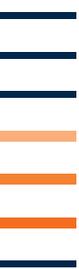




Public sector



LEGAL
INSIGHT.
BUSINESS
INSTINCT.

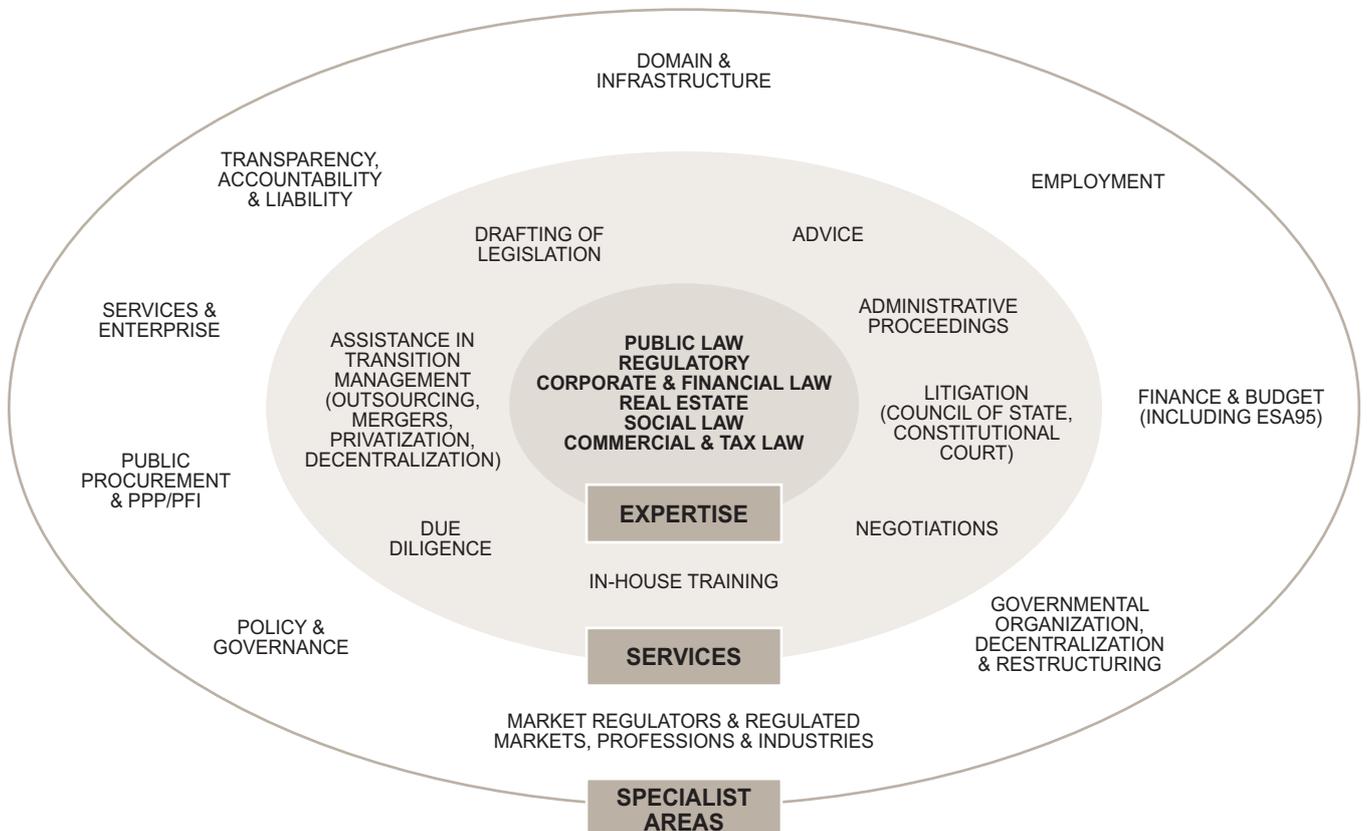


“This practice continues to grow in the market thanks to its highly integrated approach to public law. A highly active and dynamic firm.”

(Chambers 2012)

A COMPREHENSIVE, EFFICIENT APPROACH

At Lydian, we have a comprehensive and efficient approach to the public sector, focusing on (economic) public law issues dealt with our public-sector and private-sector clients on a daily basis. We offer a team of expert lawyers, each specialized in one or more of the practice areas needed to support and assist public sector participants.



