



Hogan
Lovells

You can bet on us

Our international services and experience in the
gambling industry

2023

How we can help you to overcome challenges in the gambling industry worldwide

We know the rules of the game.

Having success in the gambling industry is not a result of luck, but of accurate market know-ledge, of innovative ideas and of legal expertise. We build long-standing relationships of trust with our clients from the gambling industry and we advise them on every single aspect of their planned projects.

We have a deep understanding of their business models, needs and issues, but most importantly: visions. We help our clients overcome regulatory and administrative challenges in the domestic market but also advise on market entry strategies and regulatory requirements in other jurisdictions: The gambling market is an area of continuous development and is well known for its heterogeneous regulation all over the world. New market regulations encounter the liberalisation of the gambling market in other countries – a current example being lootbox regulation, which is regulated very differently across jurisdictions. The legislative institutions try to catch up with technological improvement or show a newly awakened concern for addiction problems and the protection of the youth. All this creates new market opportunities, as well as challenges – we keep you in the game. We provide high quality advice to corporations, financial institutions and governmental entities across the full spectrum of their critical business and legal issues globally and locally. Bringing together the combined strengths of our predecessor firms, we have over 2,800 lawyers operating out of more than 50 offices in the U.S., Southern America, Europe, the Middle East, Asia and Australia. This includes a global network of lawyers dedicated to the gambling industry as well as competent advisors in nearly every country or region in the world. We know the particular risks and potential difficulties for your business and help you to get advice on your domestic problems and any problems you have in other jurisdictions.

Especially in the course of new market access but also during e.g. concession awarding processes local contacts are essential.

We make your voice heard.

Our strengths are our reliable contacts to public authorities and governmental officials. Our team includes former government officials with long-standing theoretical and practical experience. We are able to guide you in governmental procedures and find solutions even before you realize the problems.

You can bet on us.



“ Straight talking. Thinking around corners. Understanding and solving the issue before it becomes a problem. Performing as a team, no matter where we’re sitting. Delivering clear and practical advice that gets your job done.”



**Recent developments in
selected regions and
countries**

Recent developments in selected regions and countries

Europe

The law of the European Union is playing an increasingly important role in the area of gambling regulations: gambling, especially sports betting, is offered on the Internet throughout Europe – regardless of national or jurisdictional boundaries. Even so, there is no uniform gambling legislation on European level.

As a consequence of the absence of harmonization in the field of gambling, there is no mutual recognition of the licensing rules of the various Member States under EU law. The European Court of Justice ("ECJ") has consistently held that it is for each Member State to determine, in accordance with its own scale of values, what is required in order to ensure that the interests in question are protected.

Despite the absence of Community harmonization of the gambling law sector, the regulation of gambling is subject to Union law, especially ECJ case law. The freedom of services and establishment, in particular, are benchmarks for the review of the compatibility of national and Union gambling law. Besides, the fourth Money Laundering Directive of May 20 2015 (EU 2015/849) calls for a number of regulations in order to prevent money laundering in the gambling sector.

EU Law - Gambling and EU competition law

State Aid

The gambling industry has a clear intersection with State aid rules, as licensing for providers is usually granted at a national level. Authorities such as the Belgian Gaming Commission and the "Gemeinsamen Glücksspielbehörde der Länder" (*Joint Gambling Authority of the Federal States of Germany*) regulate the gambling markets in their respective jurisdictions. State aid control impacts gambling in a number of ways, including with regard to the legality of tax measures granted by States to gambling operators. State aid investigations can result in the repayment of benefits received by companies.

Foreign Subsidy Regulation ("FSR")

The FSR gives the European Commission broad powers to tackle distortive subsidies granted by non-EU countries. The European Commission will be able to investigate and assess if gambling operators within the EU have been backed by foreign subsidies, and to take measures where those subsidies distort the internal market. In particular, the European Commission could enforce the FSR by blocking deals and public awards, and dissolving completed merger activity, as well as by carrying out own initiative investigations and market studies.

