About DLA Piper

40+ Countries
90+ Offices
8 Global Practice Areas
10 Global Sectors
$2.63 Global revenue in $USD billions for 2017
225K Pro bono and community engagement hours donated in 2017
Global Presence

AMERICAS
Argentina
Brazil
Canada
Colombia
Chile
Mexico
Peru
United States

EUROPE
Austria
Belgium
Czech Republic
Denmark
Finland
France
Germany
Hungary
Italy
Luxembourg
Netherlands
Norway
Poland
Portugal
Romania
Russia
Slovak Republic
Spain
Sweden
Ukraine
United Kingdom

MIDDLE EAST
Bahrain
Kuwait
Oman
Qatar
Saudi Arabia
United Arab Emirates

AFRICA
Algeria
Angola
Botswana
Burundi
Ethiopia
Ghana
Kenya
Mauritius
Morocco
Mozambique
Namibia
Nigeria
Rwanda
Senegal
South Africa
Tanzania
Tunisia
Uganda
Zambia
Zimbabwe

ASIA PACIFIC
Australia
China
Japan
New Zealand
Singapore
South Korea
Thailand

*Cooperation Firm
Increase in Global M&A Activity

- 2018 Global M&A deal value = $4.1 trillion USD
- Third highest year on record
- Driven in part by “megadeals” involving over $10 billion
- Over 2000 deals greater than $250 million
- Cross-border activity is a key component
  - 41.9% of 2017 deals involved cross-border M&A

Source: JP Morgan 2019 Global M&A Outlook
Key Issues for Going Global

• Labor & Employment Considerations
• Data Privacy Regulation
• Legal Professional Privilege
• Global Compliance
Going Global: Labor & Employment Considerations Around the World
Where we’re headed

- Political change / labor reform
- Global mobility / restrictive covenants
- #MeToo movement / gender diversity and pay equity
- Contingent workers / the future of work
- Workplace data privacy
<table>
<thead>
<tr>
<th>Country</th>
<th>Reforms</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>• Equal pay and sexual harassment reporting requirements</td>
</tr>
<tr>
<td>Germany</td>
<td>• Right to return from part-time to full-time</td>
</tr>
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<td></td>
<td>• Expansion of works council co-determination rights</td>
</tr>
<tr>
<td>Netherlands</td>
<td>• Updated rules for termination due to economic reasons</td>
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<td></td>
<td>• Companies must meet with Works Council re: pay issues</td>
</tr>
<tr>
<td>Italy</td>
<td>• Parental leave changes</td>
</tr>
<tr>
<td></td>
<td>• Greater penalties for undeclared work and safety breaches</td>
</tr>
<tr>
<td>Spain</td>
<td>• Obligations to implement equality plans and record daily working hours</td>
</tr>
<tr>
<td></td>
<td>• New trade secrets law to protect companies</td>
</tr>
</tbody>
</table>
**Policy and labor reform: APAC**

<table>
<thead>
<tr>
<th>Country</th>
<th>Amendments and Reforms</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>Amendments to PRC Individual Income Tax Law impact expats</td>
</tr>
<tr>
<td></td>
<td>New rules on gender discrimination and the protection of women in the workplace</td>
</tr>
<tr>
<td>Japan</td>
<td>Work-style Reform Bill:</td>
</tr>
<tr>
<td></td>
<td>Limits on overtime</td>
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<td></td>
<td>Obligation to designate 5 PTO days</td>
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<tr>
<td></td>
<td>Overtime exemption for &quot;highly skilled professionals&quot;</td>
</tr>
<tr>
<td>South Korea</td>
<td>Labor Standards Act Amendment to reduce working hours</td>
</tr>
<tr>
<td></td>
<td>Minimum wage increase</td>
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<tr>
<td></td>
<td>Prohibition on workplace harassment</td>
</tr>
<tr>
<td>Australia</td>
<td>Flexible working requirements for award covered employees</td>
</tr>
<tr>
<td></td>
<td>Expanded protections for whistleblowers</td>
</tr>
<tr>
<td>India</td>
<td>On-site childcare facilities required where 50+ employees</td>
</tr>
</tbody>
</table>
## Policy and labor reform: Americas

<table>
<thead>
<tr>
<th>Canada</th>
<th>Mexico</th>
<th>Brazil</th>
<th>Puerto Rico</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Legalization of recreational marijuana</td>
<td>• President vows to initiate labor reform</td>
<td>• Following 2017 labor reforms</td>
<td>• Changes to reporting requirements for severance payments</td>
</tr>
<tr>
<td>• Pay equity reform</td>
<td>• Ratified freedom of association with respect to unions</td>
<td>• Significant decrease in labor litigation</td>
<td>• Must be reported as “exempt wages”</td>
</tr>
</tbody>
</table>
<pre><code>                                                                                   | • Outsourcing of core activities now legal                     |                                           |
                                                                                   | • Union revenues plummet                                      |                                           |
</code></pre>
Restrictive covenants – to compete or not to compete?

