

大成 DENTONS

# Dentons Future of Retail Law Conference 2018

Thursday 14 June 2018  
Skyloft at Altitude London

Event hosted by Dentons  
in association with  
The Retail Bulletin



# Dentons lawyers to the retail industry

Retail has always been about survival of the fittest and most innovative. Embracing change, facing disruptors and implementing new technologies is challenging but has always been key to success and prosperity.

You need to deliver at local, national and international level and change happens at an increasingly fast pace. Having a legal partner that understands the myriad of business and legal issues you face and provides practical advice and solutions has become even more important.

Dentons has been trusted advisor to the retail industry for more than 25 years, offering a truly dedicated team of industry experts.

## ONE-STOP SHOP

For all your retail needs, we are here to support you. Our extensive experience acting for global retailers in more than 60 countries allows us to provide clients with complete legal services that cover all aspects of the retail industry.



## PIONEERS IN RETAIL

Dentons stands at the cutting edge of this field globally, and is one of the law firms that has the most experienced lawyers/experts in the world in the retail industry, including fashion, luxury and beauty. We have worked in retail for more than 25 years.



## WE HAVE NO LEARNING CURVE

There will be no learning time. We understand international retail projects and the issues faced by global retailers.



## CRITICAL MASS

Being the largest is only relevant if you're also the best. One of the world's largest teams, we share insight, approaches, ideas – this informs the solutions we offer clients, wherever they are in the world.



## OUR CLIENTS ARE OUR BEST CREDENTIALS

Our clients range from major supermarkets and big boxes to iconic jewelry houses and world-famous fashion brands. We have worked with family businesses and start-ups expanding for the first time and with world-leading brands.



## OUR RETAIL CAPABILITIES

The Retail group at Dentons handles some of the most complex retail transactions in today's market. Whatever challenge you face, our team has been at the forefront of developing innovative solutions that protect the business of our clients.



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# Dentons' Welcome



We are delighted to be hosting the second Dentons Future of Retail Law Conference in association with The Retail Bulletin. This is a conference by retailers for retailers. Our thanks go to our General Counsel Advisory Board Members who have given up their time to help us plan the day. We are looking forward to a packed programme covering key legal and commercial challenges faced by the retail industry in an increasingly competitive environment.

Dentons has been a trusted adviser to the retail industry for more than 26 years offering a full service multidisciplinary team covering the full range of legal issues faced by retailers. We know what retailers need to deliver at local, national and global level and understand that change happens at an increasing pace. Having a partner that understands the myriad of business and legal issues you face and that can provide practical advice and solutions has become even more important.

The retail team at Dentons can help you navigate every aspect of your business including digital advertising, pricing practices, franchising, lease negotiations and much more. We have teamed up with The Retail Bulletin to create this year's Future of Retail Law Conference with the needs of our retail clients very much in mind and we hope that it will be an interesting day.



**Babette Märzheuser-Wood**  
Co-Chair Global Retail Group  
+44 207 246 7053  
[babette.mwood@dentons.com](mailto:babette.mwood@dentons.com)



**Scott Singer**  
Partner, Retail  
+44 207 320 6599  
[scott.singer@dentons.com](mailto:scott.singer@dentons.com)

# Chair's Welcome and Conference information



Dear Delegates,

Good morning and welcome to this Dentons conference on the Future of Retail Law. It comes, with some coincidence, at a particularly challenging time for the retail sector, with very many leading and historic names facing various difficulties including closures, administrations and restructurings.

There are, of course, multiple complex reasons for this backdrop. But I believe this backdrop presents opportunities for legal teams acting proactively and anticipating changes in the legal landscape affecting the retail sector.

As you may know, Dentons has a retail advisory group comprising counsel from various retail businesses and, of course, from Dentons' own team. This group has put together a programme for today which is wide ranging enough to cover today's legal landscape as well as what we know is coming. It also includes an interactive workshop on managing an effective legal team which I hope you will also find useful.



## Forum Schedule

We will do our best to observe the start and finish times of each session. Delays are possible, however, and we would be grateful for your co-operation in returning to the conference room as quickly as possible after the refreshment breaks and lunch.



## Feedback

We greatly value the opinion of our participants, and your feedback is essential for us to maintain and improve the quality of this event. You will receive a feedback form after the event. Please take a few minutes to complete the questionnaire.



## Certificate of attendance

We are happy to provide certificates of attendance on request. Please speak to a member of the onsite team to arrange this.



## Mobile phones

Phones must be on silent throughout the conference.



## Fire alarm procedure

In the event of a fire evacuation please leave the venue through the nearest fire exit.

A member of venue staff will direct you to the nearest assembly point.



## Speaker profiles

All speaker photographs and biographies are submitted by the speaker and are not edited by Dentons or The Retail Bulletin.



## Join the conversations @Dentons #FoRL2018



### Nuns Moodliar

former General Counsel,  
Hertz International

# Event Programme



## 8.30am Registration and breakfast

## 9.00am Dentons and Chair's welcome

- Jeremy Cohen, CEO, Dentons
- Babette Märzheuser-Wood, Global Co-Chair Retail Group, Dentons
- Nuns Moodliar, former General Counsel, Hertz International

## 9.15am Future challenges for the retail industry

We discussed the future of retail at the Dentons inaugural Future of Retail Law Conference 2017. Nine months on, the retail landscape has again shifted. In this keynote Paul will share his thoughts on the main challenges faced by the retail industry.

- Paul Gilhooly, Director, KPMG Boxwood

## 9.45am Panel: The future of marketing

This panel will discuss the future of marketing post GDPR, in particular looking at young consumers and how they interact with marketing as well as the new rules on opt in only email marketing and cookies, social media marketing, behavioural targeting and data mining.

*How can retailers continue to engage with their customers?*

- Nick Graham, Head of Privacy, Dentons
- Anna Copeman, Partner, Dentons
- Monica Almeida, Deputy Data Protection Officer, John Lewis
- Natasha Miller, Founder, Miller Libertine

## 10.30am Case study: Royal Mail – how to tackle technology contracts

This session will be based on a case study looking at the impact of technology on retail businesses. We will learn top tips for non-specialist retail counsel on how to tackle technology contracts.

- Scott Singer, Partner, Dentons
- Sarah Draper, Assistant General Counsel, Royal Mail Group



**11.00am**      **Morning break**

**11.30am**      **Breakout sessions**

**Option 1: The future customer: consumer law update**

- Nuns Moodliar, former General Counsel, Hertz International
- Nick Harrison, Senior Associate, Dentons

**Option 2: The future of payment services**

Looking at future payment services: PayPal, Apple Pay, credit and debit card fees, PCI-DSS and of course the latest update on RPM, maximum price and RRP.

- Catriona Munro, Partner, Dentons
- Paul Rodgers, Chairman, Vendorcom

**Option 3: Top tips when negotiating international agreements**

This session will look at franchising and joint ventures as a tool for international expansion.

- Babette Märzheuser-Wood, Global Co-Chair Retail Group, Dentons
- Catherine Palmer, Legal Director, Joseph
- Peter Coveney, Vice President & General Counsel, Godiva

**12.15pm**      **Dealing with Cyber Attacks**

Sony had to deal with some of the largest cyber attacks in history.

In 2012 and 2014 it faced two massive hacking attacks. The first was by the Anonymous group and the second from a group calling themselves the "Guardians of Peace". They locked up Sony's networks for weeks and leaked confidential data to the public. Even though both were criminal acts, Sony faced criticisms from all sides.

- Jonathan Pearl, Ex Executive Vice President, Sony



**12.45pm**      **Lessons for the future – innovation and unique business models**

Richard Jones is the Chief Commercial Officer of Pixoneye, a data analysis company which deploys on device machine learning to deliver unique user insights. He started his career as a corporate lawyer working with Baker & McKenzie before moving into the startup industry in 2008. Ten years on he has held leadership and founding level roles at MyCityDeal (acquired by Groupon), Groupon, UNiDAYS, Zipcube and Rockchop. During his session, he will share his perspective on innovation, and how retailers can successfully deploy unique business models to the ultimate benefit of their consumers.

- Richard Jones, Chief Commercial Officer, Pixoneye

**1.00pm**      **Lunch and networking**

**2.00pm**      **International track – country round tables**

Dedicated international track looking at key retail markets such as the US, China, Italy, France, Russia and Latin America. In this session delegates will have an opportunity to attend three round tables on three countries of their choice. We will have a total of six country round tables, with flags by market, hosted by Dentons' country experts answering your questions on doing business in those markets.

- China – Emilia Shi, Dentons, Shanghai
- Russia and the CIS – Vasilii Markov, Dentons, St. Petersburg
- France – Emmanuelle van den Broucke and Julie Caussade, Dentons, Paris
- Germany – Babette Märzheuser-Wood, Dentons
- Italy – Giovanni Casucci and Michele Carpagnano, Dentons, Milan
- Netherlands – Wendela Raas, Dentons, Amsterdam
- Scotland – Alan Stewart, Dentons, Edinburgh
- Canada – Sheldon Disenhouse, Dentons, Toronto

**3.00pm**      **Tea break**



**3.15pm**

**Building an effective legal team:  
An interactive workshop on how to deliver more for less**

Delivering more for less or, as it is often described, “faster, better, cheaper”, is the new normal for in-house counsel. In the context of increased accountability and scrutiny and the perennial internal competition for scarce corporate resources, how do GCs shift the conversation and focus from cost to value, and make the case for enhanced investment in the legal function in order to deliver the expected value and results?

This interactive workshop session will support busy GCs looking to justify resources including budget, headcount and technology by helping them demonstrate the value of their legal function.

- Nuns Moodliar, former General Counsel, Hertz International
- Chris Pinnington, Chief Executive Officer, Nextlaw In-House Solutions
- Damian Taylor, Marketing and Business Development Director UK and Middle East, Dentons
- JoAnne Wakeford, Chief Client Officer, Nextlaw In-House Solutions.

