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Volume 16 Issue 5, 2019

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Published 10 times annually by
Pacific Business Press Limited
Room 2008, C C Wu Building,
302-8 Hennessy Road, Wan Chai,
Hong Kong S.A.R.

Publishers of
- **ASIAN-MENA COUNSEL™** Magazine and Weekly Briefing
- **IN-HOUSE HANDBOOK™**

Organisers of the
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Forums for the In-House Community along the New Silk Road

ISSN 2223-8697

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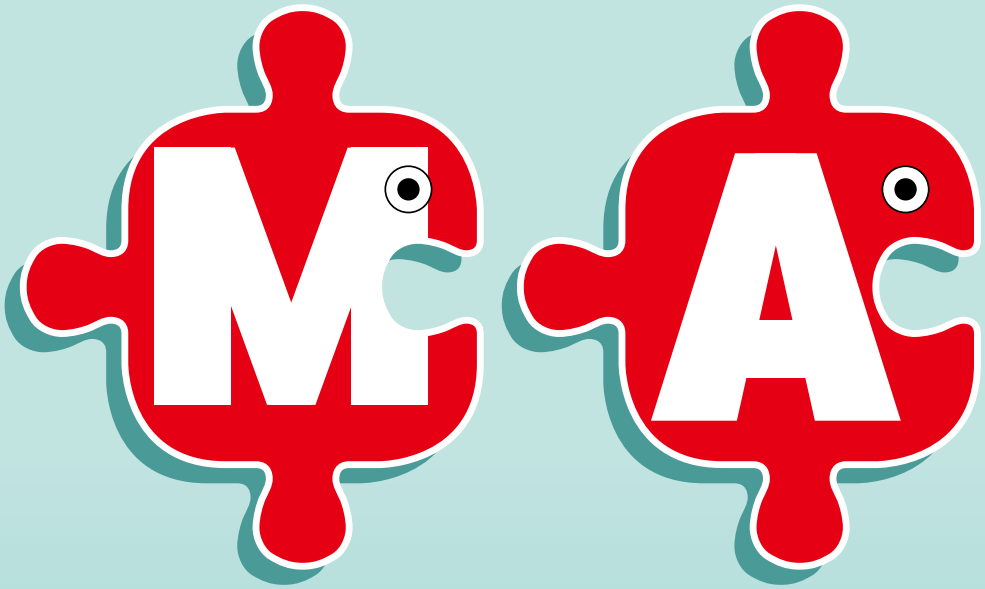

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Zimbabwe's ratification of the WTO Trade Facilitation Agreement

Recently, Zimbabwe, a member of the WTO since 1995, ratified the WTO Trade Facilitation Agreement (TFA) becoming the 139th WTO Member State to ratify this Agreement. This development comes at a time when President Emmerson Mnangagwa's government is making progressive efforts to open the country for business, to attract investors and to re-engage with the international business community. This article assesses the potential impact that the implementation of the TFA will have towards reducing informal cross border trade (ICBT) at Zimbabwe's borders.

The TFA was concluded in 2013 and entered into force on February 22, 2017, after being ratified by a two thirds majority of the WTO membership (110 of 164). The obligations contained in the TFA are only binding to those WTO members that have ratified the Agreement. In terms of section 327 of the Constitution of Zimbabwe of 2013, an international treaty which has been concluded by the President or under his authority becomes legally binding once it has been approved by Parliament and has been enacted into law through an Act of Parliament. This means that once Parliament has ratified and enacted the TFA into an Act only then will Zimbabwe be legally bound to implement and enforce the self-selected obligations contained in this agreement that it has committed to implementing. At the time of writing this article Parliament had not approved and/or enacted the agreement into domestic law.

Generally, the TFA aims at simplifying trade procedures to facilitate the easy movement of goods across borders. It contains provisions aimed at expediting the movement, release and clearance of goods, including goods in transit.

> "A step in the right direction towards addressing informal cross-border trade"

Moreover, the agreement covers measures relating to effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues, technical assistance and capacity building for WTO Member States.

For Zimbabwe, the ratification of the TFA is a step in the right direction towards reducing ICBT and promoting formal cross border trade. The African Development Bank (AfDB) has defined ICBT as "trade in processed or non-processed merchandise which may be legal imports or exports on one side of the border and illicit on the other side and vice-versa, on account of not having been subjected to statutory border formalities such as customs clearance". Research done to date by various international organisations show that ICBT at Zimbabwe's main border posts is primarily caused by among others high trade costs, complex customs and burdensome administrative procedures and a lack of trade-related information.

Also, in the practice of ICBT, numerous vices have sprouted and have been reported at different Zimbabwean border posts such as the sexual abuse of traders, corruption by government officials, massive loss of revenue through non-payment of customs tax, drugs and arms smuggling, human trafficking, unfair competition on formal businesses and smuggling of consumables which evade sanitary and phytosanitary checks thus posing serious health risks to consumers.

ICBT constitutes a significant part of the informal economy in Zimbabwe and Southern African Development Community (SADC) at large. The Food and Agriculture Organisation in a report published in 2017 estimated the size of ICBT in SADC, which Zimbabwe is a member of, to be valued at US$17.6 billion per year. This goes a long way towards emphasising the size of ICBT and reducing it will facilitate a stronger formal cross border trade practice that will be underpinned by favourable trading conditions and legal protections as well as numerous economic dividends for the nation's economy.

It is hoped that all these commitments will go a long way towards reducing ICBT and contributing towards national economic growth. Through the TFA, Zimbabwe will significantly benefit from its full implementation as it is likely to increase trade with its trading partners regionally and globally. The country will likely see a reduction in trade costs which will increase trade opportunities for SMEs, individuals, women and youth who are most engaging in ICBT to participate in cross border trade.

Furthermore, Zimbabwe's export earnings will likely grow significantly. The TFA will also boost the entry and marketability of SME's into the international market, attract investment and improve the ease of doing business as well as the socio-economic well-being of its citizens.

LEX Africa is an alliance of law firms with over 600 lawyers in 24 African countries formed in 1993. More information may be found on **www.lexafrica.com.**

INDONESIA



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Bank Indonesia issues a new regulation on the reporting of foreign exchange flows

Bank Indonesia (BI) recently issued Regulation No. 21/2/PBI/2019 on the Reporting of Foreign Exchange Flow Activities (Kegiatan Lalu Lintas Devisa) (Reg. 21/2) on January 7, 2019, which came into effect on March 1, 2019.

Reg. 21/2 partially revokes BI Regulation No. 16/22/PBI/2014 on the Reporting of Foreign Exchange Flow Activities and the Reporting of the Application of the Prudential Principle in the Management of Non-Bank Entities' Foreign Debts (Reg. 16/22), replacing all the provisions of Reg. 16/22 on the reporting of foreign exchange flow activities. Therefore, Reg. 16/22 now only covers reporting on the application of the prudential principle (kegiatan penerapan prinsip kehati-hatian, or KPPK).

FOREIGN EXCHANGE FLOW REPORT

Scope

Reg. 21/2 has added risk participating transactions (transaksi partisipasi risiko, or TPR) to be reported as a part of the foreign exchange flow report (Flow Report). A TPR is defined as a risk assignment transaction of individual credit or other facilities under a master risk participation agreement. The scope of the Flow Report (Flow Report Scope) covers the following data and information:

a. trade transactions of goods, services, and other transactions between a resident (ie a person, legal entity or other entity domiciled in Indonesia) and a non-resident;
b. principal data of offshore debts (utang luar negeri, or ULN) and/or TPR;
c. the plan of the ULN and/or TPR disbursements and/or payments;
d. the realisation of the ULN and/or TPR disbursements and/or payments;
e. the position of and amendments to offshore financial assets (aset finansial luar negeri), offshore financial liabilities (kewajiban finansial luar negeri) and/or TPR; and/or
f. a new ULN plan and/or its amendment.

Except for TPR and the information required in items c) and d) of the Flow Report Scope above on the plan and realisation of ULN and/or TPR disbursements which are now covered by Reg. 21/2, the remaining scope of the Flow Report above is similar to the scope under Reg. 16/22.

The Flow Report must be submitted by the reporting party online through BI's reporting website.

Reporting Party

The following parties are categorised as a reporting party required to submit the Flow Report:

a. financial institutions, ie banks and non-bank financial institutions;
b. non-financial institution business entities, ie legal entities and non-legal entities;
c. other entities; and
d. individuals.

TIMINGS FOR FLOW REPORT SUBMISSION

The following timings apply to submitting the Flow Report:

Flow Report Scope	Period
i. Data and information in the Flow Report Scope (except for the new ULN plan and/or its amendment)	Submitted monthly at the latest on the 15th day of the following month
ii. Data and information on the new ULN plan and/or its amendment	A new ULN plan and/or its amendments for the ongoing year is to be submitted: 1. for the new ULN plan, at the beginning of each year, at the latest on 15 March; and 2. for an amendment to the new ULN plan, at the latest on 15 June

Previously, Reg. 16/22 required any amendment to the planned new ULN to be submitted by July 1 rather than June 15.

Corrections to the Flow Report must be submitted at the latest on the 20th day of the relevant submission month. If the deadline for the submission of the Flow Report or the correction falls on a weekend or holiday, the report can be submitted the following working day.

Sanctions

Unlike Reg. 16/22, BI under Reg. 21/2 no longer imposes monetary sanctions (fines). A reporting party that:

a. submits a Flow Report with incorrect data and/or information (except for the new ULN plan and/or its amendments) and does not submit a correction;
b. submits the Flow Report late; and/or
c. does not submit the Flow Report,

will be served written warnings. The written warnings may be served by mail, e-mail or another medium. Written warnings only apply to new reporting parties after certain periods have lapsed.

