asian-mena Counsel

Volume 17 Issue 3, 2020

Projects & Energy

PPPs • Transport • Oil & Gas • Renewables

Plus:

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Sanjeev Gupta's acquisition of Adhunik

Redactions
How to ensure there are no nasty surprises

Lost In Translation
We speak to intercultural consultant Baozhen Shi

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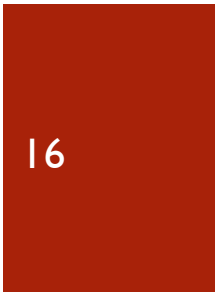
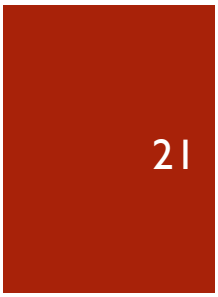
Key legal developments affecting the In-House Community along the New Silk Road





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Lewis Sanders Insider

In-house Q&A with Marco Chung

Do top tier organisations always favour candidates from well-known brands? Should you make the move in-house from a law firm? Our Director Chris Chu sat down with a senior lawyer from Morgan Stanley, Marco Chung, to tackle some burning questions that young lawyers may have before making that in-house move.

by **Chris Chu**
Director at Lewis Sanders

Marco Chung
Regional Head of Legal (Private Funds; IBD M&A) at Morgan Stanley
Marco was awarded M&A Individual of the Year at the 2019 Asia Pacific Counsel Awards and was listed in Legal 500's 2019 and 2018 GC Powerlist for Hong Kong. He regularly speaks at various M&A forums, including most recently at the ALB Asia Cross Border M&A Forum, IFLR M&A Forum (chairing the Emerging Markets panel) and Fund Finance Synopsium in Asia.

C: Chris M: Marco

Visit our website to read the full interview.

C: Hi Marco, can you tell us a bit about yourself?

M: Sure. I'm currently at Morgan Stanley. I am the Regional Head of Legal for Private Funds, so that includes the PE funds, infrastructure funds, real estate funds, and fund of funds. I'm also the regional Head of Legal for Investment Banking M&A.

C: You've worked at Slaughter and May and Morgan Stanley – both top tier organisations. Do you see any similarities in their leadership culture?

M: They both have a very flat leadership culture, everyone is highly approachable. You can easily go into the most senior person's room to chat about work, the weekend, etc. So I enjoy working at both. When I was at Slaughter and May, most of the people there were "home grown", so we grew up together and spent a lot of time together. Everyone knew each other well.

C: Candidates often feel top tier organisations will naturally favour candidates who are already at other top tier organisations. What's your advice for lawyers who aren't with a top tier brand yet and trying to make the step up?

M: I wouldn't approach it that way. For example, the type of deals we do at Morgan Stanley are very, very varied, and so we need different skillsets and people of diverse backgrounds. Obviously, whether a person can discharge their duties appropriately is super important. But assuming that part is sorted, attitude then becomes equally important. Having the right sort of pedigree is great, but having a can-do attitude is even more critical.

C: The world has changed a lot in the last 10 years and so different career paths and industries have popped up e.g. tech companies, start-ups, social enterprises. What do investment banks still have to offer that's different from all these other options now?

M: Firstly, you'll be able to work with top tier clients, which is demanding and gives you exposure to very good quality work, so this gives you really good training. Number two, your peers or colleagues also tend to have very good qualities, and so you'll be able to learn from them. And third, while you are there you can develop some fantastic contacts – and you carry those for the rest of your life.

C: For someone who's thinking about making the move from a law firm to an in-house role but is a bit unsure, what would you advise them?

M: Well, you need to know what you want, and why you're moving, and that you're not making the move just because everyone else at 5 PQE is moving in-house. For me, it was very simple. I wanted to do more deals and going to Morgan Stanley to do PE gave me a lot more deal exposure, not just Hong Kong law and English law deals, but also deals in the PRC, Thailand, Cambodia, Australia, Korea, and so on. You need to know what you want, and whether a particular in-house role will satisfy that.

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3-6 Years | HK/SH/BJ

Top US asset manager is seeking a mid-level legal counsel for its Hong Kong and China team. You will advise on PRC-related asset management legal matters and deal with the relevant regulators. PRC qualification and business level Mandarin skills are essential. Excellent Prospects. AC8269

Head of Trusts and Wealth
12+ Years | Hong Kong

Well-known International bank seeks a senior lawyer to head up the legal function that supports the private wealth, trusts and family succession business lines. Deep, technical knowledge of the area and the ability to work with a range of stakeholders essential. Overseas candidates will be considered. AC8268

Financial Services
15-20 Years | Taipei

Well-known bank is looking for a General Counsel to head up its legal team in Taiwan. You will oversee legal support for the bank's business lines and manage the bank's legal and reputational risks. Prior experience at other top tier financial institutions essential. Ability to read and write in traditional Chinese required. AC8174

Private Practice

Litigation
Partner | Hong Kong

US firm is expanding its litigation team with the hire of an additional partner. Candidates should have strong commercial litigation experience and experience working on cross border disputes. Great opportunity to join a growing firm with a very strong client base. Mandarin language skills essential. AC8278

Funds
2-4 Years | Hong Kong

Opportunity to join the funds team of a leading offshore firm in Hong Kong. This role will offer exposure to advising on the structuring and restructuring of investment funds, often in relation to private equity transactions. You must be qualified in Hong Kong, the UK or Australia. Mandarin is not essential. AC8275

Corporate Finance
3-6 Years | Hong Kong

Excellent opportunity for mid-level associates to join the corporate finance team of a leading International law firm in Hong Kong. This role will focus on HK IPO work and experience in prospectus drafting is an advantage. Mandarin is essential. AC8259

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Community issues and resource nationalism adding pressure on the mining industry

As if mining by its very nature is not difficult enough from a technical, financial, environmental and labour point of view, African mining companies face added pressure due to increasing community-related obligations and the general tendency of increased or creeping resource nationalism.

However, one should exercise caution in believing that these issues are unique to Africa, as the same tendencies apply in many other countries, including in South America and Russia. Mining often occurs in rural remote areas with indigenous communities. There is also a tendency for communities to mushroom around mines once a project develops due to potential job opportunities, offshoot industries and procurement for the mining operations.

There are two prime examples in South Africa where issues with the host community have resulted in delays. The first involves the Xolobeni mineral sands project of Transworld Energy and Mineral Resources (TEM), an Australian mining company. Ultimately the disputes with the Xolobeni community resulted in a high court ruling.

The applicants relied on the Interim Protection of Informal Land Rights Act (IPLRA) and the requirement that their consent is needed before they may be deprived of their land. They argued that such consent must be fair and informed. The Department of Mineral Resources did not ensure the applicants had the community's consent before granting a mining right. The applicants also relied on international laws for their contention that mining rights may only be granted with the traditional community's consent. The court held that having regard to the overall purpose of the IPLRA and the Mineral Petroleum Resources Development Act (MPRDA), and given the status of customary law under the South African constitution, there was no reason why the two Acts cannot operate alongside one another and that the MPRDA does not trump the IPLRA. The court held that the Minister lacked any lawful authority to grant a mining right to TEM without complying with the IPLRA.

> "Many mining operations worldwide have been detrimentally affected by the state's desire that mineral reserves and resources are used to benefit the country and its population as a whole, rather than the need for returns on capital investment"

In a recent 2018 Constitutional Court case, *Maledu v Itereleng Bakgatla Resources*, the court also considered that the IPLRA and the MPRDA should be interpreted and read harmoniously and that communities have a right to decide what should happen to their land, and must consent before they may be deprived of their land.

A further issue is the resettlement of communities on land over which a mining right is granted. An example of a successful relocation in South Africa is the Mogalakwena Mine, one of the most profitable platinum mines in the world. The biggest issue was the relocation of graves and an improvement in living standards.

Many mining operations worldwide have been detrimentally affected by the state's desire that mineral reserves and resources are used to benefit the country and its population as a whole, rather than the need for returns on capital investment. Creeping nationalism is often used as a political tool to woo the electorate.

This drive towards nationalism is most often achieved by changes in legislation. For example, the Democratic Republic of Congo recently amended its legislation to extensively increase royalties, taxes and other obligations, provide for the designation of strategic metals and substantially increased royalties, and abolish clauses in mining agreements giving fiscal stability for 10 years.

Tanzania has substantially revised its mining code by imposing extra obligations, increased royalty rates and increased government participation. Local content regulations were also imposed.

Zambia and Kenya have also increased royalties, increased state participation and imposed extra obligations to the benefit of the state.

Resource nationalism is a hot topic in South Africa. Radical change was brought about in 2004 by the MPRDA, which converted the private mineral rights system into a state licensing system with state custodianship over mineral resources.

South Africa also introduced the concept of historically disadvantaged South Africans (HDSA) and a mining charter to incorporate HDSAs into the mining industry, including in respect of ownership thereof. From March 1, 2010, royalties are payable to the state on all mining operations and draft amendments to the mining legislation proposed restrictions on exports and requirements to beneficiate. At this stage there is no state participation in mining projects, but there is a state mining company which is more involved in mining operations than ever before.

Many African mining operations are successful notwithstanding the burdens imposed upon mining companies. However, a balancing act must harmonise the interests of the state, the community and the mining company. Often this delicate balance is disturbed by the actions of one or more of the stakeholders and then often to the detriment of all concerned.

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A top-tier regional law firm in looking for a partner to join their thriving debt capital markets team in Singapore. The ideal lawyer should be UK or US qualified with good debt capital markets experience. (IHC 18170)

PARTNER, FUNDS — SINGAPORE — 12-18 PQE

A top-tier regional law firm is looking for a partner to further develop their funds practice and head the team in Singapore. The ideal lawyer should be Singapore, Hong Kong or UK qualified with good private funds experience. (IHC 18151)

SENIOR LEGAL UNDERWRITER, FINANCIAL SERVICES — SINGAPORE — 8-15 PQE

Global financial services firm is looking for a senior disputes lawyer to join their team in Singapore. The lawyer will review and advise on cross border dispute matters across Asia Pacific. The ideal candidate should be admitted to the Singapore Bar with commercial disputes and arbitration experience. (IHC 18236)

SENIOR COMPANY SECRETARY — HONG KONG — 10+ PQE

Leading listed property developer looking for a senior company secretarial candidate with extensive company secretarial and corporate governance experience. Prior experience in the property sector is useful but not essential. (IHC 18302)

REGIONAL COUNSEL — SINGAPORE — 7-10 PQE

Global healthcare company is looking for a Regional Counsel to provide support to their business across ASEAN, India and Australia. The ideal candidate should be qualified in a commonwealth law jurisdiction or PRC with good corporate experience. Due to the nature of work, proficiency in Mandarin being able to speak and read in Chinese is required. (IHC 18234)

PRIME BROKERAGE — HONG KONG — 8+ PQE

International investment bank seeks a lawyer with prime services experience to take responsibility as the lead adviser to its prime business. Experience of prime brokerage agreements, ISDA's and global swap agreements important. Asia Pac role. No language requirements. (IHC 18304)

CORPORATE COUNSEL — SINGAPORE — 4-7 PQE

Major US listed company in the IT space is looking for a legal counsel to join them and to support their business across the APAC region on a broad range of corporate matters. The ideal candidate should be qualified in Singapore, Australia or the UK with good corporate commercial experience. (IHC 18106)

