asian-mena Counsel

Volume 17 Issue 7, 2020

ANTI-TRUST & COMPETITION

Plus:

In-house recruitment
How Covid-19 has affected hiring

Cathay's US$5bn rescue
Rare HK government bailout

Covid-19 in the Middle East
Will legal changes be permanent?

asian-mena
Counsel

Nick Ferguson – Managing Editor
nick.ferguson@inhousecommunity.com

Leo Yeung – Design Manager
leo.yeung@inhousecommunity.com

Wendy Chan – Global Head of Events
wendy.chan@inhousecommunity.com

Rahul Prakash – Publisher
rahul.prakash@inhousecommunity.com

Yvette Tan – Head of Research and Community Development
yvette.tan@inhousecommunity.com

Yannie Cheung – Office Administrator
yannie.cheung@inhousecommunity.com

Tim Gilkison – Founding Director
tim.gilkison@inhousecommunity.com

Patrick Dransfield – Publishing Director
patrick.dransfield@inhousecommunity.com

Arun Mistry – Director

Editorial Enquiries
Tel:...................... (852) 2542 4279
editorial@inhousecommunity.com

Advertising & Subscriptions
Tel: .... (852) 2542 1225
rahul.prakash@inhousecommunity.com

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
- **IN-HOUSE CONGRESS™** events

Hosts of
- **www.inhousecommunity.com**
- **www.mycareerinlaw.com**

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

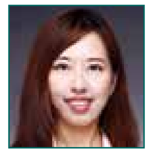
ISSN 2223-8697

Feature contributors

Sharon Shi is a senior partner of *AllBright Law Offices Shanghai*. Her main practice areas include cross-border M&A, international capital markets, compliance and dispute resolution. She is qualified to practise in Mainland China, Hong Kong SAR, and England and Wales.

Yongliang Wang is a lecturer of the faculty of law at Shanghai Customs College and a part-time lawyer at *Allbright Law Offices Shanghai*. He deals with customs and tax matters, providing enterprises with whole-chain and full-field customs legal services.

Michael Gu is a founding partner of *AnJie Law Firm* based in Beijing. He specialises in competition law, corporate compliance and M&A.



Grace Wu is an associate of *AnJie Law Firm*. Her practice focuses on antitrust/competition and compliance.

Abdulla Galadari is senior partner at *Galadari Advocates & Legal Consultants*, where he is the principal professional behind the growth strategies of many private and public organisations, who today continue to develop under his strategic input.

Ken Dixon is a partner at *Galadari Advocates & Legal Consultants* with more than 25 years of legal experience. He specialises in corporate and commercial law, projects and real estate transactions, M&A and joint ventures.

Fadi Hassoun is a partner at *Galadari Advocates & Legal Consultants*, managing the Abu Dhabi office. He specialises in corporate and commercial matters and dispute resolution focusing on real estate, employment and labour, financial crime and criminal law.

Camilla Worthington is a managing director at *Lewis Sanders* working with lawyers at associate, counsel and partner level. She has successfully placed lawyers into both in-house and private practice teams across the region, building long-term relationships with both clients and candidates.

Chris Chu is a director at *Lewis Sanders* working with candidates and clients across both private practice and in-house recruitment, with a focus on financial services and funds in China and Hong Kong since 2011.

Vasanth Rajasekaran is a partner at *Phoenix Legal*. He is based out of New Delhi and his practice areas include dispute resolution (litigation and arbitration), aerospace, defence and aviation, infrastructure projects, energy and natural resources, and competition law.

Reshma Ravipati is an associate at *Phoenix Legal*. She is based out of New Delhi and her practice area is dispute resolution (litigation and arbitration).

In this issue

Volume 17 Issue 7, 2020

Anti-Trust & Competition

04

JURISDICTION UPDATES

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

INDONESIA


By Frederick Simanjuntak and Lebdo Dwi Paripurno

MAKARIM & TAIRA S.
COUNSELLORS AT LAW

Summitmas I, 16th – 17th Floors, Jl. Jend. Sudirman Kav. 61-62, Jakarta 12190, Indonesia
Tel: (62) 21 5080 8300 / Fax: (62) 21 252 2750
E: Frederick.Simanjuntak@makarim.com
E: Lebdo.Paripurno@makarim.com
E: info@makarim.com
W: www.makarim.com

Domestic non-deliverable forwards under Indonesian law

As another effort to support and maintain the stability of the exchange rate of Rupiah, Bank Indonesia allowed and governed domestic non-deliverable forward ("DNDF") transactions since 2018. From the customers' perspective, A DNDF can be an additional instrument for an investor or business actor to hedge their exchange rate risk. Given this, the Government of Indonesia aims to enhance investors, exporters or importers' confidence in performing their business and investments in Indonesia as they have another instrument to mitigate the risk of the Rupiah exchange rate.

The main difference between a DNDF and a normal forward transaction is that in a DNDF there is no exchange of a notional or principal amount in the transaction. In practice, the profit or loss is calculated on the notional amount of the agreement taking the difference between the agreed-upon rate and the spot rate at the time of settlement.

To govern DNDF transactions, in 2018, Bank Indonesia issued Bank Indonesia Regulation No. 20/10/PBI/2018 on DNDF transactions, which has been amended twice, firstly in 2019 and secondly in 2020 ("DNDF Regulation"). The DNDF Regulation provides a more certain legal basis for banks and business actors when entering into a DNDF transaction.

Under the DNDF Regulation, a DNDF is a standard foreign exchange derivative transaction against Rupiah (plain vanilla) in the form of a forward transaction with a fixing mechanism conducted in the domestic market. A fixing mechanism here means that the transaction will be settled by calculating the difference between the forward transaction rate and the reference rate on a certain date specified in the contract (fixing date). A DNDF transaction between a bank and a customer, and a bank and a foreign party requires one of the following underlying transactions:

a. a domestic or offshore trading of goods and services;
b. an investment in the form of a direct investment, loan, capital or other domestic and offshore investment;
c. the granting of a bank loan or finance in a foreign currency for trading and investment activities, specifically for a transaction between a bank and a customer; or
d. the ownership of a Rupiah account by a foreign party.

The underlying transaction must be final, which means that there should be no change to the value of the underlying transaction during the DNDF. As a result, if an investor enters into a DNDF transaction to hedge its paid-up capital in a company, as long as the DNDF transaction is in force, there should be no change to the amount of the paid-up capital being hedged. In practice, under a binding contract the bank usually requires the investor to procure that the company the paid-in capital of which is being hedged does not to make any change to its paid-in capital or shareholders composition during the DNDF transaction. However, the DNDF Regulation does not specifically address the impact of a DNDF transaction if the company, the paid-in capital of which is being hedged through a DNDF, has a budget deficit. It seems that Bank Indonesia allows the market to interpret this on its own.

A DNDF transaction must be settled through a fixing mechanism using the JISDOR benchmark rate, for the US Dollar against Rupiah on the date determined in the contract. Meanwhile, the settlement of a DNDF transaction using other foreign currency should refer to middle exchange rate of Bank Indonesia. The settlement of DNDF transaction must be in Rupiah. However, the bank may not transfer Rupiah offshore. The Rupiah denominated funds resulting from the settlement of a DNDF transaction may be transferred offshore in a foreign currency after a spot transaction or forward transaction is entered into.

The DNDF Regulation prohibits a DNDF transaction from being rolled over or terminated early. However, the DNDF Regulation allows the unwind of a DNDF transaction provided that the bank considers the track record of the customer. It may require a certain arrangement if the parties wish the DNDF transaction to continue after its settlement.

Although under the 2020 amendment to the DNDF Regulation, Bank Indonesia has expanded the underlying transactions for DNDF transactions in the form of Rupiah accounts held by foreign parties, including savings accounts, demand deposits and term deposits, for investment purposes to accommodate investment returns and other purposes, certain aspects or practical issues are not specifically covered in the regulations. It remains to be seen whether our government will address these issues in a regulation in the near future. Nevertheless, these DNDF transactions have been part of the government's effort to strengthen the country's financial system stability, in particular, during the COVID-19 pandemic. It is hoped that DNDF transactions in the market will provide confidence to business actors regarding owning assets in Rupiah.

UAE


By Tamara El-Shibib and David Harper

Cedar White Bradley IP LLC
Burj Al Salam, 47th Floor, 2 Sheikh Zayed Road, PO Box 66300, Dubai, United Arab Emirates
Tel: (971) 4 3816888
E: tamara.elshibib@cwblegal.com – Tel: (971) 4 381 6825
E: david.harper@cwblegal.com – Tel: (971) 4 381 6840
E: dubai@cwblegal.com
W: www.cwblegal.com

Patent filing strategies in the GCC

If you are interested in protecting your technology in the region, the question shouldn't be where to patent your technology but how.

Any idea capable of demonstrating a degree of inventiveness and novelty is potentially patentable. In addition to higher profits gained from dominating a market, a strong patent portfolio can provide access to complementary technology and new markets. For those looking to develop or commercialise their technology in the Gulf Cooperation Council (GCC) region, understanding the options for securing patent protection is key.

There are three routes to securing patent protection in the GCC, each differing in cost and length. An application can be filed at the national patent office of any GCC state; through the international Patent Cooperation Treaty (PCT) filing system; or at the regional GCC Patent Office.

Filing at a national patent office in the GCC

All GCC states have a national patent office which is generally located in a ministry department and handles IP registrations. Official fees are published on the ministry websites. In all cases, a local patent agent must be appointed to file national applications. A full copy of the application in English is required at the time of filing, with Arabic translations late filed. The average time from filing to grant is three to four years however this can vary greatly among the national patent offices.

Filing through the PCT

The PCT is an international patent filing system administered by the World Intellectual Property Organisation (WIPO). By filing a single international application under the PCT, applicants can simultaneously seek protection in a large number

"If you are interested in protecting your technology in the region, the question shouldn't be where to patent your technology but how"

of countries (153 member states) simplifying the filing process and eliminating the high cost of meeting translation and legalisation requirements in every state.

An applicant filing through the PCT system can submit the application to any PCT 'Receiving Office' or directly to the International Bureau (IB) at WIPO. Currently in the GCC, the Patent Offices of Bahrain, Qatar, Oman and Saudi Arabia are listed as Receiving Offices for international applications.

At 30 months from filing, the application enters the 'National Phase' at which time the applicant must confirm the countries for protection by forwarding the application to the designated patent offices and meeting the relevant national filing requirements.

As of September 2016, all six GCC states are members of the PCT so an application filed through the PCT system can designate all GCC states for protection. Although all the GCC states are members of the PCT, the GCC Patent Office is not a member of the PCT.

Patents are territorial, although they can be granted by national or regional patent offices, enforcement is only on a national basis. The protection afforded by a patent is the same regardless of the filing route chosen. A patent in the UAE has the same protection whether it was filed at the UAE patent office, through the PCT system or at the GCC patent office.

Filing at the GCC Patent Office

The GCC Patent Office is a regional patent office based in Riyadh established under the GCC Patent Regulation in 1992. The Office receives and examines GCC patent applications which, upon grant, are purportedly valid in all six GCC states. Although the GCC official filing fees are higher than those of the national offices, applicants have the benefit of a unified filing and examination process. Long-term costs are also reduced as applicants pay one set of annuity fees. In addition, the GCC Patent Office has been speeding up its examination procedures in recent years with some applications being granted in as little as 18 months.

In short, filing and maintaining a patent portfolio is a major investment. An applicant's filing strategy should largely depend on whether they wish to exploit the patent for commercial or defensive purposes, the value proposition, patenting budget, and market entry strategy. Although the PCT route is more expensive, many applicants opt to go down this route because of the automatic designation of member states and the valued International Search Report (ISR) published after 18 months. The PCT route also gives applicants more time to designate countries for protection, delaying the associated national filing costs.

Given the size of the individual GCC markets and their similar demographic and geographic characteristics, a technology that is commercially applicable in one GCC state is likely to be relevant in all GCC states. So, if you are interested in protecting your technology in the region, the question shouldn't be where to patent your technology but how.

Ultimately, each filing route has advantages for an applicant in terms of length and cost and therefore the decision will largely depend on their overall objectives.

Professionals
Recruiting Professionals

Specialising in Legal, Financial Services, and Commerce

ALS international

Hong Kong · Singapore · Beijing · Shanghai

EQUITIES
HONG KONG 2-6 PQE

Multinational financial services company is looking for a mid-level capital markets lawyer. The successful candidate will be expected to support and coordinate with various business lines and internal stakeholders within the APAC region. Fluency in Chinese is a must. (IHC 18305)

JUNIOR LEGAL COUNSEL
SINGAPORE 2-5 PQE

Leading regional asset management firm with a global presence is looking for a junior legal counsel to join their team in Singapore. The ideal candidate should be Singapore qualified with experience in funds, general corporate and/or asset management work at a law firm or a corporate legal department. (IHC 18480)

LEGAL COUNSEL
SINGAPORE 8-10 PQE

Major US-listed company in the IT space is looking for a legal counsel to join their team based in Singapore. The ideal candidate should be qualified in either Singapore, Australia or the UK and have good corporate experience. (IHC 18328)

COMPLIANCE, ASSET MANAGEMENT
SINGAPORE 3-6 YRS

Well established regional asset management firm is looking for a compliance professional to join their legal and compliance team in Singapore. The ideal candidate should have relevant working experience in compliance within the asset management industry or lawyers with funds regulatory experience. (IHC 18454)

CORPORATE M&A COUNSEL
SINGAPORE 8-10 PQE

Major US-listed company in the technology space is looking for a mid-level legal counsel to join their team based in Singapore. The ideal candidate should come with good corporate transactional M&A experience gained either in-house or with a reputable firm. (IHC 18452)

CONFLICTS ANALYST, INTERNATIONAL LAW FIRM
HONG KONG 1+ YRS

International law firm with significant regional presence is looking for a junior conflicts analyst with experience in analyzing and resolving conflicts of interest and managing confidential information issues. Experience in a financial institution or professional services firm would be helpful. IHC (IHC 18481)

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

www.alsrecruit.com

Hong Kong
Andrew Skinner
+852 2920 9100
a.skinner@alsrecruit.com

Singapore
Jason Lee
+65 6557 4163
j.lee@alsrecruit.com

China
Kevin Gao
+8610 6567 8728
k.gao@alsrecruit.com

PHILIPPINES

By Elena Liliosa Q Escober

ACCRALAW®

Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW)
Tel: (63) 2 8830 0000
E: eqescober@accralaw.com
W: www.accralaw.com

Fine prints

In 2016, Mashable approached Stephanie Sinclair to ask permission to use her "Child, Bride, Mother/Child Marriage in Guatemala" photograph, which Sinclair had earlier uploaded to her public Instagram account. In exchange for such use, Mashable offered her US$50 for the licensing rights to the photograph. Sinclair refused.

