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- Reasons for ever-evolving GC role being increasingly complex
- The UAE's race to Mars

MAGAZINE FOR THE **IN-HOUSE COMMUNITY** ALONG THE NEW SILK ROAD | Volume 13 Issue 1, 2015

ASEAN:
Will the puzzle pieces fit?

The thing about ...

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MARQUES

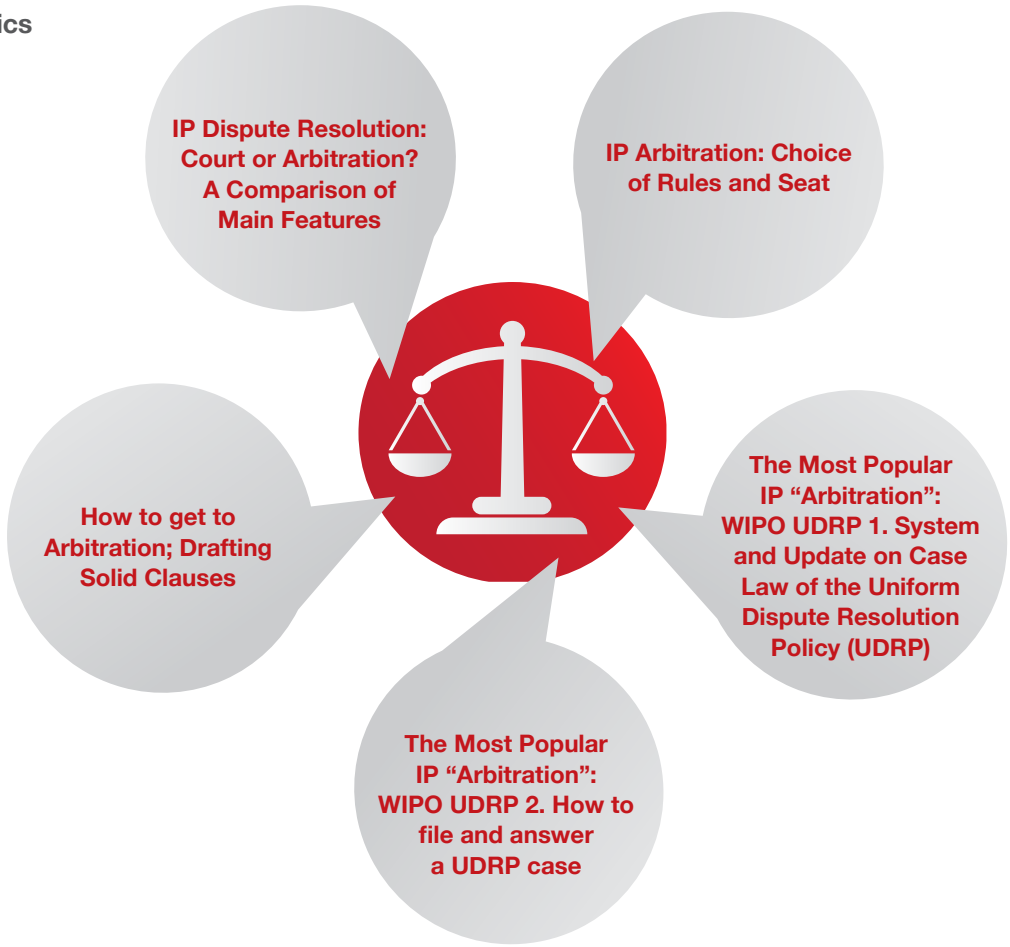
Protecting Trademarks with Arbitration and Domain Name UDRP

28 Aug 2015, 1000 – 1430
Venue: IP Academy Singapore

Given the complexities of IP cross-border disputes, arbitration is an efficient, but less known and taken route.

MARQUES seminar seeks to raise the awareness of arbitration and Domain Name UDRP. Besides a theoretical introduction, the speakers will also discuss how these alternate dispute resolution methods can be applied practically. This seminar is an event of IP Week @ SG 2015 organised by the Intellectual Property Office of Singapore.

Seminar topics



Registration fee: S$350 (Early bird reduction available before 30th June)

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Forums for the In-House Community along the New Silk Road

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Ross Barfoot's practice is focussed on cross-border and regional M&As, joint ventures, private equity, corporate restructurings and foreign direct investment. He leads *Clyde & Co*'s MENA education sector team and also has a particular focus on the oil and gas, defence, retail/food and beverage/franchise and media sectors.

Naji Hawayek is a Legal Director at *Clyde & Co* and has extensive experience in corporate and commercial matters, particularly in the Middle East and North Africa. He specialises in cross-border M&As, joint ventures, private equity, investment funds, corporate restructurings, licensing and regulatory matters, Islamic finance and foreign direct investment.

Phil O'Riordan is a partner in *Clyde & Co*'s Middle East Corporate Group with over 15 years' experience – first in the UK and since 2003 in the Gulf Region. He has helped numerous clients navigate the regulatory and legal complexities that arise when doing transactions across the GCC and wider MENA region.

Robin Singh, CFE, CFAP, MBA, MIT, is an experienced and certified fraud examiner currently working with a UAE government entity in the healthcare sector, specialising in developing and implementing compliance programmes, proactive and reactive anti-fraud/anti-bribery frameworks. Singh is currently enrolled in the Executive LLM Program: a part-time programme issued by two world-recognised schools: IE and Northwestern Law.

Kenny Tung, an In-House Community Thought Leader, is General Counsel and Director at *Lex Sigma Ltd.* Tung's previous positions include Chief Legal Counsel of Geely Holding Group Co. Ltd and Greater China General Counsel at Kodak. He also worked as Legal Director/General Counsel in Greater China or Asia at PepsiCo, Goodyear and Honeywell.

About the IN-HOUSE COMMUNITY

A mutually supportive community of In-House Counsel helping In-House Counsel and Compliance Professionals meet their ethical, legal and business commitments and responsibilities within their organisations.

The In-House Community comprises over 21,000 individual in-house lawyers and those with a responsibility for legal and compliance issues within organisations along the New Silk Road, who we reach through the annual IN-HOUSE CONGRESS circuit of events, ASIAN-MENA COUNSEL magazine and WEEKLY BRIEFING, and the In-House Community online forum.

www.inhousecommunity.com™ ASIAN-MENA COUNSEL™ ANNUAL IN-HOUSE Congress™ CIRCUIT

Empowering In-House Counsel along the New Silk Road

In this issue

Volume 13 Issue 1, 2015

ASEAN: Will the puzzle pieces fit?

Want to know if the ASEAN economic community is Asia, and perhaps the world's, next big thing? With its diverse markets and political systems, there's debate over whether the region's 10 jurisdictions can work as one and if so, how long it will take for them to integrate, their goal being to do so by the end of 2015. Given the well-documented slow-down in Asia's emerging markets, can the ASEAN economic integration be a successful one and make the region competitive and worthy of investment?

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Cover illustration: www.oweiss.com

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MOVES

The latest senior legal appointments around Asia and the Middle East

AUSTRALIA

Gadens has appointed **Jol Rogers** as a partner in its corporate team in Melbourne. A senior corporate and M&A practitioner, Rogers joined from K&L Gates where he has been a partner for six years. He specialises in regulated and unregulated M&As, equity capital markets and other corporate advisory work. In particular, Rogers advises domestic and international corporate clients with a focus on share and asset acquisitions and disposals, takeovers and schemes of arrangement, private equity, joint ventures and shareholder arrangements, restructures, capital raisings, corporate governance, regulatory compliance and general commercial work. His clients are drawn from a wide range of industries, including agribusiness, distribution and retail, financial services, health, manufacturing, mining, private equity and technology.


Jol Rogers

Gadens has added **Robert Walker** as a partner in its Intellectual Property and Technology (IPT) Team in Melbourne. He joins from Baker & McKenzie, where he has been head of its Technology Group in Melbourne for the past 14 years. Prior to this, Walker was a partner at Anderson Legal, where he built its IT practice, and was also legal counsel at McIntosh and IBM. With over 20 years' experience, he is recognised as a premier IT lawyer. His practice focuses on providing IT, telecommunications and intellectual property advice. He has detailed knowledge of e-commerce agreements. His work has included assisting major information management system providers with innovative master services agreements, advising Australian companies providing high-bandwidth communication infrastructure, preparing IT outsourcing and service level agreements, and acting on negotiations of software exploitation and licensing arrangements.


Robert Walker

HONG KONG

King & Wood Mallesons has continued to strengthen the ranks of its Corporate & Securities team in Hong Kong with the appointment of corporate partner **Gary Lock.** He joins from Herbert Smith Freehills, where he established a successful practice advising leading corporates and banks, both foreign and Chinese, on a wide range of transactions, including M&As, capital markets, corporate financing and restructuring, with particular expertise in China-related matters. Lock is consistently ranked as one of the top performing M&A specialists in Hong Kong.


Gary Lock


Thomas Kollar

Mayer Brown JSM has added **Thomas Kollar** as a partner in the Corporate & Securities practice group in Hong Kong. Kollar focuses on capital markets work throughout the region and has over 10 years of experience in US debt and equity capital markets transactions, including high yield bonds, medium term note programs, equity-linked securities, IPOs, equity block trades, equity placements and rights issues. He also has considerable experience advising on US and regional listing requirements. Kollar holds a JD from Northwestern University School of Law and a BA from Indiana University. He is admitted to practice in Hong Kong and New York.


Douglas Freeman


Victor Chen

Paul Hastings has added prominent private equity and M&A lawyers **Douglas Freeman** and **Victor Chen** as partners in the corporate practice, based in Hong Kong. They are recognised for guiding clients to success in significant transactions, with a focus on Asian cross-border deals. They join from Fried Frank, where they were partners and where Freeman led the Asia practice. Freeman represents public and private companies, private equity firms, and investment banking firms in connection with M&As, public offerings, leverage buyouts and other corporate transactions across a range of industries. His M&A practice focuses on cross-border mergers, acquisitions, reorganizations and other business combination transactions. Freeman also has broad experience in leveraged buyouts, listed company transactions and hostile or contested control transactions. Moreover, he has been active in a number of going-private transactions involving China-based companies listed in the US. On the other hand, Chen represents private equity sponsors, multinational corporations and institutional investors in their M&A transactions and investments, with a particular focus on Asia cross-border deals. He has extensive experience advising private equity, venture and institutional investors in their Greater China and US transactions, including public and private M&As, securities offerings and financings, PIPEs and auctions in a wide variety of industries. Chen's practice also involves all aspects of corporate advisory work. He has been active in a number of going-private transactions and has

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TMT, 5+ Years PQE

- Advise on commercial activities and general in-house matters
- Hong Kong qualified corporate or commercial lawyers who have ideally worked with leading international law firms and/or multinational corporation environments
- Fluency in English and Chinese (both spoken and written) is essential. Ref: 501674

FS Regulatory Associate

International Law Firm, 1-5 Years PQE

- Advise banks and brokerage houses
- Handle contentious and non-contentious financial regulatory matters
- Advise on AML/CFT and compliance matters
- Strong academics and Chinese language skills needed.
- Ref: 501698

Regulatory Lawyer

Asset Management Company, 7+ Years PQE

- Advise business units on commercial transactions and regulatory matters in the region
- Experience gained with regulatory practices of law firms and/or in-house financial services companies covering equities trading in Hong Kong
- Fluency in English and Mandarin is required. Ref: 501704

Funds/M&A Associate

Global Law Firm, 3+ Years PQE

- Exposure to big ticket private equity and fund deals
- Common law jurisdiction admitted lawyers required
- Strong M&A/PE and funds experience needed
- More senior candidates can be considered for Senior Associate
- First rate English required, overseas applicants welcome.
- Ref: 501720

Property Lawyer

Leading Property Developer, 10+ Years PQE

- Handle a range of conveyancing and property development matters including construction litigation/arbitration
- Ideally have at least 10+ years PQE gained with a leading law firm and/or property developer handling commercial and residential property matters
- Fluency in English and Cantonese is required. Ref: 501663

Banking and Finance Associate

Well Established Law Firm, 2+ Years PQE

- Syndicated loans, leveraged finance and general banking transactions
- Hong Kong qualified with excellent English and Chinese skills
- Solid banking experience is essential
- Structured products and derivatives experience desirable
- Prior financial regulatory experience preferred. Ref: 501729

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MOVES

advised founders, special committees, private equity sponsors and financial advisors in these transactions.

INDONESIA

Norton Rose Fulbright has bolstered its Indonesian banking and finance team with the appointment of Indonesian banking and finance lawyer **Nadia Soraya.** She joined as a partner in Australia, based in Jakarta with the firms associate office, Susandarini & Partners. Soraya was previously a partner at Indonesian law firm MD & Partners, which operates in association with White & Case. She handles a wide range of finance and corporate transactions, including project finance, general banking and finance, and M&As. Soraya has a particular focus on the power and natural resources sectors where she has advised on a number of significant project financings.


Nadia Soraya

MYANMAR

Baker & McKenzie has further strengthened its team in Yangon with the appointment of **Ola Nicolai Borge** as partner. He joined on 1 May 2015 from Grant Thornton Myanmar where he was the managing partner. Borge has 15 years of experience


Ola Nicolai Borge

in international tax. He has an extensive track record of advising clients on tax, legal and business issues in relation to investments in Southeast Asia, with particular focus on Myanmar, where he has been based for a number of years. Prior to his role at Grant Thornton, he established and managed the tax practice of a Big Four accounting firm in Myanmar.

SINGAPORE


Charlie Wilson

Sidley Austin has expanded in Singapore with the addition of M&A and Private Equity partner **Charlie Wilson.** He has practiced in Asia for 17 years and regularly advises clients on transactions throughout Southeast Asia. Wilson has acted as international counsel for Indonesias national oil company in its proposed acquisition of a US-based oil companys Venezuelan oil assets. He has also advised a number of sovereign wealth and global private equity funds with their investments and dispositions in Southeast Asia. Previously, Wilson was a partner in the Singapore office of a global law firm where he served as the head of its Indonesian practice.

DEALS

Featured below are some recent headline deals from across Asia and the Middle East

AUSTRALIA

Clayton Utz has advised **Macquarie Capital (Australia) Ltd** in respect of GUD Holdings Ltd's A$79.3 million (US$63.3m) placement to sophisticated and institutional investors. Macquarie Capital acted as sole manager and underwriter for the placement. The placement was part of a broader capital raising, which included a non-underwritten share purchase plan to eligible GUD Holdings shareholders. Proceeds from the capital raising will be used to fund the acquisition of Brown & Watson International Pty Ltd, which was announced to the ASX on 12 May 2015. Corporate partner Brendan Groves led the transaction which was announced to the ASX on 12 May 2015.

Allens has acted for **Magellan Flagship Fund Ltd** (MFF) in respect of its A$128 million (US$102m) capital raising. MFF raised the capital via a pro-rata renounceable entitlement issue of new fully paid ordinary shares to its shareholders on a 1-for-4 basis at an issue price of A$1.60 (US$1.28) per share. Shares were allotted to eligible shareholders on 13 May 2015 whilst normal trading of the new shares commenced on 14 May 2015. Partner and co-head of the Equity Capital Markets practice **Julian Donnan** led the transaction.

CHINA

Morrison & Foerster has advised **CLSA, Credit Suisse, Haitong International** and **Jeffries** as placing agents in respect of Guangzhou-based Evergrande Real Estate Groups US$600 million top-up placement. The block in Evergrande launched on 28 May 2015 and closed on 2 June 2015. Hong Kong capital markets partner Charles Chau led the transaction.

DLA Piper has represented **Ping An Insurance,** one of the largest insurance companies in China, through its subsidiary Ping An Real Estate, in respect of a landmark investment in Tishman Speyer's Pier 4, a Boston, USA commercial real estate project, valued at US$500 million. Pier 4, in Boston's Seaport District, is a prime waterfront development which

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Taylor Root Asia are pleased to release our annual salary guides for lawyers and compliance professionals working in-house in the Commerce & Industry and Banking & Financial Services sectors. These guides are derived from insight and information from our clients, ASIAN-MENA COUNSEL's Weekly Briefing online survey and global in-house tracking of recruitment trends, remunerations and bonuses. Over the last 12 months the in-house legal recruitment market in Asia has experienced improved market conditions, sentiment and job opportunities. Read the full reports.

To request a copy of the survey, please contact:

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DEALS

is set to include a 13-story commercial building and a nine-story residential building in an evolving and dynamic area of the city. The project marks the latest in a series of outbound investment by large Chinese conglomerates and a growing trend of Chinese insurance companies investing overseas. This is the first time that Ping An has made an equity investment into US real estate and the first time it has co-invested, alongside China Life, outside of China. Real estate partners **Ross Green** and **Lillian Duan,** supported by partners **Roy Chan** and **Stephen Cowan,** led the transaction.

Latham & Watkins has advised **China Galaxy Securities Co Ltd** in respect of its US$3.1 billion H Share placing. Beijing-based China Galaxy Securities completed its placing on 5 May 2015 with an aggregate of 2 billion H Shares successfully allotted at the placing price of HK$11.99 (US$1.55) per share. HKSE-listed China Galaxy Securities is a financial services provider in the PRC. The consortium of placing agents was led by Goldman Sachs, China Galaxy International and Nomura. Hong Kong partners **Cathy Yeung, William Woo** and **Eugene Lee** led the transaction.

HONG KONG

Baker & McKenzie has advised HKSE-listed **Reorient Group Ltd,** a provider of financial services businesses in Hong Kong and the US, in respect of its share subscription agreements with Yunfeng Financial Holdings Ltd (YFHL) and four other investors, raising approximately HK$3.9 billion (US$503m) in fresh capital. The net proceeds will be used by Reorient to support the development of its existing financial services businesses and for general working capital purposes. Upon completion of the transaction, which is subject to shareholders and various regulatory approvals, approximately 56 percent of the enlarged share capital of Reorient will be controlled by YFHL through its indirectly controlled subsidiary Jade Passion whilst 25 percent will be held by four other new investors and the remaining 19 percent will be held by current Reorient shareholders. Hong Kong corporate partners **Lawrence Lee** and **Christina Lee** led the transaction.

Troutman Sanders has advised **Creator Holdings Ltd** in respect of its acquisition of shares and warrants of HKC (Holdings) Ltd from the US-based fund **Cerberus** and in its mandatory unconditional cash offers to acquire all the remaining shares and other securities of HKC, a major developer in the China real estate market. Hong Kong partner **Rossana Chu** led the transaction which closed on 7 May 2015.

Kirkland & Ellis has advised HKSE-listed **China Traditional Chinese Medicine Co Ltd** in respect of its issuance of new shares to its controlling shareholder Sinopharm and two executive directors, and its share placement to 26 professional and institutional investors, including GIC, for a total of HK$8.2 billion (US$1.05 billion). The share placement was initially announced on the HKSE on 30 March 2015 and has been completed in the second week of May 2015. Hong Kong corporate partners **Frank Sun, Joey Chau** and **David Yun** led the transaction.

INDIA

Shardul Amarchand Mangaldas & Co is advising **Sanjeev Juneja** as the seller in respect of the sale of the Kesh King and Kesh Pari business as a going concern to Emami Ltd. Partners **Jatin Aneja, Anubhuti Agarwal** and **Dev Robinson** led the transaction which was valued at INR1651 crores (US$257.9m) and is expected to close by 15 June 2015. **Khaitan & Co Mumbai** advised **Emami.**

J Sagar Associates has also advised **NIIT Technologies Ltd** in respect of its strategic investment in Incessant Technologies Private Ltd by way of an acquisition of 51 percent stake through primary and secondary acquisition. Partner Lalit Kumar led the transaction. **Incessant** and **its promoters** were advised by **DSK Legal.**

Khaitan & Co has also acted as Indian counsel for UK-based private equity and venture capital firm **Apax Partners LLC** in respect of the sale of controlling stake by IGATE Corp to Capgemini for approximately US$4.04 billion. Partners **Haigreve Khaitan** and **Aakash Choubey,** assisted by partner **Avaantika Kakkar,** led the transaction.

INDONESIA

Clifford Chance has advised **HSBC, CIMB, JP Morgan** and **Dubai Islamic Bank** as the lead arrangers in respect of a US$2 billion sovereign sukuk raised by the Republic of Indonesia. The sukuk is the largest single tranche US dollar sukuk issued in Asia and the Republic's largest ever US dollar sukuk issuance. The issuance attracted interest from a diverse group of domestic and international investors, with increased interest from Islamic investors evident compared to Indonesia's previous sukuk offering. The 144A/Reg S 10-year Islamic bond drew orders of more than US$6.8 billion and priced inside guidance to yield 4.325 percent, cutting through Indonesias outstanding sukuk curve. Dubai partner and global head of Islamic finance **Qudeer Latif** and Singapore partner **Johannes Juette** led the transaction.

Hadiputranto, Hadinoto & Partners, Baker & McKenzie International's member firm in Indonesia, has assisted **PT Bank UOB Indonesia** (UOBI) in respect of the issuance of bonds listed on the Indonesia Stock Exchange. The bonds issued were for IDR1.5 trillion (US$114.5m) with a maturity period of 370 days for up to five years from the issuance date and with fixed interest ranging from 8.6 percent to 9.6 percent per year. The funds raised will be used to increase UOBI's productive assets, particularly in the form of loan disbursements. Partner Indah **N Respati** led the transaction.

