trowers & hamlins

Thinking Business

Issue 16

Contents

Introduction

Welcome to issue 16 of Thinking Business, a Trowers & Hamlins bi-annual publication in which we share our latest insights and commercial thinking to help businesses adapt, grow and be successful in a rapidly changing world.

In this edition, we look at different aspects of some of the key issues going in the world of business, as well as showcasing one of Trowers & Hamlins' longest running insolvency cases.

Navigating a 16 year battle to recover bank losses – a story of hard work, determination and collaboration, we delve into the case of The International Banking Corporation (TIBC) collapsing into administration and Trowers operating seamlessly across borders, navigating multiple legal systems and evolving regulations to make it a success.

Managing EDI in a time of political change – with a tumultuous view coming from the west about EDI, we discuss the importance of it within the workplace for businesses in the UK.

Devolution plans create business opportunities – with Devolution giving local authorities more powers, we discuss how this positively affects businesses.

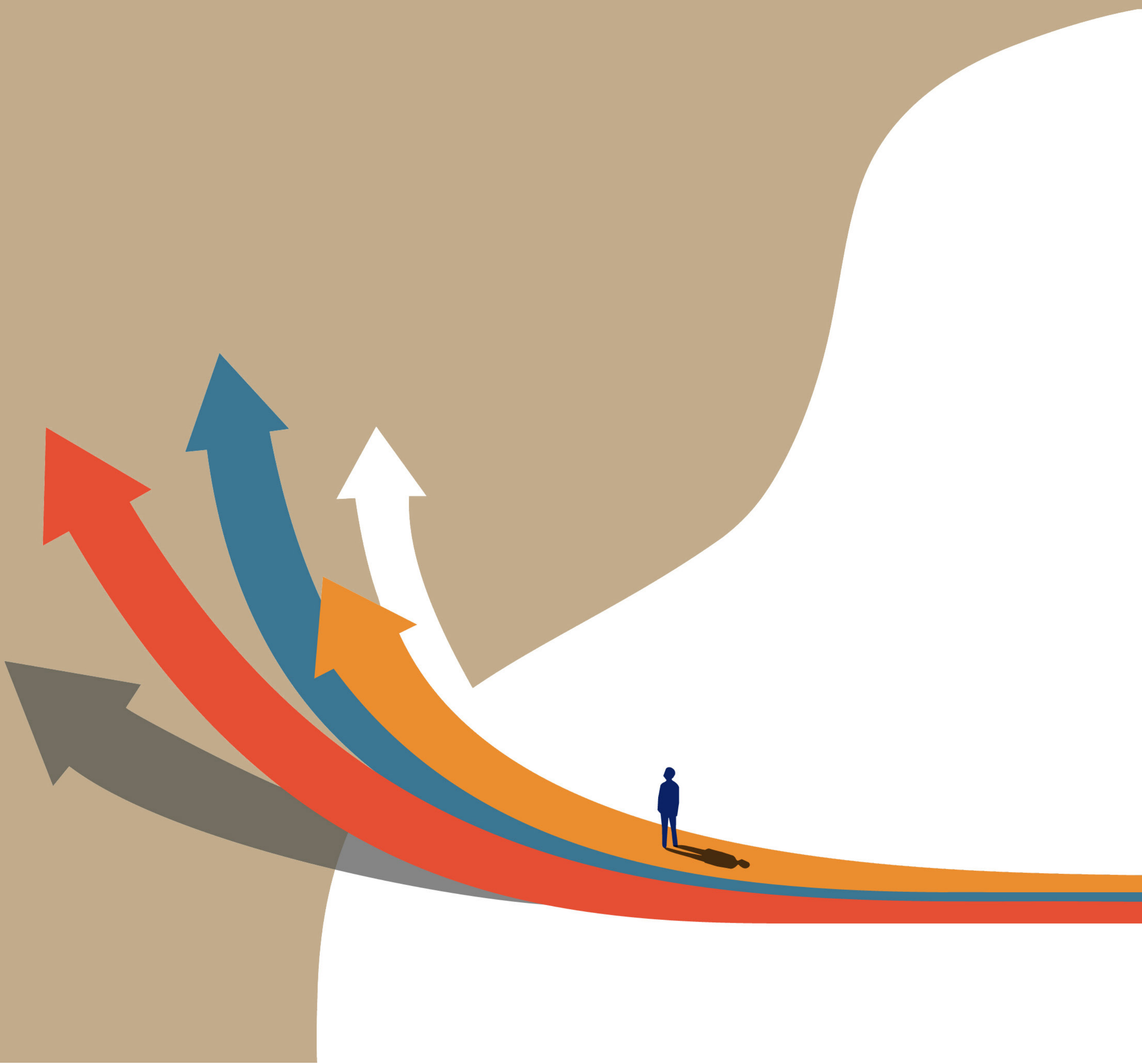
Embracing AI's opportunities and challenges for business data – with AI continuing to be one of the hot topics for businesses, we take a look how it can affect your business data, whether it is a boon or if it's a hindrance.

We hope you'll enjoy reading this and that you'll find some interesting food for thought over the course of the following pages.

