Disputes

The IR Global Disputes group was formed to revolutionise the way cross border disputes are resolved and to provide high quality, affordable and experienced legal counsel who work together as one seamless legal adviser. This helps you resolve your dispute quickly, efficiently, and effectively. We provide a full cross-border disputes service with niche sector expertise offering ADR, mediation, arbitration and litigation services. Additionally, we offer specialist knowledge in product liability, white collar crime and investigations.

For more information visit:
www.irglobal.com/working-groups/disputes

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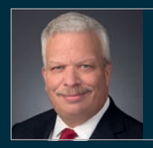

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Prashant Mara is a commercial and regulatory lawyer specialising in investigations and dispute resolution. He heads the disputes and business crime team at BTG Legal and has been helping clients manage risk and protect their interests for close to 20 years. His clients are from across a range of sectors including technology, energy, defence, automotive, aviation, industrials, pharma, and chemicals.

Prashant works closely with in-house counsel and business teams to understand risks and plan for dispute resolution that is most efficacious and efficient for his clients. His particular specialisation in foreign investment-related disputes, technology (including cybercrime) and engineering disputes, public procurement, and white-collar crime enable him to advise his clients on both civil and criminal defence/prosecution. Further, he spends a lot of his time providing board-level compliance and crisis response advice including dispute management and acting as the interface between his clients and the regulator.

Prashant was previously co-head of the India Group at Osborne Clarke in London and Cologne and prior to that ran the India desk of a Franco-American firm in Paris. He started his career as in-house counsel in Infosys and managed their European legal operations. Prashant is qualified to practice in India and read law at the National Law School of India University, Bangalore.

BTG (Business Transactions Group) Legal is a disputes and transactional law firm with best-of-breed technical expertise, a culture of innovation and teamwork, and an unrelenting commitment to excellence.

We provide expert advice tailored to our clients' business needs in a form that is simple, direct, and solution-oriented. We work on each transaction with the highest professional standards, bringing strong technical expertise and a clear-thinking commercial approach, whilst always maintaining transparency in our professional relationships.

How we do it:

- We focus on our industry sectors and have strong technical expertise in these areas.
- We maximize this sector expertise with our clear-thinking, commercial approach.
- We understand our clients' business and projects and tailor our advice to provide solutions.
- Our advice is presented clearly and simply and always considers the commercial and technical context.
- We build lasting relationships – our long-standing client relationships are a testament to this approach.
- We strive to maintain transparency and the highest of professional standards.

"The credibility of the counsel who argues in a court matters a lot in India and clients should be careful in selecting the right counsel for the right matter"

QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

Disputes take an inordinately long time to get resolved in traditional court systems in India. However depending on the value or jurisdiction of the relevant court (India has a federal court structure), higher courts such as High Courts or specialised courts such as Commercial Courts or Insolvency Courts are relatively quicker to navigate. Due to this, Courts in India encourage arbitrations that are faster and more efficient if structured properly. Therefore, it is important to pick your Court while filing cases (depending on whether that court has jurisdiction in the first place) or agree to arbitration in the contract.

Common complications:

- Claimants wanting to enforce a judgment from a superior court of a foreign jurisdiction should check whether that foreign jurisdiction is a "reciprocating territory" under the Indian Civil Procedure Code (Section 44A) and relevant notifications. If not, then the case will be reopened and merits will have to be argued in a suit filed in India.
- If enforcing against an Indian party, assets of said party in India should be verified to ensure solvency.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

- Since litigation in India takes a very long time to resolve, there may be opportunities to settle (if the client is so inclined) at crucial junctures. It is important to pursue alternate resolution mechanisms where possible and also decipher genuine offers from settlements and those that are not.
- The credibility of the counsel who argues in a court matters a lot in India and clients should be careful in selecting the right counsel for the right matter.
- Law firms can assist on the ground in identifying (via third-party service providers) assets of the litigants, ascertaining bona fides of the litigants, identifying the right forum for filing proceedings, ascertaining strengths/weaknesses of the opposite party in litigation strategy and also pursuing alternate settlement mechanisms under instructions from the client.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- Choose institutional arbitration over ad hoc arbitration or litigation as a dispute resolution mechanism.
- Pick your battles carefully – it may not be cost effective to litigate in all cases. In such cases, use litigation as a tool for negotiation.
- Choose the right team and appoint empowered internal resources to work with outside counsel.
- Pick the right court or tribunal (amongst those that have jurisdiction) and the right counsel for that court and matter.

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

- When there are delays in the formal litigation process, choose the right forum and file urgency applications where possible.
- When it comes to solvency and bona fides of parties, identify and ascertain these aspects before filing formal proceedings.
- Paper-heavy processes and formal signatures etc. are required. Businesses should put aside a significant amount of time for authorised representatives to complete filings. If possible, appoint someone in the country for the procedures.

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Dennis Boyle is an accomplished white-collar criminal defense and complex civil litigation attorney throughout the U.S. and internationally. Prior to founding Boyle and Jasari, he worked as an Assistant U.S. Attorney, a First Assistant District Attorney, and a Partner in an AmLaw 100 law firm. He concentrates his practice is helping corporations and individuals in the most complex civil and criminal matters.

Dennis is certified as a criminal trial specialist by the National Board of Trial Advocacy and is admitted to practice in Pennsylvania, New York, Maryland, the District of Columbia and Alaska as well as numerous federal courts. He is also admitted to practice before the International Criminal Court in the Hague, Netherlands and the Kosovo Specialist Chambers in The Hague, Netherlands.

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Belerina Jasari concentrates her practice in the areas of international criminal law, transnational criminal law and white-collar criminal defense. After obtaining her initial law degree in Germany and an LL.M. in French and European Union law in France, Blerina came to the U.S. to complete an LL.M. in International Legal Studies.

Blerina worked in the Prosecutor's Office at the International Criminal Tribunal for the Former Yugoslavia where she worked on the prosecution of Ratko Mladic. She worked as a White-Collar Associate for an AmLaw 100 law firm in Manhattan and clerked for a Judge of the Court of Common Pleas in Philadelphia, Pennsylvania, before joining Dennis Boyle in his practice. She is admitted to practice in New York and the District of Columbia.

QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

The timeframe for resolving a case in the U.S. is extremely variable and can only be determined on a case-by-case basis. For cases where liability is clear, such as breach of contract cases where the only issue involves payment, it is frequently possible to obtain a judgment in six to nine months.

For international cases involving complex legal and factual issues, it can take years to resolve a matter. The process of gathering evidence that would be admissible in a U.S. court can be complicated. The discovery process allows litigants in the U.S. to request documents and admissions from opposing parties, subpoena documents from third parties, and take depositions from witnesses. The Rules of Civil Procedure in most U.S. jurisdictions allow parties to seek evidence that may not be admissible in court. Objections to discovery can result in significant costs and delays.

The process becomes more complex when international litigants are involved. The Hague Convention on the Taking of Evidence in Civil and Commercial Disputes is an effective, albeit time-consuming, means of obtaining evidence; however, not all countries are a party to this Convention, and if a litigant in the U.S. is forced to use the Letters Rogatory process, the process can take much longer.

Often, non-U.S. litigants do not understand the technical Rules of Evidence that apply in U.S. Courts. While a foreign litigant may know certain facts to be true, in order to prove those facts in a U.S. court, they must be "admissible". Litigation always proceeds most smoothly when the evidence a party seeks to use in court is properly evaluated before a case is even instituted.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

American courts have their own unique culture that frequently leads to costly misunderstandings by non-U.S. businesses. Bridging the cultural divide between foreign businesses and the U.S. legal system is essential to achieving a successful outcome in litigation.

From a purely legal standpoint, many non-U.S. businesses do not understand the limitations of the U.S. courts. The U.S. courts may or may not assume jurisdiction over a dispute that appears to have arisen outside the territorial jurisdiction of the U.S. based upon a variety of factors. These limitations stem from limitations in the U.S. Constitution and must be examined on a case-by-case basis.

The role of lawyers in the U.S. frequently differs from their role in other jurisdictions. U.S. lawyers cannot normally be compelled to testify against a client, and communications between a lawyer and a client are generally considered confidential. The rule does not exist, or is not enforced, in many other jurisdictions.

Very few cases in the U.S. are actually resolved by litigation. It is estimated that 97% of cases are resolved by settlement in the U.S., and the resolution of a dispute is frequently more about negotiating an acceptable agreement to resolve the dispute than it is about winning a victory in trial. For those businesses that come from jurisdictions where cases are typically resolved by a court judgement, the process of resolving a case between the parties without court involvement can be surprising.

