



## Banking as a Service – a strange creature

Deloitte Legal Webcast | 22 May 2024

# Agenda & Introduction

# Agenda

- I. Platforms as megatrend
- II. Legal Basis
- III. Is outsourcing really “a solution for everything”?



## Arguing for you today:



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# I. Platforms as megatrend

## BaaS - added value for the financial world & more

**"Banking as a Service (BaaS) is a business strategy in which banks make their *internal infrastructure and platform available to third parties* (fintechs, start-ups and other financial service providers) so that they can distribute their *innovative financial solutions without having to acquire their own banking licence or build up an extensive infrastructure.*"**

"Banking-as-a-Service on the rise" - *Florian Ertelt, Head of Sales Germany, Treezor*

"Open banking and banking-as-a-service will be the next big hype cycle in FinTech, which will drive a new wave of start-ups."  
- *Frank Rotman, founding partner of QED Investors*

"Banking as a Service is the ultimate realisation of a fully digital banking experience."  
- *Sarah Kocianski, Head of Research at 11:FS*

"Fintech customers benefit from the best conditions and services from one or all of the BaaS provider's modular banking partners. Meanwhile, the banking partners generate new business and diversify their revenue streams with limited regulatory risk and compliance burden."  
- *Sankaet Pathak, Co-Founder & CEO Synapse*

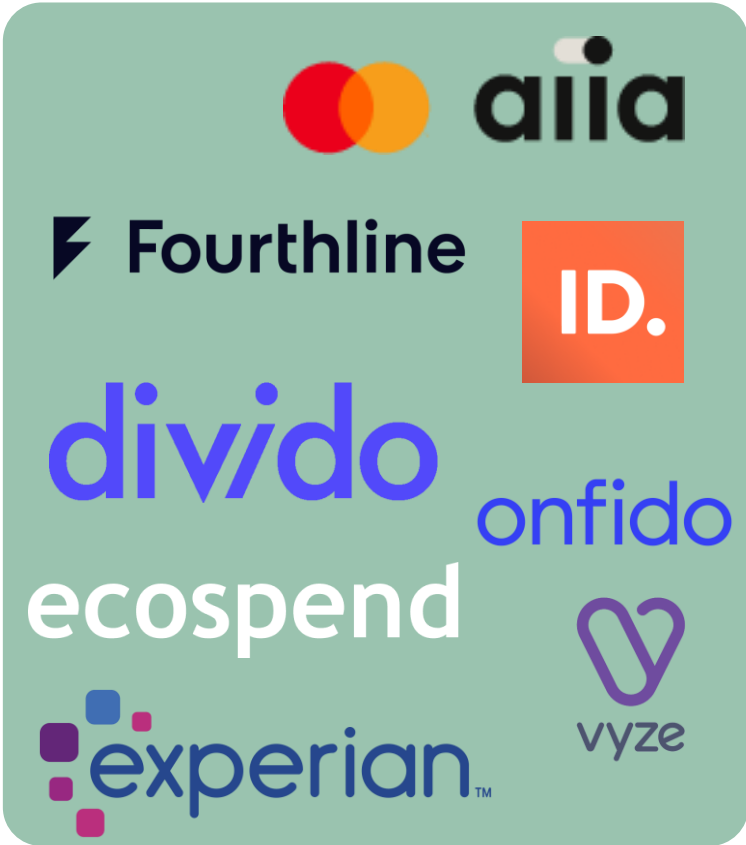
# BaaS ecosystems: providers, enablers and distributors

BaaS ecosystems result from the collaborative interaction of providers, enablers and distributors

## Providers



## Enablers



## Distributors



# Status quo of the BaaS market

The current product range is geared towards retail banking, but a shift towards SME business is clearly recognisable

***"In recent years, BaaS providers have developed a wide range of services and products that are integrated into their customers' ecosystems"***

## Market assessment

		Current Penetration	Potential Growth
Retail	Payments	●●●○	●●●○
	Banking	●●●○	●●●○
	Lending	●●○○	●●●●
SME Banking	Payments	●○○○	●●○○
	Treasury	●○○○	●●●○
	Lending	●○○○	●●●●

Source: Deloitte Analysis  
Deloitte Legal 2024

## Trends

**The market is currently dominated by banking products for retail investors:** Accounts and credit cards dominate the market, but e-wallets, wealth management and lending are generating growing demand in all markets.