Navigating a

16 year battle

to recover bank losses



At the start of 2024, some 15 years after being appointed to manage the wind down of failed Bahraini financial institution The International Banking Corporation (TIBC), Trowers & Hamlins was able to make its first payment to creditors waiting to recover bad debts. With more payouts expected imminently, one of the firm's longest-running mandates is approaching its end.

TIBC collapsed into administration in the middle of 2009, just as the global financial crisis was reverberating through banking systems around the world, and Trowers got the call from the Central Bank of Bahrain (CBB) to act as administrator. It is unusual for a law firm to assume such a role, but the regulator could see then that the task of managing the insolvency of TICB effectively would require focus on asset recovery and significant litigation, so Trowers fitted the bill.

Initially called on to spend a month unravelling the complexities of TIBC's balance sheet issues, 25 Trowers lawyers flew to Bahrain to investigate. Today, the end is in sight after a prolonged legal saga that put the firm at the heart of managing the consequences of one of the Middle East's biggest ever corporate defaults.

Nick Edmondes, now a Partner based in Trowers' Kuala Lumpur office but part of the team from day one, says:

"As one of the original group of 25 lawyers that was parachuted into Bahrain in August 2009, there is a real emotional connection to this case.

"Being part of such a large, committed and successful team, winning various critical judgments along the way, has been a career highlight for many of us."

Uncovering a fraud

TIBC was fully owned by a conglomerate called Ahmad Hamad Algosaibi & Brothers (AHAB) run by the powerful Algosaibi family of Saudi Arabia. When the team arrived in Bahrain, both AHAB and TIBC were on the brink of failure.

The Trowers team assumed control of the bank, working with multiple stakeholders and insurers around the world, closing out trading accounts, winding down non-essential costs and interviewing staff to catalogue the complex situation.

What they discovered was a balance sheet that stated there were $3.9 billion in assets, with $2.5 billion of outstanding liabilities. The outstanding net assets of $1.4 billion turned out to be theoretical as they found almost all of the cash had been removed.

With further investigation, an industrial-scale fraud was revealed. Many of TIBC's lending activities were essentially entirely fictitious, and along with other TIBC businesses such as currency trading, these activities helped mask a sophisticated Ponzi scheme within the Money Exchange part of AHAB. New money was being raised to pay off old liabilities, flying under the radar of auditors and regulators.

As Trowers focused in on the TIBC loan book and sought to understand it, they discovered fraud underpinned by identity theft. Individuals had their identities stolen and those identities were used to take out loans, only for the money to go into The Money Exchange accounts instead of the borrowers.

There were around 90 loans to Saudi businesses, sometimes secured by charges over properties, all of which were entirely fake. The loan book was then used to enable further debt raising in the global financial markets, fuelling the Ponzi scheme.

Trowers Partner Deborah Howard remembers uncovering the details: "When we realised this was a fraud underpinned by people that had had their identities stolen, we started calling these supposed borrowers.

"I remember speaking to a cobbler and telling him we had paperwork suggesting he had borrowed $40 million. He nearly fainted."

A protracted legal battle

Creditors faced a choice, to either put the bank into liquidation and risk getting very little of their lost money back, or to fund an administration to pursue recovery actions, including in respect of the fictitious loan book lending. Trowers was successful in raising close to $30 million from TIBC's largest creditors to fund that strategy.

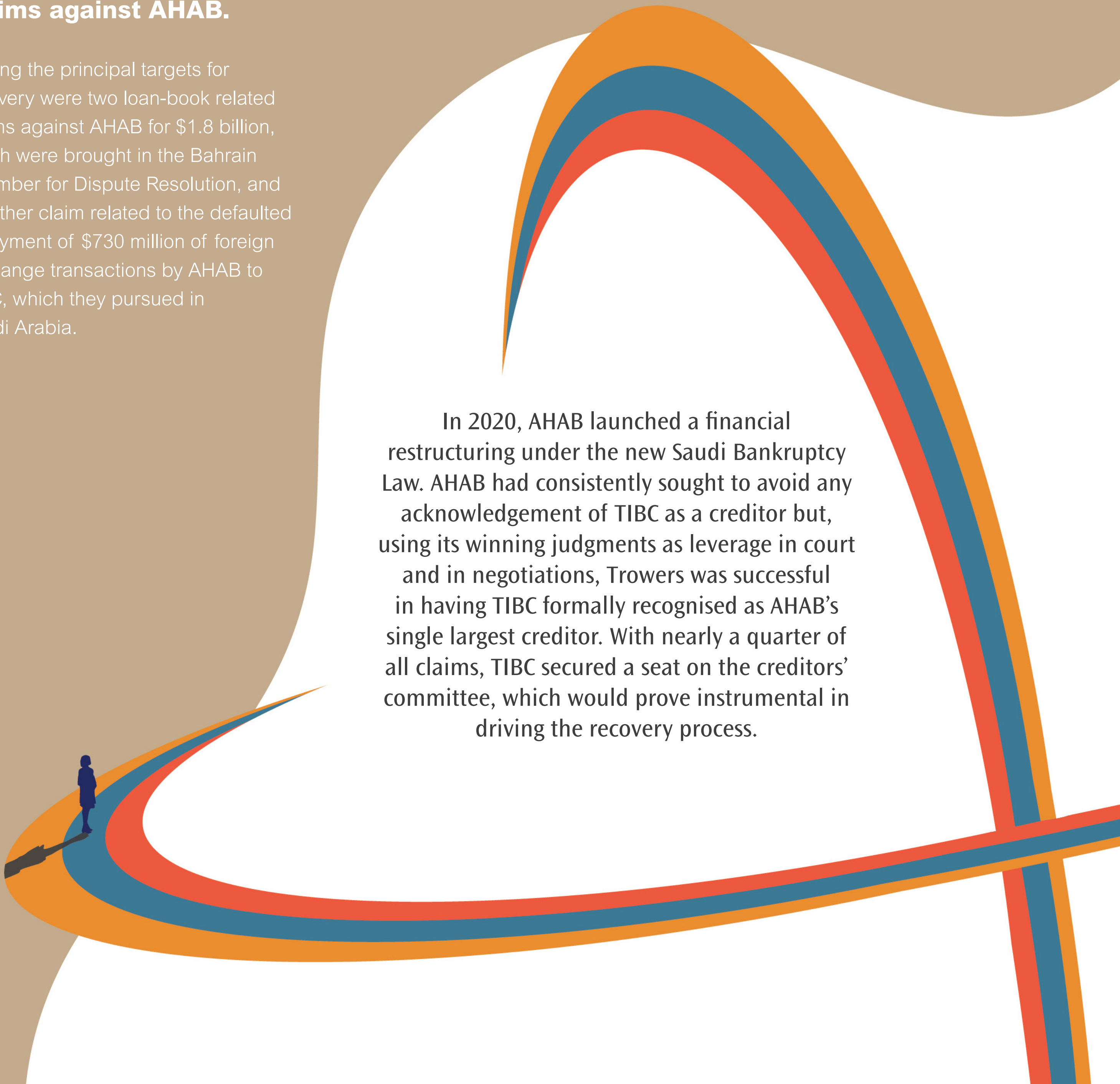
Trowers pursued multiple claims, including one against the bank's auditors that ultimately settled out of court, along with a number of recovery claims against AHAB.

