



 China: a platform for your expansion



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legal news


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## Who are we?



 Pragma is an E.E.I.G. (European Economic Interest Grouping) with its head office in Brussels (Belgium).

Pragma is a European based network of law firms with members worldwide.

With 350 “dottori commercialisti” and lawyers, 46 law offices in 15 countries, Pragma is the first group of latin philosophy and culture which is renowned for its ability to solve complex economic juridical problems.

It was set up in 2001 as the result of a common will shared by a group of four European firms of lawyers and law advisers who, after having

worked together for over ten years, decided to unite all their resources at the service of companies with new demands brought about by the developing new Europe and the increasing globalisation of business relations.

In Pragma, we aim to deliver high quality services and to offer a comprehensive service to companies through small coordinated teams.

## Convention of cooperation with China



Pragma's Board of Directors with Saro Capozzoli, Manager of Jesa, after signing the convention of development in China.

From left to right: Carlos Manubens (Vice-Chairman, Spain), Cecilia Mendes (Director in charge of development, Portugal), Saro Capozzoli (Manager of Jesa), Greg Wolton (Director, UK), Gilberto Gelosa (Secretary and Treasurer, Italy), Michel Lacroix (Chairman, France) and Gustavo Cuevas (Director, Chile).

During our General Meeting in Madrid in April 2007, we signed a convention of cooperation with Jesa, a Chinese service company managed by Saro Capozzoli to set up a platform for the expansion of our customers in China.

Thanks to this convention, we can provide support in the development of Chinese investments, especially in:

- Counsel for tax, legal, accounting advice and management control in China;
- Support for market penetration;
- Procurement Service Provider;
- Selection and Management of Chinese Suppliers.

### Agenda of Pragma

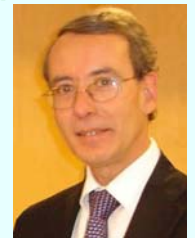
- Meeting of Pragma's Board of Directors: on 3rd July 2007 in Paris, France.
- Annual Conference: on 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> October 2007 in Nîmes, France.

### New members in 2007

- GERMANY: Stephan Pahl  
**ASP ANWALTSKANZLEI**
- USA: Giuseppe Brusa  
**G.C. CONSULTANTS INC.**
- MEXICO: Herman Alvarez Valenzuela  
**ALVAREZ VALENZUELA ABOGADOS**

## Welcome to Gustavo Cuevas as new Director of Pragma's Board

**Gustavo Cuevas**  
Cuevas Abogados, Chile  
[gcuevas@cuevasabogados.cl](mailto:gcuevas@cuevasabogados.cl)



The enlargement of Pragma's Board to a non-European Director shows Pragma's will to strengthen its international dimension.

Last April, the General Meeting approved the entry of Gustavo Cuevas as new member of the Board of Directors of Pragma.

Gustavo Cuevas has been a member of Pragma since 1st January 2006 as approved by the General Meeting of 21st October 2005 in Strasbourg, France. Since the beginning of his membership, Gustavo Cuevas has lived his membership in Pragma with a lot of enthusiasm. His seriousness and his professionalism are assets for our network.

### « A long-term endeavour »

Aware of the investment for the future that Pragma represents, Gustavo Cuevas said that Pragma was a very good means to start a long-term endeavour. He said that he was overjoyed with the enlargement of Pragma's Board to another continent and that he would do his best to make Pragma stronger and more global.

Gustavo Cuevas is an expert in Financial Law and Capital Markets, Civil Law, Litigation and Sanitary Law. He is Member of the Chilean-French Chamber of Commerce and speaks and writes Spanish, English and French.



CHINA



**JESA CONSULTING**  
Unit 3005, Jing'an Zhonghua Bldg  
1701, Beijing Road (W)  
200040 SHANGHAI  
Tel: +86 21 6288 0073  
Fax: +86 21 6288 0072  
[info@jesa.com.cn](mailto:info@jesa.com.cn)  
[www.jesa.com.cn](http://www.jesa.com.cn)

**Chinese Unified Corporate Income Tax Law**



The advent of the new unified corporate tax law in China is seen as a

natural progression of development towards a modern China.

The law is set to consolidate two separate corporate income tax regimes (for domestic and foreign firms) into a single regime. This long-awaited tax reform comes as no surprise; yet even now the information that has been supplied is merely a framework of general tax provisions and does not contain any specific information on the various regulations. It is common practice for any major tax reform to be handled in such a way that supplementary tax circulars are introduced over time to facilitate its application. Once the new tax regulations come into effect, it is expected that there will be a reduction of income tax revenue collection of up to 93 billion RMB; with collection from domestic enterprises reducing 134 billion RMB and collection from foreign companies increasing 41 billion RMB.

The new corporate tax regulation rate is set at 25% but there are still companies that will enjoy a lower tax rate, such as companies with thin profit (20%) and high-technological companies (15%), *regardless* of their geographic location. For foreign companies which are currently facing a 33% tax rate, the benefits of the tax will be felt immediately. To avoid some foreign companies experiencing a drastic 15%-point increase in the tax rate (e.g. a company currently enjoying a 10% rate), the government will introduce regulations gradually in the tax over five years.

