

# EXPERTGUIDES

THE WORLD'S LEADING LAWYERS CHOSEN BY THEIR PEERS

*27 years' experience*

## RISING STARS



### WHAT'S INSIDE?

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The Queen's Award  
for Enterprise 2008



# RISING STARS

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# Methodology

Welcome to the seventh edition of Legal Media Group's Rising Stars 2021.

When 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 peers and clients to be the best in their respective fields. This principle and concept has been extended to Rising Stars and we are launching the seventh edition of the series this year.

The Rising Stars guide represents a listing of the brightest and most talented practitioners in the area of business law and related practices. We classify rising stars (RS) as recently appointed partners, counsels and senior associates under 40 – who have already been recognised for their work in the background of important transactions. Our objective is to identify energetic, professional and skilful upcoming talent who have already demonstrated their status in recent notable transactions and who are on the right track for future partnership and leadership in the field where they operate.

To recognise rising stars, we have sent over 10,000 questionnaires to senior practitioners involved in each practice area in more than 62 jurisdictions, asking them to nominate individuals as defined above.

All nominees have been independently offered the opportunity to enhance their listing with a professional biography. They give readers valuable and detailed information on each practitioner's specialisation and work.

We owe the success of this guide to all individuals and firms that filled in the questionnaire and helped with candidates selection. We hope you will find the guide to be a useful tool and information source for the next generation of leaders in the legal business.

All information was believed to be correct at the time of going to press.

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.

Our guides cover a broad – and growing – range of legal practice areas, including:

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- Aviation
- Banking, finance and transactional
- Commercial arbitration
- Competition and antitrust
- Construction and real estate
- Energy and environment
- Insurance and reinsurance
- International trade and shipping
- Labour and employment
- Life sciences
- Litigation and product liability
- 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

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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](http://www.expertguides.com)



## AVIATION

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# CLYDE & CO

Clyde & Co is a dynamic, rapidly expanding global law firm, focused on providing complete legal service to clients across our core sectors of insurance, transport, energy infrastructure, and trade.

Since 1933, the firm has come to reflect the increasingly diverse and global face of business. Through our international network, we advise businesses that are at the heart of worldwide commerce and trade, as well as helping organisations who wish to enter and grow in new and emerging markets. Our experience and regional expertise allow us to understand our clients' perspective, commercial aims and realities.

With over 2,500 legal professionals operating from more than 50 offices and associated offices on six continents, we advise corporations, financial institutions, private individuals, and governments across a wide range of contentious and transactional matters.

At the core of our business is our award-winning insurance practice. With decades of experience across the globe, Clyde & Co is the world's pre-eminent insurance law firm, providing the highest quality advisory and dispute resolution services to insurers and their clients operating in both established and emerging markets.

Underlying our business offering is our world-leading dispute resolution practice of any law firm, with specialist expertise in international arbitration, and one of the largest dedicated global corporate practices. We also have one of the largest employment practices of any City law firm, with employment expertise across our entire international network.

We are proud that our firm has been recognised around the world for its innovative approach to law, client-focused approach, and broad expertise. We have been named Insurance Firm of the Year in multiple regions over the past several years. For a full list of our most recent awards, please see our website:

<https://www.clydeco.com/en/about/awards>



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Grégory is a partner with the aviation and litigation practice and is based in the Paris office. He regularly acts for airlines and their insurers, or other actors of the aviation sector.

He mainly practices in the aviation sector, representing airlines and/or their insurers in dispute resolution, litigation, arbitration and general advice in both contentious and non-contentious matters. Grégory has involvement in most of the recent major air losses and by their very nature most of these cases have an international dimension.

He has significant experience in product liability matters and his strong dispute resolution background includes multi-jurisdictional litigation as well as international arbitration.

Grégory regularly advises airlines on regulatory and consumer protection matters including the setting up of their business in France, slots and also regarding their relationship with various authorities.

He speaks at various conferences such as the Beaumont Conference and regularly lectures in Aviation Law. Before joining Clyde & Co he was a lecturer and researcher in Public International Law at the University of Paris 1 Panthéon-Sorbonne and a tutor in public law, international economic law and international investment law. Gregory has a Master (DEA) in Public Law from the University of Paris 1 Panthéon-Sorbonne and was admitted to the Paris bar in 2011.

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Stephen is a partner in the Finance and Capital Markets Department at Matheson.

Stephen advises aircraft lessors, financiers and airlines on the trading, financing, leasing and repossession of aircraft. His practice includes the establishment of corporate structures in Ireland to facilitate the financing and leasing of various asset classes, including aviation, maritime and industrial assets.

Stephen advises some of the world's largest financial institutions and leading aviation industry participants on a variety of transactions and financing products utilising Irish corporate structures. These include joint ventures, operating leasing, orphan financings, sale and leasebacks, export credit agency supported financings, secured and unsecured lending, EETCs, JOLCOs, ABS and PDP financings, amongst others.

Stephen is recognised as an experienced advisor in airline regulation and aircraft registration in Ireland, and has advised on the establishment of a major international airline in Ireland.

Stephen was named as a key lawyer in transport in Ireland by Legal 500 in 2020 and as a Rising Star by Airfinance Journal in 2019.

Stephen is faculty member on The Law Society of Ireland's Certificate and Diploma courses in Aviation Leasing and Finance. He is also a licenced private pilot.

Stephen's experience includes advising on

- A number of leading international asset financiers and lessors on the establishment of orphan and SPV structures to finance and lease a variety of moveable assets including aircraft, ships and flight simulators.
- A major aircraft lessor on an ABS of a portfolio of 18 aircraft on lease to 15 airlines located in 13 countries.
- An international airline and aircraft lessor on the establishment and restructuring of its Irish corporate platform.
- On the establishment of a number of joint venture platforms in Ireland including an aircraft leasing and financing platform between an airline and a major international bank.
- An international bank on matters of Irish law relating to hire purchase agreements, finance lease agreements and operating lease agreements for agricultural equipment in Ireland.
- A leading aircraft lessor on all matters of Irish law relating to the sale of 16 commercial aircraft and a related corporate restructuring exercise. The aircraft were leased to over 10 airlines in 11 countries.
- A large international airline on a pre-delivery payment financing facility and long-term sale and leaseback of 25 new commercial aircraft with 3 different aircraft lessors.
- An airline group on a EETC transaction to finance 10 aircraft and a separate AFIC financing to finance 6 aircraft for the same airline group. These transactions represented the first EETC and AFIC financings for the client.
- On the establishment of an Irish licenced airline and on a number of aircraft leasing platforms.
- A financial institution on the repossession and deregistration of Irish registered commercial aircraft.

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Kevin Mahony is a senior associate in the Aviation Finance and Transportation Group at Matheson and has advised many of the world's leading financial institutions, aircraft lessors, aircraft owners and airlines located both in Ireland and throughout the world.

Kevin has considerable experience in advising on ABS (asset-backed securitisation) transactions, complex cross-border financings, including those supported by the Export-Import Bank of China, the European Export Credit Agencies, the US Export-Import Bank, the Export-Import Bank of China, Aviation Finance Insurance Consortium (AFIC) insurers and Balthazar insurers and in relation to the acquisition, leasing, financing and trading of aircraft and engines. Kevin also regularly advises Irish airlines and leasing companies on airline licencing and registration issues with the Irish Aviation Authority and Commission for Aviation Regulation in addition to all aspects of the Cape Town Convention and Aircraft Protocol.

Kevin was named Jurisdictional Winner in Ireland and also shortlisted in the Aviation category in the recent ILFR Rising Stars Awards Europe 2020 awards.

**Experience highlights**

Kevin has advised:

- an Irish aircraft lessor on its US\$4 billion aircraft portfolio sale;
- on a US\$380 million aircraft asset backed securitisation transaction involving the acquisition of a portfolio of 18 aircraft;
- on a US\$485 million aircraft engine asset backed securitisation transaction involving the acquisition of a portfolio of 24 aircraft engines;
- an Irish aircraft lessor on the refinancing of a portfolio of nineteen (19) narrow-body aircraft;
- European Export Credit Agencies in connection with their export credit financing to an Irish lessor for the acquisition of fifteen (15) Airbus A320/A321 aircraft;
- European Export Credit Agencies in connection with their export credit financing in relation to the financing of ten (10) new Airbus A320 Neo and Airbus A321 Neo aircraft finance leased by an Irish 'orphan' special purpose vehicle directly to a European airline;
- on the establishment of an Irish aircraft leasing and trading platform for a US private equity group;
- a US lessor in connection with the purchase and leaseback by an Irish incorporated special purpose vehicle of sixteen (16) Airbus A318 and Airbus A319 aircraft with a European airline;
- lenders, Aircraft Finance Insurance Consortium (AFIC) and Balthazar insurers and investors in respect of recent complex and novel non-payment insurance product transactions in the Irish market including the financing of two (2) 787-10 Boeing aircraft and one (1) Airbus A350 aircraft for an Asian airline;
- an Irish aircraft lessor on the acquisition of a large portfolio of Airbus and Boeing aircraft with leases attached.

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Adriano Antonietti advises domestic and foreign banking and financial institutions, as well as collective investment schemes and asset managers on a wide range of matters, in particular regulatory issues, private placements, the drafting of banking contracts and certain tax related matters (FATCA, CRS). He also defends banks and their clients in a number of disputes and deals with all aspects of corporate and commercial law. His main fields include financial products and services, including regulatory aspects, as well as corporate and commercial matters.

Adriano Antonietti speaks French, English, German, and Italian. He also has some fair knowledge of Russian. He is registered with the Geneva Bar Registry and admitted to practice in all Switzerland since 2008.

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Fabio Elsener is a Senior Associate in Schellenberg Wittmer's Banking & Finance group in Zurich. Fabio focuses on fintech and financial markets regulation, structured finance and capital markets transactions. He advises clients regarding the legal and regulatory implementation of blockchain and other fintech solutions as well as financial services, financial instruments and banking regulation. He furthermore advises regularly clients in financing and capital markets transactions. His clients include financial institutions, insurances and fintech companies.

Recent examples of Fabio's expertise in Banking & Finance matters include: advising on a crypto currency lending and borrowing agreement and the documentation of a crypto currency derivative master agreement; drafting of an issuance program for structured notes under the Swiss Financial Services Act; and advising on the new regulatory regime under the Swiss Financial Services act regarding debt capital market transactions with a focus on issuance programs.

Prior to joining Schellenberg Wittmer, Fabio Elsener gained experience in the Enforcement Division of the Swiss Financial Market Supervisory Authority (FINMA) and in the legal department of a fintech mortgage company. He furthermore completed a secondment as a legal counsel at a Swiss private bank.

Fabio Elsener has an LL.M. in European Law, from Maastricht University (2012) and a Master of Law from the University of Zurich (2013).

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Tarek Houdrouge is co-head of Schellenberg Wittmer's banking and finance group; partner in the corporate and commercial group in Geneva; and head of the firm's African regional desk.

Tarek's main areas of expertise are banking and finance, transactions, and corporate law. He advises banks and financial institutions on all regulatory matters; cross-border activities; lending transactions; distribution of financial products; fintech and cryptocurrency.

Tarek regularly assists clients in acquisitions and sales of regulated financial institutions (including acquisitions of strategic clients' banking portfolios), in financings and on all regulatory and contractual matters (e.g. review of bank account opening documentation for Swiss banks, outsourcing, banking secrecy, e-banking services, derivative transactions, implementation of new financial legislations, etc.). His expertise also includes advising fintech companies on all regulatory aspects of their projects related to cryptocurrencies and digital assets.

Tarek studied at the University of Lausanne Law School where he graduated with a law degree (2003) and with an LL.M. in European and international economic law (2004). After he was admitted to the Bar in Switzerland in 2006, he worked as an associate in the banking and corporate groups of a large business law firm in Geneva. He obtained a Master of Laws from Northwestern University School of Law (Chicago) in 2010 and was admitted to the New York State Bar in 2011.

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Grégoire Wuest is a partner and co-head of the banking and finance practice in Schellenberg Wittmer's Geneva office. He is also the head of the firm's Brazilian regional desk. His practice focuses on banking and finance, in particular in the field of multi-jurisdictional transactions involving non-standard and highly valuable assets securing borrowings, complex cross-border acquisitions, and other financial transactions – notably in relation to the shipping and business aviation industries. Grégoire also advises Swiss and foreign financial institutions on all regulatory matters, fintech and cryptocurrency, cross-border activities and on the implementation of new regulations.

Grégoire's expertise in banking includes: advising a major European banking group in a large banking restructuring involving an international cross-border merger; advising a major Swiss bank with a strong international presence in the acquisitions/disposals of strategic clients' banking portfolios; advising a major European banking group in financings worth hundreds of millions of euros secured by exotic assets; advising banks and financial services providers on the implementation of the new Financial Services Act; and advising several Swiss banks on the redrafting and amendment of its entire contractual documentation and all internal regulations and improving e-banking for clients.

Grégoire studied at the University of Geneva and was admitted to the Swiss Bar in 2009 (ranked second). Grégoire has been a partner at Schellenberg Wittmer since 2016.

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John R Sobolewski is a partner in Wachtell, Lipton, Rosen & Katz's Restructuring and Finance Department. His multidisciplinary practice includes a broad range of finance, securities, restructuring and related matters, including leveraged M&A, public and private capital markets transactions, complex syndicated bank financings, and in-court and out-of-court workouts. He has unique expertise representing companies in connection with rapid response efforts to debt default activism and net-short debt activism situations.

John has represented borrower clients in numerous major corporate financing transactions, including T-Mobile in connection with its acquisition of Sprint and its related \$38.0 billion of financing commitments and \$39.0 billion of consent solicitations; Intelsat in connection with over \$6.0 billion of issuances of high-yield, holdco, and convertible notes, as well as related bond tender offers and open market purchases; Lions Gate in its \$4.5 billion of bank and bond transactions in connection with its acquisition of Starz, and its subsequent repricing transactions and bond exchanges; Zoetis in its \$1.0 billion of bank financing for its acquisition of Abaxis; XPO Logistics in its €3.24 billion acquisition of Norbert Dentressangle S.A. and \$3 billion acquisition of Con-Way, and its subsequent refinancings and repricings; Office Depot in its \$750 million term loan facility to finance its acquisition of CompuCom; Publicis in its \$3.5 billion bridge and permanent financing in connection with its acquisition of Sapien; and Apollo in its \$1.0 billion buyout of Presidio, and Presidio's subsequent refinancing transaction and leveraged stock buyback.