LEGAL COUNSEL — HONG KONG — 2-7 PQE

European Bank is looking for a legal counsel to join their Global Markets Equities team. Candidates should have worked in-house or in an international law firm and have structured products and OTC transactions experience. This position requires Chinese (Mandarin) language skills (both written and spoken). (IHC 18305)

LEGAL COUNSEL — SINGAPORE — 3-5 PQE

An established European bank is looking for a legal counsel to join its legal team in Singapore to support their business in Singapore, Hong Kong and Australia. The ideal candidate should be qualified in a commonwealth law jurisdiction with good banking and finance experience. (IHC 18278)

JUNIOR STRUCTURED FINANCE LAWYER — SINGAPORE — 2-5 PQE

Top tier regional bank is looking for a lawyer to join their legal team in Singapore and work closely with group's business across Asia Pacific. The ideal candidate should be Singapore or Commonwealth law jurisdiction qualified with experience in asset or structured finance transactional work. (IHC 18244)

COMPLIANCE — HONG KONG — 4+ PQE

We have been instructed by a tier 1 International law firm that is looking for a compliance officer to join their firm. The role will involve a variety of compliance and regulatory matters. You will report to the COO and Compliance Manager directly. Compliance/regulatory experience as a lawyer in an international law firm is required. Both English and Chinese language skills needed. (IHC 18308)

IP/IT ASSOCIATE — BEIJING/SHANGHAI — NQ-4 PQE

A large consultancy firm seeks a junior IP/IT lawyer to join their team. Candidates with IT or IP experience from leading international and Chinese law firms will be considered. The role can be based in Shanghai or Beijing. Mandarin is required for the role. The company is investing heavily in this area across the globe and so it is an exciting time to join. (IHC 18213)

COMMERCIAL LAWYER — HO CHI MINH CITY — 3+ PQE

Rare opportunity for an entrepreneurial lawyer to join growing international law firm's Vietnam office. You will need at least 3 years of general commercial experience. Unique role for lawyer looking for a change of scene. (IHC 18297)

AVIATION COUNSEL — HONG KONG/ SINGAPORE/ BEIJING/ SHANGHAI — 3+ PQE

Independent aircraft lessor looking for a qualified lawyer with in-depth understanding of the PRC aviation market. The ideal candidate will have experience in drafting documents relating to the financing and leasing of aircrafts, managing M&A transactions and liaising with business counterparts. Mandarin is a must for this role. (IHC 18319)

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

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INDONESIA



By Heru Mardijarto, Stephen Sim and Annisa Tharian

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New regulation on the procurement of goods and services in the state-owned enterprises sector

On 12 December 2019, the new Minister of State-Owned Enterprises, Erick Thohir, issued new Ministry of State Owned Enterprises Regulation No. PER-08/MBU/12/2019 on General Guidelines on the Implementation by State Owned Enterprises of the Procurement of Goods and Services (MSOE Reg 8/2019), which came into force on 16 December 2019. This regulation replaces the previous regulation, MSOE Regulation No. PER-05/ MBU/2008 as amended by MSOE Regulation No. PER-15/ MBU/2012 on General Guidelines on the Implementation by State Owned Enterprises of the Procurement of Goods and Services (MSOE Reg 5/2008).

This new regulation introduces several new important provisions, including among others:

1. Price preference for local content

MSOE Reg 9/2019 now allows state-owned enterprises (SOE) to apply a price preference for local products with a local content component value equal to or more than 25 percent.

The price preference for goods given can be up to 25 percent and for construction services up to 7.5 percent.

The local content requirements for procurement will be determined by the Local Content Team (Tim Tingkat Komponen Dalam Negeri) formed by the Board of Directors of the SOE.

> "MSOE Reg 9/2019 now allows state-owned enterprises to apply a price preference for local products with a local content component value equal to or more than 25 percent."

2. Changes to the definition of a subsidiary and an affiliated company of a state-owned enterprise

Under MSOE Reg 5/2008, a subsidiary was defined as a company at least 90 percent of the shares of which are owned by the SOE. MSOE Reg 5/2008 further defined an affiliated company of an SOE as a company at least 90 percent of the shares of which are owned by a subsidiary, joint subsidiary, or joint subsidiaries of the SOE.

Under the new regulation, the subsidiary of an SOE is a company more than 50% of the shares of which are owned by the SOE. MSOE Reg 9/2019 defines an affiliated company as a company more than 50 percent of the shares of which are owned by a subsidiary, joint subsidiary, or joint subsidiaries of the SOE.

3. Procurement for a subsidiary or affiliate of an SOE

Under the previous regulation, the procurement regulations for SOEs should also apply to their subsidiaries and affiliates. Now, under the current regulation, their subsidiaries and affiliates may opt to follow the procurement rules under MSOE Reg 8/2019. The General Meeting of Shareholders must be held by the subsidiary or affiliate of the SOE to confirm its application of the procurement rules under MSOE Reg 8/2019.

4. The conditions for a direct appointment

The conditions for a direct appointment under MSOE Reg 8/2019 are mainly still the same as under MSOE Reg 5/2008. However, MSOE Reg 9/2019 introduces 2 (two) new conditions for a direct appointment, which are: (i) the goods and services are to be procured in a certain amount and at a certain price determined by the Board of Directors of the SOE which has been approved by the Board of Commissioners; and/or (ii) the consultants are needed the procurement of which was not planned in advance to face certain issues which cannot be postponed and require an immediate response.

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Head of Legal | 15-20 yrs pqe | Hong Kong **REF: 15465/AC**

A leading blue-chip company is hiring a Head of Legal to cover Hong Kong with widespread responsibilities. Reporting to the Group General Counsel, you will handle a variety of complex legal issues, including general commercial and corporate matters, litigation and leasing. You will have solid people management exposure and be able to lead a team. You must have a Hong Kong law qualification and substantial relevant experience in a sizable MNC. Individual with solid general commercial experience from an international law firm looking to move in-house will also be considers. English, Cantonese, and Mandarin language skills are required.

Legal Counsel | 8+ yrs pqe | London **REF: 15561/AC**

This international investment bank seeks a senior legal counsel to support its expanding business in the UK and EU. You will be responsible for providing legal advice and support to equities sales & trading team plus the investment banking team. You will also be responsible for general corporate/commercial legal matters, day to day operational of the legal function and manage a team of lawyers. Ideally, you are a UK-qualified solicitor with over 7 years' PQE and have worked in-house with leading investment bank and or asset manager. Good law firm training and a strong understanding of capital markets, primary and secondary markets are highly desirable. A self-motivated team player with excellent analytical skills and the attention to detail is preferred. Mandarin language skills preferred but not essential.

AVP Legal | 6+ yrs pqe | Hong Kong **REF: 15505/AC**

Are you looking for a change of environment to join an established and stable in-house organization? Our client is a leading financial market operator that values integrity, diversity, excellence, collaboration and engagement. The role covers a mix of debt securities, listing rules compliance, and policy work. Whilst debt capital markets and financial services regulatory experience is preferred, we are also open to speak to candidates who can show they have transferrable skills from their current practice area. Ability to interpret, apply and articulate regulations, good drafting skills, analytical and logical reasoning, and legal research skills are required. We also welcome applications from candidates already in-house.

Legal Counsel | 5+ yrs pqe | Shanghai **REF: 15541/AC**

A litigation legal counsel is sought for a US multinational consumer goods company in Shanghai. You will primarily be responsible for managing litigation cases and providing legal support for general commercial work. To be considered, you must be PRC qualified with over 5 years' PQE of commercial litigation with law firms or MNCs in consumer goods sector. You must have fluent written and oral English and Mandarin for the role.

Commercial Lawyer | 1-2 yrs pqe | Hong Kong **REF: 15539/AC**

Excellent opportunity for a junior commercial lawyer to have a career development at a blue-chip company in Hong Kong. You will provide legal support and advice on all commercial matters. You must be Hong Kong qualified with commercial experience with listed companies and training gained within an international or top local firm. Excellent drafting and negotiating skills are required as well as fluent written and oral English and Chinese.

Private Practice

Regulatory Partner| 7+ yrs pqe | Hong Kong **REF: 15553/AC**

This international law firm seeks a Partner to harness increasing numbers of mandates in regulatory and international trade control in Asia and beyond. Proven experience and market reputation in US sanctions and export control and US legal qualification are required. The ability to lead a practice is essential. Fluent Chinese skills would be a plus.

Corporate Associate | 6-8 yrs pqe | Beijing **REF: 15307/AC**

This international law firm seeks a senior-level associate to join its corporate team in Beijing. You will be involved in cutting-edge corporate transactions working with prestigious clients. You must be PRC qualified with 6-8 years' PQE of HK IPO, listing rules and compliance work from a top law firm. Fluent English and Mandarin are required.

Senior Associate, DCM | 5+ yrs pqe | Hong Kong **REF: 15574/AC**

This AmLaw 100 law firm is seeking a Senior Associate with debt capital markets experience to join bolster its well-developed practice in Hong Kong. You will work closely with one of the well-known partners in the field on notable transactions. To be considered, you must be Hong Kong or New York qualified with solid experience of DCM deals plus the ability to lead transactions. Strong drafting experience is required as well as native-level Mandarin and fluent English skills.

Associate, M&A | 3-5 yrs pqe | Hong Kong **REF: 15575/AC**

This US international law firm seeks a mid-level Associate to join its thriving M&A team in Hong Kong. You will work under the guidance of experienced partners on a variety of M&A transactions. Ideally, you are Hong Kong qualified with solid M&A deal experience. Private Equity experience and/or a good knowledge of Hong Kong listing rules would be welcome attributes. Common Law-qualified lawyers with Asia deal experience who are expecting to be admitted in Hong Kong in the near future will also be considered. Fluent English and Mandarin are mandatory.

Litigation Associate | 2-6 yrs pqe| Hong Kong **REF: 15472/AC**

This leading international law firm seeks a litigator to join its Hong Kong office. You will primarily be responsible for advising an insurance-heavy client base on all litigation matters, covering policy interpretation and defense of claims. Ideally, you are Hong Kong qualified with 2-6 years' relevant PQE of banking and insurance work. A self-motivated team player who has commercial acumen, interpersonal skills, and client management experience is preferred. Fluency in English and Chinese is required.

Associate, Banking & Finance | 2+ yrs pqe| Hong Kong **REF: 15560/AC**

This Magic Circle law firm seeks a Common Law-qualified lawyer to join its thriving banking team in Hong Kong. You ideally have over 2 years' PQE of general banking and mainstream syndicated lending work with a reputable law firm. Excellent academics and good law firm training are essential. Candidates with international exposure or experience are preferred. You must have fluent English and Cantonese/Mandarin for the role.

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Work suspension during calamities

On January 12, 2020, the Taal volcano in the Philippines began erupting, causing numerous cities to experience ash fall and necessitating the evacuation of families living nearby. With the sudden turn of events, immediate evacuation and disaster preparations were necessary for the affected areas, and schools and offices were constrained to suspend their operations to make way.

"Paano naman kami? (How about us?)" exclaim the working class. The dilemma of work suspensions has always been an issue of concern, especially in cases where neither the employer nor the employee is at fault. Indeed, while the employer has a right to the continue operations of his or her business, an employee's welfare likewise constitutes a pressing concern.

