

**Baker  
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**The Year**

**AHEAD**

**Developments in Global Litigation and Arbitration in 2018**



# Introduction

There is no shortage of publications about the current state of the law. But there are far fewer guides to future legal developments. Clients often ask us to “scan the horizon” and help them to plan for the future. We hope this short guide will help you to get ahead, whatever your business.

We have drawn on the expertise of our global dispute resolution team, consisting of over a thousand lawyers in 77 offices around the globe, to present the themes and developments we think will most affect the world of litigation and arbitration in 2018. It is not an exhaustive list, but our selected highlights are set out here.

We look forward to working with you in the year ahead.



**John Leadley**  
Chair, Global Dispute Resolution Group

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# The Big Picture

We have seen significant change in the **geo-political landscape** over the last two years. President Trump's victory in November 2016 follows a theme of public disaffection with existing regimes. The same theme delivered the Brexit vote, the military coup in Turkey, and a greatly reduced majority for Angela Merkel in the last German elections. Uncertainty and instability exist in many parts of the world including Venezuela, Qatar and the Korean peninsula.

In 2018, the political implications of the Donald Trump presidency and the Brexit vote will continue to crystallize. Presidential elections will take place in Russia, with Vladimir Putin widely expected to stand for a further six year term. Other important elections in Europe and Latin America may open the door to new populist governments. And China will likely

continue to expand its global influence, through soft power initiatives and military assertiveness in the South China Sea.

The **economic backdrop** is equally uncertain. In the decade that has passed since the global financial crisis, economic policy has relied heavily on unorthodox monetary measures, distorting the usual financial mechanisms of a healthy global economy. Many companies and governments have taken advantage of cheap debt to accumulate high levels of borrowing.

The IMF forecasts global growth for 2018 to be largely similar to this year, although notes that "risks remain skewed to the downside over the medium term". Concerns include rising protectionism, weak productivity and prolonged below-target inflation.

Experience tells us that economic and political volatility often generate disputes, and we appear to be seeing this already. Over the past 12 months, **volumes of litigation and arbitration** have risen around the world. Year-on-year figures from courts and arbitration institutions show increases in most of the main centers. Particularly strong growth was seen in the DIFC courts (+14%), the ICC (+21%), the German Institution of Arbitration (+24%) and the Singapore International Arbitration Centre (+27%).

This continues the overall pattern of recent years, and is likely to continue. Rising volumes of disputes are driven not just by wider economic and political factors but by **well-established legal trends**. Class actions are growing strongly outside the traditional US market, especially in shareholder and antitrust

cases. Overall M&A volumes remain high, driving high levels of post-M&A disputes. Intellectual property disputes are on the rise, particularly in the consumer goods and technology sectors. And as businesses face new challenges from digital data and cyber attack, we have seen new types of disputes emerge, such as around trade secrets.

**Regulatory disputes** are a further growth area. Regulators are becoming increasingly active, and are co-operating more closely with other national agencies and with their global counterparts. This trend is likely to continue. Governments are under political pressure to take action against particular targets such as banks and oil companies. And the financial rewards for governments can be compelling: banks paid USD 42 billion in fines in 2016 alone, a 68% rise on the previous year.



*In many countries a mood of economic malaise has contributed to anti-establishment, populist politics and a backlash against globalization*

*World Economic Forum Global Risks Report 2017*



*In last year's Odebrecht case, the US Department of Justice recovered USD 4.5 billion against a Brazilian construction company in a global settlement co-ordinated with the Brazilian and Swiss authorities.*







# The Big Themes

The **litigation funding market** continues to develop. The latest multijurisdictional survey data shows that 26% of in-house lawyers have used litigation finance, and 76% agree that it is a growing and increasingly important area<sup>1</sup>. Reported use is highest in Australia and the UK, although recent legislative changes in places such as Hong Kong, Singapore and the UAE will allow the market to expand further.

The leading funding firms are raising capital and beginning to consolidate. Many new firms are entering the market. Funders are trying to move beyond the financing of individual cases to taking on portfolios of cases, either from law firms or directly from litigants. Funding costs remain relatively high, but with increasing competition there is likely to be a gradual reduction in costs.

