



Euro-Link strengthened through strategic alliance

Euro-Link for Lawyers have agreed to form an international strategic alliance with INAA, an independent network of auditors and accountants, which has 49 member firms represented in 31 countries worldwide.

Following meetings of the respective Boards of each association in London and Frankfurt, and subsequent discussions at each association's conferences in Copenhagen and Helsinki, the alliance was created following the endorsement of the respective members of each association. This alliance is one of the first of its kind on an international level, writes Stuart Howie, President of Euro-Link for Lawyers.



The main purpose of the alliance is to provide clients with an international, multi-disciplinary capability if required. Additionally, the associations intend to collaborate and share best practices and knowledge.

expanding our network into Eastern European countries, South America and the Far East.

Currently, we have 40 individual member firms and about 11 of these also have additional offices, either in their own jurisdiction or in other countries. Consequently, we have representation in 24 countries worldwide, through 54 office locations. In Europe, we have representation through 38 offices in 18 countries. In total there are over 400 partners and 900 professional staff within Euro-Link member firms.

Ethical separation assured

Increasingly lawyers and accountants work together. Part of the reason for a strategic alliance is to be able to offer ethical separation, but it is also important that we know each other and can work together to provide clients with an effective business solution. There are various multi-disciplinary partnerships and multi-disciplinary associations, but we have no obligation to refer work between our respective members, which gives clients, and our members, freedom of choice in the selection of their professional advisors. However, where required, we can provide a high quality, multi-skilled, cross-border international service. The benefits to clients are considerable in terms of efficiency and effectiveness in providing a total solution. [There is a short profile about INAA later in this newsletter.]

How else is Euro-Link developing?

Euro-Link was first established in 1986. We are an independent international network of medium sized law firms. We have significant representation in Europe, but also have members in North America and Australia and we are

Integrated association

The ambition of Euro-Link is not to be a single network, but rather an integrated association, to service the international activities of our members' clients. Our objective is to provide service excellence and creative business solutions.

Euro-Link itself does not provide legal advice, but as an association we offer flexible client working relationships. For example, if clients require assistance in multiple jurisdictions, then we will help them to deal with each firm or office individually, or as is most common, services are coordinated through the local member firm in your country. Additionally, if required, we can coordinate services through our administration office.

Choosing an international lawyer

We recognise fully that clients have many options about the choice and selection of their professional advisors, if they are involved in international trade. For example, you could obtain a recommendation from a business

In this issue:

- The new French "NRE" company law: How to be 'Président' and also minimise personal liability
- U.S. Congress passes new law that impacts on foreign accounting firms and companies
- England - Disputes are being settled faster.
- Labour Law matrix
- How to obtain a work permit for a foreign director of a company in Poland
- Doing business in the Russian Federation
- Euro-Link members in the news

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EURO-LINK
FOR LAWYERS

Continued from front page...

colleague or another company about a law firm abroad. However, the services and skills that they offer may have only been suitable for the person or company that provided the recommendation to you, and may not be suitable for your particular needs.

Alternatively you can try to find your own firm, but this can often take time and you may feel that you know very little about the firm and cannot be reassured about their quality.

You could contact, if available, a local firm who are part of an international legal partnership. To some large companies this can offer many benefits, particularly in terms of accountability, however, there is always a risk that if you are not a large company, you are seen as a relatively small client to them and therefore not very important.



Additionally, they may be (or may have been) the legal 'arm' of an international accountancy partnership and you may want to ensure greater independence.

Similarly, you could contact a large international multi-disciplinary network, although usually they have charters which state that they must try to introduce one of their other professional advisors and that there is an obligation to refer work to the other professionals in their network.

Or, you could also use an international network, such as Euro-Link for Lawyers.

Our members are independent, but we are part of the same 'family' and we are bound by our Rules and Regulations, lodged with the Swiss authorities. We have a Board of Directors who are elected by our members and currently they come from 10 different countries from around the world. They meet regularly to regulate our association and to make plans for the future. They are

accountable to our members for their actions. Additionally, our members regularly meet each other and so we know each other. It is a general principle within Euro-Link that we would not be able to work effectively together, if we did not know or respect each other. We think that relationship benefits clients.

Quality control

We have an established quality code, which all our members abide by, and which was created by a working group within Euro-Link. The quality code generally regulates the procedure of how client work is referred and handled between those members involved in a particular client transaction. For example, the quality code identifies minimum response times, the methods of us working together and the ways of providing clear fee quotations to clients. It also aims to establish minimum standards of client reporting and communication standards between individual member firms.

To support our quality code, we have also created a system of post matter questionnaires, which are sent to clients by our member firm for completion at the conclusion of a matter for return to our administration office. We want clients' views on the quality of our service.

Therefore, we think our quality code is important, because, while clients may be dealing with us as independent firms, we believe that they should expect to receive a consistent level of service. You can see further details about our quality code on our website.

Thorough new member acceptance policy

We also have a very formalised procedure for the recruitment of new members, who must meet certain minimum criteria and abide by our quality standards. We do not accept new members without scrutinising their capability and we either visit the prospective member or ensure that they complete a detailed questionnaire and we ask for references from clients and business contacts.

At the moment we are in regular dialogue with about 60 firms of lawyers world-wide who have expressed an interest in membership of Euro-Link. We also have many other international legal contacts, particularly in Asia and the Far East. Therefore, we may not have a member firm in every country, state or region, but it is very likely that we can pinpoint a firm to assist you, if required.

At the time of recruitment, we also ask for details of specific skills and the names of

partners responsible for those skills, and these are then created into a central database, which shows all our members' skills. So, for example, if you need the advice of an Intellectual Property lawyer in Paris or Frankfurt, we will be able to provide you with those exact details.

Broad service capability

As a result of the creation of this database we know that that we have considerable combined expertise in:

- Company law
- Mergers and acquisitions, disposals and cross border transactions
- Contract, agency, joint ventures, leasing and distribution agreements
- Intellectual property and trademarks
- E-commerce; information technology and telecoms law
- Competition law
- Litigation and dispute resolution
- Commercial property
- Debt recovery
- Labour law
- Offshore services (for example, in Jersey) and other investments locations (for example, in Luxembourg)

We also obtain data about our member firms' experience in particular market sectors and this information is available if required.

