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MAGAZINE FOR THE **IN-HOUSE COMMUNITY** ALONG THE NEW SILK ROAD | Volume 13 Issue 9, 2016

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Hearing Room

BAC/BIAC Profile

The Beijing Arbitration Commission (BAC), also known as the Beijing International Arbitration Center (BIAC), was established in 1995 as a non-governmental arbitration institution, and became the first self-funded Chinese arbitration institution in 1999. It provides institutional support as an independent and neutral venue for the conduct of domestic and international arbitration and ADR proceedings. It is operated by a Secretariat headed by its Secretary General under the supervision of its Committee. The BAC/BIAC Arbitration Rules 2015 were unveiled on December 4, 2014, and came into force on April 1, 2015. The 2015 rules widely adopt UNCITRAL Arbitration Rules and further accept up-to-date international practice.

BAC/BIAC Growth

* From 7 cases filings in 1995 to over 27,000 case in total by 2015
* 1500+ new filings on average per year since 2005
* 600+ international cases in total
* Parties from various jurisdictions including USA, UK, Germany, Australia, Japan, South Korea, Singapore, Hong Kong and Taiwan, etc.
* The sum in dispute of around 17.6 billion RMB (approx. 2.68 billion USD or 2.46 billion EUR) per year on average since 2011 with a highest claim amount of 10 billion RMB (Approx. 1.52 billion USD or 1.4 billion EUR) in 2015

Recommended BAC/BIAC Model Clause:

All disputes arising from or in connection with this contract shall be submitted to Beijing Arbitration Commission / Beijing International Arbitration Center for arbitration in accordance with its rules of arbitration in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

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Richard Bell is a dispute resolution partner in *Clyde & Co's* Shanghai office. He acts for clients in all areas of dispute resolution and has particular experience in joint venture, property development and infrastructure disputes and disputes arising under franchise, distribution and importer agreements. Bell frequently acts for clients in cross border arbitration proceedings including LCIA, ICC, DIFC/LCIA, DIAC and ad hoc arbitrations. He also assists clients with court proceedings in overseas jurisdictions and has particular experience in dealing with disputes in difficult jurisdictions and emerging markets.

Neil Cuthbert is a banking and finance partner at *Dentons* focussing on project and infrastructure financings. He has been based in Dubai since 2001. He has extensive experience advising banks, governments, borrowers, sponsors and others in project financing transactions covering a wide range industries, including the oil and gas, electricity, water, mining, leisure, transportation and telecommunications industries. He also has a general banking practice that includes advising banks, borrowers and others on a wide range of banking products, including lending, structured finance, derivatives, trade finance, development finance and restructurings.

A graduate of Atma Jaya University of Yogyakarta, **Made Barata** is a litigator and mediator and heads *Mochtar Karuwin Komar's* mediation practice. Barata is a certified mediator and assists clients with employment, litigation and dispute resolution issues.

Bobby C. Manurung graduated from the Faculty of Law of The University of Indonesia in 2008. He holds a licence from the Indonesian Advocates Association (PERADI). His practice areas include commercial litigation, arbitration and dispute resolution. He joined *Mochtar Karuwin Komar in* 2012.

Arkie Tumbelaka graduated from University of Indonesia with a master's degree in 2012. He specialises in dispute resolution, labour and litigation at *Mochtar Karuwin Komar.*

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MOVES

The latest senior legal appointments around Asia and the Middle East

AUSTRALIA


Jacques Jacobs

Norton Rose Fulbright has added insurance lawyer **Jacques Jacobs** as a partner in Sydney. Jacobs was most recently a partner at DLA Piper in Sydney. He previously worked at DLA's legacy firm Phillips Fox in Australia and New Zealand. His experience spans insurance advice and product development, as well as managing contentious claims. He has a history advising on complex coverage issues with a particular focus on directors' and officers', warranty and indemnity, management liability and financial institutions claims. Jacobs also regularly acts on professional indemnity claims focusing on finance professionals, such as accountants, financial planners and mortgage, stock and insurance brokers.

Hogan Lovells has expanded its operations in Australia with the appointment of **Andrew Crook** and **Scott Harris.** Crook will be joining from Gilbert & Tobin, where he has been a partner in Sydney. He has outstanding international experience, having worked in New Zealand with Russell McVeagh, in Singapore with Freshfields Bruckhaus Deringer and in London with Skadden Arps Meagher & Flom. Crook is a private equity specialist but also has extensive experience in mergers and strategic investments and divestments, including transactions covering multiple jurisdictions. His practice also includes equity capital market transactions, financial restructurings and reorganisations. He is English and Australian qualified. On the other hand, Harris will be joining from DLA Piper in Sydney, where he has been the head of its restructuring group in Australia. He also has outstanding international experience, having worked for Hogan Lovells in London for over 5 years before returning to Sydney to join Henry Davis York as a senior associate and, subsequently, DLA Piper as a partner in 2009. His practice is both contentious and non-contentious. His specific areas of expertise include workouts, debt restructuring, asset management and security enforcement for financial institutions and advising on special situations opportunities (including asset acquisition/loan to own) through deeds of company arrangement or schemes of arrangement. Harris advises financial and non-financial institutions, insolvency practitioners, corporations and governments in relation to all aspects of insolvency, including the formal appointment of receivers, administrators and liquidators. Since his time at Hogan Lovells, he has also continued to advise clients in relation to regulatory investigations and commercial litigation matters. In addition to having led the restructuring group at DLA Piper, Harris has also been the relationship partner for Westpac and the deputy relationship partner for HSBC. He is Australian qualified.

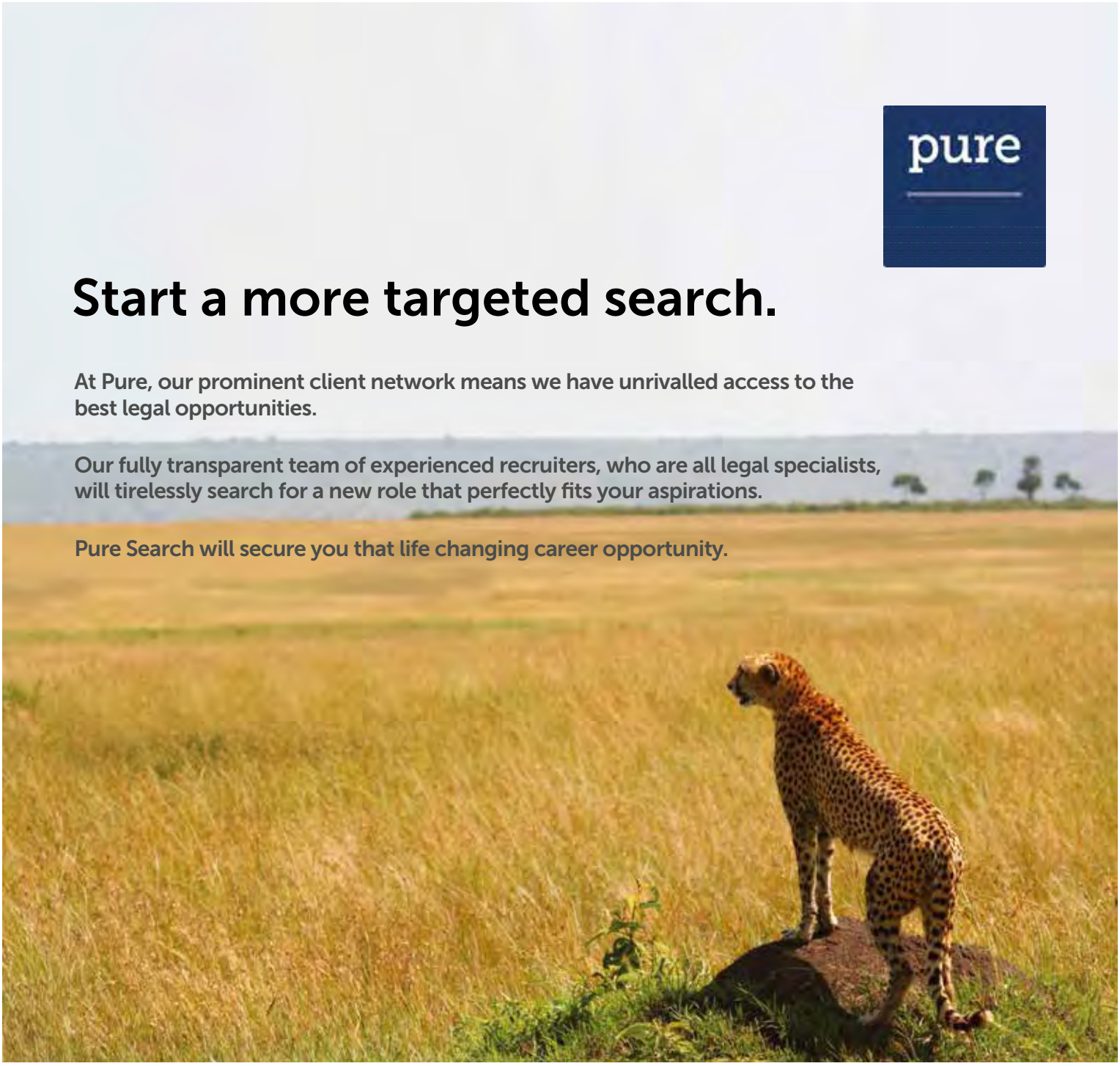
CHINA


Chi T Steve Kwok

Skadden, Arps, Slate, Meagher & Flom has added **Chi T Steve Kwok,** former resident legal adviser for the US Department of Justice (DoJ) at the US Embassy in Beijing, as a partner in the Hong Kong office. Kwok's practice will focus on internal investigations, US regulatory enforcement matters and trial and appellate litigation in US federal and state courts. As the US DoJ's attaché in China from November 2013 to January 2016, he represented the US in discussions with Chinese law enforcement authorities on criminal matters, particularly corruption, money laundering and fraud cases. He has lectured on cross-border joint investigations and American criminal procedure before Chinese officials and defense attorneys. Kwok was awarded the US State Department's Meritorious Honor Award in 2015 for his work advancing the rule of law, civil society and good governance in the PRC. From 2007 to 2013, he served as assistant US attorney in the Southern District of New York. He was a member of the Securities and Commodities Fraud Task Force and the Organized Crime Unit where he secured racketeering convictions against organized crime leaders and corrupt union officials. Kwok graduated summa cum laude in 1999 from Princeton University's Woodrow Wilson School of Public and International Affairs and in 2002 from Yale Law School, where he was executive editor of the Yale Law Journal. He served as a law clerk at the US Supreme Court (2003-04) and the US Court of Appeals for the Ninth Circuit (2002-03). Born in Hong Kong, Kwok reads and writes Chinese and speaks fluent Mandarin and Cantonese.


Leiming Chen

Ant Financial Services Group has appointed **Leiming Chen** as global general counsel and senior vice-president, responsible for legal and compliance as well as related risk management. In his new role, Chen will lead a team of over 50 legal and compliance experts that works with Ant Financials domestic and international partners, as well as governments and regulators. He will report directly to Eric Jing, president of Ant Financial. Chen joins from Simpson Thacher & Bartlett where he has been a partner and the head of the China practice with clients which include China's most prestigious companies. Qualified to practise law in New York and Hong Kong, he has extensive experience and expertise in capital markets, M&As, corporate governance and compliance. He received his JD in 1994 from Osgoode Hall Law School, York University, Toronto, Canada and graduated from Hangzhou Teachers College in 1981.



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MOVES

HONG KONG

DLA Piper has added **Wayne Ma** in its Asia real estate team as a partner in the Hong Kong and Shanghai office on 5 April 2016. Ma was previously a partner in Paul Hastings Shanghai office. Prior to moving to Asia, he practiced in New York. Ma has over a decade of experience in Asia with a practice that focuses on cross border real estate transactions, including acquisitions and dispositions of various types of real property, joint ventures, limited recourse and secured financings, private equity and institutional investments and fund formation. He represents multi-national and Chinese investment banks, financial institutions and private equity funds in both inbound and outbound transactions across Asia, Europe and the US.

INDONESIA


Endra Prabawa

Roosdiono & Partners, a member of ZICO Law, has added **Endra Prabawa** as a partner and head of the intellectual property (IP) practice group effective 1 March 2016. Prabawa has a wide array of experience and expertise in his over 16 years of experience handling a variety of IP dispute cases, including protection of patent, trademark, copyright and industrial design. He has advised both foreign and Indonesian clients. He also has extensive trial experience and has argued technical and complex IP issues before the apex courts. Prior to joining the firm, Prabawa was managing partner of Citius Intellectual Property and Eclipse Intellectual Property where he represented clients on all aspects of IP rights protection in Indonesia. He was head of Trademark and Litigation Division at Biro Oktroi Rooseno for seven years and head of Litigation Division at Amroos & Partners for five years. Prabawa received his Bachelor Degree in Law at Parahyangan Catholic University in 1997 and has obtained his Advocate (PERADI) and Registered IP Consultant license. He is also a member of the Asian Patent Attorneys Association Indonesia Group and Indonesian Intellectual Property Association.

SINGAPORE


Gervais Green


Kate Sherrard

Clifford Chance has bolstered its maritime, offshore and project finance offering with the addition of partners **Gervais Green** and **Kate Sherrard** in its Singapore office. Green is expected to start in April whilst Sherrard is expected join the office in September. They will be joining from Norton Rose Fulbright in Singapore. Green is a senior asset finance partner and has advised on a wide range of projects including limited recourse project financings for the offshore oil and gas and shipping sectors for LNG vessels, FPSCO's, FSO's and drilling and productions rigs. On the other hand, Sherrard has nearly 10 years of experience advising on financing and cross-border insolvency and restructuring matters in the shipping and offshore oil and gas sectors in South East Asia.


Matthew Cox

Simmons & Simmons has expanded its financial markets practice in Singapore with the appointment of **Matthew Cox** who joined on 1 April 2016 as a partner, subject to standard regulatory approvals and personal Singapore registration. He joins from Dentons Singapore office where he was managing partner and has accrued over 16 years experience, having spent his career at the firm in banking and finance. He has experience advising on a wide variety of structured trade products, including pre-export finance, advance payment structures, borrowing, supply chain finance, commodity repos and receivables financing. Cox has a particular focus on international structured trade and commodity finance and financings into emerging markets.

Ashurst further enhances its oil and gas capabilities in the Asia-Pacific with the appointment of new partner **Jon Ornolfsson** who will be based in Singapore. He joins from the energy and projects team of Herbert Smith Freehills, having worked in its Singapore, Tokyo and Dubai offices. Ornolfsson has advised a significant number of major energy companies. His experience includes periods of client secondments to the legal teams of INPEX Corp in Tokyo and BP in Dubai. Ornolfsson is re-joining Ashurst, having previously trained and worked in the firms London and Milan offices from 2003 to 2007. He has a broad experience of large scale, cross-border energy and infrastructure matters. Ornolfsson focuses on M&A and project development in the oil & gas (including LNG), power and petrochemical sectors. He practiced in Tokyo for a number of years and has extensive experience advising Japanese clients on outbound energy deals.

UAE


Tom Briggs

Ince & Co has added **Tom Briggs** as partner in its Dubai office. Briggs advises on corporate, finance and commercial law matters, including M&A, primary and secondary fundraisings, private equity, venture capital, joint ventures and project finance. Prior to joining the firm on 13 March 2016, he spent 15 years at Charles Russell Speechlys. For the last three years, he was a partner and head of Commercial/Corporate in the firm's Bahrain office where he was primarily responsible for the development of the corporate, finance and commercial law practice in the Middle East. In 2008, he spent six months as acting general counsel to Gulf Air in Bahrain where he advised on general corporate and commercial law and led a number of aircraft acquisitions, financings and leases.

COMMERCE & INDUSTRY LEGAL ROLES

Taylor Root is currently recruiting for legal positions in the commerce & industry sector across Asia. If you are a lawyer looking for your next opportunity, now is a great time to get in touch.

In-House Commerce & Industry

LEGAL COUNSEL, APAC - HONG KONG

Excellent opportunity for a commercial lawyer to join the APAC team of this established insurance comppany. You will advise on all general commercial contracts, M&A and regulatory work. Insurance background preferred . Fluent Chinese language skills are required.

Ref: 207200 5-8+ years' PQE

LEGAL DIRECTOR - HANGZHOU

This is an exceptional opportunity for an experienced lawyer to join the China team of this leading IT company. You will lead a team and have oversight for legal and regulatory matters for the Greater China region. Relevant in-house experience is desired.

Ref: 207560 10+ years' PQE

LEGAL COUNSEL - SINGAPORE

A rare opportunity has arisen for a lawyer with experience in public private partnerships to join this firm who specialise in the sports industry. You will be exposed to varied and challenging work including project agreements, general commercial contracts and operational matters.

Ref: 204491 3-6+ years' PQE

REGULATORY COUNSEL - SINGAPORE

Excellent opportunity for an experienced lawyer to join the regional team of this leading logistics and supply chain services company. You will provide regulatory counsel and be instrumental in establishing a compliance and investigations framework.

Ref: 205391 8-10+ years' PQE

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DEALS

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

AUSTRALIA

Clayton Utz has advised ASX-listed environment, waste management and industrial service provider **Tox Free Solutions Ltd** in respect of its completed fully underwritten placement to institutional investors to raise gross proceeds of A$20 million (US$15.3m). The institutional placement was undertaken to partly fund the acquisition of 100 percent of the shares in waste management company Worth Corp Pty Ltd. The total cash consideration for the acquisition is A$70 million (US$53.7m0, subject to adjustments. Tox Free is also undertaking a share purchase plan at the same price as the institutional placement to raise a maximum of A$4 million (US$3m). Perth corporate partner **Mark Paganin** led the transaction.

HONG KONG

DLA Piper has advised **Human Health Holdings Ltd,** the largest private healthcare services provider in Hong Kong, in respect of its HK$100 million (US$12.9m) IPO on the KSE. The IPO launch offered approximately 76.7 million shares at an offer price of HK$1.38 (US$0.18) per share and was 668 times oversubscribed. Hong Kong partner Mike Suen led the transaction. **Deacons** acted for **BOCOM International** as the sole sponsor.

King & Wood Mallesons has represented the **joint book-runners** and **joint lead managers** in respect of Hong Kong Airlines Ltds further issue of US$120 million 6.9 percent guaranteed notes due 2019, which are consolidated and form a single series with Hong Kong Airlines US$180 million 6.9 percent guaranteed notes due 2019 issued on 20 January 2016. The notes are issued by Blue Sky Fliers Company Ltd, a wholly-owned subsidiary of Hong Kong Airlines, and are irrevocably and unconditionally guaranteed by Hong Kong Airlines International Holdings Ltd, HKA Group Company Ltd and Hong Kong Airlines. The notes were listed on the HKSE on 31 March 2016. Hong Kong Airlines is a Hong Kong-based full-service network carrier with a network covering 31 cities in Asia Pacific region. Hong Kong partner **Hao Zhou,** supported by partner **Richard Mazzochi,** led the transaction.

Stephenson Harwood has advised **Southwest Securities (HK) Capital Ltd** and **Southwest Securities (HK) Brokerage Ltd** as the sole sponsor and sole global coordinator in respect of a HK$507 million (US$65.4m) spin-off and IPO listing of Get Nice Financial Group Ltd (GNFG) on the main board of the HKSE. Headquartered and based in Hong Kong, GNFG provides a wide range of financial services, including brokerage service, securities margin financing service and corporate finance advisory service. Based on the size of funds raised, the project is the largest for Hong Kong-based securities companies in the last three years. Managing partner **Voon Keat Lai** led the transaction.

Paul Hastings has also represented **Bank of Tianjin,** the only city commercial bank headquartered in Tianjin, in respect of its US$948 million global offering and IPO on the Main Board of the HKSE. BOCI Asia Ltd, ABCI Capital International and CCB International Capital Ltd acted as joint sponsors for the listing which marks the largest Hong Kong IPO by a Chinese bank since Shengjing Banks US$1.5 billion float in December 2014 and the first Hong Kong listing in 2016 to exceed US$500 million. Capital markets partners **Raymond Li, Zhaoyu Ren** and **Edwin Kwok** led the transaction.

INDIA

Latham & Watkins has represented a consortium of Indian state-owned oil and gas companies, namely **Oil India Ltd** (OIL), **Indian Oil Corp Ltd** (IOC) and **Bharat PetroResources Ltd** (BPRL), in respect of the acquisition of participatory shares of the charter capital of Taas-Yuryakh Neftegasodobycha (LLC TYNGD) from LLC RN Upstream (RN), a wholly-owned subsidiary of Rosneft Oil Company, the national oil company of Russia. The acquisition confirms the entry of the Indian companies consortium into the LLC TYNGD joint venture established by Rosneft and BP, as strategic investment in the development of Srednebotuobinskoye field, one of the largest oil and gas condensate fields in East Siberia, continues to gain momentum. Partners **David Blumental** (Hong Kong) and **Mikhail Turetsky** (Moscow), supported by partner **Rajiv Gupta** (Singapore), led the transaction.

Trilegal is advising **Hungama Digital Media Entertainment Private Ltd** in respect of Xiaomi Singapore Pte Ltds investment in Hungama. A leading manufacturer of smart devices (including smartphones) in Asia, Xiaomi will be integrating Hungama's video on demand service with the Mi platform available on smartphones and televisions. Partners **Sridhar Gorthi** and **Kunal Chandra** are leading the transaction. **Cyril Amarchand Mangaldas,** led by partner **Arun Prabhu,** advised **Xiaomi. Khaitan and Co** acted for **Bessemer Venture Partners Trust,** one of Hungamas existing shareholders.
Sullivan & Cromwell is representing **JP Morgan Asset Management (Asia) Inc** (US) in respect of its sale of the India-based onshore fund schemes managed by JP Morgan Asset Management India Private Ltd and the international fund of funds to Edelweiss Asset Management Ltd (India). Corporate partner **Chun Wei** (Hong Kong) and intellectual property partner **Nader A Mousavi** (Palo Alto) are leading the transaction which was announced on 22 March 2016.

