Annual review 2010

CLIFFORD CHANCE

The firm at a glance

Clifford Chance is one of the world's leading law firms, with legal resources across the key markets of the Americas, Asia, Europe and the Middle East.

Our ambition is to become the leader of the elite group of international law firms that we believe will emerge in the coming years. This requires unrelenting investment in our strategic goals. We want to be the law firm of choice for all of our clients, helping them to compete more successfully in their local markets and around the world by offering them commercially useful, integrated legal advice.

Revenue Year ended 30 April (£m)

2009/10	2008/09	2007/08	2006/07
1,197	1,262	1,329	1,194

Top 50 clients using:

More than 10 offices

2009/10	2008/09	2007/08	2006/07
48	48	46	43

More than 20 offices

2009/10	2008/09	2007/08	2006/07
36	32	29	23

This is our third annual review, covering the period 1 May 2009 to 30 April 2010. Find out more about our experience on our website at **www.cliffordchance.com**

Our corporate responsibility report 2010 is also available to download at www.cliffordchance.com/cr

Under the rules of certain US jurisdictions, this document may constitute attorney advertising. Prior results do not guarantee a similar outcome.

Clients in focus

Our firm is driven by a set of guiding Principles, values that underpin our culture and our strategy. These Principles are based around our **ambition**, our **people** and our **clients**. In this report, we focus unashamedly on our clients. Even in the midst of difficult times, the quality of our relationships with clients, old and new and across a wide range of sectors, has earned us a steady stream of opportunities. In this report, we highlight some of the most important and exciting challenges facing global organisations today, trends that we think have the power to change the way they do business. And although none of us may have all the answers yet, we strive constantly to think ahead and ask the right questions.

Our Principles

Thinking ahead	**Investing in talent**
Exceeding clients' expectations	**An adaptable and approachable team**
Local excellence, global standards	**Strength through diversity**
An ambition for success	**Community**

Further details of our Principles are available online at www.cliffordchance.com

What’s inside this review?

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New rules, new game, new winners?
Issues that are reshaping our clients’ world

Ambition: p02 – 03

Managing Partner David Childs and Senior Partner Stuart Popham give an overview of the firm’s performance during 2009/10, and outline our strategic direction. **Governance overview**.

Clients: p04 – 25

Clifford Chance partners assess some of the thorniest issues facing our clients today and in the coming years.

People: p26 – 29

A look at some of the ways we are developing our firm to meet clients’ evolving needs.

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While conditions remained tough last year, the fragile recovery in the US and Western Europe, coupled with the dramatic expansion of the growth economies, created opportunities for our clients and for Clifford Chance. Working side by side to understand the implications of the emerging landscape and to grasp the possibilities has often brought us closer together. That is just one reason why we enter the post-crisis world with confidence and enthusiasm.

Embracing global opportunities

Stuart Popham Senior Partner

David Childs Managing Partner

The depressed volume of conventional transaction work last year was offset by increased restructuring and litigation. We saw high levels of regulatory and investigatory activity which we expect to continue. And in this report we comment on the trend of increasing criminalisation of corporate activity.

Overall, our turnover fell by 5% for the second year running. However, the previous year's action to rebalance the firm resulted in a significant improvement in profitability. We go forward with a strong balance sheet, no net debt and significant partner funds to secure our future development.

The past few years have been demanding. But by staying true to our strategy, by being flexible and adaptable and by continuing to focus on anticipating and meeting our clients' needs, our business has proved itself resilient and sustainable – strengths well suited to an unpredictable future.

Governance summary

Our governance aims to confer on our elected leaders the authority to run the firm, while maintaining appropriate checks and balances through a matrix of geography, practice groups and global client teams, and a two-body structure.

The Partnership Agreement requires that certain issues are subject to a vote of partners, including elections for senior management roles, new partners and mergers or acquisitions.

Our ambition to lead our industry's international elite remains and we pursue our goal vigorously in four ways:

Deepening client relationships

This is a continuing preoccupation. It matters even more when clients face severe challenges: that is when they need advisers in whom they have absolute confidence. Tough times have given us the opportunity to show how much we value them – and how we can give them what they value. This has been reflected in the quality of the mandates clients entrusted to us last year.

Broadening the business

We have continued to broaden the business – not by seeking to do everything for everyone, but by focusing on those sectors where we can offer clients the most rounded advice, drawing on deep knowledge of their international markets and the commercial, business and regulatory issues that shape their world.

Building strength across markets

We must have strength in the right places. The crisis has accelerated the shift of economic power to the fast-growing markets of the south and east: our turnover in Asia increased by 20%. Few other firms can match our strength in the BRIC countries, the Middle East and Asia, and we have seen the benefit. New trade and capital flows are emerging that bypass the old established financial centres, and this is shaping our thinking for the future. We have been building capacity through lateral hires where needed, even as we cut back in our more developed markets. We will be investing much more in these growth markets, both by expanding existing offices and by opening new ones.

Investing in client service

We continue to invest in delivering what clients want – anticipating their needs by engaging directly with them. So, for example, we have further expanded our Knowledge Centre in India, which will soon have 40 consultants (see p29). Our aim of maximising cost-effectiveness for clients, without compromising quality, also underpins our investment in global standardisation of procedures, in project management, and in a common IT platform worldwide. To provide the skills that are in demand we have continued to invest heavily in training and development for every individual in the firm.

In addition, society's expectations of business have been shaped by the turmoil of the past few years, with demands for greater accountability – both enforced through tighter regulation and demonstrated through corporate responsibility. This year we publish our third corporate responsibility report, covering our policies and actions across a wide range of issues, including people, community and the environment.

To succeed, we must develop the very best talent available. For this reason, improving the gender balance of our partnership is crucial. And while this remains a challenge across the industry, at our firm this sits high on the list of priorities for everyone in management.

In all these areas, and many others, we are working more closely than ever with our clients as we all learn to map and navigate the new economic order. In that spirit, this report looks forward as well as back. In considering the future, we have asked a number of partners to contribute to essays on some of the issues our clients can expect to be grappling with in the coming year. In looking back, we extend our heartfelt gratitude to those same clients for the faith they have continued to place in us. And we send a special thank-you to our people for their unstinting energy and commitment which has made our firm what it is today and which will secure us an even more successful tomorrow.

David Childs
Managing Partner

Stuart Popham
Senior Partner

Management Committee: chaired by the Managing Partner, the Management Committee is responsible for the overall management of our firm, including our strategy, finances and profitability, our growth and the development of our competitive position.

Partnership Council: chaired by our Senior Partner, the Partnership Council monitors the performance of the Management Committee; ensures the firm is managed in a way that is fair to all partners; safeguards the reputation of the firm; and organises votes and elections required under the Partnership Agreement.

Global Operations Group: chaired by our Chief Operating Officer, the Global Operations Group is responsible for the firm's support services and oversees the successful management of internal projects, including major technology initiatives.

General Counsel: our General Counsel leads a team that is responsible for compliance, risk management, insurance and legal issues affecting the firm. It also manages the firm's conflict clearance processes.

Partner Selection Group: the Partner Selection Group reports to the Partnership Council. It reviews and reports on the personal qualities of all candidates for partnership.

Audit Committee: the Audit Committee reports to the Partnership Council. It reviews and approves the firm's accounts and recommends which firm should be appointed as auditors. It also monitors the firm's risk management processes.

Read our full Governance statement at
cliffordchance.com/review2010

New rules, new game, new winners?

For many of our clients, the past 12 months have felt like the third game-changing year in a row. First there was financial meltdown and the battle for survival. Then came recession and the battle for recovery. Now the aftermath, and the quest for remedies.

To provide context for a review of our client work, we asked several of our partners to comment on issues that are changing the rules of the post-crisis game. We offer their thoughts on the following pages – accompanied by examples of the game-changing activity we've helped clients to undertake over the past year or so, starting off here with some sector-shaping M&A.

The aftermath of crisis brings a rush to regulate-away the apparent causes. The past few years have seen growing public distrust of businesses and institutions – their ethics, their motives and their governance. Regulation is in vogue, to curb perceived excesses and mitigate risk. But will it work, and what are the implications for the regulated?

We look at three areas of growth: anti-corruption legislation **(p12),** competition law **(p6)** and the governance of financial institutions **(p16).**

While developed economies worry about how to mend a financial system that seems broken, faster-growing economies are more concerned to build new financial systems capable of fuelling their expansion. **On p20** we consider how best to establish stable capital markets in developing economies.

Everywhere, the sheer scale of enterprise is growing relentlessly. Bigger businesses and projects mean greater risks and needs for funding; so on **p24** we examine how companies can use partnerships to raise their game without betting the farm.

We hope you will find these essays thought-provoking, and would welcome feedback and further discussion. You can talk to any of our people referenced here or find out more on our website at www.cliffordchance.com

We would welcome your feedback on any of the articles in this review.

