Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare

NORTON ROSE FULBRIGHT

Horizons 2016

Norton Rose Fulbright in Germany

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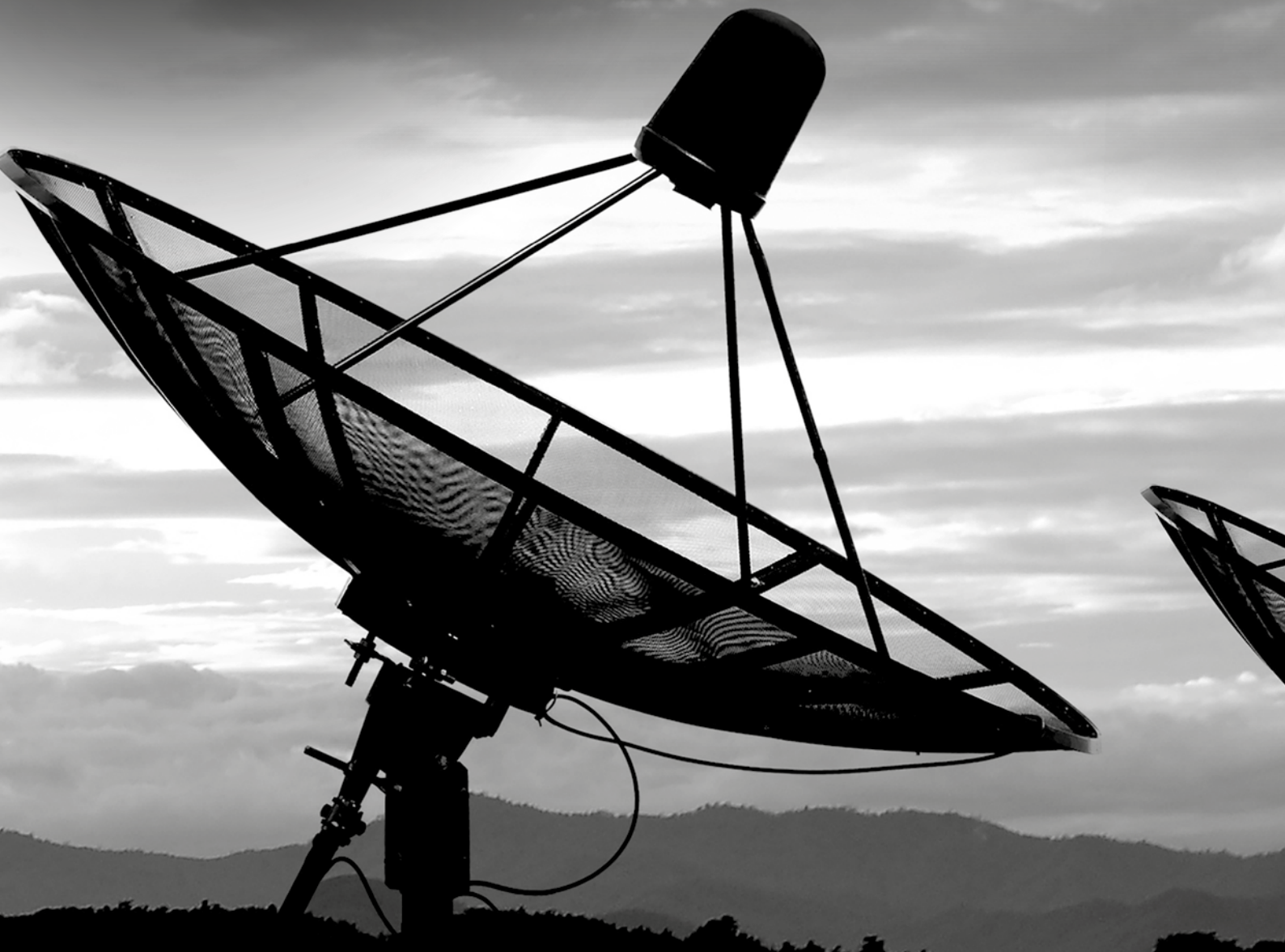

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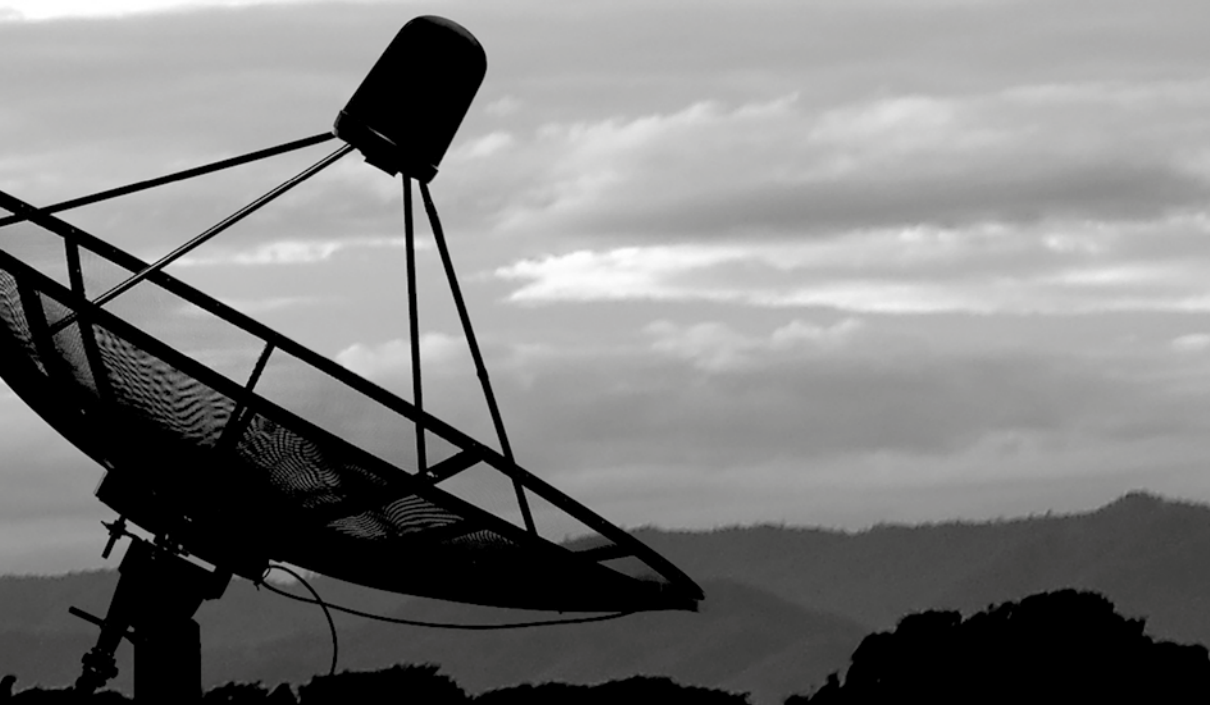