NEW ZEALAND

Norton Rose Fulbright has also advised **Objective Corp,** a specialist provider of content, collaboration and process management solutions, in respect of its purchase of 100 percent of the shares in Onstream Systems, a New Zealand-

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Head of Legal & Corporate Secretary (Investment)

Singapore **10-15 PQE**

A well-established private investment house in Singapore is looking for a senior lawyer to head its legal and corporate secretarial functions. You will be responsible for all legal and regulatory matters relating to the company's investments globally, as well as manage all corporate secretarial functions. You should be qualified to the Singapore bar with experience in corporate work. (IHC 13298)

Legal Counsel

Hong Kong **6-10 PQE**

A conglomerate in the business of energy and natural resources is seeking a lawyer with strong M&A experience and knowledge of the HK listing rules gained in private practice or in-house, to focus on acquisition projects. You will focus on regional/international transactions, commercial matters, as well as regulatory and compliance matters related to the listing rules. Cantonese language skills essential. (IHC 13397)

Regional Counsel (Healthcare)

Singapore **5-10 PQE**

A leading regional healthcare service provider is looking for a legal counsel to advise the business on a broad range of matters across several jurisdictions, including joint ventures and acquisitions, as well as general corporate commercial matters. You should have at least 5 years' PQE in both M&A transactional and general commercial work. (IHC 12485)

Senior Legal Counsel

Shanghai **8+ PQE**

A US medical device company is hiring a Senior Legal Counsel in Shanghai. Over 8 years' PQE gained from a top law firm and in-house experience are required. Excellent communication skills in both English and Mandarin are essential for this role. (IHC 13649)

Regional Legal Counsel

Hong Kong **4-8 PQE**

An opportunity to join a well-regarded global insurance company, providing legal support on M&A, regulatory and general commercial matters across Asia. The team is well established and offers a collegiate environment. Mandarin is required. (IHC 13551)

Corporate M&A Counsel (IT)

Singapore **4-7 PQE**

A major US-listed company is seeking a legal counsel who will be supporting the business across the APAC region on a broad range of corporate matters, including M&A, corporate reorganisation, employment, real estate and IP. Good corporate finance experience and strong proficiency in Mandarin are required. (IHC 13257)

Legal Counsel

Taipei **3-6 PQE**

A Fortune 500 Software company is hiring their first legal role to be based in Taipei, covering all legal matters in Taiwan as well as some in Mainland China. 3-6 years' experience gained from a multinational company. Familiar with the IT industry a plus. Good English and Mandarin required. (IHC 13658)

Senior Projects Construction Counsel

Singapore **8-12 PQE**

A major international property company is looking for a senior lawyer to join their team. You will be responsible for advising the business on all construction and project developmental matters across Asia. Experience in advising on real estate construction related issues and drafting construction contracts, as well as some experience on construction related dispute matters required. (IHC 13556)

Legal Counsel - Corporate M&A/Funds Regulatory

Hong Kong **5-10 PQE**

This international financial institution is keen to consider an experienced corporate (private equity) or funds regulatory lawyer to join its Legal Department. This is a unique role encompassing both transactional and regulatory funds. Open to private practice as well as in-house candidates. No languages skills needed. (IHC 13611)

Senior Manager, Internal Investigation

Shangahi **8+ PQE**

A Fortune 500 pharmaceutical company is hiring a senior investigation manager (or associate director level) in Shanghai. Over 8 years of working experience with solid internal investigation gained from a multinational company is required. Bachelor's degree in any disciplines. Good command of English and Mandarin. (IHC 13553)

Corporate Counsel

Beijing **8+ PQE**

A US high-tech company is seeking a Senior Corporate Counsel to join their team. Over 4 years' PQE with international law firm and in-house experience gained from a technology or internet company required. Mandarin is essential. (IHC 13012)

Regulatory Lawyer

Hong Kong **4-8 PQE**

A leading financial institution has a vacancy for a Regulatory Counsel to assist on all regulatory matters. You will work closely with Compliance and General Counsel and provide full support on regulatory changes and developments. Fluency in Cantonese and Mandarin is required. Excellent package on offer. (IHC 13177)

Corporate Legal Counsel

Shanghai **6+ PQE**

A global retail group is looking for an e-Commerce lawyer to join their Shanghai team. Over 8 years' experience gained within in-house or private practice required. Prior experience working with an e-Commerce company or mobile exposure preferred. (IHC 13545)

Legal Product Specialist

Hong Kong **NQ-4 PQE**

A leading information service provider is seeking a Product Specialist to join their Legal Product division. You will be expected to oversee its strategic accounts across the region by providing training and product demos. You must be qualified lawyers with solid business acumen. (IHC 13530)

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DEALS

headquartered company that specialises in the capture, collaboration and manipulation of large documents, complex drawings, maps and plans. Its flagship software Trapeze is operated by more than 2 million users based in over 2,000 global customers. Sydney partners **Iain Laughland** and **Nick Abrahams** led the transaction which was announced on 26 February 2016.

SINGAPORE

Allen & Gledhill advised **Gold Ridge Pte Ltd,** owner of the retail development known as Nex located at 23 Serangoon Central Singapore, in respect of the secured financing facilities of up to S$1 billion (US$743m) and the establishment of a secured multicurrency medium term note programme of up to S$400 million (US$297m). The facilities and the MTN programme were arranged by leading Singapore banks. Partners **Lyn Wee, Serena Choo** and **Daselin Ang** led the transaction.

Rajah & Tann SIngapore has advised **SAC Capital Private Ltd,** a local corporate finance boutique engaged in corporate finance and transactional advisory for IPOs and listed companies, as well as underwriting, share placement, fund raising and Catalist sponsorships, in respect of its acquisition of Canaccord Genuity Singapore Pte Ltd from Canaccord Genuity Group Inc. Canaccord Genuity Singapore is the Singapore arm of Canaccord Genuity Group, which is listed on Toronto and London Stock Exchanges and is a leading independent, full-service financial services firm with operations in two principal segments of the securities industry, namely wealth management and capital markets. Partner **Danny Lim** led the transaction.

Ashurst has advised Dutch pension fund manager **APG Asset Management** as lead investor in respect of the formation of a Singapore-incorporated private investment fund managed by Godrej Properties. Godrej Fund Management, the newly-created real estate fund management arm of Godrej Properties, raised US$275 million from a small club of investors for its new residential investment platform. The platform will invest in FDI-compliant residential real estate projects in India, developed by Godrej Properties as a co-investor alongside the Singapore fund. Corporate (investment funds) counsel **Dean Moroz** and partner **Rob Palmer** led the transaction.

WongPartnership is acting for **Takashimaya Singapore Ltd** in respect of its dispute with Ngee Ann City Development Pte Ltd over the proper construction of the parties agreements for rent review. Senior partner **Alvin Yeo** and partner Lim Wei Lee are leading the transaction.

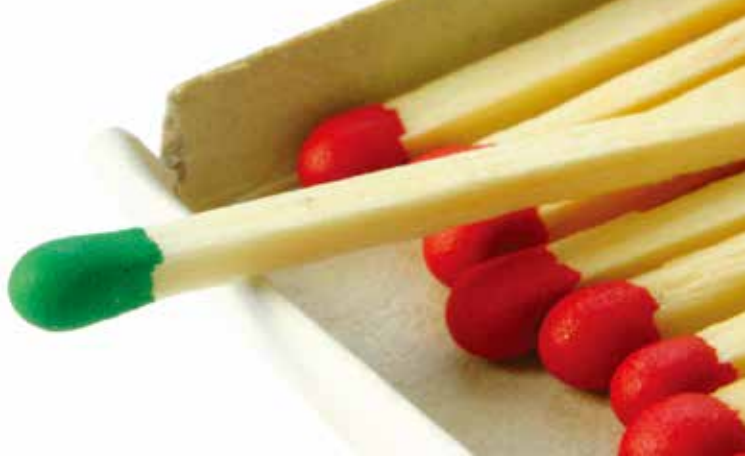
THAILAND

WongPartnership has acted as Singapore counsel to **Berli Jucker Public Company Ltd** (BJPCL) in respect of TCC Group's US$3.5 billion acquisition of Big C Supercenter Public Company Ltd, a hypermarket operator in Thailand with the majority stake owned by the Casino Group, through BJPCL. Managing partner **Ng Wai King** and partners **Annabelle Yip, Audrey Chng** and **Tan Shao Tong** led the transaction.

Thanathip & Partners has advised **Banpu Public Company Ltd,** Thailands largest coal producer, in respect of its proposed fund raising of approximately ฿13 billion (US$369m) via rights offering. Managing partner **Thanathip Phichedvanichok** led the transaction.

Weerawong C&P has represented **Secondary Mortgage Corp,** a state-owned financial institution, in respect of the up to ฿5 billion (US$141.9m) offering secured, securitized and amortized bonds in which Kasikornbank Public Company Ltd and Bank of Ayudhya Public Company Ltd acted as underwriters. Partner **Weerawong Chittmittrapap** led the transaction.

Stand Out With Hughes-Castell



In-house

General Counsel | 10-15 yrs pqe | Beijing REF: 13415/AC

This Global 500 chemical corporation is seeking a General Counsel with strong transactional experience to join its Beijing office. You will provide legal advice to senior management on M&A transactions and risk management issues. You will also be responsible for developing its China legal team. Ideally, you will have 10 – 15 years' PQE in corporate transactions with a sound working knowledge of both China and international law. Working experience in PRC is essential, plus fluent English and Chinese language skills.

Senior Counsel, APAC | 12+ yrs pqe | Hong Kong REF: 13352/AC

Excellent opportunity for a senior corporate/commercial lawyer to take on a regional role at this Fortune 500 pharmaceutical corporation based in Hong Kong, covering its operations throughout JAPAC. You will be responsible for providing advice and support on a wide range of legal issues and commercial transactions including general corporate, distribution arrangements, JVs, product development and technology-related matters. You will have a law degree from a top-tier law school with over 12 years' PQE at a top law firm or at an MNC. Experience at a Fortune 500 biotechnology/pharmaceutical company is essential. You must have excellent legal drafting skills plus fluent English, with additional Asian language (Chinese, Japanese or Korea) being highly desirable.

General Counsel | 10+ yrs pqe | Shanghai REF: 13445/AC

This global healthcare/pharmaceutical company is seeking a proactive lawyer with strong leadership skills to head up its China legal team based in Shanghai. You will be responsible for leading the legal and compliance team to provide advice and support on large projects and its operations in China. Ideally, you have an overseas legal qualification with at least 10 years' experience as a legal head or General Counsel. Proven team management experience and fluent English and Mandarin language skills are mandatory. Previous experience within the healthcare and pharmaceutical industry is highly desirable.

Legal Director | 10+ yrs pqe | Hong Kong REF: 13444/AC

This world-leading electronics manufacturer is seeking an experienced lawyer to head up its legal team in Hong Kong. The role will be responsible for a broad range of regional legal issues including operational/compliance risk, commercial activities, regulatory compliance, IP licensing management and legal documentation. To be successful in this role, you must be Hong Kong qualified with at least 10 years' relevant PQE, 3 of which is ideally gained within Hong Kong-listed companies. Proven experience and solid knowledge of HK listing rules and corporate legal matters with a focus on employment law is a plus. You must be fully bilingual with excellent English and native level Mandarin.

Head of Compliance | 10+ yrs pqe | Singapore REF: 13447/AC

Seize this excellent opportunity to take on a leadership role at a renowned Asia-based Investment management firm, which now seeks a seasoned compliance professional to head and manage their operations in Asia. This position oversees multiple markets in Asia and requires compliance experience in equities trading from buy or sell side at investment banks and wealth management firms. Those with regional experience and existing regulatory relationships are preferred.

Private Practice

Funds Lawyer | 5+ yrs pqe | Beijing/Hong Kong REF: 13441/AC

This Magic Circle firm is seeking a US-qualified Lawyer to join its funds team in either Beijing or Hong Kong. To qualify for the role, you will have experience with private fund formation in private equity, real estate, infrastructure and debt. You ideally are New York qualified with at least 5 years' fund formation experience, preferably gained in a top US law firm. Knowledge of the PE market and relevant deal terms is essential as well as fluent written and oral Chinese skill.

Corporate M&A Lawyer | 3-5 yrs pqe | Singapore REF: 13465/AC

This White shoe law firm is seeking a UK/US qualified Corporate M&A Lawyer to join its growing team in Singapore. The team has a strong energy presence so experience in related industries will be welcome. You must have strong cross-border M&A experience in the UK or US at top-tier global law firm. Candidates with an affinity to the SEA region are preferred.

IPO Associate | 3-5 yrs pqe | Beijing REF: 13425/AC

One of the world's premier US law firms with a strong presence in Asia is now seeking an IPO lawyer. You will be working closely with the leading partner on an impressive client portfolio. Ideally, you are US qualified with IPO experience gained in HK markets at an international law firm. Good understanding of the HK Listing Rules and knowledge of the securities laws and practices are highly desirable. Fluency in English and Chinese, both written and spoken, is essential.

Intellectual Property Lawyer | 2+ yrs pqe | Hong Kong REF: 13468/AC

This international law firm is seeking a driven lawyer to bolster its market-leading IP practice in Hong Kong. This role is a unique chance to join one of the premier names in the field and work with high-profile MNCs on a broad range of IP issues including e-commerce, data protection, IT contracts and associated media work. You must be Hong Kong qualified with at least 2 years' PQE in IP with a top-tier law firm. Fluency in written and spoken English is mandatory, Cantonese and Mandarin are highly desirable.

Dispute Resolution Associate | 1-3 yrs exp | Singapore REF: 13461/AC

One of the world's largest international law firms is seeking a junior lawyer with general dispute resolution experience to join its established Singapore office. You ideally are Singapore qualified with 1-3 years' PQE in commercial dispute resolution with a top-tier law firm. This is an excellent opportunity for a junior DR associate with an interest in expanding their skill sets to include investigations, compliance and arbitration matters.

Banking & Finance Associate | NQ-2 yrs pqe | Hong Kong REF: 13338/AC

Are you a Common Law qualified lawyer with an international outlook? This top global law firm is looking for you. The ideal candidate will have experience in banking and finance issues from top local and/or international law firms. Good team players with client relationship skills and an appreciation of cultural differences are preferred. Must have fluent English and Chinese plus strong communication skills.

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

Beijing In-House Congress

Our fifteenth annual Beijing In-House Congress event, hosted at the Grand Hyatt Beijing on March 17, 2016, brought together over 240 of our community members and co-hosts for a day of practice area workshops, networking and discussion.

The day began with "In-House Lawyering: uncovering the relationship between Quality, Cost and Value", a discussion led by Evangelos Apostolou, Principal, DA Partners (a law practice and member firm of EY global network); involving thoughts from Fengwen Jiang, Senior Vice President-General Counsel and Head of Legal & Integrity China ABB (China) Limited; Edoardo Agamennone, Senior Legal Advisor, EDF; and Ma Jun, VP Legal & Compliance, Volvo (China) Investment Co., Ltd.

This was followed by "Hot topics in Dispute Resolution", which featured Dr Chen Fuyong, Deputy Secretary-General, Beijing Arbitration Commission; Hang Tao, Partner, King & Wood Mallesons; Violet Ho, Senior Managing Director, Investigations & Disputes, Kroll; and was moderated by Patrick Dransfield, Publishing Director, Asian-mena Counsel.

Subsequently, delegates attended workshops on chosen topics, which included, to name a few examples, M&As, anti-corruption, anti-trust, IP litigation and data risks. As well as all those who attended and supported the event, we would like to thank co-hosts Anjie Law Firm; Beijing Arbitration Commission; Clyde & Co; Davis Polk; Debevoise & Plimpton; JunHe Law Offices; King & Wood Mallesons; Kroll; Latham & Watkins; Reed Smith; and Simmons & Simmons, as well as sponsors Hughes-Castell and Taylor Root.

2016 IN-HOUSE Congress BEIJING

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

"Hot topics and great speakers"
– In-House Congress Beijing delegate


Edoardo Agamennone
Senior Legal Advisor
EDF


Yilong Du
Partner
Latham & Watkins


Hui Yung Yung Janet
Partner
JunHe LLP


Dr Shi Jianzhong
Professor
China University of Political Science and Law


Evangelos Apostolou
Principal
DA Partners (a law practice and member firm of the EY global network)


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


Ma Jun
VP Legal & Compliance
Volvo (China) Investment Co., Ltd.


Miranda So
Partner
Davis Polk & Wardwell


William Woo
Partner
Latham & Watkins


Xu Jing
Partner
King & Wood Mallesons


Richard Bell
Partner, Shanghai
Clyde & Co


Michael Fosh
Partner
Reed Smith LLP


Fengwen Jiang
Senior Vice President-General Counsel and Head of Legal & Integrity China
ABB (China) Limited


Wang Zhao George
Partner
JunHe LLP


Ian Wood
Partner
Simmons & Simmons


Howard Zhang
Partner
Davis Polk & Wardwell


Dr Chen Fuyong
Deputy Secretary-General
Beijing Arbitration Commission


Violet Ho
Senior Managing Director, Investigations & Disputes
Kroll


Philip Rohlik
International Counsel
Debevoise & Plimpton


Dequan (Davis) Wang
Partner – Country Head – China
Simmons & Simmons


Wu Qing
Partner
King & Wood Mallesons


Jie Zhang
Partner
Reed Smith LLP


Jeremy Dai
Partner
AnJie Law Firm


Huang Tao
Partner
King & Wood Mallesons


Victor Shen
Chief Legal Officer
Henkel Greater China & Korea


Wei Yingling
Partner
JunHe LLP


Xun Yang
Of Counsel
Simmons & Simmons


Patrick Zheng
Managing Partner, Beijing
Clyde & Co

The JLegal PQE

Personality Questionnaire Experience

This month we talk to Hong Teong, a man with a dark sense of humour and a deep appreciation of good food.

Hong Teong Goh

Senior Legal Counsel
at Louis Dreyfus
Commodities Asia

- What is on your mind at the moment?
  My next holiday and how I am to finish everything before I go!
- Which talent would you most like to have?
  To be able to speak every single language in the universe.
- What is your idea of misery?
  Being trapped.
- What do you most value in your friends?
  Respect.
- If you weren't a lawyer you would be a …
  Food and wine critic.
- What is your most precious possession?
  Time.
- Where were you born?
  Georgetown in Penang, Malaysia.
- Where is the best place you have ever been to?
  Bhutan.
- What do you consider your greatest achievement?
  Having the career that I have so far.
- What is your greatest regret?
  Not moving to Asia sooner. Singapore and the region have an abundance of opportunities to offer and surpasses many other cities/regions.
- What is the strangest thing you have seen?
  Nutscaping.
- What is your motto?
  Mottos are too overly restrictive, don't restrict yourself to them.
- Top 3 favourite movies of all time?
  All movies made by Steve McQueen (the English director, not the American actor).
- What do you consider the most overrated virtue?
  Merit - it is often tainted by bias.
- What is your greatest extravagance?
  Food - I love all sorts of food.
- If you could change one thing about yourself, what would it be?
  Impatience.
- What irritates you?
  Tardiness.
- What would you like to be remembered for?
  My dark sense of humour.

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EVENT REPORT

Ho Chi Minh City In-House Congress

On Thursday April 7, 2016, the In-House Community hosted its annual Ho Chi Minh City In-House Congress at the Lotte Legend Hotel Saigon. Over 100 counsel and corporate decision makers attended and were welcomed by In-House Community Director Tim Gilkison, who highlighted trends in the growth of the in-house role in Vietnam.

This was followed by a panel discussion moderated by In-House Community Co-Director Patrick Dransfield in which he and those accompanying him deliberated over the biggest challenges facing our community there entitled 'A candid and off the record discussion on External Counsel Management, Cost Effectiveness and tried and trusted methods to enhance the reputation of the Legal Department'. Taking part in the discussion were Tom Vaizey, Senior Legal Counsel, Dragon Capital Group; Nguyen Kim Phuong Lan, Head of Legal and Compliance, Toyota Financial Services Vietnam; and Hoang Nguyen Ha Quyen, Partner, LNT & Partners.

Subsequent workshops covered international financing options for Vietnamese corporates, investment laws, enterprise laws, cross-border M&As, FCPA, competition regulations and finally a closing panel asking 'How can outside counsel and their clients work more effectively?'.

We would like to thank our co-hosts Herbert Smith Freehills; Hogan Lovells; Latham & Watkins; LNT & Partners; Russin & Vecchi; and VILAF for helping us make our third annual Ho Chi Minh In-House Congress a success, as well as our community there for their support and attendance.