Please contact us at **arfeedback@cliffordchance.com**

Sector shaping M&A: Kraft Foods and Cadbury

Sweet success

In September 2009, global food group Kraft Foods bid for the UK's Cadbury. An extensive team from Clifford Chance's New York and London offices advised on the deal, which saw many twists and turns before the Cadbury board finally recommended a £11.9 billion offer in January 2010.

The transaction created a global leader in the confectionery sector and was one of the highest profile deals in the UK for many years.

Sector shaping M&A: T-Mobile and Orange

Changing the landscape for mobile telephony in the UK

Clifford Chance helped Deutsche Telekom seize a market opportunity to complete a 50:50 joint venture between its UK-based subsidiary T-Mobile and Orange UK, creating the largest mobile operator in the UK. The objectives were: to agree relative values of both companies; to ensure a 50:50 split between debt and equity and maintain a cashless, debtless transaction; and to prevent leaks and ensure confidentiality since both parties were also key competitors. Working with the client as one team and demonstrating an in-depth understanding of the legal, regulatory and industry landscape, we pulled together a truly innovative approach to structuring and implementing the joint venture and negotiated antitrust clearance with three regulatory bodies, all within a 35-day window.

Sector shaping M&A: Volkswagen

Business acceleration

We advised Volkswagen Aktiengesellschaft on the creation of an integrated automotive group with Porsche as well as on its capital increase of more than €4 billion, one of the biggest ever in Germany. We also advised Volkswagen on the acquisition of 100% of MAHAG Group, the largest car dealership in Germany.

Navigating the complexities of international competition

If monopolies are so bad, why is there only one Competition Commission? Now there are over 100 such bodies in apparent global rivalry, the old joke doesn't look so funny. Clifford Chance's Bill Blumenthal and Michel Petite have served as General Counsel to the US and European regulators respectively and have seen the issues from both sides. Based on conversations with them, we discuss the prospects for workable global solutions.

Who referees the referees?

In global markets, who can we trust to make sense of antitrust law?

Bill Blumenthal
Partner, Washington, DC

Michel Petite
Of Counsel, Paris

It's a competitive world out there. And a proliferation of regulators is vying to make the rivalry even tougher. As a result, for some businesses the risks posed by regulators could match the risks posed by competitors.

In a world of multinational businesses, regulation looks like a fragmented cottage industry. And the more aggressive stance being adopted by many national regulators is exposing a tangle of unresolved issues that create problems with global implications. Paradoxically, there could now be a case for consolidating the competition authorities.

How did we get to this point?

Fifty years ago, few countries had comprehensive competition law. But the number grew steadily – accelerated in the 1990s and 2000s by the explosion of global trade and the inclusion of competition law mandates in trade treaties. By 2009 virtually all the world was on board.

Today's global challenges date from the 1980s, when the US began seeking to enforce its own laws extraterritorially. Other countries opposed this at first, but then began to follow suit. Now almost every nation applies its competition statutes globally, wherever there is anticompetitive activity that has impacts in its own jurisdiction. Pretty much everyone is regulating pretty much everywhere. But each in their own way – and there's the rub.

Almost all countries regard price or market fixing as bad, but how bad? There is little consensus. Cartel activity is a crime to some, a regulatory misdemeanour to others. The response to monopolies and market dominance also covers a broad spectrum, reflected in widely varying approaches to merger clearance.

Does this matter?

Yes, because the goalposts keep moving. Both legislation and enforcement are becoming more aggressive around the world, and business leaders are being caught out by the shifts in standards. There is a growing danger of accumulating penalties in multiple countries for the same offence. You could face hefty fines and a jail sentence in the US, then be fined 10% of turnover in the EU, then lose another 10% of turnover to a succession of Asian prosecutors. This piling-on effect is disproportionate and, by sapping the economic vitality of target companies, could actually reduce competition.

These are global problems that need a global response. But who should respond, and how? The path to global co-ordination is littered with unresolved issues…

"This piling-on effect is disproportionate and, by sapping the economic vitality of target companies, could actually reduce competition."

Philosophical issues

There are unresolved philosophical issues about what antitrust legislation actually aims to achieve. Are consumers best protected by unfettered competition, to the death if necessary? Or by a degree of restraint or gentlemanly agreement that ensures all competitors live to fight another day?

If there is no consensus on how markets operate or what the policy objectives are, divergent rules are almost inevitable. This is clearly apparent in the rules on market dominance, where companies shipping goods globally face growing uncertainty. Those with strong market positions face particular challenges – not least because the definition of dominance varies: it is more expansive, for example, in the EU than in the US.

Fairness and proportionality

There are unresolved issues for legislators over fairness and proportionality. It is possible to over-deter and over-punish. Where intra-jurisdictional piling-on amplifies the impact of fines, uncoordinated actions can have unexpectedly severe consequences.

International competition: Pfizer and Wyeth

Creating the world's premier biopharmaceutical company

Early last year, Pfizer and Wyeth announced their intention to integrate to create the world's premier biopharmaceutical company. Clifford Chance was selected to advise Pfizer on the competition and antitrust aspects of the global merger, bringing in lawyers from a number of offices. The case involved the largest number of affected markets ever assessed in a European Commission decision, and gained competition approval from the Chinese authorities – the fourth of only six conditional clearances since the country's Anti-Monopoly Law was introduced in August 2008. In the words of the client: "I want to express my deepest appreciation to [Clifford Chance] for all of the time, effort and brainpower you put into getting this unprecedented outcome."

And who has the right to levy such fines? Where they are levied by regulators alone, there is growing pressure for more open legal processes.

There is also the question of civil damages. Competitors can make hay from a cartel judgement by pursuing damages in court. So can customers who claim they paid needlessly high prices. Damages are being awarded in the US on a scale that adds significantly to the piling-on effect. No doubt this will spread elsewhere.

The shareholders who take the hit are often not those who benefited from the cartel activity – who may have sold their stock at prices inflated by illegally earned profits. There's an apparent unfairness here: would it be resolved if the offending managers were punished, rather than the company?

Supernational regulation

Piling-on is just one symptom of the unresolved global issues. The proliferation of regimes is an increasing problem. Since 2001 – when the EU blocked a GE-Honeywell merger after US authorities had already cleared it – the US, EU and others have been seeking better mechanisms for international coordination. In particular, US and EC authorities extensively consult each other on the basis of a bilateral agreement. Any idea of a supranational regulator looks like a pipedream, because countries are reluctant to surrender their sovereignty: who will yield to whom? But some progress is being made through less formal groupings. The OECD Competition Committee meets three times a year to help agencies align their policies better, but is limited to the OECD's 31 members and a handful of observers. The International Competition Network is a virtual organisation linking almost all countries with competition laws.

Together, these groupings have at least prevented competition among competition regulators from sparking another GE-Honeywell collision. They are supporting a gradual convergence to a global norm, but huge doctrinal divergences remain.

Business impacts

These create unresolved issues for companies. Today's free-for-all is an administrative headache. With no central clearing house to address multi-jurisdictional conduct, companies face over 100 separate merger control regimes worldwide – each with its own thresholds, filing requirements and procedures. A major merger may involve co-ordinating 20 separate filings, which is expensive and time consuming.

More worrying for boards is the risk arising from lack of clarity and consistency. What passes for routine discounting in one market may be illegally unfair pricing somewhere else. Some regimes may reduce fines in recognition of a good effort to comply; others will punish the lack of a compliance programme. Mergers may be cleared unconditionally here, but subject to conditions there.

International competition: Oracle and Sun

All systems go

In April 2009 business software giant Oracle entered into an agreement to acquire Sun Microsystems, a deal that would turn the enterprise software company into an all-round systems company. In this high profile and contentious case, Clifford Chance advised Oracle on Sun's acquisition, securing unconditional approval following an in-depth investigation from the European Commission.

International competition: Iberia and British Airways

Cleared for takeoff

Our Madrid office competition team secured the first European Commission clearance of a major airline merger without commitments being imposed. We advised Iberia, whose merger with BA will create the third-largest airline in Europe. On the same day, the team obtained clearance of the transatlantic alliance linking Iberia, American Airlines and British Airways, a move aiming to boost revenues and generate cost savings, following extensive negotiations with the European Commission.

Some regimes offer leniency or even impunity to a cartel member that reports its co-conspirators – but you must be the first to report. In our experience, when a cartel comes to light, a delay of just a few minutes can make the difference between impunity and a US$1 billion fine.

Navigating the minefield of uncertainty and inconsistency requires serious consideration and expert advice. And it is a task that won't get easier anytime soon. The progress of international co-ordination has been slow and shows little sign of resolving the issues highlighted here.

But we see other straws in the wind. A less formal kind of harmonisation is emerging through the worldwide community of competition lawyers and economists. Like their corporate clients, they have global perspectives and cross-border expertise. They have influence. And as they spread current trends and thinking through their networks, they are increasingly able to help pre-empt clashes that would be detrimental to everyone. Strangely enough, it seems to be working rather well so far…

In competition and antitrust law
Clifford Chance's specialist international expertise includes:

Mergers, joint ventures, strategic alliances
Cartel investigations
Market dominance and monopolies
Anti-competitive agreements and practices
Antitrust litigation
Antitrust compliance policies
Public procurement
State aid
Utility regulation

Find out more at **cliffordchance.com**

"When a cartel comes to light, a delay of just a few minutes can make the difference between impunity and a US$1 billion fine."