A reporting party undergoing bankruptcy or is no longer operating may submit an appplication to BI to not have a written warning served by submitting the supporting evidence (such as copy of the bankruptcy application to the court or a letter evidencing a licence revocation from the relevant ministry).

Closing

Reg. 21/2 is effective as of March 1, 2019. The implementing regulations of Reg. 16/22 are still valid as long as they are not contrary to Reg. 21/2, but may be replaced by further regulations by Bank Indonesia related to the Flow Report, particularly on (i) the scope of the report, (ii) report coverage, procedures for submitting the report and report corrections and (iii) the procedures for sanctions.

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A peek into the revised Corporation Code of the Philippines

On February 20, 2019, President Rodrigo Duterte signed into law Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines (the New Code), which may be considered as a landmark legislation updating the 38-year-old Corporation Code of the Philippines (the Old Code) to adjust to modern times.

Some notable amendments under the Code are: (1) One-person corporation; (2) perpetual existence; (3) minimum capital stock; (4) incorporators, directors, trustees and officers; and (5) remote communication and in-absentia voting.

One-person corporation

The Old Code required at least five stockholders to form a corporation.

Under the New Code, a one-person corporation (OPC) may now be formed by a single stockholder, who may be a natural person, trust or an estate. However, banks and quasi-banks, pre-need, trust, insurance, public and publicly-listed companies, and non-chartered government-owned and controlled corporations may not incorporate as OPCs. Further, as defined, it appears that a juridical entity, such as a corporation, may not be the stockholder in an OPC.

Similar to all other corporations, an OPC is not required to have a minimum capital stock. It does not need to adopt corporate by-laws unlike an ordinary corporation. In lieu of the meetings, an OPC may simply prepare written resolutions, signed and dated by the single stockholder.

The single stockholder will act as the president and sole director of the OPC. He may also act as its treasurer, upon submission of a bond to the Securities and Exchange Commission (SEC) and a written undertaking to faithfully administer its funds, disburse and invest the same according to its registration. However, he may not act as its corporate secretary.

Perpetual existence

Under the Old Code, a corporation has a term limit of 50 years, unless extended. Its existence is deemed dissolved upon expiration of the term.

Under the New Code, the default rule is that a corporation shall have perpetual existence, unless otherwise specified in the Articles of Incorporation. As transition, corporations existing prior to the effectivity of the New Code shall have a perpetual term unless the corporation, upon the required vote of its stockholders, notifies the SEC that it elects to retain its specified term. The New Code also allows the revival of corporation whose term has expired by filing an application with the SEC.

Minimum capital stock

The New Code removed the 25 percent subscription, payment and minimum paid-up capital requirements provided under the Old Code. The New Code states that "stock corporations shall not be required to have a minimum capital stock, except as otherwise specifically provided by special law".

Incorporators, directors, trustees and officers

The New Code removed the minimum number of incorporators, directors and trustees, which stood as five under the Old Code.

Section 10 of the New Code states that "any person, partnership, association or corporation, singly or jointly with others but not more than 15 in number, may organise a corporation for any lawful purpose or purposes". It appears that the New Code allows juridical persons to act as incorporators unlike the Old Code which limits incorporators to natural persons.

Moreover, the New Code reiterated the requirement to elect independent directors in corporations vested with public interest as may be determined by the SEC. The independent directors shall constitute at least 20 percent of the entire board membership.

The New Code also allows the creation of "emergency board" when the vacancy in the board prevents the remaining directors from constituting a quorum and emergency action is required to prevent grave, substantial, and irreparable loss or damage to the corporation.

With respect to corporate officers, Section 24 of the New Code now requires the treasurer to be a resident of the Philippines, and corporations vested with public interest to appoint a compliance officer.

Remote communication and in absentia voting

Following the concept of allowing board meetings by way of videoconferencing, teleconferencing, or other alternative modes of communication which have been made explicit under the New Code, the New Code took a step further by allowing stockholders or members to exercise their right to vote through a remote communication or in absentia when authorised under the by-laws, subject to the rules and regulations to be issued by the SEC. With this amendment, it appears that the stockholders and members need not be physically present or represented by proxies in meetings which is required in the past.

Existing corporations affected by certain provisions of the New Code are given a period of two years from its effectivity within which to comply with the requirements thereon.

With the aforementioned significant changes introduced under the New Code, we anticipate that the SEC will issue supplemental regulation specifying the requirements and detailed procedure to comply with its provisions.

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

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5+ Years | Hong Kong

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8+ Years | Hong Kong

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4-7 Years | Hong Kong

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13+ Years | Hong Kong

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4-6 Years | Hong Kong

Leading insurance provider seeks a mid-level corporate commercial lawyer with financial products experience to join its team. In this regional role, you will handle commercial contracts, product development, compliance and regulatory issues. Excellent English and ability to work independently are essential. AC7799

Private Practice

Banking & Finance
1-2 Years | Hong Kong

A UK firm is looking for a junior associate to join its banking & finance team. This role will offer exposure to a wide range of finance work. You should be Hong Kong qualified and have fluent written and spoken English and Mandarin. AC7784

DCM
8+ Years | Hong Kong

International firm is looking to expand its DCM team with the hire of a counsel or junior partner. You should have at least 8 years DCM experience from a Magic Circle or top International Firm. Chinese language skills essential but no book of business required. AC7738

Funds
3-6 Years | Hong Kong

An offshore firm in Hong Kong is looking for a mid-level associate to join its funds team. This role will offer exposure to a wide range of funds work and a collegiate working environment. You should have funds experience ideally at an offshore firm and Mandarin is essential. AC7772

Funds/Finance Partner
10+ Years | Hong Kong

Leading offshore firm is looking to grow its presence in the region by adding a funds and/or finance partner to its Hong Kong office. This is an excellent opportunity for counsels who are looking to step up into partnership. Strong business development track record needed. AC7758

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3+ Years | Hong Kong

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Patent licensees may file a petition for trial to seek invalidation of the licensed patent

The Korea Supreme Court ruled on February 21, 2019 that a licensee who is granted the right to practise a patent is an interested party who may file a petition for a trial seeking invalidation of the same patent (Supreme Court Decision 2017Hu2918).

In that case, Samsung Electronics, which holds the right to practice IBEX PT Holdings' patented invention regarding images (the Patent), filed a petition for a trial seeking to invalidate IBEX's Patent. When the patent tribunal decided to accept Samsung's petition and invalidate some claims of the Patent, IBEX filed a lawsuit seeking to cancel the decision on the grounds that a patent licensee is not an interested party who may file a petition for invalidation of the same licensed patent.

Article 133, Paragraph 1 of the former Patent Act stipulates that "an interested person or an examiner may file a petition for a trial to seek invalidation of a patent". In the trial, the key issue was whether a licensee who is granted the right to practice a patent would be considered an interested party with a right to file a petition to invalidate the same patent for which the licensee holds the right to practice.

Up until now, Supreme Court precedents were inconsistent regarding this matter. One precedent said "the fact that a right to practice the patent has been granted does not necessarily mean that the licensee holds no interest in the same patent", whereas another ruled that "a person who has been granted the right to practise a patent is in no danger of being sued for infringement of the patent and suffering losses during the period of the licence".

> "The Supreme Court has finally set a standard for judging 'whether a licensee is suffering or subject to suffering legal harm' and declared that the mere fact that a right to practice the patent has been granted does not necessarily mean that the person's interest in invalidating the same patent has lapsed"

The Supreme Court has now rendered a unanimous opinion, making it clear that a licensee may file a petition for an invalidation trial. The Supreme Court ruled that: "An interested party under Article 133 Paragraph 1 of the former Patent Law refers to a person who has a direct and realistic interest in extinguishing a patented invention, due to the existence of an adverse impact or other harm caused if the patent right exists. In this case, those who manufacture and sell, or plan to manufacture and sell the same kind of goods as the patented invention, constitute interested parties."

The main reasons for the Supreme Court's recent ruling that a patent licensee holds sufficient interest in a claim for invalidation of the patent, include the following: (i) Generally, a licensee is bound by various restrictions and obligations, such as the obligation to pay royalties or limitations on the scope of the licence, and the licensee may be freed from such restrictions by invalidation of the patent. (ii) Even if a patent is invalid, the patent right remains valid and cannot be denied until a patent tribunal's decision to invalidate such patent is made and finalised. It may require the expenditure of a considerable amount of time and resources until such decision is made and finalised. Thus, even if a person wishes to practise a patent without executing a licence agreement, that person may decide to practise the patent first before going through the battle to invalidate the patent. Therefore, it cannot be concluded that a person who has acquired the right to practise a patent has waived the right to file a petition for an invalidation trial.

The significance of the ruling is that the Supreme Court has finally set a standard for judging "whether a licensee is suffering or subject to suffering legal harm" and declared that according to such standard, the mere fact that a right to practice the patent has been granted does not necessarily mean that the person's interest in invalidating the same patent has lapsed.

A significant additional comment of the court is that if the parties to a licence agreement contractually decide not to dispute the validity of the patent, then the licensee may have no right to file a petition for an invalidation trial. Therefore, in the future, it will be important for the parties entering a licence agreement to negotiate over whether to include a provision containing an obligation not to dispute the validity of the patent.

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New electricity pricing and new sample of PPA of rooftop solar power projects

The number of solar power projects (SPP) in Vietnam has grown quickly in recent years, especially after the Prime Minister promulgated Decision No.11/2017/QD-TTg (Decision 11) on April 11, 2017, providing a mechanism for encouraging development of solar power in Vietnam. This Decision took effect from June 1, 2017 and expires on June 30, 2019.