Awards

Top 10 global legal brand

Acritas' Sharplegal, Global Elite Brand Index 2015

Transport finance law firm of the year

Global Transport Finance Awards 2015

Top 10 international arbitration practice

GAR 30, Global Arbitration Review 2015

Best performing legal brand

Managing Partners' Forum Awards for Management Excellence 2015, 2014, 2013

European project bond deal of the year: Norton Rose Fulbright advising on A7 Bordesholm–Hamburg motorway PPP

IJGlobal Europe & Africa Awards 2015

Maritime lawyer of the year

Lloyd's List Global Awards 2015

Perspectives

Today's world is characterised by technological progress. Intelligent machines, digital assistants, any content just a click away – only 20 years ago this would have sounded like a scene from a science fiction film. Yet many technologies that seemed to be visions of the far future are now an integral part of our everyday life.

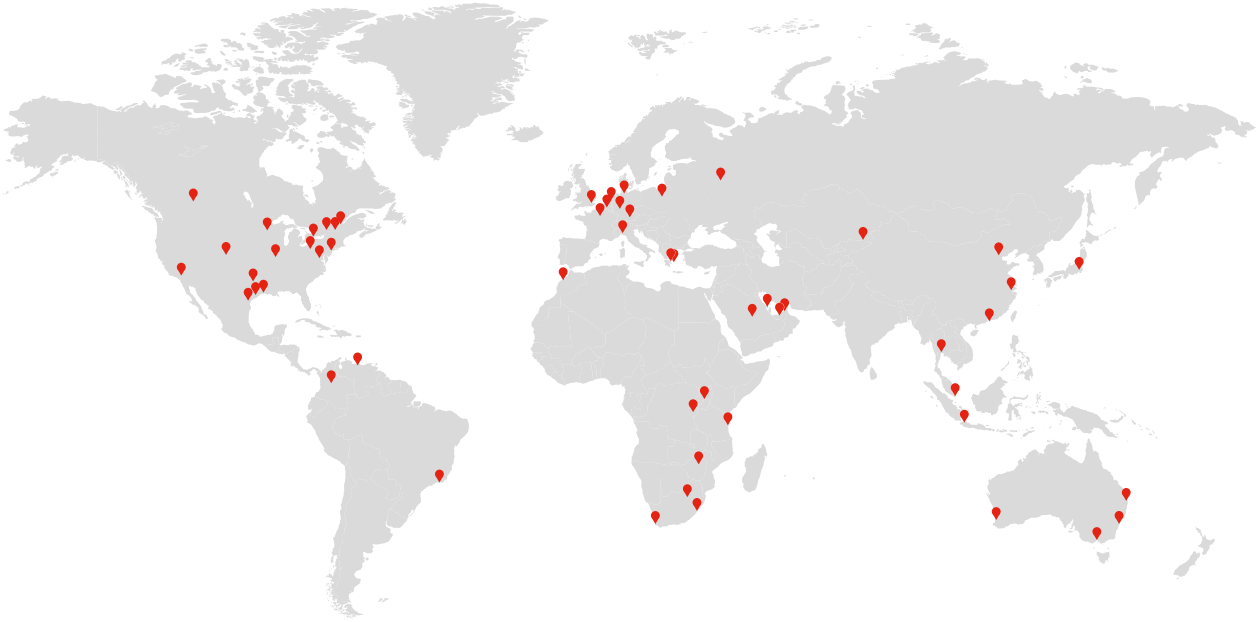
We do not yet have flying cars or teleportation devices, but the new technologies are developing at a rapid pace, influencing most economic sectors and leading to radical changes everywhere. Innovations are even finding their way into more traditional areas such as the legal sector. This is due in no small measure to the fact that our clients are looking for new business models in order to benefit from the opportunities created by cloud computing, big data and interconnected supply chains – and for this they need legal advice.

In this edition of *Horizons* we take a closer look at the legal issues surrounding these new technologies. We talk to our Global Chair Kenneth Stewart about current trends in the legal sector and our Project 2020. We report on the challenges cloud computing poses with regard to data protection. Another topic is the digital transformation of the German *Mittelstand* and the effect it has on the M&A market. Furthermore, we provide an insight on current developments in antitrust law.

We look forward to sharing our thoughts on these and other legal issues in the future.

The partners and lawyers
of Norton Rose Fulbright in Germany

Norton Rose Fulbright at a glance



Our office locations

	2010	2011	2012	2013	2014	2015
Strategic development	Australia	Canada and South Africa	Latin America	US and Central Asia	Brazil	Africa

People worldwide

7400+

Legal staff worldwide

3800+

Offices

50+

Europe

Amsterdam
Athens
Brussels
Frankfurt
Hamburg
London
Milan
Moscow
Munich
Paris
Piraeus
Warsaw

United States

Austin
Dallas
Denver
Houston
Los Angeles
Minneapolis
New York
Pittsburgh-Southpointe
St Louis
San Antonio
Washington DC

Canada

Calgary
Montréal
Ottawa
Québec
Toronto

Latin America

Bogotá
Caracas
Rio de Janeiro

Asia

Bangkok
Beijing
Hong Kong
Jakarta[1]
Shanghai
Singapore
Tokyo

Australia

Brisbane
Melbourne
Perth
Sydney

Africa

Bujumbura[3]
Cape Town
Casablanca
Dar es Salaam
Durban
Harare[3]
Johannesburg
Kampala[3]