Increased emphasis on corporate compliance

Bribery – a scourge that needs to be eliminated? Or the grease that oils the wheels of everyday commerce? Some companies seem to hold both views at once. Clifford Chance partners Wendy Wysong in Washington, DC, Roger Best in London and Martin Rogers in Hong Kong argue that this dualism is unsustainable, and runs greater risks than many boards realise.

Calling time on international bribery

The risks and rewards of corruption are shifting sharply

Wendy Wysong
Partner, Washington, DC

Roger Best
Partner, London

Martin Rogers
Partner, Hong Kong

Some international businesses are prone to doublethink on bribery: practices considered unacceptably corrupt at home may be adopted or tolerated as normal elsewhere. Others are simply complacent – assuming that the code of conduct published from Head Office is scrupulously observed throughout the organisation.

Both groups are due for a rude awakening. Corporate boards need to be alert to the risks posed by the hardball approach now being adopted by the US and UK authorities. Specifically: it has global reach, it makes a laissez-faire attitude to corruption extremely dangerous, and box-ticking compliance will not be sufficient protection.

Around the world, anti-bribery legislation has been patchy. Even where it existed, it has not necessarily been enforced with much vigour, although there are clear signs of a change in enforcement approach in major new economies, most notably China.

Turning up the heat on enforcement

The US took the initiative with its Foreign Corrupt Practices Act (FCPA) in 1977; but it is only recently that the US authorities have turned up the heat on enforcement.

The FCPA is far-reaching: it seeks to prevent bribery of foreign officials by US persons or US business entities, or even non-US persons and businesses who are registered with a US exchange or who commit an act in furtherance of the bribery in the US.

Temperatures have gotten hotter as US prosecutors supplement their broad FCPA authority with other extraterritorial crimes to win convictions.

In March 2010, UK defence contractor BAE Systems resolved US bribery investigations dating back more than two decades by accepting a US$400 million fine – not under the FCPA, but for breaches of arms export licensing law. “We are not myopically focused on the FCPA,” remarked Mark Mendelsohn of the Department of Justice, in a comment that should ring warning bells in laissez-faire boardrooms everywhere: “We have a big fat criminal code at our disposal.”

Even stronger warning signals have been coming from the UK. First we saw a more aggressive approach to enforcement of existing legislation by the Serious Fraud Office. And then the Bribery Act – coming into force in April 2011.

"Cross-border multi-agency investigations are becoming commonplace, and multinationals are finding it harder to shelter behind bank secrecy laws."

Corporate compliance: Developing standards at Clifford Chance

Combating corruption

We believe we cannot advise our clients on best practice without living up to those standards ourselves. At Clifford Chance, we expect our people to observe the highest standards of professional ethics and therefore operate a senior management-backed policy of zero tolerance towards bribery or corrupt practices. This is one part of the roll-out of our enhanced anti-bribery and corruption commitments which also include global training programmes for lawyers and business services staff.

We aim to do more than simply keep on the right side of the law: we have been at the forefront of the development of the latest thinking and legislation to combat corruption. Clifford Chance lawyers made important contributions to the drafting of the UK's wide-ranging Bribery Bill as well as assisting the Confederation of British Industry, the International Chamber of Commerce and the London Investment Banking Association with their submissions on the Bill. And we are energetic supporters of the World Economic Forum's Partnership Against Corruption Initiative (PACI), participating in a number of working groups that developed the code. As signatories to PACI and the UN Global Compact, and as active players in Transparency International and TRACE, we have put our commitment to eliminating corrupt practices across the business world at the heart of our firm.

This changes the whole anti-corruption landscape. It is extraordinarily ambitious – and rightly so, to those who believe global marketplaces need fair competition.

It is extraterritorial like the US legislation – but more so. It sets out to govern the conduct of all companies that carry out any part of their business in the UK, or anyone resident in the UK, in relation to any of their activity throughout the world. So if you are a Chilean company with an office in London or a Japanese businessman living in Manchester, it seeks to police your activity across the globe.

Compared with the US law it targets a wider range of offenders (the bribed as well as the bribers), offences (bribing people in the private sector as well as the public sector) and actors (companies become legally liable for the actions of their employees, agents and distributors, *whether these actions were sanctioned or not*).

And it leaves very little wriggle room. Where the US law allows exceptions for low-value quasi-official 'facilitation payments', the new UK law says a bribe is a bribe is a bribe.

So is this the start of a probity arms race? Will we see other countries ratcheting-up their own legislation? It would be hard to devise anything much tougher than the Bribery Act – but it probably sets the new benchmark as countries tighten their regulations.

And tighten them they will: a new aggression in anti-corruption activity is increasingly evident worldwide. Earlier in 2010 the OECD called for tougher action against facilitation payments. And even where there has been no change in the law, we are seeing more rigorous enforcement of existing regulations.

In Asia, China leads the way but other countries seem willing to follow. This seems to be driven by two concerns. First, a concern about social unrest as emerging Asian middle-classes become less tolerant of graft. Secondly, the objective of being able to say to regulators in the US and Europe: "There's no reason to stop our new Asian champions from making strategic acquisitions or raising capital in your countries. Our companies are domestically well run, without corruption and with closely comparable standards of corporate governance."

Extraterritorial risks

Cross-border multi-agency investigations are becoming commonplace, and multinationals are finding it harder to shelter behind bank secrecy laws. The US is sharing information and even resources with other nations' enforcement agencies – and turning-over evidence to them: some countries are now running their own prosecutions supported, though not supplanted, by the US.

For companies with connections with the US or UK, the risks are spiralling. Particularly in the UK, where the Bribery Act introduces an offence of 'failure to prevent bribery' which penalises a company for the actions of anyone acting on its behalf. The implications are further-reaching than many boards of directors realise: for example, a company may be exposed by bribes paid by those to whom it outsources.

Corporate compliance: EADS

Under the magnifying glass

When it came under scrutiny for possible involvement in one of Europe's largest insider dealing cases, global aerospace and defence giant EADS came to Clifford Chance first. We have a long-standing relationship with EADS, and have been acting for the company as well as three managers and former managers since the French stock market regulator launched an investigation in 2006. In December 2009, the regulator dropped all charges and recognised that there were never any breaches of insider dealing rules.

"Laissez-faire boards will have to become proactive. They will need more vigilance in operations – and more due diligence in M&A."

US corporations should already be geared to the FCPA, but even the well-prepared are having to tighten their procedures and reappraise the risks in light of the new extraterritorial legislation and enforcement. It won't be enough to tell your employees: "If in doubt, contact your compliance director". All those acting on behalf of a corporation need to be told precisely what's expected of them, and what they can and can't do. If you have an office in Cambridge, Mass, you can take a Russian client to dinner, the opera, or the ballgame (unless they're a public official). If you also have an office in Cambridge, England, lavish entertainment is a risk. And employees must look carefully at what invitations they accept, because under the UK Bribery Act it is as illegal to receive as it is to give.

Board level responses

Laissez-faire boards will have to become proactive. They will need more vigilance in operations – and more due diligence in M&A. The risk of taking on unexpected liabilities is rising sharply, and ignorance is no defence. For any company, anywhere in the world, acquiring a business with UK operations may expose the whole business to the Bribery Act. UK-compliant businesses acquiring companies that meet FCPA standards need to recognise that this does not provide complete assurance in relation to UK law: at a stroke, their compliance with the Bribery Act could be compromised. And even if the board is confident that it can impose its high compliance standards on the new acquisition, can the same bottom line be delivered without bribes?

As regulations get more complex and fines get higher (not to mention the threat of prison sentences), anti-corruption compliance is becoming an important branch of risk management. Companies need strong mechanisms and tools to stay safe. Many are investing in in-house compliance professionals who recognise the issues and can adapt procedures accordingly. Across the Clifford Chance network worldwide we have seen rapid growth in demand for help in auditing procedures and practices, strengthening compliance regimes and deepening due diligence.

Corruption is so prevalent in so many places that a skin-deep approach will be ineffectual. Drafting-up a new set of instructions isn't enough. A box-ticking approach to compliance is too easily circumvented. An anti-bribery culture needs to be embedded – led by a demonstrated commitment from the highest levels to root-out illegal activity, with remediation and discipline where it's discovered. Without this there will always be pockets of resistance where turning a blind eye is legitimised with a wink and a nudge.

Corporate compliance: Six-Dimensional Risk Management Model

A new tool to help clients manage their risk journey

Developed in collaboration with clients and with our colleagues at AZB & Partners, our Six-Dimensional Risk Management Model is based on extensive experience of the risks faced by international organisations in the current economic, financial, social and environmental climate. "After speaking to clients and listening to what they needed, we drew from industry and built a risk dashboard to help clients to identify different areas of risk, to develop a road map to mitigate those risks and to monitor the driving conditions ahead in relation to those risks," explained Singapore partner Nish Shetty.