John also frequently represents sellers in financing matters relating to major M&A transactions, including Celgene in its sale to Bristol-Myers Squibb, Monsanto in its sale to Bayer, Whole Foods in its sale to Amazon.com, Envision in its sale to KKR, and Convergys in its sale to Synnex.

John has represented key stakeholders in multiple major public and private debt default activism situations. He has additionally represented clients such as Goldman Sachs, GSO Capital Partners, and Bank of Nova Scotia in workout and restructuring situations.

John received a B.A. *summa cum laude* from Boston College in 2005. He completed a J.D. from Harvard Law School in 2008.

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Richard Kelly is a partner in the Finance and Capital Markets Department at Matheson. Richard's practice includes advising corporates, financial institutions, investment banks, asset managers and institutional investors on all aspects of capital markets transactions involving Irish elements, including corporate bond issuances, asset backed securitisations, CLOs, repackagings and segregated managed account structures.

Richard's practice also includes advising Irish corporates and investment funds and their counterparties in relation to derivatives transactions, repurchase and reverse-repurchase transactions, securities lending and prime brokerage and on the regulation of derivatives, the application of the Financial Collateral Directive and the operation of netting and set-off in Ireland. Richard has acted for many of the world's leading financial institutions in providing bespoke legal opinions on the enforceability of close-out netting provisions and collateral arrangements documented using industry standard or client-specific derivatives, repo and prime brokerage documentation.

Richard has been active in the Irish Debt Securities Association (IDSA) since its formation, regularly participating in sub-groups of the IDSA's legal committee to prepare submissions on proposed legislation. Richard also regularly represents Matheson at meetings of the EMIR working group at Irish Funds.

Recent highlights include:

- Advising a leading investment bank (as lead manager) in relation to the establishment of a EUR 10 billion and USD 10 billion MREL bond issuance programmes by an Irish pillar bank.
- Advising a US multi-national on the issuance of over EUR 3.4 billion of unsecured guaranteed corporate bonds by its Irish financing subsidiary.
- Acting as lead counsel in advising a US multi-national on the issuance and listing of a multi-billion dollar Irish law governed corporate bond issued by its Irish subsidiary.
- Advising a leading investment bank in relation to the first issuance of Sharia compliant bonds (Sukuk) under Irish tax legislation, with a value of over USD 150 million.
- Acting as lead counsel in relation to the establishment of an Irish law governed note issuance programme arranged by a US financial services company, and the issuance of secured notes thereunder linked to a portfolio of aircraft assets.
- Acting as lead counsel in relation to the issuance of approximately EUR 750 million in listed notes linked to subordinated NAMA bonds, in a transaction governed by Irish law.
- Acting as Irish counsel advising two leading banks on the establishment of the world's first multi-bank trade finance ABS securitisation programme, including the issue of USD 1 billion in Notes listed on the Irish Stock Exchange.
- Advising banks and borrowers on interest rate and currency hedging documentation linked to facility agreements.
- Drafting bespoke legal opinions on the enforceability under Irish law of security, netting and set-off provisions in prime brokerage agreements for a number of investment banks.

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## COMMERCIAL ARBITRATION

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## GERMANY

# Total Recall? – Witness Evidence in International Arbitration

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The 1990s movie *Total Recall* tells the story of a construction worker (played by Arnold Schwarzenegger) who finds himself incapable of distinguishing between his real experiences and those that are the result of his memory implants. The title of the movie *Total Recall* has somewhat of a double meaning. The first meaning being the total (full) recollection of events (or experiences, i.e. the implants) and the second meaning being the recall of a faulty product. The recent ICC Commission Report on “*The Accuracy of Fact Witness Memory in International Arbitration*” (ICC-Report) does go as far as to ask for a “total recall” of witness evidence in international arbitration. But it has extensively reviewed the distorting factors on witness evidence, outlined what can be done to preserve the accuracy of witness testimony and how to properly weigh the testimony considering these influences. This article summarises and comments on the main findings of the ICC Commission Report from a practitioner’s perspective and raises some red flags for in-house and external counsel when it comes to the preparation of witness testimony.

## Witness Testimony in International Arbitration

Witness evidence in international arbitration can be used to fill gaps in the paper trail, to support or explain existing documents or simply to “set the scene” (i.e. provide background). The overall objective being that the tribunal gains some added insight to the facts of the case relevant for its deliberations and ultimate decision. Today, international arbitrations rarely come without witness testimony.

In contrast, civil law jurisdictions tend to give greater value to documentary evidence. Moreover, in many civil law jurisdictions, statements of a party to the proceedings (including its directors, managers) are not treated, without preconditions, as evidence as such (e.g. sec. 445 German Code of Civil Procedure, CCP). On the other hand, submitting witness testimony of a party, its directors, employees etc. is not only admissible but common in international arbitration.

It is also good practice in international arbitration that counsel interviews witnesses and assists in the preparation of the written statements to provide clear and concise testimony. Counsel who are not prohibited from the coaching of witnesses for the hearing (e.g. in the US) often go to great length to prepare the witness for his or her day in court. English solicitors are, on the other hand, restricted to familiarising the witness with the arbitral process (familiarisation v. coaching)<sup>1</sup>. In civil law jurisdictions like Germany, the rules are less clear, save that counsel may not purposively ask the witness to mislead the tribunal or court (Criminal liability). The lack of professional conduct rules in civil law jurisdictions relating to the interactions with witnesses is not surprising given the preponderance of documentary evidence in civil procedure.

Considering the close interaction between counsel and witnesses in international arbitration and the possibility to submit witness statements of the parties to proceedings, witness evidence has in recent years been criticised as unreliable, polished by counsel and rarely relied upon by tribunals in their awards. Against this background, the ICC-Report sets out its finding and recommendations regarding the use of witness evidence in international arbitration.

## ICC Report – The Accuracy of Fact Witness Memory and International Arbitration

The ICC-Report specifically looks at unintentional distortions and inaccuracies as opposed to deliberate efforts to mislead. To begin with, the ICC report makes clear that although human memory is in invariably imperfect, it does not mean that it is not valuable or even at times vital to the arbitral process.

The main distorting factor identified by the report is principally the exposure of a witness to post event information (PEI). Such PEI can be anything from reviewing new documents or press reports to talking to colleagues, counsel or co-witnesses. The ICC report quotes existing psychological research which states that such “*misinformation doesn’t just alter details in our memory, it can add information to memory that was never there in the first place*” (ICC-Report, section 2.5). This is particularly critical in international arbitration as there is often more than one witness testifying on the same or overlapping events. Exchanges between witnesses can easily lead to “memory conformity” effects. Studies suggest, as referenced in the ICC Report, that exposure to PEI can even overwrite existing factual memory. Also, when recalling past events, these recollections can be heavily biased by the perspective taken by the witness after those events, for example, in his or her employment for claimant or respondent. This perspective is “encoded” in the recollections. These biased recollections can even be intensified by putting questions to the witness with qualifying descriptors – “Do you frequently eat chocolate”.

In order to determine whether these existing psychological findings (derived primarily from studies relating to criminal cases) equally apply in a commercial setting, the ICC Commission asked the psychologist Dr Kimberley Wade (University of Warwick) to conduct a witness memory experiment. The experiment showed that also in a commercial context, witness memory is as susceptible to similar distortions and influences as in the criminal context.

The report concludes, however, that simply reducing these distortions (i.e. interactions) with a witness may not be feasible, as these interactions are often necessary to discover the full facts of the case and efficiently prepare hearings. Besides the recollection of events, factual witness statements in international arbitration also serve the purpose of providing context, explain technical issues and or documentary evidence. The ICC Task Force therefore opted for differentiated recommendations in which it proposed various possible steps to “preserve witness memory” and “reduce distortions”. The recommendations are structured as follows:

**In-House Counsel**

In-house counsel are encouraged to establish procedures – within their department but also more generally within the company – for keeping contemporaneous written notes of events as they unfold. When it comes to an arbitration, in-house counsel should point out the importance of the witnesses' own recollection before bringing them into contact with external counsel. Witnesses should be interviewed one-by-one and not in a group. Setting-out a party line or trial strategy to the prospective witnesses should be avoided, discourage witnesses from discussing “endlessly” with other witnesses. The ICC-Report recommends preserving potential witness evidence early on, possibly even before it comes to a dispute, e.g. in complex construction projects.

**External Counsel***Interview*

Witness evidence should be collected as early as possible to avoid the loss of memory. At the outset of the witness interview, counsel should remind the witness that it is normal to have forgotten details and to differentiate between their own recollections and what they may have heard from others. It should also be made clear that whatever the witness says in the interview does not have any personal consequences.

During the interview, counsel should ask unbiased (and open) questions, that allow the witness to elaborate without any sense of direction. Counsel should avoid giving feedback to answers and if possible, avoid showing post event sources or documents. At the end of the interview, counsel should advise the witness not to discuss their testimony with co-witnesses or colleagues.

*Assessing Information Provided by the Witness*

Counsel should be mindful of the time that has lapsed between the actual events and time of the witness interview and test the accuracy of the statements by cross checking with other witnesses or documentary evidence. When assessing the information, preceding discussions of that witness with in-house counsel, co-witnesses or other colleagues should be considered (misinformation and memory conformity effect). The position of the witness and his or her responsibilities in the company should also be factored in (Stake in the evidence).

*Preparation of the Witness Statement*

It is recommended to provide written questions either before or after the interview to allow the witness to answer on their own terms. Giving the witness an opportunity to prepare their own drafts, if capable considering language and drafting skills. Numerous discussions and drafts/revisions of the witness statement should be avoided. When drafting or polishing the written statement, counsel should preserve the witnesses own “own voice”. The witness should be discouraged from reading other witness statements.

*Preparation for the Hearing*

Counsel should carefully consider in how far witness preparation is permitted or indeed prohibited under the applicable professional conduct rules or the rules independently agreed or set in procedural orders. The ICC report also refers to the guidelines described above for the witness interview when conducting witness preparation for the hearing.

*Identifying Distorting factors and Weighing Testimony*

The ICC-Report encourages all players to educate themselves to better understand the distorting factors on human memory, for example, such as the ‘misinformation effect’ or ‘memory conformity’. Moreover, especially external counsel should train to conduct cognitive interviews (e.g. reinstating the witness mentally in past events, encourage active participation etc.). Training and education are also crucial to reduce wrong perceptions of witness memory.

**Comment**

In practice, distorting effects can particularly arise when witnesses are interviewed in the presence of in-house counsel, superior managers or other witnesses. This can tempt the witness to try to fill gaps to seemingly “help” their company and employer by providing the best possible witness testimony. From a practitioner’s point of view, it is essential to point out that filling gaps (even unconsciously) often leads to inconsistencies in witness statements which are then brought to light in a thorough cross examination. Providing an honest testimony is the best assistance to external counsel and the in-house department. Ideally, witnesses can review and refer to their written contemporaneous notes, emails or memos to minimise distortions and allow counsel also to assess the veracity of the information provided. Caution should also be exercised when providing fact witnesses with the parties’ submissions or excerpts of those submissions. In practice, witnesses often want to know what their company is arguing in the case and get into the details. The exposure to this information should be kept to a minimum.

It is equally important to interview witnesses with an open mind and conscious of the potentially distorting factors. Witness interviews should be conducted by experienced attorneys and not “outsourced” to junior associates, who may be eager to obtain “advantageous statements”.

Providing written questions before the interview has proven helpful in practice allowing the witness to answer the question on their own terms. Especially in complex technical arbitrations it is not always possible, as recommended by the ICC-Report, to avoid showing the witness documents or indeed to liaise with co-witnesses. Overly polished written statements and overly prepared witnesses, where permitted, often harm the credibility of the witness. In practice it is important to convey to “keen witnesses” that they should only provide their recollections and not attempt to help their employer by filling gaps and reading up on past events.

The ICC-Report provides welcome guidance and encourages all stakeholders to educate themselves about distorting factors and witness memory more generally. Distorting factors harm the arbitral process and it is in everyone’s interest to preserve witness testimony and minimise distortions. The ICC-Report has also addressed common misperceptions about witness memory which nicely illustrate the need for education and training. I leave you with FN 24 of the ICC-Report:

“[...] research suggests that witnesses who include a high volume of peripheral detail in their memory reports are perceived as more credible than witnesses who provide few peripheral details (e.g. Wells, Leippe, 1981). [...] Of course, such trivial and peripheral detail in a witness’ testimony tells us little about how accurate their accounts really are. But this trivial information is persuasive, and we all have a tendency to think ‘people who recall trivial details have a really good memory’. Training would help all participants have a better appreciation of their own biases and perceptions with respect to a witness’ memory.” [Emphasis added]

1. Stricter standards apply for solicitors in criminal proceedings *R v Momodou* [2005] EWCA Crim 177, [2005] 1 WLR 3442, [2005] 2 Cr App R 6. Caution must nevertheless also be applied in civil proceedings, see *Ultraframe (UK) Ltd v Fielding* [2006] EWHC 1638 (Ch).

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Georg Scherpf leads the Arbitration practice in Germany and part of the firm's Global Arbitration Group, advising both private and state parties on complex arbitrations and cross-border litigations. He also sits as arbitrator.

His commercial arbitration work covers a broad range of legal issues and sectors including international trade (CISG), corporate disputes (joint venture and post M&A), energy (particularly wind, PV and CSP) as well as construction disputes. He has represented clients in ad hoc arbitrations seated in Germany, England, Switzerland, Austria, France, and Singapore and under various institutional rules (DIS, ICC, LCIA, AAA, SIAC and SCAI). Georg has a particular focus on disputes relating to investments and business transactions in the wider CIS region and the Western Balkans.

His public international law experience includes advising clients in relation to bilateral investment treaties (BITs) and multilateral investment treaties including the Energy Charter Treaty (ECT). He has acted for investors in several complex treaty cases (ICSID, UNCITRAL and ad hoc) relating to infrastructure and energy investments in Spain, Czech Republic, Albania, and Germany. Closely related to his investment arbitration work, albeit of commercial nature, is his disputes work in the field of political risk insurance and climate change.

Georg studied law at Humboldt University Berlin and King's College London, and practises as a German attorney (Rechtsanwalt) and a solicitor (England and Wales). Between 2013 and 2016 he was regional representative of the DIS40 and from 2016 to 2018 YIAG regional representative for Europe. Georg regularly publishes and speaks on international dispute resolution and arbitration.

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Julie Raneda is a partner in Schellenberg Wittmer's international arbitration practice in Singapore. She represents clients in international commercial, investment and sports arbitration matters.

