asian-mena Counsel

Volume 16 Issue 8, 2019

Dispute Resolution

Plus:

Internet courts in China
Improving efficiency, cutting costs

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What firms really need to know

Forensic investigations
LIO on the role of corporate counsel

SCIA

深圳国际仲裁院

SHENZHEN COURT OF INTERNATIONAL ARBITRATION

About SCIA

Established in 1983 as the first arbitration institution in the Guangdong-Hong Kong-Macao Greater Bay Area, the Shenzhen Court of International Arbitration (also known as the South China International Economic and Trade Arbitration Commission, Shenzhen Arbitration Commission, the "SCIA") is an arbitration institution to resolve contract disputes, investment disputes and other property rights disputes among individuals, legal entities and other institutions from China and overseas. SCIA is an explorer to integrate China' s commercial arbitration into international practices and so far its arbitration and mediation service have been extended to 119 countries and regions worldwide.

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The SCIA is the nationally first arbitration institution established by legislation authorizing its corporate governance structure with an international Council which ensures openness, transparency and independence.

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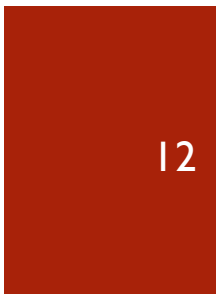
Key legal developments affecting the In-House Community along the New Silk Road



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AFRICA

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How Nigeria is going local

Promoting "indigenisation" in the Nigerian economy was the subject of a recent Lex Africa seminar, which asked how foreign investors were forging partnerships with local players, using local content and local manufacturing capacity and transferring valuable work skills.

There was no shortage of success stories emanating from the gathering in London.

Most noteworthy has been the massive job of fabricating and integrating six modules of oil producer Total's new floating production and storage offshore vessel, which will operate in the ultra-deep-water Egina oil and gas field 200km off the Port Harcourt coast.

The work, carried out at the Saipem and Hyundai Heavy Industries yard in Lagos, took six million man-hours, creating hundred of jobs and bringing multi-dimensional development in its wake. Importantly, an estimated US$5 billion in costs was retained in Nigeria, instead of the expenditure going to foreign economies, as has previously been the case with such projects.

Other shining local content examples in the oil and gas sector have been fabrication of the jacket for the Amenam drilling platform at Warri's Globestar shipbuilding yard; Saipem yard's manufacture of the Okpoho platform, and a well-jacket and helipad for ChevronTexaco's Mere-X, which was built by Transcoastal Nigeria. All these large projects created jobs, built local capacity and stimulated the Nigerian economy.

> "The Escravos gas-to-liquids project in the Niger Delta has provided jobs for more than 15,000 local people during its construction phase"

On the subject of skills transfer and support for local communities by multinationals, oil giant Shell has increasingly used locally made goods and service companies and in 2017 concluded contracts worth US$760 million with Nigerian companies.

Rival company Chevron plays an active role in the Oil Producers Trade Section of the Lagos Chamber of Commerce and Industry, working with monitoring agencies and legislators on local content development issues.

It was also mentioned that Chevron has trained 161 Nigerians in welding, fabrication and craft for its Sonam Development Project at the Nigerdock facility on Lagos's Snake Island.

Among further initiatives, Chevron has sponsored four Nigerian engineers for subsea engineering training in France, offered further education scholarships to Nigerian seamen and helped 600 community graduates register for the Nigeria Oil and Gas Industry Content Joint Qualification System.

The Escravos gas-to-liquids project in the Niger Delta has provided jobs for more than 15,000 local people during its construction phase.

Regulatory incentives have included creating "pioneer" status for companies in developing economic sectors, such as agriculture. This provides for tax holidays for certain periods of time to stimulate enterprise growth and expansion.

There are also export duty incentives for locally produced goods, while the federal government has also placed a ban on access to foreign exchange for importation of certain items, such as rice and cement.

LEX Africa is an alliance of law firms with over 600 lawyers in 25 African countries formed in 1993. More information may be found on **www.lexafrica.com.**

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Senior Counsel
Hong Kong **12+ PQE**

A global technology company seeks a seasoned transactional lawyer to join its team. You will have experience in leading all legal aspects of complex M&A transactions in the PRC and internationally. You should have a deep understanding of the internet business. Very competitive salary on offer. (IHC 17265)

Head of Legal
Hong Kong **8+ PQE**

European bank with branches in Hong Kong, Singapore and China is looking for a Head of Legal to provide advice and legal counsel to the various branches. You will need a good understanding of general banking law, preferably in a corporate banking environment and speak fluent Mandarin. (IHC 17701)

Data Privacy officer & Senior Manager
Hong Kong **8+ Years**

A HK real estate company seeks a candidate with a legal background to undertake a dual role that will report into the GC and Company Secretary. Applicants can be lawyers or hold a legal degree. You will focus on data privacy and other areas such as drafting of the Company-wide Document Control Policy. Technical skills and strong communication required. (IHC 17735)

M&A Legal Counsel
Hong Kong **3-10 PQE**

This Hong Kong based conglomerate seeks to hire a projects lawyer to manage investments for their businesses globally. You will work on M&A projects across a wide range of industry sectors, not limited to private equity, real estate, energy and hospitality. Fluency in Chinese (Cantonese and Mandarin) languages including drafting is mandatory. (IHC 17738)

Corporate/Commercial
Hong Kong **6+ PQE**

Funds house is looking for a commercial lawyer to manage a range of legal projects across the region which includes M&A, joint ventures, and strategic alliances. You will need commercial experience in a fund house or financial institution and should speak fluent Mandarin. (IHC 17696)

Trademark
Hong Kong **6+ PQE**

A leading technology company seeks a senior trademark counsel with solid experience in domain name and copyright (non-contentious, contentious, commercial and compliance related). Ideal candidate should have team management skills and solid experience in intellectual property worldwide outside of China and Hong Kong qualified. (IHC 17361)

Head of Legal
Singapore **15-20 PQE**

Global European listed chemicals company is looking for a Head of Legal to oversee their business across Asia Pacific based in Singapore. The ideal candidate should come with experience working in-house in a corporate advising on legal and compliance matters. Some proficiency in Mandarin would be preferred. (IHC 17724)

Head of Legal
Singapore **8-15 PQE**

Global European bank is looking for a senior legal counsel to head their legal and credit team across APAC based in Singapore or Hong Kong. The ideal candidate should be common law qualified with understanding of banking laws across the region especially Singapore or Hong Kong. Some proficiency in Mandarin is required. (IHC 17704)

Senior Legal Counsel
Singapore **8-12 PQE**

Global consulting company is looking for a senior legal counsel to join their legal team based in Singapore. The ideal candidate should be Singapore qualified with strong corporate experience gained in a top tier law firm or in-house doing regional work. (IHC 17526)

Senior Associate
Beijing **6+ PQE**

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Hong Kong **5+ PQE**

Leading property developer in Hong Kong looking for Hong Kong qualified solicitors with substantial experience in first-hand sale and acquisition via share purchase to focus on its Hong Kong property business. Candidates must be trilingual and have at least 5 years of post-qualified experience gained from a reputable law firm. (IHC 17732)

Senior Legal Counsel/ Document Negotiator
Hong Kong **4+ PQE**

Multinational bank seeks a senior document negotiator with experience in negotiating and managing secured financing agreements from a hedging perspective to lead a team of negotiators. Proven track record in negotiating ISDA agreements is essential. Chinese language skills and legal qualification are not required. (IHC 17709)

Legal Counsel (6-months contract)
Singapore **1-4 PQE**

Global asset management house is looking for a junior lawyer to be based in Singapore. The ideal candidate should be a common law or PRC qualified lawyer with asset management or general corporate background. Due to the nature of their business, proficiency in Mandarin is required. (IHC 17670)

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INDONESIA



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New regulation on Foreign Construction Representative Offices and Construction Foreign Investment Companies

On 13 June 2019, the Minister of Public Works and Public Housing ("MPW") issued Regulation No. 09/PRT/M/2019 on Guidelines on Licensing Services for Foreign Construction Business Entities ("Reg No. 9/2019") replacing: (i) MPW Regulation No. 10/PRT/M/2014 on Guidelines on Issuing Licence to Representatives of Foreign Construction Service Corporate Bodies ("Reg No. 10/2014"); and (ii) MPW Regulation No. 03/PRT/M/2016 on Technical Guidelines on Issuing Construction Service Business Licence to Foreign Investment Construction Service Enterprises as amended by MPW Regulation No. 30/PRT/M/2016 ("Reg No. 3/2016"). Reg No. 10/2014 and Reg No. 3/2016 are collectively referred to as "Old Regulations".

Reg No. 9 /2019 provides more details than the Old Regulations. Although, most of the provisions under Reg No. 9/2019 are the same as those of the Old Regulations, Reg No. 9/2019 introduces some significant changes to the provisions related to Foreign Construction Representative Offices ("BUJKA-RO") and construction foreign investment companies ("PMA Construction Company") which are outlined as below:

A. The licensing procedure for a BUJKA-RO Licencse

Reg No. 9/2019 finally addresses the issues in the procedures for applying for a licence for a BUJKA-RO ("BUJKA RO Licence") and for PMA Construction Company ("PMA Licence") through the Online Single Submission ("OSS") system. Under Reg No. 9/2019, a conditional BUJKA RO Licence and conditional PMA Licence will be issued by OSS before the issuance of the business entity certificate ("SBU").

A BUJKA-RO Licence will only become effective after it has obtained the SBU. On the other hand, a PMA Licence will only become effective after several commitments, such as SBU, completion of investment requirement and shareholding requirements, have been completed.

B. Shareholders requirements for a PMA Construction Company

Reg No. 9/2019 provides a more stringent requirement on the foreign shareholders of a PMA Construction Company, as Reg No. 9/2019 now requires them to have a large qualification. However, it remains to be seen how the MPW determines the large qualification of the foreign shareholder.

C. Partners for joint operations for BUJKA-RO

Reg No. 09/2019 no longer allows for a BUJKA RO to form a joint operation with a foreign investment construction company. Previously, under Reg No. 10/202014 a BUJKA RO may form a joint operation with a foreign investment company (subject to the fulfilment of several conditions and has been approved by MPW).

D. Requirements for the Person in Charge of the BUJKA-RO

Under Law No. 2 of 2017 on Construction and Reg No. 9/2019 Person in Charge of the Business Entity ("PJBU") of BUJKA RO must be an Indonesian national.

Reg No. 9/2019 provides that if the Indonesian citizen does not meet the criteria for a PJBU, the Indonesian citizen's position can be that of the Technical Person in Charge of the Business Entity (Penanggung Jawab Teknis Badan Usaha – PJTBU). The criteria for a PJBU will be regulated further under a separate MPW regulation which has not been issued yet.

E. Foreign manpower restriction

Reg No. 9/2019 now imposes a more stringent manpower requirements for BUJKA RO as BUJKA RO is now required to employ more Indonesian experts than foreign experts. This provision has not been expressly governed under the previous regulation.

F. Requirements to engage in construction services

Reg No. 9/2019 now requires a BUJKA-RO to engage in at least 1 (one) construction service during the term of the BUJKA RO Licence, otherwise its licence will be revoked.

Reg No. 9/2019 also requires a PMA Construction Companies to engage in at least 1 (one) construction service during the term of the SBU, otherwise its licence will be revoked. Note that under Reg No. 9/2019, if BUJKA RO Licence/ PMA Licence is revoked it can only be reapplied at least 5 (five) years after the original licence was revoked.