With the expiry date fast approaching, SPP investors are focused on the construction and completion of such SPPs before the benefits of Decision 11 come to an end. There are two main benefits. Firstly, Decision 11 allows SPPs to be eligible for the exemption and/or the reduction of import duties, corporate income tax, land levy, land rent and water surface rent in accordance with application laws of Vietnam (Art 10, Art 11 of Decision 11). Secondly, Decision 11 also provides a compulsory responsibility of Vietnam Electricity (EVN) as an electricity buyer to purchase all of the electricity created by SPPs (Art 9.1 of Decision 11).

Following Decision 11, the Ministry of Industry and Trade (MOIT) issued Circular 16/2017/TT-BCT (Circular 16) on September 12, 2017 regarding project development and sample of power purchase agreements (PPA) mandatorily applied to SPPs, including rooftop solar power projects (rSPPs) and grid-connected solar power project (gSPPs). One of the noteworthy points of Circular 16 is that the investor shall only be permitted to form a gSPP if it is approved in the provincial or national solar power planning or provincial or national power development planning (Art 10.1 of Circular 16). However, the investor of rSPP shall only need to register the connecting terminal with the electricity company at provincial level for the rSPP having capacity under 1 megawatt (MW) or follow the regulatory procedures for inclusion of rSPP having capacity of 1MW or over in the solar power development planning (Art 11 of Circular 16).

> "Decision 11 provides a compulsory responsibility of Vietnam Electricity as an electricity buyer to purchase all of the electricity created by SPPs"

As of March 11, 2019, the MOIT further issued Circular 05/2019/TT-BCT (Circular 05) to amend and supplement a number of articles of Circular 16, which provides a specific electricity pricing and new template of PPA for rSPP. In particular, the electricity pricing for rSPP prior to January 1, 2018 is unchanged but after January 01, 2018, it shall be adjusted in accordance with the exchange rate between VND/USD as publicly announced by the State Bank of Vietnam (SBV) on the last working day of the previous year (Art 1.1 of Circular 05). The adhesion of exchange rate herein may be an issue for the investor as it may be treated as a violation under Ordinance on Foreign Exchange Control and its guiding regulations. If this was the case, the investor would be subject to a fine up to VND250 million (US$10,700) (Art 24.6 (c) of Circular 32/2013/TT-NHNN).

Further to Circular 05, the new sample of PPA for rSPP replaces two previous templates of PPA of rSPP as attached in Circular 16 and makes it more preferable on the scope of electricity trading, payment method, rights and obligations of the parties (Art 1.2 of Circular 05). This sample is compulsory for purchasing of electricity by and between EVN and electricity seller for a term of 20 years from the commercial operation of rSPP (Art 7.1 of PPA of rSPP attached in Circular 05). The parties are permitted to supplement some new articles without making any change of the principal contents of this agreement (Art 18.3 of Circular 16). During the term of this agreement, any requirement on amendment of the agreement must be notified to other party 15 days in advance (Art 7.2 of PPA of rSPP attached in Circular 05). The SPP investors, especially for rSPP, should place importance to this Circular and the new sample PPA of rSPP before the effective date of Circular 05 (April 25, 2019).

Professionals
Recruiting Professionals

Specialising in Legal, Financial Services, and Commerce

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)

Funds – Senior Counsel — Hong Kong — 10-15 PQE

Well known asset manager has a vacancy for a senior lawyer with experience in retirement and unit trust products. As part of an established team you will have a leadership role on some interesting projects. Fluency in Chinese is important. (IHC17422)

Associate General Counsel (APAC) — Hong Kong — 6-10 PQE

MNC seeks a lawyer with strong APAC commercial transactional experience to manage their legal matters for their regional businesses. Working closely with the business teams, you will handle sales contracts, consignment work and other projects. Chinese (traditional) drafting skills mandatory. (IHC 17433)

Investment House - Senior Counsel — Hong Kong — 5-10 PQE

Lawyer with private practice or in-house transactional experience in either banking and finance, corporate finance, financial regulatory, PE funds, capital markets, structured finance and derivatives sought by boutique finance house. Critical will be your ability to think critically and solve problems. (IHC 17346)

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

This Hong Kong based conglomerate seeks a projects lawyer to manage investments for their businesses globally. You will work on M&A projects across a wide range of industry sectors, not limited to private equity, real estate, energy and hospitality. Fluency in Chinese (Cantonese and Mandarin) languages including drafting is mandatory. (IHC 17445)

MNC - PRC Counsel — Hong Kong — 4-6 PQE

PRC lawyer with commercial experience gained at an international firm or MNC is sought by the Hong Kong office of this well known US MNC. Experience in advising management in China on general commercial matters is important. (IHC 17426)

Corporate / Fintech — Hong Kong — 2-4 PQE

Venture Capital Fund seeks a corporate commercial lawyer to join this adventurous enterprise. You should be a corporate lawyer with good business acumen and an interest in Fintech and block-chain.. Regulatory experience is a plus. (HKL 17456)

Senior Counsel — Hong Kong — 12+ PQE

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

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)

Employment Counsel — Hong Kong — 6-10 PQE

Exciting opportunity for an employment lawyer to provide advice and strategy on labour law and employment matters across the region. You will report to the US. Location can be Hong Kong, Singapore or China. (IHC 17003)

Senior M&A Counsel — Singapore — 12-18 PQE

A fast expanding e-commerce company seeks a senior legal counsel to join their legal team. The ideal lawyer should be qualified in a common law jurisdiction with strong transactional regional M&A experience gained from an investment firm, top tier local or international firm. (IHC 17384)

Head of Legal — Singapore — 10-15 PQE

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

Legal Counsel — Singapore — 4-8 PQE

Global consulting company with focus in the insurance sector seeks a legal counsel to join their team. The ideal candidate should be qualified in a commonwealth law jurisdiction with experience doing insurance work but are open to candidates with good corporate background. (IHC 16575)

Junior Legal Counsel — Singapore — 2-5 PQE

A leading alternative investment fund house seeks a junior lawyer to join their team to provide legal, regulatory compliance and tax advice to their business globally. You should have a law degree with work experience in either finance or tax advisory gained in a law firm or an accounting firm. (IHC 17415)

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

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By Thomas Granger and James Gaden

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Square pegs and round holes: Partnerships and trusts in Japanese PE fund structures

Statistics from Japan over the past couple of years regarding private equity (PE) and venture capital (VC) investment have been impressive. In 2017, there was a 15x year-on-year increase in dry powder raised, a 30 percent increase in the number of funds launched and the value of deals executed more than double.

The drivers behind this growth are varied. Increased interest from overseas; and a shift in mindset to greater acceptance of PE among domestic investors, coupled with negative interest rates and lacklustre performance of other investments are named as contributing factors. However, Japanese domestic banks and pension funds allocating billions to the space is the headline that grabs most attention.

Not surprisingly, the interest of such allocators has had the knock-on effect of determining how some funds are structured, resulting in departures from global trends and the emergence of what has been referred to as the "private equity-style unit trust" (PESUT). This should not come as a surprise, as demands of large investors typically impact investment structure. However, there are questions as to whether the PESUT is a one-size-fits-all or if it is hammering a square peg into a round hole.

The gold standard — limited partnerships

Globally, the vast majority of PE funds remain structured as Cayman Islands limited partnerships. In Japan, this trend is no different.

There are numerous reasons for this, including that:

a. laws governing partnerships have been enacted intentionally to facilitate the commercial demands of investors and managers in PE. The Cayman Islands Exempted Limited Partnership Law even permits the fiduciary duty of the general partner to be disapplied, and for remedies otherwise unenforceable as penalties to be enforced in an exempted limited partnership;
b. partnerships are, fundamentally creatures of contract, governed by negotiated terms in the partnership agreement, rather than prescriptive rules of statute, or rules of equity in the case of trusts. This allows parties the flexibility to participate on a preferred basis that has come to characterise PE including by providing rights of: (i) co-investment; (ii) excuse; (iii) information rights; (iv) committee participation; and (v) distribution in-kind rights;
c. it is simple for an investor to enter into a side letter allowing it to invest on terms specific to its own investment criteria without changing the investment terms of other investors; and
d. partnerships are, typically, tax transparent "flow throughs" providing the benefits of capital gains treatment to investors and carried interest recipients.

The alternative — private equity-style unit trusts

In contrast, the PESUT, being a trust, is subject to often antiquated rules of equity that impose strict fiduciary duties on the trustee and do not permit the same level of flexibility.

This means that although a "commitment-and-call" mechanism can be readily drafted into a subscription agreement — and default remedies can be included in the documents if investors fail to fund (although there is a real risk that these are unenforceable in a trust) — a trustee cannot readily avoid its fiduciary duty to act in the best interests of the beneficiaries and to treat them equally. This can prevent the practical implementation of the terms lawyers draft into the documentation and preclude side letters (which almost always lead to one investor being preferred over others).

In a multiple investor fund, the result is that either that:

a. the commercial terms that investors desire will be unavailable;
b. the operator of the fund will not be able to exercise its discretion in the manner to which industry is accustomed;
c. the documentation becomes extremely complicated; or
d. a mixture of the above.

That said, a PESUT has a couple of characteristics that are irresistibly attractive to certain investors. When it comes to tax reporting, a trust can effectively be treated as a "blocker", allowing for reporting to take place at the trust level. Trusts are also more familiar to certain investors. Japanese tax and regulatory considerations may also weigh in to favour PESUTs in certain situations.

The trade off

To oversimplify the balancing act of many complex issues, the question is whether your investors want (i) a private equity fund, or (ii) a trust that invests in private equity.

If investors can all invest on substantially identical terms (as in a "fund-of-one"); will not require side letters, excuse rights or otherwise unequal treatment; but are familiar with trusts, a PESUT may be ideal. With thoughtful drafting, certain traditional PE features can even be incorporated.