As if on cue, the Department of Labor and Employment (DOLE) issued the timely Labor Advisory No. 1, Series of 2020 (L.A. No. 1-2020), entitled "Suspension of Work in the Private Sector by Reason of Natural or Man-Made Calamity," pursuant to Article 5 of the Labor Code and Republic Act No. 11058.

Section 1 of L.A. No. 1-2020 is clear in its mandate: *"Except as provided for by law or appropriate proclamation, employers in the private sector shall, in the exercise of management prerogative and in coordination with the safety and health committee, or safety officer, or any other responsible company officer, suspend work to ensure the safety and health of their employees during natural or man-made calamity."*

In the event that employers in the private sector suspend work for the safety and health of their employees during natural or man-made calamities, they are not required to pay their employees' salaries in accordance with the principle of "no work, no pay". L.A. No. 1-2020, however, provides that, in cases where an employee has accrued leave credits, then he may be allowed to utilise such leave in order to receive compensation for the unworked days. Furthermore, if an employee works for the employer on such day, then the employee must receive his or her regular salary — without any additional or premium pay.

> "In the event that employers suspend work during natural or man-made calamities, they are not required to pay their employees' in accordance with the principle of "no work, no pay"

Notably, these rules apply only in the absence of a more favourable company policy, practice or stipulation in a Collective Bargaining Agreement (CBA). Any existing company policy, practice or stipulation in a CBA, which is more favourable to the employee, shall prevail over L.A. No. 1-2020. To illustrate, a company policy may provide that a premium be paid, on top of the daily wage, in case an employee works during a calamity. It is also possible that an employer has been unilaterally and unconditionally granting, for a long period of time, the payment of wages to employees even if work is suspended due to natural and/or man-made calamities. Thus, in these or other similar cases, there exists a policy or practice which is more favourable to the employee. Therefore, an employer may not invoke L.A. No. 1-2020 to justify non-payment of salaries during these work suspensions. Otherwise, the employer runs the risk of violating the rule on *"non-diminution of benefits"* in relation to Article 100 of the Labor Code.

With the above discussion, however, a question remains: in the absence of a declaration of suspension from employers in the private sector, are employees absolutely mandated to report for work during the existence of natural or man-made calamities? The DOLE answers in the negative.

Section 3 of the Labor Advisory provides that employees who either fail or refuse to report for work *"by reason of imminent danger resulting from natural or man-made calamity"* shall not be subjected to any administrative sanction. The DOLE aims to strike a balance in this case: while employers cannot arbitrarily sanction employees who fail to report for work in such cases, employees, on the other hand, are only excused from reporting for work *"by reason of imminent danger resulting from natural or man-made calamity"*. The meaning of this phrase, however, is not clear in the advisory. Furthermore, even if they report for work, they will not be entitled to any premium pay.

Several weeks have passed since the Taal volcano's initial eruption. While the Philippine Institute of Volcanology and Seismology has downgraded its status to Level 3, it is quick to clarify that a hazardous eruption is still possible. With this looming threat, it is fortunate that the DOLE has issued L.A. No. 1-2020 to at least serve as a guide for employers and employees alike during these times.

This article first appeared in Business World, a newspaper of general circulation in the Philippines.

The author is an Associate of the Labor and Employment Department of the Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW). She may be contacted at kalampa@accralaw.com or (632) 8830-8000.

SOUTH KOREA

By Weon-Jae Yang

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Korea's 52-hour workweek system now applies to more businesses

In accordance with an amendment of the Labor Standards Act, companies having fewer than 300 employees will now be required to comply with the mandatory 52-hour workweek regulation, which previously applied only to companies with more than 300 employees. For the largest companies, the rule became effective on July 1, 2018. For smaller businesses with 50-299 employees, the rule just became effective on January 1, 2020. For businesses with 5-49 employees, it will become effective on July 1, 2021.

The 52-hour workweek system under the Labor Standards Act will be applied to all types of business in Korea, except for a few special types of businesses that have been excluded under Article 59(1) of the Act (land transportation and pipeline transportation services; waterborne transportation services; airborne transportation services; other transportation-related services; and health care services). Thus, unless it is amended, the rule is expected gradually to cover almost every small and medium-sized business and venture business in Korea.

Foreign investors who have already entered or are considering entering the Korean market should be aware of this change and should plan to address the new workweek regulation, even if the number of persons they employ is less than 300.

The Korean government did announce a partial amendment to the Enforcement Rules of the Labor Standards Act on December 13, 2019, which expanded the ability of businesses to request temporary relief from the 52-hour workweek limit to allow employees to work more hours in a week under certain circumstances. Those circumstances include situations (i) where it is needed for protecting human life and ensuring security; (ii) when any emergency measure is required for an unexpected situation such as a failure or a breakdown of facilities/equipment; (iii) where there is any unusual and large-scale increase in workload and the failure to handle such work in a short period of time could result in material difficulties or losses to the business; or (iv) any R&D activities recognised by the Minister of Employment and Labor as being needed to boost national competitiveness and promote the state economy. But this amendment has led to a continuing backlash from Korea's labour world. For example, on January 14, 2020, the Federation of Korean Trade Unions, one of the two largest confederations of trade unions in Korea, submitted a statement to the Ministry of Employment and Labor and the Ministry of Government Legislation, objecting to that amendment, saying it is a measure that goes completely against the purpose of the current Labor Standards Act and the existing authoritative interpretation of the Act made by the government.

> "Although the Korean government has announced that it will implement a de facto postponement on enforcement of the 52-hour workweek regulation by giving a one-year grace period, companies should be aware that granting of such a grace period will not necessarily mean a deferment or waiver of the criminal punishment that is stipulated in the law"

Although the Korean government has announced that it will implement a de facto postponement on enforcement of the 52-hour workweek regulation by giving a one-year grace period, companies should be aware that granting of such a grace period will not necessarily mean a deferment or waiver of the criminal punishment that is stipulated in the law in the case of any violation. An employer who violates this law may be subject to imprisonment for up to two years or a fine of up to W20 million (US$17,000) in accordance with Article 110 of the Labor Standards Act.

There is still some uncertainty as to whether the amended law will remain intact or undergo additional revisions in the National Assembly. Nonetheless, given the effective dates of the current amendment to the Act, companies should adapt their operations to comply with the applicable amended workweek requirements unless and until further amendments occur.

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

VIETNAM

By Trang Nguyen

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Sweeping reform to securities market

In November 2019, the National Assembly passed the new Law on Securities No. 54/2019/QH14 (New Law), effective from January 1, 2021. The New Law will completely replace the current Law on Securities No. 70/2006/QH11 as amended by the Law No. 62/2010/QH12 (Current Law). The New Law is said to be a radical improvement to securities market regulations in Vietnam and is expected to overcome those shortcomings observed for the past 10 years.

One of the remarkable points of the New Law is the imposition of stricter qualifications to become a public company. In particular, in order to become a public company, the required minimum paid-up charter capital of a company will be VND30 billion (US$1.3m), in which at least 10 percent voting shares must be held by at least 100 shareholders other than major shareholders. The Current Law requires the minimum paid-up charter capital of a public company to be VND10 billion and held by 100 shareholders only. The current public company which fails to reach such conditions after the effective date of the New Law shall be reverted to be non-public. Alternatively, a non-public company may also become a public company after its successful initial public offering (IPO).

With respect to public offering, the New Law sets out separate conditions for an IPO and follow-on public offer, rather than the same conditions for both under the Current Law. For IPO, the conditions on charter capital, profit and accumulated loss before IPO and minimum voting shares to be offered in an IPO are more stringent than those provided in the Current Law. In particular:

> "One of the remarkable points of the New Law is the imposition of stricter qualifications to become a public company"

- the company must have paid-up charter capital of at least VND30 billion (VND10 billion is required under Current Law);
- there must be profit in two preceding years (one year is required under Current Law), and no accumulated losses until the year of IPO;
- at least 15 percent of the company's voting shares must be sold (or at least 10 percent with the company having charter capital of VND1,000 billion or more) to at least 100 investors other than major shareholders; and
- major shareholders must commit to hold at least 20 percent of the company's charter capital within at least one year from the completion date of the IPO.

The subscription price shall be deposited on an escrow account during IPO process and be released only upon the completion of IPO. Furthermore, the company's shares are also demanded to be listed on the Stock Exchange after the IPO. For follow-on public offers, the following conditions are required:

- the company must have paid-up charter capital of at least VND30 billion;
- there must be profit in the preceding year, and no accumulated losses until the year of the follow-on public offer; and
- the total par value of offered shares shall not exceed the total par value of outstanding shares, excepting the case that the unsold shares are guaranteed to be subscribed by an underwriter.

If a public offering is to raise capital for a project, at least 70 percent of the total offered shares must be issued. The company must prepare a plan to make up the shortfall of the capital intended to be raised from such public offering for the project's implementation.

Regarding private placement, only strategic investors and professional securities investors are allowed to participate in the private placement of a public company under the New Law. The lock-up period will be three years for strategic investors, or one year in the case of professional securities investors, except for transfers among professional investors or as ruled by the court/arbitration or in the case of inheritance. As compared with the Current Law, the scope of professional investors under the New Law covers further, among others, companies with charter capital over VND100 billion, listed companies, individuals having a securities practice certificate, individuals having a portfolio of listed shares valued at VND2 billion, or individuals having yearly taxable income of VND1 billion or more.

The New Law also introduces certain new regulations on listing and registration for trading, securities depository, registration of securities, securities settlement and clearance, information disclosure, protection of client's assets, securities investment funds and sanctions.

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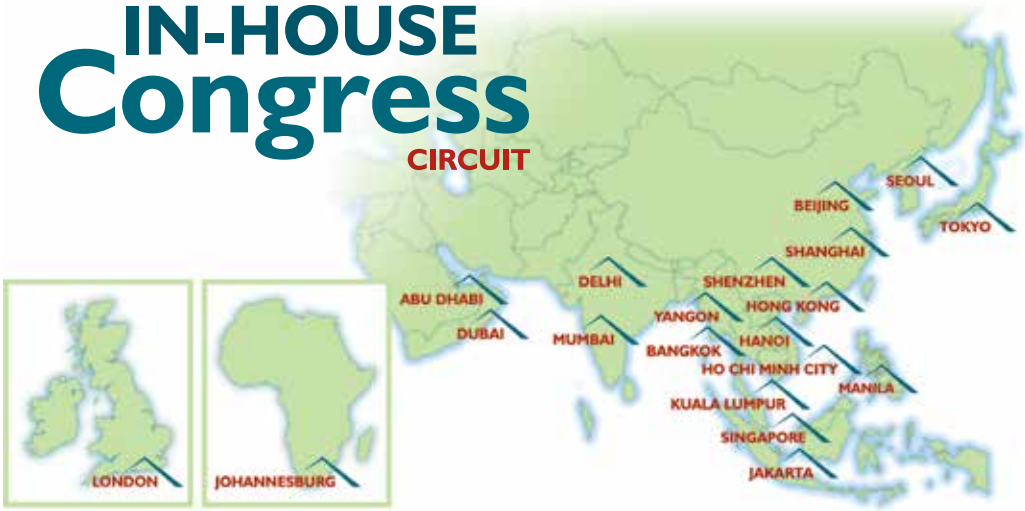

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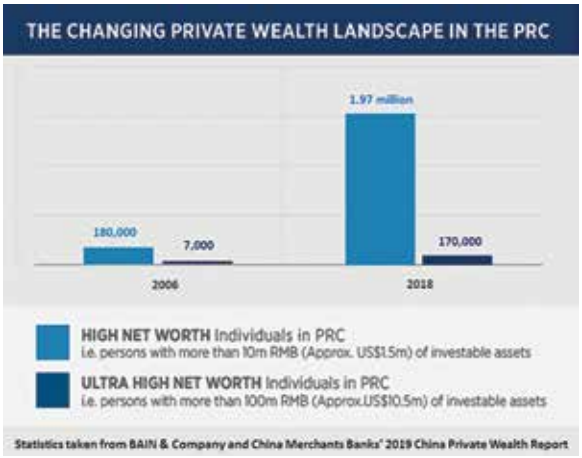

Private wealth and estate planning for People's Republic of China citizens and residents

Driven by an exceptional period of Chinese entrepreneurship in the last decade, high-tech manufacturing, IT and fintech are now key components of the Chinese economy spawning the momentous growth of China's nouveau billionaire class and poised to overtake the US.