**4.30pm**

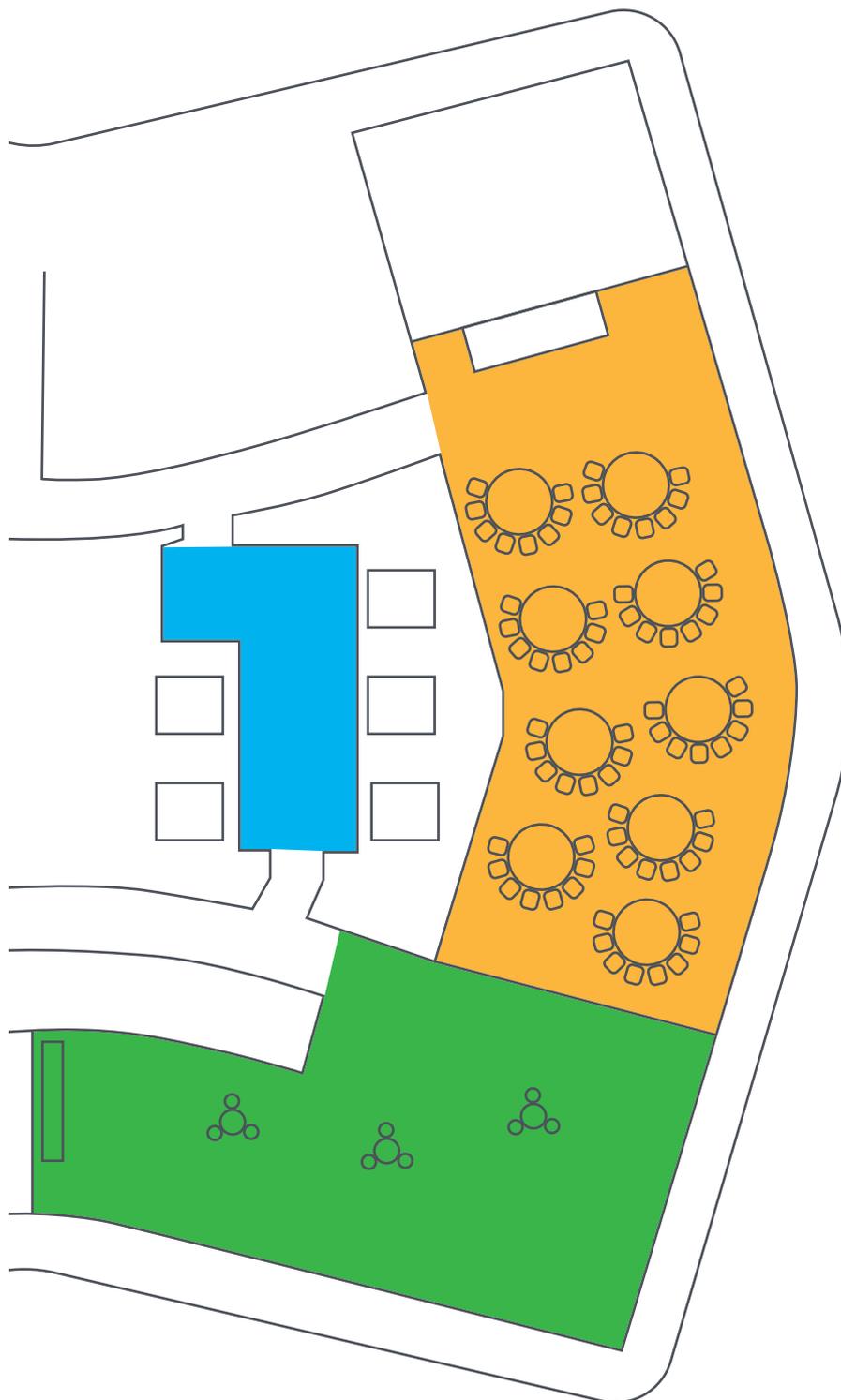
**Drinks reception**

# Venue information



## Skyloft @ Altitude London

Millbank Tower  
21-24 Millbank  
London  
SW1P 4QP



# Dentons Future of Retail Law Webinar Series



We want to develop a webinar series, covering the latest issues, challenges and developments in retail law.

## **You can develop the webinar series with us.**

Let us know what you want to hear about.

Speak to the Dentons representatives at today's event or email Michael O'Sullivan at [michael.o'sullivan@dentons.com](mailto:michael.o'sullivan@dentons.com) with your ideas.

Thank you

**Dentons Global Retail Team**



# Dentons' and chair's welcome



9.00 am



## Jeremy Cohen

CEO, Dentons

Jeremy is Dentons' Chief Executive Officer for the UK and Middle East (UKME) region and is also a member of the Firm's Global Board and its Global Management Committee. He is part of the global leadership of the Firm and is responsible for implementing Dentons' strategy in the UKME region.

Previously Jeremy was head of the division of our UKMEA region that contains our Corporate and TMT practices. He has served on the UKMEA Regional Board since 2011 and has been a member of the Regional Management Committee since its formation in 2014. Jeremy was co-head of our London Corporate department from 2007-2011.

Jeremy's practice incorporates a wide range of public and private M&A and ECM work. His particular specialist areas include public takeovers, IPOs, equity fundraisings, mergers and demergers, as well as acquisitions, disposals, equity investments and joint ventures.

9.15 am

9.45 am

10.30 am

11.30 am

12.15 pm

12.45 pm

2.00 pm

3.15 pm



## Babette Märzheuser-Wood

Global Co-Chair Retail Group, Dentons

Babette is Global Co-Chair of the Firm's Retail Group and heads up the Firm's Global Franchise Group. She advises retail and restaurant companies on their international expansion into new markets.

She specialises in global franchise, distribution, agency, wholesale and concession agreements and IP-driven joint ventures. She also advises retail clients on the strategic use of licensing strategies in emerging markets using both traditional and innovative structures for international expansion in the global marketplace.

Babette has transactional experience in over 100 countries. Recent deals include work in all major emerging markets (Russia, India, China, Brazil and South Africa) as well as in the Middle East and Africa.



## Nuns Moodliar

former General Counsel, Hertz International

Nuns Moodliar has very recently retired as General Counsel, Hertz International, after just over 22 years. Nuns managed a team of lawyers in various jurisdictions across a very wide geography. Prior to joining Hertz, Nuns was at BT for 9 years where he managed legal teams serving different business divisions at BT and prior to that, he was in the legal team at Sun Life.

Nuns is a barrister and he holds a LL.M and a Bachelor of Laws degree.

# Keynote: Future challenges for the Retail Industry



We discussed the future of retail at the Dentons inaugural Future of Retail Law Forum 2017. Nine months on, the retail landscape has again shifted. In this keynote Paul will share his thoughts on the main challenges faced by the retail industry.



**Paul Gilhooly**  
KPMG Boxwood

Paul leads Management Consulting within the Retail and Consumer Sector for KPMG in the London Region. He has 20 years retail industry experience and now advises clients on strategy, turnaround, operational improvement and operating model design.

9.00 am

9.15 am

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11.30 am

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12.45 pm

2.00 pm

3.15 pm

# Panel: The future of marketing



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This panel will discuss the future of marketing post GDPR, in particular looking at young consumers and how they interact with marketing as well as the new rules on opt in only email marketing and cookies, social media marketing, behavioural targeting and data mining.

*How can retailers continue to engage with their customers?*

10.30 am



**Nick Graham**

Head of Privacy, Dentons

Nick specialises in data privacy, cyber security and information governance. Nick advises across all sectors including financial services, transport, retail, telecoms, energy, manufacturing, technology and digital media.

11.30 am

12.15 pm

12.45 pm

Nick has over 20 years' experience and has been advising on data privacy since the days of the Data Protection Act 1984 and the early enforcement activities of the FTC. He has advised on all aspects of data privacy including global compliance strategy, privacy impact assessments, data breach and incident response, international data transfers, customer data strategy, data retention and data exploitation. Most recently, he has advised on GDPR risk and solutions, Big Data, cloud computing, cyber attacks, consumer tracking, biometrics, data sovereignty, conflicts of data laws.

Nick is ranked in Band 1 for Data Protection by Chambers UK, 2017. "He is a realistic voice in the current data fog," say clients, who commend him as "a good listener with an excellent, calm manner." He is ranked by both Chambers UK and Legal 500 for Data Protection. Nick sits on the IAPP European Advisory Board and the IAPP Training Advisory Board.

2.00 pm



**Anna Copeman**

Partner, Dentons

Anna specialises in all aspects of intellectual property law, both contentious and non-contentious. She advises clients on the strategic protection and exploitation of their valuable intellectual property portfolios, in a wide range of different industries and sectors. Anna manages many global trademark portfolios on behalf of international clients. She regularly advises on brand licensing projects, in particular international franchising, and also other "product lifecycle" agreements such as R&D, patent licensing, manufacturing and distribution. She is also

3.15 pm

very experienced in large-scale corporate due diligence, securitisation and audit projects relating to intellectual property rights. On the contentious side, Anna has litigated intellectual property disputes at all levels of the English courts and various other forums too. She also regularly works with clients to resolve matters through strategic settlements at an early stage.



### **Monica Almeida**

Deputy Data Protection Officer, John Lewis

Over 10 years experience providing legal advice to international clients, in data protection and also commercial and corporate matters.

Worked both as a private practice lawyer and in-house, focusing my work assisting clients in international data protection compliance projects with several interconnected data protection issues, not only providing relevant legal advice but also managing local counsels in the different jurisdictions.

Extensive experience in the most varied global data protection issues, such as:

- managing global data protection (DP) compliance projects;
- privacy impact assessments of new data processing activities;
- registrations with and requests for approval with the relevant DP Regulators;
- DP impact of sweepstakes and online competitions;
- advising clients who suffered data breaches;
- global DP implications of corporate transactions;
- drafting and delivering DP training; and
- replies to subject access requests and other DP requests.



