



C/M/S/

Law . Tax

# Introduction to our Funds practice

June 2020



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## Introduction

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CMS South Africa is a commercial African law firm based in Johannesburg, South Africa, with a Level 1 Board Based Black Economic Empowerment (**BEE**) rating, specializing in providing high quality, practical legal, tax and transaction advisory services.

Before joining CMS, one of the key global law firms, RM Partners was founded by senior lawyers looking to transform and modernise the South African legal market, but who also understand the African and the international market. Joining CMS fulfills a key part of our vision and provides an Africa platform which aligns directly our strategies of becoming a prominent African law firm.

Being part of CMS adds an international element to our services to ensure that our clients receive a seamless experience regardless of where they are transacting.

CMS (cms.law), one of the key global law firms, has a presence in 43 countries, with offices more than 73 cities and more than 4,800 lawyers, whom we are proud to be joining. This integration will allow us to share knowledge, resources and expertise of top professionals. If you are looking to expand your reach internationally, you can benefit greatly from being advised by an international firm like CMS that can both understand your business locally and act as a guide in other countries.

CMS now has a presence in the most dynamic regional hubs – Casablanca, Johannesburg and Nairobi – providing us with a strong regional coverage, sustained by offices in Algiers, Luanda and Mombasa.

For more information about CMS, see **Appendix**.



*The quality of their legal work is top class.*

Group Legal Advisor, a global bank

## Full-service capabilities

We are committed to providing our clients with quality tailored services at a competitive price with flexible fee structures.

Our multi-disciplinary team of over 25 lawyers have an in-depth understanding of the commercial and business issues associated with commercial and financing transactions and, together, are able to offer holistic, innovative solutions to our clients.

CMS South Africa represents a significant number of multinational companies, local private and public sector entities with transactional work both in - country and cross-border.

Our services include Practice Areas Groups and Sector Groups:

Practice Area Groups	Sector Groups
- Banking & Finance	- Banking
- Capital Markets	- Consumer Products
- Corporate & Commercial	- Energy
- Corporate Governance & Compliance	- Financial Services
- Dispute Resolution	- Healthcare
- Funds & Private Equity	- Mining & Commodities
- Project Finance & Infrastructure Development	- Private Equity
- Public Procurement	- Projects & Infrastructure
- Real Estate	- Retail
- Regulatory & investigations	- Telecommunications, Media & Technology
- Tax & Exchange Control	- Transport



*My go-to corporate tax structuring (team) and have a good grasp of difficult tax issues.*

Chambers, Tax, South Africa, 2020

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## Our Vision

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Transformation is acknowledging the new.

It is the world reflecting the real truth about people.

It is us finding better ways to see ourselves.

Transformation means building open-minded societies.

It is understanding the individual to build the collective.

It is forgoing progress for just a select few.

Transformation is...

...recognising the need to adapt

...to be unique but belong

...to be different but within reach

At CMS South Africa we understand that to be true to transformation is to move, change and grow with all people.



*The most successful companies are those that represent all of their customers, not just the select few.*

Riza Moosa, Senior Partner, CMS, on why transformed companies win every time



## Our Africa coverage

We have been advising businesses in Africa for over 50 years and are committed to its long-term prosperity. Our lawyers, based in six offices in Africa, are firmly embedded in their local markets. They know the legal systems, live and work in the local communities, understand the diverse economies and have extensive relationships with professionals on the ground.

CMS Africa has the genuine ability to combine our local and international experts to create the best team for every situation. 120 lawyers based in Africa have the resources and support of over 4800 other lawyers spread across 70 offices worldwide. They have access to an enormous wealth of expertise and knowledge, deep technical resources and high-quality training to deliver the highest services on the continent.

With Francophone, Lusophone and Anglophone offerings, CMS can deliver services in the sectors our clients work in and in the languages our clients speak.