In addition to this, firms which would be negatively affected by the new law and which qualify for (or are currently enjoying) a tax holiday, will be able to maintain their holiday until it expires.

**What is Jesa?**

Jesa is a service company headquartered in Shanghai specialized in providing reliable management and control solutions to companies expanding in China. Jesa can help our customers to carry out successful negotiations with Chinese people, to control their business in China (management, accounting and reporting control) and advise them about any tax and legal matter.

Jesa was set up in 1998. It operates three main branches in China and one foreign office in Ulan Bator (Mongolia). Jesa has a team of 70 specialized professionals in addition to 25 technicians who control projects locally. Commercial relationships are exclusive and strictly confidential, ensuring the highest expertise on each commercial and technical issue. Jesa is currently expanding its services to provide support to companies seeking to develop environmental projects in China, such as alternative energies and environmental management.



Headquarters of Jesa in Shanghai

For those companies which have not yet started their tax holidays, they will be forced to commence it as soon as the new law is effective in January. This is done in order to shorten the transition period and to avoid that foreign companies postpone their profit making year in order benefit from the lower 'holiday' tax rate for the future.

For companies that have registered after April 1<sup>st</sup>, 2007, there will no longer be any tax holiday advantages.

The tax law is structured to be industry-based, rather than geographically-based, in order to draw investments into specific sectors.

There will be tax advantages and some preferential treatment applied to manufacturing companies, double intensive companies, technologically advanced companies, service oriented companies in Special Economic Zones (SEZ), and high-new-technology companies in hi-tech zones. There are also expected tax deductions or credits to be introduced for environmentally friendly companies.

It is clear that the PRC is encouraging future overall investment in technological development, environmental protection, energy conservation, production safety, venture capital, projects located in autonomous regions and in the western part of the country, and continuing investment in agriculture, forestry, animal husbandry, fisheries, and infrastructure development.

Investment incentives for these areas will come in the form of a combination of tax holidays, lower rates, super deductions, investment tax credits, accelerated depreciation, etc.

Upon analysis of the different industries in China, it is clear that some will have an overall benefit from the new tax while others will not. The sectors of banking, beverages, communication, coal, iron & steel, petro-chemical, commercial, and real-estate will benefit overall while industries such as electricity, metallurgy, transportation, medical biology, textile & apparel, automotive, home appliances, machinery and electronic parts will suffer.

As foreign firms are gearing up for the new Unified Tax Law, all eyes rest on the government to submit the first supplementary regulations which will clear many doubts still troubling foreign firms in China.

Whether or not the law will have a strong impact on your company directly, it will make a large difference in terms of China's progressive development. Foreign direct investment is not expected to reduce, since tax incentives are one of the reasons why companies choose to enter China; it will instead offer the investment climate a future of stability. Overall, we should see these reforms as the modernization of a government structure which for many outsiders is still largely unfamiliar.

Alessandro BISAGNI  
Jesa Consulting, Shanghai, China  
[alessandro@jesa.com.cn](mailto:alessandro@jesa.com.cn)





## HOW TO INVEST IN CHINA

### Golden rules, by Jesa

1. Everything is possible in China.
2. Nothing is simple.
3. Patience is the key to success.
4. "Yes" is not necessarily a confirmation nor an accord.
5. "You don't understand China!" means a disagreement.  
Be aware of sense of national importance and understanding of personal relationships.  
Be aware of local differences in terms of culture and sense of timing.
6. "Temporary regulations" means that rules can change at any time and can apply to anything that has already been well-established.
7. "No problem!" means that there is a BIG problem.
8. The signing of a contractual agreement is just the beginning of what is to be a very long negotiation.  
Be prepared for hard bargaining.  
Be prepared to give long and detailed presentations and to answer very blunt questions.
9. If you are feeling optimistic, think of rule #2.
10. If you are getting desperate, think of rule #1.



Pragma's contact for China:

**Maurizio Bottoni**

Tel : +39 02 863 31 11

[m.bottoni@interconsulting.mi.it](mailto:m.bottoni@interconsulting.mi.it)



## How China is different



With 1.3 billion inhabitants, China is a huge country with many races and dialects, a considerable number of peasant farmers and at the same time enormous individual wealth. Major cities such as Beijing, Shanghai and Shenzhen rival anything the rest of the world has to offer in terms of size, population, skyscrapers and public transport.

Many of the international hotels chains have a presence and staying in an international hotel in Beijing, for instance, could lull you into thinking that you are in New York or Berlin, but beware, that is a false sense of security... Doing Business in China is totally different.

### Time:

The Chinese concept of timing is utterly different to that in the West. Short term (national) planning could be 25 years or more. There is much consultation. The Chinese are more Group Oriented than individualistic. Opinions are rarely given without being asked for. Business discussions, therefore, usually take more time than in other areas of the world.

