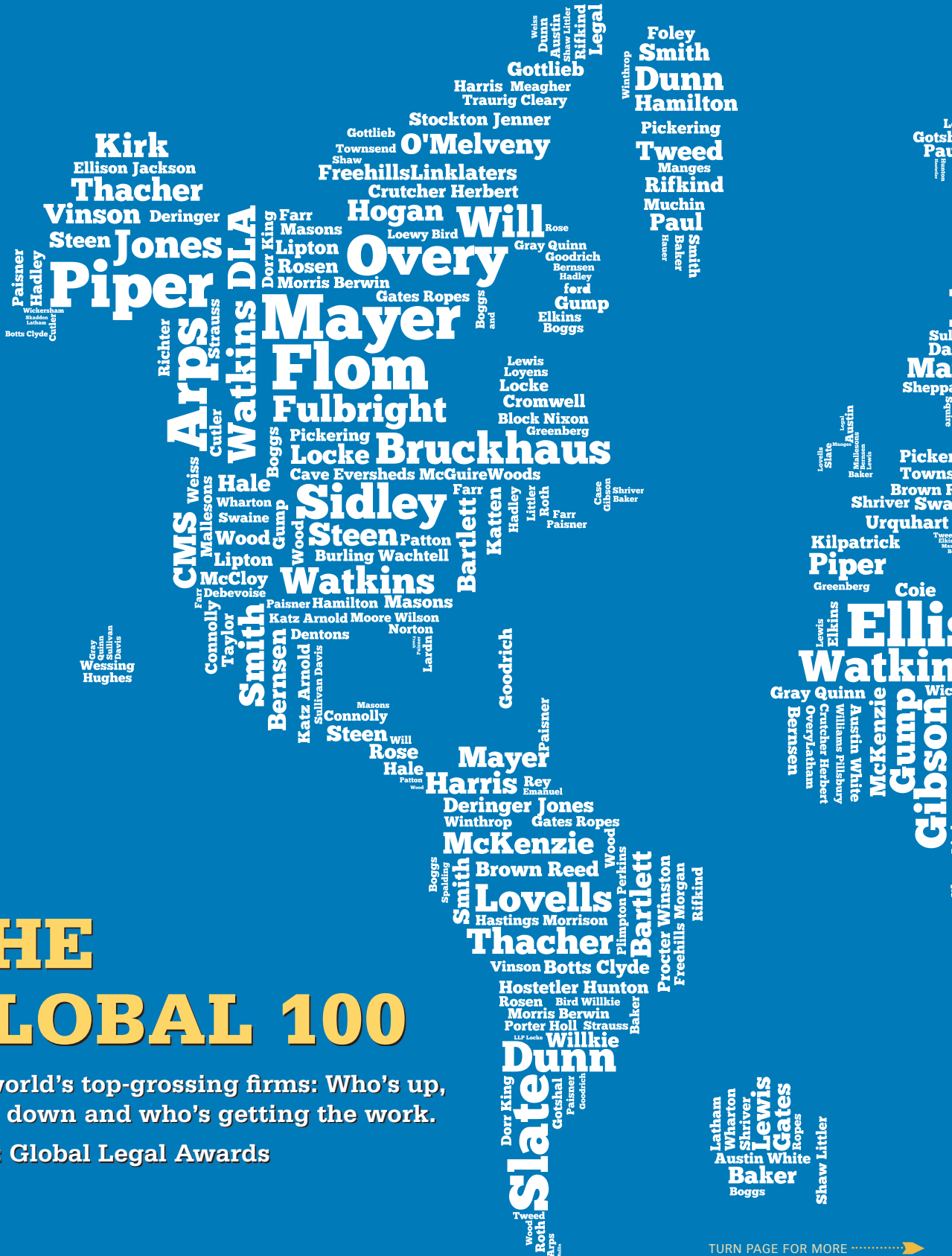


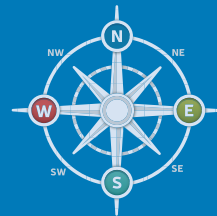
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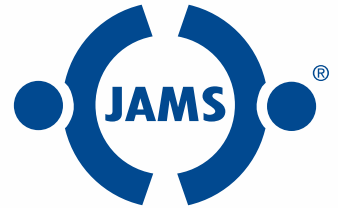
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M&A the French Way

Winners of the 2015 Global Legal Awards include Pierre-Yves Chabert, right, a Parisian partner at Cleary Gottlieb, and his team, who helped giant cement companies in France and Switzerland merge.

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and how firms are facing tough
technological challenges.

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| Profit | |
| Worked | |
| Billed | |
| Collected | 1.2 |
| Billing Realization | |
| Collection Realization | |



Metrics

| Age Bucket | Amount | Count | Count | Count |
|------------|----------------|----------|----------|----------|
| 0-30 | \$174,421.70 | 50 | 50 | \$0.00 |
| 31-60 | \$691,149.75 | \$100.00 | \$100.00 | \$100.00 |
| 61-90 | \$452,285.00 | \$4.00 | \$0.00 | \$0.00 |
| 91-120 | \$2,135.00 | \$0.00 | \$0.00 | \$0.00 |
| Over 120 | \$27,336.00 | \$0.00 | \$0.00 | \$0.00 |
| TOTAL | \$2,825,197.45 | \$100.00 | \$100.00 | \$100.00 |

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As individuals, we may be trying to “think global, act local”—I, myself, am savoring the last of this summer’s locally grown tomatoes—but it seems to me that Big Law’s mandate is

exactly the opposite: Think local, act global. That is, have a deep, personal understanding of your clients, and be able to solve their problems the world over. This issue of *The American Lawyer* measures your relative success at that job.

There’s encouraging news. This year’s Global 100, the highest-grossing firms in the world, saw top-line revenue increase 4.5 percent, the second year of similar solid growth. Average revenue per lawyer and profits per equity partner among this group were up 5.4 percent and 5.5 percent, respectively. In part, those boosts were aided by a slight decline in head count, the first drop in years. (And while RPL and PPP are on the rebound, they haven’t quite topped levels of the prerecession boom.)

Latham & Watkins, which emerged this spring at the top of The Am Law 100, is officially the world’s top-grossing firm. The Global 100 is dominated by U.S. firms, though 20 on the list are based in the U.K., Australia, China, France, Germany, the Netherlands or Spain. It’s been a consistent list year over year: In 2015, just five new firms join. But metrics we track like the number of countries in which each firm has offices underscore starkly different global strategies. At one end there’s Baker & McKenzie, with a presence in 47 countries, the most by far; by contrast, six firms among The Global 100 have offices only in the United States.

Firms have had their share of challenges, such as recent global currency swings. How to pay partners fairly in countries where the local currency is declining? The legal industry has no standard practice, experts tell us. One lesson from this issue is that global firms should consider one.

Then there’s the competition for talent in Germany, which has a group of U.S.-based firms taking

aim at long-dominant Magic Circle firms, and in the process shaking up the country’s lateral market. Meanwhile, markets in Africa, China, Latin America, the Middle East and Russia pose their own tests. Where to invest? Where to pull back, and by how much? When we asked one global chair to describe his firm’s China strategy, he said, “Simple: To lose less money than any other U.S. firm in China.”

BUT ENOUGH ABOUT BUSINESS. WE ALSO PUBLISH in this issue articles about great lawyering involving some of the most complex, creative and impactful cross-border work of the year—the subject of our third annual Global Legal Awards. Consider what it took to pull off the biggest initial public offering in history. Or a behemoth M&A deal that, among other things, meant working with regulators around the world. Remember the global debate over the “right to be forgotten?” It’s the story of a 27-year-old lawyer willing to take on Google. Lastly, our awards honor one firm’s extraordinary commitment to seeking justice in Rwanda after the genocide. Different countries, practice areas and stories, with this in common: The best lawyering knows no bounds.

Kim Kleman, Editor-in-Chief
kkleman@alm.com

LETTERS TO THE EDITOR

Lifetime Achievers

THE ASSOCIATION OF PRO BONO COUNSEL APPLAUDS THE American Lawyer's decision to honor Esther Lardent of the Pro Bono Institute with a Lifetime Achiever Award. Space constraints undoubtedly limited the accolades that could be listed in Esther's published profile—a catalogue of her contributions to the public interest would fill an entire magazine—and so we wish to note here that our membership of more than 150 partners, counsel and other professionals who lead law firm pro bono practices owes much to Esther's vision. Esther was directly involved in helping some of us convince our firms to hire a full-time pro bono counsel; for others, her impact has been perhaps indirect but no less profound. When Esther founded the Pro Bono Institute in 1996, you could fit all the full-time pro bono counsel in a small closet. It is no coincidence that today you'd need a large ballroom—and a plane to fly us in from across the country and around the world. Congratulations to Esther Lardent and to The American Lawyer for acknowledging her achievements.

Association of Pro Bono Counsel

Harlene Katzman, president

Benjamin Weinberg, president-elect

Steven Schulman, immediate past president

The Justice Gap

MANY AMERICANS FEEL THE U.S. CAN CREDIBLY LEAD THE world on international issues because of our cherished protection of rights and liberties. Yet Susan Beck's article in the October issue, "The Justice Gap: How Big Law Is Failing Legal Aid," forces us to look at whether our own house is in order. She points out that civil legal aid groups must turn away half of those seeking help, and the Legal Services Corporation estimates that 80 percent of low-income peoples' legal problems

do not get the help of a lawyer. It's no wonder why the 2015 Rule of Law Index ranked the U.S. 65th out of 102 countries on access to and affordability of civil justice. World leader, indeed.

Why don't we stack up? While the amount of financial support from the legal community is one issue, another key factor is that all of Europe provides a right to counsel for civil cases. The U.S. has no federal civil right to counsel, and the states guarantee counsel for only a few types of civil cases.

However, the call for a right to counsel in civil cases involving basic human needs is increasing. It has come from legal services leaders, public defenders, state court chief justices, trial court judges, governments and the private bar. Because of this broad support and the efforts of advocates nationwide, various state courts and legislatures including those in Florida, Hawaii, Montana and Massachusetts have recently recognized new rights to counsel.

To clarify, the call is not for "civil Gideon", which evokes a right for all civil cases, but rather a right for the most critical cases, like housing, domestic violence and health care. It's true that we don't provide enough funding even for criminal cases, but when civil litigants don't get lawyers, they can wind up in the criminal justice system. And providing systemic representation can save money in the long run. Plus we shouldn't care about whether the state calls something "civil" or "criminal" to decide whether someone gets a lawyer. To become the country we perceive ourselves to be, we must make access to justice a reality by providing a right to counsel for civil cases where basic human needs are at stake.

John Pollock

*Coordinator, National Coalition for a Civil Right to Counsel
Staff Attorney, Public Justice Center*

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- INSIDE:** 14 Vereins feel conflicted
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BARTALK

BULL MARKET

Texas firms are facing more competition at home.

BY SUSAN BECK AND BRENDA SAPINO JEFFREYS

TEXAS FIRMS ARE having to work even harder to compete in their own backyard. In the latest sign that Vinson & Elkins, Baker Botts and others are being forced to respond to the influx of out-of-town firms in the state, compensation for associates at Texas-based firms shot up in the first half of this year. Total compensation costs at these firms for all lawyers who were not equity partners rose 10.5 percent compared to the first half of last year, while head count declined, according to John Wilmouth, senior client adviser for Citi Private Bank Law Firm Group.

This was the biggest rise in any U.S. market, and more than twice the national increase. (This figure includes compensation for all associates and other nonequity lawyers at firms headquartered in Dallas or Houston, including lawyers outside Texas.) "Several managing partners have told us that they've raised salaries in response to competition from firms headquartered outside Texas," says Wilmouth.

As more outside firms have set up shop in Houston and Dallas, local firms have had to adjust. Some are giving more money to their star partners, and some have devoted more resources to high-profit, marquee practice areas while shedding less profitable groups.



Still, the native firms have seen their local market share shrink.

Lawyer head counts have fallen in the state at all but two of the 10 biggest Texas-based firms. Vinson & Elkins is down 16 percent in in-state head count since 2010; Baker Botts has fallen 17 percent in Texas; and Haynes and Boone has dropped 11 percent. Norton Rose Fulbright, which isn't considered a Texas firm, but which has the most lawyers in Texas as the successor to Fulbright & Jaworski, has

dropped 14 percent in in-state head count since 2010. The two firms that have grown in Texas are Winstead (up 9 percent) and Jackson Walker (up 3 percent).

"The market has changed dramatically," says Jeffrey Chapman, a Dallas mergers-and-acquisitions partner who left Houston-based Vinson & Elkins in 2011 to join Gibson, Dunn & Crutcher. "Five to six years ago, V&E and Baker Botts were unquestionably the market players." Andrew Bak-

er, managing partner of Baker Botts, acknowledges that the new entrants have forced many local firms to alter their strategy. "You up your game or you give up market share," he says.

Since 2010 the number of Am Law 200 firms with offices in Houston or Dallas has increased from 59 to 77. Latham, which has roots in Los Angeles, opened a Houston office in 2010 and has jumped from 19 to 77 lawyers there. Sidley Austin, with origins in Chicago, has

grown from 23 to 88 lawyers in the state since 2010. Los Angeles' Gibson Dunn has increased from 35 to 52 lawyers in Texas in that time. And another Chicago-centered firm, Kirkland & Ellis, opened last year in Houston and now has 23 lawyers there. These firms have made inroads in M&A deals, oil and gas work, and intellectual property matters.

Overall, the big Texas firms did well last year, with revenue and profits per partner rising. V&E's revenue was up 3.6 percent to \$868 million, and PPP was up 12.6 percent to \$1.925 million. Baker Botts' revenue soared 11.4 percent to \$653 million and PPP rose 25.5 percent to \$1.7 million. And Texas firms still sit atop the energy M&A rankings, based on both value and volume of deals. Baker Botts led the list with \$63.6 billion in deals in the first eight months

of this year, and V&E followed with \$42.4 billion, according to Mergermarket.

But the Texas market no longer belongs to them. In the past five years Latham has picked off more than a dozen partners from local firms, including V&E, Baker Botts and

Houston office for a reported \$5 million a year. Kirkland has since hired partners from V&E and Baker Botts.

Timothy Powers, managing partner of Haynes and Boone, says the national firms that moved into Houston in 2009 and 2010 hit a volatile

This race for talent has forced some of the native Texas firms to alter their compensation strategy. "Texas firms, to compete, had to change their internal compensation and start compensating more highly the most productive partners," says Michael Wort-

"Texas firms, to compete, had to change their internal compensation and start compensating more highly the most productive partners."

Akin Gump Strauss Hauer & Feld. ["How Latham Cracked the Houston Market," March 2014.] In 2013 Holland & Knight opened in Dallas with 24 laterals from Patton Boggs and this September it opened in Houston. And Kirkland & Ellis skewed the compensation calculus last year when it lured New York partner Andrew Calder from Simpson Thacher & Bartlett to start a

market and "lawyers were being attracted away by not only the platform but the big paydays." Several of these out-of-town firms have higher average PPP than the Texas firms, giving them leverage to lure top talent. Latham's PPP last year was \$2.9 million, Gibson Dunn's was \$3.05 million and Kirkland hit \$3.51 million. No Texas firm on the Am Law 200 has a PPP that tops \$2 million.

ley, who retired this year from V&E and is now chief legal officer of Irving, Texas-based Reata Pharmaceuticals Inc. (Wortley declined to discuss specific firms, or say how much pay has risen.) T. Mark Kelly, V&E's chairman, said the firm didn't change its partner compensation system, but many partners made more last year because profits improved. "The market sets compen-

LOOSE CONNECTIONS

Disqualified from a case for an alleged conflict, Dentons cited its Swiss verein structure as a defense.

LAW FIRMS ORGANIZED as Swiss vereins, with separate profit pools in different countries, usually say that their legal services are just as globally integrated as those offered by traditionally structured firms.

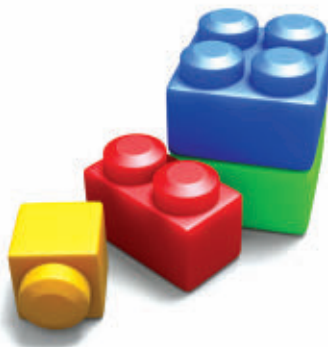
But this past summer, in a patent infringement suit, global verein Dentons took a different stance, arguing that an alleged client conflict didn't apply because of the separation between its U.S. and Canadian arms.

Back in May, U.S. International Trade Commission administrative law judge Charles Bullock agreed to disqualify Dentons from representing Revolaze LLC, which had sued Gap and other retailers over a Revolaze patent. The judge

concluded that Dentons and a predecessor firm, Salans, had long represented Gap, including in a recent customs audit in Canada.

Dentons fought back, maintaining that its U.S. and Canadian offices were not only financially separate, they didn't have access to each other's client files and never shared client confidences unless they were explicitly acting as co-counsel on a case.

Bullock didn't buy it. Noting that Dentons "holds itself out to the public as a single firm," the ITC judge disagreed that different Dentons offices were tantamount to separate law firms under ethics rules. On Aug. 19, Bullock shot down Dentons' request



to reconsider his ruling. The next day, Gap lawyers announced a settlement.

In a statement, Dentons said that Gap had provided a written agreement that "would preclude disqualification," and that the firm's challenge to Bullock's ruling was backed by two legal ethics experts.

Norton Rose Fulbright

made an argument similar to Dentons' last year in a trademark dispute, after its client's adversary cited ties to a Norton Rose Fulbright Canada client and argued that Norton Rose's U.S. arm, Fulbright & Jaworski, should be kicked off the case. Norton Rose asserted that Fulbright & Jaworski and Norton Rose Fulbright Canada were "distinct legal entities" that didn't share privileged information. The judge ultimately dismissed the case on separate grounds.

"You have to deal with the fact that this verein structure, while it might be good as a business structure, it's not going to insulate you from the ethical obligations," says Michael McCabe, a Funk &

sation,” says Baker of Baker Botts, who declined to comment further. Robert Jewell, managing partner of Houston-based Andrews Kurth, says the out-of-state firms have put pressure on compensation, but so have salary levels nationally. A few years ago, he says, his firm increased the earning potential for high-performing associates.

Billing rates have also risen. “The thousand-dollar-an-hour barrier has been broken in Texas,” says ex-V&E partner Wortley. Citi’s Wilmouth says that billing rates for Texas-based firms went up slightly more than the national average in the first half of 2015, rising 3.8 percent compared to 3 percent nationwide. Jewell says many Texas lawyers didn’t think the national firms’ billing rates would stick in the state. “Unfortunately for the clients, it seems in

many cases they have,” he says.

In response, Vinson & Elkins has allocated more resources to its marquee energy practice. “Energy is the calling card and it’s one we are known for and we want to take advantage of it,” Kelly says. The firm has shed practice areas such as estate planning and public finance, while expanding its practices in government investigations, private equity, securities and IP. “In the face of these entrants we have re-invented every part of the firm,” says Baker Botts’ Baker, mentioning new efforts in marketing and business development. The firm has also “doubled down on client teams,” says Baker, who says he tries to interview two clients a month to

10.5%

YEAR-OVER-YEAR
GROWTH IN LAWYER
SALARY COSTS AT
TEXAS FIRMS IN THE
FIRST HALF OF 2015

find out what they might do better.

“We are still the broadest and deepest [energy] practice by far in the state,” Baker asserts. “I think clients know the difference between a real en-

ergy practice and pretenders. Hiring a lawyer or two doesn’t make for an energy practice.”

C. Wade Cooper, managing partner of Jackson Walker, says that firms like his, which generally charge less than the out-of-staters, see some advantages in the influx. “We see an opportunity to pick up some practice areas that are being dropped by other firms,” he says. “We would love for our competitors to raise their rates. They’re playing a different game.”

Nearly every lawyer in-

terviewed mentioned getting calls from recruiters looking to help yet another firm open an office in Texas—although the recent decline in energy prices has caused some to wonder who would best survive a prolonged slump. “The energy market is struggling now,” says Gibson Dunn’s Chapman. “Time will tell how well these [Texas] firms will hold up.”

Baker of Baker Botts, on the other hand, predicts that an energy decline will test the staying power of the newer firms in town. “We’re going to see how deep pocketed these entrants really are,” he says. “We have seen people say they are committed to this market, but when there have been downturns in the past, it turns out [their Texas practices] were not core.”

Email: sbeck@alm.com and
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MINTZ LEVIN’S SURFER DUDE

An IP partner builds a practice while catching waves.

Bolton lawyer who serves on the American Bar Association’s professional responsibility committee.

Legal consultant Jordan Furlong of Edge International says that usually clients don’t pay attention to a firm’s underlying business structure. But, Furlong says, if a verein starts to argue in court that it’s a collection of independent entities in different jurisdictions, that kind of claim could draw more scrutiny for firms that market themselves as a single entity.

“Every so often,” Furlong says, “it will create a situation like this, where everybody’s taking a good hard look at the firm and trying to determine whether it’s one firm or not.”

—SCOTT FLAHERTY

On a recent Friday, James Cleary was up by dawn for a 7 a.m. appointment with his clients at Hydroflex Surfboards.

He wasn’t headed to the company headquarters in Oceanside, California, or to the San Diego offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, where Cleary is an intellectual property lawyer. Cleary’s morning meeting was at the beach, as it is about once a week, when he goes surfing with action sports industry clients.

“It really gives me a much better understanding of their technology,” says Cleary, who has helped several clients obtain patents for surfboards and related gear. “He’s surfed it, so he knows,” says Hydroflex CEO Fredrik Spiess. “He’s not just someone talking about it.”

Cleary discovered surfing’s business side



through one of his son’s surfing buddies, whose father is a business associate of professional surfer Kelly Slater. Cleary wound up handling IP for Kelly Slater Wave Co., which hopes to outfit resorts with manmade waves. And he took up surfing in earnest. “I just wanted to not look bad if I ever got to surf with Kelly,” Cleary says. He now surfs every day before work or at lunch.

Although his practice is still dominated by more traditional clients such as

software, telecom and electronics companies, Cleary works with about six surfing companies. He doesn’t charge clients for time spent on the water, which he refers to as “board meetings.” But he does offer advice between waves.

“As long as they let me take waves, I’ll answer any questions,” Cleary says. —NELL GLUCKMAN

KAYE SCHOLER AND CHOATE HALL FEEL THE LOVE

In our annual survey, law students weigh in on which firms have the best summer programs.

KAYE SCHOLER JOINED Choate, Hall & Stewart in a tie for first place in our 2015 Summer Associate satisfaction survey. The two Am Law 200 firms received a perfect average overall score of 5 on a 1-to-5 grading scale in nine areas.

The survey asked whether associates felt they performed interesting work; did “real” work; received excellent training and guidance; interacted positively with partners and associates. It also measured how well the firm communicated its goals and expectations; how accurately the firm portrayed itself in the interviewing process; whether re-

spondents would accept a full-time job there; and how they rated the firm overall.

More than 3,600 law students who worked at Am Law 200 firms over the summer filled out the survey, giving it a 73.5 percent response rate overall. Summer associates reported that they worked an average of 45 hours per week, billed for 27 hours, and were free or between assignments an average of 9 percent of the week. They earned an average of \$3,030 per week. [For more data on all 92 firms ranked, go to americanlawyer.com.]

The most satisfied summer associates were those who said they felt welcomed and

engaged by their firms, received “real and important” assignments and got good guidance from partners and senior associates. At top-ranked Kaye Scholer, summer associates were impressed by the accessibility and friendliness of attorneys—as well as by an outing to the hit (and impossible-to-score-tickets-to) Broadway show “Hamilton.” Kaye Scholer partner Kate Schumacher says the firm overhauled training and development projects and social events, and that the summer class’s small size (15) allowed for a “customized”



summer experience.

When summer associates had anything negative to say about their firms, their written remarks often had to do with perceived insensitivity. One summer associate at a New York firm wrote she was most surprised by “the off-color comments. Mad Men is real.” Law firms’ technology irked others. One griped, “I was not expecting to use Windows 2007 again. Getting used to using a BlackBerry has also been a challenge.”

On average, summer associates said they were slightly less worried about declining job opportunities at large law firms than their counterparts last year, with a score of 3.84 on a scale where “1” meant very worried and “5” meant not worried at all. They were confident about receiving a job offer, giving an overall response of 4.13 on the same scale.

Indeed, 86.4 percent said they expect an offer from the firm where they were working. Almost all respondents, 90.4 percent, said they wouldn’t interview with other firms if they got an offer at the end of the summer. And nearly two-thirds said that in five years they wanted to be at the same firm where they spent this past summer.

—MP McQUEEN

How They Rated: The Top 75

| 2015 Rank | 2014 Rank | Firm Name | Overall Score |
|-----------|-----------|---------------------|---------------|
| 1 | 1 | Choate Hall | 5.000 |
| 1 | 5 | Kaye Scholer | 5.000 |
| 3 | 27 | Kilpatrick Townsend | 4.992 |
| 4 | 13 | O'Melveny | 4.984 |
| 5 | 1 | Foley Hoag | 4.980 |
| 6 | 3 | Schulte Roth | 4.976 |
| 7 | 33 | Kirkland | 4.972 |
| 8 | 3 | Clifford Chance | 4.961 |
| 9 | 26 | White & Case | 4.959 |
| 10 | 36 | Milbank | 4.952 |
| 11 | 9 | Paul Hastings | 4.947 |
| 12 | 16 | Duane Morris | 4.928 |
| 12 | 34 | Morgan Lewis | 4.928 |
| 14 | 24 | Blank Rome | 4.921 |
| 15 | 54 | Orrick | 4.920 |
| 16 | 29 | Arnold & Porter | 4.909 |
| 17 | 45 | Fried Frank | 4.908 |
| 18 | 17 | Snell & Wilmer | 4.906 |
| 19 | 11 | Akin Gump | 4.902 |
| 20 | 46 | Baker & McKenzie | 4.885 |
| 21 | 30 | Wilmer | 4.884 |
| 22 | 28 | Sidley | 4.865 |
| 23 | 13 | Cahill | 4.864 |
| 24 | 19 | Goodwin Procter | 4.857 |
| 25 | 23 | Pillsbury | 4.856 |
| 26 | 10 | Fox Rothschild | 4.852 |
| 26 | 95 | Linklaters | 4.852 |
| 28 | 6 | Drinker Biddle | 4.844 |
| 29 | 19 | Cadwalader | 4.843 |
| 30 | 15 | Proskauer | 4.836 |
| 31 | 21 | Morrison & Foerster | 4.835 |
| 32 | 12 | Gibson Dunn | 4.834 |
| 33 | 22 | Willkie | 4.830 |
| 34 | 58 | Sullivan & Cromwell | 4.828 |
| 35 | 32 | Cooley | 4.822 |
| 36 | 51 | Shook Hardy | 4.821 |
| 37 | N/A | Robins Kaplan | 4.815 |
| 38 | 39 | Alston & Bird | 4.813 |

| 2015 Rank | 2014 Rank | Firm Name | Overall Score |
|-----------|-----------|---------------------|---------------|
| 39 | 81 | Faegre Baker | 4.812 |
| 40 | 41 | Finnegan | 4.807 |
| 41 | 62 | Shearman & Sterling | 4.791 |
| 42 | 56 | Dechert | 4.790 |
| 43 | 35 | Dorsey | 4.785 |
| 44 | 94 | Fenwick | 4.773 |
| 45 | 38 | Ropes & Gray | 4.763 |
| 46 | 48 | DLA Piper | 4.737 |
| 47 | 7 | Crowell & Moring | 4.726 |
| 48 | 86 | Baker Donelson | 4.722 |
| 49 | 42 | Hughes Hubbard | 4.714 |
| 50 | 53 | Hogan Lovells | 4.710 |
| 51 | 40 | Jenner & Block | 4.694 |
| 52 | 67 | Schiff Hardin | 4.683 |
| 53 | 31 | Venable | 4.671 |
| 54 | 57 | Kramer Levin | 4.657 |
| 55 | 65 | Reed Smith | 4.647 |
| 56 | 66 | Fish | 4.639 |
| 57 | 76 | Latham | 4.638 |
| 58 | 52 | Ballard Spahr | 4.637 |
| 59 | 72 | Quarles & Brady | 4.614 |
| 60 | 68 | Holland & Knight | 4.611 |
| 61 | 76 | Skadden | 4.605 |
| 62 | 83 | Cravath | 4.594 |
| 63 | 37 | Mayer Brown | 4.581 |
| 64 | 73 | Irell | 4.575 |
| 65 | 69 | Perkins Coie | 4.574 |
| 66 | 59 | Allen & Overy | 4.573 |
| 67 | 85 | Weil | 4.571 |
| 68 | 73 | Debevoise | 4.569 |
| 69 | 78 | Simpson Thacher | 4.567 |
| 70 | 42 | Pepper Hamilton | 4.561 |
| 71 | 63 | Norton Rose | 4.542 |
| 72 | N/A | Davis Wright | 4.537 |
| 73 | 59 | Greenberg Traurig | 4.536 |
| 74 | 49 | Troutman Sanders | 4.504 |
| 75 | 44 | Sheppard Mullin | 4.503 |

Answers to the puzzle on page 20.



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SECOND-CLASS CITIZENS NO MORE?

Baker & Hostetler trades in its two-tier partnership in favor of an equity-for-all model.

WITH A UNANIMOUS vote, Baker & Hostetler's partners agreed in September to adopt a "unified partnership model" and abandon the firm's two-tiered structure.

The 930-lawyer firm joins a small group of law firms that have elected to eliminate their separate partnership tiers, where partners are strictly all equity or all nonequity, in favor of tying each partner's compensation at least partly to firmwide profits. DLA Piper shed its nonequity tier in 2008 in the United States, and extended the change to its international offices in 2012. Akin Gump Hauer Strauss & Feld announced a similar move in 2013.

Starting next year, all Baker & Hostetler partners will receive at least 10 percent of their compensation as equity; the balance will be fixed compensation. Under the firm's current system, in place since 1992, partner compensation

is either fixed or entirely determined by the firm's performance. Roughly 40 percent of Baker & Hostetler's 425 active partners are equity partners under the current system.

Over the next few months, the firm's policy committee will determine how much equity each partner will receive, Baker & Hostetler chairman R. Steven Kestner says. Some partners will remain all equity, he says. Voting rights will be based on a partner's percentage interest in the firm.

"It's a matter of continuing to evolve as a law firm," Kestner says. "This makes more partners aligned with the same goal. ... It gives us the ability to have a pathway, in particular for partners who are newer to the partnership."

Lisa Smith, a principal at the consulting firm Fairfax Associates, said that many law firms have been considering similar moves. "The challenge with nonequity partners is that they can have a bit of an

employee mentality," she says. Giving all partners an equity stake, she says, ensures that they all have "some skin in the game."

Unlike some firms that have made such a move, Kestner says, Baker & Hostetler will not be raising more capital. "We have no debt and we have a strong capitalization position," he says. Partners who will have equity in Baker & Hostetler for the first time will have to pay in some capital over five years, but the firm expects to be paying back capital to other partners, making this shift capital-neutral, according to Kestner.

In a July 1 internal memo from Kestner first published by Above the Law, Kestner touched on how this new structure might affect the profits per equity partner it reports for the Am Law 100: "This new structure is not being recommended in order to change how the firm reports its financial results; however it



R. Steven Kestner

may result in the firm posting higher PPEP performance," he wrote. In an interview, the chairman reiterates that the change isn't intended to raise profits per partner.

Abandoning a two-tier partnership doesn't signal a return to the days when nearly all law firm partners earned the bulk of their compensation through their equity stakes. At DLA Piper and Akin Gump, for example, a significant percentage of partners—64 percent and 38 percent, respectively—still receive more than half their compensation in the form of fixed pay. —SUSAN BECK

EUROPE'S NEWEST IMPORT

U.S. plaintiffs firms aim to export private antitrust litigation overseas.

With antitrust reforms becoming a reality in Europe and \$2 billion in foreign exchange-related antitrust settlements under their belts in the United States, plaintiffs firms Hausfeld and Scott + Scott are setting their sights across the Atlantic.

Hausfeld announced the latest recoveries in the foreign-exchange litigation on Aug. 17, bringing to nine the number of banks that have paid to escape claims of conspiring to rig forex rates. Hausfeld and Scott + Scott are spearheading a proposed class action in Manhattan federal district court that accuses 16 banks and their top traders of widespread manipulation in the \$5.3 trillion-per-

day foreign exchange rate market.

But that case is just the start, according to Hausfeld chairman Michael Hausfeld and David Scott, managing partner of Scott + Scott. Both lawyers say their firms are poised to pursue a broader forex case across international borders.

"Once we had a better sense of how the markets operated," Hausfeld says, "it made it absolutely clear that there were no geographic boundaries to the misconduct."

Hausfeld predicts that his firm will lob the first overseas volley by October, when antitrust and consumer rights reforms in the U.K. take effect. Among other features,

the U.K. reforms will expand the availability of private damages for anti-competitive conduct, provide more authority to the country's Competition Appeal Tribunal and introduce new procedures for pursuing collective actions and settlements. A new European Union directive, which all E.U. members must enact by November 2016, also aims to broaden the avenues for private antitrust remedies.

Both firms are positioning themselves to take advantage of Europe's

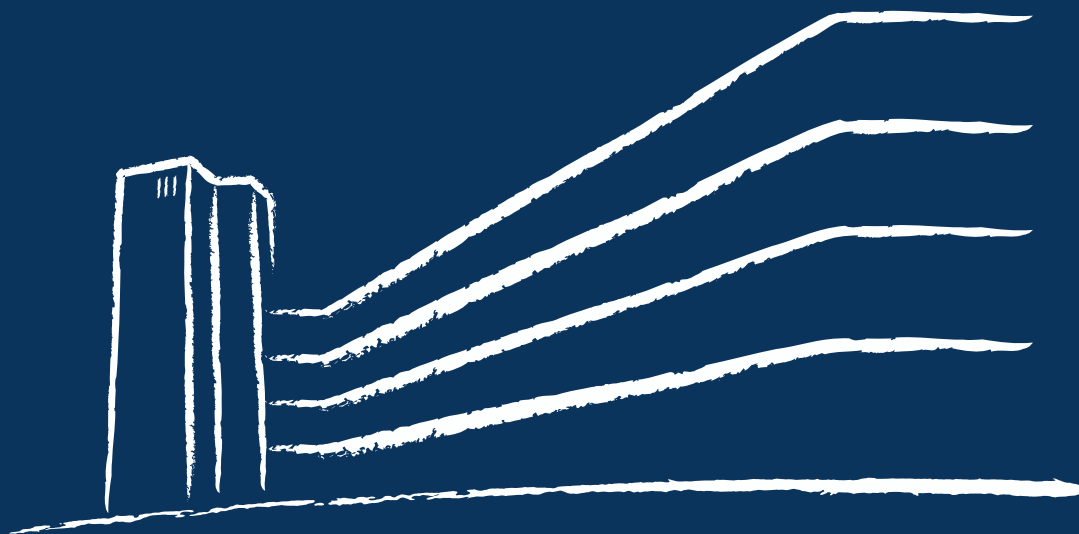


Michael Hausfeld

evolving antitrust landscape. Last October Hausfeld opened an outpost in Brussels and this year expanded its existing London operations. Scott + Scott has also established a presence overseas, hiring

competition law specialist Belinda Hollway from Freshfields Bruckhaus Derringer in July to helm a new office in London. "There has been a real interest among foreign clients," Scott says. "They are now saying to themselves, 'What can we do to recoup our losses?'" —SCOTT FLAHERTY

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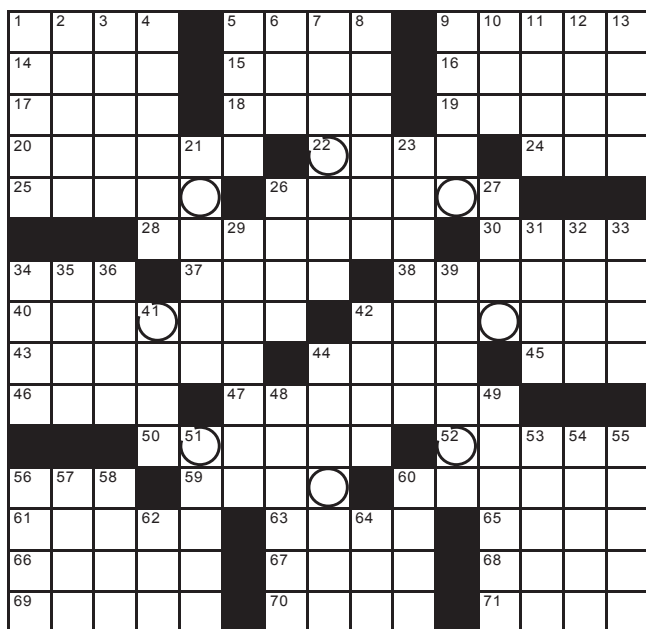
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AROUND THE WORLD

A puzzle in which circular reasoning might be appropriate, by Victor Fleming



Across

- 1 Gets ready to fire
5 Preside over, as a case

9 Safe deposit box container

- 14 Houston ALer, briefly
15 Brit's subway

16 Tabletop decoration

- 17 Foot of poetry
18 Richie's mom, to Fonzie

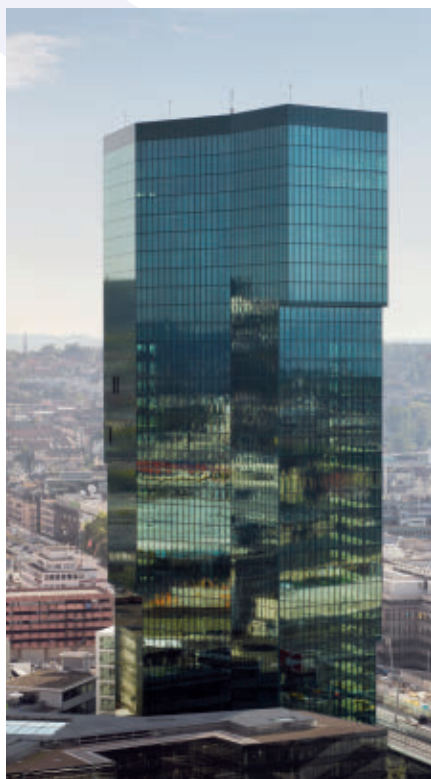
- 19 Giving sort
20 With "The" and 60-Across, Goldhaber column ... and what the circled letters represent
22 Gain competition
24 Arkansas's Governor Hutchinson
25 Big Apple Nler, briefly
26 Sites for grillings
28 Dated marital donations
30 "Earth in the Balance" science (abbr.)
34 Gibbon or orangutan
37 Broadway brightener
38 Trounces
40 Blue-pencils, in a way
42 Welcome indicator
43 They have pupils
44 Supreme Court session
45 Denny's pair?
46 One for the road?
47 Handled clumsily
50 First name in Russian authors
52 "Do ____ afraid"
56 Some "X-Files" roles, for short
59 Burgundy verb
60 See 20-Across

- 61 After "fourth," punting situations
63 Glance from a creep, perhaps
65 Moffo or Pavlova
66 "Another go?"
67 "____ it"
68 Mtge.-based security
69 Words on a seal
70 Possessive Chinese entree?
71 Bond villain

Down

- 1 "Just give me ____!"
2 Pavarotti's homeland
3 1983 Michael Keaton film
4 Cried aloud
5 Webmaster's code
6 Site of Ger.
7 Not vote
8 Say the Pledge, say
9 VCR part?
10 It starts with enero
11 Neighbor of the radius
12 Home to many Hmong
13 Banks with style?
21 Posthaste
23 Lack of harmony
26 They get pay to play
27 Future viewer
29 Leak evidence?
31 Made the scene
32 Oil-rich sultanate
33 "Saving Private Ryan" vessels
34 Met offering
35 "Secret of the Incas" setting
36 Blue-pencil
39 Pax ____ (uneasy peace)
41 Starting
42 Fast bucks?
44 Denny's pair
48 Resourceful
49 Facing
51 Led witness's checklist?
53 Jazzman McCoy
54 West African nation
55 Poet's muse
56 Dutch cheese
57 West African nation
58 Hit, as a homer
60 "____ do it!"
62 Tiny insect
64 First name in Russian authors

Comments? Email:
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BUDGETING FOR E-DISCOVERY: UNDERSTANDING PRICING MODELS FOR COST CONTROL AND TRANSPARENCY

Are you able to predict your e-discovery costs? If not, you may want to investigate new pricing models. The two most common budgeting models are line-item and total-cost. Both take very different approaches to e-discovery, especially around pricing, process and technology. The success or failure of these models, as well as the level of budgeting transparency provided by each, depends upon each organization's profile, including litigation portfolio, internal resources and technical environment.

CHARACTERISTICS OF BUDGETING MODELS

LINE-ITEM MODEL

In this model, each phase of e-discovery is viewed as a different product: a series of commoditized steps that can be strung together on an assembly line. Each step is treated as fully interchangeable between providers. The typical selection process is to compare "apples to apples" by gathering prices for collection, processing, the manual loading of data into a review tool, then the hosting and production charges. This approach offers a-la-carte flexibility where providers and services can be mixed and matched. The appeal is simple: break e-discovery into its parts and seek the lowest price for each, in an effort

to drive down the total cost of the process. Charges like project management, review time, quality assurance, or hand-off costs usually aren't considered which can lead to additional costs at the conclusion of a project.

TOTAL-COST MODEL

The total cost model streamlines the e-discovery process with a single provider creating a structural incentive for the service provider to eliminate cost inefficiencies. The total cost of e-discovery can be expressed through a flat rate per custodian, a flat rate across the project or per document reviewed to deliver budget certainty at the

outset of the case. Centralized control of the entire process allows the service provider to be nimble and scale to the needs of different matters throughout their lifecycle and increases accountability over the entire process

Companies using the total-cost approach tend to focus on quality as well as cost, have a larger portfolio of ongoing matters, or fewer internal resources to manage multiple vendors and providers. Typically, the benefit of the total cost model is overall cost reduction and increased budget predictability.

To see how these two models operate in practice, the key components—price, process, and technology—will be examined and contrasted using the two models.

PRICE: WHAT IS THE TOTAL COST OF E-DISCOVERY?

Knowing e-discovery costs at the outset of a matter is ideal. Such predictability enables more effective budgeting and opportunity to conduct a cost-benefit analysis before work on the matter begins. It also allows for a comparison across solutions and approaches.

A study conducted by RAND Corporation estimated that the total cost to review one GB of data was \$18,000.¹

Here is a closer examination how the two models address the price issue:

LINE-ITEM MODEL

There are a number of variables that can raise or, in fact, lower the price, including:

- The scope of the matter changes requiring fewer or more documents to be reviewed;
- The documents are complex, such as long contracts or spreadsheets with intricate calculations;
- The number of markings that attorneys apply to reviewed documents may vary depending on the complexity of the review;
- The deadline for production materials is short;
- The matter requires additional reviewer training or quality-control measures;
- Hand-offs or overlap between multiple vendors or providers;

- The matter requires foreign language review;
- The technology used provides greater efficiencies, such as the culling or search-based categorization of documents to reduce the dataset, or visual analytics to speed legal review;
- Workflow quality can increase or decrease the efficiency of review;
- Lower hourly rates for contract review attorneys.

Clear cost calculations remain elusive for many using a line-item approach. Most programs utilize different software and service providers throughout the process which can increase risk, create delays and potential cost overruns with multiple hand-offs of data and work product. If anything goes wrong, no single service provider has full accountability for the entire process.

In reality, most corporations do not effectively track e-discovery costs or conduct a post-matter assessment when using a line-item approach. This lack of assessment can hurt their ability to measure cost savings from improvements to an e-discovery program, such as advanced technology or improved workflow. In addition, it is unclear without assessment how much risk may have been added to the project through the line-item approach.

TOTAL-COST MODEL

The total-cost model is concerned with the successful outcome of the complete process.

Two main pricing models exist for the total-cost approach where the price is based on assumptions about the scope and complexity of the review.

- **Project Flat Rate.** The total cost estimate is based upon the project assumptions and inputs (such as data volumes) and the service provider is committed to delivering at this price. It is essential to identify what is and is not included in the all-in estimate for a smooth implementation.
- **Per Document.** With a per-document pricing model, clients pay a flat fee for each document reviewed after data is collected and processed. This “outbound” model means that with a previous agreement on processing and culling strategies, the client is not charged for the volume of data processed or hosted. Per-document prices are predictable based on assumptions with actual

costs applied once the document count is known.

Both models are based on assumptions regarding the case. Assumption accuracy is directly related to a provider's experience. The more experience the provider has in this methodology and the more exposed they are to the client's specific data and type of business/case, the more accurate the assumptions will be. Experience thus increases predictability under the total-cost model.

When working with e-discovery service providers, clients should ask for the following information to help improve transparency in the budget:

- Are there additional fees if the matter's scope changes?
- Are there separate fees for technology use? Is it per reviewer, or by volume? Does this include costs associated with hosting the data?
- What if the project settles and review never occurs?

PROCESS: IS MY PROCESS EFFECTIVE AND DEFENSIBLE?

The most complex component of e-discovery is the workflow. The more sophisticated technology you intend to use, the more sophisticated workflows you will need to employ.

LINE-ITEM MODEL

A great deal of internal project management time and resources will be required to manage multiple vendors if using the line-item model. Greater transparency is possible using this model for those with large internal teams and strong project management capabilities. Companies lacking internal support may run into problems with this model beyond transparency issues. Since no one provider is responsible for the final product in such a piecemeal approach, incentives aren't optimal for ensuring maximum efficiency.

TOTAL-COST MODEL

The total-cost model focuses on organizational integration and alignment of incentives to overcome the risks and costs of piece-mealing. Clients only manage one contract and one service provider, and one provider is fully accountable which eliminates time spent on contract

negotiations and vendor management.

Project management for e-discovery and document review should be the core competency of the e-discovery and review provider. The e-discovery and review strategy are put in place holistically so that search term definitions, coding template designs, and initial data analysis all drive to an efficient review with high quality results. This integrated approach also allows legal teams to more quickly identify information that shapes the case and requires production.

Training and workflow are essential, yet often overlooked components of legal review. Counsel should consider the following when implementing or improving an e-discovery program:

- How are reviewers trained on the matter?
- Is the training a one-time event or ongoing?
- Are reviewers trained on both the technology and subject matter?
- What is the feedback loop between the review and outside counsel?
- Is the review workflow both effective and efficient, driving consistency and quality?
- What kind of transparency will counsel (both in-house and law firm) have into the review progress?
- What access will counsel have to the reviewed documents?
- Can the provider testify in court on the quality methodology used in the review?

TECHNOLOGY: IS MY TECHNOLOGY PROVIDING GREATER PRODUCTIVITY?

The two cost models approach technology in the following ways:

LINE-ITEM MODEL

Using the lowest-cost software through each stage of e-discovery can appear to meet basic litigation needs while reducing the overall cost. Yet a number of factors in a line-item approach can reduce the overall benefits of technological advancements. These include:

- The cheapest software may not include advanced

capabilities like analytics and predictive coding to lower review costs by increasing reviewer productivity.

- The cheapest software in one process may impact the pricing in another step.
- If several tools are used throughout the process, complications and added expenses around hand-offs may arise.
- The cheapest software may not be able to scale as the scope of the project evolves, or continues for years.

For those companies that are mindful of the above, the line-item approach can provide a number of benefits, such as greater flexibility to select different tools depending on the matter.

TOTAL-COST MODEL

The total-cost model encourages the provider to achieve the greatest productivity for the corporation and counsel without sacrificing quality. Advanced technology is a commonly used in this scenario and providers are skilled in the capabilities and proven workflows for a variety of case types. As sophistication of review tools increases, the cost benefits and quality advantages also increase. For providers that leverage their own technology additional, less apparent benefits to corporate clients become available, such as:

- Service providers who invest heavily in software research and development ensure that clients will benefit from continued innovation.
- Additional efficiency gains from service providers that specialize in perfecting proven workflows for varying types and sizes of review projects.
- Increased transparency for both the law firm and corporation with the ability to securely access data from their desk to review relevant materials as they are tagged.

Technology can play a big role in increasing efficiency and reducing overall project costs. However, the least expensive software can lack many of the features that help improve reviewer productivity or minimize project risk. When considering a technology investment, counsel should discuss the following questions with their providers:

- Does the software have a proven record of reducing e-discovery costs?
- Is the company committed to continuing software

development and innovation?

- How much of the process does the technology manage?
- Are there additional risks, costs or time delays if the tool cannot handle everything from processing to production?
- Does the software service provider have references available?

CONCLUSION

The ability to predict costs more accurately requires corporations, law firms and government agencies to streamline e-discovery into a standard business process. Whether using the traditional line-item model, or the total cost model, the success of either approach will depend largely upon cost and risk transparency, given a company's litigation profile, types of matters faced, and in-house resources of people and technology.

A line item approach may provide all of the cost efficiency and transparency needed for routine e-discovery matters. Those using this approach need to be mindful of key areas where costs and risk can increase. Having a keen understanding of the pricing, process and technology at work can help line-item practitioners achieve control and transparency in their e-discovery.

A total-cost approach may provide greater efficiency in complex cases or pattern litigation. All total cost models are not equal, however. Clients considering a total-cost approach should conduct a self-assessment to ensure that they are gaining the appropriate level of cost control and transparency.

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By Vivia Chen

Arab Oasis

A move to the Middle East was a career boost for these women lawyers.



Ladies, get out your hijab. Contrary to the Middle East's image as a backwater for career women, some countries in the Arab world welcome female lawyers. (Other countries, not so much.) Indeed, some women in American and English firms say that working in the Middle East has catapulted their careers. "In London, you are

just another lawyer," says Luma Saqqaf, the former global head of Linklaters' Islamic finance practice, who worked in Dubai for more than 10 years. (She had also been a partner at Allen & Overy.) "When you're the only woman in a room of 20 men, you get noticed."

Now an entrepreneur who also directs a nonprofit that provides business mentoring in the region, Saqqaf says her career in the Middle East has been a smooth ride: "I worked my way up from junior associate to partner. I didn't face problems."

The women who've made it in this region seem to be tough, determined and unafraid to be pioneers. Jayshree Gupta, a corporate partner at Baker & McKenzie's Dubai

office, says that when she arrived in the United Arab Emirates 20 years ago, she was unique for being both a woman and an Indian. (Gupta started her career at Dentons, then went to DLA Piper before moving to Baker & McKenzie last year.)

"Being Indian was probably more challenging than being a woman," says Gupta, alluding to prejudice toward Indian laborers. "There wasn't an awareness that many Indians are highly educated. But I'm a very positive person." Eventually, she said she won over her Arab clients: "Some clients might have felt I was not the right person initially, but I changed their minds." Ironically, she says she had more trouble winning over some of her compatriots: "I thought the Indian clients would be more liberal but they were more resistant."

What's helped women thrive in the Middle East is that most of the professionals working for Western firms and companies are based in the United Arab Emirates, an international, liberal enclave known for its high standard of living. "Women there are happy and motivated," says Heidi Levine, co-managing partner of DLA Piper's New York office and co-founder of its women's initiative. Levine, who recently returned from a visit with women DLA lawyers there, says that 30 percent of the firm's fee earners in the

region are female. "Child care is affordable, and you have every type of amenity there. It's not a hard life."

Because the international community in UAE is young and transient, business protocol is less regimented, making it easier for women and newcomers to break in. "There are better opportunities to build clients because the relationship is more personal and less entrenched than it is in the U.K.," says DLA project-finance partner Debbie Barbour, who's based in Abu Dhabi. "You can just pick up the phone, introduce yourself and go out for coffee—with both men and women. In the U.K., everything is more formal."

OUTSIDE OF ABU DHABI AND DUBAI, THE SITUATION FOR women is another story. "Qatar, Oman and Saudi are more local markets, and that's where you'll see fewer women in the profession," says Saqqaf. Though she calls discrimination against working women in the Arab world exaggerated, Saqqaf says, "Saudi is the big exception."

But even Saudi Arabia is changing. In 2013, its Ministry of Justice announced that women could apply for law licenses and argue cases in court. In 2014, the first female law firm, Bayan Mahmoud Al Zahran, opened there. "It used to be difficult for women to get visas to work in Saudi, but that's no longer true," says DLA's Barbour. She says that in negotiations with local Saudi female lawyers, she finds them assertive: "They ask just as many questions. There's a level of female involvement in the Saudi government that would surprise people."

So what can you say about a culture that tolerates female lawyers but won't allow women to drive or go out unescorted without a male relative? It says there are strong contradictions. "Women in the workforce are treated differently than they are treated at home," says Gupta. "If you asked me whether I'd prefer to work in or marry into the Arab world, I'd have very different answers."

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BIG LAW MOVES IN ON IP LITIGATION

Corporate counsel are turning to large law firms on intellectual property litigation, rather than to midtier firms and IP boutiques. And although they are increasingly engaging in alternative fee arrangements with their law firms for most work, they rarely do so for IP litigation, according to a recent report.

A study by LexisNexis CounselLink that analyzed \$18 billion in legal invoices shows the nation's biggest firms are getting a bigger share of IP litigation work. In 2014, firms with 750 or more attorneys got 61 percent of the billings related to IP litigation, up from 36 percent in 2011. Midtier firms, those with between 500 and 750 attorneys, got 12.6 percent. And firms with between 200 and 500 attorneys received 13.3 percent, the study found.

"It looks like the largest firms have wrestled away a lot of market share in the highly lucrative IP litigation practice area," says study leader Kris Satkunas, LexisNexis' director of strategic consulting. In 2014, companies spent \$3 billion in the U.S. on IP litigation, one of the fastest growing practices in the legal market.

Although outcome and experience are clearly a consideration in hiring outside counsel for what is sometimes "bet the company" litigation, Satkunas found billing rates may also be a big factor in the shift toward the largest firms. Partner rates in those firms, for example, have been flat, while those at midtier firms have increased an average of 6 percent in four years. In addition, the largest firms have the benefit of more resources to leverage, which they can use to their and their clients' advantage to help reduce costs. "They get more creative with staffing," Satkunas says.

For example, the largest law firms use junior partners and associates to handle much of the workload. In fact, half of all IP litigation matters at these firms have less than 1 percent of partner time billed to them, the study found. In contrast, at firms with fewer than 500 attorneys, more than half of all IP litigation matters have between 20 and 60 percent partner time billed to them.

The focus on costs has not translated into increased



use of alternative fee arrangements for IP litigation. Although about 7 percent of overall litigation billings occur with some sort of alternative fee arrangements, the number drops to 2 percent for IP litigation.

The pharmaceutical industry is an exception, however. It has been the biggest adopter of alternative fee arrangements, Satkunas says, noting the industry's use of such arrangements went from 3.3 percent in 2011 to 19.5 percent in 2014. While IP matters drove much of this trend, they did not account for all of it.

—LISA SHUCHMAN

Hiring Advice From a Pro

Tips from Time Inc. general counsel
Lawrence "Lon" Jacobs:

- "I won't hire anybody that doesn't come recommended from somebody I trust; you really have to do due diligence."
- "A person who does well in interviews is not necessarily the right fit. You really have to dig beneath the presentation."
- "You need to be honest. I don't just tell [candidates] about the good things at the company; I tell them what the challenges will be too. They appreciate that."

—Sue Reisinger

TURN PAGE FOR MORE

The Case for Alternative Dispute Resolution in Silicon Valley

To see how tech-industry litigation can get lengthy (and pricey), look no further than the war between Apple Inc. and Samsung Electronics Co. They've battled it out over smartphone and tablet design patents for years in courts all over the world, spending tens of millions on attorney fees and damages.

Could alternative dispute resolution (ADR) be a better option? Gary Benton, founder and chairman of the Silicon Valley Arbitration and Mediation Center, which advances the use of ADR in technology and related fields, thinks so. He says that although ADR is used mainly in tech for contract- and licensing-related disputes, it also is being used more widely for intellectual property matters and other issues. Here's why, he says:

EXPERTISE Parties can choose neutrals with experience in specialized areas of the law. "Very few U.S. judges have expe-

rience with IP," Benton says. "Most U.S. juries don't have any technical expertise, so it's a problem."

PRIVACY Many conflicts concern proprietary information, so parties have an interest in keeping proceedings and documentation out of the public eye. "They are trying to reach a private resolution," Benton says.

INFORMALITY Arbitration and mediation may appeal to the collaborative spirit of tech companies and the millennial generation. "There aren't the formalities of a courtroom setting, so there is much more opportunity for the parties to step away from the proceedings and start talking about opportunity," Benton says.

EFFICIENCY ADR can be attractive over litigation if a case may cross overseas borders and parties don't want to deal with overseas courts, Benton says. Foreign parties may not want their cases heard in the U.S. court system, either.

FINALITY With litigation, "A U.S. party could win a case in the U.S., but unless it can reach assets of the other party in the United States, that judgment has no value," Benton says. "And it just can't be

readily enforceable anywhere else in the world." By contrast, if the company engages in arbitration, the New York Arbitration Convention, with more than 150 signatory countries, will require that the party receive the award it has won.

—REBEKAH MINTZER



Paths Not Taken

What alternative career do your clients daydream about? Not yours, apparently. Just 1 percent of respondents to a survey of in-house counsel in the United States and Canada by Robert Half Legal said they couldn't fathom working in a profession other than law. Their top choices:

- Business management or marketing: 18%
- Academia and education: 15%
- Science, tech, engineering or math: 15%
- Medicine: 10%
- Finance or economics: 8%
- Public service: 7%
- Journalism: 5%
- Entertainment or broadcasting: 4%
- Sports: 4%

—REBEKAH MINTZER

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Collective Trusts and Other Commingled Funds: Law & Regulation

by Thomas P. Lemke and Gerald T. Lins

Collective Trusts and Other Commingled Funds: Law and Regulation provides a comprehensive explanation of collective and common trust funds, their structure and operations, and the extensive regulatory framework governing them. In addition, the book provides extensive primary source materials as appendices.

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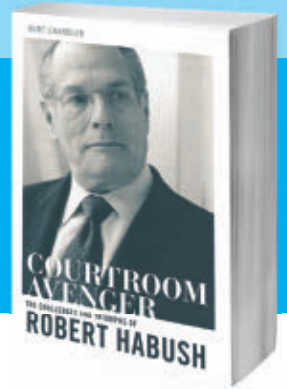


NEW BOOK!



NEW RELEASE FROM ABA PUBLISHING

Courtroom Avenger: The Challenges and Triumphs of Robert Habush By Kurt Chandler



In this new addition to the acclaimed American Bar Association's Lawyer Biography Series, author Kurt Chandler paints a profile of prolific Wisconsin trial lawyer Robert Habush of Habush Habush & Rottier, based in Milwaukee. For over 50 years, Habush has represented the Davids of the world against Goliath interests.

His cases are the stuff of legend: Cases brought against General Motors, Chrysler, Firestone, Big Pharma, Big Tobacco. Claims made against doctors, motorists, manufacturers, and malefactors of every stripe. Juries swayed, judges convinced, judgments won, and settlements paid.

"When I wanted the very best lawyer to represent the people of Wisconsin in the largest piece of litigation in state history against the massive force of Big Tobacco, I chose Bob."

- **Jim Doyle, Governor of Wisconsin, 2003-2011; Attorney General of Wisconsin, 1991-2003**

"Courtroom Avenger is enthralling, the story of superstar lawyer Robert Habush, an iron-fisted, fearless, imaginative advocate with a big heart for his injured clients, with the determination to surmount every obstacle to assure they are compensated in the courts."

- **Joan B. Claybrook, Past President of Public Citizen, former Administrator of the National Highway Traffic Safety Administration**

"This is a man I would want standing next to me in any worthwhile fight for justice."

- **Paul N. Luvera, Past President of the Inner Circle of Advocates, Member of the National Trial Lawyer's Hall of Fame**

"Habush has mastered the art of storytelling – presenting his clients' stories to the jury and proving the facts to support the necessary elements of their claims. As a mother, reading Habush's story about how his daughter suffered irreparable damage from a vaccination as an infant was heart-wrenching. This horrible personal experience led him to become one of the most successful trial lawyers in U.S. legal history."

- **Stacey E. Burke, book review in *Trial Magazine***

"It's a hundred year war,"

Habush says of his fighting instincts. "There's not going to be an armistice. There's not going to be a peace treaty. As long as I'm drawing breath I will get even, I will make them pay: the malpracticing doctors, the defective manufacturers, the companies who sell unsafe products. That's the way I am. There's no forgiveness in my heart. There's no turning the other cheek. There never was and there never will be."



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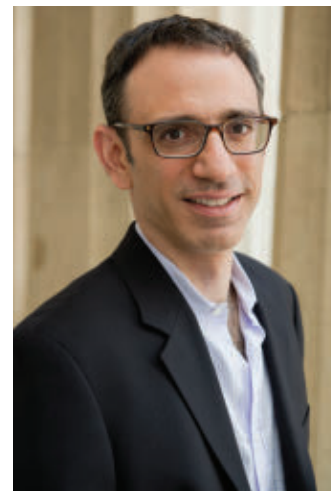
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By Michael D. Goldhaber

An Amazing Legacy

Meet the U.S. law professor who planted the seeds for civil society in Israel.



Herman Schwartz visited Israel for the first time in his life in 1983, in his early fifties. He tried to plug into the human rights scene—and found there was none. Schwartz went home to American University Washington College of Law, where he's a professor, and founded what became

the Herman Schwartz Israel Human Rights Fellowship. Each year, with support from the New Israel Fund charity, he takes two bright young Israeli lawyers, one Jew and one Arab, trains them at an iconic American NGO, grounds them in the Warren Court's greatest hits at the law school, and then sets them loose in Israel.

"It never ceases to amaze me," says inaugural fellow Joshua Schoffman, who served as Israel's deputy attorney general for 15 years. "One American professor who had never been here more or less singlehandedly transformed the Israeli human rights world. The change in five or 10 years was revolutionary." Muhammad Dahleh, a leading Israeli Supreme Court advocate and a 1991 fellow, agrees. "I cannot imagine the human rights sphere in Israel and the Occupied Palestinian Territories without the role played by the graduates of the program," he writes, quickly adding that the deterioration of Palestinian human rights undermines their achievement.

The first wave of Schwartz fellows took over the Association for Civil Rights in Israel (ACRI), which had been limping by with one half-time lawyer, just in time for the First Intifada (1987-1993). They opened a Palestinian rights hotline, and litigated nonstop. Over time they shortened pretrial detention, limited house demolition, forced the military to prosecute abusive officers, and ultimately banned the security service from using physical pressure during interrogation.

Schwartz fellows founded the Arab rights groups Adalah and Dirasat, the disability rights group Bezchut, Women Law-

Herman
Schwartz



yers for Social Justice, and Friends of the Earth Middle East. They helped to launch legal clinics (Kleeneekot) at every Israeli law school. Two joined the Knesset, and one became Jerusalem public defender.

THE LINES OF INFLUENCE ARE NOT HARD TO DRAW.

Karine Elharrar returned from her fellowship at the American Association of People with Disabilities to found the nation's only disability rights clinic (and later became the only disabled member of Knesset). The first thing Dan Yakir of ACRI did on his return, from the ACLU Lesbian and Gay Rights Project, was to draft a bill banning discrimination based on sexual orientation in the workplace. "To my great surprise it passed," chuckles Yakir.

Herman Schwartz placed a fellow named Hassan Jabareen at the NAACP in 1994. As Jabareen tells the story: "I came to Herman's office one day and said that I was interested in pursuing a SJD/Ph.D. in law after finishing my LL.M. His response was: 'Who needs another academic? We have a lot of academics. You must

make a difference as a human rights lawyer who will serve his people. Go back and establish a legal center for the Arabs in Israel and in this way you will make a difference.'" Within two years, Jabareen started Adalah—The Legal Center for Arab Minority Rights. In one of many landmark victories, Jabareen convinced the Supreme Court that Israel must stop discriminating against Arab corpses, and give cemetery funding to all communities.

Tamar Morag interned at the Children's Defense Fund in Washington, D.C.,



in 1988. She remembers sitting with the fund's director, listening to the stories of single moms at an inner city McDonalds until 2 a.m. Back in the office, as she looked at a poster on the wall of a child praying, she recalls thinking to herself: 'This is something real. This is something I can do.' Morag went on to found the Center for the Child and the Law, and to shape two generations of children's rights legislation. Wherever she goes, she tacks her poster from the Children's Defense Fund on the wall.

Gidon Bromberg wrote his thesis at American University in 1993, as the Oslo accords were signed, on the environmental implications of the peace process. During his fellowship, he came up with a vision for Ecopeace (originally called FoE Middle East) as a collaboration among the Jordanians, Palestinians and Israelis who share the same watershed. Today, it's a 100-strong organization, split roughly in thirds, which successfully pressured Israel to double Gaza's water allocation and to halt the dumping of raw sewage in the lower Jordan Valley. Emissaries from South Asia, the Koreas and the Balkans see Ecopeace as a regional model to emulate.

To Schwartz's regret, Ecopeace is the only Arab-Jewish group among his progeny (although it's true that Adalah routinely cooperates with ACRI). "I've tried

many times to reach out," Morag says. "We all tried to establish relations with our Palestinian counterparts," says Neta Ziv, who became a prolific founder of Israeli nonprofits after her 1985 fellowship. "We're not welcome, and I understand."

Sadly, Israel is so divided that even its liberal vanguard is segregated. For many of the Jewish Schwartz alumni, the fellow they were paired with was the first Arab friend of their lives. "It's really tough for Arab and Jewish youth even to meet," says Tali Gal, who has pioneered Israeli restorative justice. "Our paths very rarely cross." The 2000 Kaadan case (won by Yakir and Ziv) forced an all-Jewish community to accept Arab residents, and it's often called Israel's Brown v. Board of Education. But Hicham Chabaita of Tel Aviv University, who interned at the NAACP, notes ruefully that Israel's Brown had nothing to do with the schools. "It's appalling and absurd that the schools remain completely segregated," he said. The other fellows interviewed, from both Arab and Jewish groups, said that Israeli Arabs very much want to keep Arab schools as a matter of minority cultural rights.

As I drove to Ben Gurion International Airport, after interviews with nine Schwartz alumni in three cities, I couldn't help but ruminate on all they had accomplished, and all they had not. Their

Many institutions in Israel owe their start to lawyers Schwartz helped train.

tangible marks are everywhere. The highway signs to the airport are translated into Arabic—courtesy of an Adalah Supreme Court win. The restaurant where I grabbed a bite at the airport showed photos of the dishes on the menu—thanks to a Knesset law passed by Elharrar to help the cognitively impaired.

I confess that I didn't interview my in-flight staff. But I knew it was entirely possible that the female pilot had trained in the Israeli air force—because Neta Ziv had won the right in the Supreme Court for women to be fighter pilots. I also knew that some of my flight attendants might share their job benefits with their gay partners thanks to *Danielevitz v. El Al*, won by current Schwartz fellow Shira Dunevich.

I knew that if the plane circled 30 miles southeast, and I looked carefully out the window, I might notice a gap in the West Bank barrier near the Palestinian village of Battir. Last year, Ecopeace convinced the Supreme Court not to run the wall through ancient agricultural terraces recognized as a World Heritage Site. Now if only lawyers could do something about the wall running through the heart of Israel.