“New funding firms often target niche areas. For example, Lex Finance is a specialist fund targeting only arbitrations with connection to Latin America.”

Competition is also coming to **the world's courts**. Arbitration institutions have long been used to competing with each other for business. Over the last few years, all of the main institutions have revised their rules and practices to try to improve procedural efficiency. National courts have competed to a varying degree, with notable efforts from the UAE, Singapore, New York, and several European jurisdictions.

Rising arbitration volumes and increased forum shopping may drive the world's courts to raise their game further, not just in expensive new facilities and promotional efforts, but by substantial procedural reform to lower costs and improve speed. Courts are co-operating in this effort. In May, senior judges from commercial courts in 27 countries met in London to share best practice and industry insights. A further meeting will take place in New York next year.

Court litigation may receive a further boost in 2018 through improved mechanisms for cross-border enforcement, albeit not yet challenging arbitration's advantage through the New York Convention. Progress is being made on the long-running “Judgments Project” of the Hague Conference on Private International Law, with a major conference expected in mid 2018. In the meantime, the Hague Convention on Choice of Court Agreements continues to attract new signatories, with China's ratification expected next year.

“The Judgments Project seeks to implement a set of internationally recognized rules on the recognition and enforcement of foreign judgments, and is more ambitious in scope than the Hague Convention on Choice of Court Agreements, which focuses on international cases involving choice of court agreements.”

Looking further ahead, **big data** will increasingly affect the world of disputes. For example, wherever publicly available court data exists, information providers are seeking to analyze it. Newly-launched tools in the UK and Singapore show which firms have worked on the most cases; their success rates; and (within the next few months) their costs. Clients can scrutinize law firms' performance and value like never before.

**Artificial intelligence** is also being applied to these data sets, in novel ways. A study published in April analyzed over two centuries of decisions in the US Supreme Court database, to create a model which could predict Supreme Court decisions with over 70% accuracy. A similar study last year based on decisions of the European Court of Human Rights reached a prediction accuracy rate of almost 80%. And we are

already seeing the first small experiments in which lawyers compete against AI software to predict the outcome of cases.

“Both the US and European studies found that judgments are highly correlated to non-legal facts rather than directly legal arguments. It appears that the old saying is true: facts win cases.”

It is inevitable that AI-based judicial prediction tools will eventually enter the market, with a significant impact in the longer term. Can a black box algorithm reliably outperform a lawyer in predicting the outcome of a case? Can it highlight judicial bias and quality issues? Can it even perform the role of a neutral arbitrator? In the next few years we will find the answers.

“We tend to overestimate the effect of a technology in the short run and underestimate the effect in the long run”  
Roy Amara



# Industry Focus



## Consumer Goods and Retail

Intellectual property disputes are increasingly common, as companies face the continued challenge of protecting their brands in a global market. Technological change and the growth of social media mean that bad news travels fast — often faster than the law can protect an innocent brand. For that reason, we are seeing companies place an increased focus on preventative measures.

Following a number of high profile cases in 2017, it is more vital than ever for companies to identify sources of potential reputational risk and to monitor them. This may include compliance issues, employment practices, or product-related issues. And companies need to be aware of weaknesses not only in their own business but in others too, as supply chains are increasingly stretched and consumers demand ethically-sourced products.

## Energy, Mining and Infrastructure

Organizations in this sector have long understood the value of careful contract drafting, including tailored dispute resolution clauses. The balance of considerations between litigation, arbitration and ADR, and between various jurisdictions and seats, will become more complex in 2018, as governments and institutions push forward numerous measures to compete for global disputes business.

At the same time, companies working on large projects will continue to try to avoid disputes altogether. Effective contract management — assessing whether a relationship is working properly and resolving issues before they escalate — is more important than ever. New technology allows analysis of large volumes of disputes, and should in due course provide lawyers and corporate decision-makers with more sophisticated and tailored insights into the causes of disputes and the best way to avoid them.