Among the principal targets for recovery were two loan-book related claims against AHAB for $1.8 billion, which were brought in the Bahrain Chamber for Dispute Resolution, and a further claim related to the defaulted repayment of $730 million of foreign exchange transactions by AHAB to TIBC, which they pursued in Saudi Arabia.

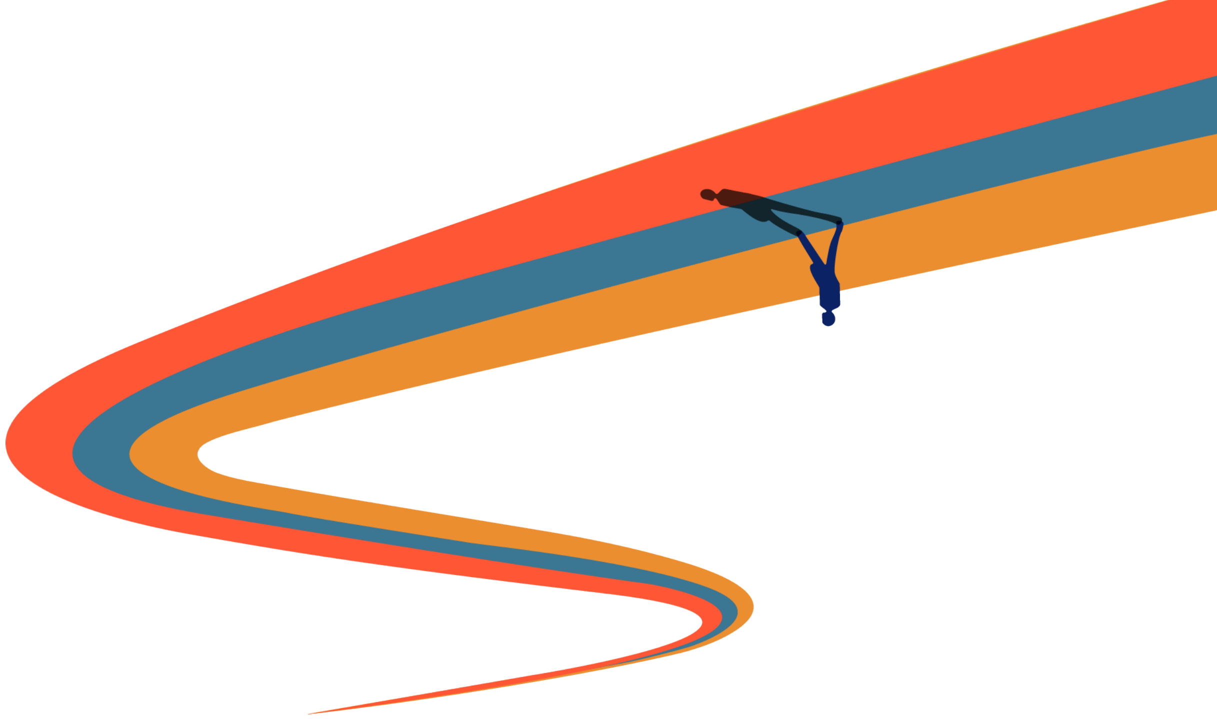
The Algosaibi family claimed to know nothing of the fraudulent activity and blamed it all on Maan Al Sanea, a son-in-law of one of the partners who had run both The Money Exchange and TIBC. That came to a head in a claim brought by AHAB in the Cayman Islands against Al Sanea and a number of companies that had been under his control, in which the Algosaibis claimed to be victims of fraud and sought to recover $6 billion.