Road tested with major international clients, the model helps companies navigate changing risk landscapes more efficiently. "It supports steps corporate clients are increasingly taking to apply technology and metrics to risk measurement and management," commented Hong Kong partner Martin Rogers.

In our experience anti-corruption compliance is lagging behind the changes in legislation and enforcement. Outside companies with US operations and the financial services sector, it is only just appearing on board agendas. There is no standard framework for addressing it. It's impossible to introduce uniform nuclear-grade compliance everywhere, and the key is a staged approach based on analysis to focus attention where the risk is greatest.

Boards should not regard compliance merely as a cost, but as a value-added competitive benefit. It enables a corporation to avoid the cost and delays associated with an investigation, and provides reassurance of business continuity to customers and suppliers. Moreover, any suggestion of impropriety could have considerably deeper consequences. Fitch recently published a report indicating that an indictment – or even an investigation – could damage companies' credit ratings and access to finance. And as the UK legislation brings a credible threat of individual liability and long jail sentences, there is also personal risk to be considered.

Business corruption is becoming more trouble than it is worth – as complacent and laissez-faire boards will discover to their cost.

In corporate compliance
Clifford Chance's specialist international expertise includes:

Corporate governance
Corporate investigations
Anti-bribery and corruption
Antitrust
Anti-money laundering
Trade controls and sanctions
Data privacy and management
Employment
Health & safety
Environment
Tax
Regulated sectors

Find out more at **cliffordchance.com**

Corporate compliance: Carousel fraud

Not so merry-go-round

Carousel fraud may sound like fun. But there's nothing amusing about being raided by the taxman and subjected to a lengthy investigation or even just fielding his barrage of questions.

The fraud happens when a company sells goods or services, collects VAT – then quietly disappears without paying the tax to the taxman. It's become a major issue in the carbon credits market. Europol estimates that €5 billion was defrauded from European governments in the 18 months leading to the end of 2009. It's been suggested this means that up to 90% of carbon credits are tainted – a serious concern for many of our clients, particularly in the energy and financial services sectors.

For example, on 28 April 2010, German prosecutors searched Deutsche Bank AG, HVB Group and RWE AG in raids on 230 offices and homes across Germany. On the same day, the UK Revenue & Customs raided 81 premises in the UK and made 21 arrests.

Often, the first approach in an investigation is made to the purchaser. A key question is whether he took reasonable care in checking the bona fides of the seller. A particular difficulty for the purchaser is when he tries to reclaim the VAT paid to the seller (which was never passed to the taxman), the taxman may withhold the refund pending the outcome of the investigation. Even if you've done nothing wrong this could cost you time, affect your relationship with the authorities and put your reputation at risk.

We've assembled a specialist carousel fraud team. As the world's leading law firm in both VAT and carbon credits we've been able to provide a highly effective combination of knowledge, tactical focus, strategic planning, expertise and legal skills to deal effectively with official and investigatory bodies and advise, for example, on how banks can open their books to the tax investigators without breaching their duty of confidentiality to their own clients.

How will we avoid the next financial crisis? Amidst the calls for structural and regulatory change, a more fundamental issue is getting less airtime than it should. Clifford Chance partners Daniela Weber-Rey in Frankfurt and Michael Bray and David Pudge in London believe that one of the keys to effective risk management is boardroom culture and behaviour, specifically, the willingness and ability of boards to challenge management's strategy and appetite for risk effectively. While any direct correlation would be difficult to prove, there are some grounds for believing that financial institutions with a strong culture of challenge in the boardroom weathered the crisis more robustly.

The real challenge is: challenge

Effective governance depends on the willingness to debate robustly

Daniela Weber-Rey
Partner, Frankfurt

Michael Bray
Partner, London

David Pudge
Partner, London

In the political aftermath of the financial crisis, attention has shifted from holding the system together to ensuring that it will not fall apart a second time. Perhaps inevitably, the focus has been on changing the system and tightening the way it is regulated. But isn't this overlooking a more fundamental issue? Couldn't the impact of the crisis have been better contained if banks' boards of directors had better understood and confronted the risks of certain strategies?

Over the past year we have held a series of round table gatherings across Europe to hear expert opinions on corporate governance in financial services – and , in particular, on the topics of "what went wrong?" and "how can we make it better?" We listened to bank leaders, regulators and consultants. Time and again, they came back to weaknesses in corporate governance. These did not cause the financial meltdown; but it appears that in many financial institutions the board was unable to limit the consequences by curbing the organisation's risk appetite.

Disaster provokes a 'never again' rhetoric demanding ever more stringent regulation. In the financial services sector, the clear danger is that over-regulation could impede the banks' vital contribution to economic recovery and growth. Layer upon layer of overlapping regulatory remedies have been proposed, often apparently motivated, principally, by a desire to punish the banks. We believe it makes more sense to focus on overhauling governance and implementing it more effectively.

Governance focuses on behaviour rather than rules. To restore confidence in financial institutions, behaviour must change – and be seen to change – from the top down. This is not simply about changing systems; it's about changing culture and mindset.

The failure of many boards to act effectively was not a structural failure, and would not have been remedied by more box ticking. Indeed, many boards mistook regulatory compliance – which was followed religiously – for sound banking policy. What was lacking was their ability to see and understand the bigger picture, to grasp the strategic risks and to challenge management.

There has been much talk about board competence, and the professionalisation of boards. Clearly, boards need to include enough specialist knowledge to understand the issues and expose the executive to proper scrutiny. But expertise does not, of itself, guarantee effective governance.

Future of financial services: GE Capital

An Islamic first

When GE Capital wanted to make its initial entry into the Islamic finance capital markets in 2009, GE Capital's lead managers, Citibank and Goldman Sachs, turned to Clifford Chance to take advantage of the firm's extensive experience and innovation in this area.

With over 35 years' presence in the Gulf region, the firm worked closely both with GE, Citibank, Goldman Sachs and each of the lead managers' internal Shari'a advisory boards to structure a novel sukuk that could meet both the strict principles of Shari'a and GE Capital's needs.

The resulting US$500 million issuance was the first investment grade sukuk from a US corporate, and has been said by many to show the way forward at a time when corporate treasurers are under pressure to diversify sources of corporate finance.

In the *realpolitik* of board life, the greatest dangers are groupthink and groupspeak – the tendency to believe that something is so because one's colleagues say it is. Competence is only part of the solution: it can too easily be overruled by a forceful leader or a mistaken majority. The real challenge for non-executives is to work collegiately with executive directors while still providing effective challenge.

We do not underestimate the difficulty of speaking out effectively against what are widely perceived to be truths. The world's economic history is littered with bubbles that highly intelligent people were apparently unable to spot, let alone prevent. But that does not mean we should not make the attempt. And addressing the issue of board culture would undoubtedly help.

Can the capacity to challenge be acquired or taught? At the individual level, it's about *character:* It takes courage to face up to a dominant figure and ask "Why?" or "Is this wise?". Not everyone can do it. But if the culture and behaviour around the individual board member are supportive, he or she will find it easier. If this is to be achieved, then the chairman has a crucial role to play in ensuring that the board operates effectively and that non-executive directors are able to challenge constructively and contribute effectively to the development of the bank's strategy.

How many banks are actively seeking to build a culture of challenge, from the board down? Some clearly already have this, and it is these that are most likely to have had a 'good' crisis. Many others are in the process of overhauling their governance and risk management functions. But driving cultural and behavioural change is not as simple as ticking boxes; and what works for one institution will not necessarily work for others. The increased focus on risk management can help. One bank's chief risk officer told us his team welcomed their board's creation of a risk committee because "more direct board engagement also sets up informal lines of communication which are perhaps as important".

Independence of spirit among non-executives can be fostered by ensuring they have access to relevant board information and devote more time to their roles, particularly in terms of preparing for board meetings. An increased time commitment by NEDs helps to ensure that they have sufficient opportunity to be fully informed, to reflect, and to be less reliant on received wisdom and groupspeak.

Another aid to challenge is diversity of perspectives. Boards should be discouraged from recruiting in their own image. Appointments should be made on merit and with a view to achieving a well-balanced board. It is essential to have an appropriate level of technical experience on the board, but a broad range of skills, experience and knowledge is a prerequisite for proper debate. This has been advanced as one reason to push for more women on boards, on the grounds that they bring different perspectives and behaviours.

At the heart of the board's responsibilities lies the control of risk and the determination of risk appetite. Only the board can ensure that the organisation's strategy is aligned with its risk profile – that it is risk-coherent. There may be different ways of structuring this but, ultimately, the board must have access to the chief risk officer and the chief risk officer should feel accountable to the board. But the quality of debate will still depend on whether individual directors feel encouraged to question and challenge – and have sufficient information and understanding to make an informed contribution.