A few days later, Mashable published the article on its website — with Sinclair's photograph. Sinclair then sued Mashable and its parent company, alleging that they infringed her copyright when they used her photograph without her consent. On April 13, 2020, the District Court of New York denied Sinclair's infringement claim, and ruled in favour of Mashable.

The *Sinclair v. Ziff Davis* case was not the first copyright case that involved organisations sourcing images from individual social media accounts. In the 2014 *AFP v. Morel* case, photographer Daniel Morel sued Agence France Presse and Getty Images, for using and distributing his 2010 Haiti earthquake photographs without his consent and failing to properly attribute the same, despite being notified of such error in attribution. In *Morel,* the Court found sufficient evidence to uphold the infringement claim against AFP and Getty Images, and ruled in favour of Morel.

Where AFP and Getty Images lost, Mashable emerged triumphant against one photographer's copyright. How then was Mashable able to legally use Sinclair's photograph?

Under US copyright law, copyright owners may license their rights to other parties. Thus, US jurisprudence held that copyright owners who permit licensees to grant sublicences cannot claim infringement against such sublicensees if they act within the terms of the licence and sublicence.

According to the *Sinclair* decision, when Sinclair created an Instagram account and set the privacy settings thereof to public, she agreed to be bound by Instagram's Terms of Use, which grant Instagram a "non-exclusive, royalty-free, transferable, sub-licensable, worldwide licence to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works" over the content, consistent with the user's privacy settings. In view of these, the Court found that when Sinclair uploaded her photograph to her public Instagram account, she agreed to allow Mashable, Instagram's sublicensee, to use it in their website.

In *Morel*, AFP argued that it was licensed to use Morel's Haiti photographs. AFP maintained that when Morel posted the photographs on Twitter, he agreed to Twitter's Terms of Service which, in turn, provided AFP licence to use his content. The *Morel* decision rejected such argument, as there was nothing in Twitter's Terms of Service, at the time, that provided AFP with such licence. Nonetheless, the Court stated that "a licence is an affirmative defence to a copyright claim. If only the scope of the licence is at issue, the copyright owner bears the burden of proving that the defendant's copying was unauthorised."

In *Sinclair*, Sinclair argued that the authorisation given to Instagram to sublicense her photograph was invalid since Instagram's Terms of Use was comprised of a series of complex, interconnected documents. According to Sinclair, though Instagram's Terms of Use states that Instagram may sublicense users' content, the sublicence's scope may be found only by reading through other Instagram policies incorporated in the Terms through mere reference. The Court, however, found differently, reasoning that prevailing laws permit the practice of construing as one Agreement documents which incorporate each other through reference, and that "while Instagram could certainly make its user agreements more concise and accessible, the law does not require it to do so".

The Philippine Intellectual Property Code provides that literary and artistic works are protected from the moment of its creation, and that copyright over such works may be licensed through a written agreement. Had Sinclair's case been situated in the Philippines, it may be likely that Courts would rule similarly.

The cases provide insight into the nature and enforcement of copyright. Generally, IP rights owners are expected to be on continuous lookout for infringers. However, whereas applications for registration of trademarks and patents are examined, compared and flagged for possible IP rights violations, and dedicated databases are made available to monitor possible unauthorised use, such resources are not available to copyright owners. Copyright owners have to exercise vigilance from the moment of creation, and safeguarding rights rely mainly on the rights-holder's creativity and initiative.

However, such vigilance cannot be limited to unauthorised use. *Sinclair* is instructive on the consequences of haphazardly agreeing to policies and trusting third parties to always act in favour of its users' rights. Examining policies may be dull, and mostly confusing, but it is dangerous for rights-holders to immediately agree and follow such policies on the basis of convenience. This convenience and faith in such third parties, as *Sinclair* shows, comes at a price of licensing others to limit the rights-holder's rights and protection.

While rights could certainly be made easier to protect and enforce, the law does not require it be so. In a time when conditions are uncertain, and when the options available come with hidden prices, rights-holders must always be vigilant, exercise caution, and, most of all, though tedious, read and question the fine prints.

This article, which first appeared in Business World (a newspaper of general circulation in the Philippines), is for general informational and educational purposes only and not offered as, and does not constitute, legal advice or legal opinion. Elena Liliosa Q. Escober is an Associate of the Intellectual Property Department of the Angara Abello Concepcion Regala & Cruz Law Offices (ACCRALAW). She may be contacted through ***eqescober@accralaw.com*** *or (63) 2 8830 0000.*

VIETNAM


By Nguyen Thu Huyen
and Phan Thi Minh

bizconsult
LAW FIRM

Hanoi: VNA Building, No. 20 Tran Hung Dao Street, Hoan Kiem District, Hanoi, Vietnam
Tel: (84) 0 24 3933 2129, Fax: (84) 0 24 3933 2130
E: huyennt@bizconsult.vn – Mobile: (84) 91 290 8579
E: minhpt@bizconsult.vn – Mobile: (84) 90 462 1350
E: info-hn@bizconsult.vn
Ho Chi Minh: Room 1103, 11th Floor, Sailing Tower, 111A Pasteur, District 1, Ho Chi Minh City, Vietnam
Tel: (84) 0 28 3910 6559, Fax: (84) 0 28 3910 6560
E: info-hcm@bizconsult.vn
W: www.bizconsult.vn

The Law on Investment 2020

The current economic situation in Vietnam has revealed various disadvantages and loop-holes in the legal framework, especially under the backbone law on investment. Though, the Law on Investment 2014 (LOI 2014) has been in effect for six years, new regulations are needed to create a more transparent, favourable and sustainable investment environment. On June 17, 2020, the National Assembly of Vietnam adopted the Law on Investment (LOI 2020), which will take effect from January 1, 2021 with the following salient changes:

List of prohibited and conditional business lines

Debt collection services has been added to the list of prohibited business lines as numerous service providers have abused this business activity to extort properties or to manipulate in the black lending market, causing public and security disorder.

For the list of conditional business lines, the LOI 2020 removes 22 business lines that are deemed to have no direct impact on national defence and security, social morality and public health, or which are already controlled by technical regulations and standards. Most popular businesses no longer belonging to the conditional list include franchising, logistics services, commercial arbitration, debt trading services, shipping agency service, medical equipment inspection service and aesthetic plastic surgery services. In contrast, it supplements a number of business activities to the list including insurance auxiliary activities, fishing vessel registry, architectural services, piping water supply service, data centre services, electronic identification and authentication services, provision of payment service without using customers' payment accounts, among others.

Concretise market access commitment to foreign investors

Market access commitments are now specifically addressed under the LOI 2020. In particular, the government must officially issue a list of business lines not open to foreign investors or which imposed conditions. Accordingly, foreign investors who wish to engage in business lines limited to foreign investors shall meet the conditions of: (i) foreign ownership room, (ii) statutory investment forms, (iii) scope of investment activities; (iv) capacity of foreign investors and business partners participating in investment activities and other regulatory conditions. For all other business activities, foreign investors are equal with domestic investors in all respects. New regulations on detailed list limited to foreign investors under LOI 2020 may improve the transparency and feasibility in applying Vietnam's market opening commitment under the next-generation FTAs.

Favourable mechanism for innovative start-ups

The definition of innovative start-up investment project is given as a project implementing ideas based on the exploitation of intellectual property, technology, new business models and rapid growth potential. Such projects are entitled to investment incentives. Foreign investors who set up medium- and small-sized innovative start-ups are not required to submit investment project nor obtain an Investment Registration Certificate for the purpose of setting up enterprises.

Deemed foreign investors

Previously, the threshold to consider a foreign-invested economic organisation (EO) as a foreign investor was 51 percent or more of charter capital of target company held by (a) foreign investors; or (b) EO which 51percent or more of its charter capital is owned by foreign investors; or (c) foreign investors and EO stated in (b) jointly. Consequently, such EO must satisfy the investment conditions and comply with investment procedures applicable to foreign investors when participating in incorporation of another EO or acquiring interest in an existing EO or investing in the form of BCC. The LOI 2020 deceases this threshold to 50 percent to comply with controlling ratio under newly adopted revised Law on Enterprise.

Cases where M&A approval is required

The LOI 2020 specifies instances where foreign investors must obtain M&A approval before acquiring an ownership interest in the target company as follows:

i. an increase of foreign ownership in the target company engaging in business lines included in the lists set limited to foreign investors;
ii. an increase of foreign ownership in the target company from under 50 percent to exceeding 50 percent of the charter capital;
iii. an increase of foreign ownership in the target company which already exceeds 50 percent of the charter capital; or
iv. the target company is using land located at sea-islands, borderlands and coastal areas and other areas having an effect on national security and defence.

The change is expected to overcome ambiguity of the provisions on cases requiring M&A Approval under the LOI 2014.

Mechanism for selecting investors for implementing investment project

To ensure the uniformity and consistency of the legal system, the LOI 2020 clarifies principles, respective conditions applied for each method of selection of investors for implementing land-use project, including: (i) auction for land use rights; (ii) bid for investor selection; (iii) approval of investor.

By David Lamb

CONYERS

29th Floor, One Exchange Square,
8 Connaught Place, Central, Hong Kong
T: (852) 2842 9511
F: (852) 2845 9268
E: David.Lamb@conyers.com – Mobile: (852) 6469 3377
W: www.conyers.com

Scheme away

Given current financial conditions in the equity markets, opportunities for privatisations abound and schemes or arrangement are all the rage again. They can be used for Bermuda, Cayman and BVI companies.

A scheme of arrangement is essentially an agreement, approved by the requisite majority of shareholders and imposed on the minority shareholders, between a company and its shareholders, as a result of which scheme shares are compulsorily transferred to a bidder or are cancelled, such that the target company becomes wholly owned by the bidder. Schemes of arrangement are therefore an important tool to privatise companies. Indeed, for various reasons, a scheme of arrangement is the most common method to privatise a company listed on HKSE.

Schemes require the approval of a majority in number (headcount test) of scheme shareholders who hold not less than 75 percent in nominal value (share count or value test) of the scheme shares. In addition, any disinterested or independent vote of the scheme shareholders required by any applicable Takeovers Code will need to be obtained.

The share count test is straightforward; the headcount test less so. The jurisprudence simply reflects the struggle of the courts to apply the headcount test, a test originally legislated for *creditors* schemes[1] and bolted onto members schemes in England over a century ago,[2] in today's *equity* markets where depositary interests are held and traded through a single member as a central depositary. Some of the results, for example the concept of creating one, but only one, bicephalic shareholder namely the central depositary or nominee which votes both for and against the scheme, are almost as comical as the Two-Headed Monster itself.

The voting thresholds apply in relation to each class of shareholders. Under the standard test, a class will be formed by persons whose rights are so dissimilar as to make it impossible for them to consult together with a view to their common *interest*.[3] The real question is whether the scheme is one scheme or several schemes and the modern approach tends to focus on rights rather than interests.[4]

> "The arbitrary nature of the headcount test makes it much like a dangerous submerged rock but it is not usually determinative of whether the scheme is approved by shareholders"

The scheme, having been approved by the target board, may be promoted by the board and scheme shareholders who hold their shares through a central depository may be encouraged to have their shares registered in their own names so that they can be counted in the headcount test, even if they may not be counted for the purposes of the Takeovers Code. This legitimate enfranchisement of true beneficial owners is a far cry from the share splitting machinations of the PCCW case.[5] In this way, although still arbitrary, the dangers of the headcount test can perhaps be minimised. Thankfully, only rarely does the headcount test rear its ugly *head*; Glorious Property Holdings Limited and New World China Land Limited, being the two examples.

In the absence of opposition by a minority shareholder at the petition hearing (which would be highly unusual), the court is likely to sanction the scheme if (a) the statutory provisions have been complied with; (b) the scheme shareholders were fairly represented by those attending and voting at the court meeting; (c) the statutory majority acted bona fide and there was no coercion of minority shareholders; (d) an honest and intelligent man acting in respect of his interests as a scheme shareholder might reasonably approve the scheme. This latter test is a universe away from the right of dissentient shareholders to have the fair value of their shares assessed by the court in a long-form cash squeeze-out merger.

From a buy side perspective schemes of arrangement are very attractive. Assuming the statutory threshold can be met (including the arbitrary headcount test) as well as any disinterested or independent vote required under any applicable Takeovers Code, the buying consortium can be relatively safe in expecting the scheme to be sanctioned by the court. The deal risk ought to be within acceptable parameters so bidders can happily scheme away!

