

COVID-19

The ultimate challenge for businesses in 2020?

The now and the next in the world of litigation



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The now and the next in the world of litigation

As businesses continue to adapt and prepare for the post-COVID-19 recovery, we invited a group of our key clients to join us for a virtual roundtable discussion on the current issues, themes, trends and critical areas they are seeing in their industries, specifically in relation to litigation and compliance.

This Reed Smith roundtable event is part of a series we have developed and designed to create a platform for senior business leaders, general counsel, legal and business teams and senior management representatives to share experiences, discuss live issues and explore ideas for the future of legal service delivery.

Our roundtable events, in their virtual and in-person formats, are always held under the Chatham House rules. Therefore, we have not provided specific names or examples and have kept the report confined to themes. This paper outlines the key themes, which emerged from our discussion with our clients from different sectors, and some useful areas, displayed under 'The now and the next' sections, which seemed to be front of mind for the majority of the clients.

As ever, we are grateful to our clients for sharing their honest thoughts and feedback on the current issues they are facing within their sectors and we would welcome the opportunity to continue the conversation with them on these issues going forward. The current economic climate is uncertain, volatile and unpredictable and the insights shared at our virtual roundtables into current and emerging issues enable us to provide pragmatic and commercial support to our clients.



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Please note: Throughout this report quotes in *“red italics”* are direct quotes from the session

Technology as a lifeline

Clients recognise that working from home has been successful due to the increased use of technology which, in some cases, has actually led to higher productivity for their teams.

- Technology has been described *“as a lifeline”* – through existing collaboration platforms and software, both social interaction and work commitments have been maintained and even improved during the COVID-19 crisis.
- Clients admitted that they have been able to continue delivering value to their business seamlessly and without interruption, but the key question has now shifted from *‘Can we work remotely?’* to *“What are we missing by not being in the office?”*
- There are sectors where work cannot be done entirely on a remote basis; for example, the construction sector does not lend itself to remote working. However, clients in the construction sector have started to use this opportunity to look at new ways of working, and to improve efficiency through better use of technology, for example, creating construction building pieces offsite.

The now and the next

- Clients do not anticipate that going back to the office will happen in its traditional form but rather, employers will need to re-evaluate their business needs and adapt to them. For example, more businesses have started to ask: *“Do we need so much desk space in the office if people are working from home most of the time?”*
- It is expected that the current pandemic will lead us to question and re-think some of our existing business activities — for example, avoiding travelling for quick in-person meetings and organising more virtual meetings.
- Some sectors will likely be more heavily impacted by the ‘new normal’ than others, e.g. construction, where companies will re-evaluate their investments in building new office buildings as people are increasingly working from their homes.
- The use of technology has been transformative, and will continue to be a high priority for business in the ‘recovery period’. Success will depend on the acceptance and use of new virtual ways of working, and adaptability is key.

“Flexible”, “Pragmatic”, “Commercial” – key characteristics of external counsel

The partnership between in-house legal teams and external counsel has become even more critical and important during the pandemic. Law firms are expected to provide value to their clients in different ways, including guiding them through the myriad of commercial and practical challenges in an increasingly virtual world.

- During the pandemic, clients have seen a move away from the traditional *“insource - outsource paradigm”* and an increased focus on the legal advice from external counsel to be delivered in line with the wider business expectations.
- Clients note that the partnership with external counsel has been crucial for them during this time, particularly in cases where ongoing trial and litigation proceedings had to be moved to a more virtual setting, for example the introduction of virtual trials.
- The pandemic has helped to change the perception of lawyers from *“being resistant to change”* to *“adaptable and flexible”*.
- Clients also expect that more lawyers will need to develop knowledge in the areas of technology, AI, cloud computing and robotics, in order to be able to respond efficiently to the needs of their clients’ businesses.

The now and the next

- Within the in-house legal community, there has been a greater level of collaboration, stronger *“portfolio approach”*, and an *“entrepreneurial spirit”* for the benefit of the wider business objectives.
- Going forward, clients expect their external counsel to show even more adaptability and flexibility in the way they deliver services to clients, especially in an increasingly virtual environment.
- Clients predict that as investigations and court hearings continue to move to virtual environments, external counsel will need to be more commercial, pragmatic and true business partners to their in-house counterparts.





Developing future legal talent

Clients recognise that some parts of their workforce have been more affected during the pandemic than others. Looking forward how can we ensure that we continue to effectively develop, train and mentor our future talent in the ‘new normal’?

