



Exploring a Hybrid Future

Adapting business models to succeed in the new normal



IR Global members offer jurisdiction-specific advice on how you can adapt to succeed in the hybrid working environment. In the following pages you will hear from 45+ IR members who share their insight and advice on hybrid working, bringing a unique vantage point from jurisdictions around the world. We believe that, to make hybrid successful, you need tailored advice. Our member-firms are on hand to offer this advice to organisations and businesses around the world.

IR Global – Going Beyond Expectations

IR Global was founded in 2010 and has since grown to become the **largest practice area exclusive network of advisors in the world**. This incredible success story has seen the network awarded Band 1 status by Chamber & Partners, featured in Legal 500 and in publications such as The Financial Times, Lawyer 360 and Practical Law, among many others.

The group's founding philosophy is based on bringing the best of the advisory community into a sharing economy; a system that is ethical, sustainable and provides significant added value to the client.

Businesses today require more than just a traditional lawyer or accountant. IR Global is at the forefront of this transition, with members providing strategic support and working closely alongside management teams to help realise their vision. We believe the archaic 'professional service firm' model is dying due to it being insular, expensive and slow. In IR Global, forward-thinking clients now have a credible alternative, which is open, cost effective and flexible.

Our Founding Philosophies

- **Multi-Disciplinary**

We work alongside legal, accountancy, financial, corporate finance, transaction support and business intelligence firms, ensuring we can offer complete solutions tailored to the client's requirements.

- **Niche Expertise**

In today's marketplace, both local knowledge and specific practice area/sector expertise is needed. We select just one firm, per jurisdiction, per practice area, ensuring the very best experts are on hand to assist.

- **Vetting Process**

Criteria is based on both the quality of the firm and the character of the individuals within it. It's key that all of our members share a common vision towards mutual success.

- **Personal Contact**

The best relationships are built on trust and we take great efforts to bring our members together via regular events and networking activities. The friendships formed are highly valuable to the members and ensure client referrals are handled with great care.

- **Co-Operative Leadership**

In contrast to authoritarian or directive leadership, our group puts teamwork and self-organisation in the centre. The group has steering committees for 12 practice area and regional working groups that focus on network development, quality controls and increasing client value.

- **Ethical Approach**

It is our responsibility to utilise our business network and influence to instigate positive social change. IR Global founded Sinchi, a non-profit that focuses on the preservation of indigenous culture and knowledge and works with different indigenous communities/tribes around the world.

- **Strategic Partners**

Strength comes via our extended network. If we feel a client's need is better handled by someone else, we are able to call on the assistance of our partners. First priority is to always ensure the client has the right representation whether that be with a member of IR Global or someone else.



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FOREWORD

Hybrid working: understanding obligations and opportunities in the new normal

Organisations are combining on-premise and remote working in a post-pandemic landscape, but this 'hybrid' approach brings both commercial benefits and operational challenges. IR Global explores the impact hybrid is having on businesses worldwide.

Fairly early in the Covid-19 pandemic, most of us realised there would be no 'return to normal'. In a matter of weeks, the world had fundamentally changed: whatever emerged from the other side of the experience would be very different from what existed 'before'.

For most businesses worldwide, the shift was sudden and swift. Covid-19 measures necessitated a quick change to a new way of operating, with remote working becoming the rule, as opposed to the exception, almost overnight. Now, as we emerge slowly into a post-pandemic landscape, the emergency measures that instigated that change are, largely, over – but the demand for remote working is not.

Many employees have realised that remote work affords them a better life-work balance, with less stress, less commuting and more control over their time. Organisations that successfully navigated the remote work revolution also realised that it had a positive impact on business, with fewer on-premise employees resulting in lower overheads, more efficiency and, surprisingly, better communication and collaboration.

Yet on the other side of the coin, many businesses and individuals have come to recognise that a fully remote workforce is not sustainable in the long-term. While 73% of global employees want more flexible remote working to stay, 67% want more in-person collaboration post-pandemic. Issues ranging from loneliness to erosion of business culture and accountability have marred an otherwise positive experience, resulting in the search for the perfect middle-ground between 'remote' and 'on-premise' structure.

The result is 'hybrid working', a combination of remote and on-premise work, tailored to each business, and even each employee, to improve employee experience and achieve better commercial results for employers. Hybrid work models are now embraced by 63% of high-revenue growth companies, while 69% of companies with negative or no growth have rejected the concept of hybrid workforces. As Gartner's George Penn put it, "Success in a hybrid work environment requires employers to move beyond viewing remote or hybrid environments as a temporary or short-term strategy and to treat it as an opportunity."

Yet hybrid working is not without its challenges: there are

generational, cultural and locational differences that impact on the success of the model. Not every employee will have the same home environment to work from, whether that's due to personal circumstances (such as a lack of dedicated home office space or childcare) or regional infrastructural issues (like poor internet access or unreliable utilities). In terms of generational issues, there can be significant disparities between employees even within one business, in one location. Research has found that the majority of generation Z – younger employees who are emerging into the workforce today – prefer to interact with colleagues face-to-face, compared to just 66% of generation X and 68% of 'baby boomers'.

If incoming workers prefer to interact in person, and older, more experienced employees prefer to work remotely, how can businesses ensure that skills, expertise and workplace culture are being successfully shared? While this does not need to be an obstacle to hybrid work, it is an important concern that organisations need to address as they create their 'new normal' – one that you will find a host of regional advice on throughout this publication.

In some jurisdictions, there are also legal, contractual and tax implications that need to be navigated if businesses are going to benefit from hybrid, rather than be hindered by it. While some jurisdictions have already developed robust hybrid policies and support – such as 'workation' visas and cross-border taxation agreement – others are lagging behind, creating additional strain on organisation's HR, legal and payroll teams. Hybrid is also changing the way that businesses approach their need for physical workspace: 66% of leaders say they are considering redesigning their office space for hybrid work, with fewer desks and increased communal spaces. This shift to remote work has changed the domestic property market, too, with changing demands for property locations and features.

While hybrid is an opportunity, it is also undeniably an additional strain for businesses: there is no hybrid model that you can 'buy-in' or replicate. To make hybrid successful, you need tailored advice. In the following pages, IR Global members share their insight and advice on hybrid working, bringing a unique vantage point from jurisdictions around the world.



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Employment

Employment issues have many facets, from engaging and retaining employees to dismissals and various disputes which inevitably arise. IR Global members are unique in that they offer both corporate advice to international businesses and individuals with complex or sensitive employment law issues. They offer a global service and work across borders to ensure that each issue is handled efficiently in accordance with the laws of each relevant country.

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

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Mark D'Alelio has over 14+ years of experience in ASEAN and specialises in general corporate and commercial practices, which includes: advising on acquisitions and dispositions; commercial contracts; joint ventures; labour law and local regional compliance requirements; and real estate guidance for developers and hospitality providers. He also has experience in the energy, power, and project financing sectors. Mark has extensive experience handling cross-border transactions in the ASEAN region, including advising and representing major companies and business groups from Singapore, China, and Thailand with foreign direct investment into Myanmar. Mark is a recognised lawyer for his work in Thailand, Myanmar, and Vietnam, and is a member of the Bar in New York and Massachusetts, U.S.A.

Legalasean was started by Mark D'Alelio with a focus on providing practical and business-related legal services to assist clients in navigating local regulations and practices in ASEAN, with a particular focus on Thailand, Myanmar, and Vietnam.

The firm's unique selling proposition is that we listen to our clients' needs and partner with them by administering compelling legal and practical solutions to meet their requirements.

Put simply, we believe there are many ways to act as a legal adviser, but we feel strongly that a bigger firm does not necessarily equate to providing a better service or response. We administer our business by putting our clients at the forefront, providing dedicated support with a singular focus in helping our clients meet the requirements of doing business in ASEAN.

That means we provide more, for less, to our clients.

QUESTION ONE

Has WFH/hybrid culture enabled businesses to broaden their talent search? What impact has this had on employment and skills availability in your jurisdiction?

Worldwide, remote working has become the 'new normal' thanks to the Covid-19 pandemic. In Thailand, being able to work from home or in a hybrid model seems to be one of the new requirements that both Thai and foreign candidates are searching for in their career. Since most private entities, and even government sectors, are willing to offer their employees remote work, it seems to be a disadvantage for companies that do not adopt this approach.

Top professional workers certainly know their worth and value. These skilled people have a lot of opportunities offered to them, which allow them to opt for the best option available. The practice of remote work allows them to, perhaps, have a better work-life balance, as they can efficiently manage their time. Thailand, especially Bangkok, is well-known for bad traffic: for the employee, time spent on travelling to and from the office could take about 2-3 hours a day (or even longer) and this period could have been spent more productively, and wisely, on actual work. Working from home could save both time and cost on travelling. In some cases, they could even save their accommodation cost, since it would be unnecessary for them to

relocate to somewhere near the office.

Therefore, going forward, it might be necessary for companies to step up and adapt to this new recruitment culture to be able to acquire talented candidates and be able to compete with their competitors in the market. Traditional daily office working from 9 to 6 may no longer be suitable for companies to keep and recruit talent. Thai companies (with few or no foreign workers) are not accustomed to this new normal and they will be hard pressed to keep up with innovative companies that are willing to change their culture.

QUESTION TWO

Proximity bias is becoming a critical issue in hybrid workforces – what do businesses need to be aware of and how can they ensure they are not discriminating against remote employees?

In the past, discrimination issues were primarily based on gender (which still remains). Employees working daily at the office no doubt are afforded greater benefits in that they can work more closely (face-to-face) with senior employees. Employees seeking work from home or a hybrid approach likely will be at a disadvantage at a traditional Thai company, or for companies that have senior employees, as work from home may not align with the expectations of the older Thai generation (50+). Ultimately, each company needs to align its internal culture to ensure working from home employees are given the same treatment as those in the office.

“Being able to work from home or in a hybrid model seems to be one of the new requirements that both Thai and foreign candidates are searching for in their career.”

QUESTION THREE

How can businesses ensure that their onboarding and training processes remain fair and balanced in a hybrid work culture?

In this 'new normal' training seems to be more remote based, especially given Covid-19 restrictions in place around group gatherings. Will these restrictions ease over time? Certainly one would hope so, but this does afford companies the opportunity to refine their training methods to accommodate more remote and IT-based learning. Again, this must start with changing the internal culture to align to the 'new normal'. Thailand has a rich and distinctive cultural tradition and the same can be said of Thai companies. Where the work force is older, changing these traditional mindsets will be important to foster change when it comes to training.

TOP TIPS

Adapting employment contracts to a hybrid working model

- ✓ The language used in the contract should consider the flexibility to work from home. Working hours for employees should be paid attention to and employers should respect the boundary of personal time and working time even in hybrid work practice. Working hours, leave days, work from home clauses and all legal requirements regarding employment should be clearly addressed in employment contracts.
- ✓ Internal work rules and regulations should also be appropriately adjusted to adopt remote working, such as whether permission from a supervisor is required to work from home, or allowance on the number of days to work from home. There needs to be structure in place to permit the work from home model, but also to ensure it is not abused.
- ✓ Additional provisions to accommodate work from home may be required, such as equipment, stationery and office supplies. The employee should not necessarily be responsible for procuring these items; therefore, the employer needs to adopt a policy on this.



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She is a frequent presenter at national and local bar associations and is a trainer and consultant on trial strategies and employment law issues, including sexual harassment for major corporations and public institutions.

Ms. Wong received her juris doctorate in 1982 from Rutgers School of Law and her bachelor's degree in 1976 from Rutgers University.

She is admitted to practice in New Jersey, New York, Pennsylvania, Virginia, and Washington, D.C. and has been recognised as a Super Lawyer in the area of Employment & Labour Law from 2005 through 2021.



Wong Fleming is a nationally recognised, AV-Rated law firm that represents Fortune 500 companies and other corporate clients in the areas of employment and labour law, commercial law, corporate asset recovery, creditors' rights and bankruptcy, environmental, insurance defense and coverage, intellectual property, immigration, real estate, and premises and product liability.

We are trial lawyers who have represented clients in jury and bench trials, and are familiar with Federal, state and local courts, as well as regulatory agencies. We have represented businesses in class action litigation, multi-party litigation and single plaintiff cases.

Wong Fleming has a vision, mission and values, that promotes excellence in our work while maintaining high ethical standards. We also approach our cases with an understanding of our clients' business and their objectives. We are uniquely designated as a diverse law firm in the United States and promote values that are representative of our clients' interests.

The firm maintains offices in New Jersey, New York, Pennsylvania, District of Columbia, Florida, Georgia, California, Texas, Washington, Illinois, Indiana, Michigan, Tennessee, Canada, Mexico, and Germany.

QUESTION ONE

Has WFH/hybrid culture enabled businesses to broaden their talent search? What impact has this had on employment and skills availability in your jurisdiction?

A hybrid work from home and office culture has allowed businesses to expand their search to qualified employees around the country, rather than being confined to one labour pool in a local area. They can also establish to their clients that they have the bench strength to handle matters nationally, with employees who are in tune with the local requirements where their home offices are located. It has also promoted employee morale in providing greater work/life balance.

“Hybrid has allowed businesses to expand their talent search around the country, rather than being confined to one, local labour pool.”

QUESTION TWO

Proximity bias is becoming a critical issue in hybrid workforces – what do businesses need to be aware of and how can they ensure they are not discriminating against remote employees?

Employers should be mindful that employees who may exclusively work remotely may feel isolated from the rest of the workforce and there could be turnover of employees who do not have colleagues they regularly interact with. Our law firm has encouraged our remote employees to work periodically in the office, and we have regular video conferences several times a week where employees report on their cases and get input from their colleagues on their litigation strategies. Employees are also invited to client conferences where they can meaningfully participate in analysing and problem-solving legal issues. We also have regular email communications and telephone calls as another means of communication, in order to maintain a connection with staff. As travel restrictions ease, employees are encouraged to participate in client and community development initiatives.

Compensation and certain benefits, such as paid time off and holidays, should uniformly be provided to all employees, regardless of whether they are working at home or are in the office. The ability to move up to supervisory positions and be assigned to more favourable work assignments should be available to all employees as well.

TOP TIPS

Adapting employment contracts to a hybrid working model

Keep your employees engaged by having regular meetings by video conference, to discuss work assignments and provide feedback on work strategies. At the meetings, managers should promote collegiality and appreciation for the work done by all employees. Employees may be asked to write articles that are published on the company website and given recognition with their picture and a short bio of what they do for the company. Certain employees can also be given supervisory responsibility or a lead role for special projects. It is important that employees feel recognised and appreciated for their work, regardless of whether they are in or out of the office.

Provide benefits that may be unique to your company, such as reduced hours in the summer, additional holidays and, for employees reporting to the office, regular times when lunch and breakfast are provided. Employers may consider providing tuition reimbursement for employees to attend colleges or to enhance their existing skills. Offices have also established 'fun committees' to celebrate employee birthdays, and plan events for the firm at the end of the workday or out of the office – such as trips to sports events or participation in culinary lessons – as a means of teambuilding.

Lead by example and give meaning to the work you are accomplishing individually and collectively within the goals of your organisation. The best employees are those who understand your business and your clients' objectives, and can look up to managers of the company who are knowledgeable, perform well and work hard.

QUESTION THREE

How can businesses ensure that their onboarding and training processes remain fair and balanced in a hybrid work culture?

Onboarding and training should be uniformly developed and provided to all new hires, and training should be consistently provided with in-person and video conferencing meetings to discuss office procedures, work assignments and strategies for problem solving.

Many classes for continued professional growth are provided remotely and should be uniformly provided to all employees. Where employees are also active in certain professional organisations, employers should also encourage their membership and consider paying for membership dues and subscriptions to professional journals.



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Lionel Paraire was admitted to the Bar in 1997 and is founder of Galion. Lionel has a DESS de Droit des Affaires and a Magistère-DJCE (Masters in Business and Tax law) from the University of Montpellier.

He worked for six years with Cabinet Jeantet Associés, then worked at the firm Baker & McKenzie, and then Mayer Brown where he became Of-Counsel.

Lionel has been Senior Lecturer at the University of Paris XII in Labour Law and European Labour Law. He is a member of Avosial, EELA (European Employment Lawyers Association), ANDJCE (Association Nationale des Diplômés Juriste Conseil d'Entreprise) and IBA (International Bar Association). He is also Senior lecturer at the University of Montpellier I (DJCE).

He has developed an acknowledged expertise in the area of individual employment relations and high risk litigation and dispute resolution. He regularly assists companies with restructuring and the labour and employment law aspects of corporate transactions.

Moreover, he has written numerous articles for specialised press (Jurisprudence sociale Lamy, RF Social, l'Entreprise, l'Usine Nouvelle) and the national press (La Tribune). Lionel frequently takes part in conferences on varied subjects of labour and employment law and provides training for his clients. Lionel speaks French, English, Spanish and German.



QUESTION ONE

Has WFH/hybrid culture enabled businesses to broaden their talent search? What impact has this had on employment and skills availability in your jurisdiction?

Attracting and retaining talent implies knowing and addressing employees' expectations, keeping in mind that these expectations are constantly changing according to economic and social context. The best example today is hybrid working. Working from home has been strongly encouraged by the French government since the beginning of Covid-19 pandemic. Both employers and employees have seen that business was not harmed by remote working and could even improve productivity, notably in Paris and other large French cities with long employee commutes. Having employees teleworking one or two days a week is now the norm

Galion is an independent French business law firm dealing exclusively with labour and employment law and specialising in advice, litigation and dispute resolution. Close to its clients, Galion creates and develops 'made-to-measure' solutions for each of its clients, adapted to their needs, culture, business and organisation. Our approach is based on three fundamental points:

- Technical excellence in a context of increasing legal uncertainty.
- Pragmatic vision and a strong corporate culture

- Partnership, availability and commitment, essential in creating a close-working relationship. Galion provides advice on all labour and employment law issues, notably in Individual employment relations; collective employment relations; reorganisation and restructuring; remuneration and employee savings schemes; assistance with the labour and employment law aspects of M&A transactions; URSSAF Audits and social security dispute resolution; Litigation and Dispute resolution; white collar crime litigation; work accidents, criminal offense of obstructing the works council.

within many companies, whatever their size. According to a recent study, 38% of French employees in the private sector are now teleworking on a regular basis, on average two days a week. It enables businesses to broaden their talent search, as 64% of French employers believe that hybrid work will allow them to attract and retain talent. On the employee side, 48% of teleworkers (63% among employees under 35 years old) are considering moving far away from their office, or even abroad.

The impact of hybrid culture is still largely unknown, but it has already impacted the labour market, especially regarding geographical mobility and workforce shortage in various sectors where teleworking is not possible (e.g. restaurants, hospitals, etc.). The situation actually depends on the business sector, as well as employees' duties within companies. Of course, not every function may be carried out remotely and not every company can be transformed into a full digital business.

QUESTION TWO

Proximity bias is becoming a critical issue in hybrid workforces – what do businesses need to be aware of and how can they ensure they are not discriminating against remote employees?

Under French labour law, employers have a general safety obligation provided by law vis-à-vis their employees, requiring them to take necessary steps to ensure their workers' safety and to protect their physical and mental health. This is an enhanced duty of care, which means that employers can avoid liability if they can prove that they have taken all the preventive measures provided by the code. The sustainable installation of teleworking requires rethinking the organisation of work and the company's operating methods to optimise the benefits and limit the negative impacts of teleworking (loss of a collective bond, difficulty in sustaining business culture, capacity for permanent adaptation, etc.).

Both employees and managers agree that the main prerequisites for a successful hybrid model are: network quality and IT security; a certain flexibility in the implementation of collective rules, and; evolution of managerial practices.

To be more efficient when they are on site, employees want to have an individual office or isolated spaces allowing them to concentrate or make phone calls, while also having communal spaces. They also want working methods to evolve towards a management more focused on trust, encouragement, taking initiatives, and the right to make mistakes. They also want more agility and flexibility in terms of time management.

Managers say they are ready to reorganise workspaces and to allow flexibility between on-site work and telework. Their priorities for successful work hybridisation lie in communicating with employees, measuring productivity, preventing occupational risks, and access to mobile digital tools.

Of course, HR must have a non-discriminatory approach to the different types of employees, based on objective and concrete elements, to establish a fair WFH policy: not all tasks and/or functions are 'teleworkable'.

TOP TIPS

Adapting employment contracts to a hybrid working model

✓ A hybrid working model implies adapting employment contracts, particularly about place of work, in order to specify where the employee will be authorised to work. Is on-site work required, and when is it needed?

✓ If the pandemic has made it possible to work mainly or exclusively from home, a company collective agreement is strongly recommended (sometimes required) or at least a written charter, which will notably define the rules of teleworking such as working hours, location, etc.

✓ The implementation of hybrid work also requires focusing on the prevention of risks of a new nature, that are sometimes less visible, called 'Techno-Social Risks' ('RTS' in French). These can be defined as "a set of physical and psychological disorders incurred by an employee when the latter evolves in a work situation where information and communication technologies (ICT) occupy a central place in the realisation of their mission". The 'document unique d'évaluation des risques' (DUER), which transcribes the results of the professional risk assessment, will need to be updated in order to take into consideration new risks such as isolation, hyper-connection, addictions, etc.

QUESTION THREE

How can businesses ensure that their onboarding and training processes remain fair and balanced in a hybrid work culture?

Working from home increases time devoted to human resources and administrative management tasks, team leadership, individual follow-up and activity coordination. By complicating individual exchanges and team cohesion, teleworking also has a mainly negative impact on team management.

It is also important to adapt management styles to this way of working, with less control and more interaction with the employee. More than ever, the manager must guarantee the cohesion of the team, by inventing new sociability rituals; by communicating more and better, and; by establishing a solid relationship of trust.

The employer's power of management or supervision must still be exercised remotely, while respecting the teleworker's privacy. The collective agreement drawn up by the employer must determine the time periods during which the employer can contact the teleworker.

Since 2016, French employees have a 'right to disconnect' and companies have to include this topic in annual mandatory negotiation, as well as regulating the use of digital tools to ensure respect for rest and leave times as well as personal and family life.



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Diana Neagu is a recognised leader in Romania and Moldova in labour and employment matters, as well as banking and finance. She has represented a variety of international and local clients in their employment issues, including Banca Transilvania, British Petroleum (BP), Michelin, Unicredit Bank, Tarmac, I.D. Sarrieri, the Salvation Army, the Peace Corps and many others. In the course of her work, she has represented clients in all types of labour matters including litigation, collective bargaining, work permits and visas, dismissals and management restructuring.

Diana has a deep specialisation and is a leading attorney in relation to employment issues for financial institutions. Recently, Diana advised the World Bank and the Moldovan State with regard to re-drafting of the Moldovan Labour Code. In addition, she has extensive experience in finance and banking matters, having represented both lenders and borrowers. Her banking experience includes new product development, negotiating complex syndicated loan agreements and advising on banking regulations both in Romania and the Republic of Moldova. Her most recent transactions include representing various lenders (syndicates and clubs) against Moldova's largest borrower. In addition to her lending work, Diana has overseen several significant M&A transactions and matters.

Vernon | David specialises in complex commercial transactions and disputes, regulatory matters and compliance issues. We provide high-end, bespoke legal advice to a wide array of domestic and international clients. Since our formation in 2001, we have worked on many market-leading deals in Romania and Moldova.

We represent clients in all types of labour matters and provide them with appropriate and measured counsel aimed at minimising, if not eliminating, costly legal actions. We have a significant and well-respected dispute resolution team and are specialised in complex labour and employment litigation. We represent many of Romania's and Moldova's leading companies, banks and NGOs.

Commercially aware and business focused, our team understands clients' needs and structures its advice to help manage risk and prevent conflict. Our goal is to achieve your desired commercial outcome with minimal disruption or cost.

We also have a significant compliance and internal investigations practice and have worked on numerous fraud and employee malfeasance cases, including FCPA investigations and matters before the Romanian anti-corruption authority.

QUESTION ONE

Has WFH/hybrid culture enabled businesses to broaden their talent search? What impact has this had on employment and skills availability in your jurisdiction?

The legal regulation of remote work has been an important HR topic during the past ten years in Romania. This started after the government named the IT industry as an essential industry for Romania and implemented tax incentives for IT specialists. Although originally set up in the largest Romanian technical university cities of Bucharest, Cluj-Napoca, Timisoara and Iasi, IT companies soon found that human resources became insufficient for their ever-growing needs. Therefore, the need for a more flexible employment environment became essential for IT companies looking to expand their workforce with quality people throughout Romania (and not just the big cities).

This led to the first remote work law in 2018 (Law 81/2018). While initially lacking in certain areas, the law was significantly amended later to properly reflect the needs and specific characteristics of remote work which arose during the pandemic in 2020 and 2021. Needless to say, starting with 2020 most industries needed to move to remote work and started full implementation. While at first many companies worked almost exclusively away from the office, from the middle of 2021 (when Covid vaccines became available) hybrid work schedules

became common.

Both employers and employees found this to be an improvement: employers significantly increased their search pool and employees found their work life balance more attainable. Hybrid work employment structures became one of the most important elements of long-term HR planning for most large companies in Romania.

Interestingly, at the beginning of 2022 Romania was placed third in a ranking of the best countries in the world for remote working and travel, out of 111 countries analysed by Momondo (part of Booking Holding). Furthermore, the Romanian authorities amended immigration laws in January 2022, to allow long-term residency visas in Romania for 'digital nomads': individuals who are employed remotely by companies located in countries other than Romania.

QUESTION TWO

Proximity bias is becoming a critical issue in hybrid workforces – what do businesses need to be aware of and how can they ensure they are not discriminating against remote employees?

According to the provisions of Article 6 of Law 81/2018, remote employees should benefit from any and all rights provided by the law, the internal regulations of the employer, and the collective bargaining agreements applicable to on-location employees of the same employer. In addition to this specific anti-discrimination protection provided by the law, we believe it is important for employers to ensure that employees who work remotely are not isolated from their co-workers and that efforts are made to integrate them as much as possible.

As such, one of the most important elements that we believe Law 81/2018 provides for is an obligation for the employer to provide specific measures to ensure that remote employees are not isolated from other employees and have the possibility to regularly meet their colleagues.

During the pandemic, we took this to imply regular online meetings with either all the employees of the company, or at least regular departmental meetings if the number of employees is too large to allow for regular all-hands meetings. Outside the pandemic, most of our clients have preferred to conduct weekly online meetings and quarterly offline meetings, with at least one yearly all-hands meeting, or weekly offline meetings and at least one yearly all-hands meeting.

QUESTION THREE

How can businesses ensure that their onboarding and training processes remain fair and balanced in a hybrid work culture?

A good onboarding program is an essential first step when it comes to welcoming new employees. Beyond learning policies, internal regulations and manuals, the actual introduction of the layout of the location where off-line work will be performed is very important. This became even more obvious during the pandemic, when it took some new employees months to visit the location after starting work with an employer. However, since onboarding was done online, we have met unfortunate

TOP TIPS

Adapting employment contracts to a hybrid working model

Law 81/2018 provides for specific requirements which the employment agreement must meet to be converted to a remote work agreement. Key elements that all remote work agreements must include are:

- ✓ A weekly schedule, defining when the employee will work on-location or remotely.
- ✓ A daily work schedule (which may be actively verified by the employer).
- ✓ The method by which the employee keeps an accurate timesheet of their working hours.
- ✓ Each party's responsibilities under the agreement, including working health and safety obligations.
- ✓ The obligation of the employer to deliver to (and from) the employee's place of work any materials/products used by the employee in their activity, as applicable.
- ✓ The obligation of the employer to inform the employee with respect to the applicable legal provisions, bargaining agreement provisions and/or the applicable internal regulations, data protection policies as well as the employee's obligations.
- ✓ The expenses which the employer undertakes during the remote work periods (for example, will the employer provide employees with an allowance for utility costs?)
- ✓ The means through which the employer ensures that the remote employee is not isolated from the other employees of the company.

cases where employees were not able to properly grasp the functionalities of their offices on location when they had to resume work in-person, leading to significant mental distress to employees and potential liabilities for the employer. Therefore, learning from this period, we strongly advise that all onboarding is done both online and on-location (in smaller groups) once employees start to resume work on-location.

With respect to training, in our view a hybrid work culture creates the perfect opportunity to ensure that all employees have access to the same level of training. We believe that businesses should redirect part of their offline training session budgets towards a combination of online and offline training aimed at smaller groups. In our experience, although cost is always an issue, we have found that employees seem to benefit more from smaller group training rather than large group offline training.



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Rebecca Torrey represents companies in litigation in federal and state courts nationwide. She is an across-the-board employment lawyer with significant trial experience representing management in bet-the-company cases involving wage, hour and fair credit class actions, trade secrets, wrongful termination, discrimination and fair pay claims.

Rebecca provides strategic advice to companies aimed towards aligning personnel practices with an employer's culture, values and priorities and minimising legal risk. She is committed to developing a client's understanding of the law

The Torrey Firm represents employers in litigation and advise management on a broad range of employment matters. From creating effective personnel practices to defending employers at trial, we have the experience and judgement to help manage the maze of regulation and the risk of litigation that comes with it.

As workplaces reflect societal developments, leadership and culture, changes in personnel practices will occur. We assist businesses in looking ahead strategically and collaboratively to improve human resource practices and reduce unnecessary risk.

Having spent years in large law firms with a hefty overhead, Rebecca Torrey founded The Torrey Firm on the principle that employers should have extraordinary resources available at reasonable rates. We provide those resources both virtually and in person as businesses assess and recreate their own workplaces.

to improve human resource practices and guide businesses forward. A frequent speaker and writer on key developments and cutting-edge legal issues, Rebecca is known for pragmatic, out-of-the-box solutions that support strategic growth.

Rebecca's clients include healthcare companies, professional services firms, entertainment, digital media and technology innovators, manufacturers and recyclers, and tax-exempt organisations, operating both domestically and internationally. She has been ranked by ChambersUSA multiple times, is honoured by her peers as one of the Best Lawyers in America and recognised for her trial successes as a Fellow of the Litigation Counsel in America. Selected by the professional services network IR Global as its exclusive California employment practitioner, Rebecca contributes thought leadership and provides guidance on developing areas of employment law to professionals around the world.

Prior to her law firm practice, Rebecca served as a Law Clerk for Chief Judge Deanell Reece Tacha for the Tenth Circuit, U.S. Court of Appeals.

QUESTION ONE

Has WFH/hybrid culture enabled businesses to broaden their talent search? What impact has this had on employment and skills availability in your jurisdiction?

Hybrid and WFH working arrangements most definitely offer businesses a broader talent pool in certain industries. White collar businesses with office workers who can perform services outside a traditional work location benefit the most from this trend. Employers can recruit and hire from outside the usual commuting radius, considering candidates residing in other geographic areas and even previously untapped local talent that wants to avoid a daily commute.

Employees working remotely will create additional compliance challenges. Regulatory requirements may include registering the employer to do business where their employees perform

services and obtaining a business license in other locations. Employers may need assistance setting up applicable payroll taxes and income tax withholdings complying with employment laws and regulations where the services are rendered. There may be additional ergonomic needs for work from home arrangements, such as standing desks, proper chairs and computer accessories, even when such items are available in a central office location. Privacy concerns and protection of trade secrets may require additional precautions, including software and security measures. A wider range of applicable employment laws may impact company-wide personnel policies, as employers set standards of expected work conduct. Employers should consider these requirements prior to hiring, as requirements may not be economically feasible.

California and the Los Angeles area where I practice offers a broad talent pool to businesses, given the sheer numbers of people in the area. However, the cost of living is high, with many workers engaged in long commutes through congested areas. Wage rates are elevated compared to other parts of the country: hiring remote workers outside of the immediate urban area may help lower payroll costs and reduce an employer's carbon impact.

QUESTION TWO

Proximity bias is becoming a critical issue in hybrid workforces – what do businesses need to be aware of and how can they ensure they are not discriminating against remote employees?

There are at least two types of bias – unlawful bias based on legally protected classifications, and a broader bias against certain employees without implicating equal employment laws. In considering unlawful bias, employers must be alert to and test for adverse impact in employment practices along the lines of any protected classification: whether in hiring, promoting, terminating, equal pay or the conditions of employment in hybrid work. If a protected class of worker is experiencing proximity bias, that might amount to unlawful discrimination. An example along these lines during the pandemic could be a requirement that older or medically vulnerable employees work from home because of their health or advanced age, missing out on opportunities at work.

Looking more broadly at the issue of proximity bias, treating individuals differently as a result of where they perform services may cause dissatisfaction, internal complaints, declining productivity and morale, supervisory challenges and poor retention. A sense of unfair treatment can be a source of conflict among co-workers and lead to human resource issues. Not everyone succeeds in a remote situation requiring personal initiative and provided with less oversight. Performance shortcomings can be more difficult to diagnose and challenging to address appropriately. While many people view remote work as a privilege, others do not, especially if favouritism occurs for those working on-site.

Companies aware of these problems aim to address the sense of exclusion and isolation by implementing practices to enhance internal communication, loyalty, workplace culture and, ultimately, job satisfaction. That is not a simple process and requires innovation in teambuilding and communication to create the interactions and relationships that occur with regular interpersonal contact. There are no easy, off-the-shelf

TOP TIPS

Adapting employment contracts to a hybrid working model

✓ The majority of workers in the United States are employed at-will and do not have employment contracts. In the absence of an individual employment contract, we recommend establishing a written document setting forth the conditions and expectations for hybrid work arrangements. This includes the anticipated schedule for office/remote work, timekeeping practices, reporting structure, confidentiality and privacy expectations, channels of communication and avenues to address job concerns. It also should address the specifics for the employer's payment of business expenses associated with hybrid work, including remote Wi-Fi access, printing costs, phone service, any required travel, uniforms as applicable and other recurring costs as required by law.

solutions. Digging into this challenge is an ongoing process as businesses adapt to hybrid work arrangements.