Trowers Commercial Litigation Partner Alex Burton says: "That case ran for years and the year-long trial was the longest claim in Cayman history. In a deeply critical judgment, the Cayman court found that AHAB had known of and authorised the fraudulent borrowing and the Ponzi scheme that had defrauded more than a hundred banks."

Trowers successfully secured judgments against AHAB for the full value of the $1.8 billion loan book cases and was also successful in other recovery claims. All the funding provided by creditors to pursue the claims was then also repaid.



In 2020, AHAB launched a financial restructuring under the new Saudi Bankruptcy Law. AHAB had consistently sought to avoid any acknowledgement of TIBC as a creditor but, using its winning judgments as leverage in court and in negotiations, Trowers was successful in having TIBC formally recognised as AHAB's single largest creditor. With nearly a quarter of all claims, TIBC secured a seat on the creditors' committee, which would prove instrumental in driving the recovery process.



Paying back lost money

In order to get money back to out-of-pocket lenders, TIBC had to be placed into liquidation. Trowers was appointed liquidator and paid its first distribution to TIBC's creditors last year, totalling $264 million, or 14 cents in the dollar.

To give the distribution figures context, for a long time following the commencement of the TIBC administration, its debt traded at around one cent in the dollar: the bank had massive liabilities and no real assets. The creditors' confidence in the recovery strategy led to a significantly more positive outcome than the market had anticipated.

In April 2024, TIBC received another payout from AHAB totalling $13 million, but there is still more to come. With AHAB's Saudi real estate assets subjected to asset freezes and bureaucracy, another distribution is expected in the first half of 2025 but the long tail of the liquidation may take years to conclude.

TIBC was one of the first two banks to be placed in administration by the special insolvency provisions of the Banking Law in Bahrain, so Trowers lawyers have been breaking new ground from day one.

"That process had never been tested or tried out, which meant almost everything being done was a first for Bahrain and often for the region," says Howard.

She adds: "To make, win and enforce claims against the Algosaibis under new bankruptcy laws in Saudi Arabia was also a huge challenge, made even more difficult by the fact that there was no funding for the costs of bringing claims."

That meant the administration had to seek, again as a first, funding from its creditors to support years of asset recovery work. The fact that those creditors will get a meaningful chunk of their losses back from the failed bank is a huge success.

"TIBC was set up as a fraud on the international creditors that lent it money," says Edmondes.

"There are lessons to be learned for international banks when it comes to making sure that the banks they are lending to have a sound footing and are properly financed.

"They should check accounts and make sure they do their own due diligence."

The TIBC story is one of hard work, determination and collaboration over a lengthy period of time, with Trowers operating seamlessly across borders and navigating multiple legal systems and evolving regulations to ensure bad debts were recovered.

Managing

EDI

in a time of political change

When Donald Trump's administration arrived in the White House in January, it quickly became clear that the returning president was going to make opposition to equity, diversity and inclusion (EDI) programmes a priority of his second term.

The president signed an executive order titled 'Ending Radical and Wasteful Government EDI Programs and Preferencing' on his first day in office, quickly rolling back a swathe of EDI mandates, policies, programmes, preferences and activities in the federal government.

Since that political shift, a number of major companies have opted to roll back on their own EDI commitments, including a number that have a significant presence in the UK. Pepsi will no longer use representation goals in hiring, for example, repositioning its Chief EDI Officer to focus more on employee development, according to Forbes.

For now, such policy changes have not been seen on this side of the Atlantic. "The current rollback is focused on the US market" says Danielle Ingham, Partner in the Employment and Pensions team at Trowers & Hamlins.

"If anything, the conversation in the UK has been very much pushing in the other direction, with lots of voices championing EDI and working to develop and improve existing initiatives further."

This includes the UK government, which is moving ahead with plans to drive through more equality legislation as part of forthcoming employment law reforms. Some private sector employers who are headquartered in the US have also actively come out to restate their commitment to EDI and driving forward more inclusive workplaces. For example, at the start of the year Costco reaffirmed its EDI approach in a statement saying that its EDI policies were not only legal but essential to its long-term success, adding,

"Our commitment to an enterprise rooted in respect and inclusion is appropriate and necessary".

Positive action does not equal positive discrimination

What does this all mean for employers who are looking to navigate the different approaches swirling between the US and the UK? An understanding of the different cultural and legal factors in play may be helpful. So far, the pushback in the Some have argued such initiatives are no longer necessary – when Goldman Sachs abandoned an internal rule that barred it from advising all-male, all-white boards looking to list on public exchanges, the bank's vice chair reported:

"That policy was put in place to try and drive a change in behaviour and I think that's happened."

Others have focused on economic pressures and the perception that EDI programmes may be 'wasting' funds that may be better spent elsewhere, a view that is certainly shared by the Trump administration. However, a major point of challenge in the US is the fear is that EDI programmes have been straying into discriminatory territory by unlawfully favouring minority groups over others.