THE FULL SCOPE OF LYDIAN'S SERVICES

Lydian can help you with the legal aspects of all your public sector projects. We have in-depth expertise in the following matters:

- Public Procurement and PPP/PFI
- Governmental organization, decentralization and restructuring
- Market regulators and regulated markets, professions and industries
- Domain and infrastructure
- HR Public Sector
- Finance and budget (including ESA95)
- Policy and governance
- Services and enterprise
- Transparency, accountability and liability

PUBLIC PROCUREMENT AND PPP/PFI

Public procurement makes up a significant part of Belgium's GDP. It is also a powerful policy instrument, steering innovation and opening up new markets. Given Belgium's complex government structure, a multitude of bodies, agencies, enterprises and utilities are subject to European and Belgian procurement rules. These rules are complex requiring in-depth and up-to-date know-how.

When it comes to public procurement, our public law practice is at the forefront of legal service providers in this area. We assist both government and private sector clients throughout the procurement process, by structuring and documenting procurements (e.g. drafting tender documents or reviewing offers), by advising on procurement or bidding strategies and assisting them during negotiations, by representing award authorities or bidders before the (administrative) courts, etc. We bring these skills to bear in various procurement sectors, such as transport, energy and utilities, ICT, HRM, infrastructure, financial services, etc.

We are also often asked to assess the impact of the public procurement regulations on different forms of market-related government action, including the creation of state enterprises, decentralization and outsourcing schemes, etc. Public procurement issues are also very often at the centre of legal question arising from PPP/PFI projects, including concession techniques such as BOO, BOT, DBFM(O) etc.

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GOVERNMENTAL ORGANIZATION, DECENTRALIZATION AND RESTRUCTURING

Belgium is known for its multi-layered government structure, both vertically (defederalization) and horizontally (decentralization). Put together with a negotiated economy, the result is a complex system of governmental bodies and agencies, subject to different sets of regulations, interacting with several forms of (semi-)public enterprises and interest groups (for example, trade unions and employers' organizations, consumer councils, chambers of commerce, and various non-profit organizations). Between these players, different types of public-public and public-private agreements and partnerships exist.

We assist all levels of government in setting up, changing or managing both centralized and decentralized administrations and agencies (legal framework, (re)structur(e)ing), finances, personnel, management, etc.).

Furthermore, we help them in structuring their mutual cooperation through special purpose vehicles or structured contracts. We have, for example, broad experience in setting up and managing various forms of agencies: public enterprises and utility companies, intermunicipal associations, externally decentralized regional or local agencies, etc.

Finally, we support private sector clients in their relationship with this complex government structure, for example, advising them on amongst other things joint ventures, concessions, procurement contracts, and PPP/PFI projects.

MARKET REGULATORS AND REGULATED MARKETS, PROFESSIONS AND INDUSTRIES

In Belgium's negotiated economy, a significant number of professions, industries and markets are regulated and controlled by, for example, various types of professional organizations, overview committees, advisory boards, market regulators.

Our public law experts advise both private sector clients and governments on complying with the regulations applicable to the area they are active in.

More specifically, we assist our clients in proceedings before market regulators and supervisors (e.g. when seeking authorizations, market access or arbitration) as well as before the (administrative) courts. In this respect, we often work together closely with other Lydian teams, specialized in the underlying field of law (energy, pensions, and insurance amongst others). We also assist our clients in reaching negotiated solutions for their compliance with the regulatory framework, for example, by drafting policy agreements, administrative appeals or briefs.

DOMAIN AND INFRASTRUCTURE

One of the key goals of the welfare state is the provision of public infrastructure. This infrastructure supports almost every aspect of (public) life, most importantly market activity, social cohesion and redistribution of wealth.

We assist government in creating, managing and optimizing various types of public infrastructure, such as transport infrastructure (on land, over water and in the air), housing, schools, culture, utilities, waste management, sports and leisure, administrative centres, police and fire stations and prisons. We have, for example, gained in-depth expertise in (urban) regeneration as well as (brownfield and blackpoint) redevelopment projects.

We also advise private sector clients (sponsors or financiers) in setting up public-private cooperation (PPP) and PFI schemes with government for the joint realization of (public) infrastructure projects (including, for example, BOT, BOO, DBFM). In this respect, we often deal with questions about private use of the public domain (concessions, rights in rem, etc.) as well as with structures for (intergovernmental cooperation on) public domain management and development.

HR PUBLIC SECTOR

Human capital is one of the main assets of government. In the ongoing pursuit of improved and more efficient services, the recruitment, management and assessment of an ever more qualified workforce is key to the success of any public body or agency.

Thanks to the knowledge built-up by our public and employment law practices, we are one of the leaders in public employment law on the Belgian market, combining in-depth knowledge of current practice with widely recognized academic credentials. We help government with the drafting, revising and negotiation of civil servants' and contractual workers' administrative and pecuniary statutes and regulations.