2016 IN-HOUSE Congress HO CHI MINH CITY

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

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

Nguyen Truc Hien
Ho Chi Minh City
Office Managing
Partner
VILAF

Nguyen Kim Phuong Lan
Head of Legal and
Compliance
Toyota Financial Services
Vietnam

Vo Ha Duyen
Chairperson
VILAF

Hoang Nguyen Ha Quyen
Partner
LNT & Partners

Posit Laohaphan
Partner, Hong Kong,
Global Co-Chair Financial
Institutions Industry Group
Latham & Watkins

Tim Gilkison
Director
In-House Community

Trinh Hoang
Associate, Hong Kong
Latham & Watkins

Nguyen Huu Minh Nhut
Partner
Russin & Vecchi

Khoa Pham
Director of Corporate,
External & Legal Affairs
Microsoft Vietnam

Tom Vaizey
Senior Legal Counsel
Dragon Capital Group

Mark Gillin
Founder, Chairman,
and Managing Director
America Indochina
Management Ltd

Long Huynh
Senior Associate,
Ho Chi Minh City
Hogan Lovells

Eddie O'Shea
Senior Associate,
Ho Chi Minh City
Hogan Lovells

Michael Sturrock
Partner, Singapore,
Vice Chair of Global
Corporate Department
Latham & Watkins

Sesto E Vecchi
Partner
Russin & Vecchi

Kevin B. Hawkins
Partner
VILAF

Quynh-Anh Lam
Counsel, Hanoi
Hogan Lovells

Jeff Olson
Partner,
Ho Chi Minh City
Hogan Lovells

Ha Thi Thanh Binh
Associate
Russin & Vecchi

Kyle Wombolt
Global Head of Corporate
Crime & Investigations,
Partner, Hong Kong
Herbert Smith Freehills

"a great opportunity to expand my in-house network, gain knowledge and create a bridge between in-house counsel and external lawyers"

– In-House Congress Ho Chi Minh City delegate

APAC Legal Director (10+ PQE), Singapore

Our client, a publicly-listed US MNC and global leader in healthcare services, is looking for an M&A lawyer with regional experience in APAC. You will be the deal lawyer for their business initiatives in APAC, with special emphasis on joint ventures, acquisitions, foreign investments, strategic alliances and business development. You will also provide legal support for day-to-day matters and counsel on compliance and licensing matters. Experience working with US MNCs, or in the healthcare industry or other highly regulated industries would be advantageous. Fluency in working Mandarin and/or Malay is preferred. [A39820]

Data Privacy Manager (8-13 PQE), Singapore

A leading provider of IT and consulting services seeks a compliance counsel, to be responsible for data privacy issues in the APAC region. The role will focus on providing subject matter expertise and support to both corporate functions globally and to APAC regional business in respect of data privacy, data security, legal compliance, risk management and privacy by design. The successful candidate should have extensive experience with data privacy, legal compliance and good working knowledge of ICT with the ability to work directly with technology and software personnel. Strong communication skills and excellent analytical and organisational ability also required. [A40351]

Regional Attorney (7-8 PQE), Singapore

A global reinsurer seeks a mid-level lawyer to join its regional office. Duties include managing legal, regulatory & compliance issues relating to the company's operations in South East Asia and advising on reinsurance and general insurance contracts and claims. The ideal candidate should be a qualified lawyer from any SEA country and have experience in insurance matters. [A40504]

Legal Counsel (5+ PQE), Singapore

Our client, a Japanese conglomerate, is looking to hire a Singapore-qualified lawyer. The role entails reviewing agreements relating to international trading, sale and purchase of commodities, and general corporate work. Candidates should have good corporate commercial experience, practised at top-tier firms and not job-hopped too much. [A39847]

Legal & Compliance Officer (3-4 PQE), Singapore

Join an investment management company! Responsibilities entail handling legal/contractual issues, transaction support (including KYC and AML checks, oversight of documentation with service providers, record keeping and filing) and regulatory compliance support (managing external service providers and internal processes to ensure smooth compliance with applicable securities regulations). Minimum 3 years of relevant legal experience within the areas of corporate law, compliance (general), risk management, and/or internal audit a must have. You should also have good organizational, time-management and follow-up skills with attention to detail. Attractive remuneration on offer. [A40502]

Junior Legal Counsel (3-4 PQE), Singapore

Global luxury brand seeks a junior counsel to manage their legal affairs in the Asia Pacific region. The ideal candidate should have good corporate commercial experience, preferably supporting retail, operations and manufacturing business units. Strong interpersonal skills and business-partnering ability are essential. [A40339]

Legal Counsel (2-3 PQE), Singapore

Leading aircraft service and maintenance company seeks a junior lawyer to join its legal team. Responsibilities will include advising on a wide range of contracts (from sales and marketing agreements to joint venture agreements), managing contentious claims as well as supporting corporate governance, compliance and company secretariat matters. Excellent communication and people management skills are essential. [A40347]

Junior Lawyer (1-3 PQE), Singapore

A Japanese bank is looking for a junior lawyer to provide legal advice relating to credit facilities, banking products and services for its corporate clients, as well as work with the Compliance teams to interpret new/revised laws and regulations. The ideal candidate would have prior relevant banking law experience, good interpersonal skills and a positive attitude. [A40340]

Corporate Counsel (8+ PQE), Bangalore, India

Join a leading US MNC in a role based in Bangalore. Responsibilities include supporting the organization's rapidly growing operations, innovative business launches, supply chain, warehouse establishments, procurement, contracting and compliance matters. [A40498]

Senior Legal Counsel (15+ PQE), Bangalore, India

Leading MNC seeks a senior lawyer to join them in a role based out of Bangalore, India. As a key member of the leadership team, responsibilities include managing a team and working closely with the management and business units on a broad range of commercial and legal issues, including complex contract negotiations and general executive support. Lawyers with good corporate commercial experience ideally with some experience in the IT industry and strong leadership qualities will have an advantage. Competitive remuneration package on offer. [A40501]

Legal Director (15+ PQE), Shanghai, China

A global MNC seeks a senior lawyer with extensive M&A experience advising on major deals in the Asia Pacific region. The ideal candidate must have prior experience managing a legal team and working directly with senior management of the company. Additionally, the candidate must have a demonstrated ability to work with various stakeholders, manage competing interests, and support and lead cross functional teams in strategic decision making. In-house legal experience is a pre-requisite for this role and the candidate must be highly proficient in both English and Mandarin. This is an exciting opportunity to join the company as it expands its footprint in China. [A39251]

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ECONOMIC UPDATE

Global economic weather

By Michael Taylor, Coldwater Economics


Michael Taylor

Fed chairman Janet Yellen's dovish comments after the Fed's FOMC meeting persuaded the market that we can expect only two US rate hikes this year, rather than four. Mrs Yellen attributed the Fed's dovish turn to the feared impact on the US economy of negative economic and financial developments elsewhere in the developed world.

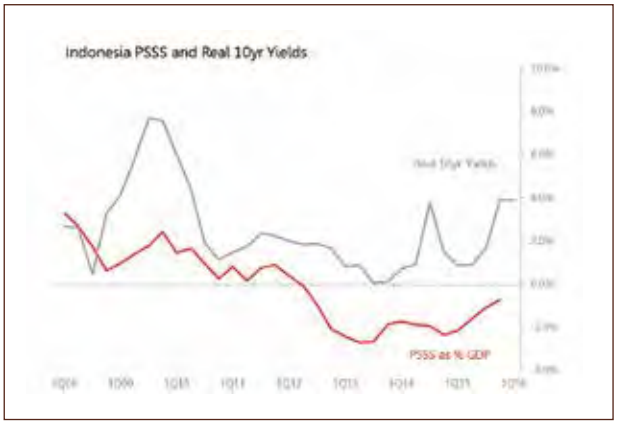
In fact, the justification for monetary indulgence lies nearer to home, since the US's return on capital indicator has already peaked, and this is likely to dampen capex ambitions for the time being.

The Fed's outbreak of caution can also, however, be seen as official confirmation of the regime change which halts and probably reverses the combination of strong dollar, weakening commodity prices and crippled cross-border financial flows, which has been the principal challenge of the last 18 months. That regime change began to emerge as early as mid-December, when the dollar broke out of its strengthening trend. But the signs got clearer in February, particularly as Asia's foreign exchange reserves began to rise once again, having been under the cosh since 2H14.

Among Asian economies, no country stands to benefit more clearly than Indonesia. The case for Indonesia was also bolstered by February's surprisingly large trade surplus, which consolidates the chances that the country is finally breaking into private sector savings surplus once again. Last week we learned February's exports fell only 7.2 percent yoy with a monthly gain 1.5SDs above historic seasonal trends: within that, oil & gas exports fell 36.5 percent yoy, but non-oil & gas exports fell only 2.2 percent yoy and were 1.4SDs better than trend. February's US$1.137bn trade surplus, meanwhile, was the largest since December 2013.

This improved trading performance raises the possibility - no more - that Indonesia might show a modest private sector savings surplus in 1Q16, the first since 1Q12. All the usual caveats and more apply, but current trajectories, if maintained, point that way. If Indonesia does indeed break into savings surplus, it signals a fundamental reversal in how cash flows around that economy. Specifically, the private sector begins to deliver cash back into the financial system, rather than taking cash from it. As a result, Indonesia's own banking system will, of necessity, be net buyers of government bonds, which will pull down bond yields. This is precisely the sort of news which gets noticed by emerging market investors.

Bank Indonesia held its own policy meeting last week too, which cut the base rate by 25bps to 6.75 percent, with the deposit and lending facility rates falling to 4.75 percent and 7.25 percent respectively. It clearly had room to do so: although February's 4.4 percent yoy CPI result was on the upper side of one percent above or below four percent target, the current trajectory will take it comfortably below four percent in 3Q and threatening the lower band by year-end. Even if the currently improving trajectory is replaced by trend rates of inflation, there's no short or medium term likelihood that inflation will breach five percent during the next 12 months.



Prior to BI's decision, Indonesia's 10yr bond yields looked very generous at 7.85 percent. The underlying dynamic has been perverse during the last two years, with nominal bond yields getting absolutely no benefit from the improvement in Indonesia's underlying private sector savings balance. Rather, yields stayed around eight percent even as the private sector savings deficit narrowed from 2.7 percent of GDP in mid-2013 to just 0.7 percent by end-2015. As a result, real yields of 3.9 percent are now the highest since mid-2010. Don't expect them to stay like that.

Michael Taylor's economic updates can be found in Asian-MENA Counsel's Weekly Briefings and on http://www.inhousecommunity.com.

Michael Taylor runs Coldwater Economics, a consultancy serving institutional investors worldwide since 2009. Michael spent 15 years of his career in Asia, principally Hong Kong and Tokyo, as Asia economist for Morgan Stanley and chief economist for W I Carr. He offers a daily Shocks & Surprises services which tracks approximately 450 economic data releases each month, identifying and briefly explaining those which deviate significantly from consensus or trend.

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Website: coldwatereconomics.blogspot.com

Lewis Sanders

Legal Recruitment

In-House

LEGAL DIRECTOR — HONG KONG — 10-15 years

Technology solution provider listed in HK seeks a senior level HK qualified lawyer with strong IP/technology & corporate commercial experience to handle legal matters of the group & manage a team of lawyers in China. Fluent Mandarin is required. AC5706

SENIOR RETAIL BANKING — HONG KONG — 10+ years

Well-known global bank is looking for a senior lawyer to head up the legal function for its retail banking and private wealth business. Strong prior experience in retail banking legal advisory matters is essential. Solid regulatory knowledge is required. AC5846

INSURANCE — HONG KONG — 7-12 years

Global insurance company seeks a senior insurance lawyer to handle non-contentious insurance matters. Prior in-house experience & good knowledge of insurance products are essential. Strong communication skills and fluent English and Cantonese are required. AC5859

LITIGATION — HONG KONG — 5+ years

In-house opportunity for a mid-level litigator with experience in general commercial/financial services litigation. Strong analytical skills & the ability to understand complex issues are required. Good work/life balance on offer. Fluent written & spoken English & Chinese are essential. AC3989

CORPORATE/COMMERCIAL — HONG KONG — 5+ years

A bio-medical technology listed company is seeking an in-house lawyer with strong experience in commercial contracts & M&A transactions. Prior experience with PRC companies & VIE structures would be highly advantageous. Mandarin & Cantonese skills are essential. AC5785

COMPLIANCE LEGAL COUNSEL — SHANGHAI — 3-7 years

US apparel company requires a legal counsel to support its compliance functions in the APAC region. You will handle anti-corruption/anti-bribery & data privacy matters & implement compliance programs. Business level Mandarin is essential. AC5881

FIXED INCOME DERIVATIVES — HK/SINGAPORE — 3-10 years

Global investment bank is seeking two experienced derivatives lawyers to join its legal team in the HK/Singapore office. You will have a UK, HK/Singapore qualification & strong experience in fixed income and OTC derivatives structured products. Chinese not required. AC5880

Private Practice

HEAD OF COMPLIANCE — HONG KONG — 7-12 years

A UK law firm is looking to hire a corporate lawyer with experience in corporate matters including IPO, M&A & compliance, from an international law firm. This role will work closely with the corporate partners & will supervise associates. Chinese language skills are essential. AC5569

DISPUTE RESOLUTION — HONG KONG — 3-7 years

An offshore law firm is seeking a mid to senior level disputes lawyer. Strong litigation experience with a reputable international law firm is ideal. Candidates with prior offshore / UK experience are welcome to apply. Chinese language skills are not required. AC5715

FUNDS — SINGAPORE — 4-8 years

UK law firm is looking for a mid to senior level funds lawyer. You will have experience in investment funds/financial services regulation in Singapore from an established Singapore/international law firm & be Singapore qualified. Collegiate environment & excellent funds exposure. AC5894

CORPORATE/PE/FUNDS — HONG KONG — 4-7 years

Leading offshore firm seeks to add a corporate/funds lawyer & offers quality private equity & funds work & also exposure to BD. Candidates with solid funds or corporate experience from a top tier international firm required. Chinese language skills preferred but not essential. AC3579

CORPORATE PSL — HONG KONG — 3-6 years

Top UK firm is seeking a corporate lawyer in a PSL role. You should have solid HK corporate experience from an international law firm. Chinese language skills would be preferred but are not essential. Excellent opportunity for a lawyer looking for a good work/life balance. AC5612

TMT — HONG KONG — 2-6 years

A leading international firm seeks a mid-level TMT associate. Experience with IT advisory, sourcing & transactions along with commercial agreements & contracts is a must. An excellent chance to join a leading TMT practice. Applicants must speak Mandarin fluently. AC5756

ARBITRATION — HONG KONG — 0-5 years

Reputable UK law firm is looking a junior/mid-level associate. Strong Chinese language skills & HK qualification are essential. Prior experience from an international law firm & candidates with a mixed arbitration & litigation practice will also be considered. AC5874

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

Please contact Lindsey Sanders, lsanders@lewissanders.com +852 2537 7409 or Jenny Law, jlaw@lewissanders.com +852 2537 7448
Karishma Khemaney, kkhemaney@lewissanders.com +852 2537 0895 or email recruit@lewissanders.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.

Hedge Fund Lawyer
PQE: 6-12 yrs, Singapore

Well known hedge fund with over US$ 4 billion under management is expanding its legal team and is looking to hire a lawyer with public company experience to support the trading desk. The position involves advising on fund documents, ISDA and brokerage agreements. You will advise on marketing and trading activity across various global markets. Applicants should have in-house buy side experience. Very competitive salary on offer. [Ref.: IHC 13673]

Contact Andrew Skinner
Tel: (852) 2920 9111
Email: a.skinner@alsrecruit.com

VP / Director, Derivatives Lawyer
PQE: 5-10 yrs, Singapore/Hong Kong

A top tier global investment banking institution with a sizeable legal team worldwide, in line with their growth plan in the APAC region, is looking for experienced derivatives lawyers to join their team either in Singapore or Hong Kong and provide support for the APAC division. In this role you will provide legal advice on the full spectrum of APAC derivatives business, liaise with and manage external counsel and act as a legal adviser on certain regional and global committees. The ideal candidate for the director level role is a common law qualified lawyer, with minimum of 8 years' relevant experience working in a top tier banking institution or a Magic Circle/Silver Circle/Tier one US law firm. For this role you will need to demonstrate in-depth knowledge of structured products and good understanding of the financial regulatory matters across APAC. Candidates with less years of PQE will be considered for a VP level role within the same team. Overseas candidates are welcome to apply. [Ref.: R/042304]

Contact Claudia Dumitru
Tel: (65) 6407 1205
Email: ClaudiaDumitru@puresearch.com

Region Counsel, APJ
PQE: 10+ yrs, Singapore

Global leader in the enterprise technology and solutions business seeks a dynamic lawyer for all software, cloud and open source transactions across the Asia Pacific and Japan region. The successful candidate will support and advise on complex deals and serve as an escalation resource to drive deal closure. He/she will also advise senior sales management on legal risks and contracting strategies, while putting in place initiatives to improve deal governance and efficiency. You should have good knowledge of technology law and understand the software industry sector. This is a leadership position within a world class legal team and will provide the successful candidate a rewarding career with opportunity for progression. [Ref.: A40503]

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

Legal Counsel
PQE: 3-6 yrs, Singapore

A leading supplier of logistics, distribution and supply chain services now has an exceptional opportunity to join its the regional team, providing legal counsel and advice on international legal activities for the company and its subsidiaries. You will advise regional and divisional management on a broad array of business transactions, including purchase and lease of facilities and equipment, procurement of goods and services, sales contracts with customers, technology agreements (hardware supply and software licensing) as well as negotiation and documentation of contracts. This is an excellent opportunity for a lawyer to transition into an in-house role. On offer is a collegiate environment that encourages mobility and a healthy work-life balance. EA Licence No: 12C6222. EA Registration No: R1100537. [Ref.: 205391]

Contact Theresa Pang
Tel: (65) 64200517
Email: theresapang@taylorroot.com

Legal Counsel, Energy & Resources
PQE: 3-4 yrs, Singapore

A reputable oil and gas company has a newly created role for a legal counsel due to their business needs. The ideal candidate should have the following experience:

- Familiar with shipping law
- Litigation experience
- Able to read and write in Mandarin

JLegal Pte Ltd Employment Agency Licence No: 08C4187. Benedict Joseph, EA Registration No: R1324716. [Ref. JGB – IS 1639]

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

General Counsel
PQE: 10+ yrs, Kuala Lumpur

Excellent opportunity to join a well-known life insurance company as General Counsel to cover its operations in Malaysia. You will lead the legal and corporate secretarial team to provide support on agreement negotiation, dispute resolution, corporate governance, risk management and regulatory compliance matters. The ideal candidate will have at least 10 years' PQE in relevant work or the banking industry, with good knowledge of corporate and regulatory work. The successful candidate will interact with senior management and the board of directors. [Ref.: 13389/AC]

Contact JJ Foo
Tel: (65) 6220-2722
Email: hughes@hughes-castell.com.sg

Fixed Income Derivatives
PQE: 3-10 yrs, Hong Kong/Singapore

Global investment bank is seeking two experienced derivatives lawyers. You will have E&W, HK/Singapore qualifications and will have gained strong experience in fixed income and OTC derivatives structured products. Candidates with APAC experience are desirable. [Ref.: PBP5880.]

Consultant: Jenny Law
Tel: 2537 7448
Email: jlaw@lewissanders.com

Peter Glanville,
Managing Director,
Investigations and Disputes

The benefits of a contract audit

Managing contracts for the supply of goods and/or services is an increasing challenge for many businesses today, where potential overcharges, changes in scope, conflicts of interest, delays and variations in quality, among other issues, can all result in financial and/or reputational loss.

Although all industries face these contracting challenges, the construction sector is particularly vulnerable given the large value of projects, a reputation for 'questionable payments' and other irregularities. Therefore, it is no surprise that 75 percent of companies in the construction industry have expressed that they were affected by fraud[1] in 2015.

Money can be lost through both 'soft leakage', due to duplicate payments and other mistakes such as formula errors in spreadsheets and 'hard leakage', due to fraud. The ability to check, monitor and audit financial arrangements during the course of a project, a process known as a contract audit, is essential in reducing the risk of both hard and soft leakage. For example, Kroll was recently retained by a client with a number of 'greenfield projects' underway in China. Although numerous resources had been deployed by our client to manage the construction project, ultimately nobody had performed a 'deep dive' into the amounts being charged by various contractors. An analysis of the accounts payable ledger, associated supporting documentation and selected vendors revealed areas of potential overcharge in the initial stages of the project.

Often areas of potential overcharge (whether by soft or hard leakage) on construction projects relate to the calculation and allocation of 'overhead costs'; specifically, the components of overhead costs that can and cannot be charged in accordance with the terms of the contract and whether the charging of overhead is duplicated between the contract and any subsequent variations to the contract. In a recent matter, we identified and quantified the duplication of overhead costs in the tens of millions of dollars.

The risk of soft and hard leakage occurring in a contract can be mitigated by the appointment of a forensic accountant to deep dive into the costs and reconcile the charges back to the terms of the contract. Having a forensic accountant involved at the contact drafting stage (phase 1) and then through the delivery of the project (phase 2) in monitoring charges as they are presented by the construction company can eliminate major surprises at the point where the contract is completed (phase 3) (i.e. a new building is handed over or the goods are supplied), which can lead to a significantly smoother finalisation process. The assistance provided by a forensic accountant during each of the three phases of the contract lifecycle can help clients understand and mitigate the risk exposures at each stage.

"The risk of soft and hard leakage occurring in a contract can be mitigated by the appointment of a forensic accountant to deep dive into the costs and reconcile the charges back to the terms of the contract"

Once hard or soft leakage is identified and quantified, the amounts can be recovered through a commercial negotiation process or a more formal dispute forum if necessary. For example, Kroll was engaged to undertake a contract audit of a construction project where we identified that the construction firm was charging a profit margin over and above what they were entitled to charge under the terms of the contract. One method employed to inflate charges was to embed a profit margin into the hourly rate of 'cost' for each worker on the construction project. Through forensic accounting analysis, we identified and quantified this amount, which was successfully recovered by the client through arbitration.

Given the complexities, the use of a forensic accountant to undertake a contract audit results in the costs charged being dissected, analysed and monitored throughout the lifecycle of the contract. This mitigates the risk of both hard and soft leakage, and provides confidence that amounts charged (and paid) are in line with the terms of the contract.

Endnote:

1. Kroll Global Fraud Report 2015, page 79

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"The In-house Community website provides the window on the development of commercial law, practice and compliance in the growth markets of Asia and the Middle East"

Dr Justine Walker, *advisor to the* British Banking Association

Dispute Resolution

SPECIAL REPORT

Achieving the proper result in arbitration

Using a recent case study, Gong Yuan Tang, Arbitrator of the *Beijing Arbitration Commission,* demonstrates how there is often more to take into consideration when trying to achieve the proper result than it first seems.

When a party allegedly breaches a non-competition agreement, what pieces of evidence become sufficient enough to establish competitive business activities? And, if indeed such competitive activities were found, what is the adequate amount of damages that should be awarded to the aggrieved party when actual monetary loss is uncertain?

In a contract dispute heard by the tribunal of the Beijing Arbitration Commission/Beijing International Arbitration Center (BAC/BIAC), the parties involved had entered into a non-competition agreement as part of a purchase and sale transaction in which the buyer agreed to acquire the seller's company. In the non-competition agreement (the Agreement), the seller agreed not to engage in any competitive business activities against the buyer for a period of 20 years.

The buyer brought the case to the BAC claiming that subsequent to the close of the transaction, the seller failed to abide by the terms of the Agreement by deliberately engaging in a series of correlated activities that competed with the buyer's business. The buyer requested the tribunal to award the buyer damages of more than RMB20 million for the seller's breach. Conversely, the seller denied any direct involvement in these alleged activities and argued even so that these actions neither rose the level of competition against the buyer's business nor took away from the buyer's bottom line.

The tribunal, in making its determination as to whether to grant the buyer's request for liquidated damages, had two major dilemmas to resolve: in order for the buyer to substantiate its claim, the tribunal had to determine whether the buyer has brought forth sufficient evidence to tie the seller to these competitive activities and in turn, if the seller did engage in these activities. The tribunal also had to determine whether the seller's activities caused the buyer damages and the extent of these damages.

