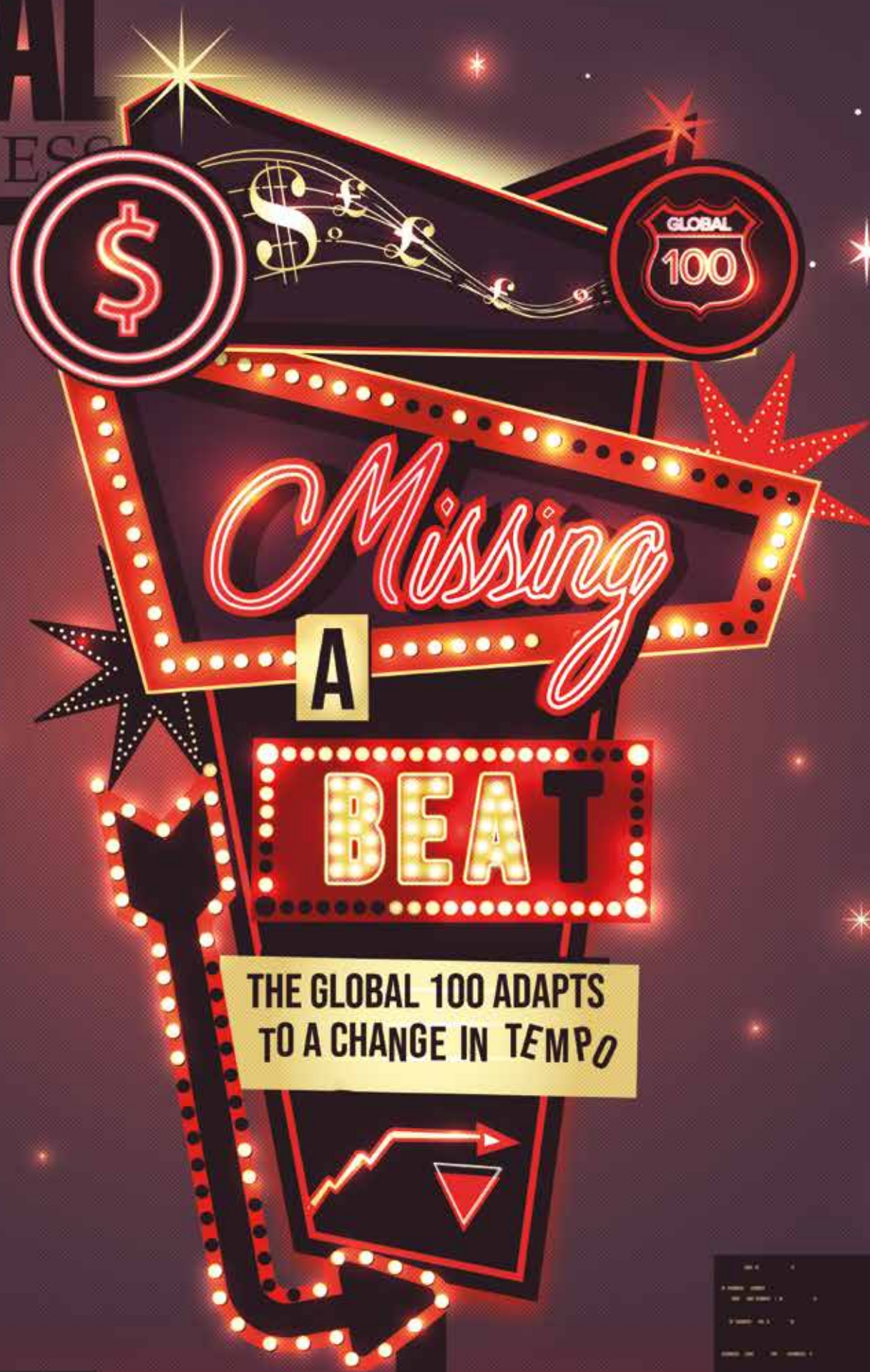


# LEGAL BUSINESS



THE GLOBAL 100 ADAPTS  
TO A CHANGE IN TEMPO



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NATHALIE TIDMAN, EDITOR

## Doing the robot – Five years on, the same old AI debate rages on

'It is very difficult to see how AI competes with what David Higgins does.' Looking back five years to our 2018 Global 100 debate, this remark from Milbank's Suhrud Mehta, one of many eminent City leaders around the table, is striking in more ways than one.

The industry has come to think of the now ubiquitous subject of AI as a recent thing, prompted by the advent of ChatGPT, which we may be forgiven for forgetting has only been around since November 2022. The reality is, law firm leaders have been debating the impact of such technology for years, while singularly failing to reach consensus on quite how it can solve the age-old conundrum of increasing efficiencies, decreasing the load of banal grunt work, while at the same time not putting stars like Kirkland's Higgins out of a job.

The truth is, some of the other choice comments from five years ago could just as easily have been uttered today.

Stephan Eilers, Freshfields' erstwhile managing partner, said at the time: 'Technology will not take the specifics of our work, which is privilege, protecting clients and having knowhow in legal matters. There are principles of education and the regulatory framework that it will be difficult for AI to replicate.'

Meanwhile Akin London head Sebastian Rice conjectured: 'Among the firms that maintain huge numbers and massive global footprints, there will be those that reduce in size because AI will take away the need for loads of people. However, we will be much more efficient; profitability could go much higher.'

Indeed, glancing through our 2023 Global 100 report in this issue, that imperative to bolster profitability has rarely been more pressing than it is now. That is why AI is still at the top of the agenda for the leaders of an industry that has never been a first-mover on technological innovation.

As Brad Karp, chair of Paul Weiss, says in a recent interview: 'The one change that will be transformative is the looming introduction of generative AI. I believe it will be arriving much sooner, and have a much more profound impact, than most expect.'

Paul Jenkins, Ashurst's global chief exec, is of a similar mind: 'The biggest opportunity in the legal market is the use of technology to supplement service provision. Everyone has been waiting for major disruption to occur there. Those firms that can adapt and provide those services will be able to seize the opportunity and excel. Equally, those firms that don't adapt will lose their market position.'

More recently, a ring around City managing partners yields completely polarised views on the question of whether, in the next five years, the number of partners offering clients premium legal advice in exchange for the big bucks will substantially shrink, giving rise to employees primarily tasked with controlling and managing AI and reviewing the documents it produces.

If it does say so itself, ChatGPT thinks its impact on the industry by 2028 will be 'significant and multifaceted', and it reels off the manifold labour-saving benefits lawyers can expect it to impart in the next five years. It also urges us not to be afraid of it (well, it would say that, wouldn't it?) but offers some words of warning: 'Lawyers need to be aware of the ethical and legal implications of using AI, including issues related to bias, privacy, and responsibility for AI-generated advice or errors.'

And therein lies the rub. The recent demands of money with menaces from Allen & Overy over data allegedly held by cyber criminal group LockBit is the ultimate cautionary tale. As long as a threat looms over the security of client data, the technology can never truly be trusted. David, if you're reading this, rest assured – your job is safe... for now.

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LB's second Ireland Forum with Addleshaw Goddard gathered Dublin's prominent in-house counsel to tackle the issues with embracing generative AI



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Georgia Tuxford and Zoe James discover that regulatory shifts, geopolitical flux and technological advancements are keeping Swiss partners on their toes



# Look to the future now

Pinsent Masons Vario and *Legal Business* gathered in-house counsel to discuss the future of their careers in an increasingly volatile market

NATHALIE TIDMAN

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**David Halliwell, Pinsent Masons Vario:** *The world is now seen through a 'VUCA' lens – it's Volatile, Uncertain, Complex and Ambiguous. Are the risks that businesses are facing much more uncertain? What does that mean for how you are working in your roles?*

**John Ventress, Lombard Odier Investment Managers:** As in-house lawyers, we need to be aware of the risks faced by our business, but our role is to support the business in navigating the future and helping it to develop, rather than being risk managers.

**Gillian Duffy, Aldermore Bank:** If you have come from organisations that have been severely distressed, you come well-prepared into a maelstrom like this, where everything needs to be operated in a more effective version than previously.

A lot of my peers who are [general counsel] GCs have had lifelong careers in quite mature, stable

organisations. They are not used to being creative on solutions and there is that resistance to looking at things differently. Lawyers are more valued in a crisis than in everyday normal, and a lot of general counsel have a chance to demonstrate their value to their organisations because everything has to be looked at in a different way.

**David Halliwell:** *Are businesses more ready to ride out some of the bumps than they might have been?*

**Gillian Duffy:** I see a very challenging financial and economic market where investor cash will go into more mature, stable businesses with interest rates so high. That cheap cashflow that was around in the last three or four years when everything went digital has come to a close.

Metro Bank struggled recently, Silicon Valley Bank collapsed, Monzo had a bit of trouble and Revolut has been taken over by HSBC. As financing is getting more expensive, we either get creative about how we raise finance, or that

venture capital, seed funding and private equity is going to collapse in the next 12 or 18 months.

**Yasmin Mangalji, Advanced:** Businesses are building the muscle for dealing with crisis and uncertainty. Investors are paying more attention to the benefits of embedding pragmatic risk management frameworks. That might not have been top of the board agenda a few years ago, but the learnings from some of these scenarios have driven investors to start thinking a little differently.

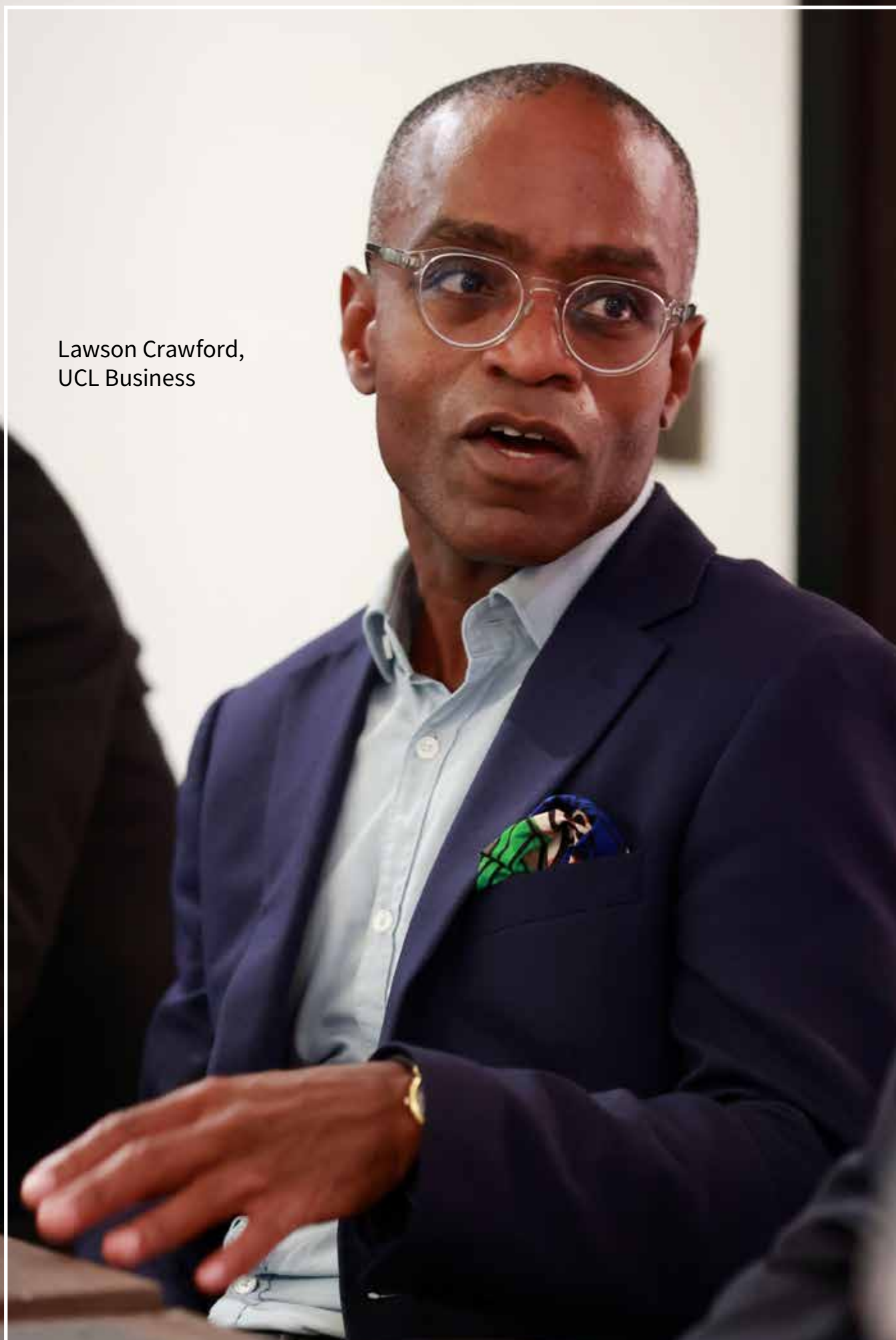
As GCs we are not just risk mitigators and crises managers, we are enablers of the strategic objectives of the business.

**David Halliwell:** *Do you think some of those risk management approaches are now being seen as driving shareholder value?*

**Yasmin Mangalji:** Yes, absolutely. Part of the challenge is to present those quite boring-sounding risk management initiatives as a ►



Lawson Crawford,  
UCL Business







**Lucia Guijarro, Honeywell:** We have gained a lot of credibility as in-house lawyers – legal teams are more robust.



**Stephen Jurgenson, Savannah Energy:** We need lawyers with private practice expertise and commercial understanding.

► route to shareholder value, high growth or whatever it is that that business is focused on. Because we are experiencing these bumps in the road, there is more willingness to hear about those initiatives.

**Gillian Duffy:** You can only flag things to clients. There are going to be stages of the market where there is so much exuberance and competition, that everyone is thinking that they are going to lose out on the next great deal. Many of the people who are investing; their performance, remuneration and prestige within the organisation is built on the deals they close and getting their names in the papers. It is very difficult in those circumstances.

**David Halliwell:** *Do you think those flags are being given more attention now than they might have been ten or 15 years ago?*

**Gillian Duffy:** What helps in financial services is having the power on the governance side of the business. If you are the company secretary, you are managing the directors and the board, and you can make them cognisant of their responsibilities under corporate law. If you have a well-educated board of directors, they are not going to take the fall for a huge issue where they are going to get a corporate sanction, or lose their directorships.

If you are just general counsel rather than corporate secretary, then you probably do not have a great deal of influence. If you are not on the remuneration and the nomination committees, you do not have that policy influence on who in the organisation is coming in to balance the views on the risks and the takes on that. When there are evident practical risks in the market, then people are a bit more open to listening to your concerns.

**Lucia Guijarro, Honeywell:** I agree that companies are more appreciative of the work we do. Even larger organisations like Honeywell can be caught off guard in extreme situations such as Russia and Ukraine. No-one was prepared for the geopolitical conflict. Some companies had some experience winding down operations in Iran, but that was like nothing compared to Russia in terms of magnitude. As a result, we now have a more robust organisation.

We rely a lot on external counsel because everything we do from an oil and gas perspective and in other business sectors is impacted by sanctions. We have gained a lot of credibility as in-house lawyers, and I see that in the fact that legal teams are more robust. We used to have lots of contract managers and representatives, but now we also have many assistant general counsel and general counsel. We are getting recognition.

**David Halliwell:** *Do you think that the gap between private and in-house practice in terms of the ability to assess and advise on risk is getting bigger?*

**Stephen Jurgenson, Savannah Energy:** Yes, although our business is a bit unusual as it was founded in 2014 and the legal team is growing. We need lawyers with not only private practice expertise but also commercial understanding, especially in the markets in which we operate. We are focused on Africa and bumps in the road

**‘There is a need for external counsel to see themselves as advisers who understand significantly what the business is, what we do, how we do things and what the risk points are.’** Lawson Crawford, UCL Business

**‘The better private practice lawyers understand what your particular business drivers are. This makes a significant difference in speed and quality of their advice.’**

Peter O’Keeffe,  
Dr. Martens



are all in a day’s work and we need lawyers who can navigate those.

**David Halliwell:** *How did private practice prepare you for that?*

**Stephen Jurgenson:** We have a deal-intensive environment at Savannah which suits my private practice background. My role of GC is not just about risk management, but it is also about delivery and sometimes leadership and mentoring. When the unexpected happens senior lawyers have to be a calming influence for the rest of the business.

**Yasmin Mangalji:** The key is always enablement. It is always saying, ‘Yes, there is a risk, but this is how we move forward.’

**Stephen Jurgenson:** There is a reward in risk, so you have to make sure you are paid for it. My role is often making sure we do not take risk for free.

**David Halliwell:** *Now that you are operating in this environment, have your expectations of outside counsel changed?*

**Lawson Crawford, UCL Business:** We need them to understand quite quickly what we as a business do. When I have meetings with my counterparts, they too share the view that there is a need for external counsel to see themselves as advisers who understand significantly what

the business is, what we do, how we do things and what the risk points are.

It is a multiway process. There are some external counsel who yearn to understand how we as a business operate and what our risk pinch points are. We would like them to understand and advise from primarily a legal, but also from a commercial, risk perspective, what our legitimate concerns are. Yes, GCs can assist with facilitating this understanding.

**Peter O’Keeffe, Dr. Martens:** I agree with Lawson. I would also add that in my experience the better private practice lawyers understand what your particular business or industry drivers are and generally what c-suite stakeholders’ concerns and expectations are of you. This makes a significant difference in speed and quality of their advice. And if I am coming to them, I probably need both.

**David Halliwell:** *Do you often have lawyers from private practice come to you and say, ‘I do not know enough about your business. Can you tell me all about it?’*

**Krishna Raman, Schroders Personal Wealth:** I do not think they will say, ‘I do not know anything about your business’, but they will ask open questions and they will try and get to know the business better. Lawyers cannot assess risks for organisations unless they understand the organisation and the market in which they operate,

but they need to know what our pinch points are, and they will only do that by spending time with us.

**David Foley, Centrica:** With an external lawyer, I expect them to know the law. I do not expect them to know everything about the ins and out of how the business works, otherwise they would be working for us. They can invest time, but the reality is they are never going to know the business as well as the in-house counsel. That is what the role of the GC is – to help them.

**Lawson Crawford:** I do not expect them to understand every intricacy of the business, but I do not like them to give advice in a vacuum.

**David Halliwell:** *What are the situations where you would use external counsel?*

**John Ventress:** I use external counsel in limited situations when the subject matter is well outside of the mainstream asset management or corporate comfort zone – an electric car scheme contract for example. I expect me and my team to be as competent and knowledgeable as external counsel within the asset management world. If we were not, I think there would be a problem.

**Lucia Guijarro:** I rely on external counsel when I am not familiar with the matter or the jurisdiction and when I need validation.

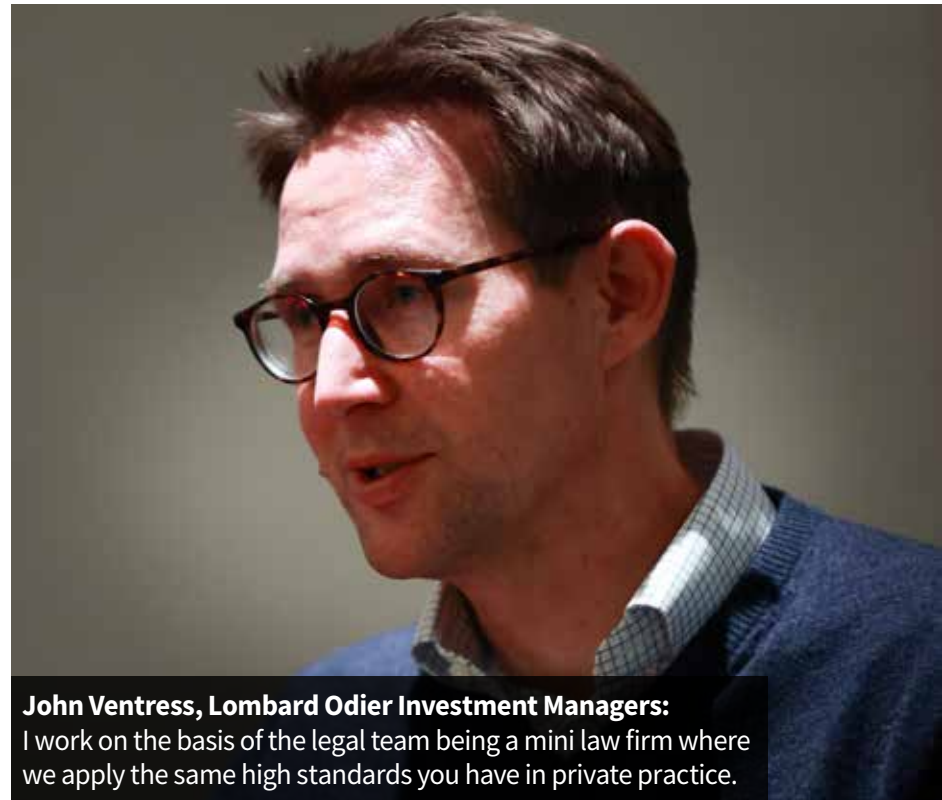
In-house lawyers are not only knowledgeable of technical aspects of







**David Halliwell, Pinsent Masons Varjo:** It used to be a choice between in-house or sending it to a traditional law firm, but there are now many other players in the market.