However, more than 80% of family enterprises in the People's Republic of China (PRC) are still controlled by the first generation of wealth creators and a massive transfer of assets to the second generation is just getting started. Affluent Chinese family leaders are no longer just focused on creating wealth; they are dealing with succession planning for their businesses and wealth inheritance. A top priority is to create an enduring legal structure that will preserve family ownership, frequently involving reserved-power trusts.

Private wealth generally falls into two categories. The first is hard assets in the form of the family business's operating company and real estate, which are by far the most important assets in terms of succession planning. The second is liquid assets and investments. Structuring the ownership of each type of assets require different treatment, based on many factors such as location, access to capital, deal flow, tax efficiency, legal protection and personal safety.

Wealth planning is also triggered by a variety of life events, such as immigration, divorces, children's education and marriages, and by business life-cycles, such as initial public offerings (IPOs). Since 2013, owing to the simplification of rules by the China Securities Regulatory Commission, small and mid-size companies have found it easier to publicly list their businesses on overseas capital markets such as the Hong Kong Stock Exchange. Offshore trust planning can be very important in preparing for an IPO, when family assets and shares of the major shareholders are re-organised and formalised in a trust structure such as a BVI VISTA trust, and employee incentive benefit plans with shares and options held in trusts are put in place.

While tax is not always a driver for asset shelter and re-organisation, the Individual Income Tax (IIT) Reform in the PRC effective from January 2019 had and continues to have a significant impact on tax and estate planning by high-net-worth individuals. Historically, a PRC person with a permanent residence in the PRC paid PRC income tax on income earned in the PRC. The IIT tax reform, among other things, redefined tax residence and domicile concepts to cover PRC individuals who maintain PRC household registration, vital economic interests and family ties in and to the PRC to be taxed on a worldwide basis, notwithstanding residing mostly outside of the PRC. Some who have the means are actively exploring avenues to become "non-domiciles" through emigration, dual citizenships passports and trust/nominee arrangements of foreign holdings to legitimately minimise that exposure. The PRC also enacted a general anti-avoidance rule (GAAR) and controlled foreign corporation rule to tighten tax loopholes. For example, GAAR empowers the tax authorities to assess tax on individuals who are involved in transactions, such as asset transfers, which are not at arm's length. There is a risk that where a PRC settlor gifts or transfers assets to a trust or effects a capital contribution and/or structures an asset loan to the trust, that may trigger a taxable event that could cause the settlor and/or trustee to become liable to PRC tax. The trust assets (and trustees) may be at risk from the claims of the tax authorities. This more than ever highlights the importance of obtaining proper onshore tax and legal advice prior to offshore planning, as well as strengthening trustee indemnities.

The Automatic Exchange of Information (AEOI)/Common Reporting Standard (CRS) continue to be an area of concern for HK/PRC citizens using offshore vehicles, given that the PRC and our practising jurisdictions (Bermuda, the Cayman Islands and BVI) are signatories to these agreements. Legitimate solutions to mitigate CRS disclosures to preserve family privacy continue to be a topic of great interest.

There is also cautious interest in using Bermuda or Cayman foundations as an alternative to trusts, given the recent judicial onslaught on trust structures in the onshore courts (the infamous UK Pugachev case) and the failed but nevertheless costly attempt to erode "anti-Bartlett" provisions in the Hong Kong Court of Appeal case of *Zhang Hong Li vs. DBS Hong Kong (2018)*. A Cayman foundation, a statutory hybrid between a trust and trustee managed by a board of directors like a corporation, is seen by some practitioners as being free of the foibles and legal baggage of trust law and a superior structure.

As Chinese wealth has become more internationalised and the world continues to develop increasingly complex rules to achieve global tax transparency, a different more nuanced, personalised and sophisticated approach to wealth management is called for. A multi-jurisdictional approach is often necessary, involving different structures for different assets in different jurisdictions to provide targeted solutions to meet diverse issues. There is no more one-size fits all.

Sanjeev Gupta buys Adhunik

The British-Indian tycoon completes a challenging deal after a complex resolution process.

GFG Alliance completed the strategic acquisition of bankrupt Indian steelmaker Adhunik Metaliks and Zion Steel in February after a complex process that started in 2018.

The group, controlled by British-Indian tycoon Sanjeev Gupta, paid Rs4.25 billion (US$60m) in cash through its steel unit, Liberty House, representing its first entry into one of the world's fastest-growing steel markets.

It has been a long time in the making. This was one of India's first group-wide restructurings under the Insolvency and Bankruptcy Code 2016 and involved multiple intra-group issues that were unprecedented and needed innovative solutions. Challenges included reneging bidders, cross-group guarantee resolutions, mining licence issues, provident funds issues and cross-linked resolution plans.

The new bankruptcy law was intended to facilitate the resolution of failed companies and force owners to give up control, but in practice bidders have been dragged into long court battles. ArcelorMittal's bid to acquire Essar Steel closed in December after a similarly drawn-out process.

Adhunik is an integrated steel plant in Odisha that can produce half a million tonnes of steel a year, while Zion Steel, its associated steel rolling facility, has a combined rolling capacity of 400,000 tonnes a year. The sites make products for the automotive, energy, engineering and oil-and-gas sectors.

GFG has said the immediate focus will be on reviving and restoring the facilities and operations, before integration into the Liberty Steel group, the eighth-largest steel producer in the world outside China.

AZB represented the **resolution professional**, supported by Grant Thornton, in the corporate insolvency resolution processes of Adhunik Metaliks and Zion Steel, led by partners **Nilang Desai** and **Suharsh Sinha**. **Khaitan & Co** represented the resolution applicant, **Liberty House**.

Other recent transactions from around the region:

The Capital Law Office has acted for **Thanachart Capital** and **Thanachart Bank** on a major business merger with TMB Bank to become the sixth largest bank in Thailand. The multi-faceted acquisition represents the Thai banking industry's largest merger to date, with a transaction value of US$5.1 billion. Partners **Chatri Trakulmanenate**, **Pakdee Paknara** and **Patraporn Milindasuta** led the firm's team in the transaction, which closed in December 2019.

Skadden has advised Unicorn **Capital Partners**, a venture capital fund-of-funds manager focused on China and other key technology markets in Asia, on the closing of Unicorn Partners Fund III, announced on December 31, 2019. The fund closed at its hard cap of US$350 million, and was oversubscribed. Unicorn founders Tommy Yip and Kah-Fai Low have 37 years of combined venture capital fund investment experience and research experience, through technology boom-and-bust cycles and generational changes in China venture capital. **Geoffrey Chan**, partner and head of investment management practice in Asia, led the firm's team in the transaction.

Paul Hastings has advised **CJ ENM** on its strategic investment in and partnership with Skydance Media. CJ ENM's investment was part of a US$275 million strategic equity investment in Skydance Media by both new and existing investors. CJ ENM is Asia's leading entertainment and merchandising company headquartered in Seoul, Korea. Its entertainment division engages in a wide array of businesses across the industry spectrum, including media content, music, film, performing arts, and animation, providing its top-notch original content to various media platforms. Corporate partners **Daniel Kim** and **Stephen Saltzman** led the firm's team in the transaction.

WongPartnership is acting for **Temasek Holdings** on its joint venture with EQT Infrastructure IV fund in the establishment of O2 Power, a renewable energy platform in India, to develop utility-scale renewable projects worth US$500 million. Partners **Low Kah Keong** and **Ye Zi** led the firm's team in the transaction.

Davis Polk has advised the **initial purchasers** on the Regulation S offering of US$450 million 10.875 percent notes due 2023 by Fantasia Holdings. Concurrently with the offering, the firm advised the **dealer managers** on a cash tender offer by Fantasia Holdings for approximately 13.3 percent of its outstanding 8.375 percent senior notes due 2021. Fantasia Holdings is a property developer and property-related service provider in China. Hong Kong partners **Gerhard Radtke** and **Yang Chu** led the firm's team in the transaction.

MOVES

The latest senior legal appointments around Asia and the Middle East

AUSTRALIA


Michael Maxwell

HFW has continued its growth in Australia, with the partner hire of regulatory and product liability specialist **Michael Maxwell**. He is based in the firm's Perth office. Joining from Clayton Utz, Maxwell has more than 20 years' experience acting in high stakes complex litigation, complemented by a scientific research background in pharmacology and toxicology. He has been advising across a range of industries, particularly in challenging product liability and highly technical commercial matters of strategic significance.

HONG KONG


Brian Gilchrist

Gibson, Dunn & Crutcher has added **Brian Gilchrist** and **Elaine Chen** as partners in its Hong Kong office. Both are admitted as solicitors in England and Wales, and in Hong Kong. Based in Hong Kong for more than 25 years, Gilchrist practises general and civil litigation, with a focus on banking, insurance, tax, employment, contentious probate, directors' duties and minority shareholders' rights. Prior to joining the firm, Gilchrist practiced with Clifford Chance's Hong Kong office since 2008, and was a partner at Johnson Stokes & Master (now Mayer Brown) from 1998 to 2008. Hong Kong native Chen is one of the few high-end litigators able to practise in English, Cantonese and Mandarin. She represents companies and high-net-worth individuals in civil and commercial litigation and disputes. She has particular experience in tax, contentious probate and estate administration, mental health, private wealth, and boardroom and shareholders disputes. Chen previously was a partner with Clifford Chance in Hong Kong since 2008, and has practiced with Mayer Brown JSM (now Mayer Brown) from 1997 to 2008.


Shaun Wu

Paul Hastings has added **Shaun Wu** to its investigations and white-collar defence practice as a partner in Asia. Wu is an accomplished investigations and litigation partner, who focuses on corporate investigations, anti-corruption compliance and white-collar defence. He has extensive experience advising corporate clients in China and across the Asia-Pacific for the past decade. Wu represents multinational corporations in investigations and compliance reviews involving China, with a focus on the US Foreign Corrupt Practices Act, bribery, corruption, fraud, misconduct and other enforcement matters. He has also served as compliance monitor and investigator to various corporations debarred by the World Bank for fraudulent practices, assessing and monitoring the implementation of their compliance. In addition, Wu has acted in a wide range of cross-border disputes involving governments, state-owned enterprises, multinational corporations and financial institutions in the US, UK, Asia and offshore court litigation, as well as international arbitration.