Julie has been involved as counsel and arbitrator in complex arbitrations seated in civil and common law jurisdictions under different laws and various arbitration rules (in particular ICC, SIAC, SCAI, UNCITRAL, CAS, VIAC). Her main areas of expertise include construction and engineering, energy, pharmaceutical/life sciences, manufacturing and international sales. She also advises clients on international trade sanctions.

Examples of Julie's expertise in arbitration include representing an Asian state-owned company in ICC proceedings seated in Switzerland related to a dispute in the engineering and construction sector; representing a leading pharmaceutical company in a dispute arising from a manufacturing and supply agreement; representing an Asian company in a high-value, multi-party and multi-contract dispute; and representing a state in several investment arbitrations.

After completing a degree in international relations at the Graduate Institute Geneva, Julie graduated with a law degree from the University of Geneva. Julie Raneda joined Schellenberg Wittmer in 2008. She also practiced at a leading international law firm in London in 2014–2015.

Julie regularly speaks on topics related to arbitration. She is the chair of the ASA South East Asia chapter and vice chair of the IPBA Next Generation Committee. Julie is AIJA's National Representative in Singapore and a co-founder of the Women's Business Society established in Geneva in 2012.

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Katherine Bell is a Counsel in Schellenberg Wittmer's Dispute Resolution Group in Zurich. Her main areas of practice are domestic and international commercial litigation and arbitration. She specialises in the resolution of disputes arising out of complex construction, engineering and infrastructure projects across a variety of industries. She acts as counsel and arbitrator in arbitral proceedings, represents parties in litigation proceedings before Swiss courts, and assists clients in the drafting and negotiation of construction contracts.

Examples of Katherine's expertise in arbitration matters include: representing a multinational company in an ICC arbitration against a shipyard operator in a dispute over a contract regarding the delivery of technical equipment, representing a German party in ICC arbitration proceedings against an Eastern European party in a dispute under a series of supply and engineering contracts related to a metals processing plant; acting as sole arbitrator in an arbitration between an Austrian and a Turkish company in the field of hydropower technologies in a dispute related to the supply of electromechanical equipment.

Katherine regularly publishes in her areas of expertise. She is a member of several professional institutions, including ASA Below 40, YConstruction, ICC YAF, ArbitralWomen, YIAG and DIS40.

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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 desalination 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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Benjamin Gottlieb is a senior associate in Schellenberg Wittmer's international arbitration group in Zurich. His main areas of practice include international arbitration, as well as domestic and international commercial litigation. Benjamin advises and represents clients with a focus on international sales, licensing, distribution contracts, construction and engineering, and energy, as well as the pharmaceutical and the automotive industries. He also sits as an arbitrator.

Benjamin's recent experience in arbitration includes representing a contractor in ICC arbitration proceedings relating to the construction of a desalination plant; a seller of turbines for a geothermal plant in ICC arbitration proceedings; a seller of airplane maintenance facility equipment in a contractual dispute under the ICC Rules; and a broadcasting company in a dispute relating to broadcasting rights in a Swiss Rules proceeding.

Benjamin is an expert on the United Nations Convention for the International Sale of Goods (CISG) and co-editor of a commentary on the CISG. He is a member of the executive committee of AIA-Arbit40, the Italian arbitration association for practitioners below 40, and a lecturer at the University of Zurich for international commercial arbitration and the CISG and taught advocacy classes in Milan. He frequently writes and speaks on arbitration and international sales law, including over 30 case annotations on the Supreme Court's case law in arbitration matters.

Benjamin studied law at the Universities of Zurich and Milan. After completing his studies he was awarded the title of Arbitration Practitioner (ArbP) by the Swiss Arbitration Academy (2010) and obtained the Certificate of Advanced Studies (CAS) in arbitration at the Universities of Lucerne and Neuchâtel (2015).

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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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Dr Stefan Leimgruber is a partner in Schellenberg Wittmer's dispute resolution group in Zurich. His main areas of practice are domestic and international commercial arbitration and litigation. He has acted as counsel and arbitrator in international arbitrations, both ad hoc and institutional (including ICC, Swiss Rules, UNCITRAL, WIPO, CEPANI), in a wide range of commercial disputes, including disputes arising from international joint ventures, shareholder and share purchase agreements, sales, licensing and distribution agreements and construction contracts. Stefan also represents parties before Swiss courts with a particular focus on banking, post-M&A and corporate litigation, interim measures and enforcement of foreign judgements and awards.

Recent experience in arbitration matters includes: acting as chair and sole arbitrator in ICC, Swiss Rules and ad hoc arbitrations arising from post-M&A, shareholders and joint venture disputes; representing athletes and sports federations in arbitral proceedings before the Court of Arbitration for Sport (CAS) and before state courts; representing an international trading company in a dispute over a contract for the sale of steel (Swiss Rules arbitration).

Prior to joining Schellenberg Wittmer in 2007, Stefan worked at the Zurich District Court, first as a legal secretary and later as a judge, mainly dealing with debt enforcement, civil attachments, injunctions, and recognition and enforcement of foreign judgements. From 2010 to 2011, Stefan was a visiting scholar at the University of Sydney Law School, where he conducted extensive research in the fields of international arbitration and transnational litigation. He obtained a doctorate in law from the University of Lucerne in 2013 for his thesis on negative declaratory relief in international arbitration in Switzerland.

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Sebastiano Nessi is a counsel in Schellenberg Wittmer's Geneva office. Trained in both civil and common law, Sebastiano specialises in international arbitration.

Sebastiano's clients and cases have spanned most continents, including Europe, Asia, South America and Africa. He has handled arbitrations under the rules of the CEPANI, DIS, ICC, ICSID, LCIA, UNCITRAL, SCC, SCAI, SIAC and WIPO.

Sebastiano has represented states, state-owned entities and private companies in complex multi-jurisdictional disputes across a wide range of sectors with a particular focus on energy, commodities, pharmaceuticals, joint ventures, aerospace, sports and construction disputes. Sebastiano has also acted as counsel in several investment treaty cases, advised clients on the structuring of their investments, as well as states on the negotiation and drafting of trade and investment treaties. Sebastiano regularly sits as arbitrator.

Sebastiano Nessi has written and spoken widely on arbitration, as well as teaching commercial and investment arbitration at the University of Paris I, Panthéon-Sorbonne and Sciences Po Law School (2013–2017). He is also a visiting lecturer at the Swiss Arbitration Academy and the Ukrainian Arbitration Association's Arbitration School.

Sebastiano Nessi serves as the current Vice-chair of the Chartered Institute of Arbitrators' Young Members Group (CIArb YMG). He was also appointed ICC YAF Representative for Europe and Russia.

Sebastiano Nessi graduated from the University of Geneva in 2004 (summa cum laude) and was admitted to the bar in Switzerland in 2006. In 2009, he earned a Master of Laws (LL.M.) from Columbia Law School (New York). In 2015, he obtained the CAS in arbitration jointly offered by the Universities of Lucerne and Neuchâtel.

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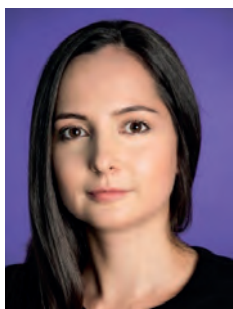
## COMPETITION AND ANTITRUST

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Hristina Dzhevlekova is a Counsel at Wolf Theiss with over eight years of experience in the areas of competition, regulatory and employment law. She is experienced senior lawyer with a demonstrated history of working on landmark cases in Bulgaria and CEE.

In her practice, Hristina advises on a range of EU and local competition matters, including in specific regulated sectors such as pharmaceuticals, telecommunication, automotive, etc. She focuses mainly on antitrust law, in particular in assessment of vertical and horizontal agreements, application of various distribution and agency systems, market policies applied by dominant undertakings, etc. Hristina was advising on the competition and regulatory aspects in the completion of the first National Roaming Agreement in Bulgaria and recently, represented one of the global manufacturers of innovative medicines in a challenging dominance case before the Bulgarian Competition Protection Commission. Her competition law expertise includes further a number of successfully completed merger clearance procedures in Bulgaria and North Macedonia.

Skilled at Employment Law and TUPE transfers, she also advises on sensitive employment cases (dismissal of top-tier personnel, mass-dismissals, negotiations with unions), structuring of employment relations upon commercial transactions, representation in legal disputes and internal compliance investigations.

Hristina is a qualified Bulgarian attorney-at-law. She has an honors Master of Law Degree from the Sofia University and obtained with Distinction a Diploma on English and EU Law from BLC (ass. Cambridge University). Hristina graduated with honors a PD on (Advanced) EU Competition Law from King's College and was the winner in the category "Rising Star Bulgaria" at the 2019 IFLR/Euromoney Legal Media Group Europe Rising Stars Awards.

Recognized by clients and peers, she is among the young generation of leading lawyers ranked by Chambers Europe and Legal 500 on the Bulgarian legal market.

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Wilbert Luna is a Senior Associate at the Mexico City office of White & Case.

There, he focuses his practice on antitrust and other regulatory matters, such as financial services regulation, data privacy, fintech, public procurement, consumer protection, and cybersecurity.

His versatile profile has helped high-profile clients to navigate the Mexican and Latin American regulatory landscape, ensuring their ventures and investments, as well as developing and strengthening their relationships with key sector regulators.

Wilbert's experience in both the public and private sectors before joining White & Case helped to nurture his current multifaceted legal practice. For example, he performed as member of the Mexican delegation to the Financial Action Task Force, the international standard-setter for anti-money laundering and counter-financing of terrorism matters, where he advised on policy matters that are still relevant to this day, such as the combat against the de-risking in the international financial systems and, particularly, in correspondent banking relationships.

Furthermore, he was a member of the Working Party 10 of the Organization for Economic Cooperation and Development, in Paris, where he joined the group of experts aiming to tackle cross border tax evasion while drafting and negotiating the "*Commentaries on the Model Competent Authority Agreement and the Common Reporting Standard*."

As a public officer for the Mexican Competition Commission, he did a secondment at the Presidency of the Administrative Council for Economic Defense, the Brazilian Antitrust Authority, then under Mr. Fernando de Magalhães Furlan. He also received a prize by the Mexican Ministry of Finance for his outstanding work as a public officer in such institution.

As an associate at White & Case, he has advised relevant clients on a pro bono basis, such as the International Federation of Red Cross and Red Crescent Societies, as well as the United Nations Environment Programme.

Wilbert Luna graduated from the Master of Science in Law and Finance (St. Cross College, Oxford), where he was a Chevening Scholar, as well as from the Master of Laws from Harvard University (thesis with honors: "*The procedure of reference to the OECD in terms of the Code of Liberalization of Capital Movements*"), as a Fulbright-García Robles Scholar.

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Dr Frank Bremer is a counsel in Schellenberg Wittmer's competition and antitrust law team in Zurich. With over 12 years' experience in Swiss and EU competition law, Frank has represented clients in complex antitrust investigations and merger notifications in a variety of areas such as construction tendering, sports broadcasting rights as well as postal and payment services.

Frank has high-profile competition law expertise across numerous Swiss competition investigations, as well as appeals to the higher courts of Switzerland. His fields of expertise include antitrust, merger control, leniency programmes, dawn raids, administrative law, compliance and internal investigations, distribution, procurement, energy, telecoms and postal regulation.

Examples of Frank's expertise are: advising Credit Suisse in an investigation by the Swiss Competition Commission; representing the international provider and reseller of network and data security products dacoso GmbH in an investigation by the Swiss Competition Commission involving a dawn raid and a successful leniency application; providing legal advice to the utilities companies ewl and EGZ in a competition investigation concerning access to the gas infrastructure and landmark regulatory issues of energy market liberalisation.

Frank Bremer's PhD on sanctions against natural persons in Swiss competition law was awarded the prestigious Walter Hug-Price for outstanding PhD dissertations. Frank has been a lecturer at the University of St Gallen since 2009 and is recognised repeatedly as a "future leader" in competition law by various leading legal publications.

Frank Bremer is inter alia a member of the Studienvereinigung Kartellrecht eV (Antitrust Law Association), the Zurich Bar Association (ZAV), the Swiss Bar Association (SAV) and the Munich Bar Association.

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Franco Castelli is counsel in Wachtell, Lipton, Rosen & Katz's Antitrust Department. He focuses on analysis of competition issues in US and cross-border mergers, acquisitions, and joint ventures. Mr Castelli has represented clients before the Federal Trade Commission, the US Department of Justice, the European Commission, as well as other antitrust regulatory agencies. He has worked on transactions involving a wide variety of industries, most recently representing companies in the high-tech, financial information and services, pharmaceutical, oil and gas, and chemical industries. Mr Castelli has served as a guest lecturer on antitrust law at the Law School of the University of Milan, Italy.

Among other matters, Mr Castelli is representing S&P Global in its pending \$44 billion acquisition of IHS Markit Ltd., and has represented Celgene in its \$98 billion acquisition by Bristol-Myers Squibb; Immunomedics in its \$21 billion acquisition by Gilead; Actelion in its \$30 billion sale to Johnson & Johnson and the spin-off of its drug discovery operations and early-stage clinical assets; Nasdaq in its acquisitions of Verafin, eVestment, and the International Securities Exchange; Square in its sale of Caviar to DoorDash; FMC Corporation in its acquisition of DuPont's Crop Protection business in exchange for FMC's Health and Nutrition business; Prysmian Group in its \$3 billion acquisition of General Cable; Marsh & McLennan Companies in its \$6.4 billion acquisition of Jardine Lloyd Thompson Group; Taubman in a \$9.8 billion merger and joint venture with Simon Property Group; Medtronic in its \$6.1 billion sale of a portion of its Patient Monitoring & Recovery business to Cardinal Health; Expedia in its acquisition of Orbitz, which was named by Global Competition Review as Merger Control Matter of 2015 in the Americas, and in its acquisition of HomeAway; Chicago Bridge & Iron in its \$6 billion merger of equals with McDermott International and in its acquisition of Shaw Group; and ProLogis in its \$12.6 billion acquisition of Liberty Property Trust.

Mr Castelli received a J.D. from the University of Milan in 2001 and an LL.M. from Columbia Law School in 2005, where he was a Harlan Fiske Stone Scholar. Mr Castelli was selected as a "Future Leader" by Who's Who Legal: Competition in 2017 and has been listed as a Rising Star in the 2015 and 2016 New York – Metro edition of Super Lawyers.

Mr Castelli is a member of the American Bar Association and the Bar Association of the City of New York.

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## CORPORATE / M&A / PRIVATE EQUITY

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Marcel Jakob is a Senior Associate in Schellenberg Wittmer's Mergers & Acquisitions Group in Zurich. He focuses on private domestic and cross-border M&A transactions, including asset deals and real estate transactions. Marcel's expertise encompasses transactions involving private equity, highly regulated businesses, such as financial institutions and life science companies, as well as technology and intellectual property driven business models.