### **Natasha Miller**

Founder, Miller Libertine

Natasha Miller is the founder of Miller Libertine, a taste branding consultancy. Who combine storytelling with award-winning culinary excellence to create personalised multi-sensory food and drink experiences. They build distinctive connections and loyalty at the deepest level between brands and their highly valued customers by distilling the unique flavour of a brand, collection, event or personality into a bespoke taste experience.

With eight Great Taste awards and an MA in Marketing and Communications Natasha started Miller Libertine to show her clients, community and the wider world that life is richer when you can taste it. Her grandmother taught her the importance of using the senses to discern the finest ingredients. She specialises in the development of bespoke flavour profiles, conceptual storytelling and recipe development. Projects vary widely, ranging from bespoke confectionery and beverages to events such as brunch or afternoon tea.

Miller Libertine's clients include The National Trust, Anya Hindmarch, Deutsche Bank, Merrill Corp, Liberty and UBS.

# Case Study: Royal Mail – how to tackle technology contracts



9.00 am

9.15 am

9.45 am

10.30 am

11.30 am

12.15 pm

12.45 pm

2.00 pm

3.15 pm

This session will be based on a case study looking at the impact of technology on retail businesses. We will learn top tips for non-specialist retail counsel on how to tackle technology contracts.



**Scott Singer**

Partner, Dentons

Scott is the Head of Dentons' Corporate and Commercial Division. He specialises in commercial contracts, IT and data privacy law and is directory-ranked in all of these areas. Scott is particularly well known for his work in the retail sector, where he advises a number of the UK's best-known names on the high street.

Scott is ranked in Chambers 2017 as a leading practitioner for commercial contracts, which recognises he "has considerable experience across a range of commercial matters. He has a reputation for handling strategically significant large-scale agreements for market-leading and brand-name clients." Scott has acted for many household names on large-scale commercial deals involving supply of goods and services, joint ventures, distribution agreements, transportation, logistics, marketing agreements, design and manufacturing agreements and consultancy agreements.



**Sarah Draper**

Assistant General Counsel, Royal Mail Group

Sarah Draper is the Assistant General Counsel at Royal Mail Group managing the Strategic Transactions team and currently also the Interim Data Protection Officer for Royal Mail. The Strategic Transactions legal team is a highly specialist team that supports the provision of a wide spectrum of group legal advice relating to for example IP, Corporate Governance, Listing and Disclosure rules, Privacy, Data, Economic Crime and Cyber. In addition, the team supports the delivery of key strategic transactions, spanning domestic and international M&A, technology, commercial and corporate deals, financing and digital deals. Sarah is a keen "technologist" and has advised and delivered some of the biggest technology deals in the European market in recent years, not least the ITST programme for Royal Mail. She is also a key member of the cyber incident response team.

Sarah trained in London and has gained her experience through holding several senior roles at Royal Mail, Central Government and what is now called the CGI group

# International Retail Franchising Masterclass

## Is franchising “good” or “bad”?

Dentons is pleased to invite you to register for a place at our next International Retail Franchising Masterclass, which is taking place on Tuesday 11 September from 10.30am.

This event is part of Dentons’ International Retail Franchising programme and is suitable for organisations that have pursued, or are interested in, franchise opportunities. This session will differ from the usual format as there will be a debate entitled:

“Is franchising good or bad? And if so, for whom?”

David Loyd of International Market Management will join Babette Märzheuser-Wood at this event, where they will be putting forward their points for approximately 30 minutes each. Babette will be representing the “yes, it is good” side and David will be putting the “no, it is bad” case forward.

As usual, the event will begin with coffee and registration and will conclude with lunch around 12.30pm.

Spaces are limited so registration will be on a first-come first-served basis. If you would like to attend this event please email: [uk.events@dentons.com](mailto:uk.events@dentons.com)

Tuesday 11 September 2018  
10.30am–2.00pm  
Dentons  
One Fleet Place  
London EC4M 7RA | [Map](#)

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# Franchising: the route to international expansion for retailers

Franchising is a proven route to the successful international expansion of businesses in various sectors from fitness studios and restaurants to high end fashion and beauty. Annually it accounts for turnover of USD\$300 billion in Europe, USD\$850 billion in America and USD\$130 billion in Australia. In the retail sector global brands such as H&M, LEGO, Ralph Lauren and Wagamama have used franchising successfully to grow in both traditional economies and emerging markets. Global retail companies such as The Body Shop and Mothercare have long been at the forefront of international franchising.

However, franchising is not the exclusive preserve of established franchise brands. A franchise strategy can also work for companies that have never franchised before. For example, some retail and leisure companies use franchising as an alternative to direct investment when it comes to expansion in the lucrative but high risk emerging markets of South-East Asia, Eastern Europe, the Middle East and Africa.

## **Benefits for all concerned**

Franchising works because it offers real benefits, not only to the brand owner but also to its franchisees. It offers a number of clear advantages to companies looking at global markets. For the retailer, it removes the need to invest capital and other substantial resources in the venture. It uses the local know how and connections of the franchisee to secure good sites and overcome obstacles with local products registrations and permits. A franchise strategy will see the local partner make the bulk of the investment whilst benefiting from the

know-how, good name and quality assurance program of the company acting as franchisor. Franchising enables retailers and leisure companies to access the required capital and grow the business internationally without significant expenditure or external funding. Franchising also allows companies to attract high quality local investors. These investors are highly sophisticated and have a great incentive to make the project a success in their local market. They also have a strong understanding of the local market. So franchising not only enables you to grow your business internationally by taking advantage of the capital and resources of local investors, but also enables the local investor to have access to the blueprint of a strong proven concept with a known reputation. Few local investors have the resource and time to research their own specialist know how to put together an innovative and successful concept for the local market that would generate attractive levels of income without the trial and error that goes into building a successful business.

## Selecting the right partner

However, in order to take advantage of the potential that franchising offers, one needs to plan the approach carefully. Successful businesses often receive a multitude of offers from foreign real estate developers interested in taking a franchise for Russia or China or the Middle East. Whilst this may be very flattering, it is important to be discerning as many of these would be franchisees will not have the required operating experience in the sector. A franchise which has been well planned, structured and executed can have a substantial positive impact on a business but one that has been done as a response to an opportunistic approach from a foreign developer can be catastrophic. The reality is that on those relatively rare occasions where international franchises fail, this is usually due to lack of due diligence regarding local partners.

## Protect your brand

Before entering into an arrangement with a local partner you need to ensure that your brand is fully protected by way of trademark registrations in the target market and that any franchise fees or royalties are structured tax efficiently so as to avoid withholding taxes. That requires some expert professional advice before negotiations start. There are countries where the registration of a trademark can take between one and two years. This can result in promising negotiations aborting because the trademark situation is unclear until registration has been achieved. Early planning is therefore key.

## Popular Franchise Structures

The basic structure for international franchises is straightforward. The franchisor grants the local owner the right to operate in given location for a set number of years. A franchise agreement will usually be for between 5 and 10 years. In certain sectors such as hotel and leisure it is common for a management company to operate the property, where the local partner does not have operating expertise. This very much depends upon the sector and the expertise of the franchisor. However, it is usual to have some input on the choice of senior personnel that are put into place by way of interview or approval rights. This can extend to Brand Manager, Property Manager and Store Manager.

In addition to the plain vanilla unit franchise for a single property, more sophisticated structures are also available and should be considered. Whilst brands with limited equipment costs may be suited to direct franchising, the investment required for most established brands, will exceed the resources of the typical unit franchisee. Instead companies should partner with an established player that has the resource available to it to construct multiple units over an agreed period of time. This is known as area development franchising. In an area development franchise the local franchisee or "area developer" is a large company that has the finance and resources to open multiple units. The area developer commits to a development schedule whereby it agrees to develop an agreed number of restaurant units over an agreed time period. It is granted exclusivity over a certain territory. Area development agreements are long-term contracts requiring significant investment. A duration of 10 to 15 years is usually appropriate. In order to avoid being locked into the wrong relationship for a substantial period of time it is however important to agree minimum performance targets.

## Financial Models

The financial model needs to be carefully considered. In the retail sector, the amount of product that can be supplied by the franchisor at a margin is an important factor. As a result royalty fees are customary. In addition major brands often command an exclusivity fee. Where the franchisor provides store design services, a charge may also be justified. For some famous brands fees of USD\$1 million are not unheard of whilst smaller brands may be unable to secure any upfront fees. Specialist advice should be taken to ensure the financial model enables both parties to make a fair return on their investment.

## Practical Issues

Practical matters such as importation of specialist equipment and products, local health and safety rules and taxation issues require a risk analysis for each market. If the importation of the equipment or products requires additional expensive testing

or certification, a market may not be suitable for franchise or it may be a case of investigating local suppliers. It is therefore vital to undertake market research into the regulatory environment before pushing ahead.

### **How about joint ventures?**

Local partners will often suggest a joint venture. Typically, this involves taking an equity stake in the local business and a profit and loss participation. The obvious attraction would be a profit share. But, these structures are high risk and should only be attempted by experienced global organisations with access to funding and a large budget for legal and consultancy fees. Joint ventures can result in the

total loss of investment and significant management time being diverted from the UK operations without any immediate financial reward. Where a joint venture is the way forward, brand owners should not compromise on brand values. These should not become a matter of debate and voting at board level but should instead be controlled by the UK brand via a franchise or license agreement.

*Article written by Babette Märzheuser-Wood,  
Head of Franchising, Dentons*



# Breakout option 1: The future customer – consumer law update



## **Nuns Moodliar**

former General Counsel Hertz Europe

Nuns Moodliar has very recently retired as General Counsel, Hertz International, after just over 22 years. Nuns managed a team of lawyers in various jurisdictions across a very wide geography. Prior to joining Hertz, Nuns was at BT for 9 years where he managed legal teams serving different business divisions at BT and prior to that, he was in the legal team at Sun Life.