JAPAN

Sullivan & Cromwell is representing **Nippon Steel & Sumitomo Metal Corp** (NSSMC) in respect of its share

The JLegal PQE

Personality Questionnaire Experience

Elvin Wan

Chief Regional Counsel,
Asia Pacific
at Orange Business Services

Every month, JLegal takes a light-hearted look at the PQE of a senior in-house counsel. This month, we find out that Elvin loves his home and country, and likens himself to an F1 Safety Car!

- What is on your mind at the moment?
  When I can take my next holiday.
- Which talent would you most like to have?
  The ability to see through people.
- What is your idea of misery?
  Fixing the same type of problem at work over and over again.
- What do you most value in your friends?
  Honesty.
- If you weren't a lawyer you would be a …
  Fisherman.
- What is your most precious possession?
  My time.
- Where were you born?
  The little red dot on the world map.
- Where is the best place you have ever been to?
  Home.
- What is your greatest regret?
  I have not reached that stage yet in my life.
- What is the strangest thing you have seen?
  An honest car salesman (in this case it was a saleswoman).
- What do you consider your greatest achievement?
  My family.
- What is your motto?
  If you are doing something you do not enjoy, make sure you are well compensated for it.
- Top 3 favorite movies of all time?
  Top Gun, Life is Beautiful, Titanic (p.s. they were all first date movies!).
- What do you consider the most overrated virtue?
  Productivity.
- What is your greatest extravagance?
  Wasting my time on people who are not worthy of it.
- If you could change one thing about yourself, what would it be?
  I'm happy being close to perfection.
- What would you like to be remembered for?
  Being the F1 Safety Car. It comes out to clear a crash and is just ahead of the curve to lead the rest away from the crash.

DEALS

exchange with Nippon Steel & Sumikin Texeng Co Ltd (NS-TEXENG), in which NSSMC will be a wholly-owning parent company of NS-TEXENG. Tokyo corporate partner **Keiji Hatano** is leading the transaction which was announced on 28 April 2015.

MALAYSIA

Zaid Ibrahim & Co, a member of ZICOlaw, has acted as Malaysian counsel for the **joint lead arrangers and managers** in respect of the Government of Malaysia's first international sharia compliant offering since 2011. The dual tranche Reg S/ 144A US$1.5 billion offering was the first Islamic finance deal in the world to use transportation rights as part of the pool of underlying assets. The 30-year tranche was the Malaysian Government's inaugural issuance and the longest tenured sukuk ever by a sovereign. HSBC, CIMB Investment Bank Berhad and Standard Chartered Bank are the joint lead managers. Although oversubscribed, the deal was well-distributed among the various investors in Asia, Europe, the Middle East and the US, bringing an aggregate interest of over US$9 billion from a combined investor base of over 450 accounts in orders. This has made the sukuk issuance one of the most prominent sales of bonds in Asia and it has also set a landmark pricing level for other sovereigns. The 10-year tranche was oversubscribed by almost seven times and the 30-year tranche oversubscribed by approximately six times. The sukuk, issued via a special purpose entity, Malaysian Sovereign Sukuk Berhad, employs a structure utilising Shariah-compliant commodities, leasable assets and non-pyhsical income-generating assets. Kuala Lumpur partner **Lilian Liew** led the transaction whilst **Clifford Chance,** led by Dubai partner **Qudeer Latif** and Hong Kong partner **Crawford Brickley,** advised as to English law and US federal securities laws. The **Government of Malaysia** was represented by **Linklaters,** led by Singapore partner **Kevin Wong** and Hong Kong partner **Pam Shores,** as the international legal counsel and **Adnan, Sundra & Low** as Malaysian counsel.

MONGOLIA

Mayer Brown JSM has advised **Trade and Development Bank of Mongolia** (TDB) in respect of the update and the issuance of US$500 million 9.375 percent notes due 2020 under its Global Medium Term Note Programme established in 2014 guaranteed by the Ministry of Finance on behalf of the Government of Mongolia. This is the first time that TDB has accessed investors in the US. Deutsche Bank, ING and BofA Merrill Lynch acted as the joint book-runners and lead managers for the issuance. Partner Jason T Elder, supported by Banking & Finance partners Stephen Walsh, James Taylor and Trevor Wood in London and Tax Transactions & Consulting partner Jason Bazar, led the transaction.

SINGAPORE

WongPartnership has acted for **Telstra Corp Ltd** in respect of the proposed acquisition for approximately US$697 million of Pacnet Ltd, Asias biggest private owner of submarine communication cables. Joint managing partner **Ng Wai King** and partners **Tan Sue-Lynn, Lam Chung Nian, Kylie Peh** and **Tan Teck Howe** led the transaction.

Shook Lin & Bok has acted for **Concord Medical Services Holdings Ltd** in respect of the acquisition of Fortis Surgical Hospital from Fortis Healthcare International Pte Ltd, a subsidiary of Fortis Healthcare Ltd, for S$55 million (US$41.3m) in cash. Partner **Wong Gang** led the transaction.

Rajah & Tann Singapore has advised **Capital Diamond Star Group** (CDSG) in respect of its food manufacturing and distribution joint venture with Mitsubishi Corp, under which CDSG's existing food manufacturing and distribution businesses were injected into the joint venture with Mitsubishi Corp. The JV is expected to grow the market leading position and share in the food and fast-moving consumer goods sector in Myanmar enjoyed by the CDSG brand, including in the sectors of agricultural commodity trading, fertilizer, agro-chemical distribution and food processing, manufacturing and retail businesses, including by way of an expected US$200 million investment over the next three years in the predecessor business operations and in new business lines to be developed within Myanmar. Corporate partners **Suyin Tan** and co-head of Myanmar practice **Chester Toh** led the transaction.

UAE

Clyde & Co has advised **RAK Hospitality Holding** (RAKHH), an asset owner and manager of a diverse portfolio of government-owned hotels, hospitality and leisure assets in Ras Al Khaimah, in respect of an AED880 million (US$239.6m) debt transaction which will be used as acquisition finance to partially fund the purchase of two hotels, Rixos Bab Al Bahr Hotel and the Banyan Tree Al Wadi Hotel. The facility will also be used by RAKHH for the refurbishment of the Hilton and Hilton Resort & Spa in Ras Al Khaimah, as well as consolidating and refinancing existing debt. RAKHH is focused on raising the profile of Ras Al Khaimah as a tourist destination through owning and managing a significant portfolio of hotels, hospitality and leisure assets in Ras Al Khaimah. Mashreq was the underwriter, mandated lead arranger and book-runner for the eight-year loan facility with Arab Bank as the mandated arranger. Partners **Adrian Low** (Finance) and **Barton Hoggard** (Corporate) led the transaction.

AMC

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EMPLOYMENT COUNSEL — Hong Kong — 10+ PQE

A leading conglomerate is seeking a senior employment counsel to oversee a full range of employment (both contentious and non-contentious) and litigation matters globally and to manage a small team in Hong Kong. Opportunity to be part of a well-regarded brand name that has an appealing work culture. (IHC 12088)

PROJECT COUNSEL (CONSRUCTION) — Malaysia — 6-10 PQE

Major property corporation is looking for a construction lawyer to join its legal team in Kuala Lumpur. The lawyer will work with the legal and business teams in Malaysia to oversee and advise on all project infrastructure and construction related work. Experience in construction related legal work is required and speak fluent Mandarin . (IHC 11886)

REGIONAL COMPLIANCE OFFICER — Singapore — 6-10 PQE

US listed global IT solutions company is looking for a compliance officer to advise on all compliance matters across APAC. The ideal candidate should have familiarity in FCPA, Anti-Bribery Act and Anti-Money Laundering regulations in the region. (IHC 11999)

LEGAL COUNSEL — Hong Kong — 6-10 PQE

Global business with its HQ in Hong Kong seeks additional senior lawyer to support its various business units. Work involves advising the international business on general commercial work covering contracts, IP and HR issues. Lawyers from private practice as well as in-house will be considered. (IHC 11540)

M&A — Hong Kong — 6-10 PQE

Global insurer is looking for an M&A lawyer from a top tier firm to support the regional team on M&A and general commercial matters. Work involves an enticing range of work across the region, but experience of Greater China work would be ideal and fluency in Chinese is important. (IHC 11989)

IP CONSULTANT KOREAN-SPEAKING — Hong Kong/Korea — 5-10 PQE

Leading global intellectual property management company is seeking a Korean-speaking IP lawyer. Candidates will play a critical role in the company's business strategy and in its management of client relationships by understanding clients' requirements and building strategic proposals. Based in either Seoul or Hong Kong, candidates will oversee the firm's strategic accounts across the Asia Pacific region. (IHC 12099)

SENIOR COUNSEL — Beijing — 8+ PQE

A leading consulting house has a vacancy for an in-house counsel to be based in Beijing. Candidates should have over 8 years' experience from either in-house or with a law firm. Candidates with good corporate commercial and transactional experience are welcome to apply. Employment and litigation experience would be a plus. Fluent Mandarin is essential. (IHC 12052)

IN-HOUSE COUNSEL — Shanghai — 5-8 PQE

A leading commodity trading house is looking for an in-house counsel in Shanghai. Supporting the physical commodity trading business as it expands across products from oil and petroleum products to liquefied natural gas across regions, the candidate will be part of a global team of international lawyers, working closely with traders and business originators. (IHC 11752)

LEGAL COUNSEL — Singapore — 5-7 PQE

A Singapore listed corporation with strong presence in Asia is looking to hire a legal counsel to join its established legal team. Candidates should have a range of experience in a broad corporate finance work gained from leading law firms and/or as an in-house lawyer. (IHC 11880)

COMMODITIES — Singapore — 3-6 PQE

Global commodities company is looking for a legal counsel to join their legal team. This lawyer will be responsible for advising the business and support teams on all corporate commercial matters as well as any dispute issues across the region. Ideal candidate should have experience in general corporate or litigation work. (IHC 12041)

HEDGE FUND — Hong Kong — 3-6 PQE

Leading hedge fund house has a vacancy for a lawyer to support their fast-growing Asia business. The role will involve advising on a range of general commercial issues as well as regulatory matters and managing external counsels. A solid understanding of the fund/regulatory sector is required for the success of this role. Spoken Cantonese is required. (IHC 11878)

LITIGATION — Hong Kong — 2-6 PQE

Leading insurance company is seeking a legal counsel with solid insurance litigation experience. The role will involve providing legal support in all aspects of risk management – this includes claims, contentious issues, and regulatory matters. A unique opportunity to join a well-established legal team that offers an interesting variety of work. Chinese language is required. (IHC 11541)

ETHICS & COMPLIANCE — Shanghai — 5+ PQE

A US MNC is looking for a regional ethics and compliance manager to support the company in regional compliance matters and assist the US VP Ethics and Compliance with development and implementation of global policies, procedures, programs, standards of conduct and training. A law degree or minimum of four years in legal, compliance, internal audit or finance environment is required. (IHC 12068)

CHINA LEGAL COUNSEL — Beijing — 4+ PQE

A US software company seeks a China legal counsel to cover commercial corporate legal matters. This position will supervise a legal specialist and report to the Asia Legal Counsel directly and work as part of the global Legal Department. PRC Bar qualification and fluency in English is essential. (IHC 12111)

Professionals Recruiting Professionals

These are a small selection of our current vacancies. If you require further details or wish to have a confidential discussion about your career, market trends, or would like salary information, then please contact one of the following consultants in:
Hong Kong: Andrew Skinner (a.skinner@alsrecruit.com),
Singapore: Jason Lee (j.lee@alsrecruit.com), **China:** Kevin Gao (k.gao@alsrecruit.com)

Hong Kong	Singapore	Beijing	Shanghai
(852) 2920 9100	(65) 6557 4163	(86) 10 6567 8728	(86) 21 6372 1058
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www.alsrecruit.com

NEWS

Photo: Patrick Dransfield

New beginnings after India's largest law firm divides

Saturday May 9, 2015, was the last working day of Amarchand & Mangaldas & Suresh A Shroff & Co, India's largest law firm, which was founded in 1917.

Following an arbitral award from the Bombay high court, the dispute between Shardul Shroff and family, and Cyril Shroff and family, partners of Amarchand Mangaldas & Suresh Shroff and Co was successfully mediated and settled.

The two will now run separate, independent entities, Shardul Amarchand Mangaldas & Co, and Cyril Amarchand Mangaldas, respectively. A settlement has also been arrived at, which along with an agreement for division of the professional practice includes allocation of family properties and assets.

The mediation that led to this split began on November 14, 2014 following a Bombay high court hearing after which the brothers agreed to settle outside of the courtroom.

According to our 'Find a Law Firm' tables, Amarchand Mangaldas had well over 600 lawyers, making it by far the largest law firm in India in terms of head count, with Khaitan & Co (300+) second largest, followed by AZB and Luthra & Luthra Law Offices.

Partners and associates from the firm's Delhi region (New Delhi, Gurgaon, Kolkata and Ahmedabad) have come together as Shardul Amarchand Mangaldas & Co. In addition, Shardul Amarchand Mangaldas & Co announced the opening of three new offices in Mumbai located at Express Towers (Nariman Point), Lentin Chambers (Fort) and Lloyds Centre Point (Prabhadevi), and an office in Bangalore located at Prestige Sterling Square, effectively covering six major business hubs across India (New Delhi, Mumbai, Bengaluru, Gurgaon, Ahmedabad and Kolkata).

In its announcement, the firm's executive chairman Shardul S. Shroff commented "In keeping with our legacy, Shardul Amarchand Mangaldas, will continue to focus on enabling businesses by providing innovative solutions as trusted advisors, with an added emphasis on collaboration, responsiveness, innovation and integrity".

Elsewhere, speaking in *The Economic Times* on May 7, Cyril Shroff said of Cyril Amarchand Mangaldas: "At a one level, it is new venture, and at another, it is a continuation of the old. In Hindu philosophy, we believe in reincarnation and you generally don't have a choice of what you will be incarnated into, but this is a reincarnation where we have a choice in terms of who we incarnate into."

Stand Out With Hughes-Castell

In-house

Senior Legal Counsel | 16+ yrs pqe | Hong Kong REF: 12975/AC
A leading news media group in Asia is seeking a lawyer with strong business acumen to join its legal team based in Hong Kong. You will be responsible for advising its leadership management on corporate and commercial matters, M&A and JV projects. You will ideally be a qualified lawyer with at least 16 years' PQE in M&A, corporate finance, land development, employment law and e-commerce. You must have good knowledge of SFC regulations and Listing Rules & the Companies Ordinance. Excellent drafting and communication skills are required as well as fluent English and Chinese.

Senior China Business Attorney | 15+ yrs pqe | China REF: 12475/AC
A Fortune 500 IT company is seeking a senior PRC-qualified lawyer with strong IP skills to join its legal team based in Beijing/Shanghai to support its business operations in China. You will be responsible for providing legal advice on all products and IT services. You must have proven legal practice experience within the IT or the industrial manufacturing industry in China. Knowledge of IP and software licensing-related issues is preferred. Native level Mandarin and fluent English are mandatory.

Company Secretary | 12+ yrs exp | Singapore REF: 12956/AC
This global supply chain conglomerate seeks an experienced Company Secretary to head up its company secretarial division in Singapore. You will be responsible for overseeing the full spectrum of company secretarial duties and advising on regulatory compliance matters. You must have sound knowledge of corporate secretarial law, corporate governance, listing rules and the Companies Ordinance requirements in Singapore. Candidates with a law degree or a professional qualification, such as ICSA with native-level English are best suited for this role. Fluent Mandarin skills are required for communication with clients and colleagues in PRC.

Lead IP Counsel | 10+ yrs pqe | HK/China REF: 12973/AC
This premier internet and services company seeks a high-caliber IP lawyer to oversee all trademark, copyright and domain name issues. You will be responsible for leading IP strategies, policies, guidelines and procedures, and managing a broad range of contentious and non-contentious IP issues. To be successful in this role, you must be HK or Common Law qualified with at least 10 years' relevant experience in an international law firm and/or leading in-house legal department of an MNC. A PRC legal qualification and experience in handling international IP matters is highly desirable. Fluent English and Mandarin are mandatory.

Legal Counsel | 8-10 yrs pqe | Hong Kong REF: 12946/AC
Excellent opportunity for a Common Law-qualified lawyer with 8-10 years 'PQE to join one of the world-leading insurance groups as part of its Asia's regional legal team. Based in Hong Kong/Singapore, you will be responsible for general corporate, regulatory and licensing matters for its businesses across Asia. You must have strong project management experience, good communication skills and excellent written and spoken English. Another Asian language would be an advantage.

Private Practice

Partner | 10+ yrs pqe | Shanghai REF: 12963/AC
One of the largest US law firms in Asia is seeking a Partner, ideally with a strong portable of business, to bolster its existing group and supplement a thriving practice to be based in Shanghai. Strong experience in outbound investment and financing is preferred. If you a team player with good business development and relationship management skills, then this could be the right role for you. Mandarin skills are welcome but not mandatory, but a longstanding experience in working with PRC clients is ideal.

Senior Associate | 5+ yrs pqe | Seoul REF: 12966/AC
A leading US law firm is seeking a senior US-qualified lawyer for its Seoul office. You will have a litigation/regulatory background ideally along with experience on M&A and capital markets matters. You must have confident client development skills. Fully bilingual capability of Korean and English is required.

Senior Associate, IPT | 5+ yrs pqe | HK/China REF: 12972/AC
This leading global business law firm is seeking a Senior Associate with solid data privacy experience for its thriving intellectual property and technology practice. You will need to be a PRC qualified with significant technology experience with a focus on data privacy at international law firms. Fluency in English and Mandarin is a must.

Corporate Associate | 4+ yrs pqe | Singapore REF: 12947/AC
We have an excellent opportunity to join the Singapore team of a top-tier US firm that is recognized globally as a leader in corporate law. Our client is seeking a US-qualified lawyer, around class of 2009 - 2013, with solid corporate experience, ideally including some corporate finance, at a leading international law firm. The flexibility to engage in frequent travel around the region is a requirement of this role.

Litigation & DR Associate | 3-5 yrs pqe | Hong Kong REF: 12948/AC
Our client is a leading international law firm with an excellent litigation and dispute resolution practice in HK. They are seeking an accomplished lawyer with banking litigation and contentious financial services regulatory experience from a highly regarded litigation practice. HK legal qualification and Cantonese language skills are preferred but not essential.

Corporate Associate | 2-3 yrs pqe | Singapore REF: 12945/AC
Excellent opportunity for an all-around corporate associate to work with and learn from a well-established international firm with a strong energy and resources practice. Ideally, you are UK qualified with 2-3 years' PQE in corporate, finance and capital markets at a top-tier law firm with a desire to immerse yourself in projects and resources matters. Strong candidates with Australian legal qualification are welcome to apply.

Linked in
Hughes-Castell

To find out more about these roles & apply, please contact us at:
T: (852) 2520-1168
E: hughes@hughes-castell.com.hk
www.hughes-castell.com

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International Legal Recruitment

EVENT REPORT

Kuala Lumpur In-House Congress

The Mandarin Oriental Kuala Lumpur was the venue for the In-House Community's fourteenth In-House Congress Kuala Lumpur, during which 227 of the region's leading in-house lawyers, compliance professionals and senior business executives from both the private and public sectors in Malaysia congregated. Delegates participated in specific practice area workshops, as well as attending a panel discussion.

Said panel discussion, entitled 'What Do In-House Counsel Truly Want? How Best can External Counsel Help Them?' featured the thoughts of Lee Chin Tok, Group General Counsel, CIMB Group; Michele Kythe Lim, Group Head, Legal and Secretarial, IHH Healthcare Berhad[1]; Iwan Rashman Gulamoydeen, Senior Vice President – Legal, Khazanah Nasional Berhad; Kuok Yew Chen, Partner, Christopher & Lee Ong; Lynette Yeow, Partner, Kadir Andri & Partners; Nick White, Partner, Trowers & Hamlins, Malaysia; and was moderated by the In-House Community's Co-Director Patrick Dransfield.

The panel, during which thoughts from in-house and external counsel on the issue were expressed, was subsequently followed by five practice area workshops, each designed to give guests a better understanding of their chosen interest.

Christopher & Lee Ong gave a session on 'AEC 2015: Get Prepared and Protect Your Business from the Risks of Violating Competition Laws', while 'Aspects of the Companies Bill and Financial Services Act 2013' were discussed by Shook Lin & Bok's representatives.

This was followed by Kroll educating delegates on 'Understanding Company Ownership in Opaque Business Environments' and Trowers & Hamlins' session: 'Troubleshooting International and Cross-Border Transactions'. Finally, Kadir Andri & Partners discussed 'Managing M&A Risk and Arbitration Strategy'.

The In-House Community would like to thank those named above for their hard work and support.