Access to useful free information

We are constantly developing our website and rather than just creating an on-line brochure, our objective is to provide an increasing amount of practical business information to clients. For example, we have produced an analysis of different corporate structures that can be created in various jurisdictions; advice on debt collection methods in different countries, and useful business links. We are also in the process of creating some Doing Business Guides for different countries, which will enable us to provide a range of information, free of charge, to businesses that are expanding or developing overseas.

Overall, our aim is to add value and provide practical support to our respective clients and also, of course, to provide excellent legal advice at reasonable rates.

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Disputes are being settled faster in the UK

The 'Woolf Reforms' in England are delivering faster commercial justice, according to a survey commissioned by the commercial litigation & dispute resolution department at English member law firm, Stevens & Bolton. The survey, on the use and experience of different methods of resolving disputes was carried out among FTSE 250 companies and measures attitudes to Litigation, Arbitration, Alternative Dispute Resolution (ADR) and funding. The results have been reported extensively in the British press, including The Times.

Head of Department, Richard King said. "By and large, this survey of in-house lawyers at some of the UK's top businesses has shown that litigation is now working well and that the three-year-old reforms are meeting their objectives in terms of speeding up the resolutions of disputes. Court statistics show that fewer cases are now reaching the courts, but 74% of the respondents to our survey believe that society is increasingly litigious. We see this as a reflection of the success of the pre-arbitration protocols introduced as part of the reforms - very many disputes are now settled without court proceedings ever needing to be issued."

"But," he added, "the survey suggests that a lot of big businesses still need to be convinced of the benefits of ADR. Whilst ADR is not a panacea to all ills, it is a useful tool."

To receive a copy of the survey results together with a commentary, please visit the Stevens & Bolton website at: www.stevens-bolton.co.uk/html/research.htm

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U.S. Congress passes new law that impacts on foreign accounting firms and companies

In response to revelations about misfeasance and malfeasance in some of the largest companies in America, Congress, with blinding speed, passed far-reaching legislation intended to reform public accounting and corporate book-keeping. The law, called the Sarbanes-Oxley Act of 2002 (the "Act"), is intended to protect investors by improving the accuracy and reliability of corporate disclosure.

A complete discussion of the Act is outside the scope of this short article, however, what is relevant is the impact that the Act may have on foreign companies which trade their stock or depositary receipts in American public markets. Which foreign corporations will be subject to the Act is left to future regulation, but it will probably depend on the extent of their presence in the United States. Additionally, foreign public accounting firms which prepare or provide audit reports for public companies, whether or not they are American corporations, are subject to the Act.

Among other things, the Act creates a Public Accounting Oversight Board (the "Board"), which will register and regulate public accounting firms. Provisions which affect foreign firms are:

- The Board may rule that a foreign public accounting firm that does not issue audit reports, but which plays a substantial role in the preparation and furnishing of reports, may be deemed to be a public accounting firm for purposes of registration under the Act.
- If a foreign public accounting firm issues an opinion or otherwise performs material services upon which a registered public accounting firm relies, in issuing all or part of any audit report/opinion, that foreign firm shall be deemed to have consented to produce its audit work papers for the Board or U.S. Securities and Exchange Commission in connection with any investigation; and is subject to the jurisdiction of the U.S. courts for the purpose of enforcing the request for production of such papers.
- One of the most significant provisions of the Act relating to registered public accounting firms is that they are prohibited from providing to their clients any non-audit service, including legal services.
- The Act contains a number of prohibitions and restrictions on corporations which have securities registered under U.S. securities laws, not least of which is a prohibition on loans to directors and executive officers. A number of provisions protect so-called "whistleblowers" and create a requirement for registered (public) companies to have financial reports certified by principal executive and financial officers. There are criminal penalties for knowingly or wilfully filing false certifications.

Attorneys who appear and practice before the Securities and Exchange Commission are required to report evidence of a material violation of securities laws or breach of fiduciary duty to the chief legal counsel or chief executive officers of their corporate clients.

The Act also provides that foreign re-incorporation does not allow any company to lessen the legal effect of the Act, including removal of its domicile or offices outside the United States.

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International labour law

As in previous Euro-Link newsletters, we have produced a digest of information concerning an important area of law for many businesses with international interests. In this newsletter we concentrate on labour law, and we feature responses from 18 different countries/regions.

To provide some useful information for businesses, we asked a selection of our members some important questions about labour law issues, specifically:

1. The necessity for an employment contract
2. Legally justifiable reasons to terminate employment
3. Good practices with regard to dismissal procedures
4. The financial range of compensation for unfair dismissals
5. Maternity rights
6. Parental leave rights including paternity leave
7. Eligibility for redundancy payments
8. Statutory redundancy payment limits
9. The rights of employees on the transfer of a business



We also asked about other relevant legislation; the rights of employees to be members of a trade union, and an employer's obligation in respect of contributions to employees' pensions.

You can see the short edited answers on the following pages. The information has been edited and if you need more free information, in relation to a specific country, please contact Euro-Link's Administration Service. Alternatively, if you need specific advice in relation to your own circumstances, please contact the Euro-Link member firm in a your country, by visiting the Euro-Link web site: www.eurolink-law.com.

How to obtain a work permit for a foreign board director of a company in Poland

A work permit for a foreigner performing the duties of a management board member in Poland is required only if: the entity entrusting the foreigner with these duties is a legal entity; the entity carries on a business activity; and the foreigner performs work in Poland for more than 30 days in a calendar year. Whether the work is paid or unpaid is irrelevant.

Notify a regional employment office

To obtain a work permit, the first stage is to obtain the opinion / notify a regional employment office, to ensure that there are no Polish nationals who satisfy the same requirements and who could be employed in the same position. However, this notification is not required in two situations. First, if the person to be hired is a citizen of a European Union member state and is to perform work as a key person within the meaning of the European Agreement i.e. possesses highly specialised knowledge; has been employed in a foreign company for a period of at least one year prior to secondment to Poland; and who will perform work in Poland as a seconded

employee. Secondly, it is not mandatory to contact a regional employment office if the foreign manager's company (or legal entity) in Poland employs at least 50 people.

