

October 2024



The VISIONARIES

YOUR GUIDE to navigating a complex and ever-changing global business environment from professional service firms across the globe

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IR Global members share their insights on key topics facing the industry today

TECHNOLOGY

“Don’t waive client-attorney privilege by submitting information to a robot.”

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TRANSGRESSIVE BEHAVIOUR

Shilpen Savani on balancing company culture with individual rights



GEOPOLITICAL CLIMATE

Isabella Bertani advises agility in the face of legislative changes



INTERVENTION AND REGULATION

James Daneri discusses investing in the US from overseas

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IR Global is a multi-disciplinary professional services network that provides legal, accountancy and financial advice to both companies and individuals around the world.

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Since 2010, our community has grown to 1,400+ members worldwide based on the principles of friendship, trust and a shared belief in going beyond the traditional role of the adviser. Today we exist as the 'go to' network for forward thinking clients looking for creative, pragmatic and cost effective solutions.

Thomas Wheeler
Founder of IR Global

"The group's founding philosophy was based on cultivating a giving mentality and creating a system which is ethical, sustainable and always puts clients' interests first."

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FROM THE EDITOR

Advice in the year of elections



Charles Scherer
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Twenty-seven general elections have fallen in 2024. At the time of writing, twenty have taken place, but one of the most impactful and momentous polling days – the US Presidential Election – is still to come.

No year has ever had such potential for peaceful and democratic regime change, and for those with an international outlook or a cross-border business, the 2020s may have continued as they began – full of stress, uncertainty, and economic strife. New leaders will all have their own remedies for inflation, employment crises, and economic stagnation, and their mandates and mechanisms to administer them will vary in strength.

At the same time, change represents an opportunity for those prepared to take it. The initiatives of incoming governments mean new conditions to adapt to and to thrive in, while market stress factors can mean more businesses ready for acquisition and more opportunities to let necessity drive innovation.

AI remains an exciting, if mysterious, prospect for businesses. It is full of promise for efficiency, cost-savings, customer experience, and productivity, but often the specifics of how to apply it are difficult to pin down. It is also sometimes a source of anxiety in areas like compliance, security, data, privacy, and public relations. Businesses may have to contend with regulations that industry bodies choose to impose, existing national and international laws that are relevant to AI's operations, and the EU's new AI act, which threatens those who contravene its rules with fines of €35m or 7% of turnover (whichever is greater).

For some, the cultural gap between generations in the workplace seems as pronounced as ever, if not more so. Social media-driven younger generations are increasingly drawing thicker boundaries between work and 'life', and to some, the professional is the political. In the wider employment market, some industries still find themselves with vacancies that they cannot fill, while others cannot handle the volume of applications they receive.

Some things, as ever, remain the same. War continues on European soil as the Russia-Ukraine conflict rages on – the same conflict that began in 2022 as a fresh crisis to replace the waning pandemic. In the Middle East, the sustained violence between Israel and Hamas shows no signs of abating, but returning to the topic of elections, the next US president will have the power to heavily influence the character and the outcome of the hostilities.

We may wonder whether instability is the new standard, and businesses must be comfortable with being uncomfortable. Even if that is the case they can at least rely on highly qualified and experienced advisers to offer guidance and strategy in all conditions. In the following chapters, IR Global members offer their invaluable perspectives from this year of elections for the years ahead.

"No year has ever had such potential for peaceful and democratic regime change."



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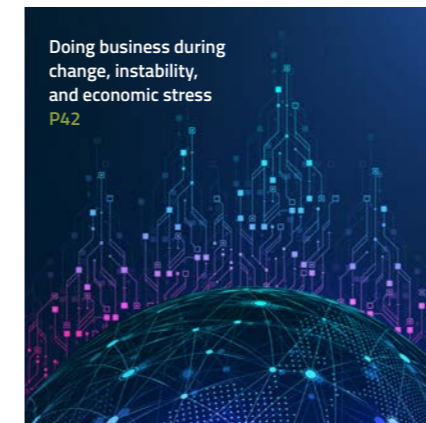
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Technology

AI is rapidly transforming all industries, reshaping dispute resolution and business growth strategies. It introduces both opportunities and challenges, from liability concerns to its role in commercial contracts and due diligence.

This chapter explores how emerging technologies impact legal frameworks, with expert insights on managing AI-related risks and sector-specific vulnerabilities.

Regarding AI's role in commercial contracts, Katherine Evans argues that the key question isn't whether AI should be used, but how businesses can balance its time-saving capabilities with the risks of inaccurate or biased data analysis. She emphasises that while AI accelerates tasks like document review, human oversight is crucial to ensure proper context and interpretation.

On legal risks in DR Congo, Amani Cibambo

highlights the growing concerns over data privacy and cybersecurity as businesses increasingly adopt technology. He notes that DR Congo's regulatory framework lags behind technological advancements, particularly in areas like blockchain and AI, which leaves businesses exposed to legal uncertainties. In contrast, Curtis Marble discusses Alberta, Canada's leadership in arbitration, emphasising its cost-effectiveness and tech-friendly legal infrastructure. He also notes Alberta's ongoing efforts to address AI-related liabilities, stressing that while AI improves efficiency, the legal framework still requires human accountability to mitigate risks, especially in complex arbitration cases.

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AI: Inevitable, but limited

Thomas H. Curran
 Managing Partner
 Thomas H. Curran Associates, LLC

Q1

How should parties seek and agree to ADR, and what advantages does your jurisdiction offer?

ADR can be an excellent approach to litigation. It is generally faster and more malleable, allowing the parties more control and flexibility to participate in the process. Massachusetts is known for its mandatory ADR programs for civil actions pending in the trial court. Massachusetts appreciates the substantial advantages and benefits ADR offers, such as preserving judicial resources and reducing the number and length of case backlogs. In Massachusetts, parties may use ADR at any time period throughout the pendency of their proceedings. Massachusetts proposes several styles of ADR, including Court-Connected ADR, Housing specialists, and private ADR services.

When deciding whether to participate in ADR, the fundamental question becomes whether the jurisdiction will enforce arbitration awards and agreements reached through mediation. Massachusetts, as a general rule, enforces arbitration awards. The Massachusetts Uniform Arbitration Act, M.G.L. c. 251, is the

Commonwealth's rendition of the Federal Arbitration Act (FAA). The Massachusetts Act mirrors the FAA in making pre- and post-dispute agreements to arbitrate "valid, enforceable and irrevocable," except on the grounds of revocation or another competing and contradictory contract provisions. M.G.L.c. 251 section 1.

Q2

Have you seen or do you expect to see a rise in the use of AI to discover infringements and actionable matters?

It is unclear what function AI can serve competently investigating matters, actions, or infringements that attorneys and/or professional investigators typically handle. However, I am sure that AI will eventually become a useful tool in the process of discovering infringements and actionable matters. However, it is important to note that there have been recent global initiatives enacted to combat the abuse of AI and implement stricter parameters

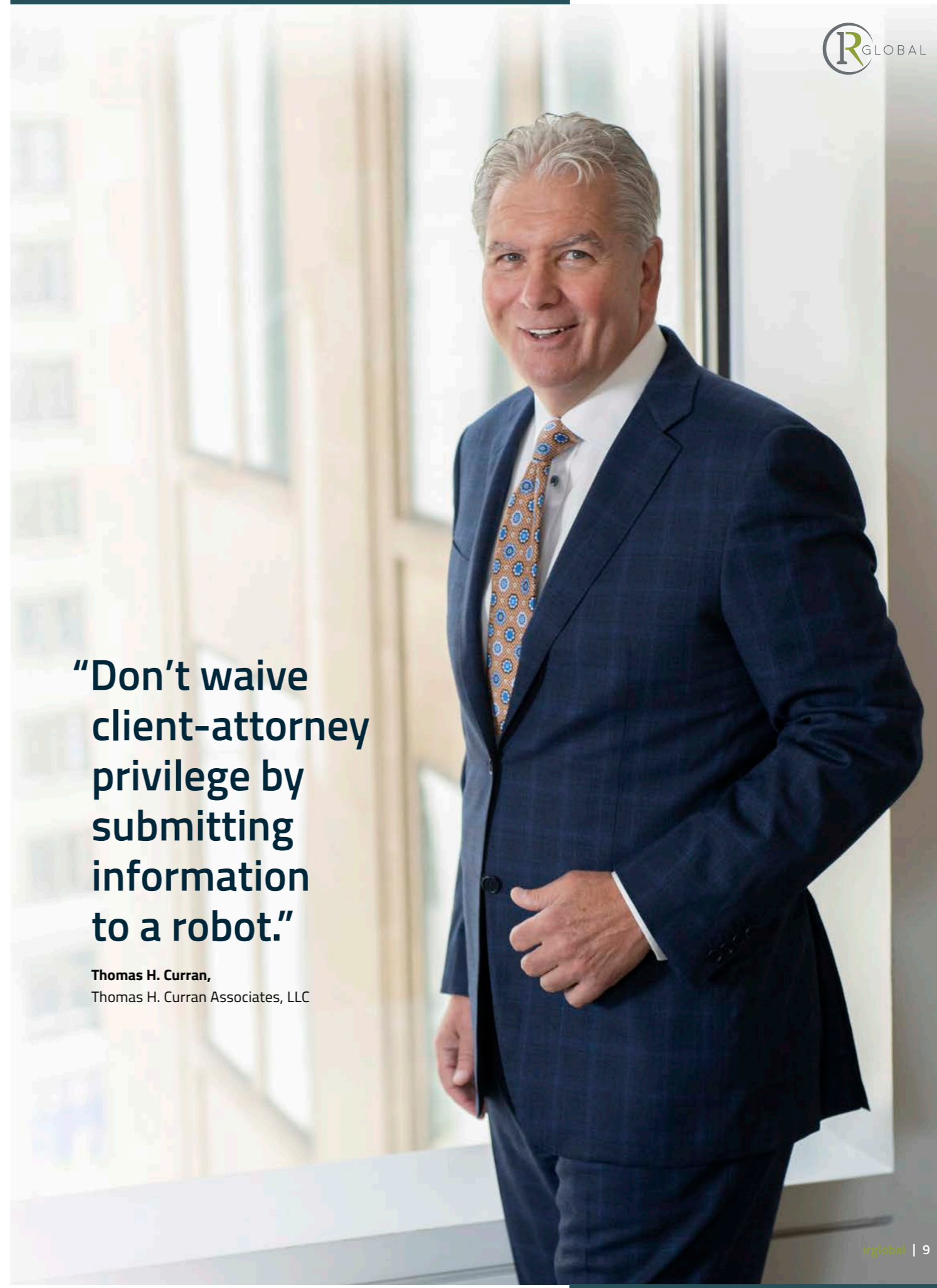
around its use. In September, the United Kingdom, the European Union, and several other countries signed the first legally binding international agreement to ensure that AI systems align with democratic values. The treaty focuses on protecting human rights, safeguarding democracy, and upholding the rule of law. One goal of the treaty is to encourage countries to consider the effects of AI on human health and the environment.

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

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“Don’t waive client-attorney privilege by submitting information to a robot.”

Thomas H. Curran,
 Thomas H. Curran Associates, LLC



MY ADVICE...

- > **Client protection and maintaining the client-lawyer relationship**
 - Make sure there are AI measures protecting work product and client information.
 - Don't waive client-attorney privilege by submitting information to a robot.
 - Close loop – make sure that your work, research, questions, etc., are not going to be remembered by AI and won't become discoverable in the AI system to third parties.
- > **Reliability**
 - Make sure that the system is calculated explicitly for legal professionals and relies on verified legal resources, don't fall for the "short-cut" trap.
 - Only pull from vetted and reliable resources, and double-check the results – this will help minimise liability.
- > **Person at the helm**
 - AI hasn't lived with the case as you have – facts can be more nuanced, therefore what AI generates doesn't have the knowledge and familiarity that the attorneys and staff working the case have.
 - AI is an excellent baseline tool for research, but it is only the start of the process, it should not be the end result.
 - Nuanced issues need to be probed for further information.
 - You can't replace an experienced professional who can check their law and facts and do their own due diligence.

“When employing AI in any capacity, the question becomes whether the user or the AI system will be held accountable for the results.”

intelligence-based technologies into their practice. Further, the opinion operates as a reminder of the pillars of professionalism in the legal profession, such as client confidentiality, communication, and legal competence.

Moreover, Massachusetts Attorney General Andrea Campbell issued an advisory on April 16, 2024, acknowledging the safeguards the Commonwealth has adopted involving AI and forewarning AI users, suppliers, and developers of the Massachusetts Consumer Protection Act (Chapter 93A) and its bearing on AI. Additionally, the advisory reminds us of the Commonwealth's Anti-Discrimination Law, GL c. 151B, §4 which prohibits developers, suppliers, and users of AI systems from deploying technology that discriminates against residents based on a legally protected characteristic. The Boston Bar Association has published numerous practice tips and articles focusing on the responsibilities associated with using AI. Data privacy and security are themes of concern, as is the risk of unauthorised access or data breaches. Additionally, adhering to Rule 11 of the Federal Rules of Civil Procedures is vital when using AI. The main thrust of the rule is to ensure that attorneys do not present frivolous claims, defenses, and other legal contentions to the court in written pleadings or papers to the court.

Thomas Curran speaking with IR Global members during a professional networking event.



Q3

What questions does AI pose for liability – who is accountable for the actions of AI and has your jurisdiction prepared for the question?

As previously mentioned, the rise of AI is inescapable and has gradually melded into the practice of law. Nevertheless, the rise of AI poses considerable issues, notably ethical and legal concerns. When employing AI in any capacity, the question becomes

whether the user or the AI system will be held accountable for the results. Massachusetts has already taken the initiative to combat these rising concerns.

On July 29, 2024, the American Bar Association Standing Committee on Ethics and Professional Responsibility published Formal Opinion 512 on Generative Artificial Intelligence Tools. The opinion reflects the rising concerns surrounding generative artificial intelligence in law practice, particularly emphasising the care and vigilance lawyers and law firms should employ if they decide to integrate artificial

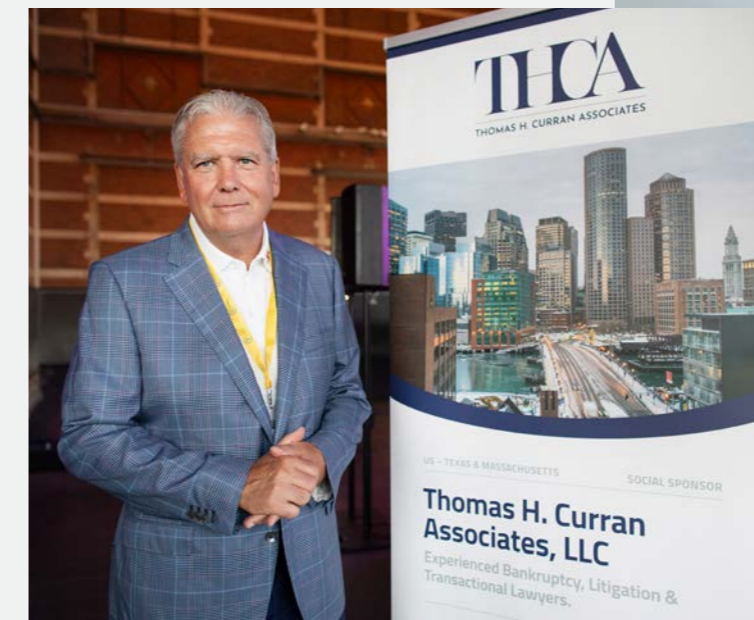
About us...

THCA

THOMAS H. CURRAN ASSOCIATES

With offices in Austin, Boston, New York & London, **Thomas H. Curran Associates, LLC** represents a wide variety of individuals, businesses, corporate entities, and governmental agencies in litigation and transactional matters throughout the United States and Western Europe. We have navigated a broad range of commercial litigation cases, including cross-border insolvency, institutional creditors' rights, bet the company litigation, and have earned a winning track record throughout the United States.

thcalaw.com



“With our innovative approach to complex litigation challenges, we consistently and effectively deliver unparalleled value to our clients.”

Modern arguments

Dispute resolution in a mobile and connected world

Cristina Bergner
Partner
Crista Law firm AB

Q1

How should parties seek and agree a seat for ADR, and what advantages does your jurisdiction offer?

First of all I recommend that you identify which type of ADR you want to use. It could be mediation, arbitration or another form. This choice of type of ADR might influence the selection of seat. Also consider factors like convenience, neutrality, confidentiality and the availability of experienced ADR professionals.

As a member of the EU, Sweden can offer EUIPO's new service ADR through which you can use mediation as an alternative dispute resolution for intellectual property disputes at EU level.

In Sweden ADR is often used as a faster and cheaper way of solving disputes between consumers and businesses. It is done outside of court through mediation, conciliation, arbitration, ombudsmen and different alternative complaint boards normally organised through trade and branch associations.

Sweden is internationally recognised for its neutrality which makes it attractive for ADR. Sweden also has a well-established legal infrastructure that supports ADR with the Swedish Arbitration Act providing a robust framework. It is also stipulated in the Swedish Code of Judicial Procedure that the court shall, if the matter is suitable for an out-of-court settlement, initiate such discussion and work with the parties to reach a settlement.

Q2

Have you seen or do you expect to see a rise in the use of AI to discover infringements and actionable matters?

The use of AI for discovering infringements and actionable matters is already an emerging trend globally,

including Sweden. The public legal institutions have not yet initiated the use of AI formally but AI will most likely reduce the time and cost associated with legal disputes both in the public system as well as for the clients or parties in disputes.

Many Swedish companies are at present looking into streamlining legal proceedings as well as well as



Cristina Bergner specialises in franchise related questions as well as counsel in AML and white collar crime investigations. She is often engaged in dispute resolution in general court and in arbitration.

Cristina is also involved in IT development projects within the legal area related to companies and investigations. As an experienced lawyer she combines a robust understanding of both legal principles and technological innovation to support the responsible development and deployment of AI technologies.

Cristina often engages with companies in navigating the complex intersection of law and advanced technology to ensure successful development. At present she is involved in a project developing services for companies to secure they have compliant systems and policies in order to avoid, among other issues, fines, sanctions and criminal legal measures against e.g. the board or CEO.

Part of Cristina's background includes working at the Swedish Tax Agency, which enabled her to acquire specific experience in tax proceedings. Her other areas of expertise include employment-related matters and general commercial law.

In her area of work Cristina finds that collaborating cross-border is crucial in succeeding for the clients and development within legal technology.

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MY ADVICE...

- Proactive Legal Compliance:**
Establish comprehensive governance policies for AI development and deployment. This includes defining roles and responsibilities, setting standards for ethical AI use, and ensuring compliance with relevant regulations, such as GDPR in Europe or the upcoming EU AI Act.
- Transparency and Explainability:**
Maintain detailed documentation of the AI system's development, training data,

decision-making processes, and any changes made. Transparency in how AI systems work and are maintained helps in demonstrating due diligence and accountability.

- Regular Monitoring and Audits:**
Conduct regular audits, risk assessments and updates of AI systems to potential vulnerabilities, biases or compliance issues. Implement ongoing monitoring to ensure that AI systems operate within legal and ethical boundaries.

using tools to analyse vast amounts of data quickly, identifying patterns and anomalies that might indicate infringements and actionable issues. AI is also used in contract review and management including for legal research. AI can assist in predicting likelihood of success in legal actions by analysing patterns from past cases and potentially identifying new approaches to complex legal issues. Using AI one can also identify legal trends which would be very useful in dispute resolution and mediation and also identifying potential breaches in real-time.

For example AI is well suited to be used in detecting IP infringements, VAT and tax evasions due to being able to detect patterns and parties involved. AI can also at an early stage detect people or companies on the internet initiating and inciting crime.

Q3

What questions does AI pose for liability – who is accountable for the actions of AI and has your jurisdiction prepared for the question?

AI poses many questions regarding liability. You have the problem of determining accountability; who is responsible if the AI systems causes harm? Is it the developer, the system or the users? A further question currently under discussion in Sweden is liability and how existing Swedish law and product liability law apply to AI. Can it be treated like a defective product under product liability laws? Finally there is the question of ethical and legal compliance and how traditional

legal concepts like negligence or fault apply to AI systems. How prepared are insurance companies at managing risks associated with AI?