> "The In-House Congress has good speakers and covers relevant topics"
>
> *In-House Congress KL delegate*

Footnote:

1. To see Michele's exclusive interview with the In-House Community, turn to page 48.

2015 IN-HOUSE Congress KUALA LUMPUR

A special thanks on behalf of the *In-House Community*™ to all our speakers and panellists, which included:

Martin Amison
Partner and Head of International
Trowers & Hamlins LLP, Dubai, UAE

Nicholas Edmondes
Partner
Trowers & Hamlins LLP, Malaysia

Lee Chin Tok
Group General Counsel
CIMB Group

Ahmad Zulkharnain Musa
Partner
Kadir Andri & Partners

Melisa Uremovic
Partner
Rajah & Tann (Thailand) Limited

Chan Kok Keong
Partner
Shook Lin & Bok

Iwan Rashman Gulamoydeen
Senior Vice President – Legal
Khazanah Nasional Berhad

Michele Kythe Lim
Group Head, Legal & Secretarial
IHH Healthcare Berhad

Kamraj Nayagam
Partner
Kadir Andri & Partners

Nick White
Partner
Trowers & Hamlins LLP, Malaysia

Richard Dailly Managing Director
Kroll

Ivan Ho Yue Chan
Partner
Shook Lin & Bok

Dominique Lombardi
Partner (Foreign Lawyer)
Rajah & Tann Singapore LLP

Michael O'Reilly
Partner and Head of International Construction
Trowers & Hamlins LLP, Dubai, UAE

Lynette Yeow
Partner
Kadir Andri & Partners

Patrick Dransfield
Publishing Director
Asian-MENA Counsel and Co-Director
In-House Community

Kuok Yew Chen
Partner
Christopher & Lee Ong

Sanjay Mohanasundram
Partner
Kadir Andri & Partners

Rikrik Rizkiyana
Partner
Assegaf Hamzah and Partners

Yon See Ting
Partner
Christopher & Lee Ong

7+ PQE

Deputy/Assistant General Counsel (8-10 PQE), Singapore

Key player in the communications industry seeks a Singapore qualified lawyer with strong litigation experience to join its legal and regulatory team. The new hire will be responsible for advising on a wide range of corporate commercial legal as well as regulatory matters pertaining to the communications industry including competition, telecommunications, IP and IT laws. Prior experience gained in a reputable law firm or in-house in the relevant industry would be regarded favourably. [A39179]

Senior Anti-trust Counsel (7+ PQE), Singapore

Triple "A" rated investment company seeks an experienced competition/anti-trust lawyer to work closely with the investment teams on transactions and who should therefore have a strong appreciation of the M&A process and deal dynamics, in particular transactions with significant competition/anti-trust aspects involving global businesses. He or she must be a domain expert, with a deep working knowledge and understanding of the merger control regimes of one or more major investment jurisdictions such as the US, EU, UK, China and India, as well as Singapore. [A39257]

Legal Director (15+ PQE), Shanghai, China

An established European company in the electronics business is looking to expand their presence in China through major mergers and acquisitions. They are looking for a senior lawyer with a solid track record of M&A transactions (both within and outside China) and with excellent drafting and negotiating skills. As this is a leadership role, the ideal candidate must have a strong ability to lead and influence and have proven people management skills to effectively communicate with various stakeholders and manage conflicts with finesse. This is an exciting opportunity to join the company as it expands its footprint in China. [A39251]

Senior Attorney (10+ PQE), Mumbai, India

This is a challenging and exciting position with a NASDAQ listed multinational software company. Responsibilities entail advising and managing legal affairs on a broad range of issues including contract, IP, marketing, sales, M&As, employment, compliance, corporate policy, company secretarial, internal and regulatory compliance and any other issues impacting the company's goals and long-term strategies. In house experience is mandatory and US MNC experience will be an advantage. The position is challenging and the right candidate will enjoy working in a high calibre, results-oriented and high-pressured environment. [A39254]

Legal Counsel (8+ PQE), Bangkok, Thailand

A leading US MNC with extensive global operations seeks a mid-level Thai qualified lawyer to support their business in the South East Asia region, with a primary focus on Thailand. This individual will support the company's local manufacturing operations as well as domestic and regional supply and sales activities. Experience gained at an international law firm or top tier local law firm is essential, and prior experience with another multinational is useful but not essential. [A39199]

8 PQE and below

Legal Counsel (5-8 PQE), Singapore

European private bank is looking for a Singapore or Hong Kong qualified lawyer to join them. The ideal candidate should have familiarity with credit and security transactions, providing banking regulatory advice as well as advising on wealth management products and product documentation. Prior legal experience in a private banking role is an advantage, but not a key requirement. Strong communication and interpersonal skills essential. [A39197]

Trade Counsel (4+ PQE), Singapore

A commodities trading house is looking for a lawyer to support their physical commodity trading business. The new hire will advise on applicable laws relating to their trading activities, review standard documentation for the trading desks, manage disputes including demurrage and shipping-related claims, negotiate OTC sale and purchase transactions, hedging instruments and finance documents as well as support any asset acquisitions or disinvestments in the Asian region. The ideal candidate should have experience in corporate, trading, and banking contracts, and good understanding of company and commercial laws. ASEAN language ability is a plus to deal with stakeholders in the region. [A39201]

IP Counsel (4-6 PQE), Singapore

A fantastic opportunity for an IP lawyer to join a dynamic technology company which develops cutting-edge consumer products. You will be responsible for day-to-day management of the company's global trademark portfolio, including new filings and office actions/opposition proceedings worldwide. You will also carry out and advise on preliminary name searches, provide litigation support on IP disputes, advise R&D teams and business units on a wide variety of IP issues (including patents, trademark, copyright, design, domain names), and help establish systems and processes for IP good practices. The ideal candidate would be admitted in an Asian jurisdiction and have a track record of 2 solid years' experience managing a worldwide portfolio, including office actions. [A36629]

Banking & Finance Associate (3-10 PQE), Singapore

International firm seeks Banking & Finance associates at various levels to work on complex cross-border financings. The ideal candidates must possess top academic credentials and experience gained from a recognized local or international law firm. They must be qualified in the UK or SG, able to interface with clients and work in a team. Experience working on deals across multiple jurisdictions would be an added advantage. [A39253/A31991]

IT Counsel (2-5 PQE), Singapore

Our client is a US MNC and an industry leader in the IT and e-commerce services sector. To support its robust growth in the Hong Kong market, it is looking to recruit a junior to mid-level lawyer. The successful candidate will advise on legal issues arising out of daily operations as well as take an active role in vendor/customer negotiations. Strong commercial acumen, excellent interpersonal and communication skills highly preferred. Good Cantonese language abilities a must have as the incumbent needs to negotiate with Cantonese speaking clients. [A39259]

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Singapore 048621

Hong Kong

Room 1402, 14/F,
Wanchai Central Building
89 Lockhart Road,
Wan Chai, Hong Kong

Email: resume@legallabs.com

Opportunities of the Month …

mycareerinlaw.com

Be it a case of wanting to spice things up or break the pattern, every now and then, it's nice to know there's something else. Whether you do so casually or stringently, take a look below to see what the legal sector can offer you.

Equity derivatives
PQE: 3-8 yrs, Hong Kong

A leading European investment bank has an opening for a VP-level lawyer with equity derivatives experience gained either in-house or in private practice. Whilst there is a particular focus on structured equity transactions, there will also be the opportunity to advise the cash, electronic trading and prime brokerage businesses as well. Based in Hong Kong, the role will cover Asia Pacific. Excellent collegiate team environment. [Ref.: IHC 12166]

Contact: Claire Park
Tel: (852) 2920 9134
Email: c.park@alsrecruit.com

Legal Counsel
PQE: 7+ yrs, Hong Kong

An Asia-based casino/gaming company with a substantial presence in Southeast Asia and India seeks to hire its first legal counsel based in Hong Kong. You will need at least 7 years' experience and will ideally have broad experience including corporate/commercial, finance, construction, taxation, gaming and property law. You will need to manage complex deals, co-ordinate with external counsel and brief management and the board. The role will involve extensive contract drafting and will also support the group's compliance programme. Extensive travel throughout the region required and prior in-house experience is essential. Chinese language skills not needed. [Ref.: PBP5094]

Contact: Lindsey Sanders
Email: lsanders@lewissanders.com
Tel: (852) 2537 7409

TMT Commercial Lawyer
PQE 5+ yrs, Hong Kong

Commercial lawyer required to advise on commercial activities and general in-house matters. Must be a Hong Kong qualified corporate or commercial lawyer who has ideally worked with leading international law firms and/or in multinational corporation environments. Fluency in English and Chinese (both spoken and written) is essential. [Ref: 501674]

Contact: Annie Tang
Email: annie.tang@staranise.com.hk
Tel: (852) 2810 9077

Legal Counsel
PQE: 5-8 yrs, PQE, Singapore

A global technology business is looking for an in-house counsel to join their APAC legal department. This is an expansionary role and will support the consumer business, hence having worked with a B2C business is required. Experience in drafting contract documents such as end user agreements and software licence agreements necessary and prior experience dealing with matters such as Consumer Protection (Fair Trading) Acts across various jurisdictions will be advantageous. [Ref.: JGB – IS 1555]

Contact: Benedict Joseph
Tel: (65) 6818 9707
Email: benedict@jlegal.com

Senior Counsel – DCM & Securitisation
PQE: 7+ yrs, Hong Kong

A renowned financial institution is seeking a senior lawyer to provide legal coverage to its DCM & securitisation business. The successful candidate will work closely with the business and act as sole legal support to the business ensuring daily interaction for this strategically involved position. Applicants should have at least seven years' post qualification experience with a focus on debt capital markets and securitisation transactions. A working level of Mandarin is essential. [Ref.: 202000]

Contact: Hayden Gordine
Tel: (852) 2973 6333
Email: haydengordine@taylorroot.com

Senior Legal Counsel
PQE: 16+ yrs, Hong Kong

A leading news media group in Asia is seeking an astute lawyer with strong business acumen to join its legal team based in Hong Kong. In this role you will be responsible for providing legal advice and support to the leadership team on corporate and commercial matters, M&As and JV projects. The ideal candidate will be a qualified lawyer with at least 16 years' PQE in M&A, corporate finance, land development, employment law and e-commerce. You must have good knowledge of SFC regulations and Listing Rules and the Companies Ordinance. Excellent drafting and communication skills are required as well as fluent English and Chinese. [Ref.: 12975/AC]

Contact: Dora Cheung
Tel: (852) 2520 1168
Email: hughes@hughes-castell.com.hk

Senior Litigation & Regulatory
PQE: 6-10 yrs, Singapore

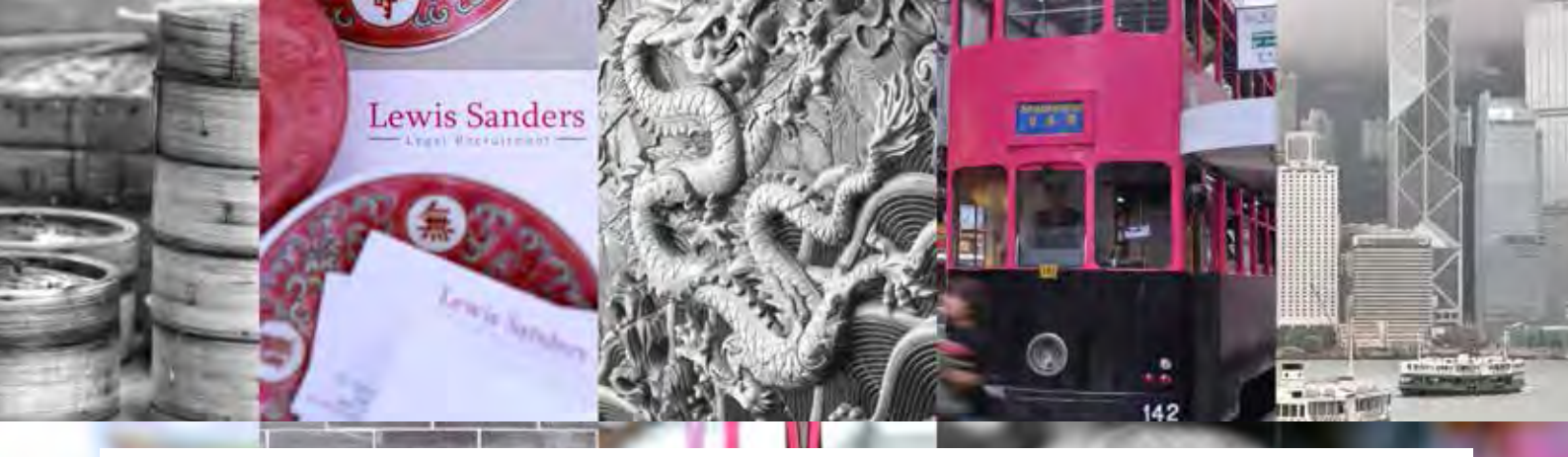
A top tier investment bank with an established presence in Asia, in line with their growth plans, is looking for a lawyer with experience in anti-bribery and corruption laws. As a member of the global team, you would be working closely with colleagues from various departments to manage legal risk issues in financial crime. The ideal candidate will have 6-10 years of experience in conducting investigations and be familiar with the relevant legislation and regulations. Competitive pay and excellent career prospects are on offer. [Ref.: R/002615]

Contact: Shulin Lee
Email: shulinlee@puresearch.com
Tel: (65) 6407 1053

Senior Regulatory Counsel
PQE: 7+ yrs, Singapore

A well-known investment house is seeking a regulatory lawyer to work closely with the investment teams on transactions. The ideal candidate should have strong M&A (public M&A or capital markets transactions) credentials and be well-versed with takeover regulations and listing rules in one or more common law jurisdictions (Singapore/UK/Hong Kong). You should be a team player who can also lead junior members in the team. [Ref.: A39256]

Contact: Michelle Poh
Email: resume@legallabs.com
Tel: (65) 6236 0166



Lewis Sanders

Legal Recruitment

In-House

TAX & TRUSTS - DIRECTOR | **HONG KONG** | **10+ years**

Private investment company requires a senior lawyer with strong tax experience to lead its legal & compliance team. The ideal candidate will have strong communication skills & experience working with high net-worth individuals & families. UK or US tax law experience advantageous. AC5363

FUNDS | **HK/SINGAPORE** | **7-12 years**

Top tier European asset manager with global operations requires a senior legal counsel to head up its legal support for the Asia region. You will have extensive experience in funds-related work & regulatory matters in HK &/or Singapore. Chinese language skills not required. AC5355

FCPA | **HONG KONG** | **5+ years**

Leading i-bank seeks a legal/compliance professional with 5+ years' experience to manage the global anti-corruption compliance program for the Asia-Pac region. You will have a JD or graduate degree, prior experience in FCPA/Anti-corruption compliance & strong communication skills. AC5341

COMMERCIAL | **HONG KONG** | **5-8 years**

US fashion brand seeks a legal counsel to join its legal team in HK as part of its continued expansion. This is a regional role covering general commercial contracts, employment, IP, finance & corporate governance matters. Fluent English, Cantonese & Mandarin language skills required. AC5372

PRIVATE BANKING | **HONG KONG** | **3-10 years**

Bulge-bracket bank seeks a mid-level lawyer with strong products knowledge to join its private banking legal team. The role involves both advisory & transactional matters in relation to structured products, derivatives & alternative investments. Chinese not essential. AC5361

CORPORATE FINANCE | **HONG KONG** | **8-15 years**

HK listed company requires a senior lawyer to join its legal team. You will be HK qualified & have at least 8 years' experience in corporate finance & general commercial matters, in particular familiarity with HK Listing Rules & compliance. Fluent English & Cantonese are essential. AC5357

M&A/COMMERCIAL | **HONG KONG** | **6-10 years**

MNC seeks a mid to senior level corporate/commercial lawyer to support the business in this regional role. Reporting to the GC for Asia, you will advise on a range of issues including M&A, JVs, financial services, regulatory & general commercial matters. Fluent Chinese is essential. AC5298

PRIVATE WEALTH MANAGEMENT | **HONG KONG** | **5-10 years**

Top tier i-bank seeks a mid to senior level lawyer to join its APAC private wealth management team. This is a broad role covering a wide range of wealth management products & so the ideal candidate will have a regulatory, funds or derivatives background. Chinese skills not required. AC5073

LITIGATION | **HONG KONG** | **5-8 years**

In-house opportunity for a mid-level litigator with experience in general commercial or financial services litigation. Strong analytical skills & ability to understand complex issues as well as fluent English & Cantonese are essential. Interesting work & good work/life balance on offer. AC3989

DCM | **HONG KONG** | **3-8 years**

Established bank in Asia with strong global presence is looking for a legal counsel to support its DCM business. You will have solid private practice or in-house experience in DCM work. Experience in funds &/or securitization would be a bonus. Chinese skills are preferred. AC5374

Private Practice

STRUCTURED PRODUCTS PARTNER | **HONG KONG** | **years**

Structured products partner is needed for a UK firm to further grow its highly regarded financial services & derivatives practice. The role offers an existing client base & the support of a strong global practice. Solid derivatives & debt products experience required. AC5366

EMPLOYMENT | **HONG KONG** | **3-6 years**

A leading employment team in HK is looking for an experienced associate to join its expanding practice. The work will cover a broad spectrum of contentious & non-contentious matters. Chinese language skills would be advantageous but are not essential. AC5256

RESTRUCTURING/INSOLVENCY | **HONG KONG** | **3-6 years**

Offshore firm is looking for a litigation associate with 3-6 PQE to assist on a diverse range of contentious issues. Ideally, you will be Commonwealth qualified & have insolvency or commercial litigation experience in HK or other Asian jurisdictions. Proficient Mandarin is preferred. AC4595

TMT | **HONG KONG** | **4-7 years**

International law firm with a strong focus on technology & digital business is seeking a mid to senior level lawyer to join its HK office. You will have 4+ years' PQE, relevant exposure to TMT work & HK qualification. Fluent Chinese language skills & prior in-house experience preferred. AC5241

This is a small selection of our current vacancies. Please refer to our website for a more comprehensive list of openings.

Please contact Emily Lewis, elewis@lewissanders.com + 852 2537 7408 or Jenny Law, jlaw@lewissanders.com + 852 2537 7448
Karishma Khemaney kkhemaney@lewissanders.com + 852 2537 0895 or email recruit@lewissanders.com

Ramon Ghosh
Associate Managing Director,
South & Southeast Asia

Knowing your clients: how to assess red flags in challenging markets

A frequent question posed by our clients is 'How do I know who I am doing business with?' The unknown is of particular concern for companies operating in a new region or conducting business in a jurisdiction where access to good quality and reliable information is a challenge. The solution is almost never straightforward and requires a number of different methodologies to ensure that businesses know their clients and vendors.

Regulatory regimes such as the UK Bribery Act (UKBA) have added greater urgency to understand commercial partners. While know your client (KYC) checks were previously seen as a best practice, they are now mandatory given that the UKBA confers liability on corporate bodies whose "associated persons" (a widely-defined term under Section 8 of the UKBA) are found to engage in corrupt practices, including bribery and facilitation payments. Ignorance cannot be used as a defence and a business must positively prove "adequate bribery prevention procedures"[1] were in place to prevent corrupt conduct and include undertaking risk assessments, due diligence and training relating to persons who perform services for, or on the behalf of, the organisation.

> "Beyond regulatory considerations, genuine operational issues are also driving the need to understand more about counterparties. For example, conflicts of interest, over-invoicing or potential shelf vendor companies could adversely affect revenue generation in a significant way"

Beyond regulatory considerations, genuine operational issues are also driving the need to understand more about counterparties. For example, conflicts of interest, over-invoicing or potential shelf vendor companies could adversely affect revenue generation in a significant way.

Bespoke programmes

We now see more businesses opting to conduct diligence on a wide range of associated persons. The conundrum for businesses with a large number of customers and/or vendors is to know where to start. Typically, companies will analyse risk by jurisdictions, taking into account the perceived and real corruption levels in each region and then prioritising a review from there. While not an exact science, there are outliers in every region, and this approach can be constructive when there is a high volume of subjects. Where businesses operate across a number of verticals, they must also consider sector-specific risk, focussing particularly on any business segments which may be subject to corrupt practices or under past or current regulatory scrutiny.

When companies conduct a significant portion of work with one customer or vendor, they should also consider risk profiling those entities as a starting point. Special attention should be paid to those vendors or agents who are known to provide little or no support for their services, as well as those who are paid 'offshore' and those who are paid in cash or round sum amounts.

Businesses are also increasingly putting the onus on clients or vendors to detail all KYC information in formal disclosures. This can be done via detailed questionnaires, certifying they are compliant with the company's policies and submitting requested supporting documentation. These interactions can be tracked through specific portals which alleviate a degree of bureaucracy around the process and enable management to automate an onboarding relationship where necessary.

Ultimately, however, these processes may not provide enough subjective information around a target entity. This is particularly relevant in jurisdictions in Asia where governance standards may be lacking and corroborating client information is difficult through open source information. One approach is to create a 'risk score' around a particular customer that will signal whether disclosures or red flags warrant further investigation; yet, even this method can lack subjectivity. To fully minimise KYC-related regulatory risks, especially in industries that involve interactions with government officials, it is imperative to speak with trusted sources on the ground to understand the reality of how operations are conducted and whether, in fact, disclosures from high-risk clients are accurate.

Endnote:

1. UKBA Guidance

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adj. pur.er, pur.est

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ASEAN:

Will the puzzle pieces fit?

Want to know if the ASEAN economic community is Asia, and perhaps the world's, next big thing? With its diverse markets and political systems, there's debate over whether the region's 10 jurisdictions can work as one and if so, how long it will take for them to integrate, their goal being to do so by the end of 2015. Given the well-documented slow-down in Asia's emerging markets, can the ASEAN economic integration be a successful one and make the region competitive and worthy of investment?