### Contracts:

A Foreign business man is often under pressure not to return home without a signed contract. The Chinese side understands this and might offer to, or even sign a contract. However, they will have seen the meetings as a "Get To Know You" opportunity, and the contract signed at this stage is, to them, a signal of intent..... and not necessarily a fait accompli.

### Contacts:

Relationships and trust are at the heart of what the Chinese call Guanxi.

Building personal relationships comes first and the commercial side will follow. Much, if not most of industry, including banking and financial services is state controlled and, by definition, bureaucratic. Contacts, which are based on personal relationships are crucial and are the key to success.

### Pressure:

Be aware that the Chinese party knows their strengths. They realize the value of their purchasing power, and they know that you don't want to go away empty handed. They will apply pressure in their negotiations, especially because they know that for most companies a trip to China is expensive and not easy to organize.

Source: ypic

## Where we are



Jesa's team in Shanghai

3 offices in China - 1 office in Mongolia  
**SHANGHAI - SHENZHEN - CHONGQING  
ULAN BATOR**

**JESA CONSULTING**

Unit 3005, Jing'an Zhonghua Building  
1701, Beijing Road (W)  
200040 SHANGHAI

Tel: +86 21 6288 0073 / 75 / 76 - Fax: +86 21 6288 0072  
[info@jesa.com.cn](mailto:info@jesa.com.cn) [www.jesa.com.cn](http://www.jesa.com.cn)



## Focus on ASP Anwaltskanzlei - Germany

### History

The ASP Law Firm was founded at the beginning of 2006 in the centre of Münster's historical city, by the union of the currently affiliated lawyers. Since legal problems often coincide with fiscal questions, we feel privileged to cooperate with the tax advisers Bischof & Bischof, on a sole-responsibility-basis in our common office space.

ASP Law Firm became member of Pragma in January 2007.



Münster



ASP Law Firm has developed specialist expertise in the following key areas:

#### Stephan Pahl



- horse law
- competition law
- new media law
- property law
- company law
- employment law

Partner  
**Stephan PAHL**  
[pahl@asp-anwaelte.de](mailto:pahl@asp-anwaelte.de)



#### Ruediger Schling



- competition law
- internet law
- rental law
- traffic and accident law
- family and social law

Partner  
**Ruediger SCHLING**  
[schling@asp-anwaelte.de](mailto:schling@asp-anwaelte.de)

### Claim

Our highest priority is the fast, consistent and creative pursuit of our client's legal and economic interests. We are convinced that this goal can only be achieved if an intensive specialization is carried out.

We are well aware of the increasing role of the legal problems that transgress nationality and national territory and we seek to deal with these matters by keeping close contact and cooperating with the foreign law offices of Pragma's network.

We see an important function of legal advice in constructive consultation, which seeks to pre-emptively rule out litigations, so that time and costs can be saved. However, if our client's interests are best served by a litigation process, we will go to court and take every necessary step in order to obtain the optimal result for our client.

### Future

Like every vocational activity, the demands for legal services are subject to constant changes. The speed of this change constantly increases by the emergence of new, global media, like the internet and the increasingly perfected means of communication.

We are not shutting ourselves off to these contemporary changes, but rather we are using them actively. We do so by emphasizing our legal advice on New Media and Internet.

### ASP ANWALTSKANZLEI

Königsstraße 22/23  
48143 MÜNSTER  
Tel: +49 (0)251 55 0 65  
Fax: +49 (0)251 484 23 90  
[pahl@asp-anwaelte.de](mailto:pahl@asp-anwaelte.de)  
[www.asp-anwaelte.de](http://www.asp-anwaelte.de)

## ITALY



**INTERCONSULTING**

Via Cordusio, 2  
20123 MILANO  
Tel: +39 02 863 31 11  
Fax: +39 02 890 135 55  
[intercon@tin.it](mailto:intercon@tin.it)  
[www.interconsulting.mi.it](http://www.interconsulting.mi.it)

## New law concerning bid control

In Italy, the law by decree n.223 of 2006 has introduced changes for Italian and multinational companies that hire subcontractors to perform specific tasks as part of contracts concerning production or services.

The article 34 D.L. 223/2006 has made changes in bid control concerning the relationship between contractor and subcontractor. Specifically, the contractor is now

jointly responsible for the tax and contributory burdens of the subcontractor as provided by the law.

Those burdens include the payment by the subcontractor of tax on incomes of subordinate employees, welfare and social security contributions for people engaged for the bid. Yet, this responsibility is excluded if the contractor checks the fulfilment of those obligations by the sub-contractor. Therefore, the contractor can suspend payment of compensation until the subcontractor proves the fulfilment of the above mentioned obligations.

Furthermore, the joint responsibility of the contractor includes only the amount due to the subcontractor for the supply of services.

Finally, the law imposes a penalty (from €5,000.00 to €200,000.00) in case buyers do not check the

fulfilment of the obligations due by the contractor related to the fulfilment of the subcontractor.

