



law firms  
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# **\_the journal**

legal news

Summer 2006  
Issue 3

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## new members

Pragma is proud to announce that we have just admitted two new members.  
Our new members are:

- SWITZERLAND: **ORIENTA, Sagl** (Please see page 1)
- ITALY: **STUDIO ROSSI-GEROSA** (Please see page 5)

We take the opportunity to welcome Greg Wolton (Gersten & Nixon solicitors, London) as new Director of Pragma's Board of Directors.



The new Board of Directors with Greg Wolton as new Director. From left:

- Michel Lacroix, Chairman (Juristes Associés du Centre, Clermont-Ferrand, France)
- Greg Wolton, Director (Gersten & Nixon, London, UK)
- Cecilia Caria Mendes, Director, in charge of international development (Cecilia Caria Mendes Advogados, Lisbon, Portugal)
- Gilberto Gelsa, Secretary and Treasurer (Interconsulting, Milan, Italy)
- Carlos Manubens, Vice-Chairman (Manubens y Asociados, Barcelona, Spain)



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## **\_who are we?**



Pragma is a European based network of law firms with members worldwide.

With 300 "dottori commercialisti" and

lawyers, 39 law offices in 11 countries, Pragma is the first group of latin philosophy and culture which is renowned for its ability to solve complex economic-juridical problems.

It was set up in 2001 as the result of a common will shared by a group of four European firms of lawyers and law advisers who, after having worked together for over ten years, decided to unite all their resources at the service of companies with new demands

motivated by the developing new Europe and the increasing globalisation of business relations.

In Pragma, we value the long-term friendship amongst members. We aim to deliver high quality services across the borders and to widen the spread of our membership.

Pragma is a E.E.I.G. (European Economic Interest Grouping) with head office in Brussels (Belgium).

## **\_latest news**

### **creation of an international tax matters structure**

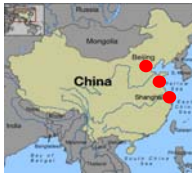


Pragma founded along with the Swiss office Ts Tax Advisors the company **Oriente Sagl** specialized in international tax matters. This company can advise us and our customers about any tax opportunity all over the world.

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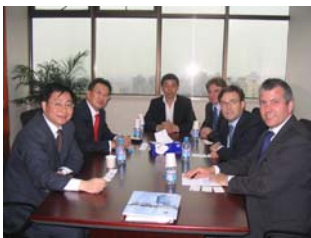
### **mission in China**



A delegation of legal professionals travelled to China in May 2006. Maurizio Bottoni, partner of Interconsulting (Italy), took part in this delegation as Pragma's representative. His mission was:

- to promote Pragma as an international network and to advertise the technical skills of its members;
- to find Chinese lawyers interested in accompanying their customers abroad;
- to establish partnerships with universities in order to welcome young Chinese lawyers for trainee placements in Pragma's offices.

We will keep you informed about the conclusions of this mission and about the opportunities of development of Pragma in China.



## **\_agenda**

### **Pragma Spring meeting in London**



Our Ordinary General Meeting 2006 took place in London on 28th April 2006 at Reform Club. We thank the people who attended for their presence and for their cooperation in all our projects of development.



A group photo of the AGM

### **annual conference in Italy**



The Autumn conference of Pragma is to be hosted by the offices of Mario Fedriani (Studio Fedriani, Arquata Scrivia) and Giorgio Rosso (Studio Rosso, Asti) in Genoa, on the Portofino coast, over the week-end of 21/22 ottobre 2006.



140 lawyers and financial advisers of 13 different nationalities will meet to discuss matter of shared interest and to develop their relationship and methods for providing services to their respective clients.

### **new website**

[www.pragma-eu.com](http://www.pragma-eu.com)



Our website [www.pragma-eu.com](http://www.pragma-eu.com) has been redesigned and updated with links to all our members' websites.




Moreover, our publications (newsletter and "the journal") are on line.



Our Directory is on line. You can get information about our offices and our professionals.



