

ASIAN-MENA COUNSEL

In this issue ...

- Doing business in Iran
- Internet law
- What Brexit might mean for you
- Richard Bell's journey along the Silk Road

MAGAZINE FOR THE **IN-HOUSE COMMUNITY** ALONG THE NEW SILK ROAD | Volume 14 Issue 1, 2016



Heba Ali of Lenovo Middle East & Africa is In-House Community Counsel of the Year

The region's outstanding lawyers revealed ...

The cream of the profession from Asia and Middle East gather to celebrate excellence in legal services

The thing about ...

Asia's father of arbitration discusses tech, international arbitration and staying sane



In-house Insight

Christopher Stephens remarks on cultural arrogance and motivating younger lawyers



Online, Cloud and e-Resources ...

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The online home of the In-House Community, www.inhousecommunity.com features vital daily legal updates for in-house counsel, company directors and compliance managers, and archived content from ASIAN-MENA COUNSEL contributors.



“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

Crème

de cassis &

chilled
champagne

*served amidst
generous*

WOOD PANELING.

*A perfect
pale blush of
bubbles.*

*And the ingredients
to a very
curious
evening.*

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along the New Silk Road

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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.



Hongbin Zhang has over 12 years' experience in providing legal services to clients in different industries, with a focus on TMT (Telecommunications, Media & Technology), automobile, energy resources and pharmaceuticals. Zhang is also listed in the Highly Recommended Lawyers (in the TMT category) by The Legal 500 Asia Pacific 2016 editorial.

Martin Amison is a Partner in Trowers & Hamblins' Dubai office. His recent work experience is in the field of infrastructure projects notably in the energy sector, leading teams in the Middle East and in Malaysia to develop project agreements and EPC contracts for upstream, downstream and power generation projects (including both renewables and conventional fuels). Amison has considerable experience of construction and engineering projects both from the UK and international practice.



Thomas Wigley is a partner in Trowers & Hamblins' London office. He specialises in the energy sector and infrastructure development and has advised on projects throughout the Middle East region. Wigley has advised clients on upstream and downstream oil & gas projects in various jurisdictions in the Gulf and Levant. He has also worked on power and water projects and has advised on IWPP/IPP projects across the region.

Sallie Bowtell is a Partner in Trowers & Hamblins' Dubai office. Bowtell has many years' regional experience in all areas of real estate having worked on projects in the UAE, Bahrain and Oman. She has a specialism in hospitality and leisure agreements, representing both owners and operators. She also has a strong background in commercial and retail leasing, sales and acquisitions, with a particular focus, more recently, on foreign ownership structures (development and long-term leasing) available in the UAE.



About the IN-HOUSE COMMUNITY

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

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



Empowering In-House Counsel along the New Silk Road since 1998

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HOT TOPICS

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Distinguishing between primary and secondary US sanctions as well as revealing who will benefit most from opportunities in Iran, **Thomas Wigley, Martin Amison** and **Sallie Bowtell** of **Trowers & Hamblins** disclose how to work your way through the laws surrounding Iranian trade.

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JunHe Partner **Hongbin Zhang** delves into issues regarding China's provisions to its network publishing services.

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Having worked in New Zealand, the UAE and now China, **Clyde & Co** Partner **Richard Bell** compares the three, reflects on his years in private practice and tells us why life in-house has never really tempted him.

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Aided by thoughts from lawyers throughout Asia and Australia, we delve into what Brexit may mean for In-House Community members, giving insight on employment, taxation, insurance, finance, investment and more.



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IN-HOUSE INSIGHT

22 Credit where credit's due

Christopher Stephens tells the In-House Community about the "cultural arrogance" behind assuming that the more longstanding laws are the better ones and will automatically work in areas whose traditions and cultures are disparate. He also talks about how to motivate younger lawyers, revealing that giving them credit for their work has to go beyond remuneration.

25 In-House Community Counsels of the Year Awards

We look back at May's inaugural regional awards ceremony that celebrated the hard and innovative work over the past 12 month from both in-house and external counsel, and examine some of the lessons to be learned from the exceptional winning in-house teams.

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ASIAN-MENA COUNSEL's Patrick Dransfield photographed and talked to Neil Kaplan and put to him a series of questions on behalf of the In-House Community.

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反垄断执法中垄断协议个案豁免

By Kevin Xu and Franz Li of *Martin Hu & Partners*



The Insolvency and Bankruptcy Code, 2016

By Vineet Aneja and Prateek Sethi of *Clasis Law*



Indonesia's New Negative Investment List

By Dyah Soewito and Darrell R. Johnson of *SSEK Legal Consultants*



Introducing the tort of sexual harassment

By *ZUL RAFIQUE & partners*



Green jobs: greening the Philippine labour sector

By Maris Donna G. Kwok of *ACCRA Law Offices*



Major reform of Korean Trademark Law to follow international trends

By So-yeon Yi of *Lee International IP & Law Group*



Family Businesses and NextGen

By Prarthna Chaddha of *Clyde & Co*

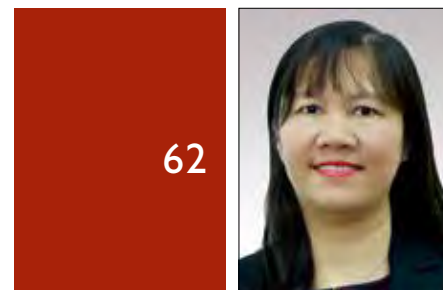
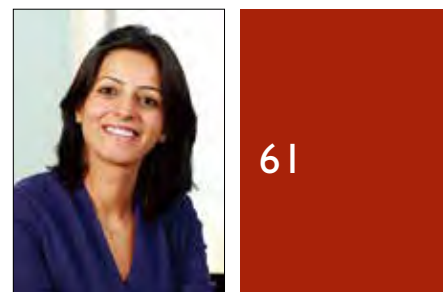
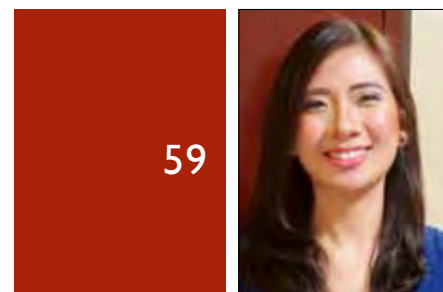
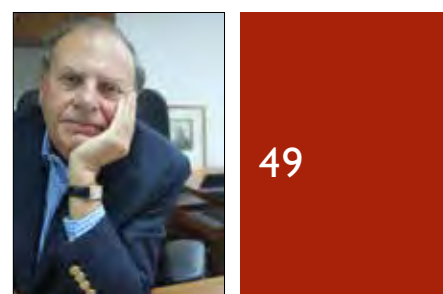
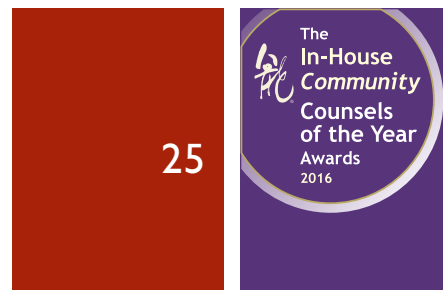


Increased penal liabilities for crimes relating to food safety and hygiene

By Nguyen Thi Hong Anh of *Indochine Counsel*

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Important contact details at your fingertips.



MOVES

The latest senior legal appointments around Asia and the Middle East

 CHINA

DLA Piper has expanded its Greater China corporate team with the addition of **Qiang Li** (LQ) and **Stewart Wang** as partners in its Shanghai office. Both join from O'Melveny & Myers in Shanghai. LQ will also be the co-managing partner of the mainland China offices. A seasoned M&A lawyer with 20 years' experience in Hong Kong and Shanghai, LQs practice includes private equity, cross-border joint ventures, real estate, restructuring, corporate finance and strategic counselling. He advises multinational and Chinese corporate and fund clients on cross-border M&A, joint venture and direct investment projects. On the other hand, Stewart has over a decade of experience representing clients on cross-border M&A, private equity/venture capital, joint venture, financing, employment and dispute resolution matters.



Troutman Sanders has continued to expand its practice in Greater China with the addition of **Jason Kuo** to the corporate practice in Hong Kong. Previously a partner in the Hong Kong office of Sidley Austin, Kuo is highly regarded for his handling of large and complex corporate finance transactions. He has handled some of the most sophisticated corporate transactions in Asia over the last two decades, with an emphasis on equity and debt offerings by issuers from the PRC and the Asia-Pacific region. Kuos experience includes mezzanine financings, high-yield debt offerings, tender offers, private placements, pre-IPO venture capital investments and Luxembourg listings. He has handled transactions involving issuers from the PRC, Vietnam, Indonesia, Korea and Taiwan. Kuo began his law career as an associate in the New York and Hong Kong offices of Brown & Wood, one of the legacy firms of Sidley Austin. He is a native speaker of both Mandarin and English, having grown up in Asia and the US. He received a Bachelor of Science, cum laude, from the University of Minnesota and a law degree from Georgetown University Law Center.

 HONG KONG

King & Wood Mallesons has expanded its Hong Kong partnership again with the lateral recruitment of two new partners leading commercial litigator and technology specialist Peter Bullock and IPO specialist **Anthony Wan**. Bullock joins from Pinsent Masons, where he established a Technology Law Group nearly two decades ago. His focus is on dispute resolution for a broad range of technology sector clients, which include equipment vendors, software vendors, telecommunications companies and digital technolo-

gies players. On the other hand, Wan joins from the Hong Kong office of a leading Chinese law firm where he led the Corporate & Securities practice. He has a substantial IPO focused practice, acting for investment banks and listed issuers. Previously, Wan was a consultant with Clifford Chance and a senior lawyer with Morrison & Foerster.

Stephenson Harwood has expanded its private wealth team with the addition of **Erik Wallace** as a partner, based in its Hong Kong office. His practice is focused on advising high net worth families on all aspects of US taxation and estate planning. He has extensive experience assisting clients with US connections in structuring and restructuring trusts, establishing private trust companies and international charitable foundations, as well as advising on corporate reorganisations, the sale of large family businesses and pre-IPO planning. Wallace joins from Withers where he was a partner since 2006.

White & Case has expanded its global M&A practice with the addition in Hong Kong of new partner **Chris Kelly**, who will lead the corporate practice in Asia. Kelly has extensive experience in a wide range of public and private corporate finance and commercial matters, including M&As and equity offers, and also in the provision of general corporate advice. He joins from Linklaters, where he was head of private equity in Asia, and brings more than 25 years of experience, including 12 years in Asia.

 INDIA

HSA Advocates has added **Sharath Chandrasekhar** as a partner in its newly opened Bengaluru office. Prior to joining the firm, he was one of the founding partners at Citius Law Advocates. He holds a BA, LLB (Hons.) degree from the National Law School of India University, Bangalore, as well as an LLM. from Duke University School of Law, Durham, NC, USA. He is



a member of the Karnataka State Bar Council and the New York State Bar, and is qualified to practice in India and New York. Chandrasekhar has also worked in Japan as a secondee to Mori, Hamada and Matsumoto, one of the leading law firms in Japan. With over 10 years of work experience, he has developed an expertise in handling domestic and international clients in banking and finance, real estate, private equity and venture capital transactions.

Cyril Amarchand Mangaldas has added **Manisha Kumar** and **Gautam Gandotra** as corporate partners at its Mumbai office. Kumar and Gandotra have extensively worked as transactional counsels in law firms over the past 14 years and 11 years, respectively. Prior to joining the firm, Kumar and Gandotra were partners

The JLegal



Personality Questionnaire Experience

Every month, JLegal examines the PQE of a senior in-house counsel. This month we talk to Adrian Kwong, who despite professing to find patience overrated, manages to patiently finish his lego projects.

Adrian Kwong

Vice President &
Head of Legal, Asia Pacific
at **Electronic Arts**



▪ Where were you born?

At the former British Military Hospital, Singapore.

▪ Which talent would you most like to have?

Flying. On my own. I dislike queues, let alone ones where people take off belts and smelly shoes and put them on trays.

▪ What is your idea of misery?

Meetings with people who just don't 'get it'.

▪ What do you most value in your friends?

A listening ear and a caring heart.

▪ If you weren't a lawyer you would be a ...

Teacher, detective, soldier, spy.

▪ What is your most precious possession?

Tangible possessions are, unless heirlooms, essentially replaceable. I'd probably run back into a burning building to get hard disks of my digital photographs as these things encapsulate a life. P. S. I hear wedding rings can survive a house fire intact!

▪ What is your motto?

'Have we considered these other things?' and
It could always be worse!

▪ Where is the best place you have ever been to?

An old grass airfield in England for a commemorative air show. Seeing and hearing a line of 20 roaring World War II Spitfire fighters is a once in a lifetime experience for me. Watching U2 perform live on the same trip came close.

▪ What do you consider your greatest achievement?

Probably not for me to evaluate my own life's worth, but I was pleased to finally finish my Ultimate Collector's Edition X-Wing Lego set last year. Biggest set I'd ever made, and the 1,559 parts took me more than a year in fits after work. Lego can be very therapeutic though.

▪ What is your greatest extravagance?

Older, sometimes less reliable, but distinctive cars. My present daily drive is more than a quarter of a century in age.

▪ What is your greatest regret?

Not having taken the road less travelled when I was younger. I could have taken more risks in life before stuff started breaking with age.

▪ Top 3 favourite movies of all time?

Top Gun, The Empire Strikes Back, and Black Hawk Down. You can't always shoot first but when you open fire, try to make it count, and try to bring everyone home.

▪ If you could change one thing about yourself, what would it be?

I'd like to be taller. Studies show a couple of inches extra never hurt.

▪ What do you consider the most overrated virtue?

Patience. Are we done yet with all these questions?

▪ What irritates you?

Drivers who don't signal before changing lanes. It suggests an increasingly me-first society. Plus it's very dangerous, especially to bicycles and motorcycles, so please do check your blind spot!

▪ What would you like to be remembered for?

As someone said at my wedding, as a man of character, who *was* a character. That, and for leaving a decent collection of toys for the children and children-at-heart, and cool friends (who listened).



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MOVES

with J Sagar Associates, where they led various transactional teams acting for leading private equity players, sovereign wealth funds, blue chip Indian and multinational corporations. Kumar graduated from the University of Delhi in 1996 and has qualified as Solicitor with the Supreme Court of England and Wales in 2003 and the Bombay Incorporated Law Society in 2002. She specializes in cross border private equity investments, M&As (both in the listed and unlisted space, across diverse sectors) and has vast experience in investment restructuring and securities law advisory. On the other hand, Gandotra specializes in private equity investments and M&As and has vast experience in various aspects of legal advisory across diverse sectors. He graduated from the ILS Law College, University of Pune in 2004 as a university rank holder and gold medalist. He also holds a Masters degree in corporate law from New York University School of Law, where he was a Hauser Global Scholar.

 JAPAN

Skadden, Arps, Slate, Meagher & Flom has added **Kenji Taneda** as a partner in the corporate practice of the firm's Tokyo office. Joining from the corporate department of another large global law firm, Taneda regularly represents both issuers and underwriters in capital markets matters, including equity and debt offerings by Japanese corporations, financial institutions and sovereign entities. He also has significant experience advising on both public and private M&A transactions. Admitted to practice in Japan as Gaikokuho-Jimu-Bengoshi, Taneda is a New York-qualified lawyer and is fluent in Japanese. He began his career at another highly regarded global corporate law firm in 2004, working extensively on public and private M&A and capital markets transactions in both its Tokyo and New York offices. In 2013, he became a partner in the Tokyo office



Kenji Taneda

of another large international law firm. A Kent Scholar, Taneda received his JD from Columbia University in 2004 and received his DESS granted jointly by the Institut dtudes Politiques and Panthon-Sorbonne in France.

 SINGAPORE

Hogan Lovells has added **Noor Meurling** as a new corporate partner in Singapore. She was the lead partner in building the relationship which led Hogan Lovells to enter into an association with Indonesian law firm Dewi Negara Fachri & Partners (DNFP) effective 1 June 2016. Hogan Lovells has over 30 years experience in Asia and a strong reputation for advising on award-winning transactions in Indonesia. The association between the two firms brings together many years of combined local and international legal expertise and allows both firms to significantly expand their offering. Meurling was formerly a partner at Ashurst, resident in its associated firm in Jakarta where she led the corporate M&A practice. She is one of Asia's leading M&A practitioners, having advised on joint ventures and acquisitions within the region and internationally since 1989. She has practised law in Singapore, Auckland and Jakarta and is active in business and industry circles in the region.

Withers has added **Mahesh Kumar** as a partner in its Singapore office. He provides wealth planning, succession and corporate tax advice. Kumar is qualified in India and Singapore (as a registered foreign lawyer) and will shortly qualify in England and Wales. He joins from Indian firm Nishith Desai Associates' Singapore office, where he headed the international tax, private client and globalization practice. Kumar advises high net worth families on a range of planning and structuring issues, including succession planning, governance, family offices and philanthropic giving. He also advises MNCs and investment funds on strategies for cross-border M&A and the structuring of global operations.

ASIAN-MENA COUNSEL is grateful for the continued editorial contributions of:



Shipping Counsel (10+ PQE), Singapore

An Asian conglomerate seeks to add a legal counsel to its well-established legal team. Candidates who have substantial experience in corporate commercial and/or shipping matters are encouraged to apply. You will work closely with business heads to offer legal advice balanced with commercial interests. Good communication skills are essential. Mandarin language ability is required to liaise with business counterparts in China. [A39845]

Indonesia-Qualified Legal Counsel, European MNC (8-10 PQE), Singapore

A European MNC in the chemical industry seeks an Indonesia-qualified lawyer to join them in a regional role. The successful candidate will support businesses in Asean, Australia and New Zealand, advising on transactional and operational matters as well as compliance matters. Indonesia-qualified candidates who have worked in Singapore are strongly preferred. An M&A background and regional experience gained in an MNC would be advantageous. The client will consider non-Indonesia qualified candidates if they speak fluent Bahasa Indonesia and have work experience with Indonesia as a primary focus market. Some travel is expected. [A40741]

Regional Counsel (8-10 PQE), Singapore

Global healthcare company is looking for a lawyer to join their team. You will provide legal support to the businesses in APAC, and advise on general commercial, manufacturing, research & development, investment, litigation and employment matters. The ideal candidate should have strong experience in general commercial law, some of which should have been gained in-house. This is an excellent opportunity to join a big brand name in the healthcare industry. [A40724]

Legal Counsel, Oil & Gas (8-10 PQE), Singapore

Our client, a European MNC in the oil and gas industry is looking to hire a mid to senior level commercial lawyer covering Asia. You will be a trusted advisor to the management and business and can expect to be actively involved in a broad range of issues and projects including M&A and financing activities, day-to-day operational matters and corporate governance as well as act as the company secretary for Singapore companies. The ideal candidate would be a driven, proactive and approachable lawyer with commercial acumen and good leadership skills. [A40733]

Public M&A Lawyer (5+ PQE), Singapore

A local firm in alliance with an established international firm is expanding its M&A practice with a mid-level hire. You should be Singapore-qualified, have trained at a good firm and possess public M&A experience. This is a genuinely collegiate and close knit firm with a collaborative environment and a strong pipeline of quality work. The ideal candidate is someone who is looking for a sustainable career in private practice with long term prospects, eager to put down roots and help build a practice. [A40728]

Legal Counsel, Logistics (4-6 PQE), Singapore

Global transportation and logistics company seeks a commercial lawyer. The successful candidate will work closely with the corporate divisions and key subsidiaries to provide legal support in all areas of documentation, corporate, commercial and transactional work. Experience in reviewing, negotiating IT contracts and managing IT disputes is an advantage. Mandarin language abilities would be a good-to-have as the role entails some interaction with Chinese speaking clients. [A40734]

Legal Counsel, Education (3-7 PQE), Singapore

This is a unique opportunity to join an international education company backed by private equity. You should be a generalist with an M&A background, comfortable with managing a broad range of legal issues from general corporate commercial work to cosec matters and disputes management. Cosmopolitan environment which would suit a confident, nimble, entrepreneurial and solutions-oriented lawyer. Travel is expected. [A40738]

Family Law Associate (3-5 PQE), Singapore

A well-known law firm seeks a family law associate to join their team. Duties include giving advice on all areas of family law i.e. advising on divorce, complex financial disputes, pre-nuptial agreements, cohabitation and disputes concerning children as well as attending Court in family dispute matters. The ideal candidate should be called to the Singapore Bar and have experience in family law matters. [A40732]

Tax Associate (3-4 PQE), Singapore

Well-regarded practice group seeks a junior lawyer to assist the partners in advising high net worth individuals and their families on tax, trust, probate and estate planning matters. You should be admitted to practise in Singapore and possess some relevant experience. The successful candidate can look forward to a rewarding career in a growing practice. [A40716]

Corporate Counsel (8+ PQE), Bangalore, India

Our client, a leading US MNC, seeks a corporate counsel to join their legal team. Reporting to the Legal Counsel based in New Delhi, the role entails providing end-to-end legal support to the organization's payments business in India. You will advise on a broad range of payment and regulatory matters. Candidate should have a strong transactional background. Familiarity with a broad range of laws and commercial practices in the financial services industry will be helpful in this role. In-house experience at a technology or financial services company is a plus. [A40506]

Capital Markets Associate (NQ - 4+ PQE), Hong Kong

Our client, a highly regarded global law firm, is looking to hire a junior lawyer. Candidates should ideally be common law qualified, have worked in a leading international law firm, preferably in the practice area of debt capital markets, and possess native level/fluent Mandarin skills. [A40730]

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DEALS

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



AUSTRALIA

Minter Ellison has acted for **ApplyDirect Ltd** in respect of the completion of its A\$8 million (US\$5.9m) IPO and listing on the ASX. Shares in ApplyDirect began trading on the ASX on 23 June 2016. It listed with a market capitalisation of around A\$33 million (US\$24.4m). ApplyDirect is an emerging e-recruitment company that uses its proprietary software to directly connect job candidates with employers' recruitment systems. It provides Australian employers with access to a purpose-built candidate-attraction system that cuts out recruitment agencies and associated costs and improves recruitment efficiencies and outcomes. Partner **David Schiavello** led the transaction.



CHINA

Han Kun has acted as PRC counsel for Nasdaq-listed **JD.com**, a leading online direct sales company in China, in respect of its strategic partnership with NYSE-listed Walmart, a leading global retail company. The partnership is aimed at providing superior products and services to customers in China.

King & Wood Mallesons has acted as international counsel for the **joint lead managers** in respect of the issuance of US\$500 million 2.5 percent guaranteed notes due 2021 by ABCL Glory Capital Ltd, a wholly-owned subsidiary of Agricultural Bank of China Ltd (ABC). The notes are unconditionally and irrevocably guaranteed by Agricultural Bank of China Ltd Hong Kong Branch. ABC is a leading commercial bank in China in terms of total assets, total loans and total deposits. With over 23,600 domestic branches, ABC is one of the most recognised financial services brands in China. Hong Kong partner **Hao Zhou** led the transaction.

