asian-mena Counsel

Volume 15 Issue 5, 2018

MERGERS & ACQUISITIONS

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MERGERS & ACQUISITIONS

Special Report

Asian-mena Counsel is grateful for the continued editorial contributions of:

INDIA


By Mustafa Motiwala and Pragya Nalwa

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Supreme Court settles the law: Major relief for foreign operational creditors

Clasis Law recently represented Macquarie Bank in two civil appeals before the Supreme Court of India in the connected matters of *Macquarie Bank Limited Vs Uttam Galva Metallics Limited* and *Macquarie Bank Limited Vs Shilpi Cable Technologies Limited*, where a bench comprising of Justice RF Nariman and Justice Navin Sinha passed a judgment dated December 15, 2017 and held as under:

(a) The filing of the certificate under Section 9 (3) (c) of the Insolvency and Bankruptcy Code, 2016 (the Code) is a procedural requirement and directory in nature; and

(b) The demand notices issued by the advocates under Section 8 of the Code are valid and in order.

To provide a brief background, Section 9 (3) (c) of the Code envisages that along with an application to initiate insolvency proceedings under Section 9 of the Code against the corporate debtor, the operational creditor shall file a certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. The Code states that this certificate has to be issued by a financial institution as defined under Section 3 (14) of the Code, which includes a scheduled bank, a financial institution as defined under Section 45-I of the Reserve Bank of India Act, 1934, a public financial institution as defined in Clause 72 of Section 2 of the Companies Act, 2013 and any such other institution as the central government may by notification specify as a financial institution.

In the abovementioned matters, Macquarie Bank had filed applications under Section 9 of the Code before the National Company Law Tribunal to initiate insolvency proceedings against Uttam Galva Metallics and Shilpi Cable Technologies. Macquarie Bank, being a foreign bank and not having an account with any financial institution as defined above, filed its own certificates under Section 9 (3) (c) of the Code, which reflected that no payment from the debtors had been received.

> "Through this judgment the Supreme Court has implemented the true legislative intent behind the Code and has enabled operational creditors to initiate insolvency proceedings against debtors without being restricted by non-mandatory procedural requirements"

In subsequent appeals before the National Company Law Appellate Tribunal (NCLAT) filed by the parties, the NCLAT held as under:

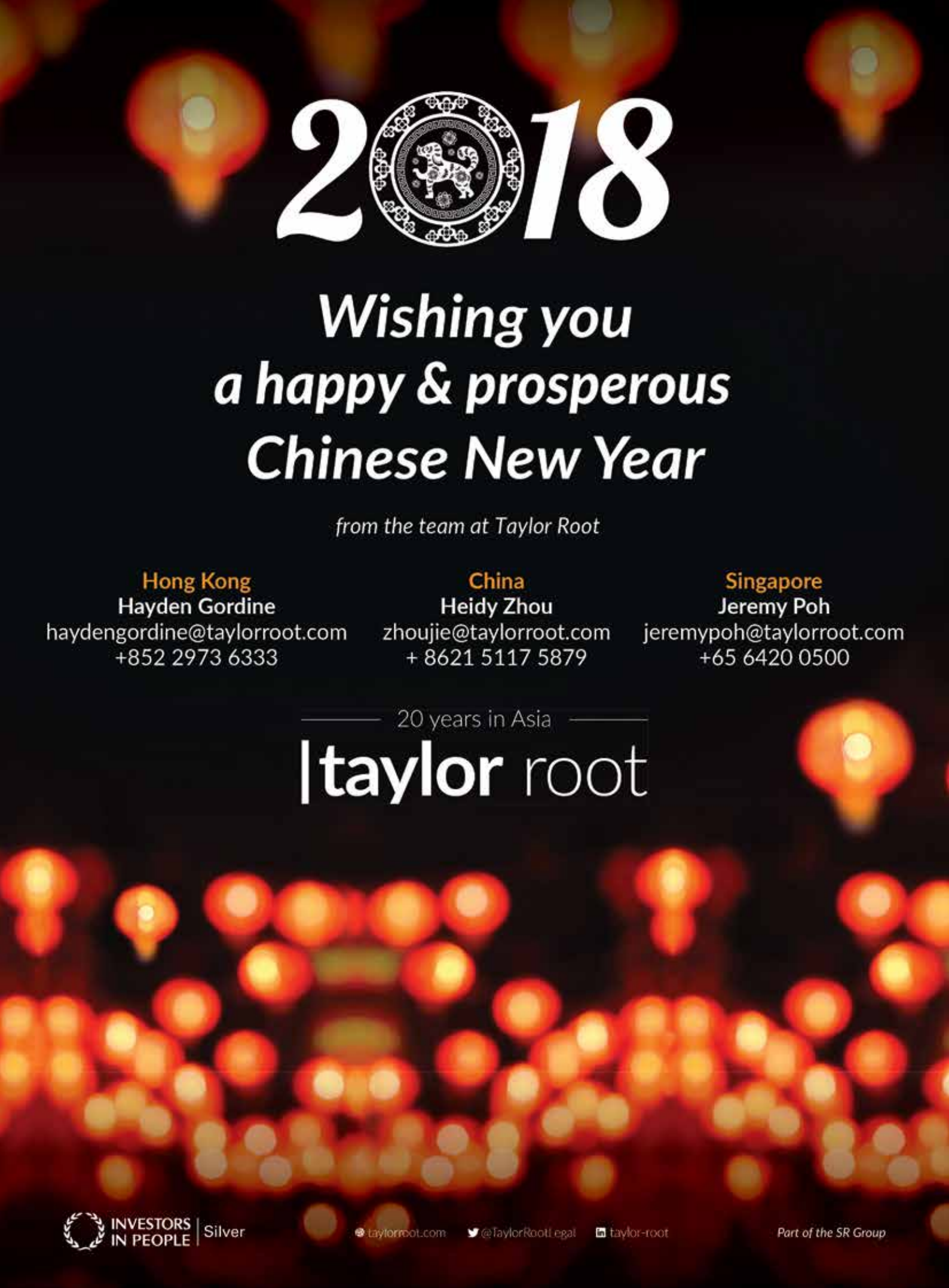
(a) That Macquarie Bank was not a financial institution within the meaning of the Code and thus the certificate filed by it is not in terms of the requirement under Section 9 (3) (c) of the Code. The said requirement being mandatory in nature, an application in absence of the certificate is not maintainable and as such deserves to be dismissed; and

(b) That the advocate/lawyer, a chartered accountant or a company secretary or any other person in absence of any authority by the operational creditor and since such person do not hold any position with or in relation to the operational creditor, cannot issue the demand notice under Section 8 of the Code.

In relation to the point (a) above, the NCLAT relied upon its order passed in the case of ***Smart Timing Steel Limited Vs National Steel and Agro Industries Limited*** and upheld that the requirement of filing a certificate under Section 9 (3) (c) of the Code is a mandatory requirement.

In the civil appeals against these orders of the NCLAT, the Supreme Court has settled the legal position and has held that the filing of certificate under Section 9 (3) (c) of the Code is not a pre-requisite to trigger insolvency proceedings under the Code. The Court has held that the filing of the certificate under Section 9 (3) (c) of the Code is a procedural requirement and is directory in nature. The Court has further held that the demand notices filed by advocates under Section 8 of the Code are valid and in order.

Through this judgment the Supreme Court has implemented the true legislative intent behind the Code and has enabled the operational creditors, especially the foreign operational creditors, to initiate insolvency proceedings against their debtors without being restricted by the procedural requirements that are not mandatory in nature. This judgment is, thus, a huge respite, especially for the foreign operational creditors, who do not have an account with a financial institution within the meaning of the Code, as now they are not restricted by the said requirement to initiate insolvency proceedings under the Code.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By Sharizan Bin Sarif

Net energy metering guidelines

The government of Malaysia has introduced various incentives and strategies to encourage the growth of the renewable energy (RE) segment in Malaysia. Particularly in respect of solar energy, several measures such as the feed-in tariff (FiT) mechanism and large-scale solar (LSS) projects have been introduced to assist in achieving the nation's RE target. In 2018, Malaysia will be in its third year of the implementation of its Net Energy Metering (NEM) scheme, as an additional incentive by the government for the promotion of RE.

Net Energy Metering scheme

The NEM scheme replaces the FiT mechanism, a special tariff system that obliges distribution licencees such as power utility companies (for example, Tenaga Nasional) to buy from the RE producers the electricity produced from RE resources (ie solar photovoltaic (PV), biogas, biomass, small-hydro and geothermal), for a price prescribed by Malaysia's Sustainable Energy Development Authority (SEDA).

The NEM scheme, on the other hand, is a billing mechanism that provides solar PV system owners with credits in consideration for the excess electricity they generate and export to the national grid. In this regard, a solar PV system owner will first consume the electricity produced from the solar PV system for its own consumption (eg home, office, business, etc) instead of importing and buying electricity from a utility company. Any excess electricity generated from the solar PV system that is unused can then be exported and sold to the utility company at a rate known as the displaced cost, to be prescribed by the Energy Commission of Malaysia (EC).

Instead of being paid for the excess electricity exported, the NEM participant will be given credits in local currency (Malaysian ringgit) for consumption of the same amount of electricity later, to be set-off against future electricity bills. These monetary credits could be carried forward from one billing period to another, for a maximum period of 24 months, subject to the NEM participant having a legal contract for the supply of electricity by a utility company. Any available credits after the 24 months will be forfeited.

Unlike the FiT mechanism, the concept of NEM is that priority is for self-consumption. In this regard, participants are not actually trying to sell electricity to the utility companies but instead are trying to avoid buying electricity from the utility companies and importing from the national grid when their electricity consumption is high.

> "Instead of being paid for the excess electricity exported, the NEM participant will be given credits in local currency for consumption of the same amount of electricity later"

As the investment cost of installing a solar PV system to power up an upper-middle-income household may be between M$60,000 - M$100,000, the NEM scheme may be more attractive to high electricity consumption consumers, especially industry or manufacturing companies. Residential electricity consumers with very low consumption may find that the investment cost to participate under the NEM scheme may not be worthwhile.

The NEM would also benefit those who are looking to be free from any increases in the tariffs set by the utility companies. Currently, tariffs in Malaysia are relatively low, however, any increase in tariffs can be expected to affect consumers.

NEM scheme guidelines

The government, through the EC, has in 2016 issued guidelines for the purpose of implementing the NEM scheme, in line with the EC's function to promote RE. The following are a few key clarifications as provided under the guidelines:

Source of energy

Unlike the FiT mechanism, the NEM is strictly for RE generated from solar PV resources. However, other RE resources may be allowed on a case-by-case basis.

Target capacity

The NEM programme is of 500MW capacity for a period between November 1, 2016 until 2020 with 100MW capacity limit a year for peninsular Malaysia, and another 100MW for the state of Sabah and the Federal Territory of Labuan.

Eligibility to participate

The Malaysia NEM programme is available to all residential, commercial (including government buildings) and industrial sectors.

Types of installation

The NEM mechanism will generally only allow excess energy from rooftops of buildings, garages and car parks to be exported to the national grid. However, any ground mounted systems may also be allowed by the EC, on a case-by-case basis.

Conclusion

The government of Malaysia continues to look at other incentives to further improve the take-up rate of RE, with the NEM scheme being a good mechanism to encourage participation of the public to generate their own electricity for self-consumption and reducing imports from the national grid. The issuance of the guidelines by the EC would provide electricity consumers with better understanding of the NEM scheme so that they may benefit by participating under the scheme and setting off their own consumptions to generate cost savings.

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Revised guidelines for continuous trial of criminal cases: Recent measure to address judicial delays

It is trite, but bears repeating: justice too long delayed is justice denied.

Our government has enacted several measures to somehow address the issue of judicial delays, the recent one of which is the Revised Guidelines for Continuous Trial of Criminal Cases, which took effect on September 1, 2017. Among its objectives is to protect and advance the constitutional right of persons to a speedy disposition of their criminal cases. To achieve this, the Guidelines set the following salient rules with the aim to reduce trial time/period:

Trial shall be held from Monday to Thursday, and courts shall call the cases at exactly 8.30am and 2.00pm. Hearing on motions, arraignment, pre-trial and promulgation of decisions shall be held in the morning on Fridays.

