



STARTUPS & FINTECH IN LUXEMBOURG



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IN LUXEMBOURG



PRACTICE OVERVIEW

Missteps at the early stage can trip up entrepreneurs at a later stage when getting ready to scale organically or through VC funding. This explains the need to surround yourself with trusted advisors having the necessary experience and skills to help take your business to the next level, no matter what the type of legal issue you could face.

Our expertise

We combine Lawyers from our transactional, tax, IP and finance groups, to provide expertise and advice in every step along the way. Built on our vast experience in assisting new companies, we have learned that certain fundamental legal elements need to be in place in order to take on funding, hire and grow your team, or build enterprise value for an exit. We closely work with entrepreneurs, founders, inventors, investors, emerging companies and growing businesses on a wide range of matters that will nurture their company and develop strategic and innovative solutions across a wide range of areas for this purpose.

Corporate matters

Analysis of the most suitable form of company incorporation, establishment of a branch, articles of association, shareholders agreements, director's liability, first board meetings, joint venture agreements, stock-options schemes, management agreement, etc.

Funding / Financing

Migration to and outside Luxembourg, drafting of contractual and financial documentation, private funding (B.A. and venture capital), eligibility to public financial aids, etc.

Commercial contracts

Preparation and review of general agreements, lease agreements, general terms and conditions, subscription agreements, licensing agreements, service and supply agreements, etc.

Employment matters

Preparation and review of employment contracts, internal guidelines, inhouse instructions, organization charts, litigation, etc.

Tax legal matters

VAT registration, tax opinion etc.

Intellectual property

IP applications, licensing contracts, non-disclosure agreements, data protection and CNPD notifications, registration of trademarks, drafting and reviewing IT contracts, etc.

Regulatory

Pre-application advice and assistance through out the whole process in case of regulated activities under the control of the CSSF, preparation of filing documents and application, liaison with the CSSF, etc.

GRAB LUXEMBOURG OPPORTUNITIES

- Central position in Europe with excellent logistic and direct access to major European markets.
- A leading international financial center with a strong culture of investors protection and a strict application of anti-laundering rules.
- Luxembourg startup ecosystem is heavily supported by local authorities and by both public and private incubators.
- Very flexible and attractive tax regimes, especially for startups and innovative companies.
- Highly skilled and multilingual workforce which is extremely research-oriented, with 7.6 researchers for every 1000 workers.
- A stable social, politic and economic environment and a modern and dynamic regulatory framework.
- Availability of public subsidies including “initial investment” aid schemes, interest subsidies, RDI aid schemes, promotion aids, export aids and tax relief.
- ICT hub with first-class infrastructure and networks, including highly secured data centers (mostly Tier IV datacenters).
- Responsive and helpful with authorities and decision makers.
- Because of its multiculturalism and size, Luxembourg is an attractive test market for startups, allowing them to rapidly become national leaders.

WHAT'S THE DEAL WITH BSP?

Our Startup & Fintech team is **passionate about fueling innovation** and fostering startups, emerging companies, and innovators. As a result, we developed a **dedicated program aimed at assisting and supporting you within the initial period of creation and thereafter by developing a well-established and running activity.**

Under this program, we work with entrepreneurs, founders, inventors, investors, emerging companies and growing businesses on a wide range of matters that will nurture their company at its most vulnerable stage.

We understand the unique and expansive needs of an entrepreneur, so our Startup & Fintech Team has adopted a **team-based approach to provide you with the most substantive and practical legal advice.** We combine attorneys from our transactional, tax and litigation groups, to provide expertise and advice every step along the way.

“Startups are lean on cash, but they still need legal support to get off the ground. We give them the benefit of a highly experienced team, at prices palatable to their budgets.”

AT LEAST 10 REASONS WE SHOULD WORK TOGETHER

We are knowledgeable in all aspects of law and have extensive experience accompanying start-ups. We can efficiently deliver outstanding results.

We are experts

Our interdisciplinary approach, along with the breadth and depth of our practice, allows us to serve as a strategic advisor through each stage of your growth.

Our approach

Our dedicated offer provides you an affordable and predictable fee arrangement in order to avoid any surprises.

Our package is a good fit for you

Our good connections with local authorities and businesses give add value to the relationships with our clients.

We are well connected

You are welcome to have a look at our rankings and the feedback from our clients gathered by all major independent legal directories.

