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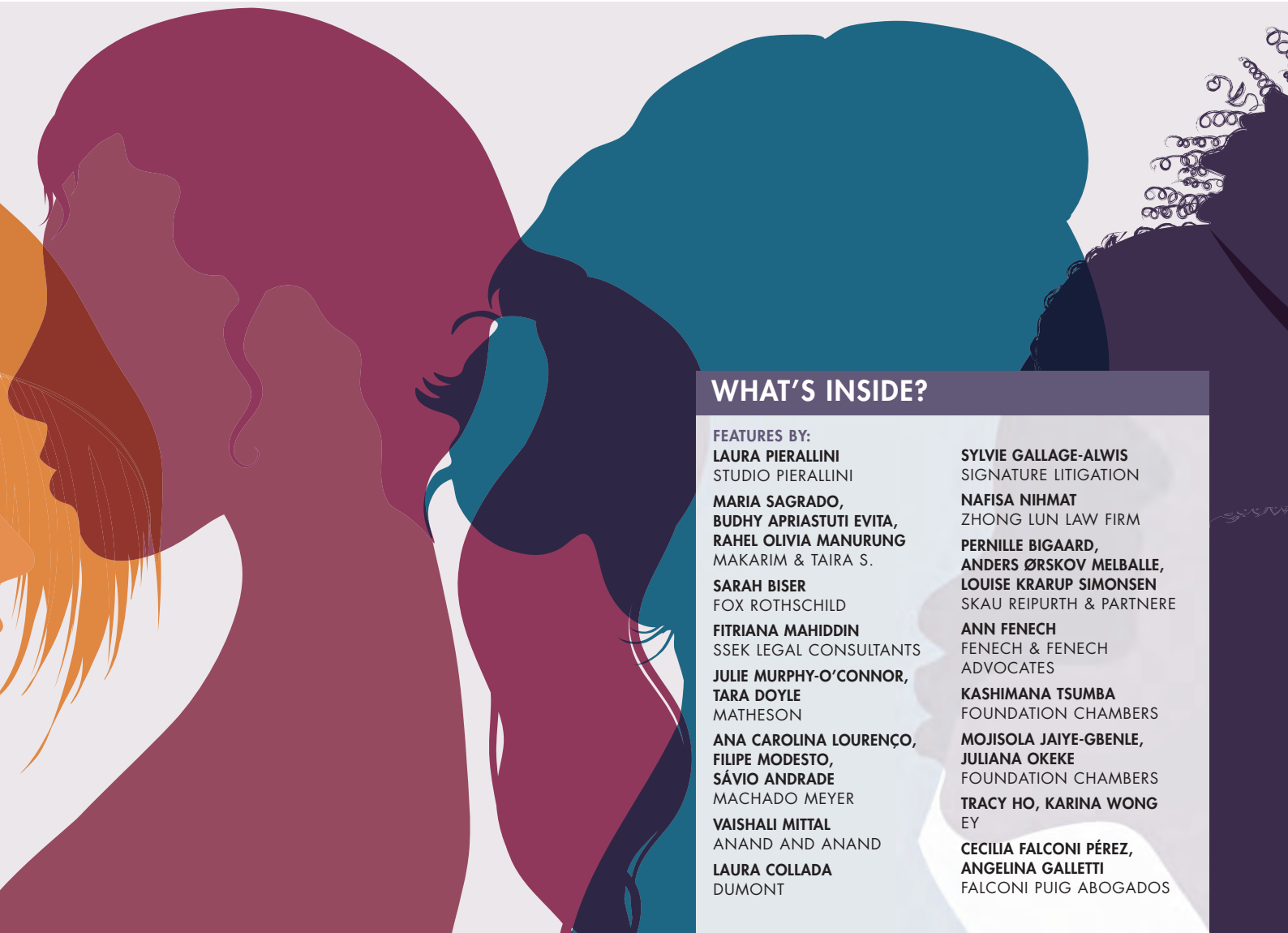
THE WORLD'S LEADING LAWYERS CHOSEN BY THEIR PEERS

27 years' experience

WOMEN IN BUSINESS LAW



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WOMEN IN BUSINESS LAW

Methodology

Welcome to the 2021 *Guide to the World's Leading Women in Business Law,* the international legal market's leading guide to the top female legal practitioners advising on business law.

The inaugural edition in 2010 was met with an overwhelmingly positive response from the female business community endorsing the idea of a guide devoted exclusively to the best female practitioners globally. The *Women in Business Law*, is one of the prolific Expert Guides publications and clearly the benchmark in the industry.

The idea to promote and celebrate successful women in the legal industry was our initiative and the Expert Guides brand is unique among it's competitiors due to a solid reputation over 27 years.

When first published in 1994, the Expert Guides were the first-ever guides dedicated to leading individuals in the legal industry. Since then we have continued to focus on individuals considered by clients and peers to be the best in their field.

The guides for each practice area are updated regularly. Our research process involves sending questionnaires to senior practitioners or in-house counsel involved in each practice area in over 90 jurisdictions, asking them to nominate leading practitioners based on their work and reputation. The results are analysed and screened for firm, network and alliance bias. The list of experts is then discussed and refined with advisers in legal centres worldwide.

Our researchers have compiled a list of specialists in 89 jurisdictions and 32 practice areas for this guide. These specialists have been independently offered the opportunity to enhance their listing with a professional biography. The biographies give readers valuable, detailed information regarding each lawyer/adviser's practice and, if appropriate, their work and clients.

We owe the success of this guide to all the in-house counsel and firms that completed questionnaires and met our researchers. Thank you. We hope you find the guide to be a useful tool. All information was believed to be correct at the time of going to press.

The Research Team

EXPERT GUIDES RESEARCH

Expert Guides has been researching the world's legal markets for over 27 years, and has become one of the most trusted resources for international buyers of legal services.

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Insurance and reinsurance
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Life sciences
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Patents
Privacy and data protection
Rising stars
Tax
Technology, media and telecommunications
Trade mark
Transfer pricing
Trusts and estates
White collar crime
Women in business law

Our guides are distributed to and regularly used by the world's most prominent decision-makers and frequent buyers of legal services. Each guide has an extensive distribution list plus additional tailoring to its area of focus.

Each guide is also reprinted in full at www.expertguides.com

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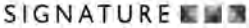

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AVIATION

Feature for:

AVIATION

Age-based restrictions for pilots and crew gender equality – overview of recent discrimination issues in the aviation sector

Laura Pierallini
Studio Pierallini
Rome

On 13 April 2021 the Italian Supreme Court issued the Judgment No. 9662/2021 on a case concerning the legitimacy of an Italian national measure setting special age restrictions for aircraft pilots involved in national intelligence operations.

In particular, the case was brought to the attention of the Italian Supreme Court by a pilot employed by an aviation company operating in the field of national intelligence, whose employment contract was automatically terminated upon reaching the age of 60 years pursuant to the provisions of the Presidential Decree dated 9 September 2008. The reason for the dispute is that the retirement age for commercial airline pilots in Italy is set at 65 years (under Regulation 1178/2011) and accordingly the applicant, given that the company in question is formally registered as a civil aviation company, considered the above Regulation also applicable to his case while the age limit set for national intelligence pilots as an age-based discrimination incompatible with the EU law.

On this last point, the Italian Supreme Court made a request for a preliminary ruling to the Court of Justice of the European Union, pursuant to Article 267 of the Treaty on the Functioning of the European Union, asking if the national measure was compatible with the EU anti-discrimination legislation or otherwise.

The European Court of Justice ruled on the point with the Judgment No. C-396/18 dated 7 November 2019, concluding that the Italian Presidential Decree dated 9 September 2008 complied with the provisions set out by the anti-discrimination Directive 2000/78/EC, both with reference to Article 5.2, considering the measure to be compatible with the need for public security ("*[…] measures aimed at avoiding aviation accidents by verifying the pilot's physical fitness so that human error cannot be the cause of such accidents, undeniably constitute measures suitable for ensuring public safety*", paragraph 47), and with Article 4.1, being the age requirement a determining occupational requirement ("*[…] a difference of treatment based on a particular characteristic shall not constitute discrimination where, by reason of the nature of the work or the context in which it is carried out, such a characteristic constitutes an essential and determining occupational requirement, provided that the aim is legitimate and the requirement is proportionate*", paragraph 10).

"AVIATION AUTHORITIES AND INTERNATIONAL INSTITUTIONS HAVE BEEN DEALING FOR A LONG TIME ON THE NEED TO ENSURE PERSONNEL GENDER EQUALITY IN THE AIR TRANSPORT INDUSTRY"

Once determined the measure introduced by the Italian Presidential Decree dated 9 September 2008 to be in compliance with the anti-discrimination Directive 2000/78/EC "*provided that the aim is legitimate and the requirement is proportionate*", the EU Court of Justice left the decision on whether the measure was necessary and proportionate to the Italian Supreme Court. The latter ruled in favor of the proportionality of the measure, given that reaching the age of 60 years is the strict limit for the performance of flight activities by aircraft pilots involved in national intelligence operations under the Italian legal framework. The Court also relied on its own case law to reject the applicant's theory according to which the normal rules governing the retirement age of airline pilots were applicable, in particular by referring to its Judgments No. 7297/1998, No. 10882/2001 and No. 15366/2002 in which it was largely established that, having passed the age of 60 years, even commercial airline pilots can continue to serve as pilots only if they are part of a crew made up of younger colleagues (a circumstance which, obviously, does not suit national intelligence operations).

AVIATION

Having ascertained that there has been no discrimination in this case, it should be noted that in the civil aviation sector there are other types of discrimination, first of all an atavic foreclosure against women. International authorities and institutions have been deeply reflecting for a long time on the need to ensure personnel gender equality in the global air transport and aviation industry.

According the Society of Women Engineers (SWE), a group that focuses on supporting women in engineering and technology, only about 13% of engineers are females, which is still higher than the percentage of women in commercial pilot roles (5% according to the US Federal Aviation Administration). As it is clear, the above is nowhere near the parity to which the industry aspires.

The two main reasons which led to the above scenario are the lack of incentive in the school environment which do not effectively guide female students toward pursuing engineering and aviation ambitions and, mostly, the often-hostile corporate culture full of bias and gender stereotypes.

A first important step was taken with the Resolution No. A39-30 adopted at the 39th session of the ICAO Assembly in autumn 2016 ("*ICAO Gender Equality Programme promoting the participation of women in the global aviation sector*") which committed "*to enhancing gender equality and the advancement of women's development by supporting UN Sustainable Development Goal 5 (Achieve gender equality and empower all women and girls) including by aiming to achieve an aspirational goal of 50-50 (women-men) by 2030 at all professional and higher levels of employment in the global aviation sector*".

In its Resolution No. A39-30, the Assembly urged States, regional and international aviation organizations and the international aviation industry "*to demonstrate strong, determined leadership and commitment to advance women's rights and to take the necessary measures to strengthen gender equality*" by supporting policies, as well as the establishment and improvement of programmes and projects, to support women's careers within ICAO's governing and technical bodies, the ICAO Secretariat and the global aviation sector.

Within the framework of the above Resolution, ICAO recently announced that a new initiative on "Air Transport Gender Equality" will be developed. This initiative includes a cooperation between ICAO, the International Labour Organization (ILO) and the UNESCO and will include the establishment of air transport gender indicators through the collection of workforce statistics (to be provided on a voluntary basis from States).

It is an initiative focusing on short, medium and long-term goals. In the short term, ICAO aims to the progressive creation of an online platform for sharing data on workforce statistics, necessary to get the full picture of the situation and to better identify gaps in personnel planning and training and gender inequality. In the medium-long term, thanks to the information and statistics collected, through regularly updated studies and publications it will be possible to provide guidelines for decision makers to create and to invest in more opportunities for gender equal employment and training in the global aviation industry.

To date, also thanks to the joint effort of ICAO, ILO and several UN agencies, something is moving forward: some of the most important worldwide airlines are taking action to reduce gender inequalities in their business activity (for instance, British Airways are ensuring that gender equality is one of their central aims in promoting diversity among leadership positions). Nevertheless, much remains to be done in order to achieve as soon as possible what is, to all intents and purposes, one of the most important and urgent challenges in our sector.

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Yvonne is a partner in the Finance and Capital Markets Department and advises on all aspects of aviation, shipping, rail and other asset financing, trading and leasing matters on a daily basis. Yvonne has gained considerable experience in advising on all aspects of the structuring of asset purchase, sale, financing and leasing transactions and acts for a number of aircraft lessors, financiers and airlines in leveraged, syndicated and export credit agency backed financing facilities. Yvonne also has considerable experience in advising on structured finance, ABS (asset-backed securities) and repackaging transactions relating to all such asset classes including the establishment of special purpose companies funded by public and private issuances.

Yvonne has significant experience in advising on all aspects of the Cape Town Convention and in addition regularly provides advice on registration issues with the Irish Aviation Authority.

Yvonne is also a lecturer and tutor on the Law Society of Ireland's Certificate and Diploma courses in Aviation Leasing and Finance.

Experience Highlights

- Advised and acted as Irish counsel in connection with the US$ 585 million ABS of a portfolio of 21 aircraft to be leased to 15 commercial airlines located in 12 countries.
- Acted as Irish counsel to the lender parties in respect of a US$250 million revolving credit facility secured by the portfolio of loans made to various aircraft lessors.
- Advised on the issuance of $1.21 billion secured notes and acted as Irish counsel in connection with the acquisition of a portfolio of 48 aircraft with leases attached.
- Advised on the issuance of more than $916 million secured notes in respect of the acquisition of 52 aircraft and 1 aircraft engine.
- Advised on the issuance of more than $713 million secured notes in respect of the acquisition of 54 aircraft and 6 aircraft engines.
- Acted as Irish counsel to the sole structuring agent and joint bookrunner on a US$250.8 million ABS of a portfolio of 18 narrow bodied aircraft.
- Advised on the issuance of $640 million secured notes in connection with the securitisation of a portfolio of over 30 aircraft.
- Acted for an aircraft leasing company on the European export credit agency backed financing of a portfolio of 30 SuperJet 100 aircraft.
- Advised an aircraft leasing company on the export credit agency supported financing of a number of Airbus A320-200 aircraft.
- Acts for leading international financial institutions in the provision of facilities to Irish companies for the acquisition of Airbus and Boeing aircraft.
- Advises on the establishment of numerous orphan and SPV structures to finance a variety of assets including aircraft and helicopters.

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Laura Pierallini is the founder and name partner of the Italian aviation law firm Studio Pierallini.

She spent several years in the legal and tax department of Arthur Andersen and then she was the managing partner of the international law firm Coudert Brothers in Rome from 2001 to 2005.

She is a professor of Commercial Law and Contracts Law at the LUISS University of Rome.

Ms Pierallini has practised aviation law since 1988, providing expert advice to clients across the whole of the international aviation sector, including aircraft finance and leasing, M&A, anti-trust and regulatory, litigation and dispute resolution, insolvency and restructuring, employment and corporate matters. Her clientele includes, among the others, Italian and foreign airlines, private operators, manufacturers, lessors, financiers, airports, handlers and travel agents.

Ms Pierallini has been awarded as Italian Lawyer of the Year in Transport Law by TopLegal Industry Awards 2021.

She has also been recognised Global Elite Thought Leader 2018-2021 (aviation regulatory) and Recommended Global Lawyer 2018-2020 (aviation regulatory, aviation contentious, aviation finance) by Who's Who Legal, as well as Best Aviation Lawyer for Italy by Client Choice Awards 2020. She was also repeatedly shortlisted as Best Aviation Lawyer for the Europe Women in Business Law Awards (2015 to 2019).

Ms Pierallini regularly attends and organises conferences on air transport, delivering speeches and moderating panels at various Italian and international symposia, in particular organised by IATA, EALA, EAC, IBA, EBAA and LUISS.

She is a committee member of the European Air Law Association and a member of the International Aviation Womens Association and the European Aviation Club.

She is also author of many national and international publications on aviation, tourism and commercial law.

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BANKING AND FINANCE

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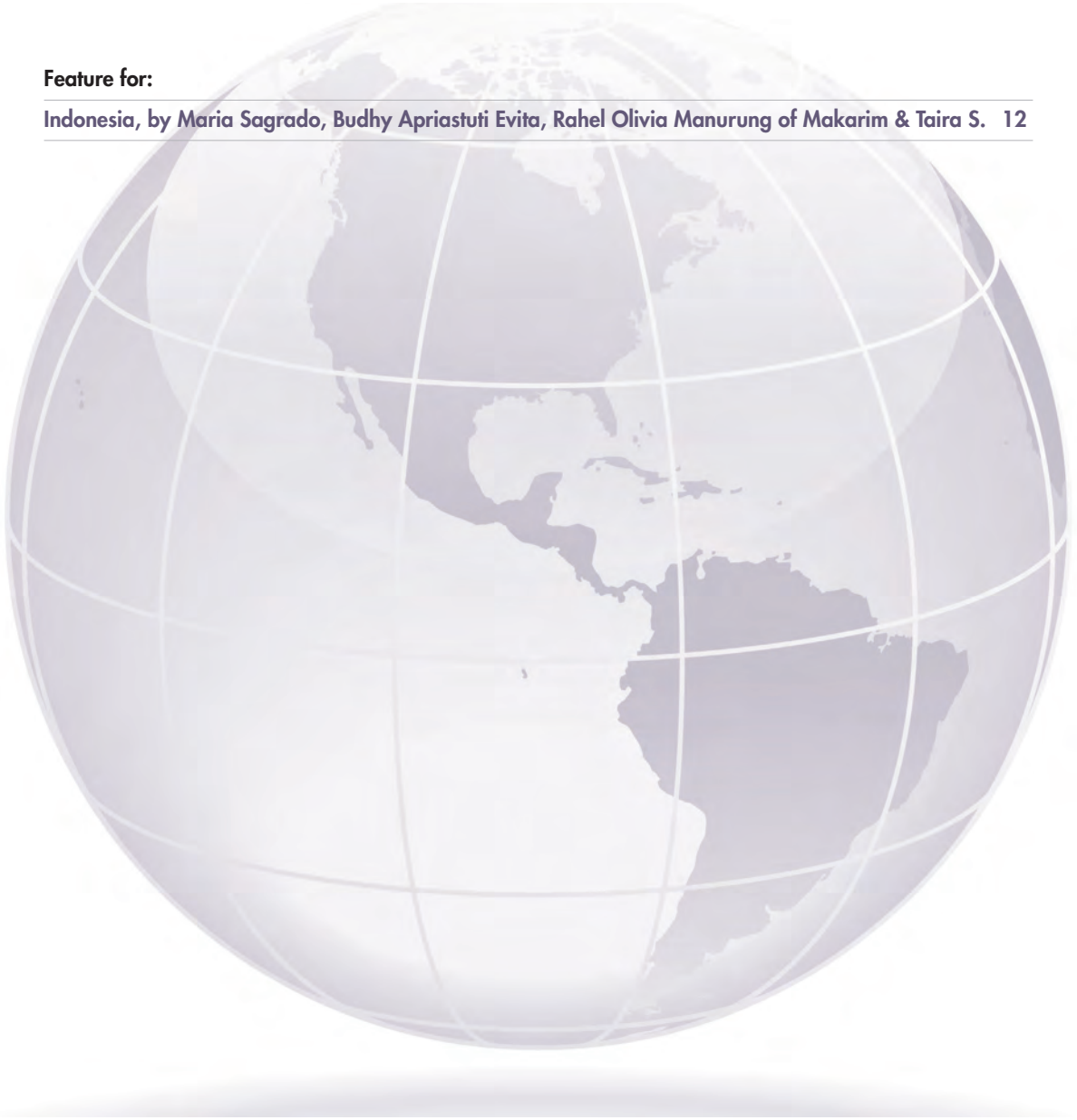

BANKING AND FINANCE

The Implementing Regulation of the Payment Systems Regulation: Payment Services Providers

Maria Sagrado (pictured), Budhy Apriastuti Evita, Rahel Olivia Manurung
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Following the issuance of Bank Indonesia Regulation No. 22/23/PBI/2020 on Payment Systems ("**Payment Systems Regulation**") on 30 December 2020 which came into force on 1 July 2021 that serves as an "umbrella" regulation that provides a regulatory framework for the Indonesian payment systems industry, this advisory discusses what follows the Payment Systems Regulation, that is one of the two newly issued implementing regulations of the Payment Systems Regulation, ie. Bank Indonesia Regulation No. 23/6/PBI/2021 on Payment Services Providers (*Penyedia Jasa Pembayaran* ? "**PJP**") which was issued and came into force on 1 July 2021 ("**PBI PJP**").

As discussed in the Advisory on the Payment Systems Regulation, the Payment Systems Regulation classifies payment systems services providers into two main categories: (i) PJP, which further regulated under the PBI PJP; and (ii) Payment System Infrastructure Providers (*Penyelenggara Infrastruktur Sistem Pembayaran* ? "**PIP**"), which further regulated under Bank Indonesia Regulation No. 23/7/PBI/2021 on PIP. Upon this classification, the following types of licensed payment system services providers are now categorized as PJPs and they are subject to the PBI PJP:

1. Payment Gateway Providers;
2. E-Wallet Providers;
3. E-Money Issuers;
4. Issuers and Acquirers of Debit Cards and Credit Cards; and
5. Fund Remittance Operators.

This PBI PJP has 276 Articles in 11 chapters covering various topics, and it revokes the following regulations and provisions:

1. Bank Indonesia Regulation No. 11/11/PBI/2009 on the Organization of Card-Based Payment Instrument Activities and its amendment;
2. Bank Indonesia Regulation No.18/40/PBI/2016 on the Organization of the Processing of Payment Transactions;
3. Bank Indonesia Regulation No. 19/12/PBI/2017 on the Organization of Financial Technology;
4. Bank Indonesia Regulation 20/6/PBI/2018 on Electronic Money;
5. the provisions on the arrangement and supervision of payment systems of Bank Indonesia Regulation No. 18/9/PBI/2016 on the Arrangement and Supervision of Payment Systems and the Management of the Rupiah Currency; and
6. the provisions on licensing of Bank Indonesia Regulation No. 14/23/PBI/2012 on Fund Remittance. Other than the licensing provisions, fund remittance operators are still subject to this Bank Indonesia regulation on Fund Remittance.

Meanwhile, the implementing regulations of the regulations number 1. to 4. above remain in effect until 30 June 2022 as long as they are not contrary to the PBI PJP.

Given the broad scope of the PBI PJP, this advisory only focuses on the scope of activities of PJPs, the licensing requirements, the ongoing capital, the single ownership policy and restrictions on corporate actions, particularly the requirements which apply to non-bank entity PJPs.

> "FOREIGN PARTIES ARE ONLY ALLOWED TO HOLD UP TO 49% OF THE SHARES WITH VOTING RIGHTS"

The scope of activities of Pjps

Upon the issuance of the Payment Systems Regulation, the structure of the payments systems industry changed from an institution-based approach to an activity and risk-based approach. PBI PJP introduces the following complete scope of activities of PJPs:

Scope of Activities	Remarks
Providing sources of funds information	This activity includes the provision of information about sources of funds for initiating payments with the users' consent, which is conducted through cooperation and/or a connection with a PJP administering sources of funds or other PJPs determined by Bank Indonesia.
Initiating payments and/or acquiring services	This activity includes forwarding payment transactions, which includes the following: 1. forwarding orders and instructions to move funds through tools, media and/or sets of procedures using certain methods or technology in the payment transactions; and/or 2. forwarding payment-transaction data in the form of instrument data, payment-transaction amount data and other payment-transaction data. In forwarding payment transactions, PJPs may: 1. store data on sources of funds and/or access to sources of funds including providing a platform to facilitate users to store data on sources of funds and/or access to sources of funds; 2. process payment transactions through the use of various instruments; 3. acquire the providers of goods and/or services; 4. make advance payments to providers of goods and/or services; and/or 5. forward funds (disbursements) to providers of goods and/or services.
Administering sources of funds	This activity includes administering accounts for sources of funds and executing the authorization of payment transactions. The executing the authorization of payment transactions are approval for a transaction after the relevant payment transaction data has been forwarded through the following methods: 1. the verification or authentication of the identities of the owners of the sources of funds that conduct payment transactions; 2. the validation of access to sources of funds and payment transactions; and 3. ensuring the adequacy of the sources of funds.
Fund Remittance services	This activity includes accepting and executing fund remittance instructions where the sources of funds do not originate from accounts administered by the fund remittance operators.

BANKING AND FINANCE

The licensing requirements

1. License Categories

To engage in the above PJP activities, both new players and existing licensed payment system services providers must first obtain a PJP license.

Bank Indonesia issues 3 categories of PJP licenses depending on the activities of the PJP. A PJP License allows the PJP to engage in several activities, as long as the activities are in the same category. The license category determines the minimum paid up capital (initial capital) that the PJP must have as shown in the table below.

License Category One	License Category Two	License Category Three
Providing sources of funds information	Providing sources of funds information	Fund remittance services
Initiating payments and/or acquiring services	Initiating payments and/or acquiring services	Other activities determined by Bank Indonesia
Administering sources of funds		
Fund remittance services		

Paid Up Capital (Initial Capital) for License Category One	Paid Up Capital (Initial Capital) for License Category Two	Paid Up Capital (Initial Capital) for License Category Three	
IDR15 Billion (approx. USD1,034,482.76[1])	IDR5 Billion (approx. USD344,827.59)	If providing a system for other PJPs holding license	IDR1 Billion (approx. USD68,965.52)
		If not providing a system for other PJPs holding license category three	IDR500 Million (approx. USD34,482.76)

The Term of a PJP License

Generally, the PJP licenses issued by Bank Indonesia do not have a specific term. However, Bank Indonesia can determine a PJP license term if Bank Indonesia deems necessary, according to its license category, activity it engages in, and/or the processed sources of funds.

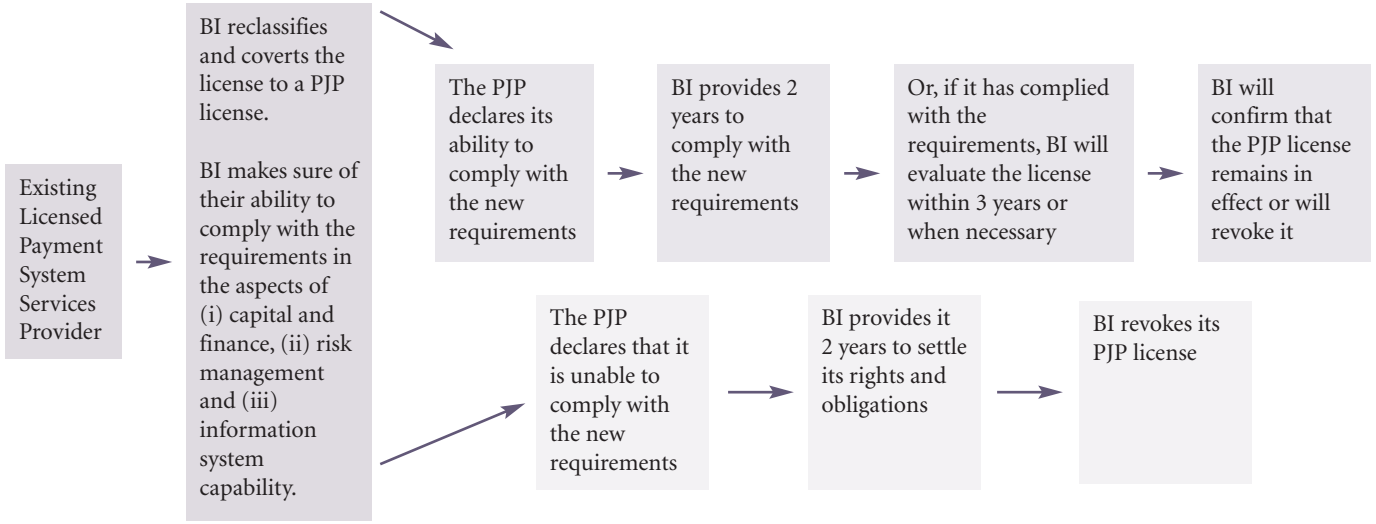
The Requirements to Obtain a PJP License

The following are the aspects of the requirements that must be satisfied by a party that applies for a PJP license:

Aspects	Remarks
Institutional	This aspect includes the legality of the legal entity, its ownership, control and management. The highlighted requirements for a non-bank entity PJP in this aspect are the following: **1. Ownership and Control** At least 15% of all the shares and 51% of the shares with voting rights of a non-bank entity PJP (calculated up to the ultimate shareholder level) must be owned by Indonesian parties. The regulation indicates that foreign parties may hold up to 85% of all the shares, but subject to the control limitation explained in the following paragraph. For a non-bank entity PJP in the form of a listed company, the foreign ownership limitation only applies to shareholding percentages of 5% or more. Shareholdings with a percentage below 5% traded on the stock exchange are calculated as domestically owned shares, unless: a. they are traded on the Indonesian stock exchange and declared to be owned by a foreign party by the party to be licensed as a PJP; or b. they are traded outside Indonesia. With regard to control in a non-bank entity PJP, foreign parties are only allowed to hold up to 49% of the shares with voting rights (calculated up to the ultimate shareholder level). In addition, if its shares in a non-bank entity PJP grants a shareholder a special right to: a. nominate a majority of the members of the Board of Directors ("**BOD**") and/or Board of Commissioners ("**BOC**"); and/or b. veto a decision or approval of the General Meeting of Shareholders that has a significant impact on the company, such as an amendment to the Articles of Association, a change to the capital structure, the appointment and termination of members of the BOD and BOC, a merger, consolidation, acquisition, split-off and dissolution of the company, the right must be held by an Indonesian shareholder(s). This means that even if a foreign shareholder can hold up to 85% of all the shares in a PJP company, control of the company must remain with the Indonesian shareholders. To determine the ownership and control of a PJP company, the company must submit its self-assessment of the ownership and control structure to Bank Indonesia at least once in a year or anytime there is a change to the ownership and control structure. If there is a discrepancy between the assessment made by the company and that made by Bank Indonesia, the assessment made by Bank Indonesia will prevail. **2. Management** At least 1 member of the BOD must be domiciled in Indonesia. Bank Indonesia will conduct a fit and proper test of the following parties: a. shareholders of 25% or more of all the shares issued with voting rights or less than 25% but it can be proven that the party concerned has control of the party to be licensed as a PJP, either directly or indirectly; b. the members of the BOD and BOC. Bank Indonesia will conduct the fit and proper tests for the following: a. to process the application for a PJP license; b. a plan to change the shareholders or members of the BOD or BOC; c. a Bank Indonesia decision based on its supervision (if it has found a violation, fraud and/or deterioration of business performance that has a significant impact on the operation of the payment system). The fit and proper test is conducted through an administrative assessment and/or interview to ensure the following requirements are satisfied: a. integrity; b. a financial reputation; c. financial feasibility; and/or d. competence.
Capital And Finance	This aspect includes the minimum paid up capital requirement, a feasibility analysis and business projections. The highlighted requirement in this aspect is that the party to be licensed as a PJP must satisfy the paid-up capital requirement (initial capital) explained in 1. above.
Risk Management	This aspect includes the legal risks, operational risks and liquidity risks.
Information System Capability	This aspect includes the security and reliability of the information system ie, the availability of security control, a fraud management system, information system audits and security testing, and certain level of capability and availability of the information system.

BANKING AND FINANCE

How an Existing Licensed Payment System Services Provider Can Convert Its License to a PJP License



The institutional aspect requirements regarding the ownership and control only apply to existing licensed payment system services providers as non-bank entity PJPs if, after 1 July 2021, a change is made to the share ownership composition by the foreign parties or there is a change in control by the foreign parties.

Ongoing capital

In addition to the initial capital, now a PJP must also meet certain ongoing capital requirements under the PBI PJP during the operation of its business activities. The ongoing capital consists of:

1. core capital, which includes:
   a. the main core capital (*modal inti utama*); and
   b. additional core capital (*modal inti tambahan*); and
2. supplementary capital (*modal pelengkap*).

The minimum ongoing capital for a non-bank entity PJP is calculated according to the payment systems capital requirement ratio with the following conditions:

1. at least 10% (ten percent) of the risk-weighted transactions (*transaksi tertimbang menurut risiko*) for all PJP classification (systemic, critical, general); and
2. additional capital requirements (surcharges) according to the PJP classification of:
   a. 2.5% of risk-weighted transactions (*transaksi tertimbang menurut risiko*) for a PJP with a systemic impact[2]; and
   b. 1.5% of risk-weighted transactions (*transaksi tertimbang menurut risiko*) for a PJP with a critical impact[3].

The single ownership policy and restrictions on corporate actions

Under the PBI PJP, no party may hold:

1. shares constituting 25% (twenty five percent) or more of all the shares issued by a PJP with voting rights; or
2. shares constituting less than 25% (twenty five percent) of all the shares issued by a PJP with voting rights but it can be proven that the party concerned has control of the PJP, either directly or indirectly,

in more than 1 non-bank entity holding a license as a PJP in the same category and/or in more than 1 non-bank entity holding a license as a PJP and a determination as a PIP.

In addition, the PBI PJP also prohibits non-bank entity PJPs from taking any corporate action which will cause a change of the party which holds:

1. shares constituting 25% (twenty five percent) or more of all the shares issued by the PJP with voting rights; or
2. shares constituting less than 25% (twenty five percent) of all the shares issued by the PJP with voting rights but it can be proven that the party concerned has control of the PJP, either directly or indirectly,

within 5 years since the PJP license was issued the first time except with Bank Indonesia's approval.

1 All USD figures assume an exchange rate of USD1 = IDR14,500
2 According to the PBI PJP, a PJP with a systemic impact means a PJP that has a systemic impact on the payment systems and/or financial systems in the event that the PJP experiences a disruption or failure.
3 According to the PBI PJP, a PJP with a critical impact means PJP that has a critical impact on the payment systems and/or financial systems in the event that the PJP experiences a disruption or failure.

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Maria Sagrado is a leading practitioner and a highly skilled negotiator with extensive high-level experience in structuring foreign investment and financial transactions. She represents the interests of numerous foreign clients investing in Indonesia, including companies and investors from China, USA, UK, Singapore, and European Union across various sectors, including power plants, pharmaceuticals, distribution, port-related activities, mining, and fintech.

Combining her European and Indonesian exposure, Maria's well-rounded experience in relevant corporate and commercial practices enable her to comprehensively advise and guide foreign clients entering into local investments or transactions in Indonesia, with due consideration of the various aspects involved.

Her ability to forge rapport between disparate parties and drive solutions is also showcased by her successful track record executing prominent finance transactions involving leading foreign banks, in particular banks from China, Germany, Malaysia and other European countries, as well as offshore export credit agencies in the financing of Indonesian borrowers including State Owned Enterprises (SOE), power plant, major mining related industries and manufacturing companies.

Maria is a pioneer and among the few Indonesian lawyers who are active in fintech transactions in Indonesia. She was involved in the drafting of the first Financial Services Authority (Otoritas Jasa Keuangan) regulation on Fintech, i.e. Peer-to Peer lending in Indonesia that was issued in late 2016. She also published an article that discusses the country's central bank's regulatory sandbox initiative for fintech players as published in IFLR1000's Fintech Special Focus 2018. Maria is a Recommended Lawyer in Banking & Finance, Capital Markets, Corporate and M&A, IT and Telecoms as well as Projects and Energy in the Legal 500 Asia-Pacific Guide 2021.

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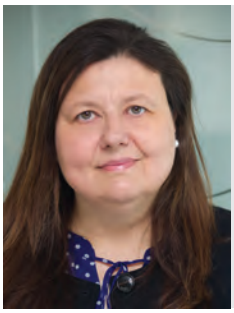

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Josée Weydert is the managing partner of NautaDutilh, where she heads the Luxembourg Banking & Finance practice. Josée specialises in financing, securitisation, (debt and equity) capital markets and financial regulatory matters.

Josée is a trusted advisor of numerous financial institutions, financial professionals and corporate groups. Due to her extensive experience working in the capital markets and structured finance departments at a well-known Luxembourg bank, she has particularly strong expertise in the banking and capital markets fields.

With more than 25 years of legal experience, Josée enjoys high recognition among both market players and clients. In 2021, Josée was named a Leading Expert in Banking & Finance Law in Luxembourg by *Chambers Europe* and as a Women Leader by the *IFLR1000*. *Chambers* notes that she has "profound knowledge of the products and services marketed in Luxembourg's financial market and excellent working relationships with the government and regulators". Clients value her "depth of expertise and long-standing experience in the banking industry".

Josée and her team contribute regularly to various publications, including The Luxembourg Banking & Finance Comparative Guide (*The Legal 500*, 2019) and an article entitled "PSD2 Implementation in the Grand Duchy – Six Months Later" (*ILO*, 2019).

Josée obtained her law degree from the Robert Schuman University in Strasbourg (1992) and subsequently completed the two-year programme for young banking executives at the Luxembourg Training Institute for Banking (1995). She regularly speaks at conferences on topics relating to the financial sector.

Josée was admitted to the Luxembourg Bar in 1993.

She is a Luxembourg native and is fluent in English, French, German and Luxembourgish.

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Caroline Clemetson is a member of the firm's management Committee. She is head of Schellenberg Wittmer's investment funds group and a partner in the banking and finance group. Caroline focuses on banking and finance law, in particular, financial services and financial regulation, asset management, collective investment schemes and other investment products, distribution of financial products, derivatives, trade finance, pension funds as well as insurance and insurance brokerage regulation.

Examples of Caroline's expertise include: counsel to a major Swiss fund management company for the set-up of a new Swiss Mortgage Fund which has been described as one of the most innovative products in the market in the last five years; advising fund managers on obtaining their FINMA license as fund manager in Switzerland and implementing their new organisation, including the set-up of the compliance and risk management as well as the implementation of the new anti-money laundering regulation and counsel to several major fund management companies for the set-up of complex Swiss products (several billion of AuM).

Caroline is an authorised representative at the SIX Swiss Exchange and is a member of the specialist committee legal and compliance of the Swiss Funds and Asset Management Association (SFAMA).

Caroline graduated from the Universities of Lausanne and Zurich in 2001 and was admitted to the Swiss Bar in 2003. In 2006, she earned an LLM from Columbia University.

Before joining Schellenberg Wittmer as a partner in 2014, Caroline worked for the Swiss Financial Markets Supervisory Authority FINMA (2006 to 2014), where she was head of the investment products and distribution department within the Markets division.

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Anita Schläpfer is a partner in Schellenberg Wittmer's banking and finance, and investment funds groups in Zurich. Anita specialises in advising Swiss and international financial institutions and corporate clients on domestic and cross-border acquisition finance and syndicated lending transactions, securitisations and other finance transactions. She assists clients on asset and investment management, onshore and offshore investment vehicles and other financial products; and provides regulatory and transactional advice for technology-driven solutions and providers in the financial services industry.

Anita's expertise includes: advising Swiss financial institutions in the transition from LIBOR to risk free rates in lending transactions; advising Lennox International Inc., on Swiss aspects relating to US$600 million senior notes offering and revolving credit and term loan facilities of US$895 million; advising Bank Julius Baer on the structuring and documentation of secured notes private placements with the clients as issuer for the purpose of acquisition of assets; and advising creditors of Advanz Pharma Corp (formerly: Concordia International Corp) on its amendment of senior secured financing in connection with the acquisition of the Correvio Pharma Corp.

Anita held various offices at the International Association of Young Lawyers and was president from September 2013 to August 2014. She is a regular speaker at seminars and conferences.

Anita holds a law degree from the University of St Gallen (1997) and an LLM focusing on banking and securities law from Columbia University (2002). After being admitted to the Swiss Bar in 2000, she worked for another large business law firm before joining Schellenberg Wittmer in 2007 as a senior associate. Anita has been a partner at Schellenberg Wittmer since 2009.

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Jennifer B Ezring is a member of the Executive Committee and of Cahill Gordon & Reindel LLP's corporate practice group.

Jenn's practice focuses primarily on advising commercial and investment banks in leveraged finance and asset-based lending transactions, including acquisition financings, leveraged buyouts, going-private transactions, recapitalizations, project financings, bridge lending and loan commitments, out-of-court debt restructurings, and other secured lending transactions.

Jenn has practiced in a variety of industries, including communications, gaming, retail, energy, manufacturing, media, publishing and internet technology. She has a broad range of financing experience in both US and international transactions.

Jenn was named to *Crain's* 2019 list of Notable Women in Law and was recognized as one of *The Secured Lender*'s 50 Women in Commercial Finance in 2017. She has been recommended as a leading finance lawyer by *Chambers USA*, *IFLR1000* and *The Legal 500*, including being named as one of *IFLR1000*'s Women Leaders for consecutive years in 2020 and 2021. Jenn is a frequent speaker on leveraged finance and asset-based lending topics, including for SFNet, PLI, and ACG New York. She is a member of the State Bar of New York, the New York State Bar Association and the American Bar Association.

Jenn is a member of the Board of Directors of LiveGirl, Inc. and the Board of Governors of Multiplying Good. She has served on the Leadership Advisory Committee of the National Women's Law Center and on Cahill's Diversity and Inclusion Committee, and Women's Initiatives Committee.

Selected Matters

- Advised the lead arrangers of financing for the combination of Construction Supply Group with White Cap, consisting of a $700 million asset-based revolving credit facility, a $2.335 billion Term B credit facility, and a $50 million revolving credit facility.
- Advised the lead arrangers of a $750 million asset-based revolving credit facility in connection with the combination of Nesco Holdings with Custom Truck One Source.
- Advised the lead arrangers in connection with a $1.868 billion North American asset-based loan facility for Gap Inc.
- Advised the lead arrangers in connection with a $1.5 billion Term B credit facility and a $50 million revolving credit facility for subsidiaries of Virtu Financial, Inc. in connection with its acquisition of Investment Technology Group, Inc.
- Advised the lead arrangers in connection with a $1.25 billion global asset-based revolving credit facility for Adient US LLC and certain of its domestic and international subsidiaries.

