LATHAM & WATKINS LLP

Litigation *2024* Year in Review and *2025* Outlook

A view of the landscape in Europe and the UK

Welcome to our Litigation 2024 Year in Review and 2025 Outlook. In this report, we examine the legal trends that have shaped the commercial landscape in Europe and the UK and explore how these developments are likely to evolve in the coming year.

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The tale of 2025 will continue the narrative that emerged from 2024, in which regulatory reforms and enforcement created a complex landscape for businesses to navigate, requiring a flexible and strategic approach to building compliance frameworks. The litigation risks emerging from these regulatory developments reflect the varied challenges businesses face in meeting heightened compliance demands, driven by the European regulatory environment.

Such increased regulatory scrutiny can be found across industries and sectors, as regulatory bodies have intensified their oversight, driven by the need to protect consumer rights, ensure data privacy, and maintain financial stability. This trend is particularly pronounced in the rapidly evolving fields of digital assets, cyber, and AI, as increased adoption continues to present novel legal challenges. The introduction of new laws and guidelines, including the EU's Digital Services Act and AI Act, as well as the UK's Online Safety Act, underscore regulators' appetite to quickly enter the fray and establish regulatory frameworks for new technologies.

Elsewhere, the effects of a surge of litigation related to EU competition law — which saw 85 competition law-related judgments at the CJEU in 2024 — will reverberate throughout 2025. Similarly, the past year has marked a shift towards greater accountability and transparency in business practices, with arbitration, collective actions, and ESG litigation playing key roles in shaping the future of dispute resolution and corporate responsibility. As new claims emerge in the coming year, the legal precedents shaped by this wave of litigation activity will further companies' need to establish robust compliance measures.

Finally, we observe that geopolitical instability, as well as the aftermath of the economic downturn and its subsequent recovery, resulted in an increase of disputes in 2024, a trend that will continue into the coming year as businesses grapple with broken deals and post-M&A disputes. To mitigate these risks, businesses will need to heed particular focus on their investment structuring, including stress-testing contractual frameworks and ensuring compliance with international investment treaties.

None of these trends exist in isolation. Rather, the activity of the past year shows a deepening overlap of the risks and considerations businesses must address to successfully contend with the European regulatory landscape. As these issues continue to converge, businesses across sectors and industries will need to embrace a flexible approach that demonstrates a nuanced understanding of the regulatory environment's complexities. This report aims to help companies and boards prepare for the likely impact of these intertwining developments.

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Arbitration and Financial Institutions


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Arbitration reform in England will likely encourage arbitration of financial disputes and enhance London's attractiveness as an arbitration venue.

Financial institutions increasingly favour arbitration for resolving cross-border financial disputes, a trend poised to accelerate under the Arbitration Bill (the Bill), which proposes amendments to the English Arbitration Act 1996 (the Act). The Bill, which was introduced over the past year, aims to encourage arbitrators to summarily dismiss unmeritorious claims or defences, enhancing the efficiency of arbitration proceedings.

Financial institutions are already attracted to the unique benefits of arbitration. A 2016 survey by the ICC Task Force on Financial Institutions and International Arbitration highlighted that financial institutions are drawn to arbitration primarily because arbitration awards are more widely and easily enforceable than court judgments, thanks to the New York Convention. Additionally, the survey noted that financial institutions value the flexibility of arbitration procedures and the ability to appoint arbitrators with sector-specific expertise as significant advantages. Confidentiality and the finality of arbitration, with limited appeal options, are also attractive to financial institutions, according to the survey.

Financial institutions value the ease of enforceability of arbitral awards across borders, as well as the flexibility of arbitration procedures and ability to appoint arbitrators with sector-specific expertise

These features, together with the United Kingdom's exit from the European Union's regime for the cross-border enforcement of court judgments within the EU, have contributed to the growing popularity of arbitration for financial-sector disputes in England. This trend is evident in the caseload of the London Court of International Arbitration (LCIA), where the banking and finance sector accounted for an average of 23% of cases between 2018 and 2023, making it the second most represented sector.[1]

Summary Dismissal

The perceived lack of availability of summary dismissal in arbitration has long been an impediment to the use of arbitration in the financial sector. The ICC Task Force survey noted that financial institutions often prefer state court proceedings for their ability to secure summary or default judgments early in the process. This feature is particularly important for financial disputes in which financial institutions may have claims that are relatively straightforward in terms of recovering a debt. While unmeritorious defences can be put forward to dispute such claims, financial institutions will often consider that those arguments can and should be dismissed at a summary stage.

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While summary dismissal is already generally available in arbitration, parties and tribunals seldom use it. The Act does not explicitly grant tribunals the power to summarily dismiss claims, but it does provide broad procedural discretion. Most major arbitration rules explicitly allow for summary dismissal,[2] yet arbitrators have been cautious, fearing challenges based on alleged due process violations.[3] This caution persists despite the fact that English courts have clarified that summary dismissal does not inherently violate due process.[4]

The Arbitration Bill's Proposed Introduction of a Statutory Power to Order Summary Dismissal

The Bill, soon to be voted on in Parliament, is expected to explicitly grant tribunals the power to make awards on a summary basis, applying the same "no real prospect of success" threshold used in English court proceedings.[5] This test would allow arbitral tribunals to draw on the rich body of case law interpreting and applying that standard used in court. The greater certainty afforded by this may encourage parties and tribunals to make greater use of summary judgment in arbitrations seated in London.

The Bill is expected to grant tribunals the explicit power to issue awards on a summary basis

This development will benefit financial institutions by combining the key advantages of arbitration – especially the global enforceability of awards under the New York Convention and the confidentiality of arbitration – with the ability to dismiss unmeritorious defences or counterclaims early on. More broadly, the Bill's provision on summary dismissal is expected to enhance London's attractiveness as an arbitration venue, offering significant time and cost savings.

1. Arbitration of banking and financial disputes, Practical Law UK Practice Note, p. 3; LCIA Annual Casework Report 2023, p. 8.
2. Article 22 ICC Rules 2021; Rule 29 SIAC Rules 2016; Article 43 HKIAC Rules 2024; Article 22.1(viii) LCIA Rules 2020; Article 35 P.R.I.M.E. Finance Rules 2022.
3. Law Commission, Programme of Law Reform 13th, p. 36, para. 4.53.
4. *Travis Coal Restructured Holdings LLC v. Essar Global Fund Ltd* [2014] EWHC 2510 (Comm).
5. Explanatory Notes, Arbitration Bill [HL] as introduced in the House of Lords on 18 July 2024 (HL Bill 1), p. 8.

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Key legal developments offer both valuable clarity and emerging risks.

England and Wales

LIBOR Cessation

The High Court issued its first judgment implying a term to compensate for the cessation of LIBOR. *Standard Chartered PLC v. Guaranty Nominees Limited and Others* concerned a term governing the bank's preference shares, which provided for dividends to be paid by reference to "Three Month LIBOR", defined by reference to a screen rate for three-month USD LIBOR. In the absence of LIBOR, there ensued what became known as "the battle of the implied terms". Ultimately, the court implied a term providing for the use of a "reasonable alternative" rate. In this case, the court determined that rate to be a Secured Overnight Funds Rate (SOFR) published by the Chicago Mercantile Exchange Group Benchmark Administration (CME) plus a fixed spread

adjustment (to address the difference between SOFR and LIBOR) published by the International Swaps and Derivatives Association (ISDA).

This judgment provides helpful clarity for financial institutions grappling with contracts that still refer to LIBOR. This case also shows how the (underused) Financial Markets Test Case Scheme can be a good resource. Here, an unusually constituted Divisional Court heard the case, which means the judgment will have the status of a Court of Appeal decision.

Precision in Engagement Terms

A Court of Appeal decision served as a reminder to financial institutions about the importance of clarity in engagement letters, especially when defining the scope of services related to capital markets transactions. In *Cantor Fitzgerald & Co v. YES Bank Limited*, US investment bank Cantor Fitzgerald sought to recover a success fee from YES Bank, India's fourth largest bank, following a public offering of shares. The Court of Appeal dismissed Cantor's appeal and upheld the earlier High Court ruling, concluding that the scope of the engagement letter was restricted to private financings, not public offerings.

A Court of Appeal decision served as a reminder to financial institutions about the importance of clarity in engagement letters, especially when defining the scope of services related to capital markets transactions

The dispute centred around whether the terms of the engagement agreement covered public financings or were limited solely to private capital placements. Cantor Fitzgerald had argued that it was entitled to a 2% success fee on funds raised from certain investors who had previously been in discussions with them and who later participated in YES Bank's follow-on public offering (FPO). However, YES Bank disagreed, arguing that the engagement letter only covered private placements and therefore excluded any public financing activities.

In deciding the case, the Court of Appeal focused on principles of contractual interpretation, emphasizing the need to consider the natural meaning of the words within the contract while taking into account the commercial context. The court reaffirmed that while commercial common sense can guide the interpretation of ambiguous terms, it should not override the clear language of the agreement.

The engagement letter defined Cantor Fitzgerald's role in assisting YES Bank with "one or more financings through the private placement, offering, or other sale of equity instruments". The court found that the specific reference to "private" at the start of the clause qualified the entire list that followed, indicating that the parties intended to restrict Cantor's engagement to private financings. The court concluded that if the intention had been to include both private and public financings, broader language would have been used, such as "any sale of equity instruments".

Group Shareholder Actions

Claims under Sections 90 and 90A of the Financial Services and Markets Act 2000, which enable shareholders to seek damages from companies for publishing misleading information to the market, are a major and growing source of risk for financial institutions and other corporates. Below we note important developments in 2024:

- In *Allianz Funds Multi-Strategy Trust & Others v. Barclays Plc*, the High Court clarified certain aspects of Section 90A FSMA: (a) the requirement for claimants to have relied on the information alleged to be misleading, and (b) the test for a claim of dishonest delay. For the first issue, the High Court found that a claimant cannot satisfy the reliance requirement unless it read or heard the representation in question, and so struck out the claims of claimants which had not read the published information but rather purportedly relied on the bank's share price or status as a listed issuer. For the second issue, the High Court confirmed that liability only arises where information has actually been published, meaning a claimant cannot bring a dishonest delay claim based solely on an allegation that an issuer failed or omitted to publish information.

  This ruling is likely to have a significant impact on the makeup of claimant groups bringing Sections 90 and 90A FSMA claims, as well as upon the business models of the funders and claimant law firms that drive many of these claims.

