



In-House Community  
Magazine



**TECH TALES WITH PAUL HASWELL**

Who's Afraid of AI?



**IN-HOUSE INSIGHTS**

Q&A with Eileen Ng of  
Harley-Davidson



**CORRUPTION PERCEPTIONS 2023**

A Bleak Global Report Card



FOCUS ON

**AML, CORRUPTION  
AND SANCTIONS**



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## NEWS

## Malaysia's Zul Rafique & Partners Appoints new Co-Managing Partners



Malaysian law firm **Zul Rafique & Partners** has appointed **Lukman Sheriff Alias** and **P Jayasingam** as its new Co-Managing Partners effective January 1, 2024. These appointments come as the former Managing Partner, Dato' Zulkifly Rafique, announced his retirement after over 24 years of outstanding leadership.

The current head of the firm's Energy & Utilities Practice Group, Lukman Sheriff Alias brings a wealth of legal experience. He specialises in corporate, energy and utility transactions, and has extensive experience in large-scale projects, including the Kuala Lumpur City Centre, Putrajaya, Kuala Lumpur International Airport and Kwasa Damansara.

Alias has been involved in various independent power producer projects, both local and overseas. He has advised, among others, the Bakun Hydro power purchase agreement, Genting power plant PPA extension, the aborted East to West Malaysia

submarine power cable line, and acquisition of Indonesian power plants and coal mines.

In 2005, he acted for the Government of Malaysia in restructuring the nation's water industries, which involved the amendment of the Federal Constitution, and the drafting and enactment of the Water Services Industry Act



2006 and the water rules thereunder, together with the establishment of Suruhanjaya Perkhidmatan Air Negara.

On the other hand, P Jayasingam brings with him over 38 years of experience at the Malaysian Bar. He currently heads the firm's Litigation and Employment & Industrial Relations Practice Groups.

Jayasingam handles a litigation portfolio of civil and industrial relations matters, and he regularly handles cases for and on behalf of employers. He also regularly appears in the Industrial Court, and advises and handles disputes relating to dismissal/constructive dismissal, collective agreements, redundancy/retrenchment, change of ownership of business, and other employment related issues.

## NEWS

## AGI Legal Opens in Indonesia, Joins Allen & Gledhill Network Known as A&G Asia

**AGI Legal**, associate firm of Allen & Gledhill and member of the Allen & Gledhill network known as A&G Asia, opens in Indonesia on May 27, 2024 at The Langham Hotel in Jakarta, with Dr Sandiaga Uno, Indonesia's Minister of Tourism and Creative Economy, as the Guest of Honour. Also witnessing the opening ceremony was Mr Terrence Teo, Deputy Chief of Mission of the Embassy of the Republic of Singapore in Jakarta.

AGI Legal is fully licensed to provide Indonesian legal advice. Based in Jakarta, the AGI Legal team includes Partners **Kevin Sidharta, Elsie Hakim, Giffy Pardede** and **Aris Budi Prasetyo**, as well as Foreign Counsel **Oene J Marseille**, who have extensive years of experience in the Indonesian market.

With the establishment of AGI Legal, A&G Asia is well-positioned to provide clients with Indonesian legal advice that is based on sound local knowledge and international best practices. AGI Legal will also be able to tap on the rich expertise of A&G Asia, comprising over 600 lawyers and over 120 years of experience in Asia.

“We are excited to have this opportunity to expand our regional capabilities to better serve our clients across the region. We hope to contribute to the growing success of Indonesia by facilitating investments into the country, as well as helping Indonesian companies navigate the complex regulatory and legal landscapes of key markets in Asia and beyond.”, said Mr Jerry Koh, Managing Partner of Allen & Gledhill.

A&G Asia is committed to its mission of providing clients with unmatched legal services in the region, and will continue to give its best in ensuring seamless end-to-end service across jurisdictional borders.



## MOVES



**Dentons** has added **Stephen Chan** as a partner in its corporate practice in Hong Kong. With over 20 years of experience, Chan focuses on corporate transactions, including public and private M&As, private equity, REIT listings, restructuring, takeovers, IPOs, H share listing and general compliance matters.



**RPC** has added **Kiat Wee Lau** as a partner in its corporate practice. A mergers and acquisitions (M&A) specialist with a focus on financial regulation, funds and Variable Capital Companies (VCC) formation, Lau advises private equity houses, venture capital firms, private wealth investors and hedge funds on investments in Singapore, Indonesia, China, India and across the APAC region.



**K&L Gates Straits Law**, the Singapore office of global law firm K&L Gates, has further expanded its capabilities with the additions of partners **David Kuo** and **Meraj Noor**. The pair joins the firm's Singapore office from DLA Piper. Kuo is a US-qualified lawyer admitted in California and a foreign registered lawyer in Singapore with 20 years of experience spanning the United States, Hong Kong and Singapore. During his tenure in Asia, he has successfully built a broad corporate practice, including leading outbound M&A, and has become a trusted advisor to promoters and other clients operating across the region. The legal, cultural, and

political insights he provides have been key in helping Asia-based clients pursue opportunities in overseas markets, particularly in the US. Kuo also advises on private equity transactions and emerging company representation, as well as on corporate finance transactions for clients operating across the technology, life sciences, energy and real estate sectors. On the other hand, Noor is an Indian-qualified lawyer and a registered foreign lawyer in Singapore, who has 16 years of experience practicing in Dubai, India and Singapore. Noor focuses his corporate practice on matters touching on Southern Asia, particularly on India-related transactions. He also brings experience across a wide spectrum of cross-border corporate deals, with a specific focus on capital markets transactions.



**Addleshaw Goddard** has appointed highly regarded corporate partner **Matt Gorman** as part of its continued strategy to establish a market leading global infrastructure practice in the ASEAN region. Bringing over 20 years of experience advising clients across South East Asia in the energy and natural resources, transportation, logistics and media and technology sectors, Gorman specialises in corporate finance, M&A, joint ventures and equity issues by public and private companies, as well as private equity and venture capital. He arrives from Reed Smith after joining to launch its Singapore corporate practice in 2015. Prior to that, he established and led the Singapore corporate practice of Stephenson Harwood for seven years. Gorman's client base is especially active throughout Asia, including Singapore,



## MOVES

Malaysia, Thailand, Vietnam, Indonesia and India, and he was co-head of Reed Smith's Indonesia Business Team. His arrival brings the number of the firm's Singapore-based partners to four.



**FenXun Partners**, Baker McKenzie's joint operation platform partner in China, has added leading IP lawyer **Cassidy Guo** as a partner in its IP practice. Guo is

a highly regarded IP lawyer specialising in IP litigation and related anti-monopoly and anti-unfair competition litigation. She has significant experience in representing technology companies in IP disputes, including patent infringement and invalidation, trade secrets and software copyright disputes, and related non-contentious matters. Many of the cases she has represented were selected as model cases by provincial courts and the Supreme People's Court. Before joining the firm, Guo worked at King & Wood Mallesons and Fangda Partners. On top of her law and medical degrees from Peking University and JD from Peking University School of Transnational Law, she attended Yale for her master's degree in law. Guo is admitted to practice in China and has also obtained a patent agent license.



