



What in-house want

Tips and advice on what to look for when choosing outside counsel

The increase in cross-border work means that in-house counsel need to rely more on outside help to fill gaps and gain local expertise. This was the key takeaway of yesterday morning's 'From Vancouver to Cape Town to Beijing: how to vet and select outside counsel in different legal markets' session.

Choosing between a local and an international firm is a question that in-house lawyers often struggle with. Some factors that need to be considered are whether legal advice is needed in multiple countries and if the firm has experience working with international clients. While some businesses may prefer international firms because of their reputation, it's important to keep in mind that not all local offices may be equally strong: in-house counsel have to do their homework on the makeup and expertise of a local legal services provider.

Working in certain industries and countries sometimes requires in-house lawyers to work with local counsel, and choosing international firms may not work. "We need trusted advisers who are able to tell us how to navigate the industry and without local insight, it just doesn't work," said OPEC general counsel Asma Muttawa. She cites the example of Libya where there are no international law firms and businesses going in have to choose from local firms.

In Asia, there is heavy reliance on local firms for a number of jurisdictions. In Korea, local firms are the only choice and in China, international firms can't litigate in court. What businesses could consider is working with both an international and a local firm. The first may be better in areas such as strategy while the second may have better connections with regulators.



Stephen Solursh

Local v international

As firms pretend to be international to attract clients, in-house counsel need to keep in mind that being international is actually not the key. What is more important is the capability to culturally understand what the business is seeking to receive and provide guidance on the sensitivity of the transaction locally.

Tapping into people networks is key when it comes to assessing outside counsel. "In Asia, chambers of commerce are an excellent resource," said Graham Wladimiroff, vice president and assistant general counsel, retail branding and information solutions at Avery Dennison. "In China, I've been involved in legal committees which are great communities to go to for names and references, and we have created regional counsel networks where we can bounce ideas off each other."

According to Stephen Solursh, vice president and associate general coun-

sel at OP Trust Pension Plan, going to trusted counsel in your own country to see which firms they have worked with in the local country, speaking with in-house friends with similar industry rules and going to conferences like the IBA can provide more opportunities for in-house counsel to meet outside lawyers skilled in areas where future investment needs can be anticipated.

What about directories?

While legal directories can be a good resource, they should not be the only one. "Directories can be used as a screening tool to see who the top firms are in particular markets, but should be used along with other options particularly when selecting individual lawyers," said Solursh.

American Express vice president and senior M&A counsel Valentina Cassata added: "Legal directories are more of a confirmation check and help narrow down the choices but in-house counsel should not be shy to ask for materials. They should look for detailed biographies of not just the lead partner but the team working on a transaction to see how strong their specialty areas are."

If a mandate is big and important enough, meeting directly with the firm is best as this can enable in-house counsel to understand the office culture and get to know and trust the firm. "Reach out to the team directly," said Cassata. "Work out details such as billing arrangements and communication plans at the outset when you have the bargaining power."



AI KNOW WHAT YOU'RE THINKING

Regulating AI is necessary but the what, how and when remain unanswered

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LUNCHTIME WITH...

Washington Post's Jennifer Rubin is part of a panel of rule of law experts

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VOX POPS

What are the main challenges currently affecting the legal profession?

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The fast fashion flow

Fast fashion is transforming the way intellectual property (IP) is being protected. The speed at which designs are being copied and the shortening of time from one collection launch to the next mean fashion houses need to be innovative in how best to protect their brands. Panelists shared best practices and strategies in yesterday afternoon's session, *'Fashion design and fast fashion: inspiration or imitation? Free ride or fair play?'*.

Trying to catch up with the pace at which counterfeits are being created for numerous designs is a futile race, especially as IP protection budgets are shrinking. A strategy for fashion brands is to have a targeted focus. "In our work with Jimmy Choo, we created a strategy whereby we asked the design team to pick out one or two designs that they are emotionally linked to to focus on," said Shoosmiths partner Gary Assim. "Rather than registering one design for €600 and multiplying that by 80 over two seasons, we had a zero-tolerance policy on those two designs only and applied injunctions. The damages were put back into the business as a funding strategy and they became a profit centre for the brand."

