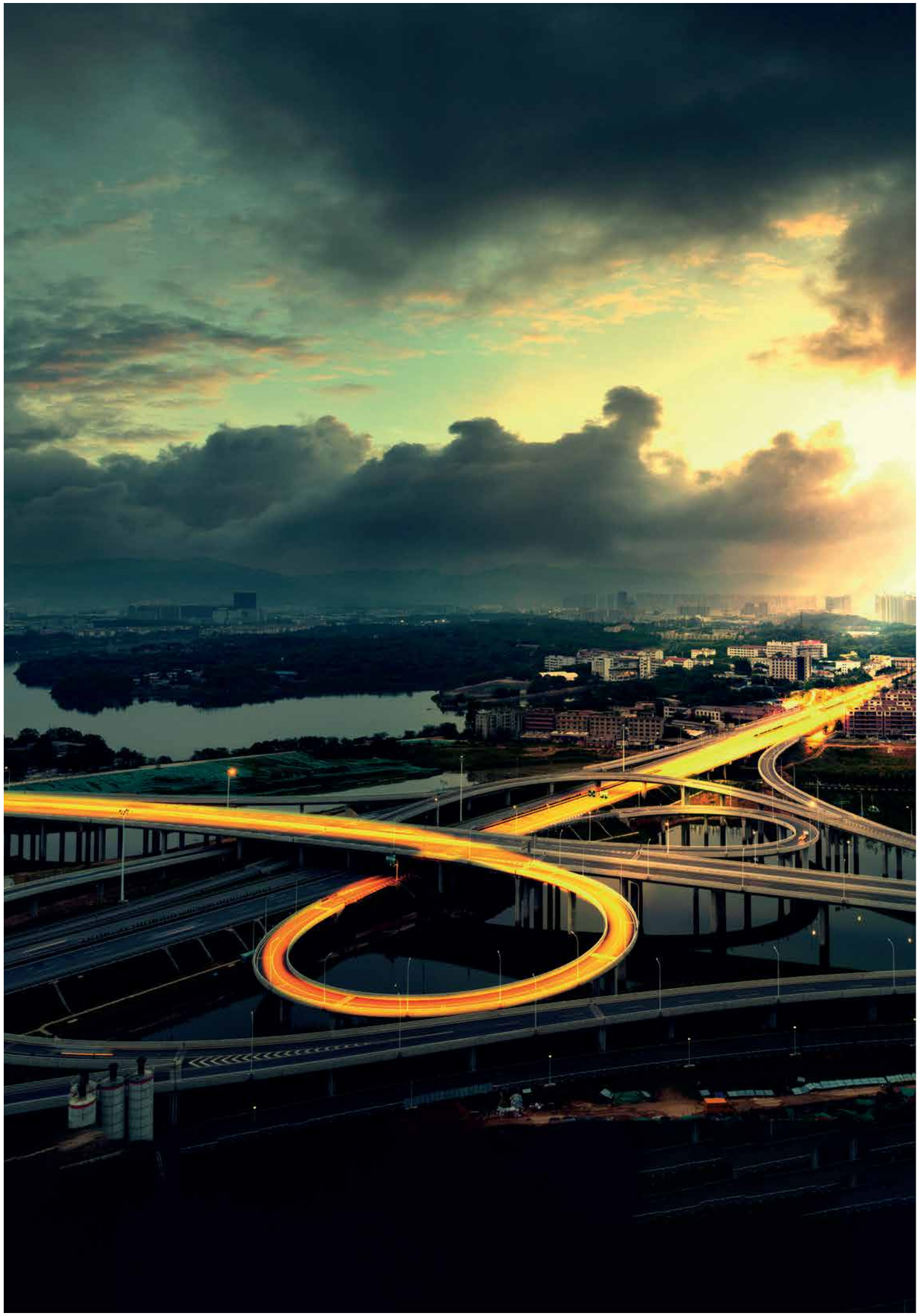
A Global Guide for In-House Counsel:

All Change

A shifting geopolitical & economic climate

In the following pages you will hear from 43 IR Global members who share their jurisdiction-specific insight on a range of topics including the progressive workplace, private equity and M&A activity, the geo-political climate, ChatGPT & AI. To keep up with the pace of the global business environment, you need tailored advice, and our member-firms are on hand to offer bespoke support to clients around the world.



IR Global – **Going Beyond Expectations**

IR Global was founded in 2010 and has since grown to become the **largest practice area exclusive network of advisors in the world.** This incredible success story has seen the network awarded Band 1 status by Chambers & Partners, featured in Legal 500 and in publications such as The Financial Times, Lawyer 360 and Practical Law, among many others.

The group's founding philosophy is based on bringing the best of the advisory community into a sharing economy; a system that is ethical, sustainable and provides significant added value to the client.

Businesses today require more than just a traditional lawyer or accountant. IR Global is at the forefront of this transition, with members providing strategic support and working closely alongside management teams to help realise their vision. We believe the archaic 'professional service firm' model is dying due to it being insular, expensive and slow. In IR Global, forward-thinking clients now have a credible alternative, which is open, cost effective and flexible.

Our Founding Philosophies

- **Multi-Disciplinary**

We work alongside legal, accountancy, financial, corporate finance, transaction support and business intelligence firms, ensuring we can offer complete solutions tailored to the client's requirements.

- **Niche Expertise**

In today's marketplace, both local knowledge and specific practice area/sector expertise is needed. We select just one firm, per jurisdiction, per practice area, ensuring the very best experts are on hand to assist.

- **Vetting Process**

Criteria is based on both the quality of the firm and the character of the individuals within it. It's key that all of our members share a common vision towards mutual success.

- **Personal Contact**

The best relationships are built on trust and we take great efforts to bring our members together via regular events and networking activities. The friendships formed are highly valuable to the members and ensure client referrals are handled with great care.

- **Co-Operative Leadership**

In contrast to authoritarian or directive leadership, our group puts teamwork and self-organisation in the centre. The group has steering committees for 12 practice area and regional working groups that focus on network development, quality controls and increasing client value.

- **Ethical Approach**

It is our responsibility to utilise our business network and influence to instigate positive social change. IR Global founded Sinchi, a non-profit that focuses on the preservation of indigenous culture and knowledge and works with different indigenous communities/tribes around the world.

- **Strategic Partners**

Strength comes via our extended network. If we feel a client's need is better handled by someone else, we are able to call on the assistance of our partners. First priority is to always ensure the client has the right representation, whether that be with a member of IR Global or someone else.

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FOREWORD

Shifting sands or concrete opportunities?
Identifying avenues for success in a changing global landscape.

We are living in an age of extreme transformation. As new technologies like generative AI accelerate the pace of business and cultural change even further, both corporations and individuals must adapt to cope in this ever-evolving climate. IR Global members examine the impact on their jurisdictions.

It can be exhilarating, living and working through a period of intense change. Yet it can also be uncomfortable. You may have heard the old 'curse' (wrongly attributed to Chinese origins), "May you live in interesting times" – the implication being that living through change, turmoil and fluctuation is never easy. Yet there's something to be said for 'interesting'. Interesting is dynamic. Interesting is exciting. Interesting is full of opportunity.

It's fairly safe to say that as we approach the end of 2023, we are indeed living in interesting times, but whether we approach them as a blessing or a curse is largely up to each of us, and the steps we take into the future. Do we change with the times, exploring new opportunities and chances to evolve? Or do we try to resist – or worse, ignore – the changes happening around us? The latter option might feel more comfortable and convenient in the short term, but in the long-term, it's the more dangerous path: one that leads to lost opportunities and, eventually, obsolescence.

Reading the perspectives of IR Global members in this latest edition of the ACC, you'll see that change is inevitable in every jurisdiction and every working group – regardless of how easy it feels, or how quickly you react to it.

In workplaces around the world, attitudes are changing, with more progressive practices like remote working, employee rights and social awareness becoming a key focal point in business' growth strategies. Legislation on these issues is currently varied from jurisdiction to jurisdiction, but it's becoming clear that eventually, most businesses will either need to embrace change, or have it forced upon them by both regulations and employee expectations.

The geo-political climate is shifting, too. The Russia-Ukraine war, trade tensions between the US and China, the escalating climate emergency and the continued repercussions of the Covid-19 pandemic are all contributing to a complicated backdrop for international trade. Their impact can be felt both on trade opportunities and confidence in the market, creating a disparate and sometimes difficult landscape for those looking for cross-border opportunities, particularly in M&A and private equity. In such a fluctuating global market, due diligence is becoming increasingly complex, with instability making forecasting and analysis a more difficult task than it would be in simpler times. Yet difficult doesn't mean impossible, and many of our members have highlighted opportunities for expansion in their markets as we come to the end of 2023 and look ahead to 2024.

Perhaps one of the biggest challenges we are experiencing on a global scale is our changing relationship with digital. As we become more reliant on data, connectivity and digital tools, governments, corporations and advisors worldwide are needing to carefully address the risks and rewards they present both now and in the future. Cybersecurity continues to be a cause for concern, but there is also unease around the growing prevalence of generative AI in our workplaces, industries and cultures. The advent of technologies like ChatGPT and DALL-E are generating incredible opportunities in almost every market that has some digital aspect to it, with everyone from lawyers to financiers able to increase productivity using such AI-assisted tools – but at what cost? What will be the long-term impact on skills, on labour, on job availability – even on our perceptions on truth and reality? Who, at this point, hasn't been hoodwinked by a believable AI generated image? Governments are slowly acting to regulate these industries, some faster than others. It will be interesting to see how they are governed in a year from now – and what impact that will have on markets worldwide.

In the following pages, you'll find fresh perspectives from IR Global members on all of these changes, challenges and opportunities, and how they are impacting their jurisdiction – giving you the advice and information you need to navigate a shifting commercial landscape.

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Disputes

Our Disputes members are at the forefront of the professional services industry. They discuss the measures in place to help with court pressures, how litigation is handled in each jurisdiction (both culturally and procedurally) and if Chat GPT is being used.

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Cristina Bergner mainly works as a private and public defender/ counsel in business-related criminal law such as bribery, perjury, fraud and money laundering. She has a background as a company lawyer as well as in the Swedish Tax Agency. Cristina has participated in several high-profile cases concerning white-collar crime such as cases involving Bombardier and Telia abroad. In addition to business-related criminal law, Cristina also works in general dispute resolution and labour law issues mainly within franchise chains/ companies in Sweden and abroad.

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Karin Söderén works with Swedish and international business law, with a focus on company law, disputes and public procurement. She regularly represents private individuals and companies in a wide range of disputes in general court, administrative court and arbitration board. Karin has extensive experience in assisting in procurement, both during the tendering process and during review, and also writes commercial agreements.

ASTRA ADVOKATER is a business law firm with broad competence and long-term relationships. Through long-term and close collaborations with our clients, we can provide competent advice for each specific situation. Thanks to our international network, we can provide counselling in legal, procedural and practical matters, regardless of where an investigation is being performed.

We provide fast and flexible service to our clients in various matters related to corporate law. We provide counselling regarding, for example, shareholder agreements, corporate governance, risk management and complex structural projects.

QUESTION ONE

Globally, governments are taking measures to lessen pressures on over-stretched court systems. How is your jurisdiction changing its approach to disputes?

Swedish courts have through the years been organised to make sure specific issues are tried in specialised courts. We therefore have specific courts regarding some areas, such as environmental law and intellectual property law. What matters should be handled by such courts is an ongoing progress.

Generally, the Swedish courts are divided between administrative courts and general courts. General courts handle disputes regarding civil law, but also penal law. In recent years we have seen an increase in more complex penal cases, which has strained the general courts. These penal cases, especially where persons are held in custody, are prioritised. This has affected dispute cases, prolonging their handling time.

No general measures have been taken to solve this situation, but at least one general court has tried to make a first valuation of the complexity of the dispute, and have easier disputes prioritised for a quick judgement. As attorneys, we must try to find possible solutions if courts are unavoidable. The parties can, for example, agree to a specific mediation, where the parties appoint a mediator who will try to settle the disputes between the parties.

QUESTION TWO

Are you seeing an increase in hybrid, multi-tier and carve-out dispute resolution clauses – and what impact is this having on commercial agreements?

Sweden has a long tradition of using dispute resolution clauses, and these are often included in more complex agreements. The most common is that disputes are to be handled by the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), and often the model clauses recommended by the SCC are used. The use of dispute resolution clauses has been quite constant, and we have not seen any specific increase.

Multi-tier dispute resolution clauses occur mainly in construction contracts or in other long-term agreements. The use of such clauses is debated, as it is questioned if these are legally enforceable in regard to consequences if the procedure is not followed. These clauses are considered to have a positive impact on long-term cooperation as these at least have a moral impact. If followed, these clauses may prevent disputes as the issues are thoroughly discussed and may be resolved between the parties.

Carve-out or hybrid clauses are normally very specific to avoid ambiguity. These are, for example, used in regard to undisputed claims, that do not need to be handled through a more costly arbitration but by a general court. If the agreement is complex, disputes may be carved out so that, for example, smaller claims under a specific amount can be tried in an expedited arbitration, or by only one arbitrator, or the SCC should determine the number of arbitrators.

Dispute resolution clauses must be construed so that it is clear for the parties in which situation a dispute will be tried in different arbitration procedures or by a general court. It is not used to give either of the parties a veto to decide where a dispute will be handled.

The use of dispute resolution clauses has had a substantial impact on commercial agreements, as these are often seen as a way of protecting the information presented in a dispute, and the existence of such disputes undisclosed. Sweden has a strong principle of public access to official documents. All documents sent to a Swedish court are therefore generally available to the public to access as official documents unless the court specifically decides otherwise. The use of arbitration does give the parties control of the public access to the information that needs to be disclosed to support the claim and is often used to protect trade secrets.

QUESTION THREE

How is litigation handled in your jurisdiction; both culturally and procedurally? Is ChatGPT being used in disputes in your jurisdiction, and what impact is this having on processes?

Litigation in general courts is handled according to the following. When a claim has been submitted and the court has assessed that the claim includes the required information, the respondent is ordered to reply to the claim. If no reply is submitted, the court may order that the claim is granted by default. Otherwise, the court makes sure that each party submits writs to clarify the case.

The court calls the parties to a preparatory hearing, where the judge acts to further clarify the issues in the dispute, and the parties can ask questions to each other regarding the claim. At such a hearing, the judge has a duty to assess if the parties may settle the dispute. If both parties agree, the judge leads the discussions regarding a potential settlement, and if the parties agree, the judge can confirm such settlement through an enforceable judgement. If the parties do not settle, the parties agree on a time frame for the continued handling of the case, including time for a final hearing.

All evidence, bases of the claim, and relevant circumstances must be disclosed before the final hearing. At the final hearing, both parties must present their case and the evidence. The witnesses and the parties themselves are heard, and after the final arguments, the judge or judges state when the written Judgement will be sent to the parties. No jury is involved. After the Judgement a party may appeal, but in civil cases permission to appeal must be granted.

The litigations are generally very civil, and all involved - the parties, the attorneys and the judges - treat each other with respect. The act of trying to surprise the opponent or trying to submit new evidence at a late stage to not give the opponent reasonable time to reply to the evidence is not allowed. The parties are normally able to influence how the case should be handled, but the courts decide.

ChatGPT is not generally used in disputes. It is however assessed as a means of a legal examination of potential case law in support of a claim.

TOP TIPS

Navigating a dispute in your jurisdiction

- When entering into agreements, consider the need to have potential disputes handled by arbitration or specific mediation. Arbitration should be considered when there is need for a quick judgement, if the value of the dispute (for example the claimed amount) is significant, or when the dispute may involve sensitive information such as trade secrets.
- Seek legal assistance before the matter has been referred to courts/arbitration. Disputes may be avoided if advise is sought on how to solve the matter before it has gone too far.
- Make a business case of the dispute, where you for example consider the chance of winning, the time frame to get a final judgment, personnel recourses required to support your claim, and costs for legal representation. From that you can assess if a settlement would be to your advantage.

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Stephen Bell handles criminal litigation, investigatory matters and commercial litigation before state and federal courts and administrative bodies. Stephen represents some of the most notable government whistleblowers under the SEC's OWB, False Claims Act, and Anti-Money Laundering Act. These include a whistleblower in SDNY and SEC investigations concerning Trump Media & Technology Group and a high-profile anti-money laundering case involving billions of dollars channeled through numerous countries to the United States.

Stephen defends individuals and entities subject to government investigations or prosecutions, including cross-border investigations before federal and foreign agencies.

Stephen's civil work includes bet-the-company litigation where hundreds of millions of dollars are at stake. His experience includes mass torts, class actions/MDLs, and litigation concerning commercial law, securities, high-net-worth estates, product liability, and professional liability.

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Cranfill Sumner LLP is a North Carolina-based law firm with attorneys serving clients globally from offices in Raleigh, Charlotte, and Wilmington. Founded in 1992, we advise and represent individual and corporate clients in all stages of civil and criminal litigation before federal and state courts, as well as administrative agencies.

The Cranfill Sumner LLP team serves clients in all aspects of white-collar criminal litigation, civil litigation, international transactions and litigation, and regulatory and government law. Our team of litigators is equipped to handle any case, anywhere, at any time.

The firm is built on the foundation of teamwork, client service, and reputation, and it continues that legacy today as it works to guide and counsel clients through their issues. Whether it's for individuals, privately-held companies, municipal entities, Fortune 100 companies, or small businesses, the "Cranfill way" includes practical and efficient representation tailored to each client's unique needs. Our depth of trial experience provides the perspective from which we advise clients on how to resolve pending matters and proactive steps they can take today to avoid future litigation.

QUESTION ONE

Globally, governments are taking measures to lessen pressures on over-stretched court systems. How is your jurisdiction changing its approach to disputes?

Most courts maintain an over-burdened docket which compounds the pressures on prosecutors in their discretion to pursue enforcement. Court closures tied to the government lockdowns of 2020-22 drastically worsened an already-significant backlog and created opportunities for adept counsel to leverage court delays and the often slow-march of litigation to their clients' benefit.

Strategically timing contact and cooperation with government investigators or prosecutors is one way clients can leverage an over-burdened court system. Clients will inevitably have to make decisions of great consequence quickly – often based on imperfect or incomplete information – but effective counsel will use court delays to minimise client time pressures. Likewise, effective counsel will utilise delays to coordinate a client's PR or media outreach efforts in a manner that complements their criminal defense strategy. Contrarily, there are instances where a client is best served by taking a matter to trial as quickly as possible. Leveraging constitutional rights to a speedy trial against overworked prosecutors and over-burdened courts is one way to maximise negotiating power.

"Most courts maintain an over-burdened docket which compounds the pressures on prosecutors in their discretion to pursue enforcement."

QUESTION TWO

Are you seeing an increase in hybrid, multi-tier and carve-out dispute resolution clauses – and what impact is this having on commercial agreements?

Because ADR is required in North Carolina, you'll find a dispute resolution clause in every commercial contract. These clauses are hotly-negotiated and make or break deals. Hybrid or multi-tier clauses are common, especially in industries with dedicated arbitral bodies (such as construction) or where the parties wish to avoid submitting their case to a jury. There has been much concern over now-common "nuclear verdicts" since courts reopened following a lengthy closure due to the government lockdowns of 2020-22; This rise in huge verdicts also fueled the rise of hybrid and multi-tiered dispute resolution clauses. We generally see, and draft, clauses that first require the parties to attempt informal settlement of any disputes. If informal settlement fails, the parties proceed to mediation (non-binding) or arbitration (binding). In cases where appellate rights are critical or a jury may favour the client, the clause will call for litigation if informal negotiations and mediation fail. Regardless of the path chosen, it is key for clients to discuss all aspects of potential disputes with counsel to map out the most advantageous dispute resolution process. Forethought and planning in the drafting and negotiation phases can and will save time, money, and headaches down the road.

QUESTION THREE

How is litigation handled in your jurisdiction; both culturally and procedurally?

In 2022, the Anti-Money Laundering Whistleblower Improvement Act (Act) became law. The Act expanded enforcement against money launderers operating in U.S. financial systems by increasing incentives for whistleblowers with knowledge of illicit conduct. The key update to these whistleblower laws is that auditors and compliance professionals, as well as foreign nationals — previously barred from claiming awards under the Securities and Exchange Commission's whistleblower program — now qualify.

Potential whistleblowers are often discouraged to learn that statutory exclusions render them ineligible for an award. The result is that fewer whistleblowers with information of illicit conduct come forward, the government's enforcement priorities are stymied, and our financial systems suffer continued abuse. No one wins.

The Act eliminated many such barriers and increased the scope of reportable conduct which entitles one to an award. It created the Financial Integrity Fund, from which awards will be paid. The Act dictated that at least 10% (and up to 30%) of any sanctions resulting from whistleblowing will be paid to eligible whistleblowers who provided qualifying information to their employer, the Department of the Treasury, or the Department of Justice (assuming those sanctions surpass $1 million). When determining the size of a whistleblower award, the government considers these factors:

- the significance of the information provided by the whistleblower to the success of the covered action
- the degree of assistance provided by the whistleblower
- the programmatic interest of the Treasury in deterring the particular violations disclosed by the whistleblower
- additional factors mirroring those utilised by the SEC.

The Financial Integrity Fund includes criminal forfeitures, payments of restitution and fines, and victim compensation payments. The Act is similar to the SEC whistleblower program in many ways. However, the Act provides more protection for whistleblowers against retaliation. Unlike the SEC program, whistleblowers qualify for retaliation protections even if they reported criminal conduct to their employer and not to the government.

Where the Act differs from the SEC program is where it shines. Two differences are critical.

First, SEC excludes whistleblowers who gained knowledge of criminal conduct as part of compliance or audit duties related to their employment. The Act removed this exclusion, and those who are in the best position to gain knowledge of criminal conduct now qualify for awards. Importantly, the Act is not limited to U.S. citizens, and foreigners qualify for awards. This long-awaited change greatly supports government policy.

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Thomas H. Curran has developed his practice over the past three decades, focusing primarily on bankruptcy and insolvency proceedings. He often represents secured and unsecured creditors, committees of creditors, trustees and equity security holders in bankruptcy and insolvency proceedings as well as financial institutions and other lenders in out-of-court loan restructurings, assignments for the benefit of creditors, foreclosures, repossessions, and the sale of distressed assets and businesses. He also has experience representing business debtors in workout, restructuring and bankruptcy matters.

Thomas has extensive experience in all facets of cross border insolvencies and cross border insolvency litigation. He is regularly engaged by private equity firms, governmental agencies and estate representatives to advise and counsel them on a wide range of cross border insolvency issues.

Thomas H. Curran Associates LLC has offices in Austin, Boston and London, and represents a wide variety of individuals, businesses, corporate entities, and governmental agencies in litigation and transactional matters throughout the United States and Western Europe. They have navigated a broad range of commercial litigation cases, including cross border insolvency, institutional creditors' rights, bet the company litigation.

Their corporate group advises entrepreneurs, investment partnerships, private equity funds and venture capital firms on the legal, business and financial issues related to forming, financing, buying and selling, and investing in businesses. They counsel domestic and foreign firms in inward and outbound investments in a range of industries, including sports and entertainment, finance, communications, manufacturing, retail and consumer, and commercial real estate.

QUESTION ONE

Globally, governments are taking measures to lessen pressures on over-stretched court systems. How is your jurisdiction changing its approach to disputes?

The pressures on over-stretched court systems in Massachusetts have led to an increased push for self-help measures and alternative dispute resolution by both federal and state benches.

In the United States District Court for the District of Massachusetts (USDCMA), the Local Rules require counsel for adverse parties to confer and narrow issues in dispute at multiple junctures. For example, Local Rule 7.1(a)(2) also requires counsel to 'certify that they have conferred and have attempted in good faith to resolve or narrow the issue' prior to filing any motion with the court, and Local Rule 37.1(a) imposes more specific conferencing requirements if a discovery dispute is at issue. Additionally, Local Rules 16.1, 16.3 and 16.5 govern the obligations of counsel to confer and prepare joint statements for the court to streamline issues and, undoubtedly, to encourage parties to keep settlement at the forefront of their litigation strategy. Local Rule 16.4, in fact, requires the court to 'encourage the resolution of disputes by settlement or other alternative dispute resolution [(ADR)] programs' and empowers the court to refer appropriate matters to ADR. However, the court cannot mandate the use of ADR over the parties' objections.

In the Massachusetts Superior Court, the state's highest trial court, procedural and local court rules impose similar requirements. Massachusetts Rule of Civil Procedure (MRCP) 16 empowers Massachusetts courts to require opposing parties to conference before the court to, inter alia, streamline triable issues, address scheduling issues and consider the possibility of settlement. Massachusetts Superior Court Rules 9-9E impose further obligations on opposing counsel when it comes to motion practice: under Rule 9A, all civil motions save those excepted at paragraph (d) of the rule must be served by the moving party, who must then allow 10 days for opposing parties to serve opposition papers (except motions for summary judgment, which have a 21-day opposition period). Rather than filing motions and oppositions under separate cover, the moving party then files the complete package (referred to as the '9A package') with the court pursuant to the guidelines set forth in the rule. Also applicable in civil motion practice in Massachusetts Superior Court is Superior Court Rule 9C, which requires counsel to confer in good faith prior to filing any motion to ensure that areas of disagreement are narrowed to the fullest extent before the dispute is brought before the court. Special considerations under Rule 9C apply to dispositive motions and motions concerning discovery disputes, with heightened requirements for discovery motions taking effect on September 1, 2023.

Both federal and state local rules in Massachusetts reflect a trend toward increasing promotion of self-resolution and streamlining of issues by the parties before imposing on the court's time and resources. In the USDCMA, magistrate judges work alongside district judges to resolve discovery disputes and facilitate early disposition of cases among the parties. Massachusetts state courts also strongly encourage parties to work together to resolve issues among themselves before consuming court resources.

QUESTION TWO

Are you seeing an increase in hybrid, multi-tier and carve-out dispute resolution clauses – and what impact is this having on commercial agreements?

Given the general trend toward promoting ADR, courts are generally enforcing hybrid, multi-tier and carve-out dispute resolution clauses in commercial agreements. These clauses allow the contracting parties to better tailor dispute resolution protocols to their specific needs and can save time and resources down the line in the event a litigable dispute should arise.

When the parties to a transaction trust their chosen jurisdiction to competently and efficiently protect their substantive rights and remedies, carve-out dispute resolution clauses can preserve parties' rights to maintain certain classes of claims or remedies in the court, which may be better able to fashion certain kinds of relief than are available via ADR. For example, where misuse of proprietary information is of concern, an aggrieved party may prefer to bypass a general obligation to arbitrate in order to seek immediately effective protection from the court. Carve-outs in commercial agreements achieve this result by excepting actions for preliminary injunctive relief from an arbitration clause. Massachusetts courts routinely enforce these carve-outs and will hear claims excepted from an arbitration clause by such a mechanism while nevertheless recognising the validity of the overarching agreement to arbitrate. This type of contractual scheme comports with court objectives by reserving for judicial consideration only those disputes that cannot be more efficiently and effectively resolved outside of the court's channels.

QUESTION THREE

How is litigation handled in your jurisdiction; both culturally and procedurally? Is ChatGPT being used in disputes in your jurisdiction, and what impact is this having on processes?

Massachusetts litigants are largely self-regulating in accordance with the rules discussed above, and there is a general spirit of willingness to collaborate to better serve the court's purpose in seeking to streamline motion practice and pretrial procedure. Technological improvements on the court's part also aid the parties in conserving time and resources – most Massachusetts courts now offer electronic filing options, and the procedural and local rules further provide for stipulation to receipt of service of motion papers and discovery by email, which can save the parties time and hard costs of production, and which further improves access to justice.

While current trends in artificial intelligence (AI) present us with powerful generative tools like ChatGPT, in the context of litigation practice, such tools might create just as many problems as they solve. It's likely too soon to observe any meaningful impact of tools like ChatGPT on litigation practice in Massachusetts, but it should be noted that overreliance on AI has landed attorneys in hot water in other jurisdictions. ChatGPT has been known to fabricate case law, so if not used with caution, these tools run the risk of becoming a hotbed for malpractice. However, when it comes to questions of access to justice, there has been chatter about deploying AI chatbots on Mass.gov to aid pro se litigants in navigating the state court system. In this context, and if properly programmed to pull and present only the most reliable information, tools like ChatGPT have the potential to make the courts more accessible for everyone.

TOP TIPS

Navigating a dispute in your jurisdiction

In the USDCMA, ensure obligations under Local Rules 7.1(a)(2) and 37.1(a) are satisfied prior to filing motions with the court. Local Rule 7.1(a)(2) requires a conference with opposing counsel prior to filing any motion, and Local Rule 37.1(a) imposes more specific requirements where discovery disputes are at issue.

In the Massachusetts Superior Court, keep in mind the procedural requirements set forth in Superior Court Rules 9A and 9C. Rule 9C similarly requires counsel to confer prior to filing any motion, with heightened requirements for dispositive and discovery motions. Rule 9A requires parties to collaborate in filing motions subject to opposition procedure, with special considerations for summary judgment motions.

Consider the benefits of ADR. In the USDCMA, magistrate judges are available and proficient in conducting judicial settlement conferences. Similarly, in the Massachusetts Superior Court, parties can request a referral to ADR under Superior Court Rule 20.

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Marco Tulio Venegas is Founding Partner of LITREDI, S.C. with 28 years of international experience. He is one of the most recognised attorneys in Mexico in the field of international commercial arbitration. He pairs his expertise in arbitration with a wide range of experience in administrative, commercial litigation and constitutional (amparo) litigation. As such, he has acted as counsel in more than 200 amparo proceedings defending companies and individuals in commercial and human rights matters.

He has acted as counsel in several of the most complex litigation and arbitration matters for both multinational clients and governments around the world. His experience includes successful participation as counsel in two of the largest commercial arbitrations in Mexican history, worth more than US$1.7 billion, as well as the most important infrastructure disputes ever with governmental entities. Mr. Venegas acts as arbitrator and counsel in large arbitration proceedings, taking advantage of his experience in regulated markets, such as energy, infrastructure and oil and gas.

He has international experience in the United States and France and has worked at law firms abroad as well as with the ICC Court in Paris. He has given several conferences and lectures related to arbitration and litigation in Mexico, Europe, China, the US and Latin America.

QUESTION ONE

Globally, governments are taking measures to lessen pressures on over-stretched court systems. How is your jurisdiction changing its approach to disputes?

In Mexico, the government is implementing electronic filing, allowing the parties not only to present their motions but also to hold virtual hearings on procedural issues and on the merits. Due to the efficiency and reduction in costs, these new systems have proven to be a success. However, not everything is perfect since the workload of the Courts continues to put pressure on the quality and speed of the resolution of the disputes. In addition, the budgetary restrictions of the judiciary are still not enough to guarantee the creation and attraction of talent vis-à-vis the private sector.

LITREDI is a boutique law firm formed by three partners, specialising in arbitration, litigation, and dispute resolution in general. It provides legal services in all stages of a controversy, including, of course, any potential settlement to national and international clients including corporations, governments, state-owned entities, private individuals, organisations and vulnerable groups.

LITREDI members together have more than 61 years of experience and throughout their professional careers have been successful in 92% of their cases. Our team has represented and advised in arbitration, administrative, and commercial litigation proceedings related to disputes in matters such as conflicts between shareholders, joint ventures, distribution and supply agreements, franchises, energy, construction and infrastructure, and financial services, among other topics.

The firm seeks to make a positive difference and provides clients with the highest level of support and personal involvement at every stage, invariably, under elevated ethical and trustworthiness guidelines that are intended to reinforce the honour and integrity of the legal profession.

At the level of the practising attorneys, we are seeing an increase in arbitration, mainly in complex topics related to energy and construction disputes. Private parties and even governmental agencies have become aware that arbitration is the best way to resolve such types of disputes and, thus, there has been an important increase in the use of arbitration in such matters. Since this increase in arbitration reduces the workload of the Courts, they have also adopted a more friendly approach to arbitration, and several precedents in favour of such alternative dispute resolution methods have been rendered in recent years. Mexico has slowly become a very good place to be considered as a seat for disputes subject to arbitration.

"At the level of the practising attorneys, we are seeing an increase in arbitration mainly in complex topics related to energy and construction disputes."

QUESTION TWO

Are you seeing an increase in hybrid, multi-tier and carve-out dispute resolution clauses – and what impact is this having on commercial agreements?

Yes, undoubtedly the parties are keener to try to resort to mediation, arbitration, or any other type of dispute resolution methods as an alternative to court litigation. Notwithstanding, there are disputes in which the interests at play put so much pressure on the legal departments and executive officers of the companies that the need to obtain a favourable decision reduces the possibility of settling a dispute in a mediation process. The change of culture is ongoing but not as fast as desirable. Mexico continues to be a very litigious society in most of our territory.

It is relevant, however, to bear in mind that the Congress and the same judiciary at the local and federal levels are creating incentives and policies to promote mediation and conciliation to resolve disputes at all levels, not only in commercial matters, but in criminal, family, and even environmental and social disputes. This trend appears to strengthen the ability of civil society to actively participate in designing better practices and procedures to take over the resolution of disputes.

QUESTION THREE

How is litigation handled in your jurisdiction; both culturally and procedurally? Is ChatGPT being used in disputes in your jurisdiction, and what impact is this having on processes?

Litigation is a long and costly means of resolving a dispute. Mexican companies and individuals are used to proceedings that would take on average 4 to 10 years. Moreover, Courts, attorneys and parties have become accustomed to dealing with a lot of procedural appeals that may produce advantages in the proceedings over the decision on the merits.

Additional challenges refer to the irregular quality in the Courts since you may have very capable Judges paired with others whose ability is lesser and who may even be keen to be corrupted. Therefore, you must follow up closely the way a proceeding evolves to avoid improper conduct and take the necessary measures to challenge it. It is also relevant to have a good understanding and tracking of the opposing party and its ability to pay in the event it is acting as defendant. In Mexico, unfortunately there are many cases in which small to medium companies have no assets to respond to the judgments issued against them. Thus, before starting litigation it is essential to identify any potential assets against which a judgment may be enforced.

ChatGPT has not taken over yet in the resolution of disputes. Some large law firms, however, have started to use it for the drafting of memorials and claims. The ethical questions about its use before its clients, however, remains a pending issue. At the Court level, ChatGPT has not been issued and due to the way in which the decisions are taken and supervised, it would not be easy to introduce it without any prior approval from the Judiciary Council. For this reason, it may take some years until we can evaluate the impact that ChatGPT or any other type of AI may have on the way in which litigation is handled in Mexico.

TOP TIPS

To navigating a dispute in your jurisdiction.

- First, you need to be careful in choosing the attorney that may represent you. Navigating through the legal market in Mexico to find a cost-effective and honest attorney is not simple. The best way to do it would be to make a prior investigation through the different international and national directories ranking local attorneys. With that information, a party then should consult with other local friends and contacts to obtain specific referrals. Finally, you should personally interview the firm or attorney you have targeted to get a sense of its ability, experience, and honesty.
- The second factor you should consider is the goal you are looking to achieve in a litigation. The cost and time of litigation or arbitration would vary depending on your goal. In this regard, the counselling and evaluation of your attorney in setting a timetable would be essential.
- A third factor, as always, is the evaluation of the opposing party and its counsel. The risks, as well as the time and costs, would also vary depending on them. In disputes dealing with matters regulated by the government (such as energy, infrastructure, oil and gas, etc.) it is important to be aware of the dimension of the dispute and the influence that a party may have in the Courts and generally within the government.

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Dr Malcolm Mifsud read law at the University of Malta. He specialised in maritime and shipping law at the IMO's International Maritime Law Institute.

Dr Mifsud started his career by joining one of the largest law firms in Malta and was assigned maritime, civil and commercial litigation cases. In December 1998, he co-founded his own law, which developed into Mifsud & Mifsud Advocates. Dr Mifsud is a director of Aegis Corporate Services Limited, a leading corporate services provider company.