G. Requirements for an extension of a BUJKA-RO Licencse

BUJKA-RO now must extend its licence before the licence expire, otherwise, the BUJKA-RO will have the following progressive sanctions imposed on it, ie written warning, being blacklisted and eventually having its licence revoked.

* * * * *

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Senior Legal Counsel | 8-15 yrs pqe | Kuala Lumpur REF: 15188/AC

This Fortune Global 500 corporation with interests in energy management, automation, and innovation, is seeking a Senior Legal Counsel to join its regional legal team in Kuala Lumpur. Working in synergy with businesses teams in the region, you will provide legal advice and support on a range of issues including commercial transactions, dispute and litigation, M&A, project contracts, property leasing, construction and engineering issues, and employment matters. You must be a 8-15 years' PQE Malaysian qualified lawyer, trained within leading law firms or international corporates, with expertise in managing commercial projects, M&A and related transactions. Strong legal advisory and documentation experience is important, as is the ability to manage stakeholders within the organization in Asia and globally. Excellent communication and interpersonal skills are required; fluency in English and Mandarin is a prerequisite, other Asian language skills are preferred.

Deputy General Counsel | 8+ yrs pqe | Guangzhou REF: 15112/AC

This well-known social media platform seeks a seasoned lawyer with over 8 years' PQE supporting business expansion and operations in SEA and Middle-Eastern countries to join its well-established legal team in Guangzhou. You must be Commonwealth-qualified with fluent spoken Mandarin skills plus experience in cross-border M&A transactions and advising on regulatory matters. A HK/SG/Malaysian-qualified lawyer with a results-orientated approach and leadership attributes is preferred.

Legal Counsel, ASEAN | 7+ yrs pqe | Hong Kong REF: 15126/AC

This well-known healthcare company seeks an in-house Legal Counsel to support its business functions in ASEAN. Based in HK, you will be responsible for providing legal support across all its business operations, including contract drafting and negotiation, IP protection, privacy, employment law, dispute resolution, litigation, and M&A activities. You must be a qualified lawyer with a minimum of 7 years' PQE in general corporate and commercial matters, gained in-house or in a top-tier law firm in Asia. Hands-on knowledge of healthcare-related special regulations is desirable. You must have fluent English skills for the role.

Legal Counsel | 5+ yrs pqe | Beijing REF: 15173/AC

This Fortune Global 500 corporation with expanding business operations in China seeks a Legal Counsel with solid transactional and technology licensing experience for its Beijing base. You will provide legal support on IPR, data/cyber security, and technology export matters. With 5 relevant years' PQE and admission to the PRC Bar, you will have an overseas legal education and hands-on knowledge of company law and foreign investment. An excellent command of English and Mandarin is mandatory; additional French language skills are a strong plus.

Private Practice

Intellectual Property Partner | 7+ yrs pqe | Shanghai REF: 12909/AC

This dynamic US law firm is looking for a Partner-level hire to further grow their IP practice in China, to ally its stellar US capability. You will be responsible for advising a portfolio of local Chinese clients on US IP-related matters including patent registration, licensing reviews, and general IP work. You must be US qualified with a pharmaceutical/biotech background and ideally connections in those fields. A strong portable book of business and a proven record in managing a team of associates are highly desirable. Native-level Mandarin and fluent English skills are required.

Senior Lawyer, Insolvency | 7-10 yrs pqe | Hong Kong REF: 15179/AC

This leading global law firm is seeking a senior HK-qualified lawyer to join its highly regarded insolvency team in HK. In this role, you will handle a mix of commercial and insolvency work. You must have a minimum of 7 years' PQE of restructuring and insolvency work with international law firms. An additional Common Law admission is preferred, as are confidence in client-facing and cross-cultural awareness. The ability to work in English, Cantonese, and Mandarin languages is required.

Senior Associate, IP | 5-8 yrs pqe | Hong Kong REF: 15178/AC

This renowned global law firm seeks a Senior Associate to join its leading IP practice in HK. You will be working closely with their IP team advising clients on a wide range of IP matters including brand protection, trademark management, and IP acquisition issues. You must be HK qualified with 5-8 years' PQE in commercial IP and contentious IP matters international law firms. Candidates with stellar academics and commercial agreement drafting experience are preferred. Fluency in English, Cantonese, and Mandarin languages is required.

Associate, Corporate Finance | 3-5 yrs pqe | Hong Kong REF: 15177/AC

This highly regarded international law firm with an impressive client portfolio is seeking a mid-level associate to join its corporate finance team in HK. The ideal candidate will have 3-5 years' PQE with a top-tier law firm advising publicly listed companies on corporate M&A work including SPAs. Experience in managing projects with other specialist practice groups is also essential. Candidates with additional experience in capital markets, HK IPOs, and REITs are also welcome to apply. Fluent English, Mandarin, and Cantonese languages skills are mandatory.

Associate/Senior Associate | 2-8 yr pqe | Hong Kong REF: 1517475/AC

Excellent opportunities have arisen for mid to senior level Capital Markets lawyers to join a leading global law firm in HK. To be considered, you must be HK qualified with a minimum of 2 years' experience in a recognized HK capital markets practice. Proven experience with HK IPOs, securities, fund-raising, and compliance-related work is mandatory. Additional experience of M&A and US IPO & securities is highly desirable. Candidates with strong client services orientation, excellent communication skills, and a pragmatic approach are preferred. Strong drafting skills and fluent English and Mandarin Chinese are required.

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Developments in the Philippine Competition Commission's enforcement activities

Early this year, the Philippine Competition Commission (PCC) Enforcement Office launched a leniency/whistleblower programme offering immunity from suit and reduction of fines to cartel members who will provide information that will help the PCC investigate and prosecute cartels. This forms part of the PCC's increased efforts in cracking down on anti-competitive agreements and conduct.

The Philippine Competition Act (PCA) prohibits anti-competitive agreements such as price-fixing and bid-rigging, and other agreements which have the object or effect of substantially preventing, restricting or lessening competition. It also prohibits an entity/entities from abusing its dominant position by engaging in conduct that would substantially and negatively affect competition. Companies face up to P250 million (US$4.9m) in fines if found guilty of these acts.

Businesses were given a period of two years from the effective date of the law to reorganise their business structure or to renegotiate agreements in order to comply with provisions of the PCA. Ever since the transitory period ended last August 8, 2017, the PCC has been more aggressive in its enforcement activities.

Some of the industries that have been the subject of probes by the PCC include the garlic industry, international shipping lines (specifically, the imposition of unnecessary shipping charges on shippers) and the cement industry. More recently, the PCC has expressed its intention to look into an alleged cold storage cartel in the onion industry, and to probe whether recent power plant outages are an intentional scheme among power suppliers to raise electricity prices. It is also investigating allegations of bid rigging involving a government project awarded in 2017.

In 2018, the Enforcement Office opened 11 preliminary inquiries, nine of which ripened into full administrative investigations. Two of those full administrative investigations have been closed. One of the closed investigations involved the Philippine Academy of Ophthalmology (PAO) and Philippine Health Insurance Corporation (PhilHealth). The PAO's mission guidelines requires ophthalmologists to first obtain permission from the PAO or the local ophthalmologist of an area before they can conduct a medical mission in the area. Philhealth will not compensate the ophthalmologists conducting the medical mission if such permission is not obtained from the PAO or the local ophthalmologist of the area. The Enforcement Office raised competition concerns regarding the foregoing practice because by requiring visiting groups to get permission from PAO/the local ophthalmologists before they can conduct a medical mission, the PAO effectively imposed a barrier to entry, effectively limited competition and facilitated the division of practice territory. However, despite such competition concerns, the investigation was closed as the parties were able to rectify the foregoing acts within the transitory period.

The other closed investigation involved the vessel fumigation business. The unnamed complainant alleged that certain inspection companies were engaged in irregular post-fumigation inspection to undermine the business reputation of the complainant, and that a major fumigation company was involved in the scheme. The Enforcement Office did not find any evidence which supported collusion among the inspectors. The Enforcement Office also noted that the major fumigation company allegedly involved in the scheme did not have sufficient market power to be considered as dominant in the vessel fumigation market. They also noted that there were many players in the vessel fumigation market, and that barriers to entry into the business were generally low. Further, customers can easily switch between fumigators without incurring any significant additional cost (ie, switching costs were low).

Recently, the Enforcement Office filed a case against a mass housing developer for imposing an exclusive internet service tie-up on its tenants, preventing them from availing of the services of other internet service providers. Aside from preventing other providers from installing fixed-line internet on units, the developer also prevented other providers from marketing to the condominium residents. It marks the first time the Enforcement Office has filed a case for abuse of dominant position under the PCA. It will be interesting to see how the case will turn out as it will set the standard of how similar cases will be prosecuted in the future.

Competition law is a relatively new concept in the Philippines, hence many businesses may not even be aware that they are engaging in activities or are parties to agreements that may be considered as anti-competitive. They may be engaged in agreements or conduct which may have been permitted before, but which must now be reevaluated in light of the PCA and the expiration of the two-year transitory period. This is why it is important for practitioners to remain abreast of developments in this emerging field, so that they can effectively guide businesses in complying with the provisions of the PCA.

As the PCC increasingly expands its capabilities in investigating and prosecuting anti-competitive agreements and conduct, businesses and competition law practitioners must keep up.

The views and opinions expressed in this article are those of the author. This article is for general informational and educational purposes, and not offered as, and does not constitute, legal advice or legal opinion.

(Note: This article first appeared in Business World, a newspaper of general circulation in the Philippines.) The author is an Associate of the Corporate and Special Projects Department of the Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW). She may be contacted at ktmanibog@accralaw.com or (632) 830-8000.

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REIT Legal/Compliance
5-10 Years | Hong Kong

Well known REIT is looking for a mid-level lawyer to look after its legal and compliance function. You will be responsible for matters relating to the REIT code, SFO and listing rules. Prior experience in the real estate sector and listing compliance is ideal. Chinese language skills required. AC7964

Derivatives
3-7 Years | Hong Kong

A well-renowned global bank is looking to hire a mid-level lawyer. You must have experience working on derivatives and repurchase agreements at an international firm. Chinese language skills would be advantageous but not essential. Excellent career prospects on offer. AC7846

Capital Markets
3+ Years | Hong Kong

Global bank seeks a mid-level lawyer to join its legal team as a vice president. You will cover the capital markets and structured products business along with the sales and trading business in Asia. Solid debt capital market transactions or derivatives experience needed. Fluent Mandarin required. AC7939

Private Practice

Disputes
4-8 Years | Hong Kong

A well-respected UK firm is looking for a mid to senior-level associate to join its disputes team. Opportunity for ambitious litigators with established experience in regulatory and financial disputes to join a growing team. Mandarin language skills and HK qualification are required. AC7965

Projects
3-9 Years | SG/KL

Exciting opportunity for a mid-level projects lawyer to join a Silver Circle firm in Singapore or Kuala Lumpur to work on front-end project development and EPC work. Candidates must be qualified in the US, England & Wales or Australia and have fluent English. AC7961

Corporate
3-6 Years | Tokyo

International firm with a strong presence in Tokyo is looking for a corporate associate to work on cross border M&A transactions for both Japanese and multinational corporations. You should be England & Wales, US or Australian qualified. Japanese language skills are not required. AC7956

M&A
5-8 Years | Hong Kong

Excellent opportunity for an ambitious senior associate/ counsel to join a leading M&A practice at an international firm in Hong Kong. This role will offer a track to partnership for the right candidate. You must be Hong Kong qualified and able to work in English, Mandarin and Cantonese. AC7950

Insolvency
2-7 Years | Hong Kong

Leading offshore firm seeks an associate to assist on a diverse spectrum of work, with a focus on Cayman Islands and British Virgin Islands related restructuring and insolvency issues. You should be common law qualified and Chinese language skills are preferred. AC7947

Corporate
1-2 Years | Hong Kong

A global firm is looking for a junior corporate lawyer to join its Hong Kong office. You must have excellent experience in M&A and/or corporate finance matters. Opportunity to work on a broad spectrum of corporate transactions with reputable partners. Mandarin language skills are a must. AC7962

Funds
1-4 Years | Hong Kong

A top tier US firm is looking to hire a funds associate to join its highly regarded investment management team. This role will offer exposure to advising blue chip institutional investors on their commitments to Asia-based private equity funds. Cravath rates on offer. Mandarin not essential. AC7955

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In Korea, a licensee is now considered an interested party who may invalidate a patent

On February 21, 2019, the Korea Supreme Court issued a decision making it clear that a licensee is an interested party who may file a petition to invalidate a patent for which he holds a licence.