Trussardi corporate affairs, legal and compliance manager Sara Citterio said it's important for fashion houses to focus on what is really the most valuable and be selective.



"We've been focusing on protecting IP rights in countries where we are distributed," she noted. "For instance, we're big in China, Italy and Russia so we choose to protect our designs more in these countries than others and also in countries where we produce as we have found that counterfeits were coming from our own producers who were over producing and putting fake labels on the products."

Rather than fighting against fast fashion, fashion houses have worked with the fast fashion flow. By making high end fashion more approachable, brands are increasingly experimenting with the fashion and fast fashion connection.

"At the beginning, many fashion houses tried to fight against it," said Citterio. "It was seen as a major threat but as time went by, fast fashion has taken its own role in the fashion industry."

KEY TAKEAWAYS

- It's important for fashion houses to focus on which IP is really the most valuable and be selective: one panellist noted that her employer focused on protecting IP rights in countries where it has distribution networks;
- The key message was that fashion houses need to be innovative in how best to protect their brands.

Assim gave the example of H&M which brings in collaborations with designers to create limited collections. "It's a way to work in tandem with fast fashion and show the customer base that a luxury brand item can be affordable," he said.

Blockchain's liquidity problem

In recent months, blockchain has attracted interest outside of the tech space and right to the very top of the financial sector. Last month, more than 75 banks signed up to the Interbank Information Network tested by JPMorgan, Royal Bank of Canada and ANZ for almost a year, and the Italian Banking Association successfully passed the initial test phases for its blockchain interbank system.

But while blockchain has entered the public's consciousness relatively quickly, there is still a way to go before it can fully reach its potential and affect banking on a massive scale. In particular, there is hope that for capital markets, the stock ledger can be programmed so that shares owned by one investor cannot be moved and therefore the impact of a single transaction with a cryptocurrency on the price of an asset is not as great.

"It's a phased approach," Andrea Tinianow, chief innovations officer at tech consultant Global Kompass Strategies, told delegates at yesterday's session, *'Titanic fail or overwhelming success: Blockchain in the capital mar-*



kets'. "The liquidity aspect will come, but it's just not there yet."

As part of its Blockchain Initiative, the US state of Delaware updated its corporate law framework to allow a company to store financial records on a blockchain. There is a desire from many to have a fully regulated framework in place, as opposed to a simple peer-to-peer network, and this is making potential new entrants pause to see the next developments.

The updated EU Payments Services Directive (PSD2), which forces banks to share customer data with their competi-

tors, could be the accelerator to providing the liquidity aspect blockchain is currently lacking and also encourage further regulatory intervention.

"PSD2 allows for the creation of a real-time settlement facility," said Borenius of counsel Jorma Yli-Jaakkola.

Doing so means the liquidity problem could be alleviated.

PSD2 and blockchain could fundamentally change the role of a bank, particularly when considering competitors are increasing in number, and in the case of challenger banks, creating more new issues than before.

KEY TAKEAWAYS

- Blockchain technology is not quite ready to provide liquidity to investors, but it could start to do so soon;
- PSD2 offers the opportunity of a real-time settlement facility that could be utilised with blockchain and reduce its liquidity problem.

This is even influencing companies outside of financial services. US retailer Overstock issued its own blockchain subsidiary, tZero, earlier this year and has changed the very nature of its business into one centred around cryptocurrencies.

Yet, even though companies from a variety of different sectors are investing in cryptocurrencies, many jurisdictions are still behind. "Some jurisdictions have not regulated on this issue because it's not on their map yet," said David Flechner, partner at Shearman & Sterling.

A call to arms

Certain states and banking institutions need to start being honest and taking responsibility for their actions to prevent the illegal sales of arms to terrorist groups and rogue states.

These actors are running their states as business models and allowing terror cells safe passage of billions of dollars that allow them to finance their activity and purchase arms and weaponry profiting financially and regardless of the moral and societal implications.