"This fear is already addressed in the UK by only permitting 'positive action' under employment law, which is not the same as positive discrimination," says Ingham.

"Positive action is entirely voluntary and is about employers taking lawful, proportionate steps to address and overcome imbalances or barriers faced by those with particular protected characteristics. This can only be done in circumstances which are expressly permitted under the Equality Act 2010".

To give a tangible example, in the UK targets for improving representation of groups with certain protected characteristics in specific roles are legal but quotas that prescribe the types of candidates that must get roles are not. "You cannot say it is mandatory to appoint X number of women to a board or make an appointment simply because a candidate is female," says Ingham. "But it is permissible to target a certain percentage of female representation at board level if this group is underrepresented, provided any steps taken to achieve this are implemented within lawful parameters.

Failing to understand the difference between positive action and positive discrimination is not only a legal risk, it can create employee relations issues in that people who do get appointed are seen to be in post for the wrong reason.

"Of course employees want to be appointed, and businesses want to manage themselves, based on merit and suitability for the role in question must always come first, before any consideration of positive action," says Ingham.

The focus therefore must remain on removing barriers and disadvantages and working to increase representation through legal tools, crafting EDI initiatives which are appropriate and relevant to each workplace.

EDI in your business

To avoid feelings of conflict and division, it is important that leadership teams ensure that the approach being taken on EDI is fully understood throughout the organisation. "EDI is an ongoing awareness and education piece," says Ingham.

"All employment and recruitment processes need to be informed by an understanding of what is and isn't lawful and what aims the business is trying to address"

There is certainly plenty of evidence suggesting EDI is still an important part of successful recruitment and retention. Companies with diverse and inclusive teams regularly report benefitting from better attraction of candidates, more positive workplace cultures and a diversity of thought that drives creativity and productivity.

Candidates also increasingly want to work for employers that align with their values. Potential new recruits are now far better informed than previously, with many looking to work for organisations that not only value diversity but actively work to create inclusive environments.

Ingham says: "When it comes to recruitment and retention, employer brand is so important.

"Leaders need to think about what they want their organisation to be known for as an employer, how authentic their message is and what their values are, because that matters to employees."

Companies that have previously made strong commitments to EDI may experience an unwelcome backlash from employees if they start to backtrack on those promises.

There might also be legal implications of changing course.

"If your organisation starts to give the message that EDI is no longer a priority, that could increase the risk of claims and challenges from individuals with certain protected characteristics," says Ingham

"It is not a huge leap to imagine a scenario where an employee believes their treatment or lack of promotion to be down to the fact that their employer is no longer supportive of people in certain minority groups. Whilst this may not be the actual reality of the organisation's culture or EDI policies, negative perceptions can be incredibly hard to shift."

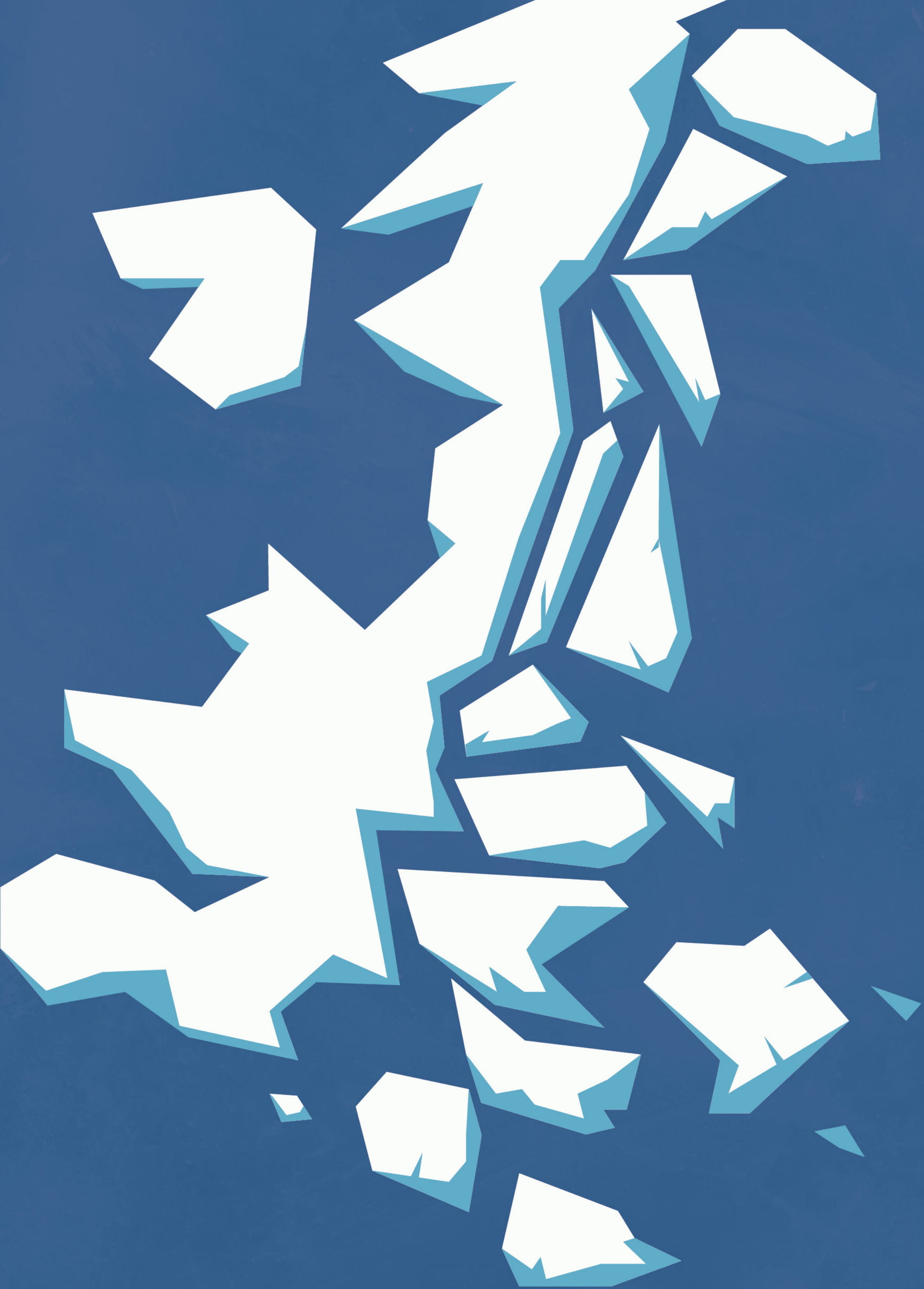
Furthermore, if tangible commitment to EDI initiatives has previously played a roll in a business successfully winning new clients, contracts or new investment, changing course may impact those wider relationships.