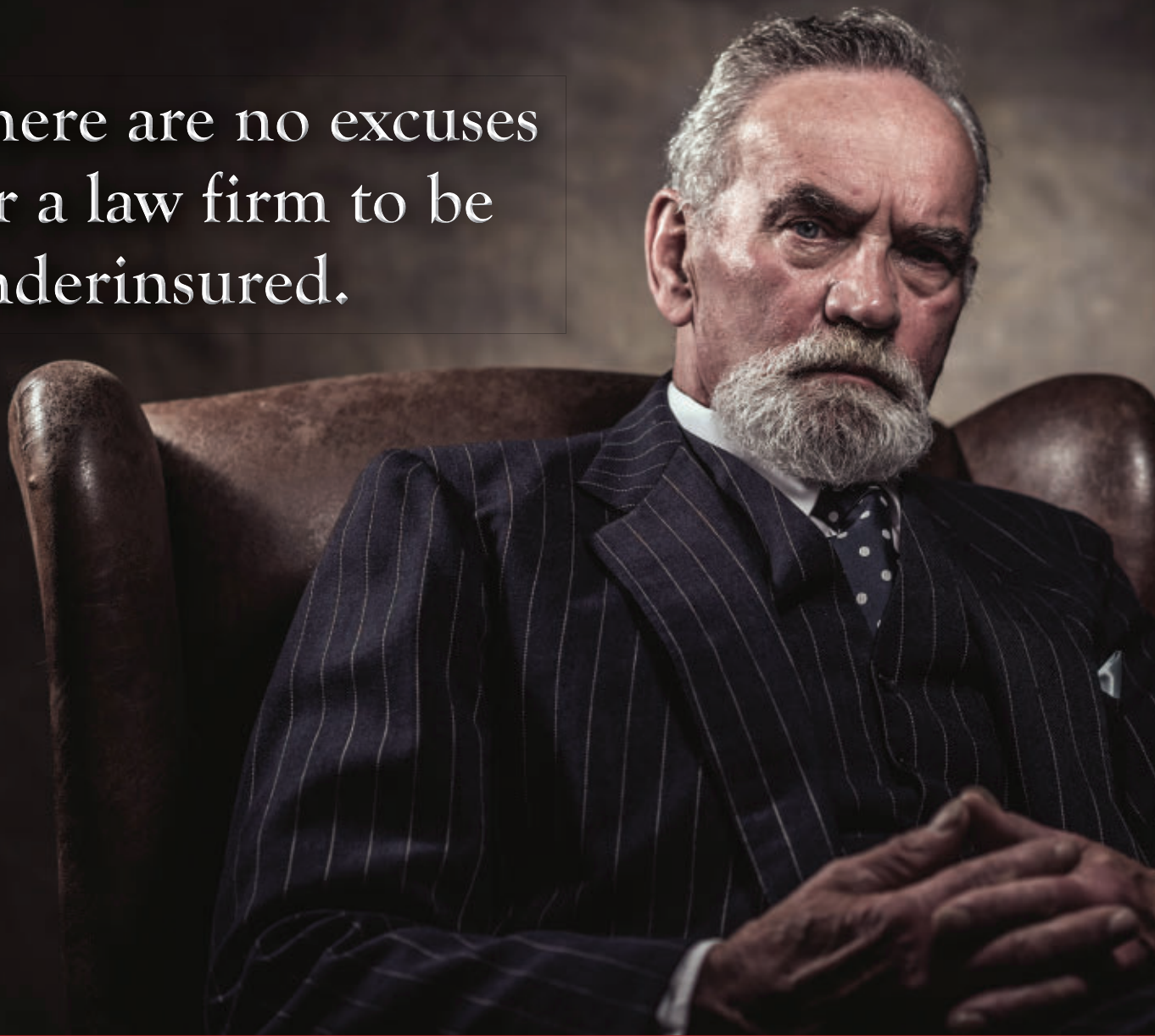
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By Alan Cohen

A Solid Ten

Microsoft's new operating system, Windows 10, eliminates many of the shortcomings of its predecessor.



I'll admit it: I always felt a bit sorry for Windows 8, Microsoft Corp.'s much-maligned operating system. It was ambitious and full of great ideas, but oh-so-awkward. But I felt sorrier for the lawyers who had to use it. Windows 8 could be a

frustrating, even bizarre experience. It tried to leverage the advantages of a tablet, like apps and touch-based gestures, while retaining familiar features like the Windows desktop. But it didn't blend those two worlds seamlessly, so it threw both of them at you in a confusing mishmash. Windows 8 was the OS whose split personality could jeopardize your own sanity.

Like a lot of PC users, I was curious, and perhaps a bit fearful, about how Microsoft would approach the sequel, Windows 10. (While there is no official explanation for why Windows 9 was skipped, guilt by association is a likely reason.) Would the company take a step back and create something that looked more like Windows XP or Windows 7—robust operating systems with familiar point-and-click interfaces? Or would it once more boldly try to capture the best of the tablet and PC worlds?

In the end, Microsoft opted for the risky approach, and it deserves some credit for that. But it deserves more credit, a lot more, for the result: Windows 10 is terrific, and it's free for those using consumer versions of Windows 7 or Windows 8, so long as they download the upgrade by July 29, 2016. It should also work on virtually any PC that can run Windows 8 (the installer will check your system before firing up the new software).

First up, it's great to have the Start menu back. Windows 8 had jettisoned that long-time feature, which provided simple point-and-click

access to programs, in favor of a tablet-like home page filled with large icons, or "tiles," representing applications and features. The problem was that Windows 8 borrowed too heavily from the tablet textbook. Even the traditional Windows desktop had to be accessed via a tile (although the Windows 8.1 upgrade let users boot directly to the desktop, it retained the overall tablet-heavy design). And touch-enabled hardware, which many PC users didn't have (and many still don't), was all but required. Basic functions, like bringing up the search tool, were easy to accomplish with swipes but often cumbersome with a mouse.

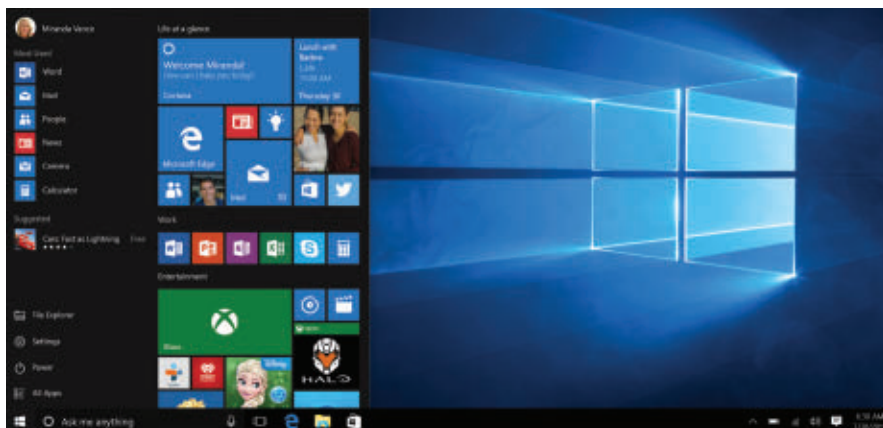
BEST OF BOTH WORLDS

The beauty of Windows 10 is that it does more than resurrect beloved old features. It does so while making good on Windows 8's biggest, and most notably unfulfilled, promise: combining the best of PCs and tablets in a smart and seamless way. Consider the new Start menu. Besides providing an easy-to-click list of applications from the "pre-8" days, it also integrates tiles—to whatever extent you choose. That's a good thing, because for all of Microsoft's overzealousness with tiles in Windows 8, tiles are a quick and easy way to access the programs and information that matter most to you. Simply drag the tiles you want to the right side of the Start menu and they will be "pinned" there, to use Microsoft's lexicon. You can customize

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the order and size of the tiles, and even choose whether they should be “live,” meaning they are updated in real time (for example, the email tile would display subject lines from the most recent messages in your inbox).

The “Action Center” is another tablet-like feature that is well-integrated into Windows 10. This is a PC version of the quick-access control panel in recent iterations of the iOS and Android mobile operating systems. With a swipe or the click of a taskbar icon, users can bring up a window that displays recent notifications, reminders and settings, including brightness, airplane mode, Wi-Fi, Bluetooth and many more. Oddly, a battery status indicator is not included: You need to touch or mouse over the battery icon in the taskbar to find out how much juice you have left. But overall, this is an excellent desktop implementation of a valuable, tablet-borne tool.



Search is also smartly integrated. While Windows 8 required users to call up, via either swipe or awkward mouse pointing, a separate “charms” menu before they could even begin a search, the new OS puts a search box right on the desktop. And this is a jack-of-all-searches tool: it can search both your PC and the Web at large with a single keyword or phrase. Search for a topic and it will not only bring up the relevant files on your computer, but links to online resources too. Or say you want to change a setting but don’t know how. The Windows 10 search tool will bring up a link to the setting itself as well as links to related Web-based information, like how-to guides.

As for how well the new Windows works with a mouse, there is still a certain “touch bias” here: I found that tap-

ping and swiping generally made for a faster, smoother interaction with the OS, but not dramatically so, due to the interface’s smart design. This design not only works for finger and mouse alike but seems equally suited for both PC and tablet. I tested Windows 10 on a Surface Pro 3 tablet, and whenever I detached the keyboard, the OS would ask if I wanted to switch to “tablet mode,” an environment where the touchable tiles are enlarged and spread out over more of the screen, à la Windows 8. There really was no need to make that switch: I was perfectly fine keeping the standard desktop on my screen. Even with a display that, at 12 inches, was a bit smaller than many laptop displays, I had no problem tapping precisely on icons and taskbar buttons, especially when using a stylus.

Windows 10 also introduces a new Web browser, called Microsoft Edge. It might seem odd to get excited about a re-

vamped browser in 2015, but this one adds some nice touches that lawyers, especially, might appreciate. Case in point is the new “reading view” button, which takes the text on the screen (such as a journal or website article), strips away the elements that often accompany it online (like advertisements) and presents it in a streamlined Kindle-like format that is far easier to read. Press the button again and the page is transformed back into its original form. It’s a clever, useful feature that works uncannily well (in every sample I threw at the tool, the reformatting was flawless).

The Edge browser is fast, too, and well-organized. A new “hub” puts bookmarks, browsing history, links to recent downloads and your reading list (all the Web pages you saved for later viewing) in one place—a tabbed box that appears on the side of the

screen with a tap or a click (much like the Action Center on the desktop).

WHERE THE OS FALLS SHORT

Not everything about Windows 10 is a home run. Positioning two or more open apps on the screen is still a bit cumbersome, though not as much so as before. But my beef isn’t major, since Windows 10 makes it easy to switch between open apps. So multitasking works well if you don’t mind looking at one app at a time.

The much-touted Cortana feature, Windows 10’s personal assistant, left me warier. Cortana is, in part, Microsoft’s version of Apple’s popular Siri tool: You speak natural-language commands (or type them) to schedule appointments, compose email, set reminders, search and so on. But Cortana also wants to learn about you—a lot about you—so it can make suggestions and follow news and events it thinks might be of interest to you. It does this by collecting and sending to Microsoft a slew of personal data; everything from your web searches to your contacts to your location history. It even reads your emails, so it can

do things like find out what flight you are booked on and remind you when online check-in starts. Handy? Creepy? A little of both?

The problem is, when Cortana is on the case, she is all in. You can’t simply opt out of the data sharing and have her do the simple things like set reminders and look up movie times. If you don’t share your information with Cortana, she’s out of your life.

For many users, that might be for the best. Lawyers in particular may have concerns about the information Cortana collects and sends to Microsoft’s servers. Browsing and location history, let alone lists of contacts, might be data that attorneys and their firms want to keep under their control. I’ll follow my own flights, thank you. And Cortana? Don’t let the door hit you on the way out.

Overall, however, Windows 10 is everything Windows 8 tried to be, and should have been. But why ruminate on the past? This is a great new operating system, and even without the inevitable update, it’s well worth trying out today.

Contributing editor Alan Cohen writes about law firms and technology. Email: alanc31@yahoo.com.

CASE STUDY

Litigators Help a Bank Prove Fraud Using Online Real Estate Records Search

Sometimes litigators have to work outside the box, such as when a case calls for documents or data that are not usually needed in a lawsuit. In this case study, we will look at a real-life situation where a real estate attorney's skills are called upon for a complex, adversarial bankruptcy case. We will see how attorneys who have never set foot inside a deed room used real estate records to resolve a year-long real estate fraud dispute.



Firm Profile: National law firm with 500 attorneys in 12 cities around the United States, with satellite affiliates in Europe. The case was based in the firm's home office, staffed with 120 attorneys. The firm is recognized as a national leader in the representation of global financial institutions, both in regulatory law and litigation. Referred to throughout as the "Firm."



Client Profile: A global banking institution with branches in over 100 countries. The client is engaged in the businesses of investment banking, personal and business banking, as well as lending for, among other things, the purchase of residential and commercial real estate. Referred to throughout as the "Bank."



Summary of the Case: This case takes place in bankruptcy court, with all of its unique rules and procedures. Debtors filed for Chapter 7 bankruptcy. The Debtors were borrowers on a mortgage loan from the Bank, issued four years prior to the filing of the current bankruptcy case. The mortgage loan was for approximately \$800,000, to finance the purchase of an upscale home in a major metropolitan area. Since the closing of the sale, the Debtors had not made a single payment on the mortgage. The Bank has attempted non-judicial foreclosure pursuant to state law several times. But each time, the Debtors foil the foreclosure with a lawsuit in state court, federal court, or by filing for bankruptcy protection. The Bank is looking for a way to corner the Debtors, cut off all litigation options, and repossess the subject property. As a bonus, the Bank would like all of the unpaid interest and attorney's fees as compensation.

CASE STUDY

Litigators Help a Bank Prove Fraud Using Online Real Estate Records Search

Case Study:

The Firm had been representing the bank for several years in all of its lending and regulatory matters. The Firm kept the Bank updated on all federal compliance regulations involved with consumer lending and represented the Bank in all banking-related litigation in state and federal court. This included judicial and non-judicial foreclosures as required by law.

The Bank asked the Firm to represent it in non-judicial foreclosure proceedings against Debtors (a husband and wife). Debtors had borrowed approximately \$800,000 for a mortgage loan to purchase a luxury home in an upscale neighborhood of a major metropolitan area. Despite qualifying for the loan based on income, the Debtors never made a single mortgage payment. The loan was secured by a Security Deed, recorded in the county real estate records, and a promissory note.

The Firm first tried the traditional non-judicial foreclosure procedure of making a written demand for payment, accelerating the debt, and advertising the foreclosure sale in the county newspaper. Debtors stopped the foreclosure when one Debtor (the wife) filed for Chapter 7 bankruptcy protection. By law (11 U.S.C. § 362), an automatic stay on all actions against the Debtor went into effect, and the foreclosure had to be cancelled. The Debtor did not file completed schedules and the bankruptcy was dismissed.

The Firm and the Bank had to begin the foreclosure process again from the beginning. Each time demand is made and the sale is advertised, two months go by before the sale can be conducted. As the second sale approached, the Debtors filed a lawsuit in state court seeking an injunction against the foreclosure sale. Out of caution, the Bank again stopped the sale. The request for an injunction was ultimately denied, and the Firm started the foreclosure process again.


Debtors Repeatedly Obstruct Foreclosure Sale

In the next four years, the Debtors filed bankruptcy petitions three times each, and filed no less than four state and federal lawsuits. Interest and attorney's fees were accruing rapidly. The Firm and the Bank needed a solution to stop the constant obstruction of the foreclosure sale.



It was determined that the simplest solution would be through the bankruptcy court. On the surface, the Debtor's bad faith and obstruction were obvious to the Firm and the Bank. However, sufficient evidence had to be gathered to show this to a bankruptcy judge. Bankruptcy law permits a creditor to exercise its contractual rights with the approval of the bankruptcy court (11 U.S.C. 362(d)). This is referred to as relief from, or lifting, the automatic stay. The usual grounds for granting such a motion are the collateral not being beneficial to the bankruptcy estate because there is no equity, and the creditor having no other recourse at law or equity to protect its security interest in the collateral.

However, there are other grounds to demand relief from the automatic stay. Specifically, 11 U.S.C. 362(d) (4) authorizes relief when the court finds that the debtor has acted with fraud, bad faith, and with the intent of obstructing a creditor or the trustee. This is referred to as



The Bank suspected that the Debtors were transferring the subject property repeatedly, from husband to wife and back, to establish standing for their various lawsuits and bankruptcy cases.

in rem relief from stay. The stay would be lifted not for a specific action (to foreclose, for example) but for specific collateral. The relief would be in effect for up to two years from entry of the order. It is a particularly drastic form of relief and requires a very high standard of proof. The Firm and Bank felt that this statute could be the ticket to finally retrieve the collateral for the Bank. It would stop the Debtors from filing additional bankruptcy cases and holding up the sale. It would also stop them from seeking any relief in the bankruptcy court, and would likely prevent any further state and federal court action, as a judge would have adjudicated the case as one of fraud.

Firm's Attorneys Use Real Estate Data to Show Fraud

The attorneys at the Firm went about building a record to show the fraud, bad faith and obstruction. The case law on the statute said that these allegations could be proven by showing a pattern of frivolous filings, or a pattern of fraudulently transferring the subject property. The first set of proof would be easy. The Firm had a file box full of court records showing nearly a dozen actions filed in state, federal, and bankruptcy court, all of which were dismissed or about to be dismissed. Proving numerous fraudulent transfers would require a deep and detailed search of county real estate records going back several years. A pattern would have to be established not only of transfers, but fraudulent transfers. This means transfers for no or little money, and for the purpose of evading creditors.

The Firm turned to DataTree® by First American® for help. DataTree offered full real estate record search services from their intuitive, online database. The Firm's attorneys were able to search by the Debtors' names, the property address, even tax record information. The Bank and their attorneys

were concerned about the cost of conducting a complete, on-site, title search and review at the county records office. Search functionality did not exist within the county's computer system to retrieve documents and data in the variety of ways and permutations that online searching offered.

The Firm retrieved actual document images of the real estate records and was able to certify those records to offer into the court's record.

Practitioner's Note: Each jurisdiction has its own standards of proof based on the local or federal rules of evidence. Before relying on any certification, check your local rules and statutes for applicability of admission.

Real Estate Records Show Dubious Transfers of Title

The Bank suspected that the Debtors were transferring the subject property repeatedly, from husband to wife and back, to establish standing for their various lawsuits and bankruptcy cases. By using the name search function in DataTree, the Firm found several such transfers in the county real estate records. The Firm printed each transfer deed and attached them as exhibits to their motion. The Firm was able to go one step further. This jurisdiction required transfer deed filers to include a statement

CASE STUDY: Litigators Help a Bank Prove Fraud Using Online Real Estate Records Search

regarding the value and cost of the transferred property. The Debtors, upon each transfer, showed that \$0 or \$10 (a nominal sum) was exchanged for the property. This was not solid proof of fraud because the transfers were between spouses, but it was a beginning.

One DataTree name search turned up a deed that the Firm found interesting and a bit shocking. There was a transfer, during this mess, to a third party. Another person owned the property for several months during the four years the Debtors did not pay the mortgage. The Bank was not familiar with this owner. Further searches for this new person's name revealed that this third party had numerous other real estate transactions with the Debtors. Looking at those properties, searching by address, the Firm was able to find several trails of transactions linked to attempts to avoid foreclosure by other banks. Using FlexSearch™ text functionality, the attorneys at the Firm were able to figure out that the third party was the wife-Debtor's mother. Each transfer was made for no monetary consideration. A careful catalogue of these transfers was made and put into the Bank's motion.

Using the subject property's parcel number in another search, the Firm found that the subject property was also transferred to the wife-Debtor using a misspelled name. It was obvious to the attorneys that the wife, using the misspelled name, would attempt to file bankruptcy with yet, another, name. This, too, was included in the motion as a further attempt to obstruct the creditors.

As the motion was being drafted, a new bankruptcy petition was sent to the Bank. This time, it listed a corporate entity that neither the Bank nor the Firm had heard of. The entity listed the subject property as an asset, and the Bank as a creditor. Going back to the online search, the Firm found a deed from one of the Debtors to this entity dated eight months before the bankruptcy petition was filed. A search using the entity's name revealed that the entity had been formed just a week earlier, eight months after it supposedly took title to the subject property. This new petition was a thorn in the side of the Bank.

After only a few searches using this advanced online real estate records tool, the Firm and its intrepid attorneys were able to catalogue 13 different transfers of the subject property within four years. All were made between the Debtors, a family member, or their questionable corporate entity, and all were made for no consideration. By obtaining

copies of the deeds and transfer documents, the Firm was able to show that each transfer coincided in time with another bankruptcy or lawsuit filing. The clear conclusion was that the Debtors were manipulating title to the subject property in order to support frivolous lawsuits and sham bankruptcy proceedings.

Bankruptcy Court Hears the Case

On the day the motion for in rem relief from stay was heard by the bankruptcy court, the courtroom was packed with observers. The case had become notorious in the local bankruptcy and real estate bars, and everyone wanted to see what would happen first hand. The Firm's lead attorney laid out for the court a careful record of title transfers and court records, supported by the documents obtained by the bank's attorneys. The judge became furious and demanded that the Debtors explain their actions. The Debtors tried to distract from their bad acts by blaming the Bank, and claiming mortgage fraud of some sort. But the Bank and their attorneys were prepared. Using additional documents obtained through their DataTree search, the Bank was able to show the court a precise record of the signed mortgage documents, even presenting documents with original signatures (these are already in the Bank's possession). The Bank was able to show to the court's satisfaction that everything was properly recorded according to state law.

The judge, who had been on the bench for nearly 30 years, announced that he was granting the motion for in rem relief from stay. He announced in open court that in 30 years he had granted such relief less than five times. But the actions of the Debtors were so egregious and obvious, that drastic action was necessary. Based on the documents in the record, the judge was able to justify his order, which was upheld on appeal to the federal district court.

Two months later, the subject property was foreclosed and the Debtors were finally evicted. Using the record of documents obtained through DataTree, the Bank intends to pursue the Debtors for attorney's fees and unpaid interest in state court. The clear, precise, and accurate records helped this client get the relief they'd been seeking for years.



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Google Reorganization

Google Inc. announced a corporate restructuring on Aug. 11 that would unshackle its less proven ventures from the its mainstay search business. The restructuring would split up the company's many projects and place them under the umbrella of a single newly formed holding company called Alphabet. The holding company will be publicly traded, with Google shares converting to those of the holding company. The new structure could allow for easier spinoffs, quicker acquisitions and a more transparent business strategy for investors.

Google turned to longtime adviser Cleary Gottlieb Steen & Hamilton for legal counsel on the restructuring. Cleary Gottlieb's team includes partners **Ethan Klingsberg, Pamela Marcogliese, Glenn McGrory, Leonard Jacoby, Yaron Reich** and **Richard Sultman**. All are in New York, except for Sultman, who is in London. The team also includes counsel **Mary Alcock** and associates **Cécile Abramowicz, Christopher Adams, Yana Chernobilsky, Brendan Cohen, Aditi Eleswarapu, Corey Goodman, Lisa McKenna, Hugh Murtagh, Alexandra O'Donohue, Jeanne-Paloma Zelmatti, Caitlin Reardon, Jackie Robinson, Tinbet Tecle, Yoon Suk Choo** and **Sophia Yuan**. All are based in New York.

Google co-founder Larry Page will be Alphabet's chief executive officer. Google chief legal officer David Drummond, the former Wilson Sonsini Goodrich & Rosati partner who joined Google before it went public, is moving to Alphabet, where he'll be the senior vice president of corporate development, said a Google spokeswoman. According to a filing with the U.S. Securities and Exchange Commission, Drummond will also be Alphabet's chief legal officer.

Google Inc.'s general counsel, Kent Walker, will remain in that role for the slimmer, newer Google unit. As for the subsidiaries, a Google spokeswoman said that the companies can hire independently of Google's watch. What that portends for Google's huge in-house department remains to be seen. But by giving its business units greater independence, it could create openings for new outside-counsel relationships.

Google Inc. has used a long list of firms, though its ties to Wilson Sonsini, which took it public, remain strong. Wilson Sonsini handled privacy litigation over Google's Gmail service and are leading a countersuit against Mississippi's attorney general over an investigation the company calls "retaliatory and overbroad." And in 2014, Google turned to Wilson Sonsini to create a new class of stock designed to preserve the voting rights enjoyed by the company's founders. Wilson Sonsini also advised Google on its purchase of Nest Labs.

But Cleary Gottlieb has emerged in recent years as a favorite for corporate work. In 2011, the firm advised Google on its

\$12.5 billion purchase of Motorola Mobility Holdings Inc., only to represent the firm again three years later when it sold Motorola Mobility to Lenovo Group Ltd. for \$3 billion. Cleary also advised Google in its purchase of Israeli mapping company Waze for \$1.1 billion in 2013 and its sale of Motorola's set-top box business for \$2.35 billion in 2012.

—David Ruiz
and Patience Haggin, *The Recorder*

DEALS IN BRIEF Week of Aug. 7-13

Berkshire Hathaway / Precision Castparts

Warren Buffett's Omaha-based holding company Berkshire Hathaway Inc. said it would pay \$37.2 billion for Portland, Oregon-based metal parts maker Precision Castparts Corp. The deal, announced Aug. 10, is expected to close in the first quarter of 2016.

LEGAL ADVISERS: **Munger, Tolles & Olson** for Berkshire; **Cravath, Swaine & Moore** and **Stoel Rives** for Precision Castparts; **Alston & Bird** for Credit Suisse Group as financial adviser to PCC.

Fidelity National / SunGard

Jacksonville, Florida-based Fidelity National Information Services will buy Wayne, Pennsylvania-based financial software provider SunGard for \$9.1 billion, including debt. SunGard was acquired by a group of private-equity firms for roughly \$11 billion in 2005, and the deal ends owner plans to take the company public. Announced Aug. 12,

the deal is expected to be completed in the fourth quarter.

LEGAL ADVISERS: **Willkie Farr & Gallagher** for Fidelity National; **Simpson Thacher & Bartlett** and **Shearman & Sterling** for SunGard.

General Electric Asset Sale

Fairfield, Connecticut-based General Electric Co. said it will sell its Healthcare Financial Services U.S. lending business and \$8.5 billion of loans to McLean, Virginia-based Capital One Financial Corp. for \$9 billion. The sale, announced Aug. 11, is expected to close in the fourth quarter.

LEGAL ADVISERS: **Wachtell, Lipton, Rosen & Katz** for Capital One; **Hogan Lovells** for GE.

Symantec Asset Sale

A group of investors led by Washington, D.C.-based asset manager Carlyle said it will purchase Mountain View, California-based Symantec Corp.'s Veritas for \$8 billion. Singapore's sovereign wealth fund GIC is another investor in Veritas, an information management company that serves Fortune 500 clients. The transaction, announced Aug. 11, is expected to close by the end of the year.

LEGAL ADVISERS: **Alston & Bird, Latham & Watkins, Allen & Overy** and **Covington & Burling** for Carlyle; **Ropes & Gray** and **Sidley Austin** for GIC; **Fenwick & West** and **Baker & McKenzie** for Symantec.

Sumitomo Life / Symetra Financial

Japan's Sumitomo Life Insurance Co. will pay \$3.8 billion for Bellevue, Washington-based Symetra Financial Corp., which is backed by Warren Buffett's Berkshire Hathaway Inc. The acquisition, announced Aug. 11, is expected to close by the beginning of the second quarter of 2016.

LEGAL ADVISERS: **Simpson Thacher & Bartlett** for Sumitomo; **Cravath, Swaine & Moore** for Symetra; **Debevoise & Plimpton** for Morgan Stanley as financial adviser to Symetra.

Terex / Konecranes

Two construction crane makers are set to combine, with Westport, Connecticut-based

Terex Corp. and Finland's Konecranes PLC agreeing to a merger of equals. Under terms of the deal, Terex shareholders will receive 0.80 Konecranes shares for each share in Terex they hold, valuing their stake in the resulting entity, Konecranes Terex PLC, at \$2.5 billion. Konecranes Terex will be incorporated in Finland. The transaction, announced Aug. 11, is expected to be completed in the first half of next year.

LEGAL ADVISERS: Fried, Frank, Harris, Shriver & Jacobson, Bryan Cave and Avance for Terex; Skadden, Arps, Slate, Meagher & Flom and Roschier for Konecranes.

Week of July 31-Aug. 6

CF Industries / OCI NV

Deerfield, Illinois-based fertilizer manufacture CF Industries Holdings Inc. said it would acquire The Netherlands' OCI N.V. for \$8 billion, including debt. The deal, announced Aug. 6, is and expected to close next year.

LEGAL ADVISERS: Skadden, Arps, Slate, Meagher & Flom for CF Industries; Cleary Gottlieb Steen & Hamilton and Allen & Overy for OCI.

Nokia Asset Sale

A consortium of carmakers—Audi A.G., BMW Group and Daimler A.G.—plan to purchase Nokia Corp.'s digital map unit for \$3 billion. The deal, announced Aug. 3, is expected to close in the first quarter of next year.

LEGAL ADVISERS: Clifford Chance and Hogan Lovells for the consortium; Shearman & Sterling for Nokia; Linklaters for lender banks.

Week of July 24-30

Allergan Asset Sale

Israel's Teva Pharmaceutical Industries Ltd. said July 27 it would acquire the generic drug business of Dublin-based Allergan PLC for \$40.5 billion. The deal, which is expected to close by the first quarter of 2016, effectively pulls the plug on Teva's hostile bid for fellow generic drug maker Mylan N.V.

LEGAL ADVISERS: Sullivan & Cromwell and Tulchinsky Stern Marciano Cohen Levitski & Co. for Teva; Latham & Watkins for Allergan, with Weil, Gotshal & Manges and Cleary Gottlieb Steen & Hamilton on antitrust; Debevoise & Plimpton for Allergan financial adviser JPMorgan Chase & Co.

Solvay / Cytec Industries

Chemical makers are primed to combine, with Brussels-based chemicals maker Solvay S.A. saying it would buy Woodland Park, New Jersey-based Cytec Industries Inc. for \$5.5 billion in cash. The deal, announced July 29 and expected to close in the fourth quarter, is valued at \$6.4 billion when including debt. Cytec, which specializes in composite materials and products for sectors such as aerospace and mining, among others, had sales of \$2 billion last year.

LEGAL ADVISERS: Davis Polk & Wardwell for Solvay; Sullivan & Cromwell for Cytec.

Honeywell /Melrose Industries/ Elster Group

Morristown, New Jersey-based Honeywell International Inc. will pay \$5.1 billion for water, gas and smart meter maker Elster Group. The target is currently owned by U.K. investment company Melrose Industries PLC. The deal, announced July 28, is expected to close in the first quarter of next year.

LEGAL ADVISERS: Freshfields Bruckhaus Deringer for Honeywell; Simpson Thacher & Bartlett for Melrose Industries.

Industrial Income Trust Asset Sale

Singapore-based logistics facilities owner Global Logistics Properties will acquire \$4.55 billion for a U.S. logistics portfolio owned by Denver-based Industrial Income Trust for \$4.55 billion. The deal, announced July 29, is expected to close by mid-November. The portfolio consists of 58 million square feet of properties.

LEGAL ADVISERS: Morrison & Foerster for GLP; Hogan Lovells for Industrial Income.

Anthem / Cigna

Indianapolis-based Anthem Inc. said July 24 it would seek to acquire Bloomfield, Connecticut-based Cigna in a \$48.3 billion cash and stock deal. The transaction, which is expected to draw close scrutiny from antitrust regulators, is projected to close in the second half of 2016.

LEGAL ADVISERS: White & Case for Anthem; Cravath, Swaine & Moore for Cigna, with Cadwalader, Wickersham & Taft on antitrust and Sidley Austin on health care regulation; Latham & Watkins for the lead financing arrangers.

Nikkei / FT Group

The U.K.'s Pearson PLC said on July 23 it would sell its business-focused entity FT Group, owner of the Financial Times newspaper, to Japanese media company Nikkei for \$1.3 billion. The deal is expected to close in

the fourth quarter of the year.

LEGAL ADVISERS: Skadden, Arps, Slate, Meagher & Flom for Nikkei; Freshfields Bruckhaus Deringer for Pearson.

Sikorsky Aircraft Asset Sale

Bethesda, Maryland-based Lockheed Martin Corp. will buy Sikorsky Aircraft, a maker of Black Hawk helicopters, from Hartford, Connecticut-headquartered United Technologies Corp. The \$9 billion price tag reads more like \$7.1 billion, taking into account a \$1.9 billion tax benefit, according to the acquirer. The acquisition is expected to close by the first quarter of next year.

LEGAL ADVISERS: Davis Polk & Wardwell, Fried, Frank, Harris, Shriver & Jacobson and McDermott Will & Emery for Lockheed Martin; Wachtell, Lipton, Rosen & Katz for United Technologies.

Pinnacle Entertainment Asset Sale

Wyomissing, Pennsylvania-based Gaming and Leisure Properties Inc. said July 21 it would buy the real estate assets of Las Vegas-based Pinnacle Entertainment Inc. in an all-stock deal that values the assets at \$4.75 billion. The resulting entity's portfolio will consist of 35 hotel and casino properties spanning 14 states. The transaction is expected to close in the first quarter of 2016.

LEGAL ADVISERS: Wachtell, Lipton, Rosen & Katz for GLPI; Skadden, Arps, Slate, Meagher & Flom and Gibson, Dunn & Crutcher for Pinnacle.

Blackstone / Corsair / First Eagle

Private-equity funds managed by The Blackstone Group and Corsair Capital said July 20 they will make a majority long-term investment, valued at \$4 billion, in New York-based First Eagle Investment Management. The deal is expected to close by year's end.

LEGAL ADVISERS: Simpson Thacher & Bartlett for Blackstone and Corsair; Skadden, Arps, Slate, Meagher & Flom for First Eagle.

St. Jude Medical / Thoratec

St. Paul-based St. Jude Medical Inc. said July 22 it will acquire Pleasanton, California-based Thoratec Corp., which makes devices to counter heart failure, for \$3.4 billion in cash. The deal is expected to close in the fourth quarter.

LEGAL ADVISERS: Gibson, Dunn & Crutcher for St. Jude Medical; Latham & Watkins for Thoratec; Weil, Gotshal & Manges for Bank of America Merrill Lynch in providing bridge financing.

—Jennifer Henderson



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Amarin Pharma v. U.S. Food & Drug Administration

Cahill Gordon & Reindel partners **Floyd Abrams** and **Joel Kurtzberg** on Aug. 7 persuaded a federal judge in Manhattan to block the U.S. Food and Drug Administration from bringing potential off-label marketing claims against their client, Irish drugmaker Amarin Pharma Inc.

In a highly anticipated ruling for the pharmaceutical industry, U.S. District Judge Paul Engelmayer agreed with Amarin's lawyers that the Constitution generally protects drug-makers' right to make truthful statements about their products. The decision paves the way for Amarin to promote its cholesterol drug, Vascepa, for certain off-label uses that haven't received explicit FDA approval.

Vascepa's FDA approval extended only to treating "very high" triglyceride levels. But doctors also frequently prescribe the drug to patients who suffer from "persistently high" triglycerides, based on a clinical study that demonstrated Vascepa's effectiveness for that condition. While the FDA hasn't questioned the results of that study, it hasn't formally approved the drug for "persistently high" triglyceride patients, making that a prohibited off-label use.

Hoping to market to a wider group of patients, Amarin hired Cahill for advice on whether the FDA's regulations might violate the First Amendment. In a declaratory judgment lawsuit against the FDA in May, Abrams and Kurtzberg argued that the agency was poised to sue if Amarin promoted Vascepa for the unapproved use. That would effectively punish Amarin for sharing study results that even the FDA didn't dispute, they argued. Amarin sought a ruling that the off-label promotion rules violated the First Amendment, and an injunction against any enforcement action.

Arguing for the government, assistant U.S. attorney **Ellen London** maintained that a ruling in the company's favor could "eviscerate FDA's drug approval regime." But Engelmayer sided with Abrams and Kurtzberg.

—Scott Flaberty

Carnegie Mellon University v. Marvell Technology Group

Agreeing to partially shield the technology industry from extraterritorial damages in patent infringement cases, the U.S. Court of Appeals for the Federal Circuit on Aug. 4 cut more than \$1 billion from a patent infringement verdict won by Carnegie Mellon University. But the Federal Circuit upheld roughly \$330 million from the May 2014 \$1.5 billion judgment against Marvell Technology Group Ltd.

In 2012, a jury in Pittsburgh concluded in 2012 that Marvell's wildly successful noise-reduction technology for hard drives was copied from the work of Carnegie Mellon researchers. K&L Gates's **Douglas Green-sweg** and **Patrick McElhinny** led Carnegie Mellon's team at trial. Orrick, Herrington & Sutcliffe's **E. Joshua Rosenkranz** argued the appeal.

Marvell appealed, led by Quinn Emanuel Urquhart & Sullivan partner **Kathleen Sullivan**. Backed by amicus filers including Google Inc., Microsoft Corp. and other large technology companies, Marvell argued that

products manufactured, designed or sold overseas should be excluded when constructing a hypothetical negotiation in a U.S. patent infringement case. The "worldwide causation theory" would be disastrous, it argued, particularly for component suppliers who develop and design products in the U.S. that are then made and sold overseas.

The Federal Circuit agreed that products manufactured, used and sold outside the United States should be excluded. Marvell also persuaded the Federal Circuit to strike the willful-infringement part of the verdict, which represented about \$270 million.

Marvell's tab could rise back above \$1 billion depending on the outcome of further proceedings. The Federal Circuit remanded the case and ordered a new trial on the question of whether the royalty rate should include foreign-made Marvell products sold to manufacturers within the U.S.

—Scott Graham

ZeniMax Media v. Oculus VR

Afierce intellectual property dispute is brewing between Facebook Inc., which owns the virtual-reality headset maker Oculus VR, and ZeniMax Media Inc., a Rockville, Maryland-based video game maker that has worked with Oculus founder Palmer Luckey. On Aug. 10, ZeniMax, which alleges trade secrets theft, copyright infringement, unfair competition and unjust enrichment against Facebook, secured a key ruling in its suit when U.S. District Judge Jorge Solis refused to grant Facebook's motion to dismiss.

ZeniMax's team includes Skadden, Arps, Slate, Meagher & Flom's **Kurt Hemr** and **P. Anthony Sammi** and Haynes and Boone's **Phillip Philbin**.

Solis had harsh words for Facebook, which is represented by Cooley's **Heidi Keefe**, **Mark Weinstein**, **Michael Rhodes** and **Stephen Smith**. When Facebook acquired Oculus last year, he wrote, it "knew, or had reason to know,



JOEL KURTZBERG
Cahill



KURT HEMR
Skadden



P. ANTHONY SAMMI
Skadden



PHYLLIS JONES
Covington



that Oculus' representation—that it had titled, owned or was authorized to use the intellectual property necessary to carry on its business—was false."

ZeniMax claims that one of its then-senior video game developers, John Carmack, heard early on about Luckey's development of a virtual-reality headset, known as Rift, and contacted the inventor for a prototype. Carmack and other ZeniMax employees, the suit alleges, began working on the nascent product and added critical features.

After Rift debuted to great acclaim, Luckey promptly formed Oculus to commercialize it. According to the complaint, that's when the trouble started. Oculus allegedly never provided any compensation to ZeniMax and allegedly hired away Carmack and five other senior ZeniMax employees. Facebook and Oculus deny the allegations.

—Jenna Greene

Hexum v. Eli Lilly

Showing that there's nothing like a devastating cross-examination, Covington & Burling partners **Phyllis Jones** and **Paul Schmidt** clinched a victory for Eli Lilly & Co. in a bellwether trial over the antidepressant Cymbalta before the jury could even deliberate. The Covington lawyers persuaded U.S. District Judge Stephen Wilson in Los Angeles to dismiss the jury and issue a directed verdict on Aug. 13.

Lilly faces dozens of lawsuits for allegedly failing to adequately warn of the risks of withdrawing from the drug. The stakes are high. Before its patent expired, Cymbalta had \$3.9 billion in sales in 2013, according to Reuters. The win followed an Aug. 7 victory for Covington lawyers in another expedited Cymbalta trial.

The plaintiff, Erin Hexum, testified that after she stopped taking Cymbalta, she suffered from severe side effects. Hexum was represented by **Nicole Maldonado** of Baum, Heldlund, Aristei & Goldman.

On cross-examination, however, Covington's Jones established that Hexum, who had earlier referred to Cymbalta as "poison," consciously chose to abruptly stop taking the drug, rather than tapering off her dosage gradually, which could have blunted the withdrawal symptoms. Another blow came when Schmidt cross-examined her doctor, who admitted that if he was doing it all over, he would have prescribed Cymbalta for Hexum's condition again. Using those admissions as ammunition, Covington's **Michael Imbroscio** successfully pushed for a directed verdict, arguing that the plaintiffs couldn't meet their burden of establishing liability, since Hexum's doctor admitted that Cymbalta's warning label played no role in his decision to prescribe it.

—J. G.

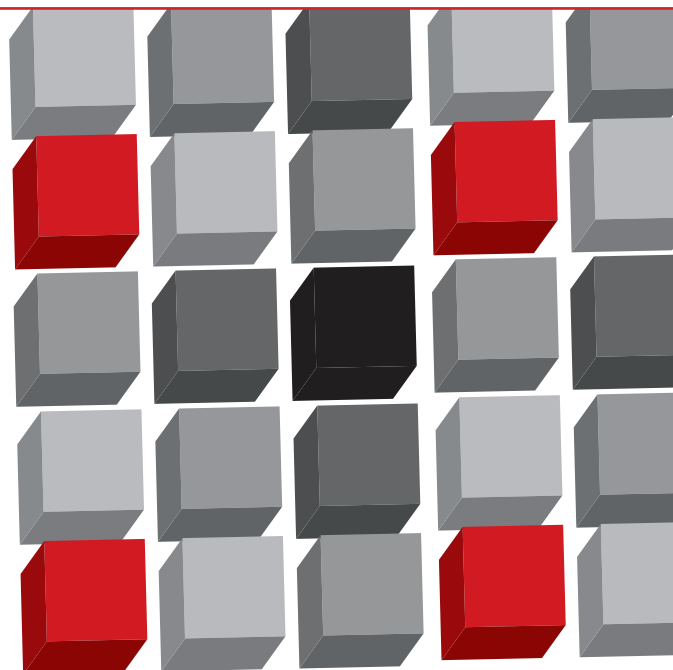
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Bell / NFL v. CRTC

The National Football League is taking the field in the fight over American Super Bowl ads on Canadian airwaves. On Aug. 7 the league was granted intervenor status in the battle between Bell Canada (and its corporate parent, Bell Media Inc.) and the Canadian Radio-Television and Telecommunications Commission over simultaneous substitution. Also known as “simsub,” the practice involves the swapping out of American television commercials for Canadian ones during the big game.

In January, CRTC chairman Jean-Pierre Blais announced that by 2017, the commission would implement a regulatory policy prohibiting simsub during the Super Bowl. Bell, which holds the license to all NFL programming in Canada through 2019, sought to appeal that decision to the Federal Court of Appeal; that permission was granted on May 5, 2015.

In court documents, Bell argues that for more than 40 years simsub “has been one of the central means through which the Canadian broadcasting system sustains local broadcasting stations and funds creation of original Canadian content.” The broadcaster says the Super Bowl generates more advertising revenue than any other single program aired on its network and argues that the CRTC is exceeding its jurisdiction. Acting for Bell is a Torsys team led by **John Laskin** and associate **Vitali Berditchevski**.

The NFL contends that prohibiting simsub will reduce the amount Canadian advertisers will pay Super Bowl broadcasting licensees, which in turn will reduce the fees the NFL collects in for game rights in Canada. “Of all the programs and classes of programs distributed in Canada, the CRTC has only singled out one particular program, the Super Bowl, and directly impacted its value,” the NFL argues. It is represented by McCarthy Tétrault’s **Neil Finkelstein** and **Brandon Kain** and associate **Richard Lizius**.

The CRTC, defended by crown attorneys **Michael Morris**, **Roger Flaim** and **Laura Tauskay**, says the argument is premature, since the commission hasn’t actually issued a regulation or other order, but simply issued a

broadcasting regulatory policy following public consultation. As of press time, no hearing date had been set by the Federal Court of Appeal.

Dunkin’ Brands Canada Ltd.
v. Bertico

Dunkin’ Donuts franchisees have been awarded almost \$11 million by the Québec Court of Appeal for breach of contract, breach of implicit obligations and negligence by their franchisor, Dunkin’ Brands, in a suit that has spanned 12 years.

“Dunkin’ Donuts brands in Québec has been a major recognized brand since 1961,” says Fasken Martineau DuMoulin’s **Frédéric Gilbert**, who acted for the 10 franchisee plaintiff/respondents and their spouses, who operated 31 stores.

But in the 1990s, when rival doughnut chain Tim Hortons began to “assert its presence in Quebec,” as Justice Nicholas Kasirer wrote in the judgment, the Dunkin’ Donuts franchises lost market share. In 2003, the Québec franchise owners sued Dunkin’ Brands, claiming

that a tolerance of underperforming franchisees, poor management practices and a failure to provide proper support led to their decline. A trial in 2012 concluded with judge Daniel Tingley ruling in favor of the franchisees and awarding their full claim of \$16.4 million in damages.

Dunkin’ Brands appealed the decision, with a team from Dentons Canada. Dentons’ **Margaret Weltrowska** didn’t respond to inquiries by press time, but she’s listed on the judgment along with **Stéphane Teasdale**, counsel **Luc Giroux** and associate **Catherine Dagenais**. The Court of Appeal reduced the damages award to \$10.9 million.

Gilbert told The American Lawyer that this case confirms implicit obligations for both parties that are not clearly carved out in the franchisor/franchisee contract. He was assisted by Langlois Kronström Desjardins’ **Guy de Blois** (who was appointed to the Québec Superior Court last April, shortly after the case was heard in February) and Faskens strategic advisor **Jean-Louis Baudouin**.

On June 15, Dunkin’ Brands applied to the Supreme Court of Canada for leave to appeal the Court of Appeal of Québec’s decision. The Globe and Mail reports that Dunkin’ Brands is being represented by Borden Ladner Gervais’ **Guy Pratte** in the leave to appeal.

Re Nortel Networks Corp.

At the height of the technology bubble Canadian telecommunications company Nortel Networks Corp. boasted a stock valuation of US\$260 billion, but in 2009 it filed for bankruptcy protection and sold its patents and global operations. Since then, its corporate entities in Canada, the United States and Europe, as well as pensioners and bond investors have been fighting over the \$7.3 billion raised through the liquidation.

On May 12, Justice Frank Newbould of the Ontario Superior Court in Toronto, along with Judge Kevin Gross of the U.S. Bankruptcy Court in Wilmington, Delaware, released separate judgments in the cross-border parallel bankruptcy trials, which saw the two



JOHN LASKIN
Torsys



NEIL FINKELSTEIN
McCarthy Tétrault



FRÉDÉRIC GILBERT
Fasken Martineau



BENJAMIN ZARNETT
Goodmans



courts linked by video and other technologies.

The judges ruled that the remaining money should be split between the company's regional businesses, to pay its creditors worldwide on a pro rata basis. "A global solution in this unprecedented situation is required and perforce, as this situation has not been faced before, it will by its nature involve innovation," said Newbould in the judgment.

Acting for the monitor and Canadian debtors were Goodmans' **Jessica Kimmel, Alan Mark, Joseph Pasquariello, Julie Rosenthal, Peter Ruby, Graham Smith** and **Benjamin Zarnett**, Gowling Lafleur Henderson's **Jennifer Stam** and Allen & Overy's **Ken Coleman, Laura Hall** and **Jacob Pultman**, with their former partner **Paul Keller**, who is now with Norton Rose Fulbright.

McCarthy Tétrault was counsel for the Canadian Creditors' Committee, with a team led by **Elder Marques** and **R. Paul Steep** with associate **Byron Shaw**. Other lawyers include Paliare Roland Rosenberg

Rothstein's **Lily Harmer, Karen Jones, Ken Rosenberg, Max Starnino, Megan Shortreed** and Koskie Minsky's **Ari Kaplan** and **Mark Zigler** with associates **Jeff Van Bakel** and **Barbara Walancik**.

The U.S. debtors tapped Torsys' **Sheila Block, Scott Bomhof** and **Andrew Gray**, along with Cleary Gottlieb Steen & Hamilton's **James Bromley, Jeffrey Rosenthal, Lisa Schweitzer, Howard Zelbo** and counsel **Avram Luft**. The ad hoc group of bondholders were represented by Bennett Jones' **Gavin Finlayson, Richard Swan, Kevin Zych** and associate **Jonathan Bell**, and Milbank, Tweed, Hadley & McCloy's **Andrew Leblanc**, of counsel **Thomas Matz** and associate **Nicholas Bassett**.

Debtors in Europe, the Middle East and Africa were represented by Lax O'Sullivan Scott Lissu's **Matthew Gottlieb** and **Tracy Wynne**, Davies Ward Phillips & Vineberg's **James Doris** and **Matthew Milne-Smith**, Hughes Hubbard & Reed's

Derek Adler, Neil Oxford and **William Maguire** and Herbert Smith Freehills' **John Whiteoak** in London. Blakes, Cassels & Graydon's **Michael Barrack** acted for the United Kingdom pension claimants, with Thornton Grout Finnigan's **John Finnigan, D.J. Miller** and associates **Rebecca Kennedy, Andrea McEwan** and **Michael Shakra** and Willkie Farr & Gallagher's **Eugene Chang** and **Brian O'Connor**.

Counsel for the U.S. unsecured creditors' committee included Cassels, Brock & Blackwell's **R. Shayne Kukulowicz** and **Geoffrey Shaw** and Akin Gump Strauss Hauer & Feld's **David Botter** and **Abid Qureshi**.

Wilmington Trust tapped Dentons' **Kenneth Kraft** and **John Salmas** and Katten Muchin Rosenman's **David Crichlow** and **Karen Dine**. McMillan's **Sheryl Seigel** and **Brett Harrison** acted for The Bank of New York Mellon and Borden Ladner Gervais' **John Marshall** represented the Law Debenture Trust Company of New York.

—*Marlisse Silver Sweeney*



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THE GLOBAL 100

News, trends and data on the world's top-grossing and biggest firms.



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THE GLOBAL 100

A Smooth Ride

After a long, bumpy journey, the Global 100 reaches its cruising altitude.

BY CHRIS JOHNSON

THE GLOBAL 100 APPEARS TO HAVE FOUND ITS GROOVE.

After the turbulence of the financial crisis, which in 2009 caused the world's 100 highest-grossing law firms to collectively suffer their first-ever fall in aggregate fee income, the group has now settled into a pattern of slow, steady growth. Aside from a slight spike in 2011, when total Global 100 revenue increased 6.8 percent, top-line growth has for the past five years hovered at around 4 percent.

This year is no different, with total Global 100 revenue rising 4.5 percent, to \$92.7 billion, a sum just shy of the gross domestic product of Ecuador, the world's 63rd-richest country, according to World Bank data. Although a far cry from the double-digit gains routinely achieved by firms before the financial crisis, at current growth rates, Global 100 revenues will still top \$100 billion within the next two years.

And these aren't figures skewed by consolidation or the introduction of some new verein megafirm: Eighty-four of the top 100 firms increased their revenue last year. Nor was the growth simply a reflection of firms adding more lawyers. In fact, the total number of attorneys employed by Global 100 firms saw a rare contraction last year, dipping 0.8 percent to just below 112,000—the first drop in overall group head count since 2010 and only the fourth since The American Lawyer began compiling global financials in 1998. In total, 42 Global 100 firms reduced their head count last year.

The combination of rising revenues and a slight reduc-

tion in lawyer numbers led to an impressive growth in revenue per lawyer (RPL) across the Global 100. The group's average RPL had remained broadly flat at around \$785,000 in each of the previous three years, but last year jumped 5.1 percent to a record \$830,000—the highest-ever Global 100 RPL and the highest annual growth rate since the recession. Total profits, meanwhile, increased 6.9 percent, to \$35.6 billion, another record.

CHANGE AT THE TOP

The Global 100 has a new No. 1 this year: For the first time, Latham & Watkins is the world's largest law firm by revenue. Latham had previously ranked no higher than third, but overtook perennial Global 100 leaders Baker & McKenzie and DLA Piper after its gross revenue surged 14 percent, to \$2.6 billion, the second-highest top-line figure of any firm in Global 100 history. (Clifford Chance had the highest gross revenue, \$2.661 billion, on our 2008 list.)

The battle for the top spot had become somewhat of a duel between Baker & McKenzie and DLA Piper, with the pair repeatedly trading places in recent years. In 2013, DLA Piper overtook Baker & McKenzie, only to see the positions reversed the following year. In this year's survey, the tables have turned once again, with Baker & McKenzie usurped by its global rival after suffering a 4.3 percent drop in gross revenue, to \$2.43 billion. DLA Piper's gross revenue remained flat last year, at \$2.48 billion. Baker & McKenzie's profits fell even more steeply than revenue, with average profits per equity partner tumbling 11.6 percent to a three-year low of \$1.14 million, the fourth-largest fall among the Global 100.

Baker & McKenzie global chair Eduardo Leite attributes the results to the "exceptional appreciation" of the U.S. dollar. (The firm collects revenues in more than 35 different currencies

The Global 100 at a Glance

| | | |
|-----------------------------------|------------------|--------|
| Total revenue | \$92,718,500,000 | + 4.5% |
| Total lawyers | 111,735 | - 0.8% |
| Average revenue per lawyer | \$829,807 | + 5.4% |
| Total equity partners | 22,850 | + 0.2% |
| Average profit per equity partner | \$1,700,900 | + 5.5% |



and then converts to U.S. dollars for reporting purposes.) He says that the firm's gross revenue rose 2.2 percent on a "like-for-like" basis and that total productivity of the firm's more than 11,000-person staff increased 5 percent to an all-time high during its most recent fiscal year. (For more on the impact of exchange-rate fluctuations on Global 100 results, see "The Exchange Edge," page 64.)

Baker & McKenzie's profits, meanwhile, were additionally affected by what Leite called "major investments," such as the launch of a new global services center in Belfast, Northern Ireland, and the opening of new offices in

Brisbane, Australia, and Jeddah, Saudi Arabia, pushing its network to 77 offices in 47 countries, as well as the development of an integrated global technology platform with German multinational software corporation SAP SE. The transfer of the firm's operations to this new finance system also resulted in a one-time delay in billing and collecting. Leite estimated that as much as three-quarters of a month's billing was delayed into the current fiscal year, the "vast majority" of which Baker & McKenzie anticipates will be realized in next year's accounts.

Baker & McKenzie is set to lose its title as the world's

largest law firm by attorney head count, too. Dentons has already dramatically improved its Global 100 ranking in recent years, having completed several transformative combinations. In the 2013 survey, SNR Denton (itself the product of a 2010 merger between Sonnenschein Nath & Rosenthal and London's Denton Wilde Sapte) placed 48th, with gross

**AT CURRENT GROWTH RATES,
GLOBAL 100 REVENUES
WILL TOP
\$100 billion
WITHIN THE NEXT
TWO YEARS.**

revenue of \$710.5 million. The following year, thanks to a three-way deal with Canadian firm Fraser Milner Casgrain and France's Salans, which was completed in 2013, Dentons jumped 30 places, to 18, with gross revenue of \$1.262 billion. But its latest deal, with 3,700-lawyer Chinese firm Dacheng, is of an entirely different scale. (At press time in early September, the tie-up was pending, with completion planned for the end of 2015.) With an estimated 6,000 lawyers, some 1,700 more than Baker & McKenzie, the combined practice will dwarf the rest of the Global 100 by head count. Adding Dacheng's estimated \$365 million revenue to Dentons' \$1.275 billion top line would have seen the new firm rank 14th on this year's gross revenue chart, between Sidley Austin and White & Case. (Dacheng isn't even the largest Chi-

nese firm in the Global 100; Beijing firm Yingke has more than 4,100 lawyers, making it the world's second-largest law firm by that measure. There are now eight Chinese firms in the Global 100 head count rankings, collectively employing more than 13,000 lawyers.)

For Latham, its results were a fitting sendoff for longtime chair Robert Dell, who departed at the beginning of 2015 after 20 years in charge. In addition to its strong top-line growth, the firm's revenue per lawyer jumped 12 percent, to nearly \$1.25 million, and its profits per partner soared 16.5 percent, to \$2.9 million. Net income rose nearly 21 percent, to \$1.325 billion: Latham added \$228 million in net income last year, which is more than the entire equity pool of K&L Gates, the world's 27th-largest law firm by revenue. Adjusting for inflation, Latham's total net income is now nearly seven times higher than it was when Dell started as chair in 1994.

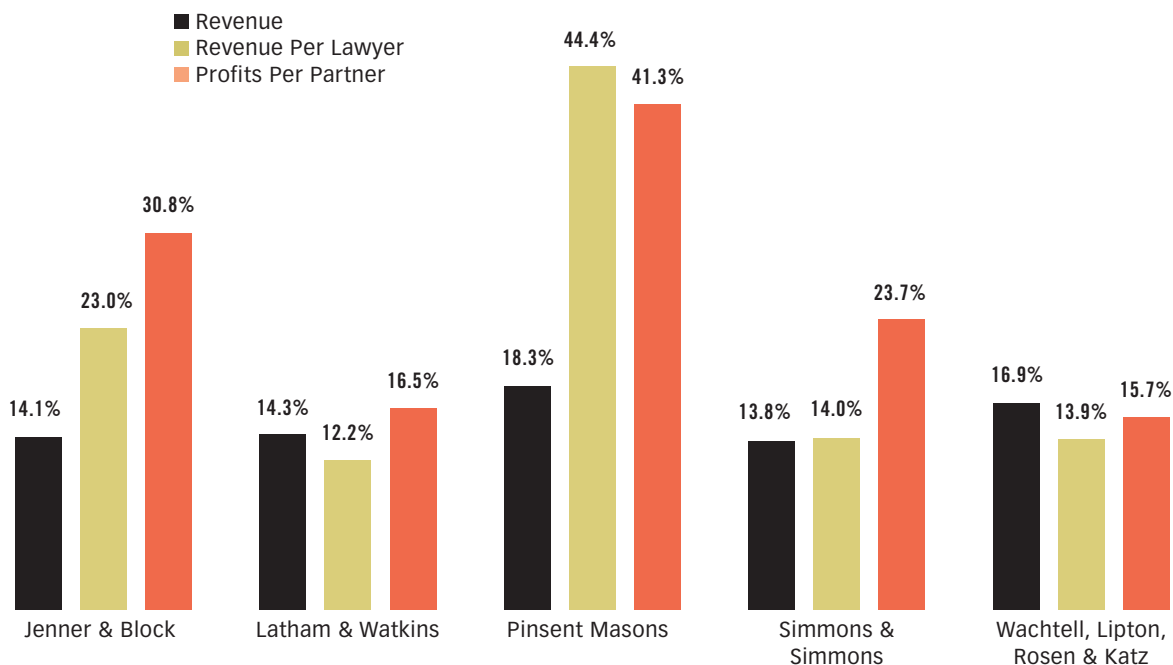
William Voge, who succeeded Dell as global chair, describes 2014 as "a dream year" for Latham. Every practice group recorded growth in both hours and revenues, he says, with M&A, private equity, capital markets, intellectual property and securities and antitrust litigation "white hot."

FIVE ON FIRE

Latham was one of just five firms to achieve annual growth of at least 10 percent in gross revenue, RPL and PPP

Growth Across the Board

Just five Global 100 firms achieved growth of more than 10 percent in three major metrics: gross revenue, revenue per lawyer and profits per partner.



Biggest Changes, Gross Revenue

| Gainers | % change | Decliners | % change |
|--------------------------------|----------|-----------------------|----------|
| Cooley | 19.0% | Slaughter and May | -18.6% |
| Pinsent Masons | 18.3% | Bingham McCutchen | -12.7% |
| Wachtell, Lipton, Rosen & Katz | 16.9% | Minter Ellison | -10.1% |
| Willkie Farr & Gallagher | 14.5% | O'Melveny & Myers | -9.3% |
| Latham & Watkins | 14.3% | Norton Rose Fulbright | -4.7% |

Biggest Changes, Revenue Per Lawyer

| Gainers | % change | Decliners | % change |
|--------------------------------|----------|-------------------------------|----------|
| Pinsent Masons | 44.4% | Minter Ellison | -14.7% |
| King & Wood Mallesons | 29.1% | Slaughter and May | -13.6% |
| Jenner & Block | 23.0% | Baker & McKenzie | -7.5% |
| Freshfields Bruckhaus Deringer | 22.4% | Locke Lord | -4.5% |
| Herbert Smith Freehills | 20.0% | Cadwalader, Wickersham & Taft | -3.2% |

Biggest Changes, Profits Per Partner

| Gainers | % change | Decliners | % change |
|--------------------------------|----------|-------------------------------|----------|
| Pinsent Masons | 41.3% | Minter Ellison | -17.1% |
| Kilpatrick Townsend & Stockton | 32.1% | Cadwalader, Wickersham & Taft | -15.3% |
| Jenner & Block | 30.8% | Baker & Hostetler | -13.4% |
| Berwin Leighton Paisner | 27.3% | Baker & McKenzie | -11.6% |
| Baker Botts | 25.5% | Bingham McCutchen | -9.8% |

last year, alongside Jenner & Block; Wachtell, Lipton, Rosen & Katz; and U.K.-based firms Pinsent Masons and Simmons & Simmons.

Wachtell was among the elite practices to benefit from a buoyant U.S. M&A market in 2014, with an influx of European buyers, record high deal valuations and a deal count nearing 2007's peak. The total value of U.S. M&A surged 56.6 percent to a record \$1.4 trillion in 2014, nearing 2007's peak, according to data provider Mergermarket. Wachtell's average PPP remains the highest of any Global 100 firm, rising 15.7 percent, to \$5.5 million. (Only one other Global 100 firm tops \$4 million: Business litigation specialist Quinn Emanuel Urquhart & Sullivan posted a PPP of \$4.93 million last year, an increase of 9.8 percent.)

Pinsent Masons, a midmarket firm with particular strength in projects, energy and construction, was actually

**TOTAL GLOBAL 100
HEAD COUNT DIPPED
0.8 percent,
THE FIRST DROP
IN THAT METRIC SINCE 2010.**

among the five worst performers by PPP in last year's survey, with a drop of 13.1 percent, to \$630,000, but rebounded strongly after recent investments started to generate returns. The firm's 18.3 percent rise in revenue, to \$597.5 million, was the second-highest increase among the Global 100, beaten only by Silicon Valley tech specialist Cooley, which boosted its top line by 19 percent, to \$802 million, and climbed eight places on the gross revenue charts, to No. 45. (Cooley also achieved double-digit growth in PPP, which rose 10.9 percent, to \$1.735 million.)

Pinsent Masons managing partner John Cleland says his firm is starting to "reap the rewards" of its 2012 merger with Scottish firm McGrigors, its opening of offices in Paris, Munich and Istanbul, and a series of lateral hires in Asia and the Middle East. Pinsent Masons earlier this year launched in Australia with the opening of two infra-

structure-focused offices, in Melbourne and Sydney.

Jenner & Block had fallen out of the Global 100 last year, but returns to the rankings as the highest-placed new entrant, thanks to much improved financial results. The 400-lawyer firm's gross revenue increased 14.1 percent, to \$408 million, enough for it to place 91st in this year's survey. Jenner's average PPP rose even more steeply, 30.8 percent, to \$1.615 million, while its revenue per lawyer increased 23 percent, to \$1.015 million. The gains were in part due to its work for General Motors Corp., investigating the automaker's ignition-switch problem, which was led by Jenner chairman Anton Valukas. GM is a long-standing client of the firm, which handled GM's Chapter 11 bankruptcy in 2009 and its initial public offering the following year. Jenner & Block recently opened an office in London to meet the increasing international needs of its clients.

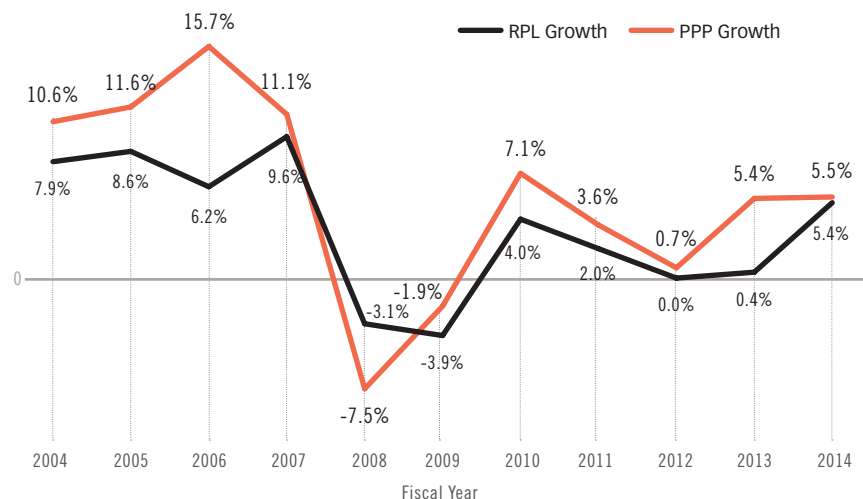
COMINGS AND GOINGS

Jenner is joined by four firms breaking into the Global 100 for the first time: Williams & Connolly, Taylor Wessing, Jackson Lewis and Pepper Hamilton. Philadelphia-based Pepper Hamilton's entry was driven by its IP and white-collar practices. The firm's IP department recorded a 24 percent increase in revenue last year, thanks in part to recoveries landed in 2014 for work started before last year, while its white-collar litigation and investigations team achieved growth of almost 18 percent after a series of high-profile representations of Johnson & Johnson, Astellas Pharma US, Inc. and Supreme Foodservice GmbH in separate federal investigations. Overall, the firm's revenue increased by almost 3 percent, to \$384.5 million, while its RPL rose 2.7 percent, to \$755,000.

European firm Taylor Wessing's performance, meanwhile, was largely fueled by its U.K. offices. The firm, which was formed in 2002 through the merger of London-based Taylor Joynson Garrett and German firm Wessing & Berenberg-Gossler, recorded an 8.2 percent increase in U.K. revenues, to 121 million pounds (\$199 million). But its results were diluted by its European practice, which comprises the majority of its lawyers, due to a weakening of the euro. The firm, which is best known for its strength in IP and technology, recently launched new of-

The Historical View

Although revenue per lawyer and profits per partner have rebounded, they have not reached the growth levels of the pre-recession boom.



fices in Palo Alto and New York, and entered into an exclusive association in Korea with Seoul-based DR & AJU.

Those five firms gain entry to the Global 100 at the expense of Cahill Gordon & Reindel; Drinker Biddle & Reath; Australian firms Allens and Clayton Utz; and Canada's McCarthy Tétrault.

