be pity indeed if some of you cannot make it to the conference this time.

In the meantime, please keep providing your ideas and updates to the General Secretariat and I look forward to seeing many of you in Fribourg in September.

*Regards
Philip*

SAVE THE DATES:

We are pleased to confirm that the venues have been booked for our forthcoming Autumn conference for 2018:

Autumn Conference:

Date: 14th-15th September 2018
Location: Fribourg, Switzerland
Venue: NH Hotels, Fribourg

Spring Conference 2019:

Date: May 2019 – exact dates to be determined shortly
Location: Frankfurt, Germany
Venue: to be determined yet

SPRING CONFERENCE 2018, Brighton, England



Thank you to Martin and everyone involved at Irwin Mitchell for doing a sterling job in hosting our Spring conference in Brighton, England.

The Agenda was cleverly set to cover the number of issues affecting Brighton, one way or another – on Friday we had a session on Fintech (that is known to be a particular expertise in Brighton area) and also session on UK political trends and Brexit.

On a bit more relaxed Saturday morning, we had interesting sessions on GDPR (that came to force on the same day!) and on managing diversity in legal practices. On the social side, we had the privilege to have our gala dinner in the impressive Banqueting Room at the Royal Pavilion and after that Irwin Mitchell people led a surprisingly large group of enthusiastic explorers of Brighton's nightlife to some Guilty Pleasures at Spiegetent.

Thank you once again to the entire Irwin Mitchell team, and in particular to ever present Martin Cross, Bryan Bletso, Aurelia Buttler-Ball, Robert Cowling and Becky Wesley who did an amazing job and proved as excellent host – and hopefully, managed to have some fun with the rest of us at the time of the conference. **Thank you all!**

AUTUMN CONFERENCE 2018, Fribourg, Switzerland

Avrio Advocati and AVOPARTNER invite you to the Avrio conference to take place in the charming City of Fribourg in Switzerland.

The conference will take place on 14th and 15th of September 2018 at the NH Hotels in Fribourg.

The tentative Agenda tackles some of the most interesting issues which affect not only Switzerland, but also other jurisdictions worldwide – Sovereign Debt, New Technologies in , International Arbitration and International Lobbying. As for the social side of the Conference – despite of being a small city by size, Fribourg truly has a lot to offer to its visitors and we are looking forward to exploring all the charms of this inspiring city jointly with you!

We are very much looking forward to seeing you all in the charming city of Fribourg. Thank you to Cristoph Joller, Benoit Morzier, Luc Esseiva and everyone involved at AVOPARTNER for hosting the Autumn conference that promises to be very successful in so many aspects.



SECONDMENT

Our association is an excellent platform for wide implementation of secondment initiative to the benefit of all parties involved – employee and employer as well as the host firm - for many different reasons.

Board of Directors recognized this opportunity and as an attempt to encourage its wider use the total Budget of EUR 5,000 that should cover all the secondments on a first come first serve basis has been approved on Sofia Meeting, with EUR 300 available to each secondee. This amount should help the sending firm who will be paying all the expenses of the seconded lawyer.

Also, our legal network has a great flexibility in this respect: secondment does not need to be in a straight exchange – but it could be nonetheless, and it is not limited only to young lawyers or to 2 weeks period – different modalities may also be sought among interested members.

We have a pleasure to inform you that **Caldwell & Robinson** hosted two secondments in May and June and we hope that their testimonials will inspire some of you to use this opportunity in the near future:

Testimonial of Host Firm “Caldwell & Robinson”, Northern Ireland:

“We had the pleasure of hosting two Avrio exchanges of a week each in May and June this year: in May, we were joined by Svetla Maneva from Manev & Partners in Sofia Bulgaria, and in June we were visited by Nikita Zatler from Law Office Gorjup in Maribor Slovenia.

Svetla and Nikita each spent time in various disciplines within Caldwell & Robinson, including Corporate, Dispute Resolution and Family, in each of our Northern Ireland and Republic of Ireland practices. However in addition to showing them how the law works here, we wanted to expose them to how we run our business and why, and encourage them to ask questions that possibly most of us may not feel comfortable asking our own Managing Partners.



Nikita even found herself as a part of a meeting with the Bank of England which was televised as a part of an upcoming BBC broadcast on the workings of the Bank of England.

Did we, as host firm, benefit from their visits? Absolutely: we found that exposing our own lawyers to these two bright and ambitious young lawyers from other jurisdictions was beneficial to our team’s personal development; it reminds us that there is a global world of professional peers that is our world if we choose to embrace it.”

Testimonial of secondee Svetla Maneva ("Manev & Partners", Bulgaria)

"How is Avrio helping us?"