1. *Joint Stock Companies Act 1870*
2. *Companies (Consolidation) Act 1908*
3. *Bowen LJ in Sovereign Life Assurance Co v Dodd 1892 2 QB 573.*
4. *Re BTR plc [2000] 1 BCLC 740; Ocean Rig UDW Inc. [2017 (2) CILR 495]*
5. *Re PCCW Ltd [2009] 3 HKC 292; see also Re Dee Valley Group plc [2017] EWHC 184 (Ch)*

FIND A LAWYER ...

INDONESIA EXTERNAL COUNSEL

For detailed profiles and to Find a Lawyer in other jurisdictions,
please visit https://www.inhousecommunity.com/find-a-lawyer/, or scan this QR Code.

Find an External Counsel by Practice and Jurisdiction

... AND SEND THEM AN RFP

Denny Rahmansyah

Jurisdiction: Indonesia
Email: dennyrahmansyah@ssek.com
Firm: SSEK Legal Consultants
Title: Managing Partner
Phone: (62) 21 521 2038
Experience/Expertise: Banking and Finance, Compliance/Regulatory, Corporate/Mergers & Acquisitions, Cybersecurity & Privacy, Project Finance, Real Estate & Construction, Restructuring & Insolvency, Telecoms, Media & Technology

Lia Alizia

Jurisdiction: Indonesia
Email: Lia.Alizia@makarim.com
Firm: Makarim & Taira S.
Title: Managing Partner
Phone: (62) 21 5080 8300, 252 1272
Experience/Expertise: Anti-trust/Competition, Compliance/Regulatory, Corporate/Mergers & Acquisitions, Employment/Labour, Intellectual Property, Litigation and Dispute Resolution, Real Estate & Construction, Restructuring & Insolvency

Dr. Yozua Makes

Jurisdiction: Indonesia
Email: ymakes@makeslaw.com
Firm: Makes & Partners
Title: Managing Partner
Phone: (62) 21 574 7181
Experience/Expertise: Banking and Finance, Capital Markets, Corporate/Mergers & Acquisitions, Real Estate & Construction, Restructuring & Insolvency

Mohamed Idwan Ganie

Jurisdiction: Indonesia
Email: ganie@lgslaw.co.id
Firm: Lubis Ganie Surowidjojo
Title: Managing Partner
Phone: (62) 21 831-5005, 831-5025
Experience/Expertise: Anti-trust/Competition, Banking and Finance, Capital Markets, Compliance/Regulatory, Corporate/Mergers & Acquisitions, International Arbitration, Investigations & Due Diligence, Litigation and Dispute Resolution, Maritime & Aviation, Project Finance, Restructuring & Insolvency, Telecoms, Media & Technology

Emir Kusumaatmadja

Jurisdiction: Indonesia
Email: ek@mkklaw.net
Firm: Mochtar Karuwin Komar (MKK)
Title: Partner
Phone: (62) 21 571 1130
Experience/Expertise: Banking and Finance, Compliance/Regulatory, Energy & Natural Resources, Project Finance

Mulyana

Jurisdiction: Indonesia
Email: Mulyana@mkklaw.net
Firm: Mochtar Karuwin Komar (MKK)
Title: Partner
Phone: (62) 21 571 1130
Experience/Expertise: Litigation and Dispute Resolution

Emir Pohan

Firm: Emir Pohan & Partners
Email: emir.pohan@eplaw.id
Phone: (62) 21 2965 1251
Jurisdiction: Indonesia

Teddy A. Suprijadi

Jurisdiction: Indonesia
Title: Managing Partner
Email: Teddy.Suprijadi@makarim.com
Phone: (62) 21 252 1272 / 520 0001
Experience/Expertise: Alt' Investments (inc' Private Equity), Anti-trust/Competition, Banking and Finance, Compliance/Regulatory, Corporate/Mergers & Acquisitions, Environmental, Insurance, Restructuring & Insolvency, Telecoms, Media & Technology

For more information on how to have your profile in the 'Find a Lawyer' search tool, please email our Publisher, Rahul Prakash, at
rahul.prakash@inhousecommunity.com

MOVES

The latest senior legal appointments around Asia and the Middle East

AUSTRALIA


David Walter

Allen & Overy has hired **David Walter** to join its Asia-Pacific restructuring and recovery group as a partner based in Sydney. Walter is a well-established figure in the restructuring and insolvency arena and will continue to work with clients on complex domestic Australian and cross-border insolvencies and restructurings. He advises the spectrum of stakeholders in informal restructures and formal insolvencies, including public companies and their boards, private equity and portfolio companies, special-situations investors, bank lenders, trustees and insolvency practitioners. He is particularly experienced in the real estate, mining and resources, energy, infrastructure, finance, retail, manufacturing, and transport sectors. He was previously with Baker McKenzie in Sydney.

CHINA

Ant Financial Services Group has hired **Jonathan Zhou**, founding partner of Fangda Partners, to join the company as general counsel. In this role, Zhou will be responsible for the company's legal and compliance functions, reporting directly to Leiming Chen, senior vice-president who oversees the legal, compliance and anti-money laundering functions at Ant Financial.

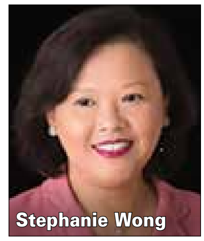

Barbara Li

Beijing Rui Bai Law Firm has added **Barbara Li** as the head of corporate, China. A long-term veteran in the China market, Li brings a wealth of over two decades' experience and expertise in advising international and Chinese companies and financial institutions on large scale and complex cross-border transactions. She joins from Norton Rose Fulbright, where she spearheaded the China TMT and fintech practices, and also specialised in providing legal support in development and investment in infrastructure projects.

HONG KONG


Derek Poon

Baker McKenzie has added seasoned private equity partner **Derek Poon** from Kirkland & Ellis in Hong Kong, as part of the firm's continuous efforts to bolster its bench strength in Hong Kong and its transactional capabilities in Asia Pacific. Poon brings significant experience in advising private equity firms, investment banks and major corporations on a wide variety of corporate matters, including public and private M&A, private equity, joint ventures, real estate private equity and distressed M&A transactions. He has worked on several significant transactions in Hong Kong, Mainland China, Japan, South Korea, Taiwan, India, Australia, Asean countries, as well as on outbound deals into Europe and North America. Poon is admitted to practice in England & Wales, Hong Kong and New York, and qualified as a solicitor in New South Wales, Australia (non-practicing).


Stephanie Wong

Eversheds Sutherland has added to its banking and finance practice with the appointment of **Stephanie Wong** as an of counsel. Wong is a highly experienced, senior banking lawyer who advises local, PRC and international banks on a broad range of matters including acquisition finance, corporate/secured lending, asset finance, real estate finance, ship finance, structured finance and syndicated lending. Prior to joining Eversheds Sutherland, she was a partner at Stephenson Harwood in Hong Kong.

SOUTH KOREA


Hwan Jun Heo

Yoon & Yang has added three lawyers who previously served at the Financial Supervisory Service (FSS) as partners. **Hwan Jun Heo**, **Jong Youl Choi** and **Yong Ho Choi** will join the firm's banking and finance practice group. Heo will head the firm's financial regulations team. He has a decade of experience serving various government entities within the capital markets and financial regulation sector. Prior to joining Yoon & Yang, he was a chief prosecutor of the FSS's bank examination department conducting supervision of specialised banks. Jong Youl Choi worked in the capital market investigation department and the audit inspection department at the FSS, and was mainly responsible for handling capital market regulations and restrictions matters. Yong Ho choi headed various inspections and restrictions against domestic and foreign financial organisations while working at the savings bank/credit finance examination department, the credit finance supervision team and the financial investment examination department during his tenure at the FSS.

UAE


Beau McLaren

Clyde & Co has appointed **Beau McLaren** as partner in its global projects and construction practice. He will be based in the firm's Dubai office. McLaren is a construction and disputes expert with more than 13 years' experience in the Middle East. He joins from HFW in Dubai, where he was partner and played a key part in building the firm's construction and construction disputes team in the Middle East. He advises parties at every level of the construction supply chain, from procurement through to contract management, having advised on a range of construction projects and commercial disputes across the GCC and further afield. He has experience of transport, infrastructure, power and healthcare projects, as well as more generic building and construction projects. In addition to his front-end work, McLaren advises clients on bringing and defending complex and high-value claims arising out of construction projects. He has extensive experience of international and domestic arbitration proceedings under most institutional rules, with a particular focus on construction-related arbitration.

DEAL OF THE MONTH

Asian-mena Counsel
Deal of the Month
July 2020

Cathay Pacific's US$5bn rescue plan

The landmark deal will see Hong Kong's government bail out the airline.

The Hong Kong government will take a stake in Cathay Pacific as part of a US$5 billion recapitalisation plan proposed in June.

Such government intervention is extremely rare in Hong Kong but was deemed necessary to avoid the collapse of the city's flagship airline after a calamitous year. Protests against China's extradition law and the heavy-handed police response led to a sharp decline in passenger traffic during the second half of 2019, made much worse by the outbreak of Covid-19.

Passenger revenue has fallen to just 1 percent of the level a year earlier and the company has been losing cash at the rate of roughly US$350 million a month.

As part of the rescue, the government will set up a US$1 billion bridge loan facility that provided immediate liquidity to the airline. The government acted through Aviation 2020, a vehicle wholly owned by the Financial Secretary Incorporated, as established under the Financial Secretary Incorporation Ordinance.

Cathay then raised US$1.5 billion through a rights issue and a further US$2.5 billion through the issue of preference shares with detachable warrants to the government, giving the government a 6.1 percent stake in the company and diluting controlling shareholder Swire Pacific to 42 percent from 45 percent.

The preference shares and rights issue will require the approval of the shareholders of Cathay Pacific. Swire, Air China and Qatar Airways Group, as the three largest shareholders of Cathay Pacific, have given irrevocable undertakings to vote in favour of the recapitalisation plan, where they are not restricted by the listing rules, and to subscribe for their pro-rata share of the rights issue.

Clifford Chance is advising as one of the principal counsels across all three investment tranches. Partners **Amy Lo** (corporate/public companies), **Anthony Wang** (finance), **Matt Fairclough** (debt capital markets) and **Virginia Lee** (corporate/public companies), together with partner **Paul Greenwell** (asset finance), are leading the firm's team in the transaction.

Linklaters advised **Cathay Pacific**, with a team led by partners **Matthew Middleditch**, **Nathalie Hobbs**, **William Liu** and **Alex Bidlake**.

Slaughter and May is advising **Swire Pacific**, led by partners **Peter Brien**, **Lisa Chung** and **Jing Chen**, while **DLA Piper** is advising **Air China**, led by **Vivian Liu**, head of capital market compliance for Greater China, assisted by **Philip Lee**, corporate partner.

Allen & Overy is advising **Morgan Stanley** as the sole financial adviser and **BOCI**, **HSBC** and **BNP Paribas** as the underwriters. Its team is led by partner **Lina Lee** alongside corporate partner **Jonathan Hsui** and supported by corporate associate **Shue Sing Churk**. Partners **Agnes Tsang** and **Jaclyn Yeap** provided capital markets support. Partners **Alex Stathopoulos** and **Kung-Wei Liu** provided US securities law support, while partner **Charlotte Robins** provided regulatory input.

Other recent transactions from around the region:

Simpson Thacher has represented a **consortium of investors led by KKR**, including **Temasek**, on its US$650 million investment, by acquiring ordinary shares equivalent to six percent equity stake, in Vinhomes. A subsidiary of Vingroup, Ho Chi Minh City-listed Vinhomes is the largest real estate developer in Vietnam. It develops and trades integrated residential, commercial and industrial real estate, and provides real estate management and related services. Partners **Jin Park** (M&A-Hong Kong), **Katharine Moir** (tax-Palo Alto) and **Shahpur Kabraji** (credit-London) led the firm's team in the transaction, which closed on June 15, 2020.

Baker McKenzie is also acting as the English, US and Hong Kong law counsel to **China Pacific Insurance (Group)** on the approximately US$1.9 billion offering and listing of its global depositary receipts in London. The GDRs, which represent the newly issued A-shares in the company, commence conditional trading in London on June 17, 2020. China Pacific Insurance is the first insurance group simultaneously listed in Shanghai, Hong Kong and London. Partners **Wang Hang** (Beijing), **Adam Farlow** (London) and **James Thompson** (London) led the firm's team in the transaction. **Clifford Chance** advised **UBS** and **Huatai International**, as joint global coordinators, and **HSBC**, **CICC**, **Morgan Stanley** and **JP Morgan**, as joint bookrunners. Partners **Simon Thomas** and **Chris Roe** (London), **Tim Wang** (Beijing) and **Jean Thio** (Singapore) led the firm's team in the transaction.

Weil has represented **Jinbo Yao**, the chairman of the board and CEO of 58.com and the consortium, on the signing of an agreement and plan of merger with Quantum Bloom Group and its wholly owned subsidiary Quantum Bloom Company. Upon completion, 58.com will be acquired by a consortium of investors, including Jinbo Yao, Warburg Pincus Asia, General Atlantic Singapore Fund, Ocean Link Partners and Internet Opportunity Fund, an entity controlled by Jinbo Yao, in a transaction implying an equity value of approximately US$8.7 billion. Hong Kong private equity partners **Tim Gardner** and **Chris Welty** led the firm's team in the transaction, which is expected to close during the second half of 2020 and is subject to customary closing conditions. **Skadden**, with a team led by partners **Julie Gao** (Hong Kong), **Peter Huang** (Beijing) and **Shu Du** (Hong Kong), is advising 58.com.

mycareerinlaw.com™

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.