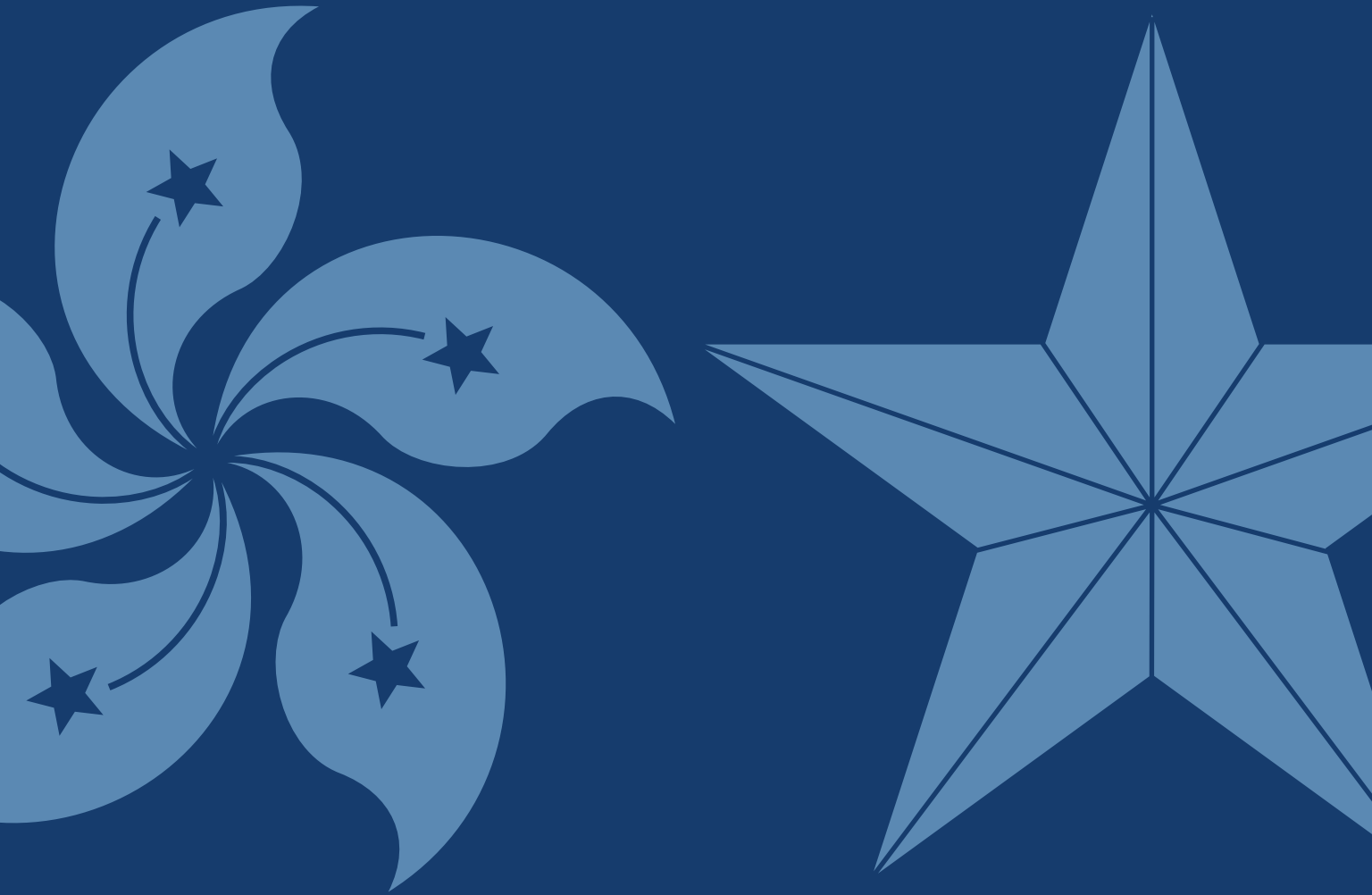
Although Allens, Clayton Utz, Drinker Biddle and McCarthy Tétrault had been long-standing fixtures in the Global 100; Cahill's presence in the rankings was much more fleeting. The New York-based firm only joined the Global 100 last year, falling back out at the first opportunity despite a strong showing by its core leveraged-finance practice, which scored roles on five of the largest buyouts of 2014, including The Blackstone Group's \$5.4 billion acquisition of Gates Global Inc. and Vista Equity Partners' \$4.3 billion purchase of Tibco Software Inc. Cahill's gross revenue was down 1.7 percent in 2014, to \$380 million, while its net income fell 4.5 percent, to \$224 million.

Cahill executive committee chair William Hartnett says the firm is "never satisfied" when it fails to meet its expectations for growth, adding that there were "no excuses" for the firm's results in 2014. "Just a matter of we did not turn enough [work-in-progress] into revenue," he says. The firm is still a powerhouse, though: Even though the firm's PPP fell 4.4 percent in 2014, Cahill's partners are still taking home, on average, more than \$3.6 million, which would have put it in fifth place on the Global 100's profits per partner rankings.

THE TOTAL VALUE
OF U.S. M&A SURGED
56.6 percent
TO A RECORD
\$1.4 trillion,
NEARING 2007'S PEAK.

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THE GLOBAL 100

New Frontiers

Firm leaders and observers have various takes on five emerging global markets.

BY CHRIS JOHNSON

FOR MANY GLOBAL 100 FIRMS, OFFICES IN HIGH-GROWTH markets have been a useful hedge against slowdowns at home. But although the U.K. and particularly the U.S. have rebounded strongly from the recession, there are now few emerging markets that aren't blighted by some degree of uncertainty or malaise.

"It's quite difficult to get wildly optimistic about any international markets at the moment," says for-

mer Clifford Chance global managing partner Tony Williams, now a law firm consultant at Jomati. "Firms are viewing these markets with a degree of uncertainty, and a lawyer's initial response to uncertainty is to do nothing."

Here's a quick snapshot of some of the key markets currently causing Global 100 firms to either lick their lips or scratch their heads.

China

This country has long been a challenging place for Global 100 firms, and it's only getting harder. Almost every major international firm now has at least one office in the country, so competition is fierce.

Global 100 firms have historically focused on handling inbound investment work for non-Chinese clients. That work has become commoditized, lawyers say, and is now dominated by domestic Chinese firms, which are evolving into larger and more sophisticated competitors to the international elite. These local firms now handle the majority of routine transactional work in China, such as joint ventures and smaller acquisitions, and boast strong relationships with Chinese corporations. They have two other significant advantages over Global 100 firms: Their rates are significantly lower and they are protected by strict bar rules that prevent international firms from practicing Chinese law, meaning a local firm has to be retained on each side of any China matter. "Those who try to compete with indigenous Chinese firms on the ground for inbound work will lose," says Orrick, Herrington & Sutcliffe chair Mitchell Zuklie.

Global 100 firms have always viewed China as a long-term play. Although outbound work for Chinese clients can be lucrative, few firms, if any, actually make a profit on the ground in China. Still, the perception has been that you can't claim to be a truly global firm without having some

presence in the world's second-largest economy. As the global chair of one U.S. law firm says, when asked what his firm's strategy is in China: "Simple: To lose less money than any other U.S. firm in China."

But some firms are beginning to question the need for a sizeable practice in China. Earlier this year, Fried, Frank, Harris, Shriver & Jacobson took the bold step of closing its Hong Kong and Shanghai offices, which were operating at a loss, and effectively withdrawing from Asia. "It was a question of discipline and good business judgment," Fried Frank chair David Greenwald said at the time. "It's not a decision we took lightly. We took a rigorous view on the performance of the practice, and our view was that the prospects for growth did not justify the cost." With China suffering its own economic slowdown, punctuated in late August by a plunge in Chinese stock prices, which led to nerve-rattling aftershocks in America, the level of scrutiny to which Global 100 firms are subjecting their Chinese operations is only likely to increase.

The picture isn't all bad, however. While large-scale deal activity, particularly in M&A and initial public offerings, has dropped off in China, there is still a good deal of corporate advisory and other finance work to keep Global 100 attorneys busy. And many countercyclical areas, such as investigations and litigation, are booming, firms say.





Africa

The continent is at the top of the agenda for many Global 100 firms, which are keen to tap into one of the world's largest and fastest-growing markets. The potential is huge: Africa's population is predicted to double to 2.4 billion in the next 35 years, with an 800-million-strong middle class, according to a recent report by the nonprofit Population Reference Bureau. Africa also benefits from huge (and increasing) investment from China. During a visit to the region in 2014, Chinese Premier Li Keqiang announced that the country expects to increase its investment in Africa to \$100 billion by 2020.

Global 100 firms say they expect to see a boom in energy, infrastructure, real estate and technology work. Again, the link to China will for many law firms be key: China's government is due to help finance projects in Africa totaling \$1 trillion through 2025.

Most international firms now have dedicated Africa teams. Some have established a physical presence there,



typically in South Africa, the continent's most developed economy and home to an increasingly crowded legal market, and to a lesser extent in countries such as Morocco. But interest is now shifting to high-growth and often resource-rich countries including Angola, Ghana, Kenya,

Mozambique and Nigeria (which recently overtook South Africa as the continent's largest economy). "People talk about Africa, but really they're talking about a diverse group of 54 recognized states," says Alan Hodgart, a consultant at Hodgart Associates.

It is unlikely that Global 100 firms will open multiple offices across Africa in the near future, however. These are markets beset by political and economic uncertainty, corruption and issues around personal security. Instead,

international firms are busy cultivating relationships with local firms—itsself a challenging task, due to the limited number of firms present in some of the less developed African countries.

Latin America

Global 100 firms say they see sizeable opportunities in Latin America, thanks to its wealth of high-growth and underlawyered markets. “There’s no riper market for international firms than Latin America,” says Dentons chair Joseph Andrew. “It’s the next great frontier for international law firms.”



International firms continue to pour into São Paulo, but a protectionist regulatory environment and fractious relationships with leading local firms have long made life in Brazil challenging, even before the economic slowdown that has pushed the country to the edge of recession. One of the main goals for leading international firms in Brazil was to capture outbound capital

markets and other transactional work, but with M&A having largely ground to a halt, Global 100 lawyers say Foreign Corrupt Practices Act (FCPA) and investigations work is now key. “FCPA is involved in everything from M&A to finance,” says Jones Day Latin America head Luis Riesgo. “It’s always the very first thing we talk about with clients.”

Elsewhere in Latin America, the Mexican government’s massive program of denationalization of a series of industries and the opening up of the country’s national-resources sector has fueled significant growth of Global 100 practices, while the fast-growing markets of Chile, Colombia and Peru are also proving attractive. An increase in intra-Latin America deals is also helping to reinforce a view of the region as a long-term bull market, albeit one with economic and political risks, that is likely to continue to suffer potentially wild swings in prosperity.

Russia

Firmly at the other end of the spectrum is Russia. The country spent several years in the late 1990s and early 2000s as one of the world’s hottest legal markets. Global



100 firms invested heavily in Moscow, eager to tap into the seemingly constant flow of large-scale IPO and M&A deals. The contrast to current market

conditions could not be more stark. Russia’s economy, and the prospects for Global 100 firms, have been decimated by Western economic sanctions, a collapse in the value of the ruble and the continued depression of global oil prices. Each of the 10 international firms interviewed for this piece said they have significantly downsized in Russia, through a combination of relocations, hiring freezes and layoffs. Many are now considering whether to pull out entirely, though it is more likely that most will retain a barebones presence.

“Everyone is wondering what on earth is going on in Moscow,” says the global CEO of one U.S. law firm with an office in Russia. “The amount of lawyers international firms have shed in Russia is stunning. We’ve trimmed it right back to the point where only people that are essential to keeping the office running are still there, just to minimize the amount of money we’re losing.”

Middle East

Another oil-rich region, the Middle East, is faring somewhat better than Russia. In the United Arab Emirates, Dubai has rebounded strongly after having been bailed out to the tune of \$10 billion in 2009 by neighboring Abu Dhabi. Dubai has in recent years cemented its position as the regional capital of the Middle East and is home to most Global 100 lawyers based in the region. They’re kept busy by a broad range of



regional and international clients, including major investment banks, Asian sovereign wealth funds and European private-equity houses. Dubai is a hub for business throughout the region and a gateway for outbound investment

into markets such as North and sub-Saharan Africa. Competitive pressures remain high (the city is arguably overlawyer) but transactional dealflow is at a postcrisis high.

A subtle change in attitude has occurred, however, with a group of leading international firms questioning the continued need to have multiple offices within the region. Several Global 100 firms, including Baker Botts, Herbert Smith Freehills and Latham & Watkins, have pulled out of Abu Dhabi over the past 12 months. The closures aren’t related to the continued slump in global oil prices, however. Unlike in Russia, international law firms say the Middle East has so far been largely unaffected. The decisions to pull back were instead driven, the firms say, by changing client preferences. Abu Dhabi is a much more local market than Dubai, dominated by work for the government; its sovereign fund, the Abu Dhabi Investment Authority; and the ruling Al Nahayan family.

“There has been a major shift over the last year or two in that the entities in Abu Dhabi have indicated that they’re going to instruct the best law firms, regardless of where their lawyers are located,” Herbert Smith’s Middle East head Zubair Mir told *The American Lawyer* in August. “That led us to take a very hard strategic look at our footprint in the [United Arab Emirates]. Given that Abu Dhabi and Dubai are about an hour’s drive apart, it made sense to consolidate the offices, rather than continue to have our lawyers and resources split between the two.”

Lawyers say they are yet to see whether the sustained slump in oil price will affect spending on capital projects in the region, but the size of Middle Eastern sovereign funds and their role as global investors means it will likely continue to be an important part of Global 100 networks.

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THE GLOBAL 100

Willkommen, Laterals!

U.S. firms have set their sights on Germany, shaking up that country's lateral market.

BY JULIE TRIEDMAN

ON OCT. 1, GREENBERG TRAURIG UNVEILS ITS NEWEST outpost, a 50-lawyer office in Berlin. Greenberg's launch into the German market, by way of absorbing the entire German arm of U.K.-based Olswang, may be the largest mass lateral migration there since 2008, when Orrick, Herrington & Sutcliffe acquired a 55-lawyer German firm.

Greenberg's chief executive, Richard Rosenbaum, says he spent a decade looking for the right group upon which to build the 1,800-lawyer firm's German base. He says he spent a year negotiating and planning with the Olswang lawyers, who bring expertise in many of the same sectors—such as real estate, tech, telecom and media—that Greenberg touts. “We’ve been counting down the days,” Rosenbaum says.

Greenberg is just one of a crop of U.S.-based firms shaking up the country's lateral market. A few, including Jones Day and Latham & Watkins, are taking aim at the four long-dominant Magic Circle firms: Allen & Overy, Clifford Chance, Freshfields Bruckhaus Deringer and Linklaters. While the four U.K.-based firms are still far ahead in head count (the largest, Freshfields, has about 500 lawyers in Germany) “the gap’s closing rapidly at the moment,” says Jones Day’s Ansgar Rempp, partner-in-charge of the German region.

Driving U.S. interest is a surge in deals work in Europe's largest economy; a slew of regulatory changes, particularly in the energy area; Germany's growing importance in European intellectual property litigation; and its growing reputation as a haven for venture capital-backed startups. Angling for a piece of the German legal market these days are roughly 65 international firms, up from about a dozen in 1999, according to Nick Shilton, the Frankfurt-based CEO and co-founder of global legal search firm Shilton Sharpe Quarry Ltd.

Germany is the world's fourth-largest economy, notes K&L Gates chair Peter Kalis, commenting on his firm's 50 percent growth there, from 42 to 63 lawyers, over the past five years. In addition, “it’s got an extraordinary midmarket of established companies with a global footprint,” he says.

In the past year, the firm has added a tax partner, an investment management partner and an IP partner in its Berlin and Frankfurt offices, and Kalis says he expects more additions in the coming months. Competition for top talent is getting fierce, particularly in the hottest areas. The number of partner lateral moves in the past year is “unprecedented in this market,” Shilton says.

In this contest for talent, several U.S. firms are ascendant, say Shilton and other market watchers. Unlike their Magic Circle rivals, which merged with large domestic firms in the 1990s, they have mostly had to rely on cherry-picking their way to growth. (The exceptions: Greenberg, Orrick and Morrison & Foerster, which nabbed Hogan Lovells' 30-lawyer Berlin office in 2013 and reportedly was in talks with the Olswang group that ultimately joined Greenberg.)

Head count gainers, according to a review of NLJ 350 demographic data between 2010 and 2014, include at least nine U.S. firms. Focusing in on the burgeoning IP and antitrust litigation, Quinn Emanuel Urquhart & Sullivan opened in Mannheim in 2010 and has since added Hamburg and Munich; it had 37 lawyers in Germany as of 2014, up from six. Many of the new hires in Quinn Emanuel's ranks came from Allen & Overy.

Jones Day lists 104 lawyers in its German offices, an increase of 37 lawyers since 2010 and up seven from last year. And Reed Smith opened a second, 11-lawyer office in Frankfurt in June, bringing its total German head count to 46. Others posting double-digit head count growth in Germany between 2010 and 2014 include DLA Piper (up 21 percent to 156 lawyers); Latham & Watkins (up 13 percent to 153); Milbank, Tweed, Hadley & McCloy (up 24 percent to 41); Morrison & Foerster (from zero to 35); and Weil, Gotshal & Manges (up 21 percent to 47).

ON THE INSIDE TRACK

Nonlockstep U.S. firms have a financial edge in the lateral market, routinely offering partners 50 to 70 percent more



GWEN KERAVAL

than their U.K. or U.S. lockstep or modified-lockstep rivals. “The financial piece is without a doubt significant” when it comes to recent lateral moves in the German market, says Shilton.

There’s also a growing perception in German legal circles that U.S. firms offer greater opportunities for professional advancement than their more hierarchical, London-centric rivals. “The U.S. firms tend to be less top-down in management than many London firms,” appealing to some

more ambitious German partners, Kalis says.

“Traditional firms are having trouble making opportunities for younger lawyers,” says Christian Schede, a real estate lawyer who leads the Olswang group that joined Greenberg. Schede adds that the firms’ base in the United States is also a big draw, because the U.S. remains the largest legal market for the major German companies.

Firms such as Jones Day and Latham assert that they have an additional cultural edge, saying that their firms re-

ward teamwork more than purely eat-what-you-kill firms. “We aren’t rewarding origination or elbowish behavior,” Rempp says. “This is a message that has arrived in Germany and there are a lot of strong laterals who want to work in a collegial environment.”

In the past year, Jones Day has added partners to its local disputes and tax practices, but the firm is building up a variety of corporate and IP practices as well. “Typically we look at the lateral market opportunistically,” Rempp says.

Like Jones Day, Latham “is long on Germany,” says vice chair Ora Fisher. Since the firm first opened in Frankfurt and Hamburg in 2001, it has slowly expanded across its German four offices, with a current focus on private equity and leveraged finance, in tune with a larger strategic plan that also includes London. Among nonvereins, only White & Case, with 224 lawyers as of 2014, is larger in Germany. “Latham is the firm that, among American firms, by a considerable distance has made the most progress marrying critical mass and quality,” Shilton says.

In August, Alexandra Hagelüken joined former Clifford Chance colleagues Oliver Felsenstein and Burc Hesse at Latham. The three are among 13 partners that Clifford Chance has lost in Germany in the past year. A Clifford Chance spokeswoman says that Felsenstein, Hagelüken and Hesse are “highly rated” but says the firm doesn’t anticipate that the departures will affect its ability to serve clients. Still, Felsenstein is among the best-known private-equity lawyers in Germany, managing local legal matters for London-based HgCapital LLP and New York-based Permira Advisers LLP. The senior lawyer, who joined Clifford Chance a decade ago after heading the German private-equity practice at British firm Lovells, is “without a doubt a major figure within German PE,” says Shilton, who declined to comment on whether he was involved in the move.

Felsenstein also helped oversee Clifford Chance’s restructuring of its partnership last year, according to German legal publication JUVE. The slimming down and refocusing of the German offices came after a review led by Peter Dieners, the newly installed managing partner in Germany. Several partners were let go as part of that, the firm confirms. Clifford Chance now has 72 partners spread across Düsseldorf, Frankfurt and Munich, down from 83 in December. Freshfields and Linklaters went through similar restructurings in 2009 and 2007, respectively.

Other high-profile German partners have recently left Clifford Chance. In the spring, local corporate head Arndt Stengel decamped for Milbank in Frankfurt, energy partners Thomas Burmeister and Peter Rosin joined White & Case in Düsseldorf and IP litigation partner Thorsten Vormann joined K&L Gates in Frankfurt.

Latham can afford to bankroll growth in Germany; the 2,100-lawyer firm posted record profits per partner last year. But it’s hardly insulated from the hot lateral market, particularly with regard to its U.S. rivals: In June, Weil plucked Latham’s Munich private-equity partner Volkmar Bruckner, and in July, Jörg Kirchner, former global corporate vice chair and founder of Latham’s Munich office, joined Kirkland & Ellis. Kirchner is considered a major loss; he was private-equity firm Bain Capital LLC’s go-to partner in Germany.

THE CONTRARIANS

Still, for every U.S. firm that is adding lawyers, nearly as many appear to be pulling back. The market is notoriously fragmented; a presence in several cities—Berlin, Düsseldorf, Frankfurt, Hamburg and Munich—has long been viewed as a requirement, because each has a significant and distinctive legal market [“All Over the Map,” May 2014].

Now, some U.S. firms are reconsidering that multioffice commitment. Seven years after it doubled its presence in the country via a merger, for example, Orrick announced

Succeeding in Germany “takes endurance, and it’s not done with one office and 10, 20, 30 lawyers,” says Jones Day’s Ansgar Rempp.

this spring that it would cut two of its four offices; they were shuttered Sept. 30. And Shearman & Sterling stunned the German market in 2013 when it announced that it would close two offices and focus entirely on Frankfurt. Long considered the leading U.S. firm in the market, its German head count had shrunk to 27 as of early September from about 120 in 2007.

At least five other firms experienced double-digit declines in German head count between 2010 and 2014. They include White & Case and Hogan Lovells, the two U.S. firms with the largest presence in Germany, which have both shed dozens of lawyers there in the past five years. Other decliners include Mayer Brown (down to 71 lawyers in Germany in 2014 from 80 in 2010); Skadden, Arps, Slate, Meagher & Flom (29 lawyers, down from 33) and Cleary Gottlieb Steen & Hamilton (55 lawyers, down from 70). Sidley, meanwhile, closed its only German office last year after a slow decline from a peak of 18 lawyers in 2007. Succeeding in Germany “takes endurance, and it’s not done with one office and 10, 20, 30 lawyers,” Jones Day’s Rempp says.

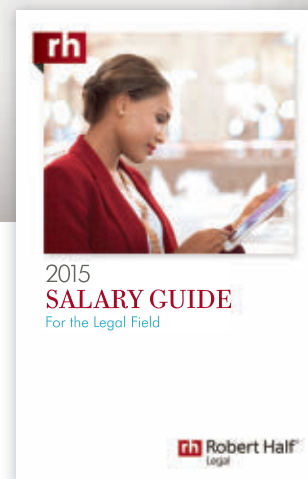
“We’re happy to see other firms buckling at the knees,” K&L Gates’ Kalis says. But “I really wonder about U.S. firms that have retreated and relinquished offices. That seems very ill-founded.”

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THE GLOBAL 100

The Exchange Edge

Firms with big global practices grapple with international currency swings.

BY MP McQUEEN

GLOBAL LAW FIRMS INCREASINGLY ARE WRESTLING WITH international currency fluctuations, including China's sudden decision in August to devalue the yuan, which led to worldwide turbulence in financial markets.

At Citi Private Bank Law Firm Group, chairman Dan DiPietro says, "Foreign exchange has been among the three or four top issues that come up regularly in discussion" with firms in the past six months. But a recent survey of 17 global law firms that are bank clients found that most firms were not doing anything differently in response to the volatile foreign-exchange rate environment, although some are now considering hedging strategies, DiPietro says.

Law firm partners and financial advisers say the challenges are coming after a period of relative stability in exchange rates that coincided with a period of global expansion for big law firms. The euro and British pound had been moving in fairly stable lockstep with the U.S. dollar since 2010. But it began to unravel about midyear 2014, because of ongoing economic problems in Greece and elsewhere in Europe. The euro fell to fresh lows against the U.S. dollar in spring 2015 but was correcting somewhat after the fall of the yuan this summer as this issue went to press. The Chinese yuan, also known as the renminbi, reached a high against the U.S. dollar late in 2014 before being devalued by the central People's Bank of China on Aug. 11.

Now, increasing foreign-exchange volatility is forcing some firms to think about coping strategies for dealing with currency movements and their effect on firm revenue and partner compensation. Foreign-exchange rate changes affect not only law firms' income, especially for those that do a large volume of business abroad and are paid in foreign currency, they also complicate the process of compensating partners living outside their native countries in regions where currency is losing value.

The yuan's devaluation in early August was promptly followed by currency devaluations in other emerging markets like Latin America, linked to tumbling commodity prices from slowing economic growth in China. (Slower growth is what prompted China to devalue the yuan in the first place.)

Volatility in stock exchanges worldwide accelerated in the days following China's announcement. The Standard & Poor's 500 Index lost 10.19 percent between August 19 and 25 before recovering somewhat, with days of wild swings in global markets. The U.S. dollar also saw fluctuations against the euro, Swiss franc and the Japanese yen.

But even before the devaluation by China, Magic Circle firms had reported that their financial results for the 2014-15 fiscal year were adversely affected by euro depreciation. Though European dealmaking rose overall in the year prior to June 30, according to Mergermarket Ltd., Linklaters (profits per partner up 2 percent, gross revenue up 1 percent), Clifford Chance (PPP down 2 percent, gross revenue down 0.7 percent) and Freshfields Bruckhaus Deringer (PPP down 8 percent, gross revenue up 1 percent) all cited currency fluctuations as putting pressure on PPP.

Freshfields global managing partner David Aitman said via email: "Movements in currency exchange rates over the last year have affected all international businesses. Companies and law firms with significant businesses in the Eurozone will particularly have felt this." He said underlying business at Freshfields was good. Reporting on a constant-currency basis, revenue increased by four percent, he says.

Firms that are paid in euros for their legal work have been exposed to greater currency risk because their fee income declines when clients pay in currency that is losing relative value, DiPietro says. "My experience of having spoken with the Magic Circle firms before they released their numbers [is] they recognize they have more exposure to the euro than a lot of the U.S.-centered firms that have significant London presences, and some euro presence and some Asian presence," he says.

THE EFFECT ON U.S. FIRMS

Baker & McKenzie, a Verein with a large U.S. presence, said its earnings for the year ending June 30 also were affected by the strengthening of the U.S. dollar against others of 35 currencies in which it collects revenues. Global chair Eduardo Leite told the Am Law Daily that the firm



had a strong year but “suffered a lot because of currency fluctuations. Our Latin America practice had double-digit growth in revenue in local currency, but recorded a decline in U.S. dollars.”

Baker & McKenzie CFO Paul Eichelman says currency fluctuations and volatility in financial markets are nothing new to the firm, which has operated internationally for more than 60 years. He says the firm’s offices generally use local attorneys, who usually bill in local currencies. In a typical year currency losses in one country are offset by gains in another, and results from all offices are reported in U.S. dollars. “But in the year ending June 30, almost every major currency weakened against the U.S. dollar,” he says.

“The euro was down 19 percent, the British pound was down 8 percent, the Aussie dollar was down 18 percent, the

Japanese yen down 21 percent and the Brazilian real was down 40 percent and the Canadian dollar was down 17 percent.” Because the strengthening of the U.S. dollar started in May 2014 and took place over nearly the whole fiscal year, the effects were more noticeable, he says: “The timing was not to our advantage, so to speak.” Revenue grew 2 percent on a constant currency basis but sank 4.3 percent measured in U.S. dollars, to \$2.43 billion. Seventy percent of revenues are outside the U.S., Eichelman says.

Deputy chief executive David Hudd of Hogan Lovells, also a verein, says the firm reports financial results in U.S. dollars, while Magic Circle firms report in British pounds. Hudd says just below 60 percent of Hogan Lovells’ billing is in dollars, 20 percent in pounds and 20 percent in euros, with small percentages in other currencies. Euro deprecia-



tion did not materially affect Hogan Lovells' 2014 financial results, he says, but likely will affect 2015 revenues, though some firm expenses also will be reduced because of it.

Hudd says that, like many international firms, Hogan Lovells reports financial results externally using average exchange rates throughout the year but reports internally using constant currency to remove currency effects. "You can have just as strong a year last year as this year but because of currency movements it can appear weaker," Hudd says.

U.S.-based firms with limited operations abroad, which often arrange for payment for services in U.S. dollars, don't appear to have suffered as much from currency devaluation and depreciation as those based in the U.K. and Europe,

"In the year ending June 30, almost every major currency weakened against the dollar," says Paul Eichelman, CFO of Baker & McKenzie.

but most don't report earnings until the end of this calendar year. Firms interviewed shortly after the yuan devaluation said they hadn't faced transaction disruptions because of it.

Morrison & Foerster's Charles Comey, a corporate finance partner in Palo Alto who says 90 percent of his work involves Chinese or U.S. companies doing business in the U.S. or Asia, says, "China's arguably heavy-handed management of its currency notwithstanding, people still perceive the strategic imperative of continuing to engage with China and develop opportunities in that market." Comey says his clients have not asked for currency hedging mechanisms in their contracts and that no deals had been scuttled but "people are increasingly watchful." He says no one had attempted to renegotiate pending deals "but where transactions are still being negotiated, as this continues to play out, there may potentially be effects on valuation pricing or other terms, on a case-by-case basis" as investors seek better terms.

Trevor Zeyl, a corporate M&A associate in Toronto at Norton Rose Fulbright, also a verein, says he believes the currency devaluations actually may increase deal activity in the short term. "Acquirers will become targets, as in the case of Chinese companies, but will also reflect an increase in the aggregate number of deals spurred by a greater discrepancy between a strong U.S. dollar and other regional currencies such as the Euro and those of Latin American countries," he says.

Certain practice groups at some U.S. law firms see opportunities in the currency shifts. "For the companies that borrowed in dollars, their debt burden is [now] significantly higher," says Kirkland's Neil McDonald, a Hong Kong-based partner who specializes in restructuring for distressed Asian companies. "It hasn't happened yet, but the pressures are there and we are seeing that in the next six months there could be some interesting tasks for these companies ahead."

Kirkland restructuring partner James Sprayregen says he

believes his firm has a stronger practice in dollar-denominated debt than many Magic Circle firms. "It is tailor-made for our business. We are poised to be able to benefit at this firm to the extent that these companies need help," he says.

COMPENSATION CONCERNS

Another problem arising with more currency instability involves paying partners equitably in countries where local currency is declining, especially overseas partners. The legal industry doesn't have a standard way of dealing with the issue. The matter is emerging at a time when many international firms that traditionally have had lockstep compensation systems are under pressure to increase partner compensation to match U.S. firms' expanding operations in the U.K. and Europe. If some partners are paid in U.S. dollars but others are paid in declining local currency, inequities can result, fueling resentments, says a foreign exchange director at a law-firm lender who was authorized to speak only on background. U.S. firms often offer part-


ners 10 to 30 percent more in compensation than other firms abroad, and the gap can widen even more when the dollar is moving upward. The best way to promote a standard of fairness across the firm is not to have situations where partners can choose to flip from one currency to another, he says.

DiPietro says most law firms, however, don't have a formal foreign-exchange arrangement with a bank for hedging currency fluctuations, for non-U.S. partner compensation. That's either because they don't realize they have currency exposure, or because they don't deal with the issue. Most don't adjust partner compensation in the current year as a result of large currency movements and those that do mainly do so through the bonus pool, distribution holdbacks or adjustments to compensation. Others make subsequent-year tier adjustments, he says.

Some firms are considering using hedging strategies to guard against fluctuations, DiPietro says. Some of the tools firms use include forward contracts and "plain vanilla" options, according to the bank foreign-exchange director interviewed for this story. Forward contracts are agreements to buy or sell a certain amount of currency at a prespecified price with a set maturity date. More firms are using this tactic than in the past, the director says. "Vanilla options" and protective collars are less common tools law firms also use to manage currency risk. A vanilla option is a financial instrument that allows the holder to buy or sell an asset at a given price, but doesn't require him to do so. A collar uses currency price caps and floors as braking mechanisms. They're usually used to limit losses, but they also can limit gains.

The director says that as firms grow internationally, currency fluctuation will be a part of everyday business "and that is why it is important to tackle the issue."

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THE GLOBAL 100

Building Your Brand

Vereins improve their position in the latest iteration of a client-awareness survey.

BY MP McQUEEN

CHALLENGERS CONTINUE TO MAKE PROGRESS AGAINST established, old-line firms in the minds of senior counsel at big corporations, the latest ranking by Acritas, the United Kingdom-based market research firm, shows.

DLA Piper jumped to second place in the Acritas Global Elite Law Firm Brand Index 2015, gaining 12 points and two places from last year, to rank behind Baker & McKenzie, which has topped the index since its inception in 2010.

DLA Piper gained favor in the U.K. and China since the last survey, displacing Clifford Chance, which dropped to third place. DLA Piper also had the biggest leap in scores among the top 20 firms in the past five years, jumping five places and 19 points since 2010.

Jones Day, Freshfields, Linklaters, Allen & Overy and

White & Case, in that order, rounded out the top 10 global firms in the global brand-strength survey.

All of the top five firms were known to respondents in every region including Canada, the United States, Latin America, the United Kingdom, mainland Europe, the Middle East, Asia-Pacific and Africa, the report found.

"We are continuing to see a decline, in the brand sense, of premium-priced brands and the rise of challengers," says Lisa Hart Shepherd, chief executive of Acritas.

Magic Circle firms in general continued losing ground in global brand strength in the latest report. Three Magic Circle firms (Freshfields Bruckhaus Deringer, Linklaters and Allen & Overy) have dropped out of the top five in the Global Index since 2010, displaced by DLA Piper, Norton Rose Fulbright in fourth place and Hogan Lovells in fifth place.

Some venerable U.S.-based firms, such as Skadden, Arps, Slate Meagher & Flom, also have fallen in the global rankings over time. Skadden, the leading brand in the United States in the Acritas survey of U.S. brands released earlier this year, was ninth in 2010 in the global index but is now 11th. Sidley Austin also fell four places in that period.

Brand awareness was highly concentrated among the top 20 firms in the ranking, Shepherd says. (Fourteen of the those 20 firms are Acritas clients, Shepherd says.) Of the 500 or so firms recalled by survey respondents, 40 percent of the index scores were held by the top 20 firms and 28 percent were held by the top 10.

Building global brand awareness is difficult but important in an increasingly fragmented market, where the average client works with 12 different firms, Shepherd says. Attention-grabbing mass lateral hires and mergers, such as the Morgan, Lewis & Bockius absorption of hundreds of former Bingham McCutchen partners last November, garner notice, she says. Frequent positive client interaction also helps, she adds, by bringing in more clients and raising the firm's profile.

A THOUSAND CLIENT INTERVIEWS

The Global Elite Law Firm Brand Index is based on detailed telephone interviews of 1,059 heads of legal depart-

Best Known Firms the World Over, 2015

A new study surveys 1,048 big companies.

| Rank | Firm | Score |
|------|-------------------------|-------|
| 1 | Baker & McKenzie | 100 |
| 2 | DLA Piper | 60 |
| 3 | Clifford Chance | 56 |
| 4 | Norton Rose Fulbright | 46 |
| 5 | Hogan Lovells | 43 |
| 6 | Jones Day | 42 |
| 7 | Freshfields | 41 |
| 8 | Linklaters | 40 |
| 9 | Allen & Overy | 37 |
| 10 | White & Case | 29 |
| 11 | Skadden | 28 |
| 12 | King & Wood Mallesons | 27 |
| 12 | Herbert Smith Freehills | 27 |
| 14 | Denton & Dache | 24 |
| 15 | Latham & Watkins | 23 |
| 16 | Sidley Austin | 19 |
| 17 | Kirkland & Ellis | 18 |
| 17 | CMS | 18 |
| 19 | Morgan Lewis | 17 |
| 19 | Evershed | 17 |

Source: Acritas Research Ltd.



ments, their deputies or chief operating officers at 1,048 companies at randomly selected companies with gross revenues of at least \$1 billion. The interviews were conducted in the first eight months of 2015.

The main part of the survey consists of more than 50 questions about law firm brand, usage and market trends. The index is based on responses to four questions, including asking counsel to name the “first five law firms that come to mind,” which three firms clients feel “most favorable towards,” and the three firms they’re likely to consider for mul-

tijurisdictional litigation in three or more countries and, separately, for multijurisdictional deals, in order of mention. Law firms are awarded points for awareness on a scale of 5 to 1 per mention, with 5 being the highest score for first mention. The total points are combined and the firm with the highest total sets the index at 100 (in this case, Baker & McKenzie) from which all the other firms’ index scores are calculated. A decline in performance of the leader therefore raises the other firms’ index scores.

One takeaway of the rankings chart on the previous

page is that the sun never sets on Baker & McKenzie's empire. The firm is highly favored by survey respondents for its global coverage. Baker & McKenzie outpaced its closest competition by 40 points, ranking first in each individual measure. Only the top five firms in the ranking, plus Latham & Watkins, had brand awareness in every one of eight regions, Shepherd says.

Several other firms aside from DLA Piper also have made leaps in brand awareness over the past five years, the survey found. Asia and Australia-based King Wood & Mallesons improved 28 places in rank and gained 16 points

WAYS TO EXPAND YOUR BRAND

Mary K. Young, a consultant at Zeughauser Group in Washington, D.C., says law firms trying to build their brands outside of their home base should start by figuring out their reason for entering a new market and how they can differentiate their services from competitors there. "You have to think through what you can offer that others can't, or what relationships you can leverage that others can't," she says.

Norm Rubenstein, another consultant at Zeughauser Group, advises firms establishing themselves in a new city or region to "find a way to integrate as rapidly as possible

into the local community. The local pro bono community is always in desperate need and can be a wonderful mechanism for establish-

Surveyed clients said they wished firms were more business-savvy and better knew clients' industries, risks and opportunities.

ing a local reputation." He says pro bono work gives potential clients "an opportunity to see the lawyers in action and see what the lawyers are capable of doing, and hear more about the firm and its value proposition."

in score. Dentons & Dacheng, which were reported together by Acritas pending completion of their combination, rose 27 places and gained 15 points. Kirkland & Ellis rose 22 points in ranking and 10 points in score. Norton Rose Fulbright gained 11 places and nine points, while CMS rose 19 and seven points. Hogan Lovells gained three places and five points since 2010. Many firms, including Skadden, Jones Day and Sidley Austin, lost points because they lacked recognition in some key regions and were regarded by respondents as being more regionally focused.

But the surge by the growing international players over the past five years has come mainly at the expense of the Magic Circle firms, the rankings show. DLA Piper entered the top five in 2012, pushing out Allen & Overy, which is now in ninth place. Norton Rose Fulbright entered the top five in 2014, pushing out Freshfields, now seventh. Hogan Lovells cracked the top five in 2015, pushing out Linklaters, now eighth. Clifford Chance is the only Magic Circle firm remaining among the top five, and it has lost 31 points since 2010.

Shepherd says corporate clients generally prefer to use the same firms they employ domestically for overseas work, if the firms have that capacity. "Unless clients are very familiar with working with a particular jurisdiction, they gain comfort from using a firm they trust at home to then look after their interests in a foreign jurisdiction" especially in difficult-to-navigate markets, she says.

"Once attention is won, the key is then to turn that awareness to favorability and then consideration," she says. "This is done by the promise of a great client experience and for much of the work, good value."

Shepherd says the firms with deeper local knowledge that do a broad range of work cost-effectively internationally are poised to gain ground against competitors.

When Acritas asked clients how law firms could improve their standing with clients, many companies said they wished firms were more business-savvy, and had a better understanding of their industries, business drivers, and potential commercial risks and opportunities, Shepherd says. Norton Rose Fulbright, an Acritas client, has organized itself around industry sectors, such as energy and life sciences/health care, with teams of lawyers drawn from different practice areas so that they understand issues arising in that sector. "This gives their people a competitive edge when it comes to having business discussions with clients, understanding the legal risks and potential gains," she says, and enables the firm to give "more practical business-savvy advice."

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How This Year's Top Ten Have Ranked Over Time

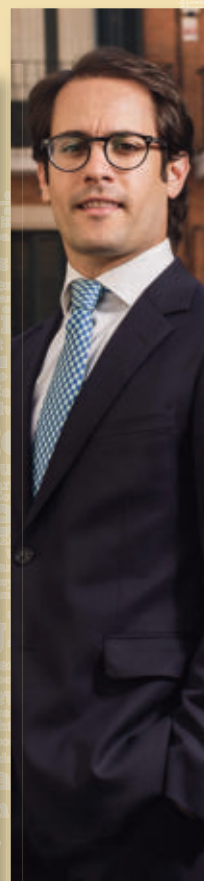
The group has been relatively consistent over the past six years.

| Firm | 2015 | 2014 | 2013 | 2012 | 2011 | 2010 |
|-----------------------|------|------|------|------|------|------|
| Baker & McKenzie | 1 | 1 | 1 | 1 | 1 | 1 |
| DLA Piper | 2 | 4 | 5 | 5 | 10 | 7 |
| Clifford Chance | 3 | 2 | 2 | 4 | 3 | 2 |
| Norton Rose Fulbright | 4 | 3 | 7 | 9 | 15 | 15 |
| Hogan Lovells | 5 | 8 | 9 | 8 | 7 | 8 |
| Jones Day | 6 | 9 | 8 | 11 | 6 | 6 |
| Freshfields | 7 | 6 | 3 | 2 | 2 | 3 |
| Linklaters | 8 | 5 | 4 | 3 | 4 | 4 |
| Allen & Overy | 9 | 7 | 6 | 6 | 5 | 5 |
| White & Case | 10 | 12 | 11 | 10 | 9 | 10 |

Source: Acritas Research Ltd.

THE GLOBAL LEGAL AWARDS

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Breaking the Mold

Merging the world's two largest cement companies, Holcim and Lafarge, required drastic steps, creative thinking and a lot of stamina.

BY CHRIS JOHNSON

WHEN THE CEOS OF THE WORLD'S TWO LEADING CEMENT companies, Swiss-based Holcim Ltd. and France's Lafarge S.A., sat down for lunch in the Hilton hotel in Strasbourg, France, in early 2014 to discuss a transformative merger of their companies, they had little idea of the 18-month roller-coaster ride of tense negotiations, myriad antitrust issues and last-minute shareholder revolts that was about to ensue.

The €40 billion (\$45 billion) combination, which finally closed in July, created a true global behemoth. LafargeHolcim, as the company is now known, boasts 115,000 employees across 90 countries and combined net sales for 2014 of €27 billion (\$30 billion).

"Putting together the number one and number two in the industry—it's the kind of deal where you look at it and think it's not possible," says Pierre-Yves Chabert, a corporate partner in the Paris office of Cleary Gottlieb Steen & Hamilton, who led the firm's team representing Lafarge and was one of the four individuals around the table in Strasbourg.

The antitrust challenges were of course considerable. Lawyers had to file 20 premerger notifications to antitrust authorities around the world, each with their own set of regulations and requirements—something that Homburger managing partner Daniel Daeniker, who acted for Holcim, describes as "a gigantic, multidimensional challenge."

The two companies had relatively significant overlap of operations in Brazil, Canada, India and the United States. But given that their headquarters were in neighboring France and Switzerland, it was clear from the outset that European approvals would present the greatest hurdle. In an attempt to avoid lengthy and costly negotiations with the European Commission, the companies quickly proposed what Chabert describes as "drastic" remedies that would result in significant divestitures of core assets,

including 24 cement plants. In every European jurisdiction, the company would take either the Lafarge or the Holcim business and carve it out into a new entity, to be sold to investors.

"We had a concept of one plus one equals one—there would be no increase in market share or strengthening of our position as a result of this transaction," Chabert says. "We started with the premise that we would make a lot of concessions, but it still wasn't easy. It took the European Commission quite a while to get into the mood of such a transaction, but they eventually saw that we weren't playing fools and trying to take advantage."

AFTER ALMOST EIGHT MONTHS OF BACK AND FORTH, THE companies finally received approval for their merger from the European Commission in December 2014. What followed next was somewhat unconventional.

The selling of remedy assets is typically a postclosing event: A merger is approved by antitrust authorities on the condition that certain assets are sold, and the company then has a fixed time period to sell those assets. If the company fails to sell the assets by the deadline, they are transferred to a trustee and sold at whatever price the trustee sees fit.

Holcim and Lafarge decided that the sheer magnitude of their divestiture package—comprising assets across five continents, offered in clusters and worth a total €6.5 billion (\$7.3 billion)—meant such an approach would be too risky.

"If we waited until after closing [to sell the assets], there was a huge danger that all the potential acquirers—and there aren't many in the world for a deal so large—would just wait six months and then buy on the cheap from the trustee," Chabert says. "We were extremely scared and concerned that such a huge





Cleary Gottlieb's Pierre-Yves Chabert:
"It's the kind of deal where you look at
it and you think it's not possible."



amount of assets could not be sold properly if everyone knew you were a forced seller.”

The companies decided not to close the merger until they had definitive agreements for the sale of the outgoing assets. As many as 40 preliminary offers were received for the assets, with 20 bidders remaining until the final round. “It was completely crazy,” Chabert says. “We had six different teams working on different clusters of assets, who each had to make sure that the bidders were all progressing at the same pace. It was extremely fluid and volatile.”

Holcim and Lafarge couldn’t afford to have a buyer pull out of the deal at the last minute, Chabert says. The companies were therefore “extremely strict” about bidders providing certainty of closing and demanded the insertion of a so-called hell or high water clause, meaning that the deal must go ahead irrespective of any difficulties the bidder encountered.

Even that wasn’t sufficient, however. The bidders were also asked to agree to a truly radical provision. If they were unable to complete the acquisition within six months, a European Commission-appointed trustee would sell the assets to any interested party at whatever price they could achieve, and the original bidder would then have to pay the potentially steep difference between the actual sale price and the originally agreed fee.

“That was quite a heavy step for us to take,” says Arthur Cox M&A partner Pádraig Ó Ríordáin, who acted for CRH plc, the Irish building-materials company that was the winning bidder of the LafargeHolcim assets.

The €6.5 billion deal represented a significant outlay for CRH, which at the time had a market cap of less than €15 billion. But after three weeks of intense negotiations in Paris—during which Arthur Cox lawyers dodged traffic on scooters shuttling to meetings at Cleary Gottlieb from their base in the offices of Holcim counsel Freshfields Bruckhaus Deringer—CRH triumphed over private-equity giant The Blackstone Group L.P. The transaction involved 11 law firms working across 12 jurisdictions, was financed through a mixture of cash on balance sheet, bank facilities and a €1.6 billion cash box placing and gave CRH 15,000 new employees and 685 new locations. It was the largest-ever acquisition by an indigenous Irish company, according to Dealogic.

“It did look like a very large deal for us to take on, but we realized the best way to win these immensely attractive assets was to buy them all in one go,” Ó Ríordáin says. “These weren’t secondary assets, they were core assets that the companies were only selling because they had to, and there was almost no overlap with [CRH’s] business. It was a potentially transformational deal.”

NOW HOLCIM AND LAFARGE WERE FREE TO LAUNCH THE primary tender offer and complete their merger. That was where things started to go badly wrong.

Although technically a merger of equals, the deal actually involved Holcim acquiring Lafarge. The “ideal scenario,” Chabert adds, would have been to create a holding company in a neutral—and tax beneficial—jurisdiction and then have that company acquire both Holcim and Lafarge. But the companies realized this would prove expensive, because of

each group’s change-of-control clauses—the provisions that trigger payments or other events when there is a change in ownership or management of a company—plus the cost of mandatory tender offers for either company’s outstanding shares. If Holcim were the target, for example, costs would have increased tenfold.

To restore the sense that the deal was a true merger of equals, the companies agreed to a series of compromises. So while the new company would be based at Holcim’s complex in Jona, Switzerland, Lafarge’s name would come first: LafargeHolcim. Similarly, while the merged company would be managed by Lafarge CEO Bruno Lafont as group CEO, the CFO would come from Holcim, the chief integration officer from Lafarge and the nonexecutive chairman from Holcim.

It helped that the company’s respective valuations meant that the exchange ratio—the rate at which existing shareholders in the premerged companies would see their stock converted into shares of the new company—was 1-to-1. “That never happens,” Chabert says of the even exchange ratio. “It was a perfectly balanced situation.”

This sense of equilibrium didn’t last for long. In March 2015, shortly after the agreement with CRH was signed, Holcim shareholders threatened to vote down the merger. Financial results for the final quarter of 2014, in which Holcim had outperformed Lafarge, meant the Swiss company’s shareholders were no longer happy with the 1-to-1 exchange ratio. Holcim shareholders also saw Lafarge CEO Lafont—reportedly nicknamed “Napoléon”—as potentially incompatible with Holcim’s more collegial culture.

“Finding out 10 months postannouncement that the mechanics of the valuation no longer worked was a huge challenge,” Homburger’s Daeniker says. “We also had to think about how to combine quite separate corporate cultures. Lafarge was very president-centric, even by French standards, whereas Holcim was very president-noncentric, even by Swiss standards. It was like Napoléon meets William Tell.”

The atmosphere in the resulting renegotiations was “anything but relaxed,” Daeniker recalls. “Nobody was giving high fives.” The exchange ratio was ultimately tweaked to 1-to-0.9, while Lafarge executive vice president Eric Olsen instead of Lafont was slotted for future CEO.

Although Daeniker says there were “two or three situations where we were absolutely staring into the abyss,” both he and Chabert say they never truly thought that the deal would fail. It was far too compelling a prospect for either side to walk away, they say. In a statement, the combined company said it expects to deliver merger-related synergies totaling €1.4 billion (\$1.6 billion) within the first three years. The deal also allowed the companies to shift the emphasis of their operations from Europe to higher-growth markets, which they anticipate will result in increased profits.

“It’s a once-in-a-lifetime deal,” Ó Ríordáin says. “The competitive complexities, the multijurisdictional issues and the overall significant meant it was by any stretch of the imagination the most interesting and best deal imaginable.”

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Witnesses to Justice

For 15 years, Shearman & Sterling sent legions of associates to support the International Criminal Tribunal for Rwanda.

BY MICHAEL D. GOLDHABER

WHEN SHEARMAN & STERLING NEEDED TO SLIM DOWN A few years ago, it was willing to shutter storied outposts in Munich and Düsseldorf. But Shearman's unofficial office in Arusha, the dusty third city of impoverished Tanzania, was sacrosanct.

Shearman House in Arusha is a cinder-block bungalow without an address, on a street that was only recently paved. The water must be boiled, the lights routinely flicker out between 8 and 10 p.m., and the beds need protective mosquito netting. In the mornings, Shearman lawyers awaken at the residential compound to the sounds of Maasai warriors or Muslim barterers whizzing by on "picky picky" motorbikes or propane 4x4s at the foot of Mount Kilimanjaro.

Over the past 15 years, Shearman has sent a relay team of 136 associates on one- to two-month Arusha sabbaticals to support the International Criminal Tribunal for Rwanda, which at the end of this year is winding up its United Nations mandate to bring Rwandan genocidaires to justice.

"Our partnership with Shearman & Sterling demonstrates the collaboration possible between public international law and private practice," says ICTR chief prosecutor Hassan Jallow. "I'm not aware of any other firm that's made such a long-standing and consistent contribution to international justice," adds appellate chief James Arguin. "In the face of uncertain litigation, the one constant we've had is a good stream of Shearman associates."

The history of Rwanda's tribunal and Shearman's program are deeply intertwined. As both prepare to close their doors, the time is ripe for an evaluation.

THE U.N. ESTABLISHED THE ICTR IN November 1994, a few months after Rwanda's Hutus massacred 800,000 Tutsis, and the court in Arusha opened a year later. After a 7-week multinational stake-out in 1997, ex-prime minister Jean Kambanda surrendered and pleaded guilty, leading to the world's only standing genocide conviction for a head of state. The

ICTR's first trial, of the small-town mayor Jean-Paul Akayesu, initially focused only on killings. But when a witness let slip on the stand that three men had raped her 6-year-old daughter, the judges took an acute interest, and women's groups persuaded prosecutors to add rape to the indictment. The 1998 Akayesu judgment was notable not only as the world's first trial conviction under the Genocide Convention, but also as the first case to recognize that genocide may take the form of sexual violence. Kelly Askin, now of the Open Society Justice Initiative, called it "the most important decision rendered thus far in the history of women's jurisprudence." In light of the Islamic State's rape crimes, says Leila Sadat of Washington University School of Law, Akayesu is of "tremendous contemporary importance."

Meanwhile, in 1998 Shearman associate Helen MacFarlane did a pro bono gig for Kosovar refugees. She and pro bono director Saralyn Cohen resolved to focus on international justice, and two years later convinced Arusha to accept their help. MacFarlane's team played a bit role in the Akayesu appeal, and an important one in the "Media case," researching the law on hate speech around the world. In its landmark Media ruling, the ICTR would agree that the directors of the extremist Hutu radio station and newspaper were guilty of public incitement to genocide.

Shearman's involvement deepened. In 2001, partner Frederick Davis (now of Debevoise & Plimpton) and partner Stephen Fishbein led the first of a half-dozen training sessions for Arusha prosecutors. Among the teachers was future Attorney General Loretta Lynch. During the Senate confirmation process, Lynch cited her experience in Rwanda as the most meaningful of her career.

The same year, Daniel Schimmel (now of Foley Hoag) devoted his law firm sabbatical to prosecuting genocide. An unbroken caravan of Shearman attorneys followed, donating more than 55,000 hours of time. Squirreled away





Shearman partners Paula Howell Anderson and Stephen Fishbein led their firm's efforts in international justice.

in the Serengeti building of Arusha's drab conference center, Shearman lawyers have prepped witnesses, drafted briefs and attended murder boards for every key case since.

Prosecutor Jallow calls the 2006 Karamera ruling especially significant, and cites it as "one of many cases for which Shearman provided valuable support." In Karamera, the appeals chamber accepted the Rwandan genocide "as a matter of undisputed fact." This "streamlined the presentation of evidence in all the remaining cases," Jallow notes, "provided formal recognition of the crimes perpetrated," and—most importantly—insulated the historical record against the insult of denialism.

Put it all together, says professor Sadat, and the ICTR "made a really significant contribution to building the modern corpus of international criminal law."

FOR ALL THAT THE SHEARMAN LAWYERS GAVE AFRICA, Africa probably gave them more. Another legacy of the ICTR, Sadat writes, is that "thousands of non-Africans have come to this continent who probably would not otherwise have done so, have grappled with the complexities of the Rwandan genocide, and have, one hopes, come away with a deeper appreciation for the peoples and nations of Africa." Says Davis: "Virtually everyone who went was blown away by how real it was. Everyone I talked to sort of had their life changed."

New York litigator Paula Howell Anderson experienced a truly global cultural moment with a young Tutsi woman who had survived the unimaginable, connecting over a song by the reggae artist Kevin Lyttle of St. Vincent and the Grenadines. For Andreas Kafetzopoulos (now of Skadden, Arps, Slate, Mea-



gher & Flom), the memory that lingers came over dinner at the home of a Tutsi man on the shores of Lake Kivu. The antitrust attorney from Brussels was moved to discover that two of the other dinner guests were the recently released murderers of his host's brother and two nephews. For Kafetzopoulos, the most searing lesson of his experience at a court devoted to retribution was the human capacity for forgiveness.

Leslie Haskell and Dan Segal recall staring into the face of evil at close range—Haskell at the trial of the genocidal mastermind Theoneste Bagosara, and Segal at the trial of the diabolical priest Athanase Seromba. Father Seromba offered more than 2,000 Tutsi parishioners refuge in his church. Then he tried to set the brick church afire, and when that didn't work, slaughtered them with bulldozers and machetes. M&A associate Grace Jamgochian recalls sitting in court amid the family of the extremist Hutu party leader Edouard Karemera. She came away appreciating that even someone who oversaw the murders of innocents “can also love and be loved.”

After returning from Africa, Brussels associate Julie Vandebussche was moved this summer to host a 20-month-old Rwandan girl, Honorine, as she underwent life-saving surgery to repair a heart defect. Several associates went on to devote their careers to the public interest, among them Segal at RTI International and Haskell, who became a loyal critic of the tribunal at Human Rights Watch.

For despite its impressive jurisprudence, the ICTR is sharply criticized on at least three scores.

First, the tribunal is accused of carrying out one-sided “victor's justice.” The ICTR never put a Tutsi in the dock for the reprisals they committed (on a vastly smaller scale) after their return to power under the militia leader Paul Kagame. “The failure to go after those cases really tarnishes the tribunal's legacy,” Haskell says. Part of the problem, Sadat notes, is that the court's jurisdiction didn't extend far enough forward in time to deter reprisals. But some Tutsi crimes occurred during the period with which the court was concerned, and critics say the ICTR caved to pressure by Kagame, who is now Rwanda's president, not to pursue cases against his men. Appellate chief Arguin responds that the court referred those cases to Rwandan courts when they were mature enough to handle them, and that the cases were prosecuted fairly. Indeed, Arguin counts Rwandan reforms of legal aid, criminal law, prisons and sentencing (including abolition of the death penalty) as among the ICTR's achievements.

Second, critics say the tribunal did a poor job of getting its message out. Haskell recalls touring Rwanda as a Shearman intern with Prosecutor Jallow, trying in vain to explain to victims how one higher-up's acquittal for lack of evidence is part of the justice process, and does not discredit the witnesses. “The tribunal did excellent work,” Haskell says, “but it didn't resonate in Rwanda because we didn't do enough outreach, and the government manipulated the coverage it got. One of the great lessons of the ICTR is that justice needs to be seen as well as done.” Arguin agrees that more community outreach should be built into the U.N.'s budget.

Third, some say the procedures were shambolic. Davis is disappointed that his training sessions didn't help to stan-

dardize practices in international justice. “It's a failure that the court didn't evolve effective procedures,” he says. “Even toward the end they were compromising and coming up with jerry-built solutions, and as a result they took forever. Five years on a case to me is fairly ridiculous.”

All told, it cost about \$1.75 billion over two decades for the U.N. to indict 93 top genocide suspects. (This excludes more than 10,000 lower-level suspects tried in Rwandan courts, and 2 million cases in the informal village system of “gacaca” justice.) The ICTR convicted 61 and sent 10 for trial elsewhere. Two indictments were withdrawn, and three suspects died during legal proceedings. Three escaped arrest, and 14 were acquitted. “The judges disbelieved an extraordinary number of witnesses,” Davis says, and “the acquittals on appeal were very high.”

Davis voices special frustration that the U.S. practice of prosecutors preparing witnesses has never been fully or consistently accepted in either Arusha or The Hague. American litigators tend to see “witness proofing” as essential if simple villagers are to relate a traumatic and distant memory in a credible way.

ANOTHER PIONEER OF SHEARMAN'S RWANDA PROGRAMS

strikes a more forgiving attitude. Now a counsel at Hesketh Henry in New Zealand, Helen MacFarlane says Arusha was a crazy quilt of legal cultures. An overarching tension existed between Africa and the West. Africa was split between Anglophone and Francophile lawyers. The West divided into civil and common law camps. Among common lawyers, there was a schism between the Yanks and the British Commonwealth.

“You've got to deal with the realm of the achievable,” MacFarlane says with a laugh. “Did the ICTR run like an efficient well-run U.S. Attorney's office? Absolutely not. I mean, that was just never going to happen.”

Shearman's Fishbein notes optimistically that the International Criminal Court has become more open to witness proofing over time. The project of improving international justice continues—with Fishbein holding three training sessions at the ICC for an ever larger and more senior crowd of prosecutors. Shearman has helped to conduct the first ICC trial for recruiting child soldiers in Kenya, and represents dozens of civil parties at the Khmer Rouge trial in Cambodia.

Most of the Shearman diaspora who passed through the cinder-block bungalow in the shade of Mount Kilimanjaro insist that they accomplished something important. They are inclined to accept the generous assessment of David Scheffer, who helped to create the ICTR as the first U.S. ambassador-at-large for war crimes issues.

“Despite its many administrative and political setbacks,” writes Scheffer in his memoir, “All the Missing Souls,” “the Rwanda Tribunal rendered credible justice for the genocide that mercilessly swept through Rwanda in 1994. Never before has the rule of law been rendered so thoroughly against so many leaders responsible for atrocity crimes in Africa. The endeavor has proven its worth many times over.”

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Hitting the Big Time

For the largest IPO in history, Alibaba turned to Simpson Thacher and Fangda Partners. Size wasn't the only thing that made the deal challenging.

BY CHRIS JOHNSON

ON MARCH 25, 2014, DANIEL FERTIG, A CORPORATE PART-ner in the Beijing office of Simpson Thacher & Bartlett, was working at his firm's Hong Kong office when he got a message telling him to travel to a private club on the south side of Hong Kong Island—and to be there within the hour. Elsewhere in Hong Kong, a carefully selected group of bankers, lawyers and other professional advisers were jumping into taxis after receiving the same message.

What sounds like a scene from an Ian Fleming spy novel was in fact arrangements for a secret meeting to discuss what would become the record-breaking initial public offering of Chinese electronic-commerce giant Alibaba Group Holding Ltd. Six months before, Simpson Thacher had been retained to represent Alibaba alongside Chinese law firm Fangda Partners.

"There was intense media interest in the deal, but the company was determined to maintain confidentiality," says Fertig, who co-led the deal with his partners William Hinman in Palo Alto and Leiming Chen in Hong Kong. "We weren't told of the venue until right before the meeting, and when we did show up, the room was signposted very innocuously—the Acme Merchant Insurance Company Annual Meeting, or something like that—to attract as little attention as possible."

It's little surprise there was such a buzz surrounding the massive IPO. Whereas Ian Fleming dealt merely with double-ohs, Alibaba's epic offering had nine of them—and with two further digits in front. The company raised a full \$25 billion in September 2014 in the largest IPO in history, dwarfing the amount raised by the previous record offering, Agricultural Bank of China Ltd.'s 2010 IPO, by almost \$3 billion. The offering on the New York Stock Exchange comprised more than 368 million shares, underwritten by 34 banks, with six joint bookrunners. Even the greenshoe—the option for

underwriters to buy additional shares—raised \$3.2 billion, a sum bigger than all but the four largest global IPOs of 2014, according to Mergermarket.

"Alibaba's IPO represents the emergence of a new type of Chinese company—it's a real global player," Fertig says.

The assignment to act on such a marquee deal would rightly be prized by any law firm. Still, the mandate to represent Alibaba on its IPO came with caveats—and rather severe ones at that. In early 2014 Alibaba informed potential legal advisers that it would no longer be providing transactional work to any firm that also handles significant deals for Chinese competitors that included Tencent Holdings Ltd., Baidu Inc. or JD.com.

That stricture effectively ruled out a number of leading international firms that might otherwise have been in the running to act for Alibaba on its IPO, including Skadden, Arps, Slate, Meagher & Flom and Davis Polk & Wardwell. (Skadden had just advised JD.com on its \$1.78 billion IPO, while Davis Polk has represented Tencent on a number of investments, including one in Alibaba, and both firms are regular advisers to Baidu.) "We represent one of Alibaba's competitors," a Beijing partner with a midsize U.S. firm told sibling

publication *The Asian Lawyer* at the time. "When we approached them, they told us, if they were to select us for their panel, we had to drop our other client. We couldn't accept that term."

Simpson Thacher, though, wasn't fazed by the ultimatum, Fertig says, noting that it is "not uncommon" to have to make decisions about conflicts and choosing which clients to represent. He declined to comment on whether Simpson Thacher had to drop any other clients as a result of its Alibaba work. The firm had developed close ties to Alibaba since

Honorees:

Alibaba Group; Fangda Partners; King & Wood Mallesons; Maples and Calder; Simpson Thacher & Bartlett; Sullivan & Cromwell

Location: Beijing and New York





Daniel Fertig co-led the deal from Simpson Thacher's Beijing office.



acting on the 2007 Hong Kong IPO of its business-to-business e-commerce platform, Alibaba.com; now, with the parent company poised to go public, Simpson Thacher was “very excited to be part of this historic transaction,” Fertig says.

Size wasn’t the only thing that made the offering unique. In an attempt to ensure that its culture and values were maintained throughout its transformation to a public company, Alibaba put in place a novel corporate governance structure based upon a partnership that allows management and other longtime employees to nominate a majority of the company’s board of directors. Lawyers had to ensure that the final structure was compatible with securities laws in the United States and Cayman Islands, where Alibaba is incorporated, and that it also met the governance requirements of the New York Stock Exchange, Nasdaq and the U.S. Securities and Exchange Commission. (Offshore law firm Maples and Calder advised Alibaba on Cayman law issues.) Alibaba also had to restructure its contractual arrangements with Alipay, a third-party online payment company that had been separated from Alibaba in 2011 due to Chinese regulations barring foreign control of online payments companies.

“Alibaba’s partnership is a very important aspect of the company’s culture and something that it wanted to make sure continued post-IPO,” says Sarah Payne, a technology M&A and finance partner in the Palo Alto office of Sullivan & Cromwell, which represented the underwriters on the IPO alongside King & Wood Mallesons.

Lawyers also had to deal with one of the most complex selling shareholder tranches ever seen in an IPO, with more than 10,000 current and former employees eligible to sell stock in the offering as holders of ordinary shares or with vested options convertible into shares. (Around 6,000 employees ultimately did take part in the IPO.) The solution was to create a bespoke internal electronic platform to manage the process and the vast amounts of documentation.

“Alibaba had a huge shareholder base,” Fertig says. “The company felt it was very important to allow employees to participate in the IPO, but the sheer numbers of selling shareholders and the logistics around those arrangements made for a unique legal challenge.”

The IPO also featured negotiations with the company’s two largest outside shareholders, Internet giant Yahoo Inc. and SoftBank Group Corp., a Japanese telecom and internet company. Pre-IPO investors often take a relatively passive role when a company goes public. But the value of Yahoo’s 23 percent stake and the fact that Softbank had been a major investor in Alibaba since the company’s early days meant both were actively involved throughout the process, including the restructuring of the agreement with Alipay and the negotiation of a new voting agreement.

For Alibaba, despite being in the midst of the world’s biggest ever IPO, it was business as usual. The company continued to make investments, including increasing its stake in Chinese microblogging site Weibo Corp.; acquiring and taking private Chinese digital map and navigation software company AutoNavi Software Co. Ltd.; and buying a majority stake in UCWeb Inc., China’s largest mobile browser

company. Simpson Thacher worked with the company, often alongside lawyers at Fangda, to incorporate these new deals into the IPO disclosure and to respond quickly to the subsequent SEC inquiries.

“There are always a lot of moving pieces in any deal this large, but Alibaba is particularly acquisitive, which made things very challenging,” Fertig says.

The core team of eight Simpson lawyers worked “crazy hours,” he added in an email. “The entire working team—company, banks, lawyers, auditors—were essentially at the printer round the clock for three weeks leading up to the



initial public filing.”

The appetite for Alibaba’s stock was overwhelming. The company reportedly received enough orders to cover the entire IPO after just two days of its investor roadshow, while more than 100 million shares changed hands in the first 10 minutes of trading. Its stock closed the first day up 38 percent, with a market cap of \$241 billion that briefly made Alibaba the fourth-largest listed company in the world. But like a number of tech companies that have gone public amid much hype in recent years, including Facebook Inc., Alibaba saw its share price fall once the post-IPO frenzy subsided. Having listed at \$68 per share, the company’s stock price dropped as low as \$59 last summer. At press time in September it was around \$62 per share.