Our clients love us

We know how to translate legal subjects in a comprehensible way. We believe that communication and mutual respect are key to develop a successful project.

There are no stupid questions

Successful startups are flexible, so are our successful lawyers. Our crucial ability to adapt to new laws, regulations but also to last-minute changes enables us to provide timely advice.

We are flexible

Accessibility and prompt responses are both fundamental to develop a trustful relationship. Regardless of where you are, our lawyers will be available for you.

We are reachable

We are well-organised and our experience allows us to better allocate time and resources depending on situations. We strive to uphold our commitments.

We meet deadlines

We are selective as to how many and what types of projects we tackle. Being selective is what allows us to devote so much individual attention to each client.

We are picky too

INCORPORATION PROCESS



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HOW TO INCORPORATE YOUR BUSINESS

Incorporation is the first concrete step you take towards setting up a successful business.

We can ensure that you get a head start by assisting you with setting up a company which is tailored to your needs.

Opening an account with a Luxembourg bank on behalf of the company on which to deposit the initial corporate capital.

We can assist you with the bank account opening process. The bank requires certain information such as a brief description of the proposed structure together with an explanation about its purpose and justification. A complete presentation of the investors (identity card, full address, geographical origin and professional or patrimonial source of the funds, geographical area of the activities) and identification of the beneficial owners, will be required as well. We have built excellent relationships over the years with Luxembourg banks with whom we can put you in touch at an early stage.

Address of a registered office in Luxembourg for the company.

Luxembourg has now several startup incubators which can both domicile your company and provide you with a work space designed for innovative businesses. BSP is partner with several incubators with which we can establish contact. You do not need a physical working space in Luxembourg, a solution may be to have your registered office at a domiciliation company. BSP does not offer such service, but we can recommend excellent and reliable professionals with whom we have been working with for many years.

Drafting the deed of incorporation including the articles of association.

The articles of association will define all internal rules of your company for the years to come as regards to shareholders duties, managers' powers and responsibilities, issuance of new shares, categories of shares, etc. Thus, it is one of the most important legal steps for your business. We can advise you and draft tailor-made articles of association that will ensure you legal certainty and clarity.

Liaising with the public notary, drafting the deed and providing the notary with all the required documents.

For most commercial companies such as the public limited liability company (*société anonyme*), incorporation involves the drafting of the notarial deed which will then be stamped by the public notary if he/she is satisfied with the documents provided. Public notaries ask for various documents to be provided, including as a minimum, the declaration of economic beneficiary and ID/passport cards for the shareholder(s). After stamping the deed, the public notary will proceed with the registration with the competent administration.

WHICH CORPORATE FORMS?

Luxembourg has always been a business-friendly environment and is committed to attracting and retaining innovative businesses. As such, the country, besides the very steady political environment, has set up a comprehensive and stable legal framework.

Your questions

All businesses usually face the same: from the initial innovative idea to becoming a successful business, there are many questions.

- What corporate form will best help my business grow?
- Will my choices be legally sustainable?
- Is it a corporate form consistent with my initial investment?
- Will it allow future investments?
- Will I be able to keep control over my company in the future?

Our answers

We help you fill the gaps between an innovative idea and a successful business by **advising you so all your questions are answered**. BSP prides itself on turning legal obstacles into opportunities for its clients.

BSP offers you creative legal solutions and helps you make the right decisions. We take care of the full incorporation process so that you just need to tell us what your vision for your business is and we do the rest.

Company structures in Luxembourg

Most common forms of companies are:

- the public limited liability company (*société anonyme, SA*),
- the private limited liability company (*société à responsabilité limitée, SARL*),
- the partnership limited by shares (*société en commandite par actions, SCA*),
- the simplified joint stock company (*société par actions simplifiée, SAS*), and
- the simplified private limited liability company (*société à responsabilité limitée simplifiée, S.à r.l.-S*), a startup friendly company form.

But all companies have their pros and cons.

- The SARL will be perfect for those who want to keep control of the share capital with a reduced shareholder liability.
- The SA will suit a wide range of activities and allow efficient investment.
- The SCA can conciliate partners with different levels of liability and involvement in the daily management.
- The SAS offers levels of flexibility for tailor-made articles of association with most of the advantages of the SA.