Merger Control

EU Merger Control may apply to mergers and acquisitions within the gambling industry. In the past, European competition agencies have looked at, for example, a distinction between betting and gambling, and online and other types of gambling. These types of cases show a willingness of regulators to carefully examine the gambling market in the context of merger control to ensure that harm to competition does not arise as a result of merger activity.

Abuse of Dominance

There have been multiple cases regarding the abuse of dominance within the gambling industry, where national courts have recognised the right for new entrants in online gambling and betting markets to receive compensation for harms suffered as a result of anticompetitive practices. Previous decisions by national courts on abuse of dominance could result in new market entrants bringing private actions against incumbent operators.

Anti-Competitive Agreements

The EU competition law rules against anti-competitive agreements apply to the gambling industry. There have already been a number of cases where national competition authorities have taken measures against such agreements to ensure that competition is not distorted.



Germany

For a number of years, two factors have had a significant impact on the gambling market in Germany: globalisation and the enormous advances in communications technology. Numerous new providers are entering the German market because they have identified it as a growth segment with long-term potential, even more so with some online services being licensable since 2021. The main areas affected by this trend are online casinos, mobile games (including reward systems like loot boxes), sports betting and viewer competitions on television.

In recent years, the law governing sports betting in particular has changed at an extremely fast pace: In July 2021, the new State Treaty on Gambling, which regulates the organization and brokerage of sports betting in Germany, entered into force. Sports betting may be organized and brokered if a corresponding permit has been issued by the competent Joint Gambling Authority (Gemeinsame Glücksspielbehörde der Länder) in Halle (Saale). In contrast to the legal situation under the State Treaty on Gambling of 2012, there is now no longer any concession limited in number and thus no longer any competitive selection procedure in order to be able to legally organize or broker sports betting. Under the new, more liberal legal situation, any provider that meets the requirements set out in the State Treaty on Gambling is granted a permit.

With the new legal situation resulting from the amended State Treaty on Gambling, the German gambling market has experienced many more liberalizations: For example, virtual slot machine games, online poker and online casino games are permissible for the first time and the previous - quite strict - ban on organizing and brokering games of chance on the internet has been loosened considerably. Still, German gambling regulation resembles a patchwork quilt – especially regarding newer technical mechanisms in online games with gambling elements like loot boxes.

Poland

The current regulations for gambling services in Poland can be seen as restrictive. As a rule, gambling services can only be provided by locally licensed operators which need to meet a number of requirements.

The Polish Act on Gambling Games (the “**Gambling Act**”) is the main act regulating gambling activities in Poland. This comprehensive legislation categorises gambling games into four primary groups: games of chance, betting, card games, and slot machine games.

In general, gambling activities are limited to the specific location stipulated in the licence or permit. Some licences also come with specific quantitative restrictions. The permitted number of casinos and cash bingo halls in a designated area depends on the population of the area.

Most online gambling activities in Poland are either prohibited, or fall under the state monopoly. The only exceptions are online betting and promotional lotteries, provided that the operators obtain a permit beforehand. Engaging in unlicensed gambling is illegal in Poland. Similarly, it is against the law to partake in any gambling activities hosted abroad while the player is situated within Poland.

The definitions provided by the Gambling Act can sometimes lead to ambiguity concerning whether certain activities qualify as gambling. To address this, the Act allows individuals to seek an official interpretation from the minister responsible for public finance. This interpretation assists in determining whether a particular game falls within the legal definition of gambling as outlined in the Gambling Act.

While immediate amendments to the Gambling Act are not imminent, there are ongoing conversations about establishing a specialised regulatory body for the gambling sector. This potential development underscores the commitment to refining and enhancing the existing regulatory framework.



United Kingdom

The landscape of gambling regulations in the UK has undergone significant change in recent years through the introduction in 2014 of a licensing requirement for remote gambling operators whose gambling facilities are used in the UK, as well as those who advertise their services to British consumers.

The licensing requirement, coupled with the imposition of a remote gambling duty of 15% of profits generated from UK customers, has imposed heavy regulatory and financial burdens for the UK's substantial remote sector, which was reported by the Gambling Commission to constitute 32% of the UK gambling market in 2015-16.