- Claimants in Sections 90 and 90A FSMA claims are increasingly challenging the right of defendant issuers to assert legal professional privilege over their documents. This is based on an alleged principle that a company cannot withhold privileged material from its shareholders. In a 2023 judgment in *Various Claimants v. G4S*, the High Court accepted the existence of this "shareholder rule" in principle but declined to order the disclosure of privileged documents for case management reasons. However, in late 2024, the High Court held in *Aabar Holdings Sàrl v. Glencore Plc and Others* that the "shareholder rule" was unjustifiable and should no longer be applied. The court held that the original rationale for the "rule" no longer applies, and that the alleged alternative basis for the "rule" was not supported by authority nor warranted as a matter of principle. It found that previous judicial references to the "rule" were not binding because they assumed, rather than established, the existence of the "rule". Given the ramifications of this ruling, it is likely that the judgment will be appealed to the Court of Appeal and potentially onwards to the Supreme Court.

- The amendments to the UK Listing Rules, which came into force in July 2024, have shifted the balance of the listing regime from one based on shareholder approvals to one based on disclosures to the market. Although the volume of disclosures that issuers are required to make is lower than under the previous rules, the replacement of the requirement for companies to seek shareholder approval for significant transactions with an obligation to announce such transactions to the market may expose issuers to claims under Section 90A FSMA based on those announcements.

Witness Memory

The reliability of witness memory continues to be an area of significant interest for the English judiciary, particularly as the science of memory and recollection continues to develop. This is of particular note for financial institutions, given that they frequently face misrepresentation cases which turn heavily upon witness recollections, often about events occurring several years before a claim is commenced.

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For the past decade, the general approach of the English courts has been to treat witness recollection as fallible and to place greater weight on contemporaneous documents. However, in *Jaffe v. Greybull Capital*, the High Court noted that it cannot be assumed that contemporaneous documents are entirely reliable. The case involved an alleged fraudulent misrepresentation made in an oral discussion eight years before the trial. The testimony of two witnesses as to the content of the discussion conflicted, but one of the witnesses had prepared a note of the discussion shortly after it took place.

Ultimately, the High Court concluded that the note broadly captured the discussion but was inaccurate in its record of the specific words relevant to the alleged fraudulent misrepresentation. The court held that the inaccuracy was innocent and resulted from the note-taker reconstructing what was said in his second language, based on handwritten notes of a lengthy meeting. It also noted the developing scientific evidence as to the rapid fall-off of memory in the immediate aftermath of an event, meaning that even a note written up the same or the next day is not equivalent to a transcript of a discussion.

The case law as to witness recollection is likely to remain an important area of focus for the courts in 2025.

Germany and the EU

Wirecard Insolvency

The Wirecard insolvency continues to be the focal point in German financial services litigation. The case involves a financial fraud in which Wirecard, a former German payment processing giant, falsely reported over €1.9 billion in non-existent cash balances. This led to its insolvency in 2020, marking one of the most notable corporate collapses in Germany's history.

In January 2024, the German Federal Court of Justice (FCJ) ruled that the German Federal Financial Supervisory Authority (BaFin) is not liable for investor losses related to Wirecard's insolvency. This decision followed an investor's attempt to claim damages, arguing that BaFin failed in its supervisory duties and breached official obligations in financial auditing. The FCJ's ruling highlights the difficulties in assigning regulatory responsibility in corporate fraud cases and underscores the limitations of BaFin's oversight capabilities.

In September 2024, the Munich District Court I ordered three former members of Wirecard's management board to pay €140 million in damages. The court found these executives liable for breaching their duty of care, citing their failure to secure collateral for a €100 million loan and inadequate financial review as key breaches. In contrast, the court dismissed the claim against the supervisory board's former deputy chairman, reasoning that his actions would not have altered the executives' behaviour since they had ignored the supervisory board's directives in the past. This case highlights the complexities in holding corporate leaders accountable and the challenges in securing restitution for affected stakeholders.

An FCJ ruling highlights the difficulties in assigning regulatory responsibility in corporate fraud cases and underscores the limitations of BaFin's oversight capabilities

In late November 2024, the Bavarian Court of Appeals held the first oral hearing in the model case of a Wirecard shareholder against the company and EY, Wirecard's former auditor. The case involves 8,500 individual claims, with damages of €750 million, and is closely monitored by another 50,000 shareholders who have already claimed €15 billion in the Wirecard insolvency proceedings. The court announced it would initially focus on procedural aspects, particularly the admissibility of the claimants' declaratory objectives, rather than the merits.

Banking Updates

Recent developments in banking law have introduced significant changes, particularly concerning consumer rights, the responsibilities of financial institutions, and the regulatory framework for non-performing loans (NPLs) and retail investment.

In March 2024, the FCJ clarified the burden of proof in payment transactions, placing the onus on payment service providers to demonstrate that a transaction was authorised by the account holder. This ruling reinforces the accountability of financial institutions in ensuring the integrity of their payment systems.

In November 2024, the FCJ decided on the customers' right to request a refund of fees the bank had increased and charged without their active consent. The FCJ ruled that a customer's payment of incorrectly charged fees for over three years without objection did not entitle the bank to retain the fees. Therefore, the court ordered the bank to refund all increased fees and compensate the claimant for any future damages. This decision continues a series of rulings in which the FCJ has strengthened customer rights related to unauthorised bank fees.

Alongside these judicial developments, there have been advancements in the legislative framework concerning NPLs. The new German Credit Secondary Market Act (*Kreditzweitmarktgesetz*) regulates the sale and transfer of loan receivables. It aims to increase transparency and imposes stricter requirements on the transfer of credit agreements, thereby enhancing consumer protection and ensuring borrowers are informed and safeguarded during the transfer of their loan agreements.

In a series of rulings, the FCJ has strengthened customer rights related to unauthorised bank fees

Additionally, the European Commission's Retail Investment Package is expected to be adopted in 2025. It is designed to enhance transparency and strengthen investor protection throughout the retail investment industry by ensuring that advice from financial advisors remains free from monetary motivations and by promoting fairness in pricing.

ESG Regulations

As ESG regulations are becoming increasingly important in the financial sector, companies are expected to enhance their risk management frameworks and ensure compliance with evolving regulatory standards. In January 2024, the European Banking Authority (EBA) released a consultation paper on new guidelines for managing ESG risks.[1] Also in January 2024, BaFin announced that it will conduct more audits focused on ESG.[2] In May 2024, the European Securities and Markets Authority (ESMA) issued a report on fund names using ESG or sustainability-related terminology. Concurrently, a report from the EBA in May 2024 indicated a 26% increase in alleged greenwashing cases in the EU in 2023 compared to 2022.[3] As revealed in June 2024, the European Central Bank (ECB) has taken action against certain banks for alleged insufficient risk identification processes concerning climate-related and environmental risks.

Legal Reforms Concerning Mass Claims

In October 2023, a new collective redress mechanism was introduced. It allows designated consumer associations to represent a class of consumers and claim directly for performance, thereby addressing a shortcoming under the old law where consumers could only seek declaratory relief through a model declaratory proceeding. The new regime can be applied *inter alia* in claims for return payment of interests due to a widely used invalid contract clause by financial institutions.

Additionally, on 31 October 2024, a new precedent procedure became effective and was brought to action by the FCJ on the same day. The new procedure allows the FCJ to designate a "lead case" in mass litigations to resolve key questions consistently across all related cases. Lower courts can pause their proceedings pending the outcome of this lead case. The FCJ is allowed to also rule on the merits if parties withdraw or settle, preventing abuse. While such leading decisions are not formally binding, they aim to guide lower courts and provide legal certainty, easing the courts' workload. The new procedure seems suitable for a range of finance-related cases that are fundamentally similar but involve thousands of individual claimants.

1. EBA, Consultation on draft Guidelines on the management of ESG risks.
2. BaFin, Risks in Focus.
3. EBA, Greenwashing monitoring and supervision.
4. ECB, Interview with Kerstin af Jochnick, Member of the Supervisory Board of the ECB.

Broken Deals and Post-M&A Disputes


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Careful investment structuring, contractual frameworks, and risk management strategies are of paramount importance in a rapidly changing global environment.

In the aftermath of the economic downturn and turbulence caused by the COVID-19 pandemic, there was a rapid surge in deal activity and private equity transactions in late 2020 and early 2021, with a significant rise of investments in technology, healthcare, and emerging markets, among other areas.

Although the rapid dealmaking propelled the global economy forward, the rushed circumstances in which deals were brokered and the geopolitical instability of the years that followed – not least as a result of the wars in Ukraine and the Middle East – have given rise to a spate of post-M&A and post-transaction disputes around the world over the last two years.

In this article, we share our insights from the year gone by, our expectations for the year to come, and our takeaways for businesses.

Clash of Legal Cultures

The rise of investments in emerging economies by investors from more developed capital-exporting countries has been accompanied by an increase in disputes that arise from the divergent expectations and obligations of parties. These differences are wide-ranging. They include legal and regulatory compliance with respect to ESG, labour laws, CSR, anti-money laundering laws, and the risk of corruption. They also include practical matters such as the use of non-traditional or unregulated banking methods – for example, cryptocurrency and hawala transactions – and the nuances of evidence and procedure across jurisdictions.

The rise of investments in emerging economies by investors from more developed capital-exporting countries has been accompanied by an increase in disputes arising from the divergent expectations and obligations of parties

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Arbitration has long been the obvious choice for the resolution of disputes arising from M&A and other cross-border transactions. By certain estimates, over 75% of SPAs contain arbitration clauses, and post-M&A disputes constitute a significant portion of cases referred to arbitration administered by arbitration institutions, with 15% of LCIA arbitrations in 2023 arising from shareholders' agreements, share purchase agreements, and joint venture agreements. Similarly, the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) reported 175 arbitration cases initiated in 2023, with 31% conducted in English and 69% in German, reflecting the international scope of these proceedings. Approximately 40% of these cases involved foreign parties, including those from Belgium, China, and the United States, highlighting arbitration's global appeal for complex, cross-border disputes, such as those in M&A. The increase from 164 cases in 2022 to 191 in 2023 further underscores the business community's reliance on arbitration.

Comparatively, the International Chamber of Commerce (ICC) registered 890 cases in 2023, showcasing a wider adoption of ICC arbitration for international disputes. ICC arbitrations often involve contracts like share purchases and shareholders' agreements (8.5%), as well as joint ventures (4%). With parties from 141 countries and English as the primary language for 77% of awards, ICC arbitration mirrors the global engagement seen in DIS cases. This international participation and diversity in sectors highlights arbitration's critical role in cross-border M&A transactions, consistent with trends in DIS and LCIA data.

Arbitration is well suited to cater to cross-border disputes because it offers a neutral forum that can be moulded by parties from different legal cultures to reconcile – or choose from – the diverse, and sometimes inconsistent, legal standards and regulatory frameworks applicable in their respective jurisdictions.

