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OCTOBER 2017

THE BIG PICTURE

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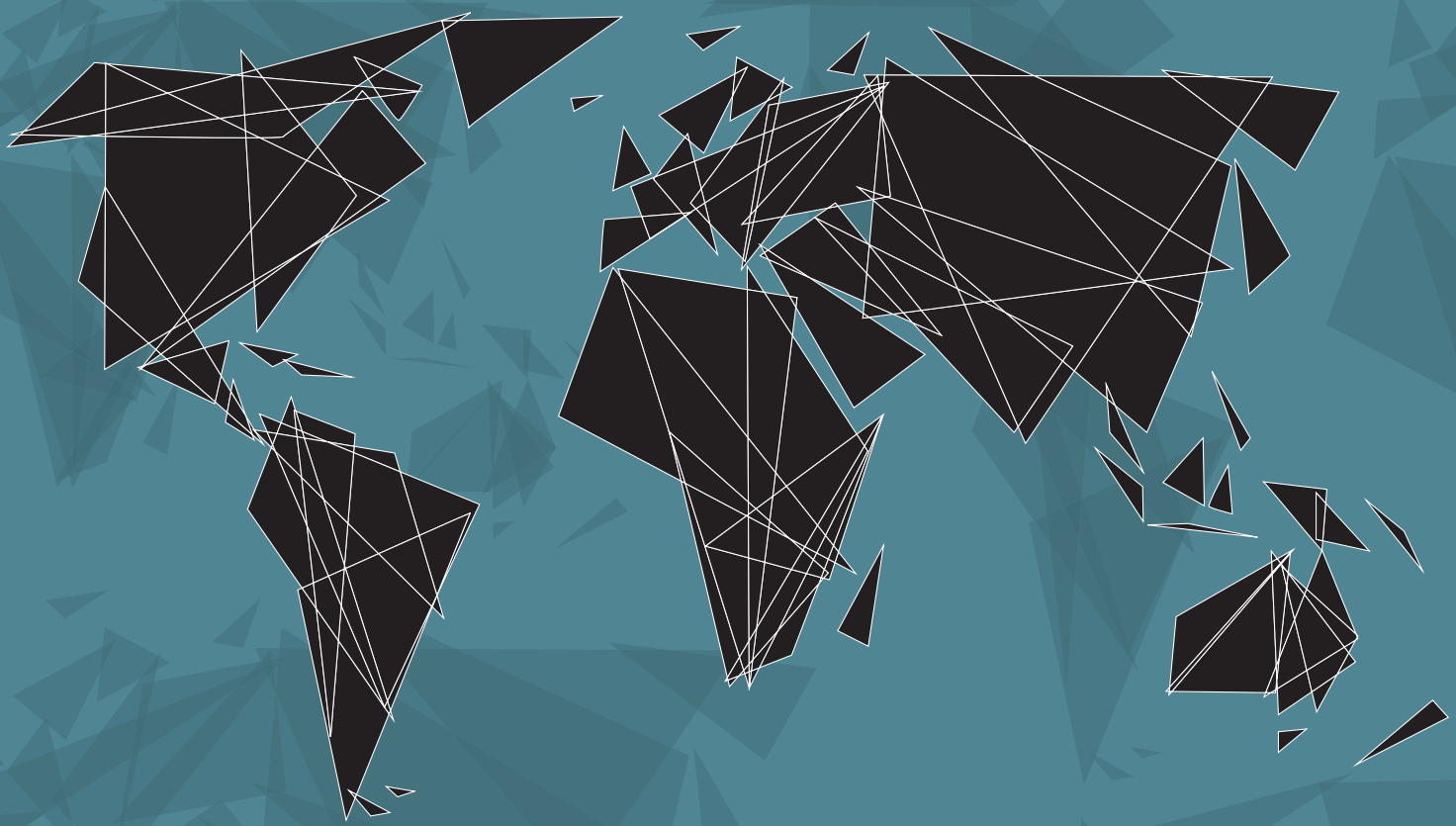
PLUS: THE GLOBAL LEGAL AWARDS.



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Check Mate
Michael Kim of Kobre & Kim knows firsthand how international litigation can feel like a game of three-dimensional chess.

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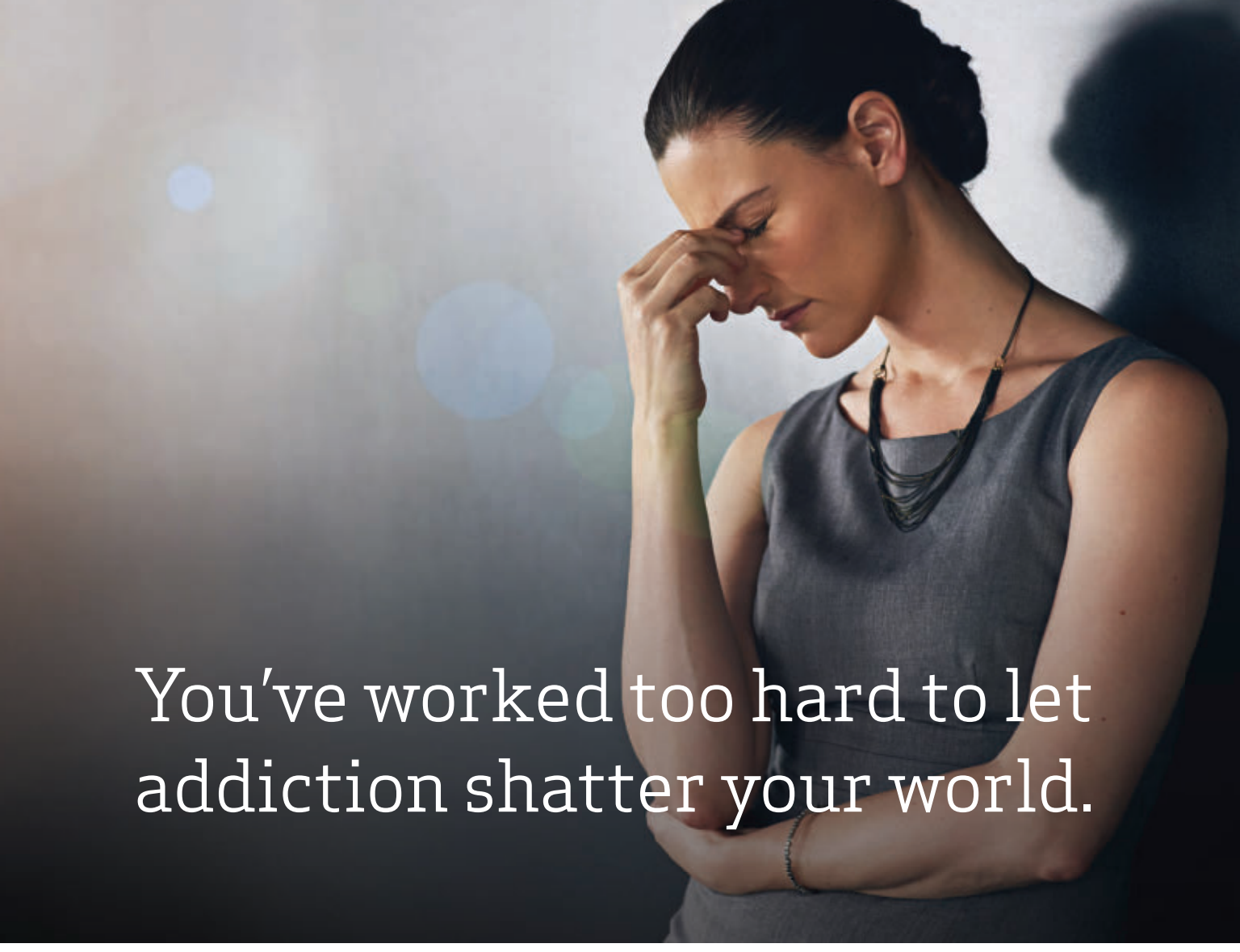

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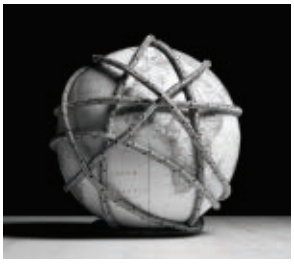

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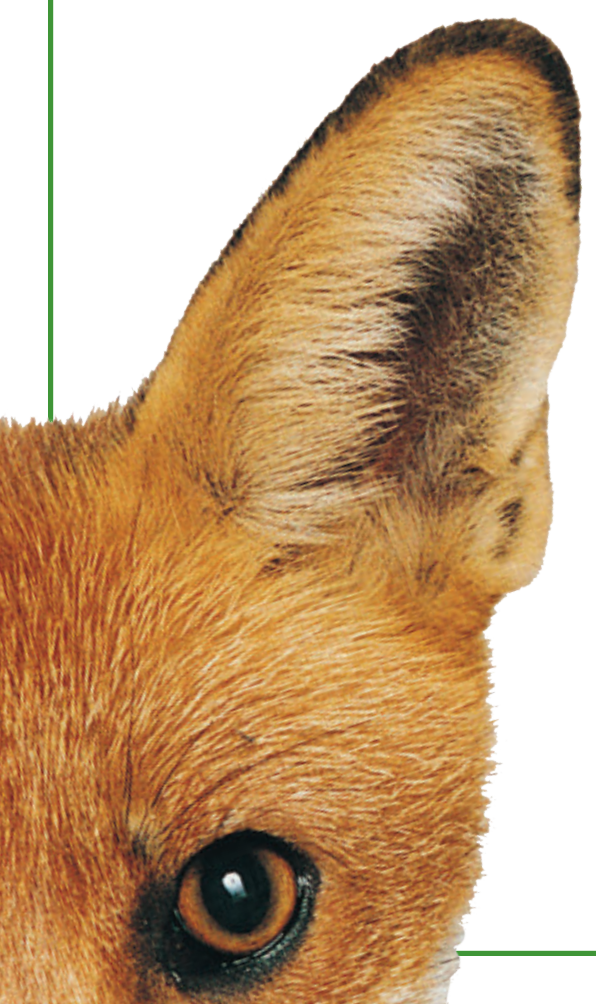

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Juggling Act

A thank you to those who make global legal work look easy.

One recent September morning, as I was lugging the overstuffed bag of clothes out the door to make it to the dry cleaner in time for same-day service (deadlines, people, what can I say?), my husband and I began ruminating about how there must be a better way to juggle it all. Who is cooking dinner? Wait, did we buy the food yet? Who is folding the clothes? Ah, I forgot to hit the start button on the dryer. Oh, didn't you say you were picking up our daughter? (Just kidding, we manage never to forget her! Whew!)

And then I read stories like the ones in this edition and I know the true meaning of juggling. When you read Scott Flaherty's article about the three-dimensional chess game that is international litigation, suddenly the question of whether the blue suit was laundered seems like a petty worry. As Scott highlights in "A Global Niche," starting on page 44, the lawyers who handle some of the most complicated international disputes in the world aren't just juggling conference calls across multiple time zones, but ensuring they have contacts in the judicial systems of far-flung places, understanding the nuances of dozens of countries' laws and social norms and making sure they are on the same page with each of their colleagues across the globe as they make arguments in multiple jurisdictions simultaneously.

And then you look at our Global Legal Awards winners, like the slew of lawyers and law firms from around the world that worked on (and at times argued intensely over) how to distribute a more than $7 billion recovery among three competing components of defunct Nortel Networks Corp. An early mediator in the case said it was "one of the most complex transnational legal proceedings in history."

This global work doesn't just strain calendar space or mental muscle, but it can take an emotional toll, too. Take, for example, the work done on the European refugee crisis by our winners in the citizenship category. The decision to serve as a guardian for a child refugee can mean something akin to a temporary adoption. Lawyers didn't take on those cases lightly: Not only did they represent the children in all legal matters, they cared for them in ways that ranged from helping them learn a new language to taking them to the movies to generally worrying about their mental well-being.

As all of these complexities play out across the globe, it's becoming increasingly harder for law firms to manage. As our Global 100 report shows, top-line growth is slowing and profits have fallen. Firms are at times struggling to figure out where they should have offices and if they can afford various foreign outposts. (See "Market Tectonics" on page 50 for forecasts about four markets seeing especially rapid change.) I'm sure spending time on pro bono work in that environment can at times create tension, too.

Doing the most complex work in an increasingly complex geopolitical and economic environment is no easy task. It's our pleasure to honor some of that work in these pages.

Thank you to the lawyers who, as they go around the world, make our world go 'round.

Gina Passarella, Executive Editor
gpassarella@alm.com.

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SUMMER OF LOVE—AND LAW

Firms get high marks from their 2017 summer associates.

BY MEGHAN TRIBE

AMID SHRINKING law school classes, law firms are looking for ways to capture the profession's young talent. And this year, while firms provided their summer associate classes with the usual cavalcade of dazzling social events—like Cleary Gottlieb Steen & Hamilton's outing to the Belmont Stakes or Paul Hastings' trip to the ESPY Awards—it was actually Big Law's efforts to give millennial would-be lawyers attention, work and mentorship that made the biggest impact, according to roughly 3,900 second- and third-year law school students who responded to The American Lawyer's annual Summer Associates Survey.

Many of these soon-to-be lawyers, who spent 10 weeks in the 92 firms included in our survey, pointed to the substantive work and training they received as the most memorable part of their summer in Big Law.

"I got substantial assignments from partners and senior associates, and my work was passed directly to clients, incorporated into briefs, or trusted to provide the answer they were looking for," said a summer associate at Foley Hoag in a comment in the survey. "Attorneys trust the summers to work diligently to complete tasks and provide them what they have requested."

This year Boston-based Foley Hoag and Philadelphia-based Duane Morris tied for the top spot in the rankings, dethroning Choate Hall & Stewart, which dropped to seventh in the rankings after holding the top spot on the Summer Associates Survey for the last two years.

Both Foley Hoag and Duane Morris received perfect scores in the nine categories used for ranking, including questions about how interesting and "real" the work was, the level of training and guidance, how accurately the firm portrayed itself, how often the students interacted with partners and associates, and if the firm is an overall good place to work.

One Duane Morris summer was surprised at how accessible the firm's partners were. "I was working with them directly on projects and I could call or go to their office whenever I had questions," the associate said.

Newly formed Arnold & Porter Kaye Scholer ranked third on the list, followed by Akin Gump Strauss Hauer & Feld and Crowell & Moring. Goodwin Procter, Choate Hall, White & Case, O'Melveny & Myers and Cadwalader, Wickersham & Taft rounded out the top 10 performers on our list.

In addition to cracking the top 10, Goodwin Procter also had the largest move on the list, jumping from 72nd in 2016 to sixth this year. Summer associates at the firm gave it 5 out of 5 in the overall place to work category, making Goodwin one out of 10 firms to earn that distinction on this year's survey. Goodwin's national hiring partner, Kenneth Gordon, says that while the firm didn't substantially change its summer program this year, it has worked on several recruitment initiatives as well as diversity and inclusion efforts over the years that could account for its move up the list.

"It wasn't that we felt like

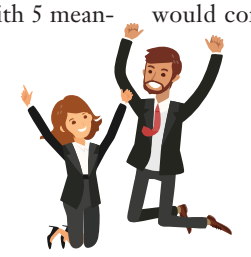
KRAPHIX/SHUTTERSTOCK.COM

we needed a radical change necessarily from last summer as much as we thought we could augment some of the things we were doing well," Gordon says.

Respondents gave their law firms an average overall ranking of 4.743 out of 5, with New York's Paul, Weiss, Rifkind, Wharton & Garrison, the lowest-scoring firm, earning a still-respectable 4.346. Summer associates surveyed at Paul Weiss said that they craved more interactions with the firm's partners as well as training and guidance. (Paul Weiss declined to comment.)

Compared to the 2016 summer associate class, this year's class seems to be somewhat more optimistic and confident about their future in Big Law. More than 86 percent of 2017 summer associates, who received an average of $3,413 a week for this summer, expected to receive a job offer from their firm, compared to 84.9 percent in 2016. On a scale of 1 to 5 about their level of worry about job offers, with 5 meaning not worried at all, they rated their prospects at 4.40, compared to 4.17 last year.

As was the case last year, Big Law's lack of diversity was one of the major complaints from respondents. Nearly 9 percent of summer associates ranked diversity in partnership as one of the factors they would consider in evaluating



HEAD OF THE CLASS

The top 50 big firms as ranked by summer associates.

2017 Rank	2016 Rank	Firm	Average Score
1	6	Duane Morris	5.000
1	N/R	Foley Hoag	5.000
3	N/R	Arnold & Porter Kaye Scholer	4.990
4	8	Akin Gump Strauss Hauer & Feld	4.985
5	3	Crowell & Moring	4.984
6	72	Goodwin Procter	4.970
7	1	Choate Hall & Stewart	4.963
8	17	White & Case	4.960
9	4	O'Melveny & Myers	4.953
10	32	Cadwalader, Wickersham & Taft	4.952
11	16	Kramer Levin Naftalis & Frankel	4.945
12	7	Kilpatrick Townsend & Stockton	4.939
13	36	Blank Rome	4.926
13	14	Proskauer Rose	4.926
13	9	Schulte Roth & Zabel	4.926
16	5	Paul Hastings	4.925
17	25	Morgan, Lewis & Bockius	4.908
18	11	Clifford Chance	4.899
19	41	Dechert	4.894
20	33	Pillsbury Winthrop Shaw Pittman	4.883
21	18	Gibson, Dunn & Crutcher	4.882
22	22	Sidley Austin	4.878
23	11	Orrick, Herrington & Sutcliffe	4.872
24	52	Faegre Baker Daniels	4.869
25	19	Fried, Frank, Harris, Shriver & Jacobson	4.868
26	31	Shook, Hardy & Bacon	4.854
27	85	McDermott Will & Emery	4.853
28	46	Winston & Strawn	4.848
29	61	Fenwick & West	4.847
30	23	Cahill Gordon & Reindel	4.842
31	N/R	Eversheds Sutherland	4.840
32	29	Cooley	4.826
33	15	Katten Muchin Rosenman	4.824
33	27	Morrison & Foerster	4.824
35	52	Alston & Bird	4.819
36	70	Latham & Watkins	4.813
37	59	Baker & McKenzie	4.811
38	28	Fox Rothschild	4.801
39	54	Dorsey & Whitney	4.798
39	N/R	Kasowitz, Benson, Torres & Friedman	4.798
41	N/R	Stroock & Stroock & Lavan	4.795
42	34	Sullivan & Cromwell	4.785
43	36	Venable	4.782
44	48	DLA Piper	4.780
45	39	Pepper Hamilton	4.772
46	N/R	Vedder Price	4.769
47	87	Holland & Hart	4.767
47	21	Wilmer Cutler Pickering Hale and Dorr	4.767
49	40	Willkie Farr & Gallagher	4.756
50	N/R	Kelley Drye & Warren	4.737

an offer from a firm, a slight increase from the 7.2 percent of associates who said this in 2016. In their responses, many summer associates noted the lack of women and racially diverse lawyers among the firm's leadership, and challenged firms to make good on their promises to promote diversity and inclusion among its ranks.

"I see the firm making strides to improve the diversity of its associates, but the number of people who look like me in partnership levels of the firm is egregiously low, which can feel a little concerning," one minority summer associate at Latham & Watkins said.

"Latham & Watkins, like virtually all of our peers in the legal industry, recognizes the challenges that have created barriers to diversity," BJ Trach, global chair of Latham's diversity leadership committee said in an emailed statement. "As such, making the firm as diverse as the world in which we live is one of the most important strategic, multiyear priorities at Latham, one that impacts our decision-making at nearly every level."

Summer associates also wanted firms to provide more opportunities for feedback on their work performance rather than just mid-summer and end-of-summer reviews.

"I'd really like more communication and feedback at an informal level rather than the institutional checks just put in place for summers," a Weil, Gotshal & Manges summer suggested. One Wilmer Cutler Pickering Hale and Dorr associate suggested the firm consider doing biweekly check-ins with summer associates rather than a twice summerly review process. A Cooley associate said that firms should provide more specific, even harsh if necessary, feedback at the mid-summer review so associates know what they need to improve on over the summer. (At press time, Wilmer and Cooley did not respond to a request for comment.)

In their comments, many summer associates noted the lack of women and racially diverse lawyers among their firm's leadership.

Email: mtribe@alm.com.

DISRUPTIVE INFLUENCE?

A new firm, Atrium, will deploy software developed by its startup twin.

BALEFIRE/SHUTTERSTOCK.COM

Atrium has been building intrigue across the technology and legal communities with a mystery project championed by Twitch founder and Silicon Valley serial entrepreneur Justin Kan. He said in April that Atrium would raise $10 million in venture capital funding to "disrupt the legal industry."

Atrium's Augie Rakow

Atrium finally launched publicly in September as both a new law firm and a software company, two separate entities under the same roof. Atrium LTS, the venture-backed software side, will be charged with designing and deploying software for the law firm to use. Atrium LLP, the law firm, will offer flat fee services to the startup community via two specific services: Atrium Counsel and Atrium Financing.

At launch, the law firm had eight attorneys hired from large firms like Orrick, Herrington & Sutcliffe; Gunderson Dettmer Stough Villeneuve Franklin & Hachigian; and Wilson Elser Moskowitz Edelman & Dicker.

Augie Rakow, co-founding partner at Atrium LLP, explains that pairing the firm and software company is intended to allow technologists and business operations specialists space to rework many of the processes that are inefficient within the traditional law firm.

"We've decided to functionally segment our operations and move all the nonadvice functions, all the nonregulated stuff over to nonlawyers. Let a nonlawyer hire engineers, train business operations people, hire people to design and improve business processes, and develop tech to give us faster access to design solutions for clients," Rakow says.

The software company has brought a couple of technologies to bear with the new firm. Atrium LTS developed an automation tool to quickly and accurately develop signature packets. It also put together a tool to organize intake documents per the firm's titling conventions, and it is working on building out a pro forma generator for convertible notes.

Atrium senior associate Hans Kim says the legal team and software team aren't just office mates, they're encouraged to work together.

Atrium isn't the first law firm to operate a software company within its purview. A number of law firms, such as Littler Mendelson, Seyfarth Shaw, and Winston & Strawn, have sold their in-house e-discovery services for outside use.

Atrium differs specifically in its venture backing. The $10 million investment round initially put together in April tapped over 90 different investors and venture firms, making the round one of the biggest "party rounds." That investment round was both a way to generate capital and a way to court potential clients for Atrium's firm.

"We want to represent their clients, we want to represent their portfolio companies, and we want to build something that portfolio companies want," Rakow says of investors.

Atrium's heads initially intended for Atrium LTS to sell their product innovations to other law firms.

"We've played with trying to sell legal software to lawyers, but we've seen how hard that is," Rakow notes. "They generally don't want to buy software. We want Atrium the law firm to be the first customer of Atrium the software company."

—Gabrielle Orum Hernández

WHAT CONSPIRACY?

Lawyer Evan Greebel looks to trim his case after ex-client Martin Shkreli is cleared of a related charge.

Evan Greebel (second from right) was arraigned with Martin Shkreli (second from left) in Dec. 2015.

ELIZABETH WILLIAMS VIA AP

WITH FORMER RETROPHIN INC. CEO Martin Shkreli convicted of fraud in August, now his ex-lawyer faces his own trial in U.S. district court in New York in mid-October.

In August, attorneys for indicted corporate lawyer Evan Greebel presented a flurry of arguments, including a bid to dismiss a wire fraud conspiracy count and to preclude certain law firm evidence, such as Greebel's salary of at least $300,000 at Katten Muchin Rosenman.

The looming trial against Greebel, his attorneys at Gibson, Dunn & Crutcher contended, is "frightening for every corporate lawyer in America simply doing their jobs representing clients."

Prosecutors have claimed Greebel and Shkreli conspired to defraud biopharmaceutical company Retrophin Inc., where Shkreli was CEO until 2014. Greebel was Retrophin's outside counsel and a partner at Katten at the time of the alleged fraud. He joined Kaye Scholer in the summer of 2015 but resigned in early 2016, after the indictment was filed.

Greebel and Shkreli were charged together in two counts: conspiracy to commit wire fraud related to Retrophin and conspiracy to commit securities fraud related to Retrophin stock. Their cases were severed earlier this year, with Greebel's trial following Shkreli's.

While Shkreli was convicted Aug. 4 of three counts, a jury acquitted him of five counts, including the wire fraud conspiracy charge also facing Greebel. Gibson Dunn argues that now, because "there is absolutely no evidence that Mr. Greebel conspired with anyone else to commit this alleged crime," that count against him must be dismissed.

The defense team also criticized the U.S. Attorney's Office for the Eastern District of New York for how it handled the lead-up to the case. Defense lawyers noted that the U.S. Attorney's manual mandates that a federal prosecutor's office must obtain prior approval before the Justice Department in Washington, D.C., before even serving a subpoena for documents or testimony on an attorney.

In this case, Gibson Dunn said, the Eastern District office chose not to go to Washington before indicting Greebel.

"The government never even attempted to speak with Mr. Greebel, or a single person at Katten" before arresting him, the lawyers asserted. "That is simply unacceptable."

In court papers seeking to preclude evidence at trial, Gibson Dunn wants to block jurors from hearing of Greebel's partner compensation at Katten of at least $300,000. They said evidence shows his compensation was not based on his billable work for Retrophin and Shkreli's hedge fund entities, since his pay actually decreased for the years he did most work for these companies.

Similarly, defense lawyers argued Katten's legal fees should not be admitted at trial because the information doesn't reflect how much Katten actually received.

"While Katten actually billed approximately $9 million" for Retrophin and Shkreli's hedge fund entities, Greebel's lawyers said, "the firm only collected somewhere between $5 and $6 million in fees."

In their own arguments, Eastern District prosecutors contend some of the defense's proposed expert testimony should be blocked at trial.

Greebel's defense lawyers disclosed in August that they may call at trial several expert witnesses who could discuss legal ethics, linguistics and law firm business issues, including Stephen Gillers, legal ethics professor at New York University School of Law; Stephen Ferruolo, dean of the University of San Diego School of Law; Bryan Garner, editor of Black's Law Dictionary; and Ronald Minkoff, a partner at Frankfurt Kurnit Klein & Selz.

> Defense lawyers argue that Katten's legal fees shouldn't be admitted at trial, since the firm collected less than it billed.

But federal prosecutors said the proposed testimony of many of the experts is inappropriate and irrelevant. "No attorney commits malpractice by refusing to help his client to commit a crime, and suggesting anything else to the jury would create improper and unwarranted uncertainty about the applicable law," they said. —CHRISTINE SIMMONS

HOLLAND & KNIGHT WINS FEES AGAINST EX-PARTNER

Charles Gibbs is still suing the firm for compensation he says he is owed.

NEARLY THREE YEARS AFTER FORmer Holland & Knight partner Charles Gibbs sued the firm for money he said it owed him, Holland & Knight has obtained a $772,000 judgment against Gibbs for its share of legal fees from two cases.

"It started as a claim by him against the firm for additional compensation … and it ended up being a judgment against him for almost 800,000," said Michael Delikat, Holland & Knight's lawyer and a partner at Orrick, Herrington & Sutcliffe. "That's quite a reversal of how the case started."

The fees in the $772,000 judgment that Holland & Knight obtained relate to work Gibbs, a veteran New York trusts and estates lawyer, performed as guardian ad litem on two matters, including the estate of investment banker Bruce Wasserstein.

According to court papers, Gibbs was appointed guardian ad litem in September 2011 for two minor sons of Wasserstein. (Wasserstein's company in 2014 bought back ALM, the parent company of the The American Lawyer and affiliated publications.) The fees in dispute also come from a woman's estate that had a wrongful death claim. He was awarded and paid fees from those cases after he left the firm in March 2014.

Last year, Holland & Knight obtained an arbitration award against Gibbs for its share of the fees, about $431,318. Arbitrator Betsy Plevan, a Proskauer Rose partner, found that while there is no express provision under the partnership agreement to transfer the guardian ad litem fees to the firm, Gibbs had a duty under the agreement to do so, and a substantial part of the work was done by other Holland & Knight lawyers.

Manhattan Supreme Court Justice Charles Ramos signed a court judgment in August confirming the arbitration award, along with $17,469 in interest and $323,266 in attorney fees.

Meanwhile, Gibbs' initial claim against Holland & Knight for more than $1.5 million, which he originally filed in court in 2014, is now pending in arbitration. Gibbs has alleged Holland & Knight refused to properly pay him for his work, including his role in the $300 million estate case of heiress Huguette Clark. Gibbs, now senior counsel at Solomon Blum Heymann, said he was the principal originator of "numerous H&K clients," and represented the executors for Clark's estate in the contest of her will.

Charles Gibbs (left) owes Holland & Knight $431,000 in fees, arbitrator Betsy Plevan (right) found.

Gibbs said Holland & Knight was awarded $11.5 million in fees plus costs and his share would have been at least $825,000. His 2014 suit claimed Edward Koren, the partner who leads the firm's trusts and estates practice, reduced Gibbs' origination credit and kept one-third of the credit for himself.

In a statement, Gibbs' attorney, Clifford Robert, a principal at Robert & Robert who entered the case after Holland & Knight's arbitration win, said, "This has been a long, drawn-out, and complex case, and last year's arbitration award on one narrow issue was merely a step along the way."

He added that since he began representing Gibbs earlier this year, "our focus has been on pursuing the multimillion-dollar claim against Holland & Knight and that remains our top priority."

—CHRISTINE SIMMONS

STRINGS ATTACHED

Quinn Emanuel's new associate bonuses hinge on whether you stay.

SECOND- THROUGH sixth-year associates at bonus-happy Quinn Emanuel Urquhart & Sullivan will receive supplemental rewards based on the high-powered litigation firm's performance, chairman John Quinn announced in a memo on August 29.

But the memo has a catch. Associates seeking the extra riches can't cash in unless they agree to stick around the firm for another three years.

According to the memo, the firm will contribute a portion of its profits to a bonus pool, which Quinn Emanuel will distribute to eligible associates three years later if they remain at the litigation powerhouse. The first provisional award will be in March 2018. An associate who begins his or her second year in 2017 could receive a payout every year from 2021 to 2025 as long as the lawyer stayed at the firm.

The new bonus, which will be in addition to current associates' existing bonuses and salaries, is intended "to attract and retain second through sixth year associates and, to some degree, link associate compensation to the performance of the firm," according to Quinn's memo.

Peter Calamari, the firm's New York office managing partner and one of the bonus plan's architects, says the program had been in the works for several months. "We wanted to make a statement to the people that come in with us and spend their careers with us," Calamari says. "We have always been a pretty creative firm when it comes to associate compensation and work conditions. Things occur to us that will make our associates happy, and we implement them."

Quinn Emanuel's past creative compensation efforts have included $35,000 signing bonuses for third-year law students who applied and were hired by the firm, a move that came after it mostly did away with its summer associate program. The firm also reportedly treated the few summer associates it did bring on in 2016 to an all-expenses paid trip to Iceland.

Partners at Quinn Emanuel have also seen a bump in compensation recently, with the firm seeing its profits per equity partner break the $5 million mark in 2016. The 718-lawyer firm, which is keen on growing in London and recently opened its ninth European office in Stuttgart, Germany, also reportedly initiated discussions about a potential combination with Williams & Connolly, although the latter's leadership quickly denied any plans to merge.

—REBECCA COHEN

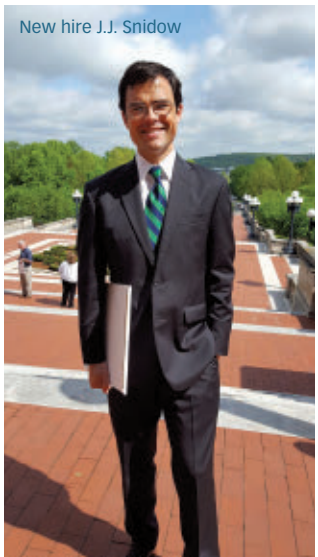
UPPING THEIR GAME

Wilkinson Walsh raises the bar for Supreme Court law clerk bonuses.

Not quite two years old, trial boutique Wilkinson Walsh + Eskovitz has hired two clerks from the most recent U.S. Supreme Court term, and in the process it appears to have set a new high for incoming associate bonuses.

The hires, Elizabeth "Betsy" Henthorne and John James "J.J." Snidow, join the firm's Washington, D.C., office from the chambers of Justices Elena Kagan and Anthony Kennedy, respectively. Wilkinson Walsh will pay them hiring bonuses of $350,000 each, name partner Sean Eskovitz says, compared with bonuses of $300,000 and $330,000 for former high court clerks at other firms in recent years.

"Our value pitch here is we're going to recruit and continue to recruit and train the best lawyers of this generation," and to eventually grow them into partners, Eskovitz says. "If we think they've got the talent and the work ethic to succeed, we are more than willing to pay the market." Eskovitz says he believes Wilkinson Walsh is at the same rate and competitive with other firms' hiring bonuses.


New hire J.J. Snidow

The firm also announced five other new associate hires, all of whom clerked on federal appellate courts.

Wilkinson Walsh, a trial litigation boutique, opened in January 2016 when its six founding lawyers spun off from some of Big Law's premiere firms, including Paul, Weiss, Rifkind, Wharton & Garrison and Munger, Tolles & Olson. The firm now has nine partners, for 36 total lawyers; it operates offices in Washington and Los Angeles, with a New York office set to formally open in the coming months.

—Katelyn Polantz

Answers to the puzzle on page 123

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THE (NEARLY) BILLION-DOLLAR FEE

Baker Hostetler's work on behalf of Madoff investors continues to pay handsomely.

IT'S BEEN NEARLY A DECADE since Irving Picard was appointed trustee of the funds recovered for victims of Bernard Madoff's massive Ponzi scheme. The mammoth assignment is still generating payouts for victims—and for Picard's firm, Baker & Hostetler.

In August, a federal judge approved a nearly $36 million payment for four months of work by the firm, bringing Baker & Hostetler's total fees to just shy of $925 million.

Last month, Picard also reached the largest settlement related to the dissolution of Bernard L. Madoff Investment Securities LLC (BLMIS) since 2011—a $687 million payout from an Irish investment firm that brings the total recovery for Madoff victims to about $12.7 billion, or about 72 percent of the $17.5 billion that Picard states that Madoff's investors lost.

Meanwhile, the Madoff matter has helped bolster Baker & Hostetler's finances for years. The firm's gross revenue has grown 15 percent since fiscal 2008, the year before the start of its Madoff work, and it has climbed from 83rd to 54th on The Am Law 100. Profits per partner at the Cleveland-founded firm rose to $965,000 last year, up 42 percent from 2008.

The latest payment to Baker & Hostetler is for 68,341.3 hours of work. The team bills at a blended rate of $515.81, with the highest hourly rates being the $998 earned by Picard and litigation partners David Sheehan and David Rivkin. All rates are then discounted 10 percent.

3DJEWELRY/SHUTTERSTOCK.COM

Sheehan's hire in 2008 proved to be a critical factor in Baker & Hostetler getting the call for its Madoff work. Sheehan, who joined the firm's New York office from Troutman Sanders, had previously worked with Picard at another firm. When Picard was appointed liquidation trustee for BLMIS in late 2008, he called on Sheehan to advise. Baker & Hostetler hired Picard from Gibbons shortly thereafter.

—ROY STROM

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By Vivia Chen

'Best' Law Firms for Women? Really?

They're doing everything right—but they still lag when it comes to making female equity partners.

How marvelous. A fresh batch of "best" law firms for women lists. They are proliferating like bunnies across the American legal landscape. Law360, Working Mother and our own National Law Journal are just some of the publications that recently put out such lists. (Yale Law Women issues one too; it's called "Top 10 Family-Friendly Firms"—a much more P.C. moniker.)

I'd love to say that these lists signal an abundance of opportunities for women in law. But that's not how I see them. I find these lists confusing, if not misleading. And sad.

Often, firms get the "best" designation because they boast a high percentage of women lawyers—even though not many of them are actual shareholders. Some.

The result is that firms with below-average percentage of women equity partners can get a skewed ranking, as I see it. For example, Baker McKenzie (16.4 percent female equity partners; the national average hovers around 18 percent) ranks No. 24 on the NLJ's list, while Paul, Weiss, Rifkind, Wharton & Garrison (23.3 female equity partners) only ranks No. 38. Using a similar formula, Law360 puts Baker McKenzie in second place on its best women's list in the 600-plus law firm category, tying with Jackson Lewis.

To me the proof in the equality pudding is how many women are elevated to equity partner. If women aren't equal stakeholders with men, how can anyone say they have any genuine power?

Which brings up my big pet peeve: Too often, these lists reward effort rather than result. That's my quibble with Working Mother. (Yale Law Women also emphasizes part-time and caregiver leave policies, in addition to percentage of women in leadership.) Though law firms on Working Mother's list averaged 20 percent female equity partners, there were some duds: Most glaring was Blank Rome, with only 9 percent female equity partners. (Runner-up was Foley & Lardner with 13 percent female equity partners.)

How did a firm in the single digits for female equity partners ever get a "best" designation? Subha Barry, vice president at Working Mother, says considerable weight is given to flexible work arrangements, generous parental leaves and business development training. "Blank Rome did dramatically better in the flexibility cluster," she explains. Though the goal is to increase female equity partners in the long run, she adds that it's key to recognize firms that have adopted "policies and practices that will help them get there, even if they haven't achieved it yet."

I'm all for encouraging institutions to reach lofty goals, but why laud firms so behind the curve? What's so great about all those spiffy flexibility arrangements when female lawyers essentially have second-class status? Women represent 30 percent of nonequity partners at Blank Rome.

In a statement, the firm says: "We recognize that we have more work to do, but we are proud that Working Mother has honored the work we have put in already to promote the development and retention of women at our law firm."

Instead of focusing on initiatives, I'd rather take a cold, hard look at where women are making equity partner. And here's the reality check: Women are scarce in the top echelons of the profession.

In The Am Law 200, the top 15 firms for women—as measured by the percentage of female equity partners—are dominated by either regional firms or specialty shops, including practices like immigration, labor and employment or family law. (Law360 also has a separate "Ceiling-Smasher" list based on female equity partner rates.)

The bottom line is that the sexy Big Law firms are not the places where women are making it in Big Law. So let's call the "best firms for women" what it really is: a sad statement of how much women lag behind.

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By Chris Johnson

Public Performances

Two law firm IPOs turned out very differently.

When Slater and Gordon became the world's first publicly-listed law firm in 2007, it was supposed to herald a new era of law firm ownership.

Instead, a decade after its landmark initial public offering, the Australian personal injury and employment claims specialist's business is in tatters, thanks to a disastrous acquisition and stifling regulatory reform in one of its core practice areas.

Having been bailed out by lenders to avoid a potential bankruptcy after racking up losses of almost $2 billion, Slater is in the midst of a comprehensive restructuring that will result in its U.K. business taken over by hedge funds.

DAVID WOOLFALL, NILS VERSEMANN/SHUTTERSTOCK.COM

Its decline has been swift and dramatic. In 2015, Slater's market capitalization peaked at $2.25 billion. It is now just $19.6 million—a drop of almost 99 percent. But while Slater has struggled in the last two years, another publicly-traded firm has thrived. U.K.-based Gateley has seen massive growth since its IPO in 2015.

Then again, things looked promising for Slater at first, too.

After investor demand drove up share prices 40 percent on its first day of trading, Slater used the proceeds of its IPO to finance an international acquisition spree, scooping up 37 businesses in Australia and the United Kingdom.

Slater entered the U.K. market in 2012 after raising $64 million to fund its takeover of British firm Russell Jones & Walker and a handful of other personal injury practices. Those moves preceded a flurry of other deals, including an $895 million acquisition of insurance company Quindell's professional services arm in 2015, which established Slater as one of the largest insurance claims firms in Britain.

But having initially sought to "dominate" the U.K. market, as managing director Andrew Grech put it at the time, Slater's underperforming British business would instead bring the firm to the brink of collapse.

The first warning signs appeared in the summer of 2015, when, following an investigation by Australian regulators, the firm admitted an accounting error that resulted in it overstating its U.K. cash flows. Slater's shares then tanked following an unexpected announcement by the U.K. government that it planned to clamp down on personal injury claims—a core driver of the firm's business.

The firm was then forced to write down more than $640 million relating to its Quindell deal after the business, which now operates as Slater Gordon Solutions, struggled with low case resolution rates and delays in settlements.

In early 2016, the firm revealed a net debt of more than half a billion dollars—just shy of its entire annual revenue at the time.

A restructuring and debt refinancing deal last year did little to improve the firm's financial situation. Slater posted additional losses of $1.2 billion in 2016.

One consultant told me Slater's travails might discourage other law firms from going public. But to discount an IPO on the basis of Slater would be to overlook the successes of another listed law firm: Gateley.

The first U.K. law firm to go public, it has increased its revenue by 27 percent in its two-year existence, while pre-tax profit rose by more than one-third.

Gateley has used the proceeds of its listing to expand the business into a tax incentives advisory and a property consultancy. It's now looking for an HR consultancy.

The IPO hasn't just helped transform Gateley's business; it has been highly lucrative for the firm's equity partners, too. They received a $33 million windfall when the firm first went public and earned an additional $8.5 million from selling their shares in the practice last year. Gateley is proof that, if managed well, transformation from law firm to corporation can be a change for the better.

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By Alan Cohen

Ready for Business?

Once minimalist, Chromebooks have come a long way. But are they powerful enough for serious work?

MORE ONLINE

FOR ADDITIONAL coverage of law firm technology, go to americanlawyer.com.

For years, the Chromebook was an interesting concept with an imperfect implementation. Inexpensive and quick to boot up, these laptop-like devices were designed for online use, essentially serving as portable Web browsers. But as many users discovered, Chromebooks also tended to be underpowered, cheaply built and low on storage. You couldn't use traditional productivity software like Microsoft Word, since the machines ran their own operating system, Google's Chrome OS, instead of Windows or Mac OS X. And if you didn't have an internet connection? Well, then your Chromebook made a nice doorstop. If you were a student or a Web surfer on a budget, these devices could be a decent alternative to a standard laptop. But for the professional crowd? Please.

Over time, Chromebooks have made some strides. You could do more offline, particularly if you didn't mind creating and editing documents within Google Docs. And some higher-quality models appeared, from the likes of Acer Inc., Asus, Samsung and Google itself. This was all welcome, but not exactly earth-shattering. More recently, however, the platform took some bigger steps. Models with faster processors and better screens and keyboards appeared. So, too, did a handful of machines that could run Android apps, the software that runs on Android phones and tablets. This last development was big. Not only did it mean many more titles could be installed on a Chromebook but also that there was more–potentially much more–you could do with the device when it was not connected to the internet.

Indeed, one could start to wonder: Are Chromebooks ready for prime time—suited, perhaps, for business use?

One model in particular makes this a legitimate question: Samsung's Chromebook Pro. At $550, it's pricey. Many Chromebooks can be found for hundreds of dollars less. But it's also a full-frills Chromebook, with components that aren't typically found on these devices. For starters, it uses an Intel Core m3 processor. This is

HYEON JIN KIM/ALM

a chip more commonly associated with ultralight laptops, like Apple Inc.'s MacBook, and high-end tablets. like Microsoft Corp.'s Surface Pro 4, than with Chromebooks, which tend to use less powerful CPUs like Intel Corp.'s Celeron line. Samsung's device also has a high-resolution 12.3-inch touchscreen, 4 gigabytes of RAM (the high-end of the range for Chromebooks), compatibility with Android apps, and a stylus for note-taking and drawing. The display can rotate 360 degrees, so you can fold it back and use the Chromebook Pro as a tablet.

Compared to past Chromebooks, Samsung's model is a revelation. The 2,400- by 1,600-pixel screen is terrific: bright, sharp, vivid and boasting impressive viewing angles. Unlike a lot of screens, even on laptops, you don't need to stare straight at the screen to see what's going on. The machine is snappy, too. Scrolling is smooth, and even with multiple apps and browser windows open, I didn't notice any slowdown in performance. While the keyboard is a bit tight (Samsung says it is full-size but some keys, like delete and enter, are significantly smaller than usual), touch-typing was a reasonable enough experience, in terms of both speed and comfort. Add to this the usual Chromebook advantages: near-instant start up and seamless integration with Google's own services, like Google Docs.