### CMS Africa in numbers

> 120 experts

6 offices in African hubs

>30 African countries  
covered between 2016 &  
2020



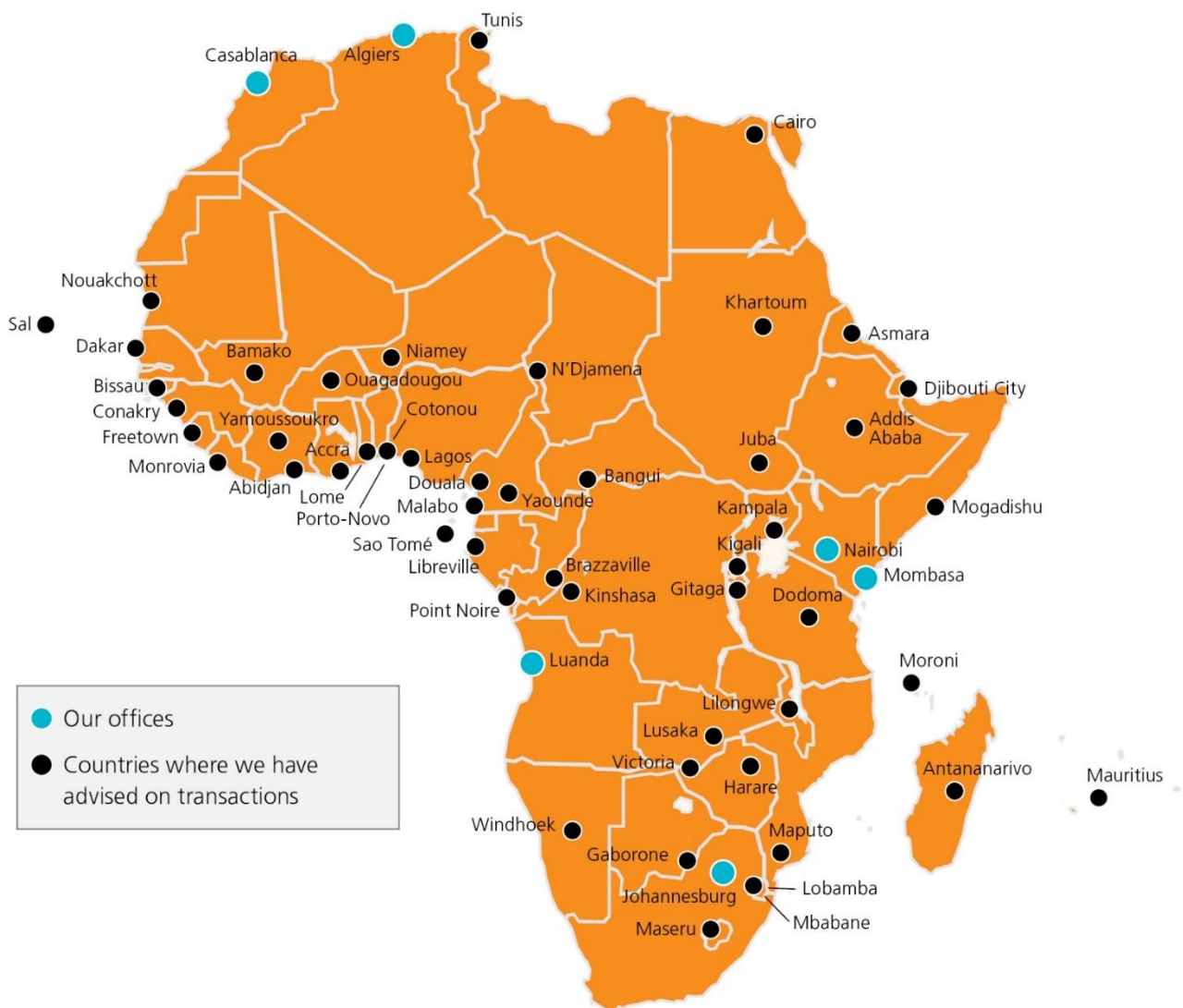
Specialist Africa-focused teams in France, Germany, Portugal, the Middle East, Asia and the UK



Services in French, Arabic, English & Portuguese



CMS Africa consists of a fully integrated team of experts dedicated to Africa, combining a local approach with global expertise in order to provide you with the best service across the continent, in Arabic, English, French and Portuguese. Where we do not have an office, we work with our "best friend" law firm network – a network of relationships that we have cultivated for over 50 years that we have been transacting in Africa.