## Financial Institutions

In 2018, banks and other financial institutions will complete a full decade of business since the global financial crisis. They will continue to face the most complex regulatory and litigation risks of any global industry, driving the trend to de-risk customer bases and reduce higher risk products, services and jurisdiction exposures. Alongside these pressures, there will be a continued regulatory emphasis on individual accountability, and a prosecutorial and legislative push toward corporate criminal liability. Regulators and government agencies will increase levels of co-operation, both within and across national borders.

Particular challenges are developing from the rapid growth of the fintech market and the move to digital platform financial services, with an increase in cyber risk. Established tech sector companies will become new entrants to the financial services sector and, conversely, established banks will develop substantial fintech business exposures. The industry and its regulators will face increasing questions as to the ability of the sector to maintain risk controls in step with growth levels in

this arena, and regulatory enforcement and disputes will flow from the competition or mismatched partnerships between new entrants and the established order.

## Healthcare

Class action lawsuits and mass tort litigation will continue to challenge drug and medical device manufacturers. Claims will include alleged faulty products, false marketing and failure to warn patients about potential side effects. We anticipate there will be a growing number of civil cases filed by US states, cities and counties against manufacturers, distributors and retailers of addictive painkillers (the so-called “opioid epidemic”), reminiscent of the tobacco lawsuits in the 1990s.

The wider legal backdrop is also changing. In Canada, the recent and more expansive approach to class actions is likely to be tested in the Supreme Court next year. In the US, Republican legislators are putting forward proposals to place limitations on the class actions regime. Companies will need to monitor these changing risk profiles. This will be made more difficult by the increasing prevalence of litigation funding, with the market expanding beyond its traditional strongholds in Australia and Europe, and funders actively seeking class actions to pursue.

## Industrials, Manufacturing and Transportation

Manufacturing companies will need to protect their “hard” intellectual property, not only from traditional sources of concern such as ex-employees and third-party suppliers, but from newly-growing cybersecurity risks. This will require a combination of technological and legal protection. In Europe, the future of the Unified Patent Court is likely to be decided next year, dependent largely on the outcome of a constitutional challenge in the German courts.

There is also growing awareness of the need to protect trade secrets. Our clients, particularly in this sector, tell us that trade secrets are essential to their business. Yet only one third of companies maintain inventories of trade secrets and have action plans for responding to theft.

## Technology, Media and Telecommunications

Even by the standards of this sector, next year will see fast-moving legal developments. Many countries are introducing new cybersecurity laws to force organizations to protect their systems and information against hacking attacks. These will have potentially significant cost and organizational implications for the companies affected. Social media companies are also coming under increasing pressure to police content on their platforms, leading to potentially increased costs and reputational risk.

New data protection laws with extra-territorial scope, such as the EU’s General Data Protection Regulation coming into force in May 2018, will mean that companies are exposed to the risk of significant fines. Many technology companies will need to find a careful balance between privacy rights and data monetization.



# Regional Developments

Europe, the Middle East and Africa

## England & Wales

### Radical changes to disclosure rules proposed

New draft rules for disclosure in civil proceedings have been published recently which aim to reduce costs and volume. These rules provide for "basic disclosure" but parties can seek the court's approval for "extended disclosure". The emphasis of the draft rules is on cooperative behavior by parties and efficient use of technology. Consultation will close in February 2018, with the relevant committee expected to review the draft in Spring 2018. If approved, a two-year pilot will then follow in the Business and Property Courts.

### Appeal of landmark privilege case to be heard

By 31 October 2018, the Court of Appeal will hear the landmark case of SFO v. ENRC. The first instance court ruled that there was no privilege over various documents produced by lawyers and forensic accountants during an internal bribery and corruption investigation. The Court of Appeal will decide whether this restrictive view of privilege in criminal investigations is correct, offering much-needed clarity for companies on how best to conduct such investigations so that privilege is maintained.

## Belgium

### Reforms to Civil Code expected

Belgium is expected to enact a new Civil Code in 2018. The Minister of Justice first published the draft new code in late 2015, with proposals for reform of the rules governing contracts, property, and evidence. Further details are due to be published imminently, and the proposals will be subject to public consultation before the start of the legislative process.