Skadden is acting as US advisor to NYSE-listed **China Ming Yang Wind Power Group Ltd's special committee of**

the board of directors in respect of its approximately US\$408 million going private takeover by its chairman and a group of private equity sponsors. Ming Yang is a leading wind energy solution provider in China. Partner **Peter Huang** led the transaction.

Paul Hastings has represented **FountainVest Partners**, a leading China-focused private equity firm, in respect of a joint venture with global sports, fashion and entertainment talent management company WME-IMG, together with venture capital and private equity firm Sequoia Capital China and Chinese internet service provider Tencent. The joint venture will enable WME-IMG to accelerate the growth of its existing Chinese business and embark on new initiatives for their clients and partners. Corporate partners **Douglas Freeman** and **Victor Chen** led the transaction.



HONG KONG

Kirkland & Ellis is representing **Ascendent Capital Partners** in respect of the HK\$549 million (US\$70.7m) acquisition of shares and subsequent HK\$790 million (US\$101.8m) conditional mandatory cash general offer by Araco Investment Ltd for HKSE-listed China Automation Group Ltd. Corporate partner **Nicholas Norris** and debt finance partner David Irvine led the transaction which was announced on 24 June 2016.



INDIA

Shardul Amarchand Mangaldas & Co has advised **Prism Cement Ltd** in respect of the acquisition of 15.23 percent stake in BLA Power Private Ltd for INR25 crores (US\$3.7m). Following the transaction, Prism Cement will be able to acquire power from BLA Power on captive power plant basis. Partner **Deepto Roy**, supported by partner Jay Parikh, led the transaction which was signed 6 June 2016.

Trilegal has advised **CLP India Private Ltd**, one of the largest foreign investors in the Indian power sector, in respect of a joint venture with Suzlon Energy Ltd, one of the leading renewable energy solutions providers in the world, to develop a 100 MW solar project at Veltoor, Telangana. Under a share subscription and shareholders' agreement dated 14 June 2016, CLP Windfarms (India) Private Ltd has acquired a 49 percent stake in SE Solar Ltd, an SPV set up by Suzlon. CLP has the option to acquire the remaining 51 percent stake in the future. The project is expected to be commissioned by May 2017 and will be funded 80 percent by debt and 20 percent by equity. Partners **Neeraj Menon** and **Delano Furtado** led the transaction which was valued at INR73.5 crores (US\$10.8m).

ELP has advised Edelweiss private equity arm **Ecap Equities Ltd** in respect of its investment in Rockdude Impex Pvt Ltd, the company that owns and operates Freshee, a Mumbai-based manufacturer of household packaging and storage products. Partners **Suhail Nathani** and **Darshan Upadhyay** and associate partner **Amit Manubarwala** led the transaction which was completed on 28 April 2016.



INDONESIA

Simpson Thacher is representing **KKR** in respect of its pending investment in Indonesia Stock Exchange listed PT Japfa Comfeed Indonesia Tbk, one of Indonesias largest agri-food companies. Subject to customary closing conditions, PT Japfa will issue 750 million new shares to KKR via a private placement for approximately US\$52.9 million and, concurrently with the private placement, Japfa Ltd. (the controlling shareholder of PT Japfa) will sell 441.7 million shares in PT Japfa to KKR for approximately US\$28.3 million. Following the closing of these transactions, KKR will hold a 10.44 percent stake in PT Japfa. Making the investment from its Asian Fund II, KKR marks its first direct private equity investment in Indonesia. Partner **Katie Sudol** led the transaction.



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Pure Search International Pte Ltd,
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DEALS

Mayer Brown JSM has acted as international counsel to the **International Finance Corp** (IFC) in respect of its investment in a US\$830 million greenfield ammonia plant in Sulawesi, Indonesia which achieved financial close last week. Operated by Panca Amara Utama (PAU), the plant is one of IFCs largest greenfield projects in the last decade. It is funded through a US\$512 million debt package consisting of a US\$97 million IFC A loan and a US\$415 million IFC B loan funded by ANZ, HSBC, Korea Development Bank, OCBC, Standard Chartered Bank, SMBC and United Overseas Bank. The IFC is also taking an equity position in PAU in the form of a convertible loan. Banking & Finance partners **Nathan Dodd** and **Benjamin Thompson** led the transaction.



MALAYSIA

Tay & Partners, working alongside **Oh-Ebashi LPC & Partners**, has advised in respect of the acquisition of a 90 percent stake in Big Apple Worldwide Holdings Sdn Bhd by Duskin Co Ltd. Duskin is the operator of the Mister Donut chain whilst Big Apple Worldwide Holdings is the operator of the Big Apple doughnut chain. Partners **Chang Hong Yun** and **Teo Wai Sum** led the transaction.



SINGAPORE

Allen & Gledhill has advised **Frasers Centrepoint Ltd** (FCL), as sponsor of **Frasers Logistics & Industrial Trust**

(FLT), in respect of the spin-off of FCL's industrial assets in Australia to FLT. The firm also advised **Frasers Logistics & Industrial Asset Management Pte Ltd**, as manager of FLT, in respect of the IPO and listing of FLT on the Main Board of the SGX-ST. DBS Trustee was appointed forfeiture trustee. The gross proceeds raised from the IPO and the cornerstone investment tranche were approximately S\$903 million (US\$666m). Concurrent but separate from the IPO, TCC Group Investments Ltd, the strategic investor, was issued S\$80 million (US\$59m) in shares. Partners **Jerry Koh**, **Long Pee Hua**, **Chua Bor Jern**, **Isaac Tung**, **Gloria Goh**, **Lim Pek Bur** and **Foong Yuen Ping** led the transaction.

Baker & McKenzie.Wong & Leow, the Singapore member firm of Baker & McKenzie, has advised **DBS Bank Ltd**, **Citibank NA Singapore Branch**, **Oversea-Chinese Banking Corp Ltd** and **United Overseas Bank Ltd** as the lenders in respect of a A\$620 million (US\$457.8m) financing to **Frasers Logistics & Industrial Trust** (FLT) in relation to its IPO on the SGX. The S\$903 million (US\$666m) IPO is the largest on the local bourse so far this year and the biggest first-time share sale in Singapore since 2013. The financing to FLT was for its acquisition of a portfolio of 51 industrial properties in Australia. The properties were acquired by **Frasers Centrepoint** in 2014 as part of its purchase of the **Australand Property Group**.

WongPartnership has acted for **DBS Bank** and **United Overseas Bank** in respect of the drawdown of S\$300 million (US\$221.4m) 3.55 percent fixed rate notes due 2026 under the S\$1 billion (US\$738m) MTN programme by **Starhub Ltd**. Partner **Hui Choon Yuen** led the transaction.

Rajah & Tann Singapore has advised **ICM Pharma Pte Ltd** in respect of its acquisition of a minority stake in Dutch-based **Alloksys Life Sciences BV** for the development of a new product **RESCAP** for the prevention and treatment of ischemic injury and inflammation mediated complications in cardiothoracic surgery. Partners **Lim Wee Hann** and **Celeste Lee** led the transaction which was valued at 5.25 million (US\$5.9m) and was completed on 30 May 2016.



THAILAND

Thanathip & Partners has advised a group of shareholders in **Villa Market JP Company Ltd** in respect of the formation of a joint venture with **We Retail Public Company Ltd**, a subsidiary of **Property Perfect Public Company Ltd**, in **All Discount Company Ltd**, a company operating a new low-cost retail format in Thailand and Southeast Asia. Managing partner **Thanathip Pichedvanichok** led the transaction.

AMC

Search our full regional deals archive
by law firm, company or individual
at www.inhousecommunity.com

DEALS SEARCH

www.inhousecommunity.com

DERIVATIVES IN DEMAND

Taylor Root is currently experiencing a high demand for lawyers with derivatives experience to join leading financial institutions across Asia.

CREDIT DERIVATIVES - HONG KONG

Global investment bank is seeking an experienced Derivatives Lawyer to join its established team. You will focus on Fixed Income, Credit or FX primarily. Rare director level role; candidates with 8+ years' PQE will be considered. Ref: 207210

EQUITY DERIVATIVES - HONG KONG

Mid-level Equity Derivatives position at this top investment bank. Strong knowledge in structured products and derivatives issuances is necessary. Candidates with 4+ years' PQE from either private practice or an in-house background are welcomed. Ref: 206880

PRIME BROKERAGE - HONG KONG

Unique opportunity in the Prime Services team of this leading investment bank. Business consultancy role on prime brokerage business/listed derivatives/ISDA®. Candidates with 4+ years' PQE will be considered. General banking candidates with an interest in Derivatives are welcomed. Ref: 207770

GLOBAL TRANSACTION BANKING - SHANGHAI

International investment bank seeks a PRC qualified lawyer to advise on derivatives, ISDA®, cash management, trade finance and lending products. A good knowledge of PRC laws and regulations especially in regards to banking regulations highly sought. Fluency in oral and written English required. 2-4 years' PQE. Ref: 205431

COMMODITY DERIVATIVES - SINGAPORE

Unique opportunity to join the derivatives team of this global investment bank. You will focus on commodity derivatives related work, but they are happy to consider candidates with FIC/rates/equity derivatives backgrounds. Great team culture. Candidates 4+ years' PQE will be considered. Ref: 206821

FIXED INCOME DERIVATIVES - TOKYO

Renowned global investment bank is seeking to recruit an experienced derivative lawyer to focus on supporting its sales and trading desks with regards to credit, FX, interest rates and community products. Applicants require excellent risk analysis and expertise in legal and regulatory knowledge around structured products and derivatives. 5-12+ years' PQE. Ref: 203821

ISDA® is a registered mark of the International Swaps & Derivatives Association.

HONG KONG

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EVENT REPORT



Hong Kong Risk & Compliance Symposium

“An informative and interactive event”

– In-House Symposium delegate



Our Hong Kong Risk & Compliance Symposium, a sister event to the In-House Congress, gathered 115 of our community for a day of workshops focussing on anti-corruption and compliance and ending with The Game of Counter-party Risk: practical steps to ensure your institution can prevail in a crisis.

Patrick Dransfield, Publishing Director ASIAN-MENA COUNSEL and Co-Director In-House Community first welcomed guests, after which co-hosts deliberated on their chosen areas, chronologically: Cyber Risks, hosted by Debevoise & Plimpton; Bribery and Corruption in Asia Pacific, featuring thoughts from Herbert Smith Freehills; and Trend and Responses to the Risks of Distressed Loan and Collateral Located in China, presented by King & Wood Mallesons.

The Game of Counter-party Risk which rounded out the day was adjudicated by Ron Yu, General Counsel, Gilkron Limited with vital input from our experienced panel of co-judges: Connie Wu, Director, Head of Business Intelligence Unit APAC, Deutsche Bank AG, Hong Kong Branch; Kyle Wombolt, Global Head of Corporate Crime & Investigations, Partner, Hong Kong, Herbert Smith Freehills; and James Guan, Partner, King & Wood Mallesons.

We would like to thank all those who took part, both as attendees and co-hosts.

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



Teng Haidi
Partner
King & Wood Mallesons



Gao Feng
Partner
King & Wood Mallesons



Mark Johnson
Partner
Debevoise & Plimpton



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



Tim Gilkison
Managing Director
In-House Community



Philip Rohlik
Counsel
Debevoise & Plimpton



Connie Wu
Director, Head of Business
Intelligence Unit APAC
Deutsche Bank AG, Hong
Kong Branch



James Guan
Partner
King & Wood Mallesons



Ralph Sellar
Associate
Debevoise & Plimpton



Ron Yu
General Counsel
Gilkron Limited

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Hong Kong • Singapore • Beijing • Shanghai

M&A Counsel (Healthcare)

Singapore 8-15 PQE

A leading regional healthcare service provider is seeking a Legal Counsel to advise the business on a range of matters across several jurisdictions, including joint ventures and acquisitions, capital markets, and general corporate commercial matters. You should have experience in M&A transactional, capital markets and general commercial work. (IHC 12485)

Head of Compliance

Hong Kong 10+ PQE

A leading international asset manager is seeking a lawyer with compliance experience gained from an investment manager. Reporting to the CEO, you will manage a small team and be responsible for North Asia including Hong Kong and China. Good decision-making skills and fluent in Mandarin required. (IHC 13846)

General Counsel - Commodities

Singapore 10+ PQE

A commodities business with global operations seeks a General Counsel to join their team in Singapore. You should have commodities and in-house experience and be able to work in an entrepreneurial environment. (IHC 13799)

Asia Pacific Counsel (Technology)

Singapore 4-8 PQE

A well-established technology company is looking for a Legal Manager to oversee the legal and company secretary matters in Asia Pacific. You will manage customer and vendor contracts, advise all business units on legal matters, assist with M&A projects, and handle compliance issues. (IHC 14052)

Legal Counsel

Hong Kong 4-8 PQE

An exciting opportunity for a corporate/commercial lawyer to join this conglomerate where you will work with their Head of Legal and International General Counsel on complex commercial issues, and advise on the company's various business operations in APAC. Excellent communication skills in English and Chinese as well as transactional negotiation skills required. (IHC 14047)

Derivatives Lawyer

Singapore 4-8 PQE

A leading bank is looking for a Derivatives Lawyer who will handle master agreements for the global markets team, and a wide range of plain vanilla and structured derivatives. You will also work with and supervise a junior Legal Counsel. Strong product knowledge and relevant experience dealing with derivatives a must. (IHC 14046)

Legal Counsel (Logistics)

Singapore 3-8 PQE

A leading logistics company is looking for a Legal Counsel who will advise on various legal issues across the region. You should have good corporate commercial and prior in-house experience dealing with logistics and supply agreements. (IHC 13982)

Senior Counsel

Hong Kong 7+ PQE

- Anti-trust & Competition

An international company seeks an experienced Anti-trust & Competition Lawyer who will handle compliance matters and support its divisions across Asia. In-house or private practice lawyers with an international private practice background, and Europe and Asia exposure preferred. (IHC 12594)

Compliance Counsel, APAC

Shanghai 7+ PQE

A US Group is looking for its first Compliance Counsel who will cover Asia Pacific and be responsible for implementing regional compliance programs of the group and its subsidiaries. A law degree with Asia regional experience a must. Good communication skills in English and Mandarin are essential. (IHC 14051)

Legal Counsel - Employment

Hong Kong 4-7 PQE

An international financial institution is looking for an experienced Employment Lawyer to join its Legal Department. You will cover contentious and non-contentious matters within the group, and provide all business divisions across Asia Pacific with legal advice. (IHC 13903)

Legal Counsel (Investments)

Singapore 3-6 PQE

A leading alternative investment fund house seeks a lawyer who will provide legal and regulatory advice to their business globally. Working with the business team, you will offer legal advice on new funds and a range of structured finance transactions. (IHC 13732)

Legal Counsel - Commodities (Contract Role)

Singapore 3-6 PQE

A global commodities company is seeking a temporary Legal Counsel. Reporting to the Regional Counsel, you will be responsible for advising the business and support teams on all corporate commercial matters and dispute issues across the region. (IHC 14055)

In-house Corporate Transaction Manager

Hong Kong 4+ PQE

A leading investment bank is seeking a lawyer with strong experience in capital markets or finance transactions, to work closely with their team of investment bankers in identifying operational risks, compliance and legal issues arising from the transactions. You should be qualified in a common law jurisdiction. (IHC 14057)

In-house Legal Executive

Hong Kong

A conglomerate seeks an experienced Legal Executive to join their growing team, focusing on a range of commercial related legal matters. You will work closely with internal and external stakeholders and counsels on the review of commercial contracts. (IHC 14041)

To apply, please send your updated resume to als@alsrecruit.com, or contact one of our Legal Consultants:

Hong Kong

Andrew Skinner

Tel: +852 2920 9100

Email: a.skinner@alsrecruit.com

Singapore

Jason Lee

Tel: +65 6557 4163

Email: j.lee@alsrecruit.com

Beijing

Kevin Lee

Tel: +8610 6567 8728

Email: k.gao@alsrecruit.com

Shanghai

Crystal Shen

Tel: +8621 6133 7946

Email: c.shen@alsrecruit.com

EVENT REPORT



Kuala Lumpur In-House Congress











On June 2, 2016, DoubleTree by Hilton Kuala Lumpur was the venue for our fifteenth annual In-House Congress Kuala Lumpur, attended by a record breaking 233 members from the jurisdiction's In-House Community.

Subsequent to welcome remarks from Patrick Dransfield, Publishing Director, ASIAN-MENA COUNSEL and Co-Director, In-House Community, delegates received insight during our panel discussion entitled 'In-House Lawyering: uncovering the relationship between Quality, Cost and Value, and their continually changing relationship with External Counsel'. This was led by Evangelos Apostolou, Principal, DA Partners (a law practice member firm of EY global network and a former regional General Counsel of many years standing, and involved thoughts from Lee Chin Tok, Group General Counsel, CIMB Group; Hema Latha Sinnakaudan, General Counsel, Legal, Compliance &












Company Secretarial, Sun Life Malaysia Assurance Berhad; Adrian Chair, Managing Partner, Putri Norlisa Chair; Janice Anne Leo, Partner, Shook Lin & Bok; and Gilbert Gan Boon Seah, Partner, Zaid Ibrahim & Co (member of ZICO Law).

Workshops then ensued, providing guests with the opportunity to hear about the New Companies Act; Investigations; the Personal Data Protection Act 2010; Challenges and Pitfalls in an M&A Transaction Cycle; and Cross-Border M&As. These sessions were led by representatives of co-hosts Shook Lin & Bok; Zaid Ibrahim & Co; Christopher & Lee Ong; Kadir Andri & Partners; and Trowers & Hamlins. As always, we at the In-House Community are grateful to both those who came to share their expertise and our members for their continued support, as well as sponsors Hughes-Castell.

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

- | | |
|---|---|
| 
Evangelos Apostolou
Principal
DA Partners (a law practice and member firm of the EY global network) | 
Norinne Ira Dewal
Partner
Kadir Andri & Partners |
| 
Adrian Chair
Managing Partner
Putri Norlisa Chair | 
Patrick Dransfield
Publishing Director
ASIAN-MENA COUNSEL and Co-Director
In-House Community |
| 
Chan Kok Keong
Partner
Shook Lin & Bok | 
Nick Edmondson
Partner – Malaysia
Trowers & Hamlins LLP |
| 
Ivan Ho Yue Chan
Partner
Shook Lin & Bok | 
Julian Mahmud Hashim
Partner
Kadir Andri & Partners |
| 
Celine Chelladurai
Partner
Zaid Ibrahim & Co (member of ZICO Law) | 
Cynthia Junavence
Partner
Zaid Ibrahim & Co (member of ZICO Law) |

“Congrats on another successful In-House Congress!”
– *In-House Congress Kuala Lumpur delegate*

- | | | |
|--|---|--|
| 
Saritha Devi Kirupalani
Partner
Zaid Ibrahim & Co (member of ZICO Law) | 
Ahlan Nasri Nasir
Partner
Kadir Andri & Partners | 
Gilbert Gan Boon Seah
Partner
Zaid Ibrahim & Co (member of ZICO Law) |
| 
Lee Chin Tok
Group General Counsel
CIMB Group | 
Deepak Pillai
Partner
Christopher & Lee Ong | 
Hema Latha Sinnakaudan
General Counsel, Legal, Compliance & Company Secretarial
Sun Life Malaysia Assurance Berhad |
| 
Janice Anne Leo
Partner
Shook Lin & Bok | 
Tom Reynolds
Senior Associate
Bahrain
Trowers & Hamlins LLP | 
Sharon Tan Suyin
Partner
Zaid Ibrahim & Co (member of ZICO Law) |
| 
Esther Low
Associate – Malaysia
Trowers & Hamlins LLP | 
Nadarashnaraj a/Sargunraj
Partner
Zaid Ibrahim & Co (member of ZICO Law) | 
Nick White
Partner – Malaysia
Trowers & Hamlins LLP |

Stand Out With Hughes-Castell



In-house

General Counsel | 10+ yrs pqe | Bangkok REF: 13593/AC

This world-renowned FMCG is seeking an astute Thai-qualified lawyer with strong business acumen to lead their legal team based in Bangkok. You need at least 10 years' PQE and will be responsible for providing advice and support on legal matters covering all their business in Thailand, including commercial transactions, risk management and corporate governance. You will also undertake investigations for compliance matters and maintain a healthy relationship with regulators. Proven experience in talent and team management gained in-house is required, along with excellent communication skills. Fluency in English and Thai is mandatory.

Legal Counsel | 8-10 yrs pqe | Kuala Lumpur REF: 13522/AC

This Fortune 500 corporation is seeking a senior lawyer with a strong commercial mind-set for its Kuala Lumpur office, to support its operations in ASEAN. You will be a vital part of the Malaysia leadership team providing advice and support on all legal and compliance matters in Malaysia. You are also required to offer legal support to its APAC regional team. You ideally are Malaysia or Common Law qualified with at least 8-10 years' PQE in compliance/corporate/commercial matters, preferably gained in both law firms and in MNCs. Prior FMCG and/or procurement experience would be an advantage. Fluency in English and Bahasa Melayu, both written and oral, is essential.

Corporate Counsel | 8+ yrs pqe | Singapore REF: 13556/AC

This multinational corporation is seeking a Common Law-qualified lawyer with solid commercial/corporate experience to be based in Singapore to support its business in North Asia. You will provide legal and compliance support on its daily operations and on a wide range of corporate and commercial issues. You ideally have a LL.M degree with at least 8 years' PQE in commercial, corporate and transactional work, preferably gained in MNCs. Experience in a heavily regulated industry is highly desirable. Fluency in Chinese and Japanese would be a strong plus.

Legal Counsel | 5+ yrs pqe | Hong Kong REF: 13588/AC

This well-known bank is seeking an experienced lawyer to join its legal team in Hong Kong as a result of its business growth. You will primarily be responsible for handling legal documentation and regulatory compliance matters. Ideally, you are Hong Kong qualified with at least 5 years' PQE in general corporate commercial matters gained at banks or at financial institutions. Knowledge of the Banking Ordinance, the SFO or the HKMA AML guidelines is highly desirable. Candidates with the desired PQE in general corporate and commercial practice but without relevant industry experience are welcome to apply. Fluent English and Cantonese skills are mandatory.

Compliance Manager | 3+ yrs exp | Shanghai REF: 13562/AC

This New York-listed chemical corporation is seeking a compliance counsel to join its Shanghai office to cover its operations in APAC. You will be responsible for implementing and monitoring their compliance program, their trade compliance with trade regulations, enforcing competition law, conducting investigations and undertaking regional compliance training. Ideally, you have an LLB/LL.M with at least 3 years' experience in a compliance field. Native-level Mandarin and fluent English skills are mandatory for this role.

