

asian-mena Counsel

Volume 16 Issue 4, 2019

Asian-mena Counsel DEALS OF THE YEAR

Winners 2018

Plus:

The thing about ...

Philip McConnaughay and
legal education in China

The art of deal management

Keeping momentum,
avoiding “deal fever”

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African competition law developments in 2018 and the outlook for 2019

Africa is sometimes described as the “last frontier” of competition law because many African countries have only recently adopted modern competition laws (South Africa only did so in 1999). However, African competition law is developing rapidly and needs to be closely and regularly monitored because the consequences of a competition contravention are serious and include severe financial penalties for the firm, damages claims, reputational damage and even criminal sanctions for involved directors and managers (10 years jail and/or R500,000 (US\$36,000) fine in South Africa).

In 2018, the East African Competition Authority (covering 6 East African countries) became operational and the ECOWAS Regional Competition Authority (covering 15 West African countries) was established. Other existing regional competition regimes are the COMESA Competition Commission, which covers 21 African countries, the Economic and Monetary Community of Central Africa, which covers six Central African countries, and the West African Economic and Monetary Union, which covers eight West African countries. A Southern African Development Community regional competition framework that will cover 15 African countries is planned by 2020.

One of the most significant recent developments in African competition law is in Nigeria, Africa’s largest economy. The Federal Competition and Consumer Protection Bill was signed by the president in February 2019. The new law establishes a commission and tribunal and covers cartels, dominance, anticompetitive practices and mergers as well as consumer protection. Cartel conduct, the abuse of dominance and minimum resale price maintenance are prohibited. It controversially allows the president to regulate the prices

“Businesses should adopt a “prevention is better than cure” approach and consider competition law training for senior executives and staff, as well as implementing compliance programmes”

of certain goods and services on the commission’s recommendation and criminalises cartels, other competition contraventions and the failure of a firm to cease an abusive practice after receipt of a desist order from the commission. A general penalty may be imposed on body corporates of up to 10 percent of annual turnover. Directors of the body corporate face up to five years jail and/or a N50 million (US\$137,000) fine. A tax of 0.5 percent of after-tax profits will be payable by all Nigerian companies to the commission.

Other important African competition law developments in 2018 and early 2019 included:

- new competition laws came into force in Angola and Botswana (cartel conduct has been criminalised in Botswana);
- significant amendments to South Africa’s Competition Act came into force with a strong focus on restricting dominant firms, widening the Competition Commission’s powers and increasing the penalties for competition contraventions;
- in Namibia, a corporate leniency programme was launched to combat cartels and the Mauritian leniency programme was amended to allow the initiators or coersers of cartels to apply for leniency and get a 50 percent reduction in fines;
- the Zambian, Kenyan, Ethiopian, Namibian,

Malawian, South African and Egyptian competition authorities investigated and issued important decisions relating to excessive pricing, exclusive supply arrangements, exclusive purchase undertakings in loan agreements, the fixing of prices and trading conditions, the exemption of joint ventures and tying arrangements by dominant firms; and

- the Zimbabwean competition authority launched a new National Competition Policy and a new competition bill was submitted to parliament in Ghana.

The following trends are increasingly important:

- the increasing importance of regional (as opposed to national) authorities;
- a shift in focus away from merger control towards enforcement and conduct cases (cartels, restrictive practices and abuse of dominance);
- increasing cooperation between African competition regulators and between competition and other regulators in the same country; and
- new competition laws, for example in Ghana, Uganda and South Sudan.

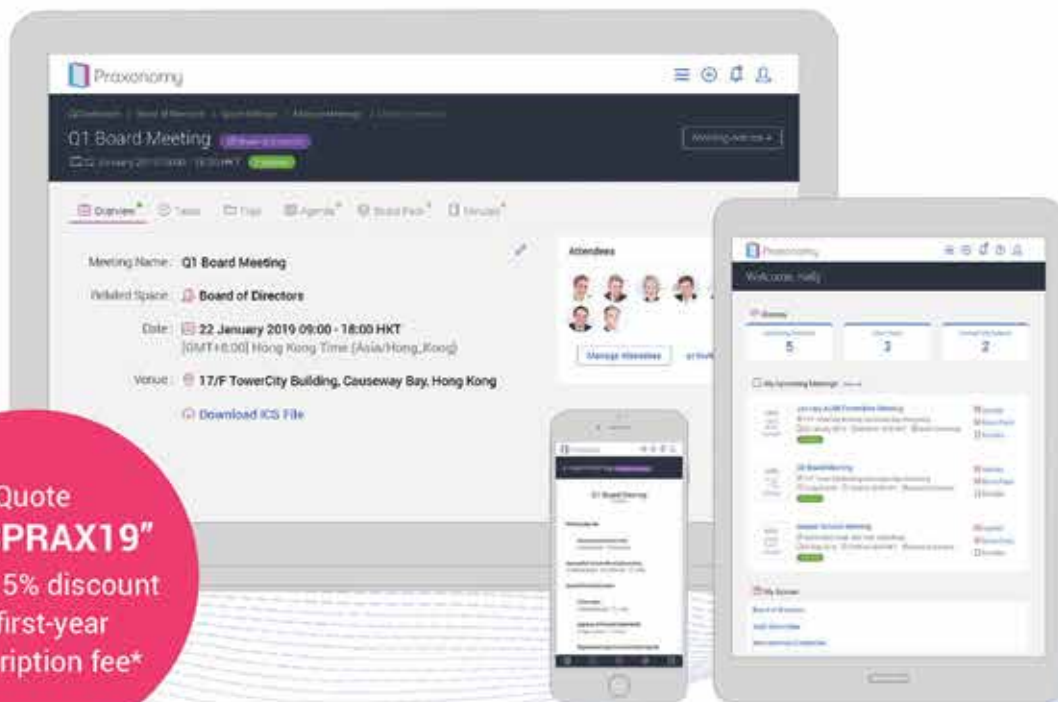
African competition law developments in 2018 clearly indicate that African competition law enforcement will increase going forward. Competition laws will continue to be passed, implemented and reviewed/amended. The risk of competition contraventions for business will accordingly increase. Due to the serious consequences of such contraventions, businesses should adopt a “prevention is better than cure” approach and consider competition law training for senior executives and staff, as well as implementing compliance programmes, including a whistle-blower programme/hotline and dawn raid training (there have been over 70 raids in South Africa since 2016 and raids have also taken place in Kenya, Namibia, Botswana, Malawi and Zambia).

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Protecting indigenous knowledge systems and practices in intellectual property rights registration

Indigenous peoples (IPs) and indigenous cultural communities (ICCs), though explicitly protected under the constitution itself, sadly remain one of the most marginalised and forgotten sectors in Philippine society. Most often than not, IPs and ICCs are known for their mineral-rich ancestral lands and domains that are the usual targets for mining development projects. Unknown to many, however, IPs and ICCs possess other valuable resources, specifically their indigenous knowledge systems and practices (IKSP) consisting of accumulation of age-old traditional cultural methods and beliefs in medicine, genetic resources, ecology, art and language, among others.

Under Republic Act No. 8371 or the Indigenous Peoples Rights Act (IPRA), the law acknowledges that IPs and the ICCs have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including their IKSP.

Pursuant to this legal mandate, the National Commission on Indigenous Peoples (NCIP), the primary government agency tasked to formulate and implement programmes, plans and policies to promote and protect the rights and well-being of the ICCs and IPs, and the Intellectual Property Office (IPO), the main government agency that administers and implements rules governing the registrations of intellectual property rights applications, issued on October 28, 2016, Joint Administrative Order No. 01, 2016 (JAO), which provided the rules and regulations on intellectual property rights application and registration protecting the IKSPs of the IPs and ICCs.

The primary thrust of the JAO is to prevent the misappropriation of the IKSPs of the IPs and ICCs, and encourage tradition-based creations and innovations. Recognising the nature of the ICCs, the JAO reflects two important principles

unique to the laws on IPs: the concept of communal property and the free prior and informed consent (FPIC). Rule 4 (b) of the JAO defines "Community Intellectual Rights" as the rights of the IPs and ICCs to own, control, develop and protect the following:

- the past, present and future manifestations of their cultures, such as but not limited to, archaeological and historical sites, artefacts, designs, ceremonies, technologies, visual and performing arts, and literature as well as religious and spiritual properties;
- science and technology including, but not limited to, human and other genetic resources, seeds, medicine, health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, resource management systems, agricultural technologies, knowledge of the properties of fauna and flora, oral traditions, designs, scientific discoveries; and
- language, script, histories, oral traditions and teaching and learning systems.

Notice that, unlike conventional intellectual property rights such as patents, copyrights and trademarks, which are registered to a specific entity or individual, the intellectual properties of IPs and ICCs are communally owned. Individuals can only act as custodians of the IKSPs, but the intellectual property rights are collectively owned by the ICCs. In addition, the JAO makes references to collective management of the intellectual properties of the ICCs. Rule 7 of the JAO provides that:

"If the author of an artistic and literary creation or the inventor of an invention cannot be identified, but an indigenous cultural community is recognised to have created and owned the artistic or literary work, or invention, this com-

munity is entitled to the collective management of their intellectual property rights over these works. These artistic and literary works and inventions of the indigenous peoples refer to tangible and intangible forms in which their IKSP are expressed, communicated or manifested and include traditional music, performances, narratives, names and symbols, designs, and technological innovations."

As regards FPIC, a major protective measure mentioned in the JAO is that intellectual property registrants must disclose any IKSP that is used in the subject matter of the application and that FPIC was secured from the ICCs concerned. Rule 6 of the JAO states that if this condition is not observed, the registration of the intellectual property which uses IKSP in its subject matter will not be effected. In case a registration has been issued in violation of the JAO, the IPO may, in accordance with its rules and regulations, cancel the registration. Further, notwithstanding the lack of declaration of the use of an IKSP in an intellectual property right application, the IPO may, *motu proprio* or upon request by any person and after initial evaluation by the IPO, refer the application to the NCIP for purposes of verifying the use or ownership of the IKSP and compliance to the FPIC requirement.

To assist the IPO in determining the use of the IKSP, the NCIP, together with other cultural government agencies, is tasked to establish an IKSP registry. In the absence of such registry, the NCIP or IPs recognised or accredited by NCIP is authorised to certify the ownership of the IKSP by the ICCs. The certification shall also include information on the FPIC compliance.

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

(Note: This article first appeared in *Business World*, a newspaper of general circulation in the Philippines.)

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Senior Legal Counsel (M&A/Commercial) Hong Kong 12-15 PQE

Established international entertainment business seeks a lawyer to lead complex commercial transactions and handle a range of commercial work for the business. Experience gained within an international corporation and/or international law firm, and proven team management skills are important. Excellent English and Chinese drafting skills is mandatory. (IHC 17128)

Senior Legal Counsel Hong Kong 12+ PQE

Our client is a leading player in the e-commerce market. They are looking to hire a senior lawyer to manage a small team and take responsibility for a range of work across the e-commerce sectors. In-house lawyers with retail and consumer experience would be ideal. Fluent Cantonese is critical for this role. (IHC 17248)

Head of Legal Hong Kong 10+ PQE

Our client is an MNC with a substantial presence across the Asia Pac region. The group are looking for a senior commercial lawyer with in-house experience who is either leading a legal team or a deputy looking for a head of legal role. Excellent opportunity to manage a quality in-house team. No language skills required. (IHC 17298)

MNC Hong Kong 10+ PQE

This well-regarded MNC has a vacancy for a senior in-house commercial lawyer with good China and regional experience. Work will involve advising senior management on an interesting mix of contract, general commercial, employment and some compliance legal matters, and advising senior management on strategic matters. Fluent Mandarin skills highly desirable. (IHC 17200)

Senior Legal Counsel Hong Kong 8+ PQE

Financial services group seeks a lawyer to head its legal team to focus on investments and commercial work for their businesses which include securities, asset management, investments and IPO work. You will work closely with senior management and advise the business on a range of matters related to the group. Chinese language skills are mandatory. (IHC 17346)

Senior Commercial Litigator Hong Kong 8+ PQE

A Hong Kong conglomerate seeks a lawyer with solid commercial dispute resolution experience from a reputable law firm or in-house to manage the disputes including data privacy and personal injury related matters. You will advise senior management on contentious matters for the group's various businesses. Cantonese language is mandatory. (IHC 17251)

Commercial / Media Hong Kong 4-8 PQE

A leading TMT company with a multitude of fast growing businesses is looking for a group legal counsel to support their media team on a range of commercial legal matters. Opportunity for a mid-senior lawyer with general commercial experience and familiarity with media & entertainment business. English and Chinese language skills are required. (IHC 17349)

Senior Counsel Hong Kong 12+ PQE

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

Dispute Resolution Beijing 8+ PQE

A well-known private company in China is looking for an experienced dispute resolution lawyer to lead its litigation team to handle a range of commercial disputes. Candidates should possess good communication and management skills. PRC Bar is essential. (IHC 16145)

Trademark Hong Kong 6+ PQE

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

Head of Legal Singapore 10-15 PQE

A well-established private investment house in Singapore seeks a senior lawyer to head its legal and corporate secretarial functions. The ideal candidate should be Singapore qualified with experience in MSA and general corporate work. (IHC 17217)

Legal Director Singapore 8-15 PQE

Global engineering equipment company seeks a senior legal counsel to join their Singapore office. The Counsel will be responsible for legal and compliance matters across the region. The ideal candidate should be based in Singapore and qualified in a common law jurisdiction with strong regional corporate commercial and corporate compliance experience. (IHC 17130)

Legal Counsel Singapore 4-8 PQE

Global consulting company with focus in the insurance sector seeks for a legal counsel to join their team. The ideal candidate should be qualified in a commonwealth law jurisdiction with experience in insurance work. Candidate with good corporate background is welcome to apply. (IHC 16575)

Legal and Compliance Manager Singapore 4-6 PQE

Leading global asset management firm seeks a legal and compliance manager to join their team. The ideal candidate should be admitted to a common law jurisdiction with experience in corporate finance, funds, financial regulatory or capital markets work at a law firm or in-house. (IHC 17247)

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Tax liabilities in Korea for income generated from patents

Recently, the Supreme Court of Korea upheld a lower court judgment finding that under the Korea-US Income Tax Convention, where a foreign corporation has given a patent licence to a company in Korea but has not registered its patent in Korea, then the income paid to that foreign corporation from Korea for the use of such patent licence would not be considered domestically generated income, and not subject to Korean tax liabilities.