Finally, mediation – the involvement of a third party – is frequently a cost-effective way to resolve a matter and help bridge cultural divides. Professionally trained mediators can help parties to understand the strengths and weaknesses of each party's position and help resolve cases faster.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- Understand the facts, the evidence, and the law before initiating legal action. Too often, litigants file suit without understanding what evidence they can marshal, what facts that evidence proves and the law that applies to the case. Understanding the case is the first step in the effective and timely resolution of the case.
- Initiate settlement discussions early. Settlement negotiations, when used in conjunction with litigation, can narrow the gap between the parties and result in a quicker settlement.
- Mediation. If the parties are agreeable to mediating their dispute early in the litigation, they can save a significant amount in attorney's fees. The savings in litigations costs, if done early, allows a plaintiff to settle for less than it might otherwise have settled and a defendant to offer a greater amount to settle.

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

The most common challenges come from a misunderstanding of the timeframe and costs involved. Litigation always lasts longer and costs more than most litigants expect, and although an issue may appear clear to one party, a creative lawyer on the opposing side will frequently raise unanticipated issues just to draw out and increase the cost of the litigation to obtain a more favorable settlement for their client.

One of the first things the business should do to mitigate this issue is involve litigation counsel early. This allows for an early analysis of the business' position and permits the attorney to develop a theory-of-the-case that will carry through if negotiations are unsuccessful. It also allows counsel to assemble the evidence necessary to prove the case should it proceed to trial. Counsel will then be in a position to vigorously pursue the case rather than waiting for the case to develop in discovery.

The business should also evaluate the strengths and weaknesses of its position and understand what will happen if the case goes to trial and it prevails. In other words, it should know what its "bottom line" is going to be.

In appropriate cases, the business may want to propose mediation even before a suit is filed. Mediation in these circumstances normally only works if both sides have analyzed their cases; however, if the parties are prepared, mediation may be a relatively inexpensive way to resolve the case. If the issues are limited and require a third party to resolve, arbitration may be another option.

Boyle and Jasari is a boutique national and international law firm with offices in Washington, DC, Baltimore, MD and Philadelphia, PA. It represents Fortune 500 corporations, privately held corporations, publicly traded companies, and individuals in complex legal issues inside and outside the U.S.

The firm advises companies and individuals in understanding U.S. criminal laws involving corruption, money laundering, sanctions, and a variety of other U.S. laws that apply internationally. Boyle and Jasari also represents these same clients in civil litigation and international or national arbitration in disputes arising out of commercial or investment agreements. The white-collar practice also includes conducting internal investigations, representing individuals in internal investigations, and negotiating with the U.S. government or at trial if a client is charged with criminal charges.

International Criminal Law and Transnational Crimes are also a major emphasis of the firm's practice.

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Klaus Oblin has been successfully representing prominent businesses and state-entities for many years.

He stands out in cross-border proceedings where politically sensitive issues meet commercial matters and has been consistently engaged as lead counsel and arbitrator in a number of high-volume arbitrations under various internationally acknowledged rules.

Drawing from both civil and common law practical experience, he is known for his ability to concurrently lead teams from multiple jurisdictions.

Specialisation:

- Litigation, especially commercial and civil law-related disputes
- Counsel and arbitrator in arbitrations e.g. under the rules of the International Chamber of Commerce (ICC), the International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC), Swiss Rules, UNCITRAL (focus: commercial law, supply contracts, M&A, joint ventures, construction)
- Advice with regard to various matters of commercial, contract and construction law
- Establishment of businesses and regular advice on partnerships and corporations
- Mergers and acquisitions

Our core focus is the management and resolution of commercial disputes. We represent our clients in all phases of domestic and international litigation and arbitration proceedings, from the initiation of the proceedings to the enforcement of court judgments and arbitral awards.

We also advise our clients in general business law matters including commercial and corporate law as well as real estate and construction law.

QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

The statement of claim is filed with the court and passed on to the defendant, along with an order to file a statement of defence. If the defendant replies in time (four weeks from receipt), a preparatory hearing will be held, which mainly serves the purpose of shaping the further proceedings by discussing the main legal and factual questions at hand as well as questions of evidence (documents, witnesses, experts). In addition, settlement options may be discussed. After an exchange of briefs, the main hearings follow. The average duration of first instance litigation is one year. However, complex litigations may take significantly longer. At the appellate stage, a decision is handed down after approximately six months.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

The legal background of the tribunal, the parties and their counsel can influence the scope of disclosure and discovery, which is a major point of divergence between common and civil law. In Austria, the main types of evidence are documents, party and witness testimony, expert testimony and judicial inspection. Written witness statements are not admissible. There are no depositions and no written witness statements. Therefore, witnesses are obliged to appear at the hearing and testify. Witnesses are examined by the judge followed by (additional) questions by the legal representatives of the parties. Restrictions to this obligation exist (e.g. privileges for lawyers, doctors, priests or in connection with the possible incrimination of close relatives).

While the ordinary witness gives testimony concerning facts, the expert witness provides the court with knowledge that the judge cannot have. Expert evidence is taken before the trial court. An expert witness may be requested by the parties yet also called on the judge's own motion. An expert witness is required to submit his or her findings in a report. Oral comments and explanations must be given during the hearing (if requested by the parties). Private reports are not considered to be expert reports within the meaning of the Austrian Code of Civil Procedure; they have the status of a private document.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

Lacking funds for hefty court fees (which can be 1-2% of the amount in dispute to be fully advanced), one might consider funding options, or contemplate a criminal complaint (plus joining the prosecution as civilly wronged party).

Alternatively, don't go legal at all. To prevent a dispute before it even arises, it's advisable to consult a lawyer who:

- Systematically analyses past disputes.
- Identifies similarities, repetitive patterns, vulnerabilities and potential improvements.
- Supplies easy-to-follow, step-by-step walkthroughs that can be implemented in any corporate or institutional environment.
- Conducts careful strategic planning and clearly defines the potential alternative to a negotiated outcome.

"In Austria, the main types of evidence are documents, party and witness testimony, expert testimony and judicial inspection"

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Jim Doyle is the Director of Doyles Construction Lawyers, established in 1991. Doyles Construction Lawyers acts for all construction industry participants and represents parties at all stages of project development.

Prior to qualifying as a lawyer, Jim worked in civil engineering construction and design and as a transport engineer/economist on major transport initiatives in Victoria.

Jim's commercial multidisciplinary approach to resolving challenges and delivering viable projects is a result of his qualifications and experience in Economics (Econometrics and Urban Economics), Engineering (he is a Chartered Professional Engineer with The Institution of Engineers Australia) and Law. Jim is admitted to the State Supreme Courts and the High Court and is an accredited mediator and Fellow of the Chartered Institute of Arbitrators. He has extensive local experience in Queensland, New South Wales, Victoria, and Western Australian jurisdictions in litigation and arbitration, as well as experience in international mediation and arbitration.

Jim has extensive experience in all sectors of the construction industry in contract documentation, contract administration and project delivery. In addition, Jim has a wealth of experience in the negotiation of complicated disputes and project re-boots and the deployment of multidisciplinary professional teams involving experts across many disciplines in complex litigation.

Jim regularly presents to industry conferences on topics of current interest and publishes a newsletter, Casewatch, which features recent Court decisions of specific relevance to the construction industry.

Doyles Construction Lawyers was established in 1991 by its Principal Lawyer, Jim Doyle, and has since grown expanded into four states with offices in Sydney, Melbourne, Brisbane and Perth. We are Construction Law specialists and our expertise includes construction contract reviews and amendments, drafting and structuring, building dispute resolution, construction negotiation, payment claims, litigation, arbitration, general advice and more.

Doyles Construction Lawyers act for a diverse range of clients in the municipal, construction, engineering, and development industries. From small residential projects to major civil and commercial developments, we are well equipped to handle all types of projects and represent parties at all stages of project development from planning, tendering, design and construction, to project delivery and dispute resolution.

We have a team of experienced and capable staff from multidisciplinary backgrounds having worked in legal services, building construction, engineering and related industries.

QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

Similar to comparable common law systems elsewhere in the world (e.g. the United Kingdom, Canada etc.), complex commercial disputes progressed in the Australian court system can often take approximately 12-24 months to be resolved, though they might be accelerated if one or both parties are well prepared.

Alternative dispute resolution mechanisms such as mediation or arbitration often present faster and more controlled options. These can be particularly effective where the parties agree an accelerated process in a disputes clause within the contract, and often allow the parties to engage in a stepped approach depending on the type of dispute encountered, e.g. senior executive negotiation, mediation, then arbitration. Arbitrations tend to be favoured for higher quantum and/or sophisticated disputes, due to the certainty of a binding determination being made.