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Lauren Hanrahan is a partner in the New York office of Milbank LLP and a member of the firm's Leveraged Finance Group. Lauren's practice centers on representing banks, direct lenders and other financial institutions in debt financing transactions.

Recognized as a leading lawyer for bank lending and finance in *Chambers Global, Chambers USA, Legal 500,* and *IFLR*, she has significant experience in representing lenders in acquisition financings, recapitalizations, bridge and mezzanine financings, special situation financings and other complex secured lending transactions. She has a broad range of financing experience in both US and international cross-border transactions. Lauren devotes a portion of her practice to acting as agent's counsel or lead investor's counsel in connection with amending and restructuring troubled loans, workouts and debtor-in-possession and exit facilities.

In *Chambers and Partners*' Global Guide, clients describe Lauren as "fantastic" and "commercial, smart and highly responsive," noting that Lauren frequently handles asset-based and leveraged financings, counting both private credit funds and commercial banks among her clients. Lauren was shortlisted for Best in Banking and Finance in *Euromoney*'s Americas Women in Business Law Awards for 2020 and 2018. As a frequent author and co-author in industry publications, she has published "A Comparative Overview of Transatlantic Intercreditor Agreements", *The International Comparative Legal Guide to: Lending & Secured Finance*; "The Cashless Roll: A Primer", *The Banking Law Journal*; and numerous articles in *IFLR's Leveraged Finance Quarterly* and the *IFLR Cross-border Financing Report.*

Lauren is also a member of Milbank's Hiring Committee and Elections Committee.

Select recent matters include:

- Represented Goldman Sachs as lead arranger in the $3.56 billion acquisition of **Nortek Air Management Businesses** by **Madison IAQ LLC**.
- Advised the financing sources in Blackstone's acquisition of **Sabre Industries, Inc.**
- Represented the lead arrangers in connection with the financing of Elanco Animal Health Incorporated's (NYSE: ELAN) $5 billion acquisition of **Bayer AG's animal health unit**.
- Represented Goldman Sachs Merchant Banking Division and Tikehau Investment Management in connection with the financing of Warburg Pincus's and ArchiMed's acquisition of French biotechnology company **Polyplus-transfection SA.**
- Advised the financing sources of the $1.95 billion first lien multicurrency facilities to support Advent International's acquisition of **NielsenIQ.**
- Represented Goldman Sachs and the other arrangers in the $2.595 billion term loan facility and $300 million revolving credit facility for **AmWINS Group.**

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Eliza McDougall is a partner in the Debt Finance Practice in the New York office of White & Case LLP. She was recently appointed as the Regional Section Head of the Americas' Banking Group (comprised of the Debt Finance and Financial Restructuring Practices), the first woman to hold this position in the Firm. In addition, Eliza sits on White & Case's elected global Partnership Committee, which is responsible for partner promotions, lateral hiring decisions and partner compensation and is Chair of the Firm's Americas Operations Council. Eliza was formerly the Executive Partner for the Firm's New York office.

A highly successful dealmaker, Eliza's clients value her deal creativity, efficiency and professionalism. She is an incredibly versatile lawyer representing a broad spectrum of clients including leading investment and commercial banks, direct lenders, corporate borrowers and private equity sponsors on a wide range of financing matters, including leveraged and investment-grade acquisition financings, asset-based financings, project and structured financings and general corporate lending transactions. Eliza's exceptional work with clients is reflected in both a Chambers USA ranking and recognition in Legal 500 US as a Key Lawyer. Her clients include Stone Point Capital, Deutsche Bank, UBS, Bank of America, Riverstone Credit, Hess Corporation, Booking Holdings and JBS.

Notable transactions led by Eliza include:

Representation of UBS on the US$2.1 billion financing of ION Trading Technologies' take-private acquisition of Fidessa Group plc, a UK publicly listed company that provides software services and market data for the financial services industry (which transaction was honored by the International Financing Review as the North American Leveraged Loan of the Year in 2019).

Representation of UBS, Jefferies and Bank of America, as lead arrangers, in connection with the financing for the US$4 Billion carve-out acquisition of McAfee's Enterprise business by a consortium led by Symphony Technology Group ("STG").

Representation of UBS, Jefferies, Bank of America, HSBC and KKR Capital, as lead arrangers and joint book-runners, in connection with the financing of STG's proposed US$1.2 Billion acquisition of the products business of FireEye, Inc.

Representation of UBS and subsequently JP Morgan Chase, in connection with the financing for acquisition of RSA Security, a computer network security company focusing on encryption and encryption standards, by STG and the later acquisition of a stake by Clearlake Capital Group. The most recent financing consisted of US$1.114 Billion in term loans, US$436 Million in delayed draw term loans and US$175 Million in revolving credit loans.

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Sabrena has over 20 years' experience in completing US domestic and cross-border financing transactions. She advises financial institutions and companies on complex financing transactions, including structured finance deals, acquisition financings, syndicated and bilateral loans, bridge loans, margin loans, investment grade loans, private equity and hedge fund financings, private banking transactions, debt restructurings, sovereign loans, trade financings, supplier financings, receivables purchases and non-performing loan (NPL) transactions.

Sabrena's broad international experience spans Europe, Asia and Latin America. She has a particular focus in Latin America, and has completed transactions in Argentina, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, and Peru, as well as other Latin American jurisdictions.

Named by *Latinvex* in 2020 as one of Latin America's top 100 lawyers, and by *Chambers Global* in 2020 as a Foreign Expert in Banking & Finance, Sabrena has led on many high-profile finance deals.

Recent matters include the representation of:

- Bayport Colombia S.A., a subsidiary of leading specialist credit provider Bayport Management Limited, on its entry into a COP-denominated secured loan agreement of up to US$150 million through a Colombian trust established by Bayport Colombia S.A., as borrower, and a syndicate of leading international lenders;
- Bayport Mexico (Financiera Fortaleza S.A. de C.V.), a subsidiary of leading specialist credit provider Bayport Management Limited, on its entry into a MXN 1.5 billion secured loan agreement with a syndicate of leading international lenders;
- OPIC and Citibank in connection on a US$150 million unsecured loan to Banco Regional S.A.E.C.A.. The purpose of the financing was to finance new lending to small and medium enterprises of Banco Regional, with a particular focus on supporting women-led small and medium enterprises.
- OPIC and Citibank on a US$101.6 million loan facility to finance new lending to small and medium enterprise customers of Sudameris Bank S.A.E.C.A.
- Deutsche Bank in a US$150 million finance transaction for Avianca S.A. backed by future credit card receivables;
- Joint Lead Arrangers and Bookrunners, and Scotiabank Peru S.A.A., as Administrative Agent in connection with Alicorp S.A.A.'s US$500 million senior unsecured bridge loan for the acquisition of Intradevco Industrial S.A.

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Susanna M Suh has represented financial institutions and companies in a wide variety of transactions for over 25 years, including cash flow and asset-based lending transactions, debt and equity securities offerings and tender offers, exchange offers and consent solicitations. She has extensive experience with companies in the energy, industrial, financial services, real estate and technology sectors. Susanna is recognized as a leading lawyer in bank lending and debt capital markets by *IFLR1000* and *The Legal 500*. She was honored as a Woman of Distinction by the Girl Scouts of Greater New York in 2017.

Susanna has practiced at Cahill since graduating from Yale Law School, where she was Editor-in-Chief of the Yale Journal of International Law. She became a partner in 2003. Susanna has served in various capacities at Cahill, including Administrative Partner and Co-Chair of the firm's Diversity and Inclusion Committee.

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THE GUIDE TO THE WORLD'S LEADING FEMALE FINANCIAL AND CORPORATE LAWYERS

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COMMERCIAL ARBITRATION

Feature for:

COMMERCIAL ARBITRATION

US Supreme Court declines to review whether the Federal Arbitration Act forecloses public-policy challenges to arbitration awards

Sarah Biser
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For the second time in four years, the US Supreme Court has declined to resolve an arbitration-related issue that state and federal courts have been wrestling with over the last decade: whether the Federal Arbitration Act ("FAA") precludes courts from invoking public policy as a ground for refusing to enforce arbitration awards. While public policy challenges to arbitration awards have a long history, some state and federal courts have interpreted a 2008 Supreme Court decision entitled *Hall Street Assocs.* v. *Mattel, Inc.*, 552 US 576 (2008), as foreclosing such challenges in arbitrations governed by the FAA.

In June 2021, the Supreme Court denied a petition for a writ of *certiorari* to review a decision of the Nebraska Supreme Court holding that, under *Hall Street*, courts may not vacate awards on public policy grounds in arbitrations governed by the FAA.[1] The Court declined to review a similar ruling by the Texas Court of Appeals four years earlier.[2] That means the issue will likely remain a point of contention in state and federal courts.

Congress enacted the FAA nearly a century ago to replace judicial opposition to arbitration with a national policy favoring arbitration and placing arbitration agreements on equal footing with other contracts. The Act, which applies to all contracts involving commerce, except certain collective bargaining agreements, provides expedited judicial review to confirm, vacate, or modify arbitration awards. Under Section 9 of the FAA, a court "must" confirm an award "unless" it is vacated, modified, or corrected "as prescribed" in Sections 10 and 11. Section 10 lists grounds for vacating an award, including where the award was procured by "corruption," "fraud," or "undue means," and where the arbitrators were "guilty of misconduct," or "exceeded their powers."

Prior to the Supreme Court's decision in *Hall Street*, courts generally permitted challenges to arbitration awards on public-policy grounds, although they interpreted that ground narrowly. It applied only if an award was contrary to "some explicit policy" that is "well defined and dominant" and ascertained "by reference to the laws and legal precedents."[3] The doctrine "derives from the basic notion that no court will lend its aid to one who founds a cause of action upon an immoral or illegal act, and is further justified by the observation that the public's interests in confining the scope of private agreements to which it is not a party will go unrepresented unless the judiciary takes account of those interests when it considers whether to enforce such agreements."[4]

In *Hall Street*, the Supreme Court considered whether parties could contractually agree to vacate an award on grounds not set forth in Section 10 of the FAA —specifically, by agreeing that a court could vacate an award where the arbitrator's findings of facts are not supported by substantial evidence or where the arbitrator's conclusions of law are erroneous. In a 6-3 decision authored by Justice Souter, the Court ruled that parties could not contractually expand the scope of review in an FAA arbitration. Rather, the Court held, Sections 10 and 11 "provide the FAA's exclusive grounds for expedited vacatur and modification."

Although *Hall Street* did not address a challenge to an arbitration award on public policy grounds and did not mention that issue, some courts have interpreted its holding that the statutory grounds for vacatur are the "exclusive" grounds permitted under the FAA as foreclosing other judicially created grounds, including the ground that an award violates public policy. Thus, for example, the U. S. Court of Appeals for the 11th Circuit has held that "our judicially-created bases for vacatur are no longer valid in light of *Hall Street*."[5] The highest courts in Alabama, Florida, and Nebraska have ruled the same way.[6]

In contrast, the US Court of Appeals for the 7th Circuit ruled that *Hall Street* "did not overrule *Eastern Associated Coal* or *W.R. Grace*,

both of which recognized a public policy exception to the general prohibition on overturning arbitrator awards."[7] Similarly, the US Court of Appeals for the 9th Circuit recently stated that "a court may vacate an arbitration award that is contrary to public policy."[8]

In light of the fact that *Hall Street* did not expressly address the issue of public-policy challenges to arbitration awards, parties will likely continue to litigate whether the Court intended to foreclose that previously well-established basis for challenging awards—except in jurisdictions like Alabama, Florida, Nebraska, and the 11th Circuit, where the courts have already decided the issue. Parties may also argue that such a broad reading of *Hall Street* conflicts with Section 2 of the FAA, which provides that agreements to arbitrate shall be valid and enforceable, "save upon such grounds as exist at law or equity for the revocation of any contract"—because courts have long held that agreements that are contrary to public policy are void and unenforceable.[9] The Supreme Court may be unlikely to review the issue, however, unless and until more circuit courts and state supreme courts examine it and come to different conflicting conclusions.

1 *See Seldin v. Estate of Silverman,* 2021 WL 1951803 (May 17, 2021).
2 *See Parallel Networks, LLC v. Jenner & Block LLP*, 137 S. Ct. 2176 (2017).
3 *Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465, 1486 (D.C. Cir. 1997) (quoting *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 43 (1987)).
4 *United Paperworkers,* 484 U.S. at 42.
5 *Frazier v. CitiFinancial Corp.*, 604 F.3d 1313, 1324 (11th Cir. 2010).
6 *See Cavalier Mfg., Inc. v. Gant,* 143 So. 3d 762, 768-69 & n.5 (Ala. 2013); *Visiting Nurse Ass'n of Fla., Inc. v. Jupiter Med. Ctr.,Inc.*, 154 So. 3d 1115, 1128, 1132 (Fla. 2014); *Seldin v. Estate of Silverman,* 305 Neb. 185, 206-07 (2020).
7 *Titan Tire Corp. of Freeport, Inc. v. United Steel Workers Int'l Union*, 734 F.3d 708, 717 n.8 (7th Cir. 2013) (citing *Eastern Assoc. Coal Corp. v. United Mine Workers,* 531 U.S. 57 (2000), and *W.R. Grace & Co. v. Local Union* 759, 461 U.S. 757 (1983).
8 *DeMartini v. Johns,* 693 F. App'x 534, 537 (9th Cir. June 7, 2017).
9 *See United States v. Bonanno Organized Crime Family,* , 879 F.2d 20, 28 (2d Cir. 1989) ("[I]llegal agreements, as well as agreements contrary to public policy, have long been held to be unenforceable and void.").

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Nadia has extensive experience acting as counsel and sitting as arbitrator in commercial and investor-state arbitrations. Before joining Clyde & Co, Nadia practiced for two decades in the International Arbitration Groups of leading international law firms in Paris, Shanghai, Frankfurt and London and as Counsel at the ICC, where she headed up the Europe, Middle East and Africa team.

Nadia is dual-qualified in England & Wales (Solicitor-Advocate) and Germany (Rechtsanwältin). She earned her LLM in International Public Law from the University of Cambridge and her LLB from the University of Warwick. She conducts arbitrations in French, German and English and speaks Dutch and Mandarin Chinese.

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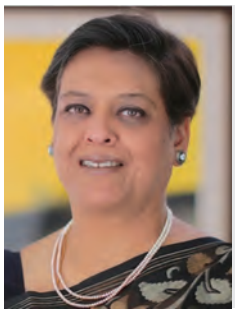

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Ms Ritu Bhalla is a senior Partner at the Firm and in the capacity of a co-chair of the practice group, oversees the Firm's practice in corporate commercial litigation, arbitrations and regulatory litigation. She specialises in Mergers, Public & Administrative Judicial Review, Insolvency-related Disputes, Shareholder Disputes, Domestic and International Commercial Arbitrations, Corporate and Commercial Litigation, Banking and Finance, Infrastructure Litigation including Building Contracts, White Collar Crimes and Extradition-related Action. She has extensively represented multinational as well as domestic shareholders in their *inter se* disputes in joint ventures, including Board room strategies.

For over two and a half decades, Ritu has been a focal point in the firm's litigation practice and has worked on many fiercely contested matters across jurisdictions including before the Supreme Court of India, High Courts of various States, and other Specialised Quasi-Judicial Tribunals. Her strength in litigation rests on her ability to formulate and execute legally sound and tactical strategies on behalf of major multinationals, domestic corporates, banks, public enterprises, commercial and financial institutions involved in complex disputes.

Ritu successfully represented the majority shareholders of a Japanese Company in a one of its kind case of oppression by minority shareholders, before National Company Law Tribunal, Mumbai. She represents the investment arm of the Russian Federation in an ongoing International Commercial Arbitration and has successfully obtained an Interim Award of INR 135 crores (approx.) in favour of her client. She has been a part of several marquee cases representing TATA, Getit Info Services Pvt. Ltd., Biological E Ltd., ETA Group of Dubai, IL&FS Transportation Networks Limited, Navyuga Engineering Company Limited, Indian Oil Corporation and Indian Paints Association et al and was part of the team advising the Government appointed Board of Satyam Computer Services Ltd. (SCSL) following the confession of its promoter and was actively involved in the proceedings involving SCSL before the Company Law Board.

Ritu's deep involvement with commercial litigation and arbitration goes beyond courts and tribunals and extends to formulating valued litigation strategy. Ritu has been associated with conferences and seminars on contemporary legal issues and is an active member of the Supreme Court Bar Association and Delhi High Court Bar Association.

Recognition

Ritu has been ranked in Band 2 for Dispute Resolution by Chambers Asia Pacific 2017-20, which states, "Ritu Bhalla advises domestic and international clients on a wide spectrum of contentious matters, including private equity, restructuring, joint venture and shareholder disputes. She is also adept at handling arbitration proceedings." Chambers and Partners 2018 quotes, "Ritu Bhalla has a stellar reputation in the arbitration and litigation circle and regularly acts on private equity, restructuring, joint venture and shareholder disputes for both domestic and international clients."

She was also been Recognised as the 'Best in Commercial Arbitration' at Euromoney Legal Media Group Asia Women in Business Law awards 2019, and ranked as a Distinguished Practitioner by Asialaw Profiles, 2019 and 2020.

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Adedoyin Oyinkan Rhodes-Vivour, SAN is the founding partner of Doyin Rhodes-Vivour & Co, a firm of solicitors, advocates and arbitrators. The firm specializes in providing corporate commercial, litigation and arbitration/ADR services. Adedoyin is a chartered arbitrator and fellow of the Chartered Institute of Arbitrators and is active in international arbitration. She holds an International Practice Diploma in Arbitration. She is a CEDR [UK] accredited mediator. She is a member of the International Chamber of Commerce (ICC) International Court of Arbitration and a member of the ICC Commission on Arbitration & ADR. She is a Vice-President of the London Court of International Arbitration African Users' Council. She was a member of the Court of the Permanent Court of Arbitration (PCA), The Hague, Netherlands pursuant to her nomination by Nigeria (2010 – 2016). She is a member of the world bank group sanctions Board.

Adedoyin was educated at the University of Lagos [LLB Hons], University of Lagos [LLM] and King's College London, University of London [M.A, International Peace & Security], graduating in 1980, 1986, and 2002, respectively. She is a barrister and solicitor of the Supreme Court of Nigeria [admitted in 1981] and was elevated to the privileged rank of Senior Advocate of Nigeria (equivalent to a Queen's Counsel) in 2019. She is a Notary Public of Nigeria. She is a member of the Nigerian Bar Association, International Bar Association, Chartered Institute of Arbitrators, and International Council for Commercial Arbitration.

She has practiced law for nearly four decades and conducts arbitration extensively both domestically and internationally in various disputes across a wide range of industries including corporate, construction, infrastructure projects, energy, maritime, banking and finance and involving complex issues. She has acted as counsel in various arbitration proceedings and has received various recognitions including listing by Africa Arbitration Academy as one of the Africa's 30 Arbitration Powerlist of the year 2020, distinguished Arbitrator of the Year 2020 by Arbitrator Intelligence and recognised in Who is Who Legal, Expert Guides and Women in Business Law (Commercial Arbitration) as a top commercial Arbitration Practitioner.

Adedoyin has conducted arbitrations under various rules including LCIA, ICC and UNCITRAL. She is listed on various arbitration panels including the Panel of the Chartered Institute of Arbitrators [UK], London Court of International Arbitration database of neutrals (LCIA), International Centre for Dispute Resolution [ICDR], Singapore International Arbitration Centre [SIAC], Dubai International Arbitration Centre [DIAC] Kigali International Arbitration Centre [KIAC Schenzhen International Arbitration Centre [SCIA] Maritime Arbitrators Association of Nigeria [MAAN], Asian International Arbitration Centre (previously known as Kuala Lumpur Regional Centre for Arbitration), Lagos Regional Centre for International Commercial Arbitration. She is listed on the Panel of Neutrals of the Lagos and Abuja Multi-door Courthouses.

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Anne-Carole has acted as counsel before international arbitral tribunals in a broad range of disputes involving inter alia oil and gas contracts, joint venture agreements, share purchase agreements, sales and distribution contracts, international construction contracts as well as investment disputes between states and foreign investors. She has handled arbitrations under the rules of ICC, UNCITRAL, ICSID, SCAI and before the PCA, in English, French and Spanish.

Anne-Carole has also represented parties before the Swiss Supreme Court in proceedings related to challenges of arbitral awards rendered both in commercial and investment arbitrations. Anne-Carole regularly sits as arbitrator.

Examples of Anne-Carole's expertise in recent arbitration matters include representation of the Russian Federation in several investment treaty cases; representation of a North-African state-owned company in a dispute relating to a water desalinisation plant and project finance issues; representation of a Qatari company in a dispute regarding the termination of a subcontract for the construction of an airport in the Middle East and representation of a Turkish company in a dispute regarding manufacturing of consumer electronics.

Prior to joining Schellenberg Wittmer, Anne-Carole worked as an associate in a renowned Paris law firm. Additionally, she was a teaching assistant in contract law at the University of Paris and a trainee lawyer in a Madrid based-law firm.

Anne-Carole Cremades is a member of several professional associations, including the Spanish Club of Arbitration (CEA), the Comité Français de l'Arbitrage (CFA), the Swiss Arbitration Association (ASA) and ICDR Young & International. She is former president of the Swiss chapter of the Spanish Club of Arbitration (CEA). Anne-Carole has authored various publications on international arbitration issues and regularly speaks at arbitration conferences.

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Anya George is a partner in Schellenberg Wittmer's dispute resolution group in Zurich. Her practice focuses on international commercial and investment arbitration. She represents states, state-owned entities and private companies in complex multi-jurisdictional disputes across a wide range of sectors, with particular emphasis on insurance and reinsurance, energy, commodities and manufacturing and sales agreements.

Anya has acted in over 50 arbitrations under the ICC, LCIA, CAS, UNCITRAL and Swiss Rules and in ad hoc proceedings. Anya has special expertise in arbitration-related litigation, including enforcement and setting-aside proceedings before the Swiss Supreme Court, in both French and German. She also advises clients on business and human rights issues.

Examples of Anya's recent matters include: representing a multinational insurance company in a suite of multi-million-dollar arbitrations; representing a group of PV investors in setting-aside proceedings before the Swiss Supreme Court in a dispute with the Kingdom of Spain; and representing the Russian Federation in a challenge to a jurisdictional award before the Swiss Supreme Court arising out of a "second wave" Yukos arbitration.

Anya is trilingual (English/French/German) and dual-qualified as a Swiss attorney and a solicitor of England and Wales. She is a co-chair of the LCIA's Young International Arbitration Group (YIAG) and an associate of the Chartered Institute of Arbitrators. Anya speaks and publishes regularly on a variety of international arbitration topics.

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Dr Anna Kozmenko is a partner in Schellenberg Wittmer's dispute resolution group in Zurich. She represents states, state-owned and private companies as well as individuals in high profile international disputes, including complex litigations, commercial and investment arbitrations as well as sports disputes. She also regularly sits as arbitrator.

Anna's experience includes over 70 arbitrations, both ad hoc and institutional (under the ICC, LCIA, SCC, VIAC, AAA/ICDR, DIS, ICAC, CAS, UNCITRAL, PCA, ICSID, ICSID Additional Facility and Swiss rules), at various seats and under a broad range of applicable laws.

Anna's recent notable matters include: representation of the Russian Federation in several investment arbitration matters and set aside proceedings before the Swiss Supreme Court; representation, before the CAS, of 39 athletes who had been wrongly banned for life from the Olympic Games amid allegations of a systematic doping scheme around the Sochi Olympic Games; representation of the Russian Antidoping Agency in a dispute against the World Anti-Doping Agency; and the successful defense of GazpromNeft PJSC before a Swiss court against the European Bank for Reconstruction and Development.

Anna is an adjunct professor of law at the University of Arkansas School of Law, where she teaches international commercial arbitration. She is also a visiting Lecturer at the Lomonosov Moscow State University, the Moscow State Institute of International Relations, and the National Research University Higher School of Economics. She was, until recently, co-chair of ICDR Young & International. Anna was named as "top arbitration practitioner" by the Russian Arbitration Association every year from 2014 to 2018.

Prior to joining Schellenberg Wittmer, Anna practiced at a leading international law firm in Paris and New York. She graduated with the highest honours from Peoples' Friendship University of Russia (BA, MA and doctorate degrees) and obtained an LL.M. degree in international dispute settlement from the University of Geneva (MIDS).

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Abby Cohen Smutny is Global Head of White & Case's world-leading International Arbitration Practice. She is widely recognized as one of the top international arbitration practitioners globally.

Her clients include multi-national corporations as well as sovereign States. She handles matters in a wide range of industries including banking & financial services, oil & gas, mining & metals, power, real estate development, water supply, retail, pharmaceuticals, construction, tobacco, railroads, telecommunications and manufacturing.

Abby handles both commercial and in investment treaty cases and serves as counsel in arbitrations before all major arbitral fora including ICSID, ICC, HKIAC, VIAC, LCIA, ICDR, SIAC, PCA, and SCC, as well as in UNCITRAL ad hoc arbitrations.

Abby's leadership positions have included: Chair of the Institute of Transnational Arbitration (ITA); Vice President of the American Society of International Law; President of LCIA North American Users Council; AAA Advisory Board Member; IBA Arbitration Committee Vice Chair and Chair of IBA Investment Treaty Sub Committee; ALI Adviser on US Restatement on International Arbitration; co-Chair of the ICCA Task Force on Standards of Practice in International Arbitration; Chair International Law Section of Washington DC Bar. Abby is a member of the Singapore International Arbitration Centre Court.

Recent representations include:

- Gabriel Resources Ltd. in an ICSID arbitration of investment treaty claims against Romania relating to one of the largest undeveloped gold mine projects in the world.
- The Republic of Bulgaria in numerous arbitrations over a range of industries including power (electricity and renewables) and real estate (commercial and residential).
- The Kingdom of Saudi Arabia in two ICSID arbitrations, one arising out of a construction project and the other arising out of a dispute involving luxury retail stores.
- Gold Reserve Inc. in an ICSID arbitration relating to one of the largest undeveloped gold/copper deposits in the world, in which Gold Reserve was awarded US$740 million.
- Leading Czech bank Ceskoslovenská obchodní banka, a. s. in an ICSID arbitration with the Slovak Republic, in which the bank was awarded US$877 million.

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Carolyn Lamm is Co-Head of White & Case's International Arbitration practice in the Americas. She regularly serves as lead counsel in high-stakes, cutting-edge cases, successfully resolving significant international arbitrations involving international corporations and sovereign clients. She also serves as lead counsel in arbitration-related litigation and international trade proceedings.

She advises clients in matters with ICSID and its Additional Facility, and other international arbitral proceedings involving States, and commercial arbitral fora including AAA/ICDR, ICC, Vienna Centre, Stockholm Chamber, Swiss Chamber and in federal court litigation.

She is the Distinguished Faculty Chair at the University of Miami School of Law in the White & Case LLM program in International Arbitration, where she teaches International Investment Arbitration and is a member of the Board of Trustees of the University. Carolyn is also a fellow at the American College of Trial Lawyers.

Carolyn was appointed by President Clinton to the US Panel and later by the Government of Uzbekistan to the Uzbek Panel of Arbitrators for ICSID arbitration. She was a member of the American Arbitration Association Executive Committee and Board, and is currently President of the American Bar Endowment, a member of the ICCA Governing Board, an Emeritus member of the Council of the American Law Institute, and has served as an arbitrator in AAA International Rules, ICDR, SIAC, ICSID and NAFTA Chapter 11 disputes. Carolyn is a founding member of the American Uzbekistan Chamber of Commerce and currently serves as Chairman of the Board.

Carolyn is a past President of the District of Columbia Bar and the American Bar Association and until recently, was the ABA's Representative to the International Bar Association.

Prior to joining White & Case, she was employed by the US Department of Justice under the Attorney General's Program for Honor Law Graduates and served as a trial attorney in the Fraud Section, Civil Division, before obtaining the position of Assistant Director, Commercial Litigation Branch, Civil Division.

Carolyn received her JD from the University of Miami School of Law and her BA in Exceptional Education and English minor from State University of New York College at Buffalo.

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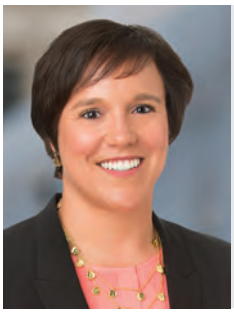

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Ank Santens is a partner in White & Case's International Arbitration Practice, and heads the Firm's Americas Disputes Section. She serves as counsel or arbitrator in commercial, investment, and construction arbitrations around the world, under all major international arbitration rules as well as under ad hoc and regional rules. Ank's industry focus includes energy, including oil, gas, electricity and renewables, infrastructure, mining, insurance, telecommunications, pharmaceutical, and financial services.

She advises corporate clients on a wide range of commercial disputes, post-M&A disputes, and disputes concerning joint ventures and other shareholder arrangements. On the sovereign side, she advises on investment treaty disputes and oil and gas concession disputes. Ank also regularly advises on the drafting of dispute resolution clauses in international contracts. She has a track record of obtaining an early resolution through creative strategies and the use of negotiation and mediation.

Ank is a Court Member of the London Court of International Arbitration, and a member of the Board of the International Institute for Conflict Prevention & Resolution (CPR), Delos Dispute Resolution, and the New York International Arbitration Center (NYIAC). She is the Vice Chair and Chair-elect of the Executive Committee of the Foundation for International Arbitration Advocacy (FIAA) and a member of the Executive Committee of the Institute for Transnational Arbitration (ITA). She also serves on the advisory board of the Arbitration Foundation of Southern Africa (AFSA) and the Editorial Committee of International Arbitration Case Law.

Ank is on the IEL Energy Arbitrators List and the arbitrator panels of the ICDR (American Arbitration Association), CPR, the Câmara de Conciliação, Mediação e Arbitragem CIESP/FIESP (Sao Paulo, Brazil), and the Lagos Court of Arbitration (Nigeria).

Ank is strongly committed to community service. She is a past chair of White & Case's New York's Women's Network, and serves on the Board of International Senior Lawyers Project (ISLP), an international pro bono organization, and of her children's school, the French-American School of New York. She helped Haiti build a culture of international arbitration as part of the country's efforts to rebuild and attract foreign investment, and has recently advised an African country pro bono on its new arbitration legislation.

Ank received her LL.M from Columbia University and her Master in Law from KU Leuven in Belgium.

Recent matters include representing:

- The investors in an ICSID claim against Argentina concerning the nationalization of the country's private pension system.
- The Republic of Bulgaria in a number of arbitrations across various sectors including power and waste collection.
- The Kingdom of Saudi Arabia in two ICSID claims brought by investors in the retail and power/construction sectors.
- Pension funds in ICC arbitrations arising out of a shareholder dispute in relation to a joint venture for construction infrastructure projects in Latin America.

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Ms Wei has extensive experience in financial institutions, real estate, energy, telecommunications, retail, automobile, hi-tech and traditional manufacturing industries and represents various multinational companies, Chinese companies, investment banks, and private equity funds in their merger and acquisition transactions. She has provided advice on various aspects of such projects including the design of transaction structures, due diligence investigation, drafting and the negotiation of complicated legal documents in connection with such projects. She has also advised many domestic and international clients from different industries in corporate financing, commercial transactions and general corporate matters since she joined the firm in 1994. Ms Wei also has extensive experience in the private fund formation area and has represented various fund managers or investors in such deals.

Since the effectiveness of the PRC Anti-Monopoly Law, Ms Wei has represented various multinational companies and Chinese companies in their merger control filings, AML advice on cartel, and RPM as well as AML compliance issues. Ms Wei has also led the team handling multiple government investigation cases initiated by AML enforcement agencies in the area of Cartel, RPM and abuse of dominant position.

Ms Wei represented multinational companies defending them in anti-trust litigations (including follow-on regarding RPM or abuse of dominant position suite.)

With award of the first "Beijing Excellent Lawyers Returning from Overseas Study", Ms Wei was also frequently nominated and recommended as a China leading lawyer in the Mergers and Acquisitions and/or Competition by IFLR 1000, EuroMoney Legal Media Group, Legal 500, Who's Who legal and the Asian authoritative legal media–Asialaw Profiles.

Ms Wei worked at the Hong Kong office of Mallesons Stephen Jaques from 2002 to 2003 where she advised clients on investment projects in China as well as international transactions.

Ms Wei is the head of the Anti-trust & Competition Group of JunHe.

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Helen Kelly is a partner and head of the EU, Competition and Regulatory Law Group at Matheson. Helen has particular expertise in EU and Irish merger control work and has experience in dealing with large scale mergers and complex joint venture arrangements under the EU Merger Regulation as well as advising on Irish merger control issues. Helen also advises on behavioural competition issues including cartels and abuses of a dominant position. Helen has experience in dealing with complex investigations including dawn raids by the European Commission, the Consumer and Competition Protection Commission (CCPC) and other sectoral regulators as well as witness summons procedures by the CCPC. Helen has in-depth experience of state aid issues advising the State, recipients of aid and complainants. Helen also regularly advises on public procurement issues.

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Setsuko Yufu is a senior partner at Atsumi & Sakai and is admitted to the bar in Japan. She is a member of the managing committee of the firm.

Setsuko heads the firm's antitrust/competition team, advising on international and domestic antitrust/competition matters and cases.

Since 2016, she has served as a member of the Antitrust Policy Council of the Japan Fair Trade Commission. She has also served as a board member of the Japan Competition Law Forum.

Setsuko was named Woman Lawyer of the Year at the 2017 ALB Japan Law Awards and was inducted into the 2021 Legal 500 Asia Pacific Hall of Fame as a leading individual in antitrust/competition law. She was ranked as Thought Leaders Competition 2020 (Japan) by WWL and awarded the honour of Lawyer of the Year Japan in Client Service Excellence (2020) in asialaw. She was ranked as a leading antitrust/competition lawyer by The Best Lawyers (2022) and as a notable practitioner by Chambers Asia Pacific (2021). She was listed in Who's Who Legal: Competition, 2020 and Who's Who Legal: Japan, 2020. She was also highly recommended in GCR 100, 2021.

She obtained an LLB from Waseda University, Tokyo, and graduated from the University of Amsterdam, Europa Instituut as the first Japanese student to study EU law there.

Setsuko also is well-known for her extensive knowledge of EU competition law and until 2020 had acted as a board member of the EU Studies Association in Japan. She taught EU law at Keio University Law School and the Business Law Department of Hitotsubashi University Graduate School. She regularly publishes articles and books on the subject.

She has been supported by Atsumi & Sakai's policy to develop a gender-neutral and equal-opportunity culture in its practice. In order to encourage female attorneys and staff, the firm has a system in place to fully support them before, during, and after childbirth. Additionally, the firm has implemented a sexual harassment policy without distinction as to the victim's gender.

These efforts to promote equality have been recognised by Euromoney Legal Media Group, which named Atsumi & Sakai as the 'Best Firm in Japan' at its Asia Women in Business Law Awards, 2011. In 2015, Atsumi & Sakai was awarded the Daini Tokyo Bar Association's first "Family Friendly Award".

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Monique Sturny is a partner at Walder Wyss. She advises companies on all aspects of competition law and distribution law matters, assists them in merger control proceedings and represents them in proceedings before competition authorities and courts. She has extensive experience with respect to setting up of distribution systems and negotiating complex cooperation agreements. She handles matters across a wide range of sectors, with particular in-depth knowledge in the healthcare sector and with respect to legal issues relating to data and the digital economy. She regularly speaks and publishes in her fields of expertise.

Monique Sturny was educated at the University of Fribourg (lic. iur., 2002, with special mentions «European Law» and «bilingual» German-French) and the London School of Economics and Political Science (LL.M. in International Business Law, 2007). She has written a doctoral thesis on the influence of EU law on the development of Swiss competition law at the University of Berne (Dr. iur., summa cum laude, 2013). Before joining Walder Wyss in 2013, she worked for a major law firm in Zurich for several years. Monique Sturny is listed as a competition and distribution law expert in international rankings such as Chambers and Who's Who Legal (Future Leader and National Leader), referring to her as "highly recommended" by peers and clients alike who highlight her "strength in vertical agreements and distribution law" and pointing out that she is "highly experienced" with a "remarkable facility for providing top-tier counsel on Swiss and EU law".

In 2020, the Swiss Competition Commission appointed Monique Sturny as Non-Governmental Advisor to the International Competition Network (ICN) for the coming three years. Monique Sturny is a co-founder and board member of Women At Competition Switzerland, a network connecting female competition law professionals in Switzerland. In addition, she co-chairs the Schulthess Juristische Medien Ltd.'s conference on competition law.

Monique Sturny's professional languages are German, English and French. She is registered with the Zurich Bar Registry and is admitted to practice in all of Switzerland.

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The "extremely pragmatic" Rebecca Farrington "provides good market context and communications in a way that clients can easily navigate." Rebecca was recognized as "Best in Antitrust/Competition" by Euromoney LMG Americas for 2019, "Retail, Consumer, Food & Beverage Dealmaker of the Year" by The Deal — Best of the Middle Market Awards for 2020, and is nationally ranked as one of nine "Leading Lawyers" by Legal 500 US for 2021. Rebecca's practice focuses on government merger and non-merger investigations, private antitrust litigation, and counseling on antitrust issues.

Rebecca has developed a significant track record defending proposed and consummated mergers before the Federal Trade Commission and the Department of Justice. Clients she has assisted have operated in a broad spectrum of industries, including healthcare, food products, aviation, petroleum, coal, broadcasting, gaming, software, hardware, industrial products, energy and retail sales. She has secured numerous high-profile merger clearances, such as:

- Saudi Aramco, the world's largest oil producer, in its US$69 billion acquisition of SABIC, the fourth-largest petrochemical company in the world;
- Newmont Mining Corporation in its US$10 billion acquisition of Goldcorp Inc.;
- DIC Corporation and its US subsidiary Sun Chemical in its acquisition of BASF's global pigments business;
- Baxter International in US and Japan clearances for its US$350 million acquisition of the Seprafilm adhesion barrier device business from Sanofi S.A.;
- Vertex Pharmaceuticals, Inc. in its acquisition of CTP-656, a development-stage asset intended for the treatment of Cystic Fibrosis, from Concert Pharmaceuticals, Inc.;

Special purpose acquisition companies are big news, breaking records and captivating markets and media alike. Rebecca is on the forefront of this wave, having provided antitrust advice on dozens of SPAC transactions.

Rebecca has also successfully defended non-merger investigations, including investigations of alleged market allocation and violations of Section 8 of the Clayton Act, and has advocated for government intervention on behalf of parties adversely impacted by proposed mergers, or by anticompetitive conduct. In addition to her work in government investigations, Rebecca's clients benefit from her extensive experience advising on issues relating to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), including proposed transactions' global premerger notification requirements. Her work in this area has also involved negotiating antitrust provisions in transaction agreements, developing client HSR Act training programs and compliance procedures, and representing clients in "failure to file" situations.

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Ilene Knable Gotts is a partner in the New York City law firm of Wachtell, Lipton, Rosen & Katz, where she focuses on antitrust matters, particularly relating to mergers and acquisitions. Recent transactions in which Mrs Gotts advised include CenturyLink/Level 3, Danone/WhiteWave Foods, Gaming and Leisure Properties/Pinnacle Entertainment, Faiveley/Wabtec, Charter/Time Warner Cable/Bright House, J.M. Smucker's/Big Heart Pet Brands, Publicis/Sapient, Essilor/PPG Industries, Deutsche Telekom/MetroPCS, ConAgra/Ralcorp, PPG Industries/Georgia Gulf, Aetna/Coventry and International Paper/Temple-Inland. Mrs Gotts is regularly recognized as one of the world's top antitrust lawyers, including being recognized in the 2006-2017 Editions of *The International Who's Who of Business Lawyers*, as one of the top five global competition lawyers, in the first tier ranking of *Chambers USA* Guide, the "leading individuals" ranking of *PLC Which Lawyer Yearbook*, and the Antitrust Lawyer of the Year for 2016 by *Best Lawyers*, and Top Lawyer of the Year for 2017 by Cablefax.

Mrs Gotts previously worked as a staff attorney in the Federal Trade Commission's Bureaus of Competition and Consumer Protection. Mrs Gotts serves on the American Bar Association's Board of Governors and is an officer of the IBA's Competition Committee. From 2009-2010, she served as the Chair of the American Bar Association's Section of Antitrust Law. In 2006-2007, Mrs Gotts was the Chair of the New York State Bar Association's Antitrust Section, which recognized her service to the antitrust bar with the Lifland Service Award in 2010; she has been a member of the American Law Institute for over 20 years. Mrs Gotts is a frequent guest speaker, has had approximately 200 articles published on antitrust related topics, and served as the editor of the ABA's Merger Review Process book, Law Business Research's Private Competition Enforcement Review (2008-2017 Editions) and Law Business Research's Merger Control Review (2010-2016 Editions). She is a member of the editorial board of *The Antitrust Counselor, Antitrust Report,* and *Competition Law International* publications. Mrs Gotts is a member of the Lincoln Center Counsel's Council. Mrs Gotts was named by the BTI Consulting Group as a BTI Client Service All-Star for her level of dedication and commitment to exceptional client service.

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Rhona Henry is a partner and head of Matheson's Construction & Engineering Team. Rhona has over 19 years' experience in the construction / development / capital projects sector. Rhona's expertise is in the build out of multiplex developments in leading developer roles, capital projects (both owner and owner / occupier led), construction / development financing, public-private partnership construction specialism, together with a regulatory advice practice. Rhona is mandated by the largest developers, investors and financiers operating in Ireland.

Rhona advises on complex construction and engineering capital projects including data centres, commercial office, corporate headquarters and EPC contracts for major international construction projects including infrastructure, facilities, power and process plants. She has an in-depth understanding of the construction requirements of organisations operating in very specialised markets, including the energy market, the pharmaceutical, data centre and ICT markets.