But that takes nothing away from the outstanding lawyering that enabled the deal to complete just one week behind the initial schedule that was set during that secretive kickoff meeting in March.

“Sticking that tightly to a schedule almost never happens on an IPO, so to successfully steer an IPO of this size and complexity through all of its issues on an aspirational timescale is pretty remarkable,” said Jay Clayton, a New York corporate partner at Sullivan & Cromwell who worked with Payne on the deal. “Everybody involved recognized the historic nature of the deal and really pulled together to get it done. It was really a privilege to be a part of it.”

Simpson Thacher’s William Hinman (fourth from left) and Leiming Chen (third from right) helped Alibaba founder Jack Ma (center) celebrate the company’s IPO outside the NYSE.

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Unforgettable

How a 27-year-old lawyer and a client miffed about an old legal notice successfully led the fight for the right to be forgotten.

BY MICHAEL D. GOLDBABER

IN JANUARY AND MARCH 1998, THE FOURTH-LARGEST newspaper of Spain ran a 36-word foreclosure notice, in Catalan, on the Barcelona home of Mario Costeja González, because his wife had unpaid social security taxes.

Ten years later, Costeja's debt, auction and marriage were ancient history. But the awkward squib popped up every time someone googled his financial consultancy. Costeja did his own googling, and found a blog post by a 27-year-old lawyer named Joaquín Muñoz Rodríguez titled "Erase Personal Data from Google." Muñoz warned in his article that the "greatest danger that our privacy will be exposed is called Google." In a private consultation, he advised Costeja to demand deletion—and, if need be, to take his grievance all the way to the Court of Justice of the European Union in Luxembourg. "There were no laws," Muñoz says. "But in my mind I was clear from the beginning that the case would finish the way it finished."

The way Costeja's case against Google Spain finished was to crystallize a new "Right to be Forgotten."

As a legal landmark, "there are very few if any cases more important in the history of data protection," says Linklaters global head of data protection Tanguy Van Overstraeten. "The question is no longer whether the right to be forgotten will exist but how far it will extend, and the answer seems to be very far indeed."

As a cultural touchstone, Google Spain might sweep even broader. "Just looking at how much debate it has generated, I don't think any other European decision has ever had such an impact," says Jens-Henrik Jeppesen of the Center for Democracy and Technology in Brussels. The right-to-be-forgotten case gave a name to the unformed anxieties of half the blogosphere—and gave the other half a tizzy fit. Not incidentally, the half that had a tizzy fit was mostly located on this side of the Atlantic. "The decision will go down in history as one of the most significant mistakes that Court has ever made," said Jules Polonetsky, who as co-chair of

the Future of Privacy Forum draws support from the chief privacy officers of 110 mostly American corporations.

The visionary lawyer who begat the right to be forgotten is an everyday father of two, with a fondness for soccer and cooking, no known skeletons in his closet, and no vendetta against Google. He happened to launch his two-partner law firm in Madrid, Abanlex, at about the same time that the Barcelona newspaper La Vanguardia digitized its back issues, in 2008. Joaquín Muñoz had been fascinated with privacy ever since he was a law student in 2001. As he prepared to hang out a shingle, he imagined how awful it would be if he did have a deep dark secret online. So he posted "Erase Personal Data from Google" on his personal website.

The manifesto drew emails from about 50 people of variable crankiness who yearned to be forgotten. In Costeja, Muñoz saw a promising test plaintiff. When Google refused their request to delete the foreclosure squib from search results, Costeja successfully petitioned the Spanish Data Protection Agency (or AEDP). Google appealed to the Spanish courts, which certified the question to the Court of Justice in Luxembourg. There it became the focal point of an already raging debate over Internet privacy.

In January 2012 the European Commission proposed a vigorous "right to be forgotten" in its draft Data Protection Regulation, purporting to build on the vague and neglected "right to delete" buried in the existing 1995 Data Protection Directive. However, in the Google Spain case, the EU advocate general advised in June 2013 that the Directive didn't establish a right to be forgotten. He stressed the value of expressing legitimate and accurate information in a democratic society. And he warned that giving Google the task of balancing free expression with privacy would lead to self-censorship, and the "falsification of history."

"That was like an ice bucket of water to me," recalls Muñoz, who notes that the court follows the advocate general 80





By suing Google Spain, Joaquín Muñoz Rodríguez of Abanlex revolutionized the field of data privacy.

percent of the time. “In that moment I thought it was over.”

It proved to be the advocate general who was out of touch with EU policy elites. In March 2014, the European Parliament proposed an amended regulation that would not only affirm the Commission’s purported right to be forgotten, but bolster it. Where the Commission would raise the maximum data protection penalty from a token amount to 2 percent of global revenue, Parliament would raise it to 5 percent of global revenue. (Google’s chief privacy officer protested that “Europe is proposing billion-dollar fines” for “rather routine privacy missteps.”) There would eventually be three versions of the data rule, comically billed as the “right to erasure,” the “right to be forgotten and to erasure” and the “right to era-

sure and to be forgotten.” A binding legal norm is virtually certain to emerge from Brussels by early next year.

Still, by the time the Court of Justice ruled in May 2014 the EU Council of Ministers had yet to weigh in, and the policy outcome was far from assured. The Court of Justice in Google Spain got out ahead of the regulatory debate—and captured the imagination of the European public—by recognizing the right to be forgotten in breathtakingly broad terms. To the European Court, the fundamental rights of privacy and data protection clearly trump Google’s mere economic interest, and generally override the informational interest of web surfers. The court held that Google must therefore delist links to personal information—like Costeja’s



foreclosure squib—that is “inaccurate, inadequate, irrelevant, or excessive for the purpose of data processing,” and holds no public interest. In broad terms, the EU Data Privacy Regulation is expected to codify these standards.

As Google’s chief privacy officer notes, the one certain result of vague standards is to increase the demand for lawyers to interpret them. The right to be forgotten, combined with other trends, has elevated privacy to a boardroom concern. This concern has built 70-lawyer data-protection groups at Linklaters and Baker & McKenzie, inspired a frenzy of lateral recruitment by big firms playing catchup, and conjured into being boutiques like Abanlex. To summarize the narrow consequences of his case: Mario Costeja did a lousy job of distracting attention from his foreclosure notice, but did wonders for Joaquin Muñoz’s legal practice. A consideration of the ruling’s broader consequences requires a detour on the intellectual history of privacy.

Cultural responses to Google Spain divided sharply along regional lines. European opinion ranged from cheerleading to skepticism. American opinion ranged from skepticism to hostility. Skeptics everywhere doubted that the court struck the right balance between privacy and free expression. The hostile critics, mostly in America, objected to the idea of placing any limits on the accretion of human knowledge.

“There couldn’t be more of a culture clash between the U.S. and Europe in the field of data privacy,” says the comparative legal scholar Franz Werro, who splits his time between Georgetown University Law Center and the University of Fribourg. “Americans just cannot relate to the European Court judgment, and Europeans don’t understand the way Americans go about practicing their freedom of speech.”

Most U.S. lawyers learn that the right of privacy was invented by the American Louis Brandeis in 1890. But in his classic study, “The Two Western Cultures of Privacy,” Yale University’s James Whitman shows that Brandeis drew on Franco-German ideas. And in fact, Brandeis’ tort for public disclosure of private facts was orphaned by U.S. courts that consistently prioritize freedom of expression. To the extent that privacy resonates in U.S. courts, it usually relates to government intrusions on personal liberty or space.

France’s concept of privacy evolved during the 19th century, as the practice of dueling fell from favor and honor came to be vindicated in the courts. In a seminal case in 1867, the *Three Musketeers* author Alexandre Dumas (or at least his family) regretted posing jacket-less for intimate photos with his mistress, Adah Isaacs Menken, a Jewish African-American actress half his age, who was famous for riding a horse onstage dressed only in a body stocking. (They just don’t make test plaintiffs like they used to.) The court said there was such a thing as a “right to privacy,” which outweighed the right to property, and ordered the photographer to sell his photos back to Dumas.

The German variation on privacy has more staid roots in the philosophy of Kant, Humboldt and Hegel, which valorized dignity and free will. This tradition took modern legal form with West Germany’s 1949 Basic Law guarantee that “every person has the right to free development of his personality.” From there, the rights of personality migrated to

Strasbourg, where the European Court of Human Rights read them to impose an affirmative obligation on the government to safeguard privacy in all its forms. By the time the EU adopted a Charter on Fundamental Rights, in 2000, data privacy was recognized as a freestanding right.

WHITMAN’S THEORY ON THE “TWO WESTERN CULTURES OF Privacy” is no longer academic, because the regulation of privacy is going global. Who gets to be the world’s privacy cop will determine how much is forgotten, and how much is remembered.

After the Costeja ruling, Google moved swiftly to set up an amnesia apparatus it could live with. Those who would be forgotten have filed more than a million requests to disappear down the memory hole since May 2014, and Google has granted 41 percent. These numbers may seem high, but they’re paltry when one considers that the search engine handled 345 million copyright requests in 2014, and granted 97 percent. It’s a sign of contentment that only about 1 percent of early privacy calls were appealed to the regulators.

Google issued “transparency reports” with 40 examples of what shall be forgotten. Rape victim’s name? Removed. Hacked intimate photo? Removed. Pedophile or politician scrubbing his public record? No dice. These examples strike even critics as eminently reasonable. But 80 academics wrote a letter complaining that there is no way to evaluate how representative they are: “It is a jurisprudence built in the dark.”

By far Google’s most important interpretation was to apply the Costeja ruling only in its search engine for Spain—and not in the universal domain, Google.com. Some object that the link is not forgotten, but just a touch harder to find. Arguably, this offends the spirit of Costeja, which gave the data law “particularly broad territorial scope,” and said letting Google escape “would compromise the ... effective and complete protection” of privacy.

In a case that may decide privacy’s future, France’s regulator ordered Google in June to forget a forgotten fact worldwide. Google refused in late July. The French Data Protection Agency, CNIL, is due to respond as this magazine hits print. Werro predicts the issue will eventually be resolved in court and that the parties will fight bitterly over both choice of forum and choice of law. If France prevails, then Europe will be the global gendarme of data privacy as surely as Uncle Sam is the world’s corruption cop.

The 1998 foreclosure notice for Mario Costeja’s home in Barcelona is nowhere to be found on Google.es. But a few keystrokes confirms that it may still be found on Google.com. And if anyone’s curious, it takes but a click on Google Street View to find the lovely pink stone building with carved scrolling lintels and ornamental steel balustrades on 8 Montseny Street. Should we be more gratified or frightened by the ubiquity of such information? Thanks to the memorable lawyering of Joaquin Muñoz, that question has jumped to the top of the international docket. The answer may depend on which side of the pond we ask it.

Email: mgoldhaber@alm.com.



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THE GLOBAL 100

MOST REVENUE

GROSS REVENUE FOR THE GLOBAL 100 GREW BY 4.5 PERCENT

in 2014, to \$92.7 billion. That's similar to a revenue increase in 2013 of 4.3 percent. This year 80 of the world's top-grossing firms have more lawyers in the United States than elsewhere, while 13 have the greatest proportion of their lawyers in the United Kingdom. Eight firms are structured as vereins or European Economic Interest Groups (EEIGs). Thirty-four firms

had more than \$1 billion in revenues compared to 30 last year.

Revenues for U.S. firms are derived from The Am Law 100. Other firms were surveyed directly. Currency conversion rates to U.S. dollars are annual averages for 2014. Lawyer numbers are average full-time-equivalent numbers for 2014. Gross revenue figures are rounded to the nearest \$500,000, while revenue per lawyer figures are rounded to the nearest \$5,000.

| 2015 Rank | 2014 Rank | Firm | Gross Revenue, Most Recent Fiscal Year | Lawyers | Revenue Per Lawyer | Country with the Most Lawyers |
|-----------|-----------|--------------------------------------|--|---------|--------------------|-------------------------------|
| 1 | 3 | Latham & Watkins | \$2,612,000,000 | 2,100 | \$1,245,000 | United States |
| 2 | 2 | DLA Piper (verein)* | \$2,480,500,000 | 3,702 | \$670,000 | United States |
| 3 | 1 | Baker & McKenzie (verein)* | \$2,430,000,000 | 4,363 | \$555,000 | United States |
| 4 | 4 | Skadden, Arps, Slate, Meagher & Flom | \$2,315,000,000 | 1,654 | \$1,400,000 | United States |
| 5 | 5 | Clifford Chance | \$2,225,500,000 | 2,495 | \$890,000 | United Kingdom |
| 6 | 6 | Kirkland & Ellis | \$2,150,000,000 | 1,576 | \$1,365,000 | United States |
| 7 | 8 | Allen & Overy | \$2,112,000,000 | 2,172 | \$970,000 | United Kingdom |
| 8 | 7 | Linklaters | \$2,088,000,000 | 2,252 | \$925,000 | United Kingdom |
| 9 | 9 | Freshfields Bruckhaus Deringer | \$2,052,500,000 | 2,035 | \$1,010,000 | United Kingdom |
| 10 | 11 | Jones Day | \$1,850,000,000 | 2,510 | \$735,000 | United States |
| 11 | 10 | Norton Rose Fulbright (verein)* | \$1,814,000,000 | 3,461 | \$525,000 | United States |
| 12 | 12 | Hogan Lovells (verein)* | \$1,779,500,000 | 2,360 | \$755,000 | United States |
| 13 | 13 | Sidley Austin | \$1,753,500,000 | 1,761 | \$995,000 | United States |
| 14 | 14 | White & Case | \$1,503,000,000 | 1,878 | \$800,000 | United States |
| 15 | 15 | Gibson, Dunn & Crutcher | \$1,466,000,000 | 1,204 | \$1,215,000 | United States |
| 16 | 19 | Herbert Smith Freehills | \$1,343,500,000 | 1,868 | \$720,000 | Australia |
| 17 | 16 | Morgan, Lewis & Bockius ¹ | \$1,317,000,000 | 1,338 | \$985,000 | United States |
| 18 | 17 | Sullivan & Cromwell | \$1,276,000,000 | 805 | \$1,585,000 | United States |
| 19 | 18 | Dentons ² (verein)* | \$1,275,000,000 | 2,285 | \$560,000 | United States |
| 20 | 20 | Greenberg Traurig | \$1,270,500,000 | 1,730 | \$735,000 | United States |
| 21 | 21 | Cleary Gottlieb Steen & Hamilton | \$1,250,000,000 | 1,178 | \$1,060,000 | United States |
| 22 | 25 | Simpson Thacher & Bartlett | \$1,245,500,000 | 929 | \$1,340,000 | United States |
| 23 | 26 | CMS Legal Services (EEIG)* | \$1,242,500,000 | 2,522 | \$495,000 | United Kingdom |
| 24 | 23 | Mayer Brown | \$1,223,000,000 | 1,486 | \$825,000 | United States |
| 25 | 27 | Reed Smith | \$1,152,000,000 | 1,638 | \$705,000 | United States |
| 26 | 24 | Weil, Gotshal & Manges | \$1,151,000,000 | 1,072 | \$1,075,000 | United States |
| 27 | 22 | K&L Gates | \$1,145,500,000 | 1,952 | \$585,000 | United States |
| 28 | 31 | Ropes & Gray | \$1,115,500,000 | 1,041 | \$1,070,000 | United States |
| 29 | 33 | Quinn Emanuel Urquhart & Sullivan | \$1,103,500,000 | 710 | \$1,555,000 | United States |

* Vereins and European Economic Interest Groups (EEIGs) differ structurally from other Global 100 firms, especially in regard to profit sharing.

¹ Census numbers and financials do not include the lawyers who joined from the former Bingham McCutchen in late November 2014.

² Dentons and Dacheng have announced their combination in January 2015 but have not fully integrated as of yet. Results are for the legacy operation only.

| 2015 Rank | 2014 Rank | Firm | Gross Revenue, Most Recent Fiscal Year | Lawyers | Revenue Per Lawyer | Country with the Most Lawyers |
|-----------|-----------|--|--|---------|--------------------|-------------------------------|
| 30 | 32 | Davis Polk & Wardwell | \$1,072,000,000 | 871 | \$1,230,000 | United States |
| 31 | 28 | Wilmer Cutler Pickering Hale and Dorr | \$1,071,000,000 | 926 | \$1,155,000 | United States |
| 32 | 29 | King & Wood Mallesons (verein)* | \$1,037,000,000 | 2,036 | \$510,000 | China |
| 33 | 35 | Paul, Weiss, Rifkind, Wharton & Garrison | \$1,036,500,000 | 943 | \$1,100,000 | United States |
| 34 | 34 | Paul Hastings | \$1,000,500,000 | 873 | \$1,145,000 | United States |
| 35 | 30 | Morrison & Foerster | \$968,500,000 | 988 | \$980,000 | United States |
| 36 | 39 | King & Spalding | \$934,000,000 | 886 | \$1,055,000 | United States |
| 37 | 36 | Ashurst | \$925,000,000 | 1,478 | \$625,000 | United Kingdom |
| 38 | 37 | McDermott Will & Emery | \$900,000,000 | 997 | \$900,000 | United States |
| 39 | 38 | Orrick, Herrington & Sutcliffe | \$877,000,000 | 891 | \$985,000 | United States |
| 40 | N/A | Squire Patton Boggs ³ (verein)* | \$870,500,000 | 1,356 | \$640,000 | United States |
| 41 | 40 | Akin Gump Strauss Hauer & Feld | \$868,000,000 | 822 | \$1,055,000 | United States |
| 42 | 41 | Shearman & Sterling | \$845,000,000 | 821 | \$1,030,000 | United States |
| 43 | 42 | Dechert | \$839,500,000 | 877 | \$955,000 | United States |
| 44 | 44 | Proskauer Rose | \$818,500,000 | 721 | \$1,135,000 | United States |
| 45 | 53 | Cooley | \$802,000,000 | 755 | \$1,060,000 | United States |
| 46 | 46 | Goodwin Procter | \$785,500,000 | 755 | \$1,040,000 | United States |
| 46 | 47 | Winston & Strawn | \$785,500,000 | 808 | \$970,000 | United States |
| 48 | 49 | Milbank, Tweed, Hadley & McCloy | \$761,000,000 | 614 | \$1,240,000 | United States |
| 49 | 50 | Debevoise & Plimpton | \$710,500,000 | 615 | \$1,155,000 | United States |
| 50 | 58 | Perkins Coie | \$710,000,000 | 913 | \$780,000 | United States |
| 51 | 54 | Covington & Burling | \$709,000,000 | 774 | \$915,000 | United States |
| 52 | 63 | Wachtell, Lipton, Rosen & Katz | \$702,500,000 | 267 | \$2,630,000 | United States |
| 53 | 51 | Arnold & Porter | \$694,500,000 | 699 | \$995,000 | United States |
| 54 | 60 | Holland & Knight | \$688,500,000 | 1,009 | \$680,000 | United States |
| 55 | 45 | Bingham McCutchen ⁴ | \$665,000,000 | 715 | \$930,000 | United States |
| 55 | 56 | Foley & Lardner | \$665,000,000 | 849 | \$785,000 | United States |
| 55 | 48 | O'Melveny & Myers | \$665,000,000 | 663 | \$1,005,000 | United States |
| 58 | 59 | Vinson & Elkins | \$653,500,000 | 624 | \$1,045,000 | United States |
| 59 | 65 | Baker Botts | \$653,000,000 | 694 | \$940,000 | United States |
| 60 | 67 | Clyde & Co | \$651,500,000 | 1,238 | \$525,000 | United Kingdom |
| 61 | 61 | Cravath, Swaine & Moore | \$648,000,000 | 442 | \$1,465,000 | United States |
| 62 | 66 | Wilson Sonsini Goodrich & Rosati | \$646,000,000 | 670 | \$965,000 | United States |
| 63 | 52 | Alston & Bird | \$645,500,000 | 759 | \$850,000 | United States |
| 64 | 68 | Willkie Farr & Gallagher | \$640,000,000 | 554 | \$1,155,000 | United States |
| 65 | 57 | Bryan Cave | \$635,500,000 | 977 | \$650,000 | United States |
| 66 | 64 | Eversheds | \$627,500,000 | 1,211 | \$520,000 | United Kingdom |
| 67 | 62 | McGuireWoods | \$620,000,000 | 939 | \$660,000 | United States |
| 68 | 74 | Pinsent Masons | \$597,500,000 | 1,319 | \$455,000 | United Kingdom |
| 69 | 71 | Baker & Hostetler | \$579,000,000 | 878 | \$660,000 | United States |
| 70 | 69 | Hunton & Williams | \$568,000,000 | 707 | \$805,000 | United States |
| 71 | 70 | Pillsbury Winthrop Shaw Pittman | \$560,000,000 | 591 | \$950,000 | United States |
| 72 | 71 | Seyfarth Shaw | \$555,000,000 | 772 | \$720,000 | United States |

³Squire Sanders joined with Patton Boggs in June 2014 to form the Squire Patton Boggs verein, so there is no year-over-year comparison.

⁴Bingham McCutchen ceased operations in December 2014.



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THE GLOBAL 100

EMERGING OPPORTUNITIES

LAWYERS ARE FAMOUSLY CAUTIOUS, but American law firms have become more and more venture-some in chasing opportunity around the globe. As competition mounts in Asia, law firms are eyeing Latin America, and the boldest have already staked a claim in Africa [see “New Frontiers, page 56]. At some point—as happened some time ago with China—the question will shift from “Can we risk being in this relatively untested, emerging market?” to “Can we risk not being here?” The charts that follow tell the story of U.S. firms’ increasing commitment to overseas markets in both developed and emerging countries.

ILLUSTRATIONS BY KIM ROSEN

LESSONS FROM DETROIT ON THE HOT-BUTTON ISSUE OF PUBLIC PENSION RESTRUCTURING

BY KEVYN D. ORR, EVAN MILLER, BRIAN WEST EASLEY, HEATHER LENNOX, AND GREGORY M. SHUMAKER

Earlier this year, the National Association of State Retirement Administrators reported that 126 of the nation's largest public-sector pension funds are underfunded by more than \$1 trillion. Despite the economic enormity of the problem, most governments are unwilling to confront it. Ironically, those that have sought to do so have found their efforts upended by the courts, as Illinois did earlier this year when the Illinois Supreme Court gave an expansive interpretation to that state's constitutional protection for pensions and struck down its reform legislation.

But one jurisdiction that has comprehensively addressed the emotional, hot-button issue of public pension restructuring is Detroit. Later this fall, Detroit will mark the first anniversary of judicial approval of its Plan of Adjustment and emergence from bankruptcy. The elements of the agreement, the process and speed with which it was reached, and Judge Steven W. Rhode's important rulings on the pension issues provide several lessons for municipal and state leaders and public-sector labor unions.

LESSON ONE

Consensual public pension restructuring is possible.

Although Detroit's chapter 9 status forced the interested

constituencies to negotiate pension reform seriously, a consensual agreement was hardly a foregone conclusion. But in the end, the parties recognized that any overarching solution to Detroit's severe pension underfunding required shared sacrifice from three core constituencies—citizens, active employees, and existing retirees. They were aided in that realization by sophisticated, court-appointed mediators.

Even in the absence of chapter 9, government leaders and public-sector unions can and should seek to negotiate meaningful pension reform, granting retiree associations a seat at the table and availing themselves of the guiding hand of seasoned mediators. Government leaders obviously have a strong incentive to spread the sacrifice needed for pension restructuring, to avoid tax revenues being used disproportionately to fund pensions to the detriment of other crucial social-service needs. And public-sector unions make a strategic mistake if they ally themselves exclusively with retirees and confront every effort at shared sacrifice with litigation to protect against any impairment of any pension feature. Even if legally successful, this will likely result in a demographic divide in which younger, active union members pay significant sums to fund the pensions of employees long since retired and no longer union members.



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EMERGING OPPORTU

THE CHARTS BELOW S
a range of markets ar
grown fastest in those

CANADA

BIGGEST OFFICES 2014 HEAD COUNT

| | |
|-----------------------|-----|
| Norton Rose Fulbright | 638 |
| Dentons | 581 |
| Baker & McKenzie | 67 |

FASTEST GROWING FIRMS 2014 2004

| | | |
|-----------------------|-----|---|
| Norton Rose Fulbright | 638 | 0 |
| Dentons | 581 | 0 |
| Dickinson Wright | 39 | 0 |

UNITED KINGDOM

BIGGEST OFFICES 2014 HEAD COUNT

| | |
|-----------------------|-----|
| DLA Piper | 789 |
| Norton Rose Fulbright | 560 |
| Hogan Lovells | 507 |

FASTEST GROWING FIRMS 2014 2004

| | | |
|---------------------|-----|-----|
| Squire Patton Boggs | 406 | 17 |
| Reed Smith | 311 | 82 |
| Latham & Watkins | 226 | 113 |

MEXICO

BIGGEST OFFICES 2014 HEAD COUNT

| | |
|------------------|-----|
| Baker & McKenzie | 235 |
| White & Case | 65 |
| Jones Day | 40 |

FASTEST GROWING FIRMS 2014 2004

| | | |
|-------------------|-----|-----|
| Baker & McKenzie | 235 | 147 |
| Jones Day | 40 | 0 |
| Greenberg Traurig | 38 | 0 |

GERMANY

BIGGEST OFFICES

| |
|------------------|
| Hogan Lovells |
| White & Case |
| Baker & McKenzie |

FASTEST GROWING FIRMS

| |
|-----------------------|
| Hogan Lovells |
| Norton Rose Fulbright |
| DLA Piper |

BRAZIL

BIGGEST OFFICES 2014 HEAD COUNT

| | |
|------------------|-----|
| Baker & McKenzie | 192 |
| Mayer Brown | 55 |
| Davis Polk | 11 |

FASTEST GROWING FIRMS 2014 2004

| | | |
|------------------|-----|-----|
| Baker & McKenzie | 192 | 130 |
| Mayer Brown | 55 | 0 |
| Davis Polk | 11 | 0 |

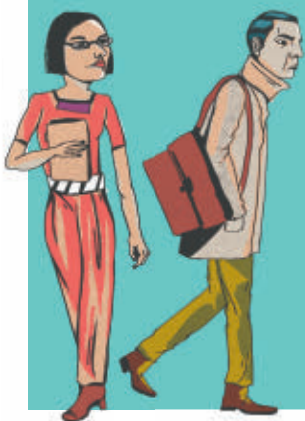
SOUTH AMERICA

BIGGEST OFFICES

| |
|-----------------------|
| Norton Rose Fulbright |
| Baker & McKenzie |
| White & Case |

FASTEST GROWING FIRMS

| |
|-----------------------|
| Norton Rose Fulbright |
| Baker & McKenzie |
| White & Case |

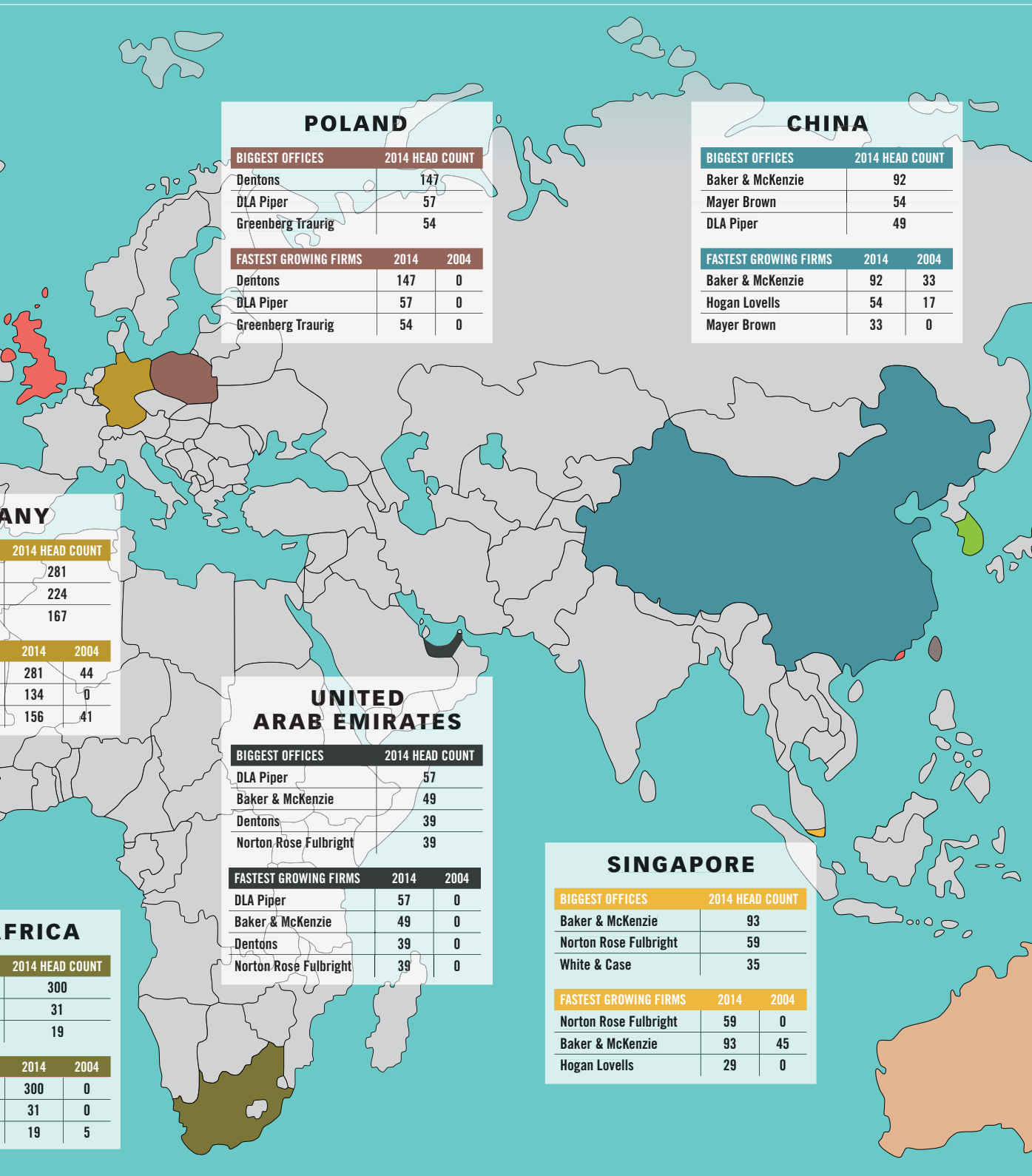


OW THE U.S. FIRMS with largest offices in
nd the world, and the U.S. firms that have
arkets over the past decade.

NITIES

Global giants Baker & McKenzie, DLA Piper, Dentons, Hogan Lovells and Norton Rose Fulbright make plenty of appearances on the chart. All are Swiss vereins—built for rapid mergers. But the charts also capture expansion efforts by traditionally structured law firms such as Greenberg Traurig, K&L Gates, and Reed Smith, among others.

The data for the charts in this article comes from ALM Legal Intelligence and the NLJ 350, the census of large U.S. law firms carried out annually by The National Law Journal.





THE GLOBAL 100

THE NUMBER OF LAWYERS AT LARGE U.S. FIRMS working from 100 in 1978 to almost 6,200 in 2014. Still, they repre

1978

1984

1990

1996

REGIONAL REVENUE PER LAWYER

\$646,429

ASIA/PACIFIC
RPL

\$851,429

FIRMWIDE
RPL

\$676,786

EUROPE
RPL

\$874,286

FIRMWIDE
RPL

\$402,286

LATIN AMERICAN
CARIBBEAN
RPL

WHAT KIND OF RETURNS CAN U.S. LAW FIRMS EXPECT in foreign markets? Our Am Law 200 survey asks firms for the percentage of firm revenue from different regions, including North America, Europe, the Asia-Pacific region, Latin American and the Middle East. Using that data, we calculated average revenue per lawyer (RPL) for those regions and compared it to average RPL for the law firms surveyed.

These charts come with some hefty caveats. Not every firm an-

swered the survey. Only the largest firms gave us data. Latin American and the Middle East were not represented. In each region, the RPL is a considerable

SOUTH KOREA

BIGGEST OFFICES 2014 HEAD COUNT

| | |
|-----------------|----|
| Cleary Gottlieb | 12 |
| Paul Hastings | 8 |
| Simpson Thacher | 5 |

FASTEST GROWING FIRMS 2014 2004

| | | |
|-----------------|----|---|
| Cleary Gottlieb | 12 | 0 |
| Paul Hastings | 8 | 0 |
| Simpson Thacher | 5 | 0 |

HONG KONG

BIGGEST OFFICES 2014 HEAD COUNT

| | |
|------------------|-----|
| Mayer Brown | 168 |
| Baker & McKenzie | 162 |
| DLA Piper | 109 |

FASTEST GROWING FIRMS 2014 2004

| | | |
|-----------------------|-----|---|
| Mayer Brown | 168 | 0 |
| Reed Smith | 85 | 0 |
| Norton Rose Fulbright | 79 | 5 |

AUSTRALIA

BIGGEST OFFICES 2014 HEAD COUNT

| | |
|-----------------------|-----|
| Norton Rose Fulbright | 560 |
| DLA Piper | 313 |
| K&L Gates | 274 |

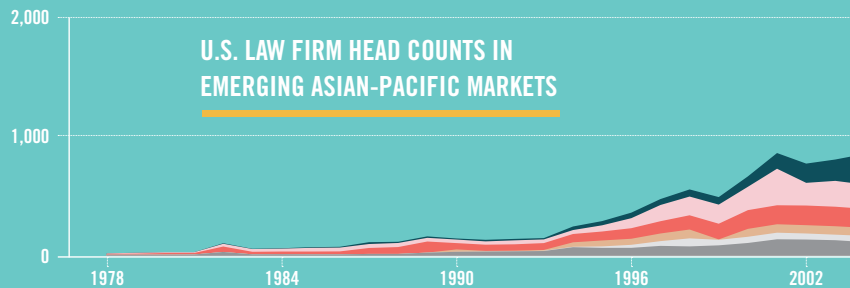
FASTEST GROWING FIRMS 2014 2004

| | | |
|-----------------------|-----|---|
| Norton Rose Fulbright | 560 | 0 |
| DLA Piper | 313 | 0 |
| K&L Gates | 274 | 0 |

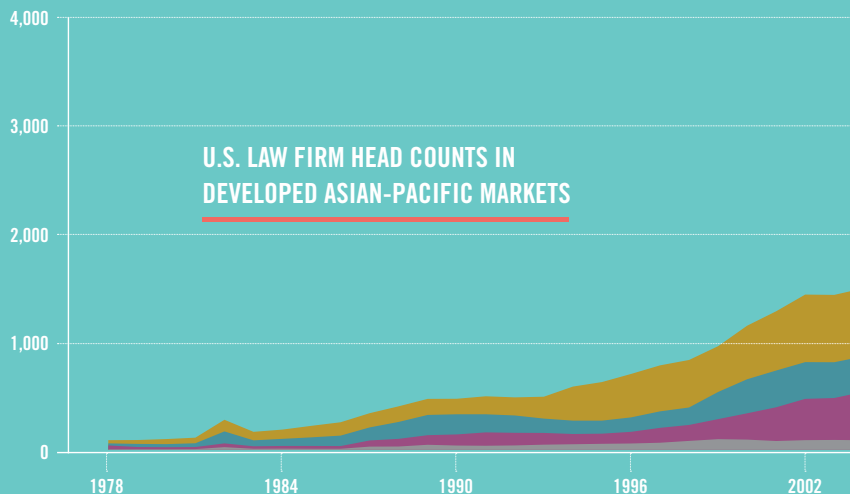
ASIAN GROWTH

THE TWO CHARTS BELOW SHOW how U.S. law firms have grown their head counts in Asian-Pacific markets over the past 35 years. Much of their recent head count growth has

U.S. LAW FIRM HEAD COUNTS IN EMERGING ASIAN-PACIFIC MARKETS



U.S. LAW FIRM HEAD COUNTS IN DEVELOPED ASIAN-PACIFIC MARKETS



ing in emerging markets has grown exponentially over the past several decades, represent only about 6 percent of the total head count of NLJ 350 firms.

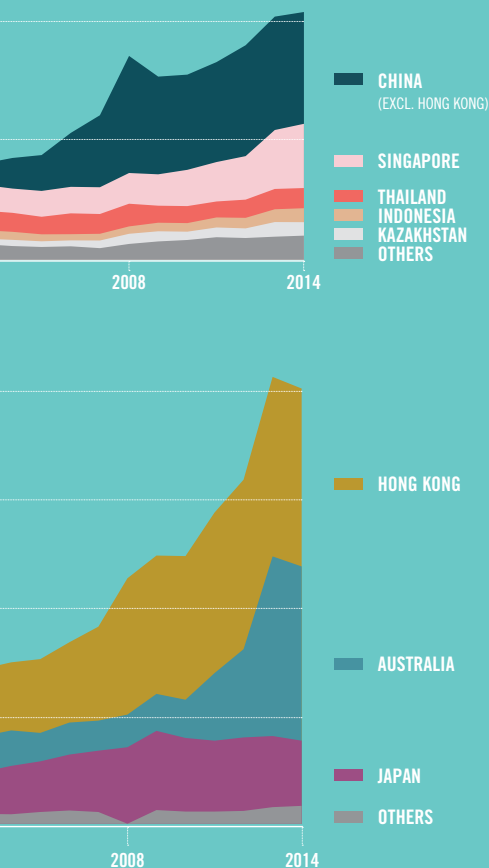


at survey question, so the chart data comes from relative subsets of The Am Law 200. For instance, some 28 firms provided data for their European operations; only 7 provided data for Africa. Several of the most globalized U.S. firms are not represented. Because the sample of firms surveyed is slightly different from the sample of firms in the Am Law 200, the average firmwide RPL cited in these charts varies slightly, from \$733,000 to \$874,286, compared to \$871,958 for

all Am Law 100 firms and \$647,025 for all Second Hundred firms in The Am Law 200.

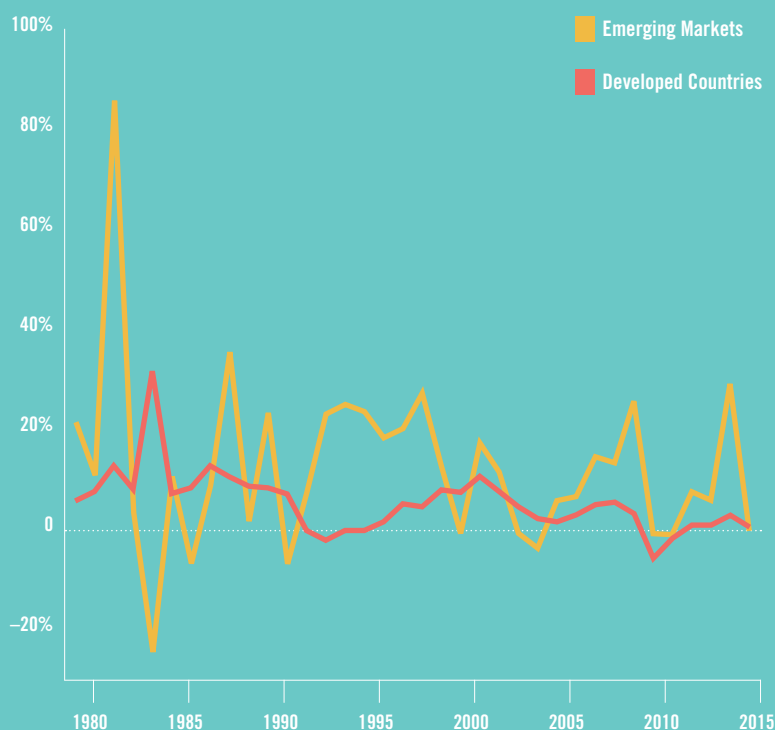
Still, the charts show a consistent trend worth noting: RPL for these firms is lower, sometimes significantly lower, outside North America. The difference is smaller in Europe and the Asia-Pacific region, and most pronounced in Latin America. Overall, RPL from North America is 25 percent higher than RPL from outside the region.

have raised their bets on the Asia-Pacific region over the past decade. The biggest bets come in China, Hong Kong and Australia.



CHANGING TIMES

THIS CHART TRACKS THE RATE OF CHANGE in lawyer head counts at large U.S. law firms in emerging markets and developed markets. Emerging markets have seen wider swings in head count growth rates but faster recoveries after downturns. Since 2008, growth in developed markets has been minimal, but law firms have continued to add lawyers in emerging markets.



Furthermore, the legal impediments outside chapter 9 to meaningful pension reform may not be intractable. In some jurisdictions, not all pension benefits may be constitutionally protected, and it is unlikely that applicable state protections render all features of pensions immutable in all events outside bankruptcy. Class action devices frequently used to reach binding agreements on retiree health obligations also may be available to achieve binding consensual agreements on pension restructuring.

LESSON TWO

A meaningful effort to address public pension underfunding requires a reevaluation of the assumptions that typically guide funding and financial reporting.

Customary pension assumptions may be unrealistic and in need of change. As the City's pension expert testified during the Detroit bankruptcy trial, for too long public pension plans have had "a policy that essentially believes that investment gains [are] permanent and losses [are] temporary." Discount rates of 7.5% to 8% are routinely used to value liabilities, necessarily requiring high-risk investment strategies and increasing the threat of unanticipated asset loss and saddling taxpayers with greater prospects for future tax hikes for pension debt. Similar rates also are often used for financial accounting purposes and mask the true liabilities that governments face. In his opinion approving the Plan of Adjustment, Judge Rhodes expressly admonished Detroit and its labor unions to directly address in bargaining the issue of "honest and realistic accounting and actuarial assumptions." To do so is likely to result in more adequate funding and avoids the prospect that hard-fought agreements end up as halfway measures requiring future renegotiation.

LESSON THREE

State constitutional protections for accrued pensions give way to federal bankruptcy power.

In all likelihood, accrued but unfunded pensions are not immune from impairment by a federal bankruptcy court. In the most widely reported decision in the Detroit bankruptcy, Judge Rhodes held that Michigan's express constitutional protection for pensions, which provides that accrued pension benefits are "contractual obligations" that cannot "be diminished or impaired," was not an obstacle to pension cuts in chapter 9. For Judge Rhodes, that clause merely conferred contractual status on pension claims and gave way to a bankruptcy court's well-established power to abridge municipal contracts. Moreover, Detroit's Plan of Adjustment was proposed and judicially approved in less than 17 months from the date of the City's filing, allowing pension restructuring through chapter 9 to be swiftly accomplished.

Fortunately, chapter 9 bankruptcy cases are likely to remain rare. Nevertheless, for governments with extraordinary and unsustainable legacy costs, the Detroit bankruptcy provides a useful set of lessons for a successful restructuring of unfunded pension liabilities, within or outside the chapter 9 context.

**126 OF THE NATION'S
LARGEST PUBLIC-
SECTOR PENSION
FUNDS ARE UNDER-
FUNDED BY MORE THAN
\$1 TRILLION. MOST
GOVERNMENTS ARE
UNWILLING TO
CONFRONT THIS.**





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THE GLOBAL 100

| 2015 Rank | 2014 Rank | Firm | Gross Revenue, Most Recent Fiscal Year | Lawyers | Revenue Per Lawyer | Country with the Most Lawyers |
|-----------|-----------|--|--|---------|--------------------|-------------------------------|
| 73 | 75 | Littler Mendelson | \$543,500,000 | 1,088 | \$500,000 | United States |
| 74 | 73 | Katten Muchin Rosenman | \$537,500,000 | 632 | \$850,000 | United States |
| 75 | 55 | Slaughter and May | \$525,500,000 | 486 | \$1,080,000 | United Kingdom |
| 76 | 77 | Sheppard, Mullin, Richter & Hampton | \$510,500,000 | 584 | \$875,000 | United States |
| 77 | 76 | Cadwalader, Wickersham & Taft | \$481,500,000 | 452 | \$1,065,000 | United States |
| 78 | 85 | Simmons & Simmons | \$478,000,000 | 735 | \$650,000 | United Kingdom |
| 79 | 83 | Fidal | \$462,000,000 | 1,269 | \$365,000 | France |
| 80 | 78 | Fried, Frank, Harris, Shriver & Jacobson | \$460,000,000 | 414 | \$1,110,000 | United States |
| 81 | 79 | Faegre Baker Daniels | \$456,500,000 | 672 | \$680,000 | United States |
| 82 | 80 | J&A Garrigues | \$446,000,000 | 1,319 | \$340,000 | Spain |
| 83 | 89 | Venable | \$442,000,000 | 564 | \$785,000 | United States |
| 84 | 97 | Fragomen, Del Rey, Bernsen & Loewy | \$441,000,000 | 469 | \$940,000 | United States |
| 85 | 90 | Bird & Bird | \$432,500,000 | 962 | \$450,000 | United Kingdom |
| 86 | 84 | Duane Morris | \$428,000,000 | 620 | \$690,000 | United States |
| 87 | 99 | Berwin Leighton Paisner | \$427,500,000 | 725 | \$590,000 | United Kingdom |
| 88 | 86 | Locke Lord ⁵ | \$426,500,000 | 578 | \$740,000 | United States |
| 89 | 93 | Troutman Sanders | \$422,500,000 | 593 | \$715,000 | United States |
| 90 | 95 | Kilpatrick Townsend & Stockton | \$411,500,000 | 571 | \$720,000 | United States |
| 91 | N/A | Jenner & Block | \$408,000,000 | 401 | \$1,015,000 | United States |
| 92 | 88 | Nixon Peabody | \$407,000,000 | 573 | \$710,000 | United States |
| 93 | 94 | Schulte Roth & Zabel | \$400,500,000 | 351 | \$1,140,000 | United States |
| 94 | N/A | Williams & Connolly | \$399,000,000 | 307 | \$1,300,000 | United States |
| 95 | N/A | Taylor Wessing | \$395,500,000 | 819 | \$485,000 | Germany |
| 96 | 92 | Hughes Hubbard & Reed | \$394,000,000 | 332 | \$1,185,000 | United States |
| 97 | 82 | Minter Ellison | \$391,000,000 | 792 | \$495,000 | Australia |
| 98 | N/A | Jackson Lewis | \$390,500,000 | 751 | \$520,000 | United States |
| 99 | 100 | Loyens & Loeff | \$387,000,000 | 793 | \$490,000 | Netherlands |
| 100 | N/A | Pepper Hamilton | \$384,500,000 | 508 | \$755,000 | United States |

⁵ Locke Lord merged with Edwards Wildman Palmer in January 2015. Results are for the legacy operation only.

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THE GLOBAL 100

MOST LAWYERS

AVERAGE HEAD COUNT FOR GLOBAL 100 FIRMS WAS 1,263 in 2014, an annual growth rate of 1.6 percent. Forty-five of the 100 largest firms by head count have more than 1,000 lawyers. Sixty-two firms have the largest proportion of their

lawyers in the United States, 15 have the largest proportion of their lawyers in the United Kingdom and eight have most of their lawyers in China. The number of lawyers listed here is the average full-time-equivalent for the 2014 calendar year.

| Rank by Head Count | Firm | Lawyers | Countries in Which the Firm Has Offices | Country with the Most Lawyers | % of Lawyers In That Country |
|-----------------------|--------------------------------------|---------|--|----------------------------------|---------------------------------|
| 1 | Baker & McKenzie (verein) | 4,363 | 47 | United States | 15% |
| 2 | Yingke | 4,153 | 20 | China | 79% |
| 3 | DLA Piper (verein) | 3,702 | 31 | United States | 34% |
| 4 | Dacheng ¹ | 3,700 | 7 | China | 98% |
| 5 | Norton Rose Fulbright (verein) | 3,461 | 27 | United States | 20% |
| 6 | CMS Legal Services (EEIG) | 2,522 | 33 | United Kingdom | 24% |
| 7 | Jones Day | 2,510 | 18 | United States | 67% |
| 8 | Clifford Chance | 2,495 | 26 | United Kingdom | 28% |
| 9 | Hogan Lovells (verein) | 2,360 | 20 | United States | 37% |
| 10 | Dentons ¹ (verein) | 2,285 | 30 | United States | 31% |
| 11 | Linklaters | 2,252 | 20 | United Kingdom | 38% |
| 12 | Allen & Overy | 2,172 | 32 | United Kingdom | 32% |
| 13 | Latham & Watkins | 2,100 | 14 | United States | 68% |
| 14 | King & Wood Mallesons (verein) | 2,036 | 14 | China | 38% |
| 15 | Freshfields Bruckhaus Deringer | 2,035 | 18 | United Kingdom | 42% |
| 16 | K&L Gates | 1,952 | 17 | United States | 64% |
| 17 | White & Case | 1,878 | 27 | United States | 30% |
| 18 | Herbert Smith Freehills | 1,868 | 16 | Australia | 37% |
| 19 | Sidley Austin | 1,761 | 9 | United States | 83% |
| 20 | Greenberg Traurig | 1,730 | 8 | United States | 89% |
| 21 | Skadden, Arps, Slate, Meagher & Flom | 1,654 | 13 | United States | 81% |
| 22 | Reed Smith | 1,638 | 9 | United States | 67% |
| 23 | Kirkland & Ellis | 1,576 | 4 | United States | 86% |
| 24 | Mayer Brown | 1,486 | 10 | United States | 54% |
| 25 | Ashurst | 1,478 | 16 | United Kingdom | 28% |
| 26 | Squire Patton Boggs (verein) | 1,356 | 20 | United States | 44% |
| 27 | Morgan, Lewis & Bockius | 1,338 | 10 | United States | 92% |
| 28 | J&A Garrigues | 1,319 | 12 | Spain | 89% |
| 28 | Pinsent Masons | 1,319 | 9 | United Kingdom | 86% |
| 30 | DWF | 1,269 | 3 | United Kingdom | 64% |
| 30 | Fidal | 1,269 | 2 | France | 99% |
| 32 | Clyde & Co | 1,238 | 18 | United Kingdom | 58% |
| 33 | Eversheds | 1,211 | 9 | United Kingdom | 87% |
| 34 | Gibson, Dunn & Crutcher | 1,204 | 9 | United States | 88% |
| 35 | Cleary Gottlieb Steen & Hamilton | 1,178 | 12 | United States | 54% |

¹ Dentons and Dacheng have announced their combination in January 2015 but have not fully integrated as of yet. Results are for the legacy operation only.

| Rank by Head Count | Firm | Lawyers | Countries in Which the Firm Has Offices | Country with the Most Lawyers | % of Lawyers In That Country |
|-----------------------|--|---------|--|----------------------------------|---------------------------------|
| 36 | DAC Beachcroft | 1,140 | 7 | United Kingdom | 92% |
| 37 | Zhong Lun | 1,098 | 4 | China | 98% |
| 38 | Little Mendelson | 1,088 | 8 | United States | 91% |
| 39 | Weil, Gotshal & Manges | 1,072 | 9 | United States | 66% |
| 40 | Zhong Yin Law Firm | 1,063 | 1 | China | 100% |
| 41 | Ropes & Gray | 1,041 | 5 | United States | 86% |
| 42 | Holland & Knight | 1,009 | 3 | United States | 97% |
| 43 | DeHeng | 1,004 | 5 | China | 99% |
| 44 | Allbright | 1,002 | 1 | China | 100% |
| 45 | Grandall Law Firm | 1,000 | 4 | China | 95% |
| 46 | McDermott Will & Emery | 997 | 8 | United States | 80% |
| 47 | Morrison & Foerster | 988 | 7 | United States | 75% |
| 48 | Bryan Cave | 977 | 6 | United States | 92% |
| 49 | Bird & Bird | 962 | 18 | United Kingdom | 25% |
| 50 | Paul, Weiss, Rifkind, Wharton & Garrison | 943 | 5 | United States | 94% |
| 50 | Siqueira Castro | 943 | 3 | Brazil | 99% |
| 52 | McGuireWoods | 939 | 3 | United States | 95% |
| 53 | Simpson Thacher & Bartlett | 929 | 6 | United States | 84% |
| 54 | Wilmer Cutler Pickering Hale and Dorr | 926 | 5 | United States | 89% |
| 55 | Perkins Coie | 913 | 2 | United States | 99% |
| 56 | Lewis Brisbois Bisgaard & Smith | 891 | 1 | United States | 100% |
| 56 | Orrick, Herrington & Sutcliffe | 891 | 8 | United States | 67% |
| 58 | King & Spalding | 886 | 9 | United States | 85% |
| 59 | Baker & Hostetler | 878 | 1 | United States | 100% |
| 60 | Dechert | 877 | 13 | United States | 66% |
| 61 | Paul Hastings | 873 | 9 | United States | 78% |
| 62 | Davis Polk & Wardwell | 871 | 7 | United States | 77% |
| 63 | Cuatrecasas, Gonçalves Pereira | 850 | 10 | Spain | 83% |
| 64 | Foley & Lardner | 849 | 4 | United States | 99% |
| 65 | Addleshaw Goddard | 831 | 6 | United Kingdom | 94% |
| 66 | Akin Gump Strauss Hauer & Feld | 822 | 8 | United States | 87% |
| 67 | Shearman & Sterling | 821 | 12 | United States | 48% |
| 68 | Taylor Wessing | 819 | 17 | Germany | 44% |
| 69 | Winston & Strawn | 808 | 8 | United States | 90% |
| 70 | Sullivan & Cromwell | 805 | 7 | United States | 80% |
| 71 | Kim & Chang | 801 | 2 | South Korea | 80% |
| 72 | Loyens & Loeff | 793 | 11 | Netherlands | 72% |
| 73 | Minter Ellison | 792 | 5 | Australia | 93% |
| 74 | Covington & Burling | 774 | 5 | United States | 86% |
| 75 | Seyfarth Shaw | 772 | 4 | United States | 96% |
| 76 | Alston & Bird | 759 | 2 | United States | 99% |
| 77 | Cooley | 755 | 2 | United States | 99% |
| 77 | Goodwin Procter | 755 | 3 | United States | 96% |
| 79 | Jackson Lewis | 751 | 2 | United States | 99% |



THE GLOBAL 100

| Rank by Head Count | Firm | Lawyers | Countries in Which the Firm Has Offices | Country with the Most Lawyers | % of Lawyers In That Country |
|-----------------------|---|---------|--|----------------------------------|---------------------------------|
| 80 | Wilson Elser Moskowitz Edelman & Dicker | 745 | 1 | United States | 100% |
| 81 | Bordon Ladner Gervais | 742 | 1 | Canada | 100% |
| 82 | Simmons & Simmons | 735 | 18 | United Kingdom | 51% |
| 83 | Berwin Leighton Paisner | 725 | 9 | United Kingdom | 75% |
| 84 | Allens | 722 | 6 | Australia | 91% |
| 85 | Proskauer Rose | 721 | 5 | United States | 90% |
| 86 | Bingham McCutchen | 715 | 5 | United States | 84% |
| 87 | Quinn Emanuel Urquhart & Sullivan | 710 | 9 | United States | 86% |
| 88 | Hunton & Williams | 707 | 6 | United States | 92% |
| 89 | Fasken Martineau DuMoulin | 703 | 4 | Canada | 83% |
| 90 | Ogletree, Deakins, Nash, Smoak & Stewart | 701 | 5 | United States | 98% |
| 91 | Arnold & Porter | 699 | 3 | United States | 93% |
| 92 | Baker Botts | 694 | 8 | United States | 85% |
| 93 | Polsinelli | 693 | 1 | United States | 100% |
| 94 | Amarchand Mangaldas Suresh A Shroff & Co ² | 690 | 1 | India | 100% |
| 95 | Clayton Utz | 689 | 1 | Australia | 100% |
| 96 | Faegre Baker Daniels | 672 | 3 | United States | 96% |
| 97 | Wilson Sonsini Goodrich & Rosati | 670 | 3 | United States | 96% |
| 98 | O'Melveny & Myers | 663 | 8 | United States | 86% |
| 99 | Gowling Lafleur Henderson | 657 | 2 | Canada | 98% |
| 100 | Katten Muchin Rosenman | 632 | 3 | United States | 97% |

² Amarchand Mangaldas Suresh A Shroff & Co disbanded in May 2015 to form two different law firms: Cyril Amarchand Mangaldas and Shardul Amarchand Mangaldas. The results are for the legacy operation only.

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THE GLOBAL 100

MOST PROFITS PER PARTNER

PROFITS PER PARTNER AMONG GLOBAL 100 FIRMS AVERAGED \$1.7 million in 2014. That's up 5.5 percent from 2013, a year that saw similar growth in that metric of 5.3 percent. Seventy-four firms topped \$1 million in PPP, compared to 70 firms the previous year. U.S. firms comprise the top 10 for the first time since 2003. The highest-ranking non-U.S. firm is Slaughter and May, ranking 11th.

This chart ranks the most profitable firms on our Most Revenue and Most Lawyers charts, which combined include 123 firms. To be eligible for this list, a firm had to appear on one of those two charts. Figures for U.S. firms were obtained from The Am Law 100. All other firms were surveyed directly. The figure for profits per partner is rounded to the nearest \$5,000, and gross revenue is rounded to the nearest \$500,000.

| Rank By PPP | Firm | Profits Per Partner | Equity Partners | Gross Revenue, Most Recent Fiscal Year | Country with the Most Lawyers |
|-------------|--|---------------------|-----------------|--|-------------------------------|
| 1 | Wachtell, Lipton, Rosen & Katz | \$5,500,000 | 83 | \$702,500,000 | United States |
| 2 | Quinn Emanuel Urquhart & Sullivan | \$4,925,000 | 147 | \$1,103,500,000 | United States |
| 3 | Paul, Weiss, Rifkind, Wharton & Garrison | \$3,845,000 | 135 | \$1,036,500,000 | United States |
| 4 | Sullivan & Cromwell | \$3,680,000 | 170 | \$1,276,000,000 | United States |
| 5 | Kirkland & Ellis | \$3,510,000 | 337 | \$2,150,000,000 | United States |
| 6 | Simpson Thacher & Bartlett | \$3,485,000 | 187 | \$1,245,500,000 | United States |
| 7 | Cravath, Swaine & Moore | \$3,365,000 | 91 | \$648,000,000 | United States |
| 8 | Davis Polk & Wardwell | \$3,295,000 | 153 | \$1,072,000,000 | United States |
| 9 | Cleary Gottlieb Steen & Hamilton | \$3,230,000 | 185 | \$1,250,000,000 | United States |
| 10 | Gibson, Dunn & Crutcher | \$3,045,000 | 292 | \$1,466,000,000 | United States |
| 11 | Slaughter and May | \$2,915,000 | 110 | \$525,500,000 | United Kingdom |
| 12 | Skadden, Arps, Slate, Meagher & Flom | \$2,905,000 | 383 | \$2,315,000,000 | United States |
| 13 | Latham & Watkins | \$2,900,000 | 457 | \$2,612,000,000 | United States |
| 14 | Milbank, Tweed, Hadley & McCloy | \$2,745,000 | 144 | \$761,000,000 | United States |
| 15 | Willkie Farr & Gallagher | \$2,560,000 | 138 | \$640,000,000 | United States |
| 16 | Weil, Gotshal & Manges | \$2,405,000 | 171 | \$1,151,000,000 | United States |
| 17 | Debevoise & Plimpton | \$2,380,000 | 134 | \$710,500,000 | United States |
| 18 | Paul Hastings | \$2,360,000 | 197 | \$1,000,500,000 | United States |
| 19 | King & Spalding | \$2,355,000 | 170 | \$934,000,000 | United States |
| 20 | Dechert | \$2,315,000 | 163 | \$839,500,000 | United States |
| 20 | Schulte Roth & Zabel | \$2,315,000 | 84 | \$400,500,000 | United States |
| 22 | Freshfields Bruckhaus Deringer | \$2,260,000 | 419 | \$2,052,500,000 | United Kingdom |
| 23 | Linklaters | \$2,255,000 | 419 | \$2,088,000,000 | United Kingdom |
| 24 | Cadwalader, Wickersham & Taft | \$2,210,000 | 56 | \$481,500,000 | United States |
| 25 | Hughes Hubbard & Reed | \$2,145,000 | 77 | \$394,000,000 | United States |
| 26 | Proskauer Rose | \$2,100,000 | 172 | \$818,500,000 | United States |
| 27 | White & Case | \$2,005,000 | 275 | \$1,503,000,000 | United States |
| 28 | Sidley Austin | \$1,990,000 | 306 | \$1,753,500,000 | United States |
| 29 | Allen & Overy | \$1,985,000 | 440 | \$2,112,000,000 | United Kingdom |
| 30 | Ropes & Gray | \$1,930,000 | 268 | \$1,115,500,000 | United States |
| 31 | Vinson & Elkins | \$1,925,000 | 144 | \$653,500,000 | United States |



THE GLOBAL 100

| Rank By PPP | Firm | Profits Per Partner | Equity Partners | Gross Revenue, Most Recent Fiscal Year | Country with the Most Lawyers |
|----------------|--|---------------------|-----------------|---|----------------------------------|
| 32 | Wilson Sonsini Goodrich & Rosati | \$1,910,000 | 125 | \$646,000,000 | United States |
| 33 | Shearman & Sterling | \$1,905,000 | 157 | \$845,000,000 | United States |
| 34 | Akin Gump Strauss Hauer & Feld | \$1,885,000 | 189 | \$868,000,000 | United States |
| 35 | Clifford Chance | \$1,840,000 | 403 | \$2,225,500,000 | United Kingdom |
| 36 | Fragomen, Del Rey, Bernsen & Loewy | \$1,835,000 | 62 | \$441,000,000 | United States |
| 37 | Fried, Frank, Harris, Shriver & Jacobson | \$1,815,000 | 107 | \$460,000,000 | United States |
| 38 | Goodwin Procter | \$1,745,000 | 189 | \$785,500,000 | United States |
| 39 | Cooley | \$1,735,000 | 176 | \$802,000,000 | United States |
| 40 | Baker Botts | \$1,700,000 | 176 | \$653,000,000 | United States |
| 41 | Winston & Strawn | \$1,685,000 | 158 | \$785,500,000 | United States |
| 42 | Jenner & Block | \$1,615,000 | 105 | \$408,000,000 | United States |
| 43 | Morgan, Lewis & Bockius | \$1,610,000 | 360 | \$1,317,000,000 | United States |
| 44 | Wilmer Cutler Pickering Hale and Dorr | \$1,605,000 | 286 | \$1,071,000,000 | United States |
| 45 | O'Melveny & Myers | \$1,595,000 | 169 | \$665,000,000 | United States |
| 45 | Orrick, Herrington & Sutcliffe | \$1,595,000 | 141 | \$877,000,000 | United States |
| 47 | Alston & Bird | \$1,545,000 | 146 | \$645,500,000 | United States |
| 48 | McDermott Will & Emery | \$1,530,000 | 203 | \$900,000,000 | United States |
| 49 | Williams & Connolly | \$1,515,000 | 118 | \$399,000,000 | United States |
| 50 | DLA Piper (verein) | \$1,490,000 | 448 | \$2,480,500,000 | United States |
| 51 | Mayer Brown | \$1,450,000 | 280 | \$1,223,000,000 | United States |
| 52 | Greenberg Traurig | \$1,425,000 | 299 | \$1,270,500,000 | United States |
| 53 | Morrison & Foerster | \$1,415,000 | 261 | \$968,500,000 | United States |
| 54 | Katten Muchin Rosenman | \$1,395,000 | 146 | \$537,500,000 | United States |
| 55 | Arnold & Porter | \$1,385,000 | 233 | \$694,500,000 | United States |
| 56 | Sheppard, Mullin, Richter & Hampton | \$1,365,000 | 114 | \$510,500,000 | United States |
| 57 | Covington & Burling | \$1,335,000 | 248 | \$709,000,000 | United States |
| 58 | Bingham McCutchen | \$1,330,000 | 130 | \$665,000,000 | United States |
| 59 | Herbert Smith Freehills | \$1,320,000 | 324 | \$1,343,500,000 | Australia |
| 60 | Ashurst | \$1,280,000 | 264 | \$925,000,000 | United Kingdom |
| 61 | Eversheds | \$1,225,000 | 118 | \$627,500,000 | United Kingdom |
| 61 | Loyens & Loeff | \$1,225,000 | 100 | \$387,000,000 | Netherlands |
| 63 | Hogan Lovells (verein) | \$1,215,000 | 509 | \$1,779,500,000 | United States |
| 64 | Reed Smith | \$1,205,000 | 302 | \$1,152,000,000 | United States |
| 65 | Clayton Utz | \$1,175,000 | 150 | \$383,000,000 | Australia |
| 66 | Pillsbury Winthrop Shaw Pittman | \$1,165,000 | 165 | \$560,000,000 | United States |
| 67 | Baker & McKenzie (verein) | \$1,140,000 | 702 | \$2,430,000,000 | United States |
| 68 | Holland & Knight | \$1,135,000 | 172 | \$688,500,000 | United States |
| 69 | Perkins Coie | \$1,095,000 | 181 | \$710,000,000 | United States |
| 70 | Clyde & Co | \$1,090,000 | 165 | \$651,500,000 | United Kingdom |
| 71 | Simmons & Simmons | \$1,070,000 | 146 | \$478,000,000 | United Kingdom |
| 72 | Foley & Lardner | \$1,065,000 | 153 | \$665,000,000 | United States |
| 73 | Berwin Leighton Paisner | \$1,050,000 | 86 | \$427,500,000 | United Kingdom |
| 74 | Hunton & Williams | \$1,000,000 | 212 | \$568,000,000 | United States |
| 75 | Minter Ellison | \$995,000 | 160 | \$391,000,000 | Australia |
| 76 | Locke Lord | \$970,000 | 160 | \$426,500,000 | United States |
| 76 | Venable | \$970,000 | 163 | \$442,000,000 | United States |
| 78 | McGuireWoods | \$960,000 | 182 | \$620,000,000 | United States |