Further, certain industries may be subject to specific legislation governing disputes, for example the construction sector, in which payment claim disputes may be escalated to statutory adjudication as a "rough and ready" form of interim justice.

Importantly, Australia is signatory to the New York and Singapore Conventions, allowing arbitral decisions and mediated agreements to be filed, recognised and enforced by the courts, thereby increasing the efficiency and efficacy of alternative dispute resolution mechanisms.

Cross-border disputes are often delayed by the formal procedural steps of service of documents and legal representative appearances to start proceedings, but can proceed quickly thereafter.

In addition, there may be local conventions within the court systems that should be discussed with local practitioners wherever possible, particularly in light of the recent Covid-19 pandemic which resulted in judicial systems adopting a number of virtual protocols, some of which may survive a return to pre-pandemic processes.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

Generally, the Australian commercial landscape operates on a professional level and disputes tend to be handled through legal representatives, particularly in cases where the subject matter relates to high value claims and/or sensitive material.

It is important that a party notify any dispute clearly to the other side and to follow any procedure outlined in the contract. It is recommended that the notice be settled by a legally qualified advisor (solicitor or barrister) and that the advisor is briefed on the matter progressively for continuity of representation.

Contemporaneous documents, such as letters recording the dispute and resolving issues which would later be the subject of debate, are often invaluable. Materials related to the dispute should be preserved in their native format where possible and copies provided to a party's solicitors at the earliest opportunity.

Consideration must be given to the relationship between the parties and whether the business relationship is continuing or expected to continue following resolution of the dispute. In this regard it can be beneficial to engage lawyers on the ground as external advisors to manage the dispute on behalf of a party, leaving the company free to continue its relationship notwithstanding matters in dispute.

Further, it is often helpful to engage lawyers on the ground with local knowledge of the Court processes and arbitrator's preferences, which can smooth the way for complex claims or resolve them ahead of formal disputation. The lawyer may be able to advise on useful resources such as industry experts, to support and more effectively manage the dispute.

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

Unsurprisingly, a common challenge in dealing with disputes in Australia tends to be lack of contemporaneous evidence on or around the time of the subject matter of the dispute. A simple but effective tool to combat this challenge would be a competent document management system, e.g. online cloud storage, with all files including emails and documents able to be shared quickly with your legal advisors. Prompt dissemination of key information to legal advisors provides the opportunity for comprehensive review of relevant documents.

When identified early, tackling key issues allows the team to develop a strategy to drive the matter towards a mutually acceptable resolution, preserving commercial relationships so far as possible. Even if no resolution is achieved at that time, it is usually the case that much of that preparatory groundwork forms the basis for a later claim and/or defence. In the event of litigation, this work is likely to assist counsel and expert witnesses in analysing the real issues in dispute.

Undertaking detailed initial investigations often allows the dispute to be resolved on good terms between the parties, which results in better relationship management. These investigations may at times require specialist services, such as an expert requested to determine likely cause of delay.

Experienced lawyers can identify key issues prior to escalating the dispute. It is important that you periodically review your objectives against the employed strategy.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- Check which of the various jurisdictions apply to your matter. Note that a dispute might be capable of being filed in a number of forums e.g. state or federal court, administrative tribunal etc.
- Choose between state and federal courts depending on the remedy. Consider what your preferred resolution looks like and investigate the options that carry optimal chances of achieving that outcome.
- Establish and define contractual and other obligations. Ensure that contractual processes and obligations have been complied with including, where relevant, service of documents to initiate the dispute.
- Investigate prime witnesses early. Interview key contacts in the matter at an early stage and record recollections of the situation to allow comprehensive instructions to legal practitioners.
- Investigate and secure key documentary evidence (e.g. emails, letters etc.) Ensure that your company has a suitable document management process which retains copies of all project documents.

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Berton Spence has a broad background in banking and financial services, product liability, and general commercial litigation. As the chief litigation counsel in the legal department for one of the top 10 financial institutions in the U.S., he handled disputes all over the U.S. and internationally including litigation and mediation/settlement disputes. In that role, he also supervised the development of eDiscovery policies and participated in responses to governmental investigations.

A partner in RumbergerKirk's Birmingham office, Spence counsels corporate clients in a wide range of litigation both in state and federal courts involving banking, consumer finance and consumer protection; class actions, insurance coverage and bad faith; workplace exposure, toxic tort, general tort issues; and product liability, including automobiles, motorcycles, ATVs, industrial equipment, tools, chemical products, and pharmaceutical and medical devices.

Beyond litigation, Spence has represented numerous lenders and special servicers regarding problem loans, with a particular emphasis on remedial issues in Commercial Mortgage-Backed Securitized lending (CMBS) including commercial real estate foreclosures, deed-in-lieu transactions, receiverships, loan modifications, guaranty claims and general issues concerning realisation on collateral.

RumbergerKirk represents companies across various industries and the nation providing litigation and counselling services in a wide range of civil practice areas including product liability, commercial litigation, construction, real estate, intellectual property litigation, securities litigation, labor and employment law, bankruptcy, insurance coverage, professional liability and administrative law.

Battle-tested, diverse litigators are dedicated to solving complex legal issues by learning the intricacies of the case, collaborating across teams, knowing opponents and jurisdictions and partnering to develop effective strategies that help businesses meet their objectives. Our team focuses on resolving cases efficiently and effectively bringing innovative legal services to the most challenging cases.

Offices are located in Orlando, Tampa, Miami, Tallahassee and Birmingham, Alabama. Visit www.rumberger.com to learn more.

QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

Dispute resolution in the U.S. takes longer than in many other places; often several years. There are two parallel court systems here: federal and state. Though procedural rules are facially similar in both, cases normally move more slowly in state courts for many reasons. Federal-court jurisdiction is limited, however, primarily to matters involving disputes between citizens of different states (or between a foreign citizen and a U.S. citizen) and disputes that involve federal law. State courts, conversely, have jurisdiction over all almost all types of disputes and litigants so long as there is a jurisdictional link to the particular state.

In both systems, disputes follow a pattern of (1) initial pleadings; (2) discovery (which is almost unlimited in comparison to most non-US jurisdictions); and (3) trial before a jury or in some instances only before a judge. The initial pleading phase is short in both systems, and the discovery period is often as brief as a year or less in federal court, but in state cases discovery involving document requests, interrogatories and depositions of potential witnesses can go on for years.

In both systems, appeals of trial-court judgments are available and tend to be resolved relatively quickly, almost always within one year, though the federal system tends to move faster. In states where there are intermediate appellate courts and final (supreme) courts, a second appeal obviously takes more time. Not all states, however, allow appeal by right to their Supreme Courts but instead follow the federal model where the Supreme Court takes only those cases it wishes to.

Final judgments obtained in one state are generally enforceable in any other U.S. state via relatively simple procedures, but enforcement outside the U.S. is a function of international agreements such as The Hague Convention.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

The U.S. is a collection of 50 different states with different histories, ethnic and cultural populations, laws, methods of choosing judges, and procedural rules in their state courts. Though states' legal systems are superficially similar, there are vast cultural differences even between neighbouring states. Even within states, there can be significant differences in the legal culture between one court district and its immediate neighbour based on demographic diversities between the two.

There are "small town" judges who do not appreciate having "big city" lawyers tell them what the law is on a particular subject. Some brilliant legal scholars have become judges in federal courts who do not appreciate "small town" lawyers that are not familiar with the sometimes-more-technical procedural rules used in federal courts. Jurors in one state may be inherently suspicious of a lawyer who is from outside that state.

Dispute resolution is ultimately about persuading a neutral adjudicator (judge or jury) of the correctness and fairness of a client's position. Though studies show that most people try to approach their duties as judges and jurors objectively, those same studies show that cultural affinity works at a subconscious level. People simply put more trust in people they perceive to be like themselves than they do in outsiders. Because ordinary citizens have a large role in dispute resolution in the U.S. (most court litigation involves a jury), this "local prejudice" must always be considered.

