



(/)

[Features \(/articles/categories/departments/features/\)](/articles/categories/departments/features/)

[Publications \(/publications/\)](/publications/) [Articles \(/articles/\)](/articles/) [News \(/news/\)](/news/)

[Jurisdictions \(/articles/categories/jurisdictions/\)](/articles/categories/jurisdictions/)

[Directory \(/directory/\)](/directory/) [Events \(/events/\)](/events/)

[Comment \(/articles/categories/departments/comment/\)](/articles/categories/departments/comment/)

[Big Debate \(/articles/categories/departments/big-debate/\)](/articles/categories/departments/big-debate/)

[In the Chair \(/articles/categories/departments/in-the-chair/\)](/articles/categories/departments/in-the-chair/)

[Global Regulation & Policy \(/articles/categories/departments/global-regulation-policy/\)](/articles/categories/departments/global-regulation-policy/)

[Sector Research \(/articles/categories/departments/sector-research/\)](/articles/categories/departments/sector-research/)

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[Home \(/\)](/) / [Articles \(/articles/\)](/articles/) / [The Great Homogenisation](#)

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# The Great Homogenisation

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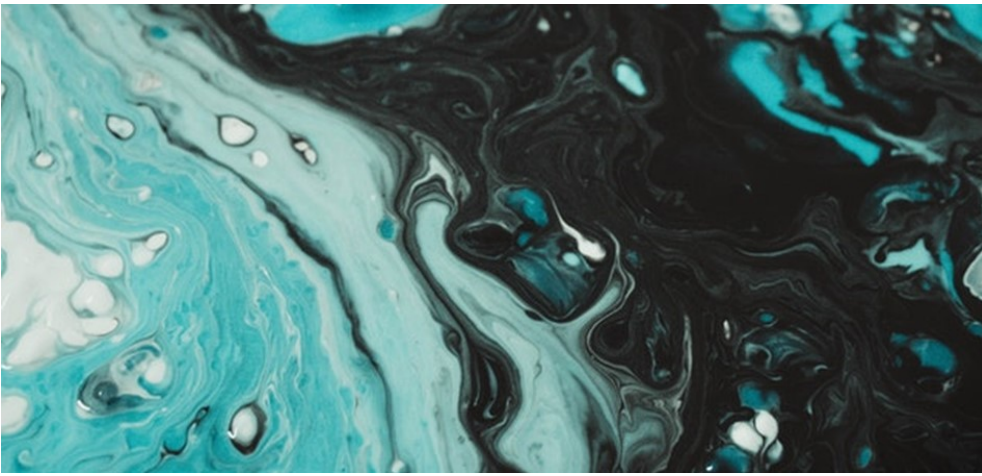
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## The Rise and Rise Of IFCs



Let us assume for this thought experiment; the OECD and FATF have their way on "unfair tax competition."

Each and every year a new initiative is issued under the guise of fit and proper regulations to avoid a race to the bottom in regulatory quality. The blacklists are assembled, regional assessment bodies are dispatched, country reviews are undertaken, and shortcomings documented with offending nations menaced into conformity. All nations, including International Financial Centres, have more or less the same tax laws. Denmark, Dominica, and Djibouti offer no tax advantages, and all of the Ultimate Beneficial Owners (UBOs[i]) are disclosed. What will the business landscape look like? How will IFC nations compete after the marginal utility of tax competition has been erased? Will the 36 OECD Member nations finally prosper and be able to pay their bills with all of the tax revenue?

The only areas of competition I can see being left for IFCs are skilled labour but at lower rates, advantages in law other than tax, citizenship by investment, and many elements of FinTech.

## Labour

The OECD is acutely aware of the advantages in labour prices and has already begun attacking "unfair labour competition". The attack is directed at informal labour as well as what we would call production labour.

"Undeclared employment lowers the quality of work and working conditions, undermines the business environment through unfair competition, and puts the financial sustainability of social protection

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[\(/articles/2021/january/the-rise-and-rise-of-ifcs/\)](/articles/2021/january/the-rise-and-rise-of-ifcs/)

systems at risk."<sup>[ij]</sup>

The issue is, what is "undeclared employment"? Is that an Uber driver, a nanny? As I read the OECD manifestos, it has more to do with labour standards, working conditions, and benefits.

"Then, there is the view that labour standards are a potential determinant of economic efficiency. Without international standards, firms will compete by offering poor working conditions. The imposition of a floor to wages and employment protection legislation, it is argued, will create a stable labour relations framework conducive to improved human capital and higher real incomes and thereby boost world trade."

The OECD has also been working with the International Labour Organization (ILO) to set such standards on pay, benefits, and termination. Unions and other pressure groups have even gone so far as to explore how "social clauses" can be made part of the General Agreement on Tariffs and Trade (GATT).