## Azerbaijan

### Legal profession set for shake-up

A law prohibiting non-lawyers from acting in court, and requiring trial lawyers to pass a bar examination, will take effect from 1 January 2018. The law aims to increase the quality and efficiency of litigation in Azerbaijan. One potential hurdle to the proposed reforms is the current shortage of lawyers admitted to the bar, with various proposals under consideration to remedy this.

## Dubai

### DIAC Rules updated to reflect international standards

The new Arbitration Rules of the Dubai International Arbitration Centre (DIAC) are set to take effect in early 2018. This will be the first update to DIAC's Arbitration Rules in a decade. The changes are expected to mirror the recent amendments to the LCIA, DIFC-LCIA and the ICC Rules, with the aim of bringing the DIAC Rules in line with international best practice, as well as ensuring efficiency and cost-effectiveness.

### DIAC considers changing seat to DIFC

The DIAC may change its default seat from Dubai to the Dubai International Finance Centre (DIFC), in order to take advantage of the DIFC's international-standard arbitration law and the pro-arbitration courts. Such a move would further increase the DIAC's attractiveness as an arbitration center following its decision last year to open a representative office in the DIFC. The move would allow parties to DIAC arbitrations to seek recognition and enforcement of their awards through the DIFC courts, avoiding more lengthy procedures in the Dubai courts.

# Regional Developments

## Europe, the Middle East and Africa

### Europe

#### Fate of the Unified Patent Court to be decided

The Unified Patent Court, the proposed forum for resolving European patent disputes, was due to begin operating this year. However, a number of setbacks, including the Brexit vote and a challenge in the German Constitutional Court, have delayed ratification. The UK has reiterated its commitment to the UPC, although progress on ratification has slowed since Brexit. The German Court is not likely to reach a decision until April 2018 at the earliest, with further delays if it requests a preliminary ruling by the Court of Justice of the EU.

### France

#### Reforms expected to private law of obligations

France continues to update its private law of obligations, and next year will proceed with several important reforms including in the area of civil liability (a concept which includes both tort and contractual non-performance). The draft reform seeks to integrate certain elements of case law into the French Civil Code, and proposes a number of new measures including the creation of a new civil penalty aimed at combating "lucrative faults", in which the benefit resulting from the wrongdoing is higher than the measure of damages.

### South Africa

#### New international arbitration law expected

South Africa looks set to overhaul its international arbitration regime in 2018. The International Arbitration Bill was recently passed by the National Assembly, and will now proceed to the National Council and then to the President for approval. The Bill is based on UNCITRAL Model Law and will replace the country's current arbitration regime, dating from 1965. The Bill is aimed at promoting South Africa as the arbitral seat of choice in Africa, taking advantage of growing investment interest in the continent.

### Russia

#### Effects of licensing requirements on foreign arbitral institutions begin to emerge

Recent changes to Russian arbitration laws oblige arbitral institutions to be licensed in order to administer disputes, with foreign institutions only required to demonstrate a "widely recognized international reputation". Four institutions have been granted licenses to date, with additional applications pending. Unlicensed institutions are precluded under Russian law from administering corporate arbitrations in respect of Russian companies. It is unclear whether unlicensed foreign institutions may administer corporate disputes that Russian law permits to be seated abroad. We should see greater clarity around the interpretation of these laws in the coming year.

### Kazakhstan

#### AIFC's new court and arbitration center set for launch

On 1 January 2018, the Astana International Financial Centre (AIFC) will launch its new AIFC Court and International Arbitration Centre. The AIFC was established in 2015 as a financial hub for the region and aims to attract investment into Kazakhstan. The Court and International Arbitration Centre will operate independently of the Kazakh judicial system. Both will be based on English common law, and have been designed following consultation with Lord Woolf, the former Lord Chief Justice of England and Wales.

### Germany

#### DIS set to amend rules for the first time in a decade

The German Institution of Arbitration (DIS) will publish a revised set of arbitration rules early next year. The new rules, the first update for a decade, will come into effect on 1 March 2018. The rules will follow common global trends for greater efficiency and transparency in arbitration. Expected changes include the introduction of a conflict manager who can be appointed to help the parties find a resolution, as well as the expedited commencement of proceedings and new provisions to cover multiparty and multicontract arbitrations.