Because of these considerations, it is absolutely essential, when litigating in the U.S., to have counsel that is aware of and experienced in navigating these cultural differences. For example, a lawyer in a smaller town will have practised before the local judge many times and will be particularly aware of how that judge likes things to be done. In the event of a jury trial, that local lawyer may be personally acquainted with or have friends in common with people on the jury. Though of course no extra-judicial communications can take place during a trial, there is nonetheless an inherent tendency of people to be more trusting of people they know and who are culturally similar to them. In larger cities, it may be more important to have counsel from a known and respected firm that has a general reputation for competence among the local judges.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- When making contracts, consider including arbitration, mediation, jury-waiver and/or forum-selection clauses to control where and how disputes will be resolved.
- The "default" rule in U.S. jurisdictions is that all parties bear their own attorneys' fees, win or lose, so to create a "loser pays" situation, it must be agreed to. Accordingly, consider including in contracts a provision that grants attorneys' fees and costs to the party that prevails. Such provisions are not right for every situation (they can incentivise a party to sue that might otherwise think it would be too costly), but in the right circumstances, they can also dissuade a potential litigant from "rolling the dice" in a lawsuit by creating a significant downside to losing.
- Hire local advocates with a strong background in the subject of the dispute. Such lawyers are better able to determine and achieve appropriate settlements.

"Dispute resolution in the U.S. takes longer than in many other places"

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

The most common challenges in most U.S. jurisdictions are hinted-at in the foregoing discussion; i.e., litigation in U.S. courts is expensive, time-consuming and can involve an incredible amount of disclosure of what would otherwise be private information along the way; something that often has a cost that is greater than the amount in controversy in the dispute.

The principal means of avoiding lengthy litigation in the American system is to include arbitration provisions in agreements with contractual counterparties and customers. Federal law in the U.S. makes properly constructed arbitration agreements enforceable in all matters that involve "interstate commerce", which effectively encompasses almost all commercial matters. Arbitration avoids arbitrary and excessive jury verdicts. Also, most states will enforce contractual waivers of the right to trial by jury. However, arbitration awards are not usually appealable so there is no opportunity to seek correction of an erroneous ruling.

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Marco Tulio Venegas Cruz is the Founding Partner of LITREDI, S.C. with 25 years of international experience. He is one of the most recognised attorneys in Mexico in the field of international commercial arbitration. He pairs his expertise in arbitration with a wide range of experience in administrative, commercial litigation and constitutional (amparo) litigation.

He has saved his clients billions of dollars and acted as counsel in several of the most complex litigation and arbitration matters for both multinational clients and governments around the world. His experience includes the successful participation as counsel in two of the largest commercial arbitrations in Mexican history, worth more than US$1.7 billion, as well as the most important infrastructure disputes ever with governmental entities.

He has international experience in the United States and France and has worked at law firms abroad as well as with the ICC Court in Paris.

Marco has published several articles related to arbitrations topics in national and international publications, such as Global Arbitration Review and Financier Worldwide. Marco is the chair of the ICC National Committee on infrastructure disputes.

“Many Mexican companies are family owned and do not have many assets to respond to adverse rulings”

LITREDI is a boutique law firm specialising in arbitration, litigation, and dispute resolution in general. It provides legal services at all stages of a controversy, including, of course, any potential settlement, to national and international clients, including corporations, governments, state-owned entities, private individuals, organisations and vulnerable groups.

LITREDI members together have more than 55 years of experience and throughout their professional careers have been successful in 91% of their cases. Our team has represented and advised in arbitration, administrative, civil and commercial litigation proceedings related to disputes in matters such as conflicts between shareholders, joint ventures, distribution and supply agreements, franchises, unfair competition, energy, construction and infrastructure, financial services, intellectual property, consumer protection and advertising, among other topics.

The firm seeks to make a positive difference and provides clients with the highest level of support and personal involvement at every stage, invariably, under elevated ethical and trustworthiness guidelines that are intended to reinforce the honour and integrity of the legal profession. The firm is also an expert in the design of tailor-made strategies for the prompt and efficient resolution of a dispute and, where possible, for the avoidance of future conflicts.

QUESTION ONE

How swiftly are disputes handled in your jurisdiction’s court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

When initiating a lawsuit before Mexican courts it is essential to determine if the matter is civil or commercial, in order to know what laws will apply to the dispute. If the lawsuit is civil, the Civil Code of the respective state (or the Federal District) will apply. When the lawsuit is commercial, the Commerce Code (Código de Comercio) will apply and supplemental to that the Federal Civil Code (Código Civil Federal).

The competence of the courts that will hear the disputes are determined by territory, subject matter, amount and degree. Both the civil proceeding and the commercial proceeding can be processed and resolved before federal courts or state courts, without distinction. In practice, disputes are generally processed before the state courts and as an exception before the federal courts. The court proceedings will be carried out before a single judge and the hearings are public, except those dealing with family law matters. The resolutions issued in the first instance can be appealed when either of the parties decides to do so.

It has been established as a general rule relative to the jurisdiction of a claim that it must be filed before the court of the domicile of the defendant. It is also accepted that the parties can provide their consent choosing a different jurisdiction, which can be recorded in a contract.

The time for processing a civil or commercial proceeding is between one and five years, depending on the complexity of the matter, the procedural strategy of the parties and the workload of the courts. Normally, when multiple procedural appeals are pursued the time is prolonged.

The most common problem complication found in cross-border disputes is related to the solvency and ability to enforce a judgment against a Mexican company. Many Mexican companies are family owned and do not have many assets to respond to adverse rulings. Therefore, it is always recommendable to have solid bank guarantees in place.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

Companies in Latin American countries such as Mexico have their own way of doing business that is based on a strange mixture of trust and wariness. In many cases, Mexican companies are focused on the present and do not plan much for the future. The absence of long-term business plans may usually result in conflicts when entering into agreements with a term of more than two years. Of course, having experienced local counsel in the corresponding industry or market is a must. A local counsel will serve not only to understand the business culture but also the legal landscape and the risks associated with each type of contract and its potential enforcement before Courts.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- Always ensure you have a proper and enforceable guarantee in your contract.
- If the value of the contract is worthy, include an arbitration clause from a renowned local or international arbitral institution.
- Take your time in hiring the proper local legal representation. Most of the cases are lost and/or complicated because of initial bad choices.

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

There are several challenges that a foreign company may face in a dispute in Mexico. The first one would be to obtain the proper legal representation. Many problems arise because companies choose attorneys that are not experienced enough in dealing with complex matters. Moreover, having attorneys fluent in both English and Spanish is essential to make sure that the communications between the client and the lawyer are conveyed properly. Other factors to consider are the places in which the dispute is being heard. Mexico has a centralist tradition in which the Courts in Mexico City are usually the best prepared, while the Courts in other States of the Mexican Republic have a very uneven quality.

Considering the duration of a case before Mexican Courts it is recommendable to include arbitration clauses in all contracts that have a value of more than US 1,000,000.00 dollars. Commercial Arbitration in Mexico works efficiently, and the local forum has enough professionals to assist sophisticated clients in this type of dispute. Moreover, Mexican Courts have adopted a friendlier approach towards the enforcement of arbitral awards.

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Joanna provides comprehensive legal advice and represents clients in the field of broadly understood economic crime, corruption and fraud leading to exposing business entities to losses. She participates in conducting audits, including due diligence of business partners, individual transactions and adopted procedures and solutions in terms of compliance thereof with the law.

She provides comprehensive legal advice in the field of customs law and customs procedures. She advises entrepreneurs on the transit, import and export of goods to/from Poland and European Union countries, as well as the classification of goods. She supports clients during customs control and represents clients in proceedings before administrative courts, providing legal support at every stage of the customs proceedings.

Joanna supports clients in transactions with a particular focus on mergers and acquisitions. She advises in complex restructuring projects of companies, including mergers, transformations and divisions. She also provides appropriate support and represents clients during business negotiations leading to the conclusion of a contract.

QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

The Polish judicial system is unfortunately inefficient. In simple cases, it takes at least a year in the first instance and about seven months in the second instance. In cases with a more complicated state of facts and more evidence, cases in the first instance can take about three years. The rule is that the case is heard by a court of second instance. In Poland, there is a tendency to use the right of second instance even when objective reasons indicate that there is little chance of a positive outcome

It should be borne in mind that the hearing of a case by a court of second instance is not merely a formality. The court of second instance may conduct its own additional evidentiary proceedings and on its basis completely change the judgment, which is very often incomprehensible for clients, especially from the common law system.

It is also a big challenge for foreign entities to submit company registration documentation, which would show the persons authorized to represent the entity and the rules of representation. Polish registration documents provide such information, so judges expect this from foreign documents as well, which sometimes requires the submission of extensive documentation, even the articles of association. Additionally, any documents in a foreign language submitted to the court should also be certified and translated into Polish, which generates additional costs.

KW KRUK and Partners is an independent law firm that has provided legal services to Polish and foreign corporate clients, financial institutions, and public administration bodies (state and local government) for more than 20 years.

A team of our lawyers has knowledge of the specificity of operations, problems and legal aspects of individual sectors of the economy, which enables our correct assessment of a business situation our clients are in and allows us to adjust legal solutions to attain the intended objectives.