In that case, a Korean company brought an action against the Korea Tax Office, challenging a decision by the Tax Office that the Korean company should have withheld corporate taxes from licence fees that it paid to a US company for the Korean company's use of the patented invention in Korea. The US company had registered its patent in the US and licensed it to the Korean company without registering the patent in Korea.

The Supreme Court's holding is consistent with prior law and precedent in Korea. Pursuant to the Korean Corporate Tax Act, a foreign company is required to pay corporate tax in Korea only when it has domestically generated income in Korea. Any entity in Korea that pays certain domestically generated income to a foreign company, as provided for in Article 93, Subparagraph 9 of the Act, has the obligation to withhold from the payment any required corporate tax. Article 93, Subparagraph 9 of the former Corporate Tax Act (Article 93, Subparagraph 8 of the current Act) specified that when there is a use and/or payment for the use of certain patent rights in Korea, any income generated from such transfer of those rights and payment is subject to the collection of a

“Only that portion of income constituting royalties of a patent registered in Korea is to be considered domestically generated income”

withholding tax as domestically generated income. But under various double tax avoidance agreements on income, whether such payments constitute domestically generated income has been determined based on the place where the patent rights have actually been used. Payments made for patent rights that are used overseas may not be deemed to be domestically generated income, even if the payments were made from Korea.

Additionally, the former Act provided that for any patents that are required to be registered in Korea to be exercised in Korea, if such patents have been registered outside Korea but used in Korea for the production or sale of goods, the patent rights are deemed to have been used in Korea, notwithstanding the failure to register such patent in Korea.

However, Article 28 of the Adjustment of International Taxes Act states that when classifying domestic sources of income of a non-resident or a foreign corporation, the provisions of a tax treaty shall be preferentially applied, notwithstanding applicable domestic laws and regulations such as

Article 93 of the Corporate Tax Act. In this regard, Article 14(4) of the Korea-US Income Tax Convention defines the term “royalties” as used in this Article to mean payment of any kind made as consideration for the use of, or the right to use patents. Article 6(3) of the Convention also states that royalties described in paragraph (4) of Article 14 (Royalties) shall be treated as income from sources within one of the Contracting States, only if paid for the use of or the right to use such property within that Contracting State.

In earlier cases the Supreme Court ruled that in light of the interpretation of the above articles, any patent licence is deemed to be valid only in the territory of a country where such patent has been registered. So when a US corporation domestically holds a patent licence by having its patent registered in Korea, the income paid to such corporation for the use of such patent licence within Korea may be deemed to be domestically generated income. In contrast, if a US corporation has not registered its patent in Korea, but has registered its patent only overseas, then any income paid to such company from Korea related to such patents cannot be deemed to be domestically generated income in Korea.

In the most recent case, the court determined that in accordance with the above legal principles, only that portion of income constituting royalties of a patent registered in Korea is to be considered domestically generated income. Such judgment once again makes clear the position of the Supreme Court that when a foreign company has registered its patent only in an overseas country and not in Korea, any income paid to such company from Korea related to such patent cannot be considered domestically generated income. Therefore, Korean corporate taxes should not be withheld from the royalty payments being made to the foreign company.

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Senior Legal Counsel | 12+ yrs ppe | Hong Kong REF: 14922/AC

This well-known telecommunications company is seeking a Senior Legal Counsel to join its Hong Kong office. You will lead a small team of professionals to provide in-house legal support and advice to its telecommunications and consumer businesses, with a focus on risk management, commercial agreements, marketing campaigns and internal policies. You must be legally qualified with at least 12 years' PQE from a recognized jurisdiction and have strong experience within the telecommunications sector. Prior experience of the insurance industry is preferable but not essential. To be successful, you will need to be entrepreneurial and hands-on along with strong stakeholder management skills and the leadership qualities to effectively lead a team. Fluency in English and Cantonese is essential; Mandarin Chinese is desirable.

Legal Counsel | 8-13 yrs ppe | Hong Kong REF: 14915/AC

This well-established food and beverage company is seeking a senior lawyer to support its Hong Kong businesses. You will be responsible for the provision of legal advice and support on general corporate and commercial work. Ideally, you are Hong Kong qualified with 8-13 years' PQE of commercial or corporate work gained in the F&B or retail sector. A good team player with good law firm training and strong drafting skills is sought. Fluency in English and Cantonese skills is required.

Compliance Director | 8+ yrs exp | Shanghai REF: 14919/AC

A Fortune 500 pharmaceutical company is seeking a Compliance Director based in Shanghai to cover its operations in China. As you will lead a team of 3 professionals to provide compliance support to business partners, a very strong knowledge of compliance/regulatory issues and anti-trust matters is essential. You ideally have a law degree with solid compliance experience in the pharmaceutical, medical equipment, healthcare industries or a similar highly regulated environment. Leadership, good communication and teamwork skills are highly desirable. Fluent written and spoken English and Mandarin skills are mandatory.

Group Legal Counsel | 5+ yrs ppe | Hong Kong REF: 14923/AC

This regional telecommunications market leader is seeking a senior commercial lawyer to join its legal team based in Hong Kong. You will be drafting and negotiating a variety of commercial agreements and supporting business teams on media and entertainment matters. You ideally will be Hong Kong qualified with over 5 years' PQE in general commercial work and be familiar with M&A, IP, media and entertainment issues. Experience in compliance with listing rules and company secretarial matters is highly desirable. Good communication skills are essential plus fluent written and oral English and Chinese (both Cantonese and Mandarin).

Senior Compliance Manager | 5+ yrs ppe | Hong Kong REF: 14931/AC

This fast-growing fintech start-up is seeking a Senior Compliance Manager to join its expanding compliance team based in Hong Kong, to be primarily responsible for providing regulatory compliance support for its businesses. You ideally have at least 5 years' compliance experience in a financial service environment together with strong experience in AML/CFT compliance and broad exposure in KYC, sanctions and policy/advisory. Prior experience in driving change initiatives on both compliance process and systems level is desirable. You must have fluent English and Cantonese skills for the role.

Private Practice

Senior Associate/Counsel, M&A | 7+ yrs ppe | HK REF: 14901/AC

This US leading law firm is seeking a Senior Associate/Counsel to bolster their busy M&A team based in HK. You must be US qualified with 7 years' PQE in M&A and PE work at international law firms as the role will be split between funds and corporate activity. Candidates with business acumen and a proven record of serving major international and regional PE houses are desired. Bilingual capability in English and Mandarin is essential; Cantonese skills would be a plus.

Senior Associate/Counsel, CM | 5+ yrs ppe | HK REF: 14905/AC

This top-tier US law firm is seeking a Senior Associate/Counsel for its equity capital markets practice in HK. Candidates should be HK qualified with over 5 years' PQE of HK IPOs, listing rules and M&A work at an international or top-ranked Chinese law firm. Experience of HK regulatory issues is highly desirable. Oral fluency in Mandarin is required.

M&A Lawyer | 4-5 yrs ppe | Beijing REF: 14932/AC

This Red Circle law firm is seeking a mid to senior-level M&A lawyer to join its corporate team based in Beijing. You will be exposed to top-tier clients, cutting edge work and be part of a strong team led by outstanding partners. A transactional lawyer who has solid M&A experience with an overseas legal qualification is preferred. Good drafting skills in English and Chinese are necessary.

Associate, US Capital Markets | 3-6 yrs ppe | Tokyo REF: 14910/AC

Do you have US qualification with a JD/LLM from a top American law school? If you also have 3-6 years' PQE on capital markets at an international law firm, then a new role at this elite US law firm is a great fit. You should have outstanding academics and good law firm training. Fluency in written and oral Japanese is essential.

Associate | 3-5 yrs ppe | Shanghai REF: 14903/AC

A leading PRC commercial law firm is seeking a mid to senior-level Associate to join its Shanghai office. You will work closely with a leading partner advising foreign companies on a wide range of international commercial matters including commercial contracts, FDI, M&A, compliance, litigation, arbitrations, IP and labour law issues in China. You must be a qualified lawyer with 3-5 years' relevant PQE plus experience of advising foreign clients. A good team player with strong legal and interpersonal mentoring skills is sought. Good drafting skills and fluent Mandarin and English is required.

Tax Associate | 2+ yrs ppe | Shanghai REF: 14892AC

A top-tier global law firm seeks a Tax Associate to join its Shanghai office. You ideally will have 2 years' PQE as a tax lawyer, with relevant corporate and international tax experience. PRC/US/UK qualified lawyers with stellar academics, fluent English and Mandarin and strong interpersonal skills are preferred.



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Reform of regulations on private issuance of corporate bonds in Vietnam

In December 2018, the Government of Vietnam issued the Decree 163/2018/ND-CP (Decree 163), effective from February 2019. Decree 163 is said to be a radical reform of regulations on private issuance of corporate bonds in Vietnam, repealing the Decree 90/2011/ND-CP (Decree 90).

One of the most notable points under Decree 163 is that the requisite conditions for issuing corporate bonds have been significantly liberalised. Specifically, the requirement to be profitable in the year immediately before issuance is now lifted. The condition for a one-year test period before issuance shall be counted from the date of initial issuance of issuer's business registration certificate, rather than the date of official operation as under Decree 90. In this regard, for issuers that have undergone restructuring such as merger, conversion or division, such time period before restructuring shall be taken into account for the purpose of that one-year test. Another noteworthy point is that a form of issuing by direct placement to bondholders without going through issuing agent or underwriter is now allowed for any issuers. Previously under Decree 90, it was limited for the credit institution only. With respect to international bonds, conditions requiring a credit rating for the issuer and legal opinion regarding issue have been revoked. Nonetheless, Decree 163 introduces a new condition for bond issues that requires an issuer to fulfil any outstanding due principal and interest accrued from those bonds issued in three consecutive years prior to the current issuance. Further, transferring of

“The requirement of being profitable in the year immediately before year of issuance is now lifted”

privately issued bonds upon issuance in the secondary market shall be, within the first year of issuance, restricted to the extent of 100 investors, excluding professional investors.

Decree 90 previously mandated an audited financial statement (FS) of issuer for the year immediately preceding the year of issuance as a condition for bond issuance. Should the bonds be issued in the first quarter of a year where a yearly audited FS has not been prepared, then the unaudited one shall be alternatively allowed, but to this end, that unaudited yearly FS must firstly be approved by the board of directors (for joint stock companies) or members' council (for liability limited companies) in accordance with the charter of the issuer. However, the charter of companies in Vietnam do not usually regulate such power of board of directors or members' council to approve the unaudited yearly FS for the purpose of bond issuance, leaving a legal uncertainty whether an issuer can use the yearly unaudited FS approved by its board of directors or members' council for such purpose. Decree 163 now has relieved such

uncertainty by stipulating that in such circumstance, an issuer may adopt the quarterly or semi-annual audited FS instead, thus no longer requiring the yearly unaudited FS.

Remarkably, Decree 163 introduces a more systematic administration regime for corporate bonds as compared with Decree 90. In particular, the stock exchange shall now be the responsible state authority directly monitoring private corporate bond offerings in Vietnam, instead of the Ministry of Finance under Decree 90, which shall receive any statutory pre-issuance report, post-issuance report and regular and irregular information disclosure by the issuer in respect to the bonds issued. In addition, issuers shall be required to deposit issued bonds with a depository agent, ie the Vietnam Securities Depository (VSD) or a member of VSD, to manage the registrar and transferring thereof within 10 days from issue, and status of ownership of such bonds shall be updated by the depository agent to the stock exchange on semi-annual basis. The stock exchange shall establish and manage a corporate bond website to collect and publicise the information on international and domestic corporate bonds issued by Vietnamese issuers, which shall include, among others, information regarding bond terms and conditions, conversion of bonds, attached-warrant exercise and regular and irregular information disclosure of the issuers. Investors may log in to such website to search for the status of bond issues in accordance with the operation rules of such website which shall be issued by stock exchange down the road. The previously issued bonds shall also comply with such requirements on depositing and information disclosure under Decree 163 as from the effective date thereof.

The JLegal



Personality
Questionnaire
Experience

Throughout the year, JLegal examines the PQE of a senior in-house counsel. This time, we speak to Rhonda Hare, someone who loves to travel but on occasion has to lie about the places she goes to!

- What is on your mind at the moment?
"Working smarter not harder".
- If you weren't a lawyer you would be a ...
teacher - I really enjoy sharing my knowledge and experiences and working with others to focus on their development and success.
- If you could change one thing about yourself, what would it be?
I would like to be more fit - spending so many hours at a desk isn't conducive to this.
- What is your idea of misery?
Not being able to have time each day to read - and by reading I mean non-work reading. Reading for pleasure is a joy and helps me disconnect from the work day.
- What is your motto?
It's a small world - remember where you came from and don't forget that your actions have consequences.
- Top 3 favourite movies of all time?
Titanic, Braveheart and The Last of the Mohicans - because I love those great epic movies.
- If you could time travel, where would you go?
To the future - I prefer to look forward than backwards.
- If you could have one superpower it would be ...?
To read minds - as a lawyer you are always trying to interpret and understand the needs of the "client" - be they internal or external.
- On what occasion do you lie?
With my family - I travel a lot and my father gets worried about some of the countries I go to - so I don't always tell him where I am going.
- What irritates you?
People who are not passionate about what they do or who don't use their best efforts.
- Where would you most like to live?
London or New York - they are such great cities. But I love living in Singapore - it's such a great place to live. I also loved my time in Abu Dhabi, and Sydney is home!
- Which of the Seven Dwarfs is most like you?
Sleepy - because I do love an afternoon nap on the weekend.