Unforeseen geopolitical and civil unrest caused by conflict or regime change across jurisdictions has caused seismic shifts in the business environments of certain jurisdictions, often resulting in the underperformance of investments and the failure of investment expectations

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The rise of disputes from the clash of legal cultures serves as a reminder to reflect on the peculiarities of less-familiar legal, regulatory, and business environments and incorporate the minutiae of the parties' expectations in the transaction documents. This includes the standards of compliance to be satisfied by the parties throughout the life of an investment, the laws applicable to the dispute and the procedure of the arbitration, and the standards governing disclosure and legal privilege, which often vary across jurisdictions.

Adaptability to Geopolitical Instability

Unforeseen geopolitical and civil unrest caused by conflict or regime change across jurisdictions has caused seismic shifts in the business environments of certain jurisdictions, often resulting in the underperformance of investments and the failure of investment expectations. These difficulties have been exacerbated by the introduction of sanctions instruments by a number of countries, which have required businesses to carefully scrutinise and monitor their exposure.

Predictably, the challenging business, legal, and regulatory environment in certain jurisdictions has prompted investors to explore exit strategies, including by way of dispute resolution, in the last two years.

Although transaction documents may contain material adverse change (MAC) clauses to address certain pre-completion changes in circumstances, including political, regulatory, and even legal shifts, all turns on the precise language used together with (inevitably disputed) factual analyses as to whether a MAC has been triggered.

Our experience with broken deals has taught us to expect the unexpected and to work with businesses to stress-test the contractual framework – specifically, the exit clauses – against unthinkable scenarios. Closely tailoring a contractual framework to the specificities of the political, economic, and regulatory context in which a transaction takes place will fortify the tools in a business's arsenal should it ever need to exit an underperforming investment or a hostile investment climate.

It is important to have a responsive team that monitors and assesses risk on an ongoing basis, both prior to entry into a deal and during the lifetime of an investment

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Risks of Corruption

Investors with investments overseas often rely on third-party consultants and experts to adapt to the local business environment. Diligence and heightened vigilance in relation to the use of third-party consultants overseas, the cultural and operational environment of the target company, and the practicalities of doing business in the overseas jurisdiction are crucial to mitigate risks of corruption. An informed diligence process, which reflects on the cultural, operational, and compliance environment will enable the early identification of potential integration challenges and legal risks.

It is important to have a responsive team that monitors and assesses risk on an ongoing basis, both prior to entry into a deal and during the lifetime of an investment. It would be prudent to develop a risk assessment framework and disseminate written guidance within the project team and all relevant parties to ensure that all parties involved are operating to the same legal and compliance standards.

Investment Structuring

At the time of investing overseas, businesses should seek advice on investment structuring with a view to securing access to robust investment treaty protections. This will involve an analysis of the investment protections available in international investment treaties entered into between the home State of the investor and the State in which the investment is contemplated. In order to benefit from the protections offered by investment treaties, it is essential for businesses to structure their investment appropriately before disputes arise.

Hedging Against the Risks of Post-M&A Disputes

Post-M&A disputes commonly arise from breaches of warranty and indemnity clauses and integration failures, whereby the target company fails to integrate or perform to the expectations of the investors. Warranty & indemnity (W&I) insurance and political risk insurance are an increasing feature in M&A transactions, which enable an insured buyer to seek recovery from the insurer in the event of a breach of warranty by the seller and political risks, without straining the relationship with the seller and engaging in expensive dispute resolution or wasting management resources. Cyber insurance offers further protections to businesses with exposure in that regard.

Although SPAs may provide for a comprehensive framework of remedies that exclude statutory claims, buyers may have non-waivable statutory claims based on wilful misconduct if they concluded the SPA based on (intentional) misrepresentations or omissions. In some jurisdictions, it is very common that post-M&A disputes focus on such claims, which may not be covered by insurance. Sellers should therefore make sure that their deal team understands the specific disclosure obligations of the relevant jurisdiction.

As we move into 2025, businesses should reflect on these insights to strengthen their strategies and contractual frameworks, ensuring they are well-equipped to handle the complexities of post-M&A disputes in a rapidly changing global environment.

Class Actions


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2025 is set to be a monumental year for European class actions, with many claims already in the pipeline and several landmark trials to start this year.

Last year was pivotal for group litigation (also referred to as class or collective redress actions) in the UK and across Europe, with a significant number of new claims filed, several matters proceeding to substantive trials, and the approval of further collective settlements. Novel theories of harm continue to emerge in the context of abuse of dominance claims, bringing privacy, tech, and environmental claims into the remit of the UK Competition Appeal Tribunal (CAT).

Looking to next year, 2025 will continue this trend, with many claims already in the pipeline for next year and trials commencing in 2025, which will provide vital guidance for future claims if they proceed to judgment. In Europe, group litigation will be seen on a wider scale now that the Corporate Sustainability Due Diligence Directive (CSDDD) has entered into force and the Representative Actions Directive (RAD) has been implemented into Member States' national legal frameworks.

Looking Back at 2024

Competition Cases Continue Before the CAT

Last year was marked by a steady increase in the volume of both certified and new collective action claims, with over 10 new claims filed in 2024. The CAT remains an attractive forum for competition class actions given the relatively broad disclosure regime and the CAT's demonstrated preparedness to undertake complex economic analysis and thoroughly engage with complex legal tests. However, the CAT's disposition towards awarding damages remains to be seen: its decision in December 2024 to dismiss the £1.3 billion stand-alone collective action brought against BT Group (*Justin Le Patourel v. BT Group PLC*) could have a significant impact on the UK class action landscape, including the availability of funding.

The CAT remains an attractive forum for competition class actions

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Following the CAT's approval of the first collective settlement in *Mark McLaren [Class Representative Ltd] v. MOL (Europe Africa) Ltd and other*, the CAT approved a second collective settlement in *Justin Gutmann v. First MTR South Western Trains Limited and Stagecoach South Western Trains Limited* at the start of 2024. Through these processes, the CAT has demonstrated its thorough approach towards evaluating settlement proposals.

Meanwhile, Mastercard and the representatives of over 45 million UK consumers have reached an agreement in principle to settle the precedent-setting £10 billion class action suit over credit card fees (*Merricks v. Mastercard*). for approximately £200 million. Approval of the proposed settlement terms could bring to an end one of the largest and longest-running class actions in the UK, and the first competition class action to obtain certification by the CAT under the opt-out regime.

Environmental Claims Heat Up

Last year saw significant developments in relation to group claims which seek to impose legal responsibility on companies for the alleged environmental impact that may arise out of their business activities or that of their subsidiaries or supply chain.

One prominent example of such a claim is *Município de Mariana and Ors v. BHP Group plc and Anor*. After a series of jurisdictional challenges, the first-stage trial of this case commenced in October 2024. The 12-week hearing will consider whether BHP may be liable under Brazilian law for harm suffered by some 700,000 claimants against BHP in relation to the collapse of the Mariana dam. The court will also be asked to determine (among other things) whether previous payments made in Brazil to certain claimants operate as waivers of their right to claim in the English proceedings and whether the claims were brought outside the applicable limitation periods under Brazilian law.

In parallel, Brazilian mining company Vale and Samarco Iron Ore Europe are facing a similar class action in the Netherlands, filed by a Stitching (also referred to as a Foundation) on behalf of over 70,000 claimants for damages arising out of the Mariana dam disaster.

Another notable decision in 2024 was the judgment of the Court of Appeal in the Bille and Ogale Group Litigation. In October 2024, the Court of Appeal allowed this group action against Shell involving claims arising from oil pollution in the Niger Delta to proceed to trial. Described as a "landmark" decision, the Court of Appeal reversed the decision of the High Court, which found that insufficiently particularised "events-based" claims should be treated as "global claims" and so required each of the claimants would have to prove Shell had caused their specific environmental damage, before expert evidence or disclosure had been ordered. The Court of Appeal agreed with the claimants that no further particularisation should be required at this stage.

Data and Technology Claims Crunch Away

The growing trend of cases pursuing novel theories of harm for abuse of dominance continues, with claimants testing the boundaries of the CAT's opt-out collective competition claims regime, which — by contrast to other jurisdictions, including the US — remains the only forum in England where a viable opt-out mechanism for aggregate damages claims is available. What would traditionally be considered privacy, consumer, and technology matters are now at risk of becoming the subject of a competition class action, with the CAT potentially willing to certify a broad range of claims as alleged competition law infringements.

Claimants continue to test the boundaries of the CAT's opt-out collective claims regime, the only forum in England where a viable opt-out mechanism for aggregate damages claims is available

There are 17 active CAT claims against tech companies, together worth about £30 billion. Several of these claims were certified in 2024, notably the £13.2 billion "ad tech" collective action against Google, alleging that it favoured its own advertising technology services, and Gormsen's data-focused claim against Meta Platforms Inc., which seeks about £2.3 billion in damages on behalf of around 45 million UK consumers. The CAT has also certified an opt-out collective action against Google over its alleged anti-competitive behaviour in search advertising, and Apple will defend itself this year against similar claims of alleged abuse of dominance for alleged overcharges on in-app purchases.

Following the Supreme Court decision in *Lloyd v. Google*, claimants continue to struggle to establish data protection group claims in the civil courts on an opt-out (representative action) basis. Outside of the CAT, the main hurdle to opt-out claims remains the requirement for all class members to demonstrate the same interest. Attempts to bifurcate common issues for determination through a representative claim also continue to face close scrutiny to ensure that the court's case management powers and procedural requirements remain intact.

What's on the Horizon for 2025

Scrutiny of AI Models Takes Shape

This year may bring a first-of-its-kind UK class action over AI data, after proceedings have been threatened against Microsoft and Google over alleged unlawful collection and use of consumers' personal data to train their respective AI models. While it remains to be seen how these types of cases are pleaded, a new frontier may emerge in the English courts challenging AI software companies' use of personal data, alongside existing claims for alleged copyright infringement in training large language models (LLMs) on content subject to copyright.

Dieselgate Goes Full Throttle

The trial for the well-known emissions claims (also known as the NOx Group Litigation) is listed for October 2025. This group litigation relates to the Dieselgate scandal in which a number of carmakers allegedly used defeat devices and engaged in malpractice relating to diesel emissions. Several court hearings have already taken place to decide the timetable and other procedural issues to determine how best to manage the claims brought by some 1.2 million claimants against a number of vehicle manufacturing groups. The judgments from those trials will set precedent for the others to follow.

Product Liability Actions in the Pipeline

We expect an increase in product liability class actions in the UK and Europe in the coming years.

Looking first to Europe, the RAD introduces a new regime for representative actions relating to alleged breaches of EU consumer law, including claims relating to product liability and data protection. The RAD affords Member States considerable flexibility as to how to implement the directive, which has made some jurisdictions more attractive to large groups of claimants looking to seek redress.

In the UK, group claims in relation to product liability are generally only available where the group of claimants have the same interest.

