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Going Big and Going Home

Change is coming for our Global report and (for a time) our newsroom.

As we closed out the October edition of The American Lawyer, we had our eye on expansion of several kinds.

First and foremost, our Global 100 report shows substantial growth in revenue and head count among the world's 100 largest law firms by gross revenue. Steady demand along with some new entrants with high lawyer head count have led to a bigger rise in gross revenue than the global market has seen in several years.

The list is also more geographically expansive, as four new firms with significant roots in China made it onto the Global 100. Speaking of China, our China 45 report, also out this month, has grown from the China 40 last year, and includes detailed profitability numbers on all of those firms.

And for the first time, we have expanded our Global survey to include 200 firms. The ranking of the Global Second Hundred based on gross revenue will publish in our November edition, offering a deeper glimpse into the financials behind the biggest players across the entire legal industry. That will be coupled with the Asia 50 report, which will examine how firms from around the world are succeeding in Asia.

You will notice an increasingly global focus in our coverage, as our audience looks to adapt to the increasingly global needs of clients. But as our story on global markets in this edition highlights, many firms are focusing their efforts back onto the United States, which, after all, remains the most profitable legal market in the world.

Another change you will notice in this edition is our use of a new acronym to describe everyone's favorite financial metric, profits per equity partner. We will now refer to that metric as PEP rather than PPP, the latter of which we felt could too easily be confused with profits for all partners, an increasingly used metric.

On a more personal front, I'll be spending more time at home over the next three months as we expand our family to welcome our second child. I look forward to following what's happening in the industry, albeit more likely from 2 a.m. scans of Twitter than meetings with law firm leadership. I'll be back in December and ready to hit the ground running with The American Lawyer Industry Awards. In the meantime, you are in the exceptionally capable hands of managing editor Ben Seal, who has some great things planned for the next few editions and beyond.

I encourage everyone to reach out to Ben with story ideas and just to get to know him if you haven't already. He can be reached at bseal@alm.com.

Here's to a successful fourth quarter. Good luck with collections, comp setting, strategic planning and, oh yes, the actual legal work! I'll be checking email and welcome tips of another sort—on parenting more than one child, getting infants to sleep through the night and other of life's mysteries.

Gina Passarella, Editor in Chief
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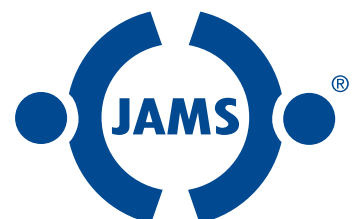
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SUMMER OF SATISFACTION

Aspiring lawyers know what they want, and for the most part they're getting it.

BY LIZZY MCLELLAN

THE MENTORSHIP connections, flashy social events and, of course, exposure to interesting legal work appears to be working. Summer associates have been, on average, thrilled with their experiences in Big Law this year.

The 2018 class of aspiring young lawyers gave an average satisfaction score of 4.768 out of 5, a survey by The American Lawyer and ALM Legal Intelligence found. None of the 85 firms ranked earned an average score of less than 4.3.

The summer associates' most memorable moments, as described in open-ended answers, show that a number of law students were making meaningful contributions on deal teams and in litigation, while also fully enjoying high-end social excursions like Taylor Swift concerts, Broadway plays, professional sports games and retreats in far-flung offices.

The ranking of firms by summer associate satisfaction showed a shake-up, with seven firms in the top 10 that were not there last year. Firms were ranked by their average scores based on nine categories: interesting work, real work, training and guidance, partner-summer associate interaction, associate-summer associate interaction, communication of goals and expectations, ac-



curacy of firm self-portrayal, inclination to accept full-time associateship and overall rating as a place to work.

White & Case, with a perfect average score of 5.0, was the top-ranked firm, hopping up from eighth in 2017 and taking the place of Philadelphia-based Duane Morris and Boston-based Foley Hoag, which tied for first last year. Duane Morris stayed in the top 10 at No. 6, and Foley Hoag had just eight survey participants, so it was not ranked nationally.

Kramer Levin Naftalis & Frankel was second, and Paul

Hastings was third, jumping up from 11th and 16th, respectively. The most dramatic changes among the top 10 firms were at Willkie Farr & Gallagher, which went from 49th to fourth, and Baker McKenzie, which went from 37th to ninth. Summers at those two firms praised the amount of substantive work they were given and the friendliness of lawyers at the firm, and a few noted that work-life balance was better than they expected, particularly at Baker McKenzie.

Other firms in the top 10 were Clifford Chance (fifth),

Dechert (seventh), Akin Gump Strauss Hauer & Feld (eighth) and Blank Rome (ninth, tied with Baker McKenzie).

The 2017 top 10 firm with the biggest change in its ranking was Arnold & Porter Kaye Scholer, which went from No. 3 to No. 44. Still, the firm had an average satisfaction score of 4.748. In their open-ended survey responses, Arnold & Porter Kaye Scholer summer associates' most common criticism was of the firm's assignment system, which one described as "rigid."

In a statement, a spokeswoman for Arnold & Porter said the firm puts a two-week limit on summer associate assignments "to allow and encourage each summer associate to work on projects with a number of different lawyers and clients during the course of the summer."

"In our experience, an approach such as this not only helps the summer associate become acquainted with the diversity of our practitioners and their varied working styles, it also enables the firm to accumulate a broadly balanced and reliable assessment of the summer associate's capabilities," the firm said.

The lowest-ranked firm on the list was Philadelphia-based Drinker, Biddle & Reath, which dropped 23 places since last year. It was the only firm whose average

scores for interesting work and real work dipped below 4.

Drinker Biddle hiring partner Justin Kay notes that in the firm's own internal summer associate survey, most respondents said their work was interesting, while just one individual said it was "dull with some high points." And he says the firm's use of training modules for summer

associates, while they are decidedly not "real work," are an integral part of the program, giving young lawyers exposure to practice areas where they would otherwise be unable to gain experience.

"That's by design, and I think it really sets us apart," Kay says. "Speaking globally, the fact that the lowest score is a 4.379 shows that big law firms

are doing a really good job running their summer programs."

While respondents across the country generally expressed very positive views of their summer experiences, they also did not shy away from saying what they want in a workplace. That occasionally came out in a kudos to their firm for work-life balance or diversity efforts, but more of-

ten as a push on their firms to make further improvements in those areas.

MAKING BALANCE MAINSTREAM

Aspiring lawyers want to have a life outside of work, and they don't want to hide it.

Work-life balance has become important to more summer associates than any other

THE SUMMERS REPORT CARD

The top 50 big firms as ranked by summer associates.

2018 Rank	2017 Rank	Firm	Average Score
1	8	White & Case	5.000
2	11	Kramer Levin Naftalis & Frankel	4.992
3	16	Paul Hastings	4.985
4	49	Willkie Farr & Gallagher	4.965
5	18	Clifford Chance	4.958
6	1	Duane Morris	4.957
7	19	Dechert	4.954
8	4	Akin Gump Strauss Hauer & Feld	4.951
9	37	Baker McKenzie	4.950
9	13	Blank Rome	4.950
11	41	Stroock & Stroock & Lavan	4.949
12	12	Kilpatrick Townsend & Stockton	4.947
13	13	Schulte Roth & Zabel	4.943
14	27	McDermott Will & Emery	4.941
15	13	Proskauer Rose	4.939
16	—	Robins Kaplan	4.933
17	9	O'Melveny & Myers	4.919
18	6	Goodwin Procter	4.914
19	30	Cahill Gordon & Reindel	4.912
20	23	Orrick, Herrington & Sutcliffe	4.907
21	31	Eversheds Sutherland	4.905
22	66	Foley & Lardner	4.878
23	17	Morgan, Lewis & Bockius	4.877
24	21	Gibson, Dunn & Crutcher	4.870
25	5	Crowell & Moring	4.868

2018 Rank	2017 Rank	Firm	Average Score
26	89	Ballard Spahr	4.865
27	33	Morrison & Foerster	4.861
28	55	Linklaters	4.860
28	63	Simpson Thacher & Bartlett	4.860
30	22	Sidley Austin	4.854
31	39	Kasowitz, Benson, Torres & Friedman	4.848
32	25	Fried, Frank, Harris, Shriver & Jacobson	4.839
33	33	Katten Muchin Rosenman	4.833
34	39	Dorsey & Whitney	4.826
35	28	Winston & Strawn	4.825
36	36	Latham & Watkins	4.817
37	47	Wilmer Cutler Pickering Hale and Dorr	4.808
38	69	Sheppard Mullin Richter & Hampton	4.799
39	26	Shook, Hardy & Bacon	4.796
40	7	Choate Hall & Stewart	4.795
41	10	Cadwalader, Wickersham & Taft	4.788
42	42	Sullivan & Cromwell	4.767
43	68	Jenner & Block	4.764
44	51	Finnegan, Henderson, Farabow, Garrett & Dunner	4.761
45	32	Cooley	4.755
46	45	Pepper Hamilton	4.753
47	3	Arnold & Porter Kaye Scholer	4.748
48	57	Shearman & Sterling	4.744
49	61	Milbank, Tweed, Hadley & McCloy	4.733
49	43	Venable	4.733

factor in evaluating their job offers. When asked what factors they would consider, 47.6 percent said work-life balance, up 3 percent from last year. Interestingly, however, the percentage of summer associates giving “relaxed office” as a factor in evaluating offers dropped considerably, from 25.1 percent to 20.7 percent, suggesting that they are content to work in a more formal environment if it means they can have a life outside of the job.

Summer associates’ views on what they actually observed were mixed. Numer-

Others are critical of the vast number of social events they were expected to attend as a summer associate, complaining that those obligations, while fun, took away from their ability to recharge off the clock, or worse, to get their work done.

And they want their firms to be upfront about flexible work options.

“Proactively make working from home less taboo and more mainstream,” a San Francisco respondent notes. “It’s 2018 and working from home (within reason) should not be

Atlanta says. “As it stands, I expect to hear about it at any moment, but other opportunities for [on-campus interviews] at school are coming and going, and I don’t know whether to pursue those opportunities or not.”

Still, the number of summers unsure of whether they will receive an offer decreased slightly, to 8.2 percent, and 84.9 percent said they are expecting to receive an offer.

Despite their gripes about offer uncertainty, another 8 percent of summer associates had already been offered a job when they answered the survey, showing an

few [people of color] who are in the office feel like this isn’t a space they belong in.”

When asked what they would consider in evaluating a job offer, 10.7 percent of survey respondents said diversity was an important factor, up from 8.8 percent last year.

And 6.7 percent say an above-average proportion of female partners was an important consideration, up slightly from 5.9 percent last year.

Many survey respondents, in their open-ended answers, urged their firms to continue or strengthen their efforts toward diversifying their firm and its leadership.

One summer associate in



Drinker Biddle hiring partner Justin Kay notes that, “speaking globally, the fact that the lowest score is a 4.379 shows that big law firms are doing a really good job running their summer programs.”

increase from 6.4 percent last year.

DIVERSITY, NOT EXCUSES

It’s not difficult for summer associates to see whether their firms’ diversity efforts are working. All it takes is a look around.

“I would tell the firm that diversity in top law schools already exists,” one New York summer says. “The firm needs to be more focused and aggressive in its recruitment of these people.”

Another summer associate says the lack of diversity in their firm’s Wilmington, Delaware, office “makes the

Boston, acknowledging that their firm was making an effort to be more diverse, called out the legal industry at large.

“My goodness does Big Law need to do so, so, so much more. It was a really unpleasant shock to look around the room on the first day and see that a law firm with a good reputation and a strong stated commitment to diversity had such a white and male summer class. And then you scroll through the firm’s website and see everyone’s pictures and it’s just really discouraging,” the Boston associate says.

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ous survey respondents said in open-ended answers that they were surprised by the work-life balance their firms afforded, or by the number of lawyers who worked reasonable hours at the office.

But some say their firms could do more to encourage the use of flexible arrangements or criticize the expectations they were held to.

“There is no work-life balance, and the attorneys who succeed are ones who are single or who have stay-at-home wives,” a summer associate in Charlotte says.

that big of a deal. It also demonstrates trust in associates and a greater sense of autonomy.”

MANAGING EXPECTATIONS

Also in the spirit of openness, summers ask that their firms be more upfront about whether a job would be waiting for them at the end of the season and which practice areas would be hiring.

“I would like them to be more clear about when to expect job offers, if ever. Perhaps give us a date when we can expect to be told ‘yes’ or ‘no,’” a summer associate in

FLOCKING TO FREELANCE FIRMS

Lawyer moms are finding a match with “extreme part-time” work.

AFTER HAVING HER second child, Southern California litigator Erin Giglia worked part-time for law firm Snell & Wilmer, but fellow associate Laurie Rowen had different plans for work when her baby girl was born 16 days after Giglia’s daughter.

Rowen always knew she wanted to be a stay-at-home mom, while continuing to do legal work on an extremely part-time basis. It took nearly a year for Giglia to jump on board, but when she did, the pair co-founded Montage Legal Group, a new legal business model especially attractive to women.

Montage and firms like it have proven a good match for all sorts of lawyers who want to set their own work terms, but they have become particularly popular with lawyer moms who want to dramatically reduce their hours after they give birth, but who also want to stay in the legal game. The part-time experience at these kinds of firms also eases the transition back into the profession full time, if they choose to, when their children get older.

About 85 percent of Montage’s 300 freelance attorneys are lawyer moms who average 10 hours of work weekly, Giglia says. “It’s a very sought-after way to go about keeping a hand in the legal field while not having the punishing schedule,” she says.

It was Joan Williams, law professor and director of the Center for WorkLife Law at the University of California, Hastings College of Law in San Francisco, who picked up on the trend of freelance law firms and reported her



Laurie Rowen and Erin Giglia with their children.

findings in a 2015 report, “Disruptive Innovation: New Models of Legal Practice.” Many of these firms call themselves freelance attorney networks, but Williams penned another name that stuck, “law firm accordion companies,” because they allow a law firm or in-house legal department to staff up for

a surge of work, and staff back down right after.

“It used to be that people who didn’t want to work full time in the law—they just dropped out for like 20 years,” Williams says. “They tried to get back in and some failed, some succeeded.”

That phenomenon, no doubt, is a contributing fac-

tor to the low numbers of women partners in private practice. Women make up 45 percent of the associate ranks in private practice, but only 19 percent of equity partners, the American Bar Association’s Commission on Women in the Profession reported in January. Only 26 percent of general counsel at Fortune 500 businesses are female.

Williams noted in her report that Big Law offers part-time attorney schedules—but with strings attached. Part-time lawyers face the stigma of being viewed as less committed to the law firm and their work assignments decline in quality. Part-time lawyers might also face “schedule creep,” where the hours ramp back up slowly toward full-time, but not their pay. Therefore, Big Law attorneys leave their firms rather than asking for flextime, she wrote.

—ANGELA MORRIS

PROSKAUER’S \$63M PONZI SETTLEMENT

The firm resolved a suit over a former client’s scheme.



Proskauer Rose has agreed to pay \$63 million to resolve a lawsuit over the firm’s past work for now-convicted Ponzi schemer R. Allen Stanford.

Settlement papers filed in Dallas federal court showed that Proskauer reached a deal with the court-appointed receiver in charge of winding down Stanford Financial Group—a collection of companies used by Stanford to commit a yearslong, \$7 billion fraud. The settlement would also resolve claims against Proskauer from the Official Stanford Investors Com-

R. Allen Stanford was convicted for his role in a Ponzi scheme.

mittee, or OSIC, which represents the interests of people who held certificates of deposit or other investments with Stanford Financial.

The settlement is subject to court approval. If a judge ultimately signs off on the deal, it would put an end to OSIC’s claims that Proskauer helped Stanford avoid regulatory scrutiny while he was in the midst of carrying out a Ponzi scheme that later led to a criminal conviction and a 110-year prison sentence.

“The \$63 million payment in the Proskauer settlement is substantial,” lawyers for the investors and receiver wrote Aug. 24 in a motion

AN AWKWARD SITUATION

Lawyers who sue their firms face strange circumstances.

MOST BIG LAW partners would probably hesitate to file a lawsuit or pursue a dispute in arbitration against their firms. After all, it's likely to present that lawyer with an unenviable choice: continuing to work alongside fellow partners as the legal claim remains active, or attempting to move elsewhere with the hope that the suit doesn't stain future job prospects.

For those reasons and others, litigating a dispute against one's employer is typically considered a last resort, says Anne Golden, a now-retired name partner at Outten & Golden who specialized in representing executives and other individuals in employment disputes.

"Litigation is a very destructive process," Golden says, adding that the process is often "more destructive to the employee" than the employer. "The employee has



Connie Bertram of Polsinelli.

the burden of proof, and if the employee goes public, they'll never work again in many cases."

Despite the personal and professional repercussions, employees sometimes reach that point of last resort and file suit. In recent years, three women partners at large firms—the now-defunct Sedgwick; Chadbourne

& Parke (now part of Norton Rose Fulbright); and Proskauer Rose—opted for litigation against their firms based on allegations that they experienced gender discrimination in pay and business development opportunities.

The women—Traci Ribeiro, formerly of Sedgwick; Kerrie Campbell, formerly of Chadbourne; and Connie

Bertram at Proskauer Rose—all stayed at their firms during a period when their suit was pending.

Ribeiro, who launched her suit in the summer of 2016, remained at Sedgwick until at least several weeks after her case was resolved in arbitration in April 2017, before landing in the Chicago office of Foran Glennon Palandech Ponzi & Rudloff.

Campbell, meanwhile, remained at Chadbourne for part of her suit's run but was expelled from the partnership with an April 2017 vote. After settling, Campbell started her own solo practice, KCampbell-Law, and has stayed committed to the gender equality struggle she pursued in the Chadbourne case.

Bertram, who brought her gender bias suit in May 2017 and settled with Proskauer in August, continued to hold practice leadership roles at the firm until joining Polsinelli as a shareholder in mid-September.

Campbell's suit was brought as a proposed class action, with former Chadbourne partners Mary Yelenick and Jaroslawa Zelinsky Johnson also serving as named plaintiffs. They all had to consider the reputational, family and other impacts of a protracted court battle, Campbell said in April.

"I felt very much that there was a purpose for doing this that was greater than myself," Campbell said. "That kind of perspective—I had to tap into that. The fighter wanted to keep fighting."

—SCOTT FLAHERTY

to approve the settlement. "But for the Proskauer settlement, the receiver litigation would be vigorously defended by Proskauer, its

prosecution would be expensive and protracted, and the ultimate outcome of such litigation would be uncertain. In light of these issues, plaintiffs believe that the Proskauer settlement reflects a fair and reasonable compromise."

Under the settlement, Proskauer would make a payment but not admit to any wrongdoing, according to court documents.

Claims against Proskauer focused mostly on the work of former partner Thomas Sjoblom, who was at Proskauer from 2006 to 2009. Initially, Sjoblom was also a defendant in the investor committee case, but the

two sides reached an agreement in late 2016 to dismiss those claims.

Proskauer, meanwhile, had argued that it should be shielded from the investor committee's claims under the attorney immunity doctrine. The firm maintained that it never represented the investor committee as a client and, as a result, should be immune from suit in light of court precedent that generally blocks claims by nonclients. That argument failed to sway U.S. District Judge David Godbey of the Northern District of Texas, who in April kept claims against Proskauer in place.

—Scott Flaherty

Answers to the puzzle on page 113

C	L	A	M	S	A	S	S	D	R	U	I	D			
A	U	T	O	C	C	N	Y	R	E	N	T	A			
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By Vivia Chen

Hung Up on Housework

Women's law firm careers are being slowed by their second job: homemaker.



Of all the reasons women quit Big Law—the old-boys' network, lack of mentors and sponsors, client development challenges and plain old sexism—there's another explanation that's far more pedestrian: housework.

Women are leading double lives—high-powered lawyers at the office, and Susie Homemaker everywhere else. According to an American Bar Association and ALM Legal Intelligence survey of 1,300 lawyers at the nation's 350 largest firms, women are bearing the lion's share of responsibilities at home:

Fifty-four percent of women (versus 1 percent of men) say child care is their responsibility. Thirty-nine percent of women (versus 11 percent of men) say they cook the meals. Thirty-four percent of women (versus 5 percent of men) say they leave work for children's needs.

No surprise, then, that the survey finds that 60 percent of women cite caretaking as the reason they ditched their jobs. The shocker isn't that women do

more chores than men, but how much more. (Repeat: Only 1 percent men consider child care their responsibility.)

"Even with progressive families who try to balance duties, society is against them," says a female Am Law 100 partner who lives with her husband and three kids. "It's a cultural vestige of days gone by. School teachers reach out to mothers first, as do pediatricians, nannies—you name it."

Societal expectations explain part of the June Cleaver syndrome, but women themselves can't seem to cede their traditional turf. Often, women joke about why they take on so much of the domestic responsibilities. "If I want to make sure something is done right—that the kids eat decently, don't wear funny clothes and that the house doesn't smell bad—I have to do it myself," says a senior in-house counsel.

It's a phenomenon that extends to other high-achieving women. Research by LeanIn.org and McKinsey & Co. found that senior female managers are seven times more

likely than men to perform home duties. And the Harvard Business Review reports that female CEOs expect little support—either at work or at home—for their careers.

So what can be done to help women before they drive themselves to exhaustion and throw in the towel?

"We don't need to fix the women or their families; we need to fix the firms," says Stephanie Scharf, a leading advocate for women in law who chaired the ABA's commission on women. The key, she explains, is that employers "adjust and adapt to the reality of what many—albeit not all—women need," such as advancement opportunities for lawyers who work part time or flextime schedules and for those who take extended leaves. If firms fail to adopt more creative, flexible career routes, she warns, "they will continue to be led overwhelmingly by males and lose large numbers of talented lawyers."

I get what Scharf is saying: Keep the pressure on firms so they don't regress. That said, I wonder if women shouldn't be putting more pressure on their significant others, too. In the last decade, women have been vocal that workplaces address scheduling and parenthood issues, but why aren't they demanding more gender equality at home?

The problem, some women say, is that it's hard to sell men on the glories of "home management" (the euphemism for housework). "A home boss has enormous power," says the lawyer with three kids. But "it's a thankless job."

All work and no glory: Now that's the kind of job women will take every time. So while men might say they're supportive of women's careers at the office, many are not doing anything close to their fair share at home.

Not to rock the boat, but isn't it high time for a rebellion at home?

Contact Vivia Chen at vchen@alm.com.



By Jill Huse

Bridge the Gap

How marketing and business development can unite business and law.



With an emphasis on theory, not practicality, law schools are falling short in teaching proven business concepts needed to more purposefully develop individual practices and provide the necessary skills to deliver best-in-class service to today's clients.

Most lawyers didn't go to business school. Instead, they spent three years independently synthesizing thousands of pages of case law, engaging in endless Socratic debate and learning how to examine every angle of an issue. What's missing is an understanding of key business concepts, in addition to an emphasis on the soft skills that are crucial for long-term professional success and an understanding of the sales and service role that lawyers have to adopt to build their practice.

Contrast that with business schools, which teach students in a totally different way, focusing on applied business principles such as differentiation, collaboration and driving growth.

No matter how large the law firm, a lawyer must take individual ownership of their practice. It is the business of law that a lawyer's individual success directly impacts the firm's success, and as such, they must understand the practical side of running a business.

In today's competitive world, it takes more than doing good legal work for an attorney to build a solid book of business. It takes true differentiation to propel our industry into the innovative, client-centric and business-focused world that

our clients have occupied for years. Here are five fundamental business school concepts that can enhance the practice of law:

TAKING RISKS

Businesses take risks every day. Private companies go public. Public companies play the opportunistic and volatile stock market—the riskiest platform in our business world. Lawyers, on the other hand, are trained to mitigate risk by examining all possible arguments and outcomes. Businesses would be paralyzed by the same level of risk aversion. Truly skilled lawyers help clients assess the amount of risk they are willing to assume and prioritize their investment in legal services as appropriate.

CONFLICT MANAGEMENT

Managing conflict is a healthy part of doing business. Whether it's holding a partner accountable for something or receiving constructive client feedback, confrontation is rarely addressed, but remains crucial to success. Our industry needs to function more like a corporate business and recognize that conflict resolution as a business practice will help firms flourish.

COLLECTIVE INTELLIGENCE

I've worked with lawyers for nearly 20 years, and they are some of the most brilliant people I know, but they sometimes lack the ability to see the big picture. Businesses understand the power of collective intelligence. Artificial intelligence, business intelligence and competitive intelligence are tools and platforms that the business community use daily to gain a competitive edge in the marketplace. Yet, few law firms have been able to adapt and harness these tools to impact their firms or help influence their position in the market. With the rise of legal project management and legal operations in corporate legal departments, collective intelligence will continue to be a point of differentiation for firms utilizing these resources.

COLLABORATION

By its very nature, law school is a highly competitive environment. Teamwork

feels inefficient and precarious. The institutional bell curve and intense competition for post-graduation jobs do not foster a collaborative culture. Yet, most schools—from kindergarten to college—have migrated to team-based learning. Different perspectives, principles and experiences all bring insight and value to achieving goals. Clients want and expect their lawyers to bring their firm's full experience to bear, something that is only possible through teamwork. Collaboration is an effective way to share opinions, work through conflict, allocate accountability and arrive at the best solution.

CLIENT EXPERIENCE

Think about any retail establishment that you enjoy visiting. What is it about the experience that keeps you coming back? For me, it's Starbucks. Why do I pay \$6 for an order that I can barely remember? Three reasons: It's personalized—they always get my order right,

and they put my name front and center for an added touch; it's convenient—I can order from my phone and skip the line; and there are incentives—I get to participate in a post-visit challenge, and with every order I earn bonus stars toward a free drink. Is it better than the other coffee shop across the street? I have no idea. I haven't felt the need to try it, because I value the overall experience Starbucks provides. They have earned my loyalty.

Erin Ryan, senior business development manager at McGuirewoods, is a JD who has seen the rising importance of business skills over the course of her 13-year career. She says, "An operational, business-driven mentality exercises a different muscle than the Socratic one. While theory, what ifs and nuanced research certainly have their place in a lawyer's skill set, they are simply not enough anymore. Client service, business development, interpersonal skills and the economics of practicing law are essential. And if law schools continue to fall short, it is up to the lawyers to seek out this post-law school curriculum."

So, you can go back to school and get your MBA, or you can seek out individuals like Ryan who can help you bridge this gap. Many law firms already have resources in-house. Look no further than your firm's marketing and business development professionals to provide teaching and coaching on the skills that are needed to differentiate your practice: branding, positioning, relationship selling, business analysis and communications are just a few to add to the list noted above. If you don't have an internal source, check out the Legal Marketing Association and its channel on JD Supra. LMA is a great resource for the legal profession to spot trends, provide training and identify talent to help you take your practice to the next level.

Jill Huse is a member of the board of directors of the Legal Marketing Association and will serve as its president in 2020. She is a partner at Society 54, where she provides consulting and coaching for professional services firms. Contact her at jill@society54.com.

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By the Young Lawyer Editorial Board

The Bittersweet Bump

Associate raises have side effects that firms should acknowledge and address.

In 2016, Cravath, Swaine & Moore raised base salaries for first-year associates to \$180,000. Quickly, many law firms (large and midsize alike) followed. In 2017, the dust seemed to settle. But, this summer, when Milbank, Tweed, Hadley & McCloy increased base first-year associate pay to \$190,000, a new round

of “salary wars” ensued. Pay raises bring immediate celebration for associates, but unintended consequences follow, and the sustainability of an ever-shifting market seems questionable. Firms ought to consider the impact these pay increases have on clients and associates, while also considering other benefits that might create more sustainable careers and more invested associates.

THE BENEFITS OF PAY RAISES

Increases in pay put more money in associates’ pockets and, in turn, associate satisfaction rises. This alone supports the decision to continue investing in associates monetarily. As firms grow in size and profitability, partners often reap the most immediate reward, and firms should seek ways to spread the wealth down the corporate ladder. Firms should

not underestimate the importance of associate morale. Happy associates become more invested in the firm and more invested in their labor, in turn creating higher quality work and improving a firm’s bottom line.

Another benefit to salary increases is that firms stay competitive during the hiring process and in retention of talent. Recruitment and retention are integral parts of firm life, and associates pay close attention to how their firm compares in these areas. The loss of a competitive edge in recruitment can impact associate morale, leading associates to look elsewhere and, in turn, impacting a firm’s retention of young talent. Regular pay raises allow firms to remain competitive while boosting associate confidence that they are at the right firm. Matching pay hikes is simply good branding.

Talking about salary, raises and bonuses can be taboo in an office environment. Associates should not shy away from questioning their firm’s pay scale and bonus structure. In fact, in this era, when one law firm’s decision to raise associate base pay impacts firms across the country, associates—and firms—should consider why these raises are not happening more often. And why these pay increases do not occur in reaction to actual market forces, such as inflation, cost of living, cost of law school, increasing student debt, billable rates and increased hours requirements. Firms also should spend time talking to their associates about compensation. Open lines of communication will ensure that associates’ voices are heard and that firms move with intention, rather than as a reaction to trends.

Although side effects to these sporadic pay increases exist—and are discussed below—associates should continue to critically analyze their firms’ response to the cycle of associate pay raises. And firms should remain open to adjusting pay—and other benefits—in order to address associate value and stability, while also considering the greater long-term impact that more holistic training and purposeful investment might have on associates, clients and firms generally.

DISGRUNTLED CLIENTS AND PRESSURED ASSOCIATES

By now it is a common theme discussed at attorney gatherings: Clients increasingly seek alternative fee arrangements, discounts and other ways to cut costs. Many clients view associate work as on-the-job training. Clients may question where these pay increases comes from and why they are necessary. One of the most immediate effects of an increase in associate salaries is the subsequent corresponding increase in associates’ billable rates. While the salary wars theoretically help ensure that the top firms hire the best associates, clients do not want to pay exorbitant billable rates—rates that often are equivalent to or higher than those of a junior partner at another firm. These clients might begin to push back.

As rates increase, clients might begin to expect an equal bump in the quality of work. Without an obvious improvement in the quality of work provided by associates, clients might stop paying for junior associate time. When that happens, critical on-the-job training opportunities for junior lawyers diminish. One creative solution is for firms to offer seconding associates to clients—or other organizations—so that associates receive actual on-the-job training.

As rates increase, clients may look elsewhere for legal work, even creating more fulsome in-house teams. Since 2007, many corporate clients have taken their legal work in-house as a way to lower legal fees. Higher associate salaries threaten to push more and more companies to take their work in-house, leaving firms no other option but to let go of associates they cannot maintain.

As clients look away, the pressure to perform increases

and the quality of work becomes even more valuable. Associates often need to work more hours—facing the consequence of written-off work while also working under higher pressure, which increases the likelihood of mistakes. In these environments, mistakes are not only frowned upon but lead to partners removing associates from matters, impacting an associate’s bottom line and mental health.

The first years of practice are when most attorneys make mistakes that turn into valuable lessons. New lawyers typically produce high-quality work at a slower pace than more

Firms should be careful not to use these increases in pay as a temporary bandage masking deeper, more fundamental concerns.

seasoned associates and junior partners. Although large firms have traditionally held their associates to a higher standard, the salary increases place additional pressure on associates to deliver quality work at the expense of learning skills in a lower-pressure environment.

The pressure to perform from clients turns into pressure from supervisory partners, and mistakes that would be a natural part of the learning curve are more highly scrutinized. Associates, in turn, receive less experience, work on fewer large cases and experience a decrease in the diversity and substance of professional opportunities.

The pressures associates—and all attorneys—face should not be faced in silence and do not have to be inevitable. If firms begin to see a rise in pressure among their associates, they might consider some of the strategies addressed in this

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board's prior editorial on mental health. Firms also might consider alternative benefits, such as those discussed below.

CREATIVE PERKS AND MORE INVESTED ASSOCIATES

In addition to increasing pay—or sometimes in place of monetary incentives—some firms have begun looking at associate training more holistically. After all, many associates will pay their dues in Big Law—to pay off debt and hone their skills—and then leave for in-house, government, consulting or other legal (or nonlegal) careers. Firms can and should start looking at this as an opportunity to create well-rounded and highly skilled professionals who, if they remain at the firm, become valuable partners, and, if they leave, think highly of their firms and create relationships between the firm and their new employer. These creative perks might include:

- Revisiting the bonus structure and process to ensure that associates feel valued for their hard work and high quality efforts;
- Partnering with business schools to provide industry and financial training;
- Hiring a director for career counseling and planning to more explicitly focus on career development and continuing education opportunities;
- Focusing on and creating associate work-life initiatives, such as consistent and direct feedback or reverse mentoring—wherein young lawyers partner with senior attorneys to provide insight and training on technology initiatives or life as an associate in this era;

- Creating more intentional systems for providing consistent and continuous feedback;
- Granting billable credit for business development and innovation efforts;
- Shortening the partner track;
- Hosting corporate deal clinics;
- Formalizing a ramp-up policy after extended absences;
- Sponsoring sabbaticals at the firm's offices in other cities; or

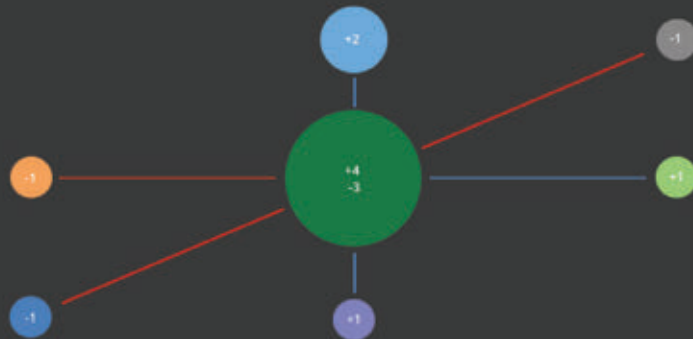
■ Encouraging associates to work remotely or telecommute.

In the era of crippling student debt and an increasing cost of living (across the country, not just in the salary-driving big cities), regular salary increases can improve associate morale and stability. Firms should be careful, though, not to use these somewhat regular (and often expected) increases in pay as a temporary bandage masking deeper, more fundamental concerns—especially as younger attorneys become increasingly open to the idea of a more flexible, well-rounded practice and career path. Holistic training and career development, coupled with increased pay and other benefits, will increase associates' investment in both their careers and their firms, and should satisfy client concerns about their subsidizing associate training. After all, it is the clients who will ultimately reap the benefits of a better-trained and more-invested associate workforce.

The views expressed here are personal to the authors and do not represent the opinions of their employers.

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 **ALM Intelligence**



By Heidi Gardner

Money on the Table

By failing to collaborate, law firms are letting down clients and losing revenue.

Under pressure to develop deep expertise as a way to differentiate themselves in a crowded legal arena, many lawyers have focused more and more on a narrow aspect of the law—data privacy for financial institutions in the European Union, say, or public-private partnerships in the transportation sector. Like law

firms themselves, clients are facing a world that is increasingly volatile, uncertain, complex and ambiguous. Clients need outside counsel that can collaborate to solve their problems, but law firms' increased specialization creates an unfortunate conflict, and many are leaving big money on the table as a result.

When firms get collaboration right—that is, do complex work for clients that spans practices and offices within the firm—they earn higher margins, inspire greater client loyalty, gain access to more lucrative clients and attract more cutting-edge work. Empirical research, based on millions of data records, including time sheets, billing records and personnel files across dozens of global firms, provides the quantitative evidence. This form of integrated client service, which often crosses practice groups and other silos, is what I call smart collaboration. It requires a radically more sophisticated approach than the self-serving cross-selling tactic that a lot of managing partners implore their lawyers to engage in.

The problem is that most firms have carved up their highly specialized, professional experts into narrowly defined practice areas, and collaborating across these silos is often messy, risky and costly. Even when partners recog-

nize the need for greater collaboration in their firm to drive growth, their intellectual buy-in doesn't translate to behavioral change. They worry that a short-term reward system makes collaboration a fool's errand. Or, even if they see the benefits, they simply don't know how to get started or how to prioritize the myriad prospects.