Can a culture of challenge be measured and monitored? It could certainly be made part of the external reviews of board performance that are now widely accepted as best practice. In addition, at the individual level, the UK's Financial Services Authority says that its 'fit and proper person' test includes an assessment of an applicant's capacity to challenge. Some other countries have also started to introduce these tests for oversight bodies and non-executive directors, and the OECD has called for them to be more widely adopted.

Future of financial services: Inmobiliaria Colonial

Restructuring real estate

With its exposure to the struggling Spanish property market, real-estate giant Inmobiliaria Colonial was negotiating hard on its bank loans in 2009.

Clifford Chance was appointed to help the syndicate of French, German, British and Spanish banks to manage their interests in the transaction, which amounted to over €6 billion. Bringing the transaction to a successful close required our team to balance the interests of these many stakeholders in order to help create a new capital structure under which the company could sustain the remaining debt.

Future of financial services: Natixis

The first French securitisation company

Clifford Chance advised Natixis on the formation and launch of the first ever domestic French securitisation company – MAGENTA. Before the launch of the €5 billion commercial paper programme, the market had been sceptical that such a vehicle was practicable and deliverable.

Given the new vehicle's bankruptcy remoteness and eligibility for double tax treaties, we expect French securitisation companies to become a popular choice for French and pan-European securitisation and structured finance transactions.

Future of financial services: Actis

Banking on Egypt

With a strong track record in Africa, Clifford Chance has advised emerging market specialist Actis on many deals in the region. A recent example was Actis' acquisition of a 9.33% stake in Commercial International Bank, Egypt's biggest bank. The deal was complicated by regulatory hurdles, which we overcame to enable one of the largest private equity deals in Africa in 2009.

In the run-up to the financial crisis, financial institution boards were, too often, the dog that didn't bark. In future they have to be more proactive, and more ready and able to challenge and test management's proposals. This may be difficult – we saw in the lead-up to the crisis how hard it is for a board to challenge a management team that appears to be successful. But it will be much easier if there is a cultural change to reflect an expectation that the board's thinking on strategy and risk will be the result of robust and informed debate.

Any reappraisal of governance in financial services will have potentially far-reaching implications. The remit of the UK's Walker Review was confined to corporate governance in financial services, but relevant aspects of its findings have already resulted in changes to the UK Corporate Governance Code for all listed companies. The deficiencies of bank boards were certainly not unique to their sector, and the financial crisis should be a salutary warning to boards everywhere that challenge is not something to be suppressed or smoothed-over. Nor is it, if done openly and constructively, at all incompatible with a positive and collegiate boardroom environment. It is, however, a prerequisite for healthy governance.

In the financial services sector
Clifford Chance's specialist international expertise includes advising banks, insurers, private equity funds and investment managers on:

Asset finance
Capital Markets
Corporate finance
Corporate governance
Dispute Resolution
International financial regulation
Islamic finance
Leveraged and acquisition finance
M&A and joint ventures
Project finance
Real Estate
Restructuring and insolvency
Syndicated loans
Tax

Find out more at **cliffordchance.com**

"In the *realpolitik* of board life, the greatest dangers are groupthink and groupspeak."

The key to success for new financial centres? Surprisingly, it's not less regulation but more – of the right kind. Clifford Chance partners Simon Gleeson in London and Debashis Dey in Dubai anatomise the ideal regulatory regime for emerging capital markets.

Rethinking regulation: revolution or recycling?

A good regulatory regime can't just be copy-and-pasted

Simon Gleeson
Partner, London

Debashis Dey
Partner, Dubai

Across the world Clifford Chance advises governments and regulators on financial regulation and policy. Much of this work recently has revolved around establishing and developing new financial centres. So we have spent a lot of time trying to answer the question: "What makes a new financial centre successful?".

One of the most important parts of the answer is efficient and effective regulation. No surprise there. But when we consider how such regulation would work, the answer is not what many people expect. There is a commonly-held belief that international finance businesses seek out low levels of regulation. In fact, nothing could be further from the truth.

From the perspective of a bank, money spent on regulating it is wasted; however, money spent on regulating its counterparties is well spent. So if the aim is to establish a financial centre where multiple businesses can deal confidently with one another, higher rather than lower levels of regulation are essential.

But that's only if the regulation works well. In all too many emerging market financial centres, poorly designed or implemented regulation causes needless problems for those seeking to do business. In our experience, these problems can be broadly grouped under the following headings:

- Obscure or inaccessible legislation, local regulation or rulebooks
- Difficulties in obtaining clear interpretation of existing rules either from local regulators or from local advisers
- Lack of clarity on local tax treatment of activities
- Problems with local decision making processes – in particular where processes are impractically slow, arrive at inconsistent results, or lack transparency as to the reasons for decisions
- Approval regimes which impose multiple uncoordinated application processes
- Lack of local service providers – this may include custodians, settlement services, payment systems or exchanges
- Permissions which are accompanied by onerous or impractical restrictions imposed on the permitted entity.

Growing economies' capital markets: India

India capital markets team in Singapore

Our Singapore-based India capital markets team, set up in January 2009, has gone from strength to strength. The location means that we are geographically close to India and accessible to the international investment banks, who have their India-related functions in Singapore or Hong Kong – and it also works well from a time zone perspective. The Singapore India unit now has a total of eight lawyers and was ranked third among international law firms for Indian IPOs after just nine months of operation.

Growing economies' capital markets: Asia IPOs

Four in one week:

In an unprecedented flurry of activity, Clifford Chance teams in Hong Kong advised on four IPOs on the Hong Kong Exchange in a single week last September: **China Resources Cement** (US$800 million), **Wynn Macau** (US$1.9 billion), **Yingde Gases** (US$467 million) and **Ausnutria** (US$ 200 million).

"Having both Hong Kong and US securities law expertise in one firm does simplify the project for both us and our clients. However, the scale, scope and background of these deals were so different that each demanded very different approaches," said Hong Kong partner Amy Lo.

China Resources Cement

Wynn Macau

These shortcomings are, of course, by no means unique to emerging markets. But for markets battling to make an impact as capital flows shift away from the traditional centres, they matter crucially. They can make the difference between long-term success and failure.

So what exactly makes good regulation?

There are two parts to the answer.

First, people. Regulation is not just a set of rules; it is a process undertaken by regulators. Even the best-drafted rules are almost useless if they are not implemented by experienced and effective regulators. Just as important is the availability of good local advice: no business can operate on the basis that it will refer all its difficult regulatory questions to the regulator and wait for replies before proceeding.

The second is that good regulation is not just effective but also efficient. Clearly, it must be effective if it is to be useful – that is its *raison d'être*. And there is little mystery left in regulating financial markets: it is relatively straightforward to produce a more or less effective set of rules.

However, there are a number of ways of achieving any particular regulatory goal. The challenge – and, in our view, the primary feature that distinguishes successful financial centres – is to create regulatory mechanisms that work efficiently in the local environment. This is not so straightforward. While rules can be transplanted easily, processes cannot. So to be both effective and efficient, regulation must operate through processes that have been developed to suit local conditions – not just cut-and-pasted wholesale from other jurisdictions.

So should new offshore centres discard the old models and develop new processes from scratch? Such radicalism carries risks, and a more nuanced approach would be more prudent. Certainly, new centres need to convince potential new entrants that their rules are effective and their regulator is efficient. But they must also recognise that many new entrants will have existing processes and compliance procedures: any approach to regulation which cuts across those processes, no matter how effective or efficient, will constitute a barrier to entry.

Those who oppose regulatory innovation use this argument to assert the superiority of existing models. But that is too simplistic. The pragmatic route lies somewhere in between: it is simply to recognise that firms' own compliance processes will be most effective if they are built on a single firm-wide model, and therefore regulators will benefit from working with rather than against the grain of existing practice.

Clifford Chance's specialist international **Capital Markets** expertise includes

Corporate finance trusts
Debt capital markets
Derivatives
Equity capital markets
International financial regulation
PFI/PPP and project bonds
Restructuring and insolvency
Structured debt and securitisation

Find out more at **cliffordchance.com**

Yingde Gases

Ausnutria

Growing economies' capital markets: Asia IPOs

...and a total of US$14.6bn in the year

Over the financial year, Clifford Chance advised underwriters and issuers on Asian IPOs totalling some US$14.6 billion, including **CapitaMalls Asia** (US$1.8 billion), the largest IPO in Singapore since 1993, **Maxis Berhad** (US$3.3 billion), the largest IPO in Southeast Asia in 2009, and **China Minsheng Bank** (US$4 billion), the largest IPO in Asia in 2009.

Growing economies' capital markets: Lao Government Bond

Funding development in Lao

Clifford Chance is advising the Asian Development Bank to help implement the first Thai Baht denominated asset-backed bonds by the Lao Government to the ASEAN+3 Asian Bond Markets Initiative.

This cross-border bond project aims to facilitate Lao People's Democratic Republic's debut in offshore market in order to access an alternative funding source, by issuing Thai Baht denominated asset-backed securities in Thailand.