It's a complicated issue that ranges from governments not doing what they are supposed to be doing, to bankers being selfish and to people who have their own ideological business incentives to violate the law, said Gregory Kehoe of Greenberg Traurig during yesterday's session, *'The business link to international crime: individual and state liability under the arms sales treaty, the Palermo Convention on*

the financing of terrorism activities, and international criminal law'.

"With smart and innovative people who are steeped in business and international banking, we are in a brave new world where hundreds and hundreds of billion of dollars can travel around the world in 24 hours," he said. "Vigilance on every single level has to be brought to bear if this is going to be curtailed."

The message: state and business sponsored transactions that lead to horrific events such as the Sarin attack in Syria must be prevented at all costs.

Perpetrators of immoral international crimes often rely on the profits of transnational organised crime to fund and sustain their criminal activity. This business link comes at the expense of innocent lives around the world, and as such, a number of organisations and initiatives have been established to combat it. But states and banks must adopt these rules and stop looking the other way.



Steven Kay QC

The 2014 Arms Trade Treaty is one such example of this: it established common standards in relation to the control of the supply of arms by states and their contractors within states. It also inaugurates transparency between states so that they can see where arms are going and avoid lessons learned from the past.

The stipulations require states with national laws that have a regime to monitor those categories of relevant weaponry and to monitor what is relevant to them. Crucially, however, the Treaty has yet to be fully ratified by three players of incredible significance.

"The fact that China, the US and Russia have not implemented it means that in many respects it is a dead letter

if we are going to properly monitor the supply of the arms trade," said Steven Kay QC, of 9 Bedford Row Chambers in London.



Gregory Kehoe

Kay outlined an ongoing case, in which he is acting pro bono on behalf of two whistleblowers, where a bank in Cyprus was found to be assisting a number of illegal actors, including the militant arm of the Shi'ite Muslim group Hezbollah, a group accused of multiple acts of terrorism. Despite the case showing clear breaches in international criminal law, nothing has been done. He said: "We have all this regulation but no one is using it, meanwhile the people who blew the whistle find themselves on the run for breaching a confidentiality agreement."

KEY TAKEAWAYS

- Certain states and banks need to start taking responsibility for their actions in order to prevent the illegal sales of arms to terrorist groups and rogue states;
- Perpetrators of immoral international crimes often rely on the profits of transnational organised crime to fund and sustain their criminal activity.



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AI know what you're thinking

Some form of artificial intelligence regulation will be needed, but the big questions of what to regulate, how to regulate and when to make a move remain unanswered

The growth in artificial intelligence (AI) software and programmes and their roles in the practice of law are opening lawyers and bar associations up to a giddy new world of possibility and uncertainty.

In this murky future, there are some things legal professionals can count on. One of these is that AI will play a role. The question of regulating – what exactly to regulate, and how and when to begin – cannot be kicked into the long grass.

“AI will be an integrated part of legal services in the future,” says Merete Smith, secretary general of the Norwegian Bar Association. “We have seen a little bit of it but not exactly what it will be. Do we wait and see or start regulating right now?”

AI and its potential as a disruptive technology to trigger unforeseeable changes make this a particularly difficult question to answer. While outside the legal world, AI technology has convincingly topped human minds in drafts, chess and now the ancient Chinese game of Go, in the legal world firms have tested and seen AI due diligence products outperform lawyers and achieve some notable success in case prediction.

“When we talk about AI we are talking of something beyond word searches, we are talking about the ability of a robot or a programme to learn and teach itself to become more efficient,” says session moderator Steven Richman from Clark Hill.

The advent of AI raises new questions about what the ‘practice of law’ means. Companies or providers of legal AI are not regulated. While there may be programmes that can put together a contract, and putting together a contract is generally considered practicing law, the concept that only (human) lawyers, regulated by bar associations, practice law is no longer valid.