Middle East

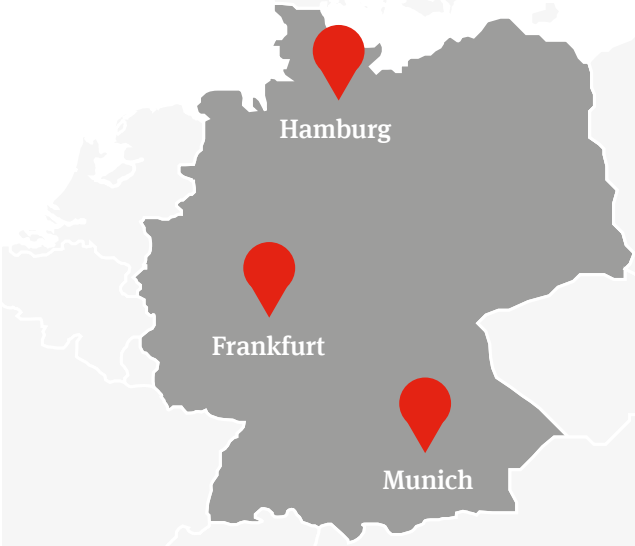
Abu Dhabi
Bahrain
Dubai
Riyadh[2]

Central Asia

Almaty

1 TNB & Partners in association with Norton Rose Fulbright Australia
2 Mohammed Al-Ghamdi Law Firm in association with Norton Rose Fulbright (Middle East) LLP
3 Alliances

Our practice in Germany



Lawyers
150+

Partners
40+

Offices
3
Munich, Frankfurt, Hamburg

Jobs in total
230+

Panels

Companies value a close and loyal relationship with their legal advisers and we are pleased to sit on the panels of more than 50 companies in Germany.

Markets

Specialisation, market knowledge, native speakers: we have people with particular knowledge of the Spanish, Italian, Russian, Chinese, Korean and Latin American markets – underpinned by a collaborative culture across our global practice.

Languages

We offer advice in 14 languages: German, English, French, Spanish, Italian, Dutch, Portuguese, Swedish, Croatian, Polish, Russian, Chinese, Korean and Farsi.

Industry focus and practice strengths

We make it our business to understand our clients' needs and requirements, as well as the markets in which they operate, by ensuring that we have in-depth knowledge of key industries.

Financial institutions

- Credit institutions, insurance companies, stock markets, open-end/closed-end funds
- Regulatory requirements
- Financing
- Acquisitions and restructurings
- Run-off business
- Trading, settlement and custody of securities
- Capital investments and capital market products
- Equity backing
- Defence of investor protection claims

Energy

- Renewable energies and cleantech
- Conventional energies
- Energy companies, suppliers, project developers, banks, investors, funds
- Acquisitions, investments, financings
- Projects and joint ventures
- Regulatory requirements, EU directives
- Investment protection proceedings

Transport

- Aviation, rail and shipping
- Sale and acquisition of means of transportation (or entire) portfolios
- Structured financing, financing through capital markets
- Reorganisations and restructuring
- Insolvency
- Claims

Infrastructure, mining and commodities

- Sponsors, banks, public sector
- PPP projects, motorways, airports, hospitals, public institutions
- Project financing
- Real estate transactions and financings
- Public procurement, including competitive dialogue
- State aid

Technology and innovation

- Technology and telecommunication companies
- Outsourcing and licences
- Joint ventures and co-operations
- Cloud services, big data
- Use of private IT in companies
- Technology-supported business models
- Industrial property rights, patent litigation, counterfeiting

Life sciences and healthcare

- Biotechnology, food and agricultural companies
- Pharmaceutical and medical device companies
- Hospitals, nursing homes and service providers
- Transactions, joint ventures
- Restructurings
- Regulatory requirements
- Technology transfer, licences, patents and property rights

Global regulation and internal investigations

Multinational companies are increasingly facing regulatory issues, official requirements, compliance issues and internal corporate investigations. Enquiries in one jurisdiction often carry consequences, including court proceedings, in other countries. The challenges involved in maintaining an efficient and practicable compliance structure are many, but can be managed. We focus on achieving consistency between the sometimes contradictory expectations of different jurisdictions, providing solutions that are in line with the law of all relevant countries. This applies to data protection, anti-corruption, internal investigations, and a range of other areas.

M&A and private equity

'Frequently recommended practice for M&A'
JUVE 2015/2016

'Strong choice for M&A and finance transactions in the energy and finance sectors'
Chambers Europe 2015 – Germany

Corporate

'Frequently recommended practice for corporate law'
JUVE 2015/2016

'Notable expertise in deals involving multiple jurisdictions'
Chambers Europe 2015 – Germany

Tax

'Respected tax practice'
JUVE 2015/2016

Best for tax advice on asset financing – Germany
Acquisition International: International Tax Awards 2015

Capital markets

'Recommended practice for IPOs and capital increases'
JUVE 2015/2016

'Solid mid-market expertise in equity capital markets transactions'
Chambers Europe 2015 – Germany

Commercial

'Handles multiple commercial matters for global clients on both the supplier and purchaser side. Focuses on the financial services sector.'
Chambers Global 2015 – Global-wide

Employment

'Respected employment practice'
JUVE 2015/2016

'It's great to work with a team which understands our business, is always available, co-ordinates global mandates and gives us concrete advice that actually works.'
Chambers Europe 2015 – Germany

Real estate

Renowned practice for real estate law
JUVE 2015/2016

'Focus on the office, logistics, hotel and shopping centre sectors'
Legal 500 Deutschland 2015

Dispute resolution and arbitration

'Recommended arbitration and litigation practice'
JUVE 2015/2016

'Strong focus on international arbitration, especially with regard to energy, media, post-M&A and investment treaty disputes'
Chambers Europe 2015 – Germany

Antitrust and competition

'Respected practice in antitrust law'
JUVE 2015/2016

'Frequently recommended practice in state aid law with a focus on the infrastructure and transport sector'
JUVE 2015/2016

Project finance and PPP

'Known for its strong position in the infrastructure sector, taking a leading role in a number of motorway PPP projects'
Chambers Europe 2015 – Germany

'Highly respected for its competences within the market'
JUVE 2015/2016

IT and data protection

'Very commercial and practical solutions in the areas of data protection, outsourcing and new technologies'
Legal 500 EMEA 2014 – Germany

Intellectual property and unfair competition

Renowned practice for trademark and competition law
JUVE 2015/2016

'A serious IP practice'
JUVE 2015/2016

Insurance

'Frequently recommended practice for advice to insurers'
JUVE 2015/2016

'Norton Rose [Fulbright] would be my first choice for Solvency II and insurance regulation.'
Chambers Europe 2015 – Germany

Banks (investment funds, regulatory)

'Recommended practice for investment funds and asset management'
JUVE 2015/2016

'Praised for its "very practical and solution-oriented" advice in regulatory law'
Legal 500 Deutschland 2016

Asset finance

Tier 1 for transportation: rail and aviation asset finance – Germany
Chambers Europe 2015 – Germany

'Established German asset finance practice with a formidable reputation for aviation and rail matters'
Chambers Europe 2015 – Germany

Acquisition finance and bank lending

'Respected firm for debt issues and structured finance'
JUVE 2015/2016

'Well-regarded practice advising on senior credit facilities, leveraged finance and debt restructuring'
Chambers Europe 2015 – Germany

Selected transactions and projects

€600m term loan agreed for IAG's acquisition of Aer Lingus

We advised Helaba as mandated lead arranger and book runner on a €600m five-year term loan to be used by International Airlines Group (IAG) for its acquisition of Ireland's Aer Lingus. This is part of a trend for smaller airlines to be swallowed by big carriers. IAG has cancelled €600m of an existing €1.4bn bridge loan and replaced it with funds arranged and underwritten by Helaba.