This article provides a starting point. Using data from across multiple firms, we show how cross-practice collaboration can provide significant revenue uplift—and outline how firms can analyze their existing data to see whether they're reaping their full potential. Our benchmarks suggest that most firms could increase revenues by 5 to 12 percent by shifting their portfolio of service. We also show examples where firms aren't currently realizing collaboration's benefit. Here, we provide direction for how leaders can interrogate their results to understand why they are underperforming their potential.

THE UPSIDE OF COLLABORATION

Clients care about the quality of partner-to-partner collaboration because it's the best way to get efficient, high-quality, customized counsel on a host of issues. But we also know that

they push back on bills that have “team meeting” as a line item. So are they really willing to pay?

Our data—and most likely yours—confirms it. Firms whose lawyers develop the confidence and capabilities to open conversations with their clients about how to add value through collaboration are winning more loyal clients and greater profits. But when we run the numbers for many firms, their leaders are surprised by the results.

The first step to understanding your data is to analyze your current client portfolio to determine the average revenues for each group of clients that are served by the same number of practice groups. In one firm, we saw that revenues were 5.7 times higher for clients served by three practice groups than by a single one. Those clients served by five practice groups generated fees 17.6 times higher than those with just one kind of service.

We have found this typical pattern across dozens of law firms—and other kinds of professional firms, such as Big Four accounting firms, boutique consultancies and financial institutions. Perhaps even more important is the direct correlation between client longevity and the number of practice groups involved. While 75 percent of clients working with a single partner would consider switching firms if that partner left, 90 percent of clients served by two or more partners would remain loyal to their firm under the same circumstances. These numbers indicate that revenues don’t just multiply as a result of effective collaboration; they become significantly more sustainable.

WHEN COLLABORATION DOESN'T WORK

Just because multiple practice groups are billing a client doesn't mean that they're actually collaborating. In one firm we studied, for instance, the leaders were initially quite pleased because their business development team had generated a list showing that a range of clients within their top 200 were served by up to eight of the firm's practice groups. When we ran the analysis to see how much revenue those initiatives were producing, however, the numbers were shocking: for clients served by three practice groups, fees were a paltry 1.5 times higher than for

clients served by a single group, meaning each group was effectively generating far less than it would serving a client solo.

If you've analyzed your data and it doesn't demonstrate the uplift you're looking for, there are ways to interrogate the situation and try to find out what's going wrong.

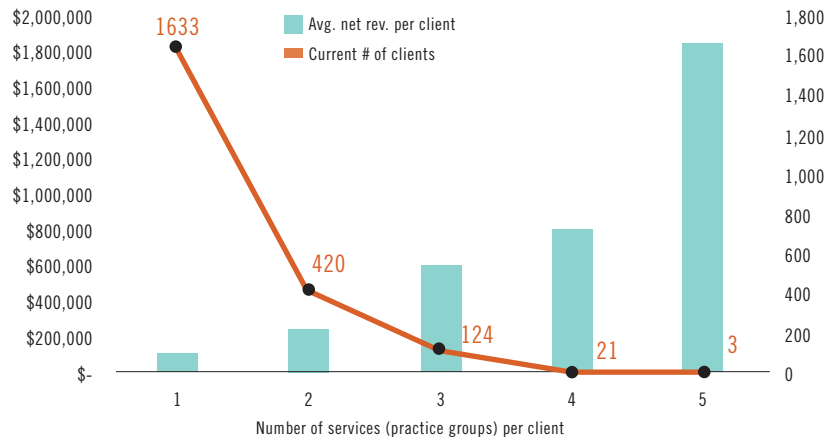
Are the clients served by multiple practice groups actually served separately by each of these practice groups rather than teaming up to solve more complex matters? In an ideal collaborative scenario, the whole should be more than the sum of the parts. If it is

less, you know your practice groups are working individually.

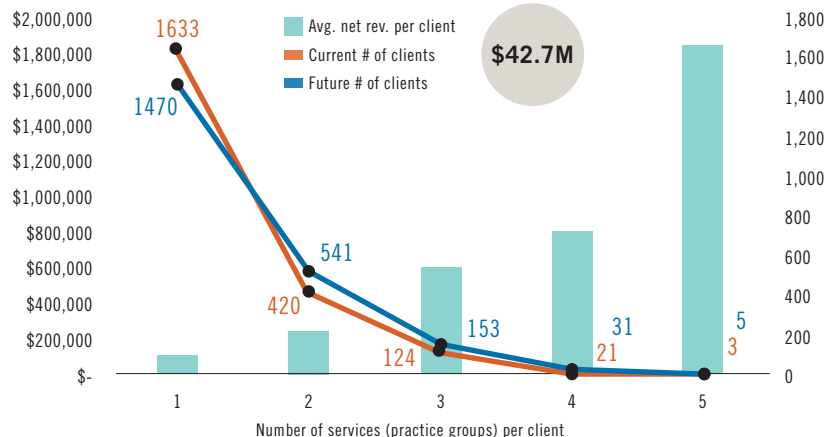
If you can identify good examples of practice group collaboration, are your teams pricing their efforts correctly? Billing clients for only the sum total of each group's effort ignores the value-add and synergies provided by smart collaboration.

Is there a realization problem? You might be attempting to bill higher fees, but clients could be pushing back on those figures because you're tackling the wrong problems, passing unnecessary costs onto the client or being otherwise ineffective.

FIRM X PORTFOLIO: COLLABORATING FOR CLIENTS



FIRM X: UPSIDE OF SHIFTING PORTFOLIO BY 10%



If you suspect you're faced with any of these scenarios, analyze the data in order to clearly identify the problem. Ultimately, you need to reach out to the client to find an appropriate solution together.

MONEY ON THE TABLE

Even firms that have figured out how to use collaboration to provide the best service to clients—and get paid accordingly—aren't optimizing collaboration across their portfolios. Unlike the Big Four or the high-end consulting firms that have sophisticated client development strategies, most law firms have a laissez faire approach to their portfolios. The largest clients have grown up over time, based on the efforts of a small set of partners, without explicit direction or prioritization from the firm.

By my estimation, at least 70 percent of large global law firms today include collaboration-related goals in their strategic plans. But many of these same firms lack a solid understanding of how collaboration is working across their portfolios and where the gaps are. Simply put, you can't just state that collaboration matters and hope lawyers change their behavior. You need to set specific objectives, based on a deep understanding of your data and its implications, then hold people accountable for delivering.

After you analyze your financial records to understand how well collaboration is paying off, the next step

in setting and implementing a collaboration-based strategy is understanding your current portfolio. You've classified clients by the number of practice groups serving each one. Now, count the clients in each of those groups. Inevitably, you'll find many more served by fewer practices. Is the mix right?

Visualizing data is very important. Even highly numerate people who are trained in quantitative analysis have an easier time spotting trends and grasping implications when they can see the findings. For the firm used as an example earlier, by graphing its portfolio onto revenue (see p. 21), it's clear that the number of clients served decreases sharply as the number of practice groups involved increases.

This overall decline is expected, but should it drop by three-quarters with each successive step along the collaboration path? Most firms' strategies rest on the belief that a number of clients would value being served by a broader mix of services. Chances are, you're leaving money on the table.

To see how much, try this analysis: How much is it worth if you shift just 10 percent of clients in each category to the next category? For this firm, it adds up to nearly \$43 million. That's an 11 percent increase in the firm's total revenue.

This figure is pretty typical across the firms we studied that are collaborating well—that is, doing complex work

for clients that results in appropriate levels of increased revenue. In general, firms are missing out on an additional 5 to 12 percent of overall revenue by not figuring out how to make this shift.

HOW TO GET STARTED

The obvious place to introduce this 10 percent shift is among the clients getting the most collaboration out of the firm, a group of dozens or fewer, rather than the hundreds using fewer practice groups. Strategically, you want to focus on this high-worth portion of your portfolio simply because adding additional practice groups at this level is worth such a significant chunk of revenue. And on the client side, these individuals are already spending a lot of money on your legal services, indicating that they have a high level of trust in your lawyers and belief that collaboration makes sense for them.

Achieving a shift at the top end of your portfolio hinges on having a leader who is accountable for delivering uplift. It's vital that everyone on your teams feels like they'll be recognized and rewarded for bringing in the next practice group. Each lawyer must recognize that their job is finding legitimate ways to service a client, rather than throwing random partners and practice groups at them (the dreaded cross-selling tactic that clients abhor).

Deciding which high-end clients deserve the most resources requires careful strategizing. Your data should tell you which clients are producing the highest margins, which is obviously a critical consideration beyond top-line revenue. Your relationship partner should also be able to tell you about opportunities and competitors' vulnerabilities with clients. For example, which incumbent firm is providing service now in areas that are white space for you? How long has that relationship been in place? To effectively implement smart collaboration and deepen these high-value client relationships, you must figure out ways to unlock value that your firm can provide given how deeply embedded you are in the client's current work.

All of this doesn't mean that the firm should neglect the hundreds of smaller opportunities for collaboration. Working with the lower end of the scale allows

FIRM Y: CROSS-PRACTICE COLLABORATION



you to create a grassroots culture of frontline collaboration. To optimize the number of people at your firm operating on a strategic level, building collaborative skills in the junior partners that are handling smaller projects is a worthwhile investment. In this sense, smaller firms also represent enormous upside potential.

Firms are missing out on an additional 5 to 12 percent of overall revenue by not figuring out how to collaborate better.

But among the hundreds of firms that you're trying to shift from being served by one practice group to two, how do you decide which 10 percent to shift? You can't hope that people will just catch the bug and take steps in the right direction; for most people, these actions feel too foreign and risky. You need to make clear, deliberate choices to focus resources and build accountability. Using three specific criteria to choose these smaller firms is a good first step.

Locate potentially big clients that

are only getting served by one practice group—you're only getting a portion of their legal spend, so prioritize those where you currently have a small portion.

Find clients currently being served by a single practice group that has an obvious companion. Make sure you're adding value in this scenario; the point

is not to simply shove another practice at an unwitting client.

Do you have a junior partner who's keen to learn to collaborate? Pairing them with a more experienced practice group leader may help them develop their collaborative skills.

As with shifts on the other end of the collaboration spectrum, accountability and motivation are key. You don't have to use direct pay increases in order to motivate your teams; in fact, making sure your firm's leaders model the

behavior you want to inspire is often a more effective method.

The CEO of Dechert, Henry Nassau, created a collaboration-focused contest. He identified 10 high-potential clients that were currently served by only a single practice group, and challenged the firm's lawyers to help generate a material amount of work for another group in the firm. "I dipped into my own pocket to buy the winning team a prize," Nassau says. In this case, attention from the chair was far more important than the award itself, and the healthy competition among partners created a real buzz in the firm.

Anthropologists will tell you that culture is composed of stories—when your leaders create these stories by acting as role models, they embed collaboration as a pillar of firm culture.

Heidi Gardner is a distinguished fellow at Harvard Law School's Center on the Legal Profession. She teaches leadership and collaboration in Harvard Law School's Executive Education programs for law firm partners.

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Against the

Odds

Ten years ago, King & Spalding set out to scale the Am Law 50 and become an ultra-profitable, international law firm. So far, it's working.

By Meredith Hobbs and Dan Packel

IN AUGUST, ROBERT HAYS, THE LONGTIME CHAIRMAN OF King & Spalding, arrived at the Atlanta-based firm's midtown Manhattan offices to update partners on the progress of the firm's latest growth plan, dubbed Strategy 3.0, which includes increasing net income by 50 percent in four years.

If that sounds remarkably ambitious, you haven't been paying attention to Hays—or his law firm—over the last decade. While many firms have struggled to hold the course since the recession, King & Spalding has surged ahead, barreling past \$1 billion in revenue and achieving triple-digit profit growth. Maintaining that trajectory won't be easy. But the firm has made a habit of overcoming long odds.

Hays had been chairman for less than two years when he traveled to New York in September 2008 to deliver a similar update on Strategy 1.0, the firm's first-ever strategic growth plan. The American Lawyer had just published a profile asking whether King & Spalding could transform itself from a hometown powerhouse into a major national—or even international—force.



**ROBERT HAYS,
CHAIRMAN OF
ATLANTA-BASED
KING & SPALDING**



ROBERT HAYS

“People in the office were high-fiving each other about it,” Hays says. “I thought it was cool. Then I thought, uh-oh. What if it’s like the Sports Illustrated jinx, where they do the article on the team, and then the team loses?”

The next day, Lehman Brothers crashed.

Then the recession “turned the whole legal industry upside down,” Hays says.

The firm was grappling with over \$100 million in debt accrued before Hays became chairman. At the same time, it was pursuing a strategy to sharpen its focus on high-value practices like international arbitration and white-collar defense, recruit top lateral partners to expand those practices, and open a slew of U.S. and international offices to stake out new turf.

King & Spalding had launched eight new offices under Hays’ leadership to expand its top practices to the Middle East, Frankfurt, northern California, Austin, Texas, and Charlotte, North Carolina, with more in the offing.

“It was a scary time,” Hays says. “You’ve got net income of \$189 million and debt of more than \$100 million, and the economic crisis is just hitting, and you see the banks going under.”

The firm missed its 2008 budget target due to the drop in demand and slowed collections. Revenue increased by 6 percent to \$652 million, but profits per equity partner fell almost 12 percent to \$1.23 million. The debt ballooned, Hays says, as clients lagged on paying bills. Six months later, in March

2009, the firm, which had about 875 lawyers, laid off 37 lawyers and 85 staff.

Even so, King & Spalding pressed on with the expansion plan and opened a Paris office that April to grow its marquee international arbitration practice beyond London.

“I got hate mail about it,” Hays recalls. People left him anonymous notes asking how he could be opening pricey international offices while laying people off.

GREAT LEAP FORWARD

In the decade since, King & Spalding has vaulted into the Am Law 25. It currently ranks 23rd in revenue and 22nd in profits per equity partner. That’s up from No. 40 and No. 41, respectively, for fiscal year 2007.

“We did the three things we said we would do,” Hays says: “Become a top 25 Am Law firm, transform geographically in the way we have, and achieve revenue and profitability growth at the same time. That’s extraordinarily difficult, especially in an industry that has been flat.”

The firm has borrowed no money, Hays says, to open 15 offices since he became chairman in 2006, when it had only four offices outside Atlanta, in Washington, D.C., New York, Houston and London. Now it has 20, half in international financial capitals. Since Paris in 2009, it has added offices in Geneva, Singapore, Moscow and Tokyo.

It took King & Spalding five years to pay off the debt, he adds, incurred, as at many firms, to fund operations during the good times of predictable collections. The firm accelerated partner capital contributions already instituted to provide working capital in 2007, and cut expenses by centralizing services and finding other efficiencies in office space and personnel.

Even as the legal industry became “more unstable and in ways more mercenary,” Hays says, the partners committed to what they called “the mission” of stewarding the firm’s future. He credits the grit and determination of lawyers and staff alike—the most pronounced in his 35 years at the firm.

“You’ve got to take a long-term view,” he says. “For so much of what we’re investing in, I tell our partners they won’t see the return themselves.”

King & Spalding isn’t the only regionally dominant firm that has tried to compete with the highly profitable national firms and Wall Street powerhouses atop the Am Law ranks. Kirkland & Ellis, Latham & Watkins and Gibson, Dunn & Crutcher are among the rare successes. But those firms have roots in the much larger legal markets of Los Angeles and Chicago. King & Spalding is the only one to do it from the South.

“King & Spalding is one of the more impressive firms that started out regionally, outside of New York, and has been able to maintain the market position [elsewhere] they have in Atlanta,” says MesaFive consultant Blane Prescott.

“One of the toughest challenges in the legal profession is to expand while maintaining market position,” he says. “You don’t want to get bigger but weaker and dilute your reputation.”

Over the past decade, King & Spalding’s revenue has increased 75 percent to \$1.14 billion, while net income has jumped 167 percent to \$505.13 million and profits per equity partner went up 111 percent to \$2.6 million. The firm sharply increased profitability while expanding head count

by only one-third—from 756 to just over 1,000 lawyers—and growing the equity partnership by 27 percent to 194 partners,

Mark Shapiro, a consultant at Blaqwell who helped the firm craft Strategies 1.0 and 2.0, thinks successful lateral hiring and integration have been key to the transformation. “It seems basic,” he says. “But a lot of firms put a lot of effort into hiring laterals and then they let them sink or swim.”

For expansion to translate into higher profitability, not just more revenue, a firm must recruit top players who attract high-value work in new locations, and it needs to integrate them, Prescott says. Splashy hires aren’t enough. “Growth is really hard,” says King & Spalding’s COO, Derek Hardesty. If a firm succeeds in recruiting someone, he says, “your job is to make sure they succeed.”

“YOU’VE GOT TO TAKE A LONG-TERM VIEW,” Hays says.

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THEY WON’T SEE THE RETURN THEMSELVES.”

King & Spalding can claim a long string of lateral coups. It convinced the former U.S. attorney for Chicago, Zach Fardon, to open an office there last year, instead of returning to Latham as he’d been widely expected to do.

Fardon is one of a number of high-profile new additions, including New York dealmaker Jim Woolery last fall and former deputy U.S. Attorney General Sally Yates, who joined in May to focus on internal investigations.

A distinctive ethos has underpinned the growth push, King & Spalding partners and observers say. The firm is remarkably disciplined, both financially and culturally. Loyalty is prized, and even the stars are team players. The balancing act that Hays has worked to pull off as chairman is to press for growth while preserving a culture of collegiality, teamwork and collaboration.

King & Spalding doesn’t rest on its laurels. “We liked to talk about being ‘constructively paranoid’ as we grew,” Hays says, without hubris about the odds in a competitive environment. One core quality is “a belief that we can do better,” he adds.

“What differentiates King & Spalding from many firms that might have been seen as comparable a decade or more ago—and aren’t now—is the discipline,” Shapiro says.

That has included the discipline to shed practices and partners that don’t fit the high-value strategy, such as the Georgia bond practice, widely considered the best in the state, along with labor and employment and more garden-variety corporate and real estate work. “Saying no to work during the recession was very hard,” Hays says.

TIGHTEN THE FIT

King & Spalding’s early growth mirrored that of venerable legacy clients, like The Coca-Cola Co. and SunTrust Banks, plus newer Atlanta entrants such as United Parcel Service, The Home Depot and Georgia-Pacific Corp.

While its corporate work came predominantly from Atlanta, the firm built a national reputation in the 1990s on its tort litigation practice, defending the likes of General Motors, GSK, Chevron and Equifax, and its white-collar practice, started by Griffin Bell almost 40 years ago, representing multinational banks and corporations including SunTrust, Wells Fargo, Credit Suisse Group, Medtronic and Johnson & Johnson.

Despite the strides toward national go-to status for both high-performing laterals and companies with high-stakes problems, the Atlanta contender is chasing even larger, higher-grossing, more profitable firms like Kirkland, Latham and Gibson. Hays has no problem going from an alpha dog in Atlanta to an underdog fighting for turf nationally and inter-

nationally. “I thought that we were verging on complacent, that we were underperforming relative to potential and that we were somewhat naive about the competition and what was happening in the marketplace,” he told his partners at their annual meeting after he was elected chairman.

The firm is determined to close the gap. In 2015, King & Spalding broke into the elite club of Am Law firms deemed “Super Rich,” with more than \$500,000 in profits per lawyer and \$1.1 million in revenue per lawyer. Over the past decade it’s been one of the five fastest-growing in revenue, profits and equity partner growth of the 29 members, which include Gibson, Latham, Kirkland and a host of Wall Street firms.

“When I started working with them, it was not clear that they could compete with the Wall Street firms,” Shapiro, of Blaqwell, says. “They thought they could. Now they do.”

The 20-office network that King & Spalding has established stakes out an international framework to drive high-value work for key practices, such as Islamic finance, energy, infrastructure projects, health care, financial services, real estate finance and tech.

That said, the 10 offices abroad make up only 14 percent of the firm’s lawyers. Five are still outposts with fewer than 10 lawyers, due to the firm’s preference to grow through careful lateral hires, not mergers.

Opening more offices isn’t a priority. The aim is to build on the existing platform and better connect partners across offices and teams. “We’re tightening the fit,” Hays says.

In the last five years, he adds, the number of matters with timekeepers from at least five offices has doubled to 40 percent.

Fardon, in Chicago, says that in his first year he’s pitched and billed time on matters with lawyers in Atlanta, Washington, New York, San Francisco and London. “Integration is kind of a boring word,” he says, but “a huge part of protecting [the] culture and ensuring long-term financial success.”

“It’s a differentiator—and something the firm does very well,” Fardon says. “You become part of that larger fabric, and strengthen the fabric.”

Other Strategy 3.0 focuses are developing new leaders firmwide and doubling down on promising areas of expertise. Hays is “skeptical about law firms’ ability to predict the future,” says Hardesty, the COO, but “very big on betting on individual partners’ passion ... and strengths.”

Granta Nakayama, for instance, an expert in vehicle emissions and air pollution law, joined with his partner Ilana Saltzbar from Kirkland in 2015 to build the environmental health and safety practice. A year later he was lead counsel

“I certainly felt like its cohesive culture was under fire,” he says. “I felt like it was a collegial, great place and it ceased to be that way. It became very cutthroat.”

The firm’s push to get to the next level meant its expectations for junior partners changed, the ex-partner says, and one thing sacrificed was patience for developing a practice.

“Firms like King & Spalding that want to be in this group are finding themselves in a cycle that they can’t control. It’s really short-sighted,” the departed partner says. “If it all falls apart in eight years, the people they brought in as laterals don’t care. They’ll just go to the next firm.”

Hays, a trial lawyer by training, quickly reaches for his pen

“WHEN I STARTED WORKING WITH THEM, it was not clear that they could compete with the Wall Street firms,” consultant Mark Shapiro says.

“THEY THOUGHT THEY COULD. NOW THEY DO.”

for King & Spalding’s Volkswagen engagement, advising on environmental law in its massive emissions scandal.

BIG TARGETS

In August, Hays was in Atlanta preparing for a lengthy mid-year update to his partners the next day on Strategy 3.0, which he would again deliver from New York.

Brandishing an eight-point agenda, he said he would focus on “taking market share, targeting and winning good clients, and doing great work.” King & Spalding launched Strategy 3.0 in January, led by its nine-person policy committee, after engaging Shapiro to facilitate previous iterations.

“I’m going to tell them that we’re off to a good start, but last year was not so great in certain ways,” he says.

The firm made budget in 2017, with 7.7 percent revenue and 5.5 percent profits per equity partner increases, but only after a midyear lag. A second-half push took it over the line, fueled by a major engagement from Equifax to handle its critical data-breach litigation.

So far, this year’s financials are on track, but it’s no time to slow down. “We need to get bigger and more profitable,” Hays says. Strategy 3.0 targets a 50 percent increase in net income by summer 2022.

Hays planned to share year-to-date financials with his partners, benchmarked, among other things, against three- to five-year targets and strategic peers in the Am Law 50. Some law firm leaders avoid that kind of transparency, he says, because it makes a firm harder to manage and they risk losing control.

“We just put it all out there,” Hays says. “That’s how you get better.”

COHESIVE OR CUTTHROAT?

For some, there’s a sense that King & Spalding’s ambitious goal-setting has come at a cost. A former partner describes the firm as a “wonderful place to work” as a senior associate, and a “lot less pleasant of a place” as a young partner.

and a legal pad when told that some former partners have complaints. “I want to hear this,” he says with enthusiasm.

He jots down six points as he listens, then replies that he agrees with half and disagrees with the rest.

“Of course our performance standards are higher,” he says, noting that the firm’s partnership has expanded, despite the inevitable exits.

“In fact, they’re going to get higher,” he adds. “We’re increasing [the focus] on partner contributions in firm leadership, and we want people who are excited and attracted by that idea. We want people who are leaders of the enterprise—not just lawyers down the hall.”

Hays rejects the idea that the firm has become less patient with younger partners. They do tell him the standards are hard to reach, he says. “But I don’t hear, ‘If you just gave me one more year [I’d make it],’” he adds. “Instead, I hear, ‘This has been a good firm for me, but now I’m doing something else.’”

Strategy 3.0 continues the firm’s practice of “upgrading and shedding,” Hays says.

King & Spalding added a record 36 partners this year, as of August. Meanwhile, of the 24 partners who’d left at that point, 10 went to other firms, and the rest headed for government, in-house positions or other endeavors.

“Many don’t make it. Some do,” Hays says. “We did a poor job with that person for them not to understand what the basis of success in the partnership is.”

PART OF THE GLUE?

Strategy 1.0 overhauled the firm’s equity partner compensation system to promote collaboration and team-building.

“We blew up our comp system,” Hays says. “We were in the Stone Age.”

To discourage credit-hoarding, King & Spalding expanded eligibility for origination credits—but it only awards them for three years. After that, new clients are considered the firm’s.

There’s no limit to how many partners can claim credit,

Hardesty says, whether from an initial client connection, helping land the matter or doing the work. As a result, origination credits total three times the actual value of the firm's new client work. That incentivizes partners to bring in as many people as necessary on pitches or RFP responses—several mention occasions with as many as 15 lawyers in the mix.

Tom Sprange, now the firm's London managing partner, says that soon after he joined from Steptoe & Johnson in 2011, "three of the biggest names in international arbitration"—partners Doak Bishop and John Bowman in Houston and John Savage in Singapore—asked him to join a pitch for a major case against the Indian government. He, too, won origination points.

"It sounds like a small thing, but I think it is a massive advantage for how the firm works," Sprange says.

King & Spalding also shifted the focus to reward partners for contributions beyond revenue generation. High-dollar billings, Hays says, "is one piece of the performance model, but how do you execute strategy with existing and new clients? Are you bringing in lateral partners and associates?"

Partners gain points for working with other partners to build the firm and developing younger lawyers. There are penalties for neglecting to give others credit or doing nothing with a leadership role, Hardesty says. "Are you part of the glue of the firm?" is the pressing question, he says.

When Hays interviews potential partners, half their questions are about the compensation system. "The more sophisticated say they are asking because [it] is the best indicator of how they will do at the firm. I like them for it," he says.

Appellate partner Jeff Bucholtz is wary of lateral candidates whose sole interest is high profits. New arrivals must care about helping their partners succeed, he says, which includes being willing to hop on planes at short notice or break from routine to make introductions and share contacts.

A lateral who wants to sit in their office and focus on their own clients "is not going to work out as well," Bucholtz says.

And King & Spalding doesn't wait for lateral candidates to knock on its door. After President Donald Trump fired Fardon as U.S. attorney for Chicago, he fielded a plethora of offers, including a call from Wick Sollers, who heads King & Spalding's government matters practice from Washington.

"I was amazed by how the firm had transformed from when I was there," says Fardon, who worked with Sollers as a new King & Spalding associate in 1992. "Then, it was an Atlanta powerhouse law firm with a couple of new satellite offices in Washington and New York and a few pockets of strength in terms of practices. That was about it."

The firm's profit and revenue growth are "striking," he says. "It's another [thing] for lawyers to have each other's backs—wanting each other to succeed." The opportunity to build that brand in Chicago convinced him.

Fardon added 12 lawyers in his first year, including former Latham colleagues. One Chicago recruiter, Kay Hoppe, says she has resumes from candidates who represent \$100 million in business. But Fardon says the growth ambitions won't outpace cohesiveness: "We're careful who we bring in and why."

EYES ON NEW YORK

Woolery, another star recruit who heads the M&A and corporate governance practices from New York, has chops as both a rainmaker and a recruiter of other big names, especially in New York's high-dollar corporate and deal arena.

An earlier push to build the New York office unraveled in the mid-2000s, and the firm hemorrhaged nearly half of its attorneys after a 2005 peak of 185. Partners who left around then complained to The American Lawyer in 2008 that all the big clients and control came from Atlanta.

"All the power was in Atlanta. They didn't want to bring in a big name ... or make any changes that would upset the power balance of the firm," one said.

That seems to have changed. Woolery is one of the rare partners to leave Cravath, Swaine & Moore. He jumped first to JPMorgan Chase, then in 2013 to leadership at Cadwalader, Wickersham & Taft, but departed to co-launch hedge fund Hudson Executive Capital before resigning in late 2016. After weighing both banks and law firms for his next career choice, Woolery bought into the King & Spalding culture, which he calls high-performance without sharp elbows. "That is a unique needle-thread," he adds.

The office's head count is back up to 170 and one-third of this year's lateral partner hires have been in New York.

"To be successful, you have to find these anchor partners," says New York legal recruiter Mark Rosen of Mark Bruce International, invoking Woolery and private equity partner Jonathan Melmed, whom Woolery recruited with a team from Morrison & Foerster. Having profits per equity partner above \$2.5 million helps, he adds.

"They've got a great foundation to build off of now," Rosen says.

A cohesive culture may help distinguish King & Spalding, but can an increasingly international firm with a growing number of star personalities hold onto that collegiality now that it's "playing in the World Series," as Woolery puts it?

How well King & Spalding's current leadership manages to develop new leaders outside Atlanta will be critical. "One common factor in successful firms is great leadership. It's undervalued by law firms," says Prescott, of MesaFive.

King & Spalding has no retirement age, but at 60, Hays is busy cultivating the next generation of firm leaders. Coinciding with the rollout of Strategy 3.0, he started a new three-year term in January—his fifth since 2006. "I don't want to wear out my welcome," he says.



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THE GLOBAL 100

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



ILLUSTRATION BY CARLOS ZAMORA

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Leaps and Bounds

The Global 100's revenues reached new heights thanks to steady demand, as the list took on a more international flavor.



BY DAN PACKEL

THE WORLD'S TOP-GROSSING LAW firms didn't just cross the \$100 billion revenue threshold for the first time in 2017—they vaulted across it.

Total revenue for the Global 100 increased a robust 6.4 percent in 2017, dwarfing rises of 2.8 percent and 3.1 percent from each of the previous two years. These firms brought in a collective \$105.7 billion dollars, almost \$10 billion more than the 2015 total. And a total of 41 firms cracked the \$1 billion mark, up from 34 firms in 2016.

"It's reflective of the fact that last year was the first in a long time that most firms had all practice areas faring well," says former Clifford Chance managing partner Tony Williams, now a management consultant at Jomati.

That's thanks to a booming mergers and acquisitions market, alongside a vibrant tech sector, with businesses of all shapes and sizes requiring legal help. Demand for cybersecurity and data protection work—fueled by the global impact of the European Union's General Data Protection Regulation—has been brisk, and investigations practices have been busy handling hot-button issues ranging from sex discrimination to anti-money laundering and sanctions violations.

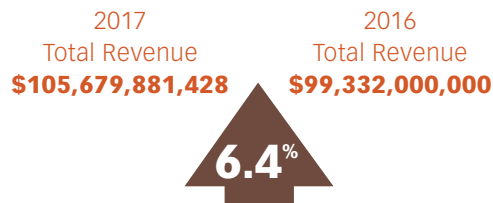
"All of these have been areas where global law firms have been active," Williams explains.

There's more good news: The members of the club also grew increasingly profitable, rebounding from a year in

POSTPIE/SHUTTERSTOCK.COM



THE GLOBAL 100



which profits per equity partner (PEP) were down by a half-percent to post a rise of 3.4 percent in 2017.

The one metric from 2017 that might give onlookers pause—a 3.9 percent decline in revenue per lawyer (RPL)—is actually indicative of another noteworthy trend: a tilt toward China.

While the 100 firms on the list employed more than 135,000 lawyers in the last year, an increase of 13,000 from the previous year, two Chinese firms that qualified for the first time in 2017 (of the four total new arrivals) added a total of more than 9,000 attorneys to the count, far outweighing the nearly 1,800 attorneys from the four American firms exiting the list. Combine that with over 1,200 attorneys added in the last year at Dentons, with its own massive China footprint, and these three firms account for more than 65 percent of that growth. With four China-heavy firms—comprising over 20,000 attorneys—together taking the final spots in RPL on the Global 100, it's little surprise their surge is bringing down the aggregate figure.

Even beyond indigenous Chinese firms Yingke and Zhong Lun joining China-heavy King & Wood Mallesons and Dentons (which categorizes itself as “polycentric”), the Global 100 took on more of an international flavor in 2017 than in the two previous years, when American firms accounted for a

record 81 spots on the list. That number dropped to 77 this year, with the balance composed of 13 U.K. firms, three from Canada, two from Australia and one from Korea. For a second year in a row, no firms from continental Europe made the cut.

Also for the second year in a row (and the third year in Global 100 history), U.S.-based firms occupied the top five firms in the revenue chart. The order shifted, however, with Kirkland & Ellis leapfrogging Latham & Watkins and Baker McKenzie to complete its march to the pinnacle. Kirkland and Latham both cracked \$3 billion in total revenue for the first time in 2017. But while Latham posted a commendable 8 percent increase in revenue, Kirkland's grew at a whopping 18 percent, more than any other American firm and trailing only Yingke, the U.K.'s CMS Legal Services and King & Wood Mallesons.

With regard to profitability, American dominance was even more pronounced. U.S.-based firms locked down the first nine spots in the PEP ranking, as well as 25 of the top 26 positions, with their run interrupted only by the U.K.'s Slaughter and May.

The RPL trend was similar. With the exception of Slaughter and Canada's Osler, Hoskin & Harcourt, firms with their largest footprint in the United States took the first 42 spots in the chart.

“It's a recognition that in other parts of the world, outside of North America, you are seeing clients looking more closely at fees, opting for alternative arrangements or fixed rates,” Williams says.

That reality is reflected in the largest U.K.-based firms witnessing stagnant revenues. Of the four biggest earners, revenue leader Clifford Chance, Linklaters and Freshfields Bruckhaus Deringer all posted meager gains of less than 1 percent, while Allen & Overy saw revenue slide by 1.5 percent. (Clifford Chance also shed 12 percent of its lawyers, allowing the firm to post an RPL figure that grew at 13.9 percent, higher than all but four other firms in the survey.)

And, unlike the last two years, currency fluctuations stemming from the fateful Brexit decision can't be blamed for these firms' lukewarm performance in the rankings. After sliding against the U.S. dollar and the Euro for two years since the 2015 vote, the pound has been largely stable for the past year.

Outside those four, the results were more mixed. While Herbert Smith Freehills saw revenues sink by 4.3 percent, Slaughter and May saw a rise of 6.5 percent. And CMS, which expanded operations to six countries in 2017—most notably Singapore—posted a whopping revenue growth of 34 percent. Gowling WLG, formed in



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THE GLOBAL 100

2017 Total Lawyers **135,189**
2016 Total Lawyers **122,157**

10.7%

early 2016 through the combination of Canada's Gowlings and U.K. firm Wragge Lawrence Graham & Co, also had an enviable year, growing at 11 percent.

Moving beyond Britain, Norton Rose Fulbright flourished as it completed its merger with New York's Chadbourne & Parke. The firm boosted gross revenues, RPL and PEP, all at more than 16 percent, with the latter touching 32 percent. Global chief executive Peter Martyr says the firm is "seeing some of the rewards for our major investments in global growth this past decade."

Morrison & Foerster was the only other firm in the Global 100 to post gains over 12 percent in all three categories, including a 23 percent rise in PEP. Firm chair Larren M. Nashelsky attributed the gains to a "banner year working on landmark technology and life sciences matters," both on the M&A side and in trials and investigations.

At the other extreme, two American firms saw the sharpest declines in the top line and in RPL: K&L Gates and Baker Botts. Both firms pointed to extraordinary contingency fee awards in 2016 that caused record results and said that 2017 marked a return to steady, measured growth.

The bottom end of the Global 100 saw less fluctuation than in previous years, with only four new arrivals, com-

pared with five in 2016 and eight the previous year.

In addition to previously noted Yingke and Zhong Lun, Australia's Allens and Canada's McCarthy Tetrault joined the list. Allens' placement at 81st in total revenue, tops among debutantes, along with a jump by Ashurst (which The American Lawyer categorizes as an Australian firm) from 84th to 64th, suggests that growing commodity prices have helped boost Australia's lagging economy. McCarthy Tetrault was ranked the second-strongest law firm brand in Canada in a 2018 Acritas report, trailing fellow Global 100 member Blake, Cassels & Graydon.