Merete Smith

Lawyers have ethical obligations to supervise work performed by non-lawyers in the context of what they do, but what happens if a client engages an AI firm directly, asks Richman. “It used to be that you associated delivery of legal services with what lawyers do, but now there is a thought that what lawyers do is only a part of the delivery of legal services,” he says.

Know your tech

“Lawyers must understand the technology related to their legal practice,” says Richman. “They have an obligation to communicate with clients as to what is available.”

One of the most dramatic examples of AI use has been in case prediction.

“What happens if you have one of these programmes, and it runs the analysis on your case and predicts the outcome that the client will lose. But you feel in your gut that there is a better chance, you persuade the client to go forward and then the client loses,” says Richman. “Are you guilty of malpractice because you didn’t follow the AI programme’s recommendation?”

There then follows the question of cost, and whether it is an overhead or a cost the client has to bear.

A similar question can be asked in relation to confidentiality. If a group of firms pool together to invest in AI, who owns the information that goes into the

product and what are the confidentiality issues?

Lawyers need to know their technology to properly advise and represent clients and keep their best interests at the fore. This amounts to an ethical obligation to know your tech.

If AI technology replaces armies of junior lawyers conducting due diligence and analysing case histories, training and legal practice will also have to evolve. The way legal services are provided will change with that, with non-legal entities conducting what is now considered legal practice, and legal practice re-focusing on other areas.

As AI develops, off-the-shelf products could suddenly make some legal services affordable to a vast proportion of the population, and tip the balance away from small firms and towards AI companies at one end, and large firms at the other. AI products could offer cheap and direct legal advice to a new section of the population without a lawyer-intermediary. The change in the organisational structure of the legal services industry alongside the potential to bring in people who now do not engage with legal advice carries regulatory implications.

How and what to regulate?

“We have this paradox of the expansion of legal services beyond what lawyers have been doing with these notions of unauthorised practice of law, but the boundaries are still in flux,” says Richman. “Nevertheless, the ethics rules and regulatory regime need to be reviewed.”

It remains unclear whether AI can and should be regulated, and if so how. Richman suggests there may be

SESSION: Regulating artificial intelligence: is it time?

TIME: Today (1115 – 1230)

VENUE: Session Room P, Level -1

COMMITTEES: Bar Issues
Commission and Bar Issues
Commission Regulation Committee

may be ways to regulate using a simple question of registration, or insurance mechanisms, but stresses that regulation needs to be looked at, not for its own sake, but to ensure clients are protected.

As to timing, no one knows the future, says Smith. In a part of the world where people have holidays, holiday companies were once busy looking at tech to make ways of booking faster and cheaper, when up popped Airbnb to turn business models on their heads. AI has this disruptive potential. It also has unknown potential. The sector could see self-enforcing contracts based on the concept behind blockchain and smart contracts, or robot jurors sitting in the jury box alongside humans analysing arguments and carefully logging facial tics and expressions.

While very few answers have been proposed to these questions at this stage, the unavoidable reality is that their arrival and impact on the standards upheld by law professionals must be considered. The legal community also needs to keep abreast of developments, lest it be caught unawares.

The concept that only human lawyers, regulated by bar associations, practice law is no longer valid

Into the fire

The US is not going to join the global Common Reporting Standard (CRS) but any trustee considering re-domiciling to the US would be jumping from the frying pan and into the fire, according to panellists at yesterday's session, *'The CRS: how it is working in practice?'*.

Passive investment funds in the US make up 78% of the world's total, by far the most of any jurisdiction globally.

The Obama administration was largely in favour of switching from the Foreign Account Tax Compliance Act (FATCA) to the CRS and its automatic information exchange system. But after the election of President Donald Trump, there has been absolutely no indication that the US will do so, in keeping with the his 'America first' policy. Efforts were made to repeal FATCA last year but came to nothing.

Yet while trustees may consider switching jurisdictions to one included within the CRS scheme, this could be a mistake. The increased regulatory demands for the US and a rise in due diligence are putting pressure on lawyers, but jurisdictions included under CRS have reported few difficulties.