Rhonda Hare
General Counsel
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AccorHotels



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By **Thomas Granger**
and **Tania Toh**

Venture capital in Southeast Asia – 2018 review

As the preeminent venture capital and private equity practice in the offshore legal arena, Walkers continues to see record activity levels in venture capital fund raisings and fund establishments in Southeast Asia. Fundraising in Asia during 2018 increased by 11 percent to US\$81 billion with the region experiencing record deal activity with 5,066 transactions, a 42 percent increase compared to 2017 reflecting the fifth consecutive year of increasing deals¹. This is consistent with 2018 global venture capital activity reaching a new high of 14,889 deals worth a total of US\$274 billion, exceeding the previous high of US\$192 billion set in 2017².

Southeast Asia, Singapore and Indonesia

While China has traditionally dominated Asian venture capital activity, 2018 saw a surge in venture capital fund raising activity in Southeast Asia. Asia saw 40 newly minted unicorns in 2018³, two from Southeast Asia — Trax and PropertyGuru⁴. There is increasing investor interest in Southeast Asia with multiple venture capital funds being established with a Southeast Asian focus ranging from domestic managers to spin-offs and offshoots of large North American or European fund houses. According to the e-Conomy SEA 2018 report by Google and Temasek, funds received by internet economy companies in Southeast Asia totalled US\$24 billion in less than four years⁵ while Dealstreet Asia estimates fund-raising levels in the

region topping US\$14.7 billion in 2018 alone⁶.

Singapore and Indonesia, as headquarters of the region's largest unicorns continued to dominate the charts, with companies in Singapore and Indonesia raising a total of an estimated US\$7.77 billion in funding and US\$3.37 billion, respectively, in 2018⁷. Singapore is also heavily investing in developing itself as a technology and venture capital hub with state-linked institutions and policy-makers supporting such development.

Other Southeast Asian countries with significant growth include Vietnam and Malaysia which reached US\$2.28 billion and US\$842 million, respectively, in total funding⁸. Internet economies across many Southeast Asian countries are growing at significant rates bolstered by the fact that Southeast Asian unicorns are also deploying funds to build businesses across the region⁹.

2018 saw the highly publicised merger of Singapore ride-hailing company Grab and Uber with the sale by Uber of its Southeast Asia-based business to Grab across eight countries¹⁰ and the continuing US\$3 billion Series H fund-raising of Grab with latest figures reporting the investment round target at US\$5 billion¹¹. Grab has become the first Southeast Asian “decacorn”, joining a league of less than 20 privately held companies globally valued at over US\$10 billion¹².

Other notable deals include the additional US\$2 billion investment in Singapore headquartered e-commerce startup Lazada and the US\$1.1

billion fund raising by Tokopedia, Indonesia's e-commerce startup¹³.

Trends in 2018 include large fund-raising of ride-hailing companies and companies in the e-commerce, digital payments and online travel sectors. The 2018 e-Conomy SEA Report notes that e-commerce has been the most dynamic sector of the internet economy in Southeast Asia in recent years with predictions that it will exceed US\$100 billion by 2025¹⁴.

Cayman Islands contribution

Cayman Islands continues to remain the domicile of choice for venture capital and private equity funds. Cayman Islands exempted companies are also the vehicle of choice for companies receiving equity funding, due to investor familiarity and preference and also as late-stage companies move toward an initial public offering or exit noting that Cayman Islands exempted companies feature heavily on the Hong Kong Stock Exchange, the New York Stock Exchange and Nasdaq.

Conclusion

Looking at the year ahead, there are no signs of any slowdown in activity. In Asia, the internet economy is expected to exceed US\$240 billion by 2025¹⁵. Bain & Company expects Southeast Asia to produce at least 10 new unicorns by 2024 with a total value of US\$70 billion¹⁶. With an increasing number of investors looking to the region, venture capital activity is expected to continue to grow significantly.

1. Naomi Feliz, *Insights - Alternatives in 2019: Asia pushes its way to the forefront of venture capital deals*, Preqin, 17 January 2019
Ibid.
2. *Ibid.*
3. *Ibid.*
4. Dealstreet Asia, *2018: A breakout year for startups in Southeast Asia*, 2018.
5. Google and Temasek, *E-Conomy SEA 2018, Southeast Asia's internet economy hits an inflection point*.

6. *Ibid.*
7. *Supra*, note 4.
8. *Supra*, note 4.
9. *Supra*, note 5.
10. Jon Russel, “It’s official: Uber sells Southeast Asia business to Grab”, *Techcrunch*, 26 March 2018 (<https://techcrunch.com/2018/03/25/gruber-official/>)
11. Jon Russel, “Grab raises fundraising target to \$5B as Southeast Asia’s ride-hailing war

heats up”, *Techcrunch*, 28 December 2018 (<https://techcrunch.com/2018/12/28/grab-5-billion/>)
12. *Supra*, note 5.
13. *Supra*, note 4.
14. *Supra*, note 5.
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16. Suvir Varma and Alex Boulton, *Investing in Southeast Asia: What’s Behind the Boom*, Bain & Company, 13 November 2018.

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Asset Management 8-12 Years | Hong Kong

Bulge bracket bank seeks a funds lawyer to support its asset management business across the Greater China region. You should have prior experience in authorised funds at a top tier law firm or in an in-house role. Business level Chinese language skills are essential. AC7471

Litigation/Regulatory 4-7 Years | Hong Kong

Reputable bank with strong presence in the region is looking to add a regulatory litigation lawyer to its team. You should have experience in dealing with the HKMA and within a retail and corporate banking context. Mandarin is highly preferred. AC7700

In-House

IP/Tech 4-5 Years | Hong Kong

A global conglomerate with strong footprints across Hong Kong and Asia is looking to hire a lawyer with prior experience in IP. This role will deal with the group's trademarks, as well as other IP work. Chinese reading and writing skills are required. AC7720

Commercial/IP 3+ years | Hong Kong

Leading sports car manufacturer seeks a legal counsel to join its team in Hong Kong. You will have at least 3 PQE in commercial and IP matters. Prior in-house experience will be advantageous. Fluent English and Chinese language skills required. AC7725

Disputes 3-5 Years | Hong Kong

Opportunity to join a leading financial institution. You will provide legal advice and support on local and cross-border litigation, arbitration and contentious regulatory matters across the Asia-Pacific region. Excellent English and Mandarin language skills required. AC7726

Private Practice

TMT 2-4 Years | Hong Kong

International firm is looking for a TMT lawyer to join its leading TMT practice. You should have at least 2 years' solid TMT experience ideally including some experience in the UK. Lawyers with a UK qualification are preferred. No Chinese language skills required. AC7652

Construction 6+ Years | Hong Kong

A well-renowned international firm is looking for a senior associate to join its construction team. Prior experience in large-scale construction disputes in the region required. Chinese language skills are strongly preferred. Hong Kong qualification would be ideal. AC7420

Part-time Litigation PSL 3-10 Years | Hong Kong

Leading disputes practice seeks a PSL for its litigation team. Existing PSL experience in dispute resolution preferred. Litigation lawyers with a genuine interest in professional support will be considered. Work-life balance on offer. Chinese skills not essential. AC7265

M&A/PE 7-12 Years | Hong Kong

Leading US firm is looking for a counsel with solid PE/M&A deal experience. You should have experience of running transactions and a track record of working for regional PE houses. Business development skills required. Fluent English and Mandarin essential. AC7717

Asset Finance NQ | Hong Kong

A Magic Circle firm is looking to add an NQ asset finance lawyer to its team. Prior experience in aviation and/or asset finance required. Chinese language skills are preferred. Excellent opportunity to join a well-renowned team with a clear career track. AC7678

US Securities 3-7 Years | Hong Kong

Top tier international firm is looking for a US securities associate to join the team. You should have solid US securities experience and fluent English language skills. Excellent opportunity to join a well-established and stable team. NY rates plus COLA on offer. AC7409

Senior BD Manager 6-9 Years | Hong Kong

Great role for BD professionals or lawyers looking to transition out of fee-earning. You will provide strategic business development advice, financial and operational support to all banking fee earners, alongside the regional PE and funds practice. AC7688

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DEAL OF THE MONTH



Asian-mena Counsel Deal of the Month

Noble Group restructuring

New Noble emerges from the ashes of its predecessor as a private, coal-focused trading house.

Having reached a deal to restructure US\$3.45 billion of debt and avoid bankruptcy, the once-powerful commodity trading house Noble Group is being wound up.

After failing to re-list the company in Singapore in 2018, the restructuring was conducted in Bermuda through a special purpose vehicle, known as New Noble, that will acquire substantially all of the assets of Old Noble.

Noble's deal ends three years of crisis that followed a scathing report into the Singapore-listed company's accounting practices by a short seller. One critic described Noble as "Asia's Enron".

Having sold off some of its prime assets in a bid to avoid insolvency, the

remaining business will focus on coal trading.

The restructuring sees creditors — including hedge funds Davidson Kempner Capital Management, Och-Ziff Capital Management, Taconic Capital Advisors and Varde Partners — receive US\$1.9 billion of new bonds and preference shares, as well as a 70 percent stake in New Noble.

The existing shareholders, which include major institutions such as CIC, Templeton, Orbis and Prudential, have

seen their investment lose 99 percent of its value and will end up with 20 percent of New Noble, while the members of management responsible for that loss of value will receive 10 percent of the company.

New Noble will also receive US\$800 million of new trade finance and hedging support facilities as a result of the agreement, while the holders of US\$400 million of perpetual capital securities will receive US\$25 million of new perpetual capital securities issued by New Noble.

Allen & Gledhill acted as Singapore counsel to Noble Group. Partners **Leonard Ching, Julie Sim, Christopher** led the firm's team in the transaction.



Other recent transactions from around the region:

Ashurst has advised **Bangladesh's Roads and Highways Department (RHD)** and the **Public Private Partnerships Authority of Bangladesh** on the project to upgrade the Joydevpur-Debogam-Bhulta-Madanpur (Dhaka By-pass) through a public private partnership. The PPP contract was signed between RHD and Shichuan Road & Bridge (Group), Shamim Enterprise and UDC Construction, as the winning consortium, on December 6, 2018. The Dhaka By-pass project is a key element of RHD's road strategy and essential to alleviating congestion in Bangladesh's rapidly growing capital. Partners **Matthew Bubb** and **Anna Hermelin** led the firm's team in the transaction, while **Syed Ishtiaq Ahmed & Associates**, with a team led by senior partner **Nihad Kabir**, advised on Bangladesh law.

Baker McKenzie has also advised **SK E&S**, a member of SK Group specialising in gas and power business, on its sale of 49 percent stake out of its wholly-owned Paju Energy Service, owner of one of the largest merchant LNG power plants in Korea, to Gen Plus, a wholly-owned subsidiary of Electricity Generating of Thailand (EGCO). The deal was valued at approximately W897 billion (US\$803.4m) and used the locked-box mechanism. Seoul partners **Won Lee** and **Winton Kim**, supported by Thailand

partners **Sawane Sethsathira** and **Kullapa Stavorn** and Hong Kong partner **Simon Leung**, led the firm's team in the transaction, while **Shin & Kim** acted as Korean counsel. **EGCO** was advised by **Hunton Andrews Kurth** as lead counsel and **Kim & Chang** as Korean counsel.

Davis Polk has also advised the **initial purchasers** on a US\$225 million Regulation S only high-yield offering by China Aoyuan Group of its 7.95 percent senior notes due 2023. China Aoyuan is a property developer in Guangdong, China and has been developing residential projects for more than 15 years. Hong Kong partner **Gerhard Radtke** led the firm's team in the transaction.

King & Wood Mallesons is advising **GTA Semiconductor**, an indirect wholly-owned subsidiary of China Electronics, on its privatisation, by way of merger by absorption, of Hong Kong-listed Advanced Semiconductor Manufacturing (ASM). Total value of the transaction is approximately HK\$2.3 billion (US\$293.3m). ASM's H-shares were delisted in Hong Kong on January 25, 2019. Partners **Sheldon Tse** (head of corporate and securities practice) and **Gong Mulong** (head of finance and capital markets group-Beijing), supported by partners **Tony Dong** (tax-Beijing) and **Chai Zhifeng** (antitrust-Shanghai), led the firm's team in the transaction.



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MOVES

The latest senior legal appointments around Asia and the Middle East

 AUSTRALIA

Gadens has added **Renae Suttor** as a partner in its banking and finance team. Suttor joins from MinterEllison, with 15 years of top tier experience in Sydney and London. After training at MinterEllison, she spent eleven years in London, as a key member of Clifford Chance’s market-leading property investment and development finance practice, before returning to MinterEllison. Suttor specialises in real estate development and investment finance origination and restructuring, and has extensive experience in complex, multi-jurisdictional lending and consensual workouts and restructurings.

 AUSTRALIA

Jones Day has added **Andrew Rankine** as a partner in the intellectual property practice in the firm’s Sydney office. A patent litigator who focuses on the life sciences sector, Rankine has extensive experience handling complex and high-profile patent disputes for global leaders in the pharmaceutical, biotechnology and medical device industries. His client work has also involved navigating Australia’s regulatory regime for therapeutic goods, as well as the country’s Commonwealth Government reimbursement system, the Pharmaceutical Benefits Scheme. He has counseled numerous life sciences companies on IP portfolio management, freedom to operate, patent validity, patent term extensions and related matters.

 AUSTRALIA

Hogan Lovells will be adding **David Holland** and **Charles Bogle** as partners in the corporate practice, based in the Sydney office. Holland is an experienced M&A lawyer, with a strong background in securities law. He leads and will bring a team of lawyers who have advised on some of the largest public M&A transactions in Australia. Beyond M&A deals, he advises both issuers and underwriters on IPOs and publicly-listed companies on corporate governance matters. On the other hand, Bogle has deep experience advising on complex and innovative M&A transactions, with a strong focus on working with financial investors, including private equity, infrastructure investors and direct investments for super funds.