Investigation Counsel

3+ yrs PQE, Hong Kong

Unique new role for Hong Kong qualified solicitors with at least 3 years of practice experience, who are looking to transition out of a fee-earning role but would like to continue to have a meaningful role within the legal sector. You should be an enthusiastic and responsible solicitor. You will play a key role in maintaining the integrity of the HK legal system, responsible for investigating complaints, conducting inspections against law firms and assisting Intervention Agents in the intervention of law firms. Chinese languages needed for this role.
[Ref: AC7270]

Contact: Teagan Jones
Tel: (852) 2537 7419
Email: tjones@lewissanders.com

Compliance Director

15+ yrs EXP, Hong Kong

This world-leading fintech is looking for a leader with proven financial compliance experience to head up its compliance team in Hong Kong. You will be responsible for leading and managing the compliance framework and overseeing their business operations. Ideally, you will have at least 15 years' compliance advisory experience gained cross-border financial services and funds transfers. A team leader with good knowledge of AML, KYC and CTF, you will have the ability to work independently. Hands-on experience in implementing automated testing monitoring, filtering, and databases is preferred. Fluency in English is essential, and proficient Mandarin is a definite plus.
[Ref: 15547/AC]

Contact: Doreen Jaeger-Soong
Tel: (852) 2520 1168
Email: djaeger@hughes-castell.com.hk

Capital Markets Lawyer

2-3 yrs PQE, Hong Kong

A top tier international investment bank is looking to hire a 2-5 year PQE attorney with Capital Markets experience into their IBD Legal team. This position is based in Hong Kong. Mandarin fluency is required, but need not be native-level fluent.
The ideal candidate has broad capital markets experience, ideally with DCM as well as with US IPOs. Their practice is DCM-heavy, but you will also be advising on US IPOs, share buybacks, private placements and M&A transactions (with M&A being approximately 25 percent of the overall dealflow). There is ample opportunity for promotion in this role as well. A variety of qualifications will be considered — US / UK / HK / Aus. They will consider candidates with an international US or UK firm background (BigLaw), including candidates with no in-house experience that are coming straight out of BigLaw.
[Ref: JVIHC 0038]

Contact: Alexis Lamb
Email: alexis@evanjowers.com

Capital Markets Lawyer

2-6 yrs PQE, Hong Kong

Multinational financial services company is looking for a mid-level capital markets lawyer. The successful candidate will be expected to support and coordinate with various business lines and internal stakeholders within the APAC region. Fluency in Chinese is a must.
[Ref: IHC 18305]

Contact: Andrew Skinner
Tel: (852) 2920 9111
Email: a.skinner@alsrecruit.com

LAW IN ORDER
Where work flows.

By David Kertsjens
Lead Consultant, Forensics team
david.kerstjens@lawinorder.com

How to Make Data Collection More 'Effective'

For multinational firms, there are a number of challenges during collections including staff in different countries or data stored in centres across the globe or in the cloud. These all present difficulties accessing data so it's critical to ensure data is collected efficiently.

The important concept is *effective* collection. Data can be collected efficiently, but if relevant data is not collected then the case will not come together.

There are a few ways to ensure effectiveness. Firstly, run comprehensive interviews with relevant organisational staff, starting with the Legal Team, to get an understanding of the scope. These discussions inform the conversation with IT who will know the most about the data and how it is stored. Next, understand the organisation's policies around data and how employees handle data, including whether they use personal devices for work. For example, if they use a personal mobile phone to access work emails and are then investigated, they may be required to surrender their personal mobile phone.

The aim is to prepare multi-dimensional metrics linking the employees to the data sources and how best to collect them.

By the end of the interviewing process, the organisation may only have 10 or 20 employees relevant to the investigation. From that group, there may be 100GB of data that needs to be collected.

Personal devices create intricacies around collections. The main concerns of an individual during investigation is how long will they be without their personal device and whether their personal data be viewed.

The next challenge is scheduling. Collections performed on shared resources need to be conducted with least disruption. This is more difficult with people travelling or if the collection needs to be performed covertly.

The data collection plan is essential as there is only one chance to collect a device in a forensically sound manner. The contents of an employee's computer today may be very different tomorrow. If they receive notification of the collection through their device, the employee can wipe everything and nothing can be recovered.

How is this addressed? To ensure relevant data is retained, a Document Preservation Notice is sent. It could be an email or memo notifying relevant employees that the organisation is putting a litigation hold on their devices, not to delete any of their data and to back up everything. The auto-deletion process is disabled and the custodian of the data is told what to do to preserve the data.

Measures need to be put in place so that if someone tries to release the data, it can be recovered. The organisation may not know every method to preserve all the different types of data as they generally won't have forensic training.

What sorts of data would be collected? Typically, data is divided broadly into two groups — structured and unstructured. Unstructured data is day to day data such as emails and documents. An example of structured data is a database, eg Client Relationship Management system, Document Management System or HR database. Structured data can create complications as it needs to be exported and you may need to allow extra weeks or months to get the relevant data ready for discovery and engage the assistance of the external system provider. For unstructured data, a backup or forensic collection can be performed quickly depending on data volume.

Data must be preserved when exported, eg document creation date, when it was last modified and by whom, document owner and what happened to the document. If you know the criteria, depending on relevance, keyword searches can be performed and searches run to produce the relevant data. These keyword searches may be possible within the system that houses the data or may require processing into an eDiscovery platform.

Regarding investigations, sexual harassment matters, victimisation and bullying where it's likely that data will be deleted, the only way to recover deleted data is through forensic imaging and data carving. Data carving means any deleted data could potentially be recovered.

Throughout the process, contemporaneous notes are completed by all members of the Team so every element is documented. These notes will ensure chain of custody of devices is maintained, methods utilised to perform the collections, any issues faced whilst onsite and any limitations faced are recorded. These notes ensure admissibility of the evidence collected and provide the information required to give thorough statements on the overall collection process.

In-house recruitment trends

Camilla Worthington and *Chris Chu* of **Lewis Sanders** discuss how Covid-19 has affected hiring in Hong Kong.

How has the impact of the coronavirus affected in-house hiring in Hong Kong?
Needless to say, 2020 has been a difficult year for Hong Kong. The combined effects of the city-wide protests in the latter half of 2019, the China-US trade war and the Covid-19 situation have led many to assume by default that it has been a tough 12 months for the in-house recruitment market.

However, while the in-house market certainly is not immune to these events, we have seen that legal and compliance teams to date have been relatively insulated from their effects compared with other professions and sectors. We are not currently aware of any significant in-house legal and compliance redundancies as a result of the current economic climate and cases of salary discounts and reduced work weeks affecting this group have also been rare. In fact, a number of new vacancies across the market arose after the peak of the protests and we also have new mandates since Covid-19 became a global issue. While the majority of these are replacement roles, some of them are actually new headcounts.

Camilla Worthington

In-house legal and compliance are typically deemed essential functions in any market by businesses looking to maintain long term success. Although companies will invariably look for ways to reduce costs in the current market, some of them take the view that having these functions in-house will actually be more cost-effective than having to engage external lawyers and service providers. These factors have contributed to the resilience of this sector.

How does this compare to what is happening in relation to hiring in law firms?
Hiring in law firms has unfortunately been slower than normal with the private practice market being dominated with news of salary freezes, unpaid leave, delayed bonuses, redundancies and even a few firms exiting the Hong Kong market. This is not unique to Hong Kong and has resulted from decisions being made at a global level, out of headquarters primarily located in the US and the UK. If law firms have seen resignations, in the majority of cases they have not replaced them and are waiting to see how the market bounces back.

It is hoped that as we now enter the second half of 2020 the feeling in Hong Kong will start to shift to one of optimism and while it is unlikely that there will be a significant increase in hiring needs until late 2020/early 2021 workflows do appear to be moving in the right direction. A number of law firms are now starting to look at where they will need to make additional hires to ensure that clients expectations are met.

We understand that where hiring is continuing a lot of interviews are now happening by video link — what tips would you give to candidates who are faced with this situation?

You are correct; there has been a significant increase in the number of interviews taking place via video conference over the past six months. For many candidates this is their first experience of this and naturally can be quite daunting. Here are a few tips to ensure it runs smoothly:

1. Test your technology: Ensure your device is fulling charged, test the internet speed/reception, prepare a plan B (ie, phone call) in case video calling does not work.
2. Dress as you would for an in-person interview: Giving a good impression is crucial. Wearing solid colours rather than patterns works better on camera.
3. Choose a distraction free location: Find a well-lit, quiet and clutter-free background area.
4. Maintain eye contact: You need to ensure you look into the camera rather that at the interviewers on screen. Don't forget to engage with the interviewer and nod and smile when it is appropriate.
5. Project and pause: Speak loudly and clearly so that your interviewer doesn't have to strain to hear you. Maintain a few seconds pause before giving your answer in case the video delays.
6. Close the interview: When the interview ends don't forget to close by thanking the interviewer for the opportunity.

Are there any sectors where you expect an increase in hiring as a result of the current situation?

In many areas of law, clients have been quick to seek counsel on the likely impact of Covid-19 on their businesses and this has generated new work for lawyers. This ranges from employment advice, real estate concerns and banking queries around loan repayment obligations and restructuring of debt. Disputes around commercial contracts are also on the rise.

A bright spot in the banking sector is the emergence of virtual banks, with the HKMA's announcement in 2019 that it had handed out licences to eight entities. We have already seen recruitment activity in this space as these licensees look to build up their legal, compliance and company secretarial functions in time for their official launches. This is a trend that should continue going forward.

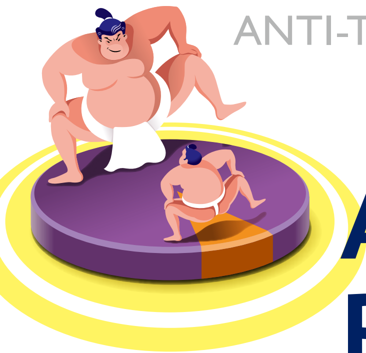
What long-term changes do you think we are likely to see to the workplace as to how lawyers operate?

During this unusual time the vast majority of employees in the in-house legal and compliance space and within law firms have been working from home. Traditionally, Hong Kong has been slow in adapting more flexible and creative workplace solutions compared to other major cities, but if employers take the view that recent work from home arrangements have been successful, we can expect to see more of this going forward, especially given the ever-increasing price of office space here.

Further, the trend for in-house teams employing legal and compliance professionals on a contract basis will continue, especially at a time where workforce flexibility and simpler approval processes are a priority for many businesses.

Lewis Sanders
Legal Recruitment
cworthington@lewissanders.com
cchu@lewissanders.com
www.lewissanders.com

Chris Chu



Antitrust Enforcement Review 2019: Monopoly investigations

China's competition authority has acquired the competence and courage to investigate some of the most complicated and new types of monopoly behaviours.

By Michael Gu and Grace Wu of **AnJie Law Firm**

INTRODUCTION

The year 2019 marked the 11th anniversary of the implementation of the PRC Anti-monopoly Law, which was also the first full calendar year for the State Administration for Market Regulation (SAMR) to take over the role as China's single central level antitrust enforcement agency.

After integration, the SAMR was relatively active in its antitrust enforcement practice. In 2019, the SAMR published 19 penalty decisions on alleged monopoly agreements and abuse of market dominance. The types of industries investigated by antitrust law enforcement authorities in 2019 were diverse, while the key industries of the investigations were still in the areas closely related to people's daily life, for example, gas and water supply, building materials, automobiles and pharmaceutical industries. Some 13 out of 19 cases published by the SAMR were related to the people's daily life.

LEGISLATION

On January 2, 2020 the SAMR released a revised draft of the Anti-monopoly Law for public comment (the Revised Draft)[1]. Although the Revised Draft follows the current Anti-monopoly Law's basic framework, it significantly enhances the legal liability of Anti-monopoly Law violators. It also clarifies practical issues such as 'controlling rights', improves merger control review procedures and introduces a new type of monopoly behaviour and methodology for identifying dominance in the internet sector. Currently, there is no clear timetable for the finalisation of the Revised Draft and promulgation of the new Anti-monopoly law. Nevertheless, the Revised Draft signals the SAMR's enforcement priorities and indicates the legislative trends that could have a profound impact on China's antitrust enforcement landscape.

Also, the SAMR published three sets of interim provisions to implement the Anti-monopoly Law and unify both substantive and procedural regulations previously published by the National Development and Reform Commission (NDRC) and the State Administration for Industry and Commerce (SAIC). On June 26, 2019, the SAMR promulgated the Interim Provisions on Prohibition of Monopoly Agreements[2], the Interim Provisions on

1. *The original Chinese version is available at the SAMR's website: www.samr.gov.cn/hd/zjdc/202001/t20200102_310120.html.*
2. *The original Chinese version is available at the SAMR's website: http://gkml.samr.gov.cn/nsjg/fldj/201907/t20190725_305165.html.*

Prohibition of the Abuse of Market Dominance[3], and the Interim Provisions on Curbing Abuse of Administrative Power to Exclude or Restrict Competition[4] (collectively as 'The Three Interim Provisions'). The Three Interim Provisions set out detailed behavioural monopoly models and assessment standards of various monopoly behaviours. The Three Interim Provisions also elaborate procedural requirements in the case investigation process.

While the Anti-monopoly Law is under revision, the SAMR released the Anti-monopoly Compliance Guidelines for Undertakings for public comments on November 28, 2019[5]. It was the first time that antitrust compliance guidelines have been issued at the state level.