"What we are seeing is rather than trustees leaving Guernsey, more are coming to the UK instead," said Ajay Wiltshire, of counsel at Saffery Champness. For these jurisdictions signed up, there has been relatively little disruption.

"There have been no difficulties in the private sector, but we have needed to go through a process



KEY TAKEAWAYS

- The US is not going to join the CRS but any trustee considering re-domiciling to the US will face difficulties;
- The increased regulatory demands for the US and a rise in due diligence are putting pressure on lawyers, but jurisdictions included under CRS have reported few difficulties.

of educating people on what the changes are," explained Maria de Lourdes Marengo, partner at Panamanian law firm Patton, Moreno & Asvat.

This could be a tricky task, however, given that the CRS does not really act as a law, but mostly as a contract. And with 104 separate jurisdictions signed up, this means 104 separate interpretations, all of which could change in the future.

The General Data Protection Regulation (GDPR) also provides complications. Questionnaires for banks are getting longer and more information is being transferred throughout the world, meaning that the chance of a data breach is significantly increased. This is exacerbated by the fact that it is difficult to ascertain whether the data collected is actually within the spirit of the regulation.

So while the US may not be the most advantageous jurisdiction for a trustee, there are no shortage of obstacles for others.

PREVIEW

A conversation with... a distinguished international panel

A generation after countries throughout Central and Eastern Europe and elsewhere in the world celebrated the overthrow of authoritarian regimes and committed themselves to building societies based on the rule of law, the rule of law has come under challenge. Recent populist surges have led to the dilution or abandonment of rule of law reforms and the values on which they were based.

Today's guests will provide first-hand accounts of the warning signs, the circumstances, and the consequences of governmental actions that have undercut the independence of judiciaries, vilified the press, suppressed individual freedoms, and attacked the legal profession.

Some key questions and issues that will be addressed include:

- Freedom House reports that in 2017 the rule of law and other



Homer Moyer



Jennifer Rubin



Sternford Moyo

tenets of democracies came under their most serious attacks 'in decades'. Are we approaching a point of crisis?

- What are the warning signs that the rule of law is being challenged and basic freedoms are being put at risk?
- What are the tools and tactics that autocrats commonly use to increase their power at the expense of the rule of law?
- How can countries effectively pro-

tect and strengthen the rule of law, and preserve free societies?

- Do members of the legal profession have a special responsibility to defend the rule of law? If so, how?

The session will be moderated by Homer Moyer, member of the IBA Rule of Law Forum Advisory Board and partner at Washington, DC law firm of Miller & Chevalier. Panellists are: professor Metin Feyzioglu, from

the Union of Turkish Bar Associations (Ankara, Turkey); Sternford Moyo, ex officio council member of the IBA's Human Rights Institute; the Honourable Justice Rimvydas Norkus, chief justice of the Supreme Court of Lithuania (Vilnius, Lithuania); Jennifer Rubin, The Washington Post (Washington, DC, US) and; Justice Włodzimierz Wróbel of the Supreme Court of Poland, Criminal Division (Warsaw, Poland).

SESSION: A conversation with... a distinguished international panel
Threats to the rule of law: are we at a crisis point?

TIME: Today (1315 – 1415)

VENUE: Auditorium, Foyer Level

Win and lose

Technology has the power to change the legal profession and the way legal services are provided

Technology plays an increasingly important role both in the legal profession and within legal systems, but questions have arisen regarding its relationship with the rule of law and the values that underpin it.

A revolutionary change is happening in the way law is being practiced, according to Christina Blacklaws, president of the Law Society of England and Wales, chair of its Technology and Law Policy Commission, the UK government's LawTech Delivery Panel and co-chair of the session.

"The impact of technology on the legal world is one of – if not the – most important issues that lawyers need to understand and address in their careers and businesses, wherever they practice," she tells IBA Daily News.

Society and the legal profession increasingly rely on new technologies using algorithms, machine learning or distributed ledger technologies. Technology and automated processes are assisting and facilitating human decision making in many areas, and in some instance, replacing it.