Upon arrest or voluntary surrender of the accused, the court shall set the arraignment and pre-trial within 10 calendar days from the court's receipt of the case for detained accused, and within 30 days for non-detained accused.

The arraignment and pre-trial conference shall be simultaneously held. The court shall proceed with the pre-trial despite absence of the accused and/or private complainant, provided they were duly notified, and accused's counsel and public prosecutor are present. Stipulations shall be done with the active participation of the court. The pre-trial order shall immediately be served upon parties and counsels on the same day after termination of the pre-trial.

As to the form of testimony, for First Level Courts, the testimonies of the witnesses shall be the duly subscribed written statements given to law enforcers, or affidavits or counter-affidavits submitted to the investigating prosecutor during preliminary investigation. If not available, they shall be in the form of judicial affidavits. The same rule shall apply for Second Level Courts, the Sandiganbayan and Court of Tax Appeals, where the demeanour of the witness is not essential in determining the credibility (such as forensic chemists, medico-legal officers, investigators, auditors, accountants, engineers, custodians, expert witnesses), and who will testify on the authenticity, due execution and contents of public documents and reports, and the criminal cases are transactional in nature (such as falsification, corruption or fraud).

> "Among the government's objectives is to protect and advance the constitutional right of persons to a speedy disposition of their criminal cases"

The court shall strictly adhere to the rule that a witness has to be fully examined in one day only.

Motions for postponement are generally prohibited, except if it is based on acts of God, force majeure or physical inability of the witness to appear and testify. If the motion is granted based on such exceptions, the moving party shall be warned that the presentation of its evidence must still be finished on the dates previously agreed upon.

The offer of evidence (which must be made on the same day after the presentation of the last witness), and the comment/objection thereto, with the court's ruling thereon, shall be made orally and in open court.

The court shall announce in open court and include in its order submitting the case for decision, the date of promulgation of decision, which shall not be more than 90 days from the date the case is submitted for decision. Motions for reconsideration shall be resolved by the court within a non-extendible period of 10 calendar days from submission of the comment thereon.

These Guidelines shall apply (1) to all newly-filed criminal cases (including those governed by the Comprehensive Dangerous Drugs Act of 2002, Cybercrime Prevention Act of 2012, Rules of Procedure for Environmental Cases, Rules of Procedure for Intellectual Property Rights Cases, and Criminal Cases cognizable by Family and Commercial Courts) in the First and Second Level Courts, the Sandiganbayan, and the Court of Tax Appeals, as of effectivity date, and (2) to pending criminal cases with respect to the remainder of the proceedings.

Non-compliance with the Guidelines shall be a ground for disciplinary action.

(This article was first published in Business World, a newspaper of general circulation in the Philippines)

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Recent amendments to employment and labour laws in Korea

Amendments to several Korean employment and labour statutes were passed on November 28, 2017 and will take effect during the first half of 2018. Companies incorporated and operating in Korea or contemplating conducting business in Korea should take heed of these amendments to ensure compliance with the applicable laws.

Among the pro-labour amendments, minimum wage adjustment is perhaps the most talked about as it will likely have the most direct and immediate impact on corporate financials. Starting from January 1,2018, the minimum wage now stands at W7,530 (US$7.05) per hour, increased from the prior year by 16.4 percent. This is the largest yearly hike in 17 years. The foregoing amendment brings Korea closer to the US and other economically leading OECD member states in terms of minimum wage, and as expected, employees welcome the change with open arms. But concerns have also been ballooning over whether companies can survive the sudden wage hike, especially relatively small businesses and/or those with lower profit margins. (http://jobfunds.or.kr/)

As minimum wage exemptions under the Minimum Wages Act (MWA) will no longer apply to unskilled manual workers (to be further defined by the Ministry of Employment and Labour) as of March 20, 2018, employers also will need to pay the full minimum wage to those employees, even during any probationary period (Article 5, Section 2). One way to mitigate the financial burden accompanying the foregoing amendments is to take advantage of the government funding available to businesses with less than 30 employees. That funding provides W130,000 monthly per employee earning less than W1.9 million each month.

Another major change to working conditions is an amendment to the Labour Standards Act (the LSA) to extend the annual leave system to cover the first year of employment, which will take effect on May 29, 2018. At present, employees are entitled to 15 days of leave for the first two years of employment combined. The amendment will provide employees who have worked for less than a year at their current job (as of May 29) with up to 11 days of leave for year 1 and 15 days for each subsequent year (Article 60, Section 3). It is worth noting that unpaid statutory childcare leave will be counted as days worked in calculating the days of annual leave to which an employee is entitled (Article 60, Section 6(3)).

> "Concerns have been ballooning over whether companies can survive the sudden wage hike, especially relatively small businesses and/or those with lower profit margins"

An additional change to the law focuses on workplace sexual harassment, which will be addressed with more severe punishments, as well as promoting prevention through training programmes. Effective May 29, 2018, employers must ensure compliance with the amendments to the Equal Employment Opportunity and Work-Family Balance Assistance Act (EEOC) that obligate employers to hold annual sexual-harassment prevention training sessions (Article 13, Section 1) and to make available training materials that are accessible to employees at any time (Article 13, Section 4). It may be helpful to note that for relatively small businesses, the Ministry of Employment and Labour offers an outside instructor, free of charge in order to facilitate the training. Any business with less than 30 employees may apply for a free instructor via a phone call to the applicable local employment and labour office.

Other EEOC amendments will soon expand employer obligations upon receiving sexual harassment complaints, mandating employers to promptly commence investigation into the allegations while taking measures to prevent the alleged victim from experiencing further humiliation (Article 14, Section 2) and otherwise protecting him/her by offering a change of work sites or paid leave (Article 14, Section 3). Strict confidentiality obligations during the investigation will also be imposed on the person who received the complaint, the investigator and other participants of the investigation (Article 14, Section 7). If investigation confirms that the reported workplace sexual harassment has indeed occurred, employers shall give the victim an opportunity to be heard prior to taking any disciplinary action against the perpetrator (Article 14, Section 5) and provide the victim with options for further protection (ie transfer to a different department, paid leave, etc) (Article 14, Section 4). In light of these additional responsibilities, it is also no longer sufficient for employers to make minimal efforts to deal with sexual harassment incidents involving employees being sexually harassed by the employer's clients or customers. According to the applicable amendment, once employers learn that their employees have been sexually harassed by their clients or customers, they are now obligated to take concrete measures to protect the victimised employees (through relocation, paid leave, etc depending on the employee's preference) (Article 14-2, Section 1).

For smooth transition with the foregoing amendments, businesses should familiarise themselves with the inevitable changes as soon as possible and act fast to devise new policies and systems to comply with and/or prepare for them at reasonable costs.

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Head of Legal — Singapore — 12-18 PQE

A leading regional investment firm seeks a senior legal counsel to manage and oversee its legal affairs. The lawyer will be solely responsible for advising the business on a broad range of matters across several jurisdictions, with a focus advising on joint ventures and acquisitions, corporate strategy and general dispute matters. Ideal candidate should have at least 12 – 18 years PQE with strong experience in M&A transactional work. Singapore qualification required. (IHC 15957)

Legal Counsel — Singapore — 4-7 PQE

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Regulatory Counsel — Singapore — 2-4 PQE

Major Investment Company seeks a corporate regulatory lawyer to join their legal regulatory team. The lawyer will work closely with the business and transactional team to provide regulatory advice on a broad range of regulatory matters including anti-bribery, anti-trust, takeover code, and financial regulations relating to the company's global investments. Ideal candidate should be Singapore qualified with at least 2 – 4 years PQE in either corporate finance / regulatory work gained from a top tier law firm. (IHC 15831)

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Licensing procedures for foreign investors clarified

The simplification of administrative procedures has now been widely acknowledged as an aim of the Vietnamese government as part of its wider plan to attract more foreign investment.

Understanding the utmost need for a more effective and simpler legal framework for foreign investors to invest in Vietnam, the Ministry of Planning and Investment (MPI) has created a mechanism allowing interconnection between the investment registration procedures and enterprise registration procedures (the Interconnection Mechanism). Such Interconnection Mechanism took effect as of June 15, 2017 by issuance of Circular No. 02/2017/TT-BKHDT, guiding the mechanism for cooperation in processing applications for investment registration and enterprise registration submitted by foreign investors (Circular 02).

It is expected that, with Circular 02, the investment registration procedures as well as the enterprise registration procedures shall take considerably less time and effort from the foreign investor. In brief, the Interconnection Mechanism lets the foreign investor submit one dossier for two procedures to register for its investment project, instead of two separate dossiers as before.

Principles for applying the Interconnection Mechanism

The Interconnection Mechanism does not eliminate the former procedures. In fact, the foreign investor, at its own discretion, can choose to use either the Interconnection Mechanism or the separated procedures already in effect to register for investment projects in Vietnam. In other words, the choice of administrative procedure has now been given to the investor and in consideration to other factors (ie, the complexity of the documents), the investor can itself choose the most effective one.

In addition, the investor shall no longer be required to submit two copies of the same document if the Interconnection Mechanism is chosen. Before the issuance of Circular 02, the documents with regards to the investment registration procedure and enterprise registration procedure could not be submitted at the same time, so the investor had to submit separate copies of documents in each procedure.

> The choice of administrative procedure has now been given to the investor and in consideration to other factors, the investor can itself choose the most effective one

Cases in which the Interconnection Mechanism is applied

The Interconnection Mechanism applies in the following cases:

a. Foreign investor or foreign-invested economic organisation invests in Vietnam under the form of establishment of economic organisation;
b. Foreign investor or foreign-invested economic organisation invests in Vietnam under the form of conducting acquisition;
c. Foreign investor or foreign-invested economic organisation concurrently amends the enterprise registration content and investment registration content under Article 4.3 of Circular 02.

Considerable benefit of Interconnection Mechanism

Investment under the form of establishment of economic organisation in Vietnam requires the investor to first obtain an Investment Registration Certificate (the IRC) through the investment registration procedure. However, until the issuance of the Enterprise Registration Certificate (the ERC) through the enterprise registration procedure, the economic organisation will then be established officially and such name will be recognised by law. In practice, therefore, under some circumstances the investor was granted an IRC but rejected the ERC when conducting procedures for enterprise registration. The common reason for such rejection was that the name of the enterprise appearing in the IRC has already been registered by another entity during the processing time for issuance of the IRC. This proved problematic for investors and their advisers.

According to the Interconnection Mechanism, the dossier for obtaining an IRC as well as an ERC must be submitted at a single time, hence, the enterprise name shall be protected by the time the competent bureau announces the proper submission.

It would thus appear that the MPI is seeking to simplify the process of submitting proposals to the proper authorities to register investment projects in the country. It is hoped that this change will not only simplify, but also expedite procedures for foreign investors.

Stand Out With Hughes-Castell

In-house

Senior Legal Counsel | 10+ yrs pqe | Seoul REF: 14216/AC

This Fortune 500 healthcare company is seeking a Korean-qualified counsel to handle all its legal matters in Korea. Based in Seoul, you will provide legal advice and support to all business units and functional groups on business initiatives and activities, new product launches, regulatory compliance and marketing programs. Ideally, you have a law degree from a top-ranked law school, plus possess at least 10 years' relevant PQE at MNCs. Candidates with in-house experience in healthcare/pharmaceutical MNCs are preferred. Strong communication skills, both in English and Korean are mandatory for this role.

Corporate Counsel | 8-12 yrs pqe | Singapore REF: 14302/AC

This US multinational technology company with a strong presence in Asia is urgently seeking a senior-level Corporate Counsel to be based in Singapore. You will primarily be responsible for overseeing and managing their commercial transactions in addition to providing legal support to its Malaysian operations and the disputes management team. Ideally, you are a Malaysian-qualified lawyer with over 8 years' relevant PQE in an in-house environment. A good team player with strong business acumen and the ability to work independently is preferred. You must have excellent communication skills as well as fluent Bahasa Malay for the role; additional Chinese skills are desirable but not essential.

Legal Counsel | 5-7 yrs pqe | Kuala Lumpur REF: 14307/AC

This multinational chemical company is seeking a Common Law-qualified lawyer to join its Kuala Lumpur office. You will provide legal and compliance support on all business activities with a focus on commercial transactions in Malaysia, Singapore and Indonesia. You must have 5-7 years' PQE in commercial transactions, projects and corporate matters, preferably gained in a recognized law firm or in an in-house legal team, plus have fluent written and oral English and Bahasa Malay language skills.