David Holland



Charles Bogle

 HONG KONG

Norton Rose Fulbright has added to its debt capital markets team in Hong Kong and China with the appointment of **Margie Chan** as partner. She joins the firm’s corporate team after more than a decade at both the New York and Hong Kong offices of Davis Polk & Wardwell, where she was counsel. A debt capital markets specialist lawyer, she has extensive experience working with key banks, underwriters and issuers.

 HONG KONG

Dechert has added to its global litigation group with the hire of **Maria Sit** as partner in its Hong Kong office. She has extensive experience advising on regulatory investigations and enforcement as well as complex civil litigation and arbitration, and has previously served as an in-house counsel at the Securities and Futures Commission.



Maria Sit

 HONG KONG

Hogan Lovells has added **Stephanie Tang** as a partner in the corporate practice; she will be based in the Hong Kong office. She will be joining from Shearman & Sterling. Earlier in her career, Tang was an associate in the Shanghai office of Hogan & Hartson, a legacy firm of Hogan Lovells. She is an established and well-regarded M&A, private equity and capital markets partner, with a strong track record of successfully advising Chinese companies on their outbound investments and international companies on their investments in the Asia Pacific region. She has a strong TMT sector focus. While at Sherman & Sterling, Tang represented private equity clients, as well as various public companies listed in the US and China. She has managed 23 take-private transactions of US-listed Chinese companies, and various cross-border acquisitions led by Chinese private equity funds and/or Chinese A-share listed companies.



Stephanie Tang

 INDONESIA

Ashurst has added **Frederic Draps** as a partner in its projects practice, based in Jakarta, working at association firm **Oentoeng Suria & Partners**. It is the firm’s second partner hire in the Southeast Asia region in the last two months. Draps joins from Allen & Overy’s Jakarta associated office Ginting & Reksodiputro. He specialises in the development and financing of projects in power and renewable energy, oil and gas, and mining infrastructure sectors, and has extensive experience on projects in Europe, the Middle East and Southeast Asia. He also has significant experience advising on cross-border disputes before international courts and arbitral tribunals related to projects in the energy and transportation sectors.

 JAPAN

Shearman & Sterling has added **Karl Pires** as an M&A partner, based in its Tokyo office. His practice focuses on representing Japanese companies on strategic acquisitions and developing business ventures outside Japan. A 20-year veteran of cross-border M&A, Pires has significant experience advising Japanese clients in



Karl Pires

the energy, power, industrial, automotive and technology sectors. He has been based in Japan for over 10 years, and speaks and reads Japanese fluently. Pires is an active member of several industry associations, including the International Committee of one of the three local bar associations in Tokyo, the Canadian Chamber of Commerce in Japan and the Inter-Pacific Bar Association.

 **SINGAPORE**

Ashurst has added **Walter Kulvik** as a partner in its corporate transaction practice in Singapore. Joining from Sidley Austin, Kulvik specialises in cross-border M&A and corporate work, with a focus towards infrastructure, power and real estate asset classes. His practice also involves joint ventures, in particular acting for Asian clients on joint ventures with western businesses, reorganisations and restructurings, as well as venture capital. He began his career at Gibson Dunn in London, prior to moving to Singapore, where he specialised in private equity before focusing on private M&A.

 **SOUTH KOREA**

Yoon & Yang has hired former chief prosecutor of Daejeon High Prosecutors' Office, **Sungwook Cho**, as a managing partner. He joins the

firm's corporate criminal investigations and white-collar criminal defence team in Seoul after serving important roles at various prosecutors' offices in Korea for 25 years. During his tenure at the prosecutorial service, Cho served in various positions, including chief prosecutor of Seoul Western District Prosecutors' Office, chief prosecutor of Gwangju High Prosecutors' Office, a senior prosecutor of the criminal department at the Seoul Central District Prosecutors' Office and other prosecutors' offices. He also performed a central role in prosecutorial administration during his tenure as secretary to the president for civil affairs and assistant minister for planning and coordination at the Ministry of Justice of Korea. Cho also has a broad background and experience working in government and legislative bodies in Korea. In 2007, he served as director general for legal affairs at the Korea Independent Commission against Corruption (current Anti-Corruption & Civil Rights Commission). In addition, from 1998 to 2000, he served as deputy director general for legislation at the National Assembly of Korea.



Sungwook Cho

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Be it a case of wanting to spice things up or break the pattern, every now and then, it's nice to know there's something else. Whether you do so casually or stringently, take a look below to see what the legal sector can offer you.

Legal Counsel — Designer Brand, 4+ yrs PQE, Hong Kong

A designer brand seeks a legal counsel with at least four years of experience to join its team in Hong Kong. You will be commonwealth qualified with both in-house and top tier private practice experience, have strong contract drafting skills and be fluent in English. 3 years of solid private practice experience within a corporate team required.

[Ref: AC7724]

Contact: Karishma Khemaney
Tel: (852) 2537 0895
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Patent Counsel – Semiconductors, 4-8 yrs PQE, Singapore

A US multinational company is looking for an IP counsel to support its businesses. The ideal candidate would be required to have exposure to patent related work, licensing of intellectual property, and technology transfers. This role will be based in Singapore, and will require Mandarin language fluency as you will need to be confident conducting internal trainings in China. The successful hire will also have the opportunity to support the company in their strategic endeavours to further grow the company. Candidates who are in their midst of taking their patent agent licence will also be considered. [Ref: JGB — IS 1820]

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

Senior Compliance Officer – Technology, 8+ yrs EXP, Hong Kong

Great opportunity to have further career development at this world-renowned technology conglomerate in Hong Kong. You will be responsible for providing AML compliance support to build programs that are in compliance with international and regional regulatory requirements. You ideally have over eight years of work experience with a minimum of five years' experience in AML, compliance or risk management. Proven ability to analyse, utilise industry standards and employ sound judgment to draw conclusions is highly desirable. Excellent written and oral English and Chinese skills are required. [Ref: I4937/AC]

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

Senior Legal Counsel/Head of Legal – TMT, 10-15+ yrs PQE, Hong Kong

A reputable TMT company with diversified business is currently looking to hire an experienced counsel for senior counsel/head of legal to lead a team and manage all legal matters relating to its business in HK and across regions, including: Engage with business and provide legal support, driving strategic initiatives, advising on legal matters impacting day-to-day operations; advising business on compliance issues and mitigate risks; negotiate, draft and review various commercial contracts, tenders; manage external counsels; advise on marketing activities and ensure compliance with relevant laws and regulations, as well as advising on HR issues. To qualify, you will be a common law qualified solicitor with around 10-15+ years of PQE, and more experienced candidates are welcome. Less experienced candidates may be considered for senior counsel. You are expected to possess solid legal experience including some in-house experience from the TMT sector (eg telecommunication, e-commerce etc). In terms of language requirements, you are expected to be fluent in English and Chinese. For this role, you are expected to have strong communication skills and possess stakeholder management skills. The role offers attractive package and an excellent opportunity to lead the legal function of a leading reputable business.

Contact: Alex Tao
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Head of Legal – Asset Management, 10+ yrs PQE, Hong Kong

Unique opportunity for a lawyer to join this international asset manager as its head of legal for Asia Pac based in Hong Kong. You must have experience of advising on both the Singapore and Hong Kong markets in particular. The role will also cover the PRC so fluent Mandarin capability is important for this role. [Ref: IHC 17386]

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Physical security key to data centre protection

Controls that prevent physical access to servers must be a fundamental component of any information security programme.

Most discussions on data centre security tend to focus on the use of technology as the primary defence against cyber attacks. And, certainly, digital protections such as endpoint detection and response solutions do play a critical role. However, whether your data centre is maintained on your company's premises or you have moved digital operations to the cloud, having controls in place that detect or keep bad actors from physically accessing servers must be a fundamental component of any information security programme.

Consider the following situation. An organisation noticed a spike in electricity consumption at its satellite located offshore. Among the initial concerns was the possibility that cryptomining malware had infected that site's servers. They were right, but the culprit was not a digital bug, rather it was a result of physical security lapse. Their local IT person, who had purchased the servers citing a legitimate business reason, had installed row upon row of cryptomining rigs instead of hard drives. Through further investigations, it was uncovered that he was able to mine several bitcoins with an estimated value of more than US\$500,000.

This fraud underscores why physical security continues to be highly relevant – indeed, absolutely essential – to modern data centre security. With emerging trends like big data and the advent of the internet and cloud-based computing, businesses are enticed to place more of their operations outside of traditional IT infrastructure and into the data centre, where there is a real drive toward greater demands on its physical security.

Look at business resilience and data security in tandem

When making the move to a third-party data centre, companies typically look at a provider's ability to deliver on two key elements: business resilience (data availability) and data security. However, companies too often consider each factor independently of the other and do not fully understand the vital synergies between the two.

From a business risk point of view, we will advise clients to investigate how resilience and security work together in a provider's service offering. For example, companies should identify from the start who, in reality, is providing the service and how the data centre is structured.

A security threat assessment is essential when designing, building and maintaining a data centre or when engaging with a third-party data centre provider. The centre must be able to withstand everything from corporate espionage and low-level thieves to terrorists to natural disasters. By identifying areas of potential threat, a business can enable decision-makers to specify a range of cost-effective and practical countermeasures.

Navigating competing security criteria and real-world deliverables

Currently, there are various industry bodies that publish data centre standards using different criteria in their assessments. Many data centre providers are "aligned to" rather than "certified according to" these standards. Very often, these bodies use a simple tiered rating, which is enhanced with additional terms that are designed to improve the marketing potential of a data centre.

However, understanding the real benefits and risks associated with these terms can be difficult. Unfortunately, there is currently no comprehensive industry standard for security, so it is not unusual to see very inconsistent levels of security performance between different providers.

Data centre security is about minimising risk and maximising operational uptime. In the digital world today, information is the new currency. Any data loss or system downtime can potentially have very high associated costs. One thing we can be sure of is that criminals are always looking out for opportunities to steal data or create havoc by disrupting critical infrastructure. If operators are to deliver on evolving customer expectations and needs, physical security must be a primary facet of information security programmes.

How a physical security expert can help

Specialists in data centre physical security such as Kroll can help clients assess how well a data centre can meet their needs from both a performance and risk perspective. In cases where we have highlighted the need for improvements, we have worked with data centre providers and clients around the world to improve their overall information security and resilience.

Kroll is the leading global provider of risk solutions with more than 45 years of experience in helping clients make confident risk management decisions about people, assets, operations and security. For more information, visit www.kroll.com.

Deals of the Year

Asian-mena Counsel's review of the top transactions and matters that closed during 2018, with a congratulatory nod to those counsel who helped make them happen.

By Nick Ferguson, In-House Community

Dealmakers had a tough time during 2018. Heightened volatility, a trade war between China and the US, one of the worst equity markets in recent years and rising borrowing costs all contributed to challenging conditions. Even so, there was no shortage of landmark deals around the region, with the help of hard-working and creative advisers.

We review some of the stand-out transactions across all practice areas below. See the table for all the advisers on each of the winning transactions, as well as those that we have given honourable mentions.

A roll call of the winning deals and top advisors p28-30 ►►

BANKING & FINANCE

We didn't see a lot of innovative banking and finance work during 2018, but there were some interesting transactions in the securitisation area, where we saw a few notable market firsts, including the US\$500 million Astrea IV private equity securitisation in June, which was the first transaction in Singapore to make private equity accessible to retail investors through a private equity bond structure. The retail tranche was for S\$242 million (US\$177m).

Just a month later, Bayfront Infrastructure Capital infrastructure issued US\$458 million of notes backed by cash flows from a portfolio of project and infrastructure loans in Asia-Pacific and the Middle East, which was the first infrastructure project finance securitisation in Asia – and marked the creation of a new asset class to facilitate institutional investor access to infrastructure debt in Asia-Pacific and the Middle East. Given the huge need for infrastructure across the region, structures like this could become extremely important.

A more conventional banking deal saw Pacific Basin Shipping close a US\$325 million seven-year secured revolving credit facility. Donald Trump's trade war with China hasn't helped Hong Kong's shipping industry, particularly after several years of difficult operating conditions brought about by the global financial crisis and slowing economic growth on the mainland, so this transaction was an important one for the company. It increased the company's funding flexibility and overall amortisation profile, providing access to long-term committed funding on a revolving

basis for the next seven years at a very competitive borrowing cost. The security package involved 50 dry bulk vessels owned by the Pacific Basin Group, 41 of which were subject to existing mortgages.

On the restructuring side, Monnet Ispat & Energy's corporate insolvency resolution process stood out. Referred by the Reserve Bank of India under the Insolvency and Bankruptcy Code 2016, it is the third of the "dirty dozen" cases to be resolved, with 98.97 percent of the financial creditors voting in favour of the resolution plan. The process led to the sale of the company to a consortium, comprising of AION Investments Private II and JSW Steel.

Other notable deals included financing for the project to develop, construct, complete, own, operate and maintain a state-of-the-art, high capacity fibre-optic submarine cable system connecting Japan, Guam and Australia; a US\$1.6 billion revolving credit and term loan facility for Perusahaan Listrik Negara; and Piramal Capital and Housing Finance structured investment in SAMHI Hotels Group.

The US\$500m Astrea IV securitisation was the first transaction in Singapore to make private equity accessible to retail investors

DEBT

Introducing new issuers to the market always involves heavy lifting for the lawyers involved, so we were particularly impressed by the inaugural sovereign bond from Papua New Guinea. The resource-rich frontier market had been trying to get a deal off the ground since 2016 (and first contemplated one 20 years ago), but has been plagued by corruption, violence and weak governance.

ChemChina's
six-tranche bond
was hard to ignore –
the sale raised the
equivalent of US\$6.4bn
and was Asia's biggest
ever Reg-S bond

Finally getting a deal away was undoubtedly one of the most impressive achievements of the year.

One of the challenges faced by PNG has been competition from some of Asia's other frontier borrowers. Last year saw Sri Lanka raise US\$2.5 billion in its largest offshore bond offering to date and Development Bank of Mongolia borrow US\$500 million, both of which were also notable deals in their own right.