Group Shareholder Actions

Claims under Sections 90 and 90A of the Financial Services and Markets Act 2000, which enable shareholders to seek damages from companies for publishing misleading information to the market, are a major and growing source of risk for financial institutions and other corporates. For more on this topic, see Banking and Financial Services.

CSDDD Elevates Collective Action Risk

The CSDDD entered into force in July 2024. Both EU and non-EU companies falling within scope of the CSDDD are subject to heightened due diligence and reporting obligations.[1]

In addition to the public enforcement of these obligations, companies falling within scope of the CSDDD may face increased litigation risk under the civil liability framework it introduces. Under the CSDDD, companies may be liable for damages incurred by natural or legal persons as a result of failure to comply with certain due diligence obligations to prevent or end adverse impacts, which apply not only to the operations of the company and its subsidiaries, but also to any business partners in the supply chain.

The CSDDD also introduces new procedural rules for filing civil actions. Liability for violations of certain due diligence obligations can be enforced by (i) individual actions by the injured party, (ii) authorisation of a trade union or an NGO to file an action on behalf of injured parties, or (iii) collective action if the breaches of the CSDDD fall within scope of a Member State's collective action regime. If the CSDDD continues to be implemented based on the current requirements, then there is a potential for an increase in civil action. However, recent developments in the EU (such as the Omnibus Proposal and the Competitiveness Compass) may result in changes associated with the CSDDD that could impact the likelihood of such civil action (though the nature of any change remains unclear at this stage).

Reform of Third-Party Funding

Another important development on the horizon is the potential reform of the third-party litigation funding landscape. While England has become one of the most attractive jurisdictions in which to commence group litigation, the decision of the Supreme Court in *R (on the application of PACCAR Inc and Ors) (Appellants) v. Competition Appeal Tribunal and Ors (Respondents)* rendered many litigation funding agreements unenforceable on the basis that they constitute damages-based agreements under Section 58AA of the Courts and Legal Services Act 1990, leaving the future of litigation funding in the UK cloudy.

Given this uncertainty, and the detrimental impact that the judgment would have on the attractiveness of the UK as a dispute resolution forum, the UK government introduced the Litigation Funding Agreements (Enforceability) Bill to amend the Courts and Legal Services Act 1990, in order to restore the position which prevailed before the *PACCAR* judgment. This bill is now at a standstill with the recent change of government; however, the Civil Justice Counsel has established a working group to conduct a review of litigation funding in light of the *PACCAR* decision, with the full report expected in the summer of 2025.

1. For more detailed information on the CSDDD, see our report The EU's Corporate Sustainability Due Diligence Directive – Obligations for Companies

Competition

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What's next after the ECJ's landmark Illumina/GRAIL ruling.

2024 was a grand cru year for litigation related to EU competition law at the Court of Justice of the European Union (CJEU), with over 85 competition law-related judgments. These include several significant judgments that have shaped the regulatory landscape, such as the European Court of Justice (ECJ) rulings in the Google Shopping appeal saga,[1] confirming the establishment of the self-preferencing theory of harm, and in Intel II,[2] providing further clarity on the legal test for exclusivity rebates.

The Illumina/GRAIL judgment[3] is arguably the most consequential of these rulings, reaffirming the importance of legal certainty and predictability within the EU merger control architecture.

Background

In September 2024, the ECJ ruled that the European Commission had overreached its authority when reviewing Illumina's acquisition of GRAIL (Latham advised GRAIL in the transaction). The Illumina/GRAIL judgment demonstrates

the ECJ's willingness to rein in the Commission when the Commission exceeds its institutional competence.

Specifically, the ruling prevents the Commission from creating a new power under the European Union Merger Regulation (EUMR) to de facto call-in and review any transaction it considers potentially problematic, effectively stepping into the shoes of the EU legislature.

This de facto call-in power was not based on any specific provision of the EUMR granting the Commission such competence. Instead, the Commission encouraged referrals from non-competent Member States on the basis of Article 22 of the EUMR (Article 22).[4] In other words, the Commission employed Article 22 to grant itself quasi-unlimited discretion to review all concentrations falling below the EUMR turnover thresholds, even where no Member State was competent to review the concentration in question under its national merger control rules.

The ECJ, after an extensive review of the EU Merger Regulations' *travaux préparatoires* (i.e., the preparatory works), decisively blocked this re-interpretation. The ECJ emphasised that one of the EU legislature's main aims was to achieve a high level of legal certainty by, among others, designing the EU Merger Regulations around a jurisdictional test based on objective, clear, and predictable bright-line turnover thresholds.

The ruling emphasises that administrative authorities must seek legislative reform in order to address perceived enforcement gaps, such as those posed by so-called "killer acquisitions" – where large companies acquire emerging rivals in order to stifle a competitive threat – rather than through the re-interpretation of existing law.

From a substantive point of view, the ruling signals the court's preference for using turnover thresholds as the primary jurisdictional test, thereby ensuring that businesses have a predictable framework for assessing merger control obligations.

From a substantive point of view, the ruling signals the court's preference for using turnover thresholds as the primary jurisdictional test

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The ruling is final and cannot be appealed, effectively ending the Commission's expansive re-interpretation of Article 22 and reinforcing the procedural boundaries set by the EUMR.

How the Commission Might Address the Perceived Enforcement Gap

In response to the ruling, the Commission is exploring alternative strategies to address potentially problematic mergers and acquisitions that fall below established jurisdictional thresholds.

First Possible Response

The Commission may decide to pursue legislative reform of the EUMR's jurisdictional criteria. If the Commission opts for this path, it is still unclear what the best solution should be (e.g., introducing deal value thresholds or including a call-in provision).[5] While discretionary call-in provisions, at least conceptually, may enable the review of potentially problematic concentrations without overburdening the responsible authority, such provisions cannot be the right solution if legal certainty is: (1) one of the pursued objectives of the concerned legal act; and/or (2) a fundamental principle that needs to be respected.

The EU legislature must consider whether it is necessary – and if so, how – to recalibrate the balance that the EUMR's turnover thresholds strike between the EUMR's various objectives (e.g., preventing potentially problematic concentration, legal certainty, the need for speed, etc.), some of which are also fundamental EU law principles.

Ideally, the question should only be answered once the Commission has quantified the size of the perceived enforcement gap. The Commission's practice in recent years suggests that the enforcement gap may be very narrow (i.e., one to two concentrations a year). Despite reportedly screening a large number of cases, the Commission only relied on its novel Article 22 policy to call in three potentially problematic concentrations between early 2021 and September 2024.[6] If that is indeed the case, one might question whether foregoing the legal certainty of all other concentrations that would be captured by an overinclusive alternative threshold is truly necessary.

In the end, deal value thresholds might be the most suitable means of achieving the desired recalibration. In an October 2024 interview with *GCR*, German Federal Cartel Office President Andreas Mundt (an early critic of the Commission's reinterpretation of Article 22) acknowledged that the system will never be "perfect" and that some deals may not be caught by transaction value thresholds. However, he stated, "if we have to [counterbalance] legal certainty, predictability on the one side, and our intent to get in the right mergers – I firmly believe the transaction value threshold is the way forward".[7]

Second Possible Response

The Commission may also consider utilising other antitrust enforcement tools, such as EU abuse of dominance rules, to challenge transactions that pose competition risks. These tools could provide a means to address anti-competitive practices without altering the existing merger control framework.

Third Possible Response

As an immediate reaction to the judgment, the Commission is pursuing another questionable Article 22 route to review sub-threshold deals and killer acquisitions by incentivising Article 22 referrals of Member States on the basis of a national call-in provision. The Commission already ran a test case for this "Article 22 light" route: Nvidia's acquisition of Run:ai, referred by Italy, where the proposed acquisition did not meet the national turnover thresholds but was notified "upon request by the national competition authority, which used its 'call in' powers".[8] Nvidia is currently attacking this new Article 22 light route before the CJEU.[9]

The Commission is pursuing another questionable Article 22 route to review sub-threshold deals and killer acquisitions by incentivising Article 22 referrals of Member States on the basis of a national call-in provision

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Key Takeaways

The ECJ ruling increases legal certainty for dealmaking in Europe. It also eliminates the risk that national regulators, which lack jurisdiction under domestic merger control rules and do not have national call-in provisions, will simply establish EU jurisdiction by referring a transaction to the Commission.

The ruling rejects the Commission's expansive re-interpretation of the EUMR and emphasises the need for legal certainty in line with EU legislative intent. The Commission's re-interpretation of Article 22 has effectively been ended. That being said:

- Businesses should remain alert to possible regulatory intervention even if the turnover thresholds are not met. The Commission and Member States will continue to explore alternative routes to evaluate potentially problematic deals that do not meet established jurisdictional thresholds. Deals in the biotech, pharmaceutical, and digital sectors are of particular interest, according to the authorities.

- Regulatory changes are possible. The ECJ has directed the Commission to consider legislative reform if it wishes to close a perceived enforcement gap for sub-threshold deals and killer acquisitions. We expect the new Commission, which took office on 1 December 2024, to explore a range of options.

- The Commission will likely pursue alternative antitrust enforcement instruments. The ECJ ruling noted that transactions falling below turnover thresholds could be challenged through other means, such as EU abuse of dominance rules. A transaction value test could be an alternative solution, providing the desired legal certainty, but political consensus across Member States could be challenging to achieve.

- Member States will likely continue to play a more active role in reviewing sub-EUMR turnover threshold transactions, including potential killer acquisitions. Many Member States have revised their thresholds to address the perceived enforcement gap. Some, such as Austria and Germany, have introduced transaction value tests, whereas others, including Italy, have opted for broader, discretionary call-in powers with a view to examining deals that fall below their bright-line turnover or value-based thresholds.

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1. C-48/22 P, *Google and Alphabet v. Commission*, 10 September 2024, EU:C:2024:726.
2. C-240/22 P, *Commission v. Intel Corporation*, 24 October 2024, EU:C:2024:915.
3. Joined Cases C-611/22 P and C-625/22 P, *Illumina v. Commission* and *Grail v. Commission*, 3 September 2024, EU:C:2024:677.
4. For more than three decades, Article 22 allowed – in line with its purposes – case referrals from Member States that did not have a national merger control system and from Member States which were competent on the basis of their national merger control system to avoid parallel review by multiple Member States.
5. A debate also currently taking place in multiple Member States. Some Member States have opted to introduce discretionary call-in provisions (e.g., Ireland, Lithuania, etc.).
6. Illumina/GRAIL, Qualcomm/Autotalks, and EEX/Nasdaq Power.
7. *GCR*, 17 October 2024.
8. *See* Commission's press releases MEX/24/5623, 31 October 2024.
9. *Mlex*, 15 January 2025.

