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### INTRODUCTION

It was an absolute pleasure to read each and every report submitted by the managing partners. Three words come to mind having digested all of the content - resilience, growth and transformation. In my opening remarks of the 2020 managing



For their clients, leadership teams have been incredibly busy developing and implementing new technology, from within the firms as well as teaming up with external providers. Although this was already a rapidly growing area for firms, the pandemic seems to have been the rocket fuel required to instill the necessity to be digitally viable and competitive. Dealing with additional pressures and reduced budgets, clients are expecting firms to add value via technology. It is fascinating to read about the broad range of technology services being offered and it is an exciting area of development to watch.

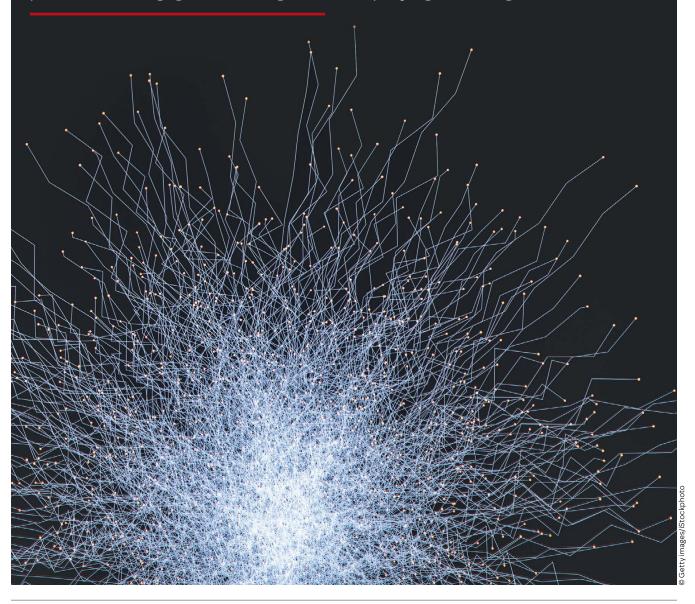
Now, more than ever, with the launch of Expo 2020 and the UAE's diversification efforts, all eyes are on our region. I am delighted to say that reflecting on the commentary from the managing partners, it is evident that there is a lot of investment into the region. Sectors such as healthcare, technology and financial services are booming. General recovery also seems to be taking place across sectors that were hit hardest over the last few years, such as tourism, hospitality and retail. Firms clearly have been playing an even greater role as advisors in many facets that affect their clients' businesses, and this will help them to retain their clients as they partner throughout the various business cycles.

As predicted, dispute resolution has been a continuous area of growth. From an ADGM Courts' perspective, we have witnessed an increase in our caseload, and particularly in the complexity of our caseload. The ADGM Arbitration Centre has increased its collaboration with leading and developing disputes resolution jurisdictions, released a Protocol for Remote Hearings, as well as established a new Panel of Mediators. These initiatives have been a direct response to the requirements of the business community and the trends that we are seeing in the way that disputes are being conducted and resolved in the market. The Arbitration Centre remains committed to aligning its services to the needs of the profession and its clients by catering to fully remote, hybrid and in-person hearings.

> Linda Fitz-Alan, Registrar and Chief Executive of ADGM Courts November 2021

# RESILIENCE, GROWTH AND TRANSFORMATION

Law firms continue to turn to technology to support ambitious growth plans and adapt to changing client priorities as the pace of new regulation intensifies. Hussain Hadi, Head of Publishing & Technology at LexisNexis, spoke to managing partners about emerging trends including ESG and third-party litigation funding.



n the wake of a steady pipeline of disputes and optimism over emerging areas of legal risk such as cybersecurity and data protection, there was a unifying thread of confidence across law firm discussions. Whether supporting their clients with restructuring, digital transformation projects, or compliance generally, managing partners were generally bullish over long-term growth prospects. Ongoing economic diversification initiatives in UAE and Saudi Arabia were lauded, while new trade routes were also referenced including Africa and China.

While construction remains a key sector for many, several firms are turning their attention to rapidly evolving practice areas such as healthcare. "The healthcare industry is rapidly digitising, and healthcare data is taking on an increasingly important role which raises issues around access, security, AI and ethics. Following on from COVID 19 there is also a renewed focus by governments on healthcare supply chains, which is leading to increased regulation in the industry," said Michael Hilton of Freshfields. "We expect all of this to intensify as we head into 2022, with traditional incumbents increasingly challenged by disruptors and rapidly changing technology adding to the complexity of our clients' needs," he added.

### **ESG FOCUS**

Firms are increasingly looking to help clients understand the risks around the growth of Environmental, Social and (Corporate) Governance (ESG). "In the last few years we've seen a profound shift in client focus on ESG issues, driven in part by investor and societal pressure. Policymakers, investors and businesses are all increasingly recognising the need to 'build back better' in the wake of COVID 19 which has created a sense of urgency like never before," said Michael Hilton of Freshfields.