This law will be in force with the issue of the decree (not yet issued).

However, the law appears limited: in fact, only the rights of the State and of insurance companies are protected, unlike those of employees involved in the bid. Furthermore, the obligation of control involves contractors and sub-contractors but not buyers.

**Matteo CENTUORI**  
Interconsulting Studio Associato,  
Milan, Italy  
[m.centuori@interconsulting.mi.it](mailto:m.centuori@interconsulting.mi.it)



**Massimiliano DESALVI**  
Partner  
Interconsulting Studio Associato,  
Milan, Italy  
[m.desalvi@interconsulting.mi.it](mailto:m.desalvi@interconsulting.mi.it)



## ARGENTINA



**DEL CARRIL, COLOMBRES,  
VAYO & ZAVALÍA LAGOS**  
Sarmiento 944  
C1041AAT BUENOS AIRES  
Tel: +54 11 4327 2100  
Fax: +54 11 4327 0011  
[edc@cvz.com.ar](mailto:edc@cvz.com.ar)  
[www.cvz.com.ar](http://www.cvz.com.ar)

## Rules applicable to Foreign Companies

Rules applying to foreign companies in Argentina have always been influenced to a greater or lesser extent by the policies in force concerning foreign investments. However these amendments made by means of new regulations have not altered the fundamental law.

### Various cases

The Commercial Companies Law (CCL) classifies the activities of foreign companies in three categories:

- isolated, accidental or sporadic activities;
- foreign companies that are subsidiaries or are shareholders in other companies run in Argentina; and
- foreign companies that are branches, headquarters or any other kind of permanent establishments in Argentina.

### New regulations

Since 2003, thanks to a general reform of the regulations of the General Ministry of Justice (GMJ), new requirements for the activity of firms constituted abroad have been incorporated in the law. Almost all these requirements are compiled in the directive 7/05 enacted by the GMJ.

The fundamental aim of these above-mentioned amendments is to control foreign companies in order to avoid any breach of the Argentinean law.

Consequently, new requirements have been included in the so-called "Informative regime" that foreign companies have to fulfil. For instance, from now on, foreign companies have to register annually: (i) their accounting statements and/or any other document that can replace these statements and (ii) information about their shareholders.

## ITALY

### New tax treatment of trusts

The Italian system for the taxation of trusts has recently gone through considerable change.

The Financial Act 2007 (L. n. 296/2006) has introduced significant innovations, especially with regards to direct taxation. For income tax purposes, trusts themselves have been included among the entities subject to Italian corporate income tax law, whereas the income which may be paid out to beneficiaries is considered as if it is paid to beneficiaries directly and is taxed directly under the category of capital income.

Due to the identification of trusts as a subject to Italian corporate income tax law, it has been established that the trust must keep bookkeeping records and rules concerning the fiscal residence of the trust have been introduced with regard to foreign trusts established in non "white list" States. It must be also mentioned that trusts are subject to the monitoring obligations laid down by EC Directive 2003/48/CE on capital gains paid to non resident persons.

The choice of the Italian legislator to subject trusts to Italian corporate income tax law, instead of introducing specific rules for these kinds of entities, represents an important step in giving a general acknowledgement to this institution, which does not belong to our legal tradition.



**STUDIO AVV.CORNIA**  
Via Corte de'Galluzzi, 4  
40124 BOLOGNA  
Tel: +39 051 232 008  
Fax: +39 051 232 668  
[cornialex@libero.it](mailto:cornialex@libero.it)

**Clara CORNIA**  
Studio Avv.Cornia, Bologna, Italy  
[cornialex@libero.it](mailto:cornialex@libero.it)



### Firms belonging to tax havens

Although the Argentinean law does not prevent the running of firms belonging to tax havens or to countries that do not collaborate in the fight against money laundering or international crime, the GMJ requires the fulfilment of various conditions to make companies prove that they run their business effectively in their country and demand more details about their shareholders than before.

### "Off - Shore" companies

The GMJ refuses to register foreign companies whose activity has been restricted in their own country.

Consequently, off-shore companies have to adopt the Argentinean legislation entirely by means of the adoption of one of the corporate structures proposed in the CCL, except for isolated acts.

### Conclusion

The new provisions of the General Ministry of Justice have reinforced the control on foreign companies' activities in Argentina, in order to avoid fraud against the Argentinean law and to prevent the running of companies with illegal activity. This

situation gives a higher level of integrity and legal safety to foreign companies who want to invest in Argentina.