On the corporate side, NagaCorp became the first Cambodian issuer of offshore bonds, overcoming a weak Asian high-yield market to raise US\$300 million, while Hoan My Medical Corporation closed the first bond issuance from a private and unlisted group in Vietnam, raising the equivalent of US\$100 million in dong-denominated bonds.

Indonesia's debt markets got off to a positive start in 2018, showing continued support for sustainability through strong demand for the Republic of Indonesia's US\$3 billion dual-tranche green sukuk – the world's first-ever sovereign green sukuk and the first issuance under the Republic's green bond and green sukuk framework. At the same time, a US\$95 million bond issue from the Tropical Landscapes Finance Facility marked the first corporate sustainability bond in Asia and the first sustainability bond in Asean. It will help finance a sustainable natural rubber plantation on heavily degraded land in two provinces in Indonesia.

Other market firsts during the year included India Grid Trust's private placement, which was the first bond issue by an infrastructure investment trust and paved the way for other

investment trusts to issue debt securities, and Temasek's US\$3.6 billion MTN programme, which allows for notes to be offered to retail investors in Singapore.

In terms of sheer size, ChemChina's six-tranche bond was hard to ignore. The sale raised the equivalent of US\$6.4 billion and was Asia's biggest ever Reg-S bond, while the euro-denominated tranche was the biggest ever euro deal by a Chinese borrower.

DISPUTES

Singapore has made great strides during the past few years to establish itself as a regional arbitration centre, and this was demonstrated once again in one of the few cases to be disclosed publicly in 2018 – Posco ICT's SIAC arbitration proceeding against Hitachi. The dispute arose during the building of new railway infrastructure in Ho Chi Minh City in Vietnam, with PICT suing Hitachi for breach, termination of the agreement and for damages and Hitachi filing a counterclaim. The case was decided in Hitachi's favour by the arbitral tribunal and PICT's claim was dismissed, with Hitachi granted US\$51.79 million in damages, plus interests and costs.

Other disputes around the region included a case involving major players in the dye industry – DyStar Global and Kiri Industries – which centred around Kiri's investment in DyStar and



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Key Practice Areas:

Securities and Capital Markets; Investment/M&A; Banking and Finance; Compliance/Regulatory; Private Equity and Venture Capital; Insurance; International Trade; Customs; General Business Law; Competition/Antitrust; Intellectual Property; Infrastructure and Project Finance; Real Estate; Bankruptcy; Shipping & Marine; Wealth Planning; Dispute Resolution

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served to emphasise that directors must not put the interest of the majority shareholder, who nominated them to the board, above that of the company's interests. In this case, DyStar's ultimate parent, Longsheng, was found by the SICC to have engaged in oppressive conduct and was ordered to buy out Kiri's shareholding in DyStar, as well as writing the losses it caused back into the value of the shares in DyStar.

In Thailand, dtac became the first telecom company to reach an agreement with its concession grantor, settling a long-standing tower dispute.

Spring Reit's defence of a hostile takeover launched by activist private equity group PAG Real Estate was the first voluntary general offer for a Reit in Hong Kong and a rare hostile bid in the city

During the rest of the year there were several deals that weighed in at the other end of the scale in terms of size – and broke ground in their own ways. Foxconn's US\$4.23 billion deal was the biggest A-share IPO since July 2015, Xiaomi's US\$4.7 billion IPO was the first Hong Kong offering to adopt a dual-class share structure and the first to list under Hong Kong's new regime for innovative technology companies, which was followed closely by Meituan Dianping's own US\$4.2 billion IPO, which also adopted a weighted voting rights structure.

In Vietnam, Vinhomes JSC raised about US\$1.3 billion in the country's biggest ever equity issue, while in Japan Mercari's US\$1.2 billion IPO and listing in Tokyo made it the country's first unicorn (a startup with a valuation above US\$1 billion). Even Thailand, which has had a lacklustre IPO market for years, generated some buzz with the US\$1.4 billion Thai Future Fund IPO, a government-backed infrastructure fund that investors quickly snapped up. India's IndInfravit Trust raised US\$461 million in the first private placement of units of an infrastructure investment trust.

Further afield, several Chinese issuers made a splash in the US with New York IPOs, including Baidu-backed iQiyi, China's largest video streaming service provider, which raised US\$2.25 billion; Pinduoduo, China's hottest e-commerce startup, which raised US\$1.6 billion; and NIO, China's leading developer of high-

EQUITY

While 2018 was a poor year on stock markets around the world, law firms in the region nevertheless helped their clients to raise billions of dollars. Indeed, the equity deals we recognised alone contributed more than US\$45 billion in fresh capital.

By far the smallest of our winners was TMH Telecom Myanmar's initial public offering, which generated just US\$1.2 million in new capital. However, that small sum of money made it the first true IPO in the country, as the first four listings were all by way of introduction of existing shares.

TMH's deal was also one of the first IPOs to get done in 2018.

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performance electric vehicles, which raised US\$1 billion.

Outside of the primary market, we also recognised San Miguel Food and Beverage US\$640 million follow-on offering by parent company San Miguel Corporation. The offering follows the consolidation of San Miguel Purefoods, leading beer-maker San Miguel Brewery and leading gin-maker Ginebra San Miguel into San Miguel Food and Beverage, the largest consumer company in the Philippines.

Other notable secondary deals included Naspers' US\$9.8 billion stake sale in Tencent, which was the biggest secondary share sale in the Hong Kong market to date.

M&A

The overall value of M&A in Asia fell slightly during 2018, partly as a result of the continued decline in activity from Chinese buyers, but the figures would have looked even worse without Walmart's extraordinary US\$16 billion acquisition of a 77% stake in Flipkart, India's biggest e-commerce marketplace, which also includes group companies Myntra, Jabong, PhonePe and eBay.in. This was the world's largest single acquisition in the e-commerce space and was a standout deal in every respect.

It remains to be seen if Walmart's deal will make sense in the long run, but some of the other deals we saw during 2018 reinforced well-established themes, such as Japan's continued interest in outbound acquisitions, particularly in Southeast Asia.

Examples included MUFG's acquisition of a 40% stake in Bank Danamon, completed in two stages for a total of US\$4 billion, as well as Toyota's US\$1 billion investment in Grab and Tokio Marine & Nichido Fire Insurance's acquisition of Safety Insurance from IAG in Thailand.

Grab was also active as a buyer, acquiring the Southeast Asian operations and assets of Silicon Valley rival Uber in exchange for a 27.5% stake.

When it comes to themes, there are no stronger associations than Singapore and real estate investment trusts. It can sometimes seem as though lawyers in the Lion City do nothing but Reits, so it comes as no surprise that the outstanding M&A deal of the year was a merger between two Reits – the US\$687.5 million tie-up between ESR-Reit and Viva Industrial Trust by way of a trust scheme of arrangement. Perhaps surprisingly, it is the first such merger to take place.

Hong Kong also hosted some interesting Reit activity with Spring Reit's defence of a hostile takeover launched by activist private equity group PAG Real Estate. It was the first voluntary general offer for a Reit in Hong Kong and a rare hostile bid in the city. PAG argued that the Reit's external manager was inexperienced in the types of assets it had acquired, resulting in poor returns for investors, though shareholders were ultimately unconvinced.

Things got hostile in Taiwan too, with Advanced Semiconductor Engineering's US\$3.35 billion merger with Silicon Precision Industries, though the outcome this time was more successful. It was a marathon deal that took almost two years to complete after the signing of the merger agreement and was heavily negotiated.

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Winning Deals for 2018:

1. ChemChina six-tranche bond
2. iQiyi Nasdaq IPO
3. Pinduoduo Nasdaq IPO
4. Xiaomi Hong Kong IPO

Honourable Mentions:

1. Bank of China multi-currency bond
2. Haidilao International Holding IPO

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Although the initial bid was criticised, the result is a company that is better equipped to withstand takeover attempts from Chinese buyers, thus keeping Taiwan's industry expertise onshore. All told, this was perhaps the most complex, interesting and economically significant deal in recent Taiwanese history.

In India, we saw significant consolidation in the troubled steel industry, with ArcelorMittal and Japan's Nippon Steel & Sumitomo Metal winning an auction to acquire the debt-laden Essar Steel and rescue it from insolvency, although the deal remains mired in controversy as the company's promoters fight in the courts to retain control. Meanwhile, Vedanta bought 90% of Electrosteel Steels for US\$813 million in a deal that was also implemented pursuant to a resolution plan approved by the Indian National Company Law Tribunal, in accordance with India's Insolvency and Bankruptcy Code 2016.

In Indonesia, 2018 finally brought to conclusion a US\$4 billion deal that results in the creation of the country's largest state-owned holding company. This two-stage deal has been underway since 2012. In the second stage, 51 percent of shares in Pertamina subsidiary Pertamina Gas owned by Pertamina were transferred to Perusahaan Gas Negara, with a purchase price of US\$1.35 billion.

Foreign breweries have been competing to tap into Vietnam's market for quite a few years now, and that action has recently spilled over

into neighbouring Cambodia. In 2018, Carlsberg bought an additional 25% stake in Cambrew, giving it management control of the Cambodian brewer of the iconic Angkor Premium Beer.

PRIVATE EQUITY/VENTURE CAPITAL

In a year when markets were volatile and sentiment towards China in particular was weak, Ant Financial closed an incredible series-C funding of US\$14 billion – the biggest single-funding round ever. The deal attracted top-tier names such as Singapore's state-owned investment funds GIC and Temasek, plus US private equity firm Warburg Pincus. If a unicorn is an unlisted VC-backed company with a valuation of more than US\$1 billion, then what is the term for one valued at more than US\$150 billion?

It's tough to compete with a deal like that, but other notable deals during the year included fundraising for Vision Plus Capital Partners, with two funds totalling US\$500 million, consisting of a RMB-denominated fund II and a US dollar-denominated fund II, each at US\$250 million or equivalent amount. PAG Asia Capital also formed a new US\$6 billion buyout fund.

In terms of acquisitions, we saw a TPG and

In a year when markets were volatile and sentiment towards China in particular was weak, Ant Financial closed an incredible series-C funding of US\$14bn – the biggest single-funding round ever



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Carlyle-led investment in Baidu financial services unit Du Xiaoman Financial for US\$1.9 billion, SoftBank Vision Fund's US\$2 billion investment in Coupang, KKR's acquisition of Ramky Enviro Engineers for US\$530 million and Standard Chartered Private Equity's acquisition of Travel Boutique Online from Naspers.

PROJECTS

Given the scale of Asia's projected infrastructure needs, governments and sponsors around the region are under pressure to come up with billions of dollars to pay for new roads, railways, ports and power plants – and that typically means structuring projects in a way that allows banks or investors to take part. There are still too few bankable projects, but we saw some notable deals in 2018.

The Macquarie-backed national highway project in India is the country's first national road project undertaken on toll, operate and transfer basis. The funding came through three rupee term-loan facilities aggregating to an equivalent of US\$853 million, for financing the upfront concession fees payable to the National Highways Authority of India, meeting the costs to be incurred for initial improvement works of the project highways, first major maintenance expenditure and for other transaction-related costs.

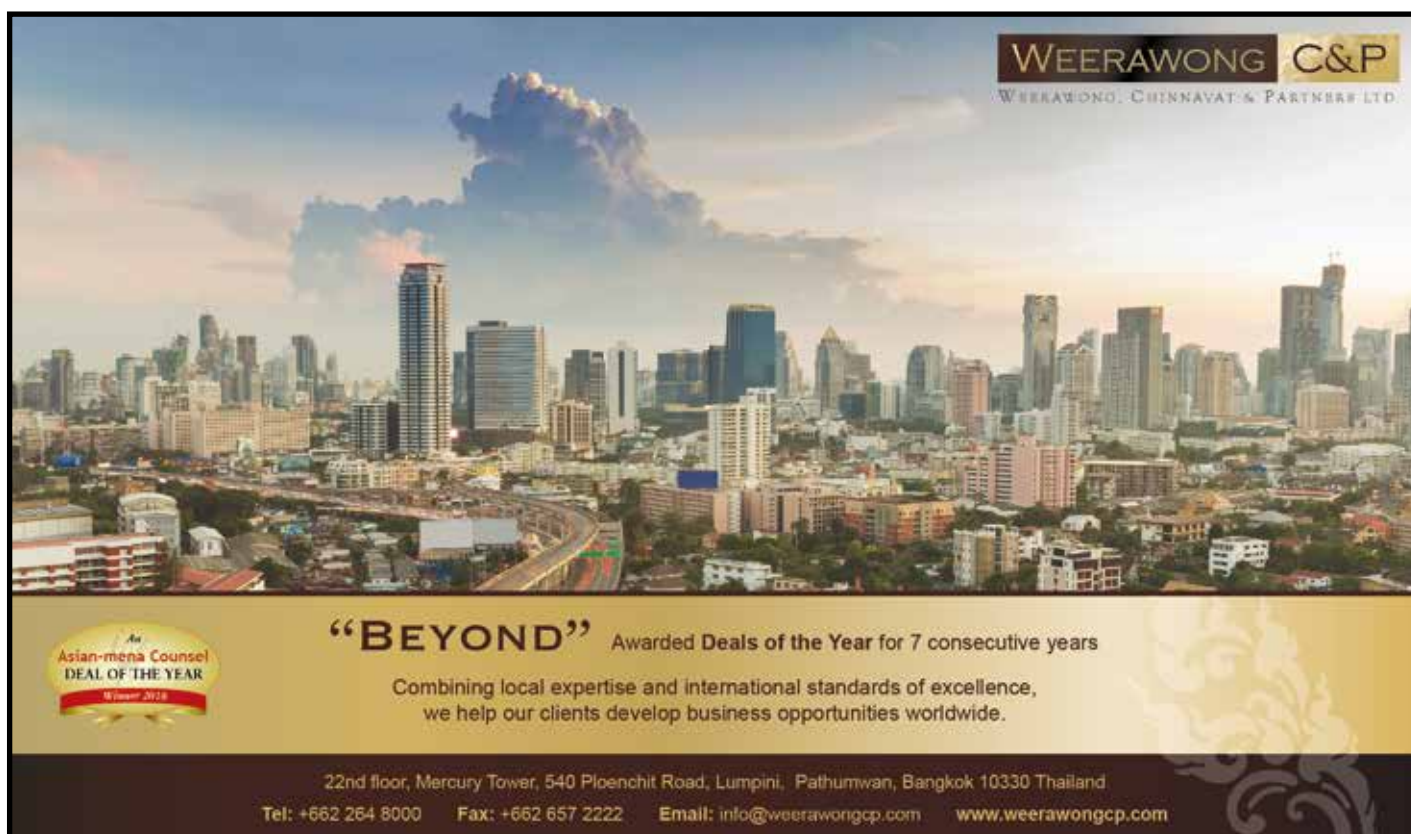
Keeping up with the demand for power is a never-ending challenge as Asia's economies continue to grow. Building more coal-fired plants is the quickest and cheapest solution for many countries, but renewable solutions are gaining ground and can be

easier to finance as more international financial institutions withdraw from coal deals. Taiwan's Formosa 1 offshore windfarm project financing is a US\$619 million 16-year project to finance the development, construction, commissioning, testing and operation of Taiwan's first commercial-scale offshore wind farm – the first step towards Taiwan achieving its objective of delivering 5.5 gigawatts of energy from offshore wind farm projects by 2025. The financing package is being provided through international and local banks, as well as Denmark's export credit agency, and will be used to refinance the first phase of the wind farm (8MW that started operations in April 2017) and fund the development of the second phase (120MW due to be completed in late 2019).