As such, it's vital that legal practitioners recognise the uses these may have. "If we want to remain relevant to our clients and continue being trusted advisors, we need to embrace and own technological innovations. The lawyers who do will not only survive but thrive in this brave new world," says Blacklaws.



Christina Blacklaws

Big Brother is watching you

But ethical issues are being brought to light for the use of big data and algorithms – for instance, when it comes to the possibility of bias in data sets, the impact of facial recognition technology on an individual's right to privacy or the cybersecurity issues raised by data transfers.

In many jurisdictions, algorithms are used to determine the likelihood of

an offender re-offending and to highlight crime hotspots, while biometrics are relied upon to identify potential criminals or terrorists. These systems clearly have proved useful in tackling crime but evidence suggests that the reality isn't as clear-cut.

US non-profit ProPublica found in an investigation carried out in 2016 that data judges rely on in the automated assessment to determine if a criminal will re-offend appeared to be biased against ethnic minorities. Similar criticism has been levelled against the so-called predictive crime mapping technology used by law enforcement teams around the world.

Facial recognition software has been met with a similar sentiment. The system that London's Metropolitan Police uses to spot potential suspects in the street is believed to single out the wrong or innocent people in up to 98% of cases. BigBrotherWatch has also warned that the technology is turning people into 'walking ID cards'.

For session organiser Tomasz Wardynski CBE, partner at Wardynski & Partners, while each human decision carries responsibility as to its consequences, the truth is more complex when it comes to machines and algorithmic intelligence. Automated processes by their very nature don't make decisions based on internalised sets of morals or emotions. Nevertheless, technology needs to be held to the same standard of conduct that society expects from individuals and the legal system, and to respect the same core values of fairness, integrity and impartiality.

"We need to make whatever effort possible to be able to encode notions like trust, empathy and compassion in machines," he says. "Technology doesn't exist outside of responsibility and doesn't liberate the people using it from the obligation to be held accountable for their actions."



The impact of technology on the legal world is one of the most important issues that lawyers need to understand and address in their careers and businesses, wherever they practice

"What we have noticed is that people are more technological than axiological and I think this is proving a growing problem, if not a threat," he adds.

Mr Robot, Esq.

If not addressed properly and globally, technology can also become a threat to the legal profession itself. While it is certainly one of the more relationship-driven sectors, it certainly has not been immune from the penetration of technology.

Much has been written about the impact automation has had in sectors ranging from manufacturing to retail and financial services. The legal sector hasn't received the same level of attention. Work is ongoing in various jurisdictions worldwide, including at EU level, to support policy makers to outline an appropriate legislative framework for the use of algorithms in the legal sector.

According to a 2017 IBA report, 'more and more legal work is carried out by algorithms; this applies, in particular, to routine work, such as reviewing an employment contract, registering a trademark or making divorce papers available'.

For junior lawyers in particular, the issue is a real one, as they tend to be more involved in data gathering and management tasks than their more senior counterparts. A recent survey released by the American Lawyer found that nearly 20% of associates believed automation was the main threat to their job, with tasks including document drafting deemed the most susceptible to being replaced.

"I think it's important for the legal profession to think about who will gain and who will lose when it comes to automation," says Wardynski.

SESSION: SPPI Showcase: the tech revolution - a threat to the core values of civil society and of the legal profession?

TIME: Today (0930 – 1230)

VENUE: Session Room E, Level -1

COMMITTEES: Section on Public and Professional Interest (Lead), Technology Law Committee; Senior Lawyers' Committee (Lead), Young Lawyers' Committee, Law Firm Management Committee, Professional Ethics Committee and Cybercrime Subcommittee

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Partner

Only a matter of time

Artificial intelligence will soon be crossing over to M&A

Preparing, negotiating, structuring and papering M&A transactions is one of those fields in which legal tech and artificial intelligence (AI) is already having an impact. While how far it will go remains unknown, the fact that legal tech and AI will take up an important seat at the corporate law table of the future is undoubted.