Watson Farley & Williams has expanded its Hong Kong finance practice with the addition of new partner **Khin Voong**, who joined the firm on February 6, 2020. He was previously counsel at King & Wood Mallesons in Hong Kong. A general banking and finance specialist, Voong's arrival enhances the firm's Hong Kong finance offering beyond asset, project and structured finance, into areas such as real estate finance, syndicated lending, margin finance, corporate loans and acquisition finance. He has considerable experience in cross-border transactions involving Chinese borrowers and security providers. His diverse, sector-agnostic client base includes both lenders and borrowers, with a strong focus on financial institutions, major corporations and high net worth individuals from Hong Kong and mainland China.

INDIA

J Sagar Associates has added **Shafaq Uraisee Sapre** as a retained partner at the firm's Mumbai office. Sapre is a specialist in M&A, JV and PE investments, with a total experience of 18 years. She has worked in Lakshmikumaran & Sridharan as an executive partner and head of corporate practice (West & South India). Prior to this, she was a partner in Bharucha & Partners. At Nishith Desai, she was the head of JV practice and co-head of the M&A and disputes practice. Sapre finished her LLB (2001) and LLM (2003) from the Mumbai University.

SINGAPORE


Harikumar Sukumar Pillay

Baker McKenzie Wong & Leow, the member firm of Baker McKenzie International in Singapore, has expanded its competition practice with the appointment of **Harikumar Sukumar Pillay** as principal. Pillay, who had spent close to ten years at the Competition and Consumer Commission of Singapore where he was Director of Enforcement, is a competition law and regulation practitioner with more than 14 years of experience in both the public sector and private practice. His practice covers competition law and regulation related advisory work in Singapore and the Southeast Asia region. He regularly assists clients with matters relating to cartel investigations, M&As, joint venture agreements, abuse of dominance investigations, competition compliance and audits. He also advises competition authorities on enforcement strategies, competition policy, institutional frameworks and work process reviews, and legislative amendments. He joins the firm from Osborne Clarke Queen Street.


Cinda Sim

CNPLaw has added **Cinda Sim** as a partner in January 2020. Sim was admitted to the Singapore bar in 1991 and chose conveyancing as her specialisation. She has worked through many "firsts" in Singapore's real estate scene, including the collective sales trend of private estates, the birth of executive condominiums in Singapore, and the conversion of land in Singapore, which was then largely unregistered, to the Torrens system of land registration.

Eversheds Harry Elias has added **Tan Weiyi** as a partner in the litigation and dispute management practice. Tan specialises in advising clients on internal and regulatory investigations, with a particular focus on investigations arising from allegations of corruption, financial fraud and

other white-collar crimes. She has advised US, Europe, UK and Singapore-based organisations on a range of issues, including allegations of corruption, forex offences, corporate governance issues and accounting irregularities, together with investigations by various regulators, including the US Department of Justice, the Monetary Authority of Singapore and the Competition Commission of Singapore. Prior to joining the firm, Tan worked with a leading international firm. She recently completed an assignment as an extern with the International Monetary Fund in Washington DC, where she advised on guidelines to assist member countries in the fight against money laundering and terrorist financing.


Tan Weiyi

Duane Morris & Selvam has added **Jonathan Crandall** as a director in its Singapore office and as a partner in Duane Morris in New York. Crandall joins from Clifford Chance, where he was a senior associate in the capital markets and US practices in Singapore. He began his career at Sullivan & Cromwell in New York, and previously worked in Clifford Chance's London office. He has extensive experience acting on complex, high-profile transactions for leading clients across Asean, India, Hong Kong, the US, Europe and the Middle East. Crandall advises issuers, underwriters and shareholders on a broad range of Rule 144A and Regulation S equity and debt capital markets transactions, as well as on M&A and corporate law matters. His practice includes advising across a diverse array of industries, including banking and finance, petroleum and petrochemicals, energy, natural resources, infrastructure, real estate, manufacturing, aviation, telecommunications, retail, consumer, technology, healthcare, and food and beverages.


Jonathan Crandall

SOUTH KOREA

Baker McKenzie has added **Jae-Hyon Ahn** as a partner in Seoul, bolstering the office's project financing and renewable energy capabilities for its energy, mining and infrastructure clients. Joining from Orrick, Herrington & Sutcliffe, Ahn brings with him 13 years of experience representing sponsors, financiers and contractors on all aspects of complex energy and infrastructure projects. He is a project finance specialist with significant experience in the development and financing of large-scale renewable energy projects, and has worked on transactions in multiple jurisdictions, including in the US, the UK, Japan, South Korea, Indonesia, Vietnam and Thailand..

USA

Rimon Law has added **Judy Deng** as a partner in its Menlo Park office. Deng joins from Davis Wright Tremaine, where she was a partner in its San Francisco office. She practices corporate and securities law, with emphasis on the representation of international social networking, entertainment, digital media, software and medical technology companies. Deng was recognised as a "Commended External Counsel of the Year" by In-House Community, based on a survey of in-house counsel of multinational companies in Asia. Deng has extensive experience counselling private companies with international operations in various stages of growth, and advising institutional investors in complex cross-border transactions involved with such companies. She regularly advises on cross-border restructurings and reorganisations, financing, M&As, executive and employee incentive programs, and strategic intellectual property transactions.


Judy Deng

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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 – Asset Management

4-6 yrs PQE, Hong Kong

A leading global asset manager is looking to hire a legal counsel to join its team in Hong Kong. The role is a generalist one and offers exposure to a wide variety of work including the review and negotiation of confidentiality agreements and information memoranda related to proposed investments, fund distribution agreements and inter-company operational agreements. Successful candidates should have 4 to 6 PQE and ideally have in-house experience at another leading asset management company though candidates with strong transactional (M&A or banking experience) will also be considered. Mandarin is essential. [Ref: AC8082]

Contact: Natalie Seppi
Phone: (852) 2537 7408
Email: nseppi@lewissanders.com

M&A / Securities Lawyers – Tech

3-8 yrs PQE, Singapore

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Redactions? How to Ensure There are no Nasty Surprises

With recent headlines highlighting the damage and embarrassment that can be caused by poorly redacted documents, it is no wonder many firms and corporates are turning to legal document management specialists to secure their redactions.

Several news articles have highlighted that even in high profile cases, such as proceedings against Facebook and Trump lobbyist Paul Manafort, documents have been produced with ineffective redactions.

In each of these instances, text which should not have been accessible within a document was able to be copied from the documents and reviewed in full once transferred into a standard text editor like Microsoft Word. Gaining access to this information did not require sophisticated software or knowledge, but a simple 'copy and paste'.

Not only has this oversight meant that media outlets and their readership have been able to review text which was otherwise meant to remain private, the oversight has no doubt caused some concern within legal circles as to the sanctity of redacted material in their own cases.

Redacting (also referred to as blackening or masking) is the process of removing information from documents that are to be provided to a Third Party. Typical scenarios in the legal industry include the redaction of privileged, commercially sensitive or privacy information before exchanging documents with other Parties in a litigation or when responding to a regulatory enquiry or including documents as part of the Due Diligence process of corporate transactions.

The risks of not applying effective redactions can be high. Aside from the embarrassment, it could mean that Parties lose their right to claim privilege, making internal legal advice they received available to the Opponents with damaging consequences to their case. In a corporate transaction, inadvertently disclosing commercially sensitive information might not only cause a breach of duties, it could cost a company millions in the negotiated sales price.

Applying effective redactions is a two-step process:

1. Accurately identifying the information to be redacted in documents to be provided / released; and
2. Applying the redactions to ensure recipients are not able to retrieve the redaction information, be it by simple means or using more sophisticated tools.

One of the biggest challenges with the first step is ensuring consistency in applying the redactions. Imagine you identify and redact that critical piece of information in one document but the information is overlooked in another released document, maybe because it appears 'hidden' towards the end of a large document. To ensure information is protected, it is critical to have processes in place to identify all occurrences of that information in your dataset.

Once you identified what to redact, it is about applying the redaction to ensure the underlying information cannot be retrieved. Common practices in the past, but still used today include printing documents, using redaction tape or black pens to cover the text to be redacted and re-scanning the documents. However, even that approach has its challenges. The redacted copies may have looked fine upon review but holding the paper against a bright light would still reveal information. Covering electronic text with a 'black box' is the only effective way the redaction is permanent and all underlying – and sometimes not immediately visible – text is removed as well.

Our suite of specialist redaction tools and team of experts can assist you with the entire redaction process.

Our team is made up of legal technology consultants, paralegals and litigation support clerks who are experts in document management and prepare redacted documents for production on a daily basis. Our tools include specialist legal document review platforms and a redaction plug-in 'Blackout', and enable our team to quickly and securely prepare documents for proceedings.

Not only are your redactions secure, you can also automatically redact certain keywords, strings of characters or numbers across a range of file types. These functions enable our clients to cut down the time and cost of redaction work, and ensure accuracy and consistency when redacting material so that no critical information is overlooked. Finally, and perhaps the best reason to utilise our redaction specialists, is the peace of mind that comes with producing redacted materials that cannot be reverse engineered.

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PPP projects in Thailand's EEC

The government is accelerating approvals for important public-private partnership projects in the Eastern Economic Corridor, write *Jessada Sawatdipong* and *David Beckstead* of **Chandler MHM**.

In 2020, Thailand will continue to aggressively move forward with legislation that streamlines implementation of important PPP projects. This legislative trend presents new opportunities for foreign and local investors alike, with a focus particularly in Thailand's infrastructure sector.

As part of the Thai government's Eastern Economic Corridor Act BE 2561 (2018) (EEC Act), certain public-private partnership (PPP) projects are underway which will facilitate investment in the EEC. Measures have been implemented to expedite an overall project approval process whereby the approval timeline has been reduced to 8-10 months, compared to a much longer timeline generally required for PPP projects. These regulations are applicable to investment projects deemed highly important as determined by the EEC Policy Committee, which requires submission for consideration prior to approval.

Projects that have received approval include:

U-Tapao Airport and Eastern Airport City

This project has received approval to develop the U-Tapao International Airport; part of the combined U-Tapao and Eastern Airport City project. The aim is to establish a third main international airport in Thailand. Project components include: a third passenger terminal; commercial gateway; phase II air cargo facilities; phase II maintenance, repair and overhaul facilities; phase II aviation training centre; and a free trade zone. The airport project will also serve a passenger link to Don Muang International Airport and Suvarnabhumi International Airport, while supporting growth as a regionally important aviation hub.

High-speed railway connection to three major airports

The High-Speed Rail Linked 3 Airport project makes use of existing structures and routes as implemented in the form of an airport rail link system. The project consists of the current 29km airport rail link route and a to-be constructed route of 191km. The area development, planned to support railroad service in Makkasan (an intersection and neighbourhood in Bangkok's Ratchathewi district), will be operated in connection with development of the high-speed train project. In October, 2019, the State Railway of Thailand signed a public-private partnership agreement with a consortium led by Thailand's Charoen Pokphand Group, which also included investors from China and Japan.

Map Ta Phut Industrial Port Phase III

Map Ta Phut Industrial Port Phase III involves enhancements to existing infrastructure with an aim to better facilitate shipment of natural gas and raw fluid material for the petrochemical industry. In October, 2019, the Industrial Estate Authority of Thailand signed a public-private partnership agreement with a joint venture consisting of Gulf Energy Development and PTT Tank Terminal.