However, if it is imperative to implement the full functionality that the broader PE industry treats as standard for its collective investment vehicles, a PESUT may be unwieldy, expensive and impractical. A combination of the rigid rules of equity, and the strict fiduciary requirements of professional trustees to treat all beneficiaries can result in the structure and documentation being unnecessarily complex or, worse, economically unviable. Where the flexibility to meet the preferences of varied investors is imperative, a partnership is often still the preferred route.

Now in its 21st year, the In-House Community Congress series is the region's original and largest circuit of corporate counsel events, bringing together over 3,000 corporate in-house counsel and compliance professionals along the New Silk Road each and every year.

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EVENT REPORTS

Middle East In-House Congress

The 13th annual Middle East In-House Congress Dubai had a record attendance from across the region, with delegates attending from Oman, Cairo and Saudi Arabia. The event got off to a resounding start with a busy and engaging plenary session as Hadef Al Dhaheri, former federal Minister of Justice for the UAE, introduced the themes of technology and talent management, which were further elaborated on by Sydney-based former general counsel Peter Connor, who emphasised the importance of personal transformation. Sadiq Jafar of Hadef & Partners moderated both panels. The technology panel explored how automation can be both an enabler and a disruptor. The second panel discussed the challenges of mentoring and being mentored in a multi-cultural setting, as well as the continuing challenges relating to work-life balance and careers, especially for women lawyers. The day continued with varied topics from doing business in Africa to the impact of GDPR and ended with an announcement of the firms competing for the In-House teams and law firms of the year awards.

With thanks to the generous support of Al Suwaidi & Company, BonelliErede with TLA, BSA, Gibson Dunn, Hadef & Partners, Maples Group, Navex Global, Pacific Strategies & Assessments, Reed Smith and Taylor Root.

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

2019 IN-HOUSE Congress MIDDLE EAST, DUBAI

Mohammed Alsuwaidi
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Al Suwaidi & Company

Suneer Kumar
Senior Associate
Al Suwaidi & Company

Lailani Manalastas
Associate
Al Suwaidi & Company

Stephanie Mouanes
Associate
Al Suwaidi & Company

Peter Connor
Founder & CEO
Alternatively Legal

Rindala Beydoun
Partner
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Emile Boulos
Local Partner
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Francesca Secondari
Partner
BonelliErede (Cairo)

Mahlet Kassa
Senior Associate
Tameru Wondm Agegnehu Law Office in cooperation with BonelliErede (Addis Ababa)

Jimmy Haoula
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BSA Ahmad Bin Hezeem & Associates LLP

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Marc Saroufim
Head of Corporate Department – Riyadh Office
BSA Ahmad Bin Hezeem & Associates LLP

Ahmed Baladi
Partner
Gibson, Dunn & Crutcher LLP

Dr Hadef Al Dhaheri
Founding Partner
Hadef & Partners

Mohammed Al Dhaheri
Partner
Hadef & Partners

James Dunne
Head of Trade Marks & Brand Protection
Hadef & Partners

Sadiq Jafar
Managing Partner
Hadef & Partners

Victoria Woods
Partner, Head of Commercial Practice Group
Hadef & Partners

Walid Azzam
Partner, Dispute Resolution
Hadef & Partners

Christian Murad
Legal Director
Kellogg Company of Great Britain Ltd. (Dubai Branch)

Philip Ireland
Partner
Maples Group

Steve Smith
Vice President Sales EMEA & APAC
Navex Global

Elina Mohamed
General Counsel
Orpic

Michael Olver
Managing Director
Pacific Strategies & Assessments (PSA) Group

Nick Malhotra
Director Ethics & Compliance
Philip Morris International (Switzerland)

Michelle Nelson
Partner
Reed Smith

Shourav Lahiri
Partner
Reed Smith

Mark Freeman
Head of MENA Corporate Sales
Thomson Reuters

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

In-House Congress Beijing 2019

The 18th annual In-House Congress Beijing attracted a much larger proportion of state-owned enterprises than in previous years and started off with a speech by Chen Fuyong on investor-state arbitrations as incorporated in the new rules of the Beijing International Arbitration Centre. Our panel discussion was kicked off by docQbot and Zhonglun's Robert Lewis, who compellingly illustrated the sheer number, quality and power of 'smart' products available to both in-house and also private practice teams — in terms of both software and artificial intelligence. Our technology panel focused on practical topics relating to contract management and how technological change in the consumer and stakeholder space is dictating change in the legal department. The challenge of retaining the right people and motivating people throughout the team — as well as the new emphasis on mixed-discipline teams was also explored. The day's workshops explored investment opportunities in South Africa and Vietnam, and also looked at some hot-button issues with sessions on sanctions and export controls, the new cybersecurity law regime, the new foreign investment law draft and also dispute resolution.

Our sincere thanks go to AnJie, Christodoulou & Mavrikis, Clyde & Co, Debevoise & Plimpton, Fenxun Partners, Latham & Watkins, Llinks Law Offices, LNT & Partners, Mintz Group, Zhong Lun Law Firm, Conyers Dill & Pearman, Beijing Arbitration Commission, Hughes-Castell and SSQ for their support.

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

2019 IN-HOUSE Congress BEIJING

Samuel Yang
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AnJie Law Firm

Zhao Kefeng
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AnJie Law Firm

Chen Fuyong
Deputy Secretary-General
Beijing Arbitration Commission/Beijing International Arbitration Center

Xi Zhang
VP & General Counsel
Bayer Greater China

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Centrient Pharmaceuticals

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Taikang Insurance Group

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

Tim Gilkison
Founding Director
In-House Community

MOVES

The latest senior legal appointments around Asia and the Middle East

HONG KONG


Sheng Wu

Dentons Hong Kong will add **Allan Leung** as a partner in the litigation and dispute resolution practice in Hong Kong effective May 27, 2019. Prior to joining the firm, Leung was a partner in the dispute resolution practice of Hogan Lovells in Hong Kong, and had been the office managing partner for a number of years. He has over 30 years of experience dealing in a broad range of dispute work.

LC Lawyers has added **Bonnie Yung** and **Jason Wang** as partners. Yung and Wang advise on corporate finance, capital markets, M&As and regulatory compliance. Prior to joining the firm, they worked separately with reputable US law firms. They are experienced in Hong Kong IPOs, fund raising and M&As involving Hong Kong-listed companies.

Mayer Brown has added **Steven Tran** and **Sheng Wu** as partners in its corporate and securities practice. Previously a partner at Kirkland & Ellis and most recently a partner at Hogan Lovells, Tran is an accomplished private equity and M&A lawyer who has been based in Asia for nearly 20 years. He represents private equity funds, major financial institutions and corporations in a wide variety of complex multi-jurisdictional deals throughout the Asia-Pacific region. Wu was previously a partner focused on China-related M&A with DLA Piper in Hong Kong. He has impressive experience advising international investors and companies on M&As and investment opportunities in China and other parts of Asia, with a focus on both corporate and regulatory matters, in the insurance, financial services and health care sectors.

CHINA

Akin Gump has added **Allen Shyu** as a partner in its Beijing office. Shyu joins from Stephenson Harwood, where he was the lead partner in the Beijing office. His practice focuses on advising mid-sized and large-scale public companies on equity capital markets and corporate M&A transactions, particularly in the energy and natural resources sector. A native of Taiwan, Shyu also regularly advises Taiwanese companies issuing equity and equity-linked securities and venture capital/private equity transactions for emerging companies in that market. He is a US-qualified corporate and capital markets lawyer advising on cross-border M&A; US securities matters, including on securities offered and listed internationally; private equity and venture capital investments; and other corporate transactions. He is also a registered foreign lawyer in Hong Kong. Before joining Stephenson Harwood, Shyu was managing partner of Troutman Sanders' Beijing office.


Allen Shyu

JAPAN

K&L Gates has added **Dale Araki** as a corporate/M&A partner in its Tokyo office. Joining from Morrison & Foerster, Araki represents Japanese, US and other companies from across the globe on a variety of international business transactions. This includes working with both buyers and sellers on mergers, corporate and real estate acquisitions and investments, manufacturing and technology joint ventures, and restructuring transactions in the US, Japan and other Asian countries. His clients operate across a broad spectrum of industries, in which managing and protecting intellectual property rights are critical. Such clients include major Hollywood studios, prominent Japanese technology companies, and leading European fashion houses.

Nishimura & Asahi has hired **Tateshi Higuchi,** former Japanese ambassador to Myanmar, as an adviser in Tokyo. He was previously superintendent general of the Tokyo Metropolitan Police Department from 2011 to 2013 and was appointed as Japan's ambassador to Myanmar in 2014, a position he held until 2018. He will help to develop the firm's corporate criminal practice and its Yangon office, while also strengthening its capabilities in the fields of cyber security, money laundering, protection of industrial and trade secrets, and export control.

SINGAPORE

Rajah & Tann has appointed **Patrick Ang** as its new Singapore managing partner, taking over from Lee Eng Beng. Lee hands over the reins of Singapore's leading law firm after nine years at the helm. He will remain as senior partner as well as chairman of Rajah & Tann Asia, one of the largest legal networks in Southeast Asia.

Asian-mena Counsel Deal of the Month

Singapore's first catastrophe bond

Insurance Australia Group raises A$75 million through the Lion City's first insurance-linked securities transaction.

In March, Singapore scored its first catastrophe bond after Insurance Australia Group (IAG) sold A$75 million (US$52.7m) of exposure to investors.

The Series 2019-1 Class A principal at-risk variable rate notes are due January 17, 2022. The bond is the first Australian dollar-denominated catastrophe bond in the global market. The issuer is Orchard ILS, the first special purpose reinsurance vehicle licensed by the Monetary Authority of Singapore (MAS).

This pioneering catastrophe bond will help broaden Singapore's capital markets by adding a new asset class and generating a new set of service providers locally.