Today's session co-chair Rainer Kaspar, of Austrian law firm PHH Prochaska Havranek and co-chair of the IBA's Young Lawyers' Committee, points out that a lot of due diligence software is used on the market right now. Contract drafting is also being developed, not just in the sense of drafting specific clauses but in tailoring agreements to suit the situation of a transaction and its parties. Whether legal tech and AI will be able to work through every stage of structuring and documenting an M&A transaction depends on who you talk to.

"Legal tech and AI companies obviously think they will do this at some

point and that it is just a question of time," says Kaspar.

'We tend to overestimate the effect of a technology in the short run and underestimate the effect in the long run'

this is the often-repeated adage by

Roy Amara, a former president of the Institute for the Future, when talking about AI. Amara's law, as it's known, fits the current buzz around AI. But real work needs to be done to understand and prepare for it. All legal tech will likely have AI built into it, what matters is how it's being used.

Eyes on the prize

The efficiencies that AI-driven legal tech can bring at the due diligence stage of a deal threaten to do away with the whole idea of having vast teams of associates sitting in a data room for weeks on end. This in turn can impact the skills junior lawyers need to have and the way their time is spent in practice.

The efficiencies will also impact

transaction timings and costs for the law firms and clients, as well as potentially the types of legal service entities that might be able to participate in deals, and the way external counsel and in-house teams work with each other.

Emily Foges, chief executive of Luminance Technologies, a UK-based legal tech developer, argues that paralegals and associates often spend hours scanning near identical documents and manually tracking progress, whereas AI can give legal teams an instant insight into the whole data room while prioritising information in an intuitive way. This frees up lawyers to focus on more intellectually demanding work.

Common fears about legal tech and AI are that it will only benefit the large law firms with the resources to develop programmes. But AI could benefit small outfits. While these don't have the armies of lawyers to handle the due diligence and contracting arrangements on very large M&A transactions, they may be able to redress the balance with technology.

Another area for consideration is that acquisition-hungry entities may opt

SESSION: The future of M&A: how legal tech, AI and big data will change deal-making

TIME: Today (0930 – 1045)

VENUE: Session Room O, Level -1

COMMITTEES: Young Lawyers' Committee, and Corporate and M&A Law Committee

to invest in their own legal tech to cut external legal fees, again possibly a bigger threat to large law firms.

Glass half full

The best preparation is cool-headed optimism. Pessimism is dangerous, particularly for the legal profession which is often characterised as being less tech-oriented than other types of consultants.

The example of Excel, invented 30 years ago is used as an analogy. Every accountancy firm uses Excel, but a client would not think of using Excel as its accountant. It also argues that the legal profession should not worry about AI any more than it did about the advent of the iPhone. Having said that, AI-driven legal tech promises more disruption.

"Software will replace some legal work, the question is when," says Kaspar. "People think it will be soon but I believe it will happen in the mid-term."



Rainer Kaspar

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QUESTION What are the main challenges currently affecting the legal profession?



Francesco Isolabella Della Croce
Studio Legale Associato
Isolabella
Italy

Lawyers need to focus on quality and find their niche, and resist opportunities to broaden their scope. We need networks of quality boutiques.



Raja Sujith
Majmudar & Partners
India

Adapting to new technology takes time and can impact a lot of things: this needs to be communicated to clients.



Joanie Zhang
Dentons
China

Artificial intelligence is an issue because basic work can be replaced. Lawyers need to make their work higher-value.



Fernando Navarro
Ashurst
Spain

That's the million-dollar question! Being capable of providing added value means lawyers and law firms need to differentiate to keep doing business especially in places that are over-lawyered.



Rocco Rondi
BMG Avocats
Switzerland

The 'uberisation' of the economy and how law firms adapt to that is important. The pace of everything is changing.



Simon Hart
RPC
England

Global uncertainty, both economic and political, is a problem. Deals happen when people have confidence – Brexit and US tariffs are issues.



Chris Engels
Claeys & Engels
Belgium

Giving young lawyers experience of basic legal work before some of it gets replaced by artificial intelligence is a challenge.