In addition, the Department for Culture, Media & Sports ("DCMS") has attempted for some time to reform the rate and structure of the levy payable by bookmakers on British horseracing. As part of these attempts, DCMS has undertaken a number of consultation exercises on different levy proposals and finally proceeded earlier this year to seek state aid approval from the European Commission on its latest proposal, in respect of which many members and representatives of the gambling industry have expressed concern.

These reforms are yet to be fully implemented and several questions remain outstanding as to precisely how the new regime will operate and be enforced.

United States of America

The gambling industry in the United States is diverse. Gambling is regulated at the federal, state, and tribal level, including certain notable restrictions at the national level, particularly in the areas of anti-money laundering and online gambling. The American industry is also changing rather significantly because of competition from other countries (in particular in Asia) and with the presence of multiple markets at the state level and on tribal reservations, with various restrictions and compacted arrangements providing certain operators market exclusivity.

Tribal Gaming

In 1988, Congress passed the Indian Gaming Regulatory Act, which recognized the inherent authority of American Indian tribes to game on their lands, but required that they enter into compacts with the applicable state. Since then, there has been tremendous growth in this market.

Sports Wagering

In the United States there is also considerable momentum and change related to sports wagering. In 2018, the U.S. Supreme Court in the *Murphy v. NCAA* decision struck down a federal law (PASPA) that prohibited states from authorizing sports betting. As a result, over twenty states have passed laws to authorize sports betting and more are likely to do so. Despite the temporary decline in gambling due to Covid-19, the American Gaming Association first quarterly revenue report for 2021 stated that "[n]ationwide, sports betting generated \$271.9 million in revenue, up more than 700 percent from May 2019."

Complex issues that will arise from this new market include cross-border gambling issues, the impact of state-tribal gambling compacts, ensuring adequate financial controls are in place to address new gambling volumes, and whether Congress will attempt to regulate this gambling in the future.

Sweepstakes

Businesses administering a sweepstakes in the United States (i.e., sponsors) are increasingly using social media to help promote and facilitate such sweepstakes. However, all U.S. sweepstakes must offer a "free" alternative method of entry to avoid being deemed an illegal lottery under applicable law. Social media entries, although they do not require the payment of money, are not deemed "free" entries under applicable law since they result in commercial benefit to the sponsor (e.g., exposure on social media; increased follower counts, etc.). Structuring a legally compliant U.S. sweepstakes program with entry via social media requires careful analysis of (i) a complex framework of federal and

state consumer protection laws that governs U.S. sweepstakes and contests, including applicable Federal Trade Commission (FTC) guidelines, and (ii) the ever-changing policies and terms and conditions of each social media platform.

Hong Kong

The Hong Kong Government's policy is to maintain a strict control on gambling activities in Hong Kong. The subsidiaries of The Hong Kong Jockey Club are the only licensed betting operators in Hong Kong offering horse race betting, football betting and Mark Six lottery.

Since 2013, a subsidiary of The Hong Kong Jockey Club which is the horse race betting licence holder

has implemented inbound commingling transactions with a number of betting operators from different overseas jurisdictions, such as the United Kingdom, Ireland, Australia, New Zealand, South Africa, Singapore, Macau, Isle of Man, Canada and a number of states in the United States to enable overseas bettors to place bets on Hong Kong horse races with authorised overseas betting operators.

Except for the above authorised betting activities, potentially many “games” can be caught by the wide ambit of the Gambling Ordinance in Hong Kong which covers either a game of chance or a game of chance and skill combined for winnings in money or other property. For products (e.g. software games) and promotional activities involving a “game” element, it is advisable to conduct a risk assessment.