The ASEAN economic community (AEC), due to be put in place later this year, is sure to shake things up, but how and when this shaking will occur is still up for debate. As with any integration, be it an M&A between companies or an integration between a total of 10 jurisdictions, this is sure to have teething problems, but whether fortune will favour the brave investor in this instance or the 10 nations are simply too incompatible won't be known for sure until long after the birth of the AEC.

According to *Mergermarket,* "M&A activity targeting Southeast Asia in Q1 2015 was almost on par with Q1 2014 in terms of deal value, with a total of 81 deals worth US$10.5 billion announced in the quarter, representing a mere 2.2 percent drop in value since Q1 2014". Their trend report also noted that "Singapore continued to be the most targeted within Southeast Asia, with 24 deals worth US$4.8 billion" in 2015, and that the real estate sector continued to be the highest performing sector in ASEAN in Q1 2015, boasting 30.9 percent of the market share.

Stating his optimism about the integration, Richard Dailly, Managing Director at *Kroll,* said "Free flows of services and investments should benefit all intra-AEC business". Dailly also said he sees Singapore, Malaysia, Thailand and the Philippines the most likely of the nations to immediately prosper, due to their established professional service firms. On sectors, he claimed that "Movement of skilled labour will benefit the growing healthcare and technology sectors across the region".

Giving his thoughts, Dr Wong Kien Kong, chairman of *Baker & McKenzie's* member firms in Singapore, Indonesia and Malaysia said he foresees the capital growth rate in ASEAN between now and 2020 being "the third fastest in the world after China and India". He went on to say that "In addition, Singapore, being a capital or money centre, will help attract the flow of capital into ASEAN from the rest of the world, particularly from China, India, Japan, the US and Europe."

"In relation to expropriation and other concerns of investors", Wong went on to say, "The ASEAN countries have entered into the ASEAN Comprehensive Investment Agreement (ACIA) to continue liberalisation, protection of investments from member states,

ASEAN, or the Association of Southeast Asian Nations, was established in 1967, and initially brought together Indonesia, Malaysia, the Philippines, Singapore and Thailand. Subsequently, Brunei, joined in 1984, Vietnam in 1955 and Laos and Myanmar in 1997. By the end of 2015, all 10 nations have the goal of forging the ASEAN economic community, envisaging a single market and production base, a highly competitive economic region, a region of equitable economic development and a region fully integrated into the global economy.

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and increasing the transparency and predictability relating to rules, regulations and procedures governing investments in the member states, among other objectives."

On objectives, Dailly noted that "One of the main drivers of the AEC project is to aid the equitable economic development of the smaller, less developed markets in Southeast Asia. ASEAN has stated that its priority aims are to improve infrastructure development, education, and information and communication technologies."

ASEAN's nations

One of the economies of ASEAN that will be hoping to see development is Myanmar, where "The legal infrastructure is being overhauled and modernised as part of the reform process and opening up to the outside world", according to Josephine Price, Managing Director and co-founder of Anthem Asia, an independent investment and advisory group focussing on building sustainable businesses in Myanmar. On top of this, as Price stated, "The country is part way through a huge series of reforms covering politics, civil society and the economy and business". Though these reforms are still ongoing, Price believes "Myanmar is now clearly on its way to creating an environment that should work for ASEAN investors".

Also giving insight into Myanmar was *DFDL's* William Greenlee, according to whom "Mynamar will benefit from the integration as there will be more foreign investment and international involvement in the community. From this increase in international involvement, Myanmar will be able to more quickly implement positive aspects of world commerce and its accompanying infrastructure systems, including legal systems that encourage commerce."

Another jurisdiction that will expect to see its economy grow as a result of the ASEAN integration is the Philippines, which, according to Christina Macasaet-Acaban, partner at *Quisumbing Torres* "provides the country with the impetus to examine the competitiveness of its businesses and legal and regulatory environment, and to make changes in these areas in order to maximise the benefits arising from the integration".

She did, however, say that "Because the Philippines is primarily a labour supplying country, the freer movement of labour will certainly provide opportunities for Filipinos to work in other ASEAN member states as [it has] a skilled and highly qualified workforce". Macasaet-Acaban countered this, though, with the fact that "If the integration will result in more inbound investment in the Philippines and an increase and growth in businesses within the country, this will make the Philippines competitive in retaining its talent and workforce in the country".

Should Macasaet-Acaban be proven right in her assessment that the Filipino workforce will be tempted to work elsewhere even more than it already is, by Greenlee's judgement, a lot of the migration will be to Myanmar, as he believes that "For skilled labour it will likely mean an increase in incoming labour [to Myanmar], which at this early stage in opening up to the world will alleviate current shortages". He did also mention that he feels there

"Since industry standards, laws and business regulations within ASEAN are yet to be harmonised, businesses may face setbacks due to the different requirements from one ASEAN country to another"

Marriette Peters

will be an increase in Myanmar's outgoing citizens as its residents seek manual labour positions elsewhere within ASEAN.

Discussing labour, Marriette Peters, partner at *Zul Rafique* noted that "Companies will find it easier to recruit, retain and manage their workforce on a regional basis. This is, however, subject to the Mutual Recognition Arrangement (MRA), which differs from one country to another with regard to recognised education and experience, licenses and certificates which have been granted by another country."

One of SSEK's founding Partners, Ira Eddymurthy, also mentioned the MRA: "Skilled workers will likely gravitate toward states that are centres for their occupation, where their expertise will be highly valued. However, it is unlikely that states, including Indonesia, will be quick to ease restrictions on expatriate workers, noting the reservations toward employment matters in the ratification of the ACIA and the extent of states' commitments in the ASEAN Framework Agreement on Services."

Giving comparisons, Sesto E. Vecchi, a founding Partner of *Russin & Vecchi* pointed out that "Among the larger Asian countries – Thailand, Indonesia, Malaysia and the Philippines – Vietnam's legal system is probably the least well developed. Yet, in many areas, Vietnam competes commercially with all of those countries."

On some of the smaller economies of the 10 jurisdictions, Dailly said that "Cambodia and Laos will benefit from having inexpensive labour, and they are already starting from a lower point in the development curve. In many respects, Cambodia, Myanmar and Laos could ultimately be the most significant winners – certainly in economic terms. Investment is already hot into both Cambodia and Laos, and Myanmar is frequently referred to as 'the next tiger'. However, these countries need to improve their regulatory environments."

For Singapore, as the nation with the highest GDP per capita in ASEAN, there will of course, be different implications. According to Eugene Lim, Partner at *Baker & McKenzie,* "There will be a greater need for regional headquarters as regional integration removes trade and investment barriers and increases business activities in ASEAN [and] Singapore can be used by non-ASEAN-based companies as a stepping stone to gain preferential access into Southeast Asian markets". This, Lim feels, will mean that "Singapore will benefit as a result of the greater interest and levels of investments in ASEAN as a result of greater integration".

Thailand too has reason for optimism, with "a marked increase in domestic deal activity within Southeast Asia, with 11 deals valued at US$2.3 billion recorded in Q1 2015, increasing 10 fold since Q1 2014" according to Mergermarket, who predict their economy will continue to grow.

What kind of integration will it be?

As stated by Eddymurthy, "It is of paramount importance to note that ASEAN economic integration is not a European Union model and does not create a supranational body. It is a gradual integrationin which ASEAN member countries agree on certain objectives to be attained and frameworks to implement such objectives, but the countries are given wide discretion to translate that into national policy."

On the comparison between the AEC and the EU, Dailly mentioned that "As with the EU, the fundamental problem that the AEC will have to deal with is the inherent tension between the existing nation-state as the key defining unit of territory". He also noted that the EU has had a lot longer to get used to various historic iterations, and that as a result, "it could take many years

"Rules exist to restrict the use of websites and to control content. However, technology and usage is racing ahead of the rules."

Sesto E. Vecchi

By Chris Thomson

for the full potential of the AEC to be unleashed. Border disputes between AEC nations will still be a challenge, and as we have seen from the recent refugee crisis, ethnicity, religion and sovereignty of national borders are still political 'hot potatoes'. But for the AEC to work, national governments will need to grip these issues and work together closely to find solutions."

Macasaet-Acaban too felt it necessary to distinguish ASEAN from the EU, noting "The concept of ASEAN integration does not envision an integration that is similar to the European Union. Notwithstanding the alignment and harmonisation of laws and regulations, each ASEAN member state continues to govern independently, make its own laws and regulations and enforce the same.

"This means that an investor intending to engage in business in an ASEAN state must also study the country specific requirements that continue to exist, despite the alignment and harmonisation of certain laws and regulations in the priority sectors."

On the extent of the integration, Wong commented "Most jurisdictions will keep a certain aspect of their laws to maintain national imperatives in commercial life. However, the draw of harmonisation to attract investments in the different industries where individual nations may have strengths will continue to govern the integration of ASEAN. There will inevitably be some convergence of their laws such that similarities of some aspects of their respective commercial laws will arise. It would not be a question of sacrificing individuality, rather a question of balancing the two objectives, and this balance will not be detrimental as scales of the balance will change with time and evolution of society and laws."

On the effect uniformity will have on Malaysia and legal developments, Peters remarked "Having a single market will help reduce complexity as companies will be able to standardise products, services, business models and marketing plans. This in turn will encourage uniformity and, in the long run, benefit the business/marketing world in Malaysia since laws and regulations related thereto would be enacted and/or amended in order to better accommodate and match the demands of the ASEAN countries."

Fielding the question from a similar angle from a Singapore point of view, Lim stated "As laws become more uniform, the regulatory cost of doing business in ASEAN will be reduced. This will allow businesses to streamline their business operations by adopting increasingly similar business models when operating across multiple jurisdictions in the region." Continuing, he said "Uniform laws will provide businesses with flexibility in structuring operations and not need to adopt specific work to comply with local legal restrictions".

Looking at the implications of uniformity on Myanmar, Greenlee observed "Laws in ASEAN becoming more uniform will have a significant impact on commerce in Myanmar and the region, as it will allow companies/investments to more easily cross borders into jurisdictions that currently have legal systems/laws that are restrictive, vague and/or generally onerous, which of course is currently a hurdle and hindrance to foreign investment".

Macasaet-Acaban said that overall, she expects the increased uniformity to have a positive effect on the Philippines. She also said "For the Philippines, challenges continue to exist and reforms must be instituted to hasten the country's alignment with all the commitments and goals of the integration".

Giving further insight into the goals of the Philippines, Macasaet-Acaban noted "In achieving the goals of a freer flow of services and investment liberalisation, certain significant areas continue to be subject to foreign equity restrictions.

What does this all mean for individual sectors?

Asked to discuss the specific sectors, Macasaet-Acaban listed IT, business process outsorcing, manufacturing, infrastructure and tourism as those she feels will benefit the most. “On the other hand, there will continue to be limitations for those businesses and activities that continue to be subject to foreign equity restrictions under the Philippine Constitution and other laws, such as mass media, advertising, public utilities and land ownership, among others.”

On the healthcare sector, Macasaet-Acaban said “The healthcare sector, including pharmaceuticals, is among the priority sectors in the ASEAN integration, and the goal is to harmonise regulations among the ASEAN member states in order to eliminate technical barriers to trade posed by different regulations”.

Vecchi, too, mentioned technology as an area bound to see change in Vietnam, though from a different angle, as he stated “Rules exist to restrict the use of websites and to control content. However, technology and usage is racing ahead of the rules. In a short period of time, the rules will be impractical to apply. I am hopeful that this reality will accelerate the modernisation of rule making.” Therefore, he sees law’s struggle to keep up with advancements as a drawback – a sentiment echoed by Price, who, on how long she felt it would take Myanmar to come to terms with changes, noted that “It took Vietnam 20 years to open up, and the process is still ongoing”.

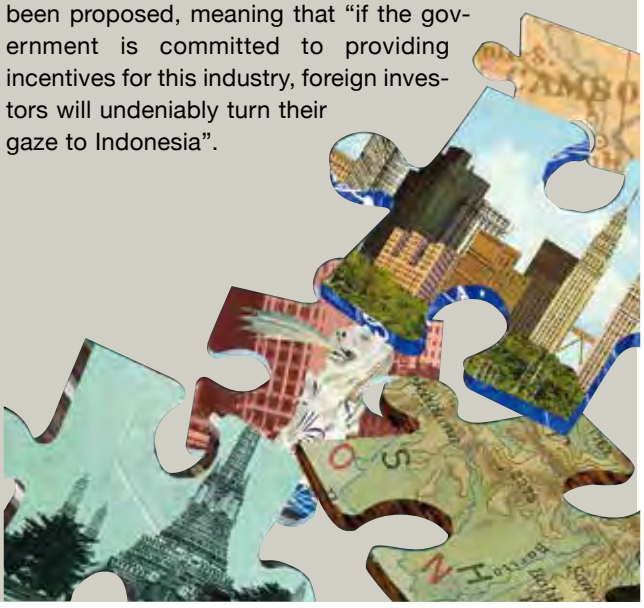
Price was discussing the change from Myanmar’s current trust-based economy to the rules-based one it plans to implement, rather than referencing a specific sector’s impact. On this change, Price does expect to see a more efficient switch, “because [unlike Vietnam,] the country doesn’t have to deal with the legacy of communist economic ideas”.

Price further remarked that “Sectors that have not developed competitive strategies will find it hard. There are operators who have benefitted from years of domination in a closed economy. As in many economies in transition, it can be hard to adjust from making money from ‘who you know’ to ‘what you do’” – that the more experienced workers and businesses the integration may bring may tempt away those who are currently loyal to local entrepreneurs they know.

Peters expects Malaysia’s tourism and education sectors to flourish, but stated that for the sake of the firm, she hopes to see the legal services industry and Islamic finance gain traction too. To justify this belief, Peters noted that Malaysia’s Islamic finance industry has been in existence for over 30 years, and that it was further strengthened by the Islamic Financial Services Act in 2013. She believes “The integration may see Malaysia continue to grow rapidly with the diversity of financial institutions from ASEAN and its broad range of innovative investment instruments, comprehensive financial infrastructure and global regulatory and legal best practices which is ever growing” will aid this. As for the legal services industry as a whole, she cited the free flow of services under the AEC, namely the single market and production base, and the ASEAN Framework Agreement on Services as evidence of potential future growth.

Market entry into Singapore will, according to Lim, be quite low, as “Singapore has a relatively open market and hence is unlikely to see a new wave of market entrants to compete with loval enterprises as a result of the AEC”. Lim went on to say that he “expect[s] industries in Singapore such as finance, professional services, logistics, information and communication technologies, healthcare, life science and air travel to benefit significantly with the AEC”

“The manufacturing sector is likely to be a big winner [in Indonesia] because foreign investors are seeing ASEAN as a regionally integrated manufacturing base offering an abundance of raw materials, low labour costs and freer movement of goods”, according to Eddymurthy. Giving statistics, she revealed that according to the Indonesian Investment Coordinating Board, in Q1 2015, investment realisation in the manufacturing sector in Indonesia grew 16.9 percent compared to Q1 2014. Citing the same source, she also said that as of 2014, at least 29 mineral smelters have been proposed, meaning that “if the government is committed to providing incentives for this industry, foreign investors will undeniably turn their gaze to Indonesia”.



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These restrictions carry with them corresponding restrictions in participation of non-Filipinos in the management and operation of the restricted businesses.

"As regards other sectors, the Philippines will need to continue to review and improve on processes in order to provide investors with greater ease in doing business in the country, both at the national and local government levels. For example, many investors have noted that the process to establish a business and incorporate an entity is significantly more complex and time-consuming in the Philippines compared to Singapore."

Investment

One trend that has already been observed is that Japan is once again the most active country investing into ASEAN. In fact, in Q1 of this year, it contributed US$1.8 billion (45.8 percent) of the total inbound deal value, which is the highest Q1 deal value for Japanese M&A transactions into Southeast Asia since records began.

Another trend is that the value of outbound M&A deals undertaken by Southeast Asian companies has decreased by 87.2 percent from Q1 of 2014 and Q1 of 2015 to US$959 million, which can mainly be explained to to the lack of mega deals.[i]

Dailly's insight on risk is that "The risks of investing in ASEAN countries once the AEC is up and running are likely to decrease with time. The key risks at the moment are lack of transparency, poor regulatory environments and political instability. The development or AEC should help address all of these issues. If this is the case, then the risks of investing in any AEC country is likely to reduce; the area will become more investor friendly and the entire region should benefit."

Assessing the comparative risk with investing into Europe, Dailly noted "Investing in Europe is obviously of a significantly lower risk. If an investor finds themselves in a dispute situation in any European country, then the regulatory and legal environment will generally ensure that the foreign investor is treated fairly. In the AEC, the regulatory and legal regimes are less strong, and in some countries, more prone to corruption. An investor getting into a legal dispute in Indonesia is going to have a much harder time dealing with the issue than in Germany: but by the same token, the potential rewards of investing in Indonesia are much higher."

In summary, according to Dailly, "Better regulation, a stronger independent legal system and a real commitment to tackle corruption should be the key priorities of most ASEAN countries. With these structures enhanced, investors would glean the rewards of the developing economies, without taking on some of the risks."

Explaining how ASEAN investment could be approached, Wong stated "Non-ASEAN investors could set up operations in

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Richard Dailly

an ASEAN state and invest from that state into other ASEAN states to enjoy the protection and coverage of the ACIA". Stating his optimism, Wong also said "It is also a step in the right direction for the advancement of the AEC, where continuing integration of ASEAN states is being pursued".

On anticipation of investment regarding Indonesia, Eddymurthy noted "Whether the country sees a large increase in foreign direct investment in the coming years will depend upon, among other factors, the government's commitment to accelerate infrastructure development, provide incentives for foreign investors and continue to simplify foreign investment procedures".

"Export-oriented manufacturing activities are amongthe priority areas of investment in the Philippines and it is hoped that ASEAN economic integration will further boost the Philippines' manufacturing sector. The ASEAN integration has also provided the push to increase competitiveness in the agribusiness sector", according to Macasaet-Acaban.

Further, "Attracting more inbound investment is among the goals of the integration for the Philippines. Even now we have received various queries regarding changes that the Philippines is implementing to liberalise various business activities in the Philippines" said Macasaet-Acaban, who went on to say that "Reservations [about inbound investment] are largely due to foreign equity and related restrictions in certain business activities under the Philippine Constitution and statutes. Amending these laws, particularly the Philippine Constitution, involves extensive processes, and while actions towards the ASEAN integration are among the general priority measures of the Philippine government, these will have to be considered along with other national concerns."

Similarly, "One development that appears to have been highly motivated by the integration is the recent approval on third reading of an anti-trust bill in the two Houses of Philippine Congress". Macasaet-Acaban noted that various anti-trust bills were pending in the Philippine Congress for over a decade, which are now "very near to being enacted into law".

Integrating into the AEC has led to "certain groups, both outside and within the government, lobbying for changes to liberalise the economic provisions of the constitution that protects Philippine ownership in certain activities and industries", which Macasaet-Acaban says currently include land ownership, mass media and public utility operation, among others. She also mentioned to the fact that the Philippines' national election in 2016 and a change in administration "may provide a different direction".

Cautioning investors, Peters claimed that "Since industry standards, laws and business regulations within ASEAN are yet to be harmonised, businesses may face setbacks due to the different requirements from one ASEAN country to another".Giving an example, she noted "Muslim countries such as Indonesia and Malaysia, out of respect for their majority Muslim population, would require strict halal certification for most food labels, local and international, as compared to non-Muslim countries such as Vietnam and the Philippines. Thus, businesses must have an insight as to the local laws and requirements before investing or venturing into a business within ASEAN."

Projecting optimism, Lim said that "Economic intergration is not a zero-sum game – all countries in ASEAN will benefit regardless of their relative wealth" and that the AEC will allow all of its members to "capitalise on their competitive advantages".

Asked about aspects investors should be aware of, Lim listed the fact that supply chains can be more efficiently organised, market access to goods and services will increase, ASEAN will increasingly be used as an integrated production base for regional and global supply and that access to talent will increase as a result of the MRA, all of which support his notion that "the AEC is going to be a game changer". Advising potential investors, Lim stated "Businesses and investors should critically examine how they can benefit from the AEC or risk being overtaken by competitors that are better able to optimise their operations to reap the advantages of the AEC".

Anticipating good things for Myanmar, Price remarked "As an economy about to boom in the next few years, Myanmar needs and will continue to need everything. She

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Ira Eddymurthy

By Chris Thomson

"[In Myanmar], there is a notable willingness to listen and take on new ideas and change"

Josephine Price

went on "Agri-businesses have a terrific opportunity as the country produces a huge range of produce. To reap the full value requires moving up the value chain and to be truly competitive means upgrading product quality, marketing and understanding one's overseas customers."

On Myanmar's hinderances, Price stated that "Moving money, even from one account to another in the same bank, takes time. Things happen, but often quite slowly", therefore investors should go in knowing that things are slower than in the markets they may be used to. She also said that "Many times our lawyers have advised us that there is no legal reason why we can't do something, only that it's never been tried nor tested in recent times", so a venture into Myanmar, as it's a less-developed jurisdiction, will come across hurdles it wouldn't elsewhere.