**John Ventress, Lombard Odier Investment Managers:** I work on the basis of the legal team being a mini law firm where we apply the same high standards you have in private practice.

► the business, we also know our policies, constraints, annual operating plan. We have all this information that external counsel does not have, so we sit in the middle.

**Peter O’Keeffe:** I agree. There are also times when going external is not a question of

**Gillian Duffy:** There has been a swing towards looking at outsourcing, especially in my area in investment banking, corporate banking and M&A, to these quasi-legal operations. If we are looking at a large-scale litigation issue or a big product overhaul issue and a reinterpretation of our products, I would rather get a London law

those. We went to a lot of effort a few years ago to simplify our procurement contracts so the majority do not come through legal.

We reviewed our precedents and trained procurement to do it themselves so the contracts that the central commercial team are seeing are only the high value ones.

**John Ventress:** I work on the basis of the legal team being a mini law firm within my own business where we apply the same high standards you have in private practice. It is not sustainable for an in-house team to apply a low grade approach.

**Peter O’Keeffe:** We try and do as much as possible in-house. But we are a lean team so need to move at pace. Where possible, we look to streamline the contracting process and for the low-value or low-risk work, do it quickly. The economics of giving this to an alternative legal service don’t work for us. Stepping back, the larger question is what the next evolution of a legal function looks like? What will businesses need and what does legal need to do to be able to provide high-quality support and advice to meet the business’ demand? I don’t think alternative legal services are a long-term part of this for us. I think the broader question most in-house leaders are asking ourselves is ‘do we wait for AI or invest in better tech or more people now?’ Ultimately generative AI is coming. And when it comes it will do average and above average work better than a lot of lawyers.

## ‘There has been a swing towards looking at outsourcing to these quasi-legal operations. We cannot justify having the whole London legal team anymore on some things.’

Gillian Duffy, Aldermore Bank

jurisdiction, scope, or value of a particular issue. If I believe a certain issue may impact the reputation of the brand or standing of the company, I might go external.

**David Halliwell:** It used to be a choice between doing something in-house or sending it to a traditional law firm, but there are now many other players in the market. How are people making choices as to where to go?

firm in to manage that team. Then I will go to an alternative legal services provider that has a bunch of lower level lawyers. I can cost it that way rather than in the old format. We cannot justify having the whole London legal team anymore on some things.

**David Foley:** There are some organisations that need an outsource centre somewhere to churn the cookie cutter contract stuff. We do not have



**‘The board expects continuous cost savings – use of technology is helping us to deliver and ensure resilience and scalability.’**

**Yasmin Mangalji,**  
Advanced

**Lucia Guijarro:** At Honeywell, we do not have a policy as such on how to use ChatGPT, but we have guidelines. We can use ChatGPT or other third-party generative AI products, but we cannot upload anything. We cannot provide information on the products or the customers.

**Yasmin Mangalji:** The board expects continuous cost savings – use of technology is helping us to deliver and ensure resilience and scalability. As a PE-backed business we are particularly conscious of the need to stay lean – so we’re grateful for any opportunities to increase productivity and efficiency. At the same time we’re conscious of the need to use GenAI tools responsibly.

**Gillian Duffy:** Things that are talked about a lot on the internet in terms of AI are not necessarily correct. The problem with the robots is they do not know how to assess things, never mind against market or environment.

**Lucia Guijarro:** The capabilities are there. I agree that future general counsel have to start from somewhere, but the reality is that shareholders will probably say, ‘Instead of hiring five entry-level lawyers, I can have these robots creating drafts.’

**Peter O’Keeffe:** Generation Alpha will not learn drafting in the traditional sense. They will learn prompts for AI. The skill will be knowing what prompts.

**Gunter Eren, Konica Minolta:** I don’t believe you can leave AI to create a legal document by itself at this time.

However, I have found that some AI chatbots are surprisingly good. That does not mean they are perfect, it simply means you need to edit the output to meet your requirements. I have found that a chatbot will sometimes raise a point I have not considered, and then I can evaluate whether to incorporate it into my memo or contract, as appropriate. I see these chatbots as a tool that can assist lawyers in their legal work.

Regarding how we train our juniors, I believe they should be using ChatGPT and other AI tools now, so when they prepare a draft memo or contract for your review, the quality of the draft should be much improved. They in turn will learn from your final edits to the text.

**David Halliwell:** *Juniors learn by looking at great drafting, which has come from a great lawyer. If the technology is presenting them with great quality product, they will learn what great quality product looks like.*

**Gillian Duffy:** If I farm out my knowledge and my experience on how I approach these agreements to a technology firm I am depriving my junior counsel of their training.

When I am mentoring trainees or junior counsel within my organisation, I am teaching them how to assess the risk in these clauses, limitations or indemnities. They understand

the case law and then from a practical position. It is a major training disadvantage for general counsel if we give that over to the robots.

**John Ventress:** I have not been in private practice for 13 years, but I do not see that sense of paranoia that we had about putting in the long hours when I was a more junior lawyer.


I do not think they have that kind of ‘battle experience’ that we might have had by virtue of the sheer amount of long hours we put in. On the other hand, for society as a whole, not having that experience and instead getting home and having a life in your late 20s and your early 30s is priceless.

**David Foley:** How many good lawyers did we lose from that? From a diversity point of view, how did that whole way that we learnt drive, largely women, I suspect, out of the legal profession?




**John Ventress:** In giving the ability to have more flexibility in your working life it is probably beneficial to a broader sector of people, not just women, but generally people that want their own lives back.

**David Halliwell:** *What is your perspective on whether some of the barriers to entry and advancement which existed in the past, are getting easier to overcome? Do you find that it is easier in-house than it might have been in private practice for people from various backgrounds to rise to the top?* ►





**‘From a diversity point of view, how did that whole way that we learnt drive, largely women, I suspect, out of the legal profession?’**  
David Foley, Centrica



► **Lucia Guijarro:** I am Hispanic and I was in private practice for a very short period of time, working for Honeywell for eight years, and also worked at a development bank in the City of London. All these firms already had inclusion and diversity initiatives and programmes in place when I joined, which has made me feel more confident.

**David Foley:** I am not sure if there is an in-house/private practice divide on this. Some in-house companies are probably very good at it, and there are probably some private practice firms which are very good at it. I have also seen some awful performance by private practice where they are talking a game, but not delivering. I suspect there are some in-house teams that are the same.

**David Halliwell:** *Are there things which private practice law firms could learn from other professionals that you engage with? Are there other professions that are doing this well where the lawyers are not doing it so well?*

**John Ventress:** The accountants have a better steer on it because of the nature of

their business. It is easier for non-lawyers to operate and break down barriers to entry because they are not restricted by the requirement to be UK qualified. As an accountant you can pretty much qualify in most jurisdictions and then go to any part of the world. It is more difficult for the legal community because we are more compartmentalised.

**Yasmin Mangalji:** The barriers to entry seem to be getting lower as some organisations implement changed hiring practices, and begin to understand the commercial benefits of diversity of thought within the workplace. I think it's yet to be seen whether the barriers to success have changed, the majority of senior lawyers I work with, particularly external counsel, are still not a diverse group. **LB**



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## THE PANELLISTS

- **Lawson Crawford** *UCL Business*
- **Gillian Duffy** *Aldermore Bank*
- **Joanne Ellis** *Pinsent Masons*
- **Gunter Eren** *Konica Minolta*
- **David Foley** *Centrica*
- **Lucia Guijarro** *Honeywell*
- **David Halliwell** *Pinsent Masons Vario*
- **Stephen Jurgenson** *Savannah Energy*
- **Matthew Kay** *Pinsent Masons Vario*
- **Yasmin Mangalji** *Advanced*
- **Peter O'Keeffe** *Dr. Martens*
- **Krishna Raman** *Schroders  
Personal Wealth*
- **John Ventress** *Lombard Odier  
Investment Managers*





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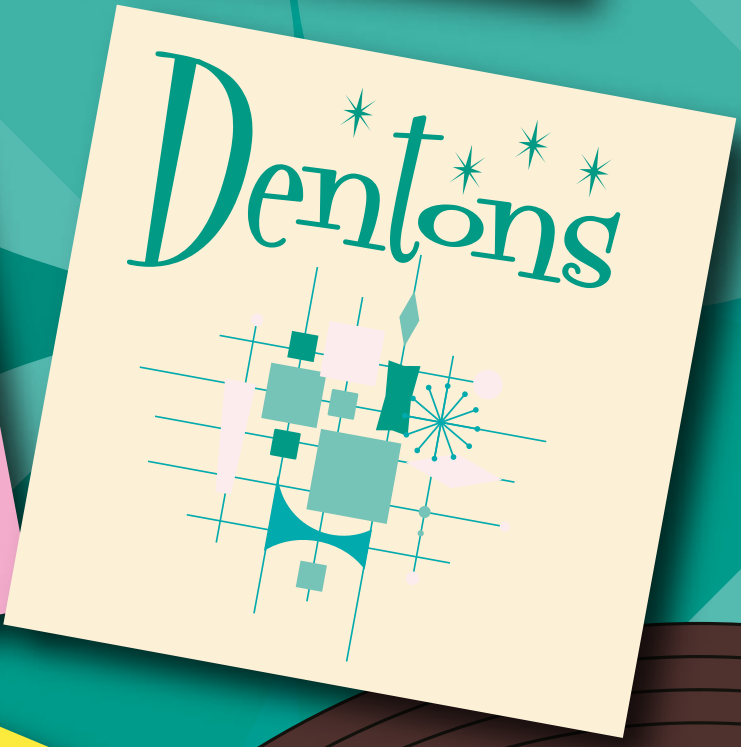




# *Spinning* **around**



In stark contrast to last year's report, the Global 100 is struggling collectively – and many firms are unsure how to get things going again  
**ALEX RYAN**





**T**he contrast between last year's Global 100 report and this year's could hardly be starker. Last year saw firms blow away even optimistic predictions to post extraordinary results. Total revenue increased by 15% to \$147.5bn – more than double the previous year's already impressive rise of 7%. Average profit per equity partner (PEP), meanwhile, shot up 19% to \$2.37m.

This year, gross revenue increased by just 1% to hit \$149.2bn, while average PEP dropped by 3% to \$2.29m. Last year, we deemed a firm to be struggling in relative terms if it did not put both revenue and PEP up by 10% or more. This year, double-digit increases are far rarer: only eight firms increased revenue by 10% or more, and only two – Gibson Dunn (see analysis, page 80) and Polsinelli – managed double-digit increases in both revenue and PEP.

Those law firm leaders that were willing to speak about their firm's performance over the past year remain broadly optimistic. The year was 'strong', 'exceptional'. Many firms noted that it was their best on record, or at least equal to what was overwhelmingly regarded as a 'historic' 2022.

Some, though, could not even make this claim. Thirty-eight firms saw revenues decrease, while turnover was flat for a further three. On profit, the picture is bleaker still: 65 firms posted a decline in PEP, while only 30 notched an increase. Clearly, when it comes to profits, the pressure is on.

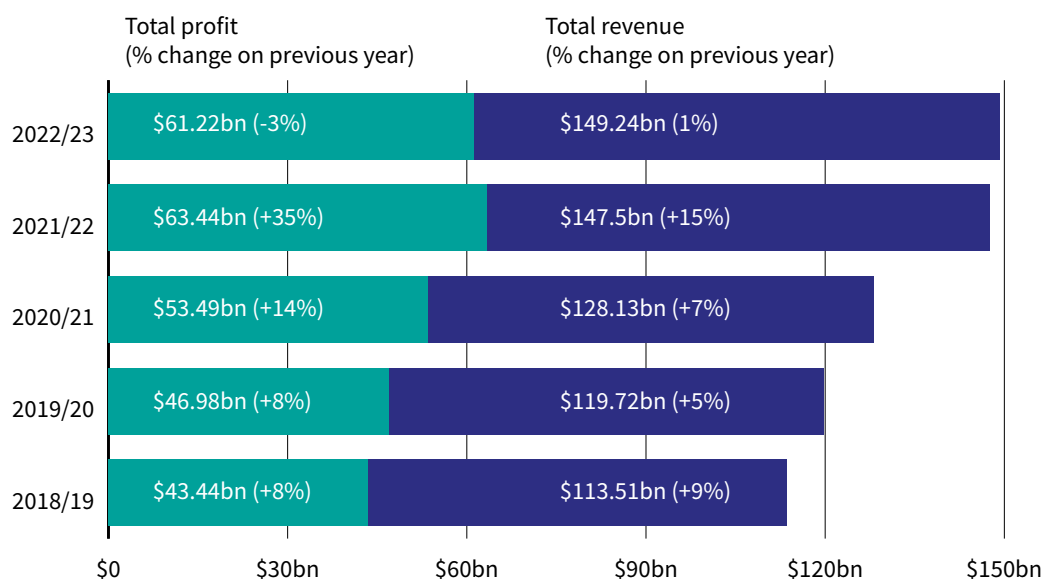
One of the more sober assessments of the market comes from Richard Youle, managing partner of Skadden's London office. 'It's been a good year, not an amazing year,' he says. 'That will be a common comment across the industry. While we're still getting the big mandates, M&A volumes have been down across the board – whether it's corporate, financial sponsors, whatever, the market has been softer.'

Ashurst global chief executive, Paul Jenkins, concurs. 'We're seeing softer economic conditions in many of our markets,' he admits, citing 'geopolitical issues, supply chain issues, and higher inflation'.

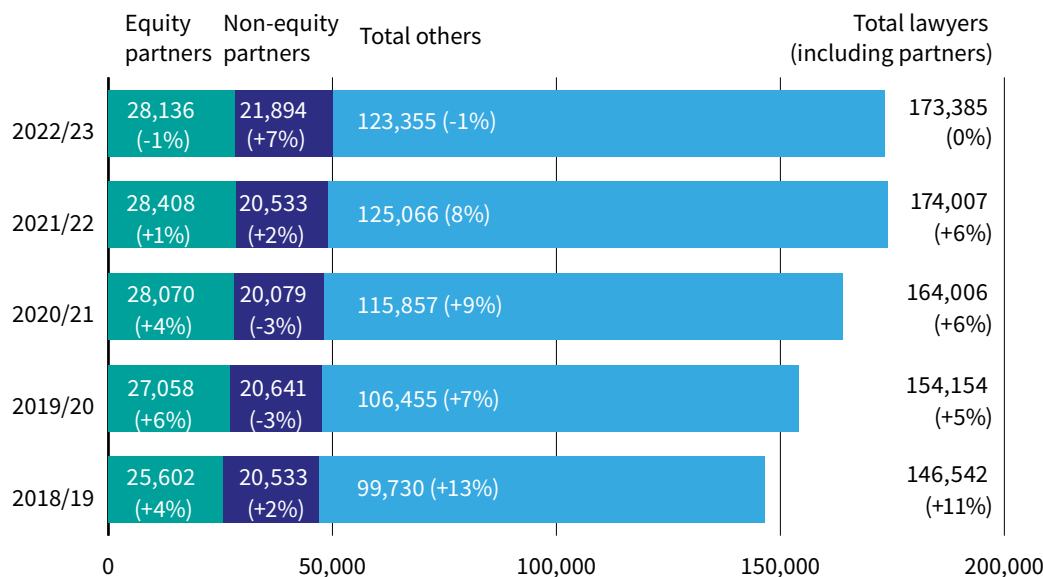
Still, there is little sign that firms are pulling up trees. Headcounts continued to grow across the board. The total number of lawyers employed at Global 100 firms almost stayed flat at 173,385. Total partner numbers rose by 2% to 50,030, with equity partner numbers decreasing by 1% and non-equity partner numbers increasing by 7%.

Firms also continued to expand their operations. The much-vaunted merger between Allen & Overy (A&O) and Shearman & Sterling is the most high-profile example of a play for scale and will have a material effect on the Global 100 table in a couple of years' time. ►

## GLOBAL 100 TOTAL GROSS PROFITS AND REVENUES

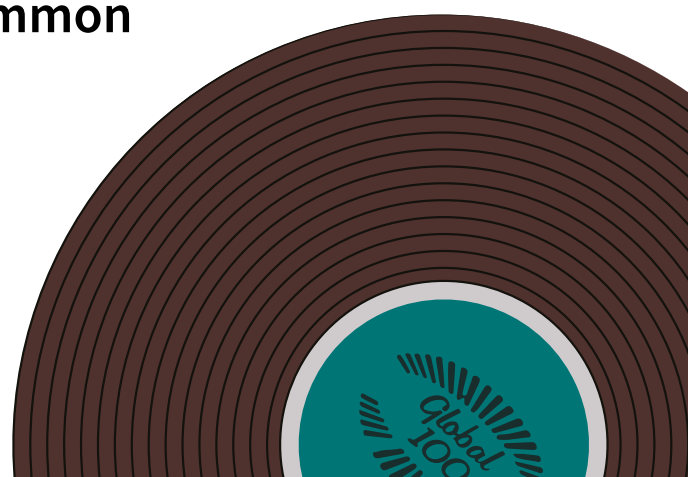


## GLOBAL 100 HEADCOUNTS



**'It's been a good year, not an amazing year. That will be a common comment across the industry.'**

Richard Youle, Skadden



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► But it is far from the only one, and many commentators predict it will be followed by further consolidation. Firms opened offices around the world and continued to invest in everything from lateral hires to technology.

‘There’s been an uptick in work,’ says Simpson Thacher London managing partner Jason Glover. ‘People are generally optimistic about 2024.’ With interest rates and inflation beginning to settle down, this optimism may yet prove well placed.

For Justin Stock, London managing partner at Cooley: ‘The market is desperate to turn.’ And when interest rates settle to a level that gives businesses certainty, ‘things are going to really take off. A common view is that when the M&A and capital markets turn it isn’t going to be slow and steady – it’ll be a pretty significant jump in activity. I’m cautiously optimistic that that will happen before the summer.’

TOPPING THE CHARTS

There was little change in position among firms at the top end of the table. The only change in the top five saw Dentons move up from sixth place, pushing Skadden into sixth after the New York firm edged out the international giant last year. Dentons increased its revenue by 5% to hit \$3.1bn, becoming the sixth and sole new entrant into the club of firms with revenues over \$3bn. Skadden, meanwhile, held steady at \$3.02bn, retaining its position in the \$3bn+ club that it entered last year.

‘We’re intensely focused on strategic growth,’ says Dentons global chief executive Elliott Portnoy. Characteristically for the firm that still bills itself as the world’s largest law firm by headcount, even after its split

from China’s Dacheng this year, Dentons continues to bet on scale: ‘We’re targeting continued growth across the United States, not only in New York. We’re also focused on growth in our other existing markets. In India, for example, we’re currently the only global law firm operating, through our combination with Link Legal. We’ll be launching in early 2024 in the Philippines, and we’ll continue to focus on other markets in Asia as well as in Latin America and the Caribbean.’

Kirkland was once again in first place, pushing revenue up by an above-average 8% to \$6.51bn. This is a far cry from the 25% increase it posted in our 2022 report, but still a sign of rude health in a difficult market. The firm also put PEP up by 2% to \$7.52m. Latham easily held on to second place, despite a much tougher year – a 3% decrease in revenue to \$5.32bn and a 10% decrease in PEP to \$5.15m.