Sweden is actively working to address the challenges of AI liability through legal, regulatory, and policy measures. Sweden has had a national AI strategy since 2018: "National approach for artificial intelligence". The strategy outlines principles for the responsible use of AI, including transparency, fairness and accountability. It also points out the general direction and focuses on the following priorities; education, training, research, innovation framework and infrastructure. These principles are intended to guide the development and deployment of AI technologies and address potential liability issues.

Further Swedish government agencies, such as the Swedish Data Protection Authority and the Swedish National Board of Trade, are actively involved in discussions about AI regulation and liability. They provide guidance and oversight to ensure that AI systems comply with legal and ethical standards.

While specific AI liability laws are still under development mainly within the EU such as the EU AI Act, in Sweden the existing laws are being interpreted and adapted to address AI-related issues by the authorities and courts. Sweden's adherence to GDPR provides a strong foundation for data privacy and security which is an important aspect of AI liability.

About us... www.crystalaw.se

Crista Law firm is a boutique law firm offering specialist advice in the major fields of commercial law, with specialist knowledge and considerable experience in areas such as franchising, property law, private or public investigations in white collar crime including corruption and anti-money laundering.

Crista Law firm offers clients highly skilled and personalised legal advice, which often leads to a more hands-on and responsive approach to legal matters. Crista Law firm offers a first-class service, providing tailor made solutions to its clients with a high level of commitment and genuine interest invested in the client's business. The firm believes in establishing close, long-term

lawyer-client relationships. This enables us to understand what is important to our client's business and offer advice that is specifically tailored to a particular situation for the individual client.

Apart from legal advice Crista Law firm offers through the founder Cristina Bergner an experienced lawyer who combines her understanding, interest and engagement of how to combine legal principles with technological innovation to support successful development of AI technologies.

The commercial benefit to our clients is of paramount importance to us and often achieved through international collaborations.



AI: Businesses' new nervous system

Paul Beare
 Founder
 Paul Beare Ltd



Paul and his team support the needs of overseas companies setting up and operating in the UK. One element is paramount with every client – they all need support and expert guidance. Paul and his team advise clients on the appropriate legal entity, payroll, VAT, banking and company secretarial services. Clients range from publicly-quoted companies through to owner-managed businesses. Paul travels frequently to Australia, New Zealand and the US, and has been heavily involved in IR Global for nine years. He uses the support network for clients when they are focusing on expanding their UK company. Clients will use this as a foundation for further expansion into Europe and beyond. Paul Beare has particular expertise in helping clients decide on the best structures to use when setting up and growing a business in the UK – for instance, guiding clients towards the right choice between using a UK branch or a UK subsidiary.

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Technology is an increasingly important part of what we do as accountants. Whether that's through accounting software, cloud-based solutions or AI-bots, no practice can expect to keep pace with client demands without adopting and rolling out up-to-date technology.

And artificial intelligence will inevitably be powering much of the next wave of solutions and tools. Just as cloud-based applications shook up the enterprise software space ten years ago, the next decade will see AI increasingly embedded into everyday applications across the tech stack.

Intelligence squared

At PB Ltd, we've already begun this journey. Using AI tools has helped us create a responsive and agile practice, allowing us to not only to track and analyse data, but to capture insight and begin to deliver predictive capabilities. But one of the key challenges that practices face is how to seamlessly integrate all of these tools. And a lot of that is about data integration and consolidating data from different sources.

We use a practice management software package that helps us track client activity across our remote operations. The idea is to funnel everything we do – client interactions, document management, emails and so on – through the AI tool. By doing that it captures everything the practice is doing at any one time, so the platform almost acts as a 'central nervous system' for the business, sensing, recording and reacting to everything that's happening

both inside and outside.

Our experience with it demonstrates that AI-led tools are especially good at summarising things: gathering – or aggregating – data together, making sense of it and filtering out extraneous detail to deliver a high-level overview of a client relationship, for instance, or a contract.

Sign on the dotted line

The most important function of AI is finding the right data at the right time, and then making sense of that data. In practice, that might involve scouring a contract and delivering the key clauses, messages and features to an accounting professional.

We are already seeing how AI will have an impact on how contracts are created and managed. Certainly, the process of creating contracts has been speeded up as AI improves functionality to assure that terms are properly vetted. This allows accounting professionals (as well as lawyers) and their counterparts to spend less time on manual, monotonous review, and more time on higher-value work.

It's also true that AI tools reduce the chances of mistakes being made during the entire contracting process. After all, there are simply too many important dates, deadlines, and terms and conditions to catch with the human eye. Because it's fair to say that when tasked with authoring agreements, sitting through multiple rounds of changes, or searching historical contracts for agreeable terms, contracting professionals may find the work flat

MY ADVICE...

- > **Protecting the data crown jewels:** AI systems need a lot of data to train and work. This need can expose private and confidential information to unauthorised access, theft, or leakage. Data breaches can cause financial losses, reputation damage, legal problems, and regulatory penalties for accounting and finance organisations and their clients.
- > **Ransomware getting more sophisticated:** While ransomware attacks are by no means a new threat, they

are becoming significantly more expensive and more frequent. Cybercriminal groups are continually developing their tool kit for themselves and their customers – for example, to make the process of data exfiltration quicker and easier through the use of AI.

- > **Predictive analytics powered by AI:** AI is now moving into its 2.0 phase, building on existing tools to help accountants gather more data and begin to make predictive contributions to client service.

"The most important function of AI is finding the right data at the right time."

and monotonous, or lose focus on it altogether. Now, AI tools are now better at helping to insert restrictive covenants into contracts that might otherwise be left out.

But AI means they no longer need to look through a 27-page services agreement; instead, they will be presented with the three elements that are important for this contract; it can then compare and contrast that with other suppliers and contracts.

Know your customer

In addition to the impact on contracts, AI will also change the way we undertake due diligence on customers and counterparties. Perhaps the most impactful area of that will be in anti-money laundering (AML), a central part of our operational relationships with clients.

One of the key elements of AML work is the requirement to carry out due diligence on their clients to make sure no illegal activities are taking place. Then, if the accountants' suspicions are raised, they must report it to the relevant

oversight bodies.

For accountants in particular, the risk is even more significant: every practice in the UK must implement internal controls, maintain proper records, and train their staff on AML procedures to remain compliant with [AML regulations in the UK](#).

The days of putting this off are over. Regulators (and there are several) are taking a more proactive approach to enforcement. In 2022-23, HMRC carried out 907 onsite visits and 834 desk-based reviews across the 35,000 businesses it supervises. That accounts for around 5% of the total. The levels of non-compliance among the reviewed firms was stark: 493 firms were named as non-compliant – 28%.

So the timing of AI's emergence as a key tool in this is fortunate, because there's no doubt of the direction of travel: towards greater enforcement of AML compliance. Recent figures showed that the total value of fines dished out by the ICAEW in 2021/22 for breaches of money laundering

regulations was £267,002 from 53 fines, compared to £178,947 in the prior year from 59 fines.

Counting the cost

This isn't just an issue for larger international firms. Smaller accountancy practices and professionals are also at the sharp end. Ignoring the importance of AI would be a mistake – not just for clients but for the practices themselves.

So, AI may represent a game changer for accountants, and for our clients. We have found that mapping out our processes to find ways to increase efficiency through automation has been extremely useful.

Our operations are now generally smoother and more integrated, in large part thanks to tools that integrate seamlessly and save us time on monotonous transactional tasks. AI is already impacting how accountants are finding, onboarding and retaining clients, not just through efficient tools but also helping us become more intuitive and responsive to client needs. It also allows us to cross-sell more effectively, as our practice management package captures and summarises our relationship with each client, highlighting areas where we could offer other services.

And for our clients, the emergence of these new technologies represents an opportunity to get much more value from their professional service advisers. If we can do things quicker, cheaper and safer, then that will inevitably have a beneficial impact on the levels of service we can deliver.

Because while technology continues to develop and evolve, one thing remains the same: successful business is built on relationships.

About us... www.paulbeare.com

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

He developed his experience of international accountancy services working for his father's business. Having started and grown his own firm in London and the surrounding area, he has since expanded to Australia and New Zealand. He is currently a resident

of Auckland but remains a frequent visitor to the UK and still has strong family and personal ties to the UK and has a home in London. He describes himself as passionate and flamboyant, and committed to helping his clients no matter what they need.

New risks, new rewards

Amani Cibambo
 Founder and Managing Partner
 Amani Law Firm



Amani Cibambo is a distinguished lawyer based in Kinshasa, Democratic Republic of Congo (DRC), and the founder and Managing Partner of Amani Law Firm (ALF), which he established in 2010.

Amani has practised at the Kinshasa/Gombe bar since 2005 and has an academic background in literature, specifically in Latin and philosophy, which he studied at the Alfajiri College in Bukavu. He later pursued legal studies at the Catholic University of Bukavu and the University of Kinshasa.

Amani Cibambo's has acted as legal counsel to nearly all the major banks in the DRC. His deep understanding of the financial sector, expertise in corporate services, and experience navigating the complex financial and regulatory environment of the DRC, has made him the go-to lawyer for banking institutions.

For more information, you can visit Amani Law Firm's official website or check out his profiles on professional advisory platforms like IR Global, UIA, ONA/RDC and Advisory Excellence.

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The productivity paradox: Does more technology mean less growth?

Nobel Prize-winning economist Robert Solow famously remarked, "You can see the computer age everywhere except in the productivity statistics." This paradox remains relevant today as industries rapidly adopt AI, automation, and digitalisation. Despite their potential to boost productivity by automating tasks and optimising processes, the initial costs of implementing these technologies—such as investments in new systems and employee training—can temporarily slow growth.

Moreover, their benefits often take time to materialise, as companies navigate integration challenges. Additionally, as technology advances, incremental productivity gains may diminish.

AI in Commercial Contracts: A Time-Saver or a Source of Delays?

The integration of AI for drafting, analysing, and managing commercial contracts marks a significant shift in how legal services are delivered. AI promises to streamline the contract lifecycle by automating tasks and potentially lowering legal costs for businesses. AI-powered tools can analyse vast amounts of data quickly and accurately, identifying potential issues that might be overlooked by human lawyers. This capability is especially beneficial in industries with large volumes of contracts, such as finance, real estate, or international trade.

However, AI's use introduces complexities. The accuracy of AI-driven analysis depends on the quality of the training data. If this data is biased, incomplete, or unrepresentative, the AI may produce misleading results, leading to legal risks. Moreover, AI lacks the nuanced understanding of context that human lawyers provide. Legal language often contains subtleties that require careful interpretation within the contract's specific context. As a result, human oversight is still necessary to verify and interpret AI findings.

While AI can improve efficiency in managing commercial contracts, its implementation requires caution. Businesses must balance using AI for routine tasks with maintaining human oversight for complex or high-stakes negotiations to fully realise AI's benefits without introducing new risks.

Technology and Due Diligence: Simplification or Overcomplication?

Technology has made due diligence in commercial transactions, mergers, and acquisitions more efficient, yet simultaneously more complex. Digital tools now enable rapid collection and analysis of vast amounts of data, allowing teams to review documents, contracts, and financial statements quickly. AI-powered platforms can uncover patterns and anomalies that might be missed in traditional methods, offering deeper insights into a target company's operations and risks.

However, the sheer volume of data available can overwhelm, leading to analysis paralysis, where it's challenging

to identify the most relevant information. Additionally, the increased reliance on technology introduces new risks, including data security concerns and the potential for inaccuracies or biases in AI algorithms. These issues can compromise the reliability of the analysis and potentially lead to flawed decisions.

Businesses must invest in appropriate tools, train staff to use them effectively, and enforce strong data security measures. By doing so, companies can leverage technology to enhance due diligence processes while minimising risks related to data overload and security.

Legal Risks Arising from Technological Advancements in the Democratic Republic of Congo

In the Democratic Republic of Congo (DRC), the rapid adoption of commercial and consumer technologies has brought about significant legal challenges. As businesses in the DRC increasingly rely on digital platforms and technologies, they are exposed to a new set of legal risks.

1. Data Privacy and Protection:

With the growing use of digital technologies, the protection of personal data has become a critical issue. Although the DRC has implemented regulations to safeguard personal data, enforcement remains inconsistent, and many businesses lack the necessary infrastructure to comply fully with these regulations. The risk of data breaches and unauthorised access to personal information is high, particularly in sectors such as finance, telecommunications, and healthcare, where large amounts of sensitive data are processed.

2. Cybersecurity Threats:

The proliferation of digital technologies has also led to an increase in cybercrime, with businesses in the DRC becoming more vulnerable to cyberattacks, hacking, and online fraud. The lack of comprehensive cybersecurity laws and the limited availability of advanced cybersecurity solutions exacerbate these risks. The financial and reputational damage caused by a cyberattack can be devastating.

3. Regulatory Uncertainty:

The pace of technological innovation often outstrips the development of legal frameworks, leading to regulatory uncertainty in the DRC. For instance, the use of blockchain technology and cryptocurrencies remains largely

unregulated, creating a legal grey area for businesses that wish to adopt these technologies. Similarly, the absence of clear guidelines on the use of AI and automated systems in business processes can lead to legal disputes and challenges. Companies operating in the DRC must navigate these uncertainties by staying abreast of regulatory developments and seeking legal counsel when adopting new technologies.

Legal Opportunities and Risks for Businesses

Understanding and anticipating the legal implications of technological evolution is crucial for companies to thrive in an increasingly digital world.

1. Automation of Legal

Processes: The automation of legal processes through AI can lead to significant cost savings and efficiency gains for businesses. However, the adoption of AI in legal processes also raises questions about accountability and the potential for errors. Businesses must ensure that automated systems are transparent and that there are mechanisms in place to correct any mistakes that may arise.

2. Blockchain in Commercial

Transactions: Blockchain technology offers a secure and transparent way to conduct commercial transactions, reducing the risk of fraud and enhancing trust. However, the legal status of blockchain transactions remains uncertain in many jurisdictions, including the DRC.

3. Liability for Technological

Errors: As businesses increasingly rely on technologies such as AI, IoT, and automated systems, the issue of liability for technological errors becomes more pressing. For example, if an AI system makes a faulty decision that leads to

financial loss or harm, determining who is responsible can be challenging. Businesses must be proactive in managing these risks and seek legal advice on liability issues.

Conclusion

The productivity paradox, along with the integration of technology into legal and business processes, raises complex questions about the relationship between technological advancement, economic growth, and risk management. In the DRC, these issues are particularly pronounced due to the rapid pace of technological change relative to the development of legal and regulatory frameworks.

For businesses operating in the DRC, understanding and anticipating the legal challenges of new technologies is essential. While technology offers significant opportunities for growth and efficiency, it also introduces new risks that must be carefully managed. By adopting a proactive approach to legal risk management, businesses can harness the power of technology, while safeguarding against legal pitfalls.

The integration of technology into business and legal practices is not a straightforward path to increased productivity. It requires careful planning, investment in skills and infrastructure, and a nuanced understanding of the legal landscape. As businesses continue to embrace digital transformation, they must remain vigilant about the legal implications of their technological choices and be prepared to adapt to an evolving regulatory environment. Only by doing so can they fully realise the benefits of technology while mitigating the risks that come with it.

About us... www.amanilf.cd

Amani Law Firm is a specialist corporate law firm based in Kinshasa since January 5, 2010.

ALF assists its clients from their creation, throughout their life. ALF helps its clients to face all the difficulties related to the exercise of their activities in the Democratic Republic of Congo and even outside the borders of the Democratic Republic of Congo when circumstances allow it. This is how it has, within it, various specialties to assist and represent its clients, individuals and legal entities, in their activities.

To learn more about ALF legal services, please visit us at www.amanilf.cd



Keeping it human

Disputes, AI and modern law

James Conomos

Founder and Principal Partner
JCL Law Partners

Q1

How should parties seek and agree a seat for ADR, and what advantages does your jurisdiction offer?

In Australia, Alternative Dispute Resolution (ADR) is the term for a process often called 'mediation' and involves exploring resolution or outcomes before or as an alternative to a court determination. ADR has many applications for all and any types of disputes including private disputes, family and business disputes.

The use of ADR is most useful where parties express a willingness to act genuinely and cooperate to explore options to resolve their dispute. The reason for and the benefits of ADR include:

- eases the way of access to justice as it saves money and time while maintaining confidentiality.
- can repair the damaged relationship and involve a win/win for parties.
- considered less stressful than exposure to the court process.
- more flexible process, and leading to broader outcomes than a court determination.

In Australia, ADR is required (with exceptions) in many jurisdictions including in the Supreme and Federal Courts and in family law proceedings. Certain jurisdictions have a longer

history of ADR - family law disputes, juvenile offender issues and Indigenous Australian and Torres Strait Islander issues are some examples.

In commercial disputes in Australia, mediation has many useful advantages including:

- (a) mediations are invariably conducted with the assistance of an experienced mediator (often a senior lawyer), whose role is to facilitate discussion to explore resolution.
- (b) mediations are held without prejudice, i.e. what is said at a

mediation cannot be used against a party at a subsequent hearing if there is no resolution, and they are designed to be neutral; the parties decide the terms of any settlement.

- (c) mediations are confidential and participants are often asked to sign an agreement to that effect.
- (d) mediations give parties the opportunity to avoid the significant costs, uncertainty and formalities of the legal process, often saving time. For lawyers who seriously engage in dispute resolution, the use of mediation

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

Jim's impressive career has seen him serve as the Queensland State Chair of the Insolvency and Reconstruction Committee of the Business Law Section of the Law Council of Australia, Queensland State Chair of the Insolvency and Reconstruction Committee of the Queensland Law Society and the National Chair | of the Insolvency and Reconstruction Committee of the Business Law Section of the Council of Australia and is presently a counsellor of the legal professional body in Queensland, the Queensland Law Society.

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to resolve disputes is critical and is a necessary tool in any litigator's arsenal.

Q2

Have you seen or do you expect to see a rise in the use of AI to discover infringements and actionable matters?

Although AI is a relatively recent topic of global conversation, firms had been investing in AI for years. It was used as soon as it was able to be used. This is evidenced through the now infamous case of *Mata v Avianca*. Here, a lawyer in the US used ChatGPT to create their submissions, but ChatGPT fabricated several cases that did not exist. Rather than admit his mistake or withdraw the submissions, they continued to insist the cases were real and did not admit to using AI until the court issued an order threatening them with sanctions. The use of AI was not the central problem here; it was the lawyer's overreliance on it, his failure to check that the AI's information was correct. The solicitor was punished in the form of sanctions and a fine.

Police use AI in many ways including to help determine who is most likely to have committed a crime, e.g. surveillance to flag suspicious activity for human review - tasks that would otherwise take a human a long time to do. The danger is that AI can be coded with human bias. In this case, AI cannot tell the difference between why a certain subpopulation may have higher rates of offending.

The law will be more accessible to potential clients as they will be able to

MY ADVICE...

- > We need to develop consistent standards for all stakeholders (including our employees) by providing education, so we know how to use AI, as it is not a replacement for hard work but a tool for us to become more effective.
- > We need to include into client agreements if you use AI, as some clients will be less comfortable with the concept of AI, either because they aren't comfortable with technology or due to concerns about confidentiality.
- > We need to design our systems with confidentiality in mind, for example, you could use numeric values for clients instead of their names.

inexpensively discover if they have a potential cause of action. On the other hand, AI may lead to an increase in matters. For example, the question of whether internet scraping of publicly available but copyrighted materials to train AI systems is an infringement on someone's intellectual property rights is yet to be determined or an increased number of killings from autonomous weapon systems.

Q3

What questions does AI pose for liability – who is accountable for the actions of AI and has your jurisdiction prepared for the question?

Australia has 8 AI Ethics Principles defined by the Government that are a voluntary and aspirational framework,

namely:

- (a) AI systems should benefit individuals, society and the environment.
- (b) AI systems should respect human rights, diversity, and the autonomy of individuals.
- (c) AI systems should be inclusive and accessible they should not involve or result in unfair discrimination.
- (d) AI systems should respect and uphold privacy rights and data protection and ensure the security of data.
- (e) AI systems should reliably operate in accordance with their intended purpose.
- (f) There should be transparency and responsible disclosure, so people are aware when an AI system is engaging with them.
- (g) When an AI system significantly impacts a person, community, group or environment, there should be a timely process to allow a challenge to the use of the AI system.
- (h) Those responsible for different phases of the AI system lifecycle should be identifiable and accountable for the outcomes of the AI systems.