Crypto


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An increase in fraud claims, regulatory scrutiny and enforcement, and consumer litigation are likely on the horizon in 2025.

The English courts continued to tackle novel legal questions raised by cryptocurrency disputes in 2024. We observed a number of significant common law developments concerning cryptoassets, as well as the introduction of draft legislation concerning the legal categorisation of cryptoassets. Notably, the Financial Conduct Authority (FCA) announced its first enforcement action under the Electronic Money Regulations 2011 against a crypto trading platform, indicating its clear interest in the money-laundering risks posed by crypto trading.

In this article, we discuss some of last year's hot topics in crypto litigation, as well as our predictions for 2025.

Hot Topics in 2024

Confirmation That Tether Tokens Constitute "Property"

The High Court has issued a number of judgments in fraud cases concerning cryptoassets over the past year. For a number of years, English law has recognised Bitcoin as "property," and the High Court recently confirmed that Tether tokens also fall under this classification.[1] Accordingly, it is now well established in English common law that claimants who seek recovery of cryptoassets in fraud claims can trace and recover those assets in accordance with traditional legal principles. The High Court has also showed a willingness to order proprietary and non-proprietary freezing injunctions in such cases.

While the common law now appears to unequivocally recognise cryptoassets as property, the position has not been enshrined in legislation. In July 2024, the Law Commission published its Supplemental Report on Digital Assets, which appended a draft bill that proposes to consider cryptoassets as a "third category" of property in order to recognise their novel differences from traditional categories of property.[2] The draft bill was introduced into Parliament in September 2024 as the Property (Digital Assets etc) Bill and is currently before the House of Lords for consideration.[3]

It is now well established in English common law that claimants who seek recovery of cryptoassets in fraud claims can trace and recover those assets in accordance with traditional legal principles

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Importance of Expert Evidence in Crypto Fraud Cases

The increase in crypto fraud cases has highlighted the need for watertight expert evidence concerning the tracing of cryptoassets. While the English courts will apply the usual legal principles regarding the tracing of assets in crypto cases, the complex and often opaque nature of crypto trading has led the High Court to note the importance of expert evidence in such disputes. In one such 2024 case, the High Court dismissed a claimant's fraud claim on the basis that his expert witness had not presented his evidence concerning asset tracing using a consistent methodology and had failed to tackle the evidentiary complexities inherent in tracing mixed funds.[4]

The increase in crypto fraud cases has highlighted the need for watertight expert evidence concerning the tracing of cryptoassets

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First Regulatory Fines

In September 2024, the FCA brought its first criminal prosecution relating to unregistered cryptoasset activity under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. The charges were brought against an individual accused of running a network of crypto ATMs in the UK.[5] And in July 2024, the FCA fined CB Payments Limited £3,503,546 for breaching a requirement that prevented the company from accepting high-risk customers.[6]

Insolvency/Bankruptcy Proceedings Involving Cryptoassets

The UK Jurisdiction Taskforce (UKJT), which was appointed by the UK government to consider crypto legal issues, published its third legal statement on Digital Assets and English Insolvency Law in April 2024. The statement confirmed that proprietary rights can be asserted over digital assets in insolvency proceedings and that the usual investigatory and clawback powers held by an insolvency practitioner equally apply to insolvencies involving digital assets. Further, the UKJT concluded that digital assets cannot form the basis of a statutory demand (given they are not yet recognised in law as money), but acknowledged that this position may change in the future. This provides helpful guidance for insolvency procedures involving cryptoassets.

A New Crypto Tort?

In its Supplemental Report on Digital Assets, the Law Commission concluded that the draft Property (Digital Assets etc) Bill does not address the question of tortious liability in respect of cryptoassets. Instead, the Law Commission said this is a question "left to be answered by common law". It remains to be seen whether this issue arises before the courts in 2025.

Who Is Satoshi Nakamoto?

The long-running controversy regarding the identity of the creator of Bitcoin culminated in a six-week trial in the English courts.[7] Craig Wright's claims to be Satoshi Nakamoto were dismissed in their entirety and injunctions were granted preventing Wright from commencing or threatening proceedings against blockchain developers. In granting the injunctions, the court recognised the vexatious and oppressive nature of Wright's previous actions.

Looking Ahead

Increase in Fraud Claims

We anticipate a continued increase in the number of fraud claims relating to cryptoassets. While those claims are likely to be fought largely by reference to traditional English law principles, asset tracing in crypto fraud is often complex. The importance of supporting expert evidence concerning the tracing of cryptoassets is therefore crucial.

Crypto remains a key area of focus for the FCA, particularly in terms of deterrence of financial misconduct

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Increased Regulatory Scrutiny and Enforcement

Crypto remains a key area of focus for the FCA, particularly in terms of deterrence of financial misconduct. Following two crypto-related "firsts" in 2024, we anticipate that the crypto industry will continue to be a fertile ground for regulatory disputes.

Consumer Litigation / Class Actions

As regulatory enforcement increases, claims from investors for breaches of regulation, consumer protection failings, and tortious behaviour are likely to increase. Crypto businesses are at real risk of class actions, given their operation at the crossroads of the financial services and technology sectors.

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1. *Tippawan Boonyaem v. Persons Unknown & Others* [2023] EWHC 3180 (Comm).
2. Law Commission, Digital assets as personal property: Supplemental report and draft Bill, July 2024.
3. https://bills.parliament.uk/bills/3766.
4. *D'Aloia v. Persons Unknown & Others* [2024] EWHC 2342 (Ch).
5. Olumide Osunkoya pleads guilty to illegally operating crypto ATM network.
6. FCA takes first enforcement action against firm enabling cryptoasset trading.
7. *Crypto Open Patent Alliance (COPA) v. Craig Wright* [2024] EWHC 1198 (Ch).

Data, Cyber, and AI

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Robust and proactive preparation is more important than ever as companies face growing compliance demands and regulatory scrutiny.

In 2024, we saw significant shifts in the regulatory landscape across the UK and Europe, driving faster regulatory changes, heavier compliance burdens, and greater business risks.

Data and technology laws are increasingly pervasive, requiring companies to remain proactive. The rapid adoption of technologies such as artificial intelligence (AI) is essential for competitiveness, but navigating the growing web of regulatory obligations and mitigating risks related to fines, litigation, and data breaches remains a daunting challenge. With more laws on the horizon, organisations still have much to prepare for.

These trends are expected to persist throughout 2025, with heightened compliance demands and regulatory scrutiny likely to challenge companies that are not ready to adapt.

In this article, we discuss recent data, cyber, and AI developments, as well as our outlook for the year ahead.

Data and Tech Regulation

Data Protection

Privacy regulators in Europe and the UK have intensified their enforcement efforts, leveraging fines to uphold data protection standards. In April 2024, the European Data Protection Board released a strategic plan emphasising faster processes, stronger cooperation, and a cohesive enforcement culture.[1]

Regulators are maintaining a strong regulatory focus on data protection in AI development. Both the UK's Information Commissioner's Office (ICO) and Italy's Data Protection Authority have progressed investigations into Snap and OpenAI. While privacy law has been the primary means of AI regulation, the EU AI Act's key provisions, effective in 2025, may drive regulators to seek greater alignment in their approaches.

Regulators are maintaining a strong regulatory focus on data protection in AI development

In 2023, the European Commission's adequacy decision on the EU-US Data Privacy Framework (DPF) provided a renewed mechanism for transatlantic data flows. While privacy activists initially raised concerns, no formal challenges have emerged, and the Commission remains confident in the DPF's durability. However, renewed litigation could reignite the debate over EU-US data transfers in 2025. Meanwhile, regulators have penalised historic transfers following the invalidation of Privacy Shield. As one example, the Dutch Data Protection Authority imposed a fine of €290 million on Uber for inadequate safeguards around its EU-US data transfers.[2]

High-risk and novel data use — particularly adtech and real-time bidding, age-appropriate design, and social media — will likely remain regulatory priorities in 2025. These areas allow regulators to influence impactful, industry-wide change through enforcement.

Privacy Litigation and Mass Claims

Data-related class actions continued steadily throughout Europe in 2024. The EU Collective Redress Directive aims to standardise redress regimes across Member States, though some jurisdictions are notably more active in handling mass claims after data breaches or GDPR infringements. For example, in Germany, law firms and legal tech companies are actively pursuing mass claims. Other legal providers are targeting customers or employees of companies when their personal data is exposed, such as through data breaches or hacking events. The providers often purchase the affected individuals' claims for damages, allowing them to pursue these claims collectively.

Legal providers are targeting customers or employees of companies when their personal data is exposed, such as through data breaches or hacking events

In 2024, several rulings by the Court of Justice of the European Union (CJEU) further clarified Article 82 GDPR, which governs compensation for damages caused by infringement of the regulation. For example, the CJEU in *Patērētāju tiesību aizsardzības centrs (Latvia Consumer Rights Protection Centre)* (C-507/23) found that the mere infringement of a provision of the GDPR, including the unlawful processing of personal data, is not sufficient to constitute "damage" within the meaning of Article 82(1) GDPR. Moreover, there must be both damage and a causal link between damage and infringement in order to give rise to the right to compensation.

In this context, Latham secured a significant decision for *MediaMarktSaturn* (C-687/21) in a landmark ruling by the CJEU that tightens the requirements for damages claims. In its ruling, the CJEU emphasised that the mere fear of data disclosure, without third-party awareness, does not constitute damage and is insufficient to justify compensation. Rather, there must be objective evidence to support such potential misuse of personal data. In particular, a purely hypothetical risk of misuse by an unauthorised third party cannot lead to compensation. This evolving case law will likely inspire new and creative legal arguments.

In the UK, bringing "opt-out" claims under the UK GDPR remains challenging following the 2021 *Lloyd v. Google* decision. Nevertheless, claimant law firms and litigation funders persist in exploring alternative mechanisms, such as the Group Litigation Order, and trying novel arguments that seek to leverage tortious "misuse of private information" claims in the wake of a data breach.

Digital Services Act / Online Safety Act

The EU's Digital Services Act (DSA) and the UK's Online Safety Act (OSA), both effective 2024, underscore robust regulatory stances on digital platforms. Both acts focus on platform accountability and harmful content mitigation, but the DSA aims to harmonise rules for illegal content, goods, and services online while preserving freedom of expression though transparency and content moderation obligations. In contrast, the OSA emphasises user safety, particularly for children, and mandates platforms to proactively reduce illegal or harmful content, creating criminal penalties for non-compliance.

The US remains comparatively hands-off, with Section 230 of the Communications Decency Act largely shielding platforms from liability for user-generated content. This divergence creates complex, cross-jurisdictional challenges for global platforms, which will likely spur further enforcement in the coming years.