The second stage in the process is to obtain a permit 'promise'. These are issued by provincial governors (województwa). Before taking up work, a foreigner must file a relevant application, which should specify, among other things, the applicant's qualifications and work experience; a description of the position and the type of work to be performed in Poland; proposed gross remuneration (not to be lower than the minimum wage, which currently amounts to USD 200); the period of employment; the reasons for the employment; and the employer's particulars. (If the foreigner takes up new or additional employment this requires an additional, separate work permit.)

A permit promise then forms the basis for applying for a visa or a temporary residence permit and the final permit. To work legally in Poland, a work visa or residence permit is required. Visas are issued for 90 days and may be extended. However, a visa only authorizes the holder to stay in Poland for up to 6 months

within a 12-month period following the date of first entry. A residence permit is issued for a period of up to 2 years (and can also be extended). If these requirements have been met, it is usually then a formality to obtain the final work permit. The whole procedure can take from 1.5 to 3 months.

How much does it cost?

The opinion of the regional employment office is free of charge. For a work permit there is a one-off fee, equal to the minimum wage, i.e. USD 200 at present. A visa costs approximately USD 50-150 and a residence permit – USD 75. If it is deemed that there has been illegal employment, there are the risk of fines for the employer and employee, and also deportation.

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	Australia (Victoria)	Austria	Denmark	England, Scotland & Wales
1. Is it a legal requirement that employees must receive an employment contract?	No - written employment contracts are not commonplace in Australia. Most employees receive a letter from a new employer confirming the starting date, salary and general duties - the balance of the 'contract' terms' would be implied by law. (Please note that in Australia there is state/territory legislation and nationally the Workplace Relations Act (WRA) which covers most unionised situations - if not local common law applies. Disputes mainly settled by the Australian Industrial Relations Commission.	No, but an employee can claim to receive a written summary of the important points of the employment agreement.	Yes, employees must receive an employment contract and they must receive it on the first day of their employment, at the latest.	No automatic right to receive a written contract of employment, but an employee is entitled to a written statement of terms (e.g. pay, hours of work, notice period, grievance procedures etc), to be provided no later than two months from start of the employment.
2. What factors constitute a fair dismissal i.e. legally justifiable reasons to terminate employment without the need to pay compensation?	Employee must be given procedural fairness based on individual merits. A contract of employment will contain a minimum period of notice for termination otherwise a 'reasonable notice' must be provided. The WRA asks for three clear warnings for poor performance.	Termination by notice; by agreement ;or based on substantive reasons, which presupposes that the employer cannot objectively be expected to continue the employment relationship, even for the period of notice.	The most important factors which constitute a fair dismissal are: that the employer's business is ailing - need to reduce costs; that the employee has acted with gross negligence (burden of proof is on the employer).	Employee must have been dismissed either by termination of contract; fixed term contract expires; or constructive dismissal. Employer must show that dismissal is for one of five permitted reasons: incapability; conduct; redundancy; illegality or other substantial reason and that he acted 'reasonably'
3. What is good practice with regard to dismissal procedures to minimise the risk of claims for unfair dismissal?	Written records, minutes of meetings, regular performance reviews. If there is no written contract there should be a statement of the employees duties (for comparison in relation to performance issues). Any warnings should be provided in writing.	There is no particular good practice with regard to termination procedures - it depends on each case.	Early discussions with the employee and his/her union representative (where relevant) and to prove the necessity of reducing staff - see (2) above.	'Reasonableness' varies according to the reason for the dismissal - generally should be evidence of offers of alternative solutions, or oral/written warnings followed by a final written warning. (For gross misconduct employees may be dismissed without warning).
4. If an employee is dismissed unfairly what is the financial range of compensation that can be made to employees?	For employees covered by the WRA there are two kinds of relief (a) Reinstatement - unusual, but employer liable for wages since the dismissal. (b) Six months pay if litigated before the Australian Industrial Relations Commission (or unlimited if the matter proceeds to court). Under common law, compensation is usually for the period of notice that should have been given.	Financial compensation is usually limited to the wages for the notice period, holiday entitlements and any other agreed severance payments.	Usually up to 3 months wages.	Employment Tribunal's basic award ranges from 1½ to ½ weeks pay for each year's service (varying with the overall length of service) - maximum of 20 years service and £240 per week. Compensatory award for loss of earnings, future loss of earnings, loss of pension rights - maximum: £51,700. Reducing factors can be taken into account e.g. employees conduct
5. What are standard maternity rights?	Employees' rights vary from state to state. In Victoria maternity leave is unpaid leave, generally up to 52 weeks. Paid maternity leave is under discussion.	Pregnant women may not be employed during the eight weeks preceding the expected date of delivery and eight weeks after (may be increased to twelve weeks under certain circumstances, e.g. multiple deliveries). Parents are entitled to maternity or paternity leave until the 2nd birthday of the child, but this cannot be simultaneous, but they can split the leave. There is an automatic entitlement to return to work.	Dismissal by reason of pregnancy could result in a compensation award of up to one year's salary. Leave: 4 weeks, at full pay, prior to the birth, afterwards -14 weeks; father also entitled to 2 weeks. Thereafter, each parent is entitled to up to 46 weeks parental leave - wages are subject to negotiation. Once the period expires, the parents are entitled to an allowance from the State. Obligation for the employer to reinstate the employee in her previous position.	Ordinary Maternity Leave of up to 18 weeks; after 1 year's employment, entitled to Additional Maternity Leave of 29 weeks - contract of employment continues and entitled to return to work. Women are entitled to claim Statutory Maternity Pay or maternity allowance, paid from public funds.
6. What are parental leave rights (including paternity leave)?	There is an entitlement to paternity leave, which is unpaid.			Yes, if employed at least one year and parent of child born or adopted, (or who acquired formal parental rights) after 15 December 1999. Entitlement to 13 weeks unpaid leave for each child up to age 5 (or 18 if adopted).
7. When are employees eligible for redundancy payments?	Unionised employees may receive an award - the entitlement will vary. Otherwise if redundancy is a ground for termination, employees may be eligible for compensation as outlined in (4) above.	Yes, after three years, except where the employee is at fault or the employer has provided notice of termination.	Employees are eligible for redundancy payments after 12 years employment.	After 2 years, if dismissed by reason of redundancy; and 20 - 65 years of age, unless the employee has contracted out of those rights or is within an excluded class (e.g. Crown employees).
8. What are the statutory redundancy payment limits?	Not applicable.	These are based on length of service: after 3 years - twice the monthly wage; after 5 years - three times monthly wage; after 10 years - four times monthly wage; after 15 years - six times monthly wage; after 20 years - nine times monthly wage; after 25 years - twelve times monthly wage (The law will change in 2003)	After 12 years - one months salary; 15 years - two months salary; 18 years - three months salary	1½ weeks pay for each year of employment if aged 41 or over; 1 weeks pay for each year if aged 22 or over ; ½ weeks pay for each year if 18 or over. Subject to a maximum of 20 years and £240 per week.
9. Can existing employees be dismissed if you buy a business with employees?	Yes, on the basis that the sale has made them redundant, however, in practice many purchasers will take on the current employees and the financial and social terms will be dealt with by way of the business sale agreement. Situation may change soon.	Employees do not need to be given notice in this situation, but there are exceptions and generally Austrian law is harmonised with EU law in this area, which generally entitles employees continuity of employment on the same terms.	No, according to the Danish Act on transfer of undertakings, all the transferor's rights, duties, powers and liabilities in relation to employment agreements (or by collective agreements) are transferred to the transferee.	Generally 'no', in accordance with transfer of undertakings legislation there is an automatic transfer of the contracts. If an employee is dismissed for a reason connected with the transfer then this is automatically 'unfair', unless the employer can show economic, technical or organisational reasons for a change in the workforce.