Laem Chabang Port Phase III

This expansion project involves creation of a deep-sea port and other facilities, including: implementation of a single rail transfer operator,

construction of a larger port and renovation of diverse facilities so as to alleviate internal traffic problems ranging from networking to transportation systems. The bidding process for the Phase III expansion project took place in 2019, but legal challenges have resulted in delay. As of January 2020 the Port Authority of Thailand has not finalised a public-private partnership agreement with private investors.

Digital Park Thailand

The Digital Industry and Innovation Promotion Zone (Digital Park Thailand) will comprise a new economic cluster in the EEC with an aim to become the destination for digital global players and digital biz innovators. It is being planned as a data hub with ultra high-speed broadband infrastructure, including an international submarine cable station, data centre and satellite earth station. With a maximum incentive package including both tax and non-tax measures, ease-of-doing-business incentives and special privileges for investors and digital specialists, the goal is for the development to be Thailand's premier digital showcase. It will pioneer test beds and adoption of state-of-the-art digital technologies, internet of things and artificial intelligence.

RECENT DEVELOPMENTS IN ELECTRICITY GENERATION AND DISTRIBUTION IN THAILAND

In 2020, there will continue to be significant activity in Thailand's energy and infrastructure sectors, which will present attractive opportunities for investors. Chandler MHM expects further growth/developments in these areas during 2020.

Further update on the PDP expected in 2020

In 2019, the Ministry of Energy revised its Power Development Plan (PDP) in order to outline Thailand's energy priorities over the coming two decades. This plan is known as the "PDP 2018" (as the plan included retroactive policy initiatives dating to 2018), which was itself an update on the previous PDP issued in 2015. The Cabinet formally approved PDP 2018 on April 30, 2019.

PDP 2018 increased projections for electricity to be generated by natural gas and renewable sources, while decreasing projected generating capacity for coal. The long-term plan to build a nuclear power plant is no longer being considered. The other significant development in PDP 2018 is the plan to increase rooftop solar installations. Difficulties in the ability to sell surplus electricity back to the transmission grid have been a major deterrent to more widespread adoption of rooftop solar installations.

Promptly after the adoption of PDP 2018, however, the Ministry of Energy announced that it would continue to make revisions and issue a further update to the PDP. We understand that the majority of the additional

Jessada Sawatdipong

policies will focus on the so-called "energy for all" scheme, which is designed to promote small-scale renewable projects (namely, solar, biomass, biogas and waste-to-energy).

As Thailand's domestic natural gas reserves are nearly depleted, the increased dependency on natural gas as a fuel source for electricity generation will necessitate additional LNG receiving capacity. The Electricity Generating Authority of Thailand is in the planning stages of building the nation's first floating storage regasification unit, which is expected to attract leading international developers.

CURRENT EVENTS ARE SHAPING THE UPSTREAM OIL & GAS SECTOR

Update to PA and PITA

The Petroleum Act, BE 2514 (1971) (PA) and Petroleum Income Tax Act, BE 2514 (1971) were amended in June 2017 to establish the production sharing contract (PSC) and service contract (SC) regimes.

Amendments to Section 23 of the PA include the additions that exploration and production of petroleum now require an application for, and a grant of, a PSC, SC or concession. The authority to determine which form is appropriate will be vested with the Ministry of Energy, with rules and procedures to be published with the approval of the Council of Ministers.

David Beckstead

Auction of Erawan and Bongkot

The current concessions for the Bongkot and Erawan gas fields in the Gulf of Thailand are due to expire in 2022 and 2023. Bids for the Bongkot and Erawan blocks were submitted on September 25, 2018 and this tender was the first time the Ministry of Energy offered petroleum producers the opportunity to operate under a PSC. The Bongkot field is currently operated under a concession by PTTEP with Total Petroleum holding a minority interest, whereas the Erawan concession is operated by Chevron with Mitsui holding a minority interest.

There was limited interest in the tenders from outside tenderers, with each PSC only attracting two bids. Chevron and Mitsui submitted joint bids for each PSC; PTTEP submitted a joint bid with Mubadala Petroleum for the Erawan PSC, and PTTEP submitted a solo bid for the Bongkot PSC.

Winning bidders were announced in December 2018, with PTTEP winning the Bongkot PSC and PTTEP and Mubadala Petroleum winning the Erawan PSC.

Decommissioning

Decommissioning of offshore installations is still in its infancy in Thailand and petroleum producers have taken many positive steps in preparing for the decommissioning exercise. The Department of Mineral Fuels, Ministry of Energy (DMF), has been coordinating with concessionaires as the decommissioning of offshore installations commences. Currently, the DMF is reviewing and approving decommissioning plans and decommissioning environmental assessment reports, submitted by various concessionaires. There is no publicly available data relating to the status of this review.

In 2016, the Ministry of Energy promulgated the Ministerial Regulation Prescribing Plans and Estimated Costs and Security for Decommissioning of Installations Used in the Petroleum Industry, BE 2559 (2016) (the Decommissioning Regulation). The Decommissioning Regulation outlines specifics on the concessionaire submitting a decommissioning plan and an estimate of decommissioning costs, a decommissioning environmental assessment report and a best practical environmental option report to the Director-General of the DMF — within prescribed timelines.

The Director-General is charged with issuing notifications under the Decommissioning Regulation to provide for greater clarity and specificity on concessionaires' obligations. There have been a number of notifications issued by the Director-General, including those related to qualifications of expert appraisers and to the rules and procedures for preparing decommissioning environmental plans and management processes.

Some concessionaires have openly disputed

the costs imposed by the Decommissioning Regulation, arguing that the principles conflict with the terms of the Concession Agreements and the PA. It is not clear whether any of these disputes will be resolved in 2020.

21st bid round

The Ministry of Energy announced in October 2014 the 21st bid round for petroleum concessions, which included 29 exploration blocks. The deadline for submission of bids was originally set for February 18, 2015, or a new date as may be specified by future public notice.

On October 27, 2014, an NGO filed a complaint to the Administrative Court to suspend the 21st bid round. The Administrative Court accepted this case, and there were a number of subsequent challenges to the 21st bid round, which was finally cancelled on February 26, 2015, pending enactment of amendments to the PA.

Officials within the Ministry of Energy have indicated that a new 21st bid round will occur in the future, though there is no concrete timeline on the horizon.

BACKGROUND: EASTERN ECONOMIC CORRIDOR (EEC)

The Eastern Economic Corridor Act BE 2561 (2018) (EEC Act) was published on May 14, 2018. It applies in three eastern provinces: Rayong, Chonburi and Chachoengsao, and prescribes a number of incentives for private investment. It complements and builds on the Board of Investment (BOI) regime. On August 17, 2018 a new Notification was issued to stimulate investment in target industries in the Promoted Zone of the EEC, and to encourage private participation in the development of human resources. A one-stop service to facilitate the issuance of permits and licences under various laws has been established to facilitate the startup of business in the Promoted Zones.

Promoted Zone

The Promoted Zone of the EEC consists of the following:

1. Special Promoted Zone for Specific Areas:
   - Eastern Airport City or EEC-A
   - Eastern Economic Corridor of Innovation or EECi
   - Digital Park Thailand or EECd
2. Promoted Zone for Target Industries (as announced and prescribed by the EEC Development Policy Committee):
3. Promoted Industrial Estate or Industrial Zone:

The promoted activities in the Industrial Estate or Industrial Zone are, for example:

Section 1: Agriculture and agricultural products;
Section 2: Mineral, ceramics and basic metals;
Section 3: Light industry;
Section 4: Metal products, machinery and transport equipment;
Section 5: Electrical appliances and electronic industry;
Section 6: Chemicals, plastics and papers;
Section 7: Service and public utilities; and
Section 8: Technology and innovation development.

> "Officials within the Ministry of Energy have indicated that a new 21st bid round will occur in the future, though there is no concrete timeline on the horizon"

To fulfil the goals of the Notification, the BOI has created tax incentives for those investing in the Promoted Zone, with the requirement to cooperate with an educational institution or programme to develop human resources or technology. In particular for the development of human resources, a cooperative plan with the institution or programme identified to accept students for vocational training must be submitted. The BOI has set a minimum number of students to be accepted, which varies depending on the zone under which the project is applying, and the number of employees required for the project. Tax privileges include the exemption or reduction of taxes; right to bring in foreign experts in certain fields; 50-year land leases, with the right to renew for up to 49 years; the right to own land and condominiums for the purpose of business activities; exemptions from exchange control regulations; and exemptions from customs law compliance.

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Outlook on Indonesian renewable energy sector in 2020

Several new and upcoming policies passed by the government are expected to gain traction this year, write *Ferdinand Jullaga Tambunan* and *Tommy Handono* of **Mochtar Karuwin Komar.**

Indonesia's presidential election in 2019 ended uncertainty surrounding doing business in Indonesia. It was hoped that the investment inflow would be boosted by the introduction of numerous innovative regulations by the new government, which appeared extremely eager to support the development of the renewable energy industry. We can expect there will be new policies in 2020 to provide even stronger support to policies initiated in 2019.

> "Prior to MEMR 16/2019, PLN industrial customers had to pay a 40-hour capacity charge which was basically the same amount of capacity charge as any other PLN industrial customers that had a captive baseload power plant, such as a coal or gas power plant"

Rooftop solar power industry

Recent developments indicate that the government is paying more attention to the rooftop solar power sector and wishes to stimulate the industry's development. This sector remained unregulated until 2018, at which time the Ministry of Energy and Mineral Resources (MEMR) issued MEMR Regulation No. 49 of 2018 on the Use of Rooftop Solar Power Systems by PLN Customers (MEMR 49/2018). MEMR 49/2018, however, was amended twice in the second semester of 2019. The first amendment was MEMR Regulation No. 13 of 2019 on the Amendment of MEMR No. 49 of 2018 on the Use of Rooftop Power Systems by PLN Customers (MEMR 13/2019), which was issued subsequent to promulgation of MEMR No. 12 of 2019 on Electric Power Generation Capacity for Own Use Pursuant to Operating Licence (MEMR 12/2019). These MEMR 12/2019 and MEMR 13/2019 regulations read in conjunction aim to simplify the licensing and

worthiness certification requirement for own use power generation generally.

The second amendment was MEMR No. 16 of 2019 on the Second Amendment No. 49 of 2018 on the Use of Rooftop Power System by PLN Customers (MEMR 16/2019). MEMR 16/2019 provides for reduction of capacity charges by PLN industrial customers and elimination of emergency energy charges, as was previously provided under MEMR 49/2018 and will result in more viability economically in providing solar PV electricity. Capacity charges were previously one of the main hindrances for industry to adopt and install solar power for their operations. Prior to MEMR 16/2019, PLN industrial customers had to pay a 40-hour capacity charge which was basically the same amount of capacity charge as any other PLN industrial customers that had a captive baseload power plant, such as a coal or gas power plant. There was no preferential treatment for rooftop solar projects, despite the obvious difference in nature between solar power and baseload power plants in terms of time of operation and availability. Given that the amount had been reduced to 1/8 only, ie five hours per month, we can expect in 2020 that many companies will opt for solar photovoltaic electricity.

It was clear from the outset that the intention of the government was to foster the market for rooftop solar power by implementing this change. This also corresponds to the issued 2019-2028 PLN Electricity Supply Business Plan *(Rencana Usaha Penyediaan Tenaga Listrik or RUPTL)*. In the RUPTL, PLN sets as a target to optimise utilisation of solar energy for development of the electricity supply infrastructure and, therefore, we can expect that development of this sector will experience an upsurge in 2020.