**More balanced distribution between retail and corporate/SME banking:** The future promises a clear shift towards BaaS offerings for corporates and SMEs, as strong expansion is forecast.

### Growth areas:

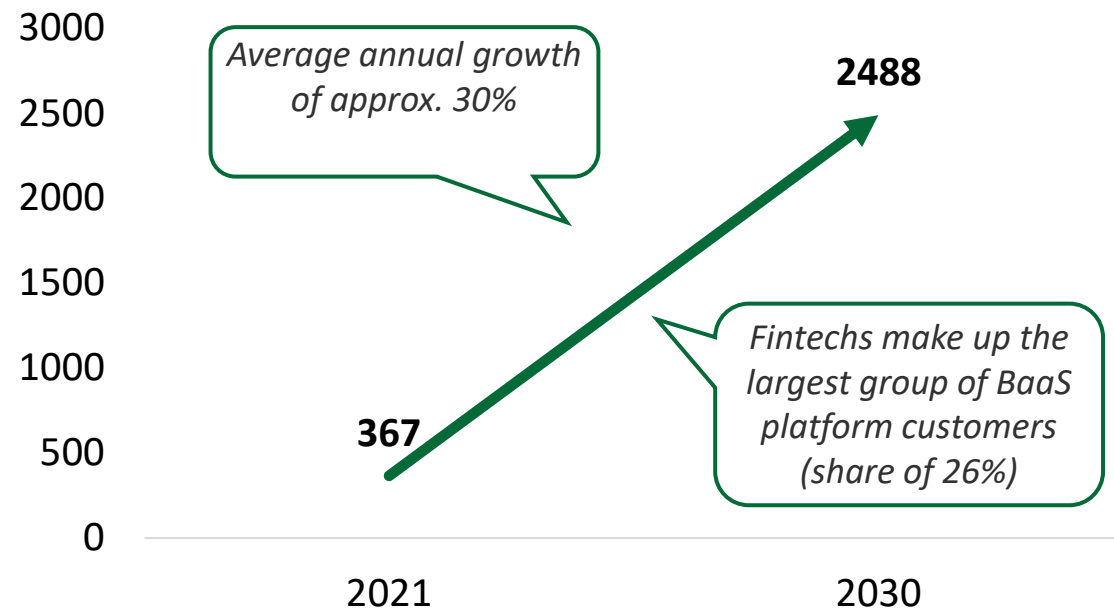
- **SME loans** - SMEs will increasingly turn to integrated financing as traditional offerings have not met their needs in the past
- **Financing at the point of sale** - BNPL and other POS financing products are expected to double worldwide in the next three years
- **FX services** - are in high demand in e-commerce, healthcare, manufacturing and the automotive industry



# Future development of the BaaS market

For BaaS, significant growth is expected worldwide, but especially in EMEA, although the industry players are facing major challenges

## Global BaaS market growth to 2030 (in bn USD)



*"Around 50-60% of BaaS platforms plan to expand their partnerships with BaaS users (B2B and B2C) by 50% over the next five years."*

## Developments in EMEA

- Sales growth**      \$60- \$80bn by 2025 and up to \$300-350bn by 2030 - due to the adoption of BaaS by large institutions
- Expansion**      in new sectors, e.g. logistics and transport, telecommunications, healthcare
- The challenges**      such as the ongoing crisis caused by the lack of familiarity, and product maturity being still in its infancy in some cases.