Harmonisation

As put by Wong, "Changes in domestic laws will be made in the direction of harmonisation between domestic laws and those which are more open and liberal within the AEC". Obviously the changes he refers to will bring about additional legal work, but as he said, "Lawyers will have to face competition from states where the lawyers are more developed or skilled, who will set up branches or affiliates in states where the competition has not been international. International competition will drive the quality of lawyers up, the fees to be more justifiable and competitive and the economies to be more open."

On linguistic harmonisation, Wong stated "English is an internationally accepted language of commerce. It is also becoming a language used socially as countries become more international. However, Bahasa is spoken by almost half of the population of ASEAN. It will maintain its relevance, at least in Indonesia, Malaysia and Brunei.

Furthermore, "Free flow of labour across ASEAN is not a reality yet although there are moves to allow this in certain sectors. It will take some time before labour flow is liberalised further." Also, in Wong's opinion, "Hires from the English speaking world in ASEAN will continue to be only in the areas where highly skilled personnel is required. There will not be a mass movement of hires and one will not take place, at least within the next 10 years."

On political harmonisation, Dailly suggested that "As with the EU – there is a fundamental ideological tension between nationalists on one side an liberal internationalists on the other". He also believes that the power of international business, as it allows populations to prosper and develop, "has the advantage [over state-held sovereign power] of technology, facilitating international money flow, which national borders struggle to control, and social media allowing populations to see first-hand that some countries are wealthier and better-managed than others, thus fuelling international migration."

The reverse side of this, as Dailly put it, is that "It is quite hard to see how the governments in Thailand or Myanmar or Brunei would have any desire to sell a fundamentally liberal manifesto to their own elites, who are probably benefitting most from the status quo".

"Laws in ASEAN becoming more uniform will have a significant impact on commerce in Myanmar and the region, as it will allow companies/investments to more easily cross borders"

William D. Greenlee, Jr

Macasaet-Acaban, much like Wong, felt it necessary to mention language, stating "English is the medium of instruction and language for business in the Philippines. This aptitude in the language provides the Philippines and its workforce with a certain advantage over some ASEAN member states as English is expected to be the language for business in an integrated ASEAN community among ASEAN member states and non-ASEAN investors."

As well as being one of the ASEAN nations in which the standard of English is high across the board, Macasaet-Acaban feels that the Philippines' public-private-partnership programmes will be a good model for other countries, so believes that others can learn from its connectivity.

Peters feels her jurisdiction Malaysia can teach others to look after their own citizens, and uses the 1Malaysia Housing Programme as an example. Other ASEAN nations have similar laws in place to deter foreign investment in housing and first and foremost provide for their own citizens, but, as Peters says, Malaysia also has the "1Malaysia Flagship, providing assistance to the middle to lower income group, such as the 1Malaysia Grocery Store". She says that 1ASEAN, though ambitious, is food for thought.

Peters also says that in understanding "the importance of realising the ASEAN dream of achieving a single market and production base which allows the free flow of goods, services, skilled labour etc. across the region", her firm has seen opportunity in ASEAN unification, and has partnered with *Bahar & Partners* in Indonesia.

If that dream is to become a reality, ASEAN's jurisdictions should take note of what Singapore has done, which is to "always embrace the ethos of free trade and benefit greatly from it", according to Lim, who continued "Singapore can teach jurisdictions in the region that opening up markets can bring about economic growth and development, and that trade liberalisation can reap greater benefits than insular trade protectionism. In many ways, Singapore is a pathfinder of free trade and benefits of greater regional economic integration".

In Myanmar, "there is a notable willingness to listen and take on new ideas and change", according to Price, who also stated "In addition, Myanmar still relies on an underpinning of old British-based common law concepts and these still resonate in an understanding of, for example, corporate entities and liability", meaning Myanmar may be more open to change than other jurisdictions within ASEAN. Further, Price remarked "It will be good to see people able to have a decent job and a decent life, underpinned by a business community that operates within a strong legal system, with good business links with its neighbours".

On the theme of harmonisation, Eddymurthy noted "Indonesia is open to economic integration, but at the same time, it has opted to retain its comparative advantage in several business sectors, such as exploitation of natural resources, and the financial sector". She also said that "Indonesia could learn from other jurisdictions regarding the alternative settlement of cross-border commercial disputes", something Singapore may be looked to as a result of its recently implemented SICC.

Overall, "Most jurisdictions will keep certain aspects of their laws to maintain national imperatives in commercial life", but, as Wong continues, "the draw of harmonisation to attract investments in the different industries where individual nations may have strengths will continue to govern the integration of ASEAN".

As a result, the incentives are there to make the pieces fit, but whether they can is another thing, as "The interests of Singapore will be vastly different to those of Laos", an observation made by Dailly.

Already, we can see attempts to integrate, such as the agreement that English will be the language of ASEAN. As Lim exclaimed, "Although the targets set out in the AEC Blueprint are unlikely to be fully achieved by the end of 2015, there is momentum and political will in the region to proceed with economic integration", which bodes well for the region and its collaboration.

Endnote

i. Statistics provided by Mergermarket

The legal profession's Kodak moment? – Part 1

As well as noting that Kodak "invented but failed to commercialise" digital photography, *In-House Community* Thought Leader Kenny Tung, once Kodak's Greater China General Counsel, gives an account of the fall of the empire whose brand was once valued at US$11.8 billion, and makes comparisons between this and the current state of the legal industry, suggesting that it too risks becoming a shadow of its former self.

In 1997, when I joined Kodak, then a venerable US$13 billion FMCG or fast moving consumer goods multinational, it was executing a 'Grand Plan' in cooperation with the sensitised materials industry in China, one of the last 'blue oceans' for the industry. Along with the launch of a new advertising campaign 'Kodak Moment' in China, the company quickly captured significant market share from key competitors. By 2000, Kodak's share in the consumer film segment was above 70 percent, two times its closest competitor in Shanghai and other major cities. In 2004, the company managed 9,000 branded retail imaging development outlets and a strategic channel supported Kodak's bargaining power opposite the rising modern trade retail channels like Carrefour.

In the meantime, disruptive forces converged, not only in developed markets but also in emerging ones, landing Kodak as one of the earliest cases to illustrate the 'innovator's dilemma' that has been impacting industry after industry.

The Kodak brand, arguably the company's most valuable asset, served as a useful indicator of the rise and fall of the business globally. According to Interbrand, in 2000, the Kodak brand ranked 24th globally, valued at US$11.8 billion. After a consistently precipitous fall to 82nd in 2007 with its value down to US$3.9 billion, it dropped below the top 100 ranking and has remained there ever since.

On January 19, 2012, Kodak filed for bankruptcy protection under Chapter 11, from which it emerged on September 3, 2013. In 2014, Kodak's revenue was US$2.1 billion and continued to run a net loss of US$123 million, albeit smaller than the rate of losses that it had been running before filing under Chapter 11.

Today, a visit to Kodak's website will find the headlines of a number of Oscar winning films shot in Kodak motion picture film, film and paper for professionals and artists, and its legacy printing business. However, Kodak also maintains a toehold in the digital imaging space through partnerships with a number of players. In December 2014, Kodak announced that:

> *"Kodak and leading mobile device manufacturer Bullitt Group, have announced today that they will launch a range of Android-powered mobile devices offering best-in-class image management software and features along with great design and UI.*
>
> *Aimed at – but not exclusively for – consumers who want a high-end experience but aren't always as comfortable using increasingly complicated mobile devices as they would like to be, the range of smartphones and tablets will come pre-loaded with bespoke image capture, management and sharing features to offer a rich user experience."*

In other words, it appears to be leveraging the brand with consumers to whom it still means something: people who just want a simple mobile device that can capture and share images … of their grandchildren who are all living in the mobile internet age.

Overleaf is a timeline of the ups and downs of Kodak's imaging business:

So what does this have to do with the legal profession and service industry?

As Paul Lippe recently commented, "The uber example of Disruption was digital photography, which Kodak invented but failed to commercialise. Kodak could have easily been Facebook, but its profit expectations, culture and cost structure prevented the change."[1]

The numbers in the below timeline correspond to the subsequent table in which the history of Kodak is parallelled with its lessons for legal practice

- ***Before 1970s*** *– 1, 2, 3 (3 overlapping to next time period)*
- ***1970-80s*** *– 3, the rise of Fuji and a few other challengers*
- ***1990s*** *– 4, China Grand Plan over latter half of 1990s*
- ***2000*** *– Brand value begins to fall, 5, 6, 7, 8, 9 (latter two references overlapping to 2010)*
- ***2010*** *– 8, 9, 10*
- ***After 2010*** *– Kodak entered & emerged from bankruptcy, 11]]*

		Kodak's Golden Moment	Legal Profession's Known Unkown
pre- 1970s – 1980s	1	Monopoly/duopoly market dynamics with 90 percent plus margin in the middle to high end of the business.	Although no legal service provider comes close to claim a monopolistic position, the field remains to be a fenced-off profession reminiscent of a medieval guild, albeit the emergence of ABSs in the UK post Legal Services Act of 2007, and increasing investments in the field such as litigation financing, adjacencies like LPOs and legal software development; margin in the sector remains attractive enough to support posh offices in CBDs, but the trend shows signs of decline beyond 2008-2010.
	2	During its early years, the company acted on the value of customer benefits over company interest (almost bankrupted the business when it decided on a mass replacement of products upon customer complaints).	A partner/mentor once told us what's good for the client is good for the firm; today most clients would not agree with this view in an era where selling hours becomes the prime directive. On the peripheral, new legal services are offering efficacy as well as efficiency, addressing what clients should care about in achieving short term as well as longer term objectives as the 'horse' and with legal exercises & resources as the 'cart'.
	3	Roots/continuation in innovation tradition (from movable plates/delivery of plates with captured images and developed images over mail to film to minilabs to the first digital cameras in 1980 to organic light emission diodes/OLED, an alternative to LED display - consumer digital business reached US$1 billion in revenue before the company's decline); not to mention other lesser known business solutions like an equipment that scans at the speed of 200 pages per minute with data feed to document management software.	The Socratic tradition continues to be the crucible of legal eagles but, in the eyes of many clients, the skill set of today's legal population leaves us wanting; the gap in skill set harks back to the time when gentleman lawyers were also trained in the sciences, socio economics and political theory. Today, clients yearn for legal professionals who can marshal data as evidence, quantifying risks and values as root causes, branching out of silo to have the legal wheels turn in a connected manner with the gears of the rest of the organisation.
1990s	4	Faced disruptive changes in the convergence of quality digital imaging, pivotal emergence of mobile capabilities in miniaturisation, storage, battery, bandwidth, and now social media, all chipping away Kodak's reason for existence - to help capture, manage, store images and enhance user experience in sharing memories and information.	Faces comparable disruption from artificial intelligence (e.g. application of techniques from machine learning to predict the voting behavior of the US Supreme Court with 70 percent success); replacement of document review by junior associates by predictive coding; unbundling (or decomposition) of legal work processes and LPOs (either offshoring and/or around the value net). The profession/sector is rediscovering value delivery such as a balance between prevention and effective remedies in deals and dispute resolution; adopting a more quantitative approach for a grounded handle on risk management and attention to designing legal processes and devices.

By Kenneth Tung, ***Lex Sigma Ltd***

		Kodak's Golden Moment	Legal Profession's Known Unkown
2000 – 2009	5	Betting on the quality of current offering (e.g. colour management, the sine qua non of an image on film that even the highest megapixel device cannot capture) and the orientation toward ever higher end business over the ease of capture and pervasiveness of the product market at the bottom.	Most in the profession continue to believe that quality legal work remains the key to expansion of the less 'bespoke' segments of the legal service industry; many lawyers take issue with alternatives that compete with doing complex, high-end work that only our intellect can offer.
	6	Attempt to push Advantix, a film that has a strip to accommodate meta data like time and place of capture, as an offering that crosses over traditional (film & paper) and digital imaging.	Many in the profession believe that alternative billing methods (in part driven by the "more for less" pressure experienced by in-house counsel), LPO, predictive coding and managing the legal version of Big Data will solve the problem faced by the profession.
	7	Retreat to the principal strategy of extending the life of film (and paper).	Some lawyers do have in the back of their minds that should any "new normal" arrive in the profession, it will happen after their retirement; some top tier firms are establishing businesses based on freelance lawyers in a move that some economists would call monopolistic competition.
2010	8	Stakeholders, many tied to a high yielding dividend stock, did not endorse further product and business development in the digital/mobile age.	Professor Susskind once said asking a roomful of millionaires to change is a difficult proposition. Many firms today still pursue the bigger is better business development strategy instead of addressing the root causes of customer discontent.
	9	Rank & file whose KPIs and reason for existence was closely tied to the old business model simply could not find a business that can be compared to the sacred cow that delivered at the rate of up to 90 percent plus margin nor persuade the company to invest in developing consumers' image printing habits.	Try asking a young partner to invest in the legal service value chain like knowledge management and expert systems, especially ones who might have paid off a student loan, and certainly invested time and sacrificed much in life to arrive at time to "harvest' the fruits of their practise.
	10	Around 2003-2013, company lived off licensing & suing players like digital camera and mobile phone makers for infringing Kodak's IPR.	Laws and regulations are mostly online public information; secondary summaries and explanations are proliferating; social media share legal development and insights; online content providers abound; players in adjacent space with more industrial (vs traders mainframe) encroached on the legal service sector; but some law firms and in-house legal functions have begun to develop knowledge management and more data linked processes.
After 2010	11	Up to today, no one has been able to profit solely from imaging like Kodak did as the market has dissolved into other platforms like smart devices (Apple), social media (Instagram, Facebook) which remain advertising driven businesses, and everything else that makes use of images (displays in cars, document scanning).	Until AI like IBM's Watson completely takes over lawyering (if ever) and perhaps creates a monopoly like service value chain, important roles remain for 'reformed' lawyers to play in the sector; one would hope that the (value) pie will greatly expand to serve more clients than the current paying ones and some lawyers will remain at the table as general contractors of legal services.

"Lawyers' reason for existence is not to profit from the misfortunes of clients. We reinvent and reform our profession as in any industry because it makes sense for the whole value net and supply chain, and with malice to none"

Kenneth Tung

Photo: Patrick Dransfield

The previous comparison touches on a number of forces reshaping the legal service industry:

- Human wisdom vs artificial intelligence
- Networked service structure enabling decoupling/re-composition of legal services to better address clients' problems like never before
- Lawyers' mind frame as traders vs industrialists[2]
- Clients' demand for efficacy in addition to efficiency as table stakes for legal service providers, leading to a great many areas for lawyers to reform themselves. These demands require the legal service industry to:
  - Deliver service and value through a more quantitative and data intensive approach
  - Assess values from preventive (other than taking no chances) vs traditional remedies, raising the stakes of capability to:
  - Tackle process and knowledge management, which in turn requires lawyers to:
  - Design their tasks and delivery of services and communicate in less 'legalese' and more in ways that speak a thousand words

Overall, lawyers need to team up with or else acquire capacities in these areas and appreciate the clients' objectives, strategy, intent, activities and measures, across many, if not all, of the silos and functions of the clients' activities.

In a follow-up article, I will discuss in depth how these issues inform the legal profession in the greatest change it has been experiencing as a service industry. Further, the article will also discuss important principles that the participants in driving the 'New Normal' in legal services should keep in mind:

Technology should neither be merely disruptive nor leave people behind.

Lawyers' reason for existence is not to profit from the misfortunes of clients.

We reinvent and reform our profession as in any industry because it makes sense for the whole value net and supply chain, and with malice to none.

Footnotes:

1. Legal Blog, 6 October 2014. The author wonders whether Mr Lippe's choice of the word "uber" might not entirely be unrelated to current references to the term "Uber lawyers" which represents the networked service economy vector in changes to the profession.
2. For a discussion of the first three "disruptive" forces above, see an article by the author published in connection with a panel discussion at the Corporate Counsel Congress in New York in June 2015: http://www.lexology.com/library/detail.aspx?g=2eae2fe3-8226-45b2-931e-97b7d66ed7d1.

kenny@lexsigma.net

Clyde & Co's Middle East Deal Study 2015

ASIAN-MENA COUNSEL is delighted to present a summary of Clyde & Co's second Middle East Deal Study, the full version of which can be found on their website and by scanning the QR code at the bottom of this article.

In this, our Middle East Deal Study 2015, we have analysed data collated from numerous M&A and JV transactions on which we have worked in the region during 2013/14. With expert commentary provided throughout, our report offers a unique insight into what businesses might expect from doing deals in the Middle East, as well as an indication of what could be considered 'market practice'.

In compiling the 2015 Deal Study, we have analysed 75 of the key M&A and JV transactions in which our Middle East offices were involved during the period, 43 of which were M&A transactions with an aggregate consideration in excess of US$6.5 billion and 32 of which were JV transactions creating new business opportunities in a broad range of sectors, including TMT, infrastructure, insurance & re-insurance, hospitality, manufacturing, education, energy, healthcare, shipping and defence.

This edition of the deal study also provided us with an opportunity to benchmark and identify shifts in market trends, which its predecessor did not. For the first time, we have also included a sector analysis of the M&A and JV transactions, forming part of the 2015 Deal Study, which is designed to assist with the planning and implementation of your own transactions.

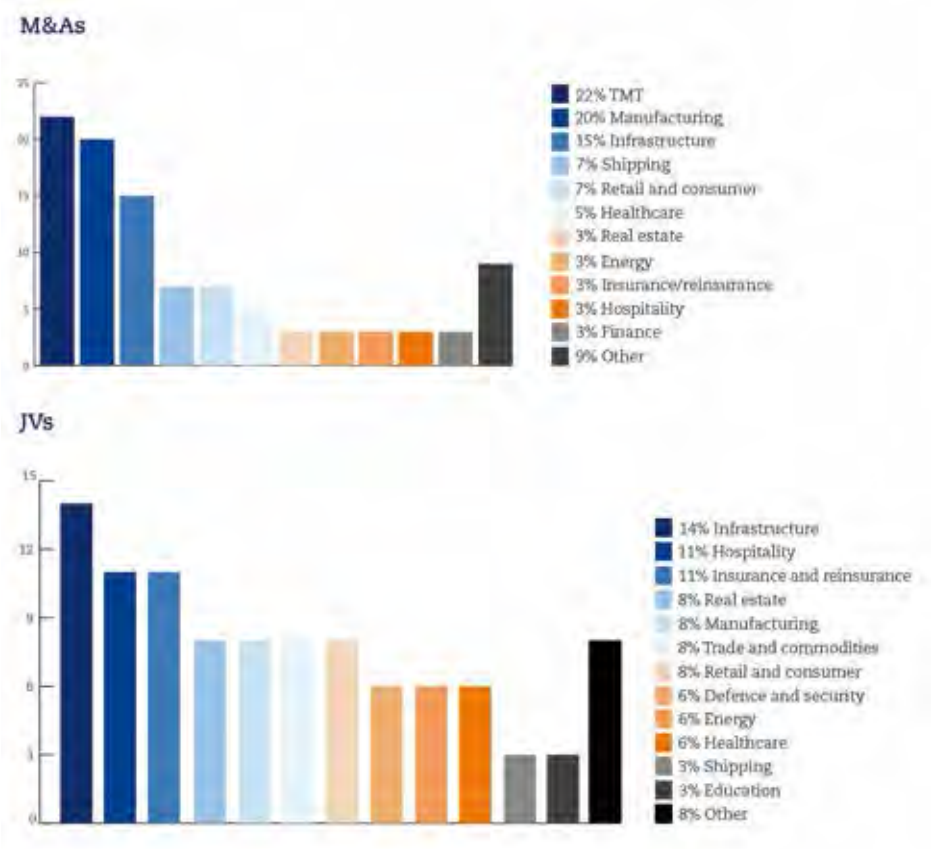
Throughout the report, we highlight what has stood out, both in terms of M&As and JVs in the Middle East. From an M&A perspective, we go into detail about why the Middle East offers a seller-friendly market, along with discussing security for claims, seller liability, choice of law/forum, tax and other aspects.

Our JV highlights section in the executive summary divulges valuable information including of JV structures being overtaken by M&A structures as a route to market, offshore structures for flexibility, contributions in terms of what each party brings to the table, reserved matters, exclusivity, share transfers, deadlock resolution and choice of law/forum.

> The Middle East continues to show signs of being a sellers' market in terms of risk allocation.

> M&A emerging as more popular route to market than traditional JV route.

In the sector analysis section, we demonstrate why there was sufficient confidence in various sectors to see high-value deals compete with relative regularity. Also, for the first time, we set out a sector analysis based on the volume of M&A and JV transactions, forming part of the 2015 Deal Study. Overleaf is a taster of what the full report offers.



Sector commentary: infrastructure & construction

Infrastructure/construction appears in the top three sectors for both M&A and JV transactions across the region. The Gulf Cooperation Council countries, in particular, appear to drive this growth, with increased levels of public investment across critical areas of the economy. We see this trend continuing along with growth in related sectors (such as healthcare and education) which are required to satisfy the demands of growing populations across the region.

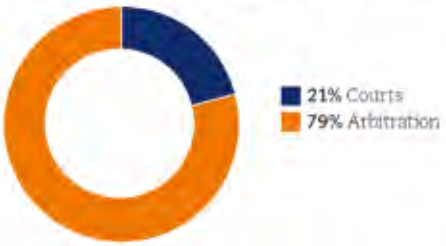
However, whilst healthcare and education generate a lot of interest, the number of quality investment opportunities coming through in the region is still relatively low, which is reflected in our analysis.