Private Practice

Associate | 5-8 yrs pqe | Shanghai REF: 13553/AC

This leading offshore law firm with a strong presence in Asia is seeking a senior-level associate to join its Shanghai office. You will work closely with the leading partner on general corporate, M&A and investment funds matters. You must be qualified outside the PRC with at least 5-8 years' relevant PQE gained in international law firms. Candidates currently based in Shanghai will be at an advantage while Asia market experience and a stable career track record are required. Fluency in Mandarin and English, both written and oral, is mandatory. An excellent remuneration package and partnership prospects are on offer.

Family Associate | 3-5 yrs pqe | Singapore REF: 13584/AC

An opportunity has arisen for a family lawyer with both contentious and non-contentious experience to join its highly regarded team in Singapore. You will be working closely with a market-leading partner on all areas of family law including divorce, complex financial disputes, pre-nuptial agreements and cohabitation. You ideally are Singapore qualified with at least 3-5 years' PQE in family law-related issues. Significant experience in court work is needed. Hands-on experience of practicing family law in Asia is essential.

Banking & Project Lawyer | 4+ yrs pqe | Beijing REF: 13385/AC

This leading international law firm is seeking a bright lawyer with solid banking experience to join its Beijing office. You will be working in the banking and projects team advising clients on high-profile and complex lending transactions in Asia. Your key areas of work include leveraged finance, corporate acquisition finance and lending transactions. HK/Common Law/PRC-qualified candidates with 4 years' PQE in leveraged and acquisition financing with an international law firm are encouraged to apply. Relevant experience gained in the energy, natural resources and infrastructure sectors is highly desirable. Fluent Mandarin skills are essential.

Capital Markets Associate | 2-3 yrs pqe | Hong Kong REF: 13560/AC

This leading full-service Chinese law firm is seeking a junior Hong Kong qualified lawyer for its capital markets practice in Hong Kong. The ideal candidate will have 2-3 years' PQE in Hong Kong's capital markets work, including IPOs. Candidates with a PRC background are preferred. Trilingual language capability (English, Mandarin and Cantonese) with excellent Chinese drafting skills are mandatory.

Antitrust Associate | 2+ yrs pqe | Hong Kong REF: 13549/AC

This top-tier US law firm has an opening in its Hong Kong office for an Antitrust Associate. The ideal candidate will be Hong Kong qualified with at least 2 years' PQE in antitrust and/or competition law at gained in an international law firm. Australia, England & Wales, Ireland or US qualified lawyers are welcome to apply. Excellent command of English is mandatory; fluent French, Mandarin, Korean or Japanese would be a strong plus but not essential.



To find out more about these roles
& apply, please contact us at:
T: (852) 2520-1168
E: hughes@hughes-castell.com.hk
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Your privacy and the privacy of others are important. By you supplying us with your personal data, which includes your CV and/or details of your referees, you have agreed to our collection, use and disclosure of such data to assist you in finding a job now or in future, as well as for marketing purposes. You agree that you have obtained appropriate consent to provide to us data from other person(s).



Bangkok In-House Congress

On Tuesday June 21, 2016, we brought together over 100 of our members in Thailand at the fourteenth annual In-House Congress Bangkok, co-hosted by Chandler & Thong-ek, Kroll, Rajah & Tann, Stephensen Harwood and ZICOlaw.

Welcome remarks from In-House Community Managing Director Tim Gilkison were followed by the panel discussion 'In-House Lawyering: Uncovering the relationship between Quality, Cost & Value and the ever changing relationship with external counsel'. The debate was led by Evangelos Apostolou, Principal, DA Partners (a law practice member firm of the EY global network) and featured thoughts from Jackson Pek, Vice President and General Counsel, Asia Pacific, Amadeus IT Group, S.A.; Punnapat Luengtharthong, Head of Legal & Compliance –

Thailand, BASF Group in Thailand; Suthirugs Berry, Director, Group Legal Counsel, Thoresen Group; Niwes Phanchaoenworakul, Managing Partner, Chandler & Thong-ek Law Offices Limited; and Sui Lin Teoh, Partner, Rajah & Tann (Thailand) Limited.

Subsequent sessions covered renewable energy projects, non-standard research in support of asset tracing, cross-border M&As, IP and JV protection and compliance and litigation considerations to take onboard when interacting with government agencies.

We at the In-House Community would like to thank co-hosts and attendees for their support and hope to see all who were involved at next year's event.



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



Nuttaphol Arammuang
Partner, Bangkok
ZICOlaw (Thailand)
Limited



Stefano Demichelis
Associate Managing
Director, Investigations
and Disputes
Kroll



Jackson Pek
Vice President and
General Counsel, Asia
Pacific
Amadeus IT Group,
S.A.



Suthirugs Berry
Director, Group Legal
Counsel
Thoresen Group



Tim Gilkison
Managing Director
In-House Community



Niwes Phanchaoenworakul
Managing Partner
Chandler & Thong-ek Law
Offices Limited



Samuel Britton
Partner, Yangon
ZICOlaw Myanmar
Limited



David Lim
Associate Partner,
Ho Chi Minh City
ZICOlaw (Vietnam)
Limited



Matthew Rendall
Partner, Phnom Penh
SokSiphana&associates
(a member of ZICO
Law)



Supawat Srirungruang
Partner
Rajah & Tann
(Thailand) Limited



Melisa Uremovic
Partner
Rajah & Tann (Thailand)
Limited



Charuwan Charonchitsathian,
Associate
Chandler & Thong-ek
Law Offices Limited



Punnapat Luengtharthong
Head of Legal &
Compliance – Thailand
BASF Group in
Thailand



Paroma Saovabha
Partner
Rajah & Tann (Thailand)
Limited



E. T. Hunt Talmage, III
Senior Counsel
Chandler & Thong-ek
Law Offices Limited



Paul Westover
Partner
Stephenson Harwood



Aristotle David
Managing Partner,
Vientiane
ZICOlaw (Laos)
Sole Co.



Cem Ozturk
Associate Managing
Director, Investigations
and Disputes
Kroll



Jessada Sawatdipong
Senior Partner
Chandler & Thong-ek
Law Offices Limited



Sui Lin Teoh
Partner
Rajah & Tann
(Thailand) Limited



Chulapong Yukate
Managing Partner,
Bangkok
ZICOlaw (Thailand)
Limited

“Relevant content, high turnout, good networking – the Congress exceeded my expectations”

– In-House Congress Bangkok delegate

Opportunities of the Month ...



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.

LEGAL COUNSEL, FINTECH PQE: 6+ yrs, Singapore [Ref.: A40725]

Exciting opportunity to join a team of lawyers in a high profile US multinational in the fintech space. The successful candidate must be Singapore-qualified and have strong financial services regulatory experience. You will deal with regional regulators and handle corporate governance and secretarial work, as well as general commercial operational and contracting matters. Interest and/or experience in technology products would be ideal. You should also be able to speak and read Mandarin Chinese, as this role will cover the North Asia markets.

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

CORPORATE PE LEGAL COUNSEL PQE: 5-7 yrs, Singapore [Ref.: JGB – IS 1652]

A company is currently looking for a self-motivated Singapore-qualified lawyer for their award-winning legal department. The role will involve working closely with the general counsel and the board of directors. This is a true in-house counsel role where you will be involved in deals, corporate governance support, compliance work and general advisory work. The successful candidate will be a high performing individual who can operate in a fluid environment – flexibility to go with the flow is key to this role. Highly manageable hours and a good deal of autonomy will be offered to the right candidate. JLegal Pte Ltd Employment Agency Licence No: 16S8076. Benedict Joseph, EA Registration No: RI 324716.

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

COMPLIANCE DIRECTOR, INTERNATIONAL PQE: 10+ yrs, Hong Kong [Ref.: 13597/AC]

An IT multinational corporation is seeking a compliance director to join its Hong Kong office to support its growing international business. You will lead the compliance function in the region and be responsible for ensuring compliance systems, policies, controls and operational processes are in compliance with the company's direction and regulatory requirements. Ideally, you are an ACAMS member with an accounting/business/finance degree plus at least 10 years' compliance experience. Strong knowledge of legal and regulatory requirements in Singapore, Hong Kong, US and the EU is essential. You must have fluent English and Mandarin skills.

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

BANKING LAWYER, INVESTMENT BANK PQE: 3-8 yrs, Hong Kong [Ref.: 208470]

A top tier global investment bank is seeking an experienced banking lawyer to join its well-established legal team. The successful candidate will support the company's sales and trading business in regards to structured products, derivatives and prime brokerage. The responsibilities of the role include working with traders and structures to help structure trades and draft the appropriate documentation and advising on the legal and regulatory risks throughout a variety of product life cycles and transactions executed with numerous counterparty types across the Asia Pacific region. Applicants should have experience with general banking transactions and banking regulations. Overseas candidates are welcome to apply.

Contact: Carmen Mok
Tel: (852) 2973 6333
Email: carmenmok@taylorroot.com

TRADE & COMMODITY FINANCE, DIRECTOR PQE: 10+ yrs, Singapore [Ref.: R/042550]

A top tier global bank is currently looking for an experienced trade finance lawyer to join their team in Singapore. Overseas candidates are welcome to apply.

The ideal candidate is a common law qualified lawyer with a minimum of 10 years' PQE, extensive experience within trade and structured finance and sound knowledge of structured commodity products. Experience within legal private practice or as in-house counsel in an investment bank required. Excellent communication and interpersonal skills and ability to engage with senior business partners will be essential. Fluency in one or more Asian languages would be preferred.

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

LEGAL COUNSEL PQE: 4-8 yrs, Hong Kong [Ref.: IHC 14047]

Exciting opportunity for a corporate/commercial lawyer to join a conglomerate where you will work with their head of legal and international general counsel on complex commercial issues, and advise on the company's various business operations in the APAC region. Excellent communication/drafting skills in English and Chinese as well as transactional negotiation skills are required.

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



Kenny Shek
Associate Managing Director

Mitigating insider fraud in China

Over the years, companies operating in China have experienced various types of fraudulent activities including theft of physical assets, misappropriation of company funds, corruption and bribery and procurement fraud. While we are seeing China-based companies investing more in financial controls to mitigate fraud, there is a continued increase in frauds relating to IP theft, information theft, corruption and bribery, and conflict of interest in China. In fact, according to the 2015 Kroll Global Fraud Report¹, 73 percent of China-based executives were affected by fraud, an increase of six percent from the previous year.

The increase in such incidents is partly due to the lack of employee and third party vendor due diligence and proactive data analytics to identify anomalous transactions or behaviour, as well as inadequate compliance training.

Unravelling a fraudster

Fraudsters could exist anywhere in any organisation but the risk of such fraud can be mitigated through proactive preventive efforts. In addition, it is important to understand the typical profile of a fraudster in China, to enable an organisation to better protect itself against insider fraud.

Based on Kroll's experience of cases in China over the past 18 months, a typical fraudster in China is often someone who appears trustworthy, and is smart, articulate, has the ability to think outside the box and lives a lifestyle beyond their means. These fraudsters behave like entrepreneurs, having high tolerance for risk and ambiguity, and a low fear of failure. While they may work hard at their jobs, they generally believe they deserve to be compensated better. This misguided sense of entitlement, coupled with the 'fear of missing out', dictates their spending habits, leading them to live beyond their means which often results in a continued search for ever-bigger rewards. Such self-justification/rationalisation also leads to denial of any wrongdoing when committing fraud and such a fraudster may explore multiple opportunities to make a personal gain, ranging from seemingly insignificant employee expense fraud to larger matters such as manipulating or 'hijacking' entire sales/distribution channels, and from one-off misappropriation of large company's assets to frequent small value frauds.

“according to the 2015 Kroll Global Fraud Report, 73 percent of China-based executives were affected by fraud, an increase of six percent from the previous year”

How to combat insider fraud

Here are five key preventive steps an organisation can take:

1. *third party and employee due diligence* – knowing the background, reputation and financial strength of customers, vendors and employees can allow the organisation to identify and mitigate potential associated risks;
2. *fraud risk assessments* – a comprehensive fraud risk assessment can enable the organisation to thoroughly evaluate its business operations, identify and manage those processes, internal controls, and procedures which could be subject to higher fraud risks;
3. *regular transaction review* – transactional data analytics supplemented by regular transaction testing can help the organisation to identify potential fraudulent transactions and evaluate them on a more timely basis;
4. *establishment of robust fraud response protocol* – the protocol will set out the procedures required to be followed when a fraud or other irregularity is discovered or suspected. It will demonstrate that the organisation is prepared and ready to tackle fraudulent activities if and when necessary; and

5. *involvement of experts* – an independent forensic expert can help the organisation to investigate and objectively evaluate any matters of concern. An expert can utilise different tools (such as computer & mobile forensic technology and access to various information databases), methods and procedures, depending on the needs and deploy a team within a short time frame.

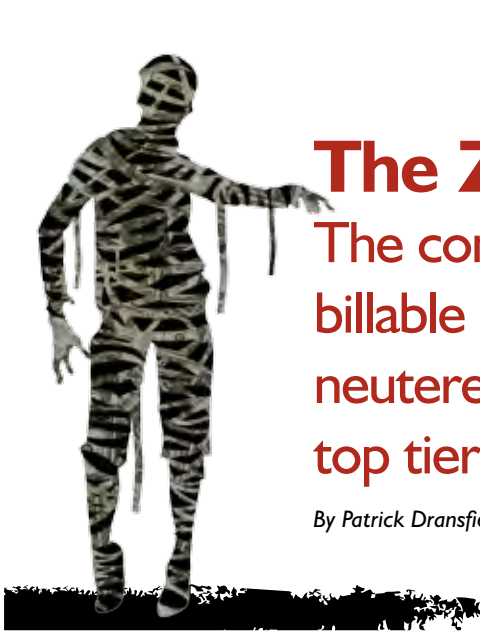
While the above mentioned steps and insights into the mindset of a typical fraudster in China provide effective pre-

ventive efforts, it is critical that such efforts are supplemented by a strong 'tone at the top' and 'zero tolerance' message from senior management, which should be comprehensively cascaded down throughout the organisation.

Endnote:

1. <http://www.kroll.com/global-fraud-report>

kenny.shek@kroll.com www.kroll.com



The ZOMBIE lives on!

The continuing half-life of the billable hour and how it has neutered necessary change for top tier international law firms

By Patrick Dransfield and David Miles



My mother and father both came from Huddersfield, in the West Riding of Yorkshire. On a Sunday morning, I was greeted with a smile from my mother:

“Now, which would you prefer...beef or pork?” For those like my father attuned to such things, there was a nuanced emphasis on the latter.

“Oh, I fancy beef, mum”.

“Well, we’re having pork.”

This somewhat surreal exchange was what my father christened ‘the Trap Offer’. It seems that traditional law firms (by that I mean partnership structured firms), even ones that appear to be offering an alternative, are really in the majority of billings still offering ‘pork’, otherwise known as ‘the billable hour’, in admittedly sometimes a new pastry wrapping. And why shouldn’t they if they feel its to their financial advantage and they can get away with it? It has been the standard for a long time now, and no doubt because the first and second generation in-house counsel began their careers in private practice, a measure of payment that is understood by many.

Patrick Dransfield

“The reason why it is so difficult for existing firms to capitalize on disruptive innovations is that their processes and their business model that make them good at the existing business actually make them bad at competing for the disruption.”
– Clayton Christensen

In our opinion the billable hour is really a very unattractive way to pay lawyers for much legal work these days if you are the buyer of their services. It can encourage complacency repetition and inefficiency where younger lawyers are more concerned about making their targets than necessarily being really efficient and cost effective. It takes as its basic

premise that most legal work is bespoke and deserving of essentially premium and expensive rates when nowadays because of competition and market forces, legal work is becoming increasingly commoditised. Of course there are always matters that deserve and demand premium hourly rates, but overall there now appears to be a widening disconnect between what private practice is trying to hang on to and what is really in a client’s best financial interest. However, in private conversations, partners in private practice in charge of even the most seemingly radical schemes to provide real value for money for commoditised legal work, wink and

say “actually what we are really after is the top end work”. The work which is supposed to be ‘bet the company’ premium type work that is largely the domain of the top firms and which quite reasonably is deserving of the billable hour.

It is not surprising that private practice lawyers, especially those who have lived through the golden period of the last twenty plus years and particularly pre-global financial crisis (GFC) are loathe to see change. Its what they understand and how their firms account internally. It’s a crucial metric.

“It is hard to persuade a bunch of millionaires that they have the wrong business model”, as Professor Richard Susskind aptly puts it. So in-house counsel may well ask for beef, but what they continue to get in large measure is pork even if they don’t necessarily know what they are actually eating.

And interestingly, the desire for beef but settling for pork is not just the preserve of private practice. Many on the client side consider radical change too hard. Twenty-five year General Counsel veteran Trevor Faure ends his ‘More for Less’ general counsel surgeries with the statement that the vast majority of his

audience will not implement any of the changes presented during the previous four hours. In some cases the need to quantify the problem will result in the discovery of inefficiencies and perhaps even to consequences they don't want. Sometimes it is better simply not to know.

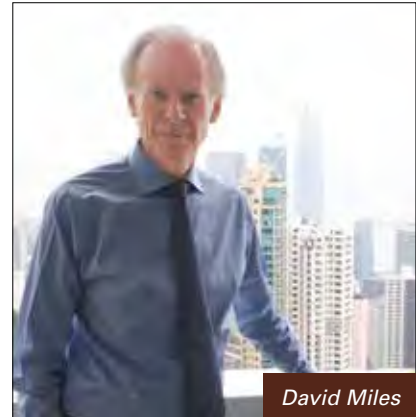
However, change is coming, even if some don't like it. And surely it is better to be the author of change and to be in control rather than to be its victim. As companies struggle for profitability in this uncertain period of global turbulence, the least efficient and cost draining departments are in sharp focus. A boss and mentor always said 'know your numbers'. And since every other department in a corporation are undoubtedly numbers driven, why not the legal department too? Many are, but surprisingly many are still not.

And for the law firms, we have seen a lot of water go under the bridge. From the original value billing, where there was not a billable hour in sight and which was a much fairer way for both client and lawyer, to the introduction of technology and the billable hour, as law firms and legal work became more complex. And even then the billable hour was not always the most advantageous financial reward to lawyers where they were deserving of premiums for their contribution in transforming a deal and whose input was worth literally millions of dollars. Indeed, during the dotcom boom of 2000 veteran Silicon Valley partners said that the lawyer's time had come and that they too, like the bankers, would be rewarded in terms commensurate with their influence on the deal. Here, even the billable hour was seen as a poor way to reward top lawyers, and we saw firms taking equity and other novel ideas.

During the bull years leading to GFC, wage inflation through the inexorable rise of the billable hour was the norm. Each year, the Magic Circle and top US law firms would inflate their flat rate billable hour by a suitable percentage, knowing that clients would knock them down but they would still achieve their hourly rates or perhaps even a premium on them. There wasn't much transparency. Hourly rates have continued to go up year on



Patrick Dransfield



David Miles

year, which suggests clients for the most part are still accepting of them.

To quote *The American Lawyer* editorial piece on the 25th anniversary of the AmLaw 100 in 2012: "In the quarter-century since *The American Lawyer* began tracking the nation's 100 largest law firms, total gross revenue for that cohort has multiplied more than tenfold, from US\$7 billion to US\$71 billion. In nominal terms the average Am Law 100 PPP has more than quadrupled, from US\$324,500 to about US\$1.4 million. Providing fodder to those who see a widening class divide, the average AmLaw 100 partner earned 11.3 times the average American employee's compensation in 1986, and 23.4 times that benchmark in 2010, the last year for which data is available."

It is no surprise then that the one key performance indicator chosen by *The American Lawyer* out of the many possible is the annual equity partner draw. A great deal of column inches has been dedicated to how managing partners at various law firms, have become obsessed with their AmLaw equity per partner ranking in the AmLaw 100 list. What has been less discussed is what an uncomfortable measure of success this represents and how the AmLaw 100 itself and the legal press more broadly have unduly influenced the legal profession with all these rankings to patterns of behaviour that are in no way in either the clients, or even the profession's best interest.

Curiously, *The American Lawyer* published its first AmLaw 100 in 1987, the same year as Oliver Stone brought us

Gordon Gekko and 'Wall Street'. It is as though Gordon Gekko took over the gentlemanly reigns of the profession and declared 'Forget about all this ethical mumbo jumbo – it's what you put in your pocket that is the true measure of a successful attorney. Greed is good!'

We are reminded of a recent Harvard piece of research indicating that the incidence of 'air rage' is much higher when economy class passengers are actually led through the first class cabin on the way to their tiny cattle class seats. In much the same way, many of these annual rankings provoke greed and envy across every class of lawyer and end up making everyone but the very top echelon dissatisfied with their lot.

In other perhaps less obvious ways, the AmLaw 100 score card of earnings by equity partner has contributed to the lack of relative success in emerging markets experienced by American-based international law firms. Generally, it would seem that quite a few American firms have garnered anemic returns on their expat investments, according to a Harvard Business Review study. The main reason, as concluded by J Stewart Black and Hal Gregersen, was that many US executives assume that the rules of good business are the same everywhere. The Asian market has proved especially difficult for international law firms – as we explored in our recent article 'Asia-Pacific exceptionalism and BigLaw global M&A'. Part of the reason for this is that charge out rates for work done in, say Singapore, do not compare with Manhattan. It is very much not

a one size fits all global market. The top firms have for the most part continued to pursue only the work that supports their financial model. The rest are continuing to work out whether they can continue to get away with billable hours or whether the creeping growth of fixed price work means they get ahead of this and work with the client with sensible proposals to reflect whats going on in any given market.

The consequences of all this is that it's getting harder to justify equity partners in these weaker and cheaper legal markets and this has a knock on effect for those associates working hard and who in other places would be absolutely deserving of an equity partnership but the economics don't justify it. It makes it very challenging to manage careers.

Some firms have given up entirely on the idea of a standard rate – for example Denton and its poly-centric approach, which attempts to make a virtue out of the differences in the perceived value of legal services in emerging markets as compared to the USA and London.

Either way, the billable hour as a measure of fees has not exported well for many international law firms and the economic imbalance of returns between certain regions is one of the reasons why cohesion in firms is breaking down. But what kind of legacy is this going to leave for the next generation? It's not an exaggeration to say that increasingly law firms are finding it tougher. The global market for the most part is not growing, so for many its all about maintaining market share and eking out more profit from that share. Firms continue to look at ways of securing their position. We have seen the increased dominance of the top firms who go from strength to strength in their chosen markets the growth of defensive mergers, and the creation of federations of firms that view that bigger is best and so on. And we have seen failures and some spectacular failures where firms have completely lost the plot. No doubt we will see much more of the same in these very turbulent times. And then there is Brexit.

We started with a quote from a business consultant whose career is inextricably linked to the concept of disruption in commercial life, Clayton Christensen. And we will end with one:

"A disruptive innovation is a technologically simple innovation in the form of a product, service, or business model that takes root in a tier of the market that is unattractive to the established leaders in an industry."

As we will explore in the next article, the big threat does not even look like Big Law and is happily making progress on the lesser attractive morsels left behind by BigLaw. And guess what, these new players are not billing by the hour!