Rhona takes a collaborative approach in advising clients on all aspects of construction and engineering projects, from initial strategy in relation to identifying the most suitable form of procurement, advising on the regulatory aspects of a project, assisting with project finance, ensuring that any required third party agreements are in place, through to completion and the commissioning.

Rhona is known for and distinguished by her formulation of complex contract structure procurement strategies which facilitate a fast pace of development and cohesion regarding interface issues. Matheson's Construction and Engineering Team are frontrunners and thought leaders in crafting procurement strategies for multiplex developments and advising on the full life cycle of a large scale development from design, building, financing, sale and leasing.

Experience Highlights

- Acting on behalf of **Oxley Holdings Limited** in relation to its development of Dublin Landings (**capex circa €300 million**).
- Acting on behalf of **a US developer** in relation to a residential, retail and hotel / student accommodation development in Dublin (**capex of €1 billion**).
- Acting as the lead construction adviser to **a US developer** in relation to **circa €700 million** build-to-rent development located in a prime central Dublin location, including drafting and negotiating a full suite of bespoke consultant appointments in addition to assisting with the strategic procurement route for this project.
- Acting for **Oxley Holdings and Ballymore Group** on the pre-letting of an office block to WeWork in the Connolly Quarter development.
- Advising a **global real estate, development and investment management firm** through all stages of the development of student accommodation facilities, consisting of 412 beds in Cork.

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Sarah Biser is a partner in the New York office of Fox Rothschild LLP, a national firm with 27 offices and about 950 attorneys. Ranked by Chambers USA as a leader in construction law for eleven consecutive years, Sarah represents owners, contractors, developers, architects and engineers, both in the United States and abroad, in all stages of the construction process. Co-chair of the firm's national construction law and international arbitration group, she focuses her practice on large, capital-intensive construction projects, with a particular emphasis on drafting and negotiating contracts for complex and unique construction and infrastructure, as well as litigating disputes involving such projects both in the courtroom and in domestic and international arbitration.

In a project expected to be the largest development of the decade in New York City, Sarah who co-chairs the firm's Israel practice group represented Technion-Israel Institute of Technology in connection with the Technion-Cornell joint venture, in the construction of a new applied science university and related facilities on Roosevelt Island. She was involved in the construction of InterActive Corporation's futuristic headquarters and AOL's headquarters, including the CNN newsroom, in the Time Warner building. Internationally, she represents one of the joint venture partners who constructed the expansion of the Panama Canal, and represents the EPC contractor who designed and constructed the construction of a 220-megawatt hydroelectric plant in Changuinola, Panama.

Sarah has also been involved in the construction of industrial smelters, waste ammonia recovery systems, solar power installations, power facilities, educational institutions, and health care facilities. She is currently defending a European construction company in connection with Defense Base Act claims arising out of the 1968 crash of a B-52 bomber carrying four nuclear warheads at an airbase in Thule, Greenland.

Sarah is co-author of the leading treatise on New York construction law, the New York Construction Law Manual. She also authors the chapter on New York law in Fifty State Construction Lien and Bond Law (3rd Edition) and the New York chapter in State-by-State Guide to Architect, Engineer and Contractor Licensing. Sarah also co-authored the chapter on "Legal Relationships" in Temporary Structures in Construction (3rd Edition).

Sarah is a frequent lecturer on construction issues, such as:

- How To Deal With the Insurer in the Arbitration and Mediation Process
- Construction of the Third Lane of Panama Canal
- How High Is Up? Civil and Common Law Approaches to the Typical Exceptions to Limitations of Liability in the Age Of "Gross Negligence"
- Litigation, Insolvency and Other Things When Projects Go Bad
- Preventative Lawyering: Lessons Learned from the Construction Industry
- Arbitration of Construction Disputes

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EXPERTGUIDES
THE WORLD'S LEADING LAWYERS CHOSEN BY THEIR PEERS

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Margaretha (Greet) Wilkenhuysen is a partner with the firm and the head of NautaDutilh's Corporate practice in Luxembourg. She specialises in cross-border corporate transactions, with a particular focus on mergers and acquisitions, joint ventures and international corporate restructuring. Margaretha also has extensive experience in corporate finance and the provision of corporate governance advice to listed companies. She represents both domestic and international clients in a wide range of high-end transactions.

Prior to joining NautaDutilh in 1997, Margaretha practiced law for several years with another well-known law firm in Brussels.

Margaretha publishes and speaks regularly on selected topics of corporate law. Recent publications include a contribution to the sixth edition of *The Shareholder Rights & Activism Review* (*The Law Reviews*, 2021) and the Luxembourg chapter of *The Corporate Governance Review* (*Law Business Research*, 2012-2021 editions).

She is a member of the International Bar Association (IBA), the European Private Equity and Venture Capital Association (ECVA) and the Duke Alumni Association.

Margaretha has been named a Leading Lawyer by the *IFLR1000* since 2011 and a Women Leader since 2018 by the same directory. The *Legal 500* describes her as "authoritative, organised and forward thinking", and she is praised by *Chambers Europe 2021* for her ability to "stay calm in any circumstances".

Margaretha obtained her law degree from the University of Leuven (KUL) in 1991. She also holds a master's degree in business and tax law from the University of Brussels (ULB, 1993) and an LL.M. from Duke Law School in North Carolina (1996).

Margaretha was admitted to the Brussels Bar in 1993 and to the Luxembourg Bar in 2007.

She is a native Dutch speaker and is fluent in English, French and German.

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Ira A Eddymurthy is a founding partner of SSEK Legal Consultants. She has more than three decades of experience advising multinationals and domestic companies on Indonesia's complex regulatory environment. Ira specializes in corporate law and mergers and acquisitions, capital markets, banking law, finance, including project finance, insurance law, and tax law.

Chambers & Partners quotes clients praising Ira's "sophisticated knowledge of Indonesian law" and "comprehensive knowledge and understanding of the commercial aims of clients."

Ira's recent projects include:

- Acting for Pigments Spain, S.L., part of the Esmalglass-Itaca Group, a portfolio company of American private equity firm Lone Star Funds, in the acquisition of two Indonesian manufacturing companies.
- Assisting McDermott, the American multinational engineering, procurement, construction and installation company, with the restructuring of several companies in Indonesia.
- Leading the SSEK team advising Malaysian investment holding company RII Holdings Sdn Bhd on its acquisition of a substantial equity interest in leading Indonesian logistics company PT Pandu Siwi Sentosa.
- Assisting Indonesian state-owned oil and gas corporation PT Pertamina (Persero) on the acquisition of Tuban Petrochemical Industries.

Ira has been named to The Legal 500 Hall of Fame for banking and finance in recognition of her years of continued excellence and constant praise from clients and colleagues. The Legal 500 also names her a leading practitioner for capital markets and corporate law and M&A. Ira is included in IFLR1000 Women Leaders, which recognizes the leading female transactional lawyers in the world who are consistently recommended by clients and peers for the quality of their advice and service.

Chambers & Partners and Asialaw recognize Ira as a leading lawyer in Indonesia for corporate law and mergers and acquisitions. She is included in the Asia Business Law Journal A-List of Indonesia's Top 100 lawyers.

Ira was a featured speaker at the 2017 US-Indonesia Women's CEO Summit in Washington, DC, which brought together C-Suite women from Indonesia and the United States for a "series of lively, open, and uniquely personal conversations on how they did it, how they do it and how they are planning for the future." Ira was named Woman Lawyer of the Year at the 2017 Asian Legal Business Indonesia Law Awards.

Ira graduated from the University of Indonesia Faculty of Law in 1984 and was a visiting scholar at the University of California, Berkeley, School of Law from 1990 to 1991. She is a member of the International Bar Association and the Inter-Pacific Bar Association (IPBA) and represented the Indonesian jurisdiction of the IPBA from 2002 to 2008.

Ira is a member of the Indonesian Advocates Association (Peradi) and leads the International Division of Peradi. Ira also is a member of the Association of Indonesian Capital Market Legal Consultants (HKHPM).

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Yoanna Stefanova is a partner with NautaDutilh's Corporate practice, focusing on private equity. She advises asset managers and private equity firms on the set-up and implementation of various structures as well as on the transactional aspects of investments and divestments, including in relation to financing, restructuring, refinancing, corporate governance and pre-insolvency matters.

Prior to joining NautaDutilh, Yoanna worked for several years at other international law firms in Luxembourg.

Yoanna holds a master's degree in private international law from the Robert Schuman University in Strasbourg (1999) and completed the *Cours complémentaires en droit luxembourgeois* (CCDL) at the University of Luxembourg (2002).

Yoanna regularly publishes on selected legal topics and recently contributed to the Luxembourg Corporate M&A Guide (*Mondaq*, 2021) and a compendium released by Wolters Kluwer to mark the 100th anniversary of the Luxembourg Companies Act. Yoanna is a member of the editorial committee of *ACE magazine*, a monthly Luxembourg periodical on business, tax and accounting law.

Yoanna is recommended by *IFLR1000* 2020 for being "very responsive and helpful." In addition to it, the Legal 500 2021 describes her as being "a key practitioner [who] combines both investment fund structuring expertise with M&A prowess". She is also recognised by Chambers Europe.

Yoanna was admitted to the Luxembourg Bar in 2002.

She is fluent in French, English and Bulgarian.

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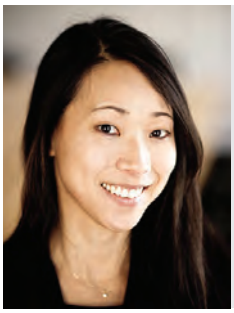

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Karessa L Cain is a corporate partner at Wachtell, Lipton, Rosen & Katz, where she focuses on mergers and acquisitions, corporate governance and securities law matters. She has worked on a range of transactions, including domestic and cross-border acquisitions, takeover defense, private equity transactions, shareholder activism, proxy contests, joint ventures and capital market transactions.

Ms Cain graduated cum laude from Yale College in 2000. She received her J.D. from Columbia Law School in 2004, where she was a James Kent Scholar and a Harlan Fiske Stone Scholar. Following graduation from law school, Ms. Cain served as a law clerk to the Honorable J. Clifford Wallace of the U.S. Court of Appeals for the Ninth Circuit.

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Denise A Cerasani is a partner in the Mergers & Acquisitions Group at White & Case, practicing principally in the areas of securities, mergers and acquisitions (M&A), and corporate finance. Denise has counseled and represented firm clients in a variety of industries and has developed a niche practice devoted to the firm's investment banking clients.

Denise received her JD from Georgetown University Law Center in 1984. She received her BA from University of Rochester in 1981.

Denise is recognized in *Chambers USA (2021)*, *Euromoney (2021)*, *Who's Who Legal (2020)* and *Lawdragon* (2016) as a leader in the field of mergers and acquisitions.

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Germaine Gurr is a partner in White & Case's global M&A practice in New York. Germaine advises clients on mergers and acquisitions, private equity, securities offerings, capital raising opportunities, joint venture and commercial transactions, and general corporate matters. She also regularly advises global companies on legal and business considerations in corporate and commercial transactions, operational structuring and management, and compliance and governance matters. Germaine has extensive experience in the energy industry, as well as the infrastructure, software, information technology, retail, healthcare, education and telecommunications sectors.

Germaine previously served as vice president and deputy general counsel at a global Fortune 500 energy management and automation company where she was responsible for and managed all of the company's corporate transactions and corporate governance matters.

Germaine is listed among The Deal's "Top Women in Dealmaking for M&A" and IFLR1000's Women Leaders Guide for M&A in the United States in 2021. She was named "M&A Legal Advisor of the Year" by The M&A Advisor in 2020. She is also listed in Euromoney's Women in Business Law Guide and Euromoney's Expert Guide for Corporate/M&A in the United States in 2020.

Germaine received her BA from Simmons College, and her JD from University of Michigan Law School, *cum laude*.

Recent matters include the representation of:

- Schneider Electric in the US$2.1 billion (₹14,000 crore) acquisition of Larson & Toubro Electrical & Automation Division (in partnership with Temasek). The transaction was named "Cross-Border M&A Deal of the Year (Over US$1 billion)" by the M&A Advisor (2020).
- AlphaStruxure, a joint venture between Schneider Electric and Carlyle Group, in its Integrated Fleet Electrification Infrastructure Project, a first-of-its-kind Energy as a Service (EaaS) fleet electrification project, to Support Montgomery County, Maryland's Growing Electric Bus Fleet. The joint venture will enable at least 44 buses in Ride On, Montgomery County Transit's fleet, to transition from diesel to electric.
- Azelis Americas, LLC, a specialty chemicals and food ingredients distributor in North America, on its acquisition of Vigon International, Inc., a leading US specialty distributtor and manufacturer of ingredients for the flavors, fragrances and cosmetics market segments.

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Kristen Rohr is a partner in the Mergers and Acquisitions Practice Group, and is resident in the New York office. Ms. Rohr focuses on the representation of corporate clients and private equity funds in connection with domestic and global mergers, acquisitions and equity investments in a broad range of industries.

Kristen was named to The Deal's "Top Rising Stars" for Mergers & Acquisitions in 2021. She is also listed as a "Rising Star" for M&A in the United States by Euromoney (2021).

Kristen received her BA from McGill University; and her JD/MBA from University of Toronto.

Recent matters include the representation of:

- Newmont Mining Corporation (NYSE: NEM), a gold and copper producer based in the United States with operations worldwide, in its US$10 billion acquisition of Goldcorp Inc. (NYSE: GG, TSX: G), a Canadian senior gold producer.
- Altria Group, Inc. in its US$1.2 billion sale by its subsidiary, UST LLC, of its Ste. Michelle Wine Estates (Ste. Michelle) business to Sycamore Partners Management, L.P.
- ION Acquisition Corp 1 Ltd. (NYSE: IACA), a SPAC, in its US$2.6 billion business combination with Taboola.com Ltd., an Israeli private company and a global leader in powering recommendations for the open web.
- Diamond S Shipping Inc., one of the largest publicly listed owners and operators of crude and product tankers, in its US$2 billion merger with International Seaways, Inc., one of the largest tanker companies worldwide providing energy transportation services for crude oil and petroleum products.
- NTT DATA, Inc., a recognized leader in global information technology services, in its acquisition of Nexient, LLC, a US-based software services firm.
- Roark Capital Group and Inspire Brands, Inc., a global multi-brand restaurant company, in the acquisition of Jimmy John's LLC, a fast food sandwich restaurant chain.
- Seaspan Corporation (NYSE: SSW), the world's largest independent containership owner-operator, in its acquisition of the remaining 89% of Greater China Intermodal Investments LLC it did not previously own from affiliates of The Carlyle Group and other minority owners at an implied enterprise value of US$1.6 billion.

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Michelle Rutta is a senior partner in White & Case's New York office and a member of the Securities Group and M&A Group, with over 30 years of experience in mergers and acquisitions, securities law, corporate governance, acquisition finance, high-yield debt and complex securities offerings.

Michelle chaired the Firm's Public Company Advisory Group and advises domestic and foreign companies on stock exchange, securities law compliance and disclosure matters and corporate governance issues. Clients also seek Michelle's advice in connection with M&A of public and private companies, spin-offs, leveraged buyouts and other acquisition transactions, as well as debt and equity securities and liability management transactions.

Michelle has represented companies in numerous acquisitions and acquisition financings in the healthcare industry, including Omnicare, Inc. in financing its acquisition of NCS HealthCare, Inc., which included the first ever issuance of a contingent interest, contingent convertible trust preferred security.

Michelle has extensive experience in the retail industry, having represented the underwriters in numerous financings for CVS Health Corporation, Reebok International Ltd., Phillips-Van Heusen Corporation and JC Penney Company. Michelle has also represented The Walt Disney Company in multiple financings, including Disney's first ever Canadian dollar-denominated security and first ever Luxembourg-listed security.

Michelle is listed among IFLR1000's Women Leaders for M&A in the United States (2021). She is also listed as a Leading Individual for Corporate Governance in the US, Euromoney's Banking Finance and Transactional Expert Guide (2021) and for Corporate/M&A in the US, Euromoney's Women in Business Law (2021).

Michelle received her BA from City University of New York, Queens College (summa cum laude) and her JD from New York University School of Law (Editor, Moot Court Board).

Recent matters include the representation of:

- Macquarie Infrastructure Corp. (NYSE: MIC) and its related entities in the sale of three businesses, including (i) the US$4.475 billion sale of its Atlantic Aviation business to KKR; (ii) the US$2.685 billion sale of International-Matex Tank Terminals to Riverstone Holdings LLC.; and (iii) the US$514 million sale of the MIC Hawaii businesses to Argo Infrastructure Partners, LP.
- Macquarie Infrastructure Partners II in the US$1.212 billion sale of Gadus Holdings Corporation, the parent company of WCA Waste Corporation, to GFL Holdco (US), LLC, a subsidiary of GFL Environmental Inc.

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Tali Sealman is a partner in White & Case's global Mergers & Acquisitions and Corporate Practice, based in Silicon Valley.

Tali's practice focuses on private and public M&A and general corporate representation of emerging technology and life science companies and venture capital investors. Tali represents strategic and financial buyers and sellers in public and private acquisitions. Tali also represents companies at all stages of their lifecycle and across a broad range of industries, including software, enterprise, security, digital health, fintech, gaming, autotech and blockchain.

Tali was named "M&A Legal Advisor of the Year" by the M&A Advisor in 2020. She is also listed among IFLR1000's Women Leaders for M&A in the United States (2021) and named a Leading Individual for M&A in the United States by Euromoney (2021) and Euromoney's Women in Business Law Guide for Corporate/M&A (2021).

Tali received her LLB at Tel Aviv University and her LLM at Columbia University School of Law, where she was a Harlan Fiske Stone Scholar.

Recent matters include the representation of:

- REE Automotive Ltd., an electric-vehicle technology startup based in Israel, in its US$3.6 billion go-public acquisition by 10X Capital Venture Acquisition Corp. (NASDAQ: VCVCU), a SPAC.
- dMY Technology Group, Inc. II (NYSE: DMYD), a SPAC, in its US$1.68 billion business combination with UK-based Genius Sports Group.
- Graf Industrial Corp. (NYSE: GRAF), a special purpose acquisition company (SPAC) founded by James Graf and Michael Dee, in entering into a definitive agreement for a US$1.8 billion business combination with Velodyne Lidar, Inc., as well as in obtaining US$150 million in PIPE commitments to support the transaction.
- NICE Actimize, a leader in Autonomous Financial Crime Management and a unit of NICE Ltd. (NASDAQ: NICE), in a definitive agreement to acquire Guardian Analytics, a leading AI, cloud-based financial crime risk management solution provider.
- OpenText Corporation (NASDAQ: OTEX, TSE: OTEX), a Canadian seller and developer of enterprise information management software and one of Canada's largest software companies, on a number of acquisitions including its US$163 million acquisition of Recommind and its US$75 million acquisition of XMedius, a provider of secure information exchange and unified communication solutions with locations in the United States, Canada and Europe.
- Abu Dhabi Catalyst Partners on its US$50 million Series F investment into Lookout Inc., a fast-growing Silicon Valley-based cybersecurity company with a pre-money valuation of approximately US$1.5 billion.

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ENERGY AND NATURAL RESOURCES

Feature for:

ENERGY AND NATURAL RESOURCES

Update on Indonesia's Omnibus Law and Implementing Regulations – Oil and Gas Sector

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The Indonesian Government has enacted implementing regulations to Law No. 11 of 2020 on Jobs Creation (the "**Omnibus Law**"). The implementing regulation particularly relevant to the oil and gas sector is Government Regulation No. 5 of 2021 on the Implementation of Risk-Based Business Licensing ("**GR 5/2021**"), which was enacted on February 2, 2021. The regulation includes Appendices I and II specifically relating to the energy and mineral resources sector ("**EMR Appendices**").

Generally, GR 5/2021 provides clarity on certain provisions relating to the requirements for oil and gas business licensing that were not made clear in the Omnibus Law. (You can see our article on the Omnibus Law and the Oil and Gas Law here. https://www.ssek.com/blog/indonesia-omnibus-law-changes-to-the-oil-and-gas-law)

Under GR 5/2021, Business Licenses in the oil and gas sector consist of licenses relating to (i) general survey, (ii) upstream oil and gas business, and (iii) downstream oil and gas business. GR 5/2021 also mentions Business Licenses for supporting businesses in the oil and gas sector. Below are some of the notable provisions in GR 5/2021.

General Survey

Implementation of General Survey

A general survey is principally implemented by the Ministry of Energy and Mineral Resources ("**MEMR**") but may also be carried out by a business entity. Under GR 5/2021, the Central Government may impose administrative sanction(s) on a holder of a Business License for general survey work if it violates one of the obligations in its Business License and/or does not fulfill the obligation(s) and/or requirement(s) set forth in the laws and regulations.

GR 5/2021 does not offer details on the form of administrative sanction(s). However, MEMR Regulation No. 29 of 2017, as amended by MEMR Regulation No. 52 of 2018 regarding Licensing for Oil and Natural Gas Business Activities, lists the administrative sanction(s) applicable for violations of certain obligations relating to general survey work:

a. written warning;
b. temporary suspension of activity; or
c. revocation of general survey license.

"GR 5/2021 PROVIDES CLARITY ON THE REQUIREMENTS FOR OIL AND GAS BUSINESS LICENSING"

Upstream Oil and Gas Business

Clarity on the Form of Business License

The Omnibus Law requires business actors in the sector to obtain at least a Business Identification Number (*Nomor Induk Berusaha* or "**NIB**") and a Business License from the Central Government before conducting business activities. A Business License is defined very generally in the Omnibus Law as being legally granted to a business entity to commence and carry out its business and/or activities. In this regard, under the EMR Appendices of GR 5/2021, upstream oil and gas business activities are considered a high-risk business sector.

GR 5/2021 clarifies that the Business License for upstream oil and gas activities is in the form of a Production Sharing Contract (PSC) and NIB, and that the implementation of the Business License will not invalidate any provisions of the Production Sharing Contract.

GR 5/2021 contains a general transition provision stipulating that provisions on the implementation of risk-based business licensing under the regulation do not apply to business actors whose Business License was approved and became effective prior to GR 5/2021 coming into effect. This provision

does not seem to waive the requirement for existing PSC contractors to obtain an NIB if they have not done so before GR 5/2021 came into effect.

The Omnibus Law provides that any person conducting exploration and/or exploitation activities without a "Business License or PSC" shall be subject to imprisonment for a maximum of six years and a maximum fine of Rp.60 billion.

Downstream Oil and Gas Business

Clarity on Sanctions

Under the Omnibus Law, a company conducting any downstream business activities without a Business License shall be subject to administrative sanctions in the form of termination of business and/or activities, a fine and/or "coercion (*paksaan*) by the Central Government". There was no elaboration on what was meant by coercion (*paksaan*) in the Omnibus Law.

GR 5/2021 clarifies that coercion (*paksaan*) may be in the following forms:

a. dismantling of infrastructure and facilities;
b. confiscation of goods or tools that have the potential to cause violations;
c. corporate coercion; and/or
d. other actions aimed at stopping violations and actions to restore environmental functions.

GR 5/2021 also provides that the foregoing sanctions shall be imposed until a Business License is issued.

Additionally, under the Omnibus Law and GR 5/2021, the Central Government may impose administrative sanction(s) on the holder of a Business License for downstream oil and gas business activities if it violates one of the obligations in its Business License and/or does not fulfill the obligation(s) and/or requirement(s) set forth in the laws and regulations. Such administrative sanctions were not made explicit in the Omnibus Law, and GR 5/2021 clarifies that the administrative sanctions shall be in the following forms:

a. written warning;
b. temporary suspension of activities; and
c, revocation of Business License.

Supporting Business in Oil and Gas

Business Licenses to Support the Oil and Gas Sector

GR 5/2021 provides a list of 33 Business Licenses to support the oil and gas sector. The EMR Appendices further regulate each of these Business Licenses, which includes the requirements and time period to obtain the license, validity period of the license, authorized governmental entity to issue the license, and obligations for the business entity in implementing the relevant business activities based on the license.

Sanctions

Pursuant to GR 5/2021, any person carrying out supporting business activities in the oil and gas sector without the relevant Business License shall be subject to administrative sanctions in the form of:

a. termination of business and/or activity;
b. administrative fine; and/or
c. coercion from the Central Government.

The Central Government may impose administrative sanction(s) on the holder of a Business License for supporting business activities in the oil and gas sector if it violates one of the obligations in its Business License and/or does not fulfill the obligation(s) and/or requirement(s) set forth in the laws and regulations. Said administrative sanctions are as follows:

a. written warning;
b. temporary suspension of activities;
c. fine; and/or
d. revocation of Business License.

Key Takeaways

GR 5/2021 provides clarity on certain provisions relating to the oil and gas sector under the Omnibus Law, particularly by specifying the required Business License in the upstream oil and gas sector. The additional requirement for an NIB may not be in line with the overall purpose of the Omnibus Law, which is to simplify licensing procedures and remove excessive regulatory requirements. However, this may not be a substantial issue and should be a mere formality that some PSC contractors have already complied with in practice.

It will be necessary to monitor how GR 5/2021 is implemented in practice.

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Fitriana Mahiddin is a supervising partner of the oil and gas practice of SSEK Legal Consultants. She is heavily involved in mergers and acquisitions, general corporate and commercial law, foreign investment and project finance, with a focus on the oil and gas, and mining sectors.

Since joining SSEK in 1999, Fitriana has represented numerous leading offshore and local upstream oil and gas companies. Her experience includes advising oil and gas companies, assisting investors in acquiring oil and gas blocks, preparing and negotiating farm-in/farm-out agreements, joint operating agreements and gas sales contracts, as well as setting up branch offices and project companies for clients.

She is recognised by legal directories as a leading practitioner in Indonesia for energy and natural resources.

Fitriana's recent work includes:

- Assisting Mubadala Petroleum on a retainer basis on several matters related to Mubadala Petroleum's operations as well as the preparation of an Indonesian Regulatory Database for Mubadala's upstream operations.
- Acting as Indonesian counsel to INPEX in connection with the Masela Production Sharing Contract (PSC) and the constructions of facilities to develop the Abadi field.
- Acting as Indonesian counsel to Mandala Energy in connection with the Lemang, Merangin III and Sumbagsel PSCs.
- Acting as Indonesian counsel to Ophir Energy in acquiring Santos' operating interests in the Sampang and Madura Offshore PSCs.
- Advising Chevron on the operation of the Rokan PSC and potential exposure on retirement of offshore and onshore assets on the expiration of a PSC.
- Acting for Sele Raya in relation to its upstream activities under its PSCs, namely the Merangin Dua, Belida and Blora blocks.
- Advising production sharing contractors in a number of upstream projects involving SKK Migas, including Total, ConocoPhillips and ExxonMobil.
- Advising an Austria-based multinational petrochemical company on the contemplated acquisition of a stake in an Indonesian petrochemical company involved in the development of a petrochemical complex.
- Acting as Indonesian counsel to an indirect shareholder of a holder of a nickel contract of work in Indonesia.
- Advising Allianz X, the digital investment unit of Allianz Group, on its investment in Gojek, the leading Indonesian ride-hailing platform that also offers various consumer on-demand and payment services.

Fitriana co-authored the Indonesia chapters of the International Comparative Legal Guide to: Oil & Gas Regulation 2021and the Lexology Getting the Deal Through Mining 2021 global guide.

Fitriana graduated in 1999 from the University of Indonesia Faculty of Law. She earned her Master of Laws (LL.M.) in international business law from Vrije Universiteit, the Netherlands. She is a member of the Indonesian Advocates Association (Peradi), the Association of Indonesian Legal Consultants, and the International Bar Association.

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Mariana has practiced environmental law all of her professional career, starting as a law student in 1998 and never looked back.

She has in-depth experience in all aspects of environmental law, from wildlife to waste regulation and approaches environmental issues from different perspectives, often in collaboration with the Firm's Projects, Litigation and M&A practice groups. She is praised by clients and peers for her ability to bring outstanding environmental expertise to the Firm's transactional projects, regulatory practice and strategic litigation capabilities.

Supported by a strong team of associates, she has represented Mexican and international companies, mainly from the energy, retail, manufacturing, financial services and infrastructure industries.

She has a particular expertise in advising intense water consuming industries on the preservation of water rights and designing strategies to ensure compliance with the complex wastewater regulations in Mexico.

As the first female partner of the Firm, Mariana is conscious of being a role model for other young female lawyers at the Firm and elsewhere. She has therefore actively promoted diversity and inclusion best practices at the Firm and coordinates the Diversity & Inclusion Committee. Mariana is also a founding member of the Board of Abogadas MX, a non-profit organization that aims to promote more female lawyers to leadership positions in Mexico. She is also part of the Firm's Pro Bono Committee.

Mariana studied Law at the Universidad Panamericana with a specialization in Administrative Law. She holds an MSc in Environmental Sustainability from the Centre for the Study of Environmental Change and Sustainability of the University of Edinburgh.

Her native language is Spanish and she is fluent in English.

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Based in Clyde & Co's Munich office, Eva-Maria Barbosa is a leading corporate insurance lawyer with broad experience of insurance regulatory and corporate insurance matters.

Eva is a corporate insurance lawyer with a broad experience of insurance regulatory and corporate insurance matters. She has led on many insurance related M&A and restructuring projects, with clients regarding her as a leading dealmaker, focusing on projects including exit strategies for discontinued businesses, run-off and cross-border outsourcing service agreements, as well as mergers and cooperation agreements.

Eva studied law in Freiburg and Düsseldorf and qualified as a lawyer in 1999. She is fluent in English and French.

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Tanja Schramm has extensive experience in a wide range of insurance work, particularly in the areas of financial lines, professional indemnity and fidelity insurance. She is recognized as a leading expert for insurance in Germany.

Tanja has more than 13 years of experience as an insurance lawyer and acts for German and foreign insurers and reinsurers in most areas of insurance and reinsurance law. Her experience includes acting as monitoring, defense and coverage counsel in large and complex (international) insurance cases as well as litigation and dispute resolution work.

She particularly advises on financial and professional lines (E&O, D&O, FI, PI), fidelity insurance, specialty risks, subrogated recovery matters and multi-jurisdictional issues. Tanja has extensive experience in the monitoring of E&O-mass claims. Furthermore, she has acted in a number of claims involving directors & officers and financial institutions as well as in several coverage lawsuits with fundamental legal importance. She also acts as defense counsel in court proceedings against professionals and directors. Further, her practice includes drafting and adapting insurance policies to German law.

Over the years, Tanja has undertaken secondments with an insurer in Germany and a reinsurer in London.

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April McClements is a Partner in the Insurance and Dispute Resolution team. April is a commercial litigator and specialises in insurance disputes.

April advises insurance companies on policy wording interpretation, complex coverage disputes (in particular relating to financial lines policies), D&O claims, professional indemnity claims, including any potential third party liability, and subrogation claims. April manages a significant number of professional indemnity claims for professionals, including insurance brokers, architects and engineers, for a variety of insurers.

April has been involved in obtaining High Court approval for various insurance portfolio transfers and/or schemes of arrangement arising from reorganisations and/or mergers and acquisitions involving life, non-life and captive insurers. April also works in the area of general commercial litigation with a particular focus on contractual disputes, most of which are litigated in the Commercial Court. She is also a strong advocate of ADR and has acted for clients in mediations and arbitration.

April is a member of the Law Society of Ireland, the Insurance Institute of Ireland and the British Insurance Law Association. She has contributed to various industry publications and has participated in seminars as a speaker on insurance issues.

Experience Highlights

- Advising Aviva in relation to a significant subrogation claim against the ESB which is being litigated in the Commercial Court arising from flooding in Cork City in November 2009.
- Advised Aviva on the Commercial Court application for approval of the restructuring of the non-life insurance business of Aviva Ireland. This was one of the largest restructurings of an Irish insurance business in recent years and involved more than one million policyholders.
- Defended an insurance broker in a significant professional indemnity action by Bloxham Stockbrokers alleging under- insurance.
- Advising an insurer in respect of cover under a Financial Institutions policy for multiple misselling claims.
- Acting for Kenmare Resources in the Supreme Court appeal of a €10 million libel award.
- Advised an insurer in relation to coverage of various D&O claims.
- Advised an insurer in relation to coverage of a fidelity claim notified by an Irish head-quartered company under its Commercial Crime Insurance Policy in respect of losses suffered by its US subsidiary as a result of alleged theft and fraud by other parties including former employees.
- Successfully represented excess layer insurers, Chubb and WR Berkley, in declaratory coverage proceedings in the Commercial Court in respect of the Michael Lynn professional indemnity cover.

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Sharon Daly is Head of Matheson's London Office and is a partner in the Commercial Litigation and Dispute Resolution Department.

Sharon is widely acknowledged as one of the leading corporate litigators in Ireland with over 25 years' experience in all aspects of commercial litigation and dispute resolution. Continuously recognised for her ability to respond creatively to complex issues, Sharon was recently awarded 'Lawyer of the Year' at the Benchmark Litigation 2019 Europe Awards.

Sharon has been involved in some of the most significant commercial litigation to come before the Irish courts in the last 10 years, including defending a major financial institution in a series of multi-billion, multi-jurisdictional disputes arising from investments in Bernard L. Madoff's business. Sharon also acted for insurers in the largest property damage dispute to come before the Irish courts in relation to the liability of hydro-electrical dams and flood damage arising therefrom.

Sharon and her team advise a wide range of clients on highly technical insurance issues including policy wordings, coverage and policy disputes, resulting in significant cost and time savings to our client and minimising reputational risk.

Sharon is Co-Chair of the Insurance Committee for the International Bar Association and has actively sought to use this committee to bring together leaders in the insurance industry to address the challenges in the industry globally.

As Head of Matheson's Brexit Advisory Group, Sharon leads a multi-disciplinary team who advise and assist clients on the implementation of their Brexit plans.

Experience Highlights

- Acted for a financial institution in a multi-billion (2.9bn) euro fraud claim achieving a dismissal of same on an interlocutory motion on public policy grounds.
- Defending a financial institution in a fund custody negligence claim seeking recovery of $500m achieving a strike out on a preliminary issue.
- Representing a major broker in the EU investigations into the commercial motor industry in Ireland.
- Acting for insurers in a significant coverage dispute on a financial lines run-off policy.
- Acting in a high-profile multimillion euro professional negligence claim action against a major firm of solicitors in relation to the administration of a very large and complicated estate (confidential).
- Acting for AIB in a very significant coverage dispute under the civil liability section of a Bankers Blanket Bond policy following an employee fraud.

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Junko Suetomi is a partner in Baker & McKenzie, Tokyo office and handles the firm's international trade and dispute resolution practice. Ms Suetomi focuses her practice on commercial and trade laws and regulations, WTO dispute settlement, civil and criminal litigation, antitrust law, bankruptcy law and general corporate law. She has extensive experience advising clients on issues involving trade remedy matters such as an anti-dumping and countervailing duties, import restrictions, customs matters, export control and sanctions, tariff treatment and FTA/EPA applications, public procurements, among others.

Prior to joining Baker & McKenzie, Ms Suetomi worked in the WTO Dispute Settlement Division of the Ministry of Foreign Affairs' Economics Bureau. She has served as a court-appointed defense attorney in many criminal cases. Ms Suetomi has co-authored numerous publications related to her practice. Ms Suetomi was the chair and now is vice-chair of the Human Rights Committee of the Tokyo Bar Association. She delivers lectures at Waseda University and National Tax College. She is a member of the Japan Association of International Economic Law. She has served as an expert member of the Ministry of Finance's Council on Customs, Tariff, Foreign Exchange and Other Transactions since 13 March 2019. She has been appointed a Bar Examiner by the Minister of Justice.

Ms Suetomi has been admitted both in Japan and New York State, United States.

Ms Suetomi has received her LL.B. from Tokyo University and Kyushu University, her LL.M. from New York University School of Law and Cornell Law School. She has completed judicial training at Legal Research and Institute of the Supreme Court of Japan.

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THE WORLD'S LEADING LAWYERS CHOSEN BY THEIR PEERS

INVESTMENT FUNDS

Feature for:

INVESTMENT FUNDS

Matheson partners Julie Murphy-O'Connor and Tara Doyle discuss work-life balance, the firm's commitment to diversity and inclusion and provide useful advice on how to develop your career

Julie Murphy-O'Connor and Tara Doyle
Matheson
Dublin

How do you think the covid-19 pandemic has or will impact gender parity in the legal profession within your jurisdiction?

The pandemic has demonstrated just how agile work can be in the legal profession. Embracing flexible working for all genders has the potential to change the legal landscape dramatically in the future. Working from home allows people to be much more efficient with their time. No time is wasted on commuting or waiting around before meetings or waiting around court, as all of these things are happening virtually. It also means more family time.

Having said all of that, research suggests that certain consequences of the pandemic such as home schooling, household chores and caregiving responsibilities have been shouldered to a greater extent by women. Organisations need to be live to these issues and to the actions they can take to encourage and support the continued success and progress of women in the workforce so as to ensure women can continue to thrive both personally and professionally.

There are several critical areas in which employers can take action, from making flexible working the norm, emphasising trust and empathy, providing networking and mentoring opportunities, implementing learning experiences that work for employees' daily lives, addressing unconscious bias in succession and promotion planning, and making diversity, respect, and inclusion non-negotiable values that are lived out in the everyday work culture. The most important thing to remember is there is no one size fits all approach.

What obstacles have you had to contend with during your legal career that related to your gender?

Julie Murphy-O'Connor: As a mother of three, I have had to navigate all of the usual issues that face women across legal and other professions, including periods of absence for maternity leave, unconscious bias, and juggling the need to be always on at work and at home.

The key to making career and family work in a sustainable way is to be organised and have a steady support network of whatever form. It helps when both parents contribute to the children's upbringing and it's important to prioritise finding childcare arrangements that work well for both the children and the parents. Although it can be expensive in the short term, it is worth investing in this for the long term.

From the perspective of gender equality how does the environment in which you work now compare to the one you began your career in?

Julie Murphy-O'Connor: Prospects for progression are more encouraging for women today than when I started out 25 years ago. When I started out there were no working mothers who were partners in the firm to act as role-models. There was no value placed on diversity and inclusion. The few that did progress to senior positions in the years that followed were often stereotyped and frequently had to work harder than many of their male counterparts to get to the same level.

Nowadays, both men and women are for the most part under similar pressures in terms of juggling childcare demands, which of itself creates a more equal environment. There are also so many more successful role models for women.

In Matheson, we have clear gender diversity goals that are underpinned by measurable outputs, including a commitment to have 40% female representation on our leadership team by 2024. Already 40% of our partners are women, this represents considerable progress, in the last five years in particular. Notably, the business has also grown from strength to strength in this period. Matheson is now the largest law firm in Ireland.

Not only do we positively demand diversity and inclusivity to be visible in everything that we do, but a factor not to be underestimated

is that our clients now also actively expect and demand that their professional advisors demonstrate this.

I am confident that progress in this regard will continue exponentially, with more and more females in leadership roles who will act as role models and mentors for those starting out in their careers.

I would love to think we are at a point where leadership positions are something that women starting out in their careers at Matheson not just aspire to, but fully expect to achieve.

Do you feel the legal profession within the jurisdiction where you are based treats women and men equally? If there are inconsistencies where are these most noticeable?

There still is more to be done across the legal profession in Ireland. The Law Society of Ireland is doing its bit, most recently by inviting its members to commit to its Gender Equality Diversity and Inclusion Charter. All of the larger professional firms have diversity and inclusion firmly on their agendas. However, women are still notably underrepresented at the Commercial Bar. This is an area in which the entire profession has a responsibility to drive change, including by instructing counsel more mindfully.

To ensure change happens and opportunities are truly equal, every firm and every branch of the profession should set themselves clear and ambitious goals that they must achieve within set timelines, embed a culture within the organisation that ensures that anything less than a truly diverse approach to every decision they make – whether it be hiring, promotion or how they resource their flagship cases – will not be tolerated.

What initiatives do you have in place at your firm to promote gender equality? Does your firm have other diversity programmes?

In implementing diversity and inclusion (D&I) at Matheson, our initial focus has been on the following six pillars:

- multiculturalism and social mobility,
- gender,
- generational,
- family and working parents,
- disability and
- LGBTQ+.

To support these pillars, we have numerous programmes running including, by way of example, Matheson's D&I scholarship in partnership with Trinity College Dublin; the Matheson maternity and paternity programmes; the Matheson life stages series; unconscious bias training; the Matheson open doors programme and the Matheson agile working programme. Matheson was also one of Ireland's founding members of the OUTLaw Network which is aimed at promoting the inclusion of LGBTQ+ employees across the legal sector in Ireland. On gender diversity, we have clear goals that are underpinned by measurable outputs, for example our commitment to have 40% female representation on our leadership team by 2024, and this work will continue.

We have worked hard to continue many of the programmes and initiatives virtually during the pandemic, as we believe it is as important now as it has ever been to maintain the connectivity and sense of belonging of our people, especially when working from home.

Matheson has been recognised by the Irish Centre for Diversity for its work in D&I and awarded its Investors in Diversity Gold Standard. This recognition is a significant milestone for us and represents a clear validation of the D&I initiatives which we have embedded. Achieving the D&I Gold Standard was made possible through the collective work and dedication of Matheson colleagues across the firm. In 2019, we were the first Irish law firm to achieve the Silver Standard, and in 2020 we were the first organisation in Ireland, across all sectors, to achieve the Gold Standard.

The Financial Times has recognised Matheson's commitment to D&I in its Innovative Lawyers Report 2019, ranking Matheson as Ireland's most innovative law firm for D&I. In May 2020, we were also ranked the seventh most gender-diverse law firm in Europe based on the number of female partners at the firm (The Lawyer, European 100, 2020).

Whilst it is great to receive this external recognition, seeking internal feedback and listening to it is very important to us, as is constantly challenging ourselves on how we can continue to evolve and improve.