Legal Counsel | 3-5 yrs pqe | Hong Kong REF: 14288/AC

This multinational technology group is hiring a mid-level Legal Counsel based in Hong Kong to support its US operations. You will be a vital member of an expanding legal team offering support on SEC compliance, corporate governance, share-based compensation and investment related matters. You must be a qualified lawyer with 3 to 5 years' PQE in SEC compliance, US securities and share schemes at a leading law firm and/or an MNC. Experience in the technology sector is highly desirable. Fluent spoken and written English and Mandarin is also required for the role.

ISDA Negotiator | 3+ yrs exp | Shanghai REF: 14304/AC

Due to their growing business, this leading international banking group has created a new role urgently seek a seasoned ISDA Negotiator for their Shanghai office. You will be joining a legal and documentation team of 6 professionals and will have sole responsibility for the drafting, negotiation, and completion of ISDA agreements in China. You must have over 3 years' experience in ISDA documentation negotiations, ideally gained in another bank or in an oil/aviation/commodities company. A good team player, who has the ability to work independently, is preferred. Must have excellent Mandarin and good English skills.

Private Practice

TMT Partner | 10+ yrs pqe | Hong Kong REF: 14180/AC

This international law firm is looking to make a Partner-level hire into its successful technology, media and telecoms team in Hong Kong due to its continued growth. You will be responsible for handling outsourcing deals, commercial contracts, data privacy and cyber security work for their global client base. A mix of contentious and non-contentious experience would be a huge bonus. You must possess solid market knowledge of the Asia TMT sector but the firm is open to relocating the right candidate back to the region.

Commercial Lawyer | 3-6 yrs pqe | Hanoi REF: 14274/AC

This top global professional services company is hiring an experienced Commercial Lawyer to join its Hanoi office and more broadly the Asia regional legal practice. You will work on general commercial and investment matters with a focus on dealing with clients from China and Taiwan, so fluency in Mandarin (and English) is required. Strong commercial experience and training gained at a top international firm is another requirement, while candidates with US or Commonwealth qualification are preferred.

Finance Associate | 3-5 yrs pqe | Singapore REF: 14308/AC

This international law firm has an opening for a finance lawyer with an interest in maritime and energy matters, areas in which the firm is highly regarded. Ideally, you hold 3-5 years' PQE in asset finance gained at a top-tier law firm specializing in corporate finance, project finance and finance leasing. Candidates without a maritime finance background but have a strong LMA/APLMA banking documentation experience are still encouraged to apply.

US Tax Associate | 1-3 yrs pqe | Hong Kong REF: 14305/AC

Excellent opportunity for a US-qualified tax and wealth planning lawyer to join a market-leading private client and trust team in Hong Kong. This is a unique chance to join one of the premier names in the field and advise high net worth individuals and their families on US and international tax, trust and estate planning issues. You must have a LLM along with 1 to 3 years' PQE in advising settlers, fiduciaries and beneficiaries on the management of offshore succession structures. Strong interpersonal, writing and analytical skills are required.

Real Estate Associate | 1-3 yrs pqe | Hong Kong REF: 14306/AC

This international law firm is seeking a junior Real Estate Associate to join their well-respected team in Hong Kong. You will be responsible for assisting property litigation, property sales, acquisition, property developing and leasing, hotel management and franchising. With 1-3 years' PQE and admission to the Bar in Hong Kong, you ideally are good team player with the ability to work under pressure. Good interpersonal, well-organized and excellent management skills are highly desirable. You must have fluent English, Cantonese and Mandarin for the role.

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Evangelos Apostolou, Former General Counsel, Asia-Pacific, and Partner, Ernst & Young

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ANNUAL IN-HOUSE Congress CIRCUIT

2018 Events Calendar

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- March – Legal Inno'Tech Forum, Singapore
- March – In-House Congress Beijing
- April – In-House Congress Ho Chi Minh City
- April – In-House Congress Shenzhen
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- May – In-House Community Counsels of the Year Awards
- May – Korea Outbound Symposium, Seoul
- June – In-House Congress Bangkok
- June – Legal Inno' Tech Forum, Hong Kong
- June – In-House Congress Kuala Lumpur
- July – In-House Congress Manila
- July – Risk & Compliance Symposium, China
- August – In-House Congress Seoul
- August – Australia Outbound & Legal Inno'Tech, Sydney
- September – In-House Congress Mumbai
- September – In-House Congress Singapore
- September – In-House Congress Delhi
- September – Risk & Compliance Symposium, Hong Kong
- October – In-House Congress Hong Kong
- October – In-House Congress Africa
- October – In-House Congress Shanghai
- November – In-House Congress Abu Dhabi
- November – In House Congress Yangon
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20 YEARS – *of the* – IN-HOUSE CONGRESS 1999-2018

Note: Event dates above are provisional and subject to change

For more details on the events and the In-House Community, please contact:

Patrick Dransfield, Publishing Director patrick.dransfield@inhousecommunity.com
Tim Gilkison, Managing Director tim.gilkison@inhousecommunity.com

CONGRESS CALENDAR 2018.indd

The JLegal PQE

Personality Questionnaire Experience

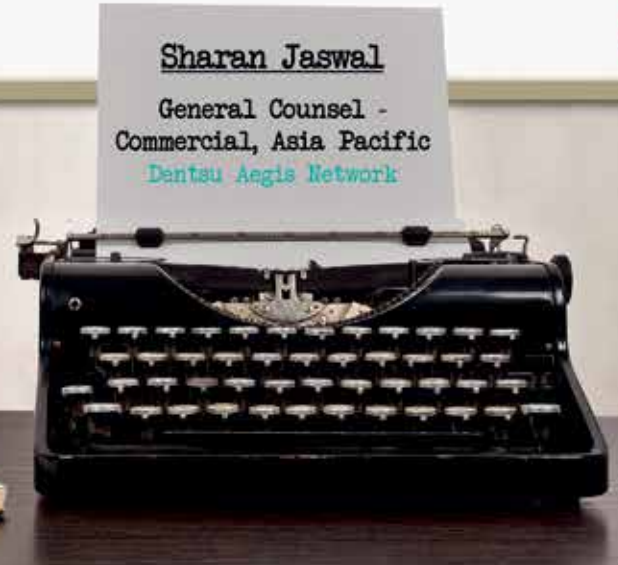
Every month, JLegal examines the PQE of a senior in-house counsel. This month we talk to Sharan Jaswal, who has a secret talent most of us would love to have!

- **What is on your mind at the moment?**
  Gratefulness.
- **What secret talent do you have?**
  The ability to sleep at any time of the day.
- **If you weren't a lawyer you would be a ...**
  party planner.
- **Where is the best place you have ever been to?**
  North Ari Atoll, Maldives.
- **What is your idea of misery?**
  Working on a Sunday morning.
- **What is the strangest thing you have seen?**
  An alpaca, the first time I saw one.
- **What is your motto?**
  If you stumble, make it part of the dance.
- **Top 3 favourite movies of all time?**
  The Sound of Music, Last of the Mohicans, Dirty Dancing.
- **If you could have one superpower it would be ...?**
  The ability to heal.
- **What do you consider the most overrated virtue?**
  Punctuality.
- **What irritates you?**
  My husband insisting that I am punctual.
- **What was your last Google search?**
  Christmas shopping related.
- **If you could time travel, where would you go?**
  I would take my daughters with me to relive a childhood family holiday in Malaysia.
- **What's the one food you could never bring yourself to eat?**
  Balut.
- **Which of the Seven Dwarfs is most like you?**
  Definitely Sleepy!

JLegal
YOUR RECRUITMENT PARTNER

Sharan Jaswal

General Counsel - Commercial, Asia Pacific
Dentsu Aegis Network



MOVES

The latest senior legal appointments around Asia and the Middle East

AUSTRALIA

Clifford Chance has added **Andrew Crook** and **Mark Currell** as partners in its Australia corporate practice. Both partners bring almost two decades of regional and global experience advising private equity firms and multinational businesses on a wide range of Australian and cross border transactions in the industrials, education, energy and resources, financial, real estate and technology sectors. Crook is qualified in Australia, New Zealand and England and Wales. He received his BCA from the Victoria University of Wellington and his bachelor of law from the Victoria University of Wellington. He joins from Hogan Lovells. Currell is qualified in Australia and England and Wales. He holds a master's degree in applied finance. He joins from Herbert Smith Freehills.

HONG KONG


Damien Whitehead

Ashurst has added **Damien Whitehead** as a partner in its finance practice, based in Hong Kong. He joins from White & Case, where he led the financial restructuring and insolvency team in Asia. Prior to that, he was the head of restructuring and insolvency (Greater China) for Herbert Smith Freehills. Having worked in Australia, Asia and London, Whitehead has nearly two decades of experience in all aspects of non-contentious and contentious restructuring and insolvency matters, acting for banks, investment funds and insolvency practitioners, as well as distressed corporate debtors and high-net-worth individuals. He advises on a broad range of complex domestic and cross-border matters throughout Asia, Australia, Europe and the US, across sectors including banking and financial services, mining and energy, oil and gas, maritime and shipping, aviation, agriculture and real estate.


Evelyn Chan


Nick Dealy

Gall has added **Evelyn Chan** and **Nick Dealy** as partners in Hong Kong. Chan rejoined the firm in November 2017. She was previously a partner in the dispute resolution group of independent Hong Kong law firm Wilkinson & Grist. Her practice focuses on complex civil litigation, with a particular emphasis on China-related matters. Dealy joined the firm in January 2018 from UBS, where he held various roles in the legal team, both in London and in Hong Kong. In his recent role as head of litigation and investigations Asia Pacific, he managed the litigation teams handling contentious matters impacting UBS in the Asia Pacific region (ex-Japan), including litigation and regulatory investigations, as well as complex internal investigations.


Brian McKenna

Mayer Brown JSM has added **Brian McKenna** as a partner in its Hong Kong corporate and securities practice. Joining from Debevoise & Plimpton in Hong Kong, McKenna represents private equity sponsors, financial institutions and fund managers on corporate and investment transactions in both New York and Hong Kong, across a wide range of industries, including insurance, financial services and telecommunications, media and technology. He has advised global and regional clients across the Asia-Pacific region on a variety of investment transactions, including cross-border M&As, strategic control investments and buy-outs, pre-IPO and cornerstone investments, private investments in publicly-traded companies and secondary investment transactions.

JAPAN

DLA Piper has added **Kaoru Umino** and **Dan Matsuda** as partners in its Tokyo office. Umino will lead the finance and projects practice, while Matsuda will lead the energy sector within the corporate practice. Before joining the firm, Umino and Matsuda were partners at the Tokyo offices of Jones Day. Umino has more than 25 years of experience advising on complex cross-border finance and corporate transactions in New York and Tokyo. Her private practice experience includes advising non-Japanese clients on proposed investments in renewable energy projects in Japan and advising the Japan Bank for International Cooperation on export finance, overseas investment and project finance transactions in Asia and the Americas. She has also advised US corporate clients on their Japan business operations and Japanese corporate clients on issues arising from their international expansion. Moreover, she has advised on real estate securitisation transactions, domestic and cross-border finance/capital markets and M&A transactions.

Matsuda is a corporate lawyer with almost two decades of experience, advising on domestic and cross-border M&A transactions, joint ventures, manufacturing and distributorship structures, and real estate transactions and investments. His

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MOVES

experience spans securities regulations, commercial disputes and general corporate matters, covering a broad range of sectors, including chemical, energy, technology and automotive industries. Matsuda is qualified in Japan and New York, while Umino is admitted in New York and registered in Japan as a foreign qualified lawyer.

MALAYSIA


Janice Tay

Wong & Partners, a member of Baker McKenzie International in Malaysia, has added dispute resolution partner **Janice Tay**, who has joined from Skrine. Her expertise lies in construction and engineering, where she regularly advises international and local clients on construction law in Malaysia. She is experienced in international and domestic arbitrations, and has appeared in all levels of the courts. She is a fellow of the Chartered Institute of Arbitrators and a mediator. She is a qualified adjudicator under the Construction Industry Payment and Adjudication Act 2012 and is on the Kuala Lumpur Regional Centre for Arbitration's panel of arbitrators, adjudicators and mediators. Aside from acting as counsel and advocate, she dedicates her time as the current Deputy President of the Society of Construction Law (Malaysia).