# Current dynamics of Banking as a Service

The growing emergence of Banking as a Service solutions is also leading to increased criticism of the legal and regulatory framework conditions

Traditional bank

## VOLKSBANK ODENWALD

- Provision of APIs for third-party providers to integrate banking services into their applications
- Expansion of the range of services offered by VR Bank Odenwald in the area of Banking as a Service



Fintech

## SOLARISBANK

- Solaris, a Berlin-based fintech company, takes over 1.3 million ADAC credit cards
- Solaris plans to use the funds to secure the ADAC credit card programme, strengthen its core capital and invest in the resilience of its platform



## What Baas providers are calling for:

- Simplification of the legal situation
- Relieving the burden on smaller companies by reducing "bureaucracy" and "complexity"

## Do these requirements match the assessment of the supervisory authority?

- "It [the complexity] makes it difficult for young companies to enter the market. And it places a particularly heavy burden on small companies in general."
- The EU could follow the example of other countries such as the UK with its "strong-and-simple regime".

*BaFin President Mark Branson  
(Press release on the annual press conference on 14  
May 2024 )*

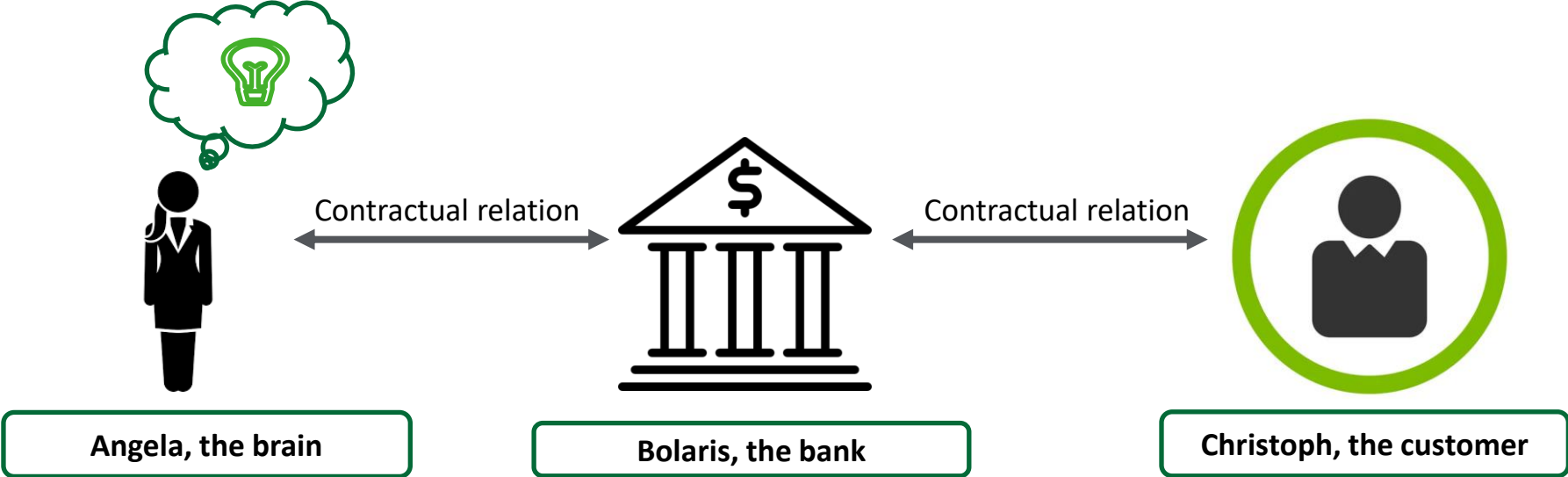
## II. Legal Basis

# Banking as a Service: What is it?



**Buzzword or legal term?**

# Banking as a Service: What is it?



Angela and Christoph are not in a contractual relationship, but they feel "as if" they were.

# Banking as a Service: an attempt at legal qualification



## Could this be outsourcing?

### What is Outsourcing?

- Cf. EBA/GL/2019/02 "An arrangement of any form between an institution, a payment institution or an electronic money institution and a service provider by which that service provider performs a process, a service or an activity that would otherwise be undertaken by the institution, the payment institution or the electronic money institution itself."