While both of those deals rely on bank financing, capital markets are also an important avenue if Asia is to meet its infrastructure needs. In Laos, EDL-Generation's issue of a multi-tranche baht bond raised the equivalent of US\$410 million to fund the expansion of its hydropower generating capacity.

METHODOLOGY

Unlike in previous years, we selected our winning deals this year based on submissions to the Weekly Briefing newsletter that we received during the year. To make sure your deals are considered for next year's Deals of the Year, please make sure to send your completed deal announcements to thebriefing@inhousecommunity.com.



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DEAL OF THE YEAR
Winner 2018

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From January to December, the Asian-mena Counsel Deals of the Year (Winners & Honourable Mentions.) Congratulations to all the in-house and external counsel who had a hand in making them happen!

MONTH		DEAL	ADVISERS
January	WINS	TMH Telecom Myanmar IPO	<i>Allen & Gledhill</i>
	HMs	Bandhan Bank IPO	<i>AZB & Partners; Clifford Chance; Cyril Amarchand Mangaldas; Khaitan & Co; Shardul Amarchand Mangaldas</i>
February	WINS	Republic of Indonesia green sukuk	<i>Clifford Chance; Norton Rose Fulbright</i>
		TLFF sustainability bond	<i>HHP Law Firm</i>
March	WINS	Advanced Semiconductor Engineering merger with Silicon Precision Industries	<i>Baker McKenzie; Davis Polk & Wardwell; Simpson Thacher & Bartlett</i>
		ChemChina six-tranche bond	<i>Commerce & Finance; Davis Polk & Wardell; Jingtian & Gongcheng; Latham & Watkins</i>
		Grab acquisition of SE Asian operations of Uber	<i>ABNR Counsellors at Law; Allen & Gledhill; Audier & Partners; Gibson, Dunn & Crutcher; Rahmat Lim & Partners; SyCip Salazar Hernandez & Gatmaitan; Vilaf; Weerawong C&P</i>
		iQIYI Nasdaq IPO	<i>Davis Polk & Wardwell; Han Kun Law Offices; Jingtian & Gongcheng; Skadden, Arps, Slate, Meagher & Flom</i>
	HMs	HDFC Bank debut masala bond	<i>J Sagar Associates</i>
		ICICI Securities India IPO	<i>Cyril Amarchand Mangaldas; Davis Polk & Wardwell; S&R Associates</i>
April	WINS	Democratic Socialist Republic of Sri Lanka bond	<i>Allen & Overy; FJ&G de Saram; Mayer Brown</i>
		Bank of China multi-currency bond	<i>Clifford Chance; Jingtian & Gongcheng; JunZeJun Law Offices; Linklaters</i>
May	WINS	NagaCorp high-yield bond	<i>DFDL; Freshfields Bruckhaus Deringer; HML Law Group; Latham & Watkins; Maples and Calder</i>
		Vinhomes IPO	<i>Allen & Overy; Latham & Watkins; Vilaf</i>
	HMs	Alibaba Group strategic investment in ZTO Express	<i>Fangda Partners; Ropes & Gray; Skadden, Arps, Slate, Meagher & Flom</i>
		IndInfravit Trust	<i>J Sagar Associates; Shardul Amarchand Mangaldas & Co</i>
		Ping An Healthcare and Technology Hong Kong IPO	<i>Clifford Chance; Davis Polk & Wardwell; DLA Piper; Grandall Law Firm; Haiwen & Partners; Maples and Calder</i>
		TPG, Carlyle-led investment in Du Xiaoman Financial	<i>Maples and Calder; Skadden, Arps, Slate, Meagher & Flom</i>
	Vision Plus Capital Partners fundraising	<i>Skadden, Arps, Slate, Meagher & Flom</i>	
June	WINS	Ant Financial series-C funding	<i>Allen & Overy; Clifford Chance; Fangda Partners; Harneys; Kirkland & Ellis; Mayer Brown; Morrison Foerster; Simpson Thacher & Bartlett; Sullivan & Cromwell; White & Case</i>
		Astrea IV private equity securitisation	<i>Allen & Gledhill</i>
		Formosa 1 wind farm project financing	<i>Clifford Chance; Lee and Li; Linklaters; Tsar & Tsai</i>
		Foxconn A-share IPO	<i>Fangda Partners</i>
		Mercari Tokyo IPO	<i>Nishimura & Asahi; Simpson Thacher & Bartlett; Skadden, Arps, Slate, Meagher & Flom</i>
		Pacific Basin Shipping secured reducing revolving credit facility	<i>Mayer Brown</i>
		Vedanta acquisition of Electrosteel Steels	<i>Ashurst</i>
	HMs	Ascendas-Singbridge Group and Temasek Holdings investment in Ascendas India Logistics	<i>Allen & Gledhill; WongPartnership</i>
		Japan-Guam-Australia subsea cable financing	<i>Rajah & Tann</i>
	Toyota investment in Grab	<i>Gibson, Dunn & Crutcher</i>	

Asian-mena Counsel Deals of the Year 2018 – Winners & Honourable Mentions (HMs)

MONTH		DEAL	ADVISERS
July	WINS	Bayfront Infrastructure Capital infrastructure project finance securitisation	Allen & Gledhill; Clifford Chance; Latham & Watkins; Linklaters
		EDL-Generation multi-tranche bond	Allen & Overy; LS Horizon
		Monnet Ispat & Energy corporate insolvency resolution process	Cyril Amarchand Mangaldas; Shardul Amarchand Mangaldas & Co
		Pinduoduo Nasdaq IPO	Jingtian & Gongcheng; King & Wood Mallesons; Kirkland & Ellis; Maples and Calder; Skadden, Arps, Slate, Meagher & Flom; White & Case
		Posco ICT SIAC arbitration proceeding against Hitachi	Allen & Gledhill; Mori Hamada & Matsumoto
		Xiaomi Hong Kong IPO	Clifford Chance; Jingtian & Gongcheng; JunHe; Maples and Calder; Skadden, Arps, Slate, Meagher & Flom
	HMs	DyStar Global Holdings (Singapore) v Kiri Industries & Ors	Allen & Gledhill
		IHH Healthcare acquisition of Fortis Healthcare	Allen & Gledhill; Cyril Amarchand Mangaldas; Khaitan & Co; L&L Partners; Trilegal
		Indus Towers-Bharti Infratel merger	AZB & Partners; Bharucha & Partners; Nishith Desai Associates; S&R Associates; Slaughter and May
		Piramal Capital and Housing Finance structured investment in SAMHI Hotels Group	J Sagar Associates
		Standard Chartered Private Equity acquisition of TBO Group from Naspers	Cyril Amarchand Mangaldas; J Sagar Associates
		UPL acquisition of Arysta LifeScience	Cleary Gottlieb Steen & Hamilton; Greenberg Traurig; J Sagar Associates; Jones Day; Platinum Partners
August	WINS	Carlsberg acquisition of an additional 25% stake in Cambrew	Baker McKenzie
		India Grid Trust private placement of debt securities	Khaitan & Co
		Macquarie Asia Infrastructure Investments 2 national highway project	Bharucha & Partners; Cyril Amarchand Mangaldas; HSA Advocates
		MUFG Bank acquisition of 40% stake in Bank Danamon	Allen & Gledhill; Baker McKenzie (Gaikokuho Joint Enterprise); Baker McKenzie Wong & Leow; Herbert Smith; HHP Law Firm; Hiswara Bunjamin & Tandjung; Makes & Partners; Nishimura & Asahi; WongPartnership
		Walmart acquisition of Flipkart	Allen & Gledhill; Dentons Rodyk; Gibson, Dunn & Crutcher; Gunderson Dettmer Stough Villeneuve Franklin & Hachigian; Hogan Lovells; IndusLaw; Khaitan & Co; Shardul Amarchand Mangaldas; WongPartnership
	HMs	Adani Transmission acquisition of Reliance Infrastructure's Mumbai Power Division	J Sagar Associates
		China Tower Hong Kong IPO	Clifford Chance; Freshfields Bruckhaus Deringer
		CreditAccess Grameen IPO	Clifford Chance; Cyril Amarchand Mangaldas; L&L Partners
		KKR acquisition of Ramky Enviro Engineers	Cyril Amarchand Mangaldas; Linklegal India Legal Services; Simmons & Simmons; Simpson Thacher & Bartlett; WongPartnership
	September	WINS	Meituan Dianping IPO
NIO New York IPO			Grandall Law Firm; Han Kun Law Offices; Latham & Watkins; Maples and Calder; Skadden, Arps, Slate, Meagher & Flom
HMs		CDPQ Infrastructures Asia II acquisition of 40% of CLP India	Cyril Amarchand Mangaldas; King & Wood Mallesons; Shearman & Sterling; Trilegal
		China Re acquisition of Chaucer from The Hanover Insurance Group	Debevoise & Plimpton; Sidley Austin
		Perusahaan Listrik Negara revolving credit and term loan facility	Baker McKenzie Wong & Leow; HHP Law Firm
		Tokio Marine & Nichido Fire Insurance acquisition of Safety Insurance from IAG	Baker McKenzie
		Total Access Communication tower dispute with Communications Authority of Thailand	Weerawong C&P

Asian-mena Counsel Deals of the Year 2018 – Winners & Honourable Mentions (HMs)

MONTH		DEAL	ADVISERS
October	WINS	Development Bank of Mongolia bond	<i>Allen & Overy; Mayer Brown</i>
		ESR-Reit merger with Viva Industrial Trust	<i>Allen & Gledhill; Dentons Rodyk; Rajah & Tann; Shook Lin & Bok; WongPartnership</i>
		Essar Steel auction and acquisition by ArcelorMittal	<i>Cyril Amarchand Mangaldas; L&L Partners; Shardul Amarchand Mangaldas & Co</i>
		Hoan My Medical Corporation dong-denominated corporate bonds	<i>Freshfields Bruckhaus Deringer; Russin & Vecchi; Vilaf; YKVN</i>
		Papua New Guinea inaugural sovereign bond	<i>Dentons; Linklaters</i>
		Temasek retail bond	<i>Allen & Gledhill; Latham & Watkins</i>
		Thai Future Fund IPO	<i>Baker McKenzie; Latham & Watkins; Weerawong C&P</i>
	HMs	Booking.com investment in Grab	<i>Sullivan & Cromwell</i>
		DHL sale of Greater China supply chain operations to SF Holding	<i>Clifford Chance</i>
		Haidilao International Holding IPO	<i>Clifford Chance; Conyers Dill & Pearman; Drew & Napier; Jingtian & Gongcheng</i>
		Minsheng Financial Leasing marine container refinancing	<i>Stephenson Harwood</i>
		Mitsubishi UFJ acquisition of Colonial First State Global Asset Management	<i>Baker McKenzie; Baker McKenzie (Gaikokuho Joint Enterprise); Sullivan & Cromwell</i>
		Opus Group scheme of arrangement and listing in Hong Kong	<i>Conyers Dill & Pearman; King & Wood Mallesons</i>
Pune Metro Line III (Hinjewadi-Shivajinagar) Project	<i>HSA Advocates; J Sagar Associates</i>		
November	WINS	San Miguel Food and Beverage follow-on offering	<i>Latham & Watkins; Milbank, Tweed, Hadley & McCloy; Picazo, Buyco, Tan, Fider & Santos; SyCip Salazar Hernandez & Gatmaitan</i>
		Spring Reit hostile takeover defence vs PAG Real Estate	<i>Ashurst; Baker McKenzie; Kirkland & Ellis</i>
	HMs	2.5GW Gulf Sriracha gas-fired combined cycle power plant project	<i>King & Spalding</i>
		PAG Asia Capital buyout fund formation	<i>Kirkland & Ellis</i>
		Semen Indonesia acquisition of 80.6% stake in Holcim Indonesia	<i>Baker McKenzie Wong & Leow; HHP Law Firm; Latham & Watkins; Tjajo & Partners</i>
SoftBank Vision Fund investment in Coupang	<i>Weil</i>		
December	WINS	Indonesian Oil and Gas Holding SoE	<i>SSEK</i>
	HMs	Zydu Wellness and Cadila Healthcare acquisition of Heinz India	<i>Cyril Amarchand Mangaldas; Gibson, Dunn & Crutcher; Khaitan & Co; Shardul Amarchand Mangaldas & Co</i>

Asian-mena Counsel Deals of the Year 2018 – Top Advisers

	ASIAN FIRMS	WINS	HMs		INTERNATIONAL FIRMS	WINS	HMs
1	Allen & Gledhill	9	3	1	Latham & Watkins	8	1
2	Jingtian & Gongcheng	4	2	2	Skadden, Arps, Slate, Meagher & Flom	6	3
3	Cyril Amarchand Mangaldas	3	8	3	Clifford Chance	5	7
4	Shardul Amarchand Mangaldas & Co	3	3	4	Baker McKenzie	5	4
5	WongPartnership	3	2	5	Maples and Calder	5	2
6	Vilaf	3	0	6	Allen & Overy	5	0
7	Khaitan & Co	2	3	7	Davis Polk & Wardwell	4	3
8	HHP Law Firm	2	2	8	Mayer Brown	4	0
9	Weerawong C&P	2	1	9=	Kirkland & Ellis	3	1
10	Han Kun Law Offices	2	0	9=	Linklaters	3	1
				9=	Simpson Thacher & Bartlett	3	1

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The market recognizes us for our role in advising and bringing to a successful completion high profile and complex corporate commercial transactions.