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# Funds & BEE transactions

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## South Africa & Africa

Whether you are establishing, managing, investing in or lending to a fund, you need experienced advisers who have done it before.

Our specialist funds group has expertise in all fund types:

- open or closed-ended
- institutional or retail
- private or listed
- partnership or hold co
- authorised or unauthorised
- BBBEE management structures.

The South African based English and South African law qualified team is part of CMS' global funds group. We advise clients wherever they are operating and can efficiently assist in coordinating your international and regional distribution strategy. As well as deep regulatory, taxation and exchange control expertise, we bring practical advice based on our extensive market experience. We are recognised experts in fund formation and also advise on:

- debt finance
- fund mergers and restructuring
- carry restructuring
- secondary transfers
- regulatory matters.

As well as technical expertise, your advisers add practical value. We develop relationships with regulators, depositaries, administrators and placing agents, which facilitates smooth transactions.



## Our approach

Knowledge of the asset class can be essential to a successful fund launch. CMS' sector-driven approach allows us to offer asset-class expertise, particularly for real estate, private equity, infrastructure, energy and clean energy, transport, life sciences & healthcare and pharmaceuticals, and TMC.

We work towards understanding our client's business operations in order to tailor our services as required. If an issue is relevant to the transaction or commercial work or our client, we partner with our clients to resolve it.

We appreciate the time sensitive nature of our client's needs and provide effective and efficient solutions. We often hand in hand with our integrated corporate and commercial team which is fully equipped and able to progress your commercial objectives including Broad Based Black Economic Empowerment.



*The team is experienced, efficient, well priced and professional.*

Legal 500, South Africa, 2020

## Our track record

### Funds & BEE

- **SICAV-RAIF (SCSp)** - a Luxembourg based fund in relation to regulatory advice on the marketing of the Luxembourg investment fund to investors in South Africa.
- **Afrika Tikkun** - in relation to establishing a ManCo structure for the current and future investment assets.
- **Swakula Empowerment Fund** - on the establishment of a domestic fintech fund focused on early stage investment in disruptive African financial technology businesses.
- **A number of sector focused fund managers** - in relation to setting up numerous funds in terms of Section 12J of the Income Tax Act.
- **A South African Bank** – on the establishment of yield fund through Mauritius and ongoing structuring and tax advice in relation to the fund.
- **China Development Bank** - in connection with USD200 million bridge loans to Wesizwe Platinum Limited in relation to the development of the Bakubung Investments' Project forming part of their USD650 million financing.
- **China Development Bank** - in connection special facility of up to USD100 million provided by China Development Bank Corporation to Industrial Development Corporation of South Africa Limited for the development of South African small and medium sized enterprises
- **Phoenix Capital** - on the establishment of a section 12 Fund.
- **Carlyle Group** - on an investment into J&J Africa, a logistics company with interests across Southern Africa.
- **Various investors** - in relation to the establishment and the restructure of the Swakhula Empowerment Fund.
- **A leading philanthropic organisation** - in relation to the establishment of the private equity fund.
- **Impact Capital** - on the establishment of a section 12J Fund.
- **Alpha Wealth** - on the establishment of private equity fund with a focused-on media and entertainment.
- **Actis** - on the formation of a sub-Saharan Africa industrial property joint venture with the Improvon Group.
- **Old Mutual and the South Africa Infrastructure Fund** - on the disposal of their investments in three privately-concessioned toll roads in South Africa, Botswana and Mozambique.
- **Osiris Trading** – in relation to assisting with the online betting and games group with its Africa expansion. The services provided included understanding the regulatory framework of each subsidiary jurisdiction, particularly the tax rules applicable to the gaming industry and optimising problem areas including where no appropriate regulation exists.
- **GTC (formerly Grant Thornton)** – in relation to developing an international focused asset management platform, including advising on appropriate jurisdictions, IP issues, tax optimisation in Mauritius.