Cybersecurity

In 2024, we witnessed significant law enforcement successes against cybercriminals, most notably through Operation Cronos, which targeted the notorious ransomware-as-a-service (RaaS) group LockBit.[3] Although the operation disrupted LockBit's infrastructure, the RaaS model's accessibility continues to empower smaller threat actors, contributing to the steady rise in ransomware incidents and ransom demands.

AI-driven tools, including convincing deepfakes, have exacerbated cyberattack challenges, as seen in recent social engineering scams.[4] Notably, a July 2024 update glitch in CrowdStrike's Falcon Sensor software caused global IT outages, affecting millions of devices and underscoring the ever-present risks within today's interconnected digital supply chains.

AI-driven tools, including convincing deepfakes, have exacerbated cyberattack challenges, as seen in recent social engineering scams

A suite of regulatory initiatives such as the EU's Digital Operational Resilience Act (DORA), Network and Information Security Directive (NIS2), and Cyber Resilience Act, as well as the UK's Product Security and Telecommunications Infrastructure (PSTI) regulations and forthcoming Cyber Security and Resilience Bill aim to bolster industry-wide cyber resilience. These frameworks mandate robust defence measures, while imposing heavy compliance demands and severe penalties for non-compliance that require diligent risk management.

Artificial Intelligence

The EU and the UK have taken notably different approaches to AI regulation. The EU's AI Act emphasises a risk-based, stringent regulatory approach, with specific requirements on documentation, transparency, and human oversight for high-risk applications. In contrast, the UK (like many other jurisdictions) has thus far favoured a more flexible, principles-based approach, empowering regulators like the ICO to provide AI guidance.

However, this stance may shift with the recent change of UK government, as new initiatives pledge "binding regulation" for the most powerful AI models. These new regulations, expected in 2025, will significantly shape the UK's AI landscape.

1. https://www.edpb.europa.eu/system/files/2024-04/edpb_strategy_2024-2027_en.pdf.
2. https://www.edpb.europa.eu/news/news/2024/dutch-sa-imposes-fine-290-million-euro-uber-because-transfers-drivers-data-us_en.
3. https://www.nationalcrimeagency.gov.uk/the-nca-announces-the-disruption-of-lockbit-with-operation-cronos.
4. https://edition.cnn.com/2024/02/04/asia/deepfake-cfo-scam-hong-kong-intl-hnk/index.html.

ESG

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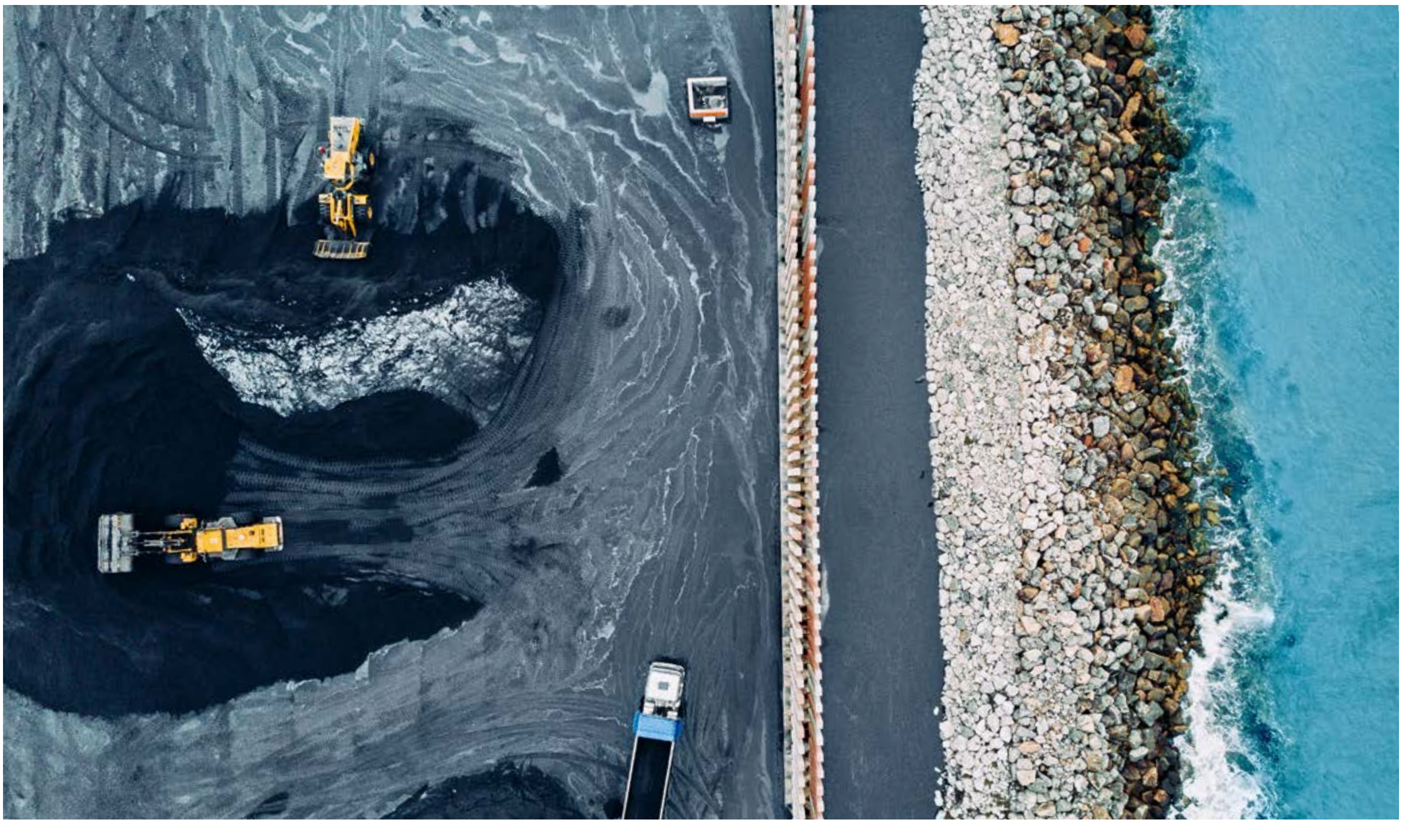
The extractive industries are under scrutiny for ESG-related claims.

Plaintiffs in the UK and Europe are increasingly seeking private law remedies against corporations for harm allegedly caused by their business activities or those of their subsidiaries or supply chains. These actions range from climate change litigation and greenwashing complaints to transactional tort liability and parent company responsibility claims. Defendants in the extractive industries in particular are being targeted with these types of claims in both civil and common law jurisdictions.

We expect these trends to continue this year, due in part to a focus on Europe as an accessible forum for claimant NGOs focused on ESG-related litigation. The relatively low admissibility and procedural requirements have made some European jurisdictions particularly attractive forums for this type of claim.



Climate Change Litigation

While climate change cases have been on the dockets for many years now, cases against companies that are perceived to be heavy emitters, primarily in the extractive industries, have significantly increased.

Cases against companies that are perceived to be heavy emitters, primarily in the extractive industries, have significantly increased

The most prominent example is the recent decision of the Dutch Court of Appeal in *Milieudefensie v. Royal Dutch Shell plc*. In considering the appeal of the 2021 ruling of the Hague District Court, in which Shell was ordered to reduce its Scope 1, 2, and 3 greenhouse gas (GHG) emissions by 45% by the end of 2030, the Court of Appeal refused to accept that Shell had an "absolute" obligation to reduce emissions by a specific percentage". However, the court accepted in principle that companies do have a duty of care under Dutch law to contribute to the mitigation of dangerous climate change by reducing their emissions, including as a matter of human rights law.

Another recent development took place in New Zealand. In *Smith v. Fonterra*, the plaintiff, an elder of the Ngapuhi and Ngati Kahu tribes, alleged that seven corporations were responsible for emitting GHG or supplying products that release GHG when burned, causing damage to places of cultural, historical, and spiritual significance. The New Zealand Supreme Court has decided to allow this case to proceed to trial, at which time the New Zealand courts will have the opportunity to consider whether recognising a duty to reduce emissions aligns with the fundamental principles of tort law, especially if such a duty is untenable given the multifactorial issues raised by climate change.[1]

Greenwashing Claims

With growing customer and investor engagement on all things ESG, companies are increasingly using green marketing and making voluntary disclosures relating to ESG-related commitments. These actions can open the door to litigation. Litigation in this space has historically targeted industries with reputations for being heavy polluters (notably those in the extractive industries).

Greenwashing claims have continued to gain traction, given the increased scrutiny of companies' disclosures with the introduction of new mandatory reporting standards across Europe and the UK. While GHG emissions are under increased scrutiny, so are disclosures of other environmental impacts, such as tailings and other hazardous waste and impacts on biodiversity.

Last year, the German Federal Court of Justice (FCJ) ruled in the Katjes case that a company advertising a product as "climate-neutral" must clearly indicate in its advertisement whether carbon dioxide emissions are being actively prevented during production or merely offset. An advertisement or label on the product that fails to provide this disclosure will be regarded as misleading and, consequently, as constituting unfair competition practices.

The EU's Corporate Sustainability Reporting Directive (CSRD) increases the risk of greenwashing claims by introducing more-detailed reporting obligations. The CSRD, which captures a number of companies with an EU presence (even in some cases where the parent is non-EU), bases reporting on "double materiality" and so extends the scope of reported information beyond financially material information to how the company and its value chain impact society and the environment. With the first reporting deadlines set for 2025, potential claimants will now have greater access to information, potentially creating fodder for future claims.

Corporate Liability for Human Rights Abuses

We have seen an uptick in actions targeting parent corporations for the alleged acts or omissions of group companies located abroad. Companies may be targets of ESG litigation for governance issues that can arise out of their business activities, including concerns over systemic discrimination, slavery, working conditions, or other violations of human rights or corporate due diligence standards.

We have seen an uptick in actions targeting parent corporations or subsidiaries for the alleged acts or omissions of group companies located abroad

The Netherlands in particular has been an active forum for these types of actions. In *Eric Barizaa Dooh of Goi and others v. RDS and others*, the UK Court of Appeal accepted, in principle, that "a parent corporation may, in certain circumstances, be liable for damages resulting from acts or omissions of an (sub)subsidiary". Following that decision, a number of similar actions have been filed against parent companies or their European subsidiaries. For example, victims of the Mariana dam collapse in Brazil launched a claim against Vale SA and Samarco Iron Ore Europe BV, Samarco's Dutch subsidiary, seeking compensation. As part of that action, claimants also obtained a pre-judgment attachment order against Vale's shares in its Dutch subsidiary in the approximate amount of €920 million.