**Cyril Amarchand Mangaldas** has welcomed **Himanshu Chahar**, who re-joined the firm's Abu Dhabi office (CAM Middle East) in a partnership role as

Director-Corporate Transactions. With over 15 years of experience, Chahar specialises in

corporate and M&A, with extensive experience in India and the Middle East. He is well-regarded for his proficiency across multiple business sectors and experience on many noteworthy M&A deals. Chahar's areas of focus include M&A, corporate restructurings, joint ventures, corporate governance, foreign investments and policy matters across various industry sectors. As a commonwealth qualified lawyer, he regularly assists his clients with navigating complex Indian and UAE law matters. He graduated from ILS Law College (University of Pune) in 2009.



**Simmons & Simmons** has added **Lijun Chui** as partner to its dispute resolution team in Singapore. Joining from another international law firm based in Singapore, Chui specialises in

international commercial dispute resolution and investigations in the Asia-Pacific region in the technology, media and telecommunications (TMT) sector and the financial sector. Both a Singapore and English qualified lawyer, Chui also brings experience across retail, construction, infrastructure, shipping and energy. Her technology expertise extends to supporting clients on disputes and investigations in areas including cybersecurity, data and emerging technology.

**DEALS**

**Allen & Gledhill** has advised **DBS Bank** on the S\$400 million (US\$298m) Taskforce on Nature-related Financial Disclosures (TNFD) targets-aligned sustainability-linked revolving credit facility to City Developments. This is a first-of-its-kind transaction with criteria guided by targets set by City Developments in its adoption of TNFD disclosures, and is designed to incentivise its ongoing efforts to achieve significant environmental, social and governance milestones. Partner **Daselin Ang** led the firm's team in the transaction.

**A&O Shearman** has advised **Cirrus Aircraft** on its IPO of equity shares in Hong Kong. The IPO raised approximately US\$193.2 million, assuming that the over-allotment option is not exercised. Cirrus designs, develops, manufactures and sells premium aircraft recognised across the aviation

industry, with a 32 percent market share in the global personal aviation market in 2023, based on the number of units delivered. Cirrus' two aircraft product lines have successfully set the industry standard for owner-piloted aircraft, and are currently certified and validated in more than 60 countries. Partners **Wanda Woo, Kyungwon (Won) Lee** and **Li Chen** led the firm's team in the transaction, which marks the second largest Hong Kong IPO in 2024, in terms of new funds raised.

**AZB & Partners** has advised **Accenture Solutions** on its acquisition of 100 percent stake of Excelmax Technologies. Partners **Vaidhyanadhan Iyer, Bhuvana Veeraragavan** and **Nishanth Ravindran** led the firm's team in the transaction, which was completed on July 3, 2024.



## DEALS

**Clifford Chance** has advised **China Merchant Port Holdings** (CMP) on the international aspects of its proposed acquisition of a 51 percent controlling stake of Indonesia's port operator Nusantara Pelabuhan Handal (NPH) from Episenta Utama Investasi (EUI), which will trigger a mandatory tender offer for the remaining shares in NPH held by other eligible public shareholders. Indonesia-listed NPH operates two container terminals in Jakarta's largest port, Tanjung Priok. The transaction will mark CMP's market entry into Indonesia, further expanding its port network in South East Asia. Hong Kong-listed CMP is a global port and shipping developer, investor and operator with an extensive network covering 51 ports in 26 countries and regions, as of 2023. Partner **Julie Fu** led the firm's team in the transaction, while **ABNR Counsellors at Law** acted as Indonesia counsel.

**Cyril Amarchand Mangaldas** has advised **Ascent Investment Holdings** on the sale via the Indian stock exchange of 500,000 equity shares with face value of Rs10 (US\$0.12) each of Amber Enterprises India, representing approximately 1.48 percent of its total issued and paid-up equity share capital, for approximately Rs2 billion (US\$24m). Jefferies India acted as broker for the sale. Western region markets head partner **Abhinav Kumar** led the firm's team in the transaction, which closed on June 20, 2024.

**JSA** has represented '**Cava**' and its **founders** on its series seed funding round from Early Spring Fund and other investors. Cava is a new-age athleisure brand founded by Ria Mittal and Shreya Mittal,

with a strong focus on high-end stylish athleisure products. Early Spring Fund is a skin-in-the-game marketing capital firm that invests in new age startups. Partner **Archana Tewary** led the firm's team in the transaction.

**Maples and Calder** has acted as BVI counsel to **Shenghai Investment** on its issuance of Rmb335 million (US\$46m) principal amount of 4.5 percent credit enhanced bonds due 2027, with the benefit of a keepwell deed provided by Qingdao Military-Civilian Integration Development Group and listed in Macao and Luxembourg. Partner **Juno Huang** led the firm's team in the transaction. **King & Wood Mallesons** acted as English counsel to the issuer and **Qingdao Military-Civilian Integration Development Group**. **Jun He Law Offices** acted as English and Hong Kong counsel to **China Industrial Securities International Brokerage, Silk Road International Capital, China Zhesang Bank (Hong Kong Branch), Guolian Securities International Capital, Haitong International Securities, CLSA, CMBC Securities** and **Zhongming Securities**, as the joint lead managers.

**Khaitan & Co** has advised **Gokaldas Exports** (GEX) on its proposed investment in fabric manufacturer BRFL Textiles by subscribing to Optionally Convertible Debentures (OCDs). In its first tranche, GEX will subscribe for Rs500 million (US\$6m), with the remaining OCDs worth up to Rs3 billion (US\$36m) to be subscribed subsequently in multiple tranches, depending on the funding requirements. These funds shall be utilised mainly to meet the working capital needs, with a smaller portion towards

## DEALS



the capex requirements. Further, subject to the fulfilment of certain conditions and receipt of applicable regulatory, statutory or other required approvals/consents, a possible merger or acquisition will be explored by June 30, 2025. Partner **Ashutosh Sharma**, supported by executive director **Bhavin Vora** and partners **Abhishek Dadoo, Anshuman Sakle, Rahul Chakraborti, Harsh Parikh, Deepak Kumar** and **Shailendra Bhandare**, led the firm's team in the transaction.

**K&L Gates**, with its Singapore office **K&L Gates Straits Law**, has advised the **shareholders of B2B research and data provider Vanda** on its sale to software services investor FPE Capital. Vanda is a global independent research company that provides tactical macro and strategic investment analysis to institutional investors. The investment by FPE Capital will be used to evolve Vanda's data

and research offerings and pursue selective acquisitions. FPE Capital are investors in the second-stage growth of software, data and software services companies. Asset management and investment funds (AMIF) partner **Edward Bennett** (Singapore), supported by AMIF partners **Jennifer Klass** (New York) and **Philip Morgan** (London), led the firm's team in the transaction.

**O'Melveny** has acted as Hong Kong and US counsel to Hong Kong-listed **Laopu Gold** on its IPO and listing in Hong Kong. The total offering size was approximately HK\$905 million (US\$116m), after full exercise of the offer size adjustment option. Established in 2009, Laopu Gold is a Chinese heritage gold jewellery brand accredited by the China Gold Association. It is the first gold jewellery brand in China to promote the concept of heritage gold, and the only brand in China that focuses on the design, manufacture and

## DEALS

sale of heritage gold jewellery. Among all gold jewellery brands in China, Laopu Gold ranked first in terms of single-store sales in 2022 and 2023. The cornerstone investors in this IPO are Tencent, China Southern Asset Management and CPE Fund, who subscribed for US\$56 million worth of shares. At the time of the IPO, Laopu Gold was 582 times oversubscribed. China Securities (International) acted as the sole sponsor, sole overall coordinator and sole global coordinator. China Securities (International), CCB International and BOCOM International acted as joint book-runners and joint lead managers. Tiger Brokers (HK) also acted as a joint lead manager. Partners **Ke Geng** and **Ke Zhu** led the firm's team in the transaction, which is widely recognised as the "First Chinese Heritage Gold Brand IPO" in the market.