What advice would you give to women in junior positions to encourage them to work towards attaining senior positions?

Don't cut off your career branches too early – don't step away from your career based on what might happen.

Don't be afraid to put yourself out of your comfort zone and spot growth opportunities when they present themselves – even if you think you're not ready. Growth and comfort tend not to co-exist.

Don't be too hard on yourself. Be resilient. When things go wrong, dust yourself off. Learn and move on.

Remember, it is never too early in your career to add value and to differentiate yourself. Don't be afraid to come forward with ideas as to how to do things better. Use your millennial skills, whether by improving your practice's online presence or introducing technological solutions to improve service delivery.

Find a niche area of law as a specialty. This will greatly increase your value.

Finally, when the going gets tough, hang in there. If you are in the throes of early motherhood, you may find it difficult to believe now, but one day your child will grow up and tell you what an amazing role model you are and how proud of you they are.

If you could introduce one policy related to gender equality in the legal profession what would it be?

Mentoring programmes are helpful and for those that find a good mentor and champion, it can be a game-changer.

More fundamentally, what women need in order to progress in the legal profession is (1) respect; (2) flexibility; (3) support and encouragement and (4) for the organisations in which they work to have clear, measurable and time-bound goals around equal representation at the very top.

For more information, please contact:
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Tara Doyle is a partner and head of the Asset Management and Investment Funds Department at Matheson. She practises Irish financial services law and advises many of the world's leading financial institutions, investment banks, asset management companies, broker-dealers and corporations carrying on business in Ireland or through Irish vehicles. Tara has extensive experience in advising a wide range of domestic and international clients on the structuring, establishment, marketing and sale of financing and investment vehicles and products in Ireland and other jurisdictions. In particular she specialises in advising on the legal and regulatory issues surrounding the establishment of private and public investment funds.

Tara was a member of the Council of Irish Funds, the representative body for the Irish funds industry from 2015 to 2019 and served as Chair for the 2017 / 2018 term. Tara currently serves as Chair of the Irish Funds ESG Sustainability Working Group and in that capacity leads the Irish Funds ESG Policy, Legal & Regulatory Workstream.

Experience Highlights

- Leading UK investment managers in relation to their Brexit planning, including the establishment of Irish financial services providers and Irish domiciled investment fund products.
- The first AIFM to be authorised in Europe.
- In relation to the implementation of the EU ESG Action Plan and its impact on Irish financial market participants and investment funds.
- A leading US investment advisor in relation to the merger of its Irish and Luxembourg management companies.
- Irish management companies and investment funds on risk mitigation programmes issued by the Central Bank of Ireland.

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Liz Grace is a partner at Matheson with a background in financial services law. Liz was appointed communications strategy director at the firm in 2016.

Liz's background in investment funds law stems from several years of practice in the area, working from early on in her career in 2000 with Matheson's global asset management client base in the establishment, operation and re-structuring of Irish domiciled investment funds.

Following on from that, she established the first dedicated knowledge management function at practice level with the Asset Management and Investment Funds team in Matheson, focussing on the law and regulation of investment funds and asset managers, in particular in relation to emerging European and Irish legal and regulatory developments affecting asset managers and investment funds. In 2012, Liz wrote the first university Funds Law syllabus in Ireland for Maynooth University. Liz's postgraduate qualifications include a master's degree in law from Oxford University.

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Michelle is a partner in the Asset Management and Investment Funds Group at Matheson.

Michelle practises Irish financial services law and advises many of the world's leading financial institutions, investment banks, asset management companies and service providers carrying on business in Ireland or through Irish vehicles.

She has extensive experience in advising a wide range of domestic and international clients on the structuring, establishment, marketing and sale of investment vehicles and products in Ireland and other jurisdictions. In particular, Michelle advises on the legal and regulatory issues surrounding the establishment of AIF and UCITS structures, including hedge funds, managed account platforms, master feeder, fund of fund, complex and bespoke structures. She also advises on the structuring, offer and sale of investment instruments and investment products, the provision of investment advice and other financial services.

Michelle has advised some of the world's largest alternative investment managers on the implementation of AIFMD and also advised on the first inward AIFMD management passport into Ireland. She also has extensive experience in advising international clients in relation to UCITS' legislative and regulatory developments.

Michelle also has extensive experience in advising on the establishment of loan origination structures and advised on the establishment of one of the first regulated loan origination AIFs in Ireland.

Michelle is the 2017 International Law Office Client Choice award winner for Banking Law in Ireland, a category that incorporates financial services and has been listed one of the 50 Leading Women in Hedge Funds for 2019 by The Hedge Fund Journal, a leading global publication for Asset Management.

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Caroline Clemetson is a member of the firm's management Committee. She is head of Schellenberg Wittmer's investment funds group and a partner in the banking and finance group. Caroline focuses on banking and finance law, in particular, financial services and financial regulation, asset management, collective investment schemes and other investment products, distribution of financial products, derivatives, trade finance, pension funds as well as insurance and insurance brokerage regulation.

Examples of Caroline's expertise include: counsel to a major Swiss fund management company for the set-up of a new Swiss Mortgage Fund which has been described as one of the most innovative products in the market in the last five years; advising fund managers on obtaining their FINMA license as fund manager in Switzerland and implementing their new organisation, including the set-up of the compliance and risk management as well as the implementation of the new anti-money laundering regulation and counsel to several major fund management companies for the set-up of complex Swiss products (several billion of AuM).

Caroline is an authorised representative at the SIX Swiss Exchange and is a member of the specialist committee legal and compliance of the Swiss Funds and Asset Management Association (SFAMA).

Caroline graduated from the Universities of Lausanne and Zurich in 2001 and was admitted to the Swiss Bar in 2003. In 2006, she earned an LLM from Columbia University.

Before joining Schellenberg Wittmer as a partner in 2014, Caroline worked for the Swiss Financial Markets Supervisory Authority FINMA (2006 to 2014), where she was head of the investment products and distribution department within the Markets division.

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Stephanie R Breslow is co-head of the Investment Management Group and a member of the firm's Executive Committee. She maintains a diverse practice that includes liquid funds, private equity funds and the structuring of investment management businesses. She focuses her practice on the formation of private equity funds (including LBO, mezzanine, distressed, real estate and venture) and liquid-securities funds (including hedge funds, hybrid funds, credit funds and activist funds) as well as providing regulatory advice to investment managers. She also represents fund sponsors and institutional investors in connection with seed-capital investments in fund managers and acquisitions of interests in investment management businesses and funds of funds and other institutional investors in connection with their investment activities, including blockchain technology and virtual currency offerings and transactions.

Recently serving as chair of the Private Investment Funds Subcommittee of the International Bar Association, Stephanie is a founding member and former chair of the Private Investment Fund Forum, a former member of the Advisory Board of former Third Way Capital Markets Initiative, a former member of the Board of Directors and current member of 100 Women in Finance, a member of the Board of Visitors of Columbia Law School and a member of the Board of Directors of the Girl Scouts of Greater New York. Stephanie has received the highest industry honors. She was named to the inaugural *Legal 500 US* Hall of Fame in the category of "Investment Fund Formation and Management: Alternative/Hedge Funds." Stephanie is also listed in *Chambers USA: America's Leading Lawyers*, *Chambers Global: The World's Leading Lawyers*, *Crain's* Notable Women in Law, *IFLR1000 Women Leaders*, *Best Lawyers in America*, *Who's Who Legal: The International Who's Who of Business Lawyers* (which ranked her one of the world's "Top Ten Private Equity Lawyers"), *Who's Who Legal: The International Who's Who of Private Funds Lawyers* (which ranked her at the top of the world's "Most Highly Regarded Individuals" list), *Who's Who Legal: Thought Leaders: Global Elite, Who's Who Legal: Thought Leaders: Private Funds, Expert Guide to the Best of the Best USA*, *Expert Guide to the World's Leading Banking, Finance and Transactional Law Lawyers*, *Expert Guide to the World's Leading Women in Business Law* and *PLC Cross-border Private Equity Handbook*, among other leading directories. Stephanie was named the "Private Funds Lawyer of the Year" for 2020 by *Who's Who Legal* and the *Euromoney Legal Media Group*'s "Best in Investment Funds" and "Outstanding Practitioner," both at the Americas Women in Business Law Awards. She is also recognized as one of *The Hedge Fund Journal*'s 50 Leading Women in Hedge Funds and was named one of the 2012 Women of Distinction by the Girl Scouts of Greater New York. Stephanie's representation of leading private investment funds has won numerous awards, including *Law360's* Asset Management Practice Group of the Year. She is a much sought-after speaker on fund formation and operation and compliance issues, and she regularly publishes articles on the latest trends in these areas.

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Jennifer M Dunn focuses her practice on advising hedge funds, private equity funds (including mezzanine and distressed funds), hybrid funds, funds of funds and investment advisers in connection with their structuring, formation and ongoing operational needs, general securities laws matters, and regulatory and compliance issues. Her experience includes structuring and negotiating seed and strategic investments, advising investment managers regarding the structure and sale of their investment management businesses and the structure of their compensation arrangements, and representing investment managers in connection with managed accounts and single investor funds.

Jennifer was named among the world's "50 Leading Women in Hedge Funds" by *The Hedge Fund Journal*. A member of the board of directors of 100 Women in Finance, Jennifer is recognized by *The Legal 500 US*, *Expert Guide to the World's Leading Banking, Finance and Transactional Law Lawyers* (Investment Funds), *Expert Guide to the World's Leading Women in Business Law* (Investment Funds) and has been named an *IFLR1000* "Rising Star" (Investment Funds). She co-authored *Hedge Funds: Formation, Operation and Regulation* (ALM Law Journal Press) and presented at conferences on topics, including ESG investing, attracting and retaining capital, operational due diligence, compliance issues, co-investments, fund structures and terms, management company issues and considerations for emerging managers.

Jennifer earned her J.D. from Columbia Law School, where she was a Harlan Fiske Stone Scholar, and her B.A., *cum laude*, from the University of Pennsylvania.

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Dorothy D Mehta leads Cadwalader's Investment Management Practice, and is the firm's leading advisor on fund formation. Her client base includes US and non-US investment advisers, wealth management platforms and family offices. Dorothy has extensive experience in the structuring, formation and operation (domestically and on a cross border basis) of a variety of alternative investments products, including US and non-US hedge funds, private equity funds, hybrid funds, funds of funds, collective investment trusts and commodity pools (both privately and publicly offered), and the establishment of separately managed account arrangements.

Dorothy regularly advises clients on registration and related compliance requirements of the SEC and CFTC, as well as on matters pertaining to the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act and federal and state securities laws generally.

Dorothy has been named leading hedge fund lawyer by *Chambers USA*, a "Next Generation Partner" in alternative and hedge fund formation by *The Legal 500 US*, a "Highly Regarded" hedge fund and investment fund lawyer in *IFLR 1000*, and as a top-rated securities and corporate finance attorney in New York by *Super Lawyers*. Dorothy has been recognized in Euromoney Legal Media Group's *Guide to the World's Leading Women in Business Law* and was shortlisted for the 2019 Euromoney LMG Americas Women in Business Law Awards for "Best in Investment Funds."

Dorothy is frequently asked to speak and write on a wide range of investment management issues and recently co-authored the chapter, "US Tax and Regulatory Considerations," in *Private Trust Companies: A Handbook for Advisers* (2020).

Dorothy received her J.D. from Fordham University School of Law and B.A. from Cornell University.

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Amanda N Persaud is a Partner in Ropes & Gray's Asset Management Practice. Her practice focuses on advising sponsors on the formation and operation of private investment funds, including hedge funds, hybrid structures, private equity, credit, venture, real estate and other strategies. Amanda regularly leads numerous global fund raises for prominent sponsors and serves as their primary advisor on a wide range of governance, operational and regulatory matters. She also has significant experience advising on recapitalizations of private investment funds, succession planning, and management company arrangements.

Amanda has been listed as a leading private funds lawyer in Chambers USA; The Legal 500 USA; Law Business Research's International Who's Who of Private Funds Lawyers and Who's Who of Business Lawyers; and Legal Media Group's Expert Guide to the World's Leading Banking Finance and Transactional Lawyers and Expert Guide to Women in Business.

Amanda speaks extensively on a range of topics affecting private investment funds at conferences sponsored by the International Bar Association, Association of the Bar of the City of New York, Practising Law Institute and other industry forums.

Her many publications include: Private Equity's Pixie Dust: Carried Interest Arrangements 16th Annual Private Equity Forum, Practising Law Institute; "Private Equity: Longer Term Investment Structures" 18th Annual Private Equity Forum, Practising Law Institute; Private Equity Funds: Legal Analysis of Structural, ERISA, Securities and Other Regulatory Issues in Investment Adviser Regulation, as well as, Financial Product Fundamentals, Second Edition, Practising Law Institute.

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Phyllis A Schwartz focuses her practice on the structuring, formation and operation of private equity funds, including buyout funds, venture capital funds, mezzanine funds, distressed funds, litigation financing funds and real estate funds. She represents both fund sponsors and investors in her practice. In addition to assisting fund sponsors with their internal management arrangements, succession planning, capital call borrowing facilities and formation of co-investment vehicles, she has extensive experience with institutional investors and regularly advises clients on market terms of investment funds. Phyllis also advises private equity funds in connection with their capital call credit lines and investments in, and dispositions of, portfolio companies.

Phyllis is listed in *The Legal 500 US*, *The Best Lawyers in America*, *New York Super Lawyers*, *Who's Who Legal: The International Who's Who of Private Funds Lawyers*, *Expert Guide to the World's Leading Banking, Finance and Transactional Law Lawyers* (Investment Funds, Private Equity) and the *Expert Guide to the World's Leading Women in Business Law* (Investment Funds). A member of New York's Private Investment Fund Forum, Phyllis frequently shares her insights on effective fund formation strategies at industry conferences and seminars. She recently discussed compliance concerns for co-investments and issues related to fund restructuring and secondary transactions. Interviewed by *Private Funds Management* in the article "Ringing the Changes," Phyllis is also the co-author of *Private Equity Funds: Formation and Operation* (Practising Law Institute), which is considered the leading treatise on the subject. In addition, she contributed to the *Fund Formation and Incentives Report* (Private Equity International in association with SRZ), as well as a chapter on "Advisers to Private Equity Funds – Practical Compliance Considerations" in *Mutual Funds and Exchange Traded Funds Regulation, Volume 2* (Practising Law Institute).

Phyllis received her J.D. from Columbia Law School and her A.B. from Smith College.

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Geraldine is a partner in the Employment, Pensions and Benefits Group. She provides strategic, practical and commercially focussed advice to international and domestic clients on all aspects of employment law. Her practice spans a variety of sectors, including technology, financial services and pharmaceuticals.

Geraldine has extensive experience advising in relation to the management of employees on a day to day basis, including the drafting and implementation of contractual documentation and employment policies and procedures, as well as guiding employers through crisis management issues in the context of workplace investigations, misconduct allegations, grievances, bullying, harassment, and performance management procedures.

Geraldine has particular expertise in advising clients on senior executive appointments and terminations, particularly in regulated industries, as well as case managing employment injunctions and defending claims before the Workplace Relations Commission, the Circuit Court and the High Court.

She provides pragmatic advice on the employment law aspects of corporate restructurings, outsourcings, and individual and collective redundancy situations.

Geraldine worked with Matheson's US client base from the firm's San Francisco and Palo Alto offices for six months in 2017 / 18. As a result, Geraldine has a deep understanding of the key distinctions between employment law in Ireland as compared with other jurisdictions.

She frequently provides bespoke employment law workshops to clients. She is a regular speaker at conferences and a tutor at the Law Society's professional practice course for trainee solicitors. She also regularly publishes articles on employment law matters. Topics on which she has recently written and spoken on include: "Fair Procedures and the Right to Cross Examination during Workplace Investigations", "US Employers in Ireland: Key Distinctions Between the Employment Law Landscape in the US and Ireland", "Recent Developments in Employment Injunctions", "Common Pitfalls and Developing Trends in Employment Law in Ireland', "Important Ruling Extends the WRC's Powers to Disregard National Law that is Contrary to EU Law", and various articles on Ireland's workplace relations system.

Geraldine is an active committee member of the Employment Law Association of Ireland (ELAI) and the Law Society of Ireland's Employment and Equality Law Committee. She is also an active member of the American Bar Association's International Labor and Employment Law section and the European Employment Law Association of Ireland. Geraldine originally qualified as a Chartered Tax Adviser.

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Emi Uchida is a partner from Atsumi & Sakai and experienced lawyer who has provided labour and employment law services. She started her career in 2000 at Anderson Mori & Tomotsune (October 2000-March 2014). Then, she had worked for legal firms which are member of "big 4" accounting firms, EY Law Co. (April 2014-May2015) and DT Legal Japan (May 2015-July 2017).

Throughout her career, she has provided various labour and employment law services to multinational companies which include UK, US and other countries'/areas' inbound clients. She has advised inbound clients having Japanese subsidiaries or branches by directly communicating with global or Asia regional HR heads. She has also handled outbound engagements for Japanese multinational companies having oversea subsidiaries or branches by closely collaborating with foreign lawyers.

Examples of her services include:

- Advised non-Japanese multinational companies starting business in Japan on hiring officers, employees or consultants in Japan including immigration law advice;
- Advised non-Japanese multinational companies' Japanese subsidiaries or branches including (i) preparation or review of HR policies (such as work rules/employee handbook/code of conducts) by adopting global policies to the extent permissible and proper under Japanese laws and practices, (ii) advice on the communications with the employees for the implementation of new or revised HR policies;
- Advised on the implementation of new or revised salary, retirement allowance or DB/DC pension schemes;
- Advised on inbound, outbound and domestic M&A transactions and post-merger integration projects (e.g. restructuring, integration of salary schemes and other HR related policies, amendment to work rules, etc.);
- Advised on reduction in workforce including giving legal advice to the management, advising on severance packages and communications with employees, and preparing relevant documents in and outside Japan;
- Advised on daily HR related issues (e.g. poor-performers, mental health issues of employees, harassment issues, temporary workers related issues, disciplinary actions, dismissals) including explanation to, or negotiation with, the authorities (e.g. Labor Bureau) or labor unions;
- Acted as a litigator for the Japanese and non-Japanese multinational companies in lawsuits, preliminary dispositions and labour trials, and represented Japanese and non-Japanese multinational companies in the negotiations with labour unions; and
- Conducted in-house training seminars for the management or employees such as harassment prevention seminars.

She is a member of the Management Lawyers Counsel in Japan and the Labor Legislation Committee of Dai-ichi Tokyo Bar Association. She has also been appointed as a member of the Headquarters for the Promotion of Gender Equality of Dai-ichi Tokyo Bar Association.

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Jeannemarie O'Brien is a partner in the New York law firm of Wachtell, Lipton, Rosen & Katz, where she is active in the firm's merger and acquisition practice, focusing on the executive compensation and employee benefits aspects of transactions, with a particular emphasis on transactions involving financial services institutions. She has been involved in over $500 billion of mergers and acquisitions transactions over the last decade. Ms O'Brien also advises companies and their boards on governance issues and assists companies and senior executives on executive compensation matters in both the public and private sectors, and has particular expertise regarding the compensation structures at financial institutions and the related regulatory considerations.

The transactions in which Ms O'Brien has been involved include many major financial institution transactions, both bank and non-bank, including: City National/Royal Bank of Canada; National Penn Bancshares/BB&T; Chubb/ACE Limited; Hilltop Holdings/Plains Capital; CapitalSource/PacWest Bancorp; Umpqua Holdings Corporation/Sterling Financial Corporation; Huntington Bancshares/Camco Financial; Marshall & Ilsley/Bank of Montreal; Alleghany Corporation/Transatlantic Holdings; Comerica Incorporated/Sterling Bancshares, Inc.; Bank of America Corporation/Merrill Lynch; Wells Fargo/Wachovia; Countrywide/Bank of America Corporation; FleetBoston Financial Corp./Bank of America Corporation; MBNA/Bank of America Corporation; J.P. Morgan/Bank One; J.P. Morgan/Bank of New York; Warburg Pincus/The Mutual Fund Store and TMFS Holdings, LLC; Bank of America Corporation in its sale of Balboa Insurance Group to QBE Holdings, Inc. She also has been involved in transactions outside of the financial sector, including: Pfizer Inc./Allergan plc; United Technologies (Sikorsky Aircraft)/Lockheed Martin; Carefusion/Becton Dickinson; Cox Automotive/Dealertrack Technologies; United Technologies Corporation/Goodrich Corporation; Thermo Fisher Scientific/Life Technologies Corporation; Vantiv/Mercury Payments Systems; Leap Wireless/AT&T; Rayonier Inc.'s spinoff of its performance fibers business; and CBS Outdoor Americas' initial public offering.

Ms O'Brien frequently writes and speaks on executive compensation and corporate governance issues and is recognized as a leading executive compensation lawyer in the Chambers USA Guide to America's Leading Lawyers for Business and The Legal 500. In addition to memos and articles on recent developments in the executive compensation area, she is an author of the chapter on executive compensation in Wachtell, Lipton, Rosen & Katz's "Financial Institutions M&A," an annual review of leading developments.

Ms O'Brien received a B.A. cum laude from Mount Holyoke College in 1989, and a J.D. cum laude from Fordham Law School in 1994, where she was an associate editor of the Fordham Law Review. She is a member of the New York State and American Bar Associations. Ms O'Brien serves as a member of the Board of Trustees of the Trinity School in New York City and of the non-profit organization Prep for Prep and is on the Advisory Board of St. Bartholomew Community Preschool in New York City.

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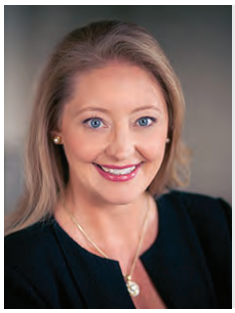

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Andrea K Wahlquist is a partner in Wachtell Lipton's Executive Compensation and Employee Benefits Practice, specializing in executive compensation and benefits matters, with an emphasis in representing target companies in strategic mergers and a background in representing some of the largest private equity sponsors in the acquisition, management and disposition of their portfolio companies.

Ms Wahlquist regularly counsels private and public companies on the design, implementation and treatment of employee compensation and benefit programs – and routinely negotiates executive employment and separation arrangements – both in connection with corporate transactions and in the ordinary course of ongoing company representations. Ms Wahlquist also has extensive experience with a broad range of executive compensation-related and benefits issues that arise in IPOs, spin-offs and in bankruptcy/restructuring transactions.

Ms Wahlquist is included in The Best Lawyers in America – *Employee Benefits Law*, is recognized as a leading lawyer in both *The Legal 500* and *Chambers USA Guide to America's Leading Lawyers for Business*, and was named in *The American Lawyer's 2007* "Dealmakers of the Year" issue. Ms Wahlquist has spoken as a panelist at a variety of industry conferences addressing executive compensation and governance issues.

Ms Wahlquist served as a law clerk to Judge Stephen J. Swift of the United States Tax Court (1995-97), and after her clerkship began practicing as an executive compensation and employee benefits lawyer in New York City. Ms Wahlquist received her B.A. from the University of Virginia (1992) and her J.D. from the Washington & Lee University School of Law (1995), where she was the Editor-in-Chief of the *Environmental Law Digest*, a publication of the Virginia State Bar Association.

Ms Wahlquist sits on the Executive Committee of the Tax Section of the New York State Bar Association, and is a member of the American Bar Association and its Joint Committee on Employee Benefits. She also serves on the Board of Trustees of Washington & Lee University and of The Children's Aid Society in New York City.

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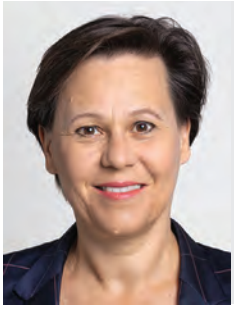

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Lorenza Ferrari Hofer (dual-qualified in both Switzerland and in England and Wales), is a partner in Schellenberg Wittmer's Intellectual Property and Life Sciences teams. She specialises in intellectual property, data and data protection law, unfair competition and contract law and has profound knowledge in complex, cross-border matters relating to product development, licensing, trade and distribution of technology, therapeutic, health and food products. Lorenza is very active in disputes, covering patent infringement and injunction proceedings, as well as trade secrets cases. Lorenza has also broad experience in media (including social media), advertising, marketing and sponsoring matters.

Lorenza has a strong expertise in structuring and negotiating intellectual property rights-related agreements, including R&D, transfer and licensing, and distribution agreements across a multitude of sectors. Her life sciences practice includes matters relating to patent licensing and litigation, regulatory and compliance, as well as product liability defence.

Lorenza regularly lectures and publishes in the fields of international licensing and technology transfer, and in several areas of unfair competition and intellectual property law. She is a president-elect of the International Association for the Protection of Intellectual Property (AIPPI). She practices in German, English, French and Italian.

Prior to joining Schellenberg Wittmer, Lorenza was partner at another major Swiss business law firm, where she was head of its IP & TMT Group and co-head of its Life Sciences Group.

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Anita Varma is chair of White & Case's Global IP practice group. She is based in the Firm's Boston office, with a dual practice in London. She is qualified is qualified to practice before the US Patent and Trademark Office (USPTO) and the European Patent Office (EPO).

Anita provides strategic patent counselling to life sciences industry companies, guiding them through every stage of a product's lifecycle. She works with clients in obtaining enforceable claims and supporting them in post-grant proceedings, as well as in developing and executing both offensive and defensive patent strategies. She also conducts strategic review of patent portfolios to identify strengths and weaknesses, and opportunities to minimize threats and maximize revenue.

As part of this strategic counselling, Anita regularly advises on patentability, validity and freedom-to-operate issues, provides pre-litigation assessments and opinions regarding patentability, conducts IP due diligence for strategic transactions, and advises on listing and delisting matters in the US Food and Drug Administration's Orange Book.

Clients also benefit from Anita's experience in navigating biosimilar litigation strategies. She has skilled expertise among diverse life sciences subjects, including immunology, antibody therapeutics, RNA interference therapeutics, small molecules, gene therapy, biotechnology, pharmaceuticals, clustered regularly interspaced short palindromic repeats (DNA sequences), ocular products, biophotonics, messenger RNA therapeutics, protein therapeutics and protein traps.

Anita is named one of the top lawyers in the United States for patent prosecution matters (*Legal 500*), and is viewed by competitors as "an extremely skilled attorney with both legal and business smarts" (*LMG Life Sciences*). Clients appreciate her "'business savvy' approach and her familiarity with the biotechnology and pharmaceutical industries" and note that "the experience [of working with Anita] has been very positive" (independent survey by *Chambers and* Partners).

Anita is named to *Managing Intellectual Property's* guide to the "Top 250 Women in IP." *Intellectual Asset Management ("IAM")*, the world's leading IP business media platform, has named Anita to their Global Leader's Guide as well as IAM Patent 1000 and IAM Strategy 300, which feature the elite private practice patent professionals.

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LITIGATION

Feature for:

LITIGATION

The importance of diversity in crisis management

Ana Carolina Lourenço (pictured), Filipe Modesto and Sávio Andrade
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The crisis has set in, now what? Among other consequences related to image, finance, human resources and sustainability, the legal implications arising from a crisis permeate the company's whole decision-making process from then on.

The need for dedicated management of such legal implications, in addition to interfaces with various sectors of the organization, is rooted in the company's legal obligations and in the way these obligations change and expand as a result of the installed crisis. However, in every crisis environment, 3 major legal niches that require special attention can be highlighted, namely: compliance with legislation, impacts on the organization's contracts, and liability for damages caused, beyond that provided for in contracts.

And in unexpected and delicate moments, such as the current one, the possibility emerges for the organization to reformulate and adapt its performance in crisis management and respond quickly and effectively to legal demands.

The challenges in a crisis scenario are always great, urgent and, despite any previous preparation and organization, bring many uncertainties that the organization needs to address. It is, then, essential to have a qualified and diverse team to deal with legal demands, so as to face and solve the diverse and complex issues that arise involving different stakeholders.

Based on the interesting premise proposed by Google[1], that working groups are "characterized by the smallest amount of interdependence" and "are based on organizational or managerial hierarchy", while teams are "highly interdependent, plan work, solve problems, make decisions and review the progress in service of a specific project", let us analyze the characteristics of a diverse team, starting with the realization that if, in a team, members need each other to develop their work, in order to achieve better results, it is then encouraged that members bring diverse multicultural contexts to the team, as well as skill and knowledge. Therefore, embracing diversity is a starting premise for successful teamwork.

Loden and Rosener[2] say that diversity can be thoughts of in its primary dimensions, consisting of immutable human differences, such as ethnicity, gender and physical abilities, and its changeable secondary dimensions, such as education, geographic location, and work experience. Barbosa and Veloso[3] define diversity as multiculturalist policies, especially related to issues of recognition of rights, the cultural identities of minorities and affirmation of the value of cultural diversity. They understand that diversity, first a historical and political concept, has been translated into the organizational universe as a management technology.

> "…COMPANIES BASED ON A CULTURE OF TRUST, COLLABORATION AND INCLUSION (…) ARE THOSE THAT HAVE THE BEST IDEAS AND SOLUTIONS"

A diverse team, then, is built from groups already traditionally seen in the corporate environment along with socially minority groups such as women, blacks, LGBTQIA+ and people with disabilities, so as to embrace pluralities to break paradigms. It is very important to openly support tolerance, providing a stimulating and welcoming environment so that team members feel more engaged and motivated to perform activities and tasks, and thus extract their full potential for an ever desired high performance.

The possibility of incorporating into teamwork all this richness and multiplicity of values, experiences, challenges, successes – and even failures – of each one enhances the set of skills and especially creative solutions from the team. And specifically, in a crisis management, there is a need to anticipate demands, meet expectations of different people, interpret the existing diversity in society, all in an agile and efficient way. This is also why non-traditional methods are great allies, as they provide greater adaptability, flexibility, resilience and anti-fragility.

Uniting diversity with non-traditional management we have tools available for high critical thinking, complex problem solving and optimization of results. If these tools are accompanied by an inspiring leader, clear rules, pre-established boundaries and structure, and a relationship of trust with collaborative teams, the embraced vulnerabilities enhance the op-

LITIGATION

portunity for each member to develop their creativity without fear of error. A good example is the ritual of sprint in the Scrum method, where the members of a team responsible for a given task, as well as the people or teams that are addressees of this same task, meet regularly to discuss actions and analyze the results of the work performed in a given period, adjusting the route and recreating solutions.

Furthermore, the wit of a team manager working with multicultural members permeates the union for a purpose in the work itself or in the result. Therefore, it is essential to create a psychological security environment so as to stimulate members' creativity, autonomy, intrinsic motivation, risk-taking, innovation, critical thinking, connection and collaboration without using mental efforts to protect themselves, resulting in the effectiveness of the team. This type of approach, in an environment that embraces diversity in an open way and encourages equality and freedom of thought, usually yields great discussions and very commonly brings creative and well-directed solutions to the problem in question. In a crisis, given the challenges and urgencies inherent to this type of situation, this is an important differential in achieving better results.

It is even possible to measure the positive results. Although there is little research on corporate diversity in Brazil, studies prove that diversity is "productive and, in many cases, an innovation inducer"[4]. According to a study by the McKinsey & Company Organization[5]: companies with ethnic and racial diversity are 35% more likely to have above-average incomes in their sector; companies with gender diversity have a 15% more chance of above-average incomes; and in the United States, for every 10% increase in racial or ethnic diversity in the executive team, profits increase 0.8%. A Harvard Business Review survey[6] revealed that in companies where the environment of diversity is recognized, employees are 17% more engaged and willing to go beyond their responsibilities and it was identified that the existence of conflicts is 50% lower than in other organizations.

Transforming the crisis into an opportunity and managing it, especially with regards to its legal implications, effectively and minimizing all impacts derived from civil liability, means reviewing traditionally applied thoughts and practices, among which the acceptance of diversity stands out. The search for creative, agile and collaborative solutions finds fertile ground in a diverse team, that is, composed of members with distinct experiences, origins and personalities. Therefore, companies based on a culture of trust, collaboration and inclusion, in which everyone feels represented, are those that have the best ideas and solutions, even in the face of a crisis. And in the current scenario, with high levels of uncertainty and unprecedented risks, anyone who can take advantage of the wealth of perspectives of a diverse team across genders, cultures and ethnicities will certainly be better prepared for the "new normal."

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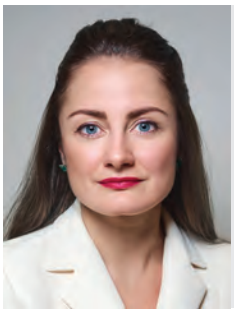
UKRAINE



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Anna Ogrenchuk is a co-founder and managing partner of LCF Law Group, a prominent Ukrainian law firm with extensive expertise, track-record and leadership positions in litigation, corporate, finance law. Anna has gained a praised recognition among clients and peers for her in-depth knowledge of court procedures and her ability to apply a client-tailored and problem-solving approach combined with innovative and creative solutions in dispute resolution.

Anna is a highly experienced solicitor and litigator, specialising in commercial law. For almost 20 years Anna has successfully represented clients in the most complex and high-profile business litigations in Ukraine. She advises domestic and international businesses, banks and financial companies, corporations and individuals. Anna has been instrumental in facilitating and strengthening international cooperation between Ukrainian and foreign dispute resolution experts (judges, legislators, academics and media).

In June 2021 Anna was elected President of the Ukrainian Bar Association. Being the member of the Judicial Reform Council under the President of Ukraine (2019-2020) and the Chairman of the Committee on procedural law of the Ukrainian Bar Association (till 2021), Mrs. Ogrenchuk actively participated in the promotion and implementation of the procedural legislation and judicial reform.

For several years in a raw Anna has acted as the program coordinator of the Annual Judicial Forum of the Ukrainian Bar Association.

Among Anna's clients are market leaders in various sectors, including Bunge Ukraine, VR Global Partners, Allianz Ukraine, First Ukrainian International Bank, Fozzy Group, Lauffer Group, Cargill, Ristone Holdings, Ovostar Union, Scatec Solar and others.

She is constantly highly recognized in top tiers of international and local ratings, such as Chambers Global, Chambers Europe, the Legal 500 EMEA, Best Lawyers, Benchmark Litigation Europe, IFLR1000, Who's Who Legal, Legal Awards, The Clients' Choice: 100 best lawyers of Ukraine and others. For several years in a raw she is recognized among women, who influenced the development of the legal market of Ukraine (according to the Ukrainian Women in the Law rating).

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Sharon Daly is Head of Matheson's London Office and is a partner in the Commercial Litigation and Dispute Resolution Department.

Sharon is widely acknowledged as one of the leading corporate litigators in Ireland with over 25 years' experience in all aspects of commercial litigation and dispute resolution. Continuously recognised for her ability to respond creatively to complex issues, Sharon was recently awarded 'Lawyer of the Year' at the Benchmark Litigation 2019 Europe Awards.

Sharon has been involved in some of the most significant commercial litigation to come before the Irish courts in the last 10 years, including defending a major financial institution in a series of multi-billion, multi-jurisdictional disputes arising from investments in Bernard L. Madoff's business. Sharon also acted for insurers in the largest property damage dispute to come before the Irish courts in relation to the liability of hydro-electrical dams and flood damage arising therefrom.

Sharon and her team advise a wide range of clients on highly technical insurance issues including policy wordings, coverage and policy disputes, resulting in significant cost and time savings to our client and minimising reputational risk.

Sharon is Co-Chair of the Insurance Committee for the International Bar Association and has actively sought to use this committee to bring together leaders in the insurance industry to address the challenges in the industry globally.

As Head of Matheson's Brexit Advisory Group, Sharon leads a multi-disciplinary team who advise and assist clients on the implementation of their Brexit plans.

Experience Highlights

- Acted for a financial institution in a multi-billion (2.9bn) euro fraud claim achieving a dismissal of same on an interlocutory motion on public policy grounds.
- Defending a financial institution in a fund custody negligence claim seeking recovery of $500m achieving a strike out on a preliminary issue.
- Representing a major broker in the EU investigations into the commercial motor industry in Ireland.
- Acting for insurers in a significant coverage dispute on a financial lines run-off policy.
- Acting in a high-profile multimillion euro professional negligence claim action against a major firm of solicitors in relation to the administration of a very large and complicated estate (confidential).
- Acting for AIB in a very significant coverage dispute under the civil liability section of a Bankers Blanket Bond policy following an employee fraud.

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Claudine Columbres is a partner in the Firm's Commercial Litigation Practice, who has extensive experience handling high-stakes matters, often involving multi-billion dollar claims, concerning complex contracts, merger and shareholder disputes, business torts, securities, class actions, and alternative dispute resolution. Claudine's work has spanned a broad range of industries including healthcare, financial services, foodservice distribution, energy, and oil & gas. She has worked with clients including Anthem, Inc., JPMorgan Chase & Co., Hess Corporation, the Votorantim Group and Major League Baseball.

Dedicated to helping her clients achieve the best possible outcomes, Claudine has also successfully represented defendants in numerous pro bono cases involving family and matrimonial law.

Claudine received her BA from Georgetown University and her JD from Columbia University School of Law.

Recent representations include:

- Representation of Anthem, Inc., in a high-profile action resulting from the failed US$54 billion acquisition of Cigna Corporation. The case involved competing claims for tens of billions of dollars, and was closely followed by major media outlets as one of the most watched business cases.
- Representation of Anthem, Inc., in a US$12 billion dollar lawsuit against one of the largest pharmacy benefits managers in the US, Express Scripts, Inc. (ESI), arising from ESI's breach of its contractual duties to negotiate in good faith to ensure that Anthem receives market pricing for pharmaceutical drugs and for certain operational breaches.
- Representation of Advance Auto Parts, Inc., a national auto parts retailer, in a securities class action in the United States District Court for the District of Delaware.
- Represented JPMorgan Chase & Co. in a lawsuit alleging contract, restitution and reformation claims challenging amounts allegedly owed by JPMorgan Chase under a chapter 11 plan of reorganization. The case raised complex tax issues and involved multiple discovery disputes before it was successfully resolved via settlement.
- Represented Fibria Celulose, a Brazilian pulp and paper company, in a federal securities class action alleging violations arising from foreign exchange derivative pricing practices.
- Represented the Office of the Commissioner of Baseball, doing business as Major League Baseball, in the unique bankruptcy of the Los Angeles Dodgers and in connection with the sale of the team.
- Defended Hess Corporation against numerous putative shareholder class action lawsuits filed in state and federal courts in Nevada and Colorado, challenging Hess' acquisition of American Oil & Gas. We consolidated the cases in the District of Colorado and then negotiated a disclosures-only settlement that resolved all the cases, and Hess' acquisition of American Oil & Gas closed without any changes to the merger's terms or price.

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Elaine P Golin is a partner in the Litigation Department at Wachtell, Lipton, Rosen & Katz. Her practice includes contracts, corporate governance, RMBS and securities litigation, as well as other types of complex commercial litigation. Ms Golin also focuses on the negotiated resolution of complex matters.

Recently, Ms Golin has represented Bank of America, PNC and other financial institutions in numerous disputes concerning mortgage-related matters. Representations include Bank of America's groundbreaking settlement of claims relating to Countrywide mortgage-backed securities and related litigation, Bank of America's multi-faceted resolutions with FHFA, MBIA, FGIC and AIG, Bank of America's global RMBS agreement with the Department of Justice, and PNC in mortgage litigation with RFC.

Other significant representations include: J.C. Flowers, Bank of America and JPMorgan Chase in material adverse change litigation with Sallie Mae; IAC in litigation with Liberty Media; Rohm and Haas in its suit to enforce its merger agreement with Dow Chemical; and senior secured lenders in the Spectrum Brands bankruptcy litigation. Ms Golin also participated in the pro bono representation of artist Christoph Büchel in a successful First Circuit appeal involving the Visual Artists Rights Act of 1990.

As a litigation associate, Ms Golin worked on several of the firm's high-profile matters, including its representation of IBP in IBP v. Tyson and of Larry Silverstein in insurance litigation arising out of the destruction of the World Trade Center.

Ms Golin received a B.A. from Yale College, a diploma in Literature from the University of Edinburgh, and a J.D. from Columbia Law School, where she was an articles editor of The Columbia Law Review and a James Kent Scholar. She clerked for the Honorable Judge Sandra Lynch of United States Court of Appeals for the First Circuit. Among other professional recognitions, Ms Golin has been named by Lawdragon as one of the 500 leading lawyers in the United States and by Benchmark Litigation as one of the top 250 women in litigation.

Ms Golin serves on the board of the Sadie Nash Leadership Project, a non-profit providing leadership education to high school and college women.

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Carrie M Reilly is a partner in the Litigation Department at Wachtell, Lipton, Rosen & Katz.

Carrie joined the firm's Litigation Department in 2005. During her time at Wachtell Lipton, Carrie has worked on several of the firm's high-profile matters, including successfully defending Goldman Sachs in *Baker v. Goldman Sachs*, a five-week jury trial in federal court; representing Bank of America in its comprehensive multi-billion dollar settlement with the Department of Justice, federal agencies, and state attorneys general, as well as its groundbreaking $8.5 billion settlement of claims relating to 530 mortgage-backed securitization trusts issued by Countrywide and its multidimensional settlements with MBIA and AIG; representing respondents in *Morrison v. National Australia Bank*, in which the Supreme Court held for the respondents and found that Section 10(b) of the Securities Exchange Act does not apply extraterritorially to so-called "foreign-cubed" securities claims; and representing the National Football League in a contract dispute over the simulcast of the Patriots-Giants game in 2007.

Carrie has also worked on many other significant matters at the firm, including representing Goldman Sachs in litigation arising from the acquisition of TIBCO by Vista Equity Partners, defending Allergan in response to a hostile bid from Pershing Square and Valeant, expedited deal litigation over JPMorgan's acquisition of Bear Stearns, the material adverse change litigation between J.C. Flowers, Bank of America, JPMorgan and Sallie Mae, litigation brought by monoline insurers against Bank of America, commercial real-estate arbitrations, and the firm's representation of a major international corporation in investigations by federal and state authorities in the United States.