> "What was difficult in granting damages here was the fact that buyer suffered no definitive monetary damages as caused by the seller"

Bringing together the evidence

Bringing together the pieces of evidence that the buyer brought forth, the tribunal used a preponderance of the evidence standard to determine whether the seller was personally involved in these activities. As such, if it is found that the seller more likely than not engaged in these activities, then the seller will have breached the non-competition agreement, and the buyer would be entitled to damages.

The buyer submitted as evidence certain marketing materials that were distributed at a tradeshow. The marketing materials revealed the seller as the founder and chairman of various business entities. Additionally, the buyer introduced into evidence that the seller had recently registered several domain names, which indicates intent and planning to start a business. The seller vehemently maintained that he had no personal involvement with the business entities being promoted at the tradeshow, as his family members established these entities, and that he did not register the domain names which appeared to have been a clerical error.

Looking at the chain of evidence provided by the buyer, the tribunal deliberated on the issue of whether the seller was indeed personally involved in these activities. The arbitrators agreed on the point that though direct evidence was lacking in this case, circumstantial evidence pointed to the seller being personally involved in these undertakings, and these 'coincidences' taken in the aggregate indeed tie the seller to these activities in which he claimed no personal involvement.

Furthermore, the buyer also introduced into evidence the seller's social media accounts. On these accounts, it shows the seller to be operating an online store, which was selling various products and services similar to those marketed and sold by the buyer. The buyer also introduced into evidence that the seller had applied for certain trademarks that were substantially similar to that of the buyer's business.

As such, despite the seller's rebuttal that his online store had little or no revenue at all and that the application of the trademarks

By Gong Yuan Tang, Arbitrator of the ***Beijing Arbitration Commission***

"Professional arbitration services would be a better choice to solve high-stake disputes in the acquisition fields. As this case was conducted in English, it also sets a good example for the foreign players considering the BAC/BIAC's arbitration services"

Gong Yuan Tang

was still pending approval, these activities nonetheless are in direct competition with the buyer's business. The tribunal held that it was irrelevant that the seller's business had no meaningful revenue stream or that the trademarks were yet to be approved; it was these acts in themselves that constituted competitive business activities against the buyer. Therefore, the seller indeed breached the non-competition agreement.

Awarding adequate damages

Once the tribunal determined that the seller had in fact breached by engaging in competitive activities prohibited by the non-compete agreement, the tribunal then had to decide the proper amount of damages that should be awarded to the buyer.

In determining the proper damages amount, the tribunal had to take into account that in spite of the fact that the seller's aforementioned activities constituted competitive activities against the buyer's business, there appears to be no substantiated damages suffered by the buyer in terms of lost revenue and lost profits.

Here, the adequate amount of damages seemed uncertain given that the tribunal did not want to overcompensate the buyer because the seller did not cause significant monetary loss to the buyer, but at the same time, the tribunal did not want to undercompensate the buyer because the seller clearly breached the terms of the non-compete agreement. The tribunal deliberated extensively on the damages issue. What was difficult in granting damages here was the fact that buyer suffered no definitive monetary damages as caused by the seller. Whereas the buyer claimed that the company's weakening revenue stream and declining bottom line was caused directly by the seller's competing business activities, there was no actual proof that the seller's competing activities were the actual cause of the buyer's poor performance. In fact, the buyer's declining business could be attributed to a variety of other contributing factors, whether it is industry specific or on a more macroeconomic level.

Therefore, even though the non-competition agreement explicitly stated that the seller would be liable for damages amounting to 50 percent of the company's revenue in the year preceding the claim if the seller was to violate the terms of the agreement, the tribunal also took into consideration Article 114 of the Contract Law of the PRC, which in part states that if the breach of contract damages are excessively higher than the losses incurred, any party may request an arbitration institution to make an appropriate reduction. As such, the tribunal had to find a proper balance in awarding an appropriate amount in damages to the buyer.

Ultimately, after much deliberation, the tribunal found that when the liquidated damages provision overcompensates the buyer relative to the actual injury suffered by the buyer as seen here, the liquidated damages clause is to be perceived as providing excessive compensation in the nature of a penalty rather than actual losses incurred by the buyer. Therefore, in the interest of equity, the tribunal had the proper justification to make the appropriate reduction that would be reasonable and equitable to both parties involved. Further still, the seller should nonetheless be reprimanded for intentionally breaching the terms of the Agreement, being fully aware that he was prohibited from engaging in such competitive activities. Thus, the tribunal awarded the buyer 10 percent of its initial damages request, both to serve as a damages award to the buyer and to caution the seller from engaging in any further competing activities.

Conclusion

In this case, the tribunal had to piece together the evidence to determine whether the seller did in fact breach the non-compete agreement. And once this was achieved, an adequate amount of damages also had to be determined that would be reasonable to both parties involved. Professional arbitration services would be a better choice to solve high-stake disputes in the acquisition fields. As this case was conducted in English, it also sets a good example for the foreign players considering the BAC/BIAC's arbitration services.

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China – an international arbitration superpower?

Enforcement of foreign arbitral awards in China and the future of arbitration in the middle kingdom

Richard Bell, dispute resolution partner at *Clyde & Co*, highlights key points of Justice Hongyu Shen of the People's Supreme Court of the People's Republic of China's address on the enforcement of foreign arbitration awards in China, made on March 4, sets out the procedure for enforcing arbitration awards in China and considers China's track record of enforcing foreign arbitral awards.

Introduction

On the 3rd and 4th of March 2016, China hosted for the first time the International Bar Association Conference in Shanghai. The conference comprised a series of seminars and discussion panels on international arbitration and litigation with a focus on Chinese law and the Chinese legal system. On the morning of the second day of the conference, Justice Hongyu Shen of the People's Supreme Court of the People's Republic of China gave an address on the enforcement of foreign arbitration awards in China. What she had to say was of great interest to the delegates and will give a significant degree of comfort to arbitration practitioners and parties doing business in China.

In this article, we highlight the key points of Justice Shen's address, set out the procedure for enforcing foreign arbitration awards in China and consider China's track record of enforcing foreign arbitral awards. We also look at the future of international arbitration in China and give our views on how we see international arbitration developing in the middle kingdom.

International arbitration in China – separating fact from fiction

Since the remarkable rise of China's economy, much has been written about the Chinese legal system, some of which has cast China in a negative light. In reality, the Chinese legal system compares favourably to the legal systems of other developing economies, particularly when it comes to arbitration and the enforcement of foreign arbitral awards.

In her address to the IBA, Justice Shen pointed out that the Chinese courts actually have a fairly robust record of enforcing foreign arbitral awards, which is considerably better than that of many other jurisdictions. Justice Shen noted that China is a signatory to the New York Convention on the Enforcement of Foreign Arbitral Awards (the New York Convention) and takes its obligations under the convention seriously. She went on to say that of the cases that have come before the Chinese courts since China acceded to the New York Convention, only a handful of awards have been dismissed.

In order to put Justice Shen's remarks in context, it is necessary to consider the procedure for the recognition and enforcement of foreign arbitral awards in China and the Chinese courts' track record of enforcing foreign awards.

Recognition and enforcement of foreign arbitral awards in the PRC under the New York Convention

China's ratification of the New York Convention

The New York Convention was acceded to by China and entered into force in 1987. The notice confirming the implementation of the New York Convention was issued by the Supreme People's Court (the Notice) with two reservations:

1. A reciprocity reservation; and,
2. A commercial reservation.

Pursuant to the reciprocity reservation, China will only recognise and enforce awards made in the territory of another contracting state. In the situation of any discrepancy between the stipulations of the New York Convention and those of the Chinese law, the New York Convention prevails.

Pursuant to the commercial reservation, China will apply the New York Convention only to awards where the underlying dispute arises out of a contractual or commercial legal relationship. This covers any relationship of economic rights and obligations arising in contract, tort or specific commercial relationships. Disputes between a foreign investor and a government of a host state are not included.

By Richard Bell, ***Clyde & Co***

"Based on what we have seen to date, China will continue to grow as a force in international arbitration. As to whether it will become a superpower, only time will tell"

Richard Bell

Recognising an award

In order to have an award recognised under the New York Convention, the party seeking to enforce the award must file an application with the Intermediate People's Court in the province where –

1. (in the case of a natural person) the counterparty is domiciled or has a place of residence; or
2. (in the case of a company) the counterparty's principal place of business is located; or
3. (in the case of a counterparty which does not have any domicile, residence or principal business office in China) the counterparty has property located.

Grounds for invalidating an award

Article 4 of the Notice and Article 274 of the PRC Civil Procedure Law set out the circumstances where a foreign arbitral award may be invalidated. Those provisions in turn make reference to Articles V(1) and V(2) of the New York Convention, which provide that a contracting state may decline to recognise an award if:

1. The parties to the agreement containing the arbitration clause were under some incapacity or the agreement is not valid under either the law of the agreement or the law of the country where the award was issued (Article V(1)(a));
2. The party against whom the award is made was not given proper notice of the appointment of the tribunal (Article V(1)(b));
3. The award deals with issues falling outside the tribunal's terms of reference V(1)(c);
4. The composition of the tribunal was not in accordance with the agreement or the law of the country where the arbitration took place (Article V(1)(d));
5. The award has not become binding, or has been set aside or suspended by a competent authority of the country where the award was issued (Article V(1)(e));
6. The subject matter of the dispute is not capable of being referred to arbitration under the law of the country where enforcement is sought (Article V(2)(a));
7. The recognition or enforcement of the award would be contrary to public policy Article (V(2)(b)).

The reporting mechanism

An interesting feature of the Chinese court system in relation to international arbitration is the internal reporting system.

If the Intermediate People's Court declines to recognise and enforce a foreign arbitral award, this must be reported to the Higher People's Court in that province (or municipality, city or autonomous region as the case may be).

Where the Higher People's Court upholds the decision of the Intermediate People's Court, that decision in turn must be reported to the Supreme People's Court for a final review. No final ruling on the award can be given until the Supreme People's Court has completed its review.

Where the court declines to recognise and enforce a foreign arbitral award, the Higher People's Court or the Supreme People's Court, as the case may be, can reverse that decision and order the award to be recognised and enforced.

It is important to note here that the reporting mechanism is asymmetrical. If an intermediate people's court decides to recognise and enforce a foreign arbitral award, it can do so on its own accord, without having to report it to the superior courts.

While this procedure takes time, it provides an important safety valve in cases where there may have been a miscarriage of justice.

Enforcement

When an award has been recognised, the successful party can request the court enforces it against the award debtor.

Upon receipt of application for enforcement, the competent court issues a 'Notice of Enforcement' to the award debtor requiring to pay the award. Where the debtor fails to perform its obligations in the Notice of Enforcement, the debtor is required to report its financial status to the court. If the debtor refuses to cooperate or provides a false report, the court may impose a fine or order the detention of the debtor. The debtor will also be liable to pay penalty interest until the debt is finally paid.

The Chinese courts have a number of tools at their disposal to enforce awards. These include the power to seize, freeze,

"Since the remarkable rise of China's economy, much has been written about the Chinese legal system, some of which has cast China in a negative light. In reality, the Chinese legal system compares favourably to the legal systems of other developing economies, particularly when it comes to arbitration and the enforcement of foreign arbitral awards"

transfer or sell the property of the debtor and the power to order the freezing and transfer of money. The courts can also issue a 'Notice of Assistance in Enforcement' to relevant authorities to assist with the tracing, seizure and transfer of the debtor's property and money, and the detention of the debtor.

China's track record on the recognition of foreign arbitral awards

Justice Shen noted in her address to the IBA that since China acceded to the New York Convention, there have been less than 30 cases where an arbitration award was not ratified by the PRC courts. The majority of those cases have concerned situations where there was found to be no arbitration agreement between the parties or where the tribunal ruled on issues that fell outside its terms of reference.

According to Chinese government statistics issued in 2014, only 14 percent of applications to annul an award (whether domestic or international) were successful. In the majority of cases, the award was ratified and enforced. By any measure, that makes China a fairly arbitration-friendly jurisdiction.

That is not to say the picture is entirely rosy. While China has a reasonably good record in recognising and enforcing foreign arbitral awards, enforcement can sometimes be difficult in certain parts of the country. In the major cities and commercial hubs, the courts tend to enforce foreign arbitral awards without too many issues. However, this is not necessarily the case in some of the provinces. Outside of the big cities, parties seeking to enforce foreign arbitral awards may encounter local protectionism and bureaucratic red tape, which may make enforcement difficult.

The future of international arbitration in China

In the last 20 years, the popularity of arbitration in China has risen with the country's economy.

According to government statistics, the overall arbitration case load in Mainland China now exceeds 110,000 cases a year, making China the biggest user of arbitration in the world. In 2014, there were 1785 foreign arbitrations (including cases arising under contracts between a Chinese entity and a foreign entity or which contained a foreign element), rising from 1219 in 2010.

Altogether, China has 258 regional and international arbitration centres and commissions. Of those, the most important is the China International Economic and Trade Arbitration Commission (CIETAC). Established in 1956, CIETAC has offices all over China operating as a single unified institution. CIETAC's rules reflect international best practice and its panel of arbitrators include some of the leading arbitration practitioners in the Asia Pacific region. Since its inception, CIETAC has heard over 20,000 concluded arbitration cases involving more than 70 countries. Its awards have been recognised and enforced in more than 60 countries and regions outside China. Since 1990, CIETAC's caseload has been one of the heaviest among the world's major arbitration institutions, averaging approximately 1,300 cases annually.

In response to the growing demand for arbitration services in China, earlier this year, the Hong Kong International Arbitration Centre, the Singapore International Arbitration Centre and the International Commercial Court all opened representative offices in Shanghai to promote international arbitration in the region. All of these developments, coupled with China's solid record of recognising foreign arbitral awards, are testament to the growing popularity and acceptance of arbitration in China.

Given China's increasing focus on foreign investment, which has been encouraged by the government under the 'One Belt One Road' policy, it is anticipated that international arbitration will continue to grow in popularity as more and more state owned and private sector enterprises invest in overseas markets.

Conclusion

Contrary to the perceptions that many observers hold, China has a robust system for the recognition and enforcement of foreign arbitral awards, and a fairly good track record in upholding foreign arbitral awards.

Given the increasing popularity of arbitration in China, the expected increase in international trade between China and the rest of the world under the One Belt One Road initiative and the increasing attention being paid to China by other international arbitration centres, the future for international arbitration in China seems very bright. Based on what we have seen to date, China will continue to grow as a force in international arbitration. As to whether it will become a superpower, only time will tell.

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Mediation: concord from discord

Made Barata, S.H. with assistance from Bobby Manurung, S.H. and Arkie Tumbelaka, S.H. of *Mochtar Karuwin Komar* gives an overview of mediation and tells why he believes that going forward, this avenue will become more popular.

Mediation has been in the spotlight recently, as authorities strive to streamline adjudication to foster a more efficient and cost-effective forum to settle commercial disputes. Unlike litigation, mediation strives to find a win-win solution to limit court fees as much as possible, and it allows the parties to resolve their disputes without a cumbersome court process. Unlike in commercial litigation, in mediation the parties are in control of the timing and flow of the whole process, and many formalities intrinsic to litigation are simply stripped away.

In the past, the mediation process was regulated under SC Reg no. 1 of 2008 (Old SC Reg) and despite the positive aspects mentioned above, too many parties in dispute seem to regard it as just another bureaucratic hurdle to surmount and dispense with before actual court proceedings can be entered into. However, notwithstanding the foregoing, many regulators and practitioners around the world feel that going forward mediation is the way to go because it avoids the backlog in the courts and the cost and time-consuming nature of litigation, among other reasons. To better streamline and encourage effective mediation, a new Supreme Regulation (Supreme Court Regulation no. 1/2016 or New SC Reg) was recently issued which replaces and supersedes the Old SC Reg.

Mediation in a nutshell

In brief, mediation is a process which can be conducted in-court or out of court. Pusat Mediasi Nasional (PMN) is an Indonesian entity accredited by the Supreme Court of the Republic of Indonesia to hold mediation training, and it awards mediator certificates. PMN also has a list of certified mediators with their particular expertise or experience in various business fields, which parties can choose and agree on to use as mediators if they do not opt for judge mediators. Essentially, there are two types of court-annexed mediation. The first type is in court; the second type takes place outside the court. Any mediation conducted outside the court will need to use a certified mediator and not a judge mediator. The key difference between mediation conducted inside and outside of the court is the executorial standing of the mediation agreement. In mediation inside the court, the mediator can be a judge and as a result, the agreement reached will be ratified and approved by the judge. By doing so, the outcome of the mediation will be memorialised in the form of a determination of the judge, and it will be enforced by the court. However, in mediation outside the court, the agreement made during mediation will be in the form of a legal contract.

According to the New SC Reg, the parties must attempt to

"many regulators and practitioners around the world feel that going forward mediation is the way to go because it avoids the backlog in the courts and the cost and time-consuming nature of litigation, among other reasons"

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"The key difference between mediation conducted inside and outside of the court is the executorial standing of the mediation agreement"

Bobby Manurung

settle their dispute via mediation before coming to trial. The parties must appoint a mediator within two days of being ordered to do so by the judge; they then have five days to submit a summary of the case at hand. The parties then have 30 days to resolve their dispute with the services of a mediator during which time they must display good faith. By force of the New SC Reg, failure to show good faith by any party will result in the offending party having to assume the fees for mediation. If after 30 days no agreement has been reached, an extension of 30 days can be granted or the case will then proceed to court.

The key to the whole process is of course the mediator; the mediator must be a judge or a certified mediator who is accredited through a programme run by the Supreme Court or another institution approved by the Supreme Court. The role of the mediator is to arrange the schedule with the parties and give them the opportunity to present their cases and assist them in drafting a settlement. They then must deliver a report to the judge on the outcome of the mediation session. It is also at their discretion to report any party which they feel have not acted in good faith during the course of the mediation proceedings. The choice of the mediator or mediators is at the discretion of the parties in dispute, and mediator fees vary widely, depending on the experience of the mediator, the time spent and the complexity of the issue at hand.

The parties are able to bring evidence and to invite expert witnesses to testify. However, the status of the evidence is not the same as in a courtroom setting. Even though there is evidence presented, the mediator is not a judge and does not pass judgment on any party. The evidence is presented simply as a matter of course and to better elucidate the case at hand.

Mediation process

Pre-mediation

After having explained the basics of mediation, the judge will instruct the parties in dispute to appoint a mediator, and then the mediator will set up a schedule for the mediation process to follow, the venue for mediation and deal with any other formalities. To save on costs, the court house can be used as the venue for mediation, and the judge can serve as mediator.

Mediation

All parties must submit a summary of the case within five business days and then mediation begins. During the sessions, all parties must follow the 'good faith' principle. This means that they must personally attend mediation, not be absent without a legitimate reason, they must respond to the Case Résumé from the other party and must sign the Settlement Agreement or give a reasonable explanation why if they refuse to do so.

There are two possible outcomes to mediation:

1. A settlement is reached: the parties in dispute and the mediator sign an agreement, and the mediator then has the obligation to give a report to the judge signalling that mediation was successful and present the settlement agreement;
2. No settlement can be reached: the parties fail to reach a settlement, and the mediator must indicate this fact to the judge by way of a written report. Subsequently, the judge will issue an order to continue the litigation process.

Mediator duties

Mediators must carry out the following duties:

- Introduce the parties
- Explain the objective of the mediation
- Conduct meetings with the parties separately and together to determine the positions of the parties in dispute
- Help find the best solution
- Assist the parties in drafting a settlement agreement
- Give a report to the judge regarding the outcome of mediation
- Report any party who the mediator believes is not acting in good faith

The mediator himself is bound by a code of conduct which is set out in the Old SC Reg. In the New SC Reg there is no new code of conduct, which means that the old one still prevails. In general, the code of conduct stipulates the duties and obligations of mediators which are, among others, not to accept gifts or bribes that would influence their behaviour, avoid conflicts of interest, keep all information revealed during the course of mediation confidential and continually seek to improve their mediation skills through continuous learning, among others.

By Made Barata, Bobby Manurung, and Arkie Tumbelaka, ***Mochtar Karuwin Komar***

"We believe that mediation will continue to be the preferred avenue of dispute resolution going forward, though the low success rate is perhaps not connected to procedures and protocols, but to the fact that often one of the parties is acting in bad faith ... and no amount of discussion will achieve the desired breakthrough"

Arkie Tumbelaka

Conclusion

We believe that mediation will continue to be the preferred avenue of dispute resolution going forward, though the low success rate is perhaps not connected to procedures and protocols, but to the fact that often one of the parties is acting in bad faith (i.e. never had any intention of honouring its obligations), and no amount of discussion will achieve the desired breakthrough. The efforts in the New SC Reg to punish any party that is not 'acting in good faith' by making them assume all fees is an interesting move, but not a perfect solution in itself. We will have to wait to see if the New SC Reg makes a positive difference in practice, but we are optimistic since the issuance of the New SC Reg in itself demonstrates the authorities' focus on streamlining the dispute process by creating a healthy environment in which to resolve differences.

Key highlights of the New SC Reg:

- Obligation to show good faith by all parties in dispute
- Shorter period to reach an agreement (30 days in the Old SC Reg to 30 days in the New SC Reg)
- The parties themselves must personally appear (unlike in litigation where lawyers can be sent as proxies)
- Shorter mediation time (30 days from the previous 40 days)

Mediation is not only relevant in domestic disputes but also in international disputes, which international institutions, such as the Singapore International Mediation Centre (SIMC), are well-placed to handle. Benson Lim of Berwin Leighton Paisner LLP's Singapore office stated "In my experience as a mediator and mediation advocate, for mediation to be most effective as a dispute resolution option, parties should always consider the option of mediation at the start of any dispute and as part of an overall dispute resolution strategy. The effective use of mediation is even more important in international disputes where the financial stakes are usually higher and the clash of business cultures is more apparent."

A famous lawyer once said: "Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often the real loser – in fees, and expenses, and waste of time." – Abraham Lincoln

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THE THING ABOUT

Recently, ASIAN-MENA COUNSEL's Patrick Dransfield photographed and talked to David Wittmann, *Slaughter and May's* Practice Partner and put to him a series of questions on behalf of the *In-House Community*.