**Our services and
selected focus
areas**

Our services and selected focus areas

Our services worldwide

Regulatory, litigation and administrative aspects of the gambling industry includes:

- Licensing requirements and application approvals
- Development of and proficiency in legislation and regulatory requirements regarding online, sports wagering, and tribal gaming requirements
- Assessment of gambling products and determination of status as gambling or skill-based gambling activities
- Representation in administrative and court proceedings, in particular in approval procedures and proceedings before regulatory authorities as well as in concession award procedures
- Representation in proceedings before award chambers
- Construction of gambling halls, installation of slot machines
- Market entry
- Regulatory and structuring issues
- Lobbying and support in political processes
- Dissemination, publication, commercialization and protection of fixture lists and racing and lottery data
- Rulemaking through drafting of and advising on betting rules for horse races, football and lotteries

IP related advice including online gambling

- Data protection

Finance related advice


- Payment systems for online gambling
- Sports betting
- Money laundering
- Terrorist financing
- Corporate (Corporate Actions)
- Mergers & Acquisitions (including public takeovers)
- Cooperation agreements including joint ventures and strategic alliances
- Development and distribution agreements
- Product liability / product safety
- Tax issues

Competition law

- Merger clearances
- State aid and FSR
- Antitrust investigations (abuse of dominance and cartels)
- Antitrust counselling

Selected areas of focus

- Online gambling (including reward systems/ loot boxes)
- Tribal gambling
- Horse racing
- Sports betting
- Gambling halls and Casinos
- Slot machines
- Lottery
- Company raffles, sweepstakes, contests and other promotions



“ [...] boasts comprehensive regulatory experience in the gambling and technology sectors.”

Chambers Europe, 2021

A selection of our experience

Regional focus

Germany

- **The German “Glücksspielkollegium”** (coordinating body of the 16 German Federal States) and the gambling supervisory authorities of all 16 German states on the development of a model regulation for online gambling (virtual slot machines, online poker and online casino games) in accordance with the State Treaty on Gambling 2021
- **The Federal State of North Rhine-Westphalia** (a Germany federal state) on the drafting of the Online Casino Games Law in accordance with the State Treaty on Gambling 2021; the Federal State of Schleswig-Holstein, the Federal State of Hesse and the State of Saxony-Anhalt on the recent and ongoing regulation of online casino games
- **LÖWEN ENTERTAINMENT GmbH** on all aspects of gambling and company law in connection with the operation of amusement arcades in Germany
- **Casino Royal GmbH and Admiral Entertainment GmbH** with regard to more than 100 proceedings before administrative courts in the entire Federal Republic of Germany for the granting of gambling permits
- **Lotterie-Treuhandgesellschaft mbH** Thüringen: Preparation of a brief expert opinion on the permissibility under gambling law of various sponsoring measures by LOTTO Thüringen at the winter sports venues in Oberhof
- **NRW.BANK and NORD/LB** on the sale of their shares in Bremer Spielcasino GmbH & Co. KG
- **A bank** on gambling law and gambling compliance in the context of financing and money laundering law
- **Westdeutsche Lotterie GmbH & Co. OHG**: General legal advice, in particular on gambling, state aid and tax law
- **Ministry of the Interior, Rural Areas, Integration and Equality of the State of Schleswig-Holstein** on the implementation of the regulation of online casino games within the meaning of Section 22c of the State Gambling Treaty, in particular preparation of an expert opinion on constitutional, Union and public procurement law issues
- **NRW.BANK and Westdeutsche Spielbanken GmbH & Co.** on the privatization of the state-owned casinos in North Rhine-Westphalia (a German state), in particular on issues of gambling law, constitutional law, union law and public procurement law as well as advice in connection with the effects of the draft German Gambling Treaty 2021 issued by the federal states
- **Autobahn Tank & Rast GmbH** on all aspects of gambling law, in particular in connection with the installation of slot machines, the construction of amusement arcades, the running of lotteries and draws
- **German Tote Service- und Beteiligungs GmbH** on gaming/gambling law, among others in the context of "online gambling"
- **NRW.BANK and NORD/LB** on the sale of their shares in Bremer Spielcasino GmbH & Co. KG
- **A mobile gaming/gambling provider** regarding the risk analysis of a marketing strategy for the offer of a bonus points system (purchasable through game play, redeemable for vouchers) as well as a reward system (Raffle Style, Sweep-stake, Lootbox)
- **Admiral Sportwetten GmbH** on all aspects in connection with the organization and brokerage of sports betting and the roll-out of the terrestrial sports betting offering
- **Wettstar GmbH** on all aspects in connection with the organization of online sports betting and the limits of permissible advertising
- **Postcode Lotterie DT gGmbH** in connection with the amendment of gambling regulation in Germany, in particular with regard to the effects of GlüStV 2021 on social lotteries; draft statement to the 16 state chancelleries in the context of the associations' consultation on the draft GlüStV 2021