Domino's buys Joey's Pizza

We advised London-listed Domino's Pizza Group (DPG) on the establishment of a strategic joint venture with Australian company Domino's Pizza Enterprises (DPE) and the subsequent acquisition of Joey's Pizza, Germany's largest pizza delivery company. The deal also involved the German JV acquiring the master franchise rights for the Domino's brand in Germany and up to 15 existing German DPG outlets.

Insurer Signal Iduna acquires 100 MW wind farm portfolio

We advised German insurance group Signal Iduna on the acquisition of eight onshore wind farms from Bremen-based wpd AG. The acquisition of the farms, which includes a total capacity of 100 MW, is Signal Iduna Group's first direct investment in renewables and infrastructure assets and the company said it will continue to consider further opportunities in the sector.

Terms for 'farmer's privilege' set before European Court of Justice

We successfully represented Saatgut-Treuhandverwaltungs GmbH before the European Court of Justice to establish the period in which a farmer must pay for using self-produced seed without the property rights holder's approval – so-called 'farmer's privilege'. In June 2015, the Court followed our arguments and ruled that the farmer must pay the compensation before the end of the financial year in which the self-produced seed was sowed.

W&W Group sells Czech insurers to Allianz

We advised long-standing client German financial services group Wüstenrot & Württembergische AG (W&W) on the sale of its Czech subsidiaries to Allianz Group. Alongside the sale, the parties agreed long-term distribution arrangements for insurance and banking products from W&W's Czech building savings bank and mortgage bank.

ADLER Real Estate acquires conwert shares

We advised ADLER Real Estate AG on the acquisition of 24.79 per cent of the shares of Vienna-based conwert Immobilien Invest SE. To this end ADLER Real Estate acquired all the shares of MountainPeak Trading Limited, which holds a 24.79 per cent share in conwert.

Environmental protection business in the Port of Hamburg

We advised H.E.C. Europe Limited on its acquisition of 100 per cent of the environmental protection business from Hamburg-based Eckelmann Group. The three acquired subsidiaries mainly operate in the field of maritime and industrial liquid waste reception and treatment.

Tenova: reorganisation of German holding structure

We advised Italian-based company Tenova on the reorganisation of its German business. The Norton Rose Fulbright team provided German tax, corporate and employment law advice in relation to the reorganisation in addition to advising on Italian tax law aspects. Following a series of mergers and share transfers, the company's German holding structure has been significantly streamlined.

The Eurozone's first Islamic bank opens in Frankfurt

In July 2015, the Eurozone's first Islamic bank opened its doors in Frankfurt. KT Bank AG is a subsidiary of Turkish Kuveyt Türk Bank, whose majority shareholder is Kuwait Finance House. Norton Rose Fulbright has advised KT Bank AG and its shareholders in relation to its establishment, licensing process and product development over recent years. This involved pioneering work for both the bank and the lawyers on previously unfamiliar territory in Germany.

A new bank for Frankfurt

Even in a banking capital like Frankfurt, the establishment of a new bank is something that does not happen very often. This is particularly true for institutions with non-traditional business structures. KT Bank AG's Islamic financing business has to comply with the provisions of the German Banking Act in addition to Islamic ethics and values. This means, for example, that the bank is not permitted to charge or pay any interest. Instead, the bank generates income for its customers and shareholders by other means which are more closely focused on real economic principles.

Regulatory, legal and tax-related challenges

Supervisory authorities issue banking licences following a thorough and detailed process, during which a large number of European and national legal norms have to be considered. In this case, ensuring regulatory compliance was particularly complex given that the banking structure had not previously been used in Germany.

The design of KT Bank AG's products raised fundamental issues such as whether and under what circumstances an interest-free Islamic loan structured as a third-party transaction qualifies as a loan business subject to banking supervision (generally, it does). This leads to several further issues relating to supervisory, consumer protection and tax law, which were not only of particular importance to the supervisory or tax authorities but also to the associations involved in the proceedings (e.g. the Federal Association of German Banks) and required extensive co-ordination with the relevant authorities.

In addition to the services and products, KT Bank AG's special structures were reviewed. Islamic banks usually have an ethics board, i.e. a body consisting of Islamic scholars with financial expertise which, according to Islamic banking standards, should always have the final say in decisions made by the bank. In Europe, on the other hand, the final decision-making authority has to lie with the bank's management. It is therefore explicitly set out in KT Bank AG's articles of association that while the ethics board must be consulted on important decisions, the final decisions should be made by the board of directors.

After two and a half years of review, in May 2015 the German Federal Financial Supervisory Authority (BaFin) granted KT Bank AG a comprehensive licence to conduct banking business. This full banking licence enables the bank, in compliance with the principles of Islamic finance, to provide services such as accepting deposits, granting loans and providing investment services.

Results and perspectives

The fact that KT Bank AG has been granted a full banking licence shows that Germany is an active financial centre which is open to pioneering business innovation. After the opening of its first branch in Frankfurt in July 2015, KT Bank expects the customer base to include around 20,000 business and private customers by 2017. Thus a unique legal structure is brought to life.

The digital transformation of the German *Mittelstand*

Companies are turning more and more into smart factories with an increasing interconnection between humans, machines and processes. Products and services as well as overall competitiveness can be enhanced by using digital technologies. Which phase of this development have German small and medium-sized enterprises (SMEs), known in Germany as the *Mittelstand*, now reached?

The rapid development of information and communication technologies and the resulting spread of digital value-added activities have gathered enormous momentum in recent years – on a global level and particularly in Germany. This trend, referred to as digital evolution or the fourth industrial revolution (Industry 4.0), is something not only large companies but also the SMEs of the *Mittelstand* have to face.