ASIAN-MENA COUNSEL: **David – you were appointed in January 2015 to develop the firm's business development and international strategy – now over a year into the job, what do you see are the key challenges for Slaughter and May regarding the above and how have you gone about solving them?**

David Wittmann: Our key business challenge is to ensure that we are continually providing the best service we can to our clients and seeking out new clients and matters to work on. This requires us to always put first what the client wants from us, both in terms of service and advice, but also appropriate cost and value for the job - ensuring that matters are pro-actively and efficiently dealt with, with a business-focused creative approach, and having the ability, when required to find innovative solutions to the most complex of legal problems. As practice partner my role is to work with the partners and others at the firm to ensure that we are equipped and trained to and do meet these challenges.

Our international strategy is well established and clear. It's about ensuring that we have the best lawyers working for our clients wherever in the world that advice is required. We do that by having our own offices in Hong Kong and Beijing, as well as London and Brussels, and working with (and having excellent relationships with) the leading independent firms in all of the relevant jurisdictions across the globe. This combination allows us to provide the best possible service, bringing both international expertise and local know-how and understanding. It is of course different to a number of our competitors and part of my role is about communicating that difference in a compelling way.

David Wittmann

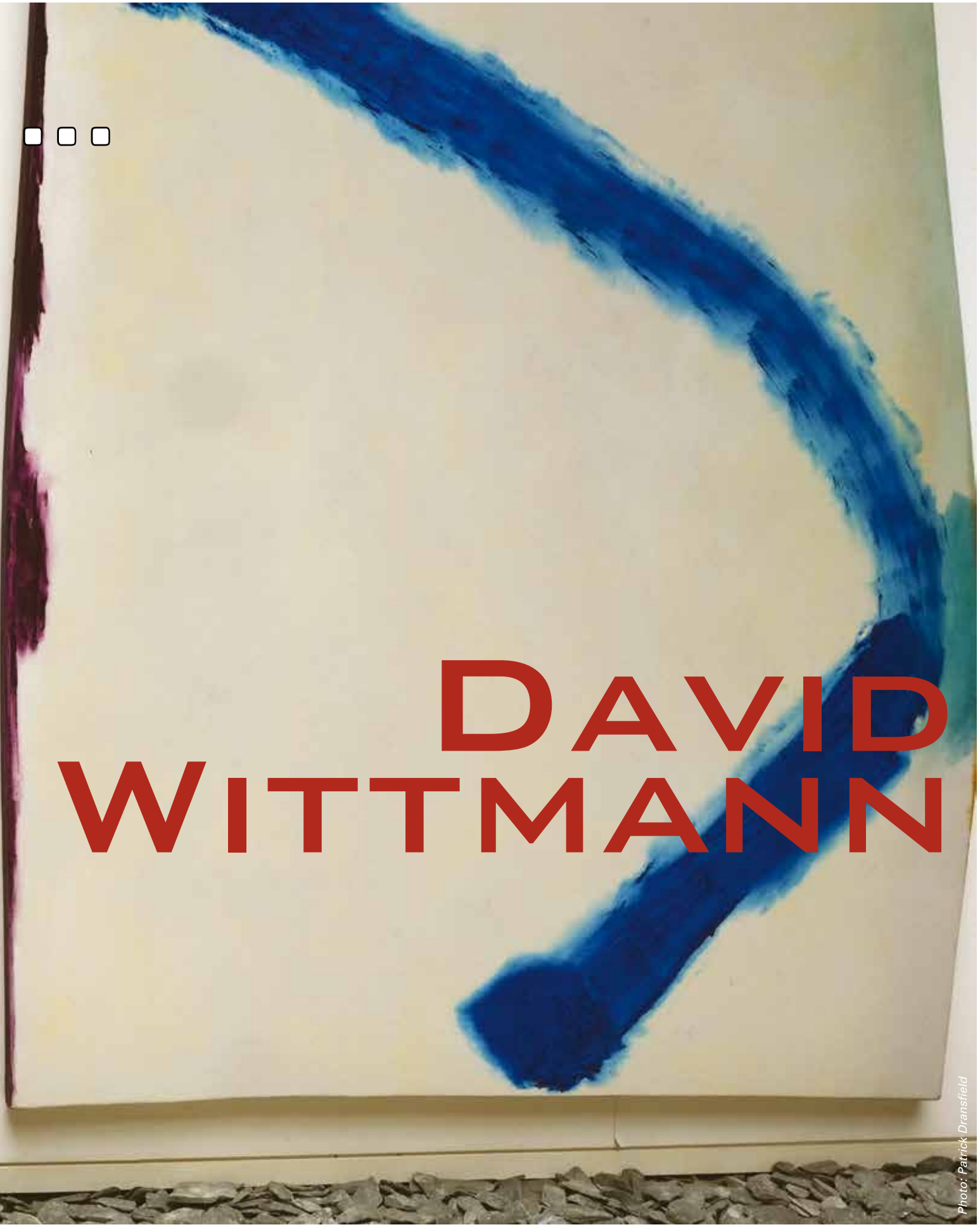


Photo: Patrick Dransfield

AMC: What do you wish an in-house counsel to have 'front of mind' when they think about Slaughter and May?
DW: This is something I think about quite a bit as if we get that right then we are at least half way there. Naturally I want them to automatically turn to us on their complex or important deals or cases, whether that's a merger, dispute, financing or anti-trust or other legal issue, and whether that's in Asia, Europe or anywhere else in the world. More fundamentally I'd like them to think that Slaughter and May is about quality and service – a firm made up of deeply professional and empathetic advisers, rather than lawyers who are simply technicians. Because we are a true partnership we are a distinctive firm, united by a restless desire to do better and to add real value in everything we do. We also have a great blend of experience within the firm, with each generation of partners able to contribute in different ways for the benefit of clients. I would be happy with that.

AMC: On Training: our belief is that successful training is to produce lawyers who can be at the top of their game, where knowledge of the law and a profound grasp of professional ethics and integrity, as well as the necessary commercial acumen to be your own boss, are embedded in the DNA. Do you subscribe to the above and how does Slaughter and May attempt to accomplish the above? Is personal happiness for stake holders in Slaughter And May something the firm considers?
DW: Yes I do and that's whatever the work that is being done, whether it's an internal investigation, an acquisition or IP licensing arrangements. Being a successful lawyer requires more than purely legal knowledge. As a starting point, our training schedule covers technical legal knowledge, legal skills, and commercial and financial awareness, as well as leadership and project management skills. People at our firm have genuine autonomy. Our training therefore is designed to produce knowledgeable flexible lawyers with good judgment, operating in an adaptable and innovative business.

Having a team that enjoys and is enthused with what they are doing is an important consideration since the energy and drive that it produces is part of providing a good service, but also just makes the firm a more enjoyable and interesting place to work. The vast majority of partners are trained here which means we all know each other very well. That personal empathy and co-operation and support manifests itself right across the firm and it's a big part of why it's good to come to work in the morning.

AMC: What keeps you awake at night?
DW: I'm a pretty good sleeper so the truthful answer is not a lot! When I do worry on a professional level it is quite rightly because I know that the competition out there is top notch and that we've got to work really hard every day to be worthy of the respect of our clients and competitors.

AMC: On Fees and Service: what are the various ways that Slaughter and May engages with clients regarding compensation for services rendered? Have you seen a shift in preferred billing arrangements in recent years? Can you provide a real example of where the firm has gone 'the extra mile' for a client?
DW: There is ongoing pressure to provide a high-quality, but cost-effective legal service for our clients – our challenge is continually to strive to do that. Two key criteria should drive fees, namely what's the value that's being provided and is the fee arrangement mutually acceptable to the client and the law firm. This means that there is a range of bases on which we charge for our work, depending on the work and the client, ranging from a set fee (on the basis of relevant assumptions) to the hourly rate approach.

There has probably been a move more towards the fixed estimate/fee for parts or all of a job, but since we already did a significant part of our work on that basis, this has been more a shift in degree for us. We don't set internal billing or hours targets unlike other firms, since we think its important for our lawyers to think about the value we are producing, rather than the time it takes. In line with this, we would, for example, have arrangements where there is a fixed part of the bill and part that is dependant on outcome.

> "Because we are a true partnership we are a distinctive firm, united by a restless desire to do better and to add real value in everything we do"

AMC: Do you believe that the compensation structure for lawyers inherent in Slaughter and May is constructive regarding providing in-house clients with a seamless international service?
DW: Yes. I've already talked about our lack of billable hours targets and that is a very significant factor. That, combined with our lockstep structure, fosters real teamwork and a collegiate working atmosphere – it means that the right team is used and everyone is working to the same goal of trying to produce the best service for the client, rather than competing with each other.

AMC: Richard Susskind has challenged international law firms to be on top of technological advances to best provide value service to clients. Does Slaughter and May effectively use technologically-advanced solutions in its services to clients?
DW: We constantly invest in technology to support the business at every level, dedicating a significant amount of budget in terms of systems, expertise and support. We have to do that. We also make sure that we are involved in and considering the technology that is currently available or that may become available. Having said that, at least for the moment, it's the combination of strong client relationships and quality of advice that make the difference. Technology must support that rather than replace it.

AMC: In your 27 years of practice, what advice, based on your direct experience, would you give to any new lawyer embarking on their career? Do you think that you have personally benefited from an education that included Medical Sciences as well as the law?

DW: Well for a start you absolutely don't need to have studied law to do well in the legal profession. Only half of the trainees we recruit studied law – among us you'll find historians, biologists, linguists, psychologists, chemists and musicians. The classic question we often get is: if I have French language skills, would that be better than being fantastic at physics? The answer is no, you are who you are. A good law firm won't tick boxes in assessing a potential recruit, it will look at the whole person. So I would like to think that my studies and scientific background were an extra element that made me a more attractive candidate.

In terms of direct advice I would say that having a creative spark combined with grit and resilience under pressure would serve any lawyer well. A sense of humour is also a must – a smile will get you a lot further than a scowl.

AMC: What is your hinterland (i.e. what are your interests outside of the firm)? How do you control your time so that you can pursue them?

DW: I have a busy life inside and outside of work and juggling family and work can be a challenge! Having followed Chelsea since childhood, watching them by way of my season tickets at Stamford Bridge has been a real pleasure over these last few years, though of course much less so this season – hopefully this will have changed by the time this is being read! From a leadership perspective it's been fascinating watching the different styles of the various managers we've had over the past decade and how each one has impacted the team.

David Wittmann is Slaughter and May's Practice Partner with responsibility, together with their Senior Partner, for developing and promoting the firm's practice and business development and international strategy.

He undertakes a broad range of corporate, corporate finance and private equity work. Wittmann advises on an extensive range of acquisitions, disposals, investments, joint ventures and flotations, for corporate and private equity clients. In addition, he advises on outsourcing and commercial contracts.

Highlights include advising:

- British Airways on its merger with Iberia and acquisition of BMI
- The Tote on its privatisation
- Palamon on numerous acquisitions and disposals
- NewDay Cards (SAV Credit) on its purchase of Santander's retail co-brand credit card business

Wittmann led the Slaughter and May team that won the FT's Innovative Corporate Lawyer Awards and British Legal Awards' M&A team of the year in 2011.

Photo: Patrick Dransfield

Project Risks
in energy and infrastructure projects

The following is a summary of *Dentons'* Neil Cuthbert's article that analyses the key risks associated with the development and implementation of large-scale international energy and infrastructure projects. It assumes that the project will be financed on limited recourse terms, by one or more bank(s) or financial institution(s). Specifically, it looks at what makes, or does not make, a project 'bankable' and how a project's risk allocation must be adjusted in order to make it bankable.

Bankability means the acceptability to the lenders of a project's overall structure, including parties, products, markets, legal regimes and contracted documentary terms, as a basis for raising finance for the construction and operation of a project on a limited recourse basis. 'Limited recourse' means the lenders to the project look primarily, but not necessarily exclusively, to the property, assets and revenues of the project as the primary source of repayment of their loans. The shareholders of a project that is financed on limited recourse terms would expect their liability for such loans to be limited to their equity in the project and other support or guarantees, typically but not exclusively, related to completion of the project that they have agreed to provide to the lenders. This is one of the main advantages for shareholders in raising limited recourse financing. Other advantages for shareholders might be balance sheet considerations and/or a desire on their part to share project associated risks with others.

The approach in this article is primarily to consider the risks associated with a project from the lenders' perspective. It is axiomatic that many of these risks will also be of equal concern to shareholders. Indeed, in many cases, the interests of the lenders and shareholders will be aligned. What will not necessarily be aligned, however, is the respective appetites of the two to assume risk. The lenders, on one hand, will earn fees and interest for assuming such risks, whereas the shareholders will look for a return on their equity, which will be many multiples of the income that the lenders will expect to earn on their loans. It follows, therefore, that the lenders will have a considerably more conservative approach to evaluating these risks. The higher the shareholders' expected return on investment, the more risk they will generally be prepared to assume. Also, as industry participants, the shareholders will have a much deeper understanding of the construction, operational, technological, marketing and other (non-financial) risks associated with the project, making them generally more comfortable with assuming these risks.

It is important to understand that the essence of limited recourse financing of a project is that the risks are allocated by the developer (or project company) to the party that is best able to manage and mitigate these risks. This provides the greatest opportunity to effectively manage and reduce these risks. An arbitrary allocation of risk or allocating a particular risk to a party that does not have the competence to understand and manage that risk will inevitably lead to problems. The end result of a carefully structured project utilising limited recourse financing should be that very little risk will be left with the project company. This is the ideal outcome for the shareholders, lenders and key stakeholders, as in reality, for most projects, the project company is essentially just a vehicle (often referred to as a special purpose vehicle or SPV) established to develop and operate the project by the shareholders and others, including the contractor, operator, suppliers, offtakers, technology providers and buyers, who will each assume pivotal roles in the successful development and operation of the project. If too many risks are 'parked' with the project company without support from other project parties the end result will be that the shareholders, to the extent of their equity (and guarantees, if any) and lenders will end up sharing the risk brought about by such default.

General bankability principles

Approach to risk sharing

The lenders will expect a fair and reasonable approach to the sharing of risk among the various project parties. How this will be achieved will, of course, depend on detailed discussions and negotiations between the parties but, broadly speaking, the optimal approach will be that each material individual risk should be allocated to, and assumed by, the party best able to manage that risk.

By Neil Cuthbert, ***Dentons***

"Indeed, in many cases, the interests of the lenders and shareholders will be aligned. What will not necessarily be aligned, however, is the respective appetites of the two to assume risk."

Neil Cuthbert

The lenders will not accept risks arbitrarily being allocated to the project company as the project company is not in a position to manage or allocate those risks to other parties. As noted above, from the lenders' perspective, risks that are 'parked' with the project company are, essentially, being assumed by the lenders, particularly in a default situation (and to a lesser extent, the shareholders).

Change in law

The lenders may require protection against changes in law that may have a material and adverse effect on the project or the project's economics such that the risk profile of the project is changed in a material way. Where there is no specific government involvement in a project, the lenders' recourse is likely to be limited to political risk or commercial insurance, which may offer some relief or recourse to the shareholders. However, where there is a significant government involvement in a project (whether as a sponsor or shareholder, concession grantor and/or perhaps fuel or utilities supplier) typically, the lenders will expect direct contractual commitments from the government under the concession agreement (if there is one) or a host government agreement (or similar arrangement). The scope of change in law protection that may be acceptable to a government will of course differ from project to project. Blanket protection for the project company against all changes in law that have a material impact on the project or the project's economics would be rare. More typical is to share these risks and for the government to provide relief only against 'discriminatory' changes in law, that is changes in law that directly impact the project company (and not other companies) or other companies undertaking similar (concession) projects in the relevant country (and not other companies).

Equity contributions

The lenders will require the shareholders to contribute an 'appropriate' level of equity to a project. What this appropriate level of equity is, will depend on many factors, including the risks perceived by the lenders in such project, whether the shareholders are actively participating in the project (e.g. as a contractor, operator or offtaker) and prevailing market conditions. Thus, for example, if a project has little active shareholder involvement other than through equity contributions and is a project that the lenders perceive to be at the higher end of the risk spectrum, then the lenders will likely require a higher debt-to-equity ratio for that project (say, 60:40 or even 50:50). Probably the starting point with most projects will be roughly 70:30 and this will be adjusted according to the particular project and market conditions. A related issue will be the timing of equity contributions. Typically, lenders will want equity to be injected into a project either up front or, possibly, on a pro rata basis with their loans during the construction period. Shareholders will prefer to back-end their equity. It is sometimes possible to bridge these different expectations through the use of equity bridge loans under which the project company borrows the equivalent of the equity contributions of the shareholders from commercial banks that are prepared to lend to the project company on an unsecured basis (but subordinated to the project loans) with the support of shareholder guarantees.

Dividends and distributions

The lenders will want to prevent shareholders from taking out dividends or receiving other distributions (whether in the form of equity returns or under management, services or similar contracts) from the project company before the lenders have been repaid. Such a position is not usually acceptable to most shareholders (except, perhaps, where it is accepted by the shareholders that the level of project risk is very high). The compromise is usually that the lenders will permit dividends and other distributions to be extracted once the project has been commissioned and has started repaying the loans; and even then, only so long as the key project financial cover ratios have been met, the debt service reserve account is fully restored, the project is not in default and possibly some further project-specific conditions or restrictions must be met. The timing of payment of dividends and distributions to shareholders can have a material impact on the shareholders' return on equity and so these terms will be heavily negotiated between the lenders and shareholders. Where all or part of the equity has been contributed through a shareholder loan, similar restrictions will be imposed on the payment of interest or repayment of these loans to the shareholders.

Related projects

Where a project is dependent on the successful completion and/or operation of another project, the lenders to each project in the chain will want to carefully analyse, assess and allocate the risks

associated with delays and/or non-completion of the other project(s). The different groups of lenders in such a chain of projects are taking 'project-on-project' risk, which they will want to manage and mitigate. How these risks are allocated and mitigated will vary from project to project, but will invariably involve complex intercreditor and interface issues that need to be understood and agreed from the outset of the first project in the chain.

Finance risks

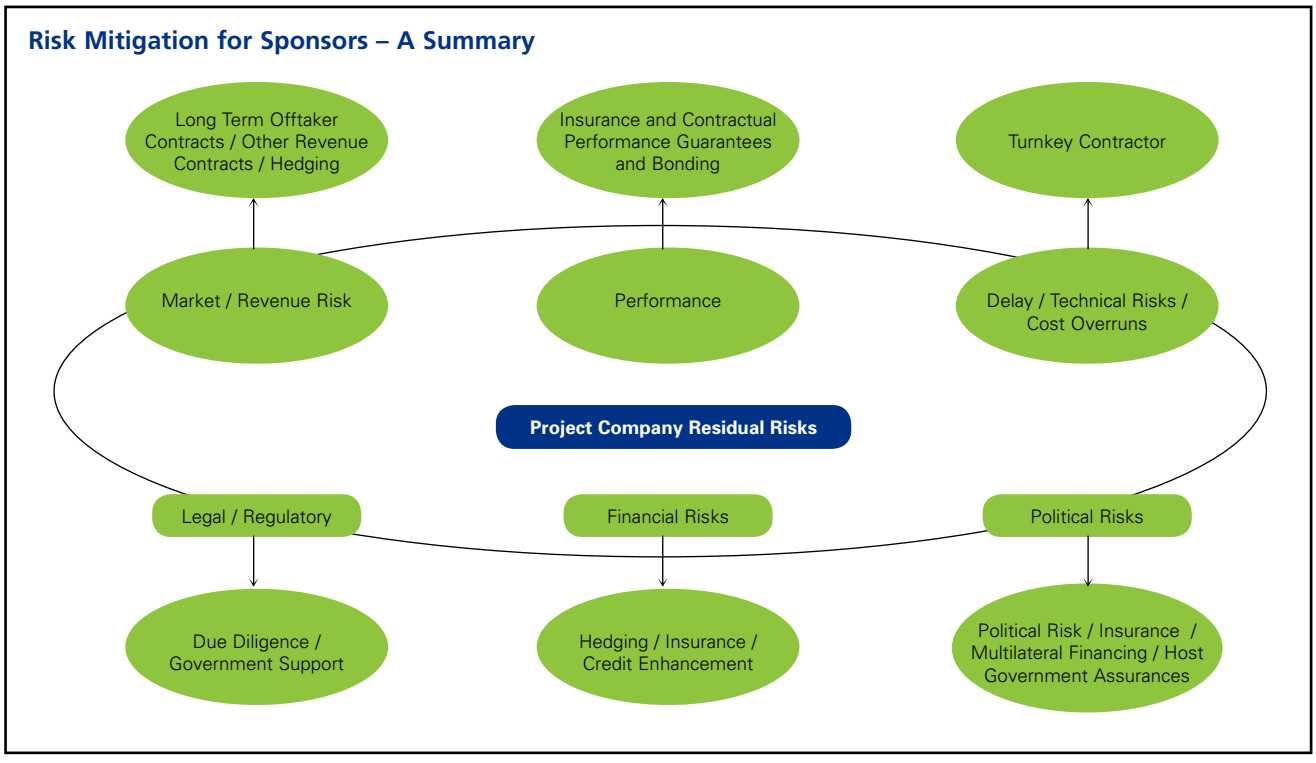
Lenders will want to make sure that interest rate, currency and commodity risks of the project are hedged (where appropriate) or otherwise mitigated. In particular, given the current very low interest rate environment, lenders are likely to require appropriate interest rate hedging for the life of the loans in the expectation that interest rates can only rise over the life of the project. Where there is a mixed currency financing package, it may be that it is not possible to obtain long term hedging for a local currency as the market is simply not deep enough. In this case, the lenders will have to settle for the maximum term the local market will offer and renew the maturity of the hedge in due course. If the majority of the capital costs for the project and loans are denominated in the same currency as the project's income stream, there should not be a requirement for currency hedging. If there are significant currency mismatches in a project's structure, the lenders may require that this risk is hedged or otherwise mitigated. In certain projects, particularly mining projects, commodity price hedging may be required.

Discrimination risks

In many concession agreements, the nationalisation or expropriation of any of the project's property or assets, or the shares in the project company or some other overt discrimination against a project or the project company, such as treating a potentially competing project more favourably or imposing discriminatory taxes or duties, will be a specific termination event entitling the project company to terminate the concession agreement and claim termination compensation from the grantor. In such cases, the level of termination compensation will usually be a sum equal to the aggregate of the total debt and equity invested in the project. However, this will not always be the case, and even where there is a contractual right to compensation, there may be disputes and protracted proceedings in the local courts, which may or may not produce the right result for the project company and shareholders.