SINGAPORE


Huang Xuhua

Allen & Gledhill has added **Huang Xuhua** as head of the China practice group, effective January 1, 2018. With more than 27 years of experience in corporate and commercial practice, he has been based in Beijing, New York, Hong Kong and Singapore in the course of his legal career. He joins from King & Wood Mallesons, where he was a partner for 14 years, with the last two years in its Singapore office. Specialising in M&A, cross-border investments and private equity transactions, he has represented Chinese and international clients in numerous investment transactions involving China, both inbound and outbound, across various sectors, including financial services, real estate, TMT, manufacturing, infrastructure, logistics, power and energy. He has been admitted to practice law in China, New York and Hong Kong.

K&L Gates has added **James Bradley** as a partner in the transportation finance practice area in Singapore. He joins from Norton Rose Fulbright. Concentrating on the transportation and finance sectors, Bradley has gained experience as external and in-house counsel in roles based in Asia and Europe, advising leading financial institutions, aircraft and engine lessors, airlines, other stakeholders and shipowners on a variety of transactions. This includes having acted for asset owners on the leasing, purchasing and financing of their assets, as well as their worldwide fleet management and joint ventures. In recent years, Bradley has been involved in many high-profile restructurings in the aviation and maritime sectors. He has counseled administrators and financial institutions seeking to restructure their debt book and/or sell part of their businesses in various jurisdictions. He also has in-field experience in China with the UNIDO program office and in advising clients entering into emissions reduction purchase agreements.


James Bradley

King & Spalding has added Singapore-based M&A lawyer **Lee Taylor** as a partner to lead the corporate practice group in the Asia-Pacific. He joins from Clifford Chance, where he headed the M&A group in Singapore and the private equity practice in Southeast Asia. Taylor brings over 20 years of experience, including 15 years in Southeast Asia. He has extensive experience advising on domestic and international public and private M&A, covering sectors such as insurance, healthcare, financial services, energy and private equity. He has advised on many of the largest and most complex M&A and private equity transactions in South East Asia, and has close ties to many of the leading companies, private equity houses, hedge funds and sovereign wealth funds across the Asia Pacific. Taylor has represented clients, such as Barclays, National Australia Bank, ABN Amro, 3i, Affinity Equity Partners, Intermediate Capital Group, Carlyle, Platinum Equity Partners, Standard Chartered Private Equity, EQT, the IFC and Credit Suisse.

THAILAND

Chandler MHM will be adding **Joseph Tisuthiwongse** as a partner as of January 1, 2018. He is an experienced corporate lawyer specialising in project finance, renewable energy and M&A. He has represented a number of Thai and international lenders and developers in connection with power projects, including conventional, wind, geothermal and solar projects, throughout Southeast Asia. He was a partner at Clifford Chance, Bangkok office from 2013 to 2017. He obtained his Juris Doctorate degree from the University of California, Berkeley and qualified as an Attorney-at-Law in California in 2000.

Lewis Sanders

Legal Recruitment

In-House

SHIPPING/COMMERCIAL — HONG KONG — 8-15 YEARS

Conglomerate focused on maritime services seeks a senior level lawyer with experience in contentious & non-contentious shipping & insurance matters. Commonwealth qualification & prior experience in Asia are essential. Chinese language skills are not required. AC6613

EXECUTIVE TO THE CHAIRMAN — HONG KONG — 15+ YEARS

A private investment company seeks a senior lawyer to join as an Executive to the Chairman. You will be a mature & reliable individual with confidence, strong communication skills & be able to work effectively with high net worth individuals. Chinese language skills are not essential. AC6888

M&A — HONG KONG — 5-12 YEARS

International education provider is seeking a legal counsel for a 6 months contract role. You will have 5-12 years' experience in M&A transactions as a lead counsel. You must have native level English with excellent communications skills. AC6872

FINANCE — HONG KONG — 4+ YEARS

Leading financial institution seeks a lawyer with strong experience in finance matters to advise & provide legal support to their securities brokerage and asset management business lines. You will be qualified in HK, E&W or the US. Fluency in English & Mandarin is essential. AC6837

COMMERCIAL — HONG KONG — 5-8 YEARS

A HK based conglomerate is looking for a commercial lawyer. The global business includes retail, outsourcing, manufacturing & distribution. You will have extensive commercial experience from a strong law firm/prior in-house experience. Fluent Mandarin language skills are essential. AC4301

PRIVATE FUND — HONG KONG — 3-6 YEARS

A dynamic private fund seeks a stand-alone legal counsel to join its team. You should have a broad corporate background & be comfortable working in a fluid environment. You will work with high caliber individuals in the industry. Business level Chinese skills are required. AC6897

SECURITIES ISSUANCE — HONG KONG — 2+ YEARS

Reputable European financial institution is looking for an experienced securities legal professional. You will have at least 2 years prior experience in MTN/certificates product area or in a legal/transaction management role. Fluent Chinese reading & writing skills would be advantageous. AC6885

Private Practice

REGULATORY — HONG KONG — 10-20 YEARS

International firm seeks a partner who specialises in financial services regulatory compliance, investigations & enforcement in multi-jurisdictions. Track record as a Dispute Resolution & Litigation partner in a major law firm preferable. Strong Chinese skills are required. AC6700

REAL ESTATE — HONG KONG — 5-10 YEARS

International firm in Hong Kong is looking for a PSL to support its leading real estate team. You will have at least 5+ PQE and have a solid understanding of the real estate practices. Prior PSL experience is useful but not essential. AC6889

POWER/INFRASTRUCTURE — HONG KONG — 3-7 YEARS

A leading PRC firm in HK is looking for a mid-level energy & projects lawyer to join them, particularly those with power & infrastructure experience. Work will include outbound investment & large scale power projects. You will be from an international firm. Chinese language skills not required. AC6765

COMPETITION — HONG KONG — 2+ YEARS

International firm seeks a lawyer to join its expanding competition practice. You will advise blue chip clients on a broad range of competition/anti-trust matters. Regional work on offer. Solid competition law candidates from overseas are welcome. Chinese language skills are essential. AC6882

DERIVATIVES — HONG KONG — 1-3 YEARS

Magic Circle firm seeks a derivatives & structured finance associate to join its well-regarded practice in HK. You will have 1-3 years of derivatives experience from an international firm & be academically strong. Chinese language skills not needed. Quality work and training on offer. AC6881

RESTRUCTURING — HONG KONG — 1-7 YEARS

A top US firm is looking for a restructuring associate to join its leading finance team in Hong Kong. You must be Hong Kong qualified, and have experience at an international firm. Chinese language skills are not required. AC6875

FINANCE — HONG KONG — 1-7 YEARS

Top tier international firm seeks common law qualified lawyers for its finance team. You will have between 1-7 years PQE with experience in general banking or restructuring & exposure to mainstream syndicated lending. Chinese language skills not needed. AC6383

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

Please contact Emily Lewis, elewis@lewissanders.com +852 2537 7408 , Camilla Worthington, cworthington@lewissanders.com +852 2537 7413 or Karishma Khemaney, kkhemaney@lewissanders.com +852 2537 0895 or email recruit@lewissanders.com

DEAL OF THE MONTH

Asian-mena Counsel Deal of the Month

FountainVest's acquisition of Pure fitness group

The private equity firm is hoping that China will embrace the global fashion for lifting weights and stretching.

The tradition of starting each new year by resolving to spend more time in the gym is well established among urban professionals in the west — and Hong Kong private equity firm FountainVest is betting that gym memberships are about to take off in China.

In December, in partnership with the Ontario Teachers' Pension Plan, the private equity firm run by ex-Goldman Sachs banker Frank Tang invested in Hong Kong's Pure Group, which offers a diverse range of premium wellness products and services, such as fitness centres, yoga studios, an online video platform, organic health products and performance activewear. The deal reportedly values the group at US$400 million.

"We are convinced that the market for health and wellness in Asia will continue to grow in the years ahead especially in emerging markets such as China, and Pure is in a prime position to capitalise on this amazing opportunity," said Tang. "With our broad networks in the region, we will support Pure to unlock its full potential and continue developing its professional team of experts."

Founded in 2002, Pure Group serves around 80,000 customers, with more than 1,900 employees across centres in Hong Kong, Shanghai, Singapore, Taipei and New York.

The investment will help to fund the group's expansion in China, where it plans to open a new fitness centre in Shanghai and a yoga studio in Beijing in the first half of 2018. It will also open new yoga studios in Hong Kong and Singapore.

Gyms have not always been good investments, either for members or financial backers. Private equity-owned Fitness First went through a restructuring in 2012 and Hong Kong's California Fitness went bankrupt in 2016. FountainVest will be looking to earn a return before Chinese gym-goers' enthusiasm wanes.

Baker McKenzie advised the Pure Group, led by partner **Tracy Wut**. **Kirkland & Ellis** advised the consortium of funds affiliated with FountainVest Partners and Ontario Teachers' Pension Plan, led by Hong Kong corporate partners **Nicholas Norris** and **Derek Poon**. **Paul Weiss** advised Ontario Teachers' Pension Plan, led by Hong Kong corporate partner Betty Yap.

Other recent transactions include:

East & Concord Partners Beijing Office has represented **Beijing Enterprises Group**, as the initial investor of the project, and **Beijing Enterprises Railroad Transportation Construction** and **Beijing Enterprises Transportation Equipment**, as the construction parties, on the investment and construction of the medium-low speed maglev line S1 in Beijing. On December 30, 2017, Beijing's first medium-low speed maglev line with independent intellectual property started its trial operation officially. Partners **Li Dongming** and **Li Jian** led the transaction.

S&R Associates has advised **JM Financial**, **CLSA**, **Nomura**, **Axis Capital**, **Edelweiss**, **IIFL Holdings**, **SBI Capital Markets** and **YES Securities**, as book-running lead managers, on the Rs15.4 billion (US$242m) IPO of Reliance Nippon Life Asset Management. Partners **Sandip Bhagat** (Mumbai) and **Venkatesh Vijayaraghavan** (New Delhi), led the transaction, which was the first listing of a mutual fund asset manager in India.

Drew & Napier has advised **ComfortDelGro** on its proposed acquisition of 51 percent of the issued share capital of Lion City Holdings (LCH), an indirect subsidiary of Uber Technologies. ComfortDelGro entered into an agreement with Mieten, an indirect subsidiary of Uber, on December 8, 2017. LCH owns 100 percent of the issued share capital of Lion City Rentals, a private hire vehicle fleet owner in Singapore with approximately 14,000 vehicles. The aggregate cash consideration for the transaction is estimated at S$295 million (US$222m). The transaction is ComfortDelGro's single largest deal to-date. Directors **Petrus Huang**, **Lim Chong Kin** and **Corinne Chew** led the transaction.

Paul, **Weiss** has advised Chinese internet giant **Tencent** on its US$604 million investment in Vipshop Holdings, a major Chinese online discount apparel retailer. Tencent and JD.com will invest an aggregate of US$863 million cash into Vipshop. Corporate partners **Jeanette Chan** and **Tong Yu** led the transaction.

Sullivan & Cromwell has represented **Alibaba Group Holding** (China) on its approximately US$1 billion investment in Lazada Group (Singapore), increasing its stake from 51 percent to approximately 83 percent for a total investment in Lazada of more than US$2 billion. Partners **Garth Bray** (corporate-Hong Kong), **York Schnorbus** (corporate-Frankfurt) and **Juan Rodriguez** (competition-London) led the transaction.

Tarun Bhatia
Managing Director, South Asia

Law firms play a critical role in the new Indian Insolvency & Bankruptcy Code

India continues to be one of the world's high-growth economies. Post liberalisation, many new reforms and regulations have been introduced to support economic growth and build the confidence of international investors. However, one area that was always neglected was bankruptcy law.