Yingke, Zhong Lun, Allens and McCarthy displaced four U.S. firms: Kilpatrick Townsend, Williams & Connolly, Cadwalader Wickersham & Taft and Crowell & Moring, which was new to the list last year. In data collected for The Am Law 100, the first two firms saw slight growth of less than 2 percent in 2017, while the latter two witnessed declining revenue: down 3.6 percent for Crowell and down 9.7 percent for Cadwalader.

Two other members of the group have new formal names, and significantly higher rankings on the revenue chart, thanks to 2017 combinations with firms outside of the Global 100. Arnold & Porter Kaye Scholer, created through the 2017 merger of Arnold &

Porter and Kaye Scholer, jumped from 67th to 45th. And Eversheds Sutherland, which was formed through the merger of the U.K.'s Eversheds and Atlanta-based Sutherland Asbill & Brennan, climbed from 71st when it was just Eversheds to 39th following the completion of the trans-Atlantic combination. The combination meant the firm no longer had the plurality of its lawyers in the United States and therefore was not included on the Am Law 100 or 200.

Looking forward to next year's rankings, mergers can be expected to upend the order further, with several Global 100 firms—Foley & Lardner, Bryan Cave and Hunton & Williams—already combining with substantial firms that didn't quite make the cut for their 2017 financial performances.

Another takeaway for all these firms—and those on the outside looking in—is the gap between total revenue growth and PEP. Even with plenty of money coming in, costs are growing across the world. That, according to Williams, is causing firms to "look much more carefully at who becomes an equity partner and who stays one." Those elite American firms, consolidating their hold on the top of the list, are already doing this. Now it's up to those who wish to be in their position to follow suit.

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MOST REVENUE

GROSS REVENUE FOR THE GLOBAL 100 GREW BY 6.4 PERCENT in 2017, to \$105.7 billion. That surpasses 2016's increase in gross revenue of 2.8 percent. This year, 77 of the world's top-grossing firms have more lawyers in the United States than anywhere else, while 12 have the greatest share of their lawyers in the United Kingdom. Eight firms are structured as vereins or European Economic Interest Groups (EEIGs). Forty firms had more than \$1 billion in revenues, compared with 34 last year.

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

Currency conversion rates to U.S. dollars are annual averages for 2017. Lawyer numbers are average full-time equivalent numbers for 2017. Gross revenue and revenue per lawyer figures are rounded to the nearest \$1,000.

2018 Rank	2017 Rank	Firm	Gross Revenue, Most Recent Fiscal Year	Lawyers	Revenue Per Lawyer	Country With the Most Lawyers
1	3	Kirkland & Ellis	\$3,165,000,000	1,997	\$1,585,000	United States
2	1	Latham & Watkins	\$3,063,992,000	2,436	\$1,258,000	United States
3	2	Baker McKenzie (verein)*	\$2,900,000,000	4,723	\$614,000	United States
4	5	DLA Piper (verein)*	\$2,634,094,000	3,609	\$730,000	United States
5	4	Skadden, Arps, Slate, Meagher & Flom	\$2,582,325,000	1,784	\$1,447,000	United States
6	6	Dentons (verein)*	\$2,360,000,000	8,658	\$273,000	China
7	7	Clifford Chance	\$2,092,047,000	2,174	\$962,000	United Kingdom
8	11	Sidley Austin	\$2,036,161,000	1,873	\$1,087,000	United States
9	12	Hogan Lovells (verein)*	\$2,036,000,000	2,685	\$758,000	United States
10	8	Allen & Overy	\$2,027,855,000	2,293	\$884,000	United Kingdom
11	13	Morgan, Lewis & Bockius	\$2,001,000,000	1,943	\$1,030,000	United States
12	10	Linklaters	\$1,963,791,000	2,305	\$852,000	United Kingdom
13	9	Jones Day	\$1,959,360,000	2,513	\$780,000	United States
14	15	Norton Rose Fulbright (verein)*	\$1,958,000,000	3,339	\$586,000	United States
15	14	Freshfields Bruckhaus Deringer	\$1,808,467,000	1,955	\$925,000	United Kingdom
16	16	White & Case	\$1,804,200,000	2,039	\$885,000	United States
17	17	Gibson, Dunn & Crutcher	\$1,642,585,000	1,275	\$1,288,000	United States
18	18	Ropes & Gray	\$1,597,091,000	1,162	\$1,374,000	United States
19	19	Greenberg Traurig	\$1,477,180,000	1,944	\$760,000	United States
20	31	CMS (EEIG)*	\$1,461,526,000	3,558	\$411,000	United Kingdom
21	20	Sullivan & Cromwell	\$1,400,790,000	812	\$1,725,000	United States
22	23	Weil, Gotshal & Manges	\$1,390,901,000	1,118	\$1,244,000	United States
23	21	Simpson Thacher & Bartlett	\$1,375,662,000	988	\$1,393,000	United States
24	24	Mayer Brown	\$1,313,000,000	1,571	\$836,000	United States
25	26	Paul, Weiss, Rifkind, Wharton & Garrison	\$1,301,773,000	1,000	\$1,302,000	United States
26	28	Davis Polk & Wardwell	\$1,240,000,000	967	\$1,283,000	United States
27	27	Quinn Emanuel Urquhart & Sullivan	\$1,229,807,000	770	\$1,597,000	United States
28	22	Cleary Gottlieb Steen & Hamilton	\$1,214,044,000	1,214	\$1,000,000	United States
29	25	Herbert Smith Freehills	\$1,194,645,000	2,071	\$577,000	United Kingdom
30	34	King & Spalding	\$1,138,540,000	1,007	\$1,131,000	United States
31	30	Wilmer Cutler Pickering Hale and Dorr	\$1,137,300,000	869	\$1,309,000	United States

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

**Arnold & Porter merged with Kaye Scholer in 2017. Last year's rank represents Arnold & Porter's pre-merger financials.

NR - Not Ranked



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2018 Rank	2017 Rank	Firm	Gross Revenue, Most Recent Fiscal Year	Lawyers	Revenue Per Lawyer	Country With the Most Lawyers
32	32	Reed Smith	\$1,119,239,000	1,550	\$722,000	United States
33	33	Paul Hastings	\$1,118,100,000	921	\$1,214,000	United States
34	37	Cooley	\$1,072,079,000	897	\$1,195,000	United States
35	50	King & Wood Mallesons (verein)*	\$1,072,000,000	2,762	\$388,000	China
36	38	Morrison & Foerster	\$1,062,700,000	960	\$1,107,000	United States
37	36	Akin Gump Strauss Hauer & Feld	\$1,039,656,000	858	\$1,212,000	United States
38	41	Goodwin Procter	\$1,032,437,000	909	\$1,136,000	United States
39	71	Eversheds Sutherland	\$1,032,175,000	2,323	\$444,000	United Kingdom
40	35	Squire Patton Boggs (verein)*	\$1,000,044,000	1,497	\$668,000	United States
41	29	K&L Gates	\$989,861,000	1,793	\$552,000	United States
42	48	Winston & Strawn	\$978,458,000	849	\$1,153,000	United States
43	42	Dechert	\$977,900,000	928	\$1,053,000	United States
44	39	Orrick, Herrington & Sutcliffe	\$974,560,000	940	\$1,037,000	United States
45	67	Arnold & Porter Kaye Scholer**	\$951,500,000	950	\$1,001,000	United States
46	47	Covington & Burling	\$945,500,000	941	\$1,005,000	United States
47	43	McDermott Will & Emery	\$925,470,000	985	\$940,000	United States
48	40	Shearman & Sterling	\$917,473,000	853	\$1,075,000	United States
49	44	Milbank, Tweed, Hadley & McCloy	\$916,538,000	690	\$1,328,000	United States
50	45	Proskauer Rose	\$890,311,000	730	\$1,220,000	United States
51	49	Kim & Chang	\$870,000,000	920	\$946,000	Korea
52	51	Holland & Knight	\$848,191,000	1,079	\$786,000	United States
53	56	Debevoise & Plimpton	\$822,030,000	631	\$1,304,000	United States
54	54	Wilson Sonsini Goodrich & Rosati	\$797,000,000	746	\$1,069,000	United States
55	52	Perkins Coie	\$785,997,000	944	\$833,000	United States
56	58	Alston & Bird	\$781,758,000	812	\$962,000	United States
57	60	Willkie Farr & Gallagher	\$772,000,000	644	\$1,199,000	United States
58	53	Wachtell, Lipton, Rosen & Katz	\$763,020,000	243	\$3,135,000	United States
59	59	O'Melveny & Myers	\$738,000,000	660	\$1,118,000	United States
60	60	Slaughter and May	\$736,019,000	528	\$1,394,000	United Kingdom
61	46	Baker Botts	\$731,827,000	717	\$1,021,000	United States
62	65	Vinson & Elkins	\$727,475,000	615	\$1,183,000	United States
63	57	Ashurst	\$726,996,000	1,321	\$550,000	Australia
64	63	McGuireWoods	\$715,430,000	1,012	\$707,000	United States
65	62	Clyde & Co.	\$710,626,000	1,597	\$445,000	United Kingdom
66	55	Cravath, Swaine & Moore	\$706,736,000	504	\$1,402,000	United States
67	64	Foley & Lardner	\$686,175,000	822	\$834,000	United States
68	70	Sheppard, Mullin, Richter & Hampton	\$671,101,000	678	\$989,000	United States
69	66	Baker & Hostetler	\$647,065,000	906	\$715,000	United States
70	68	Seyfarth Shaw	\$637,484,000	865	\$737,000	United States
71	75	Fried, Frank, Harris, Shriver & Jacobson	\$634,900,000	491	\$1,293,000	United States
72	69	Bryan Cave	\$592,577,000	847	\$700,000	United States
73	72	Pillsbury Winthrop Shaw Pittman	\$589,472,000	619	\$952,000	United States
74	81	Gowling WLG	\$587,140,000	1,224	\$479,700	Canada
75	72	Pinsent Masons	\$579,921,000	1,482	\$391,000	United Kingdom
76	79	Fragomen, Del Rey, Bernsen & Loewy	\$576,971,000	553	\$1,043,000	United States

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2018 Rank	2017 Rank	Firm	Gross Revenue, Most Recent Fiscal Year	Lawyers	Revenue Per Lawyer	Country With the Most Lawyers
77	76	Katten Muchin Rosenman	\$574,039,000	620	\$926,000	United States
78	77	Osler, Hoskin & Harcourt	\$570,960,000	449	\$1,272,000	Canada
79	78	Hunton & Williams	\$562,405,000	655	\$859,000	United States
80	NR	Allens	\$559,000,000	632	\$884,000	Australia
81	82	Venable	\$540,462,000	636	\$850,000	United States
82	80	Littler Mendelson	\$538,000,000	1,043	\$516,000	United States
83	83	Troutman Sanders	\$508,731,000	672	\$758,000	United States
84	74	Locke Lord	\$504,302,000	664	\$759,000	United States
85	84	Faegre Baker Daniels	\$491,044,000	659	\$745,000	United States
86	85	Blake, Cassels & Graydon	\$480,480,000	618	\$777,000	Canada
87	91	Polsinelli	\$475,092,000	783	\$607,000	United States
88	86	Nixon Peabody	\$473,700,000	602	\$787,000	United States
89	90	Lewis Brisbois Bisgaard & Smith	\$470,800,000	1,201	\$392,000	United States
90	95	Ogletree, Deakins, Nash, Smoak & Stewart	\$469,475,000	822	\$571,000	United States
91	88	Duane Morris	\$466,034,000	660	\$706,000	United States
92	92	Drinker Biddle & Reath	\$461,841,000	562	\$822,000	United States
93	NR	McCarthy Tetrault	\$460,976,000	602	\$766,000	Canada
94	94	Simmons & Simmons	\$456,435,000	820	\$557,000	United Kingdom
95	98	Fox Rothschild	\$453,000,000	743	\$609,000	United States
96	87	Jenner & Block	\$448,745,000	508	\$884,000	United States
97	NR	Yingke	\$445,619,000	7,438	\$60,000	China
98	NR	Zhong Lun	\$443,991,000	1,680	\$264,000	China
99	100	Bird & Bird	\$434,393,000	1,116	\$389,000	United Kingdom
100	96	Blank Rome	\$431,310,000	555	\$777,000	United States

MOST LAWYERS

OVERALL LAWYER HEAD COUNT FOR GLOBAL 100 FIRMS WAS 135,189 in 2017, an annual growth rate of 10.7 percent. Fifty-three of the 100 largest firms by head count have at least 1,000 lawyers.

Fifty-six firms have the largest share of their lawyers in the

United States, 17 are largest in the United Kingdom and 16 have their biggest group in China. The number of lawyers listed here is the average full-time equivalent for the 2017 fiscal year. (For U.K.-based firms, the number of lawyers is the average full-time equivalent for the fiscal year ending April 30).

Rank by Head Count	Firm	Lawyers	Countries in Which the Firm Has Offices	Country With the Most Lawyers	Percentage of Lawyers in That Country
1	Dentons (verein)*	8,658	73	China	55%
2	Yingke	7,438	53	China	78%
3	Baker McKenzie (verein)*	4,723	47	United States	15%
4	DLA Piper (verein)*	3,609	32	United States	35%
5	CMS (EEIG)*	3,558	41	United Kingdom	35%
6	Allbright	3,400	2	China	99%
7	Norton Rose Fulbright (verein)*	3,339	32	United States	26%
8	King & Wood Mallesons (verein)*	2,762	11	China	55%
9	Hogan Lovells (verein)*	2,685	22	United States	36%
10	DeHeng Law Offices	2,531	7	China	99%
11	Jones Day	2,513	19	United States	63%



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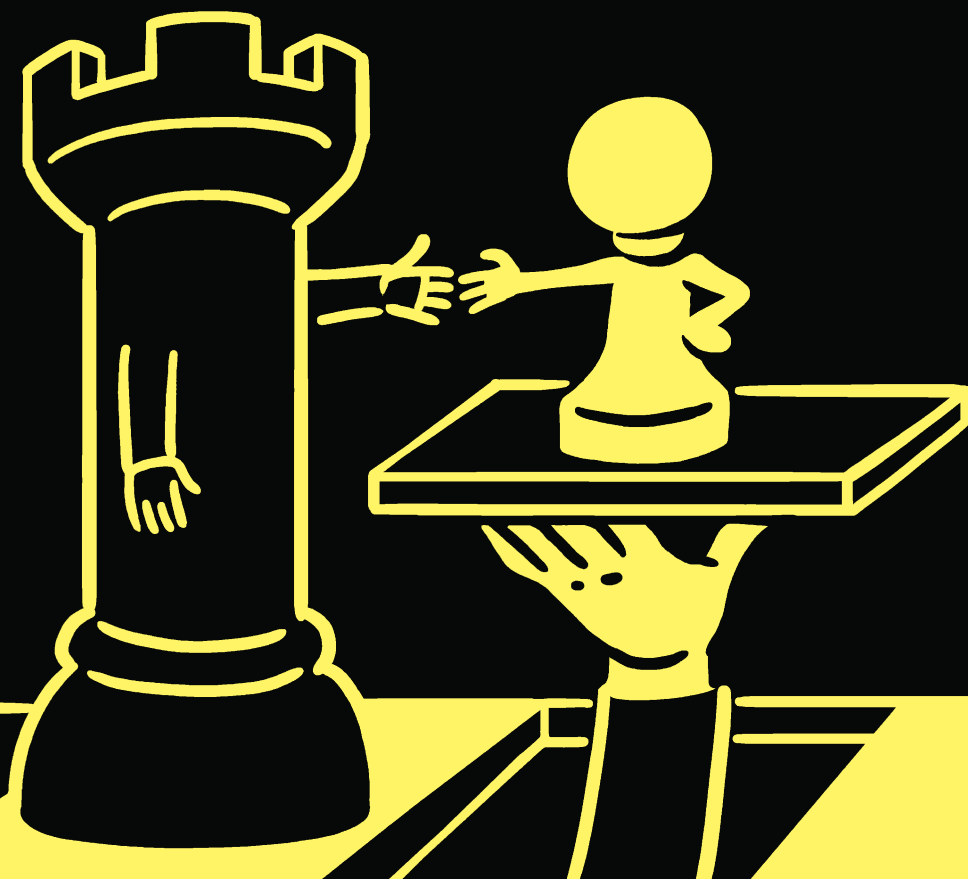
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Rank by Head Count	Firm	Lawyers	Countries in Which the Firm Has Offices	Country With the Most Lawyers	Percentage of Lawyers in That Country
12	Latham & Watkins	2,436	14	United States	67%
13	Eversheds Sutherland	2,323	27	United Kingdom	48%
14	Linklaters	2,305	20	United Kingdom	42%
15	Allen & Overy	2,293	31	United Kingdom	39%
16	Clifford Chance	2,174	22	United Kingdom	30%
17	Herbert Smith Freehills	2,071	19	United Kingdom	31%
18	White & Case	2,039	29	United States	32%
19	Zhonglun W&D Law Firm	2,011	12	China	99%
20	Kirkland & Ellis	1,997	4	United States	84%
21	Freshfields Bruckhaus Deringer	1,955	18	United Kingdom	29%
22	Greenberg Traurig	1,944	10	United States	85%
23	Morgan, Lewis & Bockius	1,943	12	United States	85%
24	Grandall Law Firm	1,920	5	China	99%
25	Sidley Austin	1,873	9	United States	81%
26	K&L Gates	1,793	16	United States	62%
27	Skadden, Arps, Slate, Meagher & Flom	1,784	12	United States	80%
28	Zhong Lun	1,680	4	China	92%
29	Clyde & Co.	1,597	25	United Kingdom	46%
30	Mayer Brown	1,571	12	United States	56%
31	Reed Smith	1,550	9	United States	63%
32	Squire Patton Boggs (verein)*	1,497	20	United States	44%
33	Pinsent Masons	1,482	11	United Kingdom	78%
34	Beijing DHH Law Firm	1,403	9	China	98%
35	Ashurst	1,321	15	Australia	40%
36	Zhong Yin Law Firm	1,308	1	China	100%
37	Garrigues	1,292	13	Spain	81%
38	Gibson, Dunn & Crutcher	1,275	9	United States	84%
39	Fidal	1,267	1	France	100%
40	Gowling WLG	1,224	9	Canada	53%
41	Cleary Gottlieb Steen & Hamilton	1,214	12	United States	53%
42	Lewis Brisbois Bisgaard & Smith	1,201	1	United States	100%
43	Ropes & Gray	1,162	5	United States	85%
44	DAC Beachcroft	1,123	8	United Kingdom	94%
45	Weil, Gotshal & Manges	1,118	9	United States	65%
46	Bird & Bird	1,116	19	United Kingdom	18%
47	Long An Law Firm	1,108	1	China	100%
48	Holland & Knight	1,079	4	United States	94%
49	Beijing Jincheng Tongda & Neal Law Firm	1,060	1	China	100%
50	Littler Mendelson	1,043	3	United States	96%
51	McGuireWoods	1,012	3	United States	96%
52	King & Spalding	1,007	10	United States	86%
53	Paul, Weiss, Rifkind, Wharton & Garrison	1,000	5	United States	93%
54	Simpson Thacher & Bartlett	988	6	United States	82%
55	McDermott Will & Emery	985	7	United States	77%

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Rank by Head Count	Firm	Lawyers	Countries in Which the Firm Has Offices	Country With the Most Lawyers	Percentage of Lawyers in That Country
56	Davis Polk & Wardwell	967	7	United States	80%
57	Morrison & Foerster	960	7	United States	74%
58	Addleshaw Goddard	957	6	United Kingdom	92%
59	Arnold & Porter Kaye Scholer	950	5	United States	91%
60	Perkins Coie	944	2	United States	100%
61	Covington & Burling	941	7	United States	85%
62	Orrick, Herrington & Sutcliffe	940	11	United States	66%
63	Taylor Wessing	935	18	Germany	41%
64	DWF	932	16	United Kingdom	61%
65	Dechert	928	13	United States	63%
66	Paul Hastings	921	10	United States	76%
67	Kim & Chang	920	2	Korea	99%
68	Irwin Mitchell	913	2	United Kingdom	98%
69	Goodwin Procter	909	5	United States	88%
70	Baker & Hostetler	906	1	United States	100%
71	Cooley	897	3	United States	91%
71	Cuatrecasas, Gonçalves Pereira	897	12	Spain	82%
73	Beijing Kangda Law Firm	877	1	China	100
74	Wilmer Cutler Pickering Hale and Dorr	869	5	United States	90%
75	Duan & Duan	868	4	China	99%
76	Seyfarth Shaw	865	4	United States	94%
77	Loyens & Loeff	862	10	Netherlands	83%
78	Akin Gump Strauss Hauer & Feld	858	8	United States	81%
79	Siqueira Castro	857	3	Brazil	95%
80	Shearman & Sterling	853	13	United States	54%
81	Winston & Strawn	849	6	United States	91%
82	Bryan Cave	847	5	United States	91%
83	Foley & Lardner	822	3	United States	100%
83	Ogletree, Deakins, Nash, Smoak & Stewart	822	7	United States	95%
85	Simmons & Simmons	820	19	United Kingdom	44%
86	Minter Ellison	813	5	Australia	96%
87	Alston & Bird	812	3	United States	99%
87	Sullivan & Cromwell	812	8	United States	80%
89	Kennedys	792	22	United Kingdom	62%
90	Osborne Clarke	788	12	United Kingdom	51%
91	Guantao Law Firm	787	5	China	99%
92	Polsinelli	783	1	United States	100%
93	Jackson Lewis	771	2	United States	100%
94	Quinn Emanuel Urquhart & Sullivan	770	9	United States	80%
95	Wilson Elser Moskowitz Edelman & Dicker	760	1	United States	100%
96	Tahota Law Firm	750	3	China	98%
97	Fasken Martineau DuMoulin	749	4	Canada	90%
98	Wilson Sonsini Goodrich & Rosati	746	3	United States	95%
99	Fox Rothschild	743	1	United States	100%
100	Proskauer Rose	730	5	United States	86%

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MOST PROFITS PER EQUITY PARTNER

PROFITS PER EQUITY PARTNER AMONG GLOBAL 100 FIRMS averaged \$1,641,497 in 2017, an increase of 3.4 percent when compared with 2016's average of \$1,586,858, and greater than last year's 0.4 percent decline.

Seventy-three firms equaled or topped \$1 million in PEP, compared with 75 firms the previous year. U.S. firms are the top nine,

with Slaughter and May the highest-ranking non-U.S. firm, ranking tenth.

This chart ranks the most profitable firms on our Most Revenue chart. Figures for U.S. firms were obtained from The Am Law 100. All other firms were surveyed directly. Profits per partner and gross revenue are rounded to the nearest \$1,000.

Rank by PPP	Firm	Profits Per Equity Partner	Equity Partners	Gross Revenue
1	Wachtell, Lipton, Rosen & Katz	\$5,700,000	81	\$763,020,000
2	Quinn Emanuel Urquhart & Sullivan	\$4,735,000	170	\$1,229,807,000
3	Kirkland & Ellis	\$4,701,000	388	\$3,165,000,000
4	Paul, Weiss, Rifkind, Wharton & Garrison	\$4,563,000	144	\$1,301,773,000
5	Sullivan & Cromwell	\$4,271,000	164	\$1,400,790,000
6	Cravath, Swaine & Moore	\$4,002,000	83	\$706,736,000
7	Davis Polk & Wardwell	\$3,700,000	158	\$1,240,000,000
8	Simpson Thacher & Bartlett	\$3,683,000	187	\$1,375,662,000
9	Weil, Gotshal & Manges	\$3,639,000	166	\$1,390,901,000
10	Slaughter and May	\$3,480,000	106	\$736,019,000
11	Skadden, Arps, Slate, Meagher & Flom	\$3,471,000	361	\$2,582,325,000
12	Milbank, Tweed, Hadley & McCloy	\$3,460,000	145	\$916,538,000
13	Latham & Watkins	\$3,246,000	477	\$3,063,992,000
14	Gibson, Dunn & Crutcher	\$3,240,000	313	\$1,642,585,000
15	Cleary Gottlieb Steen & Hamilton	\$3,070,000	188	\$1,214,044,000
16	Willkie Farr & Gallagher	\$2,969,000	145	\$772,000,000
17	Fried, Frank, Harris, Shriver & Jacobson	\$2,942,000	109	\$634,900,000
18	Paul Hastings	\$2,905,000	190	\$1,118,100,000
19	Debevoise & Plimpton	\$2,827,000	138	\$822,030,000
20	Dechert	\$2,683,000	161	\$977,900,000
21	King & Spalding	\$2,605,000	194	\$1,138,540,000
22	Akin Gump Strauss Hauer & Feld	\$2,386,000	195	\$1,039,656,000
23	Proskauer Rose	\$2,366,000	173	\$890,311,000
24	Vinson & Elkins	\$2,361,000	139	\$727,475,000
25	Shearman & Sterling	\$2,316,000	142	\$917,473,000
26	Ropes & Gray	\$2,315,000	259	\$1,597,091,000
27	Allen & Overy	\$2,286,000	389	\$2,027,855,000
28	Sidley Austin	\$2,260,000	343	\$2,036,161,000
28	White & Case	\$2,260,000	319	\$1,804,200,000
30	Freshfields Bruckhaus Deringer	\$2,246,000	392	\$1,808,467,000
31	Wilson Sonsini Goodrich & Rosati	\$2,211,000	127	\$797,000,000
32	Winston & Strawn	\$2,158,000	140	\$978,458,000
33	Goodwin Procter	\$2,151,000	212	\$1,032,437,000
34	Wilmer Cutler Pickering Hale and Dorr	\$2,116,000	257	\$1,137,300,000
35	Cooley	\$2,084,000	208	\$1,072,079,000
36	Clifford Chance	\$2,058,000	392	\$2,092,047,000
37	O'Melveny & Myers	\$2,008,000	167	\$738,000,000

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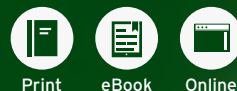




Rank by PPP	Firm	Profits Per Equity Partner	Equity Partners	Gross Revenue
38	Linklaters	\$1,982,000	440	\$1,963,791,000
39	Fragomen, Del Rey, Bernsen & Loewy	\$1,977,000	63	\$576,971,000
40	Alston & Bird	\$1,926,000	153	\$781,758,000
41	Orrick, Herrington & Sutcliffe	\$1,863,000	118	\$974,560,000
42	Baker Botts	\$1,838,000	179	\$731,827,000
43	DLA Piper (verein)*	\$1,757,000	404	\$2,634,094,000
44	Morrison & Foerster	\$1,736,000	224	\$1,062,700,000
45	McDermott Will & Emery	\$1,713,000	173	\$925,470,000
46	Sheppard, Mullin, Richter & Hampton	\$1,710,000	130	\$671,101,000
47	Greenberg Traurig	\$1,634,000	298	\$1,477,180,000
48	Mayer Brown	\$1,575,000	292	\$1,313,000,000
49	Katten Muchin Rosenman	\$1,570,000	142	\$574,039,000
50	Covington & Burling	\$1,543,000	272	\$945,500,000
51	Baker McKenzie (verein)*	\$1,443,000	680	\$2,900,000,000
52	Jenner & Block	\$1,417,000	111	\$448,745,000
53	Morgan, Lewis & Bockius	\$1,368,000	717	\$2,001,000,000
54	Holland & Knight	\$1,360,000	179	\$848,191,000
55	Kim & Chang	\$1,331,000	170	\$870,000,000
56	Allens	\$1,316,000	135	\$559,000,000
57	Hogan Lovells (verein)*	\$1,283,000	556	\$2,036,000,000
58	Pillsbury Winthrop Shaw Pittman	\$1,275,000	132	\$589,472,000

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Corey R. Chivers is a partner in Weil, Gotshal & Manges LLP's Capital Markets practice. He has represented corporations, investment banks, national governments and multinational financial institutions in a wide range of public and private securities offerings, including initial public offerings, major high-yield transactions and investment grade debt offerings.

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Rank by PPP	Firm	Profits Per Equity Partner	Equity Partners	Gross Revenue
59	Osler, Hoskin & Harcourt	\$1,272,000	219	\$570,960,000
60	Arnold & Porter Kaye Scholer	\$1,191,000	322	\$951,500,000
61	King & Wood Mallesons (verein)*	\$1,182,000	358	\$1,072,000,000
62	Reed Smith	\$1,178,000	298	\$1,119,239,000
63	Perkins Coie	\$1,173,000	178	\$785,997,000
64	Foley & Lardner	\$1,167,000	145	\$686,175,000
65	Venable	\$1,134,000	162	\$540,462,000
66	Nixon Peabody	\$1,111,000	133	\$473,700,000
67	Herbert Smith Freehills	\$1,099,000	325	\$1,194,645,000
68	Hunton & Williams	\$1,095,000	154	\$562,405,000
69	Eversheds Sutherland	\$1,083,000	191	\$1,032,175,000
70	Troutman Sanders	\$1,058,000	179	\$508,731,000
71	McGuireWoods	\$1,020,000	184	\$715,430,000
72	Jones Day	\$1,009,000	948	\$1,959,360,000
73	Baker & Hostetler	\$1,000,000	136	\$647,065,000
74	Seyfarth Shaw	\$991,000	203	\$637,484,000
75	Squire Patton Boggs (verein)*	\$987,000	169	\$1,000,044,000
76	Duane Morris	\$964,000	122	\$466,034,000
77	Ashurst	\$958,000	239	\$726,996,000
78	Locke Lord	\$936,000	175	\$504,302,000
79	K&L Gates	\$932,000	178	\$989,861,000



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Rank by PPP	Firm	Profits Per Equity Partner	Equity Partners	Gross Revenue
80	Drinker Biddle & Reath	\$926,000	195	\$461,841,000
81	Blank Rome	\$916,000	145	\$431,310,000
82	Simmons & Simmons	\$886,000	160	\$456,435,000
83	Faegre Baker Daniels	\$880,000	227	\$491,044,000
84	Norton Rose Fulbright (verein)*	\$860,000	714	\$1,958,000,000
85	Clyde & Co.	\$850,000	213	\$710,626,000
86	Pinsent Masons	\$849,000	178	\$579,921,000
87	Blake, Cassels & Graydon	\$837,000	265	\$480,480,000
88	Zhong Lun	\$827,000	268	\$443,991,000
89	Bryan Cave	\$804,000	204	\$592,577,000
90	Lewis Brisbois Bisgaard & Smith	\$800,000	114	\$470,800,000
91	McCarthy Tetrault	\$768,000	210	\$460,976,000
92	Ogletree, Deakins, Nash, Smoak & Stewart	\$723,000	181	\$469,475,000
93	Bird & Bird	\$710,000	113	\$434,393,000
94	Polsinelli	\$701,000	128	\$475,092,000
95	CMS (EEIG)*	\$686,000	598	\$1,461,526,000
96	Fox Rothschild	\$675,000	191	\$453,000,000
97	Dentons (verein)*	\$541,000	1,474	\$2,360,000,000
98	Littler Mendelson	\$461,000	386	\$538,000,000
99	Gowling WLG	\$392,500	378	\$587,140,000
100	Yingke	\$227,000	586	\$445,619,000



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ATTORNEYS AT LAW

Public M&A 2018 and trends

2018 has seen strong Austrian public M&A activity on the back of consolidation of listed real estate companies. This trend started with the 2016 Vonovia/Conwert public offer and culminated in the 2018 Vonovia/BUWOG and Starwood/CA Immo and Starwood IF public offers. The 2018 legislative changes allowing companies to delist from the Vienna Stock Exchange below the squeeze out level of 90 % and requiring a preceding public offer may lead to additional takeover activity. Delisting from the Vienna Stock Exchange remains possible without a public offer in the event the listed target relists or stays listed on another European Area stock exchange. A case in point is the 2017 RHI/Magnesita merger which led to RHI relocating its headquarters to the Netherlands and its Q4 2017 delisting from the Vienna Stock Exchange and relisting at the London Stock Exchange without a public offer.

By Christian Herbst

After having been substantially depressed in 2017, public M&A in Austria has been very active during the first half of 2018. Key 2018 takeover activity has been predominantly in listed Austrian real estate companies. As to the type of M&A, the Austrian market saw six public offers, one voluntary offer aimed at control, one mandatory offer, three partial offers and one delisting offer.

One of the drivers of the current M&A activity is market consolidation in Austrian listed real estate sector companies and strong entry of international players. This trend drove the Vonovia/BUWOG and Starwood/CA Immo and Starwood/Immofinanz public offers, which were among largest and most publicised M&A transactions on the market.

Market consolidation in Austrian listed real estate companies had already started in 2016 with the acquisition and subsequent delisting of the Vienna Stock Exchange (VSE) listed Conwert by its German peer, Vonovia. The Fosun/Wolford takeover, with subsequent recapitalisation by a capital increase, was driven by a need to recapitalise a distressed target being the luxury lingerie and legwear specialist Wolford. With KTM Industries/Pankl Racing systems, the Austrian market saw the first delisting offer under the new delisting rules in effect since 3 January 2018.

BUWOG/VONOVIA

As to highlights in 2018 public M&A, the BUWOG takeover by Vonovia stood out in several respects:

- BUWOG, a large residential real estate group listed at the VSE and with further listings in Frankfurt and Warsaw, is one of the rare examples of a true free float company, since most other companies listed on the VSE have a controlling or dominant shareholder.
- The absence of a dominant shareholder impacted the bearhug transaction structure. Vonovia/BUWOG was only the second significant takeover transaction structured this way, with Vonovia/Conwert having been the lead case in terms of structure. The 2018 public offer was thus preceded by a December 2017 business combination agreement, which secured the target's management support of the following 2018 public offer by German Vonovia.
- Moreover, BUWOG had outstanding convertible bonds which could be converted into BUWOG shares at a preferred conversion rate following a change of control in BUWOG. Pursuant to Austrian takeover law, the convertible bonds needed to be part of the takeover offer. To incentivise the bondholders to tender their bonds in the initial acceptance period, Vonovia offered a higher price for the convertible bonds in the initial acceptance period than in the additional acceptance period, anticipating the preferred conversion rate following a change of control under the convertible bond's terms & conditions.
- Finally, with an offer volume of EUR 3.6bln (enterprise value EUR 5.2bln), this was one of the largest cash offers ever in the Austrian market.

CHANGES IN AUSTRIAN LAW AFFECTING TAKEOVER ACTIVITY

The most significant legislative changes affecting public takeover activity in 2017/18 included:

- The minimum acceptance period in public offers is now 4 weeks, with 10 weeks as a maximum.
- New rules providing for a voluntary delisting from the VSE. A withdrawal of the listing at the VSE may now be requested provided that (i) the financial instruments have been listed for a minimum of three years; and (ii) adequate investor protection is secured, which inter alia includes a 75 % voting capital majority requesting the delisting and full public offer aimed at the delisting observing stricter minimum pricing rules than those applying generally.
- No public offer is required for a delisting from the VSE in the event that the target company relists or stays listed (in case of a dual listing) at an EEA Exchange providing similar protection measures as the VSE; a case in point is the RHI/Magnesita merger resolved in August 2017, where RHI, a global supplier of refractory products was delisted from the VSE and relisted in London.

