

## THE ALLIURIS GROUP

ALLIANCE OF INTERNATIONAL BUSINESS LAWYERS

- ATPR Sociedade de Avogados, Lisbon, Portugal
- Brand & Partner, Moscow/Minsk, Russia
- Clerens & Partners, Brussels, Belgium
- Studio Legale De Luca, Milan, Italy
- Farthouat Asselineau & Associés, Paris, France
- Fraga Bekierman & Cristiano, Rio de Janeiro, Brazil
- Herfurth & Partner, Hanover, Germany
- Jin Mao Partners, Shanghai/Beijing, China
- Karytinis Partners, Athens, Greece
- Kerman & Co, London/Dublin, UK-England/Ireland
- Marco Legal, Madrid/Barcelona, Spain
- Marree en Dijkhoorn, Amsterdam/Amersfoort, Netherld.
- Muheim & Merz, Zug, Switzerland
- Nyborg & Rørdam, Copenhagen, Denmark
- Pacheco Neto Sanden Tesseire, Sao Paulo, Brazil
- Paschalides & Co LLC, Nicosia, Cyprus
- VHM Vavrovsky Heine Marth, Vienna/Salzburg, Austria
- Cabinet Juridique Saone Rhone, Lyon, France
- Seth Dua, New Delhi, India
- Stalfort, Bucharest, Romania
- Vandenberg & Feliu, New York, USA
- Yamaner & Yamaner, Istanbul, Turkey
- Young & Partners, Edinburgh/Glasgow, UK

The ALLIURIS GROUP is organised as an international association under Belgian Law with its seat in Brussels.

[www.alliuris.org](http://www.alliuris.org), [info@alliuris.org](mailto:info@alliuris.org)

## Alliuris in New York

Alliuris held its Spring Board Meeting 2014 in New York. Since January of this year Vandenberg & Feliu has been a new member of Alliuris and represents our group in the USA.

We started our meeting on Friday with a reception in the firm's offices in the heart of Manhattan and enjoyed the warm hospitality of our colleagues. During the conference on Friday we discussed the markets in the US and several partners of the firm gave a brief overview of US corporate law and IP law – very helpful !

The Nielsen concert by the New York Philharmonic in Lincoln Centre was fantastic, and the lovely dinner beforehand at Lincoln Ristorante next to the concert hall gave us a good opportunity for talk and information exchange. And the weekend was a perfect occasion for our Alliuris runners in the New York Half Marathon.

Alliuris has made very good progress this year, with new representation in the US by a firm with the same professionalism, ethics and spirit as all of the other Alliuris members. All in all, the conference was very successful, informative and helpful for those who attended.

We extend our thanks to Ray Vandenberg and his partners and staff for their excellent organization of the meeting in New York. It was a great pleasure and a very good experience.

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José de Athayde de Tavares, Ulrich Herfurth and Ray Vandenberg

## Vandenberg & Feliu hosts the Meeting

Vandenberg & Feliu hosted our New York conference. The firm's profile fits the Alliuris model: medium-sized/ 20 lawyers, specialised in business law, well established in the New York market, experienced and interested in international business. Vandenberg & Feliu is a New York law firm populated with lawyers and attorneys holding a common vision - to practice law in the service of its clients and not its bottom line. From sophisticated commercial litigation to the negotiation of an employment agreements, from counseling on venture financing to negotiating complex corporate transactions, the law firm offers a wide range of specialised expertise to provide innovative solutions for legal and business matters. The attorneys consistently rank at the top of their fields, and publish and speak frequently on new developments in their legal areas. The firm's clients include Fortune 500 companies, start-up entrepreneurs, creative individuals, not-for-profit corporations and international financial institutions.