Nuns is a barrister and he holds a LL.M and a Bachelor of Laws degree.



## **Nick Harrison**

Senior Associate, Dentons

Nick leads Dentons' Commercial and TMT (Technology, Media and Telecoms) team in Milton Keynes. His practice specialises in drafting and negotiating commercial contracts, particularly those with a technology focus. Nick also regularly advises on data protection/privacy, intellectual property, franchising and consumer law matters. Nick has a strong retail and consumer law focus having undertaken secondments with Sainsbury's and Waitrose during his initial stint with the Firm. Nick returned to Dentons in April this year, after 18 months in-house with Debenhams, to assume his current role and grow Dentons' TMT offering in MK.

9.00 am

9.15 am

9.45 am

10.30 am

11.30 am

12.15 pm

12.45 pm

2.00 pm

3.15 pm

# Breakout option 2: The future of payment services



9.00 am

Looking at future payment services: PayPal, Apple Pay, credit and debit card fees, PCI-DSS and of course the latest update on RPM, maximum price and RRP.

9.15 am



**Catriona Munroe**

Partner, Competition Group, Dentons

Before joining the Firm in 1998, Catriona worked in Brussels and London. She is qualified as a solicitor both in England & Wales and in Scotland. Although she has a wide-ranging practice, her particular areas of expertise are cartels and contentious competition proceedings. She has acted in a number of major EU and UK cases, including several successful leniency applications. She has extensive experience of private damages cases in England & Wales, Scotland and other jurisdictions, acting for both claimants and defendants, and in the Competition Appeal Tribunal and in the ordinary courts. She was recently described as an opponent in litigation as “someone to have on your side, not against you”.

Her practice also includes advising on merger clearances, competition complaints, state aids and public procurement as well as other areas of European and competition law. Catriona has experience of anti-dumping proceedings and European Court challenges. She advises on matters relating to the Scottish Parliament such as challenging the scope of its powers.

9.45 am

10.30 am

11.30 am

12.15 pm

12.45 pm



**Paul Rodgers**

Chairman, Vendorcom

Paul is Chairman & Founder of European payments community, Vendorcom; Mentor at fintech accelerator, Level 39; and Member of the UK Payments Systems Regulator Panel and provided the secretariat for the All Party Parliamentary Group on Payment Systems in the last session of the UK Parliament.

2.00 pm

Paul is passionate about the payments industry and the benefits to be gained by driving innovation through collaboration. His work with Vendorcom ensures that all stakeholders in the industry are connected and have access to authoritative, independent information on strategic and innovative developments, standards, regulation and market opportunities. Paul is recognised for his broad perspective on industry matters as well as his independence, authority and pragmatism in dealing with the increasingly complex change that both merchants and solutions suppliers face.

3.15 pm

# Breakout option 3: Top Tips when Negotiating International Agreements



This session will look at franchising and joint ventures as a tool for international expansion.



## **Babette Märzheuser Wood**

Global Co-Chair Retail Group, Dentons

Babette heads up the Firm's Global Franchise Group. She advises retail and restaurant companies on their international expansion into new markets.

She specialises in global franchise, distribution, agency, wholesale and concession agreements and IP-driven joint ventures. She also advises retail clients on the strategic use of licensing strategies in emerging markets using both traditional and innovative structures for international expansion in the global marketplace. Babette has transactional experience in over 100 countries. Recent deals include work in all major emerging markets (Russia, India, China, Brazil and South Africa) as well as in the Middle East and Africa.



## **Catherine Palmer**

Legal Director, Joseph

Catherine Palmer is a member of the international board of fashion house Joseph as well as being its group Legal Director. Catherine joined Joseph following the acquisition of the fashion house by the Japanese group, Onward Holdings in 2005, and has been closely involved in the commercial expansion of the brand overseas through franchises, or direct control.



## **Peter Coveney**

Vice President & General Counsel, Godiva

Peter is General Counsel, Godiva International and Global Projects with responsibility for all Godiva's markets outside North America, principally in Europe, the Middle East, Japan, China and Pac Rim. Godiva is the world's leading premium chocolatier with origins in Belgium but now with approximately 750 stores worldwide and is present in over 100 countries. Prior to Godiva, Peter was a senior corporate counsel at SABMiller and before that he trained and practised as a corporate lawyer at Freshfields Bruckhaus Deringer. Peter was awarded Global Legal Post's Luxury Business General Counsel of the Year.

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# Distribution network in Europe and competition law: constraints and opportunities

Developing a network requires operating strategic choices to reach the expected business objectives while limiting the legal risks to which the network head could be exposed as part of the latter's contractual relations with its distributors.

Networks of independent distributors enable brands to develop themselves rapidly when developing branches can prove to be expensive and cumbersome. However, the external development of the network undoubtedly forces the network head to manage the commercial relations with its distributors to harmoniously develop the brand. Analyzing the local law of the country in which the implantation takes place therefore becomes a requirement that cannot be avoided. The choice of a foreign law that is more favorable to the network head in the distribution agreements does not enable him to avoid a certain number of mandatory provisions of the local law.

The choice of a delivery mode must therefore be thought out in the early stages before the start of any contractual relationship with distributors because terminating commercial relations with distributors can lead to considerable costs for the network head. There are many forms of distribution agreements that are more or less integrated and for the network head, the choice of putting in place a certain type of distribution rather than another will depend on the strategy and the key elements: favoring the quality of the distribution of the products/services, providing a framework for online sales, maintaining control of the resale price of products/service, duplicating a uniform distribution concept in all points of sale, etc.

Each distribution model must also comply with the requirements of European and national competition law which could expose the supplier to severe penalties and the risk of invalidity of all or part of the agreements if the applicable rules are not complied with.

## **1. The development of a network of independent resellers**

Resorting to a network of independent resellers makes it possible to rapidly develop at a lower cost but it implies for the network head to transfer part of the control over the distribution of its products to a third party. From the moment the distribution is entrusted to a third party that assumes its own commercial risks, the latter must be free to implement a commercial policy he sees fit, without interference from the network head. Certain forms of distribution however make it possible to provide a framework for the distribution of products and services and to maintain the uniformity of the network in accordance with certain constraints imposed by competition law.

### **The loss of control of the resale price of products/services**

From the moment the supplier entrusts the distribution of its products/services to independent resellers, the latter must be free to determine

their pricing policy. Indeed, European and French competition laws forbid agreements between companies that have the purpose or the effect of preventing the setting of prices by market forces. This means that the supplier cannot ask its distributor to resell at a determined price or at a minimum price; it cannot frame its commercial margin or limit the price reduction that the distributor wishes to grant to its clients. The prohibition to intervene in the distributor's pricing policy also concerns more indirect measures such as for example the fact of conditioning the granting of a discount to the distributor to comply with a certain price level.

The supplier is however authorized to set a maximum resale price, except if the maximum price is set at a level that is so low that it actually amounts to an imposed resale price. It can still communicate advised resale prices to its distributors for the correct market positioning of its products as long as the supplier does not exercise direct or indirect pressure on its distributors for them to comply with the advised resale price.

#### The loss of control of product/service markets

In principle, the independent distributor must be able to resell the products/services to the client of its choosing in any State of the European Economic Area. This rule participates in the proper functioning of the European Union's internal market and helps avoid its partitioning by practices that would consist in protecting the distributor from the competition of other distributors established in other Member States.

However, this principle includes exceptions and the implementation of distribution networks can enable heads of a network to maintain a certain amount of control over the marketing of their products/services. It is for example possible, under certain conditions, to:

- Limit the active sales of distributors to territories or clients that the network head reserved for itself or for third-party distributors as part of an exclusive distribution. However, an exclusive distributor may not prohibit the distribution to territories that are not protected by exclusivity;

- Prohibit the sales by a wholesaler to end users; or
- Limit the sales of members of a network to non-authorized distributors if the nature of the products justifies the use of selective distribution.

#### Selective and exclusive distribution: means of providing a framework for networks of independent resellers

It is recognized that the heads of networks include certain restrictions in their distribution contracts due to the efficiency gains generated by these models for the consumers.

This is the case of **selective distribution networks that make it possible to provide a framework for the distribution of highly technical or high-quality products**. This type of distribution, which relies on the selection and approval of distributors based on qualitative and/or quantitative criteria, makes it possible to ensure the optimal quality of both the products' distribution and the advice given to consumers. The distributor is therefore only authorized to resell the products to members of the selective network or end users. **Implementing a selective network also authorizes the network head to provide a framework for the distribution of its products on the Internet** by excluding the *pure players* (i.e. the distributors that have no physical point of sales) and, subject to a confirmation from the Court of Justice of the European Union, the supplier can also, in certain cases, forbid the sale by its approved distributors on *market places* like Amazon.

This is also the case for **exclusive distribution which enables the network head to limit the active sales of distributors to territories or clients that the latter reserved for third-party distributors or for itself**. However, the network head may not prohibit the distributor from responding to the solicitations of clients located on reserved territories as long as it concerns passive sales.

## 2. Agents, representatives, business providers, commission agents: controlling the sale price of products/services by the brand

While controlling the sale price of products/services to consumers and their markets is a crucial element for the brand, it should also exclude the distribution option by independent resellers and opt for intermediaries such as commercial agents, representatives, commission agents, business providers, etc. Considering that intermediaries do not purchase products/services to resell them and that they do not take commercial risks related to their distribution, this representative/represented relationship does not fall within the application of competition law and the supplier is released from the constraints of competition law outlined in point 1. Under these conditions, the network head can validly set the sale price of products/services and limit the market.

However, if, in practice, the brand has the intermediary bear all or part of the risks related to the sale of products/services (financing of the inventory, transport, market-specific investments, responsibility vis-à-vis the buyers, taking over of the publicity, etc.), the latter will then be a qualified independent reseller and the brand will then be subject to competition law constraints under a supplier-distributor relationship. The main difference between these types of intermediaries is that the commercial agent is invested by the brand with the power to negotiate and/or conclude contracts on its behalf.