THE GLOBAL 100

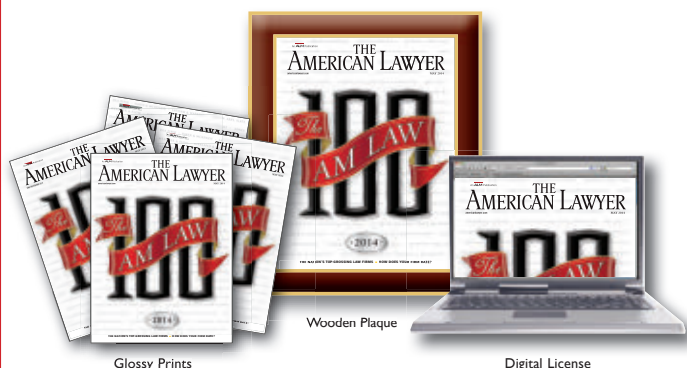
| Rank By PPP | Firm | Profits Per Partner | Equity Partners | Gross Revenue, Most Recent Fiscal Year | Country with the Most Lawyers |
|-------------|---------------------------------|---------------------|-----------------|--|-------------------------------|
| 79 | Pepper Hamilton | \$945,000 | 139 | \$384,500,000 | United States |
| 80 | Seyfarth Shaw | \$940,000 | 195 | \$555,000,000 | United States |
| 81 | Jones Day | \$930,000 | 933 | \$1,850,000,000 | United States |
| 82 | Kilpatrick Townsend & Stockton | \$925,000 | 111 | \$411,500,000 | United States |
| 83 | Duane Morris | \$900,000 | 122 | \$428,000,000 | United States |
| 84 | Pinsent Masons | \$890,000 | 156 | \$597,500,000 | United Kingdom |
| 85 | Squire Patton Boggs (verein) | \$840,000 | 154 | \$870,500,000 | United States |
| 86 | K&L Gates | \$830,000 | 252 | \$1,145,500,000 | United States |
| 87 | Bryan Cave | \$815,000 | 214 | \$635,500,000 | United States |
| 88 | Baker & Hostetler | \$810,000 | 171 | \$579,000,000 | United States |
| 89 | Troutman Sanders | \$805,000 | 197 | \$422,500,000 | United States |
| 90 | Addleshaw Goddard | \$795,000 | 96 | \$317,500,000 | United Kingdom |
| 91 | Allens | \$790,000 | 150 | \$339,000,000 | Australia |
| 92 | CMS Legal Services (EEIG) | \$775,000 | 514 | \$1,242,500,000 | United Kingdom |
| 93 | Faegre Baker Daniels | \$770,000 | 239 | \$456,500,000 | United States |
| 94 | Nixon Peabody | \$760,000 | 145 | \$407,000,000 | United States |
| 95 | Bird & Bird | \$750,000 | 91 | \$432,500,000 | United Kingdom |
| 96 | J&A Garrigues | \$735,000 | 243 | \$446,000,000 | Spain |
| 97 | Dentons (verein) | \$680,000 | 484 | \$1,275,000,000 | United States |
| 98 | Lewis Brisbois Bisgaard & Smith | \$670,000 | 103 | \$364,000,000 | United States |
| 99 | Polsinelli | \$650,000 | 112 | \$368,000,000 | United States |
| 100 | Taylor Wessing | \$640,000 | 196 | \$395,500,000 | Germany |

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THE GLOBAL 100

MOST GLOBAL

THIS CHART COMPARES 123 FIRMS BY THE NUMBER OF COUNTRIES in which they have offices. (Firms on this list appear on our “Most Revenue” chart, “Most Lawyers” chart or both.) These firms show a range of geographic diversity: Thirty-three firms

have offices in at least 10 countries, and fourteen firms are located in just one country. Eighteen firms have at less than 50 percent of their lawyers in one country. The number of lawyers listed is the average full-time equivalent for the 2014 calendar year.

| Rank by No. of Countries Where the Firm Has Offices | Firm Name | Countries in Which the Firm Has Offices | Country with the Most Lawyers | % of Lawyers In That Country | Total Lawyers |
|---|--------------------------------------|---|-------------------------------|------------------------------|---------------|
| 1 | Baker & McKenzie | 47 | United States | 15% | 4,363 |
| 2 | CMS Legal Services | 33 | United Kingdom | 24% | 2,522 |
| 3 | Allen & Overy | 32 | United Kingdom | 32% | 2,172 |
| 4 | DLA Piper | 31 | United States | 34% | 3,702 |
| 5 | Dentons | 30 | United States | 31% | 2,285 |
| 6 | Norton Rose Fulbright | 27 | United States | 20% | 3,461 |
| 6 | White & Case | 27 | United States | 30% | 1,878 |
| 8 | Clifford Chance | 26 | United Kingdom | 28% | 2,495 |
| 9 | Hogan Lovells | 20 | United States | 37% | 2,360 |
| 9 | Linklaters | 20 | United Kingdom | 38% | 2,252 |
| 9 | Squire Patton Boggs | 20 | United States | 44% | 1,356 |
| 9 | Yingke | 20 | China | 79% | 4,153 |
| 13 | Bird & Bird | 18 | United Kingdom | 25% | 962 |
| 13 | Clyde & Co | 18 | United Kingdom | 58% | 1,238 |
| 13 | Fragomen, Del Rey, Bernsen & Loewy | 18 | United States | 60% | 469 |
| 13 | Freshfields Bruckhaus Deringer | 18 | United Kingdom | 42% | 2,035 |
| 13 | Jones Day | 18 | United States | 67% | 2,510 |
| 13 | Simmons & Simmons | 18 | United Kingdom | 51% | 735 |
| 19 | K&L Gates | 17 | United States | 64% | 1,952 |
| 19 | Taylor Wessing | 17 | Germany | 44% | 819 |
| 21 | Ashurst | 16 | United Kingdom | 28% | 1,478 |
| 21 | Herbert Smith Freehills | 16 | Australia | 37% | 1,868 |
| 23 | King & Wood Mallesons | 14 | China | 38% | 2,036 |
| 23 | Latham & Watkins | 14 | United States | 68% | 2,100 |
| 25 | Dechert | 13 | United States | 66% | 877 |
| 25 | Skadden, Arps, Slate, Meagher & Flom | 13 | United States | 81% | 1,654 |
| 27 | Cleary Gottlieb Steen & Hamilton | 12 | United States | 54% | 1,178 |
| 27 | J&A Garrigues | 12 | Spain | 89% | 1,319 |
| 27 | Shearman & Sterling | 12 | United States | 48% | 821 |
| 30 | Loyens & Loeff | 11 | Netherlands | 72% | 793 |
| 31 | Cuatrecasas, Gonçalves Pereira | 10 | Spain | 83% | 850 |
| 31 | Mayer Brown | 10 | United States | 54% | 1,486 |
| 31 | Morgan, Lewis & Bockius | 10 | United States | 92% | 1,338 |
| 34 | Berwin Leighton Paisner | 9 | United Kingdom | 75% | 725 |
| 34 | Eversheds | 9 | United Kingdom | 87% | 1,211 |
| 34 | Gibson, Dunn & Crutcher | 9 | United States | 88% | 1,204 |
| 34 | King & Spalding | 9 | United States | 85% | 886 |
| 34 | Paul Hastings | 9 | United States | 78% | 873 |
| 34 | Pinsent Masons | 9 | United Kingdom | 86% | 1,319 |



THE GLOBAL 100

| Rank by No. of Countries Where the Firm Has Offices | Firm Name | Countries in Which the Firm Has Offices | Country with the Most Lawyers | % of Lawyers In That Country | Total Lawyers |
|---|--|---|-------------------------------|------------------------------|---------------|
| 34 | Quinn Emanuel Urquhart & Sullivan | 9 | United States | 86% | 710 |
| 34 | Reed Smith | 9 | United States | 67% | 1,638 |
| 34 | Sidley Austin | 9 | United States | 83% | 1,761 |
| 34 | Weil, Gotshal & Manges | 9 | United States | 66% | 1,072 |
| 44 | Akin Gump Strauss Hauer & Feld | 8 | United States | 87% | 822 |
| 44 | Baker Botts | 8 | United States | 85% | 694 |
| 44 | Greenberg Traurig | 8 | United States | 89% | 1,730 |
| 44 | Littler Mendelson | 8 | United States | 91% | 1,088 |
| 44 | McDermott Will & Emery | 8 | United States | 80% | 997 |
| 44 | O'Melveny & Myers | 8 | United States | 86% | 663 |
| 44 | Orrick, Herrington & Sutcliffe | 8 | United States | 67% | 891 |
| 44 | Winston & Strawn | 8 | United States | 90% | 808 |
| 52 | DAC Beachcroft | 7 | United Kingdom | 92% | 1,140 |
| 52 | Dacheng | 7 | China | 98% | 3,700 |
| 52 | Davis Polk & Wardwell | 7 | United States | 77% | 871 |
| 52 | Milbank, Tweed, Hadley & McCloy | 7 | United States | 71% | 614 |
| 52 | Morrison & Foerster | 7 | United States | 75% | 988 |
| 52 | Sullivan & Cromwell | 7 | United States | 80% | 805 |
| 52 | Vinson & Elkins | 7 | United States | 90% | 624 |
| 59 | Addleshaw Goddard | 6 | United Kingdom | 94% | 831 |
| 59 | Allens | 6 | Australia | 91% | 722 |
| 59 | Bryan Cave | 6 | United States | 92% | 977 |
| 59 | Debevoise & Plimpton | 6 | United States | 75% | 615 |
| 59 | Hunton & Williams | 6 | United States | 92% | 707 |
| 59 | Simpson Thacher & Bartlett | 6 | United States | 84% | 929 |
| 59 | Willkie Farr & Gallagher | 6 | United States | 80% | 554 |
| 66 | Bingham McCutchen | 5 | United States | 84% | 715 |
| 66 | Covington & Burling | 5 | United States | 86% | 774 |
| 66 | DeHeng | 5 | China | 99% | 1,004 |
| 66 | Duane Morris | 5 | United States | 95% | 620 |
| 66 | Fried, Frank, Harris, Shriver & Jacobson | 5 | United States | 88% | 414 |
| 66 | Minter Ellison | 5 | Australia | 93% | 792 |
| 66 | Ogletree, Deakins, Nash, Smoak & Stewart | 5 | United States | 98% | 701 |
| 66 | Paul, Weiss, Rifkind, Wharton & Garrison | 5 | United States | 94% | 943 |
| 66 | Pillsbury Winthrop Shaw Pittman | 5 | United States | 93% | 591 |
| 66 | Proskauer Rose | 5 | United States | 90% | 721 |
| 66 | Ropes & Gray | 5 | United States | 86% | 1,041 |
| 66 | Sheppard, Mullin, Richter & Hampton | 5 | United States | 96% | 584 |
| 66 | Wilmer Cutler Pickering Hale and Dorr | 5 | United States | 89% | 926 |
| 79 | Cadwalader, Wickersham & Taft | 4 | United States | 85% | 452 |
| 79 | Fasken Martineau DuMoulin | 4 | Canada | 83% | 703 |
| 79 | Foley & Lardner | 4 | United States | 99% | 849 |
| 79 | Grandall Law Firm | 4 | China | 95% | 1,000 |
| 79 | Kilpatrick Townsend & Stockton | 4 | United States | 95% | 571 |
| 79 | Kirkland & Ellis | 4 | United States | 86% | 1,576 |
| 79 | Seyfarth Shaw | 4 | United States | 96% | 772 |
| 79 | Zhong Lun | 4 | China | 98% | 1,098 |
| 87 | Arnold & Porter | 3 | United States | 93% | 699 |
| 87 | DWF | 3 | United Kingdom | 64% | 1,269 |
| 87 | Faegre Baker Daniels | 3 | United States | 96% | 672 |
| 87 | Goodwin Procter | 3 | United States | 96% | 755 |



THE GLOBAL 100

| Rank by No. of Countries Where the Firm Has Offices | Firm Name | Countries in Which the Firm Has Offices | Country with the Most Lawyers | % of Lawyers In That Country | Total Lawyers |
|---|--|---|-------------------------------|------------------------------|---------------|
| 87 | Holland & Knight | 3 | United States | 97% | 1,009 |
| 87 | Hughes Hubbard & Reed | 3 | United States | 93% | 332 |
| 87 | Katten Muchin Rosenman | 3 | United States | 97% | 632 |
| 87 | Locke Lord | 3 | United States | 93% | 578 |
| 87 | McGuireWoods | 3 | United States | 95% | 939 |
| 87 | Siqueira Castro | 3 | Brazil | 99% | 943 |
| 87 | Slaughter and May | 3 | United Kingdom | 90% | 486 |
| 87 | Wilson Sonsini Goodrich & Rosati | 3 | United States | 96% | 670 |
| 99 | Alston & Bird | 2 | United States | 99% | 759 |
| 99 | Cooley | 2 | United States | 99% | 755 |
| 99 | Cravath, Swaine & Moore | 2 | United States | 92% | 442 |
| 99 | Fidal | 2 | France | 99% | 1,269 |
| 99 | Gowling Lafleur Henderson | 2 | Canada | 98% | 657 |
| 99 | Jackson Lewis | 2 | United States | 99% | 751 |
| 99 | Kim & Chang | 2 | South Korea | 80% | 801 |
| 99 | Nixon Peabody | 2 | United States | 99% | 573 |
| 99 | Perkins Coie | 2 | United States | 99% | 913 |
| 99 | Schulte Roth & Zabel | 2 | United States | 94% | 351 |
| 99 | Troutman Sanders | 2 | United States | 95% | 593 |
| 110 | Allbright | 1 | China | 100% | 1,002 |
| 110 | Amarchand Mangaldas Suresh A Shroff & Co | 1 | India | 100% | 690 |
| 110 | Baker & Hostetler | 1 | United States | 100% | 878 |
| 110 | Bordon Ladner Gervais | 1 | Canada | 100% | 742 |
| 110 | Clayton Utz | 1 | Australia | 100% | 689 |
| 110 | Jenner & Block | 1 | United States | 100% | 401 |
| 110 | Lewis Brisbois Bisgaard & Smith | 1 | United States | 100% | 891 |
| 110 | Pepper Hamilton | 1 | United States | 100% | 508 |
| 110 | Polsinelli | 1 | United States | 100% | 693 |
| 110 | Venable | 1 | United States | 100% | 564 |
| 110 | Wachtell, Lipton, Rosen & Katz | 1 | United States | 100% | 267 |
| 110 | Williams & Connolly | 1 | United States | 100% | 307 |
| 110 | Wilson Elser Moskowitz Edelman & Dicker | 1 | United States | 100% | 745 |
| 110 | Zhong Yin Law Firm | 1 | China | 100% | 1,063 |

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Corporate America's Go-To Firms

BEHIND EVERY BIG COMPANY, THERE'S A BIG LAW FIRM—OR rather, a slew of big law firms. But who, exactly, do America's titans of commerce turn to when they want to seal a deal, defend against a suit, negotiate a contract or patent a product? That's the question that our colleagues at Corporate Counsel magazine seek to answer every year in their "Who Represents Corporate America" survey. Their survey identifies to go-to law firms for every Fortune 50 company in the areas of contracts litigation, IP litigation, labor and employment, torts litigation, and labor litigation.

The results, which cover calendar year 2014, appear on the following pages. Firms listed have at least one mention in a given company's public documents. (For more on the magazine's methodology, go to corpcounsel.com.)

By necessity, such a list is not comprehensive: A firm that quietly untangles a business problem or heads off litigation may not appear in public documents. Still, Corporate Counsel's rankings continue to be our best available guide to who's really bringing in the business from the country's top corporate entities.

| COMPANY 2015 Revenue \$M | Contracts Litigation | IP Litigation | Labor and Employment | Torts Litigation | Labor |
|--------------------------------------|--|---|---|--|---|
| Wal-Mart Stores 485,651 | Beale Davidson Etherington & Morris; Briglia McLaughlin; Bryan Cave; Fox Rothschild; Geary Porter & Donovan; Giffen & Kaminski; Greenberg Traurig; Kemp Smith; Kutak Rock; Lawrence & Russell; Littler Mendelson; McCranie, Sistrunk, Anzelmo, Hardy, Maxwell & McDaniel; Morgan, Lewis & Bockius; Mulinix Ogden Hall & Ludlam; Nelson Mullins Riley & Scarborough; Norton Rose Fulbright; Penry Riemann; Quintairos Prieto Wood & Boyer; Saul Ewing | Foley & Lardner; Friday, Eldredge & Clark; Friedman Stroffe & Gerald; Griesing Law; L'Abbate Balkan Colavita & Contini; Mitchell Williams Selig Gates Woodyard; Nexsen Pruet Jacobs and Pollard; Phelps Dunbar; Sheppard Mullin Richter & Hampton; Tarter Krinsky & Drogin; White & Case; Womble Carlyle Sandridge & Rice | Akin Gump Strauss Hauer & Feld; Anderson, Julian & Hull; Baird Holm; Barnes & Thornburg; Betts Patterson & Mines; Burke Williams & Sorensen; Dinsmore & Shohl; Dykema Gossett; Fisher & Phillips; Ford & Harrison; Geary Porter & Donovan; Giffen & Kaminski; Gilpin Givhan; Golden & Walters; Goodsill Anderson Quinn & Stifel; Gordon & Rees; Grant Law; Hall Estill Hardwick Gable Golden & Nelson; Higgs Fletcher & Mack; Jackson Lewis; Kemp Smith; Kutak Rock; Larson King; Lawrence & Russell; Lee Tran & Liang; Lim Ruger and Kim; Littler Mendelson; Manatt, Phelps & Phillips; McDonnell & Associates; McElfish Law Firm; McGlinchey Stafford; Mendelson; Metropolitan Business Center; Nixon Peabody; Obermayer Rebmann Maxwell & Hippel; Schroder, Joseph & Associates; Spilman Thomas & Battle; The Gaitan Group; Troutman Sanders | Baker, Sterchi, Cowden & Rice; Barrett & McNagny; Beytin, McLaughlin, McLaughlin, O'Hara & Bolin; Blanchard Walker; Boehl Stophor & Graves; Bridges Law Group; Brody O'Connor & O'Connor; Bush & Ramirez; Cipriani & Werner; Cobb Martinez Woodward; Cooper & Scully; Davidson Meaux; Daw & Ray; Decaro Doran Sciliano Gallagher & Deblasis; DeFranco & Bradley; Delashmet & Marchand; Dinsmore & Shohl; Drew Eckl & Farnham; Franklin and Prokopik; Frost Brown Todd; Gonzalez Saggio & Harlan; Howell & Fisher; MacCorkle Lavender; McCranie, Sistrunk, Anzelmo, Hardy, Maxwell & McDaniel; McDonnell & Associates; McLain & Merritt; Modrall Sperling Roehl Harris & Sisk; Morgan Minnock Rice & James; Morris & Morris; Mounce, Green, Myers, Safi, Paxson & Galatzan; O'Hagan Spencer; Pate & Spivey; Phillips Spallas & Angstadt; Plunkett & Cooney; Quintairos Prieto Wood & Boyer; Sowell Gray Stepp and Laffitte; Wells Marble & Hurst; Zausmer, Kaufman, August and Caldwell | Armstrong Teasdale; Baird Holm; Barnes & Thornburg; Blank Rome; Brydon, Swearingen & England; Charles Andrew O'Brien; Dinsmore & Shohl; Dowd Bennett; Ford & Harrison; Gordon & Rees; Greenberg Traurig; Hoover Hull; Jones Day; Lawrence & Russell; Lee Tran & Liang; Littler Mendelson; Mendelson; Millstone Peterson and Watts; Ogletree Deakins Nash Smoak & Stewart; Pite Duncan; Post & Schell; Quattlebaum Grooms Tull & Burrow; Scopelitis Garvin Light Hanson and Feary; Thomas A. Smith Law Office; Walraven and Westerfeld |
| Exxon Mobil 382,597 | Abraham, Watkins, Gallet Dreyer & Berkey; Liskow & Lewis; Parker, Heitz, & Cosgrove; Tekell Book Allen and Morris; Wilson Turner Kosmo | NA | Kean Miller | Adams & Reese; Alston Hunt Floyd & Ing; Armstrong & Associates; Armstrong Teasdale; Baker Botts; Barnes & Thornburg; Carlson Calladine & Peterson; Deutsch Kerrigan & Stiles; Johnson & Bell; Jones Walker; Kean Miller; Keogh Cox & Wilson; Kuchler Polk; Liskow & Lewis; McElroy Deutsch Mulvaney & Carpenter; McGuireWoods; McKenna Long & Aldridge; Polsinelli; Sedgwick; Shook, Hardy & Bacon; Steptoe & Johnson; Wayne S. Sakamoto | McCusker, Anselmi, Rosen & Carvelli |
| Chevron 203,784 | Foulston Siefkin; Hunton & Williams; Jones Day; Norton Rose Fulbright; Pillsbury Winthrop; Slowinski Atkins; Spilman Thomas & Battle | Poore Roth & Robinson | Stoel Rives | Adams & Reese; Blank Rome; Cozen O'Connor; Curnutt & Hafer; Dukes, Dukes, Keating & Faneca; Forman Perry Watkins Krutz & Tardy; Jones Day; Katten Muchin Rosenman; Kean Miller; Lewis Brisbois Bigaard & Smith; McElroy Deutsch Mulvaney & Carpenter; Phelps Dunbar; Prindle Amaro Goetz Hillyard Barnes and Reinholdt; Pustorino Tilton Parrington & Lindquist; Rivero Mestre; Sedgwick; Shook, Hardy & Bacon; Stamos and Trucco; Steptoe & Johnson; Strong Pipkin; Susman Godfrey; Thompson Coe Cousins & Irons | Dorsey & Whitney; Liskow & Lewis; Sayad & Biren; Sheppard Mullin Richter & Hampton; Walraven and Westerfeld |
| Berkshire Hathaway 194,673 | Drinker Biddle & Reath; Galloway, Johnson, Tompkins, Burr & Smith; Gilliland & Hayes; Manier & Herod; Soha & Lang; Wilson Smith | NA | Sheehan Phinney Bass & Green | Casten & Pearce; Gold Weems | Cantey Hanger; Lewis Roca Rothgerber; Miller & Chevalier Chartered; Nyemaster Goode Voigts West Hansell & O'Brien |
| Apple 182,795 | Atlas Hall & Rodriguez; Morrison & Foerster; O'Melveny & Myers; Shutts & Bowen | Gibson, Dunn & Crutcher; Nexsen Pruet Jacobs and Pollard; O'Melveny & Myers | Jackson Lewis | Johnson Trent West and Taylor; MacLeay, Lynch, Gregg & Lynch; Morrison & Foerster; Stich, Angell, Kreidler, Dodge & Unke | Dorsey & Whitney; Jackson Lewis; Walraven and Westerfeld |

WHO REPRESENTS AMERICA'S BIGGEST COMPANIES

| COMPANY 2015 Revenue \$M | Contracts Litigation | IP Litigation | Labor and Employment | Torts Litigation | Labor |
|------------------------------------|--|--|--|---|--|
| General Motors 155,929 | Anderson Bottrell; Barris, Sott; Bernard, Cassisa, Elliott & Davis; Bradley Arant Boult Cummings; Dykema Gossett; Hartline Dacus Barger & Dreyer; Honigman Miller Schwartz and Cohn; Issacs Clouse Crose & Oxford; Jones Day; Jones Walker; King & Spalding; Kirkland & Ellis; Lathrop & Gage; Lightfoot Franklin & White; Nilles Law Firm; Quinn Emanuel Urquhart & Sullivan; Ricci Tyrrell Johnson & Grey; Rock Law; Rose Waldorf; Rumberger Kirk & Caldwell; Seyfarth Shaw; Stefanski & Associates; The Rose Law Firm; Williams Acosta | Fenwick & West; Honigman Miller Schwartz & Cohn | Dillingham & Murphy; Dinsmore & Shohl; Frost Brown Todd; Lathrop & Gage; Schroder, Joseph & Associates; Starr, Butler, Alexopoulos, & Stoner | Bowman & Brooke; Butler Snow O'Mara Stevens & Cannada; Dykema Gossett; Hartline Dacus Barger & Dreyer; Kirkland & Ellis; Prichard Hawkins McFarland & Young; Turner, Reid, Duncan, Loomer & Patton | Dykema Gossett; Estes Okon Thorne & Carr; Frost Brown Todd; Lashley & Baer; Lathrop & Gage; Manchester, Newman & Bennett; Rabbitt Law Firm; Reed Smith; Richards, Layton & Fingersh; Schroder, Joseph & Associates; Starr, Butler, Alexopoulos, & Stoner |
| Phillips 66 149,434 | Beirne Maynard & Parsons; Cichanowicz, Callan, Keane, Vengrow & Textor; Drew Eckl & Farnham; Glynn & Finley; Law Offices of Dawn Ceizler; Stephen T Erb | NA | Hall Estill Hardwick Gable Golden & Nelson; K&L Gates; Lomurro Davison Eastman & Munoz | Adams & Reese; Chalos & Co; Gable & Gotwals; Heyl Royster Voelker & Allen; Kuchler Polk; Landreth Law Firm; Porzio Bromberg & Newman | McKenna & Prescott; Norton Rose Fulbright; Ogletree Deakins Nash Smoak & Stewart; Winston & Strawn |
| General Electric 148,321 | Adams & Reese; Astigarraga Davis Mullins & Grossman; Coughlan, Semmer, Fitch & Pott; Daigle & Fisse; Finlayson Toffler Roosevelt and Lilly; Huddleston Bolen; Kipp & Christian; Lathrop & Gage; Law Offices of James S. Brownstein; Law Offices of Robert M. Fitzgerald; Lewis Roca Rothgerber; Markel & Major; McCarter & English; McGrath; Nicoletti Hornig & Sweeney; Orrick, Herrington & Sutcliffe; Pearce & Durick; Polsinelli; Quarles & Brady; Reed Smith; Shutts & Bowen; Sidley Austin; Simmons Perrine Moyer Bergman; Smith Hulsey & Busey; von Briesen & Roper; Wong Fleming | NA | Eaton Peabody; Keating Muething & Klekamp; Ogletree Deakins Nash Smoak & Stewart; Sheehan Phinney Bass & Green | Armstrong Teasdale; Halloran & Sage; Latham & Watkins; Sedgwick; Swartz Campbell; Walsworth Franklin Bevins & McCall | Balch & Bingham; Bannerman & Johnson; Keating Muething & Klekamp; Littler Mendelson; McShea Law Firm; Montgomery & Andrews; Morgan, Lewis & Bockius; Ogletree Deakins Nash Smoak & Stewart; Quarles & Brady; Sulloway & Hollis; Walraven and Westerfeld |
| Ford Motor 144,077 | Bernard, Cassisa, Elliott & Davis; Butler Snow O'Mara Stevens & Cannada; Cole, Scott & Kissane; DLA Piper; Gibson, Dunn & Crutcher; Phillips Lytle; Poyner & Spruill | Aaronson Rappaport Feinstein & Deutsch; Baker Botts; Brooks Kushman; Hogan Lovells; Phillips Ryther & Winchester | Gibson, Dunn & Crutcher; Kienbaum Opperwall Hardy & Pelton | Aaronson Rappaport Feinstein & Deutsch; Baker, Donelson, Bearman, Caldwell & Berkowitz; Campbell Campbell Edwards & Conroy; Colvin Chaney; Dykema Gossett; Eckert Seamans Cherin & Mellot; Fucile & Reising; Greensfelder, Hemker & Gale; Huie, Fernambucq & Stewart; Lankford Crawford Moreno; Lankford Crawford Moreno & Ostertag; Lewis, Thomason, King, Krieg & Waldrop; McAfee & Taft; Sanchez, Daniels & Hoffman; Shook, Hardy & Bacon; Snell & Willmer; Thompson Coe Cousins & Irons; Thompson Hine; Turner, Reid, Duncan, Loomer & Patton; Yukevich Cavanaugh | Baker & Hostetler; Campbell Campbell Edwards & Conroy; Duane Morris; Gibson, Dunn & Crutcher; Kienbaum Opperwall Hardy & Pelton; Kienbaum, Opperwall; Schroder, Joseph & Associates; Turner, Keal & Dallas |
| CVS Health 139,367 | Foley & Lardner; Kutak Rock; Law Offices of Craig M. Geno; Taylor, Porter, Brooks & Phillips | NA | NA | NA | NA |
| McKesson 138,030 | Brunini, Grantham, Grower & Hewes; Buchalter Nemer; Dilworth Paxson; Lightfoot Franklin & White | NA | Ogletree Deakins Nash Smoak & Stewart; Waller Lansden Dortch & Davis | Arnold & Porter; Barnes & Thornburg; Drinker Biddle & Reath; Goodell Devries Leech & Dann; Goodman Neuman Hamilton; Gordon & Rees; Hoagland, Longo, Moran, Dunst, Doukas; King & Spalding; Morris and Polich; Morris Polich & Purdy; Morrison & Foerster; Patterson Belknap Webb & Tyler; Reed Smith; Sanders Wiener Grossman; Shook, Hardy & Bacon; Wheeler Trigg O'Donnell; Winston & Strawn | NA |
| AT&T 132,447 | Bangs, McCullen, Butler, Foye & Simmons; Butler Snow O'Mara Stevens & Cannada; Costello Porter Hill Heisterkamp Bushnell & Carpenter; David Young Parker; Drinker Biddle & Reath; Infante Zumpano Hudson & Miloch; Kilpatrick Stockton; Law Offices of Richard H. Dollison; Littler Mendelson; Mayer Brown; Moya White; Sidley Austin; Stokes Lawrence | Haynes and Boone | Day Pitney; Lionel Sawyer & Collins; Littler Mendelson; Maynard Cooper & Gale; Miller Law Group; Ogletree Deakins Nash Smoak & Stewart; Paul Hastings; Phelps Dunbar; Pietrantonio Mendez & Alvarez; Rhoads & Sinon; Waller Lansden Dortch & Davis; Williams & Anderson; Williams Kastner & Gibbs; Windle Hood Alley Norton Brittain & Jay | Allan, Nava & Glander; Coffey Burlington; Cotten Schmidt & Abbott; Crowley Fleck; Gholson, Burson, Entekin & Orr; Hinshaw & Culbertson; Kilpatrick Stockton; Lewis Rice; Manion Gaynor & Manning; Matovich, Keller & Murphy; Mozley, Finlayson & Loggins; Pitzer Snodgrass; Plauche Smith & Nieset; Porter, Wright, Morris & Arthur; Swetman Baxter Massenburg | Ashburn Law Firm; Babst, Calland, Clements & Zonnir; Coffey Burlington; Dorsey & Whitney; Jones, Cork & Miller; Lafayette & Kumagai; Littler Mendelson; Maynard Cooper & Gale; McElroy Deutsch Mulvaney & Carpenter; Miller Law Group; Ogletree Deakins Nash Smoak & Stewart; O'Neill & Borges; Seyfarth Shaw; Stites & Harbison; Titus Hillis Reynolds Love Dickman & McCalmon; Walraven and Westerfeld |
| Valero Energy 130,844 | Reed Smith | Broad & Cassel; Pirkey, Barber | NA | NA | Adams & Reese |

WHO REPRESENTS AMERICA'S BIGGEST COMPANIES

| COMPANY 2015 Revenue \$M | Contracts Litigation | IP Litigation | Labor and Employment | Torts Litigation | Labor |
|--|--|--|---|---|---|
| UnitedHealth Group 130,474 | Alston & Bird; Balch & Bingham; Brownstein Hyatt Farber Schreck; Figari & Davenport; GrayRobinson; Jackson Lewis; Kunz Plitt Hyland & Demlong; Littler Mendelson; Robinson & Cole; Smith, von Schleicher & Associates; Stinson Leonard Street; Stradley Ronon Stevens & Young | Lewis Roca Rothgerber | NA | Alston & Bird; Figari & Davenport; O'Melveny & Myers | Baker, Donelson, Bearman, Caldwell & Berkowitz; Balch & Bingham; Brady Hair Law Offices; Connell Foley; Dorsey & Whitney; Figari & Davenport; GrayRobinson; Hinshaw & Culbertson; J Brady Hair Law Office; Katten Muchin Rosenman; Littler Mendelson; Morgan, Lewis & Bockius; Neal, Gerber & Eisenberg; Nixon Peabody; O'Melveny & Myers; Robinson & Lawing; Scandaglia & Ryan; Sedgwick; Seyfarth Shaw; Stinson Leonard Street; Stradley Ronon Stevens & Young; Walraven and Westerfeld |
| Verizon Communications 127,079 | Anderson and Quinn; Arnall Golden & Gregory; Brown Winick Graves Gross Baskerville; Carter Scholer Arnett Hamada & Mockler; DLA Piper; Durie Tangri; Edison McDowell Hetherington; Greenberg Traurig; Kellogg, Huber, Hansen, Todd Evans & Figel; Langlois, Wilkins, Furtado & Metcalf; Leader & Berkon; Ledy-Gurren & Blumenstock; Munger, Tolles & Olson; Phillips Lytle; Pugh, Jones & Johnson; Raymond Law Group | NA | Bowditch & Dewey; Day Pitney; Fisher & Phillips; Hancock Daniel Johnson & Nagle; Jackson Lewis; Jones Day; Morgan, Lewis & Bockius; Ogletree Deakins Nash Smoak & Stewart; Reed Smith; Schroder, Joseph & Associates; Seyfarth Shaw | Greenberg Traurig; Harvey Pennington; McGuireWoods; Miller & Martin; Moore and Jackson; Willoughby and Hoefer | Blank Rome; Bradley Arant Boult Cummings; Day Pitney; Dorsey & Whitney; Duane Morris; Estes Okon Thorne & Carr; Hall Estill Hardwick Gable Golden & Nelson; Jackson Lewis; Jones Day; Kienbaum Opperwall Hardy & Pelton; Nexsen Pruet Jacobs and Pollard; Ogletree Deakins Nash Smoak & Stewart; Reed Smith; Seyfarth Shaw; Spilman Thomas & Battle; Stites & Harbison; Thomson, Rhodes & Cowie; Walraven and Westerfeld |
| AmerisourceBergen 119,569 | Mitts Law; Morgan, Lewis & Bockius | NA | Perkins Coie | NA | NA |
| Fannie Mae 116,461 | Baker, Sterchi, Cowden & Rice; Bradley Arant Boult Cummings; Bryan Cave; Bulkley Richardson & Gelinas; Corr Law Offices; Dykema Gossett; Foley & Lardner; Greenspoon Marder Hirschfeld Rafkin Ross & Berger; Higier Allen; Hinshaw & Culbertson; Jones Walker; Lightfoot Franklin & White; Locke Lord; Maddin, Hauser, McCarthy & Holthus; McGlinchey Stafford; Orlans Associates; Potestivo and Associates; Prince Lobel Tye; Rosicki Rosicki & Associates; Shapiro Schwartz; Sidley Austin; Simmerman Law Office; Stephens Millirons; Stinson Leonard Street; Stites & Harbison; Sutherland Asbill And Brennan; Sweeney Gallo Reich & Bolz; Taylor English Duma; Trott and Trott; Winstead; Winston & Strawn | NA | Carrington Coleman Sloman & Blumenthal; Sidley Austin; Taylor English Duma | Akerman Senterfitt; Bryan Cave; Goldberg Segalla; Hogan Lovells; Keesal Young & Logan; Rosicki Rosicki & Associates; Winston & Strawn; Womble Carlyle Sandridge & Rice | Sidley Austin |
| Costco Wholesale 112,640 | Byrne and Nixon; Klingman Law; Morrison & Foerster; Schwartz & Associates; Shepherd Finkelman Miller and Shah | Friedman Strofke & Gerald; Frost Brown Todd; Tarter Krinsky & Drogin | Goldman Antonetti & Cordova; Seyfarth Shaw; Sheppard Mullin Richter & Hampton | Akerman Senterfitt; Arnold & Porter; Blank Rome; Brisbee & Stockton; Cavanagh Law Firm; Davis Wright Tremaine; Drinker Biddle & Reath; Fried, Frank, Harris, Shriver & Jacobson; Fukunaga Matayoshi Hershey Ching & Kop; Gallagher, Walker, Bianco & Plataras; Goldberg Segalla; Harris, Karstaedt, Jamison & Powers; Jakob Law; LeClair Ryan; McCandlish Holton; Murchison & Cumming; Nelson Law; Roeca Luria Hiraoka; Scheer & Zehnder; Schiff Hardin; Shelton & Valadez; Smith Amundsen; Willenken Wilson Loh & Delgado; Wilson Elser Moskowitz Edelman & Dicker | Seyfarth Shaw |
| Hewlett-Packard 111,454 | Conrad O'Brien; Farella Braun & Martel; Littler Mendelson | NA | Ater Wynne; Baerga & Quintana; Barnes & Thornburg; Cozen O'Connor; Curbelo, Baerga & Quintana Law Office; McGuireWoods; Morgan, Lewis & Bockius; Reed Smith | Arthur Russell; Baker, Donelson, Bearman, Caldwell & Berkowitz; Bennett, Bricklin & Saltzburg; Clark Hill; Lewis Brisbois Bigaard & Smith; Morgan, Lewis & Bockius; Register Lett; Scharnhorst Ast Kennard Griffin | Baker & Hostetler; Ford & Harrison; Hopkins & Huebner; Littler Mendelson; Morgan, Lewis & Bockius; Reed Smith; Seyfarth Shaw; Walraven and Westerfeld |

| COMPANY 2015 Revenue \$M | Contracts Litigation | IP Litigation | Labor and Employment | Torts Litigation | Labor |
|--|--|--|--|---|---|
| Kroger 108,465 | NA | NA | Baker & Hostetler; Barnes & Thornburg; Butler Snow O'Mara Stevens & Cannada; Cozen O'Connor; Hilburn, Calhoun, Harper, Pruniski & Calhoun; Jackson Lewis; Manning Curtis Bradshaw & Bednar; Sheppard Mullin Richter & Hampton; Stites & Harbison; The Law Offices of Benjamin G. Dusing; Varnum | Barber, McCaskill, Jones & Hale; Bonnett Fairbourn Friedman & Balint; Chamblee, Ryan, Kershaw & Anderson; Coots Henke & Wheeler; Germer Gertz; Gilliland & Hayes; Glenn Robinson & Cathey; Gray Rust St. Amand Moffett & Brieske; Gynn Memmer & Dillon; Huddleston Bolen; Jackson Lewis; Jernigan Copeland & Anderson; Law Office of Douglas A. Wilde; LeClair Ryan; Merrick Hofstedt & Lindsey; Middleton Reutlinger; Morgan Minnock Rice & James; Nathan Bremer Dumm & Myers; Nunery & Call; Plaucie Smith & Nieset; Plunkett & Cooney; Pullin Fowler Flanagan Brown & Poe; Spicer Rudstrom; Taylor English Duma; The Peavler Group; Thomas Kennedy Sampson & Tompkins; Trotter & Jones; Troy and Gould; Venable; Young Moore and Henderson; Zupkus & Angell | Barnes & Thornburg; Bingham Greenebaum Doll; Cozen O'Connor; Stites & Harbison; Varnum |
| J.P. Morgan Chase & Co. 102,102 | Levi Lubarsky & Feigenbaum; McGlinchey Stafford; Morgan, Lewis & Bockius; Quilling Selander Lownds Winslett & Moser; Seglund Gabe Quinn Gatti & Pawlak | NA | Cozen O'Connor; Ogletree Deakins Nash Smoak & Stewart | Alvaradosmith; Ballard Spahr; Bricker & Eckler; Briggs & Morgan; Bryan Cave; Buckley Madole; BuckleySandler; Burke Warren Mackay & Serritella; Connell Foley; Covington & Burling; Crowe & Dunlevy; Dykema Gossett; Edwards Wildman Palmer; Faegre Baker Daniels; Foley & Lardner; Greenberg Traurig; Halloran & Sage; Herron Ortiz; Jones Day; Kay Casto & Chaney; Keesal Young & Logan; Kullen & Kassab; Lightfoot Franklin & White; Locke Lord; Maynard Cooper & Gale; McCranie, Sistrunk, Anzelmo, Hardy, Maxwell & McDaniel; McGlinchey Stafford; Morgan, Lewis & Bockius; Musick Peeler & Garrett; Nelson Mullins Riley & Scarborough; Ogletree Deakins Nash Smoak & Stewart; Parker Ibrahim & Berg; Quilling Selander Lownds Winslett & Moser; Robinson & Wood; Schiff Hardin; Seyfarth Shaw; Simcox and Barclay; Simpson Thacher & Bartlett; Spencer Fane Britt & Browne; Spilman Thomas & Battle; Stroock & Stroock & Lavan; Troutman Sanders; Wargo & French; Womble Carlyle Sandridge & Rice | Dorsey & Whitney; Duane Morris; K&L Gates; Leon Cosgrove; Morgan, Lewis & Bockius; Ogletree Deakins Nash Smoak & Stewart; Quintairo Prieto Wood & Boyer; Rimac & Martin; Rouse Hendricks German May; Sedgwick; Seyfarth Shaw; Shook, Hardy & Bacon; Walraven and Westerfeld |
| Express Scripts Holding 100,887 | Cozen O'Connor; Husch Blackwell; Jackson Lewis; Roche, McLean & Sbar | NA | HunterMaclean; Jackson Lewis; Ogletree Deakins Nash Smoak & Stewart; Reed Smith | Cozen O'Connor; Gordon & Rees; Husch Blackwell | Cozen O'Connor; Gaskins Bennett Birrell Schupp; Gordon & Rees; Huntermaclean; Husch Blackwell; Jackson Lewis; Latham & Watkins; McElroy Deutsch Mulvaney & Carpenter; Ogletree Deakins Nash Smoak & Stewart; Reed Smith; Robison, Curphey & O'Connell; Roche, McLean & Sbar; Williams & Connolly |
| Bank of America Corp. 95,181 | Bradley Arant Boult Cummings; Bryan Cave; Goodwin & Goodwin; Liebler Gonzalez & Portuondo; Maddin, Hauser; McGuireWoods; Reed Smith; Winston & Strawn | Munger, Tolles & Olson; Winston & Strawn | Akin Gump Strauss Hauer & Feld; Bressler Amery & Ross; Davis Wright Tremaine; Dykema Gossett; Edwards Angell Palmer & Dodge; Edwards Wildman Palmer; Lathrop & Gage; Locke Lord; Marshall Dennehey Warner Coleman & Goggin; McGuireWoods; Munger, Tolles & Olson; Reed Smith; Rubin Fortunato & Harbison; Stearns Weaver Miller Weissler Alhadeff & Sitterson; Wilson Elser Moskowitz Edelman & Dicker | Akerman Senterfitt; Blank Rome; Bradley Arant Boult Cummings; Browning Kaleczyc Berry & Hoven; Bryan Cave; Buchalter Nemer; Buchanan Ingersoll & Rooney; Currie, Johnson, Griffin, Gaines & Myers; Dickinson Wright; Dykema Gossett; Foulston Siefkin; Goodwin & Goodwin; Goodwin Procter; Greenberg Traurig; Hines & Thomas; Hinshaw & Culbertson; Holland & Hart; Keesal Young & Logan; Kozony & McCubbin; Lathrop & Gage; Liebler Gonzalez & Portuondo; Maddin, Hauser; McGlinchey Stafford; McGuireWoods; Morgan, Lewis & Bockius; Morrison & Foerster; Munger, Tolles & Olson; Neal, Gerber & Eisenberg; Noonan & Lieberman; Pierce Atwood; Plunkett & Cooney; Poli & Ball Plc; Quarles & Brady; Reed Smith; Robinson & Wood; Rosicki Rosicki & Associates; Severson & Werson; Shapiro, Van Ess, Phillips & Barragante; Shechtman Halperin Savage; Thompson Coburn; Trott and Trott; Vogl & Meredith; White and Woods; Wilson Elser Moskowitz Edelman & Dicker; Winston & Strawn; Witherspoon Kelley; Wright Finlay and Zak; Wright, Lindsey & Jennings; Zelle Hofmann Voelbel & Mason | Bressler Amery & Ross; Bryan Cave; Carpenter & Lipps; Duffy & Sweeney; Epstein Becker & Green; Gordon & Rees; GrayRobinson; Haley & Jhones; Lawrence & Russell; Liebler Gonzalez & Portuondo; Locke Lord; McGuireWoods; Morris James; Ogletree Deakins Nash Smoak & Stewart; Pierce Atwood; Sedgwick; Segal Roitman; Sidley Austin; Stearns Weaver Miller Weissler Alhadeff & Sitterson |
| International Business Machines 94,128 | Jackson Lewis; Jones Day; Paul, Weiss, Rifkind, Wharton & Garrison; Putney Twombly Hall & Hirson; Yetter Coleman | Miller Canfield Paddock & Stone | Gable & Gotwals; Grube Brown & Geidt; Jackson Lewis; Jones Day; Ogletree Deakins Nash Smoak & Stewart | Adams & Reese; Gable & Gotwals; Hoover Hull; Kirkland & Ellis; Quinn Emanuel Urquhart & Sullivan | Dorsey & Whitney; Gibson & Sharps; Jackson Lewis; Jones Day; Ogletree Deakins Nash Smoak & Stewart; Walraven and Westerfeld |
| Marathon Petroleum 91,417 | Littler Mendelson; MacDermid, Reynolds & Glissman; Miller Canfield Paddock & Stone | NA | NA | Baldwin Haspel Burke & Mayer; Blank Rome; Deutsch Kerrigan & Stiles; Forman Perry Watkins Krutz & Tardy; Shipley Snell Montgomery; Thompson Coburn | Littler Mendelson |
| Cardinal Health 91,084 | Dickie McCamey & Chilcote; Rose Law Firm | NA | Jackson Lewis | NA | Wilson Turner Kosmo |

WHO REPRESENTS AMERICA'S BIGGEST COMPANIES

| COMPANY 2015 Revenue \$M | Contracts Litigation | IP Litigation | Labor and Employment | Torts Litigation | Labor |
|-----------------------------|--|--|---|--|---|
| Boeing 90,762 | Payne & Fears | NA | Bryan Cave; Davis Wright Tremaine; Littler Mendelson; Nexsen Pruet Jacobs and Pollard; Ogletree Deakins Nash Smoak & Stewart; Payne & Fears; Perkins Coie; Riddell Williams | Hawkins & Parnell; Kirkland & Ellis; Manion Gaynor & Manning; Munger, Tolles & Olson; Perkins Coie; Segal McCambridge Singer & Mahoney; Weinberg Wheeler Hudgins Gunn & Dial | Davis Wright Tremaine; Gallivan White and Boyd; Gordon & Rees; Lane Powell; Lewis Brisbois Bigaard & Smith; Morgan, Lewis & Bockius; Nexsen Pruet Jacobs and Pollard; Ogletree Deakins Nash Smoak & Stewart; Payne & Fears; Perkins Coie; Riddell Williams; Walraven and Westerfeld |
| Citigroup 90,646 | Adams & Reese; Akerman Senterfitt; Baker, Donelson, Bearman, Caldwell & Berkowitz; Ballard Spahr; Brice, Vander Linden & Wernick; Brooks Hubley; Bryan Cave; Buckley Madole; Burr & Forman; Dickinson Wright; Dinsmore & Shohl; Duane Morris; Dykema Gossett; Flaherty Sensabaugh & Bonasso; Gallagher Evelius and Jones; Gonzalez Saggio & Harlan; Graydon Head & Ritchey; Greenberg Traurig; Jackson Lewis; Keesal Young & Logan; Kramer Levin Naftalis & Frankel; Locke Lord; Lopez Sanchez Pirillo & Hymovitz; Mayer Brown; McLaughlin & McCaffrey; Miles & Stockbridge; Paul, Weiss, Rifkind, Wharton & Garrison; Phelan Hallinan Schmieg; Pierce and Associates; Pite Duncan; Plunkett & Cooney; Segal McCambridge Singer & Mahoney; Shapiro Schwartz; Simmonds & Narita; Smith & Weik; Thompson & Knight; Thompson Coburn; Trott Law; Wolfe & Wyman; Zeichner Ellman & Krause | Hangley Aronchick Segal & Pudlin; Skadden, Arps, Slate, Meagher & Flom; Winston & Strawn | Fiddler Gonzalez & Rodriguez; Jackson Lewis; Locke Lord | Adams & Reese; Akerman Senterfitt; Bacon Thornton and Palmer; Ballard Spahr; Brock & Scott; Bryan Cave; Burr & Forman; Crowe & Dunlevy; Foley & Mansfield; Goodwin Procter; Graydon Head & Ritchey; Hangley Aronchick Segal & Pudlin; Haynes and Boone; Hunton & Williams; Lerner, Sampson & Rothfuss; Lewis Brisbois Bigaard & Smith; Locke Lord; Mayer Brown; McGuireWoods; Miles & Stockbridge; Munger, Tolles & Olson; Paul, Weiss, Rifkind, Wharton & Garrison; Reed Smith; Rush Moore; Sills Cummis & Gross; Thompson Coburn | Dorsey & Whitney; Fiddler Gonzalez & Rodriguez; Keesal Young & Logan; Locke Lord; Morgan, Lewis & Bockius; Proskauer Rose; Walraven and Westerfeld |
| Amazon.com 88,988 | Davis Wright Tremaine | Baker and Sterchi; Call and Jensen; DLA Piper; Farella Braun & Martel; Hahn Loeser & Parks; Haynsworth Sinkler Boyd; Hunton & Williams; Jenner & Block; LeClair Ryan; Locke Lord; McDermott Will & Emery; Mitchell Silberberg & Knupp; Morgan, Lewis & Bockius; Norton Rose Fulbright; Offit Kurman; Parker McCay; Susman Godfrey; Weinberg Gonser; White & Williams | Littler Mendelson | Ford Walker Haggerty and Behar; Marshall Dennehey Warner Coleman & Goggin; Schumann Rosenberg | Dickinson Wright; Dinsmore & Shohl; Fisher & Phillips; Jackson Lewis; Morgan, Lewis & Bockius; Perkins Coie |

WHO REPRESENTS AMERICA'S BIGGEST COMPANIES

| COMPANY 2015 Revenue \$M | Contracts Litigation | IP Litigation | Labor and Employment | Torts Litigation | Labor |
|---|---|--|--|---|--|
| Wells Fargo 88,372 | Askounis & Darcy; Baker, Donelson, Bearman, Caldwell & Berkowitz; Carlton Fields Jordan Burt; Faegre Baker Daniels; Fox Rothschild; K&L Gates; Locke Lord; Nelson Mullins Riley & Scarborough; Plunkett & Cooney; Plunkett & Cooney; Reed Smith; Sirlin, Gallogly & Lesser; Sirlin, Gallogly & Lesser; Snell & Wilmer | Hall Estill Hardwick Gable Golden & Nelson | Allen Matkins Leck Gamble Mallory & Natsis; Bland Navarro & Weber; Faegre Baker Daniels; Fisher & Phillips; Hodel Briggs Winter; Kunkel, Miller & Hamant; Littler Mendelson; Marcy Law Firm; McCorriston Miller Mukai MacKinnon; McGuireWoods; Ogletree Deakins Nash Smoak & Stewart; Parker Poe Adams & Bernstein; Quattlebaum Grooms Tull & Burrow; Reed Smith; Seyfarth Shaw; Sheppard Mullin Richter & Hampton | Allen Matkins Leck Gamble Mallory & Natsis; Anglin Flewelling Rasmussen Campbell & Trytten; Aronauer, Re & Yudell; Baker, Donelson, Bearman, Caldwell & Berkowitz; Ballard & Littlefield; Barton Klugman & Oetting; Bressler Amery & Ross; Broad & Cassel; Bryan Cave; BuckleySandler; Burr & Forman; Carlton Fields Jordan Burt; Conmy Feste; Donnelly Minter & Kelly; Douglas C. Zahm; Field Manning Stone Hawthorne & Aycock; Fowler White Burnett; Fox Rothschild; GrayRobinson; Greenberg Traurig; Gregory A. Fraser; Halloran & Sage; Hanson Bridgett Marcus Vlahos & Rudy; Hinshaw & Culbertson; Jeffrey Burr; Keesal Young & Logan; Keogh Cox & Wilson; King & Spalding; Lane Powell; Locke Lord; Lowndes, Drosdick, Doster, Kantor & Reed; Marshall Dennehey Warner Coleman & Goggin; McGinnis Lochridge and Kilgroe; McGlinchey Stafford; Morgan, Lewis & Bockius; Munger, Tolles & Olson; Nelson Mullins Riley & Scarborough; Parker Poe Adams & Bernstein; Parker, Hudson, Rainer & Dobbs; Reed Smith; Riemer & Braunstein; Robinson, Bradshaw & Hinson; Rutherford & Christie; Schnader Harrison Segal & Lewis; Severson & Werson; Seyfarth Shaw; Sheppard Mullin Richter & Hampton; Snell & Wilmer; Stevens & Lee; Thompson Hine; Treanor Pope & Hughes; Wargo & French; Wheeler Trigg O'Donnell; Williams Mullen; Winston & Strawn; Womble Carlyle Sandridge & Rice; Zelle Hofmann Voelbel & Mason | Ballard Spahr; Christian and Barton; Duane Morris; Faegre Baker Daniels; Fisher & Phillips; Hultman, Sensenig & Joshi; Kunkel, Miller & Hamant; Law Offices Of Ronald S. Kravitz; Littler Mendelson; Lynch Gilardi & Grummer; McGuireWoods; Munger, Tolles & Olson; Ogletree Deakins Nash Smoak & Stewart; Proskauer Rose; Reed Smith; Ropers, Majeski, Kohn, & Bentley; Scopelitis Garvin Light Hanson and Feary; Seyfarth Shaw; Sheppard Mullin Richter & Hampton; Sidley Austin; Sirlin, Gallogly & Lesser; Walraven and Westerfeld |
| Microsoft 86,833 | Dechert; Drinker Biddle & Reath; Orrick, Herrington & Sutcliffe; Pietragallo Gordon Alfano Bosick & Raspanti | Belin McCormick; Carlton Fields Jordan Burt; Crowe & Dunlevy; Davis Wright Tremaine; Dickinson Wright; Fish & Richardson; Graydon Head & Ritchey; Locke Lord; Meagher & Geer; Montgomery McCracken Walker & Rhoads; Perkins Coie | Frost Brown Todd; Zuber Lawler & Del Duca | Brady Radcliff & Brown; Canon Law Services; Colvin Chaney; Davis Wright Tremaine; Locke Lord; Shook, Hardy & Bacon; Tune, Entekin & White | Davis Wright Tremaine; Gibson, Dunn & Crutcher |
| Procter & Gamble 84,537 | NA | NA | Scanlon, Howley & Doherty | Armstrong Teasdale; Covington & Burling; Dinsmore & Shohl; Goldberg Segalla; Jones Day; Locke Lord | NA |
| Home Depot 83,176 | Alston & Bird; Arnold & Porter; Bondurant Mixson & Elmore; Burns & Levinson; Doffermyre Shields Canfield & Knowles; Greensfelder, Hemker & Gale; Grippio & Elden; King & Spalding; Lane Powell; Moseley, Prichard, Parrish, Knight & Jones; Ryan Ryan Deluca; Shook, Hardy & Bacon; Starr, Gern, Davison & Rubin; Stites & Harbison; Stone Pigman Walther Wittmann; The Law Office of Edward F. Vena; Wilson Turner Kosmo | DLA Piper; McGuireWoods; R. Casey Hull Law Offices; Sutherland Asbill & Brennan | Akin Gump Strauss Hauer & Feld; Alston Hunt Floyd & Ing; Bennett Tueller Johnson & Deere; Bryan Cave; Dinse, Knapp & McAndrew; Epstein Becker & Green; Ford & Harrison; Fortis Law Partners; Gonzalez Saggio & Harlan; Jones Walker; Lafayette & Kumagai; Lane Powell; Lee Tran & Liang; Littler Mendelson; Morgan Brown & Joy; Norton Rose Fulbright; Ogletree Deakins Nash Smoak & Stewart; Paley Rothman | D'Amato & Lynch; Hill Wallack; Law Offices of Arthur K Smith; Luks, Santaniello, Petrillo & Jones; Plunkett & Cooney; The Chartwell Law Offices; Winstead | Akerman Senterfitt; Akin Gump Strauss Hauer & Feld; Connell Foley; Ford & Harrison; Gonzalez Saggio & Harlan; Norton Rose Fulbright; Ogletree Deakins Nash Smoak & Stewart; Smith Moore Leatherwood |
| Archer Daniels Midland 81,201 | Stinson Leonard Street; Wyatt Tarrant & Combs | NA | Sidley Austin; Simmons Perrine Moyer Bergman | Betty Neuman & McMahon; Foley & Mansfield; Hedrick, Eatman, Gardner & Kincheloe; Howard Law Group; Jones Walker; Miller Law Group; Mouledoux, Bland, Legrand & Brackett; Smith Moore Leatherwood; Tonkin & Mondl | Faegre Baker Daniels; Wright, Lindsey & Jennings |
| Walgreens Boots Alliance 76,392 | NA | NA | NA | NA | NA |

WHO REPRESENTS AMERICA'S BIGGEST COMPANIES

| COMPANY 2015 Revenue \$M | Contracts Litigation | IP Litigation | Labor and Employment | Torts Litigation | Labor |
|--|--|--|---|---|---|
| Target 74,520 | Crowell & Moring; Davis Wright Tremaine; Dean Gibson Hofer & Nance; Derrevere Hawkes Black & Cozad; Erickson, Zierke, Kuderer & Madsen; Faegre Baker Daniels; Hill Ward & Henderson; Katten Muchin Rosenman; Little Reid Karzai; Lugenbuhl, Wheaton, Peck, Rankin & Hubbard; Morgan, Lewis & Bockius; Morrison & Foerster; Pietragallo Gordon Alfano Bosick & Raspanti | Faegre Baker Daniels; Friedman Stroffe & Gerald; Gibney, Anthony & Flaherty; Glaser Weil Fink Howard Avchen and Shapiro; Gottlieb Rackman & Reisman; Honigman Miller Schwartz and Cohn; Kane Kessler; Kleinberg and Lerner; Ostrolenk, Faber; Resch Polster and Berger; Tarter Krinsky & Drogin; Trachtman & Trachtman; Trenk DiPasquale Webster Della Fera & Sodono; Venable; Waller Lansden Dortch & Davis | Davis Wright Tremaine; Foley & Lardner; Hodel Briggs Winter; Littler Mendelson; Manatt, Phelps & Phillips; Nilan Johnson Lewis; Ogletree Deakins Nash Smoak & Stewart; Seyfarth Shaw; Shaw Valenza; Sheppard Mullin Richter & Hampton; Sutherland Asbill and Brennan; Wilson Turner Kosmo | Boornazian Jensen & Garthe; Connell Foley; Conroy Simberg Canon Krevans Abel Lurvey Morrow & Schefer; Cooney Trybus Kwavnick Peets; Crivello Carlson; Davis Wright Tremaine; Derrevere Hawkes Black & Cozad; Erwin A. Cain; Faegre Baker Daniels; Fishman McIntyre; Gonzalez Saggio & Harlan; Gordon, Muir & Foley; Greco Traficante Schulz & Brick; Halloran & Sage; Hill Ward & Henderson; James A. Coleman; Johnson & Bell; Kantrowitz & Phillippi; Katten Muchin Rosenman; Lightfoot Franklin & White; Lincoln Gustafson and Cercos; Lugenbuhl, Wheaton, Peck, Rankin & Hubbard; Manning and Kass Ellrod Ramirez Trester; Marshall Dennehey Warner Coleman & Goggin; Mashoff Brennan; Mayfield Turner O'Mara Donnelly & McBride; Miles & Stockbridge; Molod Spitz & Desantis; Montgomery, Kolodny, Amatuzio & Dusbabek; Morrison & Foerster; Prince Lobel Tye; Ricci Tyrrell Johnson & Grey; Seipp, Flick & Hosley; Simmons Jannace Deluca; Snyder Law; Stuart & Branigin; Sweeney, Sheehan & Spaniel; Trachtman & Trachtman; Vernis & Bowling; Wilson Elser Moskowitz Edelman & Dicker | Dorsey & Whitney; Marshall Dennehey Warner Coleman & Goggin; Ogletree Deakins Nash Smoak & Stewart; Paul Hastings; Seyfarth Shaw; Walraven and Westerfeld |
| Johnson & Johnson 74,331 | Bolan Jahnsen Dacey; Bryan Cave; O'Melveny & Myers | NA | Ogletree, Deakins, Nash, Smoak & Stewart | Barnes & Thornburg; Bryan Cave; Butler Snow; Carlton Fields Jordan Burt; Drinker Biddle & Reath; Goodell Devries Leech and Dann; Hedrick Gardner Kincheloe & Garofalo; Locke Lord; Nilan Johnson Lewis; Shook, Hardy & Bacon; Skadden, Arps, Slate, Meagher & Flom; Thomas Combs & Spann; Tucker Ellis & West | Littler Mendelson |
| Anthem 73,874 | NA | NA | NA | NA | NA |
| MetLife 73,316 | Akerman Senterfitt; Atlas Hall & Rodriguez; Barger and Wolen; D'Arcambal Ousley & Cuyler Burk; Dentons; Figari & Davenport; Gable & Gotwals; Jackson Lewis; Lisa M. Lilly; Maynard Cooper & Gale; Richards Brandt Miller Nelson; Ropers, Majeski, Kohn, & Bentley; Scandurro & Layrisson; Smith Von Schleicher & Associates; Stacy & Conder; Wells Marble & Hurst | NA | Jackson Lewis; Lane Powell; Proskauer Rose | Gray Rust St. Amand Moffett & Brieske; Sedgwick | Bradley Arant Boult Cummings; Dinsmore & Shohl; Frost Brown Todd; Gable & Gotwals; Haynsworth Sinkler Boyd; Hinshaw & Culbertson; Holland & Hart; Jackson Lewis; Manchester, Newman & Bennett; McElroy Deutsch Mulvaney & Carpenter; Morgan, Lewis & Bockius; Ogletree Deakins Nash Smoak & Stewart; Prince & Keating; Proskauer Rose; Sutherland Asbill & Brennan; Womble Carlyle Sandridge & Rice |
| Google 71,487 | Cooley; Wilson Sonsini Goodrich & Rosati | Fenwick & West; Herrick, Feinstein; Jackson Walker; Kecker & Van Nest; Perkins Coie; Phelps Dunbar; Quinn Emanuel Urquhart & Sullivan; The Heartfield Law Firm; Wilmer Cutler Pickering Hale and Orr; Wilson Sonsini Goodrich & Rosati | NA | Bryan Cave; Phelps Dunbar; Waller Lansden Dortch & Davis; Wilson Sonsini Goodrich & Rosati; Zuckerman Spaeder | Kasowitz Benson Torres & Friedman; Maynard Cooper & Gale; Morgan, Lewis & Bockius |

WHO REPRESENTS AMERICA'S BIGGEST COMPANIES

| COMPANY 2015 Revenue \$M | Contracts Litigation | IP Litigation | Labor and Employment | Torts Litigation | Labor |
|--|--|---------------------------|---|--|---|
| State Farm Insurance Cos. 71,160 | Adams Graham; Alston & Bird; Atlas Hall & Rodriguez; Baker, Donelson, Bearman, Caldwell & Berkowitz; Banker Lopez Gassler; Barnett & Associates; Bennett, Bricklin & Saltzburg; Britt Hankins & Moughan; Butler Snow O'Mara Stevens & Cannada; Carlton Fields Jordan Burt; Cowan & Garza; Cozen O'Connor; Curtin and Heefner; Dennett Winspear; Eimer Stahl; Forry Ullman; Germer Gertz; Goldberg Miller & Rubin; Hall Jaffe & Clayton; Hayes Scott Bonino Ellingson & McLay; Jones, Andrews & Ortiz; Kightlinger & Gray; King, Krebs & Jurgens; Lewis Brisbois Bigaard & Smith; Lewis Wagner; Lindow Stephens Treat; Martin Disiere Jefferson & Wisdom; Miller Canfield Paddock & Stone; Munson, Rowlett, Moore & Boone; Nistico Crouch & Kessler; Patrick Johnson & Mott; Ramey Chandler Quinn & Zito; Ranalli & Zaniel; Rivkin Radler; Robb Leonard Mulvihill; Schiff Hardin; Sedgwick; Strong & Hanni; Swift Currie McGhee & Hiers; Thompson Coe Cousins & Irons; Tom Petrus & Miller; Wilson Cain & Acquaviva; Windels Marx Lane & Mittendorf | White & Williams | Littler Mendelson; Ogletree Deakins Nash Smoak & Stewart; Rainey, Kizer, Reviere & Bell | Barnett & Associates; Cozen O'Connor; Debeaubien, Knight, Simmons, Mantzaris & Neal; Gobel Flakes; Grotefeld Hoffmann Schleiter Gordon & Ochoa; Kirkland & McGhee; Lewis Brisbois Bigaard & Smith | Garan Lucow; John E. Ortego & Associates; Mitchell & Blanco; Ogletree Deakins Nash Smoak & Stewart; RizzoBryan |
| Freddie Mac 69,367 | Baker, Donelson, Bearman, Caldwell & Berkowitz; Bourland Hefflin Alvarez Minor & Mathews; Bradley Arant Boult Cummings; Brock & Scott; Carlton Fields Jordan Burt; Clay Chapman Iwamura Pulice & Nervell; Codilis & Associates; Dykema Gossett; Landman Corsi Ballaine & Ford; Pierce and Associates; Plunkett & Cooney; Reed Smith; Starn O'Toole Marcus & Fisher; Trott and Trott; Ver Ploeg & Lumpkin | NA | NA | NA | NA |
| Comcast 68,775 | Ballard Spahr; Davis Wright Tremaine; Duane Morris; Gibson, Dunn & Crutcher; Griesing Law; Hoover Hull; Kienbaum, Oppenwall; Lee & Hayes; Lightfoot Franklin & White; Waller Lansden Dortch & Davis | Manatt, Phelps & Phillips | Ballard Spahr; Carlton DiSante & Freudenberger; Epstein Turner & Weiss; Fisher & Phillips; Jones Day; Ogletree Deakins Nash Smoak & Stewart; Valdez Noor Todd & Doyle | Fisher & Phillips; Franklin and Prokopik; Kubicki Draper; Michienzie & Sawin; Rudd & Diamond; Williams Mullen | Ballard Spahr; Blank Rome; Jackson Lewis; Lafayette & Kumagai; Lewis Brisbois Bigaard & Smith; Morgan, Lewis & Bockius; Obermayer Rebmann Maxwell & Hippel; Ogletree Deakins Nash Smoak & Stewart |
| PepsiCo 66,683 | Gibson, Dunn & Crutcher; Jones Day; Schiff Hardin; Womble Carlyle Sandridge & Rice | Jenner & Block | Baker, Donelson, Bearman, Caldwell & Berkowitz; Berry & Branch; Berry Law Group; Bond, Schoeneck Law Firm; Briggs & Morgan; Dykema; Landau Gottfried and Berger; Laner Muchin; Morgan, Brown & Joy; Shawe and Rosenthal; Simmons Perrine Moyer Bergman; Vedder Price; Waller Lansden Dortch & Davis | Arnold & Porter; Dugan, Brinkmann, Maginnis & Pace; Gibson, Dunn & Crutcher; Kennedy & Associates; Whiteford Taylor and Preston | Butzel Long; Sheppard Mullin Richter & Hampton; Vedder Price |
| United Technologies 65,100 | Day Pitney; Kirkland & Ellis | NA | Carlton Fields Jordan Burt; Day Pitney; McAfee & Taft; Nilan Johnson Lewis; Seyfarth Shaw | Akerman; Andrews Kurth; Armstrong Teasdale; Bartlit Beck Herman Palenchar & Scott; Bice Cole Law Firm; Day Pitney; Fitzpatrick & Hunt Tucker Collier Pagano Aubert; Gunster Yoakley & Stewart; Kurowski Shultz; Nelson Mullins Riley & Scarborough; Pierce Davis & Perritano; Rome McGuigan; Tucker Ellis & West | Seyfarth Shaw |

WHO REPRESENTS AMERICA'S BIGGEST COMPANIES

| COMPANY 2015 Revenue \$M | Contracts Litigation | IP Litigation | Labor and Employment | Torts Litigation | Labor |
|---|---|---|--|--|--|
| American International Group 64,406 | Adams & Reese; Bevan, Mosca, Giuditta & Zarillo; Carroll, Warren & Parker; Chaffetz Lindsey, Clinton & Muzyka; Collins and Lacy; Degan Blanchard & Nash; Denlean & Carton; DLA Piper; Edison McDowell Hetherington; Gordon & Rees; Graham & Jensen; Hall & Evans; Juneau David; Kennedy Lillis Schmidt & English; Krevolin & Horst; Lane Powell; Lewis Brisbois Bigaard & Smith; McCloskey, Waring and Waisman; Mound Cotton Wollan & Greengrass; Moye White; Nicolaides Fink Thorpe Michaelides Sullivan; Nyemaster Goode Voigts West Hansell & O'Brien; Reminger & Reminger; Sidley Austin; Sinnott, Puebla, Campagne & Curet; Smith Adams Law Feehan; Taylor, Keller, & Oswald; Thompson, Coe, Cousins & Irons; Vorys Sater Seymour & Pease; Weil, Gotshal & Manges; Wilson Elser Moskowitz Edelman & Dicker | NA | Cerasia & Del Rey; Littler Mendelson; Saldana, Carvajal & Velez-Rive | Ball Ball Matthews & Novak; Bush Ross; Correa Acevedo & Abesada Law Offices; Dennis Corry Porter & Smith; Goldberg Segalla; Rose Walker; Sidley Austin | Burke Williams & Sorensen; Dorsey & Whitney; Nicolaides Fink Thorpe Michaelides Sullivan; Walraven and Westerfeld |
| United Parcel Service 58,232 | Alston & Bird; Ansa Assuncao; Armstrong Teasdale; Baker, Sterchi, Cowden & Rice; Bonner Kiernan Trebach and Crociata; BurnsBarton; Chance & McCann; Copeland, Cook, Taylor & Bush; Day Pitney; Deutsch Kerrigan & Stiles; Diepenbrock & Cotter; Dilworth Paxson; Dykema Gossett; Fiddler Gonzalez & Rodriguez; Frost Brown Todd; Glassman Edwards Wade & Wyatt; Greenberg Traurig; Harman Claytor Corrigan & Wellman; Harvey Kruse; Holland & Hart; Holland & Knight; Hunton & Williams; Jackson Lewis; Jackson Walker; Kightlinger & Gray; Kilpatrick Stockton; Law Office of Robert E. Birtel; Leitner Williams Dooley Napolitan; Lewis Brisbois Bigaard & Smith; Miller Law Group; Morrison & Foerster; Murtha Cullina; Nexsen Pruet Jacobs and Pollard; Ni Law Firm; Ogletree Deakins Nash Smoak & Stewart; Perkins Coie; Phelps Dunbar; Plunkett & Cooney; Proskauer Rose; Quarles & Brady; Quattlebaum Grooms Tull & Burrow; Reed Smith; Schmoyer Reinhard; Segal McCambridge Singer & Mahoney; Smith Larsen & Wixom; Thompson Hine; Walberg, Tucker, Holmes & Wittebort; Waller Lansden Dortch & Davis; Weber Gallagher Simpson Stapleton Fires & Newby; Wilson Turner Kosmo | Kilpatrick Stockton; Morrison & Foerster; Plunkett & Cooney; Reed Smith | Alston & Bird; Armstrong Teasdale; BurnsBarton; Day Pitney; Frost Brown Todd; Greenberg Traurig; Holland & Hart; Holland & Knight; Hunton & Williams; Jackson Walker; Nexsen Pruet Jacobs and Pollard; Perkins Coie; Phelps Dunbar; Quarles & Brady; Quattlebaum Grooms Tull & Burrow; Reed Smith; Schmoyer Reinhard; Smith Larsen & Wixom; Waller Lansden Dortch & Davis; Wilson Turner Kosmo | Ansa Assuncao; Baker, Sterchi, Cowden & Rice; Bonner Kiernan Trebach and Crociata; Copeland, Cook, Taylor & Bush; Glassman Edwards Wade & Wyatt; Harman Claytor Corrigan & Wellman; Harvey Kruse; Kightlinger & Gray; Law Office of Robert E. Birtel; Leitner Williams Dooley Napolitan; Lewis Brisbois Bigaard & Smith; Morrison & Foerster; Quarles & Brady; Segal McCambridge Singer & Mahoney; Walberg, Tucker, Holmes & Wittebort; Waller Lansden Dortch & Davis; Weber Gallagher Simpson Stapleton Fires & Newby | Alston & Bird; Day Pitney; Dykema Gossett; Fiddler Gonzalez & Rodriguez; Holland & Hart; Holland & Knight; Jackson Lewis; Miller Law Group; Murtha Cullina; Ogletree Deakins Nash Smoak & Stewart; Proskauer Rose; Quarles & Brady; Reed Smith; Thompson Hine |
| Dow Chemical 58,167 | NA | NA | Cozen O'Connor; Orrick, Herrington & Sutcliffe; Warner Norcross & Judd | Bienvenu Bonneze Foco Viator & Holinga; Cotten Schmidt & Abbott; Faegre Baker Daniels; Flaherty Sensabaugh & Bonasso; Kirkland & Ellis; Lewis Brisbois Bigaard & Smith; Maccorkle Lavender; Thomas Combs & Spann | Jackson Lewis; Jenner & Block; Sutherland Asbill & Brennan; Warner Norcross & Judd |
| Aetna 58,003 | Andrews Kurth; Brown and Gould; Elliott Greenleaf Siedzikowski & Dean; Gordon & Rees; Kennaday, Leavitt & Dapond; Lane Powell; Lightfoot Franklin & White; Middleberg, Riddle Group; Ogletree, Deakins, Nash, Smoak & Stewart | NA | Jackson Lewis | Andrews Kurth; Fox Rothchild; Gordee Nowicki and Augustini | Andrews Kurth; Connell Foley; Duffy & Sweeney; Elliott Greenleaf Siedzikowski & Dean; Epstein Becker & Green; Gallivan White & Boyd; Gordon & Rees; Hahn Loeser & Parks; Lane Powell; Lightfoot Franklin & White; Ogletree, Deakins, Nash, Smoak & Stewart; Sands Anderson; Shutts & Bowen; Smith Moore Leatherwood; Womble Carlyle Sandridge & Rice |
| Lowe's 56,223 | Cranfill Sumner & Hartzog; Floyd Pflueger & Ringer; Hunton & Williams; McAngus Goudelock & Courie; Ray Quinney & Nebeker; Robinson & McElwee; Smithamundsen | Hunton & Williams; McGuireWoods; R. Casey Hull Law Offices; Sutherland Asbill & Brennan | Barnes & Thornburg; Bass, Berry & Sims; Berchem, Moses & Devlin; Connell Foley; Constangy Brooks & Smith; Davis Wright Tremaine; Dickinson Wright; Harris, Beach; Hawley Troxell Ennis & Hawley; Hunton & Williams; Laner Muchin Dombrow Becker Levin & Tominberg; Marr Jones & Wang; Moore Sparks; Phelps Dunbar; Porzio Bromberg & Newman; Sherman & Howard; Stoll Keenon Ogden; Womble Carlyle Sandridge & Rice | NA | Constangy Brooks & Smith; Crist, Krogh, Butler & Nord; Duane Morris; Estes Okon Thorne & Carr; Haynsworth Sinkler Boyd; Hunton & Williams; Paul Garcia & Associates; Porzio Bromberg & Newman; Spilman Thomas & Battle |

OCTOBER 2015

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**From Continent
to Continent**
A look at global
legal markets over
the past year. »»

GLOBAL SHAREHOLDER ACTIVISM

Some observations from Hong Kong, London and Tokyo



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INTRODUCTION

This article considers the extent of shareholder activism outside the US, in particular in the three significant international capital markets of Hong Kong, Japan and the United Kingdom. As investment activity continues to be increasingly global, these three countries are among the most popular for investment in securities by US based investors. What is quite striking is the contrasting extent to which shareholder activism is prevalent in these countries.

