

FACTS

El Bombón S.A. (“**EBSA**”) is a company incorporated in Brazil. 60% of the shares of EBSA are held by an investment company in the United Kingdom (“**UK**”), being Le Chocolat des Leofric Limited (“**Leofric**”). This is a part of the investment strategy of Bhojanam Private Limited (“**BPL**”) which is a listed company registered in India. BPL is the lead chocolate producer in India and holds 70% of Leofric.

The rest 30% is owned by Bonum Cibum GmbH (“**BCG**”), a German Company. BCG is the largest service providers in cacao and chocolate related business in Brazil and have strong connections with the Government of Brazil.

As a part of their investment strategy to secure the best cacao for their chocolate production, BPL has acquired another plantation through another subsidiary of Leofric located at Brazil named Del Bombon SA (“**DBSA**”) in which Leofric is holding 90% of the company and 10% is held by the Government of Brazil.

Both the said plantations have done extremely well and because of the said success, BPL has now entered into a greenfield project with the Government of Brazil in Brazil to develop 13 plantations. BPL has acquired the plantations through a wholly owned subsidiary called Marrom-Escuro Ltda (“**MEL**”) incorporated in Brazil with a capital of 100 million dollars. For further development of the project BPL would need the expertise of BCG for the Brazil region. For this, subsequent to several rounds of negotiations, BCG has stated that they would provide their expertise in consideration of 30% equity in MEL.

BCG has said that due to their internal investment structure they can invest in Brazil only through Leofric. However, Leofric has no capital to make the acquisition and has already leveraged its shareholding in EBSA and DBSA to raise capital for investments made in EBSA and DBSA. The Nulla Bonna Bank (“**Bank**”) giving the loan to Leforic has laid down some restrictive covenants as under:

1. The shareholding in EBSA and DBSA cannot be transferred without the prior approval of the Bank
2. Leforic will have to take prior permission of the Bank before any other loan is taken

TASK

You are a member of the corporate restructuring team of Compos Mentis LLP, an Indian law firm. You have been approached by BPL to act as transaction counsel for this matter, and to draw up a legally viable structure for transfer of 30% of the shares in MEL to Leofric in the most tax effective way.

ASSUMPTIONS/QUALIFICATIONS

1. All parties are compliant with laws in their home jurisdiction. You are required to examine the matter from an Indian law perspective only. However, please do note that any obligations that flow to foreign subsidiaries of Indian entities or relate to overseas businesses of Indian entities must also be considered.

2. You are required to structure the transaction from a lawyer's point of view only. You are not required to conduct liquidity analysis, assess techno-economic viability and similar tasks. Your goal is to provide the most efficient and least expensive legally viable and tax efficient structure for the transaction.

INDICATIVE LAWS TO BE REVIEWED

1. Foreign Exchange Management Act, 1999 and any other Master Directions dealing with foreign investment
2. Income Tax Act, 1961
3. Companies Act, 2013