We have been working with both the Lao and neighbouring Thai governments to change the key laws and other related matters to make the bond possible, and have also been engaged by the Lao Government to work with the lead arrangers in order to implement the transaction itself.

"While rules can be transplanted easily, processes cannot. Regulation must operate through processes developed to suit local conditions."

Meeting the challenges of the energy sector

All over the world, national and international energy companies are forming new partnerships. They bring together capital, supply and offtake markets, technical expertise and political clout. But they also carry risks. Clifford Chance partners Geraint Hughes in Singapore and Bleddyn Phillips in Moscow consider what will make these relationships last.

Take your partners – with care

Hunger for commodities and capital is creating new kinds of alliance. But could these relationships end in tears?

Geraint Hughes
Partner, Singapore

Bleddyn Phillips
Partner, Moscow

For decades international oil companies (IOCs) and their national counterparts (NOCs) have engaged in relationships predominantly in the NOCs' home countries – and often it's been an uneasy courtship. But in the past couple of years they have been pairing-off as never before, often involving joint investments and partnerships on large-scale deals and projects outside the NOCs home country.

So what's bringing them together now? They began to see each other in a new light a couple of years ago. When the financial crisis erupted, the price of oil dropped from US$147 a barrel to US$46 in just over six months. The balance of power between NOCs and IOCs shifted sharply.

For the internationals – the likes of ExxonMobil, BP, Shell and Total – one big issue was capital. They had less to invest, and investment decisions were further clouded by uncertainty about how long the downturn would last.

By contrast, many NOCs from the BRIC countries – such as CNOOC, CNPC/PetroChina in China, Petrobras in Brazil and Gazprom in Russia – had access to capital via state and policy banks. They were more concerned with ensuring security of energy supply to meet burgeoning domestic demand (in the case of CNOOC and CNPC) and capturing markets to which they could sell their product at realistic prices (in the case of Petrobras and Gazprom).

For CNOOC and CNPC, their growing appetite for basic commodities – minerals as well as energy – drove a rush to 'bank' commodities, using the capital which they had in relative abundance.

One method has simply been to lock-in security of supply while demand is low by agreeing long-term offtake contracts. We have seen a significant number of these in the past 18 months in oil, gas and minerals.

State enterprises have been teamed with state-owned banks to provide capital that helps them cut deals with producer countries. Thus we see loans on favourable terms from China to support energy-related projects in countries such as Brazil and Nigeria – on terms with which IOCs, raising money on the constrained international capital markets, find hard to compete.

Another attractive option has been to acquire shares, or full ownership, of international producers battered by the crisis. But newly-enriched NOCs have not had it all their own way. Some of their bolder bids have been blocked by foreign investment review boards – or stalled until they are 'trumped' by local bidders. The market saw this in 2005, when China's CNOOC offered US$18.5 billion for US oil company Unocal but eventually lost-out to a lower bid from Chevron. These NOCs are seeing this type of political risk in a number of countries.

Energy sector: Shell and Cosan

Biofuelling the future in Brazil

With its sights set on developing a sustainable, profitable and scalable biofuels operation, Shell turned to Clifford Chance to take advantage of our expertise in the world's largest biofuels market – Brazil.

Working with our long-established São Paulo office, Shell agreed plans to set up a $12 billion joint venture with Cosan in February 2010. The new venture will control almost 4,500 petrol stations in Brazil and, importantly, it will also create one of the world's largest ethanol producers at a time when future global demand for the product is expected to rise.

Energy sector: RWE and E.ON

New nuclear horizons

With a long history of advising on nuclear power across many jurisdictions, Clifford Chance was well-equipped to help Horizon Nuclear Power, a joint-venture between RWE and E.ON, to develop the UK's nuclear infrastructure.

From corporate structuring to specialised real estate advice, we will be advising Horizon as it spends an anticipated £15 billion to develop around 6,000 megawatts of power by 2025.

So the smart solution is for nationals and internationals to join forces in joint ventures or alliances. The internationals gain access to capital, and to markets where demand is buoyant. The nationals, which have the capital and markets, gain access to the internationals' technology, project management expertise – and political savoir-faire; the IOCs are better understood by international markets, regulators and public opinion.

So, for example, we have seen Shell linking up with PetroChina to acquire Arrow Energy in Australia and explore for gas in Qatar; China National Petroleum Corporation taking a stake in Shell's oil fields in Syria; and Saudi Aramco partnering with Total in constructing a US$15 billion refinery and petrochemical complex in Saudi Arabia.

These relationships bring together complementary capabilities: in Russia, for example, Total partnered with Gazprom and Norway's Statoil in an exploration consortium that united political clout, financial strength and technological expertise in what will be Russia's largest oil and gas project. Such ventures can succeed well – but they are not without risks.

Changing priorities

In today's exceptional market conditions, these partnerships look elegant and practical. But over time, individual partners' priorities may change. And these are not normal joint ventures between commercial businesses, so any falling-out between the parties could have much wider (including political) repercussions.

Over the past couple of years we have been helping a number of clients to negotiate and structure these new-style partnerships. They need to be constructed with great care, to ensure that agreements which make sense today will also foster a sustainable, long-term alignment of interests.

Let's imagine a joint venture between an NOC and an IOC in Africa. Their agreement says that annual capex budgets must be approved by both parties. One year, the IOC wants to divert capital resources away from the joint venture – perhaps to meet investors' expectations by earning faster returns elsewhere. But the NOC wants to produce the reserves as fast as possible: it has access to cheaper capital, and its priority is to meet domestic demand.

Joint venture partners can and do fall out. That is a fact of business life. But in these cases any divergence of interests can have potentially damaging consequences. Suppose the NOC partner is based in a country where the IOC partner has major interests. In our example, how will those interests be affected if the government feels its national oil company is being let down? What pressure might the government apply to encourage the IOC to reconsider?

Taking the long view

What complicates matters further is that these projects are not short term. Developing an oil field, a mine, a refinery, a pipeline or a power plant may require commitment lasting 15, 25 or 30 years (or even longer). Ensuring that the interests of a state-owned entity and a multinational oil company stay aligned over such periods is possible only through a good understanding of the changing objectives of each party, effective communication and

foundation legal documents that help deal with changing scenarios.

Global politics and the interrelationships of governments can change dramatically in a few years. So a company partnered with country A or entity B may find that this relationship has suddenly made it persona non grata in country C. The international oil companies have lived with these realities for many decades. But for NOCs, this may present opportunities and challenges based on their own political demands.

Getting it right

As they form these new alliances, what can NOCs and their governments learn from the IOCs' experience? We'd suggest three key principles:

Take care in negotiating partnership agreements, to ensure that what looks like a win-win today won't look like one partner winning twice in years to come

Build a degree of flexibility and *realpolitik* into every relationship and review frequently the parties' objectives to see how they are changing

And hedge the risks by building a portfolio of partnerships, to avoid over-exposure to any one country or entity.

These principles have served successful multinationals well for many years, in energy and other global commodity sectors. If they do the same for today's NOC/IOC partnerships, both sides have much to gain. Get it wrong, and they have much to lose!

Energy sector: China and Russia: loans and oil

Shared benefits

In a ground-breaking deal, our lawyers advised funders on a US$15 billion loan to Rosneft for the pre-export financing of a long-term oil supply agreement with China, and an associated US$10 billion loan to Transneft for the construction of a cross-border pipeline from Russia to China to deliver the oil.

Energy sector: Industrial and Commercial Bank of China and Standard Bank

Breaking new ground for power generation in Botswana

A market leading reputation in Africa-related matters ideally positioned us to advise the Industrial and Commercial Bank of China and Standard Bank on their groundbreaking US$825 million financing for the construction of the 4x150MW Morupule B coal-fired power plant in Botswana. The project reflects the emerging influence and importance of Chinese financing and equipment in Africa's development and should contribute towards reducing the power shortages experienced by Botswana, which currently imports the majority of its electricity supply from Mozambique and South Africa. The transaction incorporated innovative financing structures that adapted World Bank and Sinosure support, and was awarded Africa Power Deal of the Year 2009 by Project Finance International.

In the energy sector, Clifford Chance's specialist international expertise includes:

Capital markets
Construction
Environment
Litigation and arbitration
M&A and joint ventures
PFI/PPP
Project finance
Restructuring
Real estate
Tax

Find out more at **cliffordchance.com**

Meeting clients' changing needs

Legal fees are under pressure. Which means law firms need to find ways of cutting costs without compromising quality. Clifford Chance Chief Operating Officer Amanda Burton and Riyadh-based partner Tim Plews consider what this implies for the way they deploy their most important – and indeed only – resource: their people.

Can we do it cheaper? Let's ask the client

To do the job more efficiently, shouldn't we share ideas with our clients?

Amanda Burton
Chief Operating Officer

Tim Plews
Partner, Riyadh

The financial crisis has sharpened boards' focus on costs. All expenses are under scrutiny, and the cost of legal services – both in-house and external – is no exception.