He is also the author of a number of publications such as The International Comparative Legal Guide to Litigation & the Dispute Resolution and the Corporate Immigration Review. He is a weekly contributor to a local newspaper, analysing and explaining court judgements

Dr Mifsud held a number of public posts. He was director of the publicly owned company, Gozo Channel Company Limited (1999-2003), Legal Reviser at the Translations Unit at the Ministry of Justice and Local Government (2002-2003) and Advocate for Legal Aid (2000-2015). Dr Mifsud is on the Board of World Link for Law, an international network of medium-sized law firms. He sits on the board of a number of corporate structures representing clients and their interests.

Dr Mifsud has assisted a large array of commercial and corporate clients, both in giving legal advice, and also in representing clients in the Courts and Tribunals. He has successfully represented clients in landmark judgements and disputes. He has assisted and advised clients on the restructuring of corporate structures and on mergers and acquisitions.

Mifsud & Mifsud Advocates is a legal consultancy and advocacy firm with its head office based in Malta. Its client base, besides local, is predominantly European and North American, however, the firm is also active in North Africa and the Middle East.

Mifsud & Mifsud Advocates was set up in 2007, by Dr Malcolm Mifsud, LL.M.(IMLI); LL.D., together with Dr Cedric Mifsud, B.A., Mag. Jur. (EU), LL.D. Since its inception, the founders brought together a wealth of experience in civil, commercial and corporate law.

Mifsud & Mifsud Advocates has seen a swift expansion of its practice in a number of sectors; mainly the areas of financial services, such as trading and holding corporate structures, trust services, tax advisory, shipping and EU regulatory compliance services. The founders have also conserved and invested in the growth of other practice areas, mainly those related to advisory and litigation in various sectors such as family law, civil and property law, competition law, commercial litigation and debt collection services.

The firm has dedicated departments such as maritime law, employment law, corporate law, immigration law, and property law to mention a few.

Mifsud & Mifsud Advocates, through the expertise of its founders and the rest of the team working for the firm, has become a one-stop-shop for local and foreign, individual and corporate clients requiring a high-end legal service.

QUESTION ONE

Globally, governments are taking measures to lessen pressures on over-stretched court systems. How is your jurisdiction changing its approach to disputes?

Malta is a small country with a population of 500,000. Recently, a newspaper reported that there are slightly over 15,000 pending court cases in Malta. From my experience, a case in Malta would take two to three years to be decided in the court of first instance. If there is an appeal, the problem is dramatically increased. An appeal may be appointed until recently 3 years after it has been filed. Recently there has been an improvement, but the problem still exists.

There have been a number of attempts to decrease the pressure on the law courts, either by creating an administrative tribunal or else imposing forced arbitration and mediation.

I will be describing some of these measures. In 1995 the Small Claims Tribunal Act was introduced. Small Claims Tribunals were set up in order to listen to and decide on money claims which had a small value. Today the claim limit is 5,000. Before, such claims were dealt with by the lower courts. Therefore, since 1995, the courts have been relieved from claims with a small value, except on some occasions with more complex legal cases.

The Courts were burdened with a number of administrative cases, which dealt with decisions taken by public authorities. Throughout the years, a number of administrative tribunals were also set up. In 2007, the Administrative Justice Act was enacted which collected the competencies of these administrative tribunals and the competencies of the court in administrative matters in one tribunal, the Administrative Review Tribunal. The Tribunal now deals with issues concerning taxes, import duties, VAT, and the Malta Communication Authority decisions, just to mention a few.

As to arbitration and mediation, legislation has been enacted to force parties in disputes to take arbitration proceedings, instead of going to court. Such examples are cases dealing with civil damages in vehicle collisions. Therefore, damages caused to vehicles are handled by arbitration adjudicators. Personal injuries are excluded from arbitration and are still heard by the courts. Legislation also forced couples to go to mediation before proceedings for separation, divorce, or custody battles. This gives a chance for couples to possibly find a solution to their differences and reach an amicable solution before going to court.

QUESTION TWO

Are you seeing an increase in hybrid, multi-tier and carve-out dispute resolution clauses – and what impact is this having on commercial agreements?

Malta has the structure to offer parties alternative dispute resolution. Malta has an Arbitration Centre (www.arbitration.mt) and a Mediation Centre (mediation.mt). Admittedly they are not as popular as in other financial centres, however, they are there and they are efficient if one wants to make use of them. As such, I have not seen a shift from the traditional jurisdiction clause to the hybrid or multi-tier dispute resolution clauses.

Traditionally, the parties to an agreement will choose the jurisdiction under which the agreement falls, and the mode of dispute resolution. There are many agreements mentioning arbitration as the preferred mode of dispute resolution. However, the courts have held that irrespective of an arbitration clause, even if the arbitration clause mentions a different jurisdiction, the Maltese court may still have jurisdiction if one of the circumstances listed in our procedural law exists. Article 742 of the Code of Organisation and Civil Procedure lists those circumstances under which the Maltese Courts have jurisdiction. Therefore, there may be complex discussions on pleas of jurisdiction in court cases filed in Malta.

However, when advising clients to include such hybrid and multi-tier dispute resolution clauses when there is a Maltese element, one can safely say that it is legal and may be drafted in the agreement. It is enforceable in most circumstances.

"There have been a number of attempts to decrease the pressure on the law courts, either by creating an administrative tribunal or else imposing forced arbitration and mediation."

QUESTION THREE

How is litigation handled in your jurisdiction; both culturally and procedurally? Is ChatGPT being used in disputes in your jurisdiction, and what impact is this having on processes?

Litigation in Malta is as complex as in other jurisdictions. There are specific procedures on how actions are instituted and one has to take notice of certain aspects of the law such as prescription. Again, the law on prescription has its complexity. In general, damages cases are time-barred by two years, and commercial claims are time-barred by five years.

When one wants to file an action in Malta, one would file a claim in the form of an application, and one would have to choose the court. For example, if the case will be heard by the inferior or superior courts. If in the superior court, one would have to indicate whether the case will be heard before the general superior courts or else the specialised courts, such as the commercial court or else family law section.

As in many other jurisdictions, the plaintiff will have to present his or her evidence and when that is closed, the defendant presents his or her evidence. Once the evidence is closed, the lawyers for the parties present their submissions. Nowadays most of the submissions are done in writing, but they can be done orally too. The court would then defer the case for judgement, which judgement would be read out in open court, but also posted on the court's website.

As to ChatGPT, it has not become an issue at the moment, but I am sure it will be in the near future.

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Daniel Jimenez is founding partner of SLJ Abogados and is responsible for the litigation and arbitration department. Prior to founding SLJ he was a partner and Head of Litigation and Arbitration Department at the Madrid office of Ashurst.

He is a specialist in complex litigation matters, both nationally and internationally, and has taken part in several of the most important litigation and arbitration cases of recent years. He has extensive experience in disputes in the field of mergers and acquisitions, commercial disputes, intellectual property rights, partnerships, financial products, foreign Judgements and Awards. He is also a specialist in white collar criminal litigation.

His main sectors of activity are Banking, Hotels and Tourism, IT, Construction and Energy, and he has acted for multinational companies such as HP, IBM, Barclays, Santander, Goldman Sachs, Accor, Meliá Hotels International, Acciona, Globalia.

SLJ Abogados is an exclusive litigation firm. Our sole activity is the defence of our clients' interests in civil, commercial, bankruptcy and/or white-collar criminal cases. We are a litigation firm specialised in the settlement of disputes both in court and through arbitration or mediation.

We support our client throughout the entire processing of the case and involve ourselves in the client's problem as if it were our own. We work on complex and international matters and we are used to working with firms and lawyers in other jurisdictions. Before anything else, we will propose a full legal strategy and estimate costs associated with the case together with the possibilities of success.

QUESTION ONE

Globally, governments are taking measures to lessen pressures on over-stretched court systems. How is your jurisdiction changing its approach to disputes?

In recent years, Spain's judicial system, like those in many other jurisdictions, has faced a significant backlog. This issue has been further aggravated by the Covid-19 pandemic and strikes by judicial clerks. According to the General Council of the Judiciary, litigious activity rose by 7.5% in the third quarter of 2022 alone. During this period, a staggering 1,522,449 new cases were registered, with civil cases constituting the majority.

Procedural Efficiency Measures: A Government Initiative
To address these challenges, the Spanish Government introduced a bill aimed at enhancing procedural efficiency within the public justice service. However, the bill's progress has been stalled due to the current political climate, particularly following the elections on July 23, 2023. Once a new government is in place, the legislative process for this bill will recommence. The key objectives of the Procedural Efficiency Law are as follows:

- **Streamlining Procedural Steps**
  - In civil cases, the scope of matters eligible for oral proceedings, irrespective of the monetary value involved, has been expanded.
  - Judges are granted discretion to decide whether a hearing is necessary after evaluating the evidence.
  - The law allows for the issuance of oral judgements.
- **Addressing Mass Litigation**
  - A witness procedure has been introduced to handle cases with substantially identical claims and defendants, eliminating the need for separate processing.
- **Alternative Dispute Resolution (ADR)**
  - The law encourages the use of ADR mechanisms in civil cases. To be considered admissible, a claim must have previously undergone some form of ADR – be it mediation, conciliation, or a neutral expert opinion.
  - The subject matter of the ADR and the litigation must be identical, although the specific claims may differ.

The goal is to shift from a culture of litigation and judicial conflict resolution to one that prioritises negotiation and agreement, thereby reducing the overall volume of cases in the Spanish courts.

QUESTION TWO

Are you seeing an increase in hybrid, multi-tier and carve-out dispute resolution clauses – and what impact is this having on commercial agreements?

Until 2013, Spanish courts generally invalidated what are known as "hybrid clauses" in contracts. Specifically, clauses that allowed parties to choose between arbitration or legal jurisdiction were deemed null and void. This also applied to clauses that offered a choice between two national or international jurisdictions. The rationale was that such clauses did not demonstrate a genuine willingness by the parties to relinquish their own jurisdiction in favour of an agreed-upon decision-making body. This stance was rooted in the stipulations of Spain's former Civil Procedure Act and Arbitration Act, which required explicit submission to a specific jurisdiction.

A Shift in Legal Perspective: The 2013 Ruling
However, in 2013, a landmark ruling by the Provincial Court of Madrid changed this perspective. For the first time, the court upheld the validity of symmetrical hybrid clauses. The court reasoned that such clauses allow parties to defer their choice of dispute resolution mechanism until a conflict arises. This view was subsequently reinforced by judgements from the High Court of Justice of Madrid on February 18, 2019, and September 9, 2021. These rulings confirmed that the prevailing legal doctrine now favours the validity of such clauses.

Staggered Clauses: A Special Case
Staggered clauses have found application in Spain within long-term engineering or construction contracts, also known as "turnkey contracts." These contracts are characterised by their extended duration, undefined objectives at the outset, multiple stakeholders, and the desire to minimise disruptions in the event of disputes. Case law on this subject remains limited.

Carve-Out Clauses: A Practical Approach
Similarly, carve-out clauses are commonly included in construction contracts, given the inherent complexity of such agreements and the potential for technical disputes. These clauses enable quick and flexible resolution of technical disagreements that may arise during the contract's lifespan. This contrasts with waiting for each new dispute to be definitively settled through arbitration, an approach that could severely hinder timely and budget-friendly project execution.

The ramifications of poorly drafted clauses in commercial agreements can be severe. If such clauses lack clarity and conciseness, they run the risk of being declared null and void.

The Downside of Multi-Tiered Clauses
While multi-tiered clauses aim to facilitate a structured approach to dispute resolution, they can inadvertently extend the duration of the process. This is due to the multiple layers or stages that the parties must work through before arriving at a final resolution, potentially leading to inefficiencies and increased costs.

QUESTION THREE

How is litigation handled in your jurisdiction; both culturally and procedurally?

While the practice of dispute resolution through mediation is not as prevalent in Spain as in other countries, there is a growing trend toward alternative means of resolution. Increasingly, parties are opting for negotiation through their respective legal representatives before resorting to judicial intervention.

The Structure of Spain's Judicial System
Spain operates under a system of separation of powers, ensuring the judiciary's independence from the executive and legislative branches. The judicial system is divided into various jurisdictions, including civil, criminal, labour, administrative, and contentious-administrative courts. Within the civil jurisdiction, specialised commercial courts have been established, holding exclusive competence over matters such as antitrust violations, unfair competition, and challenges to corporate agreements.

The Litigation Process in Spain
Litigation in Spain follows a structured process that encompasses several stages: the filing of the claim, the defence, the evidence phase, and, if necessary, a trial. This culminates in the issuance of a court judgement. Parties have the option to appeal to a higher court, and a final appeal to the Supreme Court is also possible. However, legal proceedings in Spain can be protracted, often taking several years to reach a resolution, which can be a source of frustration for the parties involved.

QUESTION FOUR

Is ChatGPT being used in disputes in your jurisdiction, and what impact is this having on processes?

Absolutely, the advent of ChatGPT and similar AI technologies has indeed marked a transformative moment for the legal sector. While these tools have become increasingly useful for tasks such as preliminary research, document review, and even drafting, it's crucial to note that they are not yet fully reliable for nuanced legal advice or interpretation.

The Current State of AI in Law Firms
As of now, ChatGPT serves as a supplementary tool in law firms, aiding in tasks that would otherwise consume a significant amount of a lawyer's time. However, the technology is not yet at a point where it can replace the expertise and judgment that come with years of legal training and practice.

The Future: Specialised AI Tools for Law Firms
The legal industry is eagerly awaiting the launch of new, specialised products built on ChatGPT technology, such as Harvey, NetDocuments Max, and Thomson Reuters Case Text. These tools are expected to offer more targeted functionalities that will be highly beneficial for law firms. They could revolutionise areas like case management, legal research, and client engagement, among others.

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Abhishek Malhotra, Founding and Managing Partner, TMT Law Practice (having offices in Delhi, Mumbai and Bangalore), has two decades of experience in the primary areas of expertise, including intellectual property, competition law, commercial dispute resolution, technology, media and telecommunications. He has advised clients in minimising legal risks and devising strategies for safeguarding liability.

He has contributed to the policy realm by providing inputs to Governments and think tanks on copyright issues, sports and fantasy gaming, and Digital Health, and as a Principal Advisor to the Broadband India Forum on issues relating, inter alia, to satellite communication, competition law and data protection.

Mr Malhotra is a member of the Bar Council of Delhi and the State Bar of California, and also holds memberships of national and international professional associations.

Mr Malhotra is a guest lecturer at Indian Institute of Information Technology, the National Law School of India University, NUJS, Kolkata. He regularly speaks at conferences and forums of repute, including the National Judicial Academy in Bhopal, US India Business Council, Indo-American Chambers of Commerce, World Intellectual Property Office, The Observer Research Foundation, MediaNama, FICCI and CII.

He was an empanelled counsel with the Competition Commission of India between 15.4.2015 and 31.3.2017, and also engaged by the CCI merger approvals in the Intellectual Property and Privacy domain. He has contributed to books and papers on intellectual property, commercial space and policy, sports and gaming, music business, Telehealth, Data Protection, Cybersecurity, Artificial Intelligence, Intermediary Liability and E-Commerce.

TMT Law Practice in its second innings, is efficient, focused, and energetic. With diverse service offerings and representative experience to deliver the same, we are perhaps the only Law Firm in India that has subject matter expertise across all three sectors of Technology, Media, and Telecommunications. What further differentiates us from our peers is our ability to deliver the complete suite of high-quality corporate advisory, dispute resolution, regulatory and policy services in the TMT sectors.

The firm delivers an opinion on the applicability of OSP regulations to a financial service business, with as much ease as it advises on the incidence of liability with regard to use of certain spectrum frequencies in smart cars. We have represented clients in the first and only determination of rates of music royalty in the country, our lawyers have been engaged in the first case where John Doe orders were issued, we have helped set up at least 3 professional sports leagues in the country, and assisted franchises/teams/players in two other leagues in respect of their disputes/legal issues.

We are sought for high stakes and newsworthy arbitration, and also in leading disputes before the Competition Commission of India, the Telecom Dispute Settlement & Appellate Tribunal, the National Company Law Tribunal, the High Courts and the Supreme Court of India.

QUESTION ONE

Globally, governments are taking measures to lessen pressures on over-stretched court systems. How is your jurisdiction changing its approach to disputes?

The Government has taken the following measures to ensure access to easy, affordable and speedy justice:

- Introduction of the Commercial Courts Act, 2015 – where special courts have been set up to deal only with commercial disputes. The same legislation prescribes requirements for pre-litigation mediation, strict timelines for filing of pleadings, and a robust summary judgement procedure to address the ever-growing commercial disputes.
- Similar changes by way of strict timelines and very limited grounds of challenge to the award, have been introduced via amendments to Arbitration and Conciliation Act, 1996.
- A greater number of judges have been appointed and court infrastructure has received a massive boost with additional courtrooms, and the use of AI for pre-hearing proceedings and translation of judgements in vernacular languages. The Supreme Court of India has also attempted to streamline the listing of cases by giving primacy to bail petitions and matrimonial transfer cases, which account for a major portion of the pending cases.
- The Government has also launched the e-Courts Integrated Mission Mode Project in the country for computerisation of district and subordinate courts, with the aim of using technology to improve access to justice. Under this project, video conferencing equipment has been supplied to all courtrooms, increased bandwidth and connectivity has been provided to court complexes, a centralised database of judicial orders and judgments has been created, and real-time access to case status is provided on the website of each court.

QUESTION TWO

Are you seeing an increase in hybrid, multi-tier and carve-out dispute resolution clauses – and what impact is this having on commercial agreements?

With the increased thrust on pre-mediation of commercial disputes as a result of legislative amendments, courts are encouraging parties to attempt out-of-court/amicable settlement of disputes. In view of the above, and also in line with international trends, parties are increasingly choosing to include multi-tier arbitration clauses, requiring an attempt to negotiate/amicably resolve a dispute, before it can be referred to arbitration. Fewer parties opt to have "carve-outs", excluding certain disputes from the scope of arbitration, in view of the judicial trend of construing arbitration clauses in a wide manner [Renusagar power Co. Ltd vs General Electric Company and Anr. (1984) 4 SCC 679].

QUESTION THREE

How is litigation handled in your jurisdiction; both culturally and procedurally? Is ChatGPT being used in disputes in your jurisdiction, and what impact is this having on processes?

India's legal culture has traditionally been focused on rendering justice, and courts refrain from excessive reliance on procedure.

To this end, courts across the country have begun to digitise several aspects of litigation procedure, with e-filing, e-inspection etc. being the norm across several high courts. The Delhi High Court has recently also passed orders permitting live transcription of evidence proceedings, while the Supreme Court has put in place AI-powered live transcription of arguments, which will then be published on the official website and forwarded to the concerned counsel.

While the Punjab and Haryana High Court has recently used ChatGPT in a bail proceeding (assessing the jurisprudence in cases where cruelty is a factor), the use of the technology has not yet become widespread in the Indian judicial system.

TOP TIPS

Navigating a dispute in India

- Do your diligence in choosing the right lawyer.
- Opt for arbitration wherever possible.
- Have a strategy for the short-term and long-term disposition of the dispute.

"With the increased thrust on pre-mediation of commercial disputes as a result of legislative amendments, courts are encouraging parties to attempt out-of-court/amicable settlement of disputes."

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Stephen Wilson KC was called to the Bar of England and Wales in 1990 and practiced successfully from chambers in London for 11 years before moving to the Turks and Caicos Islands (TCI) in 2001.

At the London Bar he had a general civil and commercial practice, specialising in employment law. In 2012, Stephen was asked to open the new Turks and Caicos Islands office of the Bahamian law firm of Graham Thompson, the firm's first office outside the Commonwealth of the Bahamas. For 11 years, he was a partner and head of that firm's Litigation and Dispute Resolution Practice Group in the TCI.

Stephen was appointed one of His Majesty's Counsel, Learned in the Law (King's Counsel) in 2013 and has served as a Commissioner of the Turks and Caicos Islands Integrity Commission since 2020.

Wilson Wells' team of experienced attorneys has a track record of delivering results for our clients, whether they are facing complex legal disputes, require comprehensive advice on resort and hotel planning development, navigating the intricacies of business law, or simply need representation on a straightforward property transaction. We understand that the legal landscape can be daunting, and we're committed to making the process as smooth and stress-free as possible for our clients.

Instead of adopting the approach taken by most lawyers of addressing what they see as clients' 'legal issues', we understand that our clients actually come to us with business or personal problems. As a result, we approach every case with a focus on finding practical, cost-effective solutions that meet our clients' goals.

QUESTION ONE

Globally, governments are taking measures to lessen pressures on over-stretched court systems. How is your jurisdiction changing its approach to disputes?

The Constitution of the Turks and Caicos Islands (TCI) provides for a judiciary that is independent of the country's government (in common with the United Kingdom and many other common law jurisdictions). As such, is it generally the Chief Justice, as the head of the judiciary, rather than the government that initiates any measures to improve the court system, though it is ultimately the government that funds any such changes.

In November 2020, the Chief Justice of the Turks and Caicos Islands (TCI) formed the Civil Procedure Rules Technical Team to review and overhaul the country's procedural rules applicable to civil and commercial litigation. I was appointed a member of the team and over the course of November 2020 to January 2023, we drafted new civil procedure rules. They are currently being reviewed but their aim is to move away from the old system, which mirrored the civil procedure in England and Wales in 1999, and to modernise the whole system in the way that the Woolf reforms hoped to achieve in England and Wales, and which many Caribbean jurisdictions have subsequently followed and, to a large degree, improved upon.

Recognising the benefits of dispute resolution that were forced upon us by the Covid-19 pandemic, many of the 'temporary' reforms made in 2020 (such as remote hearings, and service by email) have remained and are likely to be incorporated in the new rules.

We also now have an electronic filing system for cases before the Supreme Court, which reduces paperwork and allows for more efficient collation of documents at the Supreme Court Registry.

Finally, though no less importantly, the TCI government has recognised the need for and has funded the recruitment of additional Supreme Court judges to hear cases.

QUESTION TWO

Are you seeing an increase in hybrid, multi-tier and carve-out dispute resolution clauses – and what impact is this having on commercial agreements?

The simple answer to this is "no". Domestic commercial agreements in the TCI continue, in general, to promote dispute resolution by informal means in the first instance and then either arbitration or litigation before the Supreme Court.

That said, as of 15 October 2021, the TCI's Court Connected Mediation Rules 2021 came into effect and apply to disputes other than insolvency proceedings and non-contentious probate proceedings. Both magistrates and judges are encouraged to refer parties to mediation. As a firm, we too encourage clients to consider mediation, but regrettably, there continues to be a very real shortage of qualified mediators in the jurisdiction.

QUESTION THREE

How is litigation handled in your jurisdiction; both culturally and procedurally? Is ChatGPT being used in disputes in your jurisdiction, and what impact is this having on processes?

Litigation continues to be the dominant form of dispute resolution in the TCI, principally because the arbitration law here is so antiquated; there are no arbitration bodies; and a very real dearth of qualified arbitrators.

Culturally and procedurally, it is an adversarial system, based on the system followed in England & Wales that is generally used across the Commonwealth, with the vast majority of trials taking place before judges alone. Though there currently remains a right to a trial by jury in civil cases, it is almost never used.

Litigation in TCI is influenced by culture and procedure in several ways, such as:

- The parties are responsible for presenting their own case and challenging the other side's case. The judge acts as an impartial arbiter who decides on the facts and the law.
- The law is based on precedents from previous cases, rather than codified statutes. This means that litigation can be unpredictable and complex, but also flexible and adaptable.
- The parties have a duty to disclose all relevant documents to each other, even if they are detrimental to their own case.
- Litigation can be expensive and time-consuming, especially in complex or high-value cases. The parties may have to pay for legal fees, court fees, experts, etc.

Litigation in TCI involves:

- Choosing a court: there are different courts for different types of disputes, such as the Labour Tribunal (for employment disputes), the Magistrate's Court (for claims up to $10,000 and certain domestic proceedings, amongst other things) and the Supreme Court (which has the same jurisdiction as the High Court in England and Wales).
- Initiating proceedings: in the Supreme Court, the plaintiff currently issues a writ (which is supplemented by a statement of claim), originating summons, originating motion or petition, setting out the basis of the claim and the remedy sought.

The defendant responds in different ways depending on the nature of the originating process, but usually admitting or denying the allegations made by the plaintiff.

- Disclosure: in cases begun by writ, the parties are required to disclose relevant documents to each other.
- Witness evidence: in cases begun by writ, the parties are usually required to exchange written statements from witnesses whom they wish to give evidence and expert reports (if any). In other cases, evidence is provided by way of affidavits.
- Trial: the parties present their arguments and evidence at trial to a judge, who then decides the outcome of the case and either dismisses the claim or awards the appropriate remedy.
- Costs: in TCI, the general rule is that costs follow the event, so the losing party usually pays the winning party's legal costs of the winning party.
- Enforcement: in cases where a party has been awarded a remedy, that party may enforce it by various methods depending on the remedy. Judgements for the payment of money can be enforced by the seizure of assets, obtaining a charging order against real property, seeking the garnishment of debts, etc.

TOP TIPS

Navigating a dispute in your jurisdiction

Be organised during the performance of your contract. It is often said that "documents win cases" or "if it isn't in writing, it didn't happen". Maintaining a clear and complete record of communications with the other party or parties to your contract can be invaluable in the event of a dispute.

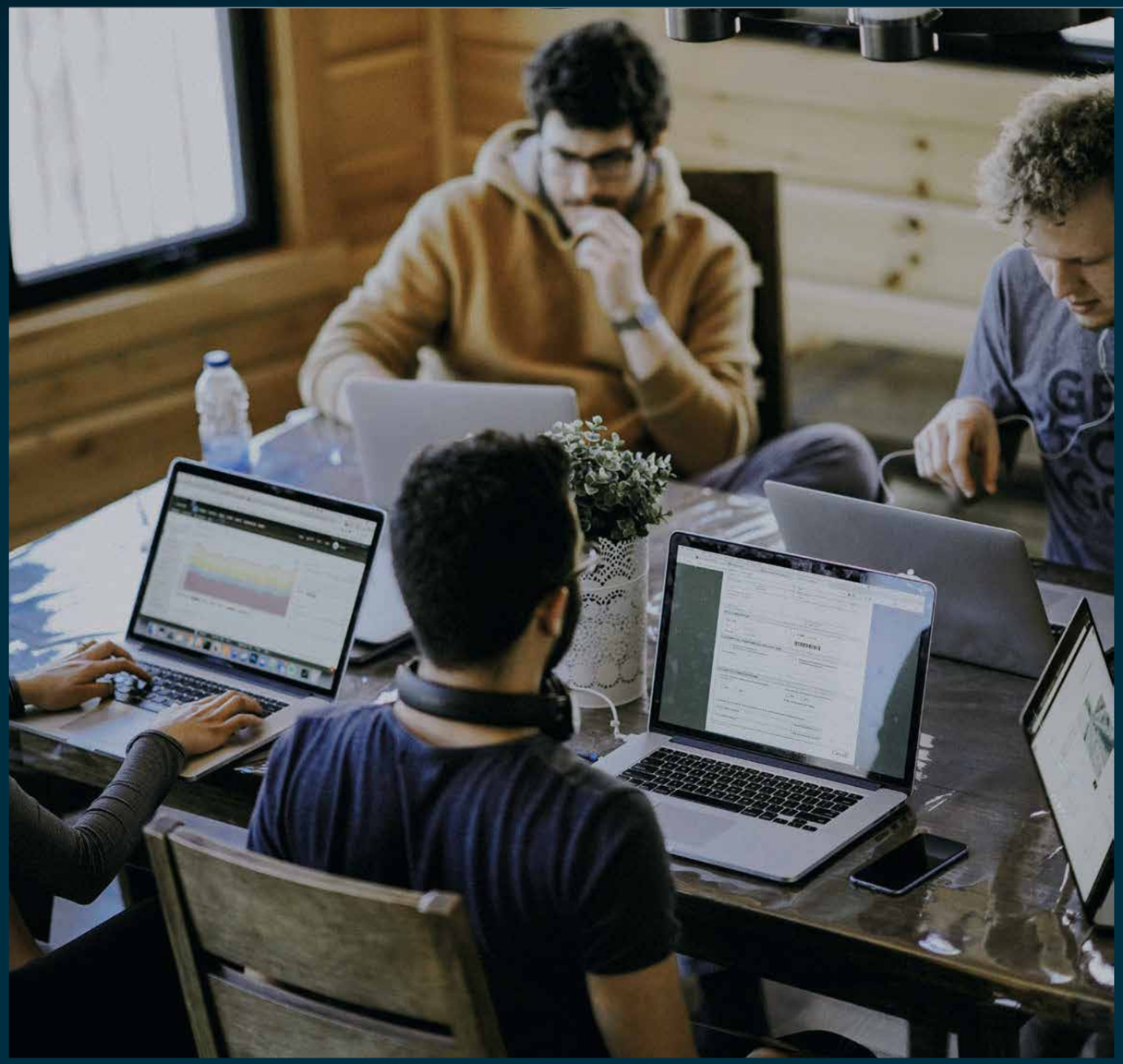
Keep all lines of communication open. Open and frank communication can often be key to avoiding a dispute as well as finding an amicable solution. If the key persons with the day-to-day relationship can no longer communicate without hostility, consider moving up the discourse to more senior personnel. If that fails...

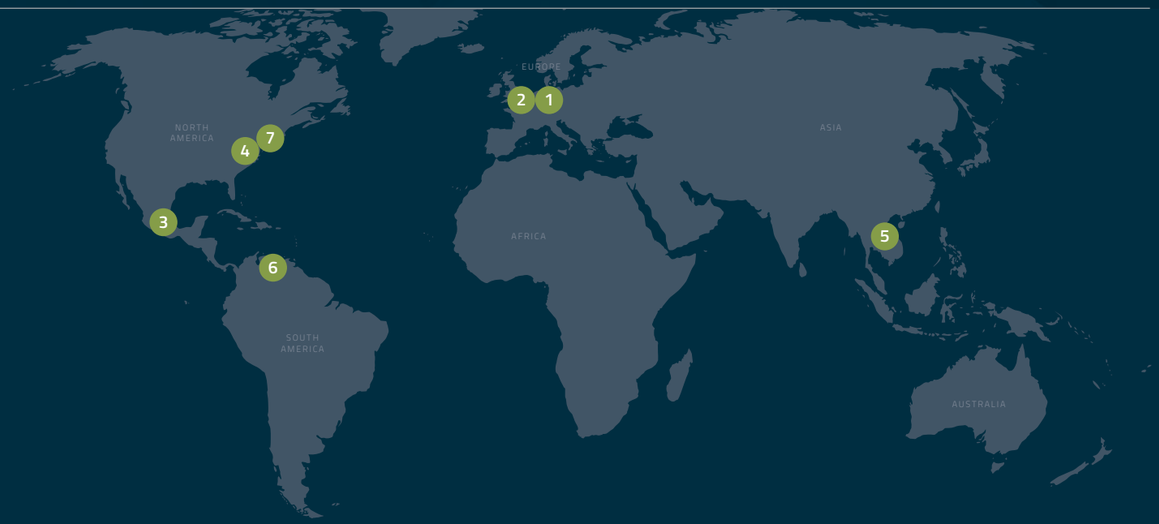
Consider mediation or other non-litigious dispute resolution. Involving a professional, trained, neutral third party (or parties) can bring an independent and objective view to bear on the dispute and allow both sides to air their views without necessarily directing hostility at each other.

Take legal advice early. Ensure you understand your obligations under the contract in question, how disputes should be dealt with and how to preserve your rights. Do not be put off by an attorney's hourly rate. Experienced attorneys often take less time to handle issues and can be more cost-effective than someone charging a lower rate.

Employment

Our Employment members discuss the global shift to more ‘progressive’ workplace practices and how employment law is changing to reflect this. They share their thoughts on how employee expectations are influencing employer practices and whether they are seeing a resistance to change or embracing new ways of working.





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Bonn & Schmitt is one of the leading independent Luxembourg full-service law firms with an extensive local and international practice. The firm is a trusted legal partner of leading international business and financial institutions, industrial corporations, international organisations, as well as national and foreign public entities and organisations. We also advise the Luxembourg State, Luxembourg local authorities, as well as Luxembourg regulatory bodies.

A series of profound changes have affected Luxembourg labour law, accentuated by the health crisis leading to a general awareness of workers' needs. Luxembourg labour law provides fundamental protection for workers' rights, and aims to ensure that workers are protected from illegal behaviour in the workplace, and that they enjoy a healthy and stable working environment. Employers benefit from assistance to help their businesses grow, while being obliged to comply with the rules.

In general, Luxembourg's labour laws are unwavering, and its main aim is to ensure a balance between employers and employees.

QUESTION ONE

There has been a global shift to more 'progressive' workplace practices: how is employment law changing in your jurisdiction to reflect this?

Progress in teleworking

Given the increase in cross-border teleworking and the increasing flexibility and digitalisation of the labour market, a new framework agreement in the field of social security was signed on June 5, 2023.

As a result, the declaration of teleworking by cross-border workers has changed, with the teleworking threshold above which cross-border workers must join the social security scheme of their state of residence rising from 25% to 50% on July 1, 2023.

The agreement allows cross-border workers to telework more in their state of residence, while remaining subject to the social security legislation to which they are subject. Working time in the state of residence may not exceed 50% of the employee's total working time.

This new agreement is an important step towards deeper integration within the European Union, by promoting the free movement of people within the Union, while preserving their right to social security.

Through this new agreement, Luxembourg is contributing to the creation of a favourable environment for cross-border workers, who will be able to benefit from new ways of working that avoid long commutes, and thus achieve a better work-life balance, and is committed to promoting cross-border mobility.

Modernising Luxembourg labour law through the right to disconnect

The importance of finding harmony between private and professional life remains a major contribution in Luxembourg.

Increasing digitalisation and the diversification of IT tools for professional purposes are leading to hyper-connection among employees, gradually blurring the line between private and professional life. To protect employees, a new law of June 30, 2023, entered into force on July 4, 2023, introduced a right to disconnect outside working hours into the Labour Code. In the case of non-compliance with the new regime by the employer, the Director of the Inspectorate of Labour and Mines (ITM) may impose administrative sanctions.

A new section relating to the protection of employee health and safety is included, establishing a separate regime to protect employees' right to disconnect outside working hours.

A new bill on transparent and predictable working conditions

Given the profound changes in the labour market due to demographic change, it has become necessary to promote more transparent and predictable employment, by improving workers' access to essential information applicable to their employment relationship, guaranteeing minimum requirements applicable to working conditions and ensuring the application of the relevant rules in domestic law.

A new bill, introduced in the Chamber of Deputies on September 7, 2022 and currently in committee, aims to transpose Directive 2019/1152 of the European Parliament and of the Council of June 20, 2019 on transparent and predictable working conditions in the European Union. This bill will impose new obligations on employers, requiring them to review their model employment contracts and internal procedures.

The ultimate aim of this bill is to improve working conditions while promoting more transparent and predictable employment and ensuring the adaptability of the labour environment.

Work-life balance for employees

The balance between private and professional life is a major challenge for many employees with family responsibilities. The initiative taken is to introduce the possibility for parents to request greater flexibility in order to adapt their daily rhythm to the working rate (e.g. telecommuting, more flexible working hours, shorter working hours).

With the same aim of allowing employees to reconcile their professional and private lives, the two laws of June 6, 2022 introduced three new types of leave for this purpose.

Three new types of leave

In the event of marriage, birth, civil partnership, moving house or the death of a loved one in certain cases, employees benefit from extraordinary days of leave. Two new laws concerning the work-life balance for parents and carers have been passed, corresponding to the introduction of three new types of extraordinary leave.

The Chamber of Deputies voted the law on August 15, 2023 which has been published on August 17, 2023, and entered into force on August 21, 2023, introducing two new forms of leave, aimed at reconciling personal and professional life, by granting, in the first instance, one day of leave per year, which may be requested in cases of force majeure. In a second phase, the same bill also provides for a "leave to assist" (caregiving leave) to accompany or help a member of the family or domestic member. Five days a year may be taken for this purpose.

Until now, access to extraordinary leave in the event of the birth of a child was reserved only for the father of a child born to a couple of different sexes. The second law of July 29, 2023 concerning the work-life balance for parents introduces extraordinary leave in the event of the birth of a child, entered into force on August 22, 2023 and introduces leave for the birth of a child for the second parent of a same-gender couple recognised as the second parent.