# Regional Developments

## Europe, the Middle East and Africa

### European Union

#### Companies could face large fines as GDPR comes into force

The highly-anticipated General Data Protection Regulation will take effect across the EU on 25 May 2018. It aims to harmonize EU data protection law, extending its scope to include all companies (wherever situated) that process personal data of EU residents. Other key changes include strengthened consent conditions, the right to be notified of a breach, and the right to be forgotten. The GDPR will be enforced by a strict compliance regime, which includes fines of up to EUR 20 million or 4% of global annual revenue, whichever is greater.

#### Progress expected on electronic privacy law

The EU's new e-Privacy Regulation was expected to enter into force alongside the GDPR on 25 May 2018, but this timing may now slip. The draft Regulation covers online tracking, including rules around cookies (which enable the collection of browsing data). It has been hailed as a victory by privacy campaigners but heavily criticized by advertising and media groups.

New enforcement measures mirror those under the GDPR, with fines of up to EUR 20 million or 4% of global annual revenue, whichever is greater.

### Poland

#### Polish business users may benefit from expedited court proceedings

Poland's Ministry of Justice has proposed the introduction of an expedited court stream for business users, which would be mandatory for all but the smallest organizations. Although within the general civil procedure, the proposed stream would feature stricter procedural rules, including the obligatory scheduling of hearings, stringent time-bars for the production of evidence, and penalties for engaging in "guerilla tactics". The proposals are still at an early stage, so amendments are likely and the precise timescale is not yet clear.

### European Union

#### Implementation of cybersecurity legislation to be completed

By May 2018, EU member states are obliged to implement the Directive on the Security of Network and Information Systems (the "NIS Directive") into national law. The NIS Directive is the first EU-wide legislation on cybersecurity, providing legal measures to boost cybersecurity within the EU, by enshrining minimum cybersecurity standards for essential systems, ensuring member states have adequate strategies and resources relating to cybersecurity, and enhancing co-operation between member states.

#### Tighter law on trade secrets

The Trade Secrets Directive seeks to prevent unlawful use or disclosure of trade secrets by providing a common definition of a trade secret, and harmonizing national laws against their misappropriation. This provides a minimum level of protection whilst allowing member states to apply stricter rules. Member states have until 9 June 2018 to implement the Directive into national law.

### UAE

#### Long-awaited reform of federal arbitration law expected to take effect

The UAE's new Federal Arbitration Law is expected in 2018. It will replace the current legislative regime, under which arbitration proceedings have suffered from uneven application by the courts, lengthy enforcement proceedings and an overall lack of confidence in the system. Two previous attempts at reform, in 2008 and 2014, were criticized for failing to conform to UNCITRAL Model Law and international arbitration best practice. These issues appear to have been addressed in the latest version. The new law is intended to boost confidence and bolster the UAE's reputation as an arbitration hub in the region.



# Regional Developments

## Asia Pacific

### Hong Kong

#### **New measures on third party funding for arbitration to come into effect**

Amendments were made to the Arbitration Ordinance this year to expressly permit third party funding in arbitration. These amendments are expected to come into effect in early 2018, alongside ancillary measures and safeguards. Hong Kong will adopt a light-touch approach to regulation by monitoring compliance by funders with a Code of Practice. The Code will cover confidentiality, conflicts of interest, privilege, degree of control by funders over proceedings, and capital adequacy requirements for funders.

#### **Amendments to HKIAC Arbitration Rules to enter into force**

Amendments to the Arbitration Rules of the Hong Kong International Arbitration Centre (HKIAC) are expected to enter into force on 1 May 2018. The proposed amendments will enhance existing provisions on multiparty and multicontract arbitrations, and introduce new provisions on disclosure of third party funding (amending the confidentiality provisions to allow disclosure of information to a funder). They also expressly allow parties to pursue other means of dispute settlement after commencement of the arbitration (eg "Arb-Med-Arb").