M&A: forum and choice of law

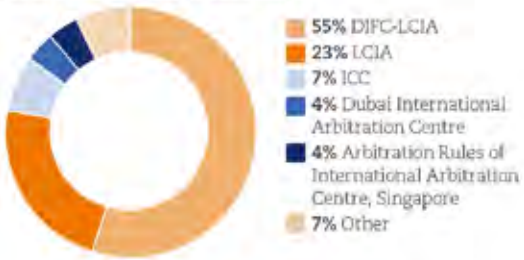
Choosing a forum for disputes and a law to govern the acquisition agreement can be one of the most critical parts. It will define how a claim for breach of contract is assessed and where it can be enforced.

In the deals reviewed, there was a clear shift in preference to the use of arbitration being chosen as the forum for dispute resolution as opposed to courts (79 percent of M&A deals used arbitration over courts as the chosen forum for dispute resolution, up from 59 percent in the last deal study).

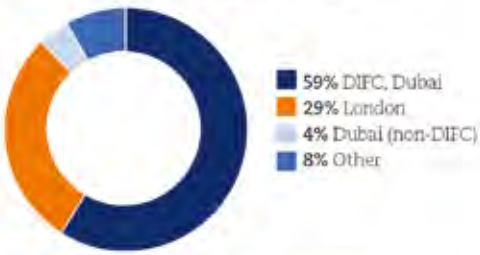
What was the preferred forum for disputes?



Which were the preferred arbitration rules chosen to govern arbitration proceedings?

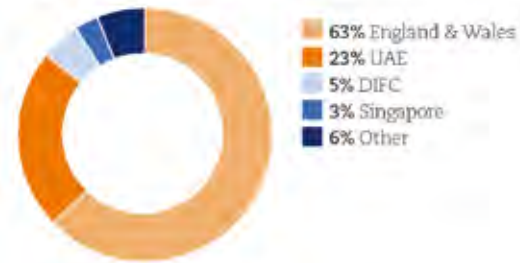


Which was the preferred seat of arbitration?



Of the deals where litigation in court was the chosen forum for disputes, the following courts were specified:

Which was the most popular choice of law to govern the sales and purchase agreement?



By Philip O'Riordan and Ross Barfoot, ***Clyde & Co***

This is in line with global trends in international contracts. It probably arises from a number of factors including: lack of confidence of either party 'playing away' in the other courts (but note it is less of a factor when considering the courts of England and Wales and DIFC (which are seen as international)); a wish for confidentiality in arbitration rather than public court proceedings; and easier cross border enforcement of awards as opposed to enforcement of judgments.

JVs: Forum and choice of law

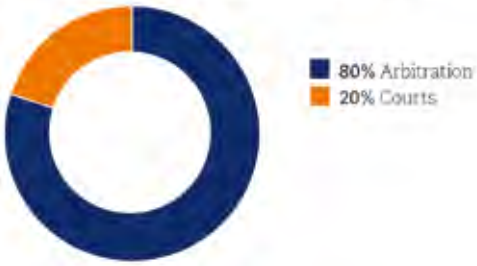
A fundamental element of any JV agreement is the law which the parties choose to govern it, and where disputes are to be heard. This is what gives 'teeth' to the JV agreement, and the parties will want certainty both that the JV agreement will be interpreted as the parties intend it to be, and that awards will be enforceable in the intended jurisdictions as chosen by the parties.

The clear favourite governing law chosen in the JV agreements reviewed was English law, and the most popular dispute resolution process was arbitration in the DIFC.

59 percent of all JV agreements reviewed had English law as the governing law, and 80 percent chose arbitration (with nearly half of those specifying the DIFC-LCIA Arbitration Centre).

Since our last deal study, there has been an increase in the use of DIFC-LCIA rules in arbitrations (69 percent up from 47 percent). DIFC-LCIA arbitrations are clearly becoming more established and known to parties in the region in view of the benefits they offer including being well-known rules based on those of LCIA; and generally being seated in DIFC so that the DIFC Courts are the supervisory and enforcement courts, and are generally much more arbitration friendly than courts in the rest of the region.

What was the preferred forum for disputes?



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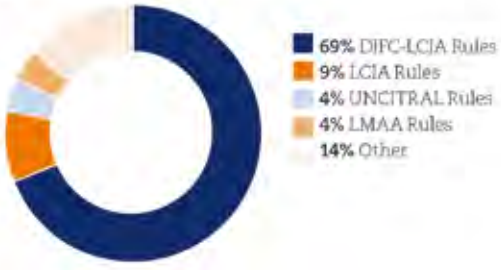
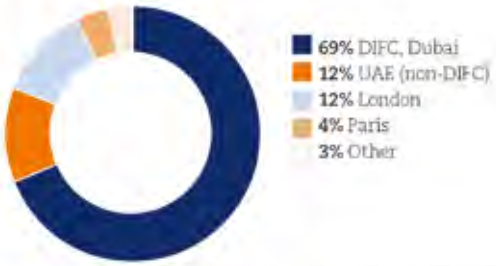
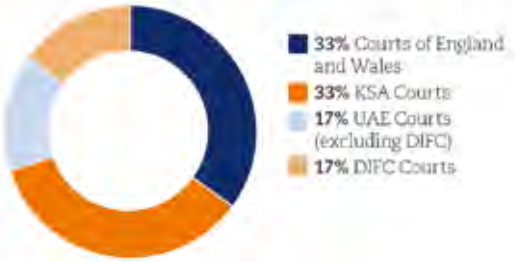


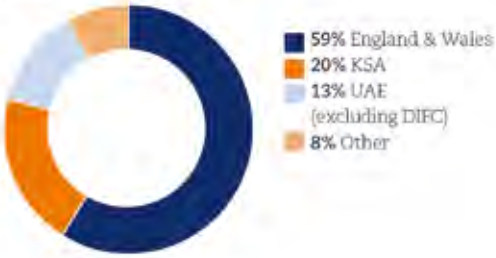
Where was the preferred seat of arbitration?



Of the JVs where litigation in court was the chosen forum for disputes, the following courts were specified:



Which was the most popular choice of law to govern the JV agreement?



Interestingly, there was a significant increase in JVs choosing courts as the preferred forum for dispute resolution (20 percent compared to seven percent in our previous deal study). Local partners may negotiate local courts for dispute resolution and as such, courts may be more advantageous to them. They may prefer to use local language in the court, rather than agree an English language arbitration, and also may prefer to be able to run a case in local courts without the risk of paying the other side's costs if they lose.

For a more in-depth look at these topics, along with our other findings from our M&A and JV studies, please see our full deal summary either at http://www.clydeco.com/firm/news/view/clyde-co-launches-2015-middle-east-deal-study, or by scanning the QR code below. Should you have any queries, please email Philip O'Riordan. We look forward to hearing from you with your own insights and comments.

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The perils for a general counsel

Robin Singh, who currently works for the *UAE government* while enrolled in the IE/ Northwestern LLM programme, points out the perils for general counsel, stating that challenges such as cyber security have made this ever-evolving role ever more complex. By giving a detailed analysis of the issues that may arise, he helps both current and future general counsel foresee the tasks they may need to tackle.

While being general counsel (GC) may have its merits, there are also certain perils that cannot be denied. Due to the sheer number of scandals that have erupted in recent years involving white collar crime and insider trading, along with the stress associated with the economic crisis, the role of the corporate regulations has significantly expanded. A GC serves as a supervisor of sorts to ensure corporate compliance and governance. Consequently, it has become vital to analyse the methods associated with the expansion of the general counsel's role.

The modern role of general counsel — an introduction and background

In order to do that analysis, we must first examine the background associated with the general counsel's role, which traditionally is to advise corporate boards of directors regarding their oversight responsibilities. The goal of such oversight is to ensure the best interest of the company as well as its stakeholders. GCs are also responsible for handling a tremendous assortment of other duties, such as legal cost management, corporate transactions that tend to be highly complex and even ensuring the corporation is in compliance with both federal and state regulations.

When the GC also serves as the chief legal officer for a corporation, he or she is responsible for providing the board of directors with legal advice. This, naturally, can lead to conflicts in which the GC could very well be at risk of being terminated should they provide information or counsel that is not what the board wishes to hear.

The pressures and priorities propelling the actions of general counsel

In survey responses, GCs tend to identify similar operational and business priorities. Most priorities can be tied directly to risk management, cost control, and operational efficiency. At the same time, GCs tend to face a number of significant pressures, including an increasing regulatory environment and compliance challenges.

> "Regardless of who actually owns the risk, the fact is that GCs are responsible for responding to emergencies as they occur"

Robin Singh

By Robin Singh, ***UAE government***

Additionally, GCs must also cope with concerns related to data privacy and data security. Consequently, they must operate in a rapidly evolving world of global change. In light of such increasingly competitive pressures, what GCs want and need tends to be driven by the need to keep costs under control while at the same time working to boost productivity and efficiency.

Working in a world of increasing complexity

Ultimately, the goal of a GC is to determine both the strengths as well as the vulnerabilities of a company, while simultaneously preventing critical issues before they actually occur. In the past few years, the role of GCs has grown extensively to encompass a broad array of other areas, including compliance, regulation, risk and HR. As a result, general counsel must now work in a world of ever-increasing complexity. As companies and organisations continue to become more and more complex, GCs have found it necessary to significantly expand their expertise in an effort to simply keep up with the changes surrounding them.

The debate — who are the owners of enterprise risk?

The question of who is the actual owner of such risk must be posed and has recently been discussed with other
GCs in my class of the IE/Northwestern Executive LLM programme. The amount of risk faced by companies today cannot be denied. A variety of reasons can lead to the sudden cessation of operation, including rogue employees, geopolitical events, and more. Regardless of what the risk may be, it tends to possess some legal aspect. Regardless of who actually owns the risk, the fact is that GCs are responsible for responding to emergencies as they occur. This often results in a firefighter approach in which GCs attempt to forestall crises.

Where does regulatory compliance fit in?

Coping with risk in today's compliance landscape tends to require GCs to stay ahead of problems, while at the same time playing catch up. This is largely due to the fact that GCs may not know from where their next compliance issue will stem. It is not uncommon for regulations to be exported from one area to another.

The cyber challenge

While GCs face a number of significant challenges, among the most significant is that of cyber security. Although the topic of cyber security might at first appear to be far too technical of a problem for general counsel to worry about, the fact remains that the consequences of data privacy are so significant that it should be a concern for the entire company. With a growing global workforce, particularly with an increasing number of people now working from home, the subject of cyber security is one that has grown to epic proportions. Consequently, it has become necessary for GCs to be present any time cyber security issues are addressed, and in all necessary preparations to improve data security.

Moving forward, GCs must play a vital role in helping their organisations remain both legally and ethically compliant, while simultaneously providing necessary legal advice regarding the best strategy for approaching risk.

The thing about …

Recently ASIAN-MENA COUNSEL's Publishing Director Patrick Dransfield, armed with his trusty Leica M2, caught up with Kyle Wombolt, Global Head of Corporate Crime and Investigations of Herbert Smith Freehills, in Hong Kong. Wombolt shared his perceptions of the historical, cultural and legal challenges facing general counsel responsible for operations in China specifically, and Asia generally, from a perspective that encompasses compliance investigations and projects in over 40 countries.

ASIAN-MENA COUNSEL: **You first began working in Asia almost 15 years ago and have seen many changes in the market. How has the legal market developed in that time?**

Kyle Wombolt: There have been a significant number of developments in the multi-jurisdictional white collar space. When I first started working in Asia, the practice area was in its infancy. I simply did not see other lawyers who were doing what I was on a regular basis. What you had in Hong Kong was a handful of criminal and financial services regulatory lawyers who had similar skill sets, but their practices were very localised. The only disputes partners in the region who were focussed on international work were arbitration lawyers, but the majority were focussed on the construction industry. So really in the space of 15 years, we have seen the practice come into existence and begin to develop. I think it's probably still in its infancy, though it has probably grown too quickly and needs to shake out a bit.

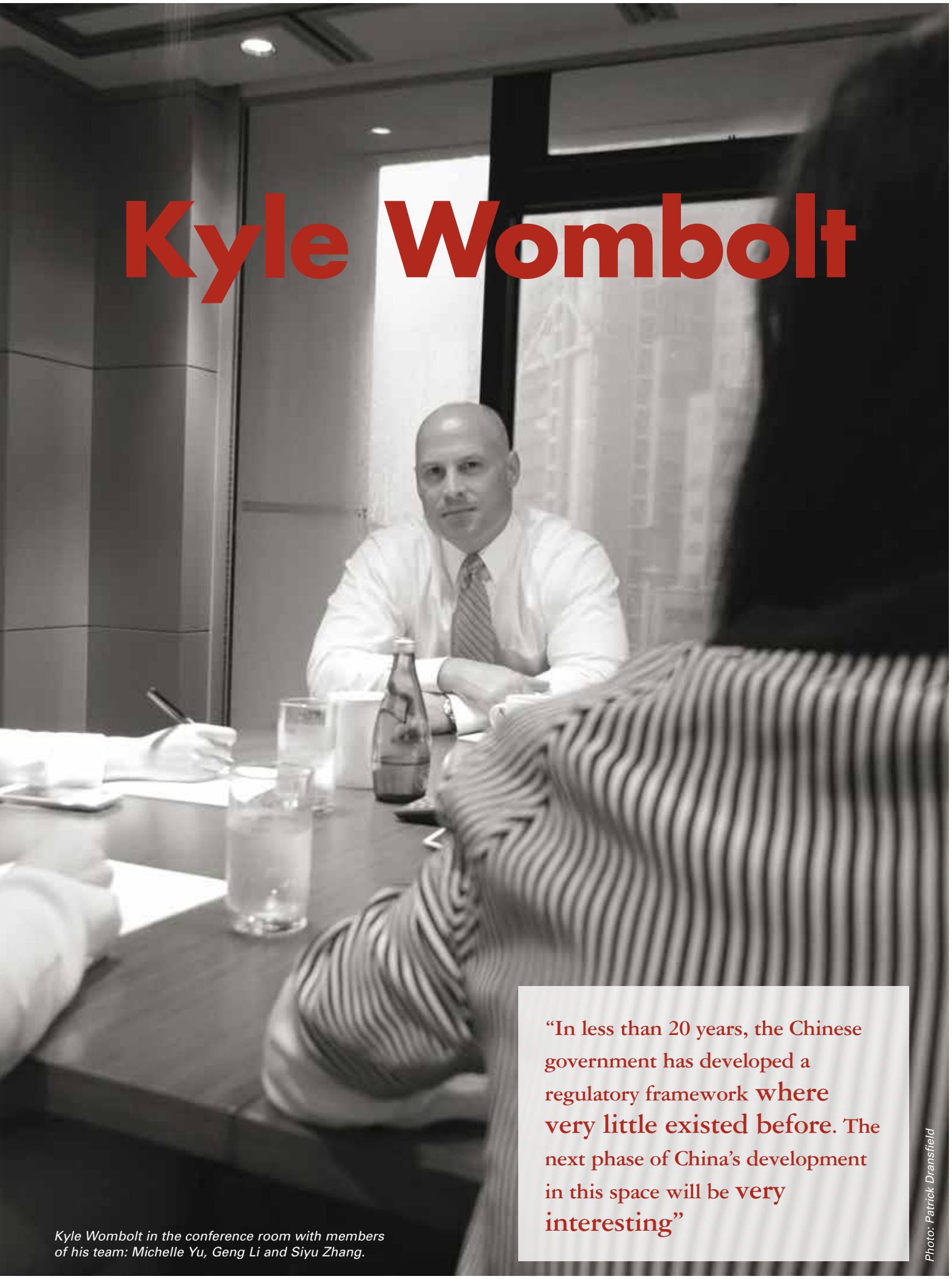
AMC: What led to the development of the market for white collar or corporate crime and investigative work?

KW: Large-scale enforcement actions related to conduct that took place in Asia. These were generally driven by regulators and prosecutors in the US, and they began to significantly increase in number a little more than a decade ago. The primary driver of that growth was probably the enactment of a piece of legislation in the US in 2002 called the Sarbanes-Oxley Act.

AMC: Why was that such a distinctive turning point?

KW: Under Sarbanes-Oxley, any organisation that files reports with the Securities and

Kyle Wombolt



"In less than 20 years, the Chinese government has developed a regulatory framework **where very little existed before.** The next phase of China's development in this space will be **very interesting**"

Kyle Wombolt in the conference room with members of his team: Michelle Yu, Geng Li and Siyu Zhang.

Photo: Patrick Dransfield

Exchange Commission is required to include an assessment of their internal controls in their annual report. In conducting the evaluations necessary to make these assessments, many organisations uncovered violations of the FCPA or federal securities laws at their foreign operations. Some of those organisations, in turn, chose to self-report to the US authorities with the hope of receiving credit for their cooperation. This led to a spike in enforcement actions, particularly FCPA enforcement actions, and increased sensitivity to issues arising across Asian jurisdictions. Around the same time, the US enforcement authorities increased their resources and began to focus on extra-territorial enforcement.

AMC: How has your practice changed and do you think Asia will continue to be a 'hot spot' for corporate investigations?
KW: I think it would be more accurate to say my practice has evolved rather than undergone any significant change. When I first began working over here, the paramount issues almost always involved the application of US law and enforcement by US authorities.

The Asian markets have matured, particularly in the last five years. Today, local regulators and enforcement agencies are every bit as active, and important, as their peers in the US. This is why the large corporate matters are frequently referred to as "multijurisdictional" enforcement actions. You have to be sensitive to different, sometimes inconsistent, rules and the various approaches taken by regulators. It can be very interesting and very complex. Our teams understand this dynamic. I think it's the key factor that distinguishes us from our competitors. We've had a significant regulatory/litigation presence in Asia for more than 30 years. We have unmatched experience in dealing with the local issues that can have a significant impact on any investigation. When you add to this our knowledge of local business cultures, the languages and business practices, this becomes a highly compelling proposition for clients.

AMC: Obviously you experienced first-hand the dramatic changes that China has undergone over the past 15 years. Can you describe some of these developments?
KW: The most dramatic change has been the sheer magnitude of investment and the number of Western companies that have entered this market. China is the hub of Asia – it drives everything about business across Asia including the development and shape of legal practices across the entire region. You often hear comments to the effect that the opening up of China to the world has changed not only China, but also the global economy. The same is true of the corporate crime and white collar spaces. It's also completely changed our practice.

I guess a more practice-specific change has been the evolution of Chinese enforcement agencies. In less than 20 years, the Chinese government has developed a regulatory framework where very little existed before. The next phase of China's development in this space will be very interesting – as the regulatory and enforcement bodies become more sophisticated, will they take an active part in shaping the markets, not just in China, but in regulating the growing number of Chinese companies that are investing offshore? I suspect we will continue to see a lot of change on this front.

AMC: What are the most significant challenges for a Western company operating in China?
KW: The most significant challenge is the fact that the Chinese legal system is still evolving, and evolving rapidly. If you look at how business relationships are defined in a Western jurisdiction, the fundamental basis of the relationship always rests on a legal construct. A contract will define the commercial relationship. This contract is underpinned by the ability of either party to seek redress in court in the event of a disagreement. In other words, the contract governs the relationship.