Article 133(1) of the Patent Act states that an interested party or an examiner may file a petition for trial to seek the invalidation of a patent. The reason for allowing only an interested party and an examiner to file a petition for such a trial is to prevent wasting the time and administrative resources of the Korean Intellectual Property Trial and Appeal Board in having to address potentially excessive filings of trial petitions. This comes from a principle recognised under the Civil Procedure Act: "No interest, no right to bring an action." Here, an "interested party" refers to a person who would or might be legally harmed by the granting of a patent on an invention and who would have a direct and practical interest in extinguishing such a patent. This includes any person who produces/sells or intends to produce/sell the same kind of product as the patented invention.

However, it was unclear whether a licensee could file a petition for an invalidation trial. In some invalidation cases, the court ruled that the grant of a licence cannot lead to the loss of an interest which enables the claimant to file a petition for an invalidation trial. But in other cases, decided about the same time, the court denied that a licensee had a recognised interest, stating that a licensee would be free from patent disputes with the patent holder and therefore free from any business loss caused by the registered patent.

> "The Supreme Court clarified its previously mixed position by ruling that a licensee of a patent also is an interested party with a right to file a petition to invalidate the licensed patent"

In the recent Supreme Court case, the plaintiff was a patent holder and the defendant was a licensee who had a right to exercise the patented invention of the plaintiff. The defendant filed a petition to invalidate the patent on the plaintiff's invention and the Korean Intellectual Property Trial and Appeal Board upheld the defendant's right to bring an invalidation action, even though the defendant was a licensee of that same patent. The plaintiff appealed that decision at the Patent Court, but the Patent Court upheld the decision of the Korean Intellectual Property Trial and Appeal Board. The plaintiff then filed a further appeal, arguing that the defendant licensee was not an interested party and did not have the legal right to file an invalidity action against the licensed patent. That appeal was dismissed by the Supreme Court.

In its judgment dismissing the appeal, the Supreme Court clarified its previously mixed position by ruling that a licensee of a patent also is an interested party with a right to file a petition to invalidate the licensed patent. The Supreme Court noted that because a licensee is usually subject to certain restrictions and obligations such as an obligation to pay royalties, limitations as to the scope of the licence, etc, the licensee may be freed from such restrictions and obligations by receiving an invalidation decision on the patent through an invalidation trial. Additionally, the court observed that even when a patent has been improperly granted, it continues to exist validly until an invalidation decision on the patent has been confirmed. Further, even though a petition for an invalidation trial is filed, it will still take some time and expense to get an invalidation decision confirmed. Therefore, notwithstanding defects in the patent, a person who wants to exercise the patent immediately may obtain a licence from the patent holder first, postponing the dispute on whether the patent is invalid.

Unlike other major jurisdictions such as the US, Japan, China and Europe where standing to file a petition to invalidate a patent is quite broad, in Korea the scope of who is considered an interested party with a right to file a petition for invalidation has been quite narrowly construed. This has prevented licensees from filing petitions to invalidate patents. This new case now corrects that, opening the door for more parties to challenge the validity of patents in Korea.

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Tightened policy on import of used machineries, equipment and technological lines

From 2015, the import of used machineries and technological lines is subject to the Circular 23/2015/TT-BKHCN, which contains some inadequate points causing difficulties in import of used machineries, technological lines, especially those of more than 10 years old in fact. The provision that import of used machineries and technological lines for an investment project must be approved by the investment registrar authority was totally unreasonable and in fact unenforceable, which caused difficulties not only for import companies but also investment authorities. Meanwhile, the Circular required import companies to obtain approvals from the Ministry of Science and Technology, but was silent on the specific procedure to do so, resulting in import companies' confusion and inactivity.

Repairing the shortcomings of Circular 23, the Prime Minister issued the new Decision 18/2019/QD-TTg to provide for a better legal framework for import of used machineries and technological lines, which helps in the restriction of trash imports into Vietnam. In principle, like most other countries in the world, it is prohibited to import into Vietnam any used machinery, equipment or technological lines that have been discarded as announced by exporting countries due to their obsolescence or low quality, causing environmental pollution; or failure to satisfy safety, energy saving or environmental protection requirements. In Vietnam, only the import of used machinery, equipment and technological lines meant to directly serve the manufacturing of enterprises in Vietnam is allowed. Used machineries and technological lines must be manufactured in accordance with National Technical Regulations (QCVN) on safety, energy saving, and environmental protection. In case of unavailability of National Technical Regulations (QCVN) for a machinery or technological line to be imported, it must be manufactured in conformity with technical indicators of Vietnam's Standards (TCVN) or Standards of G7 countries or Korea with regard to safety, energy saving and environmental protection.

Regarding used machineries and equipment, the Decision retains the general rule that used machineries and equipment are only qualified for import if their ages do not exceed 10 years. However, the Decision loosens the maximum age for some specific machinery in the areas of mechanics (machine tools for working metals and other types of materials), wood production and processing, and paper and paper pulp production to 15 or 20 years. Machineries over the provided maximum age are subject to import approval from the Ministry of Science and Technology, which shall only be granted if remaining capacity or performance achieves 85 percent or above of the machinery/equipment's design capacity or performance, and amount of raw materials or energy consumed does not exceed 15 percent of its design consumption level.

Unlike the previous Circular 23 which provided the same conditions for used machineries/equipment and technological lines, the Decision 18/2019/QD-TTg requires more conditions for technological lines than machineries and equipment. Technological lines are not subject to the condition on maximum age, and must satisfy the condition on remaining capacity and material and energy consumption level as mentioned above. Furthermore, technologies of the technological line to be imported must not be prohibited or restricted from transferring, and being applied by at least three manufacturers of member countries of Organisation for Economic Cooperation and Development (OECD). Used technological lines are not subject to import approval from the Ministry of Science and Technology.

To be imported into Vietnam, used machineries, equipment, technological lines must obtain an Assessment Certificate from a licensed assessment company to assess their satisfaction with provided conditions by laws. The assessment certificate issued by the assessment company is required by the new Decision to conclude many more contents than previously, such as assessment method and procedure, name-number of standard QCVN, TCVN or G7, Korea about safety, energy saving and environmental protection, conclusion on satisfaction to each condition provided by laws.

Therefore, in fact, the assessment procedures by the assessment companies will be much more complicated and lengthy as the assessment companies shall have to prove the applicable standard and assessment method. This is not such an easy job as before as now the assessment company must determine the applicable standards, then choose the assessment method suitable to such machines and prove the assessment method and applicable standards. It may take some days for assessment on some big and old machines. Especially, assessment of a used technological line must be conducted at the exporting country while the technological line is operating. Practically, importers are advised generally to conduct the assessment on used machineries and equipment at the exporting country as well because if the assessment is conducted on arrival in Vietnam and any condition may be concluded to be unsatisfied after the assessment, the importer shall be applied with heavy fines and the machineries shall be deported, which is not only costly but also badly affects the importer's reputation in Vietnam.

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

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


By James Gaden and Alice Molan

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Economic substance: The reality — what firms really need to know

While some of the reactions to the Cayman Islands' introduction of The International Tax Co-operation (Economic Substance) Law, 2018 (Substance Law) have been less than positive, the reality is that the Substance Law is a set of rules that fairly elegantly address OECD requirements for geographically mobile activities to have economic substance. Similar legislation is being enacted in all OECD-compliant jurisdictions with no or nominal tax, including Bermuda, the British Virgin Islands, Guernsey and Jersey. The intention of the Substance Law is that if a "relevant" entity is engaged in one of nine geographically mobile activities which the OECD identified as part of the Base Erosion and Profit Shifting report, then unless it is tax resident in another jurisdiction it will either: (a) have to comply with the Substance Law; or (b) cease that activity.

However, suggestions that the Substance Law means that all offshore operations need to be redomiciled to an onshore jurisdiction (where they will likely be subject to other compliance regimes, as well as audits) is, in the vast majority of cases, an overreaction, or simply incorrect.

In summary, the Substance Law states that if a "relevant entity" (a Cayman company, LLC or limited liability partnership) is carrying on one or more of nine listed "relevant activities", it has to maintain "adequate" economic substance in Cayman, which will require it to determine adequacy having regard to the type and scale of relevant activity and the extent (if any) that relevant income is generated.

Firstly, in many cases a Cayman entity is not a relevant entity. Investment funds (as broadly defined within the Substance Law) are out of scope. Exempted limited partnerships (the gold standard vehicle for PE funds) are out of scope. Trusts are out of scope. Entities that are tax resident in another jurisdiction are also not in scope.

> "Compliance may not be as overwhelming as certain market participants have sought to project"

Secondly, even if an entity is a relevant entity, it will only be required to maintain economic substance if it is conducting a relevant activity. It's only if a Cayman relevant entity is being used to undertake the business of IP holding, providing credit facilities, insurance, banking, shipping, providing distribution and service centre operations, providing headquarters related services, discretionary fund management or holding company business that it will need to consider the Substance Law and how it can demonstrate adequate substance.

But even if an entity is a relevant entity which is conducting relevant activity, it does not need to cease carrying on business in Cayman, or redomicile to comply. Outsourcing solutions are already being developed, and there is a wealth of legal, compliance and corporate services expertise in the Cayman Islands that can be tapped to assist to provide practical solutions to ensure compliance.

In relation to entities carrying on holding company business (as defined), the guidance indicates that reduced substance requirements apply, which may be met via the entity's Cayman registered office and compliance with existing mandatory filing requirements.

At this stage, as the Substance Law is a Cayman Islands regulatory issue, the first step to compliance should be to engage with your Cayman Islands counsel to assess if entities in your group are in scope. Counsel should then be tasked with developing a compliance solution for the particular facts and circumstances with input, if required, from onshore regulatory and tax specialists. Engaging with onshore advisers will be important, particularly in regulated sectors such as fund management, insurance, and banking, because there may be onshore rules which come into play, or which affect implementation of your compliance plan.