### Singapore

#### **ICC to open office in early 2018**

The ICC International Court of Arbitration is to set up a case management office in Singapore. The ICC is headquartered in Paris and has other offices in Hong Kong, New York, Sao Paulo and Shanghai. The Singapore office is expected to begin operations early next year, and will eventually move to Maxwell Chambers, Singapore's dedicated international arbitration facility which is currently under construction.

### Australia

#### **Government may introduce scheme for Deferred Prosecution Agreements**

The Federal Government is currently consulting on proposals to introduce a scheme for Deferred Prosecution Agreements (DPAs). The proposal is for a scheme which is similar to that of the UK, being available only to companies and applying to a specific list of serious corporate crimes, including foreign bribery, money laundering and fraud. The Government is continuing to assess whether the scheme should be available for other criminal offences.

#### **Further reform expected to international arbitration legislation**

Reforms have been proposed to the International Arbitration Act, following the last tranche of reforms in 2015. These are intended to clarify and update the legislation, and include a proposed amendment to the confidentiality provisions in the Act, in light of Australia's pending ratification of the UN Convention on Transparency in Treaty-Based Investor-State Arbitrations (the Mauritius Convention).

#### **Long-awaited report on third party funding to be presented in Sydney**

The Congress of the International Council for Commercial Arbitration (ICCA) will take place in Sydney in April 2018. At the Congress, the joint task force of ICCA and Queen Mary University of London will present its final report on third party funding in international arbitration. This follows the publication of draft reports for consultation this year.



# Regional Developments

## Asia Pacific

### Vietnam

#### New Penal Code to come into effect

A new Penal Code is scheduled to come into effect on 1 January 2018. The most significant changes are the introduction of corporate criminal liability for certain crimes, new offences relating to insurance and competition, and the extension of the application of certain corruption-related offences to those working in the private sector. (The revised Law on Anti-Corruption is also scheduled to be adopted in May 2018.)

#### New cybersecurity legislation expected

In June 2017, a draft new cybersecurity law was released for public consultation. The Government felt that existing laws were insufficient to address Vietnam's cybersecurity concerns. The draft law would confer the Government with broad regulatory and supervisory powers relating to cybersecurity, including powers over telecoms and internet service providers. The law is expected to be adopted by the middle of 2018.

### Malaysia

#### New cybersecurity law to be tabled

In June 2017, the Government announced the introduction of a new law aimed at protection from cybersecurity threats. There are no existing cybersecurity laws in Malaysia, so national enforcement agencies such as the National Cyber Security Agency (NCSA) have to rely on existing outdated legislation. In September 2017, it was announced that the public consultation period on the new law would be extended, and the Bill would be tabled in 2018.

### China

#### China expected to ratify Hague Convention on Choice of Court Agreements

In September 2017, the Government signed the Hague Convention on Choice of Court Agreements. This Convention aims to promote the effectiveness of exclusive choice of court agreements, by providing for reciprocal recognition and enforcement of relevant court judgments between contracting states. The Convention is expected to be ratified in March 2018, and will provide a valuable enforcement mechanism for many China-related contracts.

### Japan

#### Supreme Court decision due on arbitrator impartiality

The Supreme Court is expected to render an important decision concerning arbitrator impartiality and the duty to disclose. The case concerns whether the tribunal chairman's failure to disclose certain information (a colleague at the same law firm but in a different office, representing an affiliate of a party to the arbitration in an unrelated matter) is a valid ground to set aside an arbitral award.

### Taiwan

#### Plans to re-structure judiciary

The Judicial Yuan (judicial branch of the Government) is planning changes to the court system which will significantly reduce the number of the Supreme Court judges (from 108 to around 16) and increase the number of lower court judges, in a move to a "pyramid" structure. There are also plans to establish a specialized commercial court, but details are still under deliberation.



# Regional Developments

## The Americas

### Canada

#### Supreme Court appeal expected in class actions case

The Ontario Court of Appeal recently adopted an expansive approach to class actions in the case of *Airia Brands v. Air Canada*, finding that the Ontario courts had jurisdiction over claims of class members outside Canada. The court focused on the fact the Defendants conducted business in Ontario. It is expected that leave to appeal to the Supreme Court of Canada will be sought, with a hearing to take place next year.