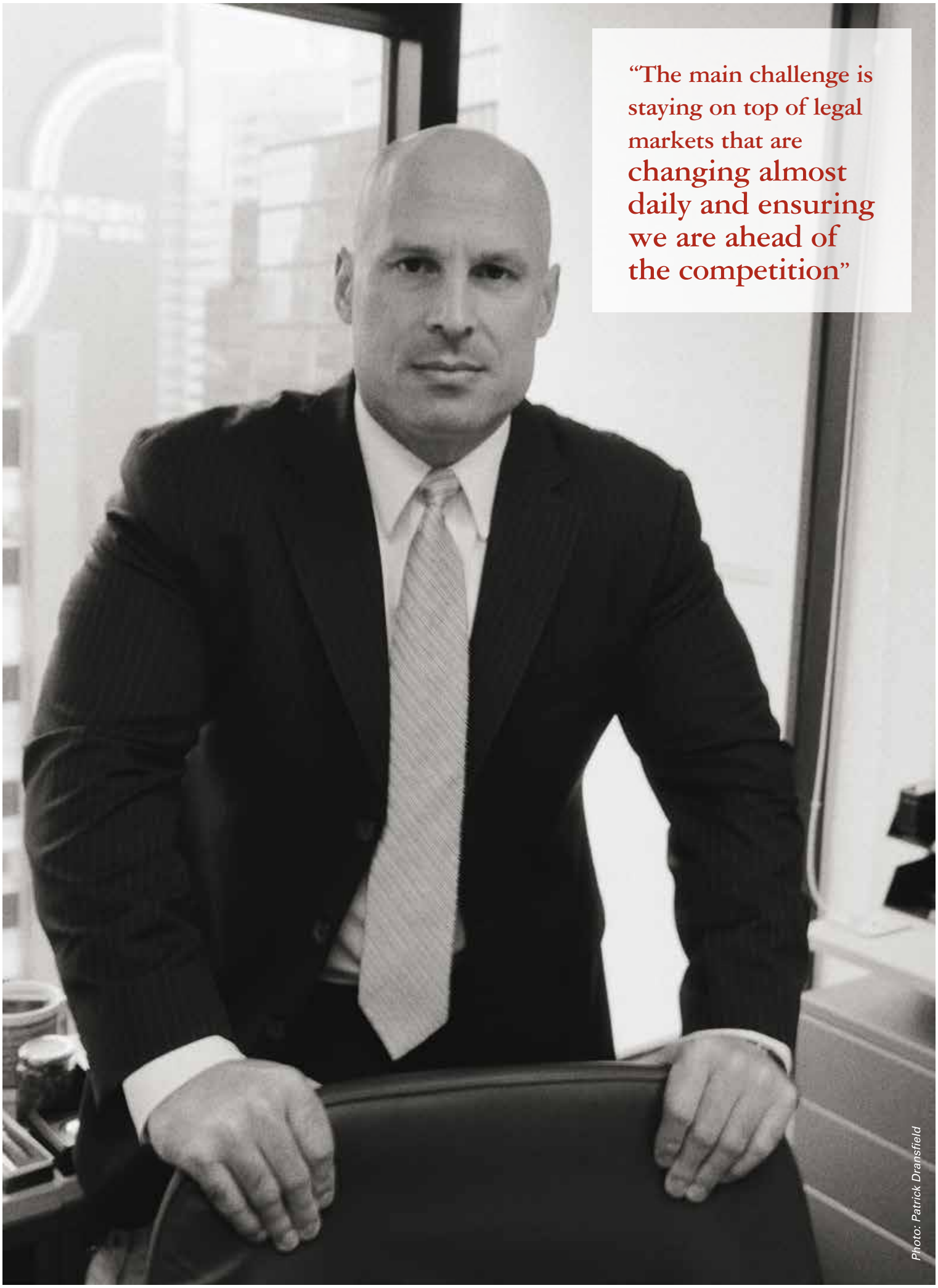
In China, the reverse is often the case. The commercial environment in China does not have a strong historical legal foundation. Rather, it is personal relationships that shape the basis of any commercial relationship. While this is obviously changing, the historical emphasis upon a personal, as opposed to a legal or contractual relationship, remains deeply ingrained. It can also present some challenges. Specifically, the need to maintain or develop strong personal relationships often gives rise to the desire to provide individualised benefits to employees of an organisation. This clearly has the potential to create issues with Western anti-corruption laws.

The most deep-seated challenge, however, remains cultural differences, in particular the language barrier. The majority of the issues we deal with on a daily basis arise or otherwise develop because the language difference has led to a failure to adequately communicate.

AMC: What was the strategic thinking for Herbert Smith Freehills to make you the Global Head of Corporate Crime and Investigations in Asia?
KW: I'm not sure that there was any real strategic thinking to it. I was already based in Asia at the time I was named the Global Head of the practice.

But on a more serious note, I do think one of the key factors that makes our offering so unique is the fact that most of us have been working in Asia for many years. This is important for a number of reasons. To be successful in this space, you need to have a full appreciation of how local issues could potentially impact a large corporate investigation. This means being able to manage a situation involving multiple local jurisdictions and authorities, as well as US, UK or other foreign agencies, while being sensitive to the demands of local authorities and the rules that they will expect you to apply. Having a team that understands those challenges is obviously the key. Failure to appreciate the fundamental importance of this issue can complicate the investigation and hamper your ability to gather information. Worse still, it may expose your client to local enforcement action and liability.

AMC: What challenges do you face in managing a team and clients that are spread around the world?
KW: The main challenge is staying on top of legal markets that are changing almost daily and ensuring we are ahead of the competition. I spend a lot of time travelling, but that is important when you are running a global practice. More broadly, the critical challenge is for us is to build our presence in the US where we are still relatively new to the market. The US enforcement authorities remain the most


"The main challenge is staying on top of legal markets that are changing almost daily and ensuring we are ahead of the competition"
Photo: Patrick Dransfield

aggressive in the world and expanding our US offering is one of my key strategic goals for the coming year.

AMC: During one of your workshops with in-house counsel you mentioned that many countries that are low on Transparency International's Corruption Perceptions Index have also been the headquarters of companies that have been subject to some notable anti-corruption enforcement actions. I think you went on to say that a country that scores well on the Corruption Perceptions Index does not necessarily have a comparably low percentage of its citizens paying bribes. Would you care to elucidate on this point as a it does rather turn perceived wisdom on its head?

KW: This is an interesting issue and something I have discussed at a number of conferences over the past few years. The Transparency International Corruption Perception Index is a 'heat map' that identifies countries with perceived high levels of corruption. If you look at the index, most Asian jurisdictions, with the exception of Japan, Hong Kong and Singapore, have perceived high levels of corruption, while Western Europe and North America are generally perceived to have much lower levels. My key point is that the people allegedly paying the bribes in the Asian jurisdictions are not necessarily domiciled, or citizens of the country where the bribes are paid. All you have to do is look at the body of settled FCPA enforcement actions – the defendants are almost exclusively US and European corporates. So when you hear talk about perceived levels of corruption in a jurisdiction, in particular in situations involving corporate 'supply side' corruption, it is important to remember that the bribe payers in those cases are not always local citizens, but rather expatriate employees of Western organisations.

AMC: Given the market development in Asia in recent years has the role of in-house counsel changed? Specifically, does Asia present particular challenges for in-house lawyers?

KW: The short answer is "yes". The biggest challenge that I see regional GCs facing is the problem of often having very limited resources but being required to cover vast geographical areas, often at a time when their organisation is in expansion mode. There are some remarkable similarities to what we saw with the tech companies in Silicon Valley during the technology boom 16 to 17 years ago. You often had one person in the GC's office who was responsible for designing, implementing and running the legal department of a rapidly growing global organisation with only a few other people to assist. It was unbelievable – beyond the capability of even the most talented lawyer. I think that being a GC is Asia is probably the most challenging role that one can think of, regardless of the industry - whether it be in financial services, energy, consumer goods or manufacturing. I have a great deal of respect for GCs in Asia and the situations they have to manage on a daily basis.

AMC: What plans do you have for the global practice? Do you see future growth turning your attention to Africa or the Middle East, for example?

KW: We will obviously focus on maintaining our market-leading position in Asia. Looking further afield, the UK and European markets are both strong, and very busy for us, while the US remains key to our global strategy. We are one of a handful of UK firms to enter the US and be profitable from a very early stage. We have also been very fortunate in being able to make some targeted, very high quality hires. I expect to see further developments in the US over the coming year and this is an exciting prospect. Africa has traditionally been a strong market for us, and I am optimistic about the future. We run our Francophone practice from Paris while London manages Anglophone Africa. London and Paris often work alongside our Asia practice to advise Asian companies, in particular from China, South Korea and Japan, which are facing issues in Africa. I am bullish about the prospects for Africa in general and see a number of opportunities for us to work with our transactional teams, in particular energy, finance and infrastructure.

AMC: How do you manage your work in order to manage your personal time? How do you counsel your team to ensure they have work life balance?

KW: I don't always do this very well. The last year in particular has been extremely busy and I would have preferred to have spent a little more personal time at home in Hong Kong. On the other hand, it is good to be busy. I am generally more concerned about the team and making sure that they get some time off. The nature of our practice is such that we frequently have high pressure situations where people have been asked to work extremely long hours. I try to make sure we give that back and allow people to have a good balance. We are lucky to have a very talented group of lawyers who are, in my opinion, the best in the business. Naturally we do everything possible to show our appreciation, not only for the effort they put in, but also for the quality of their work.

Kyle Wombolt is the Global Head of Corporate Crime and Investigations at Herbert Smith Freehills. Based in Hong Kong, he has 15 years of experience in Asia and has led investigations and compliance projects in more than 40 countries worldwide. Wombolt focusses on multi-jurisdictional anti-corruption, regulatory, fraud and accounting investigations, as well as trade and sanctions issues involving multinational and major regional corporates. He has extensive experience in dealing with government agencies and regulators in key jurisdictions in Asia, Europe, Australia and the United States.

Wombolt also has broad range of experience implementing anti-corruption compliance programmes for a broad range of clients, including investment banks and other financial institutions and multinational companies. He regularly advises clients on corruption risks associated with a wide range of transactions, including IPOs, mergers and acquisitions and joint venture relationships.

Wombolt is admitted in Hong Kong, California and New York, and is a registered foreign lawyer in England and Wales. He speaks English and is conversational in Mandarin.

What the doctor ordered

As well as highlighting the importance of teamwork within an in-house team and between the legal team and others within the business, Michele Kythe Lim, Group Head, Legal & Secretarial/ Company Secretary at *IHH Healthcare* discusses what she feels is essential to in-house success, as well as revealing how she motivates and inspires her team and herself. She also points out how now, legal departments need "to work hand-in-hand with the client".

Asian-mena Counsel: **Can you tell us what led to your current role? Briefly as well, can you describe your career trajectory?**
Michele Kythe Lim: I graduated with an LLB (Hons) degree from the University of Wales, Aberystwyth and was called to the degree of the Utter Bar with the Honourable Society of the Middle Temple, United Kingdom in 1992. I was admitted to the High Court of Malaya as an Advocate and Solicitor in 1993 and subsequently became a member of the Malaysian Alliance of Corporate Directors in 2012.

My career started at Messrs, Shook Lin & Bok, one of the largest law firms in Malaysia. This was followed by a seven year stint culminating in my position as Assistant General Manager for the Legal Affairs and Risk Division of Pengurusan Danaharta Nasional Berhad, the national asset management corporation of Malaysia, which was formed to deal with distressed assets following the 1997 Asian financial crisis. I was then headhunted to join Proton Holdings Berhad, the national car company of Malaysia as General Manager and later Chief Legal Counsel, Group Legal, Secretarial and Compliance where I was a member of the senior management team and Group Management Committees overseeing legal advisory/risk, corporate secretarial and compliance issues for the group. I then completed the Senior Management Development Programme of the Harvard Business School in 2009. Afterwards I joined IHH Healthcare Berhad in 2013 as Group Head, Legal & Secretarial/Company Secretary and remain there to this day. IHH is the second largest healthcare group globally by market capitalisation.

> "[Don't] have expectations … take a step back and analyse any situation before giving feedback"

AMC: **How do you add value to your company?**
MKL: My day-to-day work involves reporting to the Managing Director and CEO of IHH and I have a team of eight who report directly to me with functional reporting from the group subsidiaries. The value I add on a daily basis is to ensure that the legal and corporate compliance risks of the group are adequately identified and mitigated against, whilst finding solutions to the business. I firmly believe also in creating an inclusive environment and a motivated team as this will bear fruit in terms of increased productivity.

AMC: **What is the best advice you have been given?**
MKL: I will re-phrase this question to say "how do you work best?", and the answer to that is not to have expectations and to take a step back and analyse any situation before giving feedback. Also, I rely on my instincts.

AMC: **What challenges have you perceived in your current role?**
MKL: I believe the challenge most in-house counsel face is to balance business needs against risk mitigation and to be solutions oriented. I constantly strive to achieve that in the work place. For a growing business that I am in, this also involves understanding the dynamics of the business across different geographies and managing that integration.

AMC: **Can you describe how legal practice has changed as the market has developed and clients have become more sophisticated?**

"I firmly believe … in creating an inclusive environment and a motivated team as this will bear fruit in terms of increased productivity"

Michele Kythe Lim

MKL: Legal practice has evolved to become as dynamic as the businesses it advises. Having been a practising lawyer myself and now a client, I can easily say that clients nowadays are more exacting. Legal practice is now required to be more holistic and proactive. It needs to work hand-in-hand with the client. No more can the firm simply say "here is our advice and this is our bill". Lawyers should equip themselves with other skills aside from the law and not forget to market themselves, as at the end of the day, they are selling a service.

AMC: **Can you describe a typical work day?**
MKL: I start with an hour of brisk walking at 5:30am and am in the office before 9am. Work covers dealing with internal and external stakeholders at any point in time and managing the ongoing projects and daily legal, secretarial and corporate compliance matters. I believe in empowering my team, so teamwork is essential, especially considering the various countries we are present in.

AMC: **Please share with us how you approach external counsel.**
MKL: I believe it is the individual lawyer that counts and not the firm. I also believe that external counsel (however senior you are) need to be approachable and responsive at all times. A business-minded approach to legal issues is also a value add that I look for in external counsel.

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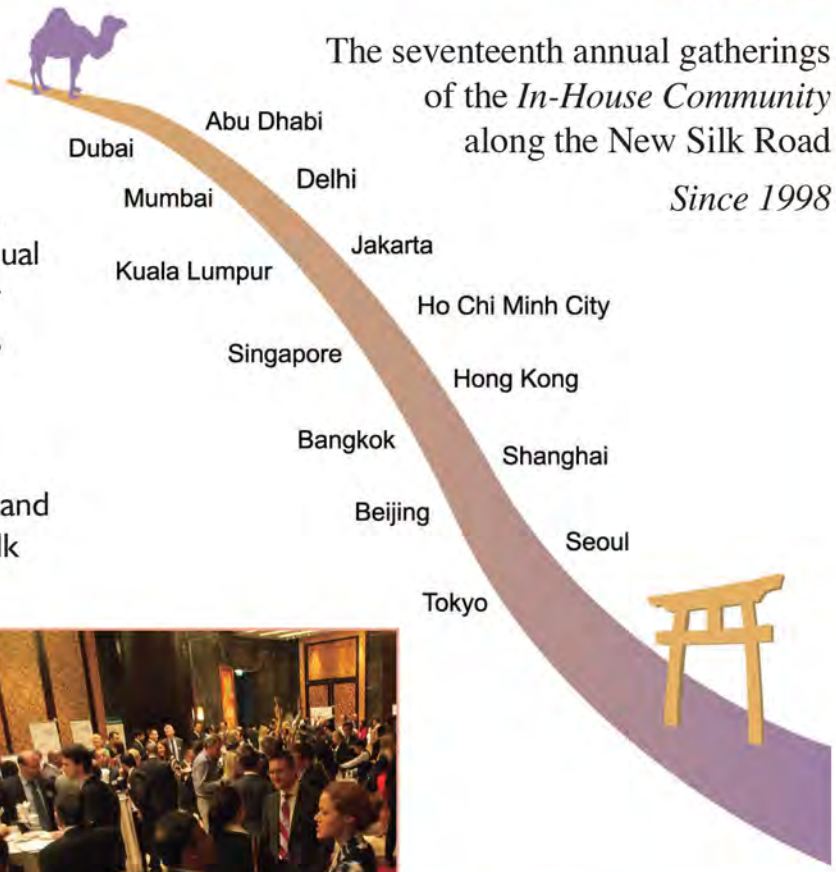

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Vertical agreement: illegal *per se* or the rule of reason? (Part I)

By Blake Yang
杨奕

Illegal per se and the rule of reason are tools commonly used in anti-trust analysis. Chapter 3 (abuse of market dominance) of the Anti-Monopoly Law (AML) of China clearly reflects the rule of reason, while it has always been controversial whether illegal per se exists under the AML. Although Article 13 (horizontal agreement) and Article 14 (vertical agreement) of the AML prohibit certain types of monopolistic agreements, Article 15 has set up a safe harbour to excuse those monopolistic agreements which fall within the scope of Article 13 and Article 14 but at the same time meet certain conditions. This has created a circumstance in which it is inevitable that the rationality of monopolistic agreements is investigated when determining the legality of such agreement. As a result, some scholars opine that illegal per se does not exist under the AML.

Compared with the rule of reason, applying illegal per se brings the following effects: from the perspective of enforcement, the enforcement agencies are able to declare a monopolistic conduct as illegal upon the confirmation of its mere existence without further going into the purpose and consequence thereof and; from the perspective of judiciary, the plaintiff's threshold of evidence will be largely reduced in anti-trust litigation, and it will be no longer helpful for the defendant to submit evidence proving the rationality of its monopolistic conduct. Considering the existence of the safe harbour clause, even though there is illegal per se under the AML, it would only be deemed as a legislative assumption, which can be defeated by Article 15.

Vertical agreement under the AML generally refers to resale price maintenance. Judged from the regulations on the burden of evidence in applicable judicial interpretation, it seems that the rule of reason will apply when determining the legality of a vertical agreement. In the draft of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Dispute Cases Arising from Monopolistic Conduct, Article 7 originally provided that:

> *"The victim who suffered from the activities of monopolistic agreement should bear the burden of producing evidence to prove that the alleged monopolistic agreement restricts or eliminates competition. Where the alleged monopolistic conduct is a monopolistic agreement as described in Article 13.1(1)-(5) and Article 14 (1) and (2), the victim need not prove that such agreement restricts or eliminates competition, unless the monopolistic actor being sued produces evidence to the contrary which suffices to overturn [the assumption]."*

"Judged from the regulations on the burden of evidence in applicable judicial interpretation, it seems that the rule of reason will apply when determining the legality of a vertical agreement"

However, upon the enactment of the Provisions in June 2012, Article 7 is changed to the following:

> *"Where the alleged monopolistic conduct is a monopolistic agreement as described in Article 13.1(1)-(5) of the Anti-Monopoly Law, the defendant shall assume the burden to prove that the agreement does not have the effect of eliminating or restricting competition."*

The underlined content of vertical agreement was deleted. The change indicates that the Supreme Court sees vertical agreement different from horizontal agreement in that the former's existence is not self-incriminating. The plaintiff should still prove that such agreement eliminates or restricts competition. Though the regulation only relates to the burden of evidence, it implies what criterion the Supreme Court applies when determining the legality of vertical agreement. It is regretful that such standard cannot be met by most plaintiffs (usually distributors) in a case involving vertical agreement: first, the plaintiff is at the downstream market, who may have some knowledge about the local distribution market where it is located but usually lacks knowledge of the upstream market of the defendant; second, the market power and capability of the plaintiff are far inferior to those of the defendant, otherwise the defendant will not be able to control the plaintiff through the vertical agreement, which means the plaintiff lacks the ability to analyse the market and collect the data.

纵向协议：本身违法，还是合理原则？（上）

本身违法原则和合理原则是反垄断分析中常用的工具。中国《反垄断法》第三章（滥用市场支配地位）明确体现了合理原则，但是对于《反垄断法》下是否存在本身违法原则一直存在争议。虽然《反垄断法》第十三条（横向协议）、第十四条（纵向协议）禁止某些类型的垄断协议，但在第十五条又确立了“避风港”规则，对虽然符合第十三条、第十四条适用范围但又满足特定条件的垄断协议予以豁免。这就造成了对垄断协议的合法性进行判断时，不可避免要对该协议的合理性进行探讨。因此，有学者认为《反垄断法》没有本身违法原则。

与合理原则相比，适用本身违法原则会产生以下效果：从执法的角度来讲，执法机关只需认定垄断行为的存在就可以认定该行为违法，而无需进一步考察其目的和效果；从司法的角度来讲，反垄断诉讼中原告的举证门槛大幅降低，而被告提供其垄断行为具有合理性的证据将不再有帮助。考虑到避风港条款的存在，《反垄断法》下即使存在本身违法原则，也只能视为一种立法推定，而且该推定可以被第十五条所推翻。

> “从有关司法解释对举证责任的规定看，判断纵向协议的合法性似乎应当适用合理原则”

《反垄断法》下的纵向协议主要指转售价格維持。从有关司法解释对举证责任的规定看，判断纵向协议的合法性似乎应当适用合理原则。在最高人民法院《关于审理因垄断行为引发的民事纠纷案件应用法律若干问题的规定》的草案中，第七条原本规定如下：

> *“垄断协议行为的受害人应对被诉垄断协议具有排除、限制竞争的效果承担举证责任。被诉垄断行为属于反垄断法第十三条第一款第（一）项至第（五）项和第十四条第（一）项、第（二）项规定的情形的，受害人无需对该协议具有排除、限制竞争的效果举证证明，但被诉垄断行为人有相反证据足以推翻的除外。”*

但是，上述《规定》在2012年6月正式实施时，第七条被修改为：

> *“被诉垄断行为属于反垄断法第十三条第一款第（一）项至第（五）项规定的垄断协议的，被告应对该协议不具有排除、限制竞争的效果承担举证责任。”*

下划线标示的纵向协议内容被删除。这一变化表明最高法院认为纵向协议与横向协议不同，其存在本身不足以自证其违法性。原告还应当证明该协议具有排除、限制竞争的效果。虽然该规定只涉及举证责任，但其中暗示了最高法院在考察纵向协议合法性时所适用的标准。遗憾的是，这样的要求对绝大多数纵向协议案件的原告（通常为经销商）来说不可能达到：第一，原告处于被告的下游市场，虽然对其自身所处的本地经销市场有一定认识，但对被告所处的上游市场往往缺乏了解；第二，原告的市场力量和能力远远弱于被告，否则被告不可能通过纵向协议对原告进行控制，这就意味着原告不具有被告那样的市场分析和数据收集能力。

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Highlights of the Companies (Amendment) Act, 2015


By Vineet Aneja and Rohan Jain

The Companies (Amendment) Act, 2015 (Amendment Act), which aims to amend the rigidities of the Companies Act, 2013 (Act), has been notified by the government of India on May 26, 2015 after it received the president's assent. The Amendment Act was passed by Rajya Sabha (the upper house of the parliament of India) on May 13, 2015. It was earlier passed by the Lok Sabha (the lower house of the parliament of India) on December 17, 2014.