But compared to a traditional laptop, even this uber Chromebook falls short. Google Docs works extremely well. Functional offline, it saves your documents locally until you're back online. But it's still Google Docs. While you can work with Microsoft Word files, you'll lose key features like tracking changes or reviewing comments unless you convert your documents to Google's own format and then convert back to Word when you want to share the end product with Microsoft Office users. Even then, the translation is often imperfect. I had a hard time aligning comments and changes that appeared off to the side of the document with the corresponding text. This made it difficult at times to follow collaborators' notes and edits. I had thought that an easy workaround would be to forget Google Docs and load the Android-based Microsoft Office apps from the Google Play store. But those apps are among a number of titles that aren't compatible with the Chromebook Pro.

In fact, Android integration, while welcome, was often a work in progress. Overall, the ability to install apps greatly enhanced the online and offline experiences. I could, for instance, download videos via Netflix or Google's own video app and play them when I wasn't connected. But some key apps, like those Microsoft Office titles, were not installable, and others could be glitchy. Some game titles, for instance, would crash or sometimes fail to respond to touch inputs.

Using Android apps also made me wish the Chromebook Pro came with more onboard storage. Its 32 gigabytes of space is fine when you're storing everything to the cloud, as you would with most Chromebooks, but it becomes insufficient when you're downloading apps and app-related content like videos for offline use. A slot for a MicroSD card helps, but still, a bump to even 64 gigabytes would have been nice.

A bigger disappointment was battery life. Samsung claims the machine will deliver nine hours of use on a full charge. While we know by now that a Magic 8-Ball has more credibility than vendors' battery-life estimates, the not-quite five hours I managed streaming video with the screen on full brightness was mediocre. Most Chromebooks–and most laptops–can readily top this.

In fact, between the ho-hum battery life and some substantial heft (the machine weighs nearly two-and-a-half pounds) this is not the most mobile laptop-size device. And it's a bit bulky in tablet mode.

Yet as I played around with the Chromebook Pro, something dawned on me: I was using it a lot. This Chromebook, like every Chromebook before it, was imperfect, but it had a versatility and an ease of use that was appealing. Flip open the lid and it's almost instantly ready for action; put it in tent mode to watch a movie, via an excellent display, on an airline tray table; use it like a laptop to type some emails and or quick notes in Google Docs. And web surfing was a fast, pleasing experience, something that wasn't always the case with Chromebooks.

Is that enough to make the Chromebook–finally–a tool for professionals? Probably not. There are still too many limitations for serious use, like annotating briefs on the train ride into work. But for the first time since there was a Chromebook, I'm excited about Chromebooks and what they may yet have in store for us.

Samsung
Chromebook Pro

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TRYING TO STAY PUMPED

IS THE NEW NORMAL FOR THE WORLD'S LARGEST LAW FIRMS SLOWING GROWTH AND FALLING PROFITS?

By Chris Johnson

Illustration by Daniel Liev

EVER SINCE GLOBAL ECONOMIES began their tentative recovery from the financial crisis, the legal industry has debated what form the market might take once things finally settle.

The good news is that the so-called New Normal is probably already here. The bad news is that it's characterized by a stifling mixture of flattening growth, widespread uncertainty, intense competition and severe pricing pressure from clients.

If anything, this year's Global 100 survey suggests that conditions for the world's largest law firms are getting even more challenging. Total Global 100 revenue rose just 2.8 percent in 2016, to $99.3 billion—the lowest annual gain since the recession and the second consecutive year of slowing growth. (Group revenue is still likely to pass $100 billion next year for the first time ever, however, requiring an increase of just 0.7 percent to hit that milestone.)

Having fallen by 2.1 percent in 2015, the group's average revenue per lawyer (RPL)—a key measure of law firm health and efficiency—remained essentially flat last year, at $813,000. Global 100 RPL has increased by just 5.7 percent over the six years since the end of the recession—far below the rate of inflation.

An even more alarming picture is emerging at the bottom line, with total net income growth plummeting from 8.6 percent in 2015 to just 2.7 percent last year.

This resulted in the first decrease in average Global 100 profit per equity partner (PPP) in seven years, with that metric dropping half a percent, to $1.59 million.

Average profit per lawyer (PPL)—a far more accurate reflection of relative profitability than PPP—also fell slightly across the group, to $317,000. As with RPL, the Global 100 have collectively struggled to make meaningful gains in this metric, with total growth of just 9.2 percent over the past six years.

There are positives to be found, however. Latham & Watkins retained its position as the world's largest law firm by revenue for the third year, having made significant gains across all metrics. The firm's revenue increased for the seventh consecutive year, climbing 6.5 percent in 2016 to pass $2.8 billion on the back of significant investment in London and Germany, where the firm has made a number of high-profile lateral hires.

Despite a lack of overall growth in the market for high-end legal services, Latham has managed to add more than a billion dollars to its revenue since the peak of the recession in 2009, equivalent to a 55 percent increase over the past seven years. This hasn't been as a result of merger or bolting on new practices: Its total attorney head count has only expanded by 21 percent over the same period.

In revenue, Latham is now more than $150 million ahead of second-placed Baker McKenzie, whose top line rose 1.9 percent last year, to $2.67 billion. Baker chair Paul Rawlinson says that geopolitical uncertainty, including the impact of Brexit on Europe, held back revenue growth over the most recent financial year. Meanwhile, the firm's PPP remained flat at $1.3 million, primarily because, Rawlinson says, of increases in salary costs—particularly in the United States, where associate pay scales jumped—and various investments in technology and innovation. Baker McKenzie this past summer announced a collaboration space in Toronto designed for the firm's lawyers to meet with clients and other tech companies, including IBM Canada, to rethink how they service clients.

The world's largest law firm by revenue as recently as 2013, DLA Piper has dropped two places this year, to fifth, after its revenue fell 2.9 percent, to $2.47 billion. It is the first time DLA has placed outside the top three since we started treating its U.S. and international arms as a single firm in our surveys in 2011. DLA has now been overtaken in revenue by both Kirkland & Ellis and Skadden, Arps, Slate, Meagher & Flom.

Kirkland's gross revenue leapt 15 percent last year, to $2.65 billion. The firm's PPP also passed $4 million for the first time ever, rising nearly 14 percent, to $4.1 million. Kirkland is now the Global 100's fifth most profitable firm by that metric, behind Wachtell, Lipton, Rosen & Katz (down 12.1 percent, to $5.8 million); Quinn Emmanuel Urquhart & Sullivan (up 13.5 percent, to $5.02 million); Paul, Weiss, Rifkind, Wharton & Garrison (up 7.2 percent, to $4.38 million); and Cravath, Swaine & Moore (up 18 percent, to $4.2 million).

It is only the second time in Global 100 history that U.S.-based firms occupy the top five spots in the revenue chart. In a sign of both the size of the U.S. legal market and the continued consolidation of the industry worldwide, American firms account for 81 of the Global 100, matching a record set in last year's survey. The remaining places are taken by 12 British firms, three from Canada, two from China, one from Australia and one from South Korea. With France's Fidal, Spain's J&A Garrigues and Dutch firm Loyens & Loeff failing to return to the revenue rankings, there are once again no firms from continental Europe in the Global 100.

At the other end of the spectrum, the largest year-on-year fall in revenue was seen at China's King & Wood Mallesons, whose top line crashed 21 percent, to $806 million. This followed the collapse of the firm's European arm, which filed for administration in January ["King & Wood Mallesons In Europe: An Autopsy," January 2017].

British law firms also had a challenging year, with nine of the 12 U.K.-based firms in the Global 100 suffering a de-

GLOBAL 100 AT A GLANCE

TOTAL REVENUE

2016
$99,332,000,000

2015
$96,633,100,000

PERCENT CHANGE
2.8%

cline in revenue. (Another historically London-based practice, Ashurst, also recorded a sizeable drop in revenue, but is now classed as an Australian law firm for the purposes of this survey following its 2011 combination with Blake Dawson.)

Their disappointing showing was largely due to Brexit, although not in the way that you might think. While the country's unprecedented decision to leave the European Union has cast a shadow of uncertainty over the market, many U.K.-based firms remained busy throughout the last fiscal year, including on Brexit-related matters.

Their figures were instead heavily skewed by currency fluctuations. The weakening of the British pound as a result of the Brexit vote actually inflated the results of U.K.-based firms with large international practices, as foreign revenue was favorably converted into sterling for consolidated accounts. (This currency boost was less pronounced at the bottom line, however. While the exchange rates mean that non-U.K. revenue is now worth more in sterling terms, so too are non-U.K. costs such as local office rent and staff salaries.)

Allen & Overy, Clifford Chance and Linklaters posted massive top line gains of between 9.8 percent and 16 percent, for example, although fellow Magic Circle firm Freshfields Bruckhaus Deringer struggled to even maintain its revenue in what the firm described as "a challenging year," despite this hefty currency bump. Remove the currency effect and it would have fallen 5.4 percent. Shortly after Freshfields' results were announced, managing partner Chris Pugh stepped down to return to full-time practice as a litigation partner—a move that partners attributed to the management team's failure to deliver on financial targets.

This positive currency effect then became a negative when the U.K. firms' results were converted to U.S. dollars for our survey. Since the EU referendum, sterling has dropped from $1.50 to below $1.30. In U.S. dollar terms, the revenue gains of Clifford Chance and Linklaters became slight falls, while Freshfields ended up with a more than 11 percent reduction to its top line, sliding from 8th to 14th place in the rankings as a result—its lowest ever position since our survey began in 1998.

Their performance is a far cry from the dominance of the U.K.-based firms over the Global 100 during the 2000s. British firms held three of the top five places in the rankings—including the number one spot—every year between 2001 and 2009. The highest-placed British firm in this year's survey is Clifford Chance, in seventh place and almost $750 million behind Latham.

Two U.K. law firms, Berwin Leighton Paisner and Taylor Wessing, fell out of the Global 100 rankings entirely due to currency exchange. While both firms had reasonably solid years and posted increases in revenue in sterling terms, of 7 percent and 4.4 percent, respectively, they both suffered falls, of 5.3 percent and 6 percent, when their results were converted to U.S. dollars. (U.S. firms Fish & Richardson, Jackson Lewis and Schulte Roth & Zabel also exited the Global 100 this year.)

Just three U.K. firms managed to still record top-line gains after their results were converted to dollars: A&O; Bird & Bird and Clyde & Co.

A&O's performance was particularly impressive, capped by a 2.8 percent increase in revenue (16 percent in sterling) and a 12 percent jump in PPP (26 percent in sterling). A&O managing partner Andrew Ballheimer said in an interview with sibling publication Legal Week that the firm's breadth of currencies, practices and geographies—it has 44 offices worldwide—provided a natural hedge against what he describes as "volatile" market conditions. The firm also saw strong returns from its business lines that go beyond conventional legal services, including online legal risk management business

GLOBAL 100 AT A GLANCE

TOTAL LAWYERS

2016
122,157

2015
118,904

PERCENT CHANGE
2.7%

aosphere and digital derivatives compliance system MarginMatrix.

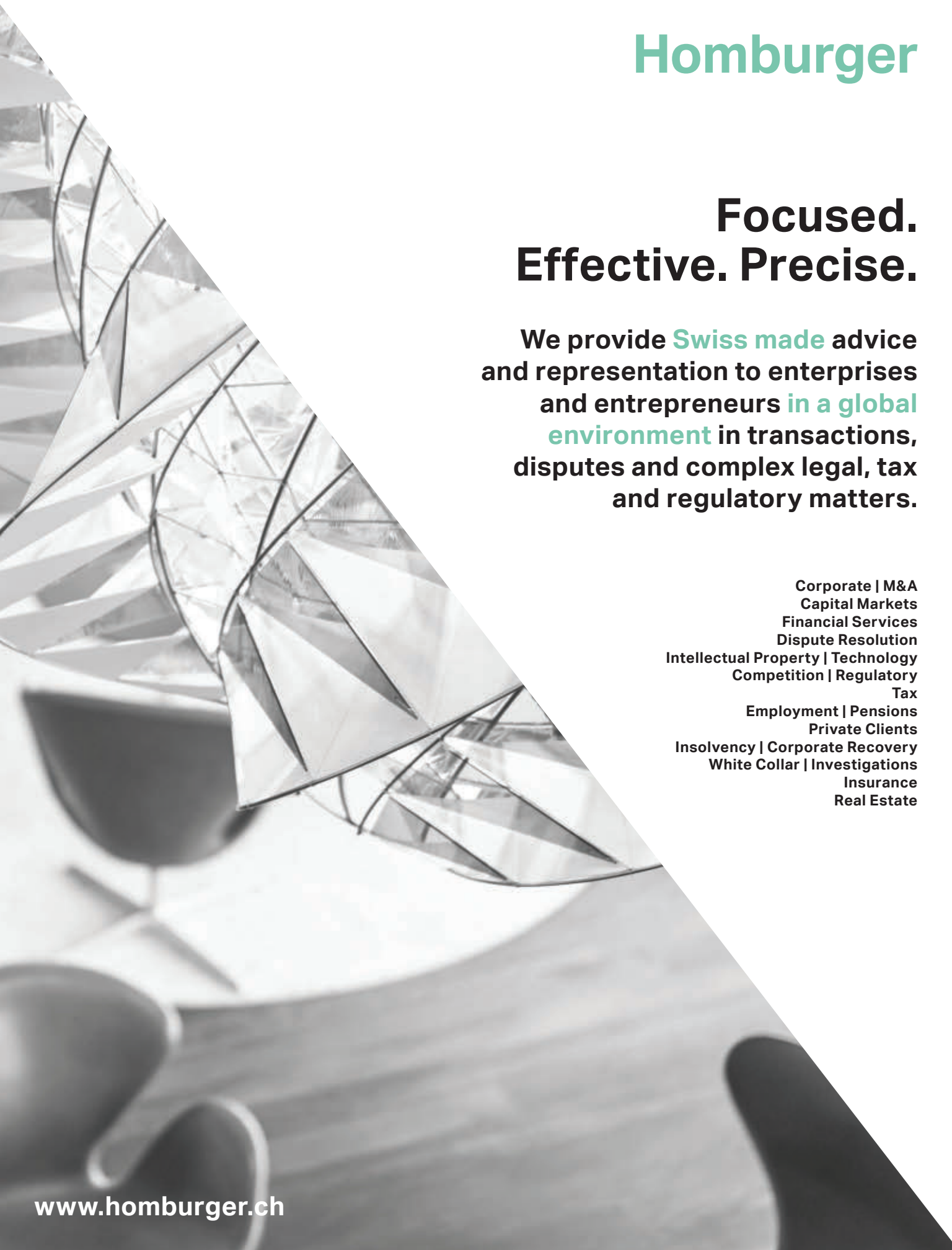
London-based insurance specialist Clyde & Co's revenue passed £500 million for the first time last year, leaping 14 percent to £508.1 million ($688.5 million). While 5 percent of this growth was attributable to currency fluctuations, it was largely driven by Clyde & Co's continued aggressive international expansion, with the firm opening five new offices in the last fiscal year, in Chicago, Düsseldorf, Mexico City, Miami and Washington, D.C. (Clyde & Co has invested particularly heavily in the United States in recent years and now has nine offices across the country.) The past fiscal year was also the first full year of revenues from Clyde & Co's 2015 merger with 45-partner Scottish firm Simpson & Marwick.

Having hit a record £665,000 in 2015, the firm's PPP fell 2 percent last year, to £650,000 ($885,000), however. Clyde & Co chief executive Peter Hasson attributed the dip to an 11 percent increase in partner numbers and "heavy investment" in IT and other systems.

Bird & Bird, meanwhile, broke back into the Global 100 after a one-year hiatus. Unusually for a London-based firm, Bird & Bird reports its financial results in euros, which actually strengthened against the U.S. dollar last year. So while the firm's revenue rose 5 percent, to 361 million euros, that equated to a 7 percent increase in our survey, to $411 million. Bird & Bird launched an international tax disputes practice in London with the hire of a five-lawyer team from PwC Legal, and also promoted 16 new partners internally—up from nine the previous year.

Bird & Bird is joined in the Global 100 by four other new entrants: Blank Rome; Crowell & Moring; Fox Rothschild; and Gowling WLG.

The highest-placed debutant is Gowling WLG, which was formed through the combination of Canada's



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GLOBAL 100 AT A GLANCE

AVERAGE PROFIT PER EQUITY PARTNER

2016
$1,586,858

2015
$1,593,124

PERCENT CHANGE
-0.4%

Gowlings and U.K. firm Wragge Lawrence Graham & Co in early 2016. The firm's revenue is split almost exactly 50:50 between the two arms, which are not financially integrated. In an interview at the time of the tie-up, head of international projects Quentin Poole said that the firm intended to complete two additional combinations by 2020, with China and Germany high on its list of priorities. Earlier this year, the firm opened an office in Stuttgart, Germany, adding to its existing intellectual property-focused outpost in Munich, which WLG launched in 2008.

Blank Rome, meanwhile, achieved the highest growth in revenue among the entire Global 100, with its top line soaring 22.5 percent, to $422.5 million. The firm picked up more than 100 attorneys from Washington, D.C.-based Dickstein Shapiro, which went out of business in February 2016. In what has been a remarkable period of growth, around 60 percent of the Blank Rome's 564 attorneys have joined the firm since 2011.

Looking ahead, the widespread uncertainty across core jurisdictions, continued global consolidation and disruption brought about by new technologies and alternative providers makes future market conditions all but impossible to predict. But the current environment of low growth and high competition has been around for long enough to suggest that it isn't going away anytime soon. In fact, the trend of the past few years suggests that the pressures facing international law firms are only likely to intensify. A continued slowdown in the overall demand for legal services and subsequent squeeze on profits will no doubt be of particular concern to Big Law managers. For the Global 100, it all makes for a challenging and uncertain future.

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MOST REVENUE

GROSS REVENUE FOR THE GLOBAL 100 GREW BY 2.8 PERCENT in 2016, to $99.3 billion, just shy of 2015's increase of 3.1 percent.

This year 81 of the world's top-grossing firms have more lawyers in the United States than elsewhere, while 12 have the greatest proportion of their lawyers in the United Kingdom. Eight firms are structured as vereins or European Economic Interest Groups (EEIGs). Thirty-four firms had more than $1 billion in revenues, compared with 35 last year.

In most cases, gross revenues for U.S. firms are derived from The Am Law 100. Other firms were surveyed directly for The Global 100, the Asia 100/China 50, or Legal Week's UK Top 50.

Currency conversion rates to U.S. dollars are annual averages for 2016. Lawyer numbers are average full-time-equivalent numbers for 2016. Gross revenue figures are rounded to the nearest $500,000, while revenue per lawyer figures are rounded to the nearest $5,000.

2017 Rank	2016 Rank	Firm	Gross Revenue, Most Recent Fiscal Year	Lawyers	Revenue Per Lawyer	Country With the Most Lawyers
1	1	**Latham & Watkins**	$2,823,000,000	2,280	$1,240,000	United States
2	2	**Baker McKenzie** (Verein)[1]	$2,670,000,000	4,719	$570,000	United States
3	5	**Kirkland & Ellis**	$2,651,000,000	1,759	$1,505,000	United States
4	4	**Skadden, Arps, Slate, Meagher & Flom**	$2,495,000,000	1,728	$1,445,000	United States
5	3	**DLA Piper** (Verein)[1]	$2,470,000,000	3,616	$685,000	United States
6	6	**Dentons** (Verein)[1]	$2,205,000,000	7,445	$295,000	China
7	7	**Clifford Chance**	$2,087,500,000	2,466	$845,000	United Kingdom
8	9	**Allen & Overy**	$2,059,500,000	2,273	$905,000	United Kingdom
9	11	**Jones Day**	$1,977,000,000	2,523	$785,000	United States
10	9	**Linklaters**	$1,950,000,000	2,279	$855,000	United Kingdom
11	12	**Sidley Austin**	$1,928,000,000	1,836	$1,050,000	United States
12	14	**Hogan Lovells** (Verein)[1]	$1,925,500,000	2,609	$740,000	United States
13	13	**Morgan, Lewis & Bockius**	$1,860,000,000	1,844	$1,010,000	United States
14	8	**Freshfields Bruckhaus Deringer**	$1,803,000,000	1,913	$940,000	United Kingdom
15	15	**Norton Rose Fulbright** (Verein)[1]	$1,685,500,000	3,505	$480,000	United States
16	16	**White & Case**	$1,631,000,000	1,957	$835,000	United States
17	16	**Gibson, Dunn & Crutcher**	$1,606,500,000	1,239	$1,295,000	United States
18	18	**Ropes & Gray**	$1,485,500,000	1,161	$1,280,000	United States
19	20	**Greenberg Traurig**	$1,377,500,000	1,884	$730,000	United States
20	21	**Sullivan & Cromwell**	$1,360,000,000	800	$1,700,000	United States
21	22	**Simpson Thacher & Bartlett**	$1,301,500,000	971	$1,340,000	United States
22	24	**Cleary Gottlieb Steen & Hamilton**	$1,271,500,000	1,204	$1,055,000	United States
23	25	**Weil, Gotshal & Manges**	$1,266,500,000	1,083	$1,170,000	United States
24	23	**Mayer Brown**	$1,260,000,000	1,586	$795,000	United States
25	19	**Herbert Smith Freehills**	$1,247,500,000	2,009	$620,000	United Kingdom
26	29	**Paul, Weiss, Rifkind, Wharton & Garrison**	$1,222,000,000	959	$1,275,000	United States
27	33	**Quinn Emanuel Urquhart & Sullivan**	$1,204,000,000	718	$1,675,000	United States
28	30	**Davis Polk & Wardwell**	$1,180,000,000	912	$1,295,000	United States
29	31	**K&L Gates**	$1,179,000,000	1,810	$650,000	United States
30	26	**Wilmer Cutler Pickering Hale and Dorr**	$1,130,500,000	887	$1,275,000	United States
31	27	**CMS Legal Services** (EEIG)[1]	$1,091,000,000	2,719	$400,000	United Kingdom

[1] Vereins and European Economic Interest Groups (EEIGs) differ structurally from other Global 100 firms, especially in regards to profit sharing.
[2] Arnold & Porter merged with Kaye Scholer in 2017. The figures here represent the 2016 figures for Arnold & Porter.
[3] Eversheds merged with Sutherland Asbill & Brennan at the start of 2017. The figures here represent the 2016 figures for Eversheds only.
[4] Gowling WGL was formed in February 2016 by the merger of Canada-based Gowling Lafleur Henderson and UK-based Wragge Lawrence Graham & Co.

2017 Rank	2016 Rank	Firm	Gross Revenue, Most Recent Fiscal Year	Lawyers	Revenue Per Lawyer	Country With the Most Lawyers
32	28	**Reed Smith**	$1,075,000,000	1,536	$700,000	United States
33	32	**Paul Hastings**	$1,074,500,000	921	$1,165,000	United States
34	35	**King & Spalding**	$1,057,500,000	1,005	$1,050,000	United States
35	38	**Squire Patton Boggs** (Verein)[1]	$983,000,000	1,466	$670,000	United States
36	37	**Akin Gump Strauss Hauer & Feld**	$980,000,000	857	$1,145,000	United States
37	40	**Cooley**	$974,000,000	854	$1,140,000	United States
38	36	**Morrison & Foerster**	$945,000,000	956	$990,000	United States
39	39	**Orrick, Herrington & Sutcliffe**	$929,000,000	941	$985,000	United States
40	44	**Shearman & Sterling**	$912,500,000	841	$1,085,000	United States
41	43	**Goodwin Procter**	$912,000,000	847	$1,075,000	United States
42	42	**Dechert**	$911,500,000	916	$995,000	United States
43	41	**McDermott Will & Emery**	$908,500,000	977	$930,000	United States
44	49	**Milbank, Tweed, Hadley & McCloy**	$855,500,000	664	$1,290,000	United States
45	46	**Proskauer Rose**	$852,500,000	709	$1,200,000	United States
46	56	**Baker Botts**	$846,500,000	708	$1,195,000	United States
47	54	**Covington & Burling**	$838,500,000	838	$1,000,000	United States
48	47	**Winston & Strawn**	$823,000,000	798	$1,030,000	United States
49	34	**King & Wood Mallesons** (Verein)[1]	$806,000,000	2,397	$335,000	China
50	53	**Holland & Knight**	$803,000,000	1,074	$750,000	United States
51	52	**Perkins Coie**	$781,000,000	921	$850,000	United States
52	45	**Wachtell, Lipton, Rosen & Katz**	$765,000,000	244	$3,130,000	United States
53	55	**Wilson Sonsini Goodrich & Rosati**	$755,000,000	750	$1,005,000	United States
54	59	**Kim & Chang**	$741,000,000	820	$905,000	South Korea
55	62	**Cravath, Swaine & Moore**	$738,000,000	497	$1,485,000	United States
56	50	**Debevoise & Plimpton**	$735,000,000	613	$1,200,000	United States
57	48	**Ashurst**	$733,500,000	1,355	$540,000	Australia
58	58	**Alston & Bird**	$730,500,000	782	$935,000	United States
59	57	**O'Melveny & Myers**	$725,500,000	648	$1,120,000	United States
60	51	**Slaughter and May**	$691,000,000	522	$1,325,000	United Kingdom
60	63	**Willkie Farr & Gallagher**	$691,000,000	605	$1,140,000	United States
62	60	**Clyde & Co.**	$688,500,000	1,990	$345,000	United Kingdom
63	64	**McGuireWoods**	$682,500,000	990	$690,000	United States
64	61	**Foley & Lardner**	$671,000,000	840	$800,000	United States
65	67	**Vinson & Elkins**	$654,000,000	604	$1,085,000	United States
66	66	**Baker & Hostetler**	$642,500,000	920	$700,000	United States
67	65	**Arnold & Porter**[2]	$624,500,000	657	$950,000	United States
68	71	**Seyfarth Shaw**	$623,500,000	847	$735,000	United States
69	69	**Bryan Cave**	$608,000,000	870	$700,000	United States
70	74	**Sheppard, Mullin, Richter & Hampton**	$607,000,000	655	$925,000	United States
71	68	**Eversheds**[3]	$594,500,000	1,777	$335,000	United Kingdom
72	75	**Pillsbury Winthrop Shaw Pittman**	$573,500,000	605	$950,000	United States
72	72	**Pinsent Masons**	$573,500,000	1,470	$390,000	United Kingdom
74	70	**Locke Lord**	$559,000,000	749	$745,000	United States
75	79	**Fried, Frank, Harris, Shriver & Jacobson**	$556,500,000	440	$1,265,000	United States
76	73	**Katten Muchin Rosenman**	$554,000,000	606	$915,000	United States

2017 Rank	2016 Rank	Firm	Gross Revenue, Most Recent Fiscal Year	Lawyers	Revenue Per Lawyer	Country With the Most Lawyers
77	77	**Osler, Hoskin & Harcourt**	$549,000,000	422	$1,300,000	Canada
78	76	**Hunton & Williams**	$541,000,000	661	$820,000	United States
79	80	**Fragomen, Del Rey, Bernsen & Loewy**	$540,500,000	539	$1,005,000	United States
80	78	**Littler Mendelson**	$530,000,000	989	$535,000	United States
81	N/A	**Gowling WLG**[4]	$529,000,000	1,289	$410,000	Canada
82	81	**Venable**	$498,500,000	611	$815,000	United States
83	82	**Troutman Sanders**	$490,000,000	655	$750,000	United States
84	83	**Faegre Baker Daniels**	$489,500,000	657	$745,000	United States
85	89	**Blake, Cassels & Graydon**	$462,000,000	641	$720,000	Canada
86	86	**Nixon Peabody**	$458,000,000	619	$740,000	United States
87	84	**Jenner & Block**	$457,500,000	487	$940,000	United States
88	88	**Duane Morris**	$454,500,000	651	$700,000	United States
89	85	**Cadwalader, Wickersham & Taft**	$452,000,000	438	$1,030,000	United States
90	94	**Lewis Brisbois Bisgaard & Smith**	$440,000,000	1,135	$390,000	United States
91	91	**Polsinelli**	$439,000,000	758	$580,000	United States
92	N/A	**Crowell & Moring**	$434,500,000	440	$985,000	United States
92	92	**Drinker Biddle & Reath**	$434,500,000	557	$780,000	United States
94	87	**Simmons & Simmons**	$428,500,000	780	$550,000	United Kingdom
95	97	**Ogletree, Deakins, Nash, Smoak & Stewart**	$427,000,000	759	$565,000	United States
96	N/A	**Blank Rome**	$422,500,000	564	$750,000	United States
97	96	**Williams & Connolly**	$420,000,000	325	$1,290,000	United States
98	N/A	**Fox Rothschild**	$416,500,000	763	$545,000	United States
98	90	**Kilpatrick Townsend & Stockton**	$416,500,000	573	$725,000	United States
100	N/A	**Bird & Bird**	$411,000,000	1,068	$385,000	United Kingdom

MOST LAWYERS

OVERALL LAWYER HEAD COUNT FOR GLOBAL 100 FIRMS WAS 122,157 in 2016, up 2.7 percent from 2015. Forty-seven of the 100 largest firms by head count have more than 1,000 lawyers.

Fifty-eight firms have the largest proportion of their lawyers in the United States, 17 have the largest proportion of their lawyers in the United Kingdom and 12 have most of their lawyers in China. The number of lawyers listed here is the average full-time-equivalent for the 2016 fiscal year. (For U.K.-based firms, the number of lawyers is the average full-time-equivalent for the fiscal year ending April 30).

Rank by Head Count	Firm	Lawyers	Countries in Which the Firm Has Offices	Country With the Most Lawyers	Percentage of Lawyers in That Country
1	**Dentons**	7,445	55	China	57%
2	**Yingke**	6,278	26	China	79%
3	**Baker McKenzie**	4,719	47	United States	15%
4	**DLA Piper**	3,616	30	United States	32%
5	**Norton Rose Fulbright**	3,505	27	United States	21%
6	**CMS Legal Services**	2,719	35	United Kingdom	25%
7	**Hogan Lovells**	2,609	22	United States	36%
8	**Jones Day**	2,523	18	United States	64%
9	**Clifford Chance**	2,466	23	United Kingdom	30%
10	**King & Wood Mallesons**	2,397	16	China	60%
11	**Latham & Watkins**	2,280	14	United States	68%

Rank by Head Count	Firm	Lawyers	Countries in Which the Firm Has Offices	Country With the Most Lawyers	Percentage of Lawyers in That Country
12	Linklaters	2,279	20	United Kingdom	38%
13	Allen & Overy	2,273	31	United Kingdom	34%
14	Herbert Smith Freehills	2,009	18	United Kingdom	46%
15	DeHeng	1,992	6	China	99%
16	Clyde & Co.	1,990	21	United Kingdom	41%
17	White & Case	1,957	29	United States	32%
18	Freshfields Bruckhaus Deringer	1,913	16	United Kingdom	31%
19	Greenberg Traurig	1,884	10	United States	89%
20	Zhong Yin Law Firm	1,875	1	China	100%
21	Morgan, Lewis & Bockius	1,844	11	United States	88%
22	Sidley Austin	1,836	9	United States	83%
23	K&L Gates	1,810	16	United States	62%
24	Eversheds	1,777	11	United Kingdom	80%
25	Kirkland & Ellis	1,759	4	United States	84%
26	Skadden, Arps, Slate, Meagher & Flom	1,728	13	United States	79%
27	Allbright	1,661	1	China	100%
28	Grandall Law Firm	1,600	5	China	99%
29	Mayer Brown	1,586	12	United States	56%
30	Reed Smith	1,536	9	United States	64%
31	Pinsent Masons	1,470	8	United Kingdom	77%
32	Squire Patton Boggs	1,466	20	United States	44%
33	Zhong Lun	1,436	4	China	99%
34	Ashurst	1,355	15	Australia	38%
35	Gowling WLG	1,289	8	Canada	53%
36	J&A Garrigues	1,278	13	Spain	83%
37	Gibson, Dunn & Crutcher	1,239	9	United States	85%
38	Cleary Gottlieb Steen & Hamilton	1,204	12	United States	52%
39	Fidal	1,198	1	France	100%
40	Ropes & Gray	1,161	5	United States	82%
41	Lewis Brisbois Bisgaard & Smith	1,135	1	United States	100%
42	Weil, Gotshal & Manges	1,083	9	United States	64%
43	Holland & Knight	1,074	4	United States	94%
44	Bird & Bird	1,068	22	United Kingdom	22%
45	DAC Beachcroft	1,054	8	United Kingdom	93%
46	Beijing DHH Law Firm	1,035	1	China	100%
47	King & Spalding	1,005	10	United States	84%
48	McGuireWoods	990	3	United States	96%
49	Littler Mendelson	989	13	United States	88%
50	McDermott Will & Emery	977	7	United States	79%
51	Simpson Thacher & Bartlett	971	6	United States	82%
52	Paul, Weiss, Rifkind, Wharton & Garrison	959	5	United States	94%
53	Morrison & Foerster	956	7	United States	75%
54	Orrick, Herrington & Sutcliffe	941	11	United States	67%
55	Paul Hastings	921	10	United States	76%
55	Perkins Coie	921	2	United States	99%

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Rank by Head Count	Firm	Lawyers	Countries in Which the Firm Has Offices	Country With the Most Lawyers	Percentage of Lawyers in That Country
57	Baker & Hostetler	920	1	United States	100%
58	Taylor Wessing	918	20	Germany	38%
59	Dechert	916	13	United States	67%
60	Davis Polk & Wardwell	912	7	United States	79%
61	DWF	904	10	United Kingdom	61%
62	Wilmer Cutler Pickering Hale and Dorr	887	5	United States	90%
63	Bryan Cave	870	6	United States	91%
64	Akin Gump Strauss Hauer & Feld	857	8	United States	81%
65	Cooley	854	3	United States	92%
66	Siqueira Castro	853	3	Brazil	95%
67	Long An Law Firm	850	1	China	100%
68	Addleshaw Goddard	849	7	United Kingdom	73%
69	Goodwin Procter	847	5	United States	94%
69	Seyfarth Shaw	847	4	United States	95%
71	Shearman & Sterling	841	12	United States	53%
72	Foley & Lardner	840	4	United States	99%
73	Covington & Burling	838	5	United States	85%
74	Cuatrecasas, Gonçalves Pereira	832	12	Spain	82%
75	Kim & Chang	820	2	South Korea	99%
76	Loyens & Loeff	800	10	Netherlands	67%
76	Sullivan & Cromwell	800	7	United States	81%
78	Winston & Strawn	798	7	United States	86%
79	Minter Ellison	789	5	Australia	95%
80	Alston & Bird	782	3	United States	92%
81	Simmons & Simmons	780	15	United Kingdom	45%
82	Wilson Elser Moskowitz Edelman & Dicker	766	1	United States	100%
83	Fox Rothschild	763	1	United States	100%
84	Irwin Mitchell	762	4	United Kingdom	92%
85	Ogletree, Deakins, Nash, Smoak & Stewart	759	5	United States	97%
86	Polsinelli	758	1	United States	100%
87	Jackson Lewis	757	2	United States	99%
88	Wilson Sonsini Goodrich & Rosati	750	3	United States	94%
89	Locke Lord	749	5	United States	94%
90	Baker, Donelson, Bearman, Caldwell & Berkowitz	742	1	United States	100%
91	Zhonglun W&D Law Firm	740	1	China	100%
92	Bordner Ladner Gervais	720	2	Canada	99%
93	Quinn Emanuel Urquhart & Sullivan	718	10	United States	83%
94	Proskauer Rose	709	5	United States	88%
95	Baker Botts	708	7	United States	86%
96	Clayton Utz	689	1	Australia	100%
97	Fasken Martineau DuMoulin	688	3	Canada	90%
98	Berwin Leighton Paisner	685	12	United Kingdom	74%
99	Guantao Law Firm	680	1	China	100%
100	Kennedys	668	18	United Kingdom	70%


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PROFITS PER EQUITY PARTNER AMONG GLOBAL 100 FIRMS AV-eraged $1.6 million in 2016, an increase of less than one percent, and less than 2015's nearly five percent gain. Seventy-five firms topped $1 million in PPP, compared with 76 firms the previous year. U.S. firms make up the top 10, with Slaughter and May the highest-ranking non-U.S. firm, ranking twelfth.

This chart ranks the most profitable firms on our Most Revenue and Most Lawyers charts, which, combined, include 157 firms. To be eligible for this list, a firm had to appear on one of those two charts. Figures for U.S. firms came from The Am Law 100. All other firms were surveyed directly. PPP is rounded to the nearest $5,000, and gross revenue is rounded to the nearest $500,000.

Rank By PPP	Firm	Profits Per Partner	Equity Partners	Gross Revenue
1	Wachtell, Lipton, Rosen & Katz	$5,800,000	81	$765,000,000
2	Quinn Emanuel Urquhart & Sullivan	$5,015,000	162	$1,204,000,000
3	Paul, Weiss, Rifkind, Wharton & Garrison	$4,380,000	139	$1,222,000,000
4	Cravath, Swaine & Moore	$4,195,000	87	$738,000,000
5	Kirkland & Ellis	$4,100,000	359	$2,651,000,000
6	Sullivan & Cromwell	$4,050,000	168	$1,360,000,000
7	Davis Polk & Wardwell	$3,775,000	153	$1,180,000,000
8	Simpson Thacher & Bartlett	$3,505,000	185	$1,301,500,000
9	Cleary Gottlieb Steen & Hamilton	$3,320,000	186	$1,271,500,000
10	Gibson, Dunn & Crutcher	$3,275,000	299	$1,606,500,000
11	Skadden, Arps, Slate, Meagher & Flom	$3,260,000	368	$2,495,000,000
12	Slaughter and May	$3,185,000	107	$691,000,000
13	Milbank, Tweed, Hadley & McCloy	$3,120,000	149	$855,500,000
14	Weil, Gotshal & Manges	$3,090,000	161	$1,266,500,000
15	Latham & Watkins	$3,060,000	465	$2,823,000,000
16	Willkie Farr & Gallagher	$2,625,000	142	$691,000,000
17	Paul Hastings	$2,605,000	190	$1,074,500,000
18	Dechert	$2,550,000	157	$911,500,000
19	Fried, Frank, Harris, Shriver & Jacobson	$2,515,000	105	$556,500,000
20	King & Spalding	$2,470,000	196	$1,057,500,000
21	Baker Botts	$2,465,000	176	$846,500,000
22	Debevoise & Plimpton	$2,410,000	134	$735,000,000
23	Schulte Roth & Zabel	$2,390,000	83	$409,500,000
24	Proskauer Rose	$2,315,000	171	$852,500,000
25	Shearman & Sterling	$2,165,000	140	$912,500,000
26	Sidley Austin	$2,130,000	346	$1,928,000,000
27	Cadwalader, Wickersham & Taft	$2,115,000	45	$452,000,000
28	Fragomen, Del Rey, Bernsen & Loewy	$2,105,000	62	$540,500,000
29	Akin Gump Strauss Hauer & Feld	$2,100,000	196	$980,000,000
30	Freshfields Bruckhaus Deringer	$2,095,000	396	$1,803,000,000
31	Allen & Overy	$2,050,000	441	$2,059,500,000
31	White & Case	$2,050,000	299	$1,631,000,000
33	Linklaters	$2,045,000	441	$1,950,000,000
34	Vinson & Elkins	$2,025,000	142	$654,000,000
35	Ropes & Gray	$2,020,000	282	$1,485,500,000
36	Goodwin Procter	$1,980,000	203	$912,000,000
37	Wilson Sonsini Goodrich & Rosati	$1,970,000	138	$755,000,000

Rank By PPP	Firm	Profits Per Partner	Equity Partners	Gross Revenue
38	Cooley	$1,965,000	203	$974,000,000
39	O'Melveny & Myers	$1,950,000	175	$725,500,000
40	Clifford Chance	$1,865,000	403	$2,087,500,000
41	Wilmer Cutler Pickering Hale and Dorr	$1,860,000	270	$1,130,500,000
42	Winston & Strawn	$1,825,000	144	$823,000,000
43	Alston & Bird	$1,810,000	147	$730,500,000
44	Jenner & Block	$1,745,000	109	$457,500,000
45	Orrick, Herrington & Sutcliffe	$1,680,000	117	$929,000,000
46	DLA Piper	$1,655,000	389	$2,470,000,000
47	McDermott Will & Emery	$1,600,000	198	$908,500,000
48	Williams & Connolly	$1,595,000	117	$420,000,000
49	Katten Muchin Rosenman	$1,575,000	142	$554,000,000
50	Greenberg Traurig	$1,545,000	308	$1,377,500,000
51	Kim & Chang	$1,500,000	130	$741,000,000
52	Sheppard, Mullin, Richter & Hampton	$1,495,000	125	$607,000,000
53	Covington & Burling	$1,475,000	263	$838,500,000
54	Crowell & Moring	$1,450,000	97	$434,500,000
54	Mayer Brown	$1,450,000	296	$1,260,000,000
56	Morrison & Foerster	$1,410,000	232	$945,000,000
57	Baker McKenzie	$1,300,000	702	$2,670,000,000
58	Holland & Knight	$1,290,000	185	$803,000,000
59	Hogan Lovells	$1,255,000	542	$1,925,500,000
60	Morgan, Lewis & Bockius	$1,235,000	708	$1,860,000,000
61	Pillsbury Winthrop Shaw Pittman	$1,215,000	145	$573,500,000
62	Perkins Coie	$1,180,000	175	$781,000,000
63	Arnold & Porter	$1,155,000	233	$624,500,000
63	Loyens & Loeff	$1,155,000	103	$321,000,000
65	Foley & Lardner	$1,130,000	144	$671,000,000
66	Reed Smith	$1,110,000	295	$1,075,000,000
67	Hunton & Williams	$1,100,000	153	$541,000,000
67	Venable	$1,100,000	161	$498,500,000
69	Osler, Hoskin & Harcourt	$1,055,000	219	$549,000,000
70	Seyfarth Shaw	$1,050,000	198	$623,500,000
71	Jones Day	$1,040,000	936	$1,977,000,000
72	Herbert Smith Freehills	$1,030,000	337	$1,247,500,000
73	Troutman Sanders	$1,020,000	185	$490,000,000
74	K&L Gates	$1,015,000	193	$1,179,000,000
75	McGuireWoods	$1,005,000	184	$682,500,000
76	Fidal	$985,000	38	$368,500,000
77	Nixon Peabody	$980,000	143	$458,000,000
78	Squire Patton Boggs	$975,000	172	$983,000,000
79	Baker & Hostetler	$965,000	142	$642,500,000
80	Eversheds	$960,000	119	$594,500,000
81	Locke Lord	$950,000	184	$559,000,000

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Rank By PPP	Firm	Profits Per Partner	Equity Partners	Gross Revenue
82	Duane Morris	$940,000	122	$454,500,000
83	Kilpatrick Townsend & Stockton	$915,000	114	$416,500,000
84	Ashurst	$910,000	243	$733,500,000
85	Clyde & Co.	$885,000	196	$688,500,000
86	Clayton Utz	$871,000	138	$334,000,000
87	Bryan Cave	$865,000	199	$608,000,000
87	Pinsent Masons	$865,000	172	$573,500,000
89	Faegre Baker Daniels	$860,000	221	$489,500,000
89	Simmons & Simmons	$860,000	145	$428,500,000
91	Minter Ellison	$856,000	162	$339,000,000
92	Berwin Leighton Paisner	$855,000	80	$368,500,000
93	Drinker Biddle & Reath	$850,000	187	$434,500,000
94	Blake, Cassels & Graydon	$805,000	265	$462,000,000
95	Fasken Martineau DuMoulin	$795,000	174	$346,000,000
96	King & Wood Mallesons	$790,000	327	$806,000,000
97	Blank Rome	$750,000	139	$422,500,000
97	Lewis Brisbois Bisgaard & Smith	$750,000	118	$440,000,000
99	Addleshaw Goddard	$695,000	92	$268,000,000
99	Polsinelli	$695,000	121	$439,000,000

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A Global Niche

By Scott Flaherty

International litigation is a hot specialization for a small cadre of law firms.

Some call it "three-dimensional chess," and it's a game of strategy that lawyers with expertise in antitrust, securities fraud, corruption, insolvency and other areas may find themselves playing more often these days, as litigation matters proceed in multiple countries at once. But not everyone can play at the highest level—while many large law firms now have offices all over the world map, it takes a special set of lawyering and project coordination skills to be able to handle a piece of truly international litigation, according to lawyers who have spent years in the arena.