The two most commonly used legal forms in Luxembourg are:

	SARL (Private limited liability company)	SA (Public limited liability company)
Minimum social capital	12,000 EUR	30,000 EUR
Notary-drawn deed for incorporation	Yes	Yes
Limited to own contributions	Yes	Yes
Unconditional transfer of shares	No	Yes

FOCUS ON S.À R.L.-S

With a fast and cheap incorporation process, a startup-friendly company form is now available under Luxembourg Law: the simplified private limited liability company (*société à responsabilité limitée simplifiée*, S.à r.l.-S).

S.à r.l.-S ambitions

The law of 23 July 2016 for the S.à r.l.-S also dubbed **1-1-1 company (one person, one euro in one day)** intends to support the fast development of the entrepreneurial spirit in Luxembourg.

This law creates a new vehicle aimed at fostering entrepreneurial ambition more effectively as well as boosting productivity and innovation by reducing the costs linked to incorporation, putting into place a faster, simplified and efficient incorporation process, and reducing the subscription and payment requirements. It provides for entrepreneurs with a legal structure that not only offers a protection in terms of personal liability, but also enhances their visibility.

Are you eligible?

S.à r.l.-S is strictly **reserved to physical persons as shareholders** and physical persons can become managers thereof. In addition, a physical person cannot become shareholder of several S.à r.l.-S at the same time, unless the parts have been transferred to him/her because of death.

A variation of the SARL

S.à r.l.-S is a variation of the SARL which provides **flexibility while ensuring a sound legal structure**. In other words, the existing rules regulating the SARL will apply to the S.à r.l.-S except when provided otherwise by the law of 10 August 1915 on commercial companies, as amended.

What is the scope of permitted activities?

The corporate object of the S.à r.l.-S must compulsorily relate to **activities requiring a business licence** which must be obtained prior to the S.à r.l.-S incorporation being filed with the Luxembourg trade and companies register.

Reduced corporate capital and legal reserve

S.à r.l.-S may be incorporated with an initial corporate capital of EUR 1, which must be entirely subscribed and paid-up. Thus, the corporate capital of a S.à r.l.-S, may be comprised **between EUR 1 and EUR 12,000**.

The very limited amount of corporate capital is counterbalanced with the obligation to create a (non-distributable) legal reserve funded on a yearly basis by the allocation of one-twentieth (5%) of the net profits. Such allocation ceases to be compulsory when the aggregate amount of the legal reserve and the corporate capital reaches Euro 12,000.

Costs and formalities efficiency

- S.à r.l.-S may be set up by a private deed, a special deed or a notarial deed, which will be published. The choice lies with the founder of the S.à r.l.-S.
- Reduced costs of incorporation setting up of a S.à r.l.-S through a private deed with an initial share capital of EUR 1. The total cost to incorporate the S.à r.l.-S, including all the required registrations, publications and a yearly

membership fee to the Luxembourg Chamber of Commerce (*Chambre de Commerce*) of Euro 70, would amount to Euro 191.

Non-limited duration

The S.à r.l.-S must be considered as a **transitory regime** aimed at allowing entrepreneurs to reach a certain level of stability. Indeed, when the share capital of the S.à r.l.-S reaches EUR 12,000, the S.à r.l.-S will be transformed into a SARL.

CORPORATE GOVERNANCE

Corporate governance is the framework of rules, practices and processes by which a company is directed and controlled. It essentially involves balancing the interests of company's stakeholders such as investors, customers, suppliers, management, employees, government and the community.

Good corporate governance

Good corporate governance is, as well as a determination of shared values, the company's culture, ethical decision process which shall develop trust that co-founders work as a team to pursue common goals.

The biggest failure of corporate governance nowadays is its emphasis on short-term performance. In exchange for the right to run a company for a longer term, the boardroom composition should favour competence, diversity by gender and strictly limit the number of mandates to ensure sound management.



Corporate governance in a nutshell

Although the law of 10 August 1915 on commercial companies, as amended from time to time, contains some mandatory provisions on corporate governance such as the scope of the collective decision making (the shareholders), it is very much based on a pick-and-choose basis by the articles of association, within the limits of this law.

It is equally important to draft meticulously the provisions of the articles of association dealing with corporate governance to ensure that they will not be misused.

- **With most commercial companies** you will not have to make a lot of choices regarding the administration system beyond the number of directors for which the minimum depends on the company form.
- **With a public limited liability company** (*société anonyme*) however, you will have to choose between the single-tier system and the two-tier system.
- In the **single-tier system**, the company will be managed by a **minimum of three directors together composing the board of directors**.