Redomiciliation is unlikely to be necessary or useful. Firstly, the Substance Law does not present an opportunity for jurisdictional arbitrage: in order to stay off the EU "blacklist" on non-cooperative jurisdictions, many countries have, or will, introduce rules similar to the Substance Law.

Secondly, compliance may not be as overwhelming as certain market participants have sought to project: satisfying some degree of economic substance has been a feature of the global regulatory framework for some time. The fact that it is being introduced in the Cayman Islands now is simply an indication of that jurisdiction once again demonstrating a willingness to implement global best practice, with laws that are consistent with the requirements of industry.

At least in the investment funds community, the Cayman Islands continues to be the jurisdiction of choice for managers and investors alike. This is not simply because it is a tax-neutral jurisdiction. It is because its regulators and legal system continue to require that market participants comply with high standards of governance, while providing an environment that is cognisant of the requirements of commerce.

Cayman was one of the first jurisdictions to enter into an Intergovernmental Agreement with the US to implement FATCA, was an early adopter of CRS, was nimble in implementing a sensible beneficial ownership register regime, and regularly updates its anti-money laundering rules to reflect international best practice. It has a robust legal system with highly competent regulators. This is why the investment community continues to have strong faith in Cayman as a jurisdiction. The implementation of the Substance Law continues this tradition.

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EVENT REPORTS

In-House Congress Shenzhen

More than 120 in-house lawyers from both Shenzhen and Hong Kong gathered together to learn from each other and to hear briefings from private practice workshops in June. The In-House Community was especially proud to work in conjunction with CCPIT and the Hong Kong Department of Justice, the Hong Kong International Arbitration Centre and the Shenzhen Court of International Arbitration in a gathering that was a true manifestation of the existing strength and future of the Greater Bay Area. We look forward to more such collaborations across Greater China, and bringing constructive cross-fertilisation for our 5,314 In-House Community members across Shenzhen, Hong Kong, Beijing and Shanghai. With our further thanks to Conyers, JunZeJun Law Offices (Shanghai), Latham & Watkins, MWE China Law Offices and Zhong Lun Law Firm.










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

"The day proved really useful and I found that the topics chosen connected directly to my daily work" General Counsel, China Tech Company

2019 IN-HOUSE Congress SHENZHEN

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Conyers Dill & Pearman

Wynne Lau
Counsel
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Professor Yuwen Li
Erasmus University Rotterdam

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

In-House Congress Kuala Lumpur

The 2019 In-House Congress Kuala Lumpur proved as lively as ever with two panels on technology and talent management, witnessed by more than 190 of Malaysia's top legal and in-house community. Patrick Dransfield of In-House Community was joined on the technology panel by William Greenlee of DFDL, Yen Lee Sim of Schneider Electric, Hanim Hamzah of ZICO Law, and Eric Chin, principal of Alpha Creates. Our second panel on talent management included Glynn Cooper of Herbert Smith, Elias Moubarak of Trowers & Hamlins, and Hanim Hamzah and Dalvin Kaur of Maybank Kim Eng Investment Bank.

In general, the event was extremely well received by our Malaysian In-House Community, with one delegate summing up that all the Workshops were mindful of local legal trends and highly relevant to the job in hand.

Our 18th anniversary in Kuala Lumpur also included workshops from Kadir Andri, Christopher & Lee Ong, Clyde & Co, Shaikh David & Co and Trowers & Hamlins on various topics, including: tech; emerging trends in M&A; Islamic finance in M&A transactions; regional white collar and regulatory enforcement; mitigating risk in cross-border investments; and finally renewable energy development across Asean.

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

"The KL In-House Congress always exceeds my expectations"
– Kuala Lumpur Congress delegate

2019 IN-HOUSE Congress KUALA LUMPUR

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Principal
Alpha Creates & Founding Board ASEAN LegalTech

Suhaida Mahpot
CEO, Head office, South East Asia
Amanie Advisors (a Shariah consultancy firm)

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Head of the Technology, Media and Telecommunications (TMT) practice,
Christopher & Lee Ong

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Fara Mohammad
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Kevin Hawkins
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Patrick Dransfield
Publishing Director
Asian-mena Counsel and Co-Director,
In-House Community

MOVES

The latest senior legal appointments around Asia and the Middle East

HONG KONG


Guiping Lu

K&L Gates has added **Guiping L**u as a corporate/capital markets partner in its Hong Kong office. Joining from the Hong Kong office of Beijing-based Haiwen & Partners, Lu focuses his practice on equity and debt capital market deals and cross-border M&As, in addition to advising clients on private equity, pre-IPO, venture capital financing and various US securities law matters.


Katherine Ke

King & Wood Mallesons has added **Katherine Ke** in its banking and finance practice in Hong Kong. She joins from Clifford Chance and has over 15 years of experience advising Chinese and multinational clients on cross-border financing transactions. Native in Mandarin and fluent in English, Ke represents lead arrangers, lenders, sponsors and corporates in a range of Chinese inbound and outbound transactions, including general syndicated loans, project finance, structured finance, trade finance and receivables finance. She also has a particular focus in asset finance and the aviation sector.

INDIA


Vatsal Gaur

HSA Advocates has added **Vatsal Gaur** as an associate partner, operating out of the firm's Delhi office. In the process, Gaur merges his independent practice with the firm. With over eight years of experience in corporate commercial and M&A transactions, Gaur specialises in PE investment transactions, having acted for diverse PE funds, VC and Angel investors across the entire spectrum of the investment and divestment cycle. He assists clients in transaction structuring, contract negotiations and drafting, advising on applicable legal and regulatory frameworks, corporate and commercial issues and transaction management. Gaur was running his independent practice for over two years, prior to which he had worked with Lakshmikumaran & Sridharan, Khaitan & Co and JSA.


Harsh Maggon

Trilegal has added **Harsh Maggon** as partner in the corporate practice in the firm's Mumbai office. He specialises in public M&A and private equity transactions, and has advised on multiple takeovers involving open offers and schemes of arrangements across sectors. He has also worked on delisting offers. Maggon's expertise includes advising on complex corporate governance issues in listed entities, control deals (including in distress situations), secondary exits and minority stake acquisitions. He joins from AZB & Partners. He was earlier at Cyril Amarchand Mangaldas, where he was part of the public M&A team.

THAILAND


Troy Schooneman

Kudun and Partners has strengthened its international practice with the appointment of **Troy Schooneman** as partner and head of its international practice group. With a career spanning more than 25 years in Asia, Schooneman has extensive experience in advising a broad spectrum of Thai and international public and private corporations, private equity funds, financial institutions and government agencies on domestic and cross-border M&A, private equity investments, joint ventures, project and corporate financings, real estate developments and general corporate matters. He was previously a partner and head of the international practice group of Weerawong, Chinnavat & Partners (formerly White & Case Thailand), focusing on the investment activities of Australian, European and US corporations in the Asia-Pacific region, as well as on outbound transactions for Thai clients.

UAE


William Reichert

Charles Russell Speechlys has hired corporate partner **William Reichert** in Dubai. He brings more than 20 years of cross-border transactional experience including M&A, joint ventures and private equity. He joins the firm from K&L Gates's Dubai office, where he served as head of the corporate and commercial practice. Reichert advises clients on a variety of corporate matters and deals, from seed series investments for startups, to complex, multi-billion dollar matters across numerous jurisdictions. His diverse client base includes a particular focus on energy, real estate, healthcare, retail and technology. Prior to moving to the Middle East region four years ago, he was based for 10 years in Moscow.

Asian-mena Counsel Deal of the Month

Hong Kong's first non-government listed bonds

Agricultural Development Bank of China, one of China's three policy banks, has become the first non-government issuer of listed bonds in Hong Kong. It sold the notes to both retail and institutional investors through the stock exchange's Central Clearing and Settlement System.

The Regulation S deal comprised a Rmb2 billion (US$289m) tranche that was offered to both retail and institutional investors with a 3.08 percent coupon due 2020, as well as a Rmb1 billion institutional-only tranche with a 3.23 percent coupon bonds due 2022.

It is the first bond issuance to be open for subscription to both retail investors through the listed market and to professional investors in the over-the-counter market, following Hong Kong Monetary Authority's Exchange Fund Bills.

The issue is the latest step in the continuing development of HKEX's fixed-income market.

"This is an exciting development for Hong Kong's markets," said HKEX chief executive Charles Li. "This provides a new type of investment opportunity for retail investors while allowing Agricultural Development Bank of China to diversify its financing base and increase its market visibility.

"We look forward to warmly welcoming more issuers interested in tapping into Hong Kong's vibrant retail investor community, and to the further development of our fixed-income markets."

Li added that the exchange will continue to explore greater market access with the mainland, including the trading of listed bonds and derivatives.

Clifford Chance advised the syndicate of banks that included Bank of China, Bank of China (Hong Kong), Standard Chartered Bank (Hong Kong), Bank of Communications Hong Kong Branch, China Construction Bank (Asia), Industrial and Commercial Bank of China (Asia), Agricultural Bank of China Hong Kong Branch, BOCOM International Securities, Shanghai Pudong Development Bank Hong Kong Branch, The Hongkong and Shanghai Banking Corporation, Citigroup Global Markets, Mizuho Securities Asia, and KGI Asia.

Partner **David Tsai**, supported by partners **Connie Heng** and **Mark Chan**, led the firm's team in the transaction.

Other recent transactions from around the region:

Baker McKenzie has advised **MetLife** on the sale of its Hong Kong life insurance business to FWD Management Holdings, a member of the FWD Group. Partner and head of Asia Pacific insurance-Hong Kong **Martin Tam** led the firm's team in the transaction, which is subject to regulatory approvals.

Shearman & Sterling has advised **subsidiaries of Joyvio Group** on financings to support its US$880 million tender offer for all of the shares of Australis Seafoods, a leading Chilean salmon producer. The transaction is one of the largest acquisitions in Chile's aquaculture industry, and provides Joyvio with a major presence in the South American seafood market. **Kenneth Ching** led the firm's team in the transaction.

White & Case has advised the **export credit agencies** and a **large syndicate of international and Taiwanese commercial banks** on the €2.7 billion (US$3b) project financing of German developer wpd's Yunlin offshore wind project in Taiwan.

Clifford Chance has acted as Hong Kong and Dutch legal counsel to **Carrefour Nederland** on the proposed sale of its 80 percent equity interest in Carrefour China to Chinese electronics and e-commerce retailer Suning.com. The transaction values Carrefour China at an enterprise value of €1.4 billion (US$1.57b). Carrefour will retain a 20 percent stake in the business. Partner **Emma Davies**, supported by partner **Gregory Crookes**, led the firm's team in the transaction.

Rajah & Tann Singapore, a member firm of Rajah & Tann Asia, has acted for **Swiss Reinsurance America** on the issuance of the US$100 million Series 2019-1 Class A principal at-risk variable rate notes by First Coast Re II, with Swiss Reinsurance America as the ceding reinsurer, and Security First Insurance as the reinsured. This is the first Rule 144A catastrophe bond transaction in Singapore issued by a special purpose reinsurance vehicle licensed by the MAS pursuant to a collateralised reinsurance transformer structure. Partners **Simon Goh, Lee Xin Mei, Vikna Rajah** and **Cheryl Tan** led the firm's team in the transaction.