Carrie received her B.S. from the Wharton School at the University of Pennsylvania, where she graduated *summa cum laude*, and her J.D. from Harvard Law School, where she graduated *cum laude*. She serves on the Steering Committee of the Kate Stoneman Project, is a Fellow of the American Bar Foundation, and is a member of the American Bar Association and the New York City Bar Association. In 2016, Carrie was recognized as a "Rising Star" by the *New York Law Journal*.

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Features for:

PATENTS

A novel injunction pushing India's IP frontier

Vaishali Mittal
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On May 3, 2021, India got its first Anti-Anti-Suit injunction. The historical order is novel not just because it is India's first such injunction but also because it displays a creative use of defensive offensive strategy, emphasizes the importance of injunctions as opposed to damages and most importantly, it goes on to strike a distinction between anti-anti-suit and anti-enforcement injunctions, pointing out how the latter do not really require special care and caution.

Before going into the details of the judgement, here is a brief overview of the genesis of the SEP-FRAND dispute titled InterDigital Corp & Ors v Xiaomi Corp & Ors which culminated in the Delhi High Court granting the AASI in favour of InterDigital.

FACTS

(a) The Plaintiff ("InterDigital") claims that at least 5 named Standard Essential Patents in its India portfolio have been infringed by Xiaomi through manufacture and sale in India of its cell phones.

(b) Xiaomi had filed, unknown to the Plaintiff on 09.06.2020 a lawsuit against the Plaintiff in Wuhan, China, seeking determination of a global FRAND rate.

(c) The Indian Court heard arguments on the setting up of a Confidentiality Club and after a few hearings, were informed that in the Wuhan Suit, Xiaomi had claimed an Anti-Suit injunction as on 04.08.2020 and the Wuhan Court granted the same on 23.09.2020 restraining InterDigital from proceeding with its injunction application (or law suit).

The Wuhan Court granted a penalty of RMB 1 Million per day, should InterDigital breach the said injunction.

(d) InterDigital filed an application seeking an Anti-Anti-Suit injunction against Xiaomi.

OUTCOME

On October 9, 2020, the Delhi High Court granted an ad-interim AASI against Xiaomi directing it to not pursue or enforce the injunction it had secured from the Wuhan Court.

This order was made absolute on May 3, 2021.

The Court also directed Xiaomi to indemnify InterDigital against any penalty in case the Wuhan Court imposes a cost of RMB 1 million (approximately US$154,000) per day against InterDigital for pursuing the suit filed by it in India, claiming injunction and damages (amongst other relief) for infringement of its Standard Essential Patents (SEPs). The court further mandated that Xiaomi will have to deposit such amount in the court within one week of imposition of such costs on InterDigital, if any, and that InterDigital can then withdraw this amount.

Realising that it was setting on deciding a novel question, the Delhi High Court laid down some fundamental guidelines:

(a) There is a distinction between an Anti-Suit injunction; an Anti-Anti-Suit injunction and an Anti-Enforcement injunction. Since the Wuhan Anti-Suit proceedings had concluded (although the suit for FRAND rate setting for a global license to InterDigital's 3F, 4G SEPs is still continuing), the Indian injunction was in the nature of an Anti-Enforcement injunction;

(b) That the Court does not subscribe to the view that special care ought to be taken while granting Anti-Enforcement injunctions (as opposed to Anti-Suit injunctions) as the latter can interfere to a greater extent with the proceedings in a foreign jurisdiction. By doing so, the Court has struck down the defence which is raised ever so often, i.e., AASI orders should be passed in even rarer circum stances when compared with an ASI. The Court clarified that there is no reason for AASI to be seen as

> "THIS JUDGMENT WILL CONTRIBUTE GREATLY NOT JUST TO INDIAN, BUT INTERNATIONAL JURISPRUDENCE ON THIS ASPECT."

PATENTS

being rarer than ASIs, especially when grounds justifying it have been established.

(c) That the Wuhan Anti-Suit injunction was not justified as Xiaomi had concealed its filing from InterDigital and had not served InterDigital with the action. Simply because there was some overlap in the reliefs sought in the two proceedings or there may have been inconsistent findings by the Delhi High Court and the Wuhan Court (although doubtful) did not justify the said action even for a day.

(d) The Wuhan Court could not possibly pass an order of injunction restraining the infringement of Indian Patents and therefore, had no business to interfere with the sovereignty of the Indian Courts and the plaintiff's right to enforce patents of its choice.

InterDigital by filing the Indian action did not interfere with or exclude the Wuhan FRAND rate setting proceedings in any way.

The Court has given careful attention to addressing the limited application that the principle of Comity of Courts will have, especially when the impugned order itself was oppressive and did not respect the jurisdiction of an Indian Court to hear matters covered under Indian law. The Court upheld the principle that Comity is a two-way street after all.

Emphasizing the importance of injunctions in the context of patent enforcement before an Indian Court, the learned Judge held:

(i) The Plaintiffs can't be expected to sit back and watch their rights being violated as this would render the "statutory guarantees" available under the Patents Act otiose and impotent.

(ii) By treating damages or other non-injunctive reliefs as sufficient succour for infringements undermines the very sanctity of Intellectual property Rights.

The principle grounds which motivated the Court to grant the AASI were:

1. InterDigital had no prior knowledge of the fact that an ASI application had been filed in the Wuhan Court, until the order was already published. Thus, it had no occasion to take pre-emptive remedies against the order of the Wuhan Court.
2. InterDigital was only served with notice of the fact that a complaint had been filed in Wuhan, which sought establishment of global, FRAND royalty rates for the entire SEP portfolio of InterDigital.
3. That a suit seeking injunction against infringement of Indian patents, can only be tried before competent courts in India.
4. The Wuhan Court was wrong to have restrained InterDigital from pursuing its injunction remedies in India, as the Delhi High Court was the only forum to adjudicate it.
5. Any overlap between the proceedings in Wuhan and those in India, is minor, and unless an overlap is such that it makes the Indian proceedings *oppressive* and *vexatious,* there was no reason for the Wuhan Court to have restrained InterDigital from pursuing its claims for an injunction against Xiaomi in India.
6. Xiaomi chose to remain silent and did not inform the Court, or InterDigital that it had filed an anti-suit-injunction against the Indian proceedings. Xiaomi was present before the Indian Court on 6 occasions after it filed an ASI application in Wuhan, but chose not to disclose this fact. This constitutes fraud on the Court.
7. If the Wuhan Court enforces its ASI order, and directs InterDigital to deposit penalties for prosecuting its Indian suit, then Xiaomi must compensate it by depositing a corresponding amount with the Court in India. This amount could be secured by InterDigital thereafter.

What makes the ad-interim AASI of October 09, 2020 and now the final decision of May 03, 2021 unique is that it is arguably the first case in the world where an AASI was granted after an ASI was already passed by a foreign court. In contrast, all previous AASI orders in patent infringement disputes like the ones between *IPCom* and *Lenovo* in UK, France, and the *Nokia v Continental / Daimler* in Germany, have been passed only when the ASI proceedings in foreign courts were still pending and being argued. This judgment will contribute greatly not just to Indian, but international jurisprudence on this aspect.

PATENTS

Much has been written about COVID-19 and about mental health issues in times of the pandemic… but what is it like to live it in the flesh?

Laura Collada
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I still cannot believe the size of the pandemic in many ways: the deaths, the families, the lost jobs, the milestones that will never be (graduation from high school, college, the postponed weddings, the toddlers that haven't socialized) and so many others. The list has no end. The future is uncertain and dealing with the new normal is more easily said that done.

It has been a year and a half since we started working remotely and we all thought it would be for a short period of time. We never thought it would extend this far and that several waves of the virus would hit us. As said before, nothing is certain, and we are mostly planning short-term. We are gregarious beings, the new normal is taking a toll on all of us. But it took a long time to figure it out. Today we are looking at a balance that many of us oversaw or turned the other way from. Very few of us were able to foresee what would happen.

At the office, we sent everyone to work remotely on March 2020 and we had to learn how to do it, how to interact, looking to be efficient, find the balance between work and personal life and ensuring good habits, etc. I must say that during the first year of the pandemic I did not realize what was happening with emotions, feelings, and mental health issues. My colleagues at the office were looking for hobbies, enjoying life at home and with their families, exercising, etc. It felt as everyone had gotten a grip of the "new situation". As a law firm we thought that we were doing a very good job with all our colleagues since we were taking care of them, weekly announcements about the pandemic, vaccination, etc. Mainly, we were speaking about physical health issues. Then it struck me. At virtual meetings people were acting and looking differently. Some were working in the middle of the night, others were forgetting things when it never used to happen, etc. Still, I was so happy that no one at the office had contracted the virus. Strict measures were slowly changed by our government, and we started returning gradually to the office. Everybody was happy to see colleagues and returning to what we used to believe was normal, having lunch together, going for a beer, etc.

We organized a small gathering at the office. We hadn't seen each other for so long and I couldn't believe my eyes. People who had gained weight up to the point of no recognition, people slim to the bone, people who were emotional and crying, and others who were living and working at night and I thought something had to be done to change this. We had spent a year taking care of their physical health, but we had completely forgotten about the emotional/mental side of things. Many of our colleagues live alone or with pets. They dropped their hobbies, stopped exercising and some even gave their pets up for adoption. I was shocked and didn't immediately know how to help them; how to address these issues and moreover how to make them realize there was something wrong that had to be addressed.

> "…BUT THEY INSTEAD DECIDED TO STRUGGLE WITH DEPRESSION AND ANXIETY AND DO NOTHING FOR THEMSELVES."

The pandemic has been difficult for everyone, no doubt. It has been challenging and resilience is the name of the game. Many have been able to endure all the dramatic changes in their lives and some are really struggling. No one was asking for help, but we were sure it was needed. In my country privacy laws and issues like psychological help are still stigmatized. Also, many people don't understand how helpful it can be, but they instead decided to struggle with depression and anxiety and do nothing for themselves. Some of them

because they don't know, others because of this bias and others mainly because it is expensive to see a therapist. So, we decided to try to help as a company, but it is difficult to address this issue, at least in our country. We tried finding solutions brainstorming with our HR team and, alas, we found one!

There is this new niche business in Mexico emerging from of the pandemic. Companies created, established and operated by therapists, psychologists and psychiatrists that have created online platforms to provide virtual therapy and to offer it as a benefit to employees. At first we were very happy, but then we had to look into all the legal frameworks around it: privacy, confidentiality, therapist-patient relationships, etc., associated to these type of care givers. These are brand new businesses in the healthcare industry in our country and we had to be certain that all services provided complied with legislation, that our employees were going to be protected and feeling safe, and that they understood that the service was delivered by this company, through their specialists, and that their information would never be revealed to us. We wanted to try to make them feel safe and that they would start using these services that were so much needed in some cases.

After many meetings and chats with the managers of the selected company, we helped them with their legal structure and even did some paperwork, all in order to start servicing our team. So, we launched the program at the office. First thing was a couple of conferences related to mindfulness, as well as balance in life; the logistics of the service and how it would work for the employees. For the conferences, it was a surprise that we had more than 90% attendance and were very enthusiastic that it would work. The service is provided giving you a certain number of hours, depending on how many sessions per employee they might have in a month and other considerations.

When we launched the program, we started with their basic package, to realize that so many people were looking for support from the very first week that the package was completely used up. Today, we are trying to figure how big it should be, but we are providing it to everyone requesting it.

I know every country is different and every company is different, but the pandemic has broadened my sense of community, which I had before, but has now turned into something more important and with a wider view. This community is not only our family and friends, but also our colleagues and it may extend much more. The pandemic has been challenging on every front and unfortunately it has politized much more than could've ever been anticipated. All of us, as a community, must take care of each other, otherwise this show will never end. Only through caring for our neighbors will we be able to succeed and return to the lives we have enjoyed before. I want to see my friends and family, go places, travel, etc., it must be a joint effort. Caring starts at home and today we have to understand that our home is what we consider our community and have to help in every possible way we can.

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Christine Kanz has worked as an attorney since 1998. Although she has primarily focused on international patent litigation in the areas of pharmaceuticals, biotechnology and chemistry, she has also handled numerous cases in the areas of medical devices, mechanics and consumer products.

Much of her work involves cross-border litigation with the result that she is highly experienced in planning and coordinating such cases.

After attending the Max Planck Institute for Intellectual Property, Competition and Tax Law in Munich as an auditing student, she obtained her PhD in trademark law in 2002 at the University of Düsseldorf.

Christine regularly publishes on patent law matters and speaks at conferences on patent law issues. She is also a visiting lecturer at the Hagen Law School.

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Litigation partner and strategist Vaishali Mittal joined Anand and Anand in 2003.

A fierce IP litigator and a strategist known for her novel concepts and cutting –edge skills in SEP space, Vaishali's body of seminal work stretching over 18 years includes landmarks such as India's first anti-anti-suit injunction (InterDigital Technologies v. Xiaomi); first compulsory licensing order for radio broadcasters under the Copyright Act; India's first judgment declaring colour combination a well-known trademark; judgment on trans-border reputation; India's first final judgment on SEPs; and a landmark judgment on aggravated damages awarding the highest-ever damages in a copyright, trademark and design infringement case.

When not on her legs in the court, Vaishali writes for renowned publications like the MIP, Asia IP, IBLJ, Chambers and Partners, Kluwer Patent Blogs etc.

Always shifting paradigms and breaking the stereotypes of the done thing, she has also co-authored IPONOMICS, a coffee-table book compiling legendary IP matters; Origami, an in-house knowledge manual on best practices and procedures in IP practice in India for law firms and companies and IP Thinker, a digital newspaper to celebrate World IP Day 2020.

Vaishali is truly a lawyer with eclectic interests and a knack for engendering unique strategies and rare orders.

Highlights of her path-breaking work

- India's first Anti-Anti-Suit Injunction (InterDigital vs Xiaomi)
- Represented Koninklijke Philips NV in two patent disputes, Philips v KK Bansal and Philips v Rakesh Bansal, securing the first final decision in SEP litigation in India
- landmark judgment on aggravated damages being the highest ever quantum in a copyright, trademark and design infringement case (Philips vs Amazestores)
- Represented Vifor Pharma International (Galenica Group) in Vifor v High Court of Delhi in a writ petition resulting in, to the relief of many IP owners, a stay on transfer of at least 20,000 IP lawsuits (valued under R10 million) from the High Court to subordinate courts in wake of the Commercial Courts Act 2015
- Represented Nokia in various pre-suit mediation claims concerning SEP infringement
- Secured an interim injunction for Astra Zeneca in a patent infringement suit against pharma majors Emcure and MSN Laboratories
- Secured relief for patent holders from strict liability under the disclosure regime of Section 8 of the Patents Act in a landmark judgement in Maj Sukesh Behl v Philips
- India's first judgment declaring colour-combination (green & yellow) a well-known trademark;
- Landmark judgement on trans-border reputation

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Career highlights: Archana Shanker, Senior Partner at Anand and Anand, heads the firm's Patents and Design practice. She has over 28 years of experience in Patents Prosecution and Litigation, strategy and designs across all technical domains. She has been ranked as one of the Most Powerful Woman in Law by World IP Forum, one of the Top Woman IP Practitioners by Managing Intellectual Property, Experts Guide-Woman in Business Law; and has several commendations to her name and her expertise. Her core domain is strategizing patentrelated matters. She has been a lead counsel in noteworthy judgements involving Monsanto's Supreme Court judgement, matters involving PREVNAR, Pioneer overseas, Novo Nordisk, Roche, Merck, Sterlite and many more.

Archana Shanker is an active member of various international bodies, such as the Asian Patent Attorneys Association (APAA), Association Internationale pour la Protection de la Propriété Intellectuelle (AIPPI), the Federation Internationale des Conseils en Propriete Industrielle (FICPI). She has been elected as President of FICPI, India, (the first Woman President of FICPI) and Vice President North India – LES. Archana regularly advises the government in Intellectual Property matters.

Archana is a regular speaker/panelist at national and international forums including LES, GIPC and many other prestigious forums; and is a contributor to India chapter of leading publications such as Halsbury's Laws of India, Getting the Deal Through; Patents and Lifesciences, Law Business Research-Life sciences Law Review, BNA'S-Finnegan- Global Patent Litigation Guide and more.

She also features on the editorial panel of LSIPR and her articles are regularly published in various leading journals such as Managing Intellectual Property, World Intellectual Property Review, Asia IP Magazine, IAM Magazine and others. She is also the editor in chief for our in-house compilation 'Patents Rewind'.

Her recent awards and recognitions include being named as the Managing Intellectual Property IP Stars Top 250 Women IP professional for 2019, 2018 and 2017 and she is also recognised by the World Intellectual Property Forum, Expert Guides and Legal Era, amongst others.

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Ms Collada has more than 30 years of experience in the IP field and she has been the Managing Partner of the firm since 2008. She is a true strategist and has acted on several milestone cases. Laura leads most of the firm's large and complex cases. Furthermore, Laura has a high profile both locally and internationally. She is regularly invited to speak for organizations such as MARQUES, UIA, ASIPI, FICPI, ABPI, AIPPI, CITMA and INTA and is a renowned teacher at several Law Schools. She is very active in promoting the Madrid Protocol and has lectured on the topic domestically and abroad. Laura's practice covers the complete lifecycle of IP rights. However, since the recent dramatic changes to the Mexican legal framework, she has been increasingly dedicated to the promotion of the MADRID system among clients, as well as the new opposition system that entered into force. She also continues to design strategies for clients as well as litigating. Laura is one of the only two women in Mexico who is the Managing Partner of an IP law firm and a three times recipient of the Best IP Lawyer in Latin America Award of Euromoney's Americas Women in Business Law. She has written about IP for national newspapers and international IP magazines. Laura is a Council Member of MARQUES, Project Leader in the International Trade Mark and Practice Team and Leader of The Madrid Protocol Task Force. She leads the Madrid Protocol Committee at ASIPI. She is Co-Chair of the Standing Committee on Geographical Indications in AIPPI, she is a member of the Famous and Well-Known Marks Committee 2020 of INTA, and a member of national and international professional associations, including AIPF, AIPLA, AMPPI (Mexican Chapter of AIPPI), ECTA, PTMG and BMA (Mexican Bar).

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PRIVACY AND DATA PROTECTION

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Anne-Marie Bohan has over 20 years' experience in technology related legal matters, and is Head of Matheson's Technology and Innovation Group and a member of our Asset Management and Investment Funds Group. Anne-Marie brings together significant practical experience in advising on technology and privacy legal issues with industry knowledge and an understanding of applicable regulatory rules and regulatory requirements. She advises on all aspects of technology and e-commerce law, as well as outsourcings and contracted services, with particular focus on the requirements of financial institutions and financial services providers in these areas.

Anne-Marie has extensive experience in drafting and negotiating contracts for the development, sale, purchase and licensing of hardware, software and IT systems for both suppliers and users of IT within the financial services industry and across a broad range of other industries. She has also acted in some of the largest value and most complex IT and telecommunications systems and services outsourcing contracts, including advising on a number of the largest and highest value financial services outsourcings in Ireland.

Anne-Marie's practice includes advising a broad range of clients on data protection, privacy issues and cybersecurity issues, including employee data protection issues, data subject access requests and security breach incidents.

Anne-Marie has lectured on IT, data protection and financial services in the Law Society of Ireland, the National University of Ireland Maynooth, and more broadly. She is author of the Ireland chapter in Outsourcing Contracts – a Practical Guide (Lewis, Fourth Ed, 2012) and is co-author of the Irish chapters in PLC's Outsourcing Guide, Getting the Deal Through's Data Protection Guide, the International Comparative Legal Guide on Data Protection, and most recently, Getting the Deal Through's new FinTech Guide. Anne-Marie is also a member of Irish Funds FinTech working group.

Experience Highlights

- In relation to IT and BPO outsourcings for financial services and corporate clients, both intra-group and on a third party basis.
- On the outsourcing regulatory requirements and contractual issues for fund administration and depositary companies.
- On the Investor Money Regulations.
- A major multinational IT services company on the outsourcing of it by one of Ireland's largest financial institutions of its IT infrastructure services.
- On a significant smart money card product, including in relation to the underlying technology contracts
- A major credit institution the establishment, structuring of and contracts for electronic wallet and electronic money products and the application of the E-Money Directive and E-Money Regulations, including anti-money laundering, passporting, distance selling, unfair contract terms and data protection issues.

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Kari Gimmingsrud is a partner in the Technology, Media and IPR department at Haavind. She is head of the privacy and data protection practice. Kari Gimmingsrud is also a member of the Norwegian Bar Association's law committee for ICT and privacy, and actively participates in commenting draft resolutions and bills for the association.

Ms Gimmingsrud has extensive experience in assisting private and public entities in navigating through regulatory matters related to technology, GDPR and information security matters. With her extensive experience in privacy and data protection matters, Kari heads Haavind's privacy team working for one of the largest employers in Norway (approximately 80,000 employees).

Her team of skilled and experience lawyers assist the customers on privacy and data protection compliance and the strategic and commercial use of data in a complex legal landscape. This includes assessment of data protection and privacy matters in M&A, outsourcing agreements, use of international cloud service providers, data processing agreements, advising on binding corporate rules and EU model clauses, data sharing agreements between companies, privacy policies, use of data for commercial and marketing purposes and assistance in complaints to the Data Protection Authority.

She further has extensive experience with management support and counselling on employment law in both the private and public sector. She acts as a legal representative in several ongoing processes related to organisational changes and outsoucing of services.

Kari Gimmingsrud brings value to customers through extensive cross disciplinary competence and as a trusted advisor. She has several years of experience in advising large Norwegian and international businesses.

Ms. Gimmingsrud has previously worked as legal adviser and local Compliance Manager for Telenor, a leading telecommunications company across the Nordics and Asia.

In addition to handling Haavind's large portfolio on privacy and data protection matters, Ms Gimmingsrud is frequently used expert in committees and writes articles and publications. She is also a lecturer at the Center for Continuing Legal Education (in Norwegian Juristenes Utdanningssenter). Together with another attorney she has developed the center's education for data protection officers.

Kari Gimmingsrud is recognized as a leading individual by Legal500 (TMT, Norway).

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PRODUCT LIABILITY

Feature for:

PRODUCT LIABILITY

The daily legal minefield manufacturers have to face

Sylvie Gallage-Alwis
Signature Litigation
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The product liability practice has drastically changed these past few years in law firms. Before, this practice was described as the one handling cases where a product was suspected of being at the origin of an incident or an accident, leading to material damage and/or personal injury. The lawyers had to work with the manufacturer to demonstrate that the product was not at the origin of said accident and that, if it was, its defect was caused by extraneous factors. While these cases can be very complex, depending on the type of product, the number of parties and the amounts at stake, manufacturers knew what to expect, especially when they could demonstrate that their products were compliant with regulations and standards.

Today, this practice is for sure a legal and judicial minefield for manufacturers. This is because of the proliferation of grounds that can be used to justify a claim against manufacturers and the increasing number of plaintiffs who can bring such claims. Product liability lawyers therefore need to have a large variety of skillsets as the issues they can face are more diverse than ever. Therefore, today, when I am asked to describe my practice, I do not say that I do product liability. I rather say that I handle all litigation that manufacturers can face.

Indeed, besides "standard" product liability cases, manufacturers are now mainly targeted by litigation which is not directly linked to the standard definition of a defective product as one could normally understand it.

As a first example, one can refer to the hazardous substances related litigation. This toxic *tort à la française* type of cases is emblematic of the litigation that a manufacturer could not reasonably expect to develop. Indeed, it mainly relates to plaintiffs who are anxious of potentially developing a disease in the future. This case law started with a Supreme Court decision dated 11 May 2010 with the employees who could have been exposed to asbestos during their career (cases no. 09-42.241 & following). The French Supreme Court however ruled, on 11 September 2019, that such a claim can now be filed for exposure to any kind of hazardous substances (cases no. 17-24.879 & following). This means that a manufacturer which uses chemical products in its manufacturing process can become the target of claims filed by its former and current employees on the ground of their anxiety of developing a disease. Such claims have imposed on product liability lawyers the need to master the procedure before Labour Courts which is very different in France than before Civil Courts, as well as rules relating to health and safety at the workplace and the medical implications of the use of substances in a manufacturing process.

"MANUFACTURERS NOW HANDLE CASES THAT ARE "BET THE COMPANY CASES" EVEN IF THE PRODUCT IS SAFE"

Another new type of claim that manufacturers now face are claims alleging that their products do not have a sufficiently long life expectancy, using the grounds of planned obsolescence or misleading advertising for instance. Here again, the issue is not whether the product is safe and compliant, as it generally is. The issue is whether the manufacturer is ensuring that its products' design is not at the origin of a change in product before it is necessary, the term "necessary" being the heart of such litigation. New legislation around reparability and availability of spare parts is the response that Governments recently gave to the development of such litigation, with, for sure, new litigation which will arise from such complex new rules that aim at influencing the business model of many companies.

In the same line, manufacturers are now targeted by claims relating to lack of duty to fully inform on the qualities and durability of their products. "Greenwashing" is one of the newest grounds of claims against manufacturers accused of misleading consumers and/or

PRODUCT LIABILITY

investors on the extent of the steps they are taking towards the protection of the environment. In April 2021, the French Government introduced an increase in the existing fine for misleading commercial practices to up to 80% of the false promotional campaign cost when it comes to allegations related to the environment. This is the new step of a brass-knuckle approach that was initiated through the so-called "duty of vigilance" introduced in 2017 which requires large French companies and groups to establish a vigilance plan intended to prevent and detect violations in France or abroad, by its subsidiaries and subcontractors, of human rights and the environment and to preserve the health and safety of the employees involved. A number of claims on the ground of alleged breach of this duty of vigilance has already been filed to date before French Courts. As for greenwashing, claims have been filed against BP, ExxonMobil, Wesson Oils, Tyson Foods Inc. or Chevron for instance. Again, the issue of whether the product is safe is not discussed here and yet, the future of the product is at stake.

More generally, the duty to inform is one of the key grounds used against manufacturers today. A manufacturer can indeed become the target of such claims filed by users of its products, as it happened to Monsanto concerning RoundUp for instance (Supreme Court, 21 October 2020, case no. 19-18.689), should the Courts rule that the information provided to the users on the substances used and their potential negative health effect are not sufficient. But the majority of such cases are conducted by the market surveillance authorities with the risk of having criminal sanctions on the ground of deceit or misleading representation being ordered. This is notably explained by the fact that the fines for these infringements have been raised to up to 1.5 million Euros and could go up to 10% of the turnover of the company which is indicted.

A last example of the legal minefield which manufacturers have to face are the claims filed by associations for the protection of consumers or the environment. Over the years, French case law, under the influence of the European Court of Justice's case law, has evolved in the direction of condemning companies as soon as a breach to environmental law is identified, irrespective of whether such breach actually caused a negative environmental impact (Supreme Court, 29 June 2021, case no. 20-82.245). This very harsh approach, disconnected from the factual realities, is at the origin of a proliferation of claims against manufacturers who have to find a way to operate sites without any issue.

These few examples demonstrate that product liability lawyers and manufacturers now have to be able to handle civil, administrative, labour and criminal procedures. They also have to handle cases that are "bet the company cases" even if the product is safe and compliant, with such claims being filed by consumers, associations, the Public Prosecutor, the general public or employees. This situation is further complexified by the fact that Courts are increasingly ruling towards a zero-tolerance approach, at European and national levels. Needless to say that this complexity is what makes this practice fascinating as it follows the evolution of the society as a whole. For now, the environment and climate change are a focus. Transparency of the information is also at the heart of numerous claims aimed at having manufacturers disclose their commercial and strategic development plans. Data-related cases should not be underestimated either, with, at first in 2019, children's digital watches with security loopholes which triggered privacy concerns being considered as an unsafe product by the European authorities on the rapid alert system (RAPEX – Alert number: A12/0157/19).

Hard to imagine, not even a decade ago, that manufacturers and their product liability lawyers would have to handle such claims and hard to imagine what they will have to handle in a decade. One thing is for sure: manufacturers need to change their decision-making process to take into account the increasing transparency that they will be subject to and the fact that there are multiple entities whose goal is to find any kind of information that can be used as ground for litigation before Courts which feel, when it comes to social, health and environmental issues, that they need to encourage the legislator by handing down increasingly harsh decisions.

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After 10 years practicing in a major international law firm, Sylvie Gallage-Alwis became one of the founding partners of the Paris office of Signature Litigation in January 2019.

With almost 15 years of experience in this field, Sylvie heads the firm's product liability practice. She specialises in all cutting-edge complex disputes linked to products, namely product liability, product safety, toxic tort, mass litigation/class actions, regulatory compliance, and the environment. She is involved in the most innovative pending legal topics for her clients, such as defending them against claims filed on the ground of planned obsolescence or deceit towards consumers. She is involved in the *dieselgate* litigation as well as in brand new climate change litigation, and the first claim filed against a manufacturer on the ground of the anxiety of developing a disease linked to the chemical substances included in the product.

Sylvie represents her clients against claims filed by consumers, NGOs (consumer protection and environment protection NGOs) and also the market surveillance authorities which are a very active plaintiff in France against manufacturers.

Sylvie is both an *Avocat à la Cour* in France and a Solicitor in England & Wales. She has been described by Who's Who Legal over the years as a "*dynamic and determined litigator*", who is "*a firm favourite among clients*" as "*she always goes the extra mile to support her clients, and is proactive in seeking commercial solutions to disputes*". Who's Who Legal Thought Leader 2021 acknowledges her as "*a star in the international world*" and "*well-connected expert*". She has also been awarded the "Best in Product Liability" award at the 2019 LMG Euromoney Europe Women in Business Law Awards and is listed in this Directory since 2015. In The Legal 500 EMEA 2020 and 2021, France chapter, Sylvie is recognised as the only Next Generation Lawyer for product liability under Dispute Resolution: Commercial Litigation.

Sylvie "*stands out in the product liability space for her creative solutions and strategic understanding of the many cases she works on*" and represents a variety of globally recognised manufacturers from industries such as the automotive industry, electronic products, cosmetics, new technologies, steel, energy, food, toys, etc.

Sylvie is further known in the French market as a leading toxic tort/mass litigation lawyer. As such, she has been involved in most pro-company case law rendered in recent years, notably in asbestos-related cases, with some cases mentioned in the French Civil and Social Security Codes because of the significant reversal in case law they represent.

Sylvie is an active member of the International Association of Defense Counsel (IADC) and the International Consumer Product Health and Safety Organization (ICPHSO).

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Elena is a partner in the Project Development and Finance Group in White & Case's New York office. She has significant experience in a variety of project financings in the Americas, primarily in the power, oil & gas and infrastructure sectors.

Elena's cutting-edge approach to deal structure enables her to develop innovative solutions to help clients achieve their business objectives. She combines a keen understanding of the commercial arrangements that underpin energy and infrastructure projects with a sophisticated knowledge of term loan B, mezzanine and hybrid finance structures. She also has extensive experience on acquisition financings, project bonds/private placements and other debt-structured products as well as equity financings.

Elena has worked on multiple award-winning, first-of-their-kind transactions. The *Legal 500* describes Elena as "a leader in hybrid project finance" and clients add, she has "finely tuned commercial sense," and provides "strong support and advice through complicated transactions," according to *Chambers USA*.

Her elite standing in the US market has earned Elena acknowledgement in numerous industry publications. Recent market recognition includes being named to the Roll Call of Elite: Project Finance in *Euromoney's Best of the Best USA Expert Guide* 2021; her selection as an *IFLR100 Women Leader* 2021 for Project Finance and Asset Finance in the United States; and being awarded Global Leader: Project Finance status in *Who's Who Legal* 2021. She is also ranked as a leading lawyer in two categories in *Chambers USA*, Energy Transactions: Conventional Power, and Project Finance.

Elena received her BA from University of California, Los Angeles and JD from University of California, Berkeley, Boalt Hall School of Law.

Recent matters include the representation of:

- Antin Infrastructure Partners, a leading independent private equity fund focused on infrastructure investments, in a US$625 million term loan A to finance its acquisition of Veolia's district energy assets. The portfolio comprises steam, hot and chilled water and electricity production plants, including cogeneration and 13 networks in ten US cities.
- Deutsche Bank and JPMorgan Chase & Co. in the provision of a US$1.385 billion term loan to Traverse Midstream Partners LLC. Traverse Midstream Partners LLC is a pipeline investor formed by The Energy & Minerals Group with a portfolio of non-operated midstream assets, including the 715-mile Rover Pipeline and the 52-mile Ohio River System pipeline that both harness natural gas from the Marcellus and Utica shales.

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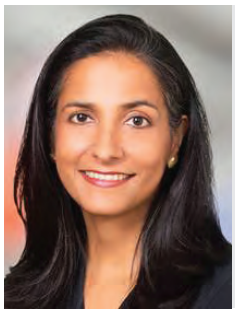

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One of *Euromoney*'s "Best of the Best" in the USA as well as a leading "Woman in Business Law" for Project Finance, Dolly has over 20 years of experience advising infrastructure and pension funds, sponsors and developers, commercial banks, institutional lenders, contractors, government agencies and secondary market investors in the development, acquisition, divestiture and financing of greenfield and brownfield energy and infrastructure assets, including innovative public private partnerships. She has played a leading role in the introduction and ongoing deployment of private investment and finance in the infrastructure sector in North America, having advised on multiple, award-winning transactions, many of which were first of a kind.

Due to her elite standing in the US market and strong leadership in advising clients, Dolly is one of only seven lawyers with a "Band One" ranking in both *Chambers Global* and *Chambers USA* for PPP projects. Dolly's numerous acknowledgements by additional industry publications include her recognition as one of *IFLR1000*'s 2021 Women Leaders for US Project Finance and Project Development, as well as her achievement of "Global Leader" status in *Who's Who Legal* for Project Finance (2021) and Government Contracts (2020). Additionally, Dolly recently advised on the "Americas P3 Deal of the Year" in back-to-back years – the LAX Automated People Mover P3 Project (*PFI* 2018) and the Newark Consolidated Rent-a-Car Facility P3 Project (*PFI* 2019).

Dolly received her LLM from Harvard Law School and her BA Jurisprudence from New College, Oxford.

Recent matters include the representation of:

- Ridgewood Private Equity Partners on its acquisition of a majority equity interest in Vista Ridge LLC, the concessionaire for a 142-mile water pipeline in Texas, the offtaker of which is the San Antonio Water System; and ongoing representation of Vista Ridge LLC, most recently advising on a US$1.05 billion refinancing of the project's construction financing at the end of 2020, implemented as a US private placement. The refinancing was recently awarded "Americas Water Deal of the Year" by *IJ Global* 2020. The original project was awarded "North America Water Deal of the Year" by *IJGlobal* 2017 and *PFI* 2017, "Water Deal of the Year" by *Global Water Intelligence* 2017, and "Best Utilities Project, Gold Award" by *P3 Bulletin* 2017.
- ACS Infrastructure Development, Balfour Beatty Investments, Bombardier Transportation, Fluor Corporation and Hochtief PPP Solutions on their successful bid for and financial close of the Automated People Mover project at LAX. The financing consisted of a combined bank/bond structure with US$1.2 billion of private activity bonds combined with a US$270 million, five-year construction facility provided by commercial banks. Awarded "Americas P3 Deal of the Year" by *PFI* 2018, "North American PPP Deal of the Year" by *IJGlobal* 2018 and "Best Transit Project" by *P3 Bulletin* 2018.

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Sally Anne is a partner in the Commercial Real Estate Department at Matheson and leads the international real estate practice as well as the occupier advisory and transaction practices. She is an accomplished and commercially focused lawyer with over 10 years' experience in large scale acquisitions and disposals; site development; commercial landlord and tenant; real estate investment, commercial real estate aspects of corporate transactions, including the sale and purchase of both private and public companies; and advising owner/occupiers on the acquisition of office, industrial, manufacturing, and technical/data centre premises.

Sally Anne advises both landlords and occupiers on the largest and most significant real estate transactions in the Irish market. She has a breadth of experience in running sophisticated transactions and her in-depth knowledge of the market has resulted in her being first choice as trusted advisor to some of Ireland's largest occupiers (both tenants and owner/occupiers) on the development, letting and ongoing management of their office and technical space. Sally Anne has advised one of the largest international tech giants for over 10 years in respect of all its real estate requirements in Ireland.

Sally Anne has been involved in many of the landmark transactions across Dublin. She is project lead on several of Dublin's largest development projects advising on site acquisitions, estate set-up, development, letting and sale of commercial and residential/ PRS assets. She also advises several Irish and non- Irish institutional investors on the acquisition of large scale assets

Sally Anne has advised on many of the market's major commercial real estate deals and some of the largest real estate transactions in Ireland in the last five years.

Experience Highlights

- Acting for a number of high profile multinational IT product and service companies and other international businesses establishing their presence in Ireland in both prime Dublin city centre and other regional locations varying in size from 20,000 to 200,000 square foot.
- Advising a leading Investment Bank on the acquisition of over 150,000 square feet of office space in a prime location and continuing to advise on their further expansion plans in Dublin.
- Advising a high profile international online retailer on the continued expansion of its property portfolio in Ireland including an Agreement for Lease and Lease of an office premises which completed in the second quarter of 2017 and has been described as by far the largest in Dublin for several years.
- Advising a number of global technology giants on the acquisition and letting of lands for the development of the largest data centres in Ireland.
- Advising Zendesk on the letting of its new EMEA headquarters at 55 Charlemont.

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Mrs Erika Åslund has significant experience and is widely regarded as an accomplished real estate M&A practitioner. She has consistently over the years represented both Swedish and international investors in the largest and most complex real estate M&A transactions in Sweden.

Mrs Erika Åslund has been awarded several domestic and international recognitions and she is also ranked in the Hall of Fame for Real Estate work in the Legal 500 EMEA.

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RESTRUCTURING AND INSOLVENCY

Features for:

RESTRUCTURING AND INSOLVENCY

The principle of the bankruptcy administrator's disclosure of the debtor's commercial secrets

Nafisa Nihmat
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Introduction

Where a company goes bankrupt, the controlling rights of the company's original shareholders over the company are restricted due to the entry of new entities enjoying such rights — the decisions made by the administrator as well as the creditors' meeting may have a far-reaching impact on the company. On the one hand, the creditors of the bankrupt company have the right to know in accordance with the law; on the other hand, the disclosure of the debtor's operation information by the administrator, such as transaction information, financial information, the list of key clients, etc., may divulge commercial secrets, harming debtor's interests and indirectly harming the interests of all creditors. How to balance the creditor's information rights with the protection of the debtor's commercial secrets? Based on the above, this article intends to discuss the principle of the bankruptcy administrator's disclosure of the debtor's commercial information, especially the operation information.

1. Scope of Commercial Secrets

According to Article 9 of the Law of the People's Republic of China Against Unfair Competition, commercial secrets referred to in the Law hereof shall mean commercial information such as technical information and business information, which is not known to the public and has commercial value and for which the rights holder has adopted the corresponding confidentiality measures. In practice, the technical information of the enterprise, such as formulas and unexamined patents, uncontroversially constitutes a commercial secret, while whether some business information of enterprises such as the list of key customers, financial statements, accounting statements, transaction records, and other business transaction information constitutes commercial secrets is still in dispute.

By retrieving relevant cases of Shanghai Intellectual Property Court, the Supreme People's Court, and other courts, and in accordance with relevant laws and regulations, we believe that specific business information may constitute commercial secrets as well if meeting the following requirements:

- Value: economic value, competitive advantage
- Confidentiality: in-depth information not known to the public
- Security: reasonable confidentiality measures adopted

The disclosure by the administrator of such information during duty performance may cause potential competitors to use such information, harming the interests of the debtor.

"BALANCE BETWEEN CREDITOR'S RIGHT TO KNOW AND DEBTOR'S COMMERCIAL SECRET PROTECTION"

2. The Administrator Shall Be Obliged To Keep The Bankrupt Enterprise's Commercial Secrets Confidential In The Whole Process Of Performing Duties

Although the Business Bankruptcy Law of the People's Republic of China does not directly stipulates the administrator's obligation to keep the commercial secrets confidential, but not to divulge the debtor's commercial secrets is included in the obligation of loyalty in Article 27 of the Business Bankruptcy Law. After the administrator takes over the bankrupt enterprise, he will inevitably come into contact with the important commercial secrets and technical secrets of the enterprise in the process of performing his duties in the administration of the debtor's property and affairs. Commercial secrets are related to the important interests of enterprises, especially for enterprises in the process of restructuring, divulging their commercial secrets may directly lead to the failure of enterprise regener-

ation. Therefore, the administrator shall bear the corresponding legal liability when violates the confidentiality obligation and harms the interests of the debtor. The principle of protecting the debtors' commercial secrets has been established in some local regulations.

3. The Balance Between Protecting Debtors' Commercial Secrets And Creditors' Rights To Know

According to the Business Bankruptcy Law and Provisions of Supreme People's Court on Several Issues Relating to Application of the Business Bankruptcy Law of the People's Republic of China (III) (hereinafter referred to as the "Judicial Interpretation of the Bankruptcy Law (III)"), the creditors of the bankrupt enterprises have the right to know. Article 10 of the Judicial Interpretation of the Bankruptcy Law (III) also specifies the relief and remedies for creditors when the administrator, without a proper reason, refuses to provide the debtor's financial and business information necessary for the creditors to participate in the bankruptcy proceedings, so as to fully protect the exercise of creditors' right to know.

On the one hand, the administrator has the obligation to keep the bankrupt enterprise's commercial secrets confidential; on the other hand, the administrator is required to perform the obligation of disclosing information to creditors in the bankruptcy proceedings. How should the administrators balance these two obligations when there is an inherent conflict?