QUESTION THREE

How can businesses ensure that their onboarding and training processes remain fair and balanced in a hybrid work culture?

The onboarding and training of employees is critical to the success of any workforce, particularly a hybrid work arrangement. Onboarding may occur virtually or require in-person meetings depending on job requirements, company practices and budget. In all cases, employers should have an intentional and well-designed process in place for new employees that considers the circumstances of their hybrid arrangements.

Initial formal job training typically consists of an overview of: company policies and procedures; work expectations; company culture; use of equipment; perks and benefits; as well as job skills and know-how. Informal, on-the-job training that naturally occurs when working with others should not be overlooked or minimised. Employers with remote workers need to find ways to replicate the collaborative learning and teambuilding that occurs when people are together in the same place. This is the area where I see the most challenges and frustration.

Learning to work better is an ongoing process for employees. Remote work may require additional communication and oversight to assess an employee's knowledge of job requirements and understanding of company culture. It can take longer, with new methods needed to become acquainted with co-workers and develop rapport. Some employees feel disassociated and unguided because of inadequate interaction with management. That can be a source of problems in employee retention. Managers may need training and coaching on how to communicate, develop teamwork and supervise their team more effectively in hybrid work arrangements.



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Shilpen also advises and represents employers, employees and professional clients in all aspects of employment and partnership law. He has expertise in restrictive covenants, discrimination, whistleblowing, restructuring and bonus disputes. He represents senior executives, self-employed professionals and company directors in connection with their entire workplace needs, including claims in the Employment Tribunal and the High Court. Shilpen is a Londoner and is passionate about the capital's unique identity and cultural variety. He is a committed advocate and driver for diversity and inclusion in the workplace.

Shilpen is a CEDR-accredited independent mediator and accepts appointments in relation to business and workplace disputes.

gunnercooke is one of the UK's fastest growing law firms, providing a wide range of corporate and commercial legal services to businesses, banks and financial institutions. The firm was founded in 2010 to challenge, improve and evolve the way that legal services are delivered. We believe that the legal industry serves neither clients nor lawyers the way it should.

Our founders set about doing things differently from day one, flattening out the traditional hierarchy and establishing a new model based upon flexibility, transparency and freedom. All gunnercooke lawyers have a client-focused approach and at least 10,000 hours' practising experience. They also operate on a fixed-fee basis, meaning work is scoped out from the outset and cost certainty is guaranteed. As a result, all clients have access to trusted advisors who have a breadth of experience and knowledge, enabling them to work on all matters from straightforward transactions to complicated cases that require complex solutions.

The firm has been recognised for 44 industry awards and currently employs over 330 legal professionals and management consultants across seven offices; London, Manchester, Leeds, Birmingham, Edinburgh, Glasgow and Berlin.

QUESTION ONE

Has WFH/hybrid culture enabled businesses to broaden their talent search? What impact has this had on employment and skills availability in your jurisdiction?

The UK has undoubtedly seen a culture shift towards a more creative approach to work. There has been a right for employees to request flexible working for a number of years, but this was not used very widely, and the employer's only real obligation was to deal with such requests in a reasonable manner. The law itself has not changed, but the Covid-19 pandemic gave the idea of greater flexibility a huge push because it forced home working on the country as a whole. Now even the most sceptical employer will accept that remote working is possible and recognises it is something that employees increasingly expect.

Technology has also played a large part, with video conferencing in particular reducing the need for in-person meetings or for employees to be based at a fixed workplace.

The hybrid working revolution has helped businesses to access a much wider pool of talent. This includes people who cannot work full time, and those who have difficulty commuting. This can be due to various reasons, such as childcare commitments, disability or just simply because an employee lives too far away to travel to the workplace every day.

There's no question that those employers who are open to a greater

degree of flexibility are able to reach sectors of the working population that may previously have been out of reach to them. This is good for candidates and for employers, who can secure a more diverse and motivated workforce simply by introducing more modern, flexible working methods.

The UK government is supportive of the drive for more flexible working methods, and a formal consultation was started last year to review the existing statutory scheme.

QUESTION TWO

Proximity bias is becoming a critical issue in hybrid workforces – what do businesses need to be aware of and how can they ensure they are not discriminating against remote employees?

As great as hybrid working can be, working from home can sometimes have the unintended effect that employees suffer from being 'out of sight, out of mind'. This is especially likely if the senior management of a business are primarily office-based, while their workforce work partly, or wholly, from home. This can then lead to management placing greater focus on the employees they see in-person on a day-to-day basis, to the detriment of those who have a lesser physical presence. If this feeds into management decisions, it can cause real injustices.

This type of skewed view of the workforce can mean that the wrong factors are used to decide promotion, restructuring or redundancy decisions. For example, an employee who works from home on a part-time basis because of childcare commitments might be valued less than a colleague who is office-based and a full-time employee. This can result in allegations of unfairness and less favourable treatment and, in extreme situations, trigger claims of unfair dismissal and/or breaches of the Equality Act 2010.

Employers must be alert to this danger and take steps to make sure that something intended to improve conditions for their workers doesn't end up with the opposite effect. This requires clear lines of communication with line managers, regular contact with all staff, and regular business-wide appraisals of the whole workforce.

QUESTION THREE

How can businesses ensure that their onboarding and training processes remain fair and balanced in a hybrid work culture?

The starting point is to create a clear homeworking or hybrid working policy, which can be added to the employee handbook so that it is available for all staff to access. The policy should set out whether employees are required to submit formal flexible working requests (if eligible) to request a contractual change reflecting the agreed arrangement, or whether a policy of discretionary hybrid working is preferable. Some employees may value a flexible arrangement, but others may prefer a formal contractual change.

As far as recruitment and onboarding is concerned, it is important to provide clear information to candidates during the recruitment process about the opportunities for flexible and hybrid work and, wherever possible, share specific

TOP TIPS

Adapting employment contracts to a hybrid working model

✓ **Ensure your contracts are geared for hybrid working and clearly state what is expected.**

This should include place(s) of work, hours of work, the right to require physical attendance in the workplace, and whether there is a geographical limit to where they work from.

✓ **Managing confidentiality and data protection is essential.**

It is normal for employment contracts to require that the employer's information is not disclosed, but in a hybrid scenario this should go further and require the employee to keep information secure too. There should also be express precautions for keeping confidential information secure such as forbidding access by household members, passwords and encryption, a secure filing cabinet and facilities for confidential disposal such as a shredder or confidential bin.

✓ **Retain control of flexible arrangements.**

No matter how strong the case for flexible working may be, the needs of your business can change and not every hybrid arrangement is a success. When introducing changes for workers it is sensible to have an initial trial period and an express right to require the employee to revert to workplace working at the end of that period. It is also advisable to retain the right to terminate a homeworking or hybrid working arrangement in certain circumstances and subject to a period of prior notice within the employment contract.

“Working from home can sometimes mean that employees suffer from being ‘out of sight, out of mind’.”

information about the flexible working options that are available. Appropriate training should also be given to the recruiting managers and virtual interviews are to be encouraged to maximise accessibility for all candidates.

The Chartered Institute of Personnel and Development (CIPD) has recently published practical guidance for the government's flexible working taskforce. Their tips include: provision of training according to a candidate's experience of remote working; helping new workers to structure their work to separate the workplace and home; building in social connection as soon as possible; providing a buddy for new starters to go to for support, and; ensuring that new starters have all the technology equipment and access to systems they need to work effectively from their first day.



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Gabriel represents the law firm in the Labour Law group within the IR Global network. Gabriel was the first general rapporteur of the Inspectorate of Competition and has gained significant experience in European and Luxembourg competition law. He helped set up the new Luxembourg competition authorities in 2004. Gabriel is a founding member and President of the Luxembourg Association for the Study of Competition Law, a board member and treasurer of Association Luxembourgeoise des Professionnels de la Société de l'Information, and a member of the Luxembourg Data Protection Association. Gabriel is also the President of the Luxembourg National Committee of the Union International des Avocats. Before joining Bonn & Schmitt with his team in October 2020, Gabriel was a partner in his own law firm.

Bonn & Schmitt is one of the leading independent Luxembourg full-service law firms with an extensive international practice.

The firm's attorneys are experienced practitioners in the Luxembourg legal environment and represent a broad spectrum of expertise that allows them to deliver unrivalled legal solutions in one of Europe's leading business and financial centres.

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Bonn & Schmitt's lawyers are registered with the Luxembourg Bar and many are members of several legal associations.

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QUESTION ONE

Has WFH/hybrid culture enabled businesses to broaden their talent search? What impact has this had on employment and skills availability in your jurisdiction?

Teleworking has become standard in Luxembourg. According to a recent survey, 69% of employees who could continue working remotely did so, and Luxembourg companies had to quickly adapt and find solutions to preserve their business.

Its impact on talent search in Luxembourg was nevertheless limited for various reasons. Firstly, due to the small size of the country when compared to neighbouring countries. Secondly, pursuant to Luxembourg law, an employee is not allowed to work for a Luxembourg employer solely remotely from his country of residence.

More than 45% of Luxembourg employees are cross-border workers (from France, Belgium, Germany). From a tax perspective, work from home creates a double tax residence: if the employee has a permanent establishment abroad, the taxation of this income is shifted from Luxembourg to the country of residence, while applicable rules differ between countries (teleworking should not exceed 24 days from Belgium, 19 from Germany and 29 from France). From a social security perspective, the employee could be liable for double contributions, which would generate high costs for the employer who would have to register in

another country.

Telecommuting implies imminent challenges for Luxembourg's jurisdiction. Work from home is the subject of growing interest from both employees and employers. Major players in the Luxembourg market have indicated that, to date, it is one of the first questions asked by candidates, and is therefore an excellent means to attract talent.

Luxembourg is committed to set up a homogeneous work from home regime aiming to attract worldwide qualified and diverse profiles, but also enhancing inclusive recruitment (such as working parents, neurodiversity or employees with disabilities).

QUESTION TWO

Proximity bias is becoming a critical issue in hybrid workforces – what do businesses need to be aware of and how can they ensure they are not discriminating against remote employees?

With hybrid culture, proximity bias has worsened, especially for younger workers who suffer from a fear of missing out and who are worried that working remotely will result in lost career advancement opportunities.

Sometimes, this can indeed be the case, without managers realising it. These situations can result in both direct and indirect discrimination, as well as other negative consequences on employees (burn-out, loss of motivation, desire to compensate and overdo, etc.). Proximity bias is a problem that Luxembourg companies need to be aware of and address.

In Luxembourg, any direct or indirect discrimination based on religion or belief, disability, age, sexual orientation, actual or assumed membership or non-membership of a nationality, race or ethnic group is prohibited under Article L.251-1 (1) of the Luxembourgish Labour Code.

Moreover, Article 6 of the Convention on the Legal Regime for Telework in Luxembourg (the Convention), dated 20 October 2020, has introduced a principle of equal treatment between teleworkers and regular workers, in particular concerning employment conditions, working hours, remuneration conditions, conditions of – and access to – promotion, collective and individual access to continuing professional training, respect for privacy and the processing of personal data for monitoring purposes.

For example, if an employer refuses that a French resident performs more than 29 days of remote work compared to a Luxembourg resident, who would be allowed to do more, such refusal would not be linked to the employee's nationality, but to his country of residence, based on bilateral agreement with France.

In principle, any direct or indirect discrimination is prohibited. However, it will be crucial for Luxembourg companies and management to ensure that there is no indirect discrimination based on nationality. This is an additional challenge specific to Luxembourg.

QUESTION THREE

How can businesses ensure that their onboarding and training processes remain fair and balanced in a hybrid work culture?

TOP TIPS

Adapting employment contracts to a hybrid working model

✔ **Distinguish between occasional and regular telework.** It is necessary to ensure that there is common consent between parties. Depending on the type of remote working, this consent will be formalised differently: in a simple written confirmation when telework is occasional (due to unforeseen events or when it represents less than 10% of normal annual working time), or in a formal written agreement when it is regular (article 5 of the Convention).

✔ **Keep up to date with telework-related news in Luxembourg.** Teleworking is an evolving topic in Luxembourg. In September 2021, a new bill regarding the right to disconnect (N°7890) has been introduced, which could have an impact. Companies should be prepared to adapt their employment contracts accordingly. It can be useful to implement internal policies that are easier to adapt.

✔ **Be coherent and consistent in the implementation of a hybrid work culture.** The Luxembourg Labour Code provides that all employment contracts must indicate the usual place of work and regular working hours. In the context of work from home conditions, these might be amended. Keep in mind that the only way of implementing a sustainable, successful hybrid work culture is to implement internal rules that are coherent and consistent, establishing fair treatment between workers and avoiding discrimination.

The Convention specifically addresses the subject of training, which states that the principle of equal treatment between teleworkers and regular workers must be respected, particularly regarding access to training and career development.

The Convention gives two practical tips to companies. Firstly, to avoid any discrimination against teleworkers, training in remote working and its management can be set up. Secondly, so that everyone can equally benefit from the advantages of teleworking, distance learning and technology, teleworkers shall receive appropriate training on the equipment available to them and the characteristics of remote working.

The process of onboarding new employees is not specifically covered by the Convention. However, it does state that employers must ensure measures are taken to prevent teleworkers' isolation, by giving them opportunities to meet regularly with colleagues and access company information, which also applies to onboarding processes.

In this spirit of preventing isolation, other recommendations include: starting the onboarding process before an employee's first day, in order to make their first days less overwhelming; focussing those first days on personal connections over paperwork, to improve morale and relationships between co-workers; setting up virtual team welcome events, and; presenting the offices, even remotely, so that when workers need to work from the premises, they feel welcome.



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ACURIS do not produce standard solutions, but develop innovative approaches to our client's needs based on a diligent analysis of all legal and economic facts and circumstances. To achieve the best possible results, we work together with external and independent tax consultants, auditors and business consultants.

In legal disputes we represent the interests of our clients in lawsuits in the relevant courts.

Personal continuity in the client-attorney relationship ensures an individualised relationship based on trust, and creates an ideal basis for our clients' success and satisfaction. Loyalty and confidentiality are of primary importance.

We advise, negotiate and conclude contracts in German, English and French.

QUESTION ONE

Has WFH/hybrid culture enabled businesses to broaden their talent search? What impact has this had on employment and skills availability in your jurisdiction?

Digital transformation in the world of work makes it possible to work from almost anywhere with the help of laptops, tablets, smartphones and internet telephony. The spatial and temporal dissolution of work boundaries is being discussed politically under the heading of Work 4.0 or New Work. In Germany, 20% of all companies with at least 50 employees already offer the option of mobile working. In Germany, a distinction is made between 'teleworking' or working in a home office on the one hand, and 'mobile working' on the other, which is when work is performed from any workplace regardless of a fixed workplace. In the case of mobile working and partial work in a home office, there are often no longer any fixed workplaces for those employees in the company's offices. The employees temporarily use workstations that are available, which is referred to as 'desk sharing' and often leads to a lower office space requirement for the companies.

Provided that the respective job permits mobile work or work in a home office, hybrid work models are likely to become the standard. This means that when looking for a job, employees tend to avoid companies that do not offer hybrid working models. For companies, however, this is precisely the opportunity to attract qualified employees who could not, or would not, want to work in a remote company with a presence culture, due to their local distance. In some countries, such as Germany, that are facing a significant shortage of skilled workers due to demographic changes, the digitalised world of work offers the opportunity to recruit qualified employees across regions. In many cases, skilled workers are also sought in other European countries. However, this raises important tax and social security issues, which is why a permanent cross-border hybrid form of work cannot be advised.

Another way to deploy qualified personnel is to outsource work to other companies and freelancers (outsourcing). In this way, companies can access know-how that their own employees do not possess and can react flexibly to market

fluctuations. There is a global trend to outsource more and more tasks – even the smallest activities, i.e., micro tasks – to self-employed persons in third countries.

QUESTION TWO

Proximity bias is becoming a critical issue in hybrid workforces – what do businesses need to be aware of and how can they ensure they are not discriminating against remote employees?

In the digitalised world of work, employers and employees must adapt to new requirements. The following challenges arise for the Employer 4.0:

- **Hardware and software equipment**

Employees need hardware and software with which they can work in the office, at home and on the move. The company software should be as easy to use as one's own iPhone. In addition, concepts such as 'Bring Your Own Device' are necessary.

- **IT-security and data protection**

Computer systems and data are usually the most valuable assets of many companies and must be protected against failure, loss or theft. At the same time, high legal protection standards apply in data protection. Especially when computer systems can be accessed from anywhere, company data must be protected against unauthorised access by third parties, especially hackers.

- **Flexible working time models and office concepts**

Hybrid working models should promote work-life balance, for which employers must offer flexible working time models such as flexitime or trust-based working time. In addition, working entirely or partly from home offers employers the opportunity to save office space. Balanced desk-sharing models offer employees different rooms for meetings, creative workshops, personal meetings or simply quiet zones.

- **Cooperative management style – motivating employees**

In companies with hybrid work models, classic leadership styles reach their limits. The boss' instructions and controls are difficult to implement when employees work in geographically dispersed areas. Moreover, such a leadership style does not meet the expectations of generations Y and Z. Employers must therefore change the management style of their superiors to encourage and support this process. If management style is not adapted to a hybrid work model, it can have a negative impact on employee motivation.

- **Agile working methods**

In the digital world, requirements for work processes change at very short notice. To be able to react to rapid changes, agile project methods, such as Scrum, have become established. Implementing these working methods requires specialist knowledge and a new, open mindset, as well as corporate culture.

- **Experiences from Covid-19 lockdowns**

The lockdown triggered several times by the Covid-19 pandemic has led to the realisation in many companies that complete activity in the home office or in the form of mobile

TOP TIPS

Adapting employment contracts to a hybrid working model

✓ The Workplace Ordinance (Arbeitsstättenverordnung) applies to home working agreements and contains numerous legal requirements for teleworking. As such, the agreement of mobile work is generally preferable, because the Workplace Ordinance does not apply to mobile work.

✓ When contractually agreeing on mobile work, it should be explicitly stated that the employer will only provide a laptop and possibly a cell phone. The reimbursement of further costs, in particular for rent and electricity, should be explicitly excluded.

✓ Permanent mobile work abroad can lead to serious tax disadvantages for the company. In addition, an employee working permanently abroad may become liable for social security contributions in another country. This can lead to substantial back payments of social security contributions and even to criminal proceedings. For this reason, mobile work abroad should be expressly prohibited in the employment contract.

working can also have negative consequences. Employees can lose their bond with the company. The professional and social exchange between employees decreases, and with it a very significant added value for the company. This negative development is often taken into account by allowing home office work or mobile working on 2-3 days per week at most. Care should be taken to ensure that members of a team actually meet, rather than not seeing each other for weeks at a time because they work in the office on different days.

In addition, it has been found that quality of work decreases when employees work purely remotely, and in some cases contractually owed working time is not performed. Preventing these negative consequences is an important task for managers.

QUESTION THREE

How can businesses ensure that their onboarding and training processes remain fair and balanced in a hybrid work culture?

Employees need continuous learning and training to keep pace with the demands of Work 4.0. In addition, newly emerging professions require ever higher qualifications. Soft skills such as personal responsibility, time management and adaptability are becoming more important to be successful. Training and education should be ensured through classroom events and online courses, and every employee should be offered the opportunity to participate, for the benefit of the company and the employee.

Accountancy & Corporate Services

IR Global's Accountancy & Corporate Services members are carefully vetted on their firm's expertise and experience. They are proud to hold the highest ethical standards as part of IR's cross border network and are fast becoming the 'go to' global alternative for business requiring international support. They are ideally placed to assist you in achieving your global expansion plans, ensuring compliance, and securing plans for growth.

For more information visit:

www.irglobal.com/working-groups/accountancy

www.irglobal.com/working-groups/corporate-services

The map shows global regions with callouts to member profiles:

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- BAHAMAS**: Wendy Warren, Onyx Partners Ltd., p28-29
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Lee Jennings is managing partner in the firm of RL Jennings & Associates, an accounting firm with offices located in Rome and Ellijay, Georgia, which serve all of Georgia, the Southeast, and various parts of Europe and Southeast Asia, with a full range of audit, tax and consulting services.

Lee has served on several committees of the Georgia Society of CPAs on both the chapter and state level. He is a past President of the Educational Foundation of the Georgia Society of CPA's, vice chair of the Assurance Section and a former member of the Ethics Committee. He is the Past President and Chapter Representative for the Rome Chapter of the Georgia Society of CPA's during which time they were named Small Chapter of the Year by the GSCPA.

Lee serves as treasurer to the George Faile Foundation, Inc. and to the Latin American Center of Northwest GA, Inc. He is a past member of the Rome Rotary Club, Lexington Who's Who Among Executives and Professionals and National Registry of Who's Who. RL Jennings & Associates, PC was named Rome Floyd County Small Business of the Year for 2009. Lee was inducted into the Berry College Alumni Association Hall of Fame for Entrepreneurial Spirit in 2011.

RL Jennings & Associates, PC was founded to meet the needs of businesses and individuals in the Northwest Georgia area and beyond. Our professional existence is based on providing our clients with the best and most competent service that is possible.

Our aim is to provide each and every client with the time and expertise they deserve. We are a full service Certified Public Accounting firm. Our services include financial statement presentation and preparation, at the audit, review and compilation level.

We also provide monthly bookkeeping services, small business advisory services, computer consultation, preparation of business and individual tax returns, financial planning, fee-only retirement and estate planning, litigation support services and representation of taxpayers before the Internal Revenue Service. This list is not all-inclusive and will be updated as technology, information management and the applicable laws of the land change.

QUESTION ONE
 Will there be a permanent shift to hybrid working in your jurisdiction – and will businesses need to restructure or review their internal processes and technologies to make it a success?

A recent study by LinkedIn shows that many people do not want to work in a traditional environment, but prefer to work at home. Many of the respondents were working mothers, who enjoyed the flexibility, and being able to spend more time with their young children. In the accounting profession, a large percentage of the workforce is female, so we will have to address the hybrid model, and how best we can make it work for all parties involved.

How much hybrid work takes hold in the State of Georgia will depend a lot on where your business is located. In the more metropolitan areas like Atlanta, Savannah, Macon and Columbus, there will be more of a tendency to adopt such practices due to the high cost of office space, housing, crime, overcrowding, and the aspects of living in a densely populated area. The more rural areas of the state will trend to more of a traditional work environment, due to the same factors.

Even in a small city of 100,000 residents like Rome, we are seeing more employees interested in working from home than in years past. Businesses will need to restructure how they allow their employees to access their work spaces

through increased use of technology. Our office has spent quite a bit on technology upgrades to not only allow workers to work remotely, but handle the strain on infrastructure of information technology resources. Businesses will have to rethink how they deliver services to their customers, from such simple things as phone calls to the office and dropping into the office to delivering completed work.

QUESTION TWO
 How can businesses mitigate against the risks of workforce fragmentation and organisation detachment through corporate services?

In order to mitigate a fractured workforce, it will take a lot of planning, coordination and structuring in the management of this new environment. Technology will have to be leveraged in order to coordinate the traditional teamwork that was automatically assumed in the traditional office workspace. We see many tools such as Zoom and Microsoft Teams that have built their platforms around this concept of working apart, but together. Look at the television ads that run every day promoting these concepts.

Management will have to figure out effective strategies to make employees feel a part of the team, even though they are not physically in the same location. People by nature are social, just look at the popularity of such media platforms like Facebook, Instagram, LinkedIn, etc. It will be incumbent upon management to figure out how to make all team members feel like they are a valuable part of the group.

Having experienced dealing with a remote staff and in-house staff during the Covid-19 lockdown, we learned that keeping remote staff involved and engaged was difficult. It was easy to forget about them, as they were not in the office: out of sight and out of mind. We put procedures in place to keep remote staff engaged through daily phone calls, emails and other forms of interaction. Accountability was a key component of pulling remote staff into the office environment. As these staff knew someone was following up with them on projects and deadlines, they became more interactive in the process. Technology was used to track their use of company resources and they were aware of this.

QUESTION THREE
 How should businesses navigate the complexities of accounts reporting with a hybrid workforce – and are there any key pitfalls to be aware of if employees are working overseas?

The challenges of accountability of employees both working at home and abroad is going to present a need for new processes and procedures. In using remote workers, we have learned that you must create processes to channel work to them, to ensure the work is completed and to channel the work back into the normal flow of the business.

We have designated in-house employees to overlook the moving back and forth of work between the remote worker and in-house staff. As the work 'product' comes into the office, it is evaluated to see if this work can be handled by remote staff and if so, then the employee is contacted to notify them work has been added to their inbox. Once the work has been

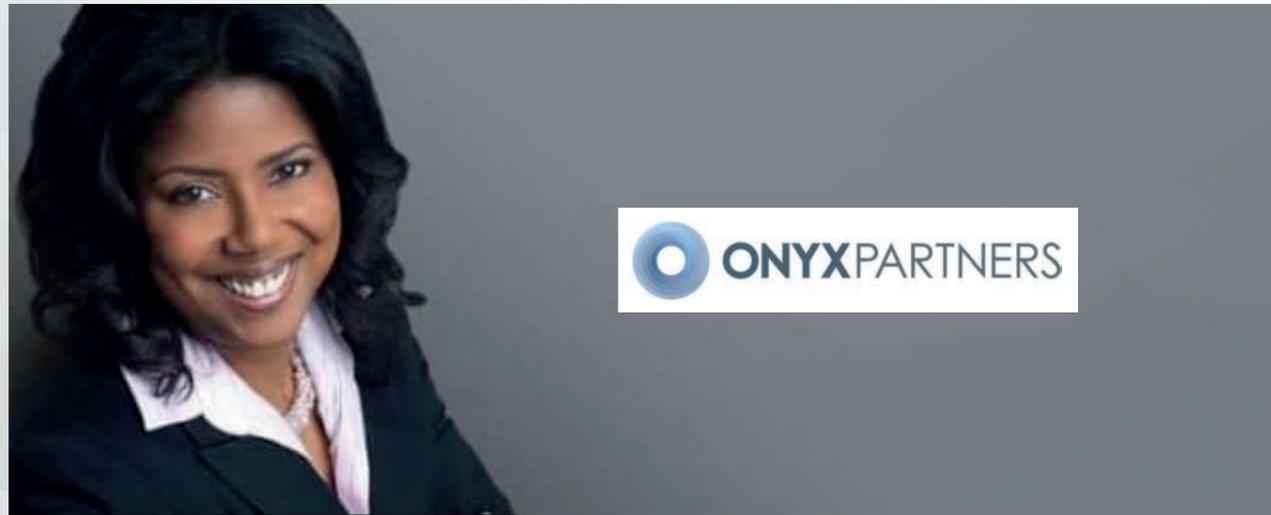
TOP TIPS
 Adapting your business' corporate policies to incorporate a hybrid workforce

- ✓ The key to adapting your policies to incorporate a hybrid work environment is planning and flexibility. Management must develop a plan of action, then monitor it and amend it to fit the situation. All team members must be involved in the planning stages in order for the process to work. Seek input from those who are in the 'trenches' doing the work as to what works and what does not.
- ✓ Take swift action when something is not working. Many companies procrastinate about making a decision to take corrective action, hoping the problem will work itself out. In the rapidly changing business environment, management must be proactive in its decision-making process. You cannot govern by committee; put someone in charge and give them authority to make changes as needed to make the process work.
- ✓ The old saying is if it's not broken don't fix it, which is excellent advice when it comes to devising policies to address this changing way of doing business. By the same token, if the wheels are falling off the wagon, then you need to address the problem, fix it, and move on.

“Accountability is a key component of pulling remote staff into the office environment.”

completed, then the product is moved to their outbox for further processing. The in-house employee then moves the work product back into normal in-house work flow. We have learned that communication is key in keeping the work flow going. Such procedures as daily emails to assign work, follow up on progress, and verification of completion are crucial to the process. We have had to transition from walking down the hall to 'check' on someone, to either calling or emailing that person to see if they need guidance or other assistance.

As more companies employ people in other countries to perform work due to the shortages of qualified talent in the workforce, there are many challenges. Not only do employers face the challenge of different languages, time zones, customs and technologies, but you have to take into account how these employees are paid, how the country they reside in taxes the company, and insuring these individuals. A good example is Mexico, which now charges a worker surcharge tax based on wages paid for the national retirement system. Certain countries don't allow for overtime, others require a higher level of benefits such as retirement, healthcare, paid days off, etc.



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Wendy Warren is the Founder and Managing Director of Caystone. Prior to establishing Caystone Solutions, Ms. Warren spent 11 years as CEO and Executive Director of the Bahamas Financial Services Board, a financial sector body that works closely with government, regulators and private industry to ensure The Bahamas provides global clients with best-in-class financial services. Following her time with BFSB, in 2012 Ms. Warren established Caystone, an operational family office focused on full corporate and fund administration services.

Ms. Warren has worked in a variety of roles in the fund administration, wealth management and audit fields including 8 years co-leading the establishment and operation of a leading investment funds administrator. She has worked with families and family businesses for over 25 years and her knowledge of the financial services business and community is broad, augmented by a deep understanding of The Bahamas and its legislative framework. Ms. Warren is a Chartered Accountant and holds a bachelor's degree in Accounting from the University of Waterloo, Canada.

Onyx Partners delivers the highest level of service by employing best-in-class fiduciary executives who each have a long record and history of building value-driven relationships with clients and their advisors. We value clients who look for longevity in the relationships with their chosen fiduciary partners.

Onyx Partners has the expertise to guide individuals, families and their advisors in the creation of the best fiduciary structure to help manage their wealth and achieve their goals.

Onyx Partners benefits from being an affiliate of Caystone Solutions Limited, a Bahamas-based business services company with years of experience providing comprehensive and customised services and support to individuals, businesses and family office structures around the world. This affords Onyx Partners direct access to a team of professionals well established in full administration and operations.

QUESTION ONE

Will there be a permanent shift to hybrid working in your jurisdiction – and will businesses need to restructure or review their internal processes and technologies to make it a success?

We think a permanent shift to a hybrid working environment is inevitable. It will be difficult and could very well be counterproductive to attempt to turn back the hands of time now that this environment is created. How exactly it will work—because it is still so new – is the issue we must face, especially since the future remains hazy.

In The Bahamas, and within Caystone, business continuity plans have long existed, and the importance of this contingency was best illustrated when Hurricane Dorian devastated parts of the country, and the financial services industry was able to immediately and seamlessly convert from an in-office to out-of-office work structure.

This experience enabled us to segue to a hybrid environment as the pandemic took hold.

The dilemma or challenge moving forward is creating and maintaining a culture that recognises the new normal of a hybrid workplace, and how we can express and demonstrate value to clients who are accustomed to a more personal relationship.

The culture of the business – its corporate governance and enlightened human resource procedures in particular – is going to play a major role as we continue to move forward in what, in many ways, remains an unpredictable future. Does your culture favour, embrace and encourage flexibility, or does your culture create a roadblock in being able to move forward?

Last but certainly not least is embracing new technologies that bridge any gaps in a hybrid work force.

“The culture of the business – particularly corporate governance and HR – is going to play a major role as we move into an unpredictable future.”

QUESTION TWO

How can businesses mitigate against the risks of workforce fragmentation and organisation detachment through corporate services?

Corporate governance has always been a key factor in a company's success with the Corporate Secretary acting as a binding agent for management and staff.

TOP TIPS

Adapting your business' corporate policies to incorporate a hybrid workforce

- ✔ Create more and regular opportunities to engage with each other both in person and online. Individuals and teams working remotely don't want to feel they are isolated or out of touch with colleagues and senior management. We have introduced regular team meetings in which each team makes a presentation to the full company so everyone is aware of what they are doing and how it may be impacting their areas of responsibility.
- ✔ Embrace and invest in new technologies for communications both internally and with clients.
- ✔ Align human resource policies, procedures and investment around client needs and expectations. Clients are not concerned about the obstacles or issues confronting a hybrid workplace. They only want results. If you create regular opportunities for your hybrid staff to get together, provide them with the right technology, and adapt your human resources to meet client expectations, the new normal will be easier to achieve.

QUESTION THREE

How should businesses navigate the complexities of accounts reporting with a hybrid workforce – and are there any key pitfalls to be aware of if employees are working overseas?

Data exposure has always been a concern in what has become a highly digitised world. With more people working from home either part- or full-time in a hybrid workplace, the need for proper controls is vital.

Enhanced Key Risk Indicators (KRIs) should be part of the control process, since they can help identify and define risks to ensure everyone appreciates and understands the relationship between each KRI and potential risks. From an accounts perspective KRIs can assist in identifying fraud or cyber security threats due to remote working conditions.

At Caystone we have embraced the digitisation of work flows to provide a common road map, whether one is working at home or in the office. Essentially, they are digital checklists that establish key automation controls and realistic daily, weekly, and monthly benchmarks.



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Szergej Schumann started his professional carrier at a Big4 firm as an external auditor, and then as a fraud investigator. He obtained Certified Accountant and Certified Tax Advisor degrees and became a professional in international taxation and wealth management, dealing mainly with international clients and high-net-worth individuals in tax planning, managing cross-border transactions and investment issues. Szergej recently became an ACCA member. He is fluent in Hungarian, English and Russian.