Peter Somekh of DLA Piper added: "In-House legal teams have always played an important role in managing social, ethical and environmental issues for organisations. However, now they are no longer just reacting to SESG issues, but are proactively becoming involved in driving the organisation's SESG approach."

ESG was on the internal agenda for several firms including BSA and Ashurst. Samer Qudah of Al Tamimi said: "We have Environmental, Social and Corporate Governance (ESG) firmly on our radar. Ensuring we have the right ESG practices, strategy and score is something we will work towards in 2022, as this will ensure our stakeholders are provided with insights which can create long-term value to our clients and build lasting relationships with all our stakeholders."

### **FLEXIBILITY HERE TO STAY**

The hybrid working model is clearly here to stay in the UAE's legal sector. "We have embraced a hybrid working model, with the aim of most staff spending about 60% of their time in the office and 40% at home or elsewhere," said David Charlier of Ashurst. This

was echoed by Geraldine Sutherland of Eversheds Sutherland: "Our UAE offices are embracing hybrid working structures which involved two or three days working in the office per week and the other days working from home." A similar balance was cited by firms including Gowling, HFW, Kenndys, and Herbert Smith Freehills. Anders Nilson of Bird & Bird said: "In principle, 50% of the working week can be done remotely, always subject however to the needs of clients, colleagues or the team the employee is a member of."

While all firms spoke of the importance of flexibility, advocacy firms including Horizons & Co and Global Advocacy & Legal Counsel, tended to place greater importance on face-to-face interaction. For some firms like BSA Ahmad Bin Hezeem & Associates this even meant an expansion of office space.

A recurring theme was adapting the office space to meet a post pandemic world. "Like many firms, we are closely re-evaluating our future infrastructure needs, opting for modern, technologically advanced spaces that support more flexible working styles and encourage greater collaboration," said Peter Somekh, DLA's Regional Managing Partner.

### **TECHNOLOGY ACCELERATION**

Beyond the expected deployment of systems and tools to facilitate flexible working, law firms continue to accelerate their adoption of legal technology solutions. "There is an increased need for (and expectation of) 'data-driven lawyers' that really understand how to consume large quantities of data, parse them for what matters most, and insightfully interpret that selective content in the context of the client's specific business needs," said Wael Jabseh of Akin Gump.

This theme was echoed by Alastair Young of Dentons: "We have been investing heavily in data in a number of areas, including our new Helix division, and using robotics for data management. At the heart of the strategy is increasing the use of structured data across the firm, allowing us to better manipulate this data for more consistent management outcomes. Law firms regularly sit on troves of data but do not make the most of it – and we aim to change this."

David Charlier of Ashurst cited the benefits of leveraging technology to more efficiently provide legal services, including through document automation and the use of AI and analytics in large transactions, regulatory investigations and disputes. Other examples of internally developed projects included Charles Russell Speechlys' bespoke document review platform (Discovery on Demand), in collaboration with Grant Thornton, which facilitates early case assessment.

### **DISPUTES CONTINUE**

Disputes arising from financial or contractual restructuring – largely driven by supply chain disputes

### DISPUTE TRENDS

"There has also been an increase in clients opting for the payment order option as it is an expedited form of judgment that can be obtained on an ex parte basis, which means businesses do not have to engage in lengthy disputes, where a claim is supported by written evidence that the debt is accepted or acknowledged by the debtor."

Ahmed Galadari, Galadari

"We also expect to see an uptick in construction disputes work, a lot of projects in certain jurisdictions (especially Kuwait) were impacted by COVID 19 related travel restrictions, which delayed some projects by a year or more which is now generating contractor claims and disputes."

Richard Gimblett, HFW

"The evolution and emergence of environmental justice has also become a trend in 2021, especially in impacting disputes related to energy and climate change, COVID 19 and pollution. We expect that environmental justice will open the floodgates to a large number of claims both before the courts and arbitration centres."

Peter Ellingham, Kennedys

"We have seen a shift in some types of litigation and the majority of post-COVID-19 cross-border litigation cases were either a disruption in a supply chain triggering an alleged inability to perform, failure to deliver goods and/or services as a result of government interventions, and allegations of party's failure to adequately mitigate against a pandemic."

Rebecca Kelly, Morgan Lewis

- have kept law firms busy in 2021. For Samer Qudah of Al Tamimi, the main litigation trends can be summarised under four categories:
- COVID-19 related cases
- Insolvency cases and large restructurings
- Big corporate lending default
- Liquidation of SMEs

Unsurprisingly, employment disputes have continued. "As companies begin revamping their labour forces, we have seen a number of disputes relating to 'team moves' and attempts to enforce restrictive covenants to stop employees switching jobs," said Bashir Ahmed of Afridi & Angell. Sadiq Jafar of Hadef added: "Employment disputes continue to evolve and grow as a result of business restructuring. These include commission-based claims, as well as severance and termination claims."