We operate throughout Poland, cooperating with lawyers and renowned law firms from other Polish cities.

Our main practice areas include:

- Negotiation and mediations
- Court and arbitration disputes
- Business crimes
- Asset tracing and recovery
- Corporate law

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

Poland is classified by theorists as a moderately pro-transaction jurisdiction, and one must agree with them. This means that Polish negotiators are characterised by being goal-oriented and paying less attention to the relationships they have with their business partners. In many Polish proceedings, the facts of a dispute are very often extended by the parties to include facts that from a legal point of view are not relevant to the case, but are important for the personal satisfaction of the party. That is why very often evidence proceedings in cases become very extensive, which translates into the duration of such a dispute. The courts, especially due to the large volume of cases, are not able to control this artificial growth of cases. It is therefore important to have someone in place who can keep the proceedings under control and not allow the conflict to escalate.

Polish law, especially procedural law, is very often amended, and it is possible to deal with a situation in which two different legal states apply in one proceeding.

When starting negotiations in Poland, it is not necessary to conduct small talk or build a personal relationship with a business partner. The main part of the arrangements is made by exchanging electronic messages. Personal meetings usually end the negotiation process and serve to clarify minor issues and summarise further actions.

Very often there is also a language barrier. Many entrepreneurs, especially senior entrepreneurs, do not speak English, and even if they do they usually refuse to conduct personal negotiations in a foreign language, so it is important to have a person on site who speaks Polish. It's worth noting that all Polish courts and other authorities are obliged to use Polish, so when dealing with foreigners they use translators, the quality of which can vary, especially when dealing with specific legal language. Something may be easily lost in translation.

"Polish negotiators are characterised by being goal-oriented and paying less attention to the relationship they have with their business partners"

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- Before litigation, it is advisable to try to resolve the dispute amicably. In most cases, this is quicker and less costly than litigating for years.
- All documentary evidence must be gathered before litigation commences; Polish law prohibits the expansion of evidence after a particular stage of litigation has been reached. It would be also easier to prepare all necessary translations for the proceeding.
- Always have the support of a local attorney. The substantive and procedural laws in Poland change frequently, and often even lawyers have trouble keeping up.
- Any settlement agreement should be consulted with a Polish lawyer to minimise the risk of its ineffectiveness under Polish law.

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

Time is of the essence. The Polish judicial system is not efficient and proceedings are highly formalised. That is why court proceedings may last for years. We recommend that each of our clients first try to settle the dispute amicably, and although this may involve concessions on the part of the client, in the end, taking into account the costs of proceedings, translation, travels to Poland, etc., this may prove to be more advantageous for the client.

Each agreement ending a dispute should be reviewed for effectiveness under Polish substantive and procedural law. It is not uncommon for waivers contained in such agreements – which are the rule in common law countries, for example – to be ineffective or even invalid under Polish law.

Many legal concepts used commonly in other jurisdictions are not familiar to the Polish system, such as trusts. As a result, it is often necessary to simply explain how such a mechanism works. A similar situation applies to new technology solutions, which may be incomprehensible to Polish courts. In Polish courts, but also in prosecutors' offices, cases are, as a rule, assigned at random, so a case that requires an understanding of a new technology issue may be assigned to a person who has no experience in this area, even if there is a competent person in the institution to resolve such a dispute.

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Daniel Fleming is IR Global's designated representative for commercial litigation in New Jersey and Pennsylvania. He has conducted over 100 jury trials and 100 bench trials throughout a legal career spanning over 35 years, has obtained multi-million dollar recoveries for Fortune 100 companies and successfully defended against high value claims. He is the co-founder of Wong Fleming, a 45-lawyer law firm headquartered in Princeton, New Jersey, with offices in Philadelphia, Pennsylvania and elsewhere. He serves as national counsel for several multinational companies. He is Chairman of the Board of Directors for Asian Bank in Philadelphia and serves on its audit committee. Daniel's pro bono activities include membership on the Program Committee for the Philadelphia Chinatown Development Corporation (PCDC) and the board of directors for ETCC, PCDC's non-profit owner of its community center and residential tower. He is a graduate of Villanova University (B.A.) and the Columbus School of Law, Catholic University of America (J.D.). He is admitted to the bars of New Jersey, Pennsylvania, New York, Maryland, Washington, DC, Ohio and California. He is married to fellow IR Global Member and co-founder of Wong Fleming, Linda Wong.

QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

The Pennsylvania courts, once notoriously slow in resolving disputes, now generally meet the American Bar Association guidelines for resolving cases within two years of filing. A 1995 study of the 45 largest state trial courts in the country concluded that the courts in Philadelphia were the second worst in the country for the amount of time it took to conclude a civil case dispute. By 2004, a National Center for State Courts study found that Philadelphia's courts were "arguably the best-managed large urban civil trial court operation in the nation," a trend that continues today.

The New Jersey courts continue to take longer to resolve disputes in comparison. State court rules generally require discovery be completed within 300 days of filing for personal injury actions, and 450 days for civil cases involving medical malpractice or other complex claims. Judges often extend these deadlines. As a result, New Jersey's timeframe for resolving civil disputes is closer to three years, or even longer.

However, federal courts in both New Jersey and Pennsylvania usually resolve their civil docket faster than the state courts. The U.S. District Court for the Eastern District of Pennsylvania is one of the busiest federal courts in the nation, but is often viewed as a model of case docket management.

Daniel Fleming and Linda Wong co-founded Wong Fleming in 1994, a national and international law firm consisting of 45 attorneys. The firm concentrates its practice for the business community in commercial, bankruptcy, employment, insurance coverage and defense, personal injury, product liability and intellectual property litigation. It is headquartered in Princeton, New Jersey, and is AV-rated by Martindale-Hubbell. Forbes has called it a "go to" firm for contract litigation. It is counsel for many Fortune 500 companies and maintains an active litigation practice for them, including serving as national counsel for litigation matters in all 50 states. Wong Fleming also provides critical transactional and immigration services for the business community. The firm is guided by its core values: (1) an absolute, irreproachable sense of integrity, without compromise to the interests of the firm's clients, (2) strong and effective advocacy, while maintaining the highest standards of professional conduct, (3) the vigorous pursuit of client interests, while maintaining civility to the bench and bar, (4) the promotion of diversity in the legal profession, and (5) a commitment to community activities.

The U.S. District Court for the District of New Jersey is the busiest federal court in the nation, but is currently dealing with a failure by Congress to confirm necessary judicial appointments, which is most apparent in its backlog in dispositive motions. A motion to dismiss can commonly take as long as six months, if not longer, for a judge to decide.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

In Pennsylvania, businesses should be aware that the state conducts unrestrained, partisan elections of its judges. Judges run as candidates listing their party affiliation, with most voters never having heard of the judicial candidates. To campaign, judges raise large sums of money from lawyers, businesses and special interests. For this reason, corruption has sometimes taken place within the judiciary. On occasion, judicial decisions in Pennsylvania have unfortunately been influenced by money, with some judges going to prison. It can affect the quality and independence of the bench in Pennsylvania, and businesses should be mindful of other options (if eligible), such as removing a state court case to federal court or otherwise choosing federal court as the first choice, especially if the dispute is complex or controversial.

In New Jersey, no elections are held and instead, the governor nominates judicial candidates and the state senate confirms them. While this helps reduce the risk of corruption, and can enhance judicial independence, New Jersey state judges nevertheless have a history of favoring the "home team" and displaying hostility toward out-of-state counsel. Out-of-state counsel barred in New Jersey used to have to maintain a bona fide office in New Jersey. They could not maintain a mail drop or conduct business from their out-of-state office. This virtually guaranteed that a New Jersey barred attorney who was located outside the state had no choice but to hire a New Jersey barred attorney with offices in New Jersey. That archaic rule has since been abolished, but the bias against out-of-state counsel, even if barred in New Jersey, remains. Use of New Jersey counsel with offices in New Jersey can help reduce the risk of this unwarranted bias.

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

For Pennsylvania and New Jersey, the most common challenge to resolution of a dispute is the inordinate time clients must wait for a judicial resolution. Litigants must also deal with the proportionally exorbitant cost of litigation while waiting for a resolution. Litigants have no choice but to go through the time-consuming and costly gauntlet of discovery, which can take on a life of its own. Some large multi-national American companies even retain so-called "discovery counsel" in an effort to employ a uniform, and hopefully cost-effective, procedure for discovery.

The scope of discovery is broad and, consequently, potentially extensive and expensive. The cost of completing the exchange of paper discovery and oral deposition testimony can result sometimes in shutting the courthouse doors to litigants. Sometimes, the cost to complete discovery can exceed the amount in dispute, making litigation a poor option.