In his work as Regional Account Manager at BPiON Group, Szergej dedicates most of his time to international/regional clients, providing business outsourcing solutions, including accounting, HR & payroll, corporate secretarial and digital transformation services. Szergej is responsible for management of broad range projects, which include cooperation of BPiON offices and a network of trusted partners, mostly in Europe, with a main focus on CEE region.

BPiON – Business Process InnovatiON provides new wave accounting, payroll and administration outsourcing across Europe. Smart use of technology, process-driven thinking and more than 100 years of combined professional experience – coming from diverse industries – makes BPiON an important player on the CEE regional market.

BPiON supports its clients, including organisations of all types and sizes, who have a desire for intelligent and tailor-made Business Process Outsourcing (BPO) services in Hungary, Poland, Romania or across Europe through a broad network of partners, which are selected carefully based on high-quality standards. Through the professional network, a local and international knowledge can be combined for all



QUESTION ONE

Will there be a permanent shift to hybrid working in your jurisdiction – and will businesses need to restructure or review their internal processes and technologies to make it a success?

There are some recent legislative actions related to distance work. However, the agreement has to be made between the employee and the employer. Therefore, you will be allowed to work from home, if the employer allows you to do so. Businesses had to rethink their remote work policies in the past two years, which led to holistic changes in internal communication and principles mainly by upgrading their information technology.

International companies were not affected seriously, because they already knew the importance of work-life balance for their employees, as it was a global trend. Hybrid work was a bigger challenge for SMEs from a technological perspective, every day work, and retaining their workforce. Review of internal processes was essential, as the companies are facing new challenges, like workforce efficiency, data protection, or confidentiality.

We at BPiON provide 100% Digital Business Process

the core services provided regarding accounting, payroll & HR administration, regulations, outsourcing and technology digitisation processes. BPiON pays attention to making the life of their clients easy and effective, by providing single point of contact of project management and sharing up-to-date knowledge regarding legislation changes, which may have an impact on the clients' industries even at international level.

BPiON is a melting pot of generations X and Y, carrying the best of both; persistence, enthusiasm for life-long learning, a 'doer' attitude, and being able to make connections in a friendly and open manner. At the same time it is familiar with new digital age technologies, which are embraced and integrated into personal and professional life.

Outsourcing, and all Accounting and Payroll services, delivered in the secure cloud. So, physical presence in the office is not necessary. We try to remain agile, and, when required, happy to change our policies accordingly. We can easily adopt 2 days a week in the office or even none. In reality, we can change the policy weekly. However, we believe that an innovative and collaborative culture comes from personal meetings, so we shouldn't give those up in normal circumstances.

We believe that we started our operation just at the time when the new cloud applications and functionalities became widespread and carefully tested, therefore we can say that we were born in the cloud. Having our infrastructure completely under the Microsoft AZURE cloud fits well into our culture of fast and flexible decisions, where we can easily scale up the scope and size of IT requirements. You cannot spend enough on cyber security, since this is one of the biggest threats of every business nowadays. We believe that our actions are well supported on a group level by the highest registered Microsoft partner IT provider in Hungary.

QUESTION TWO

How can businesses mitigate against the risks of workforce fragmentation and organisation detachment through corporate services?

Most companies are looking for different ways of attracting talent. It is a challenge, especially for those who are about to recruit the same amount of people they dismissed during the first months of Covid-19. However, the biggest challenge nowadays is not just attracting talent, or retaining it, but finding out how can you articulate your culture. As Peter Drucker says, "culture eats strategy for breakfast" and this is more valid nowadays than ever, when the majority are working partly from home. Culture is everything. This is the magic that decides whether we like Mondays or hate them; whether we are inspired to change perspective every minute, or keep our standard job description as written; whether we are looking for lasting partnerships with Clients, vendors and colleagues, or believe in an isolated professional bubble. The desired culture starts with the shareholders, if they are able to show the longevity of the culture by thinking and acting with the long-term in mind, not taking money from the business in hard times, or obsessing about quarterly or annual financial KPIs.

Workforce fragmentation and organisation detachment can happen if the employer is focusing on increasing the profit year-by-year, whatever the external circumstances. Companies which are more driven by their genuine WHY (as written by Simon Sinek, in "Start with WHY") can easily strengthen their culture, and the employees will follow them on challenging days as well.

How we develop and maintain culture has changed dramatically in the Covid era. Integrity, transparency, respect, open-mindedness and other values are best spread by personal collaboration, experiences, and failures endured together at that moment. The moment is just different when we see each other in two dimensions, sitting in our home office and staring at the screen. While experimenting with certain new, technology-driven elements of onboarding and training, we had to emphasise the importance of physical collaboration. Example of a challenge in case of new employees: How can you help new joiners become an integral part of the working environment from a social perspective, if they cannot meet their new colleagues personally, have coffee breaks or lunch together?

QUESTION THREE

How should businesses navigate the complexities of accounts reporting with a hybrid workforce – and are there any key pitfalls to be aware of if employees are working overseas?

If the businesses were still working on a paper basis just before Covid, they faced or are facing real issues in switching to hybrid working. They may just ignore the new trend and remain in full office work, however this kind of backward thinking will be the main barrier to expanding in the future or winning more complex and bigger deals. Clients are switching to hybrid or full homework models, and they expect the same – or at least a full understanding – from their service providers. Businesses without an open mind will not be competitive on the labour market, nor be able to attract new talent or expand.

At the beginning of the pandemic, more businesses changed to fully remote, and their employees returned to their homes, sometimes abroad. When it turned out that overseas working carries a lot of implications, companies changed their policies very fast. Additional costs and risks may arise due to questions around labour law, safety regulations, taxation of individuals and businesses etc. Some employers are currently setting up remote work rules based on the risk factors, which means – among many things – that no overseas work is allowed, except with special permission.

“Integrity, transparency, respect and other values are best spread by personal collaboration, experiences, and failures endured together.”

Our current engagements remained the same, and every month we have to do bookings, closure, payroll runs and similar high-value financial administrative tasks. On the other hand, we had to allocate more responsibilities to senior, experienced and loyal colleagues, because their subordinates are remote and need more people management. Furthermore, we had to integrate subject matter experts in order to maintain the quality of our services and solutions. In our practice, real-life experience and a continuous creative, challenging attitude are important. What our clients could experience from this change is that we have become more of an advisory firm than an administrative one, and now more than 30% of our consolidated revenue from Poland, Hungary and Romania comes from one-off consulting, such as tax advisory, process optimisation, system localisation and improvement, due diligence and on-site engagements.



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Paul Beare founded his practice following years of experience working at an accountancy firm, which came after his involvement in a successful merger and acquisition in 2014. Having created an extensive support network of international providers over the years, clients and potential UK in-bound start-ups regularly approach Paul for UK and international expansion support. He is referred by many clients as their trusted advisor.

Paul and his team support the needs of overseas companies setting up and operating in the UK.

One element is paramount with every client – they all need support and expert guidance. Paul and his team advise clients on the appropriate legal entity, payroll, VAT, banking and company secretarial services. Clients range from publicly-quoted companies through to owner-managed businesses.

Paul travels frequently to Australia, New Zealand and the US, and has been heavily involved in IR Global for seven years. He uses the support network for clients when they are focusing on expanding their UK company. Clients will use this as a foundation for further expansion into Europe and beyond. Paul Beare has particular expertise in helping clients decide on the best structures to use when setting up and growing a business in the UK – for instance, guiding clients towards the right choice between using a UK branch or a UK subsidiary.



QUESTION ONE

Will there be a permanent shift to hybrid working in your jurisdiction – and will businesses need to restructure or review their internal processes and technologies to make it a success?

Like all seismic shocks, the Covid-19 pandemic has forced many of us to rethink many of the habits and practices that we took for granted. Reassessing where and how we want to work has been a significant question for the millions of people forced to work from home over the past year and a half. For some, office leases have been relinquished completely.

But with the signs beginning to suggest that something like normality is about to return, many owners of smaller businesses are debating what's next: should a return to the status quo be the priority, or will the hastily assembled home office serve as a permanent base?

A recent McKinsey & Company study on workers' hopes for the future shows that 18-to-29-year-olds are most interested in a hybrid work set-up, working two to three days a week from home, and the rest in an office. Of this group, 48% said they'd prefer hybrid work. While other workers do want hybrid set-ups – 44% of 30-to-49-year-olds, and 38% of workers 50 and older – generation Z most wants a foot in each world. Meanwhile, research by the BBC found that 43 of the top 50 employers in the UK are going to combine home and office working as lockdown restrictions ease. But it's worth remembering that recent CMI research found that two-thirds of workers had some anxiety about returning to the office.

“Some leaders are insisting on communal team activities, such as making time to talk every lunchtime, so everyone keeps in touch.”

Ultimately, it's impossible to predict the extent to which hybrid working will define the UK's working landscape. The government has certainly been vocal in encouraging workers back to the office, in part to boost the struggling hospitality, retail and travel sectors.

QUESTION TWO

How can businesses mitigate against the risks of workforce fragmentation and organisation detachment through corporate services?

For some businesses the nature of their work can represent a significant challenge to remain unified within a hybrid model. Take a creative agency: having to conduct detailed exploratory brand sessions with clients, often in clients' own spaces (and alongside their colleagues and customers) can be especially challenging.

Some management teams are responding and adapting to the threat of fragmentation: a growing number are investing in co-working and collaboration tools. One, Mural, allows teams to facilitate their workshops remotely, with almost no detriment to the customer experience. In fact, this 'interactive whiteboard' is so effective it is now being retained for use by many smaller firms in need of help in some client scenarios, because it allows many more people to attend a workshop with ease, without travel, which is more inclusive.

There's no doubt, the biggest challenge for many businesses can be retaining their collective creativity, energy, agility, passion and belief as a team. Indeed, even the most enlightened leaders have expressed concern about the risks that remote working could pose to company cultures throughout the UK.

In terms of 'coping' on an ongoing basis, some leaders are insisting on communal team activities - making time to talk every lunchtime, ideally on walks so everyone was keeping active and in touch. This can be especially important for colleagues who aren't working from fully decked out home offices.

QUESTION THREE

How should businesses navigate the complexities of accounts reporting with a hybrid workforce – and are there any key pitfalls to be aware of if employees are working overseas?

As companies transitioned to remote operations during the Covid-19 pandemic, and now prepare to support re-entry efforts or a hybrid model workforce, meeting deadlines, maintaining open lines of communication and ensuring accurate financial reporting have increased in both importance and difficulty.

Finance teams that relied heavily on manual processes and spreadsheets found it difficult to do their jobs at the same level and continue to struggle today. That means finance leaders need a way of ensuring team collaboration, efficiency and access to real-time data, all within a strict control environment from the comfort of their homes, or office, or both.

One of the key issues for employers to consider is whether the activities of employees/directors in a foreign country will create a permanent establishment for the company. This is defined in the UK's double taxation agreements with other

TOP TIPS

Adapting your business' corporate policies to incorporate a hybrid workforce

✔ **Make your expectations clear.** Staff in hybrid teams need to understand the expectations and should expect to have clear lines of accountability. Both of those elements are crucial to ensure that both home and office-based employees collaborate productively and know who is doing what. Early on in the pandemic, many companies brought in daily or weekly virtual meetings to allow teams to start each day or week in the right way, and so that everyone's clear on what's expected. Technology can help managers communicate workflows and key deadlines, as well as sharing progress to maintain momentum.

✔ **Get out of the house.** Creating occasions where the team comes together can foster unity, harmony and morale. Whether it's a bowling night, a 'work-together-Wednesday' or just a coffee and chat, don't underestimate the power of connection.

✔ **Avoid 'out of sight, out of mind'.** Staff working from home may feel overlooked and left out of the decisions made by office-based managers. To avoid this, think about setting up a regular, dedicated call to communicate what's happening. This will give them a clearer overview of the strategic direction of the organisation and wider team, while minimising any sense that they feel out of the loop.

countries as, broadly, a fixed place of business. It generally requires both a degree of permanency, and that the location is at the disposal of the business.

So, if you are employing staff overseas, the importance of 'permanent establishment' must factor into your strategy. Take the following example: where a staff member works from home regularly on an indefinite basis: unless their job is one that would be considered 'preparatory or auxiliary' in nature (for example office functions such as internal HR or IT, or a project looking to set-up an operation in that country), there is a risk that they will fall under permanent establishment.

Be aware that the risk will be significantly higher where the employee in question is a director or senior employee who can bind the company to contracts and routinely makes management decisions on its behalf.



Zirkzee Group
*accountants, auditors, tax lawyers
 expat, payroll and trust services*

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Jennifer is payroll advisor at Zirkzee Group accountants and tax lawyers, a top 75 firm in The Netherlands, with two equity partners and 60 professionals working from two branches in Noordwijk and Gouda.

As a Payroll advisor with nearly 13 years' experience, Jennifer advises local-oriented clients as well as internationally oriented clients in the many fields of payroll, labour law and expats. Jennifer combines her expertise in a perfect mix within the Zirkzee Group one-stop shop.

Jennifer started in 2009 as a payroll administrator at a small local business. After five years Jennifer started at a bigger firm and became a payroll advisor. During that time she earned a diploma in Payroll Services. After another few years she arrived at Zirkzee Group in July 2018, where she now holds the position of Payroll advisor.

Zirkzee Group recognises that every company and every entrepreneur is different. For that reason, the services we offer to our clients are customised based on their desires. Our clients consist mainly of internationally operating companies, start-up companies and entrepreneurs who are excited about working within our network. We offer services for all of our clients in the following areas: accounting, payroll services, tax and expat services.

Being located in the SBIC-building in Noordwijk, the Netherlands, Zirkzee Group is part of a community involving lots of tech startups from the ESA-BIC incubation program. In this community, companies can experience to the fullest how assistance, learning and contagious enthusiasm from each other can be an inspiration and will lead to better results. For this reason, Zirkzee Group does not consider you or your company as customers.

Doing business with Zirkzee Group means we will become your business partner. Our entire approach is therefore focused on getting the best out of your company. Besides our passion for entrepreneurial work and sharing our knowledge, we also have a broad network we share with our business partners. Bringing people together and contributing to their success is what gives us a purpose.

QUESTION ONE
Will there be a permanent shift to hybrid working in your jurisdiction – and will businesses need to restructure or review their internal processes and technologies to make it a success?

We believe that hybrid working should be embraced by the entire business community, not just the accountancy sector. It is the way of the future, so it would be wise to adjust our internal processes and technology accordingly. However, hybrid working is also a more remote experience. As a result, companies could potentially lose sight of the person behind the employee. Employers will have to keep this in mind moving forward.

Here at Zirkzee, we never had a nine-to-five mentality, even before the start of the pandemic. Our employees have never been constrained by time or location, although they do have to remain available for customers and colleagues. In practice, this requires a trade-off between physical presence in the office (and at client locations) and home, and accessibility through all available channels.

As we know from experience, many people enjoy working from home a few days a week. Employers are also discovering that this system works, that they can trust their employees. The Netherlands is clearly witnessing a permanent shift towards hybrid working, as both employers and employees

increasingly embrace the idea. These lasting changes were already underway, but have been accelerated by the pandemic.

Hybrid working will inevitably impact certain business processes, such as payroll processing. For example, the tax authorities required Dutch companies to report the number of days their employees commuted to work at the start of this year in connection with travel and home-working allowances. This effectively forced all employers to determine the extent and nature of their hybrid working measures in advance. Our clients had a lot of questions on this topic, such as: what sort of provisions will we have to make if employees continue to work from home? What sort of things will we or won't we have to reimburse? How will that affect us fiscally?

QUESTION TWO
How can businesses mitigate against the risks of workforce fragmentation and organisation detachment through corporate services?

Crucially, companies embracing hybrid working mustn't lose sight of their employees. We will need to bring people together. The question is: how can you remain connected and engaged with your staff in this day and age? How can you make sure your team sticks together and continues to pursue the same goals? How do you keep people engaged with the company and avoid making them feel like they're just a number?

At Zirkzee, we like to have a weekly catch-up moment with our colleagues. A lot of other companies are doing the same. It's basically a communal online coffee break to find out how everyone is doing, both privately and professionally. We also organise regular days where as many people as possible come to the office when Covid measures allow us to. That gives us all a chance to see each other, have a chat and enjoy lunch together. You need to acknowledge the person behind the professional, show them that you care. Little things often tend to be the most meaningful.

The past two years have definitely highlighted the importance of preserving that social interaction. Especially in our industry, accountancy, where people tend to be focused on their own clients and can easily lose touch with each other. Staff can end up marooned on their own little islands if you're not careful. We've anticipated that at the office by creating an open working environment with lots of flexible workstations.

Companies are offering increasingly generous benefits in order to attract and retain staff. For example, we're seeing a surprising number of leased cars despite the high number of people working from home. It's still just one of the most effective ways of retaining staff. Employers in our industry are also offering their employees more share certificates and associate training programmes in light of the current labour shortage.

QUESTION THREE
How should businesses navigate the complexities of accounts reporting with a hybrid workforce – and are there any key pitfalls to be aware of if employees are working overseas?

Hybrid working has made it very easy to work anytime, anywhere. That also includes working from abroad. However,

TOP TIPS
Adapting your business' corporate policies to incorporate a hybrid workforce

- ✔ Critically evaluate your current occupational health and safety policy plan in terms of working from home and home working facilities. Employers always remain responsible for the locations at which their employees are working. With the rise of hybrid working, it is important (and mandatory) to critically review this plan and address questions like: is this home office really suitable in terms of occupational health and safety? Are employees sitting correctly, do they have the right equipment?
- ✔ Draw up a set of guidelines as to when and where your employees perform their activities. For example, this could specify the hours at which they may and may not work. How should employees ensure that they can be reached by customers and colleagues?
- ✔ Devote special attention to fringe benefits in order to maintain staff loyalty. Employers run the risk of losing sight of the human factor and neglecting social contact, especially when people are spending a lot of time working from home. Leverage fringe benefits to attract and retain employees for your organisation.

this comes with its own set of challenges that many companies tend to overlook. They are often unaware of the complex legislation involved, which definitely requires specialist knowledge.

Employees working from abroad are subject to specific legislation. The Netherlands has reached agreements on this issue with various countries. Although no two cases are the same in practice, employees of Dutch companies working abroad should generally be paid in their country of residence rather than the Netherlands. That can get pretty complicated, especially if an employee is moving around the world like some kind of digital nomad.

Employers need to be aware of all the potential pitfalls, and will have to address questions like: how long will this person stay abroad? Where are they covered by social insurance and liable for tax? Will I have to set up a payroll operation in that country? And will I have to pay this person in two countries? There's a lot of potential for mistakes.

Payroll for employees working abroad isn't the only blind spot among employers. The occupational health and safety plan is also crucial; as an employer, you remain responsible for your employees no matter where they happen to be working from. What sort of fiscal consequences will these occupational health and safety provisions have? Companies tend to overlook those aspects.

The bottom line: companies need to have a clear understanding of their employees' whereabouts and working environments. Everyone is so easy to reach these days, so there's really no excuse not to.



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Born in 1969 • Lawyer • 2003: Nomination as a tax consultant • 2004: Joined the Grazer Treuhand Team • 2006: Became partner in consultancy • 2008: Nomination as a chartered accountant

Grazer Treuhand was founded in 2003 as a merger of six long-established tax firms. Currently, the Grazer Treuhand Group is represented at four locations where five partners and around 70 employees look after all client needs. The headquarters is in Graz which is the second largest city in Austria, close to Vienna, the Austrian capital.

Grazer Treuhand provides tax advisory, accounting and payroll services for national and international clients with or without a subsidiary or permanent establishment in Austria. A high digitalisation standard ensures high quality accounting services and cross-border communication with clients from all over the world.

Watch the IR Global interviews about us and the business location Austria on our website www.grazertreuhand.at/en/international or here: www.youtube.com/channel/UCblp1U1B_WVIKjPP9pujDA/featured.

QUESTION ONE

Will there be a permanent shift to hybrid working in your jurisdiction – and will businesses need to restructure or review their internal processes and technologies to make it a success?

From the perspective of a tax and business consultant with a high degree of digitalisation, the Covid-19 pandemic has actually not changed the working world significantly. Before the pandemic, we had some employees who worked entirely or partially in home offices. There were online meetings with international clients from time to time, and we served international clients with employees working from a home office in Austria. The difference is, what used to be the exception has now become the rule.

All employees, both in our company and within our clients' organisations (where this is possible) have a complete home office setup and work from home one to three days a week. Hybrid working is in the interest of both parties involved: the employee saves time and money and finds working from home less stressful, which has a positive effect on motivation and productivity. The employer is also more flexible when it comes to arranging office space: desk sharing is no longer frowned upon, but has become a matter of course.

The necessary investments in hardware, software and training have long since been made, attendance plans have been drawn up and organisational manuals and data protection guidelines have been revised. It's even possible to take part in weekly company online yoga!

QUESTION TWO

How can businesses mitigate against the risks of workforce fragmentation and organisation detachment through corporate services?

Of course, technological possibilities not only create opportunities, but also risks.

For example, training new employees in the office proves

difficult when their mentor is working from home half of the time.

Another issue that is particularly problematic from our experience comes not with employees who work hybrid hours, but with those who work exclusively from home. Over time, these employees lose touch with their employer and their social connections with colleagues. The team spirit is lost. This also results in the need for constant self-motivation, which can become increasingly difficult over time.

The risks and opportunities that arise for team members from different generations are also noteworthy. While it is difficult for generations X and Y to ensure the necessary work-life balance in the home office and to separate working time from free time, the new world of work certainly suits the desires of generation Z. Working in a home office is particularly conducive for the younger generation who are more commonly looking for work-life integration, not work-life balance¹.

This, of course, gives rise to the next problem (at least in Austria): the labour law, which is strongly influenced by employee protection, was not penned by Generation Z, but the baby boomers, and is in urgent need of adaptation to the current situation. Non-compliance with mandatory rest and break times as well as weekend surcharges make working 'whenever you want' particularly expensive for employers.

Of course, we have been working on solutions to keep the team as a team for a while. Innovations have brought our team closer together despite the increase in physical distance between them. These include continual rotation between the office and home office, team meetings in the office in which the employees at home also participate virtually, and also health-promoting social events which run over longer periods of time (such as our Steps Challenge, in which employees of all teams count their steps over several weeks and the winners can win attractive prizes).

“New models are already on the rise, such as working while on vacation, which is improving quality of life for employees by allowing them to be on holiday for longer.”

QUESTION THREE

How should businesses navigate the complexities of accounts reporting with a hybrid workforce – and are there any key pitfalls to be aware of if employees are working overseas?

With the new remote working world, new international consulting fields have emerged. The home office as a place of work has suddenly become the focus of the tax authorities. Social security risks also arise from the regular use of multinational employees.

A particularly hot topic for our international clients on the Austrian market: foreign companies with operationally active employees in home offices in Austria can be easily seen as

TOP TIPS

Adapting your business' corporate policies to incorporate a hybrid workforce

✔ **Strengthen team spirit.** The team needs to feel like a team. It is not enough to know that there are others and what they are working on. Strengthening the 'we' feeling is probably the most important task of the team leader.

✔ **Onboarding new employees at Company Headquarters.** New employees should not be put into a hybrid system, until they're comfortable members of the team. This may work in some fields, but if you're working together as closely as us, mentoring, sharing work and constantly having to be able to rely on your team members, independent work at home can only be successful if someone is fully integrated in the team.

✔ **Clearly regulated working hours, also from home-office.** Home work can be a relief for many people in many ways – however if not regulated it can easily become a burden. We have found that for some employees an unregulated home office may lead to a bigger work-life imbalance: by taking work home, they find it harder to 'leave work' and relax. In addition to regulated working hours, it is also very important for the team lead to stay in close contact with their team to be able to recognise problems early on, even when they are not seeing their team members every day.

having a permanent establishment in the home office state, leading to corporate tax liability in Austria. In this area we work with clients to develop solutions that avoid unexpected tax burdens, and instead reap the advantages that can be gained from splitting income with two or more countries.

Vice versa, new home office working models are being drafted for Austrian companies with employees from neighboring countries who want to save travel costs and time by working from home on a regular basis, in order to anticipate the tax and social security risks in both countries. Especially from the point of view of such foreign employees, there is often a great interest in remaining in the Austrian social security system, which is only guaranteed if a significant part of the work is not done in their home country. Employers who know the rules of the game, and offer their employees such models to choose from, usually increase team motivation.

For the future, new innovative models are already on the rise, such as working in a home office whilst being on vacation (currently promoted through the sexy buzzword 'workation'). This is increasing the quality of life for employees by allowing them to be on holiday for longer, and is technically easy to implement for many companies. But here, too, the rule for employers is: if you want to offer this to your team, ask your tax advisor first!

¹ What is work-life integration anyway? www.atlassian.com/blog/productivity/work-life-integration



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We represent individuals and companies who are either looking to restructure their loans, apply for new loans, or who are looking for financial advice.

Our advisory services are based on giving innovative and independent advice. We offer a full spectrum of corporate or retail finance advice tailored to the specific needs of our clients.

Our personnel leverage their comprehensive knowledge of the local regulations and financial environments, together with their extensive lender and investor relationships to provide a top-tier one stop shop to all our clients as well as unmatched access and market awareness., PLLC



QUESTION ONE

Will there be a permanent shift to hybrid working in your jurisdiction – and will businesses need to restructure or review their internal processes and technologies to make it a success?

The Covid-19 pandemic has pushed businesses to their limits in exploiting the boundaries of hybrid working, while at the same time running the business with as little disruption as possible. Cyprus, as a member of the EU, had to follow strict guidelines to reduce the spread of the virus. Quarantine and mandatory self-isolation for patients and those who were in contact with them imposed home working on a high number of employees.

With the easing of those measures, we are moving slowly to a post-pandemic era, and we're seeing the majority of businesses keep the hybrid model, as it has proven to be effective. Hybrid working is most probably here to stay, since Covid measures will not be fully eliminated, and some employees will continue to work remotely.

The trend for the hybrid model is also putting a social pressure on more traditional businesses to find ways to switch. Businesses need to review their internal processes and adapt to hybrid working. Day-to-day operations have been affected, so a change in internal processes is normal consequence. Line managers will need to handle more remote workers, and so will need

to adjust their management style. It is important to show care to the team members' physical and psychological wellbeing and safety. This can be done using risk assessment questionnaires for physical environment, and psychological and social risks, as well as providing guidance to follow at home. Technologies such as video-conference tools, telecommunication, instant chat application facilitate hybrid working.

QUESTION TWO

How can businesses mitigate against the risks of workforce fragmentation and organisation detachment through corporate services?

Workforce fragmentation can cause inefficiencies and affect the viability of companies. Businesses can mitigate risk of workforce fragmentation and organisation detachment by finding the right tools to consolidate information centrally and monitor employees. Consolidation and alignment can be difficult, and often meets resistance in an organisation. Thus, change needs to be backed by senior executives in the organization, to promote benefits such as cost reduction and improved efficiency. It is wise to start small and gradually implement the change, building on success. The size and scope of change needs to be carefully controlled and road mapped. Furthermore, each change should lay the foundations of the next change.

- Each department can be considered as one business unit with similarities to other departments. Thus, processes can be standardised across departments.
- Setting up a centralised and simplified requisition process can lead to reductions in duplications and gather information in one place.
- Increased transparency and better communication can also help reduce workforce fragmentation. For example, regular weekly meetings and precise explanation of the work assigned to each individual and what the target is.
- Getting a dashboard will help consolidate information. This will enable reduction in costs and better-decision making.
- Various online applications can assist, such as Salesforce and Monday.com.

QUESTION THREE

How should businesses navigate the complexities of accounts reporting with a hybrid workforce – and are there any key pitfalls to be aware of if employees are working overseas?

Accounts reporting complexities are not significantly affected by businesses having a hybrid model. Proper management personnel are very important in hybrid working, as there should be increasing monitoring of the staff to meet set deadlines and targets. Another complexity would be remote access to servers and accounting system. In such cases laptops instead of desktops are more suitable for the hybrid model. Remote access applications are required for authentication of the user and connection to the company's server and systems. There are multiple applications that are free of charge and can facilitate company's operations.

TOP TIPS

Adapting your business' corporate policies to incorporate a hybrid workforce

✓ The company policy needs to be flexible about hybrid working. Allow teams to decide when they should be in the office, and when not, therefore improving efficiency. Standard working hours do not have a place in the hybrid future, but policies may include total working hours or specific targets. It is best to encourage staff to make decisions about where they should work, to maximise the benefits of an out-of-office working environment.

✓ Establish a system of communication that is adaptable to the hybrid model. Use video-conference technologies to foster communication between employees, regardless of location. Systems and digital tools play a key role in the hybrid environment. Software that allows instant communication, like chat functions, help businesses overcome the obstacles of hybrid working and simulate working together. Business also needs to create new hybrid policies and communicate these to all employees, so they understand of what is expected from them.

✓ Effort is important to make office time as valuable as possible. Team leaders need to arrange specific meetings at regular intervals to utilise office time. Plan, schedule, and monitor when team members will be at the office to ensure face-to-face meetings and brainstorming sessions. Office time can be efficiently utilized, so that is only required for key deliverables and meetings.

Key pitfalls of employees working from overseas:

- Difficulty or inability to arrange a face-to-face meeting. The working environment lacks proximity.
- Employing personnel from overseas would, in certain situations, require the business to be registered in a specific country. This would increase the compliance burden, with additional foreign federal and state laws. In addition, businesses need to be aware of any tax issues for employees working abroad. A company would need to be registered for tax and social insurance in the foreign country in order to pay relevant tax and social insurance for the employee.
- There may also be difficulties in the communication process, such as internet connection, difficulties around the use of communication applications, or language barriers. Overseas employees may not speak fluent English, or other relevant business language, and that may result in communication difficulties.



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“An effective hybrid workplace shouldn't demand that everyone works the same hours.”

InfoCapital's multicultural exposure and international approach, combined with its business management experience, make it an added value partner to provide consultancy support to companies in devising new business strategies in one or multiple markets. As an IR Global member, InfoCapital is well positioned to assist clients across the globe. Luis has occupied various (interim) management and supervisory board positions for both private companies, government owned entities and NGOs.



QUESTION ONE

Will there be a permanent shift to hybrid working in your jurisdiction – and will businesses need to restructure or review their internal processes and technologies to make it a success?

Hybrid working has accelerated significantly due to Covid and we hardly speak of traditional work models these days. For the simple reason that essentially all companies must now have a backup plan handy to switch to remote work when required. So how can organisations transition smoothly to a hybrid work model?

The reason why hybrid working is here to stay is simply due to the huge popularity this model enjoys among employees, now that it has been experienced in all corners of the world. Continuity of communication, productivity and, most importantly, sales are critical elements that withstood the test and are now being further improved and capitalised on by companies. Equally important are how companies address their flexible working arrangement, maintain a healthy workplace culture, and ensure good/equal connectivity for all workers.

The hybrid working model will also gain more value and popularity as, in many ways, it plays right into the new Environmental, Social and Governance trends. When executed successfully, the remote working model presents the following benefits:

- Improved work-life balance
- Reduced exposure to illness
- Saving on operational and real estate expenses
- Better carbon footprint
- Less commute stress (due to employee's location independence)
- Hiring talent across the globe

The digital work model does have challenges and it is important to guard aspects like the necessity of seeing colleagues face-to-face. While social cohesion is important, an efficient hybrid workplace shouldn't demand that everyone works the same hours or at the same pace. However, the hybrid work model is tough to beat as it covers some of the most important employee benefits like structure, sociability,

independence and flexibility. In fact, it seems that if companies will not offer the option of hybrid working in the future, this might lead to less employee engagement, innovation, lower well-being, and more outflow of personnel.

QUESTION TWO

How can businesses mitigate against the risks of workforce fragmentation and organisation detachment through corporate services?

Corporate services can play a significant role in how companies move to solve issues like workplace fragmentation and organisation detachment, by consolidating certain enterprise-wide needed support services, such as knowledge management, technology and communication to support customers and staff.

In a hybrid work model, employees enjoy greater flexibility to carry out their tasks, often choosing to do so when they're most productive. For example, some people work best early in the morning while others prefer the evening. If executed well, this flexibility offers employees more control of their work schedules as they can free up time to take care of personal matters without compromising working hours.

By switching partly to flexible hours and workplaces, organisations can create satellite offices or co-working places for employees, eventually leading to lower office/rental expenses. On the human resources side, companies now tap into a wider talent pool as they become more open to hiring staff across the globe.: a big plus, especially when looking for certain specialised skills. At the same time this improves the company's image and allows it to access new markets and create around-the-clock productivity and continuity.

To make this all work, companies must apply the right business processes and invest in proper technology to ensure stable and sustainable communication tools and conferencing equipment. The HR departments of larger organisations must also have adequate (office) scheduling systems to efficiently manage office schedules, to ensure employee flexibility and manage workplace traffic: especially crucial in organisations where staff alternate between on-site and remote work.

QUESTION THREE

How should businesses navigate the complexities of accounts reporting with a hybrid workforce – and are there any key pitfalls to be aware of if employees are working overseas?

Organisations who are actively offering the hybrid working option to their staff must carefully consider the contractual implications of this model. Personnel contracts and terms and conditions of employment that are typically based on a fixed location, must be revised accordingly to accommodate remote work when employees are alternating between office and home as their workplace.