**Agustina LYNCH PUEYRREDON**  
Del Carril, Colombres, Vayo & Zavaglia Lagos,  
Buenos Aires, Argentina  
[alp@cvz.com.ar](mailto:alp@cvz.com.ar)



**Juan Jose MENDEZ**  
Partner  
Del Carril, Colombres, Vayo & Zavaglia Lagos,  
Buenos Aires, Argentina  
[jim@cvz.com.ar](mailto:jim@cvz.com.ar)



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in English and in French at  
**[www.pragma-eu.com](http://www.pragma-eu.com)**

contact: [info@pragma-eu.com](mailto:info@pragma-eu.com)

PRAGMA is a EEIG with its  
head office in Brussels  
(Belgium),  
Rue d'Ecosse, 44

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UNITED KINGDOM



**GERSTEN & NIXON  
SOLICITORS**  
National House 60-66 Wardour Street  
LONDON W1F 0TA  
Tel: +44 20 74 39 39 61  
Fax: +44 20 77 34 24 79  
[law@gernix.co.uk](mailto:law@gernix.co.uk)  
[www.gerstenandnixon.com](http://www.gerstenandnixon.com)

## Privacy against public interest

An article appeared in the Daily Mirror this year which headlined "Ruth Kelly's Child Sent to Private School". (*Editor's note: Ruth Kelly is Member of Parliament representing the Labour Party*). A complaint to the Press Complaints Commission ("PCC") rapidly followed, claiming that this story intruded into the private life of the child and was in breach of Clause 6 (Children) of the Code.

Clause 6 (Children) of the Code of Practice has been the focus for a number of high profile complaints, including a complaint by the Blairs in respect of a publication which concerned their son Ewan Blair's application to university.

In this case, the Blairs succeeded and their complaint was upheld. The article was held to be an unnecessary intrusion into Ewan Blair's time at school and was found only to have been published because of the position of his parents.

The PCC made clear, however, that the Code requires that, in cases of public interest involving children, a newspaper has to demonstrate that the public interest is so exceptional that it takes precedence over the interests of the child.

It can be seen that this is quite a high hurdle, but the Daily Mirror were evidently able to establish such a public interest in respect of the story it published about Ruth Kelly.

The PCC, in the Adjudication Ruling (in March 2007) said that the issues raised in the article were "a matter of considerable public interest". The Daily Mirror had reported the fact of the child's learning difficulties, but claimed that this was relevant to Ruth Kelly's decision that there was "inadequate help in the East London schools near her home" and, as a result, had turned to the private sector. It is fair to say that the issue of private schools has long been

controversial in the Labour Party and, in this case, a number of MPs were quoted as being critical of the Complainant's decision and Margaret Hodge (the Trade and Industry Minister) was quoted as saying that there was a "legitimate public interest in whether Labour MPs educated their children privately".

The Mirror's Editorial claimed that readers "had a right to know when those who run crucial public services - and repeatedly tell us how much they are improving - conclude that they are actually failing their own families and can then afford to opt out". The newspaper said that, in this context, this was indeed a matter of genuine public interest. It is worth emphasizing that the PCC Ruling acknowledges that the newspaper were careful to include only minimal detail about the Complainant's child and did not publish the child's name, sex or age, any photograph, or the names of his new or previous school. Although the child's particular type of learning difficulty was referred to in the first edition, this was subsequently removed in later editions. The newspaper were thus able to argue that it had not "unnecessarily intruded" into the child's time at school.

This was a classic case of the PCC Adjudication trying to balance privacy against the public interest.

In this case, the PCC found that publication was in the public interest because the Complainant's actions were "against the underlying ethos of her political party, which was that children ought to be educated in the public, not private, system". The Complainant was a member of a Government that considered education to be its "number one priority".

The newspaper presented an argument (that proved attractive) that the 1997 Manifesto gave support for "the greatest possible integration into mainstream education of pupils with special educational needs". Furthermore, a document signed in 2005, by the Prime Minister and the Complainant (who was then Secretary of State for Education and Skills), stated that "Children with special educational needs are entitled to as good an education as everyone else, with proper support for their special needs" and that "it is not for National

Government to dictate the proper pattern and provision from the Centre, but it is essential that provision is adequate in each locality".

Perhaps unsurprisingly, the newspaper considered that the story gave rise to "reasonable charges of hypocrisy" on the part of the Complainant and that debate about an important political and social issue like education should be encouraged in a democracy. In conclusion, the PCC Ruling in this case is interesting as it highlights the importance of being able to identify with sufficient clarity the public interest in stories that would otherwise be considered as (among other things) an intrusion of privacy.

It is clear from the PCC Ruling that, although the hurdle was met in this case, it is nevertheless a very high hurdle, particularly because of the protection afforded by the Code to children.

Dominic GREEN  
Gersten & Nixon, London, UK  
[dq@gernix.co.uk](mailto:dq@gernix.co.uk)



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www.pragma-eu.com

COORDINATION PRAGMA
BP 249 - 59002 LILLE Cedex - FRANCE
Tel: +33 (0) 3 20 55 62 55
Fax: +33 (0) 3 20 55 62 60
Contact : Nathalie Facon
info@pragma-eu.com

Members

Should you have any question, please do not hesitate to contact our members directly.