In the fast growing modern world and the era of the modern's society pursuit of cultural and economic expansion the role of transnational organisations is even more important. The future cannot be envisaged, but there is no doubt, that the globalization is a symptom of the disappearing traditional geopolitical thinking.

With this challenges in mind, I realize that professionalism cannot be achieved without enriching your knowledge everyday, even by crossing borders and going further, that you have even imagined. And what a better way to learn and grow than being thought by the best professionals? Avrio is giving me exactly that - the possibility of learning from the experience of great professionals from different jurisdictions.

I cannot think of a better way to explore and to see in practice how other law systems function than the secondment in Avrio exchange program. I had the great opportunity of not only exploring other law systems, but taking another point of view how business should be handled and even more - a learnt a bit of history and politics.

I am pleased to say one big **THANK YOU** to Avrio and to my great hosts - Caldwell & Robinson. "

Testimonial of Secondee Nikita Zatler (Law Office Gorjup, Slovenia)

"Avrio Advocatio offers unique opportunity for secondment of lawyers and lawyer trainees from law firms that are part of Avrio Advocati.

I used the opportunity and for this reason, I had a chance to see first-hand how lawyers in Northern Ireland work, and also to get acquainted with common law in practice. During my stay with Caldwell & Robinson solicitors, I attended meetings with law firm's clients, and court meetings and did a little bit of GDPR work, which is the hot topic for the last couple of months.

I learned not only about the law and the difference between both systems (common law and continental law system), but I also learned a lot about how the business work, which is always valuable. The whole experience really motivated and inspired me for my further career.

I also met a lot of new people and got a chance to get to know better people I already met in Avrio meetings. Because the Irish people really are extremely friendly and welcoming, I also got a chance to experience the country in a special way, because it was shown to me by locals, who took time to show me the beauty of their homeland. "

BOARD OF DIRECTORS **NEWS**

On the previous Board Meeting, Martin Cross, our longest serving Board Member, stepped-down from the Board of Directors. A big **THANK YOU** for Martin, for his role in success story of Avrio Advocati.

At the General Meeting, the Avrio Advocati members appointed Bryan Bletso as the new Board Member.

Welcome Bryan!



Bryan Bletso Profile

Partner – Corporate
Irwin Mitchell

Bryan is a Partner in the Corporate Law Team in London and Head of International at Irwin Mitchell. Bryan has considerable experience in all corporate transactions, with a particular focus on working for international clients in relation to buying and selling businesses in England.

He also has experience in owner managed businesses, providing all types of corporate advisory services from everyday business law questions to buying and selling companies.

IN THIS SECTION OF WHAT'S HOT, WE PREPARED YOU SOME VERY INTERESTING READINGS ON SCOTTISH LIMITED PARTNERSHIPS (CCW BUSINESS LAWYERS LIMITED) AND ON CRYPTOCURRENCIES AND ICOS. PLEASE ENJOY!

SCOTTISH LIMITED PARTNERSHIPS

By John Clarke & Alison Marshall
CCW Business Lawyers Limited

Scottish Limited Partnerships – or SLPs – are strange entities in the eyes of many people. They must have at least one limited partner (whose risk is limited to the amount invested and who takes no part in the management of the SLP) and one general partner (who takes all the decisions and bears all the responsibility). Crucially, they also have their own separate legal personality – unlike Limited Partnerships in (for example) England and Wales.

The fact that SLPs have their own legal personality means that they can own assets; borrow money; grant security and so on. They are also transparent for tax purposes, so that the SLP will not have any liability to UK taxation in Scotland. Rather, the partners will be liable to taxation in their own jurisdictions.

Taken together SLPs are very useful for the investment industry since they allow give an entity in a law abiding jurisdiction, separate legal personality and tax transparency. But those useful attributes have also attracted criminals, who have been using them for money laundering and so on. If the limited partners are entities based in tax havens which require no identification of beneficial owners, the risk is that you end up with a legitimate-sounding entity owned (through several layers) by criminals in other countries. As an example, at the latest count more than 500 SLPs are registered to an address in social housing in a very poor part of Edinburgh!

Inevitably, the UK government is cracking down on the misuse. The first step is to require greater disclosure of who the beneficial owners are of the interests in the SLP, with the threat of UK “freezing and seizing” laws should anything untoward be found. It is to be hoped, therefore, that this crackdown will stop the crooks from operating – but not in a way that impacts on the legitimate use of SLPs.

SLPs have played, and will play, an important part in the structure of investment funds. We have used SLPs in a number of funds where we have been instructed, and they have performed their purpose well. So, the hope is that the steps taken by the UK government do not cause issues for the use of SLPs in the financial industry.