**Commercial agents as subject to a protection regime provided for by a European directive which is transposed differently depending on the Member State and which leads to a regime that is more or less beneficial depending on the Member State concerned. In France for example, the commercial agent is entitled to a compensatory indemnity equivalent to two years of commissions in the event of a termination of the relation.** The issue of choosing the law applicable to the contract may however make it possible to reduce the amount of this compensation.

## 3. The other elements to take into account as part of the implementation of distribution contracts

In addition to competition law, and according to the law applicable to business relationships, additional constraints falling under commercial law must be taken into account by heads of a network when they launch their distribution in Europe and notably (without this list being exhaustive):

- The obligation in most Member States to formalize a **precontractual information document** in case of provision by the network head of its trade name, brand, or sign and an obligation of exclusivity or quasi-exclusivity of the distributor (typical case of franchise). In France, non-compliance with this obligations is likely to lead to the invalidity of the distribution contract if the distributor can establish that the failure of information vitiated his consent and that it would not have concluded the agreement under the same conditions.
- The compliance of the **maximum legal terms of payment** that differ depending on the Member State concerned. In France, Article L.441-6 of the Commercial Code requires compliance with a maximum period of 60 days as from the date of issue of the invoice subject to an administrative fine of a maximum of EUR 2 million. Certain Member States only provide that this period should not constitute an abuse.
- The compliance, in most Member States, of a **reasonable notice period in case of termination of the business relations** for which the period varies depending on the State concerned. In France, this notice period must take into account the duration of the business relations, whether or not there is a situation of dependency of the distributor to the network head and whether or not there are exclusivity clauses. In the event of a sudden termination, the distributor may claim compensation equivalent to the expected margin on variable costs during the period of insufficient notice.

- It can also consist of trade rules that are applicable in addition to the competition rules in certain Member States. In France, Article L.442-6 of the Commercial Code prohibits **practices that restrict competition** and notably, the fact of imposing **imbalanced clauses** or of benefiting from an advantage without a **proportionate counterpart**, or the obligation to formalize before March 1, an **agreement that complies with the provisions of Article L.441-7 of the Commercial Code** in the event of buy/sell relations and the application of specific conditions negotiated with the distributor or commercial cooperation services.

The network head will notably have to consider which law is applicable to its relation and the competent jurisdiction in the event of a dispute, in order to analyze if this choice can exclude the application of these obligations.

*Authors: Emmanuelle van den Broucke and Alexia Delaunay of Dentons Paris*



# Dealing with Cyber Attacks



Sony had to deal with some of the largest cyber attacks in history.

In 2012 and 2014 Sony faced two massive hacking attacks. This first was by the Anonymous group and the second from a group calling themselves the “Guardians of Peace”. They locked up Sony’s networks for weeks and leaked confidential data to the public. Even though both were criminal acts, Sony faced criticisms from all sides.



## Jonathan Pearl

Ex Executive Vice President, Sony

Jonathan recently completed a 24-year career at Sony, which culminated in him having two concurrent senior management roles: one based in USA and the other in Japan. Based on the West Coast U.S.A., Jonathan oversaw 60 people in the Sony Electronics’ Law Department, which included IPR, Compliance, Information Security, Trade Affairs, Government Affairs, Technical Standards & Corporate Security functions. Concurrently, Jonathan headed a Global team of 50+ people based in Sweden, France, Germany, U.K., U.S.A., Singapore, Japan and China, supporting Sony’s worldwide mobile communications businesses including, smartphones and IoT - which is Headquartered in Japan.

Jonathan has been Company Secretary of several U.K., U.S., and Japanese legal entities.

Prior to Sony Jonathan was UK Legal Counsel at Apple. From 1986-1990 Jonathan was a U.K. company/commercial Solicitor at Bates Wells & Braithwaite in the City.

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# Lessons for the future – innovation and unique business models



Richard Jones is the Chief Commercial Officer of Pixoneye, a data analysis company which deploys on device machine learning to deliver unique user insights. He started his career as a corporate lawyer working with Baker & McKenzie before moving into the startup industry in 2008. Ten years on he has held leadership and founding level roles at MyCityDeal (acquired by Groupon), Groupon, UNiDAYS, Zipcube and Rockchop. During his session, he will share his perspective on innovation, and how retailers can successfully deploy unique business models to the ultimate benefit of their consumers..



## Richard Jones

Chief Commercial Officer, Pixoneye

Richard is the Chief Commercial Officer for user insights business Pixoneye. Prior to joining Pixoneye, Richard was on the launch team of MyCityDeal UK which was acquired by Groupon. There he served on the NER senior management team filling a number of roles including VP, Head of National Sales for UK/NER and Director of Partner Management, Legal and Compliance. He has worked with a series of early to mid-stage businesses including Rockchop, UNiDAYS and Zipcube. Before moving to the technology industry; he dabbled as an artist manager in the entertainment industry, practised as a corporate lawyer with Baker & McKenzie, KPMG and earned an MBA from Cass Business School. He's an avid sports fan, at weekends can be found on the golf course, the terraces at Brentford FC, singing, or spending time with his family and young son Oscar.

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# Key Legal Brexit Issues for Retailers

Uncertainty has dominated the reaction of the retail market to Brexit. Whilst most retailers are therefore adopting a “wait and see” approach, there is a general consensus that retailers that import heavily will be most affected. It is expected that Brexit will create a number of new barriers to trade. The legal environment will become more complex as retailers will lose the benefit of access to the common market affecting the supply chain, IP, movement of workers, transfer of data and international contracts. In this article the Retail group of Dentons looks at key issues faced by UK retailers.

## Supply chain and product import

“The basic fact is the more you import, the greater an issue Brexit will be.” Retailers that import product from within the EU need to prepare for new rules on VAT, import duties and tariffs and the reduced buying power of sterling. It is hoped that some of these disadvantages can be set off by better free trade agreements between the UK and major non-EU economies such as India and China. However, from a legal compliance perspective it is certain that the regulatory burden and complexity of the supply chain will increase. The next two years will be a period of uncertainty as retailers have to decide whether to wait for the outcome of exit negotiations before restructuring their supply chain. As the UK leaves the common market, the VAT zero rating of intra-EU purchases will disappear, potentially adding significantly to the costs of imported goods. In addition it is possible that there could be import duties on products sourced from EU countries.

## Examine supply contracts

Retailers need to examine existing supply contracts to consider how and when they can be terminated or renegotiated. Where possible, retailers may wish to terminate long-term contracts and replace them with shorter-term agreements allowing more flexibility during this period of change and uncertainty. Another potential option some are considering is whether it may be possible to invoke force majeure provisions to end potentially onerous contracts such as purchasing agreements with Euro pricing. A further area to examine is the way in which compliance with law clauses are drafted, and, in some agreements, whether there may be change in law clauses, which set out which party takes the pain of legislative changes.

## Increasing regulatory burden

Whilst importing from some non-EU countries, on the other hand, may become easier, retailers may have to go back to pre-War style import departments to cope with

the paperwork. Some retailers are already identifying countries with a strong treaty network and may begin to channel certain product supplies via those countries to minimise import duty. Legal issues associated with importing from outside the EU include the need to comply on a per-country basis with a different set of rules regarding matters such as certificates of origin, safety certificates, import permits and licences. Currently the EU takes care of that. Retailers will need to build their knowledge of import export laws and may have to increase head count in this area.

### **Competition law**

EU competition law will cease to apply to distribution networks, franchise agreements, online sales and supply agreements in the UK. This could be seen as good news as retailers may now be able to ring-fence the UK market. However, when trading in Europe, EU competition law will continue to apply to the operations of UK retailers because competition law applies to trading in the target market regardless of where the retailer's head office is located. In addition current UK competition law is based on EU law so the immediate benefits will be very limited. As the countries drift apart over the years, it is expected that the competition law landscape in the UK will start to change. EU precedents will no longer be binding on the UK courts and the regimes will likely begin to diverge. For UK retailers, a new UK regime may well bring better controls over online sales, key word advertising and exclusive customer groups but for international retailers a dual regime may evolve requiring them to have one set of policies for the UK and another set of policies for Europe.

Retailers with operations in Europe will continue to be bound by the EU regime. EU-based franchise stores will continue to have the right to sell online to any buyer from any EU country but the grey market for supplies from cheaper EU markets into the UK could be shut down, allowing UK retailers to maintain a higher price level domestically without fear of competition from other distributors of the same product range.

Retailers will need to evaluate the impact of these changes on their business model.

### **Enforcing international agreements**

Many international agreements are governed by English law and subject to the exclusive jurisdiction of the English courts. At present, disputing parties within the EU can look to two main EU regulations to identify which courts will have jurisdiction over a dispute, which law will be applied and how a judgment will be enforced. Going forward, these EU regulations will no longer apply. Enforcing a UK judgment in EU Member States may, in the future, depend on bilateral treaties between the UK and the other EU country or on any new arrangement that the UK may be able to negotiate with the EU. It is also possible that the UK may sign the Lugano Convention between the EU and certain EFTA countries on the enforcement of foreign judgments.

The position regarding the choice of English law as the governing law, on the other hand, is unlikely to change. English courts will continue to apply English law and EU courts will continue to respect the choice of law made by the parties provided always that the contract has a connection with the UK. However, if the retailer is based in the UK, this will constitute sufficient connection, so the concern arises principally for foreign parties that have chosen English law as a neutral law.

The bigger issue is thought to be the enforcement of UK court decisions. Potentially solutions include the choice of non-exclusive jurisdiction, changing jurisdiction to the courts of a Lugano Convention country such as Switzerland, and opting for arbitration as the preferred dispute resolution mechanism.