## Why doesn't outsourcing fit exactly?

One argument against the outsourcing and delegation provisions as a legal basis for "BaaS" is the fundamental requirement that the outsourcing provider be able to "insource" again.

© of the argument by Dirk Zetzsche

# Banking as a Service: What is it?


-  With "BaaS", the service provider requests the services of the supervised company and not - as with established outsourcing - the other way around.
-  The familiar outsourcing definitions see the supervised company as the initiator of the collaboration; with BaaS, the outsourcing provider is usually the initiator.
-  Let's start by using the term "reverse outsourcing" as a working assumption.

Why do you see the dog in the picture?



# Banking as a Service: (No) legal basis in the EEA - Europe



 **What about DORA?**  
The new regulation deals with the defense against ICT *risks and does not establish a link to "BaaS" activities.*



## Banking as a Service: (None) Legal framework in the EEA



We do not see a harmonised legal framework for "BaaS in the EEA.

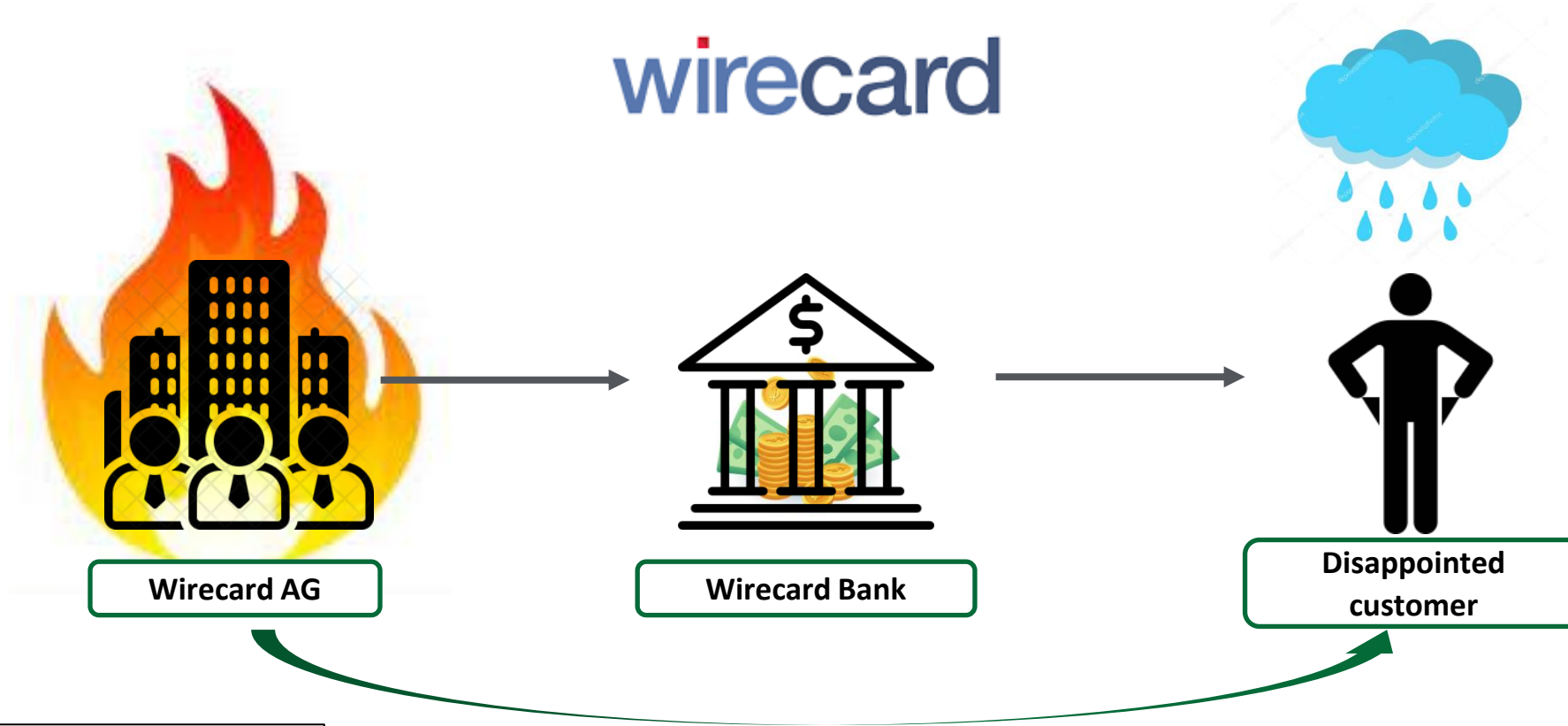


The EBA and ESMA could consider a joint approach for a harmonised European approach. In the end, the legislator will probably have to act. But how?

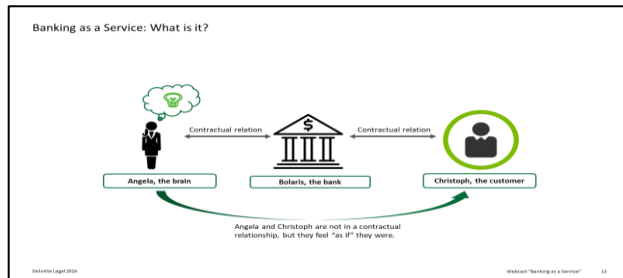


It may take a while before a common basis is created here. However, it is worth thinking about this in more detail.

# The German trauma - Wirecard as a negative benchmark



We remember:



# III. Is outsourcing really “a solution for everything”?

# Banking as a Service: Supervisory options



Zen – Doing Nothing



Prohibition à la David Hume



Continuation as outsourcing



DORA Approach



Special regulation

# Outsourcing as a "solution for everything"?

Status quo of the BaaS market  
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*"In recent years, BaaS providers have developed a wide range of services and products that are integrated into their customers' ecosystems"*