Kirkland was also one of only two firms to report a triple-digit revenue increase since

THE INS AND OUTS

New entrants to the Global 100 in 2023, and those they are replacing.

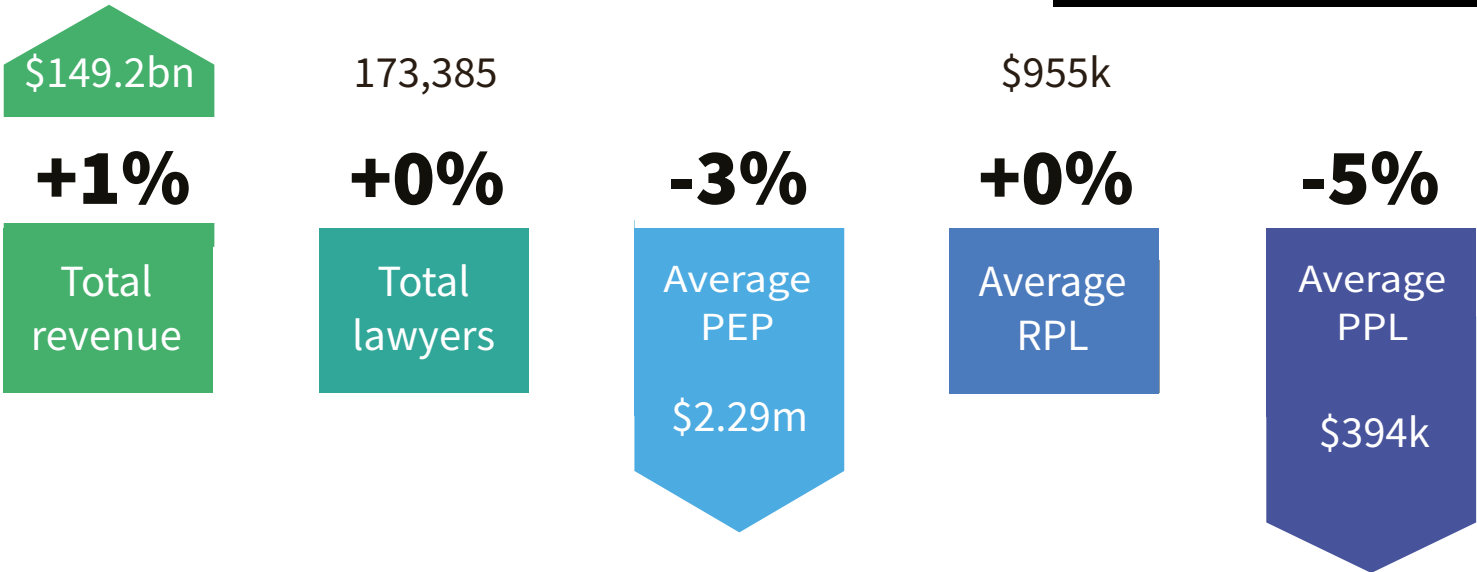
IN

Rank 2023	Firm	Turnover 2023
97	Barnes & Thornburg	\$608.8m
99	McCarthy Tétrault	\$593.9m
100	Crowell & Moring	\$590.2m


OUT

Rank 2022	Firm	Turnover 2023
94	Grandall Law Firm	\$564.1m
96	Cadwalader	\$544.8m
93	DeHeng	\$505.6m

GLOBAL 100 AVERAGES



NB: Per lawyer and per partner averages exclude firms based in China, given their distorting size models.



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## BEST AND WORST: GLOBAL 100 GROWTH 2018-23



## REVENUE

## BEST

Firm	2018	2023	% change
Goodwin	\$1,032m	\$2,210m	114%
Kirkland & Ellis	\$3,165m	\$6,514.3m	106%
McDermott	\$925.5m	\$1,815.9m	96%
Cooley	\$1,072.1m	\$2,006.8m	87%
Holland & Knight	\$963.5m	\$1,540.3m	82%

## WORST

Firm	2018	2023	% change
Shearman & Sterling	\$917.5m	\$906.9m	-1%
Baker Botts	\$731.8m	\$752.5m	3%
Norton Rose Fulbright	\$1,958m	\$2,088m	7%
Arnold & Porter	\$951m	\$1,038.8m	9%
Gowling WLG	\$587.1m	\$656.7m	12%



## PROFIT PER EQUITY PARTNER

## BEST

Firm	2018	2023	% change
Polsinelli	\$701k	\$1,690k	141%
McDermott	\$1,713k	\$3,337k	95%
McGuireWoods	\$1,020k	\$1,957k	92%
Sidley	\$2,265k	\$4,168k	84%
Ropes & Gray	\$2,317k	\$4,230k	83%

## WORST

Firm	2018	2023	% change
Gowling WLG	\$638k	\$495k	-22%
Allen & Overy	\$2,286k	\$2,247k	-2%
Clyde & Co	\$856k	\$876k	2%
Shearman & Sterling	\$2,315k	\$2,478k	7%
Akin	\$2,382k	\$2,576k	8%

These tables show the best-performing firms for revenue and PEP that featured in our 2018 and 2023 reports.

► 2018, with a healthy 106% rise. It is second only to Goodwin, which reported a five-year growth rate of 114%, continuing its impressive rise through the ranks, moving five spots up to land in 18th position, after last year rising six places to 23rd. Its revenue increased 12% to \$2.21bn, making it one of 23 firms this year to notch revenues of \$2bn or more – up from 20 last year. Goodwin's PEP dropped by 6%, however, to \$3.46m.

Anthony McCusker was elected chair of Goodwin in April and took over the role in October. He reflects on the firm's performance: 'We found in the last year, as the business world has been challenging, our diversified platform has been exceptionally resilient.'

He points to 'pockets of growth' in key sectors, including technology, financial services,

**'We found in the last year, as the business world has been challenging, our diversified platform has been exceptionally resilient.'**

Anthony McCusker, Goodwin

real estate, and, crucially, life sciences: 'In January of last year we opened a Philadelphia office with a team of life sciences, healthcare, private equity, and complex litigation partners, to service all our industries, but with a focus on healthcare. Healthcare is exciting because it overlaps with so many other sectors.'

Life sciences and technology are among the most cited areas of focus for Global 100 firms, along with energy and infrastructure. Firms from 27th place McDermott to 61st place Arnold & Porter point to life sciences as a key area of investment, with Arnold & Porter citing its September opening of an office in Boston, ►

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**Dominic Griffiths**  
Managing Partner



► inaugurated with the hire of former Foley Hoag life sciences industry group co-head Hemmie Chang. The past two years have seen firms from A&O to Covington & Burling and Clyde & Co open offices in the city. Arnold & Porter’s London managing partner Kathleen Harris gives one reason for the explosion of activity in the sector: ‘The pandemic has really invigorated investment in global health equity.’

headcount of 45. Still, it has also made notable investments in key markets. In 2022 it expanded in Singapore with two hires: private equity specialist Daniel Lindsey joined from Goodwin’s Hong Kong office, and Yuet Ming Tham rejoined as global co-chair of the firm’s white-collar: government litigation and investigations practice after just five months at McDermott. This year, it continued to focus on private equity

history, not a single UK-headquartered firm featured in the top ten (although DLA Piper clearly has strong UK origins). Clifford Chance (CC) has waved the Magic Circle flag since A&O first dropped out in 2020, following Freshfields in 2017 and Linklaters in 2018. But this year CC slipped four places to 13th, with a decline in revenue of 6% taking it to \$2.55bn. This put it behind A&O, which this year holds the crown of top-performing Magic Circle firm, down one place to 12th, with a 4% dip in revenue taking it to \$2.57bn. While Freshfields is the lowest ranked of the international Magic Circle firms, in 17th place, it is also the only one not to move down the table this year, and is ahead of its competitors on PEP, with a 9% drop taking it to \$2.59m.

The currency effect (see box, opposite) is of course skewing things here: each of the Magic Circle firms’ financials look healthier when measured in GBP, as illustrated in our *LB100* report (see *LB316*). But the weakness of the pound relative to the US dollar is itself a symptom of the strength of the US economy.

For Glover, as for many in the market, the strong performance of US firms also reflects a fundamental difference in strategy: ‘In contrast to the Magic Circle firms who, with the exception of Slaughters, have adopted a global strategy, US firms have tended to focus on specific markets and particularly those that are non-dilutive of profits.’

Notably, though, the last year has seen even many US firms expand their offerings abroad. Cravath made its first English-law-qualified hires in London in March, bringing over ►

**‘In contrast to the Magic Circle firms who, with the exception of Slaughters, have adopted a global strategy, US firms have tended to focus on specific markets and particularly those that are non-dilutive of profits.’**

Jason Glover, Simpson Thacher

Elsewhere in the top ten, Sidley regained its seventh-place spot from White & Case, with a 5% revenue increase taking it to \$2.92bn, while White & Case suffered a 1% decrease in revenue, to \$2.83bn (see White & Case analysis, page 76). At Sidley PEP rose 12% to \$4.17m – one of the strongest performances on partner profits across the entire Global 100, though partially explained by a decrease in equity partner

with a host of hires from Paul Weiss. In London, it brought over Ramy Wahbeh and Kaisa Kuusk, while in New York in November it announced its hire of Jeffrey Kochian, Gerald Brant, and Brittany Harrison.

MOVERS AND SHAKERS

A key theme was once again the dominance of US firms. For the first time in Global 100

PARTNERSHIP GROWTH

Around 60% of firms in the Global 100 reported making partner hires at an average of 22, up from last year. Partner promotions are up on average too – 30 each, compared to 29 last year.

TOP THREE PARTNER HIRERS RELATIVE TO SIZE

1. Goodwin	2022/23 hires: 52	% of partnership: 10%	<div></div>
2. Greenberg Traurig	2022/23 hires: 99	% of partnership: 8%	<div></div>
3. King & Spalding	2022/23 hires: 41	% of partnership: 8%	<div></div>

## THE CURRENCY EFFECT

The dominance of the US dollar has affected the ranking of Global 100 firms that report in sterling and the pound has suffered again this year, which is why many UK firms that have posted revenue and PEP increases in their home currency show up as declines in our main Global 100 table. In the 2022 report, the exchange rate used was £1=\$1.3764. This year the exchange rate used was £1=\$1.2371. The table below shows the actual year-on-year growth in home currency for these firms but with sterling currently holding steady at £1=\$1.24, expect to see UK-based firms continue to suffer the currency effect in next year's report.

G100 rank	Firm	Revenue	% change	PEP	% change
12	Allen & Overy	£2,080m	7%	£1,816k	-7%
13	Clifford Chance	£2,062m	5%	£2,000k	-2%
16	Linklaters	£1,901.1m	7%	£1,783k	-5%
17	Freshfields Bruckhaus Deringer	£1,840m	8%	£2,090k	1%
35	Herbert Smith Freehills	£1,186m	8%	£1,173k	1%
55	Ashurst	£879m	10%	£1,170k	0%
63	Slaughter and May	£812m	7%	£3,500k	0%
66	Clyde & Co	£788.6m	21%	£708k	0%
82	Pinsent Masons	£605.9m	14%	£795k	10%
90	Simmons & Simmons	£521m	12%	£1,016k	2%
96	Bird & Bird	£495m	11%	£669k	2%

## TOP THREE PARTNER PROMOTERS RELATIVE TO SIZE

- 1. Kirkland & Ellis** 2022/23 promotions: **205** % of partnership: **15%**
- 2. McDermott** 2022/23 promotions: **66** % of partnership: **10%**
- 3. Vinson & Elkins** 2022/23 promotions: **20** % of partnership: **10%**



► private equity duo Korey Fevzi and Philip Stopford from Shearman. The firm slipped five places to 69th position, with a 5% revenue decrease taking it to under \$1bn, and a 19% drop in PEP to \$4.69m.

More notable were the moves at Paul Weiss, which broke into English law in August with a raft of high-profile London hires from Kirkland, including leveraged finance star Neel Sachdev. The moves were a further step in a pivot towards corporate work inaugurated with the firm's 2016 hire of New York-based Cravath deal star Scott Barshay as global head of M&A. In the view of one market commentator: 'They're still litigation kings, but in the last seven years they've built into a corporate powerhouse.'

'We will continue to be opportunistic,' says Paul Weiss chair Brad Karp. 'If we have the opportunity to add world-class talent in strategically critical areas, where there is a strong cultural fit, we will continue to do so.'

The firm with the biggest drop down the table this year was Shearman. It plummeted nine spots to land in 72nd position. In last year's report, we noted Shearman as a firm perhaps enjoying a bounceback after a difficult five years, with turnover up 18% and PEP up 58%. This year, the picture is markedly different. A 10% drop took Shearman's revenue to \$906.9m, while PEP fell 18% to \$2.48m, despite a drop in equity partner numbers of 18. Worse, Shearman was the sole firm in the table to see its revenue decrease over five years, with a drop of 1% – a monumental swing of 12 percentage points from the 11% growth it posted for 2017-22. With all the excitement over its upcoming combination with A&O, it can be easy to forget that Shearman was earlier in the year linked to Hogan Lovells, which itself

**'We will continue to be opportunistic. If we have the opportunity to add world-class talent in strategically critical areas, where there is a strong cultural fit, we will continue to do so.'**  
Brad Karp, Paul Weiss

suffered a 6% dip in revenue to \$2.44bn and slipped three places to 15th.

Wachtell suffered the biggest decrease in revenue of any Global 100 firm this year: a drop of 12% took it to \$983.6m, leaving it the only other firm alongside Shearman and Cravath to drop out of the \$1bn+ revenue club. Still, those looking for struggling US firms to approach as potential merger partners will find little interest from Wachtell. Perhaps the last true Wall Street stalwart, the firm has remained steadfast on both lockstep compensation and a US law-only approach. And even with a 13% dip taking it below Kirkland, it remains the firm with the second-highest PEP, an eminently respectable \$7.29m. The November announcement that corporate

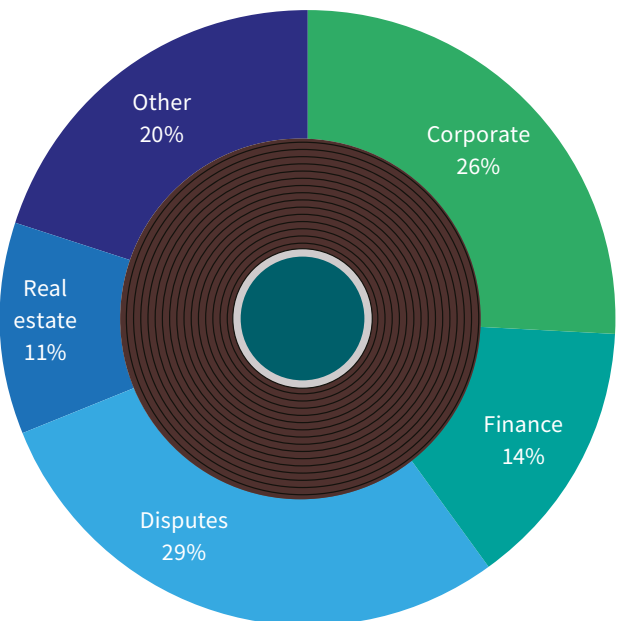
partner Andrew Nussbaum and litigator William Savitt will take over as co-chairs from incumbents Edward Herlihy and Daniel Neff, in post since 2006, should not be taken as an indicator of a change in strategy: Herlihy and Neff will remain on the executive committee. Still, as Paul Weiss seems soon to become the latest white-shoe stalwart to introduce a non-equity partner tier, the question looms over how long Wachtell will hold to its model in the face of mounting pressure.

UNDER PRESSURE

Above all, firm leaders identify rising client expectations as a key source of pressure. 'Clients are getting squeezed,' notes Gregor Pryor, Europe and Middle East managing partner of Reed Smith since July. 'They're asking us to hold our rates. But if firms hold their rates, they're losing money.'

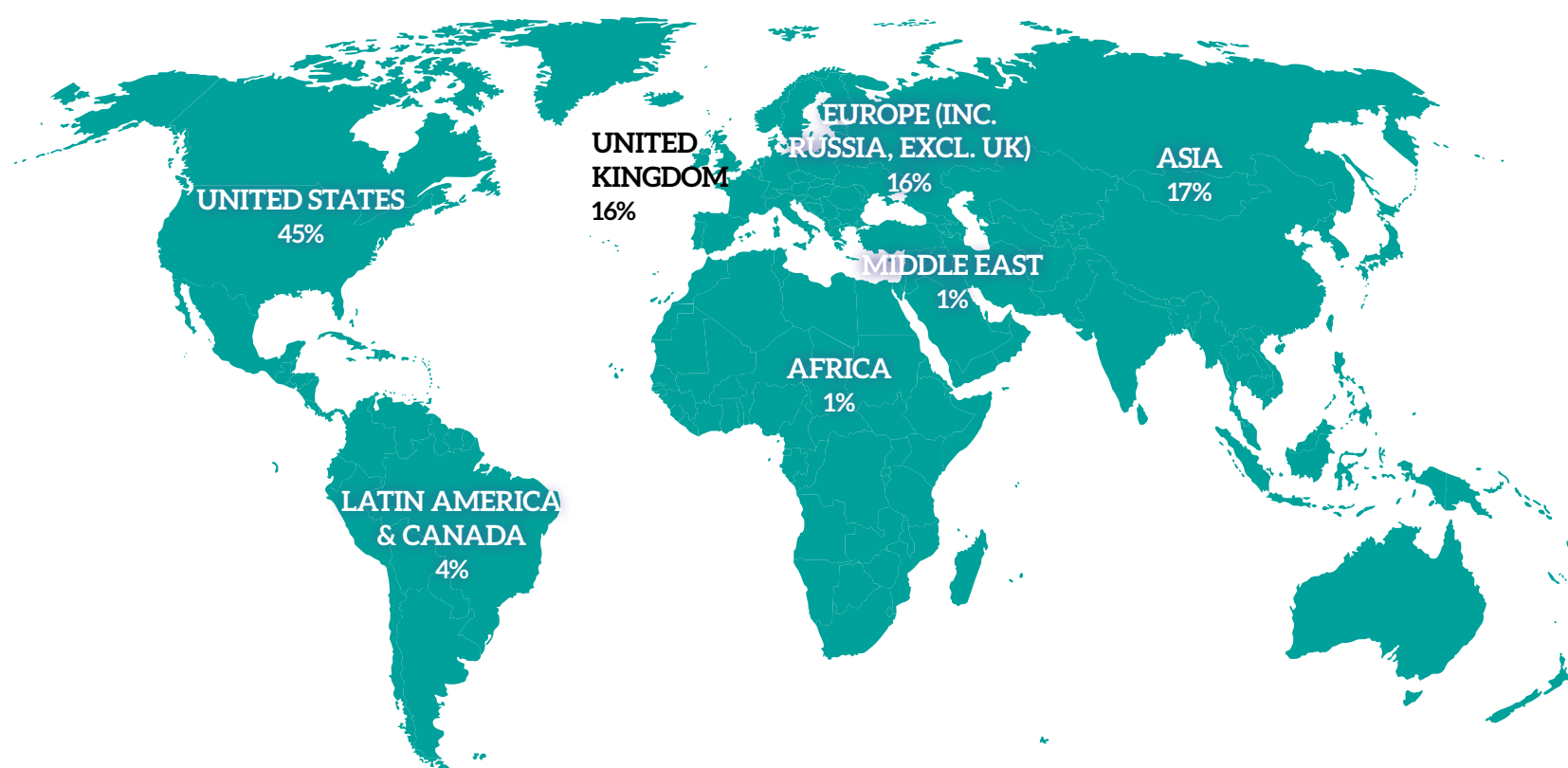
Jenkins makes a similar point: 'As economic conditions have become softer, clients rightly expect greater efficiency.' For King & Spalding's London managing partner, Tom Sprange KC: 'Client expectations in terms of availability and quality inch up each year.' And while 'the fee sensitivity we saw 12 months ago has dissipated a bit', clients are far from 'lackadaisical'.