India's corporate environment is very promoter-centric, and likely to remain so. As international firms made their entry into the country, promoters sought tie-ups with global partners through alliances and M&A. However, the intent of promoters was always to continue being involved and also lead the business. Lack of transparency in financial reporting, poor governance standards and lengthy litigation processes meant promoters remained largely unharmed in a situation where they were carrying out fraudulent practices. The siphoning of funds out of the companies by promoters for personal use has often resulted in the businesses going under and the bankers and investors having to bear the brunt. Multiple resolution mechanisms such as the Board of Industrial & Financial Resolution, corporate debt restructuring and debt recovery tribunals were introduced but did not have the expected effect.

With the introduction of the new Insolvency & Bankruptcy Code (IBC) earlier this year, the situation is now looking different. The current government, with its intent to improve governance standards in the country, has introduced a law under which defaulting companies will undergo a time-bound bankruptcy process resulting in either resolution or liquidation. However, it is important to ensure that the IBC is implemented in its true spirit, or it risks the same fate as its predecessors. Multiple stakeholders have to play an important role in this implementation, none more important than the legal profession. Especially now, when the law is young and open to multiple interpretations, the role of the legal profession becomes even more critical. The IBC is also undergoing changes and requires continuing review. Under the current IBC process, law firms are actively engaged by various stakeholders in the following ways:

> "Law firms will play an important role in shaping the direction of bankruptcy laws in India"

Insolvency resolution professionals (IRPs) — Under the IBC, IRPs are mandated to take control of day-to-day functioning of the defaulting company. It is the responsibility of the IRP to keep the company as a going concern and manage all stakeholders for which they need continuing guidance from their legal advisers. Further, as the IRP has significant personal liability, every decision will be scrutinised and hence legal advice on potential impact and possible roadblocks becomes critical.

Regulators — IBC led to the birth of the Insolvency & Bankruptcy Board of India (IBBI), the body responsible for regulating the IRPs and the Resolution proceedings. Legal professionals supported IBBI in putting together the IBC. They are also constantly engaged with other regulators in making amendments to their respective regulations to accommodate IBC and also represent them in related matters.

Potential investors — Stressed asset opportunity has resulted in an increased investor interest in India. While the opportunity is large, investors need to assess the potential opportunity within the confines of IBC. As the code itself is new, investors are unable to fully interpret the same. Further, asset acquisition is a complex process and requires multiple layers of structuring. In both these scenarios investors are seeking guidance from law firms.

For years, Indian law firms have been trusted advisers to their clients, especially the promoters. Now the legal industry has an opportunity to make a significant effect at policy level. Successful implementation of the bankruptcy code will not only enhance India's position as an attractive investment destination but will send a strong message toward India's intent to improve its governance architecture. Failure will deepen the belief that such measures are only an eye wash. Either way, law firms will play an important role in shaping the direction of bankruptcy laws in India.

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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.

Associate Director – Fixed-Income Compliance,
6-11 yrs PQE, Hong Kong

A well-established European bank looking to add an Associate Director to its expanding fixed-income compliance team. The ideal candidate must have a minimum of six years of compliance experience in dealing with fixed income products. Mandarin is ideal but not necessary for this role. [Ref: PBP6919]

Contact: Roshan Hingorani
Tel: (852) 2537 7416
Email: rhingorani@lewissanders.com

Senior Regional Legal Counsel – Insurance,
10+ yrs PQE, Hong Kong/Singapore

A market-leading insurance group is looking for a senior lawyer to oversee a wide variety of corporate commercial work across the region. Reporting to the general counsel, you will manage a small team of lawyers. The successful candidate will have legal training from a top-tier law firm coupled with in-house experience at a financial institution [Ref: IHC 16074]

Contact: Claire Park
Tel: (852) 2920 9134
Email: c.park@alsrecruit.com

ISDA Negotiator – Banking,
3+ yrs PQE, Shanghai

Due to its growing business, this leading international banking group has created a new role urgently seek a seasoned ISDA negotiator for its Shanghai office. You will be joining a legal and documentation team of six professionals and will have sole responsibility for the drafting, negotiation and completion of ISDA agreements in China. You must have over three years' experience in ISDA documentation negotiations, ideally gained in another bank or in an oil/aviation/commodities company. A good team player, who has the ability to work independently, is preferred. Must have excellent Mandarin and good English skills. [Ref: 14304/AC]

Contact: Bob Kou
Tel: (86) 21 2206 1200
Email: shanghai@hughes-castell.com.hk

Legal Counsel – Technology,
4-7 yrs PQE, Singapore

An exciting, leading multinational technology company that provides software solutions is looking for a highly independent and adaptable legal counsel. The successful hire would be working closely with the head of legal for APAC based in Singapore and must have the ability to draft and negotiate complex commercial agreements. You will also be actively supporting their China operations and thus would be highly preferred to be fluent in written and spoken Mandarin. [Ref: JGB-IS 1758]

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

Senior Capital Markets Counsel – Investment Firm,
20+ yrs PQE, Singapore

A blue-chip firm with global reach now seeks a lawyer with international capital markets experience to head its team of lawyers based across a number of offices. The successful candidate will provide transactional and regulatory advice on the firm's investment portfolio, which focuses on equities, but also includes debt and structured products. This individual would be expected to collaborate closely with key business stakeholders and provide practical, proactive and strategic legal advice. Ideally, the candidate would have prior team leadership experience. This is an opportunity to join a highly rated firm with a collegiate and supportive culture. Only Singapore citizens may be considered for the role. [Ref: A43375]

Contact: Surene Virabhak
Tel: (65) 6214 3310
Email: resume@legallabs.com

Legal Manager, Asia – Nutrition,
6-10 yrs PQE, Hong Kong

An international nutrition company is now looking for a mid- to senior-level lawyer to support on all legal matters in the Asia region. This is a newly created role, based in Hong Kong, covering all corporate commercial matters in the region. You will be advising on a broad range of commercial legal issues, supporting a wide range of business functions including advertising chain, sales, M&A, HR, finance and regulatory matters.
The successful candidate must be common law qualified, ideally in Hong Kong, with excellent English drafting and negotiation skills. Relevant industry background from FMCG, food/wellness or pharmaceutical sector preferred. Sound knowledge of corporate commercial laws in Hong Kong would be useful. Fluent Chinese language skills highly preferred. [Ref: 101973]

Contact: Charmaine Chan
Tel: (852) 2951 2104
Email: charmainechan@taylorroot.com

Legal Counsel, SEA – Consumer Goods,
5-8 yrs PQE, Singapore

A fast-growing and reputable brand in the consumer goods sector is hiring a replacement lawyer to support the Southeast Asia region due to internal mobility. Reporting to the head of finance, you will provide legal advice and support to the company in the Southeast Asia region. Your role will include drafting and reviewing of commercial, marketing, advertising, real estate and other contracts. You will also advise on compliance, data protection and privacy issues as well as to manage dispute/litigation matters when they arise.
Ideally, you are qualified in a Commonwealth jurisdiction. In-house experience preferred, but private practice candidates with substantial in-house FMCG, retail secondment experience will be considered as well. Light travels of 5-10% may be expected. [Ref: JO-1708-LC-SEA-CG]

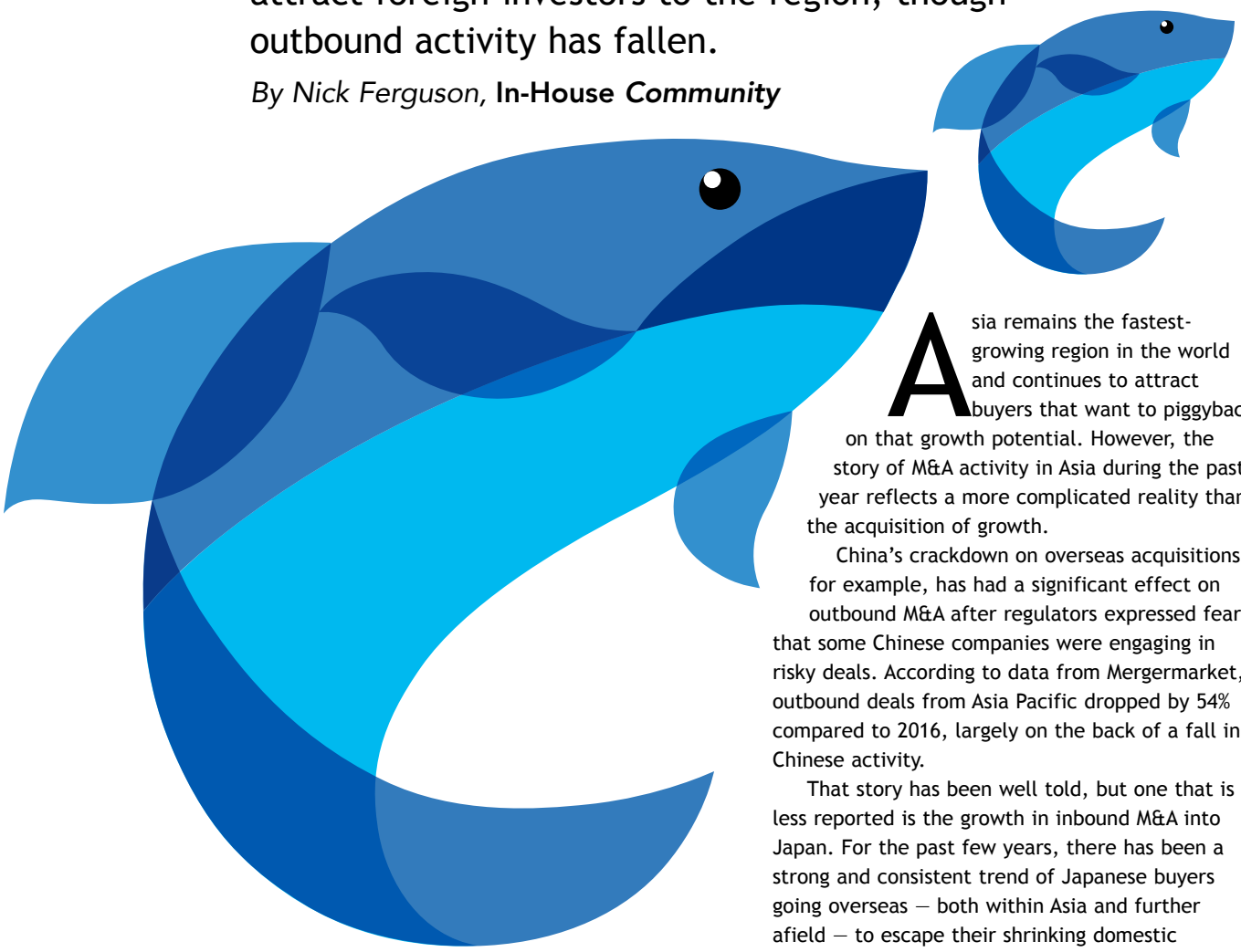
Contact: Michelle Koh
Tel: (65) 6407 1202
Email: michellekoh@puresearch.com

MERGERS & ACQUISITIONS

Global buyers continue to look to Asia

Strong growth and a rising middle class continue to attract foreign investors to the region, though outbound activity has fallen.

By Nick Ferguson, **In-House *Community***



Asia remains the fastest-growing region in the world and continues to attract buyers that want to piggyback on that growth potential. However, the story of M&A activity in Asia during the past year reflects a more complicated reality than the acquisition of growth.

China's crackdown on overseas acquisitions, for example, has had a significant effect on outbound M&A after regulators expressed fears that some Chinese companies were engaging in risky deals. According to data from Mergermarket, outbound deals from Asia Pacific dropped by 54% compared to 2016, largely on the back of a fall in Chinese activity.

That story has been well told, but one that is less reported is the growth in inbound M&A into Japan. For the past few years, there has been a strong and consistent trend of Japanese buyers going overseas — both within Asia and further afield — to escape their shrinking domestic market, but in 2017 it was the value of inbound deals that really stood out.

With a total of US$21.3 billion, the level of M&A targeting Japanese companies more than doubled during 2017, driven by US buyers in deals such as Key Safety Systems' US$1.6 billion acquisition of Takata.

This level of activity is largely a result of the Japanese government's recent efforts to reverse its long history of resistance to foreign ownership. The demand has always been there — Japan has high-quality assets and skilled workers — but it is only now that overseas companies are seeing the opportunity to take part.

Outbound deals still account for a bigger share of activity, but the trend is in the opposite direction, with deal value falling by more than a third during 2017 to US$59 billion.