QUESTION TWO

How are changing employee expectations influencing employer practices? Are you seeing a resistance to change, or are organisations largely embracing new ways of working?

As demonstrated above, Luxembourg adopts new labour laws regularly, which are constantly evolving and strive to ensure that employees' expectations are taken into account to create a balanced and pleasant working environment.

New rules are negotiated between the government in consultation with workers' and employers' representatives, ensuring that the rights and duties of each are respected in order to preserve their interests.

It is essential for companies to adapt their working environment in order to keep their employees, but also to meet the demands of potential future candidates. Especially as employees' expectations of their employer have evolved, just like their relationship with work itself. Companies therefore need to develop a message that will appeal to both employees and future candidates.

QUESTION THREE

Are there any financial or commercial issues relating to workplace reforms that employers should be aware of?

Combating moral harassment

The law of March 29, 2023 (hereinafter referred to as the "Law") introduced a system of protection against moral harassment in the workplace. The Law provides a number of obligations for employers, as well as sanctions and enhanced protection for employees. The Law covers an existing legal gap and brings it into harmony with the laws of many European Union member states, like France, Germany and Belgium. Harassment (moral, sexual and discriminatory) is still a major problem in our society today.

The Law also aims to protect employees who protest or refuse to engage in harassment. It is intended to give the greatest possible protection to employees who are victims of moral harassment, especially as it covers acts committed both during working relationships and in the context of business travel, professional training, or even any work-related or work-induced communications. The law encourages harassed employees to speak out and employers to act, at the risk of sanctions.

Protection for whistleblowers

Finally, one of the most important laws adopted which could promote fundamental changes for the companies concerned, is the law of May 17, 2023, entered into force on May 21, 2023, aimed at introducing general protection for whistleblowers. A whistleblower protection mechanism has been introduced protecting whistleblowers against all forms of reprisals, including threats and attempted reprisals, that they could face as a result of disclosing information about violations. Whistleblowers will also benefit from protection against all types of reprisals, provided that the report was made in good faith.

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Sofie Vandermeersch is one of three partners of BUYSSENS Employment Lawyers. Admitted to the Antwerp Bar in 1998 and also a member of the Antwerp Employment Law Association, Sofie Vandermeersch specialises in employment law and all related aspects of business, company and criminal law. She has broad expertise gained over 25 years in the various domains of individual and collective employment law, as well as social security law. She assists both companies and employees with advisory services and in (appeal) court proceedings.

Buyssens Employment Lawyers is a Belgian boutique law firm based in Antwerp specialising in employment law and social security law, including complementary pensions. In addition, we also advise on contracts between self-employed persons and competition issues. Founded in March 2017, its partners have over 80 years of collective experience, providing the best guarantee for both efficiency and high-quality work. However, our focus on employment law does not prevent our lawyers from focusing on other legal disciplines encouraging "out of the box" thinking and generating new insights. From businesses of all sizes to private individuals with a business profile, we understand both sides of the story and want to keep doing that.

QUESTION ONE

There has been a global shift to more 'progressive' workplace practices: how is employment law changing in your jurisdiction to reflect this?

In this regard, two important legislative changes took place in Belgium in October 2022. On October 3, 2022, the Labour Deal was concluded and on October 7, the European Directive on transparent and predictable working conditions was partially transposed into Belgian law.

The objective of the labour deal is twofold: to reform labour law to respond to new ways of working (teleworking, e-commerce, platform economy) while allowing more flexibility for both employer and employees and ensuring a better work-life balance, and contributing to the much-needed increase in the employment rate to 80% by 2030. On that, the government concluded a pension deal in July 2023. The bottom line is that those who work more and longer will receive more pension.

In terms of flexibility, employees now have the option of performing their full-time job in a four-day week and may arrange their working time in cycles of two consecutive weeks, e.g. working 45 hours in one week, but only 31 hours in the other. Employers are also no longer allowed to prohibit working for other employers in the course of an employment relationship, unless it would be for a competitor, of course. More training should be offered for free, with no financial repercussions if the employee later decides to leave. Employees may also ask for work with more predictable and secure working conditions. This is subjective and depends on the needs of each individual worker. On the one hand, there may be a need for more security: an employment agreement for an indefinite period rather than a fixed term, a full-time rather than a part-time employment contract, more and or more consecutive working hours, a fixed rather than a variable hourly schedule, and if it remains a variable hourly schedule, one with better schedule predictability. On the other hand, there may be a desire for more flexible work arrangements, e.g. to take care of a child or a family member in need. Then one may ask for telecommuting, a work schedule adjustment or a reduction in working hours.

Another new measure from the labour deal is the "right to disconnect". That means that an employee has the right to be disconnected from digital tools for work outside of work hours.

QUESTION TWO

How are changing employee expectations influencing employer practices? Are you seeing resistance to change, or are organisations largely embracing new ways of working?

When talking about more flexibility for employees, we already saw that as a result of the Covid-19 pandemic, remote working has become an expectation for employees, which most companies embraced. We all felt we reached a better work-life balance, we became more attractive for candidate-employees and we were able to retain existing employees better. With the war over talent still out there, this is a benefit not to be underestimated. But what we start to see in our practice now is that many companies believe that the balance is starting to tip. Let there be no doubt that increased flexibility for employees means for companies increased complexity in the organisation of the work and the workplace. This requires not only a mind shift at board, management and HR tables, but above all good agreements, not only individually, but also collectively in the form of collective bargaining agreements, work regulations and policies.

In Belgium, the implementation of this and other progressive workplace practices is largely left to the social partners. In order to meet the legitimate concerns of employers, the resulting interprofessional collective bargaining agreements take this into account as far as possible. We therefore always advise our clients to make full use of the possibilities offered by the Belgian regulations.

First of all, employees must already have a certain track record with the employer before being eligible for more flexible work arrangements. A seniority of 6 months is sufficient. The employee must also comply with a number of formalities when applying. The application must be in writing, timely and sufficiently specific to allow the employer to substantively assess and respond to the application, taking into account both the interests of the company and the needs of the employee. This means that the employer does not need to simply accept any application. He may refuse, postpone or counter-propose. Of course, this must be motivated. Only concrete and justified reasons related to the functioning of the company are considered. Possible reasons could be: there is no work available with more predictable or secure working conditions, the employee lacks the required qualifications or competencies for this kind of work, the resources or operational capacity of the company would be compromised, it's only possible if the employee accepts the existing work organisation or modified salary conditions, etc.

If the parties fail to reach a mutual agreement, at the request of either party, a dialogue can be initiated at company level or even at a sector level as part of the social dialogue to agree on specific arrangements in terms of modalities and possibilities, so that this can be better streamlined in the future.

TOP TIPS

Navigating workplace reforms in your jurisdiction

- Progressive workplace practices are inevitable. Don't wait for them to be imposed from above or outside, but think proactively about how to implement them in your company in the best possible way. Involve your workforce and the consultative bodies in your company.

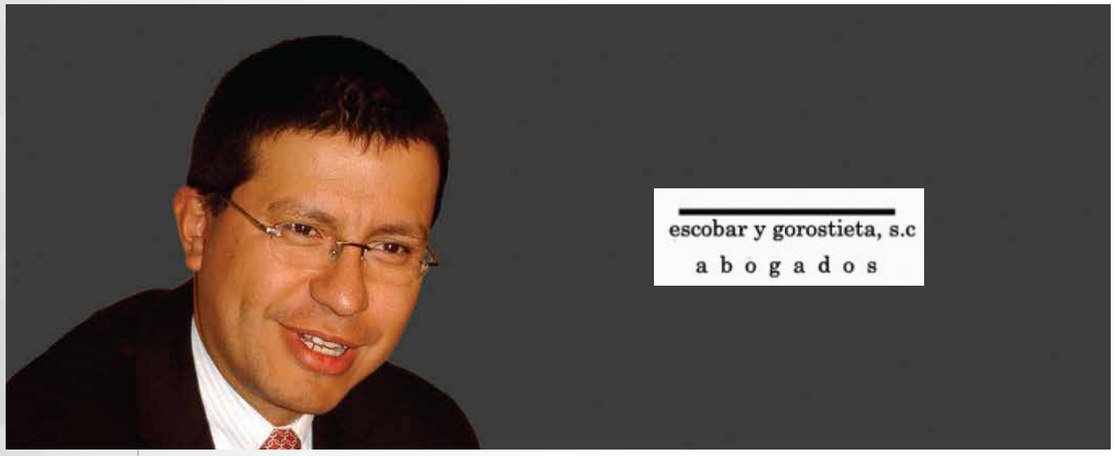
QUESTION THREE

Are there any financial or commercial issues relating to workplace reforms that employers should be aware of?

In exercising the right to request more security, predictability or flexibility in work, protections for the employee were built in. An employee may not be dismissed or otherwise disadvantaged for reasons relating to the exercise of his rights. For example, the request may not constitute grounds for a unilateral change of job or working conditions, and the employee must retain the right to normal promotions and incentives.

If the employee can provide facts that make it plausible that his rights have been violated, it is up to the employer to prove otherwise. The regulations thus provide for a reversal of the normal burden of proof. If the employer fails to meet this burden of proof, he risks having to pay, by way of damages, a protection compensation of 2 to 3 months' wages in the event of a negative action and 4 to 6 months' wages in the case of unlawful dismissal. In certain cases, violations may be considered discriminatory.

"Let there be no doubt that increased flexibility for employees means for companies increased complexity in the organisation of the work and the workplace."



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Edmundo Escobar y Gorostieta holds a law degree from the Universidad Autónoma de México (UNAM), and has specialised studies in Civil Law, Administrative Law and Taxation from the Universidad Panamericana.

He studied Public Accounting at the Instituto Tecnológico Autónomo de México, and has a Diploma in Administration for Lawyers from Yale University. He has been a professor for more than ten years at the Law School of the National Autonomous University of Mexico (UNAM).

He has participated as a specialist in non-conventional forms of employment before the ILO. He chaired the Mexican Association of Human Capital Companies A.C. (AMECH) for the period of 2017-2018.

He has more than 34 years of experience in human capital management of companies, including selection, recruitment and personnel management. He is a member of the Mexican Bar Association (BMA), the International Bar Association (IBA), and the International Fiscal Association (IFA).

Escobar y Gorostieta, S.C. is a specialised law firm with 29 years of experience in labour law, primarily serving businesses and government agencies as employers.

- **Labour Law Services:** Preventive & Corrective Advice: Guidance to avoid or correct legal issues; Litigation Representation: Legal representation in labour disputes; Labour Relations & Conflict Resolution: Management and resolution of labour relations and conflicts; Hiring Schemes & Risk Analysis: Consultation on employment agreements and risk evaluation; Training & Restructuring: Customised training for legal/HR and guidance through mergers or acquisitions.
- **Specific Labour Law Services:** Crafting contracts, handling profit sharing, employer substitutions, pension plans, non-competition agreements, and industrial secrets; Nullity and amparo proceedings.
- **Administrative Law Services:** Government representation, assistance with permits, public bids, and regulatory updates.
- **Personal Data Protection Services:** Training, risk identification, security measures, process improvement, complaint management, and defense before the IFAI.

A significant reform to the Federal Labour Law (LFT) was the reform of 2019. This initiative focused on strengthening workers' rights, boosting union transparency, and encouraging democratic practices within labour groups. The Federal Labour Law underwent amendments, such as new collective bargaining rules and updated conciliation and arbitration procedures.

These changes followed the adjustments to NAFTA under the USMCA. Mexico's Congress established the Independent Mexico Expert Labour Board, concluding that up to 75% of collective bargaining agreements were fictitious, not genuinely representing workers' interests.

Union Freedom and Democracy

- Workers can now choose to join, switch, or leave a union without facing discrimination or retaliation.
- Workers can also participate in essential union decisions through a personal, free, direct, and secret vote. This includes electing officers and approving collective labour contracts and revisions.
- The reform prohibits voting by show of hands or through delegates and mandates gender-proportional representation. Any irregularities will result in voiding the election, followed by a re-organisation.

The union must also prove support from at least 30% of the workers before negotiating a collective bargaining agreement. Employees must approve any agreements made between the union and the employer.

Creation of a New Labour Justice System
The Federal Labour Law was revamped to form a new labour justice system, focusing on modifying labour conciliation instruments. This substantial change required three years for full execution, dissolving the Conciliation and Arbitration Boards and initiating conciliation centres and federal and state labour courts.

Rights for Domestic Workers
In 2019, a reform recognised domestic workers' rights, including a written contract, Christmas bonus, and vacations. By the end of 2022, the right to social security was also acknowledged for this group, following successful pilot programs by the Mexican Social Security Institute (IMSS).

Covid-19 Pandemic Response
Mexico adapted its employment laws to the challenges of the Covid-19 pandemic, including guidelines on remote working. By the end of 2023, Mexican Official NOM 037 will be fully enforced. The new standard ensures proper internet access, reliable electricity, lighting, and ergonomic setups for remote workers, along with risk prevention strategies, including isolation, as well as the right to disconnect.

Outsourcing Regulations (2021)
New laws in 2021 restricted outsourcing to specialised services outside the company's core activities. Contractors must register with the Register of Specialised Service Providers (REPSE) and adhere to labour, tax, and social security regulations. Reform placed more responsibility on businesses to ensure their contractors comply with labour, tax, and social security obligations. Every four months, contractors must submit a report on their concluded contracts to the REPSE, Housing Fund (INFONAVIT), and to the IMSS. Simulating the provision of specialised services will be considered tax fraud.

Access to IMSS Daycare Centers for Working Fathers
In 2020, social security legislation in Mexico was adjusted to recognise the right of working fathers to utilise IMSS daycare benefits for their children. Before this change, only working mothers were eligible for this benefit.

Employment of Minors in Agriculture
Following the upheaval surrounding subcontracting reform, a change was made to the Federal Labour Law (LFT) allowing the employment of adolescents aged 15 to 17 in the agricultural sector. This employment is conditional on the work being non-hazardous, and it must not involve handling chemicals, machinery, heavy vehicles, or other activities deemed unsafe by the appropriate authorities.

Social Security Benefits for Same-Sex Couples
In late 2022, the Mexican Congress passed legislation allowing same-sex couples access to all social security benefits, including pensions and daycare centres, following the official recognition of civil unions between same-sex couples.

Pension Reform
Mexico's pension contributions, some of the world's lowest, are set to increase from 5.15% to 13.87% by 2030. Other changes include reducing the required working weeks to qualify for a pension and increasing the minimum pension amount.

Vacation Days
Effective January 1, 2023, Mexico has increased paid vacation days. employees with at least a year of service will receive 12 paid vacation days annually instead of six. This allotment will increase by two working days for each subsequent year of employment until it reaches 20 days. After six years, paid vacation days will increase by two days for every five years the employee continues to work at the same job.

Minimum Wage
In 2021, a provision ensured that annual minimum wage increases would never fall below inflation. The minimum wage has grown 134.78% in five years, with a unique rate for the northern border area.

Future changes

- **40 Hour Workweek**

A proposal for constitutional reform to shorten the workweek from 48 hours to 40 hours has already been introduced. Although it's unlikely to be passed this year, the topic is actively under discussion. It continues to make headlines and is expected to eventually be approved.

- **Labour on Digital Platforms**

In the previous year, the Ministry of Labour and Social Welfare (STPS) announced its efforts to draft a reform for the Federal Labour Law, aiming to oversee work on digital platforms. This draft includes a specialised chapter in labour legislation.

Over 20 proposals related to this subject have been sent to the Congress of the Union, with workers, unions, and collectives also contributing their own suggestions. Nevertheless, a finalised draft has yet to be debated.

TOP TIPS

Navigating workplace reforms in your jurisdiction

Navigating the labour reforms in Mexico may require understanding and adapting to several key areas. Here are four tips that might help businesses and workers alike:

- **Adapt to New Workers' Rights Provisions:** Embrace the strengthening of workers' rights, including the rights of domestic workers, same-sex couples, and minors in agriculture. Implement clear policies that reflect these changes and ensure that employees are informed about their rights and responsibilities.
- **Invest in Remote Work Infrastructure:** Given the Covid-19 pandemic response guidelines, businesses should invest in proper remote working setups, including internet access, lighting, ergonomic setups, and risk prevention strategies. Consider the right to disconnect and implement policies that promote a healthy work-life balance.
- **Prepare for Potential Future Changes:** Keep an eye on proposals, such as the potential 40-hour workweek and digital platform labour regulations, as these may affect operational practices in the future.

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Mark D'Alelio has over 14+ years of experience in ASEAN and specialises in general corporate and commercial practices, which includes advising on acquisitions and dispositions, commercial contracts, joint ventures, labour law and local regional compliance requirements, real estate guidance for developers and hospitality providers along with his experience in the energy, power, and project financing sectors. Mark has extensive experience handling cross-border transactions in the ASEAN region, including advising and representing major companies and business groups from Singapore, China, and Thailand with foreign direct investment into Myanmar. Mark is a recognised lawyer for his work in Thailand, Myanmar, and Vietnam.

Mark is a member of the Bar in New York and Massachusetts, U.S.A.

LEGAL ASEAN was started by Mark D'Alelio with a focus on providing practical and business-related legal services to assist clients in navigating through local regulations and practices in ASEAN, with a particular focus in Thailand, Myanmar, and Vietnam.

The firm's unique selling proposition is that we listen to our clients' needs and partner with them in their business by administering compelling legal and practical solutions to meet their requirements.

Put simply, we believe there are many ways to act as a legal adviser, but we feel strongly that a bigger firm does not necessarily equate to providing a better service or response. We administer our business by putting our clients at the forefront by providing dedicated support with a singular focus on helping our clients meet the requirements of doing business in ASEAN.

That means we provide more for less to our clients.

QUESTION ONE

There has been a global shift to more 'progressive' workplace practices: how is employment law changing in your jurisdiction to reflect this?

As with many other jurisdictions across the world, the employment dynamic in Thailand has evolved not only as a result of Covid-19, but also due to the implementation of Thailand's Personal Data Protection Act BE 2562 (effective as of 1 June 2022) (the "PDPA").

First, in regard to the pandemic, the Thai government encouraged (although it was not compulsory) companies to promote and follow a "work from home" policy, which had a certain impact on the employment market and is now reflected in the employment legal landscape going forward.

The Labour Protection Act (No. 8) B.E. 2566 (2023) (effective as of 18 April 2023), introduced new legislation relating to work-from-home requirements. The new legislation permits an employer and an employee to mutually agree on a work-from-home framework. Although it is not an obligation for an employer to propose the possibility of working from home to its employees, if the employer does propose it, a work-from-home arrangement shall be made in writing between the employer and the employee (details that must be included in this agreement include working hours, criteria for overtime work, and details on the provision of material necessary for an employee to work from home).

This new legislation also expresses two important rights for employees that work from home: (1) the same/equal rights as those who work physically at the office, and (2) the right not to respond to or be reachable by their managers or supervisors outside the agreed working hours (except if the employee has waived this right in writing and in advance).

Limitations exist under this new regulation as it does not provide any sanction in case of non-compliance with the above provisions and it is silent on some areas, for example on the liability of the employer in case of a "work accident" while the employee is working from home.

Second, the PDPA, which introduced new provisions with respect to personal data protection, will lead to profound effects on employment law in Thailand.

Although the PDPA is not on point in the context of employment, its application to an employer will place obligations on the employer to ask for the consent of an employee or potential employee (in the submission of a CV to an employer) to collect, process and/or transmit his/her personal data. An employee or potential employee should have the right to further review his/her consent and update or edit his/her data. This should be taken into consideration at all stages of employment, from the recruitment process (even if the person is not recruited eventually), during the employment period, and post-termination of employment (mainly with respect to the retention/storage of his/her data).

It is yet to be seen how the PDPA and future regulations on the subject will further regulate data protection in the context of employment, and how these laws will be combined with the labour laws currently in force in Thailand, which allow in certain cases the employer to keep certain information with respect to its employees.

The legal framework in Thailand is therefore slowly progressing towards a more flexible working environment, however, it is too soon to fully perceive the impact of these new laws on the employment legal landscape. The coming years will determine how courts will interpret these laws, and the direction on amendments and additions to these new regulations.

TOP TIPS

Navigating workplace reforms in your jurisdiction.

- There is no obligation for an employer to provide work-from-home opportunities to its employees. However, if provided, an employer must (i) not discriminate against employees who work from home, and (ii) establish a work-from-home policy stating the conditions and criteria for its employees to work from home, to avoid any legal uncertainty.
- The regulations are still new and they have yet to be challenged and/or interpreted by the courts.
- The expectations of employees have changed, and the employment configuration has evolved to be more employee-friendly which means employers in Thailand must take this into consideration in order to attract and more so, retain talent.

"Employees nowadays are generally looking for a better work-life balance, and some of them may not hesitate to reduce their salary against a higher quality of life."

QUESTION TWO

How are changing employee expectations influencing employer practices? Are you seeing a resistance to change, or are organisations largely embracing new ways of working?

Since the Covid-19 crisis, we have observed a tendency for employees to look for more flexible ways of working. Employees nowadays are generally looking for a better work-life balance, and some of them may not hesitate to reduce their salary against a higher quality of life. In Bangkok in particular, working from home can represent a significant advantage for some employees who wish to avoid long commutes.

In general, large MNCs have already adopted a work-from-home policy, which is usually applied on a part-time scheme (likely two to three days per week). This flexibility offered by the employer constitutes a real advantage in the recruiting and retention of employees. Domestic Thai companies, however, have maintained a more traditional way of working, requiring physical presence at the office.

QUESTION THREE

Are there any financial or commercial issues relating to workplace reforms that employers should be aware of?

Providing work-from-home opportunities to employees may entail additional costs for the employer. For example, the employer may need to invest in IT devices (e.g., specific software for conference calls, IT helpline, or IT training programs) to make sure that the employees are reachable and can effectively work from home. Depending on the conditions agreed in the work-from-home arrangement, the employer may need to provide specific devices to the employee working from home (e.g., a second monitor, headset, or office chair). On the other hand, adopting a work-from-home policy could reduce the office costs of the employer (e.g., renting a smaller office (or no office at all if all employees are working 100% remotely), or reducing transport costs if the employer is paying for it).

Adopting a work-from-home scheme may also require the employer to proceed to a thorough review and redraft of the labour documentation of the company, which may necessitate additional resources and entail external costs in case for example the assistance of legal counsel is needed.

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QUESTION ONE

There has been a global shift to more 'progressive' workplace practices: how is employment law changing in your jurisdiction to reflect this?

In Venezuela, labour legislation has yet to adapt to more progressive practices like telework, for example. "Working from home" is a figure that is considered by Venezuelan existing labour law and is the closest figure to telework the country has, but it differs in nature and purpose. Under existing regulations, employers must provide their work-from-home-employees with the necessary tools to carry out their responsibilities, as well as to meet these requirements:

- The employee works from their place of residence with no direct supervision
- They employ their own tools and equipment or that of their employer
- Their maintenance costs are covered by the employer.

That said, during the Covid-19 pandemic, the country's legislative body held talks about a possible new Teleworking law to create a legal framework. However, the project appears to be paused for now with the teleworking and hybrid regimes being mostly covered by the said provision in the 2012 Labour Law. While the text of the provision doesn't perfectly reflect what telework schedules do abroad, this is the regulation that's been applied analogously to these cases. Although it's possible for the employer to require the worker to have their own tools (computer, internet access, chair, etc.) before being hired for the position, the employer is still responsible for the maintenance cost of the equipment.

Of course, as expected, this regulation doesn't fully encompass what we consider teleworking. While called work-from-home, we know that this doesn't mean literally from home as many employees find themselves working from cafés, coworking spaces, libraries, and other similar spaces that aren't their homes. The Venezuelan regulation does literally mean home, however, which is a notable shortcoming. Beyond this thin legal framework, we've seen employers take up more progressive stances on their own, taking notes from foreign companies to mimic their workplace culture, as well as using foreign legislation for inspiration.

QUESTION TWO

How are changing employee expectations influencing employer practices? Are you seeing a resistance to change, or are organisations largely embracing new ways of working?

In our experience, reactions have been quite mixed but noticeably split among traditional/startup lines. For example, some large companies that engage in traditional business models such as banking and insurance have had their employees return to the office. On the other hand, startups that have landed on the scene after the pandemic show a greater willingness to engage in telework or hybrid employment schedules.

That said, it's important to consider that the pandemic isn't the only driver of this change. Venezuela's complex economic reality means that, while new markets have emerged for tech startups, overhead on office space continues to be a premium very few new companies can afford. The result of this shift in culture over the past few years has had a somewhat positive effect on freelance workers, who have found more flexibility to take jobs that would've required them to sit at an office desk without being able to take on outside projects.

In Venezuela, labour tends to be cheaper than abroad, which is why many foreign companies have hired employees in the country through teleworking, and as back-office staff. In 2023, companies have shown a growing trend towards having their employees work from home 2 or 3 days a week, while coming into the office for the remainder of the week. It is advisable that companies provide their teleworkers with a manual or guide with the policies, norms, and recommendations on health, safety, and hygiene in the workplace, in order to prepare themselves and their personnel on these matters as well as the due diligence, the risks and care necessary.

TOP TIPS

Navigating workplace reforms in your jurisdiction

- Companies seeking to operate in Venezuela would do well to adopt international best practices even in the absence of concrete local legislation. Companies that can offer their workers similar teleworking standards as those abroad have a considerable competitive advantage.
- A company that adopts a hybrid work scheme must bring its policies up to date and create a plan that empowers employees. Hybrid work comes with a great deal of responsibility for employees, and leaders must be capable of determining which roles are apt for telework and which must remain in-office, and with what frequency.
- Employers must actively combat digital burnout, from excessive tasks when teleworking. Consecutive meetings without breaks in between, and working into the long hours of the night, all of these are factors that are exhausting employees.

QUESTION THREE

Are there any financial or commercial issues relating to workplace reforms that employers should be aware of?

In Venezuela Labour law reform is a topic that has remained largely stagnant over the past decade, but there's reason to suspect that there may be some evolution of the existing legal framework in the next couple of years. For starters, 2024 is a presidential election year in Venezuela and the stagnation of any advance in labour law has been felt by workers, as well as the stagnation in the rise of the minimum wage. Due to the Social Dialogue promoted by the International Labour Organization (ILO), there have been serious conversations about possible changes to the labour law, minimum wage and telework. Reforms are most likely to target minimum wage stagnation, as well as seek to advance a more robust telework or hybrid schedule scheme that may benefit workers, especially freelance professionals.

Lastly, it's important to note that, in Venezuela, a lack of regulation on the matter, coupled with problems in electric power supply and internet connectivity, may result in bottlenecking progress in the telework space.

"A lack of regulation on the matter, coupled with problems in electric power supply and internet connectivity, may result in bottlenecking progress in the telework space."

Ponte Andrade & Casanova (PAC) is a Venezuelan full-service law firm that offers high-quality and wide-ranging legal services to major multinational and local companies from a variety of industries and economic sectors. Ranked in Chambers & Partners and The Legal 500, the firm stands out due to the 40+ years of experience and expertise of our professionals, our project management capabilities and the highly personalised services we offer.

PAC has an excellent relationship with law firms within Venezuela and abroad and offers financial and accounting services through allied firms. This allows us to become a one-stop-shop for our clients, providing them with fully bilingual, comprehensive, and universal services. Our solution eliminates complexity for our clients, who receive high quality service regardless of speciality and location, and without the increased overhead passed on by franchised or multi-office firms.

PAC has participated in the creation of important laws and regulations and in landmark judicial processes and commercial matters. Besides IR Global, the firm belongs to important associations such as the Venezuelan Federation of Chambers of Commerce and Production (FEDECÁMARAS), Venezuelan American Chamber of Commerce (VENAMCHAM), Venezuelan Association of Private Capital (VENECAPITAL), Venezuelan Tax Law Association (AVDT) and the International Bar Association (IBA).

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Linda Wong, CEO and Partner of Wong Fleming, is Chair of multiple practice groups including Employment and Labour Law, Trial, Insurance Defense and Coverage, as well as Intellectual Property. As a leading authority on employment law and civil litigation, she concentrates her practice on employment, commercial, insurance defence and intellectual property matters, involving terminations, harassment, contract disputes, insurance coverage, general liability defence, trademark and copyright actions and restrictive covenants.

She's adept at handling diverse litigation matters, including Title IX cases, discrimination and harassment disputes, and constitutional claims tied to public entities. In 2005, Ms. Wong was the recipient of the Trailblazer Award from the National Asian-Pacific American Bar Association, recognising her leadership and impactful contributions to advancing Asian-Pacific American attorneys and communities.

She frequently presents at national and local bar associations and is a trainer and consultant on employment law issues, including sexual harassment for major corporations and public institutions. Holding a Juris Doctorate from Rutgers School of Law (1982) and a bachelor's degree from Rutgers University (1976), Wong is admitted to practice in NJ, NY, PA, VA, and D.C., and has been recognised as a Super Lawyer in Employment & Labour Law from 2005 to 2021.

Wong Fleming was established in New Jersey in 1994 and has grown to become a national law firm with offices across the country. Headquartered in Princeton, NJ, and with offices throughout the United States, the firm is committed to ongoing professional education and lifelong learning as well as to the promotion of diversity in the legal profession. Wong Fleming is certified as a minority business enterprise by the National Minority Supplier Development Council ("NMSDC") and as a female-owned business by the Women's Business Enterprise National Council. In 2014, the Minority Corporate Counsel Association awarded us the Thomas L. Sager Award for the Northeast Region. The Sager Award is given to law firms that have demonstrated a sustained commitment to improve the hiring, retention and promotion of minority attorneys. In 2015, the NMSDC admitted Wong Fleming into the Corporate Plus Program, which is confined solely to those members who have demonstrated their capacity to execute national contracts for major corporations. We pride ourselves on our innovation, representing clients vigorously and keeping in mind their business interests.

Amid a global shift towards increasingly progressive workplace practices, New Jersey businesses are feeling the repercussions of heightened pressure from evolving employee expectations to provide remote or hybrid working arrangements, and policies that promote greater balancing between work and family obligations. According to Forbes, as of 2023, 12.7% of full-time employees work from home, while 28.2% work a hybrid model. Upwork has projected by 2025, an estimated 32.6 Americans will be working remotely, which reflects a gradual shift towards remote work arrangements. Businesses, in order to ensure they are competitive in recruiting qualified candidates who are committed to employment long-term, should be mindful of the ever-evolving trends in employment. New Jersey has already continued to expand family and medical leave benefits, such as requiring paid sick leave, tax incentives and WARN Act notifications. By keeping up to date on developments in employment law and monitoring market changes, New Jersey employers can ensure that their workplaces are able to recruit qualified candidates and that they are in compliance with the law.

One example of a progressive shift in New Jersey and elsewhere is the increase in the minimum wage. This increase comes at a time when a pandemic-induced hiring shortage has already pushed pay upward for certain traditional minimum-wage jobs. Initiated by a 2019 state law and as part of a gradual progression towards a $15.00 per hour minimum wage, the minimum wage was increased, effective January 1, 2023, from $13.00 to $14.13 per hour for most employees. While certain industry groups have expressed apprehension about potential added costs forcing businesses to close, this is only one consideration. Employers should also consider that raising the minimum wage elevates the baseline pay across the job market, leading to heightened competition for workers. Employers may benefit from refining recruitment strategies, offering non-monetary benefits, and focusing on retaining employees to mitigate turnover costs.

Other statutory developments have addressed how the state handles the income of remote workers who are employed by out-of-state companies, which intensified when many workers performed their jobs from home during the pandemic. Notably, the novel remote working tax credit plan signed by New Jersey Governor Phil Murphy introduces an opportunity for remote workers to claim a credit against their state tax liability. This tax credit entitles those who work remotely in New Jersey but are required to pay New York's income tax to claim a credit against their state liability. Per Governor Murphy, the program aims to redirect more taxpayer dollars from New Jersey towards in-state initiatives. Additionally, tax credit availability creates a new financial incentive for remote workers to continue working from home.

For employers, this has significant implications on their tax obligations, necessitating payroll and tax adjustments. Employers must work closely with their payroll departments or providers to guarantee that required alterations are made to their employees' tax withholding. Furthermore, employers should review their remote work policies and agreements so that they are consistent with the law. Employees, since the pandemic, enjoyed remote work, and have sought to continue this option. Employers must prepare to balance these considerations with in-person business needs. They should review their budgets and financial forecasts to factor in any changes associated with increased tax rates related to remote work, and assess the extent to which they may be able to provide flexible work schedules and ensure productivity.

Evolving societal values have also prompted a shift towards increasingly progressive practices, exemplified by measures like safeguarding employees during mass layoffs. This has led to sweeping amendments to the New Jersey Worker Adjustment and Retraining Notification (WARN) Act, making it the most expansive layoff law in the nation. In sum, businesses operating in the state for over three years with 100 or more employees (full and/or part-time) require 90 days advance notice for mass layoffs. Notably, the update broadens the definition of a mass layoff, includes part-time employees in thresholds, and mandates severance pay of one week per year of employment for affected employees.

This amendment is already encountering certain challenges, requiring employers to maintain a high level of vigilance. For example, the ERISA Industry Committee has already filed a suit in federal court against the New Jersey Department of Labor, alleging that the new amendment is preempted by the federal WARN Act. Employers must take proactive measures to ensure that their approach to mass layoffs aligns with both federal and state standards.

> **"Upwork has projected by 2025, an estimated 32.6% of Americans will be working remotely, which reflects a gradual shift towards remote work arrangements."**

New Jersey has also required employers to provide up to 40 hours of paid sick leave for employees, and has expanded this requirement for public school employees so that they can use sick leave for themselves and to care for family members. In addition, employees are eligible for unemployment and disability benefits, but also leave benefits for family leave. The maximum weekly benefit in 2023 for paid family leave benefits is $1,025 per week. New Jersey also affords certain employees with family and medical leave of up to 12 weeks for the birth or adoption of a child and to care for immediate family members.

These developments to the world of work in New Jersey demand that employers respond promptly to their legal obligations and the changing workplace expectations of employees. The surge towards progressive practices, propelled by the pandemic and shifting societal values, necessitates immediate and comprehensive employer responses. Adhering to state minimum wage standards, paid sick leave, strategically aligning with the remote working tax credit plan, and embracing amended WARN Act regulations are paramount for business success. As the tides of employment law continue to shift, employers' agility and readiness to embrace these transformations will ultimately define their capacity to thrive and lead in a changing world.

Commercial

Our Commercial members offer their thought leadership on what the current appetite is for investment in foreign companies, how geopolitical and economic fluctuations might affect commercial opportunities and what businesses can do to attract interest and ultimately secure funding from investors in their respective jurisdictions.

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Peter C. Pang, is Chairman and Managing Partner of IPO Pang Shenjun (www.ipopang.com), a premier international boutique law and consulting firm based in Shanghai, PRC. His expertise includes corporate law and formation, mergers and acquisitions, real estate acquisitions, initial public offering, private placement, technology transfer, joint venture formation and business alliances, and trade secrets and intellectual property protection. Mr. Pang's over 44 years of law practice in the People's Republic of China and the United States places him amongst a handful of US China lawyers with Asian International Expertise and in-depth appreciation for both the Western and Asian cultural and business differences and sensitivities. Mr. Pang is also Managing Partner of Anderson Brown, Attorneys At Law (www.anbrolaw.com), a Washington DC based law firm where his primary practice is to assist Asian businesses and investors to access the US and international markets through Mr. Pang's wide network of lawyers, accountants and consultants worldwide. Mr. Pang has partners and affiliates in over 80 countries.

Mr. Pang was formerly in-house counsel for Shell Oil Company, M&A Counsel for Hershey Foods, General Counsel for Dole Packaged Foods and Chief Corporate Counsel for Nissan North America. He is on the Board of Wonderseed Foundation, an organisation dedicated to assisting troubled teenagers.

QUESTION ONE

What is the current appetite for inbound investment by foreign companies in your jurisdiction?

China has been a major destination for foreign investment and has generally maintained a strong appetite for such investment. However, things are changing.

China's large consumer market, manufacturing capabilities, and growing middle class have traditionally been attractive factors for foreign companies looking to expand their operations. In recent years, China has taken further steps to open up its economy and improve the investment environment. The Chinese government has implemented various measures to attract foreign investment, including the easing of certain restrictions on foreign ownership in certain sectors, streamlining administrative processes, and enhancing intellectual property protection.

Additionally, initiatives like the Belt and Road Initiative have presented opportunities for foreign companies to participate in infrastructure projects across Asia and beyond. However, this investment landscape is influenced by a range of factors, including geopolitical tensions, changes in government policies, and regulatory frameworks. The simmering tensions between the US and China have led to growing concerns about reliance on a single source of product manufacturing, and this has had a dampening effect on inbound investment decisions.

Some foreign companies have doubled down, as they find going to a country other than China for sourcing is a nightmare, due to supply chain issues, as well as the availability of skilled labourers, while others are seriously contemplating enhancing (not replacing) their Asian footprint by building up a secondary source of production, as a way of mitigating their production and sourcing risks.

IPO Pang Shenjun has been in China since the early 1990s and over the last 30 years, multinationals and entrepreneurs have come to our firm when they need their legal matters in China handled efficiently and with practical wisdom that only comes only from years of experience. Based in Shanghai, the firm has associates throughout China and affiliate partners in over 90 countries. IPO Pang Shenjun is one of the top international boutique firms with operations and executional capabilities in China. Each client matter is personally handled by a shareholder of the firm, as it enables each partner to take individual responsibility for delivering outstanding quality and value for each assignment.

QUESTION TWO

How are global geopolitical and economic fluctuations affecting commercial opportunities and engagements in your jurisdiction?

Global geopolitical and economic fluctuations have had a significant impact on commercial opportunities and engagements in China. The reaction has been mixed. Some companies are doubling down their investments in China and some are considering pulling out altogether. These decisions vary by industry and the competitive business environment the decision-makers are faced with.

The imposition of tariffs and trade restrictions, particularly from the United States, disrupt supply chains, increase costs, and create uncertainty for businesses operating in China or engaging in trade with Chinese companies. Farsighted enterprises work with professional services firms such as law firms and consultants to strategise how to counteract the impact of doing business in these uncertain times, and implement and adapt their strategies and operations so as to maximise long-term profitability while minimising disruptions.

Market access: Recent geopolitical tensions have also affected market access for foreign companies in China. For instance, government procurement policies and preferences may prioritise domestic companies over foreign competitors. Political tensions can also lead to public sentiment and consumer behaviour changes, which may impact the market demand for certain products or services. However, countermeasures can be developed to minimise the impact and some companies have considered structuring their supply chain so as to reduce the impact of regulatory restrictions and stay under the radar during these volatile times.

Investment flows: Geopolitical and economic fluctuations have influenced the flow of foreign direct investment (FDI) into China, with an estimated 15% reduction in FDI in the first 2 quarters of 2023. China's policies including security crackdowns, its harsh regulation of the tech industry, and close monitoring of foreigners are convincing many global companies to steer clear of the country, said Andrew Collier, managing director at Hong Kong-based Orient Capital Research.

Uncertainty and risk aversion during these periods of geopolitical tension have dampened investor confidence and led to a decrease in investment. Some companies have considered alternative locations or reconfigure supply chains to mitigate risks or take advantage of new opportunities arising from shifting geopolitical and economic dynamics. This approach isn't for everyone and a deeper dive with knowledgeable consultants is highly suggested to ensure whether such contemplated moves are a good fit for a particular enterprise or industry. Overall, the interplay between global geopolitics, economic fluctuations, and commercial opportunities in China is complex and dynamic. Businesses need to closely monitor these factors, adapt to changing circumstances, and develop strategies that account for the evolving geopolitical and economic landscape.

QUESTION THREE

What can businesses do to attract interest and ultimately secure funding from investors in your region?

To attract interest and secure funding from investors in China, businesses can consider the following strategies:

Conduct thorough market research to understand the preferences, needs, and trends of Chinese investors. This knowledge will help tailor your business proposition and pitch to align with their interests and investment criteria. Chinese investors like technology, brand play, and businesses that can lead to immigration options.

Cultivate strong relationships with potential Chinese investors. Networking events, trade shows, industry conferences, and business associations can provide opportunities to connect with Chinese investors and establish rapport. Utilise professional networks and seek introductions through trusted contacts or consultants familiar with the Chinese investment landscape. At the end of the day, "guanxi" as the term is broadly defined is still the seminal test for investment. Good guanxi, good relationship, good deal.

TOP TIPS

Building a strong commercial proposal for investors

Localise your approach: Adapt your business model and value proposition to suit the Chinese market. Consider factors such as cultural nuances, local regulations, and consumer preferences. Engage local partners or consultants who can provide insights and guidance on market entry strategies that resonate with Chinese investors.

Demonstrate growth potential: Chinese investors are often interested in high-growth opportunities. Highlight your company's growth potential, market scalability, and competitive advantages. Provide detailed financial projections, market analyses, and a clear roadmap for future expansion. Demonstrating a solid understanding of the Chinese market and showcasing how your business can capture a share of the growing market can be compelling.

Leverage government support: Explore government-sponsored programs and initiatives that encourage foreign investment. Certain regions or industries may offer incentives, subsidies, or preferential policies to attract foreign investment.

Intellectual property protection: Intellectual property rights are a significant concern for Chinese investors. Protect your intellectual property through patents, trademarks, and copyrights, and demonstrate your commitment to safeguarding these assets. This will help build trust and confidence among potential Chinese investors.

Engage professional advisors: Seek assistance from professionals who are experienced in cross-border transactions with China. Lawyers, accountants, consultants, and investment bankers familiar with the Chinese investment landscape can provide guidance, facilitate introductions, and help navigate regulatory and cultural complexities.

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Luis, is the most recent partner to join our team. He contributes more than 30 years of experience in competition law and intellectual property law, as well as experience in mercantile and real estate law. He has worked in Banking and Finances and Risk Management and Corporate Compliance, having been an active participant in the Costa Rican financial and banking sector since the year 2013, occupying positions within the boards of directors of the Banco Nacional de Costa Rica, BICSA, and BN Valores. Luis has been a university professor at the Inter-American University of the Americas and an active participant in several Interinstitutional commissions for the management and protection of Intellectual Property in Costa Rica. He has represented Costa Rica at the General Assemblies of the WIPO in Geneve, Switzerland.

Oller Abogados is based in San José, Costa Rica, since 2000. Our law firm specialises in meeting the legal needs of entrepreneurs because we were born of an enterprising spirit: restless, curious and in constant evolution.

QUESTION ONE

What is the current appetite for investment in foreign companies in your jurisdiction?

Costa Rica had been actively seeking foreign investment, and there was generally a positive attitude towards foreign companies looking to invest in the country. Here are some factors that may have influenced the appetite for investment in foreign companies in Costa Rica:

Political Stability: Costa Rica is known for its political stability and democratic governance, which can be attractive to foreign investors seeking a stable business environment.

Investment Promotion: The Costa Rican government has established agencies such as PROCOMER, (Costa Rican government institution in charge of promoting foreign investment) to promote foreign direct investment (FDI) in the country. These agencies often offer incentives and assistance to foreign investors.

Free Trade Agreements: Costa Rica has signed numerous free trade agreements (FTAs) with countries around the world, making it an attractive location for businesses seeking access to various markets. These agreements can reduce trade barriers and enhance the investment climate.

Education and Workforce: Costa Rica has a well-educated workforce, including a strong pool of bilingual talent, which can be advantageous for companies in industries such as technology, medical devices, and nearshore services.

Environmental and Sustainability Efforts: Costa Rica has made significant efforts in environmental sustainability and eco-friendly initiatives, which may be appealing to businesses involved in sustainable industries.

Legal Framework: The legal framework in Costa Rica generally respects property rights and provides a solid foundation for businesses. It is essential for foreign investors to understand the legal requirements and regulations specific to their industry.

Taxation: Costa Rica has a relatively competitive tax structure for businesses. However, tax laws and rates can change, so it is important for investors to stay informed about tax obligations and tax reporting.

Sector-Specific Opportunities: Different sectors may have varying levels of appetite for investment. For example, technology, medical devices, near shore services (accounting, payroll, online contact centres) and tourism (in several areas such as medical tourism, adventure trips, and work tourism) have historically been attractive industries for foreign investment in Costa Rica.

QUESTION TWO

How are global geopolitical and economic fluctuations affecting commercial opportunities and engagements in your jurisdiction?

Trade Relationships: Changes in global trade dynamics and geopolitical tensions can influence Costa Rica's exports and imports. Trade disruptions or the imposition of tariffs can affect the competitiveness of Costa Rican products in international markets.

Foreign Direct Investment (FDI): Economic uncertainties and geopolitical instability can impact the flow of foreign direct investment. Investors may become more cautious and hesitant to commit capital in uncertain times, affecting commercial engagements in the country.

Global Supply Chains: Disruptions in global supply chains, as seen during the Covid-19 pandemic, can affect both exports and imports in Costa Rica. Businesses relying on inputs from abroad may face challenges in sourcing necessary materials. This includes a lack of investment by the government in port infrastructure.

Tourism: Geopolitical tensions, especially in Central America, or economic downturns in key source markets for tourists (US, Canada, and Europe) can affect the number of visitors, impacting the hospitality and related industries.

Commodity Prices: Costa Rica relies on various agricultural and industrial exports. Changes in global commodity prices can significantly impact the revenues of companies engaged in these sectors.

Access to Financing: Global economic fluctuations can affect access to financing for businesses in Costa Rica and for the Costa Rican government. In times of economic uncertainty, credit conditions may tighten, making it more challenging for companies to secure loans or investment capital.

Energy Prices: Costa Rica has made efforts to promote clean and renewable energy sources. Nevertheless, changes in global energy prices, including oil and gas, can influence energy costs and commercial opportunities in the energy sector.

Technology: Costa Rica is just beginning the process of concession of 5G frequencies, a process that in the best of cases could take 2 years, generating a delay in state-of-the-art technology.

Regulatory Changes: Geopolitical developments can lead to changes in international regulations and trade agreements, which can impact Costa Rican businesses engaged in international trade.

Region: Political instability in the region, in countries such as Nicaragua, El Salvador, Honduras, and more recently in Guatemala, could have an impact on investment decisions in the country.

QUESTION THREE

What can businesses do to attract interest and ultimately secure funding from investors in your jurisdiction?

Attracting interest and securing funding from investors in Costa Rica, like any other country, requires a well-thought-out strategy and a compelling value proposition. Our consideration on such:

TOP TIPS

Building a strong commercial proposal for investors

Market Analysis and Opportunity Assessment: Provide a comprehensive market analysis specific to Costa Rica. Include data on market size, growth potential, and trends relevant to your industry. Demonstrate a clear understanding of the competitive landscape and how your offering stands out.

Financial Projections and Return on Investment (ROI): Present realistic and well-researched financial projections for your business in Costa Rica. Include income statements, balance sheets, and cash flow forecasts. Clearly outline the investment required and the expected ROI for potential investors.

Risk Assessment and Mitigation Strategies: Identify and assess potential risks associated with operating in Costa Rica, such as regulatory changes, currency fluctuations, or market volatility.

Business Plan: Develop a comprehensive and well-researched business plan that outlines your company's mission, vision, target market, competitive analysis, financial projections, and growth strategy. Investors in Costa Rica, as elsewhere, want to see a clear roadmap to profitability.

Local Partnerships: Collaborate with local businesses and organisations. Building partnerships with established Costa Rican companies and Chambers, can help you navigate the local business landscape and gain credibility with investors.

Understand Local Investment Preferences: Different investors may have varying preferences. Some investors may be interested in startups and innovation, while others may prefer established companies with a track record.

Legal and Regulatory Compliance: Ensure your business complies with all local laws and regulations. Investors want to minimise risks, so having a strong legal foundation is crucial.

Sustainability: Sustainability and environmental responsibility are increasingly important in Costa Rica. If your business can demonstrate a commitment to eco-friendly practices, it may be more appealing to certain investors.

Market Research: Conduct thorough market research to understand the demand for your product or service in Costa Rica.

Financial Stability: Maintain good financial management practices and keep accurate financial records and tax compliance.

Government Incentives: Research and take advantage of any government incentives or grants available for businesses, especially those related to innovation, or job creation. Including preparing your project for the Free Trade Zone Regimen.

Seek Advice: Don't hesitate to seek advice from local business advisors, mentors, legal or organisations that support startups and entrepreneurs.

PAOLETTI
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Francesca Romana Valeri is an Italian Certified Attorney in Law and an accomplished Legal Consultant with over a decade of experience. Specialising in Civil, Corporate, Commercial, and Construction Law, she has built a solid reputation through her work in international law firms.

In addition to her legal achievements, Francesca is dedicated to advancing her education and is currently finalising an MBA at Liverpool University. This commitment to continuous learning reflects her desire to stay at the forefront of the legal and business landscape, ensuring she provides the most up-to-date and effective solutions to her clients. The MBA program is specifically chosen to enhance her abilities in consulting companies and serving her clients more effectively.

Francesca currently holds the esteemed position of Head of Legal for the Middle East at Paoletti Law Group further solidifying her expertise in the region.

With a passion for the law and a steadfast dedication to excellence, she continues to make a significant impact, providing pragmatic solutions and exceptional legal guidance to her clients, while safeguarding their interests and achieving their goals.

Paoletti Law Group specialises in corporate and commercial law. We believe in:

PROTECTION FOR GROWTH: We deliver pre-emptive legal solutions to prevent disputes from negatively impacting your business.

CONSISTENT AND ACCESSIBLE SUPPORT: We use our knowledge and experience to provide practical legal assistance and open, accessible support our clients rely on for their businesses' success.

We have been working at an international level for more than 20 years. We defend the interests of our clients at each stage of a company's life cycle – from setting up to expansion abroad – through focused and dedicated legal advice.

Our corporate law professionals include specialists in joint ventures and mergers and acquisitions who manage transactions around the world. We also execute reliable due diligence reviews as well as manage regulatory and compliance matters for our M&A clients, ensuring deals close in a timely manner with our clients' interests always secured.

If you want to do business abroad, you need more than just a good knowledge of the market. You need to know the legislation in the country of destination in order to protect your investments and avoid mistakes that could derail the entire operation.

"The nation's strategic location, robust infrastructure, investor-friendly policies, and stable business environment have positioned it as an attractive destination for global investors."

Navigating Commercial Investment in UAE: An Analysis of Global Geopolitical Impact and Top Tips for Success

Current Appetite for Investment in Foreign Companies in UAE

In recent years, the United Arab Emirates (UAE) has witnessed a growing appetite for investment in foreign companies, particularly in its economic heart, Dubai and Abu Dhabi.

The nation's strategic location, robust infrastructure, investor-friendly policies, and stable business environment have positioned it as an attractive destination for global investors seeking lucrative opportunities. The emirate of Dubai's thriving economy, diverse sectors, and commitment to innovation have further bolstered its allure for foreign investments.

Foreign direct investment (FDI) inflows into the UAE have remained consistently high, reflecting investor confidence in the nation's economic prospects. A proactive and progressive government approach, coupled with a strong regulatory framework, has provided investors with a sense of security and stability. Additionally, the UAE's robust trade relations with various countries have facilitated increased investment flows into the Emirates.

Impact of Global Geopolitical and Economic Fluctuations on Commercial Engagements in UAE

Despite UAE's resilience, the global geopolitical and economic fluctuations have not left the emirate untouched. These fluctuations, ranging from trade tensions to technological disruptions and pandemics, have led to uncertainties and challenges for businesses operating in the UAE. However, the UAE's dynamic and diversified economy, in the different emirates, has played a crucial role in mitigating some of the adverse effects.

Global geopolitical tensions have at times resulted in trade disruptions and fluctuations in commodity prices, which can impact businesses operating in the UAE. Additionally, the fluctuating economic landscape can influence investor sentiments, causing some degree of cautiousness in investment decisions. However, the UAE's strategic initiatives and commitment to diversification have enabled it to proactively respond to such fluctuations and emerge resiliently.

Attracting Interest and Securing Funding from Investors in the UAE

Businesses seeking to attract interest and secure funding from investors in the UAE must adopt a strategic and proactive approach.

Below I summarise some key considerations to enhance investor appeal based on my experience in UAE:

- **Market Research and Targeting:** Comprehensive market research is essential to identify sectors and industries with strong growth potential. By honing in on specific market niches, businesses can tailor their commercial proposals to align with investor interests.
- **Value Proposition and Differentiation:** Articulating a clear and compelling value proposition is critical. Businesses must highlight their unique strengths, differentiators, and competitive advantages to stand out from the competition.
- **Strong Financial Projections:** Investors seek a thorough understanding of a company's financial health and projections. Robust financial planning, based on accurate data and realistic assumptions, is crucial to instil investor confidence.
- **Transparency and Governance:** Transparent and robust corporate governance practices are highly valued by investors. Companies must demonstrate a commitment to accountability, ethical practices, and risk management.
- **Building Relationships:** Cultivating strong relationships with potential investors is pivotal. Engaging in networking events, industry conferences, and business forums can foster connections and showcase the potential for fruitful collaborations.

In conclusion, based on my experience as a professional living in the UAE and with extensive experience in the UAE market and business, I bear witness to the remarkable transformation of the UAE into a global business powerhouse. The current appetite for foreign investment in the emirate is a testament to its enduring allure as a strategic and investor-friendly destination.

While global geopolitical and economic fluctuations pose challenges, the UAE's adaptability, visionary leadership, and steadfast commitment to diversification fortify its resilience in weathering uncertainties.

To attract interest and secure funding from investors in the UAE, businesses must approach their proposals with meticulous attention to detail. Thorough market research, a compelling value proposition, sound financial projections, robust governance, and proactive relationship building are essential elements that form the bedrock of a strong commercial proposal.

As the Emirates propels forward, businesses embracing a comprehensive and strategic approach, bolstered by legal clarity and compliance, will be at the forefront of UAE's success story. As a legal consultant, I take pride in assisting companies in navigating the UAE's business landscape, ensuring they can harness the limitless opportunities that the UAE presents.

TOP TIPS

Building a strong commercial proposal for investors

- **Thorough Research:** Conduct comprehensive research on the target market, competitors, and investor preferences to tailor the proposal accordingly.
- **Compelling Value Proposition:** Clearly outline the unique selling points and the value the business brings to investors, emphasising growth prospects.
- **Financial Prudence:** Present well-structured financial projections, backed by accurate data, realistic assumptions, and a clear growth trajectory.
- **Governance and Ethics:** Demonstrate a strong commitment to transparency, good governance, and ethical practices.
- **Engagement and Follow-Up:** Actively engage with potential investors, respond promptly to inquiries, and follow up diligently to maintain interest.

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Mateo is an advisor to companies in different sectors of the economy, such as trust, real estate, cement, financial, insurance, health and food companies, among others, as well as to public entities in different matters.

"This government has generated political and economic uncertainty due to the different public statements it has made."

Suma Legal is a boutique firm, recognised in the country for and its highly professional competence, the quality of its legal services, personalised service to the client, with the constant interaction of its partners and associated lawyers in client relations.

Our work consists of providing advice and assistance to our clients in different legal matters, from business structuring to conflict resolution, in a personalised and permanent way, ensuring the protection of their interests, satisfying their legal needs, and helping them to materialise their business ideas or their permanent legal needs. We like to make things happen for our clients, fulfilling and protecting their interests, always within an ethical and legal framework.

We work especially with private-sector business clients in different sectors of the economy; and we also provide services to public sector entities and individuals and families.

Our services cover matters related to corporate, commercial, exchange, fiduciary, real estate and urban planning, insurance, health, conciliation, litigation, alternative dispute resolution, public, contractual and administrative law, conciliation, mediation, arbitration, and litigation in the public and private sectors.

QUESTION ONE

What is the current appetite for investment in foreign companies in your jurisdiction?

Currently, the outflow of Colombian investors' resources abroad has been increasing, but more than in the acquisition of foreign companies, in the outflow of family capital to investments in different assets, but assets that provide security and profitability, seeking to protect family patrimonies in view of the arrival at the end of last year of a leftist government in Colombia (the first in history).

However, it must also be said that this leftist government has not carried out any asset confiscation measures, nor has it materialised any such measures.

On the other hand, according to data extracted from the Bank of the Republic of Colombia and macroeconomic analyses, foreign direct investment in Colombia, understood as direct investment made by investors residing abroad in companies residing in Colombia, grew by 18% during the first half of the year, with the arrival of US$5,785 million in the country. The figure was up from US$4,910 million in the same period last year.

From these data, it can be seen that there is a current appetite for investment by foreign companies in Colombia, given that Colombian companies in recent years have been reporting excellent results, they are companies with competitive management and with the exchange rate of recent months, they are very attractive in terms of price and benefits for foreign investors.

QUESTION TWO

How do global geopolitical and economic fluctuations affect business opportunities and commitments in your jurisdiction?

Global economic fluctuations have been having an effect on commercial opportunities and commitments in Colombia, given that since the post-pandemic, high economic growth has been occurring in the years 2020 to 2022, with excellent and extraordinary results for Colombian companies in that period, as a result of an economic dynamic of high liquidity and high consumption. In any case, high interest rates and high inflation have also been seen in Colombia, as well as in the world in general, with the macroeconomic and business consequences that this has brought to Colombia and the whole world.

Now, more than the global geopolitical and economic context in Colombia in this year 2023, the political and economic dynamics have been affected by the arrival to power of a new government at the end of last year, being the first leftist government to govern in Colombia.

This government has generated political and economic uncertainty due to the different public statements it has made about its interest in making changes in the pension, health and infrastructure systems, but so far this government has not had enough political support in the Colombian Congress to pass its intended reforms. On the other hand, the Central Government has been carrying out a low economic execution of its budgetary economic availabilities, which has generated a low economic performance in these months.

However, investors and local markets tend to calm down and keep their operations constant to the extent that they have understood that the different public institutions that counterbalance the Central Government have worked, such as the Bank of the Republic, the Congress of the Republic and the Constitutional Court.

In any case, there has been a fluctuation of factors that do not necessarily coincide, since as we have seen, foreign direct investment is growing, and some sectors of the economy are growing at higher rates than last year, but other sectors have suffered a strong economic deceleration, especially in the housing construction and infrastructure development sectors, and there are disturbing political factors such as corruption scandals, but we insist that the institutions that maintain democracy and the balance of power are functioning adequately, such as the Bank of the Republic, the Congress of the Republic and the Constitutional Court. This continues to make investing in Colombia attractive since assets can be acquired at competitive prices with professionally well-managed companies and stable institutions.

QUESTION THREE

What can companies do to attract interest and ultimately secure funding from investors in their jurisdiction?

Companies must comply with Corporate Governance standards, with compliance with the different regulatory aspects of their activity, focus on the development of their competencies and their markets, and show clear management strategies. They must also show full transparency in their financial statements to ensure investor financing and investor interest in Colombian companies.

TOP TIPS

Building a strong commercial proposal for investors

- Quality of service.
- Personalised attention.
- Competent but on-time responses.
- Good balance between quality of service and competitive rates..

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Ramina Dehkhoda-Steele is the Partner-in-Charge of Wong Fleming's office in Redmond, Washington. Ms. Dehkhoda-Steele, within Wong Fleming, is Co-Chair of the Commercial Litigation practice group. Ms. Dehkhoda-Steele has an 18-year history of representing Fortune 500 companies in both transactional matters and general liability, premises liability, and insurance defense. An avid litigator, she has extensive experience in various areas of the law. This experience extends to complex technology transactions and real estate transactions. Ms. Dehkhoda-Steele is active in seeking a resolution not only through the court system, but through active arbitration and mediation practice. Her expertise and judgment are sought-after as an Arbitrator affiliated with the American Arbitration Association ("AAA").

Wong Fleming, first established in New Jersey in 1994, has grown to become a national law firm with offices and affiliates across the United States, Canada, Mexico, and Germany. The firm is committed to ongoing professional education and lifelong learning as well as to the promotion of diversity in the legal profession. Wong Fleming is certified as a minority business enterprise by the National Minority Supplier Development Council ("NMSDC") and as a female-owned business by the Women's Business Enterprise National Council.

QUESTION ONE

What is the current appetite for investment in foreign companies in your jurisdiction?

Washington State, known for its innovation, is home to some of the largest tech corporations in the world, making it a prime location for foreign investment. According to a recent report by the Washington State Department of Commerce, foreign direct investment (FDI) in Washington State increased by 15% in 2021. The report identified the top three countries making business investments in Washington State as Canada, China, and the United Kingdom.

The top industries attracting foreign investment into Washington State include:

- **Technology:** Washington State is home to a number of technology companies, such as Amazon, Microsoft, and Google. These companies are attractive to investors because they are at the forefront of innovation.
- **Life sciences:** Washington State is also a leader in the life sciences industry. This industry is attractive to investors because it is a rapidly growing field with a high potential for innovation.
- **Clean energy:** Washington State is committed to clean energy and is investing heavily in this sector. This makes it an attractive destination for investors who are looking to invest in sustainable businesses.

This diversity within the area leads to innovation, and with innovation comes foresight. As proven leaders in the world of technology, investors from Washington State have not geographically limited themselves to any one particular region. However, it would be a fair assessment to say that certain regions are favoured for investment, the largest being Asia. Washington State has a long history of trade and investment with Asia, and this continues to be a major focus for investors. Countries like China, Japan, and South Korea are all popular destinations for Washington State investment. Other regions include:

- **Europe:** Europe is another major region drawing in Washington State investors. Countries like Germany, the United Kingdom, and France are all attractive destinations for investment.
- **Latin America:** Latin America is a growing market with much potential, and Washington State investors are starting to take notice. Countries like Brazil, Mexico, and Chile are all seeing increased investment from Washington State.
- **Canada:** Canada is Washington State's neighbour to the north, and there is a lot of cross-border investment between the two. Washington State investors are particularly interested in investing in Canadian technology companies.

QUESTION TWO

How are global geopolitical and economic fluctuation affecting commercial opportunities and engagements in your jurisdiction?

Washington State investors are interested in investing in countries that are seen as offering dynamic opportunities and innovative solutions. This includes countries like Israel and Ireland, both of which are known for their advanced technology and cutting-edge innovation. Washington State investors tend to focus on other regions that offer potential investment opportunities, such as the European Union, Asia Pacific, and Latin America. These regions offer investors numerous opportunities for growth and development, including access to new markets, resources, and customers. In addition, Washington State investors look for countries with strong economies and a stable political environment, as these factors are integral to successful investments.

Ultimately, the specific countries where Washington State investors like to invest will vary depending on the individual investor's interests and goals. However, the regions and countries listed above are all popular destinations for Washington State investment.

The current appetite of Washington State investors for investment in foreign companies is strong. This is due to a number of factors, including:

- The growing global economy, which is creating new opportunities for businesses to expand into new markets
- The increasing sophistication of foreign companies, which are becoming more attractive investment targets
- The availability of favourable investment terms, such as tax breaks and other incentives

Overall, the drive for investment in foreign companies by Washington State investors is strong. There are a number of factors that are driving this appetite in addition to those previously mentioned, and the trend is expected to continue in the years to come.

QUESTION THREE

What can businesses do to attract interest and ultimately secure funding from investors in your jurisdiction?

Here are some things that businesses can do to attract interest and secure funding from investors living in Washington State:

- To build a strong business plan, start by clearly outlining your company's goals, strategy, and financial projections. This will provide investors with a comprehensive understanding of your business and why it is a viable investment opportunity. Additionally, this plan should include information about your market analysis, competitive advantage, and detailed financial projections. By providing a comprehensive and well-thought-out plan, you will be able to demonstrate to investors that you are serious about your business and have considered all the necessary aspects.
- Do your research: Before you start pitching to investors, it is important to do your research and understand the types of investors who are likely to be interested in your business. This includes understanding their investment goals, risk tolerance, and criteria.
- Networking with investors can be beneficial for your business. Attend industry events and conferences, reach out to potential investors one-on-one, join local business communities, and utilise social media to connect with potential investors. Introduce yourself and discuss your business to create connections that could lead to investments.
- Present your business to investors: Once you have identified potential investors, you will need to present your business to them clearly, concisely, and persuasively. This means being able to clearly articulate your business's value proposition, its competitive advantage, and its growth potential.
- Investors will likely have a lot of questions about your business, so be prepared to answer them concisely. This includes being able to explain your business model, including how you plan to make money, your financial projections, such as expected revenues, profits and expenses, and your exit strategy, which should include how you plan to realise a return on your investment. Being prepared to answer such questions will help to ensure that potential investors have a good understanding of your business and its potential for success. With this knowledge, they can make an informed decision on whether or not to invest in your business.

TOP TIPS

Building a strong commercial proposal for investors

Establish strong relationships: Establishing strong connections with local businesses, government officials, and industry leaders can benefit your business in Washington State. Networking and building trust can open doors to new opportunities and foster collaborations.

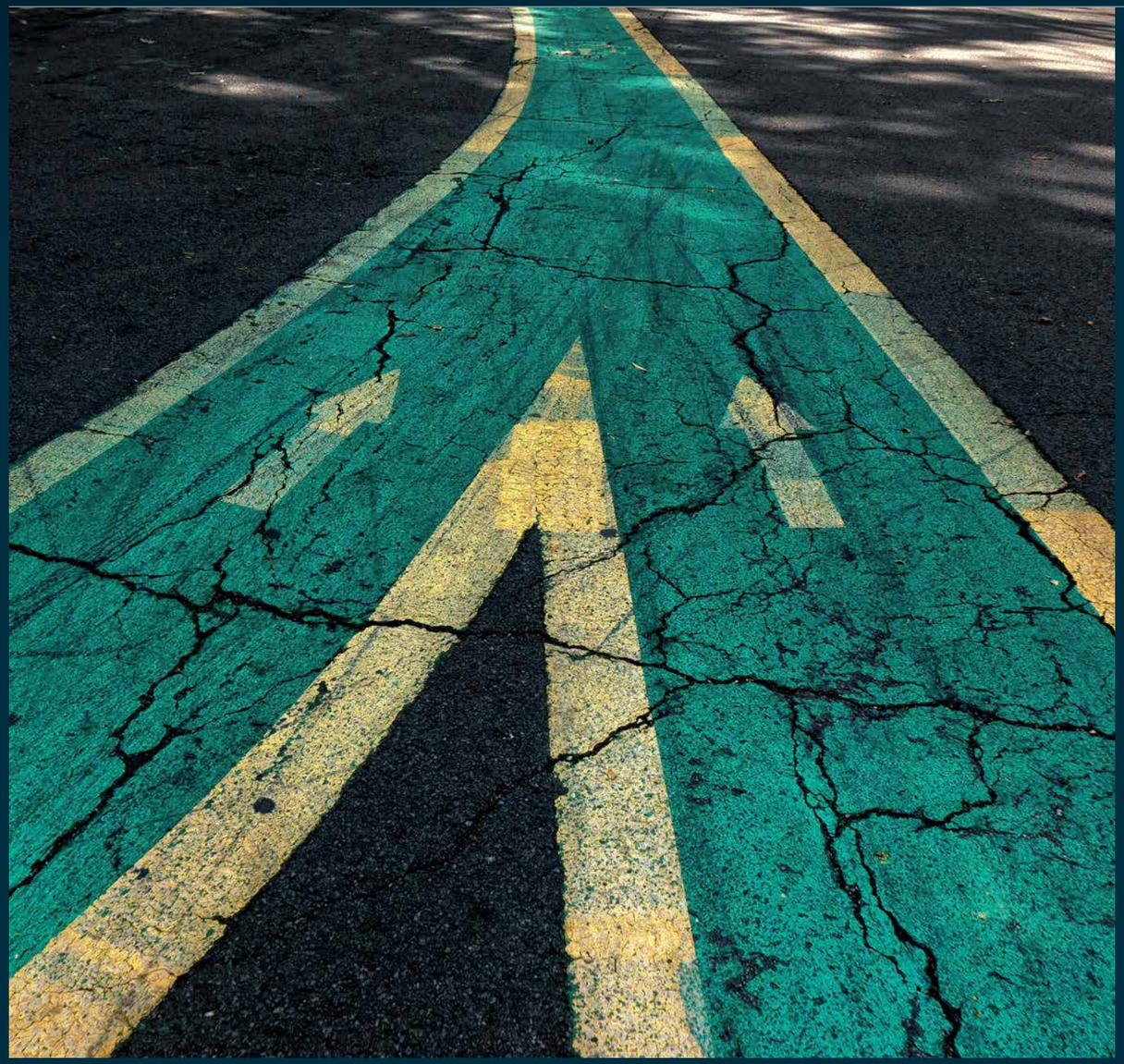
Embrace sustainability and innovation: Washington State is renowned for its green initiatives and cutting-edge technology. Incorporating sustainable practices and highlighting innovative solutions in your business proposal can be an attractive feature for investors.

Demonstrate market potential: Investors are interested in businesses that can demonstrate solid market potential. Conduct thorough market research, identify target customers, and present a compelling case for how your product or service meets their specific needs.

Highlight competitive advantage: Clearly articulate your unique selling points and competitive advantage in the market. Whether it is patented technology, a highly skilled workforce, or a strategic location, emphasise what sets your business apart from competitors.

Transactional

Globalisation continues to blur corporate geographic borders. Our transactional members discuss how they are responding to the complications of cross-border cases, whether inflation is having an impact on volume and how shareholders can protect themselves in cross-border proceedings. As well as this they will delve into the banking crisis, what sectors remain the best hunting ground for acquirers or financiers, whether deal and if private equity is active in their respective jurisdictions.



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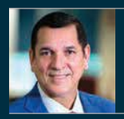

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Ardhiyasa Suratman is the founder and Managing Partner of A&CO Law Office. He has been an experienced litigation lawyer in Indonesia for more than 16 years. He is also licensed in Indonesia as a Certified Suspension Debt Payment (SOP) Receiver & Bankruptcy Trustee, and as an Intellectual Property Consultant.

He is an active law practitioner, appearing at various levels of the Courts in Indonesia, representing local and multinational corporations in legal disputes and matters. He specialises in civil and commercial litigation, especially in debt claim lawsuits, suspension debt payment, and bankruptcy at the Indonesian Commercial Courts. He is also sought by corporations on employment-related disputes and regulatory and compliance matters.

He has a growing practice in anti-counterfeit projects and enforcement actions in relation to IP Software Licenses in Indonesia. In 2015, he was awarded a scholarship from the Association for Overseas Technical Scholarship (AOTS) and the Japan Patent Office (JPO) to attend the JPO/IPR Training Course for IP Dispute Resolution Lawyers in Tokyo, Japan. He is named as one of the top 50 Indonesian IP Practitioners in 2021 by Asian IP.

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Abraham Devrian is a partner of A&CO Law Office and his main areas of practice include Bankruptcy and Suspension of Debt Payment, Corporate Matters, Mergers & Acquisitions, Labour, Contractual Matters, and Capital Market.

Abraham is a licensed Suspension of Debt Payment (SOP) Receiver and Bankruptcy Trustee. Since 2017, Bram has been appointed as Suspension of Debts Payment (SOP) Receiver & Bankruptcy Trustee for many suspensions of payment and bankruptcy cases in the Commercial Courts of Jakarta and Surabaya, Indonesia.

Abraham is a registered member of the Association of Indonesian Advocates (Perhimpunan Advokat Indonesia - PERADI), the Indonesian Advocates Association (Asosiasi Advokat Indonesia - AAI), a licensed bankruptcy receiver and administrator from the Indonesian Ministry of Law and Human Rights, and also a member of the Indonesian Receiver and Administrator Association (Asosiasi Kurator dan Pengurus Indonesia – AKPI).

A&CO Law Office (A&CO) is a fast-growing full-services law firm based in Jakarta,

A&CO is led by experienced lawyers who can handle all aspects of Civil, Commercial, Corporate, and Litigation work for a broad range of multinational and local clients, including software, food and beverages, education services, fashion, IT, telecommunications, financial services, pharmacies, and consumer products.

A&CO has represented debtors and creditors in several high-profile bankruptcy, insolvency, and suspension debt payment. cases. A&CO also acted in civil lawsuits before various courts in Indonesia. The Insolvency and Restructuring practice leverages its strong commercial understanding to ensure that our clients are able to obtain the best possible value from Bankruptcy and Insolvency regulations in Indonesia, such as receiverships, judicial management, and schemes of debt arrangements.

In the corporate and investment sectors, A&CO has assisted and advised local and multinational corporations on the structuring and establishment of companies in a wide range of commercial sectors.

A&CO has a broad range of corporate services, including Mergers & Acquisitions; Foreign Investment; drafting and reviewing Cooperation Agreements, Transaction Agreements and Employment Agreements; and providing advice on related Indonesian laws and regulations and compliance therewith.

A&CO has received the Firms to Watch award from Asia Legal Business and Top Legal Compliance Law Firm from Siemens Digital Industries Software. was awarded the Firms to Watch award by Asia Legal Business, and later in 2019, it was awarded the Top Legal Compliance Law Firm from Siemens Digital Industries Software.

QUESTION ONE

Globalisation continues to blur corporate geographic borders. How is your jurisdiction responding to the complications of cross-border insolvencies?

Cross-border insolvencies are still an issue in Indonesia, especially when discussing the authority of a Bankruptcy Trustee to deal with debtor's assets located outside Indonesia. Bankruptcy and Suspension of Payment Law Number 37 Year 2004 (Indonesian Bankruptcy Law) only gives a few rulings concerning cross-border insolvency. The first one concerns the restriction or forbidding of any person from having any settlement obtained from liquidation or claim of any debtor's assets located outside the territory of Indonesia after a bankruptcy decision is declared.

Further, the law stipulated that any person obtaining a settlement from liquidation or claiming any debtor's assets located outside the territory of Indonesia must return it to the bankruptcy asset under the management of the Bankruptcy Trustee. These stipulations can be seen in Articles 212-214 of the Bankruptcy Law. Seeing that cross-border insolvency matters are only stipulated in two articles under the Indonesian Bankruptcy Law, it shows how the Indonesian bankruptcy law has not yet set out in detail towards cross-border insolvency issues.

Regarding cross-border insolvency, there are two principles that cover it — territoriality and universality. "The principle of territoriality is the principle which the country that implements and resolves the bankruptcy case, is only limited to the territory of the country of the court in which the bankruptcy case is examined".

On the other hand, the principle of universality considers that a bankruptcy judgment in Indonesia applies to all assets of the debtor, both inside and outside Indonesia.

Therefore, the territorial principles that apply in each country (which may differ from one country to another) will of course have an impact, which includes:

- The court judgment in Indonesia will only be valid and enforceable in the territory of Indonesia;
- The court judgment does not have the power of execution abroad;
- Vice versa, the judgment of the foreign court judges is not binding and is not recognised in Indonesia.

There has been a discussion in the past to revise the current Indonesia Bankruptcy Law, to include recognition of cross-border insolvency decisions and how the Bankruptcy Trustee can have cross-border authority to manage or safeguard debtor's assets in another country, based on a bilateral treaty between the country. So far, such revision is still under discussion in the legislature.

QUESTION TWO

Are inflation and other economic pressures having an impact on the volume of insolvencies and distressed companies in your jurisdiction?

Due to fairly controlled inflation in Indonesia, it is safe to say that inflation is not a significant influence on insolvency volumes in Indonesia. Mismanagement and mishandling of finance still play a major part. Many suspensions of payment and insolvency cases in Indonesia are characterised by the incompetence of management and how the management misses forecasts, meaning the company lacks the liquidity to pay their creditors on time.

Those factors were apparent during the pandemic, when many sectors struggled to carry out their business activities due to lockdown. Many companies failed to pay their debts due to a lack of liquidity, resulting in an increased volume of petitions for suspension of payment and/or bankruptcy in the Commercial Court. These cases include several high-profile cases involving financial institutions such as insurance and financing companies.

Learning from those experiences, the Indonesian government then promulgated a new regulation Law Number 4, 2023, concerning the Development and Consolidation of the Financial Sector, which makes it more difficult for banks and other financial institutions to be declared bankrupt or in suspension of payment, and any petition against such institutions must go through the Financial Services Authority (OJK) first before submitting the petition to the Commercial Court.

> **"There has been a discussion in the past to revise the current Indonesia Bankruptcy Law, to include recognition of cross-border insolvency decisions."**

QUESTION THREE

How can business owners and shareholders protect themselves in cross-border proceedings that include your jurisdiction?

As the Indonesian legal system does not recognise an insolvency decision from foreign bankruptcy courts, the only way for the creditor to get a settlement from assets located in Indonesia, is by using the normal civil procedure in the District Court, or by submitting a petition of bankruptcy in the Indonesian Commercial Court. Therefore, it is important for the business owner and shareholder an Indonesian company to register or place their assets in Indonesia to minimise the risk.

It is also very important to diversify the ownership of assets, thus minimising the risk that all assets will be claimed by the Bankruptcy Trustee. By diversifying the ownership of assets, if one company falls into bankruptcy or suspension of payment, the Bankruptcy Trustee can only claim assets owned by the debtor, and other assets owned by other entities can be safeguarded.

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Dr Benno A. Packi, partner at adesse anwälte | adesse attorneys, advises clients on corporate and real estate transactions, project developments and financing from a legal perspective. He advises stock corporations, real estate investors, real estate developers, construction companies, operators, and successful start-ups in the real estate industry. With more than EUR 3 billion in transaction and case value he has helped clients with, Dr Packi is highly experienced in real estate transactions including share deals, asset deals, forward sales of development projects, portfolio transactions, distressed real estate transactions, including the legal structuring of the financing of such transactions. Furthermore, Dr Packi represents clients in litigation including arbitration, particularly in post-transaction disputes and liability matters relating to managing directors.

adesse anwälte | adesse attorneys is an independent law firm for German and international business law, in particular real estate law including real estate development and real estate financing, with offices in Berlin and Frankfurt. adesse's clients have one thing in common: they move people, goods and services daily on a regional, national or international level. adesse offers excellent advice for several industries and their goal is to achieve perfect results and high client satisfaction. adesses's focus is not limited to regular residential or commercial properties and includes also hotels, shopping centers and logistics properties. adesse also has extensive experience in infrastructure and turnkey projects as well as in various other special structures.

Their extensive litigation experience allows adesse's lawyers to identify pitfalls early in the project development phase and to work out counter-strategies that actually work. adesse structures and advises the acquisition or sale of a property as well as the transfer of real estate portfolios. Furthermore, they help to legally structure and implement the acquisition or project financing of real estate transactions, including equity, debt, or financing by way of mezzanine capital, or a mix of different lines of financing, respectively.

QUESTION ONE

Decarbonisation and environmental concerns have become a key priority for governments and developers. How are these issues affecting real estate in your jurisdiction – from consumer and shareholder expectations to regulations and costs?

Decarbonisation and environmental concerns have become core issues in the real estate industry. Their impact is widespread, affecting project developers, investors, users, and consumers alike.

One of the most far-reaching measures is the ESG Legal Framework, driven by EU initiatives. ESG stands for "environmental," "social" and "governance," and is intended to encompass the standards of a sustainable economy based on these three areas. New standards are being set for real estate financing.

With the ambitious goal of achieving a climate-neutral real estate stock by 2045, considerable investments are necessary which is already having a noticeable impact on real estate prices. At the heart of this development is the Building Energy Act (GEG), which defines clear limits for the energy consumption of buildings. One of its main requirements is that heating systems must be based to a significant extent on renewable energies.

The following can be said about new construction: the number of building applications has fallen drastically. In the first half of 2023, only 135,200 building permits for new apartments were issued across Germany, 50,600 fewer than in the first half of the previous year. One of the main reasons for this decline is that construction costs are still at a high level, while financing conditions are deteriorating. For example, it is forecast that 40-50% of project developers could become insolvent in the next three years. On the one hand, government regulation on energy efficiency is likely to exacerbate these problems in the medium term because of the associated costs. On the other hand, however, it is also likely to give rise to new business models.

Regarding existing properties, the following should be emphasised: buildings that are not energy efficient, in particular those with older heating systems and high energy consumption, may potentially decline in value. Property owners face the challenge of adapting their portfolios accordingly.

In summary, the real estate industry is facing significant changes. Decarbonisation and environmental targets are reshaping the landscape, influencing investments, consumer behavior and setting stricter standards. As with any change, new opportunities are emerging. Investors are therefore advised to consult experienced advisors who are able to identify and anticipate the trends.

TOP TIPS

The main advice for real estate investors can be summarised as follows:

- Real estate investors should closely monitor the development of the market and legislation in the field of energy efficiency.
- Opportunities currently arise in particular from distressed sales or sales out of insolvency.
- It is currently more important than ever to consult experienced and independent advisors, not least to clarify the economic and legal implications of a distressed property and to avoid costly mistakes.

QUESTION TWO

How are lifestyle changes like remote working impacting demand for real estate in your jurisdiction – are there any incentives to convert commercial properties into residential?

In today's rapidly changing workplace, we are seeing an increasing decline in employee office presence. Studies have recently identified this decline as being as high as 30%. The decline is also impacting population growth in major cities as professionals gain freedom to work on the move. With remote and hybrid work options available, many office-based employees have chosen to turn their backs on expensive city centres and relocate to less densely populated, lower-cost areas. This shift to the suburbs is consistent with the overall suburbanisation trend we are currently seeing.

In parallel, the stationary retail sector in Germany is struggling with growing challenges. Even before the coronavirus pandemic, it was under pressure. But the crisis has further diminished its importance.

These upheavals harbour both risks and opportunities for Germany. For example, there is a clear trend toward flagship stores in city centres coupled with the closure of less exposed locations and the expansion of retailers' online presence. Another visible trend is the increasing importance of housing in suburbs, combined with the expansion of local amenities for people moving to the suburbs.

An attractive concept is the conversion of commercial real estate to residential purposes combined with an upgrade to high-priced residential space as well as subdivision into apartments and sale of individual apartments. In this respect, most important is the market analysis to determine the most saleable apartment size in the respective price range. The involvement of experienced consultants is therefore recommended.

QUESTION THREE

Are geopolitical and economic issues causing any disruptions to real estate in your jurisdiction – and how can Real Estate practitioners turn these challenges into opportunities?

In recent years, the real estate market in Germany has undergone significant change. Geopolitical and economic developments, both at global and European levels, have had a profound impact on the country's real estate landscape.

In recent years, Germany has benefited from the low interest rate policy of the European Central Bank (ECB), which has led to a construction boom and rising real estate prices in many cities, especially in the so-called Big Five Cities, i.e. Berlin, Munich, Frankfurt, Hamburg, and Düsseldorf. The low interest rates have enabled many companies and private individuals to take out real estate loans at attractive conditions. The inflation caused by the geopolitical and economic upheavals and therefore also caused key interest rate increases by the ECB has made many real estate projects and financing unprofitable. This is one of the reasons why several major real estate developers have already fallen into insolvency. Other real estate projects are restructured in accordance with the legal options (scheme of arrangement pursuant to StaRUG, insolvency proceeding in self-administration, or regular insolvency proceeding) or thrown onto the market by way of distressed sales.

Occasionally, the model of a so-called dual-benefit trusteeship is also chosen. In this model, a trustee takes control of the respective project company and acts on behalf of both the real estate developer and the financier. The aim of the trustee's activity is to sell the real estate project, if possible at the market price, avoiding insolvency or other financial restructuring, and repaying the financing as completely as possible. At present and in the next approx. 12 to 18 months, the considerably reduced real estate prices are to be expected. This may lead to opportunities in the German real estate market for investors.

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As JCL's Managing Partner with more than 30 years' experience, Jim leads the firm's strategic direction, which has always focused on effective and efficient problem resolution. He is a recognised leader in commercial litigation and insolvency law and has garnered a widely respected reputation within Queensland's legal community.

The firm was established because Jim is passionate about achieving positive outcomes for clients and providing real value for money. Since JCL's inception, Jim has consistently adopted a pragmatic, direct and confident approach to skilfully navigate his clients through complex legal matters, with unwavering commercial results.

Jim's career has seen him serve as the Queensland State Chair of the Insolvency and Reconstruction Committee of the Business Law Section of the Law Council of Australia, Queensland State Chair of the Insolvency and Reconstruction Committee of the Queensland Law Society and the National Chair of the Insolvency and Reconstruction Committee of the Business Law Section of the Council of Australia.

James Conomos Lawyers was established in July 1992 as a boutique legal firm offering specialist expertise in commercial litigation and insolvency. The firm came into being because James is passionate about achieving positive outcomes for clients and providing real value for money. James has pursued his desire to help younger lawyers learn the art of law and problem solving and has shaped a team of capable and ambitious lawyers. JCL is recognised as a leading commercial litigation and dispute resolution law firm and a leading insolvency and restructuring law firm in Queensland, Australia.

QUESTION ONE

Globalisation continues to blur corporate geographic borders. How is your jurisdiction responding to the complications of cross-border insolvencies?

More than 10 years ago, in one of the largest cross-border insolvency cases in history, Lehman Brothers filed for bankruptcy in the US. This year marks the 15th anniversary of the commencement of the Cross-Border Insolvency Act 2008 (Cth) in Australia, by which the UNCITRAL Model Law on Cross-Border Insolvency became part of the domestic law in Australia and the year in which UNCITRAL adopted and published the Model Law on the Recognition and Enforcement of Insolvency-Related Judgments. The 15-year milestone makes it timely to explore some of the practical issues in cross-border insolvency.

- It is not uncommon for foreign creditors to become caught up in insolvency in Australia. The dealings between a foreign creditor and an Australian entity will usually be regulated by an agreement. However, once the Australian entity debtor enters into external administration, the foreign creditor becomes subject to the Australian insolvency law regime. Australian courts tend to apply the law of the forum to all insolvency law issues, without any consideration as to whether the law of the cause should apply to specific questions arising in, or connected with, an insolvency.
- There has been a steady rise in insolvencies of companies incorporated overseas. Under the Corporations Act 2001, an Australian Court may order the winding up of a foreign company that is either registered under that Act or carries on business in Australia and whilst the directors (or members) may defend the winding up application, if they seek to impede the application by commencing a competing insolvency proceeding overseas, they may find themselves out of favour with the Australian Courts. This was the case in Legend International Holdings Inc (In Liq) v Indian Farmers Fertiliser Co-op Ltd [2016] VSCA 151, where the Victorian Supreme Court ordered (and the Court of Appeal upheld) the Australian winding up of a Delaware company, which was registered under the Corporations Act and had its principal place of business in Melbourne. The winding-up order was made even though the company had filed a voluntary bankruptcy petition in the US.
- One of the many things that an Australian creditor will need to consider when a debtor goes into external administration in a foreign jurisdiction is the lodgement of a proof of debt in the foreign insolvency proceeding. Complexities may arise in relation to how and when such a proof is to be lodged, its requisite contents and its treatment by the foreign representatives. Most of these issues will be governed by the laws of the foreign jurisdiction. For example, under US bankruptcy laws, the bankruptcy court may set a "bar date" by which all creditors' proofs must be filed. Failure to prove a claim by this date may bar the creditor from claiming against the debtor in the future and, in that way, adversely affect the substantive rights of that creditor.
- Furthermore, by lodging a proof of debt in a foreign insolvency proceeding, the Australian creditor runs the risk of being found to have submitted to the foreign court's jurisdiction in the context of, for example, an avoidance action commenced against that creditor in the foreign jurisdiction and the subsequent enforcement of the foreign court's judgment in Australia.
- In recent years, there has been an increasing number of cross-border restructurings being achieved in Australia through schemes of arrangement and through deeds of company arrangement. An important development is the recognition of the Australian schemes of arrangement in the United States, under Chapter 15 of the US Bankruptcy Code (which largely corresponds with the Model Law).

QUESTION TWO

Are inflation and other economic pressures having an impact on the volume of insolvencies and distressed companies in your jurisdiction?

- Business collapses are on the rise with a perfect storm caused by the merger of inflation and the cost of living crisis in Australia.
- Collapses have hit a 3½-year high in recent months, to jump back above pre-pandemic trends for the first time, as rising interest rates and a cooling economy hurt corporate Australia.
- Banks are becoming less forgiving of distressed corporate borrowers and the Australian Taxation Office are cracking down on company directors for unpaid tax debt and all of this is driving more businesses to fail.
- The pandemic probably masked the insolvency of many companies propped up by Government handouts but now falling without that support which is also likely creating greater numbers of insolvencies.
- The corporate regulator releases new insolvency data regularly showing increased numbers compared to pre-pandemic failures.
- Insolvencies fell to record lows in the three years during Covid-19 because of moratoriums, unprecedented government stimulus payments such as JobKeeper and cash flow support, near-zero interest rates and banks temporarily waiving repayments.
- Company failures have now risen sharply, particularly in the construction sector, accommodation and food services, retail trade and manufacturing.
- These four industries combined made up about half of the corporate collapses recorded in the last 12 months according to an analysis of recent data.

TOP TIPS

Understanding personal obligations in a cross-border insolvency

The key issue to understand is the location of the Centre of Main Influence (COMI). If the COMI of the debtor is Australia, there are several important implications for foreign creditors of the debtor, including:

- Foreign creditors will be entitled to commence and participate in Australian proceedings.
- Unsecured foreign creditors have the same rights as unsecured domestic creditors and can therefore expect the same entitlements from the distribution of the proceeds from a liquidation of the debtor.
- The court has broad powers to stay proceedings or the enforcement of proceedings if to do so is necessary to protect the assets of the debtor or the interests of creditors.

QUESTION THREE

How can business owners and shareholders protect themselves in cross-border proceedings that include your jurisdiction?

A useful way to consider this issue is to look at an example of a case that was considered by the Australian and a foreign Court.

In Kelly, in the matter of Halifax Investment Services Pty Ltd (In Liquidation) (No 5) [2019] FCA 1341, the Court was faced with a situation where client funds held on trust by Halifax Australia and Halifax NZ were substantially commingled, with the result that Halifax Australia (or its clients) may have claims in relation to funds held in the name of Halifax NZ and vice versa.

Further, the Liquidators identified that there was a deficiency in the client funds held by Halifax Australia and Halifax NZ of approximately AUD19 million.

The Court determined that this case presented as a "classic candidate" for cross-border cooperation between courts to facilitate the fair and efficient administration of the winding up of Halifax Australia (and Halifax NZ) that would protect the interests of all relevant persons, particularly the investor clients of Halifax Australia and Halifax NZ who may have claims against the funds held by Halifax Australia. The Court also said that it did not have any difficulty with the general proposition that the Australian Court and the New Zealand Court should endeavour to cooperate to the extent possible to promote the objectives of the liquidations of Halifax AU and Halifax NZ, which would include a concurrent hearing by both Courts.

This example shows that courts in Australia are willing to facilitate the cross-border coordination of insolvent disputes including cooperation between courts in different international jurisdictions, which would once have been regarded as entirely novel.

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Matthias Meitner is the Managing Partner at VALUESQUE. Matthias is a business valuation expert with valuation experience from all relevant perspectives (Investment, Accounting, Taxation, appraisals, litigation, fairness opinions, succession); all industries, companies and occasions, with a special interest in "difficult" cases (start-ups, distressed companies, special situations); consulting in all value-related business areas (succession planning, valued-based management, Investment/participation Management). In a former professional life, Matthias served as an equity portfolio manager at Allianz Global Investors, the investment arm of Allianz Insurance, where he was responsible for assets under management > 300m Euros. His investment approach was based on deep fundamental and accounting analysis as well as strongly valuation-driven (stock picking).

Matthias has a Ph.D. in Finance from the University of Erlangen-Nuremberg (Germany) and is a CFA (Chartered Financial Analyst)-Charterholder. Matthias holds a chair as a Professor for Finance, Accounting & Business Valuation, at the International School of Management (ISM) in Munich. He serves as a member of the Capital Market Advisory Committee (CMAC) of the IFRS-Foundation, The EU-linked European Financial Reporting Advisory Group (EFRAG) Expert Panel, the Capital Market Policy Council of the CFA Institute and of the supervisory board of the CFA Society Germany.

VALUESQUE is a leading boutique for business valuations in Germany. VALUESQUE provides all sorts of business valuation services: from typical investment support and ongoing investment services to appraisals for tax, accounting, distress-related, cartel-related and other legal reasons, as well as all sorts of litigation services. VALUESQUE also intensively covers topics such as start-up valuation or IP and intangibles valuation.

VALUESQUE is particularly focused on difficultcases, complex situations and non-standard applications. This is where VALUESQUE can play out its strengths: a deep investment and decision-making background, strong accounting know-how and a leading position in all relevant academic aspects. VALUESQUE is able to apply the whole spectrum of valuation concepts and models, if necessary.

QUESTION ONE

What makes business valuation and business analysis so challenging in the current market environment?

For a sound business analysis and valuation, we have to forecast future economic developments. Making forecasts is easier when we face a time-stable business environment, when the past is representative of the future and when there are no big changes in key capital market parameters. However, none of this is currently the case. Hence, we are forced to do much more fundamental research, go down much deeper to the roots of business drivers, split down the drivers into more components and follow a more differentiated risk assessment process.

The current environment requires a lot of experience and analytical skills. Standard valuation procedures that might work in another, i.e. a more stable environment – such as standard discount rates, and simple valuation multiples – do not lead to reasonable results currently. Even more dangerously: applying such standard procedures without sound finetuning can lead to misevaluations and ultimately bad investment decisions.

QUESTION TWO

What are the main focus points in due diligence currently? Where should investors look at, particularly in business analysis?

There are a couple of aspects that investors should look closer at in the current situation. The first and foremost aspect is the so-called "pricing power". The pricing power of companies is the ability to pass through cost-side inflation to customers. High quality companies are easily able to adjust customer pricing in order to compensate for cost increases because they have a strong competitive positioning, e.g. because customers are dependent on the products of the company or because of high switching costs related to the products, etc. Weak pricing power companies, however, are not able to raise prices accordingly. Due to the existence of long-term contracts both on the cost and the revenue side of many companies, these companies will get squeezed in the current inflationary environment. The tricky point is, as inflation rates have been quite low in the past years and most companies have not been forced to adjust customer pricing, we cannot rely on past observations in order to assess pricing power. We rather have to apply more advanced analytical techniques.

Another important point for analysis is the working capital, i.e. the accounts receivable, accounts payable and the inventory. For many companies, the inventory was subject to both volume and price movements in the recent past. Volume movements because of a build-up of safety stock to address the current macro uncertainty or to deal with supply chain disruptions, and price movements because of (raw material) inflation. The question is now: how sustainable is this current level of inventory? Where will inventory levels and prices go in the coming months? And, as if that weren't enough, we also face some accounting distortions in the current environment. Companies applying the FIFO method (first-in, first-out; the favourable inventory valuation method in IFRS accounting) are temporarily benefiting from artificially increasing margins.

Moreover, many European companies are facing interruptions of their supply chains or demand restrictions because of the current Eastern European political tensions. And finally, the question of affordable energy costs is an overriding topic for energy-intensive industries in Europe – and will stay so for longer.

Of course, this is just a selection of important due diligence and fundamental analytical topics. But it becomes clear that we are in a big disequilibrium currently. An important question is: is this disequilibrium the new standard, the new normal, or will (at least parts of it) reverse back to the pre-disequilibrium level? Whatever the answer is, this disequilibrium is not only negative news for investors. In particular, those investors who accept the analytical challenges and are able to make a difference will find attractive acquisition opportunities in the current environment.

QUESTION THREE

Beyond the pure analytical challenges: What are the big questions in the business valuation process, i.e. when investors want to transform their analytical findings in a value number?

Disequilibrium is a big topic in the valuation process, too. When applying Discounted Cash Flow (DCF) Models we need risk-adjusted discount rates. But due to the shifts in the geopolitical and economic climate today's risk parameters are quite different from the risk parameters two or three years ago. And this is not only company-specific. Just as an example: we are currently putting a lot of research effort into the determination of an appropriate market risk premium (i.e. the return premium over the risk-free return required by an investor when investing in a broad equity market) in the current environment.

In terms of spreadsheet valuation modelling, we sometimes apply different structures in the current environment. E.g., in the old, stable environment the cost of materials where often linked to the revenues via a certain cost ratio. Today we sometimes disconnect this automatic link – at least for the first years of the forecasting horizon – and make separate predictions for revenues and cost of material. By this, we can map different inflation rates more appropriately in our valuation model.

The higher degree of general economic uncertainty also forces us to keep our valuation models more dynamic. In particular, today we apply more and more often models that make use of Monte Carlo simulation techniques (i.e. techniques that make predictions and calculate values based on random but range-bound or distribution-bound developments). Such techniques are particularly helpful if the future is path-dependent, i.e. if companies behave differently whether they run into an economic crisis (negative path) or whether they prosper (positive path) – something we can observe quite often currently.

Finally: when applying valuation using multiples we put more effort into the normalisation of the earnings numbers and in the analysis of comparability of peer group companies.

TOP TIPS

Successful due diligence and valuation in a rapidly changing market

Don't automatically apply standard techniques! Many of our analysis and valuation techniques are made for a stable business-as-usual setting. Think twice and outside-the-box how to use these techniques.

Embrace uncertainty! Uncertainty is a problem for everybody. So try to be better than others in dealing with it. Remember: By getting the tricky parts of the analysis right you can really make a difference.

Increase the depth of analysis! You can always go deeper into every aspect of your analysis. Finding the right balance between cost, time, effort, and evidence is key to success. Currently, however, more analytical depth is necessary than in a stable environment.

Ask experts! A rapidly changing environment provides lots of new challenges. With your existing skill set, you might be able to tackle some but probably not all of them. Don't hesitate to ask external experts as mistakes can be quite costly in the current environment.

Accountancy & Corporate Services

Our Accountancy & Corporate Services members discuss the growth potential for organisations in their jurisdictions, are there any key economic opportunities that you should be aware of? How is their jurisdiction encouraging businesses to trade in the area: for example, through tax incentives, business-friendly legislation, licensing? They'll also highlight any unique challenges your clients should be aware of.

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Lou Robinson, as CEO and President of Alliance Trust Company of Nevada, is responsible for the strategic vision of the firm. He leads the implementation of tactics focused on the growth of the organisation, and the development of employees while ensuring the level of client service provided is second to none. Lou's knowledge and understanding of complex estate and tax matters is a must in his role. Along with serving on the Board of Managers at Alliance, Lou has also been a member of the Board of Directors for the Great Basin Institute for the past 8 years. The Institute's mission is to advance applied science and ecological literacy through community engagement and agency partnerships, supporting national parks, forests, open spaces and public lands.

Alliance Trust Company of Nevada, headquartered in Reno, Nevada, works with attorneys, financial advisors, CPAs, and insurance professionals from around the world to provide flexible trustee services and the benefits of Nevada trust situs. Founded in 2005, Alliance Trust Company of Nevada is fully independent and 100% employee-owned and operated.

Alliance is not a subsidiary or affiliate of any brokerage house, insurance company, or bank. We engage with our clients and their established teams of professionals without interference.

Nevada leads the United States in both domestic and global asset protection and dynastic wealth management. We help our clients benefit from Nevada's favourable trust laws through a variety of trustee services.

QUESTION ONE

In a changing global economic climate, what is the growth potential for organisations in your jurisdiction? Are there any key economic opportunities that enterprises should be aware of?

Nevada's economy is shifting away from an economy driven by the gaming industry. This shift has allowed Nevada to become increasingly attractive to high-net-worth individuals seeking relief from personal and corporate income tax. Significant tax incentives and very favourable trust laws are intended to bring new businesses and new residents into the state.

Nevada's general economic conditions (as disclosed in the Center for Business and Economic Research's Nevada Business Conditions: June 2023) remain positive. Airline passenger counts are up 14.4% year over year, which is indicative of a resurgence in tourism as the state recovers from the drastic economic effects of the Covid-19 epidemic.

This surge in visitor traffic is more expansive than Nevada's traditional economic leader of the gaming industry. Rather, gaming is primarily located in Las Vegas while Northern Nevada is focused on tourism and high-tech manufacturing and distribution. Due to the emphasis on expanding the economy via manufacturing, Reno, NV has become a major distribution channel for companies that deliver their products to the Western United States.

Tourism in Nevada has increased to other areas of the state and away from the single focus of Las Vegas. Northern Nevada offers the Lake Tahoe region, which attracts visitors to the area as well as high-net-worth individuals from California who own property in the area. This region is considered an outdoor mecca for tourists seeking the opportunity to experience a beautiful location in the United States. Northern Nevada boasts snow skiing and winter sports in the mountains and camping and mountain lakes in the summer. Also, of note regarding changes in the interests of tourists are the effects of inflation causing visitors to seek more experience for fewer dollars. The tourism dollar alone is not enough to sustain the future for Nevada's economy thus the interest in expanding the number of businesses and residents in the state.

QUESTION TWO

How is your jurisdiction encouraging businesses to trade in the area: for example, through tax incentives, business-friendly legislation, licensing, etc?

Nevada's economy is quickly moving away from the traditional gaming-based focus, utilising significant tax incentives to attract large tech businesses. The use of tax incentives brought the Tesla Gigafactory plant and the related Panasonic battery cell production plant to Northern Nevada. In December 2022, the State approved over $105 million in tax incentives to expand a lithium battery recycling plant. These are visible examples of the state attracting new business through tax incentives. Nevada borders Northern California, creating easy access to high-tech companies in Silicon Valley, California, providing California businesses the opportunity to reduce costs by expanding to Nevada. Nevada also offers lower-cost real estate and employee salaries than neighbouring California.

The Nevada legislature continues to aggressively pursue adding jobs to the state. The largest priority at the moment is luring away the Oakland Athletics, the Major League Baseball team located in Oakland, California, by offering significant tax incentives. The likely move of the Major League Baseball team follows the recent move of the Oakland Raiders (American Football Team) to Las Vegas which included the build of a multi-million-dollar stadium. Las Vegas also is the home to a National Hockey League expansion team, the Las Vegas Golden Knights, whose first season was in 2017.

The recent surge in new tech businesses coupled with the decentralisation of the workforce from urban business centres caused by the Covid-19 epidemic has caused significant pressure in the housing market in Nevada, especially in Washoe County located in Northern Nevada and home to Alliance Trust. Northern Nevada is a beautiful and desirable place to live which is attracting a surge of new residents.

This rise in the need for housing has caused a 24% YoY price increase in single-family residences. Reno, according to the Reno Gazette Journal, is experiencing some of the highest rent increases in the United States. This has spawned an increase in large apartment complex construction in the city of Reno to make up for housing inventory shortfalls for new workers coming into the region.

"Tourism in Nevada has increased to other areas of the state and away from the single focus of Las Vegas."

TOP TIPS

Opening investment management accounts in your jurisdiction

- Decide on the firm with whom you or your client wish to do business. Often this decision is based on the Financial Advisor of choice.
- Do not dwell on small contractual issues. Make a list of the most important issues that matter most.

QUESTION THREE

What makes your jurisdiction unique to do business in – and are there any unique challenges your clients should be aware of?

Nevada is consistently rated in the top tier of trust jurisdictions in the United States because there is no state income tax, unparalleled privacy for international families, and some of the most favourable asset protection laws in the world. The state relies on the gaming and mining industries for tax revenue, eliminating the need for individuals and entities such as trusts to pay state income tax.

Countries around the world are increasingly exchanging information and requiring public registries to disclose international family assets, allowing for that information to potentially fall into the hands of those who would misuse the information.

Nevada law limits or eliminates creditors' ability to breach the trust and have access to trust assets. There are no exception creditors under Nevada law, which includes claims for spousal and child support. This provision is unique to Nevada. Additionally, Nevada has a two-year statute of limitation related to future creditor litigation and the ability to access assets that were placed in a trust. Of note, the administration of new trust transfers does not require a new affidavit of solvency when assets are added to the trust.

Nevada's Directed Trust Statutes allow the client to choose their Family Office team that would work in concert with Alliance Trust. Alliance Trust would follow the direction of the Family Office team to ensure the family's goals and wishes are followed.

Trusts with a Nevada situs may be established by individuals and families located either inside or outside of the United States. Nevada law simply requires that all or part of the administration of the trust be performed in Nevada. As a corporate trustee domiciled in Nevada, Alliance Trust provides the required nexus to the state allowing international families to utilise Nevada's favorable laws.

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Isabella Bertani is the Founder and Chief Client Strategist at BERTANI, a boutique audit, tax, and advisory firm located in Toronto, Canada. With over 25 years of experience, Isabella has worked extensively with both private and public companies in numerous industry sectors including manufacturing, food processing, technology, telecommunications, mining and mining-related industries, biotech, and retail and distribution. She has been named by Practice Ignition as one of the Top 50 Women in Accounting globally for two consecutive years in 2021 and 2022.

Isabella's practice focuses on inbound foreign investment and Canadian domestic companies with global interests. A recognised leader in foreign direct investment, Isabella routinely advises global corporations with regards to expansion into the North American market and clients include numerous foreign subsidiaries of significant global entities. Isabella is a frequent speaker on topics relating to globalisation including doing business in Canada, trade agreements, global trade and migration, and the impact of geopolitical trends on global foreign direct investment and global trade. She has a particular interest in FDI and its impact on global sustainability.

In 2017, Isabella was bestowed the honour of Fellow of the Chartered Professional Accountants of Ontario, the highest distinction conferred on its members that have brought prestige to the profession through significant achievements in their professional careers, volunteer involvement in the affairs of the accounting profession, and contributions to the community.

Isabella is a graduate of York University's prestigious Schulich School of Business holding both a Bachelor of Business Administration in accounting and a Master of Business Administration with a focus in policy and finance.

BERTANI is a boutique audit, tax and advisory firm located in Toronto, Canada. Founded in 2001, BERTANI specialises inbound and outbound foreign direct investment into Canada and private Canadian companies with growth objectives and global interests. Through our soft-landing program, we routinely advise and assist foreign corporations with their expansion into and continuing operations in the North American market.

As a member firm of IR Global, BERTANI is connected to over 1300 collaborative member firms in over 165 jurisdictions covering 70 practices areas across the globe, allowing our clients to be ideally positioned for their outward global expansion strategy.

"Ease of immigration of workers has made Canada a popular choice for companies looking to set up North American headquarters"

The Shifting Geo-political and Economic Reality

The global economy has experienced multiple shocks in a very short period including impacts from the pandemic, the Ukraine War, disruptions to supply chains, rising inflation, and interest rates and other economic pressures. Growing concerns around climate change where wildfires and increasing severity of storms impact the economic engines of regions or entire countries. The resultant impact of these geo-political shocks has demonstrated that both individual and the global economy as a whole must become more and more resilient in order to face the fallout. In addition, instead of each country responding to these shocks in isolation, the global economy must be more cooperative in order to effectively face global shocks due to how interrelated and globally interconnected the flow of goods and services has become as was evidenced during the pandemic.

Businesses, like economies, can no longer operate in a stagnant fashion, rather they must be more fluid and flexible in order to evolve and succeed to meet the changing reality, which is a global economy that must be constantly responding to events both within and outside our control. Hence, businesses are more likely to succeed within jurisdictions that allow that flexibility and are stable enough to endure geopolitical shocks.

Canada is part of the solution:
Canada offers an environment of openness to foreign investment and immigration, access to a diverse and educated workforce, competitive and business-friendly environment. Canada's stable banking system and stable economy, ranked number 1 among G7 countries, make it the ideal investment hub to reach consumers in North America and globally. As a result, Canada has been able to quickly respond to and endure geopolitical shocks.

Access to Global Markets:
Situating itself as a global gateway to trade, Canada's openness to trade has given rise to 15 active free-trade agreements with 51 countries with many more in various stages of negotiation, and make it a gateway for global trade. Free-trade agreements currently in force include the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Canada-European Union: Comprehensive Economic and Trade Agreement (CETA), the Canada-United States-Mexico Agreement (CUSMA), and the recently ratified Canada-UK Trade Continuity Agreement which came into force on April 1, 2021. Free-trade agreements allow businesses in Canada beneficial access to these global markets and consumers by removing tariffs and other barriers to trade when meeting the rules of origin as defined in these agreements. Through these combined agreements, businesses in Canada have access to a combined GDP of over $54 trillion and over 1.5 billion consumers.

Incentive Programs:
Canada's attractiveness to investment includes the fact that it supports innovation through its incentive programs. Canada provides numerous government incentive and grant funding programs at both the provincial and federal levels. These are mainly targeted at job creation, innovation, and research and development (R&D). The Scientific Research and Environmental Development (SR&ED) tax incentive is Canada's largest research and development program awarding over $3 Billion annually in tax incentives. It is the largest single source of grant funding for R&D provided by the Canadian program. Other programs include the Strategic Innovation Fund and the Industrial Research Assistance Program (IRAP).

Ease of doing business and stable economy:
According to the Economist Intelligence Unit, Canada ranked second out of 82 countries and first overall amount G7 countries in its evaluation of business environment in September 2022 and has consistently ranked in the top 3 countries during the last 5 years. Canada's stable economy, business environment and banking system allowed it to quickly put in place significant support to individuals and businesses through its Covid-19 Economic Response Plan which allowed it to steer the course during the pandemic and as a result, 83% of the jobs lost between February and April 2020 due to Covid-19 had been recovered by the end of April 2021 with nearly 67% of these in full-time positions.

Competitive Tax rates:
Canada has maintained a competitive tax rate compared to other leading FDI destinations in North America. The combined federal and provincial corporate tax rate in Ontario for a manufacturing entity is 25% (26.5% for non-manufacturers). It has also implemented accelerated investment incentives so that companies can recover their capital investment faster.

Ease of entry and openness to immigration:
Ease of immigration of workers has made Canada a popular choice for companies looking to set up North American headquarters. In some cases, difficulty in renewing H-1B visas in the US has resulted in many companies moving their North American headquarters from the US to Canada. Advanced manufacturing and automotive engineering are two key industries in Ontario, particularly along with the Toronto region's technology corridor, which links to several world-class universities to provide a highly educated and skilled workforce. When combined with the various government incentive programs for research and development (R&D), mentioned above, Canada is an attractive destination.

Canada has positioned itself as an environment open to trade and investment. With its free trade agreements, incentive programs, immigration policies, and competitive and stable business environment, it allows companies to compete effectively in the evolving global economy.

To be able to have a stable business environment and economy, Canada has complex assurance and tax regulations, legislation designed to prevent money laundering and fraud, detailed workplace legislation and requirements around payroll deductions for employees. As a foreign company setting up a subsidiary in Canada, various disclosures are required under the terms of the Investment Canada Act including filings required with the implementation of a new investment or where a foreign entity proposes to acquire control of an existing Canadian business. One of the major challenges that is often faced when a Canadian subsidiary of a foreign entity is incorporated, is the opening of a Canadian bank account. Canadian banks required detailed information on direct shareholders and ultimate beneficial ownership of entities looking to open a bank account. Where shareholders and officers are not present in Canada, this can be a challenge. Having a Canadian resident director will make this process smoother. In addition, ensuring that you provide full and detailed information will make the process easier to navigate.

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Achim Heuser Achim Heuser completed his academic career at the Ruhr University in Bochum. He completed his legal clerkship at the Regional Court in Essen. After working for a year in a law firm, he moved to industry. There he built up the structures for an international human resources department. At the end of 1994, he was appointed in-house counsel in the legal department. There he was responsible for both legal and tax issues. In the course of his time in industry, Achim held various positions. Finally, he founded his own law firm in 2002.

Heuser Recht Und Steuern specialises in the design of international employee assignments. This area is called Global Mobility. In addition, there are the classic areas of a law and tax firm.

The firm advises companies on the implementation of their international or global sales and growth strategies. Together with strong local partners, corporate services can be offered almost anywhere in the world. From the establishment of a subsidiary, to the design of a payroll, to the handling of international payments, the firm offers a special full service.

QUESTION ONE

In a changing global economic climate, what is the growth potential for organisations in your jurisdiction? Are there any key economic opportunities that enterprises should be aware of?

The global economic climate, which is changing dramatically as a result of the Covid-19 pandemic and the Russia-Ukraine war, is also posing new challenges for companies in Germany and forcing them to adapt and transform. The key to successful transformation is entrepreneurial innovation. New products, new processes and new business models could curb the negative consequences of crises, and even represent economic opportunities. Infrastructure such as production facilities, transport options, digitalisation and availability of skilled workers also play a very large role.

Among other things, Germany is focusing on developing and strengthening in the areas of renewable energy sources, electromobility and facilitating the immigration of skilled workers.

QUESTION TWO

How is your jurisdiction encouraging businesses to trade in the area: for example, through tax incentives, business-friendly legislation, licensing, etc?

In order to shape favourable and attractive conditions for companies in Germany, corresponding business-friendly regulations are being enacted. In the following, we present examples of such regulations that have recently been passed.

Renewable Energy Sources Sector:
To strengthen and accelerate development in the field of renewable energy sources, an Easter-Summer package of laws was passed in Germany in 2022 at the instigation of the Federal Ministry of Economics and Climate Protection. One of these is the Law on the Determination of Area Requirements for Onshore Wind Energy Plants which came into force on 01 February 2023.

The provisions of this law ensure the provision of more land for the development of renewable energy sources, especially for wind energy. Another law from this package is the Law on the Development and Promotion of Wind Energy at Sea. The provisions of this law accelerate the development of offshore wind farms and offshore connection lines, as well as shorten the contracting process in these areas by several years.

As part of the 2022 Easter-Summer Package, regulations were further adopted on electricity grid expansion, some of which took effect in July 2022 (grid regulations) and some of which took effect in February 2023 (the Energy Security Act). As a result of these regulations, administrative procedures were significantly shortened, and some review phases were even waived so that corresponding projects can be implemented more quickly in Germany. The Easter-Summer Package 2022 also contains regulations that are intended to strengthen the positive trend of the expansion of photovoltaic systems.

Electromobility area:
Electromobility is an important element of Germany's climate-friendly energy and transport policy. As a strong exporting country, Germany wants to maintain its leading position in the field of electromobility with highly innovative products and contribute to climate protection in mobility.

For this reason, three financially effective measures are at the forefront of the promotion of electromobility: temporary purchase incentives, the expansion of the charging infrastructure, and public procurement of electric vehicles. As a purchase incentive, for example, there was an environmental bonus of 900 euros until the end of 2022 for the purchase of a purely battery-electric vehicle up to a net list price of 40,000 euros and 7,500 euros for vehicles above 4,000 euros net list price.

Furthermore, the German federal government developed a new Master Plan Charging Infrastructure II i.e. an overall strategy for the rapid expansion of the nationwide and user-friendly charging infrastructure. Due to the Fast Charging Act, which came into force on July 01, 2021, the federal government is intensifying the expansion of the fast-charging structure at more than 1000 locations. A funding volume of 1.9 billion euros has been earmarked for the German network.

As a tax incentive, Germany has decided to introduce reduced taxation on electric or hybrid company cars for private use until the end of 2030.

Facilitating the immigration of skilled workers
Germany has a shortage of well-trained skilled workers in many regions and industries. The German government is focusing both on domestic potential — here the labour force participation of women and older people is to be increased, and training and continuing education strengthened — and on facilitating the immigration of foreign qualified specialists.

This is to be made possible by various legal framework conditions. For example, the Blue Card was introduced for IT specialists who are in particular demand in Germany and have a recognised qualification. For these specialists, the salary threshold is lowered, the length of professional experience is shortened, and proof of German language skills is waived.

Furthermore, one can come to Germany as a specialist on the basis of at least two years of professional experience. The qualification no longer has to be recognised in Germany beforehand. This means less bureaucracy and shorter procedures.

An opportunity card will be introduced for people who do not yet have a concrete job offer, but who bring potential for the labour market. The opportunity card serves as a residence permit for one year and is based on a points system. The criteria of the points system include professional qualification, knowledge of German and English, work experience, age, and relation to Germany.

"In order to shape favourable and attractive conditions for companies in Germany, corresponding business-friendly regulations are being enacted."

The latest amendments to the Skilled Workers Immigration Act were passed by the German Bundesrat on July 7, 2023.

At the same time, further hurdles for the immigration of skilled workers from third countries will be lowered. For example, the so-called Western Balkans regulation is to be abolished and the quota doubled. This means that in future up to 50,000 nationals from the six Western Balkan states (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, northern Macedonia and Serbia) will be allowed to immigrate to Germany each year. They can enter Germany for any employment without having to prove professional qualifications.

Companies could use the above-described acceleration and facilitation of administrative procedures, as well as the financial incentives and tax breaks, as a great opportunity for faster implementation of its projects in the field of renewable energy sources, electromobility and attracting skilled workers to Germany.

QUESTION THREE

What makes your jurisdiction unique to do business in – and are there any unique challenges your clients should be aware of?

Anyone wishing to do business in Germany is confronted with a large number of specific legal regulations. This is due, among other things, to the fact that the Federal Republic of Germany is a federal state consisting of a central government and 16 constituent states.

A characteristic of the federal system is that both the federal government and the states have their own state power and can therefore enact laws. In practical terms, this means that one must take into account both federal and state regulations in all legal constellations and legal matters.

In addition, one must also observe the applicable regulations of the European Union. That is why the legal situation in Germany is quite complicated and poses a challenge for companies. For these reasons, it is advisable to always consult a local specialist lawyer.

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Edward Allanby is the co-founder, President, and Chief Executive Officer of Leman Management Limited, a bespoke wealth administration and advisory company located in Hamilton, Bermuda. He brings over 35 years of expertise to the table with extensive experience in finance, accounting, fund administration, trusts and private trust companies, and the structuring and execution of private market investments. Edward excels in managing his clients' problematic, complex, and high-risk projects by designing and implementing effective, robust, and bespoke solutions.

Leman Management Limited is an independently owned company which provides expert, individualised services to high-net-worth and ultra-high-net-worth entrepreneurs, senior executives, families, and corporate entities who are seeking personal, responsive, and customised service for the structuring, execution, and administration of their private market asset portfolios.

Leman's team consists of a select group of internationally qualified professionals with more than 180 years of combined professional experience. Leman's skilled team are experts in local and offshore corporate services and structures. Their expertise is complemented by an extensive network of local and international professional advisors and banking relationships.

The company also provides financial control, directorships and registered office services, and corporate and fund administration services.

QUESTION ONE

In a changing global economic climate, what is the growth potential for organisations in your jurisdiction? Are there any key economic opportunities that enterprises should be aware of?

Bermuda has a longstanding reputation for being a blue-chip jurisdiction. The island's continued relevance in an era of global economic change can be attributed to the same underlying principles that have reinforced this decades-long classification. The island is a highly collaborative jurisdiction, which expertly facilitates speed to market, enabling international businesses to secure regulatory approval in a timely manner. Bermuda boasts a strong pro-business culture with an innovative legislative, a gold standard regulatory regime, and a highly qualified pool of professionals working across multiple industries, thereby ensuring that international businesses have a world-renowned, diverse, resilient, and cutting-edge platform for commercial growth and innovation.

Bermuda has a robust Economic Development Strategy and attracting new business to its shores is at its cornerstone. The international business sector is the largest industrial sector in Bermuda's economy, representing 28.1% of all economic activity on the island. This sector continues to see growth with a five-year average growth rate of 2.4%.

There are myriad economic opportunities available in Bermuda.

Bermuda is the single most important property and catastrophe market in the world, and is considered the global leader in captive insurance with many of the world's largest multinational corporations and publicly traded companies choosing to domicile their captives on its shores. 14 of the world's top 50 reinsurers hold licenses on the island.

Bermuda is a world-renowned hub for asset management offering both traditional and alternative investments including private equity, funds, and insurance-linked securities. The top U.S. and European private equity groups have either domiciled structures in Bermuda or interests in Bermuda funds. Bermuda is the leading domicile for insurance-linked securities.

Bermuda is a premier jurisdiction for high-net-worth and ultra-high-net-worth individuals with its comprehensive yet uncomplicated and welcoming approach to the establishment and maintenance of family offices, trusts, and other private client structures.

Bermuda is rapidly emerging as a global leader in technology sectors, pioneering a robust regulatory and legislative framework governing fintech, insurtech, and digital assets, and laying the foundation for companies in those fields to be part of a progressive environment in which to test ideas, develop products, and grow their businesses on a global scale.

QUESTION TWO

How is your jurisdiction encouraging businesses to trade in the area: for example, through tax incentives, business-friendly legislation, licensing, etc?

Bermuda has a collaborative business culture where government and industry work together closely to ensure that the island preserves its stellar reputation for cutting-edge innovation, premier international financial services, and commercial success. The island's well-respected regulator, the Bermuda Monetary Authority, upholds the balance between the progression of innovation and the adherence to global standards of regulation, compliance, and transparency.

Bermuda is a tax-neutral jurisdiction with no corporate, income, withholding, or capital gains taxes, and no limit on the accumulation of profit. There are no taxes on dividends paid to or received from foreign shareholders, and no taxes on interest or intellectual property royalties paid to foreign shareholders. Exempted undertakings (exempted companies, partnerships and trusts, and permit companies) are eligible to receive the 'Tax Assurance Certificate', which guarantees that exempted undertakings will be free from the imposition of these taxes through March 31, 2035.

In 2021, the government introduced 'The Economic Investment Certificate and Residential Certificate Programme', which enables high-net-worth and ultra-high-net-worth individuals and their families to reside and seek employment in Bermuda. To be eligible, the individual must make an upfront investment of at least BD$2,500,000 in Bermuda residential or commercial real estate, Bermuda Government bonds, the Bermuda Sinking Fund, the Bermuda Trust Fund, a Bermuda Registered charity, an existing Bermuda-based business, or the development and launch of a new Bermuda-based business. Upon investment, the individual will be issued an 'Economic Investment Certificate', which will allow them and their family to reside and work in Bermuda for a five year period. At the end of five years, the individual can apply for a 'Residential Certificate', which will allow them and their family to reside and work in Bermuda indefinitely.

The government is currently developing 'The Family Office Act', which will make setting up single and multi-family offices on the island more attainable. This Act will allow a Bermuda-based family office to apply for multiple licences or exemptions related to investment management, creating investment funds, fund administration, captive insurance company management, acting as a trustee or corporate service provider, etc. with a single simplified application. A dedicated team will ensure that licences are processed promptly within specified timelines, and ongoing maintenance will be streamlined and consolidated. The proposed legislation will allow for immediate approval of five work permits for family members, professionals, trusted advisors, and employees, with consideration being given to granting those individuals permanent residency. This Act will also make provision for increased privacy and confidentiality, reduced regulation, and simplified reporting for family-funded charitable structures.

TOP TIPS

Opening a bank account in your jurisdiction

Bermuda is known on the world stage as a highly reputable banking jurisdiction. There are five licensed banks on the island (including a full-service digital asset bank), all of which are experts in serving an international clientele. Exempted companies and non-resident individuals can maintain bank accounts in any currency, remitting and repatriating their funds without exchange controls.

Opening a bank account in Bermuda is a relatively simple process, which can be done either in person or remotely. To facilitate timeliness and ensure the best fit for your business, you should spend time researching the five licenced banks, familiarising yourself with their account opening requirements, and having the required documents (certified identity documents, certified proof of address, a copy of your business plan and/or a statement of purpose, etc.) ready to go. A Bermuda-based corporate service provider is your best resource as they can expertly guide you through the process.

QUESTION THREE

What makes your jurisdiction unique to do business in – and are there any unique challenges your clients should be aware of?

Bermuda is located between North America and Europe making it ideally situated for serving all major global markets. It is home to world-class financial advisors, bankers, accountants, auditors, actuaries, underwriters, brokers, lawyers, IT specialists, and trust practitioners. All of the world's preeminent accounting firms and offshore law firms have offices on the island.

The island is easily accessible, with direct flights from London, Toronto, New York, and other major gateway cities. It is rich in natural beauty, culture, and local and international cuisines, with a sub-tropical climate and temperatures that rarely drop below 55°F or exceed 90°F. Its political, economic, and social environment provides stability and consistency, making it attractive for foreign investment. As a result, the island offers one of the highest standards of living in the world, one of the highest per capita incomes in the world, a top-tier healthcare system, and access to first-rate schools.

Anyone wishing to carry on business in Bermuda through any type of corporate structure should be aware that the structure and its ultimate beneficial owners will be subject to vetting by both the local corporate service provider and the Bermuda Monetary Authority. The vetting process, which is not unique to Bermuda, is mandatory and all investors should be prepared to fully comply with its requirements.

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Paul Beare has been immersed in the corporate services sector since he was 15 and is still relatively young to be heading up such a business. His vast experience allows him to act as a trusted advisor to clients, taking care of a range of services, from opening a bank account to setting up a payroll system.

He developed his experience in international accountancy services working for his father's business. Having started and grown his own firm in London and the surrounding area, he has since expanded to Australia and New Zealand. He is currently a resident of Auckland but remains a frequent visitor to the UK and still has strong family and personal ties to the UK and has a home in London.

He describes himself as passionate and flamboyant, and committed to helping his clients no matter what they need.

Paul Beare Ltd supports the needs of overseas companies setting up and operating in the UK.

One element is paramount with every client – they all need support and expert guidance. Paul and his team advise clients on the appropriate legal entity, payroll, VAT, banking and company secretarial services. Clients range from publicly quoted companies through to owner-managed businesses.

Paul travels frequently to Australia, New Zealand and the US, and has been heavily involved in IR Global for nine years. He uses the support network for clients when they are focusing on expanding their UK company. Clients will use this as a foundation for further expansion into Europe and beyond. Paul Beare has particular expertise in helping clients decide on the best structures to use when setting up and growing a business in the UK – for instance, guiding clients towards the right choice between using a UK branch or a UK subsidiary.

QUESTION ONE

In a changing global economic climate, what is the growth potential for organisations in your jurisdiction? Are there any key economic opportunities that enterprises should be aware of?

The UK is still a great place to do business. Alongside its traditional areas of strength like professional services, design and manufacturing, the country is now firmly established as a leading player in technology.

Indeed, a recent report from techUK pointed out, "UK has established itself as a leading tech economy, with a strong digital sector and globally leading research and start-up ecosystem. The tech sector is one of the UK's modern economic success stories, with its contribution to the economy rising over 25% between 2010 and 2019, and now adding over £150 billion. This makes it one of the country's most valuable economic assets and the leading tech sector in Europe."

Young and growing companies in tech and beyond should also benefit from the UK's recent accession to Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which represents Britain's biggest trade deal since leaving the EU, cutting tariffs for UK exporters to a group of nations which – with UK accession – will have a combined gross domestic product (GDP) of £12 trillion, accounting for 15 per cent of global GDP, according to officials. Britain is the first new member and first European nation to join the bloc – comprising Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam – since its formation in 2018.

So the growth potential is there, whether your business is a start-up, a JV or a more established firm looking to take the next step.

QUESTION TWO

How is your jurisdiction encouraging businesses to trade in the area: for example, through tax incentives, business-friendly legislation, licensing, etc?

The UK government is one of the more active in the G7 when it comes to encouraging inward investment. For instance, the R&D tax credit regime – a scheme that rewards investment in research and development with tax breaks – is currently going through reforms to increase its impact, while in May, the government launched its new Science and Technology Framework under the newly created Department for Science, Innovation and Technology. According to the DSIT, it will "Challenge every part of government to better put the UK at the forefront of global science and technology this decade through 10 key actions – creating a coordinated cross-government approach."

Those both sit alongside the existing incentives for investment. The centrepiece of that is the SEIS (Seed Enterprise Investment Scheme) was introduced by the government in 2012 to incentivise investment in start-ups. In return for backing the youngest – and hence riskiest – ambitious companies, investors can receive significant tax reliefs. To date, more than 10,000 companies have raised £1.5 billion under SEIS (2012/13-2020/21).

Recently the government announced it was going further and now intends "to provide a boost to start-ups and young companies by widening access to the SEIS and increasing the funding limits, encouraging additional investment and so further supporting the growth of these early-stage companies".

QUESTION THREE

What makes your jurisdiction unique to do business in – and are there any unique challenges your clients should be aware of?

The UK is unique in its position as a globally-focused economy. The existing ties between the country and the US and Europe are obviously well known, but the links that exist between the UK and emerging markets across the world are a source of real strength.

Since Brexit, the government has aimed to strengthen those ties by agreeing on a series of Free Trade Agreements (FTAs). Some are easier than others – the FTA with India, for instance, recently entered its 10th round of talks – but there's no doubt that the open nature of the UK's economy makes it an exceptionally attractive place to do business.

And the reasons for that are many and varied: for a start, London remains the world's pre-eminent financial centre, and as such draws in so much capital and talent from around the world. Then, our University sector is probably the best in Europe, which means R&D and innovation continue to flourish, once talent is combined with investment. And of course, it goes without saying that the professional services sector in the UK is second to none, from the Big Four accounting firms and Magic Circle law practices to the specialist advisory and consulting space – whatever you need, you'll find a professional adviser ready to help.

I'd say the final reason is the unique position the UK enjoys as a special and historic trading partner with so much of the world. The US, India, Australia, Europe, Africa and even China all count the UK as a Top 5 trading partner, and as such has well-established business networks across the world that naturally include advisors that understand overseas markets and how to navigate them.

Of course, there are challenges, both short and long-term. In the short term, we're enduring high inflation and sluggish growth as a result of both global and domestic developments. In the longer term, there's no doubt that the impact of Brexit will continue to be felt over the next few years. As to the scale and nature of that impact, well, it's too soon to tell.

TOP TIPS

Opening a bank account in your jurisdiction

Ask yourself what you need from a bank account: Depending on your needs, you may find a traditional bank account is the best fit; if your needs are simpler and less onerous, however, you may find that a fintech account fits better. Those accounts are lighter touch and often cheaper, although they offer a more limited range of services.

Get your documents in order: Even if you're opting for a fintech account, the banks will need to see your paperwork and records, so make sure you have the necessary documents on hand. This is especially important when it comes to Anti-Money Laundering.

Don't get caught out by timing: opening a traditional account can be a slow process, so factor that in when planning your business strategy and setup process.

Check whether you're covered by the FSCS: This is an independent fund regulated by the Financial Conduct Authority (FCA). If your bank collapses and can't repay your money, the scheme can compensate you for your losses, up to a limit of £85,000. The scheme covers any bank that's authorised by the Prudential Regulation Authority (PRA) and the FCA.

Zirkzee Group

accountants, auditors, tax lawyers
expat, payroll and trust services

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Robin de Raad is a tax advisor at Zirkzee Group accountants and tax lawyers and focusses on direct taxation on (cross-border) SMEs. As an ambassador at Zirkzee Group, Robin is continuously looking for new opportunities to help Zirkzee customers bring their business to a great success.

After obtaining his Bachelor in Fiscal Economics in Groningen, Robin completed the Tax Advisor programme at the Dutch Register of Tax advisors (RB). Robin has 15 years of working experience within small- and medium sized accountancy firms.

Zirkzee Group's clients consist mainly of internationally operating companies, start-up companies and entrepreneurs who are excited about working within our network. Every company and every entrepreneur is different: for that reason, the services we offer to our clients are customised to their wishes. We offer services for all of our clients in the following areas: Accounting, Payroll Services, Tax and Expat Services

Being located in the SBIC-building in Noordwijk, the Netherlands, Zirkzee Group is part of a community involving lots of techno starters from the ESA-BIC incubation program. In this community, companies can experience to the fullest how assistance, learning and contagious enthusiasm from each other can be an inspiration and will lead to better results. For this reason, Zirkzee Group does not consider you or your company as customers.

Doing business with Zirkzee Group means we will become your business partner. Our entire approach is therefore focused on getting the best out of your company. Besides our passion for entrepreneurship and sharing our knowledge, we also have a broad network we share with our business partners. Bringing people together and contributing to their success is what gives us a purpose.

QUESTION ONE

In a changing global economic climate, what is the growth potential for organisations in your jurisdiction? Are there any key economic opportunities that enterprises should be aware of?

The key factors currently influencing the global economic climate are:

- A shortage of employees in virtually all sectors
- The rapidly increasing impact of technology (such as AI)
- International tensions exacerbated by the conflict between Russia and Ukraine

This makes it challenging for organisations to survive or grow in this international storm. Fortunately, as a tax advisor in the Netherlands, I can say that the growth potential for organisations in the Netherlands remains significant despite the global changes in geopolitics and economics.

The Netherlands is renowned for its favourable business climate. The open and competitive economy in the Netherlands provides favourable conditions and opportunities for businesses to thrive, making it an attractive location for international corporations. Additionally, the Netherlands is one of the innovation leaders in the EU. Currently, there are many opportunities in the field of technology, which is evolving rapidly. Artificial Intelligence (AI) is a prime example. AI reduces the need for many types of labour, shifting the role of humans toward more supervisory and high-value tasks. Consequently, there's a greater demand for highly educated individuals, and fortunately, the Netherlands boasts a substantial pool of highly educated and multilingual labour force.

Another opportunity arises from an unexpected source. The impact of Brexit, felt not only in Europe but globally, also presents opportunities for the Netherlands. Due to its favourable geographical location relative to the UK, the Netherlands is appealing to British enterprises seeking to continue serving the European market. As Dutch soccer legend Johan Cruyff once said, "Every disadvantage has its advantage."

The Netherlands consistently ranks in the top 5 EU countries with a low carbon footprint. The country possesses significant expertise in sustainability and CO2 reduction. New and existing businesses can greatly benefit from this knowledge.

Besides the technology sector, there are other industries in the Netherlands that are rapidly growing, offering abundant opportunities for companies. Some rapidly growing sectors (as of April 2022) include logistics – the Netherlands remains a hub for import and export – healthcare and life sciences, water management, fintech, and e-commerce. Lastly, there's a crucial role for renewable energy and sustainability sectors, which are continuously on the rise and receive significant attention and support from the government.

QUESTION TWO

How is your jurisdiction encouraging businesses to trade in the area: for example, through tax incentives, business-friendly legislation, licensing, etc?

The Netherlands offers an attractive fiscal system with favourable tax rates and various tax benefits for both domestic and international enterprises. Fiscal incentives encourage companies to invest here. One such incentive is the so-called "innovation box," which allows companies to access a lower corporate tax rate (effectively 9%) on profits resulting from self-developed innovative activities.

Additionally, there are several other fiscal schemes, such as the R&D deduction and the WBSO (Promotion of Research and Development Act), which support innovative research and development by providing subsidies on personnel costs. These initiatives enable companies to strengthen their competitive position. The Dutch government also promotes environmentally friendly and energy-efficient investments by continually expanding budgets for these purposes.

As mentioned, the Netherlands enjoys a favourable climate for business and company establishment. The government strives to simplify administrative procedures for businesses and reduce bureaucracy, making it easier to establish a company. The increasing harmonisation of laws and regulations within Europe has facilitated international trade. Even our Royal Family contributes to promoting international trade by linking state visits with trade missions.

Furthermore, the Netherlands has traditionally been a trading nation with the most international tax treaties globally. These tax (and trade) treaties enhance international fiscal cooperation, trade, and investments. These treaties have various effects, including preventing double taxation, reducing withholding tax, safeguarding against tax discrimination, promoting international trade and investments, and facilitating the exchange of information.

QUESTION THREE

What makes your jurisdiction unique to do business in – and are there any unique challenges your clients should be aware of?

As a tax specialist, I can tell you that the Netherlands is a favourable country for conducting business. Unique to the Netherlands are the Rulings and Advance Pricing Agreements (APAs): The Netherlands offers the opportunity for companies to make advance agreements with the Tax Authorities about their tax positions. These Rulings and APAs provide companies with clarity on how the Dutch tax authorities treat certain transactions or structures from a tax perspective. This reduces tax uncertainty and mitigates risks.

Of course, doing business in the Netherlands isn't all 'unicorns and rainbows'. There are several challenges to consider before diving into the Dutch market as an entrepreneur. The Dutch tax system is quite complex. Especially for international companies, the rules and regulations can be confusing, requiring precise compliance to avoid tax risks.

For multinational companies engaged in trade with affiliated entities, transfer pricing can pose a challenge. Accurately determining internal prices for goods and services is crucial to comply with regulations and international standards.

Companies intending to operate in the Netherlands must also be aware of the intricate legal and regulatory aspects. This includes labour law, contract law, and sector-specific regulations.

Some benefits come with drawbacks... because the Netherlands is an attractive location for businesses, competition in certain sectors is high. This makes it even more important for companies to stand out and have a solid understanding of the local market to achieve success.

Our tax practice is ready to support our clients in navigating these unique aspects and challenges. We provide tailored tax advice and guidance to ensure our clients can achieve their business goals in the Netherlands and thrive in this dynamic business environment.

TOP TIPS

Opening a bank account in your jurisdiction

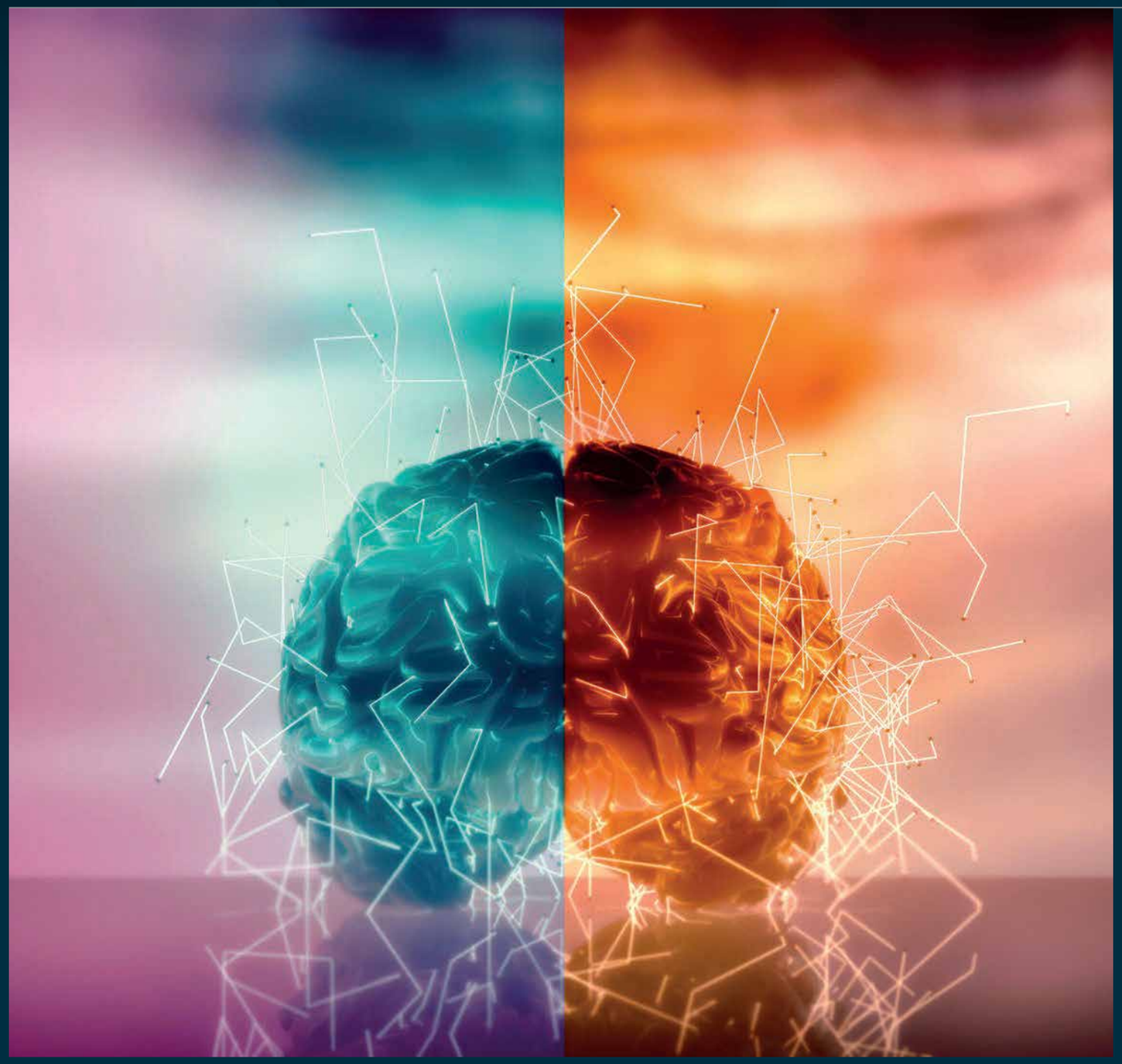
Opening a bank account in the Netherlands involves a complex procedure. Therefore, it's crucial to seek assistance from an advisor who frequently interacts with Dutch banks. Avoid attempting this process on your own, as there's a high likelihood that it will significantly prolong the entire process.

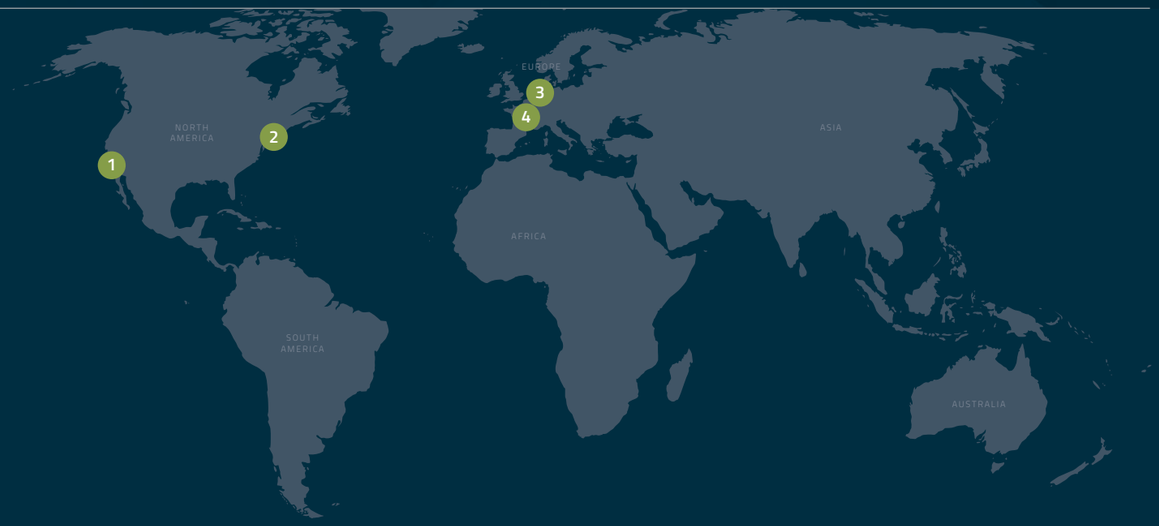
Identification & Authorisation: the individual opening the bank account must provide valid identification documents, such as a passport or identity card. Additionally, they must be authorised to sign on behalf of the company. This means the person needs to have the authority to make financial decisions for the business.

Do you want to expedite the process of obtaining a Dutch bank account? You can do so with the "Quick Scan Dutch Business Bank Account". Three Dutch banks, in collaboration with the Dutch Banking Association (NVB), have joined forces to offer a quicker assessment (within 5 working days) of the feasibility of opening a bank account in the Netherlands for your foreign company. On www.nvb.nl you can check whether a company qualifies for this quick scan.

IP

Our experienced IP members discuss the tense global geopolitical climate and the biggest risks to IP in their respective jurisdictions. They highlight how to navigate potential IP infringement via ChatGPT and other AI-powered creators. Finally, they respond to the rise in influencer marketing and social media increasing IP challenges across the global.





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Brian Buss, a Director with the Forensic Consulting Group of CBIZ, specialises in intellectual property valuation and expert testimony. A Chartered Financial Analyst (CFA) with 25 years of experience in valuations, financial analysis, and corporate finance around the world, Brian provides strategic advice and valuations for owners of intellectual property portfolios, expert testimony regarding economic damages, valuation, and IP asset apportionment in civil litigation, and valuations of trademarks, patents, copyrights, brand assets, trademarks, trade secrets, technology assets, and intangibles.

CBIZ Forensic Consulting Group is a part of CBIZ, Inc., which is a national, public company that provides accounting, HR, tax, financial consulting, business valuation, and litigation support consulting services. CBIZ FCG is a national forensic consulting group that consists of more than 100 dedicated professionals with extensive experience in all aspects of forensic analysis, business valuation, litigation support services, and intellectual property issues.

QUESTION ONE

In a tense global geopolitical climate, what cross-border IP issues and vulnerabilities is your jurisdiction facing? What steps are legislators taking to enforce IP protection in this changing landscape?

A tense geopolitical climate and rapidly evolving business environment offer businesses the opportunity to leverage their intangible assets. Broadly speaking, intangible assets are anything that adds value to a business but isn't seen or felt. This includes intellectual property (patents, trademarks, and copyrights), supplier and customer relationships, data, proprietary software and brands. Given the increasingly digital nature of our economy, and the rapidly changing business climate, these assets have skyrocketed in importance. A recent CBIZ review of middle-market public company financial reports indicates that intangible assets made up 87% of total enterprise value.

Intangible assets are particularly useful during tough times. Many organisations have successfully leveraged their proprietary intangible assets to foster growth by conducting analyses that value them based on their contribution to financial performance. For example, an education company leverage awareness of its brand to evolve its pricing strategy and achieve a 50% increase in revenues during the Covid-19 pandemic. In another example, a communications technology company was able to monetise patents no longer used with its core products, yielding additional cash flows that could be used in the development of new technologies.

To derive value from intangible assets, business owners, investors and executives must understand how these assets contribute to financial performance. That can be tricky, as the worth of these assets stems from their use rather than a concrete independent value. That's where a valuation analysis based on profit apportionment, which develops a valuation for each category of intangible asset used by the business, enters the picture. Intangible assets and IP require protection and investment. Yet many businesses do so without an understanding of their contribution to financial performance.

Regardless of geographic jurisdiction, valuation provides informative strategic insights for business owners and managers. A profit apportionment valuation of intangible and intellectual property assets allows business owners and managers to understand how their most valuable assets are driving financial performance. This insight allows businesses to leverage their most valuable assets to drive greater financial performance, especially in uncertain business climates. A profit apportionment valuation analysis consists of three steps.

1. Identify Key Assets at the Business
2. Forecast Future Financial Performance for Each Type of Product or Service Offering
3. Measure the Contribution of Identified Key Assets to Each Product or Service Offering

The bottom line? Evaluating each asset's contribution across the product portfolio determines the value of the company's intangible assets and enables the management team to identify new growth opportunities, optimise the investment of limited resources and benchmark future performance. The old saying "knowledge is power" should really be "knowledge of the value of your intangibles is the power to leverage these assets in the face of a challenging business environment."

QUESTION TWO

What is the biggest risk to IP in your jurisdiction and how are you navigating potential IP infringement via ChatGPT and other AI-powered creators?

ChatGPT, Artificial Intelligence (AI), influencer marketing, search engine advertising and social media are some of the many innovations influencing the global business environment. These and other changes to the business environment require businesses to adopt new strategies and allocate resources to new business functions. While new AI and other challenges can create new avenues for IP infringement, these tools can also be leveraged for market research and identification of profitable new business opportunities. However, successful business adaptations require a focus on core competitive advantages. Creating an AI, search engine advertising, or influencer marketing strategy that fails to leverage your business' core competitive advantages risks inefficient allocation of scarce resources and diminution of value.

Once again, an intangible valuation analysis can provide valuable insights identifying the key intangible assets at a business and how those key intangible assets have and will contribute to revenues, profits, and financial performance.

For companies investing in new or technology-based marketing initiatives and trademark protection for multiple brands in existing and new market sectors, the profit apportionment valuation analysis provides a concrete return-on-investment benchmark and enables valuation-based decision-making for resource allocation. Such benefits are particularly important during moments of economic uncertainty, rapid technological change, and increasing competition. If (or when) new innovations and technology introduce new business challenges, those companies that understand which intangible and IP assets to leverage will likely emerge stronger, more profitable, and more valuable.

TOP TIPS

Effective Management of IP and Intangible Assets

- Understand how your technology and marketing intangibles have contributed to your revenues and profits and how these assets will contribute to financial performance in the future.
- Understand where your proprietary intangible assets are providing your business with the benefits of a monopolist. If competing and substitute innovations are eroding your ability to price as a monopolist, refocus.
- Leverage valuation analysis to gain a greater understanding of your business and its proprietary assets.
- Knowledge of the value of your intangibles is the power to leverage these assets in the face of a challenging and evolving business environment.

"A recent CBIZ review of middle-market public company financial reports indicates that intangible assets made up 87% of total enterprise value"

"The bottom line? Evaluating each asset's contribution across the product portfolio determines the value of the company's intangible assets"

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Steve Reich is licensed to practice in both New York and Massachusetts and is based in Boston. He assists with environmental litigation and other complex litigation and heads the firm's intellectual property practice, including copyright and trademark registration and protection. Other practice areas include commercial contract drafting and civil litigation.

Highlights include:

- Filing and litigation in federal court of a copyright infringement suit against a Fortune 500 company that was settled favourably prior to trial.
- Assisting in the defense of a Fortune 500 company in complex federal and state environmental litigation (pending).
- Settling an acrimonious trademark dispute between two rival New York pizzerias.
- Registration of trademarks and copyrights for business clients and policing/defending marks and works.
- Assisting Brooklyn Supreme Court trial judge in drafting memoranda, research and writing, including the notorious "Spartacus the Dog" case.

Kenneth Reich Law, LLC is a boutique law firm that serves a broad range of national, international and regional clients principally in the areas of environmental law, energy law, civil litigation and commercial leasing. Kenneth Reich is also a Mediator and Arbitrator. The firm provided trademark and copyright advice, filings with the USPTO and IP protection and litigation.

The Threat (or Lack Thereof) of Artificial Intelligence: a Musing

What a difference a year makes. In 2022, we emerged, bleary-eyed from the pandemic, flush with cash and new tech, eager to harness the Metaverse, NFTs (non-fungible tokens) and cryptocurrency. But, similar to the GameStop whiplash in 2020, many of these trends either flamed out through greed (SBF and FTX) or failure to hold consumers' attention—how's that Meta virtual business going? And yet, just when you thought the wave was cresting, Artificial Intelligence (AI) has entered the chat...GPT. Since its launch, ChatGPT has been downloaded more than 100 million times and Microsoft and Tesla are also getting in on the act. How will the law handle technology that can reproduce or even create 'original' works? Who owns such works? How can we tell what is real or fake? In some cases, it's not so easy.

Right or wrong, there is no greater perceived threat right now than AI. However, at the risk of sounding like a Boomer (I'm actually GenX), I'm not worried. In fact, I remain confident in the framework of United States copyright law and other guardrails to keep the AI horse in the barn.

Reason 1.
There is Legal Precedent for This.
This is not the American judicial system's first encounter with questions of copyright authorship. First, a copyright primer: only original expressions fixed in tangible mediums are copyrightable, even with the aid or use of a mechanical device (more on that later). Ideas, concepts and systems are not. Baker v. Selden, 101 U.S. 99 (1879). This is why there are so many books and movies with similar themes and plots and why no one can exclusively own a recipe, or as in Baker, a ledger. Thus, the core issue is whether AI-generated works can gain copyright protection.

In 1884 before Baker, the Supreme Court in Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884) laid the groundwork for whether machine works—independent of humans—can acquire copyright protection. The Court held that while a camera technically creates a photograph, the photographer arranges the shot with lighting, positioning, angles, etc. and is the "author", which the Court repeatedly referred to as human beings. Id at 56. Since the decision in Burrow-Giles, federal courts have applied the human requirement to cases with animals and even "divine beings" and also held that human authors must employ a "modicum of originality" meaning facts in themselves are not copyrightable. Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991).

Accordingly, to gain copyright protection, 1) the author of the work must be a human 2) that used a "modicum of creativity" in making the work and 3) fixed it in a tangible medium. AI is not human so it cannot own or create copyrightable works.

Reason 2.
The Copyright Office has Spoken.
"In the Office's view, it is well-established that copyright can protect only material that is the product of human creativity. Most fundamentally, the term "author," which is used in both the Constitution and the Copyright Act, excludes non-humans." See https://www.copyright.gov/ai/ai_policy_guidance.pdf at 2.

In fact, the Office has already rejected several applications for AI works, including one where the applicant challenged the constitutionality of the human author requirement and another where it originally granted copyright over a comic book, but reversed course when it found out the applicant used AI to create the artwork, a fact she failed to disclose.

Reason 3.
AI Stinks... For Now.
AI works best by simplifying basic tasks or replicating or enhancing existing works. See https://www.discovermagazine.com/technology/how-to-paint-like-rembrandt-according-to-artificial-intelligence. But it is prone to inaccuracies and may even "hallucinate"; i.e. haphazardly concoct "facts". A New York lawyer found this out the hard way and suffered public humiliation and sanctions when he filed a brief in court that contained fictitious cases and offered as an excuse that when he asked ChatGTP if the cases were real, it answered yes.

Yet, AI is evolving. Similar to the self-learning killer doll in "M3GAN", AI is projected to vastly improve in the coming years. The danger and allure of AI's untapped potential can already be seen in tech leaders' pledge to limit its advance — led by Elon Musk of all people — and in the Hollywood work stoppage as union actors (SAG-AFTRA) and writers (WGA) strike to prevent being replaced by digital replicas while the major studios (AMPTP) refuse to foreclose use of the technology and have even floated scanning background actors' likeness for a one-time fee.

As for lawyers, AI remains more friend than foe, despite the above imbroglio because it can improve legal research in EXISTING, TRUSTED legal search companies like Westlaw or Lexis and administrative tasks—though its work must be vetted.

TOP TIPS

Copyrights and Trademarks

Copyrights:

- Register with the Copyright Office ASAP so you can sue for infringement in federal court, get statutory damages, attorney fees and a presumption of validity. Otherwise, you have a "common law" copyright with none of these rights. https://copyright.gov/circs/circ01.pdf at 5.
- Put a © next to your work to put the world on notice, whether it's registered or not.

Trademarks:

- Register with the USPTO to gain statutory rights a la copyright, but first conduct a clearance search that scans more than the federal register and Google. Don't use a mark blind; common law marks can still jam you up if the owner can show prior use.
- Pre-registration, use a ™, post-registration, use the ®. Doing so beforehand is illegal in the U.S. Register in all countries you plan to use your mark. Cross-border rights may not always be enforced.
- **Always hire a trademark/copyright Attorney.**

"AI is not human so it cannot own or create copyrightable works."

Conclusion
AI is the ultimate double-edged sword and like its trendy counterparts before it, it may lose the public's interest—a death blow in the attention economy. Or it could end up like Google on steroids, a turbo search engine/task machine that makes our already convenient lives more convenient. Or it may destroy us all a la The Terminator. But I say: lawyers, artists and service professionals fear not, the laws already in place offer a sturdy shield against a Doomsday scenario. Besides, AI can't really do what humans do...yet.

Peter W Snoeker

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Peter Snoeker (Breda, 1959) graduated in civil law at the University of Leiden in 1988. After passing the bar exam, Peter in 1988 associated with a well-established Dutch law firm, where he developed expertise in the field of IP and received acclaim from clients. His entrepreneurial itch resulted in the co-founding in 2007 of Spring Advocaten. Today, the office of Snoeker Advocatuur is located next to one of Amsterdam's beautiful canals, where Peter presently advises and accompanies his clients in the fields of trademark law, copyright, image rights, contract law, design patent law, and AI law.

Peter Snoeker has built up extensive experience advising small to large domestic as well as multinational businesses in the sectors of (amongst others) retail, high-tech industry, financial services, design, architecture, and healthcare. And companies and the pharma and leisure industry have also found their way to Peter for professional advice. Peter Snoeker is fluent in writing and speech in English, French, German and Dutch.

Snoeker Advocatuur was established by Peter Snoeker after working for many years as a partner of medium-sized Dutch law firms in Amsterdam. It presently specialises in trademark law, copyright, image rights, contract law, design-patent law, and AI law.

Many companies regularly face infringement on their intellectual property rights. That can be of huge concern, since that IP most often is a valuable and important part of a company's identity and economic basis. Therefore, any infringement on copyrights, trademarks or design patents should be handled professionally and without delay.

Snoeker Advocatuur offers professional services to small and mid-sized businesses as well as to well-established internationally operating companies. Those services are tailored to the respective demands of the business in question in the highly specialised legal fields of IP law. Practical, personal, focused on the specific business goal with a no-nonsense approach, and reasonably priced too.

QUESTION ONE

In a tense global geopolitical climate, what cross-border IP issues and vulnerabilities is your jurisdiction facing? What steps are legislators taking to enforce IP protection in this changing landscape?

The main cross-border IP issues that my jurisdiction is presently facing:

- Online copyright infringement and online trademark infringement by parties in EU Member States (MS) and in non-EU-states, and secondly counterfeit imports from non-EU-states. Regarding online infringement, I would refer to the online offer of possibly copyright-infringing music or audiovisual material on (torrent) sites, or to trademark-infringing material such as online sales from non-EU-states of Louis Vuitton bags.
- Imports from clearance sales of old stock elsewhere in the EU and imports of counterfeits from non-EU-states also surface often in my practice.

Mind you, these are only examples.

In such a case, the relevant holder of the rights to the music or visual material or product might want to attack the entity which offers the possibly infringing material by way of a website which is accessible in the Netherlands. The question before the relevant rights-holder then is whether such an entity in an MS or in a non-EU-state may be attacked in a Dutch court, and whether any judgment from a Dutch court may be recognised and enforced in that other MS and/or non-EU-state.

I shall now not get into the legal technicalities thereof, but I can tell you that we in the Netherlands have efficient solutions for countering cross-border IP infringement.

And in the Netherlands, the courts do not shy away from pertinent cross-border judgements. The Brussels Recast Regulation greatly facilitates the recognition and enforcement in an MS of a judgment from another MS. That not only concerns final judgments but also interim judgments. A vulnerability in the Netherlands re copyright-infringement is that if the court needs to know about cross-border issues, we need to inform the court of potentially 27 MS' copyright laws, since those differ and providing that information in order to get a cross-border judgement leads to high costs of translations, of expertise, of research etc.

A major vulnerability of my Netherlands jurisdiction is that the exclusively competent (and expert) court for trademark and design patent cases is suffering from a huge caseload, which results in long delays in getting a final judgment. A second vulnerability is the fact that the party which loses the lawsuit has to pay for all the costs, including those of the opposing party, which regularly amount to some EUR25,000. So my advice to any of my clients is always to consider it as a first step to try to reach a settlement out of court with the opposing party.

Concerning patents, the unitary patent system which the Netherlands joined and the Unified Patent Court (UPC) which opened on 1st June 2023, are major steps taken by the legislators to enforce IP (i.e. patent)-protection. No other steps by the Dutch legislator are pertinent presently.

QUESTION TWO

What is the biggest risk to IP in your jurisdiction and how are you navigating potential IP infringement via ChatGPT and other AI-powered creators?

In the Netherlands, the biggest risk to IP is that Small and Mid-sized Enterprises (SMEs) do not have or invest the time and money to defend their IP. SMEs are the backbone of the Dutch economy. SMEs however lack the time and the means to attack infringement of their IP or to even explore whether their IP is counterfeited or otherwise illegally copied. In my experience, some 70% of SMEs do not regularly check whether their IP is infringed upon, only notice that when they stumble onto it. Such an infringement and discovery thereof may also result in funding of the SME becoming harder to acquire, and that in itself poses a risk to the relevant company.

Use by businesses and individuals of AI-powered creators is big in the Netherlands. Concerning infringement via AI-powered creators, presently I always seek to come to a settlement out of court with the opposing party. The reason is that it legally is not yet clear in the Netherlands whether (an aggregate of) prompts on an AI platform by someone, creates an IP-protected work.

QUESTION THREE

How is the rise in influencer marketing and social media increasing IP challenges in your jurisdiction?

IP challenges in the Netherlands have increased because of users inserting trademarks or copyrighted work from other entities into their posts, without having received consent from the rightsholder. Most often, a cease-and-desist notification is rapidly complied with, or alternatively asking the relevant platform to take that content down, which leads to the desired result too.

TOP TIPS

Effective Management of IP and Intangible Assets

- Establish a regularly updated overview of the commercial use of your IP rights in all the relevant territories/jurisdictions.
- Establish a yearly budget for the protection of your IP against cross-border infringement.
- Disclose your IP only to persons who need to know, to close employment agreements with your employees stipulating that your company owns all IP, to close NDAs with any external entity to which your IP is disclosed by your company, to affix symbols such as TM, C-in-circle, Patent-Pending, R-in-circle, to your products, to its packaging, to your promotional and business materials, and to register your IP-rights with the relevant authorities.

"A major vulnerability of my Netherlands jurisdiction is that the exclusively competent (and expert) court for trademark and design patent cases is suffering from a huge caseload."

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Bruno Weil is your primary contact at our firm for any matter which deals with IP, IT or NTCs, his main field of expertise. As such, he intervenes as your advisor or counsel before courts for instances involving patent, trademark or copyright infringements, as well as any negotiation on license agreement or know-how transfer. In his capacity as counsel, he successfully represented several major US or German-listed companies before French courts, notably in complex multimillion patent infringement lawsuits. Bruno has been active for over fifteen years as lawyer of mid-sized or international corporations which are present or active in France.

Former correspondent for France of the editor KLUWER LAW INTERNATIONAL, as reporter for the "patent" section of the "EU IP CASES" database published by KLUWER under www.kluwereuipcases.com, he is also a member of several international associations dealing with IP and new technologies, such as Licensing Executive Society - LES - Germany, GRUR and ITECHLAW.

Bruno Weil is also active in other instances such as company restructuring or during takeovers. His day-to-day practice also involves court cases, for any business-related lawsuits. His primary goal consists in successfully elaborating the soundest economic strategy for our clients' interests to prevail.

Besides French, he is fluent in German and English.

WEIL & ASSOCIÉS has been a law firm dedicated to the service of international companies since its establishment in 1974.

Our firm is devoted to assisting companies, international or small and medium-sized, in their commercial or industrial activities in France or abroad through proactive legal advice as well as by the defence of our clients before courts and arbitral tribunals.

Business relationships of German and English-speaking countries have always been a major part of our activity. Therefore, our firm has lawyers admitted at bars in France, Germany and the USA at the same time. Our involvement in the advice to and representation of international clients implies that all lawyers write and fluently speak German, French and English. In the course of time, our activity conducted us to broaden our horizons and to represent companies from countries such as Japan, Korea and China.

Even though all lawyers are specialised, we believe in an enrichment of juristic creativity by a large field of experience in legal advice and defence.

Our work is based on mutual trust with each and every client, international companies as well as small and medium-sized enterprises. Each client's activity, products and professional environment are carefully taken into consideration as our goal is to provide our client with tailor-made solutions which take due account of the client's specific business interests.

Thanks to the small size of our firm, we compose a team of dynamic lawyers who are acquainted to responding rapidly and flexibly to the clients' needs. We shall never forget that the essence of our work, be it legal advice or advocacy, is to achieve an economically valuable result for our client.

"The biggest risk to IP in France is, as probably everywhere else, the use of AI-powered creators like ChatGPT."

QUESTION ONE

In a tense global geopolitical climate, what cross-border IP issues and vulnerabilities is your jurisdiction facing? What steps are legislators taking to enforce IP protection in this changing landscape?

As exposed below the most sensitive and vulnerable IP issue in France nowadays is linked to the (mis)use of IA, and lack of protection for those whose protected content is reused without their consent. The same applies to influencers and their unauthorised use of IP, hence a very recent law enacted in June 2023. Another current topic is the entry into force of the European unitary patent system on June 1st, 2023 (after many years of standby). This is significant for France as Paris has been chosen as the seat of the Court of First Instance of the UPC.

QUESTION TWO

What is the biggest risk to IP in your jurisdiction and how are you navigating potential IP infringement via ChatGPT and other AI-powered creators?

The biggest risk to IP in France is, as probably everywhere else, the use of AI-powered creators like ChatGPT. In a nutshell, ChatGPT gathers a huge amount of data and processes it to make it understandable and as similar as possible to human language to provide answers to users' enquiries. Content created by ChatGPT is thus derived from content that has been previously generated by others. It is not clear what the implications in terms of copyright for reusing this content are: when is the output "inspired" from existing works and when is it actually infringing them? Where to draw the limit?

How AI-generated works should be treated under laws and regulations for establishing and enforcing intellectual property rights currently seems unclear, since there is no specific legislation dealing with it. However, what is clear is that intellectual property law currently only recognises a natural person as being eligible for recognition as an author or inventor for works protectable by patents and copyright. ChatGPT is certainly an interesting tool in many fields, including intellectual property, as it can provide information and assistance. However, care should be taken when "feeding it" confidential information, as this could end up ruining novelty or being detrimental to the protection of trade secrets.

QUESTION THREE

How is the rise in influencer marketing and social media increasing IP challenges in your jurisdiction?

Since their rise a little more than 10 years ago, influencers were not subject to any specific legislation in France. This led to a series of abuses and tighter control by the French investigative authorities. This type of activity has been finally regulated. The law of June 9, 2023 provides a legal framework for the influencer profession. In particular, it clarifies the contracts between influencers and agents or advertisers, with severe sanctions if not respected. In terms of IP protection, the French

TOP TIPS

Protecting your IP against cross-border infringement

- Be careful when copying content generated by ChatGPT as it may be considered copyright infringement if based closely on existing work.
- File your IP rights locally or using multi-jurisdiction systems.
- file motion for seizure (saisie-contrefaçon) to be authorised to obtain proof of the infringement then file for prohibition and damages recovery.

"The French Intellectual Property Code protects "the rights of authors over all works of the mind, whatever their genre, form of expression, merit or purpose."

Intellectual Property Code protects "the rights of authors over all works of the mind, whatever their genre, form of expression, merit or purpose" (article L112-1). Influencers are therefore prohibited from using third-party works without authorisation as part of their promotional activities on the web. Failure to do so could result in prosecution for counterfeiting.

In addition, influencers must refrain from disparaging a competitor. They must also refrain from using the reputation of another influencer to promote products and services. Indeed, such a practice may fall foul of Article 1240 of the French Civil Code. Considered an act of unfair competition, the influencer is liable. It may also incur the liability of the brand that has used the influencer's services. The influencer may be ordered to pay damages to the competitor. Influencers must thus refrain from damaging the honour or reputation of a third party (which could constitute defamation) or denigrating or misusing a third party's trademark.

Private Client & Tax

Our Private Client & Tax members share their expertise on how their jurisdiction is enacting new or amending tax laws in response to a changing geopolitical landscape, the biggest taxation issues that individuals and businesses should be aware of and and if there are any tax relief & benefits available. They also delve into the personal liabilities that trustees need to be aware of when entering commercial contracts and the tax implications for foreign high net worth individuals who are remote working.

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Jay Menon has 18+ years' experience in transfers pricing and value chain analyses, with expertise in dealing with UK, US, Europe and India transfer pricing compliance, litigation, route-to-market advisory, value chain projects, transfer pricing audit, due diligence and Competent Authority proceedings.

Jay's areas of expertise include: Consulting for the UK – US start-up corridor, BEPS Action Plan based DEMPE analysis, value chain analyses projects, UK and global transfer pricing compliance (Master File, Local file, benchmarking) and APA.

Jay has worked on UK, US and EU Headquartered MNC's transfer pricing planning, benchmarking and compliance projects.

Jay has published articles on different tax websites and attended transfer pricing webinars and tax conferences as an expert panellist.

Jay is also currently the National Office Leader for Frazier & Deeter India.

Frazier & Deeter LLC is a top 50 US accounting firm with a focus on entrepreneurial mid-market clients. Frazier & Deeter UK LLP was formed in January 2019 with strong specialism in UK to US expansion work. We also have a strong sector specialism in the tech and life sciences sector startups. The idea was to create a transatlantic practice which could provide both UK and US advice geared towards early-stage and mid-market companies.

QUESTION ONE

How is your jurisdiction enacting new or amending tax laws in response to a changing geopolitical landscape?

UK –Tryst with OECD global guidelines on transfer pricing

UK Government published the new Transfer Pricing Records Regulations effective 9th August 2023 with the objective of alignment to global standards prescribed by OECD. Transfer Pricing is a mechanism through which Multinational Enterprises [MNEs] operating in multiple countries outside their headquarters' country set the inter-company pricing so that the appropriate level of profitability is reflected in each country in line with the value created by their group entities.

OECD guidelines recommend that the documentation of the transfer pricing arrangements can be implemented using a Master file and Local File format. The Master File contains important information at a ''group level'' i.e. organisational structure, description of business of MNEs, intangibles information, inter-company financial activities and financial and tax positions. The Local File requires detailed information relating to specific transactions taking place between the local country affiliate and headquarter entity and other group entities, including information on the identity of related parties, relevant financial information regarding those specific transactions, comparability analysis and the selection and application of the most appropriate transfer pricing method.

Although there is a threshold applicability which restricts the above regulations' applicability to large MNEs, the UK-based MNEs which are below this threshold could also follow the same OECD Local File format for their documentation of justification of transfer pricing of their inter-company transactions.

QUESTION TWO

What are the biggest taxation issues that individuals and businesses should be aware of in your jurisdiction?

UK - R&D Tax Relief System: New Provisions to Benefit UK's Innovative Companies in Tech and Biotech Sectors

In the quest to foster innovation and technological advancement, the UK has implemented an R&D tax relief system. In recent years, this scheme has seen constant change and evolution. The 2022 UK Autumn Budget announced a set of sweeping changes aimed at combatting perceived abuse of the scheme, including the drastic reduction to the generosity of the scheme, nearly halving the financial benefit to the UK's most innovative companies. The change was met with considerable industry backlash and led to the creation of the R&D intensity ratio and an enhanced level of relief if businesses meet this pass or fail test.

R&D Intensity Ratio

The R&D intensity ratio determines the enhanced tax credit rate companies can obtain when making an R&D tax relief claim. Understanding this ratio is crucial for businesses seeking to maximise their R&D tax incentives and drive their related endeavours further. The R&D intensity ratio in the UK tax relief system establishes a baseline for companies to gauge their R&D investment against their total expenditure. At the heart of this ratio lies the 40% intensity level. To qualify for the enhanced tax relief rate, companies must demonstrate that their R&D expenditure is at least 40% of their total expenditure. This criterion ensures that firms commit a substantial portion of their resources to innovation-driven activities.

When calculating the total expenditure for the R&D intensity ratio, it is important to consider costs incurred by connected companies. Connected companies are entities that share a certain level of control such as parent and subsidiary companies. Including their R&D costs in the calculation provides a more comprehensive picture of a group's investment in R&D and ensures that group companies cannot manipulate their accounting methodologies to unlock the enhanced rate of relief.

Enhanced Tax Credit Rate

The reduction in tax relief and tax credit rates announced in the Autumn Budget reduced the maximum payable tax credit from 33.5% to 18.6%. Following the introduction of the R&D intensity ratio, claimant companies will now receive a tax credit at the original rate of 14.5% of the total enhanced expenditure as opposed to the 10% rate effective from 1 April 2023. This provides a valuable increase in the incentive, with a new maximum tax credit rate of 26.9%. While still a reduction on the historic position, it is a welcome middle ground for many businesses.

Conclusion

The R&D intensity ratio will play a vital role in supporting the UK's most innovative businesses (many in the life science and biotech field) with valuable financial incentives to keep their development work in the UK, provided they surpass this hurdle. That being said, future planning of both qualifying R&D expenditure and non-qualifying business expenses is essential. Some companies invest hundreds of thousands of pounds in qualifying R&D work; a small, mistimed expense could lead to failing the R&D intensity test, reducing their tax credit value by tens of thousands of pounds.

R&D Tax Relief: The New Requirement to Notify HMRC

The UK's R&D regime has been in the news since the start of 2022. The Government has been concerned about both the quantity and quality of claims and has been at pains to reduce the perceived levels of abuse. The March 2023 Budget cast an even bigger spotlight on the R&D tax relief system; not only were we given much more detail on the changes announced in November 2022, but we were also introduced to additional proposals. In April 2023, HMRC provided official guidance explaining how some of the new rules are expected to be applied. A key part of the new guidance defines the process for making advance notification that a company intends to claim R&D tax relief, alongside a range of mandatory additional information required prior to filing a corporation tax return. While this new guidance is generally welcomed, the introduction of these new processes gives rise to a drastic increase in compliance work and information recording requirements for both the claimant company and its chosen tax advisor. For accounting periods commencing on or after 1 April 2023, many companies who seek to claim R&D tax relief may need to provide HMRC with advanced notification of their intentions to claim R&D tax relief.

TOP TIPS

Understanding tax liability in your jurisdiction

- Determine the right operating model using appropriate transfer pricing analysis and planning.
- Considerations for utilising R&D tax credits and reliefs – it is better to plan for these in advance so that right level of documentation is present to substantiate the claims before the tax authorities.
- When it comes to the taxation of an international workforce, a proactive approach is always better. Pre-move tax planning and reviews are a great first step to ensure the employer is aware of all the potential consequences before saying 'yes' to having an employee working remotely overseas.

QUESTION THREE

Are there any tax relief & benefits available to remote workers in your jurisdiction? How do they apply to domestic and foreign companies?

In general, there are three main tax areas for employers to consider for employees working significantly outside their home country and these considerations are the same while any employees are relocating to UK or moving outside UK.

- The personal tax implications for the employee as an individual including tax residence, income tax, social security and tax filings.
- The employer obligations to comply with local tax reporting and withholding for that employee in the overseas country.
- The corporate considerations for that business and if that employee's presence in a different country creates a taxable presence, known as a permanent establishment, for the company in that overseas country and further impact on transfer pricing profit / loss allocations.

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Calum McKenzie has extensive experience working in corporate and fiduciary services, advising on and assisting with the formation and ongoing administration of thousands of entities and providing director and trustee services to entities varying greatly in terms of structural complexity, asset value and activity.

Calum has worked in the BVI since 1998 post graduating in the UK with a BA (Hons) in Business Studies. Since 2005 Calum has been the BVI resident Director responsible for the day-to-day management of an owner-managed BVI Trust Company.

Throughout his career, Calum has been approved as a director in a number of offshore jurisdictions including BVI, Cayman Islands, Barbados, Nevis and Anguilla. He is presently a Council member of the BVI Investment Funds Association and formerly a member of the BVI FSC Fiduciary and Registry Liaison Committee, providing operational advice and guidance to the BVI Financial Services Commission and Council member of the BVI Association of Registered Agents. Calum is a Member of the Institute of Directors, London, a member of the Association of Certified Anti-Money Laundering Specialists and a BVI FSC approved Compliance Officer and Anti-money Laundering Reporting Officer.

Hatstone is a leading multi-jurisdictional firm providing legal, investment business, corporate and fiduciary services with offices in BVI, Panama, South Africa and Jersey.

Client focused, knowing our clients and understanding what drives their businesses is fundamental to us. We enjoy a very strong rapport with our clients who have direct access to our team. Our principal aim is to help clients achieve their objectives by offering them pragmatic advice and solutions.

"Trustees are required to discharge certain statutory or equitable (including fiduciary) duties."

QUESTION ONE

What personal liabilities do trustees need to be aware of when entering commercial contracts in your jurisdiction?

Under BVI law, individuals, as well as companies licensed as trust companies under the Banks and Trust Companies Act, or established as private trust companies under the Regulations, may act as trustees of a BVI trust. Typically however, trustees in BVI will be professional licensed trust companies.

Trustees are required to discharge certain statutory or equitable (including fiduciary) duties, except to the extent that they can be and are excluded in the trust instrument. The following are the most important duties:

- To act honestly and in good faith in the best interests of the beneficiaries or trust purposes in accordance with the terms of the trust.
- To keep under their control and manage trust property.
- To obey the terms of the trust deed, unless all the beneficiaries are of full capacity and consent to trustee actions contrary to the terms of the trust or if the court sanctions a variation of the trust's terms.
- Not to delegate duties or powers either to a third party or to a co-trustee, except when authorised by statute or the trust deed.
- To act prudently in the administration of the trust and, as regards the statutory power of investment of the trust assets in particular, to exercise the diligence and prudence that a reasonable person would be expected to exercise in making an investment as if it were his own money.
- Subject to other provision in the deed, to act unanimously, except where there are more than two trustees in which case action may be by majority decision (statutory provision makes this rule, which is in effect the rule for charitable trusts, the rule for private trusts).
- To disclose any conflict in relation to the trust and not to profit from the trust property nor to purchase trust property for personal enjoyment.
- To keep accurate records and accounts.

It is worth pointing out that where the trust assets are being re-invested on a regular basis, the trustees, will often require that a professional investment advisor be engaged to make recommendations to the trustees, so that the trustees have professional advice upon which to base their investment decisions or to assist the management of the assets.

QUESTION TWO

What incentives are there for High-Net-Worth Individuals in your jurisdiction?

BVI offers what we believe are the core requisites for HNWIs; the right to maintain information on a private basis and a tax-neutral platform. There is no income, capital gains or gift tax in BVI, and BVI trusts are exempt from tax in the BVI, provided that no beneficiaries are resident in the BVI and that the trust does not trade or conduct business or own land in the BVI.

As an added feature of BVI trust law, the legislation provides for the preclusion of forced heirship laws which are common in most civil law jurisdictions. Meaning there are no restrictions on how a person may deal with his estate in the event of his death. Accordingly, persons domiciled outside of the BVI can place assets into a BVI trust during their lifetime without the restriction of the forced heirship laws applying.

From a structuring perspective, BVI offers the ability to HNWIs and families to create a Private Trust Company (PTC). A PTC is a company formed for the specific purpose of acting as a trustee of a single trust or group of related trusts and does not charge fees. It offers an alternative to a settlor to using a professional trustee as the PTC operates in the BVI without being required to be licensed by the BVI Financial Services Commission (FSC). A PTC does require a Registered Agent who holds a Class 1 trust licence. Directors of the PTC can be professional directors or they can be members of the family benefitting from the trust structure, allowing the family more flexibility, control and continuity in the administration of the trust's assets. The shares of the PTC can be held by family members, but it is more common for them to be held in a BVI purpose trust.

"There are no restrictions on how a person may deal with his estate in the event of his death."

QUESTION THREE

What are the tax implications and/or benefits for foreign high-net-worth individuals remote working in your jurisdiction?

As we have already touched upon above, the BVI is a tax-neutral jurisdiction for those using BVI structures for purposes of international business. However, any individual who resides in the BVI for purposes of work*, is liable to the relevant tax rates. These are considerably lower than traditional onshore jurisdictions with the employee tax rate at present being approximately 8%. Note that other contributions such as Social Security and National Health payments are also required. These payments however are capped and, in reality, are minimal, being a few hundred dollars per month.

* Any person who is not from the BVI who wishes to work in BVI must obtain the requisite approvals. Strictly speaking, remote working without approval from the relevant authorities in BVI is not permitted.

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Friggo Kraaijeveld graduated in Tax Law at the University of Amsterdam. He also graduated in Civil Law and Philosophy at the University of Amsterdam and obtained a postgraduate LLM in International Tax Law from the International Tax Centre of the University of Leiden.

Friggo worked in the field of international taxation at PWC and subsequently worked with a leading Dutch law firm. Friggo specialises in tax issues with an international dimension, such as private equity structuring, cross-border investments, international trade and labour. Friggo has a strong track record in cross-border investment structures and structured finance.
Friggo is a member of the Dutch Order of Attorneys (NOvA), the Dutch Association of Tax Advisors (NOB), the International Bar Association (IBA) and the International Fiscal Association (IFA).

KC Legal, are your Dutch expert professionals in a global business environment. This KC brand promise is embedded in the corporate culture of all our service lines:

- KC Legal, International Tax Lawyers
- KC Accounting, Accountants & Business Advisors
- KC Audit, International Audit Services

We offer top-tier tax, accounting and audit services for international corporate groups, private equity funds and (ultra) high net-worth individuals with cross-border operations.

Our team of international specialists consists of seasoned accountants and auditors, experienced tax lawyers and tax attorneys, who provide a hands-on approach and are fully equipped to tackle all challenges of the (international) business practice.

As a firm we strongly believe in a business environment that is not bound by borders and is not restricted by large pyramid–style business models.

The way we aim to achieve our beliefs is embedded in our corporate values: a professional environment encouraging our professionals to always engage responsively, providing responsible advice in a pragmatic fashion.

“Generally, the Dutch tax authorities can be considered reasonable and open to discussion for real-life developments and genuine business reasons.”

Changing geopolitical landscape

In the Netherlands, a very high-level business support environment (e.g. administration, financing, legal and tax) exists, combined with a very beneficial tax treaty and investment protection treaty network. Furthermore, the Dutch tax authorities have a tax ruling policy: taxpayers can obtain a safeguard by concluding tax rulings regarding e.g. their transfer pricing policy or the application of the participation exemption.

In recent years, following negative publicity regarding the tax regime (calling it a “tax haven”), and EU anti-abuse legislation, sentiment has slightly changed and new anti-abuse legislation and policies have been introduced or announced. Although this has an effect on possibilities for inbound investments, in general, the Netherlands has not given up on its favourable tax regime. New regulations target mostly specific tax abusive situations and structures without business substance in the Netherlands.

This implies that (new and existing) investment structures need to be tested thoroughly on tax implications, but can still be structured tax efficiently, benefitting from the Dutch tax treaty network and investment protection agreements by the Netherlands. Also, tax rulings confirming the taxation or transfer pricing policies are still available, subject to more formal procedures and business substance requirements.

Furthermore, it is important to note that the Netherlands will introduce Pillar II, legislation. Under Pillar II minimum taxation rules are implemented and a top-up tax may be applicable if entities within a group do not fulfil the 15% minimum rate. This implies that investment structures will need to be tested on these minimum taxation rules, and a review of the corporate or business structure may be needed to avoid a further Pillar II impact.

Finally, the Netherlands has joined the initiative against tax havens and has introduced a blacklist of countries. Payments (interest, royalties and as of 2024, dividends) to group entities in these countries may be subjected to additional (withholding) tax.

Be aware of the following taxation topics

Due to diverse anti-abuse legislation, it is important for inbound investments to test the contemplated structure thoroughly. However, with due care an advantageous tax structure, benefitting from tax treaties concluded by the Netherlands is available.

In this respect we consider business substance a major factor to avoid triggering disadvantageous tax measures and to obtain certainty about taxation rules (i.e. concluding a tax ruling with the tax authorities). If the substance requirements are met, it is generally assumed that an active business is conducted and in such situations, anti-abuse legislation could be avoided.

New Pillar II tax measures will have a major impact on the global landscape of structuring investments. Also, the Netherlands has proposed to implement Pillar II legislation. In this respect, it is important to test the group structure on low-taxed entities and possibilities to avoid top-up taxes.

For individuals with specific talent or special knowledge who are relocating to the Netherlands, a special regime (called 30% rulings) is available. This implies that 30% of the salary can be paid untaxed (as of 1 January 2024 a maximum is introduced, with a grandfathering rule to 2026) or actual extraterritorial costs (subject to conditions) can be reimbursed tax-free.

TOP TIPS

Tax notes for the Netherlands

- The Netherlands has a 100% participation exemption for investments in entities as of a 5% interest. Furthermore, Dutch resident entities (or permanent establishments) can be grouped into a fiscal unity, and thus offsetting losses of one entity against profits of another.
- The Netherlands has (one of) the most extensive and advantageous tax treaty network and investment protection agreements in the world.
- Next to lowering withholding tax on dividends based on tax treaties, Dutch tax legislation also provides for an exemption based on participation. Furthermore, no general withholding tax on interest or royalties (except for group payments to low-tax jurisdictions) exists.
- It is possible to obtain a tax ruling from the Dutch tax authorities confirming the applicable taxation rules or transfer pricing policy.
- The Netherlands provides for a favourable tax regime for expats, with a 30% tax-free allowance and a non-resident tax regime for savings and investments.

Furthermore, income tax is partly levied on a non-resident status, and thus no income tax may be due on e.g. savings and investments.

As a special note, Dutch resident individuals are taxed regarding savings and investments on a deemed return (and not actual income or capital gains). Furthermore, interest deduction is in principle available for mortgage loans used to finance a person’s private home.

Remote workers

Dutch resident remote workers can benefit from certain (home office) facilities provided by their employer, without being subject to Dutch employee taxes or income taxes on these benefits.

Working remotely from the Netherlands for a foreign employer may trigger questions regarding a permanent establishment in the Netherlands, and thus potentially leading to corporate income tax issues. Although in recent (Covid-19) years remote work has been growing rapidly in the Netherlands, we have no indication that the Dutch tax authorities will start raising more questions with foreign employers in this respect. Generally, the Dutch tax authorities can be considered reasonable and open to discussion for real-life developments and genuine business reasons.

“New Pillar II tax measures will have a major impact on the global landscape of structuring investments.”

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Isabella Bertani is the Founder and Chief Client Strategist at BERTANI, a boutique audit, tax, and advisory firm located in Toronto, Canada. With over 25 years of experience, Isabella has worked extensively with both private and public companies in numerous industry sectors including manufacturing, food processing, technology, telecommunications, mining and mining-related industries, biotech, and retail and distribution. She has been named by Practice Ignition as one of the Top 50 Women in Accounting globally for two consecutive years in 2021 and 2022.

Isabella's practice focuses on inbound foreign investment and Canadian domestic companies with global interests. A recognised leader in foreign direct investment, Isabella routinely advises global corporations with regards to expansion into the North American market and clients include numerous foreign subsidiaries of significant global entities. Isabella is a frequent speaker on topics relating to globalisation including doing business in Canada, trade agreements, global trade and migration, and the impact of geopolitical trends on global foreign direct investment and global trade. She has a particular interest in FDI and its impact on global sustainability.

In 2017, Isabella was bestowed the honour of Fellow of the Chartered Professional Accountants of Ontario, the highest distinction conferred on its members that have brought prestige to the profession through significant achievements in their professional careers, volunteer involvement in the affairs of the accounting profession, and contributions to the community.

Isabella is a graduate of York University's prestigious Schulich School of Business holding both a Bachelor of Business Administration in accounting and a Master of Business Administration with a focus in policy and finance.

The changing geopolitical landscape and evolving political and tax policy are interrelated and impact how the other may evolve. Similarly, businesses must respond to the changing responses of jurisdictions to evolving geopolitical events, and this in turn will impact how global trade evolves.

Current tax Issues in Canada

Canadian resident taxpayers are subject to their worldwide income. Corporations incorporated in Canada are deemed to be resident in Canada for the purposes of the Income Tax Act. The jurisdiction where a corporation has a permanent establishment will dictate the corporate tax rate that it is subject with the corporate tax rate for foreign-held Canadian corporations ranging from 23% to 31%.

The following are tax topics that businesses should be aware of when considering Canada as a jurisdiction to operate in:

- **Thin capitalization rules**

Thin capitalisation rules restrict the deductibility of Canadian corporations and trusts to deduct interest expense on debt owing to certain related non-residents. This also applies to branches of foreign corporations.

Interest deductibility is limited if the outstanding debt of the related non-resident exceeds 1.5 times the debtor's equity. This would further deem the non-deductible interest to be a dividend for withholding tax purposes and would trigger withholding tax at a rate of 25% subject to reductions under the relevant tax treaty.

Hence when planning capital contributions on setting up a Canadian subsidiary these rules should be considered when determining how much equity and debt to contribute.

- **Taxable Canadian property**

Non-residents of Canada may be subject to tax on gains from the disposition of taxable Canadian property. A purchaser who acquires taxable Canadian property from a non-resident must withhold and remit 25% of the net proceeds to the Canada Revenue Agency.

Taxable Canadian property includes certain shares in certain private or listed corporations, and real property (or, in Quebec, immovable) situated in Canada.

The purchaser and the vendor are jointly liable for the withholding taxes. A vendor can obtain a clearance certificate from the Canada Revenue Agency under s.116 of the Income Tax Act before the disposition which would limit the withholding tax and remittance requirement to the extent in which the proceeds exceed the adjusted cost base of the property.

Therefore, when considering the sale of taxable Canadian property, the implications from a withholding tax perspective need to be considered.

- **Excessive Interest and Financing Expenses Limitation (EIFEL)**

Not yet enacted, under the proposed EIFEL rules, the tax-deductible amount of certain interest and financing expenses (IFE) could be restricted. Originally introduced under the 2021 Budget, there has been much discussion around these proposed rules, which if enacted were to have gone into effect October 1, 2023, with the most recent version of these rules drafted in August 2023. The EIFEL rules would apply to all corporations and trusts except for "excluded entities." Excluded entities include:

- Canadian Controlled Private Corporations (CCPC) with taxable capital employed in Canada of less than $ 50 million.
- Certain groups of Canadian resident corporations and trusts whose aggregate net foreign affiliate interest expenses of $1 million or less.
- Certain Canadian corporations or trusts that carry on "all or substantially all" of their business activities in Canada and certain conditions are met,

Impacted taxpayer's net IFE would be limited by a calculation that incorporates a certain "fixed ratio" of their adjusted taxable income with a transition period. Certain related Canadian corporations can make joint elections so that the rules don't apply to certain "excluded interest" to ensure that the EIFEL rules don't adversely impact transactions that occur regularly within the related group. These would include intercompany lease financing payments.

Consideration must also be given to the application to controlled foreign affiliates. These rules are complex, and taxpayers should consider the impact of the interest restrictions on their corporate group.

- **Multilateral Instrument (MLI)**

The MLI is part of the OECD's BEPS (Base erosion and profit shifting) action plan. Over 100 countries have joined to date including Canada. The purpose is to counter treaty abuse and improve dispute mechanisms.

Critical to the MLI is the principal purpose test (PPT). The PPT will deny treaty benefits such as the reduction of withholding tax on interest, royalties and dividends, where it is reasonable to conclude that obtaining the treaty benefit was one of the principal purposes of the party seeking to rely on the relevant tax treaty.

When considering global tax structures, consideration must be given to the MLI rules with the growing number of countries signing on to the OECD's plan.

Remote workers and non-resident workers in Canada:

As discussed above, resident taxpayers are taxed on their worldwide income. Non-resident taxpayers are taxed on their income earned in Canada subject to treaty considerations.

Remote workers can make certain deductions on their income tax returns depending upon whether they are a salaried employee or self-employed.

As a salaried employee and your employment expenses are approved by your employer and you are provided with a form T2200, you may deduct specific expenses as approved by the employer. These could include home office expenses, automobile expenses, and meals and entertainment. For self-employed workers a wider range of expenses are allowed.

From the perspective of non-resident workers, Reg. 102 of the Income Tax Act requires every employer (whether or not a resident of Canada) who makes payments (including salaries, wages, bonuses, and commissions) to either residents or non-residents of Canada, for employment services rendered in Canada to withhold, remit, and report amounts under the same obligations as those for Canadian resident employees.

Similarly, Reg 105 requires that any person paying a fee, commission or other amount to a non-resident person (individual or corporate) for the rendering of services (not sale of goods) in Canada to withhold and remit 15% of the gross payment amount to the Canada Revenue Agency.

Depending on the circumstance, certain waivers are available if applied in advance. Prior to sending remote workers into Canada, foreign corporations should consider whether a waiver can be obtained. Note that this is separate from immigration requirements (work permits).

TOP TIPS

Understanding tax liability in Canada

- Understand your objectives for expansion into the Canadian market. Your objectives will drive the structure of your business.
- Communicate with your tax, accounting and legal advisors especially when you're making changes as they can assist with helping you navigate the issues you may face.
- Canada has multiple incentive programs and advantages as we've already discussed.

BERTANI is a boutique audit, tax and advisory firm located in Toronto, Canada. Founded in 2001, BERTANI specialises inbound and outbound foreign direct investment into Canada and private Canadian companies with growth objectives and global interests. Through our soft-landing program, we routinely advise and assist foreign corporations with their expansion into and continuing operations in the North American market.

As a member firm of IR Global, BERTANI is connected to over 1300 collaborative member firms in over 165 jurisdictions covering 70 practices areas across the globe, allowing our clients to be ideally positioned for their outward global expansion strategy.

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Graham Parrott has been a tax advisor in the UK, Australia and the Channel Islands for more than 35 years, the last 25 of which he has been living in Guernsey. For 14 years he headed up the tax practice of a Big 4 firm in the Channel Islands.

Fitzroy Tax Services was established by Graham in 2014. He continues to advise those looking to do business in the Islands and elsewhere, as well as those looking to come to the Islands and those looking to leave. He sits on the Tax Sub-Committee of the local accounting body, as part of which he has been involved in working with the States of Guernsey on international issues in the area of taxation. He is also frequently asked to comment on tax and general business issues in the Channel Islands media.

Fitzroy Tax Services was established by Graham Parrott in 2014 to provide a tax advisory and compliance service, following his 30 years of 'Big 4' experience. Since then the firm has grown in scope and staff. We have extensive experience in advising clients in the Channel Islands, the UK and further afield, and have built a strong worldwide support network enabling us to assist and advise on most tax issues in all major jurisdictions.

The Channel Islands – Islands of opportunity

Introduction

Most of you reading this will have heard of the Channel Islands, or at least the two main Islands, Jersey and Guernsey, and will have your own perception of what they are, where they are and what they represent.

Top of the list of what people think of is probably tax havens, followed by cows, potatoes and a nice place to go on holiday, if you don't like it too hot.

They are small, with a population of some 150,000 between them, but real people who bleed when they are cut. They are not a home for letter box companies some see them as.

The Islands are located between France and the UK which has shaped their history over many hundreds of years. They are part of Europe but have never been part of the European Union.

The Islands are Crown Dependencies, sharing the British Monarch who has his own representative in both Islands. We are supported in the areas of defence and foreign affairs. But both Jersey and the Bailiwick of Guernsey, so including Sark and Alderney, have their own Parliaments and are individually self-governing.

Adapting to the changing geographical climate

For the last 50 years, both Jersey and Guernsey have been successful financial centres, with financial services being the Islands' main business, be that banks, fund administration and management, fiduciary companies and, in Guernsey, captive insurance.

This success has resulted in historically low unemployment, so the islands are suited to high-value, low-volume businesses, such as those for whom these well-regulated jurisdictions still offer potential for growth, whilst recognising the International drive for fiscal fairness.

Whilst the financial services industry in both Islands has matured, it has also adapted and identified new opportunities, including developments in private funds, ESG and in the captive insurance industry.

Both businesses and individuals in the Islands enjoy low rates of taxation. And whilst Jersey and Guernsey are different Islands, they are similar in terms of tax.

For companies, both Islands have a standard rate of corporate income tax of zero percent, introduced some 15 years ago to maintain fiscal neutrality, whilst addressing concerns raised internationally in relation to tax regimes available to non-local businesses only. There is no further tax on the distribution of profits to non-local resident shareholders.

Most regulated financial services businesses pay tax at 10 percent. Some such as utility companies and large retailers pay tax at 20 percent on income profits.

In 2019, economic substance rules were adopted in the Islands to satisfy EU concerns (as well as other jurisdictions) over a zero rate of company taxation. This means that for certain industries a simple 'box' is not enough, it needs to be one with sufficient substance in the Island in which it is resident. But this is ultimately beneficial for the Islands themselves and the companies looking to set up here.

For the right business, as well as very low rates on company profits the islands offer a more benign tax regime generally. Guernsey currently has no form of value added tax or sales tax. Jersey's Goods and Services Tax is a low five percent.

For individuals, the maximum rate of income tax is 20 percent in both Islands, with both also offering various ways in which an individual's effective tax rate can be limited still further. These limits or 'caps' can significantly reduce an individual's effective tax rate below the headline 20 percent.

There is no tax on capital gains, no form of inheritance tax or gift tax, and no wealth tax. People keep more of what they earn.

Tax issues to be aware of

A business established here with the appropriate substance when relevant can enjoy a favourable tax regime. But where owners and senior employees move with the company the potential benefits increase.

The Islands' tax regimes do not operate in isolation, so both businesses and individuals need to consider the international aspects of doing business or living here.

It is also right to acknowledge that at a time when the moral aspects of taxation are an increasing focus, low taxes can be a two-edged sword. The OECD Pillar 1 and 2 initiatives have been the cause of sleepless nights for some. And the global minimum tax rate of 15 percent and the Islands' zero tax rates could be considered incongruous.

But both Islands are supporting the Pillar 1 and Pillar 2 initiatives, with the global minimum rate only applicable to the largest multinational groups.

The Islands do have to address the practicalities of economic success in a limited space. Population has to be managed and the Islands take a slightly different approach to this. Jersey does so through controlling the individuals seeking to move there and businesses wanting to set up or move there. Guernsey manages population levels by having two different housing markets.

TOP TIPS
to understand your tax liability

- Keep good financial records. This makes the preparation of tax returns more straightforward, and ensures the right amount of tax is being paid. This is a legal requirement anyway, but one that can also benefit the taxpayer.
- Be aware of specific rules that affect your tax liability, for example, when there are 'caps' that limit tax payable or 'day count' limits that can be relevant to the individual's situation.
- For internationally mobile individuals, count your days. This will enable you to be aware of your tax residence position, which in most countries is generally based on the time spent there.
- Be conscious that tax years are different in different jurisdictions and for the Islands, the UK is particularly relevant. The Channel Islands use a December year end, whereas the UK has 5 April. This can present problems but also opportunities from a tax planning perspective.

Tax reliefs available to remote workers

There is no specific relief available to remote workers and there are tax considerations both for them and their employers. There was a limited relief available during the Covid-19 pandemic, but it was limited.

An individual working here will be taxed on earnings from duties undertaken in the Islands. For employees, the result is a potential withholding requirement on the part of their employers, though this can usually be addressed in practice.

But whilst there are not specific reliefs, working here does potentially enable these individuals to benefit from the low rates of tax in the Islands.

In summary, whilst the shifting geopolitical and economic climate presents challenges to the Islands, they have so far been able to adapt to these and still offer a favourable location for the right businesses and individuals, within the physical constraints that for small Islands are unavoidable.

"The Islands do have to address the practicalities of economic success in a limited space. Population has to be managed and the Islands take a slightly different approach to this. Jersey does so through controlling the individuals seeking to move there and businesses wanting to set up or move there."

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Elliott H. Levine has more than 40 years of advising clients on all phases of taxation, business planning, acquisitions and divestitures, estate planning and structuring. He frequently assists with structuring accounting and tax related aspects of acquisitions and dispositions in such areas as publishing, media, real estate, private equity and investment banking. His services include analysing the tax and accounting implications of proposed transactions and assisting companies in devising compensation plans. Elliot has acted as an advisor to clients in the acquisition of properties, including the acquisition of the Crown Building in 2015 for $1.775 Billion.

Elliot is affiliated with the American Institute of Certified Public Accountants and New York State Society of Certified Public Accountants. He received his BA in Accounting from Queens College in 1975.

Weaver is a a top 35 CPA firm with 16 offices from coast to coast and more than 1,200 professionals. We offer our clients the best of both worlds: big firm experience and resources along with a commitment to hands-on, personal client service.

Our our philosophy has always been about doing more than expected. That's why we go beyond "check the box" compliance to provide a wide array of services designed to help our clients meet their broader operational, risk management, regulatory and strategic goals.

Our goal is to balance both high development with high performance to meet the long-term goals of each individual, team and our firm, and every person plays a part. Our core values drive everything we do at Weaver — the way we work, the way we operate and the way we serve our clients.

QUESTION ONE

What personal liabilities do trustees need to be aware of when entering into commercial contracts in your jurisdiction? –

One of the common errors or missteps that a trustee can make when entering into contracts on behalf of the trust is the failure to clearly delineate in what capacity the contract is being signed. If for some reason the trustee enters into a contract in his/her name without the words "Trustee" and in the name of the Trust, there could be an issue concerning on whose behalf the Trustee was acting. It is also important to understand the nature of the income that will be generated by the investment and whether or not it creates a tax obligation for the Trust, the Grantor or the beneficiaries. In addition, it is very important for the Trustee to be absolutely certain that all tax returns and income taxes are paid by the trust, where required.

QUESTION TWO

What incentives are there for High Net-Worth Individuals in your jurisdiction?

As a result of the Tax Cuts and Jobs Act of 2017 ("TCJA"), individuals can no longer deduct state and local income tax in excess of $10,000 on their individual returns. In order to partially compensate for this situation, certain states (New York, Connecticut, Massachusetts and New Jersey to name a few) implemented an entity level tax that allows:

- An entity level deduction for an amount that approximates the individual income taxes that would be paid on the entity level income;
- A credit on the state tax return in the amount of this tax.

This essentially puts the individual back into the same position they were in prior to the enactment of the TCJA. In order to take advantage of this "tax", High Net-Worth Individuals may have to restructure their investments and their holdings to take advantage of this "tax".

While not exclusive to a particular jurisdiction in the United States, there is a potential structure that would allow High Net-Worth individuals an ability to deduct portfolio expenses on their individual tax return. This deduction had been severely limited prior to 2018 as a result of the Alternative Minimum Tax and was totally eliminated as a result of the TCJA for all years post 2017. This structure in all likelihood would require a restructuring of investment holdings but can create a significant benefit depending on the size of the portfolio.

An area that has received attention is an investment called an Opportunity Zone Fund. This is a vehicle that was designed to incentivise economic growth in underinvested areas in the United States. In order to spur investments, investors are given the opportunity to defer or reduce capital gains they generated by investing the proceeds into an Opportunity Zone Fund. While the ability to defer, or reduce, capital gains is attractive, the more important question that needs to be analyzed is whether the economics of the investment make sense. Tax incentives should only enhance the decision to make an economic investment, not create one.

QUESTION THREE

What are the tax implications and/or benefits for foreign high net worth individuals remote working in your jurisdiction?

The biggest issue for foreigners working remotely in New York concerns how the State will treat the individual for income taxes. For example, New York State has determined that if an individual has a permanent place of abode in New York State and is present in the state for any part of 183 days in a calendar year, then the individual is a Statutory Resident for that year. As a Statutory Resident, New York State will tax 100% of the individual's worldwide Income. As a nonresident, the State would not have the ability to tax the investment income of the foreign individual. When counting days, it is important to remember that one hour in the state constitutes a day in the state for purposes of this calculation.

The other area to be concerned about when working remotely in a state is whether or not the state or the IRS will determine that the business activities constitute income in the United States and is therefore subject to tax in the United States, and the related state. This can become more complicated because if the foreign individual is working for a foreign company, the taxing authorities could take the position that the foreign company has established a nexus to the United States and therefore the foreign company would be subject to US income taxes and a filing requirement. Depending on the magnitude of the dollars involved, it may ultimately make sense to establish a US corporation to "block" the foreign corporation from having to file income tax returns in the United States.

TOP TIPS

Understanding personal liability for trustees

Trustees normally are not liable for their actions as trustees provided they exercise reasonable business judgment and adhere to the responsibilities and duties as delineated in the Trust document. The following are some items to be aware of:

- Understand the provisions of the trust document regarding the type of investments the Trust is allowed to invest in;
- Understand the record-keeping and reporting requirements of the Trust;
- Review the tax treatment of the trust (Grantor, Simple, Complex) to determine whether or not taxes need to be paid on the income of the trust or if this income is taxed at the Grantor/Beneficiary level;
- Review the indemnification provisions of the Trust document;
- Review the distribution provisions of the Trust. This becomes important because oftentimes distributions may impose a tax liability on the beneficiary.

"New York State has determined that if an individual has a permanent place of abode in New York State and is present in the state for any part of 183 days in a calendar year, then the individual is a Statutory Resident for that year."

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Jeffery M. Leving has been named one of "America's Best Lawyers" by Forbes Radio and selected by his peers as one of Illinois' top attorneys. He is an international leader in advocating for fathers' rights in the courtroom, among politicians and policymakers, with legislative initiatives, in his books and in his radio, television and public speaking appearances. Leving is the founder and president of the Law Offices of Jeffery M. Leving Ltd. In Chicago, a firm concentrating in matrimonial and family law, which has gained monumental victories for fathers seeking to keep their children in their lives and protect them from danger.

Leving has steadily chipped away at the presumption that when parents split up, children belong with their mother. Thanks to Leving's persistence, overcoming this notion in Illinois courts is no longer the considerable uphill battle it once was – though it is often still a challenge that Leving is always prepared to meet. Leving recently won cases for a father whose child's mother died and the mother's extended family interfered with the father's right as the child's surviving parent to raise his child; and for a father falsely accused of abusing his child.

Jeffery M. Leving, Ltd. is internationally known for rescuing children from around the world and reuniting fathers and children.
The firm's founder, Jeffery M. Leving, has been recognised by government leaders (including 3 U.S. Presidents), private industry, and his peers.

The Illinois House of Representatives honoured Leving "for his work in safeguarding the rights of fathers and protecting the welfare of children and families in this State" and for his "hard work, integrity, and dedication for the people of the State of Illinois."

Critics of the Kids Online Safety Act need to put politics aside and realise the bill is needed

In July, the Kids Online Safety Act drew one step closer to becoming law when a Senate committee passed the bill. However, despite bipartisan support and the fact that most people in the U.S. agree that kids need internet safeguards, the bill is facing hurdles because some are trying to politicise the bill by claiming that it will be used by anti-LGBTQ+ groups to censor content under the guise of preventing depression, anxiety and eating disorders in children, while others claim it is a threat to free speech.

However, since the bill made it to the floor of Congress last year and was dropped because of criticism, some of the language in the bill has been changed, and LGBTQ+ advocacy groups that initially opposed it, like GLAAD (Gay & Lesbian Alliance Against Defamation) and the Human Rights Campaign, wisely dropped their opposition. Of course, there are some groups that still oppose the bill, but their opposition seems to be more rooted in the fact that it is supported by some conservative groups than the substance of the bill, which will help to keep children safe from many of the dangers of the internet.

The fact that these are groups that are often on the other side of many issues should not blind other groups and cause them to automatically oppose something, especially something as important as keeping children safe. All groups need to realise that compromise is essential to passing any law. Others claim that the bill is a threat to free speech, claiming that the vast majority of speech that some may consider unsuitable for minors is protected by the First Amendment. However, it seems to me that KOSA is not aiming to restrict speech. Rather, the bill aims to restrict those who can read and see harmful speech. Sadly, what is getting lost with these objections is what the Kids Online Safety Act (KOSA) will do.

We know that social media can bring us closer together and help us communicate and learn about what's going on in the lives of people we care about. But for kids, unchecked usage can have a negative impact. I fear children are suffering more and more from eating disorders, depression and bullying as a result of too much time spent online. Additionally, some kids have gone to social media to find drugs or gotten bamboozled into sexual relationships with adults or discussed disturbing plans to shoot up a school. The alarm has been going off for some time and lawmakers are starting to notice. Even the U.S. Surgeon General Vivek Murthy weighed in, issuing an advisory in May that said "we cannot conclude that social media is sufficiently safe for children and adolescents".

Murthy also has said that he believes 13-year-olds are too young to join social media and being on those platforms does a "disservice" to children. Murthy did not choose age 13 randomly. Instagram, Snapchat and Twitter/X all allow users ages 13 or older on their platforms. TikTok users who are younger than 13 can use that platform, albeit with a safety setting for children that limits the information collected from them, as well as preventing them from messaging users or allowing others to see their user profile. This type of action from TikTok has been copied by other social media companies who may fear stricter regulation or lawsuits. However, many social media companies claim to not allow kids under 13 on their platforms, and instead rely on self-reporting methods, which can be easily bypassed by children, and is why KOSA is needed. If passed, KOSA would set a new legal standard for the Federal Trade Commission and state attorneys general, allowing them to police companies that fail to prevent kids from seeing harmful content on their platforms. Supporters of KOSA say the bill keeps kids from seeing content that glamourises eating disorders, suicidal thoughts, substance abuse, and gambling. It would also ban kids 13 and under from using social media and require companies to acquire parental consent before allowing children under 17 to use their platforms.

A majority of teens say they use social media platforms like TikTok and YouTube at least once a day, and others admit to using the sites almost "constantly," according to a recent Pew Research study. Over half of the teens polled said it would be hard for them to stop using social media. KOSA will put parents back in control of what their kids experience online. Additionally, it will eliminate the need to hope that the social media companies will do the right thing and ensure the internet is a safe space for kids; reduce the need for lawsuits; and reduce reliance on third-party apps that some parents buy to keep their kids safe.

The bottom line is that no child under 13 should be on social media and thus, groups on both sides of the aisle need to compromise and support the Kids Online Safety Act so it can be passed.

Attorney Jeffery M. Leving is the recipient of President Biden's 2023 Presidential Lifetime Achievement Award. Leving, who has dedicated his career to safeguarding children and reuniting them with their fathers, has written three acclaimed books: "Fathers' Rights", "Divorce Wars" and "How to be a Good Divorced Dad," the latter of which was praised by President Obama and by Cardinal Francis E. George, then the Archbishop of Chicago. Follow Jeffery M. Leving on Facebook and X @DadsRights.

"U.S. Surgeon General Vivek Murthy weighed in, issuing an advisory in May that said "we cannot conclude that social media is sufficiently safe for children and adolescents."

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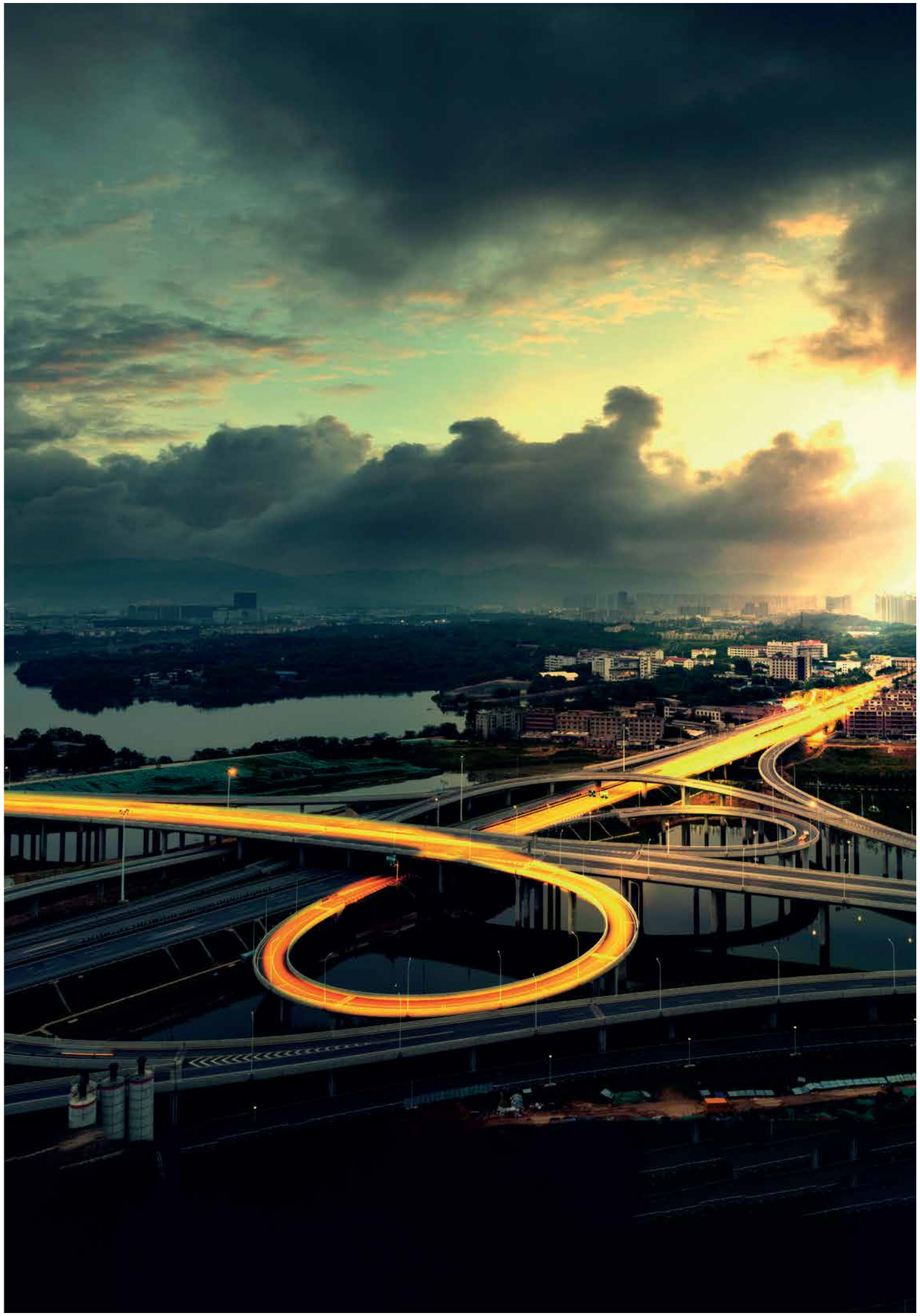

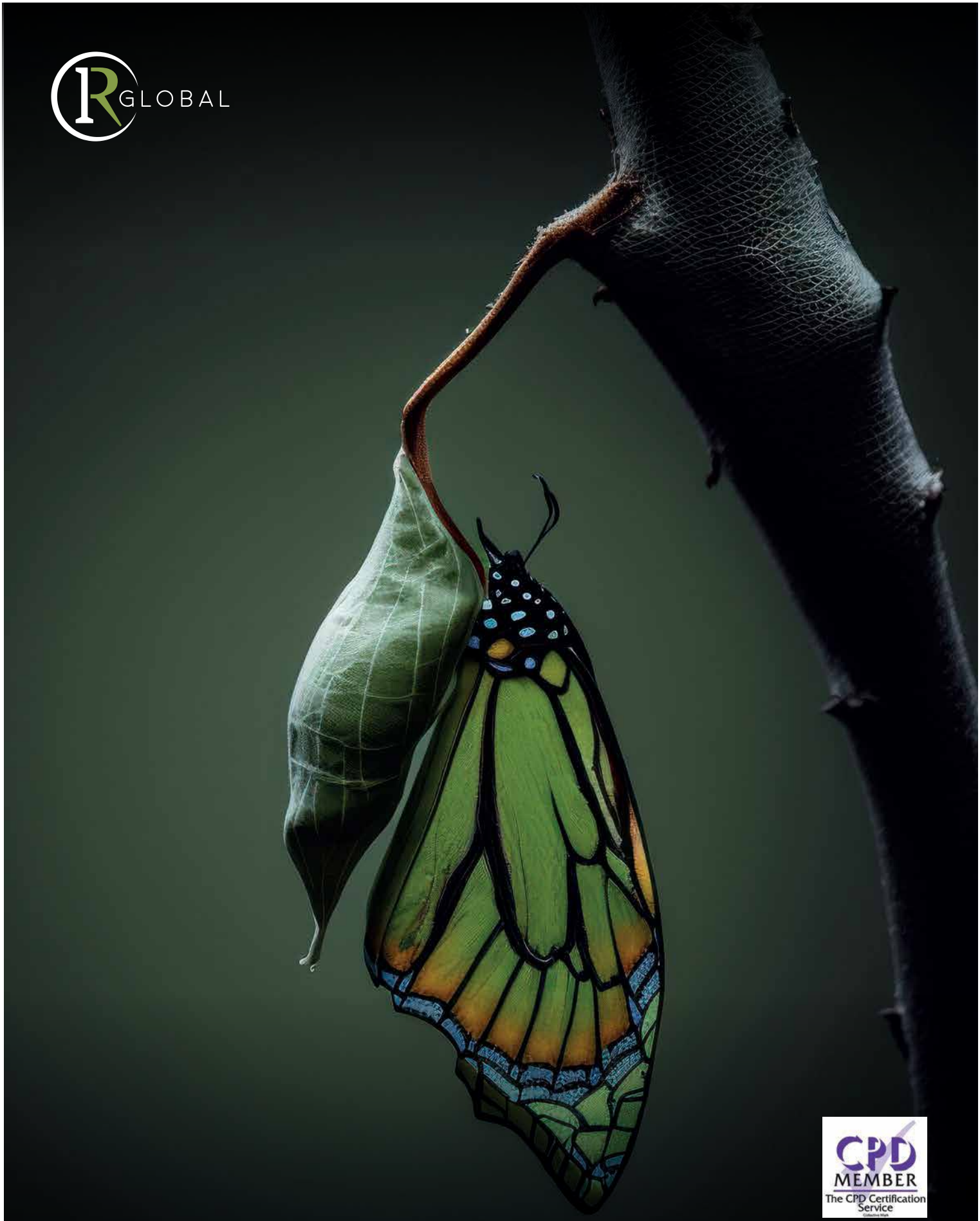

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