Press coverage and studies on the topic frequently imply that the *Mittelstand* has already missed digitisation or has at least constantly put off implementing specific measures. But is this a fair evaluation of the traditional *Mittelstand* businesses that are often referred to as the engine of the German economy?

'Press coverage and studies on the topic frequently imply that the Mittelstand has already missed digitisation.'

It is certainly true that the *Mittelstand* attaches great importance to digitisation, in particular to the fact that it is a major driver for competitiveness. Most SMEs are aware that topics such as big data, the Internet of Things and cloud computing are more than just IT projects, and that digitisation is not an end in itself. This also means that setting the target to increase a company's degree of digitisation only makes sense if this goal is also anchored in the company's overall strategic orientation – and not merely driven from the bottom up, for example by the IT department.

'Most SMEs are aware that topics such as big data, the Internet of Things and cloud computing are more than just IT projects, and that digitisation is not an end in itself.'

However, many SMEs need support in assessing which trends are just a fad and which developments offer real chances and actual benefits for the business.

On the one hand, expectations of digitised processes are high: simplification of workflows, sales growth, innovation of products and services as well as the development of new markets. On the other hand, SMEs in particular are afraid of bad investments because in contrast to large enterprises, they have limited financial resources. Also, the digitisation process is often impeded by concerns about data security. This applies particularly to exporting companies, which – unlike companies solely active on the domestic market – are more likely to be exposed to IT security issues, such as cyber espionage or data theft, due to their stronger international integration. Furthermore, SMEs aspire to find the right balance between the growing pressure for innovation and the desire to adhere to their business tradition, and to establish the necessary know-how for their employees at the same time. The technological changes should be in line with the business culture and the entrepreneurial instinct.

'For the sake of a structured approach and in order to survive in the long run, it is therefore essential that every business asks the right questions.'

Nevertheless, at this point it is necessary to move away from trying to find the right overall assessment of increasing digitisation and understand that the *Mittelstand* is already an integral part of the digital transformation. For the sake of a structured approach and in order to survive in the long run, it is therefore essential that every business asks the right questions, including the following considerations:

1. Are we in a position to offer our customers comprehensive solutions and applications or do we need to adjust our business model with regard to digitisation?

2. Does our business bear untapped potential to create added value? Could an analysis of the data generated in the business (big data) enable product and process optimisation, the development of new products or the improvement of brand awareness?

3. Could 'disruptive technologies' render our business a target for market entrants and start-ups?

4. Do we have an efficient security system to protect our products and services?

These questions mainly show that competitiveness is determined by fast market adaptation, that many industries are facing fierce competition and that digital transformation has become a competitive factor on an international level as well. In most cases, SMEs cannot find the answers by themselves.

In this context, collaboration with different partners holds the greatest potential, since *Mittelstand* businesses generally form inter-company value chains with close connections between businesses, clients and suppliers. In fact, in SMEs horizontal collaboration between sales and procurement is where the greatest progress has been made. This may also be due to the fact that the digitisation of the production process is seen to consume more time and resources.

Nevertheless, networking with external partners still offers a lot of untapped potential, especially when taking into account the limited staffing and financial resources in some cases. Apart from the above-mentioned collaborations with clients and suppliers, businesses from the same industry sectors should be taken into consideration – or even sector-unrelated partners such as IT providers, research institutes or start-ups, which are not part of a business's value chain. In many specialised areas, it is recommended that businesses supplement their business know-how with external expertise in order to deal with tasks such as data privacy, IT security, appropriate contractual documentation and intellectual property – and to track the success of digital transformation.

'Both internationally and in Germany ... digitisation has proved to be one of the most important drivers for transactions involving technology companies.'

Partnerships and collaborations are not the only means of reaching this goal. Both internationally and in Germany, since 2014 digitisation has proved to be one of the most important drivers for transactions involving technology companies. Recent record transaction volumes were not only generated by a few global mega-mergers; in 2015, the number of transactions worldwide, with Germany as one of the main markets, was already higher before the end of the year than at the end of the New Economy Era (2000). All forecasts indicate a continuous increase in M&A activities, with growing involvement of the *Mittelstand*. Many SMEs are increasingly looking for acquisition opportunities in order to enter new markets, to face the challenges of digitisation and to become 'more ready' for the digital transformation.

Contact

corporate.de@nortonrosefulbright.com

Cloud computing and data protection – black clouds over the cloud?

Cloud computing has gained wide publicity over recent years and is said to be one of the key technologies for the next level of industrial evolution. However, this technology challenges entrepreneurs in various ways, in particular in terms of data security and data protection. The judgment of the European Court of Justice (ECJ) of October 6, 2015, which rendered the EU Commission's US Safe Harbor decision invalid with immediate effect, has led to uncertainties.

'The legal requirements ... with regard to data protection thus at first seem contrary to the features of cloud computing.'

Challenges posed by cloud computing

Cloud computing is the collective term for several kinds of services: in contrast to conventional data processing, hardware and software are offered as a service. Instead of purchasing their own IT systems, companies only pay for the use of such systems. The systems are operated in a decentralised manner and are shared with other customers. Flexibility and scalability are thus increased while at the same time costs are lowered. However, the ubiquity of data and information tends to result in the reduction of controllability of data-processing and security systems. This also means that there are potentially fewer possibilities for determining where and by whom data is stored and processed.

The legal requirements, in particular with regard to data protection, thus at first seem contrary to the features of cloud computing. According to the German Federal Data Protection Act, the collection, processing and use of personal data are only permitted with the consent of the individual concerned or if expressly permitted by law. The law also includes the 'purpose limitation principle', meaning that the use of the data is in general restricted to a specific purpose and any use for another purpose has to be approved individually. Furthermore, there is a transparency requirement entailing information and notification obligations on the part of the data-processing entity.

In contracts with cloud providers a distinction has to be made as to whether data is transferred within the European Economic Area (EEA) or to 'unsafe' third countries, which include the USA.

Safe Harbor

The USA is not classified as a safe third country per se, meaning that the transfer of personal data to receivers situated in the USA requires special legal protection. The Safe Harbor agreement allowed US companies to self-certify with a US authority as safe data processors – thus the US company was classified as a safe data receiver. This possibility no longer exists due to the decision of the ECJ. Cloud providers with servers in the USA are not only used by private users but also on a regular basis by small and medium-sized enterprises (SMEs).