The deal is a result of a grant scheme announced in 2017 at the Singapore International Reinsurance Conference to speed up the development of the city's insurance-linked securities (ILS) market and is applicable to ILS bonds covering all forms of risks, beyond just natural catastrophe risks.

Under the scheme, which has been running since January 1 last year, IAG was able to take advantage of MAS funding for 100% of the upfront costs incurred in issuing the bonds.

IAG's deal had been in the works since before the scheme was announced. Indeed, it was mentioned in the speech by Lim Hng Kiang, former trade minister and deputy chairman at MAS, when he unveiled the initiative 16 months ago.

The deal follows in the footsteps of Asia's first sidecar transaction, launched by Hong Kong reinsurer Peak Re in December. Hong Kong does not yet have Singapore-style legislation to allow such structures to be domiciled there, but financial secretary Paul Chan reiterated the city's intention to move in this direction in his budget speech in March.

Such deals are capitalising on an abundance of capital in the global reinsurance market after growing interest from investors such as hedge funds, sovereign wealth funds, pensions and mutual funds, who access reinsurance risk through securities structures like catastrophe bonds, collateralised reinsurance and reinsurance sidecars.

With Hong Kong and Singapore now both pushing to position themselves as centres for ILS, opportunities are growing for reinsurers to tap this new source of capital.

Rajah & Tann Singapore, a member firm of Rajah & Tann Asia, advised on the transaction. Partners **Simon Goh** and **Lee Xin Mei** led the firm's team in the transaction.

Other recent transactions from around the region:

AZB & Partners has advised **SoftBank Vision Fund** on the Rs24.5 billion (US$355.5m) acquisition by its subsidiary, SVF Doorbell (Cayman), of compulsorily convertible preference shares amounting to approximately 22 percent of the total share capital of Delhivery, an e-commerce logistics firm that facilitates the delivery of goods for online retailers, such as Flipkart, Amazon and Paytm. **L&L Partners** advised **Carlyle Asia Partners**, which is also took part in the US$413 million funding round. The transaction, which requires approval by the Competition Commission, was the sixth round of funding for Delhivery, with Tiger Global, Times Internet, Nexus Venture Partners, Fosun, Multiples Fund and Carlyle as existing investors. AZB partners **Vinati Kastia** and **Daksh Trivedi** led the firm's team in the transaction, which was signed on December 21, 2018 and was completed on March 8, 2019. For L&L, partner **Samir Dudhoria**, supported by partners **Abdullah Hussain** and **Kanika Chaudhary**, led the firm's team in the transaction.

Allen & Gledhill has advised **Vanguard International Semiconductor** on its US$236 million acquisition of a semiconductor fabrication facility owned by Globalfoundries Singapore. Partners **Richard Young**, **Ko Xiaozheng**, **Mark Quek**, **Yeo Boon Kiat**, **Shalene Jin** and **Aloysius Ng** led the firm's team in the transaction.

King & Wood Mallesons has acted as US and Chinese law counsel to **ENN Ecological Holdings**, as the parent guarantor, on its issuance of US$250 million 7.5 percent guaranteed senior notes due 2021. This is ENN's debut offshore bond issuance and marks the first debut high-yield bond issued by a Chinese industrial company since January 2018. ENN is an A-share listed company and a leading clean energy products and services provider in China.Hong Kong partners **Hao Zhou** and **Michael Lu**, supported by Beijing partners **Yongliang Zhang** and **Yanyan Song**, led the firm's team in the transaction.

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Opportunities of the Month ...

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

Group Legal Adviser, Digital Media
6-8 yrs PQE, Singapore

- Mid-level lawyer (6-8 PQE) to provide support to the company's rapidly growing regional digital media business
- Prior experience in handling content acquisition, production and distribution matters is a must-have
- Ability to speak Cantonese would be an advantage as the role necessitates interactions with Chinese and Cantonese speaking stakeholders/clients
- Ref: A43704

Contact: Michelle Poh
Tel: (65) 6214 3310
Email: resume@legallabs.com

Legal Counsel — Insurance,
3-5 yrs PQE, Hong Kong

A global insurance company is looking to hire a mid-level commercial lawyer for its team in Hong Kong. Candidates must have gained excellent experience in corporate or commercial matters at an international firm. Lawyers from insurance firms or financial institutions may also be considered. Chinese language skills are highly advantageous and qualification in a common law jurisdiction will be strongly preferred. Excellent opportunity for junior to mid-level private practice lawyers to transition into their first in-house role. [Ref: AC7798]

Contact: Roshan Hingorani
Tel: (852) 2537 7416
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Legal Counsel — Logistics,
4-8 yrs PQE, Hong Kong

This Asian based supply chain manager is urgently seeking a high calibre lawyer to join its HK office to support its strategic and commercial transactions. You will primarily be responsible for structuring, drafting and negotiating transaction documentation in related to sales & purchase agreements, marketing agreements, financing arrangements, security documentation and joint ventures. Ideally, you are a Common Law qualified lawyer with transactional work focus and project finance experience gained from a leading international law firm. Prior experience in negotiating ISDA master agreements would be a plus. Fluency in English and Mandarin is required (a native Mandarin speaker is preferred). [Ref: 14990/AC]

Contact: Kelly Zhang
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Senior Legal Counsel — Media,
5-8 yrs PQE, Singapore

A reputable player across the media spectrum. As a result of expansion, they are seeking a senior legal counsel to be part of its Asia legal team. This is a regional role responsible for drafting, reviewing and negotiating a wide range of commercial contracts, technology agreements and production rights/content licensing etc. You will also support the head of legal, with matters relating to compliance, M&A, litigation etc as they arise. Ideally, you are a 5-8 PQE solicitor/lawyer qualified in the Commonwealth region including general corporate commercial experience gained at a top-tier law firm and some in-house experience. A passion/interest in the Media industry is also a key critical factor for success. [Ref: JO 1903 173301]

Contact: Michelle Koh
Email: michellekoh@puresearch.com
Web: http://www.puresearch.com

Employment Lawyer,
5-10 yrs PQE, HK/Sing/China

The legal team of a well-known MNC with over 16,000 employees globally is looking for a lawyer to provide advice and strategies on labour and employment matters throughout the APAC region. You will support and advise business teams on legislation, advise on issues such as discipline, labour relations and terminations as well as be involved in drafting policies and managing external counsel. Lawyers with experience in private practice and/or in-house will be considered. Role can be based in either Hong Kong, Singapore or Shanghai. [Ref: IHC 17003]

Contact: Andrew Skinner
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LAW IN ORDER
Where work flows.

David Kerstjens
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The evidence collector that's always with you

It is an integral part of our life these days and an item that is rarely further than arm's reach. There are thousands of different models running various operating systems. With each year comes a larger device with the latest devices having a storage capacity of up to 512GB with expandable memory of another 512GB. As you would have guessed, I'm talking about mobile phones. 1TB is a lot of data, but what sort of useable data can we get from a mobile phone?

Let's think of it in terms of an investigation. One of your staff members has been accused of stalking and harassing a fellow staff member. What steps do you take to secure the potential evidence that is located on their work mobile and what type of evidence would you find?

CAN YOU OBTAIN THE DEVICE?

The first step is to work out whether you have any legal right to obtain the device. Some companies will issue their staff a mobile device and other companies may allow bring your own device (BYOD). Certain states even allow surveillance of personal devices when they are being used at work using work wifi systems. In some instances, a person may provide consent for their mobile device to be imaged and reviewed and in these instances, you would ensure they have provided written confirmation. In other instances, you may need to rely on the company policies or you may not have any right to the device itself. The key to this first step is the policy the staff member has agreed to which will require discussion with your IT and legal team.

SECURE EVIDENCE

Similar to any electronic devices which may contain key data, if the device is on, try to utilise a power source to keep the device powered on. If the device is off, leave the device in this state. If the device is on, enable airplane/flight mode. This will ensure they are not able to remotely wipe the device. You will need to obtain the PIN code from the staff member in majority of instances. Some devices can be accessed using software without the PIN code, however this will not be applicable to the latest devices.

FORENSICALLY ACQUIRE DEVICE

Mobile phones are becoming increasingly more difficult to obtain the data from so we would recommend you utilise forensic software and hardware to take an image of the device. Forensic software will have varying levels of interactions with the mobile device, which can affect whether the data itself is defensible, so make sure you research what software is forensically sound and you obtain suitable training in case the matter requires attendance in court. Through suitable training and certification, you will be able to justify the actions you have taken in imaging the device and explain how the information was obtained from the data set.

AVENUES OF INVESTIGATION

The following are some potential avenues of investigation that relate to data obtained from a mobile device:

- **Correspondence between the two parties**
  This could include call logs, SMS/MMS/iChat messages, various chat applications such as WhatsApp, WeChat, Viber, Messenger etc.
- **Correspondence between the accused and third parties that may mention the defendant.**
- **Internet history**
  This could show the accused performing searches online for the defendants' address, social media accounts, etc.
- **Media**
  This could include photos or videos that the accused has taken of the defendant which could also include valuable data such as time stamps and GPS coordinates.
- **Location data**
  This could provide GPS coordinates to indicate at certain points of time where the accused was in relation to the defendant.
- **Recover deleted data.**
  In some instances, data that has been deleted such as messages can be recovered. As with all deleted data, time is of the essence. The likelihood of recovering deleted data will decrease with time, especially with mobile devices.
- **Linked Devices**
  Bluetooth history from the device may indicate linked devices such as smartwatches or car entertainment units which could provide further avenues to investigate.
- **Cloud Storage**
  The above considerations relate to data contained on the device however a review of the applications may provide further avenues to investigate such as cloud storage of the device or individual applications.

These avenues of investigation can be performed alongside the defendants' statement and a forensic image of their mobile device to corroborate or contradict their claims.

At the end of the day, forensic evidence can be a key source of truth to decipher between contradicting statements.