### **COUNTING ON CONSTRUCTION**

According to Sadiq Jafar of Hadef & Partners: "In the construction sector, constricted cash flow has led to a rise in the call of bonds and a consequent increase in arbitrations involving the underlying disputes. Major players, such as Arabtec Holding PJSC, which was one of the largest construction contractors in the UAE, filed for liquidation. The effects of this constrained

liquidity, and related restructurings and insolvencies, will continue to be felt by the UAE construction industry over the coming period."

Ali Ismael Al Zarooni of Horizons & Co expects that the majority of disputes in 2022 will continue to be related to construction and real estate and said: "Lately the firm has been inundated with construction related disputes, with many contractors complaining of payment delays and unlawful terminations of their respective contracts."

Meanwhile, Jimmy Haoula of BSA noted a rise in mitigation in the construction sector, as companies look to renegotiate terms and find a favourable solution out of the courts. Mark Blanksby of Clyde & Co said: "We have also seen significant activity in the construction sector. Although a wave of disputes is yet to emerge, currently we are seeing a more aggressive approach to handling existing disputes, perhaps reflecting the potential significance of the outcome of disputes on businesses hit hard by the pandemic."

Alastair Young of Dentons was also cautious about long-term trends: "We deal with a lot of large infrastructure project disputes across the GCC and beyond. We believe that is going to continue well into next year, but I think there is also a question around the longevity of the construction dispute market. It will not change dramatically in the UAE, where the construction dispute market has been particularly active, but there are not so many big projects happening now as there have been in the last three to four years."

### THIRD PARTY FUNDING

Funded claims in the UAE are increasing dramatically according to Andrew Johnston of Addleshaw Goddard, who said: "We have seen increased interest from clients to secure litigation funding for DIFC Court actions and arbitrations, and from funders to fund claims." This was echoed by Jimmy Haoula, Managing Partner at BSA, who said: "Companies are proactively engaging with third party funders to aid cash flow, lay off the cost of litigation and monetise valuable assets. Funding is increasingly part of the strategy in advance, rather than an afterthought, and can help companies understand their position and objective in pursuing litigation from the get-go."

Tony Griffiths, Managing Partner, K&L Gates Middle East noted that third-party funding is now regulated by both DIFC and ADGM, and added: "Third-party funding allows businesses to manage risk associated with the cost of legal claims, but it is also on the rise as it can help insolvent, distressed or cash-poor parties to fund disputes to recover receivables."

Charles Russell Speechlys has responded to the trend by creating a funding product called 'Feesible' to assist clients with funding options for dispute resolution including conditional or damage based agreements, as well as third party funding.





## **BASHIR AHMED, MANAGING PARTNER, AFRIDI & ANGELL**

ashir Ahmed joined Afridi & Angell in 1988 and was elected managing partner in 2016. He has spent the majority of his career in the UAE at Afridi & Angell during which time he has played a key leadership role including as head of the firm's Corporate/M&A, Banking and Finance and Shipping practice groups. A multi-specialist practitioner, Bashir advises on banking, corporate and contentious matters. He has extensive experience in domestic and cross-border acquisitions and advises clients on general corporate matters. He also advises international and domestic banks on a wide range of matters including loan and credit facilities, syndications and regulatory matters. His maritime practice involves advising ship owners and P&I Clubs, dry docks and ship repair companies on contentious and non-contentious matters.

### WHAT LONG-TERM REMOTE / FLEXIBLE WORKING PRACTICES WILL YOU MAINTAIN OR EXPAND UPON? HAVE YOU MADE (OR ENVISAGE MAKING) ANY LONG-TERM CHANGES TO YOUR OFFICE SPACE?

At Afridi & Angell we have not made any formal long-term remote or flexible working practices nor have we made or envisage making any long-term changes to our office space. Having said that, all our lawyers and staff have the ability to work remotely and several choose to work from home occasionally.

WE ARE SEEING A RENEWED **FOCUS ON COMPLIANCE** IN THE UAE AND WE **EXPECT THERE WILL BE MORE BANKRUPTCIES** AND RESTRUCTURINGS **AS A RESULT OF LAST** YEAR'S DIFFICULT FINANCIAL CLIMATE AND NON-COMPLIANCE..."

Given the size of the firm where the majority of our staff are located in the Dubai office, we did not feel the need to formalise a remote or a flexible working practice. Afridi & Angell has always enjoyed a collegial environment where people work closely together and in teams. It is this very quality that sets the firm apart. When choosing to be in the office or work remotely, we trust everyone in the firm to apply good judgement as to what is in the best interest of our clients. Certain tasks can be and perhaps are better accomplished remotely. Others will require close consultation with other colleagues and partners and are better performed physically in the office.