This pressure on rates is exacerbated by continued increases in both headcount and salary. Many commentators note a potential threat to firms that do not cut numbers in response to tougher economic times. 'There is always a risk that the legal market is over-lawyered, and it tends to react very slowly to such a circumstance,' says Glover, whose firm saw overall headcount increase by 118 and non-equity partner numbers by 29, with a loss of four equity partners. He adds: 'There is a ►

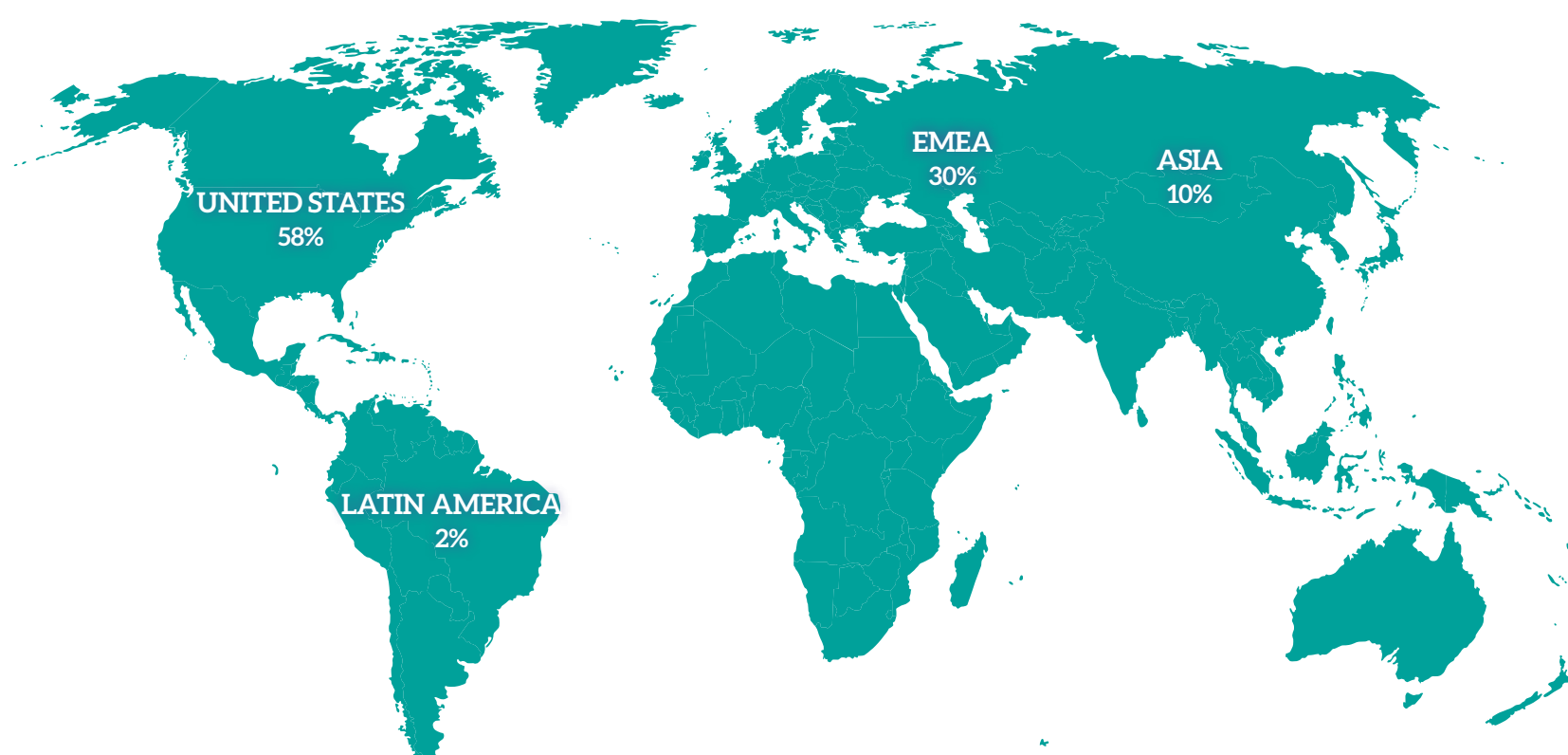


BREAKDOWN OF FEE INCOME BY PRACTICE AREA

## GLOBAL 100 LAWYERS BY REGION



## DISTRIBUTION OF FEE INCOME BY REGION





**‘Client expectations in terms of availability and quality inch up each year. The fee sensitivity we saw 12 months ago has dissipated a bit but clients are far from lackadaisical.’** Tom Sprange KC, King & Spalding



► significant risk of that happening in today’s market. The problem with this is that while providing a short-to-medium-term fix, in the long run it leaves significant gaps in consecutive class years with consequential difficulties in staffing transactions with appropriately qualified personnel.’

As ever, despite notices to the contrary, firms have found no real alternative to the billable hour model. Instead, they look for other ways to give clients more for less. ‘We’re looking to supplement legal advice with risk advice,’

says Jenkins, pointing to growth in both the firm’s consulting business and its Ashurst Advance legal and business solutions offering. While Ashurst is far from alone in offering services beyond traditional legal advice, though, the model has yet to truly take off. To the contrary, A&O sold its aosphere compliance unit to Inflexion at the end of October, though it retains its A&O Consulting business.

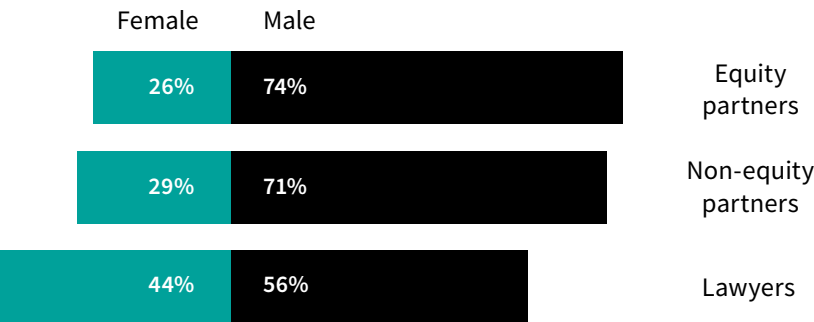
Partners also point to advances in technology as both a risk factor and a means of responding to client demands. ‘I’m a tech

lawyer,’ says McCusker, ‘so I can be accused of being too focused on tech. But I think AI is both the biggest opportunity facing the legal market and the biggest threat.’

Bird & Bird chief executive Christian Bartsch is particularly enthusiastic: ‘Generative AI opens up hugely exciting possibilities for us and businesses all over the world, including our clients. We’ve seen a huge surge of client interest in Generative AI over recent months and we don’t expect that to change any time soon.’

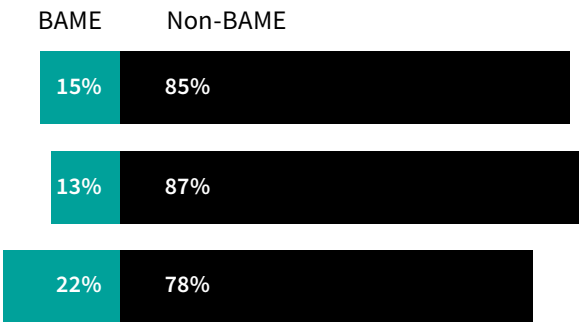
DIVERSITY: GENDER

Around 60 Global 100 firms provided gender diversity data of some kind. The majority of data applies to US/UK only lawyers, although some international firms provided global data, as requested.



DIVERSITY: ETHNICITY

Fewer than half of the Global 100 firms provided lawyer ethnicity data of some kind. The majority of data applies to US/UK only lawyers, although some international firms provided global data, as requested.





**‘We’ve seen a huge surge of client interest in Generative AI over recent months and we don’t expect that to change any time soon.’**  
Christian Bartsch, Bird & Bird

Still, as so often when the conversation turns to novel technology, commentators could offer few specifics on how they would use tools like generative AI to alter their offerings. Notably, though, many lawyers reported similar levels of uncertainty from clients, even as those same clients push for evidence of investment from firms. ‘There are competing soundbites from clients,’ says Youle. ‘They say, “we want the efficiency AI can bring, but none of the vulnerabilities, no blink in services”. All law firms are in a

place of trying to get their heads around that. We can’t compromise on integrity and confidentiality.’

In this respect, attitudes towards technology can be seen as emblematic of the state of the industry more broadly. No-one doubts the market is changing. And there is much overlap on the nature of that change: firms must go further to find clients, link up their global offerings, focus on profitability, and be ready to embrace changing technology. But the specific means by which they can do so remain murky.

And the shape the legal market may take in the near future is not at all clear. [LB](#)

*Legal Business would like to thank SSQ for its sponsorship of the Global 100.*



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## DIVERSITY CHAMPIONS

### FIVE FIRMS WITH THE STRONGEST GENDER DIVERSITY STATISTICS

Firm	% equity partners female	% partners female	% lawyers female
<b>Fragomen</b>	52%	55%	68%
<b>Cooley</b>	31%	31%	50%
<b>Pinsent Masons</b>	24%	31%	57%
<b>Herbert Smith Freehills</b>	26%	31%	53%
<b>Ropes &amp; Gray</b>	32%	32%	51%

### FIVE FIRMS WITH THE STRONGEST BAME REPRESENTATION

Firm	% equity partners BAME	% partners BAME	% lawyers BAME
<b>Fragomen</b>	38%	31%	43%
<b>Cooley</b>	19%	19%	31%
<b>Paul Weiss</b>	16%	16%	32%
<b>White &amp; Case*</b>	N/D	24%	39%
<b>Greenberg Traurig</b>	16%	15%	23%

\* White & Case does not differentiate between equity and non-equity partners for the purposes of ethnicity



# Who advises the advisers?

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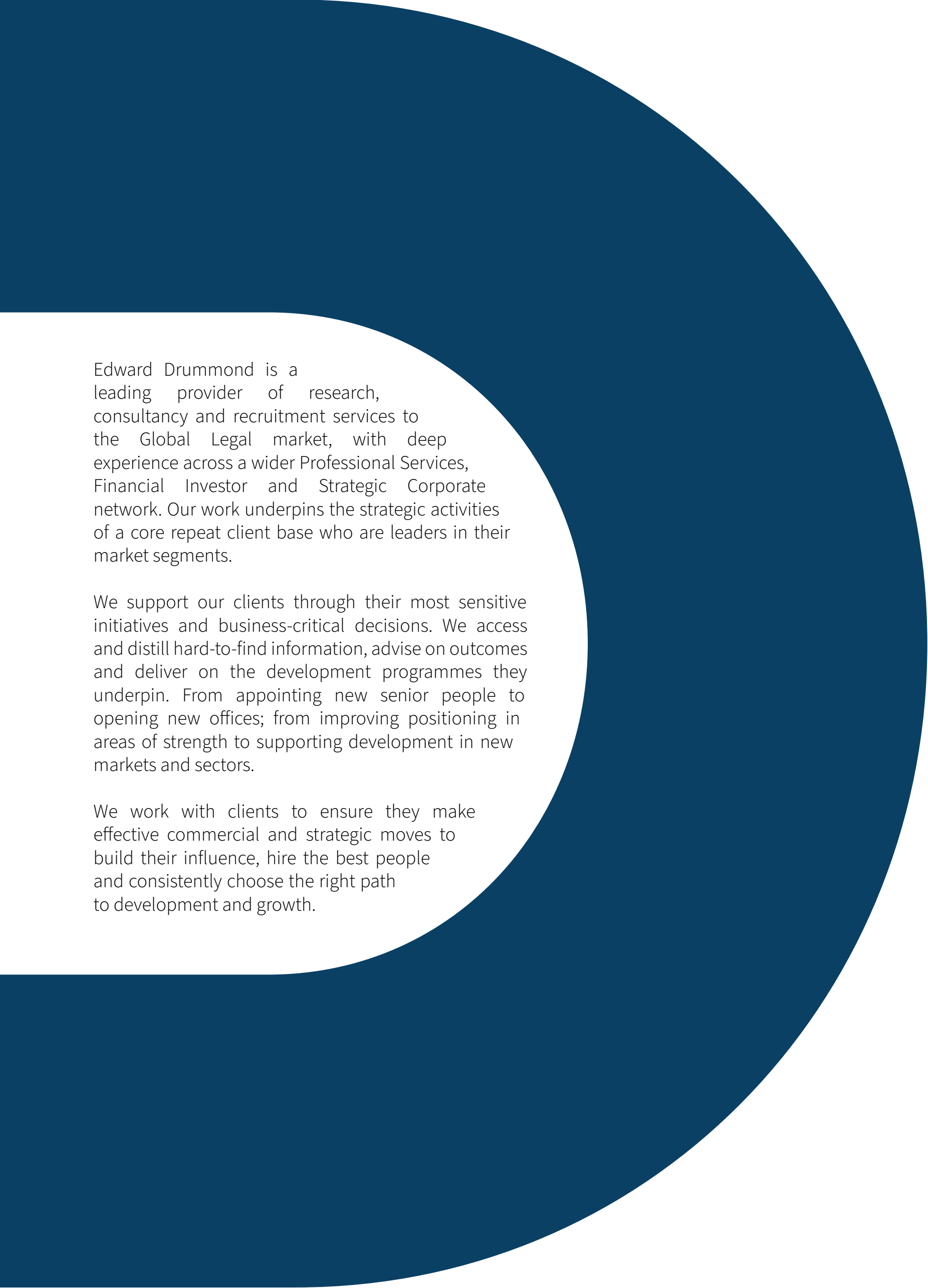
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# Dutch dividend withholding tax exemption for share buybacks by listed companies may be abolished by 2025

Dutch listed companies may buyback their own shares free from Dutch dividend withholding tax (DWT), subject to certain conditions being met. Based on an adopted amendment to the Dutch Tax Plan 2024, the House of Representatives decided to abolish this exemption as of 1 January 2025. This would mean that share buybacks will be subject to 15% dividend withholding tax. However, a new government, to be formed after the 22 November 2023 elections, could still decide in 2024 not to abolish this exemption. In addition, various alternatives remain available to distribute cash to shareholders free from DWT.

For the avoidance of doubt, companies that have a listing in the Netherlands, but are not tax resident of the Netherlands are and remain outside the scope of Dutch DWT. Such companies are in any event not affected by the proposal.

## INTRODUCTION

Dividend distributions made by Dutch resident companies to shareholders that hold a <5% interest in a Dutch resident company are generally subject to DWT at a rate of 15%. Dutch resident individual and corporate shareholders can generally credit the DWT against their

Dutch (corporate) income tax liability, so for such shareholders the DWT is ultimately not a burden. However, for non-Dutch shareholders such DWT is a final burden. A popular method for Dutch listed companies to mitigate such DWT burdens for their shareholders is to do a share buyback instead of a dividend distribution.

## BACKGROUND

The Dutch DWT treatment of share buybacks is complicated and whether an exemption of DWT may apply depends on the purpose and legal drafting of the buyback and whether the company distributing the dividend is a listed company.

If shares are bought back as temporary investment, such a buyback is – and remains – exempt from DWT. Shares are bought back as temporary investment where those shares are subsequently provided to employees or managers in connection with a management incentive plan or where the shares are bought back to support its stock price. Key is that the shares are bought back with the intention to sell those shares again in the near future.

If shares are bought back with the intention to amortise the shares, such a buyback is – and remains – subject to DWT. DWT is payable on the difference between the purchase price per shares and the fiscally recognised paid in capital per share. The Dutch DWT rate is 15%, however in case of share buybacks the DWT is normally assumed by the company for the benefit of the shareholders and therefore the DWT due is grossed-up, resulting in an effective tax rate of 17.65%.

However, a specific exemption is currently available for listed companies that run an active business, ie of which the activities are more than passive investment activities. If all conditions are met, an exemption applies even where the shares are bought back with the intention to amortise. The amount that listed companies may buyback from DWT is limited and depends on *inter alia*, the average cash dividend distributed in the last five years and the amount of the cash dividend in the year of the buyback. Notwithstanding these strict requirements, share buybacks are frequently made by Dutch listed companies and this exemption supports the Dutch business climate. This specific exemption may be abolished by 2025.



**‘A popular method for Dutch listed companies to mitigate such DWT burdens for their shareholders is to do a share buyback instead of a dividend distribution.’** Gabriël van Gelder (pictured) and Steven den Boer, VanLoman

## RESEARCH BY MINISTRY OF FINANCE

At the request of the Dutch parliament, the Dutch Ministry of Finance conducted research as to the function and effect of the DWT exemption on share buybacks for listed companies. The findings of the Ministry of Finance have been published in a letter dated 26 September 2023. The most important conclusions were that:

- Share buybacks are done for valid business reasons such as maintaining a stable dividend policy and the preservation of the value of the underlying shares;
- Many countries have a similar tax facility for share buybacks. The abolishment of the DWT for share buybacks for Dutch listed companies has a negative impact on the value of the shares of Dutch listed companies and make it less beneficial to invest in Dutch listed companies; and
- To benefit from the DWT exemption for share buybacks, Dutch listed companies must meet strict requirements. Therefore the risk of abuse of this facility is limited.

The conclusion of the Ministry of Finance was that the facility for share buybacks should be maintained in its current form. Despite this clear advice, Dutch parliament has decided less than two months after publication of the letter to abolish the exemption after all with effect as of 1 January 2025.

## CONSEQUENCES AND ALTERNATIVE SOLUTIONS

The consequences and impact on the Dutch business climate are uncertain. However, it is clear that in 2024 share buybacks by listed companies can still be done free of WHT. And further, given that there should be a new government in the Netherlands in the course of 2024, there is still a genuine possibility that the exemption will not be abolished after all.

Even where the exemption will be abolished there are still possibilities for companies to return cash to their shareholders free from WHT.

A well-known and tested alternative is to repay share premium. If this is done in a formal operation, ie the conversion of share premium into nominal share capital, and the subsequent reduction and repayment of this share capital, no WHT is due. A number of Dutch listed companies, such as AkzoNobel and OCI, have followed this route and made repayments free from WHT in the past on the basis of this formal operation.

Another alternative is a selective buyback from shareholders. If the listed company has a large number of Dutch shareholders (who can credit the DWT against their Dutch income tax



**‘There is still a real possibility that the new government will decide not to abolish the exemption after all.’ Gabriël van Gelder and Steven den Boer (pictured), VanLoman**

or corporate income tax liability) or foreign shareholders holding a 5% or more interest in the listed company (who can generally benefit from an exemption of DWT on the basis of Dutch domestic law or an applicable double tax treaty), the listed company could consider buying back shares for amortisation from these shareholders, as the DWT is not a burden for such shareholders.

There are more alternatives to mitigate DWT, such as a second trading line, or having a dual share structure. However, which (combination of) alternatives may work should be decided on a case-by-case basis and will depend on *inter alia* on the residency of the shareholders and the amount of capital available for repayment at the level of the listed company.

## CONCLUDING REMARKS

The abolishment of the DWT exemption for listed companies as per 2025 is an unhelpful measure for listed companies. However, there is still a real possibility that the new government will decide not to abolish the

exemption after all. And even if the exemption is abolished, there remain alternatives available for listed companies to repatriate cash to shareholders exempt from DWT.

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# Going hard and betting long

As market forces loom large over the profession, our Global 100 debate finds elite law firm leaders dealing with more uncertainty than ever before

**NATHALIE TIDMAN**

**Nathalie Tidman, Legal Business:** *How have your businesses been performing over the last year? What have been the highlights?*

**Deborah Finkler, Slaughter and May:**

Remarkably well. I certainly think that we have all been holding our breath for the last two years for the downturn, which still has not entirely happened. The biggest issue we are facing is that we have a higher headcount than we had 18 months ago. You normally wait until things get difficult and then you think about how you are going to cope, but things are not difficult enough. One of the issues I have as a managing partner is persuading people that we need to be out pounding the pavements and getting more work, given that we never make people redundant.

**Richard Youle, Skadden:** Business is decent. I do not think it is amazing. We have a similar dynamic, which is that we have more lawyers than we have ever had and not as much work. If you compare things to 2021, which law firm management seems

to do, then we are obviously quieter with a higher headcount. Also, there is no or very little attrition in the business. The average is about 15% and we are at about 3%. All the work we get, we can staff without panic. You need a bit of panic in the system if you are going to hit the profitability levels that we would like to. All business types that we have are busy. Our controversy business is very busy, which is the hedge that a lot of firms have.