	Finland	France	Germany	Italy
1. Is it a legal requirement that employees must receive an employment contract?	No, but the employer is obliged to provide the terms of employment in written form.	No statutory requirement, however employment contracts may be required based on certain labour agreements and for other specified cases, e.g. fixed term contracts; apprentice contracts.	A contract is not necessary, but the main terms of employment should be provided in writing one month after the start date.	No, a contract can be oral or in writing. However, any special terms or restrictions that are not normal (and fixed term contracts), must be in writing
2. What factors constitute a fair dismissal i.e. legally justifiable reasons to terminate employment without the need to pay compensation?	Personal factors such as serious breaches of obligations; and economic factors such as a significant or permanent decrease in work potential due to economic, production or re-organisational reasons.	If the dismissal is for a substantial and serious reason and for personal or economic factors (e.g. redundancy). Subjective reasons are not valid for a fair dismissal.	Justifiable reasons: personal; performance and operational or economic reasons. Instant dismissal possible for gross misconduct. (Protection is for employees who have worked for more than 6 months in companies of more than 5 employees).	A substantial reason or breach of terms that prevents the continuance of the contract. The reason has to be related to personal facts, which breaches the trust of the employment relationship.
3. What is good practice with regard to dismissal procedures to minimise the risk of claims for unfair dismissal?	Negotiation and discussion. Dismissal for personal reasons requires the use of various warnings.	Good documentation describing the dismissal procedure and awareness based on advice, of what has previously constituted a fair dismissal following interpretation in the French courts.	Different procedures for each situation. Generally important to provide warnings and have complete documentation and consult with the works council (where appropriate).	Notice must be provided - employee has 15 days to ask for a reason- employer must reply in 7 days or the notice is void.
4. If an employee is dismissed unfairly what is the financial range of compensation that can be made to employees?	Up to 24 months salary.	Up to one month's gross salary for non-compliance with the dismissal procedure, or compensation (e.g. 6 months gross salary, if more than 2 years employment and the company employs more than 10 employees); possible reimbursement of employment contributions to the unemployment agency (up to 6 months).	If the dismissal is unjustified, the termination is void and employment continues. However, often there are negotiated severance payments. If the dismissal is not justified in a labour court, it will reinstate the employee or award compensation - value depends on length of service, age, marital status, etc, but not more than 18 months salary. Average calculation is ½ the gross monthly salary for each year of service.	If a dismissal is judged as unlawful an employer (of more than 15 employees) must reinstate an employee within three days. Alternatively the employee can choose compensation equal to 15 month's wages. If the employer has less than 16 employees reinstatement or compensation of between 2.5 to 6 month's wages is possible.
5. What are standard maternity rights?	105 days with leave from work and compensation of salary from public funds.	Protection against dismissal. Six weeks maternity leave before birth, 10 weeks after birth (period can be extended, after third child)	General rights not to work if this would endanger the foetus and not to be dismissed by reason of redundancy. Paid maternity leave commences 6 weeks prior to the anticipated birth and 8 weeks after.	A pregnant employee cannot be dismissed in the year after the birth of the child. Maternity leave: from two months before the expected birth to three months after the birth - 80% of salary paid by the employer.
6. What are parental leave rights (including paternity leave)?	The father has a right to 18 days leave when the child is born. There are other parental rights to stay at home with children under 3 years of age.	3 days birth leave for fathers; 11 days leave for fatherhood; 3 years educational parental leave for one of the parents (labour agreements may provide longer periods)	Both mother and father are entitled to parental leave during the first three years of the child's life - payment from public funding. Leave of up to 12 months can be deferred if agreed by the employer - must be taken prior to the child's 8th birthday.	Until the child is one year old, the mother has the right to two daily rest periods of one hour each - fully paid. Until the child is eight year old, the parents can take up to 10 months leave, each of them not more than six months, but if the father takes at least three months, 11 months leave is possible. Until the child is three, eligible to 30 % salary up to six months maximum.
7. When are employees eligible for redundancy payments?	After notice, which varies from 14 days to 6 months depending on the length of service.	When dismissed for that reason.	No automatic right to redundancy payments - either the termination is lawful and employment ended, or void and the employment continues (see 2 and 4 above). Works councils 'social plans' normally provide for financial compensation in case of redundancies.	When employment is terminated as a result of crisis, reorganisation, conversion or reconstruction of a business with more than 15 employees.
8. What are the statutory redundancy payment limits?	There are no regulations.	20% of the salary per year of employment (+15% per year above 10 years)	No statutory limits for the 'social plan'. In insolvency situations - limited to 2½ gross monthly salary of the employee, in total up to 1/3 of the insolvent company's capital.	80% of the monthly salary, but not exceeding 880 Euros per month.
9. Can existing employees be dismissed if you buy a business with employees?	No. The reasons for any dismissal must be based on the requirements as stated in (2) above.	No, not in accordance with EU law.	No, not because of the transfer, but termination is possible if within the justifiable reasons stated in (2) above.	No, not within EU law