- No global one size fits all
- Enforceability varies from country to country
- Key themes:
  - Reasonableness
  - Duration
  - Geography
  - Tailored to employee’s position and seniority
  - Legitimate business purpose
  - Compensation (including whether or not it can be waived if restriction not enforced, *eg*, Germany)
Non-competes: Europe

Generally enforceable if there is a legitimate purpose (subject to reasonableness restrictions)
Compensation generally required for enforcement of the non-compete
Generally not enforceable
Non-competes: Middle East and APAC

Generally enforceable if there is a legitimate purpose (subject to reasonableness restrictions)

Compensation generally required for enforcement of the non-compete

Generally not enforceable
Non-competes: Latin America

Generally enforceable if there is a legitimate purpose (subject to reasonableness restrictions)
Compensation generally required for enforcement of the non-compete
Generally not enforceable
Increased focus by lawmakers globally: regulation, transparency, closing the gap, board participation

Recent examples

- **Canada**
  - Proposed legislation applicable to federally-regulated employers designed to equalize earning potential of men and women
  - Ontario: Pay Transparency Act would require reports with information on variations in compensation based on gender (among others), prohibit asking about pay history (effective date of Act postponed and Act is being reconsidered)

- **France**
  - Companies with 50+ employees to publish pay gap annually
  - 3 years to meet indicators; otherwise, have to set aside a "wage catch-up budget" for women and may be subject to a financial penalty of up to 1% of the company payroll

- **Germany**
  - Gender pay transparency rules introduced in 2017 for companies with 200+ employees

- **Ireland**
  - Proposed: employers with 50+ employees to report on gender pay gap

- **Netherlands**
  - Proposed: impose a legal duty on employers to report on equal pay in the annual report

- **New Zealand**
  - Pay equity and equal pay bill proposed

- **Spain**
  - Obligation to implement gender equality plan and keep record of employee salaries

- **United Kingdom**
  - Mandatory reporting for UK companies with 250+ employees
  - First reports were due April 2018
  - 2018: approx. 10,000 companies reported, **nearly 78%** paid men more than women
Global Employment Resources

We offer a range of additional complimentary services to help our clients reduce risk, improve efficiency and save money, including:

• Access employment, labor and pensions law guides covering a wide range of topics for over 60 countries (and counting) across Europe, the Middle East, Asia Pacific, Africa and the Americas. View single country reports or compare topics across two or more countries with GENIE.

• **Our Employment Guide to Going Global**, which covers all of the employment and labor law basics in 60 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa.

• **The Labor Dish** – our employment blog highlighting legal issues important to US employers.
Going Global: Data Privacy Around the World
Data Privacy Regulations Around the World
Data Privacy Enforcement

• 103 GDPR-related fines have been imposed in EEA Member States since 25 May 2018.
• Google fined EUR 50 million for GDPR violation.
• British Airways fined $230 million USD for 2018 GDPR violation
• Marriott fined $124 million USD for 2018 data breach
GDPR Enforcement Actions in Europe

Number of cases per country and total amount of fines issued (as of June 2019)
Biggest Cases per Country (in Euro) (as of June 2019)

- **Portugal**: A hospital (400,000): breach of patient data confidentiality
- **Italy**: Political party (50,000): breach of data security on party’s online platform
- **Bulgaria**: Telcoms service provider (27,100): subscribing customers to prepaid services without consent
- **Hungary**: A political party (35,000): failure to notify a data breach
- **Poland**: Data analytics company (220,000): breach of information, data minimisation and data security duties
- **Germany**: Municipality of Bergen (170,000): failure to protect employee and pupil records of a primary school
- **France**: Google (50 mil): breach of transparency and information duties
- **Germany**: Unknown (80,000): unlawful disclosure of health data
- **Czech Republic**: No concrete information on individual cases
- **Lithuania**: Payment services company (61,500): breach of information, data minimisation and data security duties
- **Spain**: La Liga (250,000): unlawful processing of app users’ personal data
- **Bulgaria**: A betting shop (2,000): misuse of personal data for election campaign
- **Austria**: A political party (50,000): breach of data security on party’s online platform
- **France**: Iddesign (200,000): breach of data retention limits
- **Denmark**: Tax Authority (prohibition of processing): no legal ground for processing
- **Belgium**: City major (2,000): extensive CCTV monitoring of public space
- **Netherlands**: Tax Authority (prohibition of processing): no legal ground for processing
- **Norway**: Municipality of Bergen (170,000): failure to protect employee and pupil records of a primary school
- **Belgium**: City major (2,000): extensive CCTV monitoring of public space
- **Portugal**: A hospital (400,000): breach of patient data confidentiality
Data Privacy Regulations Are Rapidly Evolving

**Regulatory evolution examples**

<table>
<thead>
<tr>
<th>New data privacy law</th>
<th>New cybersecurity law</th>
<th>Ongoing evolution</th>
<th>Changes expected</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>Vietnam</td>
<td>China</td>
<td>China</td>
</tr>
<tr>
<td>Thailand</td>
<td>Singapore</td>
<td></td>
<td>Korea</td>
</tr>
<tr>
<td></td>
<td>Australia</td>
<td></td>
<td>Hong Kong</td>
</tr>
</tbody>
</table>