There are many applications of the use of AI by legal practitioners to save time. Presently, a significant failure in Australia is a lack of AI-specific legislation and preparing legal practitioners for the use of AI, unlike in other jurisdictions. The ethical risks for legal practitioners include:

- where there is risk of hallucination.
- where there is risk of client information being leaked either because the AI firm can share that information or there is a hack.
- inability to prepare against the bias of the AI or know the quality of the information the AI provides.

About us... www.jcl.com.au

JCL Law Partners was established by James Conomos in July 1992 as a boutique legal firm offering specialist expertise in commercial litigation and insolvency. The firm came into being because James is passionate about achieving positive outcomes for clients and providing real value for money.

Since then, James has pursued his desire to help younger lawyers learn the art of law and

problem solving. Through his mentoring, James has shaped a team of capable and ambitious lawyers who will adeptly solve your legal problems within a realistic time frame.

Based in modern offices in the heart of Brisbane's central business hub, our team has now grown to a total of 15 staff. Expertly guided by Director James Conomos, you can rely on us to tackle any commercial issue you throw our way.



AI, agency, and efficiency

Vimal Damry
Managing Director
Premier Financial Services Limited

Q1

Is there scope to use AI in commercial contracts? Will it save time, or ultimately cost more time in review and pose greater risk?

The use of AI in commercial contracts is becoming universal. There are so many benefits to using AI, especially when there is a deal happening and time is critical to prepare and circulate draft versions to various parties involved to build momentum very early. Many instances, parties must wait for first draft versions if manually drafted. AI is of great use and benefit here. By its speed, it can help in making deals happen quicker

and avoid waiting time which can be detrimental in important commercial matters. Not only can AI help in the first draft but also in making changes in the draft later. It is even better used when the changes are repetitive across the various agreements.

At the first draft stage, it speeds up things and works very well with terminology and consistency within the contracts. Nowadays, it is getting more and more accurate, and you can even prompt it to include specific laws and regulations. These are marvelous tools which never existed before. It avoids the use of templates which probably do not fit. When you consider that with AI

not only helps a lot in drafting but also manages the different versions, but also has real time features of editing and managing amendments, it represents a great step forward. It helps in achieving success, however, it is clear that you cannot solely rely only on AI. Expert legal review is a must That judgment are sine qua non to ensure that the commercial contract meets all the goals and checks all the boxes. Those drafters who have their own style may not be happy with AI, as it may change the whole style which may tend to make them do a lot of amendments whilst reviewing. However, if they accept certain parts of AI drafting, they will find it extremely useful.



Vimal Druvnath Damry is the Managing Director/CEO/Founder of Premier Financial Services Limited, and a director of UHY Premier Financial Services Limited. He has been in the global business and financial industry since more than 25 years. He was also a director of INAA Group which is an international association of accountants and tax advisers and was also the past Chairman of STEP Mauritius and past board member.

His extensive expertise in the field has earned him recognition and respect among his peers and clients alike. Vimal Damry's commitment to excellence is evident in his meticulous approach to managing complex financial structures and his ability to navigate the intricate landscape of international regulations.

Beyond his professional achievements, Vimal is known for his dedication to continuous learning and staying abreast of the latest developments in the financial world. His proactive stance on education and professional development not only benefits his own career but also sets a standard for others in the industry. His contributions to various professional organisations and his active involvement in industry discussions reflect his passion for fostering growth and innovation within the global financial community.

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Q2

Is technology making due diligence easier or harder? Is the volume of available data overwhelming or useful?

Due diligence is a process which is now in the DNA of any client relationship, from onboarding and throughout. You cannot do away with it. This exercise takes a lot of time and resources especially if the numbers are huge. Nowadays, technology is a major component of a due diligence process. The automated process helps with speeding repetitive tasks of data collection and analysis. Automation helps reduce human error, is more accurate and can be standardised. Not only that, but technology is also so advanced nowadays that you can integrate various technologies (known as API) with each other making it even more useful and time saving. Technology can analyse large volumes of data, identify patterns and risks and do continuous monitoring. Take for example, when a client is being onboarded, technology checks on the name if there are hits or issues on this or similar names. If there is any issue, it gives you the details. Not only that, but technology can also perform biometric checks on identity documents uploaded by clients to verify them. This cannot be done manually as new developments happen, technology will plug in more and more features to help in due diligence process. Now, with technology you can end up with a lot

of data. This can be both useful and overwhelming. The volume of data will become cumbersome if proper tools and process are not used to focus on the relevant data. This is important or else, there can be irrelevant data which require to be discarded delaying the due diligence process or getting a misleading report. If proper tools are used, technology will sift through the data and give you tremendous output.

Q3

What legal risks are emerging in your jurisdiction stemming from developing commercial and consumer technology?

As commercial and consumer technologies emerge, they do come with the inherent legal risks that are worth considering. This is not only in Mauritius but any other jurisdiction. As mentioned earlier, technology uses a lot of data including personal data. How is the data used is very important. Any misuse can lead to data breaches. In Mauritius we have data protection laws following the EU General Data Protection Regulation (GDPR) such as the Data Protection Act 2017. Any breach involves regulatory fines and liabilities. Secondly, technology used in certain areas are critical. In some instances, there is a great reliance in technology, for example healthcare or automation of processes whereby there is a heavy reliance on AI. When AI becomes an agent rather a tool, this creates many risks.

MY ADVICE...

- Technology has brought big advantages. It handles huge volume of data efficiently if appropriate tools are used. This can help in creating customer trust. However, if not properly managed can lead to data breaches and non-compliance with data protection laws. There are also cybercrime issues due to unauthorised access to technology.
- Where AI is used as an agent, whereby it can take decisions, there has been several breakthroughs which were humanly impossible. AI is used heavily in healthcare, in automobile, aviation and manufacturing industry. They help us daily. When you rely on AI for decision making there is bound to be proper monitoring of this including the parameters that AI is working.
- No business can survive without technology. It must embrace it, understand it and use it efficiently, whilst understanding its limitations.

In conclusion, the integration of AI and technology in the realm of commercial contracts and due diligence has created a positive transformation. While AI accelerates the drafting and management of contracts, human expertise remains indispensable. Technology, through automation and APIs, has revolutionised due diligence, allowing for more thorough and accurate data analysis. However, with these advancements come inherent legal risks, such as data breaches and the need for vigilant monitoring of AI when it acts as a decision-making agent. It is imperative that we harness the power of technology responsibly, whilst being aware of its limitations.

About us... www.premierfinservices.com

Premier Financial Services Limited is a Management & Trust Company operating in the International Financial Centre of the Republic of Mauritius, approaching its 20 years of services in the industry. Premier is licensed and regulated by the Mauritius Financial Services Commission, which oversees the reputation of Mauritius as an International Financial Centre. The Premier Group offers its services to high-net-worth individuals, private companies, multinationals and listed entities across the globe. Our main offices are located in Mauritius, Dubai (United Arab Emirates), the Seychelles, and South Africa. The Premier Group is made up of experienced and dynamic members, with experience in administration, accounting, tax, law and trust and many are members of professional bodies such as the Society of Trust and Estate Practitioners (STEP) and the Association of Chartered Certified Accountants (ACCA).



The human touch

AI's role in commerce

Katherine Evans
Senior Partner
Mirkwood Evans Vincent



Katherine initially pursued a career in marketing and business development, before re-training to become a lawyer in her mid-twenties. After completing articles with Eversheds, she joined specialist shipbuilding practice, Mills & Co., where she remained until joining the international law group of the US telecommunications giant, AT&T in 1997.

Katherine held a number of positions within the AT&T international legal group, before leaving at the end of 2006 to start her own firm, focused initially on providing support to telecommunications and technology businesses on a worldwide basis.

Katherine's work with telecoms and technology companies brought her to the attention of venture capitalists and private equity professionals eager to do business in these new and emerging industry sectors. Soon some asked Katherine to start acting for business clients across a wider range of industries.

Today, the firm has two partners and ten lawyers in total, all based in the UK. Katherine's individual practice continues to focus on helping international clients do business in the UK, and UK clients to export their products and services globally.

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The Productivity Paradox: Does more technology mean less growth?

Is there scope to use AI in commercial contracts? Will it save time, or ultimately cost more time in review and pose greater risk?

Based on current AI models, the conceptual difference is marginal between using a template from an online precedent library and asking a junior associate to insert some of the basic information for review by a partner vs letting AI do that work. Both require senior legal review.

Is technology making due diligence easier or harder? Is the volume of available data overwhelming or useful?

- Technology can make due diligence easier in terms of cataloguing documents in a coherent manner at speed.
- AI tools can find key words in large volumes of data.
- AI does not, however, bypass the need for human intervention to assess relevance. It can only help point you in the direction of where to focus your efforts.

What are your three top new legal risks that technology presents to businesses?

- Exposure to legal claims for failure to comply with ever-changing international regulations in the areas of data privacy and cyber security.
- Claims from individuals and

businesses arising from decisions made on the basis of flawed AI models implemented with insufficient human oversight.

- Insufficient transparency in AI model development.

Modern Arguments: Dispute resolution in a mobile and connected world

How should parties seek and agree a seat for ADR, and what advantages does your jurisdiction offer?

For cross-border disputes, we would recommend arbitration over the courts due to the ability to enforce arbitration awards in most jurisdictions under the terms of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

For complex international disputes, we would typically steer our clients towards either the London Court of International Arbitration (LCIA) or the Singapore International Arbitration Centre (SIAC).

Each of these organisations is (a) internationally respected for their neutrality and impartiality in resolving disputes, and (b) have a reputation for using high-quality commercial arbitrators, experienced in determining international business disputes.

Have you seen or do you expect to see a rise in the use of AI to discover infringements and actionable matters?

Greater use of AI algorithms has already started to materialise in this space and is likely to increase, since AI tools are better placed than human beings to sift

through large quantities of data to detect potential infringements in real time.

What questions does AI pose for liability – who is accountable for the actions of AI and has your jurisdiction prepared for the question?

Developers and programmers each have the responsibility to test their systems at every stage to avoid and/or address errors or harmful outcomes. Developers have a further responsibility to ensure that the use of their AI tools is subject to clear user agreements which limit their use to stated purposes.

Users and operators have a responsibility to test any AI technology they deploy to check for errors and algorithmic bias.

Jurisdictions including the UK now have regulations in place to ensure that no decision which affect a person should ever be made by AI alone without human checks and balances being in place.

The UK government has established bodies like the Office for Artificial Intelligence and the Department for Digital, Culture, Media & Sport (DCMS) to oversee AI development and its societal impact, as well as the AI Council, an independent expert committee formed to advise the government on AI and help shape policy.

What are your three top tips for anticipating and reducing AI-related liabilities?

1. Conduct a comprehensive risk assessment to identify potential liabilities and risks associated with the relevant AI system, taking into account potential legal, ethical, and regulatory implications.
2. Ensure that the decision-making process of the AI system is transparent and explainable,

including how it operates, what data it uses, and how it reaches its conclusions. Focus on these areas should make it easier to identify and mitigate against unintentional bias in the model going forward.

3. Keep abreast of legal requirements related to data privacy, security and discrimination.

Winding up: Insolvency in the digital age

Are you seeing a trend in the type of firms facing insolvency? Are there any sectors in your jurisdiction particularly at risk?

- The UK is seeing a trend of highly leveraged businesses struggling with an inability to service debt levels in uncertain global market conditions.
- Companies in real estate and construction continue to face high upfront costs and delays in project completions, making them vulnerable to funding shortfalls and market fluctuations.
- An increasing number of manufacturing businesses are struggling with supply chain challenges, the need to decarbonise their manufacturing processes, and competition from producers manufacturing their products in lower-wage economies.

Does AI have a place in insolvency proceedings? What opportunities does it offer, and what safeguards does it require?

- Routine tasks, such as document review, claim validation, and report generation can be automated, reducing time and costs involved in insolvency proceedings.
- AI can help identify fraudulent

activities by highlighting inconsistencies and unusual patterns in financial transactions and statements.

- AI-driven platforms can facilitate communication and coordination among creditors, debtors, and other stakeholders, improving transparency and efficiency.

Is the sharing economy at high risk of insolvency? Many businesses are heavily funded but struggle to turn a profit – are they at greater risk of running out of money?

Whilst innovative and disruptive, businesses in the sharing economy face significant risks including:

- Reliance on venture capital for growth and sustainability, creating pressure to scale rapidly, at the expense of profitability.
- Thin profit margins due to high operational costs, competitive pricing to attract users, and significant investments in technology and infrastructure.
- High potential for price wars due to competing players operating in similar markets.

We would recommend:

- Prioritising financially sustainable growth over rapid expansion.
- Developing multiple revenue sources to reduce dependency on any single stream.
- Continually seeking ways to optimise operations and reduce costs.
- Proactively engaging with policymakers and adapting business models to comply with evolving regulations.
- Innovating constantly to stay competitive and meet changing customer demands.

About us... mirkwoodevansvincent.com

Mirkwood Evans Vincent specialise in advising clients in the telecommunications and business technology sectors in the UK and worldwide, adopting a multi-disciplinary approach, which allows us to focus on all aspects of our clients' business from initial formation, through re-financing and debt re-structuring, drafting and negotiating customer and supplier facing agreements, advising on the regulatory implications of doing business in a wide variety of jurisdictions, and supporting dispute resolution

requirements when they arise.

In the international business environment, we work with clients doing business in Europe, the Middle East, Africa, Asia and the Americas but have developed particular commercial and regulatory expertise in the Middle East and Africa regions.

Our partner-led approach ensures that a key individual oversees every aspect of each transaction, an aspiration rarely achieved by larger law firms.



ADR in the BVI

Nelcia St. Jean
Partner
McW Todman & Co

Q1

How should parties seek and agree a seat for ADR, and what advantages does your jurisdiction offer?

When selecting a seat for alternative dispute resolution (ADR) proceedings, such as arbitration or mediation, parties should carefully consider several key factors to ensure the chosen jurisdiction aligns with their needs and preferences.

Key Factors to Consider for Selecting an ADR Seat:

- **Legal Framework:** The jurisdiction's legal infrastructure supporting ADR, including modern arbitration laws and the enforceability of awards, is crucial.
- **Neutrality and Impartiality:** The seat's perceived neutrality and impartiality can significantly impact the fairness and balance of the proceedings.
- **Judicial Support:** Efficient and supportive local courts that respect the autonomy of the arbitration process and provide necessary assistance without undue interference.
- **Confidentiality:** The extent to which the jurisdiction protects the confidentiality of the proceedings and the outcome.
- **Logistical Convenience:** Considerations such as accessibility, quality of local ADR facilities, and the availability of skilled legal and ADR professionals.

Advantages of the British Virgin Islands (BVI) as an ADR Seat:

- **Modern Legal Framework:** The BVI Arbitration Act 2013 and the establishment of the BVI International Arbitration Centre provide a contemporary legal framework aligned with international best practices, including the UNCITRAL Model Law on International Commercial Arbitration.
- **Neutral Jurisdiction:** Recognised as a politically stable and neutral jurisdiction, the BVI is an essential factor for parties seeking a fair and impartial venue for resolving disputes.
- **Experienced Judiciary:** The BVI Commercial Court specialises in handling complex commercial disputes, including those arising from ADR proceedings. The judiciary is experienced and well-versed in ADR matters.
- **Confidentiality Protections:** The BVI offers strong confidentiality and privacy protections for ADR proceedings, safeguarding sensitive commercial information.
- **Enforcement of Awards:** Adherence to the New York Convention ensures the efficient and effective



Nelcia St. Jean has over 18 years' experience practising law in the British Virgin Islands and has a very wide range of experience in contentious and non-contentious corporate and commercial, probate and estate and property matters, which has provided her with a unique perspective and an ability to handle complex matters with a delicate, commercial and practical approach. She has gained a vast knowledge working in the Financial Services Industry all of her legal career. She is well known for finding creative solutions to complicated legal situations. She is highly regarded by clients for her responsiveness and ability to identify and anticipate their needs, as well as to provide practical legal advice and strategic guidance throughout each engagement. During her career she has also held the position of Money Laundering Reporting Officer, Compliance Officer and Managing Director of a trust company. Nelcia has appeared in the Commercial Court of the Eastern Caribbean Supreme Court (Virgin Islands) and has had conduct of many matters in the Civil Division of the Eastern Caribbean Supreme Court (Virgin Islands) in respect of companies and company disputes.

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MY ADVICE...

- **Establish Robust Governance Frameworks:** Implement clear policies, procedures, and accountability measures to govern the development, deployment, and ongoing monitoring of AI systems. This includes defining roles and responsibilities, establishing ethical guidelines, and implementing rigorous testing and validation processes.
- **Proactively Manage Data and Privacy Risks:** Carefully manage the data used to train and operate AI systems, ensuring compliance with relevant data protection and privacy regulations. Implement robust data security measures and be prepared to address potential data breaches or misuse of personal information.
- **Ensure Transparency and Explainability:** Strive for transparency in how AI systems make decisions, and work to make the underlying logic and decision-making processes as explainable as possible. This can help mitigate liability concerns by allowing for better understanding and oversight of AI-driven actions.

enforcement of arbitration awards both locally and internationally.

- **Professional Infrastructure:** The BVI International Arbitration Centre provides state-of-the-art facilities for ADR proceedings. Additionally, the BVI boasts a pool of skilled legal professionals experienced in international law and ADR.

infringements and actionable matters in the British Virgin Islands (BVI). We still, however, find that actionable matters are brought from the direct knowledge of parties of when they are wronged or discover the wrong.

Q2

Have you seen or do you expect to see a rise in the use of AI to discover infringements and actionable matters?

We have not seen a rise in the use of AI to discover infringements and actionable matters in the BVI. In fact, there is no mechanism or technology to monitor the discovery of

Q3

What questions does AI pose for liability – who is accountable for the actions of AI and has your jurisdiction prepared for the question?

Accountability for the actions of AI systems is a complex issue that involves various stakeholders, each with specific responsibilities to ensure that AI technologies are developed, deployed, and used in a manner that is ethical, lawful, and respects

privacy and data protection norms. In some cases, the end-users, such as businesses or individuals who utilise AI systems for specific tasks, may also be held accountable for how they use the technology. This is particularly true if they use AI in ways that were not intended or without adequate oversight, leading to harmful outcomes.

Companies and organisations that base decisions on insights or recommendations provided by AI systems need to ensure that they critically evaluate such outputs. They should not blindly trust AI decisions, especially in critical areas affecting people's lives and rights. To effectively manage AI-related liabilities, it is essential that we establish clear governance frameworks that define roles, responsibilities, and accountability mechanisms for AI systems and that persons and companies using AI systems do so with oversight and accountability. The BVI however does not yet have a framework for AI use and there are not many discussions in the BVI on the same.

“To effectively manage AI-related liabilities, it is essential that we establish clear governance frameworks.”

About us... mctodman.com

McW Todman & Co is a small legal firm founded by the late Dr. McWelling Todman CBE, QC in 1969, and continues to grow and strive in the fast-paced international legal environment that characterises the Virgin Islands.

The Firm is ranked as one of the top litigation practices in the Virgin Islands and specialises in corporate/ commercial law, real estate, family matters, intellectual property, Conveyancing, Family Law and Estate Planning and Probate and offers discreet service to clients in company formation and management through its wholly owned

subsidiary McNamara Corporate Services Limited.

We provide legal services in our selected practice areas commensurate with the quality and expertise of the big firms but in a personalised client-sensitive manner, with an unwavering commitment to responsiveness, efficiency and professionalism.

We serve a wide range of clientele, and value every client relationship greatly. Each engagement benefits from the depth and breadth of our expertise. We approach every client with a focus on integrity, advocacy and understanding.



In the loop

Disputes in the age of AI

Curtis Marble
Partner
Carbert Waite LLP

Q1

How should parties seek and agree on a seat for ADR, and what advantages does your jurisdiction offer?