Jersey	Netherlands	Poland	Portugal	Russia	Spain
No, but it is good practice to do so. If not provided within 4 weeks of the start of employment, a written statement of terms and conditions must be provided to the employee.	No, but a statement of terms should be provided. However, it is advisable to have a signed employment contract, before the employment commences.	Under the Polish Labour Code, a contract of employment is preferable although a statement of terms and conditions must be provided within 7 days of the start of the employment identifying the main conditions. There is a fine (equivalent of USD 125) for failure to provide a written statement.	No, except if it is a fixed term contract.	Labour law is regulated by the Labour Code of the Russian Federation and more than 100 other laws and regulations. The employer and employee must conclude a labour contract from the date of providing employment.	Yes, and the employer must register the employee with the appropriate social security office.
Jersey does not (at present) have unfair dismissal legislation - the employer or employee must rely on the contract or statement of terms.	A contract can be terminated immediately for gross misconduct (e.g. theft, deceit, failure to carry out reasonable requests), without compensation if approved by the Centre of Work and Income (CWI) - government agency. However, even with CWI approval an employee can apply to the court for compensation. There are four reasons to terminate an employment contract: by mutual consent; gross misconduct; decision of the CWI; by the court. If terminated by the court there is a fixed formula for compensation. Starting point is payment of the gross monthly salary according to the years of service although the formula can be weighted according to the conduct of the employer or employee.	By agreement (in writing); by notice; by consultation with trade union - all identifying the reason for termination. Many restrictions to terminate (e.g. due to personal reasons, during holidays, maternity leave). May terminate for substantial reasons (e.g. gross misconduct) with consultation and a statement of the reason.	If the dismissal is for economic or operational reasons of the company/business and there is a need to reduce employees; or for gross misconduct/just cause, or violation of the contract	Fair dismissal of the labour contract can be by mutual agreement; termination for just cause; termination by the employer; refusal to carry on specific activities due to company restructuring; or force majeure.	The company must prove any serious breaches of contract or responsibility by the employee.
See above		Advice regarding notice periods, reason for the dismissal and consultation with unions	Clear procedures with regard to consultation, allowing the employee to defend him/herself and present evidence up to a final report; the right to appeal to a court. Procedures should be followed even in cases of gross misconduct.	There is a general form of labour contract, but ensure that this is flexible to cover all possible situations.	Generally this is regulated by the collective bargaining agreement between the company and its unionised employees. Also regulated by general labour laws with regard to notice and consultation.
See above - any claim for damages, if successful, would be based on the degree of the breach of contract or statement of terms.		If terminated by notice the employee may be reinstated and compensated for loss of salary (from 2 weeks up to 3 months). Even if the contract is terminated with immediate effect, the employee may claim reinstatement (and lost salary) or compensation (equal to his notice period). Employer may also counter claim.	Reinstatement or compensation (one months salary for each year of service - minimum 3 months salary); plus the salary since dismissal and the judgement.	Generally 2 or 3 average monthly salaries - it can be higher if there are collective agreements.	4-5 days salary for every year worked up to a maximum of 42 months.
Jersey does not (at present) have statutory maternity rights.	A pregnant woman does not need to work from 6 weeks before the expected birth until 10 weeks after the birth. The employee receives 70% of her salary, paid by social security funds.	Rights against unfair dismissal, and social welfare rights e.g. avoidance of night work; business trips; right of transfer of position; right to medical visits; paid maternity leave (see below); extended work breaks after the birth.	Up to 4 months leave (and rights to breast feed for up to 1 hour per day for one year); fathers can take 2 months of the 4 months leave.	General anti-discrimination policies and better working conditions.	16 weeks paid leave.
Jersey does not (at present) have statutory parental leave rights.	A maximum of 6 months for parents employed for more than 1 year for children up to the age of 8 - there are no holiday allowances.	Maternity: up to 20 weeks depending on the number of children; up to 14 weeks for adoptions. Unused female maternity leave can be granted to her husband. Childcare leave: men and women are equally entitled to 3 years unpaid leave, after six months employment, up to age 4 of the child.		Paid maternity: ranges from 70 to 84 days before and 70 to 110 days after the birth. Parental leave rights in respect of a child up to 14 years old, mainly in relation to out of school time.	Fathers generally have 2 days paid leave.
Jersey does not (at present) have statutory rights to redundancy payments.	All employees are eligible for unemployment benefit at 70% of the last earned salary - in case of mass redundancy usually a 'social plan' provides for redundancy payment, as agreed with the unions.	If the employment contract is terminated for economic or organisational reasons (in companies with more than 20 staff)	See 4 above	Usually as stipulated by the labour contract and/or the Labour Code.	When agreed by the court or within collective bargaining agreements.
See above.	There are no statutory limits.	1, 2 or 3 months remuneration depending on the length of service. Cannot exceed 15 times the minimum wage (currently USD 200 per month)		Generally 2-3 average monthly salaries.	Up to 20 days for every year worked.
Generally yes, subject to the contracts of employment - specific advice should be sought as other considerations may apply.	No, not within EU legislation, except if a share only transaction is foreseen. However, a redundancy situation exists if the termination is for business, economic or organisational reasons.	No, all the rights of the employees remain unaffected. Employer must provide 1 months notice of such a transfer - the employees cannot object but they can terminate their employment agreements.	No (except for collective dismissals to reorganise the whole company or by mutual agreement).	Yes, but the Labour Code authorises compensation.	Yes, but the new company must compensate the employee up to 45 days pay for every year worked (as it is treated as an unfair dismissal)