For some employees, working from home may also have an impact on home lease/rental agreements, mortgages, and home insurance. The same applies for possible tax implications if an employee wishes to spend some of their remote time outside the country where the employer is based.

Employers must be aware of the potential pitfalls related to

TOP TIPS

Adapting your business' corporate policies to incorporate a hybrid workforce

✔ To successfully build a hybrid model that works for your company, it is recommended that companies conduct a survey among employees to find out what they need and want, and employ continual feedback. Employee involvement will ensure buy in from staff. Explore what type of flexible arrangements are most desired by personnel to tailor the company's work model accordingly. This is an essential step when looking to retain employees, and helps to attract new talent.

✔ Hybrid working is a concept that is new to all of us and presents a need for continual learning, which will automatically lead to regular change. Companies are encouraged to experiment with the hybrid work model, to find the best model to suit the organisation. It shouldn't be a hit or miss approach. Companies can implement a short-term program and gradually work towards a longer-term model once they have processed employee feedback.

✔ Flexibility and choice are attractive to candidates, whether that translates into remote working, having access to the workplace when needed, or operating a traditional 9-to-5 model. As businesses begin listening to employees and responding appropriately to their preferences, it will become easier for them to remain attractive to external talent.

the length of time the employee will spend abroad. Similarly, social and health insurance coverage and tax liability become points to think about. More pressing are occupational health and safety plans, since an employer remains responsible for its employees, regardless of where they choose to work. What sort of fiscal consequences will these occupational health and safety provisions have? Companies tend to overlook those aspects.

Multinationals have greater flexibility where they can choose to set up employment agreements in a country where they have an office, should the employee choose to work there. Smaller companies without an international presence are more vulnerable to liabilities such as increased taxes and issues around labour laws and benefits. The 183-day (or 6-month) rule is a commonly used threshold for determining whether someone ought to be considered a resident for tax purposes. Provided the employer is based overseas and the costs are not borne by a permanent establishment in the host country, workers can typically avoid creating taxable status for themselves within those six months.

Curaçao, for example, has initiated a Digital Nomad Visa called @Home in Curaçao, to offset the decline in tourism with longer staying remote workers and digital nomads, as well as snowbirds (people that migrate from winter climates to warmer climates for a season) and investors. The remote worker's permit is valid for six months of stay and can be extended by another six months without the person being classified as a resident.

Insolvency

Our cross-border insolvency group offers a full global service offering including bankruptcy, insolvency, and litigation / dispute services. They have unrivalled experience and expertise at all stages whether it be restructuring & crisis management, mediation or through the liquidation process. First and foremost, each member of the IR Global Insolvency Group is a leading authority in their country, ensuring clients receive the highest quality specialist advice.

For more information visit:
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Corona & Nepote is a law firm specialised in civil-commercial litigation, arbitration and bankruptcy.

Among our clients are multinational companies, financial institutions, family offices, local companies and individuals.

We work together with other national and international law firms whose clients need a solution in cases of our expertise.

Corona & Nepote Abogados is appointed the exclusive IR Global member for Insolvency in Mexico. IR Global is a multi-disciplinary professional services network that provides legal, accountancy, and financial advice to companies and individuals around the world.

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QUESTION ONE

Has Hybrid or homeworking impacted insolvency figures in your jurisdiction?

Mexico is a federal state. Insolvency of merchants, companies, and businesspersons is governed by federal law, and insolvency of non-merchants by the local civil code of each of the states. Mexico is not a country acquainted with insolvency proceedings. Non-merchant debtors rarely use them, and merchant debtors, legal entities for the most part, do not find them an attractive way of resolving insolvency. Proof of that is that each year, only around 40 insolvency cases are filed, despite the fact that Mexico has a population of 125 million, with approximately 5 million businesses, 99.8% of which are tiny, small, or medium-sized, while the others (around 10,000) are big businesses.

As of June 2020, all insolvency proceedings can be tried electronically. The digitalisation of justice made hybrid or homeworking a useful tool for debtors to commence insolvency, despite the lockdowns or curfews imposed due to the pandemic.

After two years of remote work, federal courts and law firms are starting to get back to the office. Although homeworking was a useful tool, it is never the same as working in the courthouse. This is especially true in insolvency cases, where many records, motions, and files must be analysed.

There is no link between homeworking and insolvency figures in Mexico; however, we can say that for the year 2021, the insolvency figures (35) were below the average per year (40).

“The digitalisation of justic made hybrid or homeworking a useful tool for debtors to commence insolvency, despite pandemic lockdowns.”

QUESTION TWO

How has WFH/hybrid working impacted the insolvency process in your jurisdiction – particularly regarding record keeping, evidence and key communications? What do businesses need to do to secure themselves against these associated risks?

Due to the digitalisation of justice, any record, evidence, or key communication can be submitted electronically through a PDF file before the court.

We recommend that businesses keep their digital information safe both on an external hard drive and a cloud system.

TOP TIPS

Managing insolvency proceedings in a hybrid working culture

- ✓ Keep your corporate records digitalised.
- ✓ Have a digital backup of your accounting records.
- ✓ Have your authorised electronic signature ready.

QUESTION THREE

Has Hybrid working created any additional risk around personal liability/ managerial responsibility for business leaders / managers during insolvency proceedings?

Yes. Now that digital justice is a reality (for the federal judiciary only), any motion can be signed electronically through an electronic signature, which is authenticated by a digital certificate from the Tax Authorities or the Federal Judiciary.

The electronic signature must be kept safe, on a personal USB, in possession of the manager or director of the company. Any undue use of the electronic signature is only imputable to its holder.

Additionally, now that any person can appear before the court through video conference, managers and directors do not have any excuse not to attend a court hearing. Hence, this digitalisation of justice has resulted in a more engaged activity between parties and courts.



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Schon is the Managing Principal of Condon Advisory Group, a specialist accounting firm of Forensic Accounting, Solvency and Turnaround Practitioners.

Having spent the last 40 years of his working life in the Greater Western Sydney region, Schon is very passionate about helping the community and businesses to grow, sustain, adapt, and support one another.

He holds a Bachelor of Business degree from the University of Technology Sydney, a Graduate Diploma in Management from the University of Canberra, and is also a Graduate of the Australian Command and Staff College, Canberra.

Schon is also a Registered Company Auditor, Registered Tax Agent, Licensed Real Estate Agent, Registered Trustee in Bankruptcy appointed by the Federal Court of Australia, and an Official Liquidator appointed by the Supreme Court of NSW.

QUESTION ONE

Has Hybrid or homeworking impacted insolvency figures in your jurisdiction?

Insolvency figures in Australia have been dramatically reduced over the Covid period. However, hybrid or working from home (WFH) has not in itself had a significant impact on them. The greatest impact on the Australian Market has been the unprecedented level of Government assistance that was provided, not only to individuals, but also to businesses.

In addition to the Governmental assistance, there have been changes to a number of other laws, the existence of which would have normally pushed business owners into seeking assistance from an insolvency practitioner much earlier. This included increases to litigation thresholds, mandated rent relief, interest holidays, prevention of bank and other recovery action, and mortgage repayment holidays.

Regrettably, it is our view that at some point, debts will need to be collected and this will in turn result in an increase in the insolvency figures that are likely to occur when businesses least expect it and more importantly, potentially spread the problem

Condon Advisory Group is headquartered in Western Sydney, and has been servicing clients all over Australia, as well as overseas, for over 30 years. We are a team of professionals and specialists that provides strategic financial, operational and management advice to businesses during times of growth, stabilisation and distress. Members of our firm have held positions at the highest levels in the industry, government and the community. Whatever situation a business is currently in, we'll always deliver the highest quality service, assistance and advice. Our areas of expertise include:

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Condon Advisory Group has over 140 years of combined experience in helping businesses overcome any challenge they might be facing. We also run educational and networking events on a regular basis that cater to a broad market.

to other businesses and individuals.

The WFH phenomenon has, however, impacted larger organisations, where far more of their staff are seeking remote working opportunities, and to a much greater extent. The future management of this will unfold in many different ways for many different entities with new issues continuing to arise.

QUESTION TWO

How has WFH/hybrid working impacted the insolvency process in your jurisdiction – particularly regarding record keeping, evidence and key communications? What do businesses need to do to secure themselves against these associated risks?

At least in the Australian jurisdiction, we do not believe that there has been a significant impact from the WFH/Hybrid working model in terms of record keeping and evidence. However, where people later find the need to make an insurance claim, there is a real risk that the adequate documentation issue will come to light then.

We do note that there has been an impact in some aspects of communication as there has been a lack of the 'water cooler conversation', which means much cross-fertilisation of knowledge has been lost. Further, with a marked increase in email communication and the expectation of instant replies and responses to emails, this can add further stress and mental anguish to staff.

In order to adapt and consider the additional risk of WFH/hybrid working, businesses must review their document management policies and ensure that they are adequate to the new operating model being adopted. There has been an increase in processes employed by businesses to automate the saving of documents when received, to avoid human input in this process. Additionally, there needs to be an understanding by staff that timeframes and reporting requirements have not been relaxed, despite the new WFH model. On the other hand, employers should ensure they have frank discussions with staff to ensure the expectations from both sides are in line.

QUESTION THREE

Has Hybrid working created any additional risk around personal liability/managerial responsibility for business leaders / managers during insolvency proceedings?

Yes. The risk template has grown, and this will potentially grow exponentially, the longer it becomes the norm. As employees will be subject to workers' compensation for activities not done within a traditional workplace, the opportunity for abuse is greater and once such claims start, the potential for exponential growth will be considerable.

A further increasing risk with the practitioner's staff being decentralised in a WFH/hybrid model, is the change in how information is communicated about the proceedings and more importantly, during them. As noted earlier, with more electronic communications there are fewer discussions and issues being raised by staff. Further, the feeling by staff of the need to respond to emails can result in staff issuing responses, where if

TOP TIPS

Managing insolvency proceedings in a hybrid working culture

For this question I will focus on the conduct of Court proceedings in any way related to an insolvency matter, be it seeking the appointment of someone to take control, e.g., Liquidator or Trustee, or a matter commenced in respect to their investigations or operations subsequently. The top three take-aways are:

Firstly, seriously consider the aim of the proceedings and how well the aim can be achieved in a virtual courtroom. If you are examining someone, will this environment produce the best results? In our experience, to a reasonably honest person, it's the same, but if you are dealing with a seriously experienced insolvent or fraudster, it will be a very difficult process.

Secondly, be prepared for the process to be very slow, as the Courts deal with the impracticalities of technology, because the majority of the players, including the Court, are not tech-savvy. Thus, set expectations from all sides early.

Thirdly, focus on your aim and your desired result. Where do you want to be when this process is over? Once you know that, look for alternate courses that can achieve the same result. Alas, this may even avoid court altogether, which I can understand may have a fee earning issue attached, but it just may well be the most effective, timely, or safest course to take. After all, in legal matters, it is the result that we seek, not the journey!

“The WFH phenomenon has impacted larger organisations, where far more staff are seeking remote work opportunities.”

more senior staff had been involved, a different reply might have been issued. If you can put your team in the one spot during proceedings, do so.

Finally, a further risk is the inability to obtain high quality staff. As a result of the pandemic and the general reduction in insolvency work, there has been a reduction in the overall staffing of firms. If the work is to become busier as many predict, there may be an issue with capacity. In addition, if high quality staff are not found, there will be a requirement for additional oversight, which, again, is generally more difficult in a WFH/Hybrid model.



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Iris Jans has been working at Law&Pepper Advocaten for five years now. Before that, she worked as a legal assistant to a social entrepreneur, which gave her a glimpse into the ins and outs of a business and the risks and opportunities within an organisation. Iris uses this experience in my day-to-day work.

She focus on financial law & insolvency law and business law with a lot of enthusiasm. In her practice, a working day may involve giving advice on or providing assistance with matters relating to rights of pledge, mortgage rights, retention rights, financing, suretyships, retention of title, rights of superficies, liability and the actions of receivers and other involved parties (directors, civil-law notaries, valuers, etc.). If proceedings cannot be avoided, she is there for her clients (once again with a lot of enthusiasm), using her specialist knowledge.

Iris is very inquisitive, which helps her to unravel the most complicated structures. What makes her job even more fun is brainstorming and working together with her colleagues Frank Laagland and Philippe Jansen, who are also members of IR Global.



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We take stock of the situation and make choices, so that the client receives clear and unambiguous advice. In conclusion, we think a few steps ahead – both substantively and practically – which allows us to provide a full-service solution to our clients.

which ensured that companies maintained enough or just enough cash flow so that they did not have to file a winding-up petition. We expect that an influx of liquidations will follow when government support is withdrawn, at which time many businesses will find out that they cannot continue without support.

There is no basis for stating that working at home influences the number of liquidations. There are indications, however, that long-term working at home may lead to additional costs for employers. These costs are allegedly related to the effects of less collaboration, a reduced degree of involvement in the organisation, isolation and stress. If no measures are taken to

QUESTION ONE

Does working at home influence insolvency proceedings?

People started working at home more during the Covid-19 pandemic. However, there was no increase in liquidations during the above period. In the Netherlands, there was even a large decrease.

The decrease in the number of liquidations is most likely the result of the government's support measures and various laws,

combat this, these additional costs could eventually lead to more liquidations, especially since the industries with minor margins and outstanding costs connected with the Covid pandemic may eventually end up with a loss-making operation. At this time, it is difficult to say whether this is actually a realistic risk; only time will tell. In my opinion, this will mainly depend on the actions of the Dutch government, and the degree to which the companies that received government support in the past two years have to pay back this support, within which period they need to do so, and how firmly the Dutch government will proceed with collection in case of a failure to repay. In other words: will the Dutch government petition for the liquidation of the business, or not?

QUESTION TWO

Does working at home influence insolvency proceedings (in terms of retaining documents and communication)?

The Netherlands has previously tried to simplify and digitise the administration of justice. At the time, however, this process appeared to be too complex, which resulted in undesirable complications and setbacks during the term of the digitalisation process, following which the programme was discontinued. During the Covid pandemic it suddenly turned out that the administration of justice could quickly switch to digital working after all (such as digital hearings and digital communications), as a result of which there seems to be a turnaround in the digitalisation of the administration of justice in the Netherlands.

It seems that working from home did not have much influence on this. Perhaps it will be more difficult for a receiver in insolvency proceedings to collect all of their data now that they are no longer in one location (the head office) but, instead, at several locations on account of working at home. On the other hand, computerisation is increasing, and it is also conceivable that all information can be found in a cloud solution or online environment that is easy to access. Because of that computerisation, it is actually easier to transfer records to a receiver at the time of a liquidation. Because digital working has been around for some time now, there does not seem to be a difference with working at home. Entrepreneurs, on the other hand, are now easier to reach for consultation via a video link, which may save time and costs in liquidation proceedings. Perhaps that is the main effect of working at home for insolvency proceedings: the receiver has fewer costs on account of working at home, and consequently there should be more money left in the assets of the companies in liquidation, as a result of which creditors receive more money than they would have before the pandemic. However, it seems to me that this does not involve exorbitant differences and amounts, and that this has a marginal effect.

QUESTION THREE

Does working at home involve risks for directors and managers in case of insolvency proceedings?

We have already warned directors that there must be some prospect of survival, and that directors must properly substantiate and record their considerations to decide whether or not to continue the business. However, if a turning point arises or is imminent, after which the continuation of the

TOP TIPS

Managing insolvency proceedings in a hybrid working culture

- ✔ Entrepreneurs must ensure that their records remain in order, in spite of working from various locations.
- ✔ If entrepreneurs actually foresee realistic risks connected with working at home, which involve financial consequences, they should respond adequately to this.
- ✔ Make good arrangements with your office about working at home, and record these arrangements.

“During the pandemic, the administration of justice quickly switched to digital.”

business is, in fact, at the creditors' expense, it is important to sound the alarm and take measures, such as filing a winding-up petition. After all, the risk is that the director may otherwise be liable in their private capacity for the debts in the company's liquidation. We have given entrepreneurs the following tips in this regard:

- Document your survival strategy, and mainly why you make certain choices in the interest of the company.
- Do not wait too long to file a winding-up petition/apply for the application of the Court Approval of a Private Composition (Prevention of Insolvency) Act as soon as your business no longer seems to be viable.
- Report the inability to pay to the Dutch Tax and Customs Administration and the pension fund in good time.
- File your financial statements in good time and keep your records in order.
- Do not make selective payments and do not disadvantage creditors.

Furthermore, working from home may involve risks in terms of privacy. That is why it is important that proper arrangements be made with employees about the use of work laptops, for example. In addition, homeworkers are an easy target for hackers, and this increases a risk of data breaches. Usually, network security in the office is better than home network security.

If an entrepreneur does not take into account all of the above items, they might promote the risk of directors' and officers' liability, in which case a receiver may hold the entrepreneur personally liable for the negative balance of the insolvent company. Again, at this time it is difficult to say whether working at home actually poses a risk for liquidations. If an entrepreneur should identify this risk, we recommend that they respond adequately in order to prevent directors' and officers' liability.



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At Clohessy & Co, we have in-depth specialists and hands-on experience in all our key focus areas. By building long-term relationships with clients, we provide a personalised approach and ensure you have a solid foundation to grow and develop your business.

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We build exceptional working relationships with our clients. By doing so, we are able to develop a deeper understanding of our clients' needs, provide commercially astute, innovative advice, and create better business outcomes for our clients.

QUESTION ONE

Has Hybrid or homeworking impacted insolvency figures in your jurisdiction?

The figures reported by the Insolvency Service of Ireland (the ISI) and Deloitte reported that corporate insolvencies showed a marginal increase in 2020 from the pre-pandemic year of 2019. In contrast, there is a far more noticeable difference when 2021 is compared to the pre-pandemic levels.

In 2019, 568 corporate insolvencies were reported while this figure increased to 575 in 2020: 2021 saw a dramatic drop whereby corporate insolvencies fell by a third to 401. In respect of personal insolvencies, as outlined by the statistics from the ISI, the level of insolvencies in the Irish Jurisdiction have decreased over the past two of years. In the second quarter of 2020, the percentage of new applications decreased by 57%, protective certificates decreased by 63% and bankruptcy decreased by 80% in comparison to the figures reported in the second quarter of 2019. The 2021 figures show that the number of personal insolvencies is still below pre-pandemic figures.

Hybrid and remote working were utilised to their maximum during the introduction of Covid-19 restrictions. The pandemic came into effect during the beginning of 2020 (Ireland was unaffected in 2019). During the second quarter of 2020, it was reported that 47% of individuals were working from home. This was the height of the Covid-19 crisis, with full restrictions in place. Although

Covid-19 has compelled companies and employers to adapt to alternative approaches to work, it is evident from figures that these methods of work did not have a detrimental effect on the number of companies and individuals seeking insolvency.

QUESTION TWO

How has WFH/hybrid working impacted the insolvency process in your jurisdiction – particularly regarding record keeping, evidence and key communications? What do businesses need to do to secure themselves against these associated risks?

The government of Ireland introduced measures during the crisis to sustain struggling companies. One of the primary measures which assisted was the introduction of The Companies (Miscellaneous Provisions (Covid-19) Act 2020. The Act introduced restrictions in respect of statutory demands and winding-up petitions along with various other provisions to assist companies and businesses. The act increased the minimum amount of debt claimed by a creditor to ground a winding-up application from €0,000 to €0,000. Under the Act, the High Court was enabled to grant an extension of examinership by 50 days, bringing it beyond the 100-day limit, to aid companies who had cash flow difficulties.

Technology offered a secure and effective way to work during the crisis and the Act included provisions to reflect this. Companies were enabled to convene and hold creditors' meetings at the start of, or during, a winding-up partly or wholly by virtual means. However, online communications have far more associated risks. Businesses had to ensure security protections that were available in the office setting were also available to members and employees remotely, and to the same standard. As a result of this, and the increase of data flows, cyber security was at the forefront, and of utmost importance. Updated policies and procedures, along with guidance to all members, ensured individuals were aware of risks, and how to manage a situation should an issue arise.

With regards to the personal insolvency process, all communications with the ISI moved online, through various email contact points and telephone numbers for support. The Bankruptcy Court continued to operate on a virtual basis with all documentation being sent via email.

QUESTION THREE

Has Hybrid working created any additional risk around personal liability/managerial responsibility for business leaders / managers during insolvency proceedings?

The shift to working from home and hybrid working has brought with it a range of risks. One of the primary risks associated is data breach. During the crisis, individuals and corporate entities increased their awareness of data processes, due to the increased security risks. Companies and businesses were compelled to make themselves aware of the information that they held, how they processed it, and the potential liability that they could face, should a breach occur. As processes were changed and technology utilised, data breaches became more apparent. These breaches can occur on a local level from the

TOP TIPS

Managing insolvency proceedings in a hybrid working culture

- ✓ **Evaluate.** The first action is to evaluate how the insolvency process worked and didn't work before the pandemic, and to assess how this is now being impacted through hybrid and remote working. Measures introduced to assist corporate entities must be explored, along with potential issues which may arise.
- ✓ **Communication.** Communication must be used to align the processes and to encourage steady flows of clear updates through secure channels to ensure members and employees are kept up to date. Communication ensures that everyone is kept informed of all critical information and that the likelihood that a fault may create a liability is reduced.
- ✓ **Risk Management.** It is critical that the correct measures are taken to ensure risk is kept at a minimum. Potential risks must be directly identified to enable corporate entities to put a variety of security processes in place, and to prepare procedures should these arise. Ensure that all members or advisors involved are aware of their responsibilities and risks that could occur. Demonstrate the importance of following correct procedures and their role in preventing it. It is key that everyone involved is aware of how to respond in the event of an issue arising.

loss of a memory stick or piece of equipment by personnel, or to a larger extent by breach of a company's security system, such as their cyber firewalls.

In relation to the insolvency process, sensitive commercial information must be secured against all risks, including the risk of a breach. As people may not be physically present in the office, and information may not be passed as easily, business leaders, employees, and members have a responsibility to know the appropriate measures when sharing documentation. Companies are responsible for ensuring the correct procedures are in place, and there is a requirement for employees and members to adapt to new work methods, and to keep informed and up-to-date with policies and procedures. The combination of all of the above enables corporate entities to minimise the risk.

All corporate entities, members and advisors must be mindful of the potential liability they may face should a breach arise, and that security was, and still is, an essential requirement for the detection of data breaches, and the reduction of their potential liability should a breach occur.



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David graduated in Law at the Externado de Colombia University, where he also specialised in Business Law. He earned a Master in Legal Counsel (MAJ) at the Instituto de Empresa de Madrid (Spain) and an LLM in Commercial Law at the Glasgow and Strathclyde Universities (UK).

David is an Undergraduate and Postgraduate Professor of Commercial and Insolvency Law at the Externado de Colombia University. He is also the head of E-Mercatoria, the journal of the Department of Commercial Law of the same university. He has also served as Ancillary Justice at the Supreme Court of Justice of Colombia and Coordinator of the Insolvency Group at the Superintendence of Companies.

For more than twenty years, David has been widely recognised as one of the leading bankruptcy attorneys in Colombia. He has played a pivotal role in the largest and most complex restructurings and this significant track record has made him a go-to lawyer for clients involved in the toughest and most challenging of bankruptcies.

A respected authority on restructuring, David is a prolific academic and author on related topics, such as cross-border insolvency, liquidation plans, and alternative dispute resolution procedures. Leading lawyers and practitioners seek his opinion regarding restructuring issues of national interest and their impact on the rehabilitation strategies of companies in distress.

QUESTION ONE

Has Hybrid or homeworking impacted insolvency figures in your jurisdiction?

The Colombian legal framework for insolvency changed due to Covid-19. The general provisions and proceedings regulated in the Law 1116/2006 were amended (with temporary effect) in early 2020 via an extraordinary regulation (Decreto Legislativo 560/2020). This special regulation incorporated, among other measures, two new 'recovery' mechanisms (named NEAR and PRE) in which the debtor has the main role, as opposed to general proceedings in which the insolvency judge has that role,



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Our lawyers are reliable professionals with vast experience, not only in their practice areas but also as academics. We are always keen to provide the best legal services and efficient legal solutions to our clients. We work hand-in-hand with other law firms (national and international) and with professionals on areas related to our practice (accounting, finance) to provide the best possible services to our clients.

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such as the 2006 act. Another extraordinary regulation (Decreto Legislativo 772/2020) introduced special expedited procedures for small business, introducing what is called 'abbreviated reorganisation' and 'abbreviated liquidation'.

The most important characteristic of the above regulations is time. The duration for the new proceedings is intended to be significantly shorter than general proceedings. As a matter of fact, NEAR lasts 3 to 5 months, in contrast to the 36 months that an ordinary reorganisation usually takes.

On the other hand, our main Insolvency judge (Superintendencia de Sociedades/Superintendence of Companies, a governmental office with jurisdictional power and faculties regarding insolvency proceedings) was already prepared to manage insolvency proceedings on a virtual basis. This, and the general rules incorporated for all proceedings (civil, administrative and criminal), meant that the restrictions that arose from the pandemic had little negative effects on the administration of insolvency proceedings.

As a result of the new rules, all documents can be filed by email; hearings take place through a well-known video conference platform; and debtors and creditors have complete access to documents, records, decisions, etc.

Finally, it is important to mention that Artificial Intelligence is being used to help the insolvency judge with certain stages of the insolvency proceedings, e.g. admissions.

For statistics regarding insolvency proceedings, please see: www.supersociedades.gov.co/Noticias/Publicaciones/Revistas/2021/Atlas-Insolvencia-Junio-2021.pdf

QUESTION TWO

How has WFH/hybrid working impacted the insolvency process in your jurisdiction – particularly regarding record keeping, evidence and key communications? What do businesses need to do to secure themselves against these associated risks?

There were some legal and regulatory amendments which made it easier to stay up-to-date with what is happening in insolvency proceedings. Every single document, decision and/or piece of evidence is accessible through the web page of the Superintendence of Companies: therefore, the right of the parties to be duly informed is guaranteed.

For all new insolvency proceedings, the judge orders the debtor and the insolvency administrator to create a blog in which they must release all the important and relevant information regarding proceedings.

Evidence (one of the most important and controversial aspects on any proceedings taking place in a virtual environment) does not present any issues in our jurisdiction, because in Colombian Law, documents are the only evidence that the parties can produce at insolvency proceedings. Nevertheless, the restriction regarding different types of evidence is prejudicial for certain cases in which creditor-debtor status does not rely on a document.

Colombian ordinary procedural law (Código General del Proceso) was also amended temporarily due to Covid-19 (Decreto Legislativo 806/2020). Those amendments, which impact insolvency proceedings, eliminate pre-existing formalities in the way parties appoint their lawyers, and in the way documents and evidence are presented to the judge.

Since almost every procedural stage now takes place in a virtual environment, managing insolvency proceedings

TOP TIPS

Managing insolvency proceedings in a hybrid working culture

✓ **Get legal counsel.** Colombian Law allows debtors and creditors to participate in insolvency proceedings without a legal practitioner/insolvency expert. However, only with the right advisors will the parties be able to get the most out of insolvency proceedings. As a debtor, get to know your options – not all recovery proceedings are suitable for every debtor. There are 5 different proceedings, and you need an expert by your side to choose the appropriate one.

✓ **Get to know the website of the insolvency judge (Superintendencia de Sociedades).** As we have stated, all the information regarding insolvency proceedings is available online, but it is not a user-friendly website.

✓ **Pay special attention to data security.** In insolvency proceedings, debtors and creditors must prioritise the management and conservation of data necessary to a positive outcome.

requires a solid system that allows you to certify the identity of the person, the date of issue, the receiver, the date of receipt, and the content of the communication. It requires companies to have the technology to ensure they can preserve documents that support their economic and legal transactions.

QUESTION THREE

Has Hybrid working created any additional risk around personal liability/managerial responsibility for business leaders / managers during insolvency proceedings?

The temporary insolvency regulations relaxed some of the normal formalities and created new, more expeditious proceedings. However, there were no modifications regarding the response times to requests made by an insolvency judge, nor an extension of the term for the execution of procedural acts.

Aside from negative procedural consequences, judges can impose sanctions on those who don't respond to their requests in a timely manner. Thus, at present there is a greater demand for managers, administrators, counsellors and attorneys, regardless of the working method that is being implemented (WFH or hybrid).

In terms of registration and conservation of company or business information, including that which is relevant to the insolvency process, administrators are obliged to maintain the data in an organised, accessible manner, and in a format that ensures its accuracy and inalterability. This becomes especially important as the support for the legal and economic transactions of creditor and debtor has become electronic, rather than physical. As already mentioned, it is supremely important to have technology that minimises the risk of information loss, and certifies the content of information and communications.

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R.J. represents members of all three tiers of the alcohol industry on general liquor licensing, multi-state and multi-unit acquisitions, tied house and marketing compliance, complex ownership changes, administrative hearings and litigation matters. R.J. is national liquor counsel to numerous chain hotels, restaurants and grocers and his clients include private equity, sovereign wealth and pension funds, and other investors in the hospitality, restaurant and alcohol manufacturing spaces.

Flaherty & O'Hara, P.C. is a nationally recognised leader in the laws regulating beverage alcohol in the United States. Our firm is one of the largest liquor licensing practices in the U.S., with twelve attorneys and a large staff of paraprofessionals focusing solely on beverage alcohol law matters. We take great pride in our comprehensive capabilities, our unmatched understanding of the law and our creative, problem-solving approach to challenges. We represent hundreds of businesses and institutions on liquor licensing and beverage alcohol matters, from large multinational corporations to local bars and restaurants.

Flaherty & O'Hara has unparalleled experience in multi-unit and multi-state acquisition, restructuring and refinancing transactions, representing members of the financial, investment and real estate-oriented communities, such as private equity firms and REITs, which invest in the alcohol industry. We provide guidance on alcohol marketing activities to a variety of multi-unit retail tier operators and consult on a daily basis with companies and investors worldwide on tied house laws and prohibited interlocking and conflicting interests within the alcohol industry.

The firm also acts as a resource for the renewal and maintenance of liquor and other business licenses. Flaherty & O'Hara developed proprietary renewal software, Evergreen, and employs a team of highly skilled paralegals who track and complete nearly 20,000 license renewals each year.

"Staff, especially new hires, may feel more isolated and miss out on informal training opportunities that would arise during impromptu day-to-day conversations."

QUESTION ONE

How will increased hybrid working impact commercial decision making – and how can businesses successfully communicate their commercial goals to disparate hybrid workforces?

The decision of a business owner to provide hybrid work opportunities must include a consideration of how providing such opportunities will impact other business decisions. The most obvious impacts are to the physical space that the business occupies. Will the lease be renewed as is, or will it be modified and the square footage reduced? Should the business move to new space? Will the layout, look and feel of the space be markedly different? At our firm we looked at the sorts of new technological tools that we may either need, elect to adopt, or change. We have begun to reconsider what is most important when hiring new staff, and whether the technological skill necessary for hybrid work isn't at least as important as a candidate's substantive knowledge and specialised education. If, as an employer, we are forced make a choice, which is easier to train a new employee on: technological skills or substantive knowledge?

Once a company has concluded that it will provide staff with hybrid work opportunities, communicating goals to disparate workers is not difficult, as the vast majority of the communications are either through email or virtual conferences, using tools such as Microsoft Teams. But it is also important to have well-established and regular in-person contact with hybrid employees. Face time, in-person discussion, and the sense of community that comes from sharing space, a meal, or a drink together can be essential to morale and long-term productivity.

Additionally, establishing expectations for staff reporting procedures is essential for both employees and supervisors. Staff, especially new hires, may feel more isolated and miss out on informal training opportunities that would arise during day-to-day impromptu conversations. They also may miss out on meaningful feedback from supervisors or peers. A well-established routine meant to provide feedback, review workload, and set future expectations is essential for continued employee growth and staff development.

QUESTION TWO

Are there businesses in your jurisdiction that are reticent to allow long-term hybrid working? What are the commercial risks for those who refuse requests for partially remote working?

There are many businesses that are hesitant to provide for hybrid work arrangements, especially in the legal field. Law firms are not typically incubators of progressive work environments, but rather hold onto tradition and what has been comfortable in the past. The risk for firms that don't allow hybrid or remote work opportunities is that they will lose staff to firms that do, and/or that they will fail to attract young professionals to work for them. Over time, those who are late to adopt more flexible work schedules and environments will be forced to evolve.

TOP TIPS

Securing commercial success in a hybrid future

- ✓ Adopt a team approach to reflect on whether and how providing hybrid work opportunities would fit into the services you provide, paying attention to the details of how such work arrangements would impact your product, work culture, and other aspects of your business.
- ✓ Analyse whether and how providing the opportunity for employees to work remotely will change the qualities of and skills possessed by hybrid working employees, whose work will be performed without direct supervision, and the assessment of who will be largely without the benefit of daily in-person contact.
- ✓ Determine how your business model can accommodate hybrid workers from a technological perspective and from a space-requirement perspective. Will hybrid employees who come into the office have dedicated desk space? Shared space? Desktops? Laptops? Docking stations? Will the firm issue hybrid employees firm paid cell phones?

QUESTION THREE

Hybrid working can have a significant impact on revenue maximisation – how can businesses generate commercial advantages from a hybrid future?