#### Litigation expected over cannabis legislation

The Government intends to enact the Cannabis Act in July 2018, which will set out a legal framework for controlling the production, distribution, sale and possession of cannabis across Canada. Given that the Provinces and Territories will have their own (differing) regulatory regimes, there is likely to be substantial litigation on this issue.

### Mexico

#### Court decision opens the door to punitive damages

Damages in the Mexican courts have historically been based primarily on material loss, with only small awards for intangible "moral damages". However, a landmark decision of the Supreme Court, which awarded significant moral damages to the family of a man killed at a hotel following a negligent failure to maintain the premises, opens up the likelihood of many more such claims being made during 2018, with significantly higher awards, analogous to punitive damages.

### United States

#### Supreme Court decision expected in digital privacy case

In mid 2018, the Supreme Court's decision is expected in *Carpenter v. United States*, which will determine whether the seizure without warrant of historic cell phone records revealing the user's location is permitted by the Fourth Amendment. This will be an important test of the court's attitude to digital privacy rights, and is seen as the most important Fourth Amendment case in a generation.

#### Tort reform bills expected to progress

With a Republican-held Congress and Executive branch, tort reform is on the agenda. A range of proposals have been put forward by the House of Representatives and are working their way through the chambers. These would make changes to the civil justice system long sought by some doctors and US corporations, including a cap on specific types of medical malpractice awards, and new hurdles for class actions.

#### Changes to civil rules on class actions

Changes to Civil Rule 23, governing class actions, have been under development for some time. The proposed amendments were approved this year by the Judicial Conference, and were submitted to the Supreme Court for approval. The changes would affect method of notice to class members, settlement approval, and objections of class members to settlement and appeals. The changes are expected to be approved and will come into force on 1 December 2018.



# Regional Developments

## The Americas

### Venezuela

#### Significant changes to civil procedure to allow oral proceedings

Major changes to the Venezuelan Code of Civil Procedure are expected in the year ahead. It is thought that one of the major features of the new Civil Code will be the adoption of oral proceedings for all types of procedure. This would represent a major change in Venezuelan civil litigation tradition that has rigidly required written proceedings since the 19th century, with oral proceedings only presently permitted for limited constitutional, administrative and employment matters.

#### Supreme Court case law likely to boost arbitration for non-state matters

Trends in recent case law of the Supreme Court, particularly the Constitutional, Political-Administrative and Civil Cassation Chambers, are likely to boost commercial arbitration between private parties as a dispute resolution mechanism. However, it is expected that the Supreme Court will continue to show its antipathy toward arbitration in cases involving state entities, particularly in the recognition of investment arbitration awards.

### Peru

#### Decision due in Peruvian dispute with Canadian mining company

A major ICSID arbitration award involving the Peruvian state is due to be rendered in 2018. In *Bear Creek Mining v. Peru*, the Canadian mining company alleges that Peru confiscated a silver mining project without compensation, in violation of a free trade agreement between Canada and Peru. The Peruvian decree, which stripped Bear Creek of its mining rights, was issued in response to violent protests against mining in the area. Peru claims the move was necessary in order to keep the peace, and also cites environmental concerns.

### Brazil

#### Rise in environmental investigations and litigation expected

A notable increase in resourcing and scrutiny of environmental matters by the offices of both the District Attorney and the Public Prosecutor means that the volume of environmental investigations and litigation is expected to rise. An upsurge in prosecutions has already been seen, with individuals being held criminally liable for offenses committed by the corporate bodies they represent. Additionally, increased public pressure on environmental issues makes enforcement more likely in high-profile cases (with settlement less likely).

### Argentina

#### Reform of arbitration regime based on UNCITRAL Model Law

Argentina is embarking on an extensive scheme of procedural reforms to increase the expediency, transparency, and efficiency of its justice system. One key reform is the modernization of its arbitration procedure by adopting the UNCITRAL Model Law. The draft Bill has been presented by President Macri, has received preliminary approval from the Senate, and is expected to come into force during the next year.