### **The effect of Brexit on international transfer of data**

Currently UK businesses are free to import personal data from other EU countries without the need for special authorisation. A UK withdrawal from the EU is likely to mean (at least temporarily) a loss of its position as a member of the EEA as well. In this case, the UK would need to ask the European Commission for an "adequacy" decision, to allow for the continuing transfer of personal data from the remainder of the EU to the UK. Another option could be for a UK version of the US "Privacy Shield".

It is unclear how quickly an adequacy decision would be made or even whether the UK would qualify for one. This is due to claims about UK national security measures eroding the right to privacy in the UK. The *Schrems* case (which concerned the US failing to adhere to European data protection standards as Facebook allegedly transferred consumers' personal data to the US National Security Agency) could apply to the UK. *Schrems* led to the Court of Justice of the European Union (CJEU) ruling that "adequate" safeguards for the protection of data were not met.

In light of this uncertainty, once Brexit has been triggered, any retailer with operations in an EU country would be likely to need to enter into model contracts (or another data transfer solution) to be able to continue the transfer of personal data from Europe to the UK.

## Protecting your IP

It seems inevitable that an unintended consequence of Brexit will be that the protection of intellectual property rights will become more expensive for retailers. In short, at present all 28 EU Member States benefit from a range of EU-wide intellectual property regimes such as EU trade marks and registered community designs. Some intellectual property is centrally managed – such as trade marks administered by the European Intellectual Property Office (formerly OHIM). For retailers that own or license intellectual property across a variety of European countries, these regimes are cost effective.

### Patents

Plans were well advanced at the time of the EU referendum for a Europe-wide unitary patent, which meant that a single patent application would cover most European countries. This will generate massive cost savings. Post Brexit, retailers will need separate UK and EU protection to cover all territories for their inventions and innovations.

### Trade marks and designs

Currently, trade mark and design protection is available across all 28 Member States with a single EU trade mark (the EUTM, which was formerly called the

CTM) and Community designs. In the future, national UK trade marks will need to be maintained separately from the EUTM and so retailers will need to budget to spend more money in order to protect their trade marks and register in both the UK and the EU rather than just in the EU. It is likely, however, that there will be some form of transitional regime to deal with any existing EU trade mark portfolios (which would currently cover the UK) to enable those trade marks to retain or obtain protection in the UK once it leaves the single market.

Another issue for franchisors to consider is the impact of changes to the current system for registering their trade marks with customs authorities in the EU to help prevent the importation of counterfeit products. It will be important in future to ensure that both national and EU rights are registered with customs. It remains to be seen whether there are other enforcement issues looming as it is not clear whether the UK will continue to have access to the Enforcement Database, which contains information on products that are granted an intellectual property right (such as a registered trade mark or design). At present, police and customs officials of all 28 Member States can access this tool to view information and product details, making it easier for them to identify counterfeits and take action.

### Copyright

Many retailers and most franchise systems rely extensively on copyright to protect their operations manuals, logos, unregistered trade marks, databases and software. Given the cross-border nature of franchising, most franchisors and franchisees wish to rely on a broad range of cross-border intellectual property protection to deal with copyright infringers.

Copyright has also become increasingly important as retailers have moved towards omnichannel strategies and invested significantly in IT platforms. Copyright is central to protecting the implementation of digital channels.

Many domestic copyright laws in the UK stem from EU laws and the various Member States of the EU

have increasingly aligned their approaches over time. Courts in the UK interpret such laws consistently with decisions of the European Court of Justice.

The effect of Brexit on copyright is still unclear. We recommend that franchisors monitor changes to the enforcement regimes. This is especially so with the notice and take down processes, which are at present operated by online hosts in response to court orders or allegations that certain content is illegal.

#### Trade secrets

In April 2016, the European Parliament had approved the new European Union Trade Secrets Directive, which is designed to protect trade secrets. The new law has been of great interest to retailers as confidential information forms the basis of most franchise systems and can be notoriously difficult to protect.

It now seems certain that the UK will not be enacting any national laws to implement the new Directive and so the UK law and European law will continue to diverge. Retailers should, in the meantime, ensure that their confidentiality agreements comply with both UK and European laws. Retailers should ensure they have contractual rights in the franchise agreement to provide protection against unlawful uses of their trade secrets as they will not be able to benefit from the new Directive.

#### Impact for EU workers and employment laws

Stopping the free movement of EU workers was a key factor in the Brexit vote. It is unlikely that the EU will allow the UK to close its borders to EU workers whilst allowing UK workers full freedom of movement in Europe. Retailers that have UK nationals in Europe supporting their local stores may need to apply for work visas and residence permits. Retailers that employ EU workers in their UK stores may face significant change. According to a migration study by Oxford University 8 per cent of workers in the retail and leisure sector are from other EU countries. If visa requirements come into force for EU workers already based in the UK, many of these workers may have to



leave or retailers could be faced with making multiple visa applications for their UK-based staff. Whilst this might create jobs for UK citizens, retailers will have a significant task ahead of them restructuring their workforce and complying with any new visa regimes.

### So what happens next?

Nothing immediate is the answer. It all depends on how the UK negotiates its exit and future relationship with the EU. Those European nationals who have been in the UK for some time may lose their right to work in the UK. A change in regulations that govern the rights of European nationals has fuelled this concern. In November 2015 European nationals lost the automatic acquisition of permanent residence after five years exercising treaty rights in the UK. Now a European national must make a formal application for confirmation of permanent residence. As a result recent arrivals would appear more at risk than long-standing residents.

### Potential legal changes

Whilst the risk of loss of 8 per cent of the workforce would appear to be a significant negative consequence of Brexit for retailers, positive changes for employers are also expected by some in the form of deregulation in areas such as discrimination, working time regulation, health and safety and the rights of employees on the transfer of a business, all of which are based on the laws of the EU. Whilst it is unlikely that the UK government would simply repeal all of these laws, it would no longer be bound by EU minimum standards. There may well be political pressure to offset the costs of employing a domestic workforce with some relaxation of legal requirements. Aspects of employment law that could come under scrutiny include TUPE and the rules that apply to how holiday pay is calculated. The European Agency Workers Regulations, giving agency workers many of the same rights as permanent employees, have also been unwelcome in the UK.

It would not be right to say that EU legislation has been the sole driver behind changes in UK employment laws, but politicians in support of Brexit have indicated that they are in favour of less EU-based

red tape and jurisprudence. Therefore, legislative changes and new case law might be on the horizon that could benefit retailers.

### Action plan

Retailers should put together an action plan to address the legal impact of Brexit on their business. Key legal issues to consider would include:

- Impact on your European supply chain. Review long-term supply agreements and consider termination options and force majeure clauses.
- Impact on your intellectual property. Leaving the EU will mean that the European trade mark is no longer valid in the UK. Retailers will need to review their IP portfolio and filing strategy.
- Impact on staff. Establish the extent to which your business is reliant on EU workers and consider what a two-year transition plan might look like.
- Impact on international contracts. Retailers should review jurisdiction clauses in their international agreements.
- Impact on data privacy. Retailers should put in place new measures to enable them to continue the use of personal data from EU sources.
- Impact on competition law. Retailers could benefit from a better ability to ring-fence their domestic market but will continue to be bound by EU rules where they trade in EU Member States.

Our Retail group is available to support and advise our retail clients on what Brexit means for you, and what steps can be taken in both the immediate and the longer term.

We are offering workshops to delve into this subject further, and are happy to host sessions specific to your firm only, if this would be of interest. Please get in touch if you would like more information.

*Authors: Babette Märzheuser-Wood and Scott Singer, Dentons UK*

# International Track – Country Round Tables



Dedicated international track looking at key retail markets such as the US, China, Italy, France, Russia and Latin America. In this session delegates will have an opportunity to attend three round tables on three countries of their choice. We will have a total of six country round tables, with flags by market, hosted by Dentons' country experts answering your questions on doing business in those markets.

## China



### Emilia Shi

Dentons, Shanghai

Emilia joined the Firm in 2014 after more than 17 years of private practice experience. Before that she worked for several domestic and foreign leading law firms as well as in the legal departments of multinational companies.

Emilia practises in M&A, FDI, PE, corporate governance and compliance. She has advised on projects representing a variety of clientele in major sectors, including retail, real estate, finance, pharmaceuticals, chemicals, energy and media. In particular, she acted as compliance leader for two Fortune 500 companies in the Asia Pacific Region for almost five years and has extensive experience in compliance policy review, audit and investigations.

## Russia and the CIS



### Vasilii Markov

Dentons, St Peterburg

Vasilii is a partner in Dentons' Russia Tax and Customs practice. He has participated in advising the Russian Federation Government on the introduction of tax benefits, has assisted the Federal Tax Service in developing a methodology for controlling the application of higher expense deductions for R&D, and has advised the administrations of different regions in developing the basic principles of granting regional tax benefits. Vasilii participates in drafting Russian federal regulatory acts and legislation of RF subjects intended to incentivise companies in the IT industry and support innovation. He heads the working group on special legal regimes in implementing the Digital Economy of the Russian Federation programme.

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Vasilii has implemented a wide range of projects for integrated tax advice for companies from various sectors on international and Russian tax law, including on corporate taxation, restructuring and improving a group's tax efficiency, applying the laws on CFCs and tax residency.

Vasilii started his professional career at the largest institution of the Russian Academy of Sciences in the Northwest, where he was responsible for preparing tax returns and interacting with the tax authorities.

## France



### **Emmanuelle van den Broucke**

Dentons, Paris

Emmanuelle heads the Competition and Distribution law practice of the Firm's Paris office.

Emmanuelle has thorough expertise in the French regulation of restrictive practices, advising clients on the negotiation and implementation of annual framework agreements and conditions of sale as well as compliance of their business practices with respect to the provisions of commercial law or specific regulations on certain products.

She is also regularly consulted on the setting-up of distribution networks, including drafting and negotiating distribution agreements of all types (franchise, selective distribution, agency agreements etc) and assisting clients in the event of their breach or their termination both in pre-litigation or litigation.