"Investors and other interested stakeholders are going to be watching developments closely and asking businesses whether they are going to stand behind their stated commitments," says Ingham.

"There have long been accusations that EDI initiatives are nothing but a tick-box exercise in some organisations – this could be crunch time for many to show whether or not these concerns were valid."

In an era where culture wars are increasingly erupting into the workplace, whether as a result of intergenerational tensions, conflicting beliefs or misaligned views on practices like hybrid working, EDI seems to be the latest flashpoint that employers must be ready to navigate.

Building more diverse and inclusive working environments has been front of mind for many in recent years – leaders that remain committed to those objectives now need to articulate them more than ever.



DEVOLUTION PLANS

CREATE BUSINESS OPPORTUNITIES

When the government published its English Devolution white paper in the final days of 2024, the focus was on empowering local communities to take back control from Westminster. With an ambitious plan to establish strategic authorities across England and allow them to take charge of funding in areas including housing, regeneration, local growth, transport, skills and employment, the potential impact is far-reaching.

A consultation process will now take place to draw the new map upon which the strategic authorities will be based, but Trowers & Hamlins has been at the forefront, working with amongst others, the Cheshire and Warrington region to navigate the changes after it was chosen as part of the government's priority programme. The combined Cheshire and Warrington authority will bring together three councils and is one of the first six new authorities that will hold mayoral elections in May 2026 – the rest of the country should follow a year later.

Paul McDermott, Partner in the Real Estate team and Public Sector group at Trowers & Hamlins. says:

"The benefits of the devolution plans are that authorities get more powers to decide things locally. What's more, unlike with previous reforms, this is not about redrawing boundaries or shuffling budgets, but is very much focused on local decision-making to better drive business growth and economic development."

Driving economic growth

Supporting the local business environment is one of the key motivations for the devolution strategy put forward by government. "Devolution means more investment in local areas," says the white paper, which adds:

"We will strengthen mayors' ability to attract international investment, support business to thrive and grow, and create vibrant places where people want to live and work."

There are a number of areas set out in the plans that should deliver real benefits for UK businesses. First, because strategic authorities will have powers to target investment into skills, housing, transport and local infrastructure, local companies will be well-positioned to benefit from policies specifically design to work for them. There will be sector-specific support for regional economic clusters, driving life sciences in places like Cambridgeshire and Peterborough, financial services in West Yorkshire, clean energy in the North East and advanced manufacturing in Greater Manchester and the West Midlands, for example.

Amardeep Gill, National Head of the Public Sector team team at Trowers and a Partner in the Birmingham office, says:

"The creation of strategic authorities will allow for geographic consensus on routes to growth, with the government talking about these structures resulting in enhanced productivity, more efficient operating environments and better access to resources."

He adds: "Local businesses can connect into the new strategic authorities via new communication forums, and will need to start thinking more regionally about how they can influence decision-making"

The strategic authorities also come with new multi-year funding arrangements, giving more certainty at local level about how much capital will be available for investment.

Gill says: "Right now, local authorities don't know how much they are going to get from central government on a multi-year basis. These new arrangements will mean multi-year funding settlements, so strategic authorities can set agendas that they can stick to, with more certainty about how much money they are going to get and when. Businesses can also make investments knowing what is going to happen."

Investing in local infrastructure

Transport has long been at the heart of what new authorities are tasked with delivering, and the renewed focus on an integrated system for roads, rail, buses and active travel has the potential to bring plenty of benefits to business. Along with the opportunities to win work in the projects that will deliver enhanced local infrastructure, commuter times can be reduced and workforce mobility enhanced by well targeted transport investment.

"One of the longstanding barriers to employment in some areas has been public transport," says McDermott.

"Poor public transport creates disadvantages for workers and creates blackspots where businesses struggle to thrive without a good pool of talent."