I would add there is no substitute to physical interaction when seeking a productive discussion, a good exchange of ideas, and, let us not forget, continuous learning and development especially for junior lawyers and staff. Although technology has played a vital role in bridging the 'remote' gap, it is not a substitute for physical interaction.

### WHAT IS NEW WITH YOUR FIRM AND WHAT ARE YOUR PLANS FOR 2022?

As mentioned in last year's survey, our primary focus for 2021 and beyond is to upgrade existing IT, investing in new technology and acquiring talent in key areas of growth.

We have started upgrading our existing IT systems and added to the overall headcount by hiring several transactional and dispute resolution lawyers. This process will continue throughout 2022.

In addition, we will invest in data and voice collaborative infrastructure in order to facilitate efficient working teams, while at the same time investing in additional security infrastructure in order to safeguard against cybersecurity threats.

We will also invest in additional management reporting and the further customisation of our practice management systems in order to assist partners and senior associates in handling client files efficiently and maximising revenue from each engagement.

### WHICH PRACTICES DO YOU SEE GROWING IN 2022? WHAT ARE THE DRIVERS BEHIND THAT?

The difficult economic climate we had last year coupled with an unprecedented number of new laws in the UAE and amendments to existing ones, have disrupted some businesses but have also created opportunities for new businesses. This has resulted in a surge in the restructuring and insolvency, general compliance and dispute resolution practices.

We have had a very busy year advising on high profile bankruptcy and restructuring matters, including the NMC debacle, the Wirecard scandal, and a number of bankruptcies and restructurings in the oil and gas sectors. We are seeing a renewed focus on compliance in the UAE and we expect there wil be more bankruptcies and restructurings as a result of last year's difficult financial climate and non-compliance. Anti-trust is a continued area of growth and we consider ourselves the market leading firm in that practice. This growth is driven by global M&As and consolidations which have been on the rise since the latter part of 2020. Litigation and dispute resolution, both onshore and in the DIFC, have also been on the rise and will continue to grow. The post COVID-19 environment has resulted in parties going after commercial and financial losses suffered in last year's difficult climate. The resurgence of the labour force post COVID-19 has brought more disputes related to 'team moves' where Afridi & Angell has been involved in advising on a number of high value matters. The post COVID-19 environment has also brought with it more disputes involving online transactions and we anticipate this trend to continue on the rise.

# TO WHAT EXTENT IS TECHNOLOGY CHANGING THE WAY YOU INTERACT WITH YOUR CLIENTS, AND THE SERVICES YOU PROVIDE THEM?

The majority of our clients have moved quickly to adopt technology (including electronic documents and electronic authentication) and hybrid working practices as the new norm of doing business. COVID-19 has also accelerated the 'smart' transformation process that was being introduced by the UAE government to enable services to be available anytime, anywhere. As a trusted advisor it is our duty and obligation to stay nimble and keep pace with technology and other changes adopted by our clients. Using technology has generally had a positive effect on providing services to clients. There has been a shift from physical to

virtual meetings even when a physical meeting is possible. Increasing numbers of clients are also replacing telephone calls and e-mails with virtual meetings. Eliminating the time and cost of travel and having the option of being more inclusive of global teams has prompted many clients and their advisers to use this technology as the preferred communication norm; and it is here to stay. This in turn has prompted a faster turnaround of services and increased the numbers of matters we are retained on at any time.



### WHAT DISPUTES / LITIGATION TRENDS HAVE YOU OBSERVED IN 2021?

We have seen an increase in disputes in all forums as clients attempt to resolve the many issues arising from COVID-19. As companies began revamping their labour forces, we have seen a number of disputes relating to 'team moves' and attempts to enforce restrictive covenants to stop employees switching jobs. Regulatory actions which began in the aftermath of the collapse of a number of large financial services providers prior to COVID-19 have now reached their final stages, and this has led to a number of challenges to the regulators before various forums, including the financial markets tribunal and the DIFC Courts. Disputes related to online transactions, competition and antitrust, and contentious agency advice are also on the rise this year. Litigation before the DIFC Courts continues to rise too as clients continue to opt into the DIFC as a preferred forum for dispute resolution.

# WHAT KEY ADVICE WOULD YOU GIVE FOR UAE BUSINESSES TO SUCCEED OVER THE NEXT 12 MONTHS?

Stay on top of legal developments as the UAE authorities put more emphasis on compliance. We expect the law to evolve as rapidly to take into account the new virtual/remote work environment. These developments may include areas such as employee and employer rights and obligations; adopting fintech and blockchain in a controlled manner; digital transmission and attestation of certain documents, and electronic signatures.



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