Emmanuelle is member of the French Association of Lawyers in Competition Practice and regularly publishes articles on competition law and is editor of a monthly newsletter on competition issues.



### **Julie Caussade**

Dentons, Paris

Julie co-heads the Paris Employment practice at Dentons. She has specialised for more 23 years in employment law, counsel and litigation.

Julie assists French and international companies, pharmaceuticals, banks, as well as clients in the luxury, metallurgical and chemical industries.

She assists French and International companies from various economic sectors (such as retail, hotel and leisure, IT and service sectors and industrial groups) on all aspects of employment law in the management of their day-to-day issues (setting up a business in France, remuneration and incentive policies, relations with personnel representatives and unions). She also assists them in national and international restructuring operations, including outsourcing projects and TUPE.

She also represents companies before French courts (individual and collective dismissals, disciplinary measures, discrimination/harassment).

Since she joined Dentons, Julie has provided advice to several international groups investing in the retail sector in France as well as French retail groups, including recently a group which needed to downsize its operations/boutiques in the context of a bankruptcy procedure.

### Germany



#### **Babette Märzheuser Wood**

Head of Franchising, Dentons

Babette heads up the Firm's Global Franchise Group. She advises retail and restaurant companies on their international expansion into new markets.

She specialises in global franchise, distribution, agency, wholesale and concession agreements and IP-driven joint ventures. She also advises retail clients on the strategic use of licensing strategies in emerging markets using both traditional and innovative structures for international expansion in the global marketplace.

Babette has transactional experience in over 100 countries. Recent deals include work in all major emerging markets (Russia, India, China, Brazil and South Africa) as well as in the Middle East and Africa.

### Italy



#### **Giovanni Casucci**

Dentons, Milan

Giovanni focuses on IP litigation and licensing.

He represents leading corporations before the Italian courts in complex infringement cases covering a broad range of sectors.

He also he deals with the negotiation of licensing and distribution agreements.

Giovanni is highly reputed in design issues, successfully managing such landmark cases as FLOS / Semeraro, THUN/ Egan and DIESEL / Zara.

In addition, he has a specific expertise in China IP issues, and is currently one of the experts in the China IPR SME Helpdesk programme. Since 2006, he has been involved, both as a lecturer and as an adviser, in a number of EU-China WTO, IPR2 and IP Key projects.



### **Michele Carpagnano**

Dentons, Rome

Michele is a partner in Dentons' Rome office and the head of the Italian Competition and Antitrust practice.

Michele provides national and multinational companies with legal advice and judicial assistance in all aspects of Italian, Spanish and EU Competition Law, Consumer Law, State aid Law, Merger Control, antitrust issues related to tender procedures (bid rigging) and markets regulations.

He represents national and multinational companies as well as public institutions in administrative proceedings before the Italian Competition Authority and Administrative Courts.

He also represents clients in Competition / Consumer laws litigation - both single and class action claims - before Italian Courts.

Michele assists clients in the design and implementation of tailored Antitrust and Consumer Law compliance programme.

He has advised local, national and EU Institutions on legislative / regulatory proposals related to Competition and Consumer laws.

### **Netherlands**



### **Wendela Raas**

Dentons, Amsterdam

Wendela is the managing partner of Dentons' Amsterdam office and a partner in the Real Estate practice. She is recognised as a 'leading individual' in the Netherlands for all real estate matters. In 2017 Wendela was awarded an Honorary Professorship at Amity University Dubai in recognition of her competence and reputation in the area of real estate law. She is a member of the Royal Institution of Chartered Surveyors (RICS).

Wendela focuses on commercial leases, litigation and real estate transactions. Her clients include institutional investors, including some of the biggest investors in the Dutch retail market, project developers, chain stores and estate agents. Recent work includes advising Unibail-Rodamco on the redevelopment of a shopping centre, which upon completion will be the largest indoor shopping centre in the Netherlands, advising Under Armour on the development of its new European headquarters in Amsterdam and advising Dutch real estate investment company Wereldhave on the acquisition of 9 shopping centres of Klépierre.

## Scotland



### **Alan Stewart**

Dentons, Glasgow

Alan is a retail and leisure specialist having worked within the real estate sector in Scotland for over 20 years.

He acts for occupiers, developers, landlords, funders and investors across the full retail and leisure spectrum from large out of town retail parks through to high streets, shopping centres, hotels and restaurants.

In particular, over the years Alan has acted for a number of UK and overseas investors in relation to the development and subsequent asset management of a number of large shopping centres.

He also has experience in advising retail occupiers on various real estate aspects of portfolio management and has advised House of Fraser, New Look, Arcadia, McDonalds Restaurants, Adidas and Steinhoff .

## Canada



### **Sheldon Disenhouse**

Dentons Canada

Sheldon is a partner in the Commercial Leasing and Retail Industry practice groups in the Toronto office of Dentons Canada. His practice focuses on all aspects of commercial leasing including retail, office and industrial leasing. He acts on behalf of developers, landlords and tenants including national and international retailers, and has extensive experience in drafting and negotiating sophisticated leases and related ancillary documentation. He has helped to advise a number of retailers to enter the Canadian market. Sheldon has spoken at numerous conferences on a variety of commercial leasing issues and contributes to numerous publications on commercial leasing law matters. Sheldon is listed in The Canadian Legal Directory Lexpert™ as a leasing practitioner (most frequently recommended) in the area of property leasing, the Lexpert™ American Lawyer Guide to the Leading 500 Lawyers in Canada, Woodward/White's The Best Lawyers in Canada, and Martindale-Hubbell-Peer Review Ratings.



# Immigration and Brexit – Guide for UK-based EU nationals

On 19 March 2018 the EU and the UK held a joint press conference to announce that they had reached agreement on a number of key areas of the withdrawal agreement. This latest announcement gives employers the certainty they need to push forward with planning for the Brexit transition.

To assist our clients and their employees in navigating the complexities of Brexit, we have published this comprehensive guide: *Immigration and Brexit: Guide for UK-based EU nationals*, which provides information on how EU nationals will be affected by Brexit and what can be done now in preparation.

While significant progress has been made on negotiating citizens' rights, the EU and the UK have stressed that "nothing is agreed until everything is agreed". There may be changes to the position on citizens' rights and the transition period leading up to the final execution of the withdrawal agreement (expected to be autumn 2018). In addition, as with all things immigration related, the devil is in the detail so we will also need to wait for secondary legislation and associated policy guidance before we have a complete picture.

As negotiations progress and further information is released, this guide will undoubtedly need to be updated. You can register to receive updates by contacting [immigration@dentons.com](mailto:immigration@dentons.com).

# Building an effective legal team: An interactive workshop on how to deliver more for less



Delivering more for less or, as it is often described, “faster, better, cheaper”, is the new normal for in-house counsel. In the context of increased accountability and scrutiny and the perennial internal competition for scarce corporate resources, how do GCs shift the conversation and focus from cost to value, and make the case for enhanced investment in the legal function in order to deliver the expected value and results?

This interactive workshop session will support busy GCs looking to justify resources including budget, headcount and technology by helping them demonstrate the value of their legal function.



## **Nuns Moodliar**

former General Counsel, Hertz International

Nuns Moodliar has very recently retired as General Counsel, Hertz International, after just over 22 years. Nuns managed a team of lawyers in various jurisdictions across a very wide geography. Prior to joining Hertz, Nuns was at BT for 9 years where he managed legal teams serving different business divisions at BT and prior to that, he was in the legal team at Sun Life.

Nuns is a barrister and he holds a LL.M and a Bachelor of Laws degree.



## **Chris Pinnington**

Chief Executive Officer, Nextlaw In-House Solutions

Combining his experience both as the General Counsel of a global commercial real estate company and as a law firm leader, including serving as Dentons Canada CEO for eight years, Chris Pinnington serves as Chief Executive Officer of Nextlaw In-House Solutions and Dentons Canada Chair. In his roles, Chris is firmly focused on anticipating, understanding and exceeding our clients’ expectations of value, service, innovation, collaboration and efficiency and delivering business solutions to business challenges in today’s increasingly demanding, complex and rapidly evolving business and legal environment.

Chris plays a key role in fostering client relationships and representing Nextlaw In-House Solutions and Dentons with other strategic partners, aligning and implementing our “in and of the community” approach wherever clients do—or want to do—business across the globe.

9.00 am

9.15 am

9.45 am

10.30 am

11.30 am

12.15 pm

12.45 pm

2.00 pm

3.15 pm



**Damian Taylor**

Marketing and Business Development Director UK and Middle East, Dentons

Damian is Marketing and Business Development Director for the UK and Middle East at Dentons, the world's largest law firm. He has worked in leadership roles in professional services for nearly 20 years, managing teams that are charged with delivering excellent client service to the business. Before this he worked as a journalist across major titles including Cosmopolitan, Marie Claire, FHM, Top Gear and Hello! magazine.



**JoAnne Wakeford**

Chief Client Officer, Nextlaw In-House Solutions

As Chief Client Officer for Nextlaw In-House Solutions, JoAnne works closely with our team of more than 50 former GCs, legal technology and process management experts at Dentons to design and deliver strategic and multi-disciplinary advisory services to in-house law departments. With over 15 years' experience in law firm marketing and business development, and most recent experience leading the Marketing & Business Development team at Dentons Canada, JoAnne understands the dynamics of the ongoing disruption of the legal industry and the challenges and opportunities for in-house counsel and, in particular, demonstrating the value of the legal function to the achievement of organisational goals and priorities.