Patrick Dransfield is the Publishing Director of ASIAN-MENA COUNSEL and Co-Director of In-House Community™.

David Miles is the former Partner, Executive Committee member and Chairman of Asia for Latham & Watkins. He is currently Chairman of Asia Community Ventures.

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... AND SEND THEM AN



Credit where credit's due

Having worked as a lawyer in New York for 15 years and Asia for almost 20 before joining **Asian Development Bank** which focusses on developing jurisdictions, **Christopher Stephens** tells the In-House Community about the “cultural arrogance” behind assuming that the more longstanding laws are the better ones and will automatically work in areas whose traditions and cultures are disparate. He also talks about how to motivate younger lawyers, revealing that giving them credit for their work has to go beyond remuneration.

ASIAN-MENA COUNSEL: First of all, congratulations on winning the Banking Industry Award at the In-House Community awards ceremony. What do you believe it is that made you and your team stand out and how would you advise others hoping to achieve the same standard?

Christopher Stephens: Thank you. One characteristic of our legal team that we are continuing to nurture is our proactive, solution orientation. Large institutions have a tendency to become rather staid in their culture and the way they approach issues. This can have a compounding effect when the traits of a large institution combine with a legal department's conservative traditions to produce prosaic outputs – work that answers questions and meets all technical standards, but is uninspiring. Our legal team has transformed the culture of the department by creating an atmosphere where staff are now expected to generate new ideas to solve problems, and to provide solutions, rather than mere answers. We are now moving above even that, and are striving to proactively seek to identify challenges to resolve, rather than waiting for problems to be presented to us. As a result, our staff is perceived to be valuable additions to more non-legal functions, like strategy, policy and operations because we are seen as capable of additionality beyond the legal compliance function.

Another important value is that of standards. We are a meritocracy, emphasising ability and talent over seniority, and we are hiring and promoting people based on their technical skills, temperament, performance, hard work, judgement and potential. Once such people are in leadership roles, I will give them wide berth to shape, manage and make decisions. My door is always open – figuratively and literally – and I will offer guidance and support. Our counsel are relatively free to make their own decisions in matters affecting their own units and projects, and will be given full credit for every win. But we are building a performance-based culture, and everyone – from the GC to the new hire – will be judged by results.

AMC: Asian Development Bank (ADB) operates in 42 developing countries. How do you approach related issues between countries?

CS: Many of the issues we confront across Asia and the Pacific are similar, but the way in which each is framed and the perspectives and views of stakeholders for each vary dramatically based on country, language, culture, customs, stage of development and government and social structures. Our staff at ADB comprises people from 57 countries, so we have the same diversity of perspectives and approaches within the bank as our membership. We also have a resident board of directors, meaning – instead of quarterly meetings – our board members live in Manila and work at headquarters, and are much more engaged in the business of the bank. We also have a relatively new president, who is ushering in an era of dynamism – encouraging new ideas and new approaches to the business of the bank, while maintaining the atmosphere of pragmatic consensus orientation. This diversity and intensity is not only a resource, but an invaluable enrichment of the experience of working here.

AMC: Was the move to ADB a culture shock having started your career in New York?

CS: There was not so much “culture shock” as there was a change in perspective – and not so much a result of the relocation from New York to Asia as from outside counsel to inside counsel. As an outside lawyer, most of the work that went into developing a client's project was invisible to me. Companies and banks come to outside lawyers only after the basic rationale and framework for their projects are determined. As in-house counsel, we participate in the whole production, from creation of policies, strategies and products generally, to project-specific analyses of concept, design, feasibility, development, negotiation and completion. Where we engage outside counsel, we bring them in for the last few phases of the project – negotiation and completion.

In-house counsel are embedded in the fabric and culture of

the institution – part of the team at the heart of the operation – feeling and affecting the very pulse and rhythm of the business. This enables in-house lawyers to absorb a much more holistic perspective on the institution and to provide a much more insightful and deeper contribution. But it also broadens the lawyers' coverage substantially. My to-do list changes and grows every day, and rare is the day when I accomplish the tasks I planned to the night before.

AMC: Given that you work in developing jurisdictions, you have the ability to look at developed ones and make decisions in hindsight. Are there any lessons you feel are particularly noteworthy? How do you integrate them into how you and your team operate?

CS: I lived and worked in New York for 15 years and in Asia for almost 20 years before moving to ADB. One thing that one acquires from such experience is a sensitivity to the potential for cultural arrogance – the presumption that rules and systems in developed countries are superior and should be adopted in developing countries. Sometimes, such attitudes are so strongly held that there would seem to be no need to examine the context, cultures and traditions of developing countries and how they came to the systems they have. This is cultural narcissism, and the source of a lot of the misunderstandings and tensions in multinational engagements. This is also an area where ADB and the breath of its diversity and perspectives plays a critical role. When we take a view or launch an initiative, it is inevitably the product of vetting through an extraordinarily broad set of national, cultural and technical perspectives.

But your question also touches upon the Rule of Law, and a programme that we run in the legal department. Under our Law and Policy Reform (LPR) Programme, our lawyers work directly for countries by providing advice in areas relating to legal and judicial reforms. The central premise of the LPR programme is that a functioning legal system, anchored in the Rule of Law, is essential to sustainable development. Such a system must com-

prise a comprehensive legal framework and effective judicial, regulatory and administrative institutions that establish, implement and enforce laws and regulations fairly, consistently, ethically and predictably. The range of LPR projects is broad, including, for example: advice to countries in Central West Asia on gender laws and programmes; advice to Myanmar on new laws to encourage foreign investment and facilitate commercial activity; and in other countries, facilitating the establishment of capital markets or developing capability among judges to implement environmental treaties and laws. In many cases, we borrow from the experiences of developed countries and can even improve upon their laws and systems in application to developing countries. It's in everyone's interest to encourage developing countries to have the most modern and effective legal systems relating to protection of the environment, enforceability of contracts, ownership of property, efficacy of commercial and financial transactions and investments and so forth. Greater economic activity will result and will create new investment, jobs and markets, increase incomes and free people from poverty and enhance trade links and regional stability. It's a win-win-win scenario, but it all depends on having a level playing field: Rule of Law.

AMC: What inspired you to take the path that you've chosen? Would you suggest other lawyers go experience life and law in different jurisdictions or is it not for everyone?

CS: I would love to say that I arrived here through careful consideration and calculation, and have followed a precisely planned path. But the reality is that I am the beneficiary of opportunity and luck. For people who are intrigued by different people and cultures working together to find common ground in furtherance of common endeavours, I would encourage the pursuit of law in an international or multinational setting. For younger lawyers who are ambitious, I would encourage them to start in the private sector, in as rigorous and demanding an environment as they can tolerate. Five to ten years or more in a such an environment, enduring long hours and the stress of high demands and great

“For people who are intrigued by different people and cultures working together to find common ground in furtherance of common endeavours, I would encourage the pursuit of law in an international or multinational setting. For younger lawyers who are ambitious, I would encourage them to start in the private sector, in as rigorous and demanding an environment as they can tolerate”



Christopher Stephens

“Letting the younger team members take the credit for successes large and small inspires and motivates them more dramatically than big bonuses and promotions”

expectations can shape the skills, character and demeanour required for success in many roles inside or outside the practice of law. Great success depends to some extent on opportunity and luck, but the harder and smarter someone works, the luckier she or he will be.

AMC: How do you add value to the business? Should in-house lawyers be expected to go beyond legal requirements alone?

CS: Yes, they should and they must. The world is moving increasingly quickly, and internal and external demands are keeping pace. Whether a law firm, a multinational or a start-up, businesses have to respond faster and have narrower margins for error. Providing technically correct answers to legal questions quickly and efficiently is the new minimum service standard. Fortunately, the vantage points from which lawyers sit provides them with experience and the opportunity to acquire sufficient knowledge to contribute to issues of law, strategy, operations, finance, administration and human resources. The best lawyers can use their training and experience to sort through the profusion of information, identify key issues and goals, develop multiple alternative solutions and recommend those that are commercially practical and most effective.

AMC: Please describe how the in-house role has changed as the market has developed. In your view, is the in-house function viewed differently now to how it was when you first began practising?

CS: I've been reading for 30 years how the in-house role has changed as demands of the marketplace have changed, and that more is expected of in-house lawyers in terms of timeliness, creativity, efficiency, effectiveness and so forth. But I think the nature of the change is overstated or misstated. My father was a lawyer for 40 years from the 1950s to the 1990s, and served in an almost consigliere role for several companies and chief executives and on their boards. He acquired the role of 'trusted advisor'

to clients by immersing himself in their businesses and being as passionate about the engineering, development, finance and sales parts of the businesses as he was about their legal issues. I don't think that has changed fundamentally in a hundred years. Passion and integrity remain the touchstones today as they were three generations years ago. Within the passion component is the commitment to acquire a competence in all important elements of the business. The integrity part requires the complete subjugation of personal ambitions to the best interests of the organisation.

The biggest changes since I first began practising are the profusion of information, the development of markets, the availability of capital and the evolution of technology. These have dramatically changed the marketplace, and the means by which a lawyer performs her/his role and achieves the role of trusted advisor – and influence whether she/he even wants to do so.

AMC: What's the best advice you've been given and what's the best advice you could give?

CS: The best advice I have ever been given is that there is no limit to what you can achieve if you don't mind who gets the credit. As a young, ambitious lawyer 30 years ago in the uber-competitive environment of a 'Wall Street' law firm, I was focussed foremost on survival. I started in New York in the early-mid 1980s, which was not so much a 'decade of greed' as it was a frenetic catapult out of the morosity of the late 1970s. But, of course, I didn't have any historical perspective, and thought that 15-hour days and all-nighters that ran interminably through weekends and holidays for years on end were the norm for that market. The practice moderated (but only a bit) after a few market crashes, and partnership came with new sets of demands, expectations and measures of success. But not until I had more than 15 years of this did I fully realise how much more could be achieved – and how much more fun could be had – if I could engage truly collaborative teams of lawyers and support staff that shared common ambitions and standards. When it became time to lead practice groups, offices, regions and more, the team orientation became even more important, because it underpinned productivity and profitability of the entire enterprise. It was also infinitely more fun and an effective way to motivate and keep the best staff. When the pressures of the 'young lawyer' subsided, my perspective shifted. I enjoyed participating in the development of younger lawyers – both new graduates in finding their footing and young partners transitioning to the management of practices and client relationships. And I started to take more professional satisfaction in the success of teammates and mentees than from individual personal achievements. Letting the younger team members take the credit for successes large and small inspires and motivates them more dramatically than big bonuses and promotions. 'Credit-shifting' is also an important leadership quality I look for when assessing leadership potential. All this is a long-winded way of saying that a tad of graciousness and decency is not only the right thing to do, it's best for the team and the organisation.



The
In-House
Community
Counsels
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Awards &
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2016

THURSDAY MAY 26TH, 2016
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On May 26, 2016, the In-House Community hosted its inaugural regional Councils of the Year Awards in order to celebrate outstanding work over the previous 12 months from both in-house and external counsel. The ceremony was held at the Hong Kong Jockey Club Happy Valley Clubhouse and

brought together the cream of the legal industry in Asia and the Middle East to recognise their achievements in terms of dedication, innovation, efficiency and value, integration, encouragement and improvement and corporate social responsibility and diversity.

We were truly honoured to receive

over 50 nominations for in-house team of the year and know that their contributions will continue to be valued. As the subsequent pages tell, we congratulated numerous lawyers and teams from all across the Middle East and Asia in a variety of industries for their sterling work over the past 12 months. But, what did we learn?

“Heba Ali consistently goes above and beyond her daily duties and is a highly valued and integral member of my extended team.”

Oliver Ebel, Vice President & General Manager,
EMEA Mobile Business Group, Lenovo Middle East and Africa

WHAT WE LEARNED

By Patrick Dransfield



“The Awards is a time for sharing”. Stephen Maloy, one of our judges, told us. “It is a melting pot of ideas and best practice where I can learn about what the IBM in-house team have done regarding automating documents, for example, and think how that may apply to my own team.” Another senior General Counsel put it more laconically. “Your awards recognize the blood sweat and tears of the in-house role.”

The opinions of two In-House veterans seems a good place to start. We received 54 team and individual submissions for the In-House Community Awards and the collective knowledge therein was astounding. Space does not allow for all the wisdom gleaned, but here are some highlights.

In-House legal teams in the real world

Daimler Greater China’s team submission focussed on the importance of integrating the legal team’s budget management to the financial goals of the company and by standardising contracts alongside network development, realised a 20 percent decrease in spend while contributing to the group’s record growth. Similarly, Bank of China (Hong Kong) proved that an in-house team can have a significant impact on society in general by being at the forefront of the development of the Rmb and its internationalisation through the launch of Panda bonds on the onshore interbank bond markets in 2015.

The legal team of China Machinery Engineering Corporation contributed to the first belt and road power project in Pakistan (a US\$2 billion investment); and the MTR legal team continued supporting the group’s global expansion from

its Hong Kong base. In addition, the MTR legal team made a pledge which all in-house teams would do well to replicate – to look at the commercial opportunities arising for the company and in particular how legal change may translate into business opportunities and the commitment to share the same with their other business stakeholders.

Knowledge management, compliance and integration

MERALCO’s commitment to ensuring that every lawyer every month visited at least one business centre was matched by our winning Asian Legal Team of the Year, Aboitiz Equity Ventures, who have oversight of the 139 companies under their watch by having a three-office coverage in Luzon, Visayas and Mindanao.

We were also struck by the ‘tone in the middle’ initiative implemented by 3M Asia Pacific, with grass-roots local videos in local languages generated by the company’s subsidiaries themselves. Tyco’s implementation of a comprehensive client satisfaction survey would also do well to be adopted by all our teams, as it captures on a continuing basis information regarding trust, business alignment, clarity of work product, business acumen, pace and cost – thus truly aligning in a tangible way the legal department and other stakeholders within the company.

Innovation, as well as integration, is clearly displayed by the example cited by Stephen Maloy – Intel’s automated NDA processing that reduced waiting time within the company from 17 days to six minutes. Is this a product Intel can develop commercially for all our in-house teams, we wonder?

Learning something about everything and everything about something

The commitment to 'always be learning' was exemplified by the example of our International Legal Team of the Year, Middle East, TECOM Group, with the vision statement that "something more is always possible". Their success was echoed by CFO Michael Wunderbaldinger's statement: "I commend the TECOM legal team for its collaborative approach, its technical expertise and its ability to remain flexible in an ever-changing corporate environment". Thus underlining that it is the attitude of individuals within the legal team that make for lasting success.

Buy-in from the top was certainly exhibited by conglomerate winner CK Hutchison Holdings, with the Group Finance Director Frank Sixt stating "I consider Edith Shih and her team a vital part of the company in delivering the success of CK Hutchison over the past two decades".

And not all legal departments are large. We learned from both the Far East Organization and Samsung Fire & Marine how much can be accomplished by small teams of four or less lawyers.

The personal commitment to charity was evidenced by the fact that our gathering raised over HK\$70,000 for designated charity Lifeline Express. The same charitable impulse was demonstrated in the majority of the 54 submissions, with SingTel's General Counsel, Shantini Sanmuganathan singled out for particular notice given her personal commitment to volunteer precious time to set up and manage free schools and hospitals for the rural communities of India.

Shortlisted in-house teams

Shortlisted teams

- ABB United Arab Emirates and Oversight Countries
- TECOM Group (*Winner – International Legal Team of the Year – Middle East*)
- Travelport AFMESA (*Winner – Middle Eastern Legal Team of the Year*)
- Tyco International plc
- Virgin Mobile Middle East & Africa

Asian & International Legal Teams of the Year

- Aboitiz Equity Ventures, Inc. (*Winner – Asian Legal Team of the Year*)
- Intel (*Winner – International Legal Team of the Year – Asia*)
- Sanofi (China) Investment Co., Ltd.
- Sun Life Malaysia Assurance Berhad

The nine teams shortlisted by our four independent judges to be considered for Asia Legal Team of the Year and Middle East Legal Team of the Year had all provided proof of the criteria requested, namely: Dedication: Innovation: Efficiency & Value: Integration: Encouragement & Improvement: and Corporate Social Responsibility & Diversity. Our judges needed their collective 100 years' service to the region's legal community to be able to choose the winners.

Travelport stood out as Middle Eastern Team of the Year through its ability to rise to the challenge of providing solution-

focussed and on-time advice across over 30 distributors in the Africa, Middle East and South Asia region.

The transformative change leadership coupled with their intelligent use of technology exemplified by TECOM secured them International In-House Team of the Year, Middle East.

The history of the Aboitiz team from a team of six in 2004, led by Jasmine Oporto, to a team of 27 is an inspirational story, providing coverage across the core businesses of power, land, infrastructure, food and financial services. Aboitiz impressed enough to win Asian In-House Team of the Year.

Intel won the International In-House Team of the Year, Asia category by clearly demonstrating their competence over a broad range of issues and projects, including: inter alia, software services, IP, sales, marketing, employment, anti-trust, compliance, contracting, technology licensing and mergers & acquisitions. "The legal team are our trusted advisors" shared Robby Swinnen, Vice President & General Managing, Sales & Marketing Asia Pacific and Japan at Intel. "It is heartening to know that they are passionate about what they do at Intel and for the community-at-large."

And finally to our In-House Counsel of the Year, 2016. Our judges shortlisted five in-house counsel from the 54 team submissions and any one of the below would have been a worthy winner.

- Choo Suit Mae – Sime Darby Berhad
- David Charles – Tyco International plc
- Heba Ali – Lenovo Middle East and Africa
- Phil Reynolds – Virgin Mobile Middle East & Africa
- Steven Howard – Sony Mobile Communications International AB

Heba Ali stood out, not just because of the range and obvious respect indicated by the many testimonials provided by her peers and colleagues, but also for the fact that Ali started the legal department for the Middle East from scratch. As one of the judges put it, she has managed to achieve so much in such a short space of time, as well as demonstrating an overwhelming commitment to self-improvement and growth within the Lenovo family. Her team also won the award for Corporate Social Responsibility, presented by Nellie Fong, founder of the ceremony's charitable organisation Lifeline Express, for which HK\$74,000 was raised during the evening.

"Heba exemplifies Lenovo culture in the way she operates. It is easy to work with her and [she] is a reliable resource in the region."

Ahmed Khan, HR Partner,
Lenovo.



*“Sony China Legal & Compliance Group is honoured and privileged to be named as Legal Team of the Year 2016 in the Technology Sector”...
“The importance attached to the In-House Community Councils of the Year awards will motivate our team members to continue our efforts, and to extend our best possible legal and compliance support to enable our company to deliver “KANDO” products and services ...”*

Zhen Tan, VP, Legal & General Counsel,
Sony (China) Limited



“I would simply describe Heba as everything you would need in an in-house lawyer. She is a very effective operator, and dogged in achieving the aims of the organization she acts for”

Ahmed Ibrahim
Partner
Fenwick Elliott LLP



Heba Ali (centre) of Lenovo Middle East & Africa claims the award for In-House Counsel of the Year, presented by Tumi's Katrina Wu (left)



“I consider Edith and her team a vital part of the company in delivering the success of CK Hutchison over the past 2 decades.”

Frank Sixt
Group Finance Director
& Deputy Managing Director
CK Hutchison Holdings Limited

Edith Shih, Head Group General Counsel and Company Secretary, CK Hutchison Holdings Limited showcases the award for Conglomerate Legal Team of the Year



Baker & McKenzie were the proud recipients of this year's Most Responsive Firm of the Year, collected by Principal Richard Weisman and Partner Karen Man



"I am pleased that our legal team has strategically embedded attorneys in my key sales teams."

Robby Swinnen,
Vice President & General Manager,
Sales & Marketing
Intel Asia Pacific & Japan

Intel's Winston Kiang after receiving one of the three awards he collected throughout the evening



Freshfields Bruckhaus Deringer were Active in the following winning ASIAN-MENA COUNSEL Deals of the Year:

- Dalian Wanda H Share listing
- Itochu Corporation's investment into CITIC
- TCC Holding's acquisition of Vietnam's Metro Cash & Carry
- Nikkei's acquisition of the FT Group, representing Pearson
- GSK / Novartis Joint Venture
- Tesco's sale of Homeplus to MBK consortium
- Hong Kong IPO of Chua Huarong Asset Management Co. Ltd

Hayden Gordine, Partner at Taylor Root (right) presented Simon Weller (left) and Teresa Ko (middle) of Freshfields Bruckhaus Deringer with their award for Deal Firm of the Year



"I now have a great set of lawyers who provide me with solution-focused and on time advice to help me in making the right strategic decision..."

Rahib Saab
President and Managing Director
Europe, Middle East,
Africa and South Africa
Travelport

Nadda El Kaloush (left) and Alexis Guest (right) of Travelport AFMESA collected the award for Middle Eastern In-House Community Legal Team of the Year, announced by Axiom's Head of Asia Kirsty Dougan (centre)



Commended Counsel of the Year, as voted by the In-House Community, namely (left to right) Guan Feng, Jack Wang, Lucy Lu, Meg Utterback, Mark Cheng Wai Yuen, Pham Si Hai Quynh, Nguyen H. M. Nhut, Nicky Androssov, Fiona Loughrey, Sarah Berkeley, Rafael A. Morales, Ken Dai, Mohamed Idwan Ganie and Francis Lim



Christopher Stephens, General Counsel of Asian Development Bank collected the In-House Legal Team of the Year (Banking) award



Belinda Dugan (left) and Marilou P. Plando (right) of Aboitiz Equity Ventures, recipients of the In-House Community Legal Team of the Year Award



Beatriz Gomez-Trenor of IE Law School presents Intel’s Wilson Kiang with one of the three awards he collected throughout the evening



Cerin Yip collected the Transactional Legal Team of the Year Award on behalf of Alibaba presented by David Tang, K&L Gates

“The legal team are recognized throughout the company for their professionalism, dedication and commitment.”

Tan Sri Dato’
Seri Modh Bakke Salleh
President & Group Chief Executive
Sime Darby Berhad



Janice Lee Mee Kam, Choo Suit Mae and Noorhoney Abu Hassan of Sime Darby Berhad collected the industry award for Energy & Natural Resources



May Wong and Micheal Pepper, Partners at Reed Smith claim the award for Equity & Diversity Firm of the Year



“The legal team’s efforts have ensured that the company enters into deals with an upper hand, whilst ensuring that compliance and relevant laws are strictly adhered to.”