The most obvious commercial advantage, and thus the best way to impact revenue when it comes to the question of hybrid work, is to allow it. By allowing hybrid work arrangements firms will be able to attract the best new talent. This is certainly true for new employees around the age of 30 and under, who are most likely to expect hybrid or remote work arrangements. In our experience, however, the desire for hybrid work is by no means limited to a younger workforce. In fact, we find that almost all job candidates express a desire to have at least some flexibility to work remotely. The best practice to increase revenue, then, is to allow hybrid work arrangements while employing technology and methods to keep track of employee productivity.



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Robert Bron is the co-founder and owner of ABiLiTieS Trust, an Amsterdam-based corporate services provider. Before he started ABiLiTieS Trust, he set up another successful trust company. Robert likes to be an entrepreneur and he loves to support fellow entrepreneurs.

He enjoyed his studies, having studied in the Netherlands, US and Japan. After having graduated in Dutch Law at the University of Utrecht, he started his career at the head office of a Dutch bank. Subsequently he was assigned at three Dutch trust offices and continued as a managing director of a trust company before ending up at ABiLiTieS Trust. Robert has serviced many international clients, from SMEs to large corporates, with legal support and large projects.

Robert has a lot of practical knowledge of setting up businesses and structures with international aspects. If you wish to open a business, he can inform you well on Dutch legal, accounting and tax matters.

The Netherlands has much to offer. Robert welcomes all international entrepreneurs and business partners at the ABiLiTieS office to discuss business (while, of course, serving you a cup coffee and a stroopwafel). Robert likes to practise sports. Being Dutch, he ice skates and rides his bike to the office.

ABiLiTieS Trust is a corporate services provider supporting businesses active in an international environment. Our office is located in Amsterdam, near the financial district and airport. We are specialised in the formation of Dutch limited liability companies, foundations, funds, partnerships, co-ops and branches. Over the last five years, we have serviced hundreds of entrepreneurs with the opening of their Dutch business.

All of ABiLiTieS' account managers are very experienced. Our team consists of specialists in accountancy, law, and tax compliance. As a licensed company, we can also assist our clients with registered address and director services. How convenient it is to have a fixed contact point and deal with a one-stop-shop for all Dutch business matters?

ABiLiTieS is management-owned, which is key for long-term client relations. As an IR Global member, it can offer your company business support in more than 160 jurisdictions.

QUESTION ONE

How will increased hybrid working impact commercial decision making – and how can businesses successfully communicate their commercial goals to disparate hybrid workforces?

Covid had a major impact on people's lives in the last two years. One of the largest impacts on Dutch workers was the strong advice from the Dutch government to work from home.

Working from home was received very differently amongst employees. Some love it and some hate it. Much will depend on the type of work, characters of the employees, and circumstances at home. A house full of children can be very distracting while trying to work.

Dutch employees might cope better with the situation than personnel in other countries; access to fast and stable internet connections from home helps to maintain productivity.

Next, in Dutch corporate culture, employees are used to executing their tasks independently of their superiors. Dutch workers generally have one or two short contact moments with their management per day. So, one or two telephone or online calls will be enough to enable them to carry out their tasks.

Research executed on the Dutch market in mid 2021 showed that due to Covid-19, many companies have been rapidly adopting home working. Compared to a year earlier, the use of

online meetings has almost doubled (from 52% to 94%) and almost all companies offer home-working facilities (with an increase from 85% to 96%). The number of companies that offer employees flexible working hours has also increased slightly (from 83% to 86%).

For communicating commercial goals to hybrid work forces, it is good to have a solid structure in place. In case of a larger company, it's ideal to have one person dedicated to overcoming any disadvantages of remote working.

QUESTION TWO

Are there businesses in your jurisdiction that are reticent to allow long-term hybrid working? What are the commercial risks for those who refuse requests for partially remote working?

For some businesses it is simply not possible to switch to long-term hybrid working because the activities don't allow it. There are also industries that are more old-fashioned than others. In the Netherlands, the government and the financial services industries are most progressive in part time working and working from home. With family-owned business, the cultures can be more traditional.

There are several aspects of hybrid working that can be game-changers when put to good use:

- The current labour market in the Netherlands is characterised by historical scarcity of workers. You will have to brand yourself as an attractive employer to be able to get sufficient talented candidates. Allowing partial or full home working can increase the size of the pool you can attract skilled candidates from. Your business can benefit twice, as you will also be able to attract employees who live further away.
- Research shows that hybrid working can increase the productivity of employees by 10-15%. Such a significant increase in productivity has a large impact on the profitability of your business. It means that you can start to push your less progressive competitors out of the market.
- The rent of office space has always been a significant expense for businesses. The recent massive increases in real estate prices will mean that rent prices will follow. So, you will have an extra incentive to limit your office space. How much would your business save if it only required 50% of its existing office space, or if switched to a virtual office?

QUESTION THREE

Hybrid working can have a significant impact on revenue maximisation – how can businesses generate commercial advantages from a hybrid future?

As mentioned before, a hybrid working option makes a business more competitive in the labour market, increases productivity, and lowers office costs. Note that in the Netherlands, the consensus in many sectors seems to have shifted. Employees are considered to have the right to work partly remote. At the same time, there is the right to work part time in the office. This attitude is also backed by labour unions.

Maybe the greatest advantage comes from the fact that 80% of employees embrace working from home. This was the result of a survey by McKinsey. Also, studies show that

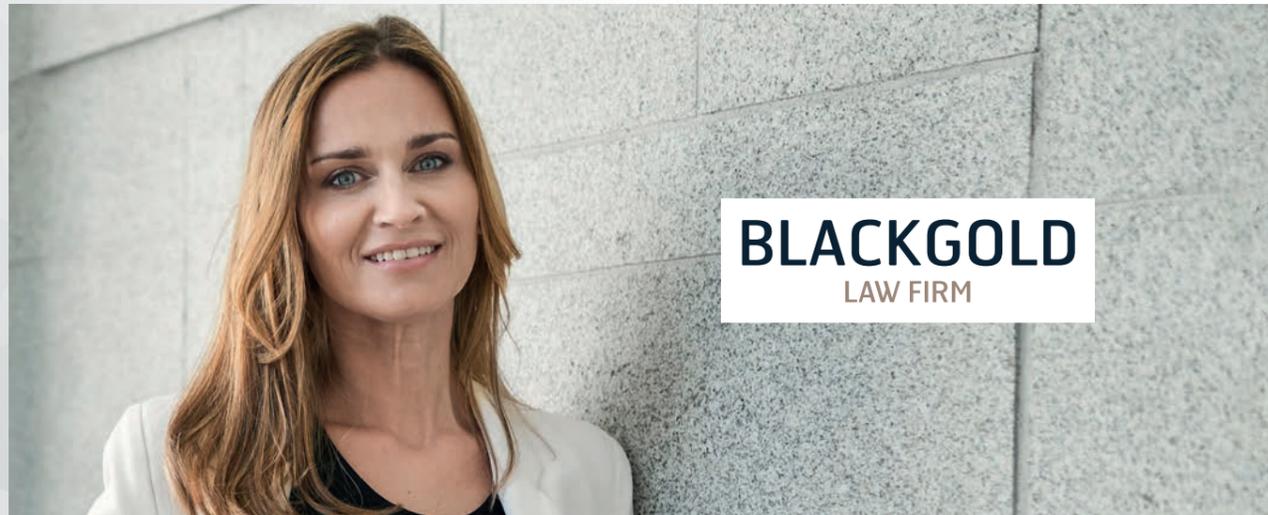
TOP TIPS

Securing commercial success in a hybrid future

- ✓ Employees working from home are more productive. Multiple studies have confirmed this. So, give long-term hybrid working a serious chance. Start by trusting your employees to work remotely. Encourage your employees to function independently. Train them to be responsible for clearly-defined tasks within the company. As a manager, try not to get involved in the way the activities are executed. Solely focus on supporting and checking the final results.
- ✓ Employees should have proper working conditions when working at home. This does not only mean a work station and a good internet connection. It can also mean support for employees with finding and arranging childcare. It can be extremely hard for employees to combine working from home with the care of their children. Research by McKinsey showed that mothers in particular are responsible for the majority of household tasks. Improving the working conditions in your company by providing daycare will further increase productivity. As a bonus, it will promote the equality of men and women, and mental wellbeing in your organisation.
- ✓ Appoint a 'structure manager' to take responsibility for onboarding, knowledge sharing, and organising team meetings and events. It can overcome the disadvantages of hybrid working.

“A hybrid working option makes a business more competitive in the labour market, increases productivity, and lowers office costs.”

hybrid working makes employees feel more empowered. Staff members are motivated to take more responsibility, are willing to work overtime, and will be for the company for longer. Most likely these effects are not visible directly. It will be a benefit for your business in the long term.



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Małgorzata Szum is the founding partner of Blackgold Law Firm with 15 years of international experience, gained as an in-house lawyer working for international companies operating in crude oil, gas, and bunkering sectors.

She negotiated commercial contracts and agreements of any kind connected with sale and delivery (via pipeline, seaborne deliveries, railway transport) of crude oil and crude oil products, as well as various accompanying agreements connected with logistics, insurance and financing of the business activity.

Małgorzata coordinated legal proceedings in various jurisdictions (i.a. Singapore, Hong Kong, USA/ New York, Denmark, England) and represented one of the biggest European logistics companies in a Polish court dispute.

She provides comprehensive legal advice on energy law, mergers and acquisitions, with a particular emphasis on the renewable energy sector. She also prepares compliance procedures, as well as providing advisory services related to company law for international business angels, private equity and venture capital funds.

Małgorzata is also a lecturer in commercial law for postgraduate students.

Founded in 2012, Blackgold Law is a boutique law firm specialising in commercial transactions, energy law (including renewable energy) and maritime law.

We offer advisory on negotiating and concluding agreements on international trade of commodities, as well as all legal aspects related to the supply chain of goods, including laytime and demurrage.

We also have thorough experience also in company law, M&A, and compliance requirements. We represent international clients in disputes in Polish courts. By providing complete legal advisory we assist our clients in securing their contractual positions in various transactions. While performing our work we always give maximum attention to each of our clients, we contribute to their business with our both legal and business advice and we optimise legal costs to offer our clients the most reasonable price and highest standard of legal services as expected.

We speak Polish, English and Russian. You may contact us at office@blackgoldlaw.com

QUESTION ONE

How will increased hybrid working impact commercial decision making – and how can businesses successfully communicate their commercial goals to disparate hybrid workforces?

In Poland, more than 65% of employees declare their willingness to perform duties in a hybrid work environment. This raises a challenge for employers who will have to skilfully combine two different communication systems: traditional, where all employees are in the same place at the same time; and asynchronous, where employees may be in different places or even different time zones. To effectively communicate their commercial goals, the employer must first of all formulate them in a clear and precise fashion, so that the goal and its meaning is clear to everyone.

Although communication was already one of the key skills of managers, in the era of hybrid working it will take on yet another dimension. It is not only about communicating objectives, but also about making sure this message is received by all members of a team. It means paying attention to their needs, ensuring the inclusiveness of the team, and ensuring that each member has a real opportunity to contribute and propose an innovative solution.

Such goals can be achieved by implementing procedures – recording meetings, saving and documenting

their course, avoiding excessive e-mail communication, and also arranging for live and one-to-one meetings to truly reach everyone with the message of the goal. It's a different perception of the team as a moving construct, a network. It is important that employees who do not have daily direct real contact with each other do not lose task significance and identity.

Attention to the employee's needs must concern not only the messages related to the company's commercial goals, but also (and perhaps most importantly) the employee's technical skills, their professional experience, and their involvement in the projects implemented so far. This can be achieved through video calls in smaller teams (not just large meetings where most people have their cameras off) and introducing different kinds of tools in the company that allow for task updates.

The employer must ensure that the hybrid employee is as active, informed, and involved in the company's activities as those in the office. Otherwise, a feeling of isolation and lack of belonging will grow.

“In Poland, more than 65% of employees have declared their willingness to perform their duties in a hybrid work environment. This raises a challenge for employers.”

QUESTION TWO

Are there businesses in your jurisdiction that are reticent to allow long-term hybrid working? What are the commercial risks for those who refuse requests for partially remote working?

Before the pandemic, remote or hybrid work was not regulated in Polish law. According to Article 3 of the Special Act (Act of 2 March 2020) during an epidemic, emergency period, or state of epidemics declared due to Covid-19, and in the period of 3 months after their cancellation, the employer may instruct the employees to perform their work outside the place of its permanent performance, for a specified period of time.

The performance of remote work may be instructed if the employee has the skills, as well as the technical and housing capacities, to perform such work and the type of work it permits. The employer should provide the tools. Hybrid work, however, is yet to be regulated by amendments to the Labour Code (work on the amendments has been in progress since May 2021, but they have not yet been introduced). Therefore, due to the lack of clear regulations, among other things, some organisations are not willing to permit hybrid work. In order to be able to do so, they need to adopt internal regulations (which, in turn, may also require agreements with, for example, trade unions) or regulate this aspect of work performance individually in the employment contract with each employee.

Another reason why companies are reluctant to introduce the hybrid work model is a concern about the results of remote working: a decline in productivity; the negative impact of remote

working on employee wellbeing; a reduction in the quality of work in teams of employees; or a decline in innovation and organisational culture. Employers fear that the digital world is not conducive to maintaining social relationships, and work is not only about achieving commercial goals, but also about atmosphere and commitment: it is a second home.

Although hybrid work has the chance to combine the advantages of working in the office with the advantages of remote working, maintaining proper communication in the company with different models of employee presence requires more commitment and special managerial soft skills (and therefore, additional effort). Since hybrid work is indicated most often as a desirable work performance model, not implementing it puts the organisation at risk of losing talent to more modern organisations. Another commercial risk is lower attractiveness in the labour market and lower price competitiveness: the organisation will not benefit from reduced administrative costs.

Of course, not all types of work and not all companies can afford to introduce hybrid working. In IT companies, consulting, administration, office services, accounting, and HR, at least some company departments can move to hybrid working.

QUESTION THREE

Hybrid working can have a significant impact on revenue maximisation – how can businesses generate commercial advantages from a hybrid future?

Hybrid working can have a positive impact on maximising an organisation's profits in several ways. In order to organise hybrid working, companies will have to spend (or have already spent) a certain amount of money to buy software and tools for communication, checking, online project management, cloud document storage, cyber security, etc. However, these investments may translate into profits, the most obvious one being a reduction in administrative costs associated with maintaining office space and the additional related expenses.

On the other hand, if hybrid working is well implemented and its effects are constantly monitored, in the long run, organisations may increase profits by increasing the efficiency of employees working in hybrid mode. Employees have more influence on the balance between family, personal and work life. For a company to be profitable, it is therefore necessary to support employees so that all team members feel they belong to the organisation, understand the company culture, support it and actively work towards shared success. Hybrid working offers the possibility of taking faster action, which is less costly for employees (commuting) and for the organisation itself (savings due to reduced business travel).

Flexibility in modern business is the key to success. This, in turn, may guarantee a prompt response to changing circumstances. So the speed of decision-making can also have an impact on increasing company profits. The possibility not only of working in a hybrid mode but also of holding hybrid meetings of the management board, the supervisory board, or even extraordinary meetings of shareholders and general meetings of shareholders (which is possible under the Polish Commercial Companies Code) can also bring companies tangible financial results.



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Ignacio graduated from Universidad Católica Andrés Bello (UCAB). He completed an LLM in Admiralty at Tulane University and is a Specialist in Labour & Employment Law (UCAB, Summa Cum Laude). He completed the Training Programme on International Labour Standards (ILS) offered by ILO's International Training Centre and the International Labour Office. The course covers the ILS and their application in local jurisdictions. Ignacio advises local and international companies

in Venezuela, and coordinates regional counsel for leading multinationals in commercial, civil and corporate law; labour & employment; insurance; technology, data privacy & protection; regulatory law.

He is a member of FEDECAMARAS's Labour Affairs Commission, and was an advisor to the Presidential Commission's Subcommittee on Labour Risks, Social Security reform. He was a member of the Ministry of Labour's Legislative Team to reform social security and labour legislation, and advisor of the National Assembly's Commission of Social Development to reform labour legislation and the Social Security System, and draft occupational health and safety legislation.

Ignacio co-authored the book "Ley Orgánica de Prevención, Condiciones y Medio Ambiente de Trabajo (LOPCYMAT). Compliance and Responsibilities. Analysis and Experiences 2005-2010." This is a landmark work in the area of Occupational Health & Safety.

Ponte Andrade Casanova (PAC) offers high-quality legal services to leading multinational corporations and their subsidiaries, as well as local companies and individuals in Venezuela.

The firm offers advice to industry, commerce, and individuals, and specialises in civil law; commercial law; technology, media & telecommunications (TMT); procedural law; labour law; tax; administrative law; occupational health and safety; banking and insurance law. Among the firm's clients are national and multinational companies in areas like entertainment, digital streaming, VOD and OTT broadcast, and advertising; e-commerce; technology; banking; insurance; telecommunications; household products; food and beverages; oil and mining; among others.

PAC has an alliance with Venezuelan investment firm Grupo Fivenca and actively works with Tamanaco Consulting Group on projects funded and commissioned by the Center for the International Private Enterprise (CIPE). The firm is actively involved with the Venezuelan Federation of Chambers of Commerce and Production (FEDECAMARAS), the Venezuelan American Chamber of Commerce (VENAMCHAM), and the Venezuelan Association of Private Equity (VENECAPITAL). The firm participated in the ILO's 109th Session, 2021. PAC has cultivated relationships with law firms throughout Latin America. The firm is part of IR Global, one of the largest professional services networks in the world.

QUESTION ONE
How will increased hybrid working impact commercial decision making – and how can businesses successfully communicate their commercial goals to disparate hybrid workforces?

In Venezuela, hybrid work isn't regulated by any law. Due to the Covid-19 pandemic, this mode of work has had important growth in the form of home offices, virtual meetings and the creation of a 'new normal' in workplace culture. It created a new future for employment that has allowed the adoption of a hybrid

model of work, both formally and informally, and the possibility of working in multiple workspaces that adapt to each employee.

This brings about new workplace patterns and policies that provide flexibility to employees. Those policies are oriented towards greater productivity rather than work schedules, creating shared virtual workspaces. The rise of hybrid work will have negative and positive effects on decision making, depending on how satisfied the worker is with their workspace, and how this environment harmonises with technology. Employers must be conscious that, in Latin America, a significant number of workers don't have adequate housing, nor the socio-economic conditions that would allow them to work comfortably from their homes without being negatively impacted by their environmental conditions, family responsibilities, or supply of public services.

Companies must take stock of the conditions that their employees work in, to avoid a hybrid workforce that finds itself on unequal footing. A hybrid work plan depends on the workforce's technological equipment, access to the internet, electricity, secure connection to the company's servers, and even family conditions.

QUESTION TWO

Are there businesses in your jurisdiction that are reticent to allow long-term hybrid working? What are the commercial risks for those who refuse requests for partially remote working?

Hybrid work isn't regulated in Venezuela, and instead is treated like working from home (trabajador a domicilio) according to the Labour Law. For this reason, the employer may be reticent towards allowing hybrid work. That said, during the pandemic we saw the Venezuelan business sector promote hybrid work as a way of avoiding contagion, and as a consequence of a lack of public services and access to fuel.

The labour market also responded positively. In Venezuela, pressure to develop hybrid work schemes is due to a series of crises in operational and business continuity that have generated great maturity in many organisations with regard to hybrid work. Future regulations in Venezuela must set employer's and workers' rights and obligations, in relation to hybrid work, that meet international standards. That should include the employer's obligation to supply workers with the necessary technology to carry out their tasks away from the workplace; the right to physical and mental integrity; the right to digital disconnection; ensuring the employees' rest, and; a prohibition from making requests outside of working hours

The elements that could cause some reticence on the part of employers are the lack of supervision over the employee's work, and the possible cases that an employee might only be pretending to work. Given the lack of regulations on hybrid work, we see no commercial risks for those who refuse requests to work in this matter, except those derived from the growth of hybrid work, and the social and labour pressure it exerts on employers.

QUESTION THREE

Hybrid working can have a significant impact on revenue maximisation – how can businesses generate commercial advantages from a hybrid future?

TOP TIPS

Securing commercial success in a hybrid future

- ✓ Successful hybrid work requires empathetic leadership to manage the organisation in the right direction, a structure that allows employees to work effectively and efficiently, and the cautious direction of resources towards building culture and continual learning.
- ✓ Invest in equipping the workforce with tools and skills necessary for higher autonomy. Train managers on how to measure performance equally and fairly for workers in a variety of locations and time zones.
- ✓ The success of a connected workplace depends on an organisation's ability to embrace a flexible culture, support its workforce with technological infrastructure, and provide an environment where innovation and productivity can thrive.
- ✓ Time management is an important skill. In a hybrid environment, employees and managers need to set priorities by hour, by day, by week, and structure their time to address the most important tasks.
- ✓ Security is a number one priority for customers, especially in this transition from remote work to hybrid, so digital transformation cannot happen without security transformation. Educating employees in cyber security best practices, personal device usage policies, and common threats and how to identify them can go a long way toward repelling a wide range of cyber threats.

Before the pandemic, policies, processes, and ways of working originated from the fact that employees spent most of their time working from the office. Now that many people are combining their homes and offices into a single workplace, we must analyse how this can have an impact on productivity and the company's profits, given that hybrid work is a gradual change of focus from the workplace to the purpose of the work itself.

In this new workplace culture, for this to generate competitive advantages they must establish clear guidelines regarding routines, tools and tech, risk and control, as well as flexibility and freedom of choice to ensure a motivated, collaborative, and productive workforce.

Effective communication is fundamental, and it can be achieved through the nurturing of better relations through collaborative hybrid work teams. Hybrid work can contribute to the betterment of workers' wellbeing by reducing the time it takes to commute, the freedom to set their own schedules, and the rise of extra free time for personal activities. It can also optimise work by carrying out individual tasks remotely and carrying out group activities in the office. The hybrid work model must avoid differences and friction between those who work from the office regularly, and those who mainly work remotely.



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Fred Ntido is a dual-qualified Nigerian and British Solicitor. He has over 2 decades practical experience in corporate/commercial, energy, litigation, employment and labour, shipping, government regulatory and compliance practice areas.

He has and continues to advise international and local businesses on all aspects of establishing their operations in Nigeria, through obtaining all requisite government and regulatory approvals, interfacing with government agencies.

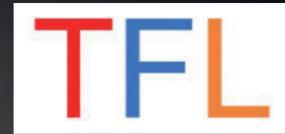
Fred is a seasoned commercial litigator, Arbitrator, Employment and Labour law expert, compliance practitioner and a transactional lawyer.

Fred was called to the Nigerian Bar in 1998 and qualified as a solicitor in England and Wales in 2010. He is also a member of the Chartered Institute of Arbitrators (United Kingdom)

Threshing Fields Law is a full-service commercial law firm with proven expertise in corporate/commercial practice, commercial litigation and arbitration, energy and natural resources law, anti-bribery and anti-corruption practice, government regulatory/compliance, employment and labour issues, local content, maritime and shipping, immigration, customs issues and taxation.

We have an excellent team of highly qualified and experienced partners who have impeccable and outstanding reviews in their respective areas of practice, and associates who are rising stars in their areas of specialisation.

We have an excellent reputation for our extensive knowledge and pragmatic approach in dealing with clients' instructions.



QUESTION ONE

How will increased hybrid working impact commercial decision making – and how can businesses successfully communicate their commercial goals to disparate hybrid workforces?

The emergence of platform economies prior to the outset of the global COVID-19 pandemic made the case for a hybrid work force indisputable. The lockdowns and restrictions imposed on businesses across countries accentuated the need for increased hybrid working. This, invariably, has its impact on commercial decision making.

A natural consequence of increased hybrid working on commercial decision making is the need to develop and implement policies which cater for the peculiarities of the dual work force and ensure that the goals and objectives of the business are not imperilled. All businesses exist to make profit and hybrid working necessitates clear-cut strategies to achieve and maintain that objective.

Businesses can adopt the following communication tools or outlets to disseminate their commercial goals to a disparate hybrid workforce.

- Adopt asynchronous communications
- Ensure that employees feel connected
- Encourage cross-department collaboration
- Appoint team leads for large projects: this allows employees to meet with the other leaders to exchange feedback, hold themselves and their teammates accountable, and drive the project to completion
- Ensure all departments are aligned when establishing KPIs, goals, budgets, and expectations
- Encourage communication to promote knowledge sharing.
- Push digital collaboration
- Prioritise mental health and wellness
- Adapt to digital transformation
- Create programs and morale boosting events for employees.
- Live stream video: this could include questions and polls, workplace chat, status updates or video selfies

QUESTION TWO

Are there businesses in your jurisdiction that are reticent to allow long-term hybrid working? What are the commercial risks for those who refuse requests for partially remote working?

It is often the case that not all businesses will embrace the groundswell of innovation exemplified in hybrid working and this is a reality in my jurisdiction. The category of businesses that are most welcoming to long-term hybrid working have been startups in the digital and fintech space, whose essential business model amplifies the need for off-site and remote working. The bigger and more traditional businesses have been reticent to adopt remote working and, upon relaxation of lockdown restrictions, were swift to return to an office-based 9 - 5.

The reasons for the latter's reluctance include: a larger client base that they may not be able to satisfy remotely; more staff members, which gives room for more meetings and a greater need for collaboration and teamwork, and; greater operational needs that remote work or co-working spaces cannot quite cater for.

When the idea of working remotely became popular, many people expected large companies to jump on this trend, but this was not exactly the case. However, there are commercial risks for those who refuse partial remote working, such as: a disoriented and discontented work force; mental wellbeing issues amongst remote employees who desire remote working; a lack of flexibility in work structure in the midst of a continuing global pandemic; increased operational costs from maintaining business facilities; reduction in projected profits; absence of a sense of inclusion amongst employees; lack of proactive approach to company culture; lack of space efficiency; failure to determine where employees work best.

QUESTION THREE

Hybrid working can have a significant impact on revenue maximisation – how can businesses generate commercial advantages from a hybrid future?

Businesses can generate commercial advantages from a hybrid future in the following specific areas:

Increased productivity

A hybrid model can offer flexibility and empower employees to work to their strengths, which in turn boosts productivity. By encouraging a culture that views remote work as a positive alternative to completing deep-focus tasks in the office, teams can find a good balance of creativity and collaboration. Employees who need peace and quiet to focus or who thrive in an office setting can be given the choice to work where and when they're most productive.

Improved employee satisfaction and culture

Autonomy is the key to employee satisfaction. If you provide full autonomy and decision-making on how, where, and when your team members work, employee satisfaction will skyrocket.

More possibilities for continuous learning

Many organisations are performance-driven – but too often, the result is there is not enough time for learning because employees are too busy performing. An output-focused

TOP TIPS

Securing commercial success in a hybrid future

- ✓ **Define What a Successful Hybrid Work Environment looks like for your company.**
There are several types of hybrid work environments impacting how your employees work. To implement the right one, you need to define what a successful hybrid work environment looks like. The following are helpful suggestions: the nature of your company's work; your organisation's capabilities to adapt to a hybrid work environment (e.g., budget, data security, etc.); employee work preference; your definition of productivity
- ✓ **Determine Where Employees Work Best.**
It is crucial to understand where each employee performs well. To find out, start by comparing employee key performance indicators (KPIs) before and during the pandemic to get an objective understanding of what works best for them.
- ✓ **Align on Hybrid Work Schedules Across Teams.**
Since not everyone in an organisation will be working in the same space or at the same time, projects that require cross-team collaboration can suffer in hybrid environments. You may have some employees that work from different time zones or some projects that need all team members to work together. Thus, making sure that your employees and team schedules align is paramount to the productivity levels and success of a hybrid work environment.

approach does not enable the long-term development of employees, and high productivity can mask an exhausted workforce. The beauty of the hybrid work model is that employees can choose to work whenever they please, meaning that they can schedule their work outside of regular meeting hours so that they can focus on getting work done peacefully and without being disturbed or distracted.

Better collaboration and work relationships

Virtual meetings can play too great a role in hybrid work. We need to find new, more efficient ways of working that do not involve workdays filled with meetings.

Improved mental health

While work and life may rarely be in perfect balance, work-life fit is a vital aspect of any healthy working environment. And hybrid work enables each employee to fit their work and life together in a way that works for them. This reduces stress and helps prevent burnout.



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Gordinier Kang & Kim LLP is Southern California's premier boutique business law firm. We are dealmakers, not deal breakers. We take pride in offering sophisticated and creative solutions to the most challenging legal issues. We focus on providing big-law quality work in an efficient and comfortable boutique setting to provide better value for our clients. Gordinier Kang & Kim LLP has recruited top lawyers in their respective practices who were formerly partners and associates at internationally known, highly respected law firms, and worked as in-house counsel at large private companies. We have the flexibility to efficiently handle matters of all sizes, and the business knowledge and trial experience to handle the most complex and important cases. Our experience advising on legal issues affecting businesses of all shapes and sizes across a wide array of industries provides a broader perspective on key decisions that matter to our clients. We assemble teams of the most skilled attorneys, at every level of experience, to develop a winning strategy.

QUESTION ONE

How will increased hybrid working impact commercial decision making – and how can businesses successfully communicate their commercial goals to disparate hybrid workforces?

Maintaining flexibility within the organisation is key to commercial success. The definition of 'office' has evolved from a primary workplace to a place where people gather to exchange ideas and innovate.

But there are definite limits to virtual collaboration. The most obvious effect of physical separation is the lack of relationship building. Onboarding, training, and mentorship are just a few areas that a hybrid work environment has failed to address. Further, without human interaction, there are inadequate opportunities to foster creativity. Businesses that have struggled in these areas need to re-evaluate their remote working policy.

To fully enable a hybrid future, it is necessary to design a seamless digital workplace that better connects workers. Both remote and onsite workers must be especially tech-savvy to maintain the level of productivity. Businesses should implement an efficient document tracking system that allows employees to easily hop on and off a working document. Businesses need to understand that the pre-pandemic network infrastructure is simply not

enough to accommodate the increased bandwidth due to remote work.

That said, technology can shape, but cannot lead. Employers should identify areas that enhance productivity within the organisation. For instance, even before the pandemic, the younger generation of workers resisted the use of phone calls as means of communication, instead turning to texts and instant messaging. But none of these were meant to replace in-person interaction. Businesses will have to assess what works and what doesn't based on the organisation's needs.

Most importantly, the disruption is ongoing, and businesses must embrace a continuous improvement mindset. As the Great Resignation has made clear, workers are re-evaluating their relationship with their employers. Employers need to accept feedback and changes to the evolving workforce to successfully communicate their commercial goals.

QUESTION TWO

Are there businesses in your jurisdiction that are reticent to allow long-term hybrid working? What are the commercial risks for those who refuse requests for partially remote working?

Commercial real estate has been reticent to allow remote working. The sector's viability is tied to office space utilisation, which may further drive this trend. While this may offset the effect of vacant office space in the short term, it could also deepen the Great Resignation. Similarly, paper-heavy office systems, such as the legal and financial sector, have also been slow to adopt long-term hybrid working.

Ultimately, the driver of change will be clients. Businesses generally take their cues from those they represent. Out in southern California, the hybrid model will look more like an in-person model as the real estate and service industry push more forcefully for their workforce to come back. On the other hand, in northern California, tech companies had embraced a hybrid model even before the pandemic. The workforce will gravitate towards remote work opportunities, which will impact talent acquisition.

Based on a comment by Rachel el Johari, an Amsterdam-based employment lawyer at Sagiure Legal, studies have shown that employees are more productive working from home. As a result, Dutch employment laws may evolve to require employers to allow employees to work at least 50% from home.

In contrast, Kaitlin Flinn, a Tulsa, Oklahoma-based tax professional, observes that some sectors, such as accounting, have experienced a significant reduction in productivity and revenue from remote working. These businesses will likely require employees to work in the office.

Each company will make its own decisions on long-term hybrid work based on a combination of factors such as employee locations and actual office space usage. Workers want flexibility, and if not, a valid justification for the decision to limit it.

Lastly, there remain lingering legal questions that must be addressed. Do malpractice laws apply to remote workers? Which laws govern them? While they may sound like the distant future, keep in mind that the hybrid work model would not have gained much traction just a few years ago.

TOP TIPS

Securing commercial success in a hybrid future

- ✓ Focus on unity and cohesion in the workforce. There is little benefit in coming back to the office if there isn't a critical mass of people to interact with. Do not create a gap between different groups within the organisation. Incentivise workers to come back to the office. For example, providing snacks and beverages could be a start.
- ✓ Think twice about switching to 'hoteling'. While it may reduce office leasing costs and signal greater flexibility to the workforce, it does not consider the employees' preference for designated office space. Office space is transitioning to more of a space for socialising and relationship building, instead of the traditional primary workspace. Depending on the organisation's needs, hoteling may be a double-edged sword. Employers need to balance the needs with costs and decide on how to structure the future workplace.
- ✓ Employee experience has to be better in the office than it is at home. 'Better' could mean different things to different people. Each business should identify the specific needs of the employee and make the office 'better.' There will not be a one-size-fits-all plan for businesses.

QUESTION THREE

Hybrid working can have a significant impact on revenue maximisation – how can businesses generate commercial advantages from a hybrid future?

Hybrid work has a significant advantage for businesses that require billing time to clients. Rather than commute daily for two hours, workers get two more billable hours per day. Businesses need to develop a routine that works for them. Having a structured work pattern that fosters cooperation will be critical in generating advantages from reduced commuting.