**Paul Hastings** is advising **Hanwha Systems** and **Hanwha Ocean** on their acquisition of Philly Shipyard, a leading US shipbuilder that has delivered approximately half of the large US Jones Act commercial ships in the United States since 2000. Hanwha Systems and Hanwha Ocean will together invest US\$100 million. The transaction is expected to close during the fourth quarter of 2024, subject to the satisfaction of certain customary conditions, including approval by the Committee on Foreign Investment in the United States. The transaction is the first ever acquisition of a US shipbuilder by a Korean company, and is an important step in Hanwha's strategy to expand its global defence and shipbuilding footprint. Established in 1997, Philly Shipyard is the sole operating subsidiary of Philly Shipyard, a publicly listed company controlled by Aker, a Norwegian

investment company with diverse holdings in energy, green technologies, and marine biotechnology. Philly Shipyard supplies around 50 percent of the largest US commercial vessels, including tankers and container ships. In addition, Philly Shipyard constructs training vessels for the US Maritime Administration. Corporate partners **Iksoo Kim** and **Alex Kaufman**, supported by partners **Dan Stellenberg**, **Jane Song**, **Lucas Rachuba**, **Navi Dhillon** and **Scott Flicker**, led the firm's team in the transaction.

**Rajah & Tann Singapore** has acted for **Amsino Medical Group** on a substantial investment into Amsino by private equity firm Novo Tellus Capital Partners, and the subsequent exit of Amsino's investors Jiangsu Yuwell Medical Equipment & Supply and Jiangsu Yuwell Technology Development via a share buyback carried out by Amsino. Partner **Tan Mui Hui** led the firm's team in the transaction.



**DEALS**

**Russin & Vecchi** has acted as Vietnam counsel to **Zurich Insurance Group** on the acquisition of AIG's global personal travel insurance business with the well-established Travel Guard brand. The business will be combined with Zurich's existing Cover-More platform. The deal is worth US\$600 million, not including potential additional earn-outs. The acquisition strategically enables Zurich to expand its footprint in more countries, and makes Zurich a leading travel insurer globally. Partner **Nhut Nguyen** led the firm's team in the transaction, while **Skadden Arps** and **Clyde & Co** also advised Zurich.

**Shardul Amarchand Mangaldas & Co** has advised **Emcure Pharmaceuticals** on the IPO of approximately 19.4 million equity shares aggregating to Rs19.52 billion (US\$234m), comprising a fresh issue of approximately eight million equity shares aggregating to

Rs8 billion (US\$96m) and offer for sale by certain shareholders of approximately 11.5 million equity shares aggregating to 11.52 billion (US\$138m). The issue was oversubscribed 68.5 times. Emcure Pharmaceuticals is a prominent pharmaceutical company which develops, manufactures and globally markets a broad range of pharmaceutical products across several major therapeutic areas. Partners **Nikhil Naredi** and **Priya Awasthi** led the firm's team in the transaction.

**Simpson Thacher** is advising **Blackstone** on the tender offer intended to be made by private equity funds and vehicles managed by Blackstone for the common shares of Infocom, a leading provider of digital comics. This marks the largest private equity transaction announced or closed in Japan this year. Partners **Anthony King** (New York)

## DEALS

and **Shahpur Kabraji** (London) led the firm's team in the transaction.

**Skadden** has advised **NTT Finance**, the financing subsidiary of the NTT Group, on the issuance of US\$600 million principal amount of senior notes due 2027, US\$900 million of senior notes due 2029 and US\$850 million of senior notes due 2031. The notes were listed in Singapore, and the offering was completed on July 2, 2024. Tokyo corporate partner **Kenji Taneda** led the firm's team in the transaction.

**S&R Associates** has represented the **broker** on the Rs41.84 billion (US\$501m) bulk deal sale of 97.9 million equity shares of Vedanta, a natural resources and technology company, by promoter entity Finsider International on the Indian stock exchange. Partner **Sudip Mahapatra** led the firm's team in the transaction.

**Trilegal** has advised on the drawdown by Muthoot Finance, via the issuance of 144A/Regulation S, US\$-denominated senior secured notes due in 2028 with a coupon of 7.125, aggregating to US\$100 million. The drawdown was undertaken by Muthoot Finance under its US\$2 billion global medium term note program, which was updated recently. Deutsche Bank Singapore Branch and Standard Chartered Bank were the managers to the offering. The notes were listed in India. Muthoot Finance is the largest gold loan NBFC, in terms of loan portfolios. The issue proceeds will be applied for onward lending and other activities, as may be permitted by RBI. Partner **Richa Choudhary**, supported by partner **Pranav Sharma**, led the firm's team in the transaction.



**TT&A** has advised **IFC** on the grant of a secured loan of US\$15 million made available to each of PRAN Dairy and Habiganj Agro for expansion in their productiveness and related working capital needs. Partners **Gautam Saha, Ambarish Mohanty** and **Nikhil Bahl** led the firm's team in the transaction.

**WongPartnership** has advised **65 Equity Partners** (65EP) on its investment of S\$100 million (US\$74.6m) into Hi-P International, where 65EP will help develop plans for new strategic focus and leadership succession for growth acceleration and sustainability, and Hi-P will tap on 65EP's extensive network to bolster its board of directors, enroute to its goal of a potential public listing in the future. Partner **Quak Fi Ling** led the firm's team in the transaction.

# Key Concerns on Trademark Registration: through the Madrid System in Thailand



SIWARUT THAMMARONG, SOPHON PATHUMRATWORAKUN

**W**e often receive queries about trademark registration filed through the Madrid Protocol with Thailand as a designated country. To address these concerns, we gathered insights from an official from the International Trademark Division of the Thai Trademark Office during the Pre-Annual Meeting Reception in Bangkok on April 24, 2024.

The key concerns are as follows:

## 1. When Will the Statement of Grant of Protection Be Issued?

### MF.4 Form: Statement of Total Grant of Protection (for smooth process applications)

The MF.4 Form is used for straightforward cases where no provisional refusal is issued, leading to smooth and uncomplicated

Between 2017 and 2024, around 2,000 trademark applications were successfully granted, with Statements of Grant of Protection (MF.4 Forms) already dispatched to the International Bureau (“IB”). However, the Thai Trademark Office solely issues MF.4 Forms to WIPO; no certificates of trademark registration are provided for applications filed through the Madrid Protocol. To obtain



certificates, applicants must appoint a local trademark agent to receive the certificates on their behalf.

Since Thailand adopted the Madrid Protocol in 2017, the Thai Trademark Office has never issued any MF.5 form. Currently, over five thousand trademark applications await final approval and notification of the MF.5 Form to the IB due to the incomplete database linkage between the IB and the Thai Trademark Office. The trademark office anticipates resolving this issue by the end of this year or sooner, allowing for the issuance of MF.5 forms to applicants accordingly.

### **MF.5 Form: Statement of Grant of Total or Partial Grant of Protection Following a Provisional Refusal**

The MF.5 Form is applicable when an international application initially receives a provisional refusal, but the statement of grant is subsequently granted.

