

Interview with David D. Doran: Partner and Chairman, DFDL Legal & Tax

By specialist journalist to the region, Robert Bailey, on behalf of Allurentis | Oct 2015



David Doran

(1) DFDL has recently been named “Most innovative ASEAN law firm 2015” by the Financial Times (FT). What do you think distinguishes your practice from other legal firms operating in the region. Can you give some examples of the type of innovations the award alludes to?

Perhaps the key distinguishing factor, and innovation, is our focus on and expertise in the developing and less developed countries in Southeast Asia - what we call frontier markets. Another of our key innovations, as recognised by the FT, was our strategy to first establish offices in several frontier ‘spoke’ markets, building relationships and local expertise, before entering more developed ‘hub’ markets like Thailand and Singapore to better service international clients. Finally, our legal and management structure was from the beginning a corporate structure - which is quite unusual for law firms. This corporate structure allows us greater flexibility and

the decision making authority to adapt to the rapidly changing legal, political and economic environment in the region.

We were also recognised by the FT for a few of our recent innovative finance and energy projects. One which is typical of the leading role we play in opening up frontier markets involved our advice to lenders on the first non-recourse project finance loan in Myanmar. The borrower and developer was Pan Asia Majestic Eagle Limited (PAMEL), a Myanmar registered company. Our client, a consortium of International banks, successfully signed an US\$85 million finance agreement with PAMEL in order to fund the rollout of 1,250 3G telecoms towers for Ooredoo Myanmar (OML).

While the amount was small by project finance standards, the impact the successful deal will have on

encouraging the financing of other projects will be significant. We are now working on a second, much larger and more complicated financing of a power project, which builds on the PAMEL precedent and should serve as a truly transformational project in opening up financing for future energy and infrastructure projects in Myanmar. We were on the frontier of these sorts of transformational matters in Cambodia and Lao PDR and this is what defines the DFDL character and distinguishes us from others in these markets.

(2) You have described DFDL as an international frontier markets firm. How mature do you consider the legal environment to be in Southeast Asia. Is the Rule of Law now firmly embedded in the ASEAN community?

The maturity of the legal markets varies widely among ASEAN members, as do many other factors, so there is no clear answer to this question. In general, I can say that considerable progress has been made over the past 10 to 15 years in the less developed member states of ASEAN. This is due primarily to domestic and international efforts, not ASEAN efforts. While enhancement of the Rule of Law is a key principal for ASEAN, it has not been of substantial focus for the Association, as explained in the article I wrote for this edition. We hope that this will change over the coming years. There's certainly a growing awareness in the less



developed countries in ASEAN that a comprehensive Rule of Law based system is required if they want to move beyond the middle income trap. The accession to the WTO by several member states and the ASEAN Charter by all states in 2007 has certainly led to the rapid implementation of new legal frameworks across the region.

(3) Can foreign firms enter all ASEAN member countries confident that sound global standards of jurisprudence exist?

Jurisprudence is an area of weakness in a number of ASEAN member states. All investors, foreign and local, must be aware of this fact and must ensure their legal arrangements are as solid as possible up front. They

also must be aware that ASEAN is not only diverse in religious belief, ethnicity, culture and economic systems, but also in legal systems and jurisprudence. Local jurisprudence is based on English (common law), French, German, Japanese, Socialist, Islamic (Sharia), and customary traditions. Obviously, jurisprudence is less of a concern in the more developed economies, such as Singapore and Malaysia.

(4) How do you view the protection of intellectual property (IP) rights in the ASEAN area?

All ASEAN member states ratified the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) just prior to the ASEAN Charter in 2007, albeit Lao PDR only as observer to the agreement. This was a significant milestone as it introduced a minimum standard for IP protection across the region. I also understand around 80% of the ASEAN IP Rights Action Plan under the AEC has been implemented and that member states that haven't already done so are working hard to accede to the Patent Cooperation Treaty as well as the Madrid Protocol for trademarks. However, implementation of international and domestic rules can be weak and there's still a long way to go at the enforcement level in some countries. There is certainly a growing awareness of the importance of a solid IP regime for trade, especially as countries become net IP producers.

(5) What have been the principal legal changes since DFDL was formed in 1994?

Probably the most significant legal development in the last 20 years was the accession to the WTO by most ASEAN members in 1995, with the exception of Cambodia, Vietnam and Lao PDR that ratified it more recently. WTO accession required these countries to implement a whole range of new international standard laws and regulations, thereby encouraging them to take immediate large steps towards formation of a

solid legal infrastructure. The ASEAN Charter in 2007 was also an important milestone in that it formalised many of the previous ad hoc agreements and set binding targets for many member states across a range of policy areas.

(6) What contributions has DFDL made to legal development in the region, in the formulation and improvement of legal documentation for example?

DFDL has contributed in two key ways: firstly by providing technical assistance in drafting laws and regulations, secondly by developing precedent for business transactions.

By partnering with the governments of Cambodia, Lao PDR, Myanmar, Thailand, and Vietnam, DFDL utilises its international regulatory expertise and regional experience to help create tailored and ethical regulatory reform measures that account for the unique circumstances in each jurisdiction where we operate. These solutions must also be able to integrate with one another on a regional level in order to help ASEAN nations recognise their economic community integration objectives.

As first movers into the less developed ASEAN countries, much of the legal documentation we have developed over the years continues to be valid precedent for business transactions today, such as contract templates for joint ventures between the public and private spheres as well as contracts for cross-border power projects in the energy sectors of Cambodia, Lao PDR and Vietnam.