If you are interested in learning more about how SLPs could be used by your clients, please get in touch with us.

Cryptocurrencies and ICOs: To Regulate or not?

By Kim Larkin - CHARLTONS LAW, Hong Kong

In the first 5 months of 2018, initial coin offerings (ICOs) raised over US\$10 billion, easily surpassing the US\$4 billion total ICO fund raise for the whole of 2017. Even excluding Telegram's record-breaking US1.7 billion token sale, ICOs this year have still raised over 200% of last year's total.

This comes against a background of increased calls for regulation. Christine Lagarde of the International Monetary Fund (IMF) has called for a "clear-eyed approach" to allow us to reap the many benefits of cryptocurrencies and the blockchain technology which underlies them, while minimizing the risks of cryptocurrencies being used for money laundering, terrorist financing and fraud. The IMF has called for global coordination in cryptocurrency regulation with first steps towards this by July 2018, although given the disparate regulatory approaches to cryptocurrencies world-wide, this seems optimistic.

At the beginning of 2018, prices of Bitcoin and other major cryptocurrencies dropped amid fears of tighter regulation. On 16 January, 2018, Bitcoin dropped 25%, Ripple fell 40% and Ethereum fell 26% as a result of a sell-off attributed to fears of further regulatory crackdown in South Korea and China. China was the first jurisdiction to ban exchange trading of cryptocurrencies and ICOs in September 2017, following widespread fraud and hacking. It has since intensified the crackdown by prohibiting cryptocurrency trading via mobile apps and restricting access to offshore platforms. South Korea also prohibits ICOs, but allows crypto exchanges to operate.

Japan, on the other hand, introduced legislation in April 2017 recognizing cryptocurrencies as a legal means of payment and requiring cryptocurrency exchanges to be licensed and subject to capital and anti-money laundering (AML) obligations. Today, bitcoin is widely accepted by Japanese retailers and cryptocurrencies are also subject to Japan's tax regime.

Japan and South Korea have been at the forefront in regulating exchange trading of cryptocurrencies and recent hacking attacks have led both countries to tighten regulation. Japan's Financial Services Authority (FSA) increased regulation of licensed crypto exchanges in April 2018 following the US\$500 million theft from Japanese crypto exchange, Coincheck and ordered a number of exchanges to improve their AML procedures. The regulation of cryptocurrencies as financial instruments rather than as electronic money is reportedly being considered by the FSA as a means to improve customer protection. South Korea also introduced a bill strengthening crypto exchange regulation after the theft of about US\$31 million from Bithumb, its second largest exchange, on 19 June, 2018.

Cryptocurrency trading exchanges are the main intersection between cryptocurrencies and traditional or fiat currencies. A number of jurisdictions thus regulate crypto trading exchanges and impose AML and counter-terrorist financing (CTF) obligations on operators to counter the use of cryptocurrencies for illegal activities. New York state imposes licensing obligations on companies engaged in various cryptocurrency businesses, although the stringent licensing criteria have

resulted in only 5 Bitlicences over 3 years. Regulation and implementation of anti-money laundering procedures can be positive in terms of developing a country's reputation as a crypto-hub as they enhance credibility among individual investors.

Jurisdictions wanting to be perceived as crypto-friendly are therefore working to adopt these measures. In Switzerland, for example, the exchange of cryptocurrency for fiat money or another cryptocurrency is subject to AML regulation which requires the crypto business to be affiliated to a self-regulatory organisation or licensed by the Swiss Financial Market Supervisory Authority (FINMA). Gibraltar's Financial Services Commission requires crypto exchanges to be authorised as distributed ledger technology providers which must implement AML and CTF checks. Thailand also issued regulations for crypto exchanges in May 2018. Elsewhere, the absence of regulation has led to a self-regulatory approach. In the UK, for example, which does not regulate cryptocurrencies, 7 leading exchanges formed Crypto UK, an independent trade body, to develop self-regulatory standards. Members of Crypto UK must abide by its principles and Code of Conduct.

As far as regulating ICOs themselves, regulatory guidelines for ICOs are under consideration in Japan, but it is likely to be a few years before they are implemented. Thailand is also proposing to regulate ICOs and the Securities and Exchange Commission of Thailand will hold a consultation before issuing regulations at the end of June 2018. New ICOs are prohibited until the regulations are in place.