Although the above law allows the board of directors to take all the necessary or useful actions to realise the corporate purpose of the company, certain interesting features such as the possibility to create committees.

- In the **two-tier system**, the company is administered by a **management board under the supervision of supervisory board**.

“Thus, it is essential that you carefully choose the features you want in terms of Corporate Governance.”

The corporate governance may also include in particular provisions in the articles of association regarding non-voting shares or control of the fulfillment of their duties by the shareholders. Nonetheless, it is especially important to ensure, when including such optional features, that they all properly fit together.

Therefore, corporate governance should be taken lightly and the provisions should be carefully drafted. Our job is to point out the best choices as regards the unique particularities of each business and to provide you with good-to-go articles of association.

SHAREHOLDERS' AGREEMENTS

A shareholders' agreement, (SHA), is a key tool to prepare for an unpredictable future.

Main clauses in an SHA

It is impossible to draw up a definitive list of which clauses are typically included in a shareholder agreement considering it is a document that is always tailor-made. Usually, you will find:

- **general clauses**, including the purpose of the document, as well as the previous agreements made between the parties;
- **operational and organisation clauses** that regulate the legal structure of the company, appointment of directors and their limitations, the shareholders' contributions, the entry of new shareholders, the roles and functions of each organ, commitments, obligations, etc.;
- **clauses defining powers and duties of the shareholders and the decision making process** (organisation of shareholders' meetings, compensation, allowance of future benefits, etc.);
- **protection clauses**, including founders' commitments, vesting conditions, non-compete clauses, non-disclosure agreements, etc.; and
- **exit clauses** notably governing the exit of shareholders from the corporate capital, buyout, etc.

What is a shareholders' agreement?

A shareholders' agreement is a **private contract subscribed voluntarily between shareholders of a company** with the aim of regulating their relationships, rights and obligations, as well as the daily operations of the company. As it frames the relationships between shareholders, everyone knows what his/her/its duties and powers are.

Why are they important?

When creating a company, everyone thinks of the best case scenario and is usually reluctant to think that the company can take a turn. From our experience, we know that prevention is better than the cure. Simple agreements can still be useful to ensure good relationships between shareholders for the years to come.

Once signed, the shareholders' agreement will be binding the shareholders and must thus be carefully drafted so as to ensure that they know exactly what they agreed to. That requires professional advice on the provisions in the agreement and how these provisions might be used in the event of a conflict.

SHA and articles of association

Professional advice is also essential in case the shareholders' agreement supplements the provisions of the articles of provisions regarding corporate governance. Indeed, the shareholders' agreement is not published and thus not enforceable towards third-parties. To avoid any problems of enforcement, provisions of a shareholders' agreement regarding corporate governance are usually reflected by corresponding changes in the articles of association.

The entry into shareholders' agreements is unfortunately often postponed by young companies. It should always be kept in mind that, a shareholders' agreement may prevent future conflicts and that such conflicts are likely to arise when least expected. In addition, in the unfortunate event of a conflict, a shareholders' agreement will also be an efficient legal tool so as to end it as quickly as possible.



REGULATORY

While dedicated to foster innovation and favour innovative companies, Luxembourg also created specific rules designed to ensure in particular consumers' protection.

Application to the CSSF



Focus on the financial regulations in Luxembourg

Startups represent a growing and dynamic economic sector in Luxembourg. The country has created an environment dedicated to foster innovation and favour young and dynamic companies.

In the case of Fintech, due to the potential impact of their activity on the Economy and to ensure consumers protection, Luxembourg has developed a specific legal framework that replaces or adds to the general rules applying to commercial companies.

- The law of 10 November 2009 on payment services, on the activity of electronic money institution and settlement finality in payment and securities settlement systems, transposes the European Directive on the subject matter. It provides for numerous derogatory rules which must compulsorily be followed.
- A company may also fall into the scope of the law of 5 April 1993 on the financial sector which determines the rules applicable to professionals of the financial sector, such as investment companies or private portfolio managers.

In each case, the additional rules will mainly compel the company to follow specific and more rigorous provisions in particular regarding corporate capital and governance. These additions necessarily impact the drafting of the articles of association and the incorporation process. Therefore, it is vital to work with professionals who have a real experience with these matters. BSP can assist you through the entire process.