The state courts in Pennsylvania and New Jersey do have arbitration panels, some of which are mandatory to participate in, but they are often feckless and ineffective. We have seen too many arbitrators who display a bias in favor of one of the litigants. The only redeeming feature is that litigants can reject the arbitration panel award and proceed with the litigation. A more effective option is often the use of private mediators who focus their practice on alternative dispute resolution. Mediation is non-binding and its only downside is the cost of hiring a mediator. Both New Jersey and Pennsylvania have an excellent ADR bar and it is money well spent. One tactic to consider is to agree to an adversary's choice of mediator; half the battle in mediation is persuading the mediator you are right. It can be a powerful weapon to have the adversary's choice of mediator tell that party that they are wrong and likely to lose.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- Be mindful of New Jersey's Entire Controversy Doctrine. New Jersey is one of the few states in the country with such a draconian rule. An equitable doctrine, its objectives are to encourage comprehensive and conclusive litigation determinations, to avoid fragmented litigation and promote party fairness and judicial economy and efficiency. However, New Jersey case law is littered with examples of out-of-state litigants who were not aware of the rule, and innocently brought subsequent actions like insurance subrogation and legal malpractice lawsuits, only to find out they are barred forever.
- Take advantage of Pennsylvania's confession of judgment rule. Pennsylvania is one of the few states that permits a party to enter into an agreement to "confess" to a money judgment. It's a great tool to use for banks and anyone else advancing credit.
- Avoid the slower state courts and choose the federal courts, when possible. Federal courts are courts of limited jurisdiction, but if your dispute is eligible, choose federal court for a faster result.

"The U.S. District Court for the District of New Jersey is the busiest federal court in the nation"

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Stephen Wilson QC is a partner and heads the Litigation and Dispute Resolution practice group in the Turks and Caicos Islands ('TCI').

Stephen has appeared in many of the TCI's headline cases involving disputes in the tourism and hospitality, banking, real estate, insurance and construction sectors. He has a broad range of experience with matters in the admiralty, shipping and aviation, banking and finance, corporate and commercial, employment, insurance, intellectual property, real property and development sectors.

Stephen's corporate and commercial work has included complex disputes comprising multi-jurisdictional claims, multi-party actions, contract breaches, insolvencies and liquidations involving local and international parties, shareholder disputes, and corporate reorganisations and restructurings.

Stephen is recognised by the prestigious London-based Chambers and Partners as a top ranked attorney in the Chambers Global General Business Law – Dispute Resolution sector. He holds the distinction of a Band 1 ranking, which is the highest individual ranking. He has also been recognised by Chambers Global with their rankings for "Foreign Expertise" and "Expertise Based Abroad".

"Stephen Wilson QC ... is regarded as a stellar litigator with a broad-ranging practice which sees him handle cases in the real estate and tourism sectors, with further expertise in banking, corporate, employment and IP disputes. He continues to represent Bahamas entities in disputes from his Turks & Caicos base."

GrahamThompson (GT) prides itself on its unique combination of expert legal skills and real-world experience in working out effective solutions to complex problems. With 70 years of continuous history and a first-rate balance between seasoned practitioners and dynamic young lawyers, GT is excellence-driven in every way.

Producing and sustaining clientele drawn locally and from across five continents is the focal point of the firm's efforts. Integrity, hard work, understanding the "bigger picture" that frames the specific legal needs of clients, creativity, rigorous ethical restraint in the charging of fees, and uncompromising loyalty to the client, are key ingredients of the GT ethos.

GT, well known as the largest commercial law firm in the Bahamas, has successfully expanded from its main downtown Nassau location to better serve its broad range of corporate and private clients. In 2000, the Freeport, Grand Bahama office was opened, followed by the launching of licensed affiliate GTC Corporate Services in 2001, and the Lyford Cay, New Providence office opened in 2011. In December 2012, GT expanded to Providenciales, in the Turks and Caicos Islands, where it enjoys a reputation as one of the leading firms for civil and commercial litigation, and more recently, for transactional real estate matters.

GT has an enviable reputation both domestically and globally in a variety of important legal disciplines. Its attorneys are sought after by leaders in the real property, resort development, banking and capital markets, and domestic tax and regulatory sectors. The firm is highly regarded for its expertise in trust and estate planning, commercial matters, civil litigation, family law, securitisation, employment and immigration matters.

GT is consistently ranked a tier one law firm by the leading international ratings publications, including Chambers & Partners, IFLR1000, and City Wealth Leaders List, among others.

QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

Relative to big international cities and other Caribbean jurisdictions, disputes can be handled quite quickly in the TCI court system, though the Covid-19 pandemic has increased the time it takes for actions to pass through the system. New civil rules are being drafted with a view to moving the system towards a more case-managed and thus court-controlled system.

Cross-border disputes do not generally produce their own unique complications. The days of foreign plaintiffs having, as a matter of course, to post security for the entirety of the anticipated costs of the litigation, appear to have been consigned to history, save in respect of those plaintiffs residing in territories with notoriously difficult legal systems and which present problems for successful defendants enforcing orders for costs. Instead, any security for costs ordered is likely to be limited to an amount representing the anticipated additional cost (if any) of enforcing in the plaintiff's jurisdiction an order to pay the defendant's costs, over and above the cost to be expected by enforcement in the TCI.

The move towards online hearings and recognition that virtual or hybrid hearings are likely to remain part of the future means that many of the drawbacks associated with parties being in foreign countries are no longer of such concern.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

Although disputes can be resolved relatively quickly, it should be taken into consideration that the TCI is a very small jurisdiction, with small law firms but still a high volume of disputes. As such, many attorneys are overworked and have access to limited resources in terms of the number of personnel they employ. This can lead to longer response times than many are used to both in terms of attorney/client communications and interparty correspondence.

In terms of its legal system, the TCI operates as a common law jurisdiction and disputes are handled by the courts through an adversarial system, such as one would find in England & Wales, Canada and the USA.

It is always advisable to take advice from local lawyers before entering into business in a foreign country such as the TCI and to engage local lawyers as soon as possible if a dispute arises.

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

One of the most common challenges is that the relatively small number of law firms specialising in commercial dispute resolution leads to the more popular firms being conflicted from acting. This is another reason why it is advisable to engage a local law firm before entering into business with a contractual counterparty.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- Do your homework before entering into any contract. Ensure that the terms of any contract you enter into are clear, unambiguous and appropriate from the outset and are regularly reviewed and updated. Ensure your contract makes provisions for how you will handle any disputes. It is always a good idea to have a litigator assist in the contract drafting.
- Be organised during the performance of your contract. It is often said that "documents win cases" or "if it isn't in writing, it didn't happen". Maintaining a clear and complete record of communications with the other party or parties to your contract can be invaluable in the event of a dispute.
- Keep all lines of communication open. Open and frank communication can often help prevent disputes or lead to amicable solutions. If the key persons with the day-to-day relationship can no longer communicate without hostility, consider moving the discourse to more senior personnel. If that fails....
- Consider mediation or other non-litigious dispute resolution. Involving a professional, trained, neutral third party (or parties) can bring an objective view to bear on the dispute and allow both sides to air their views without necessarily directing hostility at each other. From 15 October 2021, the TCI's Court Connected Mediation Rules 2021 come into effect and apply to disputes other than insolvency proceedings and non-contentious probate proceedings.
- Take legal advice early. Understand your contractual obligations, how disputes should be dealt with and how to preserve your rights. Do not be put off by an attorney's hourly rate. Experienced attorneys often take less time to handle issues and can be more cost-effective than someone charging a lower rate.

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Cherry Bridges is the Managing Partner of Ritch & Conolly LLP, a law firm in the Cayman Islands established in 1983. Her partners in the firm are Angus Charlton and David Collier.

Cherry was educated in England and called to the Bar of England and Wales in 1982. She did her pupillage at 1 Essex Court, London and Temple Chambers, Hong Kong and was called to the Hong Kong Bar in 1983.

Cherry was a Barrister-at-Law in Temple Chambers, Hong Kong until late 1986 when she relocated to the Cayman Islands and was admitted as an Attorney-at-Law there in 1987.

Cherry has 39 years' experience acting in a wide range of civil commercial litigation with particular expertise in litigation relating to insolvency, restructuring and corporate recovery, funds, corporate and shareholder disputes, contentious trusts matters, tracing actions, enforcement of judgments, fraud and asset tracing, property, contractual and tortious claims, employment and insurance. Her list of reported cases may be found at www.rc.com.ky.