KEY 2018 PUBLIC OFFERS

During 2018, the following offers launched for companies listed on the Vienna Stock Exchange were significant:

- **BUWOG.** On 5 February 2018 Vonovia SE, Germany, launched a voluntary offer aimed at control of VSE listed real estate company BUWOG. The offer was preceded by a 12/2017 Combination Agreement between Vonovia and BUWOG. In addition to the statutory 50 % acceptance threshold, the 2018 offer had several offer conditions, including no significant decline in the FTSE EPRA/NAREIT Germany index, and no material adverse change in the target earnings. During the initial offer period, an aggregate tender ratio of 73.8 % of all BUWOG shares and 99.6 % of all convertibles was reached. During the additional offer period, which ended on 18 June 2018, Vonovia could increase the tender ratio to a total of 90.7 % of target shares, thereby crossing the squeeze out threshold of 90 %. An intended squeeze out and delisting of BUWOG from the VSE was announced on 22 June 2018.
- **CA Immo.** On 18 April 2018 SOF-II Starlight, a company of the US Starwood Capital Group,

launched a limited offer of up to 26 % of VSE listed real estate company CA Immo, with a total offer value of EUR 706m (in parallel to a limited offer for up to 5 % of VSE listed real estate group Immofinanz). Twenty six percent of the Immofinanz AG core shareholders rejected the Starwood limited offer and announced an auction of their co-shareholding in CA Immo. At the end of the offer period on 30 May 2018, shares corresponding to an acceptance quota of only 0.16 % were tendered. Following the unsuccessful public tender offer, Starwood Capital succeeded in buying the core shareholding of 26 % in CA Immo (which included four registered shares with board delegation rights) in an off-market transaction from Immofinanz for EUR 759m on 2 July 2018.

- **Pankl Racing Systems.** On 2 February 2018, KTM Industries launched a delisting offer for mid-market VSE listed holding company Pankl Racing Group, which produces and distributes motor systems and components for the racing and aerospace industries. At the launch of the offer, KTM Industries already held 96.98 % of the target. The offer was thus directed at 3.02 % in the target. At the end of the offer period on 23 March 2018 KTM Industries held 98.22 % in the target, and thus had been able to collect 1.25 % in the target. Under the Austrian rules on delisting, Pankl Racing Group stopped trading on 30 May 2018.
- **Wolford AG.** On 1 March 2018, Fosun Industrial Holding Limited agreed to acquire 50,87 % from core shareholders followed by a capital increase. The share purchase agreement with core shareholders was subject to certain conditions precedents including merger control clearance and material adverse change clauses. In parallel Fosun launched a voluntary offer aimed at control of the remaining 49.13 % of the target. At the end of the offer period, 14.6 % of the shares had been tendered. The subsequent cash capital increase was successfully completed in July 2018.

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Shifts in the Paradigm



EYES ON THE PRIZE

International attention on Latin America is looking beyond Brazil and Mexico.

WHILE LATIN AMERICA'S LARGEST economies have attracted the attention of international law firms for more than two decades, the region's Pacific Rim is the newest prize, owing to growth and stability in Colombia, Peru and Chile.

Global firms rooted in the U.S. and Spain are looking to outcompete established local players, and they're eager to find the right partners to help them do so.

Those firms are aided by the fact that many local firms trail behind their international counterparts' more structured businesses, according to Jaime Fernandez Moreno, a consultant who founded Bruchou, Fernández Madero & Lombardi, one of Argentina's top firms.

"Latin American firms are in the process of becoming more organized, more professional and more institutional," he says. "While they are doing that, international firms can take advantage of that lag and become more aggressive in these markets."

The latest examples include Denton's recent announcement of a combination with Chilean firm Larrain Rencoret Urzua, approved by its partners in September; DLA Piper's move into Argentina in August, after earlier tie-ups with firms in Colombia, Peru and Chile; Iberian powerhouse Cuatrecasas' 2016 alliance with Colombia's Posse Herrera Ruiz; and Spanish firm Garrigues' 2015 merger with Colombia's DLP. There's also the merger of a Chilean and a Colombian firm with two Peruvian firms into Philippi Prietocarrizosa Ferrero DU & Uría—which, thanks to an own-

ership stake from Spain's Uría Menéndez, now bills itself as the first major "Ibero-American" firm.

The peace agreement in Colombia after 50 years of civil war is driving interest in the country. Another spur is its membership alongside Chile, Peru and Mexico in the Pacific Alliance free trade block. Taken together, the zone is one of the 10 largest economies in the world. All this attention is leading to tough decisions for established domestic firms, which must contend with the new reality of internationalization.

"The top players have had to decide whether to stay independent, pursue a regional model via alliances and mergers, or seek a full-blown merger with an international firm," says Antonio Holguin, a Colombian lawyer and director with Adam Smith Esq.

The dynamics are slightly different in the two largest economies in the region: Brazil and Mexico. While a number of top international firms have offices in Sao Paulo, there are sturdy regulatory limitations to what foreign lawyers and firms can do in Brazil, owing to a legal market that consolidated faster and earlier than others, creating a set of large firms that succeeded in pushing for regulations, according to Moreno.

"That will go away at some time," he says.

In Mexico, meanwhile, consolidation has yet to occur, and small firms are predominant—at least for now. But two firms, Creel and Galicia, are modernizing the way they are structured, and others will likely soon get on board.

"In the next few years it's going to change a lot, and the international presence will also grow," Moreno says. "It has to happen due to the size of the market and the fact they are across the border from the U.S." —DAN PACKEL



FROM THE LOOMING SPECTER OF BREXIT TO THE RISE OF NEWLY STABLE ECONOMIES IN SOUTH AMERICA, CHANGE IS NOW, AS ALWAYS, A CONSTANT ON THE WORLD STAGE. AS LAW FIRMS PLAN THEIR GLOBAL STRATEGIES, MAINTAINING A STEADY STANCE IS MADE ALL THE MORE DIFFICULT BY THE GROUND SHIFTING UNDERFOOT. A CLOSER LOOK REVEALS THE TRENDS FIRMS CAN EXPECT TO FACE IN MARKETS AROUND THE WORLD.

OPEN SEASON

Economic changes in South Africa have attracted outside interest, putting pressure on local firms.

GLOBAL LAW FIRMS HAVE RECENTLY flocked to South Africa, a trend fueled by a more open post-apartheid economy that has shaken up a legal market previously dominated by domestic firms.

As financial sanctions lifted after apartheid's end in 1994 and South Africa's economy opened, multinational companies looking to do business in the country and elsewhere in Africa found themselves in need of sophisticated legal services.

"The legal sector was obviously affected by the opening up of the economy. That created a lot more work opportunities," says Peter Leon, a Herbert Smith Freehills partner and global co-chair of the firm's Africa group. "A lot of multinationals started working there; companies became more sophisticated in their use of legal services."

In the recent past, those overarching economic changes have paved the way for a clear impact on the legal sector, which has seen an influx of global law firms, many of them with U.K. roots.

"In the last four to five years, that's been a game-changer," says Leon, who previously practiced at Webber Wentzel, one of a small group of leading South African firms now competing against the international firms. "It has given the local firms a bit of a shock, and it's created some competition that wasn't there before."

White & Case became the first international firm to open an office in Johannesburg in 1995, laying out a path for others to follow. A flurry of new entrants have joined the South African legal market since 2014, when Allen & Overy, Clyde



& Co and Dentons all opened offices in South Africa. Herbert Smith Freehills and DLA Piper followed suit in 2016, hiring big-name partners from local firms, while Pinsent Masons, a global firm based in the U.K., opened a South African office in 2017 with a focus on infrastructure.

That injection of global players has come as international companies have increasingly eyed South Africa—and the African continent more generally—according to lawyers who practiced in the region. Among other areas, global firms compete for mergers and acquisitions work in South Africa, while project finance and infrastructure-related work keep lawyers busy elsewhere in Africa.

Johannes Gouws, DLA Piper's country managing partner in South Africa, says most international entrants have focused on hiring experts from large local firms, including Bowmans,

Cliffe Dekker Hofmeyr, ENSafrica and Werksmans. In response, he says, local firms have adjusted.

"The biggest [recent trend] has definitely been the entry of the international law firms," Gouws says. "That has obviously been a disruptor in the market, because all these firms have hired the bulk of their lawyers from other South African firms."

As for what's driving global firms toward South Africa, Gouws notes that in many instances, international firms have entered the market based on necessity. Specifically, as global clients expanded their business in the country and elsewhere on the African continent, they needed on-the-ground legal expertise.

"If you say to your clients, 'Africa is important,' you have to have a presence here in South Africa," he says.

—SCOTT FLAHERTY



Shifts in the Paradigm >>>



COMING TO AMERICA

After years of globalization, firms are focusing on growth in the United States.

IN 2015, DENTONS INKED A DEAL WITH Dacheng, China's largest firm, creating the world's largest law firm by head count and changing the idea of what a global law firm was supposed to look like.

But earlier this spring, at a meeting with its U.S. partners, its leaders laid out with specificity a new plan.

"While we have grown dramatically in Europe, in Australia, in Singapore, in Latin America, in Africa and multiple other geographies over the last year, our top global growth priority is the U.S.," Dentons global chief executive officer Elliott Portnoy said.

Over the last year-and-a-half, Portnoy said, the global legal giant met with

clients and it became strikingly clear that they wanted broader and deeper bench strength in the U.S.

As a result, "Dentons, as a global priority, is doubling down on strategic growth in the U.S.," he added.

All things considered, the U.S. remains the world's largest, strongest and most lucrative legal market. A 2017 study by U.K.-based market research company Acritas found that U.S. companies spend 166 percent more on legal services per dollar of revenue than companies around the globe.

"I don't see another market that's going to match the U.S.," Hogan Lovells CEO Stephen Immelt says.

London-based Hogan Lovells' strategy has been to create an international firm with a strong U.S. presence, Immelt says. About half the firm's revenue is generated in the U.S. each year, which

has contributed to the overall growth of the firm stateside and led to expansions in California, Houston and Colorado, he says.

But Immelt says this is different from the past, when firms with a strong U.S. presence started to build international platforms. For years, globalization has been key for a large group of U.S. law firms, but many have since halted their expansion efforts.

"I have seen firms [pull] back from the platform building that you saw 10 to 15 years ago and really focus much more on the U.S. market," Immelt says. These U.S.-based firms see their main market as being in the U.S., so it's no longer the goal to build a 50-office network, he notes.

The United States' strength in the global legal market has also drawn attention from across the pond, particularly from London's top firms.

"Magic Circle firms have been growing internationally for decades but are struggling to gain market share in the U.S.," says Dave Koschik, a member of White & Case's executive committee and head of its U.S. growth team.

Allen & Overy is reportedly in merger talks with O'Melveny & Myers, a potential move that has sent ripples throughout London and signals an increased desire and interest to finally break through in the U.S. legal market.

"The U.S. is the largest and most lucrative legal market in the world, so it makes sense that firms with global ambitions would want to be here," Koschik says.

—MEGHAN TRIBE



INTO THE WILD

Brexit is coming, and European lawyers are doing their best to prepare for the uncertainty.

ACROSS EUROPE, M&A AND FINANCIAL services markets have remained buoyant throughout 2018. But with Brexit looming in March, and the United States and China continuing to exchange blows ahead of what many fear will be a global trade war, notes of uncertainty have started to ring across London.

With M&A on the rise in Germany, France, the Netherlands and other parts of Europe, the priority for U.K.-based lawyers is introducing certainty to deals and insulating clients from potential political and economic shocks.

“The biggest issue is investor confidence,” Charles Currier, co-head of corporate at CMS, says. “A year-and-a-half since the Brexit referendum, the markets have been remarkably resilient. But the difficulty for clients is uncertainty. The potential macro headwinds feel a bit closer.”

If this level of uncertainty continues into 2019, Currier stresses, “it may be a problem.” Anyone who believes they have a clear idea of what’s to come in the next six months “is kidding themselves,” he says.

“I’ve started to hear from colleagues that more clients and their financial advisers are looking to accelerate the finalizing of deals as soon as possible because they fear the future is less certain and may be problematic,” Currier says. “It might be that clients will put on pause investments they’re looking to make.”

For Alexis Roberts, Pinsent Masons’ head of financial services, it is “absolutely critical that clients can continue as before from day one [of Brexit].”



He suggests most financial services clients are assuming a worst-case scenario, which will provide more work for lawyers: “Clients are restructuring their businesses so they are Brexit-ready from day one, however hard Brexit may be.”

Similarly, Andy Ryde, corporate head at Slaughter and May, says “clients are gathering themselves.”

“I think we’ll see almost daily volatility as negotiations continue,” Ryde says. “This will have an impact on M&A. Although the climate remains better than we expected, we wouldn’t be surprised if clients put off decisions on big deals. They’re asking, ‘Why do a deal now when we’re so exposed to swings in valuations?’”

Despite the uncertainty, Ryde believes the U.K. will remain “very much at the forefront” of the deals market.

“We have a liquid market with many

multinationals located here and the city is Europe’s financial center,” he says of London. “Then we see Germany, France, Spain, Italy and also the Netherlands, which has a disproportionate share of the market given the multinationals based there.”

Germany and France boast active M&A markets, but Ryde doesn’t expect Brexit to catalyze action around Europe.

“The economic climate is what really matters,” he says.

As Ryde points out, the eurozone’s GDP growth has outpaced the U.K. recently, and despite the potential for trouble in Italy, there’s been no major European financial crisis of late.

“The eurozone doing well is a good thing—it will remain a major trading partner for the U.K. and so a prosperous eurozone is in the U.K.’s interests,” Ryde says. —KRISHNAN NAIR

THE INFLUENCE OF MERGER CONTROL ON THE EARLY STAGES OF M&A DEALS

Anticipation of the potential impact merger control constraints may have on M&A:

A key factor for the launching of a successful transaction



MARIE HINDRÉ
PARTNER
ALTANA

Competition law can be a decisive key factor that may influence the decision to sell or acquire companies or assets. At the end of the day, sellers, interested bidders and the final acquirer all come together on a common concern: defining an optimal timetable for the transaction. To meet this goal, it is highly recommended to anticipate a competitive assessment of the planned transaction, at a very early stage of the strategic discussions around the project, either within the context of a private sale, or a bidding process. Anticipation allows the parties to move into the notification process with greater comfort.

IN THE SELLER'S LENS: SELECTION OF AN APPROPRIATE ACQUIRER

Considering a transactional project from a merger control perspective, the seller's main arbitration concerns the selection of a candidate for the acquisition who has the most appropriate profile in order to circumscribe the impact of potential competition concerns on the actual feasibility of the contemplated transaction.

From a competition law viewpoint, giving priority to a logical desire for industrial consolidation can be, under some circumstances, a more complex deal to complete compared to a financial investment by a private equity investor or a family office. An aggregation of high market shares, together with significant overlap in the parties' respective businesses or bringing together various complementary businesses of the same value chain in a post-merger entity, as well as the reduction of the number of competing players in a concentrated market can all raise competition concerns, make the clearance decision more complex to issue, and therefore slow down the selling process or even alter the substance of the transaction.

Conversely, by choosing a private equity fund or a family office as a new comer investing in a sector, the seller takes a conservative option, which allows to contain or remove competition concerns in the approval process of the transaction. The transaction is also likely to meet

the criteria for applying for a simplified procedure at the EU level, thus accelerating the issuance of the clearance decision within a 15 working day time-period. In 2017, among the 353 European Commission First Phase decisions, 280 were issued under a simplified procedure.

These are two opposite logics, but the industrial vision can still be preferred if potential competition concerns are early and duly foreseen, and if the level of commitment that the proposed acquirer or interested bidders are willing to give to help the transaction to succeed is in line with the nature of the concerns.

It is far too often found that competition counsels are consulted at a late stage of the selling process to assess whether the transaction falls within the scope of a review by competition authorities. Actually, this question should be analyzed much earlier and with an extended scope: does the transaction require notification to one or more competition authorities, and will the notification be a mere technical matter? If not, when difficulties are anticipated, the seller should be offered some flexibility to contemplate other, more appropriate candidates (if any). The interest for the seller to adhere to this approach is usually well understood within the context of bidding processes launched for the acquisition of certain strategic companies or assets. An in-depth competitive assessment is often part of the documentation required from the bidders, together with a draft SPA and their offer. The appraisal of competitive effects of the transaction that could result in long and complex discussions with the competition authorities is often, together with the price, one of the key criteria for selecting the final bidder. Adherence to this approach is, however, still not the case in too many deals, and it is very detrimental to the achievement of the transaction.

Another risk for the seller actually derives from an exit scenario implemented by an acquirer giving up the project in the light of constraints that would not have been properly identified and accordingly addressed, and

that would entail an unreasonable burden on the business plan (e.g. as a result of structural remedies that would be imposed to clear the notification). The financial implications of this risk for the seller can be circumvented by agreeing on an exclusivity or including a breakup fees mechanism in the SPA. The acquirer should consider these options with caution as the amount of the breakup fees can be relatively high, aimed at compensating the seller for all of the consequences such an exit would cause, including the hypothesis of an acquirer deciding not to conclude the transaction, even sometimes at a very late stage of the discussions, while the formal examination of the case already takes place. This was recently the case in a proposed acquisition by Fraikin (no. 2 in the market for the rental of refrigerated vehicles) of their direct competitor, Petit Forestier, the market leader. Fraikin decided to withdraw the filing after the French Competition Authority initiated Phase 2 proceedings justified by the insufficiency of the proposed remedies in Phase 1. The transaction would have reduced the number of market players from 4 to 3, and resulted in combined market shares of up to 90% for the new post-merger entity, including numerous overlapping businesses. Looking back, considering the irreversible consequences these competition concerns had on the transaction itself, it could reasonably be asked whether this difficulty had been properly assessed before the notification of the merger. Out of 233 clearance decisions issued by the FCA in 2017, only 8 were subject to remedies.

IN THE BIDDER'S LENS: AN ACQUISITION, BUT AT WHAT PRICE?

For the acquirer, one of the key aspects of its strategy is the acquisition price and integration costs of the target. Competition law is one of the adjustment variables that help to determine the deal value.

While anticipating the competition concerns that could interfere with the clearance by the regulator, the acquirer should also

identify the impact on the effective value deal, acquisition price and business plan if structural remedies were imposed. The more accurate the preliminary assessment is - with the support of economists if relevant - the more the impact on the global rationale of the transaction is assessed. Experience shows that it is often more useful to slow down the discussions with the seller to reallocate the appropriate time and resources to an in-depth competitive analysis.

Most of the time, when the formal notification takes place before the EC, the parties have only very limited time to counter-balance the position of the regulator, which is traditionally disclosed during a state-of-play meeting with the case-team, and accordingly not allowing much more time to discuss potential remedies. One of the legal instruments offered to the seller to eventually escape an overly expensive clearance process is the condition precedent included in the SPA regarding the clearance of the case by competition authorities. This clause can be more or less sophisticated, covering different situations in consideration of the sorts of risks that are anticipated, namely regarding the nature and details of remedies, and/or the occurrence of an in-depth examination in Phase 2. At what point would the deal lose its strategic interest? Which remedies are not acceptable? Is the acquirer solely responsible for the assessment? All of these factors should help properly design the condition precedent, which will most of the time be counter-balanced by a breakup fees clause.

A COMMON CHALLENGE: A CONCLUSIVE TRANSACTION IN A REASONABLE TIMEFRAME

As a conclusion, if having an optimal and fast transaction calendar is an agreed goal shared by all the parties involved in a deal - sellers, acquirers, bankers, external counsel, management and project teams - the suspensive effect of merger control in most of the jurisdictions often impedes this wish, as the transaction cannot be closed until

the clearance decision is issued. It is highly preferable to define a reasonable retro-planning, with a longstop date consistent with the actual complexity of the case and the probable difficulties to get a swift clearance decision, and allow time for constructive discussions with the regulator. Mechanisms, such as a carve-out of a local part of the business concerned by the extended examination time-period, that are aimed at isolating the suspensive effect of a notification should only be considered with great care, in consideration of the risks of gun jumping, *i.e.* anticipating the realization of the deal before being granted the related clearance decision, and the related heavy fine.

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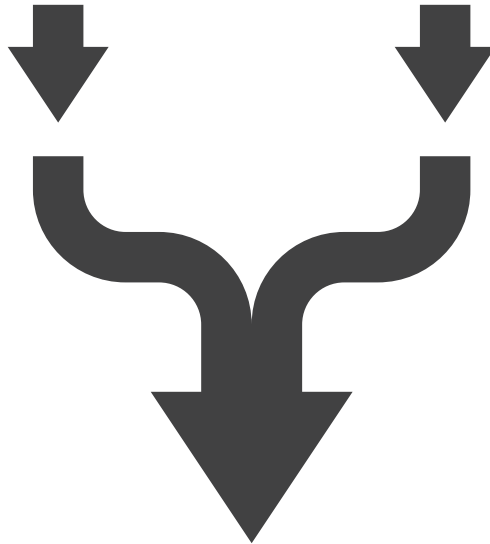
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A Trans-Atlantic Trend

With U.S.-U.K. mergers on the rise again, it's time to take stock of what they achieve.

BY NICHOLAS BRUCH

FASHION TRENDS COME IN WAVES. APPARENTLY, SO DO LAW firm management strategies.

After a busy decade of trans-Atlantic mergers, including 10 combinations of U.S. and U.K. firms between 2000 and 2011, there was a distinct slowdown. Only one major trans-Atlantic merger was completed between January 2011 and February 2017. Then word of the Eversheds Sutherland merger broke. Soon after, rumors began emerging that Womble Carlyle and Bond Dickinson were to merge. Then came news of the Bryan Cave and Berwin Leighton Paisner combination. Beyond those three examples, others have been whispered about, both privately and publicly, as is the case of the rumored merger between Allen & Overy and O'Melveny & Myers. Clearly, something is in the air.

There are many differences between the last round of mergers and the current one. But a key difference is the knowledge that comes with experience. In the early 2000s, law firm leaders were boldly going where no law firm had gone before. Trans-Atlantic mergers between law firms had not been experimented with. There was little knowledge of the complexity involved or the benefits that might come from increased cross-selling or cost synergies. Today, law firm leaders have significantly more information. Much can be learned

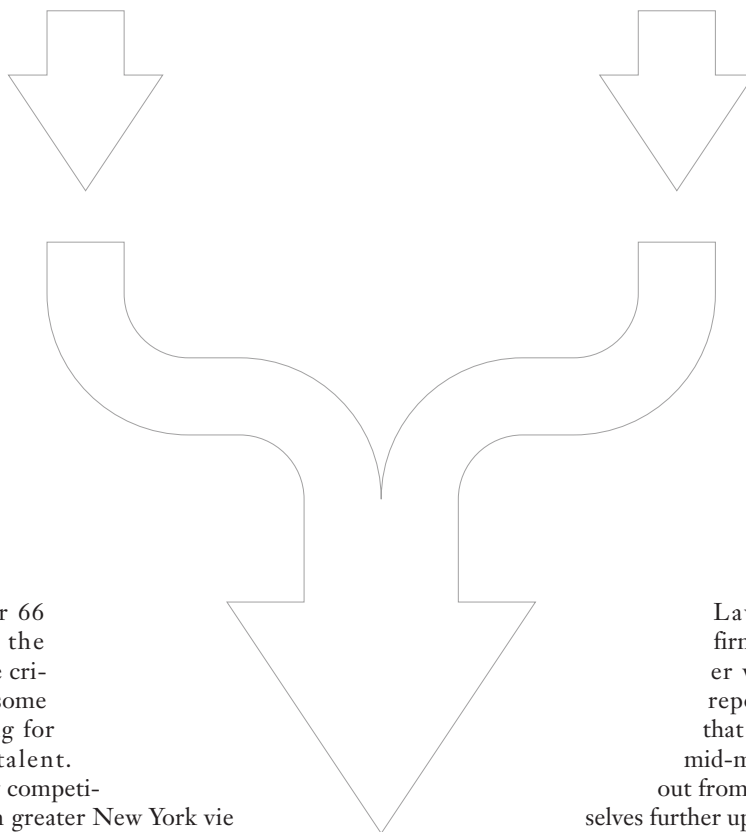
from examining past mergers. Given that these mergers are once again en vogue, it's time to take stock of past mergers and see what they achieved.

THE FORCES AT PLAY

Before jumping into the track record of past mergers, it's worth examining what today's combinations hope to achieve and why law firm management teams are considering them.

It is often said that law firms face difficult market conditions. This understates the issue. Law firms face three related problems. First, growth has slowed significantly. Second, clients have become savvier, more demanding and more cost-conscious. These problems are well known by most law firm leaders.

The third issue facing law firms is less appreciated: Law firms face a daunting amount of competition from other law firms. Within the Am Law 200 there are 185 self-described full-service firms. If that number does not impress, look closer at regional markets. Within the Midwest there are 27 Am Law firms that could be described as full-service regional firms—defined as firms that self-identify as full-service, have little to no international capabilities and have more than half of their lawyers within the region. Beyond those Am Law



firms, there are another 66 NLJ 500 firms within the Midwest that fit the same criteria. These 93 firms, to some degree, are all competing for the same clients and talent. Other regions are equally competitive—74 regional firms in greater New York vie for full-service market share, and 69 regional firms in the Southeast compete.

Mergers, it is said, offer law firms solutions to each of these problems.

For slow growth: Mergers offer the possibility of cross-selling. If more services can be sold to the same clients, growth will inherently come.

For clients' cost concerns: Mergers offer the tantalizing possibility of cost synergies. The combination of two firms, at least in theory, should create some reduction in overhead cost. This should make law firms cheaper and more competitive.

For clients' increasing sophistication: Instead of managing dozens of law firms, larger firms can offer GCs a one-stop shop. If the quality of services can be made similar across geographies and service lines, this should be compelling to corporate clients.

For differentiation from competitors: The quickest, if not the most effective, way of differentiating a law firm is to grow, either domestically or internationally. There are far fewer national and international firms than there are regional firms. Given this fact, law firm leaders might be forgiven for thinking that a trans-Atlantic merger would give them a unique selling point among corporate clients, which, after all, have been expanding globally themselves.

Many firms see mergers similarly to Jeremy Clay, the managing partner of Mayer Brown. When asked by The

Lawyer to summarize his firm's logic for its 2005 merger with Rowe & Maw, Clay reported that "our sense was that there was an overcrowded mid-market. We wanted to stand out from that group and move ourselves further up the London market."

Clay's comment raises a few important questions. Do trans-Atlantic mergers allow firms to stand out? Do they act as catalysts for transformation? If so, does that facilitate growth? A look at past mergers sheds light on these issues.

A LOOK TO THE PAST

First, the good news: Trans-Atlantic mergers have, unquestionably, been catalysts for transformation.

Nearly half (47 percent) of the world's 15 largest law firms this year, by revenue, are products of trans-Atlantic mergers. By combining with U.K. peers, U.S. law firms have transformed themselves from regional players to global behemoths.

But what about growth? One of the key benefits law firm mergers are said to bring is enhanced growth opportunities. Here, the story becomes more complicated. Measuring revenue growth in global law firms is fraught with difficulties for several reasons:

■ **Currency changes:** Large changes in major currencies can greatly impact the dollarized reported revenue of global law firms, creating difficulties in comparing growth between years.

■ **Organic vs. inorganic growth:** Most global law firms have undergone multiple mergers. This makes it difficult to parse out what growth is organic and what has been acquired through mergers or group lateral hires.



■ **Reporting issues:** Most law firms do not report revenue by region. This makes it difficult to assess which parts of the business are growing.

These difficulties create the need for a proxy, a variable other than revenue that can speak to growth.

In most law firms, growth in head count and growth in revenue are very closely linked, making head count a good proxy for measuring overall growth.

Analyzing lawyer growth in trans-Atlantic mergers suggests that the supposed benefits of organic growth are exaggerated at least and, at worst, just plain wrong.

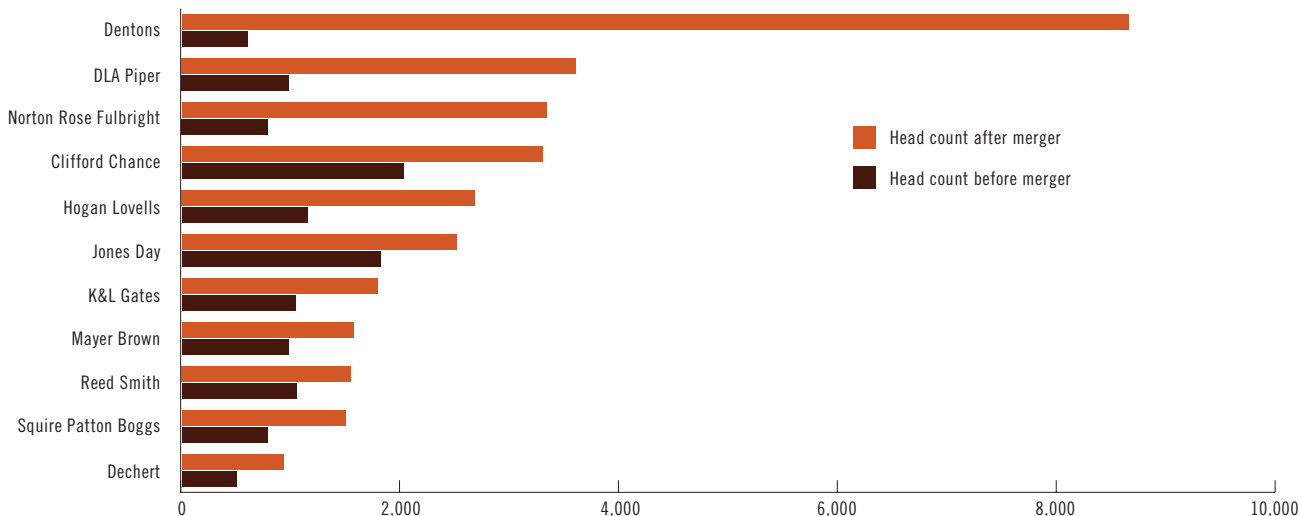
Most trans-Atlantic combinations have not facilitated growth in head count after adjusting for additional mergers. In fact, a majority of the trans-Atlantic mergers analyzed by ALM Intelligence saw the firms shrink. The average law firm reported a decline of 0.4 percent in head count per year in the years between its first trans-Atlantic merger and today. Such declines sound

minor, but they stand in stark contrast to the growth that was promised. More concerning is the fact that U.S. and U.K. offices performed particularly poorly. If trans-Atlantic mergers between U.S. and U.K.

firms facilitated cross-selling and made firms more attractive to clients, we would expect the U.S. and U.K. practices of these firms to be benefited disproportionately. The data suggest the opposite is happening.

A closer look at the offices of law firms that have undergone trans-Atlantic mergers provides additional information. In almost every case, the firm's existing offices—those offices which were open in the first reporting year after the merger was completed—have seen declines in head count. Growth, in every case except Hogan Lovells, has only come from offices opened after the completion of the merger or through additional mergers.

GLOBAL MERGERS TRANSFORMED FIRMS



GROWTH RATES FOR AM LAW 200 FIRMS



What could explain these trends? Why are firms' legacy offices shrinking?

It's possible that global expansion makes local offerings less competitive. This seems unlikely at first glance. That said, a 2017 report by ALM Intelligence on domestic mergers suggests that costs rise disproportionately after a large merger. There is good reason to think international mergers would create similar outcomes, which could raise costs and make firms less competitive. Another possibility is that big mergers distract law firm management teams from the day-to-day duties of growing their legacy offices. This seems like a real possibility. Mergers are highly complex after all. A third possibility for the loss in head count is that some number of lawyers do not want to take part in the transformation the law firm is undergoing. It is entirely believable that the practice of a significant share of lawyers, at a once-regional firm, would no longer fit into the business of a global giant.

LESSONS FOR LEADERS

What should today's law firms make of these findings? Does this data suggest law firm leaders shouldn't consider global mergers? No. At least not entirely.

For firms looking to boost growth, mergers are likely to be a disappointment and potentially even a hindrance. Some

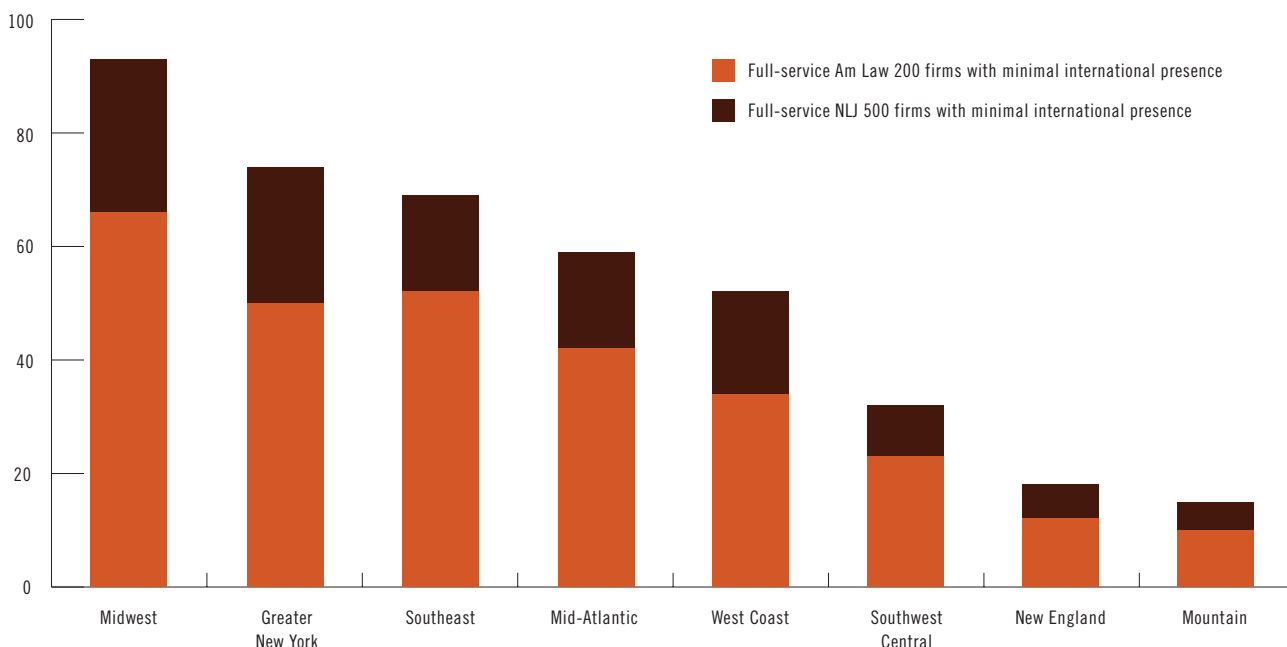
cross-selling opportunities will be created. But they are likely to be offset by complications from increased conflicts, increased costs, partner departures, and other difficulties created by mergers. The bottom line is that faster growth is not a likely outcome of a merger—at least not without additional changes.

For firms looking to make a major strategic shift, however, trans-Atlantic mergers may be worth considering. Combinations between U.S. and U.K. firms have been successful at transforming firms. Many of the most well-known brands in the legal space today are products of trans-Atlantic mergers.

To take full advantage of the merger, however, firms will have to go further than just combining. Law firm leaders should leverage mergers to have a larger discussion with their partners about how their firm can differentiate itself and become more competitive. Mergers should be pitched as the first step. Partners should know that broader operational changes, connected to how services are sold and delivered, will be needed if the firm wants to take advantage of its newfound scale. Such plans are more likely to create sustainable growth opportunities in the future. They may also usher in a new generation of trans-Atlantic law firms.

Nicholas Bruch is a senior analyst with ALM Intelligence.

COMPETITION AMONG REGIONAL FIRMS



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Great Expectations

As Ireland reaches a critical juncture with the UK over negotiations for a post-Brexit arrangement, *The American Lawyer* and *Legal Week* canvassed Dublin's legal elite to trace the country's treasured relationships with the rest of the world.

By Sarah Downey

On August 29, 2018, the United Kingdom's (UK) Brexit secretary Dominic Raab admitted to a House of Lords Committee that there had been little progress on the issue of the Irish border. A thorn in the British government's side since the referendum result in June 2016, the border arrangement between Northern Ireland and the Republican State once Britain exits the European Union will not be a frictionless one.

"I don't have a solution to give you yet," Raab said. He added, however, that he was confident a general withdrawal deal with the EU is "well within our sights."