- Working remotely has led to a greater desire for collaboration and collective generation of ideas within legal and business teams.
- Specifically, experienced lawyers who are more settled in their roles and their organisations have not had many difficulties adapting to the new environment. However, that has not necessarily been the case for new and less experienced or junior team members.
- Clients recognise that the remote working environment has had a considerable impact on the junior team members, with some of them admitting to feeling “tired” and “isolated”, as well as new joiners who face challenges in building their networks within large complex organisations entirely remotely. Clients also recognise that there has been significant pressure on team members with young children, who have had to combine remote working with home schooling and looking after the children (pre-school aged in particular).
- Overseeing, developing and mentoring junior lawyers has been one of the biggest challenges for clients across sectors during the heat of the COVID-19 crisis. Junior lawyers need supervision for their own development and remote working makes this more difficult to manage.
- Some clients are mindful of how the current crisis will impact the efforts that many legal teams have invested towards the objective of seeing more diverse talent in the workplace.

The now and the next

- Face-to-face interaction and live meetings are crucial to training and developing the future talent within legal teams.
- Looking into the future, clients envisage that a good mixture between office work and remote work will be the successful formula for their future working environment.

Corporate behaviour: “Keep the moral compass on”

The COVID-19 crisis has provided an incredible opportunity for global corporations and businesses to show their “responsible side” - when compared to the 2008 financial global crisis.

- Clients continue to draw comparisons between the current pandemic and the global financial crisis in 2008 when many organisations did not have a ‘template’ of how to react, and instinctively instigated force majeure provisions in contracts or proceeded with court action against their counterparties.
- By contrast, some believe that the priority for businesses now should be to act with pragmatism, in order to *“emerge with our customers intact at the end of the pandemic”* and creating ‘win-win’ situations.
- On an operational level, where possible, businesses have demonstrated true flexibility by shifting their operations, for example converting manufacturing plants to create PPE, face masks, sanitizers, etc. Not only as this helped some businesses to successfully keep operations going at a global level but they have also distributed their products to local communities thereby actively engaging with the local communities.
- Additionally (and again in contrast to the 2008 financial crisis), clients noted a difference in the way senior executives and leadership teams of global corporations have made salary sacrifices as a way to step in, and conduct themselves more responsibly during the crisis, e.g., taking substantial pay cuts to save jobs and making changes to their operations to not only protect their businesses but to also help local communities.

The now and the next

- Clients are increasingly working collaboratively with their counterparties, including banks, suppliers and customers, to find a way to emerge from the pandemic with protected businesses and maintaining a sustained workforce.
- Some businesses will need to *“right-size”* their operations to respond to slowing customer demand and, ultimately, protect their wider employee workforce.
- Corporations have showed their *“more caring side”* and *“compassion”*, appreciated by the media, local communities and governments across the world.
- By initiating partnerships with governments and local communities for the greater good, and even by taking pay cuts for the benefit of their employees, global executives and corporations have demonstrated a much more compassionate approach to managing the challenges to their businesses.



The impact of global macro economic issues

As we move forward in the road to post-COVID-19 recovery, macro economic and geopolitical issues will have an even greater impact on how some businesses will return to the level of their 2019 financial results.

- Clients commented on how the major political and economic events appear to have moved down in the priorities list for many governments and businesses.
- For example, in the wake of COVID-19, whilst there may not have been many developments on the Brexit front, Brexit continues to be a major (and additional) geo-political event causing concern for businesses without any clear steer or guidance from the UK government. Clients require further clarity on whether there will be a 'hard' or 'soft' Brexit and this simply adds to increased uncertainty and impact on business confidence.
- Some industries will be directly impacted by the UK government's decisions in relation to major projects agreed prior to COVID-19, such as the High Speed Two (HS2) rail network.
- Clients are also considering the impact of the pandemic at a global level. For example, how will global trade and supply chains be affected? What will happen to banks' liquidity and the national debt? Will the government address the national debt or curb public spending at the end of the COVID-19 crisis? All of these decisions will impact businesses, one way or the other.
- Reportedly, some sectors will not see the same level of productivity or financial performance levels of 2019 for the foreseeable future. Aviation and construction were identified as two sectors where clients are welcoming the government's intervention and future guidance to help them navigate through the crisis.
- Other sectors have inadvertently benefitted from the pandemic, for example, medical devices and pharmaceutical companies, which have continued to strengthen their position in the global economic marketplace because of their role in either manufacturing PPE or finding a cure to the virus.

The now and the next

- On a macro level, Brexit continues to be front of mind for many UK businesses and clients are concerned that the combination of the pandemic and Brexit has led to, and created many, increasingly unexpected challenges in 2020.
- The outcome of the elections in the U.S. later in the year, the ongoing developments in the APAC region (where countries are already on the road to recovery in the post-pandemic world), the trade relations between the U.S. and China as well as other geo-political issues, will all have a significant impact on many businesses for the rest of 2020 and beyond.
- Planning beyond 2020 is difficult and many clients do not expect their organisations' financial results to attain 2019 levels any time soon.
- As governments across the world continue to deal with the current pandemic in different ways, it is likely that most of them will face the big decision as to how to handle their national debt ("*whether to end 2020 debt high or cut public spending*") – and all such decisions will have an impact on different businesses.



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