She has acted in many complex cross border matters for clients from all over the world, including the Dominican Republic, USA, Canada, Mexico, Uruguay, UK, France, Germany, Switzerland, Spain, Russia, Norway, Singapore and Hong Kong.

QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

Disputes can be handled very swiftly in the Cayman Islands when all parties to the litigation act professionally and efficiently. Our firm has dealt with numerous cases expeditiously, though parties do adopt delaying tactics as part of their litigation strategy. Access to the Courts is not generally an issue – there are delays sometimes in getting Court dates, but the Court always makes time for necessary and urgent hearings.

There are no insoluble "complications" as such, but any litigant must understand the various procedural, interlocutory, jurisdictional and conflict of law matters which often arise in cross border litigation and which may be different in the litigant's home jurisdiction. For example, it is necessary to understand:

- The nature and importance of the pleadings in our legal system.
- Potential jurisdictional challenges and/or forum challenges.
- The requirement to give full and frank disclosure of all relevant facts and matters on ex parte applications and the consequences of failing to do so.
- Orders for security for costs which may be ordered and may need to be fortified by a Bond or bank guarantee, or payment into Court.
- The process and reasons for making payments into Court.
- Notices to Admit and the consequent adverse costs order if a party fails to admit facts which ought to be admitted to saving costs.
- The requirement to give proper disclosure/discovery of all relevant documents per the test in the Peruvian Guano case.
- When expert evidence is required, and the neutral role of an expert and the expert's duties to the Court.
- The methods by which parties may adduce their evidence in Court and when witnesses must make themselves available for cross-examination.
- The risks of adverse costs orders being made against an unsuccessful litigant

Ritch & Conolly LLP has a respected international commercial litigation practice with extensive experience in cross-border litigation in trusts, corporate disputes, insolvency and asset recovery, enforcement of foreign judgments and conflicts of law.

Other areas of our litigation practice include banking, commercial fraud, anti-money laundering, contract, negligence, construction, administrative and public law, shipping, property, employment and arbitration.

We also undertake extensive non-contentious work including company, insurance, banking, real estate development and structuring, conveyancing, wills and estates, licensing, immigration and trademarks.

The firm has established links with other law firms and institutions worldwide. Company formation and administrative services are provided by the firm's affiliated corporate administration company, Foreshore Corporate Services Ltd., which may be contacted at the law firm's address or by e-mail at ebyrnes@rc.com.ky.

> **"Whilst relatively small, the Cayman Islands is a sophisticated financial centre"**

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

Whilst relatively small, the Cayman Islands is a sophisticated financial centre with a bench of capable judges who are experienced in efficiently handling complex commercial matters. The Court of Final Appeal in the Cayman Islands is to the Privy Council in England, because the Cayman Islands are a British Overseas Territory.

The Cayman Islands is a common law jurisdiction premised on the doctrine of stare decisis – where the law is developed through court decisions instead of legislative statutes alone, and legislation is interpreted by the court compared to a civil law jurisdiction in which governments create complete codes of law and government legislation is the primary source of law. Litigating in the Cayman Islands is similar to litigating in any other common law jurisdiction, though there are differences because the Cayman Islands has its own laws and Grand Court Rules, and each country has different procedures and rules of evidence.

With our guidance, clients and instructing foreign lawyers, including those from civil law jurisdictions, quickly understand our legal system and procedures. As a jurisdiction, we are very close geographically to the United States and many matters which are the subject of litigation here also have a US aspect, though litigation in the Cayman Islands generally involves clients from all over the world. The Grand Court will also assist foreign jurisdictions and those involved in foreign proceedings (for example, allowing recognition of foreign appointees).

There is a real advantage in having experienced local lawyers involved at the outset in any litigation matters in the Cayman Islands. Our attorneys have many years of experience in the most complex and high-value cross border disputes and insolvency matters which have been brought before the Grand Court, the Court of Appeal and the Privy Council, as is evidenced by the significant number of our cases that have been reported in the Cayman Islands Law Reports and listed on our firm's website.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- Do research before engaging an attorney to find an experienced local attorney by searching the Cayman Islands judicial website to identify a list of the attorney's reported and unreported cases in the Cayman Islands Law Reports.
- Consider fee rates charged by the large, medium and small-sized firms for each fee earner on the legal team. You will be surprised at the considerable variation of rates between firms and at the fact that you will often find the more experienced attorneys in the smaller or medium-size firms. Inquire which attorneys and support staff will be deployed on the case and what their respective roles will be.
- In the interests of saving costs, keep potential settlement options in mind at all stages of the litigation.

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

There are no major challenges when dealing with disputes in the Cayman Islands, except when litigants adopt delaying tactics, and those cases that do not settle but go to a full trial, which is expensive as witnesses are usually required to appear for cross-examination. Witnesses have to incur the costs of flights and expensive hotels, especially in the high tourist season. For complex and high-value cases, Queen's Counsel from London will usually need to be instructed and this is very expensive as, apart from their fees, the client has to cover the expense of flights, hotels, their work permit and temporary admission to appear for that case before the Cayman Court.

Practical solutions might include:

- Making good use of the Court by making an application at an early stage of the proceedings for a strict timetable for the various stages of the case and obtaining unless orders for failure to comply promptly.
- Asking the Court to agree to video link hearings for all or part of the proceedings (this was particularly useful during the 2020 Covid-19 lockdown in the Cayman Islands).
- Setting the substantive trial down for hearing in the low tourist season between April and October when flights and hotels are generally much cheaper.
- Instructing Queen's Counsel who are living in the Cayman Islands and are generally admitted to practice in the Cayman Islands, as this saves paying for flights, accommodation and the fees for a work permit and temporary admission.

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Upon graduating from Georgetown University Law Center in Washington, D.C., Harry Payton began a successful career in commercial litigation in Miami, Florida. Harry is Board Certified by the Florida Bar in Civil Trial and Business Litigation, an accomplishment of less than 100 Florida attorneys state-wide. He is recognised for his high standards of professionalism, and has received the highest "AV Preeminent" rating from Martindale-Hubbell for more than 30 years.

Since 2005, he has been named in Florida Super Lawyers as a top-rated business litigation attorney. Harry was an active participant in the Managing Litigation as a Business initiative. He was a leader in the American Bar Association's effort to create a uniform system of billing and budgeting, which serves as a platform for assessing the productivity and efficiency of outside counsel and law firms.

Payton & Associates, LLC is a boutique law firm located in Miami, Florida that specializes in complex commercial litigation. The firm represents clients in both state and federal courts, as well as in arbitration proceedings, throughout the State of Florida.

Typical cases include breach of contract, shareholder derivative actions, international trade disputes, commercial foreclosures and leasehold disputes, misappropriation of confidential business information, business torts such as fraud and misrepresentation, conversion, defamation, and enforcement of non-compete agreements. The firm provides the highest calibre of services at the highest level of professionalism.

QUESTION ONE

How swiftly are disputes handled in Florida's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

Like every state, Florida has two court systems: the federal system and the state system. The federal system will entertain cases where the plaintiff and the defendant are of diverse citizenship and the amount in controversy exceeds $75,000. The federal system also entertains cases based on federal law. The state court system entertains all cases of every nature exclusive of those that are required to be filed in federal court. There is no impediment in either the federal court system or the state court system to the prompt filing of claims. Cases can be filed as soon as the papers are prepared. For matters that are very complex and that meet the federal jurisdictional standards, it may be advisable to file in federal court because the judges are generally better prepared and have assistants that the state court judges do not have.

A common complication to cross-border resolutions is the need to translate foreign language documents into English, which may delay the process of preparing the suit for filing. Florida requires every foreign language document to be translated by a certified translator if the document is going to be filed in court and be the basis for or related to the claim. Failure to file the translation of the documents on which the case is based is grounds for dismissal of the action. For cases filed in federal court, the translator should be a certified federal court translator.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with the legal dispute in Florida? How can working with a third party on the ground help to navigate these issues?

Florida is the gateway in and out of Central and South America. South Florida, in particular, is a very multi-cultural community. Many people from Latin America are unable to understand our system of discovery, the inquiry directed to the adversary and non-party witnesses to learn as much as possible about the claims or the defenses raised by the opposing party. It is, perhaps, the most liberal discovery of its kind. The guidelines for discovery are very broad. All discovery is permissible providing it is relevant or likely to lead to the discovery of admissible evidence.