(7) What big legal issues remain to be resolved in order to encourage Foreign Direct Investment (FDI) in ASEAN?

There are several factors that need to be addressed to increase FDI in the region. Firstly, establishment of sufficient Rule of Law to facilitate and



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protect investments and provide a stable investment environment. These include initiatives to foster good corporate governance and combat corruption. Secondly, the reduction in non-tariff barriers such as customs fees and inefficient border inspection controls. Thirdly, the reduction and removal of the many foreign ownership restrictions as set out in the ACIA is the key to give substance to the AEC's ambitions of an open and competitive investment community among ASEAN investors. Currently most countries have carved out many foreign ownership restrictions from the liberalisation requirement. This also holds true for the free flow of labour - domestic legislation needs to match the regional vision. Finally, improvement in local judicial systems and enforcement of laws and decisions is required. All these elements increase investor confidence when assessing the region for new operations.

(8) How do you view the prospects for the legal environment following the inauguration of the ASEAN Economic Community (AEC)?

Echoing my response to the previous question, there are substantial legal changes necessary to bring the vision for the AEC into reality. However, with the inception of the AEC planned for the end of this year I expect the business environment to change much more rapidly, in turn bringing much

needed legal reform. This is not necessarily because regional policy makers and domestic law makers will bring change. Rather, once the economic forces of free trade (i.e. free flow of goods at zero tariff, with expedited customs procedures) are truly unleashed within ASEAN, the legal system will be forced to accommodate the more open trading environment. Interaction among ASEAN countries has already increased significantly and it will continue to grow, especially in areas such as logistics.

(9) Is it possible to develop a common law system within ASEAN given its different Muslim, Christian and Buddhist traditions as well as varied colonial experiences?

No. Even if it were possible, I don't think it is either necessary or desirable. First, I don't think there is a strong correlation between any given religious system and the legal systems of the various ASEAN states. Even those states where the populace is primarily Muslim, the prevailing legal system is English (Malaysia) and Dutch (Indonesian) with, of course, Islamic law influences. As highlighted previously, all the countries in the region have their own deep legal traditions. A better approach would be to establish norms of the Rule of Law which should be adhered to by all member states within their own unique legal traditions.

(10) Does DFDL have a strategic direction in ASEAN to develop beyond the Mekong region to countries such as Malaysia, Indonesia and the Philippines?

Absolutely, in fact we are already close to achieving our strategic goals in ASEAN, with our new Philippine focused practice group which works closely with our collaborating firm in the Philippines. With this offering, DFDL covers eight of the ten ASEAN member states (only lacking Malaysia and Brunei). We have also moved beyond Southeast Asia, with a Himalaya Practice Group (Bhutan and Nepal) as well as a Dhaka office that's been open for three years now. DFDL's strategy can be best described as a series of concentric circles, starting with the Mekong Region, moving outward to ASEAN, then frontier Southeast Asia, with the last potential target being frontier markets globally. But of course that will take a lot more time and effort!

(11) What links does DFDL have with the major global legal firms?

We enjoy very good relationships with many global and regional firms that rely upon DFDL's in depth, local experience in Southeast Asian emerging markets. Most global firms don't have the interest, or financial imperative, to establish offices in every developing country and generally only have a presence in the key hubs, such as Singapore and Hong Kong. We also have close relationships with domestic firms in key inbound markets, such as Korea, Japan and China.

(12) China is a growing influence in the development of ASEAN economies. What affiliates does DFDL have in the People's Republic?

As mentioned in my previous response, China is a key inbound market for DFDL – meaning we specifically target Chinese investors in our region. We have close relationships with many Chinese law firms and have worked with them on Chinese investments throughout the region. DFDL also has a dedicated China desk, whose focus is to attract and satisfy our Chinese clients. We also have a number of Chinese lawyers and business development staff on our team. Our multilingual Chinese

and international advisors provide a full range of services to entities operating from inside and outside the Greater China region. As such, we have provided extensive advice for numerous Chinese interests in the region, including China Datang, China International Water & Electric Co., ZTE, China Huaneng Group, China Southern Power Grid, China Power Investment, Sinohydro, China Development Bank, China Exim Bank, and Bank of China.

(13) Is Myanmar the latest development focus for the firm and how is business shaping up there?

Actually, the Philippines is our latest focus. However, DFDL certainly has a renewed focus on Myanmar as our business is growing very rapidly there. Within a year after Myanmar “reopened” for business we grew from just three lawyers to over 20, adding a new office in Naypyidaw. Keep in mind that DFDL and its predecessor has been established in Myanmar since 1995 and have represented various local and multinational companies, government agencies and NGO's on Myanmar matters over the years. As a result, DFDL is recognised as one of the top tier firms operating in Myanmar and we are well placed to share in further prosperity there as industry continues to grow.

(14) What can DFDL contribute to the development of Myanmar's legal system?

The same sort of contributions that we have made to the development of the Cambodian and Lao PDR legal system. We work closely with government on legal reform projects. We develop legal precedents. DFDL has already worked closely with the Myanmar Government on several projects, including the development of the legal and regulatory framework for sector wide power reform, drafting of the implementation rules for the new Electricity Law, and establishment of an autonomous regulatory authority. As such, we have a strong record of contributing to the development of law in Myanmar, and will continue to do so in future.