Ooi Say Teng
Chief Executive Officer
Sun Life Malaysia Assurance
Berhad

Hema Latha Sinnakaudan and Noor Hayati Ramli of Sun Life Malaysia Assurance Berhad, winners of Insurance Legal Team of the Year, pose with presenter Michael Parker, Managing Partner of Clyde & Co Clasis Singapore



“their high quality, cost transparency and unique experience in supporting complex global organizations are delivering great benefit”

“they make the most effort to really understand the need to be flexible in accommodating pricing and other working structures”

Eversheds client

Stephen Hopkins thanks the Community on behalf of Eversheds for their Visionary Firm of the Year Award



In-house and external counsel enjoying each other's company, brought together by the In-House Community



Sonja Weissman, Partner at Reed Smith flew in from her home in the US to attend the event and speak earlier in the day on the panel for our Women as In-House Lawyers press conference



The Early Music Society of Hong Kong performed classical music throughout the evening



Magician Sean Macfarlane wows table 6



Nellie Fong, Founder of Lifeline Express, for which HK\$74,000 was raised during the evening: enough to fund 37 eye operations in rural China, present the Corporate Social Responsibility Award to Heba Ali of Lenovo



Founder and Managing Director of the In-House Community Tim Gilkison hosted the evening alongside In-House Community Co-Director Patrick Dransfield

“I truly had a fantastic time at the In-House Community Awards and particularly enjoyed meeting wonderful people.”

Sue Lynn Koo, General Counsel, Coupang

Our panel of judges

Mr David Miles was formerly Chair of Latham & Watkins’ Asia Practice from 2010-2014. He stepped down from this position on 30th April 2014. From 2006-2010 David was a member of Latham’s Executive Committee and from 2002-2006 Managing Partner of Latham’s London office. David is currently Chairman of Asia Community Venture.

Ms Sue Lynn Koo is a seasoned legal professional with over 20 years of experience, including being the former Head of Legal, Compliance and Secretariat for DBS Group, and General Counsel for the Korea Exchange Bank’.

From 1983 until May 2012, **Mr Stephen Maloy** was General Electric’s senior legal officer for the Asia Pacific region. Whilst serving in that role he lived in Singapore, Kuala Lumpur, Hong Kong and Shanghai. For 29 years he was actively involved in the negotiation of many GE investments across the region. Stephen is currently a Senior Advisor to ZICOLaw.

Ms Kirsty Dougan, Head of Asia for Axiom, the world’s leading provider of legal advisory services. Previously Kirsty served as Senior Regional Counsel to Diageo where she started and built Diageo’s legal function for the Greater China region.




In-House Community™ Directors

Patrick Dransfield is Publishing Director, *Asian-mena Counsel* and Co-Director of *In-House Community*. Patrick has over eighteen years of publishing experience, having been Managing Director of Euromoney (Jersey) Limited and Asia Publishing Director of IFLR, and eight years of working directly within law firms (Shearman & Sterling and White & Case, respectively) as Marketing and Business Development Director for Asia.

Tim Gilkison is a founding director of Pacific Business Press, founder and hosts of the *In-House Community* and its associated platforms, including *Asian-mena Counsel* and the *In-House Congress* series. Tim established the first *In-House Congress* in Hong Kong in 1998, bringing the the city’s in-house counsel together as a community for the first time. Previously Tim worked for Pearson Professional Limited / FT Law & Tax and Asialaw & Practice.



Practice Awards	Winner	
Budget Management	Daimler Greater China Ltd.	
Transactional	Alibaba Group	
Knowledge Management	= 3M Asia Pacific = Wockhardt Limited	Presented by 
Integration	= Tyco International plc = Aboitiz Equity Ventures, Inc. = Ping An Insurance (Group) Company of China, Ltd.	
Innovation	Intel	
Equality & Diversity	Pfizer Inc.	
Change Management	= TECOM Group = GlaxoSmithKline Pte. Ltd. = Bank of China (Hong Kong) Limited	
Small Legal Team	= Far East Organization = Samsung Fire & Marine Insurance Co., Ltd.	
Corporate Social Responsibility	= Owens Corning (China) Investment Co., Ltd. = Singapore Telecommunications Limited = Lenovo Middle East and Africa	Presented by 
Industry Awards	Winner	
Banking	Asian Development Bank	
Conglomerate	CK Hutchison Holdings Limited	
Technology Sector	= Intel = Sony (China) Limited	
Financial Services (ex-Banking)	= Haitong International Securities Group Limited = Aboitiz Equity Ventures, Inc.	
Online Services	eBay APAC	
Manufacturing & Engineering	China Machinery Engineering Corporation (CMEC)	
Energy & Natural Resources	= Sime Darby Berhad = ABB (China) Limited & ABB United Arab Emirates and Oversight Countries	
Life Science & Pharma	Sanofi (China) Investment Co., Ltd. & Sanofi Group Indonesia	
Property & Infrastructure	= Manila Electric Company (MERALCO) = MTR Corporation Limited	
Telecommunications	Singapore Telecommunications Limited	
Travel & Entertainment	= Hyatt International – Asia Pacific, Limited = Travelport AFMESA	
Insurance	Sun Life Malaysia Assurance Berhad	
External Counsel of the Year Awards	Winner	
Equality & Diversity Firm of the Year	Reed Smith	
Deal Firm of the Year	Freshfields Bruckhaus Deringer	Presented by 
Most Responsive Firm of the Year	Baker & McKenzie	
External Counsel of the Year	Christopher Lee Christopher & Lee Ong in association with Rajah & Tann Singapore LLP	
Visionary Firm of the Year Legal Services	Eversheds	
In-House Team and Counsel of the Year Awards	Winner	
Middle Eastern Legal Team of the Year	Travelport AFMESA	
International Legal Team of the Year – Middle East	TECOM Group	Presented by 
Asian Legal Team of the Year	Aboitiz Equity Ventures, Inc.	
International Legal Team of the Year – Asia	Intel	
In-House Counsel of the Year	Heba Ali Lenovo Middle East and Africa	Presented by 



In-House Community Visionary Firm of the Year

Paul Moloney, Stephen Hopkins and Jennifer Van Dale (left to right) claim the Visionary Firm of the Year Award on behalf of Eversheds

Ten legal providers gave nominations for the Visionary Firm of the Year - Legal Services Award and the winning firm was adjudicated by our independent judges Sue Lynn Koo and David Miles.

- Axiom
- Eversheds
- K&L Gates
- Lee International
- LNT & Partners
- RHTLaw Taylor Wessing
- Shanghai Qin Li
- Simpson Thacher
- Trowers
- ZICOLaw

General Counsel and their in-house legal teams throughout the In-House Community are seeking new and ever more cost-effective ways to engage external counsel. Change is coming through client demand, as predicted by some – most vocally Professor Richard Susskind. Much of this is due to cost pressure arising from an ever more competitive and congested legal market place and the need for corporates and financial institutions to cut costs. But it is also a phenomenon linked to the great levelling achieved by the

internet and other technical innovations over the past 20 years. The practice of law gets increasingly technological as each day passes. Law firms are no longer the only repository of legal knowledge, and no longer the only game in town when General Counsel are seeking external support. There are now many non-partnership structured and technology-assisted legal providers competing for the international legal services market. And with the global market not growing and with firms competing for the same in-house dollar, it's much more about market share, making the most of that market share and therefore, law firms having a competitive edge by new and innovative means. In other words: to be visionary.

The 'Visionary Firm of the Year – Legal Services' annual award seeks to encapsulate this new paradigm and celebrate by example the firm, whether it be a traditional law firm or a new law entrant.

Our judges selected Eversheds as our 'Visionary Firm of the Year – Legal Services' for 2016. Amongst those who made submissions, no other law firm has so consistently embraced the reality about and the connection between legal budgets and the risk taking partnership that is neces-

sary between a global in-house team and its external lawyers.

The Eversheds submission established the firm's credentials by providing verifiable examples of budget-orientated project management as a fully customised fee model for a leading listed Chinese client, with capped fees and agreed budgets for all legal work. Preventive work for the same client has reduced pressure on the legal budget with Eversheds providing a global risk management system – the fence at the top of the cliff rather than the ambulance at the bottom.

But more innovative are their other offerings provided to General Counsel and their teams:

- 'Eversheds Consulting' is a group dedicated to assisting the in-house department develop their own business plans and strategy and hence demonstrate to the board and senior management the contribution the legal department makes to the overall success of the organisation.
- 'Eversheds Agile' in Asia launched in the last year providing interim legal consultants to in-house teams on a flexible basis.
- 'Eversheds Unity' provides matter, document and contract management, work flow and advanced reporting – access to technology for clients that engage with the firm.

As General Counsel become ever increasingly sophisticated buyers of global legal services, all of the above will most likely prove standard quite soon. All law firms – Eversheds included – will need to continually innovate to stay afloat in this increasingly crowded legal market. But for this year at least, a more traditional law firm, albeit one with innovative add-ons, has won the 'Visionary Firm' accolade. As one General Counsel commented from the many testimonials provided "Eversheds have really set the standard on how to plan and execute complex jurisdictional projects".

Congratulations Eversheds! And keep it up. We predict that the 2017 'Visionary Firm of the Year – Legal Services' will be even more keenly contested!

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Beijing 100738, People's Republic of China



HOT TOPICS

38. Doing business in Iran

Distinguishing between primary and secondary US sanctions as well as revealing who will benefit most from opportunities in Iran, **Thomas Wigley, Martin Amison** and **Sallie Bowtell** of **Trowers & Hamlins** disclose how to work your way through the laws surrounding Iranian trade.

42. Internet law: Analysis of provisions on the administration of network publishing services

JunHe Partner **Hongbin Zhang** delves into issues regarding China's provisions to its network publishing services.

44. A journey along the Silk Road

Having worked in New Zealand, the UAE and now China, **Clyde & Co** Partner **Richard Bell** compares the three, reflects on his years in private practice and tells us why life in-house has never really tempted him.

46. What Brexit might mean for the In-House Community

Aided by thoughts from lawyers throughout Asia and Australia, we delve into what Brexit may mean for In-House Community members, giving insight on employment, taxation, insurance, finance, investment and more.



Doing business in IRAN

Distinguishing between primary and secondary US sanctions as well as revealing who will benefit most from opportunities in Iran, **Thomas Wigley, Martin Amison** and **Sallie Bowtell** of **Trowers & Hamlins** disclose how to work your way through the laws surrounding Iranian trade.

Implementation Day on January 16, 2016 marked the lifting of US, EU and UN nuclear-related sanctions targeted at Iran under the Joint Comprehensive Plan of Action (JCPOA). Despite agreement to lift sanctions, global banks have taken a more cautious approach to the lifting of sanctions and doing business with Iran. This article outlines the changes since Implementation Day, highlight how the cautious approach taken by the banks continues to impact business with Iran around the world, provide an insight to Iranian opportunities being pursued by many Asian countries and finally summarise how Asian businesses can make the most of Iranian business opportunities post-Implementation Day without falling foul of continuing US sanctions.

US sanctions – primary versus secondary

Prior to Implementation Day, the US had two distinct types of sanctions in place against Iran: primary sanctions, prohibiting business with Iran involving US persons or otherwise connected to the US; and secondary sanctions, relating to trade between Iran and third countries, not directly involving the US.

Since Implementation Day, most secondary sanctions against Iran have been eliminated or suspended. However, primary sanctions continue to be enforced by the US Treasury Department’s Office of Foreign Assets Control (OFAC).

Primary sanctions

Primary sanctions specifically apply to:

- The activities of US persons, including US citizens, individuals living in the US and US companies and other organisations;
- Non-US persons who cause US persons to violate the sanctions; and
- Transfers of US-related goods and technology to Iran.

For so long as these primary sanctions remain in place, US persons cannot engage in business in Iran and non-US persons should be careful not to violate the primary sanctions, for example by ensuring that American employees are not involved in Iranian business and that Iranian business is not carried out whilst in the US.

“Iran announced that countries which supported it during the enforcement of sanctions would reap preferential advantages. This bodes well for China whose economy and population relies heavily on Iranian energy”

Thomas Wigley



“Iran has worked hard to achieve the terms in the JCPOA. Nevertheless, it is a remote possibility that the US, EU or UN may re-impose or ‘snap back’ part or all of the sanctions if Iran reneges on its obligations”



Martin Amison

OFAC’s General Licence H provides an exception to primary sanctions, allowing foreign companies with US owners (whether foreign subsidiaries of US companies or non-US companies owned by American individuals) to engage in business with Iran, provided that US persons are not directly involved. To satisfy this rule, US persons must not decide on ongoing operations or decisions of the foreign entity for approved activities. US persons (such as senior managers or owners) may be involved in the initial high level decision to engage in business with Iran, but they must subsequently be separated from all decision making in relation to the Iranian business. This rule will need careful consideration if you have a significant number of senior US staff in your business.

Additionally, US persons cannot perform any data entry for Iranian activities. Therefore, US companies must provide their overseas affiliates with automated and globally integrated computer and database systems to automatically process authorised transactions.

Moreover, US companies cannot ship goods or services to Iran, nor to a third country knowing that they are intended for Iran. This prohibition includes goods containing 10 percent or more US-controlled content.

There are some areas where US trade with Iran is permitted. The US has approved the sale of commercial aircraft with 10 percent or more US-controlled content to Iran, provided OFAC licensing is received. OFAC also continues to allow the authorised export and re-export of medicine and medical supplies to Iran under existing general licences. Exceptions are also in place for the import to the US of Iranian carpets, pistachios and caviar. It would be advisable for any US person to contact OFAC before engaging in any of these specifically licensed activities.

Secondary sanctions

Secondary sanctions were implemented as a deterrence mechanism, threatening to prohibit non-US entities from doing any business with the US (including US companies and the US banking and financial system), if the non-US entity breached such secondary sanctions.

Secondary sanctions have now been repealed in relation to non-military areas of commerce with Iran, including: financial services; underwriting, insurance or re-insurance; energy and

petrochemicals; shipping and shipbuilding; trading in metals; and the sale of goods and services relating to the automotive sector.

However, secondary sanctions continue to apply to Iranian individuals and companies on OFAC’s list of Specially Designated Nationals (the SDN List) and any members of the Islamic Revolutionary Guard and its agents or affiliates.

This means that all organisations and individuals (including those outside of the US) should be careful not to engage in any business with Iranian persons on the SDN List. The SDN List is a public document, which is available online. It is subject to change and should be checked regularly by anyone engaging in business with Iranian persons, to ensure that they are not trading with designated persons. Reasonable steps should also be taken to confirm that their Iranian business partners do not intend to supply the imported goods or services on to persons on the SDN List or otherwise involve such persons in the transaction (for example, by providing finance).

EU sanctions

In addition to lifting similar sanctions to the US primary sanctions, the EU removed restrictions on the transfer of funds between EU and Iranian persons and entities. The EU also removed a significant number of individuals and organisations on the EU designated persons list, permitting EU entities to deal with their funds.

However, authorisation is still required to engage with Iran’s security-related activities. The EU continues to maintain its embargo on the export of missile technology, nuclear weapons delivery systems and equipment that would negatively impact human rights in Iran.

Banking and international financing

International banks, including Asian banks, are taking a very conservative approach to Iran, motivated in part by the very significant fines which were imposed on banks during the sanctions regime. Banks are also concerned with what has traditionally been seen as an opaque business environment. Post-Implementation Day, the Financial Action Task Force has advised members to be cautious with business relationships and transactions with Iran, citing money laundering and financial ter-

“The decision by the US to maintain its primary sanctions has shut US businesses out of potential Iranian trade and this provides a significant opportunity to non-US businesses, particularly those in Asia”

Sallie Bowtell



rorism as particular concerns. Most significant are the extensive US sanctions on the financial sector, for example banks wishing to finance a project in Iran must prove no US persons or entities are involved in any part of the transaction. Furthermore, due to terrorism-related sanctions, all banks must ensure the Revolutionary Guard are not involved in any transaction. This is very challenging as the Revolutionary Guard has very significant business interests in Iran, including in banking, construction, energy and telecommunications.

Furthermore, some Iranian banks, including Ansar Bank, Bank Saderat Iran, Bank Saderat plc and Mehr Bank remain on the SDN List and are therefore subject to secondary US sanctions. Non-US persons should be careful not to engage with banks on the SDN List in order to not be prohibited from doing any business with the US.

Post-Implementation Day and Asian economies

Many Asian countries and businesses are considering opportunities in Iran. Countries across Asia have approved trade missions to Iran and nearly 900 foreign companies participated at the Iran Oil Show in early May. Unlike the US, Asian countries are actively reengaging with Iran. Reciprocally, Iran is also pursuing investment opportunities in markets across Asia's. Historic trading relationships with the west are being replaced by new relationships in Asia. Some key aspects of this change are as follows:

China's preferential treatment

Iran announced that countries which supported it during the enforcement of sanctions would reap preferential advantages. This bodes well for China whose economy and population relies heavily on Iranian energy. Soon after Implementation Day, China and Iran signed 17 agreements worth US\$600 billion, ranging from oil & gas to transport and tourism. China is also interested in Iran's strategic location and is seeking to expand overland trade routes through what is being termed as the Silk Road Economic Belt: an initiative to build roads, railroads and other transportation infrastructure throughout central Asia.

There are two other positive factors in future Sino-Iranian relations. The first is China's efforts to build a pipeline via Iran to access hydrocarbons in the Caspian Sea. The second is the possible increase of Iran's participation in the Shanghai Cooperation

Organisation after the group's Secretary-General, Dmitry Mezenstev announced that sanctions relief could allow Iran full membership. Becoming an SCO full member would provide Iran with access to economies within the regional organisation.

Chabahar port

Iran is also of great interest to the Indian government and Indian businesses. In particular, President Modi's recent trip to Iran cemented India's interest in investing in Chabahar port, in South-eastern Iran. Indian steel companies are expected to export rails worth US\$150 million to Iran next month. This US\$150 million investment is part of efforts between the two countries to develop rail and other infrastructure at the strategically important port and has geostrategic and geopolitical significance. Chabahar port could provide India with access to Eurasia and the Middle East and an alternative route for exports to Afghanistan.

Qazvin-Rasht-Astara network

The Iranian government is in talks with Azerbaijan to develop an Iranian railway section of the Qazvin-Rasht-Astara network. The North-South transport corridor, valued by Iran at US\$900 million, will connect businesses in northern Europe with Southeast Asia. The railway is currently in the planning stages and requires the approval of President Aliyev of Azerbaijan. The railway line would initially carry three to five million tonnes of cargo per year with a potential increase to 10 to 12 million tonnes of cargo in the future.

Japan, Singapore and South Korea

Prime Minister Abe of Japan and Iranian President Rouhni signed a bilateral investment treaty resuming Japanese energy imports from Iran and investment activities. Japanese companies, Marubeni and Inpex have already begun discussions with Iran on future oil projects, while the Iranian government has pledged a US\$10 billion guarantee to Japan to avoid losses on Japanese investments.

Singapore was the second country after Japan to sign a bilateral investment treaty with Iran. Similar to EU permissions, the treaty allows businesses in Singapore and Iran to freely transfer capital and returns. Many companies in Singapore are seeking to re-establish their connections in Iran, whilst new companies are working to foster business relationships.

South Korea also signed the Tehran-Seoul bilateral trade agreement approving €5 billion of funding for Iranian development projects and investments in Iran's automobile industry, tourism and oil & gas projects. Currently, trade between the two nations is valued at US\$6.1 billion and Iran would like to boost this to US\$17.4 billion.

The future

Iran has worked hard to achieve the terms in the JCPOA. Nevertheless, it is a remote possibility that the US, EU or UN may re-impose or 'snap back' part or all of the sanctions if Iran reneges on its obligations. Before the snap back of sanctions, the dispute resolution process provided by the JCPOA must be exhausted by all parties. If sanctions were to be reinstated, US contracts prior to snap back could be sanctionable, unlike the EU regulation, which provides protection of contracts concluded in accordance with the JCPOA while sanctions relief was in force.

The re-instatement of sanctions remains a risk, but it should not be over-stated. Senior officials emphasise that snap back would be a last resort and that all parties have put a lot of time and resources into coming to an agreement for the lifting of sanctions. A return to sanctions would be in nobody's interest and it seems likely that this will be avoided if at all possible.

Navigating post-Implementation Day

The decision by the US to maintain its primary sanctions has shut US businesses out of potential Iranian trade and this provides a significant opportunity to non-US businesses, particularly those in Asia. Taking the below steps will allow Asian businesses to exploit this opportunity, without taking unnecessary risks.

Before your business engages in economic activities in Iran or with an Iranian counterpart, you should ensure that:

- All know your client (KYC) checks are carried out thoroughly, especially if using an agent or intermediary as part of the transaction, or money is being paid via a third party.

These checks will also need to be repeated regularly to ensure ongoing compliance.

- Anyone who will benefit from the transaction is not on the US SDN List. This will involve a thorough due diligence exercise of the identities of the individual or company, and its directors and shareholders, as well as banks that will be processing the payments.
- You obtain the requisite licence from US authorities if exporting US origin products or foreign-made products containing controlled US-origin content.
- No US person is involved in the transaction, and if a company has US employees, they must not be involved in the transaction.
- No funds are to transit the US banking system. In practice this also means avoiding using US dollars on Iranian transactions. There are also a limited number of banks who will accept payments from Iran. This is a particularly acute problem in the EU.
- Your bank will support the transaction.
- Finally, individuals from Brunei, Japan, Singapore, South Korea and Taiwan should also be aware that if an individual has travelled to Iran since March 1, 2011, they will no longer be eligible for visa free travel to the US and must apply for a visa.

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In our next issue...

As well as a Special Report on Projects and Energy, we'll bring you an In-House Insight from In-House Counsel of the Year, Lenovo's Heba Ali.

If you would like to contribute to our Special Report, or in another area, please contact Rahul Prakash at:

rahul.prakash@inhousecommunity.com




Magazine for the In-House Community
www.inhousecommunity.com

INTERNET LAW

Analysis of provisions on the administration of network publishing services

JunHe Partner **Hongbin Zhang** delves into issues regarding China's provisions to its network publishing services.

 n February 4, 2016, the State Administration of Press, Publications, Radio, Film and Television (SAPPRFT) and the Ministry of Industry and Information Technology (MIIT) jointly issued the Provisions on the Administration of Network Publishing Services (Provisions). The Provisions, with effect from March 10, 2016, specify the definition of, licensing requirements for management of, supervision of and other relevant issues pertaining to the online publishing service.

The Provisions are based on the Regulations on Publication Administration and the Administrative Measures on Internet Information Services published by the State Council and other related legislation and will replace the Interim Provisions on Internet Publication Administration 2002.

Online publishing service and online publication

Any online publishing service conducted within China shall fall within the jurisdiction of the Provisions. The Provisions provide definitions for “online publishing service” and “online publication”. According to the Provisions, the online publishing service refers to the public dissemination of online publications through an information network. “Online publications” refers to digital works with editing, production, processing and other publishing features, including: text, images, maps, games, animation, audio-visual books and other original digital works that contain knowledge and thoughts, in the fields of literature, art, science, etc.; contents of digital works consistent with published books, newspapers, periodicals, audio-visual products and electronic publications; network document databases and other digital works derived from new selections, compilations and collections of the above-mentioned works; and other digital works as identified by the SAPPRFT.