*Although trademark registration through the Madrid Protocol is a convenient option for trademark owners, most applications in Thailand are rejected.*

Since Thailand adopted the Madrid Protocol in 2017, the Thai Trademark Office has never issued any MF.5 form. Currently, over five thousand trademark applications await final approval and notification of the MF.5 Form to the IB due to the incomplete database linkage between the IB and the Thai Trademark Office. The trademark office anticipates resolving this issue by the end of this year

or sooner, allowing for the issuance of MF.5 forms to applicants accordingly.

Despite the incomplete linkage of the MF.5 forms system, once the publication process is complete, the Thai Trademark Office will grant protection to trademark applications and assign registration numbers to those filed through the Madrid Protocol. Applicants can still appoint a local trademark agent to request a local certificate of trademark registration from the Thai Trademark Office.

## **2. Should the Applicant Respond to a Provisional Refusal?**

According to the Thai Trademark Act and the Ministerial Regulation on Registration of Applications filed through Madrid Protocol B.E. 2560, provisional refusals for the applications filed through the Madrid Protocol can be categorised into two types.

### **Non-Response Required Provisional Refusals**

If a provisional refusal is issued solely to request an amendment to certain items of goods and services, and the rest of the application is considered registrable, the applicant has the option to refrain from responding to such provisional refusal. In this case, the application will proceed to publication for the acceptable goods and services only.

However, it is important to note that while no amendments were requested for certain items of goods and services by the provisional refusal, the Thai Trademark Office retains the authority to reject any items it finds unacceptable according to local practices before the publication period. In this case, the application may proceed to publication only for the goods and services that comply



with the local practices, without notifying the applicant. This situation could limit the coverage of goods and services without allowing the applicant to contest the provisional refusal. To mitigate this issue, we highly advise contacting a local trademark agent to thoroughly review all goods and services, even though the provisional refusal does not require a response.

### Response Required Provisional Refusals

If a provisional refusal is issued on multiple grounds rather than only unacceptable goods and services identification, the applicant must respond to such provisional refusal. To maintain the application, the applicant must appoint a local trademark agent to respond to the provisional refusal in Thailand. In this case, a notarised power of attorney is required. Other than unacceptable goods and services identification, the possible grounds of refusal could be non-distinctiveness, similarity to the prior registered marks, the mark itself being prohibited by laws, or disclaiming a particular part of the mark, etc.

According to the Thai Trademark Act and the Ministerial Regulation on Registration of Applications filed through Madrid Protocol B.E. 2560, if a provisional refusal has been issued on multiple grounds as described above, it is required to respond to all grounds; otherwise, the application will be abandoned.

Although trademark registration through the Madrid Protocol is a convenient option for trademark owners, most applications in Thailand are rejected. This is due to Thailand's unique practices regarding goods and services identification. Furthermore, the Protocol's examination period is much longer compared to local applications. We recommend consulting a local trademark lawyer to file local trademark applications to minimise the risk of receiving provisional refusals. Under the laws and regulations, local applications benefit from a significantly faster examination period, allowing for the preparation of lists of goods and services to comply with local practices.



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# Who's Afraid of AI?




Join Paul Haswell, a partner at K&L Gates in Hong Kong, as he explores the transformative impact of technology on the legal profession in his new column for IHC Magazine. Paul offers insights into the challenges and opportunities for in-house and external counsel, providing thought-provoking perspectives on the future of law in the digital age.

We are in the middle of the artificial intelligence (“AI”) revolution. Since ChatGPT was launched by OpenAI in November 2022 the topic of the role and impact of generative AI, its impact on productivity, on our daily lives, our jobs, and perhaps even our very existence has been dominating the headlines. Discussions have focused on how the increased adoption and advancement in the abilities of generative artificial intelligence to complete complex tasks might displace the role of human beings across multiple industries. The future of work and the possible demise of certain jobs is one of many topics which has remained in the news as multiple AI solutions have hit the market and shown how quickly they can create the type of outputs which could take a human being, or a team of human beings, many hours, days, or indeed months to produce.

Depending upon whom you ask, the job of a lawyer is one which is either almost certain to

be displaced by artificial intelligence, or the one that is safe. This is not the first time the legal profession has been highlighted as potentially doomed; I’ve lost count of the number of times since becoming a lawyer I’ve been reminded of the quote “Let’s kill all the lawyers” from Shakespeare’s Henry VI Part II. However, it would be foolish to assume that AI is not going to have a dramatic impact on the work of lawyers, whether they be working in-house or in private practice.

Those who trained and qualified before electronic research tools such as LexisNexis became widely adopted will remember the time they spent researching case law by spending hours in a law library or trying to locate and obtain precedents to prepare an agreement. Those who trained in large law firms may even recall spending a significant part of their training in data rooms or on due diligence tasks trudging through vast quantities of documents. I can distinctly remember, and not fondly, the months



I spent paginating case bundles as a very junior lawyer. I can't recall much detail of the case I was working on, but I will never forget that for a number of weeks my work was to spend 12-15 hours a day in a dark room stamping sequential digits on to seemingly limitless pages of seemingly endless documents. Those 12-15 hours each day constituted chargeable time which was ultimately charged to a client and brought me closer to hitting the number of chargeable hours I was required to bill each month.

Such tasks are now, in most cases, at least partially automated. A savvy client may no longer be willing to pay for the time it takes junior lawyers to put page numbers on documents, and with good cause, when most photocopiers can do the same job in a fraction of the time. AI brings with it the automation of more complex legal tasks, such as the drafting of complex documents, the creation of pleadings in a contentious matter, and of course to carry out legal research tasks. AI can also prepare legal advice. All of this can be done in the fraction of the time it may take a well-trained lawyer.

Which begs the question: why should anyone pay for a lawyer when AI might be quicker and cheaper? Well, firstly, AI solutions are not foolproof, and they are really just tools which can help rather than replace lawyers. There have been plenty of recent stories of lawyers who delegated the drafting of pleadings to artificial intelligence only to see it create fake cases (which landed the lawyers in question in trouble). There is also the fact that there is more to being a lawyer than just generating documents; the role the lawyer is one of trusted adviser, of one who liaises with, understands, and acts in the best interests of their client regardless of how that client may change over time. This is the case regardless of whether a lawyer is in house or part of a firm. The best lawyers are human beings who bring their humanity to the work they do whether drafting

documents, pleadings, or simply advising the clients day to day. For such trusted advisers artificial intelligence is just another tool to assist them in that task, no different to a law library full of cases or a precedent bank. AI just helps the lawyer produce outputs more quickly and efficiently.

So the real question as to the impact generative AI will have on lawyers is not whether it will replace them, but how will it change how their value is judged. The majority of private practice lawyers still charge by the chargeable hour, and even if they don't the majority of law firms' finance departments still assess lawyers by how many chargeable hours they have worked. This ignores the value of good legal advice, instead assessing outputs on how long it took to create that advice. In the age of increasingly capable AI solutions which can produce documents quickly it's hard to see how much longer this model can survive.

So perhaps the impact of AI will be to give us more time to actually be lawyers, aided by some impressive new tools and focusing on helping our clients and stakeholders provide the best possible outcomes rather than hitting hours targets. If so then I, for one, welcome our new AI overlords!

#### **Paul Haswell, Partner, K&L Gates**

Paul Haswell is a Partner at K&L Gates's Hong Kong office, specialising in Technology Transactions and Sourcing. With over 20 years of experience, he focuses on TMT matters, including data and cybersecurity, telecommunications, and emerging technologies like AI and blockchain. A tech enthusiast since childhood, Paul has handled major technology disputes and offers a blend of legal expertise and passion for innovation.