Michael Gu

CARTELS

The SAMR and local agencies published nine cartel cases in 2019. Compared with that of 2018 (14 cases), the number of cartel cases dropped slightly in 2019. The total amount of the penalties was Rmb20.97 million, and the average amount of fines imposed in each case by the SAMR was relatively low compared with that of previous years. This may be because the penalised companies were small or medium-sized enterprises and their turnover was low. The most significant case was the *Chongqing Sintered Brick Manufacturer* cartel case[6] where the enterprises argued for the exemption under Article 15 of the AML, but the enforcement authority rejected their arguments.

Chongqing Sintered Brick Manufacturer cartel case

On August 9, 2019, Chongqing Administration for Market Regulation (Chongqing AMR) published a decision fining six Chongqing sintered brick manufacturers and three individuals a total of Rmb1,938,501 and confiscating unlawful gains of a total of Rmb1,931,291 for entering into a horizontal monopoly agreement.

The involved companies and individuals engaged in the following activities during the period from March 2014 to July 2018:

a. coordination of the production schedule of the participating members, and provision of compensation to members who ease to produce the sintered brick products;
b. establishment of a joint operation office;
c. price fixing of sintered brick products; and
d. allocation of sales of sintered brick products and distribution the profits among participating members.

Chongqing AMR identified two types of monopolistic behaviours in this case:

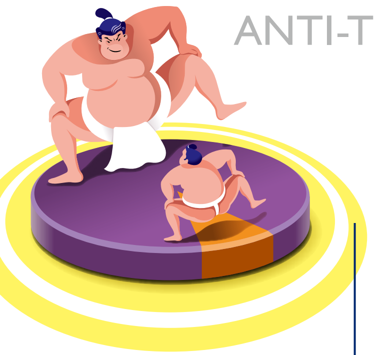
a. fixing the lowest prices of sintered brick products; and
b. restricting the product quantity though the way of reducing member's production.

The involved companies and individuals argued in the hearing held by Chongqing AMR that the suspension of production of some members was a response to implement the government's 'off-peak production' and 'environmental protection' policies, which shall be regarded as an exception under Article 15 of the Anti-monopoly Law. However, Chongqing AMR rejected this argument on the grounds that there were no objective factors such as economic downturns during the implementation of the monopoly, nor could it achieve the purpose of environmental protection. Therefore, Chongqing AMR concluded that the monopoly agreement reached by the involved companies and individuals shall not be entitled to exemption in accordance with Article 15 of the Anti-monopoly Law.

VERTICAL RESTRICTION

The antitrust agencies concluded and published four cases in relation to vertical restriction cases, and all of them related to resale price maintenance (RPM). However, among these cases, the *Hydron Contact Lens RPM* case[7] was terminated and the *Lenovo RPM* case[8] was

3. *The original Chinese version is available at the SAMR's website: http://gkml.samr.gov.cn/nsjg/fldj/201907/t20190725_305166.html.*
4. *The original Chinese version is available at the SAMR's website: http://gkml.samr.gov.cn/nsjg/fldj/201907/t20190725_305167.html.*
5. *The original Chinese version is available at the SAMR's website: www.samr.gov.cn/hd/zjdc/201911/t20191128_308890.html.*
6. *The original Chinese penalty decision is available at the SAMR's website: www.samr.gov.cn/fldj/tzgg/ xzcf/201908/t20190821_306163.html.*
7. *The original Chinese terminal decision is available at the SAMR's website: www.samr.gov.cn/fldj/tzgg/ xzcf/201905/t20190521_293971.html.*
8. *The original Chinese suspension decision is available at the SAMR's website: www.samr.gov.cn/fldj/tzgg/ xzcf/201911/t20191115_308573.html.*



suspended without any penalties. They were the first and the second vertical monopoly that were suspended or terminated. In these cases, although the parties had carried out the monopoly behaviour, they acknowledged their misconduct and provided remedial measures during the investigation. This shows that even in vertical restriction cases, as long as the parties can actively offer the remedial measures that can eliminate the adverse effects on competition, they may be exempted from penalty.

As in the past, antitrust law enforcement authorities have kept an eye on the automobile industry, in which vertical restrains are often conducted. Due to the large sales of car companies, the fine imposed on them is always large even if the penalty calculation was based on regional sales of these companies. In 2019, the SAMR published two penalty decisions against two big automobile manufacturers *(Toyota RPM*[9] *and Ford RPM*[10] *cases)*.

> "After 11 years of Anti-monopoly Law implementation, China's antitrust enforcement agency has accumulated a wealth of experience, and China has become one of the most important antitrust jurisdictions in the world"

Toyota RPM and Ford RPM

On December 27, 2019, the SAMR published the penalty decision against Toyota Motor (China) Investment. The former Jiangsu Price Bureau launched its investigation in December 2017, and the penalty decision was concluded by Jiangsu Administration for Market Regulation (the Jiangsu AMR) on November 20, 2019. Toyota fixed local distributors' prices displayed on internet portals and set minimum resale prices for multiple Lexus models.

Toyota instructed its distributors in Jiangsu to offer same price quote for online inquiry and set minimum resale price for offline sales of certain Lexus passenger cars. Toyota also specified discount policies and related monitoring and punishment measures. The distributors implemented the resale price stipulated by Toyota. Jiangsu AMR, therefore, concluded that Toyota reached and implemented an illegal vertical agreement.

Similarly, Changan Ford Motor was also penalised for engaging in the RPM monopoly by the SAMR according to a press release published on June 5, 2019 on the SAMR's website; however, the penalty decision has not yet been published. Since 2013, Ford has restricted the distributors' resale price by formulating a 'price list', reaching a 'price self-discipline agreement', and setting the lowest prices during the auto show and the lowest online prices in Chonqing.

It is worth noting that Toyota was fined for Rmb87.6 million, representing 2 percent of its sales in 2016 in Jiangsu Province. The fine was not based on the total sales of Toyota in China; rather it was based on the regional sales. The penalty imposed on Ford is also based on the regional sales in Chongqing (ie, Rmb162.8 million, representing 4 percent of Ford's previous year sales in Chongqing). Article 46 of the Anti-monopoly Law does not specify whether the fine should be based on the total sales or the regional sales or sales of related products, so it is at the discretion of the enforcement agencies. Even the Revised Draft does not provide any clarification in this regard.

ABUSE OF DOMINANCE

In 2019, the SAMR and local agencies concluded six abuse of dominance cases. Among these cases, two cases were terminated without any penalties due to the timely rectification of the investigated parties.

Eastman case[11]

On April 16, 2019, the Shanghai Administration for Market Regulation (the Shanghai AMR) issued a penalty of Rmb24.38 million on Eastman (China) Investment Management for its abuse of dominance. The Shanghai AMR states that Eastman abused its dominant position in the alcohol ester-12 coalescing agent market in mainland China, and unreasonably conducted exclusive dealing, thereby eliminating and restricting market competition.

To identify the dominant position of Eastman, the Shanghai AMR mainly considered Eastman's market share in the relevant market, financial and technological conditions, competition constraints from competitors and customers' reliance on the product and entrance barrier. Based on the above assessment, the Shanghai AMR held that Eastman had a dominant position in the alcohol ester-12 market in China.

According to the penalty decision, Eastman conducted the following wrongdoings:

a. Eastman and its six direct distributors agreed

9. The original Chinese penalty decisions are available at the SAMR's website: http://www.samr.gov.cn/fldj/tzgg/xzcf/201912/t20191227_309552.html

10. The press release is available at the SAMR's website: http://www.samr.gov.cn/xw/zj/201906/t20190605_302109.html

11. The original Chinese penalty decisions are available at the SAMR's website: http://www.samr.gov.cn/fldj/tzgg/xzcf/201904/t20190429_293241.html on the minimum purchase quantity for each contract year in the next two to three years.

b. Eastman required its direct clients and distributors in the Chinese mainland market to sign a long-term take-or-pay clause in the relevant agreement. Under the take-or-pay clause, direct clients and distributors shall fulfil the minimum purchase requirement even if the minimum purchase quantity exceeds their actual demand.
c. Eastman signed and implemented exclusive agreements involving most-favoured-nation (MFN) clauses. The MFN clauses in this case refer to the global best price and regional sales discount given to the customer whose purchase reaches the agreed global summation ratio and agreed regional quantity. Unlike the typical MFN clause in the context of EU and US jurisdictions, which refers to the company with dominant position requiring the counterparty to offer the most preferential terms, the above-mentioned clause in this case is actually a type conditional rebate.

According to the Shanghai AMR, the combination of minimum purchase quantity term, take-or-pay clause and MFN clause enabled Eastman to conduct exclusive dealing, which imposed the lock-in effect on the market competition. Therefore, Eastman was fined amounting to 5 percent of its respective revenue in 2016. In this case, the SAMR establishes a precedent for the identification of exclusive dealing, and it also challenges the legality of new type of restrictive behaviours such as the MFN clause (even it is not a typical MFN in the US and EU jurisdictions) and royalty rebates.

COMMENT

After 11 years of Anti-monopoly Law implementation, China's antitrust enforcement agency has accumulated a wealth of experience, and China has become one of the most important antitrust jurisdictions in the world.

In terms of cartels, the number of cartel cases decreased slightly and the total amount of penalties was relatively low compared with previous year. However, in early 2019, the SAMR started an investigation on German carmakers including Daimler, Volkswagen and BMW with regard to their possible collusion in emission controls following the European Commission's probe in September 2018. This shows that


Grace Wu

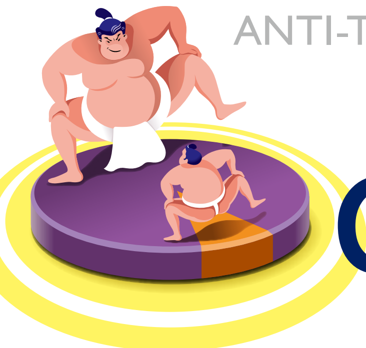
Chinese antitrust law enforcement agencies have been closely monitoring the cases investigated by other jurisdictions and may follow suit from time to time.

In terms of vertical restriction, RPM has been the focus of law enforcement agencies for years, especially in certain industries such as automobile and pharmaceutical. We expect that RPM will continue to be a focus of law enforcement agencies in the future, and companies should remain vigilant.

The SAMR has been more confident and professional when handling abusive cases. The detailed analysis illustrated in the Eastman case indicates the competition authority's competence and courage to investigate some of the most complicated and new types of monopoly behaviours.

Furthermore, in 2020, we expect more antitrust enforcement guidelines and regulations will be promulgated that will promote antimonopoly law enforcement and promote the establishment and development of a relatively mature and transparent anti-monopoly legal framework.

ANJIE
安杰律师事务所
michaelgu@anjielaw.com
wuguici@anjielaw.com
www.anjielaw.com



Competition watchdog turns its attention to the online hotel booking sector

Vasanth Rajasekaran and *Reshma Ravipati* of **Phoenix Legal** take a brief look at the Oyo, MakeMyTrip and Goibibo cases.

As we delve deeper into the age of the internet, the average individual's dependence on internet-based service providers is also increasing by the day. In a bidding war to appease this ever-expanding customer base, we see service providers cropping up around every corner, taking businesses online, in most industries. Since this enables service providers to cut back on the costs incurred in providing the same service at a physical location, online services have proven to be far cheaper than the same services being provided in the physical domain. This has led to the creation of competitive imbalances in the physical and digital realm, thereby making it much harder for service providers in the physical domain to compete in the relevant market. Under these circumstances, it has become all the more difficult for the Competition Commission of India (CCI) to identify what practices deployed by online service providers constitute anti-competitive practices under the Competition Act, 2002 (Competition Act).

Vasanth Rajasekaran

We have seen allegations of price-fixation being levied against Ola and Uber in the past, and numerous complaints against e-commerce giants such as Flipkart and Amazon; but more recently, focus seems to have shifted to the online hotel booking service sector as well. In 2019, two complaints (information) were filed with the CCI in relation to this sector. In both complaints, allegations with respect to abuse of 'dominant position' were levied against the opposite parties, among other ancillary anti-competitive practices that were sought to be highlighted. We will be analysing the orders rendered by CCI in both of these matters so far, and offer some insights on the manner in which we perceive the CCI seems to be treating complaints of this nature against online hotel booking service providers.

BACKGROUND

The RKG-Oyo Case[1]

A complaint was filed against Oravel Stays (Oyo), by RKG Hospitalities (RKG). The primary allegation levied against Oyo was that it had abused its 'dominant position' in the 'relevant market' to impose certain one-sided, unfair and discriminatory terms in its marketing and operational consulting agreement (Agreement) with RKG. Additionally, RKG also alleged that Oyo offered predatory discounts on hotel room bookings, and the conduct of Oyo was stated to be *malafide*, since its primary focus seemed to be to garner a high market share to the exclusion of other players in the 'relevant market', by creating unviable market conditions for its competitors.

The FHRAI Case[2]

The Federation of Hotel & Restaurant Associations of India (FHRAI) had filed information under Section 19(1)(a) of the Competition Act, alleging that MakeMyTrip India (MMT), Ibibo Group (Goibibo) and Oyo (collectively referred to as Opposite Parties) have entered into anti-competitive arrangements/agreements and have abused their 'dominant position' in the 'relevant market'.[3] In early 2017, the merger/combination of MMT and Goibibo was approved by the CCI (MMT-Goibibo).[4] FHRAI submitted that this merger has facilitated their dominance in the 'relevant market' of OTA(s), and has empowered the two entities to operate in a manner independent of the competitive forces prevailing in the 'relevant market'. FHRAI also alleged that Oyo's unusually high market share in the 'relevant market' indicates that it has gained a competitive advantage and has secured a position of dominance in the 'relevant market'.