We have also seen an increase in claims filed against corporations alleged to have caused or otherwise contributed to a third party's harmful activities. Described by the UK Court of Appeal as the "most fast developing areas of law" at present, plaintiffs are relying on a once exceptional principle in English tort law — the creation of danger principle — which recognises that a party which has negligently caused or permitted a dangerous situation to be created may owe a duty of care in tort to third parties. This is an exception to the usual rule that a party will not be liable in tort for the harm caused by third parties outside of its control.

By way of example, a group of claimants recently filed a claim against the London Bullion Market Association (LBMA). The plaintiffs, families of deceased miners, argue that the LBMA should be liable in tort because it continued to certify a mine in the North Mara as a "Good Delivery Refinery", notwithstanding its alleged history of systemic human rights abuses. A similar claim has been filed against British American Tobacco, alleging the defendant owes a duty of care to the claimants (giving rise to claims in tort) and that the defendant has been significantly enriched at their expense as a result of the unjust exploitation of their circumstances (giving rise to a claim in restitution for unjust enrichment). If these cases proceed to trial in 2025 as planned, they will set the stage for future corporate liability claims for human rights abuses.

Outside of the court context, claims of a similar nature can be brought before National Contact Points (NCPs) for breaches of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. For example, in January 2024, a complaint was filed against UK mining company AngloGold Ashanti PLC at the UK NCP, seeking compensation for human rights abuses by security personnel allegedly instructed by one of the company's joint ventures. We expect NCPs will continue to be a popular forum for dispute resolution in years to come.

Furthermore, we expect an increase in equal pay litigation, due to the current economic turmoil in Europe and the upcoming implementation of the EU's Pay Transparency Directive into national laws. This directive, which must be implemented by June 7, 2026, establishes rights to compensation and other remedies, accompanied by information and disclosure obligations for employers regarding equal pay.

Disclosure Regulations

Many jurisdictions are introducing new due diligence and reporting obligations for companies, for their own activities and those in their supply chains. The Corporate Sustainability Due Diligence Directive (CSDDD) will require companies to identify and prevent any actual or potential adverse impact of their operations on human rights and the environment. Companies will face civil liability for damages caused by breaches of obligations under the CSDDD; these obligations may be enforced by Member State national supervisory authorities or private litigants.

Similar claims are already underway in some European jurisdictions based on existing national laws that seek to regulate international business conduct. This is the case in France, where several corporations face claims on the ground of the 2017 French Duty of Vigilance Law. NGOs have filed claims against TotalEnergies and BNP Paribas, alleging that both companies have failed to adequately assess in their "plan de vigilance" the threats to human rights and the environment presented by certain fossil fuel projects. The Paris Court of Appeal's new chamber, established to handle all disputes related to the Duty of Vigilance Law and other ESG-related disputes, recently declared a number of legal actions brought by NGO claimants against TotalEnergies and others as admissible. These rulings provide critical insights into the application of the Duty of Vigilance Law and pave the way for similar claims to be filed in the future.

Biodiversity Litigation

A new wave of biodiversity rights litigation is emerging, following a decade focused on climate change litigation. However, many jurisdictions do not yet have national legislation relating to biodiversity, and there is no Paris Agreement equivalent. At COP16, discussions on the establishment of a new biodiversity fund and other key decisions were stalled.

Driven by concerns over government inaction, Friends of the Earth Germany and a number of individuals filed a constitutional complaint against Germany in October 2024, seeking a declaration from the Federal Constitutional Court that Germany's failure to adopt a coherent scheme for the protection of biodiversity infringes their fundamental human rights. This is precisely how climate change litigation in Europe started out, with cases first brought against governments. We expect similar challenges to government biodiversity policies to be brought in the future, with potential claims to follow against companies that have a significant impact on biodiversity or are perceived to have failed to meet biodiversity targets.

This article was prepared with the assistance of Maxim Glusdak in the Frankfurt office of Latham & Watkins.

1. See our blog post New Zealand Supreme Court Paves Way for Novel Climate Change Claim.

Insolvency and Arbitration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In 2025, we expect to see national courts continue to evolve and refine judicial approaches to the interplay between arbitration and insolvency.

In 2024, courts in various common law jurisdictions continued to deal with questions relating to the interplay between arbitration agreements and insolvency, in view of the increasing designation of arbitration as a dispute resolution mechanism as well as a continued uptick in enforcement activity by investors, lenders, and other creditors. We observed a growing body of case law featuring divergent judicial approaches to the legal relationship between arbitration agreements and insolvency across jurisdictions, including – most significantly – the test to be applied in circumstances in which a party seeks to resist or stay a winding-up petition before courts based on an arbitration agreement.

In this article, we examine the latest position in major common law jurisdictions and outline our predictions for 2025.

Major Developments in 2024

England and Wales

A winding-up petition will not be automatically stayed, unless the debt is genuinely disputed on substantial grounds.

The Privy Council's decision in *Sian Participation Corp (in liq) v. Halimeda International Ltd* is the latest in a series of judgments clarifying the common law position on whether the court can and should exercise its discretion to order a winding-up of the debtor company when the petition debt is subject to an arbitration agreement or exclusive jurisdiction clause (or other similar agreement).

Following *Sian Participation*, the legal position is that a generally worded arbitration agreement (or exclusive jurisdiction clause) will not automatically stay a winding-up petition unless the petition debt is shown to be "genuinely disputed on substantial grounds". This overturns the existing English approach in *Salford Estates (No 2) Ltd v. Altomart Ltd,*[2] which the Privy Council held to have been wrongly decided.

While the Privy Council case of *Sian Participation* arose from litigation in the British Virgin Islands (BVI) under the *Willers v. Joyce* direction made by the board to the effect that *Salford Estates* has been expressly overruled, the position in *Sian Participation* now represents the current law of England and Wales as well as the BVI.

The position in *Sian Participation* now represents the current law of England and Wales as well as the British Virgin Islands

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Cayman Islands

Before dismissing a petition in favour of arbitration, the threshold question is to determine whether the dispute is genuine and substantial – similar to the position of England and Wales.

Prior to *Sian Participation*, the Cayman Islands had already departed from Salford Estates in the case *Re BPGIC Holdings Limited.* In BPGIC, the Grand Court held that the approach of the Cayman courts is to determine the threshold question of whether the dispute is genuine and substantial before dismissing a petition in favour of arbitration.

The Grand Court recognised that its ruling in BPGIC might seem inconsistent with the Privy Council's decision in *FamilyMart China Holding Co Ltd v. Ting Chuan (Cayman Islands) Holding Corporation,* in which it was held that the Cayman courts would stay a winding-up application in favour of arbitration if the underlying issues are substantial, legally relevant to a claim or defence, and susceptible to determination by an arbitrator. However, the Grand Court clarified that its decision is consistent with the law with respect to stays in favour of foreign arbitration and with the long-standing approach of the courts on applications to stay or dismiss petitions on the ground that the debt is disputed.

Hong Kong

If there is a genuine intention to arbitrate, a winding-up petition will likely be stayed pending arbitration.

In Hong Kong, the English approach in *Salford Estates* is still largely followed, such that an arbitration clause is likely to be upheld when the creditor petitions for winding-up. Any winding-up petition by the creditor will consequently be stayed pending the outcome of the arbitration.

The test, however, is qualified by the recent Hong Kong Court of Appeal decisions in Re *Simplicity & Vogue Retailing (HK) Co Ltd* and Re *Shandong Chenming Paper Holdings Ltd,* adopting *Lasmos Ltd v. Southwest Pacific Bauxite (HK) Ltd*. These cases confirmed that debtors wishing to rely on the arbitration clause must show a genuine intention to arbitrate.

Recent Hong Kong Court of Appeal decisions confirmed that debtors wishing to rely on the arbitration clause to challenge a winding-up petition must show a genuine intention to arbitrate

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As such, there must be evidence to show that the debtors have actually taken steps towards beginning arbitration proceedings (or an undertaking from the debtor to that effect), rather than using the clause strategically to delay the creditor's action and/or avoid liability. The court will likely stay a winding-up petition in favour of arbitration found to be unmeritorious or frivolous.

Singapore

A winding-up petition will be stayed or dismissed as long as the dispute falls within the scope of a valid arbitration agreement.

Sian Participation has not yet been considered in Singapore, hence the applicable test remains that enunciated by the Singapore Court of Appeal in *AnAn Group (Singapore) Pte Ltd v. VTB Bank (Public Joint Stock Company)*: namely, that winding-up proceedings will be stayed or dismissed as long as the dispute falls within the scope of a valid arbitration agreement between the parties, unless there are exceptional circumstances, e.g., an abuse of process, or if the debt is not genuinely disputed.

Looking Ahead

Balancing Conflicting Policy Concerns

The different approaches adopted by these jurisdictions in the interplay between arbitration and insolvency reflects the conflicting policy concerns in this area.

On the one hand, promptly liquidating insolvent companies to ensure that their assets are preserved and fairly distributed among their creditors serves the public interest. In *Sian Participation*, the Privy Council noted that preserving the liquidation route may in fact encourage greater use of arbitration clauses, since creditors (who usually have stronger bargaining power) are more likely to agree to an arbitration clause if they are assured that the clause would not impede a liquidation when there is no genuine or substantial dispute as to the debt. On the other hand, it is also in the public interest for courts to uphold parties' agreement to arbitrate pursuant to the principle of contractual freedom.

We anticipate that courts, in particular the Hong Kong and Singapore courts that have not yet considered *Sian Participation*, will continue to navigate these policy concerns and develop updated legal principles regarding the legal relationship between arbitration and winding up.

We anticipate that courts, in particular the Hong Kong and Singapore courts that have not yet considered *Sian Participation*, will further clarify the legal relationship between arbitration and winding up

The Need for a Uniform Approach?

Privy Council decisions have historically been treated as highly persuasive. Moreover, *Sian Participation* directly alleviates some of the key policy concerns of the Hong Kong and Singapore courts, such as the need to preserve party autonomy and to encourage efficient dispute resolution. Thus, when a suitable case reaches the appellate courts, we may see further evolution of the law in Hong Kong and Singapore, and increased alignment with the position in England and Wales.

Further developments in other jurisdictions and the possibility of a more unified approach on this issue likely will be indicative of the direction of travel, particularly against the backdrop of increased enforcement activity by investors and creditors in the context of commercial transactions, including shareholder agreements in growth companies, joint ventures, and other contracts containing an arbitration agreement.

Whistleblowing Reform

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Whistleblowing remains a hot topic in the UK and Europe, with growing calls for legal reform and companies facing pressure from regulators, prosecutors, and stakeholders to maintain effective whistleblowing processes.

Whistleblowing came under the microscope in the UK in 2024 following a string of high-profile scandals. From the wrongful prosecution of subpostmasters by the Post Office to the allegations of sexual harassment against Mohammed Al-Fayed, the perceived negative treatment of whistleblowers in those cases has raised questions as to whether the UK whistleblowing regime is fit for purpose. The EU Whistleblowing Directive (EUWD), which has been implemented by all Member States, offers enhanced protections and is seen by some as a model for reform in the UK.