According to the interpretation of the relevant provisions in the *Understanding and Application of Provisions of Supreme People's Court on Several Issues Relating to Application of the Business Bankruptcy Law of the People's Republic of China (III)*, creditors' information rights are aimed at solving the problem of information asymmetries in bankruptcy proceedings, so as to ensure that creditors can obtain necessary information from parties to effectively exercise voting and supervisory rights. Therefore, the information that creditors apply for inspection should be relevant to the bankruptcy process and necessary for creditors to exercise their legal rights granted by the Business Bankruptcy Law, such as the right to vote and to supervise. With reference to the seventh typical case issued by Shanghai Bankruptcy Tribunal, we are of the opinion that when individual creditors take the initiative to request access to the debtor's enterprise information, the administrator shall examine the subject qualifications of the creditors as well as the necessity and the legitimacy of the purpose of such access. After examination, the administrator shall only disclose information within the necessary scope and shall require the relevant creditors to assume the confidentiality obligation.

Imposing certain restrictions on the creditors' information rights where the commercial secrets of the debtors are involved is in line with international practice. Provisions for such practice can be found in the Legislative Guide on Insolvency Law by the United Nations Commission on International Trade Law and Section 107 of the United States Bankruptcy Code.

4. How To Supervise The Administrator's Disclosure Of The Bankrupt Enterprise's Confidential Information

According to Article 23 of Business Bankruptcy Law, the people's court, the creditors' meeting, and the creditors' committee have the right to supervise the administrator's disclosure of the debtor's confidential information, which is indisputable both in theory and in practice. However, the Business Bankruptcy Law does not specify whether the debtor or its original shareholders have the right to require the administrator not to disclose certain information. On the one hand, there is a natural conflict between the interests of the debtor's original shareholders and those of creditors, the debtor's original shareholders who are driven by the human instinct of profit-seeking may protect their own interests at the expense of other interested parties'. On the other hand, the debtor's original shareholders are more sensitive to business information essential to the debtor based on their familiarity with business operations and strengths in business judgment. The protection of commercial secrets is the key to the success of an enterprise's revival and subsequent development, especially in the context of bankruptcy reorganization.

We believe that although Chinese legislation is left blank on whether the administrator shall be supervised by the debtor's original shareholders regarding disclosing commercial secrets at current stage, within the scope of commercial secrets protection, there is inherent rationality in granting certain supervisory rights to original shareholders of the debtor. Therefore, we suggest, in order to avoid irreparable losses caused by the information disclosure, we suggest that within the scope of commercial secrets, the administrator should attach great importance to the opinions of the debtor's original shareholders, analyze possible adverse consequences caused by information disclosure, and refer to the court for decision when necessary.

Summary

When an enterprise goes bankrupt, the administrator often overlooks his obligation to protect the commercial secrets of the bankrupt enterprise while safeguarding creditors' information rights under the law. When disclosing past transaction information of the debtor's enterprise to creditors, the administrator should pay particular attention to whether the enterprise's commercial secrets would be disclosed, weigh carefully, and seek instructions from the court if necessary. At the same time, we suggest that the legislation on the protection of commercial secrets of bankrupt enterprises, especially of those under bankruptcy reorganization, should be improved by granting certain supervisory rights within the scope of commercial secret protection to the original shareholders, such as the right to apply to the administrator to keep the information involving commercial secrets confidential, and the right to apply to the court to request the administrator to keep secrets when the administrator rejects such application, etc. so as to guide the administrator to balance commercial secret protection and creditors' information rights in practice.

RESTRUCTURING AND INSOLVENCY

Covid-19 inspired changes to the Danish in-court restructuring rules

Pernille Bigaard (pictured), Anders Ørskov Melballe and Louise Krarup Simonsen
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1. Danish in-court restructuring proceedings

1.1 Restructuring proceedings in general

The current Danish restructuring rules came into force in 2010. The Danish Parliament has recently passed amendments to the restructuring rules to make it easier and more flexible to complete restructurings. The rules were adopted in view of the COVID-19 crisis in order to make the in-court restructuring rules even more useful in practise in order to increase the chances of restructuring viable businesses.

The purpose of restructuring proceedings is to continue distressed companies either by making them solvent and viable by debt adjustment (compulsory composition) or by transferring the business wholly or partly to a third party. Restructuring proceedings must consist of a business transfer and/or a compulsory composition.

We consider the in-court restructuring process a very important tool to save viable businesses, the value of the assets and thus provide the best solution for the creditors, including the employees. We welcome the new changes to the Danish restructuring rules as we suspect they will provide a better foundation for successful restructurings. We have been a part of several successful restructurings and are of the firm opinion that it has provided better dividends to the creditors in those cases. We find the professional advisors counselling any business in financial distress shall be conscious of if it is a feasible solution for the business to undergo restructuring instead of bankruptcy as the net result of restructuring could save the business assets to the benefit of all stakeholders.

The Danish restructuring rules have sometimes drawn criticism for not being sufficiently flexible and too complicated particularly in relation to business transfers, and the employees' position could in some cases counter the application of the restructuring proceedings. The new rules endeavour to make solutions more flexible, which in our assessment will improve the possibilities of completing restructurings in the future. Not least considering the economic problems due to the corona pandemic.

> "WE CONSIDER THE IN-COURT RESTRUCTURING PROCESS A VERY IMPORTANT TOOL TO SAVE VIABLE BUSINESSES, […]"

1.1.1 The restructuring proceedings – restructurer and restructuring accountant

Restructuring proceedings can be commenced when a company is insolvent and thus not able to fulfil its obligations as they fall due (illiquidity).

On commencement of the restructuring proceedings the insolvency court appoints a restructurer (usually an attorney). Under the new rules it is no longer mandatory that a restructuring accountant (typically an auditor) be appointed.

The restructurer's task is *i.a.* to propose a solution where the company or the viable parts of the company may continue either as the same company through debt adjustment or by transfer of the business to a new legal entity.

The restructuring accountant's task is *i.a.* to verify and produce financial data to strengthen the creditors' confidence in the financial records and bolster the endeavours to reach a viable solution.

1.1.2 Restructuring plan and proposal

The restructurer prepares a plan for the restructuring process for the creditors. The plan is to be heard at a creditors' meeting before the insolvency court no later than four weeks after filing the petition for restructuring proceedings, also called the 4-week meeting (possibility for extension with another four weeks).

At the meeting, the creditors vote on the restructuring plan. The plan is adopted unless

a majority of the creditors represented at the meeting cast their votes against the plan, provided that such creditors amount to at least 25% of the total known creditors.

No later than six months after the 4-week meeting, there must be a new meeting with the creditors to vote for the specific restructuring proposal (possibility for extensions).

The restructuring proposal includes the exact content of the restructuring: compulsory composition, business transfer or both, plus information about the purchase, transfer price, expected dividend etc. A restructuring proposal is adopted unless a majority of the creditors represented at the meeting vote against it.

2. Amendments to the restructuring rules and their importance

2.1 "Fast-track" model

Earlier, a business transfer in a restructuring process could only occur if the creditors had adopted it in a restructuring proposal. There are quite a few formal requirements to the content of a restructuring proposal, and the rules have sometimes drawn criticism for making it too intricate in terms of time and procedure to complete a business transfer in a restructuring process.

For some companies undergoing restructuring proceedings a transfer must happen quickly for the business's survival. Liquidity may be strained, or the value of the company may drastically be reduced. In practice, bankruptcy has too often been the outcome if a business transfer had to have happened quickly.

The recent amendments to the rules now allow a business transfer immediately after commencement of the restructuring proceedings in a particular "fast-track" procedure. This procedure enables the restructurer to approve a business transfer without the transfer being adopted by the creditors as part of a restructuring proposal. Instead, the restructurer shall inform the creditors of a contemplated business transfer and provide a 5-day deadline for any objections against the business transfer.

A restructuring "fast-track" transfer requires:

- The restructurer must consent to the application of the "fast-track"
- It is considered expedient to use the "fast-track" to maintain the business's value
- No objections against the transfer must have been received from a majority of creditors within five business days' time limit.
- A restructuring plan must not have been adopted

The "fast-track" model will be expedient if the debtor needs cash to keep the business going during the ordinary restructuring proceedings or if the purchaser cannot await the standard procedure.

A "fast-track" transfer may only be completed until a restructuring plan has been adopted. Subsequently, business transfers may only be conducted under the rules applicable until now, i.e. as part of a restructuring proposal that still applies. But as before, it is possible to make a combined restructuring plan and proposal and complete the business transfer quickly.

2.2 The Employees' Guarantee Fund

Employees, who do not receive their salary because the employer ceases to exist, may receive payment from the Employees Guarantee Fund (the "Fund") of their net salary after tax of up to DKK 160,000 (2021 level) plus holiday payment, equal to approx. EUR 21,475.

Employees working for a company in restructuring will typically receive their salary from the company in the restructuring period. Previously the terminated employees had to await the conclusion of the restructuring proceedings before payment could be made by the restructured company or bankruptcy proceedings commence against the company and the employee could then receive remuneration from the Fund or the bankruptcy estate. This has in some cases been a hindrance for commencing in-court restructuring procedures as the terminated employees may find themselves in a vacuum in terms of receiving their salary for their termination period while the restructuring proceedings are pending.

Now terminated and released employees can receive payment from the Fund from the commencement of the restructuring proceedings of up to three months' salary due during the restructuring proceedings and up to one month's salary, which was due before the restructuring proceedings.

The new rules also limit the employee obligations that the buyer in a restructuring-business transfer agreement must assume. With the new regulations, the buyer – like in bankruptcy – only assumes responsibilities from the commencement of the restructuring proceedings and the Fund will cover the rest. The Fund can now cover any obligations from before the restructuring, as is the case in bankruptcy.

2.3 Restructuring accountant

Under the previous rules, it was mandatory to appoint a restructuring accountant together with the restructurer. However, under the new rules, a restructuring accountant is no longer mandatory as it is expected that it will be sufficient to work with the distressed company's auditor. The purpose of the amendment is to make restructuring less costly as a formally appointed restructuring accountant must be entirely new to the company and thus will have no advance knowledge of the company.

The company in restructuring, the restructurer or 25% of the creditors may still request that a restructuring accountant be appointed.

It is expected that restructurings with no restructuring accountant will often be restructurings of companies with limited values and a limited number of creditors where the restructurer assesses that it will be safe to prepare the restructuring material with the assistance of the company's auditor. In companies of some complexity, it will still often be prudent to appoint a restructuring accountant.

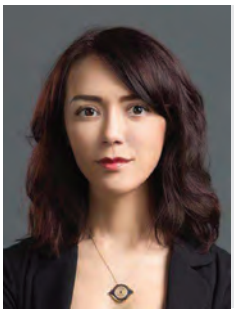
2.4 No automatic bankruptcy and no requirement for security for bankruptcy costs

With the amended rules, a company may withdraw from commenced restructuring proceedings until a restructuring plan has been adopted without automatic commencement of bankruptcy proceedings. Previously the company would automatically be declared bankrupt if the restructuring was not successful.

The last amendment we will highlight is that it is no longer a requirement to provide security for the cost of any subsequent bankruptcy proceedings. This will ease the cash flow strain to file for restructuring with DKK 30-40,000, equal to EUR 4,026-5,370.

Both more "technical" amendments may have quite significant effects both the existing rules can be hindering to a distressed company's willingness and ability to file for in-court restructuring and instead try for out of court settlements which may increase the risk of agreements to the disadvantage to some creditors or risk of loss for the creditors.

CHINA



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Professional Honors

- "Recognized Practitioner – Restructuring/Insolvency (PRC Firms)" by Chambers Asia-Pacific 2019, 2020 and 2021;
- "The A List: China's Top 100 Lawyers" by China Business Law Journal 2017, 2018, 2019, and 2020;
- "ALB China Top 15 Female Lawyers" by Asian Legal Business 2020;
- "Deals of the Year 2016" by China Business Law Journal 2016;
- "Rising Star of the Year" by IFLR1000 2021;
- Biography published in the special column of September 2017 by Asian Legal Business;
- "Top Restructuring and Insolvency Practitioner in China" by Euromoney's Expert Guides.

Representative Cases

- Fengli Group Bankruptcy Restructuring: Served as the leading partner advising the bankruptcy administrator, assisted in achieving debt restructuring of tens of billions CNY and was rewarded with "Deals of the year 2016" by China Business Law Journal;
- Zhoushan Haozhou Group Bankruptcy Restructuring: Served as the leader of the bankruptcy administrator, handled liability of billions CNY and was rewarded with Top 10 Typical Bankruptcy Cases of Zhejiang Province in 2019 and Top 10 Excellent Performing Cases of Bankruptcy Administrator Association of Zhejiang Province in 2019;
- Shandong Tranlin Group Bankruptcy Restructuring: Served as the leading partner advising the bankruptcy administrator, handled liability of tens of billions CNY;
- Jiangsu Akcome Industrial Group Co., Ltd Bankruptcy Restructuring: Served as the leading partner advising the investor, handled liability of more than ten billion CNY;
- Hangzhou Yuhang Financial Holdings Group Co., Ltd. Bankruptcy Restructuring: Served as the co-leader of the bankruptcy administrator, restructured liability of more than 5 billion CNY;
- ST 000034, ST 600678, ST 600757 and ST 600094: Served as a key member of the bankruptcy administrator and fulfilled debt reorganization plans involving billions CNY;
- SunEdison: Represented the largest unsecured Chinese creditor in bankruptcy proceedings in declaring their claims to SunEdison and assisting their cross-border distressed M&A of SunEdison's assets;
- The first case in Shanghai involving refusal to recognize and enforce overseas arbitration: Represented the respondent, successfully defended the opposite side's application for recognition and enforcement of the Singapore International Arbitration Centre ("SIAC") Award in Shanghai.

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Pernille is one of Denmark's most experienced insolvency attorneys in Denmark. She has assisted in a number of financial restructurings and insolvency proceedings against a wide range of large Danish companies, including Sterling Airways A/S, Sterling Airlines A/S, Centerplan A/S, Sandgården A/S, O. W. Bunker A/S, Fona A/S, Arnold Busck A/S and ACT Global A/S.

Pernille is widely recognised by the large international rating agencies as leading in Denmark in Insolvency and Restructuring. Her extensive experience and expertise mean that she is often asked to handle the most complex cases in Denmark; for instance, as trustee of the estate in bankruptcy of O.W. Bunker, which is the largest bankruptcy in Denmark in recent times.

Since 1988, Pernille has been entitled to appear before the Danish Supreme Court, and she has conducted several significant cases in relation to bankrupt and insolvent businesses.

As the then chairman of the Danish Association of Trustees participated establishing the Association of Danish Insolvency Lawyers in 2004, and she was chairman until 2018. For a number of years, Pernille also chaired the Danish Bar and Law Society's Insolvency Law Committee and the Association of Danish Law Firms' Insolvency Law Committee. Pernille is also a member of The Danish Debt Collection Agency's select group of attorneys whom the Agency may appoint as trustees.

Pernille is appointed as a permanent trustee at the Maritime and Commercial Court, The Insolvency Court in Copenhagen. She represents Denmark ICC's FraudNet, a global organization specializing in Fraud and Asset Recovery.

Pernille has worked as an attorney since 1980, specializing in restructuring and insolvency her entire career and has been a partner with one of the biggest and most wellknown law firms in Denmark, Plesner, for 31 years.

She has held several positions of trust, including Chairman of the Association of Danish Insolvency Lawyers, Chairman of the Danish Association of Trustees (Kuratorforeningen), Chairman of the Insolvency Law Committee of the General Council of the Danish Bar and Law Society, Member of the General Council of the Danish Bar and Law Society, Member of the Code of Conduct Committee and many more.

Pernille has received numerous international rankings: To mention a few more recent:

Pernille Bigaard [..]draws extensive praise for her considerable experience handling the most high-profile cases across Denmark, including both in-court bankruptcy proceedings and out-of-court restructurings. – Chambers Europe (2021)

Pernille Bigaard is listed in Women Leaders Guide – IFLR1000 (2020) and as Market Leader within Restructuring and Insolvency 2021. Pernille is also listed as leading individual as regards to insolvency in The Legal 500 Series 2019.

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Julie is a partner in Matheson's Commercial Litigation and Dispute Resolution Department. Julie regularly advises on fraud claims, freezing orders, injunctions, asset recovery and tracing, trust issues, directors' duties and enforcement matters. Her practice includes high-stakes, complex Commercial Court disputes for international companies and financial institutions.

Julie was named Client Choice Award Winner for Asset Recovery (Ireland) in 2020. Julie is a strong advocate of alternative dispute resolution, which provides the means to resolve disputes in a cost-effective, time-efficient, confidential and creative manner. She is a Council member of the Irish Commercial Mediation Association. Julie is consistently ranked as one of Ireland's top restructuring and insolvency lawyers by international legal directories. She was a council member of the Irish Society of Insolvency Practitioners from 2011 – 2014, acting as Secretary and as Chair of its Educational Sub-Committee during that period. Julie is co-author of the Commercial Litigation Association of Ireland's Practitioners' Guide to the Commercial Court in Ireland and of the Law Society of Ireland's Insolvency Law text book. She is a frequent contributor to Irish and international legal publications and is regularly invited to speak at industry conferences. Julie is also a non-executive director of Coillte DAC.

Experience Highlights

- Advising credit servicing firms and investment funds in relation to interest overcharging issues affecting acquired loan portfolios and associated remediation projects.
- Advising lender and receiver on enforcement, trading and sale of private hospital group.
- Advising a financial institution in relation to the design and implementation of a remediation scheme for customers arising out of mis-selling claims relating to certain investment products and assisting on their dealings with the Central Bank of Ireland and the Financial Services Ombudsman.
- Representing a major domestic bank in relation to the recovery of multi-million dollar losses arising from a major fraud in a US subsidiary.
- Advising a vehicle brand corporate group in relation to the defence of complex inter-related commercial court proceedings arising out of the fire in Douglas Village Shopping Centre Cork.
- Advising an Irish plc in relation to a number of civil claims arising from a highly publicised investigation by the Office of the Director of Corporate Enforcement followed by the appointment of High Court Inspectors to investigate the company.
- Representing a large Italian multinational manufacturer and distributor of electricity and gas in a successful jurisdictional challenge to the enforcement of an Albanian judgment in Ireland, as part of a broader enforcement strategy (so far France, Luxembourg, Ireland, New York and the Netherlands) on the part of the Albanian applicant.

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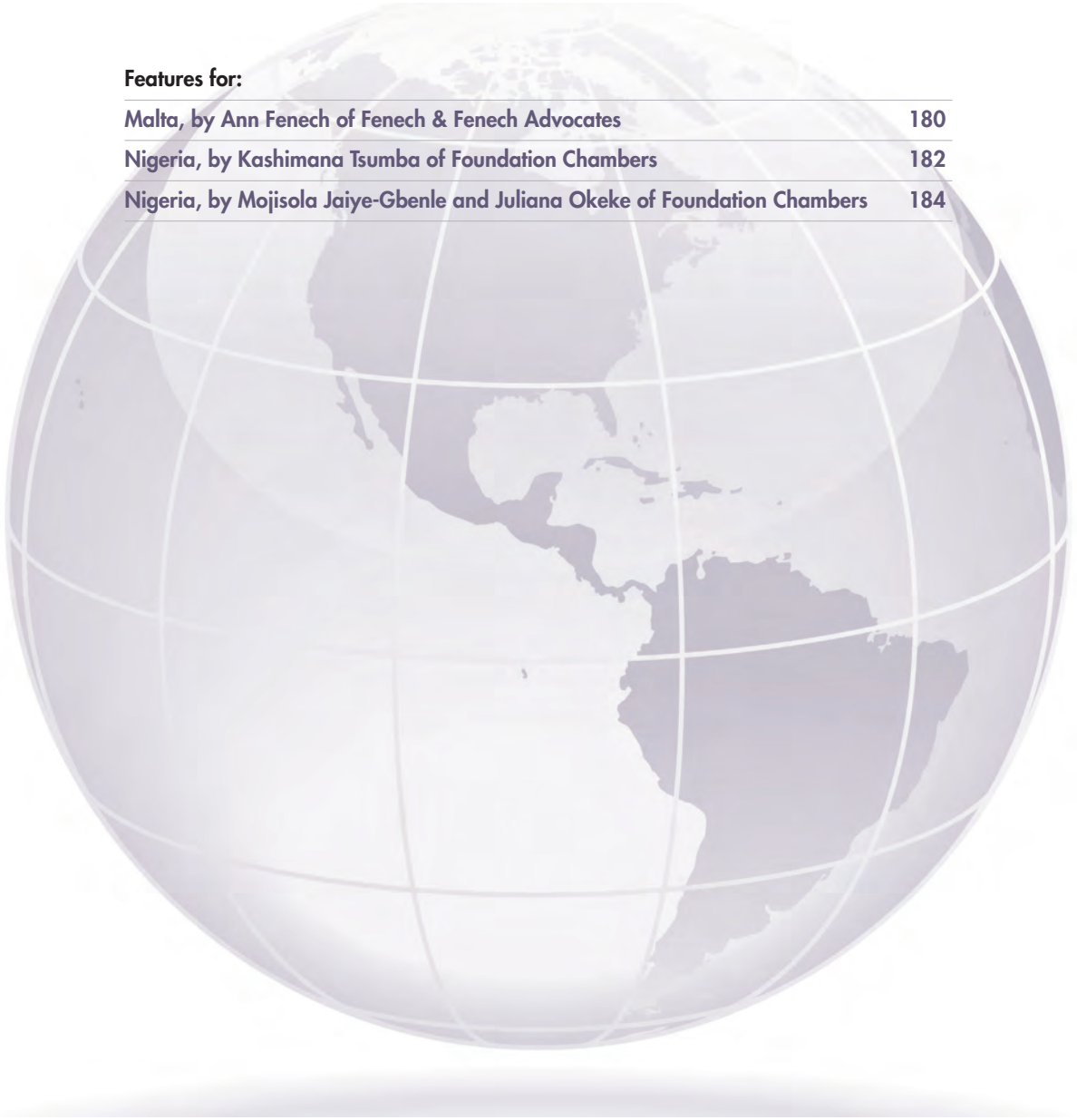

Features for:

SHIPPING AND MARITIME

International effect of Judicial Sale of Ships

Ann Fenech*
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Ships are responsible for as much as 90% of the carriage of world trade providing the main life line for global trade. This impressive statistic underlines the importance of international shipping to the lives of each and every one of us. We depend on ships to carry petroleum to run our industries, wheat, grains and livestock to feed our populations, containers stuffed with anything from clothing to pharmaceutical products to fill the shops in the high street and equipment for our hospitals, refrigerated containers carrying fresh produce varying from fruit and vegetables to fish and flowers. This very brief list is sufficient to emphasise the importance of ships to large industries as much as to the ordinary man in the street.

Ships and ship owners are however susceptible to economic forces which may effect the ability of ship owners to pay their creditors. Economic recessions and events like the global pandemic which we have just lived through, or very simply a business plan which has failed, can have catastrophic effects on the liquidity of a ship owner leading to his inability to pay his financiers, or his suppliers or his crew or any other creditor. It may not always be possible for such a ship owner to refinance his debt and when that is not possible, it very frequently leads to creditors moving in on the owner and his vessel, leading to the arrest of the vessel followed by the judicial sale of that vessel.

The most common form of judicial sale is the judicial sale by auction, held under the auspices of the courts of the country in which the vessel is arrested. In a number of jurisdictions there are also court approved private sales. These are sales which are also held under the authority and control of the court, however they do not involve an auction but involve the approval by the court of a sale to a private buyer for a stipulated price, which price, it would have to be proved is equal to or in excess of the market value of the vessel.

The fact remains however that we are here talking about the sale of a distressed vessel which is overloaded with debt. It therefore stands to reason that a prospective purchaser would only be interested in purchasing such a "distressed" vessel if he can purchase the vessel "free and unencumbered" and can purchase her with a clean slate. It is only on that basis that a prospective purchaser would be remotely interested in purchasing her, and it is only on that basis that a purchaser will be prepared to pay good money. Of course the bigger the price, the better the chance of the creditors getting paid and the bigger the chance of the owner actually having any money left over. When a purchaser buys a vessel in a judicial sale, the purchase price is paid into the court which would have ordered the sale and the creditors are then paid from the proceeds of the sale. If the price exceeds the debts, then any balance is paid to the owner. If the price is not sufficient to pay all the debts, very frequently there is a ranking of creditors procedure.

> "..A PROSPECTIVE PURCHASER WOULD ONLY BE INTERESTED IN PURCHASING SUCH A "DISTRESSED" VESSEL IF HE CAN PURCHASE THE VESSEL "FREE AND UNENCUMBERED".. "

In addition to the above it is equally important to the purchaser that when he purchases the vessel free and unencumbered, he can get the vessel deleted from its previous flag and re registered in a new flag according to his requirements. Thus the recognition of the judicial sale by the existing registry and the new registry is fundamental.

The above, one would think, is pretty obvious. However there have been several instances over the years where purchasers of vessels in judicial sales have struggled to get their new title recognised by existing registries, have struggled with unscrupulous creditors re-arresting the vessels after they have been sold to the purchasers who would have purchased the vessels in good faith and would have paid top dollar for the purchase of vessels free and unencumbered. This leads to chaos and confusion and an interruption

of international trade when the industry requires clarity and consistency. How can a purchaser expect to obtain financing from a bank to purchase a vessel in a judicial sale when after the financier has extended credit to purchase such a vessel free and unencumbered finds out that an old mortgagee or old creditor is still chasing the vessel when they should be getting paid out of the purchase price of the vessel? How can one expect a purchaser to pay top dollar if the vessel he is intending to purchase can still be arrested by old creditors? If a vessel does not fetch the best price, what chances do the creditors have of getting paid? What would happen to the crew of a ship who would have been paid out of the proceeds of the price of a judicial sale in the event that such a sale is not given its full effect further along the line? The answers to all of these questions point in one direction – uncertainty and chaos which is very bad news for the smooth operation of vessels responsible for carrying 90% of world trade.

It is in this context that the Comite Maritime International ("CMI") came up with a Draft Convention on the International recognition of Judicial Sales known as the "Beijing" draft. Following a colloquium organised in Malta in February 2018 which was attended by a cross section of maritime interests ranging from builders to owners to financiers and service providers from over 58 countries, the United Nations Commission for International Trade law (UNCITRAL) at its fifty first session held in New York was persuaded to add this topic to its work programme. This task was allocated to Working Group V1 and the first meeting was held at the UN in New York in May 2019 which meeting led to a first revision which was in turn discussed and deliberated at the UN in Vienna in December 2019. Since then and notwithstanding the fact that we have had a Pandemic which has effectively removed physical meetings, deliberations have continued in earnest through virtually held meetings under the Chairmanship of Beata Czerwenka and very effectively co-ordinated by the UN Secretariat led by Jose Angelo Faria attended by state delegations and NGO delegations from all over the world. The result is that UNCITRAL has just published the 4th revision of the Beijing Draft for deliberation at the next meeting to be held at the UN in Vienna in October. Such progress has been registered that it is likely that a final draft be presented to the UN General Assembly in the near future.

The Draft Convention currently contains 21 articles. It applies to the judicial sale of a ship when the ship is physically within the territory of the state of judicial sale at the time of the sale and when under the law of that State, the judicial sale confers clean title to the ship on to the purchaser.

The Convention provides that notification of the sale must be provided to a number of persons including the owner, the bareboat charterer of the ship, the registry of the ship, the holder of a registered mortgage or hypothec and the holder of a maritime lien who would have registered his claim. It further provides for the setting up of a repository and currently discussions are underway with the IMO as approved in principle by the legal committee of the IMO at its 107th session for a possible additional module within the IMO's Global Integrated Shipping Information System the GISIS platform. The Convention provides for all notifications to be sent to the repository which means that in practice any person interested in tracking a particular vessel would at the push of a button be able to find out if a particular vessel is going to be sold in a judicial sale.

A very important provision in the convention relates to the issuing of the Certificate of Judicial Sale. Following the sale, the Court of the State of Judicial Sale would then issue a Certificate of Judicial Sale attesting to the fact that the vessel was sold free and unencumbered and obliges the registrars of flag administrations from state parties to give effect to such certificates by deleting any mortgages, hypothecs or registered charges attached to such ships and by deleting the ship from such registries and issuing certificates of deregistration to enable new registrations.

In order to ensure order and certainty, the convention makes it clear that it is only the court of Judicial Sale which has exclusive jurisdiction to hear any claim or application to avoid a judicial sale. The Convention also makes it very clear that on the production of a certificate of judicial sale, a Court of a State Party is obliged to dismiss any applications for the arrest of a vessel for a claim against the vessel prior to its sale in a judicial sale, and must release a vessel arrested for a claim which predates a judicial sale on the production of a certificate of judicial sale.

The entire raison d'etre of the Convention is contained in article 6 which states:

" A judicial sale for which a certificate of judicial sale referred to in article 5 has been issued shall have the effect in every other State Party of conferring clean title to the ship on the Purchaser."

Much work has already gone into fine tuning this convention and that is to the credit of numerous state delegations and NGO's who have participated wholeheartedly in the debate and thanks to the UN Secretariat for its ability to sift through all the various suggestions and to capture the ideas being deliberated. Hopefully we will have a Convention on the international effects of judicial sales in the not too distant future – something which is eagerly awaited by purchasers of vessels, creditors and financiers alike so as to further reinforce the certainty required in international trade.

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SHIPPING AND MARITIME

What is free trade?

It is International trade left to its natural course without tariffs, quotas, or other restrictions.

Free trade is a policy to eliminate discrimination against imports and exports. Buyers and sellers from different economies may voluntarily trade without a government applying tariffs, quotas, subsidies or prohibitions on goods and services. Free trade is the opposite of trade protectionism or economic isolationism.

Free trade in Nigeria

Is free trade new in Nigeria? Free trade is not a new phenomenon in Nigeria. Indeed there are free trade zones in Nigeria also known as Export processing zones (EPZs) – also known as free zones (FZs). These are areas in which businesses are exempt from the normal regime applicable in Nigeria, particularly with regard to Customs duty and tax. With the incentives EPZs offer to corporations, they are one of various methods used to attract foreign direct investment, increase foreign exchange earnings, promote technology transfer and develop export- oriented industry in Nigeria.

African Continental Free Trade Agreement.

On the 5th of December 2020, Nigeria deposited its instrument of ratification of the African Continental Free Trade Area Agreement thereby becoming the 34th African country to ratify the Agreement.

The goal of the Agreement is simple, to create a simple market characterized by the free movement for trade, goods and services within Africa.

The AfCFTA is also expected to enhance competitiveness at the industry and enterprise level through exploitation of opportunities for scale production, continental market access and better reallocation of resources.

The establishment of the AfCFTA and the implementation of the Action Plan on Boosting Intra-African Trade (BIAT) provide a comprehensive framework to pursue a developmental regionalism strategy. The AfCFTA contains protocols including the Protocol on Trade of Goods which deals with import and export duties, liberalization of trade and progressively eliminating import duties.

The Trade Protocol streamlines the requirements that qualify vessels to ply African waters which in turn highlights the intersect between indigenous tonnage and the benefits of intra African trade.

Shipping Criterion

Article 6 of Section II of the AfCFTA **states that:**

"their vessels" … shall apply only to

a) the vessel sails under the flag of a State Party; or

b) at least, 50 per centum of the officers of the vessel or factory ship are nationals of the States Party or States Parties; or

c) at least, 50 per centum of the crew of the vessel or factory ship are nationals of the States Party or States Parties; or

d) ***at least, [50/51] per centum of the equity holding in respect of the vessel or factory ship are held by nationals of the States Party or States Parties or institutions, agency, enterprise or corporation of the government of the States Party or States Parties".***

Flagging

Statistics show that over 90 percent of goods imported into Nigeria are carried by sea and when regard is had to economies of scale it appears to be the most cost effective mode of transport. Consequently, legislation and the supply chain in respect of Shipping has a substantial impact on Nigeria's economy with regard to revenue and the market forces of demand and supply.

Most of the vessels that call at Nigerian Ports are owned by foreign entities. These vessels reflect the composition of the global merchant fleet which are owned by the shipping majors. Many of these vessels fly flags of convenience from other registries for commercial reasons and expediency.

Nigeria and tonnage

In 2003 Nigeria enacted a Cabotage Act 2003, to restrict the use of Foreign Vessels in Domestic Coastal Trade, promote the development of Indigenous Tonnage and to establish a Cabotage Vessel Financing Fund. This Act was geared at shoring up indigenous tonnage to partake in coastal shipping.

Although the Cabotage Act deals more with coastal shipping rather than merchant shipping outside Nigeria's coastline the provisions of the Act included a Cabotage Vessel Financing Fund which was designed to enable Nigeria acquire indigenous tonnage.

Why is the issue of vessel ownership a crucial issue with regards to the AfCFTA?

The simple answer would be that there are economic benefits that accrue to ownership and that in itself is one of the key reasons why the AfCFTA was created. More so the benefits are regional and as such ought to be utilized by a specific demographic with a core emphasis on the movement of capital within the region.

> "VESSELS EXPECTING UNLIMITED ACCESS TO TRADE UNDER ACFTA MUST BE FLAGGED IN AN AFRICAN STATE"

It is important at this stage to draw the distinction between flagging and indigenous ownership. Even though a vessel may be Nigerian flagged it may very well not be indigenously owned by a Nigerian or be of African ownership. The Nigerian flag may simply be a flag of convenience. The idea of vessels plying strictly an intra -African route also impacts on issues such as the cost of marine insurance especially in more volatile areas.

The issue of ownership in contradistinction to flagging becomes important under the AfCFTA because of the criterion for liberalization and incentives enumerated therein. From the AfCFTA it has become clear that any vessel that expects free and unlimited passage to trade in the African Continental Free Trade area needs to be flagged in an African State that is a party to the Agreement and in addition has 50 percent of its crew from a state party or the equity shareholding in respect of the vessel in 50/51% equity holding in nationals of a state party.

It is interesting to observe that the requirements appear quite similar to those of the Cabotage Act in Nigeria which rather than protect coastal shipping for indigenous operators has by way of the waiver system still left Cabotage trade quite porous to foreign participation and as such has been unable to circumvent the pertinent issue of capital flight.

The AfCFTA on the other hand permits flagging and as such, foreign vessels using the mechanism of flags of convenience in State Parties will easily participate in trade and enjoy all the incentives including the unfettered passage afforded therein.

It is common knowledge that Liberia which is also a State party to AfCFTA is one of the biggest Ship Registries and as such foreign Ship owners who have registered their vessels in such registries will partake of unrestricted trade along the African transit corridor.

Needless to say there will be an increase in flagging demands in African states which will bring in some measure of revenue but quite clearly the revenue realized from flagging is much lower than the benefits derived from vessel ownership. From an economic perspective it is debatable whether flagging alone will decisively reduce the cost of regional carriage of goods by sea thereby making intra African trade cheaper in terms of transport costs. While the routes may prove shorter they may be more expensive with respect to insurance cover.

Bills of lading

The AfCFTA creates its own transit document **The African Continental Free Area Transit Document** which is like a bill of lading. It is a *Customs Document for transit declaration* approved by the African Union Ministers of Trade and to be utilized within the African Continental Free Trade Area;

The Document raises several questions. Is it just a transit document or will any liability accrue based on the fact that it enumerates cargo on the face of the document similar to a bill of lading? In terms of carriage regimes will it be governed by the international carriage conventions or strictly subject to the dispute resolution mechanisms within the AfCFTA? Noteworthy is that no mention is made of limitation of liability within the transit documents. Where do standard forms stand in the face of this new innovation and as between the Parties can vessels that issue standard form bills of lading still ply the African Transit route if a compulsory requirement for carriage is the AfCFTA Transit Document? Will both documents operate simultaneously with one operating as a title document/receipt while the other operates as a mere passage licence? All these are matters that will need to be unraveled and judicially tested upon the coming into existence of the Agreement in our Climes.

Conclusion

At the heart of the AfCFTA is gleaned a medium aimed at bolstering economic, industrial and regional value chain development. Are the relevant drivers required to actualize the ethos of the agreement present? What can be done to build capacity to achieve the aim?. If Africa intends to establish a continental market for goods through intra Africa trade it must strategically build capacity in respect of vessel ownership. It must invest in ship building and increase its maritime asset base to enable it have a market share in the global fleet. To emerge as a viable trade hub there must be a decisive shift away from mere flagging of foreign operators to a deliberate investment in vessel ownership by African entities. Only then will African economies be positioned to play a key role in creating, utilizing and investing the revenue that comes from carriage of goods by sea in Intra Africa trade.

SHIPPING AND MARITIME

There has been a call by industry stakeholders in Nigeria's Oil and Gas industry, for the amendment of the Nigerian Oil and Gas Industry Content Development Act, 2010 (the "Act" or "Local Content Act"). In response to the call, a Bill for the amendment of the Act is currently being deliberated. Below are some of the notable proposed changes the new Bill seeks to modify in the Act.

1. Nigerian Company – Section 3 (1) and 3(2) of the Local Content Act- The Bill seeks to amend Section 3(1) and (2) of the Act, by deleting the words **Nigerian independent operators** and substituting it with **Nigerian companies under section 3 (1)** and replacing the words "**Nigerian indigenous service companies"** under Section 3(2) with the words **Nigerian service companies**.

Comments: This deletion widens the definition of Nigerian Companies and Nigerian service companies, which will be given first consideration under the Act, to include Nigerian registered joint venture-owned companies which have non-Nigerian partnerships.

2. Nigerian Content Plan – Section 7 of the Local Content Act – The Bill shall amend Section 7 of the Act by deleting the words **demonstrating compliance** and substituting it with **demonstrating capacity to comply**.

Comments*:* By the proposed amendment, operators in the Nigerian oil and gas industry, wishing to participate in bidding for a license, permit, or interest in any project, only need to submit a Nigerian Content Plan showing a **capacity to comply** with the Nigerian content requirements of the Local Content Act.

3. Minimum Target Level / Capacity Development Initiative for Imported Items- Section 11 of the Local Content Act – The Bill is proposing to replace Section 11 (2) and (4) of the Act with the following new sections **11 (2) and (4) (*a*) and (*b*)** which reads as follows:

"(2) Where a project description is not specified in the Schedule or where target of the schedule is considered inadequate based on current capacity, the Minister may make regulations to set the minimum target level for that project or project item.

(4) Notwithstanding the provisions of subsection (1) of this section, where there is inadequate capacity to meet any of the targets in the schedule to this Act, the Board may recommend to the Minister for approval, the importation of the relevant items. Any authorization to import an item shall be subject to an approved Capacity Development Initiative (CDI) to develop the relevant capacity. The approval for such CDI shall be based on the following considerations:

(a) An entity requesting for approval to import goods or services into the country (herein referred to as the Applicant) shall advertise the need for the goods and service on the Joint Qualification System for a period not less than 30 days before submitting application to the Board.

(b) The advert shall at a minimum indicate the description of the goods or services required, relevant"

***Comments*:** This proposed new section, now gives the Minister of Petroleum, the power to make regulations to set up a minimum target level for the Nigerian content required in a project, in cases where, based on the current capacity in the industry, the target level set out in

the Schedule to the Act is inadequate or, where the type of project is not described in the Schedule to the Act.

Section 11 (4) also makes approval for the importation of an item from the Minister of Petroleum based on an approved Capacity Development Initiative (CDI) submitted to the Company. Furthermore, the CDI shall only be approved by the Board, where the Company submitting the CDI shows that it advertised the need for the product or service for a minimum period of 30days and above, describing in detail the type of goods, services, or product required.

This proposed amendment is a welcome development to the Act as it shall increase the utilization of Nigerian goods, products, and services in projects in the oil and gas industry and equally reduce importation.

4. Opportunity to Nigerian Companies – Section 15 of the Local Content Act – The Bill shall amend Section 15 of the Act by deleting the words **Nigerian indigenous contractors and companies** and substituting it with **Nigerian companies**.

Comments: This deletion widens the definition of Nigerian Companies, which will be given opportunities under the Act, to include Nigerian registered joint venture-owned companies which have non-Nigerian partnerships.

5. Lists of contracts to be submitted by Operators -The Bill proposes an amendment to Section 17 of the Local Content Act to include projects valued more than N100,000,000 to the list of contracts to be submitted to the board by operators for approval. It does this by amending the existing Section 17 (1) with the following new Section 17(1):

"(1) For any proposed project, contract, subcontract, and purchase order in the Nigerian oil and gas industry estimated by an operator to be more than $1,000,000 (USD) for contracts denominated in US Dollars or 100,000,000 for contracts denominated in Naira, the operator shall provide to the Board for approval, advertisements, prequalification criteria, technical bid documents, technical evaluation criteria, and the proposed bidder's lists."

"0.5% OF GROSS REVENUE MUST BE SET ASIDE FOR R & D PROGRAMS IN NIGERIA"

Comments: This is a welcome development to the Act as it increases the number of contracts Nigerian Companies can bid for and be given first consideration.

6. Quarterly Procurement Report – Section 24 of the Local Content Act – The Bill seeks to amend section 24 (1) of the Act to include the words "**or ₦100,000,000 for contracts denominated in Naira** "before or such other limit as the Board….

Comments: The Act currently only requires contracts valued at US$1,000,000 to be submitted to the Board by operators. This bill extends the type of projects to be submitted to the Board by operators in their quarterly procurement report to include contracts valued at N100,000,000 in the case where the contracts are denominated in Naira.

7. Expatriate Quota – Section 33 of the Local Content Act – The new Bill seeks to amend section 33 subsections (1) and (2) by replacing the present section 33 (1) and (2) with the following new section 33 (1) and (2) (*a*) (*b*) (*c*) (*d*) (*e*) (*f*) (*g*):

"33. (1) Notwithstanding anything to the contrary contained in any existing enactment, law, or regulation, an operator shall obtain the approval of the Board before submitting an application to the Ministry in charge of Internal Affairs or any other relevant agency of the Federal Government for expatriate quotas or work permits.