Licensing qualifications

Entities that intend to engage in the online publishing service shall have: a platform for engaging in the online publishing service with a dedicated website domain, intelligent terminal applications, etc.; a definite online publishing service scope; technical equipment required for engaging in the online publishing service with relevant servers and data storage devices located within China; distinct

and non-repeating names and articles of association for online publishers; and qualified legal representative and principal person-in-charge.

The legal representative shall be a Chinese citizen permanently residing in China with full legal capacity. At least one professional with an intermediate professional title or above shall serve as the legal representative and/or principal person-in-charge. Apart from the legal representative and principal person-in-charge, eight or more professional editor and publishing persons with publishing qualifications or relevant professional qualifications approved by the SAPPRFT, among whom at least three personnel shall hold intermediate professional titles or above. Content review and editing systems required for engaging in online publishing services, a fixed place of business and other requirements prescribed under the laws and regulations and required by the SAPPRFT shall be adhered to. In the event that publishers of books, audio-visual products, electronic publications, newspapers and periodicals intend to engage in an online publishing service, such publishers need only satisfy the first and third requirements.

When applying for a Network Publishing Services Licence (NPSL), the online publisher shall first apply to the relevant provincial publishing administration authority by submitting the application form and other materials proving its licensing qualifications. After obtaining the approval of the local authority, the publisher shall apply to the SAPPRFT for its approval and obtain the Licence with a validity period of five years. In the event that the online publisher changes its registration information or capital structure, undergoes a merger or divestment, or establishes a branch, the approval procedure shall be carried out in accordance with the Provisions.

Penalties

In the event of unauthorised online publication activities or online publication of online games (including those authorised by overseas copyright holders), such publication shall be banned by the Publication Administration Department, Administration of Industry and Commerce, and the publisher shall be ordered to close down the website and/or be subject to other punishment by the relevant provincial telecommunication department. Where such activity



Hongbin Zhang

“The Provisions specify the requirements and procedures for the acquisition of a NPSL and further strengthen the supervision power of the relevant publishing administration authorities pertaining to the online publishing service”

constitutes a crime, criminal responsibility shall be investigated in accordance with the regulations on illegal business operations. Where such activity does not constitute a crime, all relevant online publications shall be deleted, and the main facilities and special tools used in the illegal publication activities, as well as all illegal income, shall be confiscated.

In the event of publishing and disseminating any online publications with prohibited content, the publisher shall be ordered to delete the relevant contents and take corrective actions within a given period by the Publishing Administration Department and all illegal income shall be confiscated. In the event of a serious case, the publisher shall be ordered to suspend its business or may have its NPSL cancelled by the SAPPRFT and the publisher's website shall be closed down by the relevant telecommunication department according to the notice of the Publishing Administration Department. Where such conduct constitutes a crime, criminal responsibility shall be investigated.

Comments

The Provisions specify the requirements and procedures for the acquisition of a NPSL and further strengthen the supervision power of the relevant publishing administration authorities pertaining to the online publishing service. The primary aspects of the Provisions are as follows:

Extensive applicability

The online publications prescribed under the Provisions can be widely interpreted. Apart from this general definition, the Provisions also list the scope of online publications by enumeration. In addition, a general provision involving “other types of digital works identified by the SAPPRFT” has also been inserted.

Due to this extensive applicability, it may be difficult to determine whether a publication will fall within the scope of an online publication. Further, the contents of the Provisions may overlap with those published by the competent telecommunications department, culture department, Administration of Industry and Commerce and other relevant authorities, or may raise issues concerning the linkage and application between different rules and regulations. Given the fact that the SAPPRFT will separately set forth a detailed classification of the online publishing service business, we will be expecting further detailed judgment standards regarding such business.

High threshold for licensing qualifications, high approval level and lengthy approval period

The Provisions have set forth high qualification thresholds for entities that intend to engage in online publishing services. In particular, for entities not publishing books, audio-visual products, electronic publications, newspapers and/or periodicals, stricter licensing requirements will be applied to domain names, business scopes, facilities, employee qualifications and publication content examination policies.

According to the Provisions, when applying for a NPSL, pre-approval from the local provincial publishing administration department shall be obtained, after which approval from the SAPPRFT shall be acquired. As the approval period for SAPPRFT is 60 days and considering the extra time required for provincial approval, the total approval period is estimated to be no less than three months. The abovementioned high thresholds for licensing qualifications, high approval level and relatively long approval period will inevitably increase the difficulty in obtaining a NPSL.

Strict limit on foreign-related issues

Pursuant to the Provisions, foreign-funded entities are prohibited from engaging in online publishing services. With respect to project cooperation of online publishing service business between an online publisher and a foreign-funded enterprise or overseas organisation or individual, or publishing an online game authorised by overseas copyright holder, prior-approval from the SAPPRFT shall be sought.

The Provisions also provide that the related server and storage devices cannot be located outside of China. The applicant shall make a written warranty guaranteeing to store its relevant server in China when applying for a NPSL. Moreover, the legal representative of an online publisher shall be a Chinese citizen permanently residing in China with full legal capacity.

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Richard Bell, Clyde & Co: A journey along the Silk Road

Having worked in New Zealand, the UAE and now China, **Clyde & Co** Partner **Richard Bell** compares the three, reflects on his years in private practice and tells us why life in-house has never really tempted him.

ASIAN-MENA COUNSEL: Before moving to Clyde & Co's Shanghai office, you were working for them in the UAE. What have you noticed in terms of cultural and legal differences and what would you suggest to someone making a similar switch?

Richard Bell: In terms of cultural differences, the first thing I noticed is that the ratio of expats to locals is very much lower in Shanghai than in the UAE. In the UAE, expats make up 85 percent of the population and English is widely spoken. There is a significant expat community in Shanghai too, but as a proportion of the population of the city, the numbers are relatively tiny. While Shanghai is regarded as an international city, it is still very much a Chinese city. While some business people speak English, the majority do not. That can make Shanghai a challenging place to live, but it is also what gives the city its undeniable charm and character.

In terms of legal differences, I have actually been surprised at how similar the Chinese legal system is to that of the UAE. While the two countries have different court structures, both are civil law systems, the civil codes are broadly similar and the law of civil procedure is roughly the same.

"I have actually been surprised at how similar the Chinese legal system is to that of the UAE. While the two countries have different court structures, both are civil law systems, the civil codes are broadly similar and the law of civil procedure is roughly the same"

AMC: What skills are required in the two jurisdictions named above and how easy was it to adjust to their legal systems coming from New Zealand?

RB: It was a fairly steep learning curve when I moved from New Zealand to the UAE, but less so when I moved from the UAE to China.

New Zealand has a common law legal system which is very similar to that of the UK. Moving from that environment to the UAE, which has a civil law legal system was a big change. In the UAE, the law is not overly complicated in that all the laws are contained in a handful of codes. However, the codes are quite broad and often vaguely worded, so it is often difficult to give a definitive view on a particular legal issue. Also, how the law is actually applied by the courts and government authorities can be often be very difficult to predict. In those circumstances, your commercial skills come into play much more than you legal skills. Given the similarities between the legal systems of the UAE and China, it was easier to adjust to China. The skills I acquired in the UAE have turned out to be very useful here.

AMC: What sets Clyde & Co apart from other international firms in China?

RB: In 2013 we established a joint law venture (JLV) with a Chongqing law firm Westlink Partnership. The JLV, which is licensed by the Ministry of Justice and Chongqing Bureau of Justice, operates as the "Clyde & Co Westlink JLV" and offers local law capabilities and rights of audience before the Chinese courts.

As well as giving us a presence in South Western China, which is becoming an increasingly important commercial hub, the JLV means that we can offer our clients local law advice with all the advantages of an international firm. Clyde & Co has traditionally been known as an insurance firm, but we are also very strong in the projects & construction, energy, transport and trade & commodities sectors. We pride ourselves on having local law capabilities in the markets in which our clients operate and the JLV gives us that capability in China.

“The whole idea behind the Chinese government’s “Belt & Road” policy is to encourage Chinese companies to invest more overseas to hedge against the risk of weaker domestic demand”



Richard Bell

AMC: Has the focus and kind of work taken on in China shifted in recent years? What kind of projects do you anticipate over the coming five to 10 years?

RB: When we first opened in China 10 years ago, the focus was very much on shipping and insurance work. Over the years, however, we have expanded our offering to cover corporate/commercial and M&A work, employment law, regulatory work, local litigation in the Chinese courts and local and international arbitration.

Going forward, we fully intend to expand the practice to provide a truly full service offering for both our international and domestic clients.

AMC: Considering China’s economic slowdown, do you expect more outbound deals going forward? If so, will any particular jurisdictions be invested in more than others?

RB: Yes I do. The whole idea behind the Chinese government’s “Belt & Road” policy is to encourage Chinese companies to invest more overseas to hedge against the risk of weaker domestic demand. While much has been written about China’s economy in recent times, the reality is that the slowdown in economic growth has prompted Chinese companies to invest more overseas to maintain yields. We are already starting to see the effects of the Belt & Road policy with record levels of overseas investment in 2015 and 2016. As a result, we do expect to see more activity in outbound investment, particularly in the e-commerce, manufacturing and projects & construction sectors.

AMC: Will this lead to more integration between Clyde & Co’s offices in China and the firm’s other international offices?

RB: Almost certainly, yes. Our offices in Hong Kong and Singapore already do a significant amount of China-related work and we expect that to increase as Chinese companies invest more in Asia Pacific, particularly in markets such as Malaysia, Indonesia, Thailand and Vietnam. Elsewhere, the UK is seen as a safe place to invest with a lot of interest in the “Northern Powerhouse” initiative. The Middle East is also an important market, particularly for projects and construction and there is increasing investment in India as Chinese manufacturers take advantage of a more competitive labour market. As a result, there are a number of initiatives across the firm linking our offices in

Asia Pacific, the Middle East, India and the UK to offer integrated legal services for Chinese companies across those markets.

AMC: Has the government’s role and prominence in the Chinese economy evolved recently? Do you expect to see this evolution continue?

RB: That is a very good question. I think the government’s role has evolved in the sense that it is trying to move the domestic economy away from basic manufacturing and fixed asset investment toward higher end manufacturing, services, technology and e-commerce. There is also a concerted effort to crack down on corruption in the public and private sectors to make China’s economy more competitive. Having said that, if you are asking whether the prominence of the Chinese government in the country’s economy has changed, I would say no. The government is still very much in control of the economy and while there is increasing talk of privatisation, I don’t see that changing any time soon.

AMC: You’ve spent your entire career working in law firms. Have you ever been tempted to move to an in-house role? What are some of the differences you’ve observed between working in-house and in private practice?

RB: Don’t put that idea in my head! I would say that every lawyer in private practice looks over the fence at some point in their career to see whether the grass is greener in-house, but in all honesty, I have never really been tempted. Clyde & Co is a great firm and a wonderful place to work. Bright people, quality clients, interesting work, lots of international travel. It would be pretty hard to give that up. If Conde Nast Traveller Magazine offered me a dual role as in-house counsel and global brand ambassador I might be tempted (if the salary was right), but until that happens I am very happy to stay where I am.

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WHAT

BREXIT

might mean for the In-House Community

Aided by thoughts from lawyers throughout Asia and Australia, we delve into what Brexit may mean for In-House Community members, giving insight on employment, taxation, insurance, finance, investment and more.

At this point, most comments on Brexit appear to be hypotheticals, simply because no one even knows when Britain will implement article 50, let alone all of its implications. There has, however, been plenty of speculation based on others' relationships with the EU, such as those of Norway and Switzerland. And then there are issues that were at the forefront of the minds of leave voters, such as tighter restrictions on immigration, which will presumably impact the UK's relationship with the EU going forward and obviously take their toll on employment law.

In the words of Eversheds Managing Partner, Asia Stephen Kitts, "There can be no doubt that there is turmoil right now and we're in for interesting times". Continuing, Kitts remarked that these interesting times "could last many years as there's lots of economic and political uncertainty. One of the main factors is the longevity of the process both in respect of how quickly the UK decides it wants to move forward and then the negotiations, which will be complex and time consuming."

"Companies based in the UK need to look at their financing, exchange rate fluctuations, potential breach of financial covenants

and disclosure obligations. Communication with their lenders will be imperative over the coming weeks and months," he continued.

Mark Curtis, Head of Simmons & Simmons' Corporate and Commercial International Practice Group also chimed in: "Brexit creates huge uncertainty for any business with operations or trade in the UK. We are seeing clients across all sectors reviewing the potential impact and have mobilised a large multi-disciplinary team to help them with their contingency planning. At the moment there are a lot of known unknowns and it will take some considerable time for clarity to emerge but we are recommending to clients that it is important to start planning now."

Clyde & Co's Sydney-based Partner Dean Carrigan said "Although the momentous, and unexpected vote by the UK electorate to leave the EU will have its principal impacts in the UK and Europe, the ramifications will be felt by the insurance market globally. Asia Pacific brokers and insurers, like their counterparts around the globe, will be affected by the significant uncertainty which arises as the UK moves towards an exit over the course of the next two years, and beyond. Global markets have calmed somewhat since the vote, although it is clear that a period of uncer-



Dean Carrigan

"In times of great uncertainty there is usually a flight to safety and quality. In the insurance sector this means developing structures and strategies to assist manage already identified and future unknown risks faced by clients. Nimble insurers with strong balance sheets, and brokers with an ability to identify risks arising from Brexit and how to effectively manage them will be very well placed to assist their clients"

By Chris Thomson



Stephen Kitts

“Inevitably, people will pause investment decisions. They should, however, all be cognizant of the fact that the underlying UK economy remains, the world has not come to an end and robust companies will continue to carry on business”

tainty will persist for at least the short to medium term. Brokers and insurers with operations in the UK and EU, and which have clients with operations in the UK and EU will need to carefully consider the implications arising from the vote.”

Furthermore, Carrigan stated “In the immediate short term the significant doubt and uncertainty which exists is likely to cause an increase in the need for risk mitigation and insurance solutions in all aspects of business but in relation to international trade, multi-national projects and the finance sectors having an EU/UK connection in particular. For forward thinking brokers and insurers, the current uncertainty presents significant business opportunities - especially to develop new services and risk/insurance products in order to support and provide guidance to clients who have already been, or are likely to be affected by the changes.”

Also speaking from a sector-specific point of view, in their briefing paper entitled ‘The Great Brexit Debate’, law firm Dentons noted “The continuation of UK competition law and merger control — including the surrender of authority over pan-EU cases to the Commission — are likely to be conditions of any post-Brexit settlement with the EU”.

The paper also mentions that “A substantial body of EU law that affects construction businesses is already enshrined in UK law. These laws would be unlikely to change in the shorter term, but changes, for example to reduce perceived “red tape”, would be inevitable.”

Stephenson Harwood Partner Paul Westover warns ““Be alert to the rapidly shifting landscape. The UK remains a member of the EU so, from a legal and compliance perspective, laws and regula-

tions will not be changing in the immediate future but the decision of the referendum has led to great uncertainty in the political situation, both in the UK and the EU, the investment environment, a weakened currency and markets in the UK.”

Mitigating this, Kitts pointed out that “Markets will adjust quickly. For example, the FTSE has already made up much of the ground it lost on 24 June”, as well as “The week of the referendum, the FTSE finished as it started”. In his mind, therefore, “Risk factors are built into markets, and things are likely to settle down quickly”, meaning that “In due course, there will be opportunities in the UK for Asian investors”.

Also on inherent risk, Carrigan divulged “In times of great uncertainty there is usually a flight to safety and quality. In the insurance sector this means developing structures and strategies to assist manage already identified and future unknown risks faced by clients. Nimble insurers with strong balance sheets, and brokers with an ability to identify risks arising from Brexit and how to effectively manage them will be very well placed to assist their clients.

“It is early days so it’s very difficult to say with any degree of certainty. However, insurers which are able to capitalise on the uncertainty and support clients to navigate their business through the economic and contractual uncertainty that will arise as a result of Brexit should thrive. UK and EU based insurers will need to very carefully consider their own current structures from a regulatory, licensing and overall commercial perspective. It is possible that there will be consolidation, rationalisation and a reshaping of the insurance sector in the EU as insurers may wish to close and/or open offices, or reset their distribution models depending on how best they consider they should address the structural



Mark Curtis

“Brexit creates huge uncertainty for any business with operations or trade in the UK. We are seeing clients across all sectors reviewing the potential impact ... At the moment there are a lot of known unknowns”



Paul Westover

“Whilst these uncertainties work themselves through, a GC based in Asia, whose company has interests in Britain and the EU, will need to be considering the possibility of a number of different scenarios, from a full UK exit of EU without access to trade privileges to some form of watered down membership or other close relationship with the EU...at the current time, the only thing that is certain is that there is plenty of uncertainty”

changes in the EU market. Longer term, there may well be an uptick in claims as a result of the likely ongoing market volatility and instability, the restructuring of business and the economic uncertainty which arises. So insurers need to now consider the longer term implications and respond accordingly in their policy terms and conditions. This may in some cases require a narrowing of cover and in other respects the need to consider broadening cover in light of new risks and exposures now faced by insureds.”

On taxation, Dentons made the point that “In theory, a Brexit would free the UK government and its taxation authorities from the constraints of all EU tax legislation...but a UK government is not likely to rush out and put all EU tax legislation on a bonfire immediately”, adding later that “Brexit is probably more of a challenge to the attractiveness of real estate in England and Wales and, in particular, investors’ views of the market here, rather than to how real estate business is done within the jurisdiction”. They also noted more sector-specifically that “Brexit would be unlikely to have a major impact on UK corporate law”.

Also focussing on a business sector, Carrigan said of insurance that “The UK insurance market will need to carefully consider its position and the way forward in relation to European business and as regards changes, and the likely withdrawal or modification of current EU insurance licensing pass porting arrangements. However and in the longer term, London’s long history and tradition of insurance innovation and as a global centre of excellence for insurance and reinsurance is unlikely to be significantly impacted, especially for specialist risks. Asia Pacific is a growth area for London and the Lloyd’s market. It is therefore entirely possible that in the circumstances, UK insurers will look to execute a meaningful pivot away from the EU towards Asian markets. That will provide enormous opportunities for brokers and intermediaries in the region.” Whereas according to Kitts, “Different sectors will see different results. For example, the food sector has EU subsidies. If they go, businesses in that sector will be worse off”, while “For financial services, London will stay strong and important”.

On when article 50 may be administered, Kitts believes “Good strategy is required, and the UK has plenty of opportunity to delay”. On currency, he commented “The pound initially suffered and we at Eversheds have already had calls from Hong Kong and China-based clients who want to know more about asset acquisitions because they sense there might be some bargains to be had.

My advice to them was simply that it’s too early to tell if it is a good investment.” after which he proclaimed “Inevitably, people will pause investment decisions. They should, however, all be cognizant of the fact that the underlying UK economy remains, the world has not come to an end and robust companies will continue to carry on business.” concluding that “We need to wait and see what the EU’s relationship with the UK will be, and this may not be known for quite some time”.

Echoing some of these sentiments, Westover claims “There may be investment opportunities that arise from this, depending on the appetite for risk, but also some investments will be cancelled or put on hold until there is more clarity as to what, if any, form Brexit will take”.

One thing that can be known is “A Brexit will mean the UK loses the benefit of the EC Regulation on Insolvency Proceedings 2000 (the EIR) and, unless it comes to separate mutual recognition arrangements with other European jurisdictions (or the EU as an entity), it will lose this major global competitive advantage”, as Dentons said.

Dentons also points out. “It is unlikely that the UK would be able to escape being bound by the EU Charter of Fundamental Rights in some way if it wanted to continue to trade with EU Member States on terms similar to those that it enjoys now” and that “If the UK were unable to agree an equivalent to the EU Prospectus legislation, a UK issuer would probably find it harder, and more expensive, to market its securities across Europe”. They did, however after the vote state that they were “confident that the UK and Europe will adapt and prosper in the new business environment”.

This story will continue to develop as there are numerous uncertainties, and as Westover said, “Whilst these uncertainties work themselves through, a GC based in Asia, whose company has interests in Britain and the EU, will need to be considering the possibility of a number of different scenarios, from a full UK exit of EU without access to trade privileges to some form of watered down membership or other close relationship with the EU, so as to be prepared to respond to questions from the business team. These plans can be refined as it becomes clearer the type of relationship that will exist between the UK and the EU in the future. However, at the current time, the only thing that is certain is that there is plenty of uncertainty.”

The thing about ...

Recently, ASIAN-MENA COUNSEL's Patrick Dransfield photographed and talked to Neil Kaplan and put to him a series of questions on behalf of the *In-House Community*.

Neil Kaplan
QC, CBE, SBS

ASIAN-MENA COUNSEL: In Henry S Fraser’s article ‘Sketch of the history of International Arbitration’*, he places international arbitration as one of the crowning glories of the European Enlightenment, citing Jean-Jacques Rousseau, Immanuel Kant, Jeremy Bentham and the earlier thinker Hugo Grotius as its true fathers. Grotius called for the creation of ‘certain assemblages....where controversies might be settled by disinterested parties: and that steps even taken for compelling the disputants to accept peace in advance with just laws’. Has international arbitration lived up to the lofty ambitions of its intellectual creators? How relevant is it for present and future intra-Asian disputes, for example?