Inbound M&A into the rest of the Asia-Pacific region rose 22% during 2017 to reach close to US$108 billion, once again driven mostly by US acquirers. The hottest sector is technology, where deal value was up by almost 200% in 2017.

Overall M&A activity in Asia Pacific ex-Japan was up almost 5% to US$673 billion. The most active law firms in terms of deal value, according to Mergermarket, were King & Wood Mallesons, Clifford Chance and Skadden Arps.

India

One of the region's biggest deals announced in 2017 was the US$12.7 billion merger of Vodafone India and Idea Cellular. It was also a significant deal for India, demonstrating a commitment towards equalising rights and shareholding over a period of time, according to Rabindra Jhunjhunwala, a partner at Khaitan & Co.

Rabindra Jhunjhunwala partner at Khaitan & Co

For the time being, Vodafone is expected to own 45.1% of the combined company after transferring 4.9% to the promoters of Idea when the deal is completed later this year. "The promoters of Idea will then hold 26%, while the balance will be held by the public," says Jhunjhunwala. "However, the promoters have the right to acquire up to 9.5% additional stake at an agreed price from Vodafone with a view to equalising the shareholding overtime. Further, if the shareholding of the two parties is not equal after certain agreed period of time, Vodafone will sell down shares in the combined entity to equalise its shareholding to that of the Aditya Birla Group."

This merger has already served as a template for other deals, says Jhunjhunwala. The acquisition of Essar Oil by Russia's Rosneft, for example, faced several regulatory and political hurdles and, learning from the Vodafone experience, the investors sought comfort from Indian authorities that they would not face any withholding tax issues.

India has not always been the easiest place for foreign buyers, but some progress is being made to open the economy to overseas investors. In November, the Reserve Bank of India (RBI) issued new foreign-exchange rules that revise sectoral caps in certain sectors, such as private security agencies and commodities exchanges, and allow non-residents to acquire capital instruments renounced by residents in rights issues (and do away with the need for RBI approval for such transfers). The rules also make some clarifications and procedural changes.

In January, the government also relaxed norms on foreign direct investment in sectors such as single-brand retail, construction, power exchanges and airlines. "Key amendments include permitting 100% FDI in SBRT under automatic route, clarification permitting FDI in real estate broking and primary investment up to 49% in power exchanges," says Jhunjhunwala.

Anti-trust laws in India also witnessed changes, with the creation of an exemption from mandatory approval for enterprises with assets of less than Rs3.5 billion (US$55m) in India or turnover of less than Rs10 billion.

The recently introduced Insolvency and Bankruptcy Code (Amendment) Ordinance 2017 promulgated by the president is also paving the way for clean businesses, according to Jhunjhunwala, who says that India is witnessing significant activity in terms of the sale of distressed assets pursuant to the Insolvency and Bankruptcy Code 2016.

Indonesia

Southeast Asia's biggest economy is another exciting frontier for M&A in the region, with activity on the rise in 2017, driven by tech-focused deals such as the US$1.1 billion investment into local Indonesian e-commerce platform Tokopedia, led by Alibaba, and the US$1.2 billion investment into Indonesian ride-hailing startup Go-Jek, led by Tencent.

Such activity has been helped by the government's efforts to improve the environment for foreign investors during the past few years, as reflected in the World Bank's Ease of Doing Business Report, which raises Indonesia's ranking from 91 in 2017 to 72 in 2018. However, there is clearly still much room for improvement and Joko Widodo, the president, has set a target of 50th position by 2019 and 40th position by 2020.

Mergers and acquisitions in Thailand

A Q&A on the latest developments in Thai M&A with **Chandler MHM**'s *Jutharat Anuktanakul*, partner, and *Pranat Laohapairoj*, associate.

Can you give an overview of the general M&A environment currently in Thailand?

Thailand was ranked 27th in the 2017 World Bank's Ease of Doing Business Report, which reflected a higher ranking than in 2016. This is likely because Thailand has recently experienced strong economic growth, a more stable political climate, and an attractive financial environment, all of which, coupled with good infrastructure and a reliable workforce, render Thailand the target of choice for international and regional investment. The Thai government has also promulgated several important laws over the past few years, such as those regarding securities, anti-trust and anti-corruption, which moved Thailand closer to mainstream international standards and created more confidence for foreign investors. Thus, the merger and acquisition market was active in Thailand throughout 2017 and should continue to be active during 2018.

Jutharat Anuktanakul

The government's "Thailand 4.0" economic transformation plan has made renewable energy a priority sector. What are the implications for inbound investment?

Thailand's growing energy needs are currently being met by fossil fuels, which must be imported, and this is neither economically nor ecologically sustainable. Therefore, the Thai government is driving a concerted shift, through incentives and schemes, toward reliance on renewable energy, aiming for 25 percent of energy needs to be renewably obtained within the next two decades. This shift should result in the creation of massive opportunities for inbound investment. As interest in renewable energy grows, private investors have echoed a need for clearer policies and regulations.

The Department of Alternative Energy Development and Efficiency of the Ministry of Energy, has created a specific plan to promote and accommodate renewable and alternative energy, including the creation of incentives to draw private investment and amendment to laws and regulations that previously hindered investment for renewable energy. The Thai Board of Investment has also offered benefits to investors in areas of special importance and benefit to the country, including energy conservation and alternative energy. Investors in these areas will enjoy import duty exemptions, corporate income tax deductions and deductions for transportation, electricity, water and infrastructure costs. These government initiatives also create opportunities for investment in electric vehicles and clean energy technologies. Thai companies having expertise in renewable energy may also prove attractive for foreign companies to acquire.

What is the outlook for M&A in the country? Are there any significant developments forecast in the near future?

Based on consensus from all financial and economic advisers, foreign and domestic, the Thai economy should grow by about 3.8 to 4.2 percent in 2018, which is very satisfactory considering the

sluggish growth that Thailand experienced for the past five or more years. The stock market consistently reached new highs during the last two quarters of 2017, and is expected to do the same in 2018. The country also expects nationwide stimulation as a result of concentrated investment in the Eastern Economic Corridor and around the Bangkok metropolitan area, pumped up by government incentives. Much of this investment will likely come from overseas, as has historically been the case, and in particular from Japan, which has consistently regarded Thailand as one of its major manufacturing hubs, regardless of the socio-economic and political hiccups that periodically occur. Therefore, we do expect to see robust M&A activities throughout 2018, both by foreign companies, and also between Thai companies as part of their consolidation efforts.

The new competition law has introduced a revamped merger control system. How will this effect M&A transactions?

The new mechanism included in Section 51 of the Trade Competition Act of 2017 will ease the burden of the parties who plan to merge businesses, simply because it is more clear and practical. For example, if the result of a merger will create a dominant player in any particular market, as defined by the Office of Trade Competition Commission (OTCC), or a monopoly, then the parties must apply for approval from the OTCC before the merger can take place. The OTCC will provide a definite answer within 105 days, pursuant to the law. The result may be positive, positive with conditions, or negative. If the merger, however, will only create material reduction in competition in any particular market, which is a lesser burden on society than a dominant player or monopoly, then the parties will simply have to notify the OTCC within seven days after the merger is undertaken, with no pre-merger requirement. As of now, we are still waiting for the definition of "material reduction in competition" to be issued by the OTCC, and until such time, the parties will have to operate within the current approval provision. Note, also, that there is a clear exception to allow two entities which are related via policy or control structure to merge without being subject to the above rules, although the characteristics and criteria of exempted relationships are yet to be issued by the OTCC.

Although harsh, the new law is equipped with a consultation arm, meaning that any company can approach the OTCC and request a determination on whether any of their anticipated actions will be deemed a breach

The new competition law still maintains prohibition against a similar set of actions deemed to be undesirable when undertaken by a dominant player in the market. What are the implications for a merger that might result in a dominant player?

Section 50 of the Trade Competition Act of 2017 maintains the essence of the old law and prohibits dominant players from, 1) unfairly fixing or maintaining price level, 2) imposing unfair conditions on other operators and players, 3) purposely skewing supply in the market, and 4) unreasonably interfering with other operators. The difference from the old law is that the new law is designed and intended to be more enforceable, meaning these prohibitions must be taken much more seriously than before, because any breach will now result in higher probabilities of enforcement, and the punishment can be very harsh, including up to two years of imprisonment and/or a fine of up to 10 percent of income from the year during which the breach took place. If an anticipated merger will likely result in a dominant player in any particular market, the merging parties must prepare themselves to ensure that they do not directly engage in or appear to engage in any of these prohibited actions. Although harsh, the new law is equipped with a consultation arm, meaning that any company can approach the OTCC and request a determination on whether any of their anticipated actions will be deemed a breach under Section 50.

Pranat Laohapairoj

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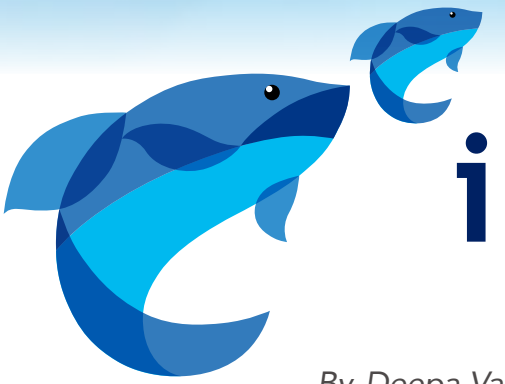
Africa is primed for private equity investments



By Deepa Vallabh, Nicholas Gangiah and Riola Kok, **Cliffe Dekker Hofmeyr**

Private equity (PE) as an asset class is a very attractive prospect for investors, due to its ability to generate returns in environments where traditional investment strategies provide lower returns due to the unpredictability of the markets.

Investment potential in Africa

PE across Africa has grown substantially over the past eight years, due to the continuous commitment of development finance institutions (DFIs) and both local and international development banks. In a statistic released by the African Private Equity and Venture Capital Association, for the period 2011 to 2016, a total of US$6.5 billion had been raised for PE in Africa, with a total reported deal value over the same period of US$22.7 billion for 919 deals. In 2016 alone, 145 deals were reported, totalling US$3.8 billion. These figures show that despite the numerous challenges associated with investing across the continent, African PE continues to present attractive investment opportunities.

According to reports published by the UN, the global population is expected to increase to 9.6 billion people by 2050, raising international concerns as to possible food shortages in the future. The UN estimates that by 2030 the global food demand will have increased by 50 percent, increasing the need for greater food production. Africa is in a unique position to mitigate the possible crisis and to develop and grow in the process. The continent holds around 50 percent of the world's uncultivated arable land. An estimate by the World Bank in 2013 revealed that if African farmers and agricultural businesses could develop and fully utilise the uncultivated arable land available, Africa could produce a trillion-dollar food industry by 2030 as compared to the US$313 billion recorded in 2010.

> If African farmers and agricultural businesses could develop and fully utilise the uncultivated arable land available, Africa could produce a trillion-dollar food industry by 2030

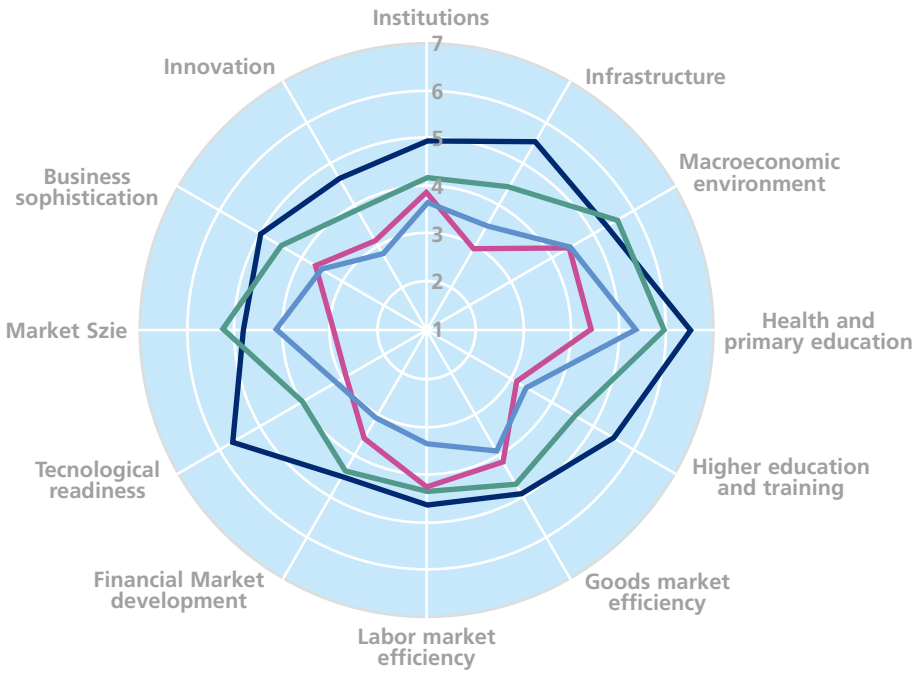
In addition to arable land and the mineral wealth often spoken about in relation to Africa, the social conditions and to some extent the changing political landscape and democratisation of Africa make the continent prime for private equity investment. Africa's attractiveness for PE practitioners stems largely from favourable population growth trends, a steady increase in disposable income, diverse and expanding economies, and an expanding middle class. The middle class in Nigeria, currently the fastest-growing economy on the continent, grew by 600 percent during the period between 2000 and 2014, with the corresponding growth rate in Nigeria for this period being an average of 4.5 percent each year.

