



Beware of the watchdogs

Regulatory scrutiny is only going to get tougher.

With most GCs in regulated sectors expecting enforcement to get tougher, follow-on litigation will be a busy area through the decade – notably with competition and consumer protection cases. Capita legal chief Claire Chapman speaks for most peers when she says that regulatory scrutiny “will only increase” in the years ahead. She adds: “Every time we have a scandal or something goes wrong, the regulators need to step in and you have the politicised nature of enforcement as well.” Likewise, Boies Schiller Flexner partner Stuart Singer notes that the new Biden administration in the US will usher in a period of far tougher regulatory oversight in the world’s largest economy.

Stricter regulation will also lead more companies to engage constructively with regulators to manage their enforcement risk, with many GCs citing a default towards early cooperation and expansive dialogue with agencies that would once have been kept at arms-length. “Trying to find a safe legal position is often not the most effective route to avoiding problems, because regulators don’t have to justify themselves as a private litigant would in court,” comments Sean Edwards of SMBC. “You must understand the issues fully from a legal perspective, but then go that one step further to say: ‘Legally, we’re okay, but we need to take a different view based on the regulatory environment.’ That’s increasingly the way banking is moving.”

While there are expectations that some governments will temporarily relax regulation in some sectors to help restart economies after the shock of the pandemic, at a global level, such attempts will be the exception to the more prescriptive rule.

This is an excerpt from an HFW report on the future of dispute resolution. To read the rest of the report, which includes a series of 30 interviews with senior in-house counsel and other leading figures from across the global disputes industry, as well as insights from our expert litigators, visit: www.hfw.com/litigation

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NOEL CAMPBELL

Global Head of Litigation

T +852 3983 7757

M +44 (0)7774 964184/+852 6113 9280

E noel.campbell@hfw.com

NICOLA GARE

Disputes PSL

T +44 (0)20 7264 8158

M +44 (0)7795 612270

E nicola.gare@hfw.com

DAMIAN HONEY

Head of International Arbitration

T +44 (0)20 7264 8354

M +44 (0)7976 916412

E damian.honey@hfw.com

SEAN TWOMEY

Director of Business Development

T +44 (0)20 7264 8546

M +44 (0)7976 282592

E sean.twomey@hfw.com

**Find us on LinkedIn at www.linkedin.com/company/hfw
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