Early termination risks

A project can terminate (or be terminated early) for many reasons. Usually the reasons can be categorised as either a grantor default, a project company default, a prolonged force majeure event or a grantor risk event[1]. In most concession-based projects, once the project assets have been returned to the grantor, they will either have to find a new concessionaire or develop and/or operate the concession itself. Most concession agreements will prescribe that the grantor must pay the project company a sum of 'termination compensation' to compensate the project company for transferring the project assets to the grantor. The amount or calculation of



By Neil Cuthbert, ***Dentons***

termination compensation, and specifically the elements that it will include, can materially affect the risk profile of a concession. If limited resource financing has been raised by the project company to finance the project, the lenders will hope to ensure that the termination compensation always includes, at a minimum, outstanding loans and interest (and related sums). The shareholders for their part will hope to ensure that their contributed equity at least will be covered and, where the reason for the default is a grantor default or grantor risk event, a sum on account of future foregone equity returns is paid to them. There are, of course, a great many different ways of calculating termination compensation, and clearly one of the key factors is the time when termination occurs.

Construction risks

For most projects, the construction of the project is the time when it faces its most significant risks, certainly true for most infrastructure and utility projects. The most significant construction risks are cost overruns, delays and technology/commissioning risks. But there are many other risks associated with delivering a project on time and on budget. That is not to say there are no risks for a project once it's commissioned and in operation. These can also be significant, particularly with projects that have multiple independent plants or trains where there are plants or trains in a process chain relying on others in that chain for raw materials or feedstock. The identity of the construction contractor will also be critical. As well as being an experienced and creditworthy contractor, in many projects the shareholders will want a turnkey solution with a single point of responsibility, and at the same time managing or reducing sub-contractor risks.

Conclusion

At the bottom of page 38 is a diagram highlighting the most common potential risks with any project, along with a possible mitigation measure.

While not all of these risks will be relevant to every project, many of them will be, and the shareholders, governments and other key stakeholders will need to structure the various elements of the project with the bankability requirements addressed in this article in mind.

In many (but not all) cases, the interests of the shareholders (and sometimes the governments) and the lenders, will be aligned in relation to these risks.

To view the full article, go to:

http://www.dentons.com/en/insights/guides-reports-and-whitepapers/2015/november/30/global-project-finance-risk-guide

or scan the QR code below.

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Footnote:

1. A 'grantor risk event' might include events (other than natural force majeure events) that have been allocated to the grantor or are the 'fault' of the grantor, e.g. non-renewal of project permits, nationalisation, change in law, non-availability of utilities, non-renewal of project consents.

Taylor Root – Asian-mena Counsel

Market update and salary survey report for the legal and compliance in-house sector in Asia

2015 review and 2016 outlook

Taylor Root
LEGAL & COMPLIANCE RECRUITMENT

Asian-mena Counsel is delighted to present Taylor Root's tenth annual report for the in-house legal and compliance sector in Asia. The findings offer valuable insights into the hiring trends and salary fluctuations in key sectors of the in-house legal market, and follow the rise and fall of job prospects around the region.

Market overview

The in-house legal and compliance recruitment market in Asia over the past 12 months has been a tale of mixed fortunes, with increased hiring in some areas and uncertainty and redundancies in others. Throughout the first half of 2015 the market continued to be buoyant with strong demand across a variety of sectors. Towards the second half of the year, the slowdown in the energy and commodities markets led to head-count freezes and knocked confidence in related sectors. Investment banks also began to make structural changes which impacted and in some cases froze hiring.

Going into 2016, the scene looks very similar and the usual uptick in hiring which occurs around Chinese New Year has been muted in comparison with previous years. Our survey results for the legal sector show that over one third (37 per cent) of institutions saw the size of their legal and compliance teams increase over the last 12 months, a slightly higher level than in the previous year. Expectations on growth over the next 12 months are roughly the same, with 32 per cent predicting that their legal teams will expand in the next 12 months.

The figures on compliance are more bullish, with 42 per cent reporting an increase in team size over the past 12 months, and an impressive 53 per cent expecting additional growth through the coming year. This reflects the hiring patterns we have seen on the ground, with compliance headcount increasing at a higher rate than legal headcount in both Hong Kong and Singapore. The majority of respondents on both legal and compliance teams expected average increases in base salary in 2016 to be between four and seven per cent (62 per cent in legal and 73 per cent in compliance). Around eight per cent of legal teams reported base salary increases of 8 per cent, whereas on compliance the landscape was more conservative with 26 per cent expecting no salary increase at all.

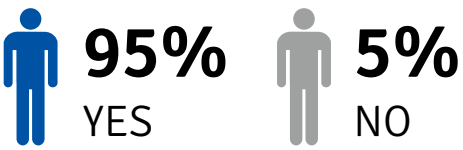
> ***"Expectations on growth over the next 12 months are roughly the same as 2015, with 32 per cent predicting that their legal teams will expand in the next 12 months."***

The overall picture on bonuses was healthy if not spectacular, with the average reported bonus between 11-20 per cent for both legal and compliance professionals across all sectors. A small number of respondents (around 10 per cent) reported bonuses between 31-40 per cent.

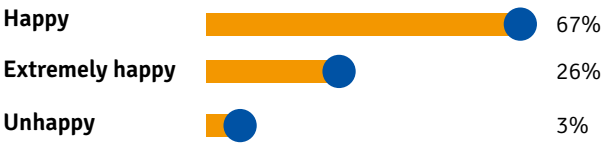
The following analysis looks at the banking and financial services, commerce and industry and compliance sectors in more detail, by region.

ARE YOU CURRENTLY HAPPY TO BE WORKING IN COMPLIANCE?

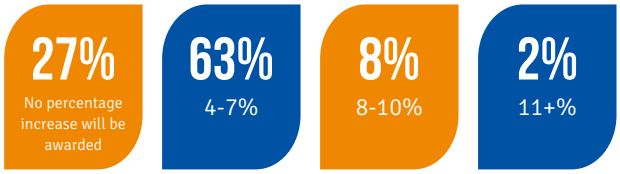
IF YOU WERE STARTING YOUR CAREER AGAIN, WOULD YOU CHOOSE TO WORK IN COMPLIANCE?



ARE YOU CURRENTLY HAPPY TO BE WORKING IN LEGAL?



WHAT AVERAGE PERCENTAGE INCREASE IN BASE SALARY DO YOU EXPECT YOUR TEAM WILL BE AWARDED FOR 2016?



IF YOU WERE STARTING YOUR CAREER AGAIN, WOULD YOU CHOOSE TO WORK IN LEGAL?

HONG KONG

BANKING & FINANCIAL SERVICES

Continuing the trend from 12 months ago, the in-house legal sector within the banking and financial services industry in Hong Kong has seen ongoing improvements in market conditions, sentiment and job opportunities. While the pace of improvement within the market over the past year remains slightly more subdued, opportunities remain for specialised banking and finance lawyers. Mandarin language skills remain a key requirement in many roles, and lawyers with top-tier backgrounds who can speak Mandarin are able to command generous salary uplifts in offers and counter-offers.

The greatest area of demand across the industry remains for lawyers with derivatives or funds experience. Cherry picking three to six year "top tier" derivatives or funds lawyers for an in-house role, for example, is now far from a straight forward proposition. Limited supply of Mandarin speaking funds lawyers and anticipated heavy global demand for derivative lawyers will only exacerbate both scenarios.

Consistent with the last couple of years, demand for capital market lawyers lies within the wider investment management sector as opposed to investment banking departments. In-house opportunities for litigation lawyers remain relatively scarce compared to previous years, but as many financial services organisations face increased regulatory scrutiny, they are becoming more proactive in managing legal risk.

> ***"In-house opportunities for litigation lawyers remain relatively scarce compared to previous years"***

There is still a general reluctance to add headcount cost to the bottom line unless absolutely business critical. We have seen an increase in contract and temporary positions offered in lieu of permanent roles which have mostly been driven by headcount constraints and permanent recruitment freezes. The trend towards recruiting lawyers on a non-permanent basis will continue to gain momentum.

We have seen an increased demand for in-house lawyers in the insurance sector. A number of international insurance companies have been looking for mid-level or senior lawyers to support either products, general commercial/regulatory matters or M&A transactions for the APAC region.

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Partner

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SALARIES

	Salary Range (HK$)				
	NQ -2 years' PQE	3-5 years' PQE	6-8 years' PQE	9-11 years' PQE	ED+
Derivatives/ Structured Products	900,000 – 1,350,000	1,100,000 – 1,600,000	1,300,000 - 1,850,000	1,500,000 – 2,200,000	1,850,000+
Capital Markets (Debt and Equity)	800,000 – 1,250,000	900,000 – 1,600,000	1,200,000 – 2,000,000	1,400,000 – 2,200,000	1,850,000+
Asset Management/ Wealth Management	800,000 – 1,250,000	960,000 – 1,500,00	1,200,000 – 1,850,000	1,44,000 – 2,000,000	1,800,000+
General Banking/ Private Banking	750,000 – 1,000,000	1,000,000 – 1,400,000	1,200,000 – 1,750,000	1,440,000 - 2,000,000	1,850,000+
Regulatory/ Investigations	800,000 – 1,250,000	900,000 – 1,400,000	1,100,000 – 1,850,000	1,350,000 – 2,000,000	1,800,000+
Insurance	600,000 – 900,000	750,000 – 1,100,000	850,000 – 1,300,000	1,200,000 – 1,800,000	1,600,000+

SINGAPORE

BANKING & FINANCIAL SERVICES

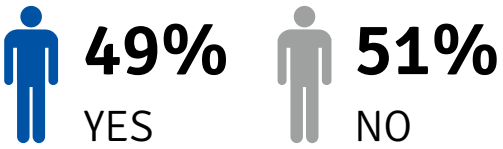
The banking & financial services sector in Singapore was in healthy shape for the first half of 2015 but began to falter towards the end of the year. Global changes for some banks, particularly following appointments of new CEOs, led to consolidation, restructuring and job losses. Over the past five years, Asian legal teams were largely insulated from global redundancy programmes but with some banks refocusing on their core markets, this began to change. Within the banking sector particularly, 2016 has not had a promising start. However, this is not the case across the board.

The insurance sector and payment services sector are strong and remain confident in hiring, both for newly created positions and acting quickly to fill replacement positions. The most interesting new roles have come from these players.

Asset managers and hedge funds have seen solid performances but as ever, remain cautious in expanding their legal teams and there have only been a handful of roles in these companies in Singapore, with most being at the mid-level.

Skillsets in high demand are insurance (on both the products and corporate/commercial side), technology, M&A and regulatory lawyers to fill both commercial and regulatory legal roles within payment services sector.

DO YOU THINK YOU ARE CURRENTLY BEING PAID ENOUGH?



Derivatives lawyers (particularly credit and fixed income) are in steady demand but mainly as a result of movement within the market rather than an increase in transactional flow. The demand for transactional capital markets lawyers continues to be flat to non-existent.

There were a handful of good litigation/investigations roles within the banks in the first part of 2015 but this has slowed considerably. Our expectation is that new roles arising will be replacement rather than newly created as the banks did the bulk of their hiring for these roles in Singapore a couple of years ago.

Pay rises were not impressive this year, with an average increase of between two and five per cent. Where we saw the highest increases were on promotion, when people were able to negotiate hefty increases of up to 20 per cent in order to take on increased responsibilities. However, the best chance of a significant increase in base salary remains when moving to a new employer. Within the banks, bonuses have been one to two months on average.

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SALARIES

	Salary Range (SG$)				
	NQ-2 years' PQE	3-5 years' PQE	6-8 years' PQE	9-11 years' PQE	ED/Head of Legal
Derivatives/ Structured Products	80,000 – 120,000	120,000 – 200,000	180,000 – 250,000	200,000 – 320,000	300,000+
Capital Markets (Debt and Equity)	90,000 – 130,000	120,000 – 180,000	180,000 – 280,000	200,000 – 320,000	300,000+
General Banking	70,000 – 120,000	100,000 – 180,000	125,000 – 240,000	180,000 – 320,000	300,000+
Regulatory/ Investigations	90,000 – 120,000	100,000 – 170,000	150,000 – 240,000	200,000 – 310,000	320,000+
Private Banking / Wealth Management/ Asset Management	80,000 – 120,000	100,000 – 160,000	140,000 – 200,000	180,000 – 280,000	300,000+
ISDA®/Master Documentation	50,000 – 100,000	90,000 – 140,000	120,000 – 200,000	180,000 – 260,000	250,000+
Insurance	70,000 – 130,000	120,000 – 170,000	160,000 – 240,000	200,000 – 280,000	250,000+

HONG KONG

COMMERCE & INDUSTRY

The Hong Kong recruitment market within the commerce and industry sector is increasingly competitive. Throughout 2015 clients were increasingly demanding top-tier candidates to fill open roles Candidates with broad corporate commercial backgrounds and M&A transactional experience are in highest demand. However, certain industries like healthcare and pharmaceutical tend to prefer candidates with more sector-specific experience.

Over the past 12 months the market has been healthy and there was consistent demand for in-house legal counsel across various sectors including the telecoms, technology, retail/FMCG and media/entertainment industries. We predict that in the current economic situation, clients will be cautious in their hiring and generally take their time in looking for the best talent. However, companies with very long recruitment processes risk losing out on good talent who receive other competitive offers.

These is an increasing trend towards contract positions, with clients offering 12 month contracts with the possibility to be renewed or made permanent after a year. On some occasions, instead of hiring a permanent legal counsel role, employers will use a combination of seconders, contractors and outsourcing arrangements.

> *"Clients are cautious in their hiring and generally take their time in looking for the best talent."*

Throughout 2015 and into 2016 there has been a significant shortage of good candidates available in the market, especially experienced commercial lawyers who possess excellent English and Chinese language skills and APAC experience. The levels at which companies typically recruit remains around 4-8'PQE, apart from some regional counsel roles where clients will look at 7' PQE upwards.

In the past year, there has been a growing demand of compliance roles within the commerce sector and we have seen mandates coming from FMCG, education or manufacturing companies looking to hire legal counsel with solid compliance experience handling FCPA, anti-corruption etc.

Telecoms and IT/e-commerce industries are still demonstrating consistent demand for TMT or IP/IT focused commercial lawyers. The retail industry has not been as optimistic as previous years and most companies in this sector kept a rather cautious attitude in terms of adding headcount.

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SALARIES

	Annual Salary (HK$)				
	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
Real Estate/ Construction	540,000 - 840,000	840,000 - 1,200,000	1,200,000 - 1,440,000	1,440,000 - 2,000,000	1,800,000+
FMCG	540,000 – 840,000	840,000 - 1,080,000	1,080,000 - 1,440,000	1,320,000 - 1,800,000	1,700,000+
Transport/ Logistics/Aviation	540,000 - 840,000	840,000 - 1,080,000	1,080,000 - 1,200,000	1,200,000 - 1,680,000	1,600,000+
Pharmaceutical/ Chemical	600,000 – 900,000	900,000 - 1,100,000	1,100,000 - 1,500,000	1,500,000 - 1,800,00	1,800,000+
IT/Media	600,000 - 900,000	900,000 - 1,100,000	1,100,000 - 1,440,000	1,440,000 - 1,800,000	1,700,000+
Energy	600,000 - 900,000	900,000 - 1,200,000	1,200,000 - 1,500,000	1,500,000 - 2,000,000	1,700,000+
Shipping	600,000 - 840,000	840,000 - 1,000,000	1,000,000 - 1,300,000	1,200,000 - 1,600,000	1,500,000+

SINGAPORE

COMMERCE & INDUSTRY

Recruitment activity going into 2016 has been mixed due to a combination of factors including global economic uncertainty, internal restructuring and cost management pressures. Salaries and bonuses are expected to remain static throughout 2016 as hiring managers focus on cost management measures and retention. Singapore remains the APAC regional hub for various multinationals, and companies in Singapore continue to have a strong preference for candidates with local experience in the APAC region.

One area in which we saw increased demand was for in-country counsels based in locations such as Malaysia, Indonesia, Thailand and Vietnam. Most packages for these positions are local rather than expat packages, with diverse salary ranges dragged to the local market. The preferred candidates are locals with overseas academic qualifications, international law firm training and strong English and native language capabilities.

The energy, oil & gas and shipping industries continued to be plagued by depressed oil prices in 2015, but major multinational companies managed to weather the economic turmoil by taking a cautious and sustained approach to regional business operations. There were casualties amongst the smaller players in the market, with some companies shutting their Singapore offices or moving APAC headquarters to alternative locations.

The global chemicals industry is going through a phase of consolidation and there have been a number of highly visible and major M&A deals. There has also been a spate of M&A within the semi-conductor/manufacturing companies, which has resulted in some lawyers being made redundant. In the construction industry, variable bonuses dropped due to the poor business climate.

Within the IT industry, demand for candidates with relevant in-house experience and expertise in technology, outsourcing and procurement remains constant. Technology start-ups and IT companies with a less established presence in the region have been more active in recruiting for new roles, with many appointing their first APAC counsel.

The retail/FMCG industry is facing longer-term structural issues such as the shift to online sales. As a result, there has been an increasing demand for lawyers with experience in e-commerce and logistics related matters. We have also seen a trend for online start-up retail companies looking for their first legal counsel.

The hospitality industry is in flux as traditional companies have seen increased competition from shared accommodation options such as Airbnb. As with the retail companies, we are seeing an increased demand for lawyers in this area with general commercial and regulatory experience to provide advice and support in areas such as marketing, e-commerce, privacy, consumer protection and intellectual property.

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SALARIES

	Salary Range (SG$)				
	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
Real Estate/ Hospitality	70,000 - 120,000	110,000 - 160,000	150,000 - 180,000	180,000 - 260,000	220,000 - 350,000
FMCG	70,000 - 120,000	100,000 - 150,000	140,000 - 170,000	160,000 - 240,000	200,000 - 320,000
Transport/ Logistics	80,000 - 130,000	120,000 - 160,000	150,000 - 200,000	180,000 - 260,000	240,000 - 350,000
Pharmaceutical/ Chemical	80,000 - 140,000	120,000 - 170,000	160,000 - 220,000	200,000 - 300,000	280,000 - 450,000
IT/Media	80,000 - 140,000	120,000 - 170,000	160,000 - 220,000	200,000 - 300,000	250,000 - 400,000
Energy/Natural Resources	80,000 - 140,000	130,000 - 170,000	160,000 - 240,000	200,000 - 320,000	280,000 - 450,000
Shipping	80,000 - 100,000	100,000 - 150,000	120,000 - 180,000	150,000 - 240,000	220,000+

CHINA

COMMERCE & INDUSTRY

The China in-house legal market is buoyant and we saw increased activity throughout 2015 and the start of 2016. As a result of the fast growing middle class in China, consumers prefer to utilise products and services with strong brands, which has resulted in a bigger demand for legal talent from companies in the FMCG and retail industries. We also saw rapid expansion within the telecommunication, media and technology (TMT) industry, with corresponding demand within the legal market. Meanwhile, due to the fall in oil prices, the energy industries have been cautious about expanding their legal teams. The manufacturing sector is still weak and we haven't seen much demand in legal as a result.

Chinese companies continue to invest outside of China, which has entailed a corresponding requirement to build up their overseas teams to move the business forward. Therefore, we expect there will be an increase in demand for both legal and regulatory roles, mainly at the senior and middle level, within these companies. Chinese companies prefer to hire Chinese nationals with overseas educational backgrounds and international firm working experience, as they know the local market and most of these candidates speak both Mandarin and English.

On the candidate side, in-house candidates (and those from international firms) tend to look for positions with a better work/life balance while some are interested in seeking opportunities providing greater coverage and responsibilities in order to carve out a better career path for themselves. As candidates with international law firm backgrounds are highly sought after, they expect salary increase for new positions in the region of 15 - 40 per cent.

> ***"As candidates with international law firm backgrounds are highly sought after, they expect salary increase for new positions in the region of 15 - 40 per cent."***

As talented candidates within the Chinese legal market continue to increase, companies have more choice when it comes to recruitment and they have been screening the right candidates with a cautious and meticulous attitude. In some cases, Asia-Pacific or even global legal teams are involved in the recruitment process which results in a longer recruitment cycle, e.g. from two months originally extending to 2.5 – four months.

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SALARIES

	Salary Range (RMB)				
	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	15+ years' PQE
Real Estate/ Construction	200,000 – 450,000	350,000 – 700,000	500,000 – 1,200,000	700,000 – 1,600,000	1,400,000+
FMCG	150,000 – 400,000	350,000 – 700,000	500,000 – 1,400,000	750,000 – 1,800,000	1,600,000+
Transport/ Logistics/Aviation	100,000 – 350,000	300,000 – 650,000	550,000 – 1,200,000	700,000 – 1,600,000	1,300,000+
Pharmaceutical/ Chemical	200,000 – 450,000	350,000 – 700,000	550,000 – 1,500,000	800,000 – 1,800,000	1,500,000+
IT/Media	150,000 – 450,000	350,000 – 700,000	600,000 – 1,300,000	750,000 – 1,700,000	1,500,000+
Energy	150,000 – 400,000	350,000 – 700,000	550,000 – 1,200,000	750,000 – 1,600,000	1,400,000+
Shipping	150,000 – 350,000	300,000 – 650,000	500,000 – 1,200,000	700,000 – 1,500,000	1,200,000+

JAPAN

IN-HOUSE

The in-house market in Tokyo was more active in 2015 than in recent years. This looks set to continue throughout 2016, with an increasing number of international companies strengthening their legal teams in Japan as confidence grows in the lead up to the 2020 Olympics. Within financial services companies, Japan Bar qualified candidates with regulatory and transactional experience are always of interest. Candidates with insurance, technology and pharmaceutical experience are also very well placed to make a move.

Demand is primarily for bilingual lawyers with native Japanese language skills. In order of preference, clients are keen to hire Japan Bar qualified candidates, Japanese candidates with a foreign qualification, and non-Bar admitted candidates with a Juris Doctor from a well-regarded university and good contract drafting experience. Excellent English is a must as even though most in-house roles in Tokyo are Japan-focused, they often require frequent interaction with international colleagues.

International banks are the highest payers in the market but have been very cautious about recruiting into legal teams over past years. There are more opportunities within international companies, but salaries are generally lower than in financial services and bonuses have hovered around the 10-20 per cent mark for some years.