In parallel, there have been calls from UK law enforcement – in particular, Nick Ephgrave, Director of the Serious Fraud Office (SFO) – and public policy institutes to reward whistleblowers for reports that lead to successful convictions. This practice already exists across the Atlantic, and Ephgrave has

argued it would help prosecutors secure "smoking gun" evidence to cut through increasingly complex and data-heavy cases.[1]

The new UK government has proposed a minor change to the scope of whistleblower protections as part of a new Employment Rights Bill, introduced in October 2024, but further reforms may follow. In this article, we explore a range of possible changes to UK whistleblowing law – drawing on developments in other jurisdictions.

Expanding the Scope of Whistleblowing Protections

A fundamental issue is who qualifies for whistleblower protection. The UK Public Interest Disclosure Act 1998 (PIDA) protects "workers" who make a "protected disclosure" from being dismissed or otherwise suffering detriment (e.g., loss of work, pay cuts, disciplinary action). The definition of "worker" includes employees, agency workers, and employee shareholders. However, unlike the EUWD, it doesn't cover other key categories of would-be whistleblowers, such as the self-employed, non-executive directors, and job applicants, as well as volunteers and unpaid interns (depending on their specific circumstances). [2] The EUWD goes further still, extending protections to persons "connected with" a whistleblower, including family members and trade union representatives.

The UK whistleblowing regime doesn't cover key categories of would-be whistleblowers, such as the self-employed, non-executive directors, and job applicants

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The UK Department for Business and Trade confirmed in November 2024 that it has "no plans" to expand the definition of worker under PIDA.[3] The Employment Rights Bill will, if enacted, broaden the definition of "protected disclosures" to include reports related to sexual harassment. While on paper this is a (modest) extension, these disclosures arguably already fall within the limbs of the existing definition, which covers legal non-compliance and health and safety risks.

Mandatory Whistleblowing Frameworks: A Step Towards Accountability?

The EUWD mandates internal whistleblowing channels for companies with over 50 employees and sets out minimum standards in respect of the manner in which reports can be made and how reports should be handled.

In comparison, there is no blanket rule that UK companies must provide a means for whistleblowing reports to be made – with the exception of firms regulated by the FCA, which are subject to more stringent regulatory requirements. Nevertheless, implementing and maintaining a robust whistleblowing channel is still strongly advisable in order to mitigate the risk of a corporate criminal prosecution. The UK corporate offences of "failure to prevent bribery" and "failure to prevent fraud"[4] make companies liable for criminal offences committed by their employees, agents, and representatives in certain circumstances – but there is a defence available if "adequate" or "reasonable" preventative measures were in place at the time. Guidance from the UK government on these offences makes clear that "appropriate whistleblowing arrangements" are among the measures they would expect companies to have in place.

An "Office of the Whistleblower"

Another proposal to enhance whistleblower protections in the UK is to create an independent whistleblowing watchdog. Spain has taken forward a similar proposal, having recently established the Independent Authority for Whistleblower Protection (*Autoridad Independiente de Protección del Informante*) (API)[5]. The API is structured into a number of departments – one of which will focus on enforcement proceedings against companies or individuals who breach whistleblowing law (punishable by fines and/or a ban from participating in public procurement processes), and another of which will adopt measures to protect and support whistleblowers.

Since 2019-20, at least three private members' bills have been proposed in the UK Parliament with the aim of introducing an "Office of the Whistleblower" to enforce standards for the conduct of whistleblowing cases and provide redress to whistleblowers who suffer detriment. Although the bills were backed by an All Party Parliamentary Group for Whistleblowing and whistleblowing charities such as Protect, none were enacted into law.

Incentivising Whistleblowing

Whistleblowing incentives remain limited across Europe. The UK does not have a general reward scheme for whistleblowers, but a handful of initiatives exist. For instance, the Competition and Markets Authority offers rewards of up to £250,000 for information related to unlawful cartel activity,[6] and HMRC offers financial rewards in exchange for intelligence on tax fraud. A similar initiative exists in France, where "tax informants" (whose status differs from that of a whistleblower) who report tax fraud can receive, under certain conditions, payments of up to €1 million.

These small-scale European programs pale in comparison with the substantial whistleblower rewards offered by US authorities. The Securities and Exchange Commission (SEC) made its largest-ever whistleblower payment in May 2023, worth nearly US$279 million, and it has awarded more than US$2.2 billion to 444 individual whistleblowers since the program began in 2011. In August 2024, the Department of Justice (DOJ) introduced its own corporate whistleblower rewards pilot program,[7] which, like the SEC scheme, seeks to discourage frivolous or opportunistic claims.[8] Crucially, a whistleblower is only eligible to receive a reward in the event of a successful enforcement action that leads to a criminal forfeiture exceeding a certain threshold.

Ephgrave has been vocal in his support of a US-style model of whistleblower incentives. For Ephgrave, whistleblowers are "keyholders" to the pivotal evidence in large and complex cases, where the criminality is often well hidden. He has pointed out that, while 86% of fines and settlements from corporate fraud cases in the US originated from whistleblowers, in the UK that number is closer to 5%. In some cases, given the choice, it appears whistleblowers are choosing to report to the US authorities over their UK counterparts. Indeed, the SEC Office of the Whistleblower Annual Report to Congress for Fiscal Year 2024, which was released on 15 November 2024, stated that "[i]n FY 2024, the foreign countries from which the highest number of tips originated were Canada, the United Kingdom, India, Australia, and Germany".[9]

For SFO Director Ephgrave, whistleblowers are "keyholders" to the pivotal evidence in large and complex cases, where the criminality is often well hidden

In December 2024, a research paper by the Royal United Services Institute, a think tank, highlighted the potential of whistleblower reward schemes to deliver "actionable intelligence about concealed economic crimes, thereby improving the speed, efficiency and cost-effectiveness of law enforcement investigations".[10] However, the paper warned that, to be successful, any reward scheme should sit within a broader whistleblower protection framework, including robust anti-retaliation measures and an empowered and proactive regulator.

The new UK government has been largely silent on the proposal, with the exception of Foreign Secretary David Lammy, who hinted at "significant financial rewards [for] whistleblowers" prior to the summer 2024 election. It remains to be seen whether whistleblower incentives will attract sufficient political support to become a reality in the UK.

This article was prepared with the assistance of Charlotte Ma in the London office of Latham & Watkins.

1. According to Ephgrave, the average SFO investigation involves around 5 million documents, while the largest-ever had 70 million documents.
2. The UK Employment Appeal Tribunal has indicated that charity trustees may benefit from the whistleblower protections under PIDA, finding that the role of a charity trustee is "akin to an occupational status". See *MacLennan v. The British Psychological Society* [2024] EAT 166.
3. *See* https://questions-statements.parliament.uk/written-questions/detail/2024-11-06/13094.
4. The failure to prevent fraud offence will enter into force on 1 September 2025. For more information, see our blog post UK Government Publishes Guidance on "Failure to Prevent Fraud" Offence.
5. Pursuant to the EUWD, Member States are required to designate a competent national authority to establish user-friendly external reporting channels.
6. *See* https://www.gov.uk/government/news/blowing-the-whistle-on-cartels.
7. For more information, see our Client Alert DOJ Launches New Whistleblower Incentive Program.
8. For example, under DOJ's pilot program, whistleblowers must submit original information that is not already known to the authorities or derived from public sources, and they must do so voluntarily.
9. *See* https://www.sec.gov/files/fy24-annual-whistleblower-report.pdf.
10. *See* https://my.rusi.org/events/role-of-rewards-for-whistleblowers-in-the-fight-against-economic-crime.html.

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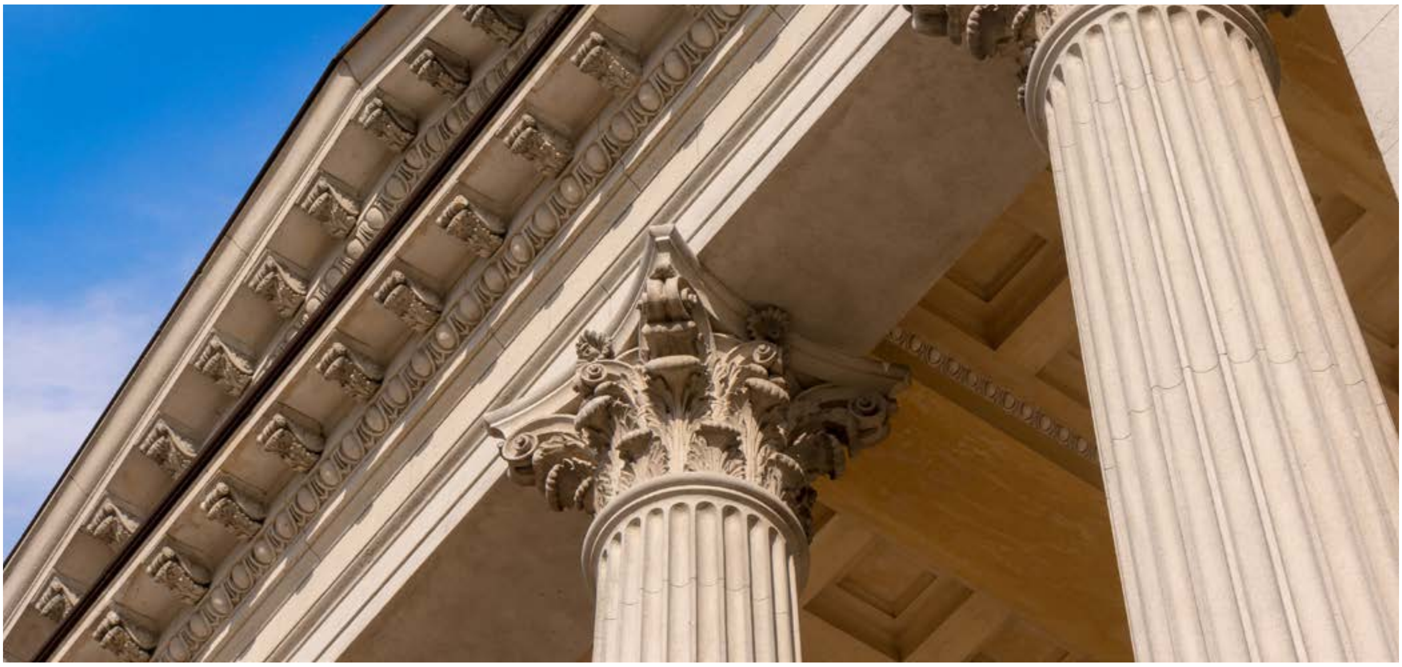

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