- **Bank of America, Inc.** in connection with the amendment of gambling regulation in Germany, in particular with a view to the GlüStV 2021 and the complete liberalization of the sports betting market
- **Merkur Casino GmbH** in connection with the Paylado 2.0 e-wallet (a special wallet that can be used to process payments in e.g. gambling arcades)
- **Hessian State Ministry of the Interior and Sports** in the preparation of a concept paper for the development of uniform state requirements for online casino games in accordance with the GlüStV 2021
- **Ministry of Finance of the State of North Rhine-Westphalia** on issues relating to gambling and state aid law in connection with the formerly state-owned casinos

Poland

- A **Japanese multinational toy manufacturer** and distributor on Polish gambling law regulatory aspects and licencing requirements
- **Paddy Power Betfair plc** on regulatory developments in Poland, including representation before local authorities and decision makers, advising on Polish licence application and commercial business launch in Poland
- **Intel** on legal and tax aspect of RemoteMyApp purchase – a Polish start-up company providing fully customized cloud gaming solutions to businesses. It was Intel's first such venture in Poland
- A **multinational consumer electronics and video game company** on regulatory issues connected with its activity in Poland.
- **Gate Arena** (a trading company dealing with electronic distribution of MMORPGs codes and XBOX Live scratch) concerning VAT taxation (sale of games)
- **Cloud Imperium Games** on Polish employment law aspects

United Kingdom

- The **Gibraltar Gambling Commissioner** in judicial review proceedings concerning the UK's imposition of licensing and regulatory requirements on remote gambling operators
- **Mars** on a wide variety of promotional, marketing and sponsorship activities for numerous brands (across all media, including TV, radio, print, internet), including with respect to the requirements of the Gambling Act and its impact on prize draws and competitions and comparative advertising
- **Sport England** in connection with its decision making and governance process and acting for it in relation to investigations by the Parliamentary Ombudsman
- **Stakis** on the acquisition and disposal of a number of hotels and casinos, including the acquisition of the Metropole Chain for £230m and the sale to Strategic Hotel Capital and leaseback of St Ermins, London
- **M&G Real Estate** on the acquisition of 52 Bingo Halls from a Gala Bingo Limited subsidiary for circa £173m
- A **consortium of PPM Ventures, CSFB and the Royal Bank of Scotland** on the acquisition of the Gala Group, the largest bingo operator in the UK
- **Royal Bank of Scotland** on financing for casinos

Italy

- **Gamesys** in both regulatory and commercial issues related to the provision of gaming services in Italy
- **PokerStars** in connection with regulatory issues regarding the offering of online games in Italy, as well as in IP, unfair competition and misleading advertising disputes with other operators and market players
- **Google** in relation to advertisement on online betting and in all legal matters concerning the services provided in Italy, including drafting of

T&Cs and regulatory, commercial, e-commerce, data protection and contentious matters

- **PayPal** in the negotiation of agreements with online betting companies and in relation to all legal issues concerning online payments in the Italian market
- **FLUXX AG** regarding regulatory, marketing and business issues related to gambling and betting websites

The Netherlands

- **Ladbrokes** in Dutch national litigation against De Lotto, about the online offering of gambling and gaming activities in the Netherlands without a Dutch license.
- This **lead** to a referral to the ECJ (case C-258/08)
- A **Dutch broadcasting channel** on online poker activities
- A **leader for ID identification** on online gambling activities
- A **large German investment fund** on legal aspects of casino and arcade offerings in the Dutch market
- A **global online platform** on online advertising in the Netherlands of online gambling operators
- Negotiation for the **French horse race betting company** (Pari Mutuel Urbain) of its strategic partnerships with Paddy Power on online sports betting when PMU entered the market