(2) The application made to the Board shall include:

(a) job titles;

(b) description of responsibilities;

(c) the duration of the proposed employment in Nigeria;

(d) exceptional reason(s) why the services of an expatriate are required;

(e) the country of residence where the expatriate would be engaged from;

(f) the nationality of the expatriate

(g) any other information required by the Board for purposes of determining the merit of the application."

Comments: This amendment makes all applications for expatriate quota to the Minister of Interior, subject to prior approval by the Board. While this amendment might be seen as an effective means of reducing the number of foreign workers working in the industry, seeking prior approval from the Board before proceeding to the Minister of Interior, only increases the number of administrative bottlenecks and delays experienced by Companies and undermines the government policy of improving the Countries ease of doing business rating.

8. 0.5% Levy on Gross Revenue of Operators – Section 38 of the Local Content Act- The Bill shall replace section 38 subsections (2) with the following new section 38 (2) (3) and (4):

"(2) The R & D Plan shall outline a revolving three to five-year plan for oil and gas-related research and development initiatives to be undertaken in Nigeria, together with a breakdown of the expected expenditures that will be made in implementing the R&D Plan;

(3) All operators shall set aside, annually and for the purpose of carrying out research and development activities in Nigeria, a minimum of 0.5% of the gross revenue received by the operator;

(4) The funds set aside under subsection (3) shall be applied as follows:

(a) fifty percent shall be allocated to Research and Development programmes in Nigerian;

(b) fifty percent shall be applied to research and development activities within the facilities of the operator established in Nigeria."

***Comments*:** The bill has introduced a new levy of 0.5% on gross revenue received by operators which is required to be set aside for R & D programs in Nigeria. While this may be viewed as a commendable initiative by the Board, it may be perceived by some industry operators as an additional indirect tax on their profits.

9. Section 68 of the Local Content Act – The Bill seeks to insert the following new subsections (2) (3) (4) (5) and (6) in the existing section.

"(2) A person who submits a plan, returns, report or other document and knowingly makes a false statement, commits an offense and shall be liable to administrative sanctions which may include a fine of not more than five percent of the project sum, cancellation of the project or any other sanction as may be prescribed by the Board.

(3) Subject to section 69 (1), A person who submits a plan, returns, report or other documents and knowingly makes a false statement, and fails to provide satisfactory reason for the violation shall be liable to administrative sanctions including cancellation of project, withdrawal

SHIPPING AND MARITIME

of certificates or any other sanction as may be prescribed by the Board.
(4) A person who connives with a Nigerian citizen or a Nigeria company to deceive the Board as representing a Nigerian company to achieve the local content requirement under this Act commits an offence and shall be liable to administrative sanction which may include a fine of not more than five percent of the project sum, cancellation of the project or any other sanction as may be prescribed by the Board.
(5) An operator or other connected entity which —
(a) carries out oil and gas activities without the required local content requirement;
(b) fails to submit a local content plan;
(c) fails to satisfy the content requirement of a local content plan; or
(d) fails to submit its local content performance report or annual work plan to the Board, commits an offence and is, on conviction, liable to administrative sanction which may include a fine of five percent of the value of the proceeds obtained from the oil and gas activities in respect of which the breach is committed but which shall not exceed five percent of the project sum or to the cancellation of a contract with respect to the extractive activity or any other sanction as may be prescribed by the Board.
(6) A person who is convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding five percent of the project sum or to imprisonment for a term of not more than five years, or to both."

Comments: The Bill has introduced a new class of offences for persons who submit false reports and documentation as well as for those who fail to submit a plan. The value of the fine has, however, been retained as 5% of the project sum or cancellation of the contract.

10. Disciplinary Procedure for Infractions by Operators – Section 69 of the Local Content Act – The Bill seeks to add a new subsection to Section 69. Namely subsections (1) (2) (3) (4) and (5) below:

"(1) Where an operator fails to comply with any provision of this Act, the Board shall notify the operator in writing specifying the details of the infraction.
(2) Any operator who is notified of any infraction shall within 7 days of the receipt of the notice reply in writing.
(3) If the board is satisfied with the operator's reply, the matter shall end, however, if the Board is not satisfied with the reply, the Board shall impose any sanction specified in this Act or this regulation.
(4) Subject to section 69 (1), A person who submits a plan, returns, report, or other documents and knowingly makes a false statement, and fails to provide satisfactory reason for the violation shall be liable to administrative sanctions including cancellation of project, withdrawal of certificates or any other sanction as may be prescribed by the Board.
(5) Any Operator who fails to remit the Nigerian Content Fund within the timeframe stipulated in the Regulation by the Minister, shall be liable to administrative sanctions including:
(a) recommendation for revocation of Operating license and permits;
(b) cancellation of project, contracts, or certificates as applicable;
(c) imposition of fines;
(d) refusal to process statutory approvals;
*(e) any other action as may be prescribed in the Ministerial Reg***ulation on Nigerian Content Development Fund**."

Comments: This is a welcome development in the Act as it spells out a step-by-step disciplinary procedure for operators who infringe on the provisions of the Act, thereby preventing any misunderstanding regarding the consequences for contravening the Act.

11. Increase in 1% Levy – Section 104 of the Local Content Act – The bill seeks to change the existing section 104 to section 105 by deleting and substituting the existing section 104 (1) (2) and (3) with a new section 105 (1) (2) and (3) as follows:

"(1) A Fund to be known as the Nigerian Content Development Fund (the "Fund") is established for purposes of funding the implementation of Nigerian content development in the **Nigerian** oil and gas industry.

(2) The sum of **two percent** of every contract awarded to any operator, contractor, subcontractor, alliance partner, or any other entity involved in any project, operation, activity, or transaction in the upstream sector **and designated midstream and downstream projects operation, activity or transaction in** the Nigerian oil and gas industry shall be deducted at source and paid into the Fund.

(3) The Fund shall be managed by the **Nigerian Content Development and Monitoring Board** and employed for projects, programs, and activities directed at increasing Nigerian content in the oil and gas industry."

Comments: The change will increase the amount to be deducted at source and paid to the Nigerian Content Development Fund from 1% to 2% on every contract awarded to a contractor. This change might be viewed by some operators as an attempt by the Government to increase its revenue stream in an industry which is currently struggling from the effects of the move from fossil fuels to renewable energy.

Conclusion:

The proposed amendment to the Act is a welcome development as the law must evolve often enough to reflect industry best practices. Upon implementation, further engagement between the Regulator and stakeholders will more specifically bring to the fore the efficacy or otherwise of the new amendments.

JAPAN

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Ms Reiko Yoshida is an attorney admitted in Japan and the Republic of the Marshall Islands, and a partner at City-Yuwa Partners. She has been providing comprehensive legal support on ship financings for some twenty years, representing Japanese and non-Japanese shipping owners, shipping operators, governmental and private financial institutions, advising on scheme construction, negotiation, and leading complicated multi-jurisdictional shipping finance transactions for the financing of high value vessels such as LNG carriers. She also advises on corporate and maritime matters under the laws of the Republic of the Marshall Islands, developments of financial products, domestic and international M&A, reorganizations of groups of companies, and successions of business of companies engaging in the shipping business.

Her recent transactions include:

- advising on M&A and succession of business of major Japanese shipowners with a value of USD150,000,000;
- advising a major Japanese shipping operator, leading a consortium of major Japanese shipping operators and a local government-related shipping operator on the financing and/or transfer of shares in respect of three LNG ships, with values of USD120,000,000-190,000,000;
- advising a senior lender in a project finance transaction consisting of ECA facilities, senior bank facilities, senior bonds, subordinated bank facilities, and subordinated bonds, to a wholly owned subsidiary of a Middle East government-related gas transportation operator through 25 separate and cross collateralized SPCs incorporated in the Marshall Islands, with values of over USD5,700,000,000;
- advising a major Japanese shipping operator on the acquisition of a company engaged in an LNG project, with a value of USD500,000,000;
- advising Japanese financial institutions on the financings of numerous LNG ships, with values of USD160,000,000-200,000,000;
- advising Japanese governmental and financial institutions on the financings of a number of 14,000-24,000 TEU container vessels, with values of USD70,000,000-170,000,000;
- advising a ship owner in the structuring of group of companies using the Marshall Islands corporations, limited partnership and limited liability companies with values of USD 300,000,000;
- advising Japanese and non-Japanese financial institutions, shipping operators and shipowners on the financing of some 60 vessels of various types per year with values of USD30,000,000-180,000,000; and
- advising a major Japanese bank on a USD117,000,000 financing for construction of a dockyard by a Japan-China JV company, and registration of foreign debts with China's State Administration of Foreign Exchange (SAFE).

Ms Yoshida is also a visiting researcher at the Waseda University Institute of Maritime Law and a co-founder and auditor of Women's International Shipping and Trading Association (WISTA) Japan.

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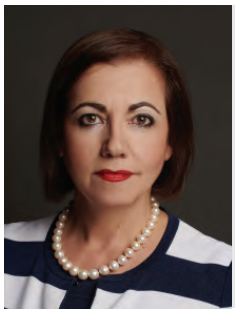

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Ann Fenech is the head of the marine litigation department at Fenech & Fenech Advocates and was Managing Partner of the firm from 2008 to 2020. She qualified in 1986 and joined Holman Fenwick and Willan in London. From there she moved to Chaffe McCall Phillips Toler and Sarpy in New Orleans. On joining Fenech & Fenech, she created the marine litigation department. She has dealt exclusively with maritime issues for the past 34 years ranging from salvage to charterparty disputes and from towage to enforcement of mortgages. She lectures at the University of Malta and the International Maritime Law Institute. She is the President of the Malta Maritime Law Association, Board Member of the European Maritime Law Organisation and founding Board Member of the Malta Maritime Forum. She has been on the Executive Council of the Comite Maritime International since 2014 and in 2018 elected Vice President. She is currently the co-Chair of the CMI IWG on International Recognition of Judicial Sales and CMI Co-Ordinator of the project at UNCITRAL. In June 2020 she was appointed Director of 1923 Investments plc and in May 2021 she was appointed Director of MMH Malta Limited.

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Mojisola specializes in ship registration, ship financing, sale of ships, charter party agreements, maritime labour, cargo claims and the carriage of goods by sea. Mojisola has also handled admiralty actions and disputes related to charter party and the carriage of goods by sea, collision, and other regulatory matters at the Federal High Court.

Mojisola has gained knowledge over several years through her participation in various transactions for clients in the shipping industry. She acts for ship owners, ship managers, charterers, terminal operators, and offshore service companies; in matters related to the Cabotage Act, the Local Content Act and other government regulatory compliance matters. She graduated with a Masters in Shipping Law from the University of Cape Town in 2009 and was awarded a BIMCO eLearning Scholarship in 2016. She is a member of the Women's International Shipping and Trade Association (WISTA), the Nigerian Maritime Law Association (NMLA) and the Nigerian Economic Summit Group's Trade, Investment & Competitiveness Policy Commission (TICPC).

She is ranked as a Rising Star and Recommended Lawyer (Shipping and Transport) Legal 500 EMEA 2021 edition.

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Kashimana studied Law at the University of Lagos. She was admitted to the Nigerian Bar in 2005. She obtained a Masters in Maritime Law from the University of Southampton United Kingdom in 2007. She served as an International Maritime Organization intern in 2010. She was a Visiting researcher at the Institute of Maritime Law, University of Southampton UK, in 2011.

Kashimana specializes in Maritime Law with an emphasis on disputes arising from Charterparties, Oil and gas, Ship arrests, Crew mens' wages, personal injury, bills of lading, sale and purchase contracts, collisions, and Marine insurance contracts. She advises Shipowners and their insurers in relation to a range of wet and dry shipping matters and has directly been involved in enforcement proceedings in respect of LMAA arbitrations.

Kashimana has also advised on greenfield ports and Public Private Partnerships to both Terminal operators, Concessionaires and Regulators in the ongoing Port concession exercise in Nigeria.

Kashimana also advises on Offshore technology and deep-water assets, particularly on Pipeline construction projects, Production Sharing Contracts, and Joint venture Agreements.

Kashimana has played a research and advisory role in the drafting of key legislation such as the Nigerian Cabotage Act, the Merchant Shipping Act and the National Transport Bill. She has several published international articles in reputable journals including the Lloyds List group.

Kashimana is passionate about continuing professional development and currently serves as Secretary to the Maritime Committee on the Nigerian Bar Association, Section on Business Law, and the Young Comite Maritime International respectively.

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Maureen Poh, Director, Helmsman LLC is well-known as a key name for charter party and carriage of goods by sea disputes, and commodity sale and purchase matters. She is lauded for being 'proactive, clear and fast in analysing specific points'. Maureen has significant experience with contentious and transactional shipping and commodity-related matters. Her experience spans a range of vessels from bulk carriers, oil and chemical tankers to gas tankers and floating storage and regasification units (FSRU). Maureen has particular expertise in energy-related transportation and sale and purchase contracts, including Liquefied Natural Gas (LNG), Liquified Petroleum Gas (LPG), crude oil and refined products.

Helmsman LLC specialises in shipping and commodities trading law. The firm routinely acts for clients in varied and high value commercial transactions and disputes across the world from our offices in Singapore and Hong Kong. The breadth of experience and deep expertise of our lawyers in shipping and commodity trading makes us the counsel of choice for the biggest shipping companies and commodity traders across the world. In addition to our deep subject-expertise, we are well known for our user-friendly approach, and penchant for 'plain practical advice'.

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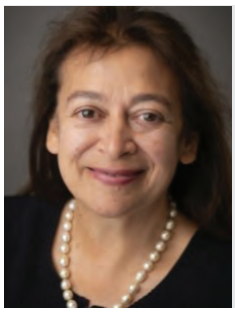

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Vasanti Selvaratnam QC is a senior Silk practising as both Counsel and Arbitrator across a wide range of industry sectors, regularly handling multimillion dollar commercial disputes in shipping, trade and commodity disputes, banking and finance, insurance, jurisdiction disputes, conflict of law issues and civil fraud. She also specialises in all forms of interim relief, including freezing orders and anti-suit injunctions. Vasanti is particularly noted for her user friendly "hands on" approach to cases and for her ability quickly to get to grips with disputes raising complex factual and technical issues which require a sound grasp of expert evidence and mastery of detail. Vasanti was shortlisted as Chambers and Partners Shipping Silk of the Year in 2019 and has been consistently highly rated in the legal guides throughout her many years in practice at the English Bar. Vasanti also speaks and publishes on a variety of legal topics, including most recently an article on English law and good faith published in the May 2020 edition of the LMCLQ.

Reported leading cases include The Alexandra 1 [2021] UKSC 6, (decision of the Supreme Court concerning the inter-relationship between the narrow channel rule and the crossing rule under the international Collision Regulations; the well-known House of Lords decisions in The Starsin [2004] 1 AC 715 and The Nagasaki Spirit [1997] AC 455, the Court of Appeal decision in The Wadi Sudr [2010] 1 Lloyd's Rep 193 (leading case on the arbitration exception, the Judgments Regulation and issue estoppel), Joint Stock Asset Management Co Ingosstrakh-Investments v BNP Paribas [2012] EWCA Civ 644 (leading case on non-contractual anti-suit injunctions), The Stolt Kestrel [2015] EWCA Civ 1035 (leading case on extensions of time under section 190 Merchant Shipping Act 1995); and a number of important first instance decisions including The Rubicon Vantage [2020] 1 Lloyd's Rep 383 (first reported case to consider a hybrid parent company guarantee and the principles applicable to its interpretation), Deutsche Bank AG London Branch v CIMB Bank Berhad [2017] EWHC 3380 (Comm) (compliance of a documentary credit presentation with UCP 600 in relation to signatures and other issues) and Emirates Trading Agency v PMEPL (ground breaking decision on multi-tiered friendly discussion clause as a condition precedent to right to commence arbitration which has generated much legal and academic discussion).

Vasanti was called to the Bar in 1983 and received her LLM in 1984. She has been a practising barrister at the Commercial Bar since 1985, a Recorder from 2000 – 2018, Queen's Counsel since 2001 and a Bencher of Middle Temple since 2011. Vasanti is a Panel arbitrator of SIAC, HKIAC and SCMA, a member of the LCIA, ICC and ICCA, a member of the LOF Panel of arbitrators and a supporting member of the LMAA. She has conducted a very large number of arbitrations to date, including as Chair, under all major international arbitral rules (including UNCITRAL) as well as ad hoc. She is chair of the education sub-committee of the London Shipping Law Centre and a Consultation Board member of Practical Law Arbitration. Vasanti is also joint head of Chambers of The 36 Group, one of the largest multi-disciplinary sets of barristers chambers in London.

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Jacqueline Zalapa is a Partner in the London office of Campbell Johnston Clark specialising in commercial litigation and arbitration of disputes in the shipping, carriage of goods, offshore and private equity sectors (including shareholder disputes). She has advised across the full spectrum of shipping contracts, including MOAs, MOUs, Charterparties, Bills of Lading, Sale Contracts and COAs. She represents clients in a wide variety of jurisdictions and arbitral regimes, including LMAA as well as English High Court Litigation.

Many of her cases involve meticulous analysis of complex factual, expert or legal issues.

Jacqueline is well-versed in early dispute management of large-scale litigation. She has significant experience in injunctive and other pre-action relief, jurisdictional and enforcement issues. She brings over 17 years' international experience practising law in London, New York and Sydney to all aspects of her case management.

Well-known for her down-to-earth approach to the law, grasp of commercial realities and creativity to implement pragmatic strategies to deliver both legal and commercial objectives from the beginning to the end of a dispute, whether in court, arbitration or using alternate dispute resolution techniques. She has been described as "*a dogged, determined and thorough litigator, always determined to get the best for her client.*"

Outside of private practice, Jacqueline has served as a Trustee of the Sailors' Society, one of the world's largest maritime charities and she co-authored "*Through the Lens of Maritime Law : A World View*" (2020) published by the Centre for Maritime Law, India.

Jacqueline is tri-qualified in England & Wales, New York and Australia. She holds an LLM (2005, Sydney University) and a BA.LLB (2003, Macquarie University). Member of the Law Society of England and Wales (2007), the New York Bar (2006) and the Law Society of Australia (2003).

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Feature for:

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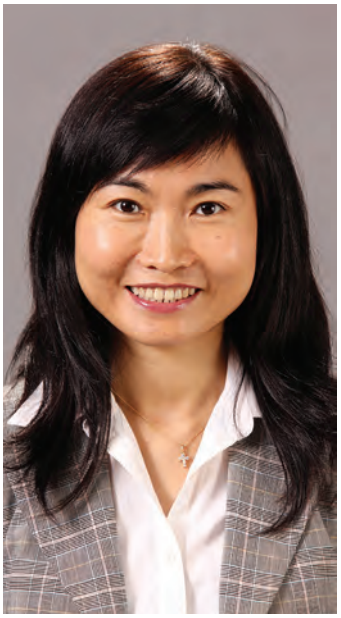
Setting the pace for family office in Hong Kong

Tracy Ho and Karina Wong
EY
Hong Kong



Now home to more than a quarter of the world's billionaires, family offices are gaining popularity in Asia. The 2016 EY Family Office Guide estimated there were at least 10,000 single family offices globally, at least half of which have been established in the last 15 years. With the rapid growth of private wealth in Asian countries, especially in Mainland China, wealthy families show increasing interests in setting up family office to professionalize their family structure and governance framework.

Why family office?

Depending on the specific family needs, the role and purpose of a family office may differ. It is important to balance between business growth and family legacy.

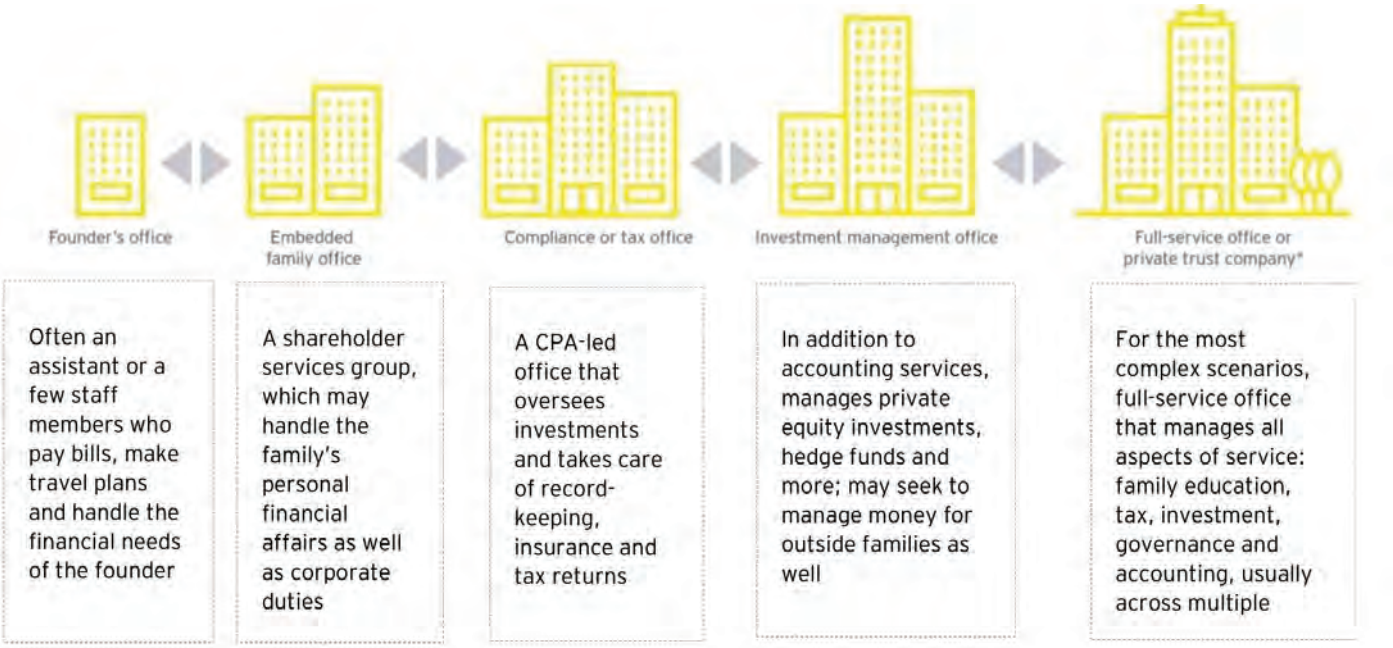
Primarily, a family office focuses on the management of family assets and personal financial matters. It also serves as a touchstone for family's collective goals, interests, values and heritage. In addition, a family office can facilitate family business succession across four key dimensions:

- Legacy and value
- Ownership
- Leadership
- Transition of wealth

Apart from facilitating a smooth intergenerational transfer of wealth and reducing intrafamily disputes, there are other advantages of setting up a family office (see table below):

"JUST AS HONG KONG OLYMPIANS ACHIEVED GREAT SUCCESS, HONG KONG IS READY TO BE A GOLD STANDARD HUB FOR FAMILY OFFICES IN ASIA"

Privacy and confidentiality	Family office is the sole entity that keeps all the information for all family members, covering the entire portfolio of assets, activities, tax and general personal information.
Governance and management structure	Family office enables transparent handling of family affairs, ownership and investments.
Alignment of interests	Family office aligns interests between the business, advisors and the family.
Potential higher returns	Family office enables centralized and professional asset management. This can result in higher returns or reduced risk from investment activities.
Separation of family enterprise and family assets	Family office enables clear distinction between the underlying business and the family's assets or other holdings.
Risk management	Family office enables decisions that are better aligned with the family's objectives and values.
Centralization of services	Family office allows coordinated professional services to the family and its members.
Focal point for the family	Family office helps align the family members around areas of common interest, such as philanthropic activities or jointly held assets of the family.



Evolution and form of the family office

Family office can be characterized as a family-owned organization that manages private wealth and other family affairs. As family wealth increases and business needs get more complex, the family office may evolve from a simple founder's office into a complex, full-service company; the office could reverse over time as assets change or the family splits.

Family office's leading services

Although at the heart of any family office is investment management, a fully developed family office can provide a number of other services, ranging from training and education to ensuring that best practice is followed in family governance.

The below diagram illustrates a full range of services of a mature family office in four categories and 12 types of services:

Outsourcing certain services can be beneficial from a cost efficient and know-how perspective. However, certain key services are usually kept in-house for confidentiality and independence of family. Although the make-or-buy decision is subject to the specific setup of the family office, the best practice is based on the objectives of obtaining the most effective services in an efficient way and avoiding potential operational risks. It is crucial to obtain the right balance between in-house and outsourcing services to meet the family expectations.

Why setting up a family office in Hong Kong

Hong Kong has the main attributes to serve as an effective hub for family offices in Asia. These advantages include:

- Hong Kong was ranked the second largest IPO market globally in 2020. Financial markets in Hong Kong are well established and sophisticated, offering a broad spectrum of financial instruments and products to accommodate the investment needs of family offices. The new regime on limited partnership fund and the tax incentive for carried interest would further promote the financial services sector in Hong Kong.
- The proximity of Hong Kong with the Mainland provides an investment gateway into and out of the mainland China. As China continues to move ahead with financial deregulation and opens its capital account, leading to diversification of wealth which potentially offers lucrative opportunities for the wealth management industry in Hong Kong.
- In 2019, 23% of Ultra-High-Net-Worth families in China were based in the Greater Bay Area ("GBA")[1]. Among the GBA initiatives, the launch of Wealth Management Connect (i.e. a cross-boundary wealth management connect pilot scheme to promote the development and cross-boundary sales of wealth management products through banks in the region) is expected to further establish Hong Kong as a prominent offshore renminbi centre and create more investment opportunities for family offices in Hong Kong.
- There are highly skilled professionals in different sectors, such as legal, accounting, treasury, and asset management. Bilingual and multicultural environment helps to attract talents from across the world to support family office operations.

TAX

- Hong Kong has a stable legal system with all the fundamental strengths such as independent judiciary, the rule of law and free flow of information and capital that strengthens Hong Kong's position as a business destination and enhances its attractiveness of operating family office businesses.
- Hong Kong has no specific licensing regime for family offices unless it carries on a business in a regulated activity. In general, a single family office will not be required to obtain a license because it will only be providing asset management services to related entities and therefore qualifying the intra group carve out licensing exemption.

In September 2020, the Securities and Futures Commission of Hong Kong ("SFC") issued the licensing guidelines for family offices:

1. A genuine single family office arrangement, established to serve the investment needs of members of a single family, which is not receiving any income or does not have a profit making objective, should not be considered as carrying on a business from a licensing perspective;
2. The sharing of office premises and administrative infrastructure by two or more family offices would not by itself automatically trigger a licensing obligation for such single family offices.
3. However, if two or more single family offices make arrangements for the sharing of human resources involved in investment related matters, research or the investment process, this may be regarded as a multi-family office structure, thus increasing the likelihood of a licensing obligation.

- The Hong Kong SAR government is supportive the establishment of family offices. In the 2021/22 Budget, the Financial Secretary announced that InvestHK[2] and regulators will offer one-stop support services to family offices interested in establishing a presence in Hong Kong. The government is also committed to reviewing the relevant tax arrangements to enhance Hong Kong's attractiveness as a hub for family offices.
- Under Hong Kong's simple tax system, our taxation is based on a source concept. The profits tax rate is 16.5% for corporations while the two-tiered profits tax rates regime reduces the profits tax rate to 8.25% for the first $2 million assessable profits. Hong Kong has no GST, no tax on capital gains and dividend income. Besides, recent changes to tax legislations on the Unified Fund Exemption regime and carried interest tax concessions provide a more tax friendly framework for the funds and asset management industry in Hong Kong, and also help promote Hong Kong as an attractive platform for family offices.

Today, private family capital is estimated to be larger than private equity and venture capital combined. This concentration of family wealth is fueling the growth of family offices across Asia and just as Hong Kong athletes made history at the recent Tokyo Olympic Games, Hong Kong is well positioned to be a 'gold' standard hub for family offices.

Disclaimer: The views reflected in this article are the views of the authors and do not necessarily reflect the views of the global EY organization or its member firms.

1 FOTILE-Hurun Wealth Report 2020
2 https://www.familyoffices.hk

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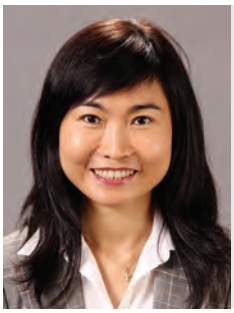

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Tracy has been a tax partner for over 15 years and is responsible for the tax advisory services to several high-profile accounts and clients in the Greater China Tax practice. Tracy has also recently taken on responsibility for Learning and Development across the Business Tax Services ("BTS") practice globally, alongside her client serving responsibilities. Prior to 2021, Tracy's senior leadership roles have included the Asia Pacific BTS Leader position for 3 years, and before that, the Tax Managing Partner of EY in Hong Kong and Macau for over 6 years.

Tracy has been voted as one of the "leading tax advisers" in Hong Kong by the Legal Media Group Guide to the World's Leading Tax Advisers in each edition since 2007. She regularly contributes articles and presents tax seminars on the latest tax development and changes.

Tracy is a senior partner experienced in providing tax consulting advice for conglomerates which are active in inbound and outbound investment activities. During the past 2 years, she has led EY Tax team members in several transactions ranging into the tens of billion US$ in transaction value.

Tracy is based in Hong Kong and works closely with partners of EY member firms around the globe in advising on clients' merger and acquisition activities, cross border supply chains and distribution models. Her roles on these significant engagements include direct tax planning, identifying tax exposure and in particular, advising on and anticipating the information possibly requested by the Hong Kong tax authorities ("IRD") and assistance in explaining to them the business models and transactions in question.

Tracy is often approached for advice on seeking agreement with the IRD on transactions with significant tax implications. Examples include – a refund claim on past withholding tax paid of over US$60M, a deduction claim on approximately US$200M of payments to group companies operating outside Hong Kong, etc.

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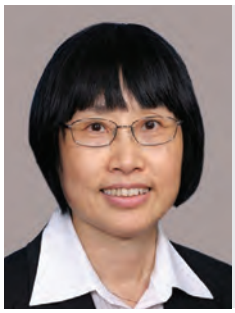

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Experience

Becky has over 35 years of professional tax consultation experience in cross-border inbound and outbound investments, IPOs, M & A, restructurings, tax treaty applications, resolving disputes and administrative review for multinational corporations, in various industries, including:

- Commercialization of state owned companies, consumer products, energy, financial services, government, hospitality, oil and gas – upstream & downstream, pharmaceutical, professional services, technology, telecommunications.

Current research focus:

- Tax Regime Competitiveness Studies
- BEPS 2.0 – Telecom & Network operators, government
- Tax incentives studies, Tax policy, FDI & economic growth
- Tax Treaty Interpretations and defend
- Expediting Dispute Resolutions
- Digitalization of Tax Administration
- Taxation of Trust
- Taxation of Digital Economy
- Tax Policies on Transfer of Immovable Properties

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Member of:

- Institute of the Hong Kong Certified Public Accountants
- Institute of the Chartered Professional Accountants, Ontario, Canada
- The American Institute of Certified Public Accountants
- CGMA
- Fellow, Taxation Institute of Hong Kong
- Certified Tax Advisor, Hong Kong

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- B. Com (summa cum laude) St. Mary's University, Canada
- MBA The University of Western Ontario, Canada
- China Executive Program – Harvard Business School -2005
- China Senior Executive Renewal Program – Harvard Business School – December 2017, March & April 2018
- CompTax – Harvard Kennedy School – August 2018
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Expertise Catherine Galvin practises corporate tax and advises on inward investment, cross border tax planning and transfer pricing issues. She advises many of the leading international corporations doing business in and from Ireland.

Catherine is a member of the Institute of Chartered Accountants in Ireland. She is the Irish panel member for BNAI's Transfer Pricing Forum. Catherine is the co-author of the Irish chapter for the International Bureau of Fiscal Documentation's (IBFD) publication *The Tax Treatment of Transfer Pricing*. She has also written on transfer pricing issues for *Transfer Pricing Review* and for IBFD's *International Transfer Pricing Journal*.

Catherine has written on tax issues for the Irish Tax Review, the International Tax Review and other publications and has lectured on international tax issues.

Experience Highlights

Catherine has advised:

- a leading multinational on the Irish taxation implications of its global reorganisation
- a US Fortune 50 company in the life-sciences sector on the most appropriate structure for its Irish operation
- on the first transfer pricing Competent Authority application in Ireland and the first Advance Pricing Agreement in Ireland
- and negotiated a number of transfer pricing settlements with the Irish Revenue Commissioners and foreign tax authorities
- advising on the implications of the introduction of transfer pricing legislation in Ireland

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Catherine is a partner in the tax department at Matheson. Catherine has significant experience advising multinational corporations doing business in Ireland on Irish corporate tax.

Catherine primarily advises multinationals on the Irish tax aspects of their operations including tax effective structuring of global reorganisations, IP ownership, inward investment projects and cash repatriation strategies. Catherine has a particular interest in advising on domestic and cross border tax disputes on transfer pricing matters, including Irish audits, mutual agreement procedure requests, correlative relief claims, advance pricing agreements and advising on the application of EU State aid principles in the context of Irish taxation matters.

Catherine's clients include many of the leading multinational corporations established in Ireland, primarily in the pharmaceutical, healthcare, ICT and consumer brand sector.

Catherine has published articles in leading tax journals, is co-author on the Ireland section of the Bloomberg BNA TP Forum and is co-author of the Ireland chapter of the International Fiscal Association Cahiers on Cross Border Business Restructuring.

Catherine is a Chartered Tax Advisor and a member of the Law Society of Ireland. Catherine is currently Chairperson of the International Fiscal Association – Irish branch.

Experience Highlights

Catherine has experience:

- Advising leading multinationals on the Irish tax aspects of their operations including tax effective structuring of global reorganisations, IP ownership, supply chain planning and cash repatriation strategies.
- Advising on transfer pricing aspect queries and audits by the Irish Revenue Commissioners.
- Advising on obtaining relief from double taxation on transfer pricing adjustments, including correlative relief claims, mutual agreement procedure requests and advance pricing agreements.
- Advising on the application of the Irish transfer pricing regime.
- Advising on the application of EU State aid principles in the context of Irish taxation matters.
- Advising companies on their establishment in Ireland.
- Advising on Irish stamp duty aspects of corporate restructurings and corporate transactions.

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Helena Robertsson is a Senior Partner with 29 years of experience in serving as a trusted Tax advisor for companies and individuals across the Nordics and around the world. Helena is a member of Global EY Private team where she successfully combines the roles of the Global Family Enterprise Services Leader and the Private Services Leader in the Nordics. Between 2017 and 2019 Helena was responsible for EY Private Tax practice in Europe, Middle East, India and Africa. She also led the Family Enterprise team in the Nordics and the Tax practice in Stockholm. Her passion is helping entrepreneurial families design long-term strategies and implement the right tools, skills and training to succeed from generation to generation.

Helena uses her broad expertise in national and international taxation to help her clients resolve complex issues related to capital gains taxation, global mobility, compensation and benefit planning, tax return compliance, transfer pricing, international corporate tax, and other matters. She served as Lead Partner in various engagements with some of the largest family offices, private equity companies, private equity partners, high-net-worth individuals, and private companies in the Nordics.

Helena holds an MSc in Business Administration and Tax Law from Stockholm University. She is a certified tax adviser and the Chair of the Stockholm University Center for Commercial Law. She also serves as a board member of the Swedish-American Chamber of Commerce in New York.

Helena is a frequent speaker at tax conferences and tax education seminars in Sweden, and regularly comments on tax matters in the media.

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With over 35 years of experience, Kim Marie Boylan heads White & Case's tax controversy practice and, until recently, was the Head of White & Case's Global Tax Practice – a position she held for nearly seven years. Kim also is Chair of the Firm's Global MDR Committee, which advises the Firm and clients on mandatory disclosure regime requirements such as DAC6 in the EU and UK and Mexico's mandatory disclosure regime. She is a recognized expert in tax controversy and transfer pricing, having won many awards in both areas and long being recognized in Expert Guides.

Kim is a trusted advisor to a broad spectrum of clients including major corporations, partnerships and other pass-through entities, and high net worth individuals. Clients turn to her for representation on sophisticated domestic and international tax disputes. The vast majority of Kim's cases are never made public because of her success in resolving matters at the administrative level. On civil matters, she works closely with clients throughout the audit process and then through the IRS Appeals, fast track, mediation, and other alternative dispute resolution processes. Kim's practice also encompasses transfer pricing, as well as the Advance Pricing Agreement and competent authority processes, an area of practice that is greatly enhanced by her credentials as a Certified Public Accountant. If a case cannot be resolved administratively, clients rely on her significant tax litigation experience. Unlike many tax litigators, Kim is skilled at handling cases in all three potential tax litigation forums – the United States Tax Court, the United States Court of Federal Claims, and the various United States district courts. Clients know that her development of a case at the administrative level always takes into account possible litigation and her cases are managed with that possibility in mind. She has also testified on clients' behalf before the United States Treasury Department, Internal Revenue Service, and the Financial Accounting Standards Board.

While her practice focuses mainly on civil tax matters, Kim has also successfully represented numerous corporate and individual clients in connection with criminal tax matters. Kim has extensive experience resolving issues through the Internal Revenue Service's various voluntary disclosure programs and the Department of Justice's Program for Swiss Banks. She continues to advise banks and individuals in follow-up investigations that have stemmed from the Swiss Bank Program in the United States as well as in various other countries.

Kim also is an expert in the area of privilege and work product protection, particularly in the context of global tax matters. She often advise companies on these important issues both in the context of transactions as well as in disputes. She is a frequent speaker on these topics and has written the leading treatise on these issues.

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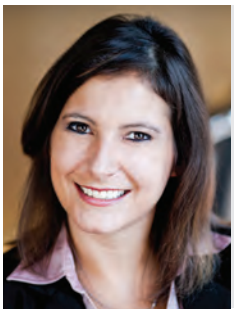

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Tijana J Dvornic is a partner in Wachtell, Lipton, Rosen & Katz's Tax Department.

Ms Dvornic focuses on tax aspects of US and cross-border mergers and acquisitions, spin-offs and other dispositions, leveraged buy-outs, joint ventures and financing transactions. Law360 has recognized Tijana as one of the country's five top tax lawyers under 40.

Ms Dvornic received a B.B.A. with highest distinction from the University of Michigan. Ms Dvornic completed a J.D. *magna cum laude* from Harvard Law School, where she was the articles editor for the *Harvard Civil Rights-Civil Liberties Law Review*. Following law school, she was a law clerk to the Honorable Judge Priscilla R. Owen in the United States Court of Appeals for the Fifth Circuit. Ms Dvornic received an LL.M. in taxation from New York University School of Law in 2016 and was awarded the David H. Moses Memorial Prize.

Ms Dvornic is a member of the Executive Committee of the Tax Section of the New York State Bar Association and a member of the Tax Section of the American Bar Association.

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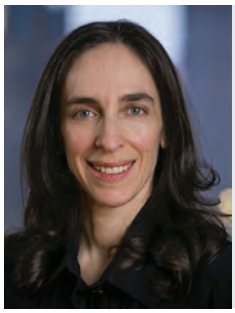

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Deborah L Paul is a partner in the Tax Department at Wachtell, Lipton, Rosen & Katz where she focuses on the tax aspects of corporate transactions, including mergers and acquisitions, joint ventures, spinoffs and financial instruments. Ms Paul has been the principal tax lawyer on numerous domestic and cross-border transactions, including strategic acquisitions and private equity buyouts, in a wide array of industries, including telecommunications, oil and gas, food, defense and energy. Ms Paul is a frequent speaker at Practising Law Institute, American Bar Association, New York State Bar Association and New York City Bar Association conferences on tax aspects of mergers and acquisitions and related topics. She is rated a leading tax lawyer by *Chambers USA*, *Super Lawyers*, the *Legal 500* and *Who's Who Legal*. She was elected partner in 2000.

Ms Paul is an active member of the Executive Committee of the Tax Section of the New York State Bar Association. Prior to joining Wachtell Lipton in 1997, Ms Paul was an assistant professor at the Benjamin N. Cardozo School of Law (1995-1997) and an acting assistant professor at New York University School of Law (1994-1995).

Ms Paul received an A.B. from Harvard University in 1986, a J.D. from Harvard Law School in 1989 and an LL.M. in taxation from New York University School of Law in 1994.

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Jodi J Schwartz focuses on the tax aspects of corporate transactions, including mergers and acquisitions, joint ventures, spin-offs and financial instruments. Ms Schwartz has been the principal tax lawyer on numerous domestic and cross-border transactions in a wide range of industries. She was elected partner in 1990.

Ms Schwartz received her B.S. in Economics *magna cum laude* from the University of Pennsylvania in 1981, her M.B.A. from the University of Pennsylvania (Wharton School) in 1984, her J.D. *magna cum laude* from the University of Pennsylvania Law School in 1984 and her LL.M. in taxation from the New York University Law School in 1987.

Ms Schwartz is recognized as one of the world's leading lawyers in the field of taxation, including being selected by *Chambers Global Guide to the World's Leading Lawyers, Chambers USA Guide to America's Leading Lawyers for Business, International Who's Who of Business Lawyers* and as a tax expert by *Euromoney Institutional Investor Expert Guides*. In addition, she is a member of the Executive Committee and past chair of the Tax Section of the New York State Bar Association and also is a member of the American College of Tax Counsel.

Ms Schwartz serves as an officer of both the UJA-Federation of NY and the Jewish Federations of North America, serves as a member of the board of Steep Rock Association and serves on the Board of Overseers of the University of Pennsylvania Law School. Ms Schwartz lives in Manhattan with her husband, son and daughter.

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Anne-Marie Bohan has over 20 years' experience in technology related legal matters, and is Head of Matheson's Technology and Innovation Group and a member of our Asset Management and Investment Funds Group. Anne-Marie brings together significant practical experience in advising on technology and privacy legal issues with industry knowledge and an understanding of applicable regulatory rules and regulatory requirements. She advises on all aspects of technology and e-commerce law, as well as outsourcings and contracted services, with particular focus on the requirements of financial institutions and financial services providers in these areas.