FRANCE

18 offices
www.pragma-fr.com
Coordination: Aurelia Ben Shlush
a.benshlush@pragma-fr.com

AVIGNON: SOCOJUR
6 bis rue Saint Thomas d'Aquin BP 2020
84023 AVIGNON
Tel: +33 (0) 4 90 14 17 00
Fax: +33 (0) 4 90 85 69 41
Contact : Jean-François Hirtz
j.f.hirtz.socojur@pragma-fr.com

BORDEAUX: JURISTES ASSOCIES DU SUD- OUEST
29-31 rue Ferrere - 33000 BORDEAUX
Tel: +33 (0) 5 56 81 33 18
Fax: +33 (0) 5 56 44 97 59
Contact : Olivier Richard
o.richard@pragma-fr.com

CLERMOND-FERRAND: JURISTES ASSOCIES DU CENTRE
Résidence des Parcs - 39, rue Amadéo
63057 CLERMOND-FERRAND Cedex 01
Tel: +33 (0) 4 73 31 75 40
Fax: +33 (0) 4 73 31 75 49
Contact: Michel Lacroix
m.lacroix@pragma-fr.com

DIJON: JURISTES ASSOCIES B.F.C.
10, rue Jean Giono - Immeuble Neptune
21000 DIJON
Tel: +33 (0) 3 80 74 22 24
Fax: +33 (0) 3 80 74 87 59
Contact: Eric Doumerg
e.doumerg@pragma-fr.com

LE MANS: JURISTES ASSOCIES DU MAINE
1 bis, place Lionel Lecouteux - 72000 LE MANS
Tel: +33 (0) 2 43 82 02 17
Fax: +33 (0) 2 43 76 18 41
Contact: Gilles Fombonne
g.fombonne.ja.maine@pragma-fr.com

LILLE: JURISTES ASSOCIES DU NORD
BP 249 - 59002 LILLE Cedex
Tel: +33 (0) 3 20 55 62 55
Fax: +33 (0) 3 20 55 62 60
Contact : Bruno Vince
b.vince@pragma-fr.com

LYON: SOCOJUR
325, rue André Philip - 69421 LYON Cedex 3
Tel: +33 (0) 4 78 60 10 87
Fax: +33 (0) 4 78 60 25 57
Contact: Jean-Paul Bourden
jp.bourden.socojur@pragma-fr.com

METZ: JURISTES ASSOCIES DE LORRAINE
14, rue Gambetta - 57000 METZ
Tel: +33 (0) 3 87 63 03 17
Fax: +33 (0) 3 87 63 05 16
Contact : Jacques Bauler
j.bauler@pragma-fr.com

NANTES: JURISTES ASSOCIES DE L'OUEST
Les Espaces Jules Verne, Bât.B
12, avenue Jules Verne 44230 ST SEBASTIEN
SUR LOIRE
Tel: +33 (0) 2 40 89 11 92
Fax: +33 (0) 2 40 89 09 13
Contact: Patrice Servel
p.servel.jao@pragma-fr.com

NICE: UNIJURIS
46, boulevard Victor Hugo - BP 1443
06008 NICE Cedex 1
Tel: +33 (0) 4 93 87 12 66
Fax: +33 (0) 4 93 88 58 12
Contact: Charles Schlub
c.schlub.unijuris@pragma-fr.com

NÎMES: SOGINIM - JURISTES ASSOCIES
47, boulevard Gambetta - BP 81277
30015 NÎMES Cedex 1
Tel: +33 (0) 4 66 68 77 00
Fax: +33 (0) 4 66 68 77 01
Contact: Jean-Louis Giallombardo
j.giallombardo.soginim@pragma-fr.com

PARIS: JEAN-CLAUDE COULON & ASSOCIES
217, rue du Faubourg Saint Honoré, 75008 PARIS
Tel: +33 (0) 1 45 63 16 00
Fax: +33 (0) 1 45 63 21 02
Contact: Claude Martin
c.martin@pragma-fr.com

PARIS: JURISTES ASSOCIES D'ILE DE FRANCE
29, rue Vernet - 75008 PARIS
Tel: +33 (0) 1 56 89 32 40
Fax: +33 (0) 1 47 23 02 50
Contact : Yves Morrier
y.morrier@pragma-fr.com

PONTOISE: JURISTES ASSOCIES DU NORD
Immeuble Le Beloise - 2 bd de l'Oise
95300 PONTOISE
Tel: +33 (0) 1 30 30 69 66
Fax: +33 (0) 1 30 30 60 56
Contact : Florence Tellier
f.tellier@pragma-fr.com

RENNES: JURISTES ASSOCIES DE L'OUEST
6, rue du Louis d'Or - CS 50825
35108 RENNES Cedex
Tel: +33 (0) 2 99 31 46 46
Fax: +33 (0) 2 99 31 10 46
Contact : Yann Jubault
y.jubault.jao@pragma-fr.com

ST BRIEUC: JURISTES ASSOCIES DE L'OUEST
ZAC des Longs Réages - 22190 PLERIN
Tel: +33 (0) 2 96 58 06 40
Fax: +33 (0) 2 96 58 06 33
Contact: Jacques Le Caer
j.lecaer.jao@pragma-fr.com