Marcel regularly acts as counsel in financing rounds and exits by venture-capital-backed companies, representing both investors and entrepreneurs, and assists businesses in structuring employee incentive schemes. In addition, as a member of a specialised Swiss-wide working group, he contributes to the further development of the Swiss model documentation for venture capital investments.

Marcel holds a Master of Arts in Law from the University of St Gallen (HSG) and graduated in 2017 with a Master of Laws (LL.M.) from University of Chicago Law School.

Prior to joining Schellenberg Wittmer, Marcel Jakob gained experience in another business law firm, at a district court, in the tax department of an international advisory firm, in a startup company as well as in the legal department of a securities dealer in Zurich.

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Rosalia Martinez Rial is an M&A associate in White & Case's New York office and is focused primarily on merger and acquisition transactions.

Rosalia has extensive experience advising both public and private clients in connection with domestic and cross-border mergers and acquisitions.

Rosalia has significant experience in Latin America. Prior to joining White & Case, Rosalia was an associate at a leading Argentinian firm, where she practiced in a range of areas including mergers and acquisitions and antitrust matters covering a broad range of industries.

Rosalia is listed in "The Best Lawyers in America: Ones to Watch" for Mergers and Acquisitions by Best Lawyers (2021). She is also listed as a "Rising Star" for M&A in the United States by Euromoney (2021).

Rosalia received Abogada from Universidad Torcuato Di Tella; and Master of Laws from Fordham University School of Law

Recent matters include the representation of:

- CVC Capital Partners in numerous transactions, including (i) the acquisition of Vitech Systems Group, a leading provider of cloud-based financial administration solutions; (ii) its investment in a limited liability company formed to create, acquire and invest in enterprises in the sports, media, entertainment, technology and lifestyle industries; and (iii) its US\$1.425 billion acquisition of beauty and personal care products company PDC Brands from Yellow Wood Partners.
- Antin Infrastructure Partners in the US\$1.25 billion acquisition of Veolia Group's district energy assets in the United States, which comprises steam, hot and chilled water and electricity production plants, including cogeneration plants, and 13 networks in ten US cities.
- Macquarie Infrastructure Corporation in its sale of Bayonne Energy Center, a power generation facility in Bayonne, New Jersey.
- Harvest Partners in an investment in MRI Software, a leading provider of real estate management software solutions globally.

**WHITE & CASE**

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Jessie Baxter is counsel in White & Case's Global M&A practice group. Jessie focuses on the representation of corporate clients, private equity firms and their portfolio companies, in connection with domestic and global mergers, acquisitions and equity investments in a broad range of industries. She also provides general corporate and corporate governance advice.

Jessie's practice focuses on White & Case's Portfolio Company offering in New York, which provides ongoing support to financial sponsors and their portfolio companies on all aspects of their capital structures and other strategic matters.

Jessie was previously listed as a "Rising Star" for Private Equity by both IFLR and Euromoney in 2021.

Jessie received her BS from Boston College; and JD from the University of San Diego.

Recent matters include the representation of:

- Investcorp Inc. in its acquisition of Multivision, LLC, an IT solutions and training provider.
- Harvest Partners in its acquisition of Material Handling Services, the largest US provider of brand-independent fleet management and asset management services to retail, manufacturing, distribution, healthcare and hospitality companies.
- Anthem, Inc., one of the nation's largest health benefits companies, in its recently terminated US\$54.2 billion agreement to acquire Cigna Corporation, a combination that garnered front-page coverage for over 2 years and involved extensive coordination of a White & Case team of cross-practice lawyers in M&A, antitrust, litigation and bank finance.
- Regal Beloit Corporation (NYSE: RBC), a leading global manufacturer of electric motors, mechanical and electrical motion controls and power generation products, in its US\$1.44 billion acquisition of the Power Transmissions Solutions business of Emerson Electric Co. (NYSE: EMR).
- Hess Corporation in the US\$850 million disposition of its US East Coast and St. Lucia terminal network to Buckeye Partners; and in the sale of its business of providing fuel oil and gasoline to commercial and industrial end users to Sprague Operating Resources LLC.
- Hovensa L.L.C., a US Virgin Islands company and a joint venture formed by Hess Corp. and Petróleos de Venezuela, in the sale of substantially all of its petroleum terminalling assets pursuant to Sections 363 and 365 of the Bankruptcy Code, to a subsidiary of ArcLight Capital Partners, LLC.

**WHITE & CASE**

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Mr Cieply is a partner in White & Case's Mergers & Acquisitions practice group. Adam represents domestic and international buyers and sellers in private and public domestic, cross-border and global mergers and acquisitions, restructurings, joint ventures and private investments in a broad range of industries. Adam also has broad experience advising distressed companies and holders of distressed debt on corporate restructurings, equity raises and distressed M&A transactions, whether in-court or out-of-court.

Prior to joining White & Case, Adam practiced corporate law, focusing on public and private mergers and acquisitions and securities law, at a major Canadian law firm, working in both their Montreal, Canada and London, UK offices.

Adam is listed as a "Rising Star" for M&A in the United States by Euromoney (2020). He is also a recipient of a "40 under 40 Emerging Leaders Award" by The M&A Advisor (2019).

Adam received his BCL/LLB from McGill University.

Recent matters include the representation of:

- Hertz Global Holdings, Inc. in connection with the reorganization and recapitalization of the Company through a combination of the issuance of new debt and equity capital in the context of the Company's Chapter 11 proceedings. The transaction, sponsored by an investor group led by Knighthead Capital Management LLC, Certares Opportunities LLC and Apollo Capital Management, LP raised approximately US\$7.216 billion in cash proceeds with an implied total enterprise value of approximately US\$6.929 billion. Prior to that he advised Hertz on the US\$825 million sale of the vehicle leasing and fleet management solutions businesses operated by its wholly owned subsidiary, Donlen Corp., to an affiliate of Athene Holding Ltd., a leading financial services company, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code.
- Sempra Energy (NYSE: SRE) a Fortune 500 energy services holding company, in its US\$3.37 billion sale of a non-controlling 20 percent interest in its new energy infrastructure business platform, Sempra Infrastructure Partners, to KKR. This transaction values Sempra Infrastructure Partners at approximately US\$25.2 billion.
- Brookfield in (i) its 50/50 joint venture with Digital Realty focused on the development, ownership and operation of institutional quality data centers in India, (ii) its 50 percent partnership with Digital Realty Trust in the US\$1.8 billion acquisition of Ascenty, a leading data center provider in Brazil, (iii) its C\$4.3 billion acquisition of Enercare Inc., one of North America's largest home and commercial services companies, and (iv) its bid to acquire Inter Pipeline Ltd., a Canadian company publicly traded on the Toronto Stock Exchange, for an implied value of CAD\$13.5 billion.

**WHITE & CASE**



## UNITED STATES

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Erin Hanson is a partner in the Technology Transactions Practice, within White & Case's Global Mergers & Acquisitions Group and Global Intellectual Property Group. She is also a member of White & Case's Global Technology Industry Core Group.

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" Lawyer 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), IFLR (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.

**WHITE & CASE**

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Morgan is a partner in the Mergers & Acquisitions Group in the Firm's Houston office. Her practice consists of a wide range of both domestic and international corporate and transactional matters, including mergers and acquisitions, private equity investments, MLP dropdowns, joint ventures and company formations. She also advises clients on corporate governance matters and deal structures relating to acquisitions, divestitures and exit strategies. Morgan has experience representing both public and private companies, as well as conflicts committees, in a variety of industries, including oil and gas and other natural resources, solar energy, entertainment and financial services.

Morgan was named to The Deal's "Top Rising Stars" for Mergers & Acquisitions in 2021. She is listed as a "Rising Star" for Mergers & Acquisitions in the United States by Euromoney (2020).

Morgan received her BS from The Wharton School, University of Pennsylvania, cum laude; and JD from University of Harvard University.

Recent matters include the representation of:

- IFM Investors, in its US\$10.3 billion take private of Buckeye Partners, L.P. (NYSE: BPL), which owns and operates a diversified global network of pipeline assets and midstream logistics solutions.
- 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: VCVU), a SPAC.
- Macquarie Infrastructure Corporation in its US\$2.685 billion sale of International-Matex Tank Terminals, a bulk liquid terminals business, to Riverstone Holdings LLC.
- Korea Hydro & Nuclear Power Co., Ltd., Alpha Asset Management, Sprott Korea Investment, Hana Financial Investment and Korea Investment & Securities, as a consortium, in its US\$1.5 billion acquisition of a 49.9 percent stake in a wind farm portfolio from Brookfield Renewable and Invenery LLC.
- Azelis Americas, LLC in its acquisition of Vigon International, Inc., a leading US specialty distributor and manufacturer of ingredients for the flavors, fragrances and cosmetics market segments.
- Sixth Street Partners in a US\$402 million overriding royalty interest acquisition and joint venture with Antero Resources Corporation.

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Emily D Johnson is a partner in Wachtell, Lipton, Rosen & Katz's Restructuring and Finance Department. She represents borrowers and issuers in all financing aspects of complex corporate transactions, including mergers, acquisitions, divestitures and spin-offs. Her experience includes both the investment grade and leveraged markets, as well as bank financings and capital markets transactions. Emily also advises buyers, sellers, investors and creditors in distressed acquisitions, divestitures and restructurings.

Johnson received a B.A. with highest distinction from the University of North Carolina at Chapel Hill, where she was a Morehead Scholar and a member of Phi Beta Kappa. She completed her J.D. *magna cum laude* at Duke University School of Law, where she was an Allen G. Siegel Scholar and a member of the Order of the Coif. At Duke, she was awarded the Faculty Prize in Business Organizations and Finance and served as an articles editor for the *Duke Law Journal*.

Emily actively participates in the community and has a vibrant pro bono practice. She represents clients in family law and domestic violence-related immigration matters in partnership with Her Justice, an organization that provides free legal services to low-income women in New York City. She also serves as pro bono counsel for the Partnership Fund for New York City as it invests in for-profit and non-profit ventures that create jobs in underserved and diverse communities. Emily is a Lecturer in Law at Columbia Law School and regularly guest lectures at Duke University School of Law. She is a David Rockefeller Fellow for the Partnership for New York City and Leadership Counsel on Legal Diversity Fellow.

Emily is admitted to practice in the State of New York and the Southern District of New York. She was named a *New York Law Journal* 2019 Rising Star and also has been named a "Rising Star" in the New York metropolitan area by *Super Lawyers* each year from 2013 to 2019.

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Luke Laumann is a partner in White & Case's Global M&A practice. Luke represents domestic and international buyers and sellers in private and public domestic and cross-border mergers and acquisitions, joint ventures and private investments in a broad range of industries.

Luke has previously been recognized as a Rising Star in *Euromoney's Expert Guide* for Private Equity. He was also named to *The M&A Advisor's* list of "40 under 40 Emerging Leaders" for M&A.

Luke received his BA from American University of Paris, *summa cum laude*; and JD from University of Virginia School of Law.

Recent matters include the representation of:

- IFM Investors, in its US\$10.3 billion take private of Buckeye Partners, L.P. (NYSE: BPL), which owns and operates a diversified global network of pipeline assets and midstream logistics solutions.
- Macquarie Infrastructure Partners in the US\$2.9 billion acquisition of Cincinnati Bell (NYSE: CBB); and in the US\$1.2 billion sale of WCA Waste Corporation to GFL Environmental Inc.
- Quad-C Management, Inc. in its US\$1.2 billion sale of AIT Worldwide Logistics Holdings, Inc., a leading global provider of transportation and logistics solutions, to The Jordan Company.
- Harvest Partners in its sale of Neighborly, a holding company of 21 service brands focused on repairing, maintaining and enhancing consumers' homes and businesses via various online platforms, to KKR.
- PRO Unlimited Global Solutions Inc., a leader in contingent workforce management solutions and jointly held portfolio company of Harvest Partners and Investcorp International, Inc., in its sale to EQT.
- Toys "R" Us on WHP Global's significant minority investment in and strategic partnership with TRU Kids Parent LLC, parent company to the Toys "R" Us, Babies "R" Us, Geoffrey the Giraffe brands and more than 20 established related consumer toy and baby brands.
- Macquarie Infrastructure Corporation (NYSE: MIC) in the US\$514 million sale of the MIC Hawaii businesses, a regulated gas utility and unregulated propane distributor, to an affiliate of Argo Infrastructure Partners LP.

**WHITE & CASE**

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Frank Lupinacci is a partner in White & Case's Global M&A practice. Frank's practice focuses on the representation of domestic and non-US private equity funds and corporate clients in connection with domestic and global acquisitions, leveraged buyouts, dispositions, and equity investments in a broad range of industries, in both competitive processes and bilateral negotiations. He also provides general corporate and governance advice.

Frank has previously been recognized as a Rising Star in *Euromoney's Expert Guide* for M&A and Private Equity. He was also named to *The M&A Advisor's list* of "40 under 40 Emerging Leaders" for M&A.

Frank received his BS from Rutgers University, *cum laude*; and JD from Seton Hall University School of Law, *magna cum laude*.

Recent matters include the representation of:

- Saudi Aramco in its US\$69.1 billion acquisition of a 70% stake in Saudi Basic Industries Corporation (SABIC) from the Public Investment Fund (PIF).
- Fusion Acquisition Corp. (NYSE: FUSE), a SPAC, in its US\$2.2 billion business combination with MoneyLion Inc., America's leading digital financial platform.
- Quad-C Management, Inc. in its US\$1.2 billion sale of AIT Worldwide Logistics Holdings, Inc., a leading global provider of transportation and logistics solutions, to The Jordan Company.
- Roark Capital Group and its portfolio company Arby's Restaurant Group, in Arby's US\$2.9 billion acquisition of Buffalo Wild Wings, Inc. (NASDAQ: BWLD); and Roark Capital Group and Inspire Brands, Inc., in Inspire Brands' US\$2.3 billion acquisition of Sonic Corp. (NASDAQ: SONC), a drive-in fast food restaurant chain based in Oklahoma.
- Pernod Ricard SA, the world's second-largest distiller, in its acquisition of Rabbit Hole Spirits, LLC, a US premium bourbon brand; and in its acquisition of Firestone & Robertson Distilling, owner of the TX brand, a leading private equity backed whiskey brand headquartered in Fort Worth, Texas.
- Avon Rubber p.l.c. (LON: AVON), an innovative technology group, specializing in chemical, biological, radiological and nuclear and respiratory protection systems, on its strategic acquisition of 3M's ballistic-protection business in the US and the rights to the Ceradyne brand.
- PRO Unlimited, a Harvest Partners portfolio company, in its acquisition of PeopleTicker, a leading independent compensation software company.