Both the UK and the EU have expressed their preference to resolve the border issue with an overarching economic and security deal. However, the UK's current stance, which includes leaving the customs union and the single market, pose major challenges that could result in no deal at all.

In any event, Ireland's economy will be worse off after Brexit no matter what exit arrangement the UK pursues. An analysis entitled "Ireland and the Impacts of Brexit", published by the Irish government in February 2018, concluded that the country's GDP, trade and real wages will all take weighty blows under every potential scenario modelled by Irish government officials. It's a simple equation; the UK is

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Ireland's largest trading partner, not least because it shares an invisible border that enables the free movement of people and goods.

Ireland's law firm leaders including Arthur Cox, A&L Goodbody, William Fry, Matheson, McCann Fitzgerald, and Mason Hayes & Curran have consequently spent the last two years navigating domestic and international clients through the Brexit headache. Simultaneously, however, the conversation has sparked a renewed recognition of the sprawling global network Irish commercial firms have established in recent decades, and an appreciation of the fact that their previous dependence on UK counterparts has shifted considerably.

A&L Goodbody's finance head, Ciaran Rogers, who also leads the firm's Brexit group, says: "No one is happy about Brexit from an Irish perspective and people are still uncomfortable with it from a commercial and economic point of view. Although the UK will always remain an important trading partner for us irrespective of how Brexit plays out, there has long been a growing diversification away from the UK for goods and services, and Brexit will accelerate that. We're dependent on our international network for a large portion of our work, including European, US and Asian law firms. Behind that, we have a good infrastructure for dealing with Europe, the US and other jurisdictions."

While there is no doubt of the UK's status as Ireland's most important trading partner, through geographical proximity, common language, similarity of legal system and business culture, the country's evolution towards other European and international centres has too become unquestionable.

THE INFLUENCERS

For more than 30 years, Ireland's position on global markets has ascended to remarkable heights, and subsequently lessened its once heavy reliance on the UK for business. For foreign direct investment alone, it ranks 19th in the world as an attractive location to investors [see **Ireland's Economic Recovery: Europe's phoenix from the ashes**] with total flows to the country reaching \$66bn in 2017. Where today the Republic constitutes the fifth biggest customer for UK exports, and the UK is the second biggest customer for Irish exports, the country's ties further abroad have majorly strengthened in recent decades. The US has become crucially important to Irish firms in this regard.

"The relationship Irish firms have with many US firms initially evolved as a result of the policy adopted by successive Irish governments over many

decades to position Ireland as an attractive location for foreign direct investment," says Matheson managing partner Michael Jackson. "US companies have a long history of establishing operations in Ireland and this has resulted in high levels of interaction between Irish and US law firms and the capacity to grow relationships. Joining the European Union in 1973 further increased Ireland's attractiveness as a location for investment. The decision to introduce a 12.5% corporate tax gave certainty about Ireland's commitment to FDI and the increase in cross-border distribution of financial products assisted Ireland's development as a leading global center for financial services. So, the growth in activity by US companies in Europe has facilitated the growth of our relationship with US law firms."

According to the American Chamber of Commerce Ireland, today over 155,000 people are directly employed in over 700 US firms in Ireland, and US firms indirectly support a further 100,000 jobs in the Irish economy, which Jackson rightly points out has led to "substantial interaction between law firms in both countries".

McCann Fitzgerald chairman and former managing partner John Cronin notes that the trend can also be linked to radical changes within London's legal market since the mid-1980s. "[Back then] there was just the Magic Circle and a pool of highly respected second-tier firms. Things have changed quite a lot. American firms have transformed the City landscape, particularly on the finance and private equity side. It's remarkable. Irish firms are extremely competitive in their own small market and have had to adjust to the changes in the London marketplace. For high-end finance and private equity work, these days we typically see the likes of Kirkland & Ellis, Milbank, Shearman & Sterling or White & Case as well as certain London firms, whereas previously it was mostly Magic Circle or other leading UK banking law firms. Now, nine times out of ten it's an American firm, although in the majority of cases we will be working with English lawyers who have migrated to those US firms."

Mason, Hayes & Curran managing partner Declan Black says: "The UK was for many years the most important referral destination for legal work coming into Ireland because of the primacy of the trading relationship and because London became a clearing house for worldwide instructions. That has evolved and changed over the last decade – the United States is just as important now. US firms hiring UK lawyers developed multiple points of connectivity with US firms for us. They become influencers in terms of the destination of international

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instructions, so Irish firms had to take care to develop relationships with Anglo-American firms.”

BRINGING HOME THE BACON

Indeed, part of the strategy saw Irish firms take a twin-track approach by having an office in both locations. Where Ireland’s legal elite all have offices in the City of London and Belfast, other launches rolled out during the last three decades included New York, Silicon Valley, Palo Alto and San Francisco. Those investments abroad have since paid off; following Ireland’s booming Celtic Tiger days, the economy has seen huge private equity investment from US players mainly in distressed and performing assets, as well as further capital flows across the real estate, technology, pharmaceutical and life sciences sectors.

“Brexit offers Ireland an opportunity to present itself as a very attractive jurisdiction within the EU that is English speaking and common law. That’s attractive to the US and Asia.”

— CIARAN ROGERS, A&L GOODBODY

In the private M&A space, a 2018 report published by Arthur Cox in association with Cleary Gottlieb, found that Ireland continues to be an attractive destination for foreign buyers with both private equity and trade buyers active in the Irish market. The financial services sector was particularly active with 17 transactions for a total aggregate consideration of €7.3bn, while the energy sector saw eight transactions for a total aggregate consideration of €1.6bn.

The growth of corporates moving their European headquarters to the country has also featured heavily throughout Ireland’s growth narrative, with more than 1,000 multinationals residing there today including GlaxoSmithKline, Johnson & Johnson, Roche, Novartis, Bayer, Eli Lilly, IBM, Google, Facebook and Paypal.

A cursory glance at recent international work that Ireland’s legal elite have received instructions on vindicates the sentiment of Irish law firm leaders. A&L, for example, advised CPPIB on its proposed €830m acquisition of Shell’s interest in the Corrib Gas Field, as well as Sumitomo Corporation on its €751m rec-

ommended takeover offer for Fyffes (Arthur Cox advised the latter), and Verizon Communications on its acquisition of FleetMatics Group for \$2.4bn in 2017. Arthur Cox, known for handling global corporate mandates, advised Mallinckrodt on its \$1.2bn acquisition of Sucampo Pharmaceuticals, as well as the Irish Stock Exchange on its €137m acquisition by Euronext NV, and cement company CRH on its \$3.5bn acquisition of US company Ash Grove Cement.

Mason Hayes & Curran acted for Activision Blizzard on its \$5.9bn offer for King Digital Entertainment by way of a scheme of arrangement, as well as for Deutsche Bank’s London branch in relation to the €1.36bn acquisition of Aer Lingus by International Consolidated Airlines Group. McCann FitzGerald, meanwhile, advised Cardinal Health on its \$6.1bn acquisition of patient product portfolio from Medtronic, and Galectric Holdings on the sale of 230MW of wind farm assets to the renewable energy investment arm of China General Nuclear Power Group. And Matheson recently advised San Diego biopharm firm Zavante Therapeutics on its acquisition by NASDAQ-listed Nabriva Therapeutics in a deal valued at up to \$125m, as well as FEXCO and Goodbody on the proposed acquisition of Goodbody Stockbrokers by a Chinese consortium led by the Zhongze Group.

A&L Goodbody’s Ciaran Rogers says: “You have to adapt to your market. The Irish have long been used to that. That’s the key factor – you’ve got to have something to sell and focus on. We focused hugely on what we had to offer in Ireland and what opportunities Ireland could offer. Brexit offers Ireland an opportunity to present itself as a very attractive jurisdiction within the EU that is English speaking and common law. That’s attractive to the US and Asia.”

SWEET SPOTS

Other jurisdictions of growing importance to Ireland are found across Europe and Asia, with Germany, France, Italy, Spain, Benelux, the Nordics, Scandinavia, Japan, Singapore and China all cited by law firm leaders as strategically beneficial for improving relationships. Interviewees were most vocal about their ambitions for the Chinese market’s aviation and finance sectors. Increasingly, local investors are doing business with Ireland for its world-famous reputation as an aircraft leasing hub. During the 1980s, Guinness Peat Aviation (GPA) operating from Shannon became the world’s largest commercial aircraft lessor, leading to a concentration of expertise in that sector in Ireland, which resulted in the “evolution and growth of a dynamic and world-leading aircraft leasing community here”, says Matheson’s Michael Jackson.



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

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“Ireland was one of the first signatories to the Cape Town Convention and Aircraft Protocol, and the International Registry of Mobile Assets operated under that Convention is based in Ireland. [The country’s] extensive tax treaty network and approach to taxation of aircraft leasing, the strong reputation of the Irish Aviation Authority and a government committed to supporting the aviation financing and leasing industry have also contributed to the fact that 14 of the world’s top 15 lessors operate from Ireland and that more than half of the world’s leased aircraft are owned and managed from Ireland. The growth in passenger numbers for airlines worldwide is particularly strong in Asia, with China forecast to overtake the US as the world’s largest aviation market. This has led to increased demand for aircraft in Asia and many Asian companies have established or acquired leasing operations in Ireland. As a firm, our Asian-facing business is growing substantially. I believe the amount of resources dedicated towards Asia will continue to increase.”

Mason Hayes & Curran’s Black says that Brexit has since acted as an accelerator to encourage people to deepen relationships further abroad. “That’s just a self-evident, sensible thing to do. It doesn’t mean the UK will become unimportant.”

It has, however, become an aging cliché that Irish firms will find it necessary to identify where competitive advantages lie as Brexit negotiations drag on.

Significantly, the Irish government, led by Taoiseach Leo Varadkar, estimated that Ireland’s GDP would be 4.3% worse off under a free trade agreement-style Brexit, with exports taking a 4.5% hit and imports 4.8%. The worst-case scenario for Ireland would be a World Trade Organization deal, in which the UK would walk away from the EU in March 2019 with no deal in place. This would wipe 7% off Ireland’s GDP, 7.7% off its exports and 8.2% off its imports. Even in a ‘soft’, European Economic Area-style Brexit, in which the UK would remain in the single market, the Irish economy would be left off in a worse state: GDP down by 2.8%, imports by 3.3% and exports by 3.5%. It seems Brexit will prove a seminal event from which Irish business will find its relationships with the UK inevitably change – for better, or worse.

Matheson’s Jackson notes: “Over the past 20 years [the relationship between the UK and Ireland has] matured greatly. As the level of international activity in Ireland has grown, Ireland has become a more sophisticated, commercial and confident economy. While agrifood continues to be a significant contributor to the Irish economy, the last 20 years have seen an acceleration of the longer-term shift from a largely agricultural base to areas like technology, pharma, life sciences, financial services and, more recently, finech and regtech.”

“That change has been mirrored in a change in the nature and quality of our relationship with the UK. More trade flows both ways now and referral opportu-

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IRELAND

nities for complex work from sophisticated clients arise on both sides. As Ireland's trade has also become more global, there has been a reduction in the percentage of revenues of Irish firms which are UK originated, although the UK is and will remain a very important market for Irish firms."

Arthur Cox managing partner Brian O'Gorman concludes: "The life of an Irish lawyer has changed from the days when you waited for deals to come in. Now you're on a plane constantly building relationships in the US, Europe and further afield. Ireland is

a small, open, independent economy and very reliant on international capital. To be successful you must be outward looking. Our partners are on the road a lot. The longer we're doing this and the more work we do for international clients, the stronger and deeper our relationships with our international clients becomes. Twenty years ago, our international efforts would have been exclusively focused on relationships with law firms, but now frequently we're travelling abroad to meet our global clients in relation to their Irish operations and transactions." ■

Grand design: Irish property market rises again

At the beginning of 2018, Ireland ranked as Europe's "austerity star performer", according to a survey of global property prices. The study found that the Republic was the sixth-fastest-growing property market in the year to September 2017, behind countries such as Iceland, Romania and Canada.

Moreover, separate data published in May 2018 recorded the country's national house prices had risen by 12.7% in the year to March, with prices throughout the country up 75% since their 2013 low point. The growth was found to be most prevalent in Dublin, where prices are up almost 91% and city-centre house prices rose 14.2% over the same period.

Notably, the International Monetary Fund (IMF) issued a fresh warning on Ireland's surging property market in May, stating that residential prices appeared "modestly overvalued" under certain measures and that the country should pay "close attention" to the shift upwards.

The Washington-headquartered body's caution has been well heeded, with no one wishing a repeat performance of the fallout from Ireland's property bubble – an overshooting of a long-term price increase of real estate from the late 1990s until 2007 that contributed to the 2008 banking crisis. Though

Irish property has recovered well from the crash that forced the country into an international bailout, since then accelerated job growth and years of demand for homes has resulted in a severe housing shortage, with double-digit price increases and record rents presenting major challenges to the current government.

Arthur Cox managing partner Brian O'Gorman says Ireland is much better equipped for crisis situations than ever before: "Ireland does boom and bust cycles in real estate like no one else. If capital values and rental values are increasing faster than income and inflation, then it's time to be on high alert. We're more alive to the risks and sophisticated as a country now in a way that we were not back in 2007/08. We have a much more active financial regulator and that has taken a lot of heat out of the residential space. Regulation is strong and our banks are all capitalised. I would like to think

we're actively managing the situation and better equipped to handle any negative shocks compared to 10 years ago."

Mason Hayes & Curran managing partner Declan Black says: "Do I think the policy mix is better now for the property market? For the residential side, yes, but that doesn't leave us immune from property cycles." ■





New Tax Partner

We are pleased to announce the appointment of Niamh Keogh as a Partner in our Tax team.

Niamh specialises in advising US Tech companies on using Ireland as the gateway to the EU following the US Tax Reform Act. Her experience includes the interaction of privacy and tax laws.

Niamh also has extensive experience in advising on the favourable Irish tax treatment of international debt capital markets and aircraft leasing transactions.

To find out how Niamh can help your business, visit [MHC.ie/niamh-keogh](https://mhc.ie/niamh-keogh)

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IRELAND

Ireland's economic recovery: Europe's phoenix from the ashes



A robust recovery for Ireland continues unabated, with the state constituting Europe's fastest-growing economy for four consecutive years, just eight years after its €68bn bailout.

Considered by many as the phoenix of the European Union among other struggling member states, Ireland's GDP grew by 6.6% last year.

The knock-on effect of Ireland's remarkable performance has been seen within the financial services industry, with Irish banks slowly recovering over the last decade since their own bailout package in 2008. Attempts to reduce their exposure to non-performing loans and focusing on providing services for consumers and small and medium-sized enterprises have begun to pay off; in late August, Permanent TSB reported a 33% leap in first-half pre-tax profit to €57m, boosted by an increase in lending. New lending volumes at the bank, which is 75% state-owned, grew by 50% to €585m, with mortgage lending up by 51% and consumer lending up by 42%.

The booming economy has also been beneficial in attracting an influx of foreign nationals, while the number of people at work in Ireland is now nearly 20,000 higher than it was before the financial crash, stats from the CSO showed. Further, employment

rose in 10 of the 14 economic sectors surveyed, with the greatest rates of increase in the construction (13.9%) and the accommodation and food service activities (10.8%) sectors. The pre-crash peak in employment, recorded in the final quarter of 2007, was 2.237 million.

Ireland also remains one of the most attractive locations for foreign direct investment (FDI) globally, according to a 2018 study published by consulting firm A T Kearney, which ranked Ireland in 19th place overall, up one spot compared to 2017. Flows of investment surged to \$188bn in 2015, suffered a hefty drop to \$22bn in 2016, but recovered to \$66bn last year.

That Europe's emerald isle remains a strong contender for investment is unsurprising given that Ireland offers a competitive cost base, a young and educated workforce, a low tax regime, membership in the eurozone, and a launchpad to the rest of Europe.

Mason Hayes & Curran managing partner Declan Black says: "The benefit and risk of being such an open economy is that we can bounce back very quickly but also take a knock very quickly. Our economy is small – we have only about two million people at work, probably 300,000 of them are workers from other EU member states. That's a particularly mobile group and Irish workers are historically mobile when things turn. Unquestionably things could turn quickly for Ireland, both negative and positive."

Finally, it's worth noting that the CSO reported a new measure called the Modified Domestic Demand – used in Ireland to remove the distorting effects of foreign multinational companies – which showed growth of 3.9% and ultimately demonstrated that the wider economy has felt some initial impact from Brexit. ■



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The Irish Fintech Ecosystem

The global fintech sector is a rapidly evolving ecosystem. This is a trend which will remain a characteristic of this emerging industry which is inherently disruptive in nature. The choice of location for investment in the fintech sector is particularly important. The relative success of government policy implementation at national level is essential for promoting the right conditions for innovation, investment, and collaborative activities in this rapidly changing landscape.

Ireland has its sights set on matching the success of the top global fintech players such as London, New York, Silicon Valley and Singapore. Dublin is fast emerging as one of the world's leading fintech hubs. According to Deloitte's 2017 Interim Hub Review, of the \$17.4bn invested globally in fintech deals in 2016, Ireland accounted for \$524m, ranking fourth globally behind China, the US and the UK.

Growth in the fintech industry is a priority for the Irish Government's economic policy. It is a key component of IFS 2020, a five-year strategy for the development of Ireland's international financial services (IFS) sector launched in 2015. IFS2020 seeks to consolidate and grow Ireland's position as the global location of choice for specialist international financial services.

The fintech industry currently employs approximately 5,000 people in Ireland, and this number is expected to quickly double by 2020, in keeping with the strategic targets of IFS2020. Growth is anticipated to arise from the increasing connectivity between the fintech sector and traditional financial services companies, which move to replace their legacy platforms and IT architecture in order to grow and innovate.

WHY IRELAND?

Ireland has a long-established track record for both financial services and technology. Over 400 financial



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services companies are located in Ireland. There are 37,000 people employed in technology companies in Ireland today with tech titans such as Facebook and Google having located their EMEA headquarters in Dublin. The preponderance of large tech firms in Dublin results in a high concentration of talent in areas such as data analytics, APIs, blockchain, cloud computing and integration technologies. In addition, there is a high concentration of regulatory (regtech) focused startups based in Ireland, supporting

Dublin's many fund management servicing businesses.

Home grown success stories like TransferMate, Realex Payments, Stripe, CurrencyFair, Fenergo and FundRecs operate in Ireland alongside global financial services behemoths. These include First Data, Visa and Paypal in areas such as payments, lending, wealth management, crowdfunding, distributed ledger technology and digital currencies.

Success stories include the acquisition of Realex Payments by Global Payments in March 2015 in a deal estimated at €115m. Founded in 2013, FundRecs has developed efficient and cost effective reconciliation software and was named European Startup of the Year at the ICT Spring Conference in 2016. Fenergo secured \$85m in funding from Insight Venture Partners and Aquiline Capital Partners in 2015, and is quickly becoming the industry standard for Client Lifecycle Management solutions.

In addition to the long established Irish association with financial and technology industries, Ireland is quietly confident of furthering Dublin's position as a "booming FinTech hub", by leveraging some of the country's other innate advantages. Ireland's low corporate tax rate of 12.5% is a major incentive for start-ups or companies looking for a location for their business investments.

Other attractive features of Ireland's tax code for relevant companies include R&D tax credit regime, a stamp

duty exemption available for the transfer of a wide range of intellectual property, a key employee reward mechanism, Ireland's Double taxation agreement network. There is also the potential 6.25% tax rate under Ireland's Knowledge Drop Box on profits arising in certain IP assets which are created as a result of qualifying R&D activity carried out in Ireland or the European Economic Area.

In addition to an attractive and stable corporate tax regime, the Irish government offers funding and grant support that may be available to fintech companies doing business in Ireland, including:

- the IDA, the Irish government's inward investment promotional agency
- Enterprise Ireland, the government organisation responsible for the development and growth of Irish companies in world markets
- Ireland Strategic Investment Fund (ISIF), an €8bn sovereign development fund with a statutory mandate to invest on a commercial basis to support economic activity and investment in Ireland. Recent ISIF investments include Kabbage, Motive Partners and Muzinich & Co

The private funding sector is also increasingly active in Ireland. Irish technology firms have raised over €1bn through venture capital in 2017 and fintech investments accounting for roughly 20% of that figure. Although most Irish fintech start-ups are raising funding through traditional funding mechanisms there has been a recent increase in crowdfunding, peer to peer lending platforms, and initial coin offerings and token sales.

WILL BREXIT HAVE AN EFFECT?

Dublin is now vying with the likes of Frankfurt to emerge as the EU's predominant fintech hub, following London's exit from the EU. Many companies are now assessing their options, in particular fintech businesses who seek to freely access the European Union market of 500m consumers.

Post-Brexit, fintech firms that are authorized by the UK financial regulator will no longer be able to passport into the EU and will need to relocate operations to an EU jurisdiction in order to qualify for EU passporting. Fintech companies authorized by the Central Bank of Ireland can offer their products and services across other EU member states without the need for further authorization in the relevant member state.

Ireland's commitment to the European Union, our position as the only remaining English speaking EU member state, along with our innovative business sector, our competitive tax regime and talented workforce strengthen our ability to become the EU jurisdiction of choice for fintech companies seeking access to the European market. While the Brexit decision was one which was not generally welcomed in Ireland, the Irish Government and the existing financial services community are well prepared and best placed to minimize the fallout for companies affected and ensure they have continued access to the broad European market.

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Stepping into the breach: The GDPR's new data breach notification rules from a US perspective

This article explores the EU's General Data Protection Regulation (or "GDPR") data breach reporting rules from a US perspective and examines when US operators are required to report data breaches to EU regulators. We also consider some of the other interesting consequences of data breaches under the new EU regime.

By Rob Corbet and Hugh McCarthy

The GDPR introduced mandatory data breach reporting. While this is nothing new to many US operators familiar with an array of US state and federal breach notification laws, the new EU rules will also notably apply to US operators in certain circumstances. The first such scenario is where a data breach is experienced by a US-based entity that processes personal data while offering goods/services to individuals in the EU, or where the entity that monitors the behaviour of individuals based in the EU (for example, an online US sales platform targeting EU consumers). The second likely scenario is where a breach is experienced by a US vendor that provides data processing services based on the instructions of an EU customer (for example, a US cloud service provider hosting data for an EU customer). Based on the GDPR's extra-territorial application, the GDPR's breach reporting rules will apply to US operators that experience data breaches in both of these situations.

WHAT IS A DATA BREACH?

The concept of personal data breach is a broad one under the GDPR. While US breach notification laws tend to be sector specific – dealing with breaches involving financial, medical and other defined categories of data, the GDPR applies to breaches concerning all



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“personal data”. A term that is defined broadly to include information – ranging from names, contact details to IP addresses – from which it is possible to identify a living individual. A data breach must also involve some breach of security – either technical or physical – which leads to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data, either in transit or in storage. Much like the equivalent US laws, obvious examples of data breaches include malicious external hacks of IT systems as well as accidental unauthorised disclosure or loss of documents, records and other media containing personal data.

WHAT ARE THE RULES?

The new EU rules generally require that a breach notification be made to the relevant data protection regulator within 72 hours of becoming aware of the data breach. The test for whether a breach is reportable requires a form of risk assessment based on whether or not the breach is likely to result in a risk of harm to the affected individuals. For example, this may not be the case where the affected data was protected by strong encryption. The nature of the data will always be a key factor in this analysis – sensitive data such as medical, financial or children's data will always increase the risk profile. Where the relevant data processing activities

involve individuals based in more than one of the EU's 28 Member States, a relevant question for consideration is the appropriate national data protection regulator to which a notification should be made. The same risk assessment applies for purposes of determining whether a notification must be made to the affected individuals. In this case, the relevant threshold is whether there exists a "high risk" to individuals arising from the breach.

The rules apply slightly differently to service providers (known as "processors" under the GDPR). They must notify the customer that engages (known as the "controller") them "without undue delay" but without undertaking any form of independent risk assessment of the data breach (as this remains the primary responsibility of the controller). Another novel aspect of the GDPR for US vendors is that when engaged by an EU controller to process personal data on its behalf, the parties are required to put in place detailed contractual clauses. Mirroring the statutory requirement under the GDPR, one of these mandatory contractual clauses requires that data processors must notify data breaches to the controller "without undue delay". This contractual approach is intended to reinforce the GDPR's data breach reporting obligations.

SECURITY AND BREACH DETECTION REQUIREMENTS

The GDPR also requires that entities involved in the processing of personal data (to which the GDPR applies) put in place security measures that are appropriate to the risk of the data processed. This in particular requires they put in place measures not only to prevent data breaches but also to enable the prompt detection and containment of data breaches when they do happen. It is advisable for US entities involved in the processing of EU personal data to proactively factor the new EU data breach rules into their analysis when drawing up data breach response procedures and contingency plans. Failure to do so could potentially result in expensive and unforeseen mistakes if personal data concerning individuals based in the EU is involved.

SANCTIONS AND REPRESENTATIVES

While regulatory fines take centre stage in most discussions about GDPR, it is important to remember that depending on the scale and severity of a data breach, civil compensation claims arising from a data breach may potentially present greater monetary risks (and deterrent). Another novel feature of data breaches

under the GDPR is the potential for class-action style suits which can be taken by not-for-profit bodies, some of which have already been established. The GDPR also introduces new requirements where US entities without any physical presence or operations within the EU engage in processing of personal data and attract the application of the GDPR under the first scenario described above – by offering goods/services or monitoring the behaviour of individuals based in the EU. The GDPR now requires that such non-EU entities designate in writing a representative within the EU in one of the EU Member State where the goods/services are offered or in which the behaviour is monitored. In essence, this obligation is intended to provide a hook through which EU regulators and litigants can enforce their rights against non-EU entities that process their personal data from afar.

CONCLUSION

A recent report suggests that 44% of organisations have suffered a data breach in the past 12 months. Given the detailed security and reporting obligations prescribed by the GDPR and its extra-territorial reach, US entities should update their data security procedures so as to minimise their exposure to a potential large fine or civil litigation.

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Ireland as a preferred legal system after Brexit

Brexit poses unique and difficult challenges for Ireland and Irish business. Due to a very high trade intensity with the UK, Ireland is impacted uniquely in comparison to the other 26 EU members. However, there are advantages of Irish law, the Irish legal system and the Irish courts which may suggest to or encourage US business organisations to use Ireland as a location for its future business operations in the European Union.

By John Cronin

OVERALL ADVANTAGES

As background and in addition to simply legal advantages, it is important to note that there are a number of overall advantages to using Ireland as a business location, including the facts that it:

- is a long-standing, deeply committed EU member state;
- is a member of the Eurozone;
- is a common-law, English speaking country, with one of the most stable systems of government in the EU;
- has a well-educated, flexible and diverse work force and is ranked as a top business destination;
- has a well-established financial services sector, comprising some 450 internationally and Irish-owned cross border financial services businesses. The sector has a truly international focus, derived from, and reflected in, the fact that it has long acted as a mid-point linking the US and European financial services markets;
- has a regulator of the financial services sector, the Central Bank of Ireland (*CBI*), which is a tried and tested regulator – see further *Financial Services* below;
- is home to an array of professional services firms with in-depth financial services experience, including audit and legal firms; and
- has significant amounts of commercial office space coming on stream over the coming months, capable of accommodating in excess of 20,000 persons.



JOHN CRONIN
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HEAD OF BREXIT GROUP
McCANN FITZGERALD

LEGAL ADVANTAGES

Irish law and the Irish legal system can facilitate US and international business from a strong base: first, our common law system – which is familiar to US corporations and their advisors, and secondly, the Irish judiciary’s record of integrity, commercial awareness, fairness and impartiality – a fundamental component for confidence in any judicial system.

There is also a history of successive Irish governments responding to the changing nature and demands of international business by introducing legislative changes to facilitate the development of such business. For example, the development and extensive growth in international financial services in Ireland since 1991 is due to a significant extent to a series of statutory changes reflecting new diverse activities in the sector. The establishment of the Commercial Division of the High Court and the Competition list were both a direct response to business needs and the demands of domestic and international business.

As a continuing EU member state, Irish judicial decisions will be recognised and enforced throughout the European Union. Ireland and Irish law will also have the benefits of uniform interpretation of rules regarding jurisdiction and choice of law and the ability for other legal procedures in Ireland to be recognised and enforced throughout the European Union (including insolvency proceedings where the “centre of main interest” is in Ireland).

FINANCIAL SERVICES

In the area of financial services, our legal system encourages the use of Ireland as a location for banks, insurance firms, MiFID firms, e-money and payment institutions and asset management operations, as well as the new areas of Fintec.

Also, one of Ireland's advantages as a financial services location is our regulated system overseen by our regulator, the CBI. Its attributes include:

- it is deeply embedded in the EU's supervisory and regulatory system;
- its approach is rules-based, cautious, prudent and predictable;
- given the level of cross-border activity originating from Ireland, it also has considerable experience in cross-border regulation and supervision – it is among the most experienced regulators in Europe in this regard; and
- experience is likely to be of vital significance for any firm looking for a home from which to exercise passporting rights.

RECENT EXAMPLES OF INTERNATIONAL CONFIDENCE IN AND ACCEPTANCE OF THE USE OF IRISH LAW

ISDA Irish law contract

In July 2018 the International Swaps and Derivatives Association Inc. (*ISDA*) decided to make available to users of ISDA documentation additional governing law options for certain key documents: the laws of Ireland and France. This will, in a post-Brexit environment, facilitate users that prefer their contracts to be governed by the laws of an EU Member State. Those market participants who have a preference for common law and who use the English governing law contract may now choose the Irish law contract. Our firm, McCann FitzGerald, worked closely with ISDA on the Irish aspects of this project.

ISDA's decision to offer this "Irish law option" is a vote of confidence both in Ireland and Irish law as a governing law of choice, and in the Irish courts as a forum for determination of disputes, in respect of cross-border transactions.

We expect this new ISDA initiative to bring an additional dimension to Ireland's current standing as a preferred jurisdiction in which to undertake cross-border business and resolve disputes; this time in a market – the

derivatives market – that, to date, has focussed primarily on the laws and courts of England and the State of New York.

Cape Town Convention

Ireland has long been one of main centres of the world for aircraft leasing with more than 50% of the world's leased aircraft leased from Ireland. Ireland was the first European country to give effect to the Cape Town Convention and the Aircraft Protocol in its laws.

Because of the International Registry's establishment in Ireland, the Irish courts have exclusive jurisdiction to deal with certain disputes under the Cape Town Convention, particularly those seeking amendment or erasure of entries on the International Registry where the registrant refuses to do so. The Irish courts have demonstrated a willingness, in appropriate circumstances, to make orders directed to the International Registry to discharge invalid or improper registrations. The ability of the Irish courts to make an order directed to the International Registry may be particularly significant in circumstances where an order has been obtained against the registrant, in another jurisdiction, which has not been complied with.

The decision to locate the International Registry of aircraft assets in Ireland demonstrated a clear confidence in Ireland as a legal jurisdiction of choice for an important international market.

CONCLUSION

Ireland's legal and regulatory framework meets the needs of companies, financial institutions and others investing or doing business in Ireland or the European Union.

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 Matheson

TAX POLICY AND THE IMPACT ON FOREIGN INVESTMENT IN IRELAND



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Despite being an island nation on the periphery of Europe, Ireland has succeeded in becoming the leading destination for foreign direct investment (FDI) in Europe. Ireland consistently ranks first globally for high-value FDI flows (see for example, IBM's annual Global Locations Trends report). There are a number of reasons why Ireland has gained such a foothold with respect to FDI in recent years. Membership of the EU and providing US multinationals, in particular, with a platform to access the 900 million strong EU market has been central to that success story. Cultivating an open economy with very few restrictions on trade and embracing globalisation has also been critical. One other influencing factor has been Ireland's tax policy which has created an environment which encourages, rather than punishes, investment from overseas.

AN EVOLVING ECONOMY

Ireland's tax policy was not always designed to attract FDI. In fact, one only has to look at the rules in play in the 1950s to see that restrictions were imposed on foreign ownership of firms and heavy tariffs were applied to protect Ireland's manufacturers. At the back end of the 1950s, 90% of all Irish exports were destined for the UK. Those protectionist policies led to limited economic growth and during the 1960s successive Irish Governments began to cut unilateral tariffs, a Free Trade Area was agreed with the UK and subsequently both countries joined, what was then, the EEC in 1973.

In the 1980s, Ireland's tax regime sought to attract certain manufacturing operations (throughout the country) and internationally traded financial services to certain designated zones (ie, the IFSC in Dublin and the Shannon Free Zone in the mid-West). These policies were designed to attract foreign investment in Ireland

at a time when the country endured extremely high unemployment levels and slow economic growth. These policies were undoubtedly successful but also had certain limitations as they were limited to certain sectors and also only provided growth opportunities to those designated zones. Ironically, it was following pressure from the OECD and the EU that Ireland arrived at its current corporate tax regime which applies a flat 12.5% rate to all active trading income for activities carried out anywhere in Ireland.

The introduction of the 12.5% rate in the early 2000s was a game changer in many ways. It opened up Ireland's doors to other sectors outside of financial services and manufacturing and paved the way for Ireland to become a major hub for software and other high-tech services. Ireland, as one of only two English-speaking countries with full access to the EU market, as well as a young and well-educated population, became the destination of choice for a much wider range of US companies wishing to access the EU market. Ireland's trading relationships have undoubtedly changed over the last 20 years. While agriculture and the food sector are still vitally important to the domestic economy, Ireland is now predominantly a knowledge-based services economy with the high-tech, life sciences and the financial services sectors accounting for a substantial portion of the economy's overall output.

The growth in the Ireland / US relationship is borne out by the figures. In 2007, 28% of all corporation tax paid in Ireland was paid by US-owned companies, almost 18% of Irish exports were destined for the US and 11% of Irish imports came from the US. At the same time, almost 16% of exports were destined for the UK and over 30% of imports came from the UK.

WHAT DOES THE FUTURE HOLD?

There is no doubt we are living through a period of great global change. It would have been difficult to envisage that the UK would leave the EU even three years ago, while not many would have predicted that the US would introduce a headline rate of corporate tax of 21%, with other incentive regimes in the new US tax code reducing that rate even further in certain circumstances.

In addition to those developments in the UK and the US, there have been other significant international tax reforms, which will shape future investment trends. The organization for economic coordination and development (OECD) launched a base erosion and profit shifting (BEPS) project which has already adjusted some long-standing norms in the international tax arena. The EU has also been to the forefront of reform with their anti-tax avoidance directives and the possible introduction of a digital services tax.

OECD BEPS

One of the key principles underpinning the BEPS recommendations was that taxable profits of a multinational organisation should arise only where that organisation has substance and where value is created. Unlike some other FDI destinations, Ireland's low corporation tax rate has only been available to companies that have placed a sufficient degree of substance in Ireland. As a result, the BEPS project should not result in investment leaving Ireland or discourage future investment. If anything, Ireland's substance-based regime is ideally positioned for the post-BEPS era. Many multinational organisations have already relocated senior management to Ireland and hired other senior executives locally.

US TAX REFORM

As well as incorporating many of the BEPS recommendations, the 2017 tax reform measures reduced the US corporate tax rate from 35% to 21%. Given the importance of the US trading relationship, US tax reform was closely monitored in Ireland. Since the changes were passed, many US multinationals have begun reviewing their

global structures. Although, it is probably too early to be definitive, it appears that Ireland should remain the location of choice for US multinationals seeking to establish a European headquarters to access the EU market. Ireland's attractiveness to US multinationals was never just based on lower tax rates. Access to the EU market, the availability of a young skilled workforce including, in more recent years, the influx of a skilled labour force from throughout the EU, as well as the stable regulatory and political infrastructure have all been arguably more important factors in the FDI decision making process.

BREXIT

The UK's decision to exit the EU will undoubtedly have a significant impact on Ireland. The UK remains one of Ireland's most important trading partners. However, what sometimes gets overlooked is that only 15% of total Irish exports are destined for the UK market, while over 32% of Irish imports are sourced from the UK. Needless to say, if a "hard" Brexit were to occur and the UK leaves without obtaining a reasonable trade deal with the EU, opening up new markets outside the EU and the US would be important for the future growth and sustainability of the Irish economy.

