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#ML15MayRathon

HOT TOPICS FOR TECH START-UPS WITH EUROPEAN OPERATIONS

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Your Presenters Today



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Andrew Ray represents public and private companies, financial sponsors, and management teams in a broad range of corporate and finance matters. Additionally, he counsels extensively in the telecommunications, media, and technology (TMT); government contracts; energy; and financial services sectors.



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Rob Bertin has more than 15 years of experience litigating patent, trademark, trade secret and copyright cases throughout the United States, counseling clients on Intellectual Property (“IP”) and negotiating transactions involving IP. He has represented clients at the center of some of the largest patent portfolio sale and licensing events in the high tech industry.

Your Presenters Today (2)



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Topics we want to cover today

- **Expanding your Ecosystem:** Resources available for tech investors
- **IP Rights:** Getting your IP rights into shape for Europe
- **Labor:** Hiring local employees and consultants in Europe
- **Corporate and tax issues:** Getting your business up and running
- **Hot potatoes:** Data transfers to the U.S. and privacy in Europe after Snowden

TOPIC 1: Expanding your Ecosystem: Resources available for tech investors

- Yes – the Europeans use Facebook, Linked-in, Twitter, but there may be language issues
- Consider “XING” – European social media service: www.xing.com
- Other resources/platforms – examples:
 - Germany Trade & Invest, www.gtia.de
 - German-American Chamber of Commerce, www.gaccny.com/en/
 - Finnish-American Chamber of Commerce, www.facc-usa.com
 - Representative of German Industry & Trade www.rgit-usa.com
 - British-American Business Association of Washington, D.C. , www.babawashington.org
- Local chambers of commerce and trade associations
- Local consultants
- ML local offices (U.K., Brussels, Paris, Moscow)

TOPIC 2: Getting Your IP Rights in Shape for Europe

- The Obvious: make sure company's name is available
- Secure your European trademarks and patents
 - A Community Trademark application ("CTM") can cover all of Europe with a single application.
 - Filing a patent application pursuant to the Patent Cooperation Treaty allows entry into all countries in the EU with single application filing. Fees correspond to how many countries are designated.
- Make sure you know when to file and where
 - File trademark applications within six months of the US filing date to claim the benefit of priority.
 - File European patent applications within one year of the US filing date
- Think about inventor's rights and local protection
 - May need to have inventores and content creators waive moral and other rights
- Software and proprietary rights agreements are important

TOPIC 3: Hiring Local Employees and Consultants

- Most jurisdictions – local employment contracts
- **Termination periods** for employees – can be significant, but probationary periods possible; give them notice, warning letter may be required, sometime even an external consent, agreeing to “US law” doesn’t help
- **Forces to reckon with:** local works councils or outside supervisory boards
- EU law prohibits discrimination



To be avoided:

Consultants as hidden employees

Rules enforced by local labor courts

TOPIC 4: Setting up the company / tax issues

- **Use the right legal form for the country you are in . . .**
 - GmbH, SpA, , SA , LLC etc.
 - A civil-law notary is likely involved.
 - Local accountant?
 - Setting up the corporate account / tax ID
 - Founding documents certified before a notary
 - Pay in mandatory share capital (e.g. minimum share capital of € 25,000 for a GmbH - 50% must be paid in)
 - Time line for certification and registration: up to one month
 - Consider buying a shelf company
 - Mandatory membership at local chamber of commerce?
 - Eastern European laws modeled after Western European laws (e.g. Dutch law)

TOPIC 4: Setting up the company / tax issues (2)

- **Know The Local Tax Regime**

- Corporate and capital income tax
- VAT (Value Added Tax) – recently reformed for online business across the border within Europe
- Local taxes?
- Double-taxation agreements – can play a significant role
- Find the most favorable location for your business
- Find out about subsidies/ tax holidays for startups



Think about the right tax structure early in the process

TOPIC 4: Hot Potatoes – data transfers

- EU-US data transfers – uncertainties especially after *Snowden*
- US a country of inadequate data protection
- The Not-so-Safe Harbor (Dept. of Commerce)
 - European Concerns – proceeding at European Court of Justice pending