United States of America

- Represented **California cardroom** in connection with **DOJ** investigation of potential anti-money laundering violations, which resulted in no action by DOJ
- Represented **global casino company** in anti-money laundering investigation in several jurisdictions, including interfacing with **DOJ** and the **SEC**
- Represented **Third-Party Players** (in coordination with cardrooms) in litigation against California tribes for alleged improper gaming under

state law and successfully obtained a motion to dismiss

- **Regal Entertainment Group** and other clients on structuring sweepstakes, contests and other promotions, and advising on compliance with applicable federal and state law in connection therewith.
- **Penn National Gaming, Inc.** on its US\$200m acquisition of assets of Zia Park Partners LLC, namely Zia Park Racetrack and Black Gold Casino
- **The Mohegan Tribal Gaming Authority and other tribes** on various aspects in connection with their gambling business
- **U.S. Supreme Court and appellate litigation** on behalf of gaming tribes in support of their sovereign rights
- **Tribal and state government licensing requirements** for international gaming service providers
- **Global financial institution** advice regarding sports wagering and online gaming regulatory regimes in global survey involving over 50 countries
- Anti-money laundering advice involving **multiple jurisdictions** as part of due diligence assessment involving gaming acquisition
- Legal support and assessment of **tribal land acquisition** on behalf of tribal clients for gaming purposes
- **The Mandalay Resort Group in securing Federal Trade Commission (FTC)** clearance for its US\$7.9bn acquisition by MGM Mirage and on its US\$520m sale of the voting securities of Circus Michigan Inc. to Marian Illitch
- **PMU** with competition law advice in relation to an agreement with artyGaming for the development of an online poker activity
- **Trade associations:** Representation of the American Gaming Association and the National Center for Responsible Gaming

Mexico

- Hogan Lovells has been part of **study groups** on proposed new legislation to substitute the current Federal Gaming Law and Regulations
- Successfully negotiating the operating agreement for the **gaming room at Hipódromo de Las Americas**, between our client, an important European company, and Corporación Interamericana de Entretenimiento
- **Software developers and equipment manufacturers/suppliers** in their licensing, lease, sale and supply contracts with Mexican casino and online gaming operators and permit holders

Hong Kong

- Assisted the **licensed horse race betting operator in Hong Kong** to successfully lobby the government to change the betting duties to facilitate commingled betting and assisting the operator in rolling out the commingling initiative with overseas betting operators
- Advised software **game developers** on loot boxes and game prize issues
- Advised on potential gambling/gaming and licensing issues relating to trade **promotion campaigns involving game prizes**
- Advised a **gambling/gaming software developer** in taking actions against imitation websites