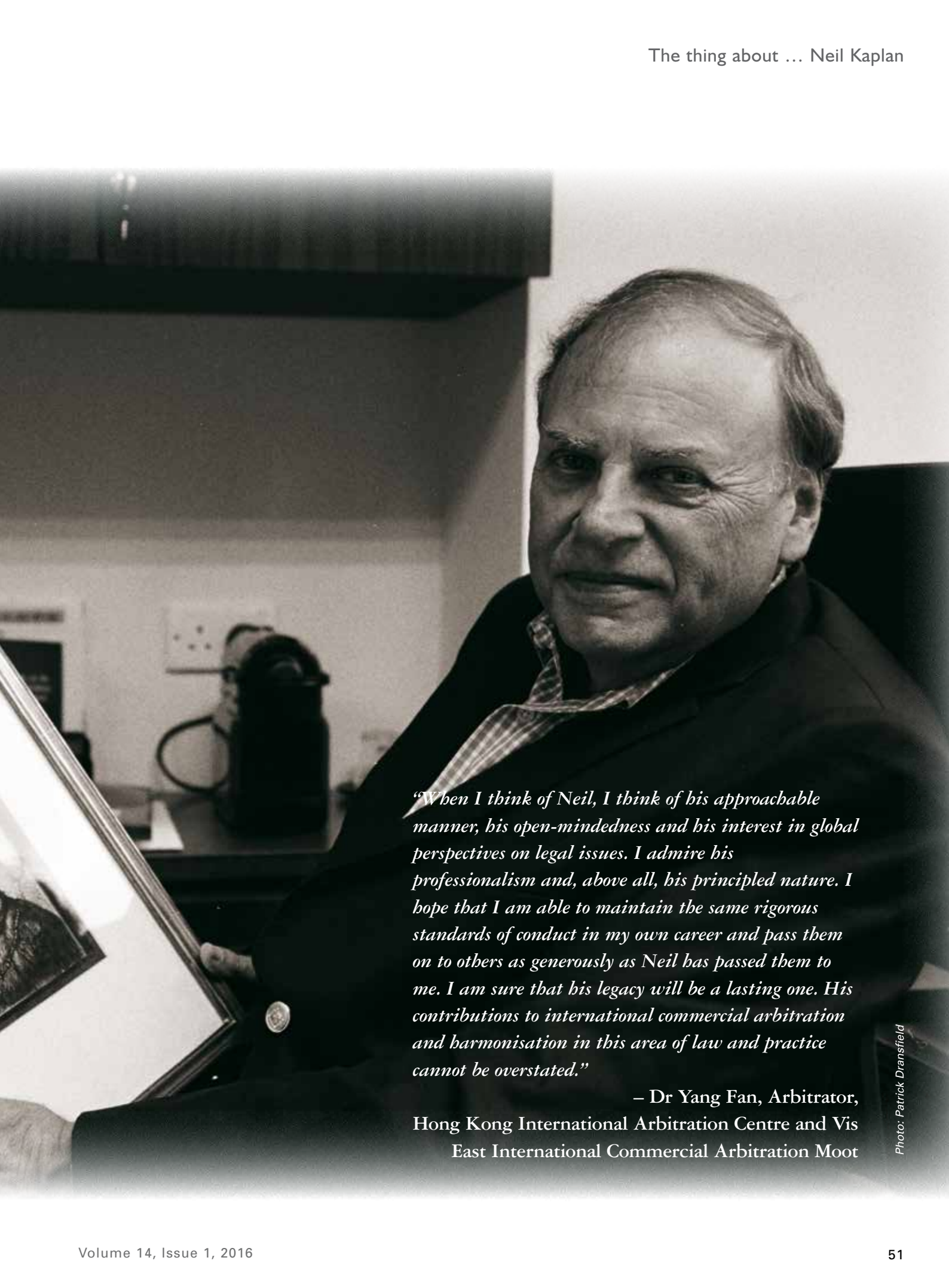
Neil Kaplan: I would take issue with Henry Fraser’s views. As my friend and colleague Professor Derek Roebuck (formerly Dean of Hong Kong City University’s law faculty) has shown in his excellent series of books on the history of arbitration, arbitration goes back as far as the Assyrians, Egyptians, Romans and Greeks. There had to be a way to sort out disputes other than violence, and arbitration was the answer. It long pre-dated state courts which are a relatively new phenomena in the scheme of things. Roebuuck showed the importance of arbitration in England in the 17th Century as well as its importance in France in his volume *The Charitable Arbitrator*. Current work on the 18th Century will reveal that arbitration was commonplace to deal with all sorts of disputes and that newspapers of the day are replete with references to current arbitrations. Confidentiality must have come late to the party!

Given the patchy state of many judiciaries around the world, arbitration has rightly become the normal method of resolving most international commercial disputes. It may have become more of a profession in its own right than the people you mentioned might have liked, but this is in part because arbitration is now being conducted as a mirror image of state court litigation and has lost some of its original aura. But on the whole the system works well. That is not to say that improvements are not necessary but they will come because consumers will demand them

AMC: Following public spats regarding the perceived conflict between sovereignty and democracy and the Transatlantic Trade & Investment Partnership and the Trans-Pacific Partnership, for example, how do you see the role and neutrality of International Arbitration in this context?

NK: I am somewhat surprised that by now we have not introduced the rule that no arbitrator can be of the same nationality as any of the parties. This rule applies to the chair and I fail to see why it should not apply to the whole tribunal, unless of course the parties agree otherwise. I would like to see a situation arrived at where the party appointed arbitrators did not know which party nominated them. This should not be hard to achieve in institutional arbitrations but I accept is harder in ad hoc cases. As to impartiality generally it is the chair which is crucial in the majority of cases. I don’t think there is less impartiality in arbitration than in the courts. Judges are human too and have prejudices, patent or latent.





“When I think of Neil, I think of his approachable manner, his open-mindedness and his interest in global perspectives on legal issues. I admire his professionalism and, above all, his principled nature. I hope that I am able to maintain the same rigorous standards of conduct in my own career and pass them on to others as generously as Neil has passed them to me. I am sure that his legacy will be a lasting one. His contributions to international commercial arbitration and harmonisation in this area of law and practice cannot be overstated.”

– Dr Yang Fan, Arbitrator,
Hong Kong International Arbitration Centre and Vis
East International Commercial Arbitration Moot

Photo: Patrick Dransfield

“Neil should be known as the father of arbitration in Asia. He provided people in Asia Pacific with his insight and vision, and encouraged the young generation to move forward toward new fields. Personally he is a gentleman. He never loses his kindness and considerate hospitality. He is very flexible and never had any difficulties to overcome any differences in age, culture and any other gaps among us.”

– Kevin Kim, Head and Founder,
Bae, Kim & Lee’s International
Arbitration & Litigation Practice Group

“Neil is well known as a leading international arbitrator; the father of arbitration in Hong Kong; and the founder of Des Voeux Chambers: Hong Kong’s largest commercial set. Neil attracted to his chambers many leading lights at the bar, and from the Attorney General’s chambers where he had worked. He is a mentor to many and has had a huge impact on the rule of law and the Hong Kong bar.”

– Chua Guan Hock, Senior Counsel,
Des Voeux Chambers

AMC: David Rivkin, in his opening remarks for the Hong Kong Arbitration Week in October 2015, called for “a new contract between arbitrators and the parties that will establish (the expectations of the tribunal) from the start”. Do you agree with his view?

NK: Only partly. I have great admiration for David with whom I have worked several times, but I feel that he is only dealing with one side of the problem. Of course arbitrators should not delay unnecessarily in delivering awards. But putting aside the few rogue cases where there is no excuse save perhaps ‘writers’ block’ it is crucial to see why there is a delay. In most cases it is not appropriate to count from the end of the hearing until the date of the award. Sometimes tribunals have to wait two to three months for detailed closing submissions and possibly reply submissions too. In some cases, both sides then insist on an oral hearing to articulate their written closings. Sometimes the tribunal will need to raise specific points with the parties which have not been adequately dealt with to date. All this takes time as does scrutiny where applicable.

Another cause of delay is the consequence of the kitchen sink approach. No triage is practised with the result that the tribunal has to deal with far too many points and this takes time. Then there is the issue of experts. If they don’t agree on important issues, the tribunal needs to find a way to resolve the impasse and this may involve using the experts to help them. This all takes time.

What if one counsel has employed guerilla tactics throughout the case? This will make the award harder to write. Who knows about this apart from the parties themselves. Thus looking at the raw data – the start and end date – can and usually does leave a false impression.

The other aspect of Davids ‘contact’ is it is very light on the obligations on the parties. What are their obligations to each other and to the tribunal? I would need to see parties agree to carry out

the arbitration with cooperation and courtesy to each other and to the tribunal. That all reasonable good faith steps be taken to agree document production, scheduling issues and any other procedural issues without having to trouble the tribunal. That all decisions of the tribunal should be accepted without reservation of rights (which can be agreed at the outset) and it should be assumed that the tribunal understands the due process requirement. Furthermore the parties should agree to focus their arguments on the important points and present their submissions with as much brevity as possible. Unnecessary citation of authorities should be avoided. No case can be submitted unless counsel explains which issue it relates to and the relevant passages must be highlighted.

I could go on but if this contract has to have any traction it needs to be more synallagmatic.

AMC: Referring again to Hong Kong Arbitration Week 2015, much time was spent discussing third party funding for arbitrations. Do you have strong views either way on this issue?

NK: Given the soaring cost of litigation and arbitration and the reduction of legal aid, third party funding is the only way to ensure that some cases will ever see the light of day. Much depends on the detail and this involves the role of the funder during the proceedings. I think we need to see how it works in practice before making rules for eventualities that may not occur. The present funders are responsible. However we have to beware if other entrants do not display such high standards. An important issue is whether the existence of a funder needs to be disclosed to the tribunal. My gut answer is yes, but I would be open to the contrary argument.

AMC: How does the drive of technology and use of Big Data affect the way that international arbitration is evolving? Are

“His ‘go-get-it-ness’ is infectious and, through the generations, the Hong Kong arbitration community has grown in strength and quality. Neil also serves as a reminder that no one is too busy to explore their interests. This curiosity has brought him the fullness of life that many wish for but end up having their head too much in the sand to do anything about. Having a mentor like Neil has meant for me a drive to keep that curiosity engaged, even in the face of an overbrimming plate.”

– Chiann Bao, Secretary General,
Hong Kong International
Arbitration Centre

you now seeing people with different skills being called upon to be arbitrators, for example?

NK: Not really. But we are becoming more tech savvy. I use Magnum a lot now and so have all documents on my laptop which saves using and carting all those bundles.

AMC: W H Auden refers to ‘the dyer’s hand’ when engaging with other writers on the craft: in the same token, are there any techniques that you would care to share with the legal community on the actual advocacy of arbitration?

NK: You bet! I think I have already told you that I think we have gone too far towards written advocacy and ignored oral advocacy. In my time in the law I have seen the full circle. When I started at the bar, everything was oral. No opening written submission, no skeletons and no written closings. The judge often had not had the papers too long so the crucial part of the case was the oral opening. This allowed you to put your case at the highest. You got the judge to mark the passages you wanted him to remember and you were able subtly to attempt to destroy the other side’s case.

There then came a time when arbitration moved towards more written advocacy and then the courts in England followed suit. So now we have a situation where you can open the case for say an hour and then you call the first witness who then immediately gets cross-examined. This is not satisfactory because it is based on a false premise, namely, that all members of the tribunal have read and understood ALL the written material served. So in my view we have to find a better way.

AMC: What is your hinterland?

NK: I am surprised that many people with whom I have worked have little in the way of hinterland. I think this reduces their effectiveness as human beings. I have no objection to hard work and

Neil Kaplan CBE QC SBS has been a full-time practising arbitrator since 1995. During this period he has been involved in several hundred arbitrations as co-arbitrator, sole arbitrator or chairman. These arbitrations have included a wide range of commercial, infrastructure and investment disputes, under the auspices of the ICC, HKIAC, LCIA, UNCITRAL, SIAC, SCC, ICSID and CIETAC. Kaplan’s investment treaty cases under ICSID and UNCITRAL both as presiding arbitrator and co-arbitrator have involved Hungary, Croatia, Vietnam, Cambodia, Ecuador, and Iran.

Called to the Bar of England and Wales in 1965, Kaplan has practised as a barrister, Principal Crown Counsel at the Hong Kong Attorney General’s Chambers, and served as a judge of the Supreme Court of Hong Kong in charge of the Construction and Arbitration List.

From 1991 to 2004, he was Chairman of the HKIAC, and in 1999–2000, he was president of the Chartered Institute of Arbitrators. Since 1995, he has been a council member and now governing board member of the International Council of Commercial Arbitration, and in 2012 he became a member of the ICC International Court of Arbitration. He is a chartered arbitrator and a fellow of the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators, and the Singapore Institute of Arbitrators. He is a panelist of several other arbitral institutions including CIETAC.

In addition to conducting arbitrations in England and Hong Kong, Kaplan has conducted arbitrations in the USA, France, Germany, Croatia, The Netherlands, Malaysia, Australia, Denmark, Sweden, Indonesia, and South Africa.

dedication, but there must be more than just work. Most lawyers are well educated and there is no excuse in not having other interests. That is of course in addition to family, which takes on more significance the older you get.

What has kept me sane? I love reading and art. I love sport, having fenced and played squash at a reasonable level. I enjoy golf although I find it takes up too much of the day now. When I started, golf was not as popular and we could get round so much quicker. I love the theatre and cinema. I collect Rembrandt etchings which has been quite a focus for the last 31 years. I enjoy travel but as I have done so much for work I enjoy going back to places I know and enjoy like the house in Umbria we have rented for last six years. But at the end of the day it is family and friends that are crucial. Grandchildren are a special joy.

Footnote:

* ‘Sketch of the history of International Arbitration’ by Henry S Fraser, Cornell Law Review, Vol. II, 1926.



CHINA



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Exemptions for monopoly agreements in anti-trust enforcement

An exemption for monopoly agreement in anti-trust enforcement refers to a monopoly agreement which formally falls into the prohibition categories of anti-monopoly law which will be exempt from penalties or not be deemed illegal for reasons of economic efficiency and/or public social interest. Article 15 of the Anti-Monopoly Law (the AML) provides seven situations and related statutory conditions of monopoly agreement exemptions, while at the same time requiring an undertaking to be obligated to prove that the agreement it has concluded or intends to conclude satisfies the statutory situations and conditions of exemptions. Then, how should an undertaking apply Article 15 of the AML to enjoy the monopoly agreement exemptions? Is the undertaking obligated to apply to anti-trust enforcement agencies for prior review or filing?

Monopoly agreement exemption under the AML: directly applicable exemption

There is an exemption mode, under which an undertaking must apply to anti-trust enforcement agencies for review and approval of exemption at the time of concluding an agreement. Such mode requiring prior review and approval needs to invest a huge amount of resources to investigate and verify those agreements which have not yet been performed, leading to difficulty to achieve desired results. The Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the treaty issued by the Council of EU on December 16, 2002 flags the replacement of the then existing prior review and approval system by a directly applicable

exception system in terms of monopoly agreement exemptions, which means that an undertaking may directly perform its agreements upon conclusion, with no need to seek prior review or approval from the anti-trust enforcement agencies.

The AML neither requires an undertaking to seek prior review or approval from anti-trust enforcement agencies for exemption of its monopoly agreements, nor expressly allows the direct performance of such monopoly agreements. The Guideline for General Conditions and Procedures of Monopoly Agreement Exemptions (draft for comment) (the Exemption Guideline) recently released by National Development and Reform

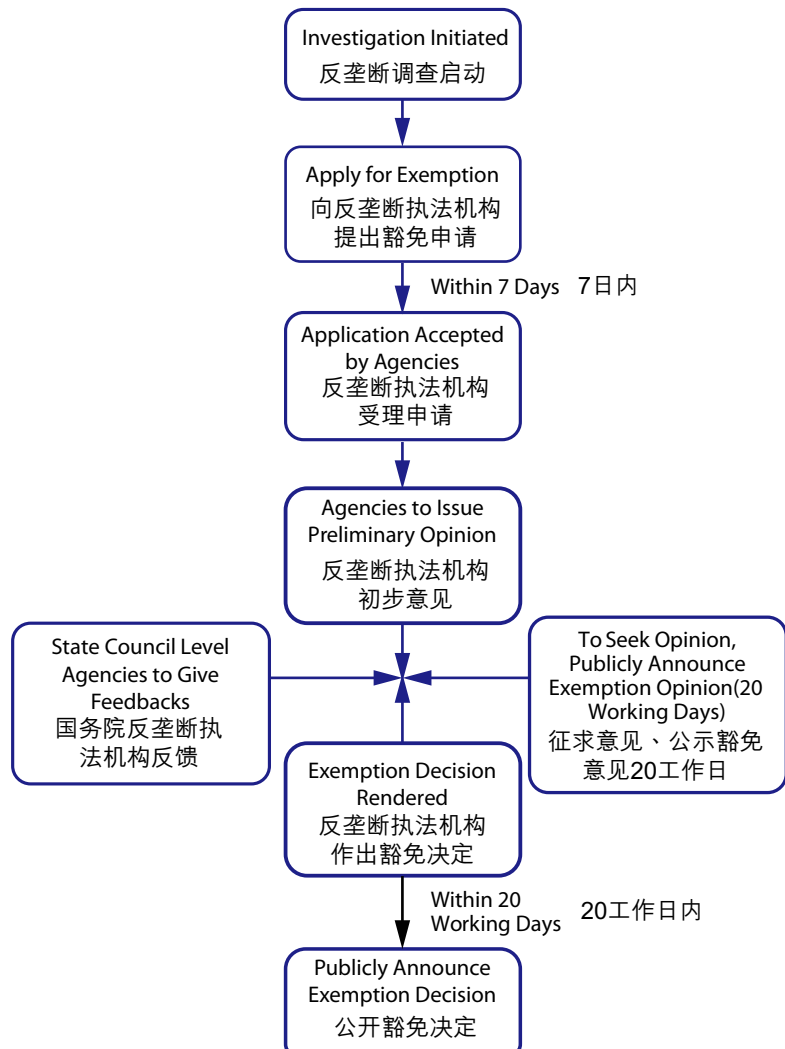


Fig 1

Commission does not require any prior review or approval of monopoly agreements either. More importantly, the Exemption Guideline highlights that an undertaking or association should make its own judgement on whether any agreement it has concluded or intends to conclude will satisfy the conditions under Article 15 of the AML; it may apply to anti-trust enforcement agencies for exemption consultation under limited situations; and it can submit application for exemption only after anti-trust enforcement agencies initiate investigation but before the final decision is rendered. As we can see from the above, China's anti-trust enforcement agencies confirm the 'directly applicable exemption' mode under the AML through the Exemption Guideline, which means that a monopoly agreement shall be deemed as exempt as long as it satisfies the situations and conditions of Article 15 of the AML, unless it is charged by the AML.

Exemption Guideline sets up procedures

In the event that a monopoly agreement is charged by AML, how should an undertaking apply Article 15 of the AML to obtain individual exemption in the course of enforcement?

The Exemption Guideline clarifies the competent authorities, timeline of application, steps and documentation needed in connection with monopoly agreement exemptions, which will largely increase the practicability of Article 15 of the AML and the transparency of enforcement. Specifically:

- (1) The authorities in charge will be the State Council and provincial anti-trust enforcement agencies.
- (2) An undertaking or association shall submit exemption application after the anti-trust enforcement agencies initiate the investigation but before the final decision is rendered.
- (3) The specific procedures are demonstrated in Fig 1.

Our suggestions

Since there is no prior review or approval procedure for exemption and anti-trust enforcement agencies usually do not accept exemption consultation, uncertainty remains strictly speaking even if the undertaking reasonably believes that an agreement it has concluded or intends to conclude satisfies the exemption requirements under Article 15 of the AML. Therefore, for cautious reason, even though only a small likelihood that an agreement will be deemed as monopoly agreement exists, it is advisable for the undertaking to proactively: preserve all the documents as required by the Exemption Guideline; and collect evidence that can prove the said agreement will not substantially restrict competition in the relevant market and can enable the consumers to share the benefits provided by the agreement.

反垄断执法中垄断协议个案豁免

反垄断法中垄断协议豁免制度是指在形式上构成反垄断法所禁止的垄断协议，出于经济效率和社会公共利益目的等考虑而不被认定为非法或免除对其惩罚。我国《反垄断法》第15条明确了垄断协议豁免的七种情形与法定条件，同时要求经营者负有义务证明其所达成的协议符合豁免法定情形和条件。那么，经营者应该如何适用《反垄断法》第15条而享有垄断协议豁免呢？需要在订立协议时向反垄断执法机构申请事先审查或备案吗？

《反垄断法》垄断协议豁免模式：直接适用制

如果经营者应该在达成或拟达成协议时申请反垄断执法机构审查批准豁免，则这种豁免模式可称之为事先审查制。事先审查制需要投入大量的资源去调查和审核还未执行的协议，难度大且效果不一定理想。欧盟于2002年12月6日发布了《关于执行<欧共体条约>第81条和第82条的2003年第1号条例》，标志着欧盟的垄断协议豁免模式从事先审查制向事后审查制转变，即经营者达成协议后可直接实施，无需反垄断执法部门的审批，亦可称之为直接适用制（或“依法豁免”）。

《反垄断法》未强制要求经营者为获得垄断协议豁免而事先向反垄断执法机构申请审查和认定，但也未明确经营者可以直接实施。《反垄断法》对于垄断协议豁免采用哪种模式语焉不详，没有给出直接答案。

国家发改委最新发布的《关于垄断协议豁免一般性条件和程序的指南》（征求意见稿）（“《豁免指南》”）亦未要求进行任何垄断协议豁免的事先审查。反之，《豁免指南》提出：（1）经营者和行业协会自行判断其达成或拟达成的协议是否符合《反垄断法》第15条规定；（2）经营者和行业协会可在满足特定条件下向反垄断执法机构进行豁免咨询；（3）豁免申请仅能在反垄断执法机构调查经营者或行业协会之后但在作出决定之前提出。从以上看来，反垄断执法机构借鉴欧盟模式，通过《豁免指南》确认了《反垄断法》对垄断协议采取了“直接适用制”的方式，即一个垄断协议只要符合了《反垄断法》第15条的规定，就可以被视为得到了豁免，除非该协议受到了反垄断法的指控。

《豁免指南》尝试建立垄断协议豁免程序

如果垄断协议真的受到了反垄断法指

控，在反垄断执法中，经营者应该如何适用第15条而获得具体个案豁免呢？

《豁免指南》详述了豁免的主管机关、豁免申请的时间节点、程序步骤以及所需文件，增强了《反垄断法》第15条的操作性以及反垄断执法的透明度。

- 1、垄断协议豁免的主管机关是国务院和省级反垄断执法机构。
- 2、在反垄断。《豁免指南》明确，豁免申请应在反垄断执法机构调查经营者或行业协会之后但在作出决定之前提出。
- 3、垄断协议个案豁免申请的流程如 Fig 1。

我们的建议

考虑到不需要进行豁免事先备案或审批以及执法机构一般不接受豁免咨询，经营者只能自行判断达成或拟达成的协议是否符合《反垄断法》第15条规定的豁免情形，直接实施垄断协议仍然存在一定的不确定性。因此，只要有构成垄断协议的可能性，经营者就应当在准备协议以及实施协议的过程中未雨绸缪：

- （1）留存《豁免指南》要求的文件资料；并且（2）参考《豁免指南》，收集有关能够证明未严重限制相关市场竞争和能使消费者分享协议产生的利益的证据材料。



INDIA



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The Insolvency and Bankruptcy Code, 2016

According to the World Bank, India is ranked 136 among 189 countries on the parameter of resolving insolvency and that it takes more than four years to resolve a case of bankruptcy in India. Currently, over 70,000 liquidation cases are pending in debt recovery tribunals and courts.

With a view to make it easier to wind up a failing business and recover debts in Asia's third-largest economy, parliament has attempted to overhaul the bankruptcy law in India. The Insolvency and Bankruptcy Bill, 2015 which seeks to strengthen the hands of lenders to recover outstanding debts, was earlier passed by the Lok Sabha (Lower House) on May 5, 2016, and was passed by the Rajya Sabha (Upper House) on May 11, 2016. With the president providing his assent on 28 May 2016, India now has a new bankruptcy law – The Insolvency and Bankruptcy Code, 2016 (the Bankruptcy Code) which will ensure time-bound settlement of insolvency, enable faster turnaround of businesses and create a database of defaulters.

Before the enactment of the Bankruptcy Code, India had multiple laws to deal with insolvency, which led to significant delays in winding up a company. The Bankruptcy Code aims to consolidate the existing framework by repealing the Presidency Towns Insolvency Act, 1090 and the Provincial Insolvency Act, 1920. In addition, it amends 11 other laws including the Companies Act, 2013, Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and Sick Industrial Companies (Special Provisions) Repeal Act, 2003. The Bankruptcy Code envisages a framework for the resolution of insolvency for individu-

als, companies, limited liability partnerships and partnership firms.