But a conventional approach to cost-cutting won't do the trick. As regulatory pressures grow, most companies see their need for high-quality legal advice and support increasing rather than diminishing. Cutting corners in ways that reduce quality is risky. And most companies recognise the dangers of demanding across-the-board rate reductions: they don't want their advisers to go under, lose talented people or be unable to attract the brightest young lawyers. When it comes to legal advice, 'only the best will do' is not an indulgence; very often, it's just a fact.

Smart procurement

So what's to be done?

Our clients know that a standard procurement approach is not appropriate. Sophisticated legal services are not paper clips, and cannot be bought as if they are. To obtain the quality of service they require, at less cost, clients are focusing more intently on the way they use the service – not just the price. This means looking at how they deploy their in-house resources as well as their external advisers. It means discussing openly with their law firms what adds value and what doesn't, to find more efficient ways of working together. And it means experimenting: what works for one client/law firm relationship won't necessarily work for another.

For law firms, it means finding ways to work more efficiently and effectively – while continuing to retain, motivate and grow their all-important talent.

At Clifford Chance we have taken action internally – for example by opening our Knowledge Centre in Delhi, described opposite. We are also looking at ways to manage projects more efficiently – we have started involving our business support teams to help lawyers with transaction and case management, and begun training our lawyers in the project management skills they don't teach in law school. This could open up new avenues to explore: for example, should we consider giving lawyers dedicated project managers for all large client mandates?

Collaborative solutions

But with clients who are particularly heavy users of legal services – especially those with substantial in-house legal capability of their own – we see cost-effectiveness as an issue that is best addressed collaboratively. That way we can start from basic principles: for example, have we ever sat down together to discuss which roles can be performed most efficiently by your team or ours? Or are we simply following demarcations for which the rationale has been lost in the mists of time?

Changing client needs: Knowledge Centre

Value and flexibility

Our Knowledge Centre opened in Delhi in September 2007. Providing high-quality support services to our lawyers outside India, it has enhanced our flexibility and helped us offer clients greater value for money. The Knowledge Centre is a fully integrated part of the Clifford Chance network and now comprises 29 consultants. Mark Ford, Knowledge Centre Director comments: “As the team increases in experience, the vision is to build a centre of excellence with deep expertise in particular areas across more of the firm's businesses and jurisdictions.”

Changing client needs: Academy Development Centre

Equipping our leaders of the future

We recognise the necessity of offering comprehensive business skills training to ensure our partners and associates are equipped both to advise global clients on legal and business issues and to help lead our firm into the future. The Clifford Chance Academy has run Lawyers' Development Centres and Senior Development Programmes since the 1990s, enabling senior associates on the threshold of partnership to gain expertise in business and management. Improvements in our overall training offering have enabled us to consolidate both schemes into one, more effective, programme: the Academy Development Centre. Aimed at associates with five to six years' post-qualification experience, the programme is coupled with follow-up discussions with learning and development professionals, focusing on giving participants even greater developmental guidance and help at an earlier stage of their career.

"Lawyers can be highly innovative thinkers, but as an industry we are notoriously conservative. This needs to change."

We have been looking at ways to streamline processes by using standardised templates throughout our network. Here, input from clients can help to identify opportunities and ensure we develop processes that add real value without compromising quality. "Are there places where we keep reinventing the wheel?" is a question that may need considering from both sides before the complete answer emerges.

Thinking ahead

At Clifford Chance and elsewhere, lawyers and clients are beginning to get together to look at things in a different light. Many lawyers may be uncomfortable with the idea of applying 'process improvement' principles to law. But as people engage with it, particularly the younger lawyers, our experience is that they find it stimulating to rethink accepted norms.

As more collaborative relationships emerge between clients and law firms, shouldn't we look for new team structures that harness the talents on both sides? In the future, a new mandate might begin with quite broad groups from both sides sitting down with their opposite numbers to agree how the relationship will be run.

There might be HR people discussing resources, knowledge managers debating information flows, trainers developing joint training programmes (as we're already doing with some clients – see RBS case study below), IT specialists considering communications requirements or opportunities for automating tasks, and finance people to agree billing processes. Such arrangements are accepted as the key to efficient working relationships in other sectors – would they be so hard to implement in law?

Openness to change

Lawyers can be highly innovative thinkers, but as an industry we are notoriously conservative. This needs to change. We need a climate in which both clients and law firms are encouraged to bring new ideas to the table. Innovation, and openness to change, must become part of the training and culture. Law firms should actively develop programmes that help and encourage lawyers, support staff and trainees to think constantly about how to do things better. Today's heresy will be tomorrow's thought leadership.

There are some huge challenges inherent in all this; and the way we address them will shape the future practice of law. For example, as we seek to deliver lower costs with undiminished quality, how will we measure quality and ensure it is delivered? And as we develop new ways of working with our larger clients, can we apply what we learn so that less frequent users of legal services also feel the benefit?

What is certain is that we – clients and lawyers – will need to try new ideas, accepting that what we try will not always work. We must recognise that all clients are different, while finding ways to maintain consistently excellent relationships, quality and service. Above all, we must get closer together. We must have open, grown-up conversations about what adds value and what doesn't – because in the long run, discussing cost and value is not a negotiation where one side can 'win'. Only a win-win will do.

Changing client needs: Royal Bank of Scotland

Project management for lawyers

As well as delivering world-class legal advice Clifford Chance delivers world-class training, and increasingly we are sharing the benefits with clients.

In a recent example of this, our experienced professional project managers worked with a senior client at Royal Bank of Scotland (RBS) to create an experimental training format based on a live scenario. The resulting workshop, for both RBS and Clifford Chance lawyers, gave the teams the chance to practise preparing, executing and closing a large legal project.

Following the training, we gave the RBS participants a toolkit of templates to help them integrate the project management structures and ideas into their working practices.

The feedback was so positive that we have since organised three follow-up sessions for 40 RBS lawyers.

What we achieved in the year

Legal expertise awards include:

Global Finance Awards 2009: Best Legal Advisor in the Middle East & Africa.

ACQ Finance Awards 2009: Clifford Chance Dubai named the Most Trusted Law Firm of the Year.

IFLR Middle East Awards 2009: Middle East Law Firm of the Year – becoming the only firm to have won the award twice; Debt & Equity-linked Team of the Year, and Restructuring Team of the Year

Private Equity News Advisory Awards 2009: Private Equity Team of the Year and M&A Team of the Year.

Project Finance International (PFI) Legal Survey 2009: Ranked No.1 in the annual PFI legal survey and No.1 in a table that spans over a decade of deal activities.

FT Innovative Lawyers Report 2009: Runner-up in the FTLaw50. The FT recognised Clifford Chance's 'unique place as a thought leader on important issues of economic and political significance' and singled out Clifford Chance with more standout (3) and highly commended (8) entries than any other firm.

Islamic Finance and Business Awards 2009: Law Firm of the Year.

Jane's Transport Finance Awards 2009: AirFinance Law Firm of the Year.

Private Equity Real Estate (PERE) Global Awards 2009: Global Law Firm of the Year (Transactions) – for the second year running; Global Law Firm of the Year (Fund Formation) – for the second year running; North America Law Firm of the Year (Transactions) – joint winner, and European Law Firm of the Year (Fund Formation) – for the fourth year running.

Association of Run-off Companies Awards 2009: Advisory Services Provider of the Year.

'Unquote' Private Equity Awards 2009: Law Firm of the Year – Fund Structuring.

CEEQA Awards 2009: C&EE Real Estate Law Firm of the Year.

Belgian Legal Awards 2010: Tax Law Firm of the Year (for the second year running) and Regulatory Firm of the Year.

IFLR Europe Awards 2010: Project Finance Team of the Year. Clifford Chance also advised on the Project Finance Deal of the Year.

IFLR Asia Awards 2010: International Law Firm of the Year; China Practice of the Year; M&A Team of the Year; Restructuring Team of the Year. Clifford Chance also advised on the Debt and Equity-Linked, Structured Finance and Restructuring Deals of the Year.

IFLR Americas Awards 2010: For the second consecutive year, Clifford Chance advised on the Project Finance Deal of the Year.

Who's Who Legal Awards 2010: Banking Law Firm of the Year and Russia Law Firm of the Year.

Chambers Europe Awards 2010: International Law Firm of the Year, Czech Republic.

People and community awards include:

Junior Achievement (JA) Awards June 2009: Clifford Chance Italy received the JA Employee Engagement Award.

Business in the Community Awards 2010: BITC 'Power in Partnership' Big Tick.

Here is the City 2010: Ranked No.15 in the 'The Best Place To Work 2010 Top 100', the only law firm to feature in the list.

LawWorks – Attorney General's Student Awards 2010: Best New Pro Bono Activity, in association with Durham University, England.

Trendence Employer Branding Awards 2010: Clifford Chance Germany recognised as Graduate Employer of Choice for Law.