We advise public employers on adapting the legal position of their workforce following decentralization, restructuring, outsourcing or pooling.

We also offer them a wide range of legal HRM services (with respect to recruitment, promotion, disciplinary measures, leave, use of languages, pensions, etc.).

Finally, we assist public bodies and agencies in finding HRM solutions when entering into joint ventures, concession contracts, PPP/PFI projects, etc.

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FINANCE AND BUDGET

Government budgets are both instruments of public policy and accountability. They play a key role in any form of government action and are therefore subject to various types of control (such as audit and parliamentary approval.).

We advise all levels of government on both the European and national legal framework for public budgeting and finances. We have extensive knowledge of Eurostat's SAC95 rules for public accounting as well as state aid matters and budget control mechanisms, such as those of the Financial Inspection Agency, the Court of Auditors, budget review commissions, etc. We also help government in structuring the financial aspects of its various services and projects, including setting up public enterprises or agencies and initializing PPP/PFI projects as well as following up on the financial aspects of management contracts with decentralized bodies and agencies.

We assist our clients in the private sector to obtain and manage government grants, subsidies, guarantees or investments for their (non-profit/market) activities. We also advise them on (financial) risk allocation in PPP/PFI projects or under subsidy contracts, grants or guarantees as well as on the financial reliability of government bodies and agencies they do business with.

POLICY AND GOVERNANCE

The importance of government rules and regulations for industries and markets makes the interface between the public and the private sectors increasingly important.

We assist our clients in this respect in:

- advising regulatory bodies on the drafting, interpretation and implementation of their legislative powers as well as on their decision-making and governance processes, including the interaction between the international and European and the federal/regional/local levels of government;
- identifying and analyzing for our private clients public policy trends as well as (anticipated) legislative and regulatory proposals;
- investigating alternatives to regulation (soft law and self-regulation solutions, policy agreements, transactional government and so on);
- representing our clients before regulatory bodies or individual lawmakers as well as (administrative and constitutional) courts.

SERVICES AND ENTERPRISE

Public services are at the heart of government action today. Government is no monolithic structure, but a network of bodies and agencies. These are organized in various forms, often with varying degrees of autonomy or even as a fully decentralized power. A specific category amongst these decentralized bodies is the government-held enterprise, often competing on open markets or, in some cases, enjoying a legal or economic monopoly.

We advise these public services and government-held enterprises as well as their private counterparts on the former's organization, governance, operations (including HRM) and accountability. We have gained extensive know-how of the different legal structures underlying federal, regional and local decentralized or autonomous bodies and agencies. We assist them in their relations with central government (management contracts, benchmarking, monitoring and auditing) and with their clients (law of public service: changeability, continuity, equal right of access), in their housekeeping (boards, delegation of power, investment decisions, HRM) and in their operations (liability, cooperation and joint ventures, restructuring, project finance, etc.). We also advise them on their relations with national and European supervisors, advisory boards, auditors, etc.

TRANSPARENCY, ACCOUNTABILITY AND LIABILITY

There is a growing demand for public sector transparency and accountability. Different levels of government adopt (internal) auditing schemes, enact public transparency regulations and try to provide citizens and enterprises with cost-efficient and effective legal recourse against government action. In this respect, there is a growing number of liability claims against government.

We advise on public transparency obligations, such as access to information (including e-government solutions), data protection, obligations of information and motivation.

We also assist government in setting up and managing (internal) audit, control and benchmark schemes as well as in drafting activity reports, policy statements, etc.

Finally, we represent both government and private clients before the courts in relation to liability claims made against government.

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A TEAM WITH EXPERIENCE

Our team of experts has hands-on experience in working for (inter)national, regional and local governments and agencies as well as for large companies and SMEs active in the public sector. They combine their (economic) public law expertise with skills obtained from working in multidisciplinary, multilingual environments (together with consultants, engineers, tax and technical specialists, etc.). They will handle your case with a solution-driven approach, attentive to your needs and concerns. We aim for a direct and open working relation with you, focusing on tailored services, availability and an active follow-up.

OUR EXPERTS

JENS DEBIEVRE

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Jens works for Lydian since 2004 as a specialist in (economic) public law.

After obtaining his JD (VUB, 1999) and an LL.M. in maritime and air law (ULB, 2000), he worked as a research fellow for the public law department of the Vrije Universiteit Brussel (VUB). Currently, Jens is one of the directors of the research group Business & Contracts at the VUB.

Jens heads the regulatory & public law practice within Lydian.