Ideally, parties should agree on the seat for arbitration when negotiating the dispute resolution clause in their contract. Some of the considerations that parties should keep in mind are:

- The neutrality of the location.
- Accessibility for both parties (unless the parties will be participating in a remote process).
- Access to reputable counsel and arbitrators in the jurisdiction.
- Legal infrastructure to support the arbitration.

Alberta offers several advantages as an arbitration seat. Alberta provides a neutral arbitration venue for parties seeking resolution in an English-speaking, common-law jurisdiction.

Alberta is easily accessible, with direct domestic and international flights to Calgary and Edmonton. There are numerous modern, well-equipped conference venues capable of hosting large arbitration proceedings.

Alberta has a sophisticated legal framework with clear, modern legislation supporting arbitration and enforcement

of arbitral awards. Domestic arbitration is governed by the Arbitration Act, while international arbitration is governed by the International Commercial Arbitration Act. Alberta's vibrant energy and high-tech sectors mean that there are many choices of experienced and well-qualified counsel familiar with running complex arbitrations. As counsel and arbitrators based in Alberta bill in Canadian dollars, arbitration in Alberta tends to be more cost-effective than similar proceedings in other centres, such as London or New York.

While many parties may choose to proceed with ad hoc arbitration under the legislation, they may also choose to take advantage of the ADR Institute of Canada's institutional rules or case administration services, which can assist with appointing qualified mediators and arbitrators.

Q2

Have you seen or do you expect to see a rise in the use of AI to discover infringements and actionable matters?

Companies and individuals are either implementing or already have implemented AI solutions to detect actionable issues. This trend will



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Curtis has both domestic and international experience with commercial and civil arbitrations and mediations and has acted in complex multi-parti international arbitration involving commodity prices and a domestic arbitration concerning construction deficiencies. He recently acted in a high-value mediation related to the disposition of significant Alberta ranch lands pursuant to an estate.

In his commercial litigation practice, Curtis acts for local and international companies as well as individuals in a wide variety of disputes including contracts, construction projects and environmental remediation. He is the co-chair of the commercial litigation practice group.

Curtis is experienced in estate litigation and has acted in matters concerning capacity, the disposition of business assets, and payment of personal representative's expenses.

Curtis has appeared before all levels of court in Alberta and before various regulatory boards.

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continue as AI improves.

AI is highly effective at tasks that require quick analysis of large datasets. For example, AI can be used to process vast amounts of data to:

- Detect intellectual property infringement or fraud by analysing massive data sets.
- Monitor compliance with regulations.
- Analyse case law, helping counsel determine whether to proceed with litigation or arbitration.

However, AI remains limited by the quality of input data. Where data is incomplete or inaccurate, the quality of results provided by AI suffers.

Q3

What questions does AI pose for liability – who is accountable for the actions of AI, and has your jurisdiction prepared for the question?

Like many jurisdictions, Alberta continues to grapple with accountability. There is yet to be a fully developed regulatory regime in Alberta (or Canada) for AI generally or the use of AI in arbitration proceedings. Regulatory regimes across the world are struggling to keep up.

Legislation has been proposed at the federal level to implement a regulatory regime for artificial intelligence. There is also a voluntary code of conduct that many companies have signed on to regarding the

MY ADVICE...

➤ **Use AI tools for which you can explain the output.** This means that you should understand what sources the AI you are using is relying upon and how those sources are being used to develop the AI's output.

➤ **Understand the limitations of the AI tools that you are using:** This is related to tip 'a'. You need to be able to understand and explain what the AI you are using cannot do and where it is likely to be unreliable.

➤ **Have a policy within your organisation for how AI can be used.** This policy should clearly outline how to responsibly use AI to serve clients in accordance with your ethical obligations. This includes ensuring client confidentiality is protected and that there is a "human in the loop" to double-check the results generated by AI.

development and use of artificial intelligence across a broad spectrum of industries. Still, this guidance is not yet binding, and the regulatory regime is not fully developed. This means existing Alberta laws on negligence would likely be applied to determine questions of AI-related liability.

This is consistent with the guidance provided to Alberta lawyers by the Law Society of Alberta regarding the duties of legal professionals when using AI. Lawyers in Alberta are mandated by the Code of Conduct. A lawyer must "...perform all legal services undertaken on a client's behalf to the standard of a competent lawyer." This means that lawyers must "...develop an understanding of, and ability to use, technology relevant to the nature

and area of the lawyer's practice and responsibilities".

For disputes lawyers, this may mean using AI to streamline document review and production or accomplish research tasks.

However, the lawyer is still responsible for the use of AI. Where lawyers choose to rely on AI to prepare submissions, they remain responsible for the accuracy of submissions. The Alberta Court of King's Bench directed that there must be a "Human in the loop," stating that:

"...any AI-generated submissions must be verified with meaningful human control. Verification can be achieved through cross-referencing with reliable legal databases, ensuring that the citations and their content hold up to scrutiny."

In the context of arbitration, this same principle should be held valid. In international arbitration, best practices from multiple jurisdictions should be considered. The Silicon Valley Arbitration and Mediation Centre suggests:

"[p]articipants involved in arbitration proceedings who use AI tools in preparation for or during an arbitration are responsible for familiarising themselves with the AI tool's intended uses and should adapt their use accordingly. All participants using AI tools in connection with an arbitration should make reasonable efforts to understand each AI tool's relevant limitations, biases, and risks and, to the extent possible, mitigate them."

Again, mitigating AI risks will require humans to remain in the loop.

About us... carbertwaite.com

Carbert Waite LLP was founded in 1999 as a boutique litigation firm with additional expertise in arbitration, mediation and business law. We are skilled advocates with experience in a wide range of legal disputes both domestic and international.

We do not believe in a one-size-fits-all approach. We take the time needed to understand our clients' particular needs and goals and then set about to design a strategy to resolve the dispute as effectively and efficiently as possible. Drawing on a talented pool of lawyers at various levels with various backgrounds means we can find a solution to fit a client's unique requirements.

We are also proud of our culture and approach to the practice

CARBERT//WAITE LLP

of law. We believe in the value of working hard for our clients but also recognise the need for our lawyers and staff to have balance in their lives. We are a family-oriented firm and enjoy each other's company. We have flexible work arrangements and several part-time lawyers (partners and associates). Building diversity in our lawyers and staff is a focus for us and we believe that a diverse team allows us to better serve our clients.

Processes and technology for fair and efficient resolutions

Florian Wettner

Partner
METIS Rechtsanwälte PartG mbB

Q1

How should parties seek and agree a seat for ADR, and what advantages does your jurisdiction offer?

Selecting the right seat for ADR is a critical decision that can significantly influence the outcome of the process. To ensure a fair, efficient, and successful resolution, parties should consider several important factors when agreeing on a jurisdiction.

Legal Framework and Enforceability

A strong legal framework is vital for effective arbitration. Jurisdictions that have ratified the New York Convention are preferred, as they ensure international enforceability of awards, providing parties with reliable and globally recognised outcomes.

Cost and Procedural Efficiency

Jurisdictions known for their cost-effective arbitration processes and expedient proceedings can be advantageous, particularly in

high-stakes disputes where time and resource management are paramount.

Cultural and Linguistic Compatibility

In international disputes, the cultural and linguistic context of the arbitral seat can significantly influence the arbitration process. Selecting a jurisdiction where the language and cultural norms are familiar to the parties can reduce the risk of misunderstandings and contribute to a more seamless and effective arbitration process. This consideration is particularly important when parties hail from different legal traditions and linguistic backgrounds.

Flexibility and Neutrality

The neutrality and flexibility of the chosen jurisdiction are vital to the integrity of the arbitration process. Jurisdictions with a strong tradition of upholding arbitration agreements and enforcing awards are more likely to provide a fair and unbiased forum. Additionally, a legal framework that adapts to the specific needs of the dispute ensures that the arbitration process remains both effective and responsive.

Legal Infrastructure and Institutional Support

Jurisdictions with well-established legal systems, experienced arbitrators, and courts familiar with ADR procedures offer a reliable foundation for complex disputes. The presence of reputable arbitration institutions, such as the ICC or DIS, further enhances the jurisdiction's ability to manage disputes with professionalism and expertise.

Advantages of German Jurisdiction

Germany is an exemplary choice for ADR due to its strong legal system and commitment to upholding international standards. German courts are supportive of ADR, and the DIS provides extensive resources and expertise. Germany's central location in Europe, combined with a stable political environment, makes it an attractive option for international parties. Recent reforms further solidify its reputation as a progressive and innovative jurisdiction for ADR. Key examples include the *Federal Digital Strategy*, which mandates fully digital civil proceedings by 2025 and introduces a video portal for online hearings. Additionally, new laws promoting videoconferencing in courts, expanding the use of video evidence, and the reform of arbitration law, all contribute to this forward-thinking approach.

Q2

Have you seen or do you expect to see a rise in the use of AI to discover infringements and actionable matters?

The use of AI tools to detect legal infringements has significantly increased. In the field of intellectual property rights, tools like Copyscape and TrademarkNow are instrumental in identifying plagiarism and trademark violations. In competition law, platforms such as Rivada monitor market transactions and assess the impacts of mergers. For regulatory compliance, solutions like Ascent RegTech and ComplyAdvantage manage regulatory reporting and detect fraud. AI's capacity to process extensive datasets enables it to uncover patterns and potential violations that might evade human detection.

Predictive Analytics

The growing use of AI in predictive analytics is revolutionising risk management in legal contexts, offering preemptive insights into potential disputes before they escalate. Advanced tools such as Lex Machina, which forecasts case outcomes, Kira Systems, which identifies high-risk

MY ADVICE...

- > **Incorporate Liability Clauses:** Include specific liability clauses in AI-related contracts, defining responsibilities and limiting liability for unforeseen AI decisions.
- > **Ensure Transparency & Documentation:** Document all AI decisions and processes thoroughly to clearly assign responsibility and minimise risks.
- > **Provide Training & Awareness:** Train employees on AI-related risks and liabilities to prevent errors and avoid potential liabilities.

contract clauses, and FRISS, which detects fraudulent insurance claims, exemplify this trend. By leveraging these AI-driven solutions, businesses are better equipped to proactively mitigate risks, thereby enhancing their overall legal strategy.

Improved Efficiency

AI enhances efficiency in administrative tasks by processing vast amounts of data and generating chronological overviews. Its application in internal processes is particularly beneficial, reducing the likelihood of human error.

Q3

What questions does AI pose for liability – who is accountable for the actions of AI and has your jurisdiction prepared for the question?

Current legal frameworks are primarily designed to regulate human behavior. AI challenges these frameworks because it can act independently without direct human intervention. Germany is still at the beginning of this process, but recent legislative initiatives demonstrate a commitment to establishing clear and equitable liability rules for the use of AI.

Germany is actively engaging with the legal challenges posed by AI through a combination of national initiatives and the implementation of EU regulations. A key focus is the EU AI Act, which was adopted by the Council of the 27 EU Member States

on May 21, 2024. This Act establishes a unified regulatory framework for AI across Europe and is the world's first comprehensive set of rules for AI. With the AI Act, the EU has laid a strong foundation for AI regulation that fosters trust and acceptance of the technology while enabling innovation "made in Europe." The AI Act now needs to be transposed into national law.

At the national level, Germany has for example already enacted specific regulations for the use of AI in autonomous driving through the Road Traffic Act (StVG). The law addresses, among other things, liability and safety requirements for autonomous vehicles. Additionally, Germany adheres to the EU General Data Protection Regulation (GDPR), which governs data-intensive AI systems, with ongoing discussions about more tailored data protection rules for AI.

The German government has also set up ethics commissions to provide guidance on the societal and legal implications of AI, feeding into the national AI strategy. Other areas under consideration include contract law, particularly regarding liability for AI-driven decisions, and labour law, focusing on the use of AI in employee monitoring and decision-making.

About us...

www.metis-legal.de/en



METIS offers legal consultancy services. Metis is a quality partner for strategic planning and assisting clients in key decisions and complex transactions. Their practice includes domestic and cross-border transactions, as well as representing clients in commercial negotiations and before the German courts. They focus on the following key areas: Mergers & Acquisitions, Corporate Law, Employment Law and Dispute Resolution METIS has links to several prestigious law firms in Germany and abroad. This network enables them to provide our clients with comprehensive legal advice across all practice areas and most jurisdictions.

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Transgressive behaviour



Transgressive behaviour in the workplace, influenced by cultural norms and legal frameworks, varies across jurisdictions.

This chapter explores how employers define and address such behaviour, balance inclusion with corporate values, and respond to shifting societal and employee expectations. Our experts offer their insights for navigating evolving workplace cultures and generational changes.

Rebecca Torrey highlights the evolving landscape of transgressive behaviour in California’s workplaces, where unlawful harassment, discrimination, and retaliation are strictly regulated. She notes that California leads the way with broader protections, covering areas like gender identity, reproductive health decisions, and even cannabis use. These developments reflect the state’s cultural commitment to individualism and self-expression, with legislation expanding to mirror societal concerns.

Meanwhile, Shilpen Savani examines the UK’s approach, where transgressive behaviour includes harassment and bullying under laws like the Equality Act 2010. He notes that while UK legislation is aligned with European Union standards, post-Brexit shifts may bring about changes in workplace protections. Shilpen emphasises that addressing transgressive behaviour requires not only legal compliance but also cultivating a workplace ethos that promotes inclusivity and respect. Each submission reveals how companies must navigate complex cultural and legal landscapes to foster safe and inclusive environments for their employees.

FEATURING...

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“From my perspective, attitudes about transgressive behaviours largely reflect a generational divide. Many younger people express their individualism in ways that previously were not socially displayed.”

Rebecca Torrey,
 The Torrey Firm



“The UK has retained many EU-aligned workplace policies but has also started to diverge in some areas.”

Shilpen Savani,
gunnercooke llp

Law, culture, and equality in the workplace

Shilpen Savani
Partner
gunnercooke llp

Q1

What is recognised as ‘transgressive behaviour’ in the UK – and is it in line with global ‘standards’?

In the UK, transgressive behaviour in the workplace includes actions that create a hostile work environment and violate societal norms. This can encompass harassment (especially when connected to a protected characteristic e.g., race, gender) involving conduct that harms someone’s dignity or creates an intimidating, hostile, degrading, humiliating, or offensive environment. It also extends to mistreatment towards an employee or group of employees that creates a risk to health and safety.

In the UK, the primary legislation that mandates employers to ensure a safe working environment is the Health and Safety at Work etc. Act 1974. This act sets out the general duties that employers have towards their employees and the public, including the responsibility to provide a safe and healthy workplace.

Additionally, the Equality Act 2010 provides protections against harassment and discrimination, contributing to a safer and more

inclusive work environment.

These are robust protections and very much at the forefront of employment law measures together with the European Union.

The European Union has several directives and resolutions to combat transgressive behaviour in the workplace and these are closely reflected in the

UK’s legislation. In the US there have been repeated attempts to introduce the Equality Act as an upgrade on the existing Civil Rights Act of 1964 but these have not succeeded yet.

Since Brexit, the UK has retained many EU-aligned workplace policies but has also started to diverge in some areas. Though the legal landscape is

Shilpen is a dispute resolution specialist with a 20-year+ track record of achieving successful outcomes in complex commercial disputes and contentious corporate matters.

He is known as a deft negotiator and trouble-shooter, advising on many contentious and sensitive business challenges for clients in a range of business sectors including media, technology, real estate, fashion and luxury brands, as well as financial and professional services. Shilpen seeks to resolve complex disputes persuasively, pragmatically and strategically to reach the best commercial outcome fast. This includes strong representation in court, at arbitration or, where appropriate, through mediation as an extremely effective alternative means of resolving disputes.

Shilpen is also known for his employment law expertise and advises employers, employees and others in workplace matters and actions in both the Employment Tribunal and High Court. He is a member of IR Global, the world’s largest exclusive network of advisory firms, where he is Employment Law Member for England. Shilpen is a committed advocate and driver for diversity and inclusion in the workplace and a pro bono supporter and Advisory Board member of Creative Equals.

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MY ADVICE...

➤ Accept that the workplace, and your talented workforce, are part of society as a whole and change is inevitable. Embrace this, welcome the changes and foster a culture of inclusivity and openness underpinned by strong company values and leadership from the top.

➤ Encourage personal wellbeing in your business. This should include support for mental health issues, a work-life balance and keeping an open mind to how, when and where, your employees want to work. This doesn't have to mean total flexibility, but a willingness to

accommodate employees' changing needs will go a long way towards creating a stronger bond with your workers.

➤ Establish robust reporting mechanisms and ensure that workers know they can activate these anonymously and/or without fear of recrimination or victimisation. A business that genuinely wants to know what is troubling its workforce and is willing to act on their concerns will root out transgressive behaviours faster and cope well with change on every level.

still mostly unchanged, the new UK government is preparing to introduce a wide-ranging upgrade of workplace rights when it brings forward the Employment Rights Bill soon. Whilst these are not directly aimed at tackling transgressive behaviour, sweeping changes such as banning zero-hour contracts and extending rights to parental leave, sick pay, and protection from unfair dismissal from the first day of employment, will significantly enhance protections for workers generally.



Q2

How does UK legislation around transgressive behaviour compare to cultural perspectives? And how do employers in the UK balance inclusion and cultural sensitivity with protecting company ethos?

UK legislation around transgressive behaviour, particularly in the workplace, is designed to protect individuals from harassment, bullying, and discrimination. These laws reflect a commitment to creating a respectful and inclusive workplace. However, cultural perspectives can vary widely in any free society. Although the legal framework is robust, societal attitudes towards issues like gender identity and sexual orientation can differ. Some cultural groups may have more conservative views, which can influence workplace dynamics.

The purpose of workplace legislation is to create universal

“Although the legal framework is robust, societal attitudes towards issues like gender identity and sexual orientation can differ.”

standards that can be respected by an employer's entire workforce. However, sometimes it can be challenging for employers to balance their compliance with the law against the beliefs of individuals and communities that differ from the norm. This needs sensitivity and it is important to create a corporate identity

and working culture that promotes inclusivity and welcomes diversity.

Q3

What changes do you feel corporations have to make to challenge transgressive behaviour – and meet changing expectations from employees?

An employer that wants to minimise transgressive behaviour and meet the expectations of its workforce should invest in establishing what its values are as a business and then communicating those widely. This also needs more than lip service or simply the appointment of a Diversity Officer in the hope that they will wave a magic wand and make the problem disappear.

There are a number of strategies to create a resilient and progressive company ethos. These include clear messaging across the workforce about the company's core values and expectations of its workforce; developing contemporary diversity and inclusion policies that do more than paying lip service to minimum legal requirements; offering specialist cultural awareness training to all staff (and not just managers); and establishing functional and anonymous channels for reporting transgressive behaviour.

However, none of these measures will be effective without active support from the most senior management, who must also undergo the necessary training and conduct themselves as examples of the company's values.

About us...

gunnercooke

gunnercooke is one of the UK's fastest growing law firms, providing a wide range of corporate and commercial legal services to businesses, banks and financial institutions. The firm was founded in 2010 to challenge, improve and evolve the way that legal services are delivered. We believe that the legal industry serves neither clients nor lawyers the way it should. Our founders set about doing things differently from day one, flattening out the traditional hierarchy and establishing a new model based upon flexibility, transparency and freedom.

All gunnercooke lawyers have a client-focused approach and at least 10,000 hours' practising experience. They also operate on a fixed-fee basis,

meaning work is scoped out from the outset and cost certainty is guaranteed. As a result, all clients have access to trusted advisors who have a breadth of experience and knowledge, enabling them to work on all matters from straightforward transactions to complicated cases that require complex solutions.

The firm has been recognised for 44 industry awards and currently employs over 330 legal professionals and management consultants across offices in London, Manchester, Leeds, Birmingham, Edinburgh, Glasgow, Berlin and New York.

gunnercooke.com



“It is an ever-changing challenge to balance inclusion and cultural sensitivity with company ethos.”