## Private Equity

- **SummerPlace Equity Fund 1 (represented by its fund manager, SummerPlace Equity Partners)** - on the acquisition of 44% of the issued shares in Old School Cool from the seller for an amount of ZAR2million.
- **Kleoss Fund I** - as represented by its advisor Kleoss Capital Proprietary Limited on its acquisition of a direct equity interest in Dartcom SA (Pty) Limited (Dartcom), a specialist distributor and service provider in the telecommunication industry.
- **Calibre Investment Holdings and The Reef Group** - in connection with an offer made to the board of Unicorn regarding the acquisition of a 51% interest in a new holding company to be established by Unicorn, following an internal restructure of Unicorn.
- **A broad-based black empowerment investment company** - on the disposal of its shareholding in one of South Africa's leading business intelligence and data management groups.
- **A broad-based black empowerment investment company** - on the provisions of the Financial Markets Act, 2012 and the JSE Listings Requirements in connection with a capital raising by a JSE listed empowered logistics group.
- **CDC Group Plc** - on its investment in Cattle Feedlot Company, a Malawian company. This included conducting a legal due diligence investigation and drafting the transactional agreements.
- **Actis** - on a USD65 million acquisition of a minority stake in Tekkie Town.
- **The Carlyle Group** – on the acquisition of an interest in Global Credit Ratings, a credit ratings business operating throughout Sub-Saharan Africa.
- **Ethos** - on the disposal of Universal Industries, a food services business with operations in South Africa, Namibia, Nigeria, Botswana and Zimbabwe.
- **Ethos** - on the disposal of Kevro Holdings, a merchandising business operating in South Africa, Mozambique, Namibia and Zambia.



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## Team & Profiles

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**Milton Osborn** leads our funds team of multi-disciplinary lawyers specialise in the full remit of legal capabilities and expertise whilst collaborating within their teams in order to provide clients with cohesive, commercial, and uncluttered advice.

We focus on ensuring cost flexibility and predictability, service consistency and rapid turnaround times with no duplication of efforts or fees.

Set out are the core team members' profiles for your consideration.



*Milton is a strong structurer and problem solver. He is able to move a transaction forward and is very commercial.*

Client feedback programme, 2020



## Milton Osborn

### Director – Head of Funds

Milton is a corporate, funds and banking and finance lawyer with previous experience at international law firms in South Africa, the United Kingdom and China.

Milton has broad experience advising financial institutions and sponsors, in relation to acquisition finance, cross-border finance, private equity, structured finance, debt capital markets, derivatives, hedge funds, high yield debt, and securitisation.

Milton has funds experience and has advised both GPs and LPs in relation to the establishment of domestic and international funds and has assisted clients with the full spectrum of private investment funds, all major investment strategies and all stages of a private investment fund's life cycle including:

- fund structuring and establishment
- investment reviews
- management and advisory arrangements
- platform and product design
- secondary transactions, restructurings and exits

Milton was admitted as an Attorney in South Africa in 1997 and as a Solicitor in England and Wales in 2003 and has previously worked as senior counsel in the private equity practice of O'Melveny & Myers, London where he acted for private equity funds, sovereign wealth funds and hedge funds on various capital market, structured finance, acquisitions and private equity related transactions. He has experience in the European, Asian and African markets.

Milton was a partner in the Beijing office of Norton Rose Fulbright LLP where he assisted Chinese State-Owned Enterprises and financial institutions with their outbound investment strategy, particularly relating to cross-border transactions into Africa and Europe.

#### Education

- 1993, LL.B., University of Natal, South Africa

#### Admissions

- Attorney, Republic of South Africa
- Solicitor, United Kingdom & Wales



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## Andrew Wellsted

### Director, Co –Head of Tax

Andrew is a highly regarded tax practitioner operating primarily in South Africa and Africa. He is a lawyer by training and specialises in tax and transactional structuring solutions.

He was head of tax at a large multinational law firm until 2018.

His tax experience covers a broad range of transactions, with an emphasis on tax advisory relevant to the cross-border, banking and mergers and acquisitions, private equity transactions, upstream and downstream advisory for funds and black economic empowerment funds.

Andrew has significant tax litigation experience, and he has excellent relationships with numerous South African regulators.

In the banking and financial service industries, Andrew has advised various financial institutions on financing transactions including project finance, structured finance and preference shares. He is specialised regarding the tax considerations applicable to advising on the structuring of derivatives, financial instruments and other structured products.