**Deborah Finkler:** I have never heard it called controversy. I love that.

**David Avery-Gee, Weil:** Volumes in M&A and private equity are obviously considerably lower this year and that affects us because we are quite transactional, but we have a very strong restructuring business, and that provides a bit of a buffer and is counter-cyclical. Yes, it is not like it was a couple of years ago, but it is fine. Certain sectors are extremely busy. In M&A, Pharma is very busy. Mining is quite busy as well. We are busy in certain areas.

**Aedamar Comiskey, Linklaters:** Things have held up better than you would expect with everything that is going on in the world. In some ways, it is surprising how much stuff is still going on, given what you pick up every time you read the news. You just have to be constantly prepared to flex because it is a pretty unusual macroeconomic environment, and it is not getting any more certain.

**Mark Sansom, Freshfields:** Despite the headwinds over the last couple of years and the fact that it has been challenging in the capital markets and so on, business has been remarkably robust. The London market has gone through a period of quite sustained growth in many areas. The optimist in me thinks that, if that has been the position throughout those challenging macroeconomic circumstances, then as we start to get green shoots across the areas that have been somewhat constrained and facing challenges over the last couple of years, we could be on the cusp of a period of very high growth in London. ►

In association with SSQ



Richard Youle and Oliver Brettle



Ted Greeno and Deborah Finkler



**Jonathan Field, SSQ:** If a law firm is convinced that it is finding a partner that can be additive, it is betting hard on London.



**Oliver Brett, White & Case:** If you are going to be a player in the global legal market, you have to have a substantial office or presence in the second-largest legal centre.

► **Jonathan Field, SSQ:** It has been pretty remarkable how robust the business has been in terms of lateral hiring. Our job is to speak to managing partners day in and day out, and if you just take a broad view of what they are reporting, a large number of law firms are talking about having an up year this year. If you had said that to us at the beginning of the year, we would never have believed that.

There are two or three places that every law firm in the world thinks it can make money. Law firms are very focused on finding talent in both London and New York. You are right that associate attrition has been low. Our business from 2021 is probably down 30% or 40% in terms of the liquidity of moving associates, but the partner stuff has remained flat. If not, it has gone up a little bit.

You will all have seen what has gone on in London over the last year. If a law firm is convinced that it is finding a partner that can be additive, it is going long and betting hard on London in particular. The Middle East has also been a huge growth business for us. Asia has been very challenging. I would say that, broadly, New York and London are the huge commitment, everyone is trying to find opportunities in the Middle East, and no-one really knows what to do with Asia.

**Jean-Pierre Douglas-Henry, DLA Piper:** I am interested in your comment about associate churn. You are not seeing them coming through the recruitment cycle, but we are seeing associate attrition. They are leaving to do other things. Gen Z does not want to go the

partnership route. Carrot and stick does not work. They want to do a few years and then go off and try something else.

**Charles Brasted, Hogan Lovells:** The competition from in-house opportunities has grown enormously. That is where we are seeing people going. The opportunity to have more of a business-led, in-house career is much more attractive now than it was five or ten years ago. We do not necessarily see that as a bad thing. If we can send associates off into the world who are going to be the clients of next year or five years' time or ten years' time, that is not a bad thing as long as we are giving them a good experience and they leave in a good way. That is probably a new priority. It is about making sure that people who want to be with us for three to seven years and then move on do so really positively.

**Deborah Finkler:** There is a huge issue with the fact that our associate salaries are so high. It is very hard for people to move in-house.

**Edward Poulton, Baker McKenzie:** For some of our teams, a lot of attrition over the past 20 years has been to clients, who have been expanding their in-house teams very significantly, particularly in the tech sector. However, a number of these corporates have not been growing, and some have in fact been reducing their numbers, over the past year or so. This has definitely affected the natural level of attrition, particularly to clients or corporates in the tech sector.

**Kate Downey, Fried Frank:** We have seen a reduction in people moving in-house for precisely that reason. Typically, our associates would have gone either to start-up businesses that maybe are just going to sit tight and wait a while, or they would have gone to large asset managers or big banks, who are cutting costs themselves and cannot match the salaries even to anything close to what associates would have been receiving. We are seeing more of an uptick in business because some of our largest clients have had to lay off on their side, and they are looking to lean more heavily on us than they would have done historically.

**Nathalie Tidman:** You might have been forgiven for thinking that opportunities have dried up for US firms in the London market. We have seen Cravath opening an English law practice in London and we have seen Paul Weiss doing the same. How much scope do you think there is for more growth?

**Oliver Brett, White & Case:** Referring to the recent high-level PE moves, I would say that we have not grown to 140 partners in London for the pleasure of London's transport system. We have grown in London because it is a very profitable market. London has always existed as a disproportionately large market for law firms because of the global reach of London. That continues, and English law continues. Therefore, if you are going to be a player in the global legal market, you are going to have to have a substantial office or presence in the second-largest legal centre.



It is obvious that law firms see London as a very good place to continue to build business. Frankly, that is a positive vote in favour of London. I am exposing my prejudices here, but if you had gone back to the dreadful Brexit vote day, a lot of people would have predicted even years later substantial investments like this would not be made. I think a lot of people would have said we would have been licking our wounds still, and people would have been very worried about London's place in the global business environment. Fortunately, that has not come to pass for the legal industry.

**David Avery-Gee:** It appears to be very focused on private equity and leveraged finance and things around financial sponsors. It is not necessarily a vote of confidence in the whole London market, but I thought it was good news that they were prepared to make that investment in that particular sector.

**Rich Youle:** The two firms you have picked out are very uninvested in London. They have been dipping their toe in and they needed to do something. I was not surprised by what Paul Weiss did. I was more surprised by what Cravath did, although it was obviously less impactful, just because of the type of firm that it is.

**Deborah Finkler:** Cravath is a very huge player, but I am not sure the Paul Weiss thing is entirely about private equity. I think that there is a serious prospect that Paul Weiss is going to go further than that.

**Nathalie Tidman:** *The indications seem to be that Paul Weiss wants to go full-service.*

**Rich Youle:** US firms in London tend to be smaller mirror images of what those firms are strong at in the US. That is certainly one of the first things we think about when we are thinking about growing. Do we have a great practice in the US that we cannot cover in Europe or in London specifically?

**Deborah Finkler:** Paul Weiss is either going to do it or it is not, but the amount of money it has spent suggests that it is going to give it a go.

**Jonathan Field:** Paul Weiss is clearly ramping up to try to do things in a bunch of products, although not in every product. A few things have dawned on US firms in particular over the last few years.

There are four or five businesses that have become so profitable on a stand-alone basis in London. That was not always the case. For a long time, some of these firms were here because it was just a defensive play. The white-shoe firms now know they can make serious money. I am talking about serious white-shoe New York firms whose most profitable office is in London. These

**‘There is a huge issue with the fact that our associate salaries are so high. It is very hard for people to move in-house.’**  
Deborah Finkler  
Slaughter and May



guys pay attention to that. Now that they have the evidence that you can scale a business and stack up with New York on a profit-per-lawyer and profit-per-partner basis, they will go for it.

So much is driven by private capital, and the amount of work some of these firms were referring into London became substantial. If you think about the work that some of these firms have been referring to Magic Circle firms, particularly in private equity, M&A, antitrust and restructuring, there does come a tipping point where it makes sense for them to jump in.

I would add Sullivan & Cromwell to that list of firms investing in London in a way they have not done before.

Look at how many of these firms are now, to all intents and purposes, full service in so far as private capital is concerned. They will do private equity, antitrust, regulatory, tax, litigation and fundraisings. They are doing pretty much everything now, and that is also a new development. The amount of US firms that can credibly offer clients total full-service offering in London is in a totally different place from what it was five years ago. They have grabbed a market share and that has provoked everyone to jump in.

**Stephen Millar, CMS:** It is interesting what you describe as full service though. You mentioned about six areas of the law, when there are about 66 areas.

**Jonathan Field:** The way they view it is, ‘Do we have the areas that mean that we are not going to lose out on big-ticket M&A and private equity?’

**Stephen Millar:** That is a very particular set of clients. That is an important and valuable subset of London, but London is so much more than that.

**Jonathan Field:** Agreed, but I will give you another example that goes beyond private equity. Two years ago, if we had sat at this table and someone had said there would be a real push by the US firms around infrastructure, I am not sure everyone would have bought that, but there has been really significant investment to grab market share in infrastructure. That was a product that was effectively done exclusively by UK law firms five years ago, but not anymore. I agree that there are loads of other areas, but it is creeping. There are certain products now in London that are almost exclusively dominated by US firms. ‘Magic Circle’ is almost a weird phrase these days.

**Stephen Millar:** My sense is that there are two markets. The market you are speaking about in the funds and everything is essentially US capital, and US capital in London.

We have a lot of big, high-value, UK-headquartered firms almost fighting two enemies. They are two completely different battles, and you simply cannot be both, which serves us extremely well.

**Nathalie Tidman:** *Moving on to consolidation, what does everyone think about the rationale of A&O Shearman and what it means for the market? Is it a good move or a bad move?*

**Aedamar Comiskey:** I have a huge amount of respect for Wim Dejonghe at A&O. He is a



► strategic guy. He clearly had a very clear plan for what he wanted to do, so I am sure it makes a lot of sense for what A&O wanted to do, and I guess it made plenty of sense for Shearman as well. Smart people have a good strategy. It may not be everybody's strategy, but for them I am sure they had a good plan.

**Stephen Millar:** Any examples of consolidation are good. It makes it an option again after years of probably all of us doing extremely well and consolidation not really being in contemplation. I think it is great for that reason. Then whether it is a good idea or not will all be in the execution.

**Adam Brown, SSQ:** The A&O management set out a very clear strategy to their partners and said, 'We are going to double the size of our US business in five years' time,' and they have done it in one fell swoop. Is it a distressed acquisition? Whatever it is, they have executed on what they said they were going to do. It will be interesting in five years' time, looking at the US market, to see who is still there and what is achieved, but I think it is a good move, absolutely.

**Ted Greeno, Quinn Emanuel:** It is a defensive move, is it not? The US firms we were talking about are building their capacity and their business in London, which they can do because they have a very strong corporate client base in the US which pays big fees. To defend against that, you have to do the same over in the US. A&O were the first firm to go in with a credible

US presence to see if they can do that, but it is all going to be in the execution.

**Deborah Finkler:** Who around this table would want to manage that merger over the next five years? A&O and Shearman will deliver the deal, but it is going to be unmanageable.

**Ted Greeno:** I think it will be about 15 years before we know whether it is successful or not. It is not necessarily great for the partners of today. It might be good for the partners of tomorrow.

**Mark Sansom:** There is certainly a part of the market where you are getting this trend towards greater and greater scale. To the extent that that is the direction of travel for the legal services market more generally, maybe things like this accelerate that trend a little bit, because everyone else looks at it and reassesses where they are at on their own scale, whether they are growing organically or through mergers like this. That is one of the ways I can see it having an impact.

**Edward Poulton:** We have been talking about how people are really focused on the two key markets of New York and London. When you take a step back and you think about the ways of growing in New York if you are a London firm, or in London for a New York-based firm, bringing together a London-centric and a New York-centric firm seems like a pretty logical thing to do. But it is very bold, and many of us are looking on and waiting to see how it pans out in the execution.

**Nathalie Tidman:** *Is further consolidation something there is space for? Can you see it happening in terms of more firms, irrespective of A&O Shearman, going into merger talks or seeing what is on the table?*

**Ted Greeno:** The question is: which US firms? A lot of them who want a presence in London are doing it by starting here, getting their chequebooks out and building up the partners rather than by a merger, but it is much more difficult for London firms to go and do it in the US in that way. Who are

**'How can you expect associates and counsel and the like to be in the office if the leaders of the business are not in the office?'**

Rich Youle, Skadden

the firms you merge with that are at the right level? Shearman was perhaps unique.

**Jonathan Field:** Over the years, we have done some introducing of firms, and the conversion rate is about 0.0001%. The A&O Shearman thing was an anomaly. Forget the profitability point, which is very hard now. There is such a delta on profitability between US and UK firms, but governance, titles, ego and all those things basically make most of these things impossible.

The reason the A&O Shearman thing worked is that A&O happened to find Shearman at a point where it had to do something. From A&O's point of view, it has an acquisition where it did not really have to compromise on most of the things you usually have to compromise on, and yet the firm got 200 partners in the US.

It is going to be difficult to integrate but if your pitch to clients is, 'We can do all your best cross-border work and the most sophisticated work across the world, and we can do that in the US and in London,' A&O has a credible story in terms of critical mass.

It is not just mergers that get you there. Freshfields has done a great job in the US. Three or four years ago, if you had pointed to what Freshfields has achieved, I am not sure everyone would have said that it would have been able to do what it has done. You have to break some eggs among your partnership to get there, and you have to just concede that they are two different markets.

I would be shocked if there were any more mergers on this scale.

**Nathalie Tidman:** *Few firms seem to have completely nailed hybrid working. Obviously, lots of clients are mandating four days a week in the office, and there seems to be a shift in terms of law firms following that and mandating. What are your thoughts on that?*

**Rich Youle:** Skadden has mandated four days a week. We led the decision on that and we have followed the clients and not the market on this topic.

Our firm's central management made this decision. The challenge that Eric Friedman, Skadden's executive partner, took on was partners not coming back to the office. The partners now have to do four days in the office. That was about getting the leaders of the business back around the corridor. How can you expect associates and counsel and the like to be in the office if the leaders of the business are not in the office?

Then the associates doing four days in the office was always going to follow. My team was not over the moon about it; neither though were they up in arms about it. If someone put you in the average Skadden associate position, they are high earners. It is a great firm brand. They have amazing opportunities and experience to



**'People begin to get back into the habit and they get used to being in the office again.'**

**Kate Downey,**  
**Fried Frank**

gain. Benefits and all the rest of it are amazing. If you do four days a week and contrast it with the fellows laying my patio at my house, who are aged 60, humping bricks around, earning £20,000 a year and doing six days, I do not think that you can have any complaint here. I would say, 'This is what we are going to do, so if you do not want to do that and there is a better opportunity for you at another firm, then go for it.' We think the advantages of being in the office far outweigh those working from home.

**Kate Downey:** Long before we put in place the formal processes, we had informally started saying to the team, 'These three days,' because you need to have everybody together to create something. It worked fine when everyone was out because we were all in the same situation. Everyone is the same height on Zoom, but if you have half in half out, it is very difficult. Long before we were into discussions about what we are mandating and how we are responding to the client feedback, it was easier to just group everybody together into a fixed number of days. Honestly, it has not been that challenging. If it is led from the top and you have associates understanding that that is beneficial, it becomes self-perpetuating quite quickly. People begin to get back into the habit and they get used to it again. As long as you are still offering them some degree of flexibility around the margins, it has not been that much of a struggle, at least in London.

**Aedamar Comiskey:** It is all about the softer benefits. You cannot keep a strong culture and you cannot have people enjoying work nearly

as much in the long-term if they are working on their own. Really, where is the fun?

**Kate Downey:** During lockdown, I have never felt so much like a six-year associate! When you are in lockdown and all you have is a screen and people giving you a pile of paper on the left-hand side to look at and a pile of paper on the right-hand side to look at, it is no way to live. It is not why you do this. It's so much nicer to be back in the office.

**Jean-Pierre Douglas-Henry:** We started off by mandating and we got such backlash and such geographical variations. In Germany, it is five days a week. In Scandinavia they almost never come in unless there is a party on. In Australia, it depends on what the weather is doing. The minute you start trying to force it, you get trouble in return. If you just let it go with a degree of reasonableness, our productivity levels are up; they are not down. There is also a generational point about this. The younger generation is much more used to learning online than we are.

**Aedamar Comiskey:** One of the challenges is that if people joined law firms during Covid, they do not know what it was like before. When I would say, 'It was a bit more fun when you were working late and you could sit around and have a laugh about something,' that does not relate to them.

**Jonathan Field:** We have seen that law firms also have a renewed confidence in being able to say to people, 'If you don't like it, go.' A year ago, they just did not have the confidence to do that. There are associates who have not seen ►



**‘There is a correlation between people who spend more days in the office and appraisal ratings.’**

**Mark Sansom, Freshfields**



► clients face-to-face and have not been sat in the office. The skills gap is huge.

**Jeremy Mead, SSQ:** When speaking to associates 18 months to two years ago, flexible working was a big part of their agenda. It was really important to them, and a lot of associates were saying, ‘If my firm shifts at all, I will just go, because I like this too much.’ That is far less part of the conversation now. There is just an acceptance that things are going back to what was previously the norm.

**Mark Sansom:** There is a correlation between people who spend more days in the office and appraisal ratings. The question is: is that causal or is it just that people who are ambitious and high performing tend to like to be around the office more because they get something from that? I am inclined to think it is probably a bit of both, but in large part the latter. The question is: how do you respond to it? I am sure in everyone’s firms it is an active and ongoing debate. For my part, I am inclined to favour encouragement more than mandating, but I recognise that it feels like there is something in the air at the moment. Things are shifting bit by bit.

**Deborah Finkler:** There have been various studies done about the fact that if you say you have all of this flexibility, then ambitious men in particular will come in because they work out that they need to be there for the key points in the transaction or the piece of litigation, and the women take you at

face value. It is going to be even more difficult on the social mobility issue. It seems to me that, in some ways, if we are trying to be more diverse, we have to be much more directional about it and we have to say, ‘No. Actually, for your career, you need to be in the office four days a week because that is how you build up your social capital. I know you think it is better for you to be able to be flexible, but actually, to tell you the truth, it just isn’t.’

**Aedamar Comiskey:** It is a bit of cause and effect as well. People think, ‘Actually, this is better fun than I thought’ or ‘I am actually enjoying this’ or ‘I am learning far more because I can run in next door and just ask somebody quickly instead of having to work out who I’m going to ring.’ Smart people see a benefit and then do more of it. I too am more on the encouragement end because I have faith that people will see benefits, and it is much better if they see the benefits than you telling them there is a benefit.

**Charles Brasted:** If all you tell people is, ‘You just have to come in,’ you tell people, ‘You do not need to think about it. You do not need to think about why you are coming in,’ whereas if you say to people, ‘Come in as much as is going to work for you and your colleagues this week, and talk about that,’ then people behave like grown-ups.

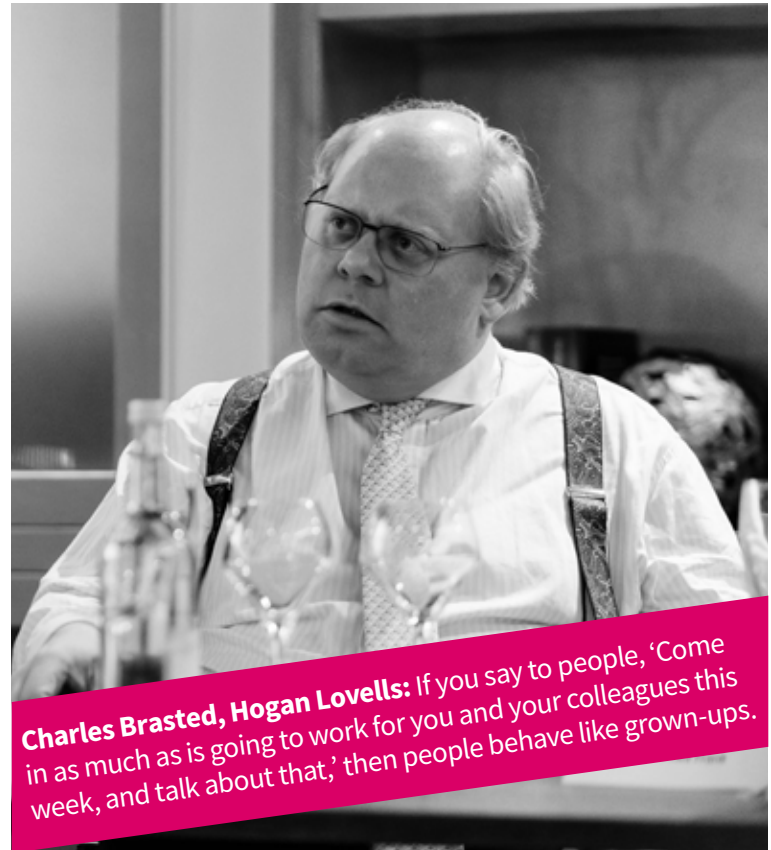
**Kate Downey:** From a management perspective, if you are going to mandate it, you have to stand behind it. I am not 100% convinced that that will

play out in reality, because that would suggest that you are going to treat a high performer and an average performer the same way if they did not comply. There are a whole bunch of issues around what that means and how you really enforce it, and I do not think that people run their teams like that in reality.