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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 – Family Office

3-5 yrs PQE, Hong Kong

A reputable family office is looking for a legal counsel with broad corporate experience. Candidates should ideally have transactional experience, with a well-known law firm or an established in-house legal team. This is a great opportunity to work closely with the business and to be involved in interesting deals. Business level Chinese skills are essential. [Ref: AC7949]

Contact: Chris Chu
Tel: (852) 2537 7415
Email: cchu@lewissanders.com

Legal Counsel, IT/eCommerce

8-13 yrs PQE, Hong Kong

This well-established retail business is seeking a capable lawyer to support its business in Asia. Based in Hong Kong, you will provide legal advice and support on general corporate and commercial work with a focus on IT matters. Ideally, you are a Commonwealth-qualified lawyer who has good law firm training plus 8-13 years' PQE. A team player with experience in the IT business plus strong drafting skills is sought. Fluency in English and Cantonese Chinese language skill is required. [Ref: 14915/AC]

Contact: Sherry Xu
Tel: (86) 21 2206-1200
Email: sherryxu@hughes-castell.com.hk

General Counsel – Investment Banking

15 yrs PQE, Hong Kong

A renowned, reputable and established full service investment bank. It is looking for a general counsel to join the Hong Kong office. Reporting into the chief executive, the general counsel will lead a team of 13 overseeing the legal function for Hong Kong. The general counsel will work closely with business in corporate finance, private equity, capital markets/IPO and investment funds teams to ensure all legal and transactional related matters is adherent to the firm's and regulatory environment. The incumbent will be working closely with other internal stakeholders, senior management and external counsels. You will have at least 15 years PQE from HK or Commonwealth jurisdiction, and a combination of related in house experience as well as a top tier reputable international law firm. Proficiency in both English and Mandarin Chinese (written and spoken) is mandatory. Very competitive remuneration package is on offer for the suitable candidate. [Ref: JO-1906-174626]

Contact: Venus Ip
Tel: (852) 2499 9796 (ext. 30) / M +852 9660 1897
Email: venusip@puresearch.com

Senior Legal Counsel

15+ yrs PQE, Hong Kong

This growing US listed company seeks a senior lawyer with strong experience on legal compliance and corporate governance matters. You will advise on company's regional business, regulatory, legal risks, AML and other commercial legal issues related to their day-to-day businesses. Experience working in a U.S. listed company and/or common law qualification required. [Ref: IHC 17657]

Contact: Georgeanna Mok
Tel: 852 2920 9101
Email: g.mok@alsrecruit.com

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Erick Gunawan
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Forensic investigations, the role of corporate counsel and the rise of information governance

Head of Forensics – Erick Gunawan, discusses the Role of Corporate Counsel in the context of litigation or investigation and the increasing importance of information governance.

The Role of Corporate Counsel

Corporate clients are increasingly aware of how new technologies can ease litigation costs, including tools that minimise document review timeframes. Instead of junior lawyers racking up billable hours manually reviewing documents, corporate clients are asking law firms for innovation around document reviews. Consequently, law firms are taking on risk, developing new tools and hiring innovation managers to incorporate technology for these processes.

Corporate counsels are increasingly focused on legal operations rather than providing legal advice. They are working with other business units on compliance and sometimes project manage the whole data collection and document review.

Due to cost, corporate counsels now have greater scope and responsibility, and need to be agile in their legal advice as well as understanding legal operations and identifying risk and threat.

When Litigation or Investigation Hits

Most corporate counsels work reactively, but increasingly, are becoming more preventative. For example, in eDiscovery where email servers may have held three months of data, they are now backing up one year of emails and setting up a process to know where all the data sits. So when litigation hits, corporate counsels can utilise this information to identify and collect all potentially relevant data fast.

For a Royal Commission, when the notice comes out, timelines are strict for producing documents. There are many data sources such as hard documents or emails or just old records. There may be an online portal for customer complaints. Everything relevant must be collected. For large companies like banks, there are numerous data repositories in which early analysis needs to be conducted. Corporate counsel will need to drive the identification of relevant data by sending out questionnaires or interviewing employees or business units. Data preservation notices may need to be issued to ensure all potentially relevant data is not destroyed/purged. This identification phase is often the most critical to ensure counsel is not over collecting unnecessary data and that potentially critical evidence isn't missed.

How does an organisaton prepare for impending litigation or just get their organisational health in order?

One step is data scope mapping. For example, if the financial systems changed in 2015, then it is important to know where the back-ups of the old system are stored and if there were any issues during the migration which might have caused data loss or corruption.

Early Case Assessment (ECA) is important for discovery and litigation, particularly with large data sets, to prescreen the data for relevance and see how the team will leverage analytics and technology.

For large reviews, it's possible to scale up quickly with managed document review teams using the Electronic Discovery Reference (EDRM) model. The EDRM model sets out the steps for a litigation or investigation to present relevant data to the court.

The Role of Information Governance

Applying the EDRM workflow, the team starts with data governance and then moves to review or investigation. The data volume decreases during the process as more relevant data is found.

If engaging law firms, they need to be briefed of all potentially relevant data, having then performed an ECA to decide on litigation or settlement. Australia is starting to embrace governance. It is really about setting up processes to ensure the organisation knows where everything is and the data governance protocols are enforced. Many organisations now have an information governance officer either in their IT, legal or risk team. More corporations are investing to ensure their data is compliant with local law and is preserved or destroyed accordingly.

The quality of information governance protocols significantly impact on the time and cost associated with document review. Ultimately, information governance is an investment with long term benefits.

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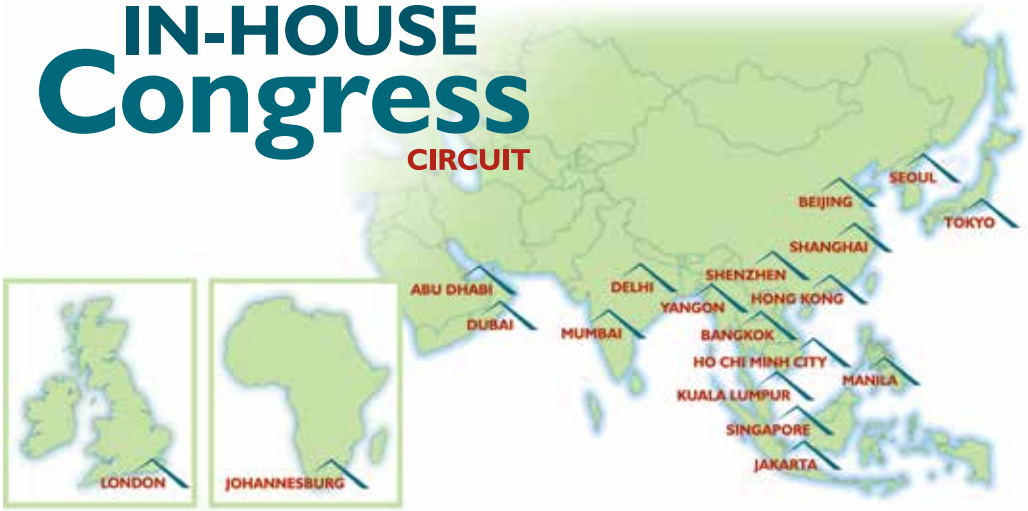

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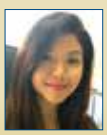

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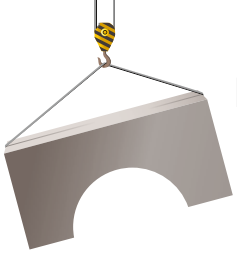


UAE – Dynamism in business and dispute resolution in the Gulf

With a variety of new legislation in the emirates, *Louise Bowmaker* of **Horizons & Co** looks at some of the most significant recent and upcoming changes.

The UAE is nothing if not dynamic and its legal jurisdictions are no exception, particularly the Dubai International Financial Centre (DIFC) and Abu Dhabi Global Market (ADGM). This article gives a roadmap of changes afoot and highlights key recent legal developments.

UAE – Foreign direct investment

The requirement for majority Emirati ownership of businesses is a well-known impediment to foreigners looking to do business in the UAE. Happily for those concerned, in September 2017 the UAE Cabinet announced the Foreign Direct Investment Law (Federal Decree Law No. 18) which paved the way towards a relaxation of the local ownership requirements in certain specified sectors and activities.

> "In its latest legislative output the DIFC has shown its willingness to look beyond England & Wales for inspiration"

A recent update came in the form of a Cabinet official press release on July 2, 2019; a Resolution has been passed approving the "positive list" of 13 sectors which are now eligible for 100 percent foreign ownership. A "negative list" of sectors which will remain subject to the majority local ownership requirement was published last year (oil and gas, banking, utilities, road and air transport, telecoms and medical retail). The positive list is:

- Renewable energy
- Space
- Agriculture
- Manufacturing
- Transport and storage
- Hospitality and food services
- Information and communications services
- Professional, scientific and technical
- Administrative and support services
- Healthcare
- Arts and entertainment
- Construction
- Education

The relevant activities within these sectors remain to be specified. For existing companies, foreign owners looking to secure 100 percent ownership for the first time may wish to consider taking legal advice as to how they might deal with the problem that they are presently minority owners.

UAE – Tax and economic substance reporting requirements

On April 30, 2019, Cabinet Resolutions No. 31 and No. 32 of 2019 introduced certain reporting requirements for UAE businesses. These resolutions form part of international efforts to improve tax transparency.

Resolution No. 31 requires UAE businesses carrying on specific licensed activities to meet economic substance criteria and make an annual report to that effect. Key features include:

- The Resolution applies to UAE businesses wherever they may be based, be it onshore or a free zone including the DIFC and the ADGM
- All UAE companies going forward must file an annual notice stating whether or not they carry on the specific activities in question. A company failing to do so will face fines
- The relevant activities are: banking; insurance; investment fund management; finance leasing; headquarters; shipping; holding company; intellectual property; distribution and service centres
- Entities undertaking the relevant activities must meet the economic substance criteria
- The criteria are: core income generated from activities in the UAE; management undertaken in the UAE; an appropriate number of full-time employees within the UAE; adequate operating expenditure; and adequate assets held in the UAE.

Resolution No. 32 of 2019 requires certain members of multinational groups to file detailed annual reports. Those affected are multinational group parents and affiliates where the parent of the group is not required to file a tax report in its jurisdiction of tax residency. Only those groups with revenues of AED 3.15 billion or more per annum are affected.

The reporting requirements are relatively onerous and include financial reporting extending to profit and loss, income tax paid, declared capital, assets and number of employees.

Louise Bowmaker

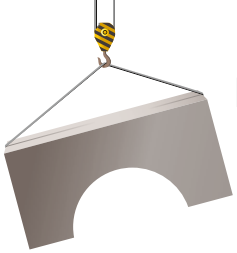
DIFC – Insolvency Law, Law No. 1 of 2019

While Gulf law makers generally are not known for their interest in insolvency legislation, the DIFC has continued to take the lead with Law No. 1 of 2019, effective from June 13, 2019. The Insolvency Law repeals and replaces the previous insolvency law, Law No 3 of 2009. It applies to companies operating in the DIFC.

The DIFC has made its name as a common law jurisdiction largely based upon the laws of England and Wales, and is a well-liked and well-established feature of the UAE legal market. In its latest legislative output, however, the DIFC has shown its willingness to look beyond England & Wales for inspiration and in particular across the Atlantic to the US.