Cloud providers in Europe

Within the EEA, 'commissioned data processing' is possible and recommended. To this end, the customer has to enter into a formal agreement with the cloud provider according to which the customer retains the right to issue instructions and exercise control. Furthermore there has to be an agreement about where exactly the customer's data will be stored and that they have to be returned in a standard format at the end of the contract term. In the course of the commissioned data processing, the customer as client remains responsible for the use of the data while the cloud provider as contractor only uses the data for the purposes defined by the customer and in accordance with the customer's instructions.

Cloud providers in the USA and other third countries

With regard to third countries the situation is considerably more difficult, as it includes a transfer of data which has to be specifically justified. The transmission of data to a third country requires a two-stage review. In stage 1, the data transfer to the cloud provider has to be justified, and in stage 2, the export of the data from the EEA has to be justified.

Unlike within the EEA, there is no privilege for commissioned data processing in the first stage so that a legal basis for transferring data to the provider is required. In many cases, companies can invoke their legitimate interest for the transfer. However, in these cases the Federal Data Protection Act still does not allow the transfer of sensitive data (so-called special categories of personal data), such as that pertaining to racial or ethnic origins, political opinions, religious or philosophical beliefs, trade union membership, health or sex life.

'Before the decision of the ECJ, the Safe Harbor self-certification of the US provider was an option in these cases but is now no longer admissible.'

In the second stage, an adequate level of data protection has to be ensured when transferring personal data out of the EEA. In this context, a distinction has to be made between 'white list countries' (Andorra, Argentina, Australia, Faroe Islands, Guernsey, Isle of Man, Israel, Jersey, Canada, New Zealand, Switzerland, Uruguay) and other third countries. For these third countries, including the USA, an adequate level of data protection has to be ensured through additional measures, e.g. by standard contractual clauses, binding corporate rules or the consent of the individual affected. Before the decision of the ECJ, the Safe Harbor self-certification of the US provider was an option in these cases but is now no longer admissible.

Background and impacts of the Safe Harbor decision

As the ECJ has rendered Safe Harbor invalid, the self-certification no longer serves as justification for data export to the USA. One reason for this decision is that the applicable rules and laws of the USA allow US authorities to access data of US-based cloud providers at their own discretion. From the EU point of view, this environment does not qualify as a 'safe harbor' for personal data.

The decision could directly affect any company transferring personal data from the EU to the USA, for example a German company providing employee data to its US-based parent company based on Safe Harbor. Indirectly, it can also be relevant for companies that depend on data transfers to the USA by their customers within the scope of their service provision, e.g. cloud providers and other IT service providers based in the USA rendering services to companies in Germany.

Besides obtaining consent, which is in general not practicable, other available alternatives are the European standard contractual clauses and binding corporate rules. The standard contractual clauses have, however, increasingly been subject to criticism since the court decision and the regulatory authorities have announced that for the time being they will not approve of binding corporate rules. It remains to be seen whether the USA and Europe can politically agree on better data protection standards. Customers in the EU can currently only be recommended to protect their data transfer to US cloud providers by using European standard contractual clauses, and to follow the coming developments very closely.

'Cloud computing cannot be used in the same way everywhere and is not equally suitable for all types of data.'

Using the cloud – but only with special security measures

In summary, cloud computing cannot be used in the same way everywhere and is not equally suitable for all types of data. Sensitive data and business secrets should only be saved in a cloud with special security measures such as encrypting the data on the desktop first. When using providers outside Europe, customers should carefully study the applicable legal framework.

Contact

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Interview with

Kenneth L. Stewart
Global Chair
Norton Rose Fulbright

Kenneth Stewart, our Chair of Norton Rose Fulbright US LLP in Dallas and Houston, has also acted as Global Chair since May 2015. Ken, a corporate lawyer and certified public accountant who was licensed to practise law in Texas in 1979, is the first US partner to assume the global role, which gives him a unique vantage point to share with us all. His message is clear: our success as a global law firm is contingent on us embracing change.

What are the current challenges for law firms?
We find ourselves at a point where our profession is undergoing disruptive change. Digitisation of the physical world and the ability this gives to an increasing range of devices to communicate with each other – from mobile phones to electronic cars – has finally started to have an impact on the legal business. We are now able to search vast amounts of data in e-discovery and to automate and computerise the creation of first draft documents. These are just two simple examples of change that digitisation is introducing to the legal business; many more are underway. Disruptive change of this kind also brings challenges, as many other industries have already discovered. In fact, the legal industry has always been very slow to adjust to change. Lawyers generally don't like change. But once we do it, we're pretty good at it. I think now is the time to start living in a world where we use these constant changes to our advantage.

The music industry is a good example of how this can work. Multiple changes of format over the years from vinyl records, to cassette tapes, CDs and now digital formats that can be played on tiny mobile devices have changed the music publishing industry's business model – in many ways, to its benefit. However, digitisation has also made it easier for consumers to copy content and bypass music publishers. Clearly, this has presented music publishers with a significant challenge – but those fundamental changes were not going to go away and the music industry finally embraced them and built new business models.

This is what the legal industry as a whole must do as well. The world has become more global, and more digital. Our clients' expectations are different from 10 or 20 years ago. They want us to be more efficient and cost-effective. And they want us to be more knowledgeable about their businesses and their industries and the future changes that may affect them. With the Norton Rose Fulbright global platform we have the power to compete very effectively – and I believe we have made a good start. But with constant change, there is still much more to come.

What insights have you gained from your experience as Global Chair?
My experience has driven home two things that I already knew, but which have taken on new life and urgency as I have spoken with our partners around the world. First, collaboration is the

key to our ability to deliver what clients want. We have to work across practice areas, across geographic borders and across diverse backgrounds and experiences to bring everything we have as a firm and everything we know to our clients' challenges. No one of us can know all we need to know to service today's clients, and no one of us can know all we know as an organisation. Collaboration is key.

The second thing is the absolute imperative that we are proactive in our approach to our business and our clients. We all know that the days of getting business by sitting at our desks waiting for the phone to ring are long gone. We must get out from behind our desks and market. Equally, we know that also gone are the days when success came through simply reacting to the issues and problems our clients handed to us as a result of our hard-fought marketing efforts. We must be smarter and know our clients' industries better. That means anticipating their issues and problems, and also developing solutions to them even before they arise, and often before the clients are even aware of them. Other service providers, such as accounting firms and business consulting organisations, have built hugely successful global businesses by taking this approach. We must learn from this across our entire business and meet this competition head-on. Collectively, we have all we need to do this – the knowledge, the expertise, the size, the scope and the resources. This brings me back full circle to my first point. No one of us can do this alone; collaboration is the key.