Salient features of the act

- Two distinct processes for resolution of individuals (fresh start and insolvency resolution).
- Proposes a timeline of 180 days to deal with the applications for insolvency resolution with an option of extending it by 90 days where 75 percent of the financial creditors agree.

“According to the World Bank, India is ranked 136 among 189 countries on the parameter of resolving insolvency and that it takes more than four years to resolve a case of bankruptcy in India”

- Contains provisions for a fast-track insolvency resolution process for companies with small operations where the resolution process has to be completed within 90 days with a window for a one-time extension of 45 days.
- For individuals and partnerships, it allows the debtor to apply for forgiveness of a specified amount of debt, provided that his assets are below the prescribed limit, which has to be completed within six months.
- Proposes the setting up of a new entity, the Insolvency and Bankruptcy Board of India, which will regulate insolvency professionals and information compa-

nies (those which will store all the credit information of corporates).

- Proposes two authorities to deal with insolvency: the National Company Law Tribunal to adjudicate cases for companies and limited liability partnerships, while the Debt Recovery Tribunal will do the same for individual and partnership firms.
- Proposes the creation of a new class of insolvency professionals that will specialise in helping sick companies. The insolvency professionals will supervise negotiations between the debtor and creditors, and if negotiations succeed, a repayment plan as agreed by a majority of the credits will be submitted to the adjudicator.
- Specifies that for most offences committed by a debtor under corporate insolvency, the penalty will be imprisonment of up to five years with a fine of up to INR10 million. For offences committed by an individual, the imprisonment will vary based on the offences; however, for most of these offences, the fine will not exceed INR500,000.

Conclusion

The Bankruptcy Code is only a starting point for easing exits for debtors in distress, preserving value and providing creditors with greater certainty in outcomes. The passing of the Bankruptcy Code and implementation of the same will give a big boost to ease of doing business in India. It could take India from among relatively weak insolvency regimes to becoming one of the world's best insolvency regimes. However, its implementation will remain the key, as the new code is contingent on the creation of a complementary ecosystem including insolvency professionals, information utilities and an active bankruptcy regulator.



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Indonesia's New Negative Investment List

Presidential Regulation No. 44 of 2016 regarding the List of Business Fields That Are Closed and Business Fields That Are Conditionally Open for Investment (the 2016 Negative Investment List or 2016 DNI) replaces the 2014 Negative Investment List or 2014 DNI, and was made public on May 24, 2016. The 2016 Negative Investment List refers to business lines and code numbers set forth in the Indonesian Standard Industrial Classification of 2015 (the KBLI).

The 2016 Negative Investment List liberalises some areas of foreign investment in Indonesia, including foreign investment from ASEAN countries. However, it is also true that the 2016 DNI does not contain the dramatic changes that had been anticipated by some members of the foreign investment community.

Fundamental principle of the DNI

Pursuant to Article 3 and Article 1(2) of the 2016 Negative Investment List, business lines that are not listed in the attachments to the 2016 DNI are deemed 100 percent open for foreign investment. There is no change in this basic concept. The 2016 Investment Negative List sets out that if a KBLI code number includes more than one business line, then a capital investment limitation stated in the 2016 Negative Investment List is applicable only to the business line that is expressly mentioned. For example, KBLI Code No. 70209 covers "other management consultancy businesses". The 2016 DNI specifically refers to this KBLI code number and horticulture development consulting, which is limited to a maximum of 30 percent foreign investment. That foreign

capital investment limitation applies only to horticulture development consulting and not to other types of consulting businesses.

Grandfather provisions

Similar to the 2014 Negative Investment List, the 2016 DNI provides grandfather protection for businesses whose capital investments were approved prior to the enactment of the 2016 Negative Investment List on May 18, 2016. The 2016 DNI is silent on what is meant by an approved capital investment. Thus, if an application has been filed and received a principle approval but no permanent licence has been issued, which DNI will apply? The approach of the Indonesian Capital Investment Coordinating Board (BKPM) to this issue in the past was to apply a prior DNI to any application for which a principle approval had been given, which will also then be applicable to the later application for a permanent business licence. If no principle approval had been issued, however, then the new DNI would be applied to a pending application. However, this approach does not necessarily mean that an investor that received a principle approval under the 2014 DNI cannot apply for more liberal treatment under the 2016 DNI. These and other issues are not explicitly addressed in the 2016 DNI and a different policy could be adopted by the BKPM.

Policies established by the 2016 DNI

Expansion to a new area Article 7(3) allows a PMA company located in one area to expand to another area without establishing a new business entity, provided it continues to comply with the government's spatial layout and environmental requirements.

However, there was no legal requirement to establish a new company if the investors wanted to create an additional location for their existing business. BKPM approval is required to add an additional location and this does not appear to be changed by Article 7(3).

Mergers, acquisitions and consolidations

Article 9 of the 2016 DNI lays out special requirements for mergers, acquisitions and consolidations: in the case of a merger, the limitation on foreign ownership is that which is contained in the surviving company's principle licence or business licence; in the case of an acquisition, the relevant limit on foreign ownership is that in the principle licence or business licence of the acquired company; and for a consolidation, the foreign capital limit is that which the 2016 DNI specifies for a new company. The result of these rules is that the only company that needs to be concerned about 2016 DNI limits on foreign capital is the consolidated company, which is a new company. In the case of a merger or acquisition, the 2016 DNI will have no adverse effects on the foreign capital limits, but if the 2016 DNI is more advantageous than the limits contained in their business licence, the foreign investor can apply for an increase. This provision is identical to the 2014 DNI, except in the case of acquisitions. In the 2014 DNI, the foreign capital limit was that of the acquiring company. We believe such change was necessary to clarify that when an acquisition occurs, neither the acquiring company nor the acquired company needs to change their capital ownership.

Advantageous provisions Article 13 provides that if the 2016 DNI has provisions that are more advantageous to the foreign investor than those it now has, it is entitled to the more advantageous provisions and can apply to the BKPM to obtain them.



Introducing the tort of sexual harassment

Introduction

The Malaysian Federal Court in the case of *Mohd Ridzwan bin Abdul Razak v Asmah binti Hj Mohd Nor* recently delivered a landmark judgment, ruling that victims of sexual harassment will now be able to seek civil remedies under the tort of sexual harassment. This is the first case involving a sexual harassment victim at a workplace who sought remedy from the civil court. There was previously no avenue for a civil action for sexual harassment under Malaysian law.

“The main issue for consideration was whether the defendant had a valid cause of action in a civil claim on the grounds of sexual harassment”

The law

The law on sexual harassment is contained in a non-binding guideline, namely the Malaysian Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace (“the Code”). In addition to the Code, a recent amendment to the Malaysian Employment Act 1955 merely imposed a duty on employers to adequately deal with sexual harassment complaints at their workplace.

The facts

The plaintiff and the defendant were employees of a company (“the Company”). The defendant reported directly to the plaintiff. In July 2009, the defendant lodged a complaint (“the Complaint”) to the Chief Executive Officer of the Company claiming sexual harassment by the plaintiff. An inquiry was conducted, and although there was insufficient evidence to warrant disciplinary action, a strong administrative reprimand was issued to the plaintiff. Aggrieved, the plaintiff, in December 2011 issued a writ against the defendant seeking, *inter alia*, a declaration that he had not sexually harassed her and

that he had been defamed by the Complaint made by the defendant. The defendant filed her defence and also a counterclaim against the plaintiff. In her counterclaim, the defendant particularised the sexual harassment. The defendant also pleaded that her allegations were upheld by their employer and that a serious disciplinary warning was issued to the plaintiff pursuant to the Complaint. The defendant counterclaimed for damages predicated on sexual harassment. The High Court found that the plaintiff failed to prove his defamation claim against the defendant and allowed the defendant’s counterclaim. This was upheld by the Court of Appeal. Aggrieved, the plaintiff appealed to the Federal Court.

The issue

The main issue for consideration was whether the defendant had a valid cause of action in a civil claim on the grounds of sexual harassment.

The decision

In the High Court, the plaintiff’s claim was dismissed as he had failed to prove that the defendant had defamed him through the

contents of the complaint letter. The defendant’s counterclaim, however, was allowed and she was awarded damages amounting to MYR120,000 since there was a direct link between her mental, physical and emotional pain and suffering, and the sexual harassment committed by the plaintiff. However, no clarification was made as to the pleaded tort of sexual harassment. The decision of the High Court was upheld by the Court of Appeal. It was further held that where acts of sexual harassment are serious to cause adverse psychological effect on the victim, those acts would fall within the tort of intentionally causing nervous shock. Therefore, since the plaintiff’s actions did amount to sexual harassment and that the plaintiff had knowledge of the defendant’s vulnerability which had adversely affected her, the plaintiff’s actions fell within the tort of intentionally causing nervous shock. On further appeal to the Federal Court, it was held that since the tort of sexual harassment was pleaded at the High Court, coupled with the fact that there was ample evidence to establish it, the introduction of the tort of harassment was justified.

Conclusion

The Federal Court decision proves to be significant as the recognition of the tort of sexual harassment provides an avenue for victims, both women working in the formal and informal working sector, to seek civil remedy, which goes beyond the remedies provided under the Code and the Malaysian Employment Act 1955.

Endnote

1. Civil Appeal No: 01(f) – 13 – 06/2013(W)
2. Employment (Amendment) Act 2012



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Green jobs: greening the Philippine labour sector

With the threat of climate change, the international community created the Paris Agreement which aims to stop global warming and preserve the environment for our future generations. The international community is then rightfully geared towards promoting economic growth within the context of sustainable and environmentally-responsible development. As a result, new work opportunities, called 'green jobs', are now emerging in the field of sustainable green development. In support of the new green jobs, a new legal framework is needed. With the Philippines being a signatory to the Paris Agreement, the country has thusly followed suit with the rest of the international community through the enactment of R.A. No. 10771 or the Philippine Green Jobs Act (PGJA) of 2016.

The PGJA is the first piece of legislation in the country's history specifically designed to generate, sustain and incentivise green jobs in order to develop an environmentally-friendly economy. The PGJA was enacted by the Philippine legislature on April 29, 2016 and took effect on May 18, 2016. Prior to the PGJA, incentives given to enterprises for adopting green practices were scattered in different laws such as the Organic Agriculture Act of 2010 (R.A. No. 10068) and Renewable Energy Act of 2008 (R.A. No. 9513). Previously, there was no legal concept relating to green jobs in the country.

However, under the PGJA, green jobs are now recognised and defined as any form of employment in any economic sector that contributes to the quality of the environment. Additionally, these green jobs are

required to be "decent", in that they are productive, respect worker rights, deliver fair income, provide workplace security, provide social protection for families and promote social dialogue.

In addition to fiscal and non-fiscal incentives already granted or provided under existing laws, orders, issuances and regulations, the PGJA enumerates the following financial incentives to encourage business enterprises even further to walking the environmentally-friendly route in the creation of green jobs:

- (1) a "special deduction from the taxable income equivalent to 50 percent of the total expenses for skills training and research development expenses"; and
- (2) tax and duty free importation of capital equipment actually, directly and exclusively used in the promotion of green jobs.

Based on these incentives, business enterprises are encouraged to not only hire employees skilled in preserving the environment, but also train or educate their current employees. Business enterprises are also encouraged to conduct research so as to reduce the environmental impact of their operations. In this regard, we may then expect the PGJA to lead to a redefinition of many jobs across a range of sectors and in turn encourage employment growth, skills development and worker training within an ever-increasingly green economy.

In order to make sure that green jobs become instrumental in the greening of the Philippine economy, the PGJA adds the Secretary of the Department of Labor and

Employment (DOLE) as a member of the Philippine Climate Change Commission. In this regard, the DOLE is tasked to formulate a National Green Jobs Human Resource Development (HRD) Plan, in coordination with other government agencies. Currently, we are seeing some healthy progress, with the DOLE Secretary indicating that HRD roadmaps for 27 industries have already been formulated. Furthermore, the PGJA also mandates the DOLE, together with the Philippine Statistics Authority, to maintain a database of green careers, professions and skills, as well as a list of emerging business enterprises, that generate and sustain green jobs.

Indeed, this new law was created for the service of and within a global context. The PGJA itself is a product of the Green Jobs Initiative, a global partnership of the International Labour Organisation, the United Nations Environment Programme, the International Trade Union Confederation, and the International Organisation of Employers. Furthermore, research for the PGJA was also funded by the Australian Agency of International Development.

Now that we have a statutory definition of green jobs, backed with the grant of incentives, business enterprises are then highly encouraged to partake in efforts to prevent global warming and at the same time generate more sustainable jobs for Filipinos. I thus look forward to the release of the Internal Rules and Regulations (IRR) that shall lay down the specifics for the new investments and new job opportunities that we certainly need to build a clean and green nation.

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SOUTH KOREA



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Major reform of Korean Trademark Law to follow international trends

The Act Providing Major Amendments to the Trademark Law (the Act) was passed by the National Assembly on February 4, 2016. The Act takes effect on September 1, 2016. This Act is significant because it is the first major revision to the law since 1990. The Act was passed to harmonise Korean trademark law with the international trademark system and to improve Korean citizens' understanding of trademark laws.

Primarily the Act focusses on simplifying the trademark filing process and making Korean trademark laws more like those found in the international community. It attempts to accomplish this by: concisely redefining essential trademark law terms in accordance with international trends; expanding who may request revocation of an unused trademark; and changing the filing standards for establishing a trademark right to enhance convenience.

Currently, essential trademark law terms in Korea are vaguely defined and not well understood by ordinary citizens. To alleviate this problem the Act redefines these terms with specific examples so that Korean citizens can easily grasp the key concepts of trademark law. This method of specifically defining key terms of trademark law, such as distinctiveness and source marking, has been widely used in the United States and Europe. Furthermore, it provides greater latitude for a mark to be qualified as a trademark by relaxing the standard. Under the Act, a mark may be qualified as a trademark so long as the mark effectively performs a trademark's original function as a source indicator. Accordingly,

in Korea a trademark will now be defined as a mark used to distinguish one's products or services from another's, and a mark will be defined as any token used to represent a product's source, regardless of its composition or manner of expression.

The Act also expands who may request that a trademark be revoked. Currently revocation may be claimed only by "an interested party". Under the new law "anyone" can request a revocation trial. The purpose of this change is to increase the availability of active trademarks by eliminating unused trademarks, and to avoid delays

"Primarily the Act focusses on simplifying the trademark filing process and making Korean trademark laws more like those found in the international community"

in trademark revocation trials caused by disputes over whether the party seeking the revocation has a proper "interest" to request the revocation. Additionally, when the final judgment is made, the Act allows an unused trademark to be revoked retroactively to the filing date of a revocation trial request. These changes increase the number of available trademarks and expand trademark choices. Currently in Europe and Japan, anyone is permitted to request revocation

of a trademark. Moreover, nominal use by the trademark holder is not sufficient to prove active usage. The Act follows these international trends. When the Act takes effect, the trademark revocation process for unused trademarks will be simplified and it will benefit individuals and corporations that wish to use these dormant trademarks.

The Act also eliminates the one-year waiting period requirement after lapse of a pre-existing equivalent or similar trademark. It will allow a new mark to be registered as a trademark as soon as a pre-registered equivalent or similar mark lapses and loses its force as a trademark. That is a departure from the existing law which prohibited the registration of a new mark for one year in Korea if a pre-registered equivalent or similar mark had existed, even if it had lapsed. This modification will enable a trademark right to be swiftly established, saving time and expense in the filing process.

Finally, the Act promotes greater transparency and knowledge about trademark registration status by requiring trademark registrations to be announced in the Trademark Gazette. Furthermore, by permitting a trademark examiner to correct trivial mistakes in registration documents on his/her own authority, and by extending the grace period for supplying missing registration materials from 14 days to two months, the Act makes the registration process more convenient for trademark applicants.

These are welcome changes under the Act. They are expected to produce positive results that will significantly enhance the trademark filing process in Korea, for the benefit of both domestic and overseas corporations doing business in Korea. This is good news for the business community in Korea.



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Family Businesses and NextGen

The UAE came into being in 1971. The self-taught local entrepreneur who set up shop selling just one product or service in those early days when he was in his 20s has now turned 70. His family has grown. His children and grandchildren are GenXers and millennials. The inevitable transition and handing over the reins of the business to the next generation has begun.

The challenges faced by family businesses in the Middle East are different to those of their counterparts in other parts of the world, but they are also similar in so many ways. While a Gen 4 family business in the Middle East may grapple with cultural sensitivities and the sheer number of family members involved (or not involved) in the business and the consequent number of divergent views and perspectives, it also faces, much like a Gen 4 family business in the west, the challenge of keeping NextGen engaged in the business and determining who is ultimately best suited to carry the legacy of the founder.

The founder who seeks to retain as much power and control over day to day activities of the business, until the inevitable happens, does himself and his family no favours. While there is no one who better understands the business, the struggles and the opportunities, a process of smooth handover to NextGen (or those who are deemed capable to take over) has to be undertaken sooner rather than later. The vision of the founder, whether that is to expand, divest or take the business to the market, has to be shared and appropriate steps taken for the family to decide, collectively, the way forward. The phase of 'living

the legacy' while the founder is alive and able to support NextGen is essential.

So what about NextGen? What of their aspirations, desires, needs, wants? Recent reports I reveal interesting statistics relating to NextGen the world over: a staggering 88 percent of NextGen "want to leave their stamp and do something special with the business", while 52 percent "are worried that they will need to spend time managing family politics". In this ever-evolving world where information is communicated in seconds and your worth is determined by the number of 'likes' on a social media platform,

"The reality is that every family is different. Each family has different values, different ideologies and different ways of doing things"

what is required to create a bridge between the baby boomers and NextGen, and have a meeting of the minds? Is it even possible for a millennial to understand the struggles, frustrations and accomplishments of the world in which their grandparents lived, worked, survived and thrived? The reality is that every family is different. Each family has different values, different ideologies and different ways of doing things. While there may be NextGens who follow closely in the founder's footsteps, there may be others

who do not have the same sensibilities as the founder of the business; they may not be at their desk at 7 am, and meticulously go through their 'to do' list, but they may have a fantastic network of contacts at the tip of their fingers who, with one 'tweet' or status update, they can tap into, from anywhere in the world, and achieve the same result.

The sooner that conversations with NextGen take place, the better it is for the family and the business. The potential contribution of NextGen may not be apparent to the founder, and those conversations should be aimed at uncovering skill sets, mindsets and visions of NextGen that have been formed by exposure to the communication-heavy, digital-based, 'blink and you miss it', world. The value in coaching NextGen and letting them make their mistakes, whilst providing constructive feedback, should also not be underestimated.

There is a real and urgent need for each generation involved in family businesses in the Middle East to discuss and implement viable, flexible structures that support the family, during the transition phase and beyond, highlight risks and threats and encourage frequent dialogue among stakeholders. The families that are cognizant and take swift action will be positioned to face the challenges that lie in the years ahead. This however requires commitment, both in time and effort, and a willingness to listen. Without these essentials, any plan or structure becomes more worth less than the paper on which it is written.

We regularly advise families on these and other succession planning-related matters, and are adept at assessing current strategy and identifying legal routes while creating a tailored model for the family. For further information, please contact us.



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Increased penal liabilities for crimes relating to food safety and hygiene

Food safety and hygiene are on red alert in Vietnam. According to local papers and media, food poisoning happens almost everyday, in many different locations, and the result of some investigations shows that, substantially, food poisoning is caused by using substances banned in growing animals and plants and/or in preparing food products, or by failing to follow regulations for the preservation of food products by farmers, food manufacturers or food service providers. Such illegal uses have not yet been prevented in part because of insufficient legal regulations without enough teeth for enforcement. In addition, certain legal regulations are not practical. For addressing these shortcomings, Penal Code No. 100/2015/QH13 dated November 27, 2015 (2015 Penal Code) has been promulgated, to supersede Penal Code No. 15/1999/QH10 dated 21 December 1999, as amended in 2009 (1999 Penal Code).

A remarkable change in the 2015 Penal Code in respect of the crime of breach of regulations on food safety and hygiene is that the element of “causing the loss of life or serious damage to the health of consumers” as regulated in Article 244 of the 1999 Penal Code has been removed from the material elements of certain crimes, and to some extent, it is treated as an aggravating fact in the examination of the penal liability of an offender. Such crimes include, inter alia, the use of banned substances in manufacturing, preliminarily processing, preserving food products, or sale of food products that the offender has become explicitly aware that they contain banned substances; use of

chemicals, anti-bodies, veterinary medicines, plant protection preparations which are banned from use in growing animals and plants, producing salt, preliminarily processing agricultural, forestal, aquatic products; and preparation, sale or supply of foods for which the offender has become explicitly aware that such foods do not comply with foods safety and hygiene regulations or technical regulations, which cause certain damage for persons in question. The maximum penalty for these crimes is up to 20 years’

“According to local papers and media, food poisoning happens almost everyday, in many different locations, and the result of some investigations shows that, substantially, food poisoning is caused by using substances [that have been] banned”

imprisonment, instead of 15 years as regulated in the 1999 Penal Code. In addition, the offender may be subject to a fine of from VND20 million to VND100 million.

Article 190 of the 2015 Penal Code provides for the crimes of manufacturing and trade of chemicals, anti-bodies, veterinary medicines, plant protection preparations which are banned from use in growing animals and plants, producing salt, preliminarily

processing agricultural, forestal, aquatic products. Accordingly, such crime may be subject to a penalty of up to 15 years’ imprisonment and the offender may be subject to a fine of up to VND100 million. Meanwhile, the crimes of storage and transportation of such banned goods may be subject to a penalty with a maximum level up to 10 years’ imprisonment, and an additional fine of up to VND50 million.

Regarding the crimes of manufacturing and trading of fake goods, in accordance with Articles 193 and 195 of the 2015 Penal Code, for fake goods being food products or food additives, an offender may receive a maximum penalty of a life sentence, and if the fake goods are food products for growing animals, the maximum penalty is 20 years’ imprisonment. In addition, an additional fine of from VND20 million to VND100 million may be imposed for these crimes of manufacture and trade of fake goods.

In connection with articles 190, 191, 193 and 195 of the 2015 Penal Code as mentioned above, traders may be subject to the penal liability examination (according to the 1999 Penal Code, only individuals can be made subject of such). The following penalties may be imposed on a trader who has committed the already discussed crimes:

- (i) Fine of up to VND9 billion, VND15 billion or VND20 billion, subject to particular crime;
- (ii) Temporary suspension of operation for the period from six months to three years;
- (iii) Permanent suspension of operation;
- (iv) Prohibited from doing business in certain fields, or from mobilising capital in a certain period of time.

The 2015 Penal Code shall take effect on 01 July 2016.

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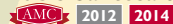


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