So if IFCs think they will be able to compete on labour, no matter how skilled, the OECD has thought of this and is actively attempting to eliminate competition from unfair labour practices, be they informal, blue-collar, or white-collar.

### **Advantages In Law**

What other advantages in law can be crafted? There are many. Differences in corporate law, product liability, intellectual property, emissions, and workplace regulations, even healthcare can and do make a difference.

The OECD has been critical of the Dutch Intellectual Property (IP) laws and administration as Dutch laws permit a multinational organisation to either re-domicile or license their IP by and through a Dutch structure that will necessarily deprive another country of tax revenue. The value of IP is directly tied to the owner's ability to enforce their exclusive rights to the IP. The range of costs to enforce a patent in the US ranges from US\$700,000 to US\$4,000,000 and can take three years. The cost of IP litigation in the

Netherlands ranges from €75,000 to €350,000, with the courts determined to get resolution in an average of six weeks from filing.<sup>[iii]</sup> The Dutch produced an advantage in law that was not praised but attacked because the more efficient legal jurisdiction offered a comparable advantage in law. It seems to me this revolution in IP law should be emulated, not suffocated.

The OECD has been successful in harmonising law in several disciplines, including corporate, environmental, workplace, and labour rights.

## **Citizenship**

“Residence and citizenship by investment (CBI/RBI) schemes, often referred to as golden passports or visas, can create the potential for misuse as tools to hide assets held abroad from reporting under the OECD/G20 Common Reporting Standard (CRS).

...

Potentially high-risk CBI/RBI schemes are those that give access to a low personal tax rate on income from foreign financial assets and do not require an individual to spend a significant amount of time in the jurisdiction offering the scheme. Such schemes are currently operated by Antigua and Barbuda, The Bahamas, Bahrain, Barbados, Colombia, Cyprus, Dominica, Grenada, Malaysia, Malta, Mauritius, Monaco, Montserrat, Panama, Qatar, Saint Kitts and Nevis, Saint Lucia, Seychelles, Turks and Caicos Islands, United Arab Emirates and Vanuatu.”<sup>[iv]</sup>

This does not look good either, as the OECD is smearing sovereign nations over how they offer residency by investment. These nations are being menaced because they choose to raise money by inviting people to become citizens, albeit it for a fee. The nations are not being allowed to even determine who can and cannot be a citizen.

## **FinTech**

FinTech comes in two strains. The two strains are automation and innovation. Automation is the automation of current processes; the technology creates a tool to automate a process that used to be manually intensive. Innovation is the creation of something new and compelling for a market niche.

“Regulation will decisively influence to what extent BigTech will enter the industry and who the dominant players will be. The challenge for regulators will be to keep a level playing field that strikes the right balance between fostering innovation and preserving financial stability.”[v]

Reflecting on innovation and the FinTech competitive landscape, it appears those that regulate the regulators are denying professionals and tinkers alike the permission to innovate. It appears the future of innovation will be restricted to those who are already licensed and regulated in a fit and proper jurisdiction.

## **Homogenisation**

I would like to believe the OECD and the FATF are staffed by well-meaning professionals. That some harmonisation exists, much like the ISO had done for measurable standards before it drifted off into the soft standards. The great OECD global homogenisation has recommended over 400 plus "harmonisation" directives, and the OECD Nations have adopted them. Some of these standards appear to be useful. Like the ISO's drift from mechanical standards to subjective standards such as Social Responsibility and Anti-Bribery Management, the OECD has drifted from harmonisation of standards to anti-competitive legislation impersonating standards.

Have State Owned Enterprises (SOEs) and monopsonies captured the OECD? I would argue that this always has been the case. The OECD's leadership and staff are composed of distinguished regulators from around the world who have zero experience in private enterprise. Their thought processes are trapped in an echo chamber between big government and big business. The OECD has drifted from harmonising what was important and strayed into regulating away the opportunities for innovation, specialisation, and competition to anti-competitive protectionism. The current state of

international regulators reminds me of the warning given by Milton Friedman to be wary of the Tyranny of the Status Quo, in particular the hegemony of the bureaucrats and their beneficiaries.

Anyone who dares to give international regulators push-back on their dogma is labelled a fool or a heretic. The opponent is accused of either wishing to see international institutional instability in governance, banking, and finance, or craving a regulatory arbitrage race to the bottom. The response positions the international regulator as the voice of reason and stability and the champion of fit and proper regulations. Honestly, who would want financial instability and criminal jurisdictions? Of course, no-one does.

