

## Case Study

### Joint Session Practice Group IBR and Practice Group IP Meeting 14 October 2017

#### The facts

Mister A is the only shareholder in Company A. A-Company produces 2 products namely “A – Antwerpen” and “A-Aarlen”. These products have been invented and developed by A-Company. Therefor A-Company protected the IP-rights (trademark, patents et cetera) properly.

A-Company has two production facilities, one for each product. This facility is located in country A, in Europe. Next to the production facility Company A has warehousing and distribution centre, located in country A as well.

Company A employs 70 persons (10 at the distribution and warehouse, 3 at administration, 5 engineers and 25 at production).

A-Company is financed by a local bank (A-Bank). The present and future stock, inventory and receivables are pledged to A-Bank.

A-Company makes a nice profit but mister A intends to cooperate with mister B because he is the soul shareholder in Company B, located in country B, another European country. Company B is organised (more or less) the same way as Company A but the turnover and the profit are twice as high. Therefor mister B claims the majority of the shares in the company/companies in case of corporation.

The corporation enables the companies to invent and develop a new product, product C-Charleroi but for this product the production needs to take place in China.

In the warehouses and distribution centres of Company A and Company B is no overcapacity. Mister A and mister B expect on increasing demand of product A and B (and hopefully C) so they intend to close the existing warehouse and distribution facilities and to create a new one in country C (in Europe) because in this country there is a nice harbour and are perfect transporting facilities.

Bank C is willing to finance the activities of Company C (and the activities of Company A and Company B) but requires in that case that Bank C will finance all three companies, that the companies will be jointly and severally liable towards the bank and that bank C will get a first pledge on present and future stock, inventory and receivables.

The following items could be discussed from the various perspectives (Company A, Company B and/or Company C):

1. Corporate law aspects: the kind of cooperation / transaction:

- Joint Venture?
- Transfer (part of) shares?
- Legal merger?

2. Banking aspects: how to setup the new finance:

- Cash pulling agreement? (n.b. capital maintenance rules)

- Securities

- ...

3. Employment law aspects:

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4. Contract law:

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5. Change of control clauses:

- ...

6. IP law aspects:

- how to cope with the existing IP rights?

- how to cope with the new IP rights (what are the consequences if (part of) the engineers of Company A and Company B will work for Company C?

- (sub)licenses?

We would appreciate if you would study this case before the Practice Group Meeting. If in your opinion there are interesting other issues to discuss with regard to this case you will be more than welcome to give your input on also that aspect on the 14<sup>th</sup>.

We look forward to meeting you at the Practice Group Meeting.

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