Rebecca Torrey,
The Torrey Firm



Sensitivity, inclusivity, and the intergenerational workplace

Rebecca Torrey
Partner
The Torrey Firm

Q1

What is recognised as ‘transgressive behaviour’ in the US – and is it in line with global ‘standards’?

Transgressive behaviour, more commonly known in California and the United States as inappropriate workplace conduct, includes unlawful harassment, discrimination and retaliation towards individuals based on characteristics protected by law. Federal law protects employees against inappropriate conduct at work on the basis of seven protected classifications (race, sex, age, religion, disability, national origin, and genetic information). California law additionally protects against transgressive behaviour based on many more protected classifications including sexual orientation, gender identity, medical conditions including AIDS/HIV, ancestry, marital status, ethnicity, plus more. The state most recently added as protected characteristics transgender and transitioning status (as part of gender expression), reproductive health decision-making, and cannabis use off the job and away from the workplace. California law also prohibits employees from engaging

in workplace bullying that need not be based on any protected classification. California’s protections against transgressive behaviours are most consistent with standards of the European Union, while the US in

general is more in line with overall global standards. In terms of legally regulated conduct, it may be fairly said that California pushes the envelope of what behaviour is considered transgressive at work. Sometimes

Rebecca represents companies in litigation in federal and state courts nationwide. She is an across-the-board employment lawyer with significant trial experience representing management in bet-the-company cases involving wage and hour and fair credit class actions, trade secrets, wrongful termination, discrimination and fair pay claims.

Rebecca provides strategic advice to companies aimed towards aligning personnel practices with an employer’s culture, values and priorities and minimising legal risk. She is committed to developing a client’s understanding of the law to improve human resources practices and guide business forward. A frequent speaker and writer on key developments and cutting-edge legal issues, Rebecca is known for pragmatic, out-of-the-box solutions that support strategic growth.

Rebecca’s clients include healthcare companies, professional services firms, entertainment, digital media and technology innovators, manufacturers and recyclers, and tax-exempt organisations, operating both domestically and internationally. She has been ranked by ChambersUSA multiple times, is honoured by her peers as one of the Best Lawyers in America and recognised for her trial successes as a Fellow of the Litigation Counsel in America. Selected by the professional services network IRGlobal as its exclusive California employment practitioner, Rebecca contributes thought leadership and provides guidance on developing areas of employment law to professionals around the world.

Prior to her law firm practice, Rebecca served as a Law Clerk for Chief Judge Deanell Reece Tacha for the Tenth Circuit, U.S. Court of Appeals.

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other jurisdictions, primarily the more progressive states and urban areas in the US, follow California in recognising what may be included as transgressive behaviours.

Q2

How does legislation around transgressive behaviour compare to cultural perspectives?

Legislation around transgressive behaviour in California is consistent with the state's overall cultural perspectives. New protected classifications are often added as legislators tune in to concerns within the culture at large about ways in which people may be treated unfairly. The general attitude on the West Coast, and especially in California, places a value on rugged individualism and the rights of self-expression and personal determination. That cultural perspective underlies a good deal of the workplace protections that the state enacts.

In contrast, US federal legislative standards around transgressive behaviour reflect the lowest common denominator on which political representatives from most states can agree. Even though bills are regularly introduced in Congress to expand protections against various types of

MY ADVICE...

- > Listen thoughtfully before telling other people at work how things should be in the workplace. There is much to learn from the individuals you work with and much to be gained in terms of new ideas and a better understanding of others.
- > Put into practice an appreciation for the perspectives and values of others, especially those in younger generations. That appreciation for others should be displayed through the way you act and in the things you say.
- > Daily seek to put yourself in the shoes of another person at work you don't understand so that you can break away from limited thinking that may stifle your own creativity and viewpoint. You owe it to yourself. Changing work cultures for the better occurs as people face their blind spots and model an evolution in their own thinking.

transgressive behaviour at work, those proposals face fierce opposition. Partisan politics among legislators doesn't help. As a result, the laws concerning transgressive behaviour rarely change on the federal level. Any changes generally occur as the federal courts expand the definition or understanding of a traditional category of protection. An example of this is the fairly recent expansion of a workplace protection based on "sex" to include pregnancy, sexual orientation, and gender identity.

As a result, legislation at the federal level mirrors the cultural perspectives of the more conservative states in the union. That is the reason, I believe, that much legislative activity impacting employment takes place on the state and local levels to fill a void on the federal level.

Q3

How do employers in your jurisdiction balance inclusion and cultural sensitivity with protecting company ethos?

It is an ever-changing challenge to balance inclusion and cultural sensitivity with company ethos. In my experience working with employers, some do it better than others. Company ethos tends to track the values or personality of upper management. If there is a generational difference between upper management and non-management personnel, this can create internal insensitivity about what matters. In the case of a younger workforce, cultural sensitivity and inclusion may be at odds with upper management's focus on productivity and profitability. This difference in perspectives and values can lead to conflict and dissonance that negatively impacts one's enjoyment of

work and the overall work environment. It also can lead to damaging public commentary about a company on social media channels and in the press that may impact its ability to attract and retain the best talent.

A workplace culture that appreciates and encourages an openness to learn from others and expects employees to respect their colleagues' points of view can help turn those challenging differences into growth opportunities that will enhance teamwork and job satisfaction.

Q4

What changes do you feel corporations have to make to challenge transgressive behaviour – and meet changing expectations from employees?

From my perspective, attitudes about transgressive behaviours largely reflect a generational divide. Many younger people express their individualism in ways that previously were not socially displayed. They may have internalised an appreciation for differences and a vision of personal freedom and possess an expectation to set a course for their own lives, including in the workplace. This vision of personal expression was not common when older workers entered the workforce. In my opinion, the expectations of a younger society drive the expansion of legislation against transgressive behaviours in the workplace.

Living through the #MeToo and Black Lives Matter movements and other social protest initiatives throughout the United States has freed many people to speak up about behavior and attitudes they consider unacceptable. Employers need to offer open doors and indicate a willingness to listen to concerns that are raised. Not every raised concern will become an action item, yet an openness to hear what others care to share and to provide a safe place to convey input should be a priority. The fear of retaliation in one form or another is a very real thing, and no one wants to be a martyr for their job.



"California's protections against transgressive behaviours are most consistent with standards of the European Union."

About us...



Guiding your business forward

We represent employers in litigation and advise management on a broad range of employment matters. From creating effective personnel practices to defending employers at trial, we have the experience and judgement to help manage the maze of regulation and the risk of litigation that comes with it.

As workplaces reflect societal developments, leadership and culture, changes in personnel practices will occur. We assist businesses in looking ahead strategically and collaboratively to improve human resource practices and reduce unnecessary risk.

Progressive culture for better client service

Having spent years in large law firms with a hefty overhead, Rebecca Torrey founded The Torrey Firm on the principle that employers should have extraordinary resources available at reasonable rates. We provide those resources both virtually and in person as businesses assess and recreate their own workplaces.

www.torreyfirm.com

Building inclusive work cultures in Mexico

Edmundo Escobar

Partner

Escobar y Gorostieta, SC Lawyers



With over 35 years of experience in labour and employment including human capital management, including selection, recruitment, and personnel administration, **Edmundo** holds a Law degree from the National Autonomous University of Mexico, with specialised studies in Civil Law, Administrative Law, and Taxation from the Pan-American University. He also pursued Public Accounting at the Autonomous Technological Institute of Mexico and completed a Diploma in Management for Lawyers at Yale University, USA. Currently managing senior partner at Escobar y Gorostieta, S., active member in the Mexican Bar Association (BMA), the International Bar Association (IBA), has represent the World Employment Confederation (WEC) at the International Labor Organization (ILO). Additionally, was Vice President of the Latin American Employment Confederation (CLEM) and was professor at the National Autonomous University of Mexico (UNAM) Law School for over a decade.

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Q1

What is recognised as ‘transgressive behaviour’ in Mexico – and is it in line with global ‘standards’?

In Mexico, transgressive behaviour in the workplace as in other latitudes is understood as conduct or action contrary to norms and legal standards. Under labour law these behaviours include verbal and physical violence, bullying, harassment (including sexual harassment), intimidation, discrimination, fraud, theft, negligence, insubordination, and breaches of confidentiality. Legally, the Federal Labour Law (Ley Federal del Trabajo) provides a framework to address these issues, emphasising the protection of workers’ rights and the establishment of a safe and respectful work environment.

Mexican law has made significant strides in aligning with global standards, particularly with the reforms spurred by international agreements such as the United States-Mexico-Canada Agreement (USMCA). These reforms have introduced stricter regulations on labour rights, including the right to freedom of association, collective bargaining, and protection against transgressive behaviours.

However, while the legal framework is in place, the practical application of these standards can vary. Cultural norms and the traditional hierarchical structures in many Mexican workplaces can sometimes lead to discrepancies between the legal standards and their

implementation. This is particularly clear in the enforcement of laws against harassment and discrimination, where cultural resistance or lack of awareness might hinder full compliance with global standards.

Q2

How does legislation around transgressive behaviour compare to cultural perspectives?

Legislation in Mexico on transgressive behaviour is quite progressive, particularly in its alignment with international labour rights conventions. The legal reforms, particularly those introduced in the context of the USMCA, have significantly strengthened workers’ rights and provided clearer guidelines for addressing workplace transgressions.

Culturally, however, Mexico presents a complex landscape. Traditional workplace hierarchies and deeply ingrained social norms can sometimes clash with the progressive intent of the legislation. For instance, while laws against sexual harassment and discrimination are robust, cultural attitudes towards gender roles and authority can make it challenging for victims to come forward. In many cases, there is a cultural reluctance to challenge authority figures, which can lead to underreporting of transgressive behaviour.

Moreover, in some sectors, particularly those with strong ties to traditional labour unions, there can

be resistance to the changes brought about by these legal reforms. This is often due to the historical relationship between labour unions and employers, where the protection of workers’ rights might be compromised in favour of keeping industrial peace.

The gap between law and practice is a significant issue, and while there is growing awareness and activism around these topics, changing deeply rooted cultural attitudes will take time. The challenge for Mexico is not only in enforcing these laws but also in fostering a cultural shift that supports the full realisation of these legal standards, so that awareness translates into a change of mindset to change the cultural influence on issues like corruption, discrimination, gender violence, and disrespect to human rights.

Q3

How do employers in Mexico balance inclusion and cultural sensitivity with protecting company ethos?

Employers in Mexico face a complex task. This balance is essential in creating a workplace that is both legally compliant and culturally harmonious.

One approach is through the development and implementation of comprehensive workplace policies that address transgressive behaviour in a culturally sensitive manner. These policies often include clear definitions of unacceptable behaviour, procedures for reporting and addressing complaints, and training programs that raise awareness of these issues among employees at all levels.

Training programs are particularly effective in bridging the gap between legal requirements and cultural practices. These programs can be tailored to address specific cultural issues, such as machismo or hierarchical deference, and can help employees understand the importance of respecting both legal standards and cultural differences.

Employers also need to create

safe spaces for dialogue, where employees feel comfortable discussing issues without fear of retaliation. This can involve the establishment of confidential reporting mechanisms and the assurance that all complaints will be taken seriously and handled in accordance with the law.

Furthermore, companies can benefit from fostering a culture of accountability, where leadership is seen to model appropriate behaviour and where there is a clear and consistent response to transgressions. This not only reinforces the company’s commitment to a safe and respectful workplace but also helps to build trust among employees, which is essential for the successful implementation of these policies.

Q4

What changes do you feel corporations have to make to challenge transgressive behaviour – and meet changing expectations from employees?

Employers can change by visualising the need to adapt and evolve to meet the evolving expectations of employees, corporations in Mexico need to implement several key changes:

“While the legal framework is in place, the practical application of these standards can vary.”

Cultural Change Initiatives:

Corporations must change the underlying cultural attitudes that allow transgressive behaviour to persist. This involves not only implementing training programs but also promoting values of respect, inclusivity, and equality. Leadership must take a proactive role in driving this cultural change through the company’s ethos.

Strengthening Legal Compliance:

Ensuring that policies are in full compliance with the latest legal standards is crucial. This includes regularly reviewing and updating policies on harassment, discrimination, and other forms of transgressive behaviour to reflect changes in the law and best practices.

Improving Reporting and Response Mechanisms:

Corporations should set up or enhance confidential, accessible, trustworthy systems for reporting transgressive behaviour. This may also involve third-party oversight to ensure impartiality in investigations and outcomes.

Incorporating Diversity and Inclusion as Core Values:

As the workforce becomes more diverse, corporations need to incorporate diversity and inclusion into their core values and business strategies. This not only helps to prevent transgressive behaviour but also ensures that all employees feel valued and respected, which can improve overall workplace morale and productivity.

Adapting to Generational Shifts:

As younger generations enter the workforce, their expectations regarding workplace culture and behaviour often differ from those of previous generations. Corporations need to be adaptable and willing to evolve their practices to meet these changing expectations, such as embracing more flexible work arrangements and placing a greater emphasis on work-life balance.

About us... eyg.com.mx

escobar y gorostieta, s.c.

a b o g a d o s
 CDMX - GDL - MTY - TIJ

Escobar y Gorostieta, SC Lawyers The company was born in 1993 as a response to the needs of different customers to have comprehensive advice provided by experts in the various branches of law and disciplines related to the business. We have responded immediately to legislative changes, social, commercial and professional both in Mexico and abroad economic environment, which has helped maintain a flexibility that is reflected in the optimal quality of our services.

Geopolitical climate

Geopolitical shifts are increasingly shaping business landscapes worldwide. Elections and government changes bring new policies that impact businesses' strategic planning, while economic stress influences M&A trends and growth strategies.

The following submissions analyse how companies can remain agile amidst uncertainty, offering practical tips for navigating volatile political climates and economic challenges across jurisdictions.

Global uncertainty has heightened the focus on safeguarding investments and fostering business resilience. Rudsel Lucas discusses how political risks in emerging markets are being mitigated through Bilateral Investment Treaties (BITs), which provide a stable legal framework for foreign investors in Curaçao. Meanwhile, Glenn Harrigan explores how businesses in the British Virgin Islands are preparing for election-related uncertainties by staying informed, diversifying operations, and strengthening risk management. This proactive approach helps them navigate potential political changes and seize emerging opportunities.

In Poland, Robert Lewandowski highlights how economic stress is driving mergers and acquisitions (M&A), with a focus on sectors like energy and technology. ESG credentials now play a key role in M&A assessments, reflecting the increasing importance of sustainability in business strategies. He advises companies seeking to acquire or be acquired in a downturn to focus on strategic growth, absorb competitors, and explore new markets.

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“Tariffs on imports would hit Canada’s economy harder than the US’s.”

Isabella Bertani,
 BERTANI

Strategies for
businesses in an
election year

Navigating political shifts

Isabella Bertani, FCPA, FCA

Founder and Chief Client Strategist,
BERTANI

The year 2024 is proving to be a pivotal time on the global stage with numerous critical elections reshaping the political landscape. As new governments take office, businesses and individuals must prepare for a wave of changes that could impact economic and investment policies, trade relations, and regulatory environments. Elections often lead to shifts in leadership and political alliances which can influence trade dynamics impacting import-export flows, supply chains, and commodity prices.

A recurring theme that has developed is the potential for outcomes that favour protectionist policies which may include tariffs on imported goods. While this nationalistic approach may protect domestic industries, it also has the impact of hindering international trade in manufactured goods. How can businesses prepare for and respond to these shifts, and maintain agility amidst legislative changes? How can companies plan properly in an era of unpredictability?

Elections inherently introduce uncertainty causing investors to react cautiously due to potential policy changes. And while the US election is significant and receives extensive media coverage, elections in other countries also impact the global economy. In fact, in 2024, at least 64 countries have had elections or will be heading to the polls¹ including the recent election in the United Kingdom where the Labour Party achieved a landslide victory over the

Conservative Party, wiping out 14 years of conservative power. Already, the new government is set to initiate trade negotiations with international partners and launch a new trade strategy.²

Preparing for and responding to new governments

Changes in government administrations and the resultant policy changes can have significant economic and geo political impacts which can create disruption to businesses and entire industries. Businesses and individuals must adopt a proactive

approach in order to prepare for and respond to such changes. Staying informed by regularly monitoring political developments and policy proposals and understanding the priorities and agendas of incoming governments is crucial to anticipate changes that may impact operations. By engaging in advocacy through participation in industry associations and advocacy groups, businesses can have an opportunity to influence policy decisions and provide opinions on how policy changes will impact their industry. Such proactive engagement

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

Isabella contributes to the global community through mentorship and volunteer work, including her involvement with the GPODS Fellowship, which focuses on public policy, diplomacy, and sustainability. Isabella was the recipient of the Joanna Townsend Excellence Award for Leadership in International Trade by the Organization of Women in International Trade in Toronto.

Isabella is a Fellow of the Chartered Professional Accountants of Ontario. She holds both a Bachelor of Business Administration and Master of Business Administration from the Schulich School of Business.

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“If trade policies change, businesses should be prepared to adjust their supply chains and sourcing strategies accordingly.”

Isabella Bertani,
BERTANI



MY ADVICE...

➤ **Contingency planning and risk management:** Developing multiple scenarios based on different potential outcomes helps in understanding the implications of various political and economic changes and can help identify potential risks and opportunities and develop strategies and resources to address them.

➤ **Stay informed:** Keeping up to date with global economic and geopolitical trends is crucial for making informed decisions, help anticipate changes, understand their potential impacts, and adjust strategies accordingly.

➤ **Organisational engagement:** Promoting a forward-thinking culture by encouraging ongoing learning and development within an organisation helps the business quickly adapt to new challenges and opportunities.

can help mitigate risks associated with sudden policy shifts that could disrupt business operations. Additionally, diversifying investments across different regions and sectors can also mitigate risks associated with political instability in any one area and ensure that businesses are not overly dependent on a single market or regulatory area.

Failing to stay informed of geopolitical and policy changes can pose significant risks to business owners, especially those in sensitive industries. The result could be facing unexpected regulatory legislation, changes in tariffs on exported goods, or changes in trade agreements that could disrupt supply chains and increase costs. Changes in investment policies can create significant barriers to entry on goods or access to suppliers. In extreme instances, businesses may be faced with sanctions or restrictions that restrict or prevent their operations in a specific market, or trading with certain customers or suppliers.

Maintaining agility in the face of legislative changes

Businesses must implement flexible and fluid strategies to remain agile and responsive to changes in legislation and policymakers. Developing flexible business plans that can be quickly adjusted in response to new regulations or geo-political influences is critical to ensuring an organisation can minimise disruption and mitigate risk. This includes having contingency plans and alternative strategy options prepared based on various scenarios, as well as the resources to implement them. It also allows organisations to identify opportunities in periods of volatility and disruption. For example, if a new government imposes stricter environmental regulations, a business should have a plan to comply with these regulations without significant disruption to operations. Similarly, if trade policies change, businesses should be prepared to adjust their supply chains and sourcing strategies accordingly. The need for this preparedness was made evident during the pandemic when organisations were faced with significant supply chain disruptions resulting in product shortages. Although it was difficult to

predict the extent of the pandemic, understanding the vulnerability of supply chains is critical to mitigating risk and being prepared for future disruptions.

Recent global events have highlighted the importance of maintaining agility. The Russia-Ukraine conflict has caused major disruptions in global supply chains and supply routes especially in the energy, food, and semiconductor industries. It has also resulted in resource shortages, higher transportation costs, and increased inflation. Similarly, China's growing interest in Taiwan and the surrounding region has sparked concerns about potential disruptions in the South Pacific. A conflict in the Taiwan Strait could not only disrupt the flow of trade in the region, but also global trade, particularly in the semiconductor sector, as Taiwan is a key producer of these components. Such disruptions underscore the need for businesses to have resilient contingency plans and adaptable strategies.

Investing in and leveraging technology is another crucial aspect of maintaining agility to enhance operational efficiency and adaptability. Digital tools can help monitor regulatory changes and streamline compliance processes.

Employee buy-in is essential to ensure changes in the business environment can be faced and addressed quickly. Encouraging and cultivating a corporate culture that values flexibility and innovation is critical through employee training aimed at adapting to new circumstances and embracing change.