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Trends

The market is currently dominated by banking products, but e-wallets, wealth management and digital services are gaining demand in all markets.

More balanced distribution between retail and SME offerings for corporates and SMEs.

Growth areas:

- SME loans - SMEs will increasingly turn to integrated financing as traditional offerings have not met their needs in the past
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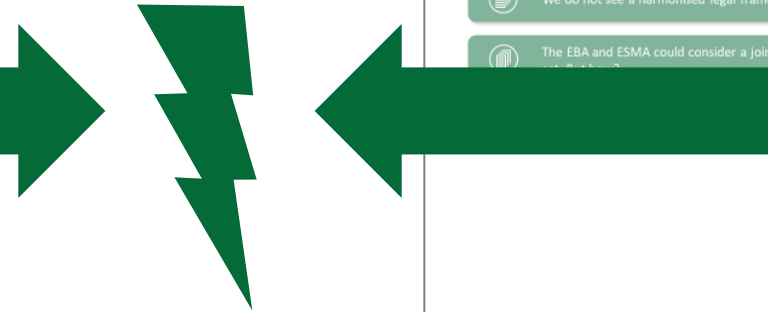
Banking as a Service: (None) Legal framework in the EEA


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The EBA and ESMA could consider a joint approach for a harmonised European approach. In the end, the legislator will probably have to create a legal framework for BaaS in the EEA. This framework is created here. However, it is worth thinking about this in more detail.


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## How do you tame BaaS - a "strange creature"?



**What now?** 

- Bespoke regulation 
- Licence holder as access point for regulation: "Delegation" 
- Technology-orientated financial regulation: DORA 



**A customised solution must be found!**

Source: Dirk Zetzsche

# Banking as a Service: Supervisory options



Zen – Doing nothing is no solution – the risks are obvious



Prohibition à la David Hume – Not a solution either; this would rule out a sensible business model



Continuation as outsourcing – As shown: probably does not fit; the current audits with the outsourcing providers are of no practical use either




DORA Approach – Probably not: DORA deals with compliance – strengthening at the licence holder’s level only



Special regulation – For example, analogous to ownership control; Why shouldn’t BaaS models be treated similarly to the “intention to acquire a bank”?