Our legal advice is provided within the context of our client's business, ensuring that the client receives well-formulated, strategic and transaction-specific advice. This has often resulted in the development of legal products and structures appropriate to the needs of our clients which are not only accepted but also well-regarded in the market and by the appropriate regulatory agencies.

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Always a forward thinker, we welcome the era of greater ASEAN and Pan-Asian economic cooperation and integration with leading Singapore firm, WongPartnership LLP. Through our strategic alliance, our excellent legal services, complemented by WongPartnership's strengths will surely reach far and wide into the ASEAN and beyond.

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- Banking and Finance
- Capital Markets
- Financial Services Regulatory
- Commercial and Corporate Disputes
- Energy, Projects and Construction
- Banking and Financial Disputes
- International Arbitration
- Other specialised practices (i.e Business Establishment, FinTech, Private Equity, Start-Ups, Venture Capital, Telecommunications, Media and Broadcasting, etc)

Significant changes to UAE's Civil Procedure Code

While the changes are welcome, they put pressure on litigants to plead their cases within relatively short time periods.

By Chatura Randeniya and Nazim Hashim of Afridi & Angell

Significant changes to the UAE's Federal Law No 11 of 1992 (the Civil Procedure Code) came into effect on February 16, 2019. These changes were introduced through regulations issued under the Civil Procedure Code (the Regulations).

The Regulations (in all, 193 articles) address a wide array of litigation procedures. Some of the Regulations codify practices already observed by the UAE Courts. In this article, we set out a high-level overview of some of the Regulations that impact both litigants and practitioners alike. Unless otherwise stated, the Article numbers refer to the Regulations.

Service of process

According to the Regulations, a court may permit a party or its attorney to serve process. Process can be served between 7am and 9pm, unless served electronically, in which case the time limits do not apply. Process

may be served by voice or video calls, text messages, fax or any other alternative means determined by the Minister of Justice. Importantly, Article 5 provides that if the official language of the defendant is not Arabic, the plaintiff is required to provide an official translation of the court notice in English.

“The efficient conduct of litigation is a recurring theme in the Regulations. The Regulations require parties to plead their cases as completely as possible at the hearing before the Case Management Office (ie, before the matter is transferred to a court)”

Service on parties domiciled abroad may be effected through “technological means, or private companies and offices, or as otherwise agreed between the parties”, and if service cannot be so effected, process will be served through diplomatic channels.

Registration of cases

A Statement of Claim/Plaint should include the details of the defendant(s) including information regarding the defendant's identification number, which is applicable with respect to individual defendants. The practice of the Dubai Courts with respect to corporate defendants is to require a copy of the defendant's trade licence at the time of registering the case. It is therefore of practical significance that parties have copies of their counterparties' ID and/or licensing documents with them, and obtaining such documentation should form part of best practice when entering into transactions.

Certain Regulations are evidently intended to speed up litigation procedures. Article 18, for example, provides that the period allowed for the defendant to appear in the Case Management Office or the court following registration of the case is 10 days, which may be reduced to three days. Where summary claims are concerned (such as applications for provisional attachment) this

period is 24 hours, which may be reduced to one hour on the condition that notice is served on the defendant personally. While Article 18 goes on to carve out an exception for maritime claims, the scope of the exception is currently unclear.

Proceedings in the UAE Courts are commenced by filing the plaint and supporting evidence (electronically or in person) with the relevant court. Thereafter, the Case Management Office of the court will fix the court fee payable, and complete the registration of the case upon receiving payment and completing any documentary requirements which may be identified by the Case Management Office. Given that there can be a considerable passage of time between filing the plaint and completing the registration in some instances, this led to uncertainty regarding the date on which action was commenced, which is an important consideration in determining whether time bars and other time related deadlines under law have been complied with. Article 19 clarifies that the date of registration is deemed to be the date on which the case was submitted to the court system, and not the date on which the registration of the case is completed.



Chatura Randeniya

Assessment of Case Value

Assessment of case value is an important practical consideration, as it has a bearing on jurisdiction, appeal thresholds, and of course the court fees payable by a plaintiff. Article 23 provides that minor circuits (as set out in Article 30(1) of the Civil Procedure Code) will have jurisdiction over civil, commercial and labour claims not exceeding Dh1 million (US\$272,000) in value (the threshold previously being Dh500,000), and counterclaims asserted in such cases irrespective of the value of the counterclaim. Decisions made by the minor circuit court in labour cases valued at no more than Dh20,000 and in all other cases valued at no more than Dh50,000 may not be subject to appeal. The current threshold is Dh20,000 for all types of cases. The threshold (in terms of value) for appealing a judgment of the Court of Appeal to the Court of Cassation is Dh500,000. The current threshold is Dh200,000. Article 25 contains provisions for assessing case values in various types of disputes. For example, an action for the dissolution of a company and appointment of a liquidator is valued based on the company's capital at the time of filing action.

“While the law and the Regulations provide that the court may award costs, in practice the UAE Courts do not award legal costs, except in a token sum”

Conduct of Proceedings

Certain claims may now be disposed of with only one hearing by a minor circuit court (Article 22). These claims include civil and commercial claims not exceeding Dh100,000 and claims for wages and salaries not exceeding Dh200,000. The Case Management Office is required to fix a case which is to be disposed of under Article 22 for its first hearing within 15 days of the date of registration of the case, and this may be extended only once with an additional 15 days by the judge supervising the matter. Article 22 does not apply to cases in which the State is a party.

Denying documents on the basis that they are copies (based on Article 9(2) of the Federal Law No 10 of 1992) is a position commonly adopted by parties, particularly defendants. Denying documents simply on the basis that they are copies will however no longer be

acceptable, and the party seeking to deny documents will also be required to maintain that such documents are “invalid” or were not in fact authored by the party to whom they are attributed to (Article 20). A party that has denied documents and the court finds that the party's denial was without justification may be subject to a fine of between Dh1,000 to Dh10,000. Importantly, the court may inform the authorities regulating the legal profession in the UAE of the fine, and thus impacts the advocates having conduct of litigation. Fines for frivolous denials of documents are not new, however its codification is a welcome development.

The efficient conduct of litigation is a recurring theme in the Regulations. The Regulations require parties to plead their cases as completely as possible at the hearing before the Case Management Office (ie, before the matter is transferred to a court). If the plaintiff or the defendant submits a document in a subsequent session which requires the court to adjourn the matter, and the court is of the view that the document could have been submitted at the first hearing, the court may penalise the party submitting the document with a fine between Dh2,000 to Dh5,000. A party may however produce documents in response to the defences and/or incidental demands of the other party without threat of sanction. A court may allow the parties to submit documents, submissions and new evidence, and to amend the relief sought and assert counterclaims that they were unable to submit to the Case Management Office. However, the court at its discretion may deny such submissions if the court is of the view that they could have been made to the Case Management Office.

Article 37 provides that a hearing may not be adjourned more than once for the same reason attributable to a party in the absence of a valid excuse. Where such a valid excuse exists, the second adjournment shall not exceed two weeks. Pursuant to Article 48, judgment must be issued within a month of pleadings being concluded.

Costs and fines for malicious prosecution/defence

While the law and the Regulations provide that the court may award costs, in practice the UAE Courts do not award legal costs, except in a

token sum. Court fees and expert's fees are however recoverable by a successful plaintiff. Article 56 provides that even a party that is successful on the merits of the case may be required to bear a portion of the expenses if that party has, among other things, caused any "futile expenses" or did not disclose documents that could have disposed of the matter to its opponents. A party that submits a malicious motion, plea or defence may be subject to a fine of between Dh1,000 and Dh10,000 (Article 58).

Payment Orders

Articles 62 through 68 set out provisions with respect to Payment Orders. Payment Orders are not new and the relevant provisions can be found in Articles 143 to 149 of the Civil Procedure Code. Payment Orders may be applied for by a creditor who has a claim for a fixed amount of money or a movable of a known type and quantity, and where the creditor's right is confirmed. The Regulations enable the possibility of confirmation by reference to electronic sources, as well as the option of applying for a Payment Order where the subject of the claim is the execution of a commercial contract, or in case the creditor's entitlement arises out of a commercial instrument. Pursuant to Article 63, the creditor is required to demand payment from the debtor and grant at least five days to make payment. If payment is not received, a Payment Order may be applied for. The application must include the details required of a Statement of Claim/Plaint, and have the proof of the debt and evidence of the demand for payment attached thereto. The order should be determined within three days of the application being filed. If the application is denied, the judge is required to provide reasons. Prior to the Regulations, there was no requirement for the judge to provide reasons. A Payment Order may be appealed within 15 days by the debtor, and the court is required to determine the appeal within a week from the date of registration.

An application for a Payment Order does not preclude the party from seeking provisional relief under the relevant provisions of the Civil Procedure Code.

Enforcement of foreign judgments and awards

Article 85 provides that an application to

enforce a judgment or order of a foreign court shall be made to an execution judge, and that the judge is required to make his decision within three days. The execution judge is required to verify the following before issuing the decision:

- that the UAE Courts do not have exclusive jurisdiction over the matter;
- that the judgment or order has been issued by an authorised court under the law of the relevant foreign jurisdiction;
- that the parties to the foreign proceedings have been summoned and represented;
- that the foreign judgment/order sought to be enforced is *res judicata* under the laws of the relevant foreign jurisdiction; and
- that the foreign judgment/order sought to be enforced is not contrary to judgment or order of a UAE court, and is not contrary to the morals and public order of the UAE.



Nazim Hashim

“An application for a Payment Order does not preclude the party from seeking provisional relief under the relevant provisions of the Civil Procedure Code”

The provisions of Article 85 are also applicable to arbitral awards issued in a foreign jurisdiction. Article 86 adds that the subject matter of the foreign arbitral award must be arbitrable according to the laws of the UAE, and the award must be enforceable in the jurisdiction in which it was issued, in order to seek enforcement in the UAE. Articles 85 and 86 are without prejudice to the provisions of any treaties entered into by the UAE with respect to the enforcement of foreign judgments, orders or awards. The New York Convention is an example of such a treaty.

Conclusion

Overall, the Regulations are directed towards quick and efficient litigation, and will be welcomed by parties and practitioners. However, they put considerable time pressure on litigants, particularly on defendants, to ensure that their respective cases are pleaded fully within relatively short time periods.

The art of deal management

Oliver Mould, head of Asia for **Lawyers On Demand**, speaks with *Nick Tomlinson* about his background, career, current role as general counsel for Asia Pacific at **Dentsu Aegis Network** and the importance of deal management.

Tell us a bit about your background and your current remit as general counsel, Asia Pacific, at Dentsu Aegis Network?

I began my legal career in New Zealand with the law firm Bell Gully, in the litigation department, working primarily on competition matters and associated regulatory issues with market access, particularly in the telecoms and energy markets. I made a natural progression into an in-house role at Vodafone. I left New Zealand in 1997, spent some time in Canada, then relocated to Hong Kong in 1998. I joined Hong Kong Telecom and was with that telecoms group under various ownership for 10 years.

In 2008, I took some time out, when I was entertaining an alternative career in the restaurant business and trained at Le Cordon Bleu in Paris. Following the global financial crisis in 2008, I decided to join Aegis Group in 2009 and I've been here ever since. In 2013, Dentsu acquired Aegis and formed DAN, which is now the fourth largest advertising group in the world.

“In 2008, I took some time out, when I was entertaining an alternative career in the restaurant business and trained at Le Cordon Bleu in Paris”

At DAN, I started as Asia-Pacific legal counsel in Hong Kong in February 2009 before relocating to Singapore in 2010, and now I work as the general counsel for Asia Pacific (excluding Japan), running a team of about 35 lawyers and compliance professionals. This team is managed

through senior lawyers with seven direct reports into me. My current remit is primarily focused on five main areas: commercial and client work, data and privacy, mergers and acquisitions, compliance and management.

How involved are you in transactions, and the broader strategies associated with them?

Since 2009, I have been involved, at some level, with every acquisition made by DAN in Asia Pacific. We tend to average between eight and 12 acquisitions a year, so we have plenty of experience in managing deals. Many of these acquisitions are bolt-on acquisitions of private companies, but we do also complete a few larger strategic public company acquisitions, for example the acquisition of the Mitchell Communications Group in Australia in 2010. I was also heavily involved with the integration of Aegis and Dentsu.

In terms of how we operate during the M&A process, I work very closely with our M&A director and the C-suite in Asia Pacific. Additionally, we work closely with the group M&A team and the group strategy team in London, with all of our transactions required to be approved by the M&A Committee of the DAN Board. This requires a thorough level of preparation and understanding of the target business.

Given the demands of M&A transactions, we manage them centrally from regional headquarters in Singapore and thus we need to ensure that we resource our legal function properly for our various deals. I rely on Will Finn, a very capable senior corporate counsel, and we also have other more junior counsel. We also like

to flexibly resource our teams to support an acquisition. We use LOD as it provides us the resource we need, coupled with great billing flexibility, so we can allocate costs to particular deals. Then of course we have preferred counsel we use – our panel. We’ve actually just gone through an RFP [request for proposals] process and we’ve nominated new law firms to our panel focused on M&A for Asia Pacific. This was a very beneficial process for us to do.