A cadre of firms that includes Cleary Gottlieb Steen & Hamilton, Dechert, Allen & Overy and Kobre & Kim—an international disputes boutique that jumped onto The Am Law 200 for the first time this year—have devoted resources to building up their capacity to handle cross-border litigation matters; lawyers at some of those heavy hitters also point to Debevoise & Plimpton as having a strong global litigation group. Also in the mix is Quinn Emanuel Urquhart & Sullivan, a firm that does a majority of its work on the defense side, but also has a plaintiffs-side practice willing to take on the world's largest financial institutions. And, increasingly, firms such as Hausfeld LLP, which focuses exclusively on plaintiffs side litigation, are looking abroad to expand offices and take advantage of recent plaintiffs-friendly reforms in the U.K. and European Union.

Different situations can give rise to international, or "multijurisdictional," litigation—matters marked by a dispute or crackdown on conduct that has effects in multiple countries. But often, they start with a government regulatory investigation and spiral out from there.

Take, for instance, the allegations that some of the world's largest financial institutions conspired to manipulate the foreign exchange markets. The forex scandal prompted investigations and regulatory fines in the United States, United Kingdom and Switzerland, plus a private class action in U.S. courts that plaintiffs lawyers later looked to replicate in the U.K. And much of the action happened concurrently, albeit with pieces of the litigation and regulatory enforcement heating up in different places at different times.

That, in turn, kept a lot of lawyers busy. The banks embroiled in the investigation tapped firms such as Cleary, which represented Citigroup Inc.; Sullivan & Cromwell, which worked for Barclays plc; and Skadden, Arps, Slate, Meagher & Flom, which represented JPMorgan Chase & Co.

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"These are increasingly the scenarios that we're seeing," says John Quinn, founding partner of litigation powerhouse Quinn Emanuel. His firm sought a lead plaintiffs counsel role to challenge the banks in a U.S. class action over the forex scandal, and although it lost out to Hausfeld LLP and Scott + Scott, Quinn Emanuel is now actively seeking European clients for a similar case abroad.

Quinn and other lawyers with experience in international litigation say there's a growing need for the specialty, driven in part by increased activity among regulatory agencies in the United States, United Kingdom, Europe, Asia and elsewhere. Those enforcement actions tend to lead to private disputes, which are increasingly finding their way into courts outside the United States. Meanwhile, there's also been rapid globalization of businesses and reductions in trading barriers, according to lawyers who practice in the space.

"As much as we thought, 30 years ago, 'The world is shrinking'—it has now shrunk," says Lawrence Friedman, a litigation partner at Cleary.

Responses from regulators and lawmakers over the past decade or so to the global financial crisis have likely added to the rise in litigation playing out internationally, says Tim House, head of Allen & Overy's global disputes practice.

"I just think the world has concentrated more on business integrity issues," he says. "Those, by their very nature, are cross-border."

What it Takes

With several litigators describing an uptick in international litigation matters, it's not surprising that at least some law firms have focused on building the capability to effectively manage these types of cases for corporate clients. What it takes to develop such an expertise is a set of unique skills, having people on the ground in the right places and maintaining the kind of partnership that guards against tribalism within a firm, according to several lawyers in international litigation practices.

John Quinn

For starters, firms have to disabuse themselves of the idea that litigation is the same regardless of the venue, says Cleary's Friedman. It takes much more, he says, than overcoming basic logistical challenges, such as an overseas client in a different time zone who needs to jump on a conference call at off hours. While many lawyers could figure out how to work through those issues, there aren't as many steeped in the more critical challenges, such as navigating cultural barriers.

"AS MUCH AS WE THOUGHT, 30 YEARS AGO, 'THE WORLD IS SHRINKING'—IT HAS NOW SHRUNK," SAYS CLEARY GOTTLIEB'S LAWRENCE FRIEDMAN.

Friedman's partner Victor Hou adds that it's not just clients that need guidance. The same can be true of judges, who may be dealing with novel questions about the interplay between laws from different countries. Cleary was among the firms that learned those lessons first hand in the massive Nortel Networks Inc. bankruptcy. That case included a first-of-its-kind trial—held simultaneously in Delaware federal bankruptcy court and a court in Ontario, Canada by way of a video feed—to determine how to divvy up more than $7 billion raised by selling off Nortel's assets. Working on that trial involved an intense level of coordination and a willingness by multiple parties to proceed in an unusual forum, according to Cleary lawyers [see "Taming the Perfect Storm," page 72].

JUN MICHAEL PARK (KIM)

"You have to be creative and flexible because you're helping the courts make this up as they're going," says Hou. "This is brand new law, brand new procedures."

Beyond inventive lawyering, firms also have to put resources on the ground in key markets. There isn't an exact formula for where to have offices, but some markets stand out as critical jurisdictions in which to have local teams.

"I think it would be very difficult to do it effectively without having a team in London that can do this, and, to almost the same extent, I think it would be very difficult without having a team in New York," says Dennis Hranitzky, co-head of Dechert's international and insolvency litigation group. "Most of these cases involve litigation in one or both of those places, among other places."

"YOU NEED A TEAM IN EACH JURISDICTION, BUT THEN YOU NEED THE FIRM TO BE UNIFIED ENOUGH," SAYS KOBRE & KIM COFOUNDER MICHAEL KIM.

Other international litigators pointed to places such as Hong Kong, which can serve as a hub for working on cases with implications elsewhere in Asia. Firms looking to do antitrust work internationally would also want to consider a presence in Brussels, the home city of the EU's competition watchdog, says Quinn.

But of course, as Quinn, Hranitzky and others recognize, no firm is likely to have an office in every single jurisdiction that might impact a given client's case. In those situations, the best international litigation firms typically have a network of local firms that they've worked hard to build and maintain relationships with. Where a firm doesn't

"I THINK IT WOULD BE VERY DIFFICULT TO DO IT EFFECTIVELY WITHOUT HAVING A TEAM IN LONDON [AND] A TEAM IN NEW YORK," DECHERT'S DENNIS HRANITSKY SAYS.

have an office of its own, says Hranitzky, "It's absolutely critical that you have deep, highly functional relationships with lawyers in those places that know how to do this."

For its part, Cleary, which often represents Argentinian public and private sector clients, has an office in Buenos Aires, but the firm has also worked to establish partnerships with local lawyers in South America, according to Friedman. That effort, he says, has involved secondments in which foreign lawyers will practice at Cleary for a time—and, as a result, many of the leading local litigators have either passed through Cleary or know the firm's reputation.

Any firm that wants a strong international litigation practice also has to focus on strong cohesion within its own partnership. Because they take place at several locations simultaneously, cross-border cases are often more complex than typical domestic litigation. Reaching a strong result, then, becomes about managing those complexities to ensure the strategy for a given case plays out in the correct sequence. A firm whose partners can't work well across offices is going to run into trouble.

Several international litigators described a cohesive partnership—one free of turf wars that might cause lawyers in one office to try to hoard more work for themselves—as perhaps the most important aspect of having a successful international litigation practice.

RICK KOPSTEIN/ALM (HRANITZKY)

"IMPLICIT IN [BUILDING A COHESIVE LITIGATION TEAM] IS A FIRM THAT'S MANAGED IN SUCH A WAY THAT PEOPLE ARE INCENTIVIZED TO FOLLOW WHATEVER LEAD THE CASE TAKES YOU," KOBRE & KIM'S STEVEN KOBRE SAYS.

House of Allen & Overy suggests that maintaining a single profit pool for a firm's partners, regardless of which office they're in, is one way to ensure the type of cohesiveness that amounts to a strong international litigation practice. "I don't think it's any more complicated than not creating any economic incentive for a partner, or an office or a team, unnaturally to hold work in their hands when it could be better done to the client's advantage by somebody else," he says.

The leaders of Kobre & Kim, which focuses on international disputes involving allegations of fraud, strike a similar chord in describing their approach.

"You need a team in each jurisdiction, but then you need the firm to be unified enough," says Michael Kim, a founding partner of the international litigation firm. His partner Steven Kobre adds, "Implicit in that is a firm that's managed in such a way that people are incentivized to follow whatever lead the case takes you."

Their firm maintains a single-tier partnership and, unlike many other players in the global litigation realm, Kobre & Kim has lawyers stationed in offshore jurisdictions like the British Virgin Islands and Cayman Islands—something that can come in handy if, say, a client needs a lawyer in Hong Kong but is going up against a BVI-registered company, says Kim.

"YOU'VE GOT TO EDUCATE THE PARLIAMENTARIANS; YOU'VE GOT TO EDUCATE THE JUDICIARY," SAYS MICHAEL HAUSFELD OF HAUSFELD LLP. "THEN YOU'VE GOT TO EDUCATE THE PUBLIC THAT THEY HAVE RIGHTS."

A Global Litigation Arms Race?

While some large defense firms have built up international litigation expertise—along with the skills, networks and cohesive partnerships that contribute to a successful practice in the arena—counterparts on the plaintiffs side are also now looking outside the U.S. Firms with a plaintiffs side practice, such as Quinn Emanuel and Hausfeld, have taken steps in recent years to expand their presence abroad.

Quinn Emanuel, which does a mix of litigation on both sides, has more than a dozen international offices in the U.K., EU, Southeast Asia and Australia, and has expanded its Brussels, Belgium, office with three antitrust partners hired within less than a year. Hausfeld, which focuses more exclusively on representing plaintiffs, has had an office in London since the firm's founding in 2008, and has since opened an office in Brussels, as well as two German outposts in Berlin and Dusseldorf.

At least in part, firms with plaintiffs-side practices have looked to expand international offices to take advantage of recent reforms in the U.K. and European Union that have opened the door to more collective or group actions—cases that come close to resembling American-style class actions.

"YOU HAVE TO BE CREATIVE AND FLEXIBLE BECAUSE YOU'RE HELPING THE COURTS MAKE THIS UP AS THEY'RE GOING," SAYS CLEARY'S VICTOR HOU. "THIS IS BRAND NEW LAW, BRAND NEW PROCEDURES."

In connection with the forex scandal, for example, at least three firms—Quinn Emanuel, Hausfeld and plaintiffs firm Scott + Scott, which opened its first international office in London in 2015—have been seeking out institutional investors and others who might have claims against banks involved in the market manipulation. Quinn Emanuel has reportedly been advising investment management heavyweight BlackRock Inc. and hedge fund BlueCrest Capital Management on a global strategy that would involve bringing suit against several banks in London and likely opting out of being a class member in the U.S. litigation. Scott + Scott, meanwhile, has reportedly signed up a group of claimants to take on Deutsche Bank AG in the U.K.

With some plaintiffs firms ramping up outside the U.S., it seems to raise the possibility of a global litigation arms race, pitting heavy hitters from American litigation against each other in new countries. But international litigators on both sides say that hasn't happened so far.

"In terms of overall volume it hasn't been that significant," says Kim of Kobre & Kim, explaining that there's still a relatively small number of group and collective actions in some of the key markets outside the U.S.

DIEGO M. RADZINSCHI/ALM

Part of the reason for the low volume of mass actions is that for a plaintiffs firm—just as on the defense side—building a successful international litigation practice is a complex endeavor. Hausfeld didn't just open international offices and start filing lawsuits, Michael Hausfeld, says.

Its lawyers instead have devoted time and significant energy in the U.K. and Europe to building relationships with local lawyers, lawmakers and judges. The goal, says Hausfeld, was to share information with key constituencies that have a stake in shaping and taking advantage of changes that allow aggrieved investors and consumers to pursue litigation collectively outside the U.S.

"You've got to educate the parliamentarians; you've got to educate the judiciary," Hausfeld says. "Then you've got to educate the public that they have rights that they can assert and there's no shame in doing so."

Brian Ratner, head of Hausfeld's international practice, adds that it's not enough to simply take a model that works in the U.S. and transplant it to the U.K. or EU. For Hausfeld, he says, "it was about working within the European system, both running cases and litigating and at the same time working within the European legal circles to develop a reputation."

Recognizing the unique challenges of litigating across borders, there have been suggestions that Chambers should create a new ranking category to encapsulate the practice. And The Legal 500 has created such a category, with Cleary, Debevoise, Dechert and Gibson, Dunn & Crutcher listed in the top band. Those specialized rankings go to show what international litigators already know—regardless of which side a lawyer's on, it takes special expertise to make it work.

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MARKET TECTONICS

Shifting centers of gravity on the world geopolitical stage have created clear winners and losers. We take a look at some of the hottest markets in the world, and some that have cooled off considerably. As many firms see growing interest in the United States, figuring out their optimal international footprint is a challenge.

BRITISH PAIN, GERMAN GAIN

Lawyers in Germany are braced for a post-Brexit boom.

By Chris Johnson

AS LAWYERS IN LONDON FRET ABOUT THE possible longer-term consequences of the United Kingdom's decision to leave the European Union, their German counterparts are trying their best to appear sympathetic while suppressing delighted smiles.

The longer-term outcome of Brexit is still impossible to predict, but it does seem increasingly likely to have a net benefit to the German economy—and by extension, to law firms practicing in the country.

"Where the uncertainty is paralyzing the U.K., it is actually helping increase activity here," says Dirk Bliesener, co-managing partner at leading German firm Hengeler Mueller. "It's very hard to think of a single practice area that isn't rising."

Much has been made of the potential shift of business from the U.K. to Germany—particularly in financial services, where the expected loss of so-called passporting rights will have a significant impact on institutions running EU operations out of London. The process has already begun, with Goldman Sachs AG, Morgan Stanley, Standard Chartered PLC, UBS Group AG and Japanese securities brokerage Nomura Holdings Inc. among the financial companies to have expanded their presence in Germany following the referendum last summer.

Lawyers say that while international banks are seeking to minimize any disruption to their business, regulators have made it clear that simply setting up a front office in Germany and continuing to handle everything out of London is not going to cut it. While the involvement of lawyers has so far largely been confined to regulatory and more general advisory work, law firms expect to see increased activity across a broad range of practices once relocation plans are set in motion.

German lawyers are also benefiting from the fact that the uncertainty currently clouding the London market makes Germany's stable and strong economy an even more appealing investment proposition. "Germany has become a safe haven for foreign investors," says Clifford Chance regional managing partner Peter Dieners.

Lawyers report strong client demand across the board, from real estate to energy and even equity capital markets, which has generally been quiet across the region.

Law firms in Germany are also being kept busy by a continued compliance and investigations boom that was kick-started by the bribery scandal at German engineering giant Siemens AG in the mid-2000s and recently hit the headlines once again with the Volkswagen AG "dieselgate" affair.

A burgeoning fintech industry is attracting investment from a buoyant German private equity market, while M&A is active across a range of sectors, including the traditional core of

industrial, machinery and equipment, and infrastructure. Earlier this summer, German gas companies Linde AG and Praxair Inc. agreed to a $73 billion merger that created roles for Cravath, Swaine & Moore; Linklaters; Hengeler and Sullivan & Cromwell.

Chinese investors continue to target German equipment and technology, with state-owned funds such as China Investment Corp. driving big-ticket deals. Chinese companies are also pursuing the Mittelstand—a group of small- to medium-sized and often family-owned enterprises that form a key part of the country's economy.

The favorable market conditions have brought Germany to the fore of many Big Law agendas.

CMS, Eversheds, Kirkland & Ellis and Sidley Austin are among the firms to have ramped up their German presence over the past 12 months. Latham & Watkins has been particularly aggressive, bringing in a slew of high-profile partners from Allen & Overy, Clifford Chance, Freshfields Bruckhaus Deringer and Linklaters. "We're not growing for the sake of it. We're very bullish about Germany," says Latham's local managing partner Oliver Felsenstein. "There is uncertainty—we aren't entirely isolated from what happens in Europe—but the economy is very strong and things are looking good."

The picture isn't entirely positive, however.

With competition among law firms in Germany intensifying, it has becoming a buyer's market.

Firms are facing a double whammy of having to pay more to attract and retain talent while feeling intensified fee pressure from clients, particularly the DAX 30, Germany's largest listed companies. Law firms' interactions with these corporate titans are increasingly being run by procurement teams rather than in-house legal departments, with panels and competitive auctions being used to drive down prices. Discounts of up to 30 percent are not uncommon, lawyers say.

The resulting squeeze on profitability is exacerbated by the fact that attorneys are paid more in Germany than anywhere else on the planet, except for the United States.

It is perhaps unsurprising, then, that the U.K. Magic Circle firms have each carried out strategic reviews in Germany over the past 18 months that have resulted in restructuring practices and modifying their lockstep partner compensation systems. These changes have also partly been prompted by a broader profitability drive designed to help finance their expansion in the United States.

"It's not just about profitability—it's about being properly aligned with the global strategy," says Clifford Chance's Dieners. "We may have been slightly oversized in the past, but now we're much more robust." ■

AUSSIE ANXIETIES

Firms staying in Australia are banking on infrastructure work.

By Anna Zhang

THE AUSTRALIAN LEGAL SECTOR SUFFE-red in 2016 as the country's economy continued to struggle. For the second year in a row, none of Australia's three largest independent firms—Clayton Utz, Minter Ellison and Allens—made the Global 100 revenue ranking.

The economic slowdown that began in Australia in 2015 with the collapse of commodity prices and the decline of Chinese economic growth intensified last year, with the worst third quarter since the 2008 financial crisis. Meanwhile, the Australian dollar continued to depreciate, trading at A$1.34 per dollar, down 17 percent from 2014.

International firms weren't shielded from the downturn. Last year Skadden, Arps, Slate, Meagher & Flom closed its five-lawyer Sydney office after 27 years, and DLA Piper pulled out of national capital Canberra in April 2017, six years after gaining the six-lawyer office through the merger with local firm Phillips Fox.

But not everyone is heading out. In September 2016, White & Case announced the launch of Sydney and Melbourne offices with eight partners recruited from Herbert Smith Freehills. Eric Berg, head of Asia Pacific for the firm, says that despite the slower growth in the overall economy, the projects and infrastructure sector in Australia has been active.

In particular, he cites the Australian government's asset recycling initiatives: Under the program, the federal government provides subsidies to states as incentives to privatize infrastructure assets such as toll roads, tunnels and ports, with the proceeds then going to build new projects. The Australian government said a total of $56 billion will be allocated in the next 10 years for infrastructure projects.

"Our projects and project finance practice is now uniquely positioned with all pieces—the Americas, Europe, Africa and the Middle East, Asia and Australia—in place," Berg says.

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In December, Dentons formally entered Australia as it completed a year-long process of combining with local firm Gadens. Although Gadens' offices in Brisbane, Melbourne and Adelaide chose not to join the combination, Dentons ended up with the firm's offices in Sydney and Perth in Australia and in Port Moresby in Papua New Guinea. In 2017, Norton Rose Fulbright, which first entered Australia in 2010 by acquiring the then 700-lawyer Deacons Australia, merged with 180-lawyer Henry Davis York. The firm now has nearly 800 lawyers in Australia.

Elsewhere the country's economic woes show a silver lining. Following three quiet quarters, mergers and acquisitions in Australia picked up in the last three months in 2016, according to Thomson Reuters data. Most of the deals were inbound deals, taking advantage of assets made cheap by low interest rates and the depreciated currency.

But dealmaking faces challenges in 2017 and beyond. In January, U.S. President Donald Trump signed an executive order for the United States to withdraw from the Trans-Pacific Partnership, a comprehensive trade deal designed to create closer business ties among the 12 signing countries, including Australia. The TPP's collapse shattered Australian law firms' hope to cash in on more cross-border trade, transactions and disputes. And in August 2016, Australian Treasurer Scott Morrison banned power company State Grid Corp. of China's $7.7 billion preferred joint bid for half of Ausgrid citing national security concerns. The decision, a second in the year after barring a Chinese consortium from taking over an Australian cattle company, prompted warning of protectionism from China, Australia's top trading partner. ■

ARGENTINIAN REVIVAL

The Latin American country is heating up thanks to new-found political stability.

By Monika Gonzalez Mesa

AFTER DECADES OF HEAVY LEFTIST GOVernment intervention into private business, Argentina's international legal practices have been returning to life under the pro-business administration of Mauricio Macri, elected to the presidency in 2015.

Capital markets, project finance and energy practices are thriving, and those focusing on public-private partnerships, private equity, compliance and M&A are expected to grow with the government's planned infrastructure and transportation improvements, the strengthening of anti-corruption laws, and private-sector demand for mining development.

"I cannot imagine how this could be going any quicker or better given the history," says Miami-based Carlos Vianna, head of White & Case's Latin America, energy, infrastructure and project finance practices. "Together with Mexico, Argentina is the most exciting and happening combined energy and infrastructure market in Latin America—by a lot."

Capital market practices took the lead after Argentina reached an agreement last year with bondholders and paid off long-standing debt that had kept it out of capital markets. A subsequent $16.5 billion sovereign debt offering in April 2016 set a record for a emerging market debt sale and attracted strong investor interest.

"A high percentage of the investments are going to the financial markets as a consequence of the high yields of the financial instruments offered by the Argentine government," says Miami-based Holland & Knight partner Norberto Quintana.

While investors are still held back by political risk and inflation, both factors appear to be improving. If the October congressional elections go well for Macri supporters, as many expect, it will signal a longer period of policy certainty than Argentina has had in many years, Argentine lawyers say.

"For the first time in modern history you'll have four years of not having to wait and see," says Javier Errecondo, a founding partner of 26-lawyer Argentine firm Errecondo, Gonzalez & Funes Abogados. "For business, you can tell what the policy is going to be for at least four years. The policy will be No. 1 to support private investment, support private companies."

Project finance is extremely active, Vianna says. White & Case is working on several project finance deals and he and others see great potential for practices that involve equity investment and mining within the next five years.

Argentina has the world's largest deposits of lithium, which is in high demand as a key raw material of batteries used in renewable energy. Argentina also has some of the largest shale oil and gas deposits in the world.

The government is also developing a public-private partnership program to attract foreign investment, Vianna says.

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While Argentina was isolated from international capital markets for years, some firms lost their capital markets and M&A expertise to attrition and time, lawyers say. Now the trend is reversing.

"All the big law firms are shoring up their M&A teams," says Gustavo Boruchowicz, managing partner of Baker McKenzie's long-standing Buenos Aires office.

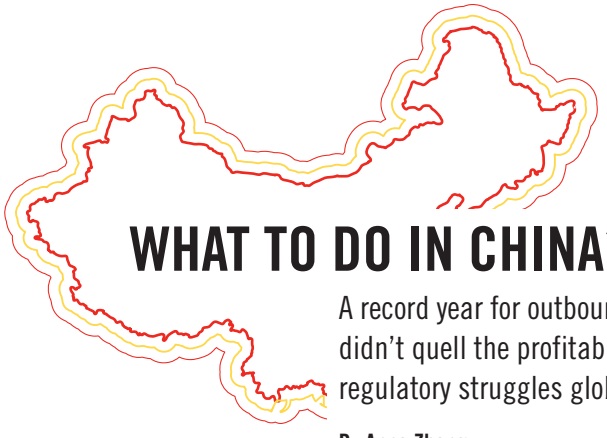
Errecondo says he has been busy in capital markets and shares clients with U.S. firms such as Cleary Gottlieb Steen & Hamilton; Milbank, Tweed, Hadley & McCloy; Shearman & Sterling; Clifford Chance; Linklaters; and Simpson Thacher & Bartlett. Holland & Knight, which has handled numerous sovereign and provincial bonds for Argentina, reports that it has worked across from some of the same Magic Circle firms on various deals.

"There's no need to open an office in Argentina right now because the amount of business you can get in Argentina right now doesn't justify a move," Errecondo says.

Cleary Gottlieb, working as CGSH International Legal Services in Buenos Aires, does have an advantage in being the only U.S. firm with a local office specializing in New York law, lawyers said. Baker McKenzie has an office in Argentina too, but it only practices Argentine law.

One local firm managing partner says many established Argentinian firms are wary of allying with a foreign firm because of the near-certainty of losing referrals from other international firms.

"There will be political ups and downs, but no country of which I am aware has as many underdeveloped natural resources and underutilized human capital as Argentina," Vianna says. "If we assume that political risk has already touched bottom, it's all upside." ■



WHAT TO DO IN CHINA?

A record year for outbound investment didn't quell the profitability and regulatory struggles global firms face.

By Anna Zhang

CHINA'S RECORD-SETTING OUTBOUND INV-estment boom in 2016 was a boost to both international and domestic law firms in that country. For example, China National Chemical Corp.'s $43 billion acquisition of Swiss agribusiness group Syngenta A.G. and the related financing and regulatory proceedings gave work to at least nine firms, including global firms Simpson Thacher & Bartlett, Davis Polk & Wardwell, Clifford Chance, Linklaters and White & Case [see "High-Stakes Diplomacy," page 68].

But the deals did little to alleviate the overall difficulties facing global firms in China. The longstanding problem of fee pressures and low profitability has worsened with Hong Kong capital markets deals becoming smaller and the Chinese economy continuing to slow. Some firms have reacted by pulling out of the Chinese market. Other firms have opted for a leaner presence. After a 40-lawyer corporate and capital markets team left Orrick, Herrington & Sutcliffe's Hong Kong office, Orrick said Hong Kong law securities work was no longer part of the firm's strategy globally. Vinson & Elkins lost two partners after a strategic review shifted the China practice's focus to global energy clients, international disputes and intellectual property. Winston & Strawn closed its Taipei and Beijing offices and saw multiple departures from its Hong Kong and Shanghai offices.

The Chinese government has put some brakes on the outbound investment, restricting capital outflow this year for transactions involving real estate, hotels, cinemas and sports clubs, while deals in infrastructure, energy and logistics will still be encouraged.

Emma de Ronde, a Hong Kong-based partner at Norton Rose Fulbright, says volume of larger-ticket outbound deals has already dropped so far in 2017; she is now seeing work coming from small-to-mid-cap market deals, which tend to receive lower levels of scrutiny.

Meanwhile, global firms have continued their efforts to go local in China. Although barred from practicing Chinese law, foreign law firms have several options for forming alliances with Chinese firms. Last year, two more international firms, Hogan Lovells and U.K.'s HFW launched joint offices with Chinese partner firms in the Shanghai Free Trade Zone. And earlier this year, Linklaters set up a "best friends" firm with a group of its former lawyers in the Shanghai FTZ, with an eye on forming an official joint office in a few years.

Despite hurdles, China will remain indispensable to many U.S. firms. "Most firms will still want to maintain a strategic base in China, especially after the 08-09 financial crisis," says Laura Zhao, head of Hong Kong-based recruiting firm Togni & Zhao. "As firms reinforce what has already been a quite bottom-line driven business model, the market in China will likely keep status quo instead of seeing massive pullouts." ■

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BIG LAW'S MISGUIDED FASCINATION WITH GROWTH

LAW FIRM EXPANSION REMAINS EN VOGUE, BUT IS IT DONE FOR THE RIGHT REASONS?

By Hugh A. Simons

THERE IS NO ECONOMIC REQUIREMENT FOR PUBLIC COMPANIES or law firms to grow. There is a requirement that they provide a robust return to shareholders: failure to do so results in shareholders taking their capital (public companies) or labor (law firms) elsewhere. In the public company world, growth drives shareholder returns; hence growth is a means to achieve the superordinate goal. Many law firms assume growth must similarly be good for them. This is misguided. The linkage between growth and shareholder returns at public companies doesn't hold for law firms. Good growth for law firms centers on a narrow set of opportunities.

THE PUBLIC COMPANY RATIONALE FOR GROWTH

For public companies, growth enhances shareholder returns through stock price appreciation. This linkage rests on two economic fundamentals: One is that companies typically have significant excess cash flow that they can deploy from one business to another; the other is that equity markets allow shareholders to realize value today for anticipated future earnings. Neither applies in the law firm world.

On the former: Companies can be thought of as portfolios of businesses, where each has different cash flow characteristics—some generate more cash than they consume; some consume more cash than they generate. Management directs the net cash flows across the portfolio. The growth-share matrix, developed in the 1970s by The Boston Consulting Group, describes how to do this: Excess cash is taken from the "cash cow" businesses and invested in "question marks" so as to turn them into "stars."

Law firms can likewise be thought of as portfolios of businesses where partners in different practices or offices comprise the distinct businesses. Here the similarities end. There is no excess cash flow in a comparable sense at a law firm. For such to exist, a partner would have to be paid less than the economic value of their practice. If such a shortfall pertained in a significant or sustained way, the partners would become susceptible to departure to rival firms. This dramatically limits the amount of cash that can be taken from "cash cows" and that can be repaid by "stars."

On the latter economic fundamental: when a public company makes an investment it effectively takes cash from current shareholders (as the cash invested could have been used to pay a dividend or buy back shares) and invests it in a "question mark" opportunity. If the equity markets perceive the "question mark" as a good investment then, because a stock's price is a reflection of anticipated future cash flows, today's stock price will rise. Thus, the shareholders who forgo the cash to make the investment are the same as the shareholders who benefit from the investment.

This is not the case with law firms. Consider, say, a law firm investing today in building a China practice. The office costs, local lawyer salaries, ex-pat packages and subsidized partner compensation are borne by today's home-market partners. It will likely take many years for the China prac-

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tice to generate more cash than it consumes. Thus, any return of the cash invested by today's partners will be paid out to a future, different, group of partners. For other than investments with fast payback, wealth is being transferred from today's partners to some future generation of partners. Risk of departure of, and a sense of fairness to, today's partners limits investments with such long-term payback.

LAW FIRM LEADERS HAVE TO BE PARTICULARLY CONSCIOUS OF THEIR OWN MOTIVATIONS. AFTER ALL, IT'S A LOT MORE FUN TO TALK WITH HEADHUNTERS AND POTENTIAL LATERALS THAN TO DEAL WITH ORNERY INCUMBENT PARTNERS.

THE LAW FIRM RATIONALE FOR GROWTH

These differences require that for growth to be "good growth" at law firms it should entail modest outlays that are recouped quickly. Some such opportunities do exist.

One is to grow commensurate with growth in demand from existing clients. To be precise, this means growing with the volume of demand (i.e., exclusive of billing rate increases), and it applies only to net growth. (That is, while demand volume from some clients increases, demand from others contracts; only the net growth pertains.) As net volume growth is low, the up-front sum invested in lawyer capacity is moderate, and because there is no time lost in business development, etc., the payback is quick.

Another opportunity for growth comes from exploiting inconsistencies in the market. For example, if a firm is paying a partner significantly less than what is consistent with the economic value of her practice, she can be picked off by a competitor with a better compensation offer, but one that is below that suggested by the worth of her practice. In such cases, a portable book ensures relatively low investment outlays, and the gap between compensation at the new firm and the worth of the practice ensures fast payback. An example of this occurred when high-end U.S. firms arrived in London and lured partners with very economically attractive practices away from the Magic Circle firms, whose lockstep compensation systems undercompensated them.

A third way is to grow behind existing "increasing returns" positions. This requires some explanation. Consider a company like eBay, which is a two-sided business—it competes for buyers and for sellers. It makes itself attractive to buyers by having lots of sellers, and vice versa. Two-sided businesses with these mutually-reinforcing characteristics exhibit what is referred to as "increasing returns." Competitors who are ahead tend to get further ahead, and those who get behind tend to fall further behind. Once established, the winners in an increasing-returns dynamic effectively lock out would-be competitors and thereby enjoy strong price realization and above-normal profitability.

Law is similarly a two-sided business. Firms compete for the best clients and for the best lawyers; they make themselves appealing to clients by having the best lawyers (in the segments they serve) and to lawyers by attracting the best clients and matters in those segments. This mutual reinforcement leads law firms to exhibit increasing returns: Once a firm gets ahead in a segment, it tends to move further ahead, and when a firm gets behind, it falls further behind. These positions reduce competitive intensity for the winners, leading to strong price realization and profitability.

Growth in increasing returns positions requires modest up-front investment as there is relatively little marketing and business development to be done—the firm is essentially capitalizing on its established renown. As the ramp-up period to full utilization for lawyers added to the position is short, the payback is quick. Leveraging this dynamic enables simultaneous growth in revenues and profitability, consistent with the justifiable rationale for law firm growth. An example of this dynamic in action is Quinn Emanuel Urquhart & Sullivan and its singular focus on business litigation. From 2004 to 2016 the firm climbed the Am Law 200 from No. 199 to No. 86 while climbing the profit per partner (PPP) rankings from twelfth to second. Similarly, Kirkland & Ellis, with its strong emphasis on private equity, bankruptcy, and litigation, rose over the same period from ninth to second in revenue, and from 10th to fifth in PPP. It is not only high-prestige segments that can exhibit increasing returns. The same dynamic can be seen in any well-defined segment with the opportunity for lowered competitive intensity and heightened profitability.

All this is to say that law firms should be chary of simply co-opting the public company view of growth as vital or even a virtue. Law firm leaders have to be particularly conscious of their own motivations. After all, it's a lot more fun to talk with headhunters and potential laterals than to deal with ornery incumbent partners who are not doing all they could to further their firm's collective agenda. Addressing the latter, though, is likely to do more for the firm's health and longevity than is growth. Alas, leading just isn't easy.

Hugh A. Simons, Ph.D., is an ALM Intelligence fellow. He is a former senior partner and chief financial officer at The Boston Consulting Group and former chief operating officer at Ropes & Gray. The ALM Intelligence Fellows Program is a collaboration between ALM and leading thought leaders in the legal industry. The program aims to foster the development of data-driven research on key topics related to the business of law.

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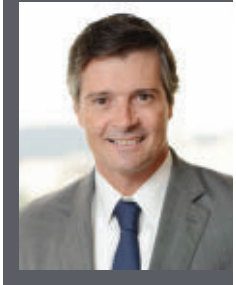
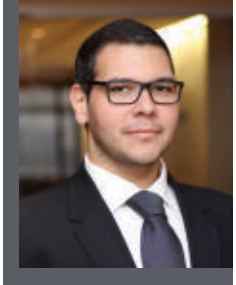
THE NEW NOVO MERCADO LISTING RULES: THE BRAZILIAN CAPITAL MARKET EVOLVES



CARLOS FREDERICO BINGEMER, PARTNER



FILIPE THOMPSON, LAWYER

After a long period of political instability and economic stagnation, due to a systemic crisis boosted by corruption scandals that go back to the beginning of Brazil's re-democratization process, the Brazilian economy is finally showing signs of recovery.

For instance, it is expected that the Brazilian Gross Domestic Product will grow around 0.50% in 2017 and 2.00% in 2018, after declining in the last two years, by 3.6% in 2016 and by 3.8% in 2015.

Moreover, with the current exchange rate favoring foreign investors (around BRL 3,11 to USD 1.00 on the eve of the release of this article*), the domestic market blooming (with startups and other small to medium businesses experiencing sharp growth and looking for new investments, benefiting from the difficulties and losses experienced by bigger, traditional and consolidated companies), easier access to bank credit (the Basic Interest Rate, which leads interest rates charged by all Brazilian financial institutions, was at 13.65% at the end of 2016, is currently at 8.25% and now is expected to be 7.25% at the close of this year), the resumption of important infrastructure projects (with concessions of public services and privatization of stated-owned companies) and new developments in the capital market development, Brazil is becoming more attractive.

In this scenario, one of the main topics that has drawn the investors' attention are changes in the capital market, currently led by the reform of the Novo Mercado Listing Rules carried out by B3 S.A. - Brasil, Bolsa, Balcão, Brazil's stock exchange.

For example, in order for a publicly-held company to have its shares listed and traded on the Novo Mercado (the "New Market", a segment that companies can opt to join), they must comply with the high standards for transparency and corporate governance set forth in the listing rules.

The Novo Mercado has gained strength as a model segment for initial public offerings, specially during the IPO boom that the country has experienced back on 2006-2007, and in fact companies whose shares are listed and traded in other segments of the stock market are increasingly deciding (or at the very least considering) to migrate to the Novo Mercado. The main goal of these companies is to add value to their shares, with the adoption of high standards of governance and strict rules to protect their shareholders, which ultimately are better seen by institutional investors than in other segments.

After intense discussion among the companies listed in the Novo Mercado, the proposal, spearheaded by B3, to improve the segment through new listing rules that adapt the best standards worldwide to the particularities of the Brazilian securities market was approved on June 23, 2017 (the day on which the voting results were announced). In its response to the demand for improved corporate governance, the approval of the Novo Mercado reform could be a historic milestone for the Brazilian capital market.

Among the innovations introduced by the recently approved Novo Mercado Listing Rules, the most important are:

- A minimum free float requirement of 25% of the company's capital stock, although it can dip to 15% in the first 18 months after the company's IPO, if the offer achieves certain financial volume requirements;
- At least 20% of the company's Board of Directors must be independent, subject to a minimum of two independent members;
- Mandatory adoption of an Audit Committee composed of independent members of the Board of Directors and persons with proven experience in corporate accounting;

- Mandatory disclosure of an annual report prepared by the Audit Committee;
- Mandatory maintenance of a permanent Internal Audit staff, to be in charge of checking the quality and effectiveness of risk management procedures, internal controls and corporate governance, working alongside the Board of Directors or the Audit Committee;
- A requirement for adoption of compliance, internal controls and corporate risk management functions, to be developed and headed by persons with no connection to the company's operational areas;
- Mandatory adoption of policies (and disclosure to shareholders of the contents of such policies) on compensation, risk management, transactions between related parties, trading in securities, and appointment of members to the Board of Directors, its advisory committees and the Board of Officers; internal rules for the Board of Directors, its advisory committees, the Fiscal Council and the Audit Committee; and a Code of Conduct applicable to all the employees and managers of the company.

The revised Novo Mercado Listing Rules not only demonstrate a clear evolution in the Brazilian capital market, but also that the standards adopted under the reform are in accordance (and sometimes in advance of) with international standards of corporate governance.

Among such innovations, the Code of Conduct required under the new Listing Rules merits particular attention, because it is, in no small part, a result of the systemic corruption crisis that Brazil has been suffering. The Code of Conduct must cover, at a minimum: the principles and values of the company; rules on the requirement for compliance and knowledge of applicable legislation and regulations; the duties of the company and of its employees to society; a method for organizing and dealing with complaints; a mechanism to prevent retaliation; penalties; and the provision of periodic training sessions in order to ensure that the Code of Conduct is respected.

In addition, listed companies' directors must structure and disclose an evaluation process for all the members of the company's management (including the Board of Directors, its advisory committees and the Board of Officers).

Although the Novo Mercado Listing Rules have been approved in the stock exchange, approval by the CVM, Brazil's Securities and Exchange Commission, is still pending. The CVM is expected to give its approval by the end of 2017 and the final text of the Rules should be published in the first quarter of 2018, with the new Listing Rules coming into force three months after publication of the final text. Once this procedure is concluded, companies already listed on the Novo Mercado will have a little more than two years to adapt their bylaws to the new Rules: the deadline is the Annual Shareholders' Meeting called to approve the financial statements for the second year following the year in which the new Novo Mercado Listing Rules come into force. According to the expected timeline, that means that the deadline will be April 2021.

With the reform of the Novo Mercado Listing Rules, the Brazilian capital market is betting on the adoption of better corporate governance standards, disclosure obligations and institutional structures for oversight and control to make Brazilian publicly-held companies even more attractive to foreigner investors.

In the view of specialists and of the stock exchange itself, these changes reinforce the Novo Mercado's status as an international benchmark: the new Listing Rules means that the Novo Mercado meets international standards (and even exceeds them in their risk management provisions). B3 conducted worldwide research, covering at least 21 countries, and took into consideration standards from five different stock exchanges, 11 corporate governance codes and recommendations from distinct international bodies such as the Organisation for Economic Co-operation and Development and the International Corporate Governance Network.

The minimum free float of 25%, for example, is an international standard present on major stock exchanges (such as NYSE, NASDAQ, London Stock Exchange and Deutsche Börse). The new Listing Rules, in turn, establishes situations in which the free float can dip to 15% if demonstrated that the shares have the desired liquidity. The higher the free float, in theory, the greater the liquidity of the shares — which is reflected in a more adequate pricing of the stock. Exceptions to the 25% free float rule reflect that the new Listing Rules sought to be attentive to the market and to the fundamentals of the rules.

With the proposed changes, that shall modernize the Novo Mercado listing segment, it is expected that foreign investors will look with even more attention to the Brazilian capital market, contributing to its development.

Carlos Frederico Bingemer is a partner in BMA's Corporate Law practice area. He has broad experience in M&A (including distressed assets), corporate restructurings, advice to publicly-traded companies and infrastructure transactions, acting for both national and international clients. His practice covers a range of sectors, such as energy, real estate, retail and telecommunications.

Filipe Thompson is a lawyer in BMA's Corporate Law practice area, with experience in M&A, corporate restructurings, legal advice to publicly-traded companies, corporate disputes, hostile takeovers, joint ventures, business agreements and general cross-border deals. His practice includes the O&G, energy, telecommunications, publishing, finance, real estate, chemical, insurance and retail sectors.

BMA - Barbosa Müssnich Aragão is now one of the leading law firms in Latin America, advising both Brazilian and international clients. The firm's comprehensive practice covers the legal issues and repercussions of business activity, with special attention to the peculiarities of Brazilian law for the foreign investor.

*Exchange rate at September 7, 2017

CHINA ON THE RISE

OUTWARD INVESTMENT BY CHINESE COMPANIES FUELED LOCAL LAW FIRMS' GROWTH IN 2016.

BY ANNA ZHANG

RIDING CHINA'S RECORD-SETTING OUTBOUND investment boom, the country's largest law firms are catching up with their global counterparts in financial performance. A historic volume of $221 billion in mergers and acquisitions, as measured by Thomson Reuters, brought high demand in legal services.

This year our ranking of the top-grossing Chinese firms has expanded to 40 firms, with total revenue of $6.1 billion. Global giant Dentons remains at the top of the list with $2.2 billion in revenue, while King & Wood Mallesons, despite a crisis that eventually placed the firm's European arm under administration in the United Kingdom, has managed to hang on to second place with $806 million in revenue. Third-ranked Zhong Lun Law Firm increased its revenue by 18.4 percent to $373 million.

In 2016, eight Chinese firms, including All-Bright Law Offices, Grandall Law Firm, De-Heng Law Offices and JunHe, exceeded $200 million in revenue, up from six the year before. Ten firms had revenue that would qualify them

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for the Am Law 200, if they were U.S.-based.

To compile the rankings, we asked Chinese law firms to report their gross revenue in calendar year 2016 alongside their full-time lawyer equivalents. In a few cases, when firms didn't provide census or financial figures, we made estimates based on our own reporting. Twelve firms also reported valid profit figures; for the first time ever, we are able to have a sneak peek of leading Chinese firms' profits per equity partner (PPP), one of the most important benchmarks to assess a law firm's profitability.

Only two Chinese firms, Dentons and King & Wood, are on this year's Global 100 revenue ranking [see chart, "Most Revenue," page 33]. Both draw significant revenue from outside China, where fees tend to be higher: Dentons has strong roots in the U.S. and U.K. markets, and King & Wood had a large part of its revenue coming from its Australian arm. But 1,436-lawyer Zhong Lun, which is almost entirely China-based, is getting closer. Its $373 million in revenue is only $38 million below that of the lowest-ranked firm on the Global 100.

Fourth-ranked Yingke Law Firm, broke the $300 million mark for the first time, with a year-on-year revenue increase of 51 percent to $305.5 million. Already the second-largest law firm in China by number of lawyers, Yingke, which is more loosely organized than Dentons or King & Wood, also grew by 27 percent in head count to 6,278 lawyers. Mei Xiangrong, global managing partner, says that one strong driver was a spike in cross-border work. "Our international work increased by at least 50 percent," says Mei, thanks to Chinese clients' outbound investment boom. Yingke also benefited from the Chinese government's Belt and Road Initiative, a strategy to develop a China-centered trade and economic network in Asia, Russia and the Middle East.