Businesses should not treat office days as the one 'work-day' for remote employees. Employers must be open and transparent about expectations, and regularly hold meetings to cultivate a culture of cooperation. This will help employees stay engaged and alert.

To maintain productivity, do not let hybrid work turn into a three-day work week. Businesses should disfavour letting employees choose their own work from home days. This will create a division between the on-site group and the work-from-home group, leading to advancement disparities. Businesses must be cognizant of personal preference when it comes to work, but at the same time, should not risk lower productivity.

One other revenue maximisation is through geographic flexibility. Employees may be able to generate further revenue from client interaction in remote locations that were once unreachable. It also allows talent acquisition from the workforce that were not previously discoverable.



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He led the team for the corporatisation of the currency printing business of the Ministry of Finance, Government of India. The result was the creation of the Security Printing and Minting Corporation of India (SPMCIL), a blend of nine units including four mints, four presses and one paper mill, which were earlier functioning under the Ministry of Finance. Singhania has since been advising the corporation on various legal issues.

He is counted amongst the most influential legal professionals in India according to the Forbes LegalPower List 2020, and Indian Business Law Journal's A-List of Indian business Lawyers. He is also amongst the 'hall of fame' lawyers in the Legal500 2020 rankings.

Singhania & Partners is engaged in diverse areas of practice with dedicated teams for corporate, litigation, employment, construction, banking & finance, and IPR matters.

S&P assists clients in foreign direct investments, entry strategy/joint ventures, domestic business structuring encompassing regulatory compliance, corporate & real estate due diligence, cross-border transactions, mergers & acquisitions, external commercial borrowings, repatriation, and technology licensing.

With their legal expertise, they guarantee foreign and Indian clients the most flexible, sustainable, and inclusive solutions for investment in India, and ensure seamless operation of their respective businesses.

In M&A transactions, they strive not only to achieve the objectives of the client, but also ensure that the deal is fair to the other party too. The firm also provides value addition on practical business aspects in the transaction.

S&P has significant experience in advising senior management of companies of all sizes on corporate governance procedures, conduct of AGMs, investor protection committee guidelines, disclosure, and transparency rules.

QUESTION ONE

How do you think we can develop social connections, affinity to organisation, and communicate organisational goals in the remote working/hybrid working model?

Working from home gathered steam in 2020 and it is no longer a 'work-in-progress'. Industry sectors and organisations are reimagining their business processes and human resource management strategy to adapt to this new model.

Hence, companies are revisiting their organisation policies and investing in IT infrastructure and cyber security measures to support hybrid working arrangements according to job roles, experience, and specific time commitments.

With workforces separated by geography and culture, engaging employees, instilling a feeling of belonging, and meeting business objectives have become a challenge. An impactful internal communication strategy is an important enabler.

Infusing a sense of unity in this faceless workforce is as much a strategic initiative as establishing communication norms in team management.

It is a given that the future of work is hybrid. That means remote working infrastructure is an immediate necessity, not a luxury to flaunt in 'best places to work' surveys.

A priority for a remote workforce is digital-savvy and cyber security

awareness, supported by login systems, internal networking software, and education on safe and secure remote work.

- Companies should invest in intranet/internal networks to allow easy communication of company achievements, event promotions, and media. These channels can reinforce company culture, morale, and feelings of unity and belonging, even at distance.
- Other initiatives such as weekly catch-ups for teams can give everyone the opportunity to connect, open-up, and share their experiences with their colleagues.

Focussed communication channels like the ones mentioned above will help businesses to navigate towards their goals.

QUESTION TWO

Are there businesses/industries in your jurisdiction that are not in favour of long-term hybrid working? What are the risks for the organisations who are not flexible with work arrangements?

There are businesses and industries where hybrid working is not a possibility and some organisations strongly advocate working from the office. But given the direction that work has moved in the last three years, it is now strategically important to offer a hybrid working arrangement to be able to attract and retain talent at competitive remunerations, and to cut the cost of buying, leasing, and maintaining offices

The work from home and hybrid model is here to stay and organisations will have to adapt to it. However, some employees prefer working from the office, whether they feel the need for in-person connection, find it more productive, or have homes that aren't well suited to work. If the workforce is divided by location, the playing field could tilt unfairly in favour of those in the physical workplace.

QUESTION THREE

Hybrid working can have a significant impact on revenue maximisation – how can businesses generate commercial advantages from a hybrid future? Or why it makes a business sense to allow hybrid working in modern organizations?

Hybrid working can have a significant impact on profit.

- It can be a strategic tool for recruitment and retention. With the multiple 'hats' that working women wear, flexibility is a big lure for those with family responsibilities, and those in search of greater work-life balance. Three hours saved in daily travel suddenly adds 15 hours to pursue other priorities.
- There are substantial cost savings in real estate, support staff, and facilities management. Workers from non-metro

“With workforces separated by geography and culture, engaging employees, instilling a feeling of belonging, and meeting business objectives have all become a challenge.”

TOP TIPS

Securing commercial success in a hybrid future

- ✓ Address the needs of your organisation's members. Focus more on attracting and retaining talent than ensuring physical presence in the office.
- ✓ Ensure productivity with check and balances. Professional service firms will continue to use timesheets, which promote transparency. Regular touch points such as virtual assemblies help teams to stay focussed and connected.
- ✓ Revisit key performance areas to decide when and why office attendance will be non-negotiable.
- ✓ Ensure you have cyber security in place for every machine.

cities may also be happier with lower salaries if it allows them to work from home. Remote working also reduces a business's carbon footprint.

- Organisational policies can specify which roles do not require office work (like independent contractors, gig workers, or freelancers) and negotiate remuneration accordingly. On this basis there can be different categories of workers, which can change depending upon individual needs and professional commitments:
 - Fully Remote/Hybrid Remote (2-3 days in a week)
 - Remote-on-Demand (mainly in office)
 - On-Site (fully in office)

Disputes

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provide counsel on a wide range of commercial and complex business disputes including cross border insolvency issues, with particular emphasis on United States/Western Europe jurisdictions.

Over the years he has cultivated extensive knowledge and expertise in the complex business litigation arena as lead counsel on various matters spanning, business torts, commercial disputes, veil piercings, corporate officer and director liability, successor liability, fraudulent conveyance and transfer litigation and constructive trust litigation, and all matters of bankruptcy & insolvency litigation. He has experience counselling clients on distressed M&A transactions, corporate governance issues and complex business restructurings. He also has significant experience representing financial institutions in workouts and foreclosures of aircraft, yachts, commercial vessels and related international equipment and has recovered and repossessed same in various jurisdictions throughout the United States.

With offices in Austin, Boston, Fort Lauderdale, Fort Myers, London, New York, Stamford and Tampa, Curran Antonelli represents a wide variety of individuals, businesses and corporate entities, and governmental agencies in litigation and transactional matters throughout the United States and Western Europe. We have navigated a broad range of commercial litigation cases, including cross border insolvency, institutional creditors' rights, bet the company litigation, and have earned a winning track record throughout our jurisdictional footprint.

Our corporate group advises entrepreneurs, investment partnerships, private equity funds and venture capital firms on the legal, business and financial issues related to forming, financing, buying and selling, and investing in businesses. We counsel domestic and foreign firms in inward and outbound investments in a range of industries, including sports and entertainment, finance, communications, manufacturing, retail and consumer, and commercial real estate. Our corporate team draws seamlessly on the firm's collective experience for our business clients.

With our innovative and aggressive approach to complex litigation challenges, we consistently and effectively deliver unparalleled value to our clients. Our experienced and dedicated lawyers are well known for their innovative strategies, litigation expertise, and unfailing delivery of the exceptional results our clients seek.

QUESTION ONE
Should businesses be wary of losing important evidence/corporate communication records in a shift to hybrid working? What steps can they take to protect themselves?

We are all well entrenched in the digital age with emails, texts, Slack, etc., which can give companies and organisations a false sense of security due to the increased documentation of organisational communications. However, the rapid shift towards hybrid working has created an increased risk of inadvertent organisational communications loss. Electronically

stored information (ESI), has become one of the most important factors in hybrid work environments. Every element of ESI will, and should, be preserved, with redundancy, for an extended period of time.

Though organisations should always be wary of losing critical corporate data and information, the advent of hybrid/remote working can heighten these concerns, if proper data storage procedures are not implemented and consistently maintained. Companies should initiate, and enforce, daily back up routines and practices to ensure their data is safe and stored. As workforce interaction becomes more electronic and less face-to-face, communications will move towards digital recordings, therefore adequate preservation protocols must be designed and implemented. This will greatly assist an organisation in defending itself if/when a dispute should arise. Collaboration with IT professionals on how to best tailor data and communication storage for future collection and data mining is critical.

QUESTION TWO
What are the most common working from home/hybrid working pitfalls that businesses need to be aware of when involved in, or exploring, disputes today?

The biggest challenge in resolving disputes is the inability to be in the same room as the employees you are attempting to placate. You lose the 'in person' effect of meeting the individuals and feeling their presence. The artificial presence of Zoom or Teams is a poor substitute for in-person interaction.

Another concern in the hybrid/WFH environment is losing touch with employees, and not knowing of the existence of an ongoing dispute until it's too late. Managers should be maintaining regular contact with their team, to ensure their needs are met, and consider scheduling regular open floor meetings where everyone has a forum to raise any issues they are experiencing. This approach should establish and encourage clear avenues for reporting any issues that escalate to a serious level.

Companies also need to ensure employees are appropriately dressed and professionally prepared for all hybrid/remote meetings, including Zoom/Teams.

QUESTION THREE
Is hybrid working likely to increase employment disputes in the future, and what should businesses do now to prepare for this?

It cuts both ways. On one hand, the reduction of in-person interaction lessens the likelihood of offhand (and inappropriate) comments in the workplace that can lead to harassment or workplace-related claims. On the other hand, where Zoom meetings may be recorded, certain inappropriate comments are now on the record and not just hearsay. It is hard to deny you said something when it's on video.

Similarly, the new normal of working from home severely restricts employers from claiming the requested accommodation of working from home is 'unduly burdensome.' Indeed, working from home is now, for many, a reasonable accommodation and extremely difficult for an employer to refuse (with obvious exceptions, of course, for specific

TOP TIPS
Successfully managing the hybrid work place

- ✓ **Secure ESI:** All electronically stored information must be made secure by implementing proper systems to ensure that same information is kept for an extended period. This will include videos, emails, etc. Because the amount of ESI available with the new hybrid model of work will be extensively larger, it is important to make sure that this is a top priority for protection of the company in any possible dispute.
- ✓ **Update policy manuals and complaint processes:** Policy Manuals need to be updated to include off-site work as well as hybrid work methods, including new processes for employees to file complaints, as employees may not have the opportunity to make complaints face-to-face in the new model. Streamlining policies across departments will assist the company with responding to the same.
- ✓ **Foster open communication:** Create an open environment, conducive to communication, order to facilitate information exchange between employees and management. Mental health will be a top priority with employees working remotely or in a hybrid model; by broaching this subject from the top down, it can ease employees' discomfort in asking for help or raising attention to a problem.

“One concern in a hybrid/WFH environment is losing touch with employees, and not knowing about a dispute until it is too late.”

industries that require employees to be on site). It has certainly altered the accommodation landscape.

It's hard to tell if the number of disputes will increase, but disputes will likely manifest in new ways. For example, there will inevitably be sexual harassment, retaliation, and other such suits arising from disputes between employees who have never been in the same physical space. There may also be disputes arising from an employee's interpretation of a written email or message from a co-worker, such as reading in an aggressive tone or sarcasm, which may or may not have been the sender's intention.

In this regard, companies should have clear policies in place mandating appropriate manners in which to address co-workers in writing, and avoiding messages which could be interpreted negatively.



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GrahamThompson ("GT") prides itself on its unique combination of expert legal skills and real-world experience in working out effective solutions to complex problems. With 65 years of continuous history and a first-rate balance between seasoned practitioners and dynamic young lawyers, GT is excellence-driven in every way and, accordingly, well-known as a leading firm in the Bahamas and the Turks and Caicos Islands.

The firm's efforts are focused on maintaining a satisfied clientele, drawn locally and from across five continents. The key ingredients of the GT ethos are integrity, hard work, uncompromising loyalty to the client, ethical restraint in charging fees, and understanding the 'big

picture' of our clients' legal needs.

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

QUESTION ONE

Should businesses be wary of losing important evidence/corporate communication records in a shift to hybrid working? What steps can they take to protect themselves?

Should they be wary? It is imperative in the legal field that all possible steps are taken to ensure that no evidence is lost. This is particularly important in corporate litigation, in which the evidence is invariably document-heavy.

Corporate client disclosure obligations in litigation are wide-reaching, and loss of information could be catastrophic to a client's case. The disclosure obligation extends to all evidence/corporate communications that are or were in a client's possession, power or control. Disclosure is a time-consuming step in litigation matters, and both clients and their representatives need to ensure the system of document retention/recording of communications

is maintained during the shift to hybrid working.

If not maintained in a central/easily accessible location, a party may fall foul of these extensive obligations.

Further, from the point of view of assessing the strength/weakness of any case it is important for the corporate client and its advisors to have access to all relevant documents/communications.

Hybrid working is susceptible to security weaknesses when staff are operating outside of the entity's networks. Cyber-security risks and the hacking of sensitive data are on the rise. Moving away from a central location to a more hybrid work environment increases the risk. That loss can amount to either a total loss of the information (i.e., it is irretrievable) or an intellectual loss, in that confidential information falls into the wrong hands.

Steps can be taken to mitigate these risks, including:

- backing up all physical documentation electronically
- organising a document management system, which can be accessed remotely, to help identify a potential breach.

Corporations should ensure adequate server security, with sufficient malware protection; regularly train all staff members in remote working protocols, and ensure that they adhere to security policies.

We would encourage corporations to seek advice on how best to manage documents, particularly when matters are (or may become) contentious.

QUESTION TWO

What are the most common working from home/hybrid working pitfalls that businesses need to be aware of when involved in, or exploring, disputes today?

Of concern is the lack of immediate connection/availability of co-workers. Hybrid working takes away the 'open-door' environment of bouncing ideas back and forth with colleagues, which in turn hampers the development of cohesive strategies.

The same is true of their lawyers who may be working in a similar environment.

Remote hearings, whilst offering savings in travel time, can become tedious and lengthy. We have experienced issues where court hearings are plagued with connection issues, user-deficiencies, and the soul-destroying phrase: 'You are muted'. Despite technological advancement in platforms such as Zoom and Teams there is an ever-present inability to connect to meetings and a lacuna of knowledge of how these platforms operate. This can lead to an increase in legal costs when hearings have to be abandoned.

It is harder to read the Courtroom remotely, as you only see the face of the person who is speaking. This makes it difficult or impossible to read the body language of a judge/witness/opponent. You are focused on the speaker and do not pick up on the reactions of other players in the hearing. This in turn erodes the advocacy skill of redirecting arguments 'on the fly' in response to reactions. We have also experienced 'convenient' connection breakdown issues when a party is faced with a difficult question.

Remote meetings are also plagued with issues ensuring that all attendees are looking at the same document, and difficulty in introducing new documents not shared prior to the meeting.

Remote hearings take away the formal setting of the courtroom, which in turn can impact the seriousness of the issues. You would never expect a party to attend court with a cup of coffee, but we have frequently seen this in remote hearings.

TOP TIPS

Successfully managing the hybrid work place

✓ **Communication:** maintain open lines of communication with team members and clients. This will ensure everyone is working towards the same goals/has the same expectations: ensure nothing is lost in virtual translation.

✓ **Back up, back up, back up:** make sure your document management system is iron-clad (against those who should not be able to access it) and easily accessible to those who need it (employees/clients as necessary).

✓ **Take advantage of the remote functions:** witnesses can be called that might not otherwise be available in person and witnesses' costs are less (travel and expenses). Judges have also had to become more tech-savvy: use this to your advantage in the presentation of your case and learn to use the functions of virtual meeting technology efficiently and effectively.

QUESTION THREE

Is hybrid working likely to increase employment disputes in the future, and what should businesses do now to prepare for this?

We believe so. People are looking for and expecting a more flexible working life and if reasonable requests for hybrid or more flexible working conditions are refused this could lead to constructive dismissal claims. Businesses will need to actively review their operations to see if a hybrid/WFH culture can be accommodated. It will not suit all industries, but where it is possible, the workforce are likely to be disgruntled if not allowed to work from home.

As noted above for some employees, hybrid working may also affect productivity, positively or negatively. Flexible working may mean that the employee puts in more hours, dealing with matters outside of the normal working day. But it can also lend itself to procrastination, as an employee can be easily distracted by outside influences. Managing under-achievement remotely can be challenging, and could lead to claims that employees are not being provided with adequate resources or training. Employers will need to consider how decreased productivity can be managed from a progressive discipline standpoint.

Employers should be prepared to increase staff/production monitoring and increase the frequency of appraisals as day-to-day monitoring of an employee's attitude and commitment is more difficult without face-to-face contact.

Consideration should be given to a policy of handling employees who refuse to come back to the workplace. If flexible working is integrated into the corporate culture, care needs to be given to disciplining employees who refuse to return to the work place, without falling foul of the protection against unfair dismissal.



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As JCL's Managing Partner with more than 30 years' experience, Jim leads the firm's strategic direction, which has always focused on effective and efficient problem resolution. He is a recognised leader in commercial litigation and insolvency law and has garnered a widely respected reputation within Queensland's legal community.

The firm was established because Jim is passionate about achieving positive outcomes for clients and providing real value for money. Since JCL's inception, Jim has consistently adopted a pragmatic, direct and confident approach to skilfully navigate his clients through complex legal matters, with unwavering commercial results.

Jim's impressive career has seen him serve as the Queensland State Chair of the Insolvency and Reconstruction Committee of the Business Law Section of the Law Council of Australia, Queensland State Chair of the Insolvency and Reconstruction Committee of the Queensland Law Society and the National Chair of the Insolvency and Reconstruction Committee of the Business Law Section of the Council of Australia.

James Conomos Lawyers was established by James Conomos in July 1992 as a boutique legal firm offering specialist expertise in commercial litigation and insolvency. The firm came into being because James is passionate about achieving positive outcomes for clients and providing real value for money.

Since then, James has pursued his desire to help younger lawyers learn the art of law and problem solving. Through his mentoring, James has shaped a team of capable and ambitious lawyers who will adeptly solve your legal problems within a realistic time frame.

Based in modern offices in the heart of Brisbane's central business hub, our team has now grown to a total of 15 staff. Expertly guided by Director James Conomos, you can rely on us to tackle any commercial issue you throw our way.



QUESTION ONE

Should businesses be wary of losing important evidence/corporate communication records in a shift to hybrid working? What steps can they take to protect themselves?

The hybrid environment, which we all have become accustomed to, presents great challenges for business. That said, the challenges can be addressed by businesses using common Document Management Systems to enable safe and accessible collaboration and information protection.

Until the COVID-19 Pandemic, workforces were primarily in-person and whilst Document Management Systems were becoming mainstream in many service businesses, particularly lawyers and accountants, business, more generally, had to catch up. As the hybrid work environment has become more prevalent in Australia, many small and large businesses are struggling to get their workforces to return to in-person locations.

Business had to quickly upskill and invest in Document Management Systems. They had to learn that to continue operations when many existing processes depended on in-person staff in one location, Document Management Systems may well present the answer. These systems would protect and preserve evidence and enable the hybrid workforce to access information remotely.

Document Management Systems facilitate and assist the hybrid work

environment, by providing access to key information by many users and enable business to maintain security over information and in many cases, ensure productivity.

Business has had to quickly assess how to upskill their workforce, many of whom are working remotely and Document Management Systems provide benefits both for staff and management.

QUESTION TWO

What are the most common working from home/hybrid working pitfalls that businesses need to be aware of when involved in, or exploring, disputes today?

Whilst there have been significant benefits from the hybrid working environment, there are also many pitfalls including workplace disconnect, disproportionate work-life balance and less face-time with other staff.

In a disputes' environment, staff continuity and retention are invaluable because the loss of knowledge and the cost of retraining present additional significant financial burden for business.

As business owners, we all know or come to realise that our most valuable and most costly resource is our workforce. The challenge of the WFH or hybrid environment presents significant problems for a workforce. For some, often, only individuals, the WFH model works in the most positive way. This applies particularly to those who can work without supervision and without the distractions of the in-office environment.

However, for those members of the workforce, who cannot work without supervision (often the majority of a workforce), the WFH or hybrid model, presents significant challenges, particularly in staff retention.

The truth is that most employees and owners would be happy enough if they did not have to work at all but if they have to work, they need to be stimulated and have goals. The great risk associated with the WFH or hybrid model is that employees:

- lose the incentive to work because they are at home
- become unproductive and become distracted at home
- environment
- do damage to their work/life balance, which is critical to maintaining a solid workforce
- the increased in-home office costs, presents challenges for employees and employers and can lead to discontentment
- can lose the enjoyable part of work, which is often the people and work environment

In the disputes' environment, where collaboration is king, the WFH or hybrid model often does not work and will rarely work without proper Document Management Systems that work in the cloud.

“As hybrid work has become more prevalent, many businesses are struggling to get their workforce to return in-person to locations.”

QUESTION THREE

Is hybrid working likely to increase employment disputes in the future, and what should businesses do now to prepare for this?

The WFH or hybrid model will present new problems for disputes between employers and employees. In Queensland, Australia, a recent decision of the Queensland Industrial Relations Commission (Commission) has upheld an employer's decision to refuse an employee's request for a flexible working arrangement to work remotely from another location – see *Hair v State of Queensland (Queensland Health)* [2021] QIRC 422.

In this case, Ms Hair was employed as an employment advisor at a local hospital. In January 2020, Ms Hair requested to work from home one day per week and it was approved. In March 2020, Ms Hair commenced working remotely on a full-time basis in response to the COVID-19 pandemic. She continued to work from home for 18 months, and only attended the workplace on three occasions. In September 2021, Ms Hair submitted a request to work remotely from a different location, as her partner was starting a new job there. The request was made under a workplace policy. In October 2021, her employer wrote to Ms Hair denying the request. The detailed letter included consideration of a range of matters including the principle of flexibility, and nature and location of work.

The Commission was required to consider whether the employer's decision to deny Ms Hair's request was fair and reasonable. The Commission found in favour of the employer for reasons including:

- the employer had anticipated that there would be a transition from the remote working arrangements that were in place during COVID-19. It was not unreasonable for the employer to take this into account when considering applications involving employees who had worked remotely for the majority of the time
- it was reasonable for the employer to take into account that it would be difficult for Ms Hair to provide in-person support in a timely manner, given she would need to fly a long distance to return to work
- it was not unreasonable for the employer to seek to return some human resources services to an in-person model, when the most appropriate, productive and preferred way of providing human resources advice and support was face-to-face
- it was fair for the employer to consider the implications of approving a wholly remote working arrangement, including the impact on other team members, if Ms Hair was unable to attend to a meeting at short notice.

The key takeaways from this decision include:

- employers can reasonably refuse an application from an employee to work primarily from home where an employee's role requires the provision of face-to-face services
- it is not unreasonable for employers to anticipate that employees will transition towards spending more time in the workplace
- employers should carefully document the reasons for refusing a request.



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Chris Niekamp engages in a diverse Commercial and Corporate Law practice. Chris has represented national and local banking institutions, large corporations and small businesses, debtors and creditors in all phases of Bankruptcy and Collection matters.

He has experience handling large and small Chapter 11 cases on behalf of Secured Lenders, Debtors, the Creditors' Committee and the Trustee. He has represented numerous large and small companies in issues ranging from start-up through dissolution, employment law issues, collection, real estate litigation, real estate acquisition, commercial lease documentation, mergers and acquisitions, and shareholder disputes.

He has experience handling commercial and residential foreclosures and has negotiated and prepared documents for corporate mergers and acquisitions, real estate transactions, wind down, forbearance agreements, condominium documents, commercial leases, non-profit 501 (c)(3) documents, employment agreements, shareholder agreements, buy sell agreements and close corporation agreements.

In addition to his Bankruptcy and Corporate Law experience, Chris has a niche practice in Entertainment Law.

Buckingham, Doolittle & Burroughs is Northeast Ohio's business law firm. We've served the Akron, Canton and Cleveland areas for over 100 years; therefore, this region has become our home and the businesses in this region have become our family. We don't just represent you. We support you and stand by you; we understand your business and become an extension of it; we celebrate with you and cheer for you; we go to great lengths for you, and we listen to you. For all of these reasons we are more than a business law firm. We are your partner in business.

We have thrived over the years because of this work ethic. Our long history in the region reflects the depth of experience our attorneys possess, not only in the practice of law, but in the industries you live and breathe every day. We know that we have to understand your business in order to protect it, a



QUESTION ONE

Should businesses be wary of losing important evidence/corporate communication records in a shift to hybrid working? What steps can they take to protect themselves?

As with all new frontiers the legal world faces, it is important to approach with caution. The issues and challenges of remote work are no exception. Therefore, every business should be diligent in protecting confidential files in a remote working environment. By taking the proper steps and procedures, businesses can reduce any uneasiness they may feel in their cyber security.

Businesses seeking to protect records, files, and communications need to start with the basics and adopt a cyber security policy. Once a policy has

philosophy established by our founding fathers.

The Buckingham, Doolittle & Burroughs partnership was founded in 1913 between Frank J. Rockwell, a former county prosecutor and future mayor of Akron, and Princeton University Graduate Charles T. Grant. An esteemed labour and employment attorney, Lisle M. Buckingham joined in 1929, and Gillum H. Doolittle, a distinguished trial lawyer, joined in 1934. Finally, Edmund Burroughs, former editor of the Harvard Law Review, joined in 1943. We have continued to add talent and evolve as times change. However, the integrity upon which our firm was built is still reflected in our people and in the services that we provide. Today we are recognised as one of the top business law firms in the region, but we are so much more than that. Find out why Buckingham is the law firm of choice for hundreds of Northeast Ohio businesses.

been adopted, businesses need to train all their employees on their policies. A policy only works if the workforce is educated and able to execute it. Adopting a policy will require businesses to balance two competing forces: the desire for simplicity and the desire for security. A good policy will ensure security, while providing employees with simple rules and standards to ensure they don't cut corners.

Along with a solid cyber security policy, businesses will need to give their employees the proper tools for the job. Among these tools, employers will want to obtain a virtual private network (VPN), a two-factor authentication system, and online tools and platforms. There are many more tools and systems that employers should consider, but these should be the foundation. A VPN will ensure that employees are able to safely and securely access work servers without fear of interference by hackers. Likewise, a two-factor authentication system will protect access to employees' accounts and hardware by requiring employees to authenticate themselves before logging in. Companies should also find tools and platforms that allow for collaboration between employees, ensuring a cohesive work product.

With a new policy and the right tools for the job, businesses should feel better about their company's cyber security risk in a remote working environment.

QUESTION TWO

What are the most common working from home/hybrid working pitfalls that businesses need to be aware of when involved in, or exploring, disputes today?

Hybrid work has created a new work atmosphere. Very few were familiar with the challenges when the pandemic first broke out. After nearly two years, common errors in conducting business have come to the forefront.

Perhaps the biggest challenge is effective communication. Largely, remote working has stripped away face-to-face communication between employers and employees. This lack of personal communication has led to issues like lack of information, uncertainty, and people taking communication out of context. Without the personal element that face-to-face communication brings, frustration builds as people miss part of the picture, or messages are misinterpreted. Whenever possible, face-to-face communication should be used. If face-to-face communication is impossible, then consider adopting new technologies that can simulate that feel and try to be as thorough and direct in communications as possible.

Businesses should also stay connected to their employees. Remote work can sever the bond between employer and employee, and as a result employees can be forgotten. The 'out of sight, out of mind' attitude can result in a whole host of problems, from general frustrations to claims of harassment. It is important that a business monitor and maintain its relationships with employees, so that it can spot early warning signs of misunderstandings.

Through communication and relationship monitoring, employers should be able to effectively manage the workplace.

QUESTION THREE

Is hybrid working likely to increase employment disputes in the future, and what should businesses do now to prepare for this?

TOP TIPS

Successfully managing the hybrid work place

✔ **Create a Remote/Hybrid Work Policy.** The first thing businesses need to do in order to manage a successful hybrid work environment is adopt policies governing hybrid work. Employers should ensure their policy addresses issues like work hour requirements, technology policies, and considering non-exempt employees who work from home. It's best to anticipate any misunderstandings before they can happen.

✔ **Communicate.** Adopting a remote/hybrid work policy provides a good start, however, a policy needs to be communicated. It is important that businesses keep their employees up to date on the latest changes. Through effective communication businesses will be able to set standards, create a feeling of inclusion, and build strong employer and employee relationships.

✔ **Secure the Work Area.** Security in the workplace should go beyond a technology policy. Businesses need to strive to create a secure place to work for their employees so that any potential misunderstandings can be resolved early. By taking the steps outlined in this article, businesses may be able to shield themselves from liability for failing to protect client confidentiality, and reduce employment law exposure.

It may still be too early to truly know and understand all the effects of hybrid working. However, it is almost a certainty that there will be misunderstandings in the workplace. Employers should do their best to limit misunderstandings by anticipating problems before they arise.

The first thing is to review workplace policies. Businesses will want to carefully examine these documents, ensuring that they cover any issues that may arise from remote/hybrid work. If the current policies fail to address certain issues, then it is imperative that new policies are drafted and their contents are effectively communicated to employees.

Hybrid work has also changed how employees conduct themselves and how work is done. Businesses will want to review each employee's job description, and change it to fit the hybrid working model. Changes should incorporate things such as the hours an employee is required to work, when the employee is permitted to work, and where the employee will be working each day.

Once again, at the heart of all preparatory actions taken by businesses, is the need for upfront and effective communication. Without standards being effectively communicated, employees and employers alike will grow increasingly frustrated. Therefore, employers will not only need to document changes to policies encompassing remote/hybrid work, but they will also need to inform employees of the changes.



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Shilpen has a dual practice focused on dispute resolution and employment law. His expertise as a litigator is in high value commercial dispute resolution and contentious corporate and partnership matters, often involving an international element. He has conducted a number of reported cases and cross border disputes, and has a reputation for securing the best commercial outcome for his clients.

Shilpen also advises and represents employers, employees, and professional clients in all aspects of employment and partnership law. He has expertise in restrictive covenants, discrimination, whistleblowing, restructuring and bonus disputes. He represents senior executives, self-employed professionals and company directors in connection with their entire workplace needs, including claims in the Employment Tribunal and the High Court. Shilpen is a Londoner and is passionate about the capital's unique identity and cultural variety. He is a committed advocate and driver for diversity and inclusion in the workplace.

Shilpen is a CEDR-accredited independent mediator and accepts appointments in relation to business and workplace disputes.

gunnercooke is one of the UK's fastest growing law firms, providing a wide range of corporate and commercial legal services to businesses, banks and financial institutions. The firm was founded in 2010 to challenge, improve and evolve the way that legal services are delivered. We believe that the legal industry serves neither clients nor lawyers the way it should.

Our founders set about doing things differently from day one, flattening out the traditional hierarchy and establishing a new model based upon flexibility, transparency and freedom. All gunnercooke lawyers have a client-focused approach and at least 10,000 hours' practising experience. They also operate on a fixed-fee basis, meaning work is scoped out from the outset and cost certainty is guaranteed. As a result, all clients have access to trusted advisors who have a breadth of experience and knowledge, enabling them to work on all matters from straightforward transactions to complicated cases that require complex solutions.

The firm has been recognised for 44 industry awards and currently employs over 330 legal professionals and management consultants across seven offices; London, Manchester, Leeds, Birmingham, Edinburgh, Glasgow and Berlin.

QUESTION ONE

Should businesses be wary of losing important evidence/corporate communication records in a shift to hybrid working? What steps can they take to protect themselves?

There are many good reasons for businesses to support requests for flexible working and facilitate hybrid working. But remote working brings a number of new risks and considerations. The first of these is the protection and preservation of sensitive content and communications, which becomes much more difficult when employees can work from virtually anywhere.

Equally important is data protection. There are significant implications arising from UK data protection legislation, including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR) and the Data Protection Act 2018. Employers must take measures against unauthorised or unlawful processing, accidental loss or destruction, or damage to personal data in order to avoid prosecution.

The answer to both issues mainly lies in technological safeguards, and ensuring that employment contracts are fit for purpose. Precautions are needed for keeping confidential information secure such as strictly limiting access to the employee, use of passwords and encryption, a secure filing cabinet and facilities for confidential disposal. Specific training is also advisable in

relation to the employer's data protection and confidentiality obligations. This should include the procedures which they must follow, and what is, and is not, an authorised use of data. A data privacy impact assessment should also be undertaken for all remote workers.

Contractual considerations include expressly providing for a duty of confidentiality, but an obligation to keep the relevant information secure should be added too. Restrictive covenants should also be reviewed and amended so that they provide genuinely enforceable safeguards. Another focal point, and frequent cause of litigation with employees, is the importance of securing the ownership of any intellectual property created by employees during working hours. This is an essential safeguard in any role where IP is critical to a business – but it is even more important when employees are being trusted to manage their own time away from the workplace.

QUESTION TWO

What are the most common working from home/hybrid working pitfalls that businesses need to be aware of when involved in, or exploring, disputes today?

Working remotely is very different to the traditional model of working from a fixed office space, and requires modern management methods. This is because it is harder to supervise those employees, or to monitor their output, and the switch to their own homes as workplaces presents a greater risk of confidential information being misused or accessed wrongfully.