With the UK still scheduled to leave the EU in just a few months (March 2019) and Ireland remaining a committed EU member, it seems inevitable that the relationship will change.

There's no doubt that the disruption and uncertainty which Brexit brings is an unwelcome development for the Irish economy on a macro level. However, it has had a positive impact on investment in certain regulated sectors, particularly in the financial services space. Since the Brexit referendum, a number of UK regulated companies have established parallel or secondary hubs in Ireland and are seeking authorisations from the Irish Financial Regulator. Such authorisations will assist regulated companies with their Brexit contingency planning, and will provide them with the certainty that they can continue selling products and services in the remaining

EU market following the departure of the UK from the EU.

CONCLUDING REMARKS

Over the past half-century, Ireland has gradually relied less on its trading ties with the UK. Now, more than ever, it will be important to forge new trading relationships in Asia and the Middle East, as well as continuing to build on the strong investment flows between Ireland and the US and the rest of the EU. Ireland is well positioned to adapt to the new paradigm of international tax rules which are being implemented in the EU and in other major trading partners. The Irish government has demonstrated its commitment to the 12.5% rate of corporate tax and it remains a cornerstone of its industrial policy. The changes proposed by the OECD and the EU will mean that aggressive tax structuring will no longer be tolerated and maintaining a transparent and low statutory rate of tax will be more important than ever, particularly with the US statutory rate now as low as 21%. However, as outlined above, tax is just one of a number of factors which determine the location of FDI. Ireland's continued membership of the EU together with the associated access to that market and its combined workforce through free movement of workers, allied with its ability to foster and develop a business-friendly environment, will be key to continuing the growth of trade.

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Ireland As An EU Gateway For US Business

This article reviews the basis of Ireland being recognised worldwide as one Europe's locations of choice for establishing holding companies and as a natural point of entry for US companies seeking to access the EU market. The introduction of anti-avoidance tax law in relation to a controlled foreign company (CFC) regime into the Irish corporate tax code should not detract from Ireland's competitiveness as a holding company location.

By John Gulliver and Niamh Keogh

A key factor in Ireland's attraction is that Irish tax resident companies are liable to tax at 12.5% on trading activities carried on in the State and in respect of dividend income from certain foreign trading subsidiaries. A generous onshore pooling regime for foreign tax credits, including withholding taxes on profits out of which dividends have been paid, ensures that the incidence of Irish tax on dividends from foreign subsidiaries and joint ventures has a similar effect for countries that have a dividend participation exemption.



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not attract an Irish tax liability. In contrast to holding companies located in an offshore location, Ireland's wide network of double tax treaties and EU membership provides a mechanism to reduce withholding on dividends, interest and royalties paid to Ireland. Ireland has signed comprehensive double tax treaties with 74 countries of which 73 are in effect.

Ireland's holding company regime provides an exemption from capital gains tax on disposals of shares in trading companies or groups resident in double tax treaty locations. Such an exemption facilitates a tax-free disposal of non-core subsidiaries by an Irish holding company.

The Irish tax regime provides an exemption from dividend withholding tax on dividends paid to residents of countries with whom Ireland has a double tax treaty. Ireland's treaty network embraces key growth countries, including the Middle East and Far East, eg Bahrain, Kuwait, United Arab Emirates, Singapore, Hong Kong and of course the USA and Canada. This gives Irish holding companies unique access to capital markets without withholding risk for the investors.

Ireland's ongoing EU membership ensures that EU Parent/Subsidiary Directive enables dividends from group companies resident in other EU countries can be paid free of withholding tax.

CFC REGIME

Ireland, like other EU countries, is required to implement the EU's Anti-Tax Avoidance Directive (ATAD) into law in the coming years, with some measures re-

HOLDING COMPANY REGIME

A company tax-resident in Ireland is liable to tax at rates of 12.5% and 25%. The 12.5% rate applies to trading income carried on in the State and certain dividend income from overseas trading groups. The 25% rate applies to other asset investment income. A 33% rate is applied to chargeable gains where the participation exemption does not apply.

For dividend income, an onshore pooling credit system of double tax relief applies. This means that credit for both underlying and withholding taxes of foreign subsidiaries is creditable against Irish tax. Hence, where dividends are paid out of profits that have been subject to say a profit tax overseas, credit is available for the foreign tax against Irish tax at the appropriate Irish tax rate. As Ireland's tax rate is significantly less than the major economies of the world, this means that income flows accruing in an Irish holding company generally do

quired to be introduced with effect from 1 January 2019. As part of ATAD, Ireland will introduce a CFC regime into the Irish corporate tax code from 1 January 2019. CFC legislation is designed to deem certain profits of companies tax resident in low tax (or no tax) territories to be taxable profits of the controlling company and therefore taxable, in Ireland's case, probably at 25%.

ATAD provides that an entity or permanent establishment (PE) of which the profits are exempt or are not subject to tax will be a CFC for a taxpayer if both conditions below are satisfied:

- the taxpayer holds (directly or indirectly) more than 50% of the voting rights, capital or is entitled to more than 50% of the entity's profits; and
- the actual corporate tax paid on the profits of the entity or PE is less than 50% of the tax that would have been incurred had the income been taxed in country of the parent company.

The ATAD gives Member States two options for the design of the CFC regime. Option A is a regime that taxes non-distributed passive income (eg interest, dividends, royalties, financial leasing income) of a CFC subject to an exclusion where "substantive economic activity" supported by staff, equipment, assets and premises is carried on by the CFC.

Option B applies to all types of non-distributed income but only where it arises from "non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage". An arrangement is non-genuine where the CFC would not own the assets or would not have undertaken the risks that generate its income if it were not controlled by a company where the "significant people functions" relevant to those assets and risks are carried out.

The Department of Finance published the "Budget 2019 Tax Strategy Group Papers" on 30 July regarding proposed tax policy changes to be considered prior to Budget 2019 and notes their intention to legislate for an option B regime in Finance Bill 2018 which is favoured by most taxpayers. The paper further considers introducing additional measures to the Option B approach such as targeted exemptions, the use of white lists and the introduction of a "grace period" in respect of newly acquired CFCs.

A roadmap setting out the next steps in Ireland's implementation of commitments made through EU Directives including ATAD was published by the Department of Finance on 5 September 2018 entitled "Ireland's Corporation Tax Roadmap". It confirms that with regard to CFC rules, Ireland will elect for the Option B approach. It also notes

that legislation will be introduced in Finance Bill 2018 and that the CFC rules will be in effect from 1 January 2019.

From an Irish perspective, the implementation of Option B, which is endorsed by the OECD, is the preferred option and will be limited to situations where income which is attributable to significant people functions carried out in Ireland relates to assets which are owned and risks undertaken by the CFC. The use of Ireland as an ultimate or indeed intermediate holding company location is therefore unlikely to be adversely affected by the introduction of CFC rules.

CONCLUSION

Ireland's low tax offering enhanced by a generous credit regime, a wide treaty network and membership of the European Union supports Ireland's standing as the go-to location for the establishment of a holding structure within the EU. The introduction of a CFC regime is in accordance to an EU wide implementation of ATAD however, it should not impact Ireland's reputation as a prime holding location and EU/EMEA trading hub. The implementation of Option B should target only wholly artificial arrangements. It should ensure that Ireland remains competitive in attracting substantive US investment. It is possible that following the introduction of the CFC regime, Ireland will introduce an exemption from tax for dividends from foreign subsidiaries which will simplify our dividend regime and bring it in line with other European Member States regimes.

For many US corporates looking to expand into the EU/EMEA, it would be prudent to establish an Irish incorporated holding company with an Irish incorporated subsidiary. If the subsidiary has a physical presence and employees based in Ireland, the subsidiary can then form the EU/EEA trading hub for the US operations that is liable to Ireland's 12.5% corporate tax rate. Importantly, under the Global Intangible Income regime in the 2017 US tax reforms, unlike other EU locations, Ireland's low corporate tax rate should not generate adverse excess US foreign tax credits. This means using Ireland in the group structure does not create unnecessary fiscal drag. Dividends can also flow tax-free from an Irish subsidiary to its Irish holding company. Ireland's position as the only English speaking EMEA hub further enhances Ireland's desirability as a holding and trading location.

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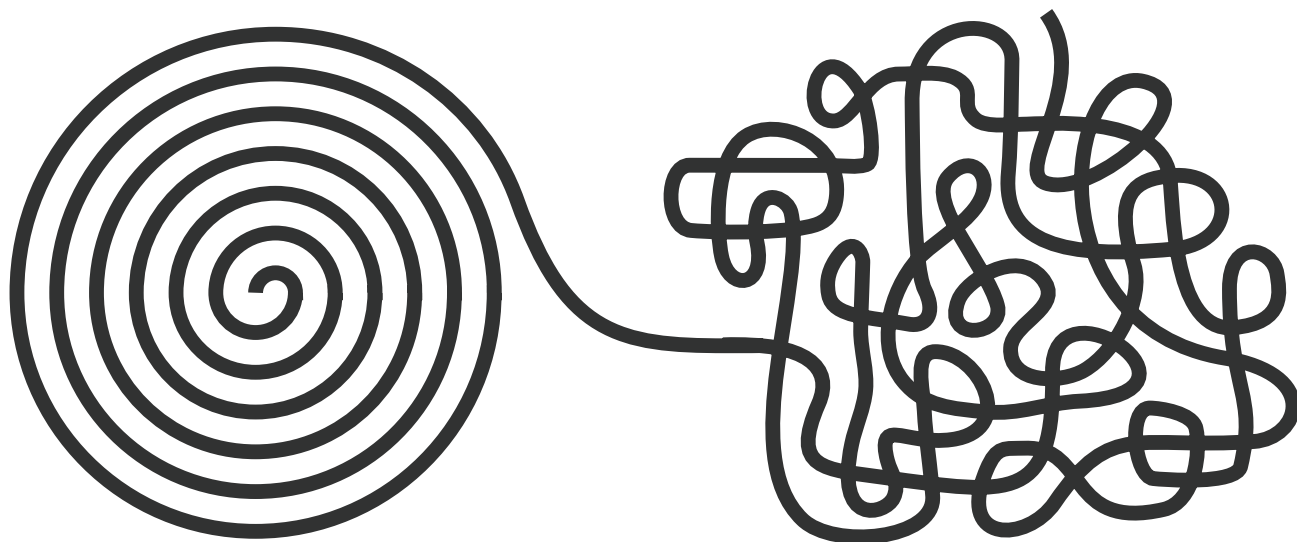
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Order Amid Chaos

Despite fraught international relations, Chinese firms are breaking through globally.

BY ANNA ZHANG

GROWING TRADE TENSION WITH THE U.S. and a slowdown in cross-border mergers and acquisitions have not curbed the growth of China's largest law firms. On the contrary, those firms saw steady financial growth in 2017.

For the first time, two law firms with more than three-quarters of their lawyers based in mainland China are on the Global 100 revenue ranking: Yingke Law Firm with \$445.6 million at 97th and Zhong Lun Law Firm with \$444 million at 98th.

The two firms take third and fourth place, respectively, on our ranking of the top-grossing Chinese firms, which has expanded to a total of 45 firms with \$7.43 billion in total revenue. Not surprisingly, Dentons tops the list with \$2.36 billion in global revenue, while Sino-Australian giant King & Wood

Mallesons, recovering from a major crisis in Europe, remains at second with \$1.07 billion in revenue.

Ten Chinese firms, including AllBright Law Offices, DeHeng Law Offices, Grandall Law Firm, JunHe, Fangda Partners, and Jincheng Tongda & Neal, exceeded \$100 million in revenue. Twenty-five firms reported revenue above \$50 million, up from 19.

To compile the rankings, we asked Chinese law firms to report their gross revenue and profit for the calendar year 2017, as well as their full-time lawyer equivalents and number of equity partners. In a few cases where firms did not provide census or financial figures, we made estimates based on our own reporting.

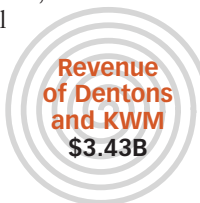
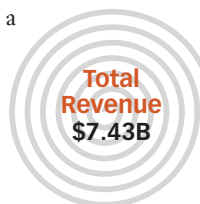
This year, for the first

time, we are also publishing profits per equity partner (PEP) figures for all 45 firms ranked on the revenue list.

Yingke and Zhong Lun's appearance on this year's Global 100 is a remarkable change in the annual list. Until

now, the only China-heavy firms on the Global 100 were Dentons and King & Wood Mallesons, both of which draw significant revenue from mature markets where fees are higher. In contrast, 78 percent of Yingke's 7,438 lawyers and 92 percent of Zhong Lun's 1,680 lawyers are based in Mainland China.

Beijing-based Yingke reported 45.9 percent revenue growth last year, following 51 percent growth from 2015 to 2016. But the world's second-largest law firm by head count is loosely structured, consisting mostly of small-to-medium-sized local firms operating under the





same brand. Growth was mainly driven by work in intellectual property, data protection and cybersecurity, according to global managing partner Mei Xian-grong, who is expecting another 35 percent revenue increase in 2018.

Zhong Lun's revenue grew 19 percent in 2017 to \$444 million. A full-service firm, it is one of China's most active firms in big-ticket, cross-border work. Last year, the firm opened a new office—its 15th—in the eastern Chinese city of Hangzhou, home to e-commerce giant Alibaba Group Holding Ltd.

The largest growth in the China 45 was from 10th-ranked Jincheng Tongda & Neal, a Beijing-based firm best known for advising Chinese companies on anti-dumping proceedings in foreign jurisdictions, particularly in the United States. In 2017, Jincheng Tongda reported \$103.6 million in gross revenue—an 80 percent jump from 2016. The firm's head count rose by 74 percent to 1,060 last year.

The 45 top-grossing firms in China had an average revenue per lawyer (RPL) of \$183,622 in 2017, less than one-fifth of the Global 100's average of \$933,477. MWE China Law Offices, the Shanghai-based associate firm of McDermott Will & Emery, tops the list with \$609,000 in RPL; it's also the only firm on the list that broke \$500,000. Twenty-eight of the 45 firms reported RPL between \$50,000 and \$200,000.

Law firms, both global and domestic, still face strong fee pressures in China, where legal fees have long been lower than in markets such as the United States and the United Kingdom. Most Chinese domestic firms, which have been in existence for 30 years or less, have traditionally focused on growth in head count rather than on average financial capability.

Still, a group of elite firms has managed to stand out from the rest. In 2017, the average RPL at the 10 highest-ranked Chinese firms was \$389,000—twice the average for all 45 firms and six times the average for the 10 firms reporting the lowest RPL. Only one out of this year's top 10 RPL firms is different from last year—eighth-ranked trial and appellate boutique Tiantong & Partners (\$282,000), which ranks number 45 on the total revenue chart;

China 45: Most Revenue

Rank	Firm Name	Total Lawyers	Gross Revenue*
1	Dentons	8,658	\$2,360,000,000
2	King & Wood Mallesons	2,762	\$1,072,000,000
3	Yingke Law Firm	7,438	\$445,619,000
4	Zhong Lun Law Firm	1,680	\$443,991,000
5	Allbrightlaw	3,400	\$388,558,000
6	DeHeng Law Offices	2,531	\$295,994,000
6	Grandall Law Firm	1,920	\$295,994,000
8	JunHe	450	\$219,183,000
9	Fangda Partners	485	\$169,456,000
10	Beijing Jincheng Tongda & Neal Law Firm	1,060	\$103,598,000
11	Zhong Yin Law Firm	1,308	\$91,758,000
12	Guantao Law Firm	787	\$88,798,000
13	Han Kun Law Offices	236	\$85,838,000
13	Tahota Law Firm	750	\$85,838,000
15	Jingtian & Gongcheng	404	\$83,923,000
16	Beijing DHH Law Firm	1,403	\$81,062,000
17	Tian Yuan Law Firm	450	\$78,438,000
18	Beijing Kangda Law Firm	877	\$73,998,000
19	Global Law Office	382	\$72,962,000
20	Long An Law Firm	1,108	\$66,599,000
20	Zhonglun W&D Law Firm	2,011	\$66,599,000
22	Grandway Law Offices	255	\$59,199,000
23	Haiwen & Partners	140	\$51,799,000
24	Jointide Law Firm	415	\$50,763,000
25	Commerce & Finance Law Offices	455	\$50,171,000
26	JunZeJun Law Offices	332	\$47,148,000
27	Llinks Law Offices	95	\$46,915,000
28	King&Capital Law Firm	561	\$44,399,000
29	Duan & Duan	868	\$41,735,000
30	Hylands Law Firm	187	\$39,976,000
31	Shanghai Co-effort Law Firm LLP	228	\$36,999,000
32	East & Concord Partners	300	\$29,606,000
33	Jia Yuan Law Offices	107	\$29,155,000
34	V&T Law Firm	383	\$28,119,000
35	Gaopeng & Partners	216	\$28,055,000
36	AnJie Law Firm	166	\$22,379,000
37	Boss-Young	262	\$21,460,000
38	Broad & Bright	106	\$20,720,000
39	EY Law Firm	70	\$18,970,000
40	MWE China Law Offices	31	\$18,889,000
41	Wintell & Co	121	\$17,779,000
42	Lantai Partners	271	\$17,389,000
43	Shengdian	186	\$17,051,000
44	Chang Tsi & Partners	205	\$13,172,000
45	Tiantong & Partners	34	\$9,596,000

*Yuan converted to \$USD using Federal Reserve System foreign exchange rate for 2017. The exchange rate is 6.7569 yuan per dollar.



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Zhong Lun (\$264,000) fell to 12th from last year's 10th place. (Tiantong was not on last year's revenue list, which ranked only the 40 highest-grossing firms.)

Seven firms—Llinks Law Offices (\$496,000), JunHe (\$487,000), King & Wood Mallesons (\$388,000), Haiwen & Partners (\$370,000), Han Kun Law Offices (\$364,000), Fangda Partners (\$349,000) and Dentons (\$273,000)—have been in the RPL top 10 for three years in a row, and all are the usual suspects in big-ticket transactions work. Last year, King & Wood Mallesons, JunHe, Fangda and Han Kun shared roles on a \$12 billion deal that saw Hong Kong-listed, state-owned telecom giant China Unicom bring in private investors as part of an ownership reform.

This year we also rank all 45 Chinese firms by PEP, and the results show even greater disparity. The 45 firms had an average PEP of \$474,911—about a quarter of the \$1.833 million average PEP of the Global 100.

The most profitable Chinese firms are actually not too far from their global peers, however. The 10 Chinese firms with the highest PEP—the only firms that hit \$800,000 or more—reported an average PEP of \$1.052 million. The 10 firms with the lowest PEP reported an average of \$86,000—less than 10 percent of the top 10.

Leading the PEP chart again in 2017 is MWE China (\$1.417 million), a compliance and government enforcement specialist with four equity partners. The top 10 also includes King & Wood Mallesons, Han Kun, JunHe, Fangda, Llinks, Haiwen and Zhong Lun, most of which also rank high on the RPL chart; one outlier is Beijing-based intellectual property litigation firm Chang Tsi & Partners, which reported \$1.184 million in PEP, the second-highest on the list. The firm typically represents multinationals in patent and trademark infringement lawsuits in China. Despite a high PEP, the firm's RPL was only \$64,000. In 2017, Chang Tsi had 205 lawyers but only two equity partners—co-founders Spring Chang and Simon Tsi. The firm also had 10 non-equity partners, whose compensation ranged from \$740,000 to \$2.2 million.

It's not surprising that the Chinese firms with higher RPL and PEP overlap

China 45: Most Revenue Per Lawyer

Rank	Firm Name	Gross Revenue*	Lawyers Firmwide	RPL*
1	MWE China Law Offices	\$18,889,000	31	\$609,000
2	Llinks Law Offices	\$46,915,000	95	\$496,000
3	JunHe	\$219,183,000	450	\$487,000
4	King & Wood Mallesons	\$1,072,000,000	2,762	\$388,000
5	Haiwen & Partners	\$51,799,000	140	\$370,000
6	Han Kun Law Offices	\$85,838,000	236	\$364,000
7	Fangda Partners	\$169,456,000	485	\$349,000
8	Tiantong & Partners	\$9,596,000	34	\$282,000
9	Dentons	\$2,360,000,000	8,658	\$273,000
10	Jia Yuan Law Offices	\$29,155,000	107	\$272,000
11	EY Law Firm	\$18,970,000	70	\$271,000
12	Zhong Lun Law Firm	\$443,991,000	1,680	\$264,000
13	Grandway Law Offices	\$59,199,000	255	\$232,000
14	Hylands Law Firm	\$39,976,000	187	\$214,000
15	Jingtian & Gongcheng	\$83,923,000	404	\$208,000
16	Broad & Bright	\$20,720,000	106	\$195,000
17	Global Law Office	\$72,962,000	382	\$191,000
18	Tian Yuan Law Firm	\$78,438,000	450	\$174,000
19	Shanghai Co-effort Law Firm LLP	\$36,999,000	228	\$162,000
20	Grandall Law Firm	\$295,994,000	1,920	\$154,000
21	Wintell & Co	\$17,779,000	121	\$147,000
22	JunZeJun Law Offices	\$47,148,000	332	\$142,000
23	AnJie Law Firm	\$22,379,000	166	\$135,000
24	Gaopeng & Partners	\$28,055,000	216	\$130,000
25	Jointide Law Firm	\$50,763,000	415	\$122,000
26	DeHeng Law Offices	\$295,994,000	2,531	\$117,000
27	Allbrightlaw	\$388,558,000	3,400	\$114,000
27	Tahota Law Firm	\$85,838,000	750	\$114,000
29	Guantao Law Firm	\$88,798,000	787	\$113,000
30	Commerce & Finance Law Offices	\$50,171,000	455	\$110,000
31	East & Concord Partners	\$29,606,000	300	\$99,000
32	Beijing Jincheng Tongda & Neal Law Firm	\$103,598,000	1,060	\$98,000
33	Shengdian	\$17,051,000	186	\$92,000
34	Beijing Kangda Law Firm	\$73,998,000	877	\$84,000
35	Boss-Young	\$21,460,000	262	\$82,000
36	King&Capital Law Firm	\$44,399,000	561	\$79,000
37	V&T Law Firm	\$28,119,000	383	\$73,000
38	Zhong Yin Law Firm	\$91,758,000	1,308	\$70,000
39	Chang Tsi & Partners	\$13,172,000	205	\$64,000
39	Lantai Partners	\$17,389,000	271	\$64,000
41	Long An Law Firm	\$66,599,000	1,108	\$60,000
41	Yingke Law Firm	\$445,619,000	7,438	\$60,000
43	Beijing DHH Law Firm	\$81,062,000	1,403	\$58,000
44	Duan & Duan	\$41,735,000	868	\$48,000
45	Zhonglun W&D Law Firm	\$66,599,000	2,011	\$33,000

*Yuan converted to \$USD using Federal Reserve System foreign exchange rate for 2017. The exchange rate is 6.7569 yuan per dollar.



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with the group that frequently gets high-stake cross-border mandates. Fees tend to be higher for cross-border matters than pure domestic matters. And working on those matters also gives Chinese firms more exposure to how global firms operate. Despite their varied business models, elite Chinese firms, more influenced by Big Law, tend to operate in a more centralized way and have a better risk-control system in place than the rest of the pack, making them more attractive.

Ultimately, the growing financial strength of Chinese firms is helping them compete in the global market. Many of the most profitable Chinese firms are also the most aggressive lateral recruiters of partners from their international counterparts. Beijing-based Han Kun, which managed to hire away White & Case's former China head, Li Xiaoming, and Clifford Chance's former China financial regulatory practice leader, Yang Tiecheng, had PEP of \$1.073 million last year. And Fangda, which had PEP of \$1.13 million, convinced former Linklaters Asia head Shao Zili to join as a non-executive chairman in 2017. In early 2018, the firm hired Linklaters China head Fang Jian.

In 2018, Chinese firms' hiring spree has continued. A full-blown China-U.S. trade war has sent more nervous clients to their lawyers, and changes in initial public offerings in Hong Kong have resulted in a much-needed uptick in listing work for capital markets lawyers. Jingtian & Gongcheng, with its \$208,000 in 2017 RPL and \$466,000 in PEP, persuaded former Mayer Brown China practice head Elaine Lo to launch a new Hong Kong office for the firm. Beijing-based Tian Yuan Law Firm, which reported \$174,000 in RPL and \$434,000 in PEP in 2017, hired away Shearman & Sterling lawyer William Ji to open a six-lawyer office in Hong Kong.

More than anywhere else, Hong Kong is becoming a prime battleground for top talent among Chinese and international firms, at least in the capital markets space, says Shawn Chen, a director of legal recruiter SSQ's China business. "They already have all the Chinese issuers' clients," he says. "All they need now is the execution capabilities."

Email: azhang@alm.com

China 45: Most Profits Per Equity Partner

Rank	Firm Name	Net Income*	Firm Equity Partners	PEP*
1	MWE China Law Offices	\$5,667,000	4	\$1,417,000
2	Chang Tsi & Partners	\$2,368,000	2	\$1,184,000
3	King & Wood Mallesons	\$423,000,000	358	\$1,182,000
4	Fangda Partners	\$101,674,000	90	\$1,130,000
5	Han Kun Law Offices	\$42,919,000	40	\$1,073,000
6	JunHe	\$141,041,000	135	\$1,045,000
7	Llinks Law Offices	\$20,868,000	23	\$923,000
8	Wintell & Co	\$13,154,000	15	\$877,000
9	Haiwen & Partners	\$25,899,000	30	\$863,000
10	Zhong Lun Law Firm	\$221,995,000	268	\$827,000
11	Tiantong & Partners	\$3,138,000	4	\$785,000
12	Guantao Law Firm	\$26,639,000	36	\$740,000
13	EY Law Firm	\$5,690,000	10	\$569,000
14	Tahota Law Firm	\$25,751,000	46	\$560,000
15	Shanghai Co-effort Law Firm LLP	\$25,899,000	47	\$551,000
16	Broad & Bright	\$10,360,000	19	\$545,000
17	Dentons	\$798,000,000	1,474	\$541,000
18	Beijing Jincheng Tongda & Neal Law Firm	\$31,079,000	60	\$518,000
19	Global Law Office	\$14,592,000	30	\$486,000
20	Jingtian & Gongcheng	\$33,569,000	72	\$466,000
21	Tian Yuan Law Firm	\$32,559,000	75	\$434,000
22	Allbrightlaw	\$116,567,000	274	\$425,000
23	Commerce & Finance Law Offices	\$20,631,000	54	\$382,000
24	Long An Law Firm	\$33,299,000	90	\$370,000
25	Jia Yuan Law Offices	\$7,459,000	21	\$355,000
26	Grandway Law Offices	\$17,760,000	58	\$306,000
27	DeHeng Law Offices	\$92,646,000	331	\$280,000
28	Jointide Law Firm	\$30,458,000	118	\$258,000
29	JunZeJun Law Offices	\$14,144,000	60	\$236,000
30	Yingke Law Firm	\$133,197,000	586	\$227,000
31	Hylands Law Firm	\$11,993,000	54	\$222,000
32	Grandall Law Firm	\$88,798,000	410	\$217,000
33	Duan & Duan	\$12,521,000	67	\$187,000
34	Beijing DHH Law Firm	\$19,508,000	112	\$174,000
35	Beijing Kangda Law Firm	\$22,200,000	142	\$156,000
36	Gaopeng & Partners	\$9,819,000	79	\$124,000
37	AnJie Law Firm	\$4,528,000	37	\$122,000
38	King&Capital Law Firm	\$13,320,000	111	\$120,000
39	Boss-Young	\$6,438,000	54	\$119,000
40	V&T Law Firm	\$8,436,000	96	\$88,000
41	Zhonglun W&D Law Firm	\$26,639,000	311	\$86,000
42	East & Concord Partners	\$6,087,000	100	\$61,000
42	Zhong Yin Law Firm	\$9,176,000	151	\$61,000
44	Shengdian	\$2,700,000	67	\$40,000
45	Lantai Partners	\$2,061,000	53	\$39,000

*Yuan converted to \$USD using Federal Reserve System foreign exchange rate for 2017. The exchange rate is 6.7569 yuan per dollar.

Success is rooted in assisting others to achieve.

成功，始于助人成功。

> 关于我们

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> 业务领域

天达共和致力于为客户提供专业化法律服务，经过20多年的不断积累及锐意进取，已经在以下业务领域取得行业领先地位，赢得了客户的高度信任与赞誉，并连续多年被业界知名媒体如《钱伯斯》、《亚太法律500强》、《国际金融法律评论》、《律师杂志》、《亚洲法律评论》、《亚洲法律杂志》、《商法》、《中国法律与实务》等推荐或报道：

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> Overview

The merger between the East Associates Law Firm and Concord & Partners in 2014 brought into being East & Concord Partners, one of the largest and the most comprehensive law firms in China. Briefly, East Associates Law Firm and Concord & Partners were established in 1993 and 1995 respectively, are among the earliest established law firms in China and both have nationwide influence and reputation. We are headquartered in Beijing and have branches in Shanghai, Shenzhen, Wuhan and Hangzhou. The firm has almost 400 professionals. And the structure of partners and consultants is mature and stable. In addition to experienced partners and consultants who have practiced law for more than 30 years, our firm is comprised of legal experts who have years of working experience in national ministries, courts, procuratorate, international arbitration institution and prestigious law firms and young and middle-aged attorneys who have gained qualifications and hands-on experience in law schools and firms throughout United States, Europe, Australia, Japan, Singapore, Hong Kong and Taiwan. Our working languages include Chinese, English, Japanese and French.

> Practice Areas

East & Concord Partners is committed to providing professional legal assistance to our clients and with 20 plus years of experience has gained a leading position and earned clients' trust and recognition and has been frequently recommended and reported by well-known international legal media such as *Chambers*, *Legal 500*, *IFLR1000*, *The Lawyer*, *Asialaw Profiles*, *ALB*, *China Business Law Journal*, *China Law and Practice* and so forth in the following practice areas:

Mergers and Acquisitions, Securities and Capital Markets, Dispute Resolution, Criminal Litigation, Banking and Finance, Financial Lease and Commercial Factoring, Anti-dumping and Countervailing, Antitrust, Intellectual Property, Foreign Direct Investment, Overseas Investment, Entertainment and Sports, Infrastructure and Project Financing, Real Estate and Construction, Energy and Natural Resources.



Three Dilemmas in China's Cybersecurity and Data Law

Multinational corporations (MNCs) are at a loss towards China cybersecurity and data law which lacks clarity. In this essay, the author intends to help MNCs better understand the rationale behind the law by analyzing the three fundamental conflicts of policy objectives: privacy vs. free flow of data, national security vs. cross-border data transfer, and big data economy vs. big data monopoly.

By Dr. David Pan

China has enacted a series of laws, regulations, and macro policies in field of cybersecurity and data, aiming to turning it into a “cyber super-power” and to boosting its digitized economy. China Cybersecurity Law (CSL) which becomes effective on June 1, 2017 is a milestone of China's cybersecurity and data law. However, the wide-range application, vague terms, and uncertainty in implementation of the CSL made many multinational companies (MNCs) outcry that it would be impossible to understand the CSL, let alone comply with it.

By looking deeper into the CSL and connecting the dots with other relevant laws, the author finds out that Chinese policymakers are confronted with three dilemmas of conflicting objectives, striving to find a fine balance. That's probably the root cause of the “nebulous” CSL.

PRIVACY VS. FREE FLOW OF DATA

To crack down on rampant abuse of personal information, China decided to take intensive protective measures. First, personal information is broadly defined by the CSL, which covers both personal identifiable information and personal identified information. Followed by the CSL, several judicial interpretations and national standards expand the scope of personal information to include a person's whereabouts, IP address and Mac address, IT equipment serial number etc. Secondly, as required by Chinese law, a person's express consent is a prerequisite for a third party's legitimate collection and use of all types of his personal information. Last but not least, China sets a quite low



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threshold for an offense of infringement of citizens' personal information. For example, anyone who illegally obtains, sells or provides more than 50 pieces of citizens' information on whereabouts, communications, credit information or property information, or derives an illegal income of more than US\$750 from the abuse of citizens' personal information would constitute the offense and consequently would be subject to an imprisonment up to 3 years.

The other side of the coin is that strict authorization requirement for collection and use of personal information could impede free flow of data. Driven by a huge e-commerce market, China has risen to the second largest digital economy entity. The sustainable development of China's digital economy depends largely on free flow of data and massive data use. According to the prevailing theory of “impossible triangle of data transaction and flow”, a data law cannot simultaneously achieve three policy objectives of ensuring strict authorization by data subjects, promoting massive data flow, and enhancing data value. To solve this conundrum, China will likely keep tipping the scale in favor of either data privacy or free flow of data, in light of the actual situation.

NATIONAL SECURITY VS. CROSS-BORDER DATA TRANSFER

Article 37 of the CSL provides that the operator of a critical information infrastructure (CII) shall store within China personal information and important data

collected and generated during its operation in China. Where such information and data have to be provided abroad for business purpose, security assessment shall be conducted pursuant to the measures developed by the China Cyberspace Affairs Commission (CAC).

The terms “CII” and “important data” are too vague to grasp their meanings. According to the CSL, CII encompasses not only traditional critical industries such as public communication, energy, transport and finance, but also other infrastructure that could severely threaten or harm the “national security”, “national economy”, “people’s livelihoods” or “public interest” in case that such infrastructure was damaged; the CSL defines important data as “data closely related to national security, economic development, and social and public interests.”

Many MNCs, confused and concerned, complained that the data localization and data transfer regulations “unnecessarily onerous”. In September of 2017, the United States asked China not to enforce the CSL in a debate in WTO Services Council, claiming that “China’s measures would disrupt, deter, and in many cases, prohibit cross-border transfers of information that are routine in the ordinary course of business.”

It is not unusual that each country competes to keep as many data as possible within its border, because data is the oil in digital era. For China, there is one more fundamental reason to do so: China still lags behind in high technology; China wants to protect its data from spying by foreign forces which enjoy advantages in data technology. For example, China’s market of automation software is dominated by foreign MNCs like Siemens and ABB, etc. Through aggregation and algorithm, the operation data of production lines collected by such software can be used to deduce the output and the spread of manufacturing facilities of China’s important industries. Hence, without restraining measures, China is concerned with its national security endangered by the free flow of important data abroad.

Weighing against its national security needs, China must consider its commitment under WTO to free cross-border data transfer. Moreover, China will have to assess whether Chinese companies would get retaliated in data practices in their business operating outside of China if it implemented this policy of data localization mercilessly.

BIG DATA ECONOMY VS. BIG DATA MONOPOLY

One of the major objectives of China’s cybersecurity and data law is to develop China’s big data economy

through top-down and state-led efforts. Big-data based economy boomed in China and many unicorns mushroomed in sectors of e-commerce, social media and communication, artificial intelligence, robotics and quantum computing. Against this backdrop, Chinese legislators and law enforcement agencies seemed hesitant to touch on the problem of big data monopoly, a controversial downside of big data economy. Most likely, they were inclined to believe that data-rich companies are not a threat to eliminating market competition, but rather are conducive to innovation. Therefore, policymakers should encourage but not limit the data-rich companies.

In reality, however, the endangerment of big data monopoly looms large in China. In this August, it was reported that Lianjia and Ziroom, one of the largest realtor agency in Beijing, monopolized data of apartments available for renting out, and Lianjia and Ziroom drove up the rental price in Beijing’s market by taking advantage of the information asymmetry between them and tenants. After having been admonished by Beijing government, Lianjia and Ziroom released 80 thousand units of “idle” apartments to the rental market, as an effort to bring down the market price.