Shakirat Kotun
Ministry of Justice
Nigeria

Enforcing the rule of law is an important issue all over the world, especially in this anti-globalist climate.



Maria Belen Moreno Bendlin
Altra Legal
Paraguay

It depends on the market: being a young lawyer in Paraguay means that it can be difficult to establish credibility on an international scale. We need a robust legal regime in place everywhere to encourage foreign investment.



V Lakshmi Kumaran
Lakshmikumaran &
Sridharan
India

Changing and disruptive business trends that lawyers don't necessarily understand can be an issue.



Ocheme Abu
Federal Inland Revenue
Service
Nigeria

Delays in court processes: a brief may take more than 10 years to conclude, there are frequent adjournments of cases in court.



John Doherty
Penningtons Manches
England

One issue that has always been around is making legal and justice services as accessible as possible. If this is achieved, it's a win-win for everyone.

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Meet in Rome:
Rolf Auf der Maur, Benedict F.Christ, Urs Haegi, David Jenny, Roland M. Müller, Klaus Neff, Christian Oetiker, Nadia Tarolli Schmidt, Thomas Weibel

Made in China?

There are serious concerns about the level of debt China is accruing with its aggressive overseas investment policy. But the country will continue its expansive outbound M&A drive as it looks to acquire distressed assets in key sectors and regions.

Initiatives such as the ambitious *One Belt, One Road* strategy, and the forward-looking *Made in China 2025* plan ensure that the country will continue along this path in the years to come. China has outlined a number of target sectors that it intends to be the dominant manufacturer globally in within seven years including next-generation IT, aerospace and aviation equipment, agricultural equipment, and biomedicine and high performing medical devices.

“This is where the future is going to lie, in the world of buying companies that are going-concern and in distress,” AlixPartners’ Brent Carlson told attendees of yesterday’s *Looking for that diamond in the rough: Asian investors finding value in distressed foreign markets*’ session.

The Chinese policy is to become a

leader in these sectors by 2025, and globally to replace the current leaders. “They are looking to buy companies that are on the turn and also buying technologies from companies that may be in difficulty. An example was when Wanxiang Group bought A123’s automotive battery business in the US – this was an indicator of where the future wave of deals will come.”

Panelists addressed the unique opportunities and challenges for Asian investors seeking to invest in distressed companies outside of Asia, drawing attention to the fact the largest number of investment opportunities in North America in the last 10 years has been in Alberta, Canada, where the commodity crisis led to a significant devaluation of a number of assets in the energy sector.

It’s a serious issue for Canada: buyers look at an asset they have paid for and think that because they paid this much it must be worth this much, noted Xiaodi Jin, a lawyer at Borden Ladner Gervais. “In certain industries like energy, there are significant end of life liabilities associated with the asset, and when the oil price collapsed, a lot



KEY TAKEAWAYS

- China has outlined a number of target sectors that it intends to be the dominant manufacturer globally in within seven years;
- They are looking to buy companies that are on the turn and also buying technologies from companies that may be in distress.

of these assets that the companies were holding were just enormous end of life liabilities with almost no company behind it,” he said.

There is a case in the courts right now where the Alberta regulator is arguing that it doesn’t want this liability to go to the taxpayer, but to creditors, which North American companies are unwilling to take on.

“This creates a pretty unique situa-

tion where we have had a flurry of \$1 deals in Alberta, and where it seems Chinese companies can buy these assets and if it goes poorly walk away from them, but if the price recovers and it goes well they can make a ton of money with nothing put in,” said Jin. Regulators have pointed the finger at the directors of these companies, and newspapers and Canadian citizens have shown their discontent.

However, Chinese companies looking to corner specific markets will continue to make acquisitions in distressed sectors as long as they make sense in terms of their core business. Certain jurisdictions, such as South Korea, are feeling the pressure of the 2025 policy and there will be further distress in these sectors and geographies. But there will be movement based on where the acquisitions can occur due to pushback from regulators in various jurisdictions.



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