# Q&A



**Thank you very  
much  
for your attention**



# Deloitte Legal

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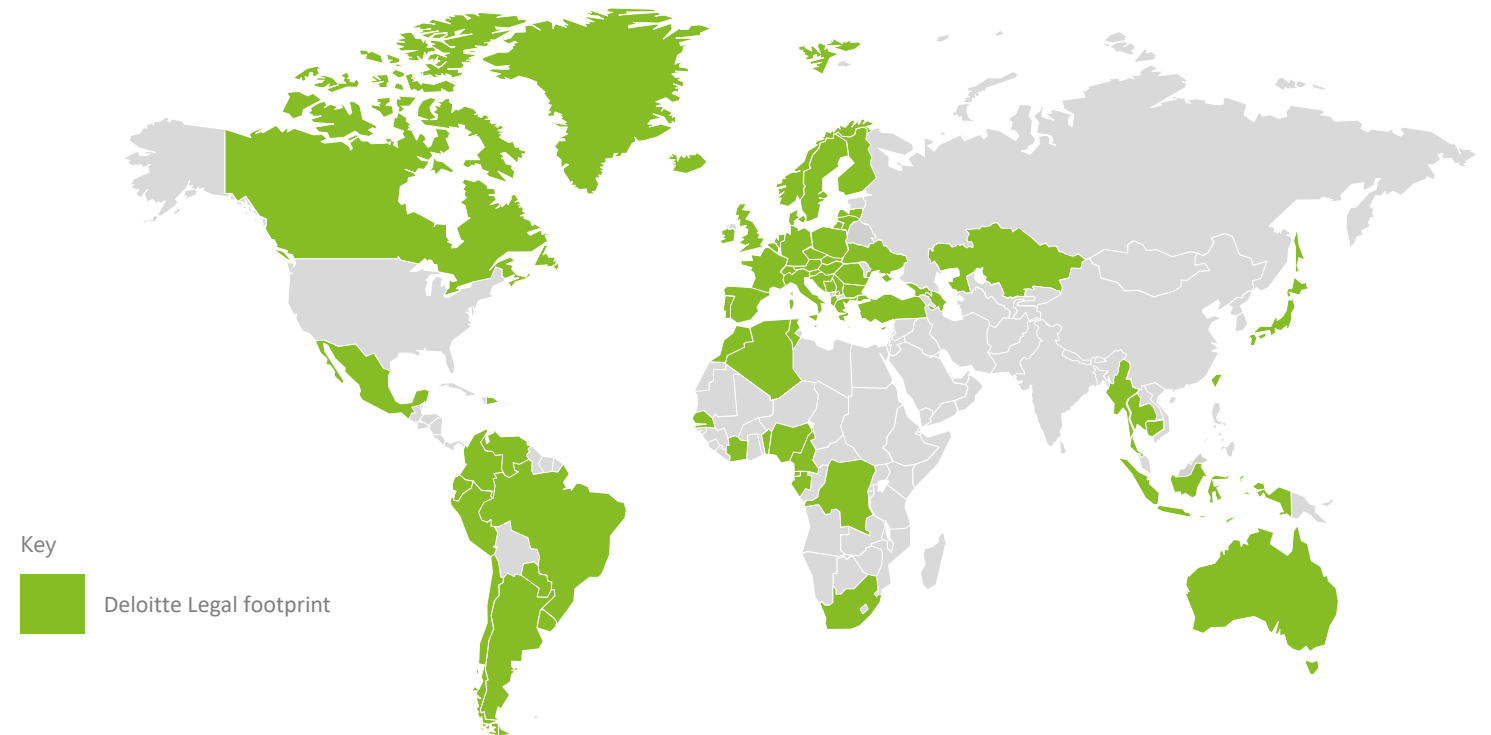


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