Outlook for businesses in Canada in 2025 and beyond

The upcoming United States and Canadian elections will play a significant role in shaping economic policies and trade relations given the close relationship the two countries share. Canada and the United States are each other's largest trading partners with nearly \$3.6 billion (US \$2.7 billion) worth of goods crossing the boarder each day in 2023.³ Depending on the election outcomes, there could be shifts in tax policies, trade policy, investment and immigration policy, trade agreements, and regulatory frameworks. Businesses should prepare for potential changes in these areas. Changes also can lead to opportunity. When the United States imposed stricter immigration policies which made H-1B visas more difficult to renew, companies, particularly in the IT industry, with high mobility needs saw opportunity in Canada which had more flexible immigration policies resulting in increased foreign investment into Canada.

Trump vs. Harris: Potential impacts on Canada

The outcome of the US election could have a significant impact on Canada due to the deep economic and political ties between the two countries. A change in administration could lead to major shifts in trade policies impacting multiple industries. Vehicles are Canada's second largest export by value at \$51 billion in 2023 of which 93% of these exports are going to the United States. The automotive industry is highly integrated, with parts and components crossing the Canadian-US-Mexico borders up to 8 times before being installed on final assembly.⁴

A Trump administration is likely to continue his approach on

About us...

BERTANI

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

As a member firm of IR Global, BERTANI is connected to over 1200 collaborative member firms in over 155 countries covering 70 practices areas across the globe, allowing our clients to be ideally positioned for their global expansion strategy.

GLOBAL BRANDS • LOCAL MARKETS reflects our goals that our clients, whether foreign or domestic, are able expand their brand globally, yet take a localised approach to the markets they expand

 [linkedin.com/company/bertani](https://www.linkedin.com/company/bertani)

protectionist policies including imposing tariffs on Canadian goods. During the first Trump term, Canadian steel and aluminum were subject to tariffs, and a renegotiation of the North American Free Trade Agreement (NAFTA) into the United States-Mexico-Canada Agreement (USMCA or CUSMA) involved significant lobbying by many industry groups, particular by the automotive industry to ensure fair treatment in the revised agreement. The USMCA is up for review in 2026. A continuation of this protectionist approach could restrict trade and increase costs for Canadian exporters and impact potential investment. Tariffs on imports would hit Canada's economy harder than the US's, affecting sectors like manufacturing and agriculture. In addition, Trump's position on migration could lead to stricter cross-border policies, impacting industries reliant on labour mobility.

In contrast, a Kamala Harris presidency would likely continue the Biden administration's policies, which have been more favourable to international cooperation and trade.

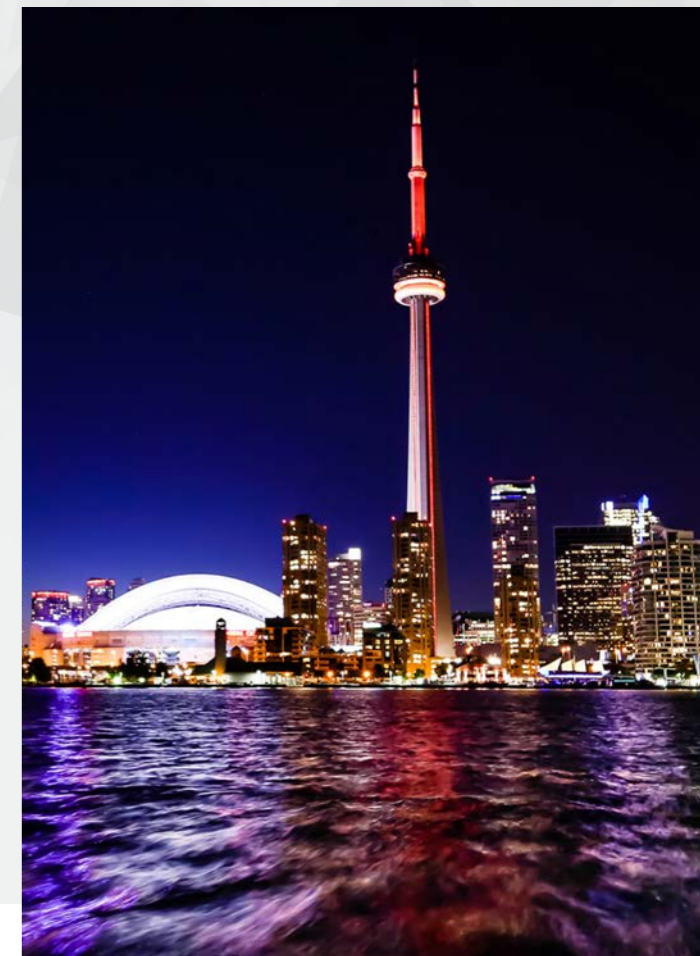
The potential impacts of a Trump or

Harris presidency on Canada highlight the importance of staying informed and engaged in advocacy. Businesses must be prepared to navigate the complexities of international trade and regulatory changes. By understanding the potential implications of different election outcomes, businesses can develop strategies to mitigate risks and capitalise on opportunities.

Impact of a potential Canadian election

Domestically, a possible Canadian federal election in 2025 could bring about significant changes for businesses. The election results could shape fiscal policies, regulations, and economic priorities.

Canada's political landscape is also influenced by regional factors. Policies that benefit certain provinces or industries could create imbalances and affect business operations across different regions. Ontario is focused on technology and manufacturing whereas Alberta and western provinces are more focused on the energy sector— each favouring very different policy approaches.



Conclusion

In a year of significant elections and geopolitical shifts, businesses and individuals must be ready to navigate uncertainty. Staying informed, engaging in advocacy, and maintaining agility are key to responding effectively to new governments and legislative changes. The outlook for Canadian businesses in 2025 and beyond will depend on not only election outcomes, but also other geopolitical events. As seen during the pandemic, the global economy is interconnected, and businesses must be prepared for these challenges to remain competitive and resilient. By adopting a proactive approach, businesses can navigate uncertainty and position themselves for success in 2025 and beyond.

¹The Ultimate Election Year: All the Elections Around the World in 2024, Time Magazine, December 28, 2023. ²UK Press Release "New Government drives forward trade talks to turbocharge economic growth" ³Canada-US Relations. ⁴Canadian Vehicle Manufacturing Association, Important Facts.

Remaining flexible during volatility

Glenn Harrigan, ACA
Director
CCP Group of Companies

Q1

How should businesses and individuals prepare for and respond to new governments across the world?

In a year marked by elections, businesses and individuals must remain vigilant and adaptable to respond effectively to new governments. The first step is staying informed about political developments and potential policy changes. Regularly monitoring news sources, government announcements, and political analyses can provide valuable insights into the direction new administrations might take.

Businesses should conduct thorough risk assessments to identify potential threats and opportunities arising from political changes. This includes analysing the potential impact on regulations, taxes, trade policies, and economic stability. Developing

contingency plans for various scenarios can help mitigate risks and capitalise on new opportunities.

Engaging with stakeholders – including employees, customers, and partners – is crucial. Open communication ensures that everyone is aware of potential changes and can contribute to developing strategies to navigate them. Additionally, businesses should foster relationships with government officials and industry associations to stay abreast of policy developments and advocate for favourable conditions.

Q2

How can your clients remain agile and respond to changes in legislation and volatile policymakers?

Agility is key to thriving in a volatile political environment. Clients should prioritise flexibility in their operations, allowing them to pivot quickly in response to legislative changes. This might involve diversifying supply



As a UK trained Chartered Accountant equipped with over 25 years of Audit, Accounting, Financial Services, Insolvency, Consultancy and Real Life Entrepreneurial experience, **Glenn Harrigan, APA**, is well-placed to analyse situations that arise and quickly offer workable solutions in all areas of business.

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MY ADVICE...

Stay Informed and Proactive: Keep abreast of political developments and anticipate potential changes. Regularly review and update business strategies to reflect new information and evolving circumstances. Proactively engage with stakeholders and government officials to stay ahead of potential impacts.

Diversify and Innovate: Reduce dependency on any single market, supplier, or customer by diversifying your operations. Invest in innovation and technology to enhance flexibility and resilience. Exploring new markets and revenue streams can provide a buffer against political and economic shocks.

Build Resilience: Develop robust risk management and contingency plans to prepare for various scenarios. Conduct regular stress tests to evaluate the impact of potential changes and identify areas for improvement. Strengthening your financial position and maintaining a flexible workforce can enhance your ability to respond to unexpected challenges.

By implementing these strategies, businesses and individuals can better navigate the uncertainties of a year marked by elections and political changes, positioning themselves for success in a dynamic environment.

“Clients should be prepared to adjust their plans based on new information and changing circumstances.”

chains, adopting new technologies, or exploring alternative markets to reduce dependency on any single factor.

Regularly reviewing and updating business strategies is essential. Clients should be prepared to adjust their plans based on new information and changing circumstances. This requires a proactive approach to risk management, including scenario planning and stress testing to evaluate the potential impact of different political outcomes.

Investing in legal and regulatory expertise can provide a significant advantage. Having a team or trusted advisors who are well-versed in relevant laws and regulations ensures that clients can swiftly interpret and respond to changes. This expertise can also help

identify opportunities for compliance and strategic advantage.

Q3

What is the outlook for businesses in your jurisdiction in 2025 and beyond?

The outlook for businesses in our jurisdiction in 2025 and beyond is optimistic. With local elections being held earlier last year there is no political uncertainty and there are opportunities for growth and innovation. Major infrastructure projects such as airport development, road improvement

and new hotel, resort and marina development are expected to drive significant changes across industries. In addition, despite ever-present challenges, the financial services industry has demonstrated resilience and staying power.

The government's focus on fostering a supportive environment for development and small businesses is expected to spur entrepreneurship and create new market opportunities.

However, businesses must remain vigilant to potential risks, such as global geopolitical tensions, economic fluctuations, and regulatory changes. Maintaining a flexible and adaptive approach will be crucial to navigating these uncertainties and seizing opportunities as they arise.

About us... ccbpvi.com

CCP Financial Consultants Limited is a part of the CCP Group of Companies, a multi-disciplinary financial services group based in the British Virgin Islands. We are fully licensed and regulated by the BVI Financial Services Commission and have been providing financial services in the British Virgin Islands since 1991.

The British Virgin Islands is one of the world's most successful international financial centres, renowned for its strong yet flexible legal and regulatory framework and for being innovative and forward-thinking. This mindset has enabled the BVI to continue to thrive even in the face of formidable competition from other jurisdictions and demands for greater transparency from international regulatory organisations. It is by far the premier choice for offshore corporate domicile, with its flagship product, the BVI Business Company (BVIBC).

Our primary areas of business within the company are BVI



COMPANY INCORPORATION and Management, Post Incorporation Services, Insolvency & Liquidations and General Business Consultancy Services. We also provide Ship Registration and Economic Substance Services and assistance with the opening of bank accounts in the British Virgin Islands and other Caribbean jurisdictions.

Our well-trained staff and our international network affiliations enable us to provide prompt and excellent services to local, regional, and international clients.

Takeover

M&A in a time of economic stress

Robert Lewandowski

Partner

DLP Dr Lewandowski & Partners



Dr Robert Lewandowski, who leads DLP Dr Lewandowski & Partners sp.k, studied mathematics and German philology at the University of Warsaw, and law at the University of Mainz, Germany, and later joined the list of German lawyers at the Frankfurt Bar Association in Germany and the list of legal advisers at the District Chamber of Legal Advisers in Warsaw. For almost 20 years, Robert has specialised in corporate law, with a focus on private Mergers & Acquisitions, cross-border work, general corporate advice, and litigation. His sector focus also covers regulated industries and private equity. Robert is the author of over one hundred articles and many legal books and commentaries on business law published in Poland and abroad.

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Q1

Do growth strategies lean more towards acquisitions rather than organic growth during economic turmoil? Are you seeing any trends in M&A as a business growth strategy?

These times of economic instability (especially recession and inflation) and ongoing conflicts do not serve the stability in the market and may adversely affect the number of M&A transactions as any appraisal and evaluation of a company may change out of the blue, due to unpredictability of developments on the market. The acquisition of other businesses is still an important factor in implementing growth and avoiding the decline of business and even insolvency. When it comes to the Polish market, Poland remains a hotspot within M&A Transactions in the CEE region as the Polish M&A market has been able to build resilience and development in contrast to global ups and downs.

The M&A landscape shows new trends that can be of interest for further consideration and strategic decisions. A significant number of acquisitions have been identified within the energy sector, as many companies are implementing diversity of their energy portfolios and look to buy businesses in the green energy sectors in particular, and also to gain access to advanced

energy technologies (the German Remondis operating in the waste processing sector purchased SFW Energia, Polish Orlen acquired Energo and Doppler Energie).

In addition, a large bulk of acquisitions were also seen on the medical market where companies were targeted producing medical facilities, laboratories and drugs. The next attractive platform for investors remains investment in entities operating in the new technologies sector, encompassing gaming and computer software companies. For instance, the Chinese tech giant Tencent has acquired a dominant stake in renowned Polish gaming company Techland. The next lucrative segment of acquisitions could be the food industry in Poland. The German food giant LISNER has acquired its competitor, the Polish company GRAL.

Q2

Does economic downturn mean more caution, and therefore fewer acquisitions, or does it mean more businesses in distress, therefore more mergers?

In my opinion the costs of a merger are much lower than the costs of acquisition and this might be highly influential during economic downturn.

A merger usually encompasses three big costs:

- professional fees (attorneys, accountants, consultants, tax advisers) that vary depending on the scale of merger transactions
- tax and finance costs
- integration costs which are associated with the management, product lines, production capacity, brands, people, facilities, customer support, and technologies all have to be aligned and possibly combined and converted. These efforts may not work, or they might cost more than the combined value of the companies, in which case the transaction will fail

The aforementioned costs also apply more or less to acquisition, however, the main additional cost factor within acquisition deals is the significant purchase price that is finally paid at closing.

Merger means the combination of two corporations, when one absorbs the other. The acquiring corporation continues to exist, but the acquired corporation is dissolved. In times of crisis, mergers can be used to help companies out of distress.

A horizontal merger combines two businesses in the same field or industry that were competitors prior to the merger. This can lead to market expansion of the acquiring company that may be either into new products or into new areas.

A vertical merger brings together two companies, one being the customer of the other. Such a combination usually removes the customer from the market. It may also remove a source of the supply if the acquiring company is a customer of the acquired one.

MY ADVICE...

- > Companies should implement a growth strategy by buying another business.
- > A company might buy out a competitor to absorb their market share and acquire their assets. The parent company will then experience growth in sales and revenue.
- > The strategy of acquiring new businesses encourages more immediate growth because a business is essentially buying into a market instead of having to invest time in organic growth methods.

Finally, a conglomerate merger is one in which the businesses involved are neither competitors nor related as customers or suppliers. Through a well planned merger, a company in distress can survive and stay afloat. However, any merger should also take into account antitrust considerations if a combination of businesses result in unreasonable restraint of trade or if it results in monopolisation of a line of commerce.

Q3

Are acquiring businesses taking into account the ESG credentials of businesses when they assess potential targets for acquisition?

ESG is short for Environmental, Social, and Governance. It's a collective term for a business' impact especially on society and the environment. These days ESG credentials are increasingly important when it comes to assessing potential targets for M&A deals on the Polish market.

“ESG credentials are increasingly important when it comes to assessing potential targets.”

Many companies operating in Poland have implemented policies and regulations imposed by EU – laws and the European Commission to meet ESG criteria. On 24 April 2024, the European Parliament adopted the Proposal for a regulation of the European Parliament and of the Council on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities. ESG ratings provide an opinion on a company's or a financial instrument's sustainability profile, by assessing its exposure to sustainability risks. ESG considerations play a significant role within M&A evaluations, including how attractive such a business is. There are high-impact industries that pose a high risk for ESG, those are industries such as manufacturing of clothing, manufacturing of textiles, forestry, agriculture, extraction of minerals, mining, and wholesale trade in minerals. In these areas of businesses, buyers will especially look at a potential target to find out if the targeted entity has a weak or rather strong ESG record. Finally, the decision to acquire or not acquire a business may be in these areas very much ESG motivates.

About us... drlewandowski.eu

DLP Dr Lewandowski & Partners is a well-known and well-established legal firm offering a comprehensive range of services and legal advice fully tailored to our Polish and International clients' demands and expectations. We specialise in assisting foreign clients to enter the Polish business sector and offer our expertise regarding the setting up and acquisition of subsidiaries, representing foreign clients in litigation cases before Polish state and arbitration courts and enforcing (cross-border) judgment. Our multi-lingual staff

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Dr Robert Lewandowski & Partners sp. k.

provides services in Polish, English, German and Russian and we are one of the very few legal firms based in Poland to provide legal advice in Italian and Spanish as well.

Political Risk in Emerging Markets: A Case for Bilateral Investment Treaties

Rising Tides

Rudsel Lucas
CEO
Sadekya Fiduciary Partners B.V.

As the global political landscape continues to evolve, emerging markets are increasingly exposed to a range of risks that can significantly impact foreign investments. Policy changes, regulatory shifts, and even expropriations are becoming more prevalent, making it imperative for investors to adopt proactive measures to safeguard their assets. Bilateral Investment Treaties (BITs) offer a valuable tool to mitigate these risks and provide a stable and predictable environment for international business.

The Growing Importance of BITs
In recent years, BITs have gained significant prominence as a means of protecting foreign investments in emerging markets. These treaties provide a legal framework that establishes clear rules and procedures for the treatment of foreign investors, reducing the risk of arbitrary or discriminatory measures. By creating a more predictable and stable environment, BITs can encourage foreign investment, stimulate economic growth, and promote development in emerging markets.

Key Provisions of BITs
BITs typically include a range of provisions that protect foreign



- investors, including:
- **National Treatment:** This provision requires host governments to treat foreign investors in the same manner as domestic investors, ensuring that there is no discrimination based on nationality or origin.
 - **Most Favoured Nation Treatment:** This provision requires host governments to treat foreign investors from one country no less favourably than they treat foreign investors from any other country.
 - **Fair and Equitable Treatment:** This provision requires host governments

- to treat foreign investors fairly and equitably, without arbitrary or discriminatory measures.
- **Expropriation:** BITs often include provisions that restrict or prohibit the expropriation of foreign investments. If expropriation is necessary for a public purpose, the treaty typically requires that the government provide fair and adequate compensation.
 - **Dispute Resolution:** BITs typically include investor-state dispute settlement (ISDS) mechanisms, which allow investors to directly challenge a host government's actions through international arbitration. This provides a neutral and efficient forum for resolving disputes, avoiding the potential biases of domestic courts.

The Role of BITs in Mitigating Political Risk

In the face of increasing political uncertainty and volatility in emerging markets, BITs can play a crucial role in mitigating risks for foreign investors. By providing a stable and predictable legal framework, BITs can reduce the risk of arbitrary or discriminatory measures, protect investments against expropriation, and ensure that investors have access to effective dispute

resolution mechanisms.

Furthermore, BITs can help to signal to foreign investors that a country is committed to creating a favourable environment for investment. This can attract foreign capital, stimulate economic growth, and create jobs.

Challenges and Considerations

While BITs offer significant benefits, they are not without challenges. Some critics argue that BITs can be used by multinational corporations to shield themselves from environmental and social regulations. Additionally, ISDS proceedings can be time-consuming and costly, and there are concerns about the potential for forum shopping.

Despite these challenges, BITs remain a valuable tool for investors seeking to mitigate political risks in emerging markets. By carefully considering the specific terms of BITs and the potential risks associated with investing in a particular country, investors can make informed decisions about whether to rely on BITs for protection.

Conclusion

As the global political landscape continues to evolve, the importance of Bilateral Investment Treaties (BITs) for protecting foreign investments in emerging markets is becoming increasingly evident. By providing a stable and predictable legal framework, BITs can help to mitigate the risks associated with investing in these dynamic economies. While there are challenges and limitations to consider, BITs remain a valuable tool for investors seeking to enhance the security and profitability of their international investments.