Rehabilitation

Part 3 of the Insolvency Law introduces "Rehabilitation Plans" which may make for familiar reading for US practitioners. In addition to Company Voluntary Arrangements and Receiverships where appropriate and/or desirable, struggling companies now have a new debtor-in-possession option open to them:



- Where directors wish to propose a Rehabilitation Plan, they may apply to the Court and obtain a 120-day moratorium (article 16). They must show only that: (i) the company is or is likely to become unable to pay its debts; and (ii) there is a reasonable likelihood of a successful Rehabilitation Plan being reached between the Company and its creditors and shareholders (article 13)
- A Rehabilitation Nominee will be appointed but the directors will continue to manage the company's affairs, save in cases of fraud, mismanagement etc.
- Creditors may apply to court for relief from the moratorium (article 16) or to terminate it "upon cause shown, including bad faith" (article 23(1))

After a Rehabilitation Plan proposal has been put forward creditors and shareholders will vote. The court must then then sanction the Plan at a post plan hearing (article 27) if certain criteria are met, including:

- The Plan is not unfairly prejudicial to each class of creditors and shareholders and the company's general body of creditors taken as a whole
- The Plan has been approved by each class of creditors and shareholders (>75 percent in value of those voting) or, if a class of interests is impaired under the Plan, at least one impaired class of creditors has voted to accept (this echoes the US Bankruptcy Code, section 1129)
- Any class which has voted against the Plan will receive at least as much value as such class would receive in a winding up
- Any holder of a claim that is junior to the claims of any dissenting class will not receive any distributions pursuant to the Rehabilitation Plan until dissenting creditors have been paid in full.

The court may order such relief as it thinks just and appropriate at the post plan hearing if a creditor or shareholder applies in writing no less than 10 days prior to the post plan hearing.

> "Part 4 of the Insolvency Law makes provision for administration, and it should be read carefully by those tempted to assume this is akin to administration under the laws of England & Wales"

Administration

Part 4 of the Insolvency Law makes provision for administration, and it should be read carefully by those tempted to assume this is akin to administration under the laws of England & Wales. There are two key points of distinction:

- In the DIFC, administrators of a company can only be appointed after a company has filed a Rehabilitation Plan Notification at court. Creditors may apply to appoint (article 32) or the court may appoint of its own motion (article 22(2)) in either case where there is evidence of misconduct on the part of the directors
- The purposes of administration in the DIFC are limited to seeking to approve Company Voluntary Arrangements or Rehabilitation Plans, or undertaking investigations (transactions at undervalues, false representations to creditors, preferences and the like) (article 32(8)).

Cross-border insolvency

Those dealing with foreign and international companies will be pleased to see the adoption in Part 7 of the Insolvency Law of the United Nations Commission on International Trade Law (UNCITRAL) Model Law (with modifications), ushering in a welcome practice of cooperation in cross-border insolvency proceedings.

Part 7 also makes express provision that the DIFC court shall assist foreign courts in the gathering and remitting of assets maintained within the DIFC in relation to insolvency proceedings in that foreign jurisdiction, upon request (article 117(1)). Meanwhile, article 118 provides that a foreign company in the DIFC may be wound up in accordance with the Insolvency Law notwithstanding the company in question may be the subject of insolvency proceedings elsewhere. Perhaps surprisingly, a foreign company can even be wound up if it has been dissolved (and therefore no longer exists) in its place of incorporation.

ADGM courts – Third-party funding

Litigation (and arbitration) funding is hot topic across the Gulf and the ADGM has joined the trend with the publication of its Litigation Funding Rules published on April 16, 2019. The

DIFC made similar express provision for third party funding in 2017, with Practice Direction No. 2 of 2017 on Third Party Funding in the DIFC Courts (Practice Direction).

Key aspects of the ADGM Litigation Funding Rules are as follows:

- A funder's principal business must be the funding of proceedings to which it is not a party. There are also capital requirements; a funder must have qualifying assets of not less than US $5m
- A funder must take reasonable steps to ensure that the litigant has had independent legal advice in relation to the litigation funding agreement ("LFA")
- LFAs must be in writing and set out the scope and amount of funding, timing of payment and steps the funder intends to take to recover payment
- The LFA must state whether the funder is liable to pay any adverse costs or any adverse costs insurance premiums
- The amount to be paid by the litigant must comprise any successful costs order in the proceedings and an amount calculated with reference to the funder's expenditure.

This development follows a welcome trend albeit the capital requirements are likely to be a prohibitively high bar for many". Litigation funders have historically been cautious of the UAE market, largely due to uncertainty as to whether such funding would be permissible under UAE law. Although there has never been an express prohibition of litigation funding in UAE law, it is also true to say it has never been expressly permissible. ADGM now joins the DIFC in giving an unequivocal green light to litigation funders.

Consultation paper – Data protection in DIFC

As is the trend in many countries, the DIFC is looking to bring its data protection laws up to date. Those operating in the DIFC may wish to cast their eye over Consultation Paper No. 6 of 2019 – Data Protection Law. The Consultation Paper was published in June and those wishing to participate in the public consultation period have until August 18, 2019 to do so.

The Consultation Paper aims to bring DIFC standards in line with international developments, including the EU General Data Protection Regulation (GDPR). Among other things, the Consultation Paper introduces data protection officers, principles of accountability and data breach notification, and introduces new sanctions and enforcement.

> "Although there has never been an express prohibition of litigation funding in UAE law, it is also true to say it has never been expressly permissible"

Soon to be effective – DIFC Employment Law

On August 28, 2019, DIFC Employment Law, Law No. 2 of 2019 will come into effect. It will repeal and replace the previous DIFC Employment Law. Highlights include:

- A limitation period for employment claims will be introduced for the first time — six months
- For the first time provision will be made for paternity leave (five working days of paid leave plus time off to attend ante-natal classes)
- Whereas at present employees are allowed a full 60 days paid sick leave a year, this will be amended to 10 days fully paid, 20 days at half pay and the remaining 30 days unpaid
- Pregnancy, maternity and age will be added to the list of protected characteristics and provision is made for remedies in cases of discrimination
- Part-time workers are recognised for the first time with the result that their statutory benefits will be pro-rated.

More to come

It is a genuine pleasure to observe and participate in the ever-evolving UAE legal landscape. As we hope is apparent from this update, the speed and, crucially, quality of change in the UAE makes it an exciting place to be.

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Internet courts in China

Yun Zhao

By Yun Zhao, **The University of Hong Kong**

In view of the rapid development of e-commerce and the skyrocketing number of online disputes, China decided on June 26, 2017 to set up an internet court, with the aim to take advantages of high technologies to facilitate the litigation process. The City of Hangzhou, the provincial capital of Zhejiang Province, being home to many high-tech companies, in particular Alibaba, is naturally the ideal location for the first internet court in China. Hangzhou Internet Court was formally established on August 18, 2017, with the IT support from Gongdao Network Technology. The litigation platform is registered with the domain name ***http://www.netcourt.gov.cn***.

According to the notice issued by the Supreme People's Court on The Proposal of the Establishment of Hangzhou Internet Court, Hangzhou Internet Court has **centralised jurisdiction over the internet-involved civil and administrative cases of the first instance** originally under the jurisdiction of the Basic People's Courts in the city of Hangzhou.

The litigation process shall be operated online, from initiating lawsuits until the release of judgments. The disputing parties may bring the suit to the internet court by registering with their phone numbers. The online system will have access to the user's identity, online transaction records and other relevant personal data. Once the case is accepted, the system will notify the other party who may send in a response in the online platform. The hearing will be conducted online through a video-chat system. It is noted that the trial process is similar to the video-chat function on China's social networking app WeChat. The application of online facilities led to significant reduction of the time and costs for the court trial — the disputing parties can also choose to pay relevant fees through e-wallets including Alipay.

Electronic evidence and electronic signatures are admitted in the internet court. It is noted that blockchain technology has already been used in the trial process. The Supreme People's Court **released a judicial interpretation** by providing that the internet court can rely on evidence provided by the parties that can be authenticated by electronic signatures, time stamps, hash value verification, blockchain and other tamper-proof verification methods.

The same as in other traditional litigation processes, mediation is also included in this online process. The **Trial Procedure of the Litigation of Hangzhou Internet Court** provides that: "The Litigation Platform sets up the process of mediation before litigation….The mediation usually lasts 15 calendar days, and can be appropriately postponed with the consent of both parties….If two parties cannot reach a settlement in the mediation period, the case will enter into the stage of the case-filing for approval and will be submitted to the case-filing judge for review….The parties, who apply for consultation, evaluation, mediation and arbitration instead of litigation, can input the case into the Online Diversified Dispute Resolution Platform, and then resolve the dispute online." A pre-trial mediation will be arranged following the file of a lawsuit; mediation can be conducted through the internet, telephone or videoconference.

The initiative to set up the first internet court was **a great success**. Within one year from its establishment (from August 2017 to August 2018), the Court accepted 12,103 cases and concluded 10,626 cases; more than 88 percent of cases were filed online and all cases were heard online with the parties' agreement; more importantly, the efficiency in the litigation process is notable, with average time of online hearings being 28 minutes and average number of days to conclude a case being 41 days. The Supreme People's Court **further released the first batch of 10 typical internet-related cases** on August 16, 2018 to unify relevant standards and provide useful guidance for future internet-related cases.

Modelling after this first internet court, two other internet courts were established in Beijing on September 9, 2018 and Guangzhou on September 28, 2018 respectively. Similar to the Hangzhou Internet Court, these two courts serve as the level of basic courts within the jurisdiction of their own cities. The appeal will be dealt with by the intermediate courts or intellectual property courts (for online copyright ownership and infringement cases and domain name dispute cases) within their respective jurisdictions.

After the establishment of the other two internet courts in China in 2018, the Supreme People's Court unified rules on court jurisdiction by issuing the **Provisions on Several Issues Concerning the Trial of Cases by Internet Courts**. Apart from confirming the status of the internet courts at the level of basic people's courts, this document lists 11 types of cases under the internet courts' jurisdiction, ie:

(1) Online shopping contracts through e-commerce platforms;
(2) Network service contracts which are both signed and performed on the internet;
(3) Financial loan contracts or small loan contracts which are both signed and performed on the internet;
(4) The ownership of the copyrights or neighbouring rights of the works published on the internet for the first time;
(5) Infringements upon the copyrights or neighbouring rights of the works published or disseminated online through the internet;
(6) Internet domain name ownership, infringements and contracts;
(7) Infringements upon others' personal rights, property rights and other civil rights and interests on the internet;
(8) Product liability disputes by the products purchased through e-commerce platforms due to product defects;
(9) Internet public interest litigation cases filed by procuratorial organs;
(10) Administrative disputes arising from the administrative actions taken by administrative organs, such as Internet information service management, internet commodity trading, and related service management;
(11) Other internet civil and administrative cases the jurisdiction over which is designated by the People's courts at higher levels.

China leads Internet litigation around the world by setting up three Internet Courts. The successful implementation proves that the wider use of high technologies in the litigation process shall improve the litigation efficiency and reduce costs, which serves as important case studies for extending the model of Internet Courts to other parts of China, and beyond.

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SCIA's innovation: Optional appellate arbitration in China

A substantive appellate mechanism constitutes a beneficial complement to the finality of single-instance arbitration.