## PORTUGAL



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### the code of the consumer

Portugal is getting prepared, after Brazil in 1990, France in 1993 and Italy in 2005, to be the fourth country in the world to have a Consumer's Code, since the writing of this Code entered the last legal step before being passed.

The goals of this Code are not only to compile vague laws about consumers' rights (16 laws are currently in vigor in the national legal system), but to include European directives and to systemize, rationally and coherently, effective dispositions that already exist in Portuguese jurisprudence.

As any law, a Code does not solve problems by itself, as we all know! The success of this Code will depend on the use that will be made of it. Therefore, behind this project, the question is to know how to make that the "law in the books" leads to the "law in action" and to the "law in court".

The matters deserving special attention in this Code are the procedures to reorganize debts of insolvent debtors in a context of over debt, the responsibility of the seller and the setting up of the Portuguese System of Defense of the Consumer (SPDC). This Code also contains a lot of other important matters, such as the way to regulate the right of free break of contract and the "product placement".

Finally, it is important to mention that the "Code of the Consumer" does not concern only consumers, since its scope encloses also professionals and legal entities, for instance, it has clauses which concern the responsibility of the producer and the

essential public services.

These are the general features of the 708 articles of the Code of the Consumer, which represents a great project for the Portuguese legislator and a new challenge for all lawyers and legal advisers.

For further information on the above topics, please contact Cecilia Caria Mendes.



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## POLAND

### lower taxes in 2009

The government has adopted a number of small changes to the tax law.

The project envisages that two tax rates of 18% and 32% will be introduced in 2009. The contribution for pensions will decrease from 13% to 9% of gross salary and employers will be able to include expenses related to the financing of health services for their employees as costs. The law on VAT will also be simplified and will allow the introduction of a flat rate tax for certain types of service.

## BRAZIL-SPAIN

### new tax treaty aiming at avoiding the mechanisms of double taxation

Brazilian tax authorities have just proposed various details for the implementation from March 2006 of the "Declaration Act number 4".

This text concerns the remuneration of dividends, the payment of royalties and

commissions on services carried out between Spain and Brazil. It updates the applicable rates and the methods of calculation of each one of these points. It insists more particularly on the definition of the royalties paid to Spanish residents.

## SPAIN

### towards a transposition of European directive on takeover bids

The draft project of the reform of the Spanish stock exchange law, aiming at transposing the European directive about takeover bids, which is currently in phase of consultation, should be approved by the government before the end of the year 2006 and come into force in January 2007.

It will reinforce the capacities of inspection of the national Commission of values market (CNMV), who will be able to claim in writing from auditors any kind of confidential data about their customers, without the latter being informed.

## SOUTH AFRICA

### cell phone law should be 'phased in'

Legislation to crack down on the criminal use of cell phones should be phased in over two or three years, the Cape Town Regional Chamber of Commerce and Industry said.

The draft legislation, now before Parliament, seeks to ensure that every phone is registered and that owners' identities and addresses are on record.

The chamber said the way the Financial Intelligence Center Act legislation, designed to combat money laundering, had been applied would be a good model to follow.

## ISRAEL

### the end of bank overdraft

The six-month transition period is coming to an end: Starting July 1, Israeli banks will have to set a fixed credit facility, which clients will only be allowed to exceed under very special conditions. As the deadline looms, 22% of bank accounts still exceed credit limitations.

Overdrafts will no longer be something that can be taken for granted. And checks that have routinely been processed and paid will suddenly start bouncing.

## the tax convention between France and Chile entered into force

A decree of May 30, 2006 approved the entry into force of the convention signed in June 2004 between France and Chile in order to avoid double taxations and to prevent tax evasion.

The agreement is in conformity with the principles of OECD convention model, but has however particular clauses that take into consideration the specificity of the legislations of both states.

The text enumerates the taxes covered by the convention and defines certain concepts (such as resident and permanent establishment). It also details measures concerning income tax, wealth tax, double taxations and other specific provisions such as those about non-discrimination, friendly procedure, exchange of information, members of diplomatic and consular entities.