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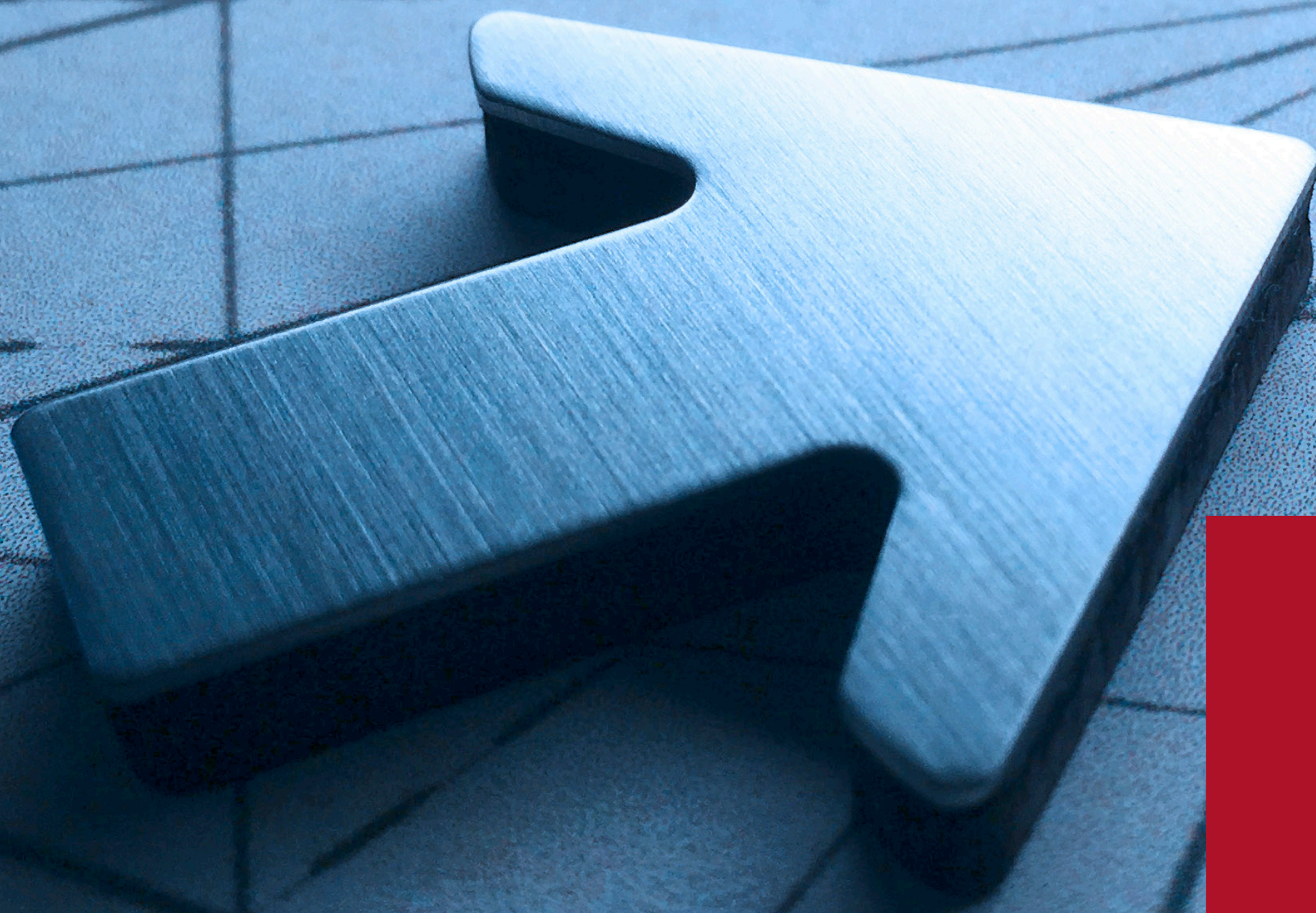


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The Year **AHEAD**



**2018**



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