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Chinese M&A goes under the radar

There is a greater focus on smaller, more strategic deals that attract less scrutiny from government officials, writes **Nick Ferguson**.

After a record-breaking year in 2016, Chinese regulators have been cracking down on overseas acquisitions, particularly debt-funded deals for over-priced trophy assets.

This is clearly visible in the data for outbound M&A. PwC's analysis of transactions in 2018 shows China outbound M&A falling for the third straight year, but the cause is more complicated than a simple regulatory crackdown. In addition to policy factors and capital controls, the consultancy firm also attributes the dwindling outbound deal flow to less access to financing, greater scrutiny of Chinese bidders in many jurisdictions and a generally uncertain environment for overseas deal-making.

Government officials are now scrutinising mega-deals much more closely, which has brought an end to some of the headline-grabbing acquisitions in the natural resources sector that reached their peak in 2012 with Cnooc's US$15 billion deal to buy Canada's Nexen. Deals for iconic hotels and buildings are also a thing of the past, with some of the most infamous acquisitions being unwound in 2018 — HNA has been selling down its US$6.5 billion investment in Hilton Worldwide and Anbang has been seeking buyers for Strategic Hotels & Resorts, which it bought for US$5.5 billion in 2016, and New York's Waldorf Astoria hotel, which it bought in 2015 for US$1.95 billion.

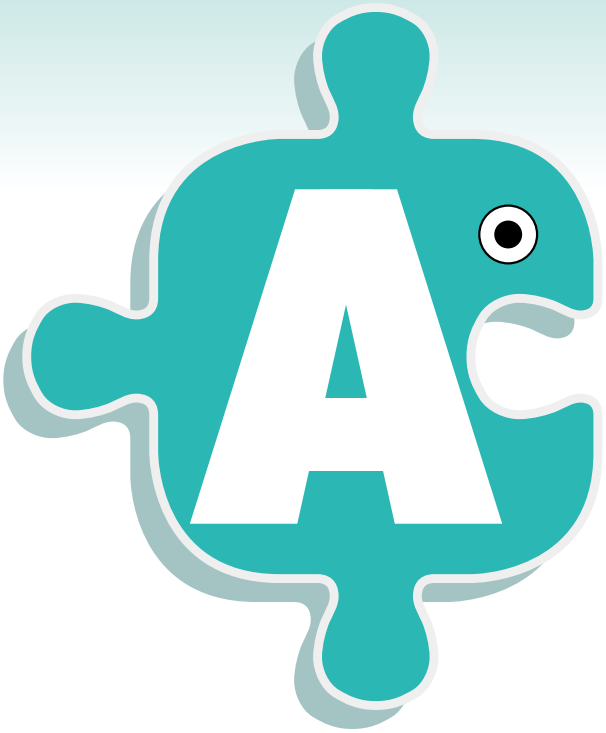
Today, there is a greater focus on smaller, more strategic deals that attract less scrutiny from government officials. Buoyed by sky-high valuations, Chinese tech firms have been leading the outbound charge with a series of acquisitions in emerging markets in 2018, including Alibaba investing in Indonesia and Didi Chuxing buying Brazil's 99 Taxis. China's obsession with luxury brands also continued, with Fosun buying French fashion house Lanvin and Shandong Ruyi Group acquiring Swiss shoemaker Bally.

Outbound M&A might be going under the radar, but overall deal values were almost exactly the same in 2018 as they were in 2017. Yes, outbound deal values were down 23 percent, but private equity (PE) transactions almost completely offset this to bring the total value of Chinese M&A to US$678 billion — roughly 11 percent off the 2016 high point.

Chinese PE investment activity hit new records in 2018 at US$222 billion, which is slightly higher than 2016, which is driven by an abundance of capital, high demand for funding in the private sector and a boom (some say a bubble) in the tech and fintech sectors. The standout deal was the US$14 billion acquisition of Ant Financial by a consortium led by GIC — the largest buyout deal worldwide in 2018.

Asia Pacific

Overall, there were 4,036 deals in the Asia-Pacific (ex-Japan) region in 2018, worth a total of US$717.4 billion, according to Mergermarket, which represents a small 2.6 percent increase in value and a drop of 42 by deal count



Asia Pacific (ex-Japan) M&A league table 2019

Firm		Deal count	Value (US$m)	Change
1.	King & Wood Mallesons	142	111,800	36.7%
2.	Herbert Smith Freehills	122	92,788	30.8%
3.	Allens	62	81,411	66.1%
4.	Freshfields Bruckhaus Deringer	39	74,419	16.4%
5.	Linklaters	35	58,882	16.0%
6.	Sullivan & Cromwell	26	56,462	20.4%
7.	Allen & Overy	59	56,095	124.2%
8.	Shardul Amarchand Mangaldas & Co	105	52,364	126.7%
9.	AZB & Partners	100	49,494	48.3%
10.	Davis Polk & Wardwell	20	46,811	85.6%

Source: Mergermarket

compared to 2017.

In terms of sectors, industrials and chemicals was the most active by both value and volume, with US$115.2 billion across 832 deals, an increase of 23.5 percent in value compared to 2017. This was led by Wanhua Chemical's US$12.7 billion acquisition of Yantai Wanhua Chemical.

There were also some significant deals in India during the year, including the largest deal to target the region in 2018 — Walmart's US$16 billion acquisition of Indian online retailer Flipkart. This transaction helped to push Indian M&A to the highest annual value on record, according to Mergermarket. At US$99 billion, India is now the second most targeted country behind China, fuelled at least in part by the country's new bankruptcy code, which was passed in 2016 and is providing a significant M&A opportunity for the acquisition of distressed companies.

Across the region, both outbound and inbound M&A experienced growth. Private equity firms remained active, despite buyout activity experiencing a dip, with 514 deals worth US$124.1 billion announced in 2018, a 3.4 percent decrease by value compared to 2017. However, at US$120.5 billion, PE exit value reached its highest value on record.

Looking at Mergermarket's legal adviser rankings, King & Wood Mallesons tops the chart by both value and deal count, advising on 142 deals worth US$111.8 billion, followed by Herbert Smith Freehills and Allens.

Japan

In a record year, Japanese outbound M&A soared to unprecedented levels, led by two global deals that made it into the global top 10 for 2018: the US$26 billion Sprint-T-Mobile merger and Takeda's US$80 billion offer for Shire.

As Japanese companies continue to focus on overseas growth amid a dwindling home market, there were 311 outbound transactions worth US$171.8 billion, with 25 deals in the billion-dollar bracket. This is the highest value in Mergermarket's records, almost 50 percent above the previous record set in 2012.

In terms of Japanese targets, there were 444 deals in 2018, worth a total of US$46.8 billion, which was slightly higher than the value in 2017. The vast majority of these deals were entirely domestic, with just US$6 billion of inbound M&A, reflecting the low growth potential and high valuation of most Japanese companies. Activity picked up in the last three months of the year, with US$15.9 billion of deals across 100 transactions, accounting for an 8.1 percent share of Asian M&A.

Private equity suffered an almost total collapse, with the value of buyouts down by 86.9 percent to US$2.1 billion from 54 deals.

Fried Frank Harris Shriver & Jacobson advised on the highest value of Japanese deals, having played a role on five transactions with a total value of US$158 billion, while Mori Hamada & Matsumoto led the legal adviser rankings by deal count, having advised on 73 deals worth US$114.6 billion.

Developments in Thai M&A

Corrupt practices, environmental breaches and merger filing are becoming more significant priorities for clients.

By Ratana Poonsombudlert and Pranat Laohapairoj, **Chandler MHM**

What are current trends in M&A in Thailand?
In general, work mechanisms of and trends in M&A in Thailand have remained largely unchanged, except for noticeable enhanced consideration in the areas of compliance, anti-trust review and environmental breach. In the past, compliance with the law was just an ordinary part of the overall due diligence process. However, in the past year, more clients have been asking specific questions about corrupt practices by target companies, environmental breaches and most notably merger filing, suggesting that these issues have recently become an upgraded priority for clients when doing M&A in Thailand, and possibly elsewhere.

What significant changes have there been in regard to recent regulations that would impact M&A transactions?
The current government has introduced significant legislation in many different sectors to improve the ease of doing business in Thailand. Significantly, a new Trade Competition Act came into force in December of 2017, replacing its predecessor, which had been lauded for being ineffectual and unenforceable. At the end of 2018, secondary laws under the new Trade Competition Act were introduced. These secondary laws achieved a level of clarity that had previously been lacking under the old act. Most notably, some high-impact M&A activities will now require either pre-merger filing or post-merger notification under this new law, thus adding another hurdle for the operators to manoeuvre around.

What possible impact will the new Trade Competition Act have on M&A transactions?
Under the Act, if the contemplated merger (whether amalgamation, asset or share acquisition) between the two businesses results in the new business operation as being classified as a "dominant player", then the merging parties would need prior approval from the Trade Competition Commission before proceeding with the merger. If the merger is approved, the Commission may prescribe

Some high-impact M&A activities will now require either pre-merger filing or post-merger notification under this new law, thus adding another hurdle for the operators to manoeuvre around

certain conditions for the businesses to abide by, such as specific business undertakings, timelines for mergers, etc. However, if the contemplated merger would only result in a material reduction of competition in the market (pursuant to characteristics announced by the Commission), then the merging parties would only need to notify the Commission of the results of the merger within seven days after the date of the unification, and there would be no need for any pre-merger approval. This, in effect, will add another process to the overall M&A scheme and will require the parties to consider very carefully when and how exactly they want to proceed with internal factual consideration and subsequent filing, without jeopardising confidentiality and other related tasks. Furthermore, some transactional documents, such as MOUs or LOIs, may now need to add specific provisions in the case that such document is signed before the merger filing issue is fully considered and settled so that the parties can peacefully and smoothly part ways in case the merger is rejected by the authority.