**Deborah Finkler:** There are huge issues with social mobility, for example. If our kids were saying, ‘They don’t really mind how often I come into the office,’ we would all be saying, ‘Don’t be ridiculous. Of course they do,’ but if you are somebody who does not have that kind of background, then you take it all at face value. We have to be really mindful of that.

There is another thing that we noticed. At the moment, we are three days a week and people come in three days a week. They come in at 9.30 or 10.00, which is absolutely fine. Worryingly, they leave at five o’clock and then they log on. There are then massive issues with people’s mental health, and of course there are, because instead of working until you are finished and then going home and having a life, the junior associates in particular are going home and sitting in small flats with their mates who are not lawyers who are saying to them, ‘Why are you logging on at 19.30? You’re being exploited. This is really terrible.’ There is nobody saying to them, ‘Actually, this is how it should work.’

What they are losing is the whole, ‘We have to stay there until ten o’clock, but we all go



together to the staff restaurant and we all have dinner together.' It sounds very patronising to say to them, 'You think it's better for you to go home at five o'clock, but it really isn't.'

**Nathalie Tidman:** *Slaughters has released some quite ambitious social mobility targets. It is one of those topics that comes and goes. How much impetus is there really behind fixing the problem?*

**Aedamar Comiskey:** If you are looking for talent, you need to be as open-minded as you can about the many places in which you can find it. Social mobility is just as important as a business imperative as it is as a good thing for the community. Honestly, it is probably very high up on many firms' agendas, both because it is a good thing to do but also because it is good for business. Think about the world we live in. The best client people are those who can relate to many people and find creative solutions. Groupthink is the most dangerous thing for all of us.

**Kate Downey:** It is also what our clients are demanding of us, and they are not asking nicely. From that point of view, and being slightly cynical about it for a minute also, the biggest driver is that, if we are not able to respond to that as law firms, our clients will not instruct us.

**Mark Sansom:** It is massively important and has not been focused on enough for far too long. We

are now moving very rapidly and rightly into a world of social mobility pay gap reporting in the same way that we report around other metrics. It is a good thing too because, as an industry, we still have big strides to make in that area.

**Nathalie Tidman:** *Firms have been going to the freshers' fairs of universities that are not Oxford or Cambridge for years. It hasn't worked. What could move the dial?*

**Mark Sansom:** Reporting is significant. You hold yourself to account and you put some targets out there and you make them public. Then you have to make it happen. Excuses do not work once you are in that situation. Underlying that there is a whole bunch of concrete things that you can do that will improve accessibility to the profession, make the recruitment process more blind to people's backgrounds and remove the unconscious bias. One of the big things is just being public with some genuinely challenging stretch metrics. That is what focuses minds.

**Aedamar Comiskey:** It is also about making sure that you do what you say you are going to do. Role model it. Having leaders who are socially mobile is always helpful because people like to join a firm where they think, 'Okay, there are people here who I can relate to.'

**Deborah Finkler:** It is quite difficult, because of course everybody under the age of 30 would

look at all of us and say we are all posh. They have no idea what our backgrounds are.

**Aedamar Comiskey:** Nobody would say I am posh.

**Nathalie Tidman:** *Yes, they would.*

**Deborah Finkler:** The fact is that they will all make assumptions of us because of the fact that we are who we are. You have to talk a lot about your life stories. One of the reasons why we made a big deal about releasing our social mobility targets and talked to the press about it is because the huge issue is that people from the lower socioeconomic backgrounds just do not think they can be lawyers. They certainly do not think they can be City lawyers. What we need to do is talk about it a lot and get it in the press so that when people Google the names of our law firms, they know that this is something that we want to do, because there is a huge attitude out there that they think we do not want them.

All the studies on blind recruiting show that it does not work. What we want is for the top of the hopper to be wider. In order to get there or to become a trainee at any of our firms, you are still going to have to be as good as anybody else, but there are people who are just not thinking of applying who are clever enough to be City lawyers.

**Ted Greeno:** Back in the early 1990s, the recruitment partners of the leading City firms

► used to meet occasionally to discuss good practice. It was around about that time that the ethnic minority lawyers' groups were being formed and gaining momentum, and they said, 'You are discriminating in the City in your recruitment of trainee solicitors, because look at how many trainees you have from ethnic minorities.' So we decided to look into this and invited representatives of these groups to participate and audit all our recruitment processes. We opened it up to our HR people, as did all the firms, and these representatives had a good look at everyone's recruitment processes. At the end of it, it took about nine months if I recall correctly, they all said, 'Yes, your systems are not the problem. The problem is that the education system is not producing enough people who are at the right level.' Social mobility is not a new problem but I like to think that things have improved since then.

**Jeremy Mead:** Would anybody consider lowering their academic standard? If people are genuinely disadvantaged, their ability to achieve those higher grades is lower. I have looked at thousands of lawyer CVs and there is no diversity in the academic standard of lawyers.

**Deborah Finkler:** All of our CV sifting is done by partners, but I am sure lots of people around the table use things like Rare Recruitment, or interview people who, without the contextual data, would not meet the academic standards. They still have to show that they are as clever as anybody else.

**Ted Greeno:** When I became a recruitment partner, I got someone to go back seven years, looking at the statistics on who we kept on at the end of their two years. The people with the worst academic results were more likely to be kept on than the people with firsts.

**Aedamar Comiskey:** The thing that many of the law firms do now, which is sensible, is to look at what people have achieved relative to the school that they come from. If they have achieved much higher, then you would think, 'OK, this person is probably going to be pretty good.' Good lawyers need to be bright, but the ones who really succeed are the ones who can build relationships, think a little bit outside the box and solve problems.

**Jonathan Field:** If diversity among the partnership is going to impact social mobility, law firms actually deserve a lot of credit. Just watch when law firms appoint people into leadership positions now. Sometimes now when clients of ours are choosing between the partner with the biggest book of business or a diverse candidate, they will go for a diverse candidate. This is all making small changes.

By the way Deborah, you are the first person to describe Richard Youle as posh. I want that in *Legal Business*.



**'Good lawyers need to be bright, but the ones who really succeed are the ones who can build relationships, think a little bit outside the box and solve problems.'**  
Aedamar Comiskey, Linklaters

**Oliver Brettle:** One thing we should realise is that the universities, albeit very late and very recently, are making a lot more of an effort to broaden their funnel for talent.

I believe that the bigger issue now lies before university. There is a piece of work to be done about how we in the City firms reach the schools to encourage people in the schools to say that law is for them.

**Charles Brasted:** One of the unexpected advantages of Covid that we found was on that reaching out more nationally. By being forced to do everything online, it stopped being, 'Yes, if you are in Oxford or Cambridge or you are at school in Guildford, it is easy.' It became much more accessible, and so we have learned a lesson from that in terms of doing more of that stuff online. It is not perfect, but it is a bit of levelling.

The real issue is retention and promotion.

**Deborah Finkler:** It may turn out to be a blip, in which case we are utterly buggered, but we found that once they were through our door, the people from a lower socioeconomic background had identical prospects of staying on and becoming a partner.

**Charles Brasted:** We applauded ourselves just now for all of these people who are diverse being visibly appointed to leadership roles. That is pretty double-edged because, in most law firms, doing the leadership job is not the best way of being remunerated. We often give people who are visibly diverse lots of visible leadership roles, but in some ways we are making their career path and their success more difficult. We need to be careful about that.

**Kate Downey:** It has been fascinating watching that in the context of gender diversity. The debate has shifted significantly in the last five or ten years. We have not yet seen that really flow through, but we have stopped saying that it is the job of the senior women to fix the women. This is now something that everybody has to get bought in on, and it is about everybody having a role in making that viable, but I agree that we are still not there. It is coming, but it is not there. **LB**



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## THE PANELLISTS

- **Nathalie Tidman**  
*Legal Business*
- **Adam Brown** *SSQ*
- **Jonathan Field** *SSQ*
- **David Avery-Gee** *Weil*
- **Charles Brasted**  
*Hogan Lovells*
- **Oliver Brett** *White & Case*
- **Aedamar Comiskey** *Linklaters*
- **Jean-Pierre Douglas-Henry**  
*DLA Piper*
- **Kate Downey** *Fried Frank*
- **Deborah Finkler**  
*Slaughter and May*
- **Ted Greeno** *Quinn Emanuel*
- **Jeremy Mead** *SSQ*
- **Stephen Millar** *CMS*
- **Edward Poulton**  
*Baker McKenzie*
- **Mark Sansom** *Freshfields*  
*Bruckhaus Deringer*
- **Rich Youle** *Skadden*







# DON'T FEAR THE ROBOTS

*Legal Business'* second Ireland Forum with Addleshaw Goddard gathered Dublin's prominent in-house counsel to thrash out the opportunities and risks in embracing generative AI  
**NATHALIE TIDMAN**







Photographer BRYAN BROPHY





**‘GenAI is a broad piece. It is drilling in and finding the piece that is useful for you. It is absolutely strategic and useful on all levels.’**

Cíara Garahy, Salesforce

**Nathalie Tidman, Legal Business:** *Welcome everyone. We have a fantastic panel of extremely talented and insightful people here this evening.*

*As a starter for ten, what do you see as the real opportunities and benefits for in-house lawyers using generative AI in your day-to-day dealings?*

**Helen Dooley, AIB:** In-house lawyers add value to the business, but we are an overhead. I am scared by GenAI, but I see it as a huge opportunity for in-house lawyers. I am sure law firms can utilise this for the low-value, high-volume type work to free up lawyers, who tend to be expensive resources, to do the strategic value-add. It is about harnessing the opportunity.

**David Hackett, Addleshaw Goddard Ireland:** We are only at the beginning of this.

The most logical use of generative AI is around those quasi-legal tasks that land on our desks and take up a lot of time. We can see that the technology can be really revolutionary for that, and the hope would be that we can deploy the technology successfully, that it will free up lawyers’ time from some of those tasks. We can let the AI do that, and do it well, so we can really concentrate on the type of advice that we are trained to give and becoming more involved in analysing the results that come through the AI

tools, and inputting on strategic matters that really add value to the business.

**Cíara Garahy, Salesforce:** If you even look at a small use case, if you are trying to hire someone into your team and the HR person says, ‘Can you write a job description?’ ChatGPT can write that. There is a huge range of opportunity, not only on the legal aspect, but especially for in-house counsel. A portion of our job is contracts, but a larger portion is actually dealing with the business, writing communications, marketing and talking to people. AI is a huge opportunity within that and in driving efficiencies. For the things that come across your desk that are not actual strategic legal work, it is game-changing.

**Nathalie Tidman:** *Is GenAI just a way of saving time and being more efficient, or are you seeing this as a real tool for actually making strategic decisions?*

**Cíara Garahy:** It depends on which tool you are using and how you are using it. Are you using it for an NDA review that you had an intern doing? Are you using it to analyse a huge set of data that came in and you need to get a response for your board in time? GenAI is a broad piece. It is drilling in and finding the piece that is useful for you. It is absolutely strategic and useful on all levels.

**Helen Dooley:** AIB has done a few acquisitions in the past couple of years. We have bought a couple of companies, and we have bought some loan books to use it, for example, to accelerate your due diligence. Months can be spent on due diligence, and all the while, you are spending money, but you are using valuable resources, whether it is business analysts and internal and external lawyers, to get a quicker answer on something like, ‘Is this feasible? Are there any problems there? Is this a company that is going to fit with our strategy?’ To short-circuit all that brings huge business benefits.

**David Hackett:** To get the best use out of AI now and in the future, you are really going to get benefits if you stand back a little bit, look at your business, your role, the industry you are in, the type of tasks that you do, and really figure out what the use cases are. The possibilities are endless, so we should not be constrained by just saying we are going to use it for what occurs to us now.

Time spent strategically thinking about how we are going to deploy AI in our businesses is really going to be valuable, and it is going to be time well spent.

**Nathalie Tidman:** *Have there been any ‘wow’ moments where you have thought AI is really driving change in quite a short space of time? Any experiences of actually having really good results from using it?*



**‘Can machine learning help us with our lending decisions? We also have to think about the ethics of that. Are people being excluded from basic credit?’**

Helen Dooley, AIB

**Cíara Garahy:** Salesforce uses GenAI products, but they are not the big game-changer for us. The big game-changer is that Salesforce sells GenAI products. Einstein GPT is the big play at the moment. We are looking at it from the other side of the house as well, and the customer’s concerns. When you see how it can change our customers’ day-to-day and you actually see what can be done with the GenAI product that we are selling, then you are like, ‘Oh my gosh, this is huge’.

If you take something like an online retailer, they can apply it everywhere, from them buying the fabric to the person at the end of the purchase. For example, if you buy a knit jumper every winter, they know you are buying a knit jumper, but now, not only do they know that, but they can also create a marketing piece around it. They can provide you with a sales piece. That is all fed through your product suite that you are already using. That is when you go, ‘Wow, look at it go’.

**Helen Dooley:** Working for a regulated financial service means that we are some way off. Banks, and certainly Irish banks, in the context of the Irish regulatory framework, are going to be slow to get ahead here. We use a lot of AI today. For example, we would have automated credit decisioning, but that is just based on, ‘If these facts are true, then the person can be approved for a personal loan up to £10,000’.

We looked at some research, which I think was in China. China obviously has a huge population, and for many years, it has been sharing its data. It did an analysis of recovery of loans going bad. If somebody took out a loan and they had the equivalent in China of a Hotmail account, rather than a more established email account, and a mobile phone that was pay-as-you-go, they had a higher default rate. That was proven time and time again with many datasets.

The Irish banks are particularly hampered with holding more capital because of our history through the financial crisis. Can machine learning help us with our lending decisions? We also have to think about the ethics of that. Are people being excluded from basic credit? If the machine has identified that the loan will go bad, it does not necessarily mean they should not get the loan in the first place. There are interesting concepts to consider.

**David Hackett:** In terms of ‘wow’ moments, it is just seeing the practical application of how the technology can work and the ability to use plain English with the technology to get it to analyse data and documents with an accurate result. The narrower AI tools have been successful, and there is still a place for those. I am thinking of something like Kira, which is used a lot in litigation, and Discovery. Again, the way things needed to be phrased, and the inputs that were

needed to drag out the information, it needs to be quite specific.

This is completely different. You can almost talk to it in regular, plain English, ask it a question. It might clarify what you are seeking to look for, but then it goes off and it delivers the results. Something I think we are all going to have to get over is the ability to trust the AI and rely on what it is doing.

**Nathalie Tidman:** *There are clearly risks associated with GenAI, such as data privacy. What do you think are the most salient points around the challenges of using it?*

**Cíara Garahy:** There are a few massive challenges. One is obviously the data piece and, going back to the techie side of it, that applies whether you are doing open source or closed source. If you are using open source and feeding data into it that is coming out on the far side, whose data is being used? How is that safely being protected? Who is the processor? Who is the controller?

You also have to think of IP and who owns the output, and you have to back-to-back your agreement. For an in-house lawyer, realistically, none of us are at the point, unless we are working in open AI, of using a third-party process. You need to back-to-back your agreements because of your IP, your data and ethics. If you are in a regulated





industry, can you trust what comes out of it? AI is very good at predicting and using its dataset, but it is not very good at the nuances, so there are huge risks there and you have to look at them all individually for your own unique business and how it is being worked out.

**David Hackett:** It is difficult to go down into the weeds, but you need to look at the contractual basis that governs the use of whatever technology you are using, be it something that is open or a bespoke model that might be developed for you. What are the terms of use that you are permitted to use it under? It might restrict the scope of use. There can be restrictions that you need to be aware of in terms of how you use it. As lawyers, our primary job is that we give advice and people need to be able to rely on that and trust us, and that is absolutely sacrosanct.

When you are providing services to clients that effectively use AI technology as part of those services, are your clients aware of that? You need to be transparent so that they understand how it is going on. That may lead to more questions, but again, that is the contractual framework that you have in place, both in terms of your receipt of the technology but also in service delivery.

In terms of the in-house environment, it is going to be a huge pressure. The businesses

will want to use these things and then, again, your role as in-house counsel is to say, 'How do we deliver that for the business but protect the business in the best possible way?' You are not going to be able to find a perfect solution to that. It is finding the best workable solution because the business will want to use these tools and will ask how you can allow that to happen.

**Helen Dooley:** In-house legal teams spend a lot of their time enabling the business but also keeping the business from walking into glass walls. I see a point coming very quickly where various business units will see the value these tools can deliver but then we are faced with the issues of if it is open software, we cannot put our clients' data into it. Are the algorithms fair? Are there any biases in there? There is a huge learning for us here.

Again, as a regulated financial services entity, we will be very slow on the uptake, because the risks in the near term are going to outweigh the benefits, because we do not know enough.

**Nathalie Tidman:** *Some of us – and I am including myself in this – are Luddites. Have you been in the position where somebody has resisted the use of technology like ChatGPT? What are the barriers to rolling it out across the business and making people buy into it?*

**David Hackett:** What I would say to people is this is not an optional extra in your set of tools that you use as a lawyer. It is not something where somebody is coming along trying to sell you a piece of technology and you say, 'Maybe I would use that', or 'That might be useful', or 'It might be a little bit of help in my job'. This is a complete change in the entire business environment, in the legal environment, in lots of different environments, so you do need to get on board with it because I do not think that opting out and saying, 'I am not going to use this' is an available option.

As much as possible, you need to embrace it, see what it can do and be open to that, because you see all these headlines, buzzwords and slogans going around. When that review came out that said 44% of legal jobs would be replaced by AI, that is a headline clickbait story, but it is not so much that AI is going to replace lawyers. Another line I heard used that I thought was quite accurate was that lawyers who use AI will replace lawyers that do not use AI.

**Helen Dooley:** AIB will not be at the forefront of this. When ChatGPT was getting traction, as a precaution AIB disabled the screenshot element on people's work phones. I presume that was in case we took a screenshot of customer data and put it into ChatGPT. We are behind the curve.

**Nathalie Tidman:** *If you had a junior member of the team using GenAI, you clearly could not take what they produced as read, or as being the finished article. Are there any risk mitigation processes that you are developing or using already in your businesses?*

**Cíara Garahy:** I feel like you have to review everything. ChatGPT is probably quicker than a trainee but is it more accurate? You still have to review the work regardless. You would not send something out blindly and most people would not do that anyway, with the legal products that are for sale and for use. I was listening to a podcast and it said, 'Do not be afraid that the robots are coming. If a robot is coming, close the door'. They have not been trained to open doors.

**Nathalie Tidman:** *David, from your perspective, there is the client piece and not putting client data into GenAI to come up with a result. How do you manage that?*

**David Hackett:** It is a moving target, and we are at the very beginning of this journey, so we are developing those policies and frameworks. There are some basic ones which say, be careful with what data you put in and make sure you have the relevant permissions and that you are entitled to do that. Approach with caution, but, that said, I am not saying it should be a runaway train, but you do not want to be overly restrictive. That may lead to some restrictions on what you use the technology for, and it may not be helpful, but they are common sense things like taking a step back and looking to see what you are using the AI for. If it is to draft an email to somebody, that is absolutely fine; it can do that and do it very well.

On the other hand, if it is litigation involving commercially sensitive or valuable data, then you do want to think, 'Should we be feeding that into an AI technology?' and specifically, 'What is the agreement? How are we entitled to use it? Who gets access to this data once it goes in? What protections do we have in terms of contractual remedies?'

**Helen Dooley:** Operating in a regulated industry sometimes means we are slower to adopt new technology. For example, with having our data in the cloud it took us a long time to be comfortable with that. Part of the reason is half the people in this country have a bank account with us and we have your sensitive personal data, and we know what you spend your money on so there is a huge trust element.