View from offices of Vandenberg & Feliu

## Global Steps

Ulrich Herfurth gave a brief overview of the recent activities and the development of the group. After the India Conference and Board Meeting in Delhi in November 2014 we have made a follow up to visit in India. In addition, we have focused on Alliuris' expansion into America, with the admission of Vandenberg & Feliu as a member in the USA and cultivation of new contacts in Latin America. Since January 2014 Alliuris has expanded to all major markets in the world, which is a significant accomplishment in the first 10 years of its existence. Alliuris management has also continued its

work with the strategy consultancy group Radius1 in Berlin, to assist member firms to develop a clear strategy for business development. Individual collaboration between member firms has also worked very well: the move of a German factory from France to Turkey, the acquisition of a metal production plant in Brazil, an M&A project in Germany with a subsidiary in the USA, damage compensation in Austria with legal aspects in Italy, cases in India and China, and much more.

## Development of Practice Groups

Alliuris' development is based on the idea that Alliuris is less than a unified global firm but more than an international network. As an alliance, Alliuris proactively combines strengths of the member firms to drive business development. This is why Alliuris follows the concept of practice groups that aim to

- exchange knowledge,
- exchange successful services jointly develop new ideas and concepts.
- participate in joint marketing activities

**Capital:** Daniel O'Connell has started to develop and Joan Yu has presented a concept to give member firms access to the London capital market, namely the AIM, through the services of Kerman & Co. Input from other firms is welcome, New York is also a financial center and Vandenberg & Feliu is available to help members and their clients.

**Corporate:** The LifeBook for succession and emergency planning for entrepreneurs was developed by Herfurth, translated into English and is available for all member firms (binder with information, lists, model forms etc, presentation and manual for the handling and marketing of the product). Henriette la Cour in Copenhagen and Paula Barboza in Rio de Janeiro are working to adapt the concept in their respective languages. A preliminary copy of the LifeBook was presented to Ray Vandenberg. Members interested in the project may join the PG. Alliuris will open a LifeBook subgroup in LinkedIn.

**Energy:** For an interim period the group will be headed by Cord Meyer. We have collected relevant information from the DENA Institute about the energy markets in Turkey, Brazil, India and China, to be updated by the member firms in place. In addition, at the India Conference we presented several investor profiles for investments in renewable energy projects. Member firms are invited to research suitable projects.

## Doing Business in the United States: Six Factors to Ponder

As foreign companies decide to enter the United States to conduct business, there are many factors to consider. This article discusses six essential factors.

**Factor 1:** The USA is multijurisdictional - what does that mean for my Company?

Companies coming to the US need to recognize that there are 51 jurisdictions (each State and the federal government) in which a Company can operate. Each of those jurisdictions has its own set of rules, regulations and laws with which a Company must comply. Depending on what a Company wants to accomplish or what its needs are, one jurisdiction may be preferable to another. For example if a Company is setting up facilities in the U.S. and wants a nonunionized work force, Texas might be preferable to Michigan, if sophisticated financial transactions are anticipated, perhaps New York would be better than Oregon.

**Factor 2:** What kind of entity should a Company establish?

Foreign companies have a variety of options for establishing entities in U.S.; the two most common are corporations and limited liability companies. It is more common today to see businesses using limited liability companies because they provide great flexibility in their operations. They can be run as a partnership, sole proprietorship, joint venture or even as a corporation, depending on how the operating agreement is drafted. Corporations are more formal in their requirements, including the need for a Board of Directors, the need to hold annual meetings for shareholders, the need to keep board minutes et cetera. However, for some complex transactions, such as issuing public shares, a corporation is a necessary requirement.

**Factor 3:** Where should a Company form its U.S. based entity?

Foreign companies are often told to form their U.S. subsidiary in Delaware as a default location. Although Delaware is a good choice, most companies should consider other States as well. If the Company intends to be located or conduct substantial business in a particular State, it should consider that State for forming its entity. If it forms in Delaware initially, it will still have to seek authority to operate in the other State and it will be subject to taxes in that State and Delaware. However, if a Company plans to form more than one subsidiary

in more than one State, the Company should consider incorporating in Delaware and qualifying to do business in each State where subsidiaries will operate.

**Factor 4:** Which State's law should be used for transactions?

A Company may select the law of any State for any transaction and that selection will likely be honored by State and Federal courts. In practice, many foreign companies select New York law because it is considered the most sophisticated in acquisition and commercial transactions. Nevertheless, if a Company is making an acquisition in California, for example, and engaged a California law firm for the transaction, it would be logical to choose California law.