Housing is another area that will come under greater local control. This government has made housing a key priority and set out an aspiration to build 1.5 million homes during the course of the parliament. The devolution plan hands strategic authorities the ability to develop local housing targets, streamline planning processes and bring forward development.

Gill says: "Housing is often an issue that impacts local businesses, particularly if workers cannot afford to live in vicinities.

"The changes will give authorities the ability to increase affordable housing near business hubs, ensuring employees can live nearby and supporting talent retention."

Devolution is also intended to facilitate skills and employment provision that is more relevant to local jobs. The new strategic authorities will be able to develop local skills improvement plans, taking responsibility for both adult skills, post-16 education and training, and getting people back into work.

The approach has already been tested in current devolved authorities, with Greater Manchester taking responsibility for its own adult education budget back in 2019. Since then, it has taken various steps to expand access to adult education, with a focus on meeting the needs of the local labour market. In total, since devolution, over 148,000 residents of the region have accessed over 320,000 grant-funded courses.

Gill says: "The new authorities will have the ability to invest in, and support, key skills that play to the strengths of the local community and the needs of its businesses.

The result should be a lot more joined-up and strategic for business than it has been previously."

A new route to engagement

With decision-making being actively decentralised away from Whitehall, it now falls to local areas to identify what type of authority they want and how regional leadership should take shape.

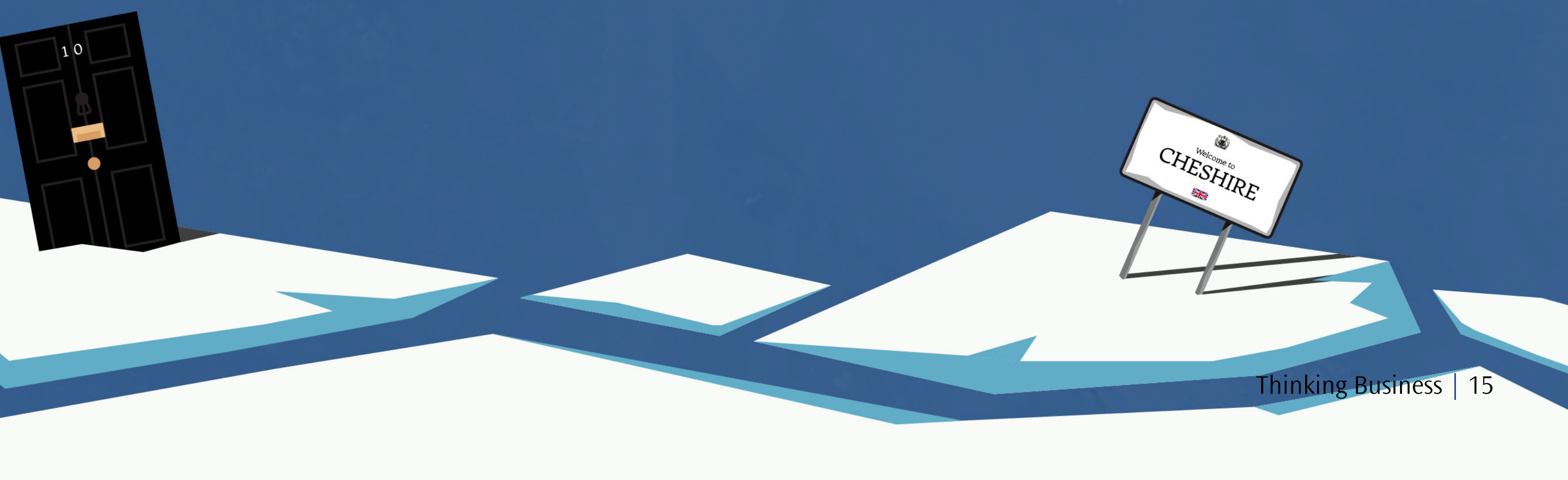
For companies across the UK, there will be new authorities to navigate, relationships to build and opportunities to engage.

"It will no longer necessarily be a question of lobbying parliament to get things done," says Gill.

"The existing strategic authorities, like Greater London and Greater Manchester, have proved to be quite good at reaching out to businesses and working with them.

"We have seen collaboration getting a lot better, and it is hoped that devolution will now bring those benefits to more parts of the country."

With greater clarity around budgets, timelines and strategic objectives also an intended outcome, there is much for UK plc to embrace in these planned reforms.



Embracing AI's opportunities and challenges for business data

With so much discussion about the grand potential of artificial intelligence to transform the way we do business, but also the many risks associated with getting it wrong, it can be hard for corporate leaders to know where to go.

Advantages of AI for business data

Under enormous pressure to embrace the AI revolution, few can any longer afford to ignore it. But your business data is enormously valuable, so before you step into the world of AI, it makes sense to fully understand both the advantages and the challenges that you will need to navigate.

Since the advent of Europe's General Data Protection Regulation in 2018, every business has shone a spotlight on the way in which it handles personal data. Where AI comes into its own for many organisations, though, is in its ability to enhance business data analysis. AI can process vast amounts of data really quickly, identifying patterns and trends that humans might otherwise miss, and delivering predictive analytics that can significantly enhance business decision-making.