CONCLUSION

China’s cybersecurity and data law lacks clarity. MNCs cannot place high expectation of the law becoming crystal clear when new laws and implemental regulations will come out. Chinese legislators and agencies may continue to act in the spirit of “crossing a river by feeling their way over the stones” by taking a balanced approach. MNCs may want to watch balances made by Chinese legislators and agencies from time to time, between conflicting policy objectives, so as to make “informed” judgements accordingly.

ABOUT THE AUTHOR

Dr. David Pan has practiced law in law firms and has worked as in-house counsels in a fortune 500 company in China and in U.S. over 17 years. Based on his thorough knowledge and solid experience in both law and business, Dr. Pan practices law in ADA compliance (anti-corruption, data, and anti-trust), corporate, merger and acquisition.

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By Xiaoming Li and Chen Ma



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The legal compliance practice in China has been expanding steadily over the years and it is gathering momentum recently. It seems that the following factors are at work. First, more and more Chinese companies take compliance seriously and have set up compliance mechanism akin to multinational companies. In many instances, this heightened importance attached to compliance is a direct result of lessons learned in the hard way. Second, increased enforcement in recent years by foreign government agencies, such as the US Department of Justice, the SEC and the UK SFO, has had a direct impact on foreign companies with substantial operations in China causing them to step up their compliance efforts. Third, as laws encouraging and rewarding whistleblowers have gained acceptance and traction, there has been a steady increase of investigations based on complaints by company employees and tips by whistleblowers. Chinese counsel, working together with their international counterpart, are playing an ever more active role in matters relating to compliance and investigations.

CHINESE COMPANIES' COMPLIANCE AWARENESS IS INCREASING

To date, hundreds of Chinese companies have been listed and traded in overseas stock exchanges, and many more are doing business in foreign countries all over the world. Compliance with local laws and regulations is a matter of de rigueur. In addition, many Chinese companies are doing business in countries that are subject to export control laws and sanction regimes which require special care and discipline

to comply with. Chinese banks and other financial institutions are under strict scrutiny in countries where they operate in addition to the traditional compliance relating to anti-money laundering and anti-terrorist financing laws and regulations. In the recent past, a number of high profile cases involving Chinese companies and financial institutions have been litigated or investigated outside of China highlighting the importance and urgency of the matter. The most recent controversy involving ZTE is a painful lesson to Chinese companies that certain matters are non-negotiable, particularly if they concern compliance.

The encouraging sign is that many Chinese companies have begun to treat compliance as a success and survival issue and built internal infrastructure to ensure its implementation. What they have done predates the ZTE incident and the latter has only reaffirmed their resolve. In the meantime, the Chinese regulatory authorities have issued a number of regulations requiring Chinese companies to beef up compliance and nurture a compliance culture. For example, the National Development and Reform Commission ("NDRC") published on July 5, 2018 a draft guideline on compliance management for Chinese companies' overseas operations (the "NDRC Guideline"), to solicit public comments. The NDRC Guideline covers a wide-range of issues from purposes and objectives to internal compliance system, compliance organization and compliance culture nurturing. It can be expected that once the NDRC Guideline is finalized, it will be widely adopted by Chinese companies, state-owned or privately held, as a key part of their internal compliance documentation.

STATE SECRET REVIEW

In the context of litigation or investigation involving Chinese companies in front of foreign courts or regulators, one task that Chinese counsel is often asked to perform is to ensure that China's state secret law is complied with in the course of document production. Under Chinese law, documents containing state secret may not be produced without proper approval. The role of Chinese counsel is to screen out documents that contain state secret as they may not be produced to readers outside of China without approval.

In most instances, it is straightforward for counsel to pick out documents containing state secret, but there are also borderline documents that require experience and judgement to include or exclude in document discovery. It also requires counsel to inform and train clients as to what to include or exclude in a manner that both complies with discovery request and with Chinese law. Therefore, Chinese counsel's experience and judgment are extremely important.

PERSONAL DATA PROTECTION

The protection of personal data has become an international issue. The promulgation of the European GDPR is expected to accelerate similar legislation to be passed by the Chinese legislature. Before that happens, China Cybersecurity Law of 2017 is the primary law in this regard. This law restricts personal information from being transferred outside of China. Of particular importance is that critical information infrastructure ("CII") operators must store customer data in China, and in case of data export, necessary security assessment must be performed and cleared. As of today, the implementing regulations regarding security assessment of personal data obtained by CII operators have not been promulgated. Chinese counsel must first determine whether the data sought to be transmitted outside of China are those obtained by a CII operator. Chinese counsel must also determine whether the documents sought to be provided to offshore parties contain personal information of Chinese residents, and whether such personal information may be redacted and then provided to offshore parties.

CONCLUSION

The convergence of heightened importance attached by Chinese companies to compliance and the uncertainties of today's global economy and politics is likely to in-

crease the need for experienced counsel adept to assist clients in navigating through the intricacies of laws and regulations, domestic or foreign alike, to avoid pitfalls and ensure success.

ABOUT THE AUTHORS

Xiaoming Li is a Co-CEO of Han Kun Law Offices. Over the years, Mr. Li has specialized in the fields of capital markets, M&A, dispute resolution, restructuring, and banking & finance. He is widely recognized as a leading lawyer for bank finance, project finance and corporate and M&A. He is listed in the top tier for banking, project finance and infrastructure by Chambers Asia, IFLR1000 and Legal 500.

Mr. Li used to head the China Practice of a major international law firm for many years before joining Han Kun. Mr. Li now also heads Han Kun's general compliance and investigations practice group.

Chen Ma is a partner of Han Kun Law Offices based in Beijing. He is a partner of the firm's general compliance and investigations practice group. He is dual qualified in China and the US (New York).

Mr. Ma is highly recommended by Chambers and Legal 500 in the area of competition law, and he is also regularly consulted by Chinese antitrust enforcement agencies on legislative efforts. He has contributed to various leading professional publications, including the ABA's Handbook on International Cartel Investigation.

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Some Hard-core Knowledge for Investing in a Chinese VIE

This title is meant to be eye-catching. Although I am not going to make it serve the purpose of luring the readers to a verbose trigger-warning to avoid investing in a Chinese VIE because of the structure's unreliability. There have been very many discussions and literatures about that. The following text is given, however, on the assumption that you've decided to make do with a Chinese VIE. Many people won't shy from Alibaba (BABA) or Tencent (0700.HK) just because the structure of them may be as unstable as they disclose after all.

By Raymond Shi

VIEs, or variable interest entities, are ubiquitous. Since its origin in China dating back to the early 2000s, VIE structure has remained very popular, especially in industries such as internet, gaming, education, medical service et al., where most privately-owned mega companies or “unicorns” arise. The idea is simple – because Chinese law restricts or even prohibits foreign investment in certain “sensitive” industries, such as internet, this ingenious entities also widely called as VIEs held by Chinese individuals, which in turn, together with those VIEs, sign a series of controlling contracts with international holding companies (in most cases their Chinese subsidiaries) to hand over the control of the VIEs as well as their profits.



RAYMOND SHI

石磊

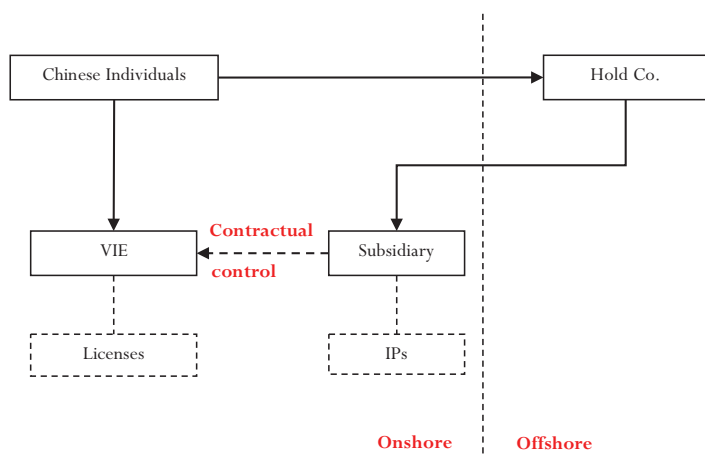
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To achieve that in China, the legal documents must not be as simple. The text is dense and you may have to put a cold towel on your head and read it several times, or you may choose to call bet outright. But before you sign, keep in mind the following candid advices from a seasoned legal practitioner:

1. Make sure the company is controlled by Chinese. Once thought to be a remote possibility, the draft of the Foreign Investment Law of the People's Republic of China (or PRC) was clearly mentioned

in the central government's 2018 legislation plan. The law, if enacted as the latest known public version, will be likely to revolutionize the existing laws and regulations governing foreign investment in China. It purports to, among other things, adopt a “see-through” approach to determine whether there is foreign investment in a PRC company (including VIEs), regardless of the holding structure the company has. To put it simple, if pierced through the complex structure a company is determined to be actually controlled by foreign investors, even if the VIE is nominally owned by Chinese individuals, it will still be deemed as a foreign invested enterprise, or FIE, thus be put under scrutiny of foreign investment policy. That said, if a VIE structure is not controlled by Chinese citizens or state-owned bodies ultimately, the very idea of setting up VIEs to get around foreign investment restrictions will be void, and the foreign investors behind will have to choose from getting approval which in many cases is hardly possible, or being squeezed out. To avoid that hard decision, the current and continuing Chinese control of the company is essential.

A Simplified VIE Setting



2. Look closely at how the Chinese invest in the international holding company. VIE companies, together with other companies established overseas but tied to business interests mainly within China and controlled by PRC legal or natural persons are also known as “red-chip”. There are two kinds of red-chip - one is red-chip mainly owned by Chinese individuals directly or their overseas holding vehicles (so called “small red-chip”), which is most common among overseas listed companies; the other (the “big red-chip”) is instead majority-owned by Chinese entities directly or indirectly, which will fall into the regulation of an obsolete yet rigidly-written rule. The rule, aka 97 Red-chip Guidance, puts in place many cumbersome or somewhat unrealistic restrictions on overseas listing with Chinese assets, for instance, it forbids Chinese assets owned by foreign entities less than three years from doing foreign listing. The definite constitution of “big red-chip” requires it to be owned by a Chinese entity, or by several Chinese entities (including the biggest holder) collectively, for more than 50%. You will have to dodge it to have a smoother exit.
3. Choose VIEs clearly serving the purpose. Although the rationale of VIEs is to haggle over foreign investment restrictions, such restrictions are not a must to form the effective control of a VIE company. In fact, some companies, including a few already listed, in industries opened to foreign ownership also adopt VIE structures. However, mainly because of its oddity, major listing venues have various requirements for VIE applicants. Even for a disclosure-based market as in the US, the SEC still needs applicants to at least provide certain justifications for VIE usage. The Hong Kong Stock Exchange, or HKSE, goes further. A bit counter-intuitively, as a regulatory body, it specifically requires that a VIE-structured applicant must prove the use of VIE is “narrowly tailored” to only operate in industries that limit foreign investments to the extent that the licenses operating its business could not have been obtained if the VIE is an FIE. In a previous case in which a company in non-restricted industries went listing in the HKSE, the Chinese securities regulatory body is believed to have expressed upset towards the HKSE and given warnings to the company. You won’t want to share that experience.
4. Better not go too far, maybe. The underlying rationale for setting up VIEs is exactly why the VIE

structure must have sounded alarming to the PRC government - namely, that possible foreign ownership of socially vital industrial sectors have strong national security implications. It is only because of the widespread market practices and the large number of interest groups involved that the central government remained purposefully half-blind, mostly not bothering to mention “VIE” or “contractual control”. However, for certain industries, PRC law does explicitly prohibit its use, e.g., a rule governing internet press business provides that foreign investment is not allowed to take over PRC companies by way of VIE; also, a proposed draft rule regulating private education also prohibits control of not-for-profit schools through contractual arrangement. VIEs still exist in these industries, where some may be even bold enough to seek listing, while remember the indispensable part of Chinese version of “rule-of-law” is arbitrary implementation of given rules. In a country where fiddly rules and obscure decision-making are both the norm, even if rules themselves unchanged, the law may sometimes feel toothless, but can definitely bite.

ABOUT THE AUTHOR

Raymond Shi is a partner in Tian Yuan’s Beijing Office. He is licensed in China and the state of New York and has been practicing laws at well-established PRC and international law firms for years. Mr. Shi specialises in general corporate, capital markets, M&A, VC and PE investment, taxation, and anti-trust. He works with Chinese clients as a native speaker and can speak English proficiently.

Mr. Shi is good at handling extremely complicated transactions, which normally involve laws of multiple, and drastically different, jurisdictions, as well as multiple practice areas such as corporate, litigation and tax, all legal issues need to be carefully considered and addressed by lawyers.

During his professional career to date, he has established sound professional reputation and has won considerable recognition in the market of PRC legal services. He was awarded the “30 under 30” legal professional elite by ranking agency LEGALBAND in 2016 and “China Top 10 Lawyers - New Economy” in 2018.

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Significant Changes in 2018 to China's Arbitration Legal Structure

On June 27, 2018, the Supreme People's Court of the People's Republic of China ("Supreme Court") promulgated a new judicial interpretation—*Provisions of the Supreme Court on Several Issues Regarding the Establishment of the International Commercial Court*. Article 2¹, Article 11 and Article 14 of the Interpretation provide that the International Commercial Court has jurisdiction of cases involving applications for preservation orders in arbitration procedure, for setting aside or enforcement of international commercial arbitration awards when the applications or awards are applied through or issued by qualified international arbitration institutions. As a result, the Interpretation has eliminated significantly the problems relating to implementation of preservation orders when parties enter into an arbitration agreement which chooses an international arbitration institution that is not located in the territory of China.

By Huanran Qiao

Prior to the Interpretation being promulgated, parties to the arbitration found it challenging to enforce preservation orders in China issued by international arbitration institutions abroad. Traditionally, Chinese courts have not readily accepted applications when they were submitted to local arbitration institutions. This traditional attitude is detrimental to China's continued efforts to reform its legal system especially in the era of its Belt and Road Initiative. However, with the new judicial interpretation, the international arbitration institutions such as ICC and LCIA will be able to successfully have their preservation orders recognized as effective and enforceable in China by the International Commercial Court.

Specifically, on December 7, 2017, the Supreme Court promulgated a judicial interpretation—*Notice of the Supreme Court on Clarifying the Level of Jurisdiction Standard for Foreign-related Civil and Commercial Cases of the First Instance and the Relevant Issues for Centralized Handling*. As a result, disputes relating to wholly foreign-owned enterprises ("WFOEs") are allocated and deemed as international disputes, and these will be directly governed by the relevant intermediate courts. Therefore, WFOEs are deemed as foreign enterprises when considering applicable jurisdiction. In conclusion, when WFOEs submit arbitration or preservation applications, the applications



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shall be submitted directly to the relevant intermediate courts rather than the basic courts. The Interpretation is beneficial for WFOEs which apply for preservation orders because intermediate courts are generally more efficient and authoritative than lower courts.

Second, on December 26, 2017, the Supreme Court promulgated a judicial interpretation—*The Provisions of the Supreme Court on Certain Issues Related to the Conduct of Judicial Review of Arbitration Cases*. This is systematically the first time for China's legal system to standardize the scope and

level of the court's judicial review power over arbitration. We will find that the judicial review of Chinese court complies with global expectations, and focuses on two targets in arbitration practices. One target is related to arbitration agreement and the other is arbitral award. As for the level of the courts, the Interpretation provides that "the intermediate court or the special court in whose jurisdiction the arbitration institution designated in the arbitration agreement locates, or the arbitration agreement was signed, or the applicant or the respondent domiciles, shall be competent to hear an application to verify the validity of the arbitration agreement". That is, the basic courts do not have this power. As for the appeal procedure in the judicial review, the Interpretation provides that only three types of the ruling may be appealed—a ruling of inadmissibility, dismissal of application or jurisdictional challenge. The remaining

rulings are not permitted to be appealed because they become legally effective as of the date of the ruling. As for the court's basic value orientation, the Interpretation provides that *"Where, absent the parties' choice of the governing law, a people's court is to ascertain the law governing the validity of a foreign-related arbitration agreement in accordance with Article 18 of the Law of the People's Republic of China on the Law Applicable to Foreign-related Civil Relations, and application of the law of the place of the arbitration institution or the law of the seat of arbitration will bring about different results in respect of the validity of the arbitration agreement, then the people's court shall apply the law that renders the arbitration agreement valid."* It is evident that the courts prefer to maintain the validity of the arbitration agreement.

Third, on the same date (December 26, 2017), the Supreme Court promulgated a judicial interpretation—*The Provisions of the Supreme Court on Application for Approval of the Arbitration Cases that are Subject to Judicial Review*. The purpose of the Interpretation is to maintain the authority and autonomy of the arbitration system. The purpose of this promulgation, we believe, is to avoid local courts' interference in arbitration. The Supreme Court hopes to put an end to the different and diverse judicial review practices which were prevalent before 2018. When some courts hold narrow judicial review while others hold one that is broad, parties find it very difficult to predict their case direction and result. Now, with the authority to conduct a final judicial review, the Supreme Court is able to provide interested parties with reliable and fair ruling of the arbitration agreements and the arbitral awards. In addition, the interpretation provides that *"In conducting the judicial review of foreign-related arbitration cases or Hong Kong, Macao or Taiwan-related arbitration cases, each intermediate people's court or special people's court shall report for approval to the higher people's court to whose appellate jurisdiction it is subject of any case it has reviewed, when it intends to determine that the arbitration agreement therein is invalid, or the enforcement of the arbitral award of a Mainland arbitration institution is to be refused, or such an award is to be set aside, or the recognition and enforcement of an arbitral award made in Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan Region is to be refused, or the recognition and enforcement of a foreign arbitral award is to be refused. Where the higher people's court, after reviewing the case, intends to agree with the lower court's opinion, it shall report to the Supreme Court for approval."*

It is noteworthy that all three interpretations mentioned above came into effect on the same date,

January 1, 2018, demonstrating that 2018 is a significant year for China in improving its arbitration legal structure. In fact, in addition to the changes mentioned above, 2018 has witnessed an interpretation regarding enforcement of arbitral awards—*Provisions on Several Issues Concerning the Handling of Arbitration Award Enforcement Cases by the People's Courts*. The Interpretation has supplemented some arbitration legislative rules, especially regarding (1) the judicial review standard for the circumstances of the vagueness which would cause courts to refuse recognizing the arbitral awards; (2) the relief procedures for non-parties of the arbitral awards in unfounded lawsuits; (3) the review standard to be implemented when the courts consider whether to enforce an arbitral award.

In conclusion, reforming China's traditional rules regarding preservation orders from international arbitration institutions is only a small part of the achievements that China has made in 2018. In fact, a variety of significant changes in the legal structure of arbitration has been made this year. According to our analysis, it is clear that China's legal environment reflects respect and independence of arbitration much more than before. We predict that increasing number of domestic and international claimants will choose arbitration to seek dispute resolution with these significant changes in China.

¹ Preservation Order has another title in common law system- Injunction or Interim Measure.

ABOUT THE AUTHOR

Philip Chiao is a partner of East & Concord Partners. His main practice areas are dispute resolution, general corporate legal affairs. Chiao has over 17 years of legal practice experience on litigation and arbitration. Chiao was a magistrate and judge at a local court in Bfj for 4 years before practicing as lawyer. Chiao has excellent winning records in his dispute resolution practice. The cases that he won cover a very wide variety of areas including M&A, real estate, labor and employment, commercial contracts, and corporate compliance, intellectual property rights, etc. Chiao also has rich experience in the legal service on TMT area. Chiao's major clients including Microsoft, DD Taxi, NTT, Neophotonics. Chiao's working language is Chinese and English. Chiao has published an English book — *Understanding English Contract*, which has been well recognized by the legal peers in China.

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Private Eyes

LAW FIRMS FOCUSED ON ADVISING THE BOOMING PRIVATE EQUITY MARKET HAVE SOARED TO NEW HEIGHTS—AND SEE NO SIGNS OF SLOWING.

By Roy Strom

ALL OF BIG LAW'S BEST-KNOWN PRIVATE EQUITY PRACTICES have a compelling origin story.

There's the tale of Simpson Thacher & Bartlett's former chairman Richard Beattie, as a 33-year-old associate in the late 1970s, working with the founders of KKR & Co. before they had even started the place. Ropes & Gray chairman R. Bradford Malt's dealings with Mitt Romney and Bain Capital date back to the mid-1980s. Jack Levin of Kirkland & Ellis reportedly had to ask his first client what a venture capital deal even was in the late 1970s. The Carlyle Group's Bruce Rosenblum, who joined the buyout giant's management committee in 2000, is a former executive committee member at Latham & Watkins.

It's hard to overstate the importance of those stories. As the biggest private equity shops have boomed in the past two decades, they have propelled their favored lawyers and firms to new financial heights. It is no coincidence that two firms with some of the busiest private equity lawyers, Kirkland and Latham, are also No. 1 and No. 2 in the Am Law 100.

Even so, there is a more pressing story to tell about the relationship between buyout firms and law firms: a growth story.

Private equity is pushing past its pre-recession heights and it is not expected to slow down. Mergermarket states that the value of private equity deals struck in the first half of 2018 set a record. PricewaterhouseCoopers expects that the assets under management in the private equity industry will more than

double from \$4.7 trillion in 2016 to \$10.2 trillion in 2025.

With twice as much dry powder to spend on deals, private equity firms will play a large role in determining the financial winners and losers of the Am Law 100 over the next five-plus years. It amounts to a power shift from traditional Wall Street banking clients and their preferred, so-called white-shoe firms to those other outfits that advise hard-charging private equity leaders.

And as more money flows into the coffers of private equity firms, they are expanding their services. Increasingly, they act as their own investment banks. KKR, one of the largest publicly traded buyout shops, reported last year that it generated \$440 million in fees related to taking companies public, underwriting new deals or syndicating debt and equity. That figure was up roughly two-and-a-half times from the prior year.

“What you’re really talking about is money, and a change in the form of money that has shifted the power base for private equity lawyers,” says Kay Hoppe, a veteran legal recruiter based in Chicago. “Private equity lawyers used to be nice to have, and they are now lawyers who are viewed as essential. They are fuel for the machine.”

It is hard to find law firm managing partners who don’t acknowledge the attraction of private equity clients. Their deals act as a lure, catching work for a variety of practice groups: tax, M&A, finance and employee benefits. And lawyers often end up handling legal work for the very companies they help private equity holders buy. Then, of course, there is always the sale of that business. A single private equity deal for one of the big buyout firms can generate fees ranging from \$1 million to \$10 million, sources say.

“It’s kind of like there’s a perfect storm taking all those things into consideration that makes private equity a big driver in the success of many firms, and an aspirational growth priority in many more firms,” says Kent Zimmermann, who does law firm strategy consulting at The Zeughauser Group.

So, who will win the competition for this lucrative practice over the next several years? It’s hard to tell for certain, but there is a group of firms with an embedded competitive advantage, and they are bulking up on talented lawyers to solidify their relationships with the biggest funds. Those top-end funds are also where much of the future growth in assets will be. Still, there is opportunity in new and smaller funds for enterprising lawyers.

It’s worth noting that a similar doubling in private equity assets already took place from 2007 to 2016, according to PwC. So there is something to be learned from the winners



Latham is “unlocking” the benefits of its private equity talent, Paul Sheridan says.

of that time period, a group that includes, roughly, Kirkland, Latham, Simpson Thacher and Ropes & Gray. All four firms are ranked in the top two bands for private equity

by Chambers and Partners.

Judging by league tables that track deals (somewhat imperfectly, as they are self-reported by firms), Kirkland has a leading position in the practice. According to Mergermarket, the firm handled 1,184 private equity deals from 2013 through this June. Latham was closest with 609. Ropes & Gray handled 323, while Simpson Thacher signed up 319. Below is a look at how those firms have grown their practices and what they plan to do to stay on top.

KIRKLAND & ELLIS

Kirkland’s recent financial performance has eclipsed most of its peers. The firm’s gross revenue doubled from 2007 to 2016, from \$1.3 billion to \$2.6 billion. Its profits per equity partner also grew from \$2.48 million to \$4.1 million.

The Chicago-founded firm, which declined to comment for this article, is something of a departure from its competitors in that it has long been known as an adviser to “middle-market” private equity firms. Kirkland did not get its start via a close-knit relationship to buyout giants that became power players, such as Apollo Global Management, Carlyle, KKR and The Blackstone Group.

Lately, however, Kirkland has made inroads with the deal-

makers at some of those big firms, including KKR and TPG Capital, which the firm now advises as part of its first European panel of legal advisers. Kirkland has lured some of the most well-regarded private equity lawyers to its highly profitable machine.

Through August, Kirkland has hired 22 private equity lawyers in 2018. Seven of those lawyers had titles as co-leaders or leaders of practice groups at their former firms, which included DLA Piper, Latham, Freshfields Bruckhaus Deringer and Morrison & Foerster, all of which are also leading advisers to private equity firms.

LATHAM & WATKINS

Latham's leaders often say that the firm has spent the last decade or so acquiring talent across the globe and they are now "unlocking" its benefits. Private equity is perhaps the best example of that strategy at the firm, according to the practice's global chairman, Paul Sheridan.

And, indeed, Latham has grown alongside its most successful private equity clients. Consider the growth of Carlyle, which in 1990 raised \$100 million for its first fund for U.S.-based buyouts. This year, Carlyle's latest and largest U.S. buyout fund raised \$18.5 billion. Sheridan says that doesn't necessarily mean the number of deals closed for that fund will be drastically larger. But the size and complexity of the deals—and their legal needs—will be.

"As they're doing larger deals, they end up requiring more out of their law firms," Sheridan says. "These larger deals have international businesses, or businesses that are subject to more regulation. So that works to the advantage of law firms that are doing that type of work day in and day out."

ROPES & GRAY

Ropes & Gray employed just under 400 lawyers in the mid-1990s when the firm first began representing private equity companies. Today, it has nearly 1,200 lawyers, thanks in large part to strong relationships with such buyout giants as Advent International Corp., Bain, Kohlberg & Co. and TPG.

Like Kirkland, Ropes & Gray's gross revenue doubled from 2007 to 2016, from \$733 million to \$1.5 billion. And among Kirkland, Latham and Simpson Thacher, Ropes & Gray has increased its head count during that time span by the greatest percentage—nearly 50 percent. Will Shields, co-chairman of the firm's private equity transactions practice, says Ropes & Gray's international growth has been aimed at "hubs of PE activity" in London, Seoul and Tokyo.



"We continue to feel very bullish about the fortunes of law firms serving private equity."

—Will Shields

"Serving the private equity industry has been fundamental to our strategy forever, or at least over the last two or three decades," Shields says. "And we are happy we've made

that bet. Looking forward, we continue to feel very bullish about the fortunes of law firms serving private equity, because we think the industry's growth has been tremendous and we think it's continuing to go that direction."

SIMPSON THACHER & BARTLETT

Simpson Thacher's private equity practice has represented KKR and Blackstone, more or less since the creation of those businesses. A profile of the firm's private equity practice by *The American Lawyer* in 2006 said those two clients alone accounted for anywhere from 9 percent to 15 percent of the firm's gross revenue for the previous 20 years.

In the period from 2007 to 2016, Simpson Thacher's gross revenue grew 35 percent, the least among the four firms cited here. Simpson Thacher, which declined to comment for this article, still has strong ties to Blackstone and KKR. Through the first six months of 2018, the firm led all law firms in the value of private equity deals it had advised on, according to Mergermarket. If Simpson Thacher can close out the year with that distinction, it will be the first time Kirkland did not finish atop the rankings since 2012.

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 | A SPECIAL REPORT

MOBILE APP EXPLOSION

Need to call clients from home or keep track of your billable hours out of the office? Your law firm wants you to have an app for that. **L2**



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AN APP A DAY KEEPS THE STAGNATION AWAY

Need to call clients from home or keep track of your billable hours out of the office?
Your law firm wants you to have an app for that.

BY RHYS DIPSHAN

IN THE LAW FIRM WORLD, FEW—IF ANY—ATTORNEYS WORK “nine-to-five” jobs. Client requests, case developments and even new legislation don’t stop after an office closes. So over the years, attorneys have learned to be agile, ready to “plug in” at a moment’s notice.

Luckily, these exacting work demands can be easier to manage in the digital age. Today’s attorneys have the luxury of carrying a pocket-sized personal computer around with them at all times. And unsurprisingly, a large number of law firms are encouraging their attorneys to go mobile.

According to the 2018 LTN Law Firm Tech Survey, 77 percent of law firms have a bring-your-own-device (BYOD) policy at the office, allowing attorneys the use of their own personal smartphones for work. When asked about the biggest benefit of allowing mobile devices in-house, 30 percent of surveyed firms cite increased flexibility, while 28 percent cite increased productivity. A quarter also said mobile devices helped enable better client services.

To be sure, it’s not the device itself that provides these benefits. Instead, the benefits come from the various mobile applications each device carries. These apps enable attorneys to work out of the office more efficiently, but

more crucially, they also change the type of legal work attorneys produce and build client expectations around attorney availability.

On a broader scale, use of mobile apps by attorneys likewise allows law firms to experiment with new ways to empower their workforce. But it also means they have to better manage the security of their information and networks, which can be now dispersed across numerous constantly-moving devices.

Still, while a mixed blessing, it’s clear that these tools are here to stay. One only need look at the diverse ways in which mobile apps are used in law firms, or how such apps are enthusiastically adopted by attorneys, to understand that legal has gone mobile. There’s no turning back.

SECURE THE LANDING

Blackberry phones were the first mobile devices to be used extensively in law firms, but few firms secured or actively managed them in-house. By contrast, in today’s world where smartphones have almost completely replaced Blackberry phones, most law firms have implemented mobile device policies, and by extension, are taking charge over what apps their lawyers use.



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VICTOR BARKALOV

Victor Barkalov, chief information officer and chief digital officer at Jackson Lewis, was instrumental in implementing a firm-wide mobile security policy after he arrived at Jackson Lewis in early 2017. At the heart of Barkalov's effort was the requirement that all attorney mobile devices install IBM's MaaS360, a security solution that combines mobile device management (MDM) and mobile application management (MAM). While MDM allows Jackson Lewis to track and enforce security measures and remotely erase any mobile device used by their attorneys, MAM also gives the firm the ability to create and manage an encrypted container, such as a folder, on each device, where it can isolate and further secure certain applications and data.

Hybrid MDM and MAM security solutions like the one Jackson Lewis implemented are highly popular with law firms that have mobile attorneys. For instance, Christopher Zegers, chief information officer at Lowenstein Sandler, says his firm also uses a hybrid solution called AirWatch—according to the Legaltech News survey, AirWatch is one of the most popular security solutions and used by 39 percent of surveyed firms.

Likewise, Judith Flournoy, chief information officer at Kelley Drye & Warren, notes her firm uses a similar solution named MobileIron—the second most prevalent platform, used by 18 percent of surveyed law firms.

So why are hybrid MAM and MDM solutions so popular? For one, they provide multiple layers of security and control over a device. But equally as important, they also allow firms to push out mobile apps to their attorneys. With these solutions in place, firms can place apps directly on their users' devices or create a proprietary "app store" with a curated list of apps to download.

DESKTOP DISASSEMBLED

The apps law firms push out to their attorneys will vary from office to office. But for the most part, these apps are provided by third-party tech vendors, whose platforms the law firm trusts and that work similarly to desktop programs. "Basically, we want to disassemble the desktop and in effect, make it available on apps," says Barry Steinberg, IT director at Young Conaway Stargatt & Taylor.

Some of the most commonly used and downloaded apps at law firms are ones that help attorneys better manage some of their essential work demands. Email and calendar apps, for instance, are universal, but are often connected to, or restricted by, the

hybrid MDM and MAM solution securing the device. Barkalov says IBM MaaS360, for example, has a native app that must be used for email and scheduling. Meanwhile, Zegers notes that AirWatch allows those with iPhones "to use the native iOS email client and for Android users, they have choice of email clients that are supported."

Many law firms also offer timekeeping apps that connect to their internal systems so their attorneys can input and track their billable hours remotely. Young Conaway and Jackson Lewis, for instance, both use a timekeeping app provided by Intapp, while Lowenstein Sandler went with a timekeeping app provided by Aderant.

Beyond enabling emails and timekeeping on the go, law firms are pushing basic communication apps to help their attorneys remotely connect with clients and colleagues as well. Lawyers at Clifford Chance, for instance "have access to Skype for business so they can easily conduct a video call... and they can use a voiceover IP (VOIP) app to conduct and participate in conference calls," says Evette Pastoriza, the firm's global director of technology services.

Some firms, however, encourage attorneys to use certain communications apps that integrate directly with office infrastructure. But why would an attorney need a phone app on their mobile phone? Zegers, whose firm Lowenstein Sandler offers Cisco Jabber to its attorneys, says it's a matter of quality. "When they are making these calls over Wi-Fi, the sound quality is better than if they were making a cell phone call," he explains.

What's more, the app also ensures that attorneys are recognized by one single number. "From a client perspective, I know when I get a call, I recognize certain numbers. And I wouldn't necessarily want to have a vendor or someone I am working with calling from different numbers," Zegers says.

As some law firms are leveraging apps to make mobile devices better communication tools, others are using them to free their attorneys from having to carry around documents wherever they go. Lawyers at Clifford Chance have access to Microsoft's OneNote app "so they can refer to meeting notes or take meeting notes without carrying around pads and papers," Pastoriza says.

Some firms likewise push apps that give their attorneys access to their work files remotely. Young Conaway and Lowenstein Sandler, for example, both encourage their attorneys to download a document management app provided by iManage. The app, however, has limited functionality compared to



CHRISTOPHER ZEGERS

the desktop version of the software. “There is no editing feature in the app, so it’s more about ease of access,” Zegers says.

Indeed, for all the capabilities mobile apps can provide, some still see word processing as their limit, especially with smartphones. “It’s difficult to do editing on the iPhone because of the size,” Flournoy says, adding that she believes apps that allow editing aren’t the most useful.

Beyond empowering attorneys with work tools, law firms are also pushing apps they believe will foster better client services. Jackson Lewis, for instance, is looking to roll out a business intake app that will connect with the firm’s internal processes that determine whether representing certain clients will create a conflict of interest. The goal of the app, Barkalov says, is to allow the attorneys to quickly determine whether they can meet with potential clients.

To better foster collaboration with clients, some law firms are also turning to mobile apps that can be accessed by their clients as well. Zegers noted his firm’s attorneys are encouraged to use the Citrix ShareFile app, which is similar to the public Dropbox in that it’s a place where clients “can share data with us, and we can give them data.” Similarly, Clifford Chance’s attorneys utilize client collaboration app SharePoint, which is connected to Microsoft Office 365 and allows external sharing, Pastoriza says.

To enable their attorneys to more quickly answer client queries, law firms are also pushing a number of research apps. Kelley Drye offers its attorneys access to the mobile app versions of research solutions Westlaw and Lexis Advance, while Lowenstein Sandler provides Research Hub, an app that automatically logs attorneys into a number of subscription-based research repositories and news publications.

UNINTENDED CONSEQUENCES?

Though law firms have a lot of control over the mobile apps attorneys have on their devices, rarely, if ever, do they actively manage how attorneys use them. Barkalov, for example, notes that Jackson Lewis will automatically download an app to devices used by attorneys in a certain practice group if they feel it is beneficial to their work. For other attorneys, it will offer the app in the firm’s proprietary “app store” and give them the option to download it themselves.

But Jackson Lewis attorneys are not required to even open any mobile app pushed by the firm. “If the attorney chooses

to turn off all notifications from an app and it remains silent on their phone, we are not going to reach into their phone and turn the notifications back,” says Gregory Alvarez, principal at Jackson Lewis. Other firms have taken similar approaches, with Clifford Chance’s Pastoriza adding, “We certainly give our lawyers the choice to work in the way that is best suited for them and that they feel will best service their clients.”

Many firms don’t mandate using certain mobile apps because they feel, in all likelihood, attorneys will voluntarily use them anyway. “I think there is a real positive attitude toward working with these tools, and I think there is a lot of enthusiasm around the programs that we put in place,” Pastoriza explains.