**WHITE & CASE**

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Raaj S Narayan is a Partner at Wachtell Lipton in the Corporate Department. He focuses on mergers and acquisitions, capital markets transactions, takeover and shareholder activism defense and corporate governance matters. He represents public and private companies and private equity funds on a wide range of domestic and cross-border mergers, acquisitions, divestitures, spinoffs, investments, joint ventures, initial public offerings and other securities offerings. Based in Silicon Valley, he represents companies and investors across industries, with a substantial portion of his practice involving technology, fintech and financial services companies. Mr Narayan was named a Rising Star by *Law 360*, *Expert Guides* and *Euromoney*.

Mr Narayan received a B.A. *cum laude* from Yale University and a J.D. from Stanford Law School, where he was a member of the *Stanford Law Review* and the *Stanford Law & Policy Review*.

He is a member of the New York State Bar Association and the State Bar of California.

**WACHTELL, LIPTON, ROSEN & KATZ**

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John L. Robinson is a partner at Wachtell, Lipton, Rosen & Katz. He focuses on mergers and acquisitions, corporate governance and general corporate and securities matters. John's practice includes a wide range of matters, including cross-border and domestic acquisitions and divestitures, joint ventures, carve-outs and private equity transactions. He also advises companies on takeover defense and in responding to shareholder activism and proxy contests.

Mr Robinson received his A.B. in economics *summa cum laude* from Dartmouth College, where he was a Rufus Choate Scholar. He received his J.D. with distinction from Stanford Law School, where he was a senior editor of the *Stanford Law Review* and a member of the *Stanford Journal of Law, Business and Finance*.

Prior to law school, John worked as an associate consultant at the business strategy consulting firm L.E.K. Consulting LLP, in its Boston and Paris offices.

**WACHTELL, LIPTON, ROSEN & KATZ**

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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.

**WHITE & CASE**

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Neeta Sahadev is an M&A associate based in our Silicon Valley office. She represents domestic and international clients in a wide range of corporate transactions, including private, cross-border and global mergers and acquisitions, and private investments in a broad range of industries, with a particular focus on the technology industry.

Prior to joining White & Case, Neeta practiced as an M&A attorney in the Toronto office of a global law firm.

Neeta is listed as a “Rising Star” for M&A in the United States by Euromoney (2021).

Neeta received her BA from University of Toronto; and her JD, Osgoode Hall Law School.

Recent matters include the representation of:

- Intel Corporation in a series of acquisitions of technology companies.
- Flying Eagle Acquisition Corp. (NYSE: FEAC), a SPAC, in its US\$4.3 billion business combination with Skillz Inc., a mobile-gaming company based in California.
- Ascendant Digital Acquisition Corp. (NYSE: ACND), a SPAC, in its US\$3 billion business combination with Beacon Street Group, LLC, a leading multi-brand digital subscription service platform that provides premium financial research, software, education and tools for self-directed investors.
- dMY Technology Group, Inc. II (NYSE: DMYD), a SPAC, in its US\$1.68 billion business combination with UK-based Genius Sports Group.
- AutoLotto, Inc., a leading platform to play the lottery online, in its US\$526 million business combination with Trident Acquisitions Corp. (NASDAQ: TDACU, TDAC, TDACW), a SPAC.
- Advance Stores Company, Inc., a wholly owned subsidiary of Advance Auto Parts, Inc. in its acquisition of the DieHard brand from Transform Holdco LLC, a leading integrated retailer.
- Salesforce.org, the world’s leading CRM provider for social good organizations, in its acquisition of roundCorner, a company specializing in customer relationship management (CRM) solutions for nonprofits, foundations and other social impact sectors.

**WHITE & CASE**

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Suni Sreepada is a partner in the Mergers & Acquisitions Practice Group, and is resident in the New York office. Suni 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. She also provides general corporate and corporate governance advice.

Suni 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 (2020).

Suni received her JD from Fordham University School of Law.

Recent matters include the representation of:

- Calpine Corporation (NYSE: CPN) in its US\$17 billion sale to Energy Capital Partners and a consortium of investors including Access Industries and Canadian Pension Plan Investment Board.
- IFM Investors in its US\$10.3 billion acquisition of Buckeye Partners, L.P. (NYSE: BPL).
- A consortium composed of Brookfield Infrastructure and its institutional partners and GIC on the US\$8.4 billion acquisition of Genesee & Wyoming Inc. (NYSE:GWR).
- 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.
- LifePoint Health, Inc. (NASDAQ: LPNT) in its US\$5.6 billion merger with RCCH HealthCare Partners, which is owned by certain funds managed by affiliates of Apollo Global Management, LLC (NYSE: APO).
- 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.
- Roark Capital Group and its portfolio company Arby’s Restaurant Group, in Arby’s US\$2.9 billion acquisition of Buffalo Wild Wings, Inc. (NASDAQ: BWLD).
- Roark Capital Group and Inspire Brands, Inc., owner of the Arby’s and Buffalo Wild Wings restaurant chains, in Inspire Brands’ US\$2.3 billion acquisition of Sonic Corp. (NASDAQ: SONC).

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## ENVIRONMENT

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## INSURANCE AND REINSURANCE

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David Méheut is a partner in the Paris office of Clyde & Co focusing on insurance and reinsurance law as well as in international arbitration and mediation.

His experience in insurance law covers in particular coverage, monitoring and defence in matters of directors and officers liability, political risks, reinsurance, professional liability (lawyers, accountants, brokers, experts,...), art and species, engineering disputes, cyber-attacks, new technologies, data security and fraud. As such, he has acted for or advised on some of the major losses affecting the French market, including the Erika oil spillage, the Libyan revolution, reinsurance of 9/11, the Kerviel fraud, the LIBOR/EURIBOR/FOREX manipulations, the Madoff fraud. He has particular experience in handling cases in African countries operating under OHADA and CIMA rules, principally in relation to onshore and offshore oil and gas projects.

David has also developed an in-depth experience in international arbitration, more particularly ICC arbitration, in which he handles procedures both in French and in English. His commercial arbitration practice goes beyond his main sphere of activity and encompasses commercial litigation such as joint venture and distribution disputes. He generally advises insurers/reinsurers, professionals, financial institutions, industrial groups and energy companies.

He was admitted to the Paris Bar (CAPA) in 2004 after obtaining an LLB in French and English law from King's College London and La Sorbonne, and a Master of Laws in EU law from the University of Paris II Panthéon-Assas. His command of English and the legal concepts of civil and common law allows him to be particularly efficient in handling cases where both systems are involved.

**CLYDE & CO**

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## INVESTMENT FUNDS

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## IRELAND



Catriona is a partner in the Asset Management Department at Matheson. She practices 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.

Catriona has extensive experience advising a wide range of domestic and international clients on the structuring, establishment, marketing and sale of both UCITS and alternative investment funds in Ireland across the full range of investment strategies and asset classes.

Catriona has completed secondments with two of the world's largest asset managers in both Dublin and London. She was based in the Matheson New York office for six months in 2018 / 2019 where she was a key local resource for our US East Coast clients. Catriona is a member of the Irish Funds Events Working Group. She is also sits on the Dublin Chapter leadership committee for global industry group, Women in ETFs and was responsible for running its EMEA mentoring scheme during 2018 / 2019. Catriona has lectured at the Summer Law School on Corporate and Finance Law with the European Law Students Association (ELSA) at Trinity College Dublin.

Catriona is also a member of the firm's Mindful Business Charter committee.

Catriona's experience includes advising on:

- The establishment of alternative investor funds, including multi-jurisdiction master-feeder structures, funds of funds, private equity funds, loan origination funds and credit funds.
- The establishment of UCITS, ranging from plain vanilla long-only equity funds, bond funds, multi-asset funds, UCITS focused on China A share exposure through to complex and alternative UCITS strategies.
- The implementation of the Sustainable Finance Disclosure Regulations and Taxonomy Regulation and related ESG matters in investment funds.
- Irish Shariah investment funds.
- The establishment of major ETF platforms, including smart beta and active ETFs.
- The cross-border mergers of Irish and Luxembourg UCITS.
- Obtaining regulatory approval for non-EU domiciled investment managers to act for Irish funds.
- Engagement with the Central Bank on thematic inspection reviews.
- New management company and "SuperManCo" authorisations in Ireland.

**Matheson**

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Louis Burrus is a Partner in Schellenberg Wittmer's Geneva office, where he co-heads the Dispute Resolution Group. He specialises in domestic and international commercial litigation, in particular in banking and financial disputes. He has extensive experience in conducting cross-border corporate internal investigations, including white-collar matters, and regularly represents companies and individuals before Swiss and foreign authorities. Louis is known for his strong expertise in enforcing foreign decisions and obtaining freezing injunctions and interim reliefs.

Louis also conducts and leads investigations in various other fields such as sports and global commodity trading in regards to cases involving bribery and corruption, sanctions violations or money laundering.

Louis's expertise in litigation includes: acting as lead counsel to an international private banking group on all litigation aspects related to an acquisition of another large bank; representation of a large transport company before the Swiss courts in the context of several court litigations initiated by a former shareholder and assistance to a large international bank in the context of a large on-going litigation before the courts of the Southern District of New York (SDNY).

Louis has a strong and unique expertise and understanding of the use of technology in litigation matters (in particular e-discovery, analytics tools, predictive coding, etc.) which is a huge added value to many of his banking litigation and investigation cases.

Louis has been a partner at Schellenberg Wittmer since 2016. In 2014-2015, he worked in the global White-Collar Crime & Corporate Investigations practice of elite firm Quinn Emanuel Urquhart & Sullivan, LLP in London.

Louis is a board advisory member of the Swiss LegalTech Association. Since 2019 Louis also serves as co-chair of the Diversity & Inclusion commission of the Geneva Bar Association.

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Beatrix Metelski advises and represents national and international clients in various fields of intellectual property law with a special focus on patent law. Her practice focuses on strategic advice and representation in complex national and cross-border patent infringement proceedings. Beatrix’ work covers various technical fields including telecommunications and information technology, electronics, mechanical engineering, medical devices and consumer goods. In addition, she has extensive knowledge in the field of copyright law.

Beatrix studied law at the University of Osnabrück with a focus on intellectual property law. Following her graduation, she worked as a research fellow at the University of Osnabrück’s Institute for Commercial and Business Law (department of Professor Dr. Hans-Jürgen Ahrens) and deepened her knowledge in the IP field. During this time she earned her Ph.D. with a thesis regarding copyright and the principle of exhaustion of multimedia works.

Throughout her legal clerkship in the district of the Higher Regional Court Düsseldorf she further focused on IP law and especially patent law, working for an international law firm in Düsseldorf.

Beatrix is visiting lecturer for copyright law at the faculty of law of the University of Osnabrück.



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Mirko Weinert (admitted to practice in 2007) specializes in national and multi-national patent litigation and trade secret litigation. The range of his activities covers infringement proceedings, nullity proceedings, enforcement proceedings and subsequent damages proceedings. He has gained extensive experience in all matters relating to intellectual property rights with a technical background, as well as other areas of intellectual property law. Clients particularly entrust Mirko with the court representation in the technical areas of telecommunications, information technology, pharmaceuticals, medical devices and mechanics. Developing and negotiating technology transfer agreements forms a further focus of his work. In addition, the spectrum of Mirko’s advisory expertise encompasses the field of IP and trade secret compliance.

Before becoming an attorney, Mirko worked as a research fellow at the Johann Wolfgang Goethe University in Frankfurt am Main (Prof. Dr. Zekoll, LL.M.) where he extended his expertise in procedural law and earned his PhD in 2006.

Mirko is visiting lecturer for patent law at the law faculty of the Johann Wolfgang Goethe University Frankfurt am Main and visiting lecturer for the law on license contracts at the Heinrich-Heine University Düsseldorf. In addition, he also speaks at conferences on patent law and co-authored a handbook on license contracts.



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## PRODUCT LIABILITY

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Feature for:

France, by Sylvie Gallage-Alwis of Signature Litigation

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FRANCE

# The daily legal minefield manufacturers have to face

**Sylvie Gallage-Alwis**  
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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.

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

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



**FRANCE**

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 sub-contractors, 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 envi-

ronmental 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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Christian Eichenberger is a partner in the real estate team. He focuses on real estate transactions, real estate development and real estate dispute resolution. He has acted in major transactions concerning the purchase and sale of real estate portfolios (with transaction values of more than 240 million Swiss francs) and was involved in many real estate development projects (the biggest project exceeding a value of 1 billion Swiss francs). In addition to his real estate transaction and real estate development experience, Christian Eichenberger also has extensive experience in real estate dispute resolution with particular expertise in the fields of construction law, planning and zoning law and landlord tenant law. He represents clients in both arbitration proceedings and before Swiss state courts.

Christian Eichenberger studied law at the University of Freiburg i.Ue. (lic. iur., 2001) and the University of Hawai'i at Manōa, William S. Richardson School of Law (LL.M., 2009) and he received a doctorate (PhD; on Swiss notarial laws) from the University of Berne (Dr. iur., 2008, Summa cum laude, Prof. Walther Hug Prize). In 2012 he earned a Master of Advanced Studies in Real Estate at the University of Zurich.

Christian Eichenberger clerked at the Administrative Court of the canton of Zug (2003), worked as an attorney at law and civil-law notary public with two law firms in Zug/Zurich (2004 – 2017) and did a secondment at a global construction supply company (2012). He regularly publishes in his field of expertise and he lectures and teaches at the University of Zurich (Center for Urban and Real Estate Management) as well as at the SVIT Swiss Real Estate School.

Christian Eichenberger speaks German and English. He is registered with the Zurich Bar Registry and qualified as civil-law notary public of the canton of Zug. He is a Professional Member of the Royal Institution of Chartered Surveyors (MRICS) and Certified Specialist SBA Construction and Real Estate Law.

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John R Sobolewski is a partner in Wachtell, Lipton, Rosen & Katz's Restructuring and Finance Department. His multidisciplinary practice includes a broad range of finance, securities, restructuring and related matters, including leveraged M&A, public and private capital markets transactions, complex syndicated bank financings, and in-court and out-of-court workouts. He has unique expertise representing companies in connection with rapid response efforts to debt default activism and net-short debt activism situations.