Rudsel Lucas: A Global Authority in Asset Protection and Wealth Preservation
With over two decades of hands-on experience, Rudsel J. Lucas has established Sadekya Fiduciary Partners B.V. as a leading boutique firm specialising in:

- **Tailored Asset Protection Strategies:** Safeguarding wealth from unforeseen events and legal challenges.
- **Comprehensive Estate Planning:** Ensuring a seamless transition of assets across generations.
- **Strategic Special Purpose Licensing:** Optimising business operations and minimising tax liabilities.
- **Offshore Bank Introductions:** Facilitating secure and efficient international banking relationships.
- **Investment Protection Treaties:** Mitigating risks and maximising returns in global markets.

Renowned for his innovative approach and deep understanding of complex financial landscapes, Rudsel is a trusted advisor to high-net-worth individuals and families worldwide. As a thought leader in the industry, Rudsel regularly shares insights through blogs and articles, covering topics such as cryptocurrency, international taxation, and estate planning.

Acclaimed Author: Rudsel is a renowned author with two internationally acclaimed books under his belt:

- "Ditch the Uncertainty" (ISBN: 9789990455236): Published in 2024, this comprehensive guide empowers investors to navigate the complexities of

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emerging markets. Rudsel delves into the unique risks associated with these markets, offering actionable strategies for effective risk management. Additionally, the book explores how investment protection treaties can serve as a powerful shield against political and economic instability.

- "Death is Not the Absolute End" (ISBN: 9781983087202): Released in 2018, this thought-provoking work equips families and their advisors with essential tools for mastering estate planning. Rudsel provides invaluable insights into the intricacies of estate preservation, ensuring a smooth transition of wealth across generations.

A Global Financial Leader with a Proven Track Record: Rudsel is a seasoned professional with a distinguished career spanning over three decades. As the Founder, Managing Director, and CEO of Sadekya Fiduciary Partners B.V. since 2008,

Rudsel has established the firm as a leading global provider of corporate services and wealth management solutions.

Prior to founding Sadekya, Rudsel held senior leadership positions at The Sovereign Group and ABN AMRO, gaining invaluable experience in international finance and business development. With a deep understanding of emerging markets and a commitment to excellence, Rudsel has consistently delivered innovative solutions and exceptional results throughout their career.

By entrusting your financial affairs to Rudsel and Sadekya Fiduciary Partners B.V., you are choosing a trusted partner with the expertise and experience to guide you through the complexities of global wealth management.

About us... www.sadekya.com

Sadekya Fiduciary Partners B.V. enable you to balance your family's needs and aspirations while providing for future generations. So that you can be confident that your family's needs and desires will be met for generations to come.

We help you get access to adequate financial and legal instruments, to structure your international affairs in the most convenient way. Some of the issues we address are wealth creation, wealth control, wealth management, wealth preservation, legacy creation and preservation of family harmony and prosperity.



We analyse your unique situation and develop a tailored solution to address your needs. You will have absolute control over your wealth, during the creation, preservation and distribution phase – all with complete security and privacy.

Planning for the uncertain

Edward Allanby

President and Chief Executive Officer
Leman Management

Q1

How should businesses and individuals prepare for and respond to new governments across the world?

Governments play a pivotal role in shaping the financial landscape by imposing regulations, setting corporate and personal tax rates, and controlling the money supply and interest rates. They also enact policies which may encourage or discourage foreign investment. These measures and others can have both immediate and long-term effects on investment decisions. A stable government fosters investor confidence, while instability and uncertainty can lead to risk aversion and a decline in investment activity.

In recent years, key political elections have reshaped the global landscape, and more are on the horizon. These are challenging times for businesses and individuals to navigate, but they can also create opportunities. Now more than ever, it is crucial for businesses and individuals to be agile, adaptable, and resilient.

Stay informed. Having a firm grasp of events that are unfolding around the world is key to making informed financial decisions. Familiarize yourself with the history of the jurisdictions where you operate and invest. Have they maintained political stability, a secure economic framework, a robust and transparent regulatory environment,

and an attractive investment climate, despite any previous changes in leadership? Stay current by following reliable news sources, signing up for targeted alerts, joining professional organizations, and observing relevant virtual communities on social media.

Build a well-rounded team. Select experienced service providers with proven track records across multiple jurisdictions. Research and interview investment managers, tax consultants, lawyers, and other professionals to ensure that you have a team in place that can guide you through turbulent times and help you achieve your current and long-term financial goals.

Embrace networking. Develop a robust network of government contacts, insiders, suppliers, advisors, and industry peers. A strong, reliable network helps businesses and individuals stay informed, allowing them to remain resilient during times of political change or unrest.

Plan with foresight. Have a long-term financial plan in place. If structured correctly, this will allow you to weather the uncertainty and volatility of changing governments and policymakers. The best way to ensure that your investment portfolio meets not only your current and long-term financial goals is to diversify. A well-diversified portfolio will reach across various asset classes, industries, and

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Prior to running his own company, Edward's career was distinguished by key roles at Brunswick Group in Geneva and at Lehman Brothers Europe Limited in London and Frankfurt. Edward is a Fellow Chartered Accountant (FCA) of the Institute of Chartered Accountants in England and Wales, a Chartered Professional Accountant (CPA) of the Chartered Professional Accountants of Bermuda, and a Trust and Estate Practitioner (TEP) of The Society of Trust and Estate Practitioners. He serves on the Board of Directors for numerous private entities and serves as Protector and Enforcer of numerous private trusts and trust companies.

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MY ADVICE...

- > "Knowledge is power" – stay informed by keeping up with local and global developments that could impact your goals.
- > "It takes a village" – build a strong network of trusted advisors and industry experts to guide you through uncertain times.
- > "Don't put all your eggs in one basket" – focus on long-term planning and ensure diversification across your investments to mitigate risk and build resilience.

jurisdictions – thereby dispersing risk – and should include both traditional and alternative investments.

Invest in private markets.

Businesses and individuals heavily invested in public markets miss out on the benefits of private market investing, including portfolio diversification and growth through unique investment opportunities in assets not traded on public stock exchanges. Private market investments are not highly correlated with the public markets and therefore are not subject to the volatility that is often seen in those markets. While private market investments typically have long holding periods and higher overall risk, they also have proven potential for higher than normal returns. Historically, small businesses and individuals were not able to invest in private markets because those markets were generally limited to accredited investors or buy-ins were at unattainable levels. This is changing due to advances in government legislation and service providers offering creative investment structuring solutions like syndicated accounts, segregated accounts, or funds where investors can pool their money—and share risks and rewards—with other like-minded investors.

Develop a contingency plan.

Identify the "what if" situations that could arise from changing political, economic, regulatory, and market factors that may affect your financial goals. Put a plan in place that will allow you to adapt to those situations, and keep it up to date. In the event of any of those "what ifs" coming to fruition, your efforts will translate into quicker recovery times, financial savings, and minimized damages.

Q2

How can your clients remain agile and respond to changes in legislation and volatile policymakers?

Changes in legislation and volatile policymakers are inevitable in even the most stable jurisdictions. Remaining agile and responsive is crucial for safeguarding and growing your wealth. This can be achieved by relying on the measures that you have already put in place.

We work closely with clients to help them build their foundation for financial success: staying informed, building a well-rounded team, embracing networking, planning with foresight, and having a contingency plan in place. We advise clients to set aside time to stay abreast of local and international

developments. We meet regularly with clients and advise that they meet regularly with the other professionals on their team. We ensure their advisory team has an intimate knowledge of their account and the necessary experience and resources to monitor volatile policymakers, navigate relevant changes in legislation, and execute instructions promptly. We advise clients to utilize their broader network, which can offer further insight and support. We advise clients to know the makeup of their investment portfolio and, under their advisors' guidance, regularly assess it to ensure it aligns with the immediate and long-term financial goals. Finally, in an unexpected turn of events, clients should trust in and follow their contingency plan.

Q3

What is the outlook for businesses in your jurisdiction in 2025 and beyond?

The outlook for businesses in Bermuda is consistently strong, and this holds true for 2025 and beyond. Bermuda's enduring success is rooted in the island's foundational principles that have cemented its status as a blue-chip jurisdiction for over 70 years. Bermuda offers a stable political climate, progressive legislation, a gold-standard regulatory framework, a strong pro-business and pro-foreign investment culture, a world-class technological infrastructure, and a highly qualified and sophisticated workforce.

As one of the world's leading offshore financial centres, Bermuda is renowned for its expertise in insurance and reinsurance, investment funds, asset management, and high-net-worth services. The island has a tax-neutral environment with no income, withholding, or capital gains taxes apart from a corporate income tax applicable only to businesses with a global revenue above 750 million euros.

Bermuda stands as an ideal jurisdiction for those seeking a secure, predictable environment to grow their wealth and expand their operations.

About us... leman.bm



Leman Management, independently owned and operating in Bermuda since 2001, provides expert, customized services to high-net-worth individuals, families, and corporations. Leman Management specializes in delivering personalized solutions for the coordination, execution, control, and administration of private market asset portfolios. Leman Management further offers fund administration, corporate administration, financial management and accounting, and directorship and registered office services.

Leman Management's team of internationally qualified professionals offers over 175 years of combined experience in management and consultancy. They are experts in local and offshore corporate structures, including those in Bermuda, the British Virgin Islands, Canada, the Cayman Islands, Cyprus, Jersey, Switzerland, Singapore, the United Kingdom, and the United States. Leman Management's expertise is complemented by their extensive network of local and international business professionals, investment managers, lawyers, and bankers.

Intervention & Regulation

Economic uncertainty, high taxation, and regulatory changes challenge private clients aiming to protect and grow their wealth. These factors demand proactive measures to ensure compliance and optimise wealth preservation strategies.

In this chapter, our experts explore how these factors shape wealth management, offering expert guidance on tax efficiency, navigating financial complexities, and safeguarding assets within their jurisdictions.

Marcelo Pupo highlights Brazil's tax reforms, aimed at simplifying the complex tax system and reducing litigation.

While these reforms intend to create a more business-friendly environment, he notes that the implementation of these changes will require careful oversight, particularly in areas affecting international investments and succession planning. James Daneri and Rachel Forster discuss California's real estate market, focusing on rising regulations surrounding foreign ownership of property. As states enact new laws restricting land acquisitions by non-citizens, they argue that the regulatory landscape remains fragmented and could impact future foreign investments.

In the Philippines, Randolph de Guzman and Hector Pascual explore the Comprehensive Tax Reform Program (CTRP), designed to streamline tax laws and foster economic growth. They caution that while these reforms aim to simplify the tax system, ongoing political and economic pressures may complicate wealth management, making proactive regulation essential for future stability.

FEATURING...

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 Blanchard, Krasner & French



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 BPS



“Any potential investment anonymity which formerly could exist through layered entity ownership is no longer possible”

James Daneri,
Blanchard, Krasner & French

James R. Daneri is a tax attorney who focuses his practice on real estate, business and estate planning matters. He has extensive experience creating tax-efficient U.S. real estate development and investment structures as well as providing counsel on complex tax deferred real property exchanges and real property tax disputes. James also assists high net worth individuals and business owners on a wide range of transactional matters, including mergers and acquisitions, contracts, corporate governance, entity formation and maintenance, and succession planning.

He holds a JD and LL.M. in Taxation from the University of San Diego School of Law and a BA from the University of California, Berkeley.

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Quantitative easing, state intervention, and overseas investment

James R. Daneri, Esq.
Rachel E. Forster, Esq.
Blanchard, Krasner & French, APC

Real estate experts in the U.S. are advising investors to “survive until 2025”, as the commercial real estate (CRE) market grapples with numerous uncertainties including inflation, high interest rates, increased office vacancies, climate change, and a contentious presidential election.

Q1

Has Quantitative Easing been a major factor in the U.S. and what affect has it had on Real Estate?

After the U.S. housing bubble burst in 2008, the Federal Reserve slashed interest rates to reverse the economic recession and quantitative easing (QE) became policymakers’ last resort. In the wake of the Covid-19 pandemic, the Fed initially maintained its QE policy, which led to increased liquidity in U.S. financial markets and boosted certain sectors of the CRE market. Investment in industrial and warehouse properties saw a sharp rise in 2021 as did multi-family housing. As inflation began to rise at an alarming rate in the U.S. in 2022, the Fed shifted course on its monetary policy.

Q2

What efforts has your jurisdiction taken to tackle inflation?

By the end of Q1 2022, the Consumer Price Index (CPI) had increased 9.59% over the prior 12 months. The Fed’s reaction was to reverse course by increasing interest rates and transitioning its QE policy to a quantitative tightening. The Fed started lowering its balance sheet by pulling bond principal repayments out of circulation, all of which led to reduced CPI increases in 2023 and 2024.

Efforts to combat inflation impacted U.S. CRE, which has experienced roughly a 30% slowdown in overall investment since 2022 and specifically a 20-25% decline in foreign investment since 2023. Higher debt costs, falling valuations due to reduced liquidity, and higher cap rates have served as major challenges to CRE borrowers and investors.

U.S. interest rate policy will likely have a continued effect on long-term foreign investment trends. As rates have dropped since Q1 2024, commercial real estate investment has increased.



Rachel Forster has experience representing real estate investment groups, individual real estate investors (U.S. and Non-U.S.), developers, landlords and tenants. Recent transactions include purchases, sales, exchanges and financings for shopping centers, office condominiums, industrial, retail, and NNN single tenant properties, as well as private equity offerings for real estate groups utilizing the “Blocker” structure. Rachel works closely with the other real estate team members to provide clients with the expertise and attention necessary for real estate professionals to navigate the complexities of investment in U.S. real estate.

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OUR ADVICE...

Foreign investors in U.S. CRE must carefully consider the tax and regulatory implications of investing in the U.S., including the following:

➤ **U.S. Income, Withholding, and Inheritance Tax** – A non-U.S. individual investing in U.S. real estate is generally subject to negative tax consequences which include income and withholding tax on rental income and distributions made to parties outside the U.S., U.S. income tax on rents, additional income and withholding tax on sale of the property under the Foreign Investment in Real Property Tax Act (FIRPTA), and U.S. federal estate tax (and in some cases state inheritance tax) upon transfer of the property after death.

To mitigate the impact of these tax laws, many foreign investors use a “blocker” structure, which involves creating a U.S. corporation (a “Blocker Corp”) to hold the property. The tax attributes relating to the property are taxed to the Blocker Corp at the corporate level, thus blocking the foreign investors from direct exposure to FIRPTA and U.S. estate and gift tax. Investors may wish to fund the Blocker with both capital and a debt instrument, as interest paid on the debt instrument can be deductible to the Blocker Corp to offset its rental income. The disposition of stock in the Blocker Corp is generally not treated as a sale of U.S. real property but rather as the sale of an intangible investment security which is not subject to U.S. capital gains tax, unless a tax treaty between the U.S. and the investor’s

country of residence states otherwise. The Blocker Corp structure has become increasingly popular as a result of recent tax reform in the U.S. which reduced the federal corporate tax rate from 35% to 21%. While the blocker structure is most commonly utilized, there are other strategies for U.S. real property investment depending on the specific goals of the foreign investors that also provide tax planning benefits, including investment in domestically-controlled Real Estate Investment Trust (REITs), partnerships, limited liability companies, joint ventures, and sometimes even direct investment.

➤ **New Regulatory Compliance** – The Corporate Transparency Act (CTA) directs the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN) to establish and maintain a private national registry of all persons who directly or indirectly manage or own at least 25% of an entity formed or operating in the U.S. In addition, those persons who file company applications on behalf of reporting companies, such as attorneys, paralegals, accountants, etc., are also required to provide certain personal information. The law is carefully written so as to provide a look through for layered entities to determine ultimate beneficial ownership. The CTA is intended to combat money laundering, tax evasion, and the use of shell companies to facilitate illicit activities.

Reporting companies formed or registered before January 1, 2024, will have one year to file initial CTA reports, while

reporting companies formed or registered between January 1, 2024, and January 1, 2025, will have 90 days. Thereafter, the deadline is shortened to 30 days from formation or registration. Failure to comply with the CTA can lead to serious civil and/or criminal penalties. Previously, foreign investors could use complex ownership structures to avoid KYC compliance, but the CTA now reduces the anonymity foreign investors once enjoyed and makes it more difficult to use shell companies to hide the true ownership of U.S. real estate assets. The CTA will promote greater accountability in foreign CRE investment but in turn introduces additional regulatory hurdles and reduces anonymity for foreign investors in the U.S. real estate market.

➤ **California Property Tax** – In addition to income taxation, most U.S. states levy a property tax based on the value of real property and personal property used for business purposes in the state. California’s property tax rate of one percent (1%) of the assessed value of the property is among the lowest in the U.S. and does not increase annually with the value of the property as with most other state jurisdictions. Rather the property tax only increases by a nominal fixed rate adjustment until there is a change in ownership or new construction. California’s relatively low property tax offsets its higher income tax rates and bridges the gap with other states which may have lower income tax rates but significantly higher property taxes.

Q3

What are the current trends in California real estate?

California’s CRE market is characterised by several notable investment trends. Industrial properties have remained one of the most attractive sectors for investment in California CRE due to consistent growth in e-commerce and increasing demand for logistic facilities. Investors are focusing on warehousing and distribution centers near transportation hubs to capitalise on demand and to meet consumer delivery expectations, particularly in

Southern California. Investment in traditional office space in California has largely been shaped by COVID-19 and a nationwide push towards hybrid and remote work models.

However, a notable trend within the office sector is the rise of adaptive reuse projects. Older vacant office buildings are being converted into residential units, mixed-use developments combining residential, retail, and office spaces, or even innovative workspaces with the aim of drawing employees back to the office. Major hubs like San Francisco, Los Angeles, and San Diego are seeing stronger focus on mixed-use developments targeting resolution to housing shortages and urban revitalisation. Concurrently, California

is experiencing a push towards sustainability, with a growing emphasis on eco-friendly and energy-efficient buildings that meet high California environmental standards for new developments.

Q4

Is there rising hostility in the U.S. to foreign ownership of property?

A cautious global outlook, combined with growing populist sentiment in U.S. politics, has led to increased scrutiny and potential restrictions on foreign investors. The shift towards protecting

domestic industries and properties from foreign ownership has prompted some jurisdictions within the U.S. to propose regulations aimed at limiting foreign investment in both residential and commercial real estate.

Between January 2023 and July 2024, at least 22 U.S. states have proposed and/or enacted legislation regulating foreign ownership of real property.

States have differed in their approach. Some states have enacted information gathering laws which mandate disclosure of, or require studies on, foreigner-owned land. Other jurisdictions have adopted legislation that makes it illegal for a non-citizen nonresident to own agricultural land or prohibit ownership of land within a certain radius of military bases, airports, public utilities, or other economically valuable sites. In certain contexts, some states have even considered or passed laws requiring divestiture of existing foreign owned properties which were already foreign owned at the time of the law’s passage.

California has seen several similar bills which propose restrictions from foreign acquisitions near military installations and restrict the ownership of agricultural land. To date none have been written into law.

In spite of this trend, California remains a highly desirable real estate investment target for foreign investors given its ideal weather, strong business and job market, and exceedingly high rental demand.

About us...



Founded in 1992, Blanchard, Krasner & French offers high quality legal services from its office in La Jolla, California. We serve a diverse base of clients ranging from large financial institutions to local and regional enterprises and individuals. Our attorneys have broad domestic and international legal experience in the following practice areas:

- Real Estate
- Trust, Tax, and Estate Planning
- Corporate and Securities
- Financial Institutions
- Appellate Practice
- Civil Litigation
- Intellectual Property
- Labour and Employment
- Family Law

Attorneys at Blanchard, Krasner & French strive to maintain “small firm” accessibility, service, and attention to our clients. We offer more than just technical legal expertise; we take a creative, intelligent, and pragmatic approach to getting transactions closed and disputes resolved.

www.bkflaw.com



Is high taxation here to stay?

Randolf De Guzman Managing Partner
Hector Pascual Senior Partner
 De Guzman, Pascual & Associates CPAs

Q1

Is your jurisdiction maintaining high taxes as a means of arresting inflation? What effect is this having on private clients?