Anne-Marie has extensive experience in drafting and negotiating contracts for the development, sale, purchase and licensing of hardware, software and IT systems for both suppliers and users of IT within the financial services industry and across a broad range of other industries. She has also acted in some of the largest value and most complex IT and telecommunications systems and services outsourcing contracts, including advising on a number of the largest and highest value financial services outsourcings in Ireland.

Anne-Marie's practice includes advising a broad range of clients on data protection, privacy issues and cybersecurity issues, including employee data protection issues, data subject access requests and security breach incidents.

Anne-Marie has lectured on IT, data protection and financial services in the Law Society of Ireland, the National University of Ireland Maynooth, and more broadly. She is author of the Ireland chapter in Outsourcing Contracts – a Practical Guide (Lewis, Fourth Ed, 2012) and is co-author of the Irish chapters in PLC's Outsourcing Guide, Getting the Deal Through's Data Protection Guide, the International Comparative Legal Guide on Data Protection, and most recently, Getting the Deal Through's new FinTech Guide. Anne-Marie is also a member of Irish Funds FinTech working group.

Experience Highlights

- In relation to IT and BPO outsourcings for financial services and corporate clients, both intra-group and on a third party basis.
- On the outsourcing regulatory requirements and contractual issues for fund administration and depositary companies.
- On the Investor Money Regulations.
- A major multinational IT services company on the outsourcing of it by one of Ireland's largest financial institutions of its IT infrastructure services.
- On a significant smart money card product, including in relation to the underlying technology contracts
- A major credit institution the establishment, structuring of and contracts for electronic wallet and electronic money products and the application of the E-Money Directive and E-Money Regulations, including anti-money laundering, passporting, distance selling, unfair contract terms and data protection issues.

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Ruth Hunter is a partner in the Finance and Capital Markets Department. She focuses on the area of film and television production including the negotiation and drafting of financing agreements, distribution agreements, equity and tax based financing arrangements (including Section 481 tax credit financing), talent agreements (including film rights agreements), writers agreements, actors, directors, designers and composers agreements. She also provides advice in relation to errors and omissions, insurance and music copyright clearance as well as theatre and public performance contracts, music contracts and general intellectual property issues including trademarks.

Ruth also works with banks in relation to financing arrangements for film and television.

Ruth works with Screen Producers Ireland (the film producers representative organisation in Ireland) and is a member of the Audiovisual Federation and the Irish Business and Employers Confederation (IBEC).

Experience Highlights

Recent Films Ruth has worked on include:

- "Once" starring Glen Hansard (Won Oscar for Best Original Song "Falling Slowly").
- "The Guard" starring Brendan Gleeson (Nominated for a Golden Globe).
- "Albert Nobbs" starring Glenn Close (Nominated for an Oscar).
- "Breakfast on Pluto" starring Cillian Murphy (Nominated for a Golden Globe).
- "Brendan Secret of Kells" (Animation Feature Film Nominated for an Oscar).
- "Brooklyn" starring Saoirse Ronan.
- "Song of the Sea" (Animation Feature Film Nominated for an Oscar).
- "Sing Street" directed by John Carney (picked up by The Weinstein Company as US distributor. John Carney directed "Once" which won an Academy Award for Best Original Song).
- "Love and Friendship" latest Whit Stillman film starring Kate Beckinsale, Chloë Sevigny and Xavier Samuel.
- Pilgrimage which shot in Ireland in spring 2015 starring Tom Holland (recently selected to play Spiderman), Richard Armitage and Jon Bernthal.

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Deirdre Kilroy is a partner in the Technology and Innovation team and is Head of Intellectual Property. Deirdre specialises in intellectual property, technology and data privacy law. She has over 20 years' experience in these areas. Prior to joining Matheson she spent over 12 years as Head of Technology & Intellectual Property with a leading Irish law firm.

Many of the commercial contracts that Deirdre has worked on are complex, and she is proactive in helping clients model their agreements and strategic positions. She has experience with large outsourcing projects, technology supply agreements and patent licences, particularly for clients in the life sciences, pharma, data and technology sectors. Much of her work involves advising businesses how to model and conclude contracts, including distribution, supply, services and sales agency arrangements. She works closely with our taxation department on international projects involving significant IP and technology assets. Deirdre also advises on confidentiality, trade secrets, advertising, ecommerce and consumer protection.

Deirdre assists brand owners to proactively protect and enforce their trade marks and designs in Ireland, Europe and globally. From brand / design creation and pre-registration advice through to searching, filing, enforcement, anti-counterfeiting and commercialisation, her clients benefit from her extensive experience. Her practice focuses on the protection, acquisition and commercial exploitation of intangible assets including through licensing, franchising, collaboration, research, sponsorship and disposals.

Deirdre advises Matheson's clients on all aspects of privacy and data protection laws including international transfers, policies, audits and the GDPR. She frequently supports clients with retail, online, outsourcing, litigation, M&A and employment needs, helping them navigate the application of data protection laws to their businesses and relationships. Clients with cybersecurity issues and data breach issues regularly seek her advice and services.

For over 16 years Deirdre has also advised international and large national entities on gaming, gambling and lotteries activities in Ireland, online, physical and remotely delivered. Not only does she understand the recent licensing regime applicable to remote operators, but also appreciates how the legislation dating from the 1930s and 1950s applies to todays' bookmakers, other operators, affiliates and service providers. Clients value her pragmatic approach.

Deirdre is acknowledged by many independent directories as an expert in her field. She regularly lectures in Ireland and internationally, including at the Law Society of Ireland, and contributes to relevant publications. She is a member of the Intellectual Property & Data Privacy Committee of the Law Society of Ireland, and sits on Technology Ireland's Data Working Group. She is a member of the Intellectual Property Commission of the International Chamber of Commerce and also of INTA, IAPPI and SCL.

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Arlene Arin Hahn is a partner in the Technology Transactions Practice, within White & Case's Global M&A Group and Global Intellectual Property (IP) Group. Arlene also serves as the Chair of the White & Case's Global Diversity Committee, Co-Chair of the New York Women's Initiative, and a member of the Firm's Global Women's Initiative.

Arlene represents clients in a variety of IP and technology matters ranging from technology licensing and other standalone technology transactions to the IP aspects of private equity, M&A and corporate transactions as well as restructurings and workouts.

Arlene has advised on hundreds of consummated transactions, ranging from formative license agreements and joint development agreements to initial start-up investments and whole business securitizations to some of the largest M&A deals in their respective industries. She represents strategic and financial clients in a broad range of industries, including software, cloud/SAAS, AI/ML, semiconductors, consumer products, industrial products, retail, media, digital healthcare, and telecommunications.

Arlene has extensive experience with stand-alone IP matters, including patent licensing, technology transfer, joint ventures and strategic alliances, joint development, software licensing, outsourcing, content licensing, trademark coexistence, and merchandising and brand licensing, as well as settlement of IP disputes. Arlene also regularly oversees significant IP and commercial due diligence investigations in the context of analyzing complex commercial or technical aspects of corporate transactions.

Prior to focusing on transactional work, Arlene also litigated a variety of intellectual property disputes, including patent infringement, trademark and copyright infringement, counterfeiting, unfair competition and trade secret misappropriation.

From January 2006 to April 2007, Arlene lived in Osaka, Japan where she was seconded to work as in-house counsel to major international conglomerate.

Arlene has appeared as a featured guest on Bloomberg TV and is a member of Law360's 2019 Advisory Board for Intellectual Property. Arlene has been recognized by numerous publications, including Intellectual Asset Management (IAM) Patent 1000, Legal 500, and Euromoney. She is an Advisory Board Member to NYU School of Law's Grunin Center for Law and Social Entrepreneurship and Co-contributing editor of author for "Technology M&A", Lexology/Getting the Deal Through, 2018-2020.

Arlene received her B.S. in Biology from MIT and her J.D. from NYU School of Law (*Associate Editor, NYU Law Review*).

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Erin is a transactional attorney, specializing in intellectual property ("IP") and technology transactions and counseling. Erin offers clients legal and commercial advice across the spectrum of standalone IP and technology transactions, including all aspects of IP and technology licensing, development and joint-development agreements, evaluation and testing agreements, strategic alliances, distribution, outsourcing, cloud and "as-a-service" arrangements. Erin also advises on the IP and technology aspects of M&A, private equity and other corporate transactions, including acquisitions, divestments, carve-outs, and joint ventures. Her work includes representing both strategic and financial clients, across a number of industries, including social media, software, hardware, telecommunications, clean-tech, data and analytics, digital health and financial services, in matters relating to a wide variety of technologies such as e-commerce, platform technologies, artificial intelligence, big data, autonomous driving, and the internet of things.

Erin has gained valuable experience working on secondment at a global technology company. Her clients also benefit from her strong international experience, having practiced in both Australia and the United States.

Erin was recently named "Up & Coming" for Technology & Outsourcing in New York by Chambers USA, 2021. Erin is also listed as a "Rising Star" for Mergers & Acquisitions by The Deal (2020), ILFR (2020) and Euromoney (2021). She is listed as a "Recognized Individual" by Intellectual Asset Management (IAM) Patent 1000 (2020) and is a recipient of a "40 under 40 Emerging Leaders Award" by The M&A Advisor (2019).

Erin received her BA and LLB from University of Queensland.

Recent matters include the representation of:

- Facebook in connection with various intellectual property, product, content, and technology transactions. She also advised Facebook in connection with its new Portal devices and service.
- ION Acquisition Corp 1 Ltd. (NYSE: IACA), a SPAC, in its US$2.6 billion business combination with Taboola.com Ltd., a global leader in powering recommendations for the open web.
- Falcon Capital Acquisition Corp. (NASDAQ: FCAC), a SPAC, in its US$3.9 billion business combination with Sharecare, Inc., a digital health company based in Georgia.
- Harvest Partners in an investment in MRI Software, a leading provider of real estate management software solutions globally.

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Chérie R Kiser chairs Cahill Gordon & Reindel LLP's communications practice group and is the managing partner of Cahill's Washington, D.C. office.

For nearly 30 years, Chérie has been at the legal forefront of the dramatic growth and technological innovation that has taken place in the voice, video, Internet, and data communications markets. Commended in *Chambers* USA for her "depth of knowledge in the telecom regulatory space," which sources speaking with the publication describe as "encyclopedic in nature," Chérie advises her clients, which range from tech start-ups to leading global communications and Internet companies, on all aspects of their telecommunications, broadband, and wireless market entry and growth strategies. Her practice has been devoted to guiding companies through the regulatory and legal shoals surrounding traditional telephone, media, wireless, and cable service issues, as well as cutting-edge technologies such as VoIP, Telepresence, Internet of Things, Cloud-based services, and broadband deployment.

Chérie is counsel to clients on a broad spectrum of issues before the Federal Communications Commission, Congress, state legislatures, state Attorneys General offices, and state regulatory agencies. She represents clients in complex litigation involving regulatory, contract, and tax issues in state and federal courts across the country. She also acts as corporate regulatory counsel in connection with initial public offerings, mergers and acquisitions, debt issuances and financings, and other corporate transactions.

Earlier in her career, Chérie was a Senior Regulatory Attorney for Sprint Communications Company.

Recognitions:

- *Chambers USA*
- *The Legal 500*
- Named to *The National Law Journal*'s list of Washington D.C. Trailblazers, 2020
- Named One of *The National Law Journal*'s "Outstanding Women Lawyers," 2015
- Member, DirectWomen Board Institute Class of 2015

Professional Activities:

- Board Member and Vice Chair, Lancaster County Broadband Authority, 2021-present
- Federal Communications Bar Association; International Technology Law Association; National Association of Women Lawyers
- Chair, Technical and Clinical Standards and Guidelines Task Force, *Partnership For Artificial Intelligence, Telemedicine & Robotics In Healthcare* (PATH), 2018-2019
- Publishes and presents at industry conferences throughout the United States and internationally

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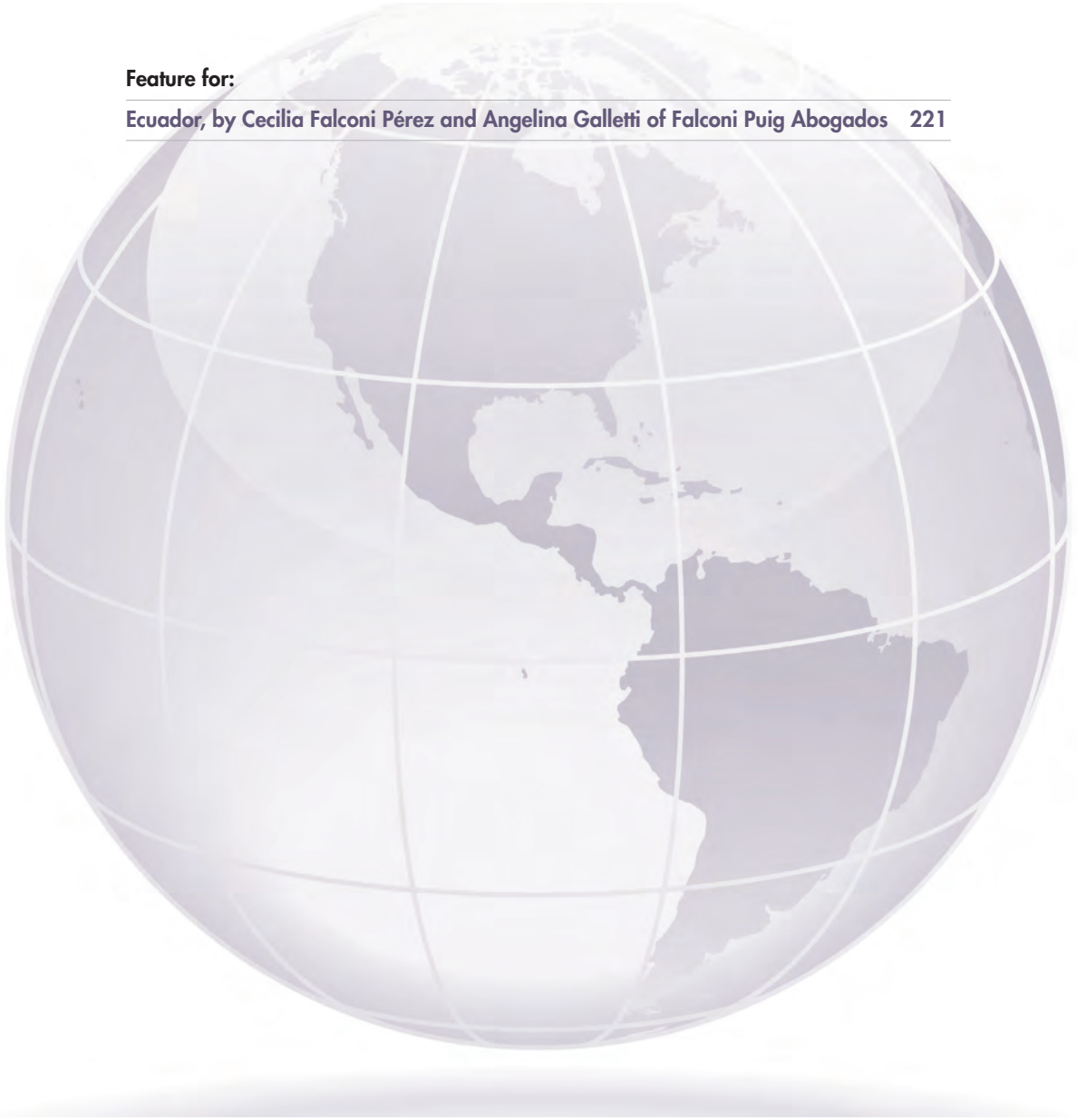

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Diversity in the legal profession: Ecuador's fight for inclusion

Cecilia Falconi Pérez and Angelina Galletti (L-R)
Falconi Puig Abogados
Quito

Ecuador is a small country located at the equator line in South America. It is recognized for having some of the most diverse ecosystems, paired with the most diverse ethnic groups across its 4 regions. It has a history of unstable political institutions and ideologies, constant fights for independence and several efforts to keep the country's identity intact. With all of these elements in the mix, it has certainly been and continues to be a great challenge to speak about diversity in the legal profession, which as we know, is currently one of the most competitive and less inclusive fields of work. Unfortunately, studies regarding the analysis of diversity and inclusion in the Ecuadorian legal field are very limited. This comes to be from the fact that there is very little awareness and attention directed towards inclusive practices in the field. Consequently, the importance of writing and discussing the topic is undoubtedly fundamental to offer and impulse advances. In particular, there are two areas of diversity and inclusion that have to be referred to when it comes to the legal profession and those are: the reduction of the gender gap and the inclusion of several nationalities and ethnicities.

In our country regulations referring to the reduction of the gender gap are relatively new. After the women s movement of the 5th Conference of the United Nations about women in Beijing, 1955, the Ecuadorian constitution in 1998 finally included legal dispositions in favor of women such as equality and non-discrimination before the law, equal participation of men and women in politics, the formal recognition of housework as a productive labor activity and State obligations to promote public policies that intend to reduce the gender gap[1]. Our current constitution, which was changed and approved in 2008, added the principles of equal job opportunity, equal pay, and the prohibition to dismiss during maternity leave, amongst others[2]. As it goes for international law that has been ratified by Ecuador, we are part of several representative instruments of women's rights. For starters, we have ratified the 1979 Convention on the Elimination of All Forms of Discrimination against Women[3], the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women[4], and the 1953 Convention on the Political Rights of Women.[5]

Despite the existence of this entire legal framework, the reality of the situation continues to be far from inclusive and non-discriminatory. Studies conducted throughout 2015 – 2020 by the National Institute of Statistics and Census have shown that women's employment rate is currently 30.6%; 14.2 points lower than men employment. From that employment rate, only 5% of women reach management positions in Ecuador. Women get paid 35% less than men for executing the same exact job. These numbers are linked with the fact that 29% of Ecuadorian families are led by women, and 70% of one-parent-households are led by women as well.[6] Our National Assembly as our legislative body, has been composed throughout the years an average of 61, 6% men and only 39, 4%[7] women. Often, what practice shows is that these statistics respond to cultural elements within the Ecuadorian understanding of family, in which the woman is in charge of house work and the men is in charge of professional work. This conception limits women s access to higher levels of school and to time-demanding management positions, which become practically impossible considering the rest of responsibilities brought upon them. The legal field is no exception to these numbers and to these conceptions.

> "AS LAWYERS IS OUR JOB TO CHANGE UNFAIR REALITIES BY ASSUMING THE OBLIGATIONS OF OFFERING NON-DISCRIMINATIVE OPPORTUNITIES"

Nonetheless, not everything seems to be so obscure. Positive advances have been made by joined efforts of women all across our country. To set an example, the same study shares that during the last few years, the amount of young women in universities has significantly increased to the point that today, 6 of every 10 university students are women. Job rates have increased in the last ten years from 30,6% to 32,4% for women and post-graduate studies rates have also increased from 0,8% to 2,3%. 52% of women who are in university are studying educational sciences and the remaining 48% study administrative or commerce related careers[8]. All in all, women are more integrated into the educational system, and determined

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to remain in such. As it comes to the legal profession, most of the firms in our country are led by men. In fact, my representation as Managing Partner of Falconi Puig Abogados would constitute the first time a female leads our firm in almost 50 years. This representation, and the representation of many young women initiating their careers inside other firms shows that our profession is slowly and steadily transitioning to be more equivalent. Every day more women are enrolled in legal law firm's payrolls, in university and in public institutions. Now it s more a matter of letting them reach higher positions and extending opportunities for their growth.

As for the second area of diversity that must be addressed, to elaborate on the inclusion of several nationalities and ethnicities it is important to start by adequately defining the difference between these two concepts. As defined by International Law, when referring to nationalities, it is to be understood that we refer to a collection of people who are perceived to share a legal bond based on common citizenship[9]". This is to be taken into account because there are several migratory waves that have crossed Ecuador throughout the years. For example, we have high statistics of immigration from Colombia, Peru, Cuba and the most recent, from Venezuela. On the other hand, when referring to ethnicities, we refer to "a group whose members share common language and culture, or a group which distinguishes itself in the exercise of their right to self-determination as such".[10] This is also important in the context of inclusion because Ecuador has 32 identified different ethnic groups, which include some non-contacted groups of the Amazonian region.[11]

The Ecuadorian legal framework regarding the inclusion of several ethnicities and nationalities is also very protective and granting. Our constitution recognizes that we have several groups within our country and establishes the States obligation to protect the identity of each one of them[12]. It also recognizes the principle of non-discrimination for incoming immigrants and other persons in mobility conditions.[13] At an international level, Ecuador ratified in 2002 the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families[14], from which several public policies have been implemented. We are also a part of the Indigenous and Tribal Peoples Convention of 1989[15] and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965[16], through which we have also promoted efforts to preserve identities and native languages within our country.

Statistically, the numbers show that there is lot of work to execute for the inclusion of different nationalities and ethnicities. For example, 2019 statistics have shown that 89% of the Venezuelan population that is living and working in Ecuador don t have formal jobs[17]. Only 40% of immigrants from Caribbean countries have finished high school and 31% have started university without graduation. The remaining 29% do not have studies.[18] For ethnicities, it is a constant worry of our authorities to work on the reduction of the illiteracy rates that are particularly high within the indigenous communities of our country. We are ranked by the UNESCO as country number 81 for literary rates with 7.17% of illiterate population[19], out of which the majority are concentrated in the amazon and the coast, where some of the oldest ethnic groups reside[20]. As a result of these rates, the inclusion of different ethnic groups is not common within the legal profession, mainly due to the sociological phenomenon that the lack of access to education represents.

In this area of diversity, as well as in gender, two common elements come to mind. First, the fact that the generalities of the legal framework, at constitutional and international level are in favor of the inclusion of these areas of diversity to everyday activities as well as to professional activities, and second, that although advances have been made, there is still a lot of work to do in order to incorporate diversity in the legal field. Lawyers, as experts of the law are the main messengers of its dispositions. Knowing that the legal framework towards inclusion exists is already a huge step for our professionals to become defenders of that legal framework and join efforts in the fight against exclusion, discrimination and inequality. Last but not least is important to remember that is our job to change this reality by assuming the obligations of offering non discriminative opportunities, balancing the amount of men and women in our offices, incorporating people who are in condition of mobility and overall, implementing a culture of equal respect to all in the work environment that they lead. I m proud to say Falconi Puig Abogados is aware of these realities, and is openly making efforts towards inclusion and towards the acceptance of the beauties in diversity. We are part of important initiatives such as the United Nations Global Compact, directed toward the fulfillment of the purposes established in the 2030 agenda and we recently signed our commitment with the Women s Empowerment Principles, all for which internal policies are being implemented. We believe that efforts like these can be made by legal firms all over the world and they represent a huge step towards a better and fairer tomorrow.

1 Constitución de la República del Ecuador, 1998.
2 Constitución de la República del Ecuador, 2008.
3 Ratified November, 1981.
4 Ratified September, 1995.
5 Ratified December, 1952.
6 INEC, Censo de Población y Vivienda, 2015-2020.
7 INEC, Atlas de Género, 2018.
8 INEC, Censo de Población y Vivienda, 2015-2020.
9 Akayesu Case of the ICTR 1998
10 Kayishema and Rudzina ICTR 1999
11 Presidencia de la República del Ecuador, Plan Nacional de Desarrollo "Toda una vida", 2017-2021.
12 Constitución de la República del Ecuador, 2008, Art. 1, Art. 11.
13 Constitución de la República del Ecuador, 2008, Art. 40.
14 Ratified February, 2002.
15 Ratified May, 1998.
16 Ratified September 1966.
17 Ministerio de Gobierno, 2019.
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19 UNESCO, 2017.
20 Censo Informa: Educación, INEC 2001-2010.

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Cecilia is a proactive attorney. She practices law mainly in Intellectual Property and has strength in copyrights, trademarks and geographical indications, also ancestral knowledge, and biodiversity. She is also an expert in regulatory affairs and efficiently advices her clients looking to place their products in the country providing effective solutions to their needs.

She constantly participates in several working groups regarding trends for the industries and works on advocacy papers towards policy making. She chairs the ICC Ecuador IP Commission for a second period and actively cooperates with juridical criteria for several projects of reforms of law and regulations on IP rights, and promoting observatories for customs watch and criminal offenses.

She is quite dynamic at INTA and ECTA now serving at the ACC Committees. At ASIPI she chairs the Geographical Indications Committee for her second period for which she has been recognized for her hard work and impeccable job. She is also involved with orIGin as law firm member.

Her advice regarding the protection of intellectual property has meant that her clients have been able to develop new ventures safely and expand their business in Ecuador and into foreign markets. Her vast experience in managing IP portfolios has allowed her to advise clients on how to achieve strategic business objectives through audits of intangible assets, acquisition of rights, licenses and franchises. She had a leading role on the negotiation of a biodiversity access contract between Yale University and the Environmental Ministry of Ecuador.

She has successfully advised and managed administrative litigation procedures having favorable results and client satisfaction. Also, she is an expert in piracy, counterfeit actions, and border measures concluding with definite cease of infringements on copyrights and trademarks. Appellation of origin infringements had also been handled successfully. Cecilia represents clients in a wide range of business sectors, and has experience in advising in beverage, clothing, cosmetics, veterinary products, pharmaceuticals, cleaners and disinfectants, agriculture, timber, entertainment, literary, and editorial business industries.

A team of professionals in FPA dedicated to the Hemp & Cannabis industries from the regulatory perspective on agro-industrial and medicinal, cosmetics and food & beverages. Cecilia is a founder member at the Quito Chamber of Commerce Hemp Cluster being it s legal advisor and asked to lead the new to come Cannabis Commission.

Currently she leads the Firm as Managing Partner.

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Nathalie Dreyfus practices as a French and European Trademark Attorney as she founded Dreyfus Law Firm in 2004, which is specialized in Intellectual Property Law. She is an appointed expert at the Paris Court of Appeal, the WIPO Arbitration and Mediation Center and the NAF National Arbitration Forum.

Nathalie Dreyfus advises clients on a broad range of intellectual property law matters and, in particular, on protection and enforcement of trademarks, designs, copyrights, patents, appellations of origin, plant varieties, and domain names. She is also involved in drafting intellectual property and know-how contracts at an international level.

She advises and assists her clients in the protection and enhancement of their intellectual property rights both in the real world and on the Internet, including dispute resolution, infringement actions, technology transfer operations and UDRP-type arbitration proceedings.

In addition, Nathalie Dreyfus has extensive expertise in all issues related to the Internet and new technologies such as phishing, cybersquatting, social media, domain names, and online sales platforms. She is particularly specialized in defending companies on the Internet.

More recently, the Dreyfus law firm has specialized in online brand enforcement and compliance.

Nathalie and her team are working in France and internationally as one of the leader of intellectual property firms with expertise in the digital economy.

Nathalie has been organizing webinars on topics related to intellectual property on various sectors. She often asked to share our views and expertise on the latest developments in intellectual property and digital law. As an active contributor to our profession, Nathalie and her team regularly take on speaking engagements at specialized French and international conferences.

Nathalie Dreyfus has written several books, as well as articles for legal journals specialized in IP/IT. She writes for the Dreyfus blog, which publishes articles on legal news relating to trademark, patent, copyright, Internet, and new technology law.

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Intellectual Property in an Innovative World

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Magda Streuli-Youssef is a partner of the Swiss law firm Rentsch Partner. She represents parties before courts and state authorities, ADR Panels and supervisory bodies in all kind of intellectual property, media and unfair competition law matters. She has a broad litigation practice including several landmark court cases in the field of copyrights, trademarks and unfair competition law. Her practice areas also include IP strategies, IP audits and licensing, drafting and negotiating all types of IP-related contracts and advising clients in intellectual property, media and unfair competition law matters.

Born in 1953, Magda Streuli-Youssef was educated at the University of Zurich (lic. iur. 1975, Dr. iur. 1978). Her working experience as an attorney stretches back to 1980; she was a lecturer at the University of Zurich and at various institutions such as SAWI in Bienne and the EMBA of the University of St. Gallen.

She was a member of the Federal Commission for the Exploitation of Copyrights and Neighbouring Rights and former Vice-President of the Federal Appeals Commission for Intellectual Property. She has been active in several professional associations, notably the International Association for the Protection of Intellectual Property (AIPPI) and the Swiss Institute for Industrial Property (INGRES). She publishes and lectures regularly on various IP topics. She is the editor of the well-known book series Schweizerisches Immaterialgüter-und Wettbewerbsrecht (SIWR) and recently published three volumes.

Rentsch Partner is a leading Swiss attorney at law and patent attorney firm, advising and representing clients in all aspects of intellectual property law – transactions, proceedings and complex cases both in a domestic and a global context.

Magda Streuli-Youssef speaks German, English and French. She is registered with the Zurich Bar Registry and admitted to practice in all Switzerland.

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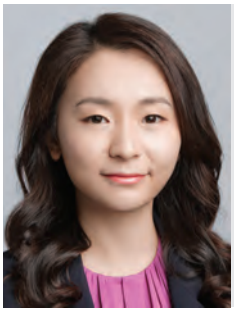
TRUSTS AND ESTATES

CHINA



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- Succession planning, family trust, family governance, asset protection and tax planning

Work Experience

- Zhong Lun Law Firm (Hong Kong & Shanghai)
- Clifford Chance (Hong Kong)
- Fangda Partners (Beijing)

Education Background

- Harvard University LL.M.
- Peking University LL.B.

Bar Admission/Professional Qualification

- PRC Legal Profession Qualification
- New York Bar

Profile

Ms Bao focuses on private client practice. She advises clients on PRC and cross-border succession planning, family trust, family governance, asset protection and tax planning matters.

Ms Bao is uniquely positioned to advise private clients on cross-border matters. She is qualified to practice law in PRC and the New York State of the US. She worked in Hong Kong for a few years and gained extensive experience in family trust, cross-border inheritance and wealth planning matters. In the practice area of family trust, Ms Bao has handled hundreds of projects covering a broad spectrum of matters such as trust establishment, administration, restructuring, transfer and termination, involving trust laws in mainland PRC, Hong Kong, Singapore, Jersey, Guernsey, Cayman, BVI, Bahamas and Cook Islands as well as tax laws in mainland PRC, Hong Kong, Singapore, US, UK, Canada and New Zealand. With deep understanding of the needs and concerns of Chinese clients, Ms Bao is able to stand in the shoes of the clients and provide practical, reliable, tailored and innovative solutions.

Ms Bao advises a number of well-known Chinese business leaders in internet, high technology, private equity, real estate and manufacturing industries on their private wealth matters. She also advises leading Chinese and international financial institutions. Having worked on cross-border matters for over 13 years, Ms Bao is able to closely monitor the trending changes in laws and regulatory practice and provide her clients with forward-looking strategies.

Languages

- Mandarin (Native)
- Cantonese (Native)
- English (Fluent)

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Andrea Dorjee-Good is a Partner in Schellenberg Wittmer's Zurich office, where she heads the Private Wealth group. She is a certified specialist in inheritance law and advises private clients on all aspects of estate and succession planning, including pre- and post-nuptial agreements, wills, succession pacts, lasting powers of attorney, trusts and foundations. Her practice areas further include contentious estates and she regularly represents clients in complex trust and estate disputes.

Some recent examples of Andrea's expertise in private client matters include advising members of an international family on succession planning and structuring for their jointly owned family business and representing one of several heirs in a complex cross-border international trust and estate dispute involving a major family owned business.

Andrea is a member of several professional associations, including the Swiss Bar Association, the Zurich Bar Association, the International Association of Young Lawyers (AIJA) and the Society of Trust and Estate Practitioners (STEP). She regularly publishes and speaks in her field of specialisation.

Andrea graduated from the University of St Gallen School of Law (lic. iur. 2004) and was admitted to the Swiss Bar in 2007. She joined Schellenberg Wittmer as a trainee in 2004 and, after gaining court experience as a clerk at the District Court of Winterthur, she rejoined the firm as an associate in 2007, she was promoted to counsel in 2013 and became a partner in 2020. Andrea obtained a diploma with distinction in international trust management from STEP in 2014 and qualified as a Certified Specialist SBA Inheritance Law in 2019.

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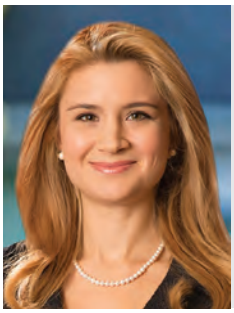

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Kerry O'Rourke Perri leads the Private Wealth & Family Offices practice at White & Case. Her clients include domestic and cross-border individuals and families, fiduciaries, family offices, financial institutions and tax-exempt organizations.

As part of her comprehensive practice, Kerry advises on estate, succession and pre-liquidity event planning, the creation and administration of private trust companies, family offices and trusts, asset protection, pre-immigration planning, charitable giving, the formation and administration of tax-exempt organizations, trust- and estate-related litigation, issues involving special assets such as art and closely-held businesses, and related transactional matters.

Clients benefit from Kerry's distinctive experience acquired both during her 18-month secondment to the wealth management division of one of the world's largest banks and prior to attending law school. Kerry previously worked as an investment banker at Morgan Stanley, where she advised health care companies on M&A and capital markets transactions, and at Accenture in the Office of the CFO, where she evaluated and executed strategic corporate transactions and financial projects.

Kerry is a frequent writer and speaker. She is recognized in Chambers and Partners' High Net Worth guide as an Up and Coming lawyer for New York Private Wealth Law. She is also listed as a Leading practitioner for Trusts and Estates by Euromoney's Women in Business Law Expert Guide, 2019-2021. In 2021, she was shortlisted for *Euromoney* Legal Media Group's 2021 Women in Business Law "Best in Wealth Management" Award and previously appeared on the shortlist for the organization's "Rising Star" in Tax award. Kerry has been quoted in The Wall Street Journal and the Financial Times on tax and wealth management issues.

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Karen Reynolds is a partner in the Commercial Litigation and Dispute Resolution Department at Matheson, and co-head of the firm's Regulatory and Investigations Group.

Karen has a broad financial services and commercial dispute resolution practice. She has over ten years' experience of providing strategic advice and dispute resolution to financial institutions, financial services providers, domestic and internationally focused companies and regulated entities and persons. She advises clients in relation to contentious regulatory matters, investigations, inquiries, compliance and governance related matters, white collar crime and corporate offences, commercial and financial services disputes, anti-corruption and bribery legislation and document disclosure issues.

Karen has a reputation for expertly guiding clients through the complexities and sensitivities of all manner of contentious disputes, including in Commercial Court, Court of Appeal and Supreme Court proceedings. Her clients include domestic and international companies, directors, senior managers and controlled function holders, financial institutions, insurers and reinsurers, fund managers, insolvency practitioners, shareholders and creditors. Karen has substantial experience in corporate restructuring and insolvency law matters, having had a lead role in some of the most high profile corporate rescue transactions of the last ten years. She advises liquidators, regulators, directors and insolvency practitioners in relation to corporate offences and investigations, shareholder rights and remedies, directors' duties, including in relation to fraudulent and reckless trading and disqualification and restriction proceedings.

Karen is a member of the Law Society of Ireland, admitted 2009. Karen was named as a "Highly Regarded Individual" in the 2018 edition of the IFLR 1000, with "attention to detail, work ethic and her constant drive to get the best result for her clients".

Experience Highlights

- Acting for an investment holding company in connection with Commercial Court proceedings arising from a shareholder dispute, including in relation to an appeal to the Court of Appeal.
- Acting for one of the largest international banks in defending multi-million dollar claims made in multiple fund and related investor Commercial Court proceedings arising out of the fraud of Bernard L Madoff Investment Securities.
- Acting for financial services providers in relation to administrative sanctions investigations under the Central Bank's enhanced regulatory enforcement regime.
- Acting for an entity regulated under the Central Bank Act in relation to a large scale remediation project and advising in relation to Central Bank investigation and enforcement action thereafter.

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Clara Poglia is a partner in Schellenberg Wittmer's Geneva office, where she co-heads the dispute resolution group. Clara's key areas of expertise and practice focus on white-collar crime, international mutual legal assistance both in criminal and tax matters, extradition, asset tracing and recovery, and internal corporate investigations. Clara is also specialised in regulatory and compliance issues. Clara regularly acts as counsel for both individuals and prominent corporate entities in criminal and administrative proceedings before cantonal and federal authorities and courts, including the Swiss Supreme Court.

Some of Clara's expertise includes: representation of a businessman in the frame of domestic criminal proceedings for alleged funds mismanagement and money laundering and assistance in the lifting of a freezing order targeting more than US$900 million; representation of a high ranked individual of a financial institution in the context of criminal proceedings related to the violation of regulatory duties; and representation of a foreign company in the context of criminal proceedings dealt by the Federal Prosecutor Office for alleged money laundering of VAT carousel fraud's proceeds.

In 2018 Clara was recognised in the Global Investigation Review's (GIR) Women in Investigations List. In 2020, Clara was recognised in the GIR'S 40 under 40 list.

Clara is the chapter leader and co-founder of the Women in White Collar Defense Association's Swiss chapter.

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Antonia M Apps is a partner in Milbank's New York office and a member of the firm's Litigation & Arbitration Group. A former federal prosecutor, she is a nationally recognized trial lawyer with experience in criminal and civil matters. She has represented public companies, private equity firms, hedge funds and high-level executives facing bet-the-company government investigations and billion-dollar commercial litigation.

Prior to joining Milbank, Antonia served as an Assistant United States Attorney for the Southern District of New York, where she led many of the government's highest-profile securities fraud and insider trading cases, including the prosecution of the hedge fund S.A.C. Capital Advisors, L.P. As a member of the Securities and Commodities Fraud Task Force, she investigated and prosecuted a wide range of financial industry cases involving investment fraud, accounting fraud, broker-dealer fraud, market manipulation, fraud stemming from the sale of RMBS and CDOs, money laundering and obstruction. Antonia prosecuted more than 20 insider trading defendants and tried numerous securities fraud trials. She also argued several appeals in the Second Circuit, including the landmark case of *U.S. v. Newman*, for which she was the lead prosecutor at trial and on appeal. In 2014, Antonia received the Executive Office of US Attorneys' Director's Award for Superior Performance.

Antonia is ranked in *Chambers USA* (Band 2), where clients have described her as a "terrific trial lawyer" who "understands the difficulties of the world we live in" and gives "advice tailored to a practical approach." *Lawdragon* has named Antonia in its list of *500 Leading Lawyers in America* each year since 2014. She was named a 2020 Litigation Trailblazer by *The National Law Journal*, which recognizes lawyers who have made significant impact on legal practice, policy or technological advancements. In 2019, Antonia was named in *Crain's New York Business*' "Notable Women in Law" list in recognition of her distinguished career and exceptional civic and philanthropic activities.

She serves on the Board of the Office of Appellate Defender (OAD), a non-profit organization that works to provide high-quality, post-conviction representation to indigent individuals, and supports Milbank's pro bono work with the OAD. She was appointed under the Criminal Justice Act by the Board of Judges of the Southern District of New York to represent indigent defendants in federal criminal trials in which the Federal Defender has a conflict.

Antonia has authored numerous articles in industry publications and is regularly quoted in news articles. She is a frequent speaker at industry conferences convened by the Securities Industry Financial Markets Association, American Bar Association, New York City Bar Association and the Practising Law Institute. She also teaches a class at Harvard Law School on White Collar Criminal Law and Procedure.

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Betty Santangelo joined Schulte Roth & Zabel as a partner in 1997. She focuses her practice on white-collar criminal defense and securities/bank enforcement. A former Assistant U.S. Attorney for the Southern District of New York where she specialized in securities and commodities fraud prosecutions, her practice includes representing financial institutions (banks, broker-dealers, mutual funds, FCMs, insurance companies, investment advisers, hedge funds and private equity funds), other corporate entities and individuals in matters brought by the U.S. Attorneys' offices, by various regulatory agencies, including the SEC, the bank regulatory agencies, the CFTC, FINRA, international regulators and state and local prosecutors. Betty also has significant experience conducting internal investigations for these entities. In addition, she has served as an independent consultant in SEC enforcement matters examining both the NYSE and a regional broker-dealer. Prior to joining SRZ, Betty served as First Vice President and Assistant General Counsel for Merrill Lynch, where she managed the firm's securities and criminal regulatory investigations group and represented the firm and its employees in enforcement proceedings before federal and state regulatory agencies, and in criminal matters before U.S. Attorneys' offices and state prosecutors, as well as in foreign jurisdictions.

Betty is nationally recognized and a sought-after speaker for her expertise in corporate compliance issues, including anti-money laundering, OFAC and FCPA. She has extensive experience advising in these areas, including for business transactions. In addition to International Who's Who of Business Crime Defence Lawyers, she is listed in Best Lawyers in America, Expert Guide to the World's Leading Women in Business Law and The Legal 500 US, among other leading directories. Among her many professional activities, she has served as the Securities and Futures Industry's representative on the Bank Secrecy Act Advisory Group of the U.S. Department of the Treasury and for over 10 years as counsel to the Securities Industry and Financial Markets Association's Anti-Money Laundering and Financial Crimes Committee. In 2014, SIFMA honored her for her extraordinary contributions to the committee and recognized her dedication to improving industry compliance. In 1998, the Financial Crimes Enforcement Network of the Treasury Department awarded her its Director's Medal for Exceptional Service. That same year, she represented the U.S. securities industry at the Financial Action Task Force (FATF) meeting in Brussels. In 2002, she represented SIFMA, the Futures Industry Association and the Investment Company Institute at the FATF meeting in Paris.

Betty is a graduate of Fordham University School of Law and Trinity College, where she participated in its honors program at the University of Oxford. Among her personal activities, Betty is a member of the Board of the National Organization of Italian American Women, where she previously served as a chair of the organization.

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