Besides, your company, before being officially incorporated, must usually go through an authorisation procedure with the *Commission de surveillance du secteur financier* (CSSF) which is the Luxembourg financial supervisory authority. Such procedure typically involves discussions and meetings with the CSSF as well as careful drafting of articles of association and of the application required to get the formal financial authorisation. This can be a time-consuming process if the initial application is not up to scratch.

We have been working on incorporation of companies subject to these specific provisions and guided clients through the CSSF approval procedure for many years and we know how to ensure that the process will be swift and efficient for you.

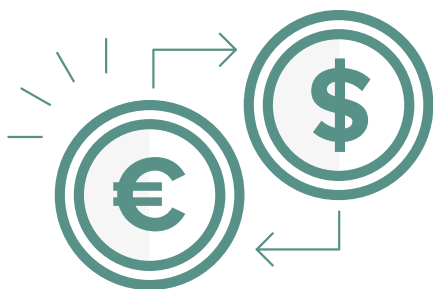
FINANCING

When you think big, make sure that you have the proper funding to back that up.

Financing options

Here is a roundup of some ways to finance your business.

- **Self-funding:** Self-funding a company is the only real way to maintain control in the early stages of the company, aside from crowdfunding.
- **Crowdfunding:** crowdfunding is a low risk option for startups and a great way to raise funds for creative projects or to gain the initial capital to fund the large scale manufacturing of a new technology product.
- **Angel investors:** angel investors specialise in offering financial backing for the small-business owner and entrepreneur within your startup stage and beyond.
- **Friends and Family:** borrowing from friends or family continues to be a very common source of capital for small businesses.
- **Loan:** applying for a business loan is another way to get your startup funded. You can apply for a bank loan or turn to one of the many peer to peer lending sites that now offer business loans.
- **Competition:** entering in competition is another way to get funding and publicity for your startup.
- **Venture Capital Financing:** VC money is for a tiny minority of startups and most have highly targeted funds with expectations of huge increases in value.



A great idea without proper investment will not go far.

You may start small and think big but banks and investors will not necessarily share your vision. BSP can help you find and negotiate with banks and private investors so as to let you focus on what matters: creating a successful and long-lasting business.

We have extensive experience with the drafting and reviewing of loan agreements, guarantees and any ancillary related financing documents. **With our guidance and advice, you can avoid surprises.** You will know exactly what you signed up to. In addition, having a trustworthy adviser at your side may also give you more legitimacy when negotiating.

Banks also regularly require legal opinions from Luxembourg law firms in the context of national and cross-border financings so as to guarantee the capacity of the contracting parties and the enforceability of those financing documents. We can assist in the legal documentation process and provide banks or other parties with such legal opinions.

Banks are not always the best visionaries. Thus, investment may also come from private investors. In that case, **we can advise you on the best means to protect your business while helping it grow with new money flows.**

Business owners do not always realise that having new investors, whilst essential, can also jeopardise everything they have built.

Private investors probably do not share your goals and objectives. Thus, we generally advise, if not already done before, to draft a shareholders' agreement so as to prevent future problems and protect you. If a shareholders' agreement has already been set up, we can ensure that it will be binding for the investors.

DATA PROTECTION

In compliance with European Union directives and regulations, Luxembourg applies an extensive, yet reliable, set of rules regarding data protection and data privacy so that consumers' rights are protected and businesses' duties are specifically defined.

Data protection: a growing challenge for companies

In our highly digitalised world, compliance with data protection rules has become a key issue for most companies. Startup & Fintech businesses which are at the heart of the digital economy face data protection legal matters.

Companies must in particular ensure that all processing of personal data is necessary, proportional, legitimate and have a specific and legitimate purpose. In addition, data retention is subject to time limitations.

It must also comply with the **principle of loyalty** which implies that the subject of the data processing is informed about it, have access to the said personal data and is able to object to such processing.

Besides the personal data processing rules, companies must also determine which processing must be notified, authorised or exempted.

This complex set of rules and the necessary assessment on a case-by-case basis justifies in many companies a position of compliance specialist. However, for a young business, this is not an option. With BSP, you will not be doomed to non-compliance because of budgetary choices. We can set up compliance procedures, as regards to the processing of personal data, for you to systematically follow and advise you on more specific matters when needed. Considering the cost of a full-time compliance specialist, outsourcing the compliance to us will be a genuine bargain.