We have sensitive personal data that would be catastrophic if in the wrong hands or used wrongly. Banks, certainly in Ireland, are still a long way off from having high trust levels, however, we need to accelerate our thinking around AI, because I see the benefits. If we go at the glacial pace that we might sometimes

approach other new technologies or new innovations, we will be left behind.

**Nathalie Tidman:** *One of the risks at the moment is that GenAI is not regulated, so is that a self-regulating thing that each business has to do itself? Do you think it should be regulated by an external body?*

**David Hackett:** There are different types of regulation. Are we talking about legal regulation or general regulation of AI? On general regulation of AI, does it need to be regulated? Definitely. ChatGPT itself has said it would welcome

That is fundamental. Whether that is set out in regulation or not, we need to be able to do it. As a regulation piece, it is going to be huge.

**Nathalie Tidman:** *Are you already training people internally on how to use AI to mitigate risk?*

**Cíara Garahy:** Absolutely. You have to. It is like any new piece of technology, you have to take it, look at it, adopt it, learn it and then everyone needs to learn a new piece of technology when it comes in.

First, the lawyers have to upskill. We can then put the guardrails in place and then push it out and also educate our customers, because they

**'It is like any new piece of technology, you have to take it, look at it, adopt it, learn it and then everyone needs to learn a new piece of technology when it comes in.'**

Cíara Garahy, Salesforce

regulation. ChatGPT may be trying to get ahead of the curve, and it is a good soundbite. Undoubtedly, this is going to be a massive area and, frankly, how do you regulate it? It is tricky. From a European perspective, we have the AI Act coming down the tracks and there has been great progress on that. There is talk of it being adopted by the end of the year; that is very ambitious. In terms of what it sets out and the type of issues it is trying to grapple with, it is going to be difficult to effectively regulate AI. I suspect you will always be chasing the genie a little bit and trying to get it back in the bottle.

Looking at the example of GDPR, we are five years in with that now and it was trumpeted as, 'It is going to fix everything on data protection, making sure individuals' rights are protected and that organisations are regulated'. There is no doubt it has achieved some of that, but it has not functioned in the way that people were expecting. Although data protection is a huge area, it is very small in comparison to regulation of AI. Regulation is needed, but there is a balance needed as well. If you are overly prescriptive on the regulatory side, it may stifle innovation.

There is a trust question here as well and for people to feel comfortable using it and that their data is being used by it, they are going to want to see a level of regulation and certainly, in the legal regulation sphere, additional controls and restrictions on lawyers using it. In essence, lawyers need to be able to do a stand over with whatever results are generated by AI. That is what we are paid to do, to give advice that clients and our businesses can rely on.

are trying to buy this piece of technology. It is a massive education piece for everyone.

**David Hackett:** At the moment it is about encouraging use in the correct environments and with the correct datasets. Using it is the biggest thing for people at the moment, because a surprising number of people have not used it yet, so you are talking about it in the abstract.

**Nathalie Tidman:** *What impact is GenAI going to have on the value for money question and on pricing?*

**Helen Dooley:** Clients are going to expect to be paying for outputs, not time input. Aside from AI cutting through, the old billable hour for law firms is questionable today. As an aside, the alternative legal service providers, which are the Big Four accountancy firms that are going to embrace AI and not come at it from the traditional billable hour, are going to force the law firms to have a different approach.

**David Hackett:** The billable hour is a concept, it is there, but there are a lot of other factors that flow into what you charge for the work that you do. Certainly, my own experience is clients are not shy about raising the issue of fees. The majority of clients are fair, and they realise the firm needs to make a profit on that, but equally they do not want to be paying an exorbitant price, or paying for something that they feel is your learning and you are going to be able to use



in the future. That is a reasonable conversation to have, and you need to be able to have it.

Some of these tools are very expensive and so there is going to be an investment by law firms in getting licences to deploy them throughout the organisation, but conversations around fees for a long time have been moving more and more in the direction of 'What value are you delivering for us?' Even if you are doing quite mundane tasks, that can be of value to a client, and they are very happy to pay for it. This is going to refocus the conversation on the value of the advice you provide. If it is the case that you are using AI to provide your advice more quickly, for example, in a competitive process where there are a number of bidders to buy a company and you can use AI to dig in and see where the issues in this company are and how that is going to affect the price we are going to pay, very quickly you get to a point of 'This is what it is worth to the client. We are willing to offer this price to get the deal done'. If you can deliver that quickly, it is of huge value for the client.

**Cíara Garahy:** The other side of it is if we are in-house, we then also have to show our value. If we are getting the AI tools in, then what is the point in us being there? If I do ten NDAs a day as my day job and an AI tool can do it, then what is justifying my salary? Across the board we need to be careful about the value-add on this piece.

**Nathalie Tidman: What are your takeaways on the future of GenAI?**

**Cíara Garahy:** It is here, so get used to it. It is not as scary as you think it is and you are able to do it.

**Helen Dooley:** The more curious we are, the more benefit we are going to get from it. AI is in a lot of the things we do today, and so we are trying to harness the value it will ultimately bring.

**David Hackett:** Embrace it because it is happening. There is no getting away from it so better to be on the train than see the train pulling away from the station and you are not on it. Realise that this is a revolution and that this is a good time to be involved. We are not coming to it when everyone else is already way ahead and they know what they are doing.

Do not to be scared by it. AI is another tool that we as lawyers will use to do our job, but we direct what it does, we give it the data to analyse, we ask it the questions, it gives us results, we interpret that. Ultimately, we have the final say. **LB**



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**‘Realise that this is a revolution and that this is a good time to be involved. We are not coming to it when everyone else is already way ahead and they know what they are doing.’** David Hackett, Addleshaw Goddard Ireland

#### THE PANELLISTS

- **Helen Dooley** Group GC, AIB
- **Cíara Garahy** In-house counsel, *Salesforce*
- **David Hackett** Head of IP/IT and data protection, *Addleshaw Goddard Ireland*
- **Nathalie Tidman** Editor, *Legal Business and The In-House Lawyer*



# Testing the mettle

As Switzerland's legal market faces similar reversals to the world at large, regulatory shifts, geopolitical flux and technological advancements are keeping partners on their toes

**GEORGIA TUXFORD AND ZOE JAMES**





In the words of Patrik Peyer, managing partner of Niederer Kraft Frey (NKF): ‘As the Swiss legal market confronts these multifaceted challenges, the resilience and adaptability of legal practitioners become crucial in shaping a forward-looking legal landscape.’

‘The legal market is always developing in parallel to the general economic situation,’ says Bär & Karrer’s Susanne Schreiber, who co-heads the firm’s tax team. In Q1, Switzerland’s annual inflation rate rose to a high of 3.4% in February, 0.6% up on December 2022. In Q2, things started to look up with rates decreasing to 2.6% in April. Since then, rates have been on a steady decline, remaining at 1.7% for both September and October 2023. Interest rates, too have stabilised. Since July 2023, the Swiss National Bank has kept its policy rate at 1.8%, providing a sense of stability to the Swiss economy. Following these economic trends, there are several trends practitioners have seen regarding the work that’s been done. For example, practice areas such as litigation and tax were extremely busy this year while areas like M&A and capital markets saw a

decrease in deal volume compared to previous years. Banking and finance and real estate and construction remained stable throughout 2023.

The M&A market in Switzerland has experienced a noticeable shift, deviating from the robust trends in previous years. At the beginning of 2023, there was a discernible slowdown in M&A activity with deal volumes on a steep decline. Tino Gaberthüel from Lenz & Staehelin, who heads the corporate and M&A team and co-heads the capital markets team, highlights that: ‘The rate of transactions that do not get to a signing or don’t progress is above average, one reason being differing valuation expectations. Overall processes take a lot longer.’ Schreiber reports that the firm ‘saw a slowdown on certain M&A activities like private equity funds, which are less active both on the sell and the buy side’.

Despite the slow start to the year, Gaberthüel notes that ‘market activity has picked up significantly since Q2’. Still, he notes that there has been a dearth of mega-deals: ‘The large ticket deals are not yet on the map, meaning parties may assess potential opportunities, but they have not happened yet.’ For Peyer this increase

in mid-market deals ‘underscores the resilience and adaptability of businesses in navigating the economic landscape’. Lawyers predict that mid-market deals will continue to dominate in 2024, and firms on the whole remain cautiously optimistic that they will have a busy year in corporate M&A.

There were some positive signs towards the end of the year. Gaberthüel highlights Partners Group’s acquisition of infrastructure-sector inspections provider ROSEN Group, with reported value as high as \$4bn, as one transaction that stands out. The deal was announced in November and is expected to close in the first half of 2024, pending regulatory approval.

While the transactional market is slower than in previous years, M&A-related litigation has experienced a discernible increase. ‘After Covid, there was a general dip in arbitration and litigation matters, as companies were being more cautious, this has picked up fully since quite some time now,’ says Caroline Clemetson, a partner in Schellenberg Wittmer’s banking and finance department in Geneva and Zürich and a member of the firm’s management committee. Now, activity in disputes ‘has picked up fully’. Gaberthüel offers an



## ‘In neighbouring countries, they say real estate is dead. In Switzerland, there is still a lot of activity.’ Susanne Schreiber, Bär & Karrer



► explanation of this trend: ‘When valuations go down or there is uncertainty, there is willingness for potential disputes post-closing.’

In other practice areas, commodities work has remained a focus for Geneva-based firms, despite a sanctions-induced slowdown in work for Russian clients. Advisory services have also seen increased activity, driven by ongoing developments in regulatory frameworks.

Tax work was particularly busy in 2023, defying initial expectations of a slowdown due to the pandemic. The EU Tax Action Plan, comprised of 25 initiatives aimed at fostering fairer and simpler adaptive taxation, triggered a rise in tax audits and administrations involving intricate procedural work. Although Switzerland is not an EU member, it is entwined with EU developments, witnessing a surge in tax litigation and controversy. In addition, transfer-pricing complexities have escalated, promoting tax authorities to form specialised teams, which in turn has had an impact on unprepared businesses. Traditional tax work closely tied to M&A transactions faces uncertainty amid rising interest rates, and economic indicators hint at an impending recession, leading companies to defer projects and focus more on internal reorganisations. Another notable trend is an increase in successful taxpayer outcomes in litigation, challenging the conventional dominance of tax authorities in such cases. Firms anticipate that these trends will continue through to 2024.

‘Even real estate survived,’ says Schreiber. ‘In neighbouring countries, they say real estate is dead. In Switzerland, there is still a lot of activity.’ Despite difficulties in real estate and construction across Europe, the Swiss market maintains transactional activity, albeit at a lower level than in previous years. Institutional investors shedding portfolios and challenges in meeting construction demands due to employment-related issues from the Covid pandemic contribute to this trend. Higher interest

rates in Switzerland correlate with decreased real estate prices, creating a mismatch between seller and buyer expectations. However, many in the market expect the gulf in expectations to narrow, and forecasts suggest a resurgence in activity, with smaller but more frequent transactions. Price decreases have been lower in residential housing, buoyed by immigration. The Der Schweizerische Ingenieur- und Architektenverein (SIA), supported by public procurement authorities, has been a hot topic this year. Public law considerations, too, have come to the fore, with increasing debates over how to align construction with action on issues such as noise pollution, climate change, and city planning. Many in the market expect real estate and construction work to maintain stability into 2024, keeping law firms in Switzerland actively engaged.

In contrast, equity capital markets work is, in Gaberthüel’s words, ‘an area that’s been very quiet’. Gaberthüel mentions that ‘there haven’t been any IPOs this year in Switzerland’, reflecting a cautious approach from market participants. The subdued nature of capital markets has prompted legal professionals to adapt to a less bustling environment, emphasising the need for strategic diversification in response to the evolving dynamics of the financial market.

### A SHOTGUN MARRIAGE – UBS ACQUIRES CREDIT SUISSE

On 19 March 2023, the Swiss market experienced a seismic shift with the announcement that UBS was acquiring Credit Suisse for CHF 3bn (\$3.2bn) in an all-stock deal brokered by the Swiss government and FINMA. This unexpected development sent shockwaves through the financial sector, reshaping the Swiss banking landscape. This takeover marked a significant consolidation of two major players, raising concerns in many areas of law. Previously, in the corporate banking and corporate lending space, Swiss companies had

two potential relationships. Now, they have one: UBS. Companies must think about whether to form a relationship with another bank – and, if so, which. In this way, the merger could lead to a re-evaluation of existing banking relationships, and has introduced a new level of uncertainty regarding the continuity of financial services. The merged entity’s approach to lending and banking practices are likely to become a focal point for corporate clients as they continue to navigate the ever-shifting terrain of financial services.

The merger will likely impact the strategies used in public takeovers, with the shift to one dominant market player in the banking world shifting the negotiating dynamics between acquiring and target companies, with fewer banks capable of exchanging shares against consideration. The integration of the two financial giants’ operations has also triggered concerns about job security, potentially leading to an increase in employment work. It is not all negative, however. Gaberthüel highlights that this merger could bring new opportunities for ex-employees. ‘Looking at investment banking,’ he says, ‘there is room for other players, such as international banks or smaller boutique financial advisers, to take on people who used to work at Credit Suisse.’

Law firms have also stood to benefit from the UBS acquisition of Credit Suisse. The complexity of this deal, as well as its implications, have required the involvement of various firms to keep up with the increasing demand for legal services generated. Firms involved included Walder Wyss acting as lead counsel to Credit Suisse and Bär & Karrer advising UBS, with Schreiber noting that the firm was ‘also selected to work on the integration, which keeps us busy’. Homburger also advised on various aspects of the deal. Other firms, such as Buis Bürgi, Quinn Emanuel Urquhart & Sullivan (Schweiz), and LALIVE, have been supporting clients in challenging



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‘Financial service providers are also now obligated to include ESG topics in the training and professional development of their client advisers.’

Nicolas Piérard,  
Borel & Barbey

► the write-down of the AT1 bonds issued by Credit Suisse. The potential employment law issues could present opportunities for law firms to provide counsel on workforce restructuring, layoffs, and related litigation.

Despite the tumult of the Credit Suisse collapse, Swiss lawyers argue that the overall banking and finance market has maintained stability, reflecting the country’s reputation for financial security. This may change, however. ‘It’s still difficult to assess what the implications will be,’ says Gaberthüel. ‘It’s still too early.’

REGULATION AND REFORM: REVVING THE ENGINE FOR 2024

While the UBS-Credit Suisse merger takes centre stage, other notable legislative developments and initiatives are occurring on the sidelines. ‘There are various impending legal and regulatory changes in Switzerland that will impact the work of commercial law firms,’ says Peyer.

The New Federal Act on Data Protection (nFADP) entered into force on 1 September 2023, taking a risk-based approach to the methodology of data protection by companies. Under this new legislation, the processing of personal data of natural persons is included, and not that of legal entities, with the scope of sensitive data extended to include genetic and biometric data. The jurisdictional scope of the act now encompasses data processors and controllers external to Switzerland who receive data from within the country.

Furthermore, the principles of privacy by design and privacy by default have also been introduced, which require companies to reduce the risk of privacy breaches during data processing, as well as to ensure that personal

data is only processed for its relevant purpose. Additionally, all data controllers and data processors need to keep records of processing activities (ROPA), bringing Swiss law closer into line with article 30 of the GDPR, which does not apply to Swiss companies outside of operations in the EEA. This record includes the purposes of data processing and recipients of data alongside an array of other requirements for the purpose of transparency and accountability. ‘It is implementing the same GDPR principles in Switzerland,’ says Clemetson. This alignment also enables the free flow of data between Switzerland and the EU to be maintained, ensuring that Swiss companies remain competitive.

Precisely what kind of work the nFADP will generate in 2024 remains to be seen. For Schreiber, it has ‘brought some clarity’ after ‘a very long preparation period’. While international clients were already familiar with European regulations, Schreiber notes that the act has already led to work in ‘advice and continued review’. ‘The main point is that it’s real now.’

Transparency is a key theme here – and the nFADP is not the only development that enhances transparency in the Swiss landscape. The Swiss government has recently initiated consultations regarding the reform of its anti-money laundering framework. This reform proposes the introduction of beneficial ownership reporting requirements for companies and the extension of due diligence rules to consultancy companies. Clemetson states that ‘they want to introduce transparency of UBOs for companies in Switzerland, this is a big project, but this is not yet in force’.

SOLIDIFYING SUSTAINABLE FINANCE IN SWITZERLAND

‘ESG is a topic in Switzerland that is everywhere,’ says Schreiber. ‘The more pressure from the regulatory side, the more the companies are forced to implement ESG measures, whether they want it or not.’ Integrating ESG aspects into investments through vehicles such as green bonds and administering climate-friendly policies are of increasing significance, as well as the management of risks and opportunities around sustainability issues. In parallel with this, the emergence of ESG rating agencies and emphasis on corporate accountability requires businesses to adopt an ESG-aware mindset.

Nicolas Piérard, partner at Borel & Barbey, describes the current ESG landscape in the financial sector: ‘The Swiss Bankers Association has issued new Guidelines, the legal basis of which is the Financial Services Act. Clients will be



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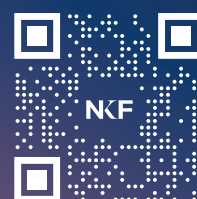
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► asked about their ESG preferences, and then offered appropriate products and services. The Guidelines also set out obligations for the provision of information, documentation and accountability when establishing the client’s ESG preferences. The scope is to make sustainability themes – in other words ESG factors and energy efficiency - an integral part of the advisory sessions with private clients. According to the latest report published by Swiss Sustainable Finance, total sustainable investment volumes climbed to almost CHF 2,000 billion in Switzerland in 2022.

Piérard also highlights that ‘Financial service providers are also now obligated to include ESG topics in the training and professional development of their client advisers. For Swiss large, listed companies reporting on environmental issues and specifically CO<sub>2</sub> targets (but also social issues, staff issues, respect for human rights, and the fight against corruption) is already expected and the subject of a first mandatory non-financial report in 2024.’

And more regulation may well be on the horizon. ‘There’s a big discussion going on with the Federal Department of Finance as to whether there will be regulation or not,’ comments Clemetson. ‘Federal Council communicated recently that they are giving the industry until February to see whether they need to adapt the self-regulation; if not, they will regulate with an ordinance in Switzerland.’

SANCTIONS ARE HERE TO STAY

The impact of the ongoing Russia-Ukraine war was also a major theme. ‘Switzerland cannot issue its own sanctions regime as it is a neutral country,’ notes Clemetson. Instead, Swiss regulation has implemented EU sanctions. For Clemetson, this has been effective: ‘As sanctions are being respected and implemented in the various companies, it has had an impact the same way it does in the UK, or in the EU.’

Piérard observes that ‘national and international sanctions are relevant and challenging for a large number of Swiss companies, especially for the commodities trading companies and for the financial sector. The reputational risk is important for banks considering the increased interest of the media for sanctions-related matters. The State Secretariat for Economic Affairs (SECO) implements the Embargo Act and the separate ordinances based on this act. Due to the substantial increase of sanctions against Russia between February and August 2022, the challenge was to help clients, mainly in the financial services industry, to take immediate steps to implement necessary processes. Information and guidance made available by SECO have proved to be useful in practice to provide updated advice in a quite complex and changing environment.’

While the outcome of the Russia-Ukraine conflict remains to be determined, these sanctions will remain in place for the foreseeable future.

And what consequences may emerge from the Israel-Palestine conflict remains to be seen. This geopolitical turmoil adds a layer of complexity and challenge to the current markets and businesses will need to navigate carefully moving forwards.