DEFINING 'RELEVANT MARKET'

The CCI reiterated that under the Competition Act, there are two dimensions to the term 'relevant market' viz. a 'product/service' dimension, and a 'geographic' dimension. The relevant product market is a culmination of all those products or services which are similar to the particular product or service in question, and are interchangeable or substitutable by the consumer, by reason of their similarity in characteristics, price and intended use. Consumer perceptibility with regard to interchangeability among products or services is said to be the most important parameter for defining the relevant product market.

In the *RKG-Oyo Case*, the CCI analysed the structure of the hospitality industry, to determine the relevant product market for Oyo. On one hand, there are online travel agencies (**OTAs**) such as MakeMyTrip, Goibibo, Yatra.com, Booking.com etc., which operate like aggregators that primarily facilitate bookings by connecting the hotels/properties with the end consumer. As aggregators, these OTAs use a variety of tools such as filters, directed searches, guest reviews and recommendations, and online payment options to provide a smooth and hassle-free booking experience to consumers. On the flip side, these aggregators offer a platform to various hotel owners to list their hotels on these aggregators' apps, thereby making their hotels and properties that much more accessible to potential consumers. In return, these aggregators charge a commission from the hotel/property owners which may comprise a listing fee and/or a transaction fee, based on certain completed transactions using their services.

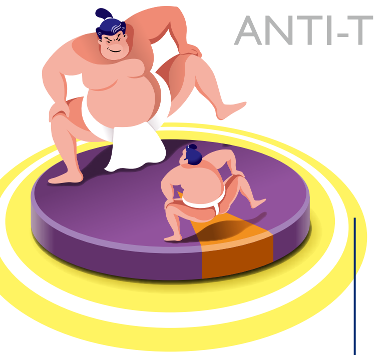
However, the CCI was of the opinion that Oyo did not qualify as an OTA. Oyo followed a franchise model, whereby standalone budget hotels partnered up with known brands such as Oyo, to take advantage of their brand value. Therefore, the CCI determined that what Oyo offers to these budget hotels is quite different from what an OTA offers. Oyo's business relations with its partner hotels constitute a franchising service, comprising a bouquet of other services, which enables the franchisee hotels to reap the benefits of Oyo brand. Oyo in turn gets a commission or share in the revenues of its partner hotels, while assuring minimum monthly guarantee of revenues to such partner hotels.

Considering the discussion set out hereinabove, the CCI identified the relevant product market in the *RKG-Oyo Case* as "market for franchising services for budget hotels", as opposed to "market for service providing budget hotels to customers through online booking", as suggested by RKG. Further, since Oyo is a pan-India service and other partner hotels of Oyo are likely facing the same issues, the relevant geographic market was identified as the territory of India. The 'relevant market' was therefore demarcated as "market for franchising services for budget hotels in India".

Relying on its decision in the *RKG-Oyo Case*, the CCI, in the *FHRAI Case*, held that the 'relevant market' for Oyo is different from the 'relevant market' for MMT-Goibibo, since Oyo is not an OTA. Accordingly, the 'relevant market' for Oyo was affirmed to be the "market for franchising budget hotels in India", whereas the 'relevant market' for MMT, as well as Goibibo, both individually and taken together, was set out as "market for online intermediation services for booking of hotels in India". Therefore, although

1. *Case No. 03 of 2019, dated 31 July 2019, available at: https://www.medianama.com/wp-content/uploads/oyo-cci-order.pdf.*
2. *Case No. 14 of 2019, dated 28 October 2019, available at: https://www.cci.gov.in/sites/default/files/14of2019_0.pdf.*

3&4. *Under Section 3 and Section 4 of the Competition Act, 2002.*



the geographic element of the relevant markets was found to be the same for all the Opposite Parties, a distinction was observed in the product/service element of the relevant markets.

EXAMINATION OF 'DOMINANT POSITION'

The CCI stated that the ability of an enterprise to behave independently of competitive forces and enjoy a 'dominant position' needs to be assessed in light of all relevant circumstances, as well as factors such as market share of the enterprise, size and resources of the enterprise, size and importance of the competitors, market structure and size of market, dependence of consumers on the enterprise etc., as detailed in Section 19(4) of the Competition Act.

Each and every case regarding allegations of abuse of 'dominant position' is unique, and needs to be assessed on its own merit, bearing in mind the characteristics of the 'relevant market'. The CCI observed that since franchising is still an emerging trend in India, particularly in the budget hotel segment, a majority of budget hotels in India continue to operate as independent hotels. Furthermore, it observed that OTAs were responding to the emergence of budget hotel franchisers with new and more innovative ways of rendering their services, to try and compete with the value addition brought about by franchisers.

Therefore, given the stage of evolution of the 'relevant market' in the *RKG-Oyo Case*, the CCI deemed the emergence of hotel franchisers to be a catalyst for competition in the hotel industry as a whole. It was further of the opinion that although Oyo is a significant player in the 'relevant market', it cannot be unambiguously concluded that it holds a 'dominant position'.

Even otherwise, it was concluded that Oyo's conduct of business did not raise any red flags under the Competition Act, and the clauses alleged to be one-sided and discriminatory, in its marketing and operational consulting agreement, were also found to be justifiable in the context of its business model. A short snippet of the justifications accepted by the CCI in relation to each of such clauses has been provided hereinbelow.

On the other hand, in the 'relevant market' for MMT-Goibibo, it was observed that the two entities taken together as a group held 63 percent of domestic hotel online market share in 2017, as per their own investor presentation.[5] Therefore, in the 'relevant market' for MMT-Goibibo, it appeared to *prima facie* enjoy a 'dominant position'.

ROOM AND PRICE PARITY CONCERNS

FHRAI alleged that MMT-Goibibo has imposed a term in their contracts with partner hotels, prohibiting such partner hotels from selling their rooms on any other platform, or on their own online portal at a price below which they are being offered on MMT and Goibibo's platforms. A

S.No.	Clause Object	Accepted Justification
1	Revenue share on gross revenue of partner hotels (including bookings done directly with the hotel)	Oyo increases the general visibility of the hotel, by promoting the hotel on the shoulders of its own brand. The commission or share in gross revenue is justifiable since Oyo's branding facilitates direct bookings with the hotel as well.
2	Prohibition on entering into any direct or indirect agreement with OTAs	In the franchise model, the franchisee is often perceived as an extension of the franchisor and they are collectively seen as a single brand seller. Provisions designed to protect the technical know-how of the franchisor are likely to demand exclusivity, to prevent abuse of the same by a franchisee.
3	Charging of GST and platform fees	Oyo realised that the hotels were receiving input credit for the GST, while not paying the same to the tax authorities. Therefore, hotels were informed that w.e.f. 01.11.2017, GST would be charged over and above Oyo's commission. The platform fee was necessary to cover the increased expense incurred in supplying toiletries and other consumables, by Oyo to its partner hotels.
4	3C scoring policy	It is simply a quality evaluation tool that is used to assess the partner hotels on the Oyo platform. Oyo's business model does not indicate that Oyo has any incentive to prioritise or de-prioritise any given partner hotel.
5	Right to unilateral modification of the partner hotel's structure	This is in the interest of standardising the services provided under Oyo's brand name.

5. The CCI rejected MMT-Goibibo's contention that other players such as PayTM, HappyEasyGo, and Thomas Cook have been posing competitive constraints on them, as none of these entities appeared to have any significant market presence in the relevant market.

room parity arrangement was also flagged by FHRAI, which allegedly restricted the inventory of rooms which a partner hotel could offer to OTAs other than MMT-Goibibo.

The CCI found the room and price parity restriction that was flagged by FHRAI, to be broad/wide in nature.[6] The CCI was therefore of the opinion that analysis of restrictive clauses in a market should be done by evaluating whether such restrictive clauses lead to an enhancement of entry barriers, to the detriment of consumers in that market. Therefore, given the *prima facie* 'dominant position' of MMT-Goibibo and the inherent restrictive nature of the room and price parity clauses in question, it was determined that these clauses are required to be examined to gauge their impact under Section 3(4) and Section 4 of the Competition Act.

ANTICOMPETITIVE AGREEMENTS

FHRAI drew the CCI's attention to an agreement between MMT and Oyo (Oyo-MMT Agreement), which resulted in preferential treatment being accorded to Oyo properties on MMT's website, and the removal of Fab Hotels and Treebo from MMT-Goibibo platforms on account of their refusal to pay an exorbitant brokerage/ commission which was sought to be charged from them. The possibility of exclusion of Fab Hotels and Treebo as a necessary result of the Oyo-MMT Agreement was also discussed, along with negative repercussions of the same on the 'relevant market'. In consideration of the same, the CCI declared that the Oyo-MMT Agreement will also have to be carefully examined to assess its probable anti-competitive effect.

Parallelly, the CCI also indicated that the alleged deep discounting practices, predatory pricing policies, discriminatory levy of service fee on certain hotels, and justifications offered by MMT-Goibibo for delayed delisting and misrepresentation of availability information of hotels which have opted to disassociate themselves with MMT-Goibibo may also be looked into by the Director General at the time of investigation, along with the aforementioned broader issues.

Having recorded the abovementioned observations and preliminary findings, the CCI directed the Director General to carry out a detailed investigation into the matter, in the *FHRAI Case*, in terms of Section 26(1) of the Competition Act. This probe is currently underway, and a report of the same is yet to be submitted to the CCI, by the Director General.

CONCLUSION

The CCI seems to bear an open mind towards novel services and service providers emerging as a result of technological advancements. Both OTAs and budget hotel franchisers are recent entrants in the hotel industry, although the former is relatively older than the latter. The trend observed in previous years in the CCI's approach towards complaints against such new entrants, even with respect to the e-commerce industry, has been to extend some leeway to new players offering innovative services in the digital market of any given industry, until they find their footing. This is largely the same approach that has been reproduced by the CCI in dealing with Oyo.

During their emerging stages, digital market players are seen as competition inducing and fostering elements, which are beneficial to the relevant industry. However, when the service matures with time and the policies of such digital market players become more identifiably anti-competitive in nature, as is perceived to be the case with MMT-Goibibo, the CCI intervenes and re-assesses the policies put in place by such entity/entities. Under these circumstances, everything starting from the business model of the entity/entities under scrutiny, to individual agreements of such entity/entities with the other market players may be called up for careful examination and investigation. It is therefore imperative for market players to consciously avoid implementation of policies that may tread on the lines of anti-competitive practices, to avoid the consequences of being flagged for violation of provisions of the Competition Act.

6. The CCI stated that restrictions may be categorised as 'narrow' restrictions and 'wide' restrictions. A narrow restriction, is when a supplier is asked to not set lower prices or offer better terms through their own websites, in comparison to prices/terms offered on the OTAs platform. A wide restriction, on the other hand, is when an OTA restricts a supplier from charging lower prices or providing better terms on their website, as well as through any other sales channel, including other OTAs.

PHOENIX LEGAL
vasanth.rajasekaran@phoenixlegal.in
reshma.ravipati@phoenixlegal.in
www.phoenixlegal.in

Reshma Ravipati

Compliance of import and export of epidemic prevention supplies

By Sharon Shi and Yongliang Wang of **AllBright Law Offices**

Sharon Shi

Currently, epidemic prevention supplies have special uses and significant importance, not only for the smooth development of economic activities, but also for China's international image. Both import and export are subject to strict regulation.

I. Recent regulatory policies and requirements

Four major governmental documents closely related to the export and import of epidemic prevention supplies have been issued recently.

Customs Announcement No.46 of 2020 introduced the Table for Correspondence between the H.S. Codes of Special Goods and Their Inspection and Quarantine Names.

Customs Announcement No.53 of 2020 included medical supplies to the scope of exported goods that are subject to customs inspection.

Ministry of Commerce, General Administration of Customs, and National Medical Products Administration Announcement No.5 of 2020 stipulates that from April 1, 2020, enterprises exporting Covid-19 testing reagents, medical masks, medical protective suits, ventilators and infrared thermometers must provide a written or electronic declaration to the Customs when making customs declaration, making a commitment that the exported products have obtained China's medical device registration certificate and have met the required quality standard of the importing country (region).

Ministry of Commerce, General Administration of Customs, and State Administration of Market Supervision Announcement No.12 of 2020 stipulates that to enhance the quality regulation of exported non-medical masks and further regulate the order of export of medical supplies, from April 26, non-medical face masks for export should comply with Chinese quality standards or foreign quality standards.

So how to comply with these regulations? Here is some brief advice.

II. Compliance advice

First, compliance with regulatory requirements is more important than innovation.

It is important to distinguish four common ways of importing and exporting the same medical supplies: as goods, as articles (carry-on or postal), via express mail, and via cross-border e-commerce.

Yongliang Wang

Personal mails in and out of the country shall be limited to a reasonable quantity for personal use. Commercial mails for export shall be processed for customs clearance in accordance with the provisions on the specific goods. When enterprises send epidemic prevention materials such as masks abroad, they shall follow the customs clearance procedures for Class C express or general cargo. If the goods are to be cleared as general cargo, the corresponding customs clearance procedures shall be carried out according to the specific type of exported goods.

Second, fully understand the regulatory rules of foreign trade, do not take foreign trade as domestic trade.

Exporters should be equipped with a considerable amount of foreign trade knowledge and be prepared for pre-operational compliance: know your product (medical or non-medical); understand your own needs and choose the right way to export; understand the regulatory requirements for domestic medical device registration; understand customs regulatory requirements, joint statements and commitments; understand the access requirements of overseas markets; understand the requirements for pre-shipment inspection by customs.