Victoria Robertson, Partner in the Commercial team at Trowers & Hamlins and a data law specialist, says: "Supermarkets might track how a particular brand sells in one place versus another, or what customers pick up when they first enter the store.

"AI can quickly identify patterns that might really inform where brands should be placed on shelves or what might be marketed to particularly customers in order to increase sales, for example."

She adds: "Often it can spot trends that humans can't, because we all bring our own bias and gaps that might stop us noticing certain patterns.

"The analytics that can come out might really make a difference to decision-making going forward."

It can also play a big role in improving corporate efficiency. By automating data intensive tasks, speeding up data processing and reporting and providing real-time data analysis and insights, there is a lot of potential for both time and cost savings.

Then another big advantage is the potential for personalisation of the customer experience. Robertson says:

"We are seeing businesses using AI for things like tailored goods and services, looking at where they have engaged with customers previously and then making suggestions.

"If the majority of customers that bought product A go on to buy product B, for instance, there is the potential for really customised marketing campaigns."

Many businesses are also employing chatbots and virtual assistants to improve customer service.

Data insights can also be used to drive innovation, such as new product development, the optimisation of existing processes and services or even the identification of new market opportunities.

And, finally, cost reduction is often an obvious benefit that comes with AI investment. Savings can be achieved in a variety of ways, whether those are linked to streamlined data management processes or a reduction in the number of human errors that occur during data handling.

Robertson says: "There is a point where humans get tired and start to make mistakes, but AI doesn't get tired – it loves these huge data sets."

She adds: "With AI, it becomes possible to achieve much more efficient resource allocation, with data able to help you decide where you should be focusing your people, where are the key points that require human interaction, and what is the most effective way to deliver results."

Risks of AI for business data

Of course, despite the many upsides that AI can bring, business leaders need to be mindful of the risks that come with such new and developing technologies.

A key area of concern remains data privacy and security, including the need to comply with data protection regulations like GDPR in Europe and the UK version of GDPR in the UK and other relevant legislation around the world, like the California Consumer Privacy Act.

Another worry is the potential for data breaches or unauthorised access. Chris Doherty, an Associate in the Commercial and Data team at Trowers, says:

"When investing in AI tools, businesses need to do thorough due diligence to make sure their data is going to be used in a compliant way, minimising any risks presented by AI use."

There are also ethical concerns about data usage and AI decision-making that need to be navigated, which means checking the outputs from AI for issues like data quality and bias.

Doherty says: "There is a real risk that AI systems can perpetuate or amplify existing biases in data.

"Poor quality data can lead to inaccurate AI predictions and there can be real difficulties in both identifying and correcting AI bias, so training needs to be given to make sure those risks are mitigated."

That problem is often compounded by the 'black box' nature of some AI algorithms, which makes them difficult to understand and means there is a lack of transparency and explainability. "Users Businesses using of AI need to be able to explain AI decisions to stakeholders," says Doherty. "If you are a regulated business, that is a particular issue when it comes to interacting with regulators.

"Otherwise, that lack of transparency can lead to potential legal liability issues in the event of claims."

Data dependency can be a problem in some businesses, where organisations become too reliant on AI-driven insights. That gives rise to increased risks in relation to system failures or data availability, while also causing issues if there is a loss of human expertise and intuition.

"A lot of AI is intended to be used as an additional tool," says Doherty.

"It is not intended to be 100% relied upon, so you need human oversight. If you are only using AI and fail to check the outputs, you cannot necessarily blame the AI if it leads to mistakes."

AI adoption can also bring with it significant integration and implementation challenges, because the tools and data infrastructure required are can be costly and there are many options available. Leaders may face difficulties integrating AI systems into their existing data ecosystems, and the need for specialist skills and talent can make the costs prohibitive.

"Companies need to make sure they are acquiring tech that they can link into what they have and that they have personnel who can understand and manage the systems," says Doherty.

Finally, there are regulatory and compliance risks associated with the fast-changing nature of AI laws. With different legislative positions being taken globally, as the EU's AI Act leads the way and the American stance evolves under President Trump, organisations need to pay close attention.

"It is quite a difficult regulatory position right now," says Robertson, "because the UK has not landed on what it is going to do. Companies need to comply with the EU AI Act if they are selling into the EU, and the position in the US is changing.

"President Trump has revoked the Biden Executive Order on safe use of AI and brought in a new Executive Order, where there is quite a different emphasis on American leadership in the AI sphere under the new administration."

Taking a measured approach

With the AI technology itself also changing all the time, as we saw with the launch in January of a new AI chatbot by DeepSeek, a Chinese AI startup, keeping on top of AI innovations and risks can feel like addressing a moving target.

Robertson says: "The biggest concern we hear from clients is that if businesses are not engaging with AI and coming up with guidelines on how staff should use it, their employees are going to start using it anyway. That gives rise to a whole other set of issues."

A report from LinkedIn and Microsoft published last year found that not only are 75% of knowledge workers already using AI at work, 78% are doing so without guidance or clearance from the top.

"For a lot of companies, having those conversations and being clear that existing usage is in line with policies has to be the first step," says Robertson.

"Having an AI strategy is now really important. For any business, there will be something that can be completely automated, so there are benefits to be reaped as long as the appropriate safeguards are in place."

If you have not already done so, now is probably the time to wise up on all things AI.

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