Praise from market sources: *"I rate him very highly. I've worked with him over the years on very complex deals and big transactions - he's very good."* Another interviewee called him *"my go-to corporate tax structuring person,"* adding that *"he's a tax specialist and has a good grasp of difficult tax issues."*

He has also written numerous articles and has been included in several international lawyer-ranking publications, most recently, in band 2 for tax practitioners in Chambers 2018, a Recognized Lawyer in Best Lawyers 2018, and the Best Lawyer in Tax, Johannesburg 2019.

#### Education

- 1997 - BA from the University of Witwatersrand
- 1999 - LLB from the University of Witwatersrand
- 2003 - LLM from the University of Witwatersrand
- 2004 - Diploma in Capital Gains Tax, from the University of Witwatersrand

#### Admissions

- Attorney, Republic of South Africa



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## Sihle Bulose

### Senior Associate - Corporate & Commercial

Sihle is also part of the funds and private equity practice at CMS.

He has experience in upstream and downstream work, and he assists his clients on fund structuring, and acquisition and disposal of assets by funds.

Sihle has also worked with infrastructure funds with interests in various parts of the African continent.

Sihle has a keen interest in Section 12J Funds and empowerment funds. Sihle also works closely with private equity funds and fund managers who have formed advisory and structuring joint ventures with CMS RM Partners, to pursue special opportunities in the fund management space.



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#### Education

- 2020 – MBA, Gordon Institute of Business Science, University of Pretoria, South Africa.
- 2019 – PGDIP (Business Administration and Management), Gordon Institute of Business Science, University of Pretoria, South Africa.
- 2012 – LL.B. (cum laude), University of Kwa Zulu Natal, South Africa

#### Admissions

- Attorney, Republic of South Africa

## Kelita Hoffman

### Associate – Financial Regulatory & Funds

Kelita is a financial services regulatory and compliance lawyer practicing in the funds and regulatory team.

Kelita has broad regulatory experience advising local and international companies in relation to regulatory, exchange control and consumer law matters. She has experience advising on the National Credit Act, Financial Advisory Intermediary Services Act, Consumer Protection Act, exchange control regulations and related legislation in assisting clients across various industries with creative legal solutions.

She has also advised on cross-border Africa transactions for global companies expanding into Africa in various industries including financial services, gambling and consumer products. Kelita's regulatory experience also extends to exchange control and cryptocurrency advisory. She also assists with private equity and funds transactions including fund structuring, management and advisory arrangements and restructurings.

After completing her Masters' at U.C. Berkeley in California as the only South African, Kelita joined the firm at its inception on her return to South Africa. She has received a variety of academic accolades.

She previously worked at another international law firm, working in pension fund and medical aid scheme advisory as well as insurance litigation.

She also worked in marketing and social media for an international cosmetics brand in California. She comes from a diverse background and also served in the military in special forces before pursuing her legal career and travelling extensively.

#### Education

- 2017 – LL.M., University of California, Berkeley, United States
- 2017 – Certificate in Business Law, University of California, Berkeley, United States
- 2014 – LL.B. (cum laude), University of Johannesburg, South Africa

#### Admissions & Memberships

- Attorney, Republic of South Africa
- Member of the Legal Practice Council
- Member of the Berkeley Law Alumni
- Member of the Berkeley Haas Business School Alumni



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## Appendix: About CMS

### Your World First – the CMS approach to delivering value

We have a phrase to sum up our promise to our clients: 'Your World First'. This phrase reflects our priorities of being client-centric, providing world vision and being performance driven.

#### Client-centric

You, the client, are at the heart of our business - whether you are a large or small organisation. Our emphasis is not just on being great technical lawyers, but really understanding your business and your key objectives. One way we do this is by organising CMS into sector groups that operate locally and internationally. CMS's international sector specialists take pride in understanding your industry and engaging with your company-specific issues.

We deliver added value services based on real client needs, such as Law-Now which provides easy-to-access, practical and timely knowledge that matters to your business. CMS expands to meet client needs, moving into countries where we can make a difference to your business. Recent examples include our new offices in Dubai and Mexico, which we set up to support our energy clients operating there.