For further information on the above topic or on tax and business law in Chile, please contact Gustavo Cuevas by phoning our offices or by e-mail to [GCUEVAS@cuevasabogados.cl](mailto:GCUEVAS@cuevasabogados.cl)

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## Brazil's new bankruptcy law

### Opportunities of investments in distressed enterprises concerning the new Bankruptcy Legislation

Brazil's new bankruptcy law, which became effective on June 9<sup>th</sup>, 2005, has brought important and long overdue changes to the country's insolvency framework. The main highlight of this new legislation is the establishment of a private arrangement with creditors, overseen by the courts, as an alternative to court-managed arrangements.

This new law may create opportunities for creditors involved in insolvency proceedings, as well as for parties that are

#### PRESS RELEASE

## release ceremony for Chinese accounting standards

The Chinese Ministry of Finance (MOF) held a ceremony to release 39 Chinese Accounting Standards for Business Enterprises and 48 Auditing Standards for Certified Public Accountants, marking the establishment of an accounting standards system for business enterprises and an auditing standards system for certified public accountants that suit the development of the market economy and convergence with the international practices.

MOF has decided that all listed companies shall apply the accounting standards system for business enterprises from January 1, 2007, and all accounting firms in China shall apply the auditing standards system for Certified Public Accountants from January 1, 2007.

All parties involved should prepare themselves well to ensure smooth implementation, to work hard to build integrity and credibility in the accounting and auditing practice and to develop high-calibre accounting personnel.

The number of high-calibre accounting and auditing personnel, who are familiar with international practices, equipped with international perspective, proficient in accounting and auditing profession, and capable of exploring the international market, is expected to reach 3,000 in five to ten years.

You can get more information about this matter at <http://www.iasb.org>.

considering investments in Brazilian insolvency and distressed debt situations, such as, purchase distressed debt, lend new money to distressed enterprises and/or purchase assets of distressed enterprises.

Creditors and investors might benefit from a number of important changes effected by or otherwise attendant with the new law. These changes include the following: a more robust reorganization mechanism, a potentially more expeditious procedure for the sale of assets by the debtor, the priority granted to post-commencement financing, the improved position of secured creditors in reorganizations, the possibility of pre-packaged restructurings, and the establishment of certain specialized bankruptcy courts.

Among the other changes brought about by the new law is a different treatment for foreign currency debt, which seeks to preserve the value of such debts, protecting them from currency risk. The new law, on the other hand, provides that, during the arrangement phase, foreign currency debts are only converted into local currency for the purposes of: (i) calculating voting rights at creditor meetings, at the exchange rate on the last business day before the meeting; and (ii) calculating the percentage required for judicial approval of the reorganization plan, based on the exchange rate on the day before the agreement is executed. Furthermore, the foreign creditor's debt is preserved by means of an express provision that, in both judicial and extra judicial reorganizations, such debt must be adjusted by the variation of the applicable foreign exchange rate. In the case of bankruptcy, however, the date of the judicial decision decreeing the bankruptcy.

Finally, the introduction in the Brazilian insolvency framework of super-priority rights for new money is an extremely relevant change. By protecting the interests of creditors that lend money to beleaguered companies during the reorganization process, it is expected that indebted companies will have easier access to credit and will be more likely to succeed in their reorganization.

Already, there are two significant cases pending under the new rules: one case pending in the Rio de Janeiro commercial court involves Varig, Brazil's largest national air carrier, which filed under the new law just over a week after its effective date. The other case, which is pending in São Paulo's recently created bankruptcy court, involves the Brazilian operations of Parmalat. As these cases progress in their respective court proceedings, they might provide preliminary indications as to how the new law will be interpreted and implemented.



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## share option schemes Enterprise Management Incentives

We are currently preparing Share Option Schemes for various client companies.