By **Shenzhen Court of International Arbitration**

The high efficiency brought by the finality of arbitral awards in one-instance procedures is one of the most important considerations when choosing arbitration to settle disputes. Article 9 of the Arbitration Law of the People's Republic of China (hereinafter referred to as China's Arbitration Law) provides that: "An arbitral award shall be final. If a party petitions for arbitration to an arbitration commission or institutes an action in a people's court regarding a dispute for which an arbitral award has been rendered, the arbitration commission or the people's court shall not accept the case." This provision on the principle of "finality of arbitral awards in one-instance procedures" ("一裁終局", hereinafter referred to as the "finality of single-instance arbitration") guarantees the efficiency and res judicata effect of arbitration as a method of dispute resolution.

However, as China's international trade and outbound investment become increasingly frequent and sizable, some domestic and foreign market players have started to worry about the finality of single-instance arbitration when they choose arbitration for dispute resolution — that is, once an erroneous award is made, there is no chance to obtain remedies. Based on domestic and overseas legislation, foreign experience and pursuant to its arbitration rules, Shenzhen Court of International Arbitration (SCIA) has responded to these concerns by taking the lead in creating an optional appellate arbitration mechanism within the existing legal framework of China, which constitutes a helpful complement to the regime of finality of single-instance arbitration in China.

I. EXPLORING THE NECESSITY AND FEASIBILITY OF AN OPTIONAL APPELLATE ARBITRATION MECHANISM

(I) Finality of single-instance arbitration is not an absolute advantage of international commercial arbitration

According to a survey initiated by Queen Mary University of London since 2006, a certain proportion of respondents say that the lack of an appellate mechanism is a flaw of the arbitration system and one of

the factors that make them reluctant to choose arbitration. According to its 2018 arbitration survey report, only 16 percent of the respondents considered finality as a valuable feature of international arbitration.

> "The advantage of the finality of single-instance arbitration lies in simplified and accelerated procedures as well as reduced costs"

The advantage of the finality of single-instance arbitration lies in simplified and accelerated procedures as well as reduced costs, which is consistent with the pursuit of profit and efficiency in commercial activities. However, Gary Born indicated in his book International Commercial Arbitration that "the non-appealability of an arbitral award excludes appellate review and thus significantly reduces litigation costs and avoids prolonged proceedings; on the other hand, this also means that a wrong award might not be corrected". Or as JK Thomas said at the Seventh Annual Transnational Commercial Arbitration Workshop in 1996: "Speed and finality can be the advantage of arbitration only when you win a dispute. If arbitrators make a material mistake, speed and finality will not be an advantage anymore."

The growth of international trade means that disputes often involve a huge amount of money. Understandably, the parties to such cases have a much higher requirement for substantive justice than for efficiency, and have expressed concerns about the potentially significant risk caused by the finality of single-instance arbitration and the lack of appealability, and that errors in arbitral awards will be difficult to be corrected. As in most of developed countries and regions, judicial review of arbitral awards generally involves no substantive issues in China. Therefore, the Chinese judicial review mechanism is unable to address the parties' concerns about substantive errors in arbitration.

(II) Finality of single-instance arbitration is not an absolute regime or principle in commercial arbitration

A general analysis of the legislation on arbitration in many jurisdictions shows that the finality of single-instance arbitration is not absolute. For instance, Article 58 of the UK Arbitration Act 1996 provides that: "Unless otherwise agreed by the parties, an award made by the tribunal pursuant to an arbitration agreement is final…. This does not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Part." Article 1050 of the Dutch Code of Civil Procedure 1986 provides that: "An appeal from the arbitral award to a second arbitral tribunal is possible only if the parties have agreed thereto." Similar provisions can also be found in the Hong Kong Arbitration Ordinance and Decree-Law n. 29/96/M of Macau SAR. In Singapore and France, an arbitral award is also appealable in practice. The above arbitration-related legislation and practices indicate that finality of single-instance arbitration is neither an absolute regime or principle of international commercial arbitration nor a basic characteristic or inherent nature of international commercial arbitration procedures.

II. CHINA SHOULD DRAW ON FOREIGN EXPERIENCE TO ESTABLISH AN OPTIONAL APPELLATE ARBITRATION MECHANISM

Arbitration stems from the market and should serve the market and meet the demand of market players. Given that the parties in international commercial arbitration have a real desire to leverage the absolute advantage of arbitration in neutrality and privacy, and avoid risks from finality of single-instance arbitration, China should explore an optional appellate arbitration mechanism into its arbitration system as a useful supplement to the finality of single-instance arbitration.

At present, there are different modes of arbitration appeals in the world. By different entities, arbitration appeals can be categorised into external appeal (to courts) and internal appeal (to arbitration institutions or arbitration tribunals). In view of the facts that only the finality of single-instance arbitration is recognised under China's Arbitration Law and Chinese courts' human resources are limited in the face of a large number of cases, it is unrealistic to explore an external appeal mechanism under which appeal petitions are filed to courts. Since the Chinese courts have supported arbitration and arbitrators are usually experts, it is feasible to attempt to establish an internal appeal mechanism.

"Arbitration stems from the market and should serve the market and meet the demand of market players"

(I) Key modes of internal appeal in foreign jurisdictions

1. Re-arbitration after annulment
   This mode is adopted by the International Centre for Settlement of Investment Disputes. Either party may petition for annulment of an award which is deemed to be under any of the circumstances specified in Article 52 of the Washington Convention. Once such circumstance is found to exist, the award will be annulled and a new arbitral tribunal will be constituted to conduct arbitration.
2. Agreed appellate arbitration
   This mode is adopted in the arbitration rules of the American Arbitration Association, Spanish Court of Arbitration and International Institute for Conflict Prevention & Resolution, ie, the parties may agree to file an appeal against an arbitral award to such arbitration institutions.
3. Implied appellate arbitration
   This mode is adopted in the arbitration rules of the European Court of Arbitration, International Arbitration Chamber of Paris, Grain and Feed Trade Association, Federation of Oils, Seeds and Fats Associations, Coffee Trade Federation and London Rice Brokers Association, ie, the parties have the implied right to file an appeal against an arbitral award to such arbitration institutions in accordance with their rules.

(II) Innovative practices of SCIA

Based on the above modes and having regards to the current state of judicial review of arbitral awards in China, SCIA has, in accordance with the relevant provisions of the laws of China and the New York Convention, pioneered an internal optional appellate arbitration mechanism in China through its arbitration rules, under which mechanism the parties may, as agreed, submit a case for which an arbitral tribunal has rendered an award to SCIA for re-hearing and rendering of a final award by a new arbitral tribunal, ie, an appellate tribunal. This is a better solution suitable to arbitration practices in China for the following reasons:

> "The optional appellate arbitration procedure is a substantive appellate mechanism with respect to the original awards established within the arbitration institution"

1. It does not violate China's Arbitration Law. The application of the optional appellate arbitration procedure is conditional upon the fact that "it is not prohibited by the laws of the place of arbitration". In other words, such procedure may not apply unless the arbitral procedure is governed by the laws of the US, the UK, France, Hong Kong or other jurisdictions where an appeal within the arbitration process is permitted or not forbidden. If China's Arbitration Law is the governing law, such procedure is inapplicable.
2. It expands specific methods for resolution of disputes through arbitration under the existing legal framework, satisfies the actual demand of market players for substantive justice and reflects the high-level flexibility of arbitration.
3. It is designed to respect the principle of "party autonomy".
4. It does not violate the principle of "finality of arbitral awards". The finality of an arbitral award is

opposed to the limited scope of judicial review of the arbitral award, ie, the scope of judicial review is limited to jurisdictional, procedural justice and public order issues and does not cover substantive issues. The optional appellate arbitration procedure is a substantive appellate mechanism with respect to the original awards established within the arbitration institution. Such arrangement gives the parties the right and chance to obtain a secondary remedy and does not constitute a breach of or a challenge to the finality of arbitral awards.

III. APPLICATION OF SCIA'S OPTIONAL APPELLATE ARBITRATION PROCEDURE

(I) Conditions for application of the procedure

1. Such procedure is not prohibited by the laws of the place of arbitration applicable to the case;
2. There is an agreement under which either party may file an appellate arbitration petition; and
3. The case involves an amount in dispute of more than RMB 3 million and is not subject to the expedited procedure.

(II) Requirements for initiation of the procedure

1. There is an arbitration agreement between the parties which contains the right to petition for appellate arbitration;
2. The appellant has petitioned for an appeal within 15 days upon receipt of the original award;
3. The appellant needs to submit a written appeal petition which contains the required information; and
4. The appellate arbitration fees are paid in advance within the required time limit.

(III) SCIA is the body that accepts an appeal petition and decides whether to commence and proceed with the appellate arbitration procedure.

(IV) The appellate arbitral tribunal responsible for appellate arbitration is composed of three arbitrators, including one presiding arbitrator. In order to maximally maintain the neutrality and impartiality of the appellate arbitral tribunal, none of its members will be selected from the original arbitral tribunal.

(V) Upon being rendered by the appellate arbitral tribunal, an appellate arbitral award will be final and binding upon the parties, in lieu of the original award. Thus, the abuse of the parties' right to appeal can be avoided, and both fairness and efficiency will be taken into account.

> "The finality of single-instance arbitration is not an absolute principle or advantage of international commercial arbitration"

IV. CONCLUSION

In summary, the finality of single-instance arbitration is not an absolute principle or advantage of international commercial arbitration. As an active response to the objective demand of market players, SCIA has, based on foreign experience, creatively designed a substantive appellate mechanism within the arbitration process under the existing legal system and framework, which constitutes a beneficial complement to the finality of single-instance arbitration. In this way, SCIA has blazed a realistic trail in optimising the combination of the advantages of arbitration such as neutrality, impartiality, efficiency and wide recognition and enforcement at international level, broadened the range of specific solutions to settlement of disputes through arbitration, and improved arbitration practices in China.

SCIA 深圳国际仲裁院 SHENZHEN COURT OF INTERNATIONAL ARBITRATION
www.scia.com.cn

Introducing Chinese arbitration to the world

Through open dialogue, **BAC** is developing the knowledge and expertise to become a leading arbitration hub among the international arbitration community.

As a leading arbitration institution in China, the Beijing Arbitration Commission / Beijing International Arbitration Center (BAC) has the responsibility to facilitate mutual understanding between Chinese arbitration professionals and their international counterparts, and makes every effort to safeguard the rules of commercial activities and protect the interests of practitioners and parties all over the world.

As part of this mission, the BAC has been providing insight into China's arbitration system through events around the world since 2013, with summits on commercial dispute resolution in major international arbitration hubs including London, Paris, The Hague and Vienna. This year, for the first time, the BAC went to North America to host events in New York, San Francisco and Toronto.

The original and continuing intention of the summit series was to promote mutual exchange, understanding and trust between Chinese and foreign legal practitioners by establishing a platform for professional dialogue.

New York Summit

The 2019 New York Summit on Commercial Dispute Resolution in China, jointly hosted by the BAC, the International Centre for Dispute Resolution of American Arbitration Association (AAA-ICDR) and the New York International Arbitration Center (NYIAC), was successfully held on June 26, 2019.

