



TaylorWessing

IT continuity – issues and solutions

LES

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Ground to cover

- Short introduction Taylor Wessing
- Brief intro on continuity
- The issues with classic escrow
- The issues with SaaS escrow
- Possible solutions & challenges
- Q&A



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Introduction TW: Martijn Loth & Otto Sleeking



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Why you should choose us

Leading international full service law firm. We are widely regarded as one of **Europe's leading tech law firms.**

International Expansion Strategists - our clients succeed because of our firm's extensive network giving them access to the key contacts and resources. See guide below.

Via both our **own offices located throughout the world** and our **best friend firm relationships**, we have experts on hand to assist you no matter the jurisdiction.

We identify **opportunities and pioneer solutions ahead of the market.** We enable our clients to succeed today to achieve their ambitions in tomorrow's world.

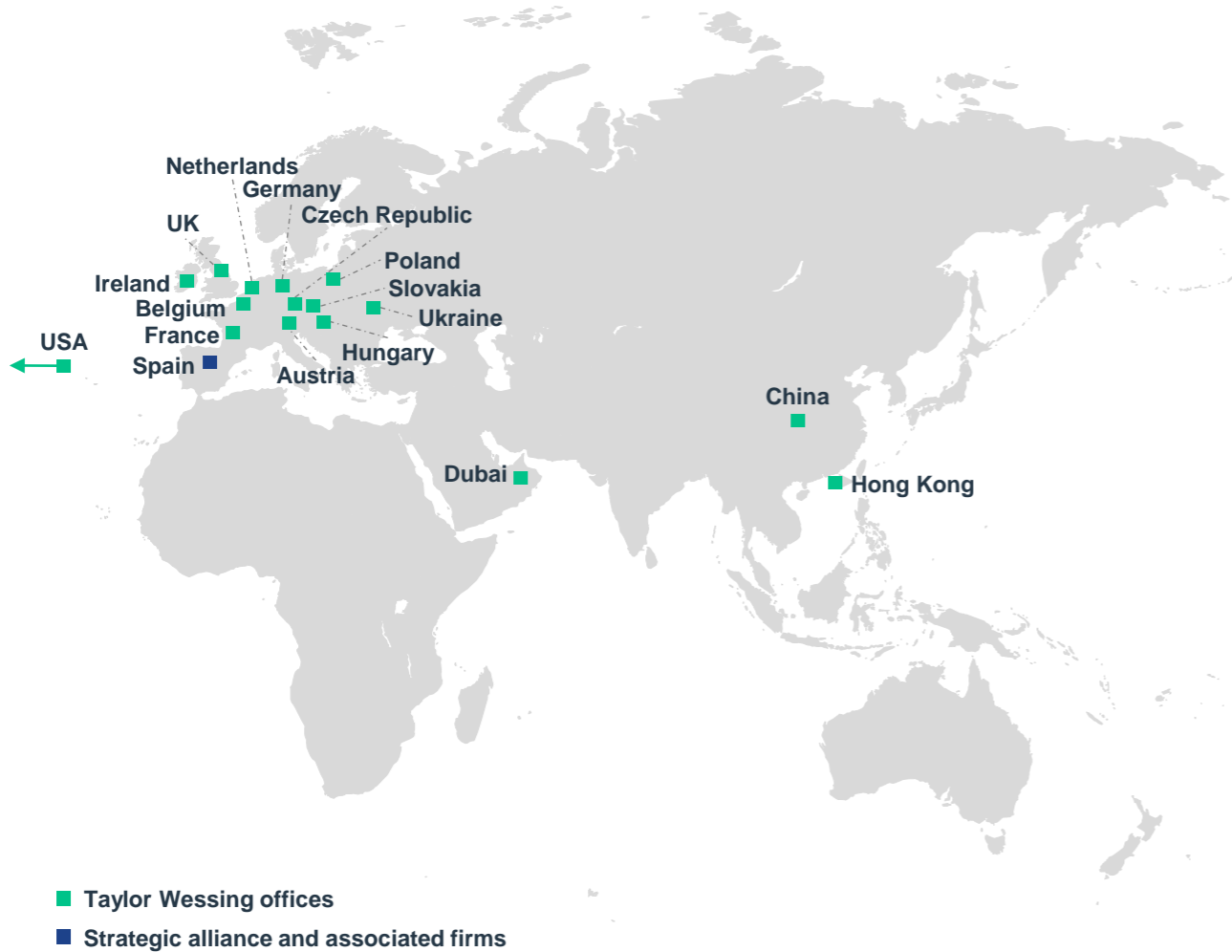


Profound **industry know-how** through longstanding relations to leading industrial companies.