What has been your most surprising experience as Global Chair?

At my age, I do not run into a lot of things that surprise me. While I have not seen all there is to see, and certainly do not know all there is to know, I have seen and experienced enough over the years to make big surprises a rare phenomenon. However, every day I encounter things I did not know or fully understand, and I am continually being educated. I think the biggest education I have had so far as Global Chair concerns Asia.

Asia is an area of the world I do not know well. Although my legal practice and my management responsibilities over the past 35 years have had a big international component, most of it has been concentrated in Europe and the Middle East. My exposure to the Pacific Rim has been almost entirely inbound work in the US, and that does not shed much light on the internal business and legal markets in Asia. I recently spent an extended trip visiting our clients and offices in Asia, and although I could only scratch the surface of this vast area and mix of cultures, I did gain insights, both business and personal, that I believe will help me guide our Western lawyers, particularly those in North America, in their dealings with Asian-based clients and work.

During my time there I enjoyed discussions, both business and personal, with people from many different walks of life. One thing that particularly struck me was the deep-seated entrepreneurial spirit that is present at all levels of society. This was particularly true on the Chinese mainland. I came away with the understanding that there are 1.3 billion entrepreneurs in China, and if that entrepreneurial spirit is ever fully unleashed, the world will have an economic juggernaut on its hands. I have heard this preached by economic pundits for many years, but the feeling of it on the ground in China was palpable and eye-opening. Whether and when this juggernaut actually materialises is impossible to predict, but I am certain the pent-up juggernaut is a reality. This presents great opportunities for Western companies, and for our firm, as well as enormous challenges.

Let's conclude with a quick look into the crystal ball: what will be next for the legal market?

We are clear that the global legal market will undergo significant change over the next five years as law firms respond to rapidly shifting market circumstances. These changes will be many and varied, caused by digital disruption, new market entrants and pressure on costs, to name but a few. As a firm, we are endeavouring to be in the vanguard of that change through our Project 2020 strategy. We have formulated this strategy from extensive research into our clients' expected needs and our own ideas about managing the business of law more efficiently. Without giving too much away, Project 2020 comprises a challenging and exciting programme of work that will touch on every aspect of our business and involve all of our people in some shape or form through the introduction of new, innovative systems, processes and ways of working. We need to take our cue from other industries, including the music industry, and embrace change and make it work for our business.

Antitrust law: infringements and fines

Reports on fines imposed or investigation proceedings initiated for infringements of antitrust law make the news almost every week. The number of fines imposed by the Federal Cartel Office has increased significantly in recent years and, at over €1bn, the total level of fines imposed reached a historic high in 2014.

This development seems to indicate that the number of antitrust law infringements has increased substantially over the last few years. This, however, is not the case. Owing to a growing number of investigations and the comprehensive introduction of compliance systems, it can be assumed that the absolute number of antitrust infringements in Germany has been declining rather than increasing in the past ten years. Infringements are simply discovered much more often than was the case until the end of the 1990s. Self-reporting or leniency programmes, which have been introduced by the vast majority of antitrust authorities since the early 2000s, are key for the discovery of antitrust infringements.

'The pressure to make use of a self-reporting or leniency programme is considerable.'

The Federal Cartel Office is one of the authorities that introduced a self-reporting programme in 2000, according to which any company which is the first to notify the Federal Cartel Office of an antitrust infringement that was previously unknown – and provides the authority with sufficient evidence to obtain a search warrant – is granted full immunity from fines for the antitrust infringement disclosed. The second company to provide new evidence is entitled to a 50 per cent reduction on the fine and the third company to a reduction of one third.

In view of the number of possible sanctions, the pressure to make use of a self-reporting or leniency programme is considerable. Fines are capped at ten per cent of a company's global group turnover for the previous year and thus can easily amount to hundreds of millions of euros. The management has hardly any choice but to apply for the self-reporting programme once it gains knowledge of an antitrust infringement. Well over 90 per cent of the fines imposed by the Federal Cartel Office nowadays are based on self-reporting. Self-reporting applications are usually prepared by specialist antitrust lawyers. For this purpose, companies seek legal advice from antitrust specialists immediately after gaining knowledge of an antitrust infringement or when they become subject to an investigation by antitrust authorities.

'Teams of lawyers review emails and other company data with appropriate forensic software.'

Specialist antitrust lawyers will ascertain within a short period of time whether the company actually was or is involved in antitrust infringements. For this purpose, teams of lawyers review emails and other company data with appropriate forensic software. In addition, they interview employees who might have been involved in the alleged infringements. As soon as it is clear whether and to what extent a company has violated antitrust law, the management or executive board are, with the help of the legal department, able to make an informed decision on the most suitable approach.

It cannot yet be foreseen what effect the increasing number of actions for damages (which are often brought following official fine proceedings) will have on a company's willingness to make use of self-reporting programmes. The European Commission's directive on the harmonisation of requirements for antitrust damages actions, which has to be implemented by the member states by the end of 2017, provides for legal protection of self-reporting companies by guaranteeing that companies damaged by antitrust infringements may not access records relating to the self-reporting programme. This regulation will make sure that self-reporting programmes remain effective in the future.