Outside of his legal work, Paul is a tech and law podcaster and a DJ. He co-hosts the "Sunday Escape" radio show on RTHK and the podcast "Crimes Against Pop." A music lover with an extensive vinyl collection, Paul enjoys discovering and sharing new music. He's also a sci-fi fan, particularly of "Doctor Who."

# In-House Insights with Eileen Ng of Harley-Davidson

*Ng shares insights on her transition from aviation to automotive, leading Harley-Davidson's legal team across APAC and international markets, and fostering innovation while balancing ESG priorities.*



Revving to go! Ng with a Harley

## **COULD YOU SHARE A BIT ABOUT YOUR PROFESSIONAL JOURNEY AND WHAT LED YOU TO YOUR CURRENT ROLE?**

I had always been in the travel and aviation industry since I had gone inhouse. From airline cargo and airlines to tasty airline food and fancy designing of amenity kits to corporate travel management. It was a huge change in industry when I joined Harley-Davidson. However, I had always liked cars, automotive and was a bit geeky around the specifications of them and how their exhaust sounds. It was an offer I could not refuse with the way Harley-Davidson's engine sounds! I started out at H-D with the APAC region and eventually moving into this role, covering the international markets (anything outside of the US).

## **CAN YOU DESCRIBE THE SIZE AND STRUCTURE OF YOUR TEAM?**

I have teams represented for each of APAC, EMEA (including MENA) and also LATAM. They are rather flat teams with a director owning the regions and representing legal for that region and 1 or 2 counsels to support them.

**HAVE YOU EVER FACED A SITUATION AS GENERAL COUNSEL WHERE YOU HAD TO OPPOSE A COMPANY DECISION THAT ULTIMATELY PROVED BENEFICIAL? ALTERNATIVELY, CAN YOU SHARE AN INSTANCE WHERE A CONTROVERSIAL DECISION BY THE LEGAL DEPARTMENT ENDED UP BEING HIGHLY ADVANTAGEOUS FOR THE COMPANY?**

There are always times when a legal recommendation may not be the best business way forward. Also, there will be times where a business decision may not be legally feasible. Especially for the APAC region, there are many times when certain greenfield projects are never done before and potentially faced with legislation that may be inconsistent and regulations themselves may be grey and not fully developed. I always believe in facilitating the business where legal compliance is a huge spectrum between grey and white. Certainly in an ideal world situation, white is always the best. However at the other end of the spectrum of dark grey, those will be the times where you just have to say no – not because it is legally not possible but we question whether the business decision is one

that is worth it for the company to be the test subject of a new piece of law.

**HOW DOES YOUR LEGAL TEAM FOSTER A CULTURE OF INNOVATION AND ADAPTABILITY? CAN YOU PROVIDE AN EXAMPLE OF A TIME WHEN CREATIVE PROBLEM-SOLVING LED TO A SUCCESSFUL OUTCOME FOR YOUR ORGANISATION?**

Coming from a team structure where the team is lean, being efficient in a smart way then allows our team members to be able to do more. Adopting technology to embrace contract lifecycle management, the power of SAP to push out standard T&Cs, gathering feedback, data, surveys using technology allow us to do our jobs a bit easier and better each day. Sometimes, we introduce technology that we see at seminars to business functions so they are able to adopt at first instance which will then lead to more meaningful work flowing across to legal eventually.

Given the lean structure, more often than not the team will need to be on their feet, doing an array of matters, addressing new requirements, new legislation, and new scopes of work as business dives into new business opportunities. There was a time where we were faced with customs imposing new requirements that was never seen or experienced before. Legal was in the centre of it because of how it works with all business functions. The particular custom requirement had no clear business function that would own it. We had to then bring everyone together to discuss and everyone to contribute with their expertise knowledge which eventually led to our bikes being successfully released from the customs albeit with slight delay. Less of what was required of legal and legal advice, it really pinned more on government relations, communication required parties and



Wearnes Harley-Davidson of Singapore Grand Opening



Team engagement in Thailand

suggestions of approach based on experience for next steps to lead this to a good end.

**WHAT QUALITIES DO YOU PRIORITISE WHEN SELECTING A LAW FIRM FOR OUTSOURCING WORK? COULD YOU EXPLAIN YOUR DECISION-MAKING PROCESS WHEN ENGAGING WITH EXTERNAL LEGAL PARTNERS?**

KIS is always my motto. My external counsels need to fully embrace that. They need to be able to keep it simple in every single way. Practical, simple and to the point advice are key points to selection of external counsel.

**IN TODAY'S FAST-PACED LEGAL ENVIRONMENT, HOW DO YOU MAINTAIN A HEALTHY WORK-LIFE BALANCE? WHAT STRATEGIES DO YOU ADVOCATE FOR PROMOTING WELL-BEING WITHIN YOUR LEGAL TEAM?**

I swim so I definitely make sure I get that done for the day regardless of how busy I am. Unless absolutely impossible or if I am travelling, I will read to my kids every night. This allows me to tell myself that at least I got something done for myself and spent some time with my kids each day, at the end of the day, especially when the

day just flies by from calls to negotiations. I say the same to my team members – please ensure you do something for yourself and your family each day. If you have more time, please do more. However on busy days, just make sure you note to take time out to do something, albeit one thing for yourself or your family. Make it something that you take note of so that mentally, it will make you feel better and will allow you to keep going. I would love to think that the more we have this thought, we will be more conscious to keep doing it and hopefully more and more when they have the time.

**HOW DOES YOUR LEGAL TEAM INCORPORATE ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) FACTORS INTO LEGAL ADVICE AND DECISION-MAKING? WHAT ROLE DO YOU SEE LEGAL PROFESSIONALS PLAYING IN PROMOTING SUSTAINABLE BUSINESS PRACTICES?**

ESG is becoming an important element for most companies. H-D, is also one of them. We are required from many aspects to do our part to fulfil our ESG obligations. H-D not only makes it a priority to comply with the compliance, regulatory requirements, environment, social and



Ng with Japan Team of Harley-Davidson

governance is always at the heart of our decision making process. We take huge considerations of how hiring is done at the plant, we have strict environmental and social requirements from our suppliers. Those are our strict requirements.

### WHAT ARE SOME PERSONAL PASSIONS OR HOBBIES YOU ENJOY OUTSIDE OF YOUR PROFESSIONAL WORK?

As mentioned, I swim. Clears my mind and keeps me sane. I also enjoy snowboarding and will take trips every year with my family to do that hobby. The mountains has its attraction, I feel that until today, it never fails to continue to train up my determination, adaptability and willingness to get up and just move on with it, especially on days when you are just totally exhausted but you just need to adapt to the ever changing mother nature and the sheer fact that you just need to get down before the lift closes.

### IN YOUR EXPERIENCE, WHAT ARE THE MOST CRITICAL ELEMENTS OF BUILDING STRONG RELATIONSHIPS WITH OTHER DEPARTMENTS WITHIN THE COMPANY? HOW DO THESE RELATIONSHIPS CONTRIBUTE TO THE OVERALL SUCCESS OF THE BUSINESS?

I always believe having sincerity and empathy is the way to build relationships and trust. In order for counsel to succeed within

the company, business must be able to trust them. We must be able to see problems from the business' point of view in order to be able to solve them practically and efficiently. This empathy and trust coupled with the willingness to help solve problems will bring success to the problem and the business.