The EMIs are share options enabling particular members of staff (chosen by the directors) to purchase shares in the company first introduced by the Government's budget in March 2000 and extended in ambit in March 2001. Such schemes have particular tax advantages for employees and are designed to help small companies retain key members of staff who have the necessary skills to aid expansion and to reward employees who invest their time and skills in such companies.

The grant of the option is tax-free and generally speaking there is no tax or NICs for the employee to pay when the option is exercised and there should be no NICs charge for the employer. When such shares are sold (hopefully at a gain), any Capital Gains Tax charge should be reduced because of taper relief which is particularly advantageous in this instance as relief will be calculated from the date the option is granted rather than when exercised.

For further information on the above topic or on company matters and business law in general, please contact Greg Wolton by phoning our offices or by e-mail to [gw@gernix.co.uk](mailto:gw@gernix.co.uk).



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## ringtones and royalties

The use of musical works as ringtones on mobile phones is a rapidly growing area for music. Ringtones have proved to be much more widespread than was initially thought; at the same time the singles market for recorded music is in decline and the sales of albums seemingly dependant on heavy discounting by retailers.

It is important to appreciate that the creation and distribution of ringtones involves both Performing (PRS) and Mechanical (MCPS) rights and as a consequence a licence is required from

both societies by companies who wish to supply ringtones. However, the attraction from the licensees' point of view is that there is no need to obtain prior approval from MCPS members for the use of their works in this scheme. This is attractive for licensees because any of the musical works which form part of the available repertoire can then be used without having to go to the trouble of requesting separate permission in each case.

It will not be long before ringtone suppliers will be in a position to offer original sound recordings as ringtones; this will then change the position as ringtone suppliers wishing to offer sound recordings will obviously need to get clearance from the record companies who will own the copyright of the sound recording that the ringtone suppliers want to use. Needless to say, this clearance will be needed in addition to the MCPS and the PRS licence.

The MCPS say that in June 2002 there were around 80 UK companies licensed to supply ringtones and having such a licence gives access to some 2 million musical works across the shared MCPS/PRS data bases.

There has been widespread comment in the media about the size of the ringtones market and the losses that may be being incurred by composers and publishers, due to operators allegedly operating without appropriate licensing (and therefore without the corresponding obligation to account for royalties to the MCPS/PRS).

This is a rapidly growing area and is one to watch, both for the mobile ringtone operators, and the composers, publishers and record companies who all have a mutual interest in making sure that the appropriate clearances and licensing are obtained.

If you need advice in this area whether as a ringtone supplier/operator or as a copyright owner of musical work, contact us as we have experience in this area and will be pleased to advise you further.

For further information on the above topic or on media & entertainment law in general, please contact Dominic Green by phoning our offices or by e-mail to [dq@gernix.co.uk](mailto:dq@gernix.co.uk).



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## FRANCE

### **\_hiring or sale, a new document required from the owner**

Since June 1, in case of sale or of hiring of real estate, built or not built, all owners

have to attach to the hiring or sale contract:

- a "state of risks" concerning the property if it is located in a risky zone (natural, technological or seismic);
- the list of the disasters suffered by the building since 1982 and compensated by the insurance against natural disasters.

In order to know if the property is located in a risky zone, you have to contact town halls or prefectures and get the compulsory "state of risks" form. This document is obligatory whatever the type of hired building (empty or furnished, main residence or holiday residence, dwelling or trade building) and the type of transaction are (sale, succession division, exchange, etc). The non compliance of this rule can involve the breach of the contract or a reduction of the price.

### **\_comments on the "Paper Discussion" of the IASB on the annual report**

The International Accounting Standards Board (IASB) published at the end of 2005 proposed a discussion about the annual report 's objectives as well as the criteria requested to improve the information given in it. In this document, elements are proposed in order to set up a standard on this matter.

The French Accounting Council has just issued its comments. It considers that the annual report is an essential complement to the financial statements.