In most other jurisdictions which have not issued cryptocurrency-specific regulation, the key legal/regulatory question in relation to ICOs is whether the coins constitute "securities", the offering and sale of which is subject to securities laws. In some jurisdictions, such as the US, ICOs may also be regulated under commodities laws. Increasingly hawkish statements by the U.S. Securities and Exchange Commission (SEC), which has launched dozens of investigations into ICOs, have seen US issuers rely increasingly on the US Reg D exemption for securities offered exclusively to accredited investors, despite the lack of legal certainty that ICO tokens in fact constitute "securities". In 2017, a number of regulators (including Hong Kong's Securities and Futures Commission (SFC) and the Monetary Authority of Singapore) issued statements warning that digital tokens or coins which have securities-like characteristics will be regulated as securities, irrespective of the name ascribed to them. Other jurisdictions, notably Gibraltar, Malta and Switzerland, have implemented or proposed to implement specific ICO regulation aimed at fostering ICOs and their development as ICO hubs. Certain jurisdictions, notably Switzerland and the State of Wyoming in the United States, have adopted narrow definitions of ICO tokens which would not constitute "securities" which restrict non-security utility tokens to those with an immediate use on issue, effectively preventing ICOs being used to crowd-fund new ventures or start-ups by issuing tokens which have a future use. FINMA's guideline stresses that in "pre-financing and pre-sale phases of an ICO which confer claims to acquire tokens in the future, these claims will also be treated as securities if they are standardised and suitable for mass standardised trading".

Similarly, US State of Wyoming's House Bill 70 passed in March 2018 provides that a token will not be a security only if the token is not sold as a financial investment, which requires it to have a consumptive purpose at the time of sale and the ability to be used at or near the time of sale for a consumptive purpose. Tokens without a consumptive purpose at the time of sale will only not be securities if the initial buyer of the token is prevented from reselling the token until the token can be used for a consumptive purpose. This wording prevents pre-sale phase tokens from qualifying as non-security tokens.

In Hong Kong, cryptocurrencies typically constitute “virtual commodities” which are not subject to regulation. In September 2017, following China’s crack-down on ICO issues, the SFC issued a statement adopting a pragmatic approach, i.e. rather than ban ICOs outright, the SFC would determine their regulatory status on a case-by-case basis depending on their particular characteristics. As elsewhere, ICOs are typically structured as “utility tokens” providing the holder with rights of access to the platform being developed using the ICO funds raised. A further statement by the SFC in February 2018 suggested that “utility tokens” are outside the scope of Hong Kong’s securities legislation, although there is no definition of “utility token”. Ultimately, whether or not an ICO token constitutes a “security” will be a question for the courts to determine based on their interpretation of the statutory definition of “collective investment scheme” (for which there is no current case law) and whether an ICO token is “commonly regarded as a security”. There have been calls in Hong Kong, as elsewhere, for regulation of cryptocurrencies primarily to create legal certainty for both issuers and investors, although regulation in Hong Kong seems unlikely in the near term. Nevertheless, Hong Kong is seeing its fair share of ICOs, with the SFC only intervening once to date to halt an ICO which clearly breached Hong Kong securities laws.

Crypto trading platforms are not subject to licensing requirements provided they trade only cryptocurrencies which are not securities such as Bitcoin and Ethereum. Exchanges which accept ICO tokens for trading typically require a legal opinion that the tokens are not securities. Some exchanges are licensed as money service operators to cover the remittance and receipt of fiat currencies to or from places outside Hong Kong. In the absence of regulation, many crypto exchanges and ICO issuers self-regulate by implementing AML and CTF checks and other best practices.

It will be interesting to see whether jurisdictions choose to regulate ICOs, which will depend on how the market develops. In jurisdictions which have not implemented regimes to allow equity crowdfunding, ICOs could provide a useful funding route for start-ups unable to access traditional funding sources. The issue for regulators is achieving appropriate investor protection without stifling innovation.

Note: The above represents Charltons’ current understanding of the regulation of ICO in the jurisdictions referred to. However, Charltons advises only on Hong Kong law and while the above represents our understanding of the legal position in certain other jurisdictions, legal advice from qualified lawyers in the relevant jurisdictions should be sought in relation to any particular transaction or situation. Further, this note is intended for educational purposes and it does not constitute Hong Kong legal advice. Specific advice must be sought in relation to any particular situation.

Thank You

I would like to thank you all for giving me such a warm welcome in my new role of General Secretariat. I really enjoyed every moment of my first Avrio Advocati conference in Brighton. I am truly looking forward to meeting all of you again at our next conference in Fribourg this September. I hope I will be able to serve you at least equally well as Heather did in the past. It goes without saying that any of your suggestion aimed in improving services I am providing you with would be highly appreciated!

With kind regards, Marina
Marina Papadakis, General Secretariat