

THE FUTURE OF DISPUTES

VIRTUAL SERIES | NOVEMBER 2020

As the effects of COVID-19 continue to be felt around the world, businesses continue to face significant levels of instability and uncertainty caused by weakened financial markets and disruption to supply chains, workplace operations and business pipelines. Such instability and uncertainty will result in a growth in the number and types of disputes, and we have already seen judicial systems twist and turn to adapt to the new "norm". Although the present circumstances undoubtedly present numerous challenges, there are also significant opportunities for those who are adaptable and sufficiently prepared. Key, relevant questions include:

- What does this future mean for how we will resolve disputes?
- Does it create fertile ground for ever more complex disputes with commercial counterparties, regulators and governmental authorities?
- Will it require us all to reassess where and how we resolve disputes in the future?
- How can we be prepared for this future in order to minimise our risks?
- Who will be the "winners" and "losers" from this future?
- How will that impact the types of disputes and methods of resolution used?

Join us throughout November as we explore these questions and more in order to help you navigate the future of disputes, from dispute avoidance to dispute resolution.

PLENARY: The Big Picture

Tuesday 3 November, 4.00 - 5.00 pm

Join us for a one-hour strategic conversation on the future of disputes with Sanjay Khanna, the Director of Baker McKenzie's Whitespace Legal Collab project which won a Financial Times' Innovative Lawyers Award. The first futurist appointed to a global law firm, Sanjay advises senior leaders in business, government and civil society on complex, twenty-first century risks and opportunities. During this session, Sanjay will provide insights on;

- The increased focus on environmental, social and governance (ESG) related issues
- Technological acceleration
- Global fragmentation, de-globalisation and nationalistic protectionism

Sanjay will be joined by Baker McKenzie's Dispute Resolution partners and together they will discuss how these issues may impact the future resolution of disputes.

Speakers



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SPOTLIGHT: Are virtual hearings here to stay?

Tuesday 10 November, 4.00 - 5.00 pm

In this session, we will discuss the results of our survey of court users (lawyers, expert witnesses and clients) on the future of remote/online dispute resolution. Based on those results, the session will turn to focus on what clients need to be doing now to prepare for those potential future developments.

For clients operating in a rapidly changing legal and business environment, this session will enable you to consider with us how the nature and processes of courts and tribunals may change in the future, and what you need to be doing now to prepare for that future.

Speakers



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SPOTLIGHT: The FCA | Looking backwards or forwards?

Wednesday 11 November, 4.00 - 5.00 pm

More than at any other time since the 2008 financial crisis, clarity as to the FCA's strategic priorities is needed as regulated firms reset their regulatory agendas.

The COVID-19 pandemic has resulted in unprecedented changes to market operations, as well as the compliance functions that support them. How well equipped is the FCA to respond to the "new normal"? Is it flexible enough to adapt to a remote-working market? What priorities and regulatory initiatives could fall by the way-side? Does the regulator still have a clear line of sight into the major market risks if it and firms' compliance functions cannot see into our home offices?

In this session we will review the results of our recent survey of pending and in-train FCA investigations and discuss how the FCA's workload may shift in response to COVID-19. We will explore whether FCA priorities, established in the decade following the global financial crisis, may shift, and ask how the FCA is responding to firms working remotely (and managing as a home-working regulator), and consider the consequences for Principle 11 reporting.

We will also discuss the rising focus on the adequacy of financial reporting in the current volatile market conditions, potential knock-on consequences for regulatory investigations and shareholder activism, class actions, PI litigation and prudential regulation. We will also consider how ratings agencies and brokers may adjust their own practices, and whether this is the time to close the "gap" between the FCA's and SFO's responsibilities.

Finally, we will unpack the growing significance of "tone from within", alongside whistleblowing best practices, and their significance to compliance and enforcement.

Speakers



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SPOTLIGHT: The Rise of Fraud | What businesses should do about it Thursday 12 November, 4.00 - 5.00 pm

We live in an increasingly virtual world. In this changing landscape, the focus should be on the prevention of fraud, as some of the tools for recovery need to be improved to reflect changes in technology.

In this session, we will discuss:

- the types of fraud that are on the rise;
- whether the traditional means of recovery are just too cumbersome and what might take their place;
- public policy questions ahead; and
- the steps that businesses and their workforces should take to mitigate fraud risk in the future.

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SPOTLIGHT: State Intervention and Business Support

Wednesday 18 November, 4.00 - 5.00 pm

In response to the COVID-19 pandemic, state intervention has increased at a rapid pace and taken many guises in the UK and beyond. State intervention often presents real risks for commercial players in a market. These range from distorting pricing to measures as serious as the threat of nationalisation of a business. The impact on businesses and their future strategies can therefore be significant.

In the event that your business is negatively impacted by a state intervention, are you aware of the tools and tactics available to attempt to mitigate the effects or challenge the intervention? Too often focus may be on domestic remedies, rather than taking full advantage of all available national and international tools to maximise your position.

Join us for a lively discussion based around a case study which will explore the key issues and trends in respect of state intervention and how best to protect your business's position using a myriad of tools.

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SPOTLIGHT: Class Actions and Consumer Claims

Thursday 19 November, 4.00 - 5.00 pm

The shift toward collective actions outside the US has been underway for some time. Litigation risk and the need for global coordination of strategy will increase in light of legislation by the EU on consumer rights and introduction of representative actions for consumer law, data protection, financial services, travel and tourism, energy, telecommunications, environment and health. It will also be driven by a rise in litigious consumer associations across EEA and increased availability of funding and firms with a business model based on being paid a slice of damages rather than up front fees.

There will be a divergence in approach between jurisdictions leading to forum shopping (with expected hot spots of claimant activity in the UK, Italy, the Netherlands and Spain), protracted litigation over procedural issues and it falling to defendants to manage competing claims in order to resolve and sequence litigation efficiently.

We're going to tackle these points in the discussion by looking at:

1. Cross-border collective actions – litigation strategy and coordination
2. EU Collective Redress Directive
3. Legislative approach and progress
4. Implementation by each member state and variance in approach
5. New Deal for Consumers - expansion of rights online and in relation to products
6. Looking forward – planning for increased litigation risk, exercising opportunities for influence on evolution of collective claims and strategic implications for business

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SPOTLIGHT: Contract Drafting and Management in the COVID-19 Era

Tuesday 24 November, 4.00 - 5.00 pm

In this session we will explore the ways in which COVID-19 has affected and continues to affect contract negotiations and drafting, as well as in respect of the effective management of pre-existing and new contracts in order to avoid costly and distracting disputes. We will discuss our experiences of best practice in protecting legal rights and the commercial deal you struck when the contract was entered into, while maintaining relationships. The impact of the current pandemic on commercial contracts, in one way or another, is unlikely to come to a halt anytime soon, so it is essential companies across all industries are aware of current hot topics and position themselves accordingly to best protect and preserve their commercial interests.

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The rise of online mediation is only one facet of what the future of mediation may look like. While online mediation is likely to see significant growth as a result of COVID-19 and technological advances, attitudes to mediation as a dispute resolution tool are also changing. During this session we will explore the future of mediation throughout the COVID-19 crisis and beyond, including topics such as;

- online mediations
- mediation as an early settlement tool
- the rise of mediation in international arbitration
- mediation as a contractual provision or as a mandatory process in court litigation

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