SHAREHOLDER ACTIVISM

Shareholder activism outside of the US is not a recent phenomenon. Historically there have been many instances of investors making their views known to boards of companies, often privately, but sometimes publicly. What is relatively recent, however, is the more frequent use of comparatively aggressive forms of shareholder activism usually with the specific intention of achieving short term increases in value and/or return for investors.

The circumstances in which investors might seek to obtain an increase in value are varied and include:

- returning large cash balances to investors
- disposals of non-core or under-valued businesses
- increasing the consideration to be paid on an announced takeover of the company.

Equally, there are many different techniques that can be used by activist shareholders to try to achieve their aims, for example:

- making public statements through various media
- seeking to add and/or remove members of the board
- looking for competing bidders in a takeover.

CONTRASTING BACKDROPS

The legal and regulatory regime in the United Kingdom lends itself to shareholder activism of the kind regularly seen in the United States. As a result, there has been a growing trend of shareholder activism in the United Kingdom.

One of the defining characteristics of the Hong Kong Stock Exchange is the number of controlled companies - the vast majority of companies listed on the Hong Kong Stock Exchange have controlling shareholders. As a result, there is very limited scope for shareholder activism to have any real effect.

There are fewer controlled companies listed in Tokyo. On the other hand, there is a long history of more passive institutional investment plus Japanese financing institutions and strategic corporates (in particular, customers and suppliers) holding cross-shareholdings in large Japanese corporates which can limit the scope for effective shareholder activism. In addition, strong and especially public criticism is not part of traditional Japanese business etiquette and this militates against shareholder activism by Japanese investors.

CONTRASTING EXPERIENCES

Against these contrasting backdrops, it is not surprising that there have been many more examples of the types of shareholder activism used in the United States being adopted in the United Kingdom rather than Hong Kong or Japan.

One form of shareholder activism that has been seen on a number of occasions in the United Kingdom is "regime change", where shareholders have sought - and in some cases achieved - the removal of all or a significant number of directors. Co-operation by shareholders to make board changes can have certain consequences under the UK takeover code, in particular the relevant



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shareholders being deemed to be concert parties. This raises the risk of a mandatory takeover offer being triggered inadvertently. This emphasizes the importance of not simply assuming that the relevant laws and regulations will be the same in every jurisdiction no matter how similar they appear to be to familiar laws and regulations.

Shareholder activism in Hong Kong tends to be limited to private representations by institutional shareholders and some public criticism from corporate governance activists. Examples of successful public shareholder activism are few, although The Children's Investment Fund managing to get a non-executive director appointed to the board of Link Real Estate Investment Trust is one.

"What is quite striking is the contrasting extent to which shareholder activism is prevalent in China, Japan and the United Kingdom."

Though traditionally weak, shareholder activism in Japan has been increasing. Whilst Japan does not have a UK style takeover code and poison pill defensive measures are permitted, key legal tools for activists are still available. Historically activism by international funds has achieved very limited success. Japanese institutional investors have been reluctant to support activism, however, that is changing. The likes of Misaki Capital, Yoshiaki Murakami, Symphony, Classy Capital and Taiyo Pacific (as well as returning international investors like Daniel Loeb, The Children's Investment Fund and Permira) are making public and direct moves on multiple corporates.

The possible proof of their effect is in the record share buybacks and dividends in Japan

in the financial year ended March 2015, which saw a 76% increase from a year earlier.

LOOKING TO THE FUTURE

In the United Kingdom, it is expected that shareholder activism will increase, not least because of the amount of funds being raised by activist managers. It is already common for boards of UK companies to seek advice on how to address shareholder activism. It is likely that they will seek this advice more frequently and become more effective at dealing with activism.

In Hong Kong, it seems unlikely that the prevalence of controlled companies on the Hong Kong Stock Exchange will change in the short to medium term and as so shareholder activism will remain limited.

Japan is expected to see a definite increase in shareholder activism and shareholder proposals at general meetings are already at a record high so far in 2015. It is also a key part of Abenomics to breathe new life into the world's second biggest equity market: a new Stewardship Code obliges asset managers to engage management and not just act as a "mechanical checklist" on shareholder votes and a new Corporate Governance Code focuses on increasing transparency and value for stockholders over entrenching management teams. The government mandated push is to move from a deflationary cash-hoarding mindset and encourage active use of cash and capital and provides increasing opportunities for successful shareholder activism in Japan.

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Morrison & Foerster has a world-class international practice – leaving us well-positioned to serve clients across the global economy. Our pre-eminent M&A practice is highly ranked with more than 250 corporate/M&A lawyers located in key technology and financial centers in the US, Europe and Asia.

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FROM ARMENIA TO CHINA

The implications of the *Rusal Armenal* judgment for the European Commission's decision whether to propose that the EU grant China MES



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PARTNER
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SUMMARY

In Case C-21/14 – Rusal Armenal, the EU Court of Justice (ECJ) clarified that WTO provisions concerning the non-market economy (NME) treatment of imports from another WTO member are not directly applicable in the EU legal order. Accordingly, within the EU legal order, the EU Institutions have policy discretion with regard to the provisions governing the calculation of normal values for Chinese exporting producers after December 2016. Given this policy discretion, and the major impact a legislative proposal in this regard would have, the Commission is obliged to conduct an impact assessment before making any proposal in that regard.

In the EU legal order, WTO law does not generally have direct effect and it can be directly invoked before the EU courts only where the EU intended to implement a particular WTO obligation, or where an EU act refers explicitly to specific WTO provisions.¹

Under Article 2(7)(a) of the EU anti-dumping regulation,² the standard price comparison to determine a dumping margin, i.e. between a producer's export price and its home market price (the "normal value"), is considered unreliable for producers from NME countries because prices are distorted in these countries. Therefore, the EU establishes the normal value for NME producers using the domestic market prices in an analogue country where market economic conditions prevail. However, under Article 2(7)(b), individual producers in NME countries that are WTO members³ can receive market economy treatment (MET), i.e. have the normal value based on their prices and costs, if they can show that they operate under market economy conditions.

In Case T-512/09, *Rusal Armenal*, an Armenian exporting producer of aluminium foil, challenged the application of Article 2(7) of the EU anti-dumping regulation based on the absence of provisions allowing that treatment under Armenia's WTO Accession Protocol or the WTO Anti-dumping Agreement (ADA). In particular, *Rusal Armenal*

claimed that Article 2.7 of the ADA⁴, which allows WTO members to deviate from the normal dumping calculation methodology with regard to imports from countries that have a state trading monopoly, does not apply to Armenia.⁵ The General Court held that the purpose of the EU anti-dumping regulation was *inter alia* to transpose the ADA into EU law⁶ and that the EU Institutions cannot therefore apply Article 2(7) of that regulation to Armenia.

On appeal, in Case C-21/14 – *Rusal Armenal*, the Court of Justice overturned the General Court's decision, finding that the EU legislature, as regards the calculation of normal value in respect of imports from NME WTO members, has taken "an approach specific to the EU legal order" and did not intend to implement the particular obligations under Article 2 of the ADA by the adoption of Article 2(7) of the Basic AD Regulation.⁷ In this regard, the preamble to Regulation 2238/2000⁸, which extended Article 2(7)(b) to NME WTO members, establishes that the rules laid down in Article 2(7)(b) are based on the emergence in certain NME countries of firms for which market economy conditions prevail as a result of economic reforms. Article 2(7) of the Basic AD Regulation is therefore "*the expression of the EU legislature's intention to adopt in that sphere an approach specific to the EU legal order*"⁹, and *Rusal Armenal* could not invoke WTO law to challenge the application of Article 2(7)(b).

The reasoning of the *Rusal Armenal* judgment fully applies to China, as China is also a NME WTO member and it is furthermore specifically mentioned in Article 2(7)(b) of the Basic AD Regulation. China was named in Article 2(7)(b) already before its accession to the WTO by virtue of Regulation 905/98¹⁰ for essentially the same reasons as those set out in the preamble to Regulation 2238/2000, namely economic reforms in progress. Further, Article 2(7)(b) was not modified following China's WTO accession.

The *Rusal Armenal* judgment has important consequences for the current controversy as to whether the EU is under an obligation to grant China MES after



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December 2016. In particular, the ECJ clearly distinguished Article 2(7) of the EU anti-dumping regulation, and the EU legal order in general, from WTO law. This means that regardless of how one would interpret WTO rules that have a bearing on the calculation

“... there is no obligation for the European Commission to propose a modification of Article 2(7)(b) of the EU anti-dumping regulation”

of the normal value of Chinese producers, there is no obligation within the EU legal order to adopt any particular approach to that calculation. In other words, regardless of how one interprets the second sentence of paragraph 15(d) of China's WTO Protocol of Accession, there is no obligation for the European Commission to propose a modification of Article 2(7)(b) of the EU anti-dumping regulation.

That decision of the EU legislator to maintain policy discretion in the normal value calculation for NME producers, to which the ECJ refers in *Rusal Armenal*, is highlighted in the specific case of China by the fact that Article 2(7)(b) was never modified – either before or after China's WTO accession – to reflect the language of the provisions of China's WTO Accession Protocol.

In any event, the lack of clear language obliging WTO Members to accord China MES in 2016 is even support for saying that the WTO rules themselves leave policy discretion in the hands of WTO Members. Indeed, there are currently opposing views as to the consequences of the December 2016 expiry of subparagraph 15(a)(iii) of China's Accession Protocol by virtue of paragraph 15(d). Some interested parties see the expiry of subparagraph 15(a)(ii) as automatically requiring WTO Members to grant MES status to China. Others, including the authors, are of the view that China's NME status continues

by virtue of the remaining text of Section 15, and that the expiry of subparagraph 15(a)(ii) only means that WTO Members must thereafter give individual Chinese producers the opportunity to demonstrate that they operate under MET conditions. In sum, the relevant WTO rules do not clearly require that other WTO Members grant China MES in 2016. The most that can be said is that the text of China's WTO Accession Protocol is not clear and there are arguments on both sides of the issue.

Most importantly, the lack of obligation on this matter within the EU legal order – regardless of one's interpretation of the WTO rules – underscores the fact that a decision of the Commission to propose a revision of the EU anti-dumping regulation that would grant MES to China, would be a pure policy decision. As a proposal to grant China market economy status would have clearly identifiable and very significant economic and social impacts within the EU, such a policy decision requires a prior

impact assessment before the College of Commissioners could vote on any such proposal.¹¹ A proper impact assessment must include public consultations and an evaluation of the economic and social impact of granting China MES on the EU industry and the EU market. The impact assessment plays an important role in informing the EU institutions about the disastrous impact that granting China MES would have on EU manufacturers.

ABOUT THE AUTHORS

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1. See in particular, Cases 70/87 – *Fediol v Commission*, ECLI:EU:C:1989:254, paragraphs 19-22; and C-69/89 – *Nakajima v Council*, ECLI:EU:C:1991:186, paragraphs 29-32.
2. Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, OJ 2009 L343/51.
3. Article 2(7) mentions WTO members and Kazakhstan.
4. Article 2.7 of the ADA refers to the second supplementary provision to paragraph 1 of Article VI of the GATT which provides: “It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.”
5. Case T-512/09 – *Rusal Armenal v Council*, ECLI:EU:T:2013:571, paragraph 28.
6. Case T-512/09 – *Rusal Armenal v Council*, ECLI:EU:T:2013:571, paragraphs 59-60.
7. Case C-21/14P – *Commission v Rusal Armenal*, ECLI:EU:C:2015:494, paragraphs 48-53.
8. Council Regulation (EC) No 2238/2000 of 9 October 2000 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community, OJ 2000 L257/2.
9. Case C-21/14P – *Commission v Rusal Armenal*, ECLI:EU:C:2015:494, paragraph 48.
10. Council Regulation (EC) No 905/98 of 27 April 1998 amending Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community, OJ 1998 L128/18.
11. Section 1.4 of the Commission's Impact Assessment Guidelines states that: “In general, IAs are necessary for the most important Commission initiatives and those which will have the most far-reaching impacts. This will be the case for all legislative proposals of the Commission's Legislative and Work Programme (CLWP) and for all non-CLWP legislative proposals which have clearly identifiable economic, social and environmental impacts (with the exception of routine implementing legislation) and for non-legislative initiatives (such as white papers, action plans, expenditure programmes, negotiating guidelines for international agreements) which define future policies. It will also be the case for certain implementing measures (so called ‘comitology’ items) which are likely to have significant impacts.”

BRAZIL

Rio de Janeiro,
Brazil

Ready to Comply

Firms across Brazil are beefing up their competition and anti-corruption practices as compliance issues take center stage.

By Maria Jackson

Compliance matters have climbed to the top of the boardroom agenda in recent years as countries across the globe unite to tackle corporate corruption. In Latin America, Brazil has become the regional poster child for anti-corruption policies following last year's enactment of the 'Clean Company Act' - a new anti-bribery law that holds companies liable for corrupt acts undertaken by their employees.

"Compliance officers tell me that it's becoming more and more easy to talk about compliance in Brazil: you just show a photo of 35 CEOs going to jail and say, 'this is Brazil.'", says Shin Jae Kim, co-head of the

compliance & investigation group at TozziniFreire Advogados. "But it's not just a matter of employees not being arrested, it's the realization that corporate governance programs guarantee that businesses will operate under the highest ethical standards and they will be essential for companies to have access to foreign financing or capital markets."

In addition to Brazil's new anti-bribery law, the country's evolving corporate compliance consciousness is also being influenced by the increasingly interventionist approach of its competition authority, CADE (Conselho Administrativo de Defesa Econômica). The establishment of a more robust com-

petition regime in 2012 has resulted in CADE becoming synonymous with eye-watering financial penalties, and companies are ramping up their compliance programs to limit their exposure to punitive fines.

“We are in a new age where you have to know exactly what’s going on inside your company,” says Jae Kim. “Everyone in a management position will now look at ethical integrity programs as a management policy.”

MAKING THE LAW

The Brazilian Clean Company Act was drafted in 2010 and came into force in January 2014. As many commentators have noted, unlike most national compliance legislation, which is introduced through a ‘top-down’ approach, this Bill was ushered in on a groundswell of popular opinion.

“In 2013, Brazil erupted in protests that gathered vast crowds across the country urging for a stricter approach on corruption issues,” says Bruno De Luca Drago, competition and antitrust partner at Demarest Advogados. “Hence, not only was the government taking steps towards a stricter enforcement of corruption issues, but the general public was also clamoring for it. We can say there was a moral call.”

In June 2013 Brazil was rocked by a series of national demonstrations, which were originally initiated to protest against public transportation costs but spread to include corruption issues - particularly government corruption. The Brazilian Clean Companies Act (BCCA) was signed into law in August 2013 amid the social unrest.

Despite the tide of popular support for new anti-bribery measures, prior to the introduction of the new law companies did not see the issue as a priority - there were simply no incentives to take action. Therefore, law firms were not routinely called upon to advise on corruption-related matters.

“Before the law was enacted, only those companies bound by the U.S. Foreign Corrupt Practices Act (FCPA), Sarbanes-Oxley and/or the U.K. Bribery Act would demand, on a constant basis, compliance-related work,” says Drago. “However, once the BCCA came into force, and more recently the Public Prosecutors and Judiciary Courts began fostering criminal, administrative and civil claims related to corruption schemes - it should be said, mostly under old legal legislations - this picture has rapidly changed.”

In the past, as a significant proportion of Brazilian companies are not listed in U.S. or U.K. markets, internal anti-corruption policies were of little interest, with anti-bribery legislation traditionally seen as a ‘foreign’ issue. Fast forward to a year after the implementation of Brazil’s new Act and the environment is very different.

“The BCCA was a watershed moment for com-

pliance in Brazil,” says Adriana Dantas, partner in the corporate ethics and compliance team at BMA – Barbosa, Müssnich, Aragão. “Before the BCCA, only multinationals focused time and resources on the implementation of a compliance program, or even considered compliance matters in their decision making process. The demand for compliance programs has significantly raised ever since the BCCA, its regulating decree enactment, and the evolution of the Operation Car Wash situation.”

OPERATION CAR WASH

There is no doubt that Brazil’s new anti-corruption legislation has had something of a baptism of fire. In March 2014, just two months after the enactment of the BCCA, the Brazilian Federal Police launched a probe into potentially suspicious activity involving directors of state-owned energy company Petrobrás. The scandal has evolved into Brazil’s biggest-ever corruption case and the seriousness of the high-profile investigation - codenamed ‘Operation Car Wash’ or

“Corporate governance programs guarantee that businesses will operate under the highest ethical standards and they will be essential for companies to have access to foreign financing or capital markets.”

—SHIN JAE KIM, PARTNER AT TOZZINIFREIRE ADVOGADOS

‘Lava Jato’ in Portuguese - has continued to escalate.

In essence, several construction companies are alleged to have paid bribes to secure contracts with Petrobrás and the scandal has spread beyond the confines of corporate directors to reach the very heart of government - although to date the names of the politicians under investigation have not been released.

“Operation Car Wash has led to unprecedented developments in the area of anti-corruption enforcement in Brazil, thereby reinforcing companies interest in revising and strengthening their compliance programs,” says Dantas. “Up to this moment there has been no final judgment based on the BCCA. Therefore, it is currently being ‘field tested’ by the Car Wash scandal. Companies involved in the Operation have resorted to BCCA provisions as a basis to negotiate leniency agreements to avoid the penalty of debarment.”

There is no doubt that Operation Car Wash is cer-

BRAZIL

tainly putting the mechanics of the new law to the test. The global scrutiny that the case is receiving should ensure that robust precedents are set.

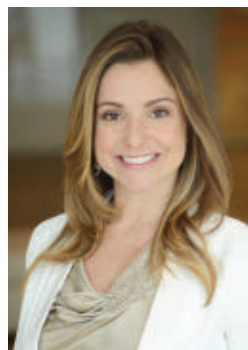
TOOLING UP

As the key features of the BCCA are still evolving, law firms are reluctant to prescriptively describe the ramifications of falling foul of the new regulations. Nevertheless, there are certain key points enshrined by the new legislation.

“The enactment of the Clean Company Law is a turning point. It provides for a company’s strict liability for misconduct perpetrated on its behalf or interest, regardless of consent or acquiescence of the company or management towards the act,” says Drago. “For instance, if a U.S. company has a branch in Brazil, and an employee decides to bribe a public official or defraud public procurement by their own will, the company will be held liable for the wrongful act, regardless of its consent or acquiescence. That, together with the possibilities provided by leniency agreements and potential fine mitigation in the case of misconduct, have been catching the attention of companies.”

Although leniency agreements have already been undertaken as part of the BCCA process, there is still a long way to go before standardization.

“Leniency agreements grounded on the BCCA have been successfully concluded. However, their effectiveness has not been confirmed by judicial courts yet,” says Raphael de Cunto, corporate partner at Pinheiro Neto Advogados. “We also lack judicial precedents on key topics related to said legislation,



ADRIANA DANTAS
BARBOSA, MÜSSNICH,
ARAGÃO



SHIN JAE KIM
TOZZINIFREIRE
ADVOGADOS

such as the enforceability of strict liability provisions and the weight of compliance programs in the assessment of sanctions to be imposed on violators.”

That is not the only challenge that Brazilian law firms are looking to overcome. In addition, lawyers are working hard to promote the idea to Brazilian companies that prevention is better than cure when it comes to possible BCCA violations, and that the long-term benefits of a well-designed internal compliance policy can go a long way to limit exposure to potential penalties.

“We would say there are two types of companies that seek compliance counseling. On the one hand, you have companies that understand compliance mechanisms and have enhanced corporate governance to mitigate possible risks. These companies



Brasilia, Brazil

tend to have moved on from ‘the old way of doing things’, and will likely be investing in growth, technology, and real compliance mechanisms,” says Paola Pugliese, competition and antitrust partner at Demarest Advogados. “Then you have the companies seeking shelf compliance programs, and are usually only interested in mitigating possible fines. One can tell immediately which type has more chance of succeeding in the new legislative scenario.”

And it is not only this new legislative scenario that internal compliance officers have to navigate; linking into the rising awareness of anti-corruption matters is the country’s more rigorous approach to competition law.

HEALTHY COMPETITION

The new Brazilian antitrust law (Law No. 12,529 of 2011) came into force in May 2012 and dramatically overhauled the country’s approach to competition regulation.

“The new antitrust law in Brazil changed the institutional structure of competition enforcement by merging the roles played by the former three agencies into CADE. The new CADE is composed of three distinct bodies: the General Superintendence, the Administrative Tribunal and the Department of Economic Studies,” says Joana Temudo Cianfarani, partner in the antitrust, and compliance and investigation practices at TozziniFreire Advogados. “Besides the changes implemented to the institutional system, the new antitrust law also promoted deep changes to the merger review regime and improved the tools for cartel investigation.”

Certainly, the aim of the new Law was to establish a more effective competition regime and statistics from 2014 demonstrate that it has met its brief.

Last year CADE sentenced participants in over 28 cartels and, according to figures published in Allen & Overy’s Global Cartel Enforcement Review (2014), issued fines worth \$1.7 billion - this represented its highest total ever. Significantly, it struck a cement cartel with a \$1.3 billion fine, and it also sentenced a Brazilian executive involved in bid-rigging in the aviation sector to over ten years in prison and a \$156 million fine.

“CADE continues to increase its enforcement efforts, particularly in the field of cartels,” says Marcio Dias Soares, antitrust partner at Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados. “After having focused primarily on merger cases during the first year of the new regime, CADE has clearly shifted its attention to cartel cases once again. Over the past two years, we have seen a significant increase in the activity of ongoing cartel matters, and also in the launching of new investigations - both domestic and international ones.”

CADE’s increased focus on cartel activity and price-fixing is starkly evidenced by its own figures: in 2014, there was a 20 percent increase in cartel investigations commenced by CADE, from 116 in 2013 to 139 in 2014. It should come as no surprise that this trend, coupled with the increasing profile of the country’s anti-corruption efforts, has seen companies turn to law firms in their droves for compliance advice.

BECOMING COMPLIANT

Law firms across Brazil are building up their business ethics and compliance teams to assist clients steer their way through the country’s rapidly changing regulatory landscape. Machado Meyer Sendacz e Opice Advogados, for example, established its compliance

“The Brazilian Clean Company Act was a watershed moment for compliance in Brazil. Before its introduction only multinationals focused time and resources on compliance programs.”

—ADRIANA DANTAS, PARTNER AT BMA – BARBOSA, MÜSSNICH, ARAGÃO

and corporate integrity practice in January 2015 under the guidance of Leonardo Ruiz Machado, who has invaluable in-house experience gained during his stint in Walmart Brasil’s legal, ethics and compliance department.

“Since 2004, Machado Meyer has been looking at compliance issues due to the interest of its foreign clients in potential investments in Brazil,” says Machado. “At this time the concern was limited to the extended risks of enforcement of the FCPA. The new BCCA has increased the risks and encouraged a more specialized approach to anti-corruption.”

Law firms usually follow their clients, but in this case it seems that the opposite is true: Brazilian firms are developing their expertise in this area while urging their clients to do the same. Brazilian corporations, even purely domestic ones, would do well to listen to their lawyers as global governments look to intensify their anti-corruption drives.

“Because the authorities are more active in the following of rules, companies that depend substantially on interaction with the public sector need to follow regulatory changes more closely,” says Jae Kim. “The company that is able to structure a solid team to do this will be a step ahead and will set itself apart in a highly competitive market.” ■

HOW TO SPOT A BRAZILIAN FALLING KNIFE

A Cautiously Optimistic Perspective about Brazil



THIAGO SANDIM
PARTNER
DEMAREST

This is an article about the Brazilian PE and M&A industry. There is a cautious shy optimism in the mid-term. A light sense that, after a long hard winter, the Brazilian government is finally trying to do the right thing about the economy. People are not sure though. There is still a long way to go, but the willingness of the new economic team and their commitment to market practices appear to be real and focused. In the macroeconomic sphere, the local currency lost a lot of value in relation to other currencies, the cost of capital increased - thus making local companies more flexible in terms of pricing - and the pricing expectations of Brazilian entrepreneurs have become more realistic.

As such, Brazil should be a no-brainer "buying market" for foreign parties interested in PE/M&A. A very large portion of this industry relies on buying assets cheap, turning them around and then selling them at a premium. This is not happening as fast as it should. When trying to determine the reasons for the slow (although steady) pace of investments in the industry, lawyers and Brazilian bankers frequently have to deal with the metaphor of "investors resisting to catch a falling knife".

Hence the title.

It is a very good metaphor for the current state of affairs of the Brazilian market. One might get hurt catching a falling knife, as one might have big losses if the timing of an investment is wrong. Therefore, this article is about how to spot and differentiate between good assets and falling knives. At the end of the day, it is only a matter of visibility.

The answer is simple and has been tested worldwide over centuries. But it is not at all easy to implement.

Get a partner.

A local one.

Pick your partner well.

You need to understand the country to make money. The timing is good. There are very good entrepreneurs in the country, many of them in search of capital. Over time it has become clear that the most successful foreign companies doing business in Brazil are the

Over time it has become clear that the most successful foreign companies doing business in Brazil are the ones that started through joint ventures.

ones that started through joint ventures. This type of organization allows foreign parties to adapt to the local business culture, while having a partner who can translate such culture to them. Joint ventures also - and foremost - align interests. If the JV does well, everyone makes money. If the JV goes bust, everyone loses money. In this regard, Brazil is no different than any other place in the world.

PEOPLE CARE THE MOST WHEN THEY HAVE SKIN IN THE GAME.

As every large country, Brazil is peculiar. The average Brazilian businessman has a local way of doing business and finds it challenging to adapt to some aspects of the mainstream international business environment. For example, with notable exceptions, Brazilians are not confrontational in the negotiation table but, at the same time are very - and I mean very - "cut throat" about formal and binding deal terms. Negotiation of documents is heavy, while personal interaction is always friendly and calm. You should try to avoid documents such as "heads of agreements" or "term sheets" in Brazil. Of course this is not a universal rule, but entrepreneurs only tend to pay the proper attention to transactions when the binding transaction documents are ready.

For cultural reasons - as in any jurisdiction - foreign parties frequently get the wrong message when negotiating in person and without local knowledge. This applies not only to PE/M&A, but also to any aspect of negotiations in Brazil. The friendly environment versus the cut-throat approach is a cultural paradox that is sometimes hard to understand and tends to stretch the timetable of a deal beyond the patience of people used to making deals in New York or London.

BRAZILIAN DEALS, AT THE OUTSET, SEEM TO BE A RIDE IN THE PARK.

Well, they are not, and this is actually good news. Heavy negotiation means that contracts in sophisticated business transactions are detailed and enforceable in the country. The naked truth, this has been the case for more than 25 years.

It is also crucial to understand that the government is a very important player in practically all economic areas and directly controls a very significant portion of the GDP. This is an area where a local business partner in a joint venture adds a lot of value. Whether you like it or not, it will be necessary to deal with the government at all levels - federal, state and municipal. This is usual and expected in Brazil. It is much better to have someone with knowledge of a certain market trying to influence the government in a proper and lawful manner than having a clueless politician designing roads to Mars (which unfortunately still happens a lot in the country).

It is critical, though, to understand how this interaction happens and to make sure that it is transparent and honest. Your partner has to have the same ethical standards as you have. The alignment of this cultural business approach with the interaction with the government is challenging, but basic ethical standards are not negotiable anywhere in the world. Make sure that you know your partner at an ethical level, in addition to performing a due diligence or X-raying its

books. Common ground with regard to work and business ethics is a very basic thing and the lack of it will certainly kill any attempt of doing business together. Doing this background check is as important as any due diligence in Brazil.

Of course nobody can guarantee that your business is going to be successful (after all, this is the essence of risk taking and doing business). But the basic rules - despite the mainstream speech these days - are there.

Partnering with a local business in a joint venture will give you perspective. Your partner is more likely to know if the knife reached the bottom. He will not allow you to reach for it if it is still falling. After all, his skin is in the game. Making money is very much about assessing, taking, managing and trading risks or, if we use the knife metaphor - about when to reach for the knife. A trustworthy local partner will help you figure out the most appropriate timing because he is closer to the action.

All in all, we are optimistic about the next 10 years in Brazil. A pessimistic approach is merely an echo of the herd and plain wrong.

Of course nobody can guarantee that your business is going to be successful (after all, this is the essence of risk taking and doing business). But the basic rules - despite the mainstream speech these days - are there. The rule of law in the country is strong and lasting. Our republican institutions are proving to be very active and independent from one another. The press is free. Democracy is steady and goes unchallenged. There are almost 200 million people in the country - all of them need to make a living

and wish to improve their standards of living.

As a country - irrespective of which government may be in power - Brazil continues to be a very good investment destination. It is just a matter of putting things into perspective and getting the timing right.

The time to buy is when everyone is selling.

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INTERACTING WITH BRAZILIAN GOVERNMENT ENTITIES ON PROJECTS



**EDUARDO HAYDEN
CARVALHAES**
PARTNER
**BMA – BARBOSA,
MÜSSNICH, ARAGÃO**

In order to find solid business opportunities with private investors and set out clear rules to avoid illegal approaches, Federal and State legislation has recently been enacted in Brazil

It does not come as a surprise that government and the private sector interact. The private sector depends on the Public Administration to carry out projects in regulated markets, provide public services, and make use of public assets, and the Public Administration cannot restrict itself to projects that are structured and financed entirely by government entities. However, the limits between legal and illegal interaction are thin and the “grey zone” may comprise corruption, administrative misconduct and other undesirable types of interaction.

Simply prohibiting any and all types of interaction between the government and the private sector is not only an extreme reaction, but also something that ultimately goes against the public interest in having an efficient and productive Public Administration. No one can deny, however, that strict regulation to set out the limits for correct and legitimate interactions is necessary. This is exactly why legislation and regulations on public tenders, government contracts, concessions, PPPs, corruption and administrative misconduct have been enacted.

Before the Brazilian Federal Law on Concessions was enacted in 1995, the general rule for all contracts made between the Public Administration and private parties was that the same private party was not permitted to take part in both the project/tender preparation and planning phase and in the competitive bidding procedure for implementation of the project.

The Federal legislation on public tenders and bids enacted in 1986 (which was replaced in 1993 by the legislation currently in force, with similar provisions on this issue) provided that those who participate on the planning phase (by helping in the basic design and/or executive plan) cannot participate in the public tender.

In other words, only those who did not take part in the preparation of the structure of the project can compete for it, by placing bids in a public tender.

However, the federal legislation on public service concessions and PPPs allowed, in general terms, for the possibility that a private sector party could propose a structure for a potential project and afterwards still be able to compete for it on the same terms as other interested parties. With this change in the law, a few private parties started proposing projects and submitting formal proposals for new projects.

Nevertheless, it was only this year that specific regulations were enacted at the federal level for Expressions of Interest, or EOIs (called *Procedimento de Manifestação de Interesse – PMIs* or *Manifestação de Interesse Privado – MIPs* in Portuguese).

By enacting Federal Decree No. 8,428 on April 2, 2015, the Brazilian Federal government formally delineated the boundaries for legitimate interaction with private parties – which, in a time of multiple corruption scandals, is received as a positive development that will foster honest and transparent dealings in projects that involve both the private and the public sectors – and establishes clear rules for reimbursing expenses and paying for the design and structuring work chosen as the most suitable and, as such, actually used in the public tenders for the project.

An EOI is the formal procedure for individuals or legal entities to submit plans, surveys, investigations or studies intended to provide support to the Public Administration in structuring projects for concessions or permissions to render public services, PPPs, lease of public assets or grants of rights of use over public assets. It can also be used for reviewing, updating or complementing such projects.

The EOI procedure is initiated by publication of a formal invitation – a public call – in the Official Gazette (*Diário Oficial*) that provides basic information on the type of projects the Public Administration is interested in, gives

the deadlines for project submission and analysis, and sets out the general criteria and maximum amount for reimbursement of costs.

The second phase of an EOI is the authorization granted to the proposal(s) which fulfill the basic requirements (the authorization is usually granted on a non-exclusive basis, but exceptions may be made for specific projects, in which a single party may be granted an exclusive authorization), allowing the authorized parties to carry out the plans, surveys, investigations or studies they proposed.

All proposals must identify the party that is financially responsible for it. This is an important characteristic of the EOI, because it ensures that the identity of all the parties responsible for carrying out projects, surveys, investigations or studies and for paying for them will be disclosed as public information, thus avoiding misleading information.

Finally, after the evaluation and analysis of the projects, surveys, investigations or studies, the Public Administration will issue its decision on which proposal or proposals are approved, the extent to which they will be used – in some cases, the Public Administration may choose to combine one participant's study with another's survey, for example, using part or all of the submissions – and how these will be used.

Some Brazilian States and Municipalities have also enacted their own legislation and regulations on EOIs for projects at the state and municipal levels of government, and here the procedural rules can vary. The most important difference is that some of these laws – such as the federal legislation – and regulations allow submission of unsolicited proposals. In other words, in some cases a private party may submit a formal proposal, without needing to wait for a public call for EOIs to be published.

Parties authorized to carry out studies or to have their costs reimbursed are, as a rule, allowed to participate in the public tender in which their studies will be used, but they do not hold any right of first refusal or other preference: they compete in the public

tender under the same terms and conditions as other interested parties. In addition, the use of an EOI procedure does not bind the Public Administration to actually continuing the process and implementing the project,

“By enacting Federal Decree No. 8,428 on April 2, 2015, the Brazilian Federal government formally delineated the boundaries for legitimate interaction with private parties...”

so even if a given proposal is authorized, this does not necessarily mean that a public tender will be held to implement the project.

The same rule applies to reimbursement of costs or payment for studies, which means that even if a private party is authorized to carry out surveys, investigations or studies, it is not necessarily entitled to be paid or reimbursed for its work.

This situation arises because of how payments are made in an EOI: the public tender invitation will set out the amounts that must be paid to those who carried out the studies that served as the basis for the project. Consequently, when the winner of the public tender is selected, it will be required, as a condition to entering into the contract with the Public Administration for the concession, PPP or other grant of rights, pay the party or parties who were responsible for the studies, and this condition must be included in the public tender invitation. In other words, private parties cannot charge the Public Administration directly for the plans, surveys, investigations or studies they prepare.

When the government entity in charge of the EOI analyzes the studies to decide whether it will use them or not, it will also determine if more than one study will be selected, if the studies will be used in their entirety or only in part (and, in case of partial use, which part will be used) and the amount to be paid for the studies.

The private participants can accept the Public Administration's decision or reject it, if they do not want to have their studies used in the manner determined by the Public Administration or they believe that the amount to be paid for their work is inadequate. If a participant rejects the Public Administration's decision, the information contained in its plans, surveys, investigations or studies cannot be used by the Public Administration and the Public Administration must return all the material to the participant.

The first EOI held after the enactment of Federal Decree 8428/2015 took place in July of this year, and involved a new round of airport privatizations. A hundred proposals were submitted by 30 companies, distributed among the four airports contemplated in the project. The perception of the private sector is that this new regulated interaction between public and private parties for infrastructure projects may be an efficient alternative to informal interaction, which involves a number of risks and a high level of uncertainty.

ABOUT BMA

BMA – Barbosa, Müssnich, Aragão is a full-service Brazilian firm founded in 1995. The firm has been involved in infrastructure projects from the very beginning, with its work in Brazilian privatization processes that started in 1996. BMA's infrastructure portfolio includes legal support for the first PPP for basic sanitation in Brazil, acting as legal counsel to the LOC for the 2014 FIFA World Cup, advising on the two largest submarine cable projects for the LatAm region, and a variety of logistic and energy projects.

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GERMANY

Düsseldorf Harbor,
Germany

Hidden Depths

Flourishing regional hubs of industry have seen German M&A activity retain a healthy outlook and international interest, despite inbound-deals dipping through 2015.

By Steve Hall

Is German business becoming a less reliable source of M&A activity? Few seem to think so, despite some of the statistics from 2015. The outlook for short-term investment in the German economy and the appetite for large-scale inbound foreign acquisitions, so prominent through 2014, has been diminished compared to wider European transaction volumes, which are yet to stagnate in 2015. But the underlying appeal of the German market and its overall transaction volume is far from troubling, despite some of the warning signs.

“A lot depends on the strength of the euro and political and macroeconomic development of the Eurozone,” says Hengeler Mueller partner Emanuel Strehle. “We are quite confident that we will again see a good year in

terms of M&A and foreign investments. Cross-border transactions of all sizes have increased; transformative deals, which were largely absent in the years following the crisis, became hallmarks of European cross-border M&A in 2014 and are continuously on the rise.”

The narrative of the Eurozone in 2014/15 was one of conflict and uncertainty as German politicians and voters wrestled with the problem of responding to the Greek debt crisis and building on a healthy exports record. Just as some degree of resolution appeared to be nearing, jitters in the Asian markets once again hit global investor confidence and threatened to undermine a period of sustained growth. Yet, amid the chaos, the German economy has come to represent reliability and promise.

It's easy to trace confidence, at least in one aspect, to the diverse opportunities available in hubs of industry such as Frankfurt, Munich, Stuttgart, Wolfsburg and Berlin. International business hasn't failed to notice the potential here, but similarly German business has revealed an appetite for acquiring foreign counterparts.

FOOT OFF THE GAS

Yet, a simple glance at the figures does not necessarily express this level of activity: according to Thomson Reuters, announced M&A transactions with European targets from non-European buyers have risen by as much as 66% year-on-year (y-o-y) in 2015 to reach the highest year-to-date (y-t-d) level since Thomson Reuters record began, while during the same time period, announced German inbound M&A activity from non-European acquirers halved in 2015, down by 52% y-o-y.

According to a report published by UK law firm Allen & Overy, the story of a quiet 2015 isn't entirely accurate. "There were still some highly significant deals [in 2015]," the report claimed, "including the €3.3bn merger of the science and academic publishing businesses of Holtzbrinck and BC Partners and the €1.8bn public takeover of tool manufacturer Gilde-meister by Mori Seiki, which already had a 25% stake in the business."

The market may seem quieter, but it may be the case that it's changed; 2014, a period noted for the health of M&A activity, saw more large-scale transactions, but fewer mid- and small-cap deals than the 2015 records.

As such, the mood is one of wary optimism. That can be put down, at least in part, to the dynamism of German companies in key industries. The sectors with the greatest M&A activity in 2015 include services (the most prominent component of which is financial services), which leads the way by some margin, followed by engineering and chemicals/pharmaceuticals. Information and communications technology (ICT) and automotive industries have contributed to a lesser extent to the recent growth, yet they remain stalwarts of regional activity and have produced many outbound transactions, not least in terms of cross-border activity with Austria.

Though big portfolio deals remain thin on the ground, 2015 saw a real estate blockbuster deal as Deutsche Wohnen paid €1.2bn to acquire its Austrian competitor Conwert. What's clear is that the nature of M&A in Germany in 2015 is altered, though not subdued.

LOOKS DECEIVE

Though any graph of M&A transactions, particularly across the Q2 and Q3 2015, would point to a slowing market, there are plenty of indications that the downward trend is unlikely to sustain. The key combination of stability from a political perspective and balance and

promise across the economy has continually put Germany high on the list of targets for foreign investors.

Despite the turmoil in China and anxiety about the future of the euro, the prospects of German business and the popularity of its exports have kept activity in 2015 robust and reliable. Market analysts have observed that over-reliance on exports might be to Germany's disadvantage, but domestic demand remains an important driver and investor sentiment seems less troubled by industry's vulnerability to global shocks.

In June, an inbound deal from the US saw Saks owner Hudson's Bay agree to acquire German department store chain Galeria Kaufhof from retail and wholesale group Metro AG for \$3.17bn. Retail is hardly a stand-

"We are quite confident that we will again see a good year in terms of M&A and foreign investments. Cross-border transactions of all sizes have increased."

—DR. EMANUEL STREHLE, PARTNER, HENGELER MUELLER

alone in what it purports to offer to foreign investors; cross-border deals have continued to turn heads as businesses in the US look for what they perceive as a safe entry point to the European market. The US has hitherto been a consistent in its appetite for acquiring German business and in the strength of the currency and availability of acquisition finance has seen a sustained flow of money into the region. Business magnate Warren Buffet noted the promise of the German market when Berkshire Hathaway acquired motorcycle equipment maker Detlev Louis for €400m.

The robust nature of the market, then, owes something to the depth of industry and regional powerhouses that have repeatedly tempted inbound M&A and driven outbound transactions as they look to grow.

Germany's global leadership in services and manufacturing; its dominance in technology-driven industries, its wealth of small and midsize enterprises and its geographical position in the heart of Europe also help explain the increasing importance of M&A in Germany.

Private equity has, likewise, recognized the opportunity and sustained interest "There are fewer deals in the pipeline, but the investment pressure still remains," says Georg Schneider, head of Noerr's private equity & venture capital group. While PE funds were quieter through the early part of 2015, Centerbridge did acquire Senvion, the German subsidiary of Indian wind turbine producer Suzlon, for around €1bn.

GERMANY

Many argue that Chinese and Indian business remains enthralled by the prospects of German prosperity, even if the scale of the deals in 2015 haven't backed that up. Indeed, where recent large multi-national deals have served to highlight the cross-industry appeal of the region they've frequently been driven by the interest from emerging markets. Zhuzhou Times New Material Technology's acquisition of ZF Friedrichshafen's rubber and plastics division in nine different jurisdictions serves to highlight the breadth and scope of deals being struck by large Chinese businesses with an eye on acquisition.

"Germany has long been the largest and most important trade partner of China within the EU with Bavarian companies accounting for around a fifth of the German-Chinese trade volume," says Hengeler Mueller's Emanuel Strehle. "Especially the German and Bavarian car manufacturers are very popular in China. 22 per cent of all cars sold in the first half of the year in China originate from German brands. Audi and BMW have sold more cars on the Chinese than on the German market."

READY TO RUMBLE

International law firms, particularly US and UK, have made inroads into this market but German law outfits are well-prepared for the increased competition: full-

"We have spent decades building a tight, tried- and-tested international network, fostering close personal contact with leading law firms and lawyers in many jurisdictions."

—DR. RAINER LOGES, MANAGING PARTNER GLEISS LUTZ

service firms have spent years honing their M&A and corporate talent and, more recently, matching that expertise with international relationships.

"We have spent decades building a tight, tried- and-tested international network, fostering close personal contact with leading law firms and lawyers in many jurisdictions," says Dr. Rainer Loges, managing partner Gleiss Lutz. "This network of relationships acts as a springboard for putting together at short notice the cross-border teams with the best minds that are required for transnational cases.

"On the other hand referrals generated through these relationships put the firm in touch with companies all over the world that require advice on matters of German law. So we are in fact benefiting in the international market from being independent."



DR. EMANUEL STREHLE
HENGELER MUELLER



DR. RAINER LOGES
GLEISS LUTZ

A closer inspection of the industries helps explain why top law firms regard the depth of client base and industry expertise as crucial factors in staying competitive. The *Mittelstand* is the engine of the German economy: a burgeoning group of small and medium-sized enterprises with a culture of innovation and industry hubs.

Philip Meichssner, partner in UK firm Osborne Clarke's Munich offices explains that no firm can currently overlook the value of deep connections in the key regions that are driving the growth. "Germany has currently two booming investment centres: Berlin, very much in the international focus, and Munich with a lot of money arriving from German-speaking countries," he says.

The technology space, for example, a flourishing part of the Munich business scene, has benefitted from the proximity and regulatory environment, as well as having the attention of big international counterparts.

One example from 2015, Apple acquired Metaio, an augmented reality start-up, based in Munich, Germany that develops AR tools that use 3D tracking-capable devices for the development and deployment of Augmented Reality apps. The terms of the deal have not been disclosed.

Microsoft, meanwhile, acquired Berlin-based 6Wunderkinder, a German software developer of productivity apps for smartphones and tablet computers, including the to-do list app Wunderlist. Yet, technology companies are the only fuel to transactions in the small- and mid-cap market.

Speak to corporate lawyers in Germany and you won't detect panic. A cursive comparison between this year and the last might reveal a more underwhelming scenario, just as a checklist of the volatile factors affecting foreign investment might cause nervousness. But German business has proved its diversity, its appeal and its ambition. The tempo and nature of the M&A deals may have altered, but the market has kept its optimism while corporate practices have prospered. ■



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IRELAND



Dublin,
Ireland

Ireland's Warm Welcome

Ireland's business and political communities have long understood that the nation's prosperity depends on its ability to attract foreign interest.

By Howard Stock

On June 1, Ireland's long-awaited Companies Act 2014 came into force, bringing together 33 company law enactments into a single piece of legislation. Its intent is simple, if not quite as revolutionary as the hype might suggest: It consolidates and modernizes Irish company law and is expected to make it easier for companies to do business in Ireland.

"The Companies Act is a consolidation of what was already there and a removal of red tape for certain kinds of activity that companies would have had to go through shareholder approval or court approval," says David Carthy, a partner at William Fry. "It's very much along the same lines that the U.K. Companies Act took several years ago. I wouldn't describe it as exciting, but it's been beneficial to companies, and they've reacted well to it."

The Companies Act has also been beneficial to lawyers, because it removes administrative costs and delays under company law in Ireland that international clients find annoying, "so from that perspective it's very welcome," Carthy says.

The principal changes relate to private companies, the most common type of company in Ireland, explains Tim Scanlon, partner and head of Matheson's corporate and commercial group. Under the act, there will be two types of private limited company, which will replace the existing single form. The first is a private company limited by shares ("LTD"), and the second is a designated activity company ("DAC"), and the key changes introduced by the act are for the purposes of modernizing and streamlining the legal rules applicable to the operation and administration of such companies.

The passage of the act is both timely and necessary. Ireland's business aspirations are much loftier than its

domestic economy could support on its own. “The internationally focused business environment in Ireland is very strong,” says Conor Hurley, New York resident partner and chair of Arthur Cox’s U.S. group. “Ireland encourages international investment, we have a strong investment funds business, and the Irish government and various Irish entities support that hugely. For a relatively small country, there are a lot of large Irish service firms. They’re larger than what the domestic business would support because of the international focus.”

STRAIGHTFORWARD LAWS

As cross-border deals get more complicated, Ireland’s rationale is that the rules must become more straightforward. “A very significant driver of deal activity in the recent past has been a series of loan book sales by both domestic and international institutions in Ireland,” Scanlon says. “There has been a very high level of demand primarily from international investors for these assets which has in turn resulted in more of those assets coming to the market than might originally have been anticipated.”

Ireland has also seen an increasing amount of strategically driven mid-market M&A involving international investors, primarily in the technology space. The government policy initiatives around financial services and FinTech are also driving levels of interest in these sectors, Scanlon says.

Meanwhile, the introduction of the new Irish corporate vehicle, the Irish Collective Asset-management Vehicle (ICAV), is a significant development for the Irish funds industry, says Anne-Marie Bohan, partner in Matheson’s asset management and investment funds group. “The ICAV combines the many advantages of the pre-existing and hugely successful Irish fund vehicles into one with its own bespoke legislation,” she says. “The ICAV is an available vehicle for establishing both UCITS and AIFs and from our discussions with fund managers, it is clear that it has generated great interest in the international industry in the short time since its recent introduction as reflected in the level of activity in ICAV authorizations.”

CHINA FOCUS

At a domestic level, another recent development is the Central Bank’s recent confirmation, in July 2015, that it has no objection in principle to Irish funds investing in the Hong Kong-Shanghai Stock Connect Program, known as “Stock Connect.” “Stock Connect effectively removes the historic requirement to obtain a separate QFII or RQFII quota and is one of the most significant developments to date in the opening up of mainland China’s capital markets,” Bohan says.

Internationalism is the clarion call of the Irish market. Hurley says that it is Ireland’s international focus that enabled the country to emerge from its

devastating recession in 2008 so soon (while there are many contributing factors, compare Ireland’s reemergence from the PIGS designation with that of Portugal, Spain or Greece).

“The last couple of years in particular have proved just how important international capital, international companies and financial institutions have been to the remarkable turnaround of the Irish economy,” agrees Pat English, a partner in Matheson’s corporate group. “It is also clear that this focus will continue to be the cornerstone of the Irish economy over the medium to long term.”

Indeed, Turlough Galvin, partner and head of tax at Matheson says that foreign direct investment (FDI) has been a cornerstone of the Irish economy for more than 60 years. “In 2014 and the first half of 2015, Ireland has continued to compete for and win a substantial share of global FDI despite increasing competition from other jurisdictions,” Galvin says. “Ireland is regarded as a very stable option for multinational companies looking to make large scale investments or to develop a foothold in Europe—Ireland’s pro-business

“The last couple of years in particular have proved just how important international capital, international companies and financial institutions have been to the remarkable turnaround of the Irish economy.”

—PAT ENGLISH, MATHESON

environment, a government that listens to business, a highly skilled workforce and competitive tax regime are key elements in attracting and retaining significant investment projects.”

The government is committed to retaining Ireland’s position as a leading location for FDI and constantly looks to improve the Irish offering. For example, in the 2015 budget, the Minister for Finance announced the introduction of a “knowledge development box,” which will offer relief from corporation tax on profits derived from commercializing intellectual property.

Ireland’s funds industry is thriving, both at a European and domestic level. 2014 was a record year for the European investment fund industry, with net sales of European investment funds rising to €634 billion and assets under management increasing by 15.7% to €11.3 trillion. The Irish funds industry is growing at a faster rate than Europe’s other major fund domiciles. As of March 2015, total assets of Irish domiciled funds amounted to over €1.8 trillion.

IRELAND

U.S. A KEY SOURCE

The U.S. continues to be the key source of cross-border business. According to the American Chamber of Commerce in Ireland, the U.S. accounted for 72% of Ireland's inward investment in 2014. Analyzed at a sector level, Ireland is the No. 1 location worldwide for U.S. FDI in the chemicals sector, which includes pharmaceuticals, and second worldwide in the information sector.

Joe Duffy, a partner in Matheson's tax group, says the reason U.S. multinational companies select Ireland as the best location to expand into Europe is not a particular set of rules but the tried-and-tested nature of the Irish offering. "The 12.5% corporation tax rate has been the cornerstone of the Irish tax regime for over fifteen years," he says. "All of the main political parties are committed to maintaining the rate and the Irish Government has remained steadfast to that commitment. That stability and certainty is appealing to businesses looking to expand into Europe."

Recent high profile international M&A transactions in the pharma, tech and financial services sectors in the past year include Willis, the third-largest insurance broker globally, merged with financial management services provider Towers Watson. The combined company, Willis Towers Watson, will be valued at approximately \$18 billion. Meanwhile, Medtronic acquired Covidien for \$42.9 billion, Allergan Phar-



PAT ENGLISH
MATHESON



CONOR HURLEY
ARTHUR COX

maceuticals engaged in a \$66 billion merger with Actavis, and Auxilium merged with Endo International to create a \$2.6 billion combined entity.

funds (ETFs) remain in strong demand, and in Ireland alone, where 48% of European ETFs are currently domiciled, they increased by 580% between 2008 and 2014, compared with 153% in Luxembourg. Ireland also remains a leading European domicile for money market funds (MMFs) with Irish domiciled money market funds holding assets of nearly €364 billion. "In addition to ETFs and MMFs, we have also seen increased growth in private equity structures and property funds; and have significant expertise in advising large institutional asset managers and private equity managers with regard to the establishment of such products," Bohan says.

That Ireland is so accommodating hasn't gone unnoticed, says Shane Hogan, another partner in Matheson's tax group, who notes an increasing propensity of foreign tax authorities to raise adjustments or seek information exchanges from the Irish Revenue Commissioners. "Although this activity of itself does not hinder business expansion, it does require businesses to spend much more time managing the requests and dealing with cross-border tax disputes which, in some cases, can take years to resolve," he says. "The Irish Revenue Commissioners is expanding and strengthening its "Competent Authority" resources which we expect will assist in dealing with these matters more effectively."

In addition, one of the possible outcomes of the Organization for Economic Cooperation and Development's base erosion and profit shifting (BEPS) project is that more double tax treaties will include mandatory binding arbitration clauses to force more efficient resolution of cross-border disputes—this development would certainly be welcomed by the business community.

"The key themes of the BEPS project are cohesion, transparency and aligning profits with value creation," Duffy says. "In a post-BEPS environment, Ireland's simple and transparent tax regime which offers a competitive corporate tax rate of 12.5% to companies engaged in substantive activity in Ireland

"For a relatively small country, there are a lot of large Irish service firms. They're larger than what the domestic business would support because of the international focus."

—CONOR HURLEY, ARTHUR COX

maceuticals engaged in a \$66 billion merger with Actavis, and Auxilium merged with Endo International to create a \$2.6 billion combined entity.

Investor demand for regulated products continues to grow and this is evidenced by recent figures for 2014, where net assets of UCITS increased by 16.3% to €7.9 trillion and net assets of non-UCITS/AIFs increased by 14.3% to €3.4 trillion. Europe ranks as the second largest market in the global asset management industry, managing 35% of the estimated €32 trillion global mutual fund assets at end 2014. This growth has continued into 2015, with assets under management in UCITS increasing to €9 trillion and non-UCITS increasing to €3.5 trillion.

In terms of specific products, exchange traded

should be one of the post-BEPS “winner” regimes. It is anticipated that once the BEPS recommendations are implemented Ireland’s offering will be difficult to beat.”

One Irish tax development that has garnered a lot of interest from our clients since it was first announced in October 2014 is the Irish “knowledge development box,” Duffy says. “It will be similar to patent and innovation boxes that exist in other European countries and will apply a competitive effective tax rate to income derived from commercializing patents and copyright,” he says. “The knowledge development box will be designed within the parameters set down by the OECD under Action 5 of the BEPS project and accordingly will be most beneficial to those who develop their patented technology or copyrighted work in Ireland.”

The relief will be available from Jan. 1, 2016, but Ireland’s existing regime for taxing income derived from intellectual property is already quite attractive. “As it stands, the regime permits taxpayers that acquire intellectual property to amortize the cost of that IP for tax purposes, offers a tax credit for the cost of research and development and applies a 12.5% corporation tax rate to trading profits,” Duffy says. “The

addition of an Irish knowledge development box is expected to further enhance Ireland’s position as a location of choice to commercialize intellectual property.”

Meanwhile, the ICAV is likely to be new corporate fund structure vehicle of choice in Ireland going forward, Bohan says. The introduction of the ICAV was the result of significant commitment and collaboration between both the Irish government and funds industry, ensuring a sensible balance between organizational and operational flexibilities and appropriate investor demands and protections. “One of the primary advantages of the ICAV is the fact that it will not be automatically impacted by amendments to European and domestic company legislation which are targeted at trading companies rather than investment funds,” she says, noting that the ICAV Act 2015 is the first of its kind for an Irish corporate fund structure.

All told, it is clear that Ireland is taking the necessary steps not only to provide an international standard in terms of regulation, but to do so in a way that doesn’t punish to companies in the process. For foreign companies looking to expand into Europe, it’s hard to imagine a more accommodating environment in which to do so. ■

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Partnership

Award-winning law firm Mason Hayes & Curran is pleased to announce the appointment of 10 new partners in our Construction, Corporate, Dispute Resolution, Financial Services, Investment Funds, Real Estate and Tax practices. We now employ 420 staff, dedicated to providing consistently excellent legal advice and service. To find out more about the way we work or to join our team please visit MHC.ie/growth

Pictured from left to right. Back: Natasha McKenna, Maura Dineen, Declan Black, Rowena Fitzgerald, Keelin Cowhey. Front: David Mangan, Adrian Lennon, Jamie Fitzmaurice, Neil Campbell, Daniel Kiely. Absent: Shane Dolan.

Q&A

MCCANN
FITZGERALD
LAWYERS SHARE
INSIGHTS ON THE
U.S.-IRELAND
TRANSACTION
BOOM



BARRY DEVEREUX
MANAGING PARTNER
MCCANN FITZGERALD



GARY MCSHARRY
PARTNER
MCCANN FITZGERALD

IRELAND'S AMERICAN ACCENT

Ireland's innovative regulatory and corporate landscape continues to make the country an attractive business destination for U.S. companies and investors.

With over 40 million Americans proudly claiming Irish heritage, Ireland and the U.S. have a unique connection that has translated into significant economic activity and cross-border transactions between the two countries. U.S. companies have invested over \$270 billion in Ireland (more than the BRIC countries combined), and more than 100,000 Irish people work for U.S. companies in Ireland. On the flipside, Irish investment in the U.S. is in excess of \$26 billion, and Ireland matches the U.S. job for job, with an equivalent number of Americans working for Irish companies in the U.S.

Reporter Howard Stock spoke to McCann Fitzgerald Managing Partner Barry Devereux and Corporate Partner Gary McSharry, who recently joined the firm after working for a number of years in New York advising U.S. companies and private equity firms on M&A, private equity and the establishment of structures and operations in Ireland.

WHAT FACTORS HAVE INFLUENCED DEAL FLOW FROM THE U.S. INTO IRELAND?

MCSHARRY: When the U.S. administration moved to reduce the attractiveness of offshore jurisdictions for U.S. companies in 2008/09, a number of U.S. companies that had originally migrated to Cayman or Bermuda decided to move onshore. Ireland, as a member of the OECD with a transparent low-tax regime, was well placed to receive a number of those companies. We then saw major activity via inversions as U.S. companies acquired non-U.S. targets and, as part of the acquisition, moved their domicile away from the U.S. When the U.S. rules changed and it became more difficult to claim a substantial business activity as the basis for an inversion, a number of U.S. companies migrated via the shareholder value test, whereby shareholders in the target company owned at least 20% of the merged company post-inversion, so it had to be quite a significant target company. The numerous commercial

and corporate benefits and advantages of locating in Ireland have led to an upward trajectory and a growing volume of activity between the U.S. and Ireland.

WHAT ARE SOME OF THE MOST SIGNIFICANT RECENT TRANSACTIONS WITH U.S. COMPANIES?

MCSHARRY: Many of the largest U.S. deals in the past year required significant Irish law support as they involved Irish incorporated entities. There was the c. \$40 billion acquisition by Medtronic of Covidien

"We are now exposed to far greater-sized transactions that have been driven out of the U.S., but the Irish input is very significant."

—Barry Devereux, managing partner,
McCann Fitzgerald

(Irish incorporated target), and the c. \$70 billion acquisition by Actavis (Irish incorporated buyer) of Allergan. Mylan are also currently making a c. \$28 billion hostile offer for Perrigo, and because it is an Irish target, the transaction is subject to Irish takeover laws. McCann Fitzgerald have also been involved in the \$2bn merger of Jazz Pharmaceuticals and Azur, the \$660m acquisition by Horizon Pharma of Vidara and the c. \$1 billion proposed merger of Chiquita and Fyffes, which was scuppered by the sale of Chiquita to another suitor.

DEVEREUX: These are Irish companies, but they are listed on the New York Stock Exchange or Nasdaq. This means that, when someone bids for these companies, the transaction is governed by both Securities and Exchange Commission takeover rules and Irish takeover rules. What that means is any such deal needs a significant input from Irish corporate lawyers as well

as U.S. corporate lawyers in order to satisfy both sets of takeover rules. For us it effectively means co-counselling with major U.S. law firms. It's a significant change in what we do because historically there wouldn't have been any companies in Ireland anywhere near the value of the likes of Medtronic, Allergan, Perrigo etc. So we are now exposed to far greater-sized transactions that have been led out of the U.S., but the Irish input is very significant.

HOW DOES THE CROSS-BORDER NATURE OF THESE DEALS AFFECT THEIR COMPLEXITY?

MCSHARRY: Because there have been so many substantial, complex U.S.-Irish transactions, ultimately there's a well-worn path. There are some nuances between SEC and Irish takeover rules, but now that McCann FitzGerald has advised on a number of these deals, something that was complex initially is now relatively straightforward for us. For the most part, U.S. advisors are also comfortable operating within Ireland because we're also a common law regime with freedom of contract and we share many legal principles. The new Companies Act (which Ireland introduced in June 2015) is a significant piece of legislation, with the purpose of making it even easier to do business in Ireland from a company law perspective. U.S. lawyers find it a very easy transition as opposed to working in, for example, a civil law jurisdiction.