Battery electric vehicles (BEV)

In 2019, the government also introduced a regulation which provides rules in the sector that previously had not been specifically regulated. The government issued Presidential Regulation No. 55 of 2019 regarding Acceleration of Battery Electric Vehicles Programs for Road Transportation (PR 55/2019). The government demonstrated its intention to boost development of the BEV industry, and PR 55/2019 set out the measures that the government would take to promote and

accelerate such development. It was also understood that the grand plan of the government for the long term was to make Indonesia a base for the production and export of BEV, just as has been going on for decades in respect of conventional motor vehicles.

PR 55/2019 provides that BEV companies must build their manufacturing facilities onshore, which to manufacture or assemble vehicles or components. Companies may develop manufacturing facilities by themselves or through a partnership with another company. PR 55/2019 also allows and in fact supports partnerships between government entities with private companies in conducting research and development and innovation in BEV technology.

The government will also provide various incentives for companies doing business in various sectors that by offering fiscal and non-fiscal incentives. The fiscal incentives include tax or import duty relief, reduction on charging fees and financial support for research or construction of facilities in respect of BEV charging facilities. Non-fiscal incentives include exemptions from the limitation to use certain roads, granting of production rights in respect of technologies which the government holds the right to, and maintenance of the safety and security in the area where the BEV industry will be based.

Ferdinand Jullaga Tambunan

The provision of charging stations shall be carried out by state-owned enterprises working in the energy sector, but PR 55/2019 provides opportunities for private companies to do so by way of entering into a partnership with the said state-owned enterprises. The sale of electricity must be carried out by a company that holds a power supply business licence *(Izin Usaha Penyediaan Tenaga Listrik)* in the relevant working area. A state-owned enterprise operating in the electricity sector, PLN, holds a power supply business licence in respect of selling power and has rights over the working area to sell electricity in almost the entire territory of Indonesia. Therefore, the private sector may only operate a charging station and sell electricity by way of partnership with PLN as the only holder that can sell electricity to endcustomers. This is not applicable to certain specific areas, such as industrial zones where the developer has its own power supply business licence to sell electricity.

Tommy Handono

The BEV which are imported to, manufactured and/or assembled in Indonesia are subject to registration and testing similar to the requirements applicable to conventional vehicles. PR 55/2019 also provides for a minimum local content requirement for BEV which will gradually increase. It requires a minimum 35 to 40 percent local content in BEV as of 2019 which will be increased up to 80 percent by 2026 or 2030 depending on the type of vehicle. Fulfillment of the local content requirements may be met by importing components on an incompletely knocked down or completely knocked down basis so long as such components cannot be produced domestically.

To guide the development of the BEV, the government also established a coordination team which will be chaired by the Coordinating Minister for Maritime Affairs and Natural Resources. The members of the team consist of several ministers, including the Minister of Industry, the Minister of Trade and the Minister of Energy and Mineral Resources. The team is expected to accelerate development of the domestic BEV industry and, given that the team is cross-sectoral, coordination within the government to tackle hindrances in implementation can be optimised.

There are reports that electric vehicle sales will greatly increase in the future, ranging between 23 million to 43 million annually, with numbers ranging from 130 million vehicles to at least 250 million vehicles. A global car producer, Toyota, has also announced plans to invest up to US$2 billion to further develop electric vehicles in the future in addition to hybrid vehicles that are currently being produced. The government clearly aims to boost the development of BEV and take part of the market share of industry that is expected will boom over the next decade. This objective is also evidenced by the government's policy in respect of the export ban of mineral resources, particularly nickel. The government in 2019 accelerated implementation of the export ban from the timeline stated in the original plan. Nickel is an important element in the production of lithium-ion batteries used in electric vehicles. The lithium-ion batteries make up a large part of the production costs of the BEV. Hence, the policy on the accelerated export ban of mineral resources might have been initiated by the government to be in alignment with the objective to develop the BEV industry.

New tariff for renewable energy

The development of the renewable energy industry in Indonesia has been carried out in a less than optimum (some might say sluggish) manner over the past few years. One of the reasons might be due to the introduction of a tariff for renewable energy projects in 2017

which was tied to the cost of generation provision *(biaya pokok penyediaan or BPP)* of PLN, the state-owned enterprise responsible for the electricity sector. There was a limit for the renewable energy tariff, depending on the location of the power generation project, all tied to the BPP of PLN. There have been concerns from industry that the cost for generation of renewable energy should not be compared with the costs for generation of non-renewable energy, given the vast differences in terms of investment and technology, among others. Prior to the regulation promulgated in 2017, the government set out the feed-in tariff for various types of power plants, and the government tasked PLN to absorb and purchase all electricity generated by independent power producers. At the time, PLN deemed the feed-in tariff to be too high; this was one of the reasons why the government introduced the regulation in 2017 which stipulated the tariff tied to the BPP of PLN.

The government then realised that since the change of tariff was tied to BPP, development of renewable energy was not ideal. To improve the development of the renewable energy sector, the government is planning to issue new regulations which will introduce new tariffs for renewable energy. The new regulations are expected to be issued by the first half of 2020 in the form of a Presidential Regulation (a regulation that in hierarchy is higher than a Ministerial Regulation).

The new regulation is expected to set out the price for the purchase of renewable energy by PLN, except for geothermal energy. The price will not be tied to the BPP of PLN. It will be set as a ceiling price to give wiggle room for PLN to negotiate with the private sector. It is also reported that the set off price will gradually decrease along with the progress of the project. The government views that along with the continuation of the project, the costs for production will also decrease, given asset depreciation, repayment of loan and others. The Director General of Electricity (DGE) stated that the regulation may set out prices that are different between the period of the first year until the twelfth year, and the remaining period of the power purchase agreement. The government hopes that this arrangement will still be attractive to the private sector, but at the same time does not put too much of a burden on PLN.

The new regulation mentioned above will not stipulate the price for purchase of electricity by PLN from geothermal energy, as it will be set out in a separate regulation. The government view the nature of geothermal energy as being different from other renewable forms of energy, particularly since geothermal involves an upstream process and the risk associated thereto. The DGE stated that there is a plan to provide an arrangement which is similar to the one with the oil and gas sector, whereby the government offers a cost recovery scheme. The government hopes to reduce exploration risk for the private sector in developing geothermal projects. There is also discussion for the government to contribute to the sunk cost of projects during the exploration stage, particularly for drilling activities. However, these contributions by the government may in turn affect the pricing calculation for electricity produced from geothermal energy.

> "There have been concerns from industry that the cost for generation of renewable energy should not be compared with the costs for generation of non-renewable energy, given the vast differences in terms of investment and technology"

The government realises that there are changes that need to be made in order to attract more participation from the private sector. Particularly since the government's target is to produce 23 percent of electricity from renewable energy by 2025. The new regulations which will set out the new tariff for renewable energy will demonstrate the commitment that the government is willing to make to support development of the renewable energy industry.

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Wind, power and Vietnam

Although Vietnam has long had favorable wind patterns and supporting geography, the serious development of wind power has only recently begun. The industry holds great promise. This article[1] discusses Vietnam's policy to develop commercial wind power. By *Nguyen Huu Hoai* — Partner, **Russin & Vecchi.**

Factors driving the development of wind power

Many factors are driving the development of wind power. **First**, Vietnam will face a severe shortage of energy in the near future — the accessible sources of fossil fuels (oil, gas and coal) are limited, and the exploitation of this traditional energy in Vietnam will continue to be more difficult and costly. **Second**, Vietnam mainly relies on coal-fired power plants that require a substantial amount of investment capital. Local banks are unable to finance large-scale coal fired projects and foreign banks appear to be less and less willing to finance coal-fired power plants due to environmental and other concerns. It is likely that large-scale coal power plants in particular will not be completed within the government's approved schedule due to the shortage of finance. **Third**, climate change and human negligence in the construction and management of hydro power plants has begun to limit Vietnam's traditional reliance on hydropower. Vietnam had paid much attention to disasters which have occurred in developed countries. They involve oil spills and nuclear power plants. Previously, it was largely unchallenged that nuclear power was clean, safe and efficient. In fact, the plan to develop a 4,000-MW nuclear power plant in Ninh Thuan was abolished soon after the Fukushima accident. **Fourth**, the development of renewable energy (including wind power) is beginning to thrive on the significant reduction of investment costs and the introduction of new technologies. **Fifth**, since Vietnam has insufficient means to store oil and gas, Vietnam will face an energy shortage if the global price of oil and gas rises. **Finally**, the retail price of electricity sold by Electricity Group of Vietnam (**"EVN"**) to end-users will gradually and continually increase. In the meantime, the price of renewable energy has become more competitive.

The long-term alternative solution is to find sources of energy that are cleaner, safer and more sustainable. Renewable energy (solar, wind, biogas and biodiesels) is now commercially viable. It explains why both domestic and foreign investors have a larger interest in development of wind power projects. There is now a clear opportunity for investors to explore in new "blue ocean" areas. A combination of wind power within an existing solar project is an option for solar power projects to generate additional income and to use land more efficiently. Offshore and floating wind farms open a new industry to develop Vietnam's wind power offshore. These new markets may first be pursued by foreign investors that have advanced technologies, experience and large financial capabilities. Even so, there appears to be room for pioneers and serious players.

Vietnam's conditions for wind power

Engineers and industry leaders have long concluded that Vietnam has particularly good conditions for wind power. Central and southern provinces are particularly well suited to the generation of wind power. A few wind farms are already operating in Binh Thuan, Quang Tri, and Bac Lieu provinces. Other projects in Ninh Thuan, Binh Thuan, Quang Tri, Baria-Vungtau, Ben Tre, Soc Trang, Binh Dinh, Tra Vinh, Thanh Hoa, Quang Ngai provinces, etc., are in various stages of implementation.

Vietnam's policy

The policy on wind power is set out mainly in Decision 428[2], Decision 37[3], Decision 2068[4], Circular 02[5] and Circular 96[6]. According to premises set out in Decision 2068, the output of electricity generated by wind power will substantially increase, but will represent a small percentage of Vietnam's projected total power. Below are wind power targets by years: *(see table 1)*

Licensing procedures

Wind power projects are especially encouraged projects. Even so, the licensing process for wind power projects is rather deliberate. In the first step, the investor must choose a suitable location. The proposed location may overlap or conflict with approved planning (eg, mining, resorts, etc). In such cases, the investor needs to work with the People's Committee at the municipal level and with the local Department of Industry and Trade in order to be sure that the proposed location is suitable.

If the proposed project is not on the Government's list of permitted projects, the investor must register it with local authorities and the Ministry of Industry and Trade (**"MOIT"**). There is a process to register a proposed project. The investor must present tests of wind capacity which cover at least 12 consecutive months at the proposed location. If the test results show significant promise, the investor is required to prepare a pre-feasibility study and submit it to the MOIT or to the Prime Minister for consideration. If the proposed project is approved, it will be added to the list of permitted projects.

The next step is to prepare a feasibility study and to submit it to the MOIT for evaluation. If approved, the local licensing authorities will issue an investment certificate. After that, the investor will sign a power purchase agreement and a grid connection agreement with EVN. The Investor must also obtain a construction permit and the other licenses necessary to construct, complete and operate the project. The process to find a suitable location and to obtain all necessary licenses will take more or less 24 months.