John has represented borrower clients in numerous major corporate financing transactions, including T-Mobile in connection with its acquisition of Sprint and its related \$38.0 billion of financing commitments and \$39.0 billion of consent solicitations; Intelsat in connection with over \$6.0 billion of issuances of high-yield, holdco, and convertible notes, as well as related bond tender offers and open market purchases; Lions Gate in its \$4.5 billion of bank and bond transactions in connection with its acquisition of Starz, and its subsequent repricing transactions and bond exchanges; Zoetis in its \$1.0 billion of bank financing for its acquisition of Abaxis; XPO Logistics in its €3.24 billion acquisition of Norbert Dentressangle S.A. and \$3 billion acquisition of Con-Way, and its subsequent refinancings and repricings; Office Depot in its \$750 million term loan facility to finance its acquisition of CompuCom; Publicis in its \$3.5 billion bridge and permanent financing in connection with its acquisition of Sapien; and Apollo in its \$1.0 billion buyout of Presidio, and Presidio's subsequent refinancing transaction and leveraged stock buyback.

John also frequently represents sellers in financing matters relating to major M&A transactions, including Celgene in its sale to Bristol-Myers Squibb, Monsanto in its sale to Bayer, Whole Foods in its sale to Amazon.com, Envision in its sale to KKR, and Convergys in its sale to Synnex.

John has represented key stakeholders in multiple major public and private debt default activism situations. He has additionally represented clients such as Goldman Sachs, GSO Capital Partners, and Bank of Nova Scotia in workout and restructuring situations.

John received a B.A. *summa cum laude* from Boston College in 2005. He completed a J.D. from Harvard Law School in 2008.

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Chen Zhida, Associate Director, Helmsman LLC specialises in international trade, trade finance, “dry” shipping work (including charterparty and bill of lading disputes). His work spans across the entire spectrum of the trading lifecycle, including contract formation and termination, payment and security, storage and shipping as well as sanctions and regulatory matters.

Having spent his formative years as a Justices’ Law Clerk in the Singapore courts, Zhida is no stranger to the Singapore courts. As counsel, he not only regularly appears in the Singapore courts, but also in international arbitrations. He specialises in complex trade and shipping litigation and arbitration, which are often multi-jurisdictional, multi-party disputes or disputes involving novel issues of law.

Graduated with a LL.B. (First Class Honours) from National University of Singapore with various academic awards and a LL.M. from New York University, Zhida is currently one of the youngest adjunct assistant professors at Faculty of Law, National University of Singapore. He is currently teaching International Legal Process (in Semester 1, 2021) and International Commodity Trading Law Clinic (in Semester 2, 2021).

#### Work Highlights:

- Acted in a limitation action in Singapore which dealt with novel issues of interest and costs in limitation proceedings (see *AS Fortuna Opco BV and another v Sea Consortium Pte Ltd and others* [2020] SGHC 72) as well as the first of its kind application to provisionally set aside of a portion of the limitation fund for foreign claims pursuant to Article 12 of the Limitation of Liability for Maritime Claims, 1976;
- Acted for shipowners in a charterparty dispute and successfully obtaining *Mareva* and *Chabra* injunctions from the Singapore courts in aid of arbitration;
- Acted for Toyota Tsusho Corporation (one of the major trade creditors) in the insolvency of the Brightoil group, including the arrest and judicial sale of the six bunker barges in Singapore and the moratorium and proposed scheme of arrangement by Brightoil;
- Acted as lead counsel for a Swiss commodities trader against a Chinese refinery in an arbitration involving 3rd party email fraud; and
- Acted for a Chinese company in relation to a claim by an international bank to recover monies paid under a letter of credit.



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Caroline is a partner in the Tax Department of Matheson. Caroline advises on cross border tax planning, transfer pricing, tax controversy matters and inward investment projects. Caroline also has extensive experience in international corporate restructurings as well as mergers and acquisitions on an international and national level.

Caroline is co-author of the Irish Chapter of the IBFD's publication on Transfer Pricing. Caroline was previously seconded to the tax department of a multinational company.

Caroline is a Chartered Tax Advisor and a member of the Law Society of Ireland.

Caroline's experience includes:

- Advising numerous international corporations on their establishment in Ireland.
- Advising on substantial integration projects pre and post mergers and acquisitions for various international clients.
- Providing ongoing strategic advice for a range of international corporations.
- Advising clients on the application of the Irish transfer pricing regime including mutual agreement procedures and correlative relief claims.
- Advising clients on contentious tax matters with the Irish Revenue Commissioners and foreign tax authorities.

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Mathis Breuer has been working as an attorney since 2013 and joined HOYNG ROKH MONEGIER in 2015. He represents national and international clients in all areas of trademarks, unfair competition including drug advertising law, design and copyright. Mathis has extensive litigation experience and has represented clients from a wide range of sectors, including consumer goods, cosmetics, life science and electronics, in both main and preliminary proceedings at all relevant German IP courts. He also advises his clients with regard to product launches, advertising measures and IP-related contracts.

Building on his regular representation of Korean clients, Mathis spent a secondment with a renowned IP law firm in Seoul in the summer of 2019.

He publishes regularly on different subjects of intellectual property law.

Mathis studied law at the University of Düsseldorf where he began specializing in intellectual property law.

Following his studies, he continued his specialization working for an international law firm with a strong focus on intellectual property law. During his legal clerkship he worked inter alia for a specialist district court division for intellectual property matters, a leading international law firm and the operating subsidiary of a large sports federation. After having completed his second State Exam, Mathis intensified his knowledge of intellectual property law working for another leading international law firm.



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Christina Tenbrock, bar-certified specialist for intellectual property law, advises and represents clients in various fields of intellectual property law, in particular in trademark law, design law and unfair competition law, including the law on advertising of pharmaceutical and medicinal products.

She has extensive litigation experience in national and crossborder infringement proceedings and regularly conducts opposition and nullity proceedings before the German Patent and Trademark Office (DPMA) as well as the EUIPO.

Outside of court, she advises clients on marketing campaigns and product launches, on border seizure proceedings and on various contractual issues. During her legal clerkship (Referendariat) with the Higher Regional Court Düsseldorf, she worked for various international law firms specializing in intellectual property law, for a global pharmaceutical company and at the German Embassy in London. After her second state examination, she continued her specialization in IP with a master's degree (LL.M.) at the Heinrich Heine University in Düsseldorf.

She deepened her expertise in pharmaceutical law in 2014/2015 through a secondment at the German subsidiary of a globally leading, research-oriented British pharmaceutical group.





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## TRANSFER PRICING

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Feature for:

Indonesia, by Emanuel Dewo Adi Winedhar of TaxPrime 113



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Alexis Bernard is an attorney-at-law working within the CMS Francis Lefebvre Avocats' international tax and transfer pricing department. Relying on his double educational background including both law and economics, Alexis has acquired a solid experience within a broad scope of industries and in all kind of transfer pricing projects for French and foreign multinationals.

Specifically, since 2008 Alexis has been providing global transfer pricing advices on matters related to transfer pricing structuring / planning (e.g. value chain reorganization), risk assessment reviews, documentation / compliance work, and dispute resolution / tax audit management (including the management of mutual agreement procedures).

Alexis has also developed reliable skills on a full spectrum of international transactions including the purchase and sale of tangible products, the development, licensing or sale of intangible assets and intellectual property, the provision of management services, the provision of contract services (manufacturing, R&D, technical and others), cost contribution and/or sharing arrangements, and financial transactions.

In addition, Alexis has recently co-written several articles dealing with the impact of the Covid-19 crisis on transfer prices as well as on financial intragroup transactions considering the recent evolution of the associated French environment.

Before joining CMS Francis Lefebvre Avocats in 2019, Alexis has worked as an international transfer pricing consultant at Deloitte France Law Firm (Taj) during nearly seven years (including a six-month secondment within the transfer pricing team of Deloitte in London) and contributed to the creation and development of the transfer pricing practice at Bird & Bird France and BDO Avocats.

Alexis is graduated from University Paris IX Dauphine in Law and Management and received a master's degree in Corporate tax strategy. He is also a French registered lawyer.

Alexis is fluent in French and English.

**About CMS Francis Lefebvre Avocats**

CMS Francis Lefebvre Avocats is one of France's top business law firms. It belongs to CMS international network which is located in more than 73 offices in 41 countries across the world, CMS employs over 4,500 lawyers of which 1000 are partners.

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Serge is a manager at Fidal in Paris. He joined the transfer pricing department of the firm in late 2019, after working 5 years within the international tax team of CMS Francis Lefebvre Avocats.

Serge focuses mostly on transfer pricing issues, such as designing and implementing new transfer pricing policies or advising groups on updating or amending their existing policies. He also regularly advises groups on transfer pricing compliance issues, including the preparation of their transfer pricing documentations (Master File / Local File), economic analyses (including benchmarking studies), or other annual obligations such as the yearly transfer pricing declaration or the Country-by-Country Report. Serge is equally involved in assisting clients with their tax audits, whether *via* settlements or court litigation. He also has experience with Advanced Pricing Agreements and post-audit procedures such as MAPs.

Serge has worked on several high-profile litigations cases which were ruled on by the French Administrative Supreme Court, in particular on the subject of the deduction of interests from intragroup loans by French entities.

In addition to his focus on transfer pricing, Serge also regularly assists clients in other specific issues relating to international tax, such as identifying potential Permanent Establishments and how to deal with such situations, or application of French CFC rules.

Serge regularly publishes articles on these subjects and is listed as a contributor to the 2017 and 2018 editions of Duff & Phelps' *Guide to International Transfer Pricing: Law, Tax Planning and Compliance Strategies*. He is also involved in transfer pricing centric training sessions, both *via* certified training organisms or directly with companies.

Serge holds a Master in Business Law from Lille University (2013) as well as an LL.M. in Law and Tax Management from EDHEC Business School (2013) and is an attorney-at-law at the Hauts-de-Seine Bar in France.

A French native, Serge lived 9 years in Canada and the US and is equally fluent in French and English.

**INDONESIA**

# Arm's Length Analysis on the Commodity Transactions: An Indonesian Perspective

**Emanuel Dewo Adi Winedhar**  
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Tax authorities of commodity-exporting countries including Indonesia have major transfer pricing challenges in ensuring the arm's length nature of the commodity transactions. During recent years, many transfer pricing disputes on commodity transactions in Indonesia are increasing due to: a) taxpayer has not sufficiently prepared documentation to prove the consistency of the pricing policy set and actual conduct of the arrangements; b) the application of the profit method to the commodity transaction may not serve sufficient approximation of the arm's length nature of the transactions; c) the interposing of intermediary entity having limited function located in lower tax rate jurisdiction which attracts suspicion of possibility of the Base Erosion and Profit Shifting ("BEPS").

## **Directorate General of Taxes (DGT) approach on the commodity transfer pricing assessment**

Indonesia has enacted several transfer pricing regulations including the Minister of Finance Regulations number PMK-213/PMK.03/2016 ("MoF 213/2016") related to Transfer Pricing Documentations, Director General of Tax Regulation number PER-32/PJ/2011 on the application of arm's length principle, and Director General of Tax Regulation number PER-22/PJ/2013 which covers the transfer pricing audit procedures. The aforementioned regulations do not explicitly require taxpayers to assess commodity transactions by applying a predetermined method. Rather, the selection of the method is based on 'the most appropriate method' analysis. Recently, the Minister of Finance also issued regulation number PMK-22/PMK.03/2020 regarding the procedures for Advance Pricing Agreement which explicitly clarifies that the Comparable Uncontrolled Price ("CUP") method is the most appropriate method for commodity transactions.

Under the MoF 213/2016, the three-tiered transfer pricing documentation i.e., Master File, Local File, and Country-by-Country Report is introduced. The regulation which adopts OECD BEPS Action 13, significantly updates the transfer pricing compliance requirement in Indonesia. Unlike previous regulations which adopt the arm's length outcome-testing approach, MoF 213/2016 requires taxpayers to implement the ex-ante approach. The approach expects taxpayers to assess the arm's length nature of the pricing policy of their related party transaction based on data and information available at the time the transaction is conducted. Should taxpayer entered into commodity transactions, the regulation also obliges taxpayers to provide specific information related to the commodity transactions in their Local File including the following:



- a) Transaction scheme and its explanation;
- b) Pricing policy applied in the last 5 (five) years;
- c) Detailed information on the commodity transactions by the minimum of:
  - Number and date of invoice;
  - The name and jurisdiction of the counterparty;
  - Commodity's specification/quality;
  - Quantity and unit price; and
  - Dates of delivery/shipment.

Tax officials prefer taxpayers to apply the CUP method, instead of the profit methods, to prove the arm's length nature of commodity transactions. The profit method may not provide a direct measure for assessing the commodity transactions. Further, due to the lack of the available appropriate comparable within databases, the profit level methods may cause inaccurate approximation of the profit for the tested party.

Arguably, the guidance on the application of CUP method for commodity transactions in the domestic regulation is not sufficiently exhaustive. Therefore, tax practitioners and tax officials rely on guidance provided by the OECD Transfer Pricing Guidelines 2017 ("TPG") including as follows:

- a) Quoted commodity price generally serves as a reliable reference price for determining the price in transactions between affiliates. In certain circumstances, taxpayers should prove that the market reference price is, indeed, extensively utilized in certain commodity industries;

## INDONESIA

- b) For the CUP method to be reliably applied to commodity transactions, the economic characteristics of the commodity products in both affiliated transactions and independent transactions need to be comparable. Therefore, taxpayers should present that the main characteristic of commodity products transacted between affiliates, among others: the physical features; quality of the commodity; and the contractual terms of the controlled transaction; such as volumes traded; the period of the arrangements; the time/date; and terms of delivery; transportation; insurance; and the terms of the foreign currency should be comparable to the commodity settled between independent parties;
- c) Taxpayers should provide reliable evidence and supporting documents related to the pricing policies including the proposal and acceptances of the contractual terms agreed between the parties. Consistency between the contractual terms and the actual conducts should also be demonstrated especially at the time of the tax audit performed. Tax officials may apply different pricing dates i.e., price at the time of the shipment date, should there be inconsistencies between the pricing date in the contract and the actual conduct taken by the parties.

#### Enhancing the arm's length analysis on commodity transactions

The aforementioned application of CUP method for the commodity transaction can be strengthened by the following:

- a) The use of functional and value chain analysis to accurately delineate commodity transaction
- Functional analysis is one of the foundations in a conduct of arm's length analysis. The analysis basically seeks to map the economic contribution and profitability of the parties involved in the transaction by identifying the functions performed, the assets used, and the risks assumed by each party. A complete understanding over the value chain helps in effective delineation of affiliated transactions which can be used to assess whether the transfer pricing outcomes already align with value creation. The analysis can identify whether appropriate remuneration is already allocated and aligned to the commercial value contribution of each entity in the value chain.