In my experience, the main pitfalls to avoid are data security breaches, neglecting the welfare of remote workers, and unintended discrimination.

Protecting confidential information is essential for most businesses, whether that is in relation to their own data or the data of customers. There are also data protection considerations in relation to personal information that is processed by a business. So effective data security measures are needed, backed up with appropriate contractual provisions.

Employers are also responsible for an employee's welfare, and health and safety, and this does not change just because employees stop coming into the office. Failing to do this can lead to claims for personal injury and prosecution, too. So suitable and sufficient risk assessments of all the work activities carried out by employees are necessary, to identify hazards and assess the degree of risk. Clear and frequent reporting lines are also needed so that there is regular contact with employees, and it is crucial to establish the boundaries of working time and ensure that adequate rest breaks are taken.

There is also a greater risk that remote workers will lose out to colleagues who are in the office more regularly. The danger here is that decisions concerning things like career advancement and selection for redundancy may lack a full and fair consideration, and could detrimentally impact, for example, those with childcare commitments or a disability. The best way to combat this – and avoid being taken to task via the Employment Tribunal – is for employers to ensure daily contact between remote workers and their line managers, to provide a degree of regular social interaction and to use communication channels that are available and inclusive to all, such as video conferencing and secure instant messaging. The aim here being, of course, to avoid excluding team members or simply making them less visible to management.

TOP TIPS

Successfully managing the hybrid work place

✔ **Embrace hybrid working as an extension of your workplace.** More and more candidates want to be able to work flexibly, and technology means we can make this happen without a loss of productivity or accountability. When rolled out properly, hybrid working should be as effective as having all your workers present in the office – if not much more so.

✔ **Be proactive about managing the wellbeing of remote workers and including them in the business.** Instil a culture that recognises the boundaries between work and home life. This should apply equally to remote workers as it does to your office-based staff, all of whom will benefit. Using easily accessible platforms such as video conferencing and ensuring regular social contact between staff will further fuse them together and improve the culture of your business.

✔ **Have regular and open contact with all staff.** Employees should have frequent (preferably daily) contact with their line managers, no matter where they work. There should be an organised appraisal structure which allows mutual dialogue, ideally supported by a good HR presence. This will provide an early warning system for contentious issues and encourage employees to air any concerns long before they think of turning to the Employment Tribunal.

QUESTION THREE

Is hybrid working likely to increase employment disputes in the future, and what should businesses do now to prepare for this?

If hybrid working is properly planned and rolled out with regard to the changing needs of working in this way, there is no reason for this to cause an increase in employment disputes. On the contrary, I think making the necessary adjustments will actually lead businesses to become more harmonised with their workforces and, importantly, also more diverse. This should in turn improve efficiencies and productivity if managed well.

As is so often the case, businesses that seek to cut corners will likely face more issues. These could be in the form of a demotivated and disorganised workforce, greater risks of data security breaches, costly employment tribunal claims from employees, and a heightened risk of prosecution by authorities such as the Information Commissioner's Office or the Health & Safety Executive.

In the end, the best way to avoid employment litigation is to be forewarned about the risks, and to address that exposure through best practices and compliance with the law.

Transactional

The following chapter features some of the greatest minds in Tax, IP, M&A, Private Client, & Real Estate. Each member is carefully vetted on their firm's expertise and experience. They each lead their industry through innovation. They are networkers, strategically advising clients by creating opportunities and making new connections. Our members are highly regarded for being at the forefront of legislation in their country, in what is a fast changing marketplace.

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As a founder and partner of Dipchand LLP, Elizabeth's practice focuses on intellectual property law and litigation focusing on the acquisition, management and enforcement of IP rights and intangible assets for clients that rely heavily on intellectual capital in their business, in particular those in the biotech and tech industries.

Clients rely on Elizabeth to advocate in high-stakes disputes with complex issue, in order to protect and enforce the critical IP rights at the core of their business. In particular, she has extensive experience in the management of complex intellectual property litigation matters in Canada, and their coordination in different jurisdictions around the world, involving patents, trademarks, and copyright issues. On the solicitor-side of her practice, she regularly advises clients on IP identification issues, acquisitions through R&D, ventures & partnerships, IP management through life cycle strategies, licensing & assignments, and leveraging technology for the prosperity of the venture.

Her formative experience began in the intellectual property litigation group of a major national law firm and continued through her practice at the nation's top ranked litigation boutique, before founding Dipchand LLP in 2010.

Nestled in the heart of downtown Toronto, Dipchand LLP is a boutique Bay Street law firm, which is the destination for purposeful, innovative and creative legal solutions, where transformative relationships catalyse magical collaborations, proliferating success and excellence in all that we have the privilege to touch. Our shop is focused on serving clients in the areas of Intellectual Property, Corporate Law, Franchise Law and Litigation.

Dipchand LLP's commitment to cultivating strong relationships with our partners and clients result in tailored, strategic advice to guide ventures of all sizes through Canada's dynamic legal landscape. They measure their value as trusted advisors by the unparalleled calibre of their legal advice and quality of service. The firm earns a rock-solid reputation over years of dependable service, which they constantly strive to maintain. If intellectual capital forms the cornerstone of your business, Dipchand LLP has the legal partners you need.



QUESTION ONE

Has WFH/hybrid working complicated IP protection practices in your jurisdiction?

Intellectual Capital, whether registrable Intellectual Property rights (e.g., patents, trademarks, copyrights) or critical intangible assets (e.g., digital assets and databases), is becoming increasingly critical to businesses across industries. A lot of this intellectual capital is being generated by a workforce that is working outside of the traditional in-office paradigm, shifting to longer-term remote work arrangements, and causing companies to rethink their IP strategies.

Canada's intellectual property regime is predominantly statutory, where the overriding principle is that the creator, developer and/or inventor is the first owner of the rights. The shift to remote work disproportionately affects the acquisition and enforcement of copyrights and patents. In terms of copyrights, the US concept of 'work for hire' is not found in Canada's copyright regime; where an independent contractor is paid to create works (e.g. photographers, software developers), the copyright subsists with the contractor, not the company who paid them. While there is some provision in the Copyright Act for employee-created works, the practical reality is that proper terms should be set out in written contracts and IP policies, especially now that lines are blurred with the increase in both remote and gig work.

Patent rights are another sensitive area that warrants attention during this shift. Previously, where technology or

inventions were created and company resources were used to do so, a presumption of the company's ownership of the resulting IP was established. However, a company's workforce may now be developing technology away from the office, making express provisions in written agreements regarding technology and IP ownership vesting with the company critical.

Even before the shift to remote work, it was common for companies to make uninformed assumptions about the ownership of IP developed by their workforce, or provided by hired third-parties, without the appropriate contractual foundation. Companies should view this as an opportunity to reconsider their IP strategies. Interestingly, the rise of the gig economy has created similar exposure which must also be addressed expressly in underlying agreements.

QUESTION TWO

What changes should businesses with a WFH/hybrid culture make to their IP management regimen?

Identification of IP is critical to its acquisition: you cannot leverage something you don't know you have. This makes strategies to record and document development imperative for companies whose workforce is remote.

Many companies now need to revise their IP policies, devise new processes, and revisit contracts with their people and partners. They should clearly set out appropriate terms for structured documentation requirements, reporting, asset identification, and collaboration. To implement long-term strategies, companies will also need to adopt a new suite of tools and platforms to facilitate technology development for deployment over secure networks and infrastructure. This will dictate how your entire workforce communicates, accesses information, and engages with the marketplace.

Trade Secrets pose an interesting and unique challenge within the remote work framework; technology is only protectable as a trade secret if it remains a secret. Take steps to ensure that such technology is developed in secret, despite the fact that developers are now working under different roofs, potentially in different jurisdictions. In contrast to other IP, where ownership is the focus, the risk to Trade Secrets posed by remote work is existential. A coherent policy, backed up with effective processes, and facilitated by properly matched technology platforms, is paramount.

There is no doubt that the onset of remote work was quick and companies had to adapt rapidly, so some matters may have fallen through the cracks. In these instances, it is advisable to take steps to retroactively confirm the ownership of IP throughout its development, or provide for remote work arrangements through such things as confirmatory assignments or amendments to prior agreements.

QUESTION THREE

How can organisations avoid IP ownership complications arising from 'blurred lines' around employment contracts and personal ownership?

Be explicit and clearly communicate. There is no better way to avoid complications than clear and transparent language. Blurred lines will arise where a company is relying on people in working environments that are not as controlled as they once

TOP TIPS

Protecting IP in a hybrid work culture

Contract audit and confirmatory assignments: Revisit and revise Employment agreements, Independent Contractor Agreements, R&D Agreements. Where third parties are providing services to your company, ensure that all IP ownership provisions are also binding their own employees. Mitigate risks of IP ownership disputes with your people properly through confirmatory assignments.

IP, privacy and cyber security policies and procedures: Ensure your processes support IP generation and address matters such as identification and tracking of existing assets, documentation and reporting processes, tracking and auditing access to important information. Ensure key employees regularly disseminate their knowledge around the company. Establish non-disclosure and confidentiality training, and other provisions that may be specific to your industry.

Infrastructure and technology review: Prioritise an actively managed strategy to hardware, software, and network infrastructure, which will mitigate the risks of company 'downtime' and provide insight into your employees' activities. Your company's tech set-up will determine the efficiency and effectiveness of your people's virtual collaboration, as well as provide insight into their efforts. Importantly, it will allow your company to monitor, track, audit, and otherwise exert control over critical information.

were, which raises the question of whether ideation, design, or development activities were supported by the employee's resources or the company's resources. Companies will need to mitigate these complications by revisiting their employment agreement. Ideally this exercise should also include a review of specific duties and reporting structures, to make sure that people are properly supported.

Additionally, companies should implement IP policies and procedures, as well as privacy and cyber security policies and procedures. IP policies and procedures are critical to processes. Communicate to your workforce the mechanisms for identifying IP, in order to acquire and protect the intellectual capital that is important to your company. This becomes even more important as people are dispersed. Similarly, privacy and cyber security considerations are now necessary to address how information is handled and secured, including the maintenance of the infrastructure critical to a company's operations.

All these strategies should be targeted; they are not necessarily going to be relevant to a company's entire workforce, but may be focused on those who are responsible for ideation, design, development and any other functions where intellectual capital is originated. In this way, the messaging on ownership of IP can be specific to avoid misunderstandings that may be caused by generalised language and blanket provisions. Above all else, however, ensure that your company is communicating clearly and regularly with your people, to increase awareness and cultivate a positive and responsible IP culture.



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Elliot H. Levine has over 40 years of experience advising clients with respect to all phases of taxation, business planning, structuring acquisitions and divestitures, and estate planning. Recognized as a leading New York-area accounting firm, Levine & Seltzer LLP was formed in 1992 by Elliot Levine, CPA and Philip Seltzer, CPA. The firm focuses on serving a broad range of clients, including high net worth individuals and businesses in the real estate, private equity, hedge fund, publishing, media, retail, manufacturing and securities trading industries. Elliot is often times retained to assist in the structuring of real estate transactions, both for sellers and buyers. The firm's clients include real estate professional who own in excess of \$30 billion of real estate.

During Mr. Levine's 30 years as the managing member of Levine and Seltzer, he has been involved in planning of

the transfer of wealth from one generation to the next. Since a primary focus of the practice has been on the owners of companies and not on the companies themselves, estate planning has been a critical element in the firm's reputation and growth. "Recent changes and proposed changes to the estate and gift tax rules in the United States have resulted in clients focusing more on wealth transfer than ever before" Mr. Levine said. "One aspect of estate planning that we discuss with our clients is the fact that all of these concepts result in savings only to their beneficiaries and that, in fact, the donor often times receives no current benefit. It is for that reason that the plans we put forth do not negatively impact the lives of the wealth creators. We are continuously thinking of new techniques to effectuate the transfer of wealth, either through derivative transactions, family LLCs or various trust structures. Add to these complexities the element of state tax implications and you end up with an area of taxation that is multi-faceted, much like a Rubik's Cube. One solves for one side, only to create issues on the other. Since we take a holistic view and look at all aspects for the client, we navigate through these complexities."

As of April 1, 2022 Levine & Seltzer merged with Weaver LLP, the 35th largest accounting firm in the country. Mr. Levine will be the senior partner in the New York office and will be in charge of Weaver's expansion into this area.

Weaver has built a nationwide presence on an unwavering commitment to its clients' success, acting with integrity and always striving to transcend expectations. The Houston-based firm has grown to be the 35th largest public accounting firm in the United States, according to INSIDE Public Accounting and Accounting Today. From Fortune 500 multinational companies to start-ups, Weaver's clients include commercial, government and not-for-profit organizations. The firm is well known in financial services,

energy, manufacturing and distribution, construction, technology, real estate, health care and government. Weaver's services go beyond traditional assurance and tax services to include risk advisory, IT advisory, energy compliance and consulting, forensics and litigation services, transaction advisory, accounting advisory, valuation, and specialty tax services such as international tax, state and local tax, private client services, transaction tax, R&D tax credit and tax provision services.

QUESTION ONE

How is hybrid working impacting private clients in your jurisdiction financially?

Working from home, or hybrid working, can create a short-term financial benefit at the cost of learning. Working from home can create an environment that focuses on delivering a 'product' rather than providing a 'service'. Clients are also finding that partners/owners are spending the time that they otherwise would be travelling, working at their computers, while employees tend to believe that this 'travel' time belongs to the employees. Many clients are saving overhead costs since they are no longer incurring travel, entertainment and other operating expenses associated with having people in offices. What unfortunately is being missed is the learning that takes place when your team is able to discuss projects and ideas on a real-time basis. In addition, clients are assessing the actual office space that is needed as the number of employees in the office every day is decreasing dramatically. The major benefit to this 'hybrid model' is that it hopefully increases the pool of people available for the workplace. In addition, it provides clients the ability to tap into resources outside their geographic location.

“What is unfortunately being missed is the learning that takes place when your team is able to discuss projects and ideas in real-time.”

QUESTION TWO

Are there any steps that private clients need to take to protect their employment or finances if they are shifting to hybrid or homeworking?

One of the 'hidden' issues as a result of employees working from their homes is the state tax impact on both the company and the employee. Many states include a payroll factor in determining the amount of taxable income that can be allocated to that state. In addition, clients may have to register and qualify to do business in various states in which their employees are now working. This could also require companies to make payroll filings in those states, in addition to being subject to employment laws in those states. Further, professional firms need professional licenses to operate in states, and the fact that employees are working from home would require that the professional licenses for those states be obtained.

New York State has a special rule with respect to determining whether or not an employee is subject to tax in New York for wages from a New York company. Under the 'convenience of the employer' rule, an employee of a New York-based employer will be deemed to have earned that income in New York State unless, out of necessity, the

TOP TIPS

Managing your client finances while hybrid working

- ✓ Maintain communication with your team – continue to speak with them (daily) and get their thoughts for ideas.
- ✓ Maintain weekly communications with your service providers – continue to monitor relationships on a weekly basis.
- ✓ Maintain communication with client: it is important to speak with them more often, so as to provide assurances that you are on top of their situation. It will pay long term dividends.

employee was forced to work elsewhere. New York State Department of Taxation and Finance recently stated, "if you are a nonresident whose primary office is in New York State, your days telecommuting during the pandemic are considered days worked in the state unless your employer has established a bona fide employee office at your telecommuting location."

QUESTION THREE

Are there any tax implications surrounding hybrid working that private clients in your jurisdiction should be aware of?

A major issue in the home working model is the lack of control. While Zoom and Microsoft Teams provide an opportunity to work and oversee what your employees are working on, it is not the same as them being in the office. In addition, the security systems needed in your network (firewalls) should be 'beefed up' so as to prevent outsiders from hacking into your system and obtaining passwords and confidential information. This is a problem that we face in the 'old' normal workplace but is merely expanded during the new hybrid model.



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Mercedes started her professional career as a tax advisor at one of the 'Big Four' companies, but after a few years she focused her practice in three main areas of specialisation: corporate, commercial, and real estate, always with an important international component – many of her clients are foreign companies or individuals, or Spanish international companies.

In corporate issues, Mercedes has experience in start-ups, mergers, acquisitions, joint-ventures and other types of strategic alliances, due diligence, shareholders' agreements, conflicts among shareholders, winding up companies, etc. She has worked closely with consultants, therefore she can provide a business and strategic approach, in addition to legal advice.

In commercial issues, Mercedes has deep experience in agency, distribution, franchising, supply, turn-key and other types of commercial agreements and distribution networks. Unfair competition, publicity, IP rights, consumer protection and data protection are as well within her areas of practice. For 2.5 years she served as General Counsel of one of the biggest franchising companies in Spain, in order to prepare this company for its internationalisation. Now Mercedes collaborates with several franchising consulting companies in three main areas: advising Spanish companies on their internationalisation processes, advising Spanish companies on how to franchise their businesses, and advising foreign investors who wish to acquire a Spanish or European master franchise for their territory.

In real estate, Mercedes has experience in corporate transactions including real estate, where tax, corporate, regulatory and civil law issues are relevant, and in advising private clients from many different countries on their investments in Spain.

Arco Abogados y Asesores Fiscales

is a firm formed by lawyers and tax advisors focused on providing the highest quality advice to companies and individuals.

Many of Arco's lawyers have more than 20 years' experience and brilliant careers at public administrations, leading law firms or private companies, always with an international approach. Our commitment is to provide high quality advice and timely responses at competitive prices.

Our lawyers not only speak some foreign languages (English, French, Italian), but understand the clients' businesses and needs in the fast moving international environment. We are proud to have very long-lasting relationships with many of our clients, Spanish or international. This is likely due to the fact that we always look for the most cost-effective solutions, while cultivating a personal relationship.

“There could be a demand for bigger homes with extra room to work from. Smaller towns could see a demand for office space and a flourishing of their commercial streets.”

QUESTION ONE

What risk does hybrid working pose to the future of real estate in your jurisdiction – particularly in terms of commercial property asset values?

Mediterranean cities used to be compact, concentrating in a relatively small space all types of real estate purposes: residential, commercial, hospitals, schools and universities, courts of justice, government buildings, and even small factories. This puts a lot of pressure on prices, making them high compared to citizens' average income. Sometimes, orography also plays a role, making mobility and the creation of a dense public transportation network more difficult. The consequence has been that prices for both commercial and residential premises, either for rent or for sale, have been much higher in big cities, with huge gaps between one city and other 'less important' ones and, of course, small towns and villages.

Nowadays, in some parts of Spain, we can already see that smaller cities and towns have gained more vitality: lower residential prices and quieter lifestyles are no longer unachievable thanks to home-work. People moving to or spending more time in such smaller cities, towns and villages also brings more business to local shops and services. In the same way, big cities have lost that number of residents or working visitors.

Fewer residents and incoming workforce imply fewer retail sales for commercial properties, and this is leading to lower rental and sale prices. In summary, we are seeing a reduction of the gap in real estate prices between big cities and their smaller competitors.

Owners of commercial premises in big cities, especially in downtown areas, may have to assume that rental prices will be lower, therefore the market value of such premises could be reduced, while in other smaller cities such prices could be increased.

QUESTION TWO

How can businesses with commercial real estate in your jurisdiction mitigate the impact that a reduced in-office workforce has on demand for commercial space?

While it is true that in-office workforce now is reduced, companies will still need office space, but it should be adapted to the new situation, with the creation of flexible spaces that can adapt to a higher or lower in-office workforce, common spaces where the employees can socialise (which has proven necessary for company culture and the workforce's psychological wellbeing), and bigger coffee rooms, lunch rooms, chill out rooms, etc.

Retail stores should also adapt to the new situation, perhaps becoming more specialised and unique, but it's possible that for some types of stores, past turnover will not return, and therefore the tenants will not be able to pay the same amount of rent, which ultimately affects the ROI and the market value of such commercial premises.

Apart from the necessary adaptation to the market, in Spain there are some usual clauses in lease agreements that could be used to protect the interests of the landlord or the tenant, depending on how they are drafted. The applicable law is the Urban Leases Act (Ley de Arrendamientos Urbanos LAU):

- **Duration of the agreement:** according to LAU, the duration of lease agreements for commercial premises can be freely agreed by the parties. It is usual to agree on a minimum duration, which protects the interests of the landlord, as the tenant could be forced to compensate the landlord in case they terminate the agreement prior to its term. In regard to dwellings, the minimum duration is 5 years, or 7 if the landlord is not an individual person.
- **Prior notice term:** long prior notice terms can be agreed in lease agreements for commercial premises, allowing the landlord to look for another tenant. Tenants who do not respect the prior notice term could be obliged to pay the rent during such a term.
- **Visits during the prior notice term:** it could be agreed that tenants are obliged to allow visits by prospective new tenants during the prior notice term.
- **Guarantee:** usually, a guarantee equal to two months terms is agreed, but additional guarantees could be established, for example comfort letters from the parent company.

QUESTION THREE

Has hybrid working created a shift away from traditional prime real estate areas – e.g., cities – and are there opportunities to be had for property investors as a result?

Yes. These new opportunities firstly are for persons, who could choose where to live without necessarily needing to be close to the main cities, where the most of the jobs are offered. Secondly, they are for companies, who could decide to set up their headquarters away from the main cities, where the rental prices are much higher. However, while it is clear that there is a shift, where the new opportunities will arise is not so clear.

There will probably be a demand for bigger homes with extra room to work from, and smaller towns could see a demand for office space, and a flourishing of their commercial streets. Owners and investors in prime areas will have to adapt.

If we take one of the prime streets Barcelona, Paseig de Gracia, we see how investors have adapted its buildings to different uses along two centuries. At its beginning in 1827, aristocrats and rich bourgeoisie were constructing their mansions; later such mansions were converted into flats; between the 60's and 80's it was many banks' headquarters, and from the 1990s-2000s, the luxury brands replaced banks. Later on, some of the upper floors, which had been mansions, apartments and offices, were refurbished again into luxury apartments. Now the street hosts luxury brands, bars and restaurants for the myriad foreign visitors, offices, and standard and luxury apartments. The evolution of this street is a proof of how real estate investors adapt to different times.

In Barcelona we also saw, in years past, big companies having to move to secondary, but good, areas, either because the available space was too small, or it was too expensive, or there was no available space at all. Maybe now we will see some of these companies coming back to prime areas. In regards to retail stores, rent prices in prime areas have been a barrier for many businesses, affordable only for very sound brands, but the new situation could be an opportunity for other activities.



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Robert H. Schuler is a U.S.-licensed attorney at Blumenthal Richter & Sumet working in Southeast Asia for more than 20 years. He has extensive experience in advising a wide range of clients in transactions involving real estate assets of all types and classes. Robert regularly advises multinational corporations, institutional investors, private equity funds and entrepreneurs on a broad range of matters including hotel and resort development, residential development, industrial acquisitions, mixed-use property development, project restructuring as well as agricultural and recreational development. Additionally, within the context of these transactions Robert advises buyers or sellers, owners or operators, developers, equity investors and lenders. Robert possesses in-depth knowledge of the local and regional real estate markets, including Bangkok, Chiang Mai, Pattaya, Phuket, Koh Samui and Krabi, and he is proficient in assisting clients with navigating the complexities and nuances of real estate transactions in Thailand as well as within the region. Also, Robert launched and heads the firm's Hospitality and Lifestyle Practice which focuses on operators and brand owners in the space. Robert is ranked by *Chamber & Partners* and *The Legal 500* as a leading individual within the Real Estate sector in Thailand.

Blumenthal Richter & Sumet is commercial, responsive and efficient. In a fast-changing world, we create simplicity for clients in the face of increasing complexity for them to make the right decisions, achieve their strategic priorities and identify new opportunities. We take the time to understand each of our client's unique needs, and provide solutions with in-depth knowledge of your sectors and markets.

For over 40 years, our licensed Thai, European and U.S. attorneys have worked at our clients' side, understanding your business while serving as a trusted counterpart who knows the law. Assisting you as a team, we collaborate with our clients to navigate not only the legal issues but the regulatory aspects impacting your business sectors.

Our experience in the real estate, hotels and hospitality, automotive, chemicals, logistics, cosmetics, energy, financial, technology, media and telecommunications sectors gives us the market perspective to understand your needs and add value for our clients to succeed. Our practice areas include Real Estate and Construction, Hospitality and Lifestyle, Corporate and Commercial / M&A, Foreign Direct Investment, Litigation and Dispute Resolution, Tax and Customs, Tech-Media-Telecoms (TMT), Regulatory Compliance and Data Privacy, Intellectual Property, Capital Markets, Banking and Project Finance, Labour and Employment, Energy and Infrastructure, Immigration and Foreign Employment and Bankruptcy, Restructuring and Business Reorganisation.

QUESTION ONE

What risk does hybrid working pose to the future of real estate in your jurisdiction – particularly in terms of commercial property asset values?

The extent that the hybrid model will be adopted remains to be seen as it originates from a response to unprecedented circumstances. There is an assumption that the 'New Normal' incorporates hybrid working models, but the market may respond differently. The hybrid working model evolved out of urgent necessity and economic factors where businesses were implementing a range of cost-saving measures. With Covid-19 changing from pandemic to endemic, the broader business environment is stabilising and adjusting to the framework of manageable uncertainty. Therefore, changes

that businesses implement may be different from what we anticipated at the onset of the pandemic. Our lesson learned from the pandemic does not seem to be "Can we do the same with less?" but rather "Can we do more with the same?" This is particularly true in Thailand, where premium office space is competitively priced from a global perspective.

There are businesses that will be looking to reduce their footprint, but for many businesses that have made a substantial financial commitment to fitting out their office space, especially in the service sector, this represents a sunken cost that is still depreciable. As businesses evolve, and if there is a longer-term adoption of the hybrid working model, businesses can start to reassess office space allocation per employee. Interestingly employee allocation increased during 2020, in part related to social distancing efforts. This trend may continue as businesses look to reformat existing office space to support the new culture surrounding hybrid work. There may be a higher allocation to common areas, conference rooms, virtual meeting rooms and open workstations. Also, hybrid working with flexible scheduling will allow for an increase in employees.

In order for there to be a 'New Normal' that involves hybrid working, businesses will inevitably look for creative ways to capitalise on the trend. The theme of 2022 will be: "Can we do more with the same?". As a result, we would not anticipate downward pressure on the rental market in the short-term based on changes in work stay. However, as new inventory comes online, we would expect commercial property owners to incorporate accommodation into new leases that will in the mid-term create downward price pressure on new and current tenants.

QUESTION TWO

How can businesses with commercial real estate in your jurisdiction mitigate the impact that a reduced in-office workforce has on demand for commercial space?

Commercial property owners may need to adjust pricing structures in view of the anticipated changes in short-term demand, but this has been done before in Thailand and commercial rent has reached record levels. However, as previously mentioned, a fitted space largely represents a sunken cost and commercial property owners can, to an extent, plan on tenants riding out the terms of the lease. For future terms or new tenants, commercial property owners should look to lease structures or have provisions that mitigate business risk.

Over the past two years, there was a significant imbalance of negotiating leverage in the landlord/tenant relationship in Thailand. In order to mitigate the impact, commercial property owners may consider including transparent provisions into the lease agreements that more equally allocate the burden of disruptions to business. A lease agreement can provide for rent abatement or reduction in the event that policies prevent or otherwise limit the use of commercial property. For example, a developer can provide for rent abatement in the lease agreement if government policy restricts access to and use of the rented premises. We are emerging from what was an entirely unexpected event, and as a result business owners are taking a look at what they would have done differently. These mitigation strategies will evolve into new business practices, and commercial property owners need to be prepared to participate in that dialogue.

While hybrid work may ultimately mean that there will be reduced requirements to work from a dedicated office,

TOP TIPS

Exploring real estate investments in a WFH/hybrid working climate

✓ In the short- to mid-term, opportunities will be a function of market supply and demand dynamics. While demand remains difficult to predict as we work our way through the 'New Normal', changes in supply are more predictable and may present opportunities. The main factors to consider will be current occupancy levels and the timing around new supply across all categories of office space. Existing supply will yield less information as tenants are reluctant to give up fitted spaces resulting in less renewal risk. With the release of new inventory there will be pressure on lessors to secure tenants and we would expect to see some combination of financial accommodations to be incorporated into new leases.

✓ We have a large increase in mixed-use commercial development with a significant amount of leasable area. We anticipate supply-side pressure on prices that will eventually trickle down to older inventory. There may be a short-term reduction in yield that may present an opportunity. That being said, it may be better to sit on the fence for the next six months as the supply/demand dynamics begin to develop.

there has been an increased demand for co-working space. Commercial property owners may look to convert leasable space into co-working space based on a membership model. A properly implemented membership model may yield higher returns than the standard lease arrangements and will also reduce building supply. A commercial developer can then use the yields to subsidise standard rental structures during the period of rental recovery. Another potential opportunity is for commercial property owners to market the co-working space as an open workstation space for building tenants. Hybrid work and the new corporate culture that is evolving around it present a risk mitigation opportunity for commercial property owners through the reformatting of leasable and commercial areas.

QUESTION THREE

Has hybrid working created a shift away from traditional prime real estate areas – e.g., cities – and are there opportunities to be had for property investors as a result?

It remains to be seen whether the hybrid model will take hold, and it is also a fact that the impact on productivity will vary from sector to sector. To me, hybrid working will result in more creative use of commercial space geared towards increasing revenues instead of reducing costs. Management of financial risk related to the pandemic will be more beneficially incorporated into lease agreements, supplier agreements, employment agreements and so on.



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Koen De Puydt heads the business law and public law department and is responsible for all real Estate / construction Law and intellectual property matters.

Koen De Puydt graduated in 1998 with a degree in Communication Sciences (VUB), while he worked for the independent music magazine RiffRaf as a journalist. After his studies, he continued his career as a music journalist with De Standaard and Studio Brussel. At the same time, he obtained his Licentiate Degree in Law, specialising in Public Law at the VUB (2002). In 2009 he obtained a Master of Business Law at the University of Antwerp.

In 2002, Koen joined a Brussels niche firm specialising in Administrative Law (urban planning and environmental law, expropriations, government contracts, and protection legislation). In the meantime, he remained responsible at De Puydt van Cauwelaert for the files relating to commercial law and intellectual property law.

Two years later, Koen started working full-time at the Puydt van Cauwelaert. He was responsible for matters relating to urban planning and environmental law, real estate law, government contracts, contracting law, business law, corporate law and intellectual property law. He also publishes on these matters.



Seeds of Law's mission is to help businesses start up, and provide support during their operation, because this allows us to help entrepreneurs realise their dreams. What does this entail in practical terms?

- Setting up a brand new business or branch and/or re-structuring
- Taking over or selling a company (the funding required for this)
- Contracts tailor-made to your business (and negotiation of these, if necessary). A win-win situation for all parties is always important
- Purchasing and selling real estate, perhaps with the appropriate real estate planning, employing personnel, attracting expats, and proper management of social matters
- Managing all of your intellectual property rights.

Domestic and foreign entrepreneurs use our services. If a problem does arise, we will do our utmost to assist you, initially via legal mediation, and if that fails, we will be happy to defend you in court or arbitration proceedings.

We make a point of familiarising ourselves fully with your company and sector, in order to be able to think strategically together with you. We do all of this in Dutch, French, English, German, and Russian.

“Companies will use the new normal to cut the costs of real estate, as they will need less space for their employees and visitors.”

QUESTION ONE

What risk does hybrid working pose to the future of real estate in your jurisdiction – particularly in terms of commercial property asset values?

Hybrid working includes an important risk for the value of real estate, particularly for the office market. We expect an important change in the office's shape as a workplace, at least in the short term. A certain part of hybrid working that we all have experienced during the Covid crisis will become the new normal. In this way companies will have different needs for their workplaces. Real estate units that are not adjusted to this new normal will decrease in value.

Companies will use the new normal to cut the costs of real estate as they will need less space for their employees and visitors. This change will certainly occur in the public sector, which was never really rational before the crisis.

On the other hand, the space that they need has to be adapted to the new normal, which means that the workplace has to be a place with an added value, that will be frequented because of its additional facilities that are not available on home workplaces. It is also an opportunity to convert and add value to the free space that arises due to a reduced in-office workforce.

Meaningful additional facilities might include huddle rooms, special meeting rooms, presentation rooms to accommodate several people, silent rooms, multifunctional rooms, or spaces that can be used for receptions or parties, and even recreation spaces, where employees can meet in an informal way. In general, all of those should, of course, have excellent connectivity to the internet and all digital equipment.

The question is, to what extent companies will eventually adjust their tele-work policy? A human being is, by definition, a social animal that needs contact with his/her colleagues and the company he/she works for. Offering this social component may in future become a selling point in recruitment again.

QUESTION TWO

How can businesses with commercial real estate in your jurisdiction mitigate the impact that a reduced in-office workforce has on demand for commercial space?

Businesses with commercial real estate should be aware of a change in the market's needs. In this way they should offer working spots that are adapted to this new normal. Businesses should take into account that the market is asking for units with a smaller footprint, but with all the modern facilities that can add value for their customers. The new workplaces should be equipped with all the modern infrastructure that is needed to create the added value that the market is asking for.

As this need for added value is different for each business or company, it is important that real estate businesses are flexible. This flexibility can be found by offering to finish and furnish business units in cooperation with the customer. The real estate business can thus create added value by offering additional services. It can, for instance, create working spots that are fully adjusted to their customer's individual needs, which can be considered as added value for their consumer's businesses.