Did anything surprise you going through the RFP process?

It was quite a surprising process, in a good way. At a broad level, we learned three things. First, incumbency can lead to complacency and this really showed during the pitching. Given we’re an advertising business, pitching is part of our blood, so we are very aware of what works and what doesn’t in a pitch. Secondly, we are starting to see a whole raft of new technologies and structures emerge in the legal services market. Thirdly, we saw surprising levels of competitive pricing – both overall and in charging structures, where we have seen a shift away from pure hourly billing to charging structures based on tasks and outcomes.

How significant a part does project management play in respect of deal activity?

Project management is a very important part of getting deals done – I don’t think anyone would argue that point, especially when you have multiple continuing transactions at various stages. For us, this management is normally led by our M&A function. All of the people in that



Nick Tomlinson

team are ex-Big Four and have significant deal experience. Further, our panel law firms have established project management capabilities in their offering – this is part of the reason we were attracted to them.

Our in-house legal team doesn’t have project management disciplinarians in the traditional sense. We have lawyers with deal experience but no dedicated project management function as part of the legal team. The legal team isn’t involved from the very beginning of a deal – we are typically involved once pricing has been agreed and the letter of intent needs to be drafted and negotiated. At that point we work with our internal M&A team and our panel firms through due diligence, negotiation and execution to project manage transactions. We are also involved in all facets of legal and compliance integration.

One area of increasing focus for us is a robust integration process, and to that end we are involving our local GCs much earlier on in transactions prior to reaching completion. We are finding this provides a much smoother process generally, but particularly in relation to integration.

I believe that M&A is a specialist discipline that requires a level of experience, but also the



Oliver Mould

right touch. This is something we value in terms of how we view potential M&A hires. But we don't look for the same touch in roles around the region more focused on general commercial work. Ensuring successful collaboration among specialists and generalists is a continuing management challenge where I feel some pride in the progress we have made over the past couple of years. Successful transition from a new target to a fully integrated business-as-usual operation contributing to our sustainable profit growth is the holy grail of our M&A approach and the legal team has a huge part to play in this process.

“One area of increasing focus for us is a robust integration process, and to that end we are involving our local GCs much earlier on in transactions prior to reaching completion. We are finding this provides a much smoother process generally”

What are the personal principles you adopt to ensure successful project management?
Focusing on M&A, the overriding principle we adopt is the active management of deal pipelines and process. We don't like to sit back

and wait for someone to get back to us. We continually push the momentum to maintain flow. I believe that good M&A requires momentum and if you lose it, you lose energy and doubts can begin to emerge. Saying that, we're alive to the fact that too much momentum can give rise to “deal fever” – causing people to lose sight of important issues. For example, once through the due diligence process, a target might not be as attractive. To keep the balance between momentum and thoughtfulness, we build in pause-points to re-evaluate the deal. This is incredibly important.

How important do you feel collaboration is, both internal and external, to ensure a transaction is completed successfully?

Collaboration is crucial in all respects. We need to collaborate with targets and advisers. We also really need advisers to collaborate with each other. Something I find very frustrating is when bankers, accountants and lawyers get testy with each other – it's unproductive. Moreover, legal advisers who are very adversarial can lose sight of what the client wants to achieve. We look for counsel who are collaborative, insightful and efficient. This helps us achieve our desired outcomes free of personal prejudices – not something that is always easy to achieve.

Something I've learned over my legal career and particularly at DAN is that different markets have very different legal and deal styles. And it's quite an art form for us to manage and understand the different styles.

For most significant negotiations, I or my

“The whole arena of alternative legal provision is an exciting one. Combining lower cost services, better charging structures and the smart use of technology is very compelling”

senior corporate counsel will attend. Then, if the meeting is starting to go off-piste or get overly heated, we can step in and reorient discussions. I see my job as very much managing the room. Over time, you build relationships with trusted advisers such that you can trust them to do a good job of advocacy without resorting to dogmatism. We’re not interested in working with big egos.

To what extent do you take an innovative approach towards resourcing for transactions? Are there any specific methods and structuring arrangements you are more frequently using? In terms of structuring arrangements, our deals normally involve entrepreneur-founded, private advertising and marketing businesses. Most of those deals rely on some sort of earn-out arrangement. While there will be an upfront payment, there is then normally performance-based earnings over several years. We are not in the business of stepping into asset-heavy companies and getting rid of management. We are in the business of building sustainable growth through growing our client base and our capability pool, and deferred consideration is part of aligning incentives in this direction. It is therefore important to maintain very good relationships throughout the transaction deal process. We have emphasised thoughtful integration engaging the target principals as crucial to transaction success.

In respect of innovative approaches to resources, I don’t think that we are on the bleeding edge of the innovation curve. However, our use and deployment of LOD is a great

example of a new and better approach to managing the cyclical nature of deal work. It allows us to flex resource up and down depending on need and further allows us to charge that cost to a specific transaction.

As a general counsel, what are the more exciting developments you are seeing from your service providers?

Generally, the whole arena of alternative legal provision is an exciting one. Combining lower cost services, better charging structures and the smart use of technology is very compelling. From my GC perspective, I’m interested in the changes and trends across the board – from innovating traditional law firms and new alternative legal providers to technology-based solutions. Recently, we’ve been piloting artificial intelligence-based contract review and I believe that curated AI will be a likely resource solution in the near future, although early ambitions have been tempered by the reality of current technology. I’m also excited by the move away from traditional hourly billing towards tasked-based billing. Firms adopting a mixture of alternative legal service provision, technology and insight are the most interesting.



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The thing about ...

Philip McConnaughey

The dean of Peking University School of Transnational Law in Shenzhen discusses the development of legal education in China.

What is the background of the Peking University School of Transnational Law, Shenzhen (STL) – when was it founded and what is its purpose?

STL was established in 2008 by special authorisation of China's State Council. The founding dean was Jeffrey Lehman, a former president of Cornell University and dean of the University of Michigan Law School. The idea was to establish an American-style law school at China's leading university that would be accredited by the American Bar Association [ABA]. The goal was to provide China's top students the option of earning an internationally recognised Juris Doctor degree in China, while simultaneously providing an educational model that would help advance legal education and the legal profession in China.

“There is keen interest in STL's approach to legal education both within China and worldwide, and we are beginning to see other law schools emulate aspects of our approach”

STL took a detour of sorts in 2012 after the ABA refused to extend its accreditation jurisdiction outside of the US and Puerto Rico, and founding dean Lehman left to establish NYU's Shanghai campus. That's when I joined STL. We retained STL's original purpose of providing an elite graduate-level common law JD education in China, but we expanded our mission by reforming and elevating our China Law Juris Master [JM] curriculum to include the “case study” and Socratic questioning methods of instruction typical of American legal education, both of which represent significant innovations in China legal education, and emphasising the new transnational legal and commercial principles likely to emerge from the rapidly expanding economic exchange between China and the West.

Most recently, we have been adding elements to our curriculum that focus on the legal and commercial traditions of Central and South Asia and the Middle East, all regions of growing importance in terms of China's economic engagement.

The evolving economic integration of Shenzhen and Hong Kong, together with Shenzhen's role as a gateway for China's Belt and Road Initiative, offers what is probably the world's most exciting and dynamic legal environment for STL's unique approach to legal education.

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In a nutshell, STL's dual Common Law JD-China Law JM programme, which is unique in China and the world, has been wildly successful. Demand for STL graduates among China's and the world's leading law firms, multinational companies, government offices and NGOs is so high we are not able to meet it. We have negotiated alternative routes to American bar exam access for STL students that do not depend on ABA accreditation. There is keen interest in STL's approach to legal education both within China and worldwide, and we are beginning to see other law schools emulate aspects of our approach. Perhaps most gratifying, STL graduates are becoming leaders of China's growing legal profession, fully equipped to handle the sophisticated transactions and disputes increasingly characteristic of China's advanced internationalised economy, traditionally almost exclusively the province of blue-chip Anglo-American firms.

“The IBM/Fujitsu arbitration was so large and complex that we essentially had to devise our own rules of procedure, applicable law and rules of engagement”

How has the legal profession changed since you first graduated? Does STL provide all the training required for the ‘modern’ lawyer, or are there areas for improvement?

The legal profession has undergone multiple changes since I first began practising law, both in the nature of services required and in methods of delivery. The demographics of the profession (thankfully), the rise of technology and electronic discovery, the use of alternative billing methods, the ability to work and partner remotely, and many other aspects of the profession all have changed quite dramatically. Although much of the law remains local and geographically defined and applied, the change I view as most fundamental has been the internationalisation of legal services. The best lawyers today are those prepared to contend fairly and knowledgeably with the interaction between different legal systems and traditions, and with the often fundamentally different expectations of parties from different traditions. Today's lawyers

must be prepared to acknowledge, respect and help find solutions when different traditions and expectations – even, at times, different notions of truth and justice – are present in a single transaction or dispute. I view this as both an intellectual and ethical responsibility of the profession. Yes, I believe STL prepares our students for this challenge.

In an era where we are encouraged to countenance multiple careers, your own has included not only being one of the only foreigners to hold a leadership position at Peking University, but also a senior partner at Morrison & Foerster (MoFo). How does a career in academia compare to a career in corporate law?

Well, I have been very fortunate in that both aspects of my career, practising law and academics, have been incredibly interesting and rewarding. The thing I enjoyed most about practicing law is the constantly changing problems of significance that lawyers help address. My academic career really has had two dimensions, being professor and teacher, on the one hand, and being a law school leader, on the other. Being a professor provides a unique opportunity to think and write about issues independently of the interests of a client, and to contribute to the education of future lawyers. I have enjoyed both of these things very much. Leading a law school calls upon so many of the skills of practice – strategy, negotiation, sometimes adversarial negotiation – in addition to a knowledge of legal education that it's almost as if my two professions have converged.

Your work at MoFo included helping to lead the MoFo team representing Fujitsu in its international arbitration with IBM. What was the significance of Fujitsu's eventual victory?

I'll mention two aspects of the IBM/Fujitsu arbitration that I believe have had lasting significance and that, I should add, were achieved because of the efforts and ingenuity of both parties, both teams of lawyers, and the arbitrators. The first was the creation of a unique model for the management and resolution of a complex worldwide dispute involving multinational parties, the interests of multiple nations, and no clear applicable law. The IBM/Fujitsu arbitration was so large and complex that we essentially had to devise our own rules of

“We need to value very highly in a world of cross-border exchange and disputes those mechanisms and institutions, such as international arbitration and the 1958 New York Convention, that preserve the flexibility to respect and accommodate different legal and commercial traditions and expectations”



procedure, applicable law and rules of engagement. It was a unique combination of arbitration, mediation and constant negotiation, in which the parties, arbitrators and lawyers happily shared a very forward-looking orientation. The process was far more about finding solutions than it was about imposing blame. The second was the principle of interoperability and the singular importance of clearly defined interfaces to interoperability. This was a major advance for worldwide consumers and producers of high technology.

Your academic writings are diverse and include a thoughtful piece on China's impact on the Western legal tradition. Can you share some of your thoughts on this topic?

I'll share one. I do not believe in the eventual convergence of all law and legal practice around the Western legal tradition. We need to value very highly in a world of cross-border exchange and disputes those mechanisms and institutions, such as international arbitration and the 1958 New York Convention, that preserve the flexibility to respect and accommodate different legal and commercial traditions and expectations, as well as the new traditions and expectations likely to emerge from their interaction. My views about this are informed both by my years of practice representing non-US parties and interests, and by my experience helping to establish one of China's most innovative and successful programmes of legal education.

As one of the seers relating to the exponential growth of Shenzhen and the emergence of the Greater Bay Area, how do you see its development comparing to Silicon Valley and the original Greater Bay Area in California?

I've been fortunate to be a first-hand witness to the emergence of both areas. China has provided a modern, interconnected infrastructure for the Greater Bay Area – transportation, communications and energy – that, in my view, is likely to ensure the eventual expansion of the innovation and development characteristic of Shenzhen throughout the region. China also is doing an admirable job of experimenting with the best approaches to laws and judicial and regulatory institutions most conducive to sustaining the advanced, innovative, internationalised economy of the region. The one

ingredient of technological innovation in which Shenzhen and the Greater Bay Area still lag in comparison to California's Silicon Valley and other US centres of innovation is higher education. The Greater Bay Area needs more institutions of higher education, and higher education throughout China, in my view, needs more autonomy if it ever hopes to match the creative output of the US.

Who was your mentor?

In law practice and client service generally, two senior partners of Morrison & Foerster, the late Bob Raven and Jim Paras. I've never known finer, more ethical lawyers with a better understanding of the profession.

What advice would you give to a young lawyer entering the profession?

Be honest. Be ethical. Leave no stone unturned. And, underestimate neither the complexity of the law nor the value of compromise.

What is your hinterland?

I'll interpret this literally as asking for my favourite remote area. This is probably the Indian Ocean Coast of the Margaret River region of Western Australia. I have many close "second" favourites all over the world, but the Margaret River region probably tops my list.

Philip McConnaughay is dean and professor of law of STL and a vice-chancellor of Peking University's Shenzhen Graduate School. Before joining STL, he was founding dean of Penn State University's law school and School of International Affairs. Prior to joining Penn State, he was a professor of law at the University of Illinois, Urbana-Champaign, and before that a partner of the international law firm, Morrison & Foerster, resident for almost 10 years in Tokyo and Hong Kong. McConnaughay is the author of numerous scholarly articles and edited books concerning international commercial dispute resolution, the regulation of international commerce, and the role of arbitration in economic development. He serves on the editorial board of the Indonesian Journal of International & Comparative Law. As a practising lawyer, McConnaughay was involved in some of the major antitrust and intellectual property disputes of the day. He has served as an adviser to the government of Indonesia with respect to the drafting of a new national arbitration law, and has been active throughout his career in a variety of public interest and pro bono matters.

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