He focuses on economic public law, advising government and private sector clients on administrative organization, public service, administrative contracts, public procurement, PPP/PFI projects, public domain, budget law (incl. ESA95), public employment law, market regulation and regulators, remedies and legal recourse against government action, etc. He regularly acts before administrative bodies and courts, including the Council of State (Belgium's highest administrative court) and the Constitutional Court.

As an (economic) public law specialist, Jens is often asked to speak at seminars or to design and deliver in-company training courses. He also regularly writes on subjects such as public procurement, administrative contracts, PPP/PFI and budget law.

Jens is a member of the *Genootschap Advocaten Publiekrecht* (Public Law Lawyers Society), the *Belgische Vereniging voor Bouwrecht* (Belgian Construction Law Association), the *Vereniging voor Bestuursrecht* (Administrative Law Association, Neth.) and the *Vereniging voor Aanbestedingsrecht* (Public Procurement Law Association, Neth.). He sits on the board of editors of the *Recht in de gemeente* (Municipal Law) book series (die Keure – la Charte).

Jens' practice is recommended in Chambers.

He speaks Dutch, French, English and German.

WOUTER NEVEN
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Wouter obtained his JD from the Catholic University of Leuven (KU Leuven) in 1991. He then obtained a Master of Laws at King's College, University of London (1992).

Wouter leads the real estate, environment and regulatory (RER) practice within Lydian. He has developed a particular expertise in a wide range of commercial, office, large residential and retail developments, having assisted clients with the setting up of shopping centres, business parks, retail offices, multi-storey and residential schemes throughout Belgium.

Wouter acts for a number of the country's leading public and private companies, carrying out a large number of acquisitions, joint ventures, development programmes and tax-designated property investments. Wouter has extensive knowledge and experience in all aspects of conveyancing, construction, public private partnerships, and property development law and has a broad and wide-ranging practice within these areas. He advises clients on dispute resolution matters and on contractual, planning, regulatory and environmental issues. He also advises on financing structures, including leasing, purchase and sale of properties and has gained solid experience in litigation with respect to real estate and construction issues.

He is the author of various legal publications and a regular speaker at conferences and seminars.

His practice is recommended in legal directories such as Chambers, Legal 500, PLC Which Lawyer? and European Legal Experts.

Wouter speaks Dutch, French, English and German.

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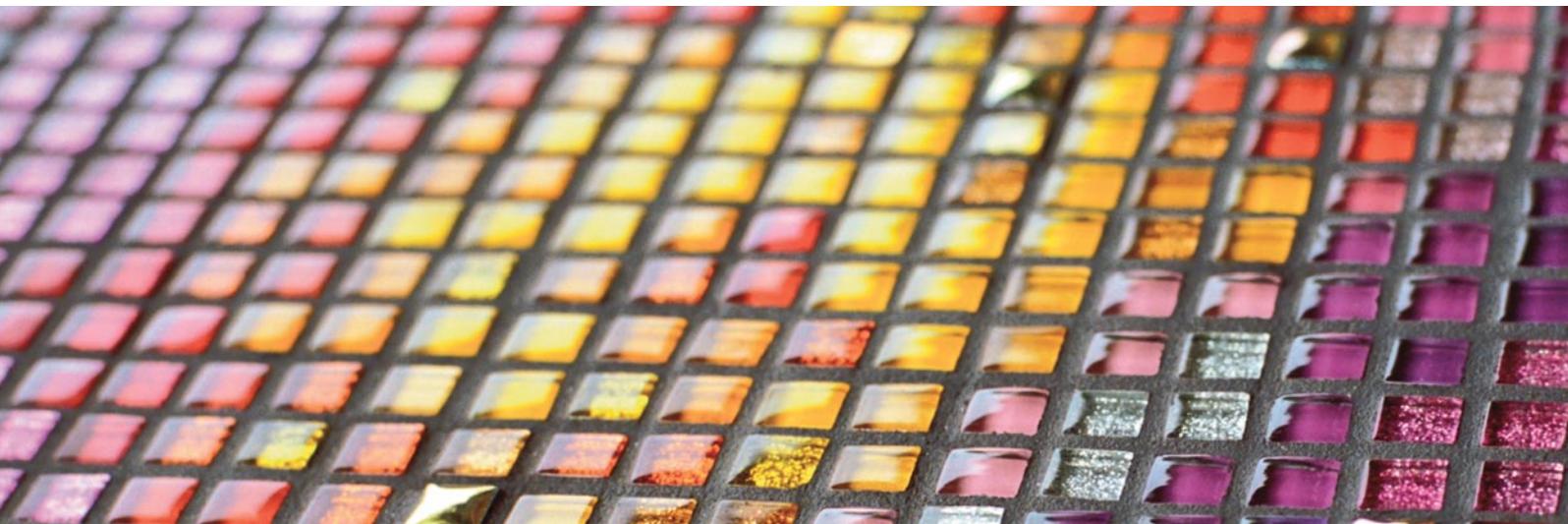
HIGHLIGHTS OF OUR RECENT EXPERIENCE