However, it thinks that the development of a common standard is not adequate because the annual report has non-financial elements and because the obligations resulting from local legislations can differ from one country to another. Moreover, it thinks that the role of the IASB is above all to propose references concerning accountancy.

For this reason, the French Accounting Council suggests proposing a guide of good practices on the matter rather than a standard.

### **\_financial communication: a French glossary for the use of professionals**

Do you know what "due diligence" and "profit warning" mean?

The Observatory of the financial communication has just updated its glossary of the terms commonly used by companies in their financial communication. Two hundred key words are listed, from the definition of "ABSA" to

the one of "warrant". It is interesting to note that this document explains Anglo-Saxon terms which are often employed, but whose significance is not always very clear. This glossary also includes legal texts concerning financial communication.

Further information at <http://www.observatoirecomfi.com>.

### **\_ no commercial responsibility for the distributor of defective products**

A recent law came to complete the provisions of the civil code relating to defective product liability.

Theoretically, if the manufacturer is unknown in case of accident due to defective products, the person responsible for the damage is the distributor.

However, the distributor is now allowed to exonerate his responsibility if he designates his own supplier or the producer within 3 months after the request for compensation by the victim.

## ITALY



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### **\_the code of the consumer**

The new Code of the Consumer (D.Lgs. 6th september 2005 n. 206), which became effective on 24th October 2005, collects in one text the dispositions of 21 previous provisions (4 laws, 2 President of the Republic decrees, 14 legislatives decrees and 1 performance code) about the relationship between consumers and companies (manufacturing, intermediation trades and services).

Even if is a gathering of dispositions - since it reproduces the discipline of previous provisions - it also contains the adaptations and substantial modifications, established by the necessity to harmonize some national laws, approved by successive communitarian rules and jurisprudential evolution.

Moreover, re-uniting in a one normative text rules that became effective at different periods, the Code aims to harmonize and to reorder under common principles the entire discipline.



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**CHILE**

**focus on Cuevas Abogados**

Cuevas Abogados is a prestigious law firm founded in Chile in 1984 by a group of renowned attorneys, whose stated mission is to provide a practical and comprehensive application of legal services to the contemporary business sector.

The firm is committed to providing quality services, guaranteeing personalized consultation and reliable legal advice in specific areas.

Cuevas Abogado's work model is focused on adding value to clients' businesses. This is possible thanks to our in-depth knowledge of the different industries, a practical view of our clients' businesses, and the efficient management of attorney time. The foregoing enables our firm to offer clients a positive cost-effectiveness ratio.

Our team's mastery of the French, English, and German languages allows it to deal with a wide range of local and international clients, such as leading manufacturing and service corporations, renowned commercial banking institutions both Chilean and foreign, important investment funds, influential public utility companies and mining houses, media, governmental agencies, and companies engaged in various sectors, all of which have capitalized on the practical advice and business guidance provided by Cuevas Abogados.

**areas of practice**

- Financial and Foreign Investment Matters
- Litigation, Arbitration, and Mediation
- Corporate Advisory Services
- Capital and Securities Market
- Labour Law
- Environmental Law and Regulations
- Tax Advisory Services



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**ITALY**

**new member: Studio Rossi-Gerosa**

We are pleased to welcome Studio Rossi-Gerosa as new member of Pragma since 1<sup>st</sup> May 2006.

Studio Rossi-Gerosa Dottori Commercialisti was established in 2001 in Lecco with the merger of two existing offices: Studio Dott. Enrico Rossi (established in 1942 by the father of Enrico Rossi) and Studio Dott. Marco Gerosa (established in 1977).

**areas of practice**

- national tax consultancy and planning
- assistance in corporate, social, tax and accounting areas
- negotiations, contracts and commercial law
- fiscal and accounting audit
- reorganisation projects
- due diligence
- company liquidation
- real estate and property law
- succession and estate organisation
- VAT and tax representative
- incorporation, merger and acquisition
- passing of activity from one generation to another
- shares, quotas and business appraisals



**Studio Rossi-Gerosa are:**



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