In his opening address, Chen Fuyong, deputy secretary general of the BAC, expressed heartfelt thanks to the co-hosts and those who provided assistance and support to the summit, while Luis Martinez, vice-president of the AAA-ICDR and Rekha Rangachari, executive director of the NYIAC, fully affirmed the significance of the launch of the annual report by the BAC, mentioning that, China has a huge demand for international arbitration. This, on the one hand, is due to the steady growth of Chinese overseas investment, and on the other hand, benefits from the increasingly close economic cooperation between China and the world. The publication of the annual report provides a favourable platform for arbitration industry peers to strengthen exchanges, so that foreign practitioners can learn more about commercial arbitration in China, and get more familiar with the Chinese legal environment.

The event included sessions themed around international construction mega-projects in China, energy and investment in international arbitration, future trends in international arbitration, IP and entertainment international arbitration, and financial dispute resolution.

> "The increasingly friendly arbitration environment in China has provided a strong guarantee for the enforcement of foreign-related arbitration awards"

The closing address was delivered by Nigel Blackaby, US partner of Freshfields Bruckhaus Deringer. He mentioned that dispute resolution has accompanied the development of human society since ancient times. In ancient China, justice minister Gao Yao asked a goat-shaped magical animal with a single horn called Xiezhi to indicate the guilty party. In midieval England, the disputing parties referred to the speed of eating of chickens they selected to decide who wins. Both approaches shared the similar original idea of arbitration, where the disputing parties choose to settle their dispute in a mutually agreed way. This idea has been inherited by the basic model of modern commercial arbitration — parties to the dispute select professionals to determine the cases, and are bound by the results of arbitration. Blackaby then fully acknowledged the rapid development of Chinese arbitration in recent years and the remarkable achievements of the BAC on the road to internationalisation. He said that the increasingly friendly arbitration environment has provided a strong guarantee for the enforcement of foreign-related arbitration awards. He believed that with the implementation of the Belt and Road Initiative, Chinese arbitration institutions will be trusted and selected by more and more international parties in the future. At last, he congratulated the event on its complete success.

Chen Fuyong

San Francisco Summit

The 2019 San Francisco Summit on Commercial Dispute Resolution in China, jointly hosted by the BAC, the Judicial Arbitration and Mediation Services (JAMS) and the Silicon Valley Arbitration & Mediation Center (SVAMC), was successfully held on June 28, 2019.

At the beginning of the summit, Chen Fuyong delivered an opening address to express heartfelt thanks to the co-hosts and supporting organisations for their efforts and support in setting the agenda, inviting speakers and event promotion. He hoped that the attendees could fully participate in and enjoy the discussion at the summit, so as to better cope with challenges of the future and safeguard the stability of international trade and business rules based on the exchange of different views.

Chris Poole, president and CEO of JAMS, said that the discussions and exchanges at the summit would be of high practical significance in light of the promotion of international arbitration from a series of new legal policies, such as foreign lawyers being allowed to be engaged in international arbitrations in California, as well as the strong trade connection between China and California.

> "Although China and the US are now facing some economic and trade problems, it is clear that these problems can be resolved through dialogue"

Based on his experience and observation in China, Gary Benton, founder of the SVAMC, said that China has grown significantly over the past 40 years from a manufacturing power to a leader in technology and innovation, and has made remarkable achievements in such areas as telecommunications, artificial intelligence and energy. Although China and the US are now facing some economic and trade problems, it is clear that these problems can be resolved through dialogue, and the BAC summit is just part of such dialogues. Finally, Benton said: "We don't judge countries by their richest and their rulers, we judge a country by their people. China has a diverse, wonderful, rich culture, a culture that we can learn from. And that is what I hope we will be doing today and in the years ahead."

In his opening address, Yang Yihang, commercial counsellor of the PRC Consulate-General in San Francisco, said that as the two largest economies in the world, the economic and trade relations between China and the US are very important said that the two countries can keep strengthening their dialogues and win-win cooperation, and that the Commercial

> "An effective system to solve international commercial disputes plays a key role in the smooth running of international trade and commerce"

Office of the Consulate-General will continue providing service and support to the economic and trade exchanges.

The five panel discussions included sessions on innovative practice and guiding policy in commercial arbitration and mediation, new trends of resolving technology and patent-related disputes, the impact of regulatory changes on entertainment sector in the PRC, restructuring in China's capital markets and selected issues of energy and construction dispute resolution.

The closing speech of the San Francisco Summit was delivered by Cedric Chao, founder of Chao ADR and former head of the international arbitration practice at DLA Piper. Looking back at snapshots in time from the 1980s to now, Chao shared what he has seen as the growth of the Chinese legal system out of nothing and its rise on the international stage. Chao concluded by saying that he expected everyone at the summit could continue to strengthen exchanges, clear up misunderstandings, grow together and jointly meet the challenges of the future.

Toronto summit

BAC's 2019 Toronto Summit was hosted on June 24, 2019 in cooperation with Arbitration Place and ADR Chambers, and was designed to strengthen the ties between dispute resolution communities in China and Toronto, with prestigious speakers from China coming to Toronto to share with Canadian dispute resolution practitioners their insight on new trends and challenges in a wide range of fields of commercial dispute resolution in China, including commercial arbitration, commercial mediation, construction, energy, investment, finance, intellectual property and entertainment. Along with the visiting Chinese speakers, the summit featured leading Canadian arbitration practitioners.

At the summit, BAC signed a memorandum of understanding (MoU) with Arbitration Place, which operates Canada's premier arbitration hearing facilities in Toronto and Ottawa, reflecting the parties' joint dedication to cooperate, and to assist in the better understanding, development and promotion of each others' services and the use of commercial dispute resolution both generally and between Chinese parties and/or Canadian parties.

Under the terms of co-operation set out in the MoU, Arbitration Place and BAC, when appropriate and subject to special arrangements, will provide facilities and services for arbitrations being heard in Canada or in Beijing, provide facilities and services for the organisation of events in Canada or in Beijing, and may, when appropriate, consult the other for assistance in recommending arbitrators or other neutrals.

Outlook

An effective system to solve international commercial disputes plays a key role in the smooth running of international trade and commerce. By the end of the three summits, as Thomas Stipanowich, BAC arbitrator and law professor and associate dean of Pepperdine University School of Law, commented in his remarks: "We are all children of our own cultures," we witnessed legal systems of different countries that are deeply characterised by different cultures and legal traditions. Meanwhile, through dialogue, we are delighted to find more similarities and consistency in such different legal systems. The dialogues between China and the world will continue, and so will the exploration and practice of the BAC. You are welcome to pay attention to and participate in the 2019 Asia Summit on Commercial Dispute Resolution in China that is to be held in this October in Singapore, Kuala Lumpur and Hong Kong.

Maxwell Chambers expands dispute resolution hub

Asian-Mena Counsel spoke to *Philip Jeyaretnam*, Chairman of **Maxwell Chambers**, about the opening of Maxwell Chambers Suites and how it will affect dispute resolution in the region.

Asia-mena Counsel: Maxwell Chambers opened in 2010. What was the aim behind the establishment of the institution and how has it progressed during the past decade?
Philip Jeyaretnam: Maxwell Chambers was established to enable international dispute resolution institutions and bespoke hearing facilities to be housed together — it was the first time an integrated facility of this type was built and a game changer for the arbitration community.

When we opened in 2010, we were nominated by the Global Arbitration Review as one of the "Best Developments" in the arbitration industry. We have grown from strength to strength since then and continue to set new benchmarks.

AMC: The new Maxwell Chambers Suites will be launched on August 8 this year. What has driven the need for expansion?
PJ: Singapore has taken the lead as a top destination of choice for commercial dispute resolution in Asia. Based on the 2018 International Arbitration Survey, Singapore is the top arbitration seat in Asia and third in the world after London and Paris. Singapore is the only Asian jurisdiction to be ranked within top four by the rest of the world (except Latin America).

Singapore's flagship arbitral institution, Singapore International Arbitration Centre (SIAC) has also seen strong growth in caseload over the years. The SIAC has seen a healthy growth in cases handled, recently surpassing that of the London Centre for International Arbitration and the Hong Kong International Arbitration Centre.

Because of the growing demand for dispute resolution work in Singapore, we hold many more hearings at Maxwell Chambers; our hearing rooms are full on some days. There are also many more international dispute resolution institutions and firms that want to establish a base in Singapore to tap into the growth of Asia.

The Maxwell Chambers Suites — which will be officially open on August 8 this year — is thus a timely addition. It will triple our current capacity and allow us to meet the growing demand. The new extension will be dedicated to housing dispute resolution institutions and firms, while the current building will house the hearing facilities. The two buildings will be connected by an overhead link-bridge.

AMC: How is the response to the new Maxwell Chambers Suites so far? What can we look forward to?
PJ: The legal community around the world has shown strong interest. Maxwell Chambers Suites will house at least 11 international institutions, as well as 20 disputes firms from 11 countries. Among the 11 international institutions, five will have their case management offices here, including the International Chamber of Commerce's International Court of Arbitration and the Permanent Court of Arbitration. Maxwell Chambers Suites will have the highest concentration of case management offices in the world, and we will see more high-value cross-border disputes heard in Singapore.

We will also have six specially designed executive suites for short-term rental to cater to arbitrators, mediators and counsel who are based overseas but fly in and out of Singapore for dispute resolution. We will provide a secure office space, staffed by a secretariat that is familiar with the needs of dispute resolution work.

AMC: Singapore has been rising up the ranks of international dispute resolution hubs. What is behind its success?
PJ: Parties choose Singapore for many reasons.

First, Singapore's neutrality and strong commitment to rule of law makes us particularly attractive to foreign parties involved in cross-border disputes. It is a more trusted and stable choice for businesses in a global climate of tension and uncertainty.

Second, Singapore offers a comprehensive suite of international commercial dispute resolution services. This includes international commercial arbitration, international commercial mediation and international commercial litigation. Under each option, users can find institutions with renowned panels of local and international arbitrators, mediators or judges.

Third, Singapore has a strong pool of dispute resolution firms. About 40 of the top 100 international law firms by revenue are based in Singapore.

Fourth, there is an open regime for the practice of international commercial arbitration — for example, parties engaging in arbitration in Singapore have the

Philip Jeyaretnam

Maxwell Chambers Suites

freedom to engage lawyers of any nationality and to use any governing law. There are work pass exemptions for arbitration and mediation services, and tax-exemptions for non-resident arbitrators and mediators.

And finally, Singapore provides world-class infrastructure for dispute resolution hearings at Maxwell Chambers.

AMC: What is Singapore doing to maintain this position?

PJ: As business needs change, Singapore proactively updates its legislative framework to ensure that it remains relevant and stays ahead of the competition. For example, in 2017, Singapore amended its laws to allow for third-party funding in international commercial arbitration. It also enacted the Mediation Act to enhance the enforceability of mediated settlement agreements.

Singapore is also now taking the lead in developing international commercial mediation, to complement the lead it has established in international commercial arbitration. Singapore took the lead and contributed directly to the development of the Convention at the Uncitral.

On August 7, 2019, one day before the opening of the Maxwell Chambers Suites, Singapore will be hosting the signing ceremony for the new UN Convention on International Settlement Agreements Resulting from Mediation, also referred to as the Singapore Convention on Mediation.

The Singapore Convention on Mediation is the missing piece in the international dispute resolution enforcement framework. For litigation, we have the Hague Convention on Choice of Court Agreements. For arbitration, there is the New York Convention. The Singapore Convention on Mediation will enhance cross-border enforceability of mediated settlement agreements. Businesses will benefit with greater certainty and assurance.

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