### WHAT ARE THE BIGGEST CHALLENGES YOU FORESEE FOR IN-HOUSE LEGAL TEAMS IN THE NEXT FIVE YEARS, AND HOW DO YOU PLAN TO ADDRESS THEM?

As business moves between good and bad years, losing talents and people will be my biggest concern. Flight risk is always a big risk for a legal team since legal is such a transferable skill. I always have the mind that individuals are here to learn and grow and I will always do that for my team members. Whether they eventually move on, we will try our best to identify talents and try to give them the right opportunity, required training, listen to their needs and hope that they will stay. I personally continue to engage with my team members so I make sure I continue to hear their needs, appreciate their contributions, keeping them engaged and hopefully they will want to stay with me and ride through another week, month, year together.

Eileen is an accomplished legal professional with extensive experience in corporate law, specialising in mergers and acquisitions, joint ventures, and strategic partnerships across diverse industries and driving successful outcomes for businesses in the Asia-Pacific region. She has held key leadership roles at renowned organisations such as Harley-Davidson Motor Company, CWT, and Singapore Airlines Limited.

Outside of her professional endeavours, Eileen is committed to community service, offering legal aid to those in need and giving back to the community.





# Dissecting Foreign Direct Investment In India Vis-À-Vis Press Note 3 (2020 Series)

RABINDRA JHUNJUNWALA, MOIN LADHA

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The Government of India launched a protectionist regime by introducing the Press Note 3 (2020 Series) (Press Note). With the introductions of the Press Note, all investment by entities incorporated in a country which shares a land border with India, or where the beneficial ownership of an investment is situated in such countries, are required to obtain a prior government approval for investments.

The primary trigger behind the introduction of the Press Note seems to have been a reaction to the rising geopolitical tensions between the two countries at the Indo-China border and to

prevent Chinese state-owned enterprises from opportunistic takeovers of stressed and strategic assets in India. This has also led to the Indian government banning several Chinese mobile applications and restricting Chinese involvement in public procurements.

Though foreign investments from China and Hong Kong (due to it being the special administrative region of China) are under government scrutiny when compared to other land bordering nations, investments from Taiwan created a lot of uncertainty amongst investors and bankers when the Press Note was implemented.



## The Conundrum Of Beneficial Ownership

The Press Note requires prior government approval for any direct/indirect investment from any beneficial owner from a bordering nation. However, the Indian jurisprudence is not very clear on the threshold for identifying 'beneficial ownership'. This has led to a draconian situation where minority non-controlling stake purchases and Indian leg of global deals (involving very minimal Chinese stake) are requiring a prior government

approval. To resolve this conundrum, certain bankers and market participants have pegged the threshold limit for beneficial ownership at 10% for indirect acquisitions though the government has provided no clarity on the same.

Therefore, the requirement for a prior government approval for direct/indirect investments from entities which have Chinese/Hong Kong (or other border nations) beneficial ownership, irrespective of the percentage or quantum of the investment, cannot be ruled out.

It is worth noting that the government has recently tightened the laws for determining a significant beneficial owner (**SBO**). Even CEOs of an ultimate holding company who have control over such company are now being considered as an SBO – thereby increasing the complexity of the Press Note structures.

*"The need of the hour is for the government to fathom whether the Press Note is still serving the purpose for which it was introduced or has it outlived its life."*

## Developments In The Press Note Space

While the banks are pegging the threshold limit at 10%, and approvals granted thus far are non-controversial with minor indirect Chinese shareholding – these are primarily in the non-regulated sectors like manufacturing and software.

However, the narrative is different in the regulated sectors. Entities in regulated sectors were made to seek post facto approval even for a beneficial ownership exposure of less than 10%. Separately, Variable Interest Entity (VIE) structures in the regulated space have also been scrutinised for a Press Note violation.

Currently, even directors from land bordering nations, who may occupy directorship positions in an Indian company are required to take necessary security clearance from the Ministry of Home Affairs.

## Conclusion

While it isn't certain if the regime would be relaxed anytime soon, we expect the measures to continue until the geopolitical tensions between India and China are resolved.

However, the situation is much improved than it was when the Press Note was implemented. Currently, the approvals are being obtained within 8 to 12 months as compared to the initial 18 months wait. We have also started seeing approval being granted to structures with minor indirect Chinese shareholding without involvement of Chinese state-owned enterprises. That being said, the investee companies and investors in direct and global transactions involving India should exercise caution while receiving any such investment and ensure that necessary approval/clearances are obtained if the structure has a Press Note exposure.

The need of the hour is for the government to fathom whether the Press Note is still serving the purpose for which it was introduced or has it outlived its life.



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Rabindra is a Partner and senior member in the Corporate Law Practice in the Mumbai office. He started with the firm in its Kolkata office in 1990 and co-founded the Mumbai office in 2001.

His practice spans across domestic and cross-border M&A and PE investment.



**Moin Ladha, Solicitor and Partner, Khaitan & Co**

Moin is a Solicitor and a Partner in the Mumbai office with over 16 years of professional experience in advising clients as part of the Corporate M&A and Regulatory Practice. He is a senior

member of the Financial Regulatory Practice of the firm.

# Corruption Perceptions Index 2023:

## Global Struggles Persist, Asia Pacific Included



JAMES M. KOUKIOS, DANIEL P. LEVISON, B. CHEN ZHU, TIMOTHY W. BLAKELY, SAQIB ALAM AND RISHIKEESH WIJAYA

**O**n January 30, 2024, Transparency International (TI) published its annual Corruption Perceptions Index (CPI) for 2023. The 2023 CPI suggests there has been limited progress in the global fight against corruption, with TI observing that a “vast majority of countries have made no progress or declined in the last decade.”

For the Asia Pacific (APAC) region in particular, TI observed that “very few countries show sustained turnarounds that indicate significant changes in corruption levels,” with “the lack of delivery by elected officials on anti-corruption agendas” being among several reasons for stagnating CPI scores in the region.

The CPI ranks perceptions of public-sector corruption in 180 countries and territories from a variety of sources, reflecting the views of experts and businesspeople. Countries and territories obtain CPI scores ranging from 0 (highly corrupt) to 100 (very clean).

At a high level, this year’s results show:

- Sixty-eight percent of countries globally have CPI scores under 50;
- For the fifth year in a row, APAC’s average CPI score “stagnates stubbornly” at 45; and
- Seventy-one percent of APAC countries have a CPI score below the regional average score (45) and the global average score (43).

In its report, TI expressed concern about the “*global trend of weakening justice systems*” that is “*reducing accountability for public officials, which allows corruption to thrive.*” This is even as countries continue to prioritize post-pandemic economic recovery amidst geopolitical headwinds and an unpredictable economic outlook.

The APAC region continues to host many of the global top scorers including, New Zealand (85, ranked 3rd), Singapore (83, ranked 5th), Hong Kong and Australia (both scoring 75 and ranked 14th), and Japan (73, ranked 16th). Even so, TI did not spare these jurisdictions from critique, observing that top-scoring countries in the region were “*slowly declining*” in their battle against public-sector corruption.

While jurisdictions of significance for global businesses and investment have made some progress from their historical scores from a decade ago, their scores have fallen from last year. These include China (42, dropping three points from 2022) and Vietnam (41, dropping one point from 2022). South Korea (63, ranked 32nd) has seen significant improvements in its CPI score over the years, although its score remained the same in the last two years.