Enforcement evolution… manage the risks on a jurisdiction-by-jurisdiction basis
Data Protection Laws of the World

- DLA Piper Data Protection Handbook
Going Global: Attorney-Client Privilege Around the World
Attorney-Client Privilege Around the World

The intricacies of attorney-client privilege are funny. But not “ha-ha” funny. More “psych, you’re not protected” funny.
Attorney-Client Privilege Around the World

- Attorney-client privilege for attorneys and in-house counsel
- No attorney-client privilege for in-house counsel
- No attorney-client privilege
Attorney-Client Privilege Around the World

• Communications with a foreign lawyer **may not** be protected.

• Communications between in-house counsel and HR/the business **may not** be protected.

• Belgium, Greece, Netherlands, Norway, Portugal, UK are the only EU jurisdictions where in-house counsel is protected.

• Use outside legal counsel to maintain privilege for particularly sensitive issues.
Outside the EU, concepts of privilege vary even more widely:

- Common law jurisdictions - where the system is based predominately on the UK (e.g. Hong Kong, Australia and South Africa) a concept of Legal Professional Privilege is recognized and can extend to in-house counsel.

- In some countries, no privilege per se, but same result can be achieved through confidentiality obligations (e.g. Mexico).

**Exercise Caution** - May be obliged to disclose a document in one jurisdiction while benefiting from privilege in another. Even close countries can take a different approaches – PRC and Hong Kong.
Attorney-Client Privilege Around the World

- Global Guide
Going Global: Compliance Around the World
Compliance Around the World

- The Global Compliance Prism
  - Programmatic
  - Risk
  - Industry/Sector
  - Geography
Compliance Around the World – Global Risks

M&A Due Diligence

FCPA/Bribery

Third Party Due Diligence
Compliance Around the World – M&A Due Diligence

Pre-Acquisition Due Diligence

- Develop risk profile for target
- Interview key stakeholders
- Review ABAC reps and warranties
- Review compliance policies and training
- Obtain list of JVs and third party vendors
- Obtain recent risk assessments and internal audits
Post-Acquisition Due Diligence

- Develop risk-based compliance integration plan
- Update and synthesize polices and training
- Conduct compliance audit to identify gaps
- Implement risk-based training
- Address pre-closing due diligence issues
FCPA Components

Anti-Bribery Provisions

- Ensures that U.S. companies do not commit bribery in foreign countries.
- Does not apply to U.S. government officials, but other statutes criminalize corrupt payments to such officials.

Accounting Provisions

- Requires accurate reporting and recording of all transactions.
- Covers all payments to non-U.S. government officials, regardless of why the payments were made.
Bribery: What Is Prohibited?

The FCPA prohibits U.S. companies from:

- corruptly and willfully
- offering anything of value
- to a government official

for the purpose of influencing the official to secure an improper business advantage.

- Practically speaking, everything a corporation does furthers its business. Thus, any activity performed on a company’s behalf may fall within the FCPA’s scope.
Gauging Risk: A Critical Consideration

*Who, where, and how an action occurs can significantly influence FCPA risk.*

- **Who** is the customer?
  - If a government is a primary customer, the risk is higher.

- **Where** is the transaction at issue taking place?
  - Countries with higher levels of corruption require greater due diligence of third-parties.

- **How** is the transaction occurring?
  - Agents or joint venture partners increase the risk.
“Who did the background check on him?”
Where is the exposure?

- Agency Relationships
- Distributors
- Franchisees
- Commercial Contracts
- Acquisition Targets
- Joint Venture Partners
Hallmarks of an Effective Third-Party Due Diligence Program

Know your vendors
- Who are they?
- What is the business rationale?
- Are they equipped to provide the services?

Identify your “high-risk” vendors
- Conduct appropriate risk assessments.

Implement a due diligence protocol
- Use questionnaires and background checks.
- Stress the importance of your commitment to ethical and lawful business practices.

Include anti-corruption clauses in contracts

Audit and monitor vendors consistently

Document everything

Ensuring the integrity of the third parties is critical to avoiding and mitigating anti-corruption risk.
Compliance Around the World – Other Issues to Consider

- Trade (import/export & trade agreements)
- Sanctions/OFAC
- Human trafficking/Modern Slavery Act
Available Resources

www.dlapiperintelligence.com

• Knowledge sites that answer legal questions from our clients around the globe.
• Comprehensive guides on topics including:
  • Global Expansion
  • Data Protection
  • Legal Professional Privilege
  • Employment
  • Mergers & Acquisitions
  • Prize Promotions
  • Real Estate
  • Telecommunications
  • Patent Laws
  • Finance Rules of the World
  • Contract Laws
  • Dispute Resolution in the Middle East
  • Media, Sport & Entertainment
Thank you