DEVEREUX: There are things that may be more difficult to do in Ireland that are routine in the U.S., such as increasing or decreasing the price in a takeover scenario but it's a bit more flexible in the U.S., so we've had to find ways of ensuring that the clients' objectives can be achieved within the rules here.

MCSHARRY: Just in terms of activity, it's important to also note that there continues to be significant U.S. private equity activity in Ireland. Over the last few years, there has been real value to be gained for U.S. investors in Irish assets, and you've had major U.S. funds acquiring significant portfolios of assets (including real estate) at very good values. There also continues to be strong activity with U.S. companies using Ireland as an efficient

location for European operations, where they can get closer to over 500 million new potential E.U. customers and a significant talent pool.

WHAT HAS HAPPENED TO TRANSACTIONS INVOLVING INVERSIONS?

MCSHARRY: The move by the U.S. Treasury to limit the post-inversion benefits led to a slowdown, but judging by recent inversions over the summer, it would appear that those attempts have not been fully successful. Ultimately, the U.S. Treasury needs Congress to act, but as I understand it, Congress is reluctant to address inversions without addressing reform of the overall U.S. tax code, which may take time.

HOW HAS THE NEW IRISH COMPANIES ACT BEEN RECEIVED BY AMERICAN CLIENTS?

DEVEREUX: I think making life easier is a good thing—it consolidates over 50 years of company legislation, which means that the framework for doing business in Ireland is now housed in one piece of legislation, with an emphasis on efficiency and simplicity. In the U.S. you can merge and fuse two companies and one of them disappears. Previously, in Ireland that wasn't generally possible. So one company will buy another company and afterwards they might do an internal reorganization and move the assets from B to A, whereas U.S. companies will say to us "Why can't we do a merger where B disappears as soon as we put A into it?" That's now been introduced in the new legislation and it's a very useful add on. For U.S. clients, the substance of an Irish contract is very close to that of a U.S.-style contract.

WHAT MISCONCEPTIONS DO U.S. ENTITIES HAVE COMING INTO IRELAND FOR THE FIRST TIME?

DEVEREUX: Because there is such a well-worn path in terms of U.S.-Irish transactions, misconceptions are becoming far fewer and there is a lot of symmetry with the U.S. U.S. buyers focus a lot more on indemnities, but we usually succeed in winning those points for U.S. acquirers of Irish assets and making Irish sellers conversant with the risk

of giving indemnities versus warranties. It's a technical point, but we generally find a happy middle ground that suits both U.S. clients and Irish sellers.

HOW CLOSELY ARE YOU WATCHING THE U.S. ELECTION?

MCSHARRY: It's obviously important in terms of how the U.S. interacts globally, including

"Many of the largest U.S. deals in the past year are actually Irish deals."

—Gary McSharry, partner,
McCann FitzGerald

with Ireland. A lot of focus from the Irish perspective will centre on the U.S. policy on corporate tax. But U.S. companies locate in Ireland for many reasons, not just tax, and those reasons will remain.

WHAT ARE THE MAIN ONGOING SELLING POINTS IN IRELAND?

DEVEREUX: The 12.5% corporation tax rate is well known, as is the fact that we're the only English-speaking member of the eurozone, but one of the things that isn't talked about that much is the willingness of Ireland to recognize the proprietary nature of intellectual property. Irish law is very much in favor of recognizing creativity, and we have a relatively new commercial court that resolves business disputes very quickly. So, rather than take two or three years to settle say a patent infringement, you can go to the commercial court and within six months you can come out at the other end with a judgment. We're hearing U.S. CEOs saying this reason is near the top of their list of reasons why they're here. It makes sense when you look at who is here—it's the world's top pharma companies, the top tech companies and also the big financial companies. And their footprint here is very significant, often being their European HQ or largest manufacturing facility outside the U.S. In addition there is a clustering effect because this is a great place for innovative companies to do business.

ISRAEL

Tel Aviv



Transcending Borders

Once primarily a target destination for acquisitive companies, Israeli companies, investors and law firms are increasingly investing overseas.

By Howard Stock

Israel continues to cement its position as a focal point for technological development for global companies. With major new investment by U.S. technology giants Microsoft, Apple, Facebook and Google, “The market for high quality public offerings and private placement is thriving for the first time in years, and Israeli companies have wide access to funds,” says Morrison & Foerster Of Counsel Bruce Alan Mann.

Add to that a “remarkable increase” in inflows from Chinese investors, and it is clear that “despite the difficult geopolitical environment, Israel continues to attract substantial foreign investment,” says Herzog Fox and Neeman partner Alan Sacks.

But that’s only part of the story. Israeli businesses aren’t only attracting international partners, they’re

actively seeking opportunities outside of Israel’s borders. A number of Israeli companies have completed high profile public listings overseas, and “Israeli capital is increasingly seeking opportunity outside of Israel, which makes relationships two-way and stronger,” says Schwell Wimpfheimer & Associates partner Dov Schwell. “Israeli companies are often the buyer and the vehicle for aggregation rather than just a target to be gobbled up by outsiders.”

Israel’s economy is very much export-oriented. Specific areas that drive this environment include the high-tech industry, where in recent years the predominance of telecom and semiconductors has been replaced by cyber and internet, biotech and medical devices, defense and traditional industry. “Since the Israeli market is very small, the only real way a com-

pany is able grow to any substantial size is by focusing on international sales and global growth,” says Naschitz Brandes Amir partner Sharon Amir.

Policy makers have taken several steps to encourage the flow of business outside of Israel. The Law for Encouragement of Capital Investments can reduce Israeli tax rates for export-oriented “approved enterprises” by as much as 55% and, in certain areas of Israel by up to as much as 80%, compared to regular corporate tax rates, as well as providing grants to certain eligible approved enterprises. Likewise, the Research and Development Law provides matching funding and other incentives to research and development activities (mostly in the high-tech industry); various bilateral and multilateral funding programs co-sponsored by Israel; and government-sponsored public-private funds invest in or provide loans to certain targeted sectors or industries, such as small businesses, the biotech industry and the Arab sector, Amir says.

However, despite many positive structures to encourage business, some reforms are still necessary, Schwell says. Israeli tax treatment of non-Israeli investors in Israel continues to hinder the market and forces challenges in structuring Israeli companies and transactions, and the need to apply for and negotiate treatment on a case-by-case basis sets Israeli apart from other developed economies. “Further, there is a perception, partially deserved, that Israeli bureaucracy hinders establishing and managing Israeli entities,” Schwell says. On the whole, though, he says Israel’s legal system has kept pace with global developments.

EVOLVING MARKET

Advances in commercial law include the Concentration Law, which is an innovative socially driven law that, among other things, targets the over-concentration of power over multiple industries and the ability to control companies by use of multiple-layer pyramids. There have also been various changes to the Securities Law and the Companies Law dealing with shareholder supervision over compensation policies, and the establishment of a special court to deal with corporate matters and securities related offenses, which has brought a significant change to areas such as corporate governance, change of control transactions and fiduciary duties, Amir says.

Recent cases illustrate the changes in the corporate governance world, including the Financial Court’s decision in the 2011 Makhteshim Agan acquisition by ChemChina, where the court intervened in the formal approval procedure of the deal by the target’s audit committee, board of directors and shareholders in the manner prescribed by law, by introducing the requirement for an independent committee in certain transactions that would rely on independent advice. Another recent decision of the District Court Central District involved an application to approve a deriva-

tive suit against the directors of a company that had acquired a failing newspaper that had caused losses of several hundred million Israeli new shekels (one U.S. dollar is equivalent to roughly four shekels). The court refused to permit the reliance on the business judgment rule, ruling that the court would not protect directors in cases where they neglected to perform their basic duty to ask the required questions and seek adequate information about the deal.

Deal sizes and complexities are increasing as larger and more sophisticated non-Israeli players enter the market. Currently, the biggest deal involving an Israe-

“Since the Israeli market is very small, the only real way a company is able grow to any substantial size is by focusing on international sales and global growth.”

—SHARON AMIR, PARTNER, NASCHITZ BRANDES AMIR

li company is Teva’s acquisition of Allergan’s generic division for over \$40 billion. Other big deals include Playtech’s \$750 million acquisition of Plus500.

Amir notes that Israel has seen a disproportionately large number of sizable exits for technology and startup companies of late. “Perhaps the greatest area of interest right now is the cyber area, where Israeli companies, as well as some non-Israeli companies founded by Israelis, leaning mainly on know-how gained in the military, have become world leaders in innovation,” he says.

Israel is also seeing some major deal activity in the energy space. “I think that the historical hot areas—high tech, green tech, biotech, medical devices, security and military—continue to take center stage,” Schwell says. “However, Israeli firms are using newly found natural resources as a springboard to bring their unique talents to new industries.”

STRENGTH TO STRENGTH

For Israeli law firms, all this business represents an opportunity to expand their own books, but successful players will likely prove more adept at adaptation and relationship-building with peers in other countries, Amir says. “Israeli law firms focusing on corporate matters have to be prepared to work internationally on the buy side of transactions where Israeli companies acquire foreign businesses. To do so, they have to establish a network of foreign firms which can assist them on local matters in various places around the world,” he says, adding that the rise of shareholder litigation on corporate matters would also necessitate firms dealing

ISRAEL

with corporate matters to have a litigation practice that is equipped to defend corporate actions.

“Staying abreast of changes in Israel as well as internationally is key to supporting increasingly sophisticated clients,” adds Schwell. “Law firms need to make sure that they have the resources—internal or in some other seamless manner—to meet the increasingly complex

national firms have established representative offices in Israel with a view to servicing overseas clients investing in Israel and satisfying the demand for overseas legal work on the part of Israeli corporations operating around the world. “The liberalization of the Israeli bar has seen an increase in cooperation between international law firms and their Israeli counterparts rather than competition for local work,” Sacks says.

U.S. law firms need to work closely with Israeli counsel and recognize that there are many tasks in M&A and capital raising transactions that should be handled by Israeli counsel because they can do them faster and with less expense to the client, adds Mann.

“Despite the difficult geopolitical environment, Israel continues to attract substantial foreign investment.”

—ALAN SACKS, PARTNER, HERZOG FOX & NEEMAN

needs of their clients. Law firms need to understand the issues of buyers in international transactions.”

For international firms looking to get in on Israel’s economic action, the best solution is to form connections with domestic firms in order to cooperate on cross-border activities. “I am not a big believer in the establishment of local offices by foreign firms since Israeli companies tend in most cases to rely on their Israeli counsel for overall advice and are unlikely to replace them for foreign firms,” Amir notes.

Since Israel liberalized the rules regarding foreign law firms operating in Israel, a number of major international firms have established a presence in Israel, but few (if any) have indicated any interest in domestic activity within Israel, Sacks says. Rather, the inter-

PUTTING CLIENTS FIRST

Either way, law firms need to ensure that their interests lie with their clients (and not with U.S. counterparts or with financial players if their clients are issuers and not sponsors), Schwell says. “They need to be on the ground and meeting face to face with their clients and available for counseling at all points in the life of a matter,” Schwell says. “An international firm with many partners resident in Israel offers Israeli clients with the expertise they need in their own backyard. Lawyers also need to invest the time to understand their clients’ businesses and not treat the transaction as an end in and of itself, but rather as a driver of success for the client.”

As a U.S. lawyer, Schwell says he is most excited to be representing Israeli companies who are seeking increasingly significant and complex opportunities and transactions overseas. “Working with Israelis is always interesting, and guiding them through the way trans-



**SHARON AMIR**

NASCHITZ BRANDES AMIR

**ALAN SACKS**

HERZOG FOX & NEEMAN

**DOV SCHWELL**SCHWELL WIMPFHEIMER
& ASSOCIATES

actions are done overseas, when they are increasingly on the buy side, is particularly stimulating,” he says. “While the clients learn fast and adapt well, it is one of the most exciting parts of my practice to help clients grow into new challenges.”

Israel’s international aspirations are not likely to tail off. The domestic market isn’t large enough to support growth beyond a certain point, so expansion outside Israel’s borders is a must for companies looking to reach the next level. “Since Israeli companies are dependent on global business for future growth, international expansion through mergers and acquisitions is the natural way to go,” Amir says. “In recent years, we have been involved in almost as many acquisitions of foreign companies by Israeli companies as in acquisitions of Israeli companies by foreign companies. This is certainly a dramatic difference to the situation that prevailed in the past where inbound transactions were predominant.”

EXPANSION THROUGH ACQUISITION

Expansion through acquisition looks set to be the preferred method since Israeli entrepreneurs and executives have seen that a U.S. or European initial public offering is not always the answer to their dreams, Schwell says. “While a rich exit is always nice, their companies may be of greater interest or command greater value with critical mass, and that can often be best accomplished through a combination of organic growth and acquisition,” Schwell says. “Also, sponsors are driving this path to growth and more Israeli companies are being receptive. Of course, having Israeli capital available to fund purchases is always helpful.” He says startups remain a key focus, but as more mature companies are also attracting interest, deal values are increasing thus driving a large part of the growth in investment.

Meanwhile, Israel’s homegrown entrepreneurial spirit and culture of innovation is likely to ensure money flows toward Israel’s domestic market, too. Even within the legal community itself, Amir reports seeing an increase in mergers between international

and domestic law firms, or business agreements that create “virtual” international law firms.

However, Amir stops short of predicting a revolution in Israel’s legal market due to an influx of international firms. For one, Israel’s legal market is somewhat liberalized, but it’s nothing like the free zones found elsewhere in the Middle East region. Additionally, Israel also has a

famously high ratio of lawyers, which means there is more competition for business than in other jurisdictions, creating downward pressure on the size of fee the market is prepared to bear.

“Staying abreast of changes in Israel as well as internationally is key to supporting increasingly sophisticated clients.”

—DOV SCHWELL, PARTNER, SCHWELL WIMPFHEIMER & ASSOCIATES

That’s why “I do not believe that the legal landscape will change dramatically in the near future,” Amir says. “Very few foreign firms have opened representative offices in Israel and it I am not sure the presence of an office in Israel has contributed more to gaining Israeli business than visits and marketing trips conducted by these and other international firms.” In general, other than very few notable exceptions, Israeli businesses rely on Israeli law firms as their principal legal advisor and look to them to coordinate their international work with assistance from local firms. “I don’t see any reason why this trend would not continue.”

Schwel suspects that the primary focus of non-Israeli firms in Israel for the next several years will remain as business development, where Israeli presences are used as a marketing tool to bring in Israeli clients for their U.S. offerings. “To a lesser extent, they may view an Israeli office as a talent reserve pool to support workflow from their primary jurisdictions,” he says. “I see these goals as being a hard sell for most Israeli firms who might be seen as merger/takeover targets. However, I do see a strong role for firms providing advice on foreign laws that are of key import to Israelis, but who are on the ground in Israel.”

For Israeli law firms and companies, future opportunities transcend borders. ■

BRIDGING THE US-ISRAEL CULTURE DIVIDE

A guide to negotiating US-Israeli business transactions



HANAN HAVIV
PARTNER, HEAD OF
HI-TECH DEPARTMENT
HERZOG FOX & NEEMAN

PERSONAL OBSERVATIONS

Having worked on M&A transactions in both Silicon Valley and Tel Aviv for the last 20 years, I have observed at close hand the legal and cultural differences between the US and Israeli markets. I find that approaching a transaction with an understanding of these legal and cultural differences is key to guiding the transaction to a smooth and successful conclusion. Israeli transactions often take place in an uncertain legal environment, they often lack uniformity, and often involve government agencies to a greater extent than comparable transactions in the U.S. Anticipating these differences allows me better to explain to my U.S. clients the particularities of the Israeli marketplace, and to explain to my Israeli clients why U.S. investors find some aspects of doing business in Israel so unusual.

Despite the differences in temperament and in the legal environment, it should not be difficult for U.S. investors to carry out transactions in Israel. The objective should always be to reach the finish line in a manner satisfactory to all parties. I believe that we as lawyers can assist in bridging cultural gaps. Let us look at some of the key issues.

LANGUAGE AND TONE

A major client once remarked to me, "Americans and Israelis both speak English, but they do not speak the same language." Many readers who have done business both in Israel and the U.S. will relate to this. It begins with "tone". At the risk of generalization, while American investors often prefer a more subtle tone, Israelis almost take pride in being blunt. And these different approaches may lead of confusion. Take for example the simple statement "That's interesting", which when expressed by an American investor may be understood as a polite dismissal, but may be taken by the Israeli entrepreneur as an invitation to pursue the matter further.

Cultural and linguistic differences are often coupled with

important distinctions surrounding legal terms of art. Take for example, directors' fiduciary duties. In Delaware corporations, in the ordinary course of business and when no personal interest is involved, directors need to follow the *Business Judgment Rule* and are subject to a duty of care. Israeli directors are subject at all times to a *fiduciary duty*, and while courts recognize the concept of the *Business Judgment Rule*, directors may also be required to show that they acted in good faith and in the company's best interest.

TRANSACTION DOCUMENTATION

A lot of the seed and early-stage VC financing transactions in Silicon Valley are structured to reduce transaction expenses by using standard documentation with which all market players are familiar. This uniformity reduces time and legal fees, as the parties are not bogged down by negotiating language that has already been rehearsed, and are able to address the core elements of the transaction. This practice frees the VC from repetitive explanations and negotiations and speeds up the entire transaction, allowing startups to concentrate on promoting their business.

Israeli practitioners have thus far been unsuccessful in implementing this uniformity. While we rely a great deal on NVCA model documents and Series Seed documents as market term guidelines, these forms require significant adaptation to the Israeli legal environment, and have not yet gained broad acceptance. Because of this, we often spend more time negotiating VC financing transactions in Israel than one would in an equivalent U.S. transaction.

CORPORATE LAW

Israeli lawyers practice in a legal environment where many key issues relevant to corporate transactions are not addressed within our company legislation or have yet to be the subject of judicial decision. This is in stark contrast to the vast body of case law available for

Delaware corporations, and the DGCL that is updated bi-yearly so as to address and codify developments in corporate practice.

For example, Israel's Companies Law, which came into effect in the year 2000, contains a chapter dealing with corporate mergers. However, there is no mention of the possibility of a "reverse triangular merger", a technique used often in U.S. acquisitions. The reverse triangular merger was imported into Israel more than ten years ago by practitioners familiar with U.S. practice, and since then the technique has been used in most public company acquisitions. It was not until recently however that Israeli courts acknowledged this form of merger as a means to effect an acquisition in Israel.

I mentioned earlier that board members of an Israeli company are subject to similar fiduciary duties to directors of Delaware corporations. However, there is almost no case law that describes the content of this duty in the context of the sale of a company. Virtually all agreements for the acquisition of Israeli public companies include a "fiduciary out provision", but there is no case law which outlines whether this is required, and whether provisions such as "matching offers" and "force the vote" are valid. Discussions among practitioners quickly turn to what *would be* the result of a specific provision in Delaware, but we can only speculate to our clients how an Israeli court might decide on the issue.

Similarly, the Companies Law includes a forced sale provision for private companies similar in nature to contractual bring-along provisions in voting agreements of Delaware corporations. Here too there is no case law delineating whether the statutory language (which requires treating all shareholders equally) permits taking into account any "liquidation preference" of investors in distributing the proceeds of sale. The case law also does not address whether the notice periods described in the Law are mandatory or whether other periods can be specified in the Articles of Association (by-laws) of a company.

GOVERNMENT APPROVALS

U.S. investors may be surprised by the number of occasions on which it is necessary to obtain regulatory approvals within the context of corporate investments or acquisitions. The term "merger" is widely defined in Israel's Restrictive Trade Practices Law, and as a result the approval of the Antitrust Commissioner (or at least notification to the Commissioner) will be necessary in a large number of transactions. Particular attention needs to be given to restrictions and conditions imposed on Israeli companies that have received funding from the Office of the Chief Scientist (OCS) at Israel's Ministry of Economy. OCS funding is generally given subject to limitations and restrictions regarding the transfer overseas of, or the granting of rights in, know-how that has been funded by the OCS. Regulatory approval will be necessary for investment (other than insignificant investment) in regulated sectors such as the finance sector, telecommunications and so on. In addition, there is a variety of controls over the use and export of regulated technologies and related services and know-how in defense-related industries. Israeli law prohibits trade with certain enemy countries.

TAXATION

The peculiarities of the Israeli tax system, and in particular the taxation of cross-border payments, often perplexes U.S. investors. The taxation of cross-border payments is effectively "policed" by Israeli banks, which are required to withhold tax at source in Israel unless they receive an appropriate withholding tax certificate from the Israeli Revenue Authorities. So, for example, if a U.S. corporation acquires an Israeli company, Israeli tax advisers will explain that there is an withholding obligation on the U.S. corporation with respect to payments to Israeli shareholders. Common problems that arise include the treatment of any founder shares repurchase arrangement and payment holdback arrangements for key employees, all of which are familiar arrangements with VC investors and technology acquirers. The treatment of payments to founders and key employees (are the payments capital or income in nature?) will affect the obligations towards

the Israeli Revenue Authorities of the U.S. investor making these payments

Even if a U.S. corporation acquires another U.S. corporation with significant operations and assets in Israel, withholding obligations may still apply.

In short, Israel's elaborate withholding tax system means that any U.S. investor must receive appropriate tax advice. More often than not, it will be necessary for the local tax advisers to approach the Israeli Revenue Authorities for withholding tax exemption certificates for those shareholders that are not subject to tax in Israel, and generally to obtain clarification on the tax obligations of the U.S. investor in Israel.

CONCLUSION

In this short article I have barely scratched the surface of the differences between M /& /A activity in Israel and in the U.S. However, as we have seen in recent years, many successful transactions have been completed, with U.S. investors investing heavily in Israeli companies at all stages of their development. The important thing for legal practitioners is to help their clients come to a transaction with an awareness of the differences between the legal systems in Israel and the U.S.

ABOUT THE AUTHOR

Hanan is head of HFN's High-Tech Department. Hanan spent eight years studying and working in the U.S., and his clients include early-stage and mature Israeli technology companies, as well as many global technology giants in their Israeli M&A activity. Hanan's practice includes representing Israeli entrepreneurs and technology companies from pre-incorporation through exit or IPO, handling cross-border M&A transactions and advising clients in VC and private equity financing transactions.

HFN is Israel's largest law firm and the leading international law firm in Israel. HFN is a full-service commercial law firm, with over 30 practice areas catering to all the needs of international clients in their Israeli activities, and Israeli companies and entrepreneurs in their outbound activities.

KOREA

Anapji Pond,
South Korea

South Korea in the Spotlight

As competition heats up in Asia, South Korea is quickly finding ways to stay one step ahead of its rivals.

By Howard Stock

Thanks to the South Korean government's strong drive for exports, its economy has evolved through its active participation in the international business market. In 2014, South Korea exported \$527.7 billion and ranked as the seventh largest exporter, and its total trade volume reached US\$1.09 trillion, which is the eighth highest worldwide.

Beyond trade in goods and services, Korean business is transforming rapidly with international investment activities both outbound and inbound, says Jaemin Jeon, a partner at Shin & Kim. Foreign direct investment (FDI) into Korea soared to \$19 billion in 2014. Now, more than 16,000 foreign-owned companies are doing business in Korea.

"For now, the relative stability in Korea compared to China indicates that solid leadership and long-term thinking matter," adds Kye Sung Chung, senior partner

at Kim & Chang. "It also shows that global investors are getting better at identifying those factors in Asia."

The number of South Korean companies seeking investment opportunities is growing fast, not only large conglomerates but also small- and medium-sized companies looking to take advantage of overseas business opportunities. In the first half of 2015, Korean companies invested \$17.45 billion in FDI overseas, Jeon notes, and in the fourth quarter of 2014, for the first time in Korean history, the amount of Korea's investment in foreign countries surpassed the amount of foreign investment inflows to Korea, meaning more outbound investments than inbound investment.

However, Korea has a few obstacles to overcome. "First on the list is the language barrier," Jeon says. "Unlike other Asian hub competitors, such as Hong Kong and Singapore, English is not an official language in Korea. Although we have seen a dramatic

improvement in English proficiency in recent years, it still requires us to put a lot of effort into overcoming the language barrier.”

Another obstacle is that some regulations hinder both inbound and outbound foreign investments. “Foreign investors find it very difficult to comply with sector-specific regulations and foreign exchange-related regulations,” Jeon says. “Generally speaking, Korea has to adopt a more cosmopolitan mindset and focus on making it easier for foreign companies to access the Korean market.”

The Korean government has set up a taskforce team for “activating foreign investment,” and has announced some amendments of rules and regulations as recently as in June 2015, says Arie Eernisse, foreign attorney at Shin & Kim. These amendments include a temporary tax exemption for domestic funds investing in foreign stocks, allowing insurance companies to invest more freely in foreign exchange hedging transactions, and tightening reporting requirements under the Foreign Exchange Transactions Act for M&A transactions and real estate investment.

Foreign currency regulations have also been noted as one of the regulatory hurdles both for domestic and foreign investors. Under the current regime, a number of different filings are required, and more often than not the government accepting such filings or granting permits has exerted its discretionary power which has increased uncertainty from investors’ perspective. This regulatory regime has been introduced to protect foreign currency reserves and keep it stable during world economic turbulence. “The importance of government intervention in times of weak and vulnerable economic turbulence cannot be underestimated,” Jeon says. “Especially during the period from 1950 to 1980, government intervention was crucial to Korea’s economic development. However, there is an increasing sentiment shared by many policymakers that reforms to the foreign currency regulations are needed so as to facilitate easier inflow and outflow of money and securities across the Korean border.”

Foreign investors can also find the administrative process difficult to comply with. “From setting up a company, making filings for government permits and approvals, to constructing needed manufacturing facilities, a foreign investor is required to follow a lengthy list of to-dos which increase its compliance/transaction costs and make Korea less attractive,” Jeon says.

Several newly booming industries require legal and regulatory changes as well, particularly in the areas of FinTech, including aspects of online banking and crowd-funding. As a result, an amendment to the Financial Investment Services and Capital Markets Act allowing for crowd-funding has been made and other bills to amend the Banking Act and other finance-related laws are under active discussion among the lawmakers of Korea.

Additionally, due to a series of data breaches in Korea, Korea’s data protection and privacy laws are rapidly changing to impose more obligations and responsibilities on data processors in relation to the customer data they collect and use for business purposes, Eernisse says.

EVOLVING LEGAL LANDSCAPE

Recent cases illustrate how the legal landscape is evolving. In the Ssangyong case, the Korean Supreme Court reversed a lower court’s ruling, which held that a massive layoff at the company in 2009 was in violation of Korea’s labor laws. “This Supreme Court case was important because it highlighted the court’s pro-business interpretation of labor laws, making it easier for companies operating in Korea to lay off workers when faced with a structural and financial crisis,” Jeon says.

At the same time, Korean courts have rendered a series of wage-related rulings reinforcing employees’ right and entitlement to receive wages and allowances by overturning long-established labor practices.

Against this backdrop, the legislative body of Korea is debating how to change the current employ-

“There is an increasing sentiment shared by many policymakers that reforms to the foreign currency regulations are needed so as to facilitate easier inflow and outflow of money and securities across the Korean border.”

—JAEMIN JEON, PARTNER, SHIN & KIM

ment laws to make Korea’s labor environment more competitive at the global stage and, at the same time, protect workers’ rights and preserve minimum labor standards for employees.

Another notable case is the investor-state arbitration case brought against Korea by Lone Star, a foreign financial company. “Although the outcome of the case is yet to come, this case will be a significant case with lasting ramifications as to how the Korean government should treat foreign investment and the aspects for which the government must take a more cautious approach,” Jeon says.

INTERNATIONAL ARBITRATION

It has also been an active year in international arbitration. In Korea, arbitration as a means of settling commercial disputes has become more popular for cross-border disputes.

“We’ve seen a growing trend of Korean companies

KOREA

engaging in arbitrations seated outside of Korea, and sometimes, with related proceedings in local courts,” says Kim & Chang partner Byung-Chol Yoon, whose firm recently represented a Korean conglomerate in a multijurisdictional M&A dispute involving two arbitrations, one in India and the other in Switzerland, and involving English, German, Korean, and Indian law. “These disputes show the trend of Korean companies engaging in outbound investments in high-tech energy projects abroad.”

Additionally, Kim & Chang has been retained by the Korean government in an ICSID arbitration case, which was filed by a U.A.E. sovereign fund. “This case arose from an ICC arbitration and subsequent tax controversies related to the interpretation of the Korea-Netherlands tax treaty,” Yoon says. “This case is the second investment treaty arbitration filed against Korea, and this suggests that investment arbitration practice in Korea will soon catch up with commercial arbitration practice, which is already active in Korea.”

In the M&A market, the sale of Homeplus, one of the big three superstore chains owned by British company Tesco, is likely to be the largest deal of 2015.

“The relative stability in Korea compared to China indicates that solid leadership and long-term thinking matter. It also shows that global investors are getting better at identifying those factors in Asia.”

—KYE SUNG CHUNG, SENIOR PARTNER, KIM & CHANG

MBK Partners, a major Korean private equity fund, was selected as the preferred bidder over foreign private equity funds such as Carlyle, KKR and Affinity, and the deal size is estimated to be around KRW 7.7 trillion or \$6.46 billion. MBK Partners proposed unprecedented bonuses for Homeplus employees that amount to more than US\$336 million, Eernisse notes. “This fact indicates that Korean labor laws may have a significant impact on M&A transactions in Korea.”

As a side note, “one problem facing foreign sellers of Korean assets is a possible Korean tax investigation on gains from such sales or past dividend payouts to itself,” says Paul Rhee, partner. “Already, there are reports or rumors about Tesco paying itself too much dividends and about KKR and Affinity being investigated by the Korean tax authorities on gains from selling Oriental Brewery Company back to AB Inbev last year.”



JAEMIN JEON
SHIN & KIM



KYE SUNG CHUNG
KIM & CHANG

Meanwhile, the investor-state dispute between Lone Star and the Korean government will have a final hearing in January 2016. “This is the first investor-state dispute that Korea has ever experienced, and regardless of its result, it will become a barometer for the relationship between international investors and the Korean government, particularly in respect of regulatory approvals and taxation,” Eernisse says. “Lone Star claimed that it was unfairly treated in taxation and in its attempt to sell the Korea Exchange Bank, causing claimed losses of more than US\$4 billion.”

Generally speaking, the Korean economy has relied heavily on the manufacturing industry, such as steel, autos, electronics, construction, and shipbuilding. The IT sector, such as semiconductors and smart phones, has been another major sector in Korea’s economy, and these areas of business are still considered the backbone of the national economy. However, Korea is facing fierce competition from the fast chaser, China, and the recovering economy of Japan. In response to such competition, Korea is searching for its own competitive edge through research and development (R&D) investments and overseas expansion.

FOREIGN INTEREST

All this activity is attracting the attention of foreign law firms. A total of 27 U.S. and U.K. firms have launched their Seoul offices as of August 2015. In the meantime, Korean law firms have become more active in expanding their presence overseas. For instance, firms opened and operating overseas offices in more than 13 other countries including China, Vietnam, Cambodia, Indonesia, Mongolia, Myanmar, Singapore, Japan, Russia and others.

Another approach for both Korean and foreign firms is to look for opportunities for strategic alliances or joint ventures. “The joint venture entity between Korean and foreign firms will be made possible from July 2016 for E.U.-based law firms and from March 2017

for U.S.-based law firms, pursuant to the third stage opening of Korea's law market as contemplated by the relevant Free Trade Agreements," Jeon explains.

In response to increasing demand from clients, Korean law firms are keen to develop more specialty areas, provide service in a more efficient manner. Korean law firms and foreign firms that have a presence in Korea are also under pressure to provide more cost-efficient services on alternative fee arrangements other than the traditional hourly charge method.

Additionally, law firms, accountancy firms and consulting firms are increasingly forming alliances with each other and often times, launch a new business model for one-stop service requiring inter-pleinary practices.

Foreign firms interested in business opportunities in Korea need to pay close attention to evolving rules for the third stage opening of Korean law market. E.U. and U.S. firms will be allowed to open joint venture firms with Korean law firms starting in 2016. "Discussion among lawmakers is still pending but E.U. firms and U.S. firms are looking into possible structures whereby they maintain management rights and majority economic interest, while complying with

regulatory schemes," Jeon says, noting that foreign firms interested in a less committed relationship with Korean firms might consider strategic alliances with Korean firms rather than joint venture structures.

"Basically, no one law firm is best at everything," adds Rhee. "As such, in order for international firms to best operate in South Korea, they will need to seek out the best or most appropriate lawyers specialized in the area of practice needed while always seeking an alternative lawyers or law firms due to possible fee constraints or conflicts since there are only few lawyers or law firms in South Korea that one can go to for good advice on certain specialized practice areas."

Jeon says it will be interesting to see how well U.K. and U.S. firms can integrate into South Korea's market, and equally, how successfully Korean firms can expand overseas. But given the pace of advances in bioscience, healthcare, e-business and other global technologies, "Korean business people are very keen to learn about technological advances worldwide and eager to enter into joint ventures with or acquire small and mid-sized firms with strength in IT and bio technologies." Competition, he says, is only going to get tighter. ■

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LUSOPHONE AFRICA



Mozambique,
Africa

Broadening Horizon

Lusophone Africa is a nuanced group of countries, and as businesses find opportunity beyond traditional industry, firms have had to match their ambitions.

By Steve Hall

For all the potential in African business, wildly different forces have buffeted the markets over the past year. Despite their varying opportunities and the shifting fortunes that characterize these nations, the ability to court foreign investment and develop a legal framework to support the growth of business is still a common differentiator.

Those Portuguese-speaking markets that form the PALOP (Países Africanos de Língua Oficial Portuguesa) interstate organization share similar systems of governance and a variety of exchange programs, if not their fortunes.

“It is not possible to look at Lusophone Africa as an

homogenous block,” argues Vieira de Almeida’s Rui Amendoeira, partner and head of oil and gas. “Their economies are structurally different. Whereas Angola is largely dependent on oil and gas, this is not the case for the smaller economies.”

The distribution of natural resources has been hugely influential; Angola and Mozambique are the largest countries and the largest economies in the group. Guinea-Bissau and Sao Tomé remain behind and mainly agrarian; Cabo Verde has seen growth in the service industry, but the much larger opportunity for large-scale commercial activity has been in the two giants.

“There are common elements in all these countries that justify a renewed and growing interest of foreign

investors grasping for business opportunities outside the traditional markets,” points out Raposo Bernardo managing partner Nelson Raposo Bernardo. “Compared to other African countries, these have some political stability, with the possible exception of Guinea Bissau. Namely, there are rules that ensure respect for foreign investment and it is possible the repatriation of capital, for large-scale projects. But above all these are countries where the return on investment is extremely fast and with extremely high margins.”

BEYOND THE BLACK STUFF

In Angola, the strength of the oil and gas sector has created the opportunity for the development of companies that service the needs of the petroleum operators, says Rui Mayer, partner at Cuatrecasas, Gonçalves Pereira who coordinates the activity of the firm in Angola and also cooperates with the firm CGA – Couto, Graça & Associados, local partner of Cuatrecasas in Mozambique.

“The political stability that was made possible by the end of the long civil war has permitted the implementation of large investments in infrastructure and distribution, and the perspective of high returns resulting from a rapid growth that the country has experienced over the last few years has attracted the interest of multiple foreign investors, who have become active in diverse sectors,” he says.

That push for diversity may not be a recent development, but it is becoming an imperative. The Angolan economic growth is likely to slow to an average of 3.5 per cent a year between 2015 and 2016 from about 4 per cent last year, the International Monetary Fund announced in August, citing weaker oil prices.

Through 2015, the price-per-barrel has led to the reorganization of regional operations by many internationals, either through divestments or through taking advantage of the lower price to purchase oil blocks. The scenario is creating work in the legal sense, but the economies are noticing the drag.

“The good news is that growth in Lusophone Africa is inevitable,” says Diogo Xavier da Cunha, partner at Portuguese law firm, Miranda Correia Amendoeira & Associados. “The oil crisis is also an opportunity for economies to become more diverse as governments take measures to foster growth in other business sectors. Beyond the natural resources sectors, infrastructure is a clear investment driver. Long term investments related to energy productions and transmission, ports, railways and roads will continue to be a key driver of growth, with an increase in PPPs. Privatisations and alternative forms of finance, including the capital markets, are also expected to grow.”

The implications for legal activity are broad. “With the reduction in oil prices, many contracts are being revised others are being met with more difficulty. We know that there are latent conflicts, which certainly

generate important mandates in international arbitrations,” says Raposo Bernardo. He notes that though there has been sustained pressure on the energy sector, the appetite for new projects across much of Lusophone Africa has provided a source of engagements.

Yet, this looks set to be a testing period for firms relying heavily on their oil and gas sector, with the emphasis placed on having a diverse portfolio. For those who do, there is a constant need for local and international expertise.

The macroeconomic movements aren’t the only influential factor. “In Angola the new Foreign Investment Law and the announced intention of the opening of the stock exchange will certainly open opportunities for investors and lawyers,” says Rui Mayer.

“There are common elements in all these countries that justify a renewed and growing interest of foreign investors grasping for business opportunities outside the traditional markets.”

—NELSON RAPOSO BERNARDO, MANAGING PARTNER, RAPOSO BERNARDO

The new law for private investment in Angola, Law 14/15, was published on 11 August. The legislation applies to any amount of foreign investments, and to domestic investments which total more than fifty million kwanzas (a little under \$8000). The law means that foreign investment in key sectors are only legal when made in partnership with Angolan citizens, state-owned companies or with Angolan companies where the Angolan partner holds at least 35 per cent of capital and effective participation in the management reflected in the shareholder agreement.

In Angola, “a major restructuring of securities law will be a factor to boost the development of the recent stock exchange,” says Sérvulo managing partner Paulo Camara. “This will namely comprise a new Securities Code and new laws on securitization, private equity and investment funds. Moreover, a revised Public Procurement Law will respond to the criticism that the current law faces.”

In a sense, the drop in oil prices and the impact that is having on Angola heralds a different change in fortunes as Mozambique, home to the largest natural gas find in the last decade, has seen its economy and interest from investors complete a dramatic turnaround from the days when civil war blighted the country. The economy expanded by 6.1 per cent in the first half of 2015 compared with a 7.5 per cent growth forecast for the full year.

LUSOPHONE AFRICA

“In Mozambique, the new LNG project will be a key driver for the attraction of new foreign investors that will in the near future certainly reshape many industry sectors in the country,” says da Cunha. “Also, with the implementation of the new competition legislation there will be an increase in merger control filings relating to corporate transactions.”

Development is afoot to capitalize on this period of growth: In Mozambique the new Petroleum Law and the so-called Mega-Projects Law (which also intends to push the development of a local stock exchange and of a local entrepreneurial class), have changed the landscape.

The workflow that has been generated by this activity has been high-profile and varied. Couto, Graça e Associados recently advised Vale on a concession contract to finance, construct and operate a 600MW coal-fired power plant, while Gabinete Legal Moçam-

“In Angola the new Foreign Investment Law and the announced intention of the opening of the stock exchange will certainly open opportunities for investors and lawyers.”

—RUI MAYER, PARTNER AT CUATRECASAS, GONÇALVES PEREIRA

bique recently advised Anadarko Petroleum and ONGC Videsh on acquisitions connected with the Rovuma Basin Area 1 offshore gas block.

With further regulation on the way, the large share of legal work has stemmed from working with corporations looking to establish themselves in the region.

FRIENDS OVERSEAS

Portuguese law firms, though they cannot practise law in Angola or other Lusophone countries, often partner with local firms to provide a service to a stable of international clients. F Castelo Branco & Associados, for example, works in close co-operation with local firm EVC Advogados and recently advised the issuer Banco BNI on granting a \$28m syndicated loan to TAAG. Similarly, Miranda Correia Amendocira & Associados is another well-respected Lisbon-based firm with ties to Angolan firm Fatima Freitas Advogados; the firm has cultivated a reputation for representing both Angolan and international banks on establishing in the country and providing loan facilities to the Angolan government.

As part of its strategic plan, meanwhile, Vieira de Almeida is also investing heavily in expanding its activity and building capacity in Lusophone Africa, re-



**NELSON RAPOSO
BERNARDO**
RAPOSO BERNARDO



RUI MAYER
CUATRECASAS,
GONÇALVES PEREIRA

ports Amendocira. “In line with this, a team of some 30 Africa specialist lawyers, including six partners, has just joined VdA last month in what is arguably the largest move in the Portuguese legal market in recent years,” he says.

Others have emphasized the breadth of offering. “We approached top-tier independent firms in those countries with the aim of offering across-the-board services to our clients, as well as to the clients of those partner firms,” says PLMJ partner Luis Pais Antunes. “This means that clients operating in different countries can work alongside lawyers with whom they are already familiar.”

FAR AND WIDE

Beyond the two largest countries in Lusophone Africa, the speed and scale of growth and the interest from international organizations is greatly reduced. Yet these regions are opening their doors to business and adapting regulatory frameworks to encourage development.

Other PALOP members are looking to their contemporaries for support. Officials from Cabo Verde have been vocal in their support of a ‘South-South’ axis with Angola a particular target. To that effect, June’s memorandum of understanding between Cabo Verde and Angola announced a slew of Angolan investments in the archipelago.

Firms have noticed an uptick in work in the region as international finance providers continue to back growing industries. Partners at Raposo Bernardo represented Deutsche Bank in a major operation in developing Air Transportation of Cape Verde, as well as working with BNP Paribas on aircraft financing.

Firms are spending and building the ties they need in the region with the expectation that stability and variety of legal requirements will help them mirror the various countries as they look to move beyond their core industries. Though the largest two economies are hugely influenced by global energy prices, business and the flow of engagements is proving more robust than many thought likely. ■

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THE IMPACT OF THE OIL CRISIS IN ANGOLA



JOÃO ROBLES
HEAD OF FCB&A'S
ANGOLAN PRACTICE

ECONOMICAL CONTEXT

The drop in the price of crude oil has been one of the hottest topics in the economy worldwide during this past year.

After hitting \$115 a barrel in June 2014, Brent prices went down to \$42 in August this year and this has had a major impact on emerging economies strongly dependent on oil, such as Angola.

In a country where oil is the largest single contributor to its GDP, the state budget for 2015 started by predicting a price per barrel of \$81 which was then cut down to \$40.

But there is a silver lining to this oil price crisis, as the Angolan government is putting all of its efforts in the diversification of the economy, so that it can return to the normal high growth rates that Angola has been evidencing in the last few years.

Given the country's richness in terms of natural resources, this is brilliant news for international investors, including for oil companies as one of the consequences of this scenario is the recent proliferation of new laws aimed at making the local economy more efficient and attractive.

NEW RULES FOR PRIVATE INVESTMENT

One of the major recent changes was the publication of the New Private Investment Law ("NPIL") which replaced the former law of 2011.

The NPIL is applicable to both domestic and foreign private investments and was enacted to adapt the rules of private investment to the new reality of the Angolan market and to create conditions to channel new investment to the country's real needs by means of clearly favouring investment in certain areas that aim at diversifying the Angolan economy.

This new law does not set any threshold for foreign investments, replacing the previous minimum threshold of USD 1 million, and seems to put a greater emphasis on negotiation of terms and conditions of investment contracts, as a number of legal requirements that appeared in the previous law seem to have been deleted. An obvious absence is the former mandatory waiting period of 3 years before investors could start to repatriate dividends.

It is important to note that investments below USD 1 million will not be entitled to any tax benefits, although investors will still be granted repatriation rights to their dividends.

The NPIL also introduces a new supplementary tax on capital investment.

Finally, there are now certain economic sectors, namely (i) power and water; (ii) hotels and tourism; (iii) transport and logistics; (iv) civil construction; (v) telecoms and IT; and (vi) media, in which new investments require the establishment of local partnerships, in which the local partner must hold at least 35% of the share capital and an active participation in the management of the company.

TAX REFORM STILL LINGERS

As part of the ongoing structural tax reform which started in 2010, and amongst other new laws, the Angolan government approved the new Corporate Income Tax Code, which aims at attracting new investments by foreseeing clearer tax rules better adapted to the country's economic reality. In addition, the corporate income tax rate was reduced from 35% to 30% and the withholding tax rates were reassessed.

Other legal developments aimed at improving the Angolan tax system include the new General Tax Code and the Tax Enforcement Code, which have brought greater certainty to the relationship between the tax payers and the tax authorities, as well as the new Personal Income Tax, the amendments introduced to the Capital Investment Code, the Stamp Tax Code and to the Consumption Tax Regulation, which are a true benefit to the Angolan tax system.

The new tax regime applicable to Collective Investments Undertaking should also be highlighted as it sets amongst other important benefits that securities investment entities are subject to a corporate income tax rate of 7.5% and real estate investment entities are subject to a corporate income tax rate of 15%, instead of the normal corporate tax rate of 30%.

More recently, the Angolan Government approved a new Special Contribution on current invisible transactions, which establishes a 10% rate over any transfers made

by any Angolan individual or company to a foreign entity under foreign technical assistance and management contracts, as defined under the applicable legislation. Although this special contribution may ultimately represent an additional cost for foreign investments, it may bring important opportunities for the Angolan economy.

NEW LABOUR LAW

The Angolan Labour Law has also been recently published and will enter into force on 14 September 2015.

This new law repealed the former law which dated from 2000 and introduced substantial changes. One of the most relevant changes is related to fixed-term contracts, which under the previous legislation could only be entered into in very exceptional situations and for a maximum period of 36 months. Under the new law, the parties are free to execute fixed-term contracts without invoking any exceptional circumstances, for a period which may

ultimately reach 10 years. As such, permanent contracts may no longer be the rule.

Besides other important innovations in terms of the amounts due for overtime and night work, compensation for termination of employment contracts and the obligation to have internal regulations, this new law is clearly concerned with conflict resolution by establishing that any disputes arising from employment contracts must be subject to mediation, conciliation or arbitration.

OTHER IMPORTANT CHANGES

Apart from the above new legal developments, during this last year, we saw the Angolan Government approving several other important new regulations, such as the new Financial Institutions Framework Law and the Simplified Companies Incorporation Procedure, which are already in force, as well as the new leasehold law which is to be published in the following weeks.

The efforts made by the Angolan Government

in modernizing the country's legal system and making the country's economy more attractive are well known. More than ever, foreign investors are made welcome to invest and business opportunities are plentiful. There is no doubt that this oil crisis has shaken the Angolan economy but in some cases surprisingly for the better.

ABOUT THE AUTHOR:

João has been a consultant of EVC Advogados in Luanda since 2009. An FCB&A Partner, he joined the firm in 2002 and heads their Angolan practice.

He holds post-graduate degrees in Landlord and Tenant Law (Leasehold) and Corporate and Commercial Law from the University of Lisbon (2006) and the Universidade Católica Portuguesa (2008) respectively. His main areas of expertise are Corporate, Commercial and M&A, Oil & Gas, Banking & Finance and Real Estate. Fluent in English and Spanish, he is author of various articles and is recommended in his main practice areas by IFLR 1000, Chambers & Partners and The Legal 500.



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MIDDLE EAST

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Open for Business

Countries in the Middle East and North Africa region are fast modernizing their regulatory frameworks to compete globally—and with each other.

By Howard Stock

While there have been mixed signals in the media about the state of the U.A.E. economy and business environment, with reports of a slowdown on the low oil prices, stagnant real estate prices, and lower M&A activity, there are reasons to be optimistic about the Middle East and North Africa (MENA) region's near-term prospects.

For one, Abu Dhabi and Dubai have approved far more projects in the second quarter than in the first quarter, says James Bowden, a partner at Afridi & Angell. Furthermore, U.S., U.N. and E.U. sanctions on Iran have been eased and should ease more soon; the

World Expo 2020 is fast approaching; and larger regional funds are actively investing. "The U.A.E. business environment has proven resilient and is a regional hub, and our expectation is that any slowdown will pass quickly," Bowden says. "We're seeing a substantial upswing in inward investment by way of new entries and number and size of acquisitions."

Meanwhile, in Kuwait, policymakers have passed a range of laws and reforms were passed with the aim at modernizing its somewhat archaic legal system, which will dramatically improve Kuwait's business prospects, says Alex Saleh, head of Al Tamimi & Co.'s Kuwait office. "Previously, local and international investors were

faced with bureaucratic restrictions,” he says. “However, the principles of free economy are apparent with the recent enactment of the new laws and reforms.”

The Saudi Arabian business environment is also rapidly evolving—government agencies are becoming more agile, in part by making use of new technologies and tapping fresh Saudi Arabian and expat talent. And government-backed companies and joint ventures are following suit, says Sumit Soni, head of Al Tamimi’s Jeddah office. However, “at the same time, the country is facing a number of challenges including maintaining a balanced budget during a time of declining oil prices, and meeting the job needs of younger citizens who have gained extensive education and are looking to build careers in-country,” Soni says.

As with other parts of MENA, the oil market is a large component of Oman’s economy and domestic activity has been affected somewhat by the global oil price, meaning transactions are taking longer to come to fruition, says Arif Mawany, an Al Tamimi senior associate in Oman. “While infrastructure projects in Oman were not affected during 2015 as a result of the decrease in the price of oil, many domestic entities used the opportunity to trim back on resources,” he says. However, “international and Middle Eastern investors with a longer timeframe have continued to invest in Oman’s long-term growth story.”

The introduction of free zones and special legal framework for these zones have further boosted the investment in Oman. Investment in these areas is not affected to a large extent by the economic factors in mainland Oman, Mawany says.

New rules are helping domestic companies in MENA expand internationally. Conyers Dill and Pearman associate Oliver Simpson cites the U.A.E.’s new Commercial Companies Law, which significantly modernizes its 1984 predecessor. While foreign ownership restrictions remain, Dubai is taking an increasingly liberal approach to corporate nominee ownership, with several service providers now firmly established in this market. “The establishment of a variety of free zones also has increased the attractiveness of the U.A.E. as a capital destination,” says Simpson, who works out of the offshore law firm’s Dubai office. “The use of offshore vehicles for international business—often in combination with a U.A.E. free zone or Dubai International Financial Center (DIFC) entity, is a popular model,” he says.

The U.A.E., conscious of encouraging investment, has also introduced a new competition law, a new mutual funds law, laws on foreign inheritance, and a new Abu Dhabi financial center (the Abu Dhabi Global Market), among other things. “These are all significant improvements to the U.A.E.’s legal environment,” Bowden says. A new insolvency law is expected in the next year or two, will further modernize the U.A.E.’s

business law landscape, and on the dispute resolution front, the jurisdiction of the Dubai International Financial Center courts has been welcomed by foreign parties and local parties alike who seek access to an English-law-based court system.

Saudi Arabian policymakers have undertaken a number of legislative initiatives in recent years as well, with the aim of reshaping the Saudi business environment, including the introduction of a new arbitration law, which seeks to provide a new streamlined regime for the conduct of arbitration proceedings in Saudi Arabia as an alternative to court process; the introduction of a new enforcement law and a new regime relat-

“Almost every area of commercial law is evolving in the U.A.E. very quickly, and in most cases the general consensus is that the changes are welcome.”

— JAMES BOWDEN, PARTNER, AFRIDI & ANGELL

ing to the enforcement of local and foreign judgments, which promises to speed up the process of realizing on a previously issued final court order; and a new mortgage law, which, once fully implemented, will provide a modern and secure mechanism for the taking and registering of real property security in Saudi Arabia, Soni says.

REGIONAL COMPETITION

Eventually, regional competition means all these evolutions tend to merge throughout MENA. “Many of the laws are very similar across the Middle East so what works in one country will invariably be acceptable in another,” Mawany says. “Establishing a branch in any of the other Middle Eastern countries is smoother than it would otherwise be if laws were materially different from country to country.”

While there have been many recent changes to commercial law in MENA, more are on the way. In the U.A.E. there has been a sustained effort over the past 10 to 15 years introduce laws and regulations that had previously been absent. This development is ongoing and is expected to continue. Areas that have been addressed include new anti-money laundering regulations, new real estate laws, opening the Dubai energy sector to private investment, and more and more innovative structures being made available through the U.A.E.’s many free zones. “Almost every area of commercial law is evolving in the U.A.E. very quickly, and in most cases the general consensus is that the changes are welcome,” Bowden says. “They are

MIDDLE EAST

aimed at attracting investment, improving transparency and predictability in a market that was historically opaque to newcomers, and are quickly bringing the U.A.E. on par with other global business centers.” Bowden expects that major developments will include moving away from the majority U.A.E. ownership requirement, a new insolvency law, and the introduction of corporate taxation, all of which will have significant impacts on the U.A.E. legal environment.

In Kuwait, it is getting easier to secure licenses for 100% foreign-owned companies to operate in Kuwait, and Oman recently enacted anti-trust legislation and draft legislation on the takeover of publicly listed companies in Oman, measures that “have been brought forward to open up Oman’s private sector to encourage growth and lower barriers to entry,” Mawany says.

Life is less easy for international law firms that plan to expand into MENA. In order to conduct business in Saudi Arabia, for example, international firms need to engage a Saudi partner who must have a minimum 25% share of the relationship, and law firms are required to maintain build very close relationships with

“While the framework agreement between Iran and its international negotiating partners is far from a done deal, it is expected to trigger a surge in investment activity, as foreign companies seek to capitalize on the opportunities Iran presents.”

—KERRI LEFEBVRE, PARTNER CONYERS DILL & PEARMAN

government institutions such as SAMA, CMA, and other vital ministries, such as the Ministry of Labor and the Ministry of Employment. These institutions will be able to provide guidelines and update on new regulations, policy’s and laws.

Likewise, in Oman, international firms will not have the right of audience unless they operate closely with domestic firms. Furthermore, the laws in Oman are not detailed and case law and practice is still the major sources for legal advice particularly the practical side of the advice. “This means that Omani-qualified lawyers are required by all firms in order to identify practice with the local government offices,” Mawany says.

PROMISING SIGNS

Looking forward, the anticipated opening up of Iran



JAMES BOWDEN
AFRIDI & ANGELL



KERRI LEFEBVRE
CONYERS DILL & PEARMAN

to international business is a source of much optimism, says Kerri Lefebvre, a partner in Conyers Dill & Pearman’s Dubai office. “While the framework agreement reached this summer between Iran and its international negotiating partners over Iran’s nuclear program is far from a done deal, it does signify a move towards relaxation and eventual removal of sanctions on Iran,” she says. “This is expected to trigger a surge in investment activity, as foreign companies seek to capitalize on the opportunities Iran presents. With its convenient location, favorable tax regime, developed business infrastructure and already significant Iranian diaspora, Dubai is expected to become a major hub for Iran-bound investment activity.”

Kuwait has reduced its high capital requirement for starting a business to a flat rate, subject to certain exceptions. For companies that fall in the category of general partnerships, limited partnership, companies limited by shares, sole person companies and companies with limited liability to KD 1,000 (US \$3,300); the minimum capital for closed shareholding companies to KD 10,000 (US \$33,000); and public shareholding companies to KD 25,000 (US \$83,000).

And in Saudi Arabia, the opening of Tadawul (the Saudi stock exchange) to foreign investors has gained strong interest. The diversification of the stock market has allowed foreign companies to invest outside the oil sector. Saudi Arabia is also investing billions of dollars into the launch of four “economic cities” in different regions of the country. These cities, which will promote economic diversification and create a substantial number of jobs, are designed to maximize investment potential in all sectors and delivers huge advantages to businesses located there.

For MENA countries, current market instability from China and Russia, and closer to home, oil prices are taking their toll on local economies. However, as the rapid pace of modernization of regional regulations as well as the proliferation of free zones shows that when the dust settles, MENA is very much open for business. ■



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Q&A

CONYERS DILL
& PEARMAN ON
HOW OFFSHORE
JURISDICTIONS
FACTOR INTO
MENA M&A



KERRI LEFEBVRE
PARTNER
CONYERS DILL &
PEARMAN



OLIVER J. SIMPSON
ASSOCIATE
CONYERS DILL &
PEARMAN

OFFSHORE LAW IN DUBAI

Conyers Dill & Pearman's Kerri Lefebvre and Oliver Simpson share insights on onshore and offshore law opportunities in Dubai—and how the two work best together.

Dubai is a global hub for international business, a leader in the Middle East and a gateway to Africa and South Asia. Offshore jurisdictions in tandem with Dubai-based entities are a popular choice for investment structures, whether to do business locally or as an entry point to other markets, and frequently figure in M&A transactions involving international investors and assets as well as those based in the Middle East and North Africa (MENA) region.

Reporter Howard Stock talked to Kerri Lefebvre, partner, and Oliver J. Simpson, associate, in the Dubai office of offshore law firm Conyers Dill & Pearman.

HOW DO THE OFFSHORE JURISDICTIONS FACTOR INTO MENA M&A TRANSACTIONS?

LEFEBVRE: Dubai offers wide scope for international business and a burgeoning private sector economy. However the corporate landscape is complex, and Dubai hosts investors from all corners of the globe, so M&A transactions often are structured in “neutral territory.” This is particularly the case for private equity transactions (often involving an “investment club” of sovereign wealth funds, institutional investors and high net-worth individuals or family offices), leveraged acquisitions (where the financiers seek certainty as to enforceability of security) and reverse takeovers (usually effected by way of merger or amalgamation), or where there are rollover investors involved.

WHAT IS THE CURRENT CORPORATE LAW LANDSCAPE IN DUBAI?

SIMPSON: Dubai is one of seven emirates comprising the United Arab Emirates. Within Dubai, there is an “onshore” and “offshore” regulatory microcosm, with offshore consisting of an array of “free zones”. The principal corporate statute in onshore Dubai is the newly-adopted U.A.E. Commercial Companies Law (CCL), a federal law that applies across the

U.A.E. It governs the incorporation and operation of various types of U.A.E. entities, including the limited liability company (LLC). While the 2015 CCL is more sophisticated than its predecessor, it still includes provisions that limit the attractiveness of onshore U.A.E. entities to international business. Foreign ownership restrictions require at least 51% of the shares of an LLC to be owned by a U.A.E. national (often a nominee) and there is a prohibition on multiple share classes. There are also burdensome provisions regarding dividends and uncertainties inherent in litigating disputes before the local U.A.E. courts, which do not observe binding precedent and import aspects of Shari’ah law.

WHAT ARE THE FREE ZONES AND WHAT ROLE DO THEY PLAY?

LEFEBVRE: Partly in recognition of the limitations of onshore corporate laws, a plethora of free zones has been created across the U.A.E.—especially in Dubai. Each of the zones has its own specialty, ranging from industry to media and technology, and they are useful for businesses looking to base themselves in the U.A.E. Free zones offer exemptions from tax and customs duties, and entities may be 100% foreign owned. Certain entities also can be used to own real estate and obtain residency visas for expatriate staff (a key consideration in the U.A.E., where the vast majority of the labor force is from overseas). However, free zone companies are subject to restrictions on their activities, typically must lease a physical office, and, as is the case for a U.A.E. LLC, shareholder disputes will be subject to the jurisdiction of the onshore courts (except in the case of the Dubai International Financial Centre, or DIFC). Free zone regulations are often light on detail, and while sufficient for wholly-owned subsidiaries or small enterprises, are unlikely to be appropriate for a company with diverse shareholders or a sophisticated shareholders’ agreement.

WHAT IS THE DIFC AND HOW IS IT DISTINCT?

SIMPSON: The DIFC has its own civil and commercial laws (including company laws), completely distinct from those of the wider U.A.E., and its own courts, which operate in English and generally follow English case law. Entities conducting financial services in or from the DIFC are regulated by the Dubai Financial Services Authority. Entities that may be established include the familiar company limited by shares and the increasingly popular special purpose company (SPC), designed for structured finance transactions and the only type of entity not required to have a physical office in the DIFC.

WHICH OFFSHORE JURISDICTIONS ARE POPULAR IN THE DUBAI MARKET?

LEFEBVRE: The minority interest in a U.A.E. LLC or the shares of a Dubai free zone company are often acquired through an offshore company. The British Virgin Islands (BVI), Bermuda, the Cayman Islands and Mauritius are all popular. For example, we often see the BVI used for general purpose holding companies, the Cayman Islands for investment funds and Mauritius for Indian and African investment, given the latter's wide network of double tax treaties and investment protection agreements. Bermuda is popular with sovereign wealth funds, listed companies and in the insurance and aircraft finance sectors. In the M&A context, some or all of the acquirer, seller and/or target frequently will be incorporated in one or more of these jurisdictions.

WHAT TYPE OF M&A TRANSACTIONS DO YOU SEE?

LEFEBVRE: These range from a straightforward share acquisition to more complex mergers and will depend on the commercial terms agreed. Acquisitions involving MENA investors and/or targets frequently involve the establishment of an offshore holding or finance vehicle (holdco) that will complete a private placement or effect a joint venture. The proceeds fund the acquisition of target assets, with or without related debt finance. Holdco often will be the subject of a shareholders' agreement setting

out corporate governance requirements, voting and other share rights, restrictions on transfer and similar matters.

WHAT ARE SOME OF THE BENEFITS OF USING OFFSHORE VEHICLES FOR M&A TRANSACTIONS?

SIMPSON: In the U.A.E., the appeal of offshore companies lies in the solid corporate law benefits they offer. These include:

- **Neutral jurisdiction.** Offshore jurisdictions provide neutral territory to document the deal terms for diverse investors without giving one party a perceived "home court" advantage.
- **International holding company.** Acquisitions frequently involve assets or projects in different countries—a tire factory in Ghana, a retail business in Oman, an oil concession in Iraq, for instance. The acquirer looks to house such interests under a holding company domiciled in a stable, recognised jurisdiction that adheres to international standards of transparency.
- **Sophisticated corporate statutes.** The offshore jurisdictions provide effective and modern rules for mergers and consolidations, with established thresholds for shareholder approval and dissenters' rights. These can facilitate a sale and reduce the scope for contentious proceedings. Other statutory tools such as court-sanctioned schemes of arrangement and minority squeeze-out provisions also may be useful.

- **Venture capital and PE structures.** Local LLCs and free zone companies do not lend themselves to the sophisticated deal structures favoured by venture capital and private equity. Multiple share classes (with different voting and economic rights), share option schemes and industry standard drag, tag, pre-emption, rollover and right-of-first-refusal provisions may be unworkable or subject to doubt as to enforceability. Offshore corporate statutes and case law facilitate such terms, which frequently factor in M&A transactions.

- **Exit strategy and capital markets.** A local LLC is unable to be listed on a stock exchange without undergoing a complicated conversion into a public joint stock company under U.A.E. law. Free zone companies (excluding DIFC entities) are also typically inappropriate as listed entities. Offshore companies are popular choices for IPO exits and can also be used in the debt capital markets, including as issuers of Shari'ah-compliant bonds, or Sukuk.
- **Litigation.** Parties like to know at the outset that, should a dispute arise between them, it can be pursued in an established jurisdiction whose courts have a long history of handling complex corporate law matters in line with centuries of English case law. Clients get that assurance from the BVI, Bermuda and the Cayman Islands. Litigation before the onshore courts of the U.A.E. remains an uncertain and unattractive prospect for international investors, due to their unfamiliarity with local law and procedure, the lack of binding precedent and the very limited track record of handling complex corporate disputes.
- **Taking security.** The offshore jurisdictions offer tried-and-tested procedures for the taking and enforcing of security.
- **Africa—the Mauritius model.** While Dubai is increasingly the physical hub of Africa-focused ventures, the corporate domicile of choice is often Mauritius, owing to its extensive network of double tax treaties and investment protection agreements with African countries.

DO OFFSHORE COMPANIES WORK ALONGSIDE LOCAL ENTITIES?

LEFEBVRE: It is commonplace to see offshore entities in a structure that also involves a DIFC SPC, a U.A.E. LLC, a free zone company, and sometimes all three. Some transactions—particularly those which involve activities to be conducted in the U.A.E. or elsewhere in the MENA region, hiring of staff in Dubai and/or the ownership of land in the emirate—will often require a combination of local and offshore entities to satisfy regulatory requirements whilst giving corporate certainty to investors.

MIDDLE EAST ON THE RISE

Al Tamimi & Company's Samer Qudah, Partner and Head of Corporate Structuring, and Senior Associate Hamad Haider share insights on opportunities in the Middle East.



SAMER QUDAH
PARTNER & REGIONAL
HEAD OF CORPORATE
STRUCTURING
AL TAMIMI



HAMAD HAIDER
SENIOR ASSOCIATE
AL TAMIMI

While the Middle East is diverse and has unique sociopolitical dynamics, the business community within the region has shown resilience to challenges resulting from such dynamics, placing the Middle East on the map as a key global business hub.

The Middle East has become synonymous with rapid growth. In the current post-economic downturn climate, where several economies of the world recover sluggishly, the Middle East is on a relatively firm footing and ripe with opportunity. The United Arab Emirates, in particular Dubai, has not only become a gateway to the world for the rest of the Middle East, it has also become a pivotal bridge on the modern day Silk Route between the east and the west. Egypt's improving political conditions have boosted economic progress. Iran has opened doors to its fertile economy on the back of its nuclear deal with the U.S. and expected lifting of sanctions. Lebanon and Jordan continue to grow. Saudi Arabia remains an economic powerhouse in the region. Oman, Qatar, Bahrain and Kuwait compound the strong business momentum. We at Al Tamimi have seen evidence of this first hand due to our presence in key Middle Eastern countries, namely Bahrain, Egypt, Iraq, Jordan, Kuwait, Oman, Qatar, Saudi Arabia and U.A.E.—making us the largest law firm in the region.

Six Middle Eastern countries rank in the top 50 for ease of doing business in the world, according to the World Bank Group's doing business report of 2014. Countries in the Middle East have achieved the status of a global business hub by being nimble in response to global shifts and by creating a strong enabling business environment. One such creature is the concept of free zones.

FREE ZONES

A free zone is a geographical area which functions as a specialized business hub, often industry specific, and operates as an independent legal jurisdiction, with its own body of laws and regulatory authority. In various Middle Eastern countries, such as the U.A.E., foreign ownership of companies is limited to varying

degrees (often depending on the nature of the business activity). The concept of a free zone, that the U.A.E. has successfully and widely implemented, permits 100% ownership of companies by foreigners. Further, there is no tax regime in force (for 50 years or less depending on the free zone), be it on income, corporations, dividends or otherwise. There are no foreign exchange laws and repatriation of funds is permitted without restriction. A variety of corporate structures, including offshore companies and single member companies, are available

"The United Arab Emirates and, in particular, Dubai, has not only become a gateway to the world for the rest of the Middle East, it has also become a pivotal bridge on the modern day Silk Route between the east and the west."

for incorporation. No duty is payable on import to the free zone or export from the free zone. Purpose built modern infrastructure is available for businesses (such as a free zone with a sea port or an airport for trade, or a free zone with a financial district and courts for financial and legal services). Free zones also have special legislation on certain matters (such as companies, financial services, employment, funds and trusts). The regulatory approach of free zones is generally laissez faire, promoting an open and free economic system.