The real estate product should therefore include more than just the real estate. Advice and solutions for the specific needs of the customer must also be provided.

TOP TIPS

Exploring real estate investments in a WFH/hybrid working climate

- ✓ The real estate product should include more than just the real estate. Advice and solutions for the specific needs of the customer must also be provided.
- ✓ Keep in mind that nowadays each customer has got even more different needs regarding real estate issues than before. There will be a direct connection between the success of a business model and the ability to give fully measured answers to individual customer's real estate needs.
- ✓ The long-term impact is not certain when it comes to the market's shift to the new normal. A short-term shift will be expected, but a real long-term disruption is uncertain. A human being is by definition a social animal that needs contact with his/her colleagues and the company he/she works for.

QUESTION THREE

Has hybrid working created a shift away from traditional prime real estate areas – e.g., cities – and are there opportunities to be had for property investors as a result?

We do not expect a big shift away from traditional prime real estate areas, as long as they do not lose their attraction as an interesting location.

One should bear in mind that in recent years the demand for real estate has been greatly influenced by factors such as sustainability (in all its aspects) and mobility. These trends will continue having an impact and will not just disappear by the perpetuation of tele-work. Moreover, the chances are that tele-work will strengthen these other factors in the long run.



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Michael Lewis founded and leads the firm Wellington Charles Advisors. He has over twenty-five years of experience in both debt and equity placements. Michael's credentials include experience with Dai-ichi Kangyo Bank of Japan, Royal Bank of Scotland, and Macquarie Bank. He has post graduate studies from Harvard University, Wharton School and Oxford University.

Wellington Charles Advisors is a boutique firm which specialises in buy-side, sell-side, valuations, recapitalisations, and debt capital markets. We are known for our precision and laser execution. Our firm has managed over \$3B in transactions ranging from middle market to large caps. We operate mostly in the United States, but have engaged in selected transactions in Europe, Asia and Australia. The industries we serve are financial services, industrial, and technology. The firm is located in Little Rock, Arkansas, USA.

QUESTION ONE

How has hybrid working – and the creation of a dispersed workforce – changed the due diligence process for buy-side and sell-side businesses in your jurisdiction?

Understanding how target companies define hybrid is crucial for both sell-side and buy-side advisors. The vernacular of hybrid and remote are prone to collision in the definition. Here, we define hybrid work arrangements as the employee's ability to fluctuate between the on-site office and home office within a given period (i.e., daily, weekly). Generally, the employees reside near the physical office location. Conversely, remote work has no attachment to the physical office location. Merger and acquisition professionals must clarify how target firms deploy their workforces as the business world evolves from pandemic crisis to the new normal.

Merger and Acquisition

Firms must peer deeper into target companies' ability to pivot as crises emerge: in this case, workforce deployment. The Microsoft 2021 Work Trend Survey found that over 73% of 30,000 employees surveyed expect some form of remote or hybrid working arrangement. Due diligence for merger and acquisition firms now demands that workforce deployment risks are identified and addressed. Advisors must ask questions such as:

- Is the target firm's leadership equipped to lead a hybrid or remote workforce?
- Has the target firm set up policies and procedures for managing a remote or hybrid workforce?
- Is the target company tracking metrics to identify the performance of the remote or hybrid workforce?
- Has the target firm identified and reported costs associated with a remote or hybrid workforce?
- What is the impact on sustainable profitability for the targeted firm? How does this impact the valuation?
- Does the target firm's strategy identify weaknesses resulting from workforce changes?
- How have the remote or hybrid work models impacted the firm's compensation and benefits?

Due diligence of the target firm must now move beyond leadership. Merger and acquisition advisors need more understanding of workforce design and sustainability. The due diligence process could be elongated due to these new requirements.

QUESTION TWO

How have hybrid work practices changed the way that businesses communicate in the M&A process, and are there any pitfalls that businesses on either side of the transaction need to be aware of?

A challenge for merger and acquisition deals in the post-covid world deals with integration. The post-close directives of aligning the newly formed business in a fast and efficient manner are complicated by the fragmented workgroup.

This fragmentation provides another layer of complexity by dislocating business workgroup models. Businesses in seemingly similar industries may have opposite workgroup structures. Namely, organisations' roles and responsibilities have shifted in the hybrid-based post-pandemic environment. This flattening of roles is sure to impact the integration process.

Next, communication via technology can be problematic. Often in the sizeable middle market and large corporate organisations, technology is not equally distributed, or more than one technology is deployed in the communication channel. The inconsistency of technology mutes the chain of organisational communications.

Virtual communications create challenges to receiving accurate feedback—it is challenging to access buy-in when all that is seen on the screen in a thumbnail. Teambuilding faces obstacles in the integration process when attempting to gather virtually. The obstacles are further amplified when attempting to blend teams from two organisations.

Lastly, the United States is seeing more regulatory enforcement of using communications outside the required approved chain of communications. Recently, various US banks were fined due to their employees using WhatsApp for deal related communications. Compliance departments must ensure adequate training takes place to avoid such missteps in communications in regulated environments.

The best practice is to plan for disjointed communications and allow adequate time to muddle through the complexities. A great starting point is to channel pre-close communications and post-close communications through collaboration technology, solutions such as Microsoft Teams. It is quite possible to run the deal from the cradle to the grave using Microsoft Teams. This would include data room configuration as well as cross-team huddles. This approach has proven to increase deal flow and clarify communications while documenting the process.

“Virtual communications create challenges to receiving accurate feedback. It is challenging to access buy-in when only a thumbnail can be seen on the screen.”

TOP TIPS

Communicating culture effectively in a WFH/hybrid business acquisition

- ✓ Assess whether the firm has a culture that will gel with work from home or hybrid work structures. If not, begin with cultural transformation prior to executing on tactical initiatives.
- ✓ Seek out the best collaboration technology that fits the firm and deploy the technology as a corporate priority.
- ✓ Allocate more time in due diligence to go deep on human capital aspects in M&A transactions.

QUESTION THREE

Does hybrid work further complicate issues around 'disguised employees' in the M&A process? How should businesses manage this during an acquisition?

'Disguised employees' present an issue in the current merger and acquisition market. A disguised employee is a worker who is compelled to work as an independent contractor in an effort for the employer to avoid the cost of total employment.

Fortunately, many countries and states are taking legislative actions to legally challenge companies operating outside the legal constraints.

Our firm has relied on seller representations and warranties that address 'disguised employees' and the legal implications of the practice. A seller should be able and willing to differentiate contractors and employees, thus providing reps and warrants to this effect.

By reviewing the employee records and verifying benefits contributions through due diligence, buyers will avoid many issues that will emerge later.



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QUESTION ONE

How has hybrid working – and the creation of a dispersed workforce – changed the due diligence process for buy-side and sell-side businesses in your jurisdiction?

The 'new normal' is still taking shape as we emerge from the pandemic period. The dispersed workforce appears to be a feature of the business landscape for at least the foreseeable future, in greater or lesser degree depending on the nature of each industry. The impacts on business of this structural change are still being digested, but the impacts in the area of M&A are critical.

In the ASEAN region, restrictions on movement have generally been strict and slow to lift. Businesses themselves have taken pause to assess these effects before proceeding with transactions, but once committed, have had to wrestle with how to undertake DD and complete. Advisors have needed to be creative in providing solutions, and ensuring that networks of trusted partners are in place has been key.

By way of example on the sell side, in one cross-border sell side transaction we advised on recently, the acquirer (a practiced M&A participant) needed to assess the risks of acquisition without having been able to physically inspect the business, meet key staff who were mostly working remotely nor to directly conduct in person DD. The solution required bringing together trusted advisors, the use of technology such as virtual inspections, and active use of the tools and workflows in the VDR in order to get across the line.

Hybrid working has impacts on buy side M&A, such as assessing the impacts of this structural change on commercial business outcomes, when the target itself is yet to accurately determine the impact on the business. In a more practical sense, a range of new diligence questions need to be addressed relating to the hybrid working model: risks associated with workplace health and safety where the workplace itself is redefined; creation and storage of original documentation; technology issues, such as data security and licensing; frequency of delays in the DD process. Moreover, assessment of impacts on retention of key staff where the traditional in-person ability to create corporate culture and build teams is needing to be re-imagined.

QUESTION TWO

How have hybrid work practices changed the way that businesses communicate in the M&A process, and are there any pitfalls that businesses on either side of the transaction need to be aware of?

Communication has always been the most critical factor in managing M&A for all participants. We have all seen robust transactions hit obstacles due to poor communication. Hybrid working has served to bring this into laser focus – if you have communication difficulties when all sitting in one workplace, how will this possibly be achieved with parties spread across multiple locations?

In the Australian and NZ context, hybrid working practices have coupled with significant travel restrictions to make the challenge of communicating during the M&A process all the more difficult. There is far more reliance on remote management of workflows in the M&A process. Importantly, success in M&A is personal as much as it is analytical. As a cross-border M&A advisor, bringing a business opportunity to life remotely has long been part of what we do. In the hybrid working environment, this is now an active part of every M&A process. The use of techniques that bring hybrid culture to life, such as case study storytelling and video-based presentations, can create excitement that dry DD documents tend to miss. At the end of the day, parties to an M&A process need to work hard to ensure communications flow from start to finish.

With respect to pitfalls, the largest one we see is the assumption that we can carry on as if nothing has changed. It is important to recognise that there will be challenges and that these do not necessarily mean that the process has gone awry. Typically, we see timelines extending with access to people and documentation having an added layer of complexity. There can also be the need for enhanced DD in some areas and communicating the need for this is critical. Setting expectations, assigning accountabilities and communicating any changes through the process has always been important, but is even more so in the hybrid working world.

QUESTION THREE

Does hybrid work further complicate issues around 'disguised employees' in the M&A process? How should businesses manage this during an acquisition?

Disguised employees present difficulties for organisations but more so in the context of a potential transaction. Each jurisdiction in which we operate has their own regulations around disguised employees, but each shares common elements, broadly categorised as: control over the work being done; delegation, and ability to sub-contract the work; employee benefits; equipment, tools and other assets; dismissal / termination processes; commercial and financial risk; exclusivity; basis of payment; and independence. Moreover, each jurisdiction has a penalty regime for mis-categorising employees as independent contractors, and the exposures can be significant. Hence, the potential impact of disguised employees in the context of a business transition can be significant.

This is exacerbated further with the onset of hybrid working arrangements. How do we assess whether a contractor is a

TOP TIPS

Communicating culture effectively in a WFH/hybrid business acquisition

Corporate culture is the intangible ingredient that defines organisational personality and differentiates mediocre from great organisations. It is the essence of goodwill that is acquired in an M&A transaction. My three top tips for communicating culture in the WFH acquisition context are:

- ✔ **Prioritise:** Make communication and culture the core priority in an acquisition, and allocate significant time to it. The goodwill of the business acquired rests with the team, and bringing that team along is fundamental.
- ✔ **Technology:** Technology can be a great tool but does not easily facilitate the off-topic chat that relationships are built on. Technology can be used very effectively to deliver messaging around culture. Business heads and team leaders can easily create embedded video content, for example, and can do so on a regular basis. However, nothing beats meeting in person and it is critical to find ways to ensure that this continues.
- ✔ **Be creative:** Think through how corporate culture was best imbued in the old world, and brainstorm ideas as to WFH equivalents. Virtual events surrounding employee welfare, for example, can bring teams together and underpin messaging around culture.

“With respect to pitfalls, the largest one we see is the assumption that we can carry on as if nothing has changed.”

disguised employee, when a number of the usual hallmarks, such as a fixed desk in the office, a phone extension from the PABX, presence at staff meetings and the like, are not necessarily present even for employees?

To manage this through an acquisition process, there are a range of angles to pursue during DD, and then structuring issues to consider in completing the transaction. Increased vigilance around interrogating contractor billing against org chart and job descriptions, reporting lines and staff meetings will provide clues as to potential disguised employees. Careful review of contractual arrangements with independent contractors will of course be required. Assessment of contingent exposures then may inform decisions around asset or share-based structures for the transaction, together with specific warranties around the issue.



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The Janas Team supports clients in the selection and implementation of strategies that enhance profitability and add millions of dollars of enterprise value to client companies. Over the past 25 years, Janas clients have added millions and millions of value, due to the advice and services provided by Janas.

We know that nothing sells better than a great story—and telling our client's stories in a compelling manner is especially important for privately owned companies. It is common wisdom that the right story to the right buyer can improve deals by 50%—especially for entrepreneurs selling to large financial and strategic buyers. We help translate your story so that MBA buyers recognise your special value.

Whether you need advice in charting a course for your company, have an unfamiliar problem to solve, or need analysis to bolster your argument, the answer is Janas. We are a professional firm whose dedicated professionals and staff apply our life experiences to create solutions to client needs and challenges.

QUESTION ONE

How has hybrid working – and the creation of a dispersed workforce – changed the due diligence process for buy-side and sell-side businesses in your jurisdiction?

History has recorded dozens of dramatic inflection points that altered the way we lived and worked. Great wars of the past left the deepest scars on us. Everyday life changed as groups of people sought something new. But despite these challenges, we learned how to adapt and prosper. And today, living in a Covid-19 pandemic is one of those times.

Currently the USA has roughly 125 million US service workers. That number increases by multiples in our larger international world. And given the 'new normal' post pandemic, this means millions of staff will continue to work from home in their new 'hybrid' jobs for some time.

Still, despite the precipitous drawbacks in the midst of a global pandemic over the last 2 years, M&A deal activity in 2020 and 2021 was surprisingly robust. According to a recent Pitchbook Global M&A Report: "Economic resurgence paved the way for record activity in both North America and Europe, with aggregate deal value at US\$2.8 trillion and US\$1.8 trillion, respectively." Deal value in 2021 totalled nearly US\$5 trillion, topping 2020 by a whopping 50%, and is expected to continue higher this year.

But how can that activity level be the

case when so much of our M&A business was face-to-face?

Enter the Hybrid Remote Worker world

Like most industries and companies impacted by Covid-19, investment banks anticipated a big transaction downturn during the pandemic. However, much to everyone's surprise, after an initial decline in transaction volume, the sale of companies quickly increased. Fears that Covid-19 might delay deals, combined with prospective tax increases, caused more transactions to close, not fewer.

"We realised quickly that our job had not changed much," says Janas CEO and Chairman Carter Freeman. "Given our 80% close rate on domestic and international transactions over the last 25 years, I knew we could adapt if we fell back on our core Mission Statement: to go the extra mile every day."

And from there, we learned quickly that our reputation at Janas hadn't changed either. We remain a firmly trusted intermediary tasked to bring together buyers and sellers, bridge their key concerns with their legal and financial advisors, and get the deal done. That meant historically face-to-face discussions needed to get done entirely remotely.

For many, Covid-19 forced upon us a new paradigm in M&A: the online automation of transactions. Given the increased deal flow and the decline of face-to-face meetings, the need to adopt more effective communication and work-flow technologies has taken centre stage.

Thanks to many new online technologies, including video conferencing, collaboration, and tools such as Zoom, we discovered a lot more than handshakes can get resolved in a remote working context. We discovered the key to successful remote M&A work is to build trust in words and pictures like never before. Which is why we try to make every virtual connection personal, engaging, and productive for all participants.

Post Covid-19, as much as two-thirds of M&A deals can now be completed remotely with limited in-person visits, saving valuable time and money. New technologies, like www.AXIAL.com and other sell-side cloud-based portals, allow buyers and their advisors to confidentially sign NDAs, read CIMs, review financial statements, and ask key questions. Online document and signature verification exchanges such as iDeals and DropBox make printing paper and mailing documents things of the past.

QUESTION TWO

How has Covid-19 and the new hybrid work model impacted M&A Due Diligence?

The devil's always in the details. But while many areas of the M&A sale process have been impacted by the pandemic, buyers today are digging deeper and asking key questions about the Covid impact on acquisition targets.

Remote Hybrid Worker Compliance.

Whereas Covid-19 has upended the work environment, remote workers now have a legitimate claim to work from home for extended periods. This new reality calls for an expert due diligence audit of job descriptions to identify which jobs can be hybrid and which can't. Key question: are the impacted employees on board?

On-site Covid-19 Compliance.

Is the seller's workforce complying with and agreeable to the company's new Covid-19 work rules? A mismatch here can

unravel a deal. What is the status of workforce health and safety pertaining to Covid-19? Is the seller complying with government mandated employee regulations? Is there a Covid-19 test, track, and remediation system in place? Is a labour shortage impacting the company? Does the seller have a hybrid, remote worker human resource plan in place, or is management winging it?

Financial Covid-19 Compliance.

Does the seller have proper accounting for Covid-related state and government financial aid benefits, including loans, grants and other affected expenses? Some Covid expenses may cause an EBITDA adjustment, some not. These days, a buyer's financial due diligence team is newly tasked to identify any material gaps in Covid-19 financial compliance that can kill a deal.

Legal Compliance.

Adding to the already long list of legal due diligence, the effects from the global pandemic have added more. Today, the legal team must review legal challenges directly impacted by Covid-19. The affects can range from customers to employees to suppliers and back.

"As much as two-thirds of M&A deals can now be completed remotely, saving valuable time and money."

Many once-routine contract reviews are now examined for how they fit into the new normal. Foremost are agreements to enable remote hybrid workers to perform their jobs while still complying with labour laws. Meanwhile, employers with onsite union workers under collective bargaining agreements are facing new compliance regulations. Some rules such as paid leave, sick time, Covid-19 health expenses and family care demands may be transitory, others not. Do you know which is which?

Supply contracts, including those that include performance or volume purchasing discounts may no longer fit the bill. What recourse does a buyer have if a supplier is out of synch and fails, triggering a material adverse effect or force majeure? New or modified contracts must align with current market conditions and buyer expectations. These agreements and their performance requirements may need revisions. Did you anticipate this?

Insurance Compliance.

Covid-19 has caused a complete review of all corners of company insurance coverage. Notwithstanding prior claims and future coverage, buyers want to review first-hand how the seller's insurance is covering claims in the new normal and how the cost of required coverage may change. Covid-19 put the pin in insurance coverage. So be warned!

Nevertheless, at the end of the day, the important message in 2022 M&A is that hybrid work models can work well. However, advisors must adopt hybrid work technologies and training internally to best communicate a sense of confidence to clients and their advisors. What we do best and yet is another example of why partnering with Janas early on makes perfect sense.



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In the past, Vera was a senior manager in Ernst & Young, S.A., Lisbon office, in the Business Tax Services and International Tax Services departments. She was member of European Union tax competency group, work group specialised in European Union tax law matters, representing Portugal. She was also trainer in restructuring operations, tax benefits, and EU tax law.

Currently, Vera is also a justice in the Tax Arbitration Court of Lisbon.

Luiz Gomes & Associados (Luiz Gomes) is a recently-founded law firm created by lawyers from reputable law firms in Lisbon.

The firm is especially dedicated to providing legal advice to companies operating in various sectors of activity, focusing in commercial, banking and financial areas of law, both internally and in cross-border transactions, administrative law, tax and dispute resolution.

For us, competence, responsibility and ethics are key and we are committed with excellence, innovation, development and sustainability, in a firm that respects differences, promotes an effective equality of opportunities and a healthy balance between professional and personal life.

We are firmly set in staying in the front line of the legal industry and we are aware of the role of lawyers as guardians of freedom and the rule of law.

QUESTION ONE

Have hybrid working models post-Covid created any tax disruptions in your jurisdiction – particularly for employees working from residences abroad?

Working models have changed in the past few years due to employees' increasing mobility, but mostly due to several lockdowns caused by Covid-19 and the need to work from home.

This rapid change in the working model has raised several tax issues from domestic and cross-border perspectives.

From a pure domestic tax perspective, working from home raised the issue on whether increase of household expenses should also be borne by employers. In case it is borne by employers, the next question was: should it be deductible by employers, or taxed at employees' level?

From a cross-border perspective, Covid-19 increased the risk of double taxation in situations where an employee performs work from home in one country, and the employer is based in another country. Doubts may arise on which country shall be entitled to tax the employment income: the country of residence of the employee or the source country/employer's country. Straightforward answers might be hard to get under current double tax treaties' rules.

In certain cases, working from home may also increase the risk that an entity is deemed to have a permanent establishment in the country where its

employees are based. Again, the rules of double tax treaties on permanent establishment were not designed with this work model in mind. Depending on the activity carried out by employees, there is the risk that the country from which the work is performed is considered the place of business or the place of a dependent agent (hence qualifying as a permanent establishment) and therefore attracts taxation of the employer in an unexpected jurisdiction.

Still, hybrid working and full working from home models will continue. The challenge now is to adapt the rules on income, expenses, double taxation of employment and permanent establishments, in order to avoid the referred disadvantages and inconsistencies.

QUESTION TWO

Are there any tax breaks/opportunities that businesses should be aware of when exploring a WFH/hybrid workforce, especially new legislations that have arisen from Covid?

The Portuguese Government has enacted specific legislation and regulations to address the new challenges brought by the need to work from home for large periods of time.

The Labour Code was amended. A compensation for the acquisition or use of work equipment (e.g. computer, phone, etc) was added. Additionally, employees are entitled to a compensation for the excess of their household expenses resulting from WFH. These compensations are treated as tax-deductible expenses of employers and are not taxed on the side of employees. In order to determine the amount of compensation for household expenses, these shall be compared with the expenses of the same month of the preceding year.

Apart from the new Covid legislation, reference shall be made to the Portuguese non-habitual resident (NHR) tax regime. Since 2009, NHR regime is designed to attract highly added value employees or self-employed individuals to Portugal by granting them tax advantages.

The NHR regime is applicable to employees working in Portugal who change their tax residency to Portugal provided they have not been resident in Portugal in the previous 5 years.

Pursuant to this regime, the income paid by a non-resident employer (and effectively taxed in the source country according to the applicable double tax treaty) might be exempt from tax in Portugal.

Self-employed income derived from high added value activities, investment income (dividends, interest, royalties), as well as capital gains or rental income, can also benefit from a tax exemption in Portugal, provided such income could be taxable in source country according to double tax treaty rules.

Given the characteristics of Portugal, WFH and the NHR regime are viewed as means to attract talent to our country. As a matter of fact, a relevant number of digital nomads are already sending their work from sea-view locations in Portugal.

QUESTION THREE

Does WFH/hybrid work culture pose any legal tax risks to organisations, particularly in terms of evidence and reporting?

TOP TIPS

Exploring WFH/hybrid workforce tax efficiencies

Work from home in the same country:
The compensation for added household expenses paid to employees is tax deductible at the level of employer and not taxable at the level of employees. The decrease in business operating costs (consumables, office supplies, rent) can be invested in strategies to improve results and increase salaries. Improved balance between personal life and work may result in happier employees.

Work from home in a foreign jurisdiction:
Request information from employees on duration of time that employees will work from home in a foreign country. Seek for advice on the potential tax implications arising for both employee and employer. In case of employees, consider whether that country offers a special income tax regime to expats. In relation to employer, consider the type of activity that will be carried out by employees in a different jurisdiction, namely if there is the risk of creating a permanent establishment for the foreign employer. It should also be considered which tax obligations arise for employees and employer from relocation abroad.

As referred above, amendments to the Portuguese Labour Code created a compensation for employees destined to pay the increase of household expenses resulting from WFH. These shall be determined through comparison with the expenses in the same month of the previous year.

It is easy to see that this can be time consuming and burdensome, especially for companies with a large number of employees working from home. Employers and employees will need to select and go through utility bills. In order to minimise this risk, some employers have decided to pay fixed amounts to all.

Then, the tax authorities may challenge the deductions presented by employers as so far, no guidance has been given by the Portuguese tax authorities on accepted documentation to calculate the compensation. Plus, fixed amounts pose added risks of non-acceptance by the tax authorities as they arguably follow the comparison criteria adopted by law. In this case, the fixed compensation may be qualified as employment income, be excluded from deduction, and be taxed at employee's level.

On what concerns the permanent establishment risk referred to above, if a foreign employer is deemed as having a permanent establishment in Portugal (employees WFH in Portugal triggering the concepts of fixed place of business or dependent agent) then it shall comply with reporting obligations before the Portuguese Tax Authorities, and file CIT and VAT returns as well, among others.

Employers might have to register as employer entities in Portugal and comply with domestic rules on withholding taxes and social security.

Furthermore, foreign employees working from home in Portugal should comply with Portuguese income tax and social security obligations.



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At Cole Schotz, lawyering is our art. We are a coalition of over 170 attorneys – a curated collection of top legal talent that works together to create a gallery of experience that we lend to the benefit of our clients. We work with businesses, large and small, as well as select individuals, many of whom continue to work with the firm for decades. Our clients turn to us to execute on their business goals with our distinct confidence and legal dexterity. As an AmLaw 200 firm with nationwide representations and a global reach, we represent clients in connection with an array of legal matters including:

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We are bold. We are passionate. We are masters of our art.

QUESTION ONE

Have hybrid working models post-Covid created any tax disruptions in your jurisdiction – particularly for employees working from residences abroad?

The Covid-19 pandemic was the catalyst for millions of employees to extricate themselves from the confines of their employer's physical office space to telecommute from their homes. What was initially perceived as a temporary displacement to 'stop the spread' is becoming more permanent. As Covid begins to wind down, despite protocols to return to the office, employees are not returning, and employers are forced to navigate the myriad tax implications of maintaining a remote and hybrid workforce.

Post-Covid Impact on State Income Tax Withholding

Employees generally pay income tax to their state of residence and allocate their wage income to states where services are being performed. An employee that relocated due to the pandemic to a low or no tax state may substantially reduce his or her state tax bill even if providing the same services to a business that is located in a high tax jurisdiction. For example, if an employee who lives and works in New Jersey, where the maximum individual income tax rate is 10.75%, opts to permanently relocate to Florida and work remotely from home or abroad, even though his or her job duties may be the same, the employee potentially avoids New Jersey income tax if all of the services are performed in Florida or abroad. Although seemingly advantageous to the employee, this could come at a substantial and unexpected toll charge to the employer.

Under the 'physical presence test', states such as New Jersey require employers to withhold state payroll taxes based on where an employee performs services. New York, along with five other states, apply the 'convenience of the employer rule,' which requires employers to withhold income taxes on wages for employees who are assigned to a New York office. Ostensibly, this rule requires non-residents whose primary office is in New York to pay New York income taxes, irrespective of where they have relocated to work during the pandemic, which potentially exposes the employee to double taxation if the employee is working from a state that also taxes income based on where the services are performed. If New Jersey were to disallow, or limit this credit, which is subject to a new pending tax bill, it could result in double taxation.

Post-Covid, employers should be cautious when determining whether to stop or modify withholding for remote or hybrid employees. In jurisdictions in which an employer is required to withhold, failure to properly withhold taxes can become a liability for the employer, plus potential interest and penalties.

QUESTION TWO

Does Work from Home (WFH) / Hybrid work culture pose any legal tax risks to organizations, particularly in terms of evidence and reporting?

Risks beyond employer withholding extend to companies continuing to allow employees to work remote and inadvertently create nexus in other jurisdictions.

Corporation Business Tax (CBT) and Nexus

Generally speaking, a remote employee creates nexus for

the employer for tax purposes. In *Telebright Corp. v. Director, New Jersey Division of Taxation*, 424 N.J. Super. 384 (App. Div. 2012), the New Jersey Superior Court's Appellate Division affirmed that an out-of-state employer could be liable for the state's corporation business tax (CBT) by virtue of one employee telecommuting from the state.

The New Jersey Division of Taxation waived the business nexus requirement for resident employees working temporarily from home because of the pandemic. Employers that continue to maintain a remote workforce in New Jersey after October 1, 2021, are considered to have nexus with New Jersey. Likewise, where a New Jersey employer's workforce is now spread outside of New Jersey, the company may also be subject to apportioning its income and sales based on the presence of a single employee working remotely even if the employee's activities are home-based. A company that tracks sales, registers and collects tax in states only where it exceeds the applicable economic thresholds pursuant to *South Dakota v. Wayfair* 138 S. Ct. 2080 (2018), with remote employees in various states, may now be subject to tax on its first dollar of sales instead of sales that exceed these enacted thresholds ranging from \$100,000 to \$500,000.

QUESTION THREE

Are there any tax breaks / opportunities that businesses should be aware of when exploring a Work from Home (WFH) / Hybrid workforce, especially new legislation that has arisen from Covid?

Creating nexus with other jurisdictions vis-a-vis a remote or hybrid workforce can shift income and sales out of higher tax jurisdictions in favour of lower ones, which could generate tax savings for nonresident owners that reside in low and no state tax jurisdictions.

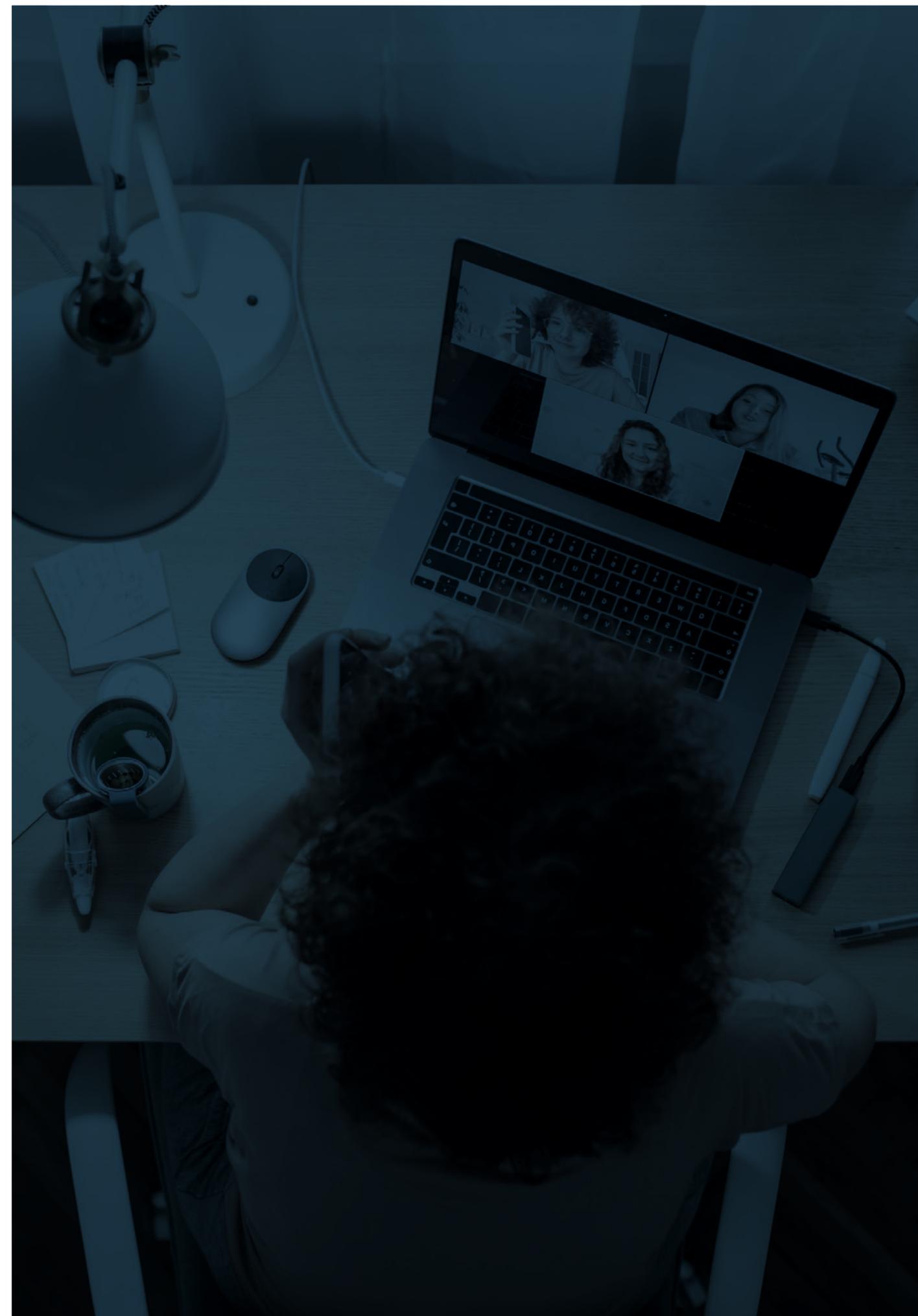
Apportionment drives the calculation of state taxable income or the taxable portion of a state's franchise tax base. For partnerships and LLCs, state and local income and franchise tax apportionment formulas are based on receipts, property and payroll factors. A remote and hybrid workforce has the potential to affect all three of these factors in varying degrees. Most owners of passthrough entities are taxed on their distributive share of income in their resident state and the state-sourced income in the nonresident states in which the passthrough entity conducts business. To avoid double taxation, most states allow their residents to claim a credit for taxes paid to nonresident states on the same income.

While remote work may require these owners to file additional state returns if nexus exists in multiple jurisdictions, this may also increase credit for taxes paid to other jurisdictions when filing in their state of residency. For corporate entities located in New Jersey, a remote or hybrid workforce may be less impactful to the extent that income is determined and allocated by market-based sourcing (i.e., where the benefit of the services is received as compared to cost of performance). Therefore, tax issues related to remote and hybrid work force must be considered in light of applicable state apportionment formulas in passthrough entities and corporations and the residency of the owners.

In sum, employers should be proactive in determining whether a remote or hybrid work force will present a tax burden or benefit to the company. The anticipated result could impact company policy on these issues.

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