Even though the Act enhanced corporate governance and compliance requirements in the interests of the investors, it imposed onerous obligations on companies thereby increasing the costs of doing business. This was seen as a hindrance to the government's move to attract higher levels of foreign investment, especially given the express thrust of the 'Make in India' policy. Hence, the Amendment Act has been introduced in order to facilitate ease of doing business.

Highlights

1. Removal of minimum paid-up capital requirement:

In terms of section 2(68) and 2 (71) of the Act, private and public companies were required to have a minimum paid-up share capital of INR 100,000 and INR 500,000 respectively. The Amendment Act provides for removal of such requirement of minimum paid-up share capital for both public and private companies.

2. Removal of requirements before commencement of business:

The Amendment Act does away with the requirement for filing a declaration by a director of a company regarding minimum paid-up share capital and verification of registered office of a company before commencing any business or exercising any borrowing powers.

3. Related party transactions:

The Amendment Act replaces the requirement of passing a special resolution with that of an ordinary resolution in the case of related party transactions. The amendment shall result in increasing the responsibility and accountability of the board in relation to such transactions. The Amendment Act further does away with the requirement of passing of ordinary resolution for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and has been placed before the shareholders for approval

4. Removal of requirement of common seal:

The Act provided that a body corporate would be required to have a common seal. The Amendment Act now makes such requirement of a common seal optional for the companies, throughout the Act.

5. Audit Committee to approve related party transactions:

The Amendment Act empowers the audit committee to give omnibus approvals for related party transactions on an annual basis in order to remove any barrier for related party transactions.

6. Punishment for acceptance of deposits from public:

The Amendment Act introduces a new provision providing harsh penalties for companies as well as the officers of the companies that accept deposits in contravention of the manner or the conditions prescribed under section 73 or section 76 of the Act.

7. Prohibition of public inspection of board resolutions filed with the registrar of companies:

The Act required the companies to file, with the registrar of companies, inter alia, copy of resolutions passed in pursuance of section 179 (3) which included issues such as issuance of securities, borrowing monies etc. The Amendment Act now prohibits public inspection of such board resolutions as they contain financial strategy and other important information.

8. Prescription of threshold beyond which a fraud shall be reported to the central government:

The Act prescribed for reporting of all kinds of frauds by auditors to the central government. Now, provisions are introduced by the Amendment Act, wherein a fraud shall be reported by the auditors to the central government involving amounts beyond the prescribed threshold. Further, frauds below such prescribed threshold shall be reported to the audit committee or to the board and shall be disclosed in the board's report.

Conclusion

Even though the Amendment Act does away with certain rigidities, there are still certain provisions which can be amended/ removed, as they do not serve the intended purpose of the Act. In this regard, the government intends to setup a broad-based committee to further review the areas under the Act where amendments can be brought in so as to meet corporate demands and to remove discrepancies.

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Negative investment list vs. cabotage principle


By Stephen Igor Warokka and Shafira Nindya Putri

In furtherance of Indonesia's commitment to welcome the implementation of the ASEAN Economic Community (AEC) in 2015, Presidential Regulation No. 39 of 2014 regarding the list of business fields closed to investment and business fields open, with conditions, to investment (2014 DNI) continues to treat foreign investors from ASEAN countries differently to investors from other countries. This was also true of the previous negative investment list under Presidential Regulation No. 36 of 2010 (2010 DNI).

Both the 2014 DNI and its predecessor allow investors from ASEAN countries to hold up to 60 percent share ownership in Indonesian shipping companies engaged in sea transportation business activities with foreign routes. Supposedly bringing a breath of fresh air to Indonesia's investment climate, this provision, bearing in mind the prevailing laws and regulations in the field of shipping, begs one question: how effectively is it being implemented?

> "In practice, there is yet to be a successful registration of a vessel owned by a shipping joint venture with more than 49 percent foreign ownership"

Cabotage principle

Indonesia's shipping regime has upheld the cabotage principle since 2005 through Presidential Instruction No. 5 of 2005 regarding the empowerment of the national shipping industry. This principle was further incorporated into Law No. 17 of 2008 regarding shipping (Shipping Law), in which the cabotage principle was translated as the requirement that sea transportation activities within Indonesian waters only be done by Indonesian-flagged vessels manned by Indonesian crews. To be registered and flagged as Indonesian, the vessels must be owned by an Indonesian citizen or an Indonesian shipping company.

Under the Shipping Law, an Indonesian shipping company may be in the form of a joint venture company between an Indonesian person and/or legal entity and a foreign entity, owning at least one Indonesian-flagged vessel measuring at least 5000 gross tonnage. As regulated under Article 158 of the Shipping Law, such a joint venture must be majority owned by the Indonesian person and/or entity. The 2014 DNI, as its predecessors did, specifies that the allowed foreign ownership in a joint venture shipping company may not exceed 49 percent, with the exception, starting with the 2010 DNI, that ASEAN investors may hold up to 60 percent ownership in Indonesian shipping companies engaged in sea transportation business activities with foreign routes.

Vessel registration

Minister of Transportation Regulation No. 13 of 2012 regarding vessel registration and nationality (MOT Reg. 13), which came into effect on February 14, 2012, prescribes that the registration of a vessel may only be carried out by, among others, a joint venture shipping company that is majority owned by an Indonesian person and/or entity.

Practical implications

It is apparent that there is an inconsistency between the limitations on foreign ownership under the 2014 DNI and the existing shipping regulations in Indonesia, particularly the Shipping Law and MOT Reg. 13. An ASEAN investor can submit an application to the Indonesian Capital Investment Coordinating Board (BKPM) to hold 60 percent of shares in the establishment of a shipping joint venture. However, an issue will surface when it comes to the registration of such shipping joint venture's vessel(s). In practice, there is yet to be a successful registration of a vessel owned by a shipping joint venture with more than 49 percent foreign ownership, due to the abovementioned provisions of the Shipping Law and MOT Reg. 13.

Despite the fact that the drafting of the 2014 DNI took into consideration recommendations from the different ministries, the treatment given to investors coming from ASEAN countries in terms of share ownership in an Indonesian shipping company apparently failed to heed the currently applicable requirements and limitations, and it remains to be seen when, or if, MOT Reg. 13 will be amended to accommodate the foreign ownership allowed under the 2014 DNI for ASEAN investors.

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Taxing times ahead?


By Mariette Peters-Goh and Amylia Soraya Aminuddin

The Goods and Services Tax (GST) at the rate of 6 percent was introduced in Malaysia with effect from April 1, 2015.

Introduction

At Malaysia's Budget 2014 on 25 October 2013, the Prime Minister of Malaysia, Dato' Seri Najib Tun Razak announced that the GST will be introduced in Malaysia at the rate of 6 percent. The GST Bill 2014 was passed on April 7, 2014 and the GST Act 2014 (the GST Act) was gazetted on June 19, 2014. It took effect from April 1, 2015.

The GST has replaced the previous sales tax and service tax of 10 percent and 6 percent respectively which, in comparison, were single-stage taxes imposed on domestic consumption of particular taxable goods and services, calculated on an *ad valorem*[1] basis.

The GST implementation is part of the Malaysian government's tax reform programme to enhance the capability, effectiveness and transparency of tax administration and management. The Malaysian government, therefore, proposed a lower rate of 6 percent as opposed to the previous 16 percent of the combined sales tax and service tax.

Understanding GST

The GST is a multi-stage consumption tax which is levied on all taxable supplies of goods and services made by a taxable person in Malaysia in the course or furtherance of any business.

The GST is levied on the supply of goods and services at each stage of the supply chain, from the supply right up to the retail stage of distribution. Although GST is imposed on each stage of the supply chain, it is not part of the cost of the business product, as GST paid on business inputs is claimable.

However, only a registered person may charge and collect GST on the taxable supplies of goods and services made by him. The GST is also imposed on supplies made only by taxpayers who are carrying on commercial activities and not just by any private individual.

Registration for GST

Individuals, sole proprietors and partnerships, amongst others, must register if they fulfil the following conditions, namely that: they make taxable supplies of goods and services; such goods and services are in the course or furtherance of business; such businesses are in Malaysia; and the registrants have a taxable turnover above the threshold of MYR500,000.

Only businesses with an annual turnover of over MYR500,000 are liable to be registered under GST. However, those with a turnover of less than MYR500,000 may apply for voluntary registration. The advantage of registering on a voluntary basis is that such businesses may be entitled to input tax credits[2] for GST on goods or services acquired.

Impact of GST on consumers

A change in the taxation system is bound to cause confusion amongst the consumers as they may face difficulties understanding the impact of GST on them. However, the greatest concern about the implementation of GST would be the effect of pricing on consumers. Based on the GST model in Malaysia, such effects are minimal. This is due to the fact that basic supplies and essential food items are zero-rated while public amenities will be exempted. Production costs for businesses are also lower since GST paid on input is claimable. Thus, savings that businesses make from input tax credits should be realised in the form of lower prices for goods and services.

In addition, the government has also taken measures to ease the burden on society. The measures taken are, namely, to: provide one-off cash assistance of MYR300 and MYR650 to individuals and households; reduce individual income tax rates by between one percent and three percent; and review the individual income tax structures to ensure a more progressive tax structure which includes increasing the chargeable income, subject to the maximum rate of excess between MYR100,000 and MYR400,000.

Conclusion

Lack of knowledge, misunderstanding and confusion regarding the scope and concept of GST are amongst the reasons for negative public perception. Thus, the government is now making an effort to have continuous awareness programmes, in order to better educate the public so as to ensure the smooth implementation of the GST for both businesses and individuals.

Endnotes

1. *Ad valorem* tax is a tax imposed on the value of property – the difference between the price of the commodity before taxes and the cost of its production.
2. *Input tax credit* is tax input claimable by businesses registered under GST.

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Amendment to the use and protection of credit information

By Ye-Na Kim

The Use and Protection of Credit Information Act (the Act) was recently amended and is scheduled to take effect on September 12, 2015. Accordingly, companies that are subject to the Act should take particular care in establishing and maintaining a system of processing, handling and managing personal credit information (CI) to remain compliant under the amended Act. While the Act contains a number of far-reaching amendments, the provisions with the most significant impacts – with the focus on the newly created provisions – are summarised below.

1. Heightened obligation to protect CI The amended Act provides stricter control on the outsourcing of CI processing. If credit bureau companies, public credit registries or CI providers/users (e.g., financial institutions) outsource CI processing to a third-party service provider, the company which outsources the CI processing must include in its outsourcing agreement, provisions addressing secure management of the CI, training of the staff of the third-party service provider handling CI and processing of the CI to prevent personal CI from being compromised. The act also severely limits the third-party service provider from subcontracting the CI processing again (Article 17, Paragraphs 4 to 7) and requires that the CI providers/users that are larger than the threshold size designate a director-level officer to the position of the CI manager/custodian. The obligations of a CI manager/custodian are detailed in the Act (Article 20, Paragraphs 3 (proviso), 4 and 5).

Furthermore, the Act limits the period that the CI providers/users can retain personal CI to five years after the conclusion of the applicable commercial transaction. Personal CI of individuals whose commercial transactions have been completed must be segregated from personal CI of individuals whose transactions are ongoing, and the CI providers/users who need (or desire) to use the personal CI of individuals whose commercial transactions have been completed must notify the subject individuals (Article 20-2). Also, in the case of a business transfer, spin-off or merger and acquisition, if the CI providers/users transfer the personal CI in its database to another party, the receiving party is required to segregate and separately manage the personal CI so transferred from the personal CI of individuals who are currently engaged in transactions with the receiving party (Article 32, Paragraph 9).

2. Increase of the owner's control over his or her personal CI: The Act provides that a separate individual consent of the owner of the CI is required in order for a CI provider/user to disclose the owner's personal CI to a third party or a person to obtain the CI from a credit bureau company or public credit registry. Also, when initially obtaining consent for collecting personal information, the consent-seeking company must first inform each individual whether the information for which consent is sought is mandatory or optional. Companies seeking consent may not refuse to provide services to the owner of the CI based on the owner's non-consent to the optional items of personal CI (Article 32). The owner of the CI may request deletion of the personal CI after a certain period if the commercial relationship between the owner of CI and the company receiving CI has been terminated, and upon such request, the CI providers/users must delete the personal CI without delay and notify the the owner of the CI of results (Article 38-3).

3. Stronger ex-post protective measures Any credit bureau company, public credit registry or CI provider/user (collectively, the CI Companies) who disclose or use an individual's personal and confidential information acquired during the course of business for any purpose other than the business purposes, or provide to a third party or use the personal and confidential information with the knowledge that such information was illegally disseminated may be subject to an administrative penalty of up to 3 percent of the company's revenue generated from the relevant business. Any CI Company which allows personal and confidential information to be lost, stolen, leaked, fabricated or damaged due to their failure to establish a security plan for their CI data processing system may be subject to an administrative penalty of up to KRW5 billion (roughly US$5 million) (Article 42-2). Moreover, a person who suffers actual damages due to his/her personal CI being stolen, lost, leaked, fabricated, or damaged due to the CI Company's willful conduct or gross negligence may seek a maximum of treble damages from the CI Company (Articles 43, Paragraphs 2 and 3). The CI Company may be required to pay damages of up to KRW3,000,000 (approximately US$3,000) to those whose personal CI has been leaked, etc. due to the CI Company's willful misconduct or negligence (Article 43-2).

These amendments have strengthened the ex-post protective measures following the leakage of CI and increased the level of punishment and amount of penalty for breach of the obligations related to the information protection (Articles 50 and 52), and thereby reinforced the level of sanctions on the CI leakage.

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UNITED ARAB EMIRATES

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The United Arab Emirates Space Agency and race to Mars

By Darcy Beamer-Downie and Nick Humphrey

With the official launch of the United Arab Emirates Space Agency on May 26, 2015 and as the UAE aspires to launch the probe known as Hope ("al-Amal" or in أمل Arabic) in 2020, we look at the UAE's position under international space law and its development of a space policy.

A very short history of space law

The 1967 Outer Space Treaty provides the basic framework for international space law created at the time of the space race between the USA and the USSR. To ensure that neither nation obtained anything other than a public relations advantage by reaching space and the moon first, it was agreed, in the Outer Space Treaty that there would be no sovereignty in space or other celestial bodies, space would be used for peaceful purposes only and space activities would be for the benefit of all mankind. These three concepts are now considered binding tenants of space law, and there are now 103 nations which are parties to the Outer Space Treaty. The international space law framework was then supplemented by the 1972 Liability Convention and the 1976 Registration Convention.

The early beginnings in the UAE

In 1972, only a year after the creation of the UAE as a nation, the UAE became a member of the International Telecommunications Union. Then, in 1976, the UAE became a party to both the Agreement of the Arab Corporation for Space Communications and the INTELSAT Agreement.

Fast forward to the new millennia, the UAE became an active space-faring nation when on October 21, 2000 the UAE's Thuraya 1 mobile telecommunications satellite was launched. This milestone occurred only a few weeks after the UAE's accession to the Outer Space Treaty, the Liability Convention and the Registration Convention.

Since that time, Thuraya 2 (2003) and Thuraya 3 (2008) were launched followed by EIAST's DubaiSat-1 (2009) and DubaiSat-2 (2013) and Al Yah Satellite 's Y1A (2011) and Y1B (2012).

A vision to be a leading space nation

In 2014, the UAE took the essential step towards becoming a space sector leader with the establishment of the UAE Space Agency pursuant to Federal Decree No. 1 of 2014. The new law envisages a mixed function for the agency as both the regulator of the space sector and the facilitator of growth, investment, research and education.

One of the first and foremost tasks of the UAE Space Agency is to set its space policy which is to be aligned with the UAE's commitments under international space law. We are currently in discussions with the UAE Space Agency on a new domestic space law which is expected to be drafted in 2015.

> "We are currently in discussions with the UAE Space Agency on a new domestic space law which is expected to be drafted in 2015"

The UAE is well placed to meet its space challenges as it has evolved to be a model jurisdiction to invest, do business in and innovate. This has been demonstrated by the evolution of the UAE from an oil and gas dependant country to a highly diversified economy and leader in the retail, tourism and aerospace sectors. In the past 15 years, the UAE has created a business environment that allows 100 percent foreign ownership within its off-shore freezones, including the innovative financial markets, legal systems and courts within the Dubai International Financial Centre and those planned for the Abu Dhabi Global Market which will be based on English common law.

As the UAE continues to enhance and develop its regulatory framework, to attract foreign investment and the brightest and best human capital in general, there should also be particular collateral benefits to the growth and evolution of the UAE space industry.

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Vietnam approves new decree on PPP investment form

By Nguyen Kim Trang

On February 14, 2015, the government of Vietnam enacted Decree No. 15/2015/ND-CP (Decree 15) regulating the investment in the form of public-private partnership (PPP) that took effect on April 10, 2015 and replaced Decree No. 108/2009/ND-CP of the government, dated November 27, 2009, on investment in the forms of BOT (Build – Operate – Transfer), BTO (Build – Transfer – Operate) and BT (Build – Transfer) contracts (as amended by Decree No. 24/2011/ND-CP dated April 5, 2011); and Decision No. 71/2010/QD-TTg of the Prime Minister, dated November 9, 2010, issuing the trial regulations on investment in the PPP form.

Project contract types: PPP is an investment form implemented on the basis of contract between the authorised state agency and the investor, project enterprise to implement, manage, and operate infrastructure project or provide public services. Such contracts may include not only the BOT, BTO and BT contracts, but also BOO (Build – Own – Operate), BTL (Build – Transfer – Lease), BLT (Build – Lease – Transfer), O&M (Operate – Manage) contracts. Other similar contracts may be proposed by the authorised state agency and decided by the Prime Minister under Decree 15.

Applicable Investments sectors: Investment sectors applicable for PPP comprise projects for construction, renovation, operation, business and management of infrastructure facilities, or provision of public equipment or services, including:

(i) Transportation infrastructure facilities and related services;
(ii) Lighting systems; clean water supply systems; water drainage systems; waste water, waste collection and treatment systems; social housing; resettlement housing; cemeteries;
(iii) Power plants, power transmission lines;
(iv) Infrastructure facilities for healthcare, education, training, vocational training, culture, sport and related services; working headquarters (offices) of state agencies;
(v) Infrastructure facilities for trade, science and technology, hydrometeorology, economic zones, industrial zones, high-tech zones, and concentrated information technology zones; information technology applications;
(vi) Agricultural and rural infrastructure facilities and development services for connecting production with processing and sale of agricultural products; and
(vii) Other sectors as decided by the Prime Minister.

Eligible PPP projects: Besides the eligible PPP projects as approved and announced by the authorised state agency, the investor/project enterprise may also propose another potential project if such project fully satisfies the following conditions:

(i) Conformity with the regional developmental master plan, the local socio-economic developmental plan and the investment sector as prescribed;
(ii) Conformity with the investment sectors applicable for PPP;
(iii) Be capable of attracting and accessing commercial capital sources, technology and managerial experience of investors as well as of continuous and stable production of products and services which satisfy quality standards and user demand; and
(iv) Total investment capital must be at least VND20 billion, except for certain exceptional projects in accordance with Decree 15.

Required capital contribution: An investor is required to contribute equity and raise other capital sources to implement the project as agreed in the project contract. The required equity rate of the investor must not be less than 15 percent of the total investment capital (excluding the state participating portion), or in case of a project over VND1,500 billion (approx. US$69.76 million), a progressive rate (saying 15 percent of the portion up to VND1,500 billion, and 10 percent of the portion over VND1,500 billion). Decree 15 also contains regulations of sources and use of state investment capital for PPP project implementation.

Selection methods of investor: To implement an approved PPP project, investor/project enterprises will be selected through open tendering or direct appointment. The selected investor shall then take part in the negotiation with the authorised state agency to sign the project contract, or in case an investment registration certificate for the project is required, to first sign an investment agreement in order to confirm the contents of the draft project contract as well as rights and obligations of the contracting parties in conducting licensing procedures for obtainment of such investment registration certificate, and the establishment of the project enterprise, if applicable.

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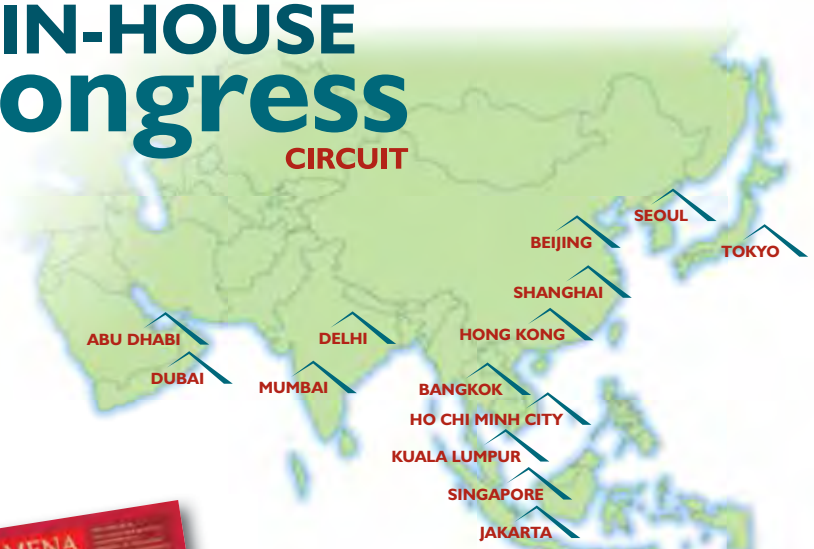

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