In spite of TI’s criticisms, we observe that certain jurisdictions in the APAC region continue to strengthen legislative and enforcement efforts against corruption, including in Vietnam which has pursued an aggressive anti-graft crackdown across multiple sectors. Australia has also increased its commitment to battling corruption by establishing its own National Anti-Corruption Commission in 2023 and tabling a bill to amend the country’s decades-old foreign bribery law (also reported in our June 2023 Top 10 International Anti-Corruption Developments).

## Ones to Watch

### China

In recent years, including in 2022, we highlighted China’s continued legislative and enforcement focus on tackling corruption at all levels, across both the public and private sectors. The past year has been no exception, with President Xi Jinping recently pledging to deepen the country’s anti-corruption crackdown, even highlighting industries of focus such as finance, energy, infrastructure, and healthcare. These statements from the top are backed by trends in enforcement activity. For example, China’s anti-corruption watchdog recently announced that 110,000 Chinese Community Party Officials faced disciplinary action for a variety of infractions, including for “*receiving expensive gifts, money or attending lavish meals and celebrations.*”

Most recently in January 2024, the Standing Committee of the National People’s Congress voted to adopt Amendment XII to the country’s Criminal Law which stipulates stiffer penalties for both bribe givers and recipients (particularly where they are repeat offenders or where the bribes involve major governmental projects or key sectors). Chinese laws targeting bribery and corruption have traditionally been focused on bribe recipients in the public sector. These amendments represent a shift in legislative strategy that likely will trickle down to enforcement, particularly with the government vowing to tackle corruption at all levels, including “*ants and flies.*”

### Indonesia

Indonesia remains one of the fastest growing markets in the region, if not the world. That said, the resource-heavy country did not see its CPI score change from 2022 to 2023 (34, ranked 115th), and its CPI score remains a far cry away from its peak in 2019 (40). Indonesia, like many countries in the APAC region and the world,

is also going to the polls this year in February 2024, at the presidential and legislative levels.

As we highlighted last year, Indonesian enforcement agencies, including its Anti-Corruption Commission (KPK) face criticism with respect to their priorities and effectiveness, particularly as amendments to the country's anti-corruption laws in 2019 and other actions in recent years arguably eroded the KPK's powers.

It remains to be seen if and how changes at the highest levels of government (particularly with current President Joko Widodo stepping down) can help the country tackle deep-seated corruption issues, although some critics are not optimistic.

## Malaysia

Malaysia is one of the significant improvers in the APAC region, improving three points in its 2023 CPI score (50, ranked 57th). The country has also seen some improvements in political stability as Prime Minister Anwar Ibrahim crossed the one-year mark for his unity government at the end of 2023. Prime Minister Anwar Ibrahim has made combatting corruption “a central theme of his reform agenda.”

From an enforcement perspective, the Malaysian Anti-Corruption Commission (MACC) has had a significant year, bringing corruption and money laundering charges against a former Prime Minister and charges (for failing to disclose assets under Malaysia's anti-corruption laws) against a former Minister of Finance.

In this regard, some critics have argued that Prime Minister Anwar Ibrahim has used the MACC to target his “political rivals” – claims that he denies. Interestingly enough, following the release of the 2023 CPI results, the MACC called for “political will to improve anti-corruption strategies and good governance” so that

Malaysia can achieve the government's target of being ranked 25th in the CPI ranking by 2033.

Recently, former Prime Minister Najib Razak's jail term and financial penalties were substantially reduced through a partial royal pardon following his conviction for corruption offences in relation to his role in the 1Malaysia Development Berhad (1MDB) matter. Critics are concerned that the decision, which under the Malaysian Federal Constitution is made by Malaysia's king with the advice of the Pardons Board, may negatively impact public confidence in Malaysia's fight against corruption. It remains to be seen if and how political developments in the country will affect its stance in rooting out corruption.

## Looking Ahead

Even as TI interprets the 2023 CPI as showing “little to no meaningful progress towards curbing corruption” in APAC, it bears watching how upcoming elections in APAC countries (e.g., Indonesia, South Korea, India, and Pakistan) will impact countries' commitment to taking concrete steps to address public sector corruption. In some ways, potential changes in government may also create their own unique corruption risks, particularly with respect to licenses and permits, procurement, and tenders for government projects. These risks are exacerbated in certain APAC jurisdictions that struggle with endemic corruption.

It would be misguided to assume that high-scoring countries in the APAC regions face limited corruption risks. Traditionally strong performers have seen their scores fall from 2022, including New Zealand (falling two points) and Hong Kong (falling one point). Singapore continues to fare well in its CPI scores even as there were no changes from the previous year. Yet, the country recently saw a former minister being charged with multiple offences including corruption (the

first time a Singaporean minister has faced a corruption charge since 1986). In the wake of this latest corruption probe, Singapore's leaders have come out to reiterate the country's commitment to keeping the country "in~~cor~~r~~ruptible~~," even publicly discussing details of limitations placed on public officials with respect to gifts, meals, and entertainment.

As countries continue to prioritize their post-pandemic economic recovery, corporates are no different. Companies must also grapple with other pressing business continuity issues including unpredictable geopolitics, changing

governments, and supply chain disruptions. With these variables, companies must be proactive in identifying how corruption and compliance risks may evolve locally and ensure that they are calibrating their resources to appropriately tackle these risks. This is in addition to distributing their resources to identify and remediate legal and compliance risks arising from other areas including sanctions and export controls, money laundering, and foreign investment regulations.

## MORRISON FOERSTER



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Tim is the managing partner of Morrison Foerster's Hong Kong office. He is also head of the firm's Hong Kong Litigation Department and a member of both the firm's FCPA + Global Anti-Corruption and Global Ethics + Compliance teams. Tim's practice focuses on government and internal investigations and complex commercial litigation and international arbitration matters.



**James M. Koukios, Partner, Morrison Foerster**

James Koukios is co-chair of Morrison Foerster's Securities Litigation, Enforcement, and White Collar Defense Group and serves as co-head of the FCPA + Global Anti-Corruption Practice.

James represents companies and individuals in high-stakes government enforcement actions and complex internal investigations.



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Rishi advises clients on government-facing and internal investigations, white-collar, and ethics and compliance matters across the Asia Pacific region.



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Dan Levison is a partner in Morrison Foerster's Singapore office, where he heads its Litigation Department and leads the firm's Ethics and Compliance regional practice in Asia. Dan counsels clients regarding compliance matters and conducts internal investigations and compliance reviews across the Asia-Pacific region, where he has over 24 years of experience.



**B. Chen Zhu, Partner, Morrison Foerster**

Chen is a partner whose practice focuses on government and internal investigations, cross-border enforcement matters and commercial litigation. He has extensive experience advising on U.S. economic sanctions, anti-money laundering, Foreign Corrupt Practices Act (FCPA), securities and accounting fraud, and related governance and corporate compliance issues.



**Saqib Alam, Partner, Morrison Foerster**

Saqib Alam is an English solicitor, New York attorney and Singapore advocate who advises global companies, boards and high net worth individuals facing business-critical issues and helps them resolve such matters from a legal and reputational standpoint. A leading practitioner in this field, Saqib has been ranked by Chambers and Partners for 2-years running in Band 1 (the top tier) for Crisis & Risk Management: UK-Wide.