Table 1

2020		2030		2050	
Output (kWh)	Percentage (%)	Output (kWh)	Percentage (%)	Output (kWh)	Percentage (%)
2.5 billion	1%	16 billion	2.7%	53 billion	5%

These targets are thought to be conservative in comparison with Vietnam's potential, and it is quite possible that generating power from wind will exceed these low targets.

Table 2

Incentives	Corporate income tax ("CIT")	Import duty
Preferential rate	10% applicable for 15 years; this can be extended to 30 years in special cases	
Tax exemption (0%)	Maximum grace period: Four (4) years of CIT exemption	Applicable to goods imported to create the project's fixed assets, and applicable to materials, raw materials and semi-finished products which are unable to be produced in Vietnam and which are imported for the project's production.
Tax reduction (50%)	Maximum grace period: Nine (9) years of CIT reduction	

Technical requirements

Generally, turbines used in wind farms must be new and they must meet Vietnamese, IEC[7] or equivalent standards. Their date of manufacture, up to the date of installation, must not exceed five years. Use of second-hand turbines must be approved by the MOIT. Old equipment and outdated technology may be rejected. These requirements will affect the initial capital expenditure and production costs.

Subsidies and financial support

Although commercial wind power has been developed in several countries and although costs are falling, the production cost of wind power remains high. Subsidies are normal. The price of wind power may eventually become more competitive as the cost of electricity from traditional sources increases (due to the increase of the price of gas and coal) and the investment costs of wind power plants decrease (thanks to the development of technology). In the meantime, and to be competitive in the present, the young industry still needs government subsidies.

Wind power is unlimited, and it is well-known as zero-carbon energy. Wind projects are especially encouraged by the Government. They are entitled to exemption and reduction of land rental and land levies. They can also qualify for favorable state loans and tax incentives. Below are tax incentives applicable to wind power projects: *(see table 2)*

In addition to the above tax incentives, the Government assures that the entire output of wind power farms will be purchased at a price of US cents 8.5 per kWh (applicable to onshore wind farms) and US cents 9.8 per kWh (applicable to offshore wind farms) pursuant to a standard power purchase agreement between EVN and the wind farm. Of note, these prices will apply for 20 years, but they will apply only to wind power projects that are able to commence their commercial operation before November 1, 2021. Subject to conditions and circumstances as the deadline approaches (eg, development of technology, Vietnam's energy demand, etc.), these prices may increase or decrease or remain the same after November 1, 2021. There is experience that the tariff for onshore and offshore wind farm were originally capped at US cents 7.8 per kWh. But the current prices were actually increased as of November 1, 2018[8].

Under Decision 37, the Government commits to provide financial support of US cent 1 per kWh to EVN through the National Environment Protection Fund. This means that, in fact, EVN needs to pay only US cents 7.5 per kWh and US cents 8.8 per kWh for energy generated by onshore wind farms and offshore wind farms, respectively. The price paid to subsidized wind power developers is higher than the average price that EVN currently pays for energy generated from traditional sources.

In addition to the Government's subsidy, there is another form of support. Wind farm investors may also receive additional income from the Clean Development Mechanism (**"CDM"**) pursuant to the Kyoto Protocol of which Vietnam is a signatory. Of course, qualifying conditions must be met.

Government support to the industry

These tax incentives and the favorable tariff may or may not be sufficient for the young industry. Government support and sensible policies are crucial. Other countries provide government subsidies and financial support. Vietnam can continue to learn from them: production tax credits for each kWh generated by wind farms, a reasonable allocation of the premium of wind power's price to monthly invoices billable to end-users (instead of using state budgets to subsidize), prolongation of grace periods to enjoy incentives, tax credits, etc.

The Government also needs to consider other forms of support: (i) creating favorable conditions and simplifying the licensing process for wind power projects; (ii) reserving sufficient land and sea areas for wind farms; (iii) perfecting comprehensive regulations on public-private partnerships in respect of infrastructure projects in general and wind power projects in particular; (iv) encouraging other ancillary production sectors, such as the production of turbines, towers and transformers; (v) granting tax incentives to individuals and contractors who work at wind power plants, (vi) VAT exemption or reductions for wind power; (vii) shaping sensible regulations on power purchase agreements between EVN and wind farms. Any of these measures are welcome by private investors and the public. In return, Vietnam will have security and diversification of energy and a source of energy friendly to the environment.

Endnotes

1. *A version of this article was first published in 2013 on CorporateLiveWire and has been updated to reflect current policies on wind power.*
2. *Decision 428/QD-TTg of the Prime Minister dated March 18, 2016 (**"Decision 428"**).*
3. *Decision 37/QD-TTg of the Prime Minster dated June 29, 2011 (**"Decision 37"**) which was amended by Decision 39/TTg-QD of the Prime Minister dated September 10, 2018 (**"Decision 39"**).*
4. *Decision 2068/TTg-QD of the Prime Minister dated November 25, 2015 (**"Decision 2068"**).*
5. *Circular 02/2019/TT-BCT of the Ministry of Industry and Trade dated January 15, 2012 (**"Circular 02"**).*
6. *Circular 96/2012/TT-BTC of the Ministry of Finance dated June 8, 2012 (**"Circular 96"**).*
7. *International Electrotechnical Commission.*
8. *The effective date of Decision 39*

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The thing about ...

Baozhen Shi

Patrick Dransfield speaks to an intercultural consultant about helping businesses avoid Lost In Translation issues in China.

You've spent a decade in the UK in the field of intercultural communication and training between China and the UK. What has changed in both China and the UK — and what has remained the same — in those years?

The development of technology really has changed how we do business. For example, the development of WeChat [a Chinese messaging app like WhatsApp] means we can have face-to-face meetings very easily, it reduces the need to fly a lot, as most issues can be communicated this way. We also know that we can almost get a reply instantly no matter what the time is, as people in China are always on WeChat.

Another example is digital marketing. We can run an online campaign for the China market from the UK very easily, thanks to the fact that most people are into Chinese social media in China. We can get our marketing messages to our potential clients efficiently.

However, despite the fact that modern technology provides convenient channels for communication, the challenge of understanding each other across cultures still stands. In the past, businesspeople often had to fly to China to get things done, and they might blame their failures on jet leg, strange dinner banquets or just how different China is. But now that the logistics of communication are so much easier, the cultural roots of failure to reach a common understanding are even more apparent. This means technology hasn't removed the need for intercultural communication support and training.

“Now that the logistics of communication are so much easier, the cultural roots of failure to reach a common understanding are even more apparent. This means technology hasn’t removed the need for intercultural communication support and training”

Photo: Patrick Dransfield

"Often where there is a deadlock, it might be that there are practical issues or worries one part has, which stop them from cooperating with one another and for understandable reasons they fail to communicate those issues"

Photo: Patrick Dransfield

You studied Chinese language and English studies in Inner Mongolia and also a UK law degree — all three disciplines seem interwoven into your present work. Did you ever imagine it would lead you to where you are now? Why have you chosen this particular path?

I never imagined that they would lead me to my current career. I chose to study them because I love them, and I enjoy finding out more in these areas. I am always fascinated by different cultures. When I came to the UK, it seemed that doing a law degree would be a great way to learn about a country's structure and how it operates. I started my work in Cambridge as a Mandarin Chinese teacher and an interpreter when I first moved there from Inner Mongolia, China. I worked with many individuals and companies in Cambridge, and noticed a gap that needed to be filled helping UK companies to work with Chinese companies. Both sides needed to understand each other not only from a language point of view, but also from a cultural point of view, from a practical side of view — how things are done in China can be different from the UK. From there I started working as an intercultural business consultant. Often where there is a deadlock, it might be that there are practical issues or worries one part has, which stop them from cooperating with one another and for understandable reasons they fail to communicate those issues. As long as we can get to the bottom of the issues, we should be able to provide remedies in most cases and help the cooperation to continue, even stronger than before.

Can you provide examples of where your strategic commercial insight has significantly benefited parties in a deal?

A common cause of problems between UK businesses and their Chinese partners is that expectations that are taken for granted in the UK are not made explicit when agreements are made. One client, a manufacturing firm based in the UK, had commissioned design and production of a component of one of their main products. The Chinese suppliers assured them that the design was progressing well, but when the British engineers asked for a beta of the firmware for interim testing, the Chinese side were offended and were afraid the Brits were trying to avoid paying. The relationship rapidly became difficult and the project came to a halt.

I facilitated a series of meetings including a site visit to the Chinese firm's plant outside Beijing. The expectations of both sides were put on the table and discussed openly, and trust was re-established. Through the discussion, a new timetable for development of the project was agreed and the Chinese engineers promised to hand over the relevant design material and prototypes according to a schedule.

> **"Don't reply on emails too much unless specifically discussed beforehand. When in Rome, do as the Romans do, so WeChat is usually a good place to start"**

A number of your clients are in the technology and scientific research space — as a non-scientist do you find it easy to understand the underlying issues in these lines of businesses?

It might be a bonus if anything else, as I would ask a lot of very basic questions, I assume nothing, and this provides no room for misunderstanding. When it comes to detailed technical matters, I work side by side with technical directors or VPs for China and when we need to discuss detailed technical issues they will fill in to talk, and I will act as an interpreter when this happens, and then switch back to the intercultural consultant to help them to find a solution when the technical issues are clear.

What five insights can you share for British businesspeople considering commercial ties with China? And the same for Chinese entities?

1. Establish guanxi (your ties with your Chinese colleagues, for example, going to dinner banquets is an import factor for establishing guanxi)

"My parents couldn't give me much guidance on how to live a life in the UK, or any cities in China, but one thing they taught me is to work hard and have a dream"

2. Communicate with the key decision-makers when multiple contacts were given, like the CEO or the person who has the power to say yes or no
3. Communicate regularly, especially if two technical teams from the UK and China are working together, set monthly or weekly meetings, set clear agendas before the meetings
4. Don't reply on emails too much unless specifically discussed beforehand. When in Rome, do as the Romans do, so WeChat is usually a good place to start
5. Assume nothing, ask directly, especially if it is the norm in your industry in the UK — it might not be in China

How energised are you about the commercial opportunities opening up relating to the new foreign investment law in China for international businesses?

On one hand, British companies thinking of investing in China will be encouraged by the significance of regulations and by investing in China directly without having to engage in complex ownership arrangements to the same extent they have had to until now. On the other hand, without local expertise to advise on local standards and help to establish and maintain good relationship with officials and business partners, foreign firms will still face significant challenges.

How can Britain specifically benefit from greater cultural ties with Inner Mongolia — and vice versa?

There are a lot, I will take dairy products as one example — people in both the UK and Inner Mongolia love and use a lot of milk, dairy products.

You were brought up on a farm in Inner Mongolia. What skills did your childhood experience provide for you in your present line of work?

My parents couldn't give me much guidance on how to live a life in the UK, or any cities in China, but one thing they taught me is to work hard and have a dream (or a few if you achieved the first one), and then get on and do it.

What is your hinterland?

I go the gym at 6.30 every morning on weekdays. This is really important for me, it sets me with great energy for the day and makes me feel happy, grateful and confident.

Shi is the founder of The China Mix, which focuses on cultural awareness training and advice, as well as other business support services. Before that, she set up and ran Chinese in Cambridge, a business training researchers and businesspeople in Mandarin Chinese, and also previously worked for the Holiday Inn, training staff in English language and intercultural communication. *https://chinamix.co.uk/*

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