Over **1,100 lawyers** in currently **29 office** based in **17 countries** including: Europe, the United States, the Middle East and Asia, including our co-operation in South Korea.

Innovators and disruptors are a core part of our practice. We work every day with clients who have strong brands and are constantly innovating, and they challenge us to innovate and think big with them.

The value of our international network



Austria	<ul style="list-style-type: none"> Vienna Klagenfurt*
Belgium	<ul style="list-style-type: none"> Brussels Beijing*
China	<ul style="list-style-type: none"> Hong Kong Shanghai*
Czech Republic	<ul style="list-style-type: none"> Prague Brno*
France	<ul style="list-style-type: none"> Paris Berlin Dusseldorf
Germany	<ul style="list-style-type: none"> Frankfurt Hamburg Munich
Hungary	<ul style="list-style-type: none"> Budapest
Netherlands	<ul style="list-style-type: none"> Amsterdam Eindhoven
Poland	<ul style="list-style-type: none"> Warsaw
Republic of Ireland	<ul style="list-style-type: none"> Dublin
Slovakia	<ul style="list-style-type: none"> Bratislava
Ukraine	<ul style="list-style-type: none"> Kyiv
UAE	<ul style="list-style-type: none"> Dubai
United Kingdom	<ul style="list-style-type: none"> Cambridge Liverpool London London Tech City
USA	<ul style="list-style-type: none"> Silicon Valley* New York*

■ Spain, Portugal, Brazil, Argentina, Mexico, Chile, Columbia, Honduras, Costa Rica, Dominican Republic, Nicaragua, El Salvador, Guatemala, Puerto Rico, Panamá, Ecuador, Uruguay

* Representative offices ** Associated office

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Introduction: continuity

IT contracts & continuity

- Continuity: the ongoing performance of a contract
- When supplier is willing and able to execute the agreement
 - Redundancy solution / Standby
 - Disaster recovery
- When supplier is no longer willing and/or able to execute the agreement
 - Step in rights
 - Escrow

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Classic: on premise software

Continuity with on premise software (1)

- When a supplier provides on premise software and maintenance and support, what is needed to ensure continuity?
 - License to use the software
 - Access to the software
 - Access to the data
 - Maintenance and development by Supplier
 - Access to support

Continuity with on premise software (2)

- How to ensure continuity during contract execution?
 - Contractual obligations, penalties
 - Step-in rights
 - Audits
 - Suspension, termination?

Continuity with on premise software (3)

- What happens when supplier of on premise goes into receivership / bankruptcy?
 - License to use the software
 - Access to the software
 - Access to the data
 - Maintenance and development by Supplier
 - Access to support

Continuity with on premise software (4)

- Solution: escrow agreement, a three party agreement under which:
 - Supplier deposits source code, scripts, documentation etc.
 - Escrow agent verifies deposit and provides this to customer in case of triggering event
 - Provides a short term solution, if customer can maintain the software itself (using the deposit) or have a third party do this

What to look out for

“Within thirty days of signing the Software License Agreement, Supplier shall enter into a Software Escrow Agreement with NCC Group in relation to the depositing of the source code for the Software.”

#ASSESSTHESTACK!

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Continuity with SaaS software

Continuity with supplier: SaaS (1)

- When a supplier provides software as a SaaS solution, what is needed to ensure continuity?
 - License to use the software
 - Access to the software
 - Access to the data
 - Maintenance and development by Supplier
 - Access to support

Continuity with supplier: SaaS (2)

- How to ensure continuity during contract execution?
 - Periodic backups
 - Redundant environment
 - Disaster recovery, business continuity plans
 - Audits
 - Contractual obligations, penalties
 - Step-in rights?
 - Suspension, termination?

Continuity with supplier: SaaS (3)

- What happens when SaaS supplier goes into receivership / bankruptcy?
 - License to use the software
 - Access to the software
 - Access to the data
 - Maintenance and development by Supplier
 - Access to support

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“Escrow” solutions

Escrow of assets to recreate the SaaS platform

- Tri party agreement
- Deposit of all source code and documentation needed to recreate a working SaaS on another MS Azure / Google Cloud / AWS
- Project phase with licensor/supplier and escrow agent to establish verification
- Following a triggering event: release
- **Plenty of issues to be foreseen**

Escrow of information to access and use the SaaS

- Tri party agreement
- Deposit of “Basic Information”: admin codes and all documentation needed to use the SaaS, incl. database logic and interfaces
- Verification by escrow agent that deposit can be used to access and use SaaS
- Escrow agent also contracts one or more hosting parties that declare to be willing and able to (continue to) host the SaaS
- Following a triggering event: release
- **Plenty of issues to be foreseen**

Other solutions

- Use a foundation (stichting)?
- Arrange for pre-payment hosting provider?
- Dual suppliers?

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