

International finance lawyers: convergence is here to stay

The Lawyer and Paul Hastings hosted a roundtable, including an external counsel fluent in US and English law, focusing on how evolving capital markets will affect the way legal services are offered

In attendance

Catrin Griffiths,
The Lawyer

Luke McDougall,
Paul Hastings

Peter Schwartz,
Paul Hastings

Ian Barnes,
Bank of America

Jessica Foong,
HSBC

Kate Hatcher,
CVC

Helena Heaton,
Lloyds Bank

Colette Pithie,
Goldman Sachs

Jarlath Pratt,
GIC

Paul Shields,
Société Générale

What is on the horizon for finance lawyers? That was the broad question being asked at a breakfast roundtable hosted by Paul Hastings and *The Lawyer* in October.

With participants both from the lender and sponsor side present, the discussion ranged from current thinking on deal structures, to how finance lawyers in-house might configure their resources within a rapidly changing transatlantic market.

The conversation between the European and US markets is intensifying. “US investors are more focused on looking at European terms,” noted one lawyer. For some institutions, this means creating a whole work stream of making their US capital markets colleagues comfortable with what is on offer.

It has also had a knock-on effect on what skills and experience are needed by firms in terms of recruitment. “You really want to look for more New York-related experience,” said one.

While many accept there is increasing convergence between US and European markets, there is, nevertheless, a distinction in practice. “European investors seem to be more flexible than US investors and accept more sponsor-friendly terms,” said one



Helena Heaton, Lloyds Bank;
Ian Barnes, Bank of America

lawyer. “Yes, they’re becoming much more familiar with European documentation,” agreed another. “You have to take on board both sides now.”

However, even if there is a convergence, few lenders or sponsors resource it that way. London, Paris, New York – the teams are all quite siloed and not terribly integrated, admitted a participant.

While high yield, as a quintessentially US product, is always going to be governed by New York law, English law is often viewed as a neutral forum – particularly with Chinese investors, who are uncomfortable with the enforcement implications of using New York law, given the current tensions around international trade and sanctions.

“In project finance in Latin America, there’s been a shift from New York law to



Jessica Foong, HSBC; Kate Hatcher, CVC

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Jarlath Pratt, GIC; Luke McDougall, Paul Hastings

English law over the past six months as a result of the trade war,” commented one participant. “This is because a lot of those projects are funded by Chinese banks, and they’re increasingly getting the word from the top, which is: we do not want to be in a New York court, at all, in any conflict. And so the next and most obvious option is English law.”

There was a general consensus around the table, too, about the importance that Asian investors in general will have in the future of Europe and Central Europe, particularly when it comes to direct foreign investment. “Europe is starting to fracture in its approach to China,” said one lawyer, while another said: “In Japan there was something like \$8bn (£6bn) of new investment money raised this year.”

Furthermore, any post-Brexit pushback on using English law on European deals has largely dissipated. Arbitration clauses – now increasingly common – generally stipulate London as the forum for dispute resolution, although Singapore and Switzerland are certainly seen as attractive alternatives. But

according to the participants, there is no attachment either way to a particular governing law in market terms. As one lawyer commented, “Transaction teams don’t care, they’ll do whatever necessary to just get the deal done.”

Deal decisions inevitably have an impact on the internal set-up at lenders and sponsors. No matter what the size of the institution, there are two abiding themes: cost and time pressure. “We are looking to external counsel who can run the whole thing, whether it be New York law, English law, or both, and be full service,” said a participant, noting – with agreement from others around the table – that the requirement for a harmonised transatlantic approach was crossing over from leveraged finance to infrastructure investing.

At the heart of these teams is the ‘lawyer of the future’, a model counsel who sits in London, but is also inherently connected with other desks, and able to do all of the due diligence before presenting feedback to the client. “The last thing you want to hear from your external counsel is: ‘Oh you’ll

Threading needles and staying neutral

Luke McDougall, finance partner, Paul Hastings, London

Paul Hastings was very pleased to sponsor the roundtable discussion on transatlantic finance and we thank all the panellists for their valuable contributions.

There was some real diversity of positions and perspectives here, but certain key messages came out for lawyers involved on complex international financings, namely:

- Governing law means very little to clients, only what’s needed to get the deal done
- Cross-border and specialist advice should be packaged in the background, and delivered in the context of the financing
- The ‘super lawyer’ or ‘lawyer of the future’ is someone conversant in all products, capable of soliciting specialist support and adept in the delivery of synthesised advice.

In summary, clients on financing transactions don’t really want to see how the sausage is made!

The conversation also wended through many of the tight spots finance lawyers get themselves in. In-house counsels noted how the practice of designating lender counsel has ultimately challenged how legal services are offered. We also heard that regulatory change has massively expanded the scope of in-house legal work.

One very pleasing aside was that news of English law’s demise has been overstated. It looks as if the oldest common law will remain the most-used for some time yet, but it’s increasingly helpful to be conversant in New York law as well.

need to call Sue in our New York office and she’ll help you out’,” said one lawyer.

The expectation for lender counsel to give independent, robust and coordinated advice was clear – both sponsor-side and bank-side. “Our capital markets team really do want the bank lawyers to be there as a second pair of eyes,” said one participant, noting the need to minimise the risk of missing out on key issues and points of contention. “You want a light touch from external counsel, but you also need to have faith in them to pick up the right issues,” said another. ●