STRASBOURG: JURISTES ASSOCIES DE LORRAINE
17, boulevard Tauler - 67000 STRASBOURG
Tel: +33 (0) 3 88 25 07 08
Fax: +33 (0) 3 88 25 19 34
Contact: Josiane Piot
j.bohler@pragma-fr.com

TOULOUSE: JURISTES ASSOCIES MIDI PYRENEES
78, Chemin des Sept Deniers - BP 2095
31019 TOULOUSE Cedex 02
Tel: +33 (0) 5 61 57 00 29
Fax: +33 (0) 5 61 57 03 38
Contact : Laurent Diatta
l.diatta.jamp@pragma-fr.com

ESPAÑA

MANUBENS Y ASOCIADOS, ABOGADOS
Avda Diagonal, 682, 3ª planta
08034 BARCELONA
Tel: +34 93 206 35 90
Fax: +34 93 204 29 61
Contact: Carlos Manubens
abogados@manubens.com
www.manubensasoc.com

POLSKA

CELICHOWSKI, SZYNDLER, WIECKOWSKA I PARTNERZY
KANCELARIA ADWOKATOW I RADCOW PRAWNYCH
Ul.Szkolna 5/15 - 61-832 POZNAN
Tel: +48 61 852 32 61
Fax: +48 61 852 32 62
Contact: Wojciech Celichowski
kancelaria@kancelaria-csw.pl
www.kancelaria-csw.pl

UNITED KINGDOM

GERSTEN & NIXON SOLICITORS
National House, 60-66 Wardour Street
LONDON W1F 0TA
Tel: +44 20 74 39 39 61
Fax: +44 20 77 34 24 79
Contact : Greg Wolton
law@gernix.co.uk
www.gerstenandnixon.com

SWITZERLAND

LUGANO - ZURICH - GENEVE
ORIENTA Sagli
Palazzo Gargantini - Riva Albertoli, 1
CP 3464 6910 LUGANO
Tel: +41 (0) 91 912 50 50
Fax: +41(0) 91 912 50 60
Contact: Gilberto Gelosa
g.gelosa@interconsulting.mi.it
Contact: Stefano Graidi
stefano.graidi@tstax.net

URUGUAY

CAPUTI & VENTURA
La Cumparsita, 1373, 9ºpl.
11200 MONTEVIDEO
Tel: +59 82 900 83 68
Contact : Gustavo Ventura
ventura@caputiventura.com
www.caputiventura.com

UKRAINE

M&K
Mezhirhirska 5, office 13
KIEV
Tel: +38 044 4287222
Contact: Roman Falunshinski
romeof@ukr.net

ITALIA

11 offices
MILAN: INTERCONSULTING
Via Cordusio, 2 - 20123 MILANO
Tel: +39 02 863 31 11
Fax: +39 02 890 135 55
Contact : Gilberto Gelosa
intercon@tin.it
www.interconsulting.mi.it

ARQUATA SCRIVIA: STUDIO FEDRIANI
Via Libarna, 235 - 15061 ARQUATA SCRIVIA
Tel: +39 0143 63 61 65
Fax: +39 0143 66 64 45
Contact: Mario Fedriani
studio@fedriani.it

ASTI: STUDIO ROSSO
Via Milliavacca, 16 - 14100 ASTI
Tel: +39 0141 598701
Fax: +39 0141 599 598
Contact: Giorgio Rosso
giorosso@tin.it

BOLOGNA: STUDIO AVV.CORNIA
Via Corte de'Galluzzi,4 - 40124 BOLOGNA
Tel: +39 051 232 008
Fax: +39 051 232 668
Contact: Federico Cornia
cornialex@libero.it

BOLOGNA: STUDIO SPECA-INGENITO
Viale Panzacchi, 15 - 40136 BOLOGNA
Tel: +39 051 644 94 49
Fax: +39 051 644 06 55
Contact: Paolo Specca
studio@speing.it

BOLZANO: STUDIO GROSSMANN, DI STEFANO & AUER
Via Mendola, 21 - 39100 BOLZANO
Tel: +39 0471 272 610
Fax: +39 0471 272 640
Contact: Matteo Di Stefano
matteo.distefano@gda.bz.it

LECCO: STUDIO ROSSI-GEROSA
Via Roma, 6 - 23900 LECCO
Tel: +39 0341 36 31 69 / 36 25 41
Fax: +39 0341 28 51 72
Contact: Enrico Rossi
enrico.rossi@rg-studio.com

LECCO: STUDIO COLOMBO
Piazza G.Mazzini, 13 - 23900 LECCO
Tel: +39 0341 36 42 65
Fax: +39 0341 28 35 11
Contact: Maria Venturini
mventurini@studiocolombo.com

PALERMO: STUDIO GALANTE
Trib. Legale Aziendale - Via Siracusa, 10
90141 PALERMO
Tel: +39 09 161 18 059
Fax: +39 09 166 22 063
Contacto: Giovanni Galante
studiogalante@virgilio.it