But might what they are doing bring about exactly what they claim they are trying to prevent? Could homogenisation be the risk? It is well known in biology that a population with insufficient genetic diversity is labelled endangered. The species is properly characterised as endangered as a single infection could wipe out the entire species; a more genetically diverse population is statistically more likely to survive. Is the great homogenisation of laws and regulations engineering an iatrogenic risk where one legal or fiscal contagion can run unchecked and unchallenged through all countries?

Innovation is the work of *knowing* rather than *doing*.

When one spots an opportunity, one requires a leap of imagination (functional inspiration) to arrive at the right place.

Opportunities exist within an industry due to unexpected occurrences, incongruities, process needs, and industry and market changes. Additional opportunities exist outside a company in its social and intellectual environment: demographic changes, changes in technology, and new knowledge. As different as these sources of opportunities are, their risk, difficulty, complexity, and innovation potential may overlap.

The problem is the entrenched bureaucratic dogmatic rule-making from a time that no longer exists. We know each walk of life has its dogmas – the dominant ideas that everyone simply accepts without questioning them. They are assumptions, rules, and conventions that influence people's thinking and

attitudes. Once they're in place, people naturally support them because they seem to make sense, and they tend to blindly defend these beliefs, no matter what.

These dogmas and legacy assumptions of fiscal stability and fit and proper jurisdictions are barriers to innovation. Opportunities are scuttled before they are contemplated as they challenge or weaken existing dogmatic regulatory assumptions.

The bureaucratic regulatory dogma has to be challenged. What is needed is some lateral thinking on approaching top-down rulemaking to be prepared for the future. The dominant top-down administrative "Father Knows Best," regulatory proscriptions are truly from the last century.

As described by Dr. Edward de Bono (from Malta), lateral thinking is a necessary counterpoint to conventional or vertical thinking. In conventional thinking, we go forward in a predictable, direct fashion. Lateral thinking involves coming at the problem with new approaches – literally, from the side. De Bono points out that lateral thinking is an excellent tool for viewing dominant ideas in a fresh light. The strategy de Bono recommends is to write them down, and then deliberately challenge them. Turn every dominant idea and association on its head, and simply see where it leads. Challenge the assumptions, the efficacy, and the status quo.

Nations menaced into conformity and out of competitive advantages will choose to survive however they can. We do not have to imagine what those nations would look like as some exist today. The radically unstable nations of North Korea, Venezuela, Nicaragua, Mozambique and South Sudan are a current warning.

A globally diverse set of laws and regulations will be infinitely more robust. Legal innovation and regulation should be allowed to thrive. The markets and participants will pick what is good for them, and nations will be under more pressure to deliver fit and proper jurisdictions. In homogeneity, there is no need to compete, or is that the point?

Footnotes:

**[i]** *The UBO is a shambolic exercise. It will increase the cost for the honest and is a zero deterrent to the bad guys.*

**[ii]** <https://www.oecd.org/employment/towards-an-inclusive-and-competitive-labour-market.htm>

**[iii]** *Patent litigation in The Netherlands: overview by Verschuur, Boelens, and Bekke*

**[iv]** <http://www.oecd.org/ctp/oecd-clamps-down-on-crs-avoidance-through-residence-and-citizenship-by-investment-schemes.htm>

**[v]** <http://www.oecd.org/daf/competition/digital-disruption-in-banking-and-its-impact-on-competition-2020.pdf>

#### ABOUT THE AUTHOR



**L. Burke Files DDP CACM, President, Financial Examinations & Evaluations, Inc**

Mr. Files is President of Financial Examinations & Evaluations, Inc. He is an international financial investigator and due diligence expert who has run cases in over 130 countries and has visited over 100 countries. Mr. Files has tackled investigations running from a few hundred thousands dollars to over 20 billion. Along the way he became familiar with the knowledge of what people need to do, for due diligence, preventing corruption, and to avoid helping criminals launder money. He brings this experience of hands on investigating and problem solving experience to his lectures on Due Diligence, AML, and Anti-Corruption. Prior to founding FE&E, Inc. he served as the Director of Corporate Finance for American National an investment bank focused on development stage venture capital. He was also employed by Oppenheimer/Rouse as a commodities specialist trading customer accounts in Agri-Business and 24-hour gold, silver, and foreign currency trading. Mr. Files has authored six books, and many white papers and articles. He has been quoted in major publications including The Guardian, The Financial Times, Forbes, US Newsweek



and more. He is the author of the award winning book Due Diligence For The Financial Professional 2nd Edition. Mr. Files serves on the board of directors for several private companies, funds, and non-profits. Mr. Files is active in several civic organizations. In the past Mr. Files has served as a member of the Arizona Governor's Board on Solid Waste Management, as an advisor to the Governor's Board on Economic Planning and Development. Mr. Files has also received a Commission and a Medal of Merit from the President of the United States.



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