Third, note that H.S. code is the foundation for determining customs control, which exporters and importers should be familiar with.

Fourth, focus on the differences between regulatory conditions for medical and non-medical products.

Identify if there is a filter valve. A mask with a filter valve is usually not a medical mask. For example, Article 4.3 of China's medical protective mask standard *GB 19803-2010* clearly states that "the mask should not have an exhalation valve", so as to avoid droplets, microorganisms, etc. exhaled through the exhalation valve, thus endangering others. However, masks for non-medical use may have exhalation valves since the valve can reduce the exhalation resistance and help workers work for a long time.

The smallest unit package of masks sold through official channels should contain information such as the name of the product, the standards implemented and the level of protection. The information clearly marked by these vendors can be a good way to distinguish medical and non-medical masks.

Different standards and certification requirements apply to medical masks in different countries (regions), and companies and individuals can differentiate between products according to the applicable standards in the countries (regions) where the products are imported from, and information on applicable standards and certifications can be obtained from the product packaging or from the test report or certificate provided by the manufacturer.

For masks shipped to other countries (regions), please refer to the Chinese standard test certificate and registration information provided by the manufacturer.

Finally, pay attention to special provisions for special goods.

According to Article 9 of the *Regulations on the Administration of Health and Quarantine of Special Articles for Entry and Exit (General Administration of Customs Decree No. 243)*, biological products and human blood products used for the prevention, diagnosis and treatment of human diseases shall be provided with a registration certificate issued by the drug supervision and administration department. For procedures for specific quarantine examination and approval and information required to be submitted, please refer to the Shenzhen Customs website home page — online services — office guide — health and quarantine — health and quarantine examination and approval of special items. For Covid-19 testing reagents, the consignor should apply for a health and quarantine examination and approval, and submit the inspection application through a single window with the "inbound/outbound special items health and quarantine examination and approval form", and after passing the customs inspection, obtain the electronic ledger, and fill in the electronic ledger account number when making customs declaration.

For more specific tailored advice, professional help should be sought for.

ALLBRIGHT
LAW OFFICES
锦天城

sharonshi@allbrightlaw.com
wangyongliang@allbrightlaw.com
www.allbrightlaw.com

Legal changes adopted in Middle East jurisdictions due to the Covid-19 pandemic

A rapid response has been needed to control the coronavirus outbreak, but it remains to be seen how permanent the changes will be.

By Abdulla Galadari, Ken Dixon and Fadi Hassoun of **Galadari Advocates & Legal Consultants**

The full nature and extent of the Covid-19 pandemic is yet unknown and is still indeterminable. What is certain however is that the consequences will be far reaching, likely to endure for some time, and that change is inevitable.

Across the globe the movement restrictions have resulted in the closure of businesses and the effective grinding to a halt of the economies of whole nations. As the pandemic continues UAE lawmakers have been forced to apply a reactive approach in addition to their typically proactive stance, to continuously re-assess the position and amend and make additional regulations to restrict the spread of the virus.

Remote justice

Amid the Covid-19 pandemic, courts, including arbitral tribunals, have been forced to quickly adapt to the current status quo governed by state measures imposing quarantines, sanitary cordons and social distancing. It is safe to say that the UAE have exhibited a commendable approach in maintaining, to the extent possible, the continuity of access to justice and the operation of judicial bodies.

It has become apparent that the default position among courts of most jurisdictions is to provide remote access to justice. The success of such remote access to justice will depend on the level of technological infrastructure and the flexibility of procedural rules vis-a-vis remote proceedings. A jurisdiction with a digitised system and supple procedural rules is likely to face less hurdles and impairments in conducting proceedings remotely.

Several recent decisions were issued by relevant UAE judicial bodies to encourage and regulate the remote access to justice and the continuation of judicial services. In this context, the President of Abu Dhabi Judicial Department issued on March 30, 2020 the Administrative Decision No. 61 of 2020, which provides for specific procedures to ensure the continuation of judicial services during the



Left:
Abdulla Galadari

Centre:
Ken Dixon

Right:
Fadi Hassoun

Covid-19 pandemic and which predominantly include procedures for remote operations. Similarly, the President of Dubai Courts issued on April 18, 2020 the Decision No. 33 of 2020 relating to remote litigation procedures and courts' services.

While the recent decisions on remote justice are novel, it is worth noting that there has been a movement in the UAE to increase the use of technology in the judicial system, even before the Covid-19 pandemic and e-litigation has been gaining momentum in light of the recent measures taken to offset the effects of the Covid-19 pandemic on the conduct of judicial operations. This has been reflected in several dispute resolution forums across the UAE, including the Dubai and Abu Dhabi onshore and offshore courts and various arbitration centres.

Although active measures have been taken by the UAE to enable remote access to justice, it remains crucial to carefully monitor how the judiciary and legal practitioners are implementing such measures. However, in such testing times, access to justice remotely presents a valuable opportunity which would not have been possible without the existing technological and legal infrastructure in the UAE. Remote justice may be the best solution for the time being but could also remain as a viable option even after the Covid-19 pandemic is resolved.

Regulatory changes in the UAE

It is reasonably certain that once the pandemic is over or under manageable control, that the UAE government must do everything in its power to kickstart, stimulate and assist in the regrowth of trade and businesses. A way in which this can be done is through regulatory changes, and due to a predominantly expat population, these regulatory changes will be heavily influenced by a desire to retain the primarily foreign workforce and attract foreign investment.

> "While the recent decisions on remote justice are novel, it is worth noting that there has been a movement in the UAE to increase the use of technology in the judicial system, even before the Covid-19 pandemic"

During the pandemic we have seen several regulatory changes made in the UAE to assist in easing the obvious impact on businesses. The government announced the introduction of its official portal (u.ae) aimed at providing remote "end to end" digital services to enable working smartly and efficiently, unrestricted by office hours or personal interaction.

At the end of March, the UAE Cabinet issued Ministerial Decree Number 20-2020, which introduced reductions on official fees applicable to in excess of one hundred different services of the UAE Ministry of Economy. Incentives have not only been introduced for businesses operating outside of the Free Zones. The Dubai Free Zones Council has introduced a stimulus package which includes rental payment deferrals for periods of up to six months, reimbursement/release of security deposits and guarantees, the waiver of penalties and measures to allow for certain payments in monthly instalments.

Whether the regulatory changes introduced will remain after the pandemic is over will remain to be seen, but it is highly likely that they will, at least for a certain period of time, and that others will also be introduced to assist in business re-generation in the UAE. This may well result in the creation of more online and virtual platforms, a reduction of required manpower to staff businesses and substantial changes, certainly to some types of businesses, to the employment laws applicable to those types of businesses.

Force Majeure

Where legislation related to force majeure has not been updated or changed in the UAE due to Covid-19, as has been discussed at great length, is significant during the current pandemic and certainly worth mentioning, as in circumstances where contractual obligation cannot be fulfilled or may impend the operation of a business, leaders turn to 'force majeure'.

There is substantial jurisprudence on force majeure clauses in contracts and their interpretation within varied fact-based scenarios and events, however as the current pandemic is unique and unforeseen, little to no contract will make specific reference to this event. There is a probability that the word 'pandemic' has been specifically incorporated in force majeure clauses, which in correlation to the WHO notification may be used as a defence of force majeure by a party. However, in scenarios where neither the terms Covid-19 or pandemic are incorporated in a force majeure clause, can parties rely on other typical clause terms? That is, can it be argued that the pandemic is an unforeseeable event or an act of god?

Under UAE law the force majeure equivalent can be found in the provisions relating to impossibility and partial impossibility in the UAE Federal Law No.5 of 1985 ("Civil Code").

Article 273 of the Civil Code permits relief for financial hardship and performance obligations. In the event of impossibility, the courts can declare the contract is cancelled and the obligations of the parties shall cease. However, in cases of partial impossibility only that part of the contract which becomes impossible to perform is extinguished.

> "Whether the regulatory changes introduced will remain after the pandemic is over will remain to be seen, but it is highly likely that they will, at least for a certain period of time"

Courts in the UAE will investigate the facts of the case to determine impossibility or partial impossibility, in particular:

a. Has the pandemic and ensuing governmental regulations made the performance of the contract impossible.
b. Is there scope for renegotiating the terms and timing of the performance obligations.

Each contractual obligation and commitment will be unique to the parties involved and should therefore be reviewed on a case-by-case basis. While organisations may experience challenges in fulfilling contractual obligations, it is essential to consider the legal ramifications of using the pandemic as a justification for non-performance, therefore a thorough case and contract analysis is conducted before aiming to exit under the force majeure clause.

GALADARI
ADVOCATES & LEGAL CONSULTANTS
محامون ومستشـارون قانونيون
كلداري

abdulla@galadarilaw.com
ken@galadarilaw.com
fadi@galadarilaw.com
www.galadarilaw.com

Your 'at a glance' guide to some of the region's top service providers.

AMC Indicates an ASIAN-MENA COUNSEL Firm of the Year. 2017 2018 2019

MR An ASIAN-MENA COUNSEL Most Responsive Firm of the Year.

MR An ASIAN-MENA COUNSEL Honourable Mention Most Responsive Firm of the Year.

One of this firm's five largest practice areas in this jurisdiction.

FS Indicates a full service firm in this jurisdiction.

Practice Area key:

INV Alt' Investment Funds (inc. PE)	CMA Corporate & M&A	IP Intellectual Property	PF Projects & Project Finance (inc. Infrastructure)
COM Antitrust / Competition	E Employment	IA International Arbitration	
AV Aviation	ENR Energy & Natural Resources	IF Islamic Finance	RE Real Estate / Construction
BF Banking & Finance	ENV Environment	LS Life Sciences / Healthcare	RES Restructuring & Insolvency
CM Capital Markets	FT FinTech	LDR Litigation & Dispute Resolution	TX Taxation
REG Compliance / Regulatory	INS Insurance	MS Maritime & Shipping	TMT Telecoms, Media & Technology

— LAW FIRMS — ASIA

CAMBODIA

MAR & Associates
Tel: (855) 23 964 876, (855) 23 987 876
Email: borana@mar-associates.com
Contact: MAR Samborana (Mr.)
Website: www.mar-associates.com
CMA E IP RE REG

CHINA

East & Concord Partners
Tel: (86) 10 6590 6639
Email: Beijing@east-concord.com
Contact: Mr. Dajin Li
Website: www.east-concord.com
BF CM CMA IP LDR

Llinks Law Offices
Tel: (86) 21 31358666
Email: master@llinkslaw.com
Website: www.llinkslaw.com
BF CM CMA INV LDR

W. K. To & Co.
Tel: (86) 10 8587 5076
Email: wktoco@wktoco.com
Contact: Cindy Chen
Website: www.wktoco.com
CMA E LDR RE REG

HONG KONG

Conyers Dill & Pearman
Tel: (852) 2524 7106
Email: hongkong@conyers.com
Contact: Christopher W.H. Bickley, Partner, Head of Hong Kong Office
Website: www.conyers.com
BF CM CMA INV LDR

Elvinger Hoss Prussen
Tel: (852) 2287 1900
Email: xavierlesourne_hk@elvingerhoss.lu
Contacts: Mr Xavier Le Sourne, Partner,
Ms Charlotte Chen, Counsel
Website: www.elvingerhoss.lu
** Elvinger Hoss Prussen's Hong Kong office provides inbound and outbound legal services only under Luxembourg law*
BF CM CMA INV TX

Vivien Teu & Co LLP
Tel: (852) 2969 5300
Email: Vivien.teu@vteu.co
Contact: Vivien Teu, Managing Partner
Website: www.vteu.co
BF CM CMA INV REG

W. K. To & Co. AMC 2018
Tel: (852) 3628 0000
Email: mail@wktoco.com
Contact: Vincent To
Website: www.wktoco.com
CMA E LDR RE REG

INDIA

Anand and Anand AMC 2017 2018 2019
Tel: (91) 120 4059300
Email: pravin@anandandanand.com
Contact: Pravin Anand - Managing Partner
Website: www.anandandanand.com
IP LDR

Clasis Law
Tel: (91) 11 4213 0000, (91) 22 4910 0000
Email: info@clasislaw.com
Contacts: Vineet Aneja, Mustafa Motiwala
Website: www.clasislaw.com
CMA E LDR REG RES

HSA Advocates AMC 2019
Tel: (91) 11 6638 7000
Email: mail@hsalegal.com
Contact: jayamon.vp@hsalegal.com
Website: https://hsalegal.com/
CMA ENR INV LDR PF

INDONESIA

Emir Pohan & Partners
Tel: (62) 21 2965 1251
Email: emir.pohan@eplaw.id
Contact: Emir Pohan
Website: www.eplaw.id
COM E LDR RES

Lubis Ganie Surowidjojo AMC 2017 2018 2019
Tel: (62) 21 831 5005, 831 5025
Email: lgs@lgslaw.co.id
Contacts: Dr. M. Idwan ('Kiki') Ganie
Website: http://www.lgslaw.co.id
CMA COM INS LDR PF

Makarim & Taira S. AMC 2016 2017 2018
Tel: (62) 21 5080 8300, 252 1272
Email: info@makarim.com
Contact: Lia Alizia
Website: www.makarim.com
FS BF CMA E LDR PF

Makes & Partners Law Firm
Tel: (62) 21 574 7181 (Hunting)
Email: smt@makeslaw.com
Contacts: Dr. Yozua Makes, SH, LL.M., MM
Website: www.makeslaw.com
BF CM CMA FT RES