# Dentons General Counsel Advisory Board for Retail



**Edward Anderson**  
Sainsbury's Supermarkets Ltd

**Sarah Azis**  
L'Oreal

**Miriam Best**  
Dentons

**Miranda Brawn**  
Daiwa Capital Markets  
Europe Limited

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**Sarah Draper**  
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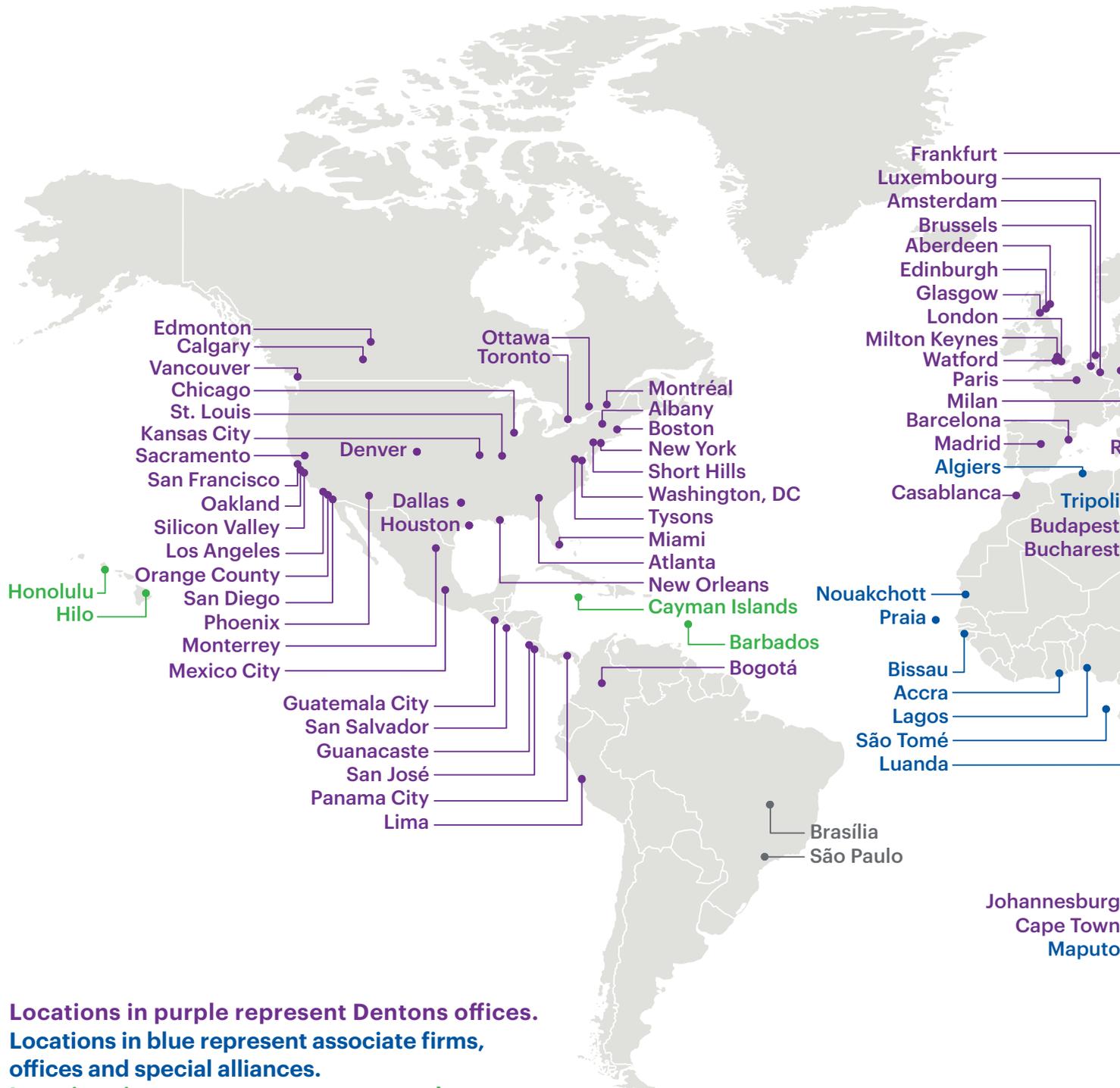
**Karolina Sibiela**  
Hertz

**Scott Singer**  
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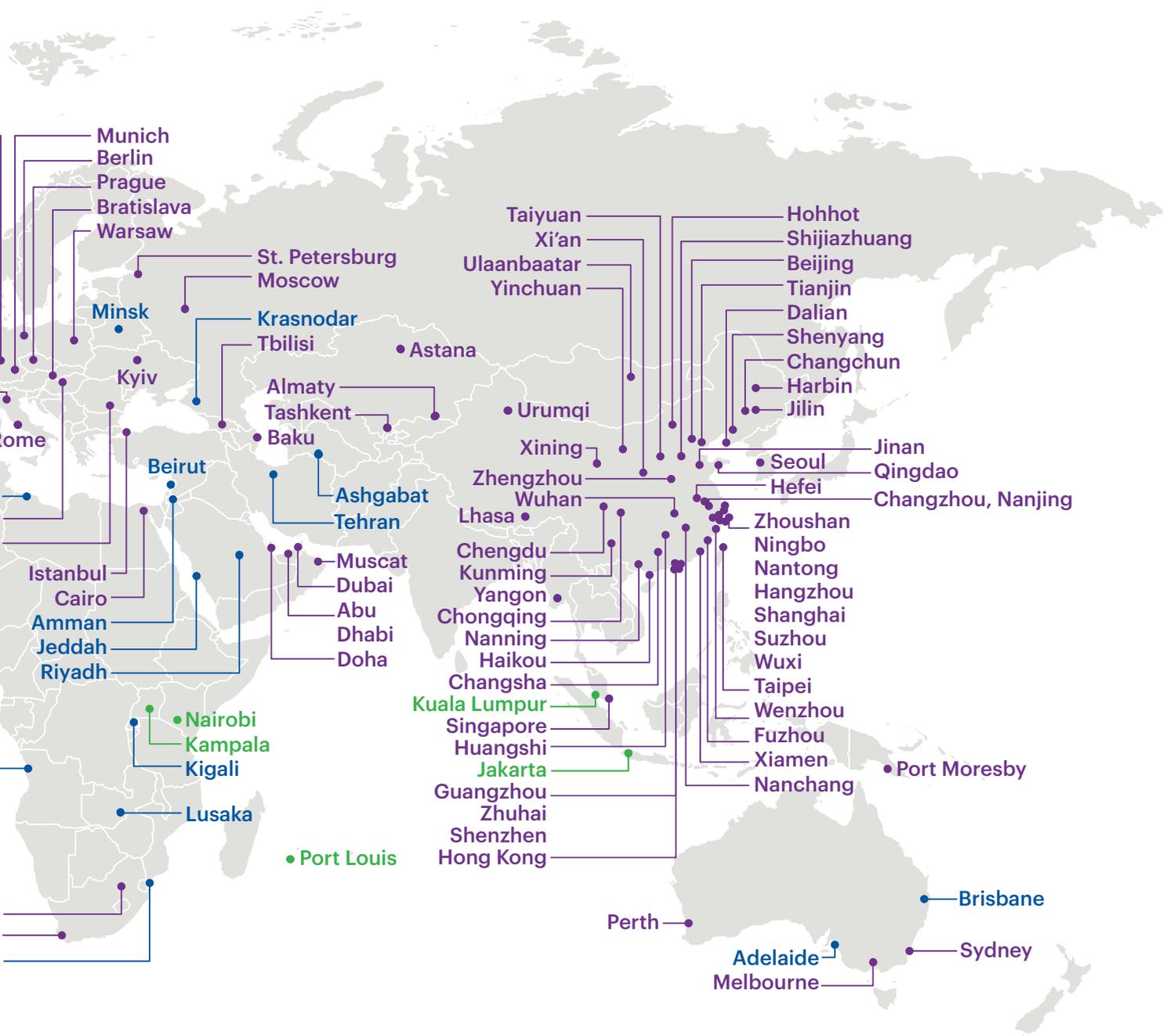
**Adam Vallance**  
FitFlop Ltd

Thank you to the advisory board for all your help in making this event a success. If you would like to join our advisory board going forward, please email Babette at [babette.mwood@dentons.com](mailto:babette.mwood@dentons.com).

# Dentons' global presence



Locations in purple represent Dentons offices.  
 Locations in blue represent associate firms, offices and special alliances.  
 Locations in green represent proposed combinations that have not yet been formalized.  
 Locations in gray represent Brazil Strategic Alliance.





 <b>Coach Europe</b> Elizabeth Cowper VP HR 	 <b>Post Office</b> Martin Kirke Group HR Director 	 <b>Wasabi Sushi &amp; Bento</b> Gary Griffith HR Business Partner 	 <b>Atom Bank</b> Anne-Marie Lister Head of People Experience 	 <b>Mole Valley Farmers</b> Caroline Bendelow People and Organisational Development Director 	 <b>The Mandarin Oriental Hyde Park Hotel &amp; Residences</b> Jon Dawson Director of HR 	 <b>The Career Gym</b> Paul Deeproze Managing Director 
 <b>Adidas Group</b> Tony Cooke HR Director 	 <b>Lincolnshire Co-operative</b> Heather Lee Head of People & Performance 	 <b>Innocent Drinks</b> Lena Taylor Group Head of Talent 	 <b>Three</b> Rhys Davies Head of People Strategy 	 <b>River Island</b> Nebel Crowhurst Head of Talent Development 	 <b>Network Rail</b> Katy Downes Senior Engagement Manager 	 <b>DWF</b> Kirsty Rogers Partner & Head of Client Development 
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**Join our audience of Retail HR Professionals at Retail Bulletin's 8th Annual HR Summit.**

**Date:** 5 October

**Where:** Cavendish Conference Centre in London West End

**Cost:** £250

**We look forward to seeing you on 5 October!**

Karen Howard  
[karen.howard@theretailbulletin.com](mailto:karen.howard@theretailbulletin.com)

# Successful retailers around the world know Dentons – do you?

We understand the retail sector and its diverse legal needs.

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\*Acritas Global Elite Law Firm Brand Index 2013-2017.

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