**Factor 5:** How does a foreign Company limit exposure to U.S. product liability law?

Many foreign companies are concerned with their potential exposure to U.S. product liability lawsuits. Although there is no definitive way to avoid all exposure to product liability, in recent case law, the U.S. Supreme Court has begun to limit foreign company exposure to product liability lawsuits. The case law suggests ways a Company might limit its exposure: (i) use an independent distributor for the Company's sales, (ii) if possible, avoid marketing or selling to any particular State, and (iii) if possible, avoid States that are notoriously unfavorable for product liability defendants, e.g. Illinois, California, Louisiana and Texas.

**Factor 6:** Can foreign Company Intellectual Property be protected in the U.S.?

The U.S. provides robust protection for intellectual property for companies provided the companies have met federal or state criteria. The protection stems from the U.S. Constitution which explicitly notes that "Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited time to authors and inventors the exclusive right to their respective writings and discoveries." In general, the types of intellectual property protected include trademarks, copyrights, patents and trade secrets. Trademarks are protected for 10 years (after the filing of a Declaration between the 5th and 6th year after registration) which may be renewed indefinitely so long as they remain in use. Currently, copyrights are protected for the life of the creator plus an additional 70 years or in the case for a work for hire for a Company – 95 years- but are not renewable. Patents receive 20 years of protection but are not renewable, and trade secrets have indefinite protection, provided the key elements remain secret.

News

**Summer School 2014 in Barcelona**

The Alliuris Academy - Summer School this year will be held in Barcelona on 02. - 05. July and will be organized by our member firm, Marco Legal. Toni Fito has designed a very attractive professional program and exciting side events. Alliuris firms are invited to send their young lawyers and to register in time. The attendants will receive certificates that in several countries can be used for official education credits.

**Alliuris - china.news**

Alliuris published its latest china.news in April 2014. The newsletter provides information about the current legal development in china, as well as changes in corporate law, IP etc. Authors are Xiaomei Zhang in Hanover and lawyers of Jin Mao Partners, Shanghai.

**New Delhi - Credit Facilities to Companies**

Atul Dua from Seth Dua Associates, New Delhi, informs us that the Reserve Bank of India (RBI) has issued a circular dated April 22, 2014 regarding Fund/Non-Fund based Credit Facilities to Overseas Joint Ventures / Wholly Owned Subsidiaries / Wholly owned Step-down Subsidiaries of Indian Companies. RBI has advised that banks, including overseas branches/subsidiaries of Indian banks, may not issue standby letters of credit/ guarantees/letters of comfort etc. on behalf of overseas entities of Indian companies for the purpose of raising loans/advances of any kind from other entities except in connection with the ordinary course of overseas business. For more details please contact Seth Dua.



New York - Rockefeller Center



New York Half Marathon 2014

**London - Dealmaker's Deal of the Year goes to Kerman & Co's M&A Team**

Kerman & Co is delighted to report that Yvonne Costello of the M&A team advised on the South East Dealmakers „Deal of the Year“ for 2013 (announced February 2014): the sale of Bellville International to OIA Global. 2013 was a busy year for Kerman & Co with 21 M&A transactions completed with a combined value of 187 million U.S. dollars. The team expanded during 2013 with the arrival of Partners, Paul Gilks (from Glovers) and Susan Perry (from Druces) due to an upturn in M&A activity. In addition the team has considerable experience acting for foreign acquirers of UK and Irish businesses involving the Dublin office and project managing cross border M&A deals often involve members of the firm's Alliuris international network of law firms.

**CALENDAR 2014**

29 May - 1 June 14	General Meeting	Zurich
02-05 July 2014	Summer School	Barcelona
XX Sept 2014	Work Meeting	Hanover
05 Oct 2014	Board Meeting	NN

Members, guests and spouses are invited to attend the meetings. Details will be forwarded and also published in [www.alliuris.org](http://www.alliuris.org).

**Impressum**

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