Luxembourg National Data Protection Commission

The National Commission for Data Protection (*Commission Nationale pour la Protection des Données – CNPD*) is an independent authority which is mainly responsible for:

- controlling the data processing; and
- ensuring that personal freedoms and fundamental rights are respected with regard to data protection and privacy.

INTELLECTUAL PROPERTY RIGHTS AND COMMERCIAL CONTRACTS

Innovation is part of the startups DNA and key to their success. As such it is an asset that you must protect. Similarly, you have to ensure that your business interests are properly protected in the context of commercial contracts no matter how vital they are for your business success.

What is a patent?

A patent is a title which gives the inventor and/or the applicant the right to prevent other individuals from manufacturing, selling, using or importing a patented product or system, or from using a patented process.

In return for disclosing the invention, the state grants the inventor sole exploitation rights for a maximum period of 20 years on a given territory. You can obtain effective protection for a patent at national, European and international level.

What is a copyright?

Copyright refers to all the rights granted to creators for their published and unpublished original literary or artistic works. Authors of works do not need to carry out any registration formalities. They simply must be able to prove the date of creation of their work.

What is a trademark?

The trademark is a fundamental element in a company's strategy. A trademark can be a name, word, slogan, symbol, design, music, and/or other unique device that identifies a product or organisation. In Benelux countries, national registration no longer exists; thus you must register your trademark in the Benelux (the protection also covers Belgium and the Netherlands) or European Union.

Innovation is part of every business DNA

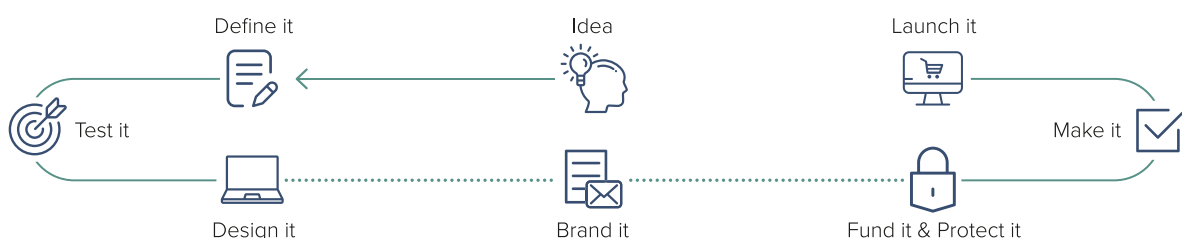
The term "intellectual property" (IP) broadly refers to ideas and concepts that are unique and potentially valuable, such as an invention or a work of fiction, and the determination of whom (or which entity) owns these ideas and/or concepts. Intellectual property encompasses copyrights, trademarks and patents.

Unprotected or misprotected creations may lead to complex and expensive litigations. Litigation on IP rights of a key technology lost in favour of the other party might even lead a young company into bankruptcy. IP rights may also be a concern when signing certain contracts on particular matters such as marketing or with software developers.

Thus, you need to work with skilled, experienced professionals who understand the specificities of your business and technologies. BSP has formed a multi-disciplinary team with diverse skills so as to accompany you at every step of your business life on these matters.

Commercial contracts in general may also be very tricky and their forms and specific clauses very much depend on their object and on the other parties which may be suppliers, developers, customers, partners etc.

We can draft such contracts to give you the upper-hand in the negotiations and ensure that the contractual provisions are aimed at protecting your business interests.



ABOUT BSP

BSP is an independent full-service law firm based in Luxembourg.

We are committed to providing the very best legal services to our domestic and international clients in all aspects of Luxembourg business law.

Talented and multilingual, our teams of lawyers work side by side with our clients to help them reach their objectives and support them with tailor-made legal advice, creating in the process professional relationships based on mutual trust and respect.

Building on the synergy of our different professional experiences and the richness of our diverse cultural background, we stand ready to meet our clients' legal needs, no matter how challenging they are.

For more information please browse through our website www.bsp.lu or contact us at startup@bsp.lu or fintech@bsp.lu.

Our practice areas include:

AML Compliance | Bank Lending, Structured Finance & Securitisation | Banking & Financial Services | Capital Markets | Corporate and M&A | Data Protection & Privacy | Dispute Resolution | Employment, Compensations & Benefits | Insolvency & Restructuring | Intellectual Property & General Commercial | Investment Management | Private Equity | Private Wealth & Business Planning | Real Estate & Construction | Startup & Fintech | Tax

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