What type of activities does the New Trade Competition Act cover?

The New Trade Competition Act generally covers five areas of market activities based on regulatory division. These include 1) dominant players; 2) merger control; 3) cartel regulations; 4) catch-all interference; and 5) cross-border activities. These five areas can, in turn, be lumped together to form three main groups of regulated activities, namely: 1) abuse of others, which includes both abuse by dominant players and those by smaller players, 2) merger control, which includes merger filing and approval, and 3) cartels, which includes same-market cartels, vertical cartels, cross-market cartels and even international cartels, although enforcement is practically limited to Thailand.

How does the New Act affect cross-border M&A transactions?

Merger control under the new Trade Competition Act technically regulates offshore M&A transactions as well as onshore M&A activities, meaning merger filing may technically be required even if the M&A activities do not take place in Thailand at all, such as when two foreign competitors amalgamate and both have competing subsidiaries in Thailand. However, the officers have publicly stated numerous times that they have no control or enforcement power outside Thailand and will not be taking any actions against any party outside of Thailand, in essence hinting that offshore M&A can take place without much consideration for Thai merger controls, as long as no part of the M&A transactions is effectuated in Thailand. This technical discrepancy, in any case, is an area that we are closely monitoring.

What are significant checklist items that in-house counsel needs to consider when doing cross-border M&A in Thailand?

As mentioned in our discussion about the new Trade Competition Act, in-house counsel must consider whether any contemplated M&A transaction would result in the new company being considered as a "dominant player," and pay attention to the resultant company's sales/value. The New Act includes significant penalties for failure to notify or receive pre-

Ratana Poonsombudlert

> Merger control under the new Trade Competition Act technically regulates offshore M&A transactions as well as onshore M&A activities, meaning merger filing may technically be required even if the M&A activities do not take place in Thailand

merger approval from the Trade Competition Commission. Penalties also may apply to directors, managers or responsible individuals for corporate entities that have violated the New Act, if such individual(s) had instructed that entity to enter into a transaction that violates the New Act or omitted to provide instruction that would have otherwise prevented violation.

In addition to the new requirements under the New Act, in-house counsel must be aware of existing restrictions on foreign ownership of Thai companies. Under the Foreign Business Operation Act (FBOA), a "foreigner" is prohibited from engaging in certain business activities without a Foreign Business Licence. A foreigner is broadly defined under the FBOA as:

a. A natural person not of Thai nationality;
b. A juristic person not registered in Thailand;
c. A juristic person registered in Thailand with 50 percent or more of its shares held by a person specified in a. or b.;
d. A limited partnership or registered ordinary partnership whose managing partner or manager is a person specified in a; or
e. A juristic person registered in Thailand with 50 percent or more of its shares held by a person specified in c. or d.

It is important to note that the FBOA has a catchall provision that generally applies to almost all service business activities, even if such activity is not specifically listed under the prohibited activities list. There are also defined industries that are specifically exempted from the catchall provision. However, such business activities (for example: securities businesses, trust businesses, banking and insurance) fall under other laws and regulations (16 total separate laws) that impose other foreign ownership restrictions on those business activities.

The third aspect that in-house counsel should be aware of is restrictions on foreign ownership of land. Generally, foreigners may not own land unless specific laws/regulations would allow otherwise (approval from the Board of Investment or becoming a Concessionaire under the Petroleum Act). Land ownership of a Thai juristic entity involved in a merger that would result in that majority owned Thai becoming a "foreigner" should be considered. Land owned by the resultant foreign company needs to be disposed of within a year of the transaction without the proper approval to continue ownership.

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Trends in mergers and acquisitions in Indonesia

The government has recently promulgated several regulations that are beneficial for M&A transactions.

By Ferdinand Jullaga Tambunan and Albertus Andhika, **MKK**

The regulatory aspect of mergers and acquisitions often plays a vital role in the success or failure of the transaction and can affect the transaction structure. This article sets out our analysis of Indonesian regulatory innovations recently introduced and the impact on investors in the course of M&A involving Indonesian companies.

> In 2018, the Indonesian government promulgated several regulations that are beneficial for doing business, such as establishment of a new online system called Online Single Submission

The Indonesian Investment Coordinating Board (BKPM) released its 2018 report and stated that investment had reached Rp721.3 trillion (US$51.5 billion), an increase of 4.1 percent compared to that of 2017. Indonesia also ranked 45th in the 2018 Global Competitiveness Report published by the World Economic Forum, a higher ranking than in 2017. The improvement occurred because, according to Asian Development Outlook 2018, Indonesia recently experienced robust GDP growth of 5.2 percent. The rate is higher than in that of most other in South East Asian countries, such as Singapore and Malaysia. In addition, Standard & Poor's and Moody's ranked Indonesia's credit rating as investment grade, making Indonesia an attractive target for investment.

In 2018, the Indonesian government promulgated several regulations that are beneficial for doing business, such as establishment of a new online system called Online Single Submission (OSS), which simplifies

the establishment of a company in Indonesia, the simplification of foreign worker regulations and tax treatment incentives for venture capital. Further, the Indonesian government also issued rules on declaring beneficial ownership to help the government protect Indonesia's business sector from money laundering practices. We also saw more case precedents regarding the importance of notifying Indonesia's Commission for the Supervision of Business Competition (KPPU) of M&A transactions to avoid late penalties. These regulatory reforms and implementation thereof have led to numerous M&A transactions in Indonesia throughout 2018, and it is expected that this trend should continue through 2019.

Indonesia's OSS cutting red tape for M&A transactions

As part of the commitment of the Indonesian government to make the Indonesian market lucrative and efficient for investment, the Indonesian government issued Government Regulation No. 24 of 2018 on Electronically Integrated Licensing Services (GR 24/2018), which has been effective since June 21, 2018. GR 24/2018 introduced the OSS system, which integrates the bureaucracy of multiple government institutions into a one single system. OSS shortens the licensing process for corporate actions (including M&A) and simplifies licensing procedures for greenfield foreign direct investment by facilitating the applications for investment licences electronically.

In respect of M&A, GR 24/2018 introduces a shorter timeframe for M&A transactions. Previously, M&A conducted by a foreign company required the target company or merged company to obtain approval from BKPM prior to the closing of the transaction. Under GR No. 24/2018, such approval is no longer needed, which cuts the time required to obtain BKPM approval (which usually takes seven days or even more). In practice upon issuance of GR 24/2018, the target company or the merged company are no longer required to have BKPM approval, and such company can immediately amend its articles of association to reflect the new shareholding structure. After amending its articles of association, such company then needs to liaise with a public notary to restate such amendment in a notarial deed.

> Given recent practice, in our view it is critical for investors to carefully choose the effective date of the transaction to avoid a KPPU penalty due to late notification

Following the execution of a notarial deed by the relevant parties, the notary will then submit a notification or request for approval to the Minister of Law and Human Rights (MoLHR) regarding such amendment via the general legal administration online system (AHU Online System). Subject to the company's obligation fulfilment to create its OSS account, upon such notification, the company's OSS account will automatically reflect the amendment, as it is connected to the AHU Online System. Investors, however, should also be aware that OSS is a self-declaration system, and it creates a post-audit obligation to the relevant government agencies with respect to the submitted OSS application. This means investors should accurately assess their compliance towards prevailing regulations (eg, compliance with regard to the shareholding limitation under Indonesia's Investment Negative List or other requirements depending on the line of business of the relevant Indonesian company) before closing the M&A transaction, and this compliance assessment is crucial to prevent the M&A transaction from being possibly cancelled in the future by the government.

Simplification of licensing procedures for foreign workers

Foreign investors typically appoint designated people to hold positions in the target company or merged company, most likely a member of the Board of Commissioners. In the past, employing foreign workers required a significant amount of time due to the complex licensing process, where the company as employer had to obtain an expatriate work permit (Izin Menggunakan Tenaga Kerja Asing, or IMTA) in addition to a Foreign Manpower Utilisation Plan (Rencana Penggunaan Tenaga Kerja Asing, or RPTKA).

Ferdinand Jullaga Tambunan

Following promulgation of Presidential Regulation No. 20 of 2018 on Expatriate Manpower Utilisation (PR 20/2018), which revoked Presidential Regulation No. 72 of 2014 on Utilisation of Expatriate Manpower and Implementation of Education and Training for Supporting Workers For Expatriate, the Indonesian government has cut the red tape to employ foreign workers, meaning that a company only needs to obtain RPTKA. There is no longer a requirement to obtain IMTA. Please note, however, that other licensing requirements, such as Limited Stay Visa and Limited Stay Permit for expats still apply. PR 20/2018 provides that expatriates can apply for a Limited Stay Visa and Limited Stay Permit simultaneously.

Income tax treatment for venture capital

In the last five years, numerous Indonesian technology companies have been acquired or funded by global venture capital. Some Indonesian technology companies even achieved unicorn status after receiving billion dollars in investment from venture capital. The government set out the Road Map for e-Commerce development for 2017-2019 in Presidential Regulation No. 74 of 2017. As part of the commitment of the government to support its e-commerce investment programme, the Minister of Finance issued Regulation No. 48 of 2018, regarding Tax Treatment for Venture Capital's Investment in Micro, Small and Medium Enterprises (MOF 48/2018), which provides an incentive in the form of income tax treatment to an Indonesian established venture capital firm that makes an equity investment in micro, small and medium enterprises. MOF 48/2018 categorised micro, small and medium enterprises as companies that recorded net sales of no more than Rp50 billion. The income tax treatment provided under MOF 48/2018 is a tax treatment that treats the dividend earned by venture capital as part of the equity investment as non-taxable income. However, this income tax treatment also has a limitation, whereby an equity investment made by a foreign venture capital firm is not subject to this income tax treatment. In other words, only a venture capital company that is established in Indonesia by way of foreign direct investment or local investment can enjoy such income tax treatment. In addition, the income tax treatment is only given for 10 years of investment, and the company that receives the investment cannot be a publicly-listed company.