- b) Transaction-by-transaction approach
- Paragraph 3.9 of TPG elucidates that depending on facts and circumstances, the transaction-by-transaction approach may provide precise approximation of the arm's length condition of the affiliated transaction. The approach can be adopted by examining the commodity transaction on an invoice-by-invoice basis and segregating the various related party transactions for the transfer pricing analysis. By segregating the transfer pricing analysis, taxpayers can identify specific transactions which are not consistent with the arm's length principle. Further, the approach can assist tax officials in mapping the transfer pricing risk which need to be prioritized.
- c) Application of conjunctive analysis on commodity transactions
- Although the CUP method is generally the most appropriate method to test commodities in transactions between affiliated parties,

there are situations in which the use of more than one method can be applied simultaneously to increase the reliability of the arm's length test results, or in the case of CUP method, the application does not generate conclusive result. The conjunctive method is important to apply especially in 'triangular' transactions where the overseas affiliates performed their functions as procurement center, trader/marketing hub, etc. In this case, profit methods i.e., the Cost Plus Method or Resale Price Method as a conjunctive method can be applied to ensure that the remuneration received by overseas affiliates is already aligned with their contribution for the value creation.

"THE PROFIT METHOD  
MAY NOT PROVIDE A  
DIRECT MEASURE FOR  
ASSESSING THE  
COMMODITY  
TRANSACTIONS"

#### Conclusion

The CUP method is the most direct and reliable method in assessing the arm's length nature of commodity transactions. Sufficient documentation related to pricing determination is crucial to be presented during tax assessment. Although, in applying the CUP method the main comparability factor is the characteristics of products and services, the functional and the value chain analysis still play an important role for accurately delineating the actual transactions between affiliates. In addition, to mitigate potential disputes due to inconclusive CUP method application, usage of conjunctive method is a valuable option to be considered for commodity transactions between affiliated parties.



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Dewo is the youngest partner of TaxPrime who had been formerly entitled to a director position in the Transfer Pricing and International Tax Division of TaxPrime. He started his career at the Indonesia Directorate General of Taxes (DGT) for more than 7 years with the latest assignment as International Tax Cooperation Analyst. Currently, he has more than 10 years of experience in domestic and international taxation and holding the registered legal counsel permit at the Indonesian Tax Court.

He completed his master's degree (LL.M) majoring in International Tax Law from the International Tax Centre, Leiden University. Apart from that, he attended several professional courses such as International Tax Planning Short Course in ITC, Leiden, The Netherlands; Transfer Pricing Acceleration Class held by the Australian-Indonesia Partnership for Economic Governance Program (AIPEG); and Audit, Transfer Pricing, and Tax Treaties Courses held by the OECD in South Korea and Jakarta, Indonesia.

Dewo specialized in Transfer Pricing compliance, business restructuring and international taxation issues. He has assisted clients in formulating strategies for the tax audit defences, resolving tax objection, appeal and tax reconsideration for transfer pricing cases including commodities transactions, royalties, intragroup services, etc. Dewo also focuses on assisting clients in the APA and MAP.

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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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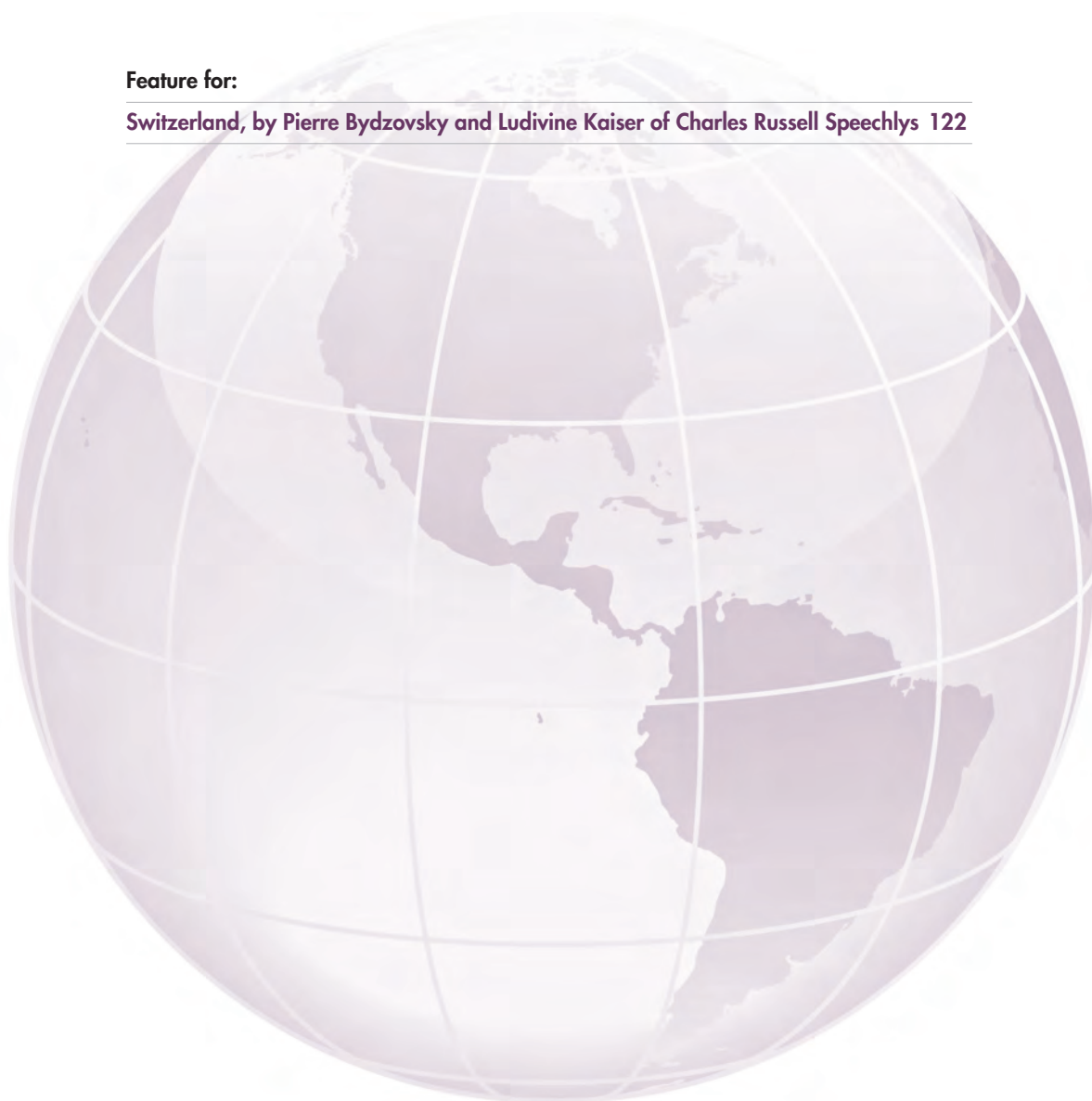


## WHITE COLLAR CRIME

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**Feature for:**

**Switzerland, by Pierre Bydzovsky and Ludivine Kaiser of Charles Russell Speechlys 122**



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Joris has dual background in law and finance and acts as a counsel for companies and individuals in high-profile white-collar crime and compliance cases. His expertise specifically focuses on criminal tax law, corruption, as well as financial and environmental criminal law. Joris also has expertise in internal investigations and litigation by multilateral development banks and agencies.

Together with Antonin Lévy, Joris significant expertise includes:

- Defence of a former French Prime Minister prosecuted for misappropriation of public funds, abuse of corporate assets and breach of his reporting requirements towards the High Authority for Transparency in Public Life.
- Representation of a high-profile businessman in an investigation on allegations of corruption and money laundering (“Kazakhgate” case).
- Representation of a French car manufacturer investigated over allegations of aggravated deception (“Dieselgate” case).
- Defence of a French industrial group and its director prosecuted on counts of manslaughter and serious injuries in connection with an industrial furnace accident.
- Representation of a French industrial group in investigations brought by the World Bank, the African Development Bank and the European Investment Bank on suspicions of corruption and collusion in West Africa, East Africa and South-East Asia.

In 2018, Joris was elected First Secretary of the Paris Bar Conference. He was recognized as “Rising Stars” in the “White collar crime” category of the 2020 and 2021 Expert Guides ranking.

Prior to being partner within Antonin Lévy & Associés in 2021, Joris worked as an associate within the Investigation White Collar and Fraud (IWCF) department of Hogan Lovells Paris, and joined Antonin Lévy & Associés when founded by Antonin Lévy and Ophélie Claude in 2019.



## SWITZERLAND

# Update on FIFA-related proceedings in Switzerland

**Pierre Bydzovsky and Ludivine Kaiser**  
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This update is a follow-up to our previous article of July 2019, which announced the recusal of the Attorney General of Switzerland (OAG) and of two other federal prosecutors following informal meetings conducted by the OAG with representatives of the Fédération Internationale de Football Association (FIFA).

Various aspects of the Swiss FIFA-related proceedings have progressed with diverse outcomes. This article provides an update on these proceedings, the first to intervene in the conduct of business of a major international sports body in Switzerland.

Since 2015, the OAG opened twenty-five investigations, twenty of which are still pending. These proceedings relate to suspicion of corruption and money laundering within FIFA.

At the same time, the US Department of Justice has conducted criminal investigations led by the Federal Prosecutor of Eastern District of New York in relation to the granting of media, marketing and sponsorship rights for the broadcast of football tournaments in the United States and Latin America. The Swiss Federal Office of Justice is supporting the US investigation through international judicial assistance, that led to the arrest, at dawn on 27 May 2015 at the Baur Au Lac Hotel in Zurich, of, among others, high-ranking officials of FIFA and of other football governing bodies. In May 2021, a Swiss bank pleaded guilty to conspiracy to launder over USD 36 million in bribes to football officials at FIFA and other football federations.

## 2006 FIFA World Cup

On 6 November 2015, six months after the Zurich police raid, the OAG opened a criminal investigation against unknown persons on suspicion of mismanagement and money laundering in connection with payments made in the run-up to the 2006 Football World Cup in Germany. The OAG of Switzerland extended the criminal prosecution in July 2016 to three former officials of the German Football Association (DFB) and a former FIFA General Secretary who were suspected of fraud (Art. 146 of the Swiss Criminal Code; SCC) for having concealed from the DFB the true destination of a 6.7 million euro transfer paid in 2005 by the World Cup organising committee. The DFB and FIFA constituted themselves as private claimants in the criminal proceedings.



Under Swiss law, the first instance judgment must be rendered before the expiry of the limitation period for criminal proceedings, which is 15 years from the commission of the offence in the case of fraud (Article 97(1)(b) SCC).

The investigation lasted five years. On 5 August 2019, the OAG filed an indictment with the Federal Criminal Court against the accused for fraud.

The trial opened on 9 March 2020 (SK.2019.45) and, due to the absence of three of the defendants, closed on the same day. On 11 March 2020, the main proceedings were re-opened in absentia. On 17 March 2020, the proceedings had to be interrupted because of the Covid-19 pandemic and the proceedings had to be suspended, first until 20 April 2020 and then until 27 April 2020. By this date, the statute of limitations for the offences in question had expired. The Federal Criminal Court had to close the proceedings and award a compensation payment to the defendants for around CHF 650,000 for defence costs and moral damage.

The first FIFA-related trial was dead in the water.

## 2018, 2022, 2026 and 2030 World Cups – First judgement rendered by the Federal Criminal Court (SK.2020.4)

The OAG opened another, separate criminal proceeding (SV.15.1443) against FIFA's ex-no 2 for mismanagement, alternatively embezzlement, contrary to FIFA's interests.

It emerged during the investigation that the defendant had received monetary bene-

“SWISS CRIMINAL PROSECUTION AUTHORITIES IN THE FIGHT AGAINST CRIME IN INTERNATIONAL FOOTBALL”



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fits from a Qatari politician and sports leader and from a Greek individual in return for the awarding of media rights of around USD 480 million for the 2018, 2022, 2026 and 2030 World Cups by FIFA. The defendant allegedly received from the Greek individual a payment of EUR 500,000 made in November 2013. FIFA filed a criminal complaint against its former executive on 27 December 2016 for bribery. The OAG opened criminal proceedings (SV.17.0008) against the three individuals on 20 March 2017 for private bribery i.e. corruption between private actors (Articles 4a and 23(1) of the Federal Act against Unfair Competition; AUC) in relation to these facts. Both proceedings were joined under the reference SV.17.0008 and, on 31 May 2017, the OAG informed FIFA that its former executive was suspected for having received other benefits from the Greek individual in return for the granting of media rights by FIFA, specifically two payments of EUR 500,000 and EUR 250,000 in May and July 2014 which gave rise to an additional criminal complaint filed by FIFA with the OAG for private bribery.

In December 2019, the OAG informed FIFA and the defendants that it would be issuing an indictment alleging aggravated mismanagement (Art. 158(1) para. 3 SCC), instigation of mismanagement (Art. 24 cum Art. 158(1) para. 3 SCC), forgery of documents (Art. 251 SCC) and active and passive bribery (Art. 4 a para. 1 letters a and b in connection with Art. 23 para. 1 AUC). On 31 January 2020, FIFA informed the OAG that it wished to reach a settlement agreement with the Qatari individual and that they were therefore withdrawing the criminal complaint against him for the offence of bribery. FIFA withdrew their criminal complaint against him which subsequently led to the closing of the investigation for private bribery.

At trial (proceedings SK.2020.4) and after ten days of hearings, the OAG requested 28 months' imprisonment for the Qatari individual, 36 months' imprisonment against the former FIFA executive and 30 months against the Greek individual. On 30 October 2020, the former FIFA executive was acquitted of the charges of aggravated mismanagement and passive bribery, found guilty of repeated forgery of documents (Art. 251 No. 1 SCC) and sentenced to a financial penalty of 120 days at CHF 200 per day – making a total amount of CHF 24,000 – a penalty that has been suspended for a two-year probation period. In addition, the former FIFA executive has been ordered to pay FIFA an amount of EUR 500,000 with interest at 5% per annum from 23 September 2020, less an amount of EUR 99,468.73 and an amount of EUR 1,25 million for compensation for the damage suffered by FIFA plus an amount of CHF 80,000 for the compulsory expenses incurred by FIFA during the procedure.

The Qatari and the Greek individuals were fully acquitted: the Federal Criminal Court held that the accuseds had effectively profited from substantial benefits, but that it had not been proven that these had caused them to act contrary to FIFA's interests in the context of the allocation of media rights for the World Cups. The Court further found no negative impact on competition at the level of broadcasters for the media rights in Italy and Greece for the 2018, 2022, 2026 and 2030 World Cups and the Confederations Cup for this period that would have led to a conviction for private corruption.

