



“Law firms have missed a major trick in advising on risk management.”

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What has been the most significant change in disputes facing KPMG in the last three to five years?

There are two areas where we've had more disputes: one is in the technology space and the other is regulatory matters, where the bar has been lowered in what constitutes sanctionable misconduct. Regulatory scrutiny has heated up, so that creates more activity.

Has there been a change in how KPMG has handled disputes over that period?

There has been an evolution in the relationship with the regulator – our strategy is to be more super cooperative than we might have been in the past. The regulatory relationship is really, really important and in enforcement procedures you benefit from being more cooperative.

How able do you feel to take a broad view of the litigation risk facing KPMG?

In the UK, very able. Within the organisation, we have a risk appetite, a risk radar. Our businesses are all reviewing on a monthly basis their risk and horizons of risk. We have a feedback loop, taking lessons learned which in turn is obviously part of the mitigation of future risk. Once you become aware of an issue, you start building in controls for that type of risk.

If there was one thing you'd like your external counsel to do differently, what would it be?

There is something around making absolutely sure the legal provisions that they think are great are actually appropriate for the client's situation. It's a distinguishing factor for when you get a really good relationship with a law firm – even if they're the best litigators, they've got to understand the business.

What kind of disputes will increase over the next three to five years?

Technology will continue to be a source of disputes because of the increase in the digitalisation of businesses – not least because Covid-19 has forced companies to think more about their digital strategies.

New kinds of disputes are probably going to come out of ESG [environmental, social and governance policies] and the work we do with corporates. Even if it's great advice, sometimes the world changes and you get into dispute. In due course, company reports are going to include reporting on ESG targets. KPMG will be involved in that in design or assurance. As with audit, where a lot of our litigation comes, you can see how you can get litigation coming out of ESG.

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How much scope do you see for Covid-related litigation over the next three to five years?

It’s inevitable. Insolvency practitioners look to recover assets and one source is the trustee in bankruptcy or an administrator. We know there will be many more failures because of the state of the economy.

How does London stack up as a leading dispute hub?

I am optimistic. The quality of legal advice and the Bar in the UK and London is so high that people will continue internationally to seek dispute resolution and access to courts in London. I don’t think Brexit will impact it unduly. And the choice of English law in international agreements will remain. That is a global thing, not a European thing, so I don’t see Brexit impacting that.

How should major companies change their strategies in handling litigation or regulatory risk?

At a macro level, the strategy of litigation will be increasingly impacted by reputation risk. That risk has over the last five years become a much heavier factor in legal strategizing and that will just increase. I am as often in discussion with our head of corporate affairs as I am with the head of the business, because the reputation of the business is absolute critical – not just the financial outcome of the dispute.

What has driven that?

There is no one answer. Confidence has always been important in markets. You could do a PhD on how social media has impacted reputation management at any corporate over the last ten years. Now, the impact is wider internationally and more immediate. You don’t wait 24 hours to hit the headline – it’s out immediately. If you consider the mega companies, like Google and Microsoft, that have their run-ins with the European Commission on antitrust issues, you can see their strategy around reputation and how that impacts how they present themselves in litigation.

Do you see scope for radical change in big-ticket litigation?

The two areas where we have been concerned on this side of the Atlantic is class actions and litigation funding. Over the last five years, we’ve been anticipating a tsunami, but I just haven’t seen that happen. In terms of how litigation is run, the only change could come through the involvement of third parties and litigation funding.

In terms of other corporate litigation, I don’t see much disruption. At the individual level, and small ticket litigation, the whole question is about virtual courts and virtual resolution. In some countries, the backlog of legal cases extends to millions that won’t be resolved in a lifetime. One solution is to farm out disputes to computers instead of courts. It’s exciting. Somebody explained to me how PayPal or eBay works, where there’s dispute resolution built into some algorithms, and it works. People seem to accept the decisions.

How do you feel about alternative billing or risk sharing?

There’s definitely space for advisers to have more skin in the game. The strategy consulting houses like McKinsey or BCG price work with a lot of clear upside/downside. I don’t see that to meaningful degrees from law firms. Law firms need to adopt a portfolio approach, where they understand that on some jobs you will lose money, but in the big picture there is net upside.

How should external advisers be adapting for the disputes of tomorrow?

My personal view is law firms have missed a major trick in advising on risk management. Very few do. That's an amazing opportunity. Wouldn't it be great as a client if the law firm helping you through your \$10bn claim had been advising on the risk procedures so you didn't get into that position in the first place? There is such a lot of know-how in the litigation departments of law firms – they could take lessons learned on an anonymised basis and transform it into amazing risk expertise to help clients. If I was in management of a law firm, that's what I'd do.

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