Investments in Africa so far have predominantly been in the commodity sector, which in recent years has been in crisis. However, many countries have moved towards increased manufacturing and the development of technological, banking and other service industries. The move towards a consumer-driven economy will be supported by the

fact that Africa has the youngest population in the world, with the median age in Niger as low as 15. The World Bank estimates that the population age demographic in Africa could generate between 11-15 percent GDP growth between 2011 and 2030. In addition, according to the World Economic Forum, if sub-Saharan Africa is able to take advantage and provide adequate education and jobs to its youth, US$500 billion a year can be contributed to the regional economy for 30 years. This is the equivalent of one-third of Africa's GDP at present.

The underdevelopment in Africa as well as the smaller economic base in the developing world present greater opportunities for private equity investors and larger returns than those in developed and well-established economies. The growth trajectory of Africa when compared to other regions is promising as evidenced in the comparative diagram below published by the World Economic Forum. Paul Collier, co-director at the Centre for the Study of African Economies at Oxford University estimates that various African nations, such as Kenya, Rwanda, Tanzania and Ethiopia, have the potential to double their economies over the next decade, with many countries averaging a growth rate of between 6 percent and 7 percent during the past few years.

Africa's competitiveness landscape in international comparison



Source:
Global Competitiveness Index 2015-16

Noth Africa (2015-2016 sample):
Algeria, Egypt, Mauritania, Morocco, Tunisia

Sub-Saharan Africa (2015-2016 sample):
Benin, Botswana, Burundi, Cameroon, Cape Verde, Chad, Côte d'Ivoire, Ethiopia, Gabon, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe

Africa's share of global trade is just 3 percent, which is inconsistent with its growth trajectory, natural resources, consumer markets and growing economies of scale. What Africa lacks is the capital to maximise on these major development opportunities. Despite the projected growth trends, investment in Africa remains fairly homogenous, with countries such as China monopolising trade and investment in the continent, accounting for almost 60 percent of the trade and investment in countries such as Gambia, Gabon and Mali. According to the Private Equity Institutional Investor Trends Survey 2017, published by Probatis Partners, 55 percent of all money raised through private equity is invested in North America, which remains the largest private equity market in the world. In addition, although funding through sovereign wealth funds has increased globally, with US$7.4 trillion of assets under management in 2017, less than 10 percent of the assets held globally are assets within the African continent. This suggests that the market for private equity funding and sovereign wealth funding in Africa is largely unexplored and underfunded.

Challenges to investing in Africa

There are however a number of challenges faced by PE investors in Africa, such as uncertain economic and political environments, foreign currency shortages, exchange rate volatility, cyclical commodity-exposed businesses and the lack of infrastructure in most African counties.

Infrastructure remains one of the primary challenges to investing in Africa. Roads and railway lines are often sparse, outdated and insufficient. The lack of infrastructure in Africa has had adverse consequences for the agricultural sector, with up to 50 percent of African fruit and vegetables spoiling before reaching markets due to the lack of proper storage and the outdated means of transportation. Despite recent technological developments, there remains a soft infrastructure deficit in Africa. Barring South Africa, the data and information critical to the decision-making of businesses such as credit and risk data, consumption patterns and other related market data are either non-existent or inaccessible. Exit routes are also slightly limited for PE fund managers, due to the lack of developed stock exchanges.

The number of active fund managers in Africa continues to grow and, coupled with the steady growth across the continent, this has led to increased competition for investment targets

Deal sourcing on the African continent is also directly impacted by the physical location of fund managers. The majority of PE funds have their headquarters elsewhere in the world and as such this results in multiple trips by PE fund managers to target countries. This leads to an increased spend on deal origination per deal, which can lead to an overall higher transaction cost per deal for funds investing in Africa in comparison to investments in developed markets. Furthermore, numerous mid-cap companies in Africa (market cap between US$80 million and US$800 million) are still being run by the founders or their families, thus making them reluctant to relinquish control to new investors.

However, despite these challenges, there seems to be a more positive outlook to private equity investment in Africa. The number of active fund managers in Africa continues to grow and, coupled with the steady growth across the continent, this has led to increased competition for investment targets. The current PE environment in Africa indicates that there is a high demand for quality assets and a need to maximise returns from portfolio companies. In a recent study conducted by Deloitte, a majority of the respondents across Africa are expecting increased PE activity throughout the continent in the next year. Economies that actively promote export and economic diversification will become the market leaders on the continent, with East Africa projected to show some of the strongest growth in the coming years. Attitudes towards investments in Africa are changing. The majority of the respondents who participated in Deloitte Africa's Private Equity Confidence Survey were very optimistic and predict that PE activity across the continent will increase during the next 12 months, with most activity expected to take place in West Africa. Competition for new investments is expected to increase particularly in East and West Africa due to the high demand but limited supply of high-quality assets.

Solutions to increase investment

The risks associated with private equity funding in Africa can be managed and mitigated by investors diversifying their portfolios, investing in projects that deliver returns in foreign currency denominations as well as diversification of investments across sector, countries, managers and assets in order to spread their risk across sectors, portfolios and regions.

Investors must change their strategies to private equity funding in Africa. The approach to private equity funding often employed in developed regions is to target large deals with established management structures. However, these deals are far less common in Africa than they are in North America and Europe, and thus the approach to private equity funding in Africa must differ for investors to maximise the investment opportunities on the continent. Private equity funders must explore new investment strategies. This includes investing in smaller deals, partnering with local investors, government entities and local sovereign wealth funds. It is also imperative that private equity funders are able to secure a majority stake in investments to effectively manage the growth trajectory. Some strategies often require a parallel investment in areas that are critical to business success. For example, ensuring regular supply of electricity to a manufacturing plant where electricity supply is scarce or irregular may require investment in an

alternative power supply such as renewables.

One of the key aspects to increasing value in target assets is for businesses who seek private equity investment for growth to ensure that they are managed and controlled in a transparent manner. Reporting on the basis of globally accepted accounting principles is key, together with ensuring that legal risks such as contract management and compliance are in place and in order.

The improved corporate governance of existing private equity funds will always bring with it investor confidence. There are three key areas that need to be addressed to improve corporate governance across the continent, namely, the distinction between managers and the investors in order to ensure that managers remain impartial and that the interests of the fund are distinguished from the interests of individual investors, secondly, greater transparency as to the operations and investments of the funds and, thirdly, the strengthening of general corporate governance structures, including the establishment of advisory committees or similar oversight committees to ensure effective management and accountability. These practices increase value and unlock opportunities for investment. In Southern Africa, investors are focused on finding new opportunities, but emphasis has been placed on helping portfolio companies grow and refinance, as well as assisting companies to improve their corporate governance and management practices.

There is a gap here for active fund managers to go in with a focus on longer-term growth and optimising the value of the business for exit. This can be done by taking a hands-on advisory role in marketing and production, building routes to market, attracting and retaining professional management teams, skills transfer, advising the company's board and improving overall efficiencies through focused interventions.

Conclusion

It is important for private equity investors to be aware that there is no single monolithic Africa into which private equity funds can invest. There are 55 fully recognised sovereign states, each with diverse political, social and economic conditions. The approach to private equity funding in Africa therefore cannot be homogenous. The unique conditions of each country must be taken into account when planning investments looking at sector-specific growth rates and the social and political conditions of each state.

As highlighted in a 2014 UN report, without jobs and economic opportunities, social stresses and unemployment could lead to unrest in many African countries owing to their young populations. The authors write: "Lack of meaningful work among young people is playing into frustration that has in some instances contributed to social unrest or unmanaged migration." Simply put, Africa presents investment opportunities with the possibility of high returns, untapped markets and a promising growth trajectory that suggests long-term returns on investments. However, to sustain growth on the continent and harness the opportunities that the growing middle class and expanding sectors present, funding and particularly foreign direct investment is essential. The underdevelopment of many African countries as well as the lack of infrastructure essential to sustaining growth presents challenges for investors. However, the very essence of these challenges is exactly what makes Africa a continent to invest in, because they provide lucrative investment opportunities with the prospects of very high returns.

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The thing about ...

Asian-mena Counsel's Patrick Dransfield had the chance to photograph and interview Chen Fuyong, deputy secretary-general of the Beijing Arbitration Commission/Beijing International Arbitration Centre, and put to him a series of questions on behalf of the **In-House *Community***.

