

To thrive, firms must identify the winners of tomorrow

By Tony Williams

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The Covid-19 pandemic has accelerated a number of business trends that may have a range of implications for law firm practices. We consider five such trends.

Peak Oil. It is quite possible that we have reached or are very close to peak oil production. The gyrations of the oil price in recent months (it even turned negative for a few days) and the commitment by major producers such as BP to go carbon neutral represent a seismic change. Many oil discoveries in more challenging locations may never be exploited. Oil companies have written down the value of existing discoveries.

Not only will this result in restructuring in the oil sector but also in the deployment of new technology to exploit and bring to market existing reserves. In addition, the increasing cost effectiveness of renewable energy without government subsidy may mean that many other energy sources such as coal and nuclear may no longer be commercially viable. Law firms may need to restructure their energy and projects practices to place greater emphasis on the renewable sector and on assisting clients to maximise returns on existing oil projects.

Online Retail. It has been a 20 year slow burn but online retail has been one of the few retail bright spots during the pandemic. Online retail is now an increasing focus of retailers (from John Lewis to Morrisons). This is accelerating the challenges of high street retailing and driving demand for distribution and logistics facilities. As the lockdown has forced consumers to either go online shopping for the first time or to increase and broaden the amount and range of products that they buy it is likely that when “normal” returns the proportion of retail activity conducted online will be at a significantly higher level than before the pandemic. As online sales increase, retailers will seek to make such sales more profitable and lawyers will help to structure the supply, sales and logistics systems as effectively as possible. In addition, retailers with existing stores will use the threat of a CFA to gain significant rent concessions from landlords.

Commercial Property Mayhem. The carnage in physical retail (see 2 above) is transforming the commercial property market. Anchor retail tenants such as Debenhams, House of Fraser and Marks & Spencer have either failed or are undergoing major restructuring. The CFA regime enables tenants to rip up their lease commitments. Without significant rent reductions many shopping centres are no longer viable. Turnover linked rentals may be used to share the risk between the landlord and tenant.

But change does not just apply to retail. Office users have worked remotely for months and will now question the need for expensive and extensive prime office locations. Leases will probably get shorter with increased flexibility in their terms. But all is not doom and gloom for commercial property investors. Shops and offices will still be used but some existing developments will be repurposed or redeveloped into residential, logistics facilities and mixed use “destination” uses. Changes to the

planning regime and the classification of existing developments as “brown field” may help accelerate the process. Institutional investors will face challenges adapting to the new normal and lawyers will be needed to assist in disposal programmes, refinancing arrangements, planning and alternative use advice and developing new more flexible letting arrangements.

Shorter Supply Chains. The major disruption to business supply chains caused by the pandemic, factory shutdowns and travel restrictions, together with an increasing wariness of a recently economically and politically assertive China, will force companies and governments to re-examine the wisdom of living with complex supply chains. Manufacturing facilities for a range of pharmaceuticals and PPE will increasingly be close to home.

But for a range of other products there is likely to be a move towards shorter supply chains and multiple suppliers in order to mitigate supply chain risk. In addition, “just in time” manufacturing may be adapted to provide for buffer stockpiles to enable the business to cope with any supply chain disruptions. This is likely to give rise to a review of existing supplier arrangements and new contractual terms to require and audit the robustness of the supply chain. Linked to this, lawyers will also be used to assist on investigations and audits of supply chains so as to ensure compliance with minimum wage and other legal obligations plus the wider ESG reputational issues.

The Digital Economy. Although the UK government is trying to reopen all schools it is likely that much higher education will be provided using online tools. This brings into question the value of large campuses and extensive student accommodation facilities. But it is not just education and retail that is impacted. All office workers have, during 2020, participated in a fast tracked experiment in home and flexible working. We have used social media and a range of video meeting tools like never before. It is hardly surprising that the share prices of a range of tech companies such as Apple and Microsoft are now at record highs.

Demand for a more flexible working environment will produce challenges as to expectations of employers and employees. Because we are sociable animals it is unlikely that the office will disappear (just as well focused physical retail space will also have a role) but greater flexibility as to where, when and how we work will add a greater level of complexity to the employer/employee dynamic and necessitate a more imaginative approach by all concerned. Lawyers will be needed to help clients develop and protect their digital assets including IP advice, cyber-security, data protection and on-line commerce platforms. Law firms will also need to ensure their own operations including flexible working regimes, premises requirements and IT requirements are appropriate for the new environment.

As always, change produces opportunities and threats. Some larger corporates may find it difficult to change quickly enough and may ultimately fail. Others, whether new entrants or existing players, will spot new opportunities and thrive. For lawyers, the need to understand these trends and to identify the winners of tomorrow has never been more urgent.

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