Selection of work

Abraaj Capital: US$4,000m; Establishment of Abraaj Buyout Fund IV; London, Dubai offices

AllianceBernstein: US Department of the Treasury PPIP programme; New York office

Anheuser-Busch InBev: US$2,200m; Sale of CEE operations; London, Amsterdam, Brussels, Bucharest, Prague offices

AXA: Acquisition of Omniasig life insurance company; Bucharest office

Babcock International: £1,300m; Acquisition of VT Group; London, New York offices

Barclays: UK Competition Commission appeal against the banning of Payment Protection Insurance; London office

BBVA, Banco Santander, BNP Paribas, Citibank, HSBC, RBS: US$15,000m; CEMEX debt refinancing; Madrid, London offices

China Development Bank: US$10,000m; Loan to Petrobras; Beijing, São Paolo offices

Dubai World: Comprehensive restructuring; Dubai, London office

Eurostar: Advice on corporate structure; London, Paris, Brussels offices

Government of Republic of Poland: Advice on EURO 2012 Football Championship infrastructure projects and related issues; Warsaw office

HSBC: RMB 1,000m; First RMB bond issued by a China-based foreign bank; Hong Kong office

HSBC, Deutsche Bank, JP Morgan: £4,200m; Debt facilities for Yell Group plc; London office

ING Bank N.V.: US$2,000m; Sale of Asian and Swiss Private Banking businesses to OCBC and Julius Baer Group respectively; Hong Kong, London offices

Inter-American Development Bank: Project financing for Pecém coal-fired thermal generation plant, Brazil; Washington DC office

International financial institutions: €1.1bn; Financing of St. Petersburg's Airport; Frankfurt, Moscow offices

KKR: Strategic partnership with Rudolf Wild GmbH & Co. KG; Frankfurt office

Kookmin Bank: US$1,000m; Covered bond offering; Tokyo office

Macquarie: Acquisition of the capital market sales and research business of private bank Sal. Oppenheim; Frankfurt office

Max Property Group: £200m; Initial public offering; London office

Morgan Crucible: Advised following US Government prosecution of former CEO for obstructing a price-fixing investigation; Washington DC office

Morgan Stanley: Joint venture agreement with Citi to create Morgan Stanley Smith Barney; Dubai, Hong Kong, Germany, Italy, London, Singapore, Spain offices

NYSE-Euronext: Privatisation of Warsaw Stock Exchange; Warsaw, New York, Abu Dhabi offices

Philip Morris: Joint venture in India; Singapore, New York, Hong Kong offices

SACE S.p.A: North Stream Pipeline; Paris, Frankfurt, London, Düsseldorf, Amsterdam, Moscow offices

Santander: €3,000m; Disposal of real estate assets through a sale and leaseback scheme; Madrid office

Techsnabexport: US$1,000m; Defence of arbitral award; Moscow office

UC Rusal: US$20,000m; Comprehensive restructuring; London, Moscow, Italy, France, Germany offices

Unicredit, SocGen, Deutsche Bank: €800m; Hybrid Tier 1 instrument; Milan office

Vivendi: USD$2,000m; Acquisition of GVT; Paris, São Paolo offices

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How we performed

Financial information

The summary financial information below is based on the audited statutory consolidated financial statements of Clifford Chance LLP, which are prepared in accordance with International Financial Reporting Standards (IFRS).

Revenue by region was as follows:

	2010 £m	2009 £m
Americas	**140**	143
Asia	**125**	104
Continental Europe	**476**	515
UK and Gulf	**456**	500
	1,197	1,262

Overall revenue was 5% lower than the previous year. Revenues grew by 20% in Asia but reduced in other regions, reflecting the more difficult economic conditions. The changes in revenue include the effect of movements in average foreign exchange rates relative to Sterling. Compared to the previous year Sterling depreciated by 5% relative to both the Euro and the US Dollar.

Operating costs excluding restructuring cost reduced by 6% in Sterling. Staff and related costs account for 62% of these costs and reduced by 7% in Sterling. Average headcount fell by 12%.

Profits for the financial year before members' remuneration and profit shares on the basis of IFRS reduced by 3% compared to the previous year. The profit before tax attributable to equity partners on the accounting basis specified by the partnership agreement increased by 10%.

Consolidated income statement

Year ended 30 April	2010 £m	2009 £m
Revenue	**1,197**	1,262
Expenditure		
Staff and related costs	**(536)**	(577)
Other operating costs		
Excluding restructuring costs	**(327)**	(341)
Restructuring costs	**–**	(6)
	(327)	(347)
Profit from operations	**334**	338
Investment income	**1**	3
Financing costs	**(16)**	(13)
Profit before tax for the financial year before members' remuneration and profit shares	**319**	328
Members' remuneration charged as an expense		
Excluding restructuring costs	**(27)**	(22)
Restructuring costs	**–**	(53)
	(27)	(75)
Profit before tax for the financial year available for profit share among members	**292**	253
Taxation	**(14)**	(19)
Profit for the financial year available for profit share among members	**278**	234

Consolidated balance sheet

As at 30 April	2010 £m	2009 £m
Assets		
Property plant and equipment	**67**	87
Intangible assets	**28**	32
Total non-current assets	**95**	119
Accrued income	**180**	168
Receivables	**372**	419
Amounts due from members	**139**	56
Cash at bank and in hand	**117**	163
Total current assets	**808**	806
Total assets	**903**	925
Liabilities		
Bank overdrafts	**5**	8
Payables	**230**	243
Provisions	**45**	15
Total current liabilities	**280**	266
Long term payables	**134**	132
Provisions	**229**	144
Total non-current liabilities	**363**	276
Total liabilities excluding members' interests classified as liabilities	**643**	542
Net assets attributable to members	**260**	383
Represented by:		
Loans and other debts due to members:		
Members' capital – current liability	**158**	182
Provisions for annuities due to current members		
Current liability	**–**	8
Non-current liability	**84**	125
	84	133
	242	315
Equity:		
Other reserves classified as equity	**(21)**	12
Foreign exchange reserve	**39**	56
Total equity	**18**	68
	260	383

Consolidated cash flow statement

Year ended 30 April	2010 £m	2009 £m
Net cash from operating activities	**345**	410
Investing activities		
Investment income received	**–**	4
Proceeds from sale of investments	**1**	–
Purchase of tangible fixed assets	**(7)**	(18)
Net cash used in investing activities	**(6)**	(14)
Financing activities		
Borrowings drawn	**3**	15
Net cash used in financing activities	**3**	15
Transactions with members		
Drawings, distributions and remuneration of members	**(360)**	(472)
Capital net (repayments to)/contributions by members	**(24)**	61
Net cash paid to members	**(384)**	(411)
Net decrease in cash and cash equivalents	**(42)**	–
Cash and cash equivalents at beginning of year	**155**	146
Effects of foreign exchange rate changes	**(1)**	9
Cash and cash equivalents at end of year	**112**	155
Interest bearing loans and borrowings	**(92)**	(89)
Net cash at end of year	**20**	66

Profit attributable to equity partners

Year ended 30 April	2010 £m	2009 £m
Profit before tax for the financial year before members' remuneration and profit shares on the basis of IFRS	**319**	328
Adjustments for partnership structure and accounting policies, excluding partnership restructuring costs	**14**	(31)
Profit before tax for the financial year attributable to equity partners excluding partnership restructuring costs	**333**	297
Partnership restructuring costs	**(7)**	–
Profit before tax for the financial year attributable to equity partners	**326**	297

The profit on the basis of IFRS is attributable to those partners of the firm who are members of Clifford Chance LLP. However, certain members of Clifford Chance LLP are not equity partners in the firm and certain equity partners of Clifford Chance LLP are not members of it.

In addition, the profit attributable to equity partners is determined in accordance with the accounting policies applicable under the partnership agreement, which differ from IFRS. The principal differences relate to the accounting treatment of annuities, pension schemes, property leases, certain software, foreign exchange differences and restructuring costs.

Accordingly, in order to arrive at the profit attributable to equity partners, adjustments are made to the IFRS profit to reflect the equity partnership structure instead of the membership structure and to reflect the differences between the accounting policies applicable under the partnership agreement and IFRS.

The average number of equity partners during the year was 372 (2009: 413). The average profit per equity partner, based on the profit before tax for the financial year attributable to equity partners excluding restructuring costs together with the value of partnership annuities charged against profits during the year, amounted to £933,000 (2009: £747,000).

Statutory accounts

The financial information included in this statement does not constitute the statutory accounts of Clifford Chance LLP within the meaning of the Companies Act 2006. Statutory accounts for the financial year ended 30 April 2009 have been delivered to the Registrar of Companies. Statutory accounts for the financial year ended 30 April 2010 have not yet been delivered to the Registrar of Companies. The auditors have reported on the accounts for both such financial years; their reports were unqualified, did not draw attention to any matters by way of emphasis without qualifying their reports and did not contain statements under Section 498 (2) or (3) Companies Act 2006, as applicable to limited liability partnerships.

C L I F F O R D

C H A N C E

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