Mochtar Karuwin Komar AMC 2016 2017 2018
Tel: (62) 21 5711130
Email: mail@mkklaw.net, ek@mkklaw.net
Contact: Emir Kusumaatmadja
Website: www.mkklaw.net
AV CMA ENR LDR PF

SSEK Legal Consultants AMC 2017 2018 2019
Tel: (62) 21 521 2038, 2953 2000
Email: ssek@ssek.com
Contact: Denny Rahmansyah - Managing Partner
Website: www.ssek.com
Blog: Indonesia Law Blog (https://www.ssek.com/indonesia-law-blog)
Twitter: @ssek_lawfirm
FS BF CMA E ENR RE

MALAYSIA

Adnan Sundra & Low AMC 2019
Tel: (603) 2070 0466
Email: enquiry@adnansundralow.com
Contact(s): Deepak Sadasivan, Rodney D'Cruz
Website: www.asl.com.my
BF CM CMA IF PF

Trowers & Hamlins LLP AMC 2017 2018 2019
Tel: (601) 2615 0186
Email: nwhite@trowers.com
Contact: Nick White - Partner
Website: www.trowers.com
MR BF CMA ENR IF PF

PHILIPPINES

ACCRALAW (Angara Abello Concepcion Regala and Cruz Law Offices)
AMC 2017 2018 2019
Tel: (632) 830 8000
Email: accra@accralaw.com
Contacts: Emerico O. De Guzman, Ana Lourdes Teresa A. Oracion, Neptali B. Salvanera
Website: www.accralaw.com
MR CMA E IP LDR TX

DivinaLaw AMC 2019
Tel: (632) 822-0808
Email: info@divinalaw.com
Contact: Nilo T. Divina, Managing Partner
Website: www.divinalaw.com
MR BF CMA E LDR TMT

Morales & Justiniano
Tel: (632) 834 2551, (632) 832 7198, (632) 833 8534
Email: ramorales@primuslex.com
Contact: Mr. Rafael Morales - Managing Partner
Website: www.primuslex.com
BF CM CMA IP LDR

Ocampo & Suralvo Law Offices
Tel: (632) 625 0765
Email: info@ocamposuralvo.com
Contact: Jude Ocampo
Website: www.ocamposuralvo.com
CMA ENR PF TX TMT

SyCip Salazar Hernandez & Gatmaitan
AMC 2017 2018 2019
Tel: (632) 8982 3500, 3600, 3700
Email: sshg@syciplaw.com
Contact: Hector M. de Leon, Jr. - Managing Partner
Website: www.syciplaw.com
MR BF CMA E ENR PF

SOUTH KOREA

Bae, Kim & Lee LLC AMC 2017 2018 2019
Tel: (82 2) 3404 0000
Email: bkl@bkl.co.kr
Contact: Kyong Sun Jung
Website: www.bkl.co.kr
MR FS BF CMA IA LDR RE

Kim & Chang AMC 2017 2018 2019
Tel: (82-2) 3703-1114
Email: lawkim@kimchang.com
Website: www.kimchang.com
MR FS COM BF CMA IP LDR

Yoon & Yang LLC AMC 2017 2018 2019
Tel: (82 2) 6003 7000
Email: yoonyang@yoonyang.com
Contacts: Jinsu Jeong, Junsang Lee, Myung Soo Lee
Website: www.yoonyang.com
MR COM E IP LDR TX

Yulchon LLC AMC 2017 2018 2019
Tel: (82-2) 528 5200
Email: mail@yulchon.com
Website: www.yulchon.com
MR FS COM CMA IP LDR TX

TAIWAN

Deep & Far Attorneys-at-Law
Tel: (8862) 25856688
Email: email@deepnfar.com.tw
Contact: Mr. C. F. Tsai
Website: www.deepnfar.com.tw
COM CM E IP LDR

THAILAND

The Capital Law Office Limited
Tel: (66) 2633 9088
Email: contactus@thecapitallaw.com
Contact: Barbara Parr - Business Development Manager (barbara@thecapitallaw.com)
Website: www.thecapitallaw.com
CM CMA INV REG TX

Chandler MHM Limited AMC 2017 2018 2019
Tel: (66) 2266 6485
Email: jessada.s@chandlermhm.com
satoshi.kawai@chandlermhm.com
Contacts: Jessada Sawatdipong, Satoshi Kawai
Website: www.chandlermhm.com
MR BF CMA ENR PF RE

Kudun & Partners Limited AMC 2019
Tel: (66) 2 838 1750
Email: info@kap.co.th
kudun.s@kap.co.th
chinawat.a@kap.co.th
pariyapol.k@kap.co.th
Contacts: Kudun Sukhumananda - Capital Markets, Corporate M&A, Banking & Finance
Chinawat Assavapokee - Tax, Corporate Restructuring, Insolvency
Pariyapol Kamolsilp - Litigation / Dispute Resolution
Website: www.kap.co.th
MR CMA CM LDR RES TX

Pisut and Partners Co., Ltd.
Tel: (66) 202 66226, 202 66227
Email: info@pisutandpartners.com
Contacts: Mr. Pisut Rakwong
Website: www.pisutandpartners.com
CM CMA E LDR RE

Warot Business Consultant Ltd.
Tel: (66) 81802 5698
Email: warot@warotbusinessconsultant.com
Contact: Mr. Warot Wanakankowit
Website: www.warotbusinessconsultant.com
CM CMA E REG TX

Weerawong, Chinnavat & Partners Ltd.
AMC 2017 2018 2019
Tel: (66) 2 264 8000
Email: Veeranuch.t@weerawongcp.com
Contacts: Veeranuch Thammavaranucupt - Senior Partner
Website: www.weerawongcp.com
MR BF CM CMA LDR PF

VIETNAM

Bizconsult Law Firm AMC 2019
Tel: (84) 24 3933 2129
Email: info-hn@bizconsult.vn
Contact: Mr. Nguyen Anh Tuan - (84) 24 3933 2129
Website: www.bizconsult.vn
CM CMA LDR RE RES

Frasers Law Company AMC 2019
Tel: (84) 28 3824 2733
Email: legalinquiries@frasersvn.com
Website: www.frasersvn.com
BF CM CMA PF TMT

Global Vietnam Lawyers LLC
Tel: (84) 28 3622 3555
Email: info@gvlawyers.com.vn
Contacts: Nguyen Gia Huy Chuong
Website: www.gvlawyers.com.vn
CMA IP LDR RE REG

Russin & Vecchi AMC 2017 2018 2019
Ho Chi Minh Office:
Tel: (84) 28 3824-3026
Email: lawyers@russinvecchi.com.vn
Contacts: Sesto E Vecchi - Managing Partner
Nguyen Huu Minh Nhut - Partner
Nguyen Huu Hoai - Partner
Hanoi Office:
Tel: (84) 24 3825-1700
Email: lawyers@russinvecchi.com.vn
Contact: Mai Minh Hang - Partner
Website: www.russinvecchi.com.vn
MR CMA E IP INS TMT

VILAF AMC 2017 2018 2019
Tel: (84) 28 3827 7300, (84) 24 3934 8530
Email: duyen@vilaf.com.vn, tung@vilaf.com.vn, anh@vilaf.com.vn
Contacts: Vo Ha Duyen, Ngo Thanh tung, Dang Duong Anh
Website: www.vilaf.com.vn
MR BF CMA RE ENR LDR

— LAW FIRMS — MIDDLE EAST

BAHRAIN

Trowers & Hamlins
Tel: (973) 1 751 5600
Email: bahrain@trowers.com
Contact: Louise Edwards - Office Manager
Website: www.trowers.com
BF CMA IF LDR RE

OMAN

Trowers & Hamlins
Tel: (968) 2 468 2900
Email: oman@trowers.com
Contact: Louise Edwards - Office Manager
Website: **www.trowers.com**
BF CMA LDR PF RE

UAE

Afridi & Angell AMC 2016 2019
Tel: (971) 4 330 3900
Email: dubai@afridi-angell.com
Contact: Bashir Ahmed - Managing Partner
Website: **www.afridi-angell.com**
BF CMA LDR RE REG

AMERELLER AMC 2019
Tel: (971) 4 432.3671
Email: gunson@amereller.com
Contact: Christopher Gunson
Website: **www.amereller.com**
CMA E IA LDR REG

Horizons & Co AMC 2019
Tel: (971) 4 354 4444
Email: info@horizlaw.ae
Contact: Adv. Ali Al Zarooni
Website: **www.horizlaw.ae**
CMA E LDR PF RE

Trowers & Hamlins LLP AMC 2015 2016
Dubai office:
Tel: (971) 4 351 9201
Email: dubai@trowers.com
Contact: Jehan Selim - Office Manager
Abu Dhabi office:
Tel: (971) 2 410 7600
Email: abudhabi@trowers.com
Contact: Jehan Selim - Office Manager
Website: **www.trowers.com**
BF CMA LDR PF RES

— Arbitration Services —

Beijing Arbitration Commission / Beijing International Arbitration Center
(Concurrently use)
Tel: (86) 10 85659558
Email: xujie@bjac.org.cn
Contact: Mr. Terence Xu（許捷）
Website: **www.bjac.org.cn**

Maxwell Chambers Pte Ltd
Tel: (65) 6595 9010
Email: info@maxwell-chambers.com
Website: **http://maxwell-chambers.com**

Shenzhen Court of International Arbitration (Shenzhen Arbitration commission)
Tel: (86) 755 83501700, (86) 755 25831662
Email: info@scia.com.cn
Website: **www.scia.com.cn**

Alternative — Legal Service — Providers

KorumLegal
Email: Titus.Rahiri@korumlegal.com
Contact: Titus Rahiri
Website: **www.korumlegal.com**

Peerpoint by Allen & Overy
Tel: (852) 2974 6978
Email: stephanie.szeto@allenovery.com
Contacts: Stephanie Szeto, Head of Peerpoint, Asia
Website: **https://www.peerpoint.com/**

Vario from Pinsent Masons (HK) Ltd
Tel: (852) 2294 3454
Email: enquiries@pinsentmasonsvario.com
Contact: Kirsty Dougan, Managing Director, Vario Asia
Website: **https://pinsentmasonsvario.com**

Risk, Investigation — and Legal — Support Services

Berkeley Research Group
Tel: (852) 2297 2270
Email: switchell@thinkbrg.com; mhadi@thinkbrg.com
Contacts: Stuart Witchell (Managing Director, Hong Kong)
Mustafa Hadi (Managing Director, Hong Kong)
Website: **https://www.thinkbrg.com/**

Law In Order
Singapore Office:
Tel: (65) 6714 6655
Email: singapore@lawinorder.com
Contacts: Shae Teo, Director
Website: **www.lawinorder.com.sg**
Hong Kong Office:
Tel: (852) 5803 0000
Email: hongkong@lawinorder.com
Contacts: Sarah Bell, Director
Website: **www.lawinorder.com.hk**

LegalComet Pte Ltd (LEGALCOMET)
Tel: (65) 8118 1175
Contact: Michael Lew, Founder & CEO
Email: michael@legalcomet.com
Website: **www.legalcomet.com**

SDL
Hong Kong Office:
Tel: (852) 2509 2712
Contacts: Christy Ma
Singapore Office:
Tel: (65) 9722 0729
Contacts: Bertram Chen
Email: inquiry@sdl.com
Website: **www.sdl.com**

— Translation —

Pacific Legal Translations Limited
Specialist translators serving the legal community.
Tel: (852) 2705 9456
Email: translations@paclegal.com
Website: **www.paclegal.com**

— Recruitment —

ALS International
Tel: *Hong Kong* – (852) 2920 9100
Singapore – (65) 6557 4163
Beijing – (86) 10 6567 8729
Shanghai – (86) 10 6372 1098
Email: als@alsrecruit.com
Website: **alsrecruit.com**

Horizon Recruitment
Tel: *Singapore* – (65) 6808 6635
Hong Kong – (852) 3978 1369
Email: Jessica.deery@horizon-recruit.com
Website: **www.horizon-recruit.com**

Hughes-Castell
Tel: *Hong Kong* (852) 2520 1168
Singapore (65) 6220 2722
Beijing (86) 10 6581 1781
Shanghai (86) 21 2206 1200
Email: hughes@hughes-castell.com.hk
Website: **www.hughes-castell.com**

Jowers Vargas
Tel: (852) 5808-4137
Email: alexis@evanjowers.com
Website: **https://www.evanjowers.com/**

Lewis Sanders
Tel: (852) 2537 7410
Email: recruit@lewissanders.com
Website: **www.lewissanders.com**

— Other Services —

MEDITATION

Kadampa Meditation Centre Hong Kong
KMC HK is a registered non-profit organisation. We offer systematic meditation and study programmes through drop-in classes, day courses, lunchtime meditations, weekend retreats and other classes.
Tel: (852) 2507 2237
Email: info@meditation.hk
Website: **www.meditation.hk**

SPORT & LEISURE

Splash Diving (HK) Limited
Learn to Dive and Fun Dive with the Winner of the PADI Outstanding Dive Centre/Resort Business Award!
Tel: (852) 9047 9603, (852) 2792 4495
Email: info@splashhk.com
Website: **www.splashhk.com**

— Charitable — Organisations

Impact India Foundation
An international initiative against avoidable disablement. Promoted by the UNDP, UNICEF and the World Health Organization in association with the Government of India.
Tel: (91) 22 6633 9605-7
Email: nkshirsagar@impactindia.org
Website: **www.impactindia.org**


TM
mycareerinlaw.com
The best opportunities from
the region's best recruiters
Market Trends
Job Search
Job Alerts
Career Advice
Sister site to the In-House Community at:
www.inhousecommunity.com