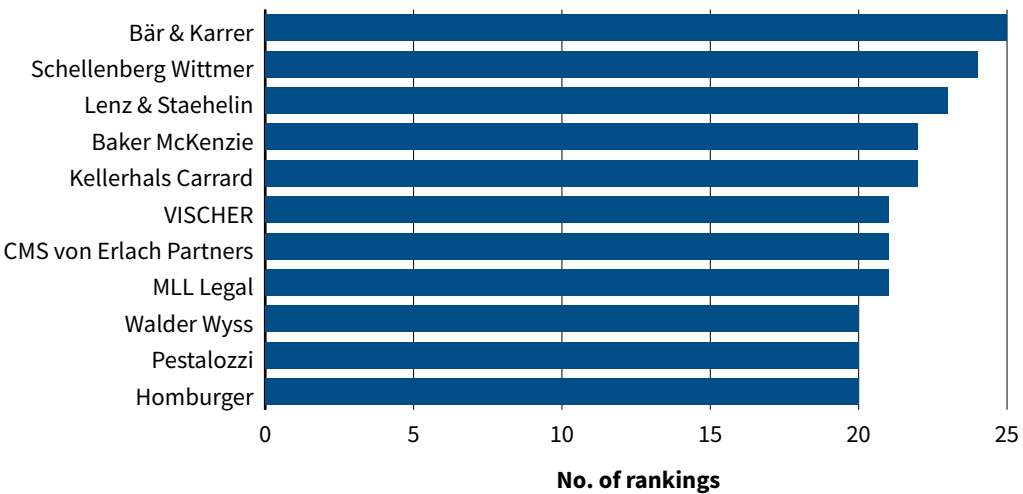
OFFICE POLITICS: NAVIGATING EMPLOYMENT TRENDS AND OFFICE DEVELOPMENTS

In January 2019, the new Swiss Foreign Nationals and Integration Act (FNIA) entered into force. The underlying rationale of this new act was to facilitate access to the Swiss labour market. It did so by implementing several measures to curb the administrative hurdles faced by workers from third countries seeking work in Switzerland. This was in response to the shortage of qualified personnel in the Swiss market. The cantons are afforded a wide margin of discretion with regards to decision making within the labour market. Despite unemployment falling from 4.3% to 4.2% in Q3 2023, the lack of specialised workers remains a problem. Following this, firms have seen an

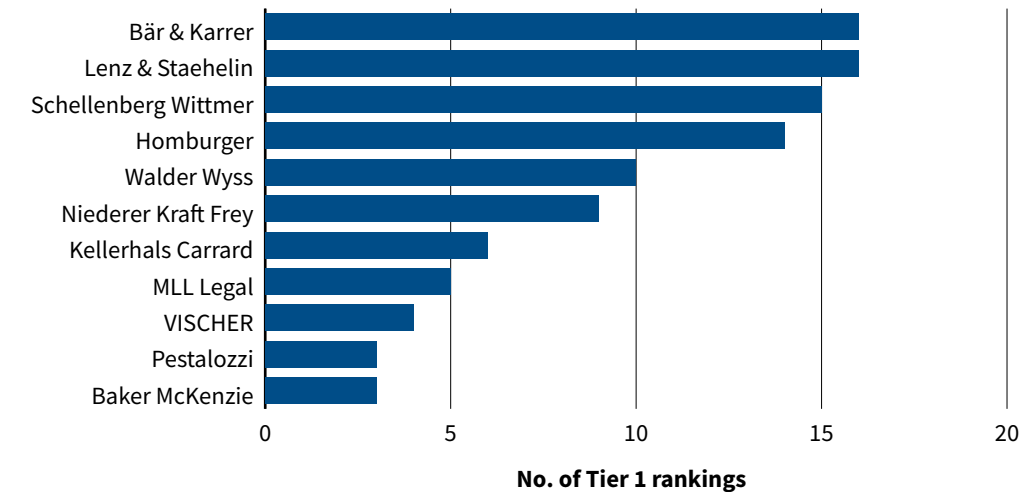
increase in immigration-related mandates. These trends in the Swiss labour market are affecting not just the work firms are doing but the firms themselves, with many reporting that they have been struggling to find qualified lawyers to build up their teams.

This is not the only factor influencing firms’ hiring processes. Gaberthüel mentions that: ‘Over the past 10 to 15 years, what has changed considerably is that first contact with future associates starts at university where they come in as summer interns at the end of the bachelor studies before doing their master’s degree.’ This differs to the traditional hiring processes, whereby firms would find associates, who have already completed both degrees, through first-year position applications. Gaberthüel points to the risk that this process may make it more difficult for smaller firms to find lawyers, as ‘there’s less capacity to have interns during university and the larger firms have already made this first contact.’ ►

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► 'If you compare this to London, probably also Frankfurt or New York, later hiring happens very seldomly,' says Gaberthüel. 'What you are more likely to see is senior associates moving from a large firm to a smaller firm or setting up their own shop.' Switzerland has seen an influx of boutiques set up by former big firm employees. Notable examples include tech law focused Arioli Law, corporate firm Advestra, and employment and pension firm Blesi & Papa.

Rather than lateral hiring, Gaberthüel says that Lenz & Staehelin aims to have a team of 'home-grown' lawyers 'who were trainees and have returned to the firm'. And to achieve this, large firms must change their offerings. 'Salaries are just one aspect of being happy and fulfilled in your job,' argues Gaberthüel. 'Things such as interesting, challenging work, flexibility of where you work and when you do your work as well as business developments and personal training are important things to offer.' This approach rests on a quid pro quo: firms require flexibility from lawyers in terms of working longer hours to complete their work, and offer those lawyers the same flexibility in return.

At the same time, firms must balance flexibility against collegiality. Gaberthüel notes that: 'Advocates of having a home office pre-Covid are now more likely to be physically in the office because they've realised that social interaction and getting to absorb the corporate culture is very important, especially for the younger colleagues.' Bär & Karrer has opened smaller offices in Basel and St Moritz, with the aim of, in Schreiber's words, helping people 'feel comfortable in the office and give them opportunities to develop in Switzerland'. Pestalozzi has also followed this approach and opened an office at the lake in Zürich.

The most notable development in this space occurred early in 2023, when NKF opened a new office in Geneva consisting of 27 lawyers, which Schreiber highlights as 'a very important move'. The office was the result of the firm's 'joining forces' with Tavernier Tschanz and a team of lawyers from Python, and grants it access to the French-speaking market. 'The reception from both existing and new clients has been encouraging,' says Peyer. 'The Geneva office is well-positioned for growth.'

#### LOOKING INTO THE CRYSTAL BALL: WHAT TO EXPECT FOR 2024

As interest rates stabilise, many in the market see prospects for higher activity in 2024. The full impact of Credit Suisse's collapse has yet to be fully felt, but few doubt that it will generate work across a range of sectors. Regulatory reform, too, poses both challenges and opportunities. Switzerland revised its corporate law in 2024, shifting to what Clemetson calls 'a more modern way of doing corporate things such as dividends that can be done throughout the year'. The change will impact listed companies, notes Gaberthüel, as they 'had to adapt their articles of incorporation and internal

## 'Salaries are just one aspect of being happy and fulfilled in your job.'

Tino Gaberthüel,  
Lenz & Staehelin

regulations'. Clemetson also points to new fund regulation the Limited Qualified Investor Fund (L-QIF), which 'will probably come into force on 1 March, subject to the Federal Council deciding at the end of January', and upcoming reform of the Financial Market Infrastructure Act, due 'next year'. As businesses adapt to these evolving regulations, the legal sector is poised to play a pivotal role in guiding clients through the intricacies of the updated legal landscape.

'Geopolitical tensions, notably exemplified by the Ukraine conflict, have injected an element of uncertainty,' notes Peyer. 'Legal professionals must remain vigilant about international developments that may impact their clients' interests.' Lawyers also point to technological changes as a key concern for 2024. 'Cyber risk has become a persistent threat, necessitating legal practitioners to implement robust data protection measures and rapid response capabilities,' comments Peyer. 'As generative AI becomes more prevalent, there will be a need to assess its implications for the enforcement of privacy, securities, and antitrust laws.' This will impact firms as well as clients: 'Questions may arise about the reliability and accountability of AI-generated legal documents, and legal professionals may need to adapt to new challenges and opportunities presented by these technologies.'

Still, as the Swiss legal world gears up for 2024, practitioners look forward with anticipation, ready to navigate an environment shaped by regulatory shifts, geopolitical uncertainties, and technological change. In Peyer's words: 'As the Swiss legal market confronts these multifaceted challenges, the resilience and adaptability of legal practitioners become crucial in shaping a forward-looking legal landscape.' LB



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# Overview of ESG law in Switzerland

## WHAT AMENDMENTS OR ADDITIONS TO SWISS ESG LAWS HAVE BEEN INTRODUCED IN THE PAST YEAR, AND HOW ARE THESE EXPECTED TO INFLUENCE BUSINESSES IN THE COMING YEAR?

In January 2022, the Swiss rules on due diligence and reporting regarding non-financial matters in the Swiss Code of Obligations (Swiss CO), which were adopted as a counterproposal to the 'Responsible Business Initiative' that was rejected by Swiss voters in November 2020, came into force (art. 964a ff. Swiss CO). These rules have started to apply as of the current financial year 2023 and the first reports according to the rules will have to be published next year (covering the financial year 2023). In a nutshell, large, listed companies and large companies supervised by the Swiss Financial Market Supervisory Authority (FINMA) will be required to publish a report on non-financial matters covering environmental matters, in particular CO<sub>2</sub> goals, social issues,

EU Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464) that entered into force in January 2023, the Swiss Federal Council has announced amendments to the Swiss CO rules that are expected to be published for review in summer 2024. It is expected that the scope of application for the reporting on non-financial matters will be expanded. For the reporting on climate matters, it should be noted that a specific ordinance (the Ordinance on the Reporting of Climate Matters) provides guidance on such reporting and will enter into force on 1 January 2024.

Finally, in June 2023, Swiss voters approved a new Federal Act on Climate Protection Targets, Innovation and Strengthening Energy Security (the Climate and Innovation Act), which is an important step for Switzerland's climate protection efforts and is expected to enter into force in 2025. The main obligation for Swiss companies included in the Climate and

Swiss CO have been introduced or amended as part of the corporate law reform:

- i) transparency obligations regarding certain payments to authorities for raw material companies;
- ii) a gender quota on a comply-or-explain basis for the board of directors and executive management of listed companies exceeding certain thresholds (with long transition periods); and
- iii) an annual binding shareholder vote on the board of directors' proposal on the compensation of the board members, the senior management and the advisory board (if any) (the so called 'say-on-pay').

The say-on-pay rules have largely applied in Switzerland since 2014, but they were newly introduced into the Swiss CO, with a few notable changes. The corporate law reform introduced the requirement of a consultative vote of the general meeting of shareholders on the remuneration report if the aggregate amount of variable compensation (typically for executive management) is voted on prospectively as well as the prohibition of sign-on bonuses, compensation for post-contractual non-compete covenants, and compensation payments for board members or members of a management body which are not in line with market practice.

**'There is no doubt that the Climate and Innovation Act is going to significantly influence all businesses in Switzerland over the next two decades.'**

Dr. Vera Naegeli, Bär & Karrer

employee-related issues, respect for human rights and combating corruption. The companies in scope will have to let their shareholders vote on the report on non-financial matters at the general meeting. Additionally, certain Swiss companies will have to publish a report on due diligence regarding child labour and/or conflict minerals and metals.

Even though many of the large Swiss companies have been producing sustainability reports of some sort for several years, so far no precedents of reports following the Swiss law requirements have been published. In addition, the Swiss rules leave a lot of room for interpretation and freedom of implementation, and the development of a Swiss CO reporting practice is currently using additional resources of businesses – which we believe will continue over the coming years, as best practices are established, and the legal framework evolves. At the same time, we expect that Swiss companies will adapt and amend the due diligence efforts in their supply chains. Additionally, based on international developments, particularly the

Innovation Act is that they must have net zero emissions by 2050 at the latest, considering direct and indirect emissions, with interim greenhouse gas reduction goals (by 2040) for the buildings, transport, and industry sectors. Even though it is not clear (yet) what the implications are for companies that do not reach these targets, there is no doubt that the Climate and Innovation Act is going to significantly influence all businesses in Switzerland over the next two decades, arguably more than the reporting obligations that were introduced recently, since it requires operational changes rather than transparency on the status quo.

## HOW HAS THE REVISION OF THE SWISS CORPORATE LAW AFFECTED ESG COMPLIANCE AND REPORTING REQUIREMENTS FOR SWISS COMPANIES?

In addition to the new due diligence and reporting obligations that have been introduced in the Swiss CO as a counterproposal to the 'Responsible Business Initiative' in 2022, certain additional ESG-related regulations in the

## SWISS LAWS APPLICABLE TO FINANCIAL INSTITUTIONS CONTAINS PROVISIONS RELATED TO ESG CRITERIA. HOW HAVE THESE PROVISIONS BEEN INTEGRATED INTO SWISS FINANCIAL SERVICES AND INSTITUTIONS?

In addition to the due diligence and reporting obligations in the Swiss CO, ESG rules in the financial industry in Switzerland are characterised by FINMA and the self-regulation of professional associations, eg FINMA requires the largest banks and insurance companies (supervisory categories 1 and 2) to specifically disclose climate-related financial risks and FINMA has adopted guidelines on sustainability-related information for Swiss collective investment schemes. Further, the conduct rules in the Federal Act on Financial Services (FinSA) have been complemented by guidelines and requirements of professional associations aiming at the prohibition of greenwashing, eg the guidelines of the Swiss Bankers Association (SBA) that are mandatory

for its members provide that as of January 2024 clients must be informed on ESG risks and ESG characteristics of the products offered, that clients' ESG preferences must be assessed and documented, and that client advisers should be trained in ESG investment solutions. The Asset Management Association Switzerland (AMAS) has developed a self-regulation for sustainable asset management that its members must adhere to.

#### IN LIGHT OF THE SWISS PARLIAMENT'S RECENT DISCUSSIONS ON BIODIVERSITY, HOW MIGHT EMERGING ENVIRONMENTAL REGULATIONS IMPACT BUSINESSES WITHIN SWITZERLAND?

Based on Switzerland's biodiversity strategy, the Federal Council adopted the biodiversity action plan in 2017 with a current implementation phase until the end of 2024. However, due to certain shortcomings of the plan, in 2020, NGOs have launched the biodiversity initiative calling on the government and the cantons to preserve and increase biodiversity in Switzerland, mainly by protecting land and by providing more financial resources. The Swiss Parliament is currently discussing the biodiversity initiative and an indirect counterproposal. While it remains to be seen whether Swiss voters will have to vote on the biodiversity initiative, it is imminent that Swiss companies will increasingly be required to address environmental aspects of how they do business (see also the next question).

#### CONSIDERING THE SWISS FEDERAL COUNCIL'S OBJECTIVES FOR A CIRCULAR ECONOMY, WHAT LEGISLATIVE MEASURES ARE ANTICIPATED TO PROMOTE SUSTAINABILITY AND RESOURCE EFFICIENCY AMONG SWISS BUSINESSES?

The Federal Council aims to foster the circular economy by a revision of the Environmental Protection Act, which is currently still being



**‘It is imminent that Swiss companies will increasingly be required to address environmental aspects of how they do business.’** Dr. Vera Naegeli, Bär & Karrer

discussed in the Swiss parliament. The revised act will introduce specific regulation on circularity measures aiming at conserving natural resources, reusing products and recycling materials that are currently often

disposed of. The Swiss regulation is inspired by the EU new circular economy action plan, one important pillar of the European Green Deal, and it will have direct effects on Swiss businesses.

#### Author profile

Dr. Vera Naegeli heads the ESG practice of Bär & Karrer. She regularly advises clients, including listed and financial market supervised companies, on Swiss ESG requirements, and works with several companies on ESG governance related matters. Further, Vera is experienced in international and domestic M&A transactions and in general corporate and regulatory matters. In 2022, Vera won the IFLR Rising Star Award EMEA for M&A and the jurisdiction award for Switzerland (2022). Euromoney's Expert Guide lists her as Rising Star in the fields of corporate/M&A/private equity.

Vera teaches at the Executive School of Management, Technology and Law (Executive MBA) of the University of St. Gallen and at the MAS Economic Crime Investigation at the Lucerne University of Applied Sciences and Arts. She regularly publishes in her field of expertise.

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## MOVERS AND SHAKERS

Global 100 leaders review the past 12 months and give their prognosis on how the market will shape up in 2024

### REAL QUESTION

'It's no secret that across the industry there has been a sustained decline in demand. Some firms assumed that Covid levels of demand were the new normal. But there's been a change in circumstances that has led to a softening of demand. I'd be an idiot if I wasn't concerned about things like the Russia-Ukraine situation, rising interest rates, and inflation. Inflation is here to stay for a while. The real question is whether law firms are willing to pass on the effect of that to clients who are trying to deal with that themselves.'

**Gregor Pryor, managing partner for Europe and the Middle East, Reed Smith**

### SITTING UNCOMFORTABLY

'We're never comfortable. Our strapline is being ambitious, always better. So, there's a dynamic in there which is to say "look, we've done well, but let's go again". Comfortable can sometimes be a negative word that you're just going to rest on your laurels, but our trajectory is about pushing, being dynamic, energetic and always better.'

**Hamid Yunis, London managing partner, McDermott**

### HEARTS AND MINDS

'The energy transition is probably the biggest opportunity. There will continue to be tremendous amounts of capital invested around the move to a lower-carbon economy. The threat is the culture within law firms and whether or not they remain attractive places for the next generation of talent to work and it's something we worked very hard on here to make sure that we're winning the hearts and minds of our newest lawyers.'

**Keith Fullenweider, chair, Vinson & Elkins**

### MOVING TOO FAST

'AI presents both a challenge and an opportunity. We spoke to a client of ours, talking about some products they'd developed. They went to an AI forum and had to throw all the products in a bin, as they were already out of date. It's so live. Everybody is finding that it is hard to put your foot on a ball that's moving so quickly.'

**Rich Youle, head of London office, Skadden**

**'The US firms don't have any magic formula – it's just that they have a very large economic driver behind them, which is the US economy.'**

**Simon Levine, DLA Piper**



### FUTURE PROOF

'The choice between increasing profit or boosting investment is an interesting one. Law firms try to increase profit each year to retain and attract talent, and we need to be competitive. Being profitable is part of being a leading law firm. But we have an eye on the future as well. We don't take a short-term view; we try to achieve a balance. It's a bit like running a country – you have to plan for the future. We try to build the firm to continue to service our clients, so that the next generation can inherit a firm that they're proud of – an enduring institution.'

**Mark Rowley, partner-in-charge – Dubai, London and Riyadh, Baker Botts**

### TIME IS RIGHT

'There are always boom years where the market is very strong. But it's especially good when markets are turbulent and people still do well. Transactional lawyers are not quite as busy right now, but that could be an issue of market timing rather than market turmoil. They're all saying there's a huge amount of capital out there to be invested, but everyone is ultra-cautious at the moment.'

**Tom Sprange KC, London managing partner, King & Spalding**

### GREATER VALUE

'The latest inflation numbers from the US have been okay, which is a good sign. There's no question that interest rates in particular have affected M&A globally, particularly in the private equity space. There hasn't been a significant shift this year in the approach to value for money. Clients are very careful and cautious on fees generally. That's understandable. Times are tough and companies have to be careful about legal spend.'

**Justin Stock, London managing partner, Cooley**

### LOOKING UP

'The economic environment and constraints that arise with the higher interest rates and inflation means expectations had a somewhat damping effect on the transactional side but ultimately that leads to some pent-up demand. As the interest rate appears to stabilising, we're seeing greater levels of activity now as our strategic and private capital clients are looking to continue their strategic growth.'

**Tom Thesing, London managing partner, Sidley**

### EUROPEAN EVOLUTION

'In the space of three decades or so, infrastructure in Europe has transitioned from being mainly owned and operated by parts of the public sector to being classes of assets increasingly in the private sector. Private equity and infrastructure funds have played a leading role in this evolution drawn by the attractive levered returns their downside-protected revenues offer investors.'

**Justin D'Agostino, chief executive, Herbert Smith Freehills**

### BUILDING OUT

'During Covid, the bigger global clients turned to law firms for a full range of services across a wide range of practices and jurisdictions, because, in difficult times, it's a lot easier to do it that way. Some of the narrower international firms are building out because they feel potentially susceptible to challenges from US firms. The US firms don't have any magic formula – it's just that they have a very large economic driver behind them, which is the US economy.'

**Simon Levine, global co-chief executive, DLA Piper**

Abu Dhabi National Oil Company	83	Clyde & Co	58, 60-61, 74, 84, 91	gunnercooke	14, 16	Mishcon de Reya	14-15, 86	Simmons & Simmons	
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TaylorWessing AI

# Unlocking potential

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