		Sweden	Switzerland	Turkey	USA (California)
1.	Is it a legal requirement that employees must receive an employment contract?	No, but the employer must inform the employee in writing about the conditions of employment.	No, except in special circumstances.	Yes, for contracts planned for more than 1 year. If there is no contract the employer should provide a written statement of terms and conditions to the employee.	No, however, certain employment situations can cause courts to imply contracts not to terminate employment other than for 'cause'
2.	What factors constitute a fair dismissal i.e. legally justifiable reasons to terminate employment without the need to pay compensation?	For economic and operational reasons (e.g. redundancy) - 'last in first out' principle and offer of alternative work. Dismissal can be for personal reasons, but this is usually a last resort and the employer has a duty to offer alternative solutions - there are no specific 'rules'.	There are no specific reasons - notice periods should be followed. Range from 1 month (after 1st year) up to 3 months depending on length of employment. It is improper to provide notice to terminate during military service, illness and pregnancy. An employee may enquire about the reasons for his/her dismissal.	The contract may be terminated without compensation in certain situations, e.g. illness/inability to work; lack of qualifications; lies/defamation; abuse of good faith; failure to fulfil obligation after warnings.	In the absence of a contract, employment may be terminated at any time for any reason, without any requirement to pay compensation. However, employers are at risk of liability for termination in certain cases, e.g. discrimination; in response to claims for compensation due to a work related injury or illness. Federal law requires at least 60 days notice of a 'mass lay off'.
3.	What is good practice with regard to dismissal procedures to minimise the risk of claims for unfair dismissal?	Notice of between 2-6 months; negotiations with an appropriate trade union. Special court of law to settle work related disputes.	Only the grounds for dismissal may constitute an unfair dismissal; dismissal procedures are irrelevant. An unfair ground for dismissal may, for example, be based on the employees personality; breach of constitutional rights; failure to consult with an employees representative body, union or the employees as a whole in the case of mass dismissal.	Little procedure in respect of substantial reasons for dismissal, but warnings in case of poor performance.	Employers should have a written policy acknowledged by the employee that employment is at will and may be terminated - therefore there are no specific practices.
4.	If an employee is dismissed unfairly what is the financial range of compensation that can be made to employees?	Damages of between 50,000KR and 70,000KR. Refusal to reinstate after a court decision may result in compensation of between 16 and 48 months pay, depending on seniority.	The notice is null and void and employment continues although consequential damage may be awarded but cannot exceed 6 months salary. There is compensation if an employment relationship is terminated without notice.	This is complex and varies according to the circumstances.	If there is an unlawful reason for termination, an ex-employee can obtain damages for back pay, and damages for future loss of earnings.
5.	What are standard maternity rights?	The mother and father have a combined maternity leave right of 480 days after the birth of a child - 360 days at 80% of salary (paid by the state), the rest at 60 KR per day. A minimum of 60 days are reserved for the father. A parent also has the right to be at home with a sick child with 80% salary.	Protection against dismissal. Employee must give notice and then eligible for maternity leave up to 16 weeks after the child's birth. Wages paid vary per canton - usually based on length of service - paid by employer although many employers have insurance.	Privileges and maternity rights for pregnant employees and also employees' wives who have no 'social guarantee' - a state social fund, part employee contributed. To benefit employees must pay into the fund for at least 90 days before birth.	Federal law: private employers of 50 or more employees - up to 12 weeks of unpaid leave - no distinction between male or female. California law: private employers of more than 5 employees - up to 12 weeks of unpaid leave, but this can be aggregated with other time off benefits so that up to 28 weeks leave is possible (in a 12 month period). From July 1 2004 workers will receive up to 6 weeks of paid leave per year for childcare or care of an ill dependent. This programme is 100% employee funded.
6.	What are parental leave rights (including paternity leave)?		There are no automatic rights for the father to take parental leave.		
7.	When are employees eligible for redundancy payments?	Not applicable - they are not eligible.	There are no statutory regulations to be observed - however they can be affected by collective labour agreements or individual contracts	If they are made redundant for economic or operational reasons - subject to minimum age limits (female 56; male 59) and completion of a minimum of 5,975 days of work (women) and 6,050 days (men)	There are no legal requirements for redundancy payments, although many private employers have voluntary adopted plans.
8.	What are the statutory redundancy payment limits?	Not applicable (see above)	There are no statutory limits.		
9.	Can existing employees be dismissed if you buy a business with employees?	No, but if the transaction creates a redundancy situation this could constitute grounds for a fair dismissal.	Yes, if statutory or contractual notice periods are met.	Yes, or new employment contracts can be agreed. However the law is evolving and the employment contracts may be automatically assigned to the new employers.	Yes, but there is distinction between asset and stock purchases, as in the latter case the employer is unchanged.

Additional labour law information

Member firms in the countries shown in this survey also identified many similarities in other aspects of legislation and regulations that employers would need to be aware of – similarities mainly in terms of the concept, although the interpretation and application may vary from country to country.

For example, there are many equal treatment laws and regulations concerning anti-discrimination in race, sex and disability; anti-harassment at work provisions; equal pay rights; data protection legislation; working time regulations; health and safety laws, and employers should also check and be aware of collective bargaining agreements and employee social fund agreements, and possibly special provisions in relation to part time workers or those employees with fixed term contracts. Uniformity across EU countries cannot be



assumed – there are often subtle variations of policies and practices.

Employer and employee contributions towards a state run social security or national insurance fund, which may include an element of old age pension, invalidity or unemployment benefits are generally

universal – however, levels of contributions differ quite considerably and this may be a factor to consider if you are acquiring a business or establishing a permanent base in a particular jurisdiction. However, in some jurisdictions there are increasing obligations to contribute to specific pension funds – probably due to the increased average age of many populations and concerns about a state's future financial obligation to provide long term care and assistance.

There is also uniformity over an employee's rights as a union member – not to be dismissed by reason of union membership – such dismissals are automatically unfair or void.

In many situations employees are your greatest asset and also, potentially, your greatest liability - it is therefore advisable to take professional advice in relation to individual specific circumstances.

How to be 'Président' of a French company and also minimise personal liability

A recent French law, called 'Nouvelles Régulations Economiques' (NRE) has considerably modified commercial company law in France. This law introduces some important modifications, especially with regard to the corporate governance of 'SA' companies (Sociétés Anonymes), and makes it closer to Anglo-American models.

A French 'SA' company - consisting of the 'Conseil d'administration' (Board of Directors) with its 'Président' (Chairman) and the 'Directeur général' (Managing Director) - can now separate the functions of the 'Président' and 'Directeur général', although, if required, the same person may exercise both these roles.

These governance modifications are not possible however for the 'SA' company management model with a 'Directoire'

(Management) and a 'Conseil de Surveillance' (Supervision Council).

Therefore, it is now possible to be appointed as President of the French company, without being in charge of, or liable for, the general management of the company. According to the 'SA' management structure, the "Directeur général" assumes the direction and representation of the 'SA' company. He is the company's 'executive officer'.