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Recent practice of Indonesian competition law

In Indonesia, any company conducting mergers, consolidations, and acquisitions must notify the KPPU of the transaction within 30 working days post-transaction. Unlike in other countries where M&A transactions usually can only be executed if the parties have received the green light from the competition agency, Indonesia applies a post-audit system and therefore it is possible for the KPPU to cancel the transaction if the KPPU determines that such transaction has created a monopoly or unfair business competition. There are minimum thresholds for such notification obligation, namely, combined assets of the parties exceeding Rp2.5 trillion and/or the combined sales of the parties exceeding Rp5 trillion. KPPU is authorised to impose a penalty to companies that are late in notifying the KPPU of such a transaction, and such penalty will be in the amount of Rp1 billion per day of delay, with a maximum penalty of Rp25 billion.

KPPU recorded 70 M&A deals in 2018 that met the threshold for M&A notification to the KPPU with a total value of approximately Rp150 trillion. In 2018, there was a case where KPPU imposed a penalty against a foreign direct investment company for being late in notifying an acquisition. Based on the information available to the public, the case revolved around a different perception between the KPPU and the company in determining the day the transaction occurred. In this case, the KPPU determined the effective date of the transaction based on the date of the evidence of notification to MoLHR while the company determined that the effective date of the transaction should be based on the approval they received from BKPM where such approval was given 19 days after the company recorded its transaction with the MoLHR. As a result of

the late notification, the company had to pay a penalty in the amount of Rp2.8 billion to the Indonesian government. Given recent practice, in our view it is critical for investors to carefully choose the effective date of the transaction to avoid a KPPU penalty due to late notification.

Beneficial ownership

In an effort to eradicate money laundering and terrorism, the Indonesian government promulgated Presidential Regulation No. 13 of 2018, regarding Implementation of the Principle of Recognising Beneficial Ownership of Corporations for the Prevention and Eradication of Money Laundering and Criminal Acts of Terrorism Funding (PR 13/2018), which went into effect on March 5, 2018. PR 13/2018 created an obligation for all types of corporations established in Indonesia to report the structure of their beneficial ownership. PR 13/2018 determines beneficial ownership in a company as any individual that meets any of the following criteria:

1. Holds at least 25 percent of a company's shares;
2. Holds at least 25 percent of the total voting rights;
3. Receives at least 25 percent of the company's yearly profits
4. Has control to appoint or dismiss the board of directors and board of commissioners;
5. Has the power to affect or control the company without having to obtain authorisation from any party;
6. Receives benefits from the company's activities; or
7. Is the true owner of the funds used for the ownership of the company's shares.

By considering the criteria of beneficial ownership above, PR 13/2018 has direct implications for companies that have an economic benefit (such as dividends) and control (such as voting rights) in a particular company that have been assigned to an outside party (non-shareholders) under a contractual arrangement. The disclosure of beneficial ownership might create an additional obligation for the beneficial owner, such as in the form of taxation or sanctions for violating certain regulations. Foreign investors considering entering Indonesia through greenfield foreign direct investment or M&A or a contractual arrangement should consider the implication of PR 13/2018 on their business plan. Regardless of the above, issuance of PR 13/2018 indicates that the Indonesian government has started to improve transparency in business activities to promote legal certainty in doing business in Indonesia.

> Foreign investors considering entering Indonesia through greenfield foreign direct investment or M&A or a contractual arrangement should consider the implication of PR 13/2018

Conclusion

The Indonesian government's regulatory innovations in 2018 have had a positive effect on M&A since the newly-established OSS system has shortened the lengthy procedure to close an M&A transaction. Simplification of the procedure to obtain a foreign worker's permit and income tax treatment for venture capital companies have provided significant benefits for foreign investors who wish to conduct business in Indonesia. The introduction of rules on beneficial ownership disclosure improves transparency and legal certainty in Indonesia. The recent KPPU practice in interpreting provisions under GR 57/2010 related to notification in M&A transactions gives a clear perspective on the manner in which KPPU determines the effective date of a M&A transaction.

In 2019, as promised by the Indonesian government through the 16th economic policy package on November 16, 2018 (economic policy package), we expect the Indonesian government to issue a new negative investment list that will replace Presidential Regulation No 44 of 2016, regarding Lists of Business Fields that are Closed and Business Fields that are Conditionally Open to Investment. According to the economic policy package, the new negative list that will be issued will open up 54 new lines of business for up to 100 percent foreign investment.

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Managing the relationship with special managers in Vietnam

Successful cooperation between a special manager and the acquirer requires the involved parties to know, name and manage this relationship.

By Bui Ngoc Hong, **LNT & Partners**

A "special manager" in this article means a key manager who formerly founded/owned a company and, after selling most or all of their shares in the company, is retained by the buyer to continue working there as a key manager for an agreed period of time.

Warren Buffet once said, "You can't make a good deal with a bad person." Yet ironically, it is also often difficult for people who are "too good" to make a good deal with each other, and this precisely describes the relationship between the acquirer and the special manager(s) they retain for the acquired business. The manager cannot be a "bad" person, at least in terms of talent, since they have built up a company successful enough to attract the acquirer. Similarly, neither can the acquirer be considered a "bad person" in that they have chosen to not only acquire the manager's company, but also to retain the manager for cooperation.

A special manager is special not only because of their talents, but also because of their legal status. Before selling their shares in their own company, they are the owner-employer. Subsequently, after selling the said shares, they may be perceived as being employed by the very company which they no longer own. The nature of the legal status

"Wearing the "employee" shirt may not sound desirable by name, but it brings an abundance of benefits and protection if the special manager works in Vietnam"

Bui Ngoc Hong

would be more difficult to define if the manager sold only part of their shares and stayed at the company — which they now co-owned with the acquirer — as a minority shareholder and concurrently its manager. The circumstance is special in that it is almost impossible to decidedly label the manager as an employee or not of the company.

But successful cooperation between the special manager and the acquirer requires the involved parties to know, name and manage this relationship.

What legal shirt should the relationship between a special manager and an acquirer be dressed in?

Basically there are two designs that a special manager could wear: an employment relationship shirt which is manifested as an employment agreement, or a service supplier shirt manifested as a management service agreement. In the former, the special manager is an employee, while in the latter, a service supplier. The laws of Vietnam permit the parties to freely decide which legal shirt they would like to put on.

For the manager, the role "employee" is self-explanatorily contrary to "employer", and thus it would seemingly be more desirable for them to wear the shirt of a service supplier. In reality, however, most would prefer to choose an employment agreement, not a service agreement, to be the legal instrument governing their relationship with the company. Why?

What's in it for the special manager to be positioned as an "employee"?

Wearing the "employee" shirt may not sound desirable by name, but it brings an abundance of benefits and protection if the special manager works in Vietnam. If defined as "employment" the relationship will be governed exclusively by the laws of Vietnam, particularly by Vietnamese labour regulations which are infamous for their employee-friendly reputation, and further protected by the exclusive jurisdiction of the Courts, not arbitration.

Being an employee means the special manager will have access to the full social welfare benefit package, which consists of, for instance, annual paid leave, maternity leave (of six months), payment of social insurance and so on.

On the other hand, sanctioning an employee for breach of the employment agreement is required to undergo a tightly regulated procedure, often with the participation of employee-protecting agencies such as the trade union and the conciliation organ. Provisions on confidentiality and non-competition are fairly difficult to enforce because, *inter alia*, these terms may be deemed a violation of the employee's freedom to choose their job and

> "… the relationship between an acquirer and a special manager is neither purely of an employment nor a service supplier-recipient nature"

workplace. Should termination be the employer's final recourse, termination of an employment contract, especially those with employees of high seniority, is often difficult if not impossible. By contrast, from where the special manager stands, unilateral termination is just a matter of prior notice.

What's in it for the acquirer if the special manager wears the "service supplier" shirt?

It would be easier for the acquirer to manage the relation if the parties can agree that the special manager would wear the "service supplier" shirt. The legal relationship would now be governed by commercial, not labour, law, and can even be made subject to a foreign jurisdiction; employee related benefits can be cut; confidentiality and non-competition provisions should be contractually binding and enforceable; and termination of the relationship is to be freely agreed by and subject to negotiation between the contracting parties without interference from pro-employee regulations.

Is a win-win possible?

In many cases, the acquirer needs the special manager so much that the former must agree for the latter to wear the "employee" legal shirt. In such a case, how should the conflicting needs be balanced so as to bring about a win-win for both parties?

First, agreement on termination of the relationship should be set out in a separate agreement, with effective conditions and timing to be controlled by the acquirer. In addition, the managerial title of the special manager should be forested out not in the labour contract but in a separate appointment which can be revoked by the company.

Second, agreements on confidentiality and non-competition should in similar veins be set out in a separate agreement to be governed like any other civil transactions. This would pave the way for the argument that these agreements are not part and parcel of any labour contract but should be treated as independent agreements subject to the same legal regime and having the same enforceability as any other civil agreement.

Last, but of course not least, is to build up a cooperative, win-win culture for the relationship. As discussed thus far, the relationship between an acquirer and a special manager is neither purely of an employment nor a service supplier-recipient nature. In such a special relationship, in addition to trust and respect, it is the clarity on how the parties are to exercise their agreed respective powers, how they are to cooperate for their mutual benefits and terminate their relationship as agreed, that will be the most enforceable and efficient tool for making a good deal between "too good" persons.

This article is for information purposes only. Its contents do not constitute legal advice and should not be treated as detailed advice in any individual case. For legal advice, please contact our partners.

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