#### World vision

Our sector insight means we immerse ourselves in the world of your business and we make sure we understand the global business issues you are facing. We have deep local expertise in your most significant jurisdictions as well as all the major global centres and we have established CMS in emerging markets in line with client needs. CMS professionals act as trusted partners, managing your global projects and transactions wherever you need us.

#### Performance-driven

We work with you to define what success means for you and your organisation and we focus on making it happen. CMS takes pride in first-class execution and project management – we deliver results, not just opinions. We will actively ask for your feedback to help us assess and improve our performance.

#### Delivering Client Service

We take the same approach to service delivery everywhere, based on a common training programme and a shared understanding of what our clients value most.

We provide you with management information to help you manage your account with us, covering areas such as invoicing, matter progress, fees, work in progress (WIP) along with bespoke reports on other factors specific to your business and your needs.

Your satisfaction with our performance drives our efforts to continuously improve our service. Through regular exchange of information and independent feedback we identify opportunities to reach higher levels of efficiency and effectiveness in service delivery and act upon them.

### Facts & Figures

73 offices

67 cities

43 countries

#### Europe:

Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, France, Germany, Hungary, Italy, Luxembourg, Republic of North Macedonia, Monaco, Montenegro, the Netherlands, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, Ukraine and United Kingdom

#### Outside Europe:

Algeria, Angola, Brazil, Chile, China, Colombia, Kenya, Kingdom of Saudi Arabia, Mexico, Morocco, Oman, Peru, Singapore, South Africa and United Arab Emirates

> 1,100 partners

> 4,800 lawyers

> 8,000 total staff

Total annual revenues:

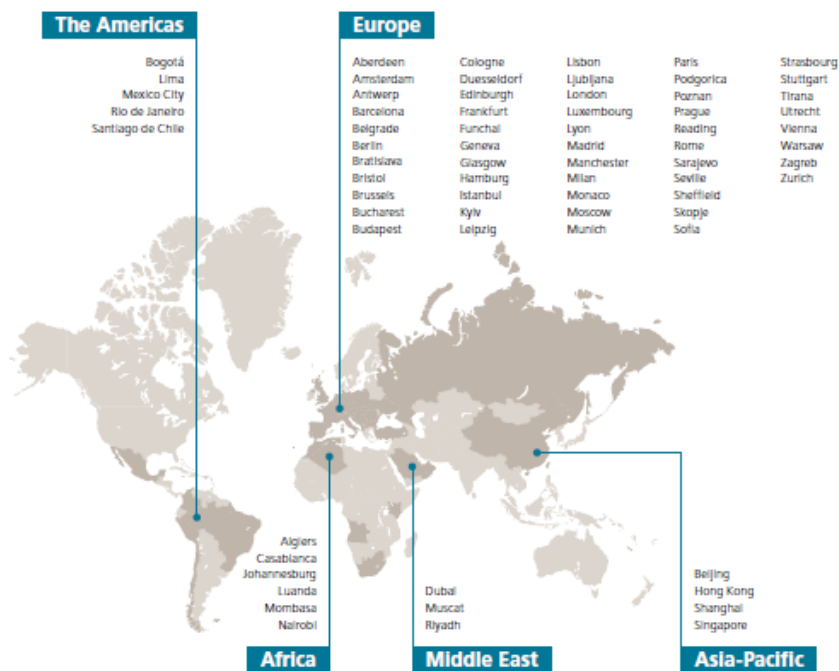
EUR 1.4 bn (2018)



## CMS practice areas and sector groups

- Banking & Finance
- Commercial
- Competition & EU
- Corporate / M&A
- Dispute Resolution
- Employment & Pensions
- Intellectual Property
- Public Procurement
- Real Estate & Construction
- Tax
- Consumer Products
- Energy
- Funds
- Hotels & Leisure
- Insurance
- Infrastructure & Project Finance
- Life Sciences & Healthcare
- Private Equity
- Technology, Media & Communications

## Locations worldwide





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**CMS locations:**

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Moscow, Munich, Muscat, Nairobi, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Skopje, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

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**[cms.law](http://cms.law)**