# Vietnam's new anti-money laundering legislation

DAO HONG DIU

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**A** new Anti-Money Laundering Law (“**AML Law**”) was passed by the National Assembly on November 15, 2022. It replaced AML Law 2012 and applies to financial institutions, businesses and individuals, whether Vietnamese or foreign<sup>1</sup> (each a “**Reporting Entity**”).

The entity primarily responsible for enforcement of the AML Law is the State Bank of Vietnam (“**SBVN**”). Within the SBVN, the Anti-Money Laundering Department (“**AMLD**”) has primary responsibility.

Two key Prime Ministerial documents are: Decision No. 941/QĐ-TTg dated August 5, 2022 which details the action plan to combat

<sup>1</sup> A financial entity is licensed to conduct one of the following activities: a) Acceptance of deposits; b) Lending; c) Financial leasing; d) Payment services; e) Payment intermediary services; f) Issuing negotiable instruments, bank cards, money transfer orders; g) Bank guarantees and financial commitments; h) Providing foreign exchange services, money market instruments; i) Securities brokerage; advice to security investment, provision of security for securities issues; j) Securities investment fund management and securities investment portfolio management; k) Life insurance business; l) Money and currency conversion. A non-financial entity which conducts one of the following activities: a) Prize-awarding games, including electronic games; telecommunications network-based games, Internet-based games; casinos; lottery tickets; betting; b) Real estate business, except leasing or subleasing of real property and real estate consulting; c) Dealing in precious metals, jewels; d) Supply of accounting services; provision of notarial services; provision of legal services rendered by lawyers, legal professional organizations; e) Providing business formation, company management and administration services; services of acting as a director or secretary of a company to third parties; legal arrangement service.



money laundering, terrorist financing and financing the proliferation of weapons of mass destruction 2021 – 2025; and Decision No. 194/QĐ-TTg of February 23, 2024 with 17 actions directed to the international Financial Action Task Force with the goal to remove Vietnam as a country that requires special monitoring.

## Reporting requirements

**High-value transaction:** A Reporting Entity must report transactions valued at VND 400 million or more (US\$1.00 = VND25,000). It must act via electronic means. If it exists it can use an information technology platform<sup>2</sup>.

**Suspicious transactions:** A Reporting Entity is responsible for reporting a suspicious transaction to the AMLD when:

- the transaction involves a suspect, defendant or convicted person, and there is reason to believe that the assets involved are owned or controlled by that person; or
- based on one or more suspicious signs there is a reasonable basis to believe that the assets relate to money laundering.

**Suspicious signs:**

- The client or customer refuses to provide information or provides inaccurate, incomplete, or inconsistent information;
- The customer tries to persuade the Reporting Entity not to report a suspicious transaction to the authorities;
- The customer is unidentifiable or the transaction involves an unidentifiable party;
- The telephone number provided is not contactable or does not exist;
- A transaction involves an entity named on the warning list;

- Based on all information available, there appears to be a criminal link among the parties involved or there is a relationship between the parties and an individual/entity on the warning list;
- The transaction involves a sum of money which does not correlate to the income or business of the organisation/individual; or
- The customer requests the Reporting Entity to act contrary to the law.

The AML Law highlights several signs that relate to banking, intermediary payments, life insurance, securities, prize-awarding games, real estate business which should raise suspicions. A Reporting Entity is obliged to report to the SBVN transactions that involve wire transfers that exceed certain amounts.

**In certain circumstances, failure to report can be criminally charged under the Penal Code.**

**Reporting deadlines are tight:** Reports on high-value transactions/wire transfers must be sent to the AMLD within two working days from the date discovered. If the report is made in the form of an electronic file, the Reporting Entity must send it before 4pm of the working day following the date on which the transaction arises. If the day on which the report is supposed to be sent is a public holiday, or weekend, the report can be sent on the next working day.

Reports on suspicious transactions must be made within three working days from the time of the transaction, or within one working day from the date discovered.

<sup>2</sup> Article 6 of Circular No. 09/2023/TT-NHNN of the SBVN dated July 28, 2023.



If criminal activity is detected in a suspicious transaction, the transaction must be reported to the SBVN and the provincial police department within 24 hours.

## Disciplinary action for non-compliance

AML violations can be disciplined, administratively sanctioned, or criminally examined depending on various factors. The offender must compensate damages.

Money laundering offences include<sup>3</sup>:

- Failure to take steps to identify, verify and update client information;
- Failure to establish a risk management process;
- Failure to classify customers based on risk exposure;
- Failure to issue internal rules on anti-money laundering, anti-terrorism financing, and the like;

- Failure to establish a risk management system to identify politically exposed foreigners;
- Failure to report a suspicious transaction, a high-value transaction and other reports;
- Failure to postpone a transaction, or to freeze accounts, or to seal/seize assets as required;
- Conduct of prohibited acts;
- Failure to follow regulations on correspondent banking, new technology, and to supervise transactions;
- Failure to provide required information; and
- Ignoring risk assessment.

Failure to comply with reporting requirements is subject to monetary fines and sanctions pursuant to Decree No. 88/2019/ND-CP of the Government dated November 14, 2019. In certain circumstances, failure to report can be criminally charged under the Penal Code.

<sup>3</sup> Decree No. 88/2019/ND-CP of the Government dated November 14, 2019 (as amended by Decree no. 143/2021/ND-CP of the Government dated December 31, 2021).

Conviction of any of the following acts can result in imprisonment of one to five years under the Penal Code:

- a. Finance or other transactions intended to conceal the illegal origin of money or property obtained through commission of a crime;
- b. Use of property obtained through commission of a crime;
- c. Concealment or obstruction of information that involves the origin, nature, location, movement or ownership of money or property obtained from a crime;
- d. Commission of any offence specified above, knowing that value was received through another's crime.

An individual offender may be subject to the following penalties:

- Confiscation of all or part of his/her property;
- A fine from VND20,000,000 to VND100,000,000;
- Prohibition from holding certain positions or employment for one to five years; or
- Imprisonment from five to 15 years depending on aggravating factors (eg, organised crime).

A corporate legal entity may be liable to a fine from VND1 billion to VND20 billion, or its operation may be suspended for one to three years and even permanently shut down, or it may be banned from raising capital for one to three years.

Certain state entities have special responsibilities to report, prevent, and combat money laundering:

### Allocation of responsibility

- As mentioned above, the SBVN is primarily responsible for enforcement. The AMLD within SBVN assists the Chief Inspector of the SBVN;

- The Ministry of Public Security is responsible for discovery and investigation of money laundering crimes;
- The Ministry of National Defense exchanges information and documents with SBVN on money laundering and dealing with weapons of mass destruction;
- The Ministry of Finance implements AML measures that involve life insurance, securities, accounting services, prize-awarding electronic games, casinos, lotteries, betting and similar service sectors within its competency;
- The Ministry of Construction implements measures that relate to the real estate business (with some exceptions);
- The Ministry of Justice implements AML measures which apply to lawyers, legal practice groups, notaries and notary public offices;
- The Ministry of Industry and Trade implements AML measures in trading precious metals and jewels (but excluding gold bullion, gold jewelries or fine arts gold);
- The Ministry of Information and Communication is responsible to implement AML measures in connection with the telecommunications or internet network-based game business sector.

## RUSSIN & VECCHI



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Dao Hong Diu joined Russin & Vecchi in 2008 upon graduation from law school.

Diu's core areas of practice are corporate and foreign investment.

She specialises in foreign-based employee stock option plans.

Diu has written and spoken extensively on anti-money laundering regulations as they apply to financial and non-financial institutions.

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