In fact, the reason firms even began supporting mobile app use in the first place was in response to the way attorneys were already working. “Mobile devices are part of our life,” Kelley Drye’s Flournoy says. “And with everything we do now, the firm understands that and provides support for that.”

Far from just a temporary trend then, the emergence of mobile apps in law firms is an evolution of how lawyers want to be equipped to handle their work. “I think this lawyer mobile experience is sort of the next frontier,” Barkalov says. “It’s no longer the legal desktop that is needed for the lawyer to have all the tools at their disposal. It’s now a legal mobile ecosystem that is needed for the lawyer to have largely the same tools, but now have them even if they’re not in the office or in front of a big screen.”

But this evolution comes at a price. Using mobile apps means attorneys are always connected to their devices and potentially always available to clients. “I’m working at all hours of the night with clients sometimes,” Alvarez says. He adds that because of mobile work, attorneys have “had to adapt and provide the service and speed clients want, which changes the work product.”

With so much technology at attorneys’ fingertips, there is an ability to serve more clients. But this means there is less time to do more focused and in-depth legal work. “There are less memos these days,” Alvarez explains. “Clients don’t want memos; they want quicker answers.”

Of course, technology has always been a mixed blessing, increasing one’s productivity, but also pushing them to stretch the limits of what they can do. Yet for many in legal, more responsibilities and a faster paced work life may be unavoidable. With mobile app use becoming more prevalent in law firms, there is no way attorneys are slowing down now. ■



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THE HOT TREND OF ADOPTION

The hot new tech trend at ILTA? Getting former hot new techs actually working.

BY BRAD BLICKSTEIN

EVERY YEAR, AT ILTA, THERE'S SOME HOT new technology that everyone's talking about. Hype reigns supreme. In 2016, it was about security. 2017 was artificial intelligence. This year, I was pleasantly surprised.

Today's hot new tech trend was making previous years' hot new tech actually work.

This is good news. Nothing is more frustrating than investing time, energy and money in new technology and then having it fall on deaf ears, yet tech providers love pushing new features and buyers love shiny new objects. None of it means anything unless the tool actually works to solve a problem.

Building, selecting and deploying tools that will actually deliver value does not happen by accident. There's got to be a formula. So on the heels of ILTA, I reached out to Lucy Bassli, who may be the very best at this in the entire legal technology space. Lucy spent 13 years at Microsoft, with her last role as assistant general counsel, legal operations and contracting, before going out on her own last year. While at Microsoft, she revolutionized the way the company reviews and executes its contracts. Want to get good at change management? Totally reinvent a function that touches thousands of different people in dozens of different departments across the globe at a \$58 billion company.

I began by wondering if perhaps organizations were starting to think about change management too late. Maybe it should start all the way back with the RFP? "That's about seven steps too late," she informed me. I could almost hear Lucy's eyes rolling over the phone. "The first question I always get is, 'Which contract



management system should we buy?' Starting there is a prescription for failure."

The first step, she told me, is to know what problem you are trying to solve. "I hear all the time, 'We want to explore artificial intelligence and some cool bots.' You can't look at cool tech and say, 'I want that.' Don't jump to solutioning. Instead, listen to your internal clients. They are frustrated. Find their pain points and work to heal them."

Next she says, is find the low-hanging fruit. "These problems can get very big, and there's not a one-stop solution." A good strategy is to find a specific use case that's causing headaches for some influential stakeholders who would be useful to get on your side. Finding a stakeholder

ready for change can be extremely valuable.

With some stakeholders in place and some problems to solve, focus on scope, and watch out for scope creep. "Identifying what you are not trying to solve is as important as identifying what you are." Spend a lot of time and energy outlining exactly what you are trying to do.

The fourth step is process mapping, and it's important to start with the current processes, even though it may seem like a waste of time. "It's painful to walk through a process that clearly isn't working. But there's no way to draw a roadmap to where you want to be without starting with where you are."

Next, map your "to-be" state and identify the delta between the two. "That

informs your change management. It also allows you to help people clearly understand the change.” Again, all of this needs to take place before selecting technology. Understanding the problem, the current workflow and what the workflow should be is critical before choosing the technology to solve the problem. Finding cool technology, then looking for a problem to solve with it, is the devil’s playground.

Perhaps the biggest mistake of all is not thinking about change management until it’s too late. Like voting in Chicago, change management needs to be considered early and often. “Start with the culture,” says Bassli. “How will people best accept the change? What’s the best way to communicate? What can you do to get them to come along? How do you set up people for success?” This is the time to build your business case, ideally including a return-on-investment analysis, and a communication plan to get buy-in.

The seventh step is to document the requirements of the new system. Start prioritizing with the critical aspects. “If we can’t have this, then there’s no point in implementing.” Then add the elements that really should be included, followed by

the “nice-to-haves.” She explains, “Listing nice-to-haves is more important than you might think. Key stakeholders sometimes have their own priorities, and knowing what horse trading you can do can make all the difference.” Most important is remembering that there is no magic button and no tool will solve every pain point.

“A LOT OF VENDORS ARE GOOD AT TECHNOLOGY. THAT’S JUST NOT ENOUGH.”

“The keys to success are selectivity and prioritization. And if it’s not a natural process, a dedicated prioritization exercise can often do the trick.”

Now you are ready to go through the RFP process.

Doing the homework beforehand will set you up for success, but identifying the right vendor—not just the right technology—can make all the difference. Of course you’re going to send a long list of requirements. And of course they are

going to say they can do them all. So how, I asked, do you really get under the hood?

Start by asking for references, case studies and stories of implementations. “No client is 100 percent happy, so testing the vendor’s transparency and willingness to be honest is important.” Those with cutting-edge technology may not have

case studies, so instead ask precise questions like “how do you solve it if [some specific problem] happens. Their professional services skills are critical success factors. A lot of vendors are good at technology. That’s just not enough.”

With any luck, you’re going to be working with this supplier for several years to come. “But it won’t be perfect, so how they respond when you have issues will make all the difference.” Bassli suggests asking about how they measure customer success, what their engagement models are, and how they will ensure your success after implementation (see below).

I pointed out that if it’s part of the sales process, the vendor is going to promise you the world. “Of course they will.” I could hear Lucy’s eyes rolling again. “Draft obligations, KPIs and SLAs into the contract. Do as much diligence as possible. It’s easier than cleaning up afterwards. The most important thing to remember is there is no magic button. Put people and process before tools.”

Of course, don’t forget to be as thoughtful after a selection as you are before you issue the RFP. And keep these steps in mind next year, when ILTA reverts to form and you walk into what may as well be named the International Legal Blockchain Association Annual Conference.

Brad Blickstein is principal at the Blickstein Group and is the publisher of the Annual Law Department Operations Survey, which is now in its 11th year.

LUCY BASSLI'S 5 CRITICAL RFP QUESTIONS

1. What does your customer success program look like?
2. Will I have a dedicated engagement manager? If not, how much of their day job is connected to my success?
3. Can you provide sample KPIs from other successful implementations?
4. What does post-implementation support look like?
5. Can we negotiate a success bonus and/or a penalty for failure to meet success targets?





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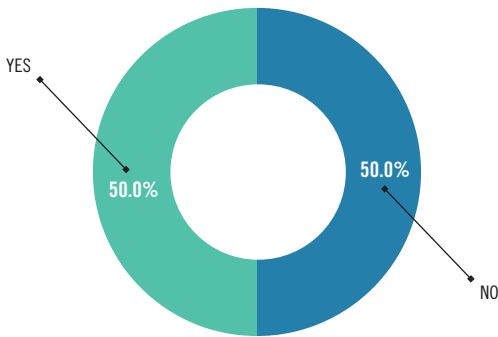
The logo for Worldox GX4. The word "Worldox" is in a blue, sans-serif font, and "GX4" is in a green, sans-serif font. The "W" is inside a green circle. The entire logo is reflected below it.

THE 2018 LTN LAW FIRM TECH SURVEY

CONDUCTED YEARLY BY ALM'S RESEARCH TEAM, THE LTN Law Firm Tech Survey asked tech leaders in some of the largest U.S. firms about their operations. Subjects of the survey included firm tech budgets, security postures, social media

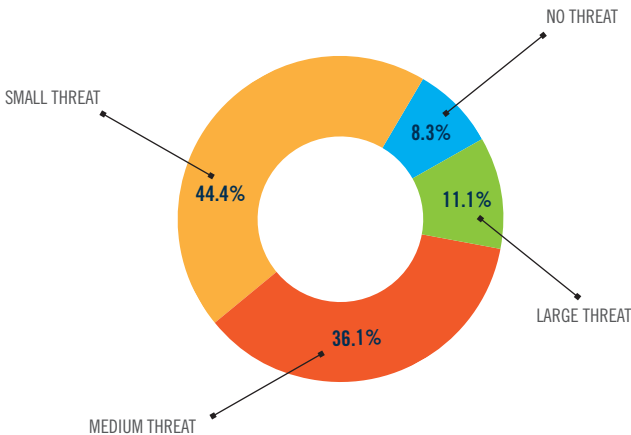
usage, software and mobile device preferences, and more. These are some of the facts and figures LTN staff found most interesting in this year's survey. This year's survey was led by ALM Research's Daniel Masopust.

IS TECH SUPPORT OUTSOURCED IN ANY WAY?



42% reported an increase in their budget for capital expenditures, while **52%** reported the same for their operating budget.

DO YOU BELIEVE THE RISE OF ALTERNATIVE LEGAL SERVICE PROVIDERS (ALSPs) TO BE A THREAT TO THE CURRENT LAW FIRM MODEL?



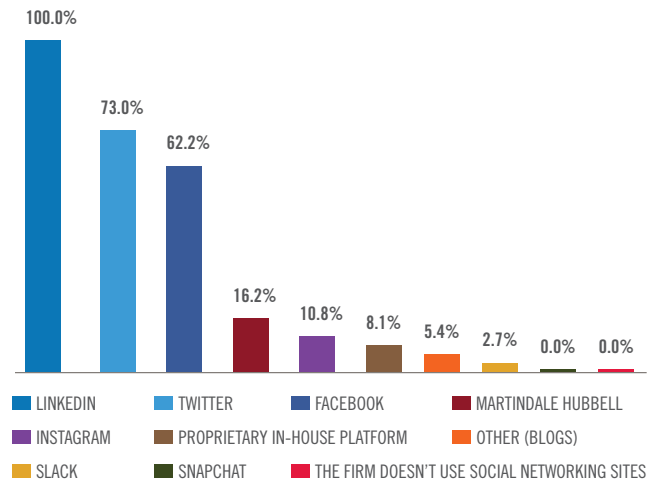
WHAT ARE THE FIRM'S BIGGEST CHALLENGES OR WORRIES REGARDING CLOUD COMPUTING? (MORE THAN ONE ANSWER POSSIBLE.)



27%

Only 27% said they have an official policy for collecting non-email sources of electronic data like messaging services, social media, texts, etc.

WHICH SOCIAL NETWORKING SITE/TECHNOLOGIES DOES THE FIRM USE? (MORE THAN ONE ANSWER POSSIBLE.)



By Phillip Bantz

Flirting With the Big Four

As giant accounting firms make new forays into the legal industry, in-house attorneys are giving more thought to offering them their business.



WITHIN THE PAST FEW MONTHS, ADOBE SYSTEMS INC. has taken a less traditional path in handling some of its corporate legal work overseas. The company has shifted some matters away from traditional international and regional law firms and hired one of the Big Four accounting firms to take on this work instead.

What prompted the switch? According to Lisa Konie, senior director of legal operations for Adobe, it was primarily a predictable alternative fee arrangement. The San Jose, California-based software company pays the firm, which Konie declined to name, an annual fixed fee that depends on the country where the work is being done and the services being provided.

“What I don’t think a lot of law firms appreciate is that we are held accountable to our CFO,” Konie says. “When I come in and tell my CFO that we have 75 percent accountability with billing I come off looking like a rock star.”

While some companies, like Adobe, are on board with the Big Four, others are hanging back, despite the apparent advantages that these accounting behemoths have over traditional law firms, including more predictable and flexible pricing and big bank vaults.

Those who remain hesitant say they’re still waiting for the Big Four to prove that they offer a better alternative to the traditional firm model.

And though nonlawyer-owned firms are still restricted in the U.S., those offerings are growing like kudzu across the global legal landscape. They’re expanding especially fast in jurisdictions—most notably the U.K. and Asia—where nonlawyer ownership of law firms is allowed.

PricewaterhouseCoopers has a flexible lawyering service

that provides legal departments with temporary attorneys. It also has an independent law firm in Washington, D.C., called ILC Legal, which offers a broad spectrum of non-U.S. legal services, from immigration and labor law and employment to tax controversies and dispute resolution.

Meanwhile, Ernst & Young announced in August it had acquired DLA Piper-backed alternative legal services provider Riverview Law, based in the U.K., which provides fixed-fee managed services for in-house teams and legal operations. The move gave EY more than 2,200 legal practitioners in member firms spanning 81 jurisdictions.

At the moment, it’s not clear what all of this activity means for legal departments, though it’s apparent that the the Big Four bring advantages to the table. Accounting firms have vast resources: Deloitte, EY and PwC all brought in 10 times more revenue in 2017 than Kirkland & Ellis, the top grossing firm of the Am Law 100. And their foray into the legal market is expected to drive down outside legal costs for companies.

Still, interviews with general counsel, consultants and advisers suggest an overarching sense of hesitancy when it comes to hiring accounting firms for legal services that go beyond basic offerings, such as commodity and transactional work.

As the top lawyer for Chicago-based Archer Daniels Midland Co., Cameron Findlay has often turned to these firms for auditing and other accounting-related services. But he hadn’t considered hiring one for real legal work until he met with reps from PwC to hear their pitch.

While Findlay says he was “amazed” by the scope of their services and appreciates “more choices,” he says he

remains lukewarm about whether he'd hire an accounting firm to handle ADM's legal needs: "I don't disagree that I would be wary of using them for litigating, maybe because I'm just old-fashioned," he says. "But the world is changing and it's always worth taking a look at some sort of model that you aren't used to."

Steve Beaver, general counsel and vice president of Benchmark Electronics, a contract manufacturing firm with offices worldwide, says he "wouldn't dismiss the possibility" of hiring the Big Four for legal work. But he adds, "I'm very accustomed to large, international law firms and working with them in the overseas market. Right now my instinct is to always go with those large law firms. It will take a while for me to think or adapt to the Big Four in those areas."

Wariness of the Big Four as nontra-

ditional legal service providers is common among general counsel, according to Susan Hackett, CEO of law practice management consulting business Legal Executive Leadership in Chevy Chase, Maryland. She says in-house lawyers typically come from law firms and might be blind to the advantages offered by the Big Four.

"All the stuff that lawyers are currently struggling to figure out how to do, the folks in the Big Four have been doing for decades," Hackett says. "They'll give you a bid. They don't just work hourly and tell you how much after they've finished the project."

She likens traditional law firms to hammers that pound away at a company's problem from a legal perspective. Big Four firms, it seems, are more like Swiss Army knives with an array of blades tai-

lored to specific situations. "For corporate clients, it's not just a legal answer. It's a business answer," she says. "A lot of lawyers and law firms don't look at that broader or holistic view."

Accounting firms are mostly doing transactional and compliance work in the legal realm, according to Hackett, but she expects that their practice areas will "start to bleed into the kinds of services that are more traditional to law."

And as the Big Four recruit high-level partners from large law firms, which has begun to happen in Asia and elsewhere, corporations may feel more confident calling on those firms to solve their legal problems. "If there's a migration from law firms to accounting firms, [the Big Four would] definitely be competitive," says Ed Ryan, former general counsel of Marriott International Inc. ■

CHANGE IS BREWING

Heineken's chief legal officer has seen in-house departments evolve during her 20 years on the job.

IT'S NOT ALWAYS EASY TO BE FIRST. JULIE

Kinch says she felt "tons of trepidation" back in 1998 when she joined Dutch beer company Heineken as its first U.S. general counsel. But the former White & Case attorney made a smooth adjustment, so much so that as of December, she will be celebrating two decades with the company. .

Kinch spoke with The American Lawyer affiliate Corporate Counsel in a conversation that has been edited for clarity and length.

CORPORATE COUNSEL: The C-suite is relying more and more on general counsel for business advice, not just legal advice. Why do you think that is?

JULIE KINCH: One of the reasons, I think, is [that] the quality of the people coming into the GC role over the years has changed. It used to be that the pinnacle of your career, for a lawyer, was to be a partner at a big firm. I think over the many years we've seen many good people going in-house. Part of it is the quality of the GCs.

I also think a lot of it has to do with—when I look at my own experience—the crazy state of change and the increased competition and complexity.

CC: Do you think growing regulation is related to GCs' increased involvement with the business side?



JULIE KINCH

JK: When I started there were some clear legal areas that we needed to focus on, like intellectual property and advertising and marketing. As there are changes in the marketing and advertising world and we're using more data, we have to think about how a company like ours utilizes that data. The access that we have to data and how we utilize that data opened up a whole world of regulation for us that typically you wouldn't expect a beer company to have to deal with. But now all of us are, because of how we gather and store and use data.

CC: What exactly is it that the C-suite is expecting of the modern general counsel?

JK: I think what the C-suite expects from general

counsel today is, first and foremost, a really deep understanding of the business. I think they expect the GC to approach things from a business perspective first and then a legal perspective.

When I think about what's expected from us, I think of the creativity piece of it. You can only really get to the creative solutions if you really understand the business. Then there is also compliance and protection. It's supporting and partnering with the business and maintaining that responsibility for compliance and reputation issues. There needs to be a deep trust level because I've had CEOs before who will say, "Julie, I expect you to push back on me."

CC: It sounds like you're trying to find a balance between having legal be "the department of no" and also giving solutions?

JK: I don't think of it as much as "the department of no." I think it's the "department of yes and ..." or "yes, but ..." I have a great excitement, I think, about coming in and creating a legal function because that's what I've spent all of my time doing is recruiting and developing lawyers who are business partners who don't say no and who find the solutions. You can really only find the solution if you understand the reason why the business wants to do something. —Dan Clark

To check out our litigator of the week, go to law.com/litigationdaily



Arsenal FC Acquisition

THREE OF THE UNITED KINGDOM'S LARGEST LAW firms are advising on a deal that will result in a new ownership structure for Arsenal FC, one of its most historic football clubs in the Premier League, the top level of English soccer.

Clifford Chance, Freshfields Bruckhaus Deringer and Slaughter and May have snagged lead roles on the transaction, in which U.S. real estate billionaire E. Stanley Kroenke will take full control of Arsenal FC after acquiring a 30 percent stake in the team he didn't already own from Russian oligarch Alisher Usmanov.

Kroenke's roughly \$781.1 million offer for Usmanov's stake officially ends a long-running dispute between both men for control of the club. Kroenke, who controls 67 percent of Arsenal through his Denver-based Kroenke Sports & Entertainment, first bought a 10 percent stake in the club more than a decade ago. In 2011, Kroenke turned to Clifford Chance corporate partner **Tim Lewis** in London to advise on an ill-fated bid to take control of Arsenal from Usmanov.



Lewis

Clifford Chance and Lewis are once again counseling Kroenke on his latest effort to acquire full control of the franchise. Lewis is working alongside Clifford Chance M&A partner **Katherine Moir**, who also previously advised Kroenke on his ultimately unsuccessful full takeover bid seven years ago.

Slaughter and May is advising Arsenal's independent directors through corporate partners **Andrew Jolly and Paul Mudie**. The firm has enjoyed a long-standing relationship with the London-based club.

Meanwhile, Freshfields is fielding a lineup for Usmanov's Red and White Securities company led by M&A partner **Ju-lian Long**.

The offer document for Arsenal states that the proposed deal "will result in the opening of a new chapter in the history of the club in bringing 100 percent private ownership," which will "bring the benefits of a single owner better able to move quickly in furtherance of the club's strategy and ambitions."
—Joseph Evans and Brian Baxter

WTT Holding Acquisition



Cooke

Latham & Watkins and Clifford Chance have landed lead roles on Hong Kong broadband services provider HKBN Ltd.'s \$1.34 billion proposal to acquire local telecommunications operator WTT Holding Corp.



Tang

Hong Kong-listed HKBN, the city's second-largest provider of residential broadband internet, seeks to purchase WTT in an all-share deal from buyout firms MBK Partners Ltd. and TPG Capital Management LP. WTT, previously known as Wharf T&T, was sold to the private equity duo two years ago for \$1.2 billion by Hong Kong conglomerate The Wharf Ltd.

In a regulatory filing with the Hong Kong Stock Exchange, HKBN said it expected the deal, which is subject to shareholder approval and antitrust clearance in Hong Kong, to close in the first quarter of 2019. MBK and TPG will each own 11.66 percent in HKBN once the deal is finalized next year.

HKBN said the proposed combination is complementary, as WTT mostly deals with large enterprise clients, while HKBN focuses on small and midsize clients. Under Hong Kong's competition regime, telecommunications is the only sector where mergers are subject to regulatory approval.

Latham corporate partners **Simon Cooke** and **Terris Tang** in Hong Kong are advising regular client HKBN on the deal. Cooke is global co-chair of the private equity practice at Latham.

Clifford Chance partner **Andrew Whan** in Hong Kong, where he heads the Magic Circle firm's Asia corporate and M&A practice, is representing MBK and TPG along with Sydney-based antitrust partner **Dave Poddar**.

—John Kang, with Anna Zhang



Lombardi

Roundup and Ranger Pro, both herbicides, and awarded \$39.2 million in compensatory damages and \$250 million in punitive damages to Dewayne "Lee" Johnson.

Johnson was diagnosed with non-Hodgkin's lymphoma in 2014 after two years of spraying Ranger Pro, a Monsanto herbicide similar to Roundup. The trial is the first to allege Monsanto's Roundup caused cancer.

Plaintiff's lawyer **R. Brent Wisner** of Baum, Hedlund, Aristei & Goldman had asked jurors to award more than \$39 million in compensatory damages and \$373 million in punitive damages to his client. "We were finally able to show the jury the secret, internal Monsanto documents proving that Monsanto has known for decades that glyphosate and specifically Roundup could cause cancer," Wisner said in a statement. "Despite the U.S. Environmental Protection Agency's failure to require labeling, we are proud that an independent jury followed the evidence and used its voice to send a message to Monsanto that its years of deception regarding Roundup is over and that they should put consumer safety first over profits."

Monsanto vice president Scott Partridge said in an emailed statement: "We are sym-

Monsanto Roundup Verdict

A jury awarded more than \$289 million to a former school groundskeeper who claimed he was diagnosed with terminal cancer after using Monsanto Co.'s weed killer. The jury, in San Francisco Superior Court, found that Monsanto had failed to warn about the dangers of

pathetic to Mr. Johnson and his family. Today's decision does not change the fact that more than 800 scientific studies and reviews—and conclusions by the U.S. Environmental Protection Agency, the U.S. National Institutes of Health and regulatory authorities around the world—support the fact that glyphosate does not cause cancer, and did not cause Mr. Johnson's cancer. We will appeal this decision and continue to vigorously defend this product, which has a 40-year history of safe use and continues to be a vital, effective and safe tool for farmers and others."

Monsanto, based in St. Louis, faces about 4,000 lawsuits over Roundup. About 150 suits have been coordinated in San Francisco Superior Court, one of which is Johnson's case, which was brought in 2016.

Monsanto's attorney, **George Lombardi** of Winston & Strawn, told jurors that reams of scientific studies and regulatory agencies, like the U.S. Environmental Protection Agency, showed no link between glyphosate, Roundup's key ingredient, and Johnson's cancer, a type of non-Hodgkin's lymphoma called mycosis fungoides.

Wisner relied on a 2015 decision by the International Agency for Research on Cancer classifying glyphosate as a possible carcinogen.

—Amanda Bronstad

Akij Tobacco Sale



Robson

Morrison & Foerster is advising Japanese cigarette maker Japan Tobacco Inc. on an acquisition of the tobacco business of Bangladeshi conglomerate Akij Group for \$1.47 billion. Japan Tobacco will acquire all the shares of United Dhaka Tobacco Co. Ltd., which is the second-largest tobacco company in Bangladesh with a 20 percent market share, according to a statement by the acquirer.



Tang

The deal is expected to be completed in the third quarter of this year, pending regulatory clearance. According to Reuters, citing Thomson Reuters data, the deal would be the biggest-ever involving a Bangladeshi company.

Morrison & Foerster corporate partners **Jake Robson** and **Shirin Tang** in Singapore are leading a team representing Japan Tobacco on the deal. They are supported by intellectual property partner **Gordon Milner** in Hong Kong, litigation partner **Craig Celniker** in Singapore and tax partner **Trevor James** in London.

Bangladeshi firm Dr. Kamal Hossain & Associates and Southeast Asian firm DFDL are advising JT Group on Bangladesh law. Dhaka-based firm Rouf & Associates is representing Akij.

—J.K.

Exxon Mobil Fraud Suit



Cortell

A Texas judge has left alive nearly all of a federal class action accusing Exxon Mobil Corp. and former CEO Rex Tillerson of securities fraud related to its alleged misstatements on the value of oil and gas reserves and the potential costs of paying carbon taxes, which ultimately led to its stock plummeting by 20 percent, erasing billions of dollars in value.

Ruling on Exxon Mobil's motion to dismiss, U.S. District Judge Ed Kinkeade of the Northern District of Texas struck portions of two expert opinions attached to the amended complaint, but said the plaintiffs sufficiently pleaded their allegations that the energy giant knowingly kept its stock inflated by refusing to write down the value of its assets, even as competitors were downgrading their own values as the price of oil began to crater in 2014.

At the time, according to court filings, Exxon Mobil was trying to maintain its AAA credit rating as it planned to issue a \$12 billion bond offering in 2016. One month after the bonds were issued, Exxon Mobil's credit rating was downgraded to AA+. A few months later, the company disclosed that almost 20 percent of its oil and gas reserves were likely insufficient to meet U.S. Securities and Exchange Commission guidelines.

Plaintiff Pedro Ramirez Jr. filed a class action alleging securities fraud in 2016 naming Exxon Mobil, Tillerson and company vice presidents Andrew Swiger and Jeffrey Woodbury as defendants. The Greater Pennsylvania Carpenters Pension Fund was named lead plaintiff the following year.

In upholding the bulk of the pension fund's "voluminous" amended complaint, Kinkeade wrote that the plaintiffs had sufficiently backed up their allegations that Exxon Mobil knowingly made misstatements of material fact regarding the value of reserves in the United States and Canada, and the per-ton carbon costs the company faced.

The order said Tillerson signed off on SEC filings and was well aware of internal differences in the cost calculations of government-mandated carbon assessments related to global warming. "The amended complaint contains numerous allegations to support [the plaintiffs'] contention that defendant Tillerson, chairman of the board and chief executive officer, had knowledge of ExxonMobil's alleged fraudulent activity," Kinkeade wrote.

As a member of the board of directors and the management committee, "both of which allegedly received in-depth briefings on and actively engaged in discussions on ExxonMobil's financial position and risks of climate change," Tillerson "also allegedly had motive to maintain ExxonMobil's AAA credit rating by using a lower, internal proxy cost and not recognizing asset impairment so as to receive sufficient funds to pay the shareholder dividends," the order said.

Kinkeade did dismiss one count against Woodbury, the company's vice president of investor relations and corporate secretary.

The attorneys for Exxon Mobil include **Nina Cortell** and **Daniel Gold** of Haynes and Boone in Dallas, and **Jonathan Hurwitz**, **Daniel Kramer**, **Gregory Laufer** and **Daniel Toal** of Paul Weiss Rifkind Wharton & Garrison in New York. Tillerson is represented by **Brian Gillett** of Squire Patton Boggs in Dallas.

"We continue to believe the complaint is meritless and will vigorously defend ourselves from these baseless claims," said Exxon Mobil spokesman Scott Silvestri.

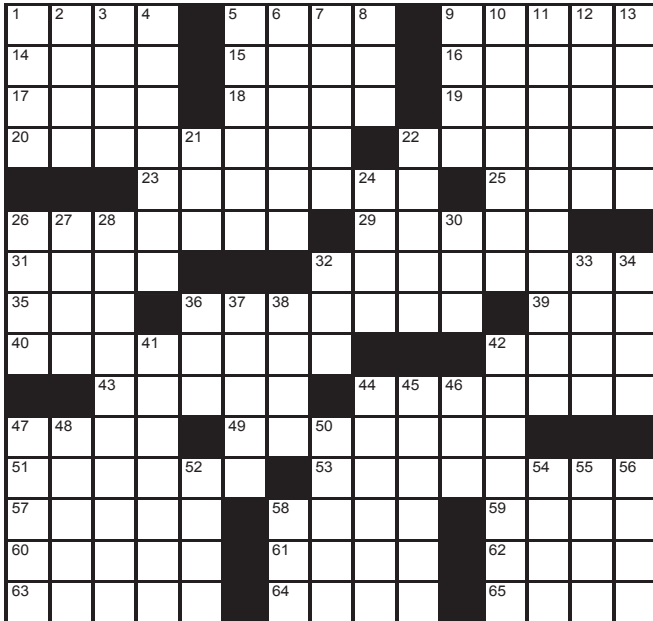
The plaintiffs' lawyers include **Jeffrey Abraham** of New York's Abraham, Fruchter & Twersky; **Balon Bradley** of Dallas' Balon B. Bradley Law Firm; **Joe Kendall** of Dallas' Kendall Law Group; and **Mary Blasy**, **Patrick Coughlin**, **John Herman**, **Nathan Lindell**, **Erika Oliver**, **Sara Polychron** and **Darren Robbins** of Robbins Geller Rudman & Dowd.

"Our view is that the court's order upholding the adequacy of the complaint is an important first step in holding one of the world's most powerful corporations accountable," Robbins said in an email.

—Greg Land

... AS USUAL

Below please find four paths, as it were, to the same conclusion. By Victor Fleming



Across

- 1 Slangy dollar
- 5 Lip
- 9 Stonehenge priest, perhaps
- 14 Mobile head?
- 15 Big Apple sch.
- 16 Car starter?
- 17 Foremost

- 18 Kind of argument
 - 19 Equidistant
 - 20 Cancel one's lease, say
 - 22 Some time
 - 23 Tomato-based condiments
 - 25 Years in Spain
 - 26 Like a team with an 0-12 record
 - 29 Giraffe relative
 - 31 High-pitched woodwind
 - 32 Clogs up, as traffic
 - 35 ___ for office
 - 36 Ready to receive clients
 - 39 Trendy
 - 40 Word in a slip opinion?
 - 42 Transfer
 - 43 Nonstop
 - 44 Run like a ___ dog
 - 47 Band choices
 - 49 Destructive wave
 - 51 Synthetic fibers
 - 53 Word needed to complete 20- and 36-Across and 11- and 28-Down
 - 57 Stash of riches
 - 58 Refuses to share
 - 59 Sticky residue
 - 60 Pivots sharply
 - 61 Sheryl Crow's "___ Wanna Do"
 - 62 City near Buffalo
 - 63 What mowers mow
 - 64 Eyelid ailment
 - 65 Strong cord
- Down**
- 1 Similarly minded group
 - 2 Island bash
 - 3 Bickering
 - 4 Prop for Mr. Peanut
 - 5 Lawn-care products brand
 - 6 Unlike this answer
 - 7 Major mix-up
 - 8 Pt. of a word
 - 9 Stalemate
 - 10 Fashion again
 - 11 Work that's yet to be completed
 - 12 Novelist Calvino
 - 13 Has guts enough to try
 - 21 Abu Dhabi's fed.
 - 22 "And ___ other dowry ...": Shak.
 - 24 Magician's sound-effect word
 - 26 "Star Trek" Klingon
 - 27 Building support
 - 28 "It's my concern!"
 - 30 Farmer's field (abbr.)
 - 32 Notable 1980 TV debut
 - 33 Current event?
 - 34 Hightailed it
 - 36 Work with an honoree
 - 37 Pub orders
 - 38 St. Louis bridge builder
 - 41 Stoical
 - 42 One who holds on
 - 44 How a bug may rest in a rug
 - 45 "Me & U" singer
 - 46 Buddy, in Burgundy
 - 47 Dilettantish
 - 48 ___ Ann Maples (mother of Tiffany Trump)
 - 50 Curved fastener
 - 52 Fed who nailed Capone
 - 54 Belgian buck
 - 55 Sort to use 5-Across
 - 56 Beginning of a carnival game
 - 58 "What ___ that got to do with anything?!"

Answers to the puzzle can be found on page 11.

Email: judgevic@gmail.com.

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By Jenna Greene

Here to Stay

Two Kirkland litigators say #MeToo isn't going anywhere—and companies need to be ready.



Remember the “Boom Boom Room” suit against Smith Barney? The Tailhook convention? Anita Hill and the Coke can? Bill Clinton and Paula Jones?

As a nation, we’ve had moments of reckoning with sexual harassment before. But Kirkland & Ellis partners Lauren Casazza and Kim Nemirow believe #MeToo is different.

“I think this is a permanent change,” says Casazza, who established Kirkland’s crisis communications and management practice group.

For the past year, the duo have been busy counseling clients on how to avoid or mitigate the risk associated with harassment claims in the workplace—a concern they say is now on par with cybersecurity breaches and compliance with international laws.

A pair of recent securities class actions against Papa John’s and CBS illustrate the risks. The plaintiffs in both suits allege that the companies touted their codes of ethics in SEC filings, but failed to enforce them—making

them materially false or misleading. They also say the companies failed to disclose misconduct by executives.

Wynn Resorts and 21st Century Fox have also faced similar litigation in the wake of allegations against leaders including Steve Wynn and Roger Ailes.

“The reputational risk hits fast and furiously,” Nemirow says. “Employers are recognizing the importance of workplace compliance from a reputational perspective, to mitigate the risk before it happens.”

Consider the genesis of the CBS suit, which was filed by Pomerantz lawyers J. Alexander Hood II and Jeremy Lieberman on Aug. 27 in U.S. District Court for the Southern District of New York. The suit points to an article in *The New Yorker* by Ronan Farrow published on Aug. 6, “Les Moonves and CBS Face Allegations of Sexual Misconduct.”

“Six women who had professional dealings with him told me that, between the 1980s and the late aughts, Moonves sexually harassed them. Four described forcible touching or kissing during business meetings, in what they said appeared to be a practiced routine,” Farrow wrote.

The article (and an advance report about it in *The New York Times*) caused CBS stock to drop 6 percent.

In the suit, the plaintiffs in painful detail quote CBS statements and filings about “company values” and “responsibility to uphold the highest standards of ethical and appropriate business actions” and “zero tolerance” for sexual harassment. Or not.

CBS has reportedly hired Debevoise & Plimpton and Covington & Burling to conduct an internal investigation, and Moonves, who has apologized for making “some women uncomfortable,” has yet to be fired or resign.

It’s entirely possible that the securities complaint won’t stick. Still, the fact that plaintiffs lawyers are trying it out as a theory is a red flag to all companies.

That’s where lawyers like Casazza and Nemirow come in. They often start by looking at a company’s human resources department, which may be focused far more on payroll and benefits than harassment prevention. They help with training and operations, including how complaints are reported, documented and responded to. And if there’s a problem, they advise on what to say about it, both externally and internally.

It’s a delicate process, especially in the early stages. “One tweet can make a difference,” Casazza says.

At the same time, the system has to be fair to the accused. “There are two sides to every story,” Casazza says, and companies have also faced liability from people who were terminated after being wrongly accused.

Another clear signal of #MeToo’s impact is in the private equity and M&A space.

The Kirkland lawyers say they’re now seeing so-called “Weinstein clauses” in the representations and warranties section. It’s a new provision where the target company must disclose sexual harassment allegations or settlements involving officers or directors.

“The tides are turning,” Casazza says.

Email: jgreene@alm.com



Lauren Casazza and Kim Nemirow



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