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WE ASKED LEGAL PROFESSIONALS IN ASIA WHAT IT IS THEY VALUE MOST ABOUT THEIR JOB:

Colleagues Yes - 42% No - 58%	Career prospects Yes - 33% No - 67%	Intellectual challenge Yes - 51% No - 49%	Location of office Yes - 19% No - 81%
Variety of work Yes - 49% No - 51%	Status of organisation Yes - 36% No - 64%	Money/Benefits Yes - 44% No - 56%	Training provision Yes - 8% No - 92%
Clients/candidates/ staff involvement Yes - 10% No - 90%	Flexibility of work/life balance Yes - 36% No - 64%	Working for the business itself Yes - 27% No - 73%	

WE ASKED COMPLIANCE PROFESSIONALS IN ASIA WHAT IT IS THEY VALUE MOST ABOUT THEIR JOB:

Colleagues Yes - 53% No - 47%	Career prospects Yes - 47% No - 53%	Intellectual challenge Yes - 58% No - 42%	Location of office Yes - 26% No - 74%
Variety of work Yes - 47% No - 53%	Status of organisation Yes - 26% No - 74%	Money/Benefits Yes - 47% No - 53%	Training provision Yes - 16% No - 84%
Clients/candidates/ staff involvement Yes - 21% No - 79%	Flexibility of work/life balance Yes - 47% No - 53%	Working for the business itself Yes - 16% No - 84%	

SALARIES

	Salary Range (JPY)				
	2-4 years' PQE	5-7 years' PQE	8-10 years' PQE	11-15 years' PQE	ED/Head of Legal
Banking & Financial services	8 - 12 million	10 - 16 million	15 – 22 million	18 – 25 million	25 – 40 million
Commerce & Industry	5 - 7 million	8 – 15 million	10 – 18 million	16 – 22 million	20 – 30 million

HONG KONG

COMPLIANCE

Ever expanding workloads and responsibilities throughout 2015 led to a return to 2010-2012 days in the compliance hiring market in Hong Kong, with aggressive salary packages offered to attract hard to find talent and attractive counter-offers preferred to retain critical staff. Investment banking advisory compliance roles and financial crime sanctions roles lead the market in total remuneration increases. Subject matter experts in AML/FCC with cross border transactional experience attracted premium salary offers through 2015 and into 2016. This reflects the lack of stable decent candidates in these areas. Testing and Control is an area we expect to see grow in the next twelve months with these teams taking a higher profile in building and defining robust risk systems after regulator recommendations.

With compliance departments moving further away from legal to become more independent, we are seeing a higher emphasis placed on attracting candidates with excellent soft skills, those candidate able to marshal but also enable 'the business' whilst facing off with legal teams and external regulators.

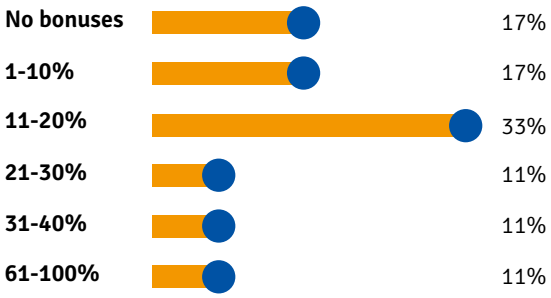
> *"Candidates with experience developing, challenging and implementing adequate risk frameworks (especially those candidates with regional language skills) are in extremely high demand."*

This has increased the competition for the right candidates to the extent that banks will look outside the region - forgoing language skills – if the product and business facing experience is correct.

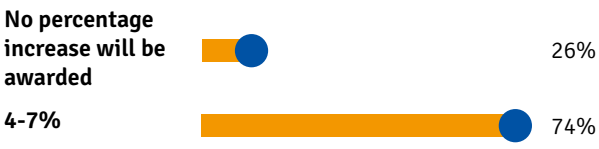
We saw increased mandates for senior compliance figures within Fin-Tec companies who seem to be staffing up or up-skilling. One other trend we noticed in 2015 was a move towards splitting the Asia region to create North and South Asian heads of compliance, whereas previously one Regional Head of Legal may have covered all of Asia for compliance; this is in response to increased cyber security risk within payment and deposit taking. Candidates with experience developing, challenging and implementing adequate risk frameworks (especially those candidates with regional language skills) are in extremely high demand as this market grows quickly through 2016.

Institutions are becoming more pragmatic around the work environment and hours for compliance employees with 30 per cent of clients offering part-time or flexible working arrangements to attract and more so to retain staff.

AVERAGE BONUS COMPLIANCE PROFESSIONALS WILL RECEIVE IN 2016:



AVERAGE PERCENTAGE INCREASE IN BASE SALARY FOR 2016:



SALARIES

In 2015 the actual monetary value of bonuses was hard to report accurately as large fluctuations existed between different sectors in financial services firms and even within the different teams within the same firms. Our clients reported that bonus payments were equally linked between company and individual performances. Firms paid out bonuses at an increased ratio to critical talent in compliance that they find hard to replace.

Senior compliance staff with 10+ years' experience in larger international financial institutions have expected bonuses of around 50 per cent of base salary over the past few years. Recently we have seen this drop closer to an expectation of around 30-40 per cent of base salary with a marked trend of moving away from an all cash bonus. We now see bonuses structured with cash and equity payments with a structure set to vest across a number of years. Some of the reasoning behind this is to show less of risk reward culture and to increase senior staff retention. One reason for the drop in bonus levels is that increasingly salaries are being front loaded to attract talent into the role. Guaranteed bonuses have all but disappeared but we saw a few signs on bonuses granted in 2015 for critical roles when multiple organisations were fighting over fewer candidates.

CANDIDATES

In terms of what candidates look for in new employers and new roles, candidates are increasingly concerned about team chemistry, cohesion and the ability of senior compliance management to gain sponsorship and respect of the business. This has resulted in a slight decrease in peer to peer banking moves as some candidates have opted to take roles based on team environment rather than moves to direct competitors.

Away from financial services, the consulting firms have been most active over the last year, investing in acquisitions of senior hires direct from the financial services industry.

We believe this is due in part to higher profile workload advisory projects and consultancies now being able to offer salary packages comparable to the banking sector. It could also have something to do with potential civil penalties within the financial services industry meaning, making the consultancy path an increasingly attractive and viable option. At the junior end of the candidate market we are seeing banking compliance candidates more open to exploring the consultancy market as a way of realising better exposure and a more varied workload, with the added benefit of a more structured promotional path.

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SALARIES

	Salary Range (HK$)				
	NQ–2 years' PQE	3–5 years' PQE	6–8 years' PQE	9–11 years' PQE	12+ years' PQE
Investment Banking – Securities & Corporate Finance	320,000 – 460,000	420,000 – 750,000	600,000 – 950,000	860,000 – 2,200,000	1,100,000 – 2,500,00+
Funds & Asset Management	345,000 – 480,000	460,000 – 720,000	630,000 – 900,000	850,000 – 1,800,000	1,000,000 – 2,500,000+
Consumer/Retail Banking	324,000 – 400,000	350,000 – 700,000	500,000 – 850,000	800,000 – 1,200,000	1000,000 – 2,200,000+
Private Banking / Wealth Management	260,000 – 350,000	374,000 – 575,000	460,000 – 950,000	800,000 – 1,500,000	1,200,000 – 2,500,000+
Insurance	240,000 – 330,000	360,000 – 550,000	500,000 – 720,000	700,000 – 1,200,000	1,10,000 – 2,100,000+

SINGAPORE COMPLIANCE

The Singapore compliance market has continued to experience positive growth as many firms invest in what is increasingly seen as a critical function for the business.

Key areas of compliance which typically experience strong demand remain regulatory compliance and AML, and this is especially marked within financial institutions. Within the corporate sectors, demand is tilted towards anti-bribery/anti-corruption, anti-trust, corporate ethics and governance, and data protection/privacy experience. These areas have been the primary driver for compliance demand. Another growing area within the compliance market in Singapore is compliance roles within law firms. Unlike the more mature compliance markets like Hong Kong and London, there are only a handful of compliance professionals working at law firms in Singapore, but this may well be set to change as we move forward.

> *"...changes in base salaries were modest and bonus levels on average tended to be between 20-30 per cent of base salaries."*

Although compliance professionals in Singapore tend to come from diverse backgrounds, there is still strong demand for those candidates with a legal background or qualified lawyers, especially within the corporate sector. This could be due to the intertwined nature of legal and compliance functions within corporates, and the need for added legal support from compliance, where needed.

Compared to the previous year, changes in base salaries were modest and bonus levels on average tended to be between 20-30 per cent of base salaries. In sectors which do not pay bonuses exclusively in cash, these tend to take the form of equity options (or similar) which vest over a period of time (typically 1-3 years) to bolster staff retention levels.

Candidates' motivation for switching jobs continue to be financially driven, though this is increasingly being tempered with other reasons relating to change in job scope and lack of career progression. This is particularly evident within the financial institutions, whose compliance functions often undergo restructuring which can sometimes result in the advisory nature of their function morphing to a more operations focus, much to the chagrin of core compliance teams. With banks increasingly choosing to consolidate and exit less profitable non-core businesses, the knock-on impact of reduced business lines and shrunken geographical scope of regional compliance functions have also driven candidates to seek opportunities elsewhere.

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SALARIES

	Salary Range (SG$)				
	NQ–2 years' PQE	3–5 years' PQE	6–8 years' PQE	9–11 years' PQE	12+ years' PQE
Investment Banking – Securities & Corporate Finance	55,000 – 80,000	70,000 – 125,000	105,000 – 160,000	150,000 – 220,000	190,000 – 285,000+
Funds & Asset Management	60,000 – 95,000	80,000 – 140,000	110,000 – 180,000	165,000 – 230,000	200,000 – 300,000+
Consumer/Retail Banking	50,000 – 70,000	58,000 – 90,000	85,000 – 150,000	105,000 – 210,000	170,000 – 290,000+
Private Banking/ Wealth Management	50,000 – 70,000	65,000 – 100,000	80,000 – 165,000	140,000 – 210,000	190,000 – 315,000+
Insurance	45,000 – 60,000	55,000 – 90,000	85,000 – 140,000	125,000 – 190,000	160,000 – 280,000+
Commerce & Industry / MNCs (FCPA/ Anti-Bribery/Ethics & Governance)	50,000 – 85,000	70,000 – 140,000	125,000 – 180,000	170,000 – 290,000	270,000 – 400,000+

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Dr Justine Walker, *advisor to the* British Banking Association

CHINA

By Chloe Lin
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Overview of draft amendment to the Anti-Unfair Competition Law from anti-monopoly perspective

Both monopoly and unfair competition are anti-competition behaviors of business operators that violate trade order and code of business ethics. They have a double whammy for the market, not only undermining the normal market competition but also prejudicing the interests of other business operators as well as consumers. Monopoly limits the freedom of business operators that compete in the market and therefore, destroys the competition itself. Meanwhile unfair competition undermines the fair order of competition. The aforementioned commonalities and differences lead to the concurrence between the Anti-Monopoly Law and Anti-Unfair Competition Law in one hand and their different focusses in the other hand, explaining why the draft amendment to the Anti-Unfair Competition Law (the Draft) announced by the Legislative Affair Office of the State Council in February 2016 has attracted wide attention of anti-monopoly fraternity.

1. Introduction of relatively dominant position

Article 6 of the Draft, which could be the provision mostly affecting anti-monopoly area, provides that a business operator shall not use its relatively dominant position to restrict its counterparty's transaction objects, commodities, terms and conditions with others without justifiable reasons; request excessive fees; unreasonably request other economic benefits from its counterparty; or attach any other unreasonable trade terms. Relatively dominant position refers to the dominant position of a business operator in a specific transaction in terms of funds, technologies, market entry, sales channel, procurement of materials etc. on which the counterparty depends and is not able to turn to other business operators. In light of the definition, relatively dominant position shows concurrence with dominant market position as both of them emphasise the market power of the business operator. For example, a business operator with relatively dominant position normally possesses the advantages in funds, technology and market entry, while determination of dominant market position would consider the business operator's financial and technical capabilities and the degree of difficulty for other business operators to enter the relevant market. Moreover, the two positions share a concurrent key criteria which is the dependency of the counterparty on the business operator. In spite of the aforementioned concurrence, the relatively dominant position has a lower threshold compared to the dominant market position. To determine dominant market position requires, first of all, identifying the relevant market and then considering the competition status of the relevant market and proving the market share of the business operator with monopoly behaviors. In practice it is quite burdensome for the counterparty seeking protection under the Anti-Monopoly Law to identify relevant market and prove market share. However, relatively dominant position does not require the identification of the relevant market or market share but focusses on 'relatively', underlining the market power comparison between the business operator and its counterparty in a specific transaction. Therefore, theoretically, the lower threshold of relatively dominant position may reduce the cost of counterparty seeking protection and remedy.

2. Deletion of regulations on certain monopoly behaviors

The Anti-Unfair Competition Law was promulgated in 1993, 14 years earlier than the Anti-Monopoly Law. The Anti-Unfair Competition Law covers some monopoly behaviors emerged at that time in order to respond to the then demands for regulatory compliance. For example, Article 11 of the Anti-Unfair Competition Law prohibits business operators from selling commodities at prices below cost with the intention of defeating competitors. Such prohibition overlaps with predatory pricing prohibited by the Anti-Monopoly Law. Thus, to streamline the legislations and minimise the conflict with the Anti-Monopoly Law, the Draft deleted four monopoly behaviors, including public utilities or other certified monopolies to restrict its counterparty's commodity purchasing, administrative monopoly, bundle or unreasonable trade terms and selling under cost. It is noteworthy that, except for administrative monopoly, the other three monopoly behaviors are deemed as acts of abuse of dominant market position under the Anti-Monopoly Law. In addition, other monopoly behaviors overlapping with the Anti-Monopoly Law such as collusive bidding has not been deleted by the Draft.

3. Other attractions

Besides the above, the Draft also added provisions regulating unfair competition behaviors in network applications service. Article 13 of the Draft stipulates that business operators shall not use network tech-

nologies to prevent its users from using network application service of others without users' prior consent, to force users to skip to other links inserted without prior permission or authorisation, to disturb or destroy network applications service provided by others without prior permission or authorisation, or to mislead, cheat, force users to modify, close, download network applications service. Unfair competition behaviors in network application service used to be regulated under Article 2 of the Anti-Unfair Competition Law, the equality and fairness principle, of which the standards are ambiguous and controversial. Such new additions in the Draft, a legislative response to the widely focussed dispute between Tencent and Qihoo 360, highlights the technology development and corresponding legal practice change in recent years.

反垄断视角下的《反不正当竞争法》修改草案送审稿

垄断和不正当竞争行为都是市场经营者在市场竞争过程中违反交易秩序、商业道德准则所实施的反竞争行为，它们均具有双重损害性，既损害正常的市场竞争，也损害其它经营者和消费者的利益。垄断行为破坏自由竞争本身，限制经营者在市场上自由参与竞争的权利;不正当竞争破坏的是公平的市场竞争秩序，从而损害合法经营者和消费者的权益。垄断和不正当竞争行为的共性和区别使《反垄断法》与《反不正当竞争法》之间既有竞合，又各有侧重。有鉴于此，2016年2月国务院法制办公室公布的《反不正当竞争法》修改草案送审稿（“送审稿”），引起了反垄断界的广泛关注。本文将对送审稿对反垄断领域的影响进行解读。

1. 引入相对优势地位，降低交易相对方的维权成本。

送审稿第6条对反垄断领域影响最大，第6条规定，经营者不得利用相对优势地位，无正当理由限定交易相对方的交易对象、购买产品、与其他经营者的交易条件，不得滥收费用或不合理地要求交易相对方提供其他经济利益，以及不得附加其他不合理的交易条件。此条在行为模式上部分借鉴了《反垄断法》第17条禁止具有市场支配地位的经营者滥用市场支配地位的行为，但在主体限定上引入了“具有相对优势地位”这一概念。相对优势地位在送审稿中被定义为“具体交易过程中，交易一方在资金、技术、市场准入、销售渠道、原材料采购等方面处于优势地位，交易相对方对该经营者具有依赖性，难以转向其他经营者”。从文义上看，相对优势地位与市场支配地位既有相似，又有区别。首先相对优势地位与市场支配地位都强调企业自身的市场地位和实力，如相对优势地位要求交易一方在资金、技术、市场准入等方面处于优势地位，而反垄断法在认定市场支配地位时，也需考虑经营者的财力和技术条件以及其他经营者进入相关市场的难易程度。同时，相对优势地位和市场支配地位的重要判断标准之一均为交易相对方对经营者的依赖性。但是，相较市场支配地位，相对优势地位的定义较为宽松。首先，在认定市场支配地位时，通常要求先确定相关市场，考虑相关市场的竞争状况以及经营者在相关市场的市场份额。然而，相关市场的判定及经营者市场份额的证明难度较大，这常常导致实践中证明经营者具有市场支配地位困难重重。而送审稿在判定相对优势地位时并未要求对相关市场进行明确定义和论证。相对优势地位将重点放在相对二字上，著重强调在具体交易中，经营者与交易相对方之间的市场地位对比。由此可见，理论上《反不正当竞争法》对相对优势地位的标准较为宽松，可能有助于交易相对方降低维权成本。

2. 删除部分由反垄断法规制的不正当竞争行为，进一步协调与反垄断法的关系。

我国《反不正当竞争法》的颁布早于《反垄断法》，为适应当时经济发展的要求，《反不正当竞争法》自然地规制了当时经济社会中已经出现的垄断行为，如公用企业或者其他具有独占性地位的经营者限定他人购买指定商品等行为。这一行为其实就是《反垄断法》规定的“滥用市场支配地位”的垄断行为之一。又如，《反不正当竞争法》禁止政府及其所属部门滥用行政权力，指定交易或限制竞争，这其实是《反垄断法》第8条规制的“行政垄断行为”。《反不正当竞争法》第11条规定的禁止经营者以低于成本的价格销售实际上与《反垄断法》禁止的掠夺性定价行为重合，第12条规定的禁止搭售或者附加其他不合理条件与《反垄断法》规定的滥用市场支配地位行为中的搭售行为竞合。本次送审稿删除了禁止公用企业指定交易、禁止滥用行政权力、禁止低于成本销售和禁止搭售这四种可以由《反垄断法》规制的反竞争行为，进一步协调与《反垄断法》的关系。值得注意的是，除了行政垄断外，上述行为在《反垄断法》下均是滥用市场支配地位的行为表现之一。除此以外，我们还注意到对于其他与《反垄断法》竞合的行为，如《反不正当竞争法》禁止的串通投标行为，送审稿并未删除。

3. 其它亮点

此外，《反不正当竞争法》还新增了有关网络服务不正当竞争行为的规定。送审稿第13条规定，未经用户同意，经营者不得通过技术手段阻止用户正常使用其他经营者的网络应用服务，不得在其他经营者提供的网络应用中插入链接实行强制跳转，不得误导、欺骗、强迫用户修改、关闭、卸载或者不能正常使用他人合法提供的网络应用服务，经营者不得未经许可，干扰或者破坏他人合法提供的网络应用服务。网络不正当竞争行为原本只能通过《反不正当竞争法》第2条的原则性规定加以规制，送审稿的本次完善回应了近年沸沸扬扬的腾讯360之争，更反映了技术进步和市场实践变化。

INDIA

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A take on Budget 2016

Union Budget 2016 was presented amid a complex political situation arising out of the intolerance debate, elections in Bihar and recent incidents related to the Jawaharlal Nehru University. In addition, India will hold several state elections this year, including in the farming state of West Bengal, with the country's most populous state, Uttar Pradesh, going to polls in 2017. A strong showing will be Prime Minister Modi's chances of a second term.

Further, due to a drought-like situation in most parts of the country, the agriculture sector, being a major employment provider and being politically sensitive, continues to be a cause of major concern for the government. Most of the economies were adversely affected by nearly bottoming of prices, turbulent financial markets and volatile exchange rates. Even for India, it has been a cause of considerable stress.

On a positive note, with a revised increased estimated growth rate of 7.6 percent, India is looking to become a fast growing major economy surpassing even China. The indicator also suggests that economic growth was due to enhanced performance of the manufacturing and service sector.

Given this backdrop, it was a mixed bag of expectation from different sections. While in the political section it was expected to be a populist budget, the economists and industrialists expected that public spending would get a boost to pump economy.

The Hon'ble Finance Minister chose for a prudent and populist budget keeping the fiscal deficit target for 2016-17 at 3.5 percent, despite many calls for relaxing this in the interests of higher growth.

The budget has a transformative agenda built on nine distinct pillars of agriculture welfare, rural sector, social sector, education, skills and job creation, infrastructure and investment, financial sector reforms, governance and ease of doing business, fiscal disciple and tax reforms.

The greater emphasis on improving rural incomes to the extent of doubling them in five years, improving rural infrastructure including irrigation facilities and roads, improving access to the market and processing of farm produce are all well thought out actions.

> "Improving the quality of life of those below the poverty line is essential, and the steps proposed are welcome, as is the intention to raise the quality of some higher education institutions"

The proposals in the infrastructure are good as it is generally agreed that the trigger to start the investment cycle has to come from government spending on basic infrastructure construction. The proposed changes in the Motor Vehicles Act to facilitate passenger movement are welcome. However, extending this, the movement of goods also would have helped make manufacturing more competitive.

Improving the quality of life of those below the poverty line is essential, and the steps proposed are welcome, as is the intention to raise the quality of some higher education institutions. The proposals for strengthening public sector banks are also a step in the right direction.

The proposal to provide a reduced tax rate for new manufacturing companies, extending the benefit of deduction for employment of new regular workmen and changes to the customs and excise duty rates on inputs can be expected to have a significant impact on the revival of growth and investment and promote domestic manufacturing and 'Make in India'.

Further, a number of tax proposals has been made in the budget towards providing relief to small taxpayers, measures to boost growth and employment generation, incentivising domestic value addition, reducing litigation and providing certainty, and for simplification and rationalisation of taxation.

To reflect India's commitment towards implementing Base Erosion and Profit Shifting (BEPS), the budget seeks to implement a new three-tier approach for TP documentation, an equalisation levy to address BEPS risks which stand exacerbated by the digital economy and a nexus-based patent box regime. As mentioned by the experts, the regime may prove to be a catalyst to progress from 'Make in India' to 'Innovate in India'.