- EU- Approved Standard Contractual Clauses or
 - Individual consents
- ➔ *alternative tools available*

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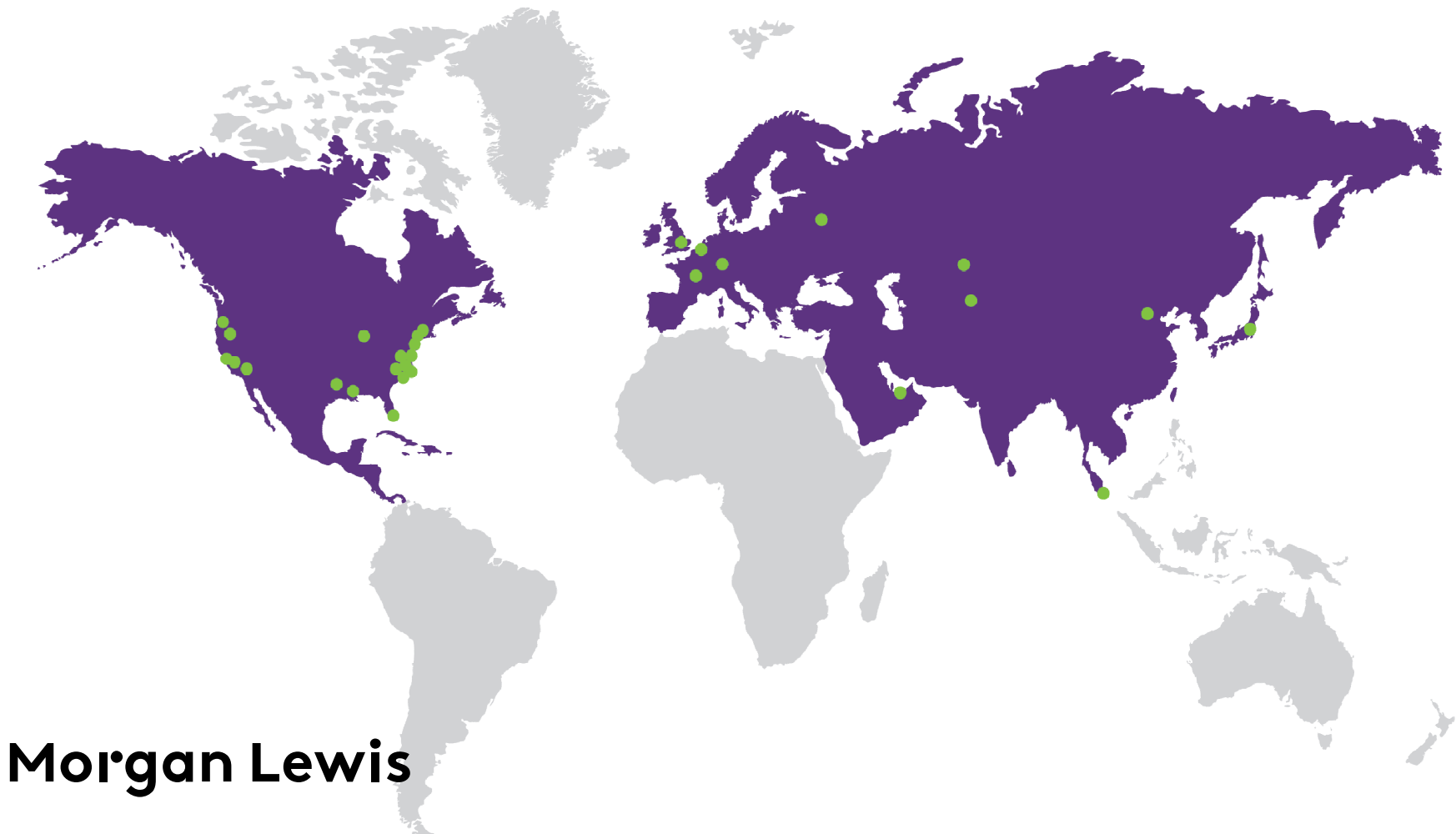
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