- Advising a Belgian regional government on the reorganisation of the management structure of its regional airports. Our advice covered both public law aspects (procurement, concessions, agency theory, state aid & competition) and some related topics (transfer/outsourcing of personnel, insurance, EU regulations on regional airports, IATA rules).
- Advising two public Belgian waterworks companies on their strategic cooperation. Our assistance included setting up affiliate companies, working out the intra-group contractual structure, advising on public procurement and concession law implications, and so on.
- Advising a Belgian regional government agency on setting up an e-procurement system. Our advice focussed on the translation of legal requirements on (electronic) public procurement into flow charts, as a basis for programming.
- Assisting several classification bodies in obtaining the status of recognized organisation to the Belgian flag state, allowing them to inspect and certify ships flying the Belgian flag.
- Assisting the Flemish Government on the realization of a new sea lock for the Port of Antwerp. Lydian represented the Port of Antwerp and the Flemish Government in the EUR 340 million project financing of the new Deurganckdock sea lock, the largest sea lock in the world. Lydian also advised on the structuring of the contractual cooperation between the public partners. This one-of-a-kind port construction project involves building the largest sea lock in the world. This massive structure will be sited at the head of the Deurganck dockyard on the left bank of the river Scheldt.
- Advising a leading IT and engineering technology group for ticketing, parking and mobile solutions in Germany and Great Britain on its claims against the Belgian railway infrastructure manager under several public procurement contracts.
- Advising and assisting the Flemish regional public investment company, held by the Flemish Government, in the development of different public finance investments and projects, for example housing, schools, sports infrastructure, etc.
- Assisting a real estate promoter in obtaining a DBFM-contract for the construction of service flats and elderly buildings at three different locations in Antwerp. Our assistance included the negotiations of the DBFM-contract as well as the legal aspects of the project structure and financing.
- Advising one of the largest Dutch building contractors, in relation to the participation of its German subsidiary in the public tender procedure for a PPP project on the DBFM of six new schools for the German-speaking Community.

- Advising the Flemish Government's knowledge centre for PPP and PFI on the legal framework for market consultation. This work resulted in an extensive report on the subject, outlining the existing rules for market consultation and containing best practices for public authorities when carrying out a market consultation (the text can be consulted on www.vlaanderen.be/pps).
- Assisting a leading listed Belgian real estate company (Euronext, BEL20) and one of the largest office property portfolios on the European market, in outlining legal frameworks for several public-private partnerships between the company and different public authorities (both on a regional and on a local level). The most important PPP project (in scope and value) was the tender procedure for the private, design, build, finance and operation of both publicly and privately held school buildings (PPS Scholenbouw). This project represents an investment value of around EUR 1 billion. In every case, the implications of European and local public accountancy rules (ESR 95) were taken into account.
- Assisting a leading real estate promoter and a subsidiary of the Belgian public railway and infrastructure operator in their successful bid for the design, build, finance and maintenance of a new hospital in Antwerp. The contracting authority is the *Zorgnetwerk Antwerpen*, a subsidiary of the Antwerp social services centre. Our assistance involves providing advice on the bid documentation and on the underlying organisation of the SPV, the financial documentation, the rights in rem, the risk allocation, etc.
- Assisting a multinational building company on the PPP it set up with the City of Sofia (Bulgaria) for the renovation and operation of the covered market hall in the Sofia city centre. Our services include the introduction of best practices in PPP from a EU perspective, assistance in contacts with the media and consultation with the Bulgarian legal team.
- Assisting several leading building contractors in Belgium in outlining legal frameworks for several PPPs with various public authorities (both on a regional and on a local level). Lydian was involved with one of the most important PPP project to date in Belgium, the successful bid for the DBFM of a prison in the Walloon Region.
- Assisting a federal government agency in the decentralization (creation of a separate legal entity) of some of its services, including the changes to the legal framework, the transfer of assets, personnel, etc.
- Advising several local authorities and agencies on specific infrastructure and PPP projects, including the drafting of tender documentation, assistance during the tender process, contract negotiations, follow-up of the works, relations with other governments, oversight committees, subsidizing authorities, ...



LYDIAN



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