However, the role of the 'Président' is limited to three basic functions as representative of the 'Conseil d'administration': to organise and lead the "Conseil d'administration" and account for it to shareholders; to supervise the functions of the company's bodies; and to help the directors accomplish their objectives.

Compared to the management of a traditional 'SA' company or a limited liability company (SARL), the new governance model provides an important advantage - considerably diminishing the liability of the 'Président du Conseil d'administration'.

These changes present a major benefit for foreign investors established, or wanting to establish in France, by being able to exercise the office of 'Président' of the French subsidiary without bearing any substantial liability towards third parties. The 'Directeur général', as the person directly involved in the day-to-day management of the 'SA' company, has the risk of this liability.

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Doing business in the Russian Federation

General economic situation & foreign investments

When the Soviet Union broke up in 1991, the group of independent states that emerged inherited a poor economic legacy. The former Soviet Union's gross domestic product (GDP) shrank by 5.1% in 1991, while inflation was running at a rampant 160%. The break up of the Union ushered in a chaotic period of reforms. The norms of economic life –strict control of prices, currency, exchange rates and trading – disappeared, to be replaced with wholesale degeneration and the sale of state owned enterprises. Since then it has been a roller coaster ride.

After privatisations from 1992, gradually foreign investment increased, perhaps without awareness of the risks of high volume investment into an ill-prepared economy. However, by 1995, 60% of GDP was generated by the private sector, but, in 1998, GDP fell and the rouble was devalued. Since 1999 there has been much more stable and controlled growth at 4-5 % per annum, initially caused by manufacturing reserves,

way since 1991. However, it is believed that continuing investment is essential.

Foreign investment is relatively low, partially due to the the low speed of re-structuring the banking system, but also because of a perceived risk by foreign investors of changes in politics, the economy, legislation and a lack of regulation.

However, Standard & Poor's Agency recent assessment indicates that there is commitment to overcome these problems and as a result it has increased its rating of Russia as a foreign investment location.

General rules of business and investments

Generally Russian businesses welcome foreign investments and they believe that it does not interfere with the development of domestic business and the economy, and they also believe that it creates new opportunities to modernise industry, and obtain new technologies.

Recent economic studies have shown that the basic motives for foreign investors to invest in the Russian Federation are an

accounting; possible corruption and organised crime.

However, it should be noted that the research also revealed that frequently most of these risks are not barriers to foreigners making investments.

Tax structures

Based on the Tax Code of the Russian Federation.

Income tax: for individuals - 13% and for companies - 24 %. Under certain conditions the income tax rate of companies attracts reduced percentages.

Tax on dividends: for individual non residents - 20% and for non resident companies -15%.

Value added tax: paid by companies, individuals – and those involved in the transport of goods into the Russian Federation, in accordance with the Customs Code of the Russian Federation. The general rate is 20%, but it can also be 10% or zero under certain conditions.

Social Security: calculated on the basis of the annual salary of employees - generally it is equal to 35.6% for salaries less than 100,000 roubles. Some reduced rates apply for agricultural structures (26.1%), for individual businessmen (22.8%) and lawyers (17.6%).



the lack of market restrictions and investments in the technology sector to support traditional industries. At times this swelled growth to 15 – 20 %.

The economic crisis of 1998 had a significant influence on the character of Russian business and the quality of the State's management of the economy. By 2001, the economy was stable – GDP stood at \$310 billion with inflation at 19.8%. Optimism is now high and the economy has come along

aspiration to keep control on profits, manage sales, control the quality of production and finance, as well as to protect 'know-how' and to be able to use well qualified labour at relatively low cost.

However, foreign investors need to be aware of potential risks such as varying tax laws; weak property rights and the rights of creditors; customs enforcement; changes in the political and economic spectrum; the underdeveloped banking sector; systems of

Principal types of business "seats"

The Civil Code of the Russian Federation regulates the following types of companies that can be incorporated:

Integral Partnership (Polnoe Tovaristchestvo) - the partners have full liability limited to their personal assets. Minimum capital – 10,000 roubles, minimum number of partners – 2.

Trust Partnership (Tovaristchestvo Na Vere) – similar to an Integral Partnership, but some partners do not participate in the management of the Partnership and have limited liability (limited to their share in the Company). Minimum capital – 10,000 roubles; minimum of 2 partners.

Limited Company (Obstchestvos Ogranichennoi Otvetstvennosti). Minimum capital – 10,000 roubles, minimum of 2 directors.

Joint-stock company (Акционерное Общество). There are two options:

Closed Joint Stock Company – shareholders are listed in the Charter, minimum number of shareholders – 1, minimum capital – 10,000 roubles.

Open Joint Stock Company – assumes public publishing and public distribution of shares. Minimum capital – 100,000

in force today – stating that the main form of investment is through the incorporation of enterprises with foreign capital within the Russian jurisdiction.

The second generation of laws have evolved through the Civil Code of the Russian Federation, relating to the status of foreign 'persons' if not determined by Federal Law. It secures, for example, the legal equality for all subjects, the inviolability of a private property, and seeks to minimise intervention of the State into the economic life of society, with the aim developing freedom for business in Russia.

The Duma is now discussing a draft Federal Law on foreign investments, based on recommendations by many international organizations. It includes regulations on the equality of legal and economic treatment of Russians and foreigners and general principles of non-discrimination.

Debt collection

Generally, the procedure of debts collection in the Russian Federation assumes two approaches:

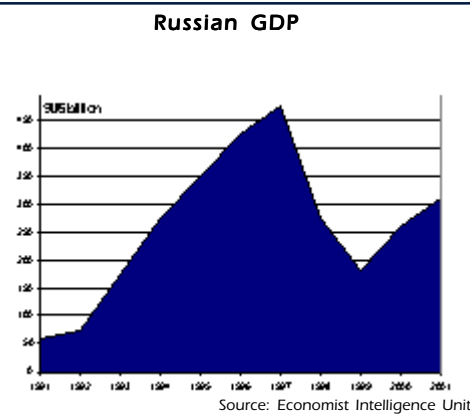
- extra-judicial via negotiations and reconciliation; and
- judicial via an Arbitration Court.