When income tax increases, people have less money to spend, reducing demand for goods and services, which tends to lower the general price level and thereby reduce inflation. Taxes are mandatory contributions levied on individuals or corporations by a

government – whether local, regional, or national. Tax revenues finance all government activities and projects. It goes back to people through essential services and economic benefits. But just as taxes are mandatory, taxes also come off as quite complex. Not quite long ago, taxation in the Philippines underwent a major turn-around which implemented the Comprehensive Tax Reform Program (CTRP). The program aims to expedite poverty reduction, tackle inequality sustainably, and achieve high-income status by 2040 through tax reforms designed to create a fairer, simpler,

and more efficient system that fosters high growth, investment, job creation, and rapid poverty reduction.

The four major Tax Reform Packages in the Philippines are:

- The Tax Reform for Acceleration and Inclusion (TRAIN) Act (Republic Act 10963) was introduced to create a more progressive tax system in the Philippines. Under this law, low to middle-income earners benefit from reduced income taxes, allowing them to take home more pay. On the other hand, high-income earners are required to contribute more. This approach aims to provide balanced tax treatment for employees across different income levels while also increasing government revenues to fund national development projects.
- Sin Tax Reform Law known as TRAIN 2, (Republic Act 11346 and Republic Act 11467) focused on increasing taxes on “sin” products, such as alcohol, tobacco, and sweetened beverages.
- The Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act (Republic Act 11534) was enacted to support businesses in recovering from economic challenges and to attract more investments to the Philippines.

Key features of this Act include the reduction of corporate income tax rates, enhancements to allowable deductions and incentives, rationalisation of fiscal incentives, and the

expansion of value-added tax (VAT) exemptions. These provisions aim to make the business environment more favorable and competitive, boosting economic growth.

- Passive Income and Financial Intermediary Taxation Act (PIFITA) aimed at simplifying and rationalising the taxation of passive income and financial transactions.

Q2

Is your jurisdiction looking to reduce the potential for tax-efficient asset management?

A Collective Investment Scheme (CIS) is rapidly growing in the Philippines, which involves the pooling of funds solicited from the investing public to invest, re-investing, and trading in securities or other assets, as permitted by existing laws. The three common types of CIS are mutual funds (MF), unit investment trust funds (UITF), and variable-unit linked (VUL) insurance.

The taxation of passive income and financial intermediaries is under Package 4 of the Comprehensive Tax Reform Program (CTRP), which includes several provisions on the taxation of CIS. The reform of Package 4 on passive income is the unification of tax rates and harmonisation of business taxes on financial intermediaries.

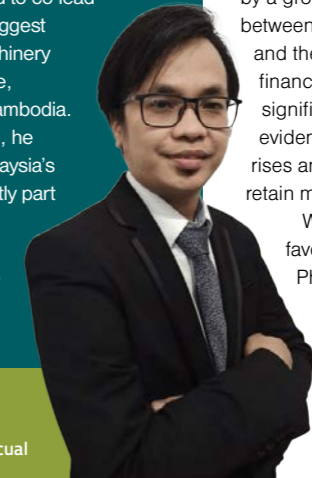
Aimed at encouraging greater capital inflow and economic activity, the measure seeks to enhance the competitiveness of capital and financial products by aligning the Philippines’ financial tax regime with that of its regional counterparts. This alignment

Hector is a Philippine CPA with more than twelve years of overall experience in external audit, internal audit, fraud audit, tax compliance audit, due diligence & valuation, business process review, special engagements and accounting functions. He has vast experience in local taxation and general knowledge in Australian taxation.

His professional career started when he engaged himself from one of the big four auditing firms in the Philippines and has extensive knowledge in financial audits of companies registered in economic zone areas (PEZA & BOI) that are engaged in manufacturing, sub-assembly, trading, information technology, manpower placement, and non-profit activities. He was seconded to UHY Malaysia where he was tasked to co-lead and audit a subsidiary of one of the biggest distributor and supplier of quarry machinery and equipment in Malaysia, Singapore, Indonesia, Thailand, Myanmar and Cambodia.

In addition to his audit experience, he also undertook training with UHY Malaysia’s technical head. Hector is also currently part of the De La Salle University college faculty, the Systems Technology Institute College, and the CPA Online Review School teaching the subject Accounting & SAP.

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geopolitical risks, policy shifts, tax reforms, market volatility, globalisation, technological advancements, demographic shifts, and ESG factors all contribute to the evolving landscape of wealth management.

The Philippines may have underdelivered on its economic and market potential in the past. But, driven by a growing sense of alignment between the private sector, regulators, and the government in promoting financial sectors, there is still significant positivity. It is particularly evident as the mass affluent class rises and the government aims to retain more private wealth onshore.

With positive GDP growth and favorable demographics, the Philippines is confident about it. They encourage private clients to diversify their investments, moving away from passive deposits and increasing their exposure to financial market investments.

Local and international players must position themselves in this high-potential market in the current competitive environment and understand the key drivers as the population grows and the economy and private wealth creation expand, even amidst global uncertainties.

The regulatory environment in the Philippines is improving, with oversight from three major regulators for wealth management entities: the Central Bank of the Philippines, the Securities and Exchange Commission, and the Insurance Commission.

Despite challenges such as increased competition, regulatory hurdles, cost pressures, and changing client expectations, the sector also presents opportunities for growth and innovation.

Q3

Is wealth management becoming more complex as a result of political or economic drivers?

At current, complexity in wealth management is increasing due to a combination of political and economic drivers. Regulatory changes,

is intended to make the country more attractive to investors and foster a more robust economic environment.

Randolf “Dolf” B. de Guzman has been the Managing Partner of De Guzman, Pascual & Associates CPAs since its inception in February 2020. Subsequently, he is the Founder of the advisory firm that bears his name, RBDG Tax & Business Advisory which started in January 2018. His specialisation includes Financial Compliance & Operational Audits, Corporate Services, Business Advisory, Accounting Systems implementation, Forensic Financial investigation, and review of end-to-end processes & procedures of the establishment of businesses in the Philippines. Dolf has extensive knowledge in compliance in specialised industries such as PEZA and BOI. Dolf is also an academic as he has been an Accounting Instructor for the National University of the Philippines on both their Laguna and Cavite Campuses. He serves as a member of the following professional associations namely: Philippine Institute of Certified Public Accountants (PICPA), Association of Certified Public Accountants in Public Practice (ACPAPP), National Association of Certified Public Accountants in Education (NACPAE) and the Insurance Commission (IC). He is also involved in socio-civic organisations as he also is a member of the Rotary Club International, Kiwanis Club International and the Fraternal Order of Eagles – Philippine Eagles. He finished his Master of Business Administration (MBA) at Philippine Christian University in Manila on March 2024. He passed on both examination of Certified Tax Technician and Certified Forensic Accountant held last November 2023 and January 2024, respectively, and is a bona fide member of those professional associations.



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About us... dgpcpa.org

De Guzman, Pascual & Associates CPAs is a dynamic and business-oriented accounting and consulting company duly accredited and registered at the Board of Accountancy (BOA), Securities & Exchange Commissions (SEC), Bureau of Internal Revenue (BIR), Department of Labor and Employment (DOLE), and a Local Government Unit (LGU) as a general professional partnership. Also, the firm has secured an accreditation with the Cooperative

Development Authority (CDA) as Cooperative External Auditor (CEA) to complement their services to the ever growing needs of clients.



Tax, assets, and politics

The outlook for UK wealth management

Justin Moore
Partner
Arnold Hill

Q1

Is your jurisdiction maintaining high taxes as a means of arresting inflation? What effect is this having on private clients?

Whilst higher taxes may form part of a broader government strategy to curb inflation, the primary responsibility for managing inflation in the UK rests with the Bank of England which adjusts interest rates and controls the money supply to maintain inflation in the target range. However high taxes could support curbing inflation the following ways impacting private clients:

- Reducing Disposable Income – higher general taxes can reduce the disposable income of consumers, leading to reduced spending and investment.
- Targeted Tax Increases – since taking power in July this year the UK Labour government has introduced targeted tax increases in respect of private school tuition fees (through the removal of the VAT exemption on those education fees and related costs) Whilst essentially a direct revenue-raising measure for the government, the disposable income of those private school families will be reduced.
- It is widely anticipated that the

forthcoming budget will see increases in capital gains tax rates and inheritance tax rates. This is likely to lead clients to hold assets for longer periods, but also to demand higher returns when making business investments, particularly in early-stage businesses. Some businesses will simply fail to be funded, others may



Justin has been with the firm for more than 30 years and has a broad range of experience. His clients tend to be entrepreneurial or regulated clients (often both!) and enjoy his proactive and commercial approach. In terms of regulated sectors, Justin acts for private equity managers, investment managers, hedge funds, insurance businesses and solicitors.

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run out of funds through smaller future funding rounds. All of this will act as a drag on economic growth.

- Increased tax revenues can be used to fund government programs or investments that improve productivity and supply-side capacity in the economy. Although not able to invest as much as they had previously hoped, the new UK Labour government has committed significant investments in clean UK energy which should increase the competitiveness of the UK manufacturing sector and provide opportunities for investing alongside the government.

Q2

Is your jurisdiction looking to reduce the potential for tax-efficient asset management?

No, quite the reverse we think. In the current environment of relatively high taxation, it is incredibly important to look at all aspects of tax-efficient investing. We would encourage clients to look at ISAs, pensions, venture schemes etc., but also to look at tax-efficient structures like trusts and family investment companies. Offshore

bonds are becoming popular again too, particularly for UK resident non-domiciled taxpayers.

Beyond the investment wrappers and structures, the ongoing difference between tax rates on income and gains in the UK encourages wealth managers and their clients to actively allocate assets to produce returns taxed at the lowest rate of taxation. If the gap between income and capital gains tax rates is closed in the forthcoming Budget (30 October 2024) the emphasis on asset allocation in terms of producing income or gains should reduce, at least in part.

Q3

Is wealth management becoming more complex as a result of political or economic drivers?

Yes, without doubt, both in the UK and globally. Examples in the UK include:

Tax Policies and Regulations – changes in tax laws, such as increases to capital gains taxes, estate taxes, and income tax rates, or the withdrawal of tax exemptions can significantly impact wealth management strategies. For instance, proposed tax reforms may lead wealth managers to rethink asset allocation and investment vehicles to

MY ADVICE...

➤ **Plan:** preserving wealth should take account of your day-to-day needs, the type of return you require (monthly, annual, lifetime), and your attitude to risk. Investments often produce the best returns when they are held for the long term without frictional transaction costs.

➤ **Structure:** when you know the plan you can select the investments and the structures to deliver the cashflows tax

efficiently. Some assets may be held in tax wrappers (ISA's, Pensions, Offshore bonds), others may be held in more personalised structures such as trusts and family investment companies. The structuring will bring tax efficiency to the plan.

➤ **Review:** needs and circumstances change, so the plan and the structuring should be kept in constant review (at least triennially) and updated where necessary.

optimise tax efficiency.

Geopolitical Risks – events such as conflicts, sanctions, and political instability in key supply and trade regions can create uncertainty for markets and investors. We have recently seen the conflicts in Ukraine and the Middle East move markets and asset allocations significantly.

Regulatory Changes – the UK financial services industry is heavily regulated, and changes in regulations can impact wealth management products. Regulatory changes, such as increased or reduced levels of permitted gearing within structured products can dramatically alter returns and investment performance

Environmental, Social, and Governance (ESG) Considerations – political policies advocating for sustainability and social responsibility have led to a rise in ESG investing.

Wealth managers are increasingly tasked with incorporating ESG factors into their investment strategies, which can complicate portfolio management and require more sophisticated analysis

Monetary Policy and Interest Rates – political decisions related to fiscal stimulus, government spending, and monetary policy can influence interest rates and inflation. The Liz Truss / Kwasi Kwarteng mini budget in the UK highlighted dramatically how these decisions can move the market very quickly.

In summary, the interplay between wealth management and political factors is becoming increasingly intricate. Wealth managers must stay informed about political developments and their potential implications for investment strategies, client relationships, and overall market conditions.

About us... www.arnoldhill.co.uk

Arnold Hill & Co LLP have been proudly delivering tailored accountancy services for over a century. Based in the heart of London, we combine tradition with a forward-thinking approach to meet the evolving needs of our clients, both across the UK and internationally. With 5 partners and over 70 employees, we advise corporate, personal and not-for-profit clients on tax and business issues. Over the years we have transitioned from accountants to advisers and more recently we are becoming an extension of our clients' finance teams through strategic partnerships.

We currently serve a large number of clients, who range from entrepreneurial or high-net-worth individuals to multinational corporations who appreciate efficient tax planning to enhance their wealth. Our services include tax compliance, tax planning and international structuring in addition to the traditional audit, accounting and business advisory services. Our personal clients are predominantly individuals seeking help with personal taxation whilst our corporate



clients tend to be international groups of companies requiring business consultancy. Our clients also range from family trusts and charitable foundations to small businesses outsourcing their bookkeeping and payroll work. From family trusts and entrepreneurs to growing businesses and multinational groups, our clients all value the peace of mind that comes from partnering with a trusted, resourceful firm of chartered accountants.

The size of the firm is small enough to provide an unusual degree of personal service, yet large enough to provide every type of professional support required by our clientele. **At Arnold Hill & Co LLP, your financial prosperity is our priority.**

Bearing the burden

Marcelo Botelho Pupo

Partner

BPS



Marcelo Botelho Pupo, lawyer in Brazil and Portugal, operates in the tax consultancy, family law and inheritance area, possessing the relevant experience in advising families with transnational assets.

Specialised in national and international tax planning for individuals in migration to Europe (Portugal, Italia, Germany, Switzerland) and the US, tax compliance, as well as international inheritance procedures, Marcelo was responsible to coordinate migration processes, termination of tax residency in Brazil, regularisation of Brazilian assets for residents in Europe and the United States, conduct inheritances with Brazilian, German, Swiss and Italian assets.

Bachelor of Law, specialist and master in Tax Law; enrolled in OAB-SP and OA Lisbon; Member of Brazilian Associations AASP and IASP and International Associations IR Global and STEP; author of book and articles on tax matters. Portuguese speaker and Fluent in English, Italian and German.

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Brazil currently ranks as one of the countries with the highest tax burdens globally, leading the tax burden index in Latin America, as reported by the OECD in 2021.

The Brazilian tax system is characterised by taxes imposed at federal, state, and municipal levels, creating a complex landscape for stakeholders seeking clarity. This complexity is compounded by extensive tax legislation governed by laws from the Union, 27 states, and 5,570 municipalities, alongside ongoing tax litigation at both administrative and judicial levels. The Supreme Federal Court plays a pivotal role in defining the tax burden, applicable rates, and calculation bases.

Approximately 50% of Brazil's tax revenue is derived from consumption taxes, with combined rates potentially reaching 28% on domestic products and 45% on imports. Consequently, economic stakeholders often utilise interest rates as a mechanism to manage inflation, rather than relying on taxation.

This intricate and unpredictable tax environment presents significant challenges for both taxpayers and the government. In response, Brazil has embarked on a comprehensive consumption tax reform initiated in 2023, aimed at streamlining the tax framework by reducing the number of taxes over a five-year period, with a projected unified rate of approximately 27% according to government forecasts.

The primary objective of the tax reform is to simplify the tax legal

structure, mitigate high levels of litigation, and foster a more conducive business environment. The true impact of these reforms will be assessed during the implementation of the new value-added tax model. In parallel, the federal government is enacting legislative changes that will affect high-net-worth families, particularly those with international investments and inadequate succession planning.

Traditionally, Brazil has imposed taxes on individuals based on a cash basis, including those utilising corporate or trust structures abroad for investment purposes. Until 2023, investments made abroad by Brazilian residents were taxed upon distribution to beneficiaries, whether as dividends or capital distributions.

Starting in 2024, Law 14,754 will come into effect, mandating annual taxation on income generated abroad by tax residents who own controlled companies, serve as settlors or beneficiaries of trusts, or hold insurance policies whose principal and income are redeemable by the insured or their beneficiaries, among other significant reforms.

Although Brazil lacks specific regulations governing trusts, tax legislation treats them as transparent entities for taxation purposes, requiring that income derived from investments held in trusts be subject to annual income tax in Brazil.

Another notable change introduced by this new law pertains to the taxation of foreign exchange transactions involving assets abroad. Prior to 2023,

“The complexity of wealth management in Brazil is further exacerbated by the country’s political and economic instability.”

investments made in foreign currency—typically by foreigners residing in Brazil or Brazilians living abroad—were not subject to taxation on fluctuations in the value of the Brazilian currency. Capital gains tax was only applicable to foreign assets purchased with Brazilian currency. Effective 2024, all investments made in foreign currency will be subject to taxation based on exchange rate variations. Even if an investor experiences a loss in the investment currency, any gain associated with the devaluation of the Brazilian currency will be taxed at 15%.

In addition to consumption and income taxes, inheritance taxes were increased in 2023, allowing states to levy taxes on inheritances at progressive rates of 4% to 8% (up from a previously fixed rate of 4%), including foreign assets within the scope of Brazilian taxation. This legislative change poses significant implications for families with assets abroad, as Brazil does not have international treaties to prevent double taxation on inheritances and lacked prior legislative authority to tax assets received from inheritances processed overseas. As a result, heirs may now face the risk of double taxation.

Since the inauguration of the left-wing government on January 1, 2023, numerous changes to Brazilian tax legislation have rendered the taxation of investments held by affluent families more burdensome, both in terms of the investments themselves and the

succession planning processes. While certain tax incentives aimed at stimulating local investments—such as exemptions from income tax on dividend distributions and incentives for the corporate real estate sector—remain intact, there are proposals to revise these incentives.

The complexity of wealth management in Brazil is further exacerbated by the country’s political and economic instability. Frequent changes in government policies, coupled with fluctuating economic conditions, create an environment of uncertainty that complicates long-term financial planning. The potential for abrupt shifts in tax legislation and regulatory frameworks can disrupt established wealth management strategies, necessitating continuous adjustments by wealth managers.

High inflation rates, currency volatility, and varying interest rates add layers of complexity to investment decisions, compelling families to remain agile and responsive to changing market conditions. Additionally, political polarisation may result in inconsistent policy enforcement and shifts in economic priorities, making it challenging for families to navigate the landscape effectively.

In this dynamic environment, high-net-worth families are exploring alternatives, including jurisdiction changes as a strategy for wealth and succession planning. However, challenges remain significant on a global

scale. A comprehensive understanding of tax regulations, family law, and succession rules is imperative. Brazilian regulations concerning marriage, same-sex unions, stable unions, and their implications in cases of separation or succession may not be applicable in destination countries, potentially leading to unexpected challenges.

In light of these developments, it is crucial for wealth managers to adopt a proactive approach. This includes conducting thorough due diligence on potential jurisdictions, understanding the implications of local laws on foreign investments, and analysing the potential impact of tax reforms on overall wealth management strategies. Engaging in scenario planning to anticipate future changes in legislation can also provide valuable insights for families navigating this complex landscape.

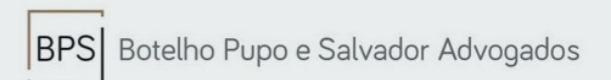
The continual evolution of regulations, driven by political and ideological disputes between conservative and liberal factions, in conjunction with international economic dependencies, necessitates thorough preparedness from wealth managers. They must remain vigilant regarding economic challenges and the various proposed changes that could affect wealth management and succession processes.

In such complex circumstances, asset preservation requires ongoing diligence. Therefore, it is recommended to: 1) Consult a qualified professional prior to making decisions; 2) Prepare the family for each jurisdiction; and 3) Regularly review and update advice to ensure compliance with any changes.

About us... en.bpsadv.com

Botelho Pupo e Salvador Advogados is a boutique law firm focused on wealth management issues, such as structuring assets, tax planning, succession for HNW families, with international complexities. Focused on structuring, protecting and planning assets located in Brazil and abroad, as well as evaluating Brazilian succession processes and migration procedures, the firm has helped Brazilian and European Families with international complexities comply with different jurisdictional requirements.

Incorporated in São Paulo in 2017, Botelho Pupo e Salvador is the union of two experienced lawyers who have worked at major consulting and auditing firms in the world and the most renowned law



firms in São Paulo, with activities developed in Brazil and abroad.

Our firm’s service is premised on the confidentiality of information, supported by ethics and legal certainty, in which we believe that the in-depth knowledge of each case and the close and personal relationship with each individual or family members are essential to a service delivered successfully.

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