ROMA: STUDIO LEGALE PAPAARAZZO
Via Crescenzo,25 - 00193 ROMA
Tel: +39 06 686 81 77
Fax: +39 06 686 87 69
Contact: Ettore Papparazzo
studiopaparazzo@virgilio.it

SEREGNO: STUDIO NOVARA
Via s.Pietro, 28 - 20038 SEREGNO
Tel: +39 0362 231 411
Fax: +39 0362 325 513
Contact: Mario Carlo Novara
mariocarlo@studionovara.it

TORINO: STUDIO IRRERA AVVOCATI ASSOCIATI
Corso Marconi, 7 - 10125 TORINO
Tel: +39 011 66 99 513
Fax: +39 011 65 08 053
Contact: Maurizio Irrera
info@studioirrerera.it
www.studioirrerera.it

DEUTSCHLAND

ASP ANWALTSKANZLEI
Königsstraße 22/23 - 48143 MÜNSTER
Tel: +49 (0) 251 55 0 65
Fax: +49 (0) 251 484 23 90
Contact: Stephan Pahl
pahl@asp-anwaelte.de
www.asp-anwaelte.de

ISRAEL

RAZIEL, UZDIN & CO
52, Ibn Gvirol st. - TEL-AVIV - 64364
Tel: +972 36 95 63 63
Fax: +972 36 96 41 22
Contact: Yitzhak Uzdin
ika@raz-uz-law.com

ARGENTINA

DEL CARRIL, COLOMBRES, VAYO & ZAVALLIA LAGOS
Sarmiento 941
C1041AAT BUENOS AIRES
Tel: +54 11 4327 2100 Fax: +54 11 4327 0011
Contact: Enrique del Carril
edc@ccvz.com.ar
www.ccvz.com.ar

PORTUGAL

2 offices
CECILIA CARIA MENDES ADVOGADOS
Contact: Cecilia Caria Mendes
ccmendes.pragma@netcabo.pt New e-mail address !
LISBOA: New address !
Avenida da República, nº74 - 1º Esquerdo
1600-205 LISBOA
Tel: +35 1 217 803 450 / 1 / 2
Fax: +35 1 217803 453

PORTO:
Rua Antero de Quental, Edifício Europa,
Sala 213 - Freixoieiro
4455-586 PERAFITA-PORTO
Tel: +35 1 229 967 128
Fax: +35 1 229 967 134

BRASIL

GROWASSOCIATES
Alameda Santos nº2.441 - 2ºandar
01419-002 SAO PAULO SP
Tel: +55 11 3088 2717
Fax: +55 11 3088 23 10
Contact: Angelica Blanco
angelica.blanco@growassociates.com
www.growassociates.com

CHILE

CUEVAS ABOGADOS
Av.Isidora Goyenechea 2939 Of.902
Las Condes - SANTIAGO
Tel: +56 2 378 2072
Fax: +56 2 378 9349
Contact: Gustavo Cuevas
GCUEVAS@cuevasabogados.cl
www.cuevasabogados.cl

MEXICO

2 offices in Mexico
ALVAREZ VALENZUELA ABOGADOS
Contact: Herman Alvarez
herman.A@alvarezvalenzuela.com
www.alvarezvalenzuela.com

MEXICO:
Mariano Escobedo 362-4, Col. Polanco
C.P.11590, MEXICO D.F.
Tel / Fax: +52 (55) 24 53 28 28

MONTERREY:
Calzada San Pedro, 250 Nte, Desp.328
Col.Miravalle - C.P.64660, MONTERREY N.L.
Tel / Fax: +52 (81) 81 24 01 25

USA

G.C.CONSULTANTS INC.
444, Madison Avenue,
Suite 1206 NEW YORK NY 10022
Tel: +1 212 310 93 11
Fax: +1 212 310 93 16
Contact: Giuseppe Brusca
gbrusa1066@aol.com

CHINA

3 offices
SHANGHAI - SHENZHEN - CHONGQING
JESA CONSULTING
Unit 3005, Jing'an Zhonghua Building
1701, Beijing Road (W)
200040 SHANGHAI
Tel: +86 21 6288 0073 / 75 / 76
Fax: +86 21 6288 0072
Contact: Saro Capozzoli
info@jesa.com.cn
www.jesa.com.cn

MONGOLIA

JESA CONSULTING
UB-11, Chingeltei Duureg, MUE Building
Rm 206
ULAN BATOR
Tel: +86 21 6288 0073
Fax: +86 21 6288 0072
Contact: Saro Capozzoli
info@jesa.com.cn

International references

BELGIQUE

A.D.I.E.
Rue de la Source, 46
1060 BRUXELLES
Tel: +32 2 644 58 21
Fax: +32 2 644 58 22
euroad@skynet.be

BELGIQUE

AVV. CARLO FORTE
Rue Souveraine, 95
1050 BRUXELLES
Tel: +32 2 514 12 08
Fax: +32 2 514 26 32
studio-forte@libero.it

International references