Although the procedures are legally determined, the process is quite difficult and lengthy and also arbitration is a relatively new concept that has yet to achieve broad based acceptance and consistency. However, it should be noted that the apparent difficulty in recovering debts has not played an important role in the decision of foreign investors to invest in the Russian Federation.

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roubles; number of shareholders – unlimited.

Co-operative (Кооператив, Артель) – liability of members of co-operative is determined by the Charter of the Cooperative and the Law on Co-operatives.

State-Run Unitary Company – companies with exclusive state property.

Also a natural person (individual) can be registered as a business person, which allows him or her to perform business activities and assumes payment of respective taxes.

General principles in relation to the legal system

The legislation concerning foreign investments is not yet harmonised and is evolving in line with the evolution of the Russian Federation. It comprises aspects of different generations of legislation.

In the first generation were the Decisions of the Council of Ministers of the USSR in 1987, which mainly concerned joint ventures between the USSR and other countries, and ensuing pronouncements by the Council for Mutual Economic Assistance (CMEA) encouraging joint ventures between Soviet organizations and firms from capitalist and developing countries.

The law on foreign investments was adopted within the Law of the Russian Federation on July 4, 1991, which contains significant aspects of USSR legislation – still



Euro-link has formed an international strategic alliance with INAA.

INAA was established in 1992 as an international network of accountants, auditors and tax advisers, representing both businesses and private individuals. It now has 49 members throughout the world.

INAA members offer to co-ordinate services for multi-national business operations and provide an assurance that all work carried out will be at a consistently high level in accordance with the 'INAA Quality Standard'

Fundamental to any cross-border business and personal financial planning is tax. In order to constantly improve the capability of its members, INAA's International Tax Forum meets at least twice a year, where member firm delegates exchange technical information about changes in their jurisdictions and how domestic legislation can be translated to provide international tax planning opportunities for corporate and personal clients.

The Forum was started in 1997 and attracts a regular group of tax professionals and is now an integral part of the INAA worldwide ethos.

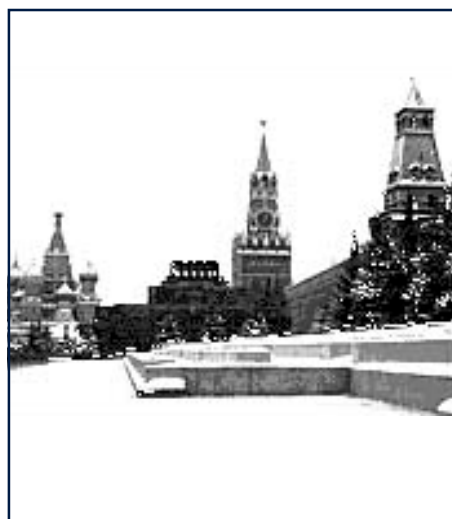
As an organisation, INAA are sensitive to issues emanating from recent auditing scandals. They always aim to ensure a high calibre for their membership. In the light of recent public concerns, an educational component focusing on auditing and accounting will be expanded and continue to be a part of their conferences, which already include a one day international taxation seminar.

If these additional services are required, introductions to INAA members can be obtained by contacting your local Euro-Link member firm. Alternatively you can contact INAA members directly by visiting their web site: www.inaa.org.

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Euro-Link members in the news



Successful defence of French judge makes the headlines

Jean-Louis Cocusse, partner of **KBR Juriteam, Paris, France** defended a former judge accused of corruption of his functions, in the French Criminal Courts.

The case has been very high profile in France and several articles have been published in the French national newspapers (such as Le Monde and Le Figaro). Jean-Louis Cocusse had already defended his client before the Supreme Court and, in May, the judge was found not guilty of the criminal charges. The judge was released and the Director of Public Prosecutions decided not to appeal against the decision.

The case continues in respect of disciplinary proceedings, but in the meantime a claim of compensation has been lodged because the client was incarcerated for two months.

Recognition for two member firms in the UK

Two UK Euro-Link member firms received prestigious accolades, in the Managing Partners Forum/ European Practice Management Awards 2002, announced in London, UK, on September 11 2002. The awards recognise significant achievement by UK law firms. They are the only Awards to focus on the contribution of marketing, HR, technology and innovation in the management of professional firms.

Collyer-Bristow of London, were announced as Runners-up in the 'Best Brand In Practice' award, while **Stevens & Bolton** of Guildford received the Runners- up award for 'Best Managed Firm'.

The chairman of the judges said after the awards ceremony:

"These were exceptionally difficult awards to judge, and the high quality of entrants demonstrated the very clear improvements that have occurred in the management of professional service firms over recent years."

New members update

Euro-Link has recently made the following new member appointments. You can see further details about each firm in the 'Network' part of the Euro-Link web site.

- **USA** - Ziegler, Ziegler & Associates LLP, New York
- **Germany** - D&P Dehnen GmbH, Dusseldorf & Nuremberg
- **USA** - Greene Radovsky Maloney & Share LLP, San Francisco
- **Turkey** - Le Buro, Istanbul
- **Poland** - Kunachowicz, Slusarek & Partners, Warsaw
- **England** - Morgan Russell, Esher
- **The Netherlands** - Abeln Sluis de Neef Advocaten, Amsterdam

New Euro-Link Board elected in Helsinki



Euro-Link for Lawyers elected a new Board of Directors at their annual conference in Helsinki, June 2002. Pictured from left to right (standing): Kurt Blickenstorfer (Switzerland); Lars Espersen (Denmark); Paul Sillis (England); Claude Wassenich (Luxembourg); Stuart Howie (Scotland) - President; Rosa Maria Arasa (Spain); Philippe Bedard (France); Jim Dawe (USA) - Vice President; (kneeling) Evert-Jan Rotshuizen (Netherlands) and André Castelli (Germany)

Euro-Link for Lawyers is one of the largest facilitators of international legal services, bringing together the combined strengths of 40 commercial legal practices to create an international team of powerful advisers.

Together, Euro-Link for Lawyers' member firms have over 400 partners and over 900 professional staff in 54 offices worldwide in 24 countries.

Future Newsletters

What information would you like to see in future newsletters? If you have suggestions, please e-mail them to: info@eurolink-law.com

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

No responsibility can be accepted by Euro-Link or member firms for any loss occasioned by a person or organisation acting or refraining from acting on the basis of this newsletter.

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