Contact

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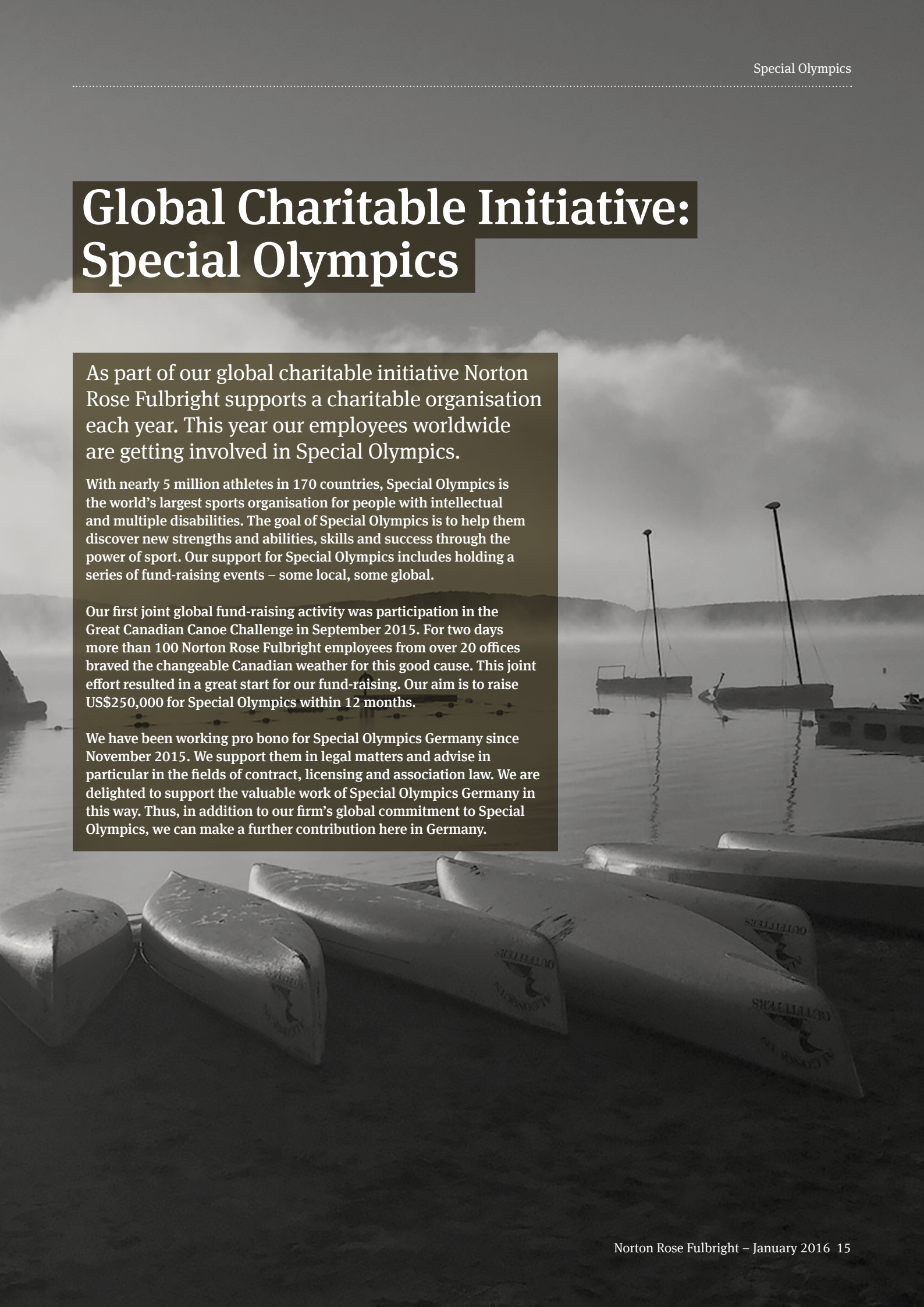
Global Charitable Initiative: Special Olympics



As part of our global charitable initiative Norton Rose Fulbright supports a charitable organisation each year. This year our employees worldwide are getting involved in Special Olympics.

With nearly 5 million athletes in 170 countries, Special Olympics is the world's largest sports organisation for people with intellectual and multiple disabilities. The goal of Special Olympics is to help them discover new strengths and abilities, skills and success through the power of sport. Our support for Special Olympics includes holding a series of fund-raising events – some local, some global.

Our first joint global fund-raising activity was participation in the Great Canadian Canoe Challenge in September 2015. For two days more than 100 Norton Rose Fulbright employees from over 20 offices braved the changeable Canadian weather for this good cause. This joint effort resulted in a great start for our fund-raising. Our aim is to raise US$250,000 for Special Olympics within 12 months.

We have been working pro bono for Special Olympics Germany since November 2015. We support them in legal matters and advise in particular in the fields of contract, licensing and association law. We are delighted to support the valuable work of Special Olympics Germany in this way. Thus, in addition to our firm's global commitment to Special Olympics, we can make a further contribution here in Germany.

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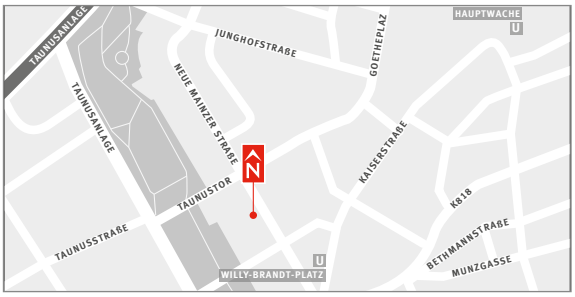

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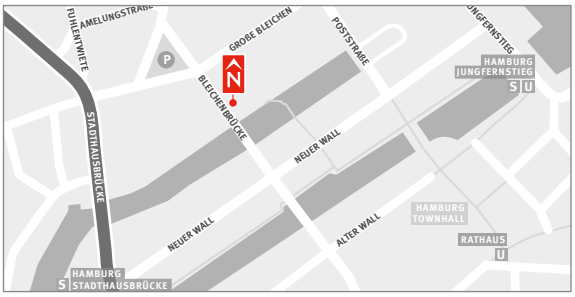

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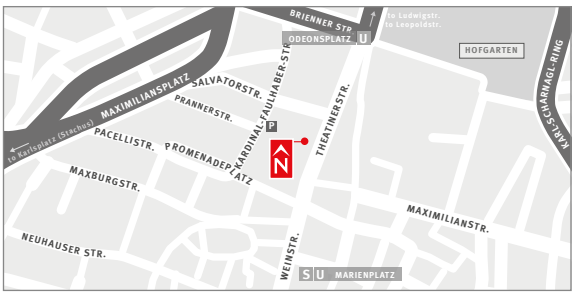

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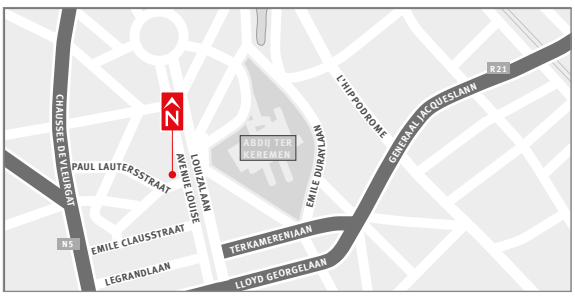

Norton Rose Fulbright

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 3800 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

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