Free zones often cater to specific industries, such as commodities (Dubai Multi Commodities Center), technology and media (Dubai Technology and Media Free Zone, Dubai Silicon Oasis), finance and legal services (Dubai International Financial Center ("DIFC")), trade by sea (Jebel Ali Free Zone, RAK Maritime City), trade by air (Dubai, Abu Dhabi and Sharjah Airport Free Zones), health care (Dubai Healthcare City), biotechnology (Dubitech), renewable energy and sustainable technology (Masdar City Abu Dhabi), and general Emirate-wide free zones (Ras Al Khaimah

Free Zone), etc. The Jebel Ali Free Zone, in particular, with the capacity to handle 15 million containers annually serviced by over 170 shipping lines, has played a strong role in the emergence of Dubai as a logistics powerhouse. Free zones offer companies economies of scale and a regulator with special industry knowledge. Free zones compete for business amongst each other to attract company incorporations. This competition ensures innovation and improved services.

The creative model of doing business from a free zone has benefited investors in several ways and instilled investor confidence. As a result many multinational companies have moved their global or regional headquarters to Dubai, including Halliburton, Pfizer and Continental tires.

It is pertinent to add that companies incorporated in a free zone are restricted from doing business in the mainland (areas other than the free zone). This restriction is, in practice, generally applicable to movement of tangible goods into the mainland (not to provision of intangible services). For instance, in the case of the U.A.E., a trading company incorporated in a free zone can only supply goods to the mainland by engaging a distributor licensed in the mainland. The distributor will import the goods from the free zone to the mainland and distribute the goods. Customs duty will be applicable at the time of entry of goods into mainland from the free zone (not before).

There is no restriction on a free zone company from owning shares in a company in the mainland, provided foreign ownership restrictions are adhered to. For most activities conducted by a company in U.A.E. a non-U.A.E. national may own less than 50% of such company. Accordingly, a free zone company, being owned by non-U.A.E. nationals, will be permitted to own less than 50% of a company in the mainland. Where the non-U.A.E. national is desirous of fully owning and operating a company in the mainland, the common practice is for the non-U.A.E. national to contractually appoint a

U.A.E. national to hold the majority shares in the company as a nominee.

RULES AND REGULATIONS

The meteoric growth of certain Middle Eastern countries has necessitated a modern and robust legal framework. To meet the requirement of immediate legislative variety, the DIFC in Dubai offers the unique solution of a dual legal system. The DIFC promulgated modern laws inspired by English law. In addition, the DIFC was permitted to have its own courts with the English common law system, and an arbitration center in partnership with London Court of International Arbitration. Parties in Dubai, and internationally, hence have the option of choosing the traditional civil law system in mainland Dubai or the DIFC English common law system in the free zone of DIFC. This solution satisfied the demand for legislative variety and modernity without abolishing or overhauling the traditional legal framework, which is evolving at its own natural pace.

There is also a strong trend amongst free zones to introduce modern laws in order to keep up with changes in market trends and to remain competitive with other free zones. We have commonly seen amendments to the companies' law (introducing modern developments in corporate regulation, such as abolishment of the minimum capital requirements and the par value regime). There is a significant demand for electronic transactions and hence a supporting electronic transactions law is also being introduced.

FUNDAMENTAL STRENGTHS

While oil revenues may have initially fueled the growth of Middle Eastern countries, propelling certain countries to establish what is now a world class international business hub, these countries today have reduced dependence on oil and offer a broad based economy with tourism, trade, banking, real estate and manufacturing. These countries offer state of the art communications, energy, industrial and transportation infrastructure, attract skilled and highly skilled labor from around the world, have a diverse

demographic and offer political stability (with the U.A.E. in particular, and other Middle Eastern countries gaining stability post-Arab Spring). These key fundamental strengths are believed to be the reasons for the swift recovery of these countries from the global economic downturn and the current upward trajectory.

"While oil revenues may have initially fueled the growth of Middle Eastern countries, propelling certain countries to establish what is now a world class international business hub, these countries today have reduced dependence on oil and offer a broad based economy with tourism, trade, banking, real estate and manufacturing."

Dubai, leading this positive sentiment, has recently won the bid to host the Expo 2020, being the first time that the World Expo will be held in the region, cementing the role of the Middle East as a true business hub connecting the east and the west.

ABOUT THE AUTHORS

Al Tamimi & Company, the largest law firm in the Middle East, is one of the very few law firms with a dedicated Corporate Structuring practice in the region. We pride ourselves on having the capability to provide a full-service solution to all clients across the region. We have advised on a wide variety of corporate structuring and restructuring related projects. The strength of our team comes not only from our in-depth knowledge of relevant laws and regulations in every jurisdiction in which we have a presence, but also from our awareness of the regional regulatory practices which we have developed by having very close working relationships with regulatory authorities and Ministries in the entire Middle East.

NORDICS



Stockholm,
Sweden

Diverse Destinies

Despite economic volatility, Finnish and Swedish firms are adapting to make the most of the vibrant industries across the fragmented Nordic marketplace.

By Steve Hall

Changing scenery across the Nordic marketplaces has given legal professionals an intriguing prospect: how do they broaden their portfolios and develop expertise at a time when the make-up of their client bases is shifting and industries are offering new opportunities. The constituent countries have their distinct characteristics and are experiencing a range of economic fortunes, but what remains consistent is the uptick in activity from technology, real estate, finance, logistics and further beyond. With that comes incentive and opportunity for those firms able to be bold.

Still, it's been the accepted truth for years: you can't ignore the stream of corporate, finance and dispute resolution work that comes from one of the region's key

sectors. The energy industry: regulated, developing and highly leveraged, it has provided engagements across Sweden, Norway, Finland, Denmark and Iceland.

"With the notable exception of hydro power [...], the Nordics have been a little behind other Northern European countries in terms of building out significant renewable energy infrastructure," says Markku Mäkinen, managing partner at Hammarström Puhakka Partners (HPP). He points to wind power as a very active area over the past few years, whilst noting projects in biomass, LNG and solar PV as generators of interest from domestic and, to a larger extent, foreign investors. Proposed revisions to the current renewable energy subsidy system have kept energy departments at law firms busy with interest in renewable energy projects having an effect from both a legal and a commercial perspective.

In a sense, the work generated by the energy sector, even as renewables continue to disrupt the market, has provided a central pillar for many law firms. The market has been built on deep relationships and transactional expertise; understandable that anyone wishing to make sense of some of the recent shifts in the legal market should look elsewhere for differences in the commercial landscape.

FUTURE TECH

The growth of the technology and life sciences industry in recent years, as an example, has undermined any suggestion that the energy sector was the dominant influence in these regions. Fragmented though the wider market is, the rise of tech and tech-related companies has been a common story. Research compiled by Standout Capital shows that there are over 4,000 tech-centric, established and mostly profitable growth companies in the Nordics. These are distributed more or less evenly across the Nordic region.

In Finland, Mäkinen points to technology projects and tech M&A deals, particularly those with an industrial lean, as an example of the health of the sector. Last year, HPP advised Japanese conglomerate Muratec on the acquisition of Finnish robotics group Cimcorp, a deal indicative of the interest from foreign companies in Finnish innovation.

In Sweden, meanwhile, Richard Åkerman, partner in Hannes Snellman's Stockholm offices, describes a market where tech companies are creating a surge of inbound and outbound investment. Hannes Snellman recently represented TeliaSonera's acquisition of a stake in music software group Spotify, as well acting on the public offering and listing of Biotie Therapies shares on NASDAQ. In that sense, the interest of foreign companies, the opportunities for finance and the frequent acquisitions that characterize the sector have all rewarded firms with a combination of corporate and sector-specific expertise.

"We act as counsel to numerous technology, telecoms and life sciences-related companies in a wide range of transactions, including IPOs," says Hannes Snellman's Åkerman. "Data protection and privacy issues have become more important in all M&A transactions."

This is not necessarily new territory for local firms, but it does point the way to a number of shifts as the legal market adapts. HPP, for example, has appointed two new technology and ICT partners, previously at Bird & Bird.

Given the depth of transactional and litigious work that characterizes the legal side of the industry, it's no surprise that firms across the Nordics have looked to develop the expertise to deliver on large-scale IT projects, outsourcing and IP disputes.

"One of the main reasons for the growing demand is the thriving startup scene in Finland," ex-

plains Castrén & Snellman managing partner Pauliina Tenhunen. "The Finnish game industry has been growing dramatically during the past three years and the startup scene is vibrant. Another key trend is cleantech. New business is created around renewable energy like biomass and a lot of new wind power plants are created with the help of state aid."

SPACE TO GROW

Finland's legal market has been illuminated by a handful of dominant domestic firms, but despite the economic troubles in the region, there has been space for those firms to push further into Sweden, the Baltic States and Russia. At the same time boutique firms are beginning to emerge, dedicated to serving domestic and international clients who are looking for nimble

"Banking and finance is one of the busiest services at our firm. The high number of syndicated deals and restructurings keep the team fully occupied."

—PAULIINA TENHUNEN, MANAGING PARTNER, CASTRÉN & SNELLMAN

firms with qualities required to handle complex transactions in the various areas of the TMT industries.

Movements in legislation have helped emphasize sector-specific expertise; changing data protection regulation in Finland and in Russia is one of the newer services keeping firms busy. On 15 June 2015, the Ministers in the Justice Council reached a political agreement on the new data protection rules, confirming the approach taken in the Commission's proposal back in 2012.

Similarly, Swedish firms have seen greater importance being placed on data protection and privacy issues in M&A transactions, placing an emphasis on a more diverse transactional skillset.

Åkerman notes that: "In Sweden we continue to see the creation of boutique firms started by partners leaving the bigger law firms. "Challenges arising from increased regulatory scrutiny and new regulations in general continue to drive law firm growth," he adds.

Those boutique firms have been able to grow by virtue of confidence in the economy and the amount of influence that individuals with a reputation in areas of TMT are able to command. Kastell Advokatbyrå, for example, has added to its ranks with the hire of Stefan Widmark from Mannheimer Swartling. Synch Advokat is another new boutique formed from partners of international law firm Bird & Bird, which itself commands prominent TMT practises in the region.

Adaptation has been the name of the game for the

NORDICS

leading firms in the Nordics; applying their expertise across borders and growing into the region as a whole.

That movement has accelerated in the last five years, and today Finnish firms command an impressive share of marquee deals. Castrén & Snellman's Tenhunen points to the firm's role representing Danish company Danfoss in a public tender offer concerning Vacon in a transaction that exceeded €1bn. The deal, led by partner Jan Kuhlefeldt, saw the creation of a significant global player in the AC Drives market, and demonstrated the ability of Finnish firms to make a mark in large-scale international deals.

"Banking and finance is one of the busiest services at our firm," confirms Tenhunen. "The high number of syndicated deals and restructurings keep the team fully occupied. Due to a large number of IPOs and contemplated IPOs, both on main list and First North market, our capital markets team has been very busy in 2014/15."

"In Sweden we continue to see the creation of boutique firms started by partners leaving the bigger law firms [...] Challenges arising from increased regulatory scrutiny and new regulations in general continue to drive law firm growth."

—RICHARD ÅKERMAN, PARTNER AT HANNES SNELLMAN

Indeed, the message of Finland as a struggling economy perhaps skews the perception of the transactional activity there. It is obvious that the Finnish economy has been receding for a year or more which means that there are a lot of strategic M&A deals happening, notes HPP's Mäkinen. "We anticipate the current high activity level, particularly in the small and mid-cap M&A sector, to continue for at least the next two quarters as the level of distress for small and mid-sized Finnish companies rises. Current figures suggest that our fee income from M&A and investment matters has increased by approximately 15% to the end of August compared to the same period in 2014."

SWEDISH DELICACY

Economic concerns are perhaps a less influential driver in Sweden, in fact the country has been one of Europe's stars in recent years thanks to robust government finances, low interest rates and strong domestic demand. "In Sweden corporates are cash rich, have cheap finance available and have in general a good confidence



RICHARD ÅKERMAN,
HANNES SNELLMAN



PAULIINA TENHUNEN
CASTRÉN & SNELLMAN

in the development the coming 12-18 months," says Åkerman. "The stock market is strong, although a bit volatile, but mainly due to the development in the Euro zone and in China."

As in Finland, it has made sense for Swedish and Finnish firms in Sweden to focus on building capabilities across the region and look to raise their reputation among foreign investors. For example, Hannes Snellman won work as counsel to Tata Steel in Finland and Sweden as the Indian giant acquired steel service centers in Naantali (Finland) and Halmstad (Sweden). Though the economic situation in China is expected to have what the Swedish Finance Minister described as "a hard landing" which is expected to have an effect on the appetite of Chinese investors, there is still immense opportunity in the flow of investment from emerging markets.

These kinds of deals have been less of an opportunity to boutique firms in Sweden and yet they have been able to thrive in the past few years. Again, as with TMT, the cause can be traced to the knock on effects of the economic prosperity of several key markets. The low interest rates that have driven growth have also created heat in the real estate market and turned the heads of domestic and international investors. While large firms have been able to build practices with teams of up to 20 partners, there is space for boutique firms to apply a precise outlook to these underserved areas of the market.

In a sense, firms from Sweden and Finland are sharing the same greenhouse and unfurling into each other's space. Yet, a range of industries are prospering; sometimes because of the economic prosperity in one region, sometimes despite a slowdown in another. For large firms, the possibilities of broadening and deepening across the region means playing on the international stage and pushing corporate and finance capabilities; but the space for more targeted expertise is developing and creating a more assorted and ultimately more intriguing legal marketplace. ■



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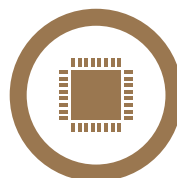
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New Horizons

As the internationalization of the offshore market continues apace, law firms from all segments of the market continue to eye new jurisdictions.

By Maria Jackson

Few would quibble that globalization has been the dominant force in the shaping of international legal markets over the past ten years, and the offshore market has been just as susceptible to the expansionist trend as the major onshore players. Indeed, the leading offshore monoliths continue to break new ground in terms of geographical diversification, looking increasingly towards emerging markets and financial jurisdictions that blur the boundaries between onshore and offshore, such as Ireland or Switzerland.

Ogier was among the first band of law firms to predict this trend, completing the first transatlantic merger between a Channel Islands firm and Cayman Islands firm in 2005.

“The demand for global legal services over the past decade has contracted in certain sectors while increasing in others. As such, offshore law firms have had to

become increasingly flexible and have moved away from a commoditized, ‘one-size-fits-all’ approach, reflecting the complex and bespoke requirements of our clients,” says Michael Killourhy, partner in the British Virgin Islands (BVI) office of Ogier. “There has been a significant push in the offshore legal market to Hong Kong, Singapore and to other Asian jurisdictions, often coupled with expansion in the Cayman Islands or BVI. While there is always a risk of flag planting, appropriate and prudent jurisdictional expansion is arguably the clearest illustration of the offshore law firms responding to the demand for global legal services.”

In fact, upon close examination, it becomes apparent that the offshore model is particularly conducive to a wider geographical footprint. Offshore markets provide a conduit for effective cross-border deal structuring, meaning that offshore firms are often working hand-in-hand with firms in onshore jurisdictions - lo-

cal platforms are an advantage in these transactions. In addition, the increasing regulatory burden being placed on offshore financial centers translates into a heavier load for law firms, meaning that critical mass and local knowledge is essential to keep up to date with offshore and onshore requirements.

“The speed at which the regulatory burdens have increased offshore is startling,” says Colin Riegels, global head of the banking & finance practice at Harney Westwood & Riegels. “Offshore lawyers need to be able to advise their clients both on ‘internal’ regulatory developments in the offshore jurisdictions, but also ‘external’ onshore developments such as the Foreign Account Tax Compliance Act (FATCA) and the Alternative Investment Fund Managers Directive which are impacting on offshore structuring.”

Could the days of single-site offshore law firms be numbered?

STRENGTH IN NUMBERS

Although a high-profile tie-up hasn’t been seen for a while, consolidation has been a long-term theme in the offshore legal market, with Jersey and Guernsey firms particularly alive to the benefits of a cross-Channel Islands platform. In 2003, Carey Olsen was formed through the name-marking merger between legacy Guernsey firm Carey Langlois and Jersey stalwart Olsens, while Mourant du Feu & Jeune and Ozannes combined in 2010 to create Mourant Ozannes. Among the key unions in other offshore jurisdictions, Appleby has been the most acquisitive; the firm in its present form was established through the union of Bermuda outfit Appleby Spurling Kemp and Cayman Islands law firm Hunter & Hunter in 2004, then it combined with Jersey’s Bailhache Labesse in 2006 before merging with prominent Isle of Man law firm Dickinson Cruickshank & Co in 2009.

“It’s been over a decade since the first merger between a Channel Island law firm and a Cayman Island law firm,” says Narinder Hargun, Bermuda-based director and firm co-chair at Conyers Dill & Pearman. “Since that time some Channel Island firms have sought to ‘internationalize’ with varying degrees of success. If Channel Island firms wish to pursue an international strategy (and some may not) they will have to do so either by merging with a firm which has BVI/ Bermuda/Cayman expertise or open their own office in those jurisdictions. Some may now find both choices equally scary. We would not be surprised to find fallout in the offshore sector, particularly among those firms who have pursued an overly ambitious expansion plan. We would also not rule out further consolidation but the key to accretion can be elusive.”

As the leading offshore law firms continue to grow and the regulatory burden swells, could we see a new wave of strategic mergers as firms struggle to balance profit and value?

“Larger firms have managed the regulatory changes through investment in systems and regulatory and compliance teams,” says Jonathan Rigby, global managing partner at Mourant Ozannes. “This is having an effect on margins and may ultimately be a further driver of consolidation in the market.”

As the leading offshore law firms continue to broaden their international networks, the signs seem to point to a tough road for single-site law firms. Jurisdictional diversity has become the jewel in the crown for the market’s premier brands, and it seems that the position of one-site offshore firms is becoming increasingly untenable.

“While we see ‘one-jurisdiction’ firms continuing, they face multiple threats to their growth and long-term profitability,” says Nick Rogers, corporate finance partner in Ogier’s Cayman Islands office. “Including, most obviously, their dependence on the fortunes of a single jurisdiction; their inability to meet all the offshore needs of their clients; the growing scale and resources of their international competitors; and their diminished ability to attract the best talent.”

Indeed, the consensus among lawyers seems to be that while there will always be a place for specialized niche firms, growth for those firms will remain restricted.

“Offshore law firms have had to become increasingly flexible and have moved away from a commoditized, ‘one-size-fits-all’ approach.”

—MICHAEL KILLOURHY, PARTNER IN THE BRITISH VIRGIN ISLANDS OFFICE OF OGIER

“There are a number of possible reasons for this - it may be in part a reflection of a natural desire for clients to obtain all their offshore services under one roof (most complex offshore structures involve more than one jurisdiction),” says Riegels. “But also smaller firms with more limited product exposure also struggle to provide client facing offices in major commercial centers like London and Hong Kong, which have become increasingly important.”

Indeed, an Asian network in particular has become a key piece in the geographical puzzle for expansionist offshore law firms. Although other, perhaps more surprising, destinations have also become ‘go-to’ markets in recent years.

TO BOLDLY GO

The big news is not the ongoing movement of offshore law firms into emerging markets, but the movement of offshore law firms into mature, well-established off-

OFFSHORE

shore markets. Walkers stands at the vanguard of both of those movements. Over the past ten years, the firm has moved into Dubai and Jersey, and it also blazed a trail in terms of the ‘mid-shoring’ trend, with its launches in Dublin and Singapore an illustration of the growing tendency of traditional offshore firms to launch in more mainstream banking hubs that combine certain traits of both offshore and onshore jurisdictions.

However, it is its recent office announcement that has really hit the headlines. In May 2015, the firm revealed that it would be opening an office in Bermuda before the end of the year.

“Our interest in Bermuda is primarily a response to client demand. We have been receiving requests from clients for some time to expand our service offering to include Bermudan legal services and we believe now is the right time for us to take steps to achieve that,” says Ingrid Pierce, global managing partner at Walkers. “The team will work closely with our global network to promote Bermuda and the services that will be offered. International financial centers such as the BVI,

“We would not be surprised to find fallout in the offshore sector ...We would also not rule out further consolidation but the key to accretion can be elusive.”

—NARINDER HARGUN, CO-FIRM CHAIRMAN AT CONYERS DILL & PEARMAN

Bermuda and the Cayman Islands have a degree of overlap in some areas and various clients and transaction structures will use a combination of entities from one or more of these jurisdictions.”

Leading Canadian firm Bennett Jones is another recent newcomer to the market, opening the doors to its Bermuda office in April, while Harneys has also been linked to a potential Bermuda launch. It seems that a mature, rather than emerging, market is the hot ticket this year.

“What stands out year on year is that the tried and true jurisdictions such as BVI and Cayman continue to dominate client structuring decisions offshore. These jurisdictions may not be sexy or new but they are jurisdictions that clients have tested and are comfortable with,” says Riegels. “People will invariably test new markets, but we expect offshore firms to continue to focus on the jurisdictions that have proven themselves over the years and those which are maintaining their competitiveness through updated legislation and by keeping pace with international regulatory developments.”

That said, Riegels agrees that the rise of ‘mid-shore’ markets such as Singapore, Cyprus and Hong Kong will continue. Firms are also increasingly looking to



NARINDER HARGUN
CONYERS DILL & PEARMAN



MICHAEL KILLOURHY
OGIER

more clearly ‘onshore’ Asian markets, with Harneys’ 2015 Tokyo launch being an obvious example. However, it does seem that the traditional offshore centers are back in favor, despite the increasing number of new jurisdictions setting out their stalls to be the next regional financial hub.

Notably Walkers, which has offices across the offshore world, is also seeing an uptick in its Cayman Islands’ business.

“Institutional investors continue to select the Cayman Islands as the offshore jurisdiction of choice. This, combined with the strength and expansion of the private equity sector over the last several years, has led to a significant increase in the use of Cayman entities in M&A and general corporate structuring,” says Pierce. “Cayman structures are now used very regularly as joint venture, asset owning and corporate governance vehicles in both public and private M&A and capital markets deals. This is a growing practice area for us and we see this continuing.”

The simple fact is that the well-established markets have the more robust financial infrastructure, and that is a key lure for clients in a climate of increasing regulatory scrutiny.

“The introduction over the last few years of new legislation, such as the statutory merger process and a wholly revised partnership law, has enabled the Cayman Islands to keep pace with the changing global financial market,” says Pierce. “This development has been widely praised by market participants. New legislation in the pipeline, such as an LLC statute, will ensure Cayman continues to keep pace. This proactive approach from the Cayman Islands is vital in its continued success.”

A SAFE HAVEN

There is no doubt that offshore financial markets are continuing to feel the pressure from global regulators, but the main jurisdictions of Bermuda, BVI, the Cayman Islands and the Channel Islands have all made it on the White List of transparent tax regimes as com-

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piled by the Organization for Economic Co-operation and Development (OECD). Therefore, the aim is to raise standards and keep up with global developments, rather than to convince international authorities that their markets are not tax havens.

“Over the last 12 months regulatory compliance has continued to feature strongly in our jurisdictions following the aftermath of tax treaties, tax changes in the U.K. and FATCA. Fortunately, FATCA is becoming the international standard of transparency so that a level playing field is created,” says David Lamb, firm co-chair and partner in the Hong Kong office at Conyers Dill & Pearman. “The latest release of FATCA legislation, in particular, has caused offshore jurisdictions to react in developing procedures and agreements in order to comply with the legislation released. To the extent FATCA, and its equivalent, the OECD’s Common Reporting Standard, are adopted as international standards, then this will assist the offshore jurisdictions by increasing transparency and reducing the association of the offshore financial centers with the true tax havens.”

The demand for offshore legal services is certainly

strong. According to the Offshore-i report published by Appleby, in Q2 2015 there were 22 deals worth over a billion dollars conducted in offshore markets, six more than the previous record of 16 billion-dollar deals in a three-month period.

“This is the sixth quarter out of the last seven to record more than 10 billion-dollar deals, after only four such quarters spanning the preceding decade,” says Frances Woo, chairman of Appleby. “Of the billion-dollar deals recorded in Q2, nine were worth more than \$2 billion. It would appear that billion-dollar deal activity is showing good resilience and is here to stay.”

Despite the perpetual sounding of the death knell for offshore financial centers then, there is no doubt that the leading hubs will continue to flourish for as long as they can continue to stay ahead of the evolving regulatory environment.

“The offshore model is being continually challenged,” says Woo. “Yet all of our offshore jurisdictions have shown their adaptability and flexibility to change over the past number of years and indeed have led the market in certain circumstances.” ■

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CHANGING HORIZONS

Post-economic crisis the industry standard terms for private equity are being re-evaluated by all parties and many are looking to new geographic horizons to seek out the best returns.



MELISSA LIM
PARTNER
WALKERS

Change is certainly afoot and, as Cayman Islands counsel to the offshore funds promoted by many of the world's leading private equity fund managers and as fund formation activity continues to steadily increase year-on-year in the Cayman Islands, we are in a unique position to identify the trends occurring in the offshore private equity funds space and in the wider private equity market. 2015 is shaping up to be an interesting year and here we give our thoughts on two of the most interesting trends coming out of this year's vintage of funds.

IT IS ALL ABOUT THE LONGER-TERM HORIZONS...

Whereas traditionally investors in private equity expected to see their money locked-up for 10 years, subject to extensions (at the discretion of the general partner, by a vote of limited partners or the advisory committee), rarely for more than three one year periods, with a fairly standardised fee-structure, it looks like the horizon might just be changing.

THE TERM OF SOME NEW FUNDS JUST GOT LONGER...

With a number of key players, from the middle-market to the biggest buy-out firms, coming to market with new funds with longer-term investment horizons, with some proposing fund terms even as long as 20 years, investing in slower-growing, less risky assets, with less leverage and a more investor-friendly fee structure.

So, why is longer better? In the current macroeconomic climate of less leverage and more competition, players on both sides have had to reassess their expectations of returns and fund managers are now looking to diversify their offerings accordingly. By increasing the terms of these new funds, fund managers are able to make investments that don't fit within their existing buy-out fund mandates, for example, long-term infrastructure projects or assets which are better suited to more permanent capital, for example, insurance companies. In fact, in recent years many of the biggest names in private equity have turned their attentions to the insurance sector and have spent billions of dollars on insurance assets and, in some cases, have even raised

funds specifically focussed on financial institutions and insurance companies. By investing in these types of assets over the longer-term, fund managers are able to collect a steady, more predictable stream of income, significantly increasing their AUM (as they in turn manage

"Longer fund terms are attractive to investors looking for a reliable yield in this period of historically low interest rates."

the investment of the capital of the portfolio insurance company as well), enhancing their values in such a way that is particularly attractive for the publicly traded fund managers out there.

How long is too long? Longer fund terms are attractive to investors looking for a reliable yield in this period of historically low interest rates with less frequent deployment of capital and to those that would prefer to hold on to high growth assets over the longer-term rather than divesting prematurely simply because the term of the fund is coming to an end at the typical 10 year point. But, for some investors it may be difficult to commit to a longer term strategy. Ultimately whether this trend continues will be determined by whether the lower but more predictable returns and lower fees make this a more attractive prospect for investors versus investing in the public markets. Only time will tell.

WHILE THE SUN IS SETTING ON OTHER FUNDS...

Given the huge volume of private equity funds raised in the 2005-2008 period and, assuming that a significant chunk of those funds were established with the traditional 10 year (plus extensions) model in mind, it is clear that we are entering a period where a huge number of funds are reaching the wind-up stage of their life-cycle.

But, are these funds ready for the sun to set? You would expect that these funds would be in the final stages of liquidating their assets but some commentators are suggesting that due to decreased levels of capital deployment during the economic crisis many of these



TAMSIN WEST
ASSOCIATE
WALKERS

funds still in fact have sizeable unrealized value, requiring the fund manager's time and resources to continue to manage and eventually realize. What does this mean for investors? This will somewhat depend on the specific circumstances, for example, are term extensions permitted in the fund documents and if so, for how long and whose consent is required? If the consent of investors is required, it is paramount that the fund manager is able to convey a clear strategy for liquidation within a time frame that is acceptable to investors. However, there may be diverging objectives among the investors with some open to an extension of the fund's term in order to maximise long-term value versus other investors in need of immediate liquidity.

Money talks...In recent years we have seen a steady increase in the number of funds going out to market with significantly more flexible and potentially longer periods of extension to their terms, even up to 15 years in some cases and an uptick in the ability of GPs to unilaterally extend the term. It would appear that fund managers have learnt the lessons of the past and are now looking to make their documents as flexible as possible to avoid headaches in the future. But if you are an investor focused on immediate liquidity, you could find yourself trapped in a fund for longer than you would like. This could be from the GP having a right to unilaterally extend the term, the fund's larger investors wanting to extend the term to maximise value, or because you are a minority investor in a fund that requires a limited partner vote to extend the term.

WHILE SOME ARE LOOKING OUT AT THE STUNNING AFRICAN HORIZON...

So, while some fund managers are turning the traditional norms of private equity fund terms on their head, other fund managers are changing their geographic focus to make their mark, putting aside concerns over the short-term challenges for the stunning longer-term horizons that investment in Africa, and in particular Sub-Saharan Africa, can offer.

MORE, MORE, MORE...

With stagnant European economic growth, the current Chinese uncertainty contagion and a

congested U.S. domestic market, the private equity industry is putting aside concerns over falling commodity prices, political uncertainties and fears over the scale of the Ebola crisis to focus on the stunning promise of Sub-Saharan Africa with almost US\$4 billion raised by private equity in 2014 for this region alone, according to the Emerging Markets Private Equity Association. Such is the interest in the region that we are now seeing key U.S. players raising funds specifically focussed on the region and all indications are that this is a trend that will continue judging by the significant uptick in

"According to the African Private Equity and Venture Capital Association, 2014 saw record levels of investment with private equity funds investing US\$8.1 billion in African companies."

the number of 2015 vintage offshore funds that we have seen coming to market with this geographic focus. According to the African Private Equity and Venture Capital Association, 2014 saw record levels of investment with private equity funds investing US\$8.1 billion in African companies. Traditionally, the focus for private equity investment in Africa was the region's abundance of natural resources but increasingly, investors and fund managers alike have changed their focus and are looking at the African consumer market for returns, for example, infrastructure, healthcare, education, telecoms and financial services, brought about by demographic shifts in the region's increasingly urbanised population with more disposable income.

AGAIN IT IS ALL ABOUT THE LONG-TERM HORIZONS...

This is certainly a region not without its challenges but it has good long-term fundamentals and provided that all players focus on the longer-term potential rather than the short-term challenges, we believe that Africa will continue to emerge as an exciting

opportunity for private equity.

In recent years the macro economy has thrown a few curve-balls at the private equity industry, forcing all players to reassess expectations, re-evaluate industry norms and focus on new horizons. Whether the trends we are seeing turn out to be anything more than ephemeral, only time will tell, but so far the private equity industry has proved itself to be a pretty adaptable beast.

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Melissa Lim is based in Walkers' Cayman Islands office where she is a partner in the Global Investment Funds Group. She has extensive experience in a broad range of investment fund structures including private equity funds, hedge funds and unit trusts.

Melissa regularly acts for leading investment banks, investment managers, private equity houses and corporate trustees, advising on the structuring and formation of funds, their downstream transactions and exit mechanisms. An integral part of her practice involves advising in relation to mergers and acquisitions, joint ventures, preference share issues, corporate restructurings and other corporate transactions. She also has significant expertise in advising on finance transactions (in particular, capital commitment subscription financing and LBO financing) and related issues of security creation and perfection.

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POLAND

Krakow,
Poland

After the Gold Rush

New government, new money, new reputation: Poland is a hugely dynamic market. As investment pours in, what are the keys to commercial competitiveness?

By Steve Hall

It's tempting to bracket Poland, as a growing economy, in with some of the less mature markets in Central and Eastern Europe and think of commercial activity there as comparative with its neighbours and narrowly focused. To do so would be short-sighted: the more time spent investigating the flow of inbound money into the country, the more it's clear that a diverse range of industries are benefitting from and adapting to investment, giving real depth to the economic prosperity.

Wolf Theiss' partner Ronald Given isn't alone when he argues that it's a mistake to stick with the familiar narrative of Poland as a developing economy. "Transactions occur here that are as sophisticated and complex as in London and New York. Tax spe-

cialists are critical. Firms with a full tax team have an advantage," he says.

With major tax reform on the agenda for the new Polish government, as well as a number of NGOs, and an expected regulatory shift in the financial services market scheduled in the next couple of years, there's little to suggest that those with a stake in the success of the market are sitting still.

Greenberg Traurig's Warsaw managing partner Jarosław Grzesiak agrees that today's market is moving fast, influenced by, but not in the shadow of, its Eurozone neighbours to the West. "With deregulation and economic stabilization, Western European banks moved aggressively into Poland to help consolidate the banking sector and expand the scope and depth

of services offered,” he says. “At the same time, a few of the leading domestic players adopted modernization strategies to keep them at the front of the pack.”

When the World Bank approved a €912.7m growth development policy loan for Poland in July, it was with an eye to augmenting the innovation and private sector competitiveness that has pushed Polish business to the fore this year.

“Poland’s economic growth has been impressive over the last two decades and the World Bank is pleased to be able to continue to support the Government’s reform program, which aims to strengthen public finances and financial sector resilience, create jobs and promote a more dynamic and innovative economy,” said Mamta Murthi, World Bank Country Director for Central Europe and the Baltic Countries in a statement.

The expectation is that Poland has the breadth of growth industries to withstand the economic shocks that have buffeted the Eurozone.

“In our view, Warsaw has become the business hub of Central Europe,” adds Grzesiak.

Indeed, the sustained flow of inbound money and the buzz of domestic activity has caught the attention of international investors, not least because of the contrast with progress in the rest of Europe, where even the German economy across the border has seen some disruption in the second half of 2015. Indeed, Poland is the bridge between West and East, Europe and Russia, stability in the present and the future.

BUOYANT AND BULLISH

“The continued growth of the Polish economy is being driven by a mix of elements,” says Katarzyna Terlecka, managing partner, Schoenherr Poland. “First of all, Poland has one of the EU’s largest domestic markets. The country’s continued huge domestic consumption ensures fast-growing retail sales. Current forecasts state that Poland’s domestic consumption and investments will be the driving factors behind continued growth in the country in 2015 and next year too. Exports also continue to be an important factor. However, the Ukrainian conflict and stagnation in the EU have decreased their significance over the past year. A third factor worth mentioning is an industrial production, which seems to be on rather stable level.”

Though concerns around Ukraine shadowed the first half of the year and the knock-on effects of uncertainty around the euro and the plunging Chinese stock market loomed over progress through 2015, those fundamentals mentioned by Terlecka look set to continue to drive cross-border transactions.

“Despite the fact that Russia’s economy is heading towards a recession, other CEE economies are in good shape, and are expected to show decent economic performance in coming years,” notes Dominika Wa-

grodzka, partner in the Warsaw offices of bnt Neupert Zamorska & Partnerszy. “Better economic prospects and declining unemployment rate on CEE labor markets have influenced the creation of domestic demand in these economies. This trend is being caused also by the drop in oil prices. This has resulted in a moderate increase in wage growth, which should underpin consumption. Moreover, it has opened the door for further foreign investments – companies should feel confident to invest in those CEE countries.”

Wagrodzka points to the positive forecast resulting from the obtaining of greater liquidity in connection with the loosening of monetary policy and the results of stress tests of banks conducted by the European Central Bank. “Banks’ activity on the market is highly expected to increase,” she says. “This may be the basis for the revival of eagerness to obtain assets and to take higher risks in order to make higher profits. The expected increase in trading volumes within the Central and Eastern Europe can amount to the 30-35% in comparison to the previous year. In the

“Current forecasts state that Poland’s domestic consumption and investments will be the driving factors behind continued growth in the country in 2015 and next year too.”

—KATARZYNA TERLECKA, MANAGING PARTNER, SCHOENHERR POLAND

opinion of PKO Polish Bank, in 2015 GDP growth will amount to 3.6%. In the second half of the year Polish economic growth may exceed 4%, rising to the level of even 4.5%.”

A SLICE OF THE ACTION

Several sectors have attracted money from cross-border investors eager to place their bets on a market on the rise, while much of Europe continues to struggle. “Many sellers are facing distress in their home markets, or pressure from shareholders and regulators to scale back expansion. Buyers are seeking opportunities to capitalize on their own strength and accelerate market share growth by acquisition,” says Greenberg Traurig’s Grzesiak. As an example, representatives from his firm were instructed by Bank Pekao on Poland’s biggest restructuring deal and advised Wirtualna Polska Holding and Innowa capital on the largest IPO on the Warsaw Stock Exchange in over a year.

What’s remarkable is the range of work flowing from promising sectors that, either by commercial endeavour or legislative loosening, have been able to

POLAND

move and adapt quickly.

“The media and telecommunications sectors in Poland have exploded, as elsewhere, with new technologies pushing the utilization of digital services in place of older traditional media and land line phones,” says Grzesiak. The impact here, of course, is not only found in the growth of those industries, but also in the enablement of the rest of industry as modernizing trends take hold.

“Development of new technologies has also contributed to the growth of that interest,” says Wagrodzka. “An equally important factor determining the international recognition of Polish market is the quality of services provided and the level of creativity of young Polish employees, which often exceeds the expectations of employers. The benefits of locating their businesses in Poland, such as the availability of high-quality communications infrastructure, particularly airway connections, and data communications - at the same level as those in Western Europe - convince investors to bring their businesses here.”

“The media and telecommunications sectors in Poland have exploded, as elsewhere, with new technologies pushing the utilization of digital services in place of older traditional media and land line phones.”

—JAROSŁAW GRZESIAK, MANAGING PARTNER, GREENBERG TRAURIG

The Polish National Development Strategy 2020 and the EU-supported National Reform Program are key components of this effort to avoid losing business to some of the mature Western markets. Arkadiusz Rumiński, associated partner in the Warsaw offices of law firm Noerr reinforces the idea that Poland’s economy isn’t just developing; it’s competing for big business. “The continuously increasing focus of the Polish government on developing an innovative economy (i.a.) as well as the support from the EU funds for 2014–2020 (OP Smart growth and OP Digital Poland) will, in our opinion, undoubtedly have an enormous impact on those sectors, which contribute the most to the economic growth, increased employment and general modernization,” he says. Google’s R&D facility in Krakow and Samsung’s Poland R&D Centres in Warsaw, Poznan, Krakow and Lodz underline the approach that global tech companies are taking: embracing Poland and establishing a footprint seems a prudent move in the current climate.



JAROSŁAW GRZESIAK
GREENBERG TRAURIG



KATARZYNA TERLECKA
SCHOENHERR POLAND

SMOOTH AND SOPHISTICATED

Just as international business has seen fit to use Poland as a hub for CEE activity, law firms have pushed to take their place at the heart of the Polish legal market, competing for a mix of inbound engagements and supporting a Polish clientele.

Being visible to those investors who plan to come to Poland is key, says Schoenherr Poland co-managing partner Paweł Halwa. “There are many aspects which help to raise such visibility, with the following measures having proven effective so far: increasing reputation and awareness among peers in other countries, being active in various initiatives aimed at attracting investments to Poland, and setting up teams capable of meeting the needs of investors from particular countries or regions.”

Other law firms have focused on standing out by honing in on the rapidly developing sectors like financial technology and outsourcing, as well as practice areas which have been of most interest to both legislators as well as market participants, including data protection, IT and general compliance.

At an EU level, there are several further legislative changes on the slate which will require attention from law firms as they look to cater for a market hungry to find a way into the Polish market. The General Data Protection Regulation, due to be finalized in the next few months, would require careful observation and implementation among corporate clients. Meanwhile the Alternative Investment Fund Managers and Undertakings For Collective Investment in Transferable Securities (UCITS) laws look set to have significant consequences for private equity and venture capital investments.

Poland and Polish business finds itself in a unique position: it has such diversity among sources of investment and flourishing industries, turbulence and volatility in Europe looks more likely to drive worried investors to Poland than away. As the economy sets its sights on modernization efforts, it is laying the foundations for engagements in the short term and cementing the appeal of the economy for years to come. ■



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WARSAW -- The Warsaw office of global law firm **Greenberg Traurig, LLP**, named the 2013 International Law Firm of the Year in Poland by Chambers and Partners, has been involved in some of Poland's most talked about transactions.

Recently, the office became the **first law firm in Poland to advise on a bond issue** under the new Bonds Act, the client being Cyfrowy Polsat. Additionally, team members advised Bank Pekao S.A. concerning Poland's **biggest restructuring deal**; advised on the **biggest TV rights transaction in Polish history**; and advised Wirtualna Polska Holding S.A. and Innova Capital on the **largest IPO on the Warsaw Stock Exchange in over a year**.

"The recent expansion of the real estate team catapults our Real Estate Practice into the top tier and thus, gives us a unique position in the market of being the only law firm that enjoys the top ranking in five key areas of business legal practice: Capital Markets: Equity, Corporate/M&A, Private Equity, Tax, and now Real Estate," said **Lejb Fogelman**, senior partner of the Warsaw office of Greenberg Traurig. **Fogelman** has been recognized by *Chambers Europe* 2015 as a Senior Statesman, the highest possible rank, in Corporate/M&A.

The Warsaw office of Greenberg Traurig boasts a wealth of experience concerning all aspects of varied undertakings connected with trading in securities on the Polish and international equity markets. The experience of attorneys from the capital markets team is confirmed every year by international and Polish rankings. The office is recognized often for excellence in a number of legal practices, being ranked in Poland in Band 1, the highest possible position, in Capital Markets: Equity, Corporate/M&A, Private Equity, Tax, and Real Estate, according to *Chambers Europe* 2015. As such, Greenberg Traurig is the only law firm in Poland with top ranking in those five areas. Moreover, Greenberg Traurig is Band 3 in Banking and Finance, Capital Markets Debt,

Dispute Resolution, and Restructuring/Insolvency.

Earlier in 2015, as part of a strategy to strengthen one of the top international real estate practices, the firm added two leading real estate teams in Central Europe to its existing group. The addition of 12 new attorneys to the Warsaw office created one of the largest and most diversified real estate practices in the region.

"Greenberg Traurig is known for its contribution to the process of changing the legal system, both from the theoretical and the practical points of view. The solutions developed by our team have been reflected on many occasions in the legal system and have been seen as a reference standard on the market," said **Jarosław Grzesiak**, managing shareholder and head of the Capital Markets practice of the Warsaw office of Greenberg Traurig. **Grzesiak** is ranked in Band 1 in Corporate/M&A and in Band 1 in Capital Markets Equity in *Chambers Europe* 2015.

"Our Warsaw team was successful in Poland for two decades before they joined Greenberg Traurig and have always been integral to the Warsaw business and legal communities. Establishing this office was an important opportunity in one of the most important and successful European markets, where entrepreneurship in the private sector is highly valued and supported with policies that focus on growth," said **Richard A. Rosenbaum**, Greenberg Traurig's chief executive officer.

SELECT TRANSACTIONS RECENTLY COMPLETED BY THE WARSAW TEAM:

- Advised Bank Pekao S.A., one of the largest creditors of PBG S.A., in its bankruptcy with composition in the course of a rehabilitation process that took more than three years to be finalized. This court-supervised restructuring of PBG's debt is the **largest such procedure in Poland's history**, the aggregate value of receivables of PBG's creditors exceeding PLN 3.2

billion. The PBG restructuring was one the most complex transactions on the Polish market, combining various diverse elements of bankruptcy law, securities, and bonds trading laws.

- Became the **first law firm in Poland to provide legal advice regarding a bond issue governed by the new Bonds Act.** The client, Cyfrowy Polsat, completed the issue of Series A unsecured bearer bonds with the aggregate nominal value of PLN 1 billion. The bonds were issued within the framework of a public offering addressed to more than 150 designated investors. The company is planning to seek the introduction of the bonds to the alternative trading system operated by the Warsaw Stock Exchange within the framework of the Catalyst market. The new Bonds Act, which came into force July 1, 2015, reintroduces the bondholders meeting, governs the procedure for amending the terms of the issue of bonds, introduces new types of bonds, and clarifies various issues.
- Advised on the sale of media rights relating to the Polish Premiere League (Ekstraklasa) in seasons 2015/2016 to 2018/2019 to the broadcasters nc+ and Eurosport. In terms of value, the TV rights license to broadcast all football matches represents **the biggest contract ever** concluded within the domestic sports media industry. Greenberg Traurig represented well-known international marketing agency MP & Silva, acting as exclusive advisor to Ekstraklasa on the marketing, distribution, and exploitation of media rights with respect to Polish football for the next four seasons. The participation of Greenberg Traurig in this unique TV rights sale process included all of its stages from the establishment of a tender aimed at disposing of all media rights relating to Ekstraklasa competitions, through negotiations with a number of bidders, and finally the execution of licence agreements with TV broadcasters.
- Advised Wirtualna Polska Holding S.A. and its selling shareholder, European Media Holding S.à r.l. - an entity controlled by the

private equity fund Innova Capital - on the initial public offering of shares and listing on the Warsaw Stock Exchange. The value of the IPO was PLN 294 million and it is **the largest initial public offering in Poland in over a year.** Greenberg Traurig provided Wirtualna Polska Holding S.A. and the selling shareholder, European Media Holding S.à r.l.,

“The recent expansion of the real estate team catapults our Real Estate Practice into the top tier and thus, gives us a unique position in the market of being the only law firm that enjoys the top ranking in five key areas of business legal practice: Capital Markets: Equity, Corporate/M&A, Private Equity, Tax, and now Real Estate.”

—Lejb Fogelman

with multidisciplinary legal advice with respect to Polish, English, and American law in connection with the preparation and consummation of the IPO.

- Acted as legal counsel to Grupa LOTOS S.A. in a rights issue of 55 million new shares with a total value of PLN 995.5 million placed with the company's existing shareholders. In terms of value, it was **the biggest public offering of new shares in Poland** in 2014 and one of the largest public offerings in Poland that year altogether.
- Provided advice on Cyfrowy Polsat S.A.'s acquisition of Polkomtel, the operator of the “Plus” mobile network. The transaction **created the largest media and telecommunication group in the region and one of the largest corporations in Poland.** Greenberg Traurig advised Cyfrowy Polsat on all aspects of the transaction.

Based on the agreements, Cyfrowy Polsat acquired shares in Metelem in exchange for its own new shares with a total issue price close to PLN 6.15 billion.

- Served as legal adviser in the **most important transactions in the banking sector in Poland**, including **having represented clients in most mergers and acquisitions of banks.** As an example, the firm represented PKO BP in the acquisition of Nordea Polska, BNP Paribas in the acquisition of Bank Gospodarki Żywnościowej, and Alior Bank on the acquisition of Meritum Banku S.A., among others.

ABOUT GREENBERG TRAURIG, LLP

Greenberg Traurig, LLP is an international, multi-practice law firm with approximately 1900 attorneys serving clients from 38 offices in Europe (Poland, Berlin, the UK, and Amsterdam) and in the United States, Latin America, Asia, and the Middle East. The firm is among the 2015 BTI Brand Elite and among the most “Tech Savvy.” It was on the 2013-2015 BTI Client Service 30 listings of firms “most recognized by clients for providing excellent client service,” and one of the 2014 BTI Client Relationship Scorecard “Power Elite,” based on the nature and strength of its client relationships. More information at: www.gtlaw.com.

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SOUTH AFRICA

Cape Town,
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Building Blocks

As South Africa looks to ignite growth, infrastructure development is high on the agenda.

By Maria Jackson

At first glance, it looks like South Africa may be entering a challenging period. Following a strong start to the year, which showed gross domestic product (GDP) grew by 1.3 percent in the first three months of 2015, official statistics reveal that the economy shrunk by an annualized 1.3 percent during the second quarter - analysts had previously predicted a slight rise. Global hazards such as the weak commodities market and the anticipated slowdown in China are projected to hit South Africa quite hard, with its signature mining industry and strong relationship with China particular vulnerabilities in the current global climate.

However, South Africa's government is not resting on its laurels. Infrastructure development has been earmarked as a key priority for the country going forward,

with landmark projects such as the approximately \$8 billion (ZAR 105 billion) Medupi power plant expected to contribute significantly to South Africa's GDP.

"The completion of major projects such as Medupi should help to demonstrate that the parastatals can perform their role as employers in major infrastructure projects," says Jason Smit, head of the construction and engineering practice at Werksmans Attorneys. "Some analysts have questioned the ability of the state to drive key infrastructure projects and manage the complex relationships between employer and the various contractors and subcontractors. Bringing these high profile projects to a close will hopefully help to persuade analysts and investors that the state is able to address infrastructure requirements."

Medupi is a flagship energy project in South Africa's comprehensive infrastructure program which has

targeted the energy, transport and telecoms sectors as areas of investment. Overall, the government aims to plug the country's infrastructure gap by investing around \$62 billion (ZAR 827 billion) on infrastructure during a three-year period, which commenced in 2013/14.

GET WITH THE PROGRAM

Following sluggish growth last year, which saw GDP growth fall from 2.2 percent in 2013 to 1.5 percent in 2014, the government used its 2015 budget to renew its commitment to infrastructure spending to boost growth. It also announced several other policies that it hopes will act as a stimulus to the economy.

"The government has identified nine national 'strategic priorities' to drive investment," says Ezra Davids, chairman of the corporate and M&A department at Bowman Gilfillan Africa Group. "Namely, resolving the energy challenge; revitalizing agriculture; adding value to mineral wealth; enhancing the Industrial Policy Action Plan; encouraging private investment; reducing workplace conflict; unlocking the potential of small enterprises; infrastructure investment; and supporting the implementation of the National Development Plan."

As Davids goes on to explain, among the investment initiatives outlined by the government to achieve growth and development in these nine priority areas are the following proposals: state-owned companies will invest around \$27 billion (ZAR 360 billion) over the next three years; the Industrial Development Corporation aims to use over \$7.5 billion (ZAR 100 billion) to promote faster industrial development, mineral beneficiation and agro-processing; approximately \$8 million (ZAR 108 million) has been allocated for research and regulatory requirements for licensing shale gas exploration and hydraulic fracturing; while \$262 million (ZAR 3.5 billion) has been allocated for special economic zones, mainly for infrastructure development.

"These are obviously significant investments and, if implemented efficiently, will have a positive and lasting impact on growth and development within the country," says Davids. "In addition, many of these strategic priorities are expected to involve public-private partnerships which will actively engage the private sector in the country's development plans."

Public-private partnerships, or PPPs, have become a preferred instrument for financing infrastructure projects to balance risk between the government and the private sector, rather than letting the public sector shoulder the burden completely. PPPs have been a theme of South Africa's infrastructure landscape for some time; indeed, the country used toll roads to modernize its national roads systems as early as 1997, and a strategic framework for PPPs was endorsed in 1999. By mid-2000 the country's PPP unit was established

and it has experience across a wide spread of sectors including health, energy, transport and education. The country's solid track record in this area is set to combine with new procurement rules to make PPPs even more attractive to investors.

"The legal framework for public procurement is being overhauled," says Pippa Reyburn, director in the corporate and commercial team at ENSafrica. "A

"Investment by South African companies into the rest of the continent, and the start-up of operations in other areas of the continent, are becoming increasingly important sources of activity."

—MICHAEL KATZ, CHAIRMAN OF ENSAFRICA

single comprehensive and sensible legal regime for government procurement would, in our view, assist in both local service delivery and attractiveness to investors."

Another proposed piece of reform also has the potential to facilitate infrastructure development.

LOOKING LOCAL

In his February budget speech, finance minister Nhlanhla Nene announced that the government would be proposing certain amendments to the country's Municipal Fiscal Powers and Functions Act. Not only are these reforms expected to reduce red tape, but also to clarify the rules surrounding bulk infrastructure charges and to increase transparency.

"The government has announced plans to explore changes to the fiscal and regulatory structures for urban municipalities 'to ensure that they have sufficient and effective instruments to mobilize revenue for financing municipal strategic infrastructure capable of promoting growth,'" says Reyburn.

According to the official explanation of the Division of Revenue Bill, 2015, "potential changes to the structure of the fiscal framework include consolidating urban grants and enhancing the use of performance incentives with transfers, such as with the integrated cities development grant (this will form part of the review of local government infrastructure grants); enabling greater flexibility in using grants to accelerate implementing of investments; and enabling cities to leverage grant and own-revenue funds over a longer period for strategic projects."

As Reyburn adds, these measures will be given effect by potential changes to the regulatory structures

SOUTH AFRICA

for development charges, municipal borrowing and metropolitan municipalities' own revenue powers.

"Additional technical support will be provided, through the Cities Support Program in the National Treasury, which is coordinating initiatives in this area, to further strengthen the capacity of cities to take advantage of these changes," says Reyburn. "We understand that the cities are already receiving expanded project preparation support to help them build a pipeline of strategic investment projects that can attract private finance. In addition, the Development Bank of Southern Africa (DBSA) is increasing its assistance to give cities better access to funding for strategic projects, by enhancing appraisal and supervision arrangements or extending the average debt maturity."

Although these potential reforms should go a long way to expedite project development and improve access to private sector finance, it should be noted that some regulatory hurdles remain.

"Infrastructure projects intended to be funded

"Despite the fact that prospects for South Africa are currently somewhat subdued, the country's well-regulated financial markets and strong legal framework position it as a solid base for expansion into other African markets."

—EZRA DAVIDS, CHAIRMAN OF THE CORPORATE AND M&A DEPARTMENT AT BOWMAN GILFILLAN AFRICA GROUP

through these measures necessitate a wide range of regulatory approvals, authorizations and other procedures, and are contingent on, for example, electricity supply and other inputs which may delay development," says Reyburn. "Increased participation by the private sector in such developments may assist, however, in completing these projects within a reasonable time."

Of course law firms are not sitting around idly waiting for infrastructure deals to come through the door; despite the slight dip in South Africa's economy lawyers remain busy.

DEAL DRIVERS

According to Mergermarket's 'Global and regional M&A: First half 2015' trend report, total M&A activity targeting the Africa and Middle East region has fallen, with the value of deals undertaken during H1 dropping by 29.4 percent to \$18.9 billion compared to H1 2014.

"We have seen a slight drop in foreign investment into South Africa by comparison with last year. Our sense is that South Africa's modest growth predictions



EZRA DAVIDS
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in comparison to other African jurisdictions means that other African jurisdictions are attracting a large slice of the capital that is investment that is not risk averse," says Shayne Krige, director and head of the investments and private equity group at Werksmans Attorneys. "At the same time, the perceived increase in the risks of investing in South Africa, implied by power cuts and labor unrest, coupled with an improvement of the returns in the developed world has meant that South Africa no longer attracts as much of the risk-averse African investment as it did previously."

That said, outbound M&A activity in the Africa and Middle East region increased by 47 percent year-on-year to reach \$20.9 billion during 2014. Importantly South Africa led the way, accounting for \$6.4 billion of that total - this marks its highest H1 outbound value on record. The figures demonstrate that South Africa's long-established position as a launch pad into the region distinguishes it as a preferred conduit for outbound investment.

"As South Africa remains a 'gateway' to doing business in other African countries, a key growth area for us here is the African expansion plans of both local and international clients. At present, countries that are being targeted for investment include Botswana, Ghana, Kenya, Nigeria and Zambia," says Davids. "We provide an integrated pan-African legal service, which is an attractive option for local and foreign investors alike. South Africa can be the first point of entry to deal with due diligence and determine whether legal restrictions apply. We draft and negotiate deals with our local lawyers - we now have eight offices in six African countries - or country-specific specialists looking after the finer details."

Many of South Africa's leading firms have been capitalizing on the trend for outbound work.

"Investment by South African companies into the rest of the continent, and the start-up of operations in other areas of the continent, are becoming increasingly important sources of activity," says Michael Katz, chairman of ENSAfrica.

In addition to the robust cross-border pipeline, despite the slowing market there have also been a significant number of headline domestic deals. In one of the year's marquee transactions, Bowman Gilfillan Africa Group acted for casino resort Peermont Global in its \$765 million (ZAR 9.4 billion) acquisition by hotel chain Sun International.

"We see telecommunications, financial services, fast-moving consumer goods and real estate as the sectors driving our business in South Africa at present," says Davids. "Manufacturing, retail, automotive and leisure are also significant growth sectors."

Energy remains another important area of instructions, with South Africa's energy crisis prompting a wave of work in that sector.

"In the project development and project finance space, the big drivers remain renewable energy procurement by the South African Government, the recent launch of the Co-Generation IPP Procurement Program and the Coal Baseload Energy Program," says Eric le Grange, projects and energy director at ENSAfrica "These replicate across the region (Namibia, Zambia, Kenya Uganda, Rwanda and Mozambique)."

The government has also tabled some significant

reform proposals for the oil and gas sector, which could prove to be a big draw for investors into that space.

"The positive action taken by the government to send the proposed amendments to the Mineral and Petroleum Resources Development Act (MPRDA) relating to the oil and gas industry back to Parliament for redrafting has met with widespread approval from the nascent oil and gas sector," says Davids. "This should have a very positive effect on investments in this sector and could potentially be a game changer in the South African economy."



It seems that South Africa's stagnating economy is actually being used as an opportunity by the country's government to take bolder moves to encourage foreign investment. In addition, its position as a platform of choice for entrance into neighboring African markets is also continuing to bear fruit.

"Despite the fact that prospects for South Africa are currently somewhat subdued, the country's well-regulated financial markets and strong legal framework position it as a solid base for expansion into other African markets," says Davids.

Law firms have every reason to be upbeat as South Africa continues to prioritize economic growth. ■

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A licensed structural engineer with more than 25 years of experience as a practicing attorney, Coleman provides clients with a single go-to resource for both legal and risk management issues. He has represented design professionals in all matters of their business, including defense of multi-million-dollar design defect and negligent construction administration claims.

Nationally known for his knowledge and expertise in the area of concrete construction, Coleman is the author of "Legal Issues in Concrete Construction" and is the only attorney ever to be named a Fellow of the American Concrete Institute (FACI).

He also is known for his involvement with large complex construction litigation – among them the Notre Dame football stadium, Soaring Eagle Casino arbitration, the Duluth Aquarium and, more recently, a large ethanol plant in North Dakota and marina cases in Florida and California. While he has handled major cases that drew national attention, much of his practice involves advising clients on contracts, contract negotiations, claims avoidance and early resolution of potential claims.



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that he leaves no stone unturned. Mr. Garza also practices in the area of personal injury, where he represents many plaintiffs involved in automobile and motorcycle accidents. Mr. Garza also represents plaintiffs in other areas, such as premises liability and slip-and-fall cases. A native of Athens, Tennessee, Mr. Garza earned his bachelor's degree from Vanderbilt University, his master's degree in social work from the University of Tennessee, and his law degree from the University of Tennessee College of Law. Mr. Garza served as a Captain in the United States Marine Corps from 1999 until 2005. Mr. Garza is rated AV by Martindale-Hubbell, has been recognized by Super Lawyers® for the last five years, is a graduate of Gerry Spence's Trial Lawyers College, and the National Trial Lawyers Institute in Macon, Georgia. He is a life member of the National Association and Tennessee Association of Criminal Defense Lawyers, a Board Member of the Tennessee Association for Justice, and serves as Vice President of the national DUI Defense Lawyers Association.

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After years as a prosecutor, Mark moved to private practice defending commercial and insurance interests. In 1998, he formed his firm defending complex claims, particularly in trucking. He has mentored many attorneys associated with the firm.

Bar Association memberships: American, Louisiana, Texas, U.S. Western and Middle Districts, U.S. Fifth Circuit Court of Appeal and the U.S. Supreme Court. Other organizations: Defense Research Institute, Louisiana Association of Defense Counsel, Trucking Insurance Defense Association, Transportation Lawyers Association, Louisiana Motor Transit Association, and the National Private Fleet Counsel. Mark trains and speaks at numerous seminars businesses, industry, trucking companies and associations.

He regularly blogs on trucking issues at www.truckingalong-markperkins.blogspot.com and general interests at www.perkinsfirm.blogspot.com.



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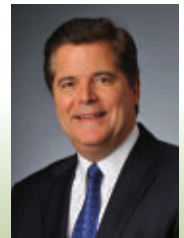
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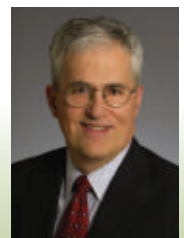
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Mr. Fitzgerald has been a member of the Defense Research Institute and the Ohio State Bar Association's Insurance Law Committee. He has also served as grievance counsel for the Allen County Certified Grievance Committee. Mr. Fitzgerald is currently serving, by appointment of the Ohio Supreme Court, on the Board of Commissioners for Professional Conduct.

Mr. Fitzgerald has been named as one of Ohio's Super Lawyers and is AV Peer Review Rated. He is also very active in his community, serving as President of the Foundation Board for the Lima Allen County Veterans Memorial Civic & Convention Center and a member of various other downtown boards and civic organizations.



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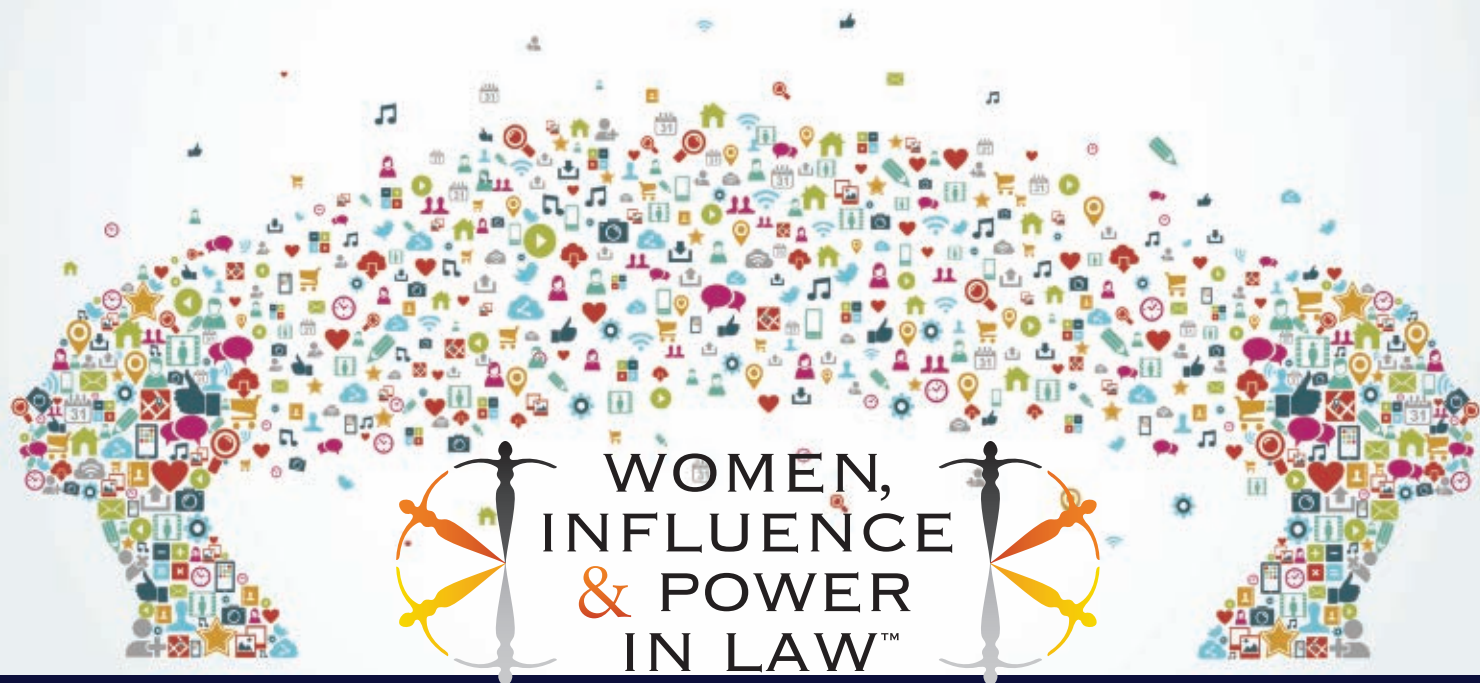
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By David L. Brown

If You Teach a Lawyer to Fish...

...she can help an entire community.



Erica Boyce grew up in Massachusetts and spent a lot of time on Cape Cod. She was attracted, of course, to the summer delights there, camping in scrub pines and standing in the surf. Over

time, however, she also began to admire its long, rich history of fishing, and, as she tells it, “in college, I started to learn more about fishing regulation and just how complicated it was. ... That regulatory environment is what led me to law school, in hopes of learning more about the regulations themselves.”

In 2013, Boyce finished her J.D. at Harvard and decided to take on the problems of the Cape Cod fishing community full time. Through an Equal Justice Works

fellowship, she has been helping the Cape Cod Commercial Fishermen’s Alliance, a Chatham, Massachusetts-based nonprofit, on issues facing the local fishing community.

Boyce is about to complete her two-year tour of duty, and I wanted to get a sense of her work and how the fellowship experience had affected her perspectives on being a lawyer. (Her fellowship was sponsored by ALM, The American

Lawyer’s parent company. Every year, we fund an EJW fellow, who agrees to spend two years working on a public interest project.)

It’s become almost cliché to say that these are tough times for the New England fishing industry. Overfishing (there isn’t all that much cod off Cape Cod these days), environmental issues, competition from large industrial fishing fleets and tough federal regulations have cut the number of boats owned by small-scale fishermen. And with those boats, a way of life is also disappearing.

Boyce has been trying to help stem the tide. She’s spent much of her time helping fishermen who operate scallop boats. Her work, she says, “has involved some conflict resolution, a fair bit of policy expertise and a good deal of strategizing.” Naturally, it’s taken some time for Boyce to gain the trust of the fishermen. “They are not quick to believe outsiders who say they’re here to help,” she says.

That skepticism rises where lawyers are concerned. “I’ve learned that to many people the word ‘lawyer’ is not always synonymous with ‘trustworthy’ or ‘on my

side,’” Boyce says. “I’ve learned to be cognizant of that and the baggage that our culture sometimes attaches to our profession. ... I’ve learned how to describe my role in detailed but simple terms in order to reassure the wary and create relationships where I can work with them, rather than be seen as a potential threat.” It’s a practical lesson in client relations that many Big Law lawyers would be wise to heed.

With her fellowship ending, the just-married Boyce, 27, will continue her work advocating for fishermen. She’s teaming with her supervisor at the alliance, Paul Parker, on building permit banks that will help small-scale fishermen sustain their businesses by giving them a better shot at acquiring fishing rights. “We have become a great team that is helping fishermen on Cape Cod, and now we are focusing on replicating that experience for other community fishermen around the country,” Parker says.

MEANWHILE, OUR OTHER ALM-SPONSORED EJW FELLOWS are continuing their work. Mark Doss is entering the second year of his fellowship working with the Iraq Refugee Assistance Project at New York’s Urban Justice Center, tackling issues of domestic violence in the Middle Eastern community. And our latest fellow, Jordan Cummings, is working with Public Counsel in Los Angeles representing immigrant parents facing custody and detention issues.

We’ve supported Equal Justice Works, and work by dedicated young lawyers like Erica, Mark and Jordan, for more than a decade now. As my former colleague Aric Press said in this space last year, “If we publishers can manage to scrape together the cash, law firms can do even more.” So let me repeat the call: Supporting an Equal Justice Works fellow allows your firm to do good for a relatively modest price. You don’t even have to go it alone. In the last year, 36 firms have partnered with their clients to sponsor fellows. Imagine that: a chance to strengthen a client relationship and support the profession’s core values. Sounds like a win-win to me.

David L. Brown is vice president and editor-in-chief of ALM.





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