This judgment is rather surprising since it would mean that it would be possible to receive hundreds of thousands of francs in the course of one's employment without informing one's employer, which would not constitute a criminal offence in the absence of a clear link between the payment and a result contrary to the em-

ployer's interests, a link that is always difficult to prove in corruption cases.

The purpose here is not to discuss the penalties and outcome which are detailed in a 218-page judgment and which turns on the totality of the circumstances, but one can nonetheless question the deterrent effect of this sentence in the sporting world, given the very high financial stakes that were at the basis of the criminal investigation, in comparison with the penalties that would have been handed down in other jurisdictions.

The OAG filed an appeal and the decision is not final. It remains to be seen whether the judges of the court of second instance will share the view of the court of first instance.

### Proceedings against the former Attorney General and the FIFA President

As we explained in June 2019, the Federal Criminal Court ordered the recusal of the former Swiss Attorney General of Switzerland and other federal prosecutors for bias for having informally met FIFA representatives, including the FIFA president on different occasions. These events forced the resignation of the Swiss Attorney General in summer 2020 and, to date, this politically exposed position has not been filled.

On 23 September 2020, the Swiss Parliament elected a cantonal judge as Extraordinary Public Prosecutor for the opening of preliminary proceedings against former Swiss Attorney General and any accomplices and participants alleging an abuse of office (Art. 312 SCC), breach of official secrecy (Art. 320 SCC) and interference in the criminal investigation (Art. 305 CC) through the holding of several meetings with FIFA President Infantino and other persons that were not recorded in the minutes.

The newly appointed Prosecutor refused FIFA permission to be a private claimant in this proceeding against the FIFA President, a decision that was confirmed by the Federal Criminal Court and rejected the FIFA President's request to disqualify the Extraordinary Federal Prosecutor.

The Federal Criminal Court's support was however short-lived.

On 10 December 2020, the Extraordinary Public Prosecutor published the following media release on his personal website under the title "The a.o. Federal Prosecutor sees signs of criminal acts by FIFA [president]" as follows [translated from German into English]:

*"The Extraordinary Public Prosecutor of the Confederation has completed its examination of the criminal charges against the FIFA President [...] for mismanagement in connection with the use of a private jet. There are clear indications of criminal conduct on the part of the FIFA President. However, the actual criminal proceedings fall within the competence of the Office of the Attorney General of Switzerland."*

Following up a request filed by the FIFA President, the Federal Criminal Court ordered the recusal of the Extraordinary Public Prosecutor in May 2021 blaming him for four communications to the press, including an interview in a legal magazine. The Federal Criminal Court questioned his impartiality in the proceedings as his comments were not considered objective or neutral and true comments made in the interest of the public.

This decision is final and not subject to appeal.

The Federal Criminal Court has not yet issued any decision on the request to annul the procedural acts instituted under the conduct of the (now former) Extraordinary Federal Prosecutor who was forced to resign in June 2021.

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The case is still open and others with pending proceedings are waiting to be heard by a new, yet to be designated, magistrate.

### **The Office of the Attorney General of Switzerland under high scrutiny**

Despite significant efforts and financial resources engaged by the Swiss prosecution authorities, the outcome of the proceedings conducted in the context of FIFA are limited.

With inadequate communications and informal meetings with FIFA during the criminal proceedings, the OAG has so far been unable to bring sufficient evidence before the Court to shed light on

the alleged conduct, resulting in acquittals and a light sentence in one of the proceedings while the others grind to a halt.

The credibility and the actual willingness of the OAG to prosecute and clean up international football is in question not only in Swiss public opinion but also within the international community.

Several legislative projects propose attributing the monitoring of the OAG to the Swiss Government which would bring into question the OAG's independence. On this note, parliamentary committees have suggested granting more financial resources and competence to OAG's monitoring authority. The ball is now in the court of the judicial affairs committee to launch the necessary legislative reforms.

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George Ayoub is a partner in Schellenberg Wittmer's dispute resolution, white-collar crime and compliance, and internal corporate investigations groups in Geneva. His key areas of expertise and practice focus on white-collar crime, international mutual legal assistance, extradition, asset tracing and recovery, and internal corporate investigations.

George is also specialised in regulatory and compliance issues as well as in matters of trade sanctions, embargoes and export controls. George acts as counsel for both individuals and corporate entities in criminal and administrative proceedings before cantonal and federal authorities and courts, including the Swiss Supreme Court.

George's expertise includes: regular advice and assistance to a large international commodity trading group in the context of domestic proceedings as well as foreign requests for mutual legal assistance in criminal matter; representation of and assistance to a prominent businessman and his group of companies in relation to Swiss criminal investigations in the context of an alleged corruption scheme and representation of a HNWI in extradition proceedings to the United States.

George is a member of the International Bar Association's anti-corruption, business crime and criminal law committees.

After graduating from the University of Lausanne, School of Law, in 2007 George worked at the Office of the Attorney General of Switzerland. He was admitted to the Geneva Bar in 2011. Prior to joining Schellenberg Wittmer in 2012, he worked at another renowned Swiss business law firm as a contract and corporate lawyer. Before embarking upon his legal profession, George accumulated several years' experience as an airline pilot for the Swiss national carrier.

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Pierre is a partner in the litigation group of Charles Russell Speechlys in Geneva, specialising in white-collar crime cases and mutual assistance proceedings, banking litigation, disputes relating to foundations and estates and insolvency.

Pierre Bydzovsky holds a Master in Law degree from the University of Fribourg, Switzerland after having also studied at the Ruprechts-Karl-University of Heidelberg, Germany, with a specialization in European Union law. He has completed his education with a Certificate of Advanced Studies in Criminal Judiciary from the Swiss Criminal Judicial School with honours (2011) and with a Master of Laws (LL.M) in International Trade Law of University Institute of European Studies and University of Turin, Italy, where he graduated in 2015 summa cum laude.

Pierre has 15 years of experience in commercial disputes. He has been admitted to the Geneva Bar in 2007, is a member of the Geneva Bar Examination Commission, of the Geneva Bar Association, of the Swiss Bar Association, of the Geneva Business Law Association and of the ICC-YAF.

Pierre also advises companies on labour law and in the implementation of good governance rules in the field of data protection, as well as in sports law. Pierre is also a certified Data Protection Officer (University of Geneva – 2020).

In addition to these civilian functions, Pierre also acts as President of the Military Court 1 responsible for judging criminal offences under military law, with the rank of lieutenant colonel.

**Experience**

Pierre has been involved in a multi-billion foundation and trust litigation in Switzerland and the Caribbean;

He represents bankruptcy estates in insolvency proceedings and criminal proceedings for fraud and fraudulent bankruptcies;

He has been counsel of an important art collector victim of a hidden commissions scam;

He obtained significant compensation in the context of banking fraud, in particular churning.

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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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Some examples of Roland's expertise include defending high-profile clients in administrative criminal proceedings for tax evasion; advising and defending a major Swiss bank in an investigation into allegations of corruption-related money laundering in a cross-border context; and acting as defence counsel to a Swiss bank in criminal proceedings for fraud and money laundering.

Roland is a member of various professional associations, including the Zurich and Swiss Bar Associations, the International Bar Association, the Defence Counsel's Section of the Zurich Bar and the Swiss Society of Criminal Law. He regularly publishes and speaks at conferences on topics within his areas of expertise. In addition, he is a lecturer on business criminal law in AML compliance officer trainings.

Roland graduated with a Master of laws from the University of Zurich in 2004 and received a PhD in corporate criminal law in 2006. In 2011, Roland was on secondment with a major law firm in Australia, where he served as a consultant.

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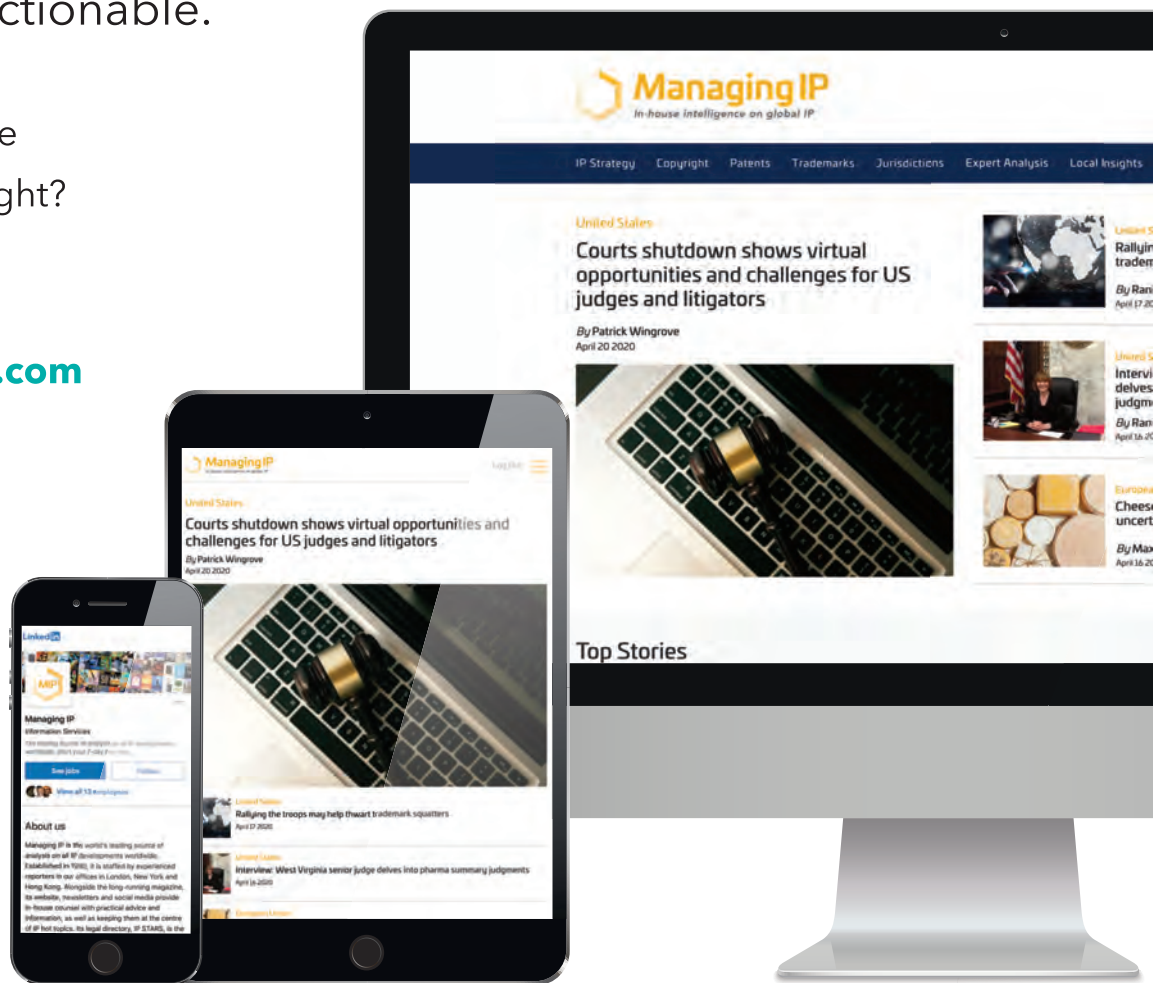
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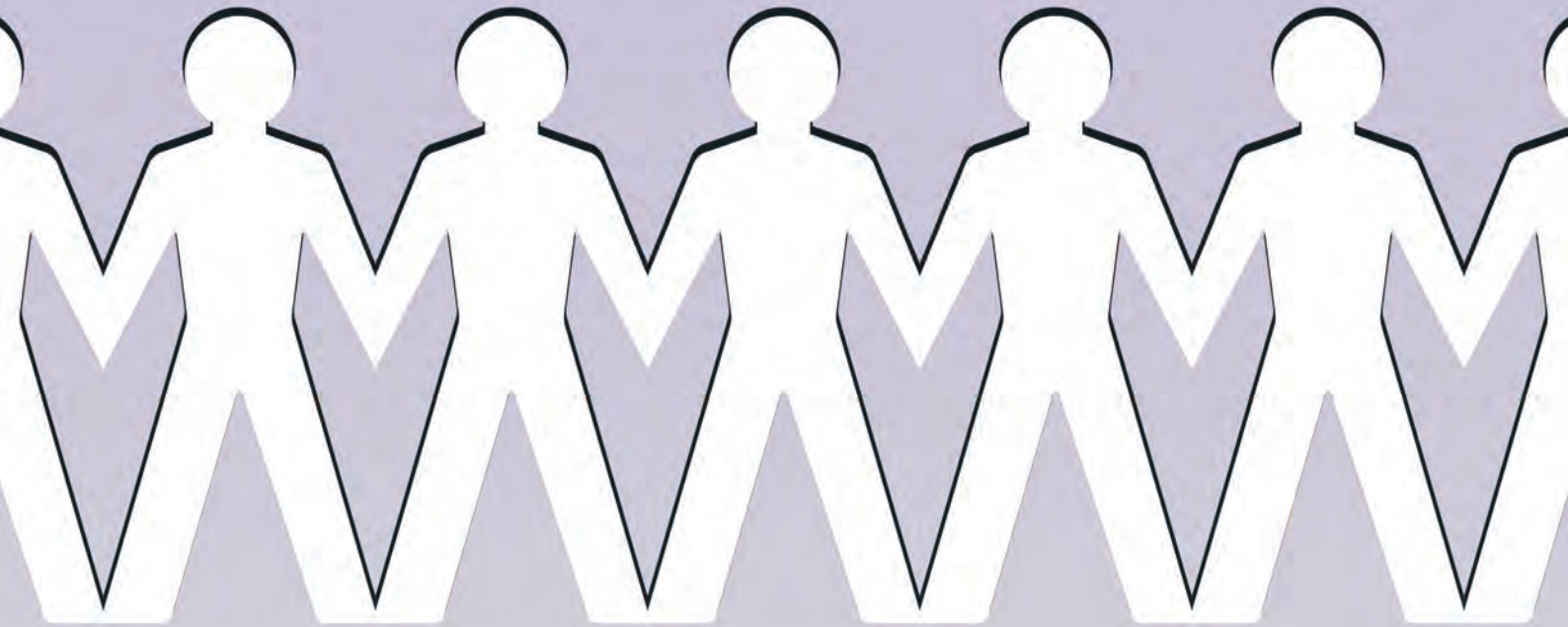
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