Our Team

Our Team

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Brussels



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Hamburg



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Partner

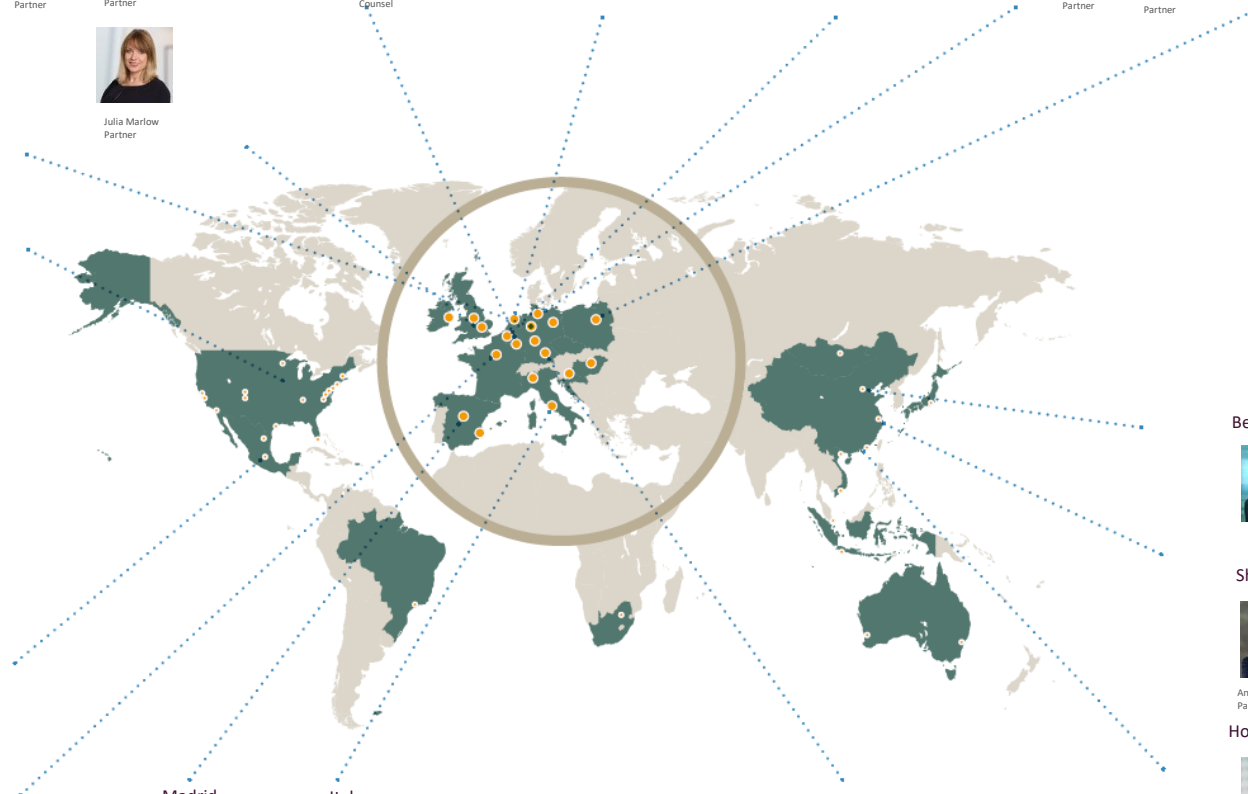


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Munich



Dr. Ingmar Doerr
Partner



Dr. Volker Geyhalter
Partner



Dr. Stefan Schuppert
Partner

About Hogan Lovells

Why choose Hogan Lovells?

Change is happening faster than ever, and to stay ahead, you need to anticipate what's next

Legal challenges come from all directions. We understand and work together with you to solve the toughest legal issues in major industries and commercial centers around the world. Whether you're expanding into new markets, considering capital from new sources, or dealing with increasingly complex regulation or disputes, we can help. Whether change brings opportunity, risk, or disruption, be ready by working with Hogan Lovells.

Straight talking. Understanding and solving the problem before it becomes one. Delivering clear and practical advice that gets your job done.

Hogan Lovells offers extensive experience and insights gained from working in some of the world's most complex legal environments and markets for corporations, financial institutions and governments. We help you identify and mitigate risk and make the most of opportunities. Our 2,500 lawyers on six continents provide practical legal solutions wherever your work takes you.

A fast-changing and inter-connected world requires fresh thinking combined with proven experience.

That's what we provide. Progress starts with ideas. And while imagination helps at every level, our legal solutions are aligned with your business strategy. Our experience in cross border and emerging economies gives us the market perspective to be your global partner. We believe that when knowledge travels, opportunities arise.

Our team has a wide range of backgrounds. Diversity of backgrounds and experience delivers a broader perspective. Perspectives which ultimately make for more rounded thinking and better answers for you.

Giving back to communities and society is fundamental to good business. And, it's part of our core. We are advocates of justice, equality, and opportunity. Everyone at Hogan Lovells is asked to volunteer at least 25 hours a year as part of their normal work duties. Around the world, our people are making a difference through pro bono activities, community investment, and social justice.

Why choose Hogan Lovells?

- Deep understanding of your issues
- Straight talking and practical problem solving
- Strong relationships and a collaborative approach





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