Chen Fuyong

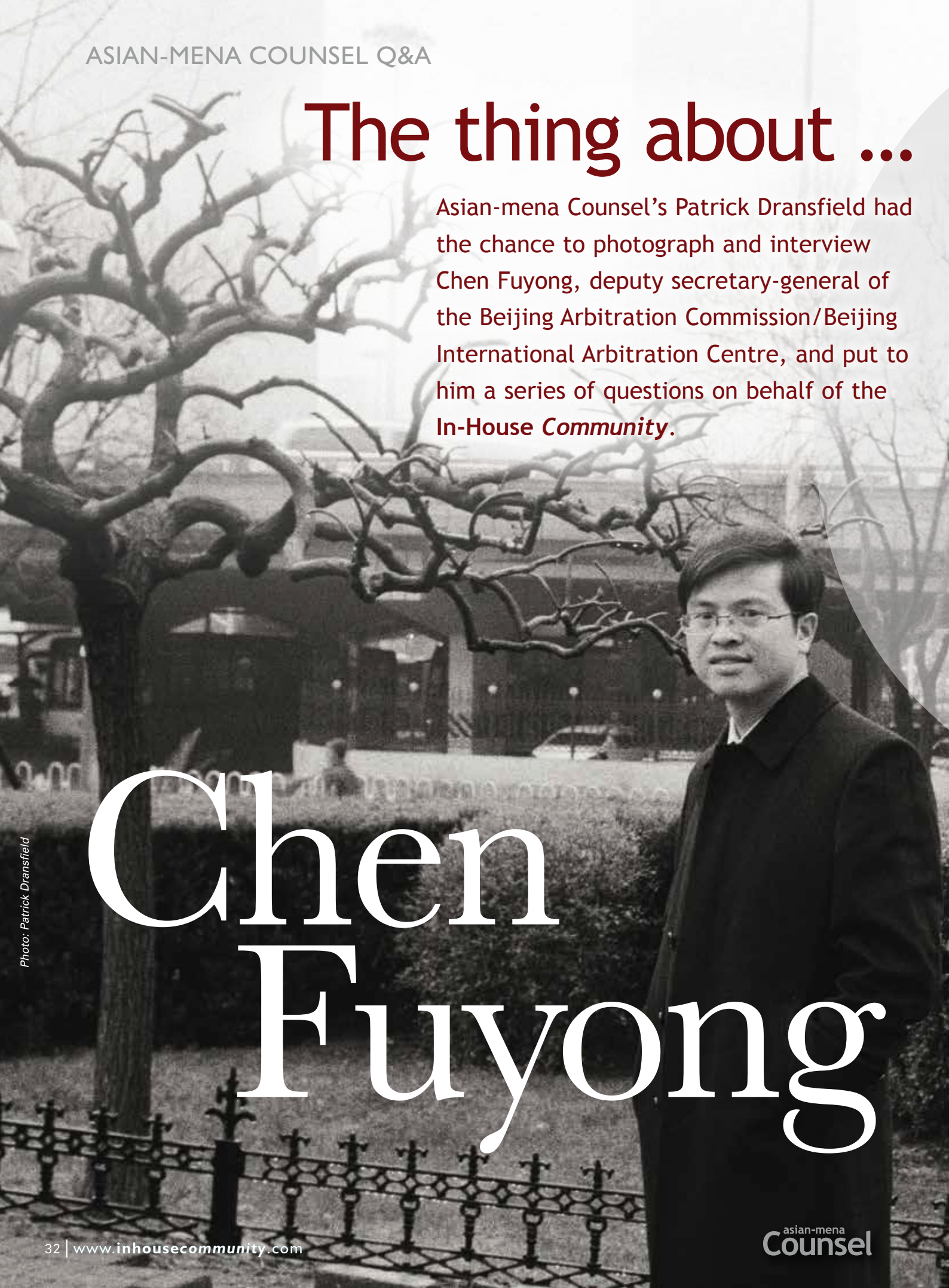
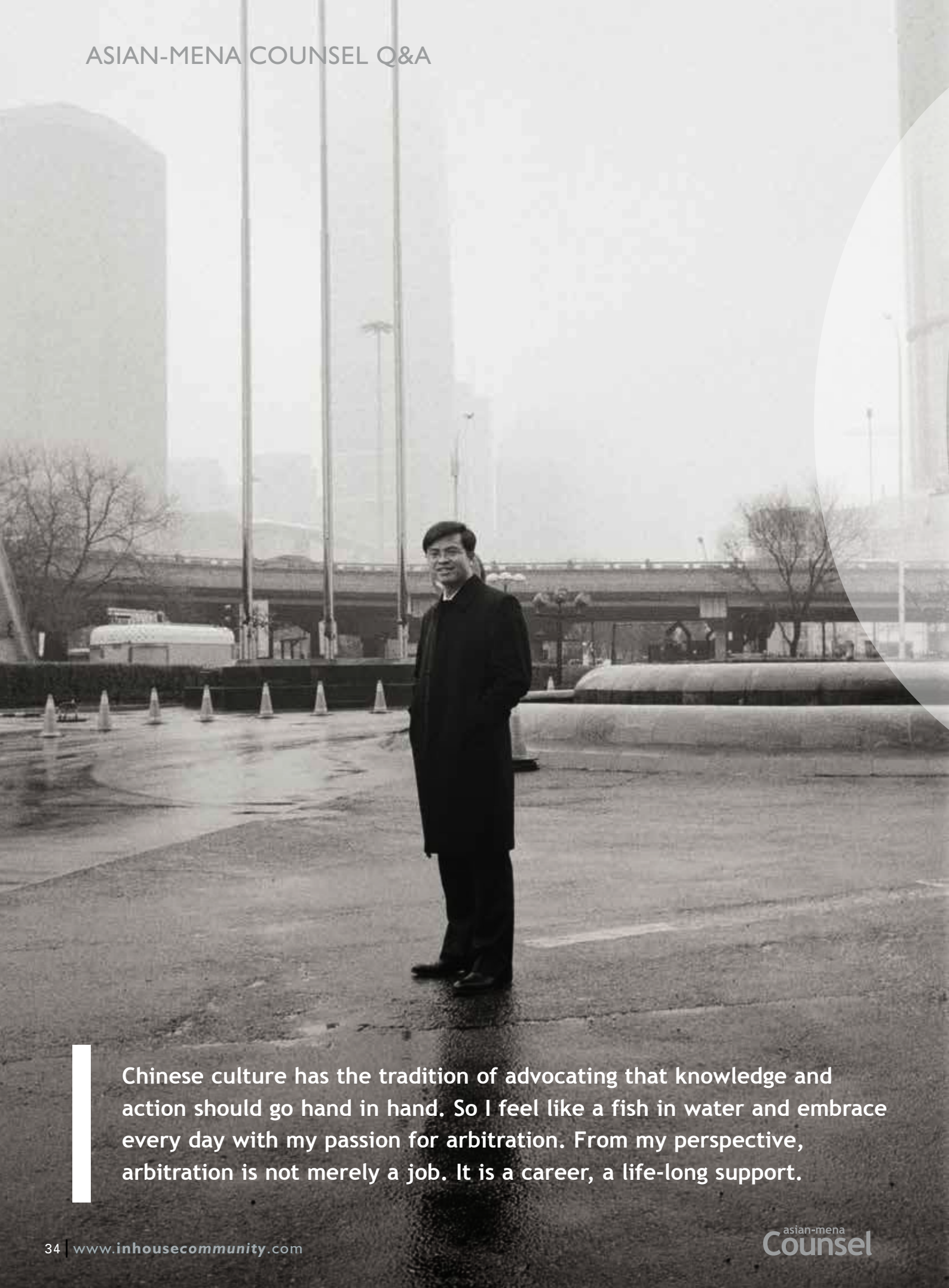


Photo: Patrick Dransfield

Asian-mena Counsel: I understand that you did your doctoral thesis on China's arbitration institutions — has the reality of helping to run an arbitration centre lived up to your expectations?

Chen Fuyong: Absolutely. For me, it was a calling to engage in the field of arbitration. Although generally very few law students enter into arbitration institutions, it came naturally for me to take the road less travelled by other law students. Back in 1992, Deng Xiaoping did the famous southern tour and China started to clearly express the goal of establishing a market-oriented economy. Echoing this transition in the economy, the Arbitration Law of the PRC was enacted in 1994 with an aim to transform the original planned economy-based administrative arbitration regime into a non-administrative one in line with international arbitration practice.

More than 200 arbitration institutions have been established in China since the Arbitration Law came into effect in 1995. However, the development of these institutions varies dramatically and the intended transformation seems quite difficult. My doctorate thesis was an empirical analysis of the then-current status and future trends of China's arbitration institutions, which attempted to unlock the intricacies of the transformation of these institutions.



Chinese culture has the tradition of advocating that knowledge and action should go hand in hand. So I feel like a fish in water and embrace every day with my passion for arbitration. From my perspective, arbitration is not merely a job. It is a career, a life-long support.

For the purpose of doing participant observation and collecting data, I joined BAC as a case manager for two years and learned about the inner working of an arbitration institution. During that period, I also organised two national surveys on the arbitration institutions and did interviews with staff in 10 arbitration institutions located in different cities and with different development levels. Then I spent one year as a visiting researcher at the Centre for the Study of Law and Society at the University of California, Berkeley and did a comparative study of the development of arbitration in America. After that I put my heart and soul into the writing of my dissertation for another year. The dissertation turned out to be the first systematic empirical research on China's arbitration institutions. I rejoined BAC in 2009 and was very excited to put my academic insights into practice. Chinese culture has the tradition of advocating that knowledge and action should go hand in hand. So I feel like a fish in water and embrace every day with my passion for arbitration. From my perspective, arbitration is not merely a job. It is a career, a life-long support.

AMC: Why is arbitration important for China?
Chen: Basically, arbitration plays an indispensable role in every country's system of dispute resolution. For China, arbitration shows its special significance in two ways: firstly, against the background of social transformation, the development of arbitration is a symbol of the development of self-governance of business society. Secondly, against the background of increasing outbound investment, international arbitration is one of the fields that China seeks to expand its power of discourse. To some extent, pursuing an arbitration is not just to resolve a specific dispute, but to construe and define the related rules of international trade and investment.

AMC: You describe the Beijing International Arbitration Centre as one of the busiest in the world. Could you provide details of the volume and kinds of cases that the centre typically hosts?
Chen: Since its establishment in 1995, BAC/BIAC has cumulatively accepted more than 30,000 cases, including over 800 international cases with disputing parties coming from more than 30 countries. If we look at the annual caseload, there is a sharply increasing trend in the past three years. The caseload in 2014, 2015 and 2016 were 2,041, 2,944 and 3,012, respectively. There are 11 hearing rooms at BAC. It is not unusual that we find all the hearing rooms are in session at the same time. The cases involve disputes arising from various commercial contracts, including sales contracts, commission contracts, contracts for construction projects, investment and financing contracts, lease contracts, loan contracts, franchise contracts, technology contracts, and so on.

AMC: What are the potential attractions for a foreign party to use the Beijing International Arbitration Centre for their disputes?
Chen: BAC/BIAC devotes itself to providung dispute resolution services of an international calibre at local fee standards. The arbitration under BAC/BIAC rules is independent, impartial, professional, efficient and cost-effective. In addition, BAC/BIAC is very user-friendly. For example, under international procedures, the disputing parties could appoint an arbitrator from outside the panel. If, upon the termination of unsuccessful conciliation proceedings, both parties may request a replacement of an arbitrator on the ground that the results of the award may be affected by the conciliation proceedings.

AMC: My limited understanding is that, globally, arbitration centres typically fall into three categories: state to state, state to investor and commercial. How would you define the current status of the Beijing International Arbitration Centre? What are the plans for the centre over the next five years?
Chen: Currently, BAC/BIAC is mainly focusing on commercial arbitration, but is open to administer state-to-investor arbitration as well. As a leading arbitration institution in China and an emerging international arbitration centre, BAC/BIAC is expected to substantially increase its international visibility over the next five years, especially against the background of the Belt-and-Road initiative, and to make greater contribution to facilitate exchanges and cooperation between Chinese professionals in the field of arbitration and their counterparts in other countries.

AMC: How does the drive of technology and use of big data affect the way that International Arbitration is evolving? Are you now seeing people with different skills being called upon to be arbitrators, for example?
Chen: Technology and big data affect arbitration in many ways. Just to name a few, at BAC/BIAC, the parties are provided with a computer system to search for specific background information on arbitrators to make sure they have made appropriate disclosure of any conflicts. To increase efficiency, BAC/BIAC has designed and developed a case management system to consolidate information and expedite case handling since its establishment. BAC/BIAC also has designed and developed an online office system to provide arbitrators with greater access to case materials and tools to arbitrate cases with greater efficiency.

AMC: Where do you personally stand of the debate regarding third-party funding for arbitration?
Chen: Third-party funding is definitely a hot topic in recent years. I personally fully support this type of funding for arbitrations. The key is to require the disputing parties to disclose the third-party so that the tribunal could clearly decide whether there is any conflict of interest.

AMC: Who is your mentor?
Chen: Looking back to the days that I have grown, my academic mentors include Professor Pan Jianfeng at the Law School of Peking University, Professor Wang Yaxin at the Law School of Tsinghua University and Professor Malcolm Feeley at the Law School of UC Berkeley. They are all eminent experts in their field of research and gave me the best academic training that a student could have. My practice mentor is Madame Wang Hongsong, the former secretary-general of BAC/BIAC. She was the founder of BAC/BIAC and made it stand out among the arbitration institutions in China within a very short time. I have learned so much from her over the years that no words could express my gratitude to her. All my efforts in the field could be regarded as just following her footprints to make BAC/BIAC an internationally recognised arbitration institution.

Chen Fuyong is the deputy secretary-general of the Beijing Arbitration Commission/Beijing International Arbitration Centre and the vice-president of Asia Pacific Regional Arbitration Group (APRAG). He is a qualified PRC lawyer with an LLB from China University of Political Science and Law, an LLM from Peking University and a PhD from Tsinghua University. Chen was a visiting researcher (2007-08) at the Law School of UC Berkeley and is a research fellow of the Centre for the Study of Dispute Resolution at Renmin University of China. He is the general editor of Beijing Arbitration Quarterly and has published more than 10 journal articles on commercial dispute resolution, including "Striving for Independence, Competence and Fairness: A Case Study of Beijing Arbitration Commission" in *The American Review of International Arbitration, v.18/no.3*. His dissertation titled "The Unfinished Transformation: An Empirical Analysis of the Current Status and Future Trends of China's Arbitration Institutions" was awarded 2010 Beijing Excellent Doctoral Dissertation. Chen is also the co-author of Chinese Arbitration Law (LexisNexis 2015) and China Arbitration Handbook (Sweet & Maxwell 2011). He has extensive experience in handling various commercial disputes through arbitration and mediation and is a regular speaker at international conferences and seminars.

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