Discovery takes several forms in both the federal and the state court systems. In the federal court, the rules require voluntary disclosure of pertinent documents. This, even before the parties make demands upon each other. The process of discovery is governed by Florida's rules of procedure, which are very similar to the rules of procedure in federal court. The most common forms of discovery are interrogatories, requests for admissions and requests for production of documents. In written discovery, one party may ask another to answer written questions under oath. These questions are referred to as interrogatories. Another form of discovery is a request for admissions of fact wherein the requesting party asks the opposing party to admit stated facts and/or the authenticity of documents. Finally, the parties may request documents relevant to the claim or defense. Following written discovery, the parties have the opportunity to interrogate opposing parties and non-party witnesses in the presence of a stenographer/court reporter who administers an oath and records the questions and answers. This process is known as a deposition. In addition to having a court reporter present, the party taking the deposition may choose to record it on video for later use in court, including at trial.

The discovery process is the most time consuming, expensive part of preparing a case for trial.

> **"Florida requires every foreign language document to be translated by a certified translator if the document is going to be filed in court"**

QUESTION THREE

What are the most common challenges when dealing with disputes in Florida? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

The most common challenges involve time and money. In both court systems, the disposition of the bulk of the cases filed is between one and two years. The more complex the case, the longer it will take to resolve. Access to the courthouse is readily available. Some Florida counties have adopted a business court for handling commercial disputes. The business courts are patterned after the federal court system of oversight and case management. The following counties have adopted business courts: Miami-Dade County (Miami); Orange County (Orlando); Hillsborough County (Tampa); Broward County (Fort Lauderdale). Cases filed in the business courts tend to move faster than in other court divisions.

The cost of litigation has been a paramount issue for corporate America since at least the early 1990s, when the American Bar Association Section of Litigation undertook a study of the rising cost of legal fees and the creation of a uniform system of billing and budgeting. A comprehensive review of the facts giving rise to a case should occur very early in the case. From that comprehensive view, witnesses should be identified and a budget should be drawn according to the litigation codes adopted by the ABA.

As an alternative to litigation, the parties could select mediation as the first step in dispute resolution and/or arbitration. Arbitration could be binding and non-binding according to the agreement of the parties. Arbitration was designed to be economical, efficient and expeditious. If the parties treat arbitration as it was intended, it can accomplish its objective. If the parties treat arbitration as another form of litigation, in effect you would have litigation with a private judge or judges, as the case may be. An effective arbitration can be had with one arbitrator applying the substantive law of the state, permitting one deposition of a party on each side and one expert and an exchange of documents relied upon. In that way, arbitration can be more cost-effective than litigation.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- Put an effective arbitration agreement in your contracts. Determine how much money you can afford to lose before feeling deprived of the right of appeal, and above that sum of money provide an option for the parties to elect litigation.
- In your contracts, select a forum for the resolution of disputes: private arbitration under state or federal arbitration rules; AAA or Jams arbitration or litigation in federal and/or state court and the location.
- Identify the best mediators in the jurisdiction in which you choose to resolve your dispute and decide whether to require mediation before any other form of dispute resolution.
- Get your arms around a comprehensive set of facts before taking further action.
- Insist counsel provide a budget that both parties can agree upon.

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The Managing Director and founder of Wolfs Advocaten, John Wolfs, is a thoroughbred entrepreneur. He has worked as an attorney for 26 years, initially for leading firms in Washington DC and Rotterdam, before founding Wolfs Advocaten in Maastricht 20 years ago.

John is well known for his creativity, specialist sector knowledge and the top quality service he provides. He is direct, proactive, constructive and able to analyze situations quickly. He is also pragmatic. John Wolfs often lectures in the field of international transport and customs law, as well as international commercial law and insurance law.

With offices in Maastricht, Amsterdam and Venlo, Wolfs Advocaten specialises in legal solutions for entrepreneurs in the Netherlands and abroad. Wolfs Advocaten is a so-called full-service firm, where all areas of (civil) law are covered. The firm is mainly specialised in the field of corporate advice and litigation, (international) transport law, international commercial law, customs law and insurance law.

Wolfs Advocaten now consists of a young, dynamic team of around 20 attorneys, lawyers and support staff. Wolfs Advocaten employs true team players, who make efficient and optimum use of each other's expertise. You know and will otherwise find that we are business-like, realistic, effective and accessible, as well as being experts in 'our' legal areas.

Our clients often choose to enter into a long-term business relationship with our firm. Many of our clients are logistic, industrial and trading companies, as well as insurance companies, insurance intermediaries, foreign lawyers, housing corporations and care providers who value the services provided by Wolfs Advocaten.

The firm operates in Dutch, English and German if needed. Check out our website www.wolfsadvocaten.nl for news items. Follow us on LinkedIn. And last but not least: feel free to contact us for an introduction.

QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

One should distinguish in civil matters between regular Court decisions, urgency proceedings and provisional measures.

For example, a regular proceeding for the collection of debt may take nine months, including one obligatory Court hearing, if the amount exceeds 25,000. Thereupon the Court will render a final judgement or an intermediate e.g. to hear witnesses have an expert opinion. The intermediate judgement usually extends the proceeding by at least one year.

However, proceedings involving the dismissal of employees are usually dealt with in a shorter time (around two months). Generally, an urgency proceeding is started, since a regular proceeding would take too long and lead to uncertainty on both sides. Upon any decision appeal, an appeal with the Supreme Court is possible and extends the proceeding with at least one year per instance, if not more.

If a decision is needed quickly, Dutch courts can decide in an urgency proceeding. This usually only takes two months, also if it relates to disputes between shareholders. The urgency needs to be strongly motivated; if not, the judge dismisses the claim for lack of urgency. Appeal is possible and takes one third of the running through time as stated above.

A conservatory arrest may serve as a possibility to freeze assets. A judge may render a decision to freeze assets within 24 hours upon the request of the claimant. Take a look at our vlog on conservatory arrest in The Netherlands at www.wolfsadvocaten.nl. Appeal is possible, as in an urgency proceeding.

Enforcement of a judgement within the European Union and European Economic Area countries is easy. Judgements from abroad are usually recognised under Dutch law if minimum requirements are met as to notification and impartial judging. However, legal claims that are not possible to request under Dutch law, like punitive damages, are not recognised. Parties from abroad may have to provide security for Court fees and possible forfeited lawyers' fees up to a certain amount.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

Only lawyers of the Dutch Bar Association are entitled to represent parties in disputes relating to civil matters unless the amount is less than €25,000. Judges are impartial so discrimination is a no-go area.

Some judges are very active in the debate and even try to find solutions providing some insight into a possible decision, thereby stimulating parties to solve the matter in a break of the hearing.

And last but not least: Dutch people are usually direct, which may be considered a little bit rude for some foreigners.

Dutch lawyers guide you and can explain what is said and also what is not said by a judge or an opponent. This reading between the lines and a generally pragmatical approach of most lawyers is considered an asset and of value to foreign clients.

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

One of the most common challenges when dealing with disputes in the Netherlands is that the court fees to start proceedings are relatively low, as a result of which an opposing party sometimes starts proceedings already for a relatively minor (financial) interest. It is also possible to present new evidence or to hear witnesses/experts during the proceedings, which makes the threshold for starting proceedings (while the evidence is not yet complete) low.

If proceedings have been initiated against one, one will be obliged to put up a defence; otherwise, the claim will be granted. However, Dutch lawyers generally (and are required by their Code of Conduct) to avoid proceedings by reaching a settlement with the opposing party (which is also still possible after the proceedings have been initiated, although the court fees paid cannot be reclaimed with the court anymore) but this will not always be accomplished.

To avoid lengthy and costly proceedings, a settlement is usually always better from a cost perspective, as the legal costs incurred in litigation are only partially (about 20%) reimbursed in the Netherlands if you win the case. If you lose, you have to pay part of the litigation costs of the opposing party but full court fees. Litigation in the Netherlands is therefore relatively expensive, even if you win.

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- Make sure that the file is complete and that the relevant documents including an outline are presented to the lawyer. Pay attention to the burden of proof!
- It may also be worthwhile when a dispute arises, to already estimate the amount for which you are willing to settle the case.
- Always ask your lawyer for sufficient step-by-step insight into the costs of the proceedings/settlement. In the Netherlands, a 'no cure, no pay' agreement is not possible. However, a hybrid agreement is possible, for example, a lower hourly rate than usual, which only increases if a certain positive result properly described will be achieved.
- Make sure that you have your general terms and conditions that you (hopefully) use when contracting with a (foreign) opposing party checked on consistency with Dutch law by a lawyer.
- Make sure you have your contracts checked on consistency with Dutch law. Having a contract drafted or reviewed will incur costs, but these costs are much lower than the costs involved when you need to litigate because a dispute has arisen afterwards.

"Only lawyers of the Dutch Bar Association are entitled to represent parties in disputes relating to civil matters unless the amount is less than €25,000"