The FM reiterated that General Anti-Avoidance Rules would be implemented with effect from April 1, 2017. However, implementation of place of effective management as a test for corporate residency has been deferred

Further, though nothing significant has been said in terms of goods and services tax, the preparation and lack of policy-related changes indicate the keenness on part of the government to implement this as soon as possible. There are some negatives like the imposition of cess, but considering the federal compulsion, that can't be ignored.


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Non-compete agreements and protecting confidential information

Indonesian labour and employment laws do not expressly impose or regulate non-competition obligations of employees with the exception of the Chief Representative of the local representative office of an overseas principal.

However, Indonesian law recognises the principle of freedom of contract. This principle is codified in Articles 1337 and 1338 of the Indonesian Civil Code (the Civil Code). The parties to a contract are free to include any provisions they wish, subject only to the mandatory provisions of Indonesian law, as well as the general principles that contract terms must be implemented in good faith and not contrary to public order.

With regard to non-competition during the period of employment, it is essential to include a provision in the employment agreement imposing a duty on the employee not to compete or otherwise act in conflict with the interests of the employer. The same provision may be set forth in the so-called company regulation, which sets forth the employer's work rules registered with the Ministry of Labor and is updated every two years, or in the Collective Labour Agreement (CLA) if there is a union or unions representing a majority of employees. Violation of that contractual duty would be grounds for termination. Interestingly, the rules with regard to the appointment of a Chief Representative of a representative office expressly require the candidate to sign an undertaking to be solely devoted to the interests of the overseas principal and not to have any other employment whatsoever.

Non-competition following employment

With regard to non-competition following the period of employment, employers may wish to include non-competition and non-solicitation clauses in their employment contracts and company regulations. However, the enforceability of such post-employment constraints is less clear. There is no jurisprudence on the issue and thus no clear guidelines as to the requirements for such clauses to be enforceable. Depending on the circumstances, such constraints may violate Article 27(2) of the Indonesian Constitution, which vaguely guarantees every citizen the right to work and a decent livelihood.

We do not routinely include non-compete and non-solicitation clauses in the employment contracts of ordinary employees. However, for senior executives and other high-risk employees, such constraints may be commercially warranted. In that case, given the constitutional right to work and the lack of judicial guidance, we recommend that the clauses set reasonable geographic and time limitations, and for greater certainty, include some compensation during the restraint period.

The enforceability of non-competition and non-solicitation covenants would likely depend upon the particular factual context. In practice, at least for multinationals operating in Indonesia, it is common for the former employer to alert the new employer about the existence of such constraints, as well as confidentiality obligations of the former employee, and address the concern amicably, recognising that all companies face the same challenge with regard to their former key employees from time to time.

Injunctive relief is not generally available in the Indonesian courts. In principle, an employer could sue its former employee in the District Court system – not the Labor Courts – for direct damages under Articles 1243 – 1252 of the Civil Code.

Confidentiality obligations and IP rights

The Indonesian Labour Law provides for summary termination due to serious misconduct, which includes disclosure of confidential information. However, the serious misconduct section of the law was struck down by the Constitutional Court given the lack of due process. As a result, all employers are advised to include a serious misconduct clause – including disclosure of confidential information and misuse of IPR – in their employment agreements and company regulations or CLAs; provided that such terminations are subject to Labour Court approval as per all other terminations. The employee would be entitled to untaken leave and a modest separation payment depending on the employment documentation, but forfeits any other accrued severance, long service pay, and health and housing allowance entitlements.

Under Indonesian Law No. 30 of 2000 regarding Trade Secrets, employers also enjoy protection of their trade secrets for methods of production, methods of processing, methods of sale and other information in the area of technology and/or business that has economic value and is not otherwise available to the general public. Under the Trade Secrets Law, the employer can commence an action in the District Court for direct damages and injunctive relief in connection with any person's unauthorised disclosure of trade secrets. In addition, anyone who deliberately and without entitlement uses a company's trade secrets is also subject to criminal prosecution and sanctions of up to two years imprisonment and/or a fine of up to IDR300 million.

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Only Muslims may practise in *Syariah* courts

The Malaysian Federal Court in the case of *Majlis Agama Islam Wilayah Persekutuan v Victoria Jayaseele Martin* [2016] 1 LNS 131, issued a landmark ruling whereby it held that only Muslims may practise as *Syarie* lawyers in the *Syariah* Courts in Wilayah Persekutuan, Kuala Lumpur, Malaysia.

The facts

The applicant, Victoria Jayaseele Martin, is an Advocate and Solicitor of the High Court of Malaya. After obtaining the Diploma in *Syariah* Law and Practice from the International Islamic University, Malaysia, she applied in 2009 to be admitted as a *Syarie* lawyer in Wilayah Persekutuan, Kuala Lumpur, Malaysia. Her application was however denied on the ground that she is not a Muslim, a condition imposed by Rule 10 of the *Syariah* Lawyers Rules 1993, or commonly known as the *Peguam Syarie Rules* 1993 (the Rules).

The arguments

Ms Martin argued that based on section 59(1) of the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505), the Federal Territories Islamic Religious Council or *Majlis Agama Islam Wilayah Persekutuan* (MAIWP) may admit any person who has sufficient knowledge on Islamic law to practise in the *Syariah* Courts as a *Syarie* lawyer. Furthermore, she argued that the parliamentary debate of August 1995 had clearly made provisions for "non-Muslims who have adequate knowledge of *Syariah* laws" to practise in *Syariah* courts. It was also articulated that the MAIWP had contravened the Federal Constitution in rejecting her application. She had asked the court for a declaration that Rule 10 of the Rules, which only allows Muslims to be accepted as *Syarie* lawyers in the Federal Territory, is unconstitutional as it violates specific provisions of the Federal Constitution, namely, Article 5 on the right to life and liberty, Article 8 on the right to equality and Article 10 on the freedom of speech, assembly and association.

> Section 59. *Peguam Syarie*
> (1) Subject to subsection (2), the *Majlis* may admit **any person** having sufficient knowledge of Islamic Law to be *Peguam Syarie* to represent parties in any proceedings before the *Syariah* court.
> (2) The *Majlis* may, with the approval of the *Yang di-Pertuan Agong,* make rules –
> (a) to provide for the procedure, **qualifications** and fees for the admission of *Peguam Syarie*; and
> (b) to regulate, control and supervise the conduct of *Peguam Syarie*.

The decision

The High Court, in 2011, held that since the Syariah laws fall within the jurisdiction of the State, the Federal Constitution empowers the MAIWP, under section 59(2) of Act 505, to legislate on the qualification of a *Syarie* lawyer. The power to legislate based on the empowering provision and the broad meaning of the word 'qualifications' allow the MAIWP to impose a condition that only a Muslim may be admitted as a *Syarie* lawyer. The condition for a *Syarie* lawyer to be a Muslim imposed by the MAIWP, was held to be based on the requirements of *Syariah* and Islamic jurisprudence. It was also held that if the legislature deems that condition necessary that for the purpose of achieving the object of Act 505, then Rule 10 of the Rules is good law and does not violate Article 8 of the Federal Constitution.

It was further held that Rule 10 is not unconstitutional and did not contravene Articles 5 and 10 of the Federal Constitution, as the applicant was not deprived of practising as an Advocate & Solicitor in the Civil Court, and that Ms Martin could not force her application as a member to be allowed.

Ms Martin appealed and in 2013, the Court of Appeal reversed the ruling of the High Court and held that non-Muslims were eligible to practise in the *Syariah* courts on the basis that the words 'any person' in section 59 of Act 505, do not confine *Syariah* law practitioners to Muslims only, and therefore, the Rules, which allow only Muslims to be admitted as *Syarie* lawyers, were ultra vires Act 505.

On March 24, 2016, in reinstating the decision of the High Court, the Federal Court, decided that only Muslim lawyers are eligible to practise as *Syarie* lawyers in the Federal Territory. Rule 10 of the Rules did not contravene Articles 5, 8 and 10 of the Federal Constitution, and did not go beyond the powers granted by Act 505. According to the Federal Court, having a *Syariah* lawyer who professed the religion of Islam was important to achieve the objectives of Act 505.

> "On March 24, 2016, in reinstating the decision of the High Court, the Federal Court, decided that only Muslim lawyers are eligible to practise as *Syarie* lawyers in the Federal Territory"

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Restrictive covenants in employment contracts

One of the means of keeping afloat in today's competitive market is to hire employees who are 'fit' for a particular job. However, before employers may tap the full potential of their employees, the former are expected to invest so much time, effort and money in honing their skills and perfecting their work proficiency. In fact, some employers even send their employees abroad and pay all necessary expenses for their training and professional growth.

But then, reality bites, because after acquiring the necessary experience and expertise, the employee has to leave the company due to tempting offers and fat bonuses dangled by a competitor company. What is even worse is when this employee starts to solicit the services of his colleagues and brings the whole team with him to the competitor.

So as to mitigate, if not end, the ill effects of the above practice, employers may explore the possibility of providing restrictive covenants in their employment contracts to regulate the post-employment action and activity of their employees. These restrictive covenants are express contractual terms, which bind an employee to comply with the restraint agreed and stipulated upon, and prevent him from taking certain action(s) when he leaves the company.

Restrictive covenants may include: non-competition/non-compete clause – when the employee is prevented from directly competing or working for a competitor of his former employer, or when the employee is prevented from setting up a competing business; non-solicitation clause – when a duty is imposed on the employee not to approach his former employer's customers or prospective customers, or when the employee is prevented from taking customers/clients of his former employer; and non-poaching clause – when the employee is prevented from enticing his former employer's staff away from the business, the aim is to prevent the employee from taking key employees with him to his new employment or business.

The validity of restrictive covenants, such as those mentioned above, is anchored on law and applicable jurisprudence.

Thus, the employer and the employee may establish such stipulations, clauses, terms, and conditions as they may deem convenient (Art. 1306, Civil Code), and that the obligations arising from the agreement between the employer and the employee have the force of law between them and should be complied with in good faith (Art. 1159, Civil Code) *(Oxales v. United Laboratories,* Inc. [G.R. No. 152991, 21 July 2008]).

Likewise, restrictive covenants are enforceable in this jurisdiction, unless they are unreasonable. And in order to determine whether restrictive covenants are reasonable or not, the following factors should be considered: whether the covenant protects a legitimate business interest of the employer; whether the covenant creates an undue burden on the employee; whether the covenant is injurious to the public welfare; whether the time and territorial limitations contained in the covenant are reasonable; and whether the restraint is reasonable from the standpoint of public policy *(Rivera v. Solidbank Corporation* [G.R. No. 163269, 19 April 2006]).

Restrictive covenants are not necessarily void for being in restraint of trade. In deciding to include a restrictive covenant in the employment contract, employers must see to it that there are reasonable limitations as to time, trade and place *(Tiu v. Platinum Plans Phils., Inc.* [G.R. No. 163512, 28 February 2007]).

To concretise, a non-compete clause in the employment contract of an engineer working in an IT firm cannot prohibit the said engineer from working in another IT firm during his entire lifetime. Neither can the said non-compete clause validly prohibit the engineer from working in another trade (e.g. mining, construction etc.), which is not at all connected with the IT industry, nor can he be prohibited from working in all IT firms in the Philippines. Under any such circumstance, since there is no "reasonable limitation as to time, trade and place", the restrictive covenant will be struck down for being violative of public policy.

Employers, however, must realise that even a carefully drafted restrictive covenant is not a cure-all remedy. Undeterred employees will simply leave as soon as they can find new employers who will gamble more on their experience and expertise, rather than honouring the restrictions. If it reaches this point, the resolve of the aggrieved employer will be tested in enforcing the restrictive covenants, more so that other employees are merely waiting for the employer's move, until such time that they themselves are also ready to test the hot waters.

This article first appeared in Business World.

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Special act on revitalising companies to take effect in August 2016

On February 4, 2016, the "Special Act on Revitalising Companies" (the Act) was passed by the National Assembly of Korea as temporary legislation, scheduled to take effect on August 13, 2016 and remain operative for three years. Designed to revitalise industries which have been suffering from oversupply and to facilitate and initiate voluntary corporate restructuring, the Act provides for special new or amended provisions under the Korea Commercial Code (the KCC), the Financial Investment Services and Capital Markets Act (the FISCMA), the Monopoly Regulation and Fair Trade Act (the MRFTA), the Special Tax Treatment Control Law (the STTCL) and the Local Special Tax Treatment Control Law (the LSTTCL).

The Act will apply to and provide certain benefits (see below) to companies whose corporate restructuring plans are approved by a government evaluation committee. The Act explicitly provides that if the corporate restructuring is found to have been done to facilitate ownership succession, to strengthen specially related parties' control of a corporation or to provide unfair profits to affiliates, rather than for the purpose of enhancing company productivity, then the evaluation committee is obliged to reject the proposed corporate restructuring plans or cancel the plans. If they had previously been erroneously approved. If the approved corporate restructuring plans are cancelled for the foregoing reasons, the Act requires the relevant companies to refund any monetary benefits they received under the Act, plus treble damages (i.e. triple the amount of the benefits they had received pursuant to the enforcement decree).

1. Special provisions under the KCC and FISCMA:

- ***Small-scale spin offs, small-scale merger and short-form merger:*** the Act permits the approval of small-scale spin-offs by a resolution of the board of directors (rather than the shareholders) under certain circumstances, and relaxes the requirements of small-scale mergers and short-form mergers;
- ***Merger, etc. procedures:*** the Act reduces the notification period for shareholders' meetings and the publication period for reference dates required for mergers, spin-offs, comprehensive share exchanges and transfers and business transfers, from two weeks to seven days;
- ***Creditor protection procedures:*** the Act shortens the creditor objection period from one month to 10 days and allows approved companies to forego creditor protection procedures if they submit a bank guarantee or insurance policy covering their liabilities; and
- ***Appraisal rights:*** the Act shortens the period during which dissenting shareholders may exercise their appraisal rights from 20 days to 10 days following the date of the shareholders' resolution, and it extends the period during which approved companies are obligated to purchase the relevant shares of minority shareholders, from one month to three months for listed companies and from two months to six months for unlisted companies.

2. Special provisions under the MRFTA:

- ***Restrictions on holding companies:*** The applicable debt ratio restrictions and shareholding ratio limitations on the amount of shareholdings a holding company may have in its direct subsidiaries or non-affiliate companies would not be applied for three years;
- ***Restrictions on holding companies' subsidiaries and second-tier subsidiaries:*** The applicable shareholding ratio limitations on the amount of shareholdings a holding company's subsidiaries may have in second-tier subsidiaries or the shareholding limitations on holding shares in other affiliates would not be applied for three years; and
- ***Cross shareholding restrictions and debt guarantee restrictions:*** the Act extends or newly adopts, as applicable, grace periods for application of cross shareholding restrictions and debt guarantee restrictions.

3. Tax and financial support: the Act, through the STTCL (Articles 126-26 through 126-31) and LSTTCL (Article 57-2), provides special tax benefits, including tax deferral on gains, etc., and financial and R&D support to approved companies.

4. Support for removal of regulatory obstacles: the Act allows certain companies to request official interpretations and opinions on the applicability of laws and regulations to the relevant corporate restructuring activities and regulatory improvements.

Because further details, including the definition of the term 'oversupply' and requirements of corporate structuring, are still to be determined by the enforcement decree, it will be necessary to monitor the progress of the enforcement decree's adoption. Also, given the treble damages provision of the Act, companies planning to carry out corporate restructuring to obtain benefits under the Act should thoroughly review the applicable laws and regulations before formulating their restructuring plans.



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Headcount reduction in the GCC

With economic commentators predicting a difficult 2016, employers across the region may be forced to look at staffing levels. With commodity prices struggling to recover, the Chinese stock market losing eight percent of its value on the first trading day of the year and oil prices remaining low, it's no wonder that the first trend of 2016 looks set to be the implementation of cost reduction measures. More often than not, this means reducing the workforce. In this article, we examine the issues involved when an employer reduces headcount together with the various regulations applicable across the GCC.

An employer's ability to lawfully reduce headcount

Redundancy has not historically been a recognised concept across the GCC. However, in the recent amendments to their Labour Codes, Bahrain, Kuwait and KSA introduced provisions providing for a recognition of redundancy and the dismissal of employees by reason of redundancy in certain circumstances.

The most extensive of these are in Bahrain where Article 110 of the Labour Law for the Private Sector, No. 36 of 2012 states that: "An employer may terminate the contract of employment because of the total or partial closure of the establishment, scaling down its business or replacement of the production system by another that may affect the size of the workforce, provided that the contract's termination shall not take place except upon giving notice to the Ministry concerning the reason for termination 30 days before the date of giving the worker notice of termination."

In Kuwait and KSA, however, the circumstances in which redundancy dismissals are permitted are limited to where the establishment of the employer is being closed (KSA and Kuwait) or there is a cessation of business within the unit or operation where the employee works (KSA only).

Where a redundancy exercise does not fall within the circumstances provided for in the Labour Codes, or is in one of the other jurisdictions (such as the UAE) where the employment laws do not include the concept, the usual termination provisions apply and potentially, claims can be brought for unfair or arbitrary dismissal.

Employers should also be aware that there is additional protection from dismissal (for any reason) for nationals in a number of GCC states (UAE, KSA and Bahrain in particular). In addition, there are restrictions in all GCC states on issuing notice to employees on leave (annual, sick or maternity).

Getting the process right

Where an employer operates across the GCC, one consideration will be whether to adopt a standard process across operations to identify which roles will be affected, how employees will be informed of the process and what exit packages will be paid.

From an employee relations perspective, a standardised approach may help to smooth the transition for employees as well as those who remain within the business. Choosing to adopt this approach, however, could increase business costs where the process extends the employment period (and thus salary payments). On the other hand, it may reduce the prospects of a successful claim against the employer for compensation (in addition to common entitlements such as notice, end of service gratuity and payment in lieu of holiday).

A potential process an employer could choose to follow would be by: announcing the pending restructuring to the relevant employees (i.e. at a 'town hall' type meeting); ensuring that there is a mechanism for employees to air concerns and ask questions (many employers also produce FAQ documents which are updated and circulated at regular intervals); conducting individual meetings with affected employees to explain why their role is at risk of redundancy and explore alternative options; and after these meetings, efforts should be made to be seen to have considered any alternatives put forward by the employee and to have explored any other potential solutions before the decision is made and communicated to the employee.

In Bahrain, a formal notice of the intention to make redundancies must first be made to the Ministry of Manpower and no notice of termination can be issued prior to the notice being given and acknowledged by the ministry. There may also be additional requirements for nationals – for example, in the UAE, an employer falling under the Ministry of Labour jurisdiction should obtain prior consent for the dismissal of a UAE national.

Termination packages

Depending on the condition of the business and the extent of the reductions, employers may wish to consider offering an exit package which includes an ex-gratia payment over and above the statutory and contractual entitlements (i.e. notice, holiday, end of service gratuity, and, in the case of Bahrain, a statutory redundancy payment). Employers are not obligated to do so. If made, such a payment should always be offered under a settlement agreement or release document, whereby the employee agrees to receive the payments and acknowledges that these are the entitlements due, that any claims or complaints are waived, and that the employer is released from any liability.

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New guidance for real estate brokers and trading floors

On December 30, 2015 the Ministry of Construction issued Circular No. 11/2015/TT-BXD (Circular 11) regulating the issuance of real estate brokers' practicing certificates; guiding the training on real estate brokerage and operation of real estate trading floors; and regulating the establishment and operation of real estate trading floors.

Circular 11 took effect on February 16, 2016 and will repeal and replace:

- Circular No. 13/2008/TT-BXD, dated May 21, 2008, of the Ministry of Construction guiding Decree No. 153/2007/ND-CP, dated October 15, 2007, of the Government regarding the guidance on implementation of the Law on Real Estate Business; and
- Decision No. 29/2007/QD-BXD, dated December 31, 2007, of the Minister of Construction issuing the framework training program on knowledge of real estate brokerage, property evaluation and management of real estate trading floors.

Practising certificate

According to Circular 11, Vietnamese citizens, Vietnamese residing overseas and foreigners are eligible to sit an exam for the real estate brokers' practising certificate (Practising Certificate) provided that they satisfy the following conditions:

(a) Have full capacity for civil acts, and are not currently the subject of investigation for criminal liability or serving a prison sentence;
(b) Have graduated from secondary school or higher; and
(c) Have lodged an application file for registration and paid the fees for the exam.

The exam for the Practising Certificate is structured with two sections, including the basic knowledge section and the specialised knowledge section. Each section will last for 120 minutes and the language used in the exam is Vietnamese. If the examinee is a foreigner, he/she is permitted to use a translator. Anyone who already has a valid Practising Certificate from a foreign country or who requires reissuance of the Practising Certificate in place of an expired Practising Certificate needs to take the basic knowledge section of the exam only.

> "According to Circular 11, Vietnamese citizens, Vietnamese residing overseas and foreigners are eligible to sit an exam for the real estate brokers' practising certificate"

It is stipulated under Circular 11 that real estate brokerage certificates which were issued prior to July 1, 2015 will remain valid for five years as of July 1, 2015, while real estate brokerage certificates and Practising Certificates issued after July 1, 2015 will be valid for five years as of the issuance date.

Establishment and operation of the real estate trading floors

Under Circular 11, conditions applicable to the establishment of the real estate trading floors (the Trading Floor) are specified as follows:

(a) the organisation or individual establishing the Trading Floor must establish an enterprise;
(b) the Trading Floor must have at least two people holding Practising Certificates;
(c) the person managing the operation of the Trading Floor (Floor Director) must have a Practising Certificate;
(d) the Trading Floor must have operational rules, name and trading address which are stable for more than a 12 month period. The Department of Construction and clients must be notified of any changes; and
(e) the Trading Floor must have a minimum area of 50m^2 and must have technical equipment satisfying operational requirements.

The Trading Floor shall be either an independent enterprise or a unit directly under the enterprise. Prior to the operational commencement of the Trading Floor, the enterprise is required to submit a dossier to the Department of Construction for management.

Circular 11 also provides for the management structure of the Trading Floor which includes the Floor Director together with a specialised section consistent with the operational scale of the Trading Floor.

The Trading Floors established prior to February 16, 2016 are permitted to continue operation, but by no later than July 1, 2016, these Trading Floors must fulfill all conditions stated in Circular 11.

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