Further down the rankings, Beijing-based Guantao Law Firm saw the largest revenue growth; the 680-lawyer firm reported $68 million in gross income last year, up 70 percent from 2015's $40 million. A full-service firm, Guantao is better known for projects

CHINA 40: MOST REVENUE

THE HIGHEST-GROSSING CHINESE FIRMS, RANKED BY 2016 GROSS REVENUE

RANK	FIRM	GROSS REVENUE $USD*	2016 FIRMWIDE LAWYERS
1	Dentons	$2,205,000,000	7,445
2	King & Wood Mallesons	$806,000,000	2,397
3	Zhong Lun Law Firm	$373,000,000	1,436
4	Yingke Law Firm	$305,500,000	6,278
5	AllBright Law Offices	$272,500,000	1,661
6	Grandall	$245,000,000	1,600
7	DeHeng Law Offices	$226,000,000	1,992
8	JunHe	$205,000,000	454
9	Fangda Partners	$136,500,000	451
10	Tian Yuan Law Firm	$80,500,000	372
11	Long An Law Firm	$74,500,000	850
11	Zhong Yin Law Firm	$74,500,000	1,875
13	Jingtian & Gongcheng	$74,000,000	382
14	Guantao Law Firm	$68,000,000	680
14	Han Kun Law Offices	$68,000,000	175
16	Tahota Law Firm	$66,500,000	590
17	Global Law Office	$57,500,000	369
17	Jincheng Tongda & Neal	$57,500,000	610
19	Beijing DHH Law Firm	$53,000,000	1,035
20	Beijing Kangda Law Firm	$48,000,000	400
20	Haiwen Partners	$48,000,000	140
22	Zhonglun W&D Law Firm	$46,500,000	740
23	JunZeJun Law Offices	$44,500,000	482
24	Commerce & Finance Law Offices	$43,500,000	239
25	Llinks Law Offices	$40,500,000	75
26	East & Concord Partners	$34,500,000	300
26	Hylands Law Firm	$34,500,000	234
28	Gaopeng & Partners	$33,500,000	267
29	Co-effort Law Firm	$33,000,000	378
29	King & Capital Law Firm	$33,000,000	500
31	Jia Yuan Law Offices	$27,500,000	83
32	AnJie Law Firm	$27,000,000	183
33	Guanghe	$24,500,000	519
34	Duan & Duan	$24,000,000	300
35	Tenet & Partners	$19,000,000	200
36	Broad & Bright	$18,000,000	104
36	MWE China Law Offices	$18,000,000	48
38	Wintell & Co	$14,500,000	101
39	Lantai Partners	$14,000,000	302
39	Wang Jing & Co.	$14,000,000	65

*Yuan converted to $USD using U.S. Federal Reserve System foreign exchange rate for 2016. The exchange rate is 6.64 yuan per dollar.

and finance work and has a nonexclusive alliance with Ashurst.

Cui Liguo, firm managing partner, attributes the growth largely to the two mergers the firm did in Shanghai last year to build a stronger base in eastern China. In April, the firm merged with longtime partner firm, 40-lawyer real estate and construction boutique Zhongmao Law Firm; and in August, with 60-lawyer full-service firm Shenda Partners. In addition, Cui says, legacy Guantao was able to keep a 20 percent growth rate thanks especially to strong performance in its litigation and arbitration practice. Last year, Guantao successfully helped a Hong Kong subsidiary of a German timber trading company win two parallel arbitration cases before the China International Economic and Trade Arbitration Commission and the Lithuanian Court of Arbitration over a cyberattack dispute.

Revenue per lawyer (RPL) at Chinese firms is still dramatically lower than at their global counterparts. The 40 Chinese firms we ranked had an average RPL of $167,672. That's almost $20,000 lower than the average RPL of the 35 firms ranked in 2015—and it's just a fraction of the average RPL for The Global 100 ($813,150) or The Am Law 100 ($907,765).

Nor are China's highest-grossing firms necessarily the most productive in terms of revenue per lawyer. Shanghai firm Llinks Law Offices, number 25 on the revenue chart, retained the top spot on the RPL ranking with $540,000 in 2016. Eight firms reported $300,000 or more in RPL, up from six in 2015. These included two of this year's newcomers, 48-lawyer MWE China Law Offices ($375,000) and 83-lawyer Jia Yuan Law Offices ($330,000).

MWE China, which has a decade-old alliance with U.S. firm McDermott Will & Emery, has focused on compliance and government enforcement work. Since 2014, through cooperation with McDermott Discovery, the firm also runs MWE China Data Center in Shanghai to review and analyze digital evidence for investigations and compliance clients.

Beijing-based Jia Yuan is strong in capital markets and public M&A transactions. Last year, it served as Chinese counsel to home appliance maker Midea Group Co. Ltd. on a $5 billion acquisition of German robotics company Kuka A.G. and China Resources Pharmaceutical Group Ltd.'s $1.8 billion Hong Kong listing.

The small group of firms with higher RPLs includes Han Kun Law Offices ($390,000), Haiwen & Partners ($345,000) and Fangda Partners ($305,000), all of which have strong cross-border practices. Han Kun, alongside Davis Polk & Wardwell, advised Uber on its $7 billion sale of China business to rival Didi Chuxing, represented by Fangda and Skadden, Arps, Slate, Meagher & Flom. Haiwen served as Chinese counsel to the Postal Savings Bank of China Co. Ltd.'s $7.4 billion listing on the Hong Kong Stock Exchange, the largest initial public offering in the world in 2016.

When it comes to profitability, however, Chinese firms can come closer to their international counterparts. The chart above shows profit per equity partner figures for 12 Chinese firms, based on Global 100 data or profit data reported by the firms. (Because this group is largely self-selected, it likely includes firms with profits higher than average.) Han Kun, which has 30 equity partners, had the highest reported PPP of $1.435 million in 2016; on a global level, that's slightly above Morrison & Foerster's $1.41 million. Shanghai-based shipping law boutique Wintell & Co. had $1.355 million in PPP last year; the firm's equity is tightly held by just seven partners out of 41. Both Han Kun and Wintell, as well as JunHe, which reported $1.04 million in PPP, have profit margins higher than 60 percent.

As Chinese firms achieve better financial results, international firms are showing more interest in teaming up with them to acquire Chinese law capability. In 2016, Wintell formed an association with U.K. firm HFW in the Shanghai Free Trade Zone. Hogan Lovells also struck an FTZ alliance last year with China's Fujian Fidelity Law Firm.

But following the collapse of King & Wood Mallesons' European arm, Chinese firms are more cautious about internationalization. Guantao's Cui Liguo says that Chinese firms are still relatively less experienced in globalization, and should take a step-by-step approach based on clients' needs. Outbound investment may be going gangbusters for Chinese companies, but for law firms, Cui says, "making mergers and acquisitions overseas can be quite risky."

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PROFITABILITY

PROFITS PER EQUITY PARTNER AT A DOZEN CHINA 40 FIRMS

FIRM	2016 NET INCOME*	EQUITY PARTNERS	PROFITS PER PARTNER
Han Kun Law Offices	$43,000,000	30	$1,435,000
Wintell & Co	$9,500,000	7	$1,355,000
JunHe LLP	$135,500,000	130	$1,040,000
Llinks Law Offices	$17,000,000	18	$970,000
Commerce & Finance Law Offices	$21,000,000	28	$750,000
Co-Effort Law Firm	$24,000,000	39	$615,000
Broad & Bright	$9,000,000	17	$530,000
Tian Yuan Law Firm	$38,500,000	73	$525,000
Guantao Law Firm	$15,000,000	32	$470,000
Gaopeng & Partners	$11,500,000	74	$155,000
Zhong Yin Law Firm	$9,290,000	108	$85,000
Chance Bridge Partners	$72,847	8	$10,000

*Yuan converted to $USD using U.S. Federal Reserve System foreign exchange rate for 2016. The exchange rate is 6.64 yuan per dollar.

CHINA 40: REVENUE PER LAWYER

THE HIGHEST-GROSSING CHINESE FIRMS, RANKED BY 2016 RPL

RANK	FIRM	GROSS REVENUE $USD*	2016 FIRMWIDE LAWYERS	2016 REVENUE PER LAWYER
1	Llinks Law Offices	$40,500,000	75	$540,000
2	JunHe	$205,000,000	454	$450,000
3	Han Kun Law Offices	$68,000,000	175	$390,000
4	MWE China Law Offices	$18,000,000	48	$375,000
5	Haiwen Partners	$48,000,000	140	$345,000
6	King & Wood Mallesons	$806,000,000	2,397	$335,000
7	Jia Yuan Law Offices	$27,500,000	83	$330,000
8	Fangda Partners	$136,500,000	451	$305,000
9	Dentons	$2,205,000,000	7,445	$295,000
10	Zhong Lun Law Firm	$373,000,000	1,436	$260,000
11	Wang Jing & Co.	$14,000,000	65	$215,000
11	Tian Yuan Law Firm	$80,500,000	372	$215,000
13	Jingtian & Gongcheng	$74,000,000	382	$195,000
14	Commerce & Finance Law Offices	$43,500,000	239	$180,000
15	Broad & Bright	$18,000,000	104	$175,000
16	AllBright Law Offices	$272,500,000	1,661	$165,000
17	Global Law Office	$57,500,000	369	$155,000
17	Grandall	$245,000,000	1,600	$155,000
19	AnJie Law Firm	$27,000,000	183	$150,000
20	Hylands Law Firm	$34,500,000	234	$145,000
20	Wintell & Co	$14,500,000	101	$145,000
22	Gaopeng & Partners	$33,500,000	267	$125,000
23	Beijing Kangda Law Firm	$48,000,000	400	$120,000
24	DeHeng Law Offices	$226,000,000	1,992	$115,000
24	East & Concord Partners	$34,500,000	300	$115,000
24	Tahota Law Firm	$66,500,000	590	$115,000
27	Guantao Law Firm	$68,000,000	680	$100,000
28	Jincheng Tongda & Neal	$57,500,000	610	$95,000
28	Tenet & Partners	$19,000,000	200	$95,000
30	JunZeJun Law Offices	$44,500,000	482	$90,000
30	Long An Law Firm	$74,500,000	850	$90,000
32	Co-effort Law Firm	$33,000,000	378	$85,000
33	Duan & Duan	$24,000,000	300	$80,000
34	King & Capital Law Firm	$33,000,000	500	$65,000
34	Zhonglun W&D Law Firm	$46,500,000	740	$65,000
36	Beijing DHH Law Firm	$53,000,000	1,035	$50,000
36	Yingke Law Firm	$305,500,000	6,278	$50,000
38	Guanghe	$24,500,000	519	$45,000
38	Lantai Partners	$14,000,000	302	$45,000
40	Zhong Yin Law Firm	$74,500,000	1,875	$40,000

*Yuan converted to $USD using U.S. Federal Reserve System foreign exchange rate for 2016. The exchange rate is 6.64 yuan per dollar.

BEYOND THE NUMBERS

THE BIG FOUR'S GROWING PRESENCE IN THE GLOBAL LEGAL MARKET.

By Nicholas Bruch, David B. Wilkins and Maria J. Esteban Ferrer

MANY FALSELY BELIEVE THE BIG FOUR were kicked out of the legal industry in the early 2000s. The Economist even went so far as to state, after the Enron scandal drove regulators to limit the range of legal services audit firms could provide, that "accountancy firms' drive in the legal arena is dead."

Such reports—as Mark Twain once famously said when he was informed of a rumor of his own death—were greatly exaggerated.

There is increasing evidence that law firms are finally waking up to this reality. Two recent reports by ALM Intelligence show that law firm leaders see the Big Four as a significant threat to their firms' revenue streams and market positions.

They also report that the Big Four appear well-placed to expand into a wider range of services, including those higher up the value chain.

A GLOBAL FOOTPRINT

To see the threat posed by the Big Four, one need only look at the number of countries where these newly re-energized players are currently offering a wide range of legal services.

As documented in a recent article by Harvard Law School's Center on the Legal Profession (CLP) and an accompanying academic article in the Law & Social Inquiry journal of the American Bar Foundation, during the last decade the Big Four have been quietly expanding their legal arms. By May 2016, PricewaterhouseCoopers had established legal practices in 85 countries worldwide, KPMG in 53 countries, and Deloitte and EY in 73 countries.

Taken together a total of 106 countries are currently hosting at least one of the Big Four's legal practices, giving them a significant presence in every important legal market in the world with the notable exception of the United States.

Moreover, these legal practices are growing rapidly in strength and stature. In France, Spain, Italy and Russia, law firm rankings now put the Big Four's legal practices in the top 10 in terms of revenue. In Germany and the United Kingdon, the Big Four are showing double-digit annual revenue growth.

The Big Four's progress in emerging markets is even more impressive. Accounting firms have been investing heavily in Asia, Africa and Latin America. ALM Intelligence research shows that Asia-Pacific and Latin America col-

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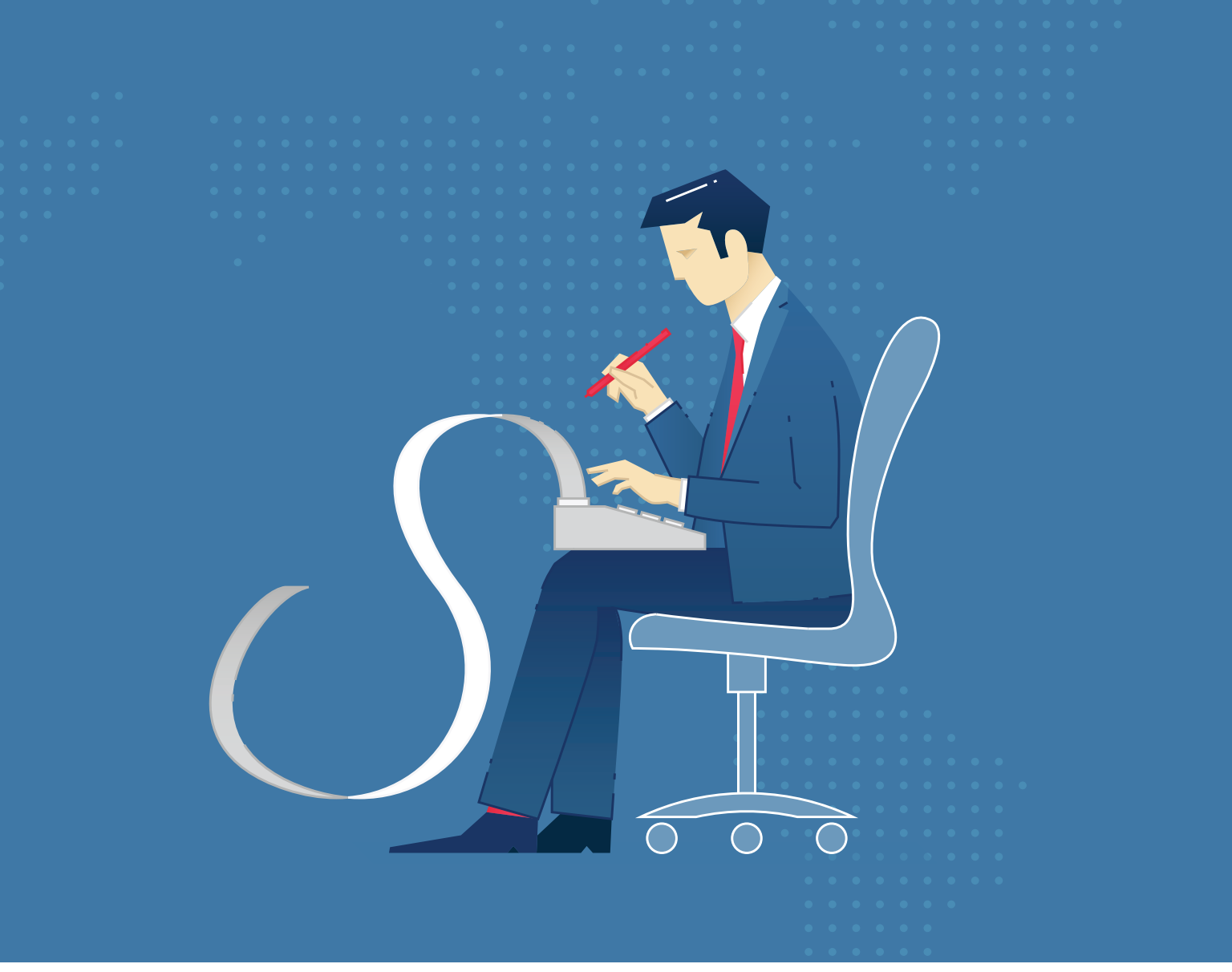


lectively account for 76 percent of the Big Four's lateral partner hires in the legal industry since the start of 2016.

Those investments, and others like them, are beginning to pay off. In 2015, EY Law's network firm in China—EY Chen & Co.—was ranked by a Chinese law journal in the top third for "Eminent Performance" in capital-market related legal services. That same year, PDS Legal—EY's law network firm in India—was ranked by Venture Intelligence among the top 10 advisers in completed M&A deals.

The Big Four's gains are important. A significant amount of the growth in the legal market over the past five years has originated in emerging markets. If law firms lost the war for these markets, it would deprive them of much-needed growth opportunities.

THE DRIVERS OF EXPANSION

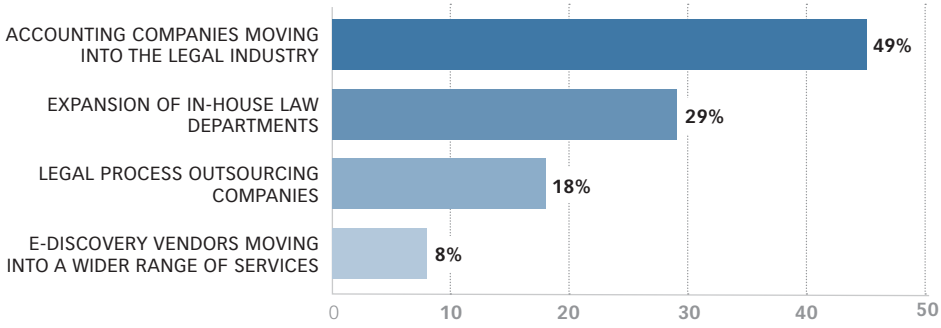
As ALM Intelligence and CLP's research underscores, three interrelated factors seem likely to fuel the Big Four's rapid expansion. First, while Sarbanes–Oxley and other related statutes severely restrict the Big Four's ability to sell non-audit services, it does not ban them from the legal market altogether. While accounting firms are barred from selling legal and other non-audit services to their audit clients, nothing prevents them from marketing such services to non-audit clients, which they all now aggressively do.

A second force driving acceleration for the Big Four is the unique model they are using to penetrate the legal industry. In many jurisdictions the regulation of the legal profession either explicitly or implicitly permits "alternative business structures," including the kind of multidisciplinary practices (MDP) championed by the Big Four. The MDP model, which aims to combine law, accounting, tax, finance, strategic consulting, and information technology into one integrated service offering, is the Big Four's unique selling point against law firms. By committing themselves to this multidisciplinary approach—as opposed to trying to copy Big Law as they did in the 1990s—the Big Four are increasingly able to market themselves as "globally integrated business solutions providers."

In areas where the Big Four can package legal services alongside their strengths in tax and advisory services, the multidisciplinary model has been popular with clients. This is particularly true in areas such as tax and labor

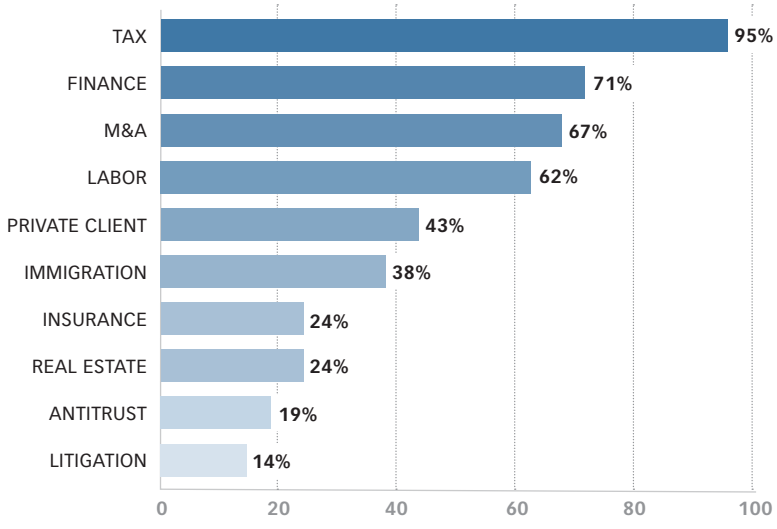
WHICH COMPETITORS DO YOU CONSIDER TO BE A MAJOR THREAT TO YOUR LAW FIRM'S MARKET SHARE?

Percentage of Respondents



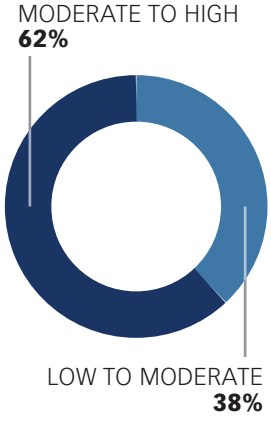
WHAT PRACTICE AREAS DO YOU THINK ACCOUNTING COMPANIES ARE BEST POSITIONED TO TAKE MARKET SHARE FROM LAW FIRMS?

Percentage of Respondents



WHAT VALUE OF WORK ARE ACCOUNTING COMPANIES BEST POSITIONED TO WIN WORK IN?

Percentage of Respondents



Source: ALM Intelligence

and employment, where the Big Four are now seen as leading providers of legal services. But it is also true in higher value areas like M&A, where the Big Four are rapidly expanding.

A third force is the Big Four's growing investment in the intersection of law and technology. Over the past several years, the Big Four have been developing an array of services which look more similar to those offered by alternative legal service providers than traditional law firms. These services, aim to combine process improvement, technology and talent to deliver legal services at a lower cost than traditionally offered by law firms.

Deloitte's investments in these areas are illustrative of this trend. In 2014, Deloitte purchased ATD Legal, one of the few providers of managed docu-

ment review services in Canada. In 2016, they followed with a purchase of Conduit Law, a provider of outsourced lawyers. Most recently, they formed a strategic alliance with Kira Systems, which has been described by the company's CEO Noah Waisberg as "the largest professional services AI [artificial intelligence] deployment anywhere, period."

PwC's recently announced partnership with GE provides one example of what a managed legal services future might look like. In 2017, PwC signed an agreement with GE to provide integrated, enterprise managed tax services on a global basis for a five-year period. As part of the deal, PwC agreed to hire more than 600 members of GE's tax team, including many lawyers. PwC announced that these individuals will not only service GE, but will also be available for other clients.

To be sure, most of the tax work that PwC will be doing for GE would not be considered premium by the tax departments of most top law firms. But as the global head of one of the Big Four's legal arms underscored, their goal is not to concentrate on "bet the company" cases, as most large law firms obsessively do, but instead on "run the company" cases. Such a strategy will give the Big Four a seat at the table as companies strive to reign in the cost of providing legal and other related services in the new global age of more for less.

THE THREAT TO BIG LAW

Whether these and other similar moves by the Big Four will enable these newly energized players to significantly disrupt the market for corporate legal services remains to be seen. Law firm leaders, for their part, appear concerned. In a recent report by ALM Intelligence, titled "Elephants in the Room: The Big Four's Expansion in the Legal Services Market," 66 percent of law firm leaders reported they were concerned about the expansion of the Big Four. Tellingly, they reported accounting firms as the competitor they were most concerned about, ranking them ahead of expanding in-house teams or other alternative legal service providers.

IN A RECENT SURVEY, MORE THAN TWO-THIRDS OF LAW FIRM LEADERS SAID THE BIG FOUR ARE AN EMERGING THREAT TO THEIR FIRMS' FINANCE AND M&A PRACTICES.

Most concerning were the practice areas that law firm leaders identified as areas where the Big Four were well-positioned to steal market share. More than 70 percent of survey respondents reported that the Big Four posed a threat in finance-related practice areas. Sixty-seven percent were concerned about M&A practices. These findings suggest two things. First, law firms appear to be collectively waking up to the threat the Big Four pose. Second, that threat is likely larger and faster-moving than many initially thought.

Law firm leaders need not look farther than the consulting industry for an example of the Big Four's potential for disruption. After divesting their consulting arms in the 1990s and early 2000s, over the past decade, the Big Four have regrown their consulting practices to become the largest competitors in the market, with a combined market share of 16 percent. Last year, they collectively earned $42.2 billion in revenue from consulting services. If the Big Four were half as successful in the $600 billion global legal market as they were in consulting, and built a combined 8 percent share, their annual revenue from legal services would be $46.7 billion. The majority of this revenue would come at the cost of market share currently owned by law firms.

Such a scenario is not guaranteed of course. Client conflicts could limit the Big Four's ability to build market share. The localized nature of legal services, as opposed to the more globalized consulting market, could dull the potency of the Big Four's scale and global networks. More worrying is a scenario where regulators, once again, grow uneasy over the potential conflicts of interest created by combining audit and advisory services. A scandal, such as the one which brought down Arthur Andersen in the early 2000s, could precipitate such a change in mood.

What is clear is that law firms should not underestimate the Big Four. Their size, brands, strength in process management, and strong relationships with corporate clients make them formidable competitors. The expansion of the Big Four into legal services has the possibility to transform the global legal market. Law firms must prepare for a significant increase in competition.

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End of the Lockout

A $16.5 billion debt offering marked Argentina's triumphant return to global capital markets after 15 years of exile.

By Chris Johnson

ARGENTINA'S RECORD-BREAKING $16.5 billion sovereign bond issue transcended business and finance: It was a matter of historic national significance.

The deal—the largest ever emerging markets debt offering, comfortably eclipsing the $11 billion raised by Petróleo Brasileiro S.A. in 2013—lifted a cloud that had been hanging over the country ever since its $80 billion debt default in 2001.

Its proceeds allowed Argentina to finally end more than a decade of fierce litigation with holdout creditors that had seen the country essentially locked out of international capital markets—the offering was its first international bond issue for over 15 years—and led to another sovereign default in 2014.

HONOREES:
Bruchou, Fernández Madero & Lombardi; Cleary Gottlieb Steen & Hamilton; Errecondo González Funes; Shearman & Sterling; Argentina's Ministry of Finance

"We knew we were involved in a historic undertaking that was going to make a huge difference to the whole country," says Antonia Stolper, head of the Americas capital markets and Latin America practices at Shearman & Sterling, which advised the underwriters on the offering. "It felt like the fate of Argentina was resting on our shoulders."

Argentina had already reached agreements with holders of more than 90 percent of the defaulted bonds during previous restructuring efforts in 2005 and 2010.

But a stubborn group of creditors, led by a group of U.S. hedge funds including NML Capital, Ltd. Elliott Management Corporation and Aurelius Capital Management, rejected the offers to exchange the bonds at 30 cents on the dollar and sued Argentina in multiple jurisdictions for full repayment.

Crucially, Argentina's bond document contained a *pari passu* clause, meaning all creditors would have equal priority in the event of a default. A standard feature of government borrowing, the holdouts controversially but successfully argued in U.S. courts in 2012 that the clause meant Argentina could not pay holders of the newly issued bonds without also paying the objectors in full. U.S. District Court Judge Thomas Griesa even hit Argentina with an injunction that prevented the country from servicing its restructured debt until the holdouts were paid.

Argentina's then-president, Cristina Fernández de Kirchner, had shown little appetite to negotiate with the hedge funds that she had labelled "financial terrorists" and instead stopped payment of the country's performing debt, leading to a fresh default. But the election of new president Mauricio Macri in 2015 saw a radical change in tack. Macri ran on a ticket of free market policies and made it a key priority to settle the holdout issue once and for all.

There was a problem, however. Macri soon declared a state of "administrative emergency" after it emerged that the previous administration had been deliberately publishing incorrect inflation data. The country's historic economic statistics, which in a sovereign bond issue forms the basis of disclosure to investors, were unreliable to the point of being useless. The bond offering memorandum warned inves-

CLEARY'S ANDRÉS DE LA CRUZ

CARMEN NATALE/ALM

tors that "the credibility of several Argentine economic indices has been called into question, which has led to a lack of confidence in the Argentine economy and could affect your evaluation of this offering."

But Cleary Gottlieb Steen & Hamilton partner Andrés de la Cruz, who led the firm's team advising Argentina on the bond issue, says that the lack of credible statistics did little to suppress investor appetite. "Argentina went to the market acknowledging that the historical statistics it was presenting were not accurate, but it honestly didn't have much impact," he says. "The market was investing in Argentina's future, not in its past."

Indeed, the offering was an overwhelming success, with Argentina receiving almost $70 billion in orders, meaning it was more than four times oversubscribed. Demand was so strong, in fact, that the country was able to increase the offering from a planned $12.5 billion, giving it additional funds to bolster public finances.

The night before the close, lawyers met in Cleary's offices to make the final preparations for paying the holdouts and pore over the 45 separate bond forms. Work continued well into the early hours, leaving virtually no time for sleep before they had to head back for the close the following morning. Shortly after 6 a.m., groups of exhausted lawyers, bankers and government officials gathered around a boardroom table, with dozens more dialing in from around the world. While everyone was anxiously awaiting the judge's order that would lift the injunction and allow the transaction to proceed, Madonna's "Don't Cry For Me Argentina" suddenly started playing across the conference call.

"We were all waiting with baited breath and that song just came on out of nowhere," Stolper recalls. "Everyone went silent for a moment, then burst out in hysterics. It was a nice way to cut the tension. We still don't know who did it."

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High-Stakes Diplomacy

Not everyone thought ChemChina could pull off the $43 billion acquisition of Switzerland's Syngenta. The lawyers on the deal proved doubters wrong.

By Chris Johnson

HONOREES:
Simpson Thacher & Bartlett; Homburger; Linklaters; Davis Polk & Wardwell; Bär & Karrer

THE RECORD-BREAKING $43 BILLION acquisition of Swiss agrochemical giant Syngenta AG by Chinese state-owned China National Chemical Corp. was a case study of corporate persistence and diplomacy.

In order to pull off the landmark all-cash deal—the largest ever outbound acquisition by a Chinese company—ChemChina had to win over a reluctant seller, which had just fought off a series of hostile bids from United States rival Monsanto Co., and agree to a series of unprecedented concessions over Syngenta's future governance.

Lawyers also had to contend with an almost impossibly tight timescale, an antitrust process that would involve regulators in 20 jurisdictions, and the small matter of raising financing equivalent to the gross domestic product of Slovenia.

"It was just on an entirely different scale to any outbound Chinese investment that had gone before," says Simpson Thacher & Bartlett New York M&A partner Alan Klein, who jointly led the firm's team advising ChemChina alongside Beijing corporate partner Shaolin Luo.

Syngenta rejected Monsanto's repeated advances due to what it considered to be the "enormous regulatory obstacles" of bringing together two agrochemical and agricultural biotechnology leaders, according to Davis Polk & Wardwell global M&A co-head Louis Goldberg, who advised the Swiss company throughout the process.

But the generous valuation of Monsanto's offer, which was at a significant premium to Syngenta's stock price, had turned the heads of the Swiss company's shareholders. "Shareholders were frustrated at what they perceived to be a lost opportunity and were putting the company under real pressure to pursue another transaction," Goldberg adds.

So, when ChemChina—a broader business that in addition to agrochemicals also covers rubber products, industrial equipment and petrochemical processing—made its first tentative advances over the summer of 2015, Syngenta listened.

Syngenta remained skeptical that the deal would receive regulatory approval, however, or that ChemChina could drum up the necessary financing. The Chinese company's first offer, $42 billion, was rejected in November 2015.

Klein's team, working alongside Swiss firm Homburger—one of whose lawyers happens to be a board member at Syngenta—spent weeks analyzing the transaction's regulatory backdrop, including the likelihood of getting approval from the Committee on Foreign Investment in the United States (CFIUS). "We came to the conclusion that the deal would be achievable," Klein says. "We then had to convince Syngenta."

The two companies set a self-imposed deadline of Feb. 8, the beginning of Chinese New Year, to work out their differences. Cue a frenzied succession of endless conference calls and meetings between lawyers and deal teams across Switzerland, New York and Beijing. As often seems to happen to lawyers working on such high-profile deals, this most intense period of negotiation happened to coincide with a family vacation Goldberg had planned in his native South Africa. "I spent two weeks in Cape Town looking out the window at my family enjoying themselves on the beach while I was on the phone or my laptop trying to get the deal done in time," he says.

DAVIS POLK'S LOUIS GOLDBERG

The formal bid was completed with just days to spare, and announced on Feb. 3, 2016. But that wasn't an end to the challenges.

Although it was incorporated in Switzerland, Syngenta's New York Stock Exchange listing and sizeable U.S. shareholder base necessitated a complex dual Swiss and U.S. tender process, which launched the following month. Lawyers on both sides had to work with the U.S. Securities and Exchange Commission and the Swiss takeover board to convince them that the interests of shareholders in both jurisdictions would be accommodated.

The situation was further complicated by the fact that Swiss takeover rules require a buyer to have definitive financing in place and approved by regulators before launching a tender offer. ChemChina had barely a month to secure $43 billion from lenders and have it signed off. "Raising $43 billion simultaneously under different contractual arrangements in China and the U.K. in such a short timeframe was nothing short of herculean," Klein says.

Antitrust and CFIUS approvals, on the other hand, dragged on for additional months. Some U.S. lawmakers expressed concerns over a Chinese state-owned entity owning a company involved in the U.S. food supply. "We were confident that we'd get [CFIUS] approval," Klein says, "but unlike antitrust clearance, where you're dealing with economic questions, CFIUS has more of a political element that makes it much harder to predict." ChemChina's investment was greenlit in August, and subsequently received the necessary approvals from antitrust bodies in the U.S., Europe, Mexico and China.

In addition to paying a significant premium for Syngenta, ChemChina committed to uphold a series of unique governance arrangements after the deal had closed. "Syngenta is extremely proud of its principles of agricultural sustainability and health and safety," Goldberg says. "There was a concern that by selling, particularly to a foreign company, some of those best practices might be lost. It was a major issue for them." The commitments included maintaining a certain level of Swiss representation on the Syngenta board and imposing limits on future debt levels.

"ChemChina was very accommodating—much more so than a buyer has to be, given that it was paying a full price to Syngenta shareholders," Klein says. "It's a sign of the company's desire to be viewed in the West as a thoughtful and responsible investor, and as a credible steward of these assets."

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Taming the Perfect Storm

In one of the most complex and contentious cross-border bankruptcies ever, Nortel's battling Canadian, U.S., and European estates finally had to make a deal.

By Emily Barker

BACK IN 2011, WHEN INSOLVENT Nortel Networks Corp. raised about $4.5 billion by selling off many of its patents in a groundbreaking auction, it seemed like very good news for the company and its creditors. The sell-off of the failed telecom technology company's businesses had brought in another $3.5 billion. "It was much more than could have been hoped for at the start," says Herbert Smith Freehills litigation partner John Whiteoak, who represented Nortel's European arms.

Then things turned ugly, as the various parts of the defunct company battled each other for their share of the proceeds. "There's only one thing worse than a bankruptcy with not enough money," says Jay Carfagnini, head of the restructuring practice at Toronto's Goodmans, who represented the monitor for the Canadian debtor, Ernst & Young Inc. "That's a bankruptcy with too much money." The fight involved multiple mediations; a 21-day trial held simultaneously in American and Canadian courts via video link; almost $2 billion paid out in legal and other professional fees; and finally, in 2016, settlement. The Nortel saga, says bankruptcy partner James Bromley of Cleary Gottlieb Steen & Hamilton, counsel to the U.S. debtor, "is probably one of *the* most complicated international insolvencies to ever occur."

At the time of its bankruptcy in 2008, Nortel had about 30,000 employees in 39 different companies around the world. It spawned three bankruptcy main estates: in Canada, where Nortel was headquartered; in the United States; and in the United Kingdom and Europe. Nortel's business lines, which included wireless and ethernet networking products, spanned national borders and individual subsidiaries; they were so intertwined that early on the Nortel estates and their representatives came to a fateful decision. To maximize returns, Bromley says, "we came to the conclusion that it made sense to sell the businesses to raise money and fight over how to divide up the money later."

"You've got this melting ice cream cone, and you've got to get it sold and figure out who gets the 10 cents later," Carfagnini says.

In addition to raising billions, the rapid sell-off of Nortel businesses in 2009 and 2010 allowed a significant majority of Nortel jobs to move to other companies. "Even though Nortel Networks is no longer out there, its ideas and expertise are still in the marketplace," Bromley says.

But the first attempts to divvy up the $7 billion pie via mediation failed. The lawyers who had worked together to facilitate the sale of assets now battled to increase their clients' share.

The three sides in the dispute were bitterly divided. The U.S. debtor, whose creditors included bondholders such as Elliott Management and Quantum Partners LP, based its claim for more than 70 percent of the proceeds on the fact that most of Nortel's revenues had come from the U.S. market. The Canadian debtor and its monitor contended that the rights to the company's valuable IP were held by its Canadian entity, which should therefore receive more than 80 percent of the proceeds. The U.K. estate, which included 19 other European companies, held out for almost 20 percent, making the argument that much of that IP had been developed in Nortel's European operations. Other creditors and stakeholders raised their voices, too: Early mediations had as many as 200 people in the room.

In 2014 courts in two countries heard the so-called allocation dispute, via a single trial. While joint U.S.-Canada hearings are not uncommon in cross-border bankruptcies, Carfagnini notes, a full-blown trial was something new. A

HONOREES

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CLEARY'S JAMES BROMLEY

video internet connection allowed U.S. Bankruptcy Judge Kevin Gross of the District of Delaware and Ontario Superior Court Justice Frank Newbould to hear evidence and arguments in each other's courtrooms, including questioning witnesses. Court procedure was more complicated. While the American and Canadian court systems are similar, there are key differences, especially when it came to conducting witness depositions, Carfagnini says.

"We quite literally had to make up rules for the court, so we used a bit of the Canadian system and a bit of the U.S. system," Whiteoak says.

The trial outcome was a turning point in the case, lawyers say. Both courts united in rejecting the arguments of all three debtors. "The debtors have lost sight of the irrationality of their respective positions," Gross wrote in his May 2015 opinion. Instead, the courts ordered a modified pro rata allocation that would have given the Canadian debtor 63 percent, the U.S. debtor 15 percent, and the European debtors 22 percent.

It was effectively a loss for the United States and Canada, and a win for the European entities. Although the courts' ruling was promptly appealed in both the United States and Canada, it propelled all three debtors back to the negotiating table. "That put a lot of pressure on the parties," Whiteoak says.

Mediation restarted under the supervision of retired federal district judge Joseph Farnum Jr. "We had some extraordinarily difficult meetings," Bromley says, "but we remained in the room."

"In a sense there were so many issues that had to be resolved, that you had to get to a point where you could resolve them all in one go," says Herbert Smith restructuring partner Kevin Pullen. Also increasing the pressure was the time and expense that the case had already cost: By early 2016, professional fees totaled $1.6 billion.

The three sides reached the framework of a deal in July 2016. "We had spent years working together, and years fighting," Bromley says. "It took the better part of a year to negotiate the settlement, get to the handshake, then negotiate the document." In the end, $4.1 billion would go to the Canadian debtor, $1.8 billion to the U.S. debtor, and the remaining $1.3 billion to the European companies. Nortel's creditors began receiving their long-delayed money in summer 2017. "At the end of the day, the decision of the court and settlement that was entered into resulted in unsecured creditors around the world kind of getting the same recovery," Carfagnini says: between about 42 and 50 cents on the dollar, according to media reports.

"I don't think we'll see another case like it," he adds. "It was kind of like a perfect storm."

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All Hands On Deck

The lawyers who are tackling the European refugee crisis often find themselves using more than just their legal skills to help their clients.

By Gina Passarella

HONOREES:
Latham & Watkins;
Morrison & Foerster

MORRISON & FOERSTER COUNSEL Julia Schwalm sat in her car in Berlin for five minutes, refusing to move, until the Pakistani refugee who just accepted her guardianship understood he needed to wear his seat belt.

After the 16-year-old refugee to Germany was able to accept that a woman would be his guardian, it was the little things he and Schwalm had to overcome—like the seat belt, she says, or how to communicate. They used mobile instant messenger WhatsApp and its translation function to correspond. But Schwalm says it was important to her that her client learn German if he was to achieve the asylum he was seeking and assimilate into a country that has one of the largest refugee populations in Europe.

Now that her client is over 18, Schwalm is no longer a guardian but is still representing him in his asylum appeal. She still worries about his mental health, given that he lives in a country without his parents, who are back in Pakistan, where a family feud over land has made her client fearful for his life.

"Being a trustee is a very personal thing to do. It's not something that the firm would say 'Who wants to volunteer?' It's not as much of an adoption, but it's close," Schwalm says, adding "They are kids. They are alone. You worry about them."

When Schwalm received an email from the judiciary about the need for trustees, or guardians as they are called in the United States, she forwarded it to friends at other international law firms in the same building as MoFo. She and four others from various firms agreed to take on cases.

"It doesn't mesh well with normal lawyer work," Schwalm admits, noting how trustees must frequently go before government agencies during the day to sign things on their clients' behalf. And time sheets don't account for the hours going to the movies or attending thank-you dinners prepared by the refugees, she says.

There isn't much about the refugee crisis in Europe that meshes well with a normal schedule or even normal pro bono initiatives, as evidenced by the multipronged response to the crisis taken on by firms like MoFo and Latham & Watkins. Aside from the trustee work, MoFo lawyers spent more than 1,200 hours last year helping pro bono client IsraAID set up as a nonprofit in Germany to aid refugees; working to get approvals for Hotel Utopia, which was designed to be a hotel run by refugees; and helping GoVolunteer get nonprofit status to help connect volunteers with refugee support efforts.

Latham & Watkins London partner Helena Potts found herself and a team of lawyers from the firm in an uncommon scenario for pro bono work: They went up against two or three other firms for the right to represent the International Rescue Committee pro bono. Partner TrustLaw, which was facilitating IRC's hiring of outside counsel, had worked with Potts a few years earlier on a multijurisdictional project researching citizenship and the rights of mothers and children. IRC was seeking counsel to identify the rationale behind the "sensational headlines" surrounding Syrian refugees entering Europe, seek the truth and use that to advocate on behalf of the refugees. Latham & Watkins won the work and was

MORRISON & FOERSTER'S JULIA SCHWALM

quickly put to the test. The lawyers had nine days to prepare 44 memoranda in advance of the March 2016 European Council meeting on the movement of refugees between Turkey and the European Union. Those memoranda now serve as a guide in refugee camps and for other international humanitarian organizations to turn to.

Latham & Watkins has also focused some of its efforts in Germany, running clinics alongside the Red Cross for refugees seeking legal advice on the asylum process. And the firm works on behalf of the Red Cross, CARE USA, the Norwegian Refugee Council and Mercy Corps, advising them on the ground as they conduct their operations. Even laptops and cell phones are subject to embargoes, so the firm helps those organizations navigate export control restrictions when bringing supplies to set up operations in various countries, among other issues.

The work isn't always easy or successful. Hotel Utopia is still in planning stages, advocacy before the European Council didn't go quite as well as it hoped for and Schwalm's client is still fighting the denial of his asylum status. But Schwalm, Potts and their teams remain committed. The Berlin lawyers at MoFo logged an average of 104 pro bono hours each last year, and the work continues. Latham & Watkins is moving forward with its clinics and nonprofit representation as well.

Both Potts and Schwalm cite their firms' commitment to pro bono as a reason why they can handle such large-scale, complex and ongoing legal issues. And controversial ones at that. The refugee crisis has created strains in Germany, leading to vocal opinions on both sides of the issue.

But even if some at the firm don't agree with the outcome of certain cases, they support the refugees' right to representation, Potts says. "I think everyone here fundamentally believes in the rule of law," Potts says.

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A Tale of Two Halves

It has been a decade since the financial crisis engulfed economies around the world. Of all those European nations gripped by turmoil, Ireland is the poster child for recovery. Dublin's law firm leaders reflect on lessons learned and the art of managing a crisis.

By Sarah Downey

On 28 September 2008, McCann Fitzgerald's Barry Devereux returned to work following a four-month sabbatical. Sitting in his office at the firm's Dublin headquarters, the corporate partner was suffering with post-holiday blues when he received a call from the financial director of one of Ireland's biggest financial institutions, Allied Irish Bank (AIB). Sounding stressed, the director requested that Devereux make himself available immediately. The very next day, on 29 September, the Irish government (then Republican party Fianna Fáil) voted through the infamous bank guarantee; a systemic agreement that put the State on the hook to cover €440bn ($525bn) of customer deposits and banks' own borrowings. With the bankruptcy of Lehman Brothers triggering a global financial crash earlier that month, the Irish banking system was facing imminent collapse due to poor supervision of excessive borrowing on corporate and international money markets.

Devereux says: "After I got that call in 2008, everything changed. We had heard about the 'credit crunch' a year before…heard that some major funds had halted redemptions. But we kept doing deals through the winter of 2007 unbeknownst to us what was coming."

Arthur Cox managing partner Brian O'Gorman recalls: "The crisis kicked off on different dates for everyone. For Ireland, it was an enormous bang on 15 September 2008 – the day Lehman collapsed. During the following two weeks, the whole Irish banking system came to a shuddering halt. There was a risk that the banks on Monday morning wouldn't have opened had the government not stepped in with the guarantee on 29 September."

The government's move to rescue Ireland's banks was nevertheless a portentous decision in the aftermath and resulted in crippling consequences, with the State having to receive an €85bn ($101.5bn) bailout from the European Union and the International Monetary Fund in November 2010. Ireland's banking giants, namely Bank of Ireland, AIB, Anglo Irish Bank, Permanent TSB, Irish Life & Permanent, Irish Nationwide Building Society and Educational Building Society, faced years of restructurings, waves of robust regulation, and public scrutiny.

William Fry managing partner Bryan Bourke says: "M&A was getting more difficult in terms of volume even though we had seen huge transactions in 2006/07. Valuations had gone through the roof but clients were becoming anxious to get deals done. There was this growing nervousness, and a lot of talk of banks being nationalized. I remember when it became clear that at least one bank would go into State ownership – one of my then partners said to me: 'We'll all be back in mud huts!' We have achieved a lot since then."

Ireland's legal elite including McCanns, Arthur Cox, A&L Goodbody, Matheson, William Fry, and Mason Hayes & Curran, would spend half a decade navigating domestic and international clients through corporate restructurings, large scale insolvencies, and the sell-off of distressed assets, all while operating under economic malaise.

Devereux kept in touch with management at AIB. "During the crisis, we became closer to some major clients. I was in AIB most of the week for long periods at a time. That gave me real in-depth knowledge of the client's perspective."

Professional history vindicated his decision. In June 2017, McCanns advised AIB on its €3bn ($3.6bn) initial public offering (IPO) and admission to the Irish and London Stock Exchanges, the largest IPO in Europe in 2017. Constituting a landmark agreement, it was the first sign of recovery from a collapse that was the largest than most developed economies. Weeks later, Bank of Ireland confirmed it will pay a dividend this financial year, nine years after being rescued.

The economy presents a similarly optimistic picture **[See Box-Out: Economic recovery: Ireland's rise from the ashes]**. And despite years of austerity, low investor confidence, and scandal over Ireland's leading financiers and politicians, the legal elite made the best of a bad situation, embodying the Republic's robust reputation for dealing with hard times. They are intrinsically part of the formula that put Ireland back on the map.

With the ten-year anniversary of the financial crisis in mind, and in the context of current geopolitical and economic uncertainties emanating from the Brexit vote and a shaky Trump administration, we asked Dublin's seasoned legal leaders to reflect on how they succeeded in testing times.

STEALING THE MARCH

Ireland's legal elite identified opportunities to provide rescue-style advice to clients long before anyone took the idea of the economy's recovery seriously.

A&L Goodbody managing partner Julian Yarr, who took over leadership at the firm in 2009, says: "We law firm leaders learned: you cut your cloth accordingly in spend, and hold your nerve. Economic cycles do pass. Clients will become active again. Understand what legal services they require and make sure you have the appropriate groups of partners working together."

Instructions were ripe for the taking, including the tender for legal advice on restructuring incumbent state-owned telecoms company eircom in 2012, a task which wrote off €1.4bn ($1.7bn) worth of debt from eircom's balance sheet, which was gifted to Arthur Cox, A&L Goodbody, McCann FitzGerald and William Fry. Irish firms too saw a range of panel appointments and advisory roles emerge in finance, following the ring-fencing of distressed assets with the establishment of the National Asset Management Agency (NAMA) in late 2009. The most established Dublin firms acquired significant recession-related roles.

O'Gorman says: "It was novel, exciting, complicated work… it did mean we were to some extent insulated from the economic reality. There was overcapacity of the legal market in the early years of the crisis. It was particularly difficult for second- and third-tier firms because there was flight to the leading firms during those difficult times."

Devereux says: "From the point of view of our clients generally, when the chips were down, we were there. We reviewed our pricing and made hard

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decisions in relation to the cost structure of the firm. During the height of the crisis, we had clients asking tough questions one day and seeking advice on a completely different, but equally difficult, issue the next day, which was heavily reliant on the answer you had given the day before. There was no time to reconsider your first answer. One partner compared it to doing an exam for which no revision was available. In many cases there was no precedent – it was back to first principles – using your intellect, knowledge and wisdom."

"There was a period where there was lots of negativity… it was short lived because we were seen as the first nation to 'take our medicine"

—BRYAN BOURKE, WILLIAM FRY

Doubling down on that strategy, Ireland's legal and business community went further and did what the Irish do best: travelled abroad in search of renewed foreign investment. Ireland's recovery during the past decade has translated into robust levels of M&A deal flow, with domestic firms providing counsel on company law, tax and takeover regulation issues for a series of loan book sales by institutions operating in Ireland, as well as work related to the recapitalization and restructuring of the Irish banking sector post-crisis. Investor appetite continues to thrive across technology, pharmaceutical, and leisure industries. The first half of 2017 saw the highest figure on record for inbound and private equity deals, according to William Fry's Mid-Year M&A Review 2017, with 60 deals totaling a combined value of €8.2bn ($9.8bn) during that period. The report recorded 18 private equity transactions worth €7.5bn ($9bn) while the consumer sector accounted for the largest increase in value from 8% in 2016 to 15% in 2017, and financial services generated the bulk of deal value with €7.1bn ($8.5bn) spent across nine deals.

A key transaction to emerge from such proactivity, and one that triggered a sea change in attitudes to Ireland's reputation abroad, was the sale of Bank of Ireland's shares just months after the government signed the bailout agreement in 2011. A consortium of six foreign investors including Fairfax Financial Holdings, New York buyout firm WL Ross and Boston-based Fidelity Investments, invested €1.1bn ($1.34bn) and saved the bank from nationalization.

While the elite law firms refocused their efforts to capture large-scale instructions, it has been far from easy for smaller players. The lower mid-tier suffered from the period of austerity, essentially widening the gap between them and Dublin's biggest practices. The only new entrant to the pack was Mason Hayes and Curran (MHC), an admirably bullish firm that went through a major reinvention, and enhanced its international reputation and practice offering. For those who argue that the market remains dominated by the familiar quintet, MHC has achieved respectable growth in just under a decade, with revenue increasing from €32m ($38m) in 2008 to €77m ($92m) in 2017. Major instructions in 2016 included representing Activision Blizzard in its $5.9bn acquisition of King Digital Entertainment, and acting for Virgin Media on its acquisition of UTV Ireland.

Managing partner Declan Black says: "We [the firm] had a good recession…although I suppose that's like saying we had a good war. Nevertheless, we tripled in size over the last decade. We were the only firm to make it into the elite group of commercial law firms. The disruption of the recession allowed that transition and altered the status quo."

GOOD HOUSEKEEPING

If Irish firms stand out as key architects of Ireland's reinvention, part of their success has been to demonstrate strong leadership and robust management of internal operations. All interviewees agreed that weighty consideration must be given to improving efficiency levels and careful use of skilled resource.

A&L Goodbody's Yarr says: "The smartest people in business identify what is available. It's up to you to understand how best to use your resources. Then there's no nasty surprises when it comes to your strategy. You must also empower people to get on with things and hold them accountable."

McCann's Devereux describes the firm's decision to make redundancies in 2009, with an estimated 20 lawyers, four legal executives and 13 business support staff affected, for the first time in the firm's history. "Alternatives were considered but the business had become over-resourced for the way the market was unfolding before us. It is not something I would want to experience again. It was a very tough time."

The legal elite further assert that consistent engagement and communication with staff on the strategy and the health of the business, while encouraging an entrepreneurial, inclusive culture, is crucial.

Devereux says: "People always want to hear as much about the business as they can. Law firms are often guilty of not disseminating information and that's how rumors start. We have almost 600 people

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who deliver services on behalf of the firm every day; you want them to stay engaged, stay motivated and want to work here. If you refuse to engage, and a crisis occurs they will think the worst and be drawn to somewhere more secure. The truth is, we communicate a lot more than we did in the past – the best ideas can come from anyone. Hiding information is not wise during a crisis."

OPEN THE BOOKS

A rarely noted element of Irish firms' perseverance during the past decade was the transparency over the country's poor financial health. The legal elite attest this was key to attracting foreign investment and repairing the damage to its reputation as a no-go zone for business. In 2009, the newly elected government (Fine Gael) adopted what many would view as a high-risk strategy to be honest about the scale of the economy's debt and, crucially, accepting the harsh terms that would follow a rescue.

"There is a general recognition about how well we're doing now," says O'Gorman. "That the Irish strategy was based on openness was essential to that…it was the best advertisement for our international reputation."

Ireland suffered a dramatic explosion in debt from 25% of GDP in 2008 to 125% in the first quarter of 2013 – the fourth highest in the EU, behind Greece, Italy and Portugal. It's saving grace was the State's 2011 Troika (the Russian word for a sled pulled by three horses) agreement with the European Commission. This three-year financial aid program saw Ireland sell off €3bn ($3.6bn) of its assets to bidders, and was conditional upon far-reaching austerity measures imposed on Irish society to cut government expenditure. By January 2015, the government had already paid off €12.5bn ($14.9bn), with the aim of tapping private markets for debt carrying a lower rate of interest than most IMF loans.

Matheson managing partner Michael Jackson says: "There's no doubt there was initially a lot of nervousness internationally about Ireland's future. We spent a lot of time travelling to clients, explaining the situation to them and convincing people that some of what they were reading about Ireland was not necessarily reflective of what was happening on the ground.

"Once it became clear that Ireland was determined to and was going to be able to tackle the issues with the assistance of the Troika and that there was a real commitment to the restructuring program, a lot of the issues about which we were fielding questions began to fade more into the background. The fear over whether we would be part of the euro anymore

Our San Francisco Office is Open for Business

Matheson

Pictured at the announcement of Matheson's San Francisco Office Opening are from L-R Mark O'Sullivan, US Resident Partner, Anne-Marie Bohan, Head of Technology and Innovation, Chris Bollard, Partner, Technology and Innovation, Michael Jackson, Managing Partner, Emma Doherty, Partner, International Business Group, and Robert O'Shea, Head of the Corporate and Commercial Department.

Matheson Opens Second West Coast Office

Matheson is proud to announce the opening of our new San Francisco office. With five partner-led global locations, we are ideally positioned to serve the Irish legal needs of our International clients and our Irish-based clients with an international focus. We have a wealth of global experience, and we act for 7 of the 10 leading global technology brands and the majority of the world's Fortune 100 companies. We also bring our unique brand of innovative thinking and client-focused solutions to over half of the world's 50 largest banks. Matheson ensures our clients go further by delivering unrivalled results and expertise through a world-class team.

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or whether the Irish punt or exchange controls would be reintroduced dissipated."

William Fry's Bourke agrees: "There was a period where there was lots of negativity… it was shortlived because we were seen as the first nation to 'take our medicine'. We reacted and engaged quickly with the Troika. People saw that. Ireland has come a long way in turning things around."

THIS TOO SHALL PASS

There were other macro-economic factors at play, which continue to illustrate Ireland's open-door reputation for global businesses, and translate to a competitive edge for Dublin's legal elite. Ireland's attractiveness for foreign investment, heavily due to low corporation tax, has certainly helped preserve the status quo for business development. Moreover, the country's social fabric has fundamentally shifted towards a more liberal agenda. A historically conservative and Catholic society as late as the early noughties, Ireland received international plaudits for embracing marriage equality in 2015. It's Taoiseach (prime minister) Leo Varadkar is the nation's first openly gay party leader.

Social politics aside, Irish firms impressively seized opportunities when they emerged during the past decade, operating dually as white knights to distressed domestic clients, and as high-powered salesmen to sharp-eared investors abroad. Yarr says: "The smartest people in business identify what is available. It's up to you to understand how best to use your resources. Then there are no nasty surprises when it comes to your strategy. You must also empower people to get on with things and hold them accountable. The new challenge is with sophistication of general counsel and their teams… all organizations need to sit up and listen to make sure they can deliver with value for money. Post economic crisis, the regulatory landscape is of significant commercial concern to clients… we'll see where the next cycle goes to."

Looking ahead, the market will continue to be swayed by uncertainties posed by a looming Brexit, which has called into question the future of the Common Travel Area (an open borders area in existence between the UK and Ireland since 1923), as well as the conflicting anti-globalist agenda of the Trump administration.

Jackson says: "There are aspects of the current environment which are similar, although while there are obvious challenges now, we see this environment as one that still presents a lot of real opportunities for Ireland to strengthen its position as a substantive English-speaking gateway to the EU markets. The current climate is one in which advisory firms who have built strong relationships locally and internationally, and which are immersed in their clients' industries, are in a position to really benefit notwithstanding all the uncertainty."

Whatever shape the post-Brexit landscape takes, and indeed the increasingly volatile nature of US governance under President Trump, Irish firms are well versed to ably position themselves and identify where competitive advantages lie.

Mason Hayes & Curran managing partner Declan Black concludes there is no room for complacency, and says: "The truism that you learn more from adversity than prosperity is good. Irish firms are very well run and offer good services, so businesses like coming to Ireland. We're rightly positioned as a key gateway to Europe for American companies; English-speaking, common law, a member of the EU. We're very focused on communicating that – we didn't want Brexit but it's incumbent on us to point out its consequences." ■

Barry Devereux, Managing Partner and
Gary McSharry, Resident Partner, New York

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Economic Recovery: Ireland's Rise from The Ashes

Seven years after its €68bn bailout, the Celtic tiger is beginning to roar again. Serving as a case study for other struggling economies, Ireland has made a remarkable recovery. The nation's debt is trading at similar levels to France, a core eurozone economy, while the spread between Irish and German bond yields has returned to decade-long lows. Ireland grew 5.2% in 2016 and is set to grow 3.5% this year, according to forecasts from the International Monetary Fund. The Republic also holds single-A ratings from all major credit rating agencies.

Foreign direct investment (FDI) remains a key contributor to the country's development. The country, which has predominantly attracted US technology and pharmaceutical companies for nearly 30 years, saw 99 new investments in 2016 that helped to create jobs at the fastest rate for 15 years, according to figures from IDA Ireland. The European hub to more than 1,000 multinational companies, big names include GlaxoSmithKline, Johnson & Johnson, Roche, Novartis, Bayer, Eli Lilly, IBM, Google, Facebook, and PayPal.

Ireland's corporate tax rate remains a competitive 12.5% and the country was ranked first in Europe for ease of paying business taxes, according to a 2016 report published by PwC entitled: Paying Taxes 2016: The Global Picture.

The European Commission rocked the boat last year, however, when it ordered Apple to repay taxes to Ireland following a ruling that the technology giant paid so little tax on its Ireland-based operations that it amounted to state aid. Attempting to dilute tensions, Ireland's finance minister recently told Germany's Frankfurter Allgemeine newspaper that the European Commission's demand that Dublin collect up to €13bn ($15.5bn) in back taxes from Apple was unjustified.

On the domestic front, there is much to celebrate from the economic recovery including a near return to full employment (less than 10% unemployment) and strong core domestic demand growth, while domestic spending is back at 2007 levels. This all coincides with having a young, skilled and well-educated labor force. A recent market sentiment survey published by the CFA Institute in August flagged the current contentions dividing Irish businesses. Namely, what the Fine Gael-led government should do with the €3bn proceeds of AIB's flotation in June, and whether the proceeds should be used to pay down national debt, fund capital expenditure, or reduce taxation. ■

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A&L Goodbody

Ireland, a Jurisdiction of Choice and Gateway to Europe for Financial Institutions

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In recent decades Ireland has been and is increasingly viewed as a gateway into Europe for US companies seeking a hub to expand their operations into the region. Many of the world's largest multinational life science and technology companies such as Pfizer, Intel, Google and Facebook, have EU headquarters in Ireland, or very significant operations in terms of investment.

As of January 2017, some 1,200 multinational companies operate in Ireland, directly employing approximately 200,000 people. They are attracted by Ireland's highly educated English-speaking workforce, competitive tax environment and the supportive environment provided by Irish development authorities.

These advantages, coupled with Ireland's excellent support infrastructure and a changing global economic landscape, have led to Ireland's emergence as a jurisdiction of choice for international investment. More recently Dublin, the Irish capital and economic hub, is rapidly developing its reputation as a preferred base for international financial institutions post-Brexit.

THE MOVEMENT OF FINANCIAL INSTITUTIONS POST-BREXIT

The recent decision by the United Kingdom to leave the EU has had an unsettling effect on the European economic and political landscape. Banks in the UK have indicated that they will move some of their staff from London to elsewhere in the EU, to maintain their ability to provide services across the region. Some estimates indicate that up to 70,000 financial services jobs may move away from the city of London.

Ireland's financial services sector is uniquely positioned to meet their needs. IDA Ireland, the Irish government's inward investment promotional agency, is reported to have already clinched deals with more than a dozen London-based banks and financial institutions to move some or all of their EU operations to Dublin, including some of the world's largest investment banks. Barclays Plc has announced that it will move its EU hub to Ireland while Bank of America has indicated that Dublin is its "preferred location" for its main legal entity in the EU and Dublin is also running to host its trading and investment EU hub. JP Morgan Chase has recently purchased a commercial property in Dublin to accommodate 1,000 people.

The chairman of the Scottish investment firm, Standard Life, has stated that Dublin will likely be chosen as its new EU hub. Toronto-Dominion (TD) Bank, which already has an operation in Dublin, has chosen the Irish capital for its new trading hub in the EU in preparation for Brexit. Citi Bank also plans to significantly expand its current operations in Ireland as does Northern Trust, and in recent weeks Japan's Mizuho and Sumitomo Mitsui have announced that either Dublin or Frankfurt will be chosen as their new EU headquarters. In addition, the opening of a Bank of China branch in Dublin this June emphasizes the increased interest of Asian banks in the Irish market, Bank of China has already had a previous presence in Ireland through its aircraft leasing operation, BOC Aviation Ireland Limited.

ATTRACTIVE BUSINESS AND REGULATORY ENVIRONMENT

The EU relocation and expansion of leading global financial institutions in the Irish market is testament to its sophisticated yet flexible business environment, and strong but friendly regulatory framework. In recent years, the Central Bank of Ireland has introduced significant new banking regulations, reflecting best practice in EU law. This means that, from a supervisory perspective, Ireland has moved away from the perceived light touch banking regulation of the past and is now firmly embedded in the European supervisory system.

Indeed, while some commentators have suggested that other countries may be engaging in "regulatory arbitrage" in trying to win post-Brexit investment, Ireland is positioning itself to be the EU jurisdiction where financial decisions are made. The ambition being that Dublin will be host to "the mind and management of the entity", according to Ireland's Central Bank. Ireland is also a contender to host the European Banking Authority (EBA), which is to relocate from London. Many now consider that Dublin is vying with Frankfurt as the leading destination for financial institutions, particularly the large American banks, looking to ensure ongoing access to the 27 country EU bloc post-Brexit.

The Irish economy has been experiencing strong growth and is more diversified than ever which is undoubtedly a huge factor for large institutions and investors when deciding whether to invest and expand into Ireland. 2017 has been a very positive year for the Irish economy which has resulted in The Central Bank of Ireland raising its forecast for economic growth in 2017, from 3.5 per cent GDP to 4.5 per cent making it the fastest growing euro zone economy for the fourth year in a row.

OTHER FINANCIAL SERVICES OPPORTUNITIES

The financial services industry has been central to this economic growth. In addition to more traditional banking jobs, Ireland has thriving investment funds, fintech, insurance and aviation finance sectors. Ireland continues to be the leading global location for aircraft financing and leasing activities as emphasized by the arrival of new entrants to the market such as Chinese leasing companies and the US private equity houses.

Outside of the financial institutions, opportunities also exist for Ireland in the wake of Brexit across the industries of fintech, insurance and investment funds. In the absence of any special arrangements, it is expected that passporting will be lost to UK institutions once Brexit occurs. As a result The Central Bank of Ireland has seen a significant increase in the number of firms within these industries seeking to explore their ability to receive authorization in Ireland and access into the EU post-Brexit.

The variety and flexibility of tax efficient structures available is one of the key advantages that Ireland offers to facilitate investment within the financial services sector. Irish regulated and unregulated vehicles are widely used by international banks, asset managers and private equity investment funds for financial platforms. These include securitizations, profit participating note transactions, loan origination, bond issuances and asset leasing platforms. The reduction or elimination of withholding taxes on income flows being a key benefit as a result of Ireland's wide double tax treaty network.

OUR CONTINUED SUCCESS

Ireland has long been viewed as an attractive destination for multinational companies seeking to expand their operations into the European market. Leveraging off these successes, Ireland has positioned itself as the logical gateway to Europe for those US financial institutions affected by Brexit who are seeking to maintain their access across the region in the changing landscape post-Brexit.

Our commitment to the European Union, our future position as the only remaining English speaking EU member state, along with our innovative business sector, our competitive tax regime, flexible structures and talented workforce strengthen our ability to become the EU jurisdiction of choice for financial institutions seeking continued access to the European market.

While the Brexit decision was one which was not generally welcomed in Ireland, the Irish Government and the existing financial services community are well prepared and best placed to minimize the fall-out for US firms affected and ensure they have continued access to the broad European market.

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ARTHUR COX

Brexit: EU authorities highlight the importance of supervisory convergence and issue sector-specific opinions

ESMA's focus on regulatory arbitrage will be of interest to financial services providers seeking to establish in the EU for the first time.

By Phil Cody

In June 2016, the United Kingdom voted to leave the EU. There was some initial optimism among investment managers and MiFID investment firms based in London and elsewhere in the UK that services into the EU could continue to be provided on the basis of regulatory equivalence or that there would be early agreement on a free trade/services deal between the remaining EU Member States (the EU27) and the UK covering financial services. Any such optimism has given way to an acceptance that a "hard Brexit" leading to the loss of passporting rights for UK investment managers and investment firms is a highly likely scenario, meaning that relocation to the EU27 will be required for many.

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A number of European cities have been on the short-list of those firms seeking to maintain access to the EU single financial services market by establishing an EU27 subsidiary. The short-listed cities include Dublin, long a leading European centre for funds and investment services. Undoubtedly there has been some competition between these financial centres, on the basis of infrastructure, location, talent and, in the case of Dublin, it being in an English-speaking and common law jurisdiction. For some jurisdictions, selling a welcoming or light-touch regulatory environment has been a focus.

In its comments of May 2017, the European Central Bank (ECB) expressed concern about regulatory arbitrage between the EU27 Member States and emphasised that it would "resist any supervisory or regulatory race to the bottom". The ECB comments were aimed at relocating banking groups in the euro area. The ECB statement was followed by a number of opinions from the European Securities and Markets Authority (ESMA). The ESMA opinions are of relevance to investment managers and investment firms. In its May 2017 opinion, ESMA repeated the concerns, raised by the ECB, about regulatory arbitrage and noted that, unless parameters are set for national competent authorities (NCAs) (i.e. local regulators) in the EU27, relocations could lead to a prevalence of "letter box entities". ESMA emphasised that existing authorisations should not be automatically recognised and relocating firms should approach, as soon as possible, the relevant NCA in the EU27 to which it hopes to relocate. Authorisations granted to relocating entities by NCAs in the EU27 are required by ESMA to be rigorous and efficient, and issued in a coherent manner.

ESMA issued sector-specific opinions in July 2017, including one in relation to investment managers and another in relation to MiFID investment firms. These opinions focus on how NCAs should deal with MiFID investment firms, UCITS management companies, self-managed investment companies and authorised AIFMs that are currently based in the UK and are seeking to relocate in the EU27. Noting that the EU27 have a "shared interest in building a common approach" to relocations, ESMA reiterated that relocating firms must be "subject to the same standards of authorisation and ongoing supervision across the EU27 in order to avoid competition

on regulatory and supervisory practices between Member States".

The following key principles are common to the ESMA opinions;

- NCAs should not put in place any "fast-track authorisation processes".
- NCAs should not rely on existing authorisations from other Member States or third countries.
- NCAs should examine applications closely in order to ensure that they are not motivated by regulatory arbitrage.
- In light of the important roles played by board members and senior management, NCAs should pay particular attention to individuals with a significant number of other executive or non-executive roles.
- Re-iterating its previous concerns about Brexit-related relocations leading to a prevalence of "letter-box entities", ESMA cautioned that this is not only a risk that may arise from delegation/outsourcing but also from situations in which EU authorised entities use non-EU branches for the performance of certain functions. If a relocating entity proposes to establish or maintain a non-EU branch, NCAs must be satisfied that this is based on objective reasons related to services provided in the non-EU jurisdiction.

ESMA requires the relocating entity to have at least two senior managers. This reflects the existing requirements of AIFM and the UCITS Directives and, in turn, is reflected in the Central Bank of Ireland's authorisation process. In looking at whether firms have substance in the EU, NCAs have been encouraged by ESMA to pay particular attention to proposals by relocating entities to delegate functions to non-EU entities or to use delegation structures that involve complex operational chains or large numbers of parties. ESMA's view is that NCAs should apply "additional scrutiny" to situations where relocating entities do not dedicate at least three locally based full-time employees (FTEs) to the performance of portfolio management and/or risk management functions and/or monitoring of delegates (but does not prohibit an applicant having less than three locally-based FTEs). In this regard, it is noteworthy that the Central Bank of Ireland recently completed a three year consultation into fund management and governance and issued a detailed set of guidelines, in its so-called CP86 paper, designed to ensure that firms have the requisite substance (even if a relocating firm has less than three locally based FTEs). The Central Bank of Ireland is satisfied that its CP86 paper is also consistent with these recent ESMA opinions.

The ESMA opinion on MiFID investment firms addresses three core issues: substance; governance and outsourcing. As regards substance, ESMA places much emphasis on the avoidance of "letter-box entities". NCAs should examine the relocation of human and technical resources, any outsourcing proposals and planned governance and internal controls for the firm's day-to-day business to ensure that the applicant's relocated presence will be one of substance. On governance, ESMA is of the view that the business of the applicant firm should be directed by at least two individuals with the required levels of knowledge and expertise who are prepared to dedicate sufficient time to that role. If an applicant already uses, or proposes to use, a party based in a third country to place or execute client orders, NCAs are required to examine this closely. Outsourcing is a key focus of this opinion and ESMA has emphasised that NCAs should carefully examine proposed outsourcing arrangements and a firm should not have significantly more of its activities performed on an outsourced basis than it performs directly itself.

Commentary

ESMA's focus on regulatory arbitrage is to be welcomed. It is plainly inconsistent with a single market in financial services within the EU to have a differing approach taken across the EU27's national financial regulators to matters of substance and governance, and for jurisdictions to compete on issues where there should be common ground. It is understandable and inevitable that in the context of Brexit, the EU27 will seek to attract financial services activity that has been or would otherwise be based in the UK. However, the decisions of investment managers and investment firms should be based on factors other than regulatory environment. Although the ESMA position relates to firms relocating from the UK, the read-across for new firms, from the US and elsewhere, seems clear. Their choice of EU27 location should not be based on regulatory considerations and applications should be made sooner rather than later, given that NCAs across Europe will likely be busy evaluating applications from firms relocating from the UK.

About the author

Phil Cody is the New York resident partner at Arthur Cox and advises financial institutions doing business in Ireland. Arthur Cox is one of Ireland's leading and largest law firms, with a pre-eminent financial services practice.
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MASON HAYES & CURRAN

Ireland's Technology Offering And Its 6.25% Tax Rate

Whilst the debate about reforms to the US tax system continues, Ireland's 6.25% tax rate and the Knowledge Development Box ("KDB") are attracting new technology development, which is generating significant new international business. Ireland is becoming a hub for the development of computer programmes from malware detection and removal to deep data mining. Multinationals are developing business models that benefit from the KDB to use innovation to gain competitive advantage and licence the resultant IP around the globe.

We review key features of the KDB, its interaction with the 12.5% tax rate applicable to income from a trade carried on in Ireland, and the benefits of Ireland's EU membership and double tax treaty network.

IRELAND'S KNOWLEDGE DEVELOPMENT BOX

KDB relief is obtained in the form of an additional tax deductible expense equal to 50% of the qualifying profits against the profits of the specified trade, which has the effect of reducing trading income otherwise taxable at 12.5%. The KDB incorporates the modified nexus approach put forward in the OECD Base Erosion Profit Shifting initiative and hence operates by tracking qualifying expenditure attributable to knowledge development for each qualifying asset. Companies looking to make a relevant claim under KDB should have internal systems and procedures in place to ensure the relevant data is accurately recorded in support of a KDB claim.

Broadly, the expenditure must meet the following three conditions:

(i) it is attributable to research and development activities conducted in the EEA or EU that leads to;

(ii) certain computer programs or patentable invention; and

(iii) that is exploited as part of a specified trade.

We consider each of these further below.

• CARRYING ON OF R&D ACTIVITIES

R&D that is carried on in Ireland, or indeed other parts of the European Economic Area, can be regarded as qualifying expenditure. Moreover, R&D outsourced to third parties can occur anywhere in the world. In all cases, the R&D must result in the development, improvement or creation of a qualifying asset. Group expenditure on R&D is restricted but, in limited circumstances, can be partially allowable. Grant assistance is ignored so that where grant assistance expenditure has been incurred and it leads to a qualifying asset, the income stream arising from that asset can benefit from the c. 25% rate.

• QUALIFYING ASSETS

A qualifying asset includes certain computer programs and an invention protected by a qualifying patent. Marketing-related IP is excluded. The computer program must involve the resolution of scientific or technological uncertainty. Where there is development of an existing computer program, consideration needs to be given to the adoption costs or indeed the entire computer program as an asset. The qualifying asset needs to be exploited as part of a specified trade.

• SPECIFIED TRADE

The specified trade is the part of a company's trade that involves:

(i) the managing, developing, maintaining, protecting, enhancing or exploiting of intellectual property;

(ii) the researching, planning, processing, experimenting, testing, devising, developing or other similar activity leading to an invention or creation of intellectual property, or;

(iii) the sale of goods or the supply of services that derive part of their value from activities described in subparagraph i) and ii), where those activities were carried on by the company.

INTERACTION WITH OTHER IRISH TAX RELIEFS

The KDB is a relief from tax. It is independent of double tax relief, loss relief and indeed research and development credits. If withholdings operate on income paid to a company carrying on a KDB trade, then credit could be available against tax payable. Similarly, certain R&D expenditure can benefit from a 25% tax credit under the R&D tax credit regime.

CONCLUSION

The real key to the 6.25% rate is that income flows into an Irish innovation centre should benefit from Ireland's EU membership and double tax treaty network. This means that withholding taxes that might otherwise apply to income flows to other jurisdictions can be avoided.

The BEPS initiative has brought a change in the mind-set for tax directors, with the need for substance to be more aligned to the economic activities of the business. The use of no tax jurisdictions in international structures is becoming unacceptable and also attracts withhold. The UK post-BREXIT position is unclear.

With the effective tax rate of 6.25%, Ireland's KDB regime is playing a role in managing international groups' effective tax rates and aligning profit centres with the economic realities. Whilst R&D activities have to be carried on within the EEA, the use of third party outsourcing service providers carrying on activities anywhere in the world shows the practical understanding of how businesses operate and further demonstrates the pro-business attitude of the Irish legislators. The KDB regime won't fit everyone's needs but, for technology service providers, it is something for finance and tax directors, together with General Counsels and management, to consider as part of their international growth taking place in a post-BEPS and BREXIT environment platform..

OUR TAX LAW SERVICES

Our service offering is focused on companies and individuals using Ireland as part of their global tax management strategy. We regularly work with tax counsel from overseas practices on mergers and acquisitions, redomiciliations, asset finance, debt capital markets, debt structures and investment funds.

Ireland's membership of the EU, its regulatory regime, the 12.5% corporate tax rate, various tax credit relief regimes and tax exemptions in respect of certain activities provides a unique platform to structure international business in and through Irish corporate and other vehicles.

We advise on:

- Structuring multinational corporate activities in and through Ireland
- Use of Ireland as a location to build and develop an EMEA hub
- Corporate migrations
- Ireland as a location for intellectual property
- Structuring acquisition and disposal of distressed debt
- Double taxation treaties
- Employee benefits and packages
- Stamp duty & VAT
- Tax controversies

RECOMMENDATIONS:

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Chambers Europe, Chambers and Partners, 2017
"A fantastic firm across all its departments."
Chambers Europe, Chambers and Partners, 2016
"The quality of work is excellent."
Chambers Europe, Chambers and Partners, 2015
"First-class tax offering"
The Legal 500, 2015

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John regularly advises on the use of Irish regulated funds and Irish special purpose securitisation companies for structuring international business in and through Ireland.

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TRANSATLANTIC PRIVACY – REGIMES DIVIDED BY A COMMON LANGUAGE

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In 1999, Sun Microsystems CEO Scott McNealy shocked a group of reporters and analysts by telling them that consumer privacy issues were a red herring – ***"you have zero privacy anyway - get over it"***. Four years prior to that statement, the European Parliament passed the Data Protection Directive which would become the bedrock of Europe's information privacy laws. Over the years, common perceptions of transatlantic privacy values have followed a well-worn narrative: European privacy standards are overly stringent and bureaucratic while US privacy laws are lax, laissez-faire and offer minimal protection for individuals. The reality is somewhat more nuanced.

The impending General Data Protection Regulation (the "**GDPR**") and the negotiations over the draft ePrivacy Regulation have once again brought into sharp focus the perceived differences between European and US privacy standards. This is being acutely felt in Ireland which is home to some 16 of the top 20 software companies in the world. Post-Brexit, Ireland is also on course to be the only common law country left in the EU.

Common law and civil law traditions have tended to approach privacy from difference angles. Europe's privacy regime is largely a civil law concept. The first modern, comprehensive information privacy law was passed by the Hessian Parliament in Germany in 1970. The two common law jurisdictions in the European Union – the UK and Ireland - did not fully follow suit until the 1995 Data Protection Directive was fully transposed locally in 1998 and 2003 respectively. Countries with common law traditions (including the US, Ireland and the UK) have traditionally tended to focus more on decisional privacy (this posits privacy as a right which individuals can rely on to defend themselves against the actions of the state). Ireland's privacy regime prior to the adoption of the 1995 Directive was closer to the US right of privacy usually found in the Fourth Amendment of the US Constitution.

European data privacy law focuses on achieving information privacy by the horizontal application of principles-based regulations. The processing of all types of data is regulated in more or less the same way (save for additional protections for certain categories of sensitive personal data etc.). The principles which underpin the GDPR are intended for application across the whole economy – the same provisions which govern processing by public bodies will also govern social media companies and ad-tech agencies. There are advantages and disadvantages to this approach. Framing laws in a technologically neutral fashion can help lawmakers keep ahead of the rapidly changing technological landscape (legislating for the unforeseen consequences of IoT is a good example of this). The drawback is unpredictable interpretation of the law and a likelihood of discouraging innovation. The European privacy tradition is sometimes described as inherently prohibitive – you have to actively seek out a lawful basis for each category of processing.

This contrasts sharply with the US position which has always preferred sector specific privacy rules – for example, the Health Insurance Portability and Accountability Act (to protect health records), the Video Privacy Protection Act (which protects the privacy of video watching), the Family Educational Rights and Privacy Act (which protects student's education records) and the Children's Online Privacy Protection Act (COPPA) (which protects children's personal data online). The position is also complicated by state laws. European companies operating in California might be

surprised to learn that the collection of certain types of personal information is prohibited in the context of a credit card transaction under the Song-Beverly Credit Card Act 1971.

Enforcement of personal data rights in the EU is generally left to national regulatory authorities who have been established specifically for that purpose (such as the Office of the Irish Data Protection Commissioner). In the US, some of this task has been taken up by a coalition comprised of the FTC, state legislatures and attorneys general. Those suspicious of the perceived looseness of privacy laws in the US would do well to remember that the world's first data security breach law was enacted by the state of California in 2003. The GDPR will introduce a harmonised breach reporting regime across the EU for the first time.

The GDPR provides for compensation where a breach of the regulation has led to a data subject suffering immaterial or non-pecuniary harm. This is helpful insofar as it harmonises the European position on the issue after the rulings of the English Court of Appeal in Google v Vidal-Hall and the Irish High Court in Collins v FBD Insurance plc. Compensating for immaterial harm in the privacy context has traditionally been a bridge too far for courts in the US ***(Clapper v Amnesty International)***.

While the US courts have been traditionally sceptical of immaterial harm, the EU can learn from the way in which consumer privacy rights have been vindicated in class action suits. Article 80 of the GDPR provides that privacy advocacy groups can take actions on behalf of groups of data subjects whose rights have been infringed. This right, combined with the right to recover for immaterial harm, should prove a serious deterrent to companies who might be tempted to skirt around data subject rights.

The GDPR also fixes a notable omission of the 1995 Directive by directly addressing the processing of children's personal data. It provides that where a child's consent is required in order to provide them access to an information society service and the child is under the local lawful age of consent, the provider of the service must obtain verifiable parental consent. This echoes the equivalent provision of COPPA which appears to have partly inspired it and provides an example of at least one area where the standard in the US and the EU is similar.

The future is already here — it's just not very evenly distributed (William Gibson)

It is hard to avoid the conclusion that the future of privacy law would appear to be European. While most of the world has enthusiastically embraced US technology companies and their products, they have also adopted European-style data protection laws. This is a trend which is likely to continue under the GDPR because of the very wide territorial scope claimed by the regulation in Article 3. That article provides that the GDPR will apply to companies who offer goods and services to European data subjects (even if the company itself is not based in the EU). Even the UK, soon to leave the EU, has conceded that it will implement the GDPR in full. The influence of the GDPR will also be spread by data processing agreements which will contractually require that US controllers and processors meet the standards set by European counterparties.

In October 2015, the Court of Justice of the European Union (CJEU) struck down the Safe Harbor regime for the transfer of personal data from the EU to the US. In March of this year, the Irish Data Protection Commissioner petitioned the court to refer the European Commission's standard contractual clauses to the CJEU in order to determine whether they meet the standard of protection for data subjects required under European law. The consequences could be far-reaching as the standard contractual clauses are widely relied on by companies and organisations transferring personal data between the EU and the US. The latest episode in transatlantic privacy relations is currently being considered by the Irish High Court and at the time of writing, we await the court's decision.

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Matheson's primary focus is on serving the Irish legal needs of internationally focused companies and financial institutions doing business in and from Ireland. Our clients include the majority of the Fortune 100 companies. We also advise 7 of the top 10 global technology brands and over half of the world's 50 largest banks. We are headquartered in Dublin and also have offices in London, New York, Palo Alto and San Francisco. More than 600 people work across our five offices, including 80 partners and tax principals and over 350 legal and tax professionals

McCann FitzGerald

KEY ATTRACTIONS OF HOLDING IP IN IRELAND

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Many of the leading global corporates in the technology, pharma, medical devices, biotech and other sectors involved in the commercialisation of intellectual property have chosen Ireland as their preferred location for doing business within Europe and internationally. This has contributed to Ireland becoming a global digital hub and centre for innovation. In this article, we will outline the key legal, tax and business attractions of locating operations in Ireland to exploit intellectual property rights.

Ireland is a common law jurisdiction with a reputation as a safe, politically stable and efficient place to hold and exploit IP rights, not least because of its robust laws and court system, which recognise and protect the rights of owners of intellectual property rights including patents, copyright, trade marks, designs and plant varieties and which consistently rank highly in international indexes regarding IP regimes. Ireland's expertise in the field of IP development and exploitation is powered by a highly skilled and educated workforce providing the necessary human skills and technical resources. Ireland also has the requisite commercial infrastructure, pro-business environment and dedicated State agencies which support enterprise.

INTELLECTUAL PROPERTY EXPLOITATION AND ENFORCEMENT

In terms of the legal environment for intellectual property exploitation, a guiding principle in dealing with IP rights is freedom to contract; parties may tailor IP exploitation agreements to their needs. However, EU competition law applies to agreements that have an impact on inter-State trade within the EU; Irish competition law applies in the national sphere. As regards enforcement of IP rights, the Irish High Court is experienced in dealing with commercial disputes and is a suitable forum for resolving IP disputes. The commercial division of the High Court (known as the Commercial Court) specialises in the hearing of complex commercial disputes including intellectual property matters. The Irish Revenue Commissioners are designated as the competent customs authority for receiving and processing actions in connection with counterfeit and pirated goods. Ireland has signed the International Agreement on a Unified Patent Court, however, the ratification of this agreement will require a constitutional referendum.

IRISH TAX REGIME

Ireland has a favourable tax regime for companies that are tax resident in Ireland carrying on a trade of exploiting and/or developing IP in Ireland. Such companies are subject to the standard rate of corporation tax of 12.5%. This rate applies to trading income, such as royalty and other licensing income and to profits made on the sale of trading assets. Trading in this context requires that the Irish operations are active and carried on by staff in Ireland with the relevant skills, expertise and authority to conduct and manage the exploitation of the rights located in Ireland.

Specific tax depreciation allowances and R&D tax credits are available in respect of expenditure incurred on certain R&D carried on in Ireland which effectively reduces the rate of tax for companies engaged in R&D below 12.5%.

KNOWLEDGE DEVELOPMENT BOX

Ireland has introduced a Knowledge Development Box regime which taxes certain profits arising in connection with qualifying assets generated by qualifying R&D carried out by an Irish company at a rate of 6.25%.

Qualifying assets are defined as patents, copyrighted software and inventions that are certified by the Controller of Patents, Designs and Trade Marks as being novel, non obvious and useful. Qualifying expenditure includes own account expenditure and R&D activities carried on within the EU.

RESEARCH AND DEVELOPMENT EXPENDITURE

Companies carrying on R&D activities in Ireland are entitled to claim a tax credit of 25% in respect of R&D

expenditure incurred within Ireland and/ or the EEA, subject to specific conditions and limitations. This tax credit may be claimed in addition to any tax deduction available in respect of expenditure on patents, trademarks, scientific research etc.

Qualifying R&D expenditure includes expenditure on plant and equipment and on buildings, where certain conditions are met. Qualifying R&D activities involve systematic, investigative or experimental activities in the field of science or technology and involve basic research, applied research and/ or experimental development. In addition, the activities must seek to achieve scientific or technological advancement and involve the resolution of scientific or technological uncertainty.

The R&D tax credit can be offset against a company's current year corporation tax liability or can be paid to certain key employees as tax free remuneration. Unutilised R&D tax credits can be carried forward to future periods or can be carried back against previous corporation tax paid. Excess credit can be repaid to the company by the Irish Revenue Commissioners, in certain circumstances and subject to certain limits.

TAX DEDUCTION FOR SCIENTIFIC EXPENDITURE

Non-capital expenditure on scientific research is deductible for trading companies. Scientific research for these purposes is defined as "any activities in the fields of natural or applied science for the extension of knowledge". Expenditure includes payments made to Irish universities undertaking such research or other approved bodies.

PARTICIPATION EXEMPTION FOR CERTAIN SHAREHOLDINGS

Generally gains made on the disposal of the capital assets of the business are subject to tax at a rate of 33%. However, Ireland has a participation exemption which exempts from tax gains made on the sale of shares or/and certain rights related to shares, in a trading company or part of a trading group resident in the EU or, a country with which Ireland has a double tax treaty.

TAXATION OF DIVIDENDS / FOREIGN TAX CREDITS

Ireland also has an extensive (currently 73) double tax treaty network and operates a generous foreign tax credit pooling arrangement regarding the taxation of income from investments including dividend income received from trading companies resident in the EU or DTT country. Such dividends are generally subject to the 12.5% rate, but the availability of tax credits in practice means that generally, such dividends are not subject to further tax in Ireland. Ireland also provides for a unilateral tax credit in respect of foreign withholding tax suffered.

TAX DEPRECIATION ALLOWANCES ON INTANGIBLE ASSETS

Companies can claim tax depreciation allowances in respect of the capital cost of acquiring a broad range of intangible assets where they are used in the course of a trading operation carried on in Ireland. Qualifying assets for these purposes are broadly defined and include most IP rights, patents, trade marks, copyright, computer software, know-how including secret processes and formula related to industrial, commercial or scientific experiments/techniques, research rights related to medical effects or medicines and other intangible rights.

The tax depreciation allowances can be written off in line with the amortisement charge in the company's accounts or, over 15 years, at an annual rate of 7% and 2% in the final year, and (subject to certain restrictions) can be set off against trading income derived from the exploitation of intangible assets and the sale of goods and/or services which derive the greater part of their value from those assets.

TRANSFER PRICING

In line with OECD transfer pricing rules, Irish trading companies are obliged to conduct transactions with connected or related parties on an arm's length basis. Small and medium size enterprises are exempt from the specific Irish transfer pricing rules and related reporting requirements.

WITHHOLDING TAX ROYALTY PAYMENTS

Royalty payments in respect of most IP rights can be made by an Irish resident corporate, to non-residents free from Irish withholding tax, irrespective of where the recipients are located. Patent royalties payments can give rise to withholding tax but, generally speaking, withholding tax can be avoided where the recipient is not resident in Ireland and is resident in another EU member state or in a DTT country.

PROFIT PARTICIPATION

Profits can be repatriated by way of dividends to non-resident shareholders free from withholding tax in line with a number of exemptions from withholding tax, including where the recipient is resident in an EU or DTT country, or is ultimately controlled by residents of the EU or a DTT country, or is a listed company.

STAMP DUTY

Transfers of IP rights are specifically exempt from stamp duty Ireland, thus the acquisition or transfer of IP rights by Irish corporates can be done tax efficiently.

STATE SUPPORTS

Ireland has dedicated State agencies which provide companies with specific financial support/programmes and hands on know-how and assistance. These supports are available to specific projects and in certain circumstances may be availed of by Companies exploiting IP rights in Ireland as part of a broader business. The Industrial Development Authority (IDA), is mandated to assist international companies to invest and establish operations in Ireland, and Enterprise Ireland is mandated to assist Irish businesses to invest in research, development and innovation with a view to assisting export sales growth.

CONCLUSION

Ireland has a well established infrastructure and favourable tax regime for companies exploiting IP rights, together with, a robust and developed legal and court system for the protection and enforcement of IP. These regimes combined with Ireland's membership of the EU make it a very attractive EU location in which to exploit intellectual property rights globally.

WILLIAM FRY

GDPR & Brexit | Brexit Implications for U.S. Multinationals

JOHN O'CONNOR
PARTNER, WILLIAM FRY

INTRODUCTION

The likely implications of Brexit for data protection is a topic which lawyers are frequently asked about in the lead up to the implementation of the General Data Protection Regulation (the "GDPR") on 25 May 2018, particularly in the context of multinational companies who engage in trans-border data transfers on a daily basis. The GDPR is a ground breaking legislative overhaul of data protection and is analogous to the type of disruptive, but arguably necessary, regulatory change that happened in the area of antitrust law a number of decades ago and that demanded the attention of senior board members and stakeholders of organisations.

The aim of this article is to provide insights into some of the key impacts that Brexit may have upon: (i) the regulation (and underlying legal framework) of personal data, and (ii) international transfers of personal data. In this regard, while little can be said with certainty, we can say that Brexit is likely to have a significant effect on data protection which will impact primarily upon the UK but also the EU, the US and beyond.

BREXIT | ARTICLE 50 PROCEDURE

By way of background, the UK has recently signalled its formal intention to leave the EU through the initiation of the Article 50 procedure of the Treaty on European Union. This has triggered a two-year negotiation process during which time the UK will both extricate itself from, and seek to set the parameters for, its future relationship with the EU. The Article 50 procedure will continue until the end of March 2019; in the interim, the GDPR will become law in the UK on 25 May 2018 in the same way that it will become law in every other EU member state.

At the end of the two-year negotiation period, unless an extension for negotiations is agreed (which seems unlikely), the UK will no longer be a member of the EU and the GDPR will (according to the UK government) be replaced by the UK's new domestic data protection legislation which is likely to be similar to the GDPR. However, due to the GDPR's extra-territorial effect, UK based companies will continue to be subject to the GDPR (in addition to UK domestic data protection legislation) in circumstances where they monitor the behaviour of, or offer goods and services to, citizens in the EU.

ONE STOP SHOP MECHANISM UNDER GDPR

Although the GDPR will be significantly more burdensome on organisations than the current EU data protection regime, it also promises to deliver a much more harmonised data protection regime across the EU with an ability for multinationals with an EU establishment (meeting certain criteria) to be principally regulated by one data protection supervisor authority (the "Lead SA") rather than several supervisors across the EU. This is known as the 'One Stop Shop' mechanism. The location of an organisation's 'main establishment' in the EU (i.e. EU headquarters) will typically determine which EU member state supervisory authority is the Lead SA. Without careful planning, post-Brexit there may be a significant number of organisations with their European

headquarters in the UK but which lack a 'main establishment' in the EU to allow the EU operations of the organisation to benefit from a Lead SA. This would mean that an organisation would likely need to interact with data protection supervisors in each EU member state in which it is active resulting in more complexity and competitive disadvantage.

A related post-Brexit issue is that the UK data protection supervisor (post-Brexit) is unlikely to have the authority to act as a Lead SA for the purposes of approving or regulating an organisations binding corporate rules (the "BCRs"). Such organisations will need to approach a supervisory authority in an EU member state to act as its Lead SA and to approve or regulate its BCRs and this will necessitate significant operational changes.

TRANS-BORDER DATA FLOWS OF MULTINATIONAL COMPANIES POST-BREXIT

Another key impact which Brexit will likely have is in the area of international data transfers. Under the GDPR (as under the current EU data protection regime) transfers of personal data outside of the European Economic Area (the "EEA") can only be lawfully made in limited circumstances as there is a requirement to ensure adequate safeguards. It is acknowledged (by the UK government) that the UK will become a 'third-country' post-Brexit in relation to data transfers and as a result will become subject to the same requirements as other non EEA jurisdictions. Accordingly, the UK is seeking an 'adequacy decision' (i.e. essentially a declaration of equivalency of data protection and privacy laws) from the EU Commission as being the most appropriate basis for the EEA to continue to share data with the UK post-Brexit.

However, such an 'adequacy decision' is by no means guaranteed for the following reasons:

- the EU Commission (when considering 'adequacy') are obliged to scrutinize all relevant aspects of the UK's legal regime including human rights, powers of surveillance and retention and rules for onward transfers of data. There are some specific challenges to bridge such as the UK's controversial Investigatory Powers Act 2016 (which gives far-reaching powers of surveillance and retention to UK law enforcement agencies). This is likely to also involve the UK satisfying the EU Commission that the UK will put in place safeguards similar to the Swiss-US Privacy Shield in relation to data transfers from the UK to the US;
- the UK government has declared that it will not incorporate the Charter of Fundamental Rights of the European Union (the "Charter") into UK domestic law. The Charter (specifically Articles 7 and 8 dealing with privacy and data protection) was key to the EU Court of Justice decision to invalidate the EU–US Safe Harbour framework – since replaced by the EU–US Privacy Shield;
- EU Court of Justice decisions made post-Brexit (on data protection and privacy) will no longer have legal effect in the UK as UK Supreme Court decisions will have the final say (although there is some uncertainty on this);
- the EU Court of Justice has increasingly (over the past 5 years) adopted a strict interpretation of 'adequacy' - requiring 'equivalence' with the EU data protection regime; and
- the desire to avoid decisions that lead to unwanted precedence leads to the conclusion that the EU Commission is heavily constrained in making a special case for the UK.

If the UK fails to secure an 'adequacy decision' it will likely seek a bi-lateral agreement with the EU such as the EU–US Privacy Shield framework. If this is not achievable in time for Brexit, data transfers to the UK from EEA based organisations will need, in every instance, to be legitimised by using other means such as, for example, standard contractual clauses (which are required to be governed by the laws of the EEA jurisdiction of the data exporter and need to prevail in the event of conflict in relation to their subject matter). Needless to say, this would cause significant issues for businesses operating in the UK and the UK will seek to avoid this.

Conclusion

With only 18 months to Brexit, multinationals with their EU headquarters in the UK should carefully consider how to benefit from the One Stop Shop Mechanism under GDPR post–Brexit including in relation to BCRs. Any organisation, whether or not based in the UK, but which engages in trans-border data transfers involving the UK should also plan for legal and operational changes. Many multinationals are not waiting but instead making plans now to avoid the potential harsh effects of Brexit and adding legal and operational certainly to their organisations.

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Offshore Law Firms Limber Up for Trump Era

Republican presidencies have historically been good news for offshore financial centers. Offshore law firms consider whether it will be any different this time as they seek to bolster their image as a tax-neutral venue for cross-border deals and shake off any misconceptions from last year's Panama Paper leaks.

By Ben Edwards

In the days after Donald Trump pulled off his unexpected victory in last November's presidential election, offshore financial centers were already busy trying to make sense of the implications. Would Trump's deregulatory leanings boost cross-border transactions—the lifeblood of the offshore finance industry—or would his America-first protectionist agenda weaken the global economy and stymie international capital flows?

Half way through Trump's first year in office, the implications remain hazy.

"It's pretty hard to tell what the impact will be," says Nick Bullmore, a partner in Carey Olsen's Cayman Islands office. "Offshore jurisdictions tend to do better under Republican presidencies because they are invariably for lower regulation and a bit more understanding of offshore financial centers and how we help. Our main job is effectively getting money from A to B in a sensible neutral forum where there's no additional tax or regulation; anything that enhances that is obviously a good thing and anything that obstructs that is potentially bad. It's unclear how it will pan out but it really depends on which of Trump's initiatives gain traction."

That uncertainty has been exacerbated in part by Trump's early failure to repeal and replace the Affordable Care Act, one of his central campaign promises. That setback could hinder Trump's ambitions to cut corporate taxes and loosen business regulations—reforms that law firms expect would be beneficial to offshore financial centers.

"Both of these [low taxes and deregulation] are pro-business measures and obviously intended to fuel economic growth," says Joanne Huckle, a partner in

Ogier's Cayman Islands office. "In terms of offshore centers, at least in the Caribbean, we tend to do well when economies are strong; when the US economy is booming that is great for business in Cayman and the Caribbean in general."

Huckle says lower taxes in the US are unlikely to crimp demand for financial centers such as the Cayman Islands, given the wider benefits of doing business offshore.

"The comparative advantage of an offshore center over the US may be reduced if the tax saving is lower, but there are still other obvious advantages for using an offshore center, not least removing the risk of future tax rises," she says. "Our view is that a well-established business-friendly jurisdiction like the Cayman Islands is actually likely to stand out as a beacon of stability in times of political uncertainty and change in the US."

Trump's proposals to slash corporate taxes is also part of a commitment to lure back to the US an estimated $2.6 trillion of earnings that US companies are holding overseas. While this would likely have an impact on markets where that cash is being invested, offshore lawyers say such a move is unlikely to disrupt their core business of providing a tax-neutral venue for cross-border deals.

"People often conflate tax treaty jurisdictions like Ireland and Luxembourg with what I would call our offshore jurisdictions like BVI, Bermuda and Cayman," says Robert Briant, partner and head of Conyers Dill & Pearman's British Virgin Islands office. "Trump is talking about tax reform and getting Apple and others to repatriate all their cash back to the US, but that doesn't impact us, our centers are not tax treaty jurisdictions. It's places like Ireland that are set up for tax treaty purposes; where the likes of Amazon and Apple can route their profits through to lower their tax burden, so if there's any change to the law to make that less popular, that will frankly not impact us. Around 90% of what we do—our bread and butter—is selling corporate law using the English legal system in BVI based on Delaware incorporation statute for cross-border transactions."

Part of that business of selling corporate law means constantly revamping their range of product offerings to compete with other offshore centers. Last year, the Cayman Islands introduced new limited liability company legislation as part of an effort to broaden the different types of companies that can be set up on the island.

"It used to be that there was only a choice between one type of company, a trust or a partnership, and those were really the vehicles that would be used for fund structures, but now the Cayman Islands has introduced an LLC," says Huckle. "This is something that US clients kept asking for because it is something they are familiar with, for example they frequently use Delaware LLCs. US clients were frustrated that they couldn't just create in Cayman the same entity that they understand from their US structures, and now they can."

One advantage of an LLC over a traditional partnership is that under Cayman law, a partnership is not its own separate legal personality whereas the LLC is. Also, an LLC can be set up in such a way to mirror the flexible accounting mechanics of a partnership. Huckle says about 200 companies have been set up under Cayman LLC legislation since it was introduced.

"We're seeing it used for special purpose vehicles in downstream private equity work and in corporate transactions," says Huckle. "In addition to its use as an investment fund, we have also seen it used as a management vehicle and as a GP entity for a partnership, so it's quite broad."

The Cayman Islands also recently introduced legislation that will soon allow clients to set up a limited liability partnership or a foundation company. The latter is expected to be popular with private clients as a succession planning vehicle and for other purposes, such as securitization transactions, where previously a trust would have been used, Huckle says.

"Cayman tries to be reactive to investor demand, it's all about responding to what investors want; our government really jumps on that to make sure it is still a relevant jurisdiction that responds to demand from the onshore world," she says. "Cayman has a very pro-business government and time and again it's showed itself to be very agile and flexible; in a time when there is a lot of changing regulation for offshore jurisdictions, the Cayman government tries to be extremely pro-active and take the best and most business-friendly approach to how to deal with regulation."

The British Virgin Islands is also on the cusp of adopting state-of-the-art limited partnership legislation that will give clients, for instance, the option to elect legal personality and the ability to register a charge over assets of the limited partner, as opposed to the general partner on behalf of the LP, says Briant.

"The legislation is out for public comment right now and we hope to have it in place by the end of the year," he says. "We're always looking to build a better mousetrap and we compete fiercely with each other as jurisdictions to do so."

As well as introducing new product legislation, offshore jurisdictions must also regularly tweak existing laws to ensure their jurisdictions continue to be attractive to potential clients. Bullmore says the Cayman Islands overhauled its partnership law in 2014 to tidy up various ambiguities and keep up to date with changes elsewhere. Further modifications are currently being drafted.

"The key is we want people to write what they want as a commercial deal and that that will be enforced without odd quirks, so there are further revisions envisaged over time and people are currently working on the next round of those," he says. "We want to do series partnerships, series LLCs and also merging of partnerships—all those types of things you can do in Delaware. If someone can split a partnership in Delaware we want to be able to say we can do that in Cayman, and so we're constantly having to keep up with innovation—and sometimes innovation is at our end and it's mirrored in Delaware and other jurisdictions. You just don't want someone coming to you and saying: we've decided not to use the Cayman Islands because the inability to split a partnership was a deal killer for us."

And it is not just about optimizing legislation to remain competitive, offshore financial centers also need to adapt to shifting onshore trends and be ready to provide legal advice and services around those developments. One area where offshore law firms are bolstering their expertise is in the growth of blockchain technology and the burgeoning financial products and services that are being created around it, such as cryptocurrencies like Bitcoin.

"We've been waiting for new products or new business lines and the big one at the moment is cryptocurrencies and initial coin offerings(ICOs)," says Bullmore. "They fall naturally within the fund type structure, and also the US Securities and Exchange Commission has recently started warning that some of the ICOs may be considered securities and therefore subject to regulation. Carey Olsen did the first ever cryptocurrency-denominated fund in Jersey a month or so ago, and we've got people looking to replicate that here. So a US manager or someone with an idea or a blockchain company looking to start a fund or whatever would look to Cayman and potentially just not raise money from US investors and raise it in places where these things aren't regulated yet."

Against that backdrop, Huckle says her firm is setting up a digital advisory team to meet growing demand for cryptocurrency and blockchain-related services.

"This is definitely an area where we see there will be growth," she says. "We very recently worked on the launch of the first blockchain-administered fund, which is basically where subscriptions and redemptions for the fund are done via the blockchain ledger. The way this fund has been set up actually provides the capability to eventually accept subscriptions and pay redemptions in cryptocurrencies, so as this trend develops we in Cayman and in our other offices are well placed to take a pivotal role."

The Cayman Islands is also trying to develop its physical infrastructure and encourage fund managers and cutting-edge industries to actually set up shop on the island, potentially attracting US companies that might find it increasingly difficult to hire foreign talent given Trump's orders to tighten H-1B visa restrictions (a pathway used by many foreign computer programmers and software developers).

"We're looking for tech startups to come and move to Cayman," says Bullmore. "Cayman is looking to build and is in the process of building various tech initiatives to encourage those types of people to come here visa-free and we're hoping that will create a Caribbean Silicon Valley with the intellectual property and everything stored offshore here. A lot of the arguments are very compelling on paper because you're creating the IP offshore genuinely with physical substance and the employees who are here don't pay income tax or capital gains, and they get to live on a nice Caribbean island. The infrastructure and everything here is such that they can just as easily do it in Cayman as Silicon Valley."

A boom in private equity fundraising in the US is also driving demand for offshore services, particularly in the Cayman Islands, as funds seek to raise US tax-exempt and non-US money in addition to the funds they have raised onshore.

"Private equity is very popular at the moment, arguably even more so than hedge funds," says Bullmore. "Hedge fund inflows have picked up a bit as returns have improved but generally the fees are seen to be quite high and the returns just haven't been there and the barriers to entry are bigger, whereas private equity has been going absolutely gangbusters on the fund side, the number of PE funds in the Cayman has pretty much doubled in the last seven or eight years."

That has helped cement Cayman's reputation as one of the leading jurisdictions for offshore fund-related work.

"You can do most things in most offshore centers but for historical reasons and personal taste and expertise, they tend to congregate in one place because really you just want to stick with something that's tried and tested in a jurisdiction that everyone knows," says Bullmore. "So it's one of those positive circles that's self-reinforcing: once you get a certain amount of expertise and the legislation to back it, you effectively become the default jurisdiction."

Huckle says she is seeing increased demand from family offices, sovereign wealth funds and private sector pension plans to invest in private equity funds, which benefits not only Ogier's private equity practice but also its private client team. The ongoing low interest rate environment in the US is also stimulating clients' ability to raise money to finance acquisitions, boosting downstream private equity deal flow activity

for Ogier's corporate and finance teams, she adds.

Maintaining Cayman's position as the offshore jurisdiction of choice for many global investors also means being plugged in to their changing needs, such as providing more robust data protection and IT security measures.

"We're increasingly subject to more rigorous cybersecurity-related due-diligence by fund investors; before investors want to invest in a fund they're not only doing the due diligence on the manager, we're actually getting quite detailed cybersecurity questionnaires coming to us," says Huckle. "Cybersecurity is something that we've had to address in terms of making sure risks are clearly addressed in offering documents and ensuring that managers have protective systems in place. We're very aware as an offshore service provider to the funds industry that it's not only excellent quality of legal advice that we need to give but also our business support services and data security needs to be rigorous and excellent, so it's an area in which we have very heavily invested."

A greater demand for transparency is also helping offshore financial centers shake off misconceptions about their business practices. One US regulation that lawyers say has had helped improve the openness of offshore jurisdictions is the Foreign Account Tax Compliance Act, or FACTA, which is intended to clamp down on US tax evasion by forcing foreign financial institutions to report on the offshore assets of US citizens.

"FACTA has had a positive impact on offshore because it's another tool to dissuade people from using vehicles anywhere in the world to evade tax, and anything which both cleans up jurisdictions globally and makes the impression of jurisdictions being clean helps offshore and allows us to get on with our bread and butter work, which is to sell vehicles or to give corporate advice and litigation advice on vehicles for cross-border transactions," says Briant.

But some of those misconceptions persist. Offshore law firms are still feeling the ripples from last year's Panama Papers leak, which has further fuelled a lack of understanding about the legal services they provide. A wider crackdown on certain offshore financial centers by some governments has also added to that stigma.

"There's the chilling effect by all of these blacklists, including the European [Union] blacklist where they foolishly equate a zero tax regime with harmful tax practice, failing to understand what we do—which is that we have full transparency for the authorities for tax purposes," says Briant. "If you have a French shareholder and French tax law says you should pay tax on your BVI profits, then BVI law says: here's the information. The suggestion that we don't charge tax at our level being a problem is wrong analysis on their part and frankly they just don't get it. They do not understand what offshore is about."

Briant says the British Virgin Islands is ahead of the curve with its transparency initiatives to demonstrate to authorities that they are not there to help people evade tax or launder money.

"In the BVI every company has to file its register of directors," he says. "It's not public, it's private but that information is instantly available to the authorities and they can search it based on an individual name or company name."

The same information is also available for shareholders and beneficial owners of BVI-registered companies. And while that information remains private and only accessible to authorities, it is carefully vetted and verified, something Briant says is a significantly superior model to the UK's unvetted public register.

"The UK is putting pressure on overseas territories to adopt public registers but again failing to understand that BVI licences its incorporation agents, we're audited constantly to ensure that we get know-your-customer information and it's vetted," he says.

Conyers Dill & Pearman has a team of eight people in Toronto whose job it is to corroborate information that is submitted, such as checking that passports are not forgeries and that the certifiers of documents are authentic.

"BVI is leading the charge and we are united that the UK system is inferior to the BVI system to root out criminality and tax evasion," says Briant. "We suggest that if the UK was serious about tackling these issues they would regulate the incorporation of entities and adopt a similar approach to transparency as the overseas territories to better root out criminality and tax evasion."

Those efforts to improve transparency and an ongoing push to better communicate the work that offshore law firms carry out means the old perception that these financial centers are simply sunny places for shady people will continue to fade.

"People love to beat up tax havens, as they call them, and assume they have gold bars sitting under a palm tree somewhere and so we're constantly having to deliver the message and make the point that's not what we do, that we just help money flow from A to B, and things like FACTA, the common reporting standards, all the tax information exchange agreements, all of those have really meant that the kimono has come off," says Bullmore. "There was never really anything interesting to see, but people are starting to see there's a limit to transparency—once you've seen everything, you've seen everything. So the usual complaints that we're hiding money, that offshore is all about secrecy, has abated and people are understanding a bit more that that's not what we do here." ■

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The Cayman Islands – A Busy Start To 2017.

As a leading offshore financial centre, the Cayman Islands strives both to meet the varied and changing needs of those who utilise the jurisdiction as well as ensuring it maintains appropriate levels of regulation.

Notable legislation which has come into effect during 2017 has included the Limited Liability Partnership Law, which allows for the registration of a new type of partnership vehicle (the "LLP"); the Non-Profit Organisations Law which formally governs the formal registration and record-keeping in respect of non-profit organisations ("NPOs"); requirements for certain Cayman Islands corporate entities to maintain beneficial ownership registers for very limited purposes (the "Beneficial Ownership Regime"); and legislation aimed at modernizing Cayman's intellectual property regime, including the Patents and Trade Marks (Amendment) Law, the Trade Marks Law and the Design Rights Registration Law. Further information is provided below.

LIMITED LIABILITY PARTNERSHIP LAW

An LLP is similar to a general or exempted limited partnership, with the key difference that an LLP is established as an entity with legal personality that is separate and distinct from its partners. Accordingly, it is the LLP rather than the individual partners that will be liable for any debts or losses of the LLP. Whilst partners may actively manage the operation of the LLP's business, they will not be personally liable either jointly and/or severally, provided that such debts or losses are not caused by a negligent act or a breach of duty of care (where such an express duty has been assumed). Whilst LLPs may be used for any lawful purpose, it is expected that they will be of most interest to professional businesses such as accounting or law firms. Existing general partnerships can be converted into LLPs and foreign LLPs may be continued into Cayman.

NON-PROFIT ORGANISATIONS LAW

This law is part of Cayman's ongoing commitment to increased transparency and the global fight against corruption, money laundering and terrorism. It provides for the establishment of a registration system to deal with the regulation and monitoring of NPOs operating in Cayman and to provide for the investigation into the operations of funds flowing through those NPOs.

The definition of NPO is broad and includes a company or body of persons, whether incorporated or unincorporated or a trust established primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes or other activities or programmes for the public benefit or a section of the public within Cayman or elsewhere, which solicits contributions from the public or a section of the public within Cayman or elsewhere.

The law requires all NPOs (through their "controller" – trustee, director or other person who has established the NPO) to apply to the Registrar of Non-Profit Organisations for registration. Soliciting or raising contributions from the public within Cayman or elsewhere is prohibited unless the NPO is so registered. Once registered, certain information will be recorded on the register including the name, Cayman address, telephone number, the NPO's purposes and activities and the person who owns, controls or directs the NPO. This register will be open for public inspection but financial information and the names and personal information of the controllers/senior officers will not be available. The Registrar may refuse to register an NPO if its activities do not fall within the definition, if it has been established for illegal purposes, does not have a connection with Cayman or if the information in the application is manifestly incorrect. The NPO may also have its registration cancelled if it engages in wrongdoing or contravenes the law.

The law requires the controller to keep proper financial statements in respect of money received and ex-

pended. An NPO with gross annual income of over US$250,000 that remits 30% or more overseas must have its financial statements reviewed by a qualified accountant in accordance with international standards. There are a range of penalties for non-compliance.

MAREE MARTIN
COUNSEL

THE BENEFICIAL OWNERSHIP REGIME

The principal purpose of this legislation is to make beneficial ownership information normally held by corporate service providers readily accessible in response to proper and lawful requests from specified law enforcement agencies (currently Cayman and the United Kingdom). Unless exempted, companies must create and maintain a register of beneficial owners; the information in the register will be encrypted and stored on a secured standalone search platform.

Exemptions are available for entities or subsidiaries of one or more legal entities which are (a) listed on the Cayman Islands Stock Exchange or another approved stock exchange; (b) registered or licensed under a Cayman Islands regulatory law; or (c) managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund or a general partner of such a vehicle, fund or scheme.

If the law applies, an individual is a beneficial owner of a company if he holds, directly or indirectly, more than 25% of the shares or voting rights, or the right to appoint or remove a majority of the Board. If no individual satisfies those requirements, an individual will be a beneficial owner if they have the legal right to exercise or actually do exercise significant direct or indirect influence or control over the company including through any trust or partnership (other than solely in the capacity of a director, manager, professional advisor or professional manager).

There is a 12 month period in which to ensure compliance after which there are significant penalties for failure to comply.

TRADE MARKS LAW

This law makes provision for the direct registration of collective marks and certification marks and establishes a new stand-alone trade mark registry. The existing system which required trade marks to be first registered in the UK has been abolished resulting in a quicker, more cost-effective process.

PATENTS AND TRADE MARKS (AMENDMENT) LAW

This law maintains the previous practice of enabling proprietors of United Kingdom ("UK") patents to automatically extend their registered patents into the Cayman Islands whilst stripping out the provisions relating to trade marks which are now regulated under the Trade Marks Law. The law includes a provision which will prevent the "assertion of patent infringement in bad faith". Such "anti-patent trolling" provisions will mean that the Court will not recognize, enforce, or give effect to an estoppel based on an assertion of patent infringement made in bad faith.

DESIGN RIGHTS REGISTRATION LAW

This law allows owners of UK registered designs and registered community designs to extend their registered design rights to the Cayman Islands. Once registered, such design rights will have the same duration and afford the owner with all the equivalent rights and remedies available to them in the UK or EU.

Applications need to be made to the Registrar of Design Rights via a registered agent in the Cayman Islands. It is thought that most applications will be accepted on the basis that they have been previously registered in either the UK or EU and that particulars will be checked to determine whether the design right consists of or contains (a) national flags, insignia or royalty, insignia or international organisations and national emblems or the design of such flags, insignia or emblems; or (b) words, letters or devices likely to lead persons to think that the applicant either has or recently has had Government patronage or authorization.

For further information in respect of any of the abovementioned laws please contact the author or your usual contact(s) at Conyers Dill & Pearman.

Q&A

COLLAS CRILL'S JOSS MORRIS HIGHLIGHTS WHY CAYMAN FUND INVESTORS NEED CAYMAN COUNSEL.'

CAYMAN FUNDS INVESTOR COUNSEL – SELLING THE CAYMAN BUY-SIDE

JOSS MORRIS
COLLAS CRILL

Globally, institutional investors allocate billions of dollars to funds registered in the Cayman Islands and yet many may never have engaged Cayman counsel.

Joss Morris, a partner in Collas Crill's investor/buy-side funds practice, poses some key questions from an investor perspective and considers some compelling factors as to why Cayman buy-side counsel should be (and increasingly are) engaged.

JUST TO BE CLEAR - WHAT INSTITUTIONAL INVESTORS ARE WE TALKING ABOUT?

SWFs, pension funds, funds of funds, insurance companies, banks (where domestic legislation permits), foundations, endowments and (increasingly) family offices.

WHY ARE THESE INVESTORS INVESTING INTO CAYMAN FUNDS?

Simply put, because managers setting up offshore funds (across fund types) as either stand-alone funds, parallel funds to domestic funds, AIVs, or feeder and/or master funds continue to choose Cayman as one of their primary offshore fund domiciles.

Managers seeking to attract global pools of capital want to spend their time and resources convincing investors of the merits of their strategy, proprietary deal flow and personnel, not on explaining why they have elected to use a fund jurisdiction outside of that which investors are familiar and comfortable with.

BUT AS A SOPHISTICATED INVESTOR WE HAVE AN INTERNAL LEGAL TEAM AND/OR HAVE ENGAGED INTERNATIONAL ONSHORE LEGAL COUNSEL TO CONDUCT OUR FUND REVIEWS. WHY SHOULD WE ALSO ENGAGE CAYMAN COUNSEL?

Have a think about these highlighted points:

The fund documentation is Cayman law governed – fundamentally the constitutional documents of the fund (the memorandum and articles of association of a company, the limited partnership agreement of a Cayman exempted limited partnership or the LLC agreement of a Cayman LLC) as well as the subscription documentation and any side letters are ***all*** Cayman law governed. Whilst Cayman has adopted legislation to allow its fund documentation to replicate/dovetail with onshore fund documentation, there remain differences – making a multimillion dollar investment into a Cayman fund without engaging Cayman counsel acting for you (as opposed to acting for the fund itself) to review them, is a risk.

Onshore Counsel Role – onshore investor counsel's primary focus is to assist with analysis and negotiation of fund terms and documentation, a role which they adopt with respect to a Cayman fund. Onshore investor counsel are often very familiar with Cayman law issues, particularly where the firm in question also acts as fund counsel for managers on Cayman fund formations. Onshore counsel are not however Cayman law qualified, typically will not be familiar in detail with the full statutory provisions of the relevant Cayman laws and are not based in the Cayman Islands. Consequently, at a particular point in time they may not be familiar with imminent/recent changes to Cayman law or practice, whether statutory or deriving from Cayman case law, or which are driven off local regulator (i.e. with respect to hedge funds, the Cayman Islands Monetary Authority) statements of guidance or approach which may also impact the documentation/investment.

Fiduciary Duties – for institutional investors having fiduciary duties to their stakeholders, not engaging

Cayman counsel may run a particular risk in connection with being able to demonstrate satisfying those duties. This has, for example, led to a particular increase in Cayman counsel engagement amongst pension funds and funds of funds. Not engaging Cayman counsel at any level may have duty of care implications.

SO IF IT'S A CAYMAN FUND DO I ALSO NEED ONSHORE COUNSEL?

Yes, **absolutely.** Cayman counsel's primary role is providing Cayman Islands legal advice, not drafting or negotiating fund terms which is the primary role and experience of your onshore counsel.

To coin and somewhat mix a saying, "beware handsome offshore counsel bearing gifts" – investors should be wary of any offshore firm that claims it can do everything (presumably for less money) that an onshore counsel review team would do.

THE FUND I AM GOING INTO HAS CAYMAN FUND COUNSEL WHO ARE NAMED IN AND HAVE PREPARED THE FUND DOCUMENTATION - ISN'T THAT SUFFICIENT?

That *should* be sufficient to ensure the documentation complies with Cayman law but ***complying*** with Cayman law does not equate to making investors aware of terms arising under Cayman statute and/or which have arisen as a matter of common law in the Cayman courts – various of which may be caught by language in the documentation referring to matters being 'subject to applicable law' or subject to the provisions of a particular Cayman statute. Experienced buy side counsel will highlight the applicable Cayman provisions, providing knowledge and, if necessary, the opportunity to address issues before an investment is made.

WHAT DOES A CAYMAN COUNSEL INVESTOR-SIDE REVIEW TYPICALLY INVOLVE?

Review of the main fund documents – including the PPM, Cayman constitutional documents, subscription documents and any side letter - to ensure compliance with Cayman law and highlight any unusual provisions/other Cayman issues impacting the documentation.

Review of any fund Cayman counsel legal opinions – this may include a Cayman fund counsel 'launch' legal opinion for the fund and a side letter opinion and negotiation of the same from a Cayman law perspective with the fund Cayman counsel.

Cayman Court Searches – potentially conducting Cayman court searches on the fund and any related Cayman entities - for the purposes of identifying if there is any Cayman based litigation against the fund entities and/or any insolvency/winding up proceedings.

Online Cayman Registry and Regulator (Cayman Islands Monetary Authority) checks – checking the fund (and any related entity) is actually registered in the Cayman Islands and (where required) registered with the Cayman Islands Monetary Authority.

Reporting back – Cayman counsel will review and report back to the investor's onshore counsel who will 'quarterback' the review comments, discuss further as necessary with Cayman counsel and their client and determine any matters which need further investigation/incorporation into the fund documentation and/or any side letter.

Investor-side Legal Opinion – an investor may also want a separate legal opinion from its Cayman counsel in connection with an investment – for example where a limited partnership agreement includes limited partner rights raising concerns as to the investor's limited liability protection.

OK, ANYTHING ELSE TO PUSH ME OVER THE LINE?

'Carrot' and 'stick':

The 'carrot'- a number of our investor clients and their onshore counsel view Cayman buy-side counsel (worse case) like an insurance premium – as well as satisfying various fiduciary-type duties the cost/benefit analysis runs that if Cayman counsel do not spot a material issue in nine out of ten investments that is a positive and, ultimately, the one time they do raise something or are available to advise at short notice on an issue that arises, it has paid for the ten times.

The 'stick' - hopefully, the rationale provided elsewhere will convince but, ultimately, there is another way of looking at this which we might characterise as the 'stick' – *if something happens to the investment which is driven off, is a consequence of, or could have been mitigated by, an up-to-date knowledge of Cayman law issues and the investor suffers a loss, will that investor (and potentially its onshore counsel) be comfortable with responding to a question internally/from its own investors or clients as to why it didn't receive Cayman counsel advice?*

ABOUT THE AUTHOR AND COLLAS CRILL

Joss Morris has been based in the Cayman Islands for over a decade with roughly the first half of that spent with one of the largest Cayman firms representing and regularly advising some of the largest global fund managers on fund formations, secondary investments and (to a lesser extent) institutional investors on their primary investments and the second half spent focusing on advising institutional investors into global funds and on their own fund formations - 'poacher turned gamekeeper' as an analogy doesn't warrant too close an analysis but conveys the point.

Prior to moving offshore, Joss trained and worked with Linklaters for eight years in London and Central and Eastern Europe.

Collas Crill has an established Cayman investor/buy-side practice spanning over 20 years advising some of the world's largest institutional investors across fund types. The firm also acts as Cayman fund counsel, particularly in the sub US$1 billion market.

Collas Crill's investor-side practice also operates across its global jurisdictions in the BVI, Guernsey, Jersey and Asia.

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Legaltech© news | A SPECIAL REPORT

DESKTOP'S NOT DEAD
Desktop computers may not be the slickest machines, but they don't appear to be leaving law offices any time soon. **L6**

JOHN YANEZA

BACK TO BASICS

FOR MORE THAN 20 YEARS NOW, Legaltech News and ALM have done some form of a Law Firm Tech Survey, and every year, there promises to be some sort of surprise. When I received the results of the survey in August, it was clear this year would be no different.

But even the overall trend wasn't what I was expecting—it seemed that many large law firms weren't throwing briefcases of money at cybersecurity or practice management tools. Instead, the theme seemed to be a revertion to old, familiar ways of looking at legal technology. Really, more firms are keeping IT in-house rather than outsourcing anything? And 45 percent of firms are planning on desktops for their next hardware refresh? Not even a single firm has at least three-quarters of attorneys on tablets?

After a moment of reflection, though, I thought about one word I've been hearing over and over again this year and that I've been stressing in LTN's own coverage: practicality. A new piece of technology means nothing if you can't actually get attorneys to adopt it, and if overall efficiency is the end goal, a rational CIO or IT director needs to work with the tools that attorneys will actually use.

It's not as if firms are dropping technology as a priority. In fact, our survey revealed that average capital and operating tech expenses at law firms are largely stagnant heading into 2018. It just means that firms are being smarter with those decisions out of necessity, and any new rollouts —be it a cloud infrastructure or a new mobile device management system —needs to be done in a way that encourages adoption. It'd take more than my fingers and toes to count the times I've heard the phrase "change management" at legal technology conferences this year.

That's why for LTN's features this month, we decided to dive into the survey's numbers and explore the ways firms are getting back to basics. As our Gabrielle Hernandez found, desktops are staying alive in law firms, where many view them as the most secure, reliable and cheaply maintained option. Rhys Dipshan, meanwhile, looked at why IT staffs are growing, particularly in large firms, as they manage disparate interests.

Technology is becoming crucial to law firm operations—but only if it serves the ultimate end goal of assisting clients.

Zach Warren, Editor-in-Chief
zwarren@alm.com

REGULATORS LOOK TO TAME CRYPTOCURRENCY MARKET

Canadian and U.S. actions suggest more countries may look to regulate ICOs as securities.

THE MARKET FOR DIGITAL CURRENCIES has taken off faster than regulatory agencies could keep pace. But one method gaining steam is to regulate some ICOs under existing securities laws.

On July 25, the U.S. Securities and Exchange Commission (SEC) issued guidance stating that federal securities laws apply to ICOs, while Singapore quickly followed suit, deciding it will regulate some ICOs as securities. On August 24, Canada made its move, with the Canadian Securities Exchange Administrators (CSA) announcing that securities laws may apply to ICOs.

ICOs have until this August been unregulated and, when traded, did not confer ownership rights. Digital currency sales have also been frequently cited as subject to fraud. On August 28, the SEC issued an investor alert warning investors of " pump-and-dump" schemes (artificially inflating a share price by encouraging investors to purchase to sell one's own shares at a high price) and market manipulations.

Joshua Klayman, of counsel at Morrison Foerster, said given that three countries have already regulated ICOs as securities, more countries are going to potentially come out with similar guidance.

"I think that will have an effect, because it will cause people to take greater caution when they are developing these types of structures for their token sales," she explained. "It certainly should give lawyers pause when they're advising on these to say, 'Listen, you really need to take a hard look at this and think about whether you just want to assume it's a security.'"

Klayman noted that, while "many people would advise to take a conservative view anyway" in these investments, "the more and more guidance comes out, the less and less easy it is for people with a straight face around the world to say, 'My jurisdiction says it's not a security; who cares about what other jurisdictions think.'"

Speaking about the SEC's advisory, Jones Day partner Stephen Obie said, "It doesn't surprise me that what's happening here is there's a regulatory effort to raise awareness about the potential in the ICO marketplace. What folks are trying to say is that laws that have existed for decades still apply, and anyone buying these coins should definitely do their due diligence. It's not for the faint of heart at times."

—IAN LOPEZ

LIMITED OPTIONS, HIGH LIABILITY

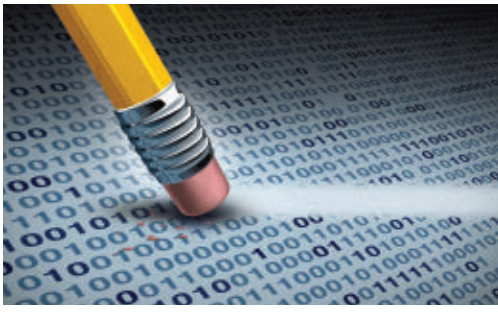
What one "intent to deprive" ruling says about companies and their retention processes.

IN 2012, HEADPHONE MANUFACTURER GN took audio equipment manufacturer Plantronics to court alleging monopolization charges. Delayed for over five years due to problems that arose during discovery, the case demonstrates how deleted discoverable content will likely come to light and be a liability.

Plantronics issued internal litigation holds, trained custodians on legal hold processes and sent quarterly reminders of such holds. But due to one person's actions, tens of thousands of emails were knowingly deleted. The company couldn't recover all the deleted content, and in a ruling in the U.S. District Court for the District of Delaware, Judge Leonard Stark imposed sanctions on Plantronics for its "intent to deprive" during discovery.

Debbie Reynolds, director of EimerStahl Discovery Solutions, said Plantronics should've been capable of keeping documents regardless of employee deletetion, and should look to implement automated data recovery solutions while shutting off automated deletion processes.

EimerStahl partner Daniel Birk said legal holds can be effective," but "instuting a [server] freeze" can ensure "everything won't be lost or deleted." —*Rhys Dipshan*

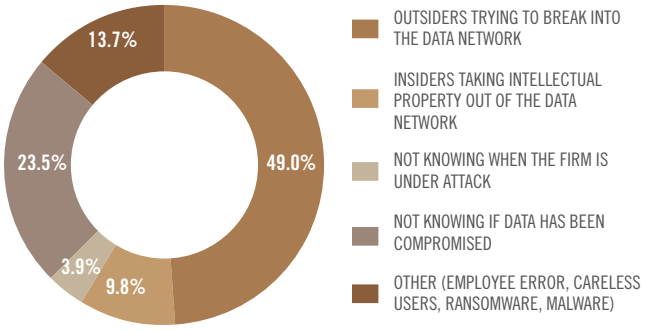


ANATOLY VARTANOV/SHUTTER; SHUTTERSTOCK

THE 2017 LTN LAW FIRM TECH SURVEY

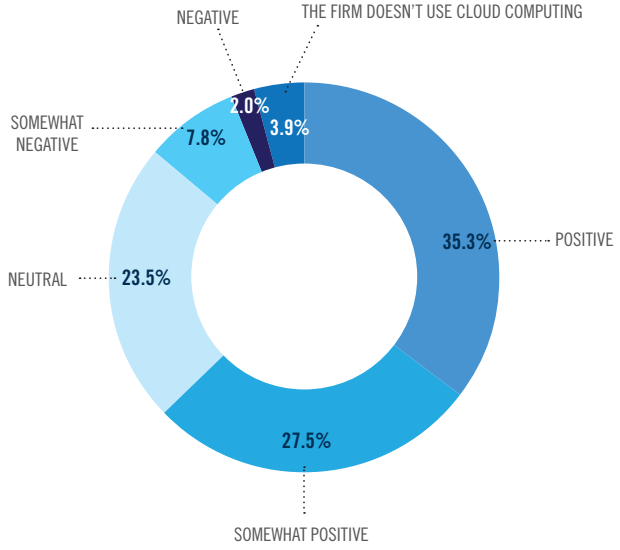
NOW IN ITS 22nd year, the 2017 LTN Law Firm Tech Survey asks questions about technology adoption, usage, and policies at top U.S. law firms, with topics ranging from operations and security to budgeting and quality of life. The survey, spearheaded by Daniel Masopust of ALM Legal Intelligence, received responses from 51 NLJ 350 law firms, with respondents identified as top technology decision makers for their firms—a mix of CIOs, IT directors, and other similar positions.

WHAT DO YOU PERCEIVE AS THE BIGGEST SECURITY THREAT TO YOUR FIRM?

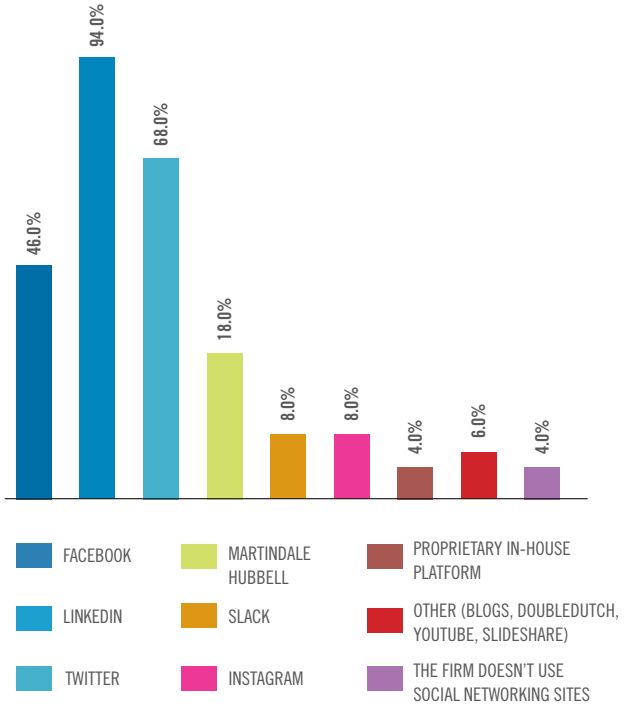


WHAT ARE THE FIRM'S BIGGEST CHALLENGES OR WORRIES REGARDING CLOUD COMPUTING? (MULTIPLE RESPONSES ACCEPTED)

HOW WOULD YOU DESCRIBE THE FIRM'S EXPERIENCE WITH CLOUD COMPUTING?



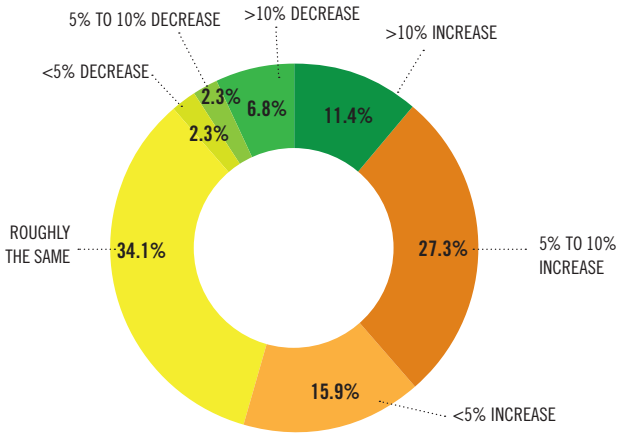
WHICH SOCIAL NETWORKING SITES/TECHNOLOGIES DOES THE FIRM USE?



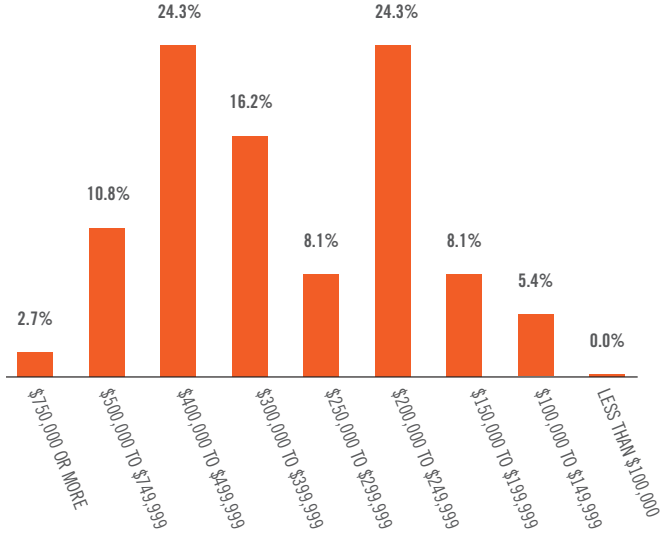
email: LTNpressreleases@alm.com

Among survey respondents, the projected average firm technology budget for capital expenses is **$2,856,209.38** in 2018, down from **$3,073,236.97** in 2017.

HOW DOES THE IT DEPARTMENT'S 2017 OPERATING BUDGET COMPARE WITH THE AMOUNT THAT WAS SPENT IN 2016?



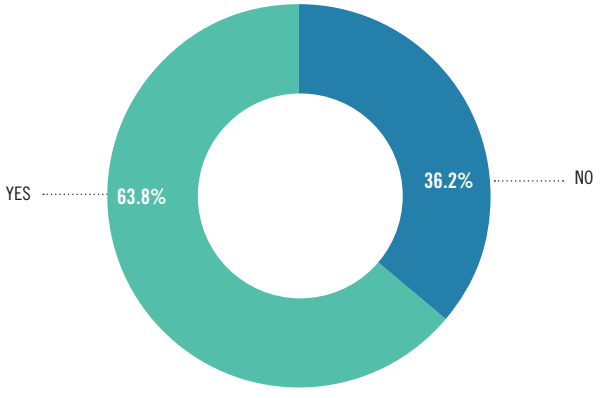
HOW MUCH COMPENSATION, INCLUDING BONUS, DID THE TOP TECHNOLOGY EXECUTIVE AT YOUR FIRM MAKE IN 2016?



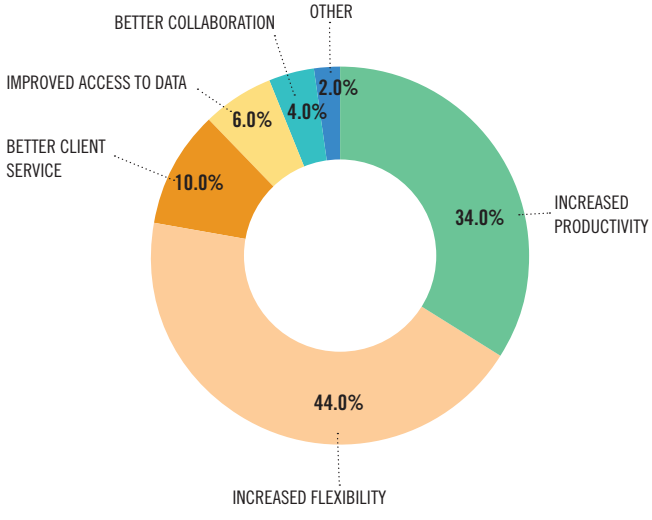
82.2%

That's how many survey respondents said they were either satisfied or mostly satisfied with their current compensation. Not a single respondent said they were fully dissatisfied.

DOES THE FIRM HAVE AN OFFICIAL POLICY FOR COLLECTING NON-EMAIL SOURCES OF ELECTRONIC DATA (BLOOMBERG CHAT, SOCIAL MEDIA, TEXT MESSAGES, ETC.)



WHAT IS THE BIGGEST BENEFIT OF MOBILE TECHNOLOGY FOR YOUR FIRM?



DESKTOP'S NOT DEAD

DESKTOP COMPUTERS MAY NOT BE THE SLICKEST MACHINES ON THE MARKET, BUT THEY DON'T APPEAR TO BE LEAVING LAW OFFICES ANYTIME SOON.

BY GABRIELLE ORUM HERNÁNDEZ

AMID ALL THE SLICK TECH HARDWARE ON THE MARKET TODAY, desktop computers perhaps seem like a relic of an ancient past. They're bulky, arguably unattractive and chained to one specific location—the name literally points to its permanent fixture on a desk top. And yet, 45 percent of all law firms plan to equip attorneys with desktop computers in their 2017 hardware refresh.

In the modern legal workplace, where attorneys are expected to be reachable at any given hour of the day, it may seem counterintuitive for law firms to invest too heavily in desktop technology. Law firms have taken significant steps towards embracing the kind of mobility and flexibility needed to stay available to clients at any time of the day. In the last decade, laptops and tablets began to outstrip desktop computers in law firm purchasing. Aiding in the matter, law firms have widely adopted cloud-based data hosting, enabling attorneys to work remotely and collaboratively.

Yet in a few key ways, desktop computers still play an integral role in law firms' technology strategies. Desktop computers are still potentially the most secure, reliable and cheaply maintained option for many law firms.

THE SURVEY DATA

The 2017 LTN Law Firm Tech Survey found that 45 percent of law firms plan to equip lawyers with desktop computers in their next hardware refresh, a 16 point jump from last year. The bump in desktop purchasing also seems to show a pivot from the 20 percent that planned to equip attorneys with desktop computers exclusively. In 2016, 41 percent of firms intended to equip attorneys with laptop computers only in their next hardware refresh, and an additional 30 percent of firms planned to offer attorneys laptops and tablet devices.

The International Legal Technology Association (ILTA), however, didn't find such a precipitous jump in its most recent data. The group's 2016 Technology and Purchasing Survey found that 61 percent of law firms purchased desktop computers in the last 12 months, with 60 percent of firms reporting the same in 2015. Despite their different conclusions, both reports point to the staying power of desktop hardware in the law firm technology budget.

Computing hardware generally operates on a set of refresh

JOHN VANEZA

LANCE EDWARDS, CHIEF INFORMATION OFFICER, ARNALL GOLDEN GREGORY

cycles, timeframes in which firms expect to update their technology to stay up to date. David Clark, director of information technology at Kirton McConkie, says that desktop computers typically run on four to six year refresh cycles, a timeframe notably longer than laptop refresh cycles.

"You don't drop desktops, you don't move them around. If they fail, it's actually a component failure," Clark says. "Anything that's mobile, including a vehicle or bicycle or a laptop for that matter, is bound to be bumped and bruised."

Upkeep on laptops can also require more administrative time and energy than law firm technology staff can reasonably manage. Lance Edwards, chief information officer at Arnall Golden Gregory, says that laptop maintenance alone is perhaps more time consuming than it may be worth. "It's almost a full-time job for one individual to maintain that whole fleet. I'm not really sure that makes a whole lot of sense," Edwards explains.

Refresh cycles can be set by basic machine lifespans, but operating system upgrades can also force firms to bump up their refresh cycles to keep pace. This year, many firms are opting for a desktop refresh to update their operating systems up to Windows 10, which will allow them to better secure data and run newer software. Clark estimates that perhaps up to 40 percent of those reporting new desktop buys could be primarily motivated by the need to upgrade to Windows 10.

"In this industry, you can't run anything legacy. It's all got to be protected; you've got to make sure you're at the standards required to make sure your client data is protected," Edwards adds.

Additionally, desktop computers aren't typically saddled with a ton of application software, largely because they can be operated through virtualization. David Cunningham, chief information officer at Winston & Strawn, says that desktop computers at the firm run virtual desktop infrastructure, a software technology allowing users to access their desktop environment from a different machine remotely. Typically, vendors like Citrix, Microsoft and VMWare will act as a connection broker to encrypt the connection between a user and the desktop machine, effectively allowing users to access the content on their desktop computers via a virtual image presented on a different device.

Virtual desktop infrastructure also forms the core of Edwards's computing strategy for his firm. He explains that by using virtualization, he can keep desktop computers essentially clear of applications, which can up their lifespan substantially. "Computers now are nothing more than zero clients. There's nothing actually installed," he says.

Some firms may choose to combine desktop virtualization and cloud hosting via "desktop as a service" (DaaS) offerings, which host user desktop environments from a cloud server rather than from a law firm's in-house back end. Although DaaS strategies are still fairly new to the legal community, a report from virtualization vendor Citrix notes that legal made up around 9 percent of DaaS vertical market specialties, indicating that the strategy is finding some traction in the legal community.

David Moon, a consultant and founding partner of CompassPOINT Legal, noted in a talk at the State Bar of Georgia's 2016 Solo & Small Firm Institute that DaaS strategies have found a home primarily within the small firm and solo practitioner space. For smaller firms, who don't often have the IT support to manage firm data in-house, DaaS strategies can be a way to keep data secured and accessible in a cloud-hosted desktop environment, which can sometimes be a cheaper and more secure strategy than housing data across a few different proprietary SaaS products.

NAVIGATING MOBILITY

Desktop computer purchasing is also fairly surprising given the move away from working exclusively from the office. The American Bar Association's 2016 Legal Technology Survey found that nearly all attorneys work remotely at least some of the time, with only 15 percent of attorneys reporting that they work remotely less than 10 percent of the time.

Still, the ABA survey finds that 70 percent of attorneys work primarily out of a private law office. (Notably, this trend flips for solo and small firm attorneys, only 35 percent of whom now work primarily from a private law office.)

Edwards says that flexible policy allows attorneys the ability to choose where they primarily like to work, but most still choose to root themselves in a physical office location. "What I see is that most folks always have their home base in the office," Edwards

JOHN DISNEY/ALM

says, adding that although many attorneys choose to work from home some of the time, it's rarely more than a day or two a week. "But it's not like you see in other industries where you have truly remote work."

While larger-scale remote policies have certainly proliferated in other industries, they haven't played out perfectly. IBM operated such a popular telecommuting office policy that upwards of 40 percent of its staff chose to work primarily outside of a traditional office setting in 2009, but the company this year abruptly ended the policy, telling its remote workers that they can either "co-locate" into one of the company's traditional offices or find a new job. Yahoo similarly banned remote work in 2013. Both companies cited workplace productivity as a primary driver of these policy changes.

For Edwards, giving attorneys access to work product and client data through virtual desktop infrastructure feels like the best way to meet attorney needs for mobility while keeping data secure.

Notably, remote needs may not extend to all law firm staff. Cunningham points out that for firm staff that don't have the same responsibilities to be available to clients at all times, it can often be more cost effective and secure to offer desktop machines.

"The attorneys and many staff are mobile, but there are inherently people in a law firm that don't travel and don't generally work from home—secretaries, records staff, accounting, facilities, etc. These are the people with the desktop PCs," Cunningham says.

Clark still sees laptops as the best technology to deal with modern mobility needs. "I haven't bought more than maybe a dozen desktops in the last four years," he says. Clark regularly updates the drives and RAM on older desktop computers, but largely opts to invest his firm's technology budget on laptop computers.

Clark admits that laptops do introduce some security concerns. Laptops can easily be lost or stolen, which runs the risk of invoking data breach concerns. Additionally, company issued laptops fall into blurry territory for employees, who more often than not end up using their work device for some personal matters. "It's very difficult to go to an attorney and say, 'You can't use your laptop except for remote access,'" Clark notes.

"VIRTUALIZING" SECURITY

The combination of high profile data breaches and the expansion of data breach regulation have made data security consistently one of the biggest concerns for law firm IT staff. For some, desktop computers still feel like the best way to keep data from vulnerabilities introduced by more mobile technology. Where laptops rely on users being able to pull down information from a secured server onto their local machines, virtual desktop infrastructure allows users to access content and data through a reproduced image of the root machine, meaning that client data never touches any other machine.

Edwards finds that desktop computers allow his team to ensure that client data stays contained within the firm's infrastructure. Laptops, he says, expose data to the wide swath of human error issues arising from mobile devices.

"We do desktops at my organization, but that was for security reasons. I wanted to make sure I'm providing a completely secured environment for my clients, so I have no mobility for what someone else brings in to the office, but there's no way to connect to client data short of virtual desktop interface. We made that decision to really force our end users to not be able to take any client data with them mobile-y [sic]," he says.

Edwards notes that his strategy somewhat precludes the possibility of bringing in a personal device for work use, but concludes that the absolute containment of client data is a higher priority for the firm.

Data control is fairly core to the virtual desktop infrastructure strategy. "It's some firms' way of keeping control of resources, technology, the law firm's [intellectual property] and whatever they do for their clients," Clark says.

Cunningham clarifies that it's not that superior technology makes desktop computers more secure, it's primarily a factor of the context in which they're used.

"They are not inherently more secure, but it's what they are used for that matters. Desktops sit quietly is a secure office space. Laptops travel to many countries, get carried in your trunk, get USB sticks from strangers plugged into them, get connected to random wireless networks, get left at security at the airport, etc. They are just exposed to a lot of unsecure situations."

Although virtual desktop environments can help firms keep a better handle on their data, they're not exactly the most user-friendly computing experience. Because the "image" produced on the remote machine is outsourced from a different server, applications, log-ins, graphics and other data retrieval can run frustratingly slow. More recent updates to virtual desktop infrastructure have worked out many of the kinks that initially frustrated users, but some users still find virtual desktop work somewhat obnoxious.

Clark notes that striking that the balance between portability and security remains core to the work of most technology operations in law firms today, and he still doesn't quite have a clear best strategy. "I think you have firms that are looking at better ways to make remote access more palatable," he says.

For the time being, that balance still includes the good old desktop computer. ■

DAVID CUNNINGHAM, CHIEF INFORMATION OFFICER, WINSTON & STRAWN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A LITTLE HELP FROM MY DPO

Automation and outside expertise provide support for GDPR compliance.

ALEUTIE/SHUTTERSTOCK.COM

BY RYAN COSTELLO

THE BEATLES' SGT. PEPPER'S LONELY Hearts Club Band, the seminal album by the greatest rock n' roll band of all time, turned 50 years old at the start of this summer. Curiously, the album came just at the time the Beatles quit touring for good, and the album's genius was sparked by creativity and outside-the-box thinking at a key career turning point for the band.

In many ways, the struggle to adapt to the requirements of the EU's General Data Protection Regulation (GDPR) presents many organizations with a similar turning point: Become creative and innovative in the approach to significant data protection requirements, or face crippling potential fines and severe limitations in the global scope of business.

Unfortunately, all indications point to the fact that compliance efforts have been slow, or non-existent, for both EU-based and US-based companies alike. An extensive Varonis poll from late spring 2017 revealed that 52 percent of organizations face significant challenges in identifying the extent and locations of personal data and PII in their systems, and nearly 75 percent will likely struggle to meet all GDPR requirements by the May 2018 implementation deadline. As could be expected, small and medium size businesses face the most significant hurdles toward compliance. In a typical day in the life of smaller-sized businesses, there just simply isn't the manpower, expertise nor time available to properly devote to GDPR readiness.

However, the available support for businesses seeking to catch up on GDPR compliance is getting better all the time. First, there are now numerous resources

on GDPR compliance, including regulatory guidance, readiness assessments, toolkits, and quick, but helpful, references such as DPO decision trees.

Second, according to official guidance on the GDPR released by the Article 29 Working Party (which will become the European Data Protection Board under the GDPR), there are many options for filling the data protection officer (DPO) role required by the regulation, including outsourcing the DPO role to a third-party service provider. For many organizations, finding a DPO with the expertise, experience and independence required will be a tall order, particularly for US-based organizations with no physical presence in the EU. The outsourced-DPO can make the appointment of this key person for GDPR compliance substantially easier.

Finally, though the accountability and reporting requirements of the GDPR can seem daunting, the right technology and automation solutions for information governance can really streamline the entire compliance effort.

Some of the key GDPR requirements that can be best met through information governance and automation tools include:

ARTICLE 15: RIGHT OF ACCESS

Article 15 requires that organizations provide data subjects with information regarding the personal data held on them within the organization's systems. Any further collection, processing or transfer the organization has performed or will perform should also be indicated.

Procedures for handling subject access requests can be streamlined by creating an automated dashboard from which individual data subjects can view the full nature and extent of personal data held in an organization's systems. From the dashboard, the user can also acknowledge or consent to data transfers, view legal holds and request deletions.

ARTICLE 17: RIGHT OF ERASURE

Numerous organizations have struggled with the Right of Erasure (or the "Right to be Forgotten"), which requires that any links to, copies or replications of a data subject's personal data be deleted when that data is no longer necessary for the purpose for which it initially was collected.

An automated erasure process with logs and reports, incorporated as part of data processing procedures, will not only ensure full compliance, but also provide the adequate records necessary for data subject requests or regulatory oversight.

THE SUPPORT FOR BUSINESSES SEEKING TO CATCH UP ON GDPR COMPLIANCE IS GETTING BETTER ALL THE TIME.

ARTICLE 18: RIGHT TO RESTRICTION OF PROCESSING

In order to effectively comply with Article 18, stored personal data must be marked or flagged for limited processing, and the volume of data must be proportional to the legitimate basis for the processing activity. Data-mapping and data governance technologies, such as those built into cloud platform providers like Microsoft Azure and Amazon S3, can be effective in ensuring that narrow processing conditions remain in place, particularly for personal data, PII and sensitive data, where native automation can detect these and flag them. But mostly, these technologies can, and should, exist across corporate directories, databases, applications and systems for effective GDPR compliance.

ARTICLE 25: DATA PROTECTION BY DESIGN AND DEFAULT

It's imperative under the GDPR that data protection be sufficiently integrated into product lifecycle and planning, and that protections around the proportionality of data collections and retention of data be maintained throughout processing activities. Enabling the necessary in-place technological safeguards in advance, such as single instance storage, firewall security, encryption, etc., will ensure that Article 25 requirements are properly, and consistently, addressed. Much like the previous Article 18, cloud platform providers like Microsoft Azure and Amazon S3 are inherently safeguarded with these technologies.

ARTICLE 30: RECORDS OF PROCESSING ACTIVITIES

Article 30 requirements under the GDPR address records of processing activities. Maintaining processing records are core to the accountability obligations of the GDPR, and require specific elements that must be recorded by both data controllers and processors.

An automated process for producing the reports and records under Article 30, with categories for including information on data movements and cross-border transfers, identifying data locations and access rights, and pinpointing time limits for erasure of different categories of data, will make this significant requirement much easier to implement.

Of course, having a DPO that can propose, implement and oversee these automation and technology solutions, as well as provide solutions for other requirements like the Data Protection Impact Assessments of Article 35, will be critical. An outsourced DPO, with the required expertise in national and European data protection laws and practices, will be critical for most organizations. That expertise, coupled with information governance, automation and technology solutions aimed at streamlining compliance to the GDPR, will bring many small and medium size business closer to where they need to be ahead of May 28 of next year.

Ryan Costello is the operations manager for eTERA Consulting in Europe, providing electronic discovery, document review and technology consulting services across the Electronic Discovery Reference Model.

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Law Firm Data Security: Recent Breaches Highlight Benefits of Cloud Storage

Is the legal industry experiencing a culture shift on keeping ESI?

The threat of cyberattack looms large for law firms. In 2016, "the year of the breach,"[1] a seemingly endless barrage of law firm security incidents were front and center in industry news – and the pace hasn't slowed. Mossack Fonseca, Johnson & Bell, amongst many, fell victim to breaches, prompting the FBI to issue an alert that hackers were targeting international law firms in an insider trading scheme.[2]

But cyberattacks at law firms and other organizations aren't the only thing persuading firm managers and attorneys of the importance of Electronically Stored Information (ESI) security. They're experiencing that need firsthand. The American Bar Association (ABA) reported that 14 percent of legal professionals said their firms had experienced a data breach at some point. And while the largest firms are most at risk – 26 percent of respondents at firms with 500+ attorneys said they'd experienced a breach – firms of all sizes are exposed.[3]

The enhanced security features of a cloud-based hosted solution makes it a popular option for storing files. Ricoh's 2017 "eDiscovery Managed Services Survey" shows that, although legal professionals still have some concerns about the security of cloud-based data storage, they're also beginning to see how such a solution can actually enforce security and reduce the risk of a costly breach.[4]

Implications for law firms

With the exponential increase of ESI, law firms are storing larger volumes of their client data. At Mossack Fonseca, which experienced the largest breach in history, 2.6 terabytes of information were leaked – an estimated 11.5 million documents.[5]

But it's not just the loss of client data that's at risk. In the ABA study, 37 percent of respondents who'd been through a breach reported business downtime and/or loss of billable hours. Twenty-eight percent said they'd had large correction fees, including consulting fees, and 22 percent said they'd had to purchase new hardware and software.[6]

With these figures, it's easy to see the financial and reputational ramifications, and why security should be top-of-mind for all law firms.

In a vote of confidence for cloud storage, the 2016 ILTA/Inside Legal Technology Purchasing Study showed that 25 percent of law firms planned to upgrade to the cloud within the next 12 months – up from 15 percent in 2015.[7]

And for 76 percent of respondents in the Ricoh survey, security is an important factor in selecting an eDiscovery managed services provider.[8] However, some skepticism may remain. The same study showed that data security is second only to cost on the list of concerns about cloud-based eDiscovery providers.[9] This fear is fading. Ricoh's study also revealed that one-third of legal professionals see advanced data security as a primary benefit of using an external, cloud-based solution.[10]

Why are firms considering the cloud?

There are several benefits to migrating client data to the cloud environment.

- **Encryption.** Cloud providers can offer encryption for data at rest and in transit, which can be both difficult and expensive in a traditional private data center.
- **Access controls.** Access controls in the cloud are significantly more sophisticate and robust than with a traditional private data center, while still leaving the encryption keys within the law firm's control.
- **Remote location.** Data resides on remote servers rather than on-site, where it can be at risk of law firm server failure or damage. By having data in the cloud, firms can be on-line and stay on-line with increased data protection and business continuity.
- **Consumption-based pricing models.** While it may make sense to keep client data after a matter is closed in the event of future litigation, that data may then fall outside of the client's retention requirements and remains discoverable. Consumption-based pricing means firms only pay for the processing power and storage they use. This is a financial incentive for firms to dispose of client information they no longer need to retain, along with the associated cost and liabilities of doing so.
- **Scalability.** The scalability of the cloud poses a huge benefit to law firms. Depending on the client's circumstances, adding more storage in the cloud could take just a few minutes – compared with several weeks for increasing on-site storage.
- **Competitive differentiation.** In an age of increasing cybersecurity awareness, clients are more attuned than ever to the security of their law firm's data. A firm that can demonstrate a commitment to security and data protection will be one that stands out among the rest.

Choosing a provider

When searching for a provider, law firms commonly look at cost, ease of use and security.[11] Some questions to ask include:

- Where do you store your data?
- What type of encryption is used?
- Who holds the encryption key?
- What certifications do you have?
- Is data backed up? Where? How often?
- How does the data get there?
- What happens if we need more space?
- What happens if we need to move our data elsewhere?

Security is not a frivolous concern for law firms, especially now. And while the move from paper to ESI seemed an insurmountable challenge 15 to 20 years ago, the idea of storing data in the cloud is becoming more favorable among legal professionals. Despite any concerns about the risks of off-site, the cloud clearly offers benefits for law firms looking for a secure storage option. Ultimately, firms need to consider their clients' safety and the competitive benefits – as well as the peace of mind and financial benefits – of placing data in a highly secure location.

About Ricoh eDiscovery

RICOH eDiscovery combines a comprehensive suite of powerful cloud-based technologies with enhanced security, quality processes and the expertise of their trusted team of advisors and project managers, to design *Intelligent eDiscovery* solutions that best meet their customers' needs. Backed by an 80-year global history of innovation and a refusal to be limited by tradition, Ricoh works collaboratively with legal teams to provide practical solutions at every stage of the eDiscovery lifecycle.

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REDEFINING ROLES

As law firms' needs and services evolve, IT departments are growing and expanding their roles. But their future is far from certain.

BY RHYS DIPSHAN

WALK DOWN THE HALLS OF ANY large law firm, and you're bound to run into a few staple characters: partners, paralegals, associates, and even a marketing professional or two. But nowadays, chances are you'll also run into the firm's IT staff, who are slowly but surely becoming a ubiquitous presence in the firm.

According to the 2017 LTN Law Firm Tech Survey, law firms are filling their offices with more IT staff than ever before. This year, around 10 percent of firms had at least one IT professional per 15 users, which includes attorneys, support staff and all other firm employees. By comparison, only 4 percent had the same

ILLUSTRATION BY VAL BOCHKOV

ratio of IT staff to users in 2016. What's more, just one-third of law firms averaged a ratio greater than one IT professional per 25 users in 2017, down from 39 percent in 2016.

On average, law firms are also spending more on their IT departments. While 42 percent of firms increased in IT budgets in 2016, 47 percent did so in 2017. And less than half, 49 percent, of firms were outsourcing their IT and tech services in 2017, compared to 56 percent in 2016.

To be sure, the numbers don't show an IT revolution at legal's doorstep. But they do point to a turning point at many firms, where internal

IT departments are becoming more integral to the firm's operations.

"There is an increasing need for IT staff in law firms—we certainly are [hiring] as well," says Vince Marin, chief information officer at Sidley Austin.

But despite the need, not all law firms are growing their IT departments. For now, growth seems to be limited to only the largest law firms with resources to spare.

"I don't see us growing IT greatly at my firm in particular," says Christopher Fryer, chief information officer at Hanson Bridgett. He adds that though he sees other firms increasing their IT staff, "we are a medium-sized firm, and we have different things happening in our market that affect our hiring decisions."

For large firms, what's driving IT department growth is a confluence of market demands, client expectations and a changing business environment. Many, however, see IT staff growth tapering off and possibly even reversing in the future. But temporary or not, the current growth is redefining IT's role in the modern law firm and leaving its mark on legal for years to come.

THE CYBERSECURITY CATCH-UP

The growth in IT staff at large law firms is partially driven by a new responsibility for legal in the digital era: protecting client data from cyberattacks.

Marin calls cybersecurity "one of the most pressing needs of the day, and depending on where a firm is with their security staffing and the level to which they have been paying attention, that could definitely be driving additional IT staffing needs."

In 2017, the need for IT to focus on security is almost universal among firms, regardless of whether they have the resources to expand their IT personnel. "I would say five years ago, my staff spent probably 90 percent less time working on security issues," Fryer says. "Now, because I'm constrained from bringing more bodies in to handle the security issue, what we've done is shift internal resources though retraining current IT staff."

Fryer notes that Hanson Bridgett has also "brought in a managed security service provider (MSSP) to use their own set of tools to look for security incidents." The firm's IT staff now spends most of its time managing the MSSP and handling the many "not very worrisome malware attacks that hit all firms now regularly."

> "It's important to have IT staff that have both the desire to learn about the business of the law firm as well as the right background in which to do so."
>
> —Vince Marin, CIO, Sidley Austin

But it's not all just network monitoring and vendor management. IT staff's cybersecurity role has evolved to a more holistic protection that includes hand-on training with firm employees as well.

This training can be a demanding, time-consuming task for any IT department. "It's a double-edged sword," Fryer says. "A staff that doesn't know much about security is going to do something that you wished they didn't on their computers, and a staff that does know about security is going to be much smarter, but they are also going to ask a lot more questions."

THE OUTSOURCING QUESTION

Beyond security, the growth of law firm IT departments is connected to something far more obvious: the rising use of legal technology in-house.

Marin notes that Sidley Austin has a host of technology in "multiple areas like due diligence, research, knowledge management, search and data extractions, and security analytics." With all that technology, he says, comes the need "for upgrading of various systems as they age," as well as the need to "take advantage of the new systems that become available."

Doug Leins, chief information officer at Waller Lansden Dortch and Davis, sees a similar demand for hands-on IT management at his law firm, as "the systems that are coming into play are too complex for attorneys to manage by themselves."

Such management is a constant and ongoing responsibility that, in Marin's opinion, is best handled by an internal IT staff: "Outsourcing can work well in situations where there are well-defined repeatable processes, and the provider has a proven track record in what it is that one may be interested in outsourcing.

However, what is core to the business, what requires a deeper knowledge of the business in especially client situations, whether consultative or advisory—the internal staff definitely do this better."

Leins agrees, noting that internal IT departments will always be vital to law firms because they "understand the culture, the people, the systems, and drive innovation" better than outsourced staff.

He adds, "The people that I know who have outsourced their IT departments, pretty much all of them regret it, because once you do it, it's very difficult to go back. And the savings that people anticipated don't appear to be there, at least from the peers I've talked to."

INTEGRATION ENGINEERS

Integrating legal technology platforms with legal departments or with other teams internally is one of the biggest challenges law firms face, and many are seeking to meet it head on with a larger army of IT staff at their disposal.

Olga Mack, general counsel of tech company ClearSlide, says that law firms may "have a number of different technologies in-house, because that gives the client a lot of options [to integrate with]."

She adds, "The challenge I think for law firms is that they have to be able to entertain all of them."

But integrating technology solutions, such as e-billing or matter management, can pose a variety of technical challenges for law firms, as well as the security problem of safely moving data out of internal systems.

Leins says integrations are "absolutely difficult, because quite often we are dictated what systems we need to integrate with, and how we need to integrate with them. And very often, the systems we are integrating with are less secure or less sophisticated, or are more sophisticated [than ours]."

Vendors, however, are aware of law firm and corporate legal's need to safely and easily integrate legal technologies with one another, and buoyed by the advent of cloud storage services, many vendors are actively working on making integrations as painless as possible in the future. "I think there we will see a proliferation of vendors that not only provide technological solutions, but make sure those solutions better at [integrating] with each other," Mack says.

"As the billable dollar goes away and we start having to find other ways to service our clients, I think what you'll find is that law firms will outsource more."

—Christopher Fryer, CIO, Hanson Bridgett

THE REBIRTH OF IT?

This integration, though, has a catch: If legal technology platform integrations become more automatic, and if more law firms spin out their security services into a standalone department, what becomes of law firms' IT departments?

For many, the writing is already on the wall. Hanson Bridgett's Fryer believes that the expanding roles for IT staff is transitory, a reaction to catch up with the changing times as fast as possible before firms have to re-orient themselves with more cost-effective IT services.

"Technology, efficiency, client pressure—it hits us less because we are still arguably on the billable dollar," Fryer says. "But as the billable dollar goes away and we start having to find other ways to service our clients, I think what you'll find is that law firms will outsource more."

But Fryer adds that far from disappearing from the picture, IT staff will change to take a more higher-level role in law firms. Then, law firms can "move IT staff over to do things that are more important to the firm, like bringing in technology that provides better value, those sort of things," Fryer explains.

Marin sees a similar future. He notes that IT staff levels will likely fluctuate in the future in no small part because "the increasing adoption of cloud solutions in law firms for the long-term is likely to lessen the need for IT staff."

But this provides IT with an opportunity to become "business partners" at law firms and work with attorneys and other staff in designing workflows and selecting technology in-house, he says. But becoming an equal partner at a firm, Marin cautions, will not happen overnight.

As he explains, "It's important to have IT staff that have both the desire to learn about the business of the law firm as well as the right background in which to do so." ■

THE AI MARKETPLACE

Searching for AI, rather than tools that solve problems, is a backwards approach.

BY BRAD BLICKSTEIN

TEAM OKTOPUS/SHUTTERSTOCK.COM

IN ALL MY YEARS COVERING LEGAL TECHnology, I've never seen more buzz around anything than we now see around artificial intelligence. There are stories in the legal press almost every day, and in the run-up to this year's International Legal Technology Association Conference (ILTACON), I must have received 20 press releases promoting some vendor's AI offering. It took Gartner more than a decade to publish any kind of report on enterprise legal management, but they've already started covering AI for legal. And I've heard countless stories of operations and IT professionals at both law departments and law firms being told to "get us AI."

All that, without any real definition of what AI is, at least in the context of the practice of law. According to the dictionary, AI is "the capability of a machine to imitate intelligent human behavior." In the legal space, that could mean any number of things, which is why searching for AI technology, rather than simply for tools that solve your problems, is a backwards approach.

A PRIMER ON WHAT DOESN'T MATTER

Almost everyone I've ever talked to about AI is primed for an argument about what is and what is not "artificial intelligence." The CEO of one vendor I talked to insisted that his solution was based on machine learning, which he kept telling me is not AI. Another data scientist I talked to spent 20 minutes explaining that her solution was built with artificial intelligence, as if I doubted it. I didn't doubt it, and I didn't really care either. And neither should you, at least in the early stages of analyzing these tools.

Artificial intelligence. Machine learning. Natural language processing. Expert systems. Neural networks. Cognitive simulation. Statistical relationship learning. All of these buzzwords and more raise a critical question: Who cares?

Or more specifically, who should care? The specific technology really only matters in terms of whether it will actually solve your problem. And while I may not know what your underlying problem is, I can promise you it is not a lack of artificial intelligence technology.

Tools and processes built on artificial intelligence are just ways to solve problems in new and more efficient ways. The reason for the buzz is that the legal industry is ripe for new service delivery models. General counsel are starting to break up

the duopoly that law firms and law departments have held for 100 years. No longer are "doing it in-house" and "sending it to a law firm" the only ways to get legal work done. More and more is done by alternative legal service providers, technology tools, self-service models and more.

So being told to bring in artificial intelligence and then looking for a problem to solve with it is nonsensical. The good news is that if that's what you've been charged with, you may already be done.

LIPSTICK ON A PIG?

Almost as soon as it became apparent that the enormous volume of electronically stored information was creating enormous problems in the litigation discovery process and in government investigations, it also became apparent that smart technology could solve many of these problems. These solutions were described as automated document review, concept learning, email analytics, document clustering, predictive coding and technology assisted review… anything but "artificial intelligence."

The reluctance to identify these tools as such was not because they are not artificial intelligence. It was due to the legal market's extreme reluctance to hear those words. It is no coincidence that the technology did not take off in the discovery function until smart vendors started using terms like "predictive," implying that the tools predict—but do not make—decisions, and "technology-assisted," implying the technology is only there to help.

I mentioned this to Rick Hutchinson, chief technology officer at Advanced Discovery, a company that has for years used AI for electronic discovery processes like normalizing metadata, and is building new AI tools that will allow legal teams to make better decisions by leveraging all the data it has ever collected across every matter they've ever had. Hutchinson points out that optical character recognition, "which has been used in legal for many years, is actually an artificial intelligence tool."

Many of these providers and their new announcements are not putting lipstick on a pig. They are just starting to call it lipstick. If you've already implemented any of the above technologies, feel free to check the box and move back to solving your organization's problems.

EFFICIENCY AND ACCURACY TOOLS

The use cases most commonly associated with artificial intelligence revolve around doing work more efficiently. This is what the pundits are talking about when they say that robots are doing the work of lawyers. Often called "expert systems," these tools simplify research, streamline workflows, organize data and promulgate decisions based on rules set by attorneys.

> WHILE I MAY NOT KNOW WHAT YOUR UNDERLYING PROBLEM IS, I CAN PROMISE YOU IT IS NOT A LACK OF AI.

Contracts are the most common example. These tools deliver two major benefits. First, "contract assembly" tools help businesspeople create and execute contracts on their own by following rules and algorithms that originate with the legal team. Complicated contracts that cannot fall within the system's rules must be reviewed, but many deals can be documented without involving lawyers. These tools take pressure off the legal team, saving hours of redundant work. Businesspeople also love them, as fewer deals are delayed while awaiting routine legal review.

There are also AI tools for maintaining those agreements. "Contract normalization" tools now analyze and manage agreements in a database, which automatically keep track of key dates and other elements. For example, managers can be notified automatically when a lease is set to autorenew, or if the quantity of purchases start to approach the level of a price break.

"These tools let you know when to get humans in the loop," says Arup Das, CEO of IT services provider Alphaserve Technologies. Das points out, however, that the real value of artificial intelligence will be combining knowledge and data into decision support systems.

Rather than simply more efficiently doing work already getting done, predictive tools are designed to help make better decisions by combining internal and external information into a data hub, and then using sophisticated tools to answer important questions. According to Das, some law firms are starting to use AI to better understand what to look for in lateral hires, based both on the firm's own data and publicly available evidence about other firms, replacing the hiring partners' biases and anecdotal evidence.

The value here is answering questions that the legal team cannot easily answer on its own. While a litigator might have a basic understanding of how a judge likes to rule, or what happens in a particular jurisdiction, there are biases that go into that judgment, and no lawyer can understand such issues across every venue in America. Perhaps even more valuable is these tools' ability to make predictions based on a company's own data, suggesting when and where a company is likely to face compliance issues or may be taking unforeseen risks.

Leveraging AI for efficiency really only brings us to the automated state that most other functions have been at for years, which aligns with the trend toward new legal service delivery models. But if we are going to take full advantage of AI, we need to use its predictive abilities to understand and reduce risk. Because doing legal work more efficiency is very nice, but avoiding legal issues is where the real value lies.

Brad Blickstein is principal at the Blickstein Group and is the publisher of the Annual Law Department Operations Survey, which is now in its ninth year.

PRACTICE LAW BETTER

Aaron Crews believes legal needs AI now more than ever.

BY RHYS DIPSHAN

HAVING SERVED AS SENIOR ASSOCIATE general counsel and global head of e-discovery at Wal-Mart, Aaron Crews is no stranger to modern e-discovery struggles. Crews steered Wal-Mart's legal department efforts to tame and review more information than most companies handle over the course of an entire year. But what he learned over his three years at the helm is that success in e-discovery, and the future of legal itself, is defined as much by machines as it will be by attorneys.

Crews recently became general counsel and vice president of strategy at TextIQ, a legal technology company offering artifical intelligence (AI) powered e-discovery, legal analytics and compliance platforms. He sat down with LTN to discuss how his experiences at Wal-Mart motivated him to join the startup, and why he thinks legal needs AI to survive.

LTN: What first sparked your interest and career in e-discovery?

AARON CREWS: I joined Littler Mendelson in 2007 from my prior firm, and I was predominately doing trade secrets work and dabbling in discovery. I ended up joining the firm's e-discovery group, then ended up becoming the number two in the group under Paul Weiner, who is the firm's national e-discovery counsel and one of my mentors.

LTN: How did you end up at Wal-Mart?
AC: I was national coordinating counsel for e-discovery for Wal-Mart as one of their outside lawyers, and eventually they convinced me to come in and run e-discovery for them internally. So in 2014, I made that move and became senior associate GC and head of e-discovery.

LTN: What e-discovery challenges did you face in your role at Wal-Mart?
AC: Because of the scope and scale of Wal-Mart, there are very large class actions and some long-running investigations that involve just ridiculous numbers of people. So just the custodian identification, data collection, figuring out how to get through all that data is a tremendously difficult process. Wal-Mart had multiple matters where the number of people on hold for that matter would dwarf what a lot of companies put on hold for an entire year, for all their litigation combined.

LTN: How did you deal with all these legal holds?
AC: It really was a people, process and technology kind of thing. We took some existing technologies and made them better either working directly with the vendor or working with our IT group.

We also built an entire team whose whole job was researching and drafting legal holds, sending out reminders, auditing compliance for legal holds, and releasing them at the end of a case. There is an entire organization we built that was designed to do just that, and it was the only way we could handle that scale.

LTN: Why do you believe AI is so pivotal for legal?
AC: If we don't do this, if we don't make this move to AI soon, my very real fear is that we will have started to price people out of justice. We will make it economically impossible for individuals or organizations below certain thresholds to get into an American court because it's just too expensive.

I think it's a real possibility for a growing numbers of people, unless legal starts to act like the rest of the economy, using normal business processes and integrating technology everywhere we can, to improve the efficiency, lower the costs, and improve the speed to outcome. ■

DAVID HANDSCHUH/ALM

Re Sino-Forest Corp.

THE ONTARIO SECURITIES COM-mission (OSC) ruled that Sino-Forest Corp.—a commercial forest plantation and timber supplier based in China and Ontario—engaged in "deceitful and dishonest conduct" along with five executives, including Allen Chan, its former chief executive officer, and George Ho, Alfred Hung, Albert Ip and Simon Yeung.

At its peak in 2011, the company had a market value of $6 billion. Then, in June of that year, according to the case, a short-seller released a report alleging Sino-Forest was a "near total fraud" and a "Ponzi scheme." The OSC launched an investigation into the company, and a cease-trade order was issued in August 2011. Sino-Forest failed to file the necessary financial documents and the company was delisted from the Toronto Stock Exchange in 2012.

AARON HARRIS/REUTERS/NEWSCOM

The OSC hearing lasted almost 200 days and was the longest ever held by the commission, according to The Globe and Mail. On July 13, the OSC found that the respondents breached various sections of the Ontario Securities Act by either facilitating or acquiescing to material misstatements in the company's public documents. Particularly, the hearing revealed that 70 percent of total timber holdings, as well as 70 percent of revenue between 2007 and 2010, could not be verified. At press time, a sanctions hearing had not been scheduled.

Former CEO Chan tapped Miller Thomson for his legal work, with a team led by **Emily Cole, Rohit Kumar** and associate **Caleb Edwards.** Ho, Hung, Ip and Yeung called on McMillan. Its team included **Markus Koehnen,** who was recently appointed as a judge to the Ontario Superior Court of Justice, with **Adam Chisholm, Jeffrey Levine** and **Stephen Wortley.** OSC lawyers in the matter were **Malinda Alvaro, Hugh Craig** and **Carlo Rossi.**

This isn't the only case related to Sino Forest's collapse. According to a publication by Osler, Hoskin & Harcourt, which has represented the independent committee of the company's board and its independent directors (none of whom were involved in the OSC proceeding) class actions across North America have named Sino-Forest's directors, officers, auditors and underwriters. Ernst & Young, an auditor during the relevant period, paid $117 million to settle a class action and another $8 million to the OSC. BDO has paid out more than $8 million to settle a class action and a group of underwriters put down $33.5 million to settle another class proceeding.

Das v. George Weston Limited

The Ontario Superior Court of Justice denied certification to a proposed class action composed of victims from the 2013 Rana Plaza collapse in Bangladesh. The Bangladeshi citizens filed the suit in April of 2015, just before the second anniversary of the collapse, against George Weston companies, including Loblaws and Joe Fresh, which manufactured clothes at the plant, as well as Bureau Veritas, a consulting service Loblaws hired to conduct a social audit of the factories.

"It is ... obvious that a duty of care analysis leads to the conclusion that the Defendants did not have a duty of care to the Plaintiffs and the putative Class Members," ruled Justice Paul Perell in a judgment released on July 5. The plaintiffs were attempting to persuade the court that Loblaws, as a purchaser, has a duty of care to the employees manufacturing the goods. The court characterized this as a novel duty and said there wasn't sufficient proximity between the parties. The action also focused on whether Ontario had jurisdiction over the foreign claimants, as well as choice of law.

"Even when there's a very sympathetic group of plaintiffs—let's be clear, this is a heartbreaking situation—the courts recognize that there must be a remedy known at law before they will hold the defendants accountable," says **Michael Eizenga** of Bennett Jones, who acted for Bureau Veritas. Assisting him were Bennett Jones' **Ranjan Agarwal** and associate **Gannon Beaulne.**

Christopher Bredt of Borden Ladner Gervais, who acted for the Weston group of companies, calls the legal issues in this case "cutting-edge" and noted that "increasingly you're getting these international class actions being litigated in Canada." Assisting Bredt were Borden Ladner's **Markus Kremer** and associate **Alannah Fotheringham.**

Rochon Genova's **Joel Rochon,** who acted for the plaintiffs, says he plans to appeal the judgment and hopes the litigation will act as a deterrent to corporations from going into developing countries, "without a real care as to how the workers are treated and with an eye to the condition these garments are being produced. We, as a Western society, have been really living off of the hard work of these individuals in these developing countries for years and it's probably time we really understood that there is a legal relationship between the Western brands and these workers." Rochon

was assisted by Rochon Genova senior counsel **Peter Jervis** and associates **Lisa Fenech** and **Golnaz Nayerahmadi.**

Brent Kettles and **Lisa La Horey** acted for the attorney general of Ontario, an intervenor in the case. There is no date set for the appeal.

Clyde River v. Petroleum Geo-Services; Chippewas of the Thames First Nation v. Enbridge Pipelines

The Supreme Court of Canada released companion judgments on July 26 clarifying rules and protocol regarding consulting with Aboriginal communities on oil and gas projects. The court ruled in favor of a group of Inuit from the remote hamlet of Clyde River, on the coast of Baffin Island, who since 2011 had been fighting Petroleum Geo-Services, a consortium of Norwegian energy companies that want to conduct seismic surveys in the area. This testing had the potential to affect migration of marine mammals, which the Clyde River Inuit hunt.

"How often do you see a tiny hamlet of 1,000 people stand up to the federal government and a consortium of oil companies and win?" says **Nader Hasan** of Stockwoods, who acted for the Clyde River Inuits. "It's an understatement to call it a David and Goliath story." Stockwoods' **Justin Safayeni** and associate **Pam Hrick** worked with Hasan on the case.

Justices Russell Brown and Andromache Karakatsanis, writing for the court, found the consultation process was flawed, particularly when considering the risk to the Inuit's treaty rights. Though the energy companies met with the Clyde River inhabitants and filed written materials with Canada's National Energy Board (NEB), ultimately the NEB approved the testing without a formal hearing process.

"My clients, the Inuit of Baffin Island, they are not anti-development by any means, but they want to have a say in the process and a seat at the table and that's what they're entitled to," says Hasan.

In a separate judgment, the court ruled in favor of Enbridge Pipelines, which had applied to the NEB for approval to modify its pipeline and increase its capacity. The NEB granted approval to the project, but held a formal hearing process and imposed conditions on Enbridge to accommodate concerns posed by Indigenous communities.

"People should be reading the cases together," says Hasan, though he notes that they don't provide a blueprint for companies going forward, since their facts differ. "If companies want assurances that what they're doing is going to pass constitutional muster, don't strive to reach the floor—go above that."

Blake, Cassels & Graydon's **Sandy Carpenter** and associate **Ian Breneman** represented Petroleum Geo-Services Inc.; Multi Klient Invest As, a Norwegian engineering company; and TGS-Nopec Geophysical Company ASA, a Norwegian geoscience data company.

Enbridge Pipelines tapped **Douglas Crowther** and **Joshua Jantzi** of Dentons and counsel **Aaron Stephenson** of Norton Rose Fulbright for the case. The NEB was advised by in-house counsel **Kristen Lozynsky** and **Jody Saunders**. Appellant Chippewas of the Thames First Nation was counseled by **David Nahwegahbow** and **Scott Robertson** of Nahwegahbow, Corbiere. **Mark Kindrachuk** and **Peter Southey** represented the Attorney General of Canada in both cases. *—Marlisse Silver Sweeney*

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Sempra / Energy Future Holdings

Just weeks after advising Dallas-based Energy Future Holdings Corp. in a deal in which it was to be acquired by Berkshire Hathaway Energy for $9 billion, Kirkland & Ellis is again representing EFH—except this time in a deal in which the company will be acquired for $9.45 billion by Sempra Energy. Sempra, based in San Diego, is using a team from White & Case.

On Aug. 20, Sempra announced that it will pay $9.45 billion to acquire EFH, the indirect owner of 80 percent of Oncor Electric Delivery Co., which operates the largest electric transmission and distribution system in Texas. On Aug. 21, Berkshire Hathaway Energy, a Des Moines subsidiary of Warren Buffett's Berkshire Hathaway, announced that EFH terminated its acquisition agreement, which had been announced July 7 ["Big Deals," September].

Sempra's acquisition is expected to close during the first half of 2018. It is subject to customary closing conditions, including approval from the Public Utility Commission of Texas, and from the bankruptcy court overseeing EFH's Chapter 11 reorganization.

Sempra announced that once the transaction is completed, Allen Nye, Oncor's senior vice president, general counsel and secretary, will become Oncor's chief executive officer.

The Kirkland lawyers for EFH include corporate partners **Andrew Calder** and **John Pitts,** both of Houston, and **Veronica Nunn** of Houston and Washington, D.C., and Houston associates **David Thompson** and **David Moore;** restructuring partners **James Sprayregen** of Chicago and New York, **Edward Sassower** of New York and **Marc Kieselstein** and **Chad Husnick,** both of Chicago, and associates **Aparna Yenamandra, Rebecca Chaikin, Christopher Kochman, Patrick Venter** and **Daniel Rudewicz,** all of New York, and **Kevin McClelland** of Chicago; tax partners **Todd Maynes** and **Gregory Gallagher,** both of Chicago, and **Sara Zablotney** of New York, and associate **Anthony Sexton** of Chicago; litigation partners **Mark McKane** and **Michael Esser,** both of San Francisco, and **Bryan Stephany** and **Jonathan Ganter,** both of Washington, D.C.; capital markets partners **Dennis Myers** and **Wayne Williams,** both of Chicago; and debt finance partners **Michelle Kilkenney** and **Thomas Dobleman,** both of Chicago.

Martha Wyrsch, executive vice president and general counsel of Sempra Energy, turned to a White & Case team that includes M&A partners **Gregory Pryor** and **Michael Deyong,** both of New York; financial restructuring and insolvency partners **Thomas Lauria** of New York and Miami and **Matthew Brown** of Miami; financial restructuring and insolvency litigation partner **Chris Shore** of New York; tax partner **David Dreier** of New York; and energy regulatory partner **Daniel Hagan** of Washington, D.C.

—Brenda Sapino Jeffreys

Energy Capital Partners / Calpine

White & Case is representing Houston's Calpine Corp. in its pending acquisition by an investor group led by Energy Capital Partners. The investor group has turned to Latham & Watkins for the transaction.

The deal is the latest in a string of Calpine representations for White & Case. The firm represented Calpine in its $1.05 billion acquisition of Noble Americas Energy Solutions and represented the company in 2013 in a $625 million Texas power plant acquisition.

On Aug. 18, Calpine, the nation's largest generator of electricity from natural gas and geothermal resources, announced a definitive agreement in which venture capital firm Energy Capital Partners, along with investors including Access Industries and Canada Pension Plan Investment Board, would acquire it for $5.6 billion in cash.

The transaction has been approved by Calpine's board of directors, but is subject to approval by shareholders of Calpine common stock, and federal and state regulatory approvals. The deal is expected to close during the first quarter of 2018.

The White & Case team for Calpine is co-led by New York partners **Morton Pierce, Chang-Do Gong, Robert Chung** and **Michael Shenberg.** Others include partners **William Dantzler, James Hayden, Ian Cuillerier, Gary Kashar, Andrew Weisberg, Nandan Nelivigi, Marius Griskonis, Glenn Kurtz, Arlene Hahn, Steven Lutt, Henrik Patel** and **David Bilkis,** all of New York; and **Rebecca Farrington, Mara Topping, Farhad Jalinous, Daniel Hagan** and **Jane Rueger,** all of Washington, D.C.

The team also includes New York counsels **Seth Kerschner, Victoria Rosamond, Heather Waters Borthwick, Amy Delsack** and **Robert Tiedemann;** associates **Suni Sreepada, Arian Mossanenzadeh, Caelah Nelson, Neal Van Vynckt, Vinay Mysoor, Lauren Kim, Isaac Tendler, Julianne Prisco, Laura Mulry, Jason Pham, Abigail Simon, Erin Choo, Elizabeth Martinez, Julia Bell** and **Ryan Covington,** all of New York; **Rebeca Garcia-Lopez** of Mexico City; **Evan Zhao** and **Keith Schomig,** both of Washington, D.C.; and **Andrzej Omietanski** and **Yan Ng,** both of London.

A corporate M&A team from Latham's New York office leads the deal team for Energy Capital Partners. The team includes partners **David Kurzweil** and **Adel Aslani-Far** and counsel **Colin Bumby.** Finance partners **Jeffrey Greenberg** in Los Angeles and New York and **Veronica Relea** of New York are also on the team, along with investment funds associate

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Amy Rigdon and partner **David Greene,** both of Washington, D.C.; regulatory partner **Natasha Gianvecchio** of Washington, D.C.; antitrust partner **Jason Cruise** of Washington, D.C.; and tax partner **Matthew Dewitz** of New York. Energy Capital Partners has offices in Houston, San Diego and Short Hills, New Jersey. *—B.S.J.*

DEALS IN BRIEF

Crown Castle / Lightower

As Houston-based Crown Castle International Corp. looks to expand its fiber-optic network in urban areas in the Northeast, the company announced a $7.1 billion deal to acquire wireless infrastructure provider Lightower Fiber Networks from Berkshire Partners, Pamlico Capital Management and other investors. The acquisition would double Crown Castle's fiber-optic footprint to 60,000 miles of cable and give the company access to markets in Boston, New York and Philadelphia. It is expected to close by the end of the year.

Legal Advisers: **Cravath, Swaine & Moore** for Crown Castle; **Ropes & Gray** for Lightower

Nature's Bounty, WebMD Acquisitions

New York-based KKR & Co. said that its portfolio company Internet Brands will acquire New York-based online health publisher WebMD Health Corp. for $2.8 billion, and purchase from The Carlyle Group a majority stake in Ronkonkoma, New York-based The Nature's Bounty Co. for a reported $3 billion. Both deals are expected to close in the fourth quarter of 2017.

Legal Advisers: **Simpson Thacher & Bartlett** for KKR; **Latham & Watkins** for Carlyle Group; **Shearman & Sterling** for WebMD

Reckitt Benckiser Asset Sale

Sparks, Maryland-based herb and spice company McCormick & Co. Inc. said it will acquire for $4.2 billion the food division of British consumer goods company Reckitt Benckiser Group plc, whose brands include French's mustard and Frank's RedHot Sauce. The deal is expected to close in the third or fourth quarter of this year.

Legal Advisers: **Cleary Gottlieb Steen & Hamilton** for McCormick; **Davis Polk & Wardwell** for Reckitt Benckiser

ABM Industries / GCA Services

New York-based janitorial services provider ABM Industries Inc. said that it will acquire Cleveland-based competitor GCA Services Group Inc. from The Goldman Sachs Group Inc. and private equity firm Thomas H. Lee Partners for $851 million in cash and $399 million in stock. At press time, the transaction was expected to close in September.

Legal Advisers: **Jones Day** and **Davis Polk & Wardwell** for ABM; **Kirkland & Ellis** for GCA Services *—Meghan Tribe*

In re: Takata Airbag Products Liability Litigation

HONDA MOTOR CO. LTD., THE BIGGEST player left in the Takata air bag multidistrict litigation, weighed in Sept. 1 with a $605 million settlement offering compensation to 16.5 million current and former Honda and Acura owners and lessees of vehicles manufactured since 2001.

Prieto

Mattson

Honda, which made the most recalled vehicles with Takata air bags, will be entitled to a 20 percent discount by offering a free rental or loaner car policy, bringing its total cash payout down to $484 million. The agreement comes with no admission of liability or wrongdoing. **Eric Mattson, Michael Mallow** and **Michael Andolina** of Sidley Austin represented Honda, along with **Marty Steinberg** of Hogan Lovells and **Mitchell Widom** of Bilzin Sumberg Baena Price & Axelrod.

The proposal filed with U.S. District Judge Federico Moreno in Miami comes with a program intended to accelerate the removal of defective air bag inflators, which generated the largest vehicle recall in U.S. history affecting nearly two dozen brands, plaintiffs attorneys said. "This agreement will not only expand awareness of the Takata recalls and improve driver safety by accelerating the removal of defective air bags from our roads but will provide compensation to affected Honda consumers," says Peter Prieto, plaintiffs lead counsel.

The settlement plan is similar to others previously announced with Toyota Motor Corp. ($279 million), Bayerische Motoren Werke AG ($131 million), Nissan Motor Corp. ($98 million), Mazda Motor Corp. ($76 million) and Subaru Corp. ($68 million). Preliminary approval was granted for all but Nissan, and a final hearing on the first four is set for Oct. 25.

But Honda was in a precarious position because of potential testimony from a company engineer who was prepared to discuss a 1999 air bag inspection when an inflator ruptured. In July, a court-appointed special master recommended compelling the engineer's testimony about a plot to hide decades-old reports.

The settlement terms offer compensation for motorists' economic losses resulting from the recall, including reimbursement for reasonable out-of-pocket expenses and a possible residual distribution payment of up to $500, among other things. Owners and lessees also would be part of an outreach program overseen by an independent administrator to boost part replacement rates.

If Moreno gives final approval, the claims process will be open to eligible class members pending any appeals. Personal injury claims based on air bag malfunctions are not covered by the agreement. *—Catherine Wilson*

Stender v. Archstone-Smith Operating Trust

Polkes

With $4 billion on the line, a team from Weil, Gotshal & Manges led by litigation department co-chair **Jonathan Polkes** scored a decisive summary judgment win on behalf of some of the biggest names in finance and real estate, beating back an investor class action that had been headed for trial.

The decision by U.S. District Judge William Martinez in Denver on Aug. 25 ended a 10-year fight over the $22 billion purchase of Archstone in 2007—one of the largest REIT going-private transactions in history.

Zalka

According to the firm, the litigation included "80 depositions done in 12 states, trips to the Seventh and Tenth Circuit Courts of Appeals, proceedings before four federal district court judges, three California state court judges, a New York Supreme Court judge, and three arbitrations resulting in favorable arbitration decisions that were confirmed by three different courts."

Investors, represented by **Kenneth Wexler, Edward Wallace** and **Kara Elgersma** of Wexler Wallace, sued more than 20 Tishman Speyer and Lehman Brothers-related entities for breach of contract, breach of fiduciary duty and unjust enrichment, alleging that the plaintiffs "had negotiated for securities with certain key economic characteristics, only to see those characteristics stripped away through a $22 billion merger transaction that deprived the investors of what they expected, both as a matter of contract and as minority shareholders."

One key issue: advice from lawyers at what was then Hogan & Hartson in structuring the underlying transaction. The defendants chose to waive privilege, and asserted an advice of counsel defense, with Hogan lawyers testifying as witnesses in depositions.

In 2015, the court certified a liability class. A 14-day jury trial was scheduled to begin on Jan. 16, 2018.

That is, until Martinez tossed the case on summary judgment, dismissing all counts against the defendants and vacating the trial.

"The court finds no genuine dispute of material fact that the terms of the 2007 merger were permissible, contrary to plaintiffs' position," the judge wrote. He also awarded the defendants their legal costs (although not attorney fees).

The Weil team also included securities litigation partner **Caroline Zalka** and associates **Adam Banks, Melanie Conroy, Justin D'Aloia, Ondrej Staviscak-Diaz, Raquel Kellert, Irisa Chen, Lauren Engelmyer, Andrew Cauchi, and Megan Richardson.** In addition, **Greg Silbert, Paul Dutka** and **Jessie Mishkin** made key contributions over the years. Corporate partners **Mike Bond** and **David Herman,** and tax partner **Mark Schwed,** also played major roles. *—Jenna Greene*

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U.S. ex rel. Sanofi-Aventis v. Mylan

Weinreb

Durrell

Mylan has agreed to pay $465 million to settle claims that the Pennsylvania-based drugmaker misclassified its EpiPen allergy medication to avoid paying Medicaid rebates.

The settlement ends a qui tam action initiated by drug maker Sanofi-Aventis and Ven-A-Care, a Florida pharmacy, that alleged Mylan improperly classified the EpiPen as a generic drug in an effort to underpay rebates owed to Medicaid. The suit specifically alleged the company violated the False Claims Act. **Robert Thomas Jr.** and **Suzanne Durrell** of Thomas Durrell represented Sanofi-Aventis, while **James Breen** of the Breen Law Firm represented Ven-A-Care.

The U.S. Attorney's Office for the District of Massachusetts, which handled the case, announced the agreement on Aug. 17. The government's team included assistant U.S. Attorneys **Gregg Shapiro** and **Kriss Basil,** as well as **Augustine Ripa** and **Nicholas Perros** from the commercial litigation branch of the Justice Department's civil division.

Mylan, which is incorporated in Canonsburg, Pennsylvania, faced a public outcry and a dramatic Senate hearing last year over a dramatic hike in its pricing of the medication. Federal attorneys had pointed to the fact that the EpiPen—a life-saving allergy auto-injector—had no FDA-approved equivalent drugs, and said Mylan marketed and priced the medication as a brand name drug, noting that the company raised the price more than 400 percent between 2010 and 2016. The company tapped **Mitchell Zamoff** of Hogan Lovells for its defense.

"Mylan misclassified its brand name drug, EpiPen, to profit at the expense of the Medicaid program," acting U.S. Attorney for the District of Massachusetts **William Weinreb** said in a statement to the press.

In a statement, Mylan CEO Heather Bresch said the company has taken steps to increase access to the drug, including launching a half-priced generic version. "Bringing closure to this matter is the right course of action for Mylan and our stakeholders to allow us to move forward," Bresch said in the statement. The statement also noted that the settlement did not include any admission of wrongdoing, but that the company will reclassify the EpiPen and has entered into a "Corporate Integrity Agreement" with the U.S. Health and Human Services's Office of Inspector General. *—Max Mitchell*

Inside AT&T's ADR Strategy

The telecom expects its lawyers to be heavily involved in its conflict resolution processes.

FOR A BIG COMPANY LIKE AT&T INC., conflict resolution rather than litigation to resolve a dispute is an "overriding philosophy" that benefits the business and its customers, says AT&T senior executive vice president and general counsel David McAtee II. The International Institute for Conflict Prevention & Resolution Inc. recently named AT&T and McAtee the recipients of its 2017 Corporate Leadership Award for leadership in dispute resolution.

AT&T's legal department has for years favored ADR over litigation in court, McAtee says. "When you think about the size of what we do and the scope of what we do ... over time, it's just become an overriding philosophy that really makes sense for us. So much of our business is about avoiding friction, getting to the right result with less friction. That's what ADR provides to us."

If there's an issue with a business customer, for example, ADR enables the company to get to the bottom of a problem as quickly as possible while avoiding certain additional variables, according to McAtee. "By allowing us to focus on the solution, ADR allows us to bypass a number of costly things [such as litigation expenses] that might sidetrack us," he says.

For contracts with wireless customers, McAtee says the company's arbitration clause is similarly designed to "give us every incentive to get right to the heart of the problem." This clause stipulates that if a wireless customer has a problem, he or she can inform the company, which will attempt to resolve the issue within 30 days of receiving notice. A customer who is unhappy with a settlement offer may then start an arbitration proceeding. If AT&T is deemed to have offered an inadequate settlement, the customer gets the arbitrator's award or $10,000—whichever is greater. AT&T pays any expert witness fees and costs and pays double the amount of attorney fees.

AT&T's legal team of more than 500 attorneys, who are spread across 20 countries is heavily involved in AT&T's ADR processes from start to finish, McAtee says. For instance, the idea of incorporating consumer-friendly arbitration agreements into wireless contracts with consumers was "a lawyer-driven effort," he says. And with business-to-business agreements, the legal department had a heavy hand in ensuring that a dispute resolution process was built into contracts that would allow both parties to continue doing business while an issue is resolved, he says.

"We really have lawyers who work day-to-day, shoulder-to-shoulder with their business clients," McAtee says. "You only can accomplish that when you've got great trust between the client and the lawyer that's developed

LESSONS FROM AN IN-HOUSE GIG

A crucial takeaway: Know the client's business.

After two years as deputy general counsel and head of litigation at Atlanta-based Mercedes-Benz USA, Miguel Alexander Pozo left the company in August to become a partner in the trial practice group at Duane Morris, one of Mercedes-Benz USA's outside counsel.

At Mercedes-Benz USA, which markets and distributes the German company's cars in the United States, Pozo was one of 12 lawyers in the legal department. (Parent company Daimler has about 300 lawyers worldwide.) His portfolio included IP and employment law as well as litigation. Before moving in-house, Pozo worked in private practice for 17 years at Lowenstein Sandler. Pozo spoke with Corporate Counsel, a sibling publication of The American Lawyer, about what he learned working in-house. The conversation has been edited for clarity and length.

CORPORATE COUNSEL: Why did you make the move in-house?

MIGUEL ALEXANDER POZO: When you get a call from Mercedes-Benz asking you to work for them, you don't say no. It's not something you want to look back on later and say: "I wish I had done that." It was a highlight of my career.

Miguel Alexander Pozo

DUPONT PHOTOGRAPHERS


David McAtee II

through the years of working together in the trenches."

Despite a preference for ADR to resolve conflicts, McAtee says the legal department "won't hesitate" to fight a matter in court. Striking the right balance, he says, is something "I keep my eye on quite a bit."

Says McAtee: "It's important that I and members on my team put a marker down that if there's a fight that needs to be fought in court, we're not afraid to fight it. So we've made very strategic decisions in the past to go to court to make sure that we send the message that we're not afraid to avail ourselves of the court when we think it's appropriate to do so."

The best example of this is with patent litigation, McAtee says. A few years ago, it was revealed that AT&T was the top target of nonpracticing entities, often referred to as "patent trolls." This news reminded McAtee that AT&T needed to make sure to push back against the proliferation of suits against the company, which is why the legal department will carefully choose patent cases to take to trial every year or two.

For all the good that may come from ADR, there has been criticism in recent years of mandatory arbitration provisions, which often prevent consumers from pursuing any type of litigation against a company.

AT&T was thrust into the debate when five U.S. senators in a June 7 letter expressed concern about the telecommunications company's use of forced arbitration clauses in customer contracts. AT&T responded on June 30, stating that AT&T's arbitration system is extremely customer-friendly and that because customers freely enter into contracts for service, they are not forced to agree to arbitration.

Speaking generally about these provisions, McAtee says it's "impossible to paint this issue with just one brush" because all are a little bit different. "What we have found is every court that has looked at our provision has upheld it and in many cases, has complimented it," McAtee says, "and so we always bristle at being lumped in with others."

—JENNIFER WILLIAMS-ALVAREZ

CC: Was there anything particularly surprising that happened there?

MP: It was great. I got to learn the whole business. I traveled to Germany to see how the cars function and got to be immersed in the brand. The automotive industry is constantly evolving, so I was learning about autonomous vehicles, technology and driving issues, and some corporate issues that had nothing to do with litigation.

The biggest difference in being in-house is you're entrenched in the day to day. You have a bigger worldview when you're outside counsel. As an in-house lawyer, you're not able to say "no" necessarily. You have to help the company. It was fascinating to have that perspective, looking through the lens of a client and knowing firsthand what keeps clients up at night.

CC: Anything else that changed your perspective on outside counsel?

MP: One of the pet peeves that in-house lawyers have is when outside lawyers come to a pitch meeting not understanding the [client's] business. Not doing your research, that's bad. Mercedes-Benz USA does not manufacture cars. Cars are manufactured in Germany by Daimler. Outside lawyers would come in [thinking we made cars in the United States] and hadn't bothered to educate themselves.

CC: So which types of firms did you decide to hire as outside counsel?

MP: Mercedes-Benz has a range of relationships that have been around for a very long time and won't change much. For the firms I hired, I looked for areas of expertise we didn't have on our bench, as well as firms that had diverse teams that were inclusive in their approach to staffing cases. I actually hired Duane Morris when I was there. They had a great collaborative model and an expertise in automotive.

CC: Before going in-house, you counted LVMH, Moët Hennessy, Louis Vuitton, TAG Heuer and Target as clients. Do you expect to continue with those clients?

MP: If it's up to me, absolutely. That's the expectation. You have to hit the ground running. I've been in contact with a number of people and looking for the right opportunities to get back into the relationships I had.

—Stephanie Forshee

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Construction

VIRGINIA NORTHERN VIRGINIA

Garth M. Wainman

Walsh, Colucci, Lubeley & Walsh represents national and regional builders, developers, and contractors throughout Virginia in litigation in state and federal courts. Our team of skilled attorneys provides a solution-oriented and fee-efficient approach to resolving all types of construction disputes and has effectively led our clients through complex cases resulting in successful arbitration awards and jury verdicts. We have successfully defended our clients from claims of breaches of condominium warranties, structural design defects, delay damages, bond defaults, and myriad complex business torts. Our lawyers have earned their strong reputation with Virginia's judges and clients with diligence and creative yet pragmatic legal analysis while serving as lead counsel in a number of complex construction and surety claims. Garth Wainman leads the firm's construction law practice group and is recognized by *U.S. News and World Report* as one of *The Best Lawyers in America*©. He is AV rated and named a 2016 Top Rated Lawyer in Construction Law by American Lawyer Media and Martindale-Hubbell.

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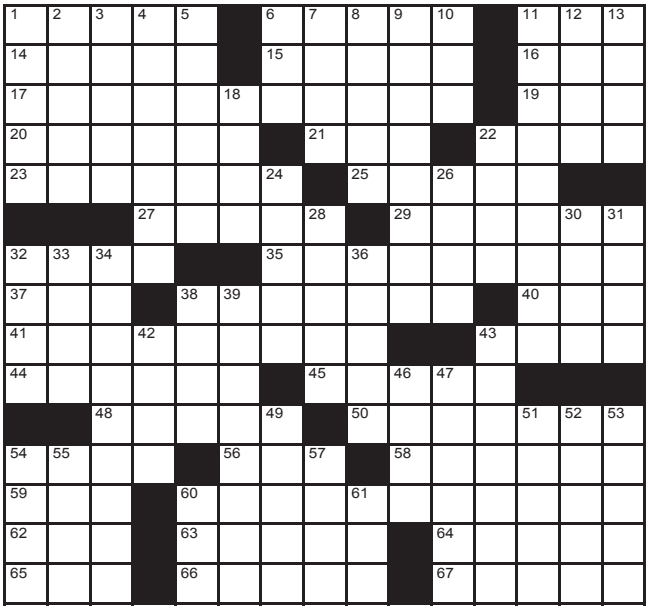
PEERING IN?

Take a look: This grid is full of authority. *By Victor Fleming*



Across

1 Old blue toon
6 Taste test brand
11 WWII-era female
14 Israeli prophet
15 Gumshoe Pinkerton
16 Maniacal leader?
17 How big-box stores sell some stuff
19 Noteworthy stretch
20 Maniacal leader?
21 Little rascal
22 Satirical playlet
23 Qualified voter
25 Sadat's co-Nobelist
27 Bottom-line amount
29 Strays on the range
32 Beauts
35 Facing hardship with courage
37 Gabrielle portrayer on "Desperate Housewives"
38 Classic Chrysler
40 Otho's govt.
41 Story
43 Carefully pack (away)
44 Net
45 Put into practice
48 April Fools' Day activity
50 Godlessness
54 Word with hand or home
56 Torque-transmitting tooth
58 Tuesdays With ___
59 Its eggs are dark green
60 Grand Ole Opry comic of yore
62 Pose, as questions
63 "Take ___, please" (prof's directive at the start of class)
64 Blakley of "A Nightmare on Elm Street"
65 Front part of a golf club's head
66 Prefix with foam
67 Record's more-played half

Down

1 Finger-wagger's admonition
2 Inn alternative
3 Grammar subject
4 Blue-pencils, in a way
5 "I ___ see the humor!"
6 Campaign funding grp.
7 Race in "The Time Machine"*
8 Exactly vertical
9 Los Angeles bay named for an apostle
10 NFL drive killer
11 When kids might go to bed early
12 Cultural head?
13 Layer of paint
18 Cause of a stain on Santa's pants
22 Leo or Capricorn
24 Sukkot leader
26 Enter
28 Maternity ___
30 Capital of France?
31 Gush violently
32 It gets passed down in the family
33 Author Hunter
34 Great Dane of the funnies
36 Boston's Fleet Center, e.g.
38 Kind of hurrah
39 Moral thinker
42 Russo or Lacoste
43 Music lovers' choices
46 "Ma, he's making eyes ___!"
47 "Golf for Enlightenment" author Deepak
49 ___ Island
51 Tehran man
52 Was father to
53 It may follow a beaning
54 Ravioli filling, sometimes
55 Arguer's reply to "Are not!"
57 Sound like an angry dog
60 "X" ending
61 Judge Lance

Answers to the puzzle can be found on page 14.

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Richard Caruso Publisher.

By Jenna Greene

Field of Dreams

A lawyer's path from migrant farm worker to Big Law leader.

By the time he was 8 years old, Joshua Briones was rising before dawn to pick strawberries and tomatoes, moving from town to town in California with his immigrant farm worker parents.

He spent his teenage years painting, laying linoleum and carpet, working as a busboy, a waiter, and in grocery stores. He didn't graduate from high school.

Today, Briones, 44, is the managing partner of Mintz Levin Cohn Ferris Glovsky and Popeo's Los Angeles office, a lauded litigator who has served as lead defense counsel on more than 200 alleged class actions.

Joshia Briones

His mother's words have been a touchstone: "Remember God and where we came from. Work hard. Be honest. Help people."

Briones was born in Gilroy, California, to parents from Mexico. He has "crisp memories" of working in the fields as a child. "You don't forget waking up before the sun comes up," he says.

"I didn't give [the work] much thought. It was just something my family and I did. We viewed it as something we did together. We were in the U.S., we were eating and making money, everything was perfect," Briones says. "I never thought about being a lawyer or a professional. It never entered my mind."

But as he grew older, other people recognized his potential. A regular customer at a grocery store where Briones worked hired him to help install a sprinkler system. They talked about books and the man said "Hey, you should go to college," Briones recalls.

Briones was moving around and working too much to get a high school diploma, but he passed the California Proficiency Exam and enrolled at Cabrillo College in Aptos, California, at age 17.

He was there for one semester before it was time to move again. In all, Briones went to six community colleges before he got an associate's degree.

"I was thinking I could take some classes, maybe get a job at a bank. I could work indoors—I wouldn't be out in the hot sun all the time," he says.

Then his school counselor asked if he'd thought about going to law school given his love of debate.

"If she had not introduced me to that idea, I probably would not be an attorney today," Briones says.

He moved to San Diego and met a partner at a small law firm in an elevator. Briones landed a job on the spot doing clerical work.

To save money, he moved to Tijuana, Mexico, and commuted over the border each day.

One job was selling Encyclopedia Britannica door-to-door. The experience "taught me it doesn't matter when someone says no. You have to keep persevering, asking questions," Briones said. "It's exactly what litigation is."

Another gig was making cold calls at a brokerage firm in La Jolla. He earned $100 for every lead that turned into a client. The father of his boss was a lawyer. He told Briones that he loved the profession, and recommended that he try to go to law school at UCLA.

After Briones got an undergraduate degree from San Diego State University, he was accepted to UCLA School of Law.

He earned his J.D. in 1999 (and later, an LLM from NYU) and was hired as an associate at Gray Cary Ware & Freidenrich, which later merged with DLA Piper.

Briones became a partner at DLA in 2011. He also started a family—he and his wife have five children ages 8 and under.

In 2016, he joined 445-lawyer Mintz Levin as managing partner in Los Angeles, drawn by the firm's embrace of diversity and its "welcoming spirit," he says.

"When recruiting or working with lawyers, it's so important to appreciate diversity in their backgrounds," he said. "It makes a much more powerful team. … People bring different strengths to the objective."

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JASON DOIY (GREENE)

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THE WORLD'S HIGHEST-GROSSING LAW FIRMS IN 2017

RANK 2017	RANK 2016	FIRM	REVENUE Gross Revenue, Most Recent Fiscal Year	LAWYERS Total Lawyers	LAWYERS Revenue Per Lawyer	LAWYERS Total Equity Partners	GLOBAL PRESENCE Countries in Which Firm Has Offices	GLOBAL PRESENCE Country With the Most Lawyers	GLOBAL PRESENCE Percentage of Lawyers in That Country
1	1	**Latham & Watkins**	$2,823,000,000	2,280	$1,240,000	465	14	United States	68%
2	2	**Baker McKenzie** (verein)*	$2,670,000,000	4,719	$565,000	702	47	United States	15%
3	5	**Kirkland & Ellis**	$2,651,000,000	1,759	$1,505,000	359	4	United States	84%
4	4	**Skadden, Arps, Slate, Meagher & Flom**	$2,495,000,000	1,728	$1,445,000	368	13	United States	79%
5	3	**DLA Piper** (verein)*	$2,470,000,000	3,616	$685,000	389	30	United States	32%
6	6	**Dentons** (verein)*	$2,205,000,000	7,445	$295,000	1,365	55	China	57%
7	7	**Clifford Chance**	$2,087,500,000	2,466	$845,000	403	23	United Kingdom	30%
8	9	**Allen & Overy**	$2,059,500,000	2,273	$905,000	441	31	United Kingdom	34%
9	11	**Jones Day**	$1,977,000,000	2,523	$785,000	936	18	United States	64%
10	9	**Linklaters**	$1,950,000,000	2,279	$855,000	441	20	United Kingdom	38%
11	12	**Sidley Austin**	$1,928,000,000	1,836	$1,050,000	346	9	United States	83%
12	14	**Hogan Lovells** (verein)*	$1,925,500,000	2,609	$740,000	542	22	United States	36%
13	13	**Morgan, Lewis & Bockius**	$1,860,000,000	1,844	$1,010,000	708	11	United States	88%
14	8	**Freshfields Bruckhaus Deringer**	$1,803,000,000	1,913	$940,000	396	16	United Kingdom	31%
15	15	**Norton Rose Fulbright** (verein)*	$1,685,500,000	3,505	$480,000	813	27	United States	21%
16	16	**White & Case**	$1,631,000,000	1,957	$835,000	299	29	United States	32%
17	16	**Gibson, Dunn & Crutcher**	$1,606,500,000	1,239	$1,295,000	299	9	United States	85%
18	18	**Ropes & Gray**	$1,485,500,000	1,161	$1,280,000	282	5	United States	82%
19	20	**Greenberg Traurig**	$1,377,500,000	1,884	$730,000	308	10	United States	89%
20	21	**Sullivan & Cromwell**	$1,360,000,000	800	$1,700,000	168	7	United States	81%
21	22	**Simpson Thacher & Bartlett**	$1,301,500,000	971	$1,340,000	185	6	United States	82%
22	24	**Cleary Gottlieb Steen & Hamilton**	$1,271,500,000	1,204	$1,055,000	186	12	United States	52%
23	25	**Weil, Gotshal & Manges**	$1,266,500,000	1,083	$1,170,000	161	9	United States	64%
24	23	**Mayer Brown**	$1,260,000,000	1,586	$795,000	296	12	United States	56%
25	19	**Herbert Smith Freehills**	$1,247,500,000	2,009	$620,000	337	18	United Kingdom	46%
26	29	**Paul, Weiss, Rifkind, Wharton & Garrison**	$1,222,000,000	959	$1,275,000	139	5	United States	94%
27	33	**Quinn Emanuel Urquhart & Sullivan**	$1,204,000,000	718	$1,675,000	162	10	United States	83%
28	30	**Davis Polk & Wardwell**	$1,180,000,000	912	$1,295,000	153	7	United States	79%
29	31	**K&L Gates**	$1,179,000,000	1,810	$650,000	193	16	United States	62%
30	26	**Wilmer Cutler Pickering Hale and Dorr**	$1,130,500,000	887	$1,275,000	270	5	United States	90%
31	27	**CMS Legal Services** (EEIG)*	$1,091,000,000	2,719	$400,000	516	35	United Kingdom	25%
32	28	**Reed Smith**	$1,075,000,000	1,536	$700,000	295	9	United States	64%
33	32	**Paul Hastings**	$1,074,500,000	921	$1,165,000	190	10	United States	76%
34	35	**King & Spalding**	$1,057,500,000	1,005	$1,050,000	196	10	United States	84%
35	38	**Squire Patton Boggs** (verein)*	$983,000,000	1,466	$670,000	172	20	United States	44%
36	37	**Akin Gump Strauss Hauer & Feld**	$980,000,000	857	$1,145,000	196	8	United States	81%
37	40	**Cooley**	$974,000,000	854	$1,140,000	203	3	United States	92%
38	36	**Morrison & Foerster**	$945,000,000	956	$990,000	232	7	United States	75%
39	39	**Orrick, Herrington & Sutcliffe**	$929,000,000	941	$985,000	117	11	United States	67%
40	44	**Shearman & Sterling**	$912,500,000	841	$1,085,000	140	12	United States	53%
41	43	**Goodwin Procter**	$912,000,000	847	$1,075,000	203	5	United States	94%
42	42	**Dechert**	$911,500,000	916	$995,000	157	13	United States	67%
43	41	**McDermott Will & Emery**	$908,500,000	977	$930,000	198	7	United States	79%
44	49	**Milbank, Tweed, Hadley & McCloy**	$855,500,000	664	$1,290,000	149	7	United States	71%
45	46	**Proskauer Rose**	$852,500,000	709	$1,200,000	171	5	United States	88%
46	56	**Baker Botts**	$846,500,000	708	$1,195,000	176	7	United States	86%
47	54	**Covington & Burling**	$838,500,000	838	$1,000,000	263	5	United States	85%
48	47	**Winston & Strawn**	$823,000,000	798	$1,030,000	144	7	United States	86%
49	34	**King & Wood Mallesons** (verein)*	$806,000,000	2,397	$335,000	327	16	China	60%
50	53	**Holland & Knight**	$803,000,000	1,074	$750,000	185	4	United States	94%
51	52	**Perkins Coie**	$781,000,000	921	$850,000	175	2	United States	99%
52	45	**Wachtell, Lipton, Rosen & Katz**	$765,000,000	244	$3,130,000	81	1	United States	100%
53	55	**Wilson Sonsini Goodrich & Rosati**	$755,000,000	750	$1,005,000	138	3	United States	94%
54	59	**Kim & Chang**	$741,000,000	820	$905,000	130	2	South Korea	99%
55	62	**Cravath, Swaine & Moore**	$738,000,000	497	$1,485,000	87	2	United States	93%
56	50	**Debevoise & Plimpton**	$735,000,000	613	$1,200,000	134	7	United States	74%
57	48	**Ashurst**	$733,500,000	1,355	$540,000	243	15	Australia	38%
58	58	**Alston & Bird**	$730,500,000	782	$935,000	147	3	United States	92%
59	57	**O'Melveny & Myers**	$725,500,000	648	$1,120,000	175	7	United States	88%
60	51	**Slaughter and May**	$691,000,000	522	$1,325,000	107	4	United Kingdom	89%
60	63	**Willkie Farr & Gallagher**	$691,000,000	605	$1,140,000	142	6	United States	72%
62	60	**Clyde & Co**	$688,500,000	1,990	$345,000	196	21	United Kingdom	41%
63	64	**McGuireWoods**	$682,500,000	990	$690,000	184	3	United States	96%
64	61	**Foley & Lardner**	$671,000,000	840	$800,000	144	4	United States	99%
65	67	**Vinson & Elkins**	$654,000,000	604	$1,085,000	142	7	United States	90%
66	66	**Baker & Hostetler**	$642,500,000	920	$700,000	142	1	United States	100%
67	65	**Arnold & Porter**	$624,500,000	657	$950,000	233	3	United States	93%
68	71	**Seyfarth Shaw**	$623,500,000	847	$735,000	198	4	United States	95%
69	69	**Bryan Cave**	$608,000,000	870	$700,000	199	6	United States	91%
70	74	**Sheppard, Mullin, Richter & Hampton**	$607,000,000	655	$925,000	125	5	United States	96%
71	68	**Eversheds**	$594,500,000	1,777	$335,000	119	11	United Kingdom	80%
72	75	**Pillsbury Winthrop Shaw Pittman**	$573,500,000	605	$950,000	145	5	United States	88%
72	72	**Pinsent Masons**	$573,500,000	1470	$390,000	172	8	United Kingdom	77%
74	70	**Locke Lord**	$559,000,000	749	$745,000	184	5	United States	94%
75	79	**Fried, Frank, Harris, Shriver & Jacobson**	$556,500,000	440	$1,265,000	105	4	United States	88%
76	73	**Katten Muchin Rosenman**	$554,000,000	606	$915,000	142	3	United States	87%
77	77	**Osler, Hoskin & Harcourt**	$549,000,000	422	$1,300,000	219	2	Canada	95%
78	76	**Hunton & Williams**	$541,000,000	661	$820,000	153	6	United States	91%
79	80	**Fragomen, Del Rey, Bernsen & Loewy**	$540,500,000	539	$1,005,000	62	19	United States	58%
80	78	**Littler Mendelson**	$530,000,000	989	$535,000	382	13	United States	88%
81	N/A	**Gowling WLG****	$529,000,000	1,289	$410,000	386	8	Canada	54%
82	81	**Venable**	$498,500,000	611	$815,000	161	1	United States	100%
83	82	**Troutman Sanders**	$490,000,000	655	$750,000	185	2	United States	95%
84	83	**Faegre Baker Daniels**	$489,500,000	657	$745,000	221	3	United States	96%
85	89	**Blake, Cassels & Graydon**	$462,000,000	641	$720,000	265	6	Canada	96%
86	86	**Nixon Peabody**	$458,000,000	619	$740,000	143	2	United States	99%
87	84	**Jenner & Block**	$457,500,000	487	$940,000	109	2	United States	98%
88	88	**Duane Morris**	$454,500,000	651	$700,000	122	6	United States	94%
89	85	**Cadwalader, Wickersham & Taft**	$452,000,000	438	$1,030,000	45	4	United States	79%
90	94	**Lewis Brisbois Bisgaard & Smith**	$440,000,000	1,135	$390,000	118	1	United States	100%
91	91	**Polsinelli**	$439,000,000	758	$580,000	121	1	United States	100%
92	N/A	**Crowell & Moring**	$434,500,000	440	$985,000	97	4	United States	92%
92	92	**Drinker Biddle & Reath**	$434,500,000	557	$780,000	187	2	United States	99%
94	87	**Simmons & Simmons**	$428,500,000	780	$550,000	145	15	United Kingdom	45%
95	97	**Ogletree, Deakins, Nash, Smoak & Stewart**	$427,000,000	759	$565,000	177	5	United States	97%
96	N/A	**Blank Rome**	$422,500,000	564	$750,000	139	2	United States	99%
97	96	**Williams & Connolly**	$420,000,000	325	$1,290,000	117	1	United States	100%
98	N/A	**Fox Rothschild**	$416,500,000	763	$545,000	302	1	United States	100%
98	90	**Kilpatrick Townsend & Stockton**	$416,500,000	573	$725,000	114	4	United States	94%
100	N/A	**Bird & Bird**	$411,000,000	1,068	$385,000	105	22	United Kingdom	22%

*Vereins and European Economic Interest Groups (EEIGs) differ structurally from other Global 100 firms, especially in regard to profit sharing.
**Canada-based Gowlings and UK-based Wragge Lawrence Graham & Co. merged in February 2016 to form Gowling WLG.

METHODOLOGY

ABOUT THE CHARTS

WE PRODUCE THREE RANKINGS for our Global 100 report. The Most Revenue chart ranks the world's largest law firms by gross revenue. We also rank firms by head count (Most Lawyers) and profits per partner (Most Profits Per Partner). Firms are eligible for placement on the Most Revenue chart, the Most Lawyers chart or both. A total of 122 firms are included on our global charts. Most firms provide their financials voluntarily. Some refuse to cooperate. All information, whether it is volunteered by the firm or not, is investigated by our reporters. Foreign law firms differ in structure from U.S. law firms, so we've taken steps to level the playing field, such as excluding trainee lawyers. Here's how we produce our lists:

MOST REVENUE This chart ranks firms by gross revenue for their most recently completed fiscal year. Revenue figures are rounded to the nearest $500,000, and revenue per lawyer figures are rounded to the nearest $5,000. In most cases financial information for U.S.-based law firms is obtained from The Am Law 100. Other law firms were surveyed directly for the Global 100. Revenue figures for all non-U.S. firms (except vereins) are converted to U.S. dollars using the average annual conversion rate in 2016 as published by the U.S. Federal Reserve.

MOST LAWYERS This chart ranks firms by the average number of full-time-equivalent lawyers at the firm in the 2016 calendar year. The firms on this chart are the world's 100 largest by head count. The geographic breakdown comes from the 2016 National Law Journal survey of the 500 largest U.S. firms or from the firms directly if they are not included in that report.

MOST PROFITS PER PARTNER Only firms that make the Most Revenue and/or Most Lawyers charts are included in this chart